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Selected Subjects

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Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 5331 of April 29, 1985

National Child Safety Awareness Month, 1985

By the President of the United States of America

A Proclamation

May has been designated as National Child Safety Awareness Month this year, but for a mother or father who has suffered the tragedy of a missing child, the nightmare is not confined to one day, one week, or one month. It stays with them until their child is found. For all too many parents, it stays with them forever.

More than 1,500,000 children have been reported missing in the United States, but until recently there was little concerted action to deal with this problem. Today, however, a new spirit of activism is bringing together parents, law enforcement officials, and community agencies in an energetic drive to increase public awareness of the need to protect our Nation's children.

One of the most encouraging developments in this regard was the establishment of the National Center for Missing and Exploited Children. This Center disseminates educational material about child safety, offers information about voluntary identification procedures for young people, and maintains a toll-free hotline to help locate missing children. It is providing a needed focus for our Nation's efforts to stem this serious problem.

The safety of our children is everyone's responsibility, and by working together we can make a difference. It is important for parents to instruct their children at an early age and ensure that they know their complete name, address, and how to dial their telephone number. The public and private sectors can provide the assistance that is needed by children who are victims of abuse, including safe and secure shelter for runaway and homeless youth to protect them from the dangers they might encounter on the streets. Corporations can be helpful by publicizing the plight of missing children to facilitate their identification and return home.

The most important thing we can all do, however, is to create a society in which our children are respected, loved, and cherished. The family is the natural place for demonstrating this love and respect, but the spirit of respect for family values should be spread widely throughout society. Activities such as child pornography should be straightforwardly condemned as inconsistent with a society that truly loves its children and respects the integrity of the childhood years. By speaking up and making their voices heard, concerned Americans can make a big difference in the kind of society our children will grow up in and, even more, in their ability to grow up with the love and security that should be every child's birthright.

The Congress, by House Joint Resolution 33, has designated the month of May 1985 as "National Child Safety Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1985 as National Child Safety Awareness Month. I call on all Americans to join the effort to protect our children to ensure a healthy and productive generation of Americans as our contribution to the future.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-10701
Filed 4-29-85; 4:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5332 of April 29, 1985

Mother's Day, 1985

By the President of the United States of America

A Proclamation

For most of this century, we have set aside the second Sunday in May as a special day when we honor our mothers. It is very appropriate that we do so because from the earliest days of our country, mothers have played a major role in building America into a great Nation. The fortitude, courage, and love of family and country shown by these brave pioneer women lives on in mothers today.

It is especially important that we honor mothers today, because we are more aware than ever before of the importance of the family unit, in which mothers play so central a role. Families are truly the foundation of society, and mothers the vital foundation of the life of the family. Their influence on the training and education of our youth is so deep and pervasive that it is impossible to measure.

When we honor mothers, therefore, we honor the women who shape our Nation's future. Their collective effect on the America our children will inherit is greater than that of any act of Congress or any Presidential decision. I am happy, therefore, to have this chance once a year to pay them tribute.

In recognition of the contributions of all mothers to their families and to the Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as Mother's Day and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby request that Sunday, May 12, 1985, be observed as Mother's Day. I direct government officials to display the flag of the United States on all Federal government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-10702
Filed 4-29-85; 4:26 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12511 of April 29, 1985

President's Child Safety Partnership

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. II), and in order to establish an advisory committee to recommend initiatives by which the private and public sectors may cooperate in promoting the safety of children, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Child Safety Partnership.

(b) The Partnership shall be composed of not more than 26 members designated or appointed by the President from among citizens of the United States, and shall include the Attorney General, the Secretary of Health and Human Services, and the Secretary of Education. The President shall designate a Chairman from among the members of the Partnership.

Sec. 2. *Functions.* (a) The Partnership shall examine issues and make recommendations to the President on preventing the victimization and promoting the safety of children in the United States.

(b) The Partnership may conduct such studies, inquiries, hearings, and meetings as may be necessary to carry out its functions. The focus of the Partnership's inquiries and reports shall be on recommendations for public-private cooperation to encourage and facilitate private sector involvement in child safety efforts, including activities appropriate for action by service organizations, schools, businesses, charitable organizations, and public safety organizations.

(c) The Partnership shall report to the President from time to time as requested and shall submit its final report by April 29, 1987.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Partnership such information as it may require to carry out its functions.

(b) Members of the Partnership shall serve without compensation for their work on the Partnership. However, members appointed from among private citizens, including employees from State and local government, may, subject to the availability of funds, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Attorney General shall, to the extent permitted by law, provide the Partnership with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. *General.* (a) The Departments of Justice, Health and Human Services, and Education are directed to join with the Partnership to encourage the development of public/private sector initiatives to prevent and respond to the victimization of children.

(b) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Partnership, shall be performed by the Attorney General, in accordance with guidelines and procedures established by the Administrator of General Services.

(c) The Partnership shall terminate on April 29, 1987, or 60 days after submitting its final report, whichever is earlier.

Ronald Reagan

THE WHITE HOUSE,
April 29, 1985.

[FR Doc. 85-10703
Filed 4-29-85; 4:28 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5333 of April 29, 1985

National Tourism Week, 1985

By the President of the United States of America

A Proclamation

Travel has long been recommended as a way to broaden the mind and refresh the spirit. But in previous ages, travel was often hazardous and difficult. The rewards of a romantic adventure could sometimes be more than overbalanced by the dangers a traveler might encounter along the way.

Today, the travel and tourism sector of our economy constitutes the second largest retail industry in the United States. The benefits of travel remain as enticing as ever, but the hazards and dangers have largely disappeared. Americans who want to travel abroad can experience the tremendous diversity of the world's cultures on group excursions or on individually designed tours.

Many Americans, however, are choosing to remain near home and explore the natural beauties and historic monuments of our own Nation. And many citizens of foreign lands are joining them in discovering that America's rich history and scenic wonders make it an excellent place to take a vacation.

The Congress, by Public Law 98-424 of September 25, 1984, has designated the week beginning May 19, 1985, as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 19, 1985, as National Tourism Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-10751
Filed 4-30-85; 10:57 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12512 of April 29, 1985

Federal Real Property Management

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 486(a) of title 40 of the United States Code, and in order to ensure that Federal real property resources are treated in accordance with their value as national assets and in the best interests of the Nation's taxpayers, it is hereby ordered as follows:

Section 1. *General Requirements.* To ensure the effective and economical use of America's real property and public land assets, establish a focal point for the enunciation of clear and consistent Federal policies regarding the acquisition, management, and disposal of properties, and assure management accountability for implementing Federal real property management reforms, all Executive departments and agencies shall take immediate action to recognize the importance of such resources through increased management attention, establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate actions. Specifically:

(a) The Domestic Policy Council shall serve as the forum for approving government-wide real property management policies;

(b) All Executive departments and agencies shall establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management, and identify sales, work space management, productivity, and excess property targets;

(c) The Director of the Office of Management and Budget shall review, through the management and budget review processes, the efforts of departments and agencies toward achieving the government-wide property management policies established pursuant to this Order. Savings achieved as a result of improved management shall be applied to reduce Federal spending and to support program delivery;

(d) The Office of Management and Budget and the General Services Administration shall, in consultation with the land managing agencies, develop legislative initiatives that seek to improve Federal real property management through the adoption of appropriate private sector management techniques; the elimination of duplication of effort among agencies; and the establishment of managerial accountability for implementing effective and efficient real property management practices; and

(e) The President's Council on Management Improvement, subject to the policy direction of the Domestic Policy Council, shall conduct such additional studies as are necessary to improve Federal real property management by appropriate agencies and groups.

Sec. 2. *Real Property.* The Administrator of General Services shall, to the extent permitted by law, provide government-wide policy oversight and guidance for Federal real property management; manage selected properties for

agencies; conduct surveys; delegate operational responsibility to agencies where feasible and economical; and provide leadership in the development and maintenance of needed property management information systems.

Sec. 3. *Public Lands.* In order to ensure that Federally owned lands, other than the real property covered by Section 2 of this Order, are managed in the most effective and economic manner, the Departments of Agriculture and the Interior shall take such steps as are appropriate to improve their management of public lands and National Forest System lands and shall develop appropriate legislative proposals necessary to facilitate that result.

Sec. 4. Executive Order No. 12348 of February 25, 1982, is hereby revoked.

Ronald Reagan

THE WHITE HOUSE,
April 29, 1985.

[FR Doc. 85-10752
Filed 4-30-85; 10:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 84
Wednesday, May 1, 1985

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Soybeans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Soybeans. Pursuant to this review, FGIS is revising the soybean standards to: (1) Delete the current classes of Green, Black, and Brown soybeans and include these deleted classes in a new definition of Soybeans of other colors; (2) include limits in the Sample grade requirements for soybeans, and (3) make miscellaneous changes in language, format, and references. These changes are made to update and conform the standards to other grain standards.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, S.W., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of soybean inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (the Act), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest, the revision become effective September 9, 1985. This will coincide with the beginning of the 1985 crop year and to facilitate domestic and export marketing and will provide adequate time to implement the revised standards and for the industry to make necessary marketing changes involving existing contracts and other documents. The effective date of this action coincides with the effective date of a previous revision of the soybean standards (49 FR 35743). To avoid confusion and to coordinate changes to the soybean standards, it is in the best interest of the public that these two revisions are effective on the same date.

Final Action

The review of the standards included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing practices and functions affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective is to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Sobyeans, Corn, and Mixed Grain was published in the May 6, 1980, **Federal Register** (45 FR 30446). Views and comments were solicited to help in the study and evaluation of present grading practices and standards and in the development of any recommendations for change. Following this request for public comment, additional information was evaluated and discussions were held with soybean industry representatives to aid in the formulation of proposed changes to the soybean standards.

A proposal to revise the standards for soybeans was published in the December 20, 1984, **Federal Register** (49 FR 49474). The proposal included the following:

1. Delete test weight per bushel as a grade-determining factor for soybeans.
2. Revise the current classes of soybeans by deleting the classes of Green, Black, and Brown soybeans, and include these classes in a new definition of Soybeans of other colors.
3. Include limits in the Sample grade requirements for soybeans.
4. Make changes in language, format, and update the footnotes referenced in the standards to enhance the clarity and uniformity among grain standards.

Within the 60-day comment period, 37 written comments were received. Twenty-two comments were received from importers of U.S. soybeans and soybean products. Eight comments were received from State Departments of Agriculture, universities and producer representatives. Seven comments were received from representatives of grain elevators, domestic processors, and exporters. The large majority of commenters confined their remarks to the proposed deletion of test weight per bushel as a grade-determining factor and the previous final rule (49 FR 35743), which deletes moisture content as a grade determining factor (effective September 9, 1985).

Twenty-nine commenters were opposed to the deletion of test weight per bushel as a grade determining factor, while six commenters favored the proposal. The six commenters who favored the proposal included two national producer organizations, two State Departments of Agriculture, a

producer, and a university professor. The majority of the commenters who opposed the test weight change represented U.S. soybean handlers, grain industry associations, exporters, and importers. The soybean handlers and some of the exporters generally indicated that the deletion of test weight per bushel as a grade determining factor would not prevent producers from being discounted for soybeans with low test weight. Concerning the export markets, the grain trade associations and the exporters generally opposed the proposal because, in their opinion, it would be misleading and would create confusion for the importers given present trading and marketing practices. The importers opposed the proposal because they (1) consider test weight per bushel as a grade determining factor to be a critical test for soybeans; (2) claim that U.S. soybean quality has been deteriorating, and the deletion of test weight as a grade determining factor will add to the deterioration; and (3) believe that the change may impair the confidence in the uniformity and quality of U.S. soybeans, causing them to look to other suppliers to meet their needs.

While, as stated in the proposal, some producers have questioned the value of the test weight per bushel as a grade determining factor and its use for discounting, based upon information received from exporters as well as foreign importers, it is evident that its use as a grade determining factor is of value to the industry, especially in view of present trading and marketing practices.

Accordingly considering information available including comments, FGIS has determined that test weight per bushel should be retained as a grade determining factor in the soybean standards. As in the current standards, test weight per bushel will continue to be expressed in whole and half pounds with a fraction of a half pound disregarded. Applicable comments favored the current provisions of test weight per bushel including that it be expressed in whole and half pounds.

A majority of the comments addressing the proposed changes in class designations and the revisions in format favored these changes as an improvement in the soybean standards. The changes as proposed, are included in this final rule.

Many commenters addressed changes that were not included in the proposed revision of the soybean standards. Twelve commenters requested the inclusion of protein and oil content in the standards. Four commenters asked that FGIS make changes in the current provision for assessing stink bug damaged soybeans. Four other comments requested changes to the current allowances for foreign material. FGIS is currently conducting studies to refine the methodology for rapidly measuring oil and protein content and will consider proposing the inclusion of these factors into the standards in the future. A study is also underway to improve the current method for assessing stink bug damaged soybeans. Possible changes will be addressed when the study is completed. The comments on excess foreign material and the current foreign material provisions in the standards will be given consideration during the next review of the soybean standards.

As a result of this review, the U.S. Standards for Soybeans are revised as discussed below.

1. To enhance clarity and uniformity among standards, FGIS is revising the U.S. Standards for Soybeans by dividing the standards into 4 parts, and into sections, similar to the present format in other U.S. grain standards. Specifically, in addition to the changes below, the undesignated heading, TERMS DEFINED consists of a new § 810.601, *Definition of soybeans*, and a new § 810.602, *Definition of other terms*. An undesignated heading, PRINCIPLES GOVERNING APPLICATION OF STANDARDS consists of a new § 810.603, *Basis of determination*, a new § 810.604, *Temporary modifications in equipment and procedures*, and a new § 810.605, *Percentages*. An undesignated heading, GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS consists of a new § 810.606, *Grades and grade requirements for soybeans*, and a new § 810.607, *Grade designations*. The undesignated heading, SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS consists of a new § 810.608, *Special grades and special grade requirements*, and § 810.609, *Special grade designations*.

Incidental to this revision, the current § 810.601, *Terms defined*, is removed as unnecessary, TERMS DEFINED becomes an undesignated heading, and § 810.601 is designated the new *Definition of soybeans*. The current § 810.602, *Principles governing application of the standards*, is removed; PRINCIPLES GOVERNING APPLICATION OF STANDARDS becomes an undesignated heading, and § 810.602 is designated the new *Definition of other terms*. The current § 810.603, *Grades, grade requirements, and grade designations*, is removed; GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS becomes an undesignated heading, and § 810.603 is designated the new *Basis of determination*.

The current § 810.601 (a) *Soybeans*, is redesignated as § 810.601, *Definition of soybeans*, and includes the scientific name for soybeans. The current § 810.601 (b) *Classes*, § 810.601 (c) *Yellow soybeans*, and § 810.601 (g) *Mixed soybeans*, are revised and redesignated as the new § 810.602(a). The current § 810.601 (d), (e) and (f) are removed as classes and redesignated as § 810.602(h), *Soybeans of other colors*, as discussed below. The current § 810.601(h) *Grades* is removed as unnecessary. The current § 810.601 (i) *Bicolored soybeans*, is incorporated into the new § 810.602 (h), *Soybeans of other colors*, and includes additional information incorporated from the current § 810.903. Section 810.903, therefore, is removed.

The current § 810.601(j) *Splits*, (k) *Damaged kernels*, (l) *Heat-damaged kernels*, (m) *Foreign material*, and (n) *Stones*, are restated and redesignated as § 810.602 (i), (b), (e), (d), and (j), respectively. The current § 810.602 (c) *Moisture*, and (d) *Test weight per bushel* are redesignated as (f) and (k), respectively. The current § 810.601(o) *8/64 sieve*, is redesignated as § 810.602(1).

Also included in the new § 810.602 *Definition of other terms*, are definitions for two new terms, (c) *Distinctly low quality* and (g) *Purple mottled or stained*, which are incorporated from the current § 810.901 and § 810.902, respectively. Sections 810.901 and 810.902, therefore, are removed.

The new § 810.603 *Basis of determination* (previously § 810.602(a)), is clarified by rewording the section and dividing it into three subparagraphs, (a) *Distinctly low quality*, (b) *Certain quality determinations*, and (c) *All other determinations*. This format appears in other grain standards and the information which appears in the section is generally contained in the FGIS Grain Inspection Handbook.

A new § 810.604, *Temporary modifications in equipment and procedures*, is included. The equipment and procedures referenced in the soybean standards are applicable to grain produced under normal environmental conditions. The revision provides that, when adverse growing or harvest conditions make impractical the use of routine procedures, minor temporary modifications in the equipment or procedures may be required to obtain results expected under normal conditions. Adjustments in interpretations (i.e., identity, quality,

and condition) shall not be made. This section is similar to sections which appear in other grain standards.

The current § 810.602(b) *Percentages*, is clarified by explaining in greater detail the rounding procedures currently used for soybeans. Accordingly, this revision specifies how a figure will be rounded when followed by a figure greater, lesser, or equal to five. This revision makes the wording of the section the same or similar to that used in other grain standards, as appropriate. The section is included in the new § 810.605, *Percentages*.

A new § 810.606 *Grades and grade requirements for soybeans* (currently § 810.603), is included. Changes are made to clarify wording and to revise the format for the requirements for U.S. Sample grade. The format changes for the U.S. Sample grade requirements are made to conform to other grain standards and to incorporate the current § 810.901 into these requirements. Because of changes to other standards, § 810.901 applies only to soybeans, therefore § 810.901 is removed.

A new § 810.607 *Grade designation* (currently an undesignated heading), is included. Changes are made to clarify wording and to conform to other grain standards. The current § 810.603 (b) and (c) are redesignated as § 810.607 (a) and (b), respectively.

An undesignated heading, currently contained in § 810.603(d) is revised to read: SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS. The heading is followed by two new sections, § 810.608 *Special grades and special grade requirements*, and § 810.609 *Special grade designations*. This information is currently contained in § 810.603(d) (1 and 2). The new wording and format for this section of the soybean standards adds clarity and conforms with other grain standards.

As indicated above, § 810.901, § 810.902, and § 810.903 in the current standards are removed and incorporated into other sections.

2. The current classes of soybeans are revised. The current soybean standards define classes for Yellow, Green, Brown, Black, and Mixed soybeans. While it is known that some black or brown soybeans are produced for special purposes, detailed information on the production of green, brown, or black soybeans is not available because of the limited production. Further, these soybeans are rarely offered for official inspection. With these revisions, two classes of soybeans are defined—Yellow and Mixed soybeans. Under the revised standard, a sample containing green, brown, or black soybeans, or a mixture thereof, when exceeding 10% of the sample, is certified as Mixed soybeans. A new definition for soybeans of other colors is added to the revised soybean standards. Soybeans of other colors include black, brown, green, and bicolored soybeans. The percentage of yellow soybeans and the percentage of soybeans of other colors would follow the class designation on the inspection certificate, e.g., U.S. No. 2 Mixed soybeans, Yellow soybeans 80%, Soybeans of other colors, 20%.

3. FGIS has included in the definition of U.S. Sample grade, the limits for stones, pieces of glass, crotalaria seeds, castor beans, particles of an unknown foreign substance(s), rodent pellets, bird droppings, and animal filth. The limits of 8 or more stones (which have an aggregate weight in excess of 0.2 percent of the sample weight), 2 or more pieces of glass, 3 or more crotalaria seeds, 2 or more castor beans, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), and 10 or more pieces of rodent pellets, bird droppings, or other animal filth, have been followed in the inspection process for many years, are contained in the FGIS Grain Inspection Handbook, and do not constitute new limits. The limits are added to the definition of U.S. Sample grade for clarity and to conform with other grain standards.

4. Footnotes are updated to delete reference to the Inspection and Equipment Handbooks as appropriate. Footnote 2 is revised and references to footnotes 3 and 4 are changed to footnote 2. Footnotes 3 and 4 are deleted.

5. In addition to the changes referenced above which differ from the proposed rule, miscellaneous non-substantive changes are made in this final rule for clarity and for facilitating use of the standards. These minor changes appear, generally in §§ 810.605, 810.606, and 810.607, and relate to grammatical and format changes. Otherwise, this final rule is the same as that proposed.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Accordingly, the United States Standards for Soybeans is amended by revising §§ 810.601–810.603, adding §§ 810.604–810.609, and by removing §§ 810.901–810.903 as follows:

United States Standards for Soybeans

Sec.

Terms Defined

810.601 Definition of soybeans.
810.602 Definition of other terms.

Principles Governing Application of the Standards

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United States Standards for Soybeans [1]

Terms Defined

§ 810.601 Definition of soybeans.

Grain which consists of 50 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) which will not pass readily through an 8/64-inch sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.602 Definition of other terms.

For the purposes of these standards the following terms shall have the meaning stated below:

(a) *Classes*. There are two classes for soybeans:

(1) *Yellow soybeans*. Soybeans which have yellow or green seed coats, and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

(2) *Mixed soybeans*. Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels*. Soybeans and pieces of soybeans which are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stink-bug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged

[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Distinctly low quality.* Soybeans which are of obviously inferior quality because they are in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling devices; i.e., large stones, wreckage, or similar objects.

(d) *Foreign material.* All matter, including soybeans and pieces of soybeans, which will readily pass through an 8/64-inch sieve and all matter other than soybeans remaining on the sieve after sieving.

(e) *Heat-damaged kernels.* Soybeans and pieces of soybeans which are materially discolored and damaged by heat.

(f) *Moisture.* Water content in soybeans as determined by an approved device in accordance with procedures prescribed in FGIS Instructions.[2]

(g) *Purple mottled or stained.* Soybeans which are discolored by the growth of a fungus; or by dirt; or by dirt-like substance(s) including nontoxic inoculants; or by other nontoxic substances.

(h) *Soybeans of other colors.* Soybeans which have green, black, brown, or bicolored seed coats. Soybeans which have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color shall cover 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(i) *Splits.* Soybeans with more than 1/4 of the bean removed and which are not damaged.

(j) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(k) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on the original sample using an approved device in accordance with procedures prescribed in FGIS Instructions.[2] Test weight per bushel is expressed in whole and half pounds with a fraction of a half pound disregarded.

(l) *8/64 inch sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (8/64) inch in diameter with approximately 4,736 perforations per square inch.

Principles Governing Application of Standards

§ 810.603 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of class, heat damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material.

(c) *All other determinations.* All other determinations are made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling in accordance with procedures prescribed in the Grain Inspection Handbook.[2]

§ 810.604 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the soybean standard are applicable to soybeans produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of soybeans may require temporary modifications in equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.605 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., 0.46, report as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., 0.54, report as 0.5.

(3) When the figure to be rounded is even and followed by the figure 5, retain the even figure. When the figure to be rounded is odd and followed by the figure 5, round the figure to the next higher number; e.g., 0.45 report as 0.4; 0.55; report as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining splits. The percentage of splits is stated in whole percent with a fraction of a percent disregarded.

Grades, Grade Requirements, and Grade Designations

§ 810.606 Grades and grade requirements for soybeans.

The following grades and grade requirements are applicable under these standards. In Mixed soybeans, the factor "soybeans of other colors" will be disregarded.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Splits (percent)	Damaged kernels		Foreign material (percent)	Soybeans of other colors(percent)
			Total (percent)	Heat damaged (percent)		
U.S. No. 1	56.00	10.0	2.0	0.2	1.0	1.0
U.S. No. 2	54.00	20.0	3.0	0.5	2.0	2.0
U.S. No. 3[1]	52.00	30.0	5.0	1.0	3.0	5.0
U.S. No. 4[2]	49.00	40.0	8.0	3.0	5.0	10.0

U.S. Sample grade: U.S. Sample grade shall be soybeans which:

(a) Do not meet the requirements of U.S. No. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more pieces of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth in 1,000 grams of soybeans; or

(c) Have a musty, sour or commercially objectionable foreign odor (except garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.

[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

§ 810.607 Grade designation.

(a) *Grade designations for soybeans.* (See also § 810.608.) The grade designations for soybeans shall include in the following order: (1) The letters "U.S."; (2) The number of the grade or the words "Sample grade"; (3) The class; and (4) Each applicable special grade (See also § 810.609). In the case of Mixed soybeans, the grade designation shall also include, following the name of the class, the approximate percentages of Yellow soybeans and soybeans of other colors in the mixture.

[2] Requests for information concerning inspection and certification procedures, approved devices, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(b) *Optional grade designations.* Soybeans may be certified (under certain conditions [2]) when supported by official analysis, as "U.S. No. 2 or better Soybeans," "U.S. No. 3 or better Soybeans," and the like. The optional grade designations for soybeans shall include the name of the applicable class immediately preceding the word "soybeans" on the grade designation. The special grade designation, when applicable, also shall be included (under certain conditions [2]) in the certification.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.608 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.606. Such special grades are established and determined as follows:

(a) *Garlicky soybeans.* Soybeans which contains 5 or more garlic bulblets in a 1,000 gram portion.

(b) *Infested soybeans.* Soybeans which are infested with live weevils or other insects injurious to stored grain as set forth in the Grain Inspection Handbook.[2]

§ 810.609 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.607. The grade designation for garlicky and infested soybeans shall include in the order listed, following the applicable class, the word "Garlicky" and "Infested," as warranted, and all other information prescribed in § 810.607.

§§ 810.901–810.903 [Removed]

* * * * *

Dated: April 17, 1985.

Dr. Kenneth A. Gilles,

Administrator, FGIS.

[FR Doc. 85–10347 Filed 4–30–85; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1032

[Milk Order No. 32]

Milk in the Southern Illinois Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends for the month of April 1985 the provisions of the Southern Illinois milk order relating to how much milk may be moved directly from farms to nonpool plants and still be priced under the order. The suspension was requested by six cooperative associations that represent a substantial majority of the producers who supply the market. The suspension is needed to provide additional flexibility to allow efficient and orderly adjustments by market participants to changes in marketing conditions caused by the April 1, 1985, termination of the St. Louis-Ozarks order.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 4, 1985; published April 9, 1985 (50 FR 13976).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 9, 1985 (50 FR 13976) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that for the month of April 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

Statement of Consideration

This action removes the limit on the amount of milk that may be diverted from pool plants to nonpool plants during the month of April 1985. The order now provides that during the month of April not more than 8 days of production of a producer may be diverted to nonpool plants. During the following months of May through July the order does not limit the amount of milk that may be diverted to nonpool plants.

The suspension was requested by six cooperative associations that represent a substantial majority of the producers who supply the market. The suspension is necessary to provide additional flexibility for market participants to adjust to changes in marketing conditions occurring as a result of the April 1, 1985, termination of the adjacent St. Louis-Ozarks order. As a result of that termination a number of fluid milk plants in the St. Louis metropolitan area, and a substantial volume of producer milk associated with such plants, will be regulated under the Southern Illinois order. Significant marketing adjustments will have to be made by the cooperative associations who supply the fluid milk needs of the market to accommodate the structural changes in the market.

In view of these circumstances, it is concluded that the aforesaid provisions should be suspended to ensure the orderly marketing of milk supplies. The suspension will provide greater flexibility in making adjustments to the changed marketing conditions. The April through July period of no limits on diversions of milk to nonpool plants (there are no diversion limitations during May–July) will allow for adjustments to the termination of the St. Louis-Ozarks order to be made in an efficient manner.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concening this suspension. No comments opposing the suspension were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

PART 1032—[AMENDED]

It is therefore ordered, That the following language in § 1032.13 of the order is hereby suspended for the month of April 1985:

In § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

Effective date. May 1, 1985.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on: April 24, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85–10527 Filed 4–30–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

[Milk Order No. 106]

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain standards for pooling plants that are operated by cooperative associations under the Southwest Plains order during the months of April through August 1985. The action removes the requirement that certain plants operated by cooperative associations need to be located in the marketing area or in a county adjacent to the marketing area. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that will be regulated under the Southwest Plains order because of the termination of the adjacent St. Louis-Ozarks order effective April 1, 1985. Without the suspension, costly and inefficient movements of milk would have to be made solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri plants, will have their milk priced and pooled under the order.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Suspension: Issued April 4, 1985; published April 9, 1985 (50 FR 13977).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the Federal Register on April 9, 1985 (50 FR 13977) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that for the months of April through August 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

Statement of Consideration

The order currently provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the producer milk of members of cooperative associations that operate such plants is physically received at distributing plants. The suspension removes the requirement that cooperative association plants need to be located in the marketing area or in a county adjacent to the marketing area during the months of April through August 1985.

The action was requested by Mid-America Dairymen, Inc. (Mid-Am) a cooperative association that operates plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. The distributing plants in this area were regulated under the St. Louis-Ozarks order. There is every indication that these distributing plants, and the supplies of producer milk associated with such plants, will become associated with the Southwest Plains order because of the termination of the St. Louis-Ozarks order effective April 1, 1985.

Mid-Am supply plants did supply fluid milk to the southwest Missouri distributing plants during the past fall and winter months and constitute a part of the reserve supply for these distributing plants. Mid-Am indicates that during the months of April through August, there are sufficient supplies of milk available to supply the fluid needs of southwest Missouri distributing plants on a direct-shipped basis. However, since Mid-Am's supply plants are not located in the Southwest Plains marketing area or in a county adjacent to the marketing area, Mid-Am will not be able to pool the milk of its member producers without making costly and inefficient shipments of milk from the supply plants to the distributing plants. With a suspension action, the milk can be pooled on the basis of Mid-Am's total performance in supplying 50 percent or more of its milk supply directly to pool distributing plants, thus eliminating the need to make costly and inefficient movements of milk solely for the purpose of pooling the milk of dairy farmers who supply the fluid milk needs of the southwest Missouri distributing plants.

Interested parties were given an opportunity to submit written data, views, or arguments concerning the suspension. Comments supporting the action were received from Associated Milk Producers, Inc., a cooperative association that represents a substantial majority of the producers who supply the Southwest Plains market, and Kraft, Inc., a handler who operates a supply plant pooled under the Southwest Plains order and a plant at Springfield, Missouri, that receives milk from producers who have been pooled under the former St. Louis-Ozarks order. These parties supported the suspension to promote transportation and handling efficiencies. No views in opposition to the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area in that without the suspension costly and inefficient movements of milk would be made solely for pooling purposes;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following language in § 1106.7 of the order is hereby suspended for the months of April through August 1985:

In § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

Effective date: May 1, 1985.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C. on: April 24, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85-10528 Filed 4-30-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 399

[Docket No. 50468-5068]

Hughes Helicopters, Model 500/530 Series, Civil Version; Licensing Requirement on Exports to All Country Groups

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations prohibit the export and reexport of virtually all commodities and technical data to destinations in Country Group Z, which includes North Korea. Exports of certain Hughes helicopters have recently occurred in violation of these Regulations.

In this regard, on February 1, 1985, an order temporarily denying all export privileges to Kurt Behrens and Delta-Avia Fluggerate GmbH and certain named related parties was entered by the Department of Commerce (50 FR 5288, Feb. 7, 1985).

This rule imposes a licensing requirement on exports and reexports of Hughes helicopters, Model 500/530 series, civil version, including specially designed components, to all Country Groups to assure that further violations of the ban on exports to destinations in Country Group Z do not occur. This licensing requirement will expire in 90 days, unless modified or extended. During this time period, the Department, in consultation with other Government agencies, will review U.S. export policy regarding the exports of all commercial helicopters.

DATES: This rule is effective April 29, 1985 until July 29, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Webb, Capital Goods and Production Materials Division, Office of Export Administration, Telephone (202) 377-3806.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Applicants for the validated export license required by this Notice will use Form ITA-622P. This form has been approved by the Office of Management and Budget under control number 0625-0001. Applicants for reexports will use Form ITA-699P. This form has been approved by the Office of Management and Budget under control number 0625-0009.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 376 and 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for 15 CFR Parts 368-399 continues to read as follows:

Authority: Secs. 203, 206; Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985).

PART 376—[AMENDED]

2. Section 376.5 is added to read as set forth below.

§ 376.5 Helicopters.

Under ECCN 4461B a validated license is required for the export of Huges Model 500/530 series civil version helicopters, including specially designed components, to all Country Groups. Subject to other applicable licensing policies, the policy is to approve license applications and reexport requests for these commodities to all Country Groups, except Groups S and Z, if OEA is satisfied that the restrictions on exports and reexports to Country Group Z will not be violated (see § 385.1).

PART 399—[AMENDED]

3. Supplement No. 1 to § 399.1 (the Commodity Control List) is amended by adding in Commodity Group 4, Transportation Equipment, entry 4461B to read as follows:

§ 399.1 [Amended]

4461B Hughes, Model 500/530 Series, helicopters (civil versions); including specially designed components.

Controls for ECCN 4461B

Unit: Report helicopters in number; components in dollar value.

Validated License Required: Country Groups: Q S T V W Y Z.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign Policy.

Special Licenses Available: None.

Technical Data: See 379.4(d).

Special Foreign Policy Controls: (1) This validated licensing requirement is maintained for all Country Groups to preclude diversion to S and Z destinations. (2) The licensing

requirement is this ECCN 4461B expires 90 days after its effective date. (3) For commodities defined in this entry, foreign policy controls apply to Libya, Iran, the Republic of South Africa and Namibia for both aircraft and helicopters regardless of value.

Dated: April 26, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-10619 Filed 4-29-85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 239

Guides Against Deceptive Advertising of Guarantees

AGENCY: Federal Trade Commission.

ACTION: Final Revision of Guides.

SUMMARY: The Commission has revised the Guides Against Deceptive Advertising of Guarantees, 16 CFR Part 239, which were adopted in 1960. The Guides, as presently constituted, call for extensive disclosure of warranty terms, particularly in advertising of warranties that promise a remedy in the event of product defects of malfunctions. The Guides also address a number of other topics including: savings guarantees (representations that certain savings will be realized), "satisfaction" or "money back" guarantees, "lifetime" guarantees, the obligation to perform advertised warranties, and the use of guarantees as misrepresentations about the attributes of products.

The Commission has revised the Guides to eliminate the provisions calling for disclosures of warranty terms in advertising of warranties and guarantees that promise a remedy in the event of product defects or malfunctions. In place of these extensive disclosures, the revised Guides call for a simple, brief disclosure that the actual warranty document is available for consumers to read before they buy the advertised product.

The basic concepts of the other provisions have been retained, except the provision dealing with savings guarantees, and the provision dealing with warranties as misrepresentations of material fact. These two provisions have been deleted. The wording of the Guides has been modified to be more consistent and direct throughout.

The Commission has been reviewing the existing Guides since the 1976 adoption, pursuant to the Magnuson-Moss Warranty Act, of the Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR Part 701 (the "Disclosure Rule") and the Rule on Pre-Sale Availability of Written Warranty Terms, 16 CFR Part 702 (the "Pre-Sale Availability Rule"). Among other things, the Act and the Rules assure that the terms of consumer product written warranties are clearly disclosed in a single document and that the warranty documents are made available for consumers to examine before they purchase warranted products. Thus, the current situation is dramatically different from that which prevailed when the Guides were adopted. At that time consumers may have had to depend upon warranty advertising as their primary source of pre-purchase information about warranties.

The revisions of the Guides are based upon public comments and survey research. Comments were received in response to the Commission's solicitation in the **Federal Register** on how the existing Guides might be revised to encourage non-deceptive warranty advertising, 45 FR 51836 (Aug. 5, 1980). There were two surveys conducted in conjunction with this matter, the Warranty Print Advertising Survey, conducted in 1981, and the Warranty Evaluation Survey, conducted in 1982-1983.

This notice explains the revisions, section by section, discusses the reasons for the revisions, and sets forth the revised and renamed Guides for the Advertising of Warranties and Guarantees.

DATE: The Revised Guides are effective as of May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Allen Hile, Attorney, Division of Marketing Practices, 6th Street at Pennsylvania Avenue, NW., Washington, D.C. (202) 523-3553.

SUPPLEMENTARY INFORMATION: The remainder of this announcement is divided into five sections. Section A describes the existing Guides. Section B summarizes the comments received in response to the August 5, 1980, **Federal Register** Notice. Section C sets forth relevant results of the surveys that were conducted in conjunction with this matter. Section D explains the revisions, provision by provision, and, finally, Section E sets forth the revised Guides for the Advertising of Warranties and Guarantees.

Section A—The Existing Guides Against Deceptive Advertising of Guarantees

In 1960, the Commission issued its *Guides Against Deceptive Advertising of Guarantees,* 16 CFR Part 239, based upon numerous Commission cases concerning the advertising of warranties and guarantees.

Section 239.0 of the existing Guides states that the Guides enunciate principles to be used by the Commission in determining whether representations about warranties or guarantees made in advertising or otherwise violate section 5 of the Federal Trade Commission Act.

Existing § 239.1 of the Guides pertains to representations made in advertising or otherwise and calls for any advertisement that mentions a guarantee or warranty on the advertised product to disclose the nature and extent of the warranty or guarantee, including: (1) What product or part of the product is guaranteed; (2) what characteristics or properties of the designated product or part are covered by, or excluded from, the guarantee; (3) what is the duration of the guarantee; and (4) what, if anything, any one claiming under the guarantee must do before the guarantor will fulfill its obligation under the guarantee (such as return the product or pay service or labor charges). Existing § 239.1 also calls for disclosure in warranty advertising of the manner in which the guarantor will perform, namely, a statement of exactly what the guarantor undertakes to do under the guarantee (for example, repair or replace the product, or refund the purchase price). Finally, existing § 239.1 calls for disclosure of the identity of the guarantor in advertising that mentions a guarantee or warranty.

Existing § 239.2 of the Guides pertains to pro rata guarantees, which are guarantees that provide a credit or refund that declines regularly according to some specified formula over some specified period of time. This section calls for disclosure of the basis upon which the remedy offered by such a guarantee or warranty is pro rated. The other disclosures in § 239.1 that apply generally to all defects guarantees also apply to pro rata warranties.

The other Guide sections cover a range of specific topics relating to warranties or guarantees.

Section 239.3 of the existing Guides provides that a "satisfaction," or "money back," or similar guarantee is to be interpreted to mean that the full purchase price will be refunded at the purchaser's option. The section also calls for disclosure of "any conditions or limitations whatsoever" that apply to the guarantee.

Existing § 239.4 deals with "lifetime" guarantees and calls for disclosure of the life to which the term "lifetime" refers if it is any life other than that of the purchaser. Section 239.6 of the

existing Guides provides that a guarantor should fulfill promises made in advertisements or other representations about warranties.

One of two Guide sections that have been deleted is existing § 239.5, which pertains to guarantees of savings. It calls for disclosure of what the guarantor will do if the promised savings are not realized, and of any time limitations that apply. The other section which has been deleted is § 239.7 of the existing Guides, which provides that a warranty should not be used as a misrepresentation of a product's attributes.

Section B—Summary of Comments

On August 5, 1980, the Commission published a notice in the **Federal Register** calling for comment on how the Guides might be revised to facilitate non-deceptive advertising of warranties (45 FR 51838). The notice explained generally that the Guides were under review and set forth ten specific questions concerning what aspects of warranty advertising are deceptive and what approach the Commission should follow with regard to warranty advertising. The notice focused on the impact of the Warranty Act and Rules with respect to the Guides, and sought detailed comment with respect to those provisions of the Guides which called for disclosure of warranty terms in advertising. The notice did not specifically highlight or solicit comment on the other sections of the Guides, for example, those sections dealing with lifetime guarantees, savings guarantees, and satisfaction guarantees.

A total of 41 comments were received, including three that were received after the comment period ended and were retained because of the absence of prejudice resulting from their inclusion in this record.

The overwhelming majority of comments came from the industries affected by the Guides: Manufacturers, retailers, broadcasters, and their respective trade associations. Comments were also received from the American Association of Advertising Agencies, The Association of National Advertisers, the American Advertising Federation, and one advertising agency. A variety of other organizations also commented, including the Better Business Bureau of Cleveland, the Attorneys General of South Carolina and Puerto Rico, and the Antitrust Division of the United States Department of Justice. Only one consumer group, Consumer H.E.L.P., submitted comments.

Most comments did not address the specific questions posed in the Notice, but instead made general statements about regulation of warranty advertising. Therefore, the comments are summarized under those topics which most commenters addressed.

1. Effectiveness of Warranty Advertising in Promoting Sales

Many commenters felt that warranty advertising can be an effective means of promoting sales. Three commenters cited survey results tending to support the proposition that warranty adverstising is effective in promoting sales. One of these commenters noted that the results of its most recent consumer surveys showed that 29% of the respondents were strongly influenced by warranties in choosing replacement tires. Another of these commenters stated that, based upon a 1980 consumer test study it conducted which showed that the company's limited warranty "is held in high regard by the consuming public," it believes warranty advertising is effective. The third of these commenters cited a study showing that firms with smaller market shares are approximately twice as likely to rely on warranty advertising than their larger, better established competition.

Several commenters expressed the view that promoting on the basis of warranty coverage is not as effective as other kinds of promotion, while other commenters stated that warranty advertising is not *per se* ineffective but at present is made ineffective by the Guides.

2. Need for Revision of the Guides

Commenters overwhelmingly favored revising or rescinding the Guides. The majority of commenters argued that the Warranty Act and the Disclosure and Pre-Sale Availability Rules have obviated the need for the Guides. The National Automobile Dealers Association, for example, pointed out that every disclosure requirement of the Guides is covered by the Disclosure Rule, and that "in light of [the Pre-Sale Availability] Rule . . . consumers may obtain complete warranty information, prior to sale, without having to rely on a complete disclosure in warranty advertising."

More than half of the commenters stated that the Guides inhibit warranty advertising and a significant proportion of the commenters described their own particular negative experiences under the Guides. Most of these commenters cited the amount of space or time needed for the disclosures and the attendant increases in costs as the principal reason that the Guides discourage warranty advertising. For example, the American Association of Advertising Agencies stated:

> When time is precious, seconds spent providing excessively technical data about warranty provisions that are readily available at the point of sale often add relatively little to the advertisement's principal purpose.

Several commenters stated that they had been deterred from advertising their warranties because disclosure of the type required by the Guides would substantially dilute the primary message of their television, radio and short print advertising.

Several commenters contended that the Guides call for disclosure of more information than consumers can use in the context of an advertisement. The American Advertising Federation stated that studies and surveys reveal that consumers do not give the kind of attention to either written or broadcast advertisements that would be needed to understand complex legal documents like warranties, even if they were fully explained in advertising. The National Association of Broadcasters stated:

> Such complete [warranty] information [as the Guides call for] cannot be digested, understood and retained by consumers receiving the information in a 30 or 60-second announcement—which also must contain the main selling message . . . Information about the nature and extent of warranties, as well as the manner of performing a warranty, must be reviewed and carefully examined to be useful to consumers in purchasing decisions—not simply flashed across a screen or quickly recited.

3. Deceptive Words or Phrases in Warranty Advertising

A number of commenters addressed the specific question posed by the **Federal Register** Notice regarding whether certain words or phrases used in warranty advertising are inherently deceptive. No studies or surveys were presented on this issue; however, commenters identified certain words or phrases they felt were deceptive. Several commenters stated that the use of the term "lifetime" in warranty advertising is deceptive. Sears expressed the view that the term is "inherently deceptive if no other information to clarify what 'life' is referred to were supplied." The Consumer Electronics Group of the Electronic Industries Association stated that the term "extended warranty" could be deceptive without information that indicates whether it refers to a service contract or to warranty protection provided without consideration by a retailer to supplement a manufacturer's warranty. Volkswagen commented that

using the word "limited" in conjunction with the duration of the warranty "leads to the conclusion that the warranty is limited in time or mileage only". Volkswagen also argued that "the term 'full' is thought [by consumers] to be indicative of whether or not all or only some parts of the vehicle are covered by warranty." Three commenters stated that the phrase "full warranty" is deceptive if not all parts are covered by the warranty.

4. Commenters' Recommendations for Revision of the Guides

Although the commenters were overwhelmingly in favor of modifying the Guides, there was no clear consensus on what approach the Commission should take on the regulation of warranty advertising. Some commenters favored rescinding the Guides and regulating warranty advertising on a case-by-case basis. Others sought revision of the existing Guides to make them less burdensome. Some commenters (including some who supported rescission of the Guides) supported certain limited disclosures in all warranty advertising, such as a reference to pre-sale availability of disclosure of the warranty's limitations, its designation, or its duration. (The **Federal Register** Notice specifically sought comment on whether a disclosure of pre-sale availability or a limitations disclosure should be required. It also asked for suggestions as to other types of disclosures that might prevent warranty advertising from being deceptive.) Differing views were expressed as to whether the broadcast media should be treated in a different manner than print media.

Twenty-four commenters recommended that the Commission rescind the Guides and proceed against deceptive warranty advertising on a case-by-case basis under section 5. Commenters cited a number of reasons in support of this recommendation including: That there is no reason that the treatment of warranty advertising should be different from that of other forms of advertising, which are generally regulated on a case-by-case basis; that rules and guides are overbroad because they attempt to address potential deception prospectively; and that formulating guides appropriate to the advertising of complex, widely differing warranties on a myriad of consumer products is a very difficult and perhaps insurmountable problem.

On the other hand, seven commenters favored the issuance of revised, less restrictive Guides. Sears argued in favor of this approach:

> . . . Sears . . . want[s] to be certain of meeting the Commission's standards of what it considers not to be misleading or deceptive. The lack of guidance on what the Commission may consider proper disclosure could be as stifling to the advertising of warranties as the present burdensome requirements. Sears does not want to wait for guidance to be developed after years of case-by-case adjudication. To take full promotional advantage of less burdensome requirements, Sears needs quick clear guidance from the Commission.

Similarly, General Motors commented that a revised Guide, putting all competitors on notice of the Commission's requirements, would assist the industry in "avoiding objectionable practices which might otherwise occur over the relatively lengthy period necessary for the Commission to make its views known" by means of a case-by-case approach.

Several of the commenters who favored retaining but revising the Guides made specific recommendations as to what the contents of the revised Guides should be. The American Advertising Federation recommended that the existing Guides be retained and reorganized. They also urged that a new section be added that provided the failure to make the disclosures required in the Guides would not be deceptive as long as (1) the product were covered by the Pre-sale Availability Rule or the advertiser otherwise made the warranty available, and (2) the advertisement "invite[d] consumers to read the full text of the advertised guarantee" at the retailer's place of business. The National Retail Merchants Association urged the Commission to issue guides tracking staff's 1979 warranty advertising rulemaking proposal, with some modifications.[1] Sears recommended Guides calling for disclosure of (1) the identity of the warrantor, if different from the advertiser or if unclear from the context of the advertisement; (2) the product, part or characteristic covered; (3) the duration; and (4) pre-sale availability; or full disclosure of warranty terms as called for by the present Guides. Volkswagen recommended Guides calling for disclosure of the duration; the fact that only some parts are covered or that labor is not covered, if this were the case; and pre-sale availability. Zayre recommended disclosure of the "full" or "limited" designation, exclusions of any main components from the coverage of a full warranty, and pre-sale availability.

Many commenters expressed the view that although the existing Guides' disclosures were unduly burdensome and unnecessary, some disclosures are needed to minimize the possibility that consumers will be deceived by warranty advertising. Fourteen commenters favored disclosure in warranty advertising of the fact that the warranty is available prior to sale.

Several commenters opposed mandatory disclosure of the fact of pre-sale availability. The reasons cited in support of this view included: that the disclosure would quickly lose its effectiveness; that the disclosure is unnecessary because the public should already be aware of the fact that warranties are required to be available; and that the disclosure would be ineffective because few consumers take advantage of point-of-sale warranty information.

Several commenters supported disclosure of warranty limitations. Dunlop Tire Company supported a general disclosure that the warranty has limitations, along with a disclosure of pre-sale availability. A number of commenters made suggestions for more specific disclosures concerning warranty limitations, including: a disclosure of major limitations in a full warranty; a disclosure of any major restriction on the parts covered or the remedy offered in any warranty (such as an exclusion of labor charges); and a disclosure of identity of the warrantor. In addition, twelve commenters favored disclosure of the "full" or "limited" warranty designation required by the Warranty Act.

Five commenters addressed the issue of whether treatment of broadcast media should be different from that of print media (although the difficulty of complying with the Guides in the context of broadcast media was mentioned by many other commenters). Three commenters favored treatment tailored to the different media. On the other hand, two commenters expressed the view that print and broadcast advertising should be treated in the same manner. For example, Volkswagen commented that different treatment for broadcast advertising would "penalize small advertisers who cannot afford TV. Advertising is advertising, whatever the medium used."

Section C—Survey Results

Empirical data obtained from two surveys, the Warranty Print Advertising Study and the Warranty Evaluation Study, which were conducted for the

[1] The staff recommendation included detailed requirements for various types of disclosures, depending upon whether the advertised warranty was a "full" warranty or a "limited" warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq*. The Commission rejected staff's recommendation in November, 1979.

Commission, demonstrate that potential deception arising from partial disclosure of warranty terms in warranty advertising is, in fact, a genuine problem. These surveys indicate that consumers' expectations about warranty coverage are enhanced by advertising that mentions the warranty on a product. The methodology and results of these surveys are described in greater detail below.

1. The Warranty Print Advertising Survey

This survey was conducted by interviewing shoppers in shopping malls. Interviews were conducted with 440 respondents from three locations: Philadelphia, Pennsylvania; Florence, Kentucky; and Seattle, Washington. To ensure that the sample was generalizable to the American public, quota sampling procedures were employed.

One section of the study required respondents to match one of several warranty advertising claims with a description of the warranty that was the subject of the claim. The question thus tested respondents' understanding of six different warranty claims with varying levels of disclosure, ranging from mere mention of the warranty and its duration at the lowest level, to total explication of virtually all of the terms of the warranty, pursuant to the existing Guides, at the highest level.

Interviewers read one of the claims to each respondent and then asked the respondent to select the best description of the warranty from a printed list. The list contained five different descriptions. For each claim the list contained one description which was correct; all other descriptions either overestimated or underestimated the warranty's coverage.

The general trend that the results of this question revealed is that the less information respondents receive about a warranty in an advertisment, the more likely they are to overestimate warranty coverage. For example, 54.2% of the respondents who were read the claim with only the fact that the product was "guaranteed" and that the duration of the guarantee was two years overestimated the coverage provided by the underlying warranty; by contrast, only 8.4% of the respondents who were read the claim which described all the terms of warranty as called for by the existing Guides overestimated the coverage.

It is noteworthy that unlike the portion of the survey described below (which was conducted at a point earlier in the interviews) this portion of the study tested warranty claims outside the context of specific advertisements. Analysis of the responses to other questions (described below) suggests generally that in the context of a print advertisement the level of disclosure has no significant impact upon respondents' expectations about coverage of an advertised warranty. However, when the respondents' attention was directed to a specific claim in the portion of the study described above, the amount of information in the claim did influence the respondents' estimation of coverage. This may suggest that when respondents focus on the warranty claim, as they might be expected to do when actually in the market for the advertised product, the amount of information contained in the claim does influence respondents' expectations about coverage of the advertised warranty.

Another portion of the study confirmed that the mention of a warranty raises expectations about coverage. The interviewer gave each respondent three fictitious advertisements, one for a car, one for a TV set, and one for an automatic coffeemaker. One of these three advertisements included no warranty claim. Each of the other two advertisements included one of the same five warranty claims used in the other part of the survey, described above. The warranty claims were different in each of the two advertisements containing warranty information.

Interviewers then asked respondents two questions regarding the likelihood that the product has a warranty with certain specific terms of coverage. Respondents gave their answers in terms of a five-point scale, with 1 as "not at all likely" and 5 as "extremely likely."

The results of this part of the survey showed that respondents had higher expectations about the warranty coverage offered on a product when the product's advertisement contained a warranty claim. However, respondents who received advertisements with the disclosure provided for by the existing Guides did not have any more accurate understanding of the warranty coverage on the advertised product than did respondents who received advertisements with the less detailed disclosures. Further, the limitations disclosures that were tested did not have a significant reducing effect on the tendency to ascribe greater warranty coverage to a product when the advertisement mentioned a warranty.

The Warranty Print Advertising Survey results described above indicate a tendency on the part of respondents to overestimate coverage when they receive advertisements with information, whether partial or complete, about the warranty underlying the claim. Thus, the survey supports the proposition that partial warranty information may be misleading to consumers. However, the survey results also indicate that the "full disclosure" remedial approach of the existing Guides is not effective to ensure that consumers accurately comprehend the warranty coverage provided by an advertised warranty.

2. The Warranty Evaluation Survey

The Warranty Evaluation Survey is a comprehensive study of consumer awareness, attitudes and behavior concerning warranties both before and after purchase. Thus, the scope of this survey was much broader than that of the Warranty Print Advertising Survey, which had only warranty advertising as its subject.

The mail panel method was employed in the Warranty Evaluation Survey. The questionnaire, which was developed by the Commission's staff, was sent to 8,691 panel members. Responses were received from 73.8 percent of those contacted. Each respondent was asked a series of general questions as well as product-specific questions.

To summarize the results of the Warranty Evaluation Survey as they relate to the revision of the Guides, there are three main points. First, and most important, the Warranty Evaluation Survey confirmed the results of the Warranty Print Advertising Survey with respect to the tendency of warranty advertising to raise expectations about warranty coverage. Second, the Warranty Evaluation Survey amplified this finding by showing nearly all respondents believe warranties are important to consider in some purchases, and about 20 percent think that warranties are one of the top three considerations in purchasing decisions in general. Finally, despite the importance of warranties to respondents, something less than a quarter of all respondents actually read warranties before buying.

a. Warranty Advertising Raises Expectations About Warranty Coverage

A significant proportion of respondents to the Warranty Evaluation Survey indicated that warranty advertising tends to raise their expectations about the warranty. Nearly half of all respondents agreed, either strongly or to some degree, with the statement that "when an ad mentions a

product's warranty, it usually means the warranty coverage is especially good." People who had lower incomes, who were less educated, or who were over 65 were more likely to agree.

Another question on the survey asked respondents whether they agreed or disagreed with the following statement: "I don't really think about a product's warranty unless I see it mentioned in an advertisement." Nearly one third of all respondents agreed.

Thus, the results of the Warranty Evaluation Survey are fully consistent with the results of the Warranty Print Advertising Survey in showing that warranty advertising tends to encourage enhanced expectations about warranty coverage on the part of a significant proportion of respondents.

b. Warranties Are Important to Consumers

Several questions probed the issue of the importance of warranties to consumers in making purchasing decisions. The responses to these questions support the conclusion that warranty advertising can be an effective way to promote a product. Eighteen percent of respondents said that warranties were among the top three factors in selection of a product. Over fifty percent counted warranties as important and more than three quarters said they would pay more for a product with a better warranty.

In a separate question, about 88 percent of respondents felt that the warranty was an important consideration, while just under twelve percent of respondents indicated that seeing the warranty prior to purchase was *not* important regardless of the price of the product.

c. Most Consumers Do Not Examine Warranties Before Buying Warranted Products

The survey probed the degree to which respondents actually used warranties in their purchasing decisions. Responses to several questions indicate that most consumers do not examine warranties before buying whether or not they are aware of the availability of warranties.[2] The results of the survey on this issue indicate that somewhere between 7.4 percent and 27 percent of consumers either read or look at warranties prior to purchase.

Section D—Explanation of the Revision of the Guides

Section 239.1 Purpose and scope of the Guides.

This Section supplants § 239.0 of the existing Guides. This section make five important points. First, it states that the Commission intends the Guides as an aid to advertisers in avoiding violations of the law. This general introductory statement is followed by important qualifying statements, described below.

Second, the section notes that the revised Guides are based upon Commission case law, but also reflect the changes in the legal landscape effected by the Magnuson-Moss Warranty Act. The revised Guides do not abrogate the case law. However, many of the cases were decided before the 1975 enactment of the Magnuson-Moss Warranty Act. The Guides generally are intended to retain the principles enunciated in the cases and interpret them in light of the Magnuson-Moss Warranty Act which assures availability of warranty information prior to sale.

Third, the section strongly cautions that section 5 of the FTC Act, and not the Guides, is the ultimate legal standard that applies to warranty advertising. The Commission's power to challenge warranty advertising that complies with the Guides, but is deceptive in some manner not addressed by the Guides, is not altered or diminished.

Fourth, the section notes that § 239.2 of the revised Guides, which calls for disclosure of pre-sale availability of warranties in warranty advertising, applies only to those products covered by the Pre-Sale Availability Rule, 16 CFR Part 702. The Commission has included this statement to clarify that it does not intend the pre-sale availability disclosure to be made in advertising of satisfaction guarantees or in advertising which promotes warranties on products that cost less than $15, or that are not consumer products within the scope of the Pre-Sale Availability Rule. The other sections of the revised Guides apply to such advertising. For guidance on subjects not addressed by the other sections of the revised Guides, advertisers of such products must look to the case law developed under Section 5 of the FTC Act and the Commission's recent Enforcement Policy Statement on Deception.

Finally, whereas the existing Guides expressly covered representations concerning warranties whether made in advertising or otherwise, this section makes it clear that the revised Guides pertain only to advertising of warranties or guarantees. Because the Magnuson-Moss Warranty Act and the Rules adopted under it require warranty documents to disclose the information called for by the existing Guides, it is unnecessary for the scope of the revised Guides to reach beyond warranty advertising.

Section 239.2 Disclosures in warranty advertising.

This section supplants the existing Guide provisions which call for extensive disclosure of warranty terms in advertising that mentions the warranty on the advertised product (Section 239.1, which applied generally to all guarantees or warranties, and § 239.2, which applied specifically to pro-rata guarantees or warranties).[3] In place of those extensive disclosures, the revised Guide §239.2(a) calls for disclosure in warranty advertising that promotes a product covered by the Pre-Sale Availability Rule, 16 CFR Part 702, of the fact that the warranty document is available for examination prior to purchase of the warranted product.[4]

[2] The survey also probed consumer awareness of the availability of warranties prior to sale. It approached this issue in two different ways. The first question was very specific and dealt with the respondent's experience with a consumer product actually purchased within the twelve months previous to filling out the survey questionnaire. The second question probed the respondent's awareness in general about the availability of warranties prior to sale without reference to purchase of a specific product.

With regard to the respondent's experience with the availability of the warranty on a specific consumer product, the survey asked whether the written warranty on the specific product was available to him or her from the retailer before purchase. About 70 percent of the respondents indicated that the warranty was available for the specific product they had purchased, while 25 percent said they either did not look for the warranty or weren't sure whether it was available or not. The remaining respondents indicated that the warranty was not available.

The more general question about pre-sale availability yielded comparable results. Respondents were asked to agree or disagree with the following statement: "Generally, warranties are available to look at in the store before you make your purchase." Slightly more than 66 percent of the respondents agreed with this statement, while about 22 percent indicated that they believed warranties are generally *not* available prior to purchase. The remaining respondents did not know whether warranties are generally available.

Thus, the Warranty Evaluation Survey indicates that while a clear majority of consumers are aware that warranties are available prior to purchase, a significant minority generally lack awareness or knowledge about the availablity of warranties prior to purchase.

[3] In replacing § 239.2 of the old guides with the new guide § 239.2 the note to old § 239.2 that "[pro rata] guarantees which provide for an adjustment based on a fictitious list price should not be used even where adequate disclosure of the price is made," has been dropped. Deletion of this note should not be interpreted to mean that such misrepresentations do not violate section 5 of the FTC Act.

[4] It is essential to note that the Commission intends the presale availability disclosure to convey to consumers that the actual warranty document is available at the point of sale, and not merely an oral summary of it, which may or may not accurately describe the warranty's terms and conditions.

Section 239.2(b) uses a similar approach for mail order and catalogue sales. This section is needed in addition to § 239.2(a) because the Pre-Sale Availability Rule provides for a different method of pre-sale availability for mail order and catalogue sales than for retail sales. The Pre-Sale Availability Rule provides that for catalogue or mail order sales either the warranty itself or a disclosure informing consumers that the warranty is available upon specific written request must be included in close conjunction to the description of the warranted product. Therefore, § 239.2(b) of the revised Guides provides that advertisements for mail order or catalogue sales should disclose "information sufficient to convey to consumers that they can obtain complete details on the written warranty free upon specific written request, or from the catalogue or solicitation (whichever is applicable)."

There are three basic reasons for eliminating those provisions of the existing Guides that call for warranty terms to be disclosed in advertising. First, the Warranty Act and Rules have significantly changed the manner in which warranty information is disclosed prior to sale. This change has obviated the need to disclose warranty information in advertising in order to provide this information to consumers prior to purchase. The Act and Rules require that complete warranty information be made available to consumers prior to sale. The Disclosure Rule, 16 CFR Part 701, requires disclosure of all warranty terms and conditions in the warranty document. The Pre-Sale Availability Rule, 16 CFR Part 702, requires that the warranty document be made available to consumers prior to purchase at the place where the warranted product is sold. The present situation of pre-sale availability of warranty terms is in marked contrast to the situation that existed when the existing Guides were promulgated. At that time, advertising disclosures in most cases may have been the only available source of information about warranty coverage prior to purchase. Thus, the implementation of the Warranty Act and Rules has made detailed disclosure of warranty terms in advertising unnecessary.

Second, the "full disclosure" approach of the Guides is not an effective means of providing consumers with complete and accurate warranty information. The Guides call for disclosure of lengthy and relatively complicated information. Both the comments and the research described in Section III, above, indicate that consumers are not able to use the comprehensive, detailed information made available by the existing Guides in the context of an advertisement. Examination of the warranty document prior to purchase, when there is an opportunity for detailed study and comparison, is a far more effective approach for obtaining information about warranty terms than are detailed disclosures in a print, radio or TV advertisement.

Third, the existing Guides tended to undercut two of the major goals of the Magnuson-Moss Warranty Act: promoting the availability of warranty information and encouraging competition on the basis of warranty coverage. As the comments described in Section II, above, indicate, the disclosure requirements of the existing Guides have discouraged advertisers from promoting their warranties in advertising. The lack of warranty advertising may also thwart competition on the basis of warranty coverage, since warrantors have less incentive to offer increased warranty protection if it is not economically feasible to advertise this feature.

Although a Guide calling for disclosure of virtually all warranty terms in warranty advertising is no longer appropriate, a limited disclosure concerning pre-sale availability of warranty information is necessary to prevent deception in warranty advertising and to achieve the goals of the Warranty Act. A disclosure urging consumers to examine the warranty document will act as an important qualifier of the warranty claim by drawing to the attention of consumers the fact that the advertisement neither contains nor purports to contain all of the material information concerning the warranty. The pre-sale availability disclosure is needed to counter expectations that consumers may form as a result of reasonably interpreting references to a warranty in advertising to contain complete and sufficient information obviating the need to examine the warranty before buying.

The Commission has recognized in numerous cases both prior to and since the publication of the Guides that advertising which promotes warranty coverage may be deceptive without additional disclosures.[5] Warranties frequently have significant conditions or limitations. It is unlikely that a warrantor will disclose all these conditions and limitations in an advertisement. The Commission has recognized that this partial disclosure of information (disclosure of certain features of a warranty but not all of its conditions and limitations) has great potential for deception. This conclusion is supported by the consumer research described in Section III, above, which indicates that if a warranty is mentioned, consumers tend to ascribe greater warranty coverage to the advertised product than if no warranty is mentioned, even if the advertisement indicates the warranty has significant limitations.

To remedy the possibility of deception in warranty advertising, the Commission has adopted revised Guide § 239.2, which encourages advertisers who refer to their warranties to disclose that complete details of the warranty can be seen where the product is sold. This disclosure will suffice to avoid the risk of deceiving consumers about the other conditions and limitations of the warranty when only certain warranty terms are discussed. It will not, however, avoid deception when an advertisement misrepresents, directly or by implication, the warranty's limitations or coverage (*e.g.*, when an advertiser describes the "complete protection" of a warranty that covers only some parts). In those cases advertisers may need to include additional information in their advertisements to dispel the misimpressions otherwise created, depending on the language of the advertisement and the coverage of the warranty. For most advertisements, compliance with the Guides should suffice.

The disclosure suggested in § 239.2 of the revised Guides is designed to encourage consumers to examine warranties prior to sale to correct misimpressions that may have been created by the advertisement. However, the disclosure does not specifically indicate to consumers *why* they should examine the warranty (*i.e.*, because there may be only partial information about the warranty coverage in the advertisement). A disclosure such as "limitations may apply," in conjunction with a reference to pre-sale availability might, therefore, be even more effective than the disclosure the Commission has adopted to remedy deception in warranty advertising. The Commission has not adopted this approach for two reasons. First, consumer research indicates that reference to warranty limitations does not significantly affect consumers' expectations of the warranty's limitations. Second, the Commission is unable to conclude that the benefits to consumers and to

[5] *See, e.g., Coro, Inc.* 63 F.T.C. 1164 (1963), 338 F.2d 149 (1st Cir. 1964).

competition that could result from a more detailed disclosure would outweigh the cost.[6] After a period of experimentation in the marketplace and with further information about consumer expectations, a more detailed disclosure may be found to be appropriate.

In adopting the disclosure concerning pre-sale availability the Commission has rejected three other possible approaches to warranty advertising: (1) Completely rescinding the Guides and proceeding solely on a case-by-case basis; (2) prohibiting specific language found to be deceptive in warranty advertising (*e.g.*, "X year limited warranty," or "lifetime guarantee"); or (3) requiring that if certain representations are made, certain disclosures should be included (*e.g.*, if the advertisement stressed benefits of the warranty, major limitations would have to be disclosed).

The Commission rejected rescinding the Guides entirely and proceeding solely on a case-by-case basis because, despite the Magnuson-Moss Warranty Act, there continues to be a significant potential for deception in warranty advertising. The existing Guides and the cases from which they are derived are based upon the principle that a potential for deception exists when warranties are promoted in advertising. This principle is supported by the research described in Section III, above. Thus, this same principle is the basis of the revisions of the Guides.

The potential for deception in warranty advertising proceeds from the fact that an accurate picture of the coverage provided by a warranty—which is a legal instrument—cannot be had without evaluating a number of interrelated provisions. Each provision of a warranty determines some aspect of coverage, but only taken all together do the provisions fully and accurately define total coverage. Information about only some of the terms of a warranty is an inadequate basis for drawing any conclusion about the overall coverage afforded by a warranty. Nevertheless, for a number of reasons, warranty advertising, if it mentions any specific provisions at all, is likely to mention only the duration provision, because that one is the simplest and quickest to convey.

It is reasonable for consumers to accept at face value the typical claim that the advertised product is "guaranteed" or "warranted" for a certain period, and to interpret this to mean that they will be made whole in the event the product fails after purchase. However, the extent to which this interpretation is accurate depends upon the overall coverage of the warranty, including its scope and the remedy it provides. Nevertheless, the research indicates that consumers may interpret warranty claims in this way, and, in the absence of a pre-sale availability disclosure, may rely upon this interpretation without reading the actual warranties.

The comments (and common sense) indicate that advertisers do not include information about the scope of coverage, the remedy offered, and other important terms and conditions mainly because of the high costs of doing so in terms of air time or print space. This is especially true of broadcast advertising. Also, because the effectiveness of an advertisement may be in many cases a function of the brevity and simplicity of its message, advertisers may be reluctant to risk diluting or distorting an advertisement's message by including lengthy disclosures about warranty provisions. Thus, warranty advertising is likely to provide only partial information which can, in some cases, mislead reasonable consumers about the extent of coverage provided by an advertised warranty. At any rate, the warranty Print Advertising Survey results indicate that even if advertisers included all the terms and conditions in advertisements, pursuant to the existing Guides, consumers would not be likely to have a more accurate understanding of the coverage offered.

The Commission has determined that the "full disclosure" remedial solution put forth by the existing Guides is no longer appropriate, largely because the Magnuson-Moss Warranty Act now assures that consumers have access to written warranties prior to purchase. Consumers no longer need to rely on advertising as their major, if not only, source of warranty information. Also, the Warranty Print Advertising Survey indicates that "full disclosure" of warranty terms is ineffective in dispelling the potential for deception in warranty advertising.

In the footnote to § 239.2 the Commission has covered a topic that the existing Guides did not address, namely, how an advertiser can ensure that the disclosure of warranty information (*i.e.* that warranties are available for inspection prior to sale) will be clear and prominent. The Commission has added this note because it has determined that to articulate a minimal standard for clarity and prominence of the pre-sale availability disclosure in television advertising is likely to encourage non-deceptive warranty advertising.

This note to § 239.2 states that television advertisements will be regarded as complying with the Guide provision calling for disclosure of the pre-sale availability of warranties if the advertisements make the necessary disclosure simultaneously with or immediately following the warranty claim. The disclosure can be presented either in the audio portion or in the video portion as a printed disclosure, provided that a video disclosure appears on the screen for at least five seconds. The Commission intends by means of this note to enhance the probability that consumers notice and understand the pre-sale availability disclosure, whether it appears in the audio or video portion of the advertisement.

This note pertains only to the pre-sale availability disclosure suggested in § 239.2. Assuring the disclosures called for by the other Guide provisions are clear and prominent may require other methods or additional emphasis. For example, it may be necessary for multiple disclosures of the material limitations on a satisfaction guarantee to be disclosed in the audio portion of an advertisement, or to be disclosed for a longer period of time than five seconds in order for the disclosures to be clear and prominent.

The Commission has determined that it is not necessary to attempt to provide more detailed and specific guidance with regard to other factors bearing on whether a disclosure is clear and prominent, such as the size of the letters in a video disclosure and the degree of contrast between the letters and the background against which they appear. Similarly, no note pertaining to disclosures in print or radio warranty advertising has been added. Advertisers can be guided by the general purpose of these Guides in resolving these issues.

Section 239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosures in advertising that mentions "Satisfaction Guarantees" or similar representations.

Subsection (a) of this section of the revised Guides indicates that satisfaction guaranteed representations should be used by an advertiser only if it refunds the full purchase price at the purchaser's request. Subsection (b) provides that if such a representation is subject to material limitations or conditions (*e.g.*, an express limitation of duration, or a limitation to products returned in their original packaging).

[6] This is also the reason the Commission has rejected the various suggestions by commenters for more extensive disclosures.

then the advertisement should disclose that limitation or condition.

The revised section retains the essential points of existing Guide § 239.3 and revises the wording to make it more consistent with the other revised Guide provisions. The revised Guide section provides for disclosure of "material" conditions and limitations rather than "any conditions or limitations whatsoever" (as in the existing § 239.3) because the former phrase is a more accurate statement of the relevant principles under section 5 of the FTC Act. Material conditions or limitations are those likely to affect a consumer's choice or conduct regarding the product upon which the satisfaction guarantee is offered.

Satisfaction guarantees are extremely common in advertising, particularly TV and other mail order advertising, and consumers apparently place very high value upon satisfaction guarantees in purchases induced by such advertising. Nevertheless, the details of advertising satisfaction guarantees are frequently not required to be made available prior to purchase under the Magnuson-Moss Warranty Act and Rules.[7]

Disclosure of material limitations in advertising of satisfaction guarantees does not entail a significant burden on advertisers, and is the minimum necessary to prevent deception. Therefore, the Commission has determined that retaining these principles in the Guides is in the public interest.

The Commission has retained this specific and ready guidance rather than requiring advertisers to refer to section 5 case law in deciding whether and how to advertise a satisfaction guarantee. This low-cost Guide provision will promote nondeceptive advertising of such guarantees, through which consumers will realize a net benefit in the form of more information that they can rely upon in making their purchasing decision.

Section 239.4 "Lifetime" and similar representations.

This section replaces § 239.4 of the existing Guides. The Commission has retained the essential point of the existing section, which is that such terms as "lifetime," when used to describe the duration of a warranty or guarantee, have a potential to mislead or confuse consumers unless clarification is provided as to the "life" to which the term refers.

The Commission's revision is intended to make this provision more straightforward, providing for clarification of the life to which the representation refers whether or not it refers to the life of the purchaser. The existing Guide section called for disclosure of the life to which the term "lifetime" refers if the life is any other than that of the purchaser. The impact of this change is not significant, since the life of the purchaser is rarely the life to which the term refers. More often the term is used to mean "for as long as you own the product," or "for the life of the product (*e.g.*, a car) into which our product (*e.g.*, a muffler) is installed." Thus, the term is ambiguous. Without further clarification, one can only speculate as to whose life is referred to. The low costs entailed in clarifying what life is referred to is more than outweighed by the benefits consumers enjoy as a result of the elimination of ambiguity in the use of this term.

Section 239.5 Warranty performance.

This section retains the principle, stated in § 239.6 of the existing Guides, that a warrantor or guarantor should ensure performance on advertised warranties or guarantees. This is an obvious point, but one which merits an express statement in Guides designed to simplify the task of advertisers attempting to comply with the law. This is especially so in view of the fact that this principle, although implicit in the common law and the case law developed under section 5 of the FTC Act, is not expressly stated in the Magnuson-Moss Warranty Act or the rules adopted under it. This provision requires no affirmative disclosures and involves no other costs to advertisers. It is purely cautionary and, as such, it is appropriate for inclusion in the Guides.

Section 239.5 of the existing Guides (deleted).

The Commission has deleted the existing Guide section dealing with claims such as "guaranteed lowest price in town". The section called for advertising disclosures of what the advertiser will do if the promised savings are not realized, and of any limitations that apply. This section pertained to a species of representations unrelated to defects warranties (those that promise redress if a defect appears in a product) and "satisfaction" guarantees (which promise a refund if the product is unsatisfactory for any reason, not just if it is defective) which are the subject of the remainder of the Guides. Rather, savings guarantees are in the nature of general advertising representations, and are more appropriately handled under general deception in advertising concepts.

Moreover, a Guide provision calling for across-the-board disclosure of the remedy the advertiser will provide in the event promised savings are not realized may be unduly burdensome and unjustified. For these reasons the Commission has deleted this existing Guide section, and will deal with this problem in the future, if necessary, on a case-by-case basis.

Section 239.7 of the existing Guides (deleted).

The existing provision states that a guarantee can be used in a manner that constitutes a representation of material fact about a product, and that a guarantor must not only perform the warranty, but also take care that such representations are true. The essential point of this provision is that honoring a warranty does not cure any misrepresentations of material fact about the product made by means of or in conjunction with a warranty.

The existing provision is an accurate statement of Commission law about which there is no question or controversy. The language used to describe a warranty can convey misimpressions about product performance. For example, claims that a watch is "guaranteed to last ten years" are deceptive if the useful life of the watch is designed to be only one or two years. This is so even if the warrantor replaces the watch every year when it fails. Similarly, claims that shirts are "guaranteed not to shrink" are deceptive if the shirts in fact usually shrink, even if the warrantor provides the promised remedy. In both cases the warrantors can restate the warranties they offer in order to avoid misleading consumers about the performance of their products. In neither case is the misrepresentation permissible simply because it is made in conjunction with a reference to a warranty.

However, the Commission believes that it is possible to infer from the existing provision that a violation of Section 5 may occur simply because a

[7] Because many satisfaction guarantees are not offered in writing, they are not available for inspection prior to purchase. In addition, many satisfaction guarantees that are offered in writing cover products that do not actually cost consumers more than $15.00, and are thus not covered by the Disclosure and Pre-Sale Availability Rules. Some satisfaction guarantees are covered by the Magnuson-Moss Act and Rules. (The Magnuson-Moss Warranty Act and the Rules do not cover "representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations." Section 103(b) Magnuson-Moss Warranty Act, 15 U.S.C. 2303(b). *See also* Interpretations of Magnuson-Moss Warranty Act, 16 CFR 700.5.)

substantial number of warranted products fail in use—notwithstanding the fact that the warrantor fully performs all warranty obligations. Such an inference could discourage advertising of warranties, contrary to the Commission's purpose in revising the Guides.

The Commission has therefore determined that, in view of the potential for chilling warranty advertising that may be created by this provision, or by a revision of the provision that sets forth the same points as prospective guidance, there is no need to restate these settled principles of Commission law in the Guides. The Commission emphasizes, however, that deletion of this provision should in no way be interpreted as a reversal of the well settled fundamental principles of Commission law set forth in the existing provision.

List of Subjects in 16 CFR Part 239

Advertising, Trade practices, Warranties.

Section E—The Guide

For the reasons discussed above, the Commission hereby issues the following Guide, which amends Subchapter B, Guides and Trade Practices Rules, of 16 CFR Chapter I, by revising part 239, to take effect May 1, 1985, as follows:

PART 239—GUIDES FOR THE ADVERTISING OF WARRANTIES AND GUARANTEES

Sec.

Authority: Secs. 5, 6, 38 Stat. 719 as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

§ 239.1 Purpose and scope of the guides.

The Guides for the Advertising of Warranties and Guarantees are intended to help advertisers avoid unfair or deceptive practices in the advertising or warranties or guarantees. The Guides are based upon Commission cases, and reflect changes in circumstances brought about by the Magnuson-Moss Warranty Act (15 U.S.C. 2301 *et seq.*) and the FTC Rules promulgated pursuant to the Act (16 CFR Parts 701 and 702). The Guides do not purport to anticipate all possible unfair or deceptive acts or practices in the advertising of warranties or guarantees and the Guides should not be interpreted to limit the Commission's authority to proceed against such acts or practices under section 5 of the Federal Trade Commission Act. The Commission may bring an action under Section 5 against any advertiser who misrepresents the product or service offered, who misrepresents the terms or conditions of the warranty offered, or who employs other deceptive or unfair means.

Section 239.2 of the Guides applies only to advertisements for written warranties on consumer products, as "written warranty" and "consumer product" are defined in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, that are covered by the Rule on Pre-Sale Availability or Written Warranty Terms, 16 CFR Part 702. The other sections of the Guides apply to the advertising of any warranty or guarantee.

§ 239.2 Disclosures in warranty or guarantee advertising.

(a) If an advertisement mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prior to sale, at the place where the product is sold, prospective purchasers can see the written warranty or guarantee for complete details of the warranty coverage.[1]

Examples: The following are examples of disclosures sufficient to convey to prospective purchasers that, prior to sale, at the place where the product is sold, they can see the written warranty or guarantee for complete details of the warranty coverage. These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular type and the disclosure is in boldface.

A. "The XYZ washing machine is backed by our limited 1 year warranty. For complete details, see our warranty at a dealer near you."

B. "The XYZ bicycle is warranted for 5 years. Some restrictions may apply. See a copy of our warranty wherever XYZ products are sold."

C. "We offer the best guarantee in the business. Read the details and compare wherever our fine products are sold."

D. "See our full 2 year warranty at the store nearest you."

E. "Don't take our word—take our warranty. See our limited 2 year warranty where you shop."

(b) If an advertisement in any catalogue, or in any other solicitation [2] for mail order sales or for telephone order sales mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prospective purchasers can obtain complete details of the written warranty or guarantee free from the seller upon specific written request or from the catalogue or other solicitation (whichever is applicable.)

Examples: The following are examples of disclosures sufficient to convey to consumers how they can obtain complete details of the written warranty or guarantee prior to placing a mail or telephone order. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular typeface and the disclosure is in boldface.

A. "ABC quality cutlery is backed by our 10 year warranty. Write to us for a free copy at: (address)."

B. "ABC Power tools are guaranteed. Read about our limited 90 day warranty in this catalogue."

C. "Write to us for a free copy of our full warranty. You'll be impressed how we stand behind our product.

§ 239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

(a) A seller or manufacturer should use the terms "Satisfaction Guarantee," "Money Back Guarantee," "Free Trial Offer," or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request.

(b) An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a satisfaction guarantee that is conditioned upon return of the unused portion within 30 days) "We guarantee your

[1] In television advertising, the Commission will regard any disclosure of the pre-sale availability of warranties as complying with this Guide if the advertisement makes the necessary disclosure simultaneously with or immediately following the warranty claim and the disclosure is made in the audio portion, or, if in the video portion, it remains on the screen for at least five seconds.

[2] *See* note 1.

satisfaction. If not completely satisfied with Acme Spot Remover, return the unused portion within 30 days for a full refund."

Example B: (In an advertisement mentioning a money back guarantee that is conditioned upon return of the product in its original packaging) "Money Back Guarantee! Just return the ABC watch in its original package and ABC will fully refund your money."

§ 239.4 "Lifetime" and similar representations.

If an advertisement uses "lifetime," "life," or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

Examples. These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a lifetime guarantee on an automobile muffler where the duration of the guarantee is measured by the life of the car in which it is installed) "Our lifetime guarantee on the Whisper Muffler protects you for as long as your car runs—even if you sell it, trade it, or give it away!"

Example B: (In an advertisement mentioning a lifetime guarantee on a battery where the duration of the warranty is for as long as the original purchaser owns the car in which it was installed) "Our battery is backed by our lifetime guarantee. Good for as long as you own the car!"

§ 239.5 Performance of warranties or guarantees.

A seller or manufacturer should advertise that a product is warranted or guaranteed only if the seller or manufacturer, as the case may be, promptly and fully performs its obligations under the warranty or guarantee.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-10448 Filed 4-30-85; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 455

Used Car Trade Regulation Rule; Application to OMB for Review of Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Application to OMB for review of information collection requirements.

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), the FTC is requesting OMB review under 5 CFR 1320.14 of public disclosure requirements contained in its Used Car trade regulation rule. The request is for a three-year approval for the disclosure requirements of the rule, which is scheduled to take effect in the near future.

DATES: Comments on this request for OMB review must be submitted on or before May 31, 1985.

ADDRESS: Send comments to Mr. Don Arbuckle, Office of Information Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. Copies of the applications may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3776.

By direction of the Commission.

Dated: April 23, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-10449 Filed 4-30-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

Tolerances for Residues of New Animal Drugs in Food; New Animal Drugs for use in Animal Feeds; Amprolium for Pheasants

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., providing for use of an amprolium premix to make a complete feed for the prevention of coccidiosis in growing pheasants. FDA is also establishing a tolerance for amprolium residues in uncooked edible pheasant tissues.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, filed supplemental NADA 12-350 providing for use of a 25-percent (113.5 grams per pound) amprolium premix to make a complete pheasant feed containing 0.0175 percent (159 grams per ton) amprolium. The feed is used for the prevention of coccidiosis in growing pheasants caused by *Eimeria colchici*, *E. duodenalis*, and *E. phasiani*. The supplement incorporates data and information in Public Master File (PMF) 3887. A notice of availability of certain safety, effectiveness, and environmental data in the public master file for use in support of NADA's providing for use of amprolium in pheasant feed published in the **Federal Register** of December 24, 1984 (49 FR 49940). The supplement is approved. The regulations are amended to reflect this approval and to establish a tolerance for amprolium residues in uncooked edible tissues derived from treated animals. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch (address above), filed under PMF 3887.

List of Subject

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for Part 556 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 556.50 by adding new paragraph (c) to read as follows:

§ 556.50 Amprolium.

* * * * *

(c) In the edible tissues of pheasants:

(1) 1 part per million in uncooked liver.

(2) 0.5 part per million in uncooked muscle.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for Part 558 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b): unless othewise noted.

4. In § 558.55 by adding new paragraph (e)(3) to read as follows:

§ 558.55 Amprolium.

* * * * *

(e) * * *

(3) *Pheasants.* It is used in complete feed as follows:

(i) *Amount.* 0.0175 percent (159 grams per ton).

(ii) *Indications for use.* For the prevention of coccidiosis in growing pheasants caused by *Eimeria colchici, E. duodenalis,* and *E. phasiani.*

(iii) *Limitations.* Feed continuously as sole ration. Use as sole source of amprolium. Fertility, hatchability, and other reproductive data are not available on amprolium in breeding pheasants. Do not use in feeds containing bentonite.

Effective date. May 1, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 24, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–10540 Filed 4–30–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-85-1238; FR-2120]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loads. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATES: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–7270. (This in not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Ch. II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 13.00 percent to 12.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs, Health, Loan programs, Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232(i) and 235(i), National Housing Act, (12 U.S.C. 1715b, 1715w(i), and 1715z(i)); sec. 7(d) of the Department of HUD Act, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 12.50 percent per annum, except that where an application for commitment was received by the Secretary before April 19, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 232(i) and 235(i), National Housing Act, (12 U.S.C. 1715b, 1715w(i) and 1715z(i)); sec. 7(d) of the Department of HUD Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.50 percent per annum, except that where an application for commitment was received by the Secretary before April 19, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after April 19, 1985, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 12.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

Dated: April 18, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy FHA Commisssioner, HD.

[FR Doc. 85-10491 Filed 4-30-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5 and 602

[T.D. 8022]

Qualified Discount Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a method of accounting for the redemption costs of qualified discount coupons. Changes to the applicable law were made by the Revenue Act of 1978. The regulations provide the public with the guidance needed to comply with the law and affect all taxpayers who elect to use this method of accounting for qualified discount coupons.

DATES: The regulations are effective for taxable years beginning after December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1984, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 466 of the Internal Revenue Code of 1954 (49 FR 31080). The amendments were proposed to reflect the addition of section 466 to the Code by section 373 of the Revenue Act of 1978 (92 Stat. 2863). In general, section 466 permits certain taxpayers who issue qualified discount coupons to elect to use a special method of accounting for the redemption costs of those coupons.

The proposed amendments also reflected the special election provided under section 373(c) of the Act for certain taxpayers who used a method of accounting for discount coupons in prior taxable years that is reasonably similar to the method of accounting for premium coupons and trading stamps in § 1.451-4. Those taxpayers generally may elect to have that method of accounting treated as a valid method of accounting for certain taxable years ending before January 1, 1979.

The proposed amendments provided rules and definitions relating to the method of accounting under section 466 and the special election provided under section 373(c) of the Act. The proposed amendments also incorporated the provisions contained in temporary regulations § 5.466-1 and § 5.466-2 (T.D. 7653, 44 FR 63522), relating to the time and manner of making the elections under section 466 of the Code and section 373(c) of the Act. Those temporary regulations are superseded by the publication of this Treasury decision in the **Federal Register**.

No written comments were received with respect to the proposed amendments. A public hearing was neither requested nor held. Therefore, this Treasury decision adopts those proposed amendments without change.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis therefore is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these final regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.441-1—1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 5

Income taxes, Revenue Act of 1978.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 5, and 602 are amended by adopting, without change, except for the addition of a technical amendment to 26 CFR Part 602 for the purpose of displaying the OMB control number, the regulations proposed as a notice of proposed rulemaking published in the **Federal Register** on August 3, 1984 (49 FR 31080).

This Treasury decision is issued under the authority contained in sections 466 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2864, 26 U.S.C. 466; 68A Stat. 917, 26 U.S.C. 7805).

Approved by the Office of Management and Budget under control number 1545-0512.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: March 27, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The following new §§ 1.466-1 through 1.466-4 shall be added in the appropriate places as follows:

§ 1.466-1 Method of accounting for the redemption cost of qualified discount coupons.

(a) *Introduction.* Section 466 permits taxpayers who elect to use the method of accounting description in section 466 to deduct the redemption cost (as defined in paragraph (b) of this section) of qualified discount coupons (as defined in paragraph (c) of this section) outstanding at the end of the taxable year and redeemed during the redemption period (within the meaning of paragraph (d)(2) of this section) in addition to the redemption cost of qualified discount coupons redeemed during the taxable year which were not deducted for a prior taxable year. For the taxable year in which the taxapayer first uses this method of accounting, the taxpayer is not allowed to deduct the redemption costs of qualified discount coupons redeemed during the taxable year that would have been deductible for the prior taxable year had the taxpayer used this method of accounting for such prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) A taxpayer must use the accrual method of accounting for any trade or business for which an election is made under section 466. Furthermore, the taxpayer must make an election in accordance with the rules in section 466(d) and § 1.466-3 for that trade or business. The method of accounting in section 466 is applicable only to the taxpayer's redemption of qualified discount coupons. Section 466 does not apply to trading stamps or premium coupons, which are subject to the method of accounting in § 1.451-4, or to discount coupons that are not qualified discount coupons.

(b) *Redemption costs*—(1) *Costs deductible under section 466.* The deduction allowed by section 466 applies only to the redemption cost of qualified discount coupons. The term "redemption cost" means an amount equal to:

(i) The lesser of:

(A) The amount of the discount stated on the coupon, or

(B) The cost incurred by the taxpayer for paying the discount; plus

(ii) The amount payable to the retailer (or other person redeeming the coupon from the person receiving the price discount) for services in redeeming the coupon.

The amount payable to the retailer or other person for services in redeeming the coupon is allowed only if the amount payable is stated on the coupon.

(2) *Costs not deductible under section 466.* The term "redemption cost" includes only the amounts stated in paragraph (b)(1) of this section. Amounts other than those mentioned in paragraph (b)(1) of this section cannot be deducted under the method of accounting described in section 466 even though such amounts are incurred in relation to the redemption of qualified discount coupons. Therefore, those amounts must be taken into account as if section 466 did not apply. Examples of such amounts are fees paid to the redemption center or clearinghouse and amounts payable to the retailer in excess of the amount stated on the coupon.

(c) *Qualified discount coupons*—(1) *General rule.* In order for a discount coupon (as defined in paragraph (c)(2)(i) of this section) to be considered a qualified discount coupon, all of the following requirements must be met:

(i) The coupon must have been issued by and must be redeemable by the taxpayer;

(ii) The coupon must allow a discount on the purchase price of merchandise or other tangible personal property;

(iii) The face amount of the coupon must not exceed five dollars;

(iv) The coupon, by its terms, may not be used with other coupons to bring about a price discount reimbursable by the issuer of more than five dollars with respect to any item; and

(v) There must exist a redemption chain (as defined in paragraph (c)(2)(ii) of this section) with respect to the coupon.

(2) *Definitions*—(i) *Discount coupon.* A discount coupon is a sales promotion device used to encourage the purchase of a specific product by allowing a purchaser of that product to receive a discount on its purchase price. The term "discount coupon" does not include trading stamps or premium coupons, which are subject to the method of accounting in § 1.451-4. A discount coupon may or may not be issued as part of a prior purchase. A discount coupon normally entitles its holders to receive nothing more than a reduction in the sales price of one of the issuer's products. The discount may be stated in terms of a cash amount, a percentage or fraction of the purchase price, a "two for the price of one" deal, or any other similar provision. A discount coupon need not be printed on paper in the form usually associated with coupons; it may be a token or other object so long as it functions as a coupon.

(ii) *Redemption chain.* A redemption chain exists when the issuer redeems the coupon from some person other than the customer who used the coupon to receive the price discount. Thus, in order to be treated as a qualified discount coupon, the coupon must not be issued by the person that initially redeems the coupon from the customer. For purposes of determining whether a redemption chain exists, corporations that are members of the same controlled group of corporations (as defined in section 1563(a)) as the issuer of the coupon shall be treated as the issuer. Thus, if the issuer of the coupon and the retailer that initially redeems the coupon from the customer are members of the same controlled group of corporations, the coupon shall not be treated as a qualified discount coupon.

(d) *Deduction for coupons redeemed during the redemption period*—(1) *General rule.* Two special conditions must be met before the cost of redeeming qualified discount coupons during the redemption period can be deducted from the taxpayer's gross income for the taxable year preceding the redemption period. First, the

qualified discount coupons must have been outstanding at the close of such taxable year. Second, the qualified discount coupons must have been received by the taxpayer before the close of the redemption period for that taxable year.

(2) *Redemption period.* The taxpayer can select any redemption period so long as the period does not extend longer than 6 months after the close of the taxapayer's taxable year. A change in the redemption period so selected shall be treated as a change in method of accounting.

(3) *Coupons received.* The deduction provided for in section 466(a)(1) is limited to the redemption costs associated with coupons that are actually received by the taxpayer within the redemption period. For purposes of this paragraph, if the issuer uses a redemption agent or clearinghouse to group, count, and verify coupons after they have been redeemed by a retailer, the coupons received by the redemption agent or clearinghouse will be considered to have been received by the issuer. Nothing in section 466, however, allows deductions to be made on the basis of estimated redemptions, whether such estimates are made by either the issuer or some other party.

(e) *Transitional adjustment*—(1) *In general.* An election to change from some other method of accounting for the redemption of discount coupons to the method of accounting described in section 466 is a change in method of accounting that requires a transitional adjustment. Unless the taxpayer can qualify for a waiver of the suspense account requirement as provided for in section 373(c) of the Revenue Act of 1978 (92 Stat. 2865), the taxpayer should compute the transitional adjustment described in section 481(a)(2) according to the rules contained in this section. This adjustment should be taken into account according to the special rules in subsections (e) and (f) of section 466.

(2) *Net increase in taxable income.* In the case of a transitional adjustment that would result in a net increase in taxable income under section 481(a)(2) for the year of change, that increase should be taken into income over a ten-year period consisting of the year of change and the immediately succeeding nine taxable years. For example, assume that A, a calendar year taxpayer, makes an election to use the method of accounting described in section 466 for the year 1980 and for subsequent years. Assume further that the amount of the transitional adjustment computed under section 481(a)(2) would result in a net increase in taxable income of $100 for 1980. Under these facts, A should increase taxable income for 1980 and each of the next nine taxable years by $10.

(3) *Suspense account*—(i) *In general.* In the case of a transitional adjustment that would result in a net decrease in taxable income under section 481(a)(2) for the year of change, in lieu of applying section 481, in taxpayer must establish a separate suspense account for each trade or business for which the taxpayer has made an election to use section 466. The computation of the initial opening balance in the suspense account is described in paragraph (e)(3)(ii)(A) of this section. An initial adjustment to gross income for the year of election is described in paragaph (e)(3)(ii)(B) of this section. Annual adjustments to the suspense account are described in paragraph (e)(3)(iii)(A) of this section, and gross income adjustments are described in paragraph (e)(3)(iii)(B) of this section. Examples are provided in paragraph (e)(4) of this section. The effect of the suspense account is to defer some part of, or all of, the deduction of the transitional adjustment until the taxpayer no longer redeems discount coupons in connection with the trade or business to which the suspense account relates.

(ii) *Establishing a suspense account*—(A) *Initial opening balance.* To compute the initial opening balance of the suspense account for the first taxable year for which the election to use section 466 is effective, the taxpayer must determine the dollar amount of the deduction that would have been allowed for qualified discount coupon redemption costs during the redemption period for each of the three immediately preceding taxable years had the election to use section 456 been in effect for those years. The initial opening balance of the suspense account is the largest such dollar amount reduced by the sum of the adjustments attributable to the change in method of accounting that increase income for the year of change.

(B) *Initial year adjustment.* If, in computing the initial opening balance, the largest dollar amount of deduction that would have been allowed in any of the three prior years exceeds the actual cost of redeeming qualified discount coupons received during the redemption period following the close of the year immediately preceding the year of election, the excess is included in income in the year of election. Section 481(b) does not apply to this increase in gross income.

(iii) *Annual adjustments*—(A) *Adjustment to the suspense account.* Adjustments are made to the suspense account each year to account for fluctuations in coupon redemptions. To compute the annual adjustment, the taxpayer must determine the amount to be deducted under section 466(a)(1) for the taxable year. If the amount is less than the opening balance in the suspense account for the taxable year, the balance in the suspense account is reduced by the difference. Conversely, if such amount is greater than the opening balance in the suspense account for the taxable year, the account is increased by the difference (but not to an amount in excess of the initial opening balance described in paragraph (e)(3)(ii) of this section). Therefore, the balance in the suspense account will never be greater than the initial opening balance in the suspense account determined in paragraph (e)(3)(ii) of this section. However, the balance in the suspense account after adjustments may be less than this initial opening balance in the suspense account.

(B) *Gross income adjustments.* Adjustments to the suspense account for years subsequent to the year of the election also produce adjustments in the taxpayer's gross income. Adjustments which reduce the balance in the suspense account reduce gross income for the year in which the adjustment to the suspense account is made. Adjustments which increase the balance in the suspense account increase gross income for the year in which the adjustment to the suspense account is made.

(4) *Examples.* (i) The provisions of paragraph (e)(3) of this section may be illustrated by the following examples:

Example (1). Assume that the issuer of qualified discount coupons makes a timely election under section 466 for its taxable year ending December 31, 1979, and does not select a coupon redemption period shorter than the statutory period of 6 months. Assume further that the taxpayer's qualified discount coupon redemption costs in the first 6 months of 1977, 1978, and 1979 were $7, $13, and $8 respectively, and that the accounting change adjustments that increase income for 1979 are $10. Since the accounting change adjustment that increases income for 1979, ($10), is greater than the taxpayer's discount coupon redemptions during the first 6 months of 1979 ($8), the net section 481(a)(2) adjustment for the year of change results in a positive adjustment. Because of this, a suspense account is not required. The taxpayer should instead follow the rules in section 466(f) and in paragraph (e)(2) of this section in order to take this positive transitional adjustment into account.

Example (2). Assume the same facts as in example (1), except that the sum of the accounting change adjustments that increase income for 1979 is equal to $2. Under these facts the initial opening balance in the suspense account on January 1, 1979 would be $11 (that is, the largest dollar amount of

qualified coupon redemption costs in the pertinent years ($13), reduced by the sum of the accounting change adjustments that increase income in the year of change ($2)). Since the coupon redemption costs taken into account in determining the initial opening balance ($13 in 1979) exceed the actual redemption costs in the first 6 months of the taxable year for which the election is first effective ($8 in 1979), the excess of $5 is added to gross income for the year of election (1979).

Example (3). Assume, in addition to the facts of example (2), that coupon redemption costs during the redemption period for the 1979 taxable year are $7. Since the qualifying redemption costs ($7) during the redemption period for the taxable year are less than the opening balance in the suspense account ($11) the taxpayer must reduce the suspense account balance by the difference ($4). The taxpayer is also allowed to take a deduction equal to the amount of this adjustment to the suspense account. Thus, the net amount deductible for the 1979 taxable year after taking into account the coupon redemptions during the redemption period, the amount deductible because of the decrease in the suspense account, and the initial year adjustment determined in example (2) is $6 ($7 + $4 − $5).

Example (4). Assume, in addition to the facts of example (3), that coupon redemption costs during the redemption period for the 1980 taxable year are $10. Since the qualifying redemption costs during the redemption period for the taxable year ($10) exceed the opening balance of the suspense account at the beginning of the taxable year ($7), the suspense account must be increased by the difference ($3). The taxpayer must also include $3 in gross income for the taxable year. Thus, the net amount deductible for the 1980 taxable year is $7 ($10 − $3).

Example (5). Assume, in addition to the facts of example (4), that coupon redemption costs during the redemption period for the 1981 taxable year are $12. Since the qualifying redemption costs for the 1981 taxable year ($12) exceed the opening balance of the suspense account at the beginning of the taxable year ($10), the suspense account must be increased by the difference ($2) but not above the initial opening balance ($11). Thus, the taxpayer will increase the balance by $1. The taxpayer must also include $1 in gross income for the taxable year. Thus, the net amount deductible for the 1981 taxable year is $11 ($12 − $1).

(ii) The following table summarizes examples (2) through (5):

	Years ending Dec. 31—					
	1977	1978	1979	1980	1981	1982
Facts						
Actual coupon redemption costs in first six months	$7	$13	[illegible]	$7	$10	$12
Accounting change adjustments that increase income in year of change			[illegible]			
Net adjustment decreasing income in year of change under sec. 481(a)(2)			6			
Adjustment to suspense account:						
Opening balance			11	7	10	11
Addition to account				3	1	
Reduction to account			(4)			
Opening balance for next year			7	10	11	
Amount deductible:						
Initial year adjustment			(5)			
Amount of deductible as actual coupon redemptions during redemption period			7	10	12	
Adjustment for increase in suspense account				(3)	(1)	
Adjustment for decrease in suspense account			4			
Net amount deductible for the year for coupons redeemed during the redemption period			[illegible]	7	11	

(f) *Subchapter C transactions)*—(1) *General rule.* If a transfer of substantially all the assets of a trade or business in which discount coupons are redeemed is made to an acquiring corporation, and if the acquiring corporation determines its bases in these assets, in whole or part, with reference to the basis of these assets in the hands of the transferor, then for the purposes of section 466(e) the principles of section 381 and § 1.381(c)(4)–1 will apply. The application of this rule is not limited to the transactions described in section 381(a). Thus, the rule also applies, for example, to transactions described in section 351.

(2) *Special rules.* If, in the case of a transaction described in paragraph (f)(1) of this section, an acquiring corporation acquires assets that were used in a trade or business that was not subject to a section 466 election from a transferor that is owned or controlled directly (or indirectly through a chain of corporations) by the same interests, and if the acquiring corporation uses the acquired assets in a trade or business for which the acquiring corporation later makes an election to use section 466, then the acquiring corporation must establish a suspense account by taking into account not only its own experience but also the transferor's experience when the transferor held the assets in its trade or business. Furthermore, the transferor is not allowed a deduction for qualified discount coupons redeemed after the date of the transfer attributable to discount coupons issued by the transferor before the date of the transfer. Such redemptions shall be considered to be made by the acquiring corporation.

(3) *Example.* The provisions of paragraph (f)(2) of this section may be illustrated by the following example:

Example. Corporation S, a calendar year taxpayer, is a wholly owned subsidiary of Corporation P, a calendar year taxpayer. On December 31, 1982, S acquires from P sustantially all of the assets used in a trade or business in which qualified disount coupons are redeemed. P had not made an election under section 466 which respect to the redemption costs of the qualified discount coupons issued in connection with that trade or business. S makes an election to use section 466 for its taxable year ending December 31, 1983, for the trade or business in which the acquired assets are used, and selects a redemption period of 6 months. Assume that P's qualified discount coupon redemption costs in the first 6 months of 1981 and 1982 were $120 and $140 respectively. Assume further that S's qualified discount coupon redemption costs in the first 6 months of 1983 were $130, and that there are no accounting change adjustments that increase income with respect to the election. S must establish a suspense account by taking into account the largest dollar amount of deductions that would have been allowed under section 466(a)(1) for the 3 immediately preceding taxable years of P, including both P's and S's experience with respect to costs actually incurred during the redemption periods relating to those years. Thus, the initial opening balance of S's suspense account is $140. S must also make an initial year adjustment of $10 ($140–$130), which S must include in income for S's taxable year ending December 31, 1983. P may not take a deduction for the qualified coupon redemptions made after December 31, 1982, that are attributable to coupons issued by P before December 31, 1982. Thus, none of the $130 qualified discount coupon redemption costs incurred by S during the first six months of 1983 may be deducted by P.

§ 1.466–2 Special protective election for certain taxpayers.

(a) *General rule.* Section 373(c) of the Revenue Act of 1978 (92 Stat. 2865) allows certain taxpayers, who in prior years have accounted for discount coupons under a method of accounting reasonably similar to the method described in § 1.451–4, to elect to treat that method of accounting as a proper one for those prior years. There are several differences between this protective election and the section 466(d) election. First, the protective election applies only to a single continuous period of taxable years the last year of which ends before January 1, 1979. Second, an otherwise qualifying protective election may apply to

coupons which are discount coupons but which would not be treated as qualified discount coupons under Code section 466. Third, certain expenses such as the cost of redemption center service fees, and amounts that are payable to the retailer (or other person redeeming the coupons from the person receiving the price discount) for services in redeeming the coupons but that are not stated on the coupon, can be subtracted from gross receipts for prior years covered by a protective election (if treated as deductible under the accounting method for such years), even though such expenses would not be deductible under Code section 466.

(b) *Requirements.* In order to qualify for this special protective election, the following conditions must be met:

(1) For a continuous period of one or more prior taxable years, (the last year of which ends before Jan. 1, 1979), the taxpayer must have used a method of accounting for discount coupons that is reasonably similar to the method provided in § 1.451–4 or its predecessors under the Internal Revenue Code of 1954;

(2) The taxpayer must make an election under section 466 of the Internal Revenue Code of 1954 according to the rules contained in § 1.466–3 for its first taxable year ending after December 31, 1978; and

(3) The taxpayer must make an election under section 373(c) of the Revenue Act of 1978 according to the rules contained in § 1.466–4 for its first taxable year ending after December 31, 1978.

(c) *Amount to be subtracted from gross receipts.* The amount the taxpayer may subtract under this section for the redemption costs of coupons shall include only:

(1) Costs of the type permitted by § 1.451–4 to be included in the estimated average cost of redeeming coupons, plus

(2) Any amount designated or referred to on the coupon payable by the taxpayer to the person who allowed the discount on a sale by such person to the user of the coupon.

Nothing in this paragraph shall allow an item to be deducted more than once.

(d) *Right to amend prior tax returns.* This paragraph applies only to those taxpayers who have agreed in a prior year to discontinue the use of the method of accounting described in § 1.451–4 for discount coupon redemptions. If the taxpayer used such method of accounting on the original return filed for the prior taxable year, and if any such year is not closed under the statute of limitations or by reason of a closing agreement with the Internal Revenue Service, a taxpayer who has made a protective election may file an amended return and a claim for refund for such years. In this amended return, the taxpayer should account for its discount coupon redemptions, according to the method of accounting described in § 1.451–4. This is not to be construed, however, to abrogate in any way the rules regarding the close of taxable years due to the statute of limitations or a binding closing agreement between the Internal Revenue Service and the taxpayer.

(e) *Suspense account not required.* If the following three conditions are satisfied, the taxpayer need not establish the suspense account otherwise required by section 466(e). First, the taxpayer must make a timely election under these rules to protect prior years. Second, the method of accounting used in those years must have been used for all discount coupons issued by the taxpayer in those years in all the taxpayer's separate trades or businesses in which coupons were issued. Third, either before or after an amendment to the taxpayer's tax returns as described in paragraph (d) of this section, a method of accounting reasonably similar to the method of accounting described in § 1.451–4 must have been used for the taxable year ending on or before December 31, 1978. If these conditions are met, the taxpayer will treat the election of the method under section 466 as a change in method of accounting to which the rules in section 481 and the regulations thereunder apply.

(f) *Definition: reasonably similar.* For purposes of paragraphs (b)(1) and (e) of this section, a taxpayer will be considered to have used a method of accounting for discount coupons that is "reasonably similar" to the method of accounting provided in § 1.451–4 if the taxpayer followed the method of accounting described in § 1.451–4 as if that method were a valid method of accounting for discount coupon redemptions.

§ 1.466–3 Manner of and time for making election under section 466.

(a) *In general.* Section 466 provides a special method of accounting for accrual basis taxpayers who issue qualified discount coupons (as defined in section 466(b)). In order to use the special method under section 466, a taxpayer must make an election with respect to the trade or business in connection with which the qualified discount coupons are issued. If a taxpayer issues qualified discount coupons in connection with more than one trade or business, the taxpayer may use the special method of accounting under section 466 only with respect to the qualified discount coupons issued in connection with a trade or business for which an election is made. The election must be made in the manner prescribed in this section. The election does not require the prior consent of the Internal Revenue Service. An election under section 466 is effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the prior consent of the Internal Revenue Service to revoke such election.

(b) *Manner of and time for making election*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an election is made under section 466 and this section by filing a statement of election containing the information described in paragraph (c) of this section with the taxpayer's income tax return for the taxpayer's first taxable year for which the election is made. The election must be made not later than the time prescribed by law (including extensions thereof) for filing the income tax return for the first taxable year for which the election is made. Thus, the election may not be made for a taxable year by filing an amended income tax return after the time prescribed (including extensions) for filing the original return for such year.

(2) *Transitional rule.* If the last day of the time prescribed by law (including extensions thereof) for filing a taxpayer's income tax return for the taxpayer's first taxable year ending after December 31, 1978, falls before December 3, 1979, and the taxpayer does not make an election under section 466 with respect to such taxable year in the manner prescribed by paragraph (b)(1) of this section, and election is made under section 466 and this section with respect to such taxable year if—

(i) Within the time prescribed by law (including extensions thereof) for filing the taxpayer's income tax return for such taxable year, the taxpayer has made a reasonable effort to notify the Commissioner of the taxpayer's intent to make an election under section 466 with respect to such taxable year, and

(ii) Before January 2, 1980, the taxpayer files a statement of election containing the information described in paragraph (c) of this section to be associated with the taxpayer's income tax return for such taxable year.

For purposes of paragraph (b)(2)(i) of this section, a reasonable effort to notify the Commissioner of an intent to make an election under section 466 with respect to a taxable year includes the timely filing of an income tax return for

such taxable year if the taxable income reported on the return reflects a deduction for the redemption costs of qualified discount coupons as determined under section 466(a).

(c) *Required information.* The statement of election required by paragraph (b) of this section must indicate that the taxpayer (identified by name, address, and taxpayer identification number) is making an election under section 466 and must set forth the following information:

(1) A description of each trade or business for which the election is made;

(2) The first taxable year for which the election is made;

(3) The redemption period (as defined in section 466(c)(2)) for each trade or business for which the election is made;

(4) If the taxpayer is required to establish a suspense account under section 466(e) for a trade or business for which the election is made, the initial opening balance of such account (as defined in section 466(e)(2)) for each such trade or business; and

(5) In the case of an election under section 466 that results in a net increase in taxable income under section 481(a)(2), the amount of such net increase.

The statement of election should be made on a Form 3115, which need contain no information other than that required by this paragraph or paragraph (c) of § 1.466–4.

§ 1.466–4 Manner of and time for making election under section 373(c) of the Revenue Act of 1978.

(a) *In general.* Section 373(c)(2) of the Revenue Act of 1978 (92 Stat. 2865) provides an election for taxpayers who satisfy the requirements of section 373(c)(2)(A) (i) and (ii) of the Act. The election is made with respect to a method of accounting for the redemption costs of discount coupons used by the electing taxpayer in a continuous period of one or more taxable years ending before January 1, 1979. The election must be made in the manner prescribed by this section. The election does not require the prior consent of the Internal Revenue Service.

(b) *Manner of and time for making election*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, the election under section 373(c) of the Revenue Act of 1978 is made by filing a statement of election containing the information described in paragraph (c) of this section with the taxpayer's income tax return for the taxpayer's first taxable year ending after December 31, 1978. The election must be made not later than the time prescribed by law (including extensions thereof) for filing the income tax return for the taxpayer's first taxable year ending after December 31, 1978. Thus, the election may not be made with an amended income tax return for such year filed after the time prescribed (including extensions) for filing the original return.

(2) *Transitional rule.* If the last day of the time prescribed by law (including extensions thereof) for filing a taxpayer's income tax return for the taxpayer's first taxable year ending after December 31, 1978, falls before December 3, 1979, and the taxpayer does not make an election in the manner prescribed by paragraph (b)(1) of this section, an election is made under section 373(c) of the Act and this section with respect to a continuous period if—

(i) Within the time prescribed by law (including extensions thereof) for filing the taxpayer's income tax return for the taxpayer's first taxable year ending after December 31, 1978, the taxpayer has made a reasonable effort to notify the Commissioner of the taxpayer's intent to make election under section 373(c) of the Act with respect to the continuous period, and

(ii) Before January 2, 1980, the taxpayer files a statement of election containing the information described in paragraph (c) of this section to be associated with the taxpayer's income tax return for the taxpayer's first taxable year ending after December 31, 1978.

(c) *Required information.* The statement of election required by paragraph (b) of this section must indicate that the taxpayer (identified by name, address, and taxpayer identification number) is making an election under section 373(c) of the Revenue Act of 1978 and must set forth the taxable years in the continuous period for which the election is made. The statement of election should be made on the same Form 3115 on which the taxpayer has made a statement of election under section 466. The Form 3115 need contain no information other than that required by this paragraph or paragraph (c) of § 1.466–3.

PART 5—[AMENDED]

Temporary Income Tax Regulations Under the Revenue Act of 1978

Par. 2. Part 5 of 26 CFR is amended by removing § 5.466 and § 5.466–2.

PART 602—[AMENDED]

§ 602.101 [Amended]

Par. 3. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.466–3 and 1.466–4 . . . 1545–0512" and by removing from the table § 5.466–1 . . . 1545–0123" and § 5.466.2 . . . 1545–0123".

[FR Doc. 85-10490 Filed 4-30-85; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

31 CFR Part 103

Amendments To Implementing Regulations Currency and Foreign Transactions Reporting Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Department of Treasury is amending 31 CFR Part 103 to conform those regulations to recently enacted amendments to the Currency and Foreign Transactions Reporting Act.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Office of the Assistant Secretary (Enforcement and Operations), Department of the Treasury, Room 1458, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1984, the Comprehensive Crime Control Act of 1984 was signed into law. (Pub. L. 98–473). As part of that bill, Congress enacted certain amendments to the Currency and Foreign Transactions Reporting Act (Act), (Pub. L. 91–508, Title II, as amended, codified at 31 U.S.C. 5311 *et seq.*).

These amendments increase the maximum civil and criminal penalties that can be imposed for violations of the Act or of the regulations promulgated pursuant to the Act; require the reporting of attempts to transport currency, or to cause currency to be transported, into or outside the United States; increase the threshold amount of monetary instruments required to be reported under the Act and implementing regulations from $5,000 to $10,000; permit customs officers to stop and search certain conveyances without search warrants if the officers have reasonable cause to believe that monetary instruments are being transported in violation of the Act; and provide for the payment of rewards to informants.

Part 103 of 31 CFR is hereby amended to reflect these changes in the law.

Notice and Comment

The Department of the Treasury for good cause has determined that a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) is not required because it is unnecessary. The amended regulations are necessitated by, and are in conformity with, a federal statute. There is no discretion vested in, or exercised by, the Secretary in implementing the statutory provisions; they are incorporated into the regulations without substantive change.

Special Analyses

The Department of the Treasury has determined that this regulatory amendment is not a "major rule" within the meaning of Executive Order 12291. The rule merely conforms existing regulations to changes in the statute. It will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment activity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Consequently, a Regulatory Impact Analysis has not been prepared.

Because no notice of proposed rulemaking is required for this final rule, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Authority and Issuance

The Department of the Treasury issues this rule under the authority of the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II (Oct. 26, 1970), as amended, codified at 31 U.S.C. 5311 *et seq.*; and the Comprehensive Crime Control Act of 1984, Pub. L. 98–473 (Chapter IX) (Oct. 12, 1984).

List of Subjects in 31 CFR Part 103

Financial institutions, Reporting and recordkeeping requirements, Currency transactions, Monetary instruments, Rewards, Informants, Banks and banking, Penalties.

31 CFR Part 103 is amended as follows:

PART 103—[AMENDED]

The table of contents in Part 103 of 31 CFR is amended to add to Subpart D a new section, § 103.52 Rewards for Informants.

§ 103.23 Reports of transportation of currency or monetary instruments. [Amended]

Paragraph (a) in § 103.23 is amended by inserting in the first sentence, after "physically transports, mails or ships, or causes to be physically transported, mailed or shipped", the words "or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped".

Paragraph (a) in § 103.23 is further amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

§ 103.47 Civil Penalty. [Amended]

Paragraph (a) in § 103.47 is amended by striking out "$1,000" and inserting in lieu thereof "$10,000".

§ 103.49 Criminal Penalty. [Amended]

Paragraph (a) in § 103.49 is amended by striking out of the first sentence "of this part" and by inserting, in lieu thereof, "of title I of Pub. L. 91–508, or of this part authorized thereby".

Section 103.49 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and by inserting the following new paragraph (b):

(b) Any person who willfully violates any provision of title II of Pub. L. 91–508, or of this part authorized thereby, may, upon conviction thereof, be fined not more than $250,000 or be imprisoned not more than 5 years, or both.

§ 103.50 Enforcement authority with respect to transportion of currency or monetary instruments. [Amended]

Section 103.50 is amended by redesignating pargraphs (a) and (b) as paragraphs (b) and (c), and by inserting the following new paragraph (a):

(a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by §§ 103.23 and 103.25 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.

A new section 103.52 is added to Part 103, Subpart D, to read as follows:

§ 103.52 Rewards for informants.

(a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of the provisions of the Act or of this part, the Secretary may pay a reward to that individual.

(b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or $150,000, whichever is less.

(c) An offer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

Dated: April 19, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85–10301 Filed 4–30–85; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–85–01]

Drawbridge Operation Regulations; Bush River, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Interim rule.

SUMMARY: At the request of the Bush River Yacht Club, the Coast Guard is issuing an interim rule amending the regulations that govern the operation of the railroad drawbridge across the Bush River, mile 6.8, at Perryman, Maryland and requesting comments on the rule. This is being done to improve navigation through the bridge and keep interruptions to rail traffic at a minimum. The drawbridge has been a constant source of discontent between the two modes of transportation in the past. Implementation of the rule should alleviate the problem to the satisfaction of all concerned.

DATE: This interim rule is effective May 1, 1985. Comments must be received on or before June 14, 1985.

ADDRESS: Comments should be mailed to Commander (oan), 5th Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23705–5000. The comments received will be available for inspection and copying at Room 609 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, (804) 398–6227.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the interim rule. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action. The interim regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are CAPT M. J. Moynihan, Project Officer, and LCDR W. J. Brudzinski, Project Attorney.

Discussion of Proposed Rule

At the request of the Bush River Yacht Club, the Coast Guard is issuing an interim rule amending its regulation governing the operation of the Amtrak railroad drawbridge across the Bush River in Maryland. The Yacht Club members, virtually the only users of the draw, would like to have certain additional opening dates during the boating season and to have the operating procedures for the draw more expressly detailed in the regulation. This interim rule is the result of the combined efforts of representatives of the Yacht Club, Amtrak, and Coast Guard. Amtrak has agreed to implement the rule for the 1985 boating season.

The existing regulation requires two openings a day on each Saturday and Sunday from June 1 through September 30. The interim rule extends the period during which the draw shall open by one month, from May 1 through September 30, and adds one weekend (two days) in October. In addition, Federal holidays falling on Fridays and Mondays between May 1 and September 30 are added to the list of days on which the draw shall open.

Under the existing regulation, Amtrak sets the exact times for each opening but both openings must fall between 10 a.m. and 5 p.m. Under the interim rule, Amtrak will still determine the time of each opening but must limit the openings to daylight hours and separate them by six to ten hours with one opening before noon and one after noon. This change permits earlier and later openings and ensures that there will be a reasonable period of time between openings.

The existing rule does not clearly indicate that openings will be scheduled if requested by the Yacht Club. The revised rule clarifies the existing practice.

This interim rule is being made effective in less than 30 days because the boating season affected by the rule begins on May 1. Under this interim action, a comment period is provided which extends to June 14, 1985. This allows interested parties an opportunity to evaluate the regulations during the first month and a half of the boating season. Therefore, the Coast Guard finds that notice and public procedure thereon are unnecessary and contrary to the public interest and that the rule may be made effective in less than 30 days under 5 U.S.C. 553(d).

Economic Assessment and Certification

This interim regulation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the interim regulation is not substantially different from the present regulation governing operation of this bridge, and the increase in the number of drawbridge openings for navigation is so minimal that it will not place a significant economic burden on Amtrak. Since the impact of this interim rule is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended by revising § 117.547 to read as follows:

§ 117.547 Bush River.

The draw of the Amtrak bridge, mile 6.8 at Perryman, operates as follows:

(a) When notice under paragraph (b) of this section is given, the draw shall open twice a day—

(1) From May 1 through September 30, on each Saturday, Sunday, and Federal holiday falling on a Friday or a Monday; and

(2) In October, on the Saturday and Sunday of one weekend.

(b) Notice of the need for an opening is given to the Amtrak Assistant Transportation Superintendent at 301-291-4278 by an authorized representative of the Bush River Yacht Club by noon on the Friday just preceding the day of opening or, if that Friday is a Federal holiday, by noon on the preceding Thursday.

(c) Amtrak determines the times for openings and shall schedule the times—

(1) During daylight hours;

(2) Six to ten hours apart; and

(3) One opening before noon and one after noon.

(d) Amtrak shall notify a representative of the Yacht Club of the times of all openings for the weekend (or extended weekend) in question by 6 p.m. on the Friday just preceding the weekend or, if that Friday is a Federal holiday, by 6 p.m. on the preceding Thursday.

(e) Each opening shall be of sufficient duration to pass waiting vessels.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: April 3, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 85-10612 Filed 4-29-85; 3:48 pm]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[Docket No. CRT-85-2CC]

1985 Inflation Adjustment for Cable Copyright Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal is adjusting the cable copyright royalty rates for inflation as set forth in the Copyright Act of 1976. This action is pursuant to a petition filed by parties with a significant interest in the cable royalty rate. This is the second inflation adjustment. This first adjustment was made in 1980.

This action does not affect the cable copyright royalty rates adopted by the Tribunal in 1982 after deregulation of the cable carriage rules by the FCC, nor does it affect the syndicated exclusivity surcharges. The Tribunal will consider those rates later this year.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, Suite 450, 1111 20th Street NW., Washington, D.C. 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On March 19, 1985, the Copyright Royalty Tribunal (Tribunal) published a notice proposing to adjust cable television copyright royalty rates for inflation. *Notice Commencing 1985 Cable Royalty Inflation Adjustment Proceeding and Setting Procedural Dates,* 50 FR 10989 (1985).

In the notice, the Tribunal stated that sections 801(b)(2) (A) and (D) of the Copyright Act of 1976 (Act) authorizes the Tribunal to adjust the cable television royalty rates and the gross receipts limitations for inflation as set forth in sections 111(d)(2)(B)–(D) of the Act. The Tribunal also stated that it had received on March 8, 1985 a joint petition from the National Cable Television Association, Community Antenna Television Association, the Motion Picture Association of America, Major League Baseball, National Basketball Association, North American Soccer League, National Hockey League, National Collegiate Athletic Association, American Society of Composers, Authors, and Publishers, Broadcast Music, Inc., SESAC, Inc., and National Association of Broadcasters stating that they had reached an agreement regarding the 1985 inflation adjustment. The parties urged the Tribunal to adopt this agreement.

Pursuant to section 804 of the Act, the Tribunal gave notice of the commencement of the 1985 Cable Inflation Adjustment Proceeding and directed all interested parties to notify the Tribunal by April 17, 1985 of their intent to participate in the proceeding. The Tribunal further directed anyone interested in the proposed inflation adjustment to file their comments by April 17, 1985. The Tribunal asked for comments as to whether good cause existed to make the final rules effective with the publishing of the final rulemaking order in the **Federal Register**, pursuant to section 553(d)(3) of the Administrative Procedure Act.

Comments

The Tribunal received a comment filed jointly by the National Cable Television Association, Community Antenna Television Association, the Motion Picture Association of America, Inc., Major League Baseball, National Basketball Association, North American Soccer League, National Hockey League, National Collegiate Athletic Association, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., and National Association of Broadcasters. The Tribunal also received a comment from National Public Radio. Both comments supported the inflation adjustment proposed by the Tribunal.

More specifically, the comment filed jointly by the National Cable Television Association *et al.* supported the modification made by the Tribunal to the settlement agreement filed by the joint petitioners in which the Tribunal adjusted the $76,000 cut-off figure for Form 1 cable systems downward to $75,800. The comment agreed that the $75,800 figure was more accurate than $76,000 and that it was in keeping with the intent of the adjustment proposed by the joint petitioners.

The joint commenters also believed that good cause exists to make the final rules effective with the publishing of the final rulemaking order in the **Federal Register**. They cited the lead time needed by the Copyright Office to revise its statement of account forms to reflect the changes to be effected by the proposed rulemaking. However, the Tribunal, in researching this question on its own, has determined that it cannot make these rules effective on the date of publication in the **Federal Register**. Section 803 of the Act states that the Tribunal shall be subject to the provisions of the Administrative Procedure Act, "*except as otherwise provided in this chapter. . . .*" (emphasis ours). Section 809 states, "Any final determination by the Tribunal under this chapter shall become effective thirty days following its publication in the **Federal Register** as provided in section 803(b), unless prior to that time an appeal has been filed pursuant to section 810, to vacate, modify, or correct such determination, and notice of such appeal has been served on all parties who appeared before the Tribunal in the proceeding in question. . . ." It is the determination of the Tribunal that when sections 803 and 809 of the Act are read together, the "good cause" provision of section 553(d)(3) of the Administrative Procedure Act is not available to the Tribunal in the context of final determinations.

However, the Tribunal does not believe that delaying the effective date of its proposed inflation adjustment will cause any undue harm. It is the understanding of the Tribunal that the Copyright Office will be able to make the appropriate changes necessary for the first accounting period of 1985 which ends June 30, 1985 if the proposed rules are effective by June 1, 1985. Accordingly, the Tribunal is making the effective date of the final rules May 31, 1985.

Conclusion

The Tribunal reiterates that it is pleased that all the parties who participated in the 1980 inflation adjustment proceeding have been able to reach an agreement concerning the 1985 inflation adjustment. The Tribunal has also made a separate determination based on the comments it has received and upon its own experience that the inflation adjustment proposed by the joint petitioners is in the public interest. The Tribunal reminds the public that this inflation adjustment does not affect the cable royalty rates adopted in 1982 after deregulation of the cable carriage rules by the FCC, nor does it affect the syndicated exclusivity surcharges. The Tribunal will consider those rates later this year to the extent it is petitioned. Accordingly, and pursuant to section 801 of the Act. (17 U.S.C. 801) the Tribunal hereby adopts the rule changes proposed on March 19, 1985, as follows.

List of Subjects in 37 CFR Part 308

Cable television, Copyright.

PART 308—[AMENDED]

37 CFR Chapter III Part 308 is amended by revising § 308.2 (a) and (b) as follows:

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) Commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(2)(B) shall be as follows:

(1) .893 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (a) (2) through (4);

(2) .893 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .563 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .265 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C.

111(d)(2) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total $146,000 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which $146,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $5,600. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the acutal gross receipts paid by the subscribers to a cable system for the period covered by the statement, for the basis service of providing secondary transmissions of primary broadcast transmitters, are more that $146,000 but less than $292,000, the royalty fee payable under this paragraph shall be: (i) 0.5 of 1 per centum of any gross receipts up to $146,000 and (ii) 1 per centum of any gross receipts in excess of $146,000 but less than $292,000, regardless of the number of distant signal equivalents, if any.

* * * * *

Marianne Mele Hall,

Chairman, Copyright Royalty Tribunal.

April 25, 1985.

[FR Doc 85-10446 Filed 4-30-85; 8:45 am]

BILLING CODE 1410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2828-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA announces final approval of a revision to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2). The revision consists of the removal of the SO_2 self-monitoring requirement for Public Service Indiana's (PSI) Edwardsport Generating Station, Knox County, Indiana, as allowed by Indiana Rule 325 IAC 7-1, Section 4(b). This revision becomes effective once the Station achieves an annual operating capacity of no greater than 10%. USEPA's action is based upon a SIP revision request that was submitted by the Indiana Air Pollution Control Board (IAPCB) on February 23, 1984. A notice proposing approval of this revision appeared in the October 29, 1984, **Federal Register** (49 FR 43479).

EFFECTIVE DATE: This final rulemaking action becomes effective on May 31, 1985.

ADDRESS: Copies of this revision to the Indiana SIP are available for review at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Copies of this SIP revision and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: Indiana Rule 325 IAC 7-1 Section 4(a) requires all fuel combustion sources with a total plant capacity greater than 500 million British Thermal Units (MMBTU) heat input to maintain an ambient air quality monitoring network. However, Section 4(b) of this same rule allows the IAPCB to modify or remove the requirements of Section 4(a), if the source demonstrates to the Board's satisfaction that self-monitoring is not necessary to achieve the purposes of the rule.

On February 23, 1984, Indiana submitted, as a revision to its SO_2 SIP, a revised monitoring requirement for PSI's Edwardsport Generating Station, Knox County. This revision requires PSI to maintain the Edwardsport air quality monitors in place until such time as the Edwardsport Station is operated at a total annual operating capacity of 10% or less. When this occurs, PSI can discontinue running the Edwardsport monitors, but it must notify the State of its action. If the Station is ever operated again at an annual rate greater then 10%, the State must be notified for the possible reinstatement of the monitoring requrements. A detailed description of this SIP revision is given in the October 29, 1984, notice of proposed rulemaking (49 FR 43479), as well as the associated technical support document.

USEPA has reviewed this SIP submittal and concludes that the Edwardsport Station self-monitoring requirements go beyond what is presently required under the Clean Air Act to assure attainment and maintenance of the SO_2 NAAQS in the vicinity of the Station. USEPA proposed to approve this revision to the Indiana SO_2 SIP on October 29, 1984 (49 FR 32865). No public comments were received. Thus, USEPA takes final action to approve this revision to the Indiana SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals of the appropriate circuit by 60 days from today. This action may not be challenged later in proceeding to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Sulfur oxides, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Authority Citation

This notice is issued under authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

INDIANA

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Section 52.770 is amended by adding new paragraph (c)(52) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(52) On February 23, 1984, the Indiana Air Pollution Control Board submitted a revision to Indiana's SO_2 SIP waiving the self-monitoring requirement for Public Service Indiana's Edwardsport Generating Station, as set forth in section 4(a) of Rule 325 IAC 7-1. See (c)(19). This revision becomes effective once the Edwardsport Station achieves

an annual operating capacity of no greater than 10%.

* * * * *

[FR Doc. 85-10532 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2828-3]

Approval and Promulgation of Implementation Plans; Maine; Lincoln TSP Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the State of Maine. These revisions will reduce emissions of Total Suspended Particulate (TSP) matter at the Lincoln Pulp and Paper Company, Inc., in Lincoln. The intended effect of this action is to provide for attainment of the primary TSP National Ambient Air Quality Standards (NAAQS) as required under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective June 10, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, D.C., Office of the Federal Register, 1100 L St., NW., Room 8401, Washington, D.C. and the Maine Department of Environmental Protection, Ray Building, Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Stephen Perkins, (617) 223-4866.

SUPPLEMENTARY INFORMATION: On December 18, 1984, the Commissioner of the Maine Department of Environmental Protection (DEP) submitted revisions to the Maine State Implementation Plan (SIP). The revisions provide for attainment of the primary NAAQS for TSP in Lincoln by requiring controls on sources of particulate emissions at the Lincoln Pulp and Paper Company, Inc. (the Company).

Background

The Town of Lincoln was redesignated as a nonattainment area for the primary and secondary NAAQS for TSP on December 20, 1983 (48 FR 56219). A ban on the construction or modification of major sources automatically applies to Lincoln eighteen months after the date of the redesignation unless an approved or conditionally approved attainment plan is in effect (40 CFR 52.24(k)). The redesignation was challenged in the U.S. Court of Appeals for the First Circuit by the Company and the Town of Lincoln on February 17, 1984. *Lincoln Pulp & Paper Co., et al.* v. *USEPA*, No. 84-1124 (1st Cir.) That challenge has been temporarily stayed pending rulemaking action to resolve the issues.

These revisions will satisfy the requirement for an approved attainment plan. Further, approval of this plan will also allow EPA to proceed with a forthcoming request to redesignate the area to secondary nonattainment for TSP.

Control Strategy

The Lincoln Pulp and Paper Company is the only major source of TSP in the nonattainment area. Under the requirements of an emission license issued to the Company on March 9, 1983 by the Maine DEP, pollution control systems have been installed and are operating on all significant point and fugitive sources of particulate emissions. The emission controls which have been submitted as part of the attainment plan require the Company to:

1. Operate an electrostatic precipitator and in-stack opacity monitors on the recovery boiler,
2. Operate a venturi scrubber on the lime kiln,
3. Operate fuel viscosity controls and oxygen monitors on certain oil-fired power boilers,
4. Restrict operation of certain powerboilers or combinations of boiler operation,
5. Operate a wet scrubber on the lime slaker vent,
6. Operate a wash demister pad scrubber on the lime causticizer vent,
7. Operate a baghouse on the lime silo vent,
8. Operate a wet scrubber on the starch slaker tank vent,
9. Use specified procedures in the handling of sawdust,
10. Pave and sweep weekly certain millyard areas,
11. Chemically stabilize certain unpaved roads, and
12. Limit emissions from the smelt tank.

These controls have resulted in a 284 TPY (37%) reduction in point source emissions and additional, though unquantified, reductions in fugitive emissions. There have been no primary TSP violations since the implementation of these reductions.

The State's submission also included an air quality analysis. All significant emission points at the mill were modeled using EPA's Industrial Source Complex (ISC) Model. Impacts on nearby elevated terrain were evaluated using EPA's Valley Model. The modeling results show attainment of both the 24-hour and annual primary NAAQS for TSP.

EPA has reviewed the State's submission and conducted independent analyses. We find that the emission reductions are federally enforceable and will provide for attainment and maintenance of the primary NAAQS expeditiously and effectively.

Final Action

EPA is approving the plan to attain the primary NAAQS for TSP in Lincoln, Maine submitted by the State on December 18, 1984.

The U.S. Court of Appeals for the District of Columbia has remanded portions of EPA's stack height regulations for promulgation of new regulations. *Sierra Club* v. *EPA*, 719 F2D 436 (1983). EPA has since proposed new stack height rules, on November 9, 1984 (49 FR 44878). Combined gas flows at the Company were evaluated for possible conflict with portions of the proposed regulation concerning "dispersion techniques," 40 CFR 51.1(hh). The combined gas flows were evaluated as though they were dissociated gas flows through separate stacks, in a manner consistent with the proposed regulation. The analysis showed that predicted impacts still would not violate the primary NAAQS. While EPA believes the action taken today to be consistent with the court decision, this action may be subject to modification when the final regulations are promulgated. This may result in a revised emission limitation.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 40 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no

such comments are received, the public is advised that this action will be effective June 10, 1985.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control agency, Particulate matter, and Incorporation by reference

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart U—Maine

Section 52.1020 is amended by adding paragraph (c)(20) as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(20) A plan to attain the primary TSP standard in Lincoln, consisting of particulate emission limitations contained in an air emission license issued to the Lincoln Pulp and Paper Company, Inc., submitted by the Commissioner of the Maine Department of Environmental Protection on December 18, 1984.

[FR Doc. 85–10534 Filed 4–30–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-2828-2]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is today removing its conditional approval of Michigan's State Implementation Plan (SIP) Rule 336.1606. The condition of approval of Michigan's Rule 336.1606 for Stage I control of volatile organic compounds (VOC) emissions, required that the State either promulgate a rule with a 120,000 gallon per year throughput exemption for gasoline dispensing facilities and submit it to USEPA or demonstrate that allowable emissions resulting for the application of its existing rule with a 250,000 gallon per year throughput exemption for gasoline dispensing facilities are less than five percent greater than the allowable emissions resulting from the application of reasonably available control technology (RACT) as defined by USEPA's guidelines. USEPA has determined that the State of Michigan has demonstrated that emission limits in Rule 336.1606 are equivalent to RACT for the Detroit Urban nonattainment areas consisting of Wayne, Oakland, and Macomb Counties.

EFFECTIVE DATE: The final rulemaking is effective July 1, 1985.

ADDRESSES: Copies of this SIP revision and USEPA's evaluation are available for review at the following addresses:

U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

Copies of the state submittal are available at:

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C.

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On November 1, 1984 (49 FR 43976), USEPA published a notice of proposed rulemaking proposing to remove its conditional approval of Michigan's Rule 336.1606 and to fully approve the rule. During the 30-day comment period no comments were received. For further information on the specifics of USEPA's analysis, see USEPA's Technical Support Document (TSD) dated June 1, 1984. That TSD also contains a detailed review of Michigan's RACT comparison study.

Michigan's Rule 336.1606 requires all gasoline dispensing facilities having a throughout of greater than 250,000 gallons per year which are located in the Detroit metropolitan area, as defined in Table 61 of Rule 336.1606, to install and operate vapor balance equipment for use in controlling VOC emissions during storage tank loadings. Additionally, the Rule requires that facilities which have a throughput greater than 250,000 gallons per year and are located anywhere in Wayne, Oakland, or Macomb Counties install submerged fill equipment.

On March 8, 1984, the State of Michigan submitted a report which was designed to demonstrate that the emission reductions required by Rule 336.1606 in the total three county area are equivalent to the emission reductions which would result from application of USEPA's recommended RACT limits in the urbanized portion of the three county area.

Under Michigan's analysis, the total VOC emission allowed under Rule 336.1606 in the three county area are 1,146 tons per year, compared with allowed emissions of 1,191 tons VOC per year based on USEPA's recommended RACT requirements.

USEPA believes that Michigan has adequately demonstrated that its Rule 336.1606 emissions limits are equivalent to RACT for Wayne, Oakland and Macomb Counties. Therefore, USEPA removes its conditional approval of Rule 336.1606 and fully approves this rule.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challanged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by Reference.

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40, Code of Federal Regulations is amended as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraph (c)(77) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(77) On March 8, 1984, the State of Michigan submitted a report which demonstrated that Rule 336.1606 contains emission limits equivalent to Reasonable Available Control Technology (RACT) for Wayne, Oakland and Macomb Counties. Therefore, USEPA removes its conditional approval of Rule 336.1606 and fully approves the State's rule.

* * * * *

§ 52.1174 [Amended]

2. Section 52.1174 is amended by removing Paragraph (a)(2).

[FR Doc. 85-10531 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[TN-016; A-4-FRL-2827-1]

Designation of Areas for Air Quality Planning Purposes; Tennessee: Redefinition of TSP and SO_2 Attainment Areas; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction in final rule.

SUMMARY: The portion of the Tennessee-SO_2 attainment status table published on page 30188 of the issue of July 27, 1984, was incorrect for Roane County. This document corrects that error.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ray Gregory, EPA Region IV Air Management Branch, at 404/881/3286 (FTS 257-3286).

In § 81.343, in the Table "Tennessee-SO_2", Roane County's attainment status is correctly listed as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
*	*	*	*	*
That portion of Roane County surrounding TVA's Kingston plant			X [1]	
Rest of Roane County				X
*	*	*	*	*

[1] EPA designation replaces state designation

Dated: April 18, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-10364 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2508/R760; FRL-2824-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Triclopyr

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on various raw agricultural commodities. This regulation to establish maximum permissible residues of the herbicide in or on the raw agricultural commodities was requested, pursuant to a petition, by Dow Chemical Corp.

EFFECTIVE DATE: Effective on May 1, 1985.

ADDRESS: Written objections, identified by the document control number [PP 1F2508/R760], may be submitted to the: Hearing Clerk (A-110, Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 20, 1981 (46 FR 37323), that announced that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, had filed pesticide petition 1F2508 with the Agency proposing to amend 40 CFR Part 180 by establishing tolerances for the combined residues of the herbicide triclopyr ((3,5,6-trichloro-2-pyridinyl)oxy)acetic acid and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities grasses, forage at 1,000 parts per million (ppm); grasses, hay at 300 ppm; milk at 0.1 ppm; meat, fat, meat by-products (except kidney and liver) of cattle, sheep, and goats at 0.1 ppm; kidney and liver of cattle, sheep, and goats at 1.0 ppm.

No comments were received in response to the notice of filing.

The petitioner later amended the petition by proposing the establishment of tolerances for combined residues of the herbicide triclopyr ((3,5,6-trichloro-2-pyridinyl)oxy) acetic acid and its metabolities 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine on grasses, forage at 500 ppm and grasses, hay at 500 ppm and tolerances for the combined residues of the herbicide triclopyr ((3,5,6-trichloro-2-pyridinyl)oxy) acetic acid and its metabolite 3,5,6-trichloro-2-pyridinol in or on milk at 0.01 ppm; meat fat and meat by-products (except liver and kidney) of cattle, goats, hogs, horses, and sheep at 0.05 ppm; liver and kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm. Because these tolerances are less than previously proposed, no period for public comment is necessary.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicology data considered in support of the tolerances include several acute toxicology tests; a 90-day rat feeding study with a no-effect-level (NEL) of 30 milligrams/kilogram/day (mg/kg/day); a 6-month dog feeding study with a no-observable-effect level (NOEL) of 2.5 mg/kg/day; a 3-generation rat reproduction study with an NEL greater than 30 mg/kg/day; a mouse oncogenicity study with no observed oncogenic effects at all levels tested (24, 80, 240 ppm); a rabbit teratology study with a NOEL of >25.0 mg/kg/day; a rat teratology study with a NOEL >200 mg/kg (HDT); and several mutagenic studies (rec-assay and reversion, host-mediated

assay, Ames test, dominant lethal and mammalian cytogenetic study) all negative for mutagenic effects.

The provisional acceptable daily intake (PADI) based on the 6-month feeding study (NOEL) of 2.5 mg/kg/day) and using a 100-fold safety factor is calculated to be 0.025 mg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.500 mg/day. The theoretical maximum residue contribution (TRMC) for these tolerances is 0.0129 mg/day (1.5kg). This action will utilize 0.86% of the ADI. No tolerances have previously been established for this chemical.

Data lacking are a repeat of the 2-year chronic feeding oncogenicity study in rats. The company has been required to perform the study and to submit it by July 31, 1987.

The herbicide is considered useful for the purpose for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the herbicide. The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography with an electron capture detector, is available for enforcement purposes. Residues are expected to occur in milk, liver, kidney, meat, fat, and meat by-products of cattle, sheep, and goats but will not exceed the proposed tolerance. Residues are not expected to occur in poultry or eggs.

Based on the information cited above, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 16, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. By adding § 180.3(d)(11), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(11) Where a tolerance is established for triclopyr, chloropyrifos, and chlorpyrifos-methyl having the common metabolite 3,5,6-trichloro-2-pyridinol on the same raw agricultural commodity, the total amount of such residues shall not exceed the highest established tolerance for any of the pesticides having the metabolites.

* * * * *

2. By adding new § 180.417, to read as follows:

§ 180.417 Triclopyr; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide triclopyr ((3,5-trichloro-2-pyridinyl)oxy)acetic acid and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the following raw agricultural commodities:

Commodity	Parts per million
Grasses, forage	[illegible]
Grasses, forage, hay	[illegible]

(b) Tolerances are established for the combined residues of the herbicide triclopyr ((3,5,6-trichloro-2-pyridinyl)oxy)acetic acid and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following raw agricultural commodities:

Commodity	Parts per million
Milk	0.01
Meat, fat and meat byproducts (except liver and kidney) of cattle, goats, hogs, horses, and sheep	0.05
Liver and kidney of cattle, goats, hogs, horses and sheep	0.5

[FR Doc. 85-9991 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 439

[OW-FRL-2286-7]

Pharmaceutical Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical Amendment.

SUMMARY: In the preamble to Pharmaceutical Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards, 40 CFR Part 439, **Federal Register** October 27, 1983 and 48 FR 49808, EPA noted that the information collection requirements were under review at the Office of Management and Budget (OMB). In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), those provisions are not effective until OMB approval has been obtained. The Agency is announcing today the approval of these information requirements by OMB. In conformance with this approval, the Agency will include the OMB control number in the body of the rule.

EFFECTIVE DATE: January 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank H. Hund at (202) 382-7182.

Dated: April 19, 1985.

Henry Longest II,

Acting Administrator for Water.

PART 439—[AMENDED]

§ 439.15 [Amended]

At the end of CFR 439.15, and OMB control number is added to read as follows:

(Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 2040-0033)

[FR Doc. 85-10367 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6602

[I-15306, I-15307]

Idaho; Modification of Stock Driveway Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order establishes a 20-year term for two Bureau of Land Management Orders which withdrew 10,846.34 acres of land for stock driveway purposes. The lands have been and remain open to mining and mineral leasing, but closed to surface entry.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83724 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Bureau of Land Management Orders of July 28, 1955, and March 23, 1956, which withdrew the following described lands, are hereby modified to expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended. The lands aggregate 10,846.34 acres in Bingham County.

Robert N. Broadbent,
Assistant Secretary of the Interior.

[FR Doc. 85-10559 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 55, 56, and 57

Riot Reinsurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule removes regulations implementing the riot reinsurance program. In November 1983, Congress amended the Urban Property Protection and Reinsurance Act of 1968 to terminate the Federal Insurance Administration's authority to offer further policies of Federal riot reinsurance and to periodically review each State's FAIR Plan in its entirety for conformity to statutory criteria. Consequently, no offer to extend or write new policies of riot reinsurance was made after September 30, 1984.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street SW., Room 433, Washington, DC 20472. Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: No written comments were received during the comment period which were due by April 1, 1985.

List of Subjects in 44 CFR Parts 55-57

Civil orders, Insurance.

Accordingly, Subchapter B of Chapter I, Title 44, Code of Federal Regulations, is hereby amended by removing and reserving Parts 55, 56, and 57 as follows:

PART 55—[REMOVED]

By removing and reserving Part 55 in its entirety.

PART 56—[REMOVED]

By removing and reserving Part 56 in its entirety.

PART 57—[REMOVED]

By removing and reserving Part 57 in its entirety.

Authority: 12 U.S.C. 1749bbb-17.

Issued: April 26, 1985.

Jeffrey S. Bragg,
Federal Insurance Administrator.

[FR Doc. 85-10495 Filed 4-30-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 85-197]

Delegation of Authority to the Chief, Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action delegates to the Chief, Common Carrier Bureau, the Commission's authority to approve the disclosure of commercial information obtained by the Commission during an examination of books or accounts.

This action is taken by the Commission in order to facilitate joint and cooperative activities with state public utility commissions.

This action is intended to generate regulatory and fiscal efficiencies by promoting the efficient utilization of limited federal and state staff resources.

EFFECTIVE DATE: April 24, 1985.

ADDRESS: FCC, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael R. Wack, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Delegations of authority, Freedom of information.

Memorandum Opinion and Order

In the matter of amendment of Part 0 of the Commission's rules with respect to delegation of authority to the Chief, Common Carrier Bureau. CC, FCC 85-197, 35753.

Adopted: April 19, 1985.

Released: April 24, 1985.

By the Commission.

1. Telecommunications products and services in the United States are provided pursuant to a system of concurrent, complementary federal and state regulation. In recent years, due to rapid and substantial changes in the telecommunications industry, the complexity and pace of federal and state common carrier regulation have increased significantly. This has occurred at a time when fiscal pressures on the states and the federal government preclude major funding increases to support staff activities. In view of our shared regulatory responsibilities, and the similar nature of many of our activities, we believe substantial regulatory and fiscal efficiencies can be achieved by closer cooperation between state and federal regulators on matters of common interest and jurisdiction. Therefore, we act today (1) to highlight and emphasize those portions of the Communications Act, 47 U.S.C. 151, *et seq.*, which both empower and encourage the Commission to cooperate with the States on matters of common interest; and, (2) to facilitate such cooperation by making certain minor changes in our rules regarding delegations of authority to the Chief, Common Carrier Bureau.

2. There can be no doubt that the dynamic nature of the telecommunications undustry in recent years has increased significantly the magnitude and scope of the federal and state common carrier regulatory workload. For example, technological advances have created markets, such as cellular telephone service, which existed

only in infant form ten years ago.[1] Moreover, AT&T's divestiture of its local operating companies, pursuant to the Modification of Final Judgment (MFJ) in *United States v. AT&T*,[2] has altered substantially the telecommunications industry. The MFJ has, among other things, led to the establishment of seven large regional holding companies. The creation of these companies and their various subsidiaries has generated a host of policy issues, including issues related to the entry of these new companies into unregulated telecommunications and nontelecommunications markets.[3] In addition, the Commission's own activities during this period have generated significant amounts of work, as our policies and rules have been reshaped to accommodate outside events and to implement our own initiatives. For purposes of illustration, we point to the accounting and reporting activities relating to our decisions involving the Uniform System of Accounts,[4] and to the compliance and enforcement activities arising out of the *Computer II* decision and its progeny.[5] While the policy trend is toward less regulation, the transition period associated with opening telecommunications markets to new entrants, products, and services imposes significant short-to-medium-term burdens on regulators.

3. The impact on state utility and public service commissions of these events is at least equal to their impact on this Commission. Divestiture has fundamentally altered the corporate structure, as well, as the nature and degree of activities, of the Bell operating companies (BOCs), which have been regulated primarily by the states. The new industries generated by technological advances also have had an impact on state regulatory activities (e.g., policies and activities related to the rate regulation of cellular services). Moreover, state commissions are subject to the same fiscal pressures which exist at the federal level and preclude any major funding increases to support staff activities.

4. At the federal level, these staff activities are performed by the Commission's Common Carrier Bureau. Pursuant to our rules, the Bureau develops, recommends, and administers policies and programs for the regulation of entities furnishing interstate of foreign communications and ancillary operations relating to the provision or use of such services. 47 CFR 0.91. In so doing, the Bureau performs certain specific functions, including (1) the administration of the Commission's accounting and reporting requirements; and, (2) conducting and coordinating compliance and enforcement activities. 47 CFR 0.91(a). To a substantial degree, these activities overlap—and in some instances, duplicate—activities performed at the state level. For instance, in performing its accounting responsibilities, the Bureau frequently audits the same carrier materials that are examined by the states in the course of a rate case.

5. As noted previously, we believe significant fiscal and regulatory efficiencies can be achieved by working more closely with the states on matters of common interest and jurisdiction. It is in our mutual interest to avoid duplication of our activities wherever possible and thereby enhance and efficiently utilize our limited resources. Examples of cooperation might include, *inter alia*, (1) joint audits of the accounts, records, and memoranda of carriers subject to our concurrent jurisdiction; (2) joint investigations of carrier activities in areas of common interest; and, (3) sharing information gathered in the course of separate audits and investigations.

6. The Communications Act specifically authorizes the Commission "to avail itself of such cooperation, services, records, and facilities as may be afforded by any State Commission." 47 U.S.C. 410(b); *see also* 47 U.S.C. 410(a), 410(c) (Joint Boards). This clear congressional approval of joint federal and state activities is supplemented by our own authority under sections 4(i) and 5(c) of the Act, 47 U.S.C. 154(i), 155(c). Pursuant to this authority, we have already directed the Common Carrier Bureau to collaborate with representatives of state regulatory commissions and the National Association of Regulatory Utility Commissioners in cooperative studies of common carrier and related matters. 47 CFR 0.91(c).

7. We find no prohibition in the Communications Act or elsewhere which would bar the joint activities or information sharing outlined above or contemplated by this order. Out of an abundance of caution, however, we note that section 220(f) of the Act, 47 U.S.C. 220(f), may inhibit the Bureau from cooperating with the states without Commission approval. Section 220(f) provides:

> No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

8. The legislative history of the Communications Act indicates that section 220(f) is based upon a substantially similar provision of the Interstate Commerce Act; specifically, section 20. H.R. Rep. No 1850, 73rd Cong., 2nd Sess. 7 (1934); S. Rep. 781, 73rd Cong., 2nd Sess. 5 (1934). The provision is intended to serve as a limited barrier against disclosure to the public of commercial information obtained by the Commission during an examination of accounts and records. *See, e.g. Hearings on H.R. 8301 Before the Committee on Interstate and Foreign Commerce, House of Representatives*, 73rd Cong., 2nd Sess. 94 (1934) (statement of Frank McManamy, Chairman of the Legislative Committee, Interstate Commerce Commission); *Id.* at 227 (statement of Sosthenes Behn, President, International Telephone and Telegraph Company).

9. There is no indication that Congress intended section 220(f) to be a barrier to the sharing of FCC-acquired information with the states. On its face, the provision merely requires that disclosure be approved by the Commission or by a court. As the prompt and orderly conduct of the Commission's business would be significantly disrupted if each cooperative venture or information release demanded full Commission review and approval, we hereinafter delegate the authority to make such determinations to the Chief, Common Carrier Bureau. We wish to make the limited scope of this authority absolutely clear, however, by emphasizing that it shall relate exclusively to information which may be (1) disclosed during the course of an

[1] *See generally*, Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, FCC 85-54, CC Docket No. 84-637 (released February 12, 1985) and orders cited therein

[2] United States v. AT&T, 552 F. Supp. 131 (D D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[3] *See, e.g.*, Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services, FCC 85-28 (released Feb. 4, 1985) and orders cited therein.

[4] *See, e.g.*, Uniform System of Accounts, 64 FCC 2d 1 (1977) (CC Docket 19129, Final Decision and Order); Uniform System of Accounts, 85 FCC 2d 818 (CC Docket 79-105, First Report and Order); *see generally* Further Notice of Proposed Rulemaking, FCC 85- , CC Docket 78-196 (released January 3, 1985) and orders cited therein.

[5] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983).

audit or investigation; or, (2) contained in audit reports prepared by the Bureau.

10. We can foresee instances in which the joint and cooperative activities contemplated by this order will entail sharing with the states commercial information of a confidential nature. The companies from which such information is obtained have a legitimate interest in ensuring that it is protected against unwarranted disclosure. As such, we make note of the fact that the sharing of confidential business information by this Commission with the states is not a release of such information to the "public" within the meaning of the Freedom of Information Act (FOIA), as long as the states provide reasonable assurances that the information will not be generally released to the public. *INTERCO Inc.* v. *F.T.C.*, 478 F.Supp. 103, 106 (1979); *accord Jaymar-Ruby, Inc.* v. *F.T.C.*, 651 F.2d 506 (7th Cir. 1981); *see generally Fleming* v. *F.T.C.*, 670 F.2d 311 (D.C. Cir. 1982). In view of the case law, Commission participation in joint and cooperative activities engaged in pursuant to this order is conditioned upon a requirement that state participants are willing and able to treat commercial information according to our confidentiality rules and guidelines.[6] The regulatory efficiencies we hope to achieve through joint activities will not be reduced by such a requirement. It is merely a means of ensuring that joint federal and state activities do not have the unintended consequence of automatically triggering the release of confidential commercial information to third parties, pursuant to an FOIA request.

11. Notice and comment are not required prior to enactment of this rule change because it relates to internal Commission organization, procedure, and practice. 5 U.S.C. 553(b). As the immediate implementation of these changes will expedite the transaction of public business and advance the public interest, compliance with the effective date provisions of the Administrative Procedures Act is also not required. 5 U.S.C. 553(d).

12. Accordingly, it is ordered, on the Commission's own motion, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), that the rules are amended, effective April 24, 1985 by substituting for § 0.291(b) the revised language which appears as Appendix A to this Order.

13. It is further ordered, pursuant to section 5(c)(1) of the Act 47 U.S.C. 155(c)(1), and § 0.201(d)(1) of our rules, 47 CFR 0.201(d)(1), that the Secretary shall cause this order to be published in the **Federal Register**.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Rule Revision

Subpart B of Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. In § 0.291, paragraph (b) is revised to read as follows:

§ 0.291 Authority delegated.

* * * * *

(b) *Authority concerning sections 219 and 220 of the Act.* The Chief, Common Carrier Bureau shall not have authority to promulgate regulations or orders pursuant to section 219 or section 220 of the Communications Act of 1934, as amended, except that the Chief, Common Carrier Bureau shall have authority to (1) approve depreciation charges to operating expenses on an interim basis subject to commission prescription prior to the end of January of the year following that in which interim approval is given; and, (2) approve the release to state public utility commissions such information as the Bureau may obtain during the course of its audit activities which falls within the common interest and jurisdiction of the Commission and the states.

* * * * *

[FR Doc. 85-10592 Filed 4-30-85; 8:45 am]

BILLING CODE 6712-01-M

[6] The Commission's guidelines for the treatment of confidential commercial information may be found in §§ 0.457, 0.459, and 0.461 of our rules. 47 CFR 0.457, 0.459, 0.461. To the extent that the FOIA imposes a higher standard of confidentiality than a particular state law, our action today will require all participants to adhere to the higher federal standard.

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47 CFR Part 83

[PR Docket No. 84-759; FCC 85-198]

Implementation of the Second Set of Amendments to the Safety of Life at Sea Convention of 1974

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules governing the radio equipment carried by ships subject to the Safety of Life at Sea (SOLAS) Convention and Title III, Part II of the Communications Act of 1934, as amended. The purpose of these amendments is to provide for emergency position indicating radiobeacons and two-way radiotelephones in survival craft. This action will improve the safety of ships' crews and passengers.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. McIntyre, Private Radio Bureau, Washington, D.C. 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 83

Communication equipment, Marine safety, Vessel, Distress.

Report and Order; Proceeding Terminated

In the matter of amendment of Part 83 of the Commission's rules to implement the second set of amendments to the Safety of Life at Sea Convention of 1974. PR Docket No. 84-759.

Adopted: April 22, 1985.

Released: April 25, 1985.

By the Commission.

1. This Report and Order amends Part 83 of the Commission's rules to implement the second set of amendments to the Safety of Life at Sea (SOLAS) Convention of 1974 adopted by the International Maritime Organization (IMO).[1] The amendments will improve the safety of ships' crews and passengers by providing for the use of emergency position indicating radiobeacons (EPIRB's) and two-way radiotelephones for use in survival craft.[2]

2. These rules will apply to vessels which are subject to the Communications Act of 1934, as amended, as well as to vessels which are subject to the 1974 SOLAS Convention.[3] The proposed rules

[1] The expanded Maritime Safety Committee (MSC) at its Forty-Eighth Session (June 6-17, 1983) adopted the second set of amendments. The amendments apply to new vessels after July 1, 1986. Other compulsorily fitted vessels constructed prior to July 1, 1986, must comply no later than July 1, 1991. These amendments are scheduled to come into force on January 1, 1986, provided the required number of objections stipulated in the Convention have not been notified to IMO.

[2] A survival craft is a craft capable of sustaining the lives of persons in distress from the time of abandoning the ship (Chapter III, Regulation 4, 1974 SOLAS Convention, as amended).

[3] Vessels operating on national voyages, subject only to the Communications Act, often travel on the high seas and, consequently, are exposed to the same dangers as vessels engaged on international voyages. The Communications Act and the SOLAS Convention have similar provisions governing ship's radio equipment. The Commission maintained this similarity when the first set of amendments to the 1974 SOLAS Convention was implemented (PR Docket No. 83-429, Adopted October 19, 1983. FCC

Continued

providing for the use of survival craft EPIRB's and two-way radiotelephones include technical standards, testing provisions, equipment approval procedures and licensing provisions.

3. Comments were filed in this proceeding by Amoco Transport Company (AMOCO), ITT Telecom Products Company (ITT), Lake Carriers Association (LCA) and Shell Oil Company (SHELL). The proposed rules were coordinated with the U.S. Coast Guard (U.S.C.G.) and the National Transportation Safety Board. The comments generally supported the Commission's proposals, and recommendations were received concerning specific technical problems on which we solicited views. Late comments were received from the U.S.C.G. and have been considered in this proceeding. No reply comments were filed.

Discussion

4. The Commission's Notice was based on the "Report of the Maritime Safety Committee on Its Forty-eighth Session (July 12, 1983)" which approved the second set of amendments to the 1974 SOLAS Convention. We proposed rules which provided for the use of the equipment (including technical standards, equipment approval and licensing arrangements) and specified the survival craft equipment to be carried on compulsorily fitted vessels.[4] The U.S.C.G. in their comments has indicated that they intend to incorporate the equipment carriage requirements in Title 46 of the Code of Federal Regulations and have requested that this aspect of the amendments not be included in our rules. While there are advantages to placing all radio equipment carriage requirements in one rule part, we can honor this request since the life saving appliance requirements (46 U.S.C. 3306(a)) are under U.S.C.G. cognizance. The proposed rules have been modified to reference the U.S.C.G. regulations for the survival craft EPIRB's and two-way radiotelephone carriage requirements and to delete such requirements from our rules.[5] Except as noted in the remaining discussion, the rules related to technical standards, equipment approval, testing and licensing remain substantially as proposed.

5. No objections were raised to the carriage of a survival craft EPIRB (Class S) as proposed by the Commission. The U.S.C.G. pointed out that "IMO is planning a future global maritime distress and safety system (FGMDSS) which will ultimately replace the current distress and safety system now mandated by the SOLAS Convention. Two new features of the FGMDSS are the use of satellite EPIRB's for alerting and use of (VHF/FM) radiotelephones by survival craft personnel for communicating to the rescue ship and to other survival craft." The U.S.C.G. wishes to draw attention to the ongoing FGMDSS planning [6] and the fact that the Class S EPIRB, in addition to alerting aircraft which fly over the area, may be detected by the COSPAS/SARSAT polar orbiting satellite system currently being tested by a number of administrations, including the United States.[7]

6. We proposed in the Notice that the Class S EPIRB "must be stowed in the radio room, on the bridge or in a location readily accessible for transfer to a survival craft." Recognizing that the EPIRB would be well protected if it were stowed in the survival craft and that this method would obviate the need for transfer of the device during an emergency situation, we also solicited comments in this regard. U.S.C.G. and ITT supported the stowing of the EPIRB in the survival craft. SHELL preferred that the location be kept flexible to accommodate various types of vessels but stated that stowage in the survival craft itself should be given consideration when choosing a location. LCA prefers that the storage location be left to the discretion of the owner/operator appropriate to the configuration of his vessels. If this recommendation is not accepted then LCA would prefer that the Commission's proposal stated in the Notice be adopted.[8] We agree with the U.S.C.G. and ITT to require stowage of the EPIRB in the survival craft because of the protection afforded the device and its availability during a distress situation.

7. The rules we proposed would require that the EPIRB be capable of floating in accordance with the newly amended Regulation 14-1, Chapter IV of the SOLAS Convention. The U.S.C.G. points out in some installations the EPIRB will be permanently mounted to the survival craft and in such cases the EPRIB itself need not be capable of floating since flotation will be provided by the survival craft. We have eliminated the requirement for the device to have the capability of floating for those cases where the device is permanently installed in the survival craft. This interpretation will permit this type of EPIRB to be made physically smaller and at a lower cost to the user. We have modified the rules to accommodate this application.

8. The proposed rules would permit UHF transceivers currently carried for on-board communication purposes to be used to satisfy the carriage requirement for a two-way portable radiotelephone apparatus.[9] AMOCO supports our proposal permitting currently used UHF on-board apparatus to be used until 1993. LCA and ITT recommend that a VHF two-way radiotelephone operating on the maritime mobile bands be used to satisfy this requirement. The U.S.C.G. also recommends that VHF two-way radiotelephone be permitted as an alternative to the UHF equipment. Several reasons are put forth to support this recommendation to use VHF including:

—In an emergency the occupants of a survival craft could communicate with other vessels on the disaster scene and not just vessels fitted with UHF on-board equipment;
—VHF homing equipment on U.S. Coast Guard vessels would permit location of a survival craft during periods of low visibility; and
—VHF portable hand held transceivers are readily available.

83-475, 48 FR 21599); the amendments were made applicable to vessels subject only to the Communications Act.

[4] Compulsorily fitted vessels in the context of this proceeding pertain to vessels subject to Part II of Title III of the Communications Act and to the 1974 SOLAS Convention.

[5] In the case of the survival craft nonportable radiotelegraph installation (§ 83.469) and the portable radiotelegraph equipment (§ 83.472) the carriage requirements are in Title 46 of the Code of Federal Regulations and the Commission's rules provide for the technical standards, equipment approval and station licensing.

[6] Information concerning the proposed FGMDSS system can be found in following Commission proceedings: Docket 82-395, Notice of Inquiry, adopted August 23, 1982, FCC 82-595, 47 FR 40227. Docket 83-430, Notice of Inquiry, adopted April 27, 1983, FCC 83-205, 48 FR 22632.

[7] The U.S.C.G. further points out that the COSPAS/SARSAT organization is planning to finalize specifications for a 406 MHz EPIRB in the next few months and will enter into an initial operational phase in 1985. Additionally, IMO is developing the FGMDSS in which this 406 MHz EPIRB will be a major element. They urge substitute fitting of a 406 MHz EPIRB, as soon as this device is available and before being mandated by IMO, because of the enhanced alerting capability and increased search and rescue efficiency which will be realized.

[8] With regard to LCA comments, we note that vessels which sail only on the Great Lakes are not subject to the requirements of the SOLAS Convention or Title III, Part II of the Communications Act of 1934, as amended and, consequently, are not specifically subject to the regulations under consideration in this proceeding.

[9] Portable radiotelephone transceivers now type for on-board communications purposes may be used to satisfy the survival craft radiotelephone requirement provided the licensee make a determination that the device meets the technical requirements of § 83.603 a, b, e and f.

9. The majority of large vessel operators currently use UHF transceivers for on-board communication purposes and have supported the U.S. position to IMO recommending the use of this equipment to satisfy the survival craft two-way radiotelephone requirements. The equipment is in daily use on these vessels and, consequently, has a high probability of being in working order when carried into a survival craft. We recognize, however, that smaller vessels may not be currently fitted with UHF equipment and that, in light of the expected FGMDSS requirement for a survival craft VHF/FM radiotelephone, it may be advantageous for these vessels to fit with a VHF two-way radiotelephone. For this reason and those stated in paragraph 8 we agree that use of a two-way radiotelephone operating in the VHF band, as an alternative to the UHF band, provides increased flexibility and should be permitted. We have modified the proposed rules to include this flexibility.

10. SHELL requests that we clarify the applicability of the rules to ensure that the requirements only apply to self-propelled vessels in international trade. Paragraph 1 of the Notice declares the Commission's intention to implement the second set of amendments to the 1974 SOLAS Convention and the rules proposed apply to compulsorily fitted vessels subject to the SOLAS Convention as well as Part II of Title III of the Communications Act. It is further stated in paragraph 3 of the Notice that the proposed rules are additionally applicable to vessels subject only to the Communications Act of 1934, as amended. Thus, the proposed rules are applicable to all compulsorily fitted vessels leaving U.S. ports whether or not they are engaged on an international voyage.[10] However, it should be noted that the specific carriage requirement for survival craft equipment will be included in U.S.C.G. rules and SHELL's concerns, including those related to carriage of EPIRB's in the Gulf of Mexico, should be addressed in the context of the U.S.C.G. proceeding.

11. Recognizing that two-way radiotelephones include in some cases the use of a removable external antenna, we invited comments as to whether the Commission should require that the units have a permanently affixed antenna or that the antenna be stowed with the equipment when not in normal use. AMOCO recommended that the equipment normally be "kept with the self-contained antenna in place and in use." We agree with this recommendation and are further of the view that the antenna can only be kept in place if it is required to be permanently fixed to the equipment or requires use of a special tool for removal from the equipment. Section 83.603 of our rules is modified to require this feature on new equipment installed after October 1, 1988.

[10] See paragraph 2 of this Report and Order providing additional discussion of this subject.

12. The proposed rules require weekly tests of the survival craft two-way radiotelephones when the equipment is not in routine use. We requested comments on the type of operational check to be performed on this equipment. AMOCO recommends that the operational checks be conducted between two vessels at a distance to be specified by the Commission. We agree that tests with another vessel, separated, for example, by a distance of 2 miles or greater, would provide a clear indication of satisfactory operation.

However, we foresee cases where it may be difficult, especially on the high seas, to contact vessel in order to conduct such weekly tests. Considering this fact, and noting that routine use of the radiotelephone has been agreed to provide an adequate indication that the equipment is operating properly, we will accept tests conducted between units on-board the same vessel. The tests should be conducted with equipment physically separated as far as practical to provide the most stringent test conditions realizable under the circumstances.

13. Our proposals required that the survival craft two-way UHF radiotelephone equipment operate on the frequency 457.525 MHz in the simplex mode (transmission alternately in each direction). Use of the simplex mode assues a communication capability in the event that the repeater, usually employed in such systems, fails. Since several frequencies are available for on-board communications, specifying a particular frequency ensures interoperability of stations when communicating for distress purposes. AMOCO recommends that we discusss this concept with other administrations to ensure wide spread acceptance of this frequency. We are planning to introduce this concept into the IMO forum and will consider this matter further in conjunction with our 1987 Mobile WARC proposals.

Conclusion

14. In view of the above, we conclude that is in the public interest to implement the provisions of the 1974 SOLAS Convention in the rules. The survival craft radio equipment described in this proceeding will substantially improve the safety of passengers and crew in distress situations. Accordingly, we are adopting the rules as proposed except for those changes described in the discussion.

15. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. Vessels subject to these rules are operated by large concerns rather than small businesses.

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirements or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

17. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Part 83 of the Commission rules is amended as set forth in the attached Appendix, effective June 3, 1985.

18. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

19. It is further ordered, that this proceeding is terminated.

20. Regarding questions on matters covered in this document, contact Robert C. McIntyre (202) 632-7175.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.139 paragraph (h) is revised to read as follows:

§ 83.139 Acceptability of transmitters for licensing

* * * * *

(h) Each emergency position indicating radiobeacon (EPIRB) transmitter acceptable for licensing under this part must be type accepted by the Commission. In order to obtain type acceptance for a Class S EPIRB, the applicant must submit a sample unit for

testing with the application for type acceptance.

* * * * *

2. In § 83.473 paragraph(a) is revised to read as follows:

§ 83.473 Tests of survival craft radio equipment.

(a) Tests of survival craft radio equipment, except emergency position indicating radiobeacons and two-way radiotelephone equipment, must be conducted at weekly intervals while the ship is at sea or within 24 hours prior to departure from a port when a test has not been conducted within a week of the departure.

(1) When the ship is in a foreign port, transmitter tests are subject to any limitations imposed by the nation having jurisdiction.

(2) The tests must include operation of the transmitter connected to an artificial antenna and determination of the specific gravity in the case of lead-acid batteries or determination of the voltage under normal load for other types of batteries.

* * * * *

§ 83.474 [Redesignated as § 83.479]

3. Section 83.474 is redesignated as § 83.479.

4. A new § 83.474 is added to read as follows:

§ 83.474 Survival craft emergency position indicating radiobeacons, Class S.

(a) Survival craft emergency position indicating radiobeacons, Class S, required to comply with the Title 46 of the Code of Federal Regulations must be type accepted to meet the provisions of § 83.601.

(b) The Class S EPRIB must be stowed in the survival craft.

(c) The Class S EPIRB must be tested at intervals not to exceed twelve months.

(d) Batteries must be replaced after the date specified in § 83.144(h), or after the transmitter has been used in an emergency situtation, whichever, is earlier.

5. A new § 83.475 is added to read as follows:

§ 83.475 Survival craft portable two-way radiotelephone apparatus.

(a) Survival craft portable two-way radiotelephone transceivers required to comply with Title 46 of the Code of Federal Regulations must be approved by the Commission to meet the provisions of § 83.603.

(b) The equipment must be stowed in the radio room on the bridge or in a location readily accessible for transfer to life boats when not being used by shipboard personnel to satisfy the vessel's operational requirements.

(c) When not in routine use the survival craft two-way radiotelephone transceivers must be operationally tested once a week. Operational tests should be conducted with equipment separated as far as practical and must in the case of UHF equipment include tests on the frequency 457.525 MHz.

(d) All survival craft two-way radiotelephone apparatus associated with a vessel must operate in the same frequency band (VHF or UHF).

6. A new § 83.504 is added to read as follows:

§ 83.504 Survival craft radio equipment.

(a) A survival craft emergency position indicating radiobeacon, Class S, required to comply with Title 46 of the Code of Federal Regulations must meet the provisions of § 83.474.

(b) A survival craft two-way radiotelephone apparatus required to comply with Title 46 of the Code of Federal Regulations must meet the provisions of § 883.475.

§ 83.651 [Redesignated from § 83.601]

7. Section 83.601 is redesignated as § 83.651. The heading, Subpart W-Violations, is relocated to precede § 83.651.

8. A new § 83.601 is added to read as follows:

§ 83.601 Requirements for survival craft emergency position indicating radiobeacons.

To be type accepted by the Commission pursuant to § 83.474, survival craft emergency position indicating radiobeacons must comply with the following general requirements in addition to the applicable specific requirements in §§ 83.134(i), 83.137(l) and 83.144 (a) and (c) through (m):

(a) Be capable only of manual activation by an on-off switch protected by a guard or other suitable means to prevent accidental activation of the radiobeacon;

(b) Provide either continuous or intermittent operation with a 50 percent duty cycle having a total period of two minutes ± 12 seconds. The radiobeacon must transmit for one minute followed by a one minute period without transmission if designed for intermittent operation;

(c) Be marked with the manufacturer's name, with the type number and with the indication "Class S";

(d) Be watertight and float in calm water with at least the upper 5 centimeters of the EPIRB body and the base of the antenna above the water. If the device is intended to be permanently secured to the survival craft, the EPRIB need not be capable of floating. A report attesting to the capability of the device to meet this requirement must be provided.

(e) Meet the technical requirements of this section after a free fall from a height of 20 meters into water. A report attesting to the capability of the device to meet this requirements must be provided.

§ 83.653 [Redesignated from § 83.602]

9. Section 83.602 is redesignated as § 83.653.

10. A new § 83.603 is added to read as follows:

§ 83.603 Requirements for survival craft two-way radiotelephone apparatus.

Survival craft two-way radiotelephone equipment may operate in the maritime mobile VHF band or the UHF band used for on-board communications. To be approved by the Commission, survival craft two-way radiotelephone transceivers must comply with the following requirements and in the case of UHF equipment to the specific requirements is Subpart Z of this chapter:

(a) UHF equipment must receive and transmit on the frequency 457.525 MHz.

(b) VHF equipment must be capable of operating on the frequencies specified in § 83.106.

(c) Be type accepted as to the transmitter section [1] by the Commission. A sample unit must be submitted with the application for type acceptance.

(d) Be certified as to the receiver section by the Commission pursuant to Part 15, Subpart C of this chapter. The receiver portion of the sample unit will be tested.

(e) Provide a minimum effective radiated power of at least 0.1 watts.

(f) Have a usable sensitivity of 2 microvolts maximum. The Commission will use the measurement procedure for receiver sensitivity in RTCM Special Committee No. 66 Report MMS–R2.

(g) Be battery powered and operate for four hours with a transmit to receive ratio of 1:9.

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[1] Portable radiotelephone transceivers now type accepted may be used to satisfy the survival craft rediotelephone requirement until October 1, 1993, provided the licensee has determined that the device meets the technical requirements of § 83.603 (a), (b), (e) and (f). Survival craft radiotelephone equipment first installed after October 1, 1988, must be type accepted to meet Section 83.603. After October 1, 1993, portable radiotelephone transceivers used to satisfy the survival craft radiotelephone requirement must be type accepted to meet § 83.603. Portable radiotelephone transceivers type accepted to meet the requirements of § 83.603 will be identified by an appropriate note in the Commission's Radio Equipment List.

(h) Have a permanently attached waterproof label with the statement "Complies with the FCC requirements for survival craft two-way radiotelephone equipment."

(i) The antenna shall be permanently affixed to the equipment or require the use of a special tool for removal from the equipment.

[FR Doc. 85-10598 Filed 4-30-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64e]

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule is a technical amendment to the Department's minority business enterprise regulation. It specifically references the applicability of the Department's recently-published regulation on suspension and debarment of participants in DOT financial assistance programs to misconduct by participants in the Department's minority, disadvantaged, and women's business enterpirse programs.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, Room 10105, 400 7th Street, SW, Washington, DC 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION: At the present time, § 23.87 of the Department's minority business enterprise (MBE) regulation provides as follows:

> If, at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of the Department. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as he/she deems appropriate.

In March 1980, when this provision was promulgated, the Department did not have a suspension and debarment regulation of its own. In addition, the Department anticipated publishing additional regulations in 49 CFR Part 23 concerning the Department's direct procurement activities. Consequently, § 23.87 made reference to debarment procedures in the Federal Procurement Regulations which apply to direct procurement.

Because of the development of an effective program, under the provisions of Pub. L. 95-507, to assist the participation of small and disadvantaged business in the Department's direct procurement activities, the Department no longer intends to publish regulations in Part 23 concerning direct procurement. In addition, the Department recently published a rule entitled "Suspension and Debarment of Participants in DOT Financial Assistance Programs" (49 CFR Part 29: 49 FR 15197; April 18, 1984). This regulation establishes, for the first time, a Department-wide procedure to suspend or debar contractors and other parties for misconduct in DOT financial assistance programs.

49 CFR Part 29 applies to all participants in DOT financial assistance programs, including contractors involved with the Department's minority, disadvantaged, and women's business enterprise programs. In addition to conviction or indictment for a criminal offense, § 29.23(a)(4) makes the following conduct subject to suspension and debarment action:

> Commission or omission of an act of such serious or compelling nature that the act indicates a serious lack of business integrity or honesty. Such commissions or omissions include, but are not limited to—
>
> (i) The violation of any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a DOT financial assistance program; or
>
> (ii) Making, or procuring to be made, any false statement or using deceit for the purpose of influencing in any way any action of the Government.

Among the kinds of misconduct to which 49 CFR Part 29 applies are fraud, deceit, or other actions indicating serious lack of business integrity or honesty with respect to the eligibility of firms to participate as minority, disadvantaged, or women's business enterprises. For example, a firm may be suspended or debarred if it acts as or knowingly makes use of a "front" company (i.e., a firm which is not really owned and controlled by minority, disadvantaged individuals or women, but poses as such in order to participate as a minority, disadvantaged, or women's business enterprise in a DOT-assisted program). Even in the absence of a specific false statement that would subject a party to criminal liability under 18 U.S.C. 1001 (the Federal "false statements" statute), a firm which acts as or uses a "front" may justifiably be viewed as acting so as to indicate a serious lack of business integrity or honesty.

49 CFR Part 29 would apply to the Department's minority, disadvantaged, and women's business program even without this amendment to § 23.87. However, in order to ensure that § 23.87 contains the correct suspension and debarment reference and to avoid any confusion to parties involved with programs under 49 CFR Part 23, the Department has decided to publish this amendment. The amendment simply removes the reference to the Federal Procurement Regulations and substitutes appropriate references to 49 CFR Part 29.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is a technical change that will have no economic impact. Consequently, no Relgulatory Impact Analysis, Regulatory Evaluation, or Regulatory Flexibility Analysis has been prepared in connection with this rule.

This rule is a technical amendment that, for purposes of clarity, changes a reference in 49 CFR Part 23 to another regulation already applicable to all participants in DOT financial assistance programs. The amendment relates solely to practice and procedure before the Department of Transportation. Consequently, under 5 U.S.C. 553(b)(A), a notice of proposed rulemaking is not required. In addition, under the Department's Regulatory Policies and Procedures, the Department has determined that the receipt of useful public comment on this technical amendment would be unlikely.

Under 5 U.S.C. 553(d), the required publication of a substantive rule must be made not less than 30 days before its effective date, unless the agency determines that there is good cause for making the rule effective immediately. This regulation is a purely procedural rule, rather than a substantive rule. In addition, 49 CFR Part 29 already applies to participants in the Department's MBE/DBE/WBE program. This amendment is merely a conforming change to 49 CFR Part 23 to avoid confusion and to avoid potential technical problems in any suspension or debarment actions that may be brought in the future. Even if this rule were a substantive rule, however, there would be good cause for making it effective

upon publication, in that a delay in the effective date could result in technical problems in pending or future suspension or debarment actions or otherwise impede such actions. Consequently, the Department is making this rule effective immediately upon publication.

Issued at Washington, D.C. this 24th day of April, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

List of Subjects in 49 CFR Part 23

Government contracts, Minority business, Mass transportation.

PART 23—[AMENDED]

The Authority Citation for Part 23 continues to read as follows:

Authority: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); sec. 19 of the Urban Mass Transportation Act 1964, as amended (Pub. L. 95-599); Title 23 of the U.S. Code (relating to highways and highway safety); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); The Federal Property and Administrative Services Act of 1949 (49 U.S.C. 471 *et seq.*); Executive Order 11625; Executive Order 12138, unless otherwise noted.

Accordingly, in Title 49, Part 23 of the Code of Federal Regulations, the Department of Transportation revises § 23.87 to read as follows:

§ 23.87 Suspension and Debarment; Referral to the Department of Justice.

(a) If, at any time, any person has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, or otherwise acted in a manner subjecting that person or firm to suspension or debarment action under 49 CFR Part 29, he or she may contact the appropriate DOT element concerning the existence of a cause for suspension or debarment, as provided in 49 CFR 29.17.

(b) Upon the receipt of information indicating a violation of 18 U.S.C. 1001, or any other Federal criminal statute, the Department may refer the matter to the Department of Justice for appropriate legal action.

[FR Doc. 85-10536 Filed 4-30-85; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 50, No. 84
Wednesday, May 1, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions relating to how much milk may be moved directly from farms to nonpool plants and still be priced under the order. The proposed suspension would remove the limits on such movements of milk for the months of May through August 1985. The action was requested by a federation of three cooperative associations that represent a substantial number of the producers who supply the market. The cooperatives contend that the suspension is necessary to assure that the milk of dairy farmers long associated with the market will continue to be priced and pooled under the order.

DATE: Comments are due not later than May 8, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of May through August 1985.

In § 1124.11(a), the words "The aggregate quantity diverted may not exceed 60 percent of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator."

In § 1124.11(b), the words "The aggregate quantity diverted may not exceed 60 percent of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month."

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures to make the suspension effective for May 1985.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limit on the amount of milk that may be diverted from pool plants to nonpool plants during the months of May through August 1985. The order now provides that the aggregate quantity of milk diverted to nonpool plants may not exceed 60 percent of the producer milk handled by a cooperative association or proprietary handler.

The suspension was requested by a federation of three cooperative associations that represent a substantial number of the producers who supply the market. The cooperatives indicate that the suspension is necessary to continue to include in the marketwide pool the milk of producers who have long been associated with the market. The cooperative associations requesting the suspension expect that seasonal increases in milk production, combined with the end of the paid diversion program, will result in a surge of milk production in the market that will displace some of their milk from their usual fluid accounts. In addition, the end of the school year is expected to reduce fluid use in the market. The cooperative associations expect the suspension of the diversion limits for the months of May through August 1985 will make it unnecessary to move milk in a costly and inefficient manner solely for the prupose of assuring that dairy farmers supplying the fluid needs of the market will have their milk priced and pooled under the order.

List of Subjects in 7 CFR Part 1124

Milk marketing order, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on: April 25, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-10529 Filed 4-30-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 702

Pre-Sale Availability of Written Warranty Terms

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This Notice announces a rulemaking proceeding to consider an amendment to the Rule regarding the

Pre-Sale Availability of Written Warranty Terms and seeks comments on the proposed changes to the rule. The Magnuson-Moss Warranty Act requires the Federal Trade Commission to promulgate a Rule to ensure that consumer product warranties are made available to consumers prior to purchase. The current Rule, which was promulgated on December 31, 1975, with an effective date of December 31, 1976, requires retailers of consumer products costing more than $15.00 to make warranty texts available to customers prior to purchase by placing the warranty text in one or a combination of four specified locations: (1) On or "in close conjunction to" the warranted product, (2) in a binder (if this option is used, the retailer must also display the binder or post a sign advising consumers of the availability of warranties), (3) on the package containing the warranted product, or (4) on a sign. The proposed amendment would reduce the costs of complying with the Rule by providing retailers with a choice of displaying the warranty text near the product or making the warranty text readily available to any customer upon request. The Commission seeks comment on the merits of this approach and the possible need to publicize the availability of warranties prior to sale and to define more precisely standards for retailer compliance with an upon request approach.

This proposed amendment is based on an investigation conducted by the Commission staff into the operation and impact of the Pre-Sale Availability Rule. The investigation indicated that the goals of the Pre-Sale Availability Rule could be attained with equal effectiveness at lower compliance costs by modifying retailers' obligations under the current Rule.

The FTC additionally seeks comment on whether to include explicit directives in the Rule to require sellers who make television solicitations of mail or telephone order sales to disclose clearly and prominently the pre-sale availability of the warranty and how it can be obtained. Certain other revisions to the Rule are proposed to clarify the Rule's language and improve its organization.

The Commission is requesting public comment on the proposed amendments to the Pre-Sale Availability Rule. The public will be afforded an opportunity to make oral presentations regarding the proposed amendments.

DATES: Written comments should be received on or before June 17, 1985. Written rebuttals should be received on or before July 1, 1985. A hearing will be held upon request. Requests to make oral presentations should be made no later than June 17, 1985. A hearing date, if any, and instructions for those who desire to make oral presentations will be announced in the **Federal Register** following the comment period.

ADDRESSES: Comments and requests for an opportunity to make oral presentations should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580.

Additional Material Available for Review: The Final Report on the Warranty Evaluation Study conducted under contract with the FTC staff in 1982 has been placed on the rulemaking record. The study is available for public examination in the Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Room 130, Washington, D.C. 20580, 202–523–3598. A limited number of copies are also available.

FOR FURTHER INFORMATION CONTACT: Joseph Kattan, 202–523–3860, or Rebecca Johnson 202–523–3357, attorneys, Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

A. Background

The Magnuson-Moss Warranty Act, 215 U.S.C. 2301 *et seq.*, directs the FTC to establish rules requiring that the terms of written warranties for consumer products be made available to consumers prior to purchase. 15 U.S.C. 2302(b)(1)(A). In 1975, the FTC promulgated the Pre-Sale Availability Rule, 16 CFR Part 702, which provides retailers with four permissible methods of making warranties available prior to sale: (1) Displaying the text of the warranty on or "in close conjunction to" the product (on a tag, for example); (2) maintaining a copy of the warranty in a binder and either displaying the binder in a readily accessible areas or posting a sign advising consumers of the availability of warranties for examination prior to sale; (3) displaying the warranty text on the package of the warranted product; or (4) posting a notice disclosing the warranty text near the product. Manufacturers may make warranty texts available to retailers through one of four methods: (1) Providing a copy of the warranty with every product; (2) attaching to the product a tag or a label containing the warranty text; (3) affixing the warranty text to the product package; or (4) providing a sign disclosing the warranty text.

In July 1980, the Commission received a petition from the National Mass Retailing Institute ("NMRI"), a trade association representing discount mass merchandise retailers, requesting modification of the Pre-Sale Availability Rule. The NMRI petition described problems encountered by NMRI's members in complying with the Rule and requested that the Commission amend the rule by requiring manufacturers to affix the warranty text to the packaging of all products covered by the Rule. In February, 1981, the Commission considered the issues raised by the NMRI Petition and concluded that additional information was needed before it could determine whether a modification of the Rule was necessary. The Commission therefore instructed staff to undertake an investigation into the operation of the Pre-Sale Availability Rule and its impact on manufacturers, retailers, and consumers.

To obtain information concerning the impact of the Pre-Sale Availability Rule on regulated industries, in 1981 Commission staff interviewed interested parties and surveyed compliance in retail stores subject to the Rule. The staff conducted informal interviews with manufacturers, retailers, and consumer organizations concerning their experience with the Rule and solicited their opinions concerning possible modifications of the Rule. In late 1982 and 1983, staff conducted additional interviews with retailers. Although these discussions do not provide a statistically valid measure of affected parties' experience with the Rule, they do provide useful information about the impact of the Rule on diverse elements of the manufacturing and retail industries and on consumers.

In general, the 1981 interviews indicated that most industry members had not encountered significant difficulties in complying with the requirements of the current Rule, but that most questioned the Rule's effectiveness in conveying warranty information to consumers. The costs associated with compliance were generally reported to be low. The interviews also revealed that many retailers are unaware of the Rule and are not in strict compliance with its requirements. However, most retailers said that they generally would provide a warranty for consumers prior to sale if so requested.

Commission staff also investigated the level of compliance with the Pre-Sale Availability Rule through an informal survey of retail stores. The staff visited 194 retail stores throughout the country and recorded whether warranties were available to consumers

prior to purchase and the method used by stores to make them available to consumers. The stores surveyed did not represent a random sample but included national and regional chains, discount, department, and variety stores. In general, the survey showed a low level of compliance with the terms of the Pre-Sale Availability Rule. However, when the staff investigators specifically requested copies of written warranties, they usually were produced by store employees.

To measure the impact of the Rule on consumers, Commission staff procured the services of an independent contractor who conducted a survey of consumer knowledge of and attitudes toward warranties. The Warranty Evaluation Study, which was conducted in 1982, obtained information from 6,418 households on a variety of topics related to warranties. A copy of the Warranty Evaluation Study has been placed on the public record of this proceeding.

The Warranty Evaluation Study contains information concerning consumer attitudes toward warranties and the impact of Rule 702 on consumers. The study demonstrated that consumers consider warranty information an important factor in making purchase decisions and that warranties are usually available to consumers prior to purchase, in spite of the widespread technical noncompliance with the provisions of the Pre-Sale Availability Rule revealed in staff's industry survey.

The Warranty Evaluation Study showed that a majority of consumers consider warranty information in making purchase decisions and that a sizable minority, 18.3 percent, consider the warranty to be one of the three most important factors in the purchase decision. The study also disclosed that an overwhelming majority of the respondents did not experience any problems in obtaining warranty information from retailers, although many did not attempt to obtain such information. Only 3.6 percent of respondents indicated that a written warranty was not available for examination prior to sale, while 71.2 percent indicated that the warranty was available, and 25.3 percent did not look for a warranty prior to making a purchase.

The survey also attempted to determine the proportion of consumers who actually read warranties prior to purchase. While the evidence is inconclusive, it shows that between 7.4 percent and 27 percent of all consumers read or examined the warranty prior to the purchase of a consumer product. The Warranty Evaluation Study also examined the relationship between product price and the importance of warranties to consumers. The study found that no correlation existed between those two factors.

On the basis of the interviews and surveys, Commission staff has proposed an amendment to the Pre-Sale Availability Rule to provide that retailers must make warranties readily available to consumers prior to purchase by displaying the warranty text near the product or by making the warranty text available to any customer upon request. The complete text of the proposed Rule amendments is located at the end of this Notice.

B. Analysis

Under the current version of Rule 702.3(a), retailers may make applicable product warranties available to consumers prior to sale through one of four methods. Three of those methods involve the open display of the warranty text on or near the product. The fourth method relies on binders containing warranty texts, accompanied by notices or signs informing consumers of the availability of the binders. The proposed Rule would continue the requirement that retailers make warranties available to consumers prior to the sale of any consumer product. Rather than specify the form in which the warranty is to be made available, however, the proposed Rule would create a general requirement that retailers make warranties "readily available" to consumers, either by displaying their text or by making them available for examination by consumers upon request. Any of the methods of disclosure specified in the current Rule would satisfy the requriements of the proposed Rule. In addition, however, retailers could discharge their obligations under the proposed Rule by making warranties readily available to consumers upon request.

Of the various modifications discussed with manufacturers and retailers, the "upon request" modification received the greatest support. The results of the store surveys indicate that the proposed Rule amendments will offer retailers a method for making warranties available prior to sale that is consistent with present practices. The survey results suggest that warranties are made available to consumers who ask for them. This is confirmed by the Warranty Evaluation Study, which showed that a very small number of consumers who responded to the survey (less than one percent) were denied copies of warranty texts by merchants from whom they requested warranty information. In addition, the proposed Rule would authorize other methods of disclosure that would benefit consumers but may be prohibited or discouraged by the strict language of the present Rule. For example, the present Rule may discourage merchants from displaying warranty information together with other information by requiring that any binder containing warranties be entitled "Warranties." Under the proposed amendment, merchants would be permitted to display warranties together with other product information, in binders or otherwise.

The Commission anticipates that the proposed Rule will lead to disclosure methods that will benefit the consumer. The staff's research shows the binder method of disclosure is the option most commonly used by retailers to comply with the Pre-Sale Availability Rule but that consumers rarely use the warranty binders. Affording retailers greater latitude in choosing the manner of disclosure would allow them to select the optimal form of warranty disclosure to meet the demands of consumers and the dictates of the Rule. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request. Stores that compete on the basis of price only might display warranties in close proximity to the warranted products while stores that compete on the basis of shopping environment might show warranties only upon request. In any event, warranties will be readily available prior to purchase to any consumer who wishes to examine them. Retailers will be required to make warranty information readily available to consumers by maintaining warranties in reasonable proximity to the warranted products and by producing warranties to consumers who request them without unreasonable delays.

Although the Commission is proposing the "upon request" standard as an acceptable way to provide consumers with ready access to warranties prior to sale, the Commission is concerned that this approach may subject consumers to unreasonable delays and difficulties in obtaining warranties prior to sale. Because the ease with which consumers may obtain warranties upon request is crucial to the proposed approach to warranty availability, the Commission welcomes any data or comments describing the circumstances under which retailers would make warranties

available when requested to do so. In addition, the Commission seeks comments on whether a more specific performance standard for retailers should be set out in the Rule to ensure that warranties are made available to consumers who request them without unreasonable delays and whether there should be other requiremetns to assist consumers in exercising their rights (*e.g.*, signs to publicize the pre-sale availabilty of warranties).

The Commission also seeks comment on whether Rule 702 should impose on all advertisers an obligation to disclose the pre-sale availability of warranties in those advertisements that mention warranties. A similar requirement appears in the Commission's revised Guides Against Deceptive Advertising of Guarantees, 16 CFR Part 239, which are being published in the **Federal Register** contemporaneously with this Notice.[1] Disclosures of pre-sale availability in warranty advertisements could be required of manufacturers, retailers, or other sellers in order to enhance consumer awareness of warranty availability. Comments on this proposal should address, in particular, whether a warranty advertising disclosure requirement would advance the purpose of the Pre-Sale Availability Rule by increasing consumer awareness of and access to warranties. Comments should also consider what effect such advertising disclosures would have, what they would cost, and what form of disclosure would have the greatest effect at the lowest expense.

The FTC additionally seeks comment on whether to include explicit directives in the Rule to require sellers to make television solicitations of mail or telephone order sales to disclose clearly and prominently in such solicitations that warranties are available for examination prior to sale upon request and how they may be obtained. The current Rule does not impose any explicit obligations on sellers with respect to television solicitations of mail or telephone order sales. Section 702.3(c) governs catalogue and mail order sales, but the disclosures required by this section are limited to disclosures in print solicitations. Given the proliferation of product solicitations on television in the last decade, the Commission questions whether it may be necessary to provide explicit directions for television advertisers to use in informing consumers how to obtain copies of their product warranties prior to sale.

Certain revisions are proposed to clarify the Rule's language and organization. First, the FTC proposes to delete the definition of "binder" in § 702.1(g) because under the amendments proposed in this Notice retailers will no longer be required to use binders. Second, the FTC proposes to correct a typographical error by reformulating the definition of "written warranty" in § 7.02.1(c) to clarify that the final clause in that definition modifies both subparts of the definition.

The Commission does not propose any substantive changes in the options available to manufacturers to ensure that warranties are available to retailers because it appears from the staff's investigation that manufacturers have not experienced significant burdens in complying with the present Rule. The Commission is not seeking comments on NMRI's proposal to require manufacturers to affix the warranty to every product package because we believe the upon request proposal to be a more efficient and less burdensome means to achieve pre-sale disclosure of warranty information. If this approach proves unworkable, however, the Commission may consider other alternatives, including NMRI's suggestion that manufacturers shoulder some additional burden.

The Commission has not proposed changes to the Rule provisions concerning mail order, catalogue, and door-to-door sales. The FTC does, however, seek comment on whether Rule 702 should specify how television advertisers of mail or telephone order merchandise should make warranties available to consumers prior to sale. The information gathered during the staff's investigation indicated that these industries have not experienced significant burdens as a result of the Pre-Sale Availability Rule.

C. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act provides for analysis of the potential impact on small businesses of Rules proposed by federal agencies. *See* 5 U.S.C. 603, 605(b). Staff has researched the composition of the industries affected by the Pre-Sale Availability Rule and has found that a very high percentage of businesses subject to the Rule are "small" based upon Small Business Administration size standards. Unfortunately, the data obtained during the staff investigation do not provide a precise measurement of the economic impact the proposed Rule amendments would have on small businesses. The information gathered does indicate, however, that the proposed changes will have an impact on a large number of small manufacturers and retailers to some degree, by reducing their compliance costs. This section of the Notice of Proposed Rulemaking describes the small businesses which are covered by the Pre-Sale Availability Rule, discusses the compliance measures called for by the proposed amendments to the Rule, and considers whether any alternatives to the proposal could minimize the impact on small businesses.

Commission staff has developed an estimate of the number of small businesses potentially affected by the proposed amendment to the Pre-Sale Availability Rule. Based upon staff's research, nearly all retailers (952,916 companies or 99.3 percent) and manufacturers (11,365 companies or 97 percent) that will be affected by the proposed Rule are considered "small" using the size standards promulgated by the Small Business Administration. If the companies are compared according to annual receipts, small retailers represent approximately 47 percent and small manufacturers represent approximately 23 percent of gross annual receipts in their respective industries.

Staff believes that the proposed amendments to the Rule will reduce retailers' compliance costs by increasing their flexibility to select the disclosure approach that best suits their individual operations. Although the current Pre-Sale Availability Rule gives retailers four options for compliance, staff's investigation showed that most retailers elect the binder options because it is the only one of the four which easily makes use of the copies of warranties submitted by manufacturers. Many retailers complained that the binder option requires allocation of personnel and resources to update and monitor warranty binders, which consumers rarely use. Our store surveys have shown that binders are often difficult for consumers to locate and use because they are incomplete or poorly organized. Thus, although the current Rule attempted to provide flexibility, many retailers have found themselves restricted, in practice, to one approach that is cumbersome and of questionable efficacy.

The industry discussions with FTC staff indicated that larger retail organizations with numerous branch stores compile the binders at a main office and distribute them to their branches. This centralized compliance

[1] The Guides impose this disclosure obligation on sellers whose advertisements mention warranties in order to prevent an inaccurate or deceptive representation of warranty coverage. This Notice seeks comment on whether a pre-sale availability disclosure requirement is needed in Rule 702 to further the Rule's goal of widespread consumer access to warranty information.

approach appears to afford lower costs for large retailers, per store, than for a smaller retailer with fewer stores and a decentralized system. The proposed amendment should reduce or eliminate this disparity between large and small enterprises by permitting retailers to replace the binder system with a more flexible approach that conforms to their particular method of doing business.

Staff's discussions with retailers during the investigation indicated that retailers' costs and inconvenience would be reduced if they were not required to maintain warranty binders but could, instead, respond individually to specific consumer requests for warranties. The methods for ensuring that warranties are available when requested would vary according to product and store operation.

We do not anticipate that this proposed amendment to retailers' compliance options will have any impact on large or small manufacturers.

As part of the Commission's evaluation of the Pre-Sale Availability Rule and in response to the Regulatory Flexibility Act, staff has considered alternatives to the proposed amendments that could accomplish the goals of the Magnuson-Moss Warranty Act but minimize the economic impact of small entities. Staff considered a number of alternatives suggested by the Regulatory Flexibility Act including: (1) Different compliance requirements for small businesses, (2) simplification of compliance requirements for small businesses, (3) use of performance rather than design standards in the Rule, and (4) exemption for small businesses.

One of the principal goals of the proposed amendments to the Pre-Sale Availability Rule is to comply with the Congressional mandate in section 102 of the Warranty Act while minimizing the economic impact on all affected businesses. Section 102(b)(1)(A) of the Warranty Act directs the Commission to prescribe a rule requiring that written warranties be made available to consumers prior to sale. All of the alternatives suggested by the Regulatory Flexibility Act have been considered. The third option—use of a performance standard—is at the heart of the proposed Rule. The staff rejected erecting an exemption for small businesses because the congressional requirement for presale availability of warranties applies equally to all transactions, regardless of whether they involve a small manufacturer or a small retailer. In addition, staff research into the composition of the affected industries indicates that more than 95 percent of the companies are small. Consequently, it would not be possible to exempt small businesses from the scope of the Rule and at the same time comply with the congressional mandate. Different standards for small businesses were infeasible given the flexible nature of the standards proposed.

Although the proposed amendments are intended to simplify and clarify the measures necessary to comply for all affected companies, small and large, comments received during the Rulemaking may indicate that additional modifications to the Rule are necessary. The Final Regulatory Flexibility Analysis, to be published with the final form of the Rule to be promulgated, will reflect consideration of any additional alternatives proposed during the Rulemaking.

D. Issues for Comment

The public is invited to submit written comments and data on issues of fact or law relevant to the current Pre-Sale Availability Rule, the proposed amendments, other issues related to making warranties available to consumers prior to purchase, and the issues noted below. Please accompany all submissions of data with a complete report describing the procedures used to gather and analyze the data.

1. Will the proposed amendments to § 702.3(a) create significant disincentives or obstacles to consumers who wish to obtain warranty information prior to purchase?

a. What systems and procedures would retailers use to provide warranties to consumers if retailers were required to make warranties "readily available" upon request?

b. What information is now available to indicate the practical obstacles this option would present for consumers (*i.e.*, how long they must wait for production of the warranty, how often they must request it, how many offices or store personnel they must visit to receive it)?

2. a. Are the standards for compliance in the proposed amendments to § 702.3(a) clear? If not, what are the ambiguities and how can they be clarified?

b. Is there a need for the Commission to consider more specific performance standards to define compliance with an avaibability upon request requirement (*i.e.*, requiring that warranties be provided without undue delay or without substantial effort on the part of consumers who request warranties)? What form could such standards take? What are the benefits, costs and drawbacks of imposing such standards?

3. How will the proposed revision of § 703.3(a) of the Pre-Sale Availability Rule affect compliance costs for retailers and manufacturers?

4. What other modifications to the Rule specifying methods for the disclosure of warranty information by retailers would reduce overall compliance costs and still ensure consumers access to warranties prior to purchase?

5. Should the Commission include, as part of an on-request warranty availability requirement, provisions requiring retailers and/or advertisers to publicize the pre-sale availability of warranties and to inform consumers how to take advantage of this right (*i.e.*, through signs in retail outlets, or disclosures in advertisements that mention warranties)? What effect would these forms of publicity have, how would they benefit consumers, and what would they cost?

6. Should the Commission include explicit directives in § 702.3(c) of the Rule to require sellers who make television solicitations of mail or telephone order sales to disclose clearly and prominently in such solicitations that warranties are available for examination upon request and to disclose how they may be obtained?

List of Subjects in 16 CFR Part 702

Trade practices, Warranties.

Authority: 15 U.S.C. 2302 and 2309.

PART 702—[AMENDED]

It is proposed that 16 CFR Part 702 be amended as set forth below:

§ 702.1 [Amended]

1. It is proposed that 16 CFR 702.1(c) be amended to read as follows:

(c) "Written warranty" means—(1) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of proformance over a specified period of time, or

(2) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

2. It is proposed that 16 CFR 702.1(g) be removed.

§ 702.3 [Amended]

b. It is proposed that 16 CFR 702.3(a) be revised to read as follows:

(a) *Duties of Seller:* Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by displaying it in close proximity to the warranted product or furnishing it upon request prior to sale.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–10450 Filed 4–30–85; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–967; File No. S7–19–85]

Uniform Investment Adviser Registration Application Form

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form amendment and related rule amendments.

SUMMARY: The Commission is proposing for public comment revisions to Form ADV, the investment adviser registration application form to make the form a uniform Form for registration with the Commission and the states. Uniform Form ADV was developed by the Commission and the North American Securities Administration Association, Inc. to remove unnecessary administrative burdens on investment advisers registering as advisers with more than one governmental entity. If adopted, the uniform Form ADV should result in cost-saving for advisers required to register as such with the Commission and the states.

DATE: Comments must be received on or before June 14, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C, 20549. Comment letters should refer to File No. S7–19–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Podesta, Chief, (202) 272–2107 or Jay Gould, Staff Attorney, (202) 272–2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Stop 5–2, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for comment revisions to Form ADV, the application form for registering with the Commission as an investment adviser. The revisions to Form ADV being proposed for comment would make the form identical to the form adopted by the membership of the North American Securities Administrators Association, Inc. (NASAA) on April 5, 1985. The new form, titled Uniform Application for Investment Adviser Registration, was developed by NASAA for use by all jurisdictions which require advisers to register as such. The uniform Form ADV is based on the Commission's Form ADV.

I. Background

Under the Investment Advisers Act of 1940 (the "Advisers Act") persons engaged in business as investment advisers generally are required to register as advisers with the Commission. Under the Commission's rules, advisers register with the Commission by filing Form ADV and paying a one-time registration fee of $150. Registrants are required to keep their registration current by filing amendments and to file a short annual report on Form ADV–S. In addition, most registrants are required to provide clients and prospective clients with pertinent information about the adviser and its business under rule 204–3, the "brochure rule." The information required to be given to clients is contained in Part II of Form ADV. An adviser can give clients Part II of the Form or a separate disclosure document. Thirty-eight states, Puerto Rico and Guam (the jurisdictions) require advisers to register as such. The registration requirements of the jurisdictions are not uniform. Advisers registering in the jurisdictions are required to file the form or forms used by the jurisdiction and to comply with any disclosure requirements of the jurisdiction. Although some jurisdictions permit advisers to file Form ADV, in lieu of a separate state form, even these jurisdictions often require the filing of supplementary forms and schedules containing additional information. Also, the jurisdictions' requirements on disclosure to clients are not uniform.

The Commission and NASAA have undertaken to promote a more uniform system for registration of advisers with the Commission and the jurisdictions. The first step is development of a uniform registration application form based on Form ADV. Uniform requirements for the filing of amendments and annual reports for advisers also will be developed. The Commission and NASAA also intend to develop a central registration system for advisers such as the Central Registration Depository (CRD) maintained by the National Association of Securities Dealers for NASAA to register agents of brokers-dealers, or another system. Under a central registration system an adviser would file one form and information on the form would be transmitted electronically to the Commission and all jurisdictions in which the adviser was registering for review and granting of registration.[1]

The uniform Form being proposed today for comment by the Commission was drafted by the NASAA Adviser Committee with the assistance of members of the Commission staff. It was adopted by the NASAA membership on April 5, 1985.[2] The uniform ADV is based on the Commission's Form ADV with certain modifications designed to address the requirements of the jurisdictions for additional information and to improve the form as a registration and disclosure document.

The discussion below about uniform Form ADV is divided into two parts. The first part describes the principal differences between uniform Form ADV and existing Form ADV. The second part is an item by item description of uniform Form ADV.

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[1] The Commission anticipates that depending upon the kind of central registration system developed it may be necessary to modify the format of the uniform Form to make it compatible with that system. For example, if adviser registrations are processed in the CRD system it may be necessary to obtain substantially all registration information in objective format. Part II of the form now is designed to serve also as the adviser's brochure, and, as a result, some registration information now appears in narrative format. Because the details of the central registration system have not been determined, it is not possible to know what, if any, modifications may be necessary to the form, or to estimate when the central registration system will be implemented. It is the Commission's view that the uniform Form ADV being proposed today will improve the form as a registration and disclosure document and reduce administrative burdens on advisers until such time as a central registration system is implemented.

[2] The NASAA resolution adopting the form recommends that the form be implemented beginning in January, 1986. The Commission anticipates that it will take final action on the form prior to that time so that, if the form is adopted, it would be effective in January, 1986 for new registrants filing with the Commission. Also, the Commission would expect to develop with NASAA a timetable for gradually converting existing registrants to the new form.

II. Uniform Form ADV

A. Summary of Changes Between Uniform Form ADV and Existing Form ADV

While uniform Form ADV is based substantially on existing Form ADV, there are several types of changes,

New items have been added to identify advisers engaged in financial planning services and to tailor items of the form to obtain pertinent information about their activities. These changes are expected both to improve the information obtined by the form and to make it easier for financial planner applicants to fill out the form. New items also have been added to address specific regulatory concerns of the status such as compliance by the adviser's personnel with state qualification and examination requirements.

The execution and the disciplinary question and Schedules A, B and C (relating to certain kinds of advisory entities) have been revised to make them substantially identical to the corresponding items of uniform Form BD, as proposed to be amended.[3] Prior to adoption of uniform Form BD by the Commission in November, 1983 these items of existing Form ADV were substantially identical to the corresponding items of the Commission's Form BD.

Uniform Form ADV also would require that additional information be disclosed to clients and prospective clients under the brochure rule. For the benefit of the jurisdictions, individual information would be requried on all employees giving advice to clients on behalf of the adviser in the jurisdiction. Schedules of individual information would be made part of the brochure. Also, advisers would be requird to provide more information about affiliations and third-party compensation arrangements.

Finally, two changes have been made in the format of the form. Where possible, the form seeks information in objective format, to facilitate entry and computer use of the information by the Commission and the jurisdictions. These changes will improve the data available about the advisory industry. Among other things, the data can be used by the Commission to determine what types of advisers should be examined in the Commission's program of routine adviser compliance examinations. Also, the instructions, form and schedules have been revised to use "Plain English" wherever possible

B. Item by Item Description of Uniform Form ADV

1. Part I

Page 1. New uniform Form ADV contains a new heading requring a registrant filing an amendment to give its 801 SEC registration number and state whether it is now active in business as an investment adviser. This information will facilitate processing of amendments.

Item 1—Name. This item is the same as item 2(a) of existing Form ADV.[4]

Item 2—Address. Item 2 requires applicant to state its principal place of business, the hours during which regular business is conducted, its mailing address, and telephone number. Subparts B and F, which ask the hours during which business is conducted at applicant's offices is new and has been added in order to assist Commission staff in conducting examinations. To facilitate processing of the form, Subpart E asks whether applicant's address is being amended. Other portions of this question are the same as question 2(a) of existing Form ADV.

Item 3—Books and Records. Item 3 of the new uniform Form, relating to the location of books and records, is based on a similar item in item 2(a) of existing Form ADV, but has been expanded. Where applicant's books and records are kept at a location different from the applicant's principal place of business, the name and address of the entity and its hours of business must be given. This will assist Commission staff in conducting examinations.

Execution

The uniform Form AVD contains an Execution which is substantially identical to the Execution required on uniform Form BD.

Item 4—Persons to Contact. This item is the same as item 2(b) existing Form ADV.

Item 5—Consent. This item is the same as item 2(c) of existing Form ADV.

Item 6—Fiscal Year. This item is the same as item 2(e) of existing Form ADV.

Item 7—Status in Jurisdiction. This item is the same as item 3(a) of existing Form ADV except that an applicant must designate any jurisdiction in which it withdrew an application for registration prior to being registered. Item 3(b) of existing form ADV, asking information about terminations of registration, has been deleted. Information about involuntary terminations is covered in new question 11, the disciplinary question.

Item 8—Type of Entity. This item combines questions 4, 5, 6, and 8 of existing Form ADV with minor modifications.

Item 9—Successor. This item is the same as question 7 of existing Form ADV except that applications must provide details about the transaction on Schedule D, the continuation sheet for Part I of the form.

Item 10—Control. This item is the same as question 9(a) and 9(b) of existing Form ADV.

Item 11—Disciplinary questions. The disciplinary questions have been revised to provide more information to the jurisdictions on past activities of applicants and certain persons affiliated with the adviser. Item 11 is substantially identical to the proposed new disciplinary questions of uniform Form BD except that uniform Form ADV requires information on "advisory affiliates." The term advisory affiliate means the applicant, persons named in question 10A or Schedules A, B, or C, and persons directly or directly controlling or controlled by applicant. This includes employees, except for those performing only clerical or ministerial functions.[5] Also, uniform ADV includes a question on bankuptcy not related to broker-dealer activities.

Item 12—Custody by applicant. This item is the same as that part of item 12 of existing Form ADV requiring information about custody by applicant of any advisory client funds or securities.

Item 13—Custody by affiliates. This item makes several changes to question 12 of existing Form ADV relating to custody by persons associated with the applicant. The new item seeks information about custody by persons affiliated with the applicant. The term "affiliated person," which is defined in instructions to the form, is somewhat broader than the term associated person. This item asks whether any affiliated person with custody is a registered broker-dealer under Section 15 of the Securities Exchange Act of 1934. Finally, because "custody" includes not just holding client funds and securities but the ability to obtain possession of client funds or securities,

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[3] The Commission today is proposing amendments to uniform Form BD, the form developed by NASAA and the Commission to register broker-dealers. *See* Securities Exchange Act Release No. 21981

[4] Unless otherwise indicated, all of the references in this section to items of uniform ADV and existing Form ADV are to items contained in Part I of those forms.

[5] The new proposed disciplinary question of uniform BD seeks information only about employees in "control" positions, because disciplinary history of agents of a broker-dealer appears in Form U-4.

the instructions to the form describe certain common situations involving "custody." The instructions are intended to assist applicants in responding properly to the item but are not a comprehensive list of all possible circumstances in which an adviser might be deemed to have custody.

Item 14—Prepayment of Fees. This item requires applicant to state whether it requires prepayment of fees of more than $500 per client and more than six months in advance. The information will identify applicants subject to the audited balance sheet requirement of Part II Item 15.

Item 15—Brochure Rule. This new item seeks information for the Commission and the jurisdictions on whether applicant will use Part II of Form ADV or a separate brochure to comply with rule 204-3 under the Advisers Act.

Item 16—Exams. Some jurisdictions require that individuals giving investment advice on behalf of the applicant in the jurisdiction meet certain qualifications. For the benefit of these jurisdictions a new item asks whether employees performing advisory functions in the jurisdiction where the application is being filed are qualified to do so by examination or by waiver of examination.

Item 17—Employees. This new item will require applicant to provide information, in check-the-box format, about the number of employees of applicant performing investment advisory functions. This item will be used by the Commission and the jurisdictions to obtain information about the advisory industry and to assist examiners in scheduling exams.

Item 18—Discretionary Management. This item requires applicant to state whether it provides discretionary managment of securities portfolios and, if so, the number of its accounts and their aggregate market value at the end of applicant's fiscal year. This question is substantially similar to item 15 of existing Form ADV.

Item 19—Non-Discretionary Management. This item requires applicant to state whether it manages client securities portfolios a on a non-discretionary basis and, it so, the number of its accounts and their aggregate market value at the end of applicant's last fiscal year. This question is substantially similar to item 16 of existing Form ADV.

Item 20— Financial Planning. This new item will require an applicant providing financial planning services to state the number of clients to whom applicant provided services during the last fiscal year and the total amount of client assets in those plans. This question is intended to provide the Commission and the jurisdictions with pertinent information about a financial planner applicant's business.

Item 21—Interests in Securities. This new item will require applicant to state whether it recommended to clients in its last fiscal year securities in which the applicant had an interest other than the receipt of a normal and customary sales commission or brokerage fee. The item also will require the applicant to check a box to indicate the approximate value of securities so recommended by the applicant in its last fiscal year. The item will provide pertinent information to the Commission and the jurisdictions about advisers whose businesses may pose regulatory concerns because of the inherent conflicts of interest involved when advisers recommend securities in which they have an interest.

2. Part II

Page 1—Table of Contents

A table of contents has been added to Part II of the uniform ADV to provide clients receiving the brochure with a guide to the information contained in the brochure.

Page 2—Definitions

For the convenience of applicants, and clients receiving Part II of Form ADV, definitions of terms used in Part II are provided at the beginning of Part II.

1. *Item 1.A.—Advisory Services and Fees.* This item requires applicant to provide information about the types of services it provides. The item is similar to item 1(a)-(h) of existing Form ADV. [6] except that applicants also will be required to provide information about any timing services offered to clients. Also, for each type of service offered, applicant must provide the approximate percentage of total advisory billings from that service. This information should be useful to clients in assessing the nature of the adviser's business.

Item 1.B.—Financial Planning. This new item will require applicants to indicate whether they provide any of the advisory services described in item 1.A. as part of financial planning services.

Item 1.C. and I.D.—Fees. Item 1.C., which is new, requires applicants to indicate the types of fees received by checking the appropriate boxes. This objective format facilities computer analysis of the information by the Commission and the jurisdictions. Item 1.D., which requires narrative information about the services provided, and fees charged, by the adviser, is substantially identical to item 1 of existing Form ADV.

Item 2—Clients. This item is substantially similar to item 2 of existing Form ADV except that the format is now objective and a new category on corporations or other buisness entities has been added.

Item 3—Securities. This item is the same as item 3 of existing Form ADV except that a new category for foreign issuers has been added.

Item 4—Methods of Analysis, Sources of Information, and Investment Strategies. This item is the same as existing Form ADV item 4.

Item 5—Education and Business Background. This item is the same as existing Form ADV item 5.

Item 6—Individuals' Education, Business and Disciplinary Background. Item 6, which seeks information about the education and business background of certain persons associated with the adviser, has been substantially revised. In existing Form ADV, applicants must provide information in response to item 6 of Part II on the education and business background for the preceding five years of certain persons involved in determining what advice is given to clients. The information is required for members of applicant's investment committee or, if none, those persons determining or approving the advice given, but if this group is larger than five people, information need only be provided for those persons with supervisory responsibility. Under item 11 of Part I of existing Form ADV applicants also must file a Schedule D of individual information, including business background for ten years and any disciplinary history, for the persons named in item 6 of Part II as well for certain persons named in other items of the form and schedules. The Schedule D of individual information is filed as part of the registration application but is not required to be given to clients under the brochure rule.

Item 6 of uniform Form ADV would require as part of the registration application and the brochure a Schedule F of individual information for each individual who is: the applicant, a control person, an owner of at least ten percent of a class of applicant's securities, or an officer, director, or partner or person with similar status. Schedule F also would be required for each individual who is a member of applicant's investment committee or, if none, each individual who determines advice given to clients, but if there are

[6] Unless otherwise indicated, all of the references in this section to items of uniform ADV and existing Form ADV are to items contained in Part II of those forms.

more that five such individuals, Schedule F only must be provided for their supervisors. Finally, Schedule F would be required for each individual giving investment advice in the jurisdiction in which the application is filed. The information required on Schedule F of uniform ADV is substantially similar to that required on Schedule D of the existing form except that Schedule F also requires information about names used by the individual and professional examinations and designations.

Item 7— Business Disciplinary Background. Item 7 would require applicant to explain on Schedule E the details of any disciplinary action indicated in response to question 11 of Part I involving a partnership, corporation or other organization. The information reported on Schedule E would be filed with the registration application and provided to clients in the brochure. Under existing Form ADV, this information is filed on Schedule D but is not required to be given to clients.

Item 8—Other Business Activity. This item is similar to item 7 of existing Form ADV except that it also seeks information on whether the principal business of officers or controlling persons of applicant is other than investment advice and requires applicant to indicate the amount of time spent by applicant and such persons on non-investment advisory activities.

Item 9—Other financial Industry Activities or Affiliations. This item, which is based on item 8 of existing Form ADV, has been expanded significantly to require information about other pertinent buisness affiliations of applicant relating to financial services. Also, applicant will be required to indicate whether it is or has an application pending to become a futures commission merchant, commodity trading adviser, or commodity pool operator. Applicant also will be required to provide information about whether it or an affiliated person is a general partner in any partnership in which clients are solicited to invest.

Item 10—Participation in Securities Transactions. This item is substantially similar to item 9 of existing Form ADV except that information also will be required as to affiliated persons of applicant.

Item 11—Conditions for Managing Accounts. This item is similar to item 10 of existing Form ADV, but will be expanded to require applicants to also include any conditions for providing financial planning services.

Item 12—Review of Accounts. This item is similar to item 12 of existing Form ADV but also will apply to advisers providing financial planning services and will require more specific information about review procedures.

Item 13—Investment or Brokerage Discretion. The questions in this item are similar to item 11 of existing Form ADV, however, applicant also will be required to indicate whether it or any affiliated person suggests brokers to its clients.

Item 14—Additional Compensation. This new item will require an applicant to indicate whether it or an affiliated person has any arrangement where it receives an economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients and whether applicant directly or indirectly compensates any person for client referrals. Applicant must fully describe any such arrangement on Schedule E.

Item 15—Balance Sheet. This item is substantially similar to item 13 of existing Form ADV except that financial statements also may be required by a jurisdication.

Schedules

Schedules A, B, and C have been revised to be substantially identical to the corresponding schedules proposed for Uniform Form BD.

Schedules D and E, which are continuation sheets, correspond to Schedules E and F of existing Form ADV.

Schedule F is similar to Schedule D of existing Form ADV.[7]

III. Related Rule Amendments

The Commission is proposing to amend rule 204–1(b)(1) relating to the filing of amendments. Under that rule, advisers are required to file amendments to correct inaccurate information on their Form ADV promptly for inaccuracies to specified items, and within 90 days of the end of the registrant's fiscal year for other changes. The proposed amendment to rule 204–1 would make the items specifiedd in the rule correspond to the items of uniform Form ADV. A similar change is proposed to rule 0–7(b) relating to the definition of Small Entities for purposes of the Regulatory Flexibility Act.

Rule 204–1 also would be amended to delete paragraph (b)(3). That paragraph specifies that a registrant must report changes in the information contained in response to item 3 of Part I, relating to jurisdictions in which the adviser is registering or registered, within 90 days of the end of its fiscal year. However, if the adviser's registration in a jurisdiction is restricted, suspended, withdrawn or voluntarily or involuntarily terminated, the adviser must report this information promptly. Under uniform Form ADV, all of the foregoing events, except for a voluntary withdrawal of registration, will be reported in response to item 11 of Part I, the disciplinary question. Under paragraph (b)(1) of rule 204–1, as proposed to be amended, changes in responses to item 11 would have to be reported promptly. The Commission believes it would be sufficient for an adviser to report a voluntary withdrawal of registration in a jurisdiction within 90 days of the end of the adviser's fiscal year. The withdrawal would be reflected by an amendment to item 3 of Part I designating the jurisdictions in which the adviser is registered. Accordingly, the Commission is proposing to delete paragraph (b)(3) of rule 204–1.

[7] See discussion of item 6, *supra*.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting requirements, Securities.

IV. Text of Proposals

It is proposed to amend Title 17, Chapter II of the Code of Federal Regulationsd as follows:

PART 275—[AMENDED]

1. By revising paragraph (b) of § 275.0–7 to read as follows:

§ 275.0–7 Small entities for purposes of the Regulatory Flexibility Act.

* * * * *

(b) As used in this rule, the term "other advisory services" means the services referred to in Form ADV, Part II, item 1.A.

(3)–(9). [17 CFR Part 279–1].

2. By revising paragraph (b) of § 275.204–1 to read as follows:

§ 275.204–1 Amendments to application for registration.

* * * * *

(b)(1) The information contained in the response to items 1, 2, 3, 4, 5, 8, 11, 12A, 12B, 13A, 13B, of Part I of any application for investment adviser, or in any amendment thereto, becomes inaccurate for any reason or if the information contained in response to items 9 and 10 of Part I, or any question in Part II (except item 14) of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccruate in a material manner, the investment adviser shall promptly file an

amendment on Form ADV (§ 279-1 of the chapter) correcting such information.

(2) For all other changes not designated in paragraph (b)(1) of this section, the investment adviser shall file file an amendment on Form ADV correcting such information within 90 days of the end of the fiscal year. In addition, a balance sheet as required by item 15 of Part II shall be filed as the end of the applicant's fiscal year.

* * * * *

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding uniform Form ADV proposed in this release. The Analysis notes that even though the proposed form will require more disclosure of investment advisers than the present form for registering with the Commission, adoption of a uniform registration form will, overall, reduce the burden associated with registration with the Commission and the states. It also notes that the proposed form uses "Plain English" and therefore will be more understandable to investment advisers filling out the form and to clients receiving Part II of the form.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jay Gould, Securities and Exchange Commission, Division of Investment Management, Stop 5-2, 450 Fifth Street, NW., Washington, D.C. 20549.

Statutory Authority

The Commission (i) amends Rules 0-7 and 204-1, pursuant to the authority contained in section 204, 206(4), and 211(a) of the Advisers Act (15 U.S.C. 80b-4, 80b-6(4), and 80b-11(a)) and (ii) amends Form ADV pursuant to the authority contained in sections 203 (15 U.S.C. 80b-3), 204, 206(4) and 211(a) of the Act.

Text of Form

See Appendix A. Form ADV will not be codified in the Code of Federal Regulations.

By the Commission.

John Wheeler,

Secretary.

April 24, 1985.

Appendix A—Instructions for Form ADV

1. *Updating*—Complete all amended pages in full and circle the number of the item being changed. Each amendment must include the execution pages. By law, the applicant must update the Form ADV information by submitting amendments to correct inaccurate information.

2. *Format.*

- Type all information.
- Give all individual names in full, including full middle names.
- Use only the Form ADV and its Schedules or a reproduction of them.

3. *Signature.*

- All filings and amendments must be filed with signed execution pages (pages 1 and 2.)
- Each copy filed with the Securities and Exchange Commission and any jurisdiction must be manually signed.

If applicant is—	Form ADV should be signed by—
• A sole proprietor	The proprietor
• A partnership	A general partner for the partnership.
• A corporation	An authorized principal officer for the corporation.
• Any other organization	The managing agent (an authorized person that participates in managing or directing applicant's affairs).

4. *General Definitions* (Additional definitions appear in Part I item 11 and Part II.)

- Affiliated person: Any person directly or indirectly able to vote 5% or more of the voting securities of applicant; any person who the applicant can vote 5% or more of the securities of; any person directly or indirectly controlling, controlled by or under common control with the applicant; or any officer, director, partner or employee of the applicant.
- Applicant—The investment adviser applying on or amending this form.
- Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 per cent or more of the voting securities or is entitled to 25 per cent or more of the profits is presumed to control that company.
- Custody—Includes not just the applicant's holding the funds or securities but may also include where advisory fees are paid automatically upon the adviser's instructions or where the adviser has a full power of attorney.
- Jurisdiction—Any non-Federal government or regulatory body in the United States, or Puerto Rico.
- Person—An individual, partnership, corporation or other organization.
- Self-regulatory organization—Any national securities or commodities exchange or registered association, or registered clearing agency.

5. *Continuation Sheets*—Schedule D and E provide additional space for continuing Form ADV items (Schedule D for Part I; Schedule E for Part II) but not for continuing Schedules A, B, C, F or G. To continue those schedules, use copies of the schedule being continued.

6. *SEC Filings.*

- Submit filings in triplicate to the Securities and Exchange Commission, Washington, D.C. 20549. To register, submit a check or money order for $150 payable to the Securities and Exchange Commission. This fee is non-refundable.
- *Non-Residents*—Rule 0-2 under the Investment Advisers Act of 1940 [17 CFR 275.0-2] covers which non-resident individuals named anywhere in Form ADV must file a consent to service of process and a power of attorney. Rule 204-2(j) under the Investment Advisers Act of 1940 [17 CFR 275.204-2] covers the notice of undertaking on books and records non-residents must file with Form ADV.
- Updating. Federal law requires filing amendments:
- Promptly for any changes in Part I, items 1, 2, 3, 4, 5, 8, 11, 12A, 12B, 13A, 13B;
- Promptly for material changes in Part I, items 9, 10 and all items of Part II except item 14;
- Within 90 days of the end of the fiscal year for any other changes.
- *Federal Information Law and Requirements*—Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this form from applicants for investment adviser registration. The information is used for regulatory purposes including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids identifying the applicant is voluntary. The SEC may return as unacceptable forms that do not include all other information. By accepting this form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b-17.

7. *Filings in Jurisdictions*—Consult the requirements of each jurisdiction in which you are filing to determine its requirements for, among other things:

- Filings
- Updates
- Financial statements
- Bonding
- Examinations and qualifications
- Photographs and fingerprints
- Limitations on advisory fees

Information on a jurisdiction's requirements is available from the Securities Administrator.

BILLING CODE 8010-01-M

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Part I Page 1

This filing is an: [ ] ......or an...... [ ]
Initial Application Amendment

If This Filing is an AMENDMENT:
°Give the Applicant's Registration Number 801-__________
°Is Applicant now active in business as an investment adviser?
Yes [ ] No [ ]

WARNING: Failure to complete this form accurately and keep it current subjects applicant to administrative, civil and criminal penalties.

1. A. Applicant's full name ____________________
(If sole proprietor, state last, first and middle name)

B. Name under which business is conducted, if different:

____

C. If business name is being amended, give previous name:

____

2. Principal place of business:

A. ____________________
(Number and Street -- Do not use P.O. Box Number) (City) (State) (Zip Code)

B. Hours business is conducted at this location: from ______ to ______

C. Telephone number at this location: ______ ______
(Area Code) (Telephone Number)

D. Mailing address, if different from address given in 2.A):

____
(Number and Street or P.O. Box Number) (City) (State) (Zip Code)

E. Is the address in item 2A or 2D being amended in this filing? ...... [ ] Yes [ ] No

F. On Schedule D give the addresses, telephone numbers and business hours of all applicant's offices other than the one given in item 2A.

Answer all items; indicate "N/A" for not applicable.

Part I Page 2

Applicant ______________________ File Number 801-__________ Date __________

3. A. If books and records required by Section 204 of the Investment Advisers Act of 1940 are kept somewhere other than at principal place of business given in item 2A, give the following information (If kept in more than one place, give additional names, addresses and hours of business on Schedule D):

____
(Name of entity where books and records kept)

____
(Number and Street) (City) (State) (Zip Code)

B. Hours business is conducted at this location: from __________ to __________

C. Telephone number at this location: __________ ______________
(Area Code) (Telephone Number)

EXECUTION

For the purpose of complying with the laws of the State(s) I have marked in Item 7 relating to the giving of investment advice, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

__________ ______________________________
(Date) (Name of Applicant)

By: ______________________________
(Signature)

____
(Typed Name and Title)

Subscribed and sworn before me this ________ day of __________, 19__

By: ______________________________

My commission expires __________ County of __________ State of __________

Answer all items; indicate "N/A" for not applicable.

Part I Page 3

Applicant ______________________ File Number 801-__________ Date __________

4. Persons to contact for further information about this Form:

A. ____
(Name) (Title)

B. ____
(Mailing Address) (Telephone Number)

5. Applicant consents that notice of any proceeding before the Securities and Exchange Commission or jurisdiction in connection with its investment adviser registration may be given by registered or certified mail or confirmed telegram to:

A. ____
(Last Name) (First Name) (Middle Name)

B. ____
(Number and Street) (City) (State) (Zip Code)

6. Applicant's fiscal year ends: ______________ ______________
(Month) (Day)

7. Give status of applicant's investment adviser registration by indicating:

"1" for initial or pending application

"2" for registered

"3" for withdrawn before registration

Securities and Exchange Commission ____

AL __	AK __	AZ __	AR __	CA __	CO __	CT __	DE __	DC __	FL __	GA __
HI __	ID __	IL __	IN __	IA __	KS __	KY __	LA __	ME __	MD __	MA __
MI __	MN __	MS __	MO __	MT __	NE __	NV __	NH __	NJ __	NM __	NY __
NC __	ND __	OH __	OK __	OR __	PA __	RI __	SC __	SD __	TN __	TX __
UT __	VT __	VA __	WA __	WV __	WI __	WY __	Puerto Rico __			

Other ____
(Specify)

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 4

Applicant__________ File Number 801-______ Date______

8. Applicant is a (check box that applies and complete those items):

A. [ ] CORPORATION

(1) Date of incorporation: .... ____________
(Month) (Day) (Year)

(2) Jurisdiction where incorporated: ____________

(3) Complete Schedule A

B. [ ] PARTNERSHIP

(1) Date of establishment: .... ____________
(Month) (Day) (Year)

(2) Current legal address:

____
(Number and street) (City) (State) (Zip code)

(3) Complete Schedule B

C. [ ] SOLE PROPRIETORSHIP

(1) Date of establishment: .... ____________
(Month) (Day) (Year)

(2) Current residence address of proprietor:

____
(Number and street) (City) (State) (Zip code)

(3) Social security number: ____ - ____ - ____

D. [ ] OTHER ____________
(Specify)

(1) Date of establishment: .... ____________
(Month) (Day) (Year)

(2) Current legal address:

____
(Number and street) (City) (State) (Zip code)

(3) Complete Schedule C

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 5

Applicant________________________________ File Number 801-__________ Date____________

9. Is the applicant taking over the business of a registered investment adviser? (If "yes" describe the transfer on Schedule D, including the transfer date, and predecessor's full name, IRS employer number and file number.)... Yes |_| No |_|

10. A. Does any person not named in Item 1A or Schedules A, B, or C through agreement or otherwise, control the management or policies of applicant?.. Yes |_| No |_|

(If "yes" state on Schedule D the exact name of each person and describe the basis for the person's control.)

B. Is the applicant financed by a person not named in Items 1.A) or Schedule A, B, or C other than by: (1) a public offering under the Securities Act of 1933; (2) credit given by banks or suppliers in the ordinary course of business; or (3) a subordination under Securities Exchange Act of 1934 Rule 15c3-1 (17 CFR 240.15c3-1)?.................................. Yes |_| No |_|

(If "yes" state on Schedule D the exact name of each person and describe the arrangement through which financing is made available including the amount).

11. Disciplinary questions.

Definitions:

- Advisory affiliate — A person named in Items 1A, 10A or Schedules A, B or C; an individual or firm that directly or indirectly controls, or is controlled by the applicant including all employees except those performing only clerical, administrative, support or similar functions.

- Investment or investment-related — Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, savings and loan association or fiduciary).

- Involved -- Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 6

Applicant________________________ File Number 801-__________ Date____________

A. In the past ten years has the applicant or an advisory affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") to

(1) a felony or misdemeanor involving:

- investment or an investment-related business
- fraud, false statements, or omissions
- wrongful taking of property or
- bribery, forgery, counterfeiting, or extortion? .... Yes [ ] No [ ]

(2) any other felony? .... Yes [ ] No [ ]

B. Has any court:

(1) in the past ten years, enjoined the applicant or an advisory affiliate in connection with any investment-related activity?.... Yes [ ] No [ ]

(2) ever found that the applicant or an advisory affiliate was involved in a violation of investment-related statutes or regulations? .... Yes [ ] No [ ]

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or an advisory affiliate to have made a false statement or omission? .... Yes [ ] No [ ]

(2) found the applicant or an advisory affiliate to have been involved in a violation of its regulations or statutes? .... Yes [ ] No [ ]

(3) found the applicant or an advisory affiliate to have been a cause of an investment-related business losing its authorization to do business? .... Yes [ ] No [ ]

(4) entered an order denying, suspending or revoking the applicant's or an advisory affiliate's registration, barring or suspending its association with an investment adviser or otherwise disciplined it by restricting its activities? .... Yes [ ] No [ ]

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 7

Applicant ________________________ File Number 801-________ Date__________

D. Has any other federal regulatory agency or any state regulatory agency:

(1) ever found the applicant or an advisory affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? .... Yes [ ] No [ ]

(2) ever found the applicant or an advisory affiliate to have been involved in a violation of investment regulations or statutes? .... Yes [ ] No [ ]

(3) found the applicant or an advisory affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? .... Yes [ ] No [ ]

(4) in the past ten years, entered an order against the applicant or an advisory affiliate in connection with an investment-related business? . . . . Yes [ ] No [ ]

(5) ever denied, suspended, or revoked the applicant's or an advisory affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? .... Yes [ ] No [ ]

(6) ever revoked or suspended the applicant's or an advisory affiliate's license as an attorney or accountant? .... Yes [ ] No [ ]

E. Has any self-regulatory organization or commodities exchange:

(1) found the applicant or an advisory affiliate to have made a false statement or omission or been dishonest, unfair or unethical? .... Yes [ ] No [ ]

(2) found the applicant or an advisory affiliate to have been involved in a violation of its rules? .... Yes [ ] No [ ]

(3) found the applicant or an advisory affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended revoked, or restricted? .... Yes [ ] No [ ]

(4) disciplined the applicant or an advisory affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? .... Yes [ ] No [ ]

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 8

Applicant__________ File Number 801-________ Date________

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or an advisory affiliate related to investments or fraud? .... Yes [ ] No [ ]

G. Is the applicant or an advisory affiliate now the subject of any complaint, investigation, or proceeding that could result in a "yes" answer to parts A-F of this item? .... Yes [ ] No [ ]

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? .... Yes [ ] No [ ]

I. Does the applicant have any unsatisfied judgments or liens against it? .... Yes [ ] No [ ]

J. Has the applicant or an advisory affiliate of the applicant ever been a securities firm or an advisory affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? .... Yes [ ] No [ ]

K. Has the applicant, or an officer, director or person owning 10% or more of applicant's securities failed in business, made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt? .... Yes [ ] No [ ]

If a yes answer on Item 11 involves:

- an individual, give the details on Schedule F item 8, as required by Part II Item 6H
- a partnership, corporation or other organization, give the details on Schedule E, as required by Part II Item 7

12. Does applicant have authority for custody (see definition in instruction) of any advisory client:

A. funds .... Yes [ ] No [ ]

B. securities .... Yes [ ] No [ ]

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 9

Applicant________________________ File Number 801-__________ Date__________

13. Does any person affiliated with applicant have authority for custody (see definition in instructions) of any advisory client:

A. funds .... Yes ☐ No ☐

B. securities .... Yes ☐ No ☐

If either is yes:

C. is that person a registered broker dealer qualified to take custody under section 15 of the Securities Exchange Act of 1934? .... Yes ☐ No ☐

D. what is the value of those funds and securities at the end of applicant's last fiscal year in thousands? .... $__________

14. Does applicant require prepayment of fees of more than $500 per client and more than 6 months in advance? .... Yes ☐ No ☐

15. With a few exceptions, the "brochure rule" (Advisers Act Rule 204-3) requires that clients must be given information about the investment adviser. If covered by this rule, will applicant comply with it by giving clients:

A. Part II of this Form ADV? .... Yes ☐ No ☐ N/A ☐

B. Another document that includes at least the information contained in Form ADV Part II? .... Yes ☐ No ☐ N/A ☐

16. Are those giving investment advice for the applicant qualified by examination or qualified for waiver of examination in the jurisdiction in which this application is being filed? .... Yes ☐ No ☐ N/A ☐

17. The number of employees of applicant who perform investment advisory functions (including research, but excluding unrelated functions such as accounting) is: (Check only one box)

A. ☐ 1 person, part time

B. ☐ 1 person primarily involved in providing investment advisory services

C. ☐ 2-9 persons

D. ☐ 10 or more persons

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Part I Page 10

Applicant________________ File Number 801-________ Date________

18. Does applicant manage client securities portfolios on a discretionary basis? If yes, at the end of applicant's last fiscal year these accounts: . . . . Yes [ ] No [ ]

   A. numbered ____________.

   B. totalled in aggregate market value, in thousands $____________

19. Does applicant manage client securities portfolios on a non-discretionary basis? If yes, at the end of applicant's last fiscal year these accounts: . . . . Yes [ ] No [ ]

   A. numbered ____________.

   B. totalled in aggregate market value, in thousands $____________

20. Does applicant provide financial planning or some similarly termed services? If yes, during the last fiscal year applicant provided services to clients: . . . . Yes [ ] No [ ]

   A. who numbered ____________.

   B. whose assets in those plans totalled, in thousands $____________

21. Did applicant recommend securities to clients during its last fiscal year in which the applicant had either an equity interest or was acting (itself or through an affiliated person) as an underwriter, general or managing partner, or offeree representative, or had any other ownership or sales interest (other than the receipt of normal and customary sales commissions as a broker or brokers representative)? . . . . . . Yes [ ] No [ ]

   (If "yes", the approximate value of securities so recommended during its last fiscal year is:)

   A. [ ] Under $50,000

   B. [ ] $50,000 up to $250,000

   C. [ ] $250,000 up to $1 million

   D. [ ] over $1 million

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 1

Name of Investment Adviser:

Address:

(Number and Street) (City) (State) (Zip Code)

Telephone Number:

(Area Code) (Number)

This part of Form ADV gives information about the investment adviser and its business for the use of clients. The information has not been approved or verified by any governmental authority.

Table of Contents

(Schedules A, B, and C are included with Part I of this form, for the use of regulatory bodies, and are not distributed to clients.)

FORM ADV PART II Page 2

Applicant______________________________ File Number 801-__________ Date____________

Definitions for Part II

Affiliated person: Any person directly or indirectly able to vote 5% or more of the voting securities of applicant; any person who the applicant can vote 5% or more of the securities of; any person directly or indirectly controlling, controlled or under common control with the applicant; or any officer, director, partner, or employee of the applicant.

Investment Supervisory Services - Giving continuous advice to a client (or making investments for the client) based on the individual needs of the client. Individual needs include the nature of other client assets and the client's personal and family obligations.

Timing Service - Continuous advice on investing based solely on an analysis of market factors.

1. A. Advisory Services and Fees. (Check the applicable boxes) Applicant:

For each type of service provided, state the approximate % of total advisory billings from that service.

- [ ] (1) Provides investment supervisory services . . . . ____ %
- [ ] (2) Manages investment advisory accounts not involving investment supervisory services. . . . . ____ %
- [ ] (3) Furnishes investment advice through consultations not included in either service described above . . . . ____ %
- [ ] (4) Issues periodicals about securities by subscription . . . . ____ %
- [ ] (5) Issues special reports about securities not included in any service described above. . . . . ____ %
- [ ] (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities . . . . ____ %
- [ ] (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities. . . . . ____ %
- [ ] (8) Provides a timing service. . . . . ____ %
- [ ] (9) Furnishes advice about securities in any manner not described above. . . . . ____ %

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 3

Applicant____________________________ File Number 801-_________ Date__________

B. Does applicant call any of its services financial planning or some similar term? .... Yes [ ] No [ ]

C. Does applicant charge for investment advisory services through (Check all that apply):

[ ] (1) A percentage of assets under management?

[ ] (2) Hourly charges?

[ ] (3) Fixed fees (not including subscription fees)?

[ ] (4) Subscription fees?

[ ] (5) Commissions?

[ ] (6) Other?

D. For each checked box in A above, describe on Schedule E,

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee.
- the fees for the services, and the formula for determining them, (e.g., 1% per annum).
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable.
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date.

2. Types of clients - Applicant generally provides investment advice to (check those that apply):

[ ] A. Individuals

[ ] B. Banks or thrift institutions

[ ] C. Investment companies

[ ] D. Pension and Profit Sharing Plans

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 4

Applicant ______________________ File Number 801- ________ Date ________

| | E Corporations or business entities other than those listed above

| | F Other (Describe on Schedule F)

---

3 Types of Securities. Applicant gives advice on the following (check those that apply)

A Equity securities

| | (1) exchange-listed securities

| | (2) securities traded over-the-counter

| | (3) foreign issuers

| | B Warrants

| | C Corporate debt securities (other than commercial paper)

| | D Commercial paper

| | E Certificates of deposit

| | F Municipal securities

G. Investment company securities

| | (1) variable life insurance

| | (2) variable annuities

| | (3) mutual fund shares

| | H United States government securities

I. Options contracts on

| | (1) securities

| | (2) commodities

Answer all items indicate "N/A" for not applicable Complete amended pages in full circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 5

Applicant______________________________ File Number 801- ________ Date____________

J. Futures contracts on:

|_| (1) tangibles

|_| (2) intangibles

K. Interests in partnerships investing in:

|_| (1) real estate

|_| (2) oil and gas interests

|_| (3) other (explain on Schedule E)

|_| L. Other (explain on Schedule E)

4. Methods of Analysis, Sources of Information, and Investment Strategies.

A. Describe the applicant's security analysis methods. For example, charting or fundamental, technical, or cyclical analysis.

B. Describe the main sources of information applicant uses. For example, financial newspapers and magazines, inspections of corporate activities, research materials prepared by others, corporate rating services, timing services, annual reports, prospectuses, filings with the Securities and Exchange Commission, or company press releases.

C. Describe the investment strategies used to implement any investment advice given to clients. For example, long term purchases (securities held at least a year), short term purchases (securities sold within a year), trading (securities sold within 30 days), short sales, margin transactions, or option writing, including covered options, uncovered options, or spreading strategies.

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 6

Applicant ______________ File Number 801-________ Date ________

5. Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients? . . . . Yes [ ] No [ ]

(If "yes" describe these standards on Schedule E.)

6. Individuals Education, Business and Disciplinary Background.

Complete a Schedule F for each individual who is:

A. The applicant, named in Part I Item 1A

B. A control person named in Part I Item 1D

C. An owner of at least 10% of a class of applicant's equity securities

D. An officer, director, partner, or individual with similar status of applicant, described in Schedule A item 2a, Schedule B item 2, Schedule C item 2.

E. A member of the applicant's investment committee that determines general investment advice to be given to clients

F. If applicant has no investment committee, an individual who determines general investment advice (if more than five, complete for their supervisors only).

G. An individual giving investment advice on behalf of the applicant in the jurisdiction in which this application is filed.

H. Involved in any yes answer to the disciplinary question, Part I Item 11

7. Other Disciplinary Background

Describe in detail on Schedule E any yes answer to the disciplinary question, Part I Item 11 that involves a partnership, corporation or other organization. Give the following details of any court or regulatory action:

- the organization and individuals named
- the title and date of the action
- the court or body taking the action
- a description of the action

8. Other Business Activities. (Check those that apply)

[ ] A. Applicant is actively engaged in a business other than giving investment advice.

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 7

Applicant_____________________ File Number 801-__________ Date__________

[ ] B. Applicant sells products or services other than investment advice to clients.

[ ] C. The principal business of applicant, its officers, or its controlling persons involves something other than providing investment advice.

(For each checked box describe the other activities including the time spent on them on Schedule E.)

9. Other Financial Industry Activities or Affiliations. (Check those that apply)

[ ] A. Applicant is registered (or has an application pending) as a securities broker/dealer.

[ ] B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.

C. Applicant is an affiliated person of a:

[ ] (1) broker-dealer

[ ] (2) investment company

[ ] (3) other investment adviser

[ ] (4) financial planning firm

[ ] (5) commodity pool operator, commodity trading adviser or futures commission merchant

[ ] (6) banking or thrift institution

[ ] (7) accounting firm

[ ] (8) law firm

[ ] (9) insurance company

[ ] (10) pension consultant

[ ] (11) real estate broker or dealer

[ ] (12) entity that creates or packages limited partnerships

(For each checked box in C, identify the affiliate and describe the affiliation and any business relationship with the affiliate on Schedule E.)

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 8

Applicant________________________________ File Number 801-__________ Date___________

D. Is applicant or an affiliated person a general partner in any partnership in which clients are solicited to invest? . . . . Yes [ ] No [ ]

(If "yes" describe on Schedule E the partnerships and what they invest in).

10. Participation or Interest in Securities Transactions

Applicant or an affiliated person (check those that apply):

[ ] A. As principal, buys securities for itself from or sells its own securities to any investment advisory client.

[ ] B. As broker or agent for any investment advisory client, effects securities transactions.

[ ] C. As broker or agent for any person other than an investment advisory client effects transactions in which advisory client securities are sold to or bought from a brokerage customer.

[ ] D. Recommends to investment advisory clients that they buy or sell securities in which the applicant has some financial interest.

[ ] E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule E when the applicant or an affiliated person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

11. Conditions for Managing Accounts. If the applicant provides investment supervisory services, manages investment advisory accounts or provides financial planning services: Are a minimum dollar value of assets or other conditions imposed for starting or maintaining an account? . . . . Yes [ ] No [ ] N/A [ ]

(If "yes", describe on Schedule E.)

12. Review of Accounts. If applicant provides investment supervisory services, manages investment advisory accounts, or provides financial planning services:

A. Describe below the reviews and reviewers of the accounts. For reviews, include their frequency, different levels, and triggering factors. For reviewers, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 9

Applicant______________________________ File Number 801-__________ Date___________

B. Describe below the nature and frequency of regular reports to clients on their accounts.

13. Investment or Brokerage Discretion.

A. Does applicant or any affiliated person have authority to determine, without obtaining specific client consent, the:

	Yes	No	N/A
(1) securities to be bought or sold?	[ ]	[ ]	[ ]
(2) amount of the securities to be bought or sold?	[ ]	[ ]	[ ]
(3) broker or dealer to be used?	[ ]	[ ]	[ ]
(4) commission rates paid?	[ ]	[ ]	[ ]
B. Does applicant or an affiliated person suggest brokers to clients?	[ ]	[ ]	[ ]

For each yes to A describe on Schedule E any limitations on the authority.

For each yes to A(3), A(4) or B, describe on Schedule E the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or an affiliated person is a factor, describe:

- the products, research and services:
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services,
- whether research is used to service all of applicant's accounts or just those accounts paying for it; and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

FORM ADV PART II Page 10

Applicant______________________________ File Number 801-__________ Date__________

14. Additional Compensation

Does the applicant or an affiliated person have any arrangements, oral or in writing where it:

A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients? . . . . Yes [ ] No [ ]

B. directly or indirectly compensates any person for client referrals? . . . . Yes [ ] No [ ]

For each yes, describe the arrangements on Schedule E.

15. Balance Sheet. Applicants:

- with custody of client funds or securities
- requiring prepayment of more than $500 in fees per client six or more months in advance
- filing in a jurisdiction that requires financial statements

must provide a balance sheet for the most recent fiscal year on Schedule G.

Has applicant provided a Schedule G balance sheet? . . . . Yes [ ] No [ ] N/A [ ]

Answer all items; indicate "N/A" for not applicable. Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Applicant______________________________ File Number 801-__________ Date______________

SCHEDULE A of Form ADV

(Answers in for Form ADV Part I Item 8.)

1. This form requests information on the owners and executive officers of the applicant.

2. Please complete for:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and

   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class equity security of the applicant.

3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5%; A - 5% up to 10%; B - 10% up to 25%; C - 25% up to 50%; D - 50% up to 75%; E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this form.

Last	First	Middle	Beginning Date Mo.	Beginning Date Yr.	Title or Status	Ownership Code	Control Person	CRD No., or, if none Social Security Number	Official Use Only

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ____________ File Number 801-________ Date ________

SCHEDULE A of Form ADV

(Answers for Form ADV Part I Item 8.)

List below names reported in the most recent previous filing pursuant to this item which are DELETED hereby:

FULL NAME			Ending Date		
Last	First	Middle	Mo.	Yr.	Social Security Number

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant | File Number 801- Date

SCHEDULE B of Form ADV

FOR PARTNERSHIPS

(Answers in for Form ADV Part I Item 8.)

1. This form requests information on the owners and partners of the applicant.

2. Please complete for all general partners and with respect to limited and special partners all those who have contributed directly or indirectly through intermediaries, 5% or more of the partnership's capital.

3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chair of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5% A - 5% up to 10% B - 10% up to 25% C - 25% up to 50% D - 50% up to 75% E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this form.

FULL NAME			Beginning Date		Title or Status	Owner-ship Code	Control Person	CRD No., or, if none Social Security Number	Official Use Only
Last	First	Middle	Mo.	Yr.					

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ____________________ File Number 801- ________ Date ________

SCHEDULE B of Form ADV

FOR PARTNERSHIPS

(Answers for Form ADV Part I Item 8.)

List below names reported in the most recent previous filing pursuant to this item which are DELETED hereby:

FULL NAME			Ending Date		
Last	First	Middle	Mo.	Yr.	Social Security Number

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Applicant ____________________ File Number 801-________ Date ____________

SCHEDULE C of Form ADV

FOR APPLICANTS OTHER THAN PARTNERSHIPS AND CORPORATIONS

(Answers for Form ADV Part I Item 8.)

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the nature of their authority and their beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.

FULL NAME			RELATIONSHIP			CRD Number or, if none Social Security Number	Description of Authority and Beneficial Interest
			Beginning Date		Title or Status		
Last	First	Middle	Mo.	Yr.			

List below names reported in the most recent previous filing pursuant to this item which are DELETED hereby:

FULL NAME			Ending Date		Social Security Number
Last	First	Middle	Mo.	Yr.	

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ________________ File Number 801- ________ Date ________

SCHEDULE D of Form ADV

(CONTINUATION SHEET FOR OF FORM ADV PART I)

(Do not use this Schedule as a continuation sheet for FORM ADV Part II or any other schedules.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: IRS Empl. Ident. No.

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ______________________ File Number 801-__________ Date ____________

SCHEDULE E of Form ADV

(CONTINUATION SHEET FOR FORM ADV PART II)

(Do not use this Schedule as a continuation sheet for FORM ADV Part I or any other schedules.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: IRS Empl. Ident. No.

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2).

Applicant ____________________ File Number 801-__________ Date ____________

SCHEDULE F of Form ADV

(Answers for Form ADV Part I Item 11 and Part II Item 6.)

This Schedule is submitted for an individual who is: (Check all boxes that apply)

[ ] A. the applicant, named in Part I, Item 1A

[ ] B. a control person, named in Part I, Item 10A

[ ] C. an owner of at least 10% of a class of applicant's equity securities

[ ] D. an officer or director, partner, or individual with similar status of applicant, described in Schedule A Item 2a, Schedule B Item 2, or Schedule C Item 2

[ ] E. a member of the applicant's investment committee that determines general investment advice to be given to clients

[ ] F. if applicant has no investment committee, an individual who determines general client advice (if more than 5, complete for their supervisors, only)

[ ] G. an individual giving investment advice on behalf of the applicant in the jurisdictions checked below:

AL __	AK __	AZ __	AR __	CA __	CO __	CT __	DE __	DC __	FL __	GA __
HI __	ID __	IL __	IN __	IA __	KS __	KY __	LA __	ME __	MD __	MA __
MI __	MN __	MS __	MO __	MT __	NE __	NV __	NH __	NJ __	NM __	NY __
NC __	ND __	OH __	OK __	OR __	PA __	RI __	SC __	SD __	TN __	TX __
UT __	VT __	VA __	WA __	WV __	WI __	WY __	Puerto Rico __			

Other ____
(Specify)

[ ] H. involved in any yes answer to the disciplinary question, Part I Item 11. IF ONLY THIS BOX IS CHECKED, THIS SCHEDULE DOES NOT HAVE TO BE GIVEN TO CLIENTS.

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ______________________ File Number 801- ________ Date ____________

SCHEDULE F of Form ADV Page 2

(Answers for Form ADV Part I Item 11 and Part II Item 6.)

1. Applicant name as stated in Part I Item 1A — IRS Empl. Ident. No. ____________

2. Individual's full name for whom this Schedule is being completed — IRS Empl. Ident. No. ____________ Soc. Sec. No. ____________ CRD No., if any ____________

3. (a) Residence of individual:

(Number and Street) (City) (State) (Zip Code)

(b) Birth Date: (c) City: (d) State or Province: (e) Country:

4. NAMES USED. List all names other than the one given in Item 2 above that the individual has used, including maiden names.

(Last) (First) (Middle)

5. EDUCATION. Start with last high school attended. If no degree received, state "none."

School (Name, City and State	Years Attended	Year Graduated	For College and above Degree	Major

6. BUSINESS BACKGROUND. Provide complete consecutive statement of all employment for the past ten years, beginning with the most recent position first.

Name of Firm and Address	Kind of Business	Exact Nature of connection or Employment	Beginning Date Mo.	Beginning Date Yr.	Ending Date Mo.	Ending Date Yr.

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant ______________________________ File Number 801-__________ Date __________

SCHEDULE F of Form ADV Page 3

(Answers for Form ADV Part I Item 11 and Part II Item 6

7. EXAMINATIONS/PROFESSIONAL DESIGNATIONS. List all jurisdiction, self-regulatory organization, and professional examinations and designations. Give examination or designation name (include any examination's title and number), body giving it, and date taken or conferred. If examination was waived, give details.

8. PROCEEDINGS. For each yes to Part I Item 11 give the following details of any court or regulatory action:

- the adviser and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

Applicant File Number 801- Date

SCHEDULE G of Form ADV

(Answers in Response to Item 4 of FORM ADV-S or Form ADV Part II Item 14.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: IRS Empl. Ident. No.

Instructions

Schedule G of Form ADV - Balance Sheet

1. The balance sheet must be:

   A. Prepared in accordance with generally accepted accounting principles

   B. Audited by an indpendent public accountant

   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity

2. Securities included at cost should show their market or fair value parenthetically

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et seq.)

4. Sole proprietor investment advisors:

   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities.

   B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution pages (pages 1 and 2)

[FR Doc. 85-10515 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-C

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Reopening and Extension of Public Comment Period on Proposed Amendments to the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letter dated December 23, 1983, Illinois submitted to OSM proposed requirements for the training and certification of blasters working in surface coal mining operations. OSM published a notice in the **Federal Register** on January 25, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 3093).

OSM's review of Illinois' proposed amendments identified concerns relating to the kind of courses required to provide adequate training to blasters, reexamination for blaster competency, and protection of blaster certificates from theft, loss, or unauthorized duplication. OSM notified the State about its concerns on April 25, 1984. On May 25, 1984, the State responded by agreeing to amend the rules to answer OSM's concerns. Illinois also proposed to make other minor editorial changes to its blasting rules. The amended rules were submitted to OSM on March 29, 1985.

Accordingly, OSM is reopening and extending the comment period on Illinois' December 23, 1983 proposed amendment as modified on March 29, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. May 31, 1985, will not necessarily be considered in the Director's decision. A public hearing on the modified proposed amendments has been scheduled for May 27, 1985. Any person interested in speaking at the hearing should contact Mr. James Fulton at the address or telephone number listed below by May 16, 1985. If no person has contacted Mr. Fulton by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701.

Copies of the Illinois program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street NW., Washington, D.C. 20240;

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Room 201, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program, can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

At the time of the Secretary's approval of the Illinois program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Illinois program, the Secretary specified that Illinois would be required to adopt such provisions following promulgation of the Federal standards (47 FR 23858, June 1, 1982). On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Ch. M (48 FR 9486).

II. Proposed Amendment

By letter dated December 23, 1983, Illinois submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements were set forth under Part 1850—Training, Examination and Certification of Blasters.

OSM announced receipt of the amendments and initiated a public comment period on January 25, 1984 (49 FR 3093). The comment period ended February 24, 1984.

During review of the amendments OSM identified three concerns:

(1) The proposed Illinois rules do not contain counterparts to all of the courses required for blaster training in 30 CFR 850.13(b);

(2) Illinois' proposed rules do not provide that the regulatory authority may require periodic re-examination, training or other demonstration of continued blaster competency; and

(3) Illinois' proposed rule does not require the blaster to take every reasonable precaution to protect his certificate from loss, theft or unauthorized duplication.

OSM notified Illinois about these concerns by letter dated April 25, 1984. On May 25, 1984, Illinois responded by agreeing to amend its blaster training and certification rules to answer OSM's concerns. Illinois also proposed to make minor editorial changes and correct typographical errors. The State completed its changes on February 15, 1985, and submitted the amended rules to OSM on March 29, 1985.

The full text of the proposed program amendments and of the subsequent material is available for review at the locations listed above under "**ADDRESSES.**" Accordingly, OSM is now seeking public comment on the adequacy of Illinois' December 23, 1983 amendments in light of the State's March 29, 1985 modifications.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 24, 1985.

Charles B Kenahan,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85-10510 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2827-9]

Approval and Promulgation of Implementation Plans: Ohio, Extension of Comment Period

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for the notice of proposed rulemaking, published March 13, 1985 (50 FR 10076), regarding the Cleveland Carbon Monoxide State Implementation Plan is being extended an additional 30 days to May 13, 1985. USEPA is taking this action because a 30-day extension was requested by the Ohio Environmental Protection Agency.

DATE: Comments are now due on or before May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Regulatory Specialist (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6088.

Dated: April 22, 1985.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 85-10533 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85-124; FCC 85-196]

Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission commences a rulemaking proceeding to examine the appropriate method for calculating interstate and intrastate switched access service usage by the other common carriers (OCCs) for purposes of applying access charges. The Commission also exercises its discretion to convene a Federal-State Joint Board to make recommendations concerning a permanent resolution of this issue. The Commission is taking these actions to ensure creation of a complete record on which to base permanent measures for calculating OCC switched access traffic, and to facilitate successful resolution of this issue of joint federal and state concern through involvement of a Joint Board.

DATES: The Joint Board will issue a subsequent Order establishing a pleading cycle.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Raymond Dujack at (202) 632-9342.

Proposed Rulemaking

In the matter of determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, CC Docket No. 85-124.

Adopted: April 19, 1985.

Released: April 25, 1985.

By the Commission.

I. Introduction

1. The Commission hereby initiates a rulemaking proceeding to examine the appropriate method of calculating interstate and intrastate switched access service usage by the other common carriers (OCCs) for purposes of applying access charges. Since this is a matter of mutual concern to state and federal regulators, the Commission is exercising its discretion to convene a Federal-State Joint Board pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), to prepare recommendations for a permanent resolution of this issue.

II. Background

2. On September 11, 1984, MCI Telecommunications Corporation (MCI) filed a Petition for Declaratory Relief asking the Commission to take action concerning state regulations with regard to the calculation of intrastate switched access usage by the OCCs. MCI urged the Commission to find that state authority in this area had been preempted by the FCC-mandated procedures for the determination of interstate and intrastate switched access usage set forth in sections 2.3.14 and 2.3.15 of the National Exchange Carrier Association (NECA) switched access tariff. MCI also asked the Commission to approve use of the OCCs' current method of estimating the amount of intrastate switched access traffic to be reported to the local exchange carriers. This method involves application of a factor to adjust for "false" intrastate traffic, *i.e.*, traffic that appears to be intrastate but is actually interstate in nature.[1] Finally, MCI asked that we establish a nationwide method for calculating interstate and intrastate switched access traffic—either through a notice of inquiry or by supervising negotiations between the carriers.

3. These issues arise, in part, from the inability of the local exchange carriers to measure the relative amounts of interstate and intrastate OCC switched access traffic using Feature Group A, or using Feature Group B in end offices that do not have automatic number identification capability. As a consequence, some states have required the OCCs to allow periodic auditing of their traffic and billing records by the local exchange carriers as a condition for obtaining intrastate switched access service. The OCCs objected to this approach. They supported the system for determining the jurisdictional nature of switched access traffic mandated by the Commission for use in the NECA tariff. Under that approach, the OCC simply submitted a breakdown of its total switched access traffic to the local exchange carrier.

III. Discussion

4. The Commission denied the MCI Petition in a Memorandum Opinion and Order released on April 16, 1985,[2] declining to require state use of the existing NECA tariff methodology for determining relative usage. The Commission also declined to approve the estimation procedures currently used by the OCCs, including the factors to adjust for "false" interstate traffic. Instead, the Commission concluded that, on an interim basis, interstate usage should be estimated by treating as interstate those calls which enter the OCC network in a different state than the dialed telephone station. The Commission did not require use of this "entry/exit" measurement procedure by the states, although they generally favor this approach. The Commission also

[1] This phenomenon occurs when a call originates and terminates in different states, but enters the OCC facilities and terminates within the same state. For example, a call originating in one state over a private line could terminate at a leaky PBX in another state and be routed by the PBX over the toll facilities of an OCC to another point within the same state. Such traffic would appear to be intrastate if measured in terms of where it entered the OCC network and where it terminated.

[2] MCI Telecommunications Corporation Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, Memorandum Opinion and Order, FCC 85-145 (released April 16, 1985) (hereinafter *MCI Order*).

recommended that the local exchange carriers reflect this interim measurement approach in their interstate switched access tariffs to be filed with the Commission on July 2, 1985.

5. Since issues concerning the jurisdictional classification of switched access traffic are a matter of concern to both federal and state regulators, the Commission also found that creation of a Federal-State Joint Board would be appropriate as a means of achieving a permanent resolution of the questions raised by MCI. In the Order we stated:

> Since the problem of classifying traffic as interstate or intrastate for access charge purposes will not be completely resolved by the advent of equal access, we also have decided that it would be useful to have a Joint Board consider a permanent and comprehensive solution to that problem.[3]

Accordingly, we are now establishing a discretionary Joint Board pursuant to section 410(c) of the Communications Act to consider this issue.

IV. Ordering Clauses

6. Accordingly, it is ordered that a rulemaking proceeding is instituted concerning the issues described above.

7. It is further ordered that a Joint Board is hereby convened pursuant to the provisions of section 410(c) of the Communications Act, as amended, 47 U.S.C. 410(c), to consider these issues and to submit a recommended decision concerning this matter to the Commission for its consideration and action. This Joint Board shall consist of Chairman Fowler, Commissioner Quello, and Commissioner Patrick of the FCC, and four State Commissioners to be nominated by the National Association of Regulatory Utility Commissioners (NARUC) and approved by this Commission.

8. It is further ordered that the schedule for the filing of comments, reply comments, or any other submissions concerning this matter shall be established by the Joint Board.

9. It is further ordered that, for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission staff that addresses the merits of the proceeding. (State Commissioners and staff members will be treated as FCC Commissioners and staff for purposes of the *ex parte* rules.) Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Secretary, Federal Communications Commission, for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on the Commission Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation summary described above must state on its face that the Secretary has been served, and must also state, by docket number, the proceeding to which it relates.[4] The Joint Board in CC Docket No. 80–286, *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, has modified the Commission's *ex parte* rules somewhat for purposes of the proceeding before it.[5] To avoid confusion, we are asking this Joint Board to use the same *ex parte* procedures as the CC Docket No. 80–286 Joint Board unless it finds that those procedures should be modified.

10. Pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 605(b), it is certified that sections 603 and 604 of the Act do not apply because resolution of this matter will not have a significant economic impact on a substantial number of small entities.[6] *See* 5 U.S.C. 603, 604, 605(b).

11. It is further ordered that the Secretary shall cause this Notice of Proposed Rulemaking and Order Establishing a Joint Board to be published in the **Federal Register**.

12. It is further ordered that pursuant to § 220(i), the Secretary shall serve a copy of this Notice on each State Commission.[7]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–10590 Filed 4–30–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 85–61]

Implementation of the Equal Employment Opportunity Provisions Cable Communications Policy Act of 1984; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: Action taken herein extends the time for filing comments and replies to comments in response to the Notice of Proposed Rule Making in MM Docket No. 85–61 published at 50 FR 11191, March 20, 1985. This Notice requested comment on amendment of the Commission's Rules to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984. The extension of time was requested by the National Cable Television Association, Inc.

DATES: Comments are due on or before May 20, 1985, and replies to comments are due on or before June 19, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on March 20, 1985 (50 FR 11191).

Order Extending Time for Filing Comments to Notice of Proposed Rule Making

In the matter of amendment of Part 76 of the Commission's rules to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984 (MM Docket No. 85–61).

Adopted: April 18, 1985.

Released: April 22, 1985.

By the Chief, Mass Media Bureau.

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[3] *MCI Order* at para. 33.

[4] Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings, Report and Order, Gen. Docket No. 78–167, 78 FCC 2d 1384 (1980).

[5] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Order, FCC 82–106 (released March 5, 1982).

[6] The Commission has found that local exchange carriers do not come within the Regulatory Flexibility Act's definition of a small entity. Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 96 FCC 2d 781, para. 75 (1984). Although the OCCs will also be affected by the Commission's decisions in this proceeding, our determinations will not have a significant effect on a substantial number of small entities.

[7] This action is taken pursuant to sections 1, 4(i) & (j), 201–205, 220, 403, and 410 of the Communications Act as amended, 47 U.S.C. 151, 154(i) & (j), 201–205, 220, 403 and 410.

1. On March 1, 1985, the Commission adopted a *Notice of Proposed Rule Making* in MM Docket No. 85–61 to consider amendments to the Commission's rule to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984. The *Notice* was released on March 6, 1985, with comments due by May 6, 1985, and reply comments due by June 5, 1985.

2. On April 3, 1985, the National Cable Television Association, Inc. (NCTA) submitted a motion for extension of time for filing comments and reply comments in this proceeding. NCTA requests that the dates for comments and replies be extended to May 20, 1985, and June 19, 1985, respectively. The petitioner states that additional time is needed to ascertain the views of its member cable companies in the preparation of its comments in this proceeding.

3. The Commission is interested in expeditiously completing this proceeding. However, it also recognizes the importance of the equal employment opportunity issues and wishes to provide sufficient time for parties to submit comments. Therefore, the petitioner's request for a 14 day extension of time for filing comments and reply comments is granted.

4. Accordingly, it is ordered that the time for filing comments in the above captioned proceeding is extended to and including May 20, 1985, and June 19, 1985, for reply comments.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(i), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 85–10467 Filed 4–30–85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[Ex Parte 460]

Certification of Railroad Annual Report R–1 by Independent Accountant

AGENCY: Interstate Commerce Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a reporting revision that would require Class I railroads to submit a certified statement from an independent public accountant attesting to the conformity of the primary financial statements and selected schedules in the Annual Report Form R–1 (required by 49 CFR 1241.11) with the Commission's accounting and reporting rules. This revision would provide an alternative to the almost continuous audits currently being performed by the Commission staff. This proposed revision has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: Comments must be received on or before June 17, 1985. The proposed revision would become effective with annual reports filed March 31, 1986 for the 1985 reporting year.

ADDRESSES: Respondents may direct comments to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503. An original and 10 copies of any comments should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275–7510.

SUPPLEMENTAL INFORMATION: The diversity and complexity of railroad operations has significantly affected the audit responsibilities of the Commission. Integrated operations with affiliates, subsidiary formation, conglomerate mergers, and complex data processing have all contributed to an increased compliance responsibility. To meet and better achieve this responsibility it has become necessary to develop supplemental procedures.

This certification reporting requirement is similar to a requirement employed by the Federal Energy Regulatory Commission (FERC) and its predecessor Federal Power Commission (FPC) since 1970. This requirement was found to be an effective and relatively nonburdensome means of supplementing compliance procedures.

Class I railroads engage independent public accountants for accounting, auditing, tax, and management advisory services. These carriers could meet the certification reporting requirements by having their independent public accountant expand the scope of their annual examination of financial statements.

We recognize that an expanded scope would undoubtedly result in incremental audit fees. This could be alleviated by performing the examination on a cyclical basis over several periods. We would permit the railroads, in conjunction with their independent public accountants, to propose their own cyclical basis and implement it upon review and approval of the Commission. The Commission audit programs could be used to facilitate compliance audit work by independent public accountants.

The certification would cover the primary financial statements and the selected supporting schedules listed in Appendix A. All of the data included in these statements and schedules is used by the Commission in fulfilling its responsibilities under the Interstate Commerce Act, the 4–R Act of 1976, and the Staggers Rail Act of 1980.[1]

A statement attesting to the conformity of the primary financial statements and selected supporting schedules would be required as an integral part of the annual report. The proposed format for the attestation letter is shown in Appendix B.

As previously noted, the diversity and complexity of railroad operations has resulted in an almost continuous audit at each of the Class I railroads by the Commission staff. The certification of the R–1 annual report would permit the Commission to eliminate the need for these countinuous audits. In lieu of the continuous audits, the Commission staff would inspect the independent public accountant's workpapers to review the procedures performed to verify the compilation of the data reported in the R–1. As stated earlier, this procedure has worked satisfactorily at another agency and we believe it can also be used to ensure the accuracy of the data filed in the R–1 annual report.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. This decision directly affects only Class I railroads which have annual revenues of $50 million or more.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1241

Railroads, Reporting and recordkeeping requirements.

These rules are proposed under the authority of 11145 and 5 U.S.C. 553.

Decided: April 22, 1985.

[1] The Interstate Commerce Act and related laws enacted as Subtitle IV of Title 49, United States Code, "Transportation," by Pub. L. 95–473.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix A—R-1 Schedules To Be Included in the Certification by the Independent Public Accountant

Schedule

200—Comparative Statement of Financial Position

210—Results of Operations

240—Statement of Changes in Financial Position

245—Working Capital Information

310—Investments and Advances Affiliated Companies

310A—Investments in Common Stocks of Affiliated Companies

330—Road and Equipment Property

330A—Improvements on Leased Property

335—Accumulated Depreciation—Road and Equipment Owned and Used

342—Accumulated Depreciation—Improvements to Road and Equipment Leased from Others—

352A—Investment in Railroad Property Used in Transportation Service (By Company)

352B—Investment in Railway Property Used in Transportation Service (By Property Accounts)

410—Railway Operating Expenses

450—Analysis of Taxes

510—Debtholdings

512—Transactions Between Respondent and Companies or Persons Affiliated with Respondent for Services Received or Provided

755—Railroad Operating Statistics

Appendix B—Proposed Attestation Letter

In connection with our regular examination of the financial statements of ________ for the year ____, on which we have reported separately under the date of __________, we have also reviewed schedules ______________, of the Annual Report Form R-1 for the year _____ which was filed with the Interstate Commerce Commission as set forth in Uniform System of Accounts for Railroad Companies and orders issued by the Commission. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based on this review, it is our opinion that the schedules identified in the preceding paragraph (except as noted below)[1] conform in all material respects with the accounting requirements of the Interstate Commerce Commission, as set forth in its Uniform System of Accounts for Railroad Companies, and orders issued by the Commission.

[FR Doc. 85-10520 Filed 4-30-85; 8:45 am]

BILLING CODE 7035-01-M

[1] Parenthetical phrase inserted when exceptions are to be reported.

Notices

Federal Register
Vol. 50, No. 84
Wednesday, May 1, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Selection of Sites for Nuclear Waste Repository by Department of Energy

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Under the Nuclear Waste Policy Act of 1982, the Department of Energy is responsible for selecting sites for the disposal of spent nuclear fuel and high-level radioactive waste. The Department is currently considering nine sites: Richton Dome and Cypress Creek Dome in Mississippi, Vacherie Dome in Louisiana, Swisher County, Texas, Deaf Smith County, Texas, Lavender Canyon, Utah, Davis Canyon, Utah, Yucca Mountain, Nevada, and Hanford, Washington. The Advisory Council proposes to execute either a single Programmatic Memorandum of Agreement (PMOA) or several PMOAs providing for the protection of historic properties within each site recommended for site characterization studies, which include activities that may be injurious to such properties. Consulting parties will include the Council, the pertinent State Historic Preservation Officers, the Department of Energy, and possibly other Federal agencies. Comments from the public are solicited on the historic and cultural values of the candidate sites, and on elements that should be included in any PMOA.

Comments Due: May 31, 1985.

ADDRESS: Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 803, Washington, DC 20004, Attention Dr. Thomas F. King.

Dated: April 25, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–10522 Filed 4–30–85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 26, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contrains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Forest Service

Conservation Reporting and Evaluation System Data
AD 862
On occasion
State or local governments; 16,000 responses; 16,000 hours; not applicable under 3504(h)
William L. Thompson (703) 235–1588

Revision

- Forest Service

Requesting National Forest Concessioners to have their Accountants Reconcile Fee-Base Financial Reports
FS 2700–20, 2700–21
Annually
Businesses or other for-profit; Small businesses or organizations; 300 responses; 900 hours; not applicable under 3504(h)
Richard E. Kuhn (703) 235–8466.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85–10332 Filed 4–30–85; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of Alaska Department of Natural Resources, Division of Agriculture (AK); Little Rock Grain Exchange Trust (AR); and Memphis Grain and Hay Association (TN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Alaska Department of Natural Resources, Division of Agriculture (Alaska); Little Rock Grain Exchange Trust (Little Rock); and Memphis Grain and Hay Association (Memphis), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and

determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The November 28, 1984, issue of the **Federal Register** (49 FR 46775) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Alaska's, Little Rock's, and Memphis' designations terminate on May 31, 1985, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by December 28, 1984.

Alaska, Little Rock, and Memphis, the only applicants, each applied for renewal of their respective designations.

FGIS announced the names of these applicants and requested comments on same in the February 1, 1985, issue of the **Federal Register** (50 FR 4716). Comments were to be postmarked by March 18, 1985; one favorable comment was received regarding Memphis' renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), decided that Alaska, Little Rock, and Memphis are able to provide official services in the respective geographic areas for which FGIS is renewing their designations. Each assigned geographic area is the entire one previously described in the November 28 **Federal Register** issue.

Effective June 1, 1985, and terminating May 31, 1988, Alaska, Little Rock, and Memphis are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Alaska Department of Natural Resources, Division of Agriculture, Pouch A, Wasilla, AK 99687

Little Rock Grain Exchange Trust, 600 Olive Street, Bldg. B, North Little Rock, AR 72114

Memphis Grain and Hay Association, 1390 Channel Avenue, P.O. Box 13302, Memphis, TN 38113

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: April 18, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc 85–10342 Filed 4–30–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to Kansas State Grain Inspection Department (KS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Kansas State Grain Inspection Department.

DATE: Comments to be postmarked on or before June 17, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The March 1, 1985, issue of the **Federal Register** (50 FR 8351) contained a notice from the Federal Grain Inspection Service requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended, in the area currently assigned to the official agency. Applications were to be postmarked by April 1, 1985.

Kansas, the only applicant, requested designation for the entire geographic area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 18, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc 85–10343 Filed 4–30–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Area Currently Assigned to Los Angeles Grain Inspection Service, Inc. (CA) and Peoria Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Los Angeles Grain Inspection Service, Inc., and Peoria Grain Inspection Service, Inc.

DATE: Applications to be postmarked on or before May 31, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, D.C.

20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not be a rule or regulation as defined in Executive Order 12291 and Departmental Regulations 1512-1; therefore, the Executive Order and Departmental Regulations do not apply to this action.

Section 7(f)(1) of the Act specified that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Los Angeles Grain Inspection Service, Inc. (Los Angeles), 1625 Bluff Road, Montebello, CA 90640, and Peoria Grain Inspection Service, Inc. (Peoria), 330 SW., Washington Street, 2nd Floor, Peoria, IL 61602, were each designated under the Act as an official agency to perform inspection functions on November 1, 1982.

Each agency's designation terminates on October 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Los Angeles, in the State of California, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernandino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Peoria, in the State of Illinois, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Stark County line to Marshall County; the northern Marshall County line to Putnam County; the western Putnam County line north to State Route 29; State Route 29 north to Interstate 180; Interstate 180 east to State Route 26;

Bounded on the East by State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 southeast to State Route 121; State Route 121 south to State Route 10;

Bounded on the South by State Route 10 west to Mason County; the eastern and southern Mason County lines west to the Illinois River; the Illinois River northeast to Fulton County; the southern Fulton County line; and

Bounded on the West by the western and northern Fulton County lines to Peoria County; the western Peoria and Stark County lines.

Interested parties, including Los Angeles and Peoria, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning November 1, 1985, and ending October 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et. seq.*)

Dated: April 18, 1985.

J.T. Abshier,

Director Compliance Division.

[FR Doc. 85-10344 Filed 4-30-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in Eastern Indiana

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the eastern portion of the State of Indiana.

DATE: Comments to be postmarked on or before June 17, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The March 1, 1985, issue of the **Federal Register** (50 FR 8352) contained a notice from the Federal Grain Inspection Service requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended, in the eastern portion of the State of Indiana. Applications were to be postmarked by April 1, 1985.

East Indiana Grain Inspection, Inc., Muncie, Indiana, the only applicant, requested designation for the entire geographic area available for assignment. East Indiana Grain Inspection, Inc., has been providing official inspection service in the area on an interim basis since March 1, 1985.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 18, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-10345 Filed 4-30-85; 8:45 am]

BILLING CODE 3410-EN-M

Designation Amendment of Chattanooga Grain Inspection Company, Inc. (TN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the amendment of the designation of Chattanooga Grain Inspection Company, Inc. (Chattanooga), to add weighing services to that agency's current designation.

EFFECTIVE DATE: April 15, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Chattanooga is presently designated under the Act as an agency to perform inspection services. The agency has requested that its designation be amended to include weighing services.

Pursuant to Section 7A(c)(2) of the Act, the Federal Grain Inspection Service has evaluated Chattanooga, and determined that Chattanooga is able to provide Class X or Class Y weighing services. Effective April 15, 1985, and terminating April 30, 1987, Chattanooga is responsible for providing official inspection services and Class X or Class Y weighing services in its specified geographic area. The assigned geographic area for weighing services is the same as that currently assigned for inspection services, which was described in the April 2, 1984, issue of the **Federal Register** (49 FR 13060).

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address: Chattanooga Grain Inspection Company, Inc., Judd Road, P.O. Box 5113, Chattanooga, TN 37406.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: April 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-10346 Filed 4-30-85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice that the Census Advisory Committee on Agriculture Statistics will convene on May 23, 1985, at 9 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

This Committee advises the Director, Bureau of the Census, concerning the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee, and a representative from the U.S. Department of Agriculture.

The agenda for the meeting, which is scheduled to adjourn at 4 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) current Census Bureau activities and legislative situation; (3) update on Census Bureau's agriculture programs; (4) effect of farms with less than $2,500 of total value of products sold; (5) comparability of current and historical censuses of agriculture data; (6) content issues—1987 Census of Agriculture; (7) audiovisual for 1982 Census of Agriculture; and (8) Committee recommendations.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 3009, Federal Building 4, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-7731.

Dated: April 26, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc 85-10570 Filed 4-30-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 295]

Resolution and Order Approving the Application of the Georgia Foreign-Trade Zone, Inc., for a Special-Purpose Subzone in Hapeville, GA, Within the Atlanta Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, filed with the Foreign-Trade Zones Board (the Board) on June 18, 1984, requesting special-purpose subzone status for the vehicle manufacturing plant of Ford Motor Company in Hapeville, Georgia, within the Atlanta Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Hapeville, GA, Within the Atlanta Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 26, has made application (filed June 18, 1984, Docket No. 32–84, 49 FR 26771) in due and proper form to the Board for authority to establish a special-purpose subzone at the auto manufacturing plant of Ford Motor Company in Hapeville, Georgia, within the Atlanta Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed June 18, 1984, the Board hereby authorizes the establishment of a subzone at the Ford plant in Hapeville, Georgia, designated on the records of the Board as Foreign-Trade Subzone No. 26C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 22nd day of April 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–10548 Filed 4–30–85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 294]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Wisconsin, Ltd., for Special-Purpose Subzones in Janesville and Oak Creek, WI. Adjacent to the Milwaukee Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, filed with the Foreign-Trade Zones Board (the Board) on April 27, 1984, requesting special-purpose subzone status for the General Motors Corporation (GM) auto manufacturing plant in Janesville, Wisconsin (Doc. 17–84), and for GM's electronic products manufacturing plant in Oak Creek, Wisconsin (Doc. 18–84), adjacent to the Milwaukee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones in Janesville and Oak Creek, WI, Adjacent to the Milwaukee Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone No. 41, has made application (filed April 27, 1984, Docket Nos. 17 and 18–84, 49 FR 18882) in due and proper form to the Board for authority to establish special-purpose subzones at the auto/electronic components manufacturing plants of General Motors Corporation in Janesville and Oak Creek, Wisconsin, adjacent to the Milwaukee Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed April 27, 1984, the Board hereby authorizes the establishment of subzones at the General Motors plants in Janesville and Oak Creek, Wisconsin, designated on the records of the Board as Foreign-Trade Subzone Nos. 41C and 41D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army

Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 22nd day of April 1985, pursuant to Order

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-10551 Filed 4-30-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Draft Federal Consistency Study; Availability

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of Draft Federal Consistency Study.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces the availability for public review of its Draft Federal Consistency Study. NOAA invites all interested parties to provide comments on the Study.

The Study (1) presents and examines statistical information and case studies on how the Federal consistency process has affected several key types of activities; (2) describes the laws, regulations and policies which guide the Federal consistency process from the early stages of interpreting the language of the CZMA and identifying Federal actions subject to Federal consistency review, through informal negotiations to reach agreements and, finally, the formal mechanisms available to resolve disputes; (3) reports on the comments and concerns about the Federal consistency process which have been expressed to NOAA by interested parties; and (4) provides a number of case examples which illustrate both the problems and the successes encountered in the Federal consistency process. NOAA will use the results to determine whether improvements are needed to increase the efficiency or effectiveness of coastal zone management.

DATE: Comments should be submitted by June 30, 1985.

ADDRESS: Written comments should be directed to: Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235, (202) 634-4251.

SUPPLEMENTARY INFORMATION: The Coastal Zone Management Act (CZMA) requires that Federal agency activities impacting the coastal zone be conducted in a manner consistent with the federally approved coastal zone management programs. Section 307 of the CZMA establishes standards and procedures for consistency review of four basic types of activities: direct Federal agency activities, including development projects (sections 307(c) (1) and (2)); federally licensed and permitted activities (section 307(c)(3)(A)); Outer Continental Shelf (OCS) exploration, development and production plans (section 307(c)(3)(B)); and Federal assistance to state and local governments (section 307(d)).

On September 10, 1984, NOAA published in the **Federal Register** a Notice of Intent to conduct the Federal Consistency Study (49 FR 35541-42). NOAA received information from affected Federal agencies, states with approved management programs, public interest groups and industry representatives.

The Draft Federal Consistency Study is lengthy (800 pages) and divided into three volumes. Volume 1 includes Section I, Introduction, and Section II, Experiences with Federal Consistency: Statistics and Case Studies. Section II summarizes the statistical information on the use of the Federal consistency process to review Federal activities, licenses and permits, and funding assistance during Federal Fiscal Year 1983. Section II also describes how Federal consistency has been used to review four important types of activities: (1) OCS lease sales and OCS exploration, development, and production plans; (2) military activities; (3) Corps of Engineers' Section 404/10 permits; and (4) fishery management plans. Volume 2 is composed of section III, Implementing The Federal Consistency Process: Comments On How The System Works. Section III examines experiences with the operation of the Federal consistency process including: (1) Interpreting the language of the CZMA; (2) achieving improved consultation and coordination through consistency; (3) conducting a consistency review; (4) reaching agreements on the consistency of an activity; and (5) using formal mechanisms to help resolve disagreements between Federal and state agencies. Volume 3 contains seven Technical Appendices, including the Federal Consistency Statistical Data Base for FY 83 which presents in chart form the statistics received from state and Federal agencies.

A 35-page Executive Summary of the Draft Federal Consistency Study is available in addition to, or instead of, the full 3-volume Study. The Executive Summary reviews the statistical information provided by Federal agencies and coastal states for FY 83. The Executive Summary includes data on the number of concurrences and nonconcurrences which have been organized by type of Federal activity, by Federal agency and by state. The Executive Summary also identifies those cases in which state and Federal agencies have not been able to reach agreement on consistency, as well as instances where states initially disagreed and differences were resolved following further action. The Executive Summary describes the experiences with consistency reviews of various activities, including: OCS activities, military activities, Corps permitting actions, fishery management plans, activities on excluded Federal lands, and activities landward and seaward of the coastal zone. The Executive Summary also describes experiences throughout the history of the CZMA with Secretarial mediation and Secretarial appeals.

Copies of the Draft Federal Consistency Study are being sent to contributors, including state coastal zone management program offices and affected Federal agencies. Others interested in obtaining a copy should write to: NOAA/OCRM, 3300 Whitehaven Street NW., Washington, D.C. 20235, Attn: Stephen Calder, Program Support Analyst, N/ORM4.

Please indicate whether you wish to receive the complete three volume, 800 page Study (or a specific volume); and/or the separate, 35-page Executive Summary.

NOAA encourages all interested parties to review the Study and will consider all comments and additional information. Please submit any comments by June 30, 1985 to OCRM, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235, Attn: Nan Evans, Senior Policy Analyst, N/ORM4.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: April 26, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–10589 Filed 4–30–85; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Innomed

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Innomed, having an office in Rye Brook, New York, an exclusive right to practice the invention embodied in U.S. Patent No. 4,393,048, "Protective Gel Composition for Wounds." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85–10564 Filed 4–30–85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia on Category 613pt.; Correction

April 26, 1985.

On March 15, 1985, a notice was published in the **Federal Register** (50 FR 10527) requesting public comment on bilateral textile consultations with the Republic of Indonesia concerning trade in Category 613pt. (polyester lightweight fabrics).

In line 6 of paragraph 2 of the notice, the prorated specific limit, stated as 4,981,555 square yards, should be 4,947,216 square yards, and in line 6 of paragraph 3, the level of restraint during the ninety-day consultation period, stated as 3,535,520 square yards, should be 3,488,728, square yards. This latter change should also be included in the last line of paragraph 1 of the CITA letter to the Commissioner of Customs which followed that notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–10552 Filed 4–30–85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru

April 29, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 1, 1985. For further information contact William Boyd, International Trade Specialist (202) 377–4212.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985 between the Governments of the United States and Peru establishes limits for Categories 300, 301, 313, 315, 317, 319, 320, 410 and Categories 400 through 469 (wool group) and 330–359 (cotton apparel group), produced or manufacturing in Peru and exported during the period beginning on May 1, 1985 and extending through April 30, 1986. The directive to the Commissioner of Customs which follows this notice establishes the new limits.

A description of the textile categories in terms of T.S.Y.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 29, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Peru and exported during the twelve-month period beginning on May 1, 1985 and extending through April 30, 1986, in excess of the following restraint limits:

Category	12-mo restraint limit
330-359	10,000,000 square yards equivalent
400–469	4,000,000 square yards equivalent
300	3,000,000 pounds
301	2,250,000 pounds.
313	15,000,000 square yards
315	3,852,000 square yards
317	16,050,000 square yards of which not more than 4,815,000 square yards shall be in Category 317 pt.[1]
319	21,400,000 square yards
320	15,515,000 square yards of which not more than 4,280,000 square yards shall be in Category 320 pt.[2]
410	1,500,000 square yards

[1] In Category 317, only TSUSA items 320.—through 331—with statistical suffixes 50, 87, and 93

[2] In Category 320, only TSUSA numbers 320—thru 328—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98

In carrying out this directive entries of textile products in the foregoing categories, except Categories 400–469 as a group and 330–359 as a group, produced or manufactured in Peru, which have been exported in the United States on and after May 1, 1984 and extending through April 30, 1985 shall, to the extent of any unfilled balances, be charged to the levels established for that twelve-month period. To the extent the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 400–469 and 330–359, exported prior to May 1, 1985, shall not be subject to this directive.

The restraint limit set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of January 3, 1985 between the Governments of the United States and Peru which provide, in

part, that: (a) Specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-10624 Filed 4-30-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1985 Summary Study Panel on Armor Anti-Armor Competition; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee.

SUMMARY: The Defense Science Board 1985 Summer Study Panel on Armor Anti-Armor Competition will meet in closed session on May 20–21, and June 18–19, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Panel will evaluate the current state of the armor anti-armor competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 26, 1985.

[FR Doc. 85-10568 Filed 4-30-85; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 4, 1985, Tuesday, June 11, 1985; Tuesday, June 18, 1985 and Tuesday, June 25, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meetings, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b)c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer Department of Defense.

April 26, 1985.

[FR Doc. 85-10569 Filed 4-30-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

To Prepare a Joint Environmental Impact Statement for the Puget Sound Dredged Disposal Analysis Study

Lead Agencies:

Federal: U.S. Army Corps of Engineers, Seattle District, DOD.

State: Washington Department of Natural Resources

Cooperating Agencies:

Federal: Environmental Protection Agency, Region 10.

State: Washington Department of Ecology

ACTION: Notice of Intent to prepare a joint National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) environmental impact statement (EIS) for the Puget Sound Dredged Disposal Analysis study (PSDDA).

SUMMARY: The Puget Sound Dredged Disposal Analysis (PSDDA) is a three-year study of open-water, unconfined disposal of dredged material in Puget Sound. Developed in response to public and agency concerns about water quality and the long-term health of the Sound, the goal of the study is to provide the basis for publicly acceptable and environmentally safe plans governing unconfined dredged material disposal. The study will be undertaken as a cooperative planning effort between the Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Washington Department of Natural Resources (WDNR) and the Washington Department of Ecology (WDE), the Federal and State agencies having regulatory responsibilities for dredged material disposal.

PSDDA is part of a program known as the Puget Sound Initiative. The initiative, a $12 million effort administered by EPA and WDE, focuses on the identification of water quality problems and the promotion of clean-up

actions. The specific objectives of PSDDA are:

1. Locate acceptable sites for open-water, unconfined disposal of dredged material in Puget Sound;

2. Identify chemical and biological evaluation procedures for assessing the acceptability of dredged material for open water disposal and for alternatives to unconfined disposal; and

3. Develop site management plans covering operational requirements and site management methods and responsibilities.

PSDDA is a Sound-wide study that will be accomplished in two overlapping phases. The first phase will include the central portion of the Sound and will take about two years to complete. The second phase, covering the balance of the Sound, will begin about one year after the start of Phase I and will also take about two years to complete. Through the phasing approach, the total study will be completed in approximately three years.

In order to assess the potential impacts of various alternatives and to obtain public input to these assessments, the Corps and WDNR have determined that the preparation of an environmental impact statement is necessary. A separate NEPA/SEPA EIS document is planned for each phase of the study. Joint Federal/State EIS's will be prepared to reduce duplication between Federal and State needs and requirements.

The results of the PSDDA study and EIS's will assist Federal and State agencies in their regulatory programs for dredged material disposal and will provide the basis for subsequent implementation actions for designation and use of Puget Sound disposal sites. During conduct of the study, dredging projects and processing of permit applications will continue using best available information.

Alternatives: There are many types of alternatives to be evaluated for PSDDA, including alternative site selection criteria, site locations, evaluation procedures for dredged material, monitoring requirements, and site use plans. The analysis of alternative methods of dredged material disposal (i.e., upland, nearshore confined, in water capped, and ocean disposal) will involve development of generic evaluation procedures for confined disposal. The No Action alternative will be the continuance of current regulatory practices where dredged material disposal is evaluated primarily on a project-by-project basis. The range of alternatives to be addressed for each study objective will be determined during scoping.

Significant Issues: Significant issues to be addressed in the EIS include: Water quality management goals for Puget Sound, handling and disposal of contaminated sediments, assessment of risks to human and environmental health, alternatives to open-water, unconfined disposal of dredged material, alternative approaches to disposal site location criteria, alternative approaches to testing and test evaluation procedures for dredged material, and monitoring and management of disposal sites.

Scoping and Public Involvement: Public involvement will be sought during the scoping and conduct of the study in accordance with NEPA/SEPA procedures. A public scoping process is being undertaken to clarify issues of major concern, identify studies that might be needed in order to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. Public meetings have been scheduled to provide the public an opportunity to identify the scope and significance of the issues to be addressed during the study and EIS process. Further meetings will be scheduled as needed. A public notice further describing PSDDA and listing the locations and times of public scoping meetings (to be held in late May) is being mailed to all persons known to have an interest in this action. Copies of this notice are available from the address shown below. Comments on scoping will be accepted until 31 May 1985.

Availability of Draft EIS: The draft EIS for Phase I of PSDDA is scheduled to be available by the end of 1986. The draft EIS for Phase II should be available by the end of 1987.

FOR FURTHER INFORMATION CONTACT: Questions and/or comments on this action or the draft EIS may be directed to: Frank Urabeck, Study Director, Corps of Engineers, Seattle District, Post Office Box C-3755, Seattle WA 98124-2255, Telephone: (206) 764-3708.

SEPA responsible official: John DeMeyer, Manager, Marine Lands Management Division, Wash. Dept. of Natural Resources, M/S OW-21, Olympia, WA 98504, (Telephone: (206) 753-5324).

Dated: April 22, 1985.

Roger F. Yankoupe,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 10565 Filed 4-30-85; 8:45 am]

BILLING CODE 3710-FR-M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council, U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in May 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natual gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and finding will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its sixth meeting on Friday, May 17, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, 1300 Lamar Street, Houston, Texas.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on Friday, April 19, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-10614 Filed 4-30-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-007 OFP Case No. 61053-9271-20, 21-24]

Exemption and Certification; American Cogen Technology, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by American Cogen Technology, Inc.

SUMMARY: On March 26, 1985, American Cogen Technology, Inc. (Cogen), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the Spreckels Agri-Business Center, Spreckels, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 54.19 MW (net) combined cycle cogeneration facility consisting of two gas turbine generators, two waste heat recovery steam generators, a steam extraction turbine generator and ancillary equipment. The plant will burn natural gas or No. 2 fuel oil. It is expected that virtually all of the net annual electric power produced by the cogenerator will be sold to Pacific Gas & Electric Company (PG&E), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce approximately 45,900 lbs of steam per hour which will supply Spreckels Agri-Business Center's needs. Cogen will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATE: Written comments are due on or before June 17, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW. Washington, D.C. 20585.

Docket No. ERA-FC-85-007 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Phone (202) 252-1774

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Cogen proposes to install a cogeneration system at the Spreckels Agri-Business Center, Spreckels, California, which will (1) generate electrical power for sale to PG&E, and (2) produce steam to meet the Agri-Business Center's heating and cooling requirements. The proposed cogeneration system will be operated by Cogen. The system will consist of two gas turbine generators which will produce electric power, two waste heat recovery systems, an extraction steam turbine and ancillary equipment which will produce steam and additional electric power for sale to PG&E.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Cogen has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible. In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Cogen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that

Cogen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on April 24, 1985.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-10617 Filed 4-30-85; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

National Petroleum Council Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in May 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its sixth meeting on Thursday, May 16, 1985, starting at 9:00 a.m. in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Suit 600, Washington, D.C.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the status of Refinery Survey responses.
3. Discuss proposals for aggregations of survey data.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, fossil Energy, 301-353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on Friday, April 19, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-10613 Filed 4-30-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP84-94-002 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP84-94-002]

April 23, 1985.

Take notice that on March 13, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-94-002 a petition pursuant to section 7(c) of the Natural Gas Act, to amend the Commission's order issued July 25, 1984, in Docket No. CP84-94-000 by deleting ordering paragraph (C), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that on July 25, 1984, the Commission issued a certificate of public convenience and necessity authorizing ANR to construct and operate an interconnection between its transmission system and the pipeline system of Consumers Power Company (Consumers) in Allegan County, Michigan. It is explained that ANR constructed about 3,800 feet of 16-inch diameter interconnecting pipeline and related facilities that cost an estimated $1,000,000. Ordering paragraph (C) of the certificate provided:

"(C) The facilities authorized by paragraph (A) above shall be used solely to alleviate emergency conditions on the ANR and Consumers systems, as defined in § 157.45, *et seq.* of the Commission's Regulations. Before ANR or Consumers can use the proposed interconnection facilities for purposes other than emergency service, they shall be required to seek the necessary certificate authorization from the Commission.

Consumers has requested that ANR seek modification of the certificate and accordingly ANR has filed the instant petition to request the deletion of ordering paragraph (C) to enable ANR and Consumer to utilize the facilities for all lawful purposes.

ANR states that the public convenience and necessity would be served by broading the authorized utilization of the ANR/Consumers interconnecting facilities. ANR states that the removal of the limitation on the use of the interconnecting facilities may allow Consumers to participate more fully in Commission authorized transportation services under Orders 234B and 319 and section 311 of the Natural Gas Policy Act of 1978. It is stated that Consumers has advised ANR that these potential activities and resultant economic opportunities are encouraging to Consumers when weighted against a significant period of market evasion due to conservation, severe economic recession and loss of markets to competing fuels.

Comment date: May 14, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Equitable Gas Company, a Division of Equitable Resources, Inc.

[Docket No. CP85-405-000]

April 25, 1985.

Take notice that on March 29, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-405-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain of its facilities which had been utilized exclusively for Applicant's retail distribution operation for the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is realigning its corporate structure along functioinal lines and it has determined that the subject facilities, as presently utilized, perform more a transmission than a distribution function. Applicant has concluded that the initial classification of these facilities was based on departmental operating responsibility which did not coincide with the facilities' operating function. The facilities that Applicant is requesting to convert from distribution to jurisdictional transmission lines are as follows:

Line No	Diame- [redacted] (inches)	Length (miles)	Location
D-317	16	39.1	Alleghany County, PA.
D-357			Washington County, PA.
D-358			
D-359			
D-400	16	17.5	Westmoreland County, PA Allegheny County, PA.

Applicant asserts that the facilities are high-pressure, large volume main line facilities which are maintained in accordance with Federal pipeline safety standards. It is stated that based upon the test year ended September 30, 1983, the approximate effect of the proposed reclassification of facilities would be to decrease Applicant's Pennsylvania jurisdictional rate base and to increase Applicant's Commission jurisdictional rate base, by the amount of $221,000.

Comment date: May 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-429-000]

April 25, 1985.

Take notice that on April 11, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-429-000 a request pursuant to Section 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to construct and operate a new delivery point to the U.S. Department of the Army under the certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that the U.S. Department of the Army, Fort Leavenworth Military Reservation, Leavenworth County, Kansas, has requested this additional delivery point in order to serve a new mess hall for the U.S. disciplinary barracks now under construction. The projected volume of delivery through this delivery point is approximately 13.7 Mcf of natural gas per day. The estimated cost of these facilities is $1,470, which would be paid from available funds and reimbursed by the U.S. Department of Army.

Northwest Central states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: June 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-424-000]

April 25, 1985.

Take notice that on April 10, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3188, Tulsa, Oklahoma 74101, filed in Docket No. CP85-424-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim certain measuring, regulating and appurtenant facilities in Rice County, Kansas, and to abandon the transportation and sale of gas through said facilities pursuant to Northwest Central's abandonment authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that the facilities were installed under budget-type authority in 1967 to make a direct sale to Tobias & Birchenough, Inc., that customer has advised that gas is no longer needed, and that it now desires to reclaim these facilities. The estimated cost to reclaim these facilities is $1,570, with an estimated salvage value of $70.

Comment date: June 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85-418-000]

April 25, 1985.

Take notice that on April 8, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-418-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the direct sale of natural gas and the transportation of gas to Mapco Production Company (Mapco) and to abandon, by reclaim, certain measuring, regulating, and appurtenant facilities located in Vernon County, Missouri, under the abandonment authorization issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that said facilities were installed in 1981 under authorization issued in Docket No. CP81-203, to make a direct sale of natural gas to Mapco for an oil recovery project. Northwest Central further states that it has been requested by Mapco to terminat their gas sales contract; Northwest Central is, therefore, proposing to abandon its gas sale and transportation service to Mapco and to reclaim the facilities installed to execute the transportation.

Northwest Central avers the facilities it proposes to reclaim are located above ground, on its transmission pipeline in Vernon County, Missouri. Northwest estimates it would cost $2,100 to reclaim said facilities and that the facilities have a $0 salvage value.

Comment date: June 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Alaskan Pipeline Company

[Docket No. CP85-413-000]

April 23, 1985.

Take notice that on April 4, 1985, Northwest Alaskan Pipeline Company (Northwest Alaskan), 295 Chipeta Way, Salt Lake City, Utah 84108-8900, filed in Docket No. CP85-413-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authority, with pregranted abandonment authorization, to transport natural gas in interstate commerce on behalf of any other interstate pipeline, all as more fully set forth in the application which is on file and open to public inspection.

Northwest Alaskan requests blanket authorization to transport gas for other interstate pipeline companies and states that it would comply with § 284.221(d) of the Commission's Regulations.

Northwest Alaskan states that it has no facilities and that none are proposed. Northwest Alaskan also states that no new or additional gas reserves will be added to its available gas supply by this proposal. Northwest Alaskan further states that it presently has no transportation or exchange agreement in place and the impact on revenues, expenses and income is not known at this time.

Comment date: May 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP84-149-001]

April 23, 1985.

Take notice that on April 11, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-149-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for

authorization to use an additional receipt point and for flexible authorization to add sources of gas and Northern receipt/delivery points under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it was authorized in Docket No. CP84–149–000 to transport natural gas on behalf of Gulf States Utilities Company (GSU) under the prior notice procedure. Pursuant to the terms of an October 10, 1983, transportation agreement between GSU and Northern, GSU has agreed to deliver or caused to be delivered volumes of gas to Northern at the existing facilities of Northern and ANR Pipeline Company (ANR) in Kiowa County, Kansas, for subsequent transportation to a point on Northern's system in Pecos County, Texas, it is stated. Northern then causes equivalent volumes of gas to be delivered, for the account of GSU, at the existing facilities of ANR located near Centreville, St. Mary Parish, Louisiana, it is further stated.

It is explained that Northern and GSU have amended the transportation agreement to add an additional point of receipt located on Northern's system in Beaver County, Oklahoma (Elmwood). Northern states that the gas transported from Elmwood is gas that GSU purchases from Funk Exploration Inc. pursuant to an August 12, 1983, gas sales contract. Northern states it would charge GSU 10.90 cents per Mcf of gas for the volumes received at Elmwood and back-hauled and delivered to Oasis (426 miles). It is further stated that Northern's rate for this transportation service is derived from Rate Schedule EUT–1 of Northern's FERC Tariff (4.65 cents per 100 miles of forward-haul plus one cent per Mcf for general and administrative expenses).

Northern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Northern will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: June 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation

[Docket No. CP85–420–000]

April 23, 1985.

Take notice that on April 8, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston West Virginia 25314, filed in Docket No. CP85–420–000 a request pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) for authorization to establish additional delivery points to an existing wholesale customer under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate certain facilities necessary to provide two additional points of delivery to an existing wholesale customer, Columbia Gas of Ohio, Inc. (COH). It is explained that Columbia Gas of Ohio, has received authorization from its state regulatory agency to attach or provide service to new customers and that the additional gas to be provided through the proposed new points of delivery are within Columbia's currently authorized level of sales and that such gas would not affect the peak day and annual deliveries to which COH is entitled. It is also indicated that the point of delivery proposed herein would be utilized by COH to provide industrial service to Lancaster Sand and Gravel Company for aggregate driving in Fairfield County, Ohio. Columbia proposes to install a two-inch tap and measurement facilities at an estimated cost of $9,500. It is further stated that the other point of delivery to COH would supply a small distribution system to be established by COH in a rural area of Columbiana Township, Lorain County, Ohio. Columbia estimates the tap facility would cost $300.00.

Comment date: June 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP85–421–000]

April 23, 1985.

Take notice that on April 9, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85–421–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Colorado interstate Gas Company (CIG), all as more fully set forth in the application which is on file and open to public inspection.

It is stated that by order dated December 14, 1978, the Commission issued certificates of public convenience and necessity to Northwest in Docket No. CP78–203 and to CIG in Docket No. CP78–274 authorizing the transportation and sale of natural gas pursuant to the terms of a gas gathering and transportation agreement dated December 30, 1977 (agreement).

"Northwest states that under the terms of the agreement, Northwest received natural gas for CIG's account at certain wells located in the Monument Butte area of Sweetwater County, Wyoming. Northwest also states that the agreement also provided that Northwest would purchase 25 percent of such gas and gather, process and transport the remaining 75 percent for redelivery of thermally equivalent volumes, less fuel and shrinkage, to CIG at the existing interconnection between Northwest and CIG's lines near Green River in Sweetwater County, Wyoming.

It is stated that CIG gave written notice of its intent to terminate the agreement, effective December 31, 1984. CIG indicated that it no longer had a supply of gas available for transportation from the Monument Butte area because it has secured producer-seller releases under all of its gas purchase agreements covering its interest in the wells and acreage subject to the agreement.

It is stated that Northwest and CIG then entered into a letter agreement dated December 14, 1984, which terminated the transportation service effective as of January 1, 1985. Consequently, Northwest requests permission and approval to abandon the transportation service provided for CIG.

Comment date: May 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP85–279–000]

April 23, 1985.

Take notice that on February 11, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–279–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain services rendered in connection with a gas gathering and transportation agreement (agreement) with Northwest Pipeline Corporation (NPC), all as more fully set forth in the application which is on file

with the Commission and open to public inspection.

Applicant requests authority to abandon the sale and exchange of natural gas with NPC in the Monument Butte III Unit of Sweetwater County, Wyoming. Applicant states that it has secured producer-seller releases under gas purchase agreements covering all wells and committed acreage in the Monument Butte III Unit, and therefore is unable to deliver gas to NPC. No facilities are proposed to be abandoned.

Comment date: May 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

11. K N Energy, Inc.

[Docket No. CP85-411-000]

April 23, 1985.

Take notice that on April 3, 1985, K N Energy, Inc. (Applicant), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-411-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 for authorization to construct and operate sales taps for the delivery of gas to end users under its certificates issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the proposed seven end-users are located in Kansas and Nebraska and that the gas would be used primarily to fuel irrigation equipment. It is indicated that the total peak day and annual deliveries are estimated to be 142 Mcf and 4,520 Mcf, respectively. Applicant states that the proposed sales taps would have no significant impact on its total peak day and annual deliveries and that such taps are not prohibited by any of its existing tariffs. Applicant further states that the gas would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: June 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Sea Robin Pipeline Company

[Docket No. CP85-412-000]

April 23, 1985.

Take notice that on April 3, 1985, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-412-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 87 Mcf of natural gas per day for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin proposes to transport up to 87,000 Mcf of natural gas per day for Southern from the East Cameron area, offshore Louisiana, to Erath, Louisiana. It is stated that the transportation service would continue for five years from the date of first delivery after receipt of the requested authorization. It is stated that the transportation service commenced February 8, 1984, in Docket No. ST84-623-000 pursuant to Order No. 60.

It is indicated that Sea Robin would charge Southern a monthly demand charge and a commodity charge for the gas transported, pursuant to Sea Robin's FERC Gas Tariff, Original Volume No. 1, Sheet No. 4-A (currently $3.86 and 73 cents per Mcf, respectively). Sea Robin states that existing facilities would be used for the transportation service and that Sea Robin's other customers would not be adversely affected.

Comment date: May 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-417-000]

April 23, 1985.

Take notice that on April 5, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-417-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tenneco Oil Company (TOC) under its certificate issued in Docket No. CP82-413 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 700 Mcf of natural gas per day on behalf of TOC. It is stated that the gas to be transported would be purchased by TOC from Moore McCormack Energy, Inc. (Moore McCormack) from the State Tract 110 Well No. 1, Turtle Point Field, Matagorda County, Texas.

Tennessee indicates it has agreed to receive, on an interruptible basis, the gas purchased by TOC, up to 700 Mcf per day, at the existing points of interconnection between the facilities of Tennessee and Moore McCormack in Matagorda County, Texas. Tennessee states it would transport and deliver a thermally equivalent quantity of gas, less volumes for fuel use and gas lost and unaccounted for, associated with this transportation service, for the account of TOC, at the existing point of interconnection between the facilities of Tennessee and TOC at TOC's Leabo processing plant manifold in Matagorda County, Texas. Tennessee indicates that TOC has advised Tennessee that it would deliver to Channel Industries Gas Company (Channel), at the tailgate of the Leabo plant, quantities of gas thermally equivalent to those received by TOC from Tennessee.

It is indicated that Channel, under a separate agreement with TOC, would deliver said volumes to TOC's La Porte fractionation plant for use as plant fuel. Tennessee states that it proposes to provide the requested service for a term expiring June 30, 1985, unless the Commission authorizes an extension of service pursuant to § 157.209(e) in which event it is requested that this service be permitted to continue for any term coincident with any such extension.

Tennessee also requests flexibile authority to add and/or delete sources of gas, and add/or delete receipt and/or delivery points. Following the addition or deletion of any gas supplies or receipt or delivery points, Tennessee will file with the Commission certain information within thirty (30) days following the implementation of such changes.

Tennessee states that it would charge rates set forth in its Rates Schedule ITEU. Further, Tennessee states that it would retain 1.2 percent of the total quantity of gas received into its system for system use and gas lost and unaccounted for. In addition, Tennessee indicates that it may, at its sole option, elect to provide such volumes for fuel use and gas lost and unaccounted for to TOC at Tennessee's weighted average cost of gas. In addition, Tennessee states that it would collect the Gas Research Institute surcharge for all quantities transported under the transportation arrangement.

Tennessee estimates that the annual volume, peak day volume and average day volume would be 500 Mcf, 700 Mcf and 182,500 Mcf, respectively. It is indicated that the plant fuel requirements to be served by the gas to be transported represent only a small portion of the gas requirements at the plant.

Tennessee has submitted a letter from Channel indicating that it has sufficient capacity to transport the gas without detriment to its other customers. Tennessee also indicates that the only

facilities required to implement the transportation service are auxiliary facilities installed pursuant to Section 2.55 of the Commission's General Policy and Interpretations.

Comment date: June 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10499 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-303-000]

Coastal Oil & Gas Corp; Application

April 25, 1985.

Take Notice that on March 28, 1985, Coastal Oil & Gas Corporation ("Applicant") filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificates of Public Convenience and Necessity to authorize a special marketing program called Coastal Special Marketing Program ("CoGas"). Applicant proposes to conduct this program in a manner similar to the special marketing programs authorized by the Commission on September 26, 1984 in Docket Nos. CI85-269, *et al.* Under CoGas, Applicants would market gas released by the original pipeline-purchaser. By this Application Coastal seeks authorization of the limited-term abandonment of the sale of the released gas to the original pipeline-purchaser and authorization of the sale of that gas to new purchasers, pursuant to Section 7 of the Natural Gas Act. In addition, Coastal's Application seeks authorization to the extent necessary for interstate pipeline companies, local distribution companies, and Hinshaw pipeline companies to transport gas sold under CoGas pursuant to Section 7(c) of the Natural Gas Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and motions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before May 9, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commision's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided, unless Applicant is otherwise advised, it will not be necessary for Applicant to appear or to be represented at a hearing in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10501 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-398-000]

Goodrich Oil Co.; Application for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization

April 25, 1985.

Take notice that on April 17, 1985, Goodrich Oil Company (Goodrich), 800 First Federal Plaza, Shreveport, Louisiana 71101 filed an application pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing Goodrich to conduct a short-term spot sales marketing program, hereinafter referred to as Goodrich Oil SMP, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Goodrich Oil SMP; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Goodrich also requests the Commission to declare that, with respect to Goodrich and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation not otherwise exempt from the NGA.

Under Goodrich Oil SMP, Goodrich proposes to sell natural gas qualifying for the Section 102 and 103 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432. Only contractually committed gas will be sold. Goodrich and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for

transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 9, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10502 Filed 4-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3779-001]

Great Northern Nekoosa Corp.; Intent To Prepare Environmental Impact Statement, and Notice of Scoping Session, and Public Hearings

April 25, 1985.

The Great Northern Nekoosa Corporation filed on March 29, 1984 an application for license for the Big Ambejackmockamus Falls (Big "A") Hydroelectric Project, FERC Project No. 3779-001. The project would be located on the West Branch of the Penobscot River in Piscataquis County, Maine.

Public notice of the application was issued by the Commission on February 8, 1985. The application has been mailed to interested agencies for their review and comments. The Commission staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

Scoping Session

Interested persons and agencies are invited to participate in a scoping meeting to discuss the environmental impact issues associated with the proposed Big "A" Hydroelectric Project. The scoping session will be held on June 5, 1985, commencing at 1:00 p.m., and will be held at the Muskie Federal Building and Post Office, Room 315, 40 Western Avenue (corner of Sewalls Street and Western Avenue), Augusta, Maine 04333. Scoping sessions are utilized by the Commission staff to: (1) Present environmental issues, currently identified for coverage in the EIS, to the public and experts familiar with the Big "A" Project, (2) receive input from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and assist FERC staff with the determination of issues to be addressed in the EIS.

Public Hearing

Interested officials and members of the public are invited to express their views about the project in public hearings. The public hearings will be held on Monday, June 3, 1985, commencing at 7:00 p.m., at Stearns High School Auditorium, State Street, Millinocket, Maine 04462 and, on Wednesday June 5, 1985, commencing at 6:30 p.m., at Augusta Civic Center, Capitol Pine Tree Room, Community Drive, Augusta, Maine 04333. The public hearings will be conducted by the Commission's staff.

At the public hearings persons may give their statements orally or in writing. The hearings will be recorded by a stenographer, and all statements (oral and written) will become part of the public hearing records. In addition the public hearing records will remain open until August 1, 1985, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington D.C. 20426, and should clearly show the project name and number (Project No. 3779-001) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10503 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-14-000]

Northern Natural Gas Co.; Division of InterNorth, Inc.; Tariff Filing

April 24, 1985.

Take notice that on April 18, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, tendered for filing in Docket No. TC85-14-000, pursuant to Part 154 of the Commission's Regulations, Seventh Revised Sheet No. 59a to Northern's FERC Gas Tariff, Third Revised Volume No. 1. Northern proposes that this tariff sheet become effective May 16, 1985.

Northern states that the purpose of its filing is to classify cogeneration requirements in its curtailment priorities, as a Priority 2 usage. Northern avers that this identification is necessary since some cogeneration applications require the use of natural gas as part of essential process applications and do not possess alternate fuel capability. Northern additionally states that such curtailment classification would be consistent with the Congressional mandate to encourage cogeneration. Northern states that its Data Verification Committee would be advised by letter of the proposed priority change and would meet to improve of any customer reclassification.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before May 3, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10504 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7865-001, 8610-000]

Orville Nicholson, Niagara Mohawk Power Corp.; Availability of Environmental Assessment and Finding of No Significant Impact

April 26, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemptions listed below and have assessed the environmental impacts of the proposed developments.

Project No	Project name	State	Water body	Nearest town
7865-001	Nicholson	ID	Rocky Run Creek/Uncle like Creek/Fallert Springs.	Howe
8610-000	Middle Falls	NY	Battenkill Creek	Easton and Greenwich

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc 85-10505 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-435-000, et al.]

San Diego Gas & Electric Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. San Diego Gas & Electric Company

[Docket No. ER85-435-000]

April 24, 1985.

Take notice that on April 15, 1985, San Diego Gas & Electric Company (SDG&E) tendered for filing rate schedule changes of the following agreements between SDG&E and Southern California Edison Company (Edison):

1. Short Term Firm Transmission Service Agreement (FPC 58)
2. Interruptible Transmission Service Agreement (FPC 59)
3. Firm Transmission Service Agreement (FPC 60)

SDG&E states that under the terms of the agreements, SDG&E will make available to Edison firm and interruptible transmission service between points near the U.S.-Mexico border and San Onofre as specified in the agreements.

SDG&E requests an effective date of January 1, 1985 for both the Short Term Firm and Interruptible Agreement and an effective date of May 1, 1985 for the Firm Transmission Agreement. Therefore, SDG&E is requesting waiver of the prior notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Electric Power Company

[Docket No. ER85-425-000]

April 23, 1985.

Take notice that on April 10, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing rates applicable to service to the City of Hope, Arkansas (Hope) for the period February 1, 1985 to December 31, 1985. Such rates were calculated pursuant to the Agreement for the Purchase and Sale of Electric Power between SWEPCO and the City, FERC Rate Schedule No. 86.

SWEPCO requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served on Hope and on the Arkansas Public Service Commission.

Comment date: May 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. The Kansas Power and Light Company

[Docket No. ER85-430-000]

April 23, 1985.

Take notice that on April 12, 1985, the Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated March 12, 1985, with the City of Axtell, Kansas for wholesale service to that community. KPL states that this contract permits the City of Axtell to receive service under rate schedule WSM-12/83 designated Supplement No. 9 to R.S. FERC No. 180. The proposed effective date is July 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Axtell and the State Corporation Commission of Kansas.

Comment date: May 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Electric Power Company

[Docket No. ER85-424-000]

April 23, 1985.

Take notice that Southwestern Electric Power Company (SWEPCO) on April 10, 1985, tendered for filing rates applicable to service to Northwest Texas Electric Cooperative, Inc. (NETC) for the period February 1, 1985 to December 31, 1985. Such rates were calculated pursuant to the Power Supply Agreement between SWEPCO and NTEC, FERC Rate Schedule No. 84.

SWEPCO asks that the rates be made effective as of February 1, 1985, and accordingly requests wavier of the notice requirements.

Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment date: May 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power & Light Co.

[Docket No. ER85-440-000]

April 24, 1985.

Take notice that on April 15, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) betwen DP&L and the Villiage of Jackson Center (Jackson Center), Ohio.

DP&L states that the proposed Agreement allows Jackson Center to purhcase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&F for delivery to Jackson Center.

DP&L requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Company

[Docket No. ER85-434-000]

April 24, 1985.

Take notice that on April 15, 1985, Central Illinois Public Service Company (CIPS) tendered for filing Modification No. 1 dated March 15, 1985, to the Interconnection Agreement dated September 23, 1985, between CIPS and the City of Springfield, Illinois (City).

CIPS states that Modification No. 1 modifies the 1981 Agreement by inserting First Revised Service Schedules B, C, D, E, and F to replace the existing Service Schedules B, C, D, E and F respectively.

CIPS requests an effective date of April 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing has been sent to the City of Springfield and the Illinois Commerce Commission.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER85-438-000]

April 24, 1985.

Take notice that on April 15, 1985, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 124.

Edison requests an effective date of December 31, 1984, and therefore requests waiver for the Commission's notice requirements.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85-439-000]

April 24, 1985.

Take notice that on April 15, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Nine to Agreement to Provide Specified Transmission Service Between FP&L and Lake Worth Utilities Authority (Rate Schedule FERC No. 56).

FP&L states that under Amendment Number Nine, FP&L will transmit power and energy for the City of Lake Worth as is required in the implementation of its interchange agreements with the City of Starke and Florida Power Corporation.

FP&L request waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Copies of this filing were served on the City of Lake Worth, Florida.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER85-443-000]

April 24, 1985.

Take notice that on April 18, 1985, Pennsylvania Power & Light Company (PP&L) tendered for filing as a Supplement to Rate Schedule FERC No. 68, an executed agreement dated March 27, 1985 between PP&L and UGI Corporation (UGI). The Agreement recognizes possible future UGI installations and supply arrangements and, accordingly, provides for a redefinition of PP&L's supply obligations to UGI. The March 27, 1985 agreement extends PP&L's agreement with UGI for five years until 1991 with decreasing supply obligations from that date until 1994. PP&F also tendered for filing a supplement to the Operating Principles and Practices between UGI and PP&L and on file with the Commission as UGI Corporation Rate Schedule FERC No. 3 and Pennsylvania Power & Light Company Rate Schedule FERC No. 46.

PP&L requests an effective date of June 14, 1985.

Copies of this have been served upon UGI and the Pennsylvania Public Utility Commission.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10500 Filed 4-30-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $210,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Ayers Oil Company, a reseller-retailer of motor gasoline and No. 1 and No. 2 fuel oil, and diesel fuel located in Canton, Missouri.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0563.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Ayers Oil Company which settled possible violations of DOE price controls in the firm's sales of motor gasoline, No. 1 and No. 2 fuel oil, and diesel fuel to its customers during the November 1, 1973 through January 27, 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Ayers Oil Company pursuant to the consent order. The DOE has

tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: April 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Ayers Oil Company.
Date of Filing: February 20, 1985.
Case Number: HEF-0563.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Ayers Oil Company (Ayers) was a motor gasoline and fuel oil reseller-retailer as those terms were defined in 10 CFR Part 212. The firm consisted of three companies: Ayers Oil Company of Canton, Missouri, Ayers Oil Company of Pike County, Missouri, and Ayers Oil Company of Quincy, Illinois. A DOE audit of Ayers' records revealed possible regulatory violations with respect to the firm's pricing of motor gasoline, diesel fuel, and other refined petroleum products, during the period November 1, 1973 through April 30, 1974 (the audit period). In order to settle all claims and disputes between Ayers and the DOE regarding the firm's pricing of refined products during the period November 1973 to January 1981, Ayers and DOE entered into a consent order on April 11, 1984. Under the terms of the consent order, Ayers remitted $210,000 to the DOE on May 9, 1984. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of March 31, 1985, the Ayers escrow account had earned $18,080 in interest. This Proposed Decision concerns the distribution of the $210,000 that was deposited into the escrow account, plus the accrued interest.

II. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Ayers consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of petroleum products who may have been injured by Ayers' pricing practice during the period November 1, 1973 through January 27, 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

We propose that the Ayers consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Ayers' alleged pricing violations. The information available to us at this time regarding Ayers' operations during the audit period does not provide names and addresses of all of the firm's customers. However, according to information in the audit file, Ayers marketed its products in a three-state region, including parts of Illinois, Iowa, and Missouri. Furthermore, from our experience we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Ayers or from other firms in a chain of distribution leading back to Ayers. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Ayers petroleum products for the period November 1973 through January 1981. If the products were not purchased directly from Ayers, the claimant must include a statement setting forth its reasons for believing the product originated with Ayers. In addition, a reseller or retailer that files a claim will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it must provide some further evidence of injury. *See Amoco* at 88,215. For example, a reseller can show competitive injury by demonstrating that the prices it paid for products purchased from other suppliers were lower than those it paid to Ayers. *See e.g., Tenneco Oil Co./Racetrac Petroleum, Inc.,* 10 DOE ¶ 85,023 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Ayers during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Ayers consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Ayers and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailer proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[1] *See Texas Oil & Gas Corp., supra; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users of ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Ayers petroleum products need only document their purchase volumes from Ayers to make a sufficient showing that they were injured by the alleged overcharges.

We believe that if a reseller or retailer made only spot purchases from Ayers, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that is was unable to recover the increased prices it paid for Ayers petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.000575 per gallon,[2] exclusive of interest. As of March 31, 1985, accumulated interest increased the volumetric refund amount to $.000624.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize

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[1] Resellers whose total purchases during the period for which a refund is claimed who cannot establish that they did not pass through price increases, or who limit their claims to the threshold amount, will be eligible for refunds of the $5,000 threshold amount.

[2] According to information available to us, during the consent order period, Ayers sold 365,097,794 gallons of regulated petroleum products. The volumetric refund amount is obtained by dividing the amount remitted by Ayers by this volume amount ($210,000 divided by 365,097,794 gallons = $.000575 per gallon).

widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. We have asked Ayers to provide us with the names and addresses of its larger customers. If we cannot obtain this information from Ayers, in addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers Council, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, the Society of Independent Gasoline Marketers of America, and to local newspapers in the region where Ayers apparently made most of its sales. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Ayers' alleged overcharges. *See, e.g., Northeast Petroleum Industries,* 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by the Ayers Oil Company pursuant to the consent order executed on April 11, 1984 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–10615 Filed 4–30–85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1,010,000 plus accrued interest in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Warren Holding Company.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0192.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice in hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Warren Holding Company which settled alleged violations of DOE price regulations in sales of motor gasoline and No. 2 heating oil made by several firms controlled by Warren Holding Company during the period November 1, 1973 through April 30, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Warren pursuant to the consent order. DOE has tentatively established procedures under which purchasers of motor gasoline and No. 2 heating oil covered by the consent order may file claims for refunds. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: April 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Warren Holding Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0192.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Warren Holding Company (Warren).

Several corportions controlled by Warren Holding Company marketed petroleum products to resellers and end users located primarily in the States of New York, Connecticut, Rhode Island, and Massachusetts. The Warren firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of the firms' records revealed possible price violations with respect to the sales of motor gasoline and No. 2 heating oil from November 1, 1973 through April 30, 1974. The overcharges alleged by ERA were attributed to sales made by the following entities during the following periods:

Company	Product	[redacted]
Mid-Valley Oil Co., Inc., Mid-Valley Petroleum Corp., Newburgh, NY	Motor gasoline	Nov. 1 to Dec. 31, 1973; Jan. 7 to Mar. 31, 1974
	No. 2 heating oil	Nov. 21, 1973, Dec. 13 and Dec. 19, 1973
Kenyon Oil Co., Inc., North Grosvenordale, CT.	Motor gasoline	Nov. 16, 1973 to Feb. 28, 1974; Mar. 4 to Apr 30, 1974
Petroleum Marketers, Inc., North Grosvenordale, CT.	do	Nov. 1, 1973 to Jan. 31, 1974, Mar. 1 to Apr 30, 1974
Drake Petroleum Co., Inc., Auburn, MA	do	Nov. 1, 1973 to Apr. 30, 1974
Warren Petroleum Corp./Rhode Island Oil Co., Inc., Providence, RI.	do	Nov. 1, 1973 to Mar. 31, 1974, Apr. 5 to Apr 7, 1974.

In order to settle all claims and disputes between DOE and the Warren companies regarding the firms' sales of motor gasoline and No. 2 heating oil during the audit period, DOE and Warren Holding Company entered into a consent order on September 12, 1980, in which Warren Holding Company agreed to remit $1,010,000 to DOE.(*1*) This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $1,010,000 that was deposited into the escrow account, plus accrued interest, which amounted to $607,822 as of March 1, 1985.

II. Proposed Refund Procedures

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Warren consent order fund. The Subpart V process may be used in situations where DOE is unable to readily identify persons who were injured or to ascertain the amounts that such persons are eligible to receive as a result of enforcement proceedings. 10 CFR 205.280; *see also In re The Charter Co.*, 47 FR 16396 (April 16, 1982) (proposed decision); *Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). ERA indicated in its petition that those circumstances exist in this case; therefore, we propose to grant ERA's petition and assume jurisdiction over the distribution of the Warren consent order fund.

A. Refunds to Identifiable Purchasers

We propose that the Warren consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Warren's alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of its purchases of motor gasoline and No. 2 heating oil for the applicable periods. If the motor gasoline and No. 2 heating oil was not purchased directly from one of the Warren companies listed above, the claimant will be required to include a statement setting forth its reasons for believing the product originated with Warren. In addition, a reseller or retailer that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement: In the Matter of Ada Resources, Inc.*, 10 DOE ¶85,029 at 88,125 (1982). In addition, a reseller will have to provide some further evidence of injury. *See Office of Special Counsel*, 10 DOE ¶85,048 at 88,215 (1982) (hereinafter cited as *Amoco*).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of motor gasoline and No. 2 heating oil marketed by the Warren companies during the periods covered by the consent order. This volumetric, or pro rata, refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser will be allowed to file an application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Warren's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶85,226 (1984) and cases cited therein.(*2*) Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.(*3*)

In addition to the presumptions we are adopting, we are making a finding that each end-user or ultimate consumer whose business is unrelated to the petroleum industry was injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Warren motor gasoline that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of motor gasoline or No. 2 heating oil sold by the Warren companies, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]he customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶82,597 at 85,396-97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the

increased prices it paid for Warren motor gasoline. *See Amoco* at 88,200.

A successul refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.0149114 per gallon ($1,010,000 received from Warren divided by 67,733,412 gallons of motor gasoline and No. 2 heating oil sold by the Warren companies during the periods covered by the consent order), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of March 1, 1985, accrued interest will increase the per gallon refund amount by $.0089747 for a total per gallon amount of $.0238861. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

Detailed procedures for filing applications will be provided in a final Decision and Order. Applications for refunds should not be filed until issuance of the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first-stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We will therefore reserve this issue for determination at a later date.

It Is Therefore Ordered That:

The $1,010,000 refund amount remitted by Warren Holding Company, pursuant to the consent order executed on September 12, 1980 will be distributed in accordance with the foregoing Decision.

Notes

(1) The Warren consent order does not include sales made by any other subsidiary or affiliate of Warren Holding Company or any unnamed subsidiary of the above-mentioned entities.

(2) In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

(3) In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 242,154 gallons per month during the Warren consent order period. Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

[FR Doc. 85-10616 Filed 4-30-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50636; FRL-2824-6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit:

1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352-EUP-118. Extension. E.I. duPont De Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 32.2 pounds of the fungicide 1-[[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole on peanuts to evaluate the control of early and late leafspot. A total of 30 acres are involved; the program is authorized only in the States of Alabama and Georgia. The experimental use permit is effective from April 1, 1985 to April 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

352-EUP-126. Issuance. E.I. duPont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 13.35 pounds of the fungicide 1-[[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole on apples to evaluate the control of apple scab, cedar-apple rust, and powdery mildew. A total of 32 acres are involved; the program is authorized only in the States of Michigan, New York, Ohio, Oregon, Pennsylvania, Virginia, and Washington. The experimental use permit is effective from March 19, 1985 to March 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

352-EUP-127. Issuance. E.I. duPont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 6.8 pounds of the fungicide 1-[[bis(4-fluorophenyl) methylsilyl] methyl]-1H-1,2,4-triazole on grapes to evaluate the control of black rot and powdery mildew. A total of 20 acres are involved; the program is authorized only in the States of Arizona, California, New York, Oregon, Pennsylvania, and Washington. The experimental use permit is effective from March 19, 1985 to April 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or

used for research purposes only. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

1471-EUP-90. Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 4,400 pounds of the herbicide trifluralin on alfalfa to evaluate the control of weeds. A total of 2,200 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Nebraska, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington. The experimental use permit is effective from March 22, 1985 to March 22, 1986. A permanent tolerance for residues of the active ingredient in or on alfalfa hay has been established (40 CFR 180.207). (Richard Mountfort, PM 23, CM#2, Rm. 253, (703-557-1830))

7501-EUP-2. Extension. Gustafson, Inc., P.O. Box 220065, Dallas, TX 75222. This experimental use permit allows the use of 2,100 pounds of the fungicide (N-trichloromethylthio-4-cyclohexane-1,2-dicarboximide on field and sweet corn, sorghum, and soybeans to evaluate the control of seedborn fungi that cause seed decay, damping-off, and seedling blight. A total of 26,500 bushels are involved; the program is authorized only in the States of Illinois, Indiana, Iowa, Nebraska, Ohio, and Texas. The experimental use permit is effective from February 21, 1984 to June 30, 1985. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

10182-EUP-34. Issuance. ICI Americas Inc., Wilmington, DE 19897. This experimental use permit allows the use of 7,500 pounds of the plant growth regulator (2*RS*, 3*RS*)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1*H*-1,2,4-triazol-1-yl) pentan-3-ol on grass seed crops to evaluate its effectiveness of increasing grass crop yields. A total 10,000 acres are involved; the program is authorized only in the States of Idaho, Minnesota, Missouri, Oregon, and Washington. The experimental use permit is effective from March 13, 1985 to March 13, 1987. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

618-EUP-10. Amendment. Merck and Company, Inc., P.O. Box 2000, Rahway, NJ 07065. In the **Federal Register** of June 29, 1984 (49 FR 26804), EPA issued an experimental use permit pertaining to the extension of 618-EUP-10 to Merck and Company, Inc. At the request of the company, the permit has been amended to reduce the acreage and the amount of the active ingredient. The experimental use permit now allows the use of 100 grams of the insecticide Avermectin B_1 on non-cropland and pastures to evaluate the control of the fire ant. A total of 2,000 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from March 23, 1985 to March 23, 1986. This permit is issued with the limitation that cattle will not be allowed on treated pastures within 7 days of application. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

45639-EUP-14. Extension. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 1,250 pounds of the insecticide 3,6-bis(2-chlorophenyl) 1,2,4,5-tetrazine on apples to evaluate the control of various apple diseases. A total of 5,000 acres are involved; the program is authorized only in the States of California, Colorado, Connecticut, Idaho, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, Washington, and West Virginia. The experimental use permit is effective from March 13, 1985 to March 13, 1986. A temporary tolerance for residues of the active ingredient in or on apple pomace has been established. (Jay Ellenberger, PM 12, Rm. 238, CM#2, (703-557-2386))

748-EUP-18. Renewal. PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 74.4 pounds of the herbicide 1-(carboethoxy) ethyl 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate on soybeans to evaluate the control of various broadleaf weeds. A total of 372 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin. The experimental use permit is effective from May 1, 1985 to April 30, 1986. This permit is issued with the limitation that all food or feed derived from the experimental use program will be destroyed with the exception of samples collected for research purposes. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: April 16, 1985.

Robert V Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-9992 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240062; FRL-2824-8]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 10 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

Office location and telephone number: Rm. 728, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7116).

SUPPLEMENTARY INFORMATION: Most of the registration listed below were received by the EPA in February 1985. Receipts of State registrations will be published periodically. Of the following registrations, two involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arizona

EPA SLN No. AZ 85 0001. Northrup King Co. Registration is for Rovral to be used on crucifier crops grown for seed only to control alternaria leaf and pod blight. February 20, 1985.

California

EPA SLN No. CA 85 0001. Monterey County Agricultural Commissioner. Registration is for Rodent Bait Zinc Phosphide Treated Grain 1.00% (not EPA Reg.) to be used on runways and burrows to control ground squirrels, Norway rats, roof rats, meadow mice, cotton rats, and wood rats. February 26, 1985.

EPA SLN No. CA 85 0002. Monterey County Agricultural Commissioner. Registration is for Rodent Bait Zinc Phosphide Treated Grain 2.00% (not EPA Reg.) to be used only in rural locations to control ground squirrels, meadow mice, cotton rats, and Norway rats. February 26, 1985.

EPA SLN No. CA 85 0003. Monterey County Agricultural Commissioner. Registration is for Rodent Bait Diphacinone Treated Grain (0.01%) (not EPA Reg.) to be used on active burrows or runways to control ground squirrels, deer mice, and house mice. February 26, 1985.

EPA SLN No. CA 85 0004. Monterey County Agricultural Commissioner. Registration is for Rodent Bait Block Diphacinone Treated Grain/Paraffin (0.005%) (not EPA Reg.) to be used on sewers, outdoor placement, excessively damp locations to control Norway rats, muskrats, and wood rats. February 26, 1985.

EPA SLN No. CA 85 0005. Monterey County Agricultural Commissioner. Registration is for Rodent Bait Diphacinone Treated Grain (0.005%) (not EPA Reg.) to be used on runways and burrows to control Norway rats, roof rats, house mice, ground squirrels, chipmunks, muskrats, meadow mice, wood rats, and jackrabbits. February 26, 1985.

EPA SLN No. CA 85 0009. County of Alamea Dept. of Agriculture. Registration is for Pocket Gopher Baits Strychnine Treated Grain (not EPA Reg.) to be used on burrows to control pocket gophers. February 21, 1985.

EPA SLN No. CA 85 0010. County of Alamea Dept. of Agriculture. Registration is for Rodent Bait Block Diphacinone Treated Grain/Paraffin (.005%) (not EPA Reg.) to be used on ditches, waterways, burrows, runways, barns, and dens to control Norway rats, muskrats, and wood rats. February 21, 1985.

EPA SLN No. CA 85 0011. County of Alamea Dept. of Agriculture. Registration is for Rodent Bait Block Chlorophacinone (not EPA Reg.) to be used on barns, poultry houses, lumber piles, ditches, and waterways near muskrat burrows, runways, and dens to control Norway rats, muskrats, and wood rats. February 21, 1985.

EPA SLN No. CA 85 0012. NAPA County Agricultrual Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (1.33%) (not EPA Reg.) to be used on burrows to control pocket gophers. February 16, 1985.

EPA SLN No. CA 85 0013. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Zinc Phosphide Treated Grain (1.00%) (not EPA Reg.) to be used on runways and burrows to control ground squirrels, Norway rats, roof rats, meadow mice, cotton rats, and wood rats. February 26, 1985.

EPA SLN No. CA 85 0014. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Zinc Phosphide Treated Grain (2.00%) (not EPA Reg.) to be used only in rural locations to control ground squirrels, meadow mice, cotton rats, and Norway rats.

EPA SLN No. CA 85 0015. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Block Chlorophacinone Treated Grain/Paraffin (0.005%) (not EPA Reg.) to be used on barns, poultry houses, sheds, lumber and rubbish piles, ditch banks, ditches, waterways near burrows, runways, and dens to control Norway rats, muskrats, and wood rats. February 26, 1985.

EPA SLN No. CA 85 0016. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Chlorophacinone Treated Grain (0.01%) (not EPA Reg.) to be used in corners, along walls, and in burrows to control ground squirrels, deer mice, house mice, and pocket gophers. February 26, 1985.

EPA SLN No. CA 85 0017. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Chlorophacinone Treated Grain (0.005%) (not EPA Reg.) to be used in corners, along walls, and in burrows and harborages to control Norway rats, roof rats, and house mice. February 26, 1985.

EPA SLN No. CA 85 0018. NAPA County Agricultural Commissioner. Registration is for Rodent Bait Warfarin Treated Grain (0.025%) (not EPA Reg.) to be used in corners, along walls, and in burrows and harborages to control Norway rats, roof rats, house mice, ground squirrels, chipmunks, muskrats, meadow mice, and wood rats. February 16, 1985.

EPA SLN No. CA 85 0019. Calaveras County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (0.05%) (Not EPA Reg.) to be used in runways and burrows to control pocket gophers. February 13, 1985.

EPA SLN No. CA 85 0020. Ventura County Dept. of Agriculture. Registration is for Rodent Bait Zinc Phosphide Treated Grain (2.00%) (Not EPA Reg.) to be used on runways and burrows to control ground squirrels, meadow mice, cotton rats, and Norway rats. February 13, 1985.

EPA SLN No. CA 85 0021. Ventura County Dept. of Agriculture. Registration is for Rodent Bait Block Diphacinone Treated Grain/ Paraffin (0.005%) (not EPA Reg.) to be used in sewers, outdoor placement, and excessively damp locations where unprotected bait would spoil rapidly to control Norway rats, roof rats, muskrats, and wood rats. February 13, 1985.

EPA SLN No. CA 85 0022. Ventura County Dept. of Agriculture. Registration for Pocket Gopher Bait/ Strychnine Treated Grain (0.50%) (not EPA Reg.) to be used on runways underground to control pocket gophers. February 13, 1985.

EPA SLN No. CA 85 0023. Contra Costa County Dept. of Agriculture. Registration is for Pocket Gopher Bait Styrchnine Treated Grain (0.050%) (not EPA Reg.) to be used on runways to control gophers. February 26, 1985.

EPA SLN No. CA 85 0024. Contra Costa County Dept. of Agriculture. Registration is for Starling and Blackbird Bait Starlicide (not EPA Reg.) to be used on orchards and vineyards to control starlings and blackbirds. February 26, 1985.

EPA SLN No. CA 85 0025. Contra Costa County Dept. of Agriculture. Registration is for Feral Pigeon and Crow Bait Starlicide (not EPA Reg.) to be used on roof tops to control feral pigeons and crows. February 26, 1985.

Delaware

EPA SLN No. DE 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on alfalfa to control weeds between cuttings. (CUP) February 19, 1985.

Florida

EPA SLN No. FL 85 0001. Rhone-Poulenc, Inc. Registration is for Mocap 10% Granylar to be used on sugarcane to control wireworms. February 28, 1985.

EPA SLN No. FL 85 00002. Chemical Group-Uniroyal, Inc. Registration is for

Omite CR to be used on strawberries to control Pacific spiders, strawberry spiders, and two-spotted spiders. February 20, 1985.

Idaho

EPA SLN No. ID 85 0001. Orco, Inc. Registration is for Patrol Ground Squirrel Bait to be used on runways and burrows to control ground squirrels. February 15, 1985.

Illinois

EPA SLN No. IL 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on no-till sunflowers for preplant or preemergence treatment for annual broadleaf weeds and grasses. February 12, 1985.

New Jersey

EPA SLN No. NJ 85 0001. Lipha Chemicals, Inc. Registration is for Rozol Paraffinized Pellets to be used on apple orchards to control pine and meadow voles.

EPA SLN No. NJ 85 0002. Lipha Chemicals, Inc. Registration is for Roxol Rodenticide Ground Spray Conc. to be used on apple orchards to control orchard mice. January 24, 1985.

EPA SLN No. NJ 85 0004. Penick Corp. Registration is for Scourge Insecticide with SPB–1382/Piperonyl Butoxide 4% + 12% MF Formula II to be used in recreational and residential areas and in municipalities, around the outside of apartment buildings, golf courses, athletic fields, parks, campsites, woodlands, swamps, tidal marshes, and overgrown waste areas to control mosquitoes. February 20, 1985.

EPA SLN No. NJ 85 0005. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds between cuttings. February 26, 1985.

North Carolina

EPA SLN No. NC 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on corn and fallow land to control witchweed and grassy weeds. (CUP) February 19, 1985.

North Dakota

EPA SLN No. ND 85 0001. Penick Corp. Registration is for Scourge Insecticide with SPB–1382/Piperonyl Butoxide 18% +54%MF FII to be used in recreational and residential areas, apartment buildings, golf courses, athletic fields, parks, campsites, woodlands, swamps, tidal marshes, and overgrown waste areas to control mosquitoes. February 8, 1985.

EPA SLN No. ND 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on no-till sunflowers for preplant or preemergence treatment for control of emerged annual broadleaf weeds and grasses. February 28, 1985.

Texas

EPA SLN No. TX 85 0001. Nalco Chemical Co. Registration is for Nalco 7330 to be used on oil field waters to control slime-forming bacteria and sulfate-reducing bacteria. February 20, 1985.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: April 16, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–9990 Filed 4–30–85; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3209/T487; FRL-2827-8]

Norflurazon; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide norflurazon and its desmethyl metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by Zoecon Corporation.

DATE: These temporary tolerances expire April 2, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1830).

SUPPLEMENTARY INFORMATION: Zoecon Corporation, a Sandoz Company, 975 California Ave., Palo Alto, CA 94304, has requested in a pesticide petition (PP 5G3209) the establishment of temporary tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(*alpha, alpha, alpha*-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-(amino)-2-(*alpha, alpha, alpha*-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone, in or on the raw agricultural commodities alfalfa forage at 2.0 parts per million (ppm) and alfalfa hay at 5.0 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 11273–EUP–41 and 11273–EUP–42, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pecticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Zoecon Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 2, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 23, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-10359 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3191/T486; FRL-2827-7]

Diethatyl-Ethyl; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide diethatyl-ethyl and its metabolites in or on the raw agricultural commodity cottonseed. This temporary tolerance was requested by Nor-Am Chemical Company.

DATE: This temporary tolerance expires April 2, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, has requested in pesticide petition PP 5G3191 the establishment of a temporary tolerance for residues of the herbicide diethatyl-ethyl and its metabolites (free and bound) determinable as the *N*-acetyl (*N*-(2,6-diethylphenyl) glycine derivative in or on the raw agricultural commodity cottonseed at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the exprimental use permit 45639-EUP-28, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 2, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 23, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-10360 Filed 4-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Berrien Broadcasting Corp. et al.; Hearing Designation Order

In re applications of:

Berrien Broadcasting Corporation, Berrien Springs, Michigan.	MM Docket No. 85-116, file No. BP-800909AA.
Req: 640 kHz, 0.25 kW, 0.5 kW-LS, U	
WYYS, Inc., WJJQ, Tomahawk, Wisconsin.	File No. BP-801205AH.
Has. 810 kHz, 10 kW, DA-D	
Req: 640 kHz, 1 kW, 10 kW-LS, DA-2, U	
Juarez Communications Corporation, Kingsley, Michigan.	File No. BP-810126AA.
Req: 640 kHz, 1 kW, 10 kW-LS, DA-2 U	
West-State Broadcasters, Incorporated, Zeeland, Michigan.	File No. BP-810330AG.
Req: 640 kHz, 0.25 kW, 1 kW-LS, U.	

For Construction Permit.

Adpted: April 11, 1985.

Released: April 26, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) The above-captioned applications for new AM broadcast stations and for changes in the facilities of an existing AM station; (b) petitions to deny the Juarez Communications Corporation (Juarez) application filed by Great Northern Broadcasting System, Inc. (Great Northern), WTCM Radio, Inc. (WTCM) and Radio Station WCCW, Inc. (WCCW); (2) informal objections to the West State Broadcasters, Inc. (West-State) application filed by KFI, Inc.; and (d) relevant pleadings.[1]

2. *International matters.* the WYYS, Inc., and the Juarez applications involve minor conflicts with accepted Canadian allications; these applicants therefore must file minor amendments with the presiding Administrative Law Judge within thirty days of the release of this Order to eliminate these conflicts. Of course, these minor amendments may not cause additional interference or overlap to any existing station or to any pending application. WYYS, Inc., must amend its daytime proposal to eliminate any overlap with the new Canadian assignment at Saint Francis, Ontario. Juarez must amend its nighttime proposal so that a nighttime limit of less than 5 mV/m will be placed into the Saint Francis assignment; it must amend its daytime proposal so as to reduce to an acceptable level interference with the Canadian assignment at Toronto, Ontario. In determining this acceptable level of interference, the presiding Administrative Law Judge shall take cognizance of the need for international coordination.

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[1] These include a motion for extension of time in which to respond to relevant pleadings filed by Juarez Communications Corporation. The request is unopposed and is hereby granted.

3. *Local Public Notice.* Section 73.3580 of the Commission's Rules requires broadcast applicants to give local notice of the filing of their applications. We have no evidence that Berrien Broadcasting Corporation and Juarez Communications have complied with the rule: these applicants must therefore comply with the rule, if they have not, and file the required certification of compliance with the presiding Administrative Law Judge within thirty days of the release of this Order.

4. *Berrien Broadcasting Corp. (Berrien).* Section 73.2080(c) of the Commission's Rules requires, *inter alia,* that applicants for a construction permit for new broadcast facilities file equal employment opportunity programs if they propose to employ five or more full-time employees. Berrieu proposes to employ nine employees and the record does not contain an equal employment opportunity program for Berrien; this applicant must therefore comply with the rule and submit the required EEO program within thirty days of the release of this Order.

5. The information submitted by Berrien does not demonstrate its financial qualifications. The applicant estimates that construction and three months operating expenses will be $60,960. To cover these costs the applicant has $10,000 cash and technical equipment with a value of $5,000. In addition, the applicant asserts that Andrews University will donate to Berrien a studio, tower location, power, telephone service and $36,000 cash. No documentation has been submitted however that indicates the University's willingness or current ability to make these donations. Under these circumstances we cannot find the applicant financially qualified. A financial issue will be specified.

6. *Juarez Communications Corporation.* Great Northern, WTCM and WCCW, all licensees of Traverse City, Michigan, broadcast stations and potential Juarez competitors, have filed petitions to deny this proposal. The complaints are similar and will be considered together.[2]

7. Petitioners allege first that Kingsley is not a community for broadcast station allocation purposes. We disagree. Our test of whether a specified location meets the assignment standard is a liberal one which encompasses all the circumstances. *Teche Broadcasting Corp.*, 52 F.C.C. 2d 970 (Rev. Bd., 1975). Kingsley is an incorporated village with a population of 663 (1980 U.S. Census) located approximately twelve miles from Traverse City; it has an elected village council, provides water, fire, ambulance and sewage services and has its own school system. In addition, the applicant has submitted a list of sixty-six Kingsley businesses and civic organizations. Small size alone will not disqualify a community from consideration for a broadcast allocation. *Musical Heights, Inc.*, 29 F.C.C. 1 (1960), *Kaldor Communications, Inc.*, FCC 84R-26, Mimeo No. 3720, 56 RR 2d 137 (Rev. Bd., 1984). We conclude in view of all of the circumstances presented here, Kingsley is a community to which a broadcast station can be allocated.

8. Concerning the lack of financial qualification, petitioners second area of contention, Juarez proposes construction and three months operating expenses of $45,800. To cover these costs it relies primarily upon a $200,000 commitment letter from the City National Bank of Detroit. Petitioners assertions to the contrary notwithstanding we find that this letter provides a reasonable assurance that a bank loan will be available to the applicant if a construction permit is acquired. *Jay Sadow*, 39 F.C.C. 2d 808, 810 (Rev. Bd., 1973); *Poet's Seat Broadcasting, Inc.*, 78 F.C.C. 2d 1080 (Rev. Bd., 1980). The commitment specifies all relevant terms of repayment, including a security requirement (bonds or cash from two Juarez principals) upon which we believe that the applicant can fairly rely, in light of the principals' active role in the negotiation of the agreement and its submission to us. Further, the bank letter earmarks the funds for the proposed Kingsley station thus assuring that the funds will be made available only for that purpose. *Cannon's Point Broadcasing, Inc.*, 93 F.C.C. 2d 643 (Rev. Bd., 1983). In these circumstances we find that Juarez has demonstrated its financial qualifications.[3] We will therefore deny the petitions to deny.

9. Juarez filed petitions for leave to amend and amendments to its application on November 25, 1981 and August 25, 1983. The 1981 amendment contained additional financial information and the 1983 amendment reported changes in broadcast ownership interests. The amendments are unopposed, are in part required by § 1.65 of the Rules and will not improve the applicant's comparative position. We will therefore grant the petitions for leave to amend and accept the amendment.

10. *West-State Broadcasters, Incorporated.* KFI, Inc., licensee of station KFI, Los Angeles, California, filed informal objections to the West-State application alleging that the applicant had failed to show that its application was acceptable for filing under the Commission's Rules. The applicant responded on November 19, 1981, and filed a petition for leave to amend and an amendment to its application demonstrating that the application is acceptable for filing pursuant to § 73.37(e)(2)(ii) of the Commission's Rules. KFI, Inc., in its reply pleading, conceded that West-State has now demonstrated that its application is acceptable for filing; its informal objections are therefore moot and will be dismissed. Since the amendment clarifies the record and confers no advantage to West-State we will grant the petition for leave to amend and accept the amendment.

11. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[4] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the proposal of Berrien Broadcasting Corporation:

a. Whether the applicant has available sufficient funds to meet the

[2] Petitioner's allegations concerning Juarez's intention to serve Kingsley, as opposed to Traverse City, have been mooted by our action. *The Suburban Community Policy, the Berwick Doctrine and the De Facto Reallocation Policy,* 93 F.C.C. 2d 436 (1983); *recon. denied,* 56 RR 2d 835 (1984).

[3] Even if, as petitioners allege, Juarez's cost estimates are in some minor respects too low, the funds from its commitment letter are sufficiently in excess of its estimated costs to cover these errors.

[4] The facilities specified herein are subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, and to bilateral and other multilateral agreements between the United States and other countries.

proposed construction and operating costs, and

b. Whether, in light of the evidence adduced pursuant to (a), the applicant is financially qualified to construct and operate as proposed.

2. To determine: (a) The areas and populations which would gain or lose primary aural service from the proposal of WYYS, Inc. and the availability of other primary service to such areas and populations, (b) the areas and populations which would receive primary aural service from the remaining proposals and the availability of other primary service to such areas and populations, and (c), in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

3. To determine in the event that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

13. It is further ordered, that the petition to deny filed by Great Northern Broadcasting System, Inc., is denied.

14. It is further ordered, that the petition to deny filed by WTCM Radio, Inc., is denied.

15. It is further ordered, that the petition to deny filed by Radio Station WCCW, Inc., is denied.

16. It is further ordered, that the informal objection filed by KFI, Inc., is dismissed as moot.

17. It is further ordered, that WYYS, Inc., and Juarez Communications Corporation file amendments to their applications to remove the conflicts with accepted Canadian allocations as set out above in paragraph two (2) with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

18. It is further ordered, that Berrien Broadcasting Corporation and Juarez Communications Corporation comply with the local public notice requirements of § 73.3580 of the Commission's Rules, if they have not done so, and certify as to compliance with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

19. It is further ordered, that Berrien Broadcasting Corporation comply with § 73.2080(c) of the Commission's Rules and file an equal employment opportunity program with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

20. It is further ordered, that the petitions for leave to amend filed by Juarez Communications Corporation on November 25, 1981 and August 25, 1983, are granted and the concurrently filed amendments are accepted for filing.

21. It is further ordered, that the petition for leave to amend filed by West-State Broadcasters, Incorporated on November 19, 1981, is granted and the concurrently filed amendment to its application is accepted for filing.

22. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street NW., Washington, DC 20554.

23. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. It is further ordered, that pursuant to § 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 85-10594 Filed 4-30-85; 8:45 am]

BILLING CODE 6712-01-M

Cape Fear Broadcasting Co.; Hearing Designation Order

In re applications of:

Cape Fear Broadcasting Company, WFNC, Fayetteville, North Carolina.	MM Docket No. 85-115, File No. BP-810122AA.
Has: 940 kHz, 1 kW, 50 kW-LS, DA-N, U	
Req: 640 kHz, 1 kW, 10 kW-LS, DA-D, U	
GDR, INC., Wildwood, Florida.	File No. BP-810616AI.
Req: 640 kHz, 1 kW, U	
Phoenix City Boradcasting, Ltd of Atlanta, Atlanta Georgia.	File No. BP-810729AF.
Req: 640 kHz, 1 kW, 50 kW-LS, DA-2, U	
James S. Rivers, Leesburg, Georgia.	File No. BP-810806AJ.
Req: 640 kHz, 1 kW, 10 kW-LS, DA-N, U	
Brown-Johnson Co., Inc., Winterville, North Carolina.	File No. BP-810806AK.
Req: 640 kHz, 1 kW, 10 kW-LS, DA-2, U	
Vernon H. Baker, d/b/a County Seat Radio, Bluntville, Tennessee.	File No. BP-810806AQ.
Req: 640 kHz, 1 kW, 10 kW-LS, DA-2, U.	
James S. Rivers, Sparta, Georgia.	File No. BPH-810811AC.
Req: 249A, 97.7 MHZ, 3 kW, 91 meters.	

Adopted: April 11, 1985.

Released: April 26, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Cape Fear Broadcasting Company (Cape Fear), GDR, Inc., (GDR); Phoenix City Broadcasting, Ltd. of Atlanta (Phoenix City); James S. Rivers (Rivers); Brown-Johnson Co., Inc. (Brown-Johnson); and Vernon H. Baker d/b/a County Seat Radio (County Seat) [1] for a new AM broadcast station. These applications are linked to each other directly or indirectly through the presence of intervening interlocking proposals.[2] Also before us are an informal objection filed against Brown-Johnson on behalf of NCM Life Communications, Inc. and responsive pleadings. We also have before us the application of James S. Rivers for a new FM broadcast station at Sparta, Georgia, which we have consolidated with the above proposals because of issues common to Rivers' Leesburg, Georgia AM application.

2. *Environmental narrative statement issues.* Since the proposals of GDR, Rivers, Phoenix City and County Seat constitute major environmental actions as defined by Section 1.1305 of the Commission's Rules, they are required to submit the environmental impact information described in Section 1.1311. GDR's environmental narrative statement fails to state the zoning classification of the site and whether construction of the proposed facility has been a source of controversy on

[1] County Seat filed a minor amendment on June 11, 1984, listing other media interests of the applicant's principal and his relatives. This amendment, filed after the November 5, 1981 "B" cut-off date, will be accepted for filing pursuant to Section 1.65 of our Rules.

[2] Groups of this nature are commonly termed "daisy chains."

environmental grounds in the local community; Rivers' environmental narrative statement fails to state whether construction of the proposed facility has been a source of controversy on environmental grounds in the local community; Phoenix City neglected to include any environmental narrative statement in its application; and County Seat's environmental narrative statement fails to state the zoning classification of the site.

3. Accordingly, GDR, Rivers, Phoenix City and County Seat will be required to fill within 30 days of the release of this Order their amended environmental narrative statements with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, Section 1.1317 of the Rules is waived and the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. *F.A.A. issues.* Since no determination has been received from the Federal Aviation Administration as to whether the FM antenna proposed by Rivers or the AM antenna proposed by County Seat would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

5. *Phoenix City Broadcasting, Ltd. of Atlanta application.* To meet construction and three months' operating expenses of approximately $800,000 Phoenix City relies upon a limited partnership interest of $200,000, a subordinated debt of $250,000 and equipment vendor financing. Only the third of these sources can be credited to it, however, as the letters containing the other commitments do not set forth either a balance sheet or financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities, and, in addition, to indicate financial ability to comply with the terms of the agreement. Accordingly, an appropriate issue will be specified.

6. Applicants proposing operation on a clear channel frequency must cover the entire community of license with the higher of their 10 mV/m or nighttime interference-free contour. Phoenix City's proposed 10 mV/m contour would cover most, but not all, of Atlanta. Because of the other applications pending here, however, the nighttime interference-free contour will be much higher than this. Phoenix City should, therefore, submit an amendment indicating its nighttime interference-free contour and requesting any necessary waivers.

7. The engineering portion of Phoenix City's application must be amended to correct the following deficiencies: the nighttime pattern does not result in 1 ohm loss; and a daytime and nighttime horizontal plot must be submitted to show the correct height. This amendment must be filed with the presiding Administrative Law Judge within 30 days of the release of this Order.

8. Phoenix City requests a waiver of 73.24(g), the blanketing provision of the Commission's Rules. This request will be granted, as the proposed facility requires a close-in transmitter site to meet all coverage requirements, and the applicant accepts the responsibility to correct all blanketing interference complaints.

9. *James S. Rivers application.* The AM material submitted by Rivers indicates that the applicant will have eight employees. The Commission requires that if there will be five or more full-time station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies even though there may be only a few members of minorities residing within the proposed service area. Accordingly, the applicant will be required to file this Section VI information within 30 days of the release of this Order with the presiding Administrative Law Judge.

10. While Rivers' AM application includes estimates of construction and operating costs, it does not specify any sources of funding. Accordingly, an appropriate issue will be specified.

11. Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause it may be located outside that community. The applicant indicated in Section V–B of Form 301 that its main studio was within Sparta, but the local notice statement dated May 10, 1982 and filed May 14, 1982 indicated that the main studio was outside Sparta. Under these circumstances, the applicant will be required to file with the presiding Administative Law Judge, within 30 days of the release of this Order, either an amended response resolving this discrepancy as to where the main studio will be located, and/or, if applicable, a showing of good cause should it propose to locate its main studio outside the city of license. The presiding Administrative Law Judge may then evaluate this showing and take such action as he deems appropriate.

12. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that Rivers published the required notice for its AM application. With respect to its FM application, Rivers published the required notice, but the notice is deficient. Its statement of proposed notice dated May 10, 1982 fails to note antenna height. To remedy this deficiency, the applicant must publish local notice with respect to the AM application, and republish an amended local notice with respect to the FM application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order.

13. In a Memorandum Opinion and Order, FCC 83–48, Mimeo No. 94927, released February 18, 1983, the Commission designated for hearing the renewal applications of several stations licensed to James S. Rivers. A series of issues concerning the operation of Rivers' station WTJH, East Point, Georgia, were raised at that time. Specifically it was alleged, in a Bill of Particulars filed by the Commission's Hearing Branch on March 14, 1983, that James S. Rivers and his son Tolliver R. Rivers, then manager of WTJH, took actions to falsify one of the composite week logs. It was further alleged that both James Rivers and Tolliver Rivers, when interviewed by Commission investigators in March 1981, made repeated and deliberate misrepresentations.

14. Before a hearing was held, the Commission, in a Memorandum Opinion and Order, FCC 83–47, Mimeo No. 4390, released May 24, 1984, granted Rivers' motion for relief by distress sale. Accordingly, these issues were never resolved. Absent a resolution of these very serious questions, however, we cannot find Rivers qualified to be a Commission licensee. Hence we will specify here those issues originally specified at the earlier date.

15. *Brown-Johnson Co., Inc. application.* While Brown-Johnson has submitted credit agreements from equipment suppliers, it has not established other sources of funding to cover construction and operating costs. Accordingly, an appropriate issue will be specified.

16. NCM Life Communications, Inc. filed an informal objection to the Brown-Johnson application contending that the applicant had failed to request a necessary waiver of the nighttime power

limit and had specified Winterville, North Carolina with the intention of serving Greenville.

17. With respect to the nightime power aspect of NCM's pleading Brown-Johnson filed on March 18, 1983, an amendment reducing its power to the prescribed maximum. Contrary to Cape Fear's argument in its opposition to acceptance of this amendment, we find the elimination of a potentially disqualifying issue to be good cause for the acceptance of a post cut-off amendment under §73.3522. We will therefore accept the amendment. With respect to the question of Brown-Johnson's service intentions, we no longer inquire into this matter. *The Suburban Community Policy, The Berwick Doctrine, and the DeFacto Reallocation Policy*, 93 FCC 2d 436 (1983). Accordingly, NCM's informal objection will be denied.

18. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[3] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would be best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

19. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the applications of GDR, Inc., Phoenix City Broadcasting, Ltd. of Atlanta, the AM application of James S. Rivers, and Vernon H. Baker d/b/a County Seat Radio, which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether there is a reasonable possibility that the tower height and locations proposed by James S. Rivers for its FM application and Vernon H. Baker d/b/a/ County Seat Radio for its AM application would constitute a hazard to air navigation.

3. To determine with respect to the application of Phoenix City Broadcasting, Ltd of Atlanta:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a), the applicant is financially qualified.

4. To determine with respect to the application of James S. Rivers for a new AM station at Leesburg, Georgia:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a), the applicant is financially qualified.

5. To determine with respect to the application of James S. Rivers for a new AM station at Leesburg, Georgia and a new FM station at Sparta, Georgia:

(a) Whether, in light of all the facts and circumstances pertaining thereto, James S. Rivers misrepresented facts to the Commission or was lacking in candor when it filed its application for renewal of license of station WTJH;

(b) Whether, in light of the evidence adduced pursuant to (a), James S. Rivers misrepresented facts to the Commission during the course of the investigation; and

(c) Whether, in light of the information giving rise to the proceding questions, if found to be true, James S. Rivers possesses the requisite character qualifications to be a Commission licensee.

6. To determine with respect to the application of Brown-Johnson Co., Inc.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a), the applicant is financially qualified.

7. To determine: (a) The areas and populations which would gain or lose primary aural service from the proposal of Cape Fear Broadcasting Company and the availability of other primary service to such areas and populations, (b) the areas and populations which would receive primary aural service from the remaining proposals and the availability of other primary service to such areas and populations, and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

20. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, GDR, Inc., James S. Rivers, and Vernon H. Baker d/b/a county Seat Radio shall submit the amended environmental narrative and Phoenix City Broadcasting, Ltd of Atlanta its original environmental narrative, required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

21. It is further ordered, that the Federal Aviation Administration is made a party to this proceeding.

22. It is further ordered, that Phoenix City Broadcasting Ltd of Atlanta file an amendment to correct the engineering deficiencies specified in paragraphs 6 and 7 above with the presiding Administrative Law Judge within 30 days of the release of this Order.

23. It is further ordered, that Phoenix City Broadcasting Ltd of Atlanta's request for waiver of § 73.24(g) of the Commission's rules IS GRANTED.

24. It is further ordered, that James S. Rivers in reference to its AM station file the model EEO program called for in Section VI of Form 301 within 30 days of the release of this Order with the presiding Administrative Law Judge.

25. It is further ordered, that James S. Rivers file either an amended response resolving the discrepancy as to where the main FM studio will be located, and/or, if applicable, a showing of good cause should it propose to locate its main FM studio outside the city of license, within 30 days of the release of this order with the presiding Administrative Law Judge.

[3] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

26. It is further ordered, that James S. Rivers publish local notice with respect to the AM application, and republish an amended local notice with respect to the FM application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order.

27. It is further ordered, that the amendment filed by County Seat Radio on June 11, 1984 is accepted for filing.

28. It is further ordered, that the amendment filed by Brown-Johnson Co., Inc. on March 18, 1983 is accepted for filing.

29. It is further ordered, that the informal objection filed by NCM Life Communcations, Inc. is denied.

30. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C.

31. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 30 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

32. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, given notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-10593 Filed 4-30-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing Collection in Use Without an OMB Control Number

Title: Survey of State Fire Service Training Systems

Abstract: Data collected in 1981 survey was basis for a reference directory published and distributed in 1982. Information now outdated. This data collection effort required to update and revise the reference directory. Information is used by the National Fire Academy for program planning and by States for resource exchange

Type of Respondents: State or Local Governments

Number of Respondents: 50

Burden Hours: 400.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 25, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-10494 Filed 4-30-85; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0022

Title: Flood Insurance Application, Flood Insurance Cancellation, Flood Insurance General Change Endorsement, Request for Policy Processing and Renewal Information, V-Zone Risk, Schedule Property Form Supplemental Addendum

Abstract: Forms needed for the continued sale and servicing of policies under the National Flood Insurance Program (NFIP).

Type of Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, Small Businesses or Organizations.

Number of Respondents: 839,625

Burden Hours: 141,479.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 25, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-10493 Filed 4-30-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-432]

Peoples Federal Savings Association Richmond, IN; Final Action Approval of Conversion Application

Dated: April 25, 1985.

Notice is hereby given that on March 29, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Peoples Federal Savings Association, Richmond, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, 115 Washington Street, Suite 1290, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10545 Filed 4-30-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-431]

Broken Arrow Federal Savings and Loan Association Broken Arrow, OK; Final Action Approval of Conversion Application

Dated: April 25, 1985.

Notice is hereby given that on March 29, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Broken Arrow Federal Savings and Loan

Association, Broken Arrow, Oklahoma for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Do. 85-10544 Filed 4-30-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-430]

Bright Banc Savings Association, Dallas, TX, (Successor to Texas Federal Savings and Loan Association, Dallas, TX; Approval of Application To Withdraw Securities From Listing and Registration

Dated: April 25, 1985.

Notice is hereby given that on March 25, 1985, the General Counsel approved pursuant to delegated authority, the application filed on February 4, 1985, by Bright Banc Savings Association, Dallas, Texas (the "Association") pursuant to Securities Exchange Act ("Exchange Act") 12(d) and Exchange Act Rule 12d2-2(d), to withdraw from listing and registration on the American Stock Exchange (the "Exchange") Certificates of Deposit Maturing July 22, 1988 nd March 21, 1994, originally issued by Texas Federal Savings and Loan Association, Dallas, Texas ("Texas Federal"), which had been consolidated into the Association. Copies of the application are available for inspection at the Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., 20552.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10543 Filed 4-30-85; 8:45 am]

BILLING CODE 6720-01-M

[No. 85-314]

Securities Exchange Act Disclosure

Dated: April 25, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection, "Securities Exchange Act Disclosure," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork burden aspect of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: J. Larry Fleck, Office of General Counsel. Phone: 202-377-6413.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10542 Filed 4-30-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Intent To Terminate Approval of Agreement

Agreement No.: 217-010648.

Title: Trans Freight Lines, Inc./Double Eagle Lines, Inc., Charter Agreement.

Parties:

Trans Freight Lines, Inc.

Double Eagle Lines, Inc.

Synopsis: The Commission gives notice that it will terminate its prior approval of Agreement No. 217-010648 effective April 2, 1985, the date the parties legally terminated their arrangement. By letter dated April 15, 1985, the Commission was notified of the termination of Agreement No. 217-010648, effective April 2, 1985.

By order of the Federal Maritime Commission.

Dated: April 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-10538 Filed 4-30-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Countricorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Countricorp*, White Sulfur Springs, Montana; to become a bank holding company by acquiring 80.8 percent of the voting shares of The First National Bank of White Sulfur Springs, White Sulfur Springs, Montana.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Freeman Bancstock Investments*, and *Inwood Holding Corporation*, both located in Irving, Texas; have applied to become bank holding companies by acquiring 100 percent of the voting shares of Inwood Bancshares, Inc., Dallas, Texas, thereby indirectly acquiring Inwood National Bank of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10607 Filed 4-30-85; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage in *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation*, Jersey City, New Jersey; to engage *de novo*, directly in the activity of leasing of real property. Comments on this application must be received not later than May 17, 1985.

2. *Norstar Bancorp Inc.*, Albany, New York; to engage *de novo* through its subsidary, Norstar Leasing Services Inc., Albany, New York, in making, acquiring and servicing loans and other extensions of credit (including issuing letters of credit and accepting drafts) for its own account or for the account of others; leasing of personal property and acting as agent, broker or adviser in leasing of personal property.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to engage *de novo* directly in data processing activities which include offering automated teller machine services to banks, financial, and other institutions.

2. *U.S. Bancorp*, Portland, Oregon; to engage *de novo* directly in trust company activities and selling money orders, savings bonds, and travelers checks.

Board of Governors of the Federal Reserve System, April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–10608 Filed 4–30–85; 8:45 am]

BILLING CODE 6210-01-M

CB&T Bancshares, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 10, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to merge with First United Bancshares, Inc., Montezuma, Georgia, thereby indirectly acquiring First United Bank, Montezuma, Georgia.

Board of Governors of the Federal Reserve System, April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–10553 Filed 4–30–85; 8:45 am]

BILLING CODE 6210-01-M

Guyan Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 23, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Guyan Bancshares, Inc.*, Gilbert, West Virginia; to acquire 100 percent of the voting shares of American National Bank, Logan, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Peoples Bancorp of Sylacauga, Inc.*, Sylacauga, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank and Trust Company of Sylacauga, Sylacauga, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. *Charter 17 Bancorp, Inc.*, Richmond, Indiana; to acquire 1.9 percent of the voting shares of Northwest National Bank, Rensselaer, Indiana.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Center Bancorp*, Woodland Hills, California; to become a bank holding company by acquiring 100 percent of the voting shares of Center National Bank, Woodland Hills, California.

Board of Governors of the Federal Reserve System, April 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10507 Filed 4-30-85; 8:45 am]

BILLING CODE 6210-01-M

Irwin Union Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in the activities of providing portfolio investment advice, general economic information and financial advice to clients; underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in; and providing management consulting advice to nonaffiliated bank and nonbank depository institutions.

Board of Governors of the Federal Reserve System, April 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10508 Filed 4-30-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1526]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-0650. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Report on Low Occupancy, Low-Income Public Housing

Office: Public and Indian Housing

Form Number: HUD-51237

Frequency of Submission: Semi-annually

Affected Public: State or Local Governments

Estimated Burden Hours: 4,400

Status: Extension

Contact: Edward C. Whipple, HUD, (202) 426-0744; Robert Fishman, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 9, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-10492 Filed 4-30-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Resources Act; Extension of Public Comment Period Regarding Draft Maps Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice is published to announce the extension of the public review and comment period for draft maps under consideration for possible inclusion in the Coastal Barrier Resources System. These maps were made available on Monday March 4, 1985 **Federal Register** Vol. 50, No. 42, Part II, pp. 8689–8702). Comments were to be received by June 30, 1985. In order to conform with the comment period for the draft test made available today, comments on the draft maps will be accepted through July 15, 1985.

DATE: Comments should be received no later than July 15, 1985.

ADDRESS: Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—498, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Coastal Barriers Study Manager, National Park Service, Department of the Interior, Washington, D.C. 20013–7127, (202) 343–5625.

Dated: April 25, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and wildlife and Parks.

[FR Doc. 85–10585 Filed 4:30–85; 8:45 am]

BILLING CODE 4310-70-M

Availability of Draft Report Regarding Conservation Alternatives for the Coastal Barrier Resources System (CBRS)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 10 of the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3509), the Secretary of the Interior is required to provide recommendations for conservation of the fish, wildlife and other natural resources of the CBRS. He is also required to provide recommendations to the Congress for additions to, or deletions from, the Coastal Barrier Resources System, and for modifications to the boundaries of System units. Recommendations made by the Secretary will be advisory only; any changes to the System will require an act of Congress. Draft maps regarding this requirement were released for public review and comment on March 4, 1985. (Volume 50, No. 42 **Federal Register**, p. 8698).

This notice announces the availability of the draft text that addresses conservation alternatives for the CBRS.

DATE: Comments should be received no later than July 15, 1985.

ADDRESS: Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—498, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Coastal Barriers Study Manager, National Park Service, Department of the Interior, Washington, D.C. 20013–7127, (202) 343–5625.

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (16 U.S.C. 3509). Section 4 of CBRA establishes the Coastal Barrier Resources System as referred to and adopted by Congress, and Sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. These provisions of the Act became effective immediately. The Act also amends and conforms to the Federal flood insurance provisions of the Omnibus Budget Reconciliation Act of 1981 pertaining to undeveloped coastal barriers. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements within the System went into effect on October 1, 1983.

Section 10 of CBRA requires the Secretary of the Interior to submit to Congress within three years of passage of the Act a report regarding the Coastal Barrier Resources System. Section 10 requires recommendations on two major issues: (1) Conservation of the fish, wildlife and other natural resources of the CBRS and (2) additions to, or deletions from, the System. Section 10 also requires a summary of the comments received from the Governors of the States, State Coastal Zone Management agencies, other government officials and the public regarding the System. The Secretary is to consult with the Governors of the affected States regarding proposed recommendations. To this end, the Secretary will invite comments from each affected governor. The governors' comments will be forwarded to the Congress as a part of the report.

Dated: April 25, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–10586 Filed 4–30–85; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Availability of Bristol Bay Regional Management Plan and Final Environmental Impact Statement for the Bristol Bay Region, AK

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: As required by section 102(2)(C) of the National Environmental Policy Act of 1969 and section 1203 of the Alaska National Interest Lands Conservation Act, the U.S. Fish and Wildlife Service has prepared the Bristol Bay Regional Management Plan and final environmental impact statement for the Bristol Bay region of southwestern Alaska.

DATE: Comments may be submitted on or before June 17, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: Clayton Hardy).

FOR FURTHER INFORMATION CONTACT: Clayton M. Hardy, U.S. Fish and Wildlife Service, 1101 E. Tudor Rd., Anchorage, Alaska 99503 (907–786–3484).

Copies of the Bristol Bay Regional Management Plan and final environmental impact statement (EIS) are being sent to all agencies and individuals who commented on the revised draft Bristol Bay Cooperative Management Plan and draft EIS. Those individuals wishing to obtain a copy of the document may do so by contacting Mr. Hardy.

Additionally, copies of the plan and final EIS are available for inspection at the Fish and Wildlife Service Regional Office in Anchorage and at the following locations:

Federal Building Resource Library, 701 East Seventh Avenue, Anchorage, Alaska
University of Alaska Achorage Library, Anchorage, Alaska
Z. J. Loussac Library, Anchorage, Alaska
Izembek National Wildlife Refuge Headquarters, Cold Bay, Alaska
Togiak National Wildlife Refuge Headquarters, Dillingham, Alaska

North Star Borough Library, Fairbanks, Alaska
University of Alaska, Elmer E. Rasmussan Library, Fairbanks, Alaska
Alaska State Library (Documents Librarian), Juneau, Alaska
Alaska Peninsula and Becharof National Wildlife Refuge Headquarters, King Salmon, Alaska.

SUPPLEMENTARY INFORMATION: The Bristol Bay Regional Management Plan was prepared in accordance with section 1203 of the Alaska National Interest Lands Conservation Act. This act requires that a comprehensive regional plan for the 31 million acres in southwest Alaska be developed with the goal of conserving fish and wildlife and other resources of the region while at the same time providing for rational and orderly development of the economic resources of the region.

The plan was prepared under the direction of the U.S. Fish and Wildlife Service, the Alaska Land Use Council and its Bristol Bay Study Group. The document explains and evaluates a land use plan for the region, along with five alternatives, that can assist local, federal, state and private land managers by providing a broad regional policy framework or resource management strategy for the area. This plan is a guide to future decisionmaking, not an absolute. The alternatives remain part of the document in order to place in context the rationale for chosen the plan.

Dated: March 20, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-10496 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Draft Environmental Impact Statement for the New Mexico Statewide Wilderness Study; Availability and Notice of Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement and public hearings.

SUMMARY: Pursuant to sections 202 and 603 of the Federal Land Policy and Management Act of 1976 and section 102 of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Draft Environmental Impact Statement (EIS) for the New Mexico Statewide Wilderness Study.

ADDRESS: Copies of the Draft EIS are available upon request from the New Mexico State Office, NM ((912), Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico, 87504-1449. Comments on the Draft EIS should be sent to this same address.

FOR FURTHER INFORMATION CONTACT: Joe Sovcik, EIS Team Leader, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, (505) 988-6565.

SUPPLEMENTARY INFORMATION: The Draft EIS the New Mexico Statewide Wilderness Study Analyzes 37 Wilderness Study Areas (WSA's) which encompass 786,391 acres of public land in New Mexico. The purpose of this study is to determine the suitability or nonsuitability of these WSA's for recommended inclusion in the National Wilderness Preservation System. Alternatives evaluated include an all wilderness alternative, and alternative which emphasizes manageability, a proposed action, a conflict resolution alternative and a no wilderness alternative.

The Draft EIS contains three volumes. Volume 1 is the Statewide overview which analyzes the Statewide environmental consequences for each alternative and summarizes the site specific impacts for each WSA. Volumes 2 and 3, the appendices, provide a detalied analysis for each of the 37 WSA's.

Written comments should be directed to State Director, NM (912) New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Written comments on the Draft EIS must be received by close of business July 29, 1985.

Public hearings have been scheduled for the following dates, times and locations:

June 18, 1985, 3 and 7 p.m., Albuquerque Convention Center, 401 Second St., NW., Albuquerque, NM
June 20, 1985, 3 and 7 p.m., Sweeney Convention Center, 201 W. Marcy St., Santa Fe, NM
June 25, 1985, 3 and 7 p.m., Macey Center, NM Tech. Campus, Socorro, NM
June 27, 1985, 3 and 7 p.m., Branigan Library, 200 E. Picacho, Las Cruces, NM.

Dated: April 26, 1985.

Charles Luscher,

State Director.

[FR Doc. 85-10405 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-FB-M

[5-22599-GPS-009]

Revision and Update of Land Use Management Plans; House Range Resource Area RMP/EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Progress report and call for nomination of Areas of Critical Environmental Concerns (ACEC).

SUMMARY: The House Range Resource Area is completing the Management Situation Analysis for the House Range RMP and preparing for formulation of Alternative Management Plans. During the issue identification phase, the interdisciplinary team and the public identified concerns. Management review of those concerns identified only two concerns that meet the criteria for planning issues. The remainder were identified and will be addressed as management concerns. The planning issues identifed are rangeland management/forage allocation and the conflict between recreational vehicular use and other resource uses.

ACECs are areas where special management is needed to protect important historic, cultural, scenic or natural values, or areas hazardous to human life or property. ACECs in the House Range Resource Area will be identified and designated as part of our current Resource Management Planning process. If you know of an area on public lands possessing important values or hazards that you feel need special designation and management, we invite you to nominate it to ACEC consideration.

Nomination of possible ACECs in the House Range Resource Area should include the following: Name of Area, Location (legal descriptions or attach map), Important Natural Features or safety hazards, threats of damage to the feature, and type of management recommended.

The formulation of alternatives is next in which we anticipate a minimum of four alternatives addressing the issues of rangeland management/forage allocation and ORV use as well as the management concerns. One alternative will be that of continuing the present management direction and level of management intensity. The other alternatives will address various levels of management intensity and resource development.

The draft environmental impact statement is due to be completed by March, 1986.

For further information contact Thomas L. Jensen, House Range the House Range Resource Area Manager at P.O. Box 778, Fillmore, Utah 84631.

April 19, 1985.

Neil D. Thomas,

Acting District Manager.

[FR Doc. 85-10562 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

[5-22598-GPS-008]

Revision and Update of Land Use Management Plans; Warm Spring Resource Area RMKP/EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Progress report and call for nomination of Areas of Critical Environmental Concerns (ACEC).

SUMMARY: The Warm Springs Resource Area is completing the Management Situation Analysis for the Warm Springs RMP and preparing for formulation of Alternative Management Plans. During the issue identification phase, the interdisciplinary team and the public identified concerns. Management review of those concerns identified only one concern that meets the criteria for planning issues. The remainder were identified and will be addressed as management concerns. The one planning issue identified is rangeland management/forage allocation.

ACECs are areas where special management is needed to protect important historic, cultural, scenic or natural values, or areas hazardous to human life or property. ACECs in the Warm Springs Resource Area will be identified and designated as part of our current Resource Management Planing, porocess. If you know of an area on public lands possessing important values or hazards that you feel need special designation and management, we invite you to nominate it for ACEC consideration.

Nomination of possible ACECs should include the following: Name of Area, Location (legal descriptions or attach map), Important Natural Features or safety hazards, threats of damage to the feature, and type of management recommended.

The formulation of alternatives is next in which we anticipate a minimum of four alternatives addressing the issue of rangeland management/forage allocation, as well as the management concerns. One alternative will be that of continuing the present management direction and level of management intensity. The other alternatives will address various levels of management intensity and resource development.

The draft environmental impact statement is due to be completed by March, 1986.

For further information contact, Mark Bailey, the Warm Springs Resource Area Manager at P.O. Box 778 Fillmore, Utah 84631.

Neil D. Thomas,

Acting District Manager

April 19, 1985.

[FR Doc. 86-10561 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

[4-19952-I-LM-CA]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

A petition for reinstatement of oil and gas lease CA 11274, embracing lands in the State of California, County of San Bernardino, was timely filed and accompanied by all the required rentals and royalties accruing from June 1, 1983, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at the rates of $5.00 per acre or fraction thereof and 16⅔% respectively.

The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

The lessee having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1983, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Dated: April 1, 1985.

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands and Minerals Operations.

[FR Doc. 85-10556 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-84-M

[W-56035]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a)(b)(1), a petition for reinstatement of oil and gas lease W-56035 for lands in Uinta County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessees have agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500.00 administrative fee and $106.25 to reimburse the Department of the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-56035 effective September 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-10566 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-22-M

[I-21401; 5-00255-GP5]

Realty Action, Competitive Sale of Public Lands in Twin Falls County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands have been examined and through development of land use decisions based on public input, it has been determined that the sale of the tract is consistent with section 203(a) of the Federal Land Policy and Management Act (FLPMA) of 1976. The land will be offered for sale using modified competitive bidding procedures for no less than the appraised fair market value indicated below. Any bids for less than such value will be rejected as required by FLPMA. The adjacent landowners, Bill Pullin, Ron Waller, Edwin Crockett, Vicki Patrick, James L. Marr and Keith Sligar will be given preference rights as designated bidders in accordance with 43 CFR 2711.3-2. This preference right gives those designated bidders who submit a valid bid the opportunity to match the highest bid. Only sealed bids will be accepted. In the case where two or more designated bidders exercise their preference right, the designated bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders will be allowed to continue bidding to determine the high bidder. A bid will also constitute an application for conveyance of the mineral rights, except geothermal, oil and gas. The mineral interests being offered for conveyance

have no known monetary value. Each bidder must submit a fifty dollar ($50.00) non-returnable filing fee for the mineral conveyance (43 CFR 2711.3-1(d)) with the bid. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market or re-offer them for sale at a later date.

Legal description	Acres	Market value
T. 11 S., R. 18 E., B.M. Sec. 35: SW¼NE¼	400	$8,000 00

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1-2(d). The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation , or 270 days from the date of publication, whichever occurs first.

The patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way. Detailed information concerning these reservations as well as additional information concerning the land, terms and conditions of the sale and bidding instructions may be obtained from Jim Pribble or Sharon LaBrecque at the Burley District Office, Bureau of Land Management, 200 South Oakley Highway, Burley, Idaho.

DATES: All sealed bids must be received by 1:30 p.m. on June 26, 1985. At this time all bids will be opened at the Burley District Office.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the department of the Interior.

Dated; April 23, 1985.

John S. Davis,

District Manager.

[FR Doc. 85-10557 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-22-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held June 4, 1985.

On June 4, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A discussion of the Medford District's Final Supplemental Environmental Impact Statement on timber, the Forest Service/BLM Interchange, and a statewide Draft Environmental Impact Statement on Wilderness.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board following conclusion of its other agenda items on June 4, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by June 3, 1985. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date signed: April 23, 1985.

Hugh R. Shera,

District Manager.

[FR Doc. 10558 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-33-M

Colorado; Filing of Plats of Survey

April 22, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., April 22, 1985.

The plat representing the dependent resurvey of a portion of the First Standard Parallel North (south boundary), the east boundary, a portion of the north boundary, and a portion of the subdividional lines, and the survey of the subdivision of certain sections, T. 5 N., R. 84 W., Sixth Principal Meridian, Colorado, Group 712, was accepted April 1, 1985.

This survey was executed to meet certain administration needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the south and west boundaries, subdividional lines, and Mineral Survey No. 19801, Sunny Slope and Sunny Slope No. 2 lodes, and the survey of the subdivision of sections 20 and 30, T. 7 S., R. 69 W., Sixth Principal Meridian, Colorado, Group 761, was accepted April 1, 1985.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 10560 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4261, Block 330, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the

public, pursuant to section 25 of the OCS Lands Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 23, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10555 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-MR-M

Report on Blowout and Fire, Loss of Drilling Unit, Matagorda Island Block 657, Gulf of Mexico Outer Continental Shelf, Offshore the State of Texas

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of blowout report.

SUMMARY: Pursuant to the provisions of section 22 of the Outer Continental Shelf (OCS) Lands Act, 33 U.S.C. 1348, an investigation was conducted into the blowout and loss of drilling unit that occurred on July 20, 1983, involving drilling operations on Well No. 1, Lease OCS-G 4139, Matagorda Island Block 657, Gulf of Mexico, off the Texas coast. A report has been prepared by the Investigative Panel, and copies are now available.

The Investigative Panel consisted of six members, five of whom were Minerals Management Service (MMS) personnel—one from Reston, Virginia; one from Vienna, Virginia; one from Matairie, Louisiana; and two from Lake Jackson, Texas. The other member was Lt. Cmdr. Max Miller, U.S. Coast Guard, New Orleans, Louisiana. Informal hearings were held in Corpus Christi, Texas, on August 11, 1983. Both the operator, Exxon, Inc., and the drilling contractor, Penrod Drilling Company, had key witnesses present.

The investigative findings included in the report cover the following topics:

A. Preliminary Activities
B. Loss of Well Control
C. Attempts at Restoring Well Control
D. Blowout and Fire
E. Emergency Warning and Evacuation
F. Damage
G. Causes and Conclusions
H. Recommendations

Additionally, the Investigative Panel determined the proximate cause of the incident and provided serveral contributing causes associated with the incident. They concluded the report with recommendations that future wells use a revised casing program, controlled drilling procedures when approaching a lost circulation zone, an improved annular preventer maintenance program, and larger diverter lines.

ADDRESS: Copies of the report may be obtained from the Public Information Office, Minerals Management Service, P.O. Box 7944, Metairie, Louisiana 70010.

FOR FURTHER INFORMATION CONTACT: Bill Martin at (504) 838-0848.

Dated: April 22, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-10554 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, David W. Beyers has filed a plan of operations in support of proposed mining operations on lands embracing the LEE BENCH HOWTAY ASSOCIATION CL. #4-#6 Mining Claims within the Denali National Park and Preserve. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region

[FR Doc. 85-10588 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Commission vacancies and appointments.

2. Review status of subsistence hunting program for Lake Clark National Park.

3. Procedures for subsistence hunting proposal review and public comment.

4. Final action on proposal recommendation for subsistence hunting within Lake Clark National Park.

DATE: The meeting will begin at 10:00 a.m. on May 11, 1985, and will conclude the same afternoon.

ADDRESS: The meeting will he held at the Newhalen School, Newhalen, Alaska.

FOR FURTHER INFORMATION CONTACT: Paul Haertel, Superintendent, Lake Clark National Park and Preserve, 701 C. Street, Box 61, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: The Lake Clark National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Dated: April 24, 1985.

Roger J. Contor,

Regional Director, Alaska Region.

[FR Doc. 85-10587 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Intent To Prepare a Draft Environmental Impact Statement; North Side Pumping Division Extension, Minidoka Project, ID

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior proposes to prepare a draft environmental impact statement (EIS) on the proposed North Side Pumping Division Extension, Minidoka Project, Idaho. The purpose of the project is to provide for the optimum management and use of several tracts of undeveloped Federal drylands totaling 17,160 acres for irrigation and wildlife enhancement, as well as for other minor purposes. The tracts are located within the existing North Side Pumping Division in Minidoka and Jerome Counties, Idaho.

All the alternatives considered center around an agreement signed in 1981 between the A&B Irrigation District and the Idaho Department of Fish and Game, which establishes some basic concepts to insure a sound and acceptable mix of irrigation and wildlife uses. Under the 1981 Agreement:

1. Certain lands in key locations would be designated as critical wildlife areas and would be protected and managed as escape and winter cover for

wildlife by the Idaho Department of Fish and Game.

2. Lands placed in private ownership for irrigation would have an easement reserved to the United States requiring that: (a) The landowners manage a part of their new lands to provide wildlife habitat, and (b) the landowners permit hunter access on part of their lands.

The recommended plan would provide irrigation service to 10,730 acres of new farmland and 820 acres of existing farmland with an inadequate water supply. Most of the water would be obtained by new ground-water wells, but a small amount of additional pumping from the Snake River also would be required. In addition, 240 acres of land in parcels too small to develop would be sold to adjacent landowners to be irrigated with their existing water supply. Approximately 5,590 acres of land in 72 tracts scattered throughout the existing North Side Pumping Division would be protected, improved, and managed as escape and winter cover for wildlife. In addition to the irrigation and wildlife functions, 840 acres of land would be used for other minor purposes including a public golf course, an irrigation district headquarters, and the continued operation of a sewage effluent disposal area. A no action alternative also will be considered in the EIS. Other potential developments were evaluated in the earlier study efforts but have been excluded from further consideration. These included alternative locations for the critical wildlife areas, different methods of managing wildlife habitat on the new croplands, different means of improving existing wildlife habitat, and alternative ways for controlling agricultural and storm runoff.

A considerable public involvement program was carried out during planning for the project to reach agreement among the interested publics as to project details needed to implement the concepts of the 1981 Agreement. This effort included consideration of the impacts of the various alternatives. Therefore, no formal scoping meetings are planned in connection with preparation of the draft EIS.

Interested public entities and individuals may obtain information on the project and provide input to the draft EIS. A combined planning report/draft EIS is expected to be completed and available for public review and comment by November 1985.

The contact person for this draft EIS is Robert Adair, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, telephone (208) 334-1209.

Dated: April 24, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-10537 Filed 4-30-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-205 (Final)]

Carbon Steel Wire Rod from the German Democratic Republic; Rescheduling of Hearing

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation for 10:00 a.m. on June 5, 1985 to 10:00 a.m. on July 11, 1985.

For further information concerning the conduct of the investigation, hearing proceures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Reed (202-523-0255), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985 the Commission instituted the subject investigation and schdeuled a hearing to be held in connection therewith for June 5, 1985 (50 FR 13290, April 3, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from May 20, 1985 to July 1, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by August 14, 1985.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on June 28, 1985, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 11, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 1, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 8, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 8, 1985.

Testimony at the public hearing is governed by §207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see §201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with §207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24) and must be submitted not later than the close of business on July 17, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 17, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during

regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

By order of the Commission.

Issued: April 23, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10601 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-213]

Certain Fluidized Bed Combustion Systems; Denial of Motion To Permit the Administrative Law Judge To Take Evidence on the Remedy and Public Interest Issues

AGENCY: International Trade Commission.

ACTION: Denial of motion to permit the administrative law judge (ALJ) to take evidence on the remedy and public interest issues.

SUMMARY: Notice is hereby given that the Commission has denied the Commission investigative attorney's (IA) motion to permit the ALJ in the above-captioned investigation to take evidence on the remedy and public interest issues.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0189.

SUPPLEMENTARY INFORMATION: The IA filed a motion requesting that the Commission permit the ALJ to take evidence on the remedy and public interest issues in the above-captioned investigation and that the ALJ grant leave to request interlocutory review of her ruling pursuant to section 210.70 of the Commission Rules of Practice and Procedure. Motion No. 213-2. The ALJ denied the motion for an order requesting permission to take evidence on the remedy and public interest issues. Order No. 2. The ALJ found that most of the issues identified by the IA related to both violation and remedy or public interest issues. Thus, evidence on these issues will be admissible at the evidentiary hearing on violation of section 337. With regard to questions related solely to the remedy or public interest issues, the ALJ found that the Commission must determine if it wants a record developed pursuant to proceeding under the Administrative Procedure Act. The ALJ granted the IA's motion for interlocutory review of this order, Order No. 3, and on March 19, 1985, the IA filed a petition requesting interlocutory review of Order No. 2.

The IA has not shown that the circumstances in this investigation are so different that the Commission should invoke the extraordinary alternative procedure available under § 210.58(b) of the rules. In the absence of such a showing the Commission has denied the motion. At the time the Commission undertakes to decide whether to review the ALJ's initial determination regarding violation of section 337, the Commission will consider whether it is necessary to develop a record before the ALJ on one or more specific issues related to the remedy and public interest.

Copies of the ALJ's order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: April 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10600 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[332-200]

Competitive Position of U.S. Producers of Semiconductors

AGENCY: International Trade Commission.

ACTION: Postponement of public hearing and deadline for filing written submissions.

EFFECTIVE DATE: April 26, 1985.

SUPPLEMENTARY INFORMATION: The public hearing in connection with investigation No. 332-200, which was originally scheduled to be held in Palo Alto, Calif., on June 19, 1985, beginning at 10 a.m., has been postponed until further notice. The deadline for notification of appearances at the hearing and submission of public comments in connection with the investigation will be announced when the public hearing is rescheduled. The original notice of the investigation, which also announced the hearing, was published in the **Federal Register** of November 8, 1984 (49 FR 44691).

By order of the Commission.

Issued: April 26, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10606 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-248 (Preliminary) and Investigations Nos. 731-TA-259 and 260 (Preliminary)]

Offshore Platform Jackets and Piles From the Republic of Korea and Japan

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-248 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea (Korea) of offshore platform jackets and piles, provided for in item 652.97 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Government of Korea. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by June 3, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-259 and 260 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and Korea of offshore platform jackets and piles, provided for in item 652.97 of the TSUS,

which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by June 3, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on April 18, 1985 (Korea), and April 19, 1985 (Japan), by Kaiser Steel Corp., Napa, CA; and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, KS.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 13, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202-523-4612) not later than May 9, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before May 16, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR § 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR § 207.12).

By order of the Commission.

Issued: April 23, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10602 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 22-49]

Sugar; Institution of Investigation and Scheduling of Public Hearing

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) and scheduling of a public hearing in connection therewith.

SUMMARY: Following receipt on March 29, 1985, of a request from the President for an investigation under section 22 of the Agricultural Adjustment Act, the Commission instituted investigation No. 22-49 for the purpose of determining whether the import fees for sugar set forth in item 956.15 of the Appendix to the Tariff Schedules of the United States (TSUS) may be terminated and whether the import fees for sugar set forth in items 956.05 and 957.15 of the Appendix to the TSUS may be modified to one cent per pound without resulting in sugar being imported or practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program of the U.S. Department of Agriculture for sugar cane or sugar beets or to reduce substantially the amount of any product processed in the United States from sugar.

EFFECTIVE DATE: April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Lowell Grant (202-724-0099) or Stephen Burket (202-724-0088), Agriculture Division, Office of Industries, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

The President's letter, which was dated March 29, 1985, stated that "I have been advised by the Secretary of Agriculture, and I agree with him, that there is reason to believe that changed circumstances require the termination of import fees for the entry of raw sugar as described in item 956.15 of part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) and a modification of the import fees for TSUS items 956.05 and 957.15 from the current adjustable fees." The President directed the U.S. International Trade Commission "to make an investigation of this matter under section 22 of the Agricultural Adjustment Act of 1933, as amended." The President's letter further stated "The Secretary of Agriculture has also determined and reported to me, pursuant to section 22(b) of the Agricultural Adjustment Act of 1933, as

amended, that a condition exists requiring emergency treatment. I have, therefore, issued a proclamation suspending the import fees for TSUS item 956.15 and modifying the fees for TSUS items 956.05 and 957.15 to one cent per pound. The suspension and modification of these fees will continue in effect pending receipt of the report and recommendations of the United States International Trade Commission and action that I may take thereon."

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11) not later than 21 days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 16, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 25, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 24, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 27, 1985.

Testimony at the public hearing shall be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Posthearing briefs shall not exceed ten (10) pages of textual material, double spaced, on stationery measuring 8½ x 11 inches, and must be submitted not later than the close of business on July 23, 1985. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 23, 1985. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation hearing procedures, and rules of general application, consult the Commission's Rules of Practices and Procedures, Part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 204.2 of the Commission's rules (19 CFR 204.2).

By order of the Commission.

Issued: April 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10604 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-147]

Certain Papermaking Machine Forming Sections for the Continuous Production of Paper and Components Thereof; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Gary J. Rinkerman, Esq. and Juan S. Cockburn, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: April 24, 1985.

Arthur Wineburg

Office of Unfair Import Investigations.

[FR Doc. 85-10605 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 22-48]

Certain Articles Containing Sugar

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 22(a) of the Agricultural Adjustment Act (7 U.S.C. 624(a)) and scheduling of a public hearing in connection therewith.

SUMMARY: Following receipt on March 22, 1985, of a request from the President for an investigation under section 22 of the Agricultural Adjustment Act, the Commission instituted investigation No. 22-48 for the purpose of determining whether certain articles containing sugar derived from sugar cane or sugar beets, not within the scope of other section 22 restrictions, and provided for in items 155.35, 156.45, 156.47, 157.10, 182.90, 182.92, 183.01, 183.05, and 184.7070 of the Tariff Schedules of the United States Annotated (TSUSA), are being or are practically certain to be imported under such conditions and in such quantities as to materially interfere with the price support program of the Department of Agriculture for sugar cane and sugar beets.

EFFECTIVE DATE: April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Lowell Grant (202-724-0099) or Stephen Burket (202-724-0099), Agriculture Division, Office of Industries, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

The President's letter, which was dated March 22, 1985, stated that "I have been advised by the Secretary of Agriculture, and I agree with him, that

there is reason to believe that certain articles containing sugar or sirups derived from sugar cane or sugar beets are practically certain to be imported under such conditions, at such prices, and in such quantities as to materially interfere with the price support program for sugar cane and sugar beets undertaken by the Department of Agriculture." The President directed that the Commission investigate to determine whether such articles containing sugar are "practically certain to be imported under such conditions, as such prices, and in such quantities as to materially interfere with the price support program of the Department of Agriculture for sugar cane and sugar beets, and to report its findings and recommendations to me at the earliest practicable date."

The President's letter also stated "The Secretary has also determined and reported to me, pursuant to section 22(b) of the Agricultural Adjustment Act of 1933, as amended, that a condition exists requiring emergency treatment with respect to certain articles containing sugar or sirups derived from sugar cane or sugar beets as described below, and has therefore recommended that I take prompt action under section 22(b) to restrict the quantity of these articles which may be entered. I have therefore, on January 28, 1985, issued a proclamation establishing quotas for the following articles containing sugar derived from sugar beets or sugar cane, except articles subject to items 958.10, 958.15 or other import restrictions under part 3 of the Appendix to the Tariff Schedules of the United States:

TSUS item	Quota level (short tons)
156.45	3,000
183.01	7,000
183.05	84,000

These quotas will continue in effect pending the report and recommendations of the United States International Trade Commission and action that I may take thereon."

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11) not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 17, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 26, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 24, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 28, 1985.

Testimony at the public hearing shall be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Posthearing briefs shall not exceed ten (1) pages of textual material, double spaced, on stationery measuring 8½ x 11 inches, and must be submitted not later than the close of business on July 24, 1985. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearings briefs or answers which do not comply with the provisions contained in this notice.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 24, 1985. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 204.2 of the Commission's rules (19 CFR 204.2).

By order of the Commission.

Issued: April 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-10603 Filed 4-30-85; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: Office of Records Administration; NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a monthly notice of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985 (50 FR 12879). Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before June 30, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, D.C. 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records covered by the schedule. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval:

1. Department of the Army, Office of the Adjutant General (NC1-AU-85-12). Records relating to withheld taxes for Korean nationals.

2. Department of the Army, Office of the Adjutant General (NC1-AU-85-13). Individual pay records for Korean nationals not eligible for retirement benefits.

3. Department of the Army (NC1-AU-85-24). Records of various Army organizational offices, 1947-63, including routine correspondence, manuals, bulletins, circulars of an administrative or informational nature, and project files relating to administrative management. Related records of this group with reference and research value will be accessioned by the National Archives.

4. Department of Commerce, International Trade Administration (NC1-151-85-2). Case files relating to trade adjustment assistance to firms and industries.

5. Administrative Office of the United States Courts, Office of Management Review (NC1-116-84-2). Records relating to the review of the management and financial operations of the Federal Courts.

6. Health Care Financing Administration, Office of Administrative Services (NC1-440-85-2). Routine Medicare beneficiary correspondence files consisting of inquiries and complaints received by central office, regional offices, and intermediaries and carriers.

7. Department of the Navy, Naval Data Automation Command (NC1-NU-85-4). Summary records such as copies of repair requests and correspondence relating to upkeep, maintenance, or alteration of vessels.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-10526 Filed 4-30-85; 10:21 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-25]

NASA Advisory Council, Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: May 20, 1985, 9:30 a.m. to 5:30 p.m.; May 21, 1985, 8:30 a.m. to 5:30 p.m.; May 22, 1985, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, FB 10-B, Room 226-A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202-453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The Committee is chaired by Louis Lanzerotti and is composed of 27 members.

The meeting will be closed to the public from 4:45 p.m. to 5:30 p.m. on May 20. During this session the Committee will discuss the evaluate candidates being considered for Committee membership. Throughout this session the qualifications of candidates will be candidly discussed and appraised. Since this session ill be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants).

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda

May 20, 1985

9:30 a.m.—Introduction, Announcements, Logistical Arrangements, etc.

9:45 a.m.—Status of Office of Space Science and Applications (OSSA) FY 1986 Budget in Congress, Current OSSA Planning and Program Priorities, Prospects for the FY 1987 Budget.

11:15 a.m.—FY 1987 Budget and Program Issues from the Perspective of the Division Directors:

- Astrophysics;
- Solar System Exploration; and
- Earth Science and Applications.

2:15 p.m.—Status Reports on FY 1987 New Start Candidates.

4:45 p.m.—Space and Earth Science Advisory Committee (SESAC) Membership (closed session).

5:30 p.m.—Adjourn.

May 21, 1985

8:30 a.m.—Status of Space Station Program.

9:30 a.m.—Update on Space Station Science Task Force Activities.

10 a.m.—SESAC Study Planning.

1 p.m.—General Discussion of Long-Range Planning, FY 1987 Budget Issues, and Program Priorities.

3:30 p.m.—Formulation of Preliminary Recommendations/Drafting of Committee Position Papers.

5:30 p.m.—Adjourn.

May 22, 1985

8:30 a.m.—General Discussion of Committee Recommendaitons.
10 a.m.—Preparation of Final Committee Position Papers.
11 a.m.—Meeting Summary/ Conclusions and Recommendations: Plans for Next Year.
12:30 p.m.—Adjourn.

Dated: April 25, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-10497 Filed 4-30-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-26]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC) Informal Earth System Sciences Committee (ESSC).

DATE AND TIME: June 8, 1985, 8:30 a.m. to 5:30 p.m.; June 9, 1985, 1 p.m. to 6:30 p.m.; June 10, 1985, 8:30 a.m. to 12:30 p.m.; June 11, 1985, 8:30 a.m. to 12:30 p.m.; June 12, 1985, 8:30 a.m. to 5:30 p.m.; and June 13, 1985, 8:30 a.m. to 5:30 p.m.

ADDRESS: Rosario Resort, Orcas Island, Eastsound, Washington 98245.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1707.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Earth System Sciences Committee has been formed to provide advice and counsel to NASA on the future role, responsibilities, and implementation strategies for the Earth Science and Applications program. This committee is chaired by Dr. Francis L. Bretherton and has a total of 17 members.

Type of Meeting: Open.

Agenda

June 8, 1985

8:30 a.m.—Scientific presentations.
1 p.m.—Writing assignments.
5:30 p.m.—Adjourn.

June 9, 1985

1 p.m.—Discussion on the observing strategy.
3:30 p.m.—Writing assignments.
6:30 p.m.—Adjourn.

June 10, 1985

8:30 a.m.—Discussion on the implementation strategy and priorities.
10:30 a.m.—Writing assignments.
12:30 p.m.—Adjourn.

June 11, 1985

8:30 a.m.—Discussion on Agency roles.
10:30 a.m.—Writing assignments.
12:30 p.m.—Adjourn.

June 12, 1985

8:30 a.m.—Deadline for receipt of writing assignments.
1 p.m.—Discussion on the first draft of the report.
5:30 p.m.—Adjourn.

June 13, 1985

8:30 a.m.—Continuation of the discussion on the first draft of the report.
5:30 p.m.—Adjourn.

Dated: April 25, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-10498 Filed 4-30-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration; Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13, issued to Southern California Edison Company (the licensee), for operation of the San Onofre Nuclear Generating Station, Unit No. 1 located in San Diego County, California.

By letter dated April 9, 1985, the licensee requested an amendment which would modify license condition 3.E, Steam Generator Inspections. The amendment would modify the schedule for performing an inspection of the steam generators from within six equivalent months of operation from the outage that ended on November 27, 1984 (estimated mid to late June 1985) to during the refueling outage scheduled to begin no later than November 30, 1985. The requirements to submit the inspection program 45 days prior to the shutdown and to obtain Commission approval before resuming power operation after the inspection are unchanged.

Before issuance of the proposed license amendment, the Commission will have made findings by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The basis for the proposed determination is discussed in the following paragraphs.

The present license condition 3.E became effective upon issuance of Amendment No. 80 to the license on September 4, 1984. The basis for this license condition was discussed in the safety evaluation supporting Amendment No. 80 and in the staff's safety evaluation dated February 7, 1984 regarding the results of the previous steam generator inspection. The staff concluded in the February 7, 1984 safety evaluation that a steam generator inspection would be required within six Effective Full Power Months (EFPM) from the previous inspection based on the licensee's inability, at that time, to demonstrate a degraduation rate less than 15% per year, but that the staff would evaluate any additional justification that the licensee may provide for extending this inspection interval.

The licensee's April 9, 1985 amendment request references a report entitled "1985 Reevaluation of Steam Generator Inspection Interval, March 1985" that was submitted for NRC staff review by letter dated March 19, 1985. The purpose of this report is to document the reevaluation of the basis for the current steam generator inspection interval and to provide sufficient information to justify a longer inspection interval. The licensee has reevaluated the intergranular attack degradation rate of the nonsleeved steam generator tubes using the methodology in the March 1985 report. The licensee concludes that the reevaluated intergranular attack rate (10% growth per 15 EFPM) justifies the

resumption of a refueling cycle interval (15 EFPM) for steam generator inspections.

The staff's preliminary evaluation of the March 1985 report indicates that the information presented justifies the licensee's amendment request to extend the schedule for performing the next steam generator inspection until the refueling outage scheduled to begin no later than November 30, 1985 after approximately 10.5 EFPM of operation, assuming optimum operation, since the last inspection. The licensee's analysis shows that the degradation rate is less than 15% per year.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (iv) of actions no likely to involve a significant hazards consideration relates to a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met. The proposed license amendment is encompassed by this example.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 31, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to J. A. Zwolinski: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application for amendment dated April 9, 1985, the steam generator inspection interval report submitted March 19, 1985, and the NRC staff's safety evaluation dated February 7, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland, this 25th day of April 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-10576 Filed 4-30-85; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Regulatory Commission Advisory Committee on Reactor Safeguards; Subcommittee on Long Range Plan for NRC; Meeting

The ACRS Subcommittee on Long Range Plan for NRC will hold a meeting on May 16, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 16, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue to develop a long range plan for the NRC. Topics to be discussed are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 25, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-10575 Filed 4-30-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Systematic Evaluation Program (San Onofre); Meeting

The ACRS Subcommittee on Systematic Evaluation Program (San Onofre) will hold a meeting on May 15, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 15, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review the Integrated Plant Safety Analysis Report (IPSAR) for San Onofre Unit 1.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 25, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-10574 Filed 4-30-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance notice of new routine use to be added to an existing system of records, and final notice of the deletion of a temporary routine use.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add a new routine use to system USPS 050.020, Finance Records—Payroll System, and to publish notice of the deletion of a temporary routine use to that system.

DATE: Any interested party may submit written comments on Part 2 of this notice regarding the proposed new routine use. Comments must be received on or before May 31, 1985. Part 1 became effective February 3, 1985.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW, Washington, DC 20260-5010, or delivered to Room 8121 between 8:15 a.m. and 4:45 p.m. Comments received may be inspected in Room 8121 between 8:15 am. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office (202) 245-5568.

SUPPLEMENTARY INFORMATION: Part 1 of this notice deletes temporary routine use No. 28 to system USPS 050.020, Finance Records—Payroll System. In Part 2 of this notice the Postal Service is proposing a new routine use No. 28 for system USPS 050.020, in connection with its plans to participate with Federal agencies and non-Federal entities in efforts to enhance the intergrity of benefit programs whether sponsored by those agencies and entities or by the Postal Service. The Postal Service plans to provide to Federal agencies and non-Federal entities certain postal employee information required in connection with efforts to prevent illegal payments under such benefit programs. Disclosures may be made either upon the request of the Federal agency or non-Federal entity or by the Postal Service on its own initiative, under a cooperative agreement. This routine use, once in effect, will permit the discretionary disclosure of data from the Postal Service's Payroll System files when disclosure is necessary for the Postal Service, the Federal agency or the non-Federal entity to take appropriate corrective action to improve the integrity of benefit programs such as the Food Stamp Program, Aid to Families with Dependent Children, workers' compensation, sick leave, education and home loan programs, etc.

Part 1—Deletion of Temporary Routine Use

Temporary routine use No. 28 to system 050.020 was published in 49 FR 4291: February 3, 1984, to be in effect for a period of one year from date of publication. While in effect, the routine use allowed for the disclosure to the Department of Education of home address information on former postal employees for the purposes of notifying those individuals of their indeptedness to the United States under programs administered by the Secretary of Education and for taking subsequent actions to collect those debts. The effective period of one year elapsed February 3, 1985, and the routine use is being deleted.

Part 2—Proposed New Routine Use

The Postal Service, in connection with direction set by the President's Council on Integrity and Efficiency (PCIE) Long Range Computer Matching Group, has determined that it is prudent to identify current or former Postal Service employees who have improperly received compensation under Federal agency, non-Federal entity, or Postal Service benefit programs, and to prevent illegal payments of such benefits. The Postal Service therefore proposes to undertake or to participate in efforts to eliminate this problem by disclosing certain Postal Service employee information in connection with computer matching operations conducted by the Postal Service or by the requesting Federal agencies or non-Federal entities, as determined through written agreements. The matches will be conducted in accordance with the Office of Management and Budget's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982). The Postal Service will obtain a signed agreement from the Federal agency or non-Federal entity specifying that the information disclosed by the Postal Service will be used for purposes of the computer match and for no other purposes and specifying that the information will be safeguarded against unauthorized disclosure.

Postal Service payroll files (USPS 050.020, Finance Records—Payroll System) contain general payroll information including name, social security number, salary, benefit deductions, leave data, addresses, records of attendance and other relevant payroll information. Under a computer matching arrangement, the Postal Service will disclose only information on "matched" employees which is necessary to make a thorough analysis for determining the recipient's status as to eligibility for compensation under the benefit program in question. The Postal Service retains the authority under the proposed routine use to withhold specific data elements if it is believed that the particular elements are not germane to the purpose of such analysis. This analysis, to be conducted by the involved Federal agency or non-Federal entity, or by the Postal Service, is an essential element of the project. The mere existence of an individual's match between the benefit program file and the Postal Service's Payroll System file will not of itself, or without the individual's prior opportunity to respond, be the cause of any benefit reduction or legal collection action.

Disclosure under the proposed routine use is compatible with the Postal Service's personnel management responsibility for oversight of its employees' conduct, particularly with regard to the requirement that these individuals comport themselves in a proper manner and not obtain financial benefits in a fraudulent manner.

Important limitations to the Postal Service's supplying of the data are that the involved parties must: (1) Agree to follow the requirements of the OMB's "Guidelines for Conducting Computerized Matching Programs"; (2) not utilize the information for purposes other than those specifically agreed upon; and (3) not derivatively use the file or information without the Postal Service's specific permission.

A match between the Postal Service's Payroll System File and the Federal agency or non-Federal entity benefit program file is not an indication that any illegality has occurred; the match will alert the participating parties, however, that further study is warranted to see if there is any impropriety. System USPS 050.020 last appeared in 50 FR 6087, February 13, 1985.

Accordingly, the existing temporary routine use No. 28 to system USPS 050.020, Finance Records—Payroll System, is deleted, and it is proposed to add a new routine use No. 28 as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

28. Disclosure of information about particular current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Postal Service; to improve program integrity; and to collect debts and overpayments owed under those programs.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-10523 Filed 4-30-85; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Matching Program—Postal Service/Department of Agriculture

AGENCY: Postal Service.

ACTION: Notice of a Matching Program—U.S. Postal Service/U.S. Department of Agriculture.

SUMMARY: The U.S. Postal Service USPS) announces a proposal to match by computer certain records in its Payroll System file with the U.S. Department of Agriculture (USDA) Food Stamp Program Files. The match will be made under a written agreement between USPS and USDA. The USPS will perform the match using certain data provided by USDA. A matching report is set forth below.

DATE: Comments must be received on or before May 31, 1985.

ADDRESS: Send any comments to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245–5568.

SUPPLEMENTARY INFORMATION: At the request of the USDA, the USPS has agreed to match certain data in USPS payroll system files (USPS 050.020 Records—Payroll System) with USDA Hawaii food stamp recipients files for the purpose of identifying those postal employees receiving food stamps, and determining their eligibility under the Food Stamp Program. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management Budget.

Report of a Matching Program; U.S. Postal Service/U.S. Department of Agriculture

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* It is proposed that the U.S. Department of Agriculture (USDA) will submit to the U.S. Postal Service (USPS) a computer tape containing the names and social security numbers (SSNs) of its Hawaii food stamp recipients which the USPS will match against its payroll system file (SUPS 050.020). For matched employee names and SSNs (i.e.. "hits") the USPS will disclose to USDA the following information from its payroll file: name, SSN, and annual gross wage which USDA will use to make a determination of eligibility under the Food Stamp Program. USPS 050.020, Payroll System, was last published in 50 FR 6087, February 13, 1985.

c. *Period of the Match:* The matching program will begin in [month] 1985 and end no later than September 30, 1986.

d. *Security:* Only the USPS personnel who perform the match will have access to the USDA computer tape. They will us it for the purpose of the match and for no other purpose and will safeguard it from unauthorized access. Likewise, the postal employee information disclosed to USDA will be used by authorized USDA personnel only for the purpose of the match and for no other purposes and will be safeguarded from unauthorized access

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by USDA, and will return it upon completion of the match. All information compiled as a result of this matching effort will be destroyed as soon as the determination is made that it relates to a legitimate, non-fraud situation.

f. *Other Comments:* No bestowed rights, privileges or benefit will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–10524 Filed 4–30–85; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Matching Program—Postal Service/State of Indiana Employment Security Division

AGENCY: Postal Service.

ACTION: Notice of a Matching Program—U.S. Postal Service/State of Indiana Employment Security Division.

SUMMARY: The Postal Service (USPS) announces a proposal to match by computer certain USPS records in its Payroll System file with the State of Indiana Employment Security Division (IESD) wage and unemployment insurance claims files. The match will be made under a written agreement between the USPS and IESD. The IESD will perform the match using certain data provided by the USPS. A matching report is set forth below.

DATE: Comments must be received on or before May 31, 1985.

ADDRESS: Send any comments to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office (202) 245–5568.

SUPPLEMENTARY INFORMATION: At the request of the USPS, the IESD has agreed to match certain data in USPS payroll system files (USPS 050.020, Finance Records—Payroll System) with IESD wage and unemployment insurance claims files for the purpose of identifying any postal employees working in the State of Indiana who are employed by another employer (other than the Postal Service) and who are fraudulently receiving partial unemployment compensation or workers' compensation. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program; U.S. Postal Service (USPS) State of Indiana Employment Security Division (IESD).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* The USPS Inspection Service (IS) proposes to submit to the IESD a computer tape containing only the social security numbers (SSNs) of Indiana postal employees which the IESD has agreed to match against its wage and unemployment insurance claims files. For matched SSNs (i.e., "hits") the IESD will provide the IS with the following information from its files: individual name, employer name and address, the most current five quarter wage information, and the most current unemployment benefit information. Using the information provided by IESD, the IS will compare it to USPS payroll files, including its workers' compensation periodic payroll file, and produce a printout of suspect cases for further investigation. USPS 050.020, Payroll System, was last published in 50 FR 6087, February 13, 1985.

c. Period of the Match: The matching program will begin in [month] 1985 and end no later than September 30, 1986.

d. *Security:* Only the IESD personnel who perform the match will have access to the USPS computer tape; they will use it for the purpose of the match and for

no other purpose, and will safeguard it from unauthorized access. The IS personnel will have access only to the details of the "hits" and not other information or names in the IESD files, and the USPS tape and all information obtained by the IS will be maintained in locked cabinets, and safeguarded against unauthorized access.

e. *Disposition of Records:* The IESD will not retain or copy the tape provided by the USPS. Upon completion of the match, the IESD will return the USPS tape to the IS. Except for any individual investigative case file that may be established within the parameters of system USPS 080.010, Inspection Requirements—Investigative File System (last published in 48 FR 10964, March 15, 1983), all other information compiled as a result of this matching effort will be destroyed as soon as the determination is made that is relates to a legitimate, non-fraud situation.

f. *Other Comments:* No USPS bestowed rights, privileges or benefit will be terminated solely on the basis of a "hit" or the records provided by the IESD in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-10525 Filed 4-30-85; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21976; File No. SR-NYSE-85-8]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Relating to New York Stock Exchange Participation in the Central Registration Depository

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 18, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange is proposing minor language changes to certain rules which require submission of applications for registration of personnel in order to effectuate the Exchange's participation in the Central Registration Depository.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposes rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The New York Stock Exchange intends to become a participant in the Central Registration Depository ("CRD"). The CRD is a computerized application processing system operated pursuant to an agreement between the National Association of Securities Dealers ("NASD") and the North American Securities Administrators Association ("NASAA"). Currently, member organizations, which are also NASD members, must submit applications for registration of securities personnel to both the Exchange and NASD. The CRD system will be utilized to process applications for registration of personnel of member organizations which are also members of the NASD. Applications will continue to be deemed to be filed with an approved by the Exchange. Therefore Exchange participation will elimiate duplicate filing of applications with the Exchange by dual NYSE/NASD member organizations. It is expected that cost savings for both the Exchange and member organizations will result from utilization of the CRD.

In order to effectuate the Exchange's participation in the CRD, technical changes to Rules 311 (Formation and Approval of Member Organizations), 321 (Formation of Corporate Affiliates), 345 (Employee—Registration, Approval, Records) and 720 (Registration of Options Principals) are necessary. These changes will make it clear that any filing or submission required under these rules made with an authorized agent of the Exchange will be deemed to be a filing with the Exchange. The Exchange's jurisdiction under Rules 476 and 477 in regard to such persons and such filings will not be adversely affectd by these changes. The Exchange will announce to its membership, through an Information Memo, the revised submission procedures for application as a result of its participation in the CRD.

Statutory Basis for the Proposed Rule Change

The proposed amendments to Rules 311, 321, 345 and 720 to accommodate Exchange participation in the CRD are consistent with Section 6(b)(5) of the Act in that they will foster cooperation and coordination among self-regulatory organizations engaged in regulating persons handling securities transactions. The proposed amendments will not affect the ability of the Exchange to examine and verify the qualifications of natural persons associated with members, pursuant to Section 6(c)(3) of the Act. In addition, the proposed amendments will not affect existing procedures of the Exchange for compliance with Section 6(b)(7) of the Act in providing for procedures for disciplining members and persons associated with members or denying, barring or otherwise limiting access by members and persons associated with members where appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others.

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The NYSE has requested accelerated approval of the proposed rule change in view of the potential for reduced paperwork in filing applications for approval of certain associated persons by member organizations and its belief that participation in the CRD will not inhibit the Exchange's ability to surveil its member organizations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the

requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the proposal in that the Exchange is currently prepared to begin participation in the CRD and thereby will be enabled to benefit immediately from such participation. The Commission believes that accelerated approval is appropriate because cost savings could thereby be maximized for the NYSE and its member organizations by reducing duplicative paperwork for NYSE member organizations that are also members of the NASD. In addition, the proposed amendments to Exchange Rules 311, 321, 345 and 720 are technical in nature and clarify that registration applications filed with authorized designees (*i.e*, the CRD) are to be considered as filed with the Exchange.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1985.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 23, 1985.

John Wheeler,

Secretary.

[FR Doc 85-10517 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14486; File Nos. 812-6023 and 812-6024]

Applications and Opportunity for Hearing; Sun Life Insurance and Annuity Company of New York et al.

April 24, 1985.

Notice is hereby given that Sun Life Insurance and Annuity Company of New York (the "Company"), a New York stock life insurance company with its executive office at 67 Broad Street, New York, New York 10004; Sun Life (N.Y.) Variable Account A and Sun Life (N.Y.) Variable Account B (the "Accounts"), registered under the Investment Company Act of 1940 ("Act") as unit investment trusts and established by the Company in connection with the proposed issuance of certain variable annuity contracts ("contracts"); and Clarendon Insurance Agency, Inc., the principal underwriter for the contracts, (collectively, "Applicants") filed applications on January 14, 1985, and amendments thereto on March 18, and April 23, 1985, for an order pursuant to section 6(c) of the Act, exempting Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the applications. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Sections 26(a)(2)(C) and 27(c)(2)

Applicants request exemption from sections 26(a)(C) and 27(c)(2) to the extent necessary to deduct from the Accounts a daily mortality and expense risk charge equal to an effective annual rate of 1.3% of net assets (.80% for mortality risks and .50% of administrative expense risks.) Applicants state that the mortality and expense risk charge compensates the Company for the risk that annuitants under the contracts will live longer as a group than had been anticipated in setting the annuity rates guaranteed in the contracts, and for the risk that the guaranteed contract maintenance charge will prove insufficient to cover the administrative costs incurred in regard to the contracts. Applicants represent that the deferred sales charge (which is equal to the amount withdrawn divided by .95, minus the amount withdrawn, and subject to a maximum of 5% of purchase payments) assessed in connection with certain full or partial withdrawals will recoup their expected distribution costs associated with registering and distributing the contracts. Applicants further represent that the Company does not expect to realize a profit from the mortality and expense risk charge, and has determined that it is reasonable in amount with respect to comparable annuity products. This latter representation is based upon its analysis of publicly available information about comparable annuity products in light of the products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, sales loads and expense charge guarantees. The Company undertakes to maintain and make available to the Commission upon request memoranda setting forth the basis for this representation. Applicants also represent that the Accounts will only invest in a mutual fund if such fund undertakes to have a Board of Directors with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the applications may, not later than May 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc 85-10513 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23672; 70-6714]

Columbia Gas System, Inc.; Extension of Authorization To Issue Common Stock Pursuant to Dividend Reinvestment Plan

April 24, 1985.

Columbia Gas System, Inc. ("Columbia"), a registered holding

company, has filed an application-declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

On May 3, 1982 (HCAR No. 22486) this Commission authorized Columbia to issue and sell up to 3,000,000 shares of its authorized, but unissued common stock from time to time through April 30, 1985 pursuant to its Dividend Reinvestment Plan ("Plan"). As of April 23, 1985, 2,031,415 of the 3,000,000 shares had been issued through the Plan, and 968,535 shares remain registered for issuance pursuant to the Securities Act of 1933.

Columbia now proposes that the prior Commission authorization for issuance of the remaining shares of common stock be extended through April 30, 1986. The continued issuance of common stock through the Plan will provide Columbia with an additional source of common equity capital. The funds generated from the issuance of common stock will be added to Columbia's general funds. These funds will be used, together with funds available and those to be generated from operations, to satisfy the demands upon such general funds, including the capital expenditures program of Columbia's subsidiaries.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 14, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10512 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21964; SR-NYSE-85-12]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE is proposing to amend its rate schedule to recover the incremental bond ticker network and delayed prices ticker network expenses resulting from Western Union rate increases that became effective on January 31, 1985. The rate schedule is being changed, retroactive to February 1, 1985, to allow for the separation of communications costs from the ticker display fees.

The fee for bond ticker display service has been $89.00 for the first unit and $4.85 for each additional unit. Under the new structure, the implicit first unit fee is $108.50 where communication facilities are provided ($48.50 ticker display fee plus the $60.00 communications fee) and $48.50 if no communication costs are involved. Additional unit fees are to remain the same. Similarly, the fee for bond ticker printer service which has been $271.00 has been increased to $298.50 ($250.00 for the bond ticker printer plus $48.50 for ticker display). The delayed prices services fee for leased lines subscribers also has been increased from $296.00 to $330.00.

According to the NYSE, this proposed rule change will affect all subscribers to either the bond network or the delayed network in the same manner, since the rates for each network are being raised by the same percentage (22 percent for bond display subscribers and 11 percent for delayed prices service via leased lines subscribers). It also will affect all printer subscribers in the same manner because each printer subscriber will be charged the full costs of his printer. As the present fees apply equally to all members, non-member broker-dealers and others who subscribe to these services, the increases, likewise, will apply. The NYSE informed data recipients of the likelihood of a rate change by a notice dated March 1, 1985, and intends to inform them of the precise rates by notices accompanying their April 1985 statements.

The Exchange cites Sections 6(b)(4) and 6(b)(5) of the Act as the statutory bases for the proposed rule change. According to the NYSE, the proposed rule change relates to Section 6(b)(4) because that section requires an exchange to have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. It also relates to Section 6(b)(5) to the extent that the Exchange's recovery of its costs with respect to its electronic dissemination of bond last sale prices and equity last sale prices on a delayed basis serves to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and the subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-85-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NYSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10518 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21985; SR-PSE-85-9; PHLX-85-9]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change; Order Approving Proposed Rule Change; Notice of Filing and Order Granting Accelerated Approval and Partial Accelerated Approval to Proposed Rule Change

The Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges submitted proposed rule changes, respectively, on April 1 and 4, 1985, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] to amend certain PSE and Phlx policies concerning new option series.

I. Description of the Proposals, Their Purpose and Statutory Basis

A. Proposals Being Approved in this Release

The proposed rule changes would amend PSE's and Phlx's policies to allow: (1) Strike price intervals of $2.50 for individual stock options with strike prices of $25.00 or less; and (2) the addition of series of individual stock options until the first calendar day of the month in which the option expires, or until the fifth business day prior to expiration in "unusual market conditions."[3]

Currently, the policies of both Exchanges require strike price intervals of $5.00 for stocks trading below $200.00, and $10.00 for stocks trading at or above $200.00. In addition, the exchanges currently allow the introduction of new individual stock option series only until 45 days prior to the series' expiration.

In their filings, both PSE and Phlx stated that permitting strike price intervals of $2.50 for options with strike prices of less than $25.00 would enhance depth and liquidity in lower priced options by making at-the-money or near-the-money puts and calls in these option series more readily available. In addition, with regard to the introduction of new option series until the beginning of the expiration month, or until five business days prior to expiration under unusual market conditions, PSE stated that the proposal is consistent with the policy concerning the introduction of new index option series recently approved by the Commission.[4]

Furthermore, PSE and Phlx noted that this portion of their respective proposals is substantially identical to rule changes filed by the Chicago Board Options ("CBOE") and American ("Amex") Stock Exchanges, and recently approved by the Commission.[5] Finally, both Exchanges believe that these proposed rule changes are consistent with Section 6(b)(5) of the Act because they will facilitate transactions in securities by providing market participants with greater flexibility in their investment opportunities and strategies.

B. Proposal Only Being Noticed in This Release

PSE also is proposing a one year pilot program which would allow the listing of individual equity options with two near-term expiring series available at all times. The amended expiration cycle would allow a maximum of four expiration months to trade at any given time.[6] For example, in the January, April, July, October cycle the proposal would allow the introduction of an option series with a February expiration (beginning on the Monday following the December option series' expiration), so that during this cycle there would be four expiration months open simultaneously: January and February (the two near-term expiring series), and April and July. Next, upon expiration of the January series, the proposal would allow introduction of a March expiration series. This would allow the Exchange to retain two open near-term expiring series (February and March) and a maximum of four expiring series (February, March, April, and July).

In this connection, PSE indicated that the industry's experience with index options is that consecutive, near-term expiration month cycles can attract substantial investor interest. The PSE believes that the additional equity option series in the second near-term expiration month should provide investors with greater flexibility in their short-term investment opportunities, while not affecting their long term investment abilities. Nevertheless, because the industry has no experience in the use of near-term consecutive expiration months for equity options, PSE has requested implementation of this program on a one year pilot basis. In addition, because the proposed rule change is intended to facilitate transactions in securities, and will provide the PSE with greater flexibility to list a more complete range of option series for investors, PSE states that its proposal is consistent with Section 6(b)(5) of the Act.

II. Solicitation of Comments

The Commission is publishing this Release to solicit comment on the PSE and Phlx proposed rule changes described above in Sections I.A. and B. Persons interested in commenting on this proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule changes, except those that may be withheld from the public pursuant to 15 U.S.C 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings are also available at the PSE and Phlx.

III. Date of Effectiveness of the Proposed Rule Changes Described in Section I.B. and Timing for Commission Action on this Proposal

With respect to the proposed rule changes described in Section I.B., within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatoy organization consents, the Commission will either by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Approval of Proposed Rule Change

As indicated, the Commission recently has approved proposed rule changes of

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Although the Phlx's original proposal did not include the unusual market condition provision, the Phlx subsequently amended its filing to include such a provision. *See* letter from Barbara M. Rotherberg, Senior Vice President and General Counsel, Phlx, to Heidi Coppola, Attorney, Market Regulation, SEC dated April 12, 1985.

[4] In Securities Exchange Act Release No. 21362 (September 28, 1984), 49 FR 39135 (October 3, 1984), the Commission approved a proposed rule change allowing the addition of series of index options until the first calendar day of the month.

[5] Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258 (April 17, 1985). (File Nos. SR-CBOE-85-1; SR-AMEX-85-6). No comments were received on these changes.

[6] Recently, the Commission solicited comment on a substantially similar CBOE proposed rule change. Securities Exchange Act Release No. 21707 (February 4, 1985), 50 FR 5459 (February 8, 1985). At CBOE's request, however, action regarding this proposal has been deferred.

the CBOE and which are substantially identical to the PSE and Phlx proposals described above in Section I.A.[7] For the reasons stated above, and in the order approving the CBOE and Amex proposals, the Commission believes that this portion of the PSE's proposal and the Phlx proposal is consistent with the requirements of the Act applicable to a national securities exchange and, in particular, Section 6 and the rules and regulations thereunder. In addition, the Commission finds good cause for approving these proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in that CBOE's proposed rule change, which is substantially similar, was published for comment over 30 days ago,[8] and no comments were received in response to that publication.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes by the PSE and PHLX are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary

April 25, 1985.

[FR Doc. 85-10514 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21986; SR-PSE-85-4]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

April 23, 1985.

The Pacific Stock Exchange, Inc. ("PSE") submitted on February 12, 1985, copies of proposed rule changes pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to modify Articles II (Government), III (Elections, Meetings, Terms of Office, Proxies), and VIII (Member Firm Requirements) of the PSE Constitution, and Rule 1 (Dealings upon the Exchange) of the PSE Rules to provide that: (1) "regular" meetings of PSE's Board of Governors ("Board") could be held without notice and that "special" meetings of the Board could be held on four days' written notice though any Board member could waive such notice; (2) a PSE Board member elected as a representative of the public would be exempted from PSE's existing restriction that no Board member may serve for more than two consecutive three-year terms; (3) the period within which PSE's Nominating Committee must meet would be changed from "not less than thirty-five days" to "not less than sixty-five days" before an election; (4) the period within which members may nominate by petition would be changed from "at least twenty days" to "at least forty-five days" before an election; and (5) the term "floor representative" as defined in PSE Rule 1, Section 4(a) would be replaced by the term "floor member."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21804, March 4, 1985) and by publication in the **Federal Register** (50 FR 9739, March 11, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10516 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IA-968; File No. 803-45]

Fidelity Management & Research Co.; Application and Opportunity for Hearing

April 25, 1985

Notice is hereby given that Fidelity Management & Research Company ("Applicant"), 82 Devonshire Street, Boston, Massachusetts, 02109, filed an application on December 24, 1984, requesting an order of the Commission pursuant to section 206A of the Investment Advisers Act of 1940 (the "Act"): (1) exempting Applicant's advisory fee arrangement with a limited partnership to be established by Applicant from the prohibitions of section 205(1) of the Act, and (2) exempting Applicant from the recordkeeping requirements of section 204 and Rules 204-2 (b) and (c) under the Act to extent those provisions require separate records to be maintained for each limited partner in the partnership. Applicant further requests an order from the Commission pursuant to section 210(a) of the Act granting confidential treatment to the Limited Partnership Agreement ("Partnership Agreement") attached as Exhibit A to the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions thereof.

Applicant states that it is registered as an investment adviser under the Act. Applicant proposes to form and become the general partner of a limited partnership (the "Partnership") which will include a limited number of sophisticated institutional investors as the limited partners. According to the application, the Partnership will invest principally in domestic and foreign business enterprises experiencing poor operating results or which are in a weak financial condition, including those involved in work-outs, liquidations, spinoffs, reorganizations, mergers, bankruptcy or similar situations. The Partnership may also invest in leveraged buy-outs. Applicant represents that the Partnership will be exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940. Applicant also represents that the Partnership interests will be sold in a private offering exempt from registration under the Securities Act of 1933.

According to the application, limited partnership interests will only be offered to institutional investors and each limited partner will be required to make a minimum investment of $2,500,000. No limited partner will be permitted to contribute more than 10% of the Partnership's total capital if such investment would cause the Partnership to need to register under the Investment Company Act of 1940. A limited partner may neither withdraw from the Partnership nor assign its Partnership interest without the Applicant's consent.

Applicant represents that the Partnership Agreement will require that Applicant contribute to the Partnership's capital an amount approximately equal to 1.01% of the aggregate capital contributions by all the limited partners. The Applicant will be solely responsible for the management and administration

[7] *See* note 5, *supra*.

[8] The Commission solicited comment on the CBOE proposal in Securities Exchange Act Release No. 21794 (February 26, 1985), 50 FR 8691 (March 4, 1985).

[9] Similarly, because the AMEX proposal was substantially identical to the CBOE proposal, the Commission approved the AMEX proposal on an accelerated basis. *See* Securities Exchange Act Release No. 21929, note 5, *supra*.

of the Partnership's business, including the making of all investment decisions on behalf of the Partnership.

Applicant will also be responsible for all of its administrative and operating expenses, including office, telephone and travel expenses, and salaries and fees of all of its personnel, and for the organizational and offering expenses of the Partnership (other than any brokerage commissions payable to broker-dealers). Applicant states that the Partnership will pay Applicant an annual management fee equal to 2% of the net asset value of the Partnership's assets. Applicant further states that the Partnership will be responsible and will pay for all of its direct expenses, including all legal, auditing, brokerage, interest and tax expenses.

Applicant represents that it will maintain financial records for the Partnership and will provide semi-annual reports to the limited partners on the affairs of the Partnership. Applicant further represents that the Partnership will be audited annually by an independent certified public accountant selected by Applicant. Applicant will provide to the limited partners an annual report of the Partnership accompanied by the independent accountant's report.

According to the application, in addition to the management fee, Applicant will be allocated 1% of the net income and net losses of the Partnership and the limited partners 99% of Partnership net income and net losses until such time as the limited partners have been allocated cumulative net income of the Partnership (net of cumulative losses) equal to 72% of their paid in capital contributions. Thereafter, Partnership net income and net losses will be allocated 20% to Applicant and 80% to the limited partners.

The application states that Applicant does not intend to make distributions during the initial five years of the Partnership; however, within 90 days after the end of any taxable year within the Partnership's five year investment period, Applicant, in its sole discretion, may elect to distribute to each limited partner an amount up to 50% of all realized net income for such taxable year in proportion to the allocation of net income for that taxable year to such limited partner. It is represented that if Applicant should receive distributions in excess of what Applicant is ultimately entitled to receive on the liquidation of the Partnership, Applicant will be required in effect to contribute sufficient amounts to the Partnership to cause the limited partners to be distributed the full amount to which they are entitled. Applicant may also distribute securities in kind to the partners ratably in proportion to their interests.

According to the application, if market quotations are not readily available or if the General Partner determines such value to be unreflective of current fair market value, it will make a good faith determination of the value of the securities. Applicant represents that if 67% in interest of the limited partners request, Applicant will obtain at the expense of the Partnership a valuation of any securities other than marketable securities from an independent firm of investment bankers selected by 67% in interest of the limited partners. Prior to the exercise of such right, the Partnership will obtain an opinion of counsel to the effect that the exercise of such rights will not jeopardize the tax status of the Partnership.

Applicant proposes to maintain the designated books and records for the Partnership rather than for each limited partner. Applicant further states that it will maintain capital accounts for each limited partner reflecting each limited partner's contributions, allocations and distributions.

Applicant requests an exemption from section 205(1) of the Act to the extent necessary to permit it to receive the proposed share of the profits of the Partnership. Applicant also requests an order exempting it from the provisions of section 204 of the Act and of Rule 204-2 (b) and (c) thereunder to the extent that such provisions might otherwise require it to maintain the designated books and records with respect to each limited partner. Applicant represents that it will comply with all other applicable provisions of Rule 204-2.

Applicant further requests an order under section 210(a) of the Act for confidential treatment of the form of Partnership Agreement designated as Exhibit A to the application. Applicant states that the essential terms of the Partnership Agreement have been disclosed in the application; the Partnership Agreement itself constitutes trade secret or commerical or financial information that is privileged and confidential; there will be no public offering of the partnership interests; and prospective investors will be provided with a copy of the Partnership Agreement.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 17, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10578 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23673; 70-6985]

Middle South Utilities, Inc., et al.; Proposed Amendments to Domestic and Foreign Bank Loan Agreements

April 25, 1985.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its electric generating subsidiary, Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, and MSU's electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39205, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act").

MSE was incorporated in 1974 to own and finance certain future generating capacity of the Middle South system. All of its common stock is owned by MSU. MSE is in the final stages of completing and placing in commercial operation the first unit of the Grand Gulf Project ("Unit No. 1"), a two-unit, nuclear-fueled generating station located near Natchez, Mississippi. Work on the second unit of the Grand Gulf Project has been reduced pending commercial operation of Unit No. 1. MSE owns 90% of the Grand Gulf Project, and South Mississippi Electric Power Association, Inc., an association of Mississippi electric power cooperatives, owns the remaining 10%.

By order in this proceeding dated June 26, 1984 (HCAR No. 23341), MSE was authorized to amend its revolving bank loan agreements, Mortgage and Deed of Trust, Availability Agreement, and Power Purchase Advance Payment Agreement for the purpose of increasing its financing capacity and extending the completion date for Grand Gulf Unit No. 1. MSE now proposes further amendments to its revolving bank loan agreements.

As of March 31, 1985, MSE had $1,565,914,000 in revolving credit borrowings outstanding under its $1,711 million loan agreement with Manufacturers Hanover Trust Company and Citibank, N.A., as co-agents, and a group of domestic banks ("Domestic Bank Loan Agreement") and $354,086,000 in revolving credit borrowings outstanding under its $378 million loan agreement with Credit Suisse First Boston Limited, as agent, and a group of foreign banks ("Foreign Bank Loan Agreement"). Under the terms of the Domestic Bank Loan Agreement and the Foreign Bank Loan Agreement, revolving credit borrowings outstanding thereunder are scheduled to convert to term loans no later than June 30, 1985.

MSE proposes to enter into amendments to the Domestic Bank Loan Agreement and the Foreign Bank Loan Agreement in order to facilitate these conversions and to set forth the definitive terms for the timing of and conditions for the resulting term loans. Among other things, MSE proposes to extend the maturity date for the term loan under the Domestic Bank Loan Agreement to some time in 1989. In connection with this extension, MSE would agree to make mandatory prepayments of principal at regular intervals in order to reduce the amount of the term loan prior to maturity. MSE also proposes to change the schedule of payments under the Foreign Bank Loan Agreement to provide for semi-annual mandatory prepayments of one-eighth of the aggregate amount of the term loan which matures on February 5, 1989.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 21, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10584 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14489; 812-6041]

Merrill Lynch, Pierce, Fenner & Smith Inc., et al.; Application

April 25, 1985.

Notice is hereby given that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), 165 Broadway, New York, New York 10080, ML Tax-Advantged Fund, L.P. (the "Partnership"), Merrill Lynch & Co., Inc., (ML&Co."), the independent general partners of the Partnership ("Independent General Partners"), Merrill Lynch, Tax-Advantaged Investments Inc., a proposed Delaware corporation (the "Management Company"), and such future partnerships to be formed by Merrill Lynch under the terms applicable to the Partnership ("Subsequent Partnerships") (collectively, the "Applicants") filed an application on February 6, 1985, for an order of the Commission, requesting: (1) A determination that the Independent General Partners are not "interested persons" of the Partnership as defined in section 2(a)(19) of the Investment Company Act of 1940 ("Act") solely by reason of being general partners thereof; (2) an exemption from section 19(b) of the Act and Rule 19b-1 so that the Partnership may make capital gains distributions more frequently than annually; and, (3) pursuant to sections 6(c) and 17(d) of the Act and Rule 17d-1 thereunder, an exemption authorizing certain joint investments by the Partnership in certain partnerships ("ML Partnerships") in which Merrill Lynch or ML&Co.: (a) Act as general partner or have an equity interest in the general partner of the ML Partnership; (b) are co-investing in the ML Partnership with the Partnership; or, (c) are receiving fees for providing services to the ML Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions thereof.

According to the application, the Partnership will be organized under Delaware law pursuant to a limited partnership agreement ("Partnership Agreement") and will register under the Act as a closed-end, non-diversified management investment company. The Partnership will also file a registration statement under the Securities Act of 1933 ("Securities Act"). The Partnership's investment objectives are current income, long-term capital appreciation and receiving the tax advantages associated with certain investments, such as real estate, research and development, equipment leasing and oil and gas properties. It is intended that the Partnership will concentrate in real estate financings, triple-net leased realty and government-assisted housing. Other investments, including venture capital investments, may also be made by the Partnership. It is expected that the Partnership will acquire between 15 and 20 investments during its projected fixed term of 10 years, with limited possible extensions as prescribed in the Partnership Agreement.

Applicants state that Merrill Lynch Tax Investments Co., L.P. (Managing General Partner") and at least four individuals ("Individual General Partners") will be the general partners of the Partnership ("General Partners"). The Managing General Partner, a partnership controlled by the Management Company, will provide management and administrative services to the Partnership. The Managing General Partner and the Management Company will be registered under the Investment Advisers Act of 1940.

A majority of the Individual General Partners will be noninterested persons, and will perform the same duties and have the responsibilities and obligations of noninterested, corporate directors of registered investment companies under the Act. The Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the Individual General Partners' guidance and review, will be responsible for directing the Partnership's portfolio investments and the admission of limited partners to the Partnership. Applicants state that the Partnership Agreement will provde that the Managing General Partner may be removed by a majority vote of the Individual General Partners or by vote

of limited partners. Individual General Partners may be removed for cause by a two-thirds vote of the remaining Individual General Partners or by vote of the limited partners. The Partnership Agreement authorizes only limited managerial rights to the limited partners, including voting rights, the giving of consents and approvals, and the right to vote on certain matter such as the sale of a substantial portion of Partnership assets. The Partnership Agreement will also restrict the right of the Managing Generla Partner to withdraw from the Partnership unless advance notification is given, a suitable replacement is designated, a majority in interest of limited partners consent and the substitute general partner agrees to assume all duties and responsibilities of the Managing General Partner without receiving compensation in excess of that payable under the Partnership Agreement.

Partnership units will be offered at a price of $1,000 per unit. Limited partners must subscribe for a minimum of five units and meet the following suitability standards: (i) New worth, exclusive of homes, furnishings and automobiles, exceeds the greater of (a) $60,000 in excess of the purchase price for units, or (b) four times the price of units purchased; and (ii) expected income during the current and next three tax years of $60,000. Applicants believe these standards exceed those under state blue-sky laws applicable to public offerings of tax advantaged partnerships, as well as those standards generally applicable to public offerings by specific partnerships of the type in which the Partnership will invest. Applicants also submit that the Partnership's suitability standards will not preclude investment by those for whom the Partnership has been designed, viz., persons making investments of an amount that is not by itself economically practical for individual management other than in the context of a portfolio of pooled tax-advantaged investments.

Applicants state that because the Partnership affords diversification of risk accords only minimum managerial rights to the limited partners provides a general reduced risk of Partnership liability for actions in tort or contract against limited partners, and obligates the General Partners to take appropriate action to protect limited partners, the Partnership has not obtained insurance coverage for limited partners. Applicants further state that such policies are not typical for real estate, oil and gas or equipments partnerships. Merrill Lynch expressly undertakes that the Parntership will periodically review the appropriateness of obtaining an error and omissions policy for the Partnership.

According to the application, Merrill Lynch projects that it will organize a new limited partnership each year with investment objectives similar to those of the Partnership. Applicants represent that all Subsequent Partnerships will: (i) Retain the Management Company as their management company; (ii) elect to register as closed-end, non-diversified management investment companies under the Act; (iii) adopt the Partnership's suitability standards; and, (iv) adopt investment objectives similar to that of the Partnership. To avoid filing separate applications for each Subsequent Partnership, Applicants week that the requested order on behalf of the Partnership be made applicable to Subsequent Partnerships on the same terms and conditions applicable to the Partnership.

Applicants state that under section 2(a)(19) of the Act, the Individual General Partners, by virtue of being partners of the Partnership, are "affilitated persons" of the Partnership as defined in the Act. In addition, Applicants state that the Individual General Partners may also be deemed "interested persons" of the Partnership as defined in the Act because they are interested persons of the investment adviser and principal underwriter of the Partnership. Applicants state that Individual General Partners are affiliated persons of the Managing General Partner because they are "co-partners" of the Managing General Partner. Applicants also state the Managing General Partner is an affiliated person of the Management Company and Merrill Lynch because the Managing General Partner may be deemed to be under common control with the Management Company, the investment adviser of the Partnership, and Merrill Lynch, the principal underwriter.

In order to ensure compliance with section 10, and enable the Individual General Partners to assume the responsibiities of directors who are not interested persons under the Act, Applicants request exemption from the provisions of section 2(a)(19) to the extent that the Individual General Partners would otherwise be deemed to be interested persons of the Partnership, the Managing General Partner, the Management Company or Merrill Lynch solely because such Individual General Partners are general partners of the Partnership and co-partners of the Managing General Partner. Applicants assert that the Partnership has been structured to make the Individual General Partners the functional equivalent of noninterested directors of incorporated investment companies, and therefore Applicants submit that the requested exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the Partnership is scheduled to terminate on December 31, 1995, subject to the right of the Individual General Partners to extend the term for two additional two-year periods. Although Individual General Partners will have authority to reinvest Partnership revenues, Applicants expect that cash received from Partnership portfolio investments will be reinvested only to the extent necessary to meet staged-payment obligations on the Partnerships's investments or for working capital reserves. To the extent cash received is not utilized by the Partnership, it will be distributed at least annually. Applicants state that Section 19(b) of the Act prohibits any registered investment company from distributing, long-term capital gains more frequently than once every 12 months. Rule 19b–1(b) prohibits registered investment companies from making more than one distribution of long-term capital gains in any one taxable year.

The purposes of section 19(b), according to the application, is to prevent shareholders of investment companies from confusing dividends of interest income with distributions of capital gains, to relieve pressure on investment company managers from realizing such gains, to mitigate improper sales practices related to the distribution of such gains, and to eliminate administrative expenses incurred with frequent gain distribution. Applicants submit that the principal concerns section 19(b) was directed against are not applicable to the Partnership because: (1) Distributions of capital gains to limited partners will be identified, hence there is only a minimal possibility of confusion; (2) the Partnership's finite term requires that all investments must be liquidated, and the Partnership does not expect to make further portfolio investments after liquidation; and (3) the Partnership will not offer its securities after the initial offering period, consequently no sales practices will refer to past distributions. Unless relief from section 19(b) is granted, Applicants state, limited partners will be prevented from utilizing the capital gain distributions for their own purposes and the Partnership will

be compelled to invest such funds in marketable short-term securities. For these reasons, Applicants request an exemption from the provisions of section 19(b) of the Act and Rule 19b-1 to permit the Partnership and Subsequent Partnerships to make distributions of long-term capital gains more frequently than once every tax year.

Applicants state that the purpose of the Partnership will be to invest a substantial portion of its assets in offerings in which: (1) Merrill Lynch or its affiliates acts as placement agent; (2) Merrill Lynch or its affiliates may be a general partner or have a general partnership interest; (3) Merrill Lynch or its affiliated entities may have co-invested in the ML Partnership as a limited partner; (4) Merrill Lynch or an ML&Co. affiliate may be receiving compensation in the form of advisory, brokerage or other fees for providing services for the ML Partnership; and (5) Merrill Lynch or an ML&Co. affiliate may have a minority interest in the general partnership of the ML Partnership. Applicants also state that Merrill Lynch or its affiliates have made loans to several ML Partnerships suitable for Partnership investment. All investments of the Partnership, including ML Partnerships, will be selected on the basis of factors set forth in the Partnership's registration statement.

Section 17(d) of the Act, and Rule 17d-1 prohibit a registered investment company, acting as principal, from effecting any transaction in which such registered investment company is a joint or joint and several participant, in contravention of such rules adopted by the Commission. According to Applicants, relief from the provisions of section 17(d) and Rule 17d-1 is necessary to effectuate the purposes of the Partnership. Moreover, Applicants request that the order permitting certain joint transactions with ML Partnerships be granted on an open-ended basis pursuant to section 6(c) of the Act, rather than on an individual basis for each investment. The Partnership is projected to acquire between 15 and 20 investments and each investment will be acquired at the time originally issued. Offering periods for tax-advantaged investments, Applicants state, range from four to eight weeks. Therefore, in terms of transaction volume and time constraints, filing individual exemptive applications and receiving exemptive orders for each investment prior to the closing thereof would be impractical and may preclude the Partnership from obtaining significant tax advantages available only if the portfolio investment is acquired at the time of issuance. Applicants state they also considered the potential of the Management Company acquiring portfolio investments on behalf of the Partnership and then seeking an exemptive order applicable to a multitude of investments; however, significant tax benefits of portfolio investments inure only to the beneficial owner and transfers would diminish the tax benefits to the Partnership.

Applicants contend that section 17(d) of the Act and Rule 17d-1 are not applicable when Merrill Lynch or an affiliate of Merrill Lynch ("ML Affiliate") merely acts as a placement agent for a ML Partnership in which the Partnership invests. Applicants state that section 17(e) of the Act governs purchase transactions by a registered investment company where an affiliate acts as broker. Under the terms of its registration statement, the partnership will acquire ML Partnerships where Merrill Lynch acts as placement agent at a price net of sales commissions. It is expcted that either the Partnership will pay the net price to Merrill Lynch as placement agent for the ML Partnership, or it will be immediately reimbursed by Merrill Lynch or the Management Company in the amount of the Commissions. Applicants do not seek exemptive relief from section 17(e), but in order to insure that the terms of the transactions are fair and reasonable and do not involve overreaching on the part of any person concerned, and in recognition of the potential conflicts of interest when the Partnership purchases securities in offerings in which Merrill Lynch acts as placement agent, Applicants consent to certain conditions applicable also to Partnership acquisitions of other ML Partnerships.

In connection with its request for an order pursuant to section 17(d) and Rule 17d-1 thereunder, permitting the Partnership to invest in ML Partnerships, Applicants consent to the following terms and conditions:

A. With respect to all transactions applicable to the Partnership:

(1) Information concerning all offerings in which Merrill Lynch or a ML Affiliate is involved, as general partner or placement agent, that involve securities eligible for purchase by the Partnership, will be provided to the Independent General Partners of the Partnership.

(2) All investments in ML Partnerships must be reviewed by the Independent General Partners, prior to the time of investment, and they must determine that: (a) There is no overreaching of the Partnership and that the terms of the transaction are reasonable and fair to the limited partners of the Partnership and (b) that the investments are consistent with the policies of the Partnership as recited in its filings under the Act and Securities Act. The Independent General Partners will record in their minutes the information and materials on which these determinations are made.

(3) No General Partner of the Partnership or Management Company or any officer or director of the Management Company will invest in any offering in which the Partnership invests.

(4) Documents relating to information provided to the Independent General Partners, made pursuant to condition (1), and the information and materials referred to in condition (2), will be maintained and preserved by the Partnership for a period of at least six years and will be available for inspection by the Commission in accordance with section 31(b) of the Act as if they were required records thereunder.

B. With respect to Partnership investments where Merrill Lynch or ML Affiliates are co-investors ("Co-investment"):

(5) Each Co-investment will be made by the Partnership on the same basis, in terms of both chronology and price, with that of Merrill Lynch or the ML Affiliate. If the Partnership chooses to purchase a Co-investment security on a basis different from that of Merrill Lynch or a ML Affiliate, an application for an order pursuant to Section 17(d) of the Act and Rule 17d-1 will be filed with the Commission. If such an order is not obtained prior to closing of the particular Co-investment transaction, the Management Company will purchase such security on behalf of the Partnership. If and when the order is issued, the Management Company will sell the security to the Partnership for the original purchase price, plus, to the extent permitted under the terms of such order, costs incurred by the Management Company in connection with its purchase and holding of such security.

(6) Each proposed Co-investment will be reviewed by the Independent General Partners of the Partnership who will make a determination that any such investment by Merrill Lynch or a ML Affiliate would not disadvantage the Partnership in the making of such Co-investment, maintaining its Co-investment position or disposing of such Co-investment.

(7) If Merrill Lynch or a ML Affiliate proposes to sell a Co-investment

security also held by the Partnership, notice of such proposed sale will be given to the Partnership and the Partership will be given the opportunity to participate in such sale. The basis of the Independent General Partners' decision whether to participate in such sale will be recorded in their minutes.

(8) All determinations made by the Independent General Partners pursuant to conditions (5), (6), and (7) will be kept and maintained in the Partnership's records in accordance with Condition (4).

C. With respect to those investments by the Partnership in ML Partnerships for which Merrill Lynch acts as placement agent ("ML Agent Investments"):

(9) ML Agent Investments will be acquired by the Partnership net of selling commissions.

(10) The opportunity to purchase securities in ML Agent Investment offerings will be made available to all Partnerships as well as to any other investment entity managed by Merrill Lynch that has investors other than Merrill Lynch and invests in securities of the types in which the Partnerships invest ("Pooled Entities"). Purchase orders by Pooled Entities will be treated on an equal basis and to the extent demand exceeds availability, the Pooled Entities' investments will be proportionately reduced.

(11) Orders for purchases of ML Agent Investment securities by the Partnership will be placed during the first month of the offering period, or the first one-third of the offering period, whichever is longer.

(12) The Partnership will maintain records indicating its compliance with conditions (9), (10), (11) in accordance with terms of condition (4).

D. With respect to Partnership investments where Merrill Lynch or a ML Affiliate acts as General Partner ("ML GP Investment"):

(13) The Partnership will not invest more than 35% of its partners' capital contributions in ML GP Investments.

(14) Partnership investment in ML GP Investments, whose offering is exempt from the registration requirements of the Securities Act, will not be made by the Partnership unless and until at least 35% of the limited partnership interests sold are purchased by institutional investors not affiliated with Merrill Lynch or by individuals.

(15) The Partnership will maintain records indicating compliance with conditions (13) and (14) in accordance with terms of condition (4).

E. With respect to Partnership investments in a ML Partnership to which Merrill Lynch or a ML Affiliate is committed to make loans or provides advisory or other services for compensation ("ML Service Investment"):

(16) Information concerning the services to be performed by Merrill Lynch or a ML Affiliate and the compliance to be received, to the extent known at the time of investment, will be furnished to the Independent General Partners prior to the time the Partnership invests in a ML Service Investment.

(17) The independent General Partners will consider such services and fees in connection with their approval of investments as required by and in conformance with condition (2).

(18) The Independent General Partners will not differentiate the terms of a ML Service Investment from other investments solely by reason of the fact that Merrill Lynch or a ML Affiliate receives compensation therefrom.

(19) The Independent General Partners will preserve in their minutes records of the basis of their considerations in accordance with the terms of condition (4).

Applicants submit that the above conditions will minimize the potential conflicts of interest and make participation by the Partnership consistent with the protection of investors and the provisions, policies and purposes fairly intended by the Act, and that the participation of the Partnership is not on a basis different from or less advantageous than that of other participants. Applicants represent that the terms of the exemptive order if and when issued pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, will be disclosed in the Partnership's prospectus. Applicants conclude that the Partnership will provide an investment alternative not presently available to investors and that the Partnership could not operate in the absence of the requested exemptive order. Applicants therefore request the Commission to issue an order, pursuant to Sections 6(c) and 71(d) of the Act, and Rule 17d–1 thereunder, permitting the Partnership to make certain joint transactions on the terms and conditions set forth herein.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–10579 Filed 4–30–85; 8:45 am]

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[Release No. 34–21989; SR–MSR B–85–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Rule Change

April 25, 1985.

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N. Street NW., Washington, D.C. 20036–2491 on March 7, 1985 submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder to amend MSRB rule G–12 on uniform practice. The amendment provides greater clarity in the rule by specifying a time prior to the record date after which interest payment checks must be attached on deliveries or registered securities.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21837, published in the **Federal Register** (50 FR 11278, March 20, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–10581 Filed 4–30–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21990; SR-MSRB-85-6]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Rule Change

April 25, 1985

The Municipal Securities Rulemaking Board, ("MSRB") Suite 800, 1818 N. Street NW., Washington, D.C. 20036-2491 on March 1, 1985 submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 and rule 19b-4 thereunder to reorganize rules G-19 on suitability, G-26 on discretionary accounts, and G-27 on supervision, and to provide an interpretation concerning the application of rule G-19 to recommendations made during investment seminars and to customer inquiries made in response to advertisements published by a dealer.

The MSRB is revising the language of rule G-19 to require a municipal securities dealer to have reasonable grounds, based upon information available from the issuer of the security or otherwise, for recommending a purchase, sale, or other transaction in a security. With respect to supervision, the board is incorporating the present provisions of rule G-26(c) into rule G-27 so that rule G-27 contains all the supervision-related responsibilities applicable to municipal securities dealers. Rule G-26 is being withdrawn by the MSRB, and the rule will be reserved for future rulemaking.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21819, published in the **Federal Register** (50 FR 9932, March 12, 1985). One comment was received, from the Public Securities Association ("PSA").[1] While the PSA generally supports the MSRB's proposal to require prior written authorization for discretionary accounts, it believes no such authorization should be required for what it termed "investment management accounts." The PSA also raised questions with respect to the amendments concerning suitability of recommendations.

Discussion

The Commission has determined to approve the MSRB's proposal. With respect to the PSA's comment that prior written authority is not necessary for investment management accounts, the Commission is of the view that there should not be an exception made for these types of accounts, and that customers with such accounts also would benefit from the protection afforded by the MSRB's proposal. The Commission recognizes that certain investment management accounts may already require some prior authorization from customers.[2] However, because the term "investment management account" may apply generically to a broad range of investment accounts and is not limited to any strict legal definition, an exemption, in addition to having serious definitional problems, could result in such accounts not being covered by a rule requiring prior written authorization.

For these reasons, the Commission believes that the MSRB's proposed amendments to rules G-26 and G-27 regarding discretionary accounts are appropriate without an exemption for investment management accounts.

The PSA also expressed concern over the MSRB's proposed amendment to rule G-19 relating to suitability. Specifically, although the PSA supported the requirement in new section G-19(c)(i) that a professional recommending that a customer engage in a transaction in a municipal security have "reasonable grounds" for such transactions "based upon information available from the issuer . . . or otherwise," it suggested that this requirement is insufficiently precise. The PSA suggested that the basis for a professional's recommendation should be limited to the characteristics of the coupon and maturity of the security, its rating by a nationally recognized agency (if any) and its call provisions.

The Commission believes that limiting the requirement in this way would be unnecessarily restrictive. It would be likely to discourage professionals from considering any unique or unusual characteristics peculiar to a particular security, but nevertheless important and material to the investor. The Commission believes that the rule should possess sufficient flexibility to allow for any other factors which may be unanticipated, and therefore cannot be specified. The Commission is also aware that by providing such flexibility, there may be some compromise with regard to precision and predictability. The Commission, however, believes that these concerns may be largely assuaged by future interpretations of the rule by the MSRB, as well as by further industry experience with the new requirement.

Accordingly, the Commission believes that the amendment to rule G-19 is appropriate as proposed by the MSRB.

Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 9(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-10582 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Peter E. Hoey, Chairman, Sales and Marketing Committee, Public Securities Association to John Wheeler, Secretary, SEC, dated April 2, 1985.

[2] Written authorization of discretionary power over accounts is specifically required by the rules of the self-regulatory organizations. *See* New York Stock Exchange Rule 408; National Association of Securities Dealers, Inc., Rules of Fair practice, Article III Section 15.

[Release No. 34-21970; File No. SR-NYSE-85-13]

Self-Regulatory Organizations; Proposed Rule change by New York Stock Exchange, Inc.; Relating to Bond Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 8, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Listing Fee for:

Instruments evidencing ownership of future interest and principal payments on a previously-issued debt security—$10,000 per series.[1]

[1] A series (or class) comprises all eligible instruments evidencing payments on the same debt security, having the same sponsor, and sharing other common or related specifications. The Exchange will ordinarily accept the sponsor's determination as to whether instruments that it sponsors and that evidence payments on the same debt security are part of the same or different series.

The new fee is to be effective upon filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulation Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of the proposed rule change is to establish a fee for the listing of instruments that are repackagings of previously-issued debt securities whose issuance does not entail the raising of new debt capital. While the Exchange has been listing this type of instrument for over two years—member organizations have repackaged United States Treasury Bonds in zero coupon form—it has not heretofore promulgated a separate listing fee for such instruments. The proposed fee, which is a one-time charge, is set at $10,000. The Exchange believes this figure is reasonable for an issue that does not involve the raising of new capital.

(2) *Statutory Basis*—The basis under the 1934 Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organizaiton's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in futherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10583 Filed 4-30-85; 8:45 am]

BILLING CODE 8010-01

SYNTHETIC FUELS CORPORATION

Draft Comprehensive Strategy

AGENCY: Synthetic Fuels Corporation.

ACTION: Availability of Draft Comprehensive Strategy and Invitation of Public Comment.

SUMMARY: This notice invites public comment on a draft of the Comprehensive Strategy of the United States Synthetic Fuels Corporation.

DATE: Comments should be submitted on or before May 15, 1985.

ADDRESS: Comments should be sent to Thomas J. Corcoran, Chairman of Comprehensive Strategy Subcommittee of the Board of Directors, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586.

Dated: April 26, 1985.

United States Synthetic Fuels Corporation.

Leonard Rawicz,

Vice President, General Counsel and Secretary.

This is an early draft of the Comprehensive Strategy of the U.S. Synthetic Fuels Corporation. This draft has not been extensively reviewed by staff or discussed by the Board. It contains draft recommendations and conclusions designed to stimulate discussion; the Board may change these in later drafts. It refers to technical appendices that are not yet complete and makes reference to numbers that are not yet available or ready for release.

This early draft is being released to the public for information only. It does not represent the final judgments of the Board on the matters discussed.

Synthetic Fuels Corporation Comprehensive Strategy Draft

April 22, 1985.

Introduction

This Comprehensive Strategy was adopted by the Board of Directors of the U.S. Synthetic Fuels Corporation ("the Corporation") on June XX, 1985 and is hereby submitted and proposed to the Congress, pursuant to section 126(b)(2) of the Energy Security Act ("the Act").

Since three new members were appointed to the Board of Directors ("the Board") in December 1984, the Board has been working to formulate an approach to the national synthetic fuels program that is appropriate under current conditions. The Statement of Objectives and Principles adopted in January 1985 and the Business Plan adopted in February 1985 reflect the conclusions the new Board reached early in its review of the energy and economic environment and of synthetic fuels projects. This Comprehensive Strategy builds on those earlier documents. It describes:

- The energy and synthetic fuels outlook and the changes in that outlook since the Act was enacted in 1980.
- Experience under the national synthetic fuels program established by the Act.
- The Board's views on the feasibility and desirability of pursuing the national synthetic fuel production goal established by the Act.
- The Board's recommendations on the Corporation's objectives and schedules for their achievement,

including a recommended phased strategy for accomplishing the recommended national synthetic fuels objectives.

• Plans for implementing Phase I of the recommended strategy. Appendices to this document contain background material, including the reports required by the Act to be part of the Comprehensive Strategy.

The Energy and Synthetic Fuels Outlook

Since enactment of the Energy Security Act of 1980, the energy outlook has changed dramatically and much has been learned about synthetic fuels economics and technology. This section sets forth the Board's views on the current outlook and some of the implications for the synthetic fuels program.

The Outlook for Energy Prices and Supplies

In 1980, events in the Persian Gulf had recently caused world oil prices to triple for the second time since 1972: there were gasoline lines in urban areas; and memories of the natural gas crisis of 1976 were still fresh. It was widely believed that energy prices would continue escalating and energy supplies would continue being unreliable indefinitely. Rapid development of a domestic synthetic fuels production capacity seemed a natural response.

However, since 1980, the normal workings of supply and demand in the world oil market, aided by deregulation of domestic energy markets, have resulted in a remarkable change in the situation and the outlook for the future:

• The price of oil in world and U.S. markets has declined in dollar terms.

• Oil production outside the OPEC nations has increased relative to world oil consumption, reducing OPEC's oil sales more than one-third.

• The world oil supply system has proven surprisingly stable, as illustrated by the steady decline in world oil prices during a lengthy war between two major oil exporters in the Persian Gulf.

• The U.S. Strategic Petroleum Reserve has become large enough to provide a significant buffer against sudden supply interruptions and the price pressures that would otherwise result.

As a result of these developments, current forecasts of oil supply, demand and price are almost all sanguine, projecting no major price increases over the rest of the 1980s and only slow increases thereafter. However, such forecasts are all based on the assumption that there will be no disruptions of energy supplies. Furthermore, even if the possibility of supply disruptions is discounted, history has shown that long-term energy price forecasts are unreliable, volatile and strongly influenced by short-term trends: when prices were increasing rapidly, it was widely assumed they would continue increasing without limit; now that they have been stable for a few years, the tendency is to assume they will remain that way indefinitely.

Today, just as in 1980, the only thing certain about the energy future is that it is uncertain and will be full of surprises. However, there are fundamental economic reasons to expect the prices of scarce and depletable natural resources, such as oil, to increase, on average, over time. Long before such a resource is physically exhausted, its owners foresee the time when it will be even more scarce and more valuable; even without a seller's cartel, rational producers begin conserving their limited supplies for that future sellers market. As they do so, current supplies on the market decrease, current prices rise above production costs, and expected future supplies increase, reducing the potential payoff from conservation. Equilibrium is reached when sellers expect prices to rise just fast enough so that their oil in the ground is as good as, but no better than, money in the bank; this equilibrium is optimal for sellers and encourages an economically efficient allocation of the limited supplies over time.

This elegant and simple economic theory cannot predict all the surprises and complications that arise in the real world—revolutions, new technologies, discoveries of additional supplies, etc. But it does help explain much of what has happened in the world energy markets over the past fifteen years, and provides a rationale for thinking that synthetic fuels will become economic sometime in the not-too-distant future. The market price of oil (and, to a lesser extent, natural gas) does not depend on production costs for the lowest-cost producers, but rather on expected future supplies and demands. Barring discoveries of new oil fields comparable to those in the Middle East, prices will tend to continue increasing, on average, but with unpredictable fluctuations.

Other fossil fuel resources, particularly coal and oil shale, will not experience the kinds of price increases likely for oil and gas. Because these other resources are so plentiful relative to any reasonable expectation of demand, their prices will be determined largely by production costs for many decades. As a result, the conversion of these plentiful resources into substitutes for natural oil and gas will almost certainly become economic someday. This prospect puts a limit on the future price of the scarcer natural fuels. In fact, if the large-scale production of these substitutes at reasonable cost becomes an option for the future, convincing owners of low-cost natural fuels that hoarding will not pay large dividends, the current prices of the natural fuels might decrease.

Although oil and (to a lesser extent) natural gas prices can be expected to increase someday, making alternative supplies economic, most current forecasts put this day in unknown but distant future. Whether these forecasts are right or not, they have greatly reduced the private sector's interest in developing energy supplies. Not only do energy investments look less profitable now than they did a few years ago, but lower revenues from existing operations have left energy companies short of cash and vulnerable to corporate mergers and takeovers. The entire industry is undergoing retrenchment and restructuring, and is reluctant to take on large, risky ventures with long-term payoff. Budgets for exploration and development of oil and gas, especially in the frontier areas where the major finds of the future must be made, are being reduced. And investments in alternative supply sources, such as synthetic fuels, are not faring well in corporate capital allocation decisions.

The changes in the energy outlook since 1980 have clearly reduced the urgency of developing a large synthetic fuels production capability. However, as discussed further below, uncertainty about the energy future and some special features of the synthetic fuels business still provide a compelling case for a national synthetic fuels program with objectives other than large-scale production. The development of secure sources of economical and clean energy for the future requires a national effort with continuity and a long-term focus, and should not be turned on or off when every short-term fluctuation in energy prices or price forecasts.

Synthetic Fuels Developments

While the energy situation in general has been improving, government programs and private activities have been adding significantly to the nation's knowledge of and experience with synthetic fuels. Feasibility studies and detailed engineering designs of commercial plants have been conducted. A few pioneer plants have been constructed, and some of these are in the early stages of operation. Among the most important developments arising from these activities have been the following:

• Estimates of the capital costs of pioneer synthetic fuel plants have increased as designs have become more detailed. It is now clear that pioneer plants to produce high-quality synthetic fuels from shale will have capital costs in the range of $100,000 (1985 $) per barrel of daily capacity, while plants using coal will be even more costly to construct; and these estimates apply to plants large enough to capture economies of scale. At these capital costs, the 50,000 barrel per day (bpd) plants that, in 1980, were sought to be optimal would each cost more—and perhaps much more—than $5 billion to construct.

• Those projects that have been constructed have generally met construction budgets and schedules based on detailed engineering design. However, there is still great uncertainty about how well and at what cost a plant will operate once it is constructed—factors that are critical to project economics. Experience in other chemical processing industries, even with mature technologies, indicates that actual production levels ultimately can be significantly higher or lower than design estimates, depending on equipment reliability, how well the several processes within any plant work in combination, etc. It will take some years of operation before it will be known how well any particular plant will operate; and the industry will need experience with different types of plants before it can be said with confidence which processes, in which combinations, are best.

• Some of the pioneer projects that have been built—including some on which private firms have spent large sums of their own money—have encountered technical problems with their processes or environmental controls that will, at best, be expensive to fix in these plants. These problems have set back by several years plans for follow-on projects, as potential sponsors wait to see how they are solved and with what implications for costs.

• Those pioneer plants that have performed as expected are suggesting ways to accomplish significant improvements in costs and performance in follow-on plants. While this is encouraging for the long-term future of the industry, it is further reason for both private and public investors to limit their exposure in the pioneer plants that will not be competitive with follow-on plants.

In summary, experience to date with commercial synthetic fuels production is similar to experience in other industries: Early optimism fades as the pioneers confront the realities of designing, constructing and operating complex and unproven technologies; but, as experience accumulates and problems are solved, the industry gains confidence with the technology and unit costs decline. With a few more years of experience with a broader range of technologies, the synthetic fuels industry will be in position to expand to meet market demand when the economic conditions are right.

The Implications for Synthetic Fuels

Because of these developments in energy markets and in synthetic fuels projects, it is now generally acknowledged that the production of marketable synthetic fuels (at least from coal or oil shale) will not be a large-scale economical alternative to natural fuels for a decade or more—assuming no significant disruptions in energy supplies. Plants based on current technology, even if large enough to take advantage of all economies of scale, simply cannot produce marketable fuels from coal or oil shale at costs than can compete with natural fuels at likely prices.

There are a few specialized situations not involving the production of marketable fuels in which coal synthetic fuel technologies may be more nearly economic. For example, in an integrated chemical complex a coal gasification plant can provide feedstock, process fuel, heat and power in a highly efficient manner. A similar but more important situation arises in the production of electricity: compared to other ways of using coal to produce electrical power, gasifying coal to operate a combined cycle power plant is energy efficient, allows generation capacity to be added in smaller units, and produces much less air pollution. These "niche" positions will provide natural opportunities for the development of synthetic fuel technologies that can be applied economically but on a limited basis in the short run, while improving the technologies that can be used to produce marketable fuels from coal when the market is right in the longer run.

Tar sands and heavy oil resources are more economical sources of marketable fuels than are coal and oil shale. However, while these resources can yield fuels that are (or can be) "synthetic fuels" under the definitions of the Act, they differ from coal and oil shale in several fundamental ways: They are much smaller in size, and hence do not offer the same potential as a large-scale, long-run source of fuel; and they are producible with moderate extensions of well-proven technology that, in most cases, the private sector can manage quite well when the market calls for it. Thus, while production of fuels from tar sands and heavy oils is worth pursuing, especially as an option that might be expanded relatively quickly in response to a sudden increase in energy prices, these resources do not offer the kind of fundamental, long-term alternative to conventional oil and gas that is offered by coal and oil shale resources, and may not require as much of the kind of special assistance the Corporation was created to provide.

Experience in synthetic fuels production and in similar industrial processes suggests that production costs can be reduced significantly—as much as 25–35 percent—below the levels encountered in the pioneer plants. This cost improvement does not usually result from spectacular technological breakthroughs but from "learning by doing". For this reason, even though pioneer synthetic fuels plants cannot compete economically with natural fuel sources, there is a much better chance that synthetic fuels production will be economical after the nation has built and operated a series of pioneer plants. However, the risks of going first and the very liklihood that subsequent plants will be more economical discourage private firms from undertaking the pioneer plants. Even with a determined public program to reduce the risks and provide an economic incentive to firms to undertake the initial projects, it will take ten years or more to develop the base of knowledge and experience that will give the private sector the confidence to expand production rapidly and to a large scale.

Experience Under the National Synthetic Fuels Program

When the Energy Security Act was passed in 1980, it contemplated a massive, crash program of commercial synthetic fuels projects. Because the Corporation was not yet operational, the Act provided funds for the Department of Energy to provide financial assistance (authorized under other legislation) to those projects that were "ready to go;" under this "fast start" program DOE approved assistance to three projects—Colony, Parachute Creek and Great Plains.

The Corporation issued its first solicitation for project proposals in December 1980, as required by the Act, and began evaluating proposals in early 1981. Because the Department of Energy had just funded the strongest and most mature projects, those available to the Corporation were, by definition, not "ready to go." Changes in the Corporation's Board and management during 1981 caused some uncertainty

among sponsors, staff and others about the direction of the program. But, most importantly, with energy prices softening and the realities of pioneer plant economics becoming apparent, sponsors were losing interest or were increasing the amount of assistance they needed from the Corporation.

In 1982, the Corporation began emphasizing the Act's mandate that "prior to the approval of a comprehensive strategy" the Board should assist projects that "incorporate a technological diversity of processes, methods and techniques * * *", as the best was to develop the knowledge and information the nation would need to develop a large scale commercial industry when this became appropriate. This approach was validated by Congressional action in 1984, when the Corporation was directed to make its project decisions without regard to the national production goal, at least until the comprehensive strategy is approved by Congress.

As a result of the continuing deterioration of the short-term market potential for synthetic fuels, the Corporation has been unable to conclude financial assistance agreements with any of the larger projects that were under consideration several years ago. Some of these projects withdrew their proposals, while others let their schedules slip as they reconsidered their involvement and are now inactive. Still others have indicated to the Corporation that, in order to justify the projects to their boards and shareholders, they would now need much higher levels of Corporation support—levels of support that raise serious questions in the mind of the Corporation Board about the value of the projects to the nation and the taxpayers. The Corporation has been able to conclude agreements with only two small projects in special circumstances. [This may change by the time the Comprehensive Strategy is completed in June, depending on what happens to Great Plains and the other LOI projects.]

The change in the situation over the past five years can be illustrated by a summary review of the three commercial projects that were assisted by the Department of Energy before the Corporation became operational and the two projects the Corporation has assisted:

- *The Colony Project (DOE):* Tosco Corporation, a minority partner with the Exxon Corporation in this large (50,000 bpd) shale oil project, had a loan guarantee from the Department of Energy for 75 percent of its share of the capital costs. After investing almost a billion dollars in the project, Exxon decided to withdraw and the project was terminated; the gaaranteed loan was repaid in full.
- *Great Plains (DOE):* This large (23,000 bpd oil equivalent) coal-gasification project has a $1.5 billion loan guaranteed by the Department of Energy. It is a commercial project in terms of scale, large enough to take advantage of economies of scale and using relatively well-proven foreign technology. It was constructed within budget and on schedule and is successfully beginning operation. However, the project will be unable to repay the DOE-guaranteed loan from project revenues, despite an arrangement that yields above-market prices for the synthetic natural gas produced. The sponsors have applied for price supports that would allow the loans to be repaid; the Corporation has issued a letter of intent to provide such price supports.
- *Parachute Creek, Phase I (DOE):* This moderate-size (10,400 bpd), single retort shale oil project sponsored by Unocal has a $400 million price support agreement from DOE but has encountered technical problems that may prevent it from producing enough, soon enough, to collect much of the money available. Because of these problems, other projects that had planned to use the same technology must be reconsidered. The much-larger Phase II project planned by Unocal, which has a $2.7 bilion letter of intent from the Corporation, is inactive.
- *Coolwater (SFC):* This small (4,300 bpd oil equivalent) project was designed to demonstrate a new coal gasification technology for use in electric utility combined cycle plants; its sponsors were intersted in technological data and experience and were willing to pay to get it. The project was modified to assure that it was a commercial plant for the Corporation's purposes and was the first project with which the Corporation signed an agreement—a price guarantee of $120 million. It has been built and operated successfully and is yielding valuable information that will significantly improve the cost and operating characteristics of follow-on commercial plants using this gasification technology for either power generation or synthetic fuels production.
- *Dow Syngas (SFC):* This small (5,172) bpd oil equivalent) commercial project will gasify coal to produce both fuel and power within an integrated industrial complex—one of the "niche" positions in which coal gasification will first be economical. The Corporation is providing a $620 million price guarantee. The project is on schedule and has encountered no significant problems.

This experience with actual pioneer plants suggests that the very large projects contemplated in 1980 are neither appropriate nor necessary under current conditions. This is confirmed by a review of the projects that were under consideration by the Corporation when the new Board arrived in December 1984. This review demonstrated that the larger projects (and even most of the smaller ones) could not now be undertaken responsibly without significant restructuring, which has been underway where possible.

The Board's Conclusions

On the basis on its understanding of the general energy situation and of the specifics of the projects that have been assisted or considered for assistance under the Act, the Board has reached the following conclusions regarding the current status of the synthetic fuels industry:

- Projects large enough to take advantage of economies of scale (i.e., producing multiples of 10,000 bpd), even when technological risks are small, are uneconomic at present and are too large for private sponsors to undertake for the experience. Such projects are of interest to private sponsors only with significant subsidies on a "per barrel" basis, and produce enough barrels to require multi-billion dollar subsidies.
- Smaller commercial projects, using commercial technology and commercial-scale equipment, can be much more nearly economical in particular applications in the chemical or power generation industries, or where project sponsors expect to earn their profits from follow-on activities rather than from the project itself. The total subsidies necessary to make such projects interesting to private sector sponsors can be much less than for the larger projects, even though the "per barrel" subsidy may be larger.
- At this point in the development of a commercial synthetic fuel capability, the appropriate next step for many technologies involves commercial plants that do not try to capture all economies of scale, but that are large enough to provide much of the information and experience necessary to remove technological and enviromental uncertainties from larger projects that might be undertaken later.
- There are real trade-offs involved in choosing between larger and smaller plants: Larger plants would be more direct models for the commercial plants of the future and, because their unit operating costs would generally be

lower, would be more likely to continue operating for many years adding to experience and maintaining an infrastructure of skilled personnel and organizations; smaller plants would provide most of the knowledge and experience necessary to design and build the larger plants of the future, at less cost and with less risk, and would be easier to modify or shut down if this turned out to be the best thing to do. Although these trade-offs must be evaluated on a case-by-case basis, in most cases it appears likely that the smaller plants will generally be preferable.

The National Synthetic Fuel Production Goal

Section 125 of the Energy Security Act of 1980 ("the Act") establishes a national synthetic fuel production goal "of achieving a synthetic fuel production capability equivalent to at least 500,000 barrels per day of crude oil by 1987 and of at least 2,000,000 barrels per day of crude oil by 1992, from domestic resources." Section 126(b) of the Act directs the Board of Directors ("the Board") of the Corporation to "establish a comprehensive strategy to achieve the national synthetic fuel production goal."

Appendix A described in quantitative terms what would be required to accomplish the national production goal, using one possible combination of resources and technologies. Conceivably, with a concerted national effort comparable to wartime mobilization, this plan could be carried out. However, it would be extremely costly and disruptive to do so, and it is unlikely that the deadlines specified in the Act could be met. Under current price and cost forecasts, the financial resources of the Corporation—even the full $88 billion authorized, of which only about $8 billion is currently available—would not be adequate to induce private investment on the required scale.

The plan described in Appendix A is *not* recommended by the Board. It is intended only to illustrate the magnitude of what would be required if the nation should choose to pursue the national production goal, even with relaxed time deadlines and increased financial resources. The plan is intended to be illustrative only, and does not go into details about specific technologies, locations or projects; the implied inclusion or exclusion of any specific technology, location or project does not represent a Board conclusion that such a technology, location or project should or should not be included in any actual large-scale commercial industry. Some of the key features of this plan (or of any of the many others that could be drawn up to accomplish or approximate the goal) are:

[What follows will be expanded and modified on the basis of analytic work being performed by staff.]

- To meet the goal of 500,00 barrels per day (bpd) production capacity in place by (the end of) 1987 would require widespread use of proven technologies (e.g., steam injection) or tar sands and on certain heavy oil resources that can qualify as synthetic fuels resources under the Act. In effect, this would force development of costly and risky heavy petroleum resources in preference to similar heavy oils that are too economical to meet the Act's legal definition of a "synthetic fuel resources." The coal and oil shale projects now beginning or soon to begin operations could contribute only about XXXXX bpd toward the 500,000 bpd goal, and no other coal or oil shale projects could be producing by 1987.
- To meet the goal of 2,000,000 bpd by 1992 would require maximum development of tar sands and (qualifying) heavy oil resources, and simultaneous investments in dozens of multi-billion dollar coal and shale oil plants. These large plants (e.g., costing $5 billion dollars each and producing 50,000 bpd each) would either use proven technologies with limited potential for improvement or try more advanced technologies and run the risk of not working without time- and money-consuming fixes.
- The economic cost of accomplishing the national production goal would be about $XXX billion in investment. Although there is great uncertainty about future energy prices and plant operating cost and performance, the projects should be able to cover operating costs, so that continuing subsidies would not be required if construction costs were fully subsidized. However, if capital costs (including interest) had to be repaid from product revenues, the required energy prices would be on the order of $$XXX per barrel; on the Corporation's median energy scenario, approximately $XXX billion in price guarantee assistance would be necessary to accomplish the 2 million bpd goal.

Although other plans could be developed to accomplish (or approximate) the national production goal, they would differ only in details from the plan outlined above and in Appendix A. Any plan driven by the objective of putting in place a large synthetic fuels production capacity as soon as possible, without regard to technological or market realities, would have to be similar, involving the simultaneous investment in dozens of duplicative projects using unproven and/or unimproved technology; the costs and risks of any such plan would be comparable to those of the proposed plan.

It is the Board's judgment that any plan that might be developed to pursue the national production goal would have unreasonable costs and risks and would not be the best way to develop a strong, commercially viable synthetic fuels industry for the next century. Therefore, the Board does not recommend that the national production goal be maintained as the objective of the national synthetic fuels program, even if the deadlines are relaxed to reflect logistical realities. Under current conditions, it is simply unnecessary and unwise to push for large production levels independent of future developments.

Recommended Objectives, Schedule and Strategy

In recommending that the national production goal *not* be the objective of the national synthetic fuels program, the Board is not suggesting that a large synthetic fuels program should never be developed in the United States. There is no question in the Board's mind that synthetic fuels could provide most of the fuels the nation demands (and, for that matter, satisfy a large foreign demand) in an environmentally acceptable manner, and may someday do so. However, it is too soon to know when or if this may be a good idea, or how it should be done when and if it is a good idea. The issue is one of timing and strategy, not whether a synthetic fuels industry is an option worth developing.

This section outlines the rationale for a continued synthetic fuels program under current conditions and sets forth the Board's recommendations concerning the objective, schedule and strategy for the national synthetic fuels program.

Rationale for a Publicly-Supported Synthetic Fuels Program

The basic rationale for using governmental authorities and funds to encourage investment in commercial synthetic fuels projects is that such projects will yield benefits to the nation at large that are not fully captured by the investors in the projects. These "external" or "social" benefits are of several possible types: The economic and political benefits of decreased reliance on foreign oil supplies; the possibility that near-term world oil prices may be lower if the nation has a credible long-term synthetic fuels option; the ability to increase synthetic

fuels production more quickly and economically when and if it becomes desirable to do so.

Under current conditions in the world oil market, there is no strong argument for producing large quantities of expensive synthetic fuels to displace cheaper natural fuels, either domestic or imported. However, there is still a compelling argument that the nation *may* want to increase synthetic fuels production to a large scale sometime in the next decade or so, and hence the capability to do so economically and with acceptable environemntal impact is worth having—as an "insurance" policy against an uncertain but costly event. Thus, at the present time the most important external benefit from investing in synthetic fuels is the knowledge and experience that will allow the private sector to expand production on its own if and when this becomes desirable.

Until some pioneer commercial plants have been built and operated, the technical, economic and environmental risks of building large synthetic fuels plants will be a serious constraint on the nation's ability to expand synthetic fuels production rapidly. Because these pioneer plants are too large, too risky and, under current conditions, too unprofitable to be attractive to private investors, they will not be built now without governemnt subsidies. Whether such subsidies are appropriate, when and for what types of plants, depends on the magnitude and nature of the external "learning" benefits associated with the different types of plants, in different combinations.

In concept, it would be possible to calculate the learning benefits expected from each possible project in a portfolio of possible projects and then optimize the number and type of projects assisted. As a practical matter, this is impossible and hence a great deal of judgment is necessary to determine which projects deserve how much public assistance. Nonetheless, it is useful to undertake some quantitative assessment of the potential benefits of various types of projects, to estimate the order of magnitude of the benefits and to determine which types of projects, with what timing, might provide the desired "insurance" in the most cost-effective way.

The Corporation has contracted for and performed itself analyses of the learning benefits of pioneer projects. Some of the results are reported in Appendix XXX. In summary, these analyses suggest that pioneer plants built now have the potential of significantly improving the cost and performance of future plants, and that the cost savings to the nation are large enough, soon enough and certain enough to justify some public investments. However, to maximize the net benefits from near-term investments, it is necessary to assure that the right kinds of pioneer projects are undertaken; the program of publicly-supported projects should be no larger or more duplicative than necessary to learn what needs to be learned; and, depending on how the technology and the environment develop over time, the actual outcome may or may not ba a large production program. Insurance is worth buying if one is careful about how much and what kind one buys; and one is usually better off if one never collects on it.

The Board's Recommended Objective, Schedule and Strategy

Based on consideration such as those above, the Board recommends the following:

- *The objective* of the national synthetic fuels program should be to establish, in a cost-effective way, a base of commercial knowledge and experience that will allow the private sector to expand synthetic fuels production to any desired level, efficiently and cleanly, when and if market or national security considerations make this appropriate.
- *The schedule* for accomplishing this objective should be flexible, should reflect both the likely timing of the market and the time it will take to develop the knowledge/experience base in a cost-effective way, and may be different for different synthetic fuel resources and technologies; under current conditions, there is little reason to rush but good reasons to continue making progress toward the longer-term objective.
- *The strategy* should be a phased, adaptive one, in which results and events are analyzed before decisions are made concerning how, when and whether to continue; in the near term, projects should be designed to provide, in a cost-effective way, knowledge to inform later decisions, not necessarily to be models for the projects that will be built in the long run.

More specifically, the Board recommends that:

- The Corporation continue to operate under the Statement of Objectives and Principles adopted in January 1985, and specifically to design its program to "improve the national base of knowledge and experience about both the technological and environmental aspects of selected synfuels options, in order to reduce the technical and environmental uncertainties that might limit the rate and extent of synfuels production nationally."
- The Corporation continue working to implement the Phase I Business Plan adopted by the Board in February 1985, as described in more detail in the next section.
- No additional funding beyond what is currently available to the Corporation be considered at this time.
- The Board report back to Congress within 3 years [Board discussion of the appropriate time is required], describing Phase I progress and results to date and making recommendations for Phase II, if any.

There is, of course, no way to predict just what will occur in the future, either in the synthetic fuels program or in the energy and economic environment, and hence no way to know what the Corporation might report or recommend. There are many possibilities, depending on how well and in which areas Phase I has succeeded in reducing the technical and environmental uncertainties surrounding synthetic fuels technology, and on the energy price outlook. For the sake of illustration, four simple cases can be described.

I. If actual or forecast energy prices are again increasing, and the Phase I program has succeeded in reducing the environmental and technical uncertainties surrounding promising synthetic fuel technologies, the Board may conclude that little or no further government assistance is necessary—the private sector has the economic incentive and the technological base to undertake on its own investments in capacity and in further technological improvements.

II. If actual or forecast energy prices are again increasing, and there remain significant uncertainties about promising options, the Board may recommend a continued or even expanded program to reduce these uncertainties as quickly as possible, perhaps in the kind of fully commercial projects that were originally contemplated in the Act but that are not appropriate now.

III. If the energy price outlook is still sanguine, and the Phase I program has succeeded in reducing the environmental and technical uncertainties, the Board would probably recommend that nothing further be done—the technology is ready when the market is.

IV. If the energy price outlook is still sanguine, and there remain significant technical and environmental uncertainties about synthetic fuels development, the Board might recommend a small program of

continued research to improve knowledge and experience further.

Implementing Phase I of the Business Plan

The Business Plan adopted by the Board in February identified certain combinations of resource and technology that are of priority interest in the Phase I program. Based on further analysis of the status of technology and of potential projects, the Board has defined more specifically what needs to be done within each of the priority resource-technology combinations and how much financial assistance from the Corporation might be required.

In the Business Plan, the Board identified those resource categories and subcategories that are potentially of greatest significance as a source of synthetic fuels, and then identified the kinds of technologies necessary to assure the nation's capability to expand synthetic fuels production from each of these. Because of the wide variation in processing characteristics across subcategories of the "coal" resource, compared to the relative homogeneity of processing characteristics within the shale resource, this process resulting in more coal projects than shale projects, as indicated in the listing below. This outcome reflects the Board's judgment about what is required in each area to accomplish the Board's objective, and does not suggest that the Board thinks coal is more "important" or more "economical" than shale.

The Board's current views on implementing the Phase I Business Plan are outlined below. Those resource-technology categories in which projects are underway are included for completeness. Where no project is now underway, an "Example Desired Project" is described for illustrative purposes; in most cases, these are descriptions of specific projects that are actually before the Corporation or that are expected, on the basis of current discussions. However, the mention of any project, explicitly or by implication, does not mean that the Board has decided to assist that project, that other projects are not welcome, or that agreement has yet been reached between the Corporation and sponsors regarding the project configuration.

Priority Coal Technologies

Fixed Bed Gasification, Dry Bottom, High Pressure

Project Underway: Great Plains—Lurgi gasification of No. Dakota lignite to produce 23,000 bpd (crude oil equivalent) of synthetic natural gas.

Status: The Great Plains plant is completed, in operation, nearing design production rate, approximately on schedule. Improved emission control system may be needed, is under study. Corporation price supports are under consideration to allow project to repay DOE-guaranteed loan.

Fixed Bed Gasification, Slagging Bottom, High Pressure

Example Desired Project: Gasification of high-rank bituminous coal; plant should be minimum size necessary to demonstrate commercial-scale process.

Statue: Coporation will issue a solicitation. Preliminary discussions have been held with a utility engaged in feasibility study of 180 mw projects; sponsor considering reducing size of project.

Fluidized Bed Gasification, High Pressure

Example Desired Projects: Gasification of high-rank bituminous coal; plant should be minimum size necessary to demonstrate commercial-scale process, to minimize risk of scale-up from small pilot plant.

Status: Candidate project has been proposed under existing solicitation; discussions are exploring ways in reduce project size, reduce technological risks.

Entrained Solids Gasification, Slurry Feed, High Pressure

Project Underway: Coolwater—gasification of high-rank bituminous coal to produce 4,3000 pbd (coe) of medium-BTU gas to operate utility combined cycle power plant.

Status: Coolwater plant is complete, operating at capacity, producing approx. 90 mw of power; ready for extended operation to demonstrate plant reliability and equipment life.

Project Underway: Dow Syngas—Gasification of low-rank western coal to produce 5,170 bpd (coe) of medium-BTU industrial fuel gas.

Status: Dow Syngas pilot plant operating; construction of commercial plant to be completed in 1987

Entrained Solids Gasification, Dry Feed, High Pressure

Example Desired Project: Gasification of high-rank Bituminous coal; plant should be minimum size necessary to demonstrate commercial-scale process, to minimize risk of scale-up from pilot plant.

Status: Candidate project proposed under Corporation solicitation, others under discussion; projects may need modification to comply with Business Plan, meet other criteria.

Priority Shale Oil Technologies

Underground Mining/Surface Retorting of Western Shale

Project Underway: Parachute Creek Phase I, utilizing Union B technology in single 10,400 bpd retort, with raw shale oil upgrading.

Status: Project has been constructed but has encountered difficulties in the spent shale disposal section of the retort; discussions underway to explore addition of carbon-burning retort to project.

Example Desired Project: Mining and surface-retorting project using retort capable of handling shale fines; project should be minimum size necessary to demonstrate commercial-scale process.

Status: Corporation interested in proposals but taking no action to solicit them, pending outcome of discussions with Cathedral Bluffs and Parachute Creek.

Modified In Situ (MIS) Recovery of Western Shale

Example Desired Project: Project involving minimum number of commercial scale MIS retorts necessary to demonstrate commercial process, with minimum surface retorting necessary to process shale incidentially mined and surface retort involving carbon burning and/or fines handling.

Status: Discussions are underway with Cathedral Bluffs to explore modifying the project that has a letter of intent from the Corporation, to reduce mining/surface retorting and use an acceptable surface retorting technology.

Priority Tar Sands/Heavy Oil Technologies

Projects Using In Situ and/or Surface Recovery of Heavy Petroleum

Example Desired Project: A set of projects involving resources typical of relatively large deposits, where Corporation assistance is required to characterize the resource and technologies.

Status: A letter of intent is outstanding with one project; others are under consideration; additional solicitation(s) will be issued; no detailed project listing is possible at this time.

Secondary Priority Resource-Technology Combinations

The Business Plan lists several resource-technology combinations as "secondary priority," meaning that strong projects that are under consideration or that may come to the Board's attention will be considered in Phase I, within the limits of funding availability, but that the Board does not

intend to actively solicit or develop projects in these areas. Example projects in this secondary priority category are described below.

Example Project: Surface mining and retorting of Eastern oil shale, using retort applicable to Western shale; project should be minimum size necessary to demonstrate commercial process.

Status: Several projects are under consideration or discussion.

Example Project: Project producing synthetic fuel from peat, promising to overcome some of peat's inherent disadvantages as a synthetic fuel resource.

Status: One project has a letter of intent from the Corporation but has asked for additional time to reassess technology and economics.

Example Project: Project using true in-situ processing of near-surface western oil shale.

Status: One project has a letter of intent; discussions with sponsors underway.

Example Project: Direct hydrogenation project.

Status: Preliminary discussions have been held with several potential sponsors.

Example Project: Coal-water fuel project at minimum size necessary to demonstrate production of fuel of quality and at cost that is attractive to potential electric utility users: must demonstrate that project would not compete with unsubsidized producers of such fuels.

Status: Corporation solicitation is inactive, pending future Board review of status, competition in the industry.

Conclusions

The Board of Directors of the U.S. Synthetic Fuels Corporation is convinced that the nation will benefit from a limited program of modest-size commercial projects as outlined in the Phase I program above. Until the projects have been more fully defined and the financial assistance terms negotiated, it is not possible to say how much it might cost to implement the suggested Phase I Business Plan. However, a rough estimate for each of the categories is presented below:

Priority Coal Technologies	$XXXX million.
Priority Oil Shale Technologies.	$XXXX million.
Priority Tar Sands/Heavy Oil Technologies.	$XXXX million.
Secondary Priority Categories	$XXXX million.
Total	$XXXX million.

[More specific conclusions and recommendations to be formulated and discussed by the Board.]

[FR Doc. 85-10521 Filed 4-30-85; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 11-85]

Series U-1987 Notes

April 25, 1985.

The Secretary announced on April 24, 1985, that the interest rate on the notes designated Series U-1987, described in Department Circular—Public Debt Series—No. 11-85 dated April 18, 1985, will be 9¾ percent. Interest on the notes will be payable at the rate of 9¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-10539 Filed 4-30-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 85-74]

Recordation of Trade Name; American Fan Retail Association, Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On February 1, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "AMERICAN FAN RETAIL ASSOCIATION, INC." was published in the **Federal Register** (50 FR 4828). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than April 12, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "AMERICAN FAN RETAIL ASSOCIATION, INC." is recorded as the trade name used by American Fan Retail Association, Inc., a corporation organized under the laws of the State of Delaware, located at 125 Walnut Avenue, Bronx, New York 10454. The trade name is used in connection with fans manufactured in Taiwan and Hong Kong.

DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: April 26, 1985.

Edward T. Rosse,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-10541 Filed 4-30-85; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 84
Wednesday, May 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 6, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance: Southwest Thrift & Loan Association, an operating noninsured industrial bank located at 283 South Escondido Boulevard, Escondido, California.

Application for Federal deposit insurance and consent to exercise full trust powers: First Signature Bank & Trust Company, a proposed new bank to be located at 65 Lafayette Road, North Hampton, New Hampshire.

Application for Federal deposit insurance for a state-licensed branch of a foreign bank: Bank of the Philippine Islands, Makati, Philippines, for Federal deposit insurance of deposits received at and recorded for the accounts of its branch to be located at 805 Third Avenue, 28th Floor, New York, New York.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, a liquidating agent of those assets:

Case No. 46,216-SR (Amendment)—Sharpstown State Bank, Houston, Texas.

Case No. 46,217-NR (Amendment)—Swope Parkway National Bank, Kansas City, Missouri.

Case No. 46,218-NR (Amendment)—Coronado National Bank, Denver, Colorado.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda: Memorandum and resolution re: FFIEC Supervisory Policy, entitled "Securities Lending," which discusses several areas of supervisory concern involving securities lending transactions and sets forth prudent operating guidelines for depository institutions engaged in securities lending activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 29, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10669 Filed 4-29-85; 3:14 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 6, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Notice of acquisition of control: Names of acquiring parties and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof: Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.: Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 29, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10670 Filed 4-29-85; 3:14 pm]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 50, Page (unknown), Date of publication—April 30, 1985.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, DC. 20552.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Martha Gravlee (202–377–6677).

CHANGES IN THE MEETING: The meeting previously scheduled for Thursday, May 2, 1985, has been cancelled.

No. 8, April 29, 1985.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85–10671 Filed 4–29–85; 3:20 pm]

BILLING CODE 6720–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 6, 1985

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Implementation of the Board's Program Improvement Project.
2. Building proposals regarding the Federal Reserve Bank of Chicago.
3. Proposed purchase of a telephone system within the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Jospeph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–10610 Filed 4–29–85; 9:18 am]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, May 3, 1985, at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Inv. 731–TA–254 [Preliminary] (Heavy-walled rectangular welded carbon steel pipes and tubes from Canada—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[FR Doc. 85–10599 Filed 4–26–85; 4:49 pm]

BILLING CODE 7020–02–M

6

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 29, May 6, 13, and 20, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 29

Wednesday, May 1

2:00 p.m.
Discussion of Low level Waste Issues (Public Meeting).

4:00 p.m.
Affirmation Meeting (Public Meeting) (if needed).

Thursday, May 2

10:00 a.m.
Discussion of Modified Rule on Material False Statements (Public Meeting).

3:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be closed—Ex. 5 & 7).

Week of May 6—Tentative

Wednesday, May 8

10:30 a.m.
Briefing by AIF on State of the Industry (Public Meeting).

Thursday, May 9

10:00 a.m.
Briefing on Brookhaven Report on Independent Safety Organization (Public Meeting).

2:00 p.m.
Executive Branch Briefing (Closed—Ex. 1).

3:30 p.m.
Affirmation Meeting (Public Meeting) (If needed).

Friday, May 10

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting).

Week of May 13—Tentative

Wednesday, May 15

10:00 a.m.
Briefing on Final Rule on Backfitting (Public Meeting).

Thursday, May 16

10:00 a.m.
Mid-Year Budget and Program Review (Public Meeting).

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed).

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

Week of May 20—Tentative

Thursday, May 23

9:30 a.m.
Discussion of Pending Investigation (Closed—Ex. 5 & 7).

10:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Palo Verde-1 (Public Meeting).

2:00 p.m.
Discussion on Shoreham Adjudication Matter (Closed—Ex. 10) (Tentative).

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed).

ADDITIONAL INFORMATION: Affirmation of "Petitions for Review of ALAB–800 (In Re Long Island Lighting Company)" (Public Meeting) was held on April 23.

Discussion of Diablo Canyon-2 Contested Issues scheduled for April 23, *cancelled.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85–10573 Filed 4–26–85; 4:12 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
May 1, 1985

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3040, 3100, 3130, and 3200

Oil and Gas Leasing; Geothermal Resources Leasing; National Petroleum Reserve, Alaska; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3040, 3100, 3130, and 3200

Exploration Activity; Oil and Gas Leasing; National Petroleum Reserve, Alaska; and Geothermal Resources Leasing; General; Amendment Consolidating Oil and Gas and Geothermal Geophysical Exploration and Lease Bonds, and Increasing Minimum Bond Amount Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations covering bond requirements for oil and gas leasing and geothermal leasing activities by consolidating twelve different types of bonds, seven for oil and gas and five for geothermal. The proposed consolidation would provide for only four types of bonds covering oil and gas as well as geothermal activities, and exploratory as well as drilling activity, thus reducing the administrative burden. Requiring fewer bonds would not only reduce public confusion, but also would represent a net cost savings. The proposed increased bond amount would cover current surface restoration costs and the value of Federal royalties, and would simplify and consolidate the bonding requirements structure.

DATE: Comment period expires July 1, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management, 18th and C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mona Schermerhorn, (202) 653-2236.

SUPPLEMENTARY INFORMATION: Present oil and gas regulations in 43 CFR Part 3100, Subpart 3104 require that "prior to the commencement of drilling operations, the lessee or operator or designated operator shall submit a surety or personal bond * * * in an amount of not less than $10,000 conditioned upon compliance with all terms and conditions of the lease." In lieu of the $10,000 individual compliance bond, a lessee or operator may furnish a bond of not less than $25,000 to cover all leases and operations in any one State, or a bond of not less than $150,000 to cover leases and operations nationwide.

In addition, prior to commencement of any geophysical exploration operations, parties or lessees filing a notice of intent or permit application for exploratory work must furnish at the same time a bond of not less than $5,000 for each planned exploration, or in lieu thereof, a $25,000 statewide or $50,000 nationwide exploration bond. Where a lease bond or operator's bond has already been furnished, it may be conditioned by a rider to cover exploration operations and a separate exploration bond need not be posted (43 CFR 3045.4).

In the National Petroleum Reserve—Alaska, a $100,000 corporate surety bond must be furnished prior to issuance of each lease or, in lieu thereof, a $300,000 bond covering an entity's oil and gas activities on the entire Reserve in accordance with the leasing regulations at 43 CFR Part 3134.

Present Federal geothermal regulations at 43 CFR Parts 3206 and 3209 pertaining to geothermal lease and geophysical exploration bonding are similar to those for oil and gas with two exceptions. The minimum bond for statewide lease coverage is $50,000 instead of $25,000. Also required is a separate bond of not less than $5,000 for indemnification for damages to persons or property required on an individual lease basis regardless of whether the lessee has filed a lease compliance, statewide, or nationwide bond (43 CFR 3206.1-1(c)). This requirement for a separate bond to indemnify surface owners had also been required under the oil and gas regulations until it was removed from the regulations on October 15, 1976 (41 FR 45566).

Under this proposed rulemaking there would be only four types of bond covering oil and gas and geothermal activities, with allowance for National Petroleum Reserve—Alaska coverage under the nationwide bond. The requirement for a $5,000 geothermal bond protecting surface owners in 43 CFR 3206.1-1(c) would be removed. The regulations in §§ 3045.4, 3104, 3134, 3206, and 3209 would be changed to reflect the four basic bond requirements proposed:

(1) An individual bond in the amount of $25,000 would be required of each lessee or operator for any exploratory and drilling activity undertaken on an individual lease or any activity undertaken for a single exploratory project, except those in National Petroleum Reserve—Alaska. Each separate drilling (on separate leases) or exploratory project would require an individual $25,000 bond unless a statewide bond or nationwide bond was furnished.

(2) A statewide bond in the amount of $150,000 would provide the bondholder coverage within a single State for all drilling on all of his/her leases and for all of his/her exploratory work, except in the National Petroleum Reserve—Alaska.

(3) A nationwide bond in the amount of $500,000 would cover all drilling and exploration activity conducted by a single party regardless of the number of States affected. A nationwide bond would be required where drilling or exploratory activity by a single party occurs in more than one State. This new requirement would reduce administrative problems incurred in handling multistate bonding by single operators and provide a simpler, more direct, cost-effective solution. Further, single operators that have lease activities in more than one State are generally operating in more than two or three States—for example, throughout the Rocky Mountain Region. Thus, for the great majority of operators, carrying a nationwide bond would be less costly than carrying multiple statewide bonds for individual States. Exploratory work and leases in the National Petroleum Reserve—Alaska would also be covered by a nationwide bond. Separate statewide bonds provided before the proposed rulemaking becomes effective would not have to be replaced by a nationwide bond until they expire or become due for renewal.

(4) Under existing regulations, a National Petroleum Reserve—Alaska $100,000 bond covers a single lease in the National Petroleum Reserve—Alaska, and is required prior to issuance of such a lease. Bond coverage is also required prior to issuance of an exploration permit for operations in areas where no lease has been issued. Multiple leases by a single party in the National Petroleum Reserve—Alaska may be bonded by a reserve-wide $300,000 bond in lieu of single $100,000 lease bonds. Under the proposed rulemaking, a nationwide bond would also cover leasing and exploration activities on the National Petroleum Reserve—Alaska. Holders of National Petroleum Reserve—Alaska lease bonds would be permitted to obtain a rider to include coverage of off-lease as well as on-lease exploration operations in the National Petroleum Reserve—Alaska without an increase in the amount of bond coverage.

The increases in the amount of bond coverage provided in this proposed rulemaking would make the bonds

commensurate with current restoration costs. In recent years, the Bureau of Land Management (BLM) has encountered an average of 10 instances annually where individual operators have left well locations without properly plugging and abandoning the holes, or properly reclaiming the disturbed surface at the well site.

Costs involved in down-hole plugging and abandonment procedures, covering cementing, rig time, and miscellaneous costs, range from an estimated $20,000 to $75,000 per well, when depths range from 5,000 feet to 15,000 feet. Costs involved in surface reclamation at the individual well sites range from an estimated $5,000 to $25,000 per site, depending on the environmental and terrain configurations. This means that total costs of plugging, abandonment, and reclamation could range from $25,000 to $100,000 per site.

Accordingly, during the course of a year, the typical 10 instances of improper abandonment would involve an unrecoverable expense for BLM of from $200,000 to $750,000 for plugging and abandonment and from $50,000 to $250,000 for reclamation, or a total of $250,000 to $1,000,000, less the small proportion now covered by bonds.

Delinquencies in royalty payments also demonstrate the need for higher bond levels. The Minerals Management Service has analyzed current delinquent billings that would require the bond to be called to protect the interest of the Government. Since October 1, 1984, 69 Federal onshore leases have gone into default for non-payment of royalties totaling $4.6 million. An examination of bonds in force for these leases shows a total deficiency of $1.2 million in bonding to cover the defaulted royalties.

Also, the number of bankruptcies among royalty payors is on the rise. As of January 31, 1985, MMS had been notified of 12 bankruptcies involving companies with royalty payment responsibilities. In all instances, MMS is seeking approval of the bankruptcy court to collect the royalties by calling the bond. It is expected that the bonds in these cases will be insufficient to cover the total royalty liability in all 12 cases.

Under this proposal, single exploratory project minimum bond coverage would be raised from $5,000 to $25,000; coverage of drilling activity on a single lease would be raised from $10,000 to $25,000. The statewide exploratory bond coverage would be raised from $25,000 ($50,000 for geothermal exploration) to $150,000; statewide coverage for drilling activity on leases would be raised from $25,000 to $150,000. Required coverage for nationwide activity would be raised from $50,000 for exploration and from $150,000 for drilling on leases to $500,000 for both exploration and drilling activities. For the National Petroleum Reserve-Alaska, exploration and lease coverage could be included in a nationwide bond in lieu of separate lease and exploration bonds covering the entire Reserve.

During a period of 1 year following the effective date of this rulemaking, all current lessees holding nationwide, statewide, and individual bonds covering geophysical exploration, geothermal resources, and oil and gas leasing, will be required to submit replacement bonds in the amounts specified.

The public is encouraged to offer any suggestions that would improve the present bonding system. We solicit comments on the following topics: Ways of reducing possibly duplicative Federal and State bonding requirements; whether the proposed bonding requirements are sufficient to cover the actual costs of closing and abandoning drill holes and wells; and possible alternatives to bonding such as imposing a reclamation fee. The public is urged to suggest new and innovative approaches to bonding.

The principal authors of this proposed rulemaking are Mona Schermerhorn and Lois Mason of the Division of Fluid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The $250 increase in annual bond premium costs imposed on small operators is insignificant compared to their well-drilling and other operating expenses. The costs that would be occasioned by this proposed rulemaking would fall equally on all entities, regardless of size.

Information collection requirements associated with this rulemaking have been submitted to the Office of Management and Budget for review. This proposed rulemaking would provide for a new revised consolidated single bond form to replace existing forms 3045-3, 3104-1, 3104-2, 3104-8, 3106-4, 3200-11, 3200-12, 3200-13, and 3200-16, which were assigned Office of Management and Budget clearance numbers 1004-0128 and 1004-0074.

List of Subjects

43 CFR Part 3040

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3130

Alaska, Mineral royalties, Oil and gas reserves, Public lands—mineral resources, Surety bonds.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359), the Geothermal Steam Act of December 24, 1970 (84 Stat. 1566), the Department of the Interior Appropriations Act for Fiscal Year 1981 (Pub. L. 96-514), the Act of May 21, 1930 (30 U.S.C. 301-306), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), Groups 3000, 3100 and 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, is amended as set forth below.

PART 3040—[AMENDED]

1. Section 3045.4 is amended by revising paragraph (a) to read as follows:

§ 3045.4 Bond requirements.

(a) For each planned exploration, the party or parties filing the notice of intent or application for a permit shall simultaneously file, and a lessee, prior to commencing geophysical operations on a lease, shall file with the authorized officer a bond, as described in § 3104.1 of this title, in the amount of at least $25,000, conditioned upon full and faithful compliance with all of the terms and conditions of this subpart, the notice of intent, permit and/or lease. In lieu thereof, the party or parties may file

a statewide bond in the amount of $150,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $500,000 covering all oil and gas exploration operations in the nation. Holders of statewide and nationwide bonds shall also be deemed to have bond coverage for leasing activities as required in §§ 3104.2 and 3104.3 of this title, and geothermal exploration operations and leasing activities as required in §§ 3206.5, 3206.6, and 3209.4 of this title. Holders of National Petroleum Reserve-Alaska oil and gas lease bonds as required in § 3134.1 of this title shall be permitted to obtain a rider to include the coverage of oil and gas exploration operations within the National Petroleum Reserve-Alaska.

* * * * *

PART 3100—[AMENDED]

§ 3104.2 [Amended]

2. Section 3104.2 is amended by removing the figure "$10,000" wherever it appears, and inserting, in its place, the figure "$25,000", and adding at the end thereof a new paragraph (c) to read as follows:

* * * * *

(c) This bond shall satisfy the bonding requirement of a lessee on its lease under § 3045.4(a) of this title.

§ 3104.3 [Amended]

3. A. Section 3104.3(a) is amended by removing the figure "$25,000" and inserting, in its place, the figure "$150,000", and adding at the end thereof two sentences reading as follows: "This bond shall also satisfy the provisions for a statewide bond in §§ 3045.4(a), 3206.6, and 3209.4 of this title. A nationwide bond shall be furnished in lieu of a statewide bond when coverage is required in more than 1 State."

B. Section 3104.3(b) is amended by removing the figure "$150,000" and inserting, in its place, the figure "$500,000", and adding at the end thereof two sentences reading as follows: "This bond shall also satisfy the provisions for a nationwide bond in §§ 3045.4(a), 3206.6, and 3209.4 of this title. However, a nationwide bond shall be required where leases are held and operations will be conducted in more than 1 State."

PART 3130—[AMENDED]

§ 3134.1 [Amended]

4. Section 3134.1 is amended by: (A) Amending paragraph (a) by changing the period at the end of the second sentence thereof to a comma, and adding the phrase "or maintains and furnishes a nationwide bond as set forth in § 3104.3(b) of this title."

(B) Amending paragraph (b) by inserting, in the first sentence, following the figure "$300,000", the phrase "or a nationwide bond as provided in § 3104.3(b) of this title.".

(C) Amending paragraph (c) by removing the words "$100,000 lease bond or a $300,000 National Petroleum Reserve-Alaska-wide" after the words "surety on a".

(D) Amending paragraph (d) by removing from the first sentence the words "$100,000 lease bond or $300,000 NPR-A-wide" following the word "new", by removing the second sentence in its entirety, by inserting the phrase "$100,000 lease" following the word "separate" in the third sentence, and by adding the phrase "or a nationwide bond" in the third sentence following the phrase "a $300,000 NPRA-wide bond".

(E) Amending paragraph (e) by removing the phrase "Subparts 3104 and 3318" and inserting, in its place, the phrase "§§ 3045.4(a), 3104.2, 3104.3(a), 3206, and 3209".

§ 3134.1-2 [Amended]

5. Section 3134.1-2 is amended by redesignating the existing section as paragraph (a) and adding a new paragraph (b) reading as follows:

* * * * *

(b) The holders of an oil and gas lease bond for a lease on the National Petroleum Reserve-Alaska shall be permitted to obtain a rider to include the coverage of oil and gas geophysical exploration operations within the boundaries of the National Petroleum Reserve-Alaska.

PART 3200—[AMENDED]

§ 3206.1-1 [Amended]

10. Section 3206.1-1 is amended by:

(A) Revising paragraph (a) to read as follows:

(a) Bonds shall be either corporate surety bonds or personal bonds.

* * * * *

(B) Amending the second sentence in paragraph (b) by removing the figure "$10,000" and inserting, in its place, the figure "$25,000"; and

(C) Removing paragraph (c) in its entirety.

§ 3206.3-1 [Amended]

11. Section 3206.3-1 is amended by:

(A) Amending the first sentence by removing the figure "$10,000" and inserting, in its place, the figure "$25,000"; and

(B) Amending the second sentence by inserting the word "one" after the phrase "Where there is more than".

§ 3206.3-2 [Amended]

12. Section 3206.3-2 is amended by correcting the word "more" to read "mere".

§ 3206.5 [Amended]

13. Section 3206.5 is amended by removing the figure "$150,000" and inserting, in its place, the figure "$500,000" and adding at the end of the section a new sentence to read as follows: "This bond shall also satisfy the bonding requirements contained in §§ 3209.4, 3045.4, and 3104.3(b) of this title."

§ 3206.6 [Amended]

14. Section 3206.6 is amended by removing the figure "$50,000" and inserting, in its place, the figure "$150,000", and adding two sentences as follows: "This bond shall also satisfy the bonding requirements contained in §§ 3209.4, 3045.4, and 3104.3(a) of this title. If an operator anticipates expanding activities into more than one State, a nationwide bond may be furnished in lieu of statewide bonds."

§ 3206.7-2 [Amended]

15. Section 3206.7-2 is amended in the first sentence of the paragraph by removing the figure "$150,000" and inserting, in its place, the figure "$500,000" and by removing the figure "$50,000" and inserting, in its place, the figure "$150,000".

§ 3209.4-1 [Amended]

16. Section 3209.4-1 is amended by:

(A) In paragraph (a) removing the figure "$5,000" and inserting, in its place, the figure "$25,000;" and

(B) Redesignating paragraph (b) as paragraph (c) and inserting a new paragraph (b) to read as follows:

* * * * *

(b) In lieu thereof, the party or parties may file a statewide bond in the amount of $150,000 covering all geothermal exploration operations and leasing activities in the same state or a nationwide bond in the amount of $500,000 covering all geothermal exploration operations and leasing activities in the nation. These bonds shall also satisfy the bonding requirements contained in §§ 3045.4, 3104.2, and 3104.3 of this title.

* * * * *

J. Steven Griles,
Deputy Assistant Secretary of the Interior.
March 22, 1985.

[FR Doc. 85-10489 Filed 4-30-85; 8:45 am]
BILLING CODE 4310-84-M

federal register

Wednesday
May 1, 1985

Part III

Department of Agriculture

Agricultural Marketing Service

Wheat and Wheat Foods Research and Nutrition Education; Wheat Industry Council Budget for Fiscal Year 1986; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. WR-1]

Wheat and Wheat Foods Research and Nutrition Education; Wheat Industry Council Budget for Fiscal Year 1986

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of the Wheat Industry Council Budget for fiscal year 1986.

SUMMARY: This notice presents the proposed July 1985 through June 1986 budget of the Wheat Industry Council. Publication of budget information in the **Federal Register** is required by the Wheat and Wheat Foods Research and Nutrition Education Act. The purpose is to provide information concerning the emphasis and direction of the Council's nutritional education program for the upcoming year. In addition, it provides those end product manufacturers, who are required to pay assessments on purchases of processed wheat to fund the program, an opportunity to reserve the right to seek a refund of assessments paid.

FOR FURTHER INFORMATION CONTACT: Lowry Mann, Livestock and Seed Division, AMS, USDA, Washington, D.C. 20250, Phone: 202/447-2650.

SUPPLEMENTARY INFORMATION: The Wheat and Wheat Foods Research and Nutrition Education Act of 1977 (7 U.S.C. 3401-17) authorized a research and nutrition education program for wheat and wheat foods. Formal rulemaking procedures, including a public hearing, were followed in developing the Wheat and Wheat Foods Research and Nutrition Education Order which provides the framework for the program.

In a March 1980 referendum wheat end product manufacturers approved the Wheat and Wheat Foods Research and Nutrition Education Order. The Order provides for a program of research and nutrition education for wheat and wheat-based foods to be administered by a 20-member Wheat Industry Council. The Order requires that all nonexempt wheat end product manufacturers be assessed up to 5 cents per hundredweight of processed wheat purchased to finance the program. The Order limited the assessments to 1 cent per hundredweight during the first 2 years of the program. The assessment will remain at the 1 cent level for fiscal year 1986 (July 1985-June 1986). Wheat end product manufacturers who purchase less than 2,000 hundredweight of processed wheat per year, those who are defined as retail bakers, and processed wheat used in the manufacture of exempt end products are not assessed.

The Wheat and Wheat Foods Research and Nutrition Education—Rules and Regulations require all nonexempt wheat end product manufacturers to register with the Wheat Industry Council; 1333 H Street, NW., Suite 1200; Washington, D.C. 20005 (Phone: 202/682-2130). Assessments are due and payable to the Wheat Industry Council on or before the 30th day following the end of each firm's quarterly reporting period.

Wheat end product manufacturers who wish to reserve the right to request refunds of assessments to be paid during the Council's upcoming fiscal year must submit such notification to the Wheat Industry Council by registered or certified mail within 60 days after publication of this notice in the **Federal Register.** In order to receive a refund of assessments paid, an end product manufacturer must first reserve that right, then pay the assessment on or before the 30th day following the end of the quarterly reporting period. The refund must then be requested on the appropriate form within 60 days following the end of the quarterly reporting period.

The primary objective of the Council's 1985-86 program is to increase consumer awareness of the benefits of wheat foods through an effective nutrition education program. The program includes generic television commercials, media appearances by university nutritionists, television public service spot announcements, releases to food writers, audio-visual materials for health and nutrition speakers and lecturers, and a wheat foods logo.

The Wheat Industry Council budget for fiscal year 1986 is as follows:

Wheat Industry Council—July 1, 1985-June 30, 1986, Budget

Income:		
From Assessments	$1,000,000	
Carryover from 1985 Budget	114,000	
Total		$1,114,000
Program Expenses:		
Media Tour	[illegible]	
Color Page Release	50,000	
TV PSA	50,000	
Media	234,500	
Consumer Materials	45,000	
Conferences/Comm. Mtgs	15,000	
Supplies, Expenses	55,000	
Employment Compensation	[illegible]	699,500
Medical/Nutrition Research Committee	50,000	50,000
Industry Communications:		
Council Communications:		
The Reporter	20,000	
Newsgram	12,000	
Special Mailings	6,000	
Council Meetings/Travel Committee Expenses	49,000	
Supplies/Postage	3,500	
Employment Compensation	20,000	110,500
Administration:		
Administration Costs (Rent, Liability Insurance, Telephone, Property Tax)	86,000	
Assessments/Registration	22,500	
Professional Services	8,000	
Miscellaneous	2,500	
Employment Compensation	[illegible]	174,000
USDA:		
Administration	50,000	
Repayment of Referendum Costs	30,000	[illegible]
Total Expenses		1,114,000

Done at Washington, D.C.: April 26, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-10530 Filed 4-30-85; 8:45 am]

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federal register

Wednesday
May 1, 1985

Part IV

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2749-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three wastes generated during the production of linuron and bromacil. The Agency also is proposing to add linuron and bromacil to the list of commercial chemical products which are hazardous wastes when discarded. The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262–266, Part 124, and the permitting requirements of Parts 270 and 271.

DATES: EPA will accept public comments on this proposed rule until July 1, 1985. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by May 16, 1985.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket "Listing Linuron and Bromacil." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for this amendment is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA today is proposing to add to the list two wastes from the production of linuron and one waste from the production of bromacil. The two wastes from linuron production are the wastes from the decanter (K119), and the wastes from the spill control trap (K120); the wastewater from product filtration and water washing (K121) is the waste from bromacil production.

The hazardous constituents in these wastes include carcinogenic, teratogenic, reproductive, and otherwise chronically and acutely toxic organic compounds. They typically are present in high concentrations in the wastes. The hazardous constituents also are mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. In addition, both linuron wastes are ignitable, with flash points of 80° F and 85° F (K119 and K120, respectively); waste K119 also is corrosive, with a pH less than 2. Evaluated against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Both linuron and bromacil are commercial chemical products and have adverse health effects. Accordingly, EPA is proposing to add them to the list of commercial chemical products which are hazardous wastes when discarded (40 CFR 261.33(f)).

The Agency notes that the Hazardous and Solid Waste Amendments of 1984 (HSWA) require EPA to determine whether or not to list wastes from the production of linuron and bromacil within 15 months of the bill's enactment (see section 222(a) of HSWA, 42 U.S.C. 3001(f)).

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous two wastes generated during the production of linuron and one waste from the production of bromacil. The residual wastes are:

- K119—Wastes from the decanter in the production of linuron.
- K120—Wastes from the spill control trap in the production of linuron.
- K121— Wastewater from product filtration and water washing in the production of bromacil.

In 1983, one domestic company produced linuron and bromacil at one location; the annual production capacity is not available. Based on engineering judgment, however, EPA estimates the volume of waste generated per year from linuron production by the process described here to be approximately 2.5–5.0 kkg of waste K119, and 1.25–2.5 kkg of waste K120; approximately 10,000 kkg of waste K121 are generated from bromacil production.

Linuron production typically is a continuous process consisting of reacting a dichloroaniline with phosgene, then reacting the isocyanate intermediate with a hydroxylamine to form the linuron product. The wastes are formed as residuals at two points in the production of linuron. After the linuron goes through two distillations steps, the light ends from the second distillation go through a decanter. When the decanter (which has a volume of 500–1000 kg) is filled (about once each month of operation, or five times per year), it is dumped and the contents incinerated. These wastes, a mixture of water, oranics, and solids from the decanter, are waste K119. Waste K120 comes from the spill control trap, which is an integral part of the initial distillation process. This trap receives water with entrained solvent and some solids from the distillation area on a continuous basis. The trap also receives wastewater intermittently, such as when spills occur, from the bromacil production process, which is physically located adjacent to the linuron process. When the trap (which has a volume of about 250–500 kg) is filled (about once each month of operation, or about five times per year), it is dumped and the contents incinerated.

Bromacil is manufactured in a batch process, consisting of mixing methyl acetoacetate in a xylene solution with sec-butyl urea, and adding sodium methoxide to drive the reaction to completion. The uracil intermediate is extracted, then brominated to form bromacil. The product is filtered, washed, and refiltered, and the filtrate discharged to a biotreatment system; this wastewater is waste K121.

The listing background document (available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries) and the sources cited there describe this production process in detail. Certain sections of the

background document, however, are confidential business information (CBI); these CBI sections will be deleted from the document that is available to the public.

As derived from sampling and analyses, these wastes typically contain significant concentrations of the toxic constituents:

Waste No	Constituent	Concentration in PPM
K119	Chlorobenzene	407,000
	Linuron	1,600
K120	Chlorobenzene	395,200
	Bromacil	2,400
K121	Bromacil	2,400

[1] 3,3',4,4'-Tetrachloroazobenzene (TCAB) and 3,3',4,4'-tetrachloroazoxybenzene (TCAOB) also are expected to be present in the wastes from linuron production. TCAB and TCAOB are structurally related to the chlorinated dioxins and -dibenzofurans (CDDs and CDFs). As is true for the CDDs and CDFs, TCAB and TCAOB induce a variety of toxic effects at extremely low doses; they bind with high affinity to the "TCDD receptor" (in this respect they are as potent as 2,3,7,8-tetrachlorodibenzofuran (TCDF)). TCAOB is teratogenic in mice, causing cleft palate, hydronephrosis and hydrops. In these studies, the ED50 (dose eliciting 50% of the maximal response) for TCAOB is about 200 times that of 2,3,7,8-tetrachlorodibenzodioxin (TCDD), *i.e.*, the teratogenic potency of TCAOB is only about 200 times less than that of TCDD, one of the most potent teratogens known. For TCDD, the VSD for the reproductive effects (1.8 fg/kg/d) (Kimbrough, 1984) and the 10^{-6} lifetime excess cancer risk level dose (7 fg/kg/d) are the same order of magnitude. Since TCDD is about 200 times more potent a teratogen than TCAOB, we estimate its VSD for reproductive effects to be 200 × 1.8 = 400 fg/kg/d. TCAB and TCAOB also are immune system and liver toxicants. The health effects of TCAB and TCAOB are more fully discussed in the HEEP (EPA, 1985). TCAB is presumed to be present in these wastes based on published reports that linuron itself contains about 9 ppm. The presence of TCAOB is inferred because it is the oxidation product of TCAB. CDC determined that 1 ppb of TCDD in soil is a reasonable level at which to begin consideration of action to limit human exposure to dioxin-contaminated soil (Kimbrough, 1984). CDC's 1 ppb estimate as the level of concern in a residential situation would therefore yield about 200 ppb as the level of concern for TCAOB. Because of their structural and physicochemical resemblance to TCDD and TCDF, TCAB and TCAOB are predicted to be almost insoluble in water, soluble in aprotic organic solvents, and to adsorb strongly to organic soil constituents. In the absence of solubilizing solvents, the principal hazard to human health is expected to arise from dusts and sediments containing these chemicals. The presence of TCAB in these wastes is of concern because of its structural resemblance to TCDD, the potency of its biochemical and systemic toxic effects, and the fact that it degrades to TCAOB. Since the degradation rate is not known, the Agency is not able presently to determine a level of concern for this toxicant in these wastes. Because the Agency has no definite information regarding the concentration of these toxicants in the waste, we, therefore, are not including them as constituents of concern. We solicit data on their concentration, and may include them as constituents of concern in the final listing if additional data is received to indicate that they are present at significant levels.

Based on their toxicity, mobility, and persistence, the concentrations of these toxicants are of significant concern (see discussion below).

These hazardous constituents have carcinogenic, teratogenic, reproductive, or other effects. Chlorobenzene, in several subchronic studies, caused histopathologic changes in the liver and kidneys of rats, mice, and dogs (EPA, 1984). Reproductive effects noted in a study in dogs include decreased spermatogenesis, tubular atrophy, and epithelial degeneration (EPA, 1984).

There is limited evidence that linuron is a potential human carcinogen (EPA, 1980–85b, CBI). There also is slight evidence that linuron is teratogenic in rats (EPA, 1980–85a). Mutagenicity tests with linuron have shown both positive and negative results; these data, therefore, are inadequate for assessing its mutagenic potential (EPA, 1980–85a; and b, CBI).

In a long-term assay, bromacil was carcinogenic to male mice; thyroid hyperplasia was noted in rats (EPA, 1980–85b, CBI). Bromacil also caused slight fetotoxic effects, causing decreased fetal weight and delayed caudal ossification in rats (EPA, 1980–85a). Its reproductive effects in mice include increased incidence of spermatocyte necrosis (EPA, 1980–85b, CBI).

These compounds, therefore, exhibit toxicological properties of regulatory concern. For additional information on the toxicity of the hazardous constituents, see the Health and Environmental Effect Profiles (HEEPs), available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries.

These constituents are very mobile, with expected exposure pathways via ground water and volatilization. The water solubility of a given toxic constituent is indicative of its mobility potential (*i.e.*, the likelihood that it will be released from a management site and become dissolved in a water resource). Leaching is a concern because most of these compounds are soluble in water and so could leach out of the wastes, potentially contaminating ground water. The water solubility of the hazardous constituents are fairly high: linuron, 75 mg/l (EPA, 1980–85a); bromacil, 815 mg/l (EPA, 1980–85a); and chlorobenzene, 488 mg/l (EPA, 1980–85a). The Ambient Water Quality Criterion (AWQC) for chlorobenzene (derived from toxicity data) is 0.488 mg/l. Therefore, if chlorobenzene present in the waste leached into ground water, and contaminated a drinking water well at only 10% of its solubility limit, the resulting chlorobenzene concentration would be 100 times its AWQC.

If linuron or bromacil were to contaminate a drinking water well downstream from a disposal facility at only 10% of their theoretical solubility limit (*i.e.*, 7.5 and 81.5 ppm concentrations respectively), the users of such a contaminated well would be at high risk (10^{-4} to 10^{-3} in the case of linuron, and 10^{-1} in the case of bromacil) for the development of benign or malignant tumors.[1]

Chlorobenzene also is volatile, a factor which increases its potential release to air. Its vapor pressure is 10 mm Hg at 22.2° C (Sax, 1979), indicative of its potential to release to air when improperly contained, posing an additional threat to human health and the environment if these wastes are improperly managed. For linuron, with a vapor pressure of 1.5×10^{-5} mm Hg at 24° C (EPA, 1980–85a), and bromacil, with a vapor pressure of 8×10^{-4} mm Hg at 100° C (EPA), 1980–85a), emission to air is not an exposure pathway of great concern.

The Agency considers a material to be persistent if it persists in the environment long enough to be detected, since it may result in exposure to humans in the same period of time. Chlorobenzene and bromacil have been detected repeatedly in ground and surface water surveys, which provides an indication of their environmental persistence. These constituents can migrate from the matrix of a waste, through air, soil, and water, and will persist in the environment. Chlorobenzene has been found in ground water, surface water, soil, and air (JRB, 1984). It also was detected in school and basement air, basement sumps, and in solid surface samples at the Love Canal site (JRB, 1984). The Agency has no data indicating detection of linuron in water, but its estimated half-life in water is about two months (EPA, 1980–85a), sufficient time for it to reach environmental receptors and pose a substantial hazard to human health and the environment. Bromacil has a half-life of about six months in soil, and has been detected at low levels in Florida citrus soils a year after application (EPA, 1980–85a). Bromacil also was detected at higher levels (0.3 and 32 mg/l in a Michigan river (EPA), 1980–85a).

These data demonstrate the mobility and persistence of these hazardous constituents in the environment. (See the background document and HEEPs for additional details on the fate, transport, and mismanagement of these constituents.)

Due to the high concentrations of the hazardous constituents in these wastes, the toxic effects of these constituents, and their mobility (via both leaching and volatilization) and persistence in the

[1] These risks were calculated as follows:

Risk = conc. in water × daily water consumption × 1/body weight × q1*.

For linuron: risk = 7.5 mg linuron/L × 2L/day × 1/70 kg × (0.0006 – 0.0098)/mg/kg/day = 10^{-4} to 10^{-3}.

For bromacil: risk = 81.5 mg bromacil/L × 2L/day × 1/70 kg × 0.064/mg/kg/day = 10^{-1}.

(q1* is an estimate of the upper limit of the slope of the dose-response data obtained from an animal cancer assay, and/or epidemiology studies. It enables an assessment of the excess cancer risk to humans resulting from lifetime exposure to a carcinogen.)

environment, EPA concludes that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

B. Addition of Linuron and Bromacil to § 261.33(f)

Linuron is a herbicide used for selective weed control in corn (field and sweet), sorghum, soybeans, carrots, celery, parsnips, potatoes, cotton, wheat, and non-crop areas, such as roadsides, vacant lots, golf course fairways and tees, sod farms, alleys, streets, and fence rows. Bromacil is a non-selective photosynthesis inhibitor herbicide.

For the reasons listed above linuron and bromacil also should be regulated as discarded commercial chemical products, pursuant to 40 CFR 261.33. Section 261.33(f) is a list of commercial chemical products or manufacturing intermediates which are identified as hazardous wastes when discarded. Substances are listed as hazardous if they exhibit one or more hazardous waste characteristics identified in 40 CFR 261.21, 261.22, 261.23, and 261.24, or have been shown in reputable scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms, unless the Administrator concludes after considering certain factors that the waste is not capable of posing a substantial present or potential hazard to human health or the environment even when improperly managed. (See 40 CFR 261.11(a)(3).) With respect to linuron and bromacil, they both have toxic effects and are mobile and persistent in the environment, as discussed earlier and in the HEEPs. In addition, they are typically and frequently present in concentrations far higher in the commercial chemical product than in the wastes. Therefore, even though the volumes of wastes that may be disposed may be small, the Agency still believes that linuron and bromacil should be added to the list of commercial chemical products that are hazardous wastes when discarded.

C. Toxicants Added to Appendix VIII

This action also proposes to add linuron, bromacil, TCAB, and TCAOB to 40 CFR Part 261, Appendix VIII. As noted above, in the listing background document, and in the HEEPs, these substances have toxic, carcinogenic, or teratogenic effects on humans or other life forms (see 40 CFR 261.11(a)(3)); these considerations form the basis for adding them to Appendix VIII.[2]

D. Test Methods for Compounds Added to Appendices VII and VIII

On October 1, 1984, 49 *FR* 38786–38809, the Agency proposed test methods (both those newly designed and those previously available in SW-846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III.

The Agency has determined that Method Numbers 8080, 8250, and 8270 are suitable for testing for the presence and concentration of linuron, bromacil, TCAB, and TCAOB.[3] Preliminary literature searches (material available in the public docket—see "**ADDRESSES**" section) indicate that these compounds have been detected by gas chromatographic methods similar to those described by the above methods. Halogens (*e.g.*, bromine and chlorine) and unsaturated oxygen bonds allow the use of electron capture detection gas chromatography for the detection of these compounds, as well as mass spectrometric detection. EPA is proposing, therefore, that these existing analysis methods be used for the detection of these constituents. The Agency requests information concerning industry experience on the determination of these compounds by the referenced methods.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3238, Document number: 055–002–81001–2.

III. CERCLA Impacts

The hazardous wastes designated by today's proposed rule, if listed, become hazrdous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14), 42 U.S.C. 9601(14).) A final listing of linuron and bromacil production wastes under RCRA would affect reporting requriements under CERCLA. (See CERCLA section 103, 42 U.S.C. 9603 and 50 *FR* 13456–13521, April 4, 1985.)

An RQ has been designated for one of the hazardous constituents for which the three waste streams are proposed to be listed: chlorobenzene has a final RQ of 100 pounds. Linuron (a hazardous constituent of Waste K119) and bromacil (a hazardous constituent of Wastes K120 and K121) will be added to 40 CFR 261.33(f) if this proposal is made final. Both of these compounds will have RQs of one pound, unless and until adjusted by regulation under CERCLA. The Agency is currently assessing the available data on all of the hazardous constituents and the waste streams to determine if an adjustment from the statutory one pound RQ is appropriate.

IV. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carryout those requirements and prohibitions in authorized States, including the issueance of permits, until the State is granted authorization to do

[2] Although the Agency is not including TCAB and TCAOB as constituents of concern, we believe there is sufficient toxicity data as described above and in the HEEPs to add them to Appendix VIII.

[3] Chlorobenzene already is included in 40 CFR Part 261, Appendix III; the methods to use for detecting the presence and concentration of chlorobenzene are Method Numbers 8020 and 8240.

so. While States must still adopt HSWA-related provisions as State law to retain authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes regulations that would be effective in all States since the requirements are imposed pursuant to Section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Thus, EPA will implement the regulations in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations is described in 40 CFR 271.21. See 49 *FR* 21678 (May 22, 1984).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

V. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste regulations, tanks that are treating or storing hazardous wastewaters are exempt from the Parts 264 and 265 management standards when the treatment unit is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. Treatment units, such as concrete basins, which may or may not be in-ground, routinely provide for certain steps in a wastewater treatment process such as equalization, neutralization, aeration (in biological treatment facilities), settling (in both biological and physical/chemical treatment facilities), flocculation, or treated wastewater storage before recycling. Where such units are constructed primarily of non-earthen materials designed to provide structural support, they are defined as tanks for purposes of the hazardous waste regulations. See 40 CFR 260.10 (definition of "tank"). In applying this definition, the Agency has provided guidance that a unit is to be evaluated as if it were free-standing and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit is considered to be a tank. Alternatively, if the unit is not capable of retaining its structural integrity without supporting earthen materials, it is considered to be a surface impoundment, and subject to 40 CFR Parts 264 and 265 requirements.

When wastewaters, including those covered by the listing proposed today, are stored or treated in tanks that are part of a unit subject to regulation under sections 307(b) or 402 of the Clean Water Act, they are presently exempt from the Parts 264 and 265 management standards.

VI. Regulation of Linuron and Bromacil Compounds Under FIFRA

Linuron and bromacil are used as herbicides and, therefore, are subject to regulation as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA uses a statutory risk-benefit balancing test: products are "registered" (authorized) if they generally will not cause any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use. Accordingly, pesticides which present more than insignificant risks can be approved if the Agency determines that the benefits of use outweigh the risks. (See FIFRA sections 3(c)(5), 3(c)(7), and 2(bb).) If the Agency ever decides that a pesticide no longer meets the standards for registration, then its registration may be cancelled.

Following completion of a Registration Standard for linuron, the Office of Pesticides and Toxic Substances (OPTS) issued a notice on September 26, 1984 (49 *FR* 37843) which informed the public that evidence of hazard from the use of linuron warranted a special review of its risks and benefits to determine whether its registration should be cancelled. The basis for this review is that linuron is oncogenic to laboratory animals and that the public may be at risk from both dietary and agricultural workplace exposure. EPA also has determined that data necessary to refine the Agency's risk assessment must be developed on an accelerated basis, and that interim precautionary labeling is required to reduce the risk during the special review process.

OPTS also published a Registration Standard for bromacil in September, 1982. Preceding issuance of this document, the Agency reviewed all available health effects data on bromacil and concluded that additional data were needed to evaluate bromacil's use as a pesticide. OPTS still is awaiting submission of additional data required of registrants, however, before reaching a final conclusion on whether any further changes in the terms and conditions of bromacil's pesticide registration are warranted.

The Agency believes that the decision to list linuron and bromacil waste streams as RCRA hazardous wastes is consistent with the treatment of these pesticides under FIFRA because the statutory standards under RCRA and FIFRA are different.

VII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The total additional incurred annual cost for disposal of the wastes as hazardous is about $139,000, well under the $100 million constituting a major regulation. This estimate is based on EPA's determination of incremental costs to facilities associated with compliance with all relevant RCRA management standards. This cost is insignificant and results from minimal additional compliance requirements as two of these wastes already are managed in compliance with RCRA.

The addition of the new toxicants of concern to Appendix VIII also will not result in any significant increased burden in ground-water monitoring or incineration monitoring requirements since the analytical techniques currently employed to test for the presence and concentration of other Appendix VIII constituents also would detect these additional compounds.

Furthermore, the cost of adding linuron and bromacil to 40 CFR 261.33(f), the list of commercial chemical products which are hazardous wastes when discarded, also will be minimal, since commercial chemical products are rarely discarded, due to their inherent value.

In addition, we do not expect that there will be adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal is not a major regulation;

therefore, no Regulatory Impact Analysis is being conducted.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency does not believe that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603.)

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: April 20, 1985.

Lee M. Thomas,

Administrator.

References

Hassoun, E. *et al.* 1984. Teratology studies on the TCDD congener 3,3',4,4'-tetrachloroazoxybenzene in sensitive and non-sensitive mouse strains: evidence for a direct effect on embryonic tissues. *Arch. Toxicol.* 55:20–26.

Kimbrough, R. D. *et al.* 1984. Health implications of 2,3,7,8-tetrachlorodibenzodioxin (TCDD) contamination of residential soil. *J. Toxicol. Envir. Hlth.* 14:47–93.

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Sundstrom, G. 1980 3,3',4,4'-tetrachloroazobenzene and 3,3',4,4'-tetrachloroazoxybenzene, potent chloracnegens and enzyme inducers—an overview. *In:* Workshop on the impact of chlorinated dioxins and related compounds on the Environment. Rome, October 22–24.

Syracuse Research Corporation. 1983. Measurement of the water solubilities of phthalate esters. Final report to Chemical Manufacturers Association, Washington, D.C. April.

USEPA. 1980–1985a. Office of Solid Waste. Appendix A—Health and environmental effects profiles. Washington, D.C. October 30, 1980, and subsequent revisions.

USEPA. 1980–1985b. Office of Solid Waste. Appendix A—Health and environmental effects profiles. *CONFIDENTIAL BUSINESS INFORMATION* appendices to Appendix A. Washington, D.C.

USEPA. 1980a. Office of Water Regulations and Standards. Ambient water quality criteria for chlorinated benzenes. EPA/440/5–80–028. Washington D.C. October.

USEPA. 1984. Office of Health and Environmental Assessment. Health assessment document for chlorinated benzenes (external review draft). EPA-600/8–84–015A. Washington, D.C. April.

USEPA. 1984b. Review of rat and mouse data from duPont Chemical Company for the carcinogenicity of linuron. Prepared by OHEA for OPTS. OHEAC–117. April 30. *CONFIDENTIAL BUSINESS INFORMATION.*

USEPA. 1985. Health and environmental effects profiles on tetrachloroazobenzene, tetrachloroazoxybenzene, and tetrachlorohydrazobenzene. SRC TR85–011. March. Draft.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA Hazardous Waste No	Hazardous waste	Hazard code
* * *	* *	
Organic Chemicals: *	* * *	
K119	Wastes from the decanter in the production of linuron	(I,C,T,)
K120	Wastes from the spill control trap in the production of linuron.	(I,T)
K121	Wastewater from product filtration and water washing in the production of bromacil.	(T)
* * *	* *	

§ 261.33 [Amended]

3. In § 261.33(f), add the following listings, in alphabetical order:

Hazardous Waste No.	Substance
* *	* * *
U354	Bromacil.
U354	5-Bromo-3-sec-butyl-6-methyluracil
U355	Linuron.
U355	N -(3,4-dichlorophenyl)-N-methoxy-N-methylurea.
* *	* * *

4. Add the following hazardous constituents in alphabetical order to Table 1 of Appendix III of Part 261:

Compound	Second edition method(s)
* * *	* *
Bromacil	8080, 8250, and 8270
Linuron	8080, 8250, and 8270
3,3',4,4'-Tetrachloroazobenzene (TCAB)	8080, 8250, and 8270
3,3',4,4' Tetrachloroazoxybenzene (TCAOB)	8080, 8250, and 8270
* * *	* *

5. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No	Hazardous constituents for which listed
*	* * * *
K119	Chlorobenzene, linuron.
K120	Chlorobenzene bromacil.
K121	Bromacil
*	* * * *

6. Add the following hazardous constituents (with CAS Numbers) in alphabetical order, to Appendix VIII of Part 261:

Appendix VIII—Hazardous Constituents

Constituent	CAS No.
* * * *	*
Bromacil (5-bromo-3-sec-butyl-6-methyluracil)	314–40–9
Linuron (N'-(3,4-dichlorophenyl-N-methoxy-N-methylurea)	330–55–2
3,3',4,4'-Tetrachloroazobenzene (bis(3,4-dichlorophenyl)diazene)	14047–09–7
3,3',4,4'-Tetrachloroazoxybenzene (bis(3,4-dichlorophenyl)diazene-1-oxide)	21232–47–3
* * * *	*

[FR Doc. 85–10535 Filed 4–30–85; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 50, No. 84

Wednesday, May 1, 1985

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FEDERAL REGISTER PAGES AND DATES, MAY

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 30, 1985

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
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May 3	May 20	June 3	June 17	July 2	August 1
May 6	May 21	June 5	June 20	July 5	August 5
May 7	May 22	June 6	June 21	July 8	August 5
May 8	May 23	June 7	June 24	July 8	August 6
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May 13	May 28	June 12	June 27	July 12	August 12
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May 17	June 3	June 17	July 1	July 16	August 15
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May 21	June 5	June 20	July 5	July 22	August 19
May 22	June 6	June 21	July 8	July 22	August 20
May 23	June 7	June 24	July 8	July 22	August 21
May 24	June 10	June 24	July 8	July 23	August 22
May 28	June 12	June 27	July 12	July 29	August 26
May 29	June 13	June 28	July 15	July 29	August 27
May 30	June 14	July 1	July 15	July 29	August 28
May 31	June 17	July 1	July 15	July 30	August 29

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federal register

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Selected Subjects

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Mortgage Insurance
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Public Assistance Programs
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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5334 of April 30, 1985

Helsinki Human Rights Day, 1985

By the President of the United States of America

A Proclamation

May 7, 1985, marks the opening session in Ottawa of the Human Rights Experts Meeting of the Conference on Security and Cooperation in Europe. This meeting is mandated to deal with questions concerning the record of all 35 CSCE states in protecting human rights and fundamental freedoms, in all their aspects, as embodied in the Final Act. This is the first CSCE meeting that has ever been devoted exclusively to human rights issues. It visibly manifests the success of joint U.S.-West European efforts to utilize CSCE as a major forum for discussions on human rights.

The United States delegation will work tirelessly to achieve meaningful results at this assembly, which discusses an issue of great concern to this Nation.

Human rights and fundamental freedoms lie at the heart of the commitments made in the Helsinki Accords of 1975 and in the Madrid Concluding Document of 1983. These documents set forth a clear code of conduct, not only for relations among sovereign states, but also for relations between states and their citizens. They hold out a beacon of hope for those in the East who seek a freer, more just, and more secure life. We and the other Atlantic democracies will not waver in our efforts to see that these commitments are someday fully honored in all of Europe.

Let us as Americans look once again to our commitment to implement fully the human rights and humanitarian provisions of the Helsinki Accords, because these freedoms are fundamental to our way of life. Let us pledge ourselves once again to do everything in our power so that all men and women may enjoy them in peace. In doing so, we call on all 35 CSCE states to dedicate themselves to upholding these humane principles.

The Congress, by Senate Joint Resolution 15, has designated May 7, 1985, as "Helsinki Human Rights Day" and authorized and requested the President to issue a proclamation reasserting our commitment to the Helsinki Accords.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 7, 1985, as Helsinki Human Rights Day and call upon all Americans to observe this day with appropriate observances that reflect our continuing dedication to full implementation of the commitment to human rights and fundamental freedoms made in the Helsinki Accords.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-10854
Filed 4-30-85; 4:13 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12513 of May 1, 1985

Prohibiting Trade and Certain Other Transactions Involving Nicaragua

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), chapter 12 of Title 50 of the United States Code (50 U.S.C. 191 *et seq.*), and section 301 of Title 3 of the United States Code,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of Nicaragua constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

I hereby prohibit all imports into the United States of goods and services of Nicaraguan origin; all exports from the United States of goods to or destined for Nicaragua, except those destined for the organized democratic resistance, and transactions relating thereto.

I hereby prohibit Nicaraguan air carriers from engaging in air transportation to or from points in the United States, and transactions relating thereto.

In addition, I hereby prohibit vessels of Nicaraguan registry from entering into United States ports, and transactions relating thereto.

The Secretary of the Treasury is delegated and authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the purposes of this Order.

The prohibitions set forth in this Order shall be effective as of 12:01 a.m., Eastern Daylight Time, May 7, 1985, and shall be transmitted to the Congress and published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
May 1, 1985.

[FR Doc. 85-10978
Filed 5-1-85; 10:48 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions for Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends a sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence would apply only to 1984 crop reserve Zante Currants so that the value of handlers' 1983 crop free tonnage inventory of those raisins can be adjusted downward closer to current world price levels, thereby aiding in the marketing of those supplies. The proposal was recommended by the Raisin Administrative Committee, which works with USDA in administering that marketing order.

EFFECTIVE DATE: April 26, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment to be accomplished through this action will permit an overall price reduction for Zante Currant raisins, enabling the industry to compete more effectively with lower-priced foreign-produced Zante Currants, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Raisin packers have been conducting their marketing operations since last October on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price, and no useful purpose would be served by delaying the effective date of this action.

This final rule would suspend for Zante Currant raisins, through July 31, 1985, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: Provided, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee."

Notice of this action was published in the **Federal Register** on March 6, 1985 (50 FR 9037). Interested persons were invited to submit written comments by April 5, 1985. Three comments strongly in favor of the proposal were received.

On June 27, 1984, the Department issued a document suspending the penultimate sentence of § 989.67(j) through July 31, 1986, to help reduce the value of handlers' 1983 crop free tonnage inventory of all raisin varietal types having reserve pools to permit more aggressive marketing and product movement and to help the industry become price competitive with foreign-produced raisins. That suspension was published in the **Federal Register** on June 29, 1984 (49 FR 26708).

Subsequent to that action, a group of raisin producers filed suit in the Federal district court for the Eastern District of California (Raisin Producers for Fair Marketing, et al. vs John R. Block, et al.), to enjoin the implementation of that suspension and necessary price adjustments. On July 31, 1984, Judge Price denied the request for injunctive relief insofar as it applied to 1983 crop reserve raisins but issued an order enjoining the suspension for the 1984 and subsequent crop year reserves until the Secretary has complied with the applicable provisions of the Agricultural Marketing Agreement Act of 1937, the Administrative Procedure Act, the Regulatory Flexibility Act, or until further order of the district court. The

decision of the court prevented the industry from making price adjustments in the value of 1983 crop Zante Currant free tonnage inventory because no reserve was established for that varietal type during the 1983 crop year and because the suspension of the penultimate sentence of § 989.67(j) was blocked with respect to 1984 and later crop year reserves.

A reserve is in effect for 1984 crop Zante Currant raisins and is available to offset the price of a portion of the higher valued 1983 crop inventory carried into the 1984 season (held in inventory on July 31, 1984) by the California raisin industry. That inventory totalling 2,551 natural condition tons was valued (producers' price) at $1,150 per ton while the 1984 producer price for the free tonnage portion of the 1984 crop is just over half that amount at $625 per ton. The plan would allow the Committee to sell to handlers one ton of 1984 crop reserve Zante Currant raisins at $100 per ton for each ton of 1983 crop Zante Currant raisins, valued at $1,150, effectively revaluing those raisins at $625, and making them competitive with free tonnage from the 1984 crop.

Deliveries of Zante Currant raisins to date this season are in excess of 2,900 tons. The carryin from the 1983 crop coupled with the 1984 production represent more than a two-year supply of Zante Currant raisins. Free tonnage shipments last year of Zante Currant raisins totalled about 2,262 packed tons and the most recent three-year average shipments was 2,311 tons.

In the absence of this action, open price contracting between producers and packers on 1984 crop Zante Currant deliveries was a possibility because of the excess supplies and the inflated value of the 1983 crop inventory. After the Committee's recommendation, packers did not use open price contracting but agreed instead in negotiations with the Raisin Bargaining Association to the aforementioned $625 per ton price, and have been conducting their marketing operations on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price.

In recommending this action, the Committee recognized that producers would be selling reserve Zante Currant raisins at a price well below production costs. However, the devaluation of the inventory would bring the prices of Zante Currant raisins in line with current marketing conditions and parallel the price adjustments already made on other California raisins using 1983 crop reserves.

One commenter recommended the establishment of a 1985 crop Zante Currant reserve pool because there are only 524 tons of 1984 crop reserve pool Zante Currant raisins available to devalue the 2,551 tons of 1983 crop Zante Currant raisins carried into the 1984–85 season. The commenter indicated that this is a must, otherwise packers will sustain great financial losses. The Department cannot implement this recommendation, because it is not possible to foresee the 1985 crop and marketing conditions for Zante Currant raisins at this time and whether there will be a reserve for Zante Currants in 1985.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by RAC, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant sale of Zante Currant reserve raisins to handlers to provide them with raisins to sell as free tonnage, pursuant to § 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended with regard to Zante Currant raisins pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1985, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1985.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

The authority citation for Part 989 continues to read as follow:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 989.67 [Amended]

Therefore, the penultimate sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1985.

Dated: April 26, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 85–10639 Filed 5–1–85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 85–018]

Swine Health Protection Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes Louisiana from the list of States that have primary enforcement responsibility under the Swine Health Protection Act (the Act). This action is taken pursuant to a request from Louisiana. The intended effect of this action is to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Louisiana and thereby help prevent the dissemination of certain swine diseases.

This document also removes Arkansas from the list of States that do not have primary enforcement responsibility under the Act, but, under cooperative agreements with APHIS, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. Arkansas no longer issues such licenses. With this change APHIS is now the entity that issues licenses for facilities eligible to be licensed in Arkansas. Therefore, the removal of Arkansas from the list of such States is necessary to inform interested persons that Arkansas no longer issues such licenses.

DATES: Effective date is May 2, 1985. Written comments must be received on or before July 1, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Firday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Williams, Special Diseases Staff, VS, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8487.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection Provisions" regulations (contained in 9 CFR Part 166 and referred to below as the Federal regulations) were established pursuant to the Swine Health Protection Act (set forth in 7

U.S.C. 3801 *et seq.* and referred to below as the Act). These authorities contain provisions regulating the treatment of garbage to be fed to swine and the feeding thereof in order to prevent the introduction into and dissemination in the United States of certain diseases of swine. The Act, except for authority for certain emergency actions, provides that the provisions of the Act and Federal regulations are to be enforced only in States that do not have primary enforcement responsibility under the Act.

Louisiana

The Act provides that a State shall have the primary enforcement responsibility for violations of laws and regulations relating to the treatment of garbage to be fed to swine and the feeding thereof during any period for which the Secretary of Agriculture determines that (1) such State has adopted adequate laws and regulations regulating the treatment of garbage to be fed to swine and the feeding thereof which meet the minimum standards of the Act and the regulations promulgated thereunder, (2) such State has adopted and is implementing effective enforcement procedures, and (3) such State keeps records and makes reports as the Secretary may require.

Prior to the effective date of this document, Louisiana was listed in § 166.14(c) of the regulations as a State having primary enforcement responsibility under the Act. Pursuant to a request from Louisiana and pursuant to the requirements of section 10(a) of the Act, this document removes Louisiana from the list of States that have primary enforcement responsibility under the Act. Therefore, the provisions of the Act and the Federal regulations are now being enforced in Louisiana.

Also, it should be noted that the feeding of garbage to swine is prohibited by the laws of Louisiana. Therefore, in accordance with section 13 of the Act and § 166.2(c) of the Federal regulations, Federal licenses will not be issued for the feeding of garbage to swine in Louisiana.

Arkansas

Pursuant to authority in the Act, APHIS enters into cooperative agreements with some States that do not have primary enforcement responsibility under the Act to allow such States to issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. Prior to the effective date of this document, Arkansas was included in the list of States in § 166.14(d) which issue such licenses under cooperative agreements with APHIS, but do not have primary enforcement responsibility under the Act. Arkansas no longer issues such licenses. Therefore, this document removes Arkansas from the list of States that issue such licenses under cooperative agreements with APHIS but do not have primary enforcement responsibility under the Act. With this change APHIS is the entity that issues such licenses for facilities eligible to be licensed in Arkansas.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The amendments made by this document will not cause significant changes in requirements for affected persons.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Louisiana and thereby help prevent the dissemination of certain swine diseases, and to inform interested persons that Arkansas no longer issues licenses to persons desiring to operate a treatment facility for garage that is to be treated and fed to swine.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-Mouth disease, Hog cholera, Hogs, Garbage, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166 is amended as follows:

1. The authority for 9 CFR Part 166 is revised to read:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (c) and (d) of § 166.14 are revised to read as follows:

§ 166.14 State status.

* * * * *

(c) The following States have primary enforcement responsibilities under the Act: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, USDA, but do not have primary enforcement responsibility under the Act: Alaska, Minnesota, Washington, and Puerto Rico.

* * * * *

Done at Washington, D.C., this 26th day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-10638 Filed 5-1-85; 8:45 am]

BILLING CODE 3410-34-M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1503

Official Seal

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: The African Development Foundation proposes to adopt an official seal. The African Development Foundation Act states that the Foundation may adopt a seal which shall be judicially noticed. The purpose of this rule is to adopt such a seal.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, (202) 634–9853.

List of Subjects in 22 CFR Part 1503

Seals and insignia.

Accordingly, Part 1503 is added to 22 CFR Chapter XV to read as follows:

PART 1503—OFFICIAL SEAL

Authority: Pub. L. 95–533, 94 Stat. 3131 (22 U.S.C. 290h 4(2)(3)).

§ 1503.1 Authority.

Pursuant to section 506(a)(3) of Pub. L. 96–533, the African Development Foundation official seal and design thereof, which accompanies and is made part of this document, is hereby adopted, approved, and judicially noticed.

§ 1503.2 Description.

The official seal of the African Development Foundation is described as follows:

(a) Forming an outer circle is a ring of type in dark blue capital letters spelling the words "AFRICAN DEVELOPMENT FOUNDATION—UNITED STATES OF AMERICA:"

(b) Within that circle is an inner circle with the stylized letters ADF in dark blue superimposed on a light grey background.

(c) The official seal of the African Development Foundation when reproduced in black and white and when embossed, is as it appears below.

§ 1503.3 Custody and authorization to affix.

(a) The seal is the official emblem of the African Development Foundation and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Chairman of the Board of Directors, or the President of the African Development Foundation to authenticate records of the Foundation and for other official purposes. The General Counsel may redelegate and authorize redelegation of this authority.

(c) The President of the African Development Foundation shall designate and prescribe by internal written delegation and policies the use of the seal for other publication and display purposes and those Foundation officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Foundation may be made only with the Foundation's prior written approval. Such request must be made in writing to the General Counsel.

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85-10699 Filed 5-1-85; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 85-029]

Authority Citation, Update

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the authority citation for Parts 110 and 165 of Title 33, Code of Federal Regulations (CFR) to conform to recently adopted **Federal Register** standards. Due to later codification, reorganization or revision, the statutes which authorize the regulations in these parts are not readily located by reference to the United States Code sections currently cited. This rule amends the authority citations to provide a direct reference to the section(s) of the current United States Code where the statutes are set out. In addition, the authority citations provide reference to regulations delegating Secretarial authority to the Commandant and further delegations to Commanders of Coast Guard Districts and Captains of the Port (COTPs).

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: LT Dave Shippert, Office of Chief Counsel, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days. This rule merely updates the authority citations for 33 CFR Parts 110 and 165 to reflect the current location of statutory authority within the United States Code and to reference the relevant delegations of authority. Therefore, notice and comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule will benefit the public by providing more direct references to statutory authority as found in the United States Code. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the **Federal Register** in accord with 5 U.S.C. 553(d)(3).

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. This rule merely updates the citation to statutory and regulatory authority for regulations within 33 CFR Part 110 and 165 to facilitate public review.

List of Subjects in 33 CFR Parts 110 and 165

Anchorage grounds, harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the foregoing, the Coast Guard is amending Parts 110 and 165 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

(1) The authority citation for Part 110 is revised to read as set forth below and the authority citations following the sections in Part 110 are removed.

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

PART 165—[AMENDED]

(2) The authority citation for Part 165 is revised to read as set forth below and the authority citations following the sections in Part 165 are removed.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

Dated: April 25, 1985.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 85-10675 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 85-030]

Authority Citation, Update

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: This rule revises the authority citation for Part 117 of Title 33, Code of Federal Regulations (CFR) to conform to recently adopted **Federal Register** standards. This rule amends the authority citation to provide a direct reference to the section(s) of the current United States Code where the statutes are set out. In addition, the authority citation provides reference to regulations delegating secretarial authority to the Commandant and further delegations to Commanders of Coast Guard Districts.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Lt Dave Shippert, Office of Chief Counsel, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Telephone (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days. This rule merely updates the authority citation for 33 CFR Part 117 to reflect the current location of statutory authority within the United States Code and to reference the relevant delegations of authority. Therefore, notice and comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule will benefit the public by providing a more direct reference to statutory authority as found in the United States Code. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the **Federal Register** in accord with 5 U.S.C. 553(d)(3).

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and

non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. This rule merely updates the citation to statutory and regulatory authority for regulations within 33 CFR Part 117 to facilitate public review.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

The authority citation for Part 117 is revised to read as set forth below.

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Dated: April 24, 1985.

H.H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 85–10676 Filed 5–1–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 181 and 183

[CGD 83–012]

Certification, Safe Loading and Flotation Standards; Correction and Clarification

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction and clarification.

SUMMARY: The purpose of this document is to clarify the final rule on miscellaneous amendments to the certification, safe loading and flotation standards that appeared on page 39327 in the **Federal Register** of Friday, October 5, 1984 [49 FR 39327]. Since the effective date of the final rule, the Coast Guard has received questions regarding interpretation of §§ 183.39 and 183.41 of the Safe Loading Standard. This document corrects these sections to clarify the Coast Guard's intent and eliminate possible confusion.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/44), (CGD 83–012), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G–BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426–1065, between 8 am and 4 pm Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: As originally written, sections 183.39 and 183.41 prescribed the method for determining the maximum persons capacity of inboard, inboard/outdrive and outboard powered boats subject to the Safe Loading Standard. The maximum persons capacity could not exceed the lesser value obtained by performing two different tests.

Amendments were proposed to §§ 183.39(a)(2) and 183.41(a)(2) that would remove the applicability of one of the tests, the dry stability test, to inboard, inboard-outdrive and outboard boats with a maximum persons capacity 550 pounds or more. The words, "the lesser of", were deleted because they were thought to be surplus. No comments were received on the proposal and the final rule was published.

Questions brought to the attention of the Coast Guard since the effective date of the final rule, indicate that the present wording appears to allow manufacturers of boats rating a maximum persons capacity of less than 550 pounds to calculate the maximum persons capacity by either one of the two test methods. The Coast Guard wants to make it clear that this was not the intention. The maximum persons capacity for these boats still must not exceed the lesser value obtained after performing both tests. Therefore, this document does not change the intent of the final rule.

The following corrections are made in FR Doc. 84–26365 appearing on page 39328 in the issue of October 5, 1984:

§ 183.39 [Corrected]

1. On page 39328, in the first column, in the seventh line, after the word, "exceed" and before the colon, by adding the words, "the lesser of".

§ 183.41 [Corrected]

2. On page 39328, in the second column, in the third line, after the word, "exceed" and before the colon, by adding the words, "the lesser of".

(46 U.S.C. 4302; 49 CFR 1.46(n)(1))

Dated: April 29, 1985.

A.D. Breed,

Commodore, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumers Affairs.

[FR Doc. 85–10683 Filed 5–1–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-2-FRL-2829-1]

Standards of Performance for New Stationary Sources Delegation of Authority to the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegations of authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the Commonwealth of Puerto Rico to implement and enforce additional source categories of the Standards of Performance for New Stationary Sources (NSPS). This delegation was requested by the Puerto Rico Environmental Quality Board (EQB).

NSPS are air pollution control requirements set under the Clean Air Act. NSPS are applicable to certain categories of new air pollution sources.

EFFECTIVE DATE: This action was effective March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch Air and Waste Management Division, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264–9627.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On February 20, 1985 EPA offered to the EQB delegation of four applicable NSPS categories and revisions and amendments to existing NSPS and NESHAPS promulgated between July 1, 1984 and December 31, 1984, in accordance with with the EPA/EQB delegation agreement date July 20, 1983. EQB accepted delegation of these additional NSPS and revisions and amendments to existing NSPS and NESHAPS in a letter dated March 7, 1985 from the Chairman of the EQB to the Regional Administrator, Region II. The following provides a complete listing of NSPS delegated to the EQB.

The new categories being delegated by today's action are identified with an asterisk (*). All revisions and amendments to the existing NSPS and NESHAPS from January 1, 1984 to June 30, 1984 are included here by reference.

NSPS Delegation

D Fossil-Fuel Fired Steam Generators for Which Construction commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators)
Da Electric Utility Steam Generating Units for Which Construction Commerced After September 18, 1978
E Incinerators
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries—(Process Gas Combustion, Catalytic Regenerators)
J Petroleum Refineries:(Sulfur Recovery)
K Storage Vessels for Petroleum Liquids Constructed After June 11, 1973 prior to May 19, 1978.
Ka Storage Vessels for Petroleum Liquids Constructed After May 18, 1978
L Secondary Lead Smelters
M Secondary Brass and Bronze Ingot Production Plants
N Iron and Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W Phosphate Fertilizer Industry: Triple Superphosphate Plants
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants: Electric Arc Furnaces Constructed after 10/21/74 and prior to 8/17/83
*AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after 8/17/83
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Plants
LL Metallic Mineral Processing
QQ Graphic Art Industry Publication Rotogravure Printing
RR Pressure Sensitive Tape and Label Surface Coating Operations
*SS Industrial Surface Coating: Large Appliances
*TT Metal Coil Surface Coating
UU Asphalt Processing and Asphalt Roofing Manufacture
VV Equipment Leaks of Volatile Organic Compounds in Synthetic Organic Chemical Manufacturing Industry
WW Beverage Can Surface Coating Industry
XX Bulk Gasoline Terminals
FFF Flexible Vinyl and Urethane Coating and Printing
*GGG Equipment Leaks of VOC in Petroleum Refineries
HHH Synthetic Fiber Production Facilities
*JJJ Standards of Performance for Petroleum Dry Cleaners

EPA's Findings

EPA's determination of approvability of delegations is based on the Agency's review of the Puerto Rico Public Policy Environmental Act, Law No. 9 of 1970, 12 L.P.R.A. Sec. 1121, et seq. and on the Puerto Rico Regulation for the Control of Atmospheric Pollution. Based on that review, EPA determined that such delegation is appropriate and so notified the Chairman of the EQB, in a letter dated July 20, 1983. This letter identified the conditions under which delegation would be approved. EQB subsequently accepted delegation of the additional categories in a letter dated March 7, 1985. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Consequences of EPA's Action

Effective March 11, 1985, all correspondence, reports and notifications required by the delegated NSPS should be submitted to the Offices of the Puerto Rico Environmental Quality Board located at P.O. Box 11488, Santurce, Puerto Rico, 00910, Attention: Air Quality Area Director.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12991.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. Section 7411).

Dated: April 17, 1985.
Christopher Dagget,
Regional Administrator.
[FR Doc. 85-10611 Filed 5-1-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, 76, and 78

[MM Docket 84-1296 FCC 85-179]

Implementation of the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order proposes changes in the Commission's rules and regulations. This action is necessitated by the passage of the Cable Communications Policy Act of 1984 which sets a national cable communications policy. This action is intended to revise our rules and regulations to conform with the Cable Communications Policy Act of 1984.

EFFECTIVE DATE: April 28, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 63

Communications common carriers.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 1, 63, and 76 of the Commission's Rules to implement the provisions of the Cable Communications Policy Act of 1984. MM Docket No. 84-1296; FCC 85-179.

Adopted: April 11, 1985.
Released: April 19, 1985.

By the Commission: Commissioner Rivera not participating.

Introduction

1. By this action, the Commission amends its rules to implement certain provisions of the Cable Communications Policy Act of 1984. This action

establishes rules and regulations for cable systems in the areas of ownership, channel usage, franchise requirements and pole attachments. In addition, it establishes regulations and guidelines governing the regulation of basic cable service rates by franchising authorities.

Background

2. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) was signed into law.[1] This legislation amends the Communications Act of 1934, as amended, by adding a new Title VI, entitled "Cable Communications."[2] The intent of the Cable Act is to establish a national policy that encourages the growth and development of cable television services and assures that cable systems are responsive to the needs and interests of the local communities they serve.[3]

3. On December 4, 1984, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) in the above-captioned proceeding.[4] In this *Notice*, the Commission proposed to amend its rules to implement certain provisions of the Cable Act.[5] In particular, the *Notice* proposed, *inter alia:* (1) Definitions for the terms cable operator, cable service, and cable system; (2) procedures whereby an aggrieved party may petition the Commission for a ruling or file a complaint concerning commercial channel access; (3) rule changes regarding common carrier ownership of cable systems in their rural service areas; (4) criteria for determining whether a cable system is subject to effective competition; (5) standards for regulation of basic cable service rates by a franchising authority in those instances where a cable system is not subject to effective competition; and (6) modification of our rules concerning state regulation of pole attachments to reflect new language contained in the Cable Act.

4. One hundred and forty (140) parties filed comments and sixty-three (63) parties filed replies in response to the *Notice*. A list of all parties is contained in Appendix A. The Commission was required by the Cable Act to complete this rule making within 180 days of enactment.

Discussion

Section 602—Definitions

5. Section 602 of the Cable Act defines a number of fundamental terms. In the *Notice*, we proposed to amend our rules to adopt the definitions of cable operator, cable service, and cable system contained in the Cable Act. In proposing these changes, we noted that there are differences between the new definitions and the definitions presently in our rules and that these differences may affect the manner in which we currently regulate certain segments of the cable industry. Comments were sought on the proposed definitions of these terms. Each of these terms is discussed below.

6. *Cable Operator*. The term "cable operator" is defined in paragraph (4) of section 602 of the Cable Act as follows:

> * * * any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

The term "affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.[6] A "significant interest" for the purposes of this definition means a cognizable interest as provided in the Commission's rules for attributing interests in broadcast, cable television and newspaper properties.[7]

7. Several parties submitted comments on the proposed cable operator definition. Comments filed by the law firm of Hogan & Hartson on behalf of various cable operators and state cable associations (Hogan & Hartson) state that the proposed definition, if read broadly, could include not only the local entity providing cable service to the community but also entities associated with the cable entity. This could include companies with management contracts to run the cable system, even if those companies have no ownership interests, and any person with a "cognizable interest" in the cable system, even if those persons do not participate in the management of the system. Hogan & Hartson suggests that the Commission "should clarify the definition by limiting it to a single cable operator per cable system." Tele-Communications, Inc. (TCI) believes that the Commission should clarify the use of the term "affiliate" to indicate that it is not being used in its common communications sense but rather is used to describe a purely legal relationship. In this regard, TCI believes that the Commission's present rules are more reflective of congressional intent.

8. The New York Telephone Company and the New England Telephone and Telegraph Company (NYNEX), while supporting the Commission's proposal, believes that more specificity is needed. NYNEX is concerned that the definition may give rise to uncertainty concerning the ability of the telephone companies to construct, sell or lease a cable system. NYNEX requests that the definition be amended to specify that "controls or is responsible for" pertains to provision of cable services, not facilities. Similar views are expressed by Pacific Bell and Nevada Bell (Pacific) in its comments and by the Ameritech Operating Companies (Ameritech) in its reply comments. Both Pacific and Ameritech propose that language be added to the proposed definition to affect this change.[8] BellSouth Corporation (BellSouth), on behalf of its operating telephone companies, supports the Commission's proposed adoption of the language contained in section 602(4) of the Cable Act. Similarly, Southwestern Bell Telephone Company (Southwestern Bell) supports the definition but suggests the Commission add language to clarify the meaning of "significant interest." The Communications Workers of America (CWA), in its comments, suggests that the definition be amended to include either "cable television system operator or cable operator" to ensure consistency with the statute.

9. After review of the comments and replies, we believe that our original proposal is generally appropriate. However, in order to ensure completeness and consistency with the statute, we will also amend our rules to include definitions of the terms: affiliate; persons; and significant interest. With regard to limiting the definition to

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[1] Cable Communications Policy Act of 1984. Pub. L. 98–549, section 1 *et seq.*, 98 Stat. 2779 (1984).

[2] The Cable Act also amends certain other provisions of the Communications Act of 1934, as amended. For example, the Cable Act also amends section 224(c) of the Communications Act of 1934, as amended, by adding a new paragraph (c)(3).

[3] *See* House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (hereinafter House Report).

[4] *See Notice of Proposed Rule Making* in MM Docket No. 84-1296, 49 FR 48765 (1984).

[5] The Commission also recently initiated a separate rule making proceeding regarding the equal employment opportunity provisions of the Cable Act. *See Notice of Proposed Rule Making*, MM Docket No. 85–61, FCC 85–102, adopted March 1, 1985.

[6] *See* Section 602(1) of the Cable Act.

[7] *See* 47 CFR 73.3555, 73.3615 and 76.501. *See also* House Report at 41.

[8] Pacific proposes that the definition be amended to state that it "does not include a person or group of persons who provides cable distribution facilities for channel service to cable systems." Ameritech proposes the adoption of the language suggested by Pacific or the following language:

This definition shall not include a person or groups of persons who lease or manage local distribution systems for the delivery of cable services by third parties.

include only a single cable operator per cable system, we feel that the definition of a cable operator is intentionally broad and that a cable system may have more than one operator. According to the definition, any person who "provides cable service" and "owns a significant interest" in a cable system either directly or through a subsidiary or affiliated company would be a cable operator. In addition, anyone who controls or is responsible for the "management and operation" of a cable system would also come under the definition of a cable operator and may also be subject to sanctions for violations of the provisions of the Cable Act.[9] On the other hand, mere ownership of facilities used by a cable system would not be sufficient to qualify an entity as a cable operator. Accordingly, telephone companies that merely construct or lease cable system facilities are not cable operators under the Cable Act.

10. *Cable Service.* Section 602(5) of the Cable Act defines the term "cable service" as follows:

(A) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

The Commission's rules do not contain a definition of cable service or the terms "video programming" or "other programming service" which are included in this definition.[10] In the *Notice*, we proposed to include only the definition of the term cable service in our rules.

11. Most parties commenting on this matter favor the addition of the definition of cable service to the Commission's rules.[11] Several parties, however, comment that the proposed definition of cable service is incomplete and potentially confusing without also defining the terms "video programming" and "other program services" contained in the Cable Act. A number of parties suggest that the definition of cable service is meant to delineate the boundary between such services and services for which common carrier regulation could potentially be imposed.[12] In this regard, Southwestern Bell suggests a more precise definition of cable service in order to differentiate more clearly between cable services and telephone common carrier services. Several telephone interests, such as BellSouth and GTE, believe that our rules should state that the provision of non-video programming by a telephone company is a permissible activity under the Cable Act.

12. DOJ requests that the Commission clarify the definition of the term video programming contained in the Cable Act. DOJ recommends that the Commission indicate that programming "comparable" to that provided by a television broadcast station includes satellite-delivered, advertiser-supported programming networks such as ESPN, commercial-free TV programming such as HBO, and pay-per-view services which are not generally provided by broadcast television stations.

13. The National Cable Television Association, Inc. and the Community Antenna Television Association (NCTA/CATA), on the other hand, suggest that the Commission need not define the term cable service in the rules, because the term does not generally appear elsewhere in the Commission's rules and inclusion of the term is inappropriate given the unresolved preemption issues related to two-way services provided by cable systems. NCTA/CATA maintains that such inclusion might suggest that the Commission had decided that any services "other than those meeting the Cable Act's defintition of 'cable service' could be regulated as common carrier services * * *." In its reply comments, NCTA/CATA states that the term cable service is intended to distinguish between those services "that cannot, by statute, be regulated on a common carrier basis from whose regulatory status is yet to be determined by the Commission." Inclusion of the definition, it states, could be viewed as resolving the issue of preemption of state regulation of two-way services provided by cable systems.

14. We stated in the *Notice* that the legislative history indicated that the intent of Congress in defining cable service is to mark the boundary between the cable services that the legislation specifically exempts from common carrier regulation under section 621(c) of the Cable Act and all other non-cable communications services which cable systems could provide. We proposed to resolve only those issues raised in the Cable Act and, therefore, not to address the issue of the regulatory treatment of non-cable communications services offered over cable systems.[13] Consistent with our proposal, therefore, we will avoid ruling at this time on the manner of regulatory treatment of non-cable services. We emphasize that our adoption of the term "cable service" in our rules in no way represents any decision as to the regulatory treatment of non-cable services.

15. We believe that inclusion of the term "cable service" in our rules is necessary and consistent with the intent of Congress. The term is used extensively not only throughout the Cable Act but also in the rules we are adopting today. We believe that adoption of the term precisely as stated in the Cable Act is a necessary part of our implementation process. We believe that the legislative history and intent provides sufficient guidance regarding the definition of cable service. Such service includes programming services that make non-video information generally available to all subscribers and do not include subscriber-specific information. Cable services include, for example, pay-per-view video programming, teletext, one-way transmission of computer software, and

[9] However, we will generally proceed against the franchisee who is a matter of record with us.

[10] The terms "video programming" and "other programming service" are defined in sections 602(11) and 602(16), respectively, of the Cable Act as follows:

The term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station;

The term "other programming service" means information that a cable operator makes available to all subscribers generally.

[11] These parties include Ameritech, Anchorage Telephone Utility, BellSouth, CWA, the City of New York (NYC), the Department of Justice (DOJ), GTE Services Corp. (GTE), the National Telecommunications and Information Administration (NTIA), NYNEX, Pacific, Southwestern Bell and the Connecticut Department of Public Utility Control (Connecticut PUC).

[12] For example, Anchorage Telephone Utility states in its reply comments that Congress included the definition of cable service "to differentiate between cable services exempted from common carrier regulation and all other non-cable communications services which can be provided over a cable system. Anchorage also states that Congress intended that cable operators should not be allowed to function as telecommunications common carriers. Similarly, Southwestern Bell proposes that the Commission adopt sections 3(b) and 621(d)(2) of the Cable Act concerning jurisdiction of the FCC and the states with respect to cable service to ensure clear delineation between the regulatory treatment of cable operators offering cable services and those offering common carrier services.

[13] This issue is currently under consideration before the Commission in Cox Cable Communications, Inc. (CCB–DFD–83–1), which concerns preemption of state regulation of Cox's institutional cable service in Omaha, Nebraska. The House Report states that the Committee "does not intend to resolve or even address the issue of the state or Federal treatment of non-cable communications services offered over cable systems . . . ." *See* House Report at 60. It also states that nothing in the Cable Act "shall be construed to affect existing regulatory authority with respect to non-cable communications services provided over a cable system." *See* House Report at 41.

on-line airline guides or catalog services that do not allow direct customer purchases. Two-way services that allow subscribers to manipulate or otherwise electronically process information or data would not be classified as cable services.[14] Examples of such non-cable services include at-home shopping and banking services, data processing, video conferencing, and all voice communications.[15]

16. We are also amending our rules at this time to include definitions of the terms "video programming" and "other programming service" as they are stated in the Cable Act. These terms are contained within the definition of the term "cable service," and we believe that their incorporation in the rules will reduce potential confusion which may arise from their absence. Further, with respect to the definition of video programming, we conclude that this definition is sufficiently expansive to include such video programming as that provided by ESPN, HBO, and other satellite-delivered cable network programming.

17. *Cable System.* The *Notice* also solicited comment on the definition of the term "cable system" contained in the Cable Act. The Cable Act defines a cable system as:

> * * * A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community * * *.[16]

Furthermore, the definition of cable system in the Cable Act specifically excludes *inter alia:* (1) Facilities that only retransmit the signals of television broadcast stations; and (2) facilities that serve only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facilities use public rights-of-way.

18. In the *Notice*, the Commission recognized several differences between this definition and the existing definition of a cable system in the Commission's rules. For example, the Commission's rules define a cable system as a facility that distributes the signals of broadcast stations.[17] The Cable Act redefines a cable system as a facility that provides video programming and it specifically excludes facilities that only retransmit broadcast signals.[18] In this regard, we requested comment on whether or not to include satellite-received "superstations" within the meaning of television broadcast signals; our initial position was that such facilities not be included within the meaning of television broadcast signals for this purpose.

19. A second difference is that cable systems with fewer than 50 subscribers are presently exempted from our rules. Under the Cable Act, such systems are no longer exempted. A third difference is that the Cable Act includes facilities, such as satellite master antenna television (SMATV) systems, that serve subscribers in one or more multiple unit dwellings under common ownership, control or management, if such facilities use public rights-of-way. The Commission's rules exclude all facilities that serve multiple unit dwellings under common ownership, control or management.

20. In proposing to adopt the definition of a cable system contained in the Cable Act, we noted that a number of regulatory concerns remain for facilities which previously qualified as cable systems but would no longer come under the definition and sought comment on what, if any, other rules should be applied to such facilities. We indicated that existing federal preemption policies such as those relating to franchise fee limits, technical standards, mandatory signal carriage, sports blackout, and network nonduplication rules would no longer be applicable to these systems. In addition, such facilities would no longer be eligible to be licensees in the Cable Television Relay Service (CARS). We raised the question of whether existing licensees should be "grandfathered" or whether the CARS eligibility rules should be amended.

21. In general, most commenters support adoption of the proposed definition of a cable system contained in the Cable Act. Some concern, however, was raised by a number of broadcast interests and others about the impact the Cable Act definition of a cable system may have on the Commission's signal carriage rules.[19] For example, the National Broadcasting Company, Inc. (NBC) and the Corporation for Public Broadcasting (CPB) argue that the definition of a cable system should not exempt cable facilities that retransmit exclusively broadcast signals. CPB indicates that at a minimum if the Commission adopts the Cable Act definition it must amend its signal carriage rules to include facilities that retransmit exclusively broadcast signals. Similarly, the Association of Independent Television Stations, Inc. (INTV), in its reply comments, states that the Commission should retain its current definition of a cable system at least for the purposes of its "must-carry" rules. Other parties, such as NCTA/CATA, also indicate that the Commission should conduct a further inquiry to determine the extent to which systems not covered by the Cable Act or the rules should be subject to signal carriage rules, technical requirements and other regulations similar to those applied to cable systems.

22. DOJ in its comments, states that the Commission's must-carry rules would not, as a practical matter, need to be applied to "classic" cable systems (*i.e.*, systems that retransmit only broadcast signals) since these systems will generally respond to demand for retransmission of those signals desired by consumers. In its reply comments, DOJ indicates that the Commission does retain authority over these systems and suggests that the Commission could seek further comment on whether such systems should remain subject to the "array of signal carriage regulations" historically applied in cable television systems.

23. With regard to the retransmission of "superstations," the majority of commenters on this issue support the Commission's proposals in this matter.[20] They believe that satellite-received superstations should not be included within the meaning of television broadcast signals contained in the exception to the definition of a cable television system. The commenters generally agree that such television broadcast signals be limited to only those signals received in a conventional manner. In this regard, DOJ states that the Commission has discretion in this matter but suggests that a reasonable way to deal with this

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[14] With respect to data processing services or use of data bases, we believe that the distinction between cable and non-cable services occurs with regard to where the data processing takes place. For example, downloading of data to a home computer that then is used to manipulate or process the information would still be considered a cable service.

[15] *See* House Report at 41–44.

[16] Section 602(6) of the Cable Act.

[17] The existing definition of a cable system is contained in § 76.5(a) of the Commission's rules, 47 CFR 76.5(a).

[18] The staff estimates that about ten to twelve percent of all cable facilities, serving less than two percent of all subscribers, carry only broadcast signals.

[19] The carriage rules cited by the commenters include sports blackout, technical standards, network nonduplication protection and the mandatory carriage or must-carry rules.

[20] *See, e.g.*, comments of Pennsylvania Cable Television Association (PCTA), NYC, and DOJ

problem is to include such systems as cable systems.

24. Most commenters object to our proposal to include SMATV systems serving multiple unit dwellings not under common ownership, control or management as cable systems only if they use public rights-of-way. Some SMATV, cable and municipal interests submit that the Cable Act is not intended to alter the present status of non-commonly owned multiple unit dwellings. Austin Satellite Television, Inc. *et al.*, for example, states that the Commission proposal to include such facilities in the exemption would require "otherwise legitimate cable systems" to utilize public rights-of-way in order to be considered cable systems. The City of St. Louis, NYC, the Municipal Coalition and the National League of Cities (NLC) agree and state that the Cable Act imposes new regulations on SMATVs that use public rights-of-way and serve commonly owned, controlled or managed multiple unit dwellings.

25. Another issue which some commenters address is the interpretation of the phrase "use of public rights-of-way." Private Cable Systems, Inc. and Direct Satellite Communications, Inc. suggest that the definition of the term should remain a local responsibility and that the revised definition should not automatically subject SMATV systems to federal cable regulation.[21] In its reply, NTIA, on the other hand, declares that Congress did intend to include sytems which make incidental use of public rights-of-way in the cable system definition. Furthermore, NCTA/CATA, TCI, the National Association of State Cable Agencies (NASCA), and the City of Austin state that, regardless of their status under the Cable Act, SMATVs should be subject to the same regulatory obligations as cable systems.

26. Several commenters were concerned with the impact of the definition on small cable systems and SMATV operations. The Microwave Communications Products Division of the Hughes Aircraft Company (Hughes) states that this new definition will render many older and small cable systems ineligible for CARS licenses. Hughes believes that such systems should continue to be eligible for CARS licenses. Hughes does not believe that grandfathering these existing small systems is the appropriate solution. Hughes proposes that the CARS eligibility rules be amended to incorporate the existing Commission definition of "cable system."

27. After reviewing the record, we believe that adoption of the definition of a cable system contained in the Cable Act is appropriate. We concur with DOJ, which states in its comments, that the Commission cannot define cable systems to include systems that retransmit only broadcast signals given the clear language to the contrary in the Cable Act. Accordingly, facilities that merely retransmit broadcast signals will not be considered cable systems for purposes of the Cable Act or the Commission's rules to the extent indicated herein. With respect to the status of "superstations," we believe that such signals which emanate well beyond the local viewing area should not be considered broadcast television signals for the limited purpose of the broadcast-only exclusion contained in the definition of a cable system. To do otherwise would preclude from regulation many systems which the Congress clearly intended to include within the scope of the Cable Act's definition of a cable system. On the other hand, we agree with the commenters that this proceeding is not the appropriate place to decide the status of signal carriage requirements for such rebroadcast only facilities. Accordingly, at this time, facilities now subject to signal carriage rules will continue to remain subject to those same requirements. Facilities constructed after the effective date of these rules and not meeting the definition of a cable system contained in the Cable Act, however, will no longer be subject to any signal carriage requirements. With regard to the exclusion of facilities serving multiple unit dwellings, we will include as cable systems only such facilities that use public rights-of-way. Further with respect to CARS eligibility, we believe that CARS facilities should be limited to only those systems which qualify as cable systems under the revised definition.[22] We will, however, grandfather existing systems which hold CARS licenses as of the effective date of this action. As a final matter, we emphasize that any regulations which are inconsistent with the policy of the statute or place a burden on interstate communications will continue to be regarded as in conflict with federal regulatory policy.[23]

Sections 611 and 612—Use of Cable Channels

28. Sections 611 and 612 of the Cable Act concern the use of cable channels. Section 611 specifies that a franchising authority may establish requirements to designate channels for public, educational or governmental (PEG) use. In addition, section 611 prohibits the cable operator from exercising any editorial control over the PEG channels. Section 612 establishes those conditions under which a cable operator must designate channels for commercial use by persons unaffiliated with the cable operator. The term "commercial use" is defined in section 612(b)(5)(B) as the provision of video programming, whether or not for profit. Cable systems with fewer than 36 activated channels are not required to designate any channel capacity for commercial use. Cable systems with 36 or more activated channels must designate a certain percentage of their capacity for commercial use.[24]

29. Section 612 also provides a right of action for any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available. The first avenue of relief is the Federal court system. However, section 612 also provides that parties may petition the Commission for relief upon a showing that a cable operator or a multiple system operator (MSO) has repeatedly violated this section.[25] The

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[21] Direct Satellite notes, for example, that it is not unusual for a commonly-owned group of multi-unit dwellings to be situated on both sides of a public street or for a developer to dedicate streets to a local municipality following construction.

[22] It should be noted, however, that such cable facilities may be eligible for microwave systems above 18 GHz in the private radio services and can also lease channel capacity from common carriers.

[23] *See*, for example, *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), *recon. denied* FCC 84-206 (May 14, 1984), *aff'd sub nom. New York State Commission Cable Television v FCC*, 749 F.2d 804 (D.C. Cir. 1984).

[24] Systems with 36 to 54 activated channels must designate 10 percent for commercial use and systems with 55 or more must designate 15 percent Except for systems with more than 100 channels, must-carry channels and channels which cannot be used due to technical and safety requirements (*e.g.*, aeronautical channels) are subtracted from the system's total capacity for the purposes of determining the percentage of designated commercial channels. In addition, any fractional amount of a channel is rounded up to the next whole number of channels.

[25] Three or more adjudicated violations would generally constitute a pattern or practice of abuse with respect to a single cable operator However three adjudications on three different cable systems all controlled by an MSO may not necessarily constitute such a pattern. Nevertheless, to the extent that a few violations which might otherwise appear to be isolated are found to be the result of corporate headquarter decisions, directives or actions, these actions may be grounds for a Commission finding that an MSO has engaged in a pattern of abuse. *See* House Report at 53-54.

Commission is also authorized to establish any additional rule or order, including a rate schedule, if it finds that there is a pattern or practice of abuse.

30. *Commercial Channel Access Disputes.* In order to implement the provision of the Cable Act concerning commercial channel access disputes, we proposed in the *Notice* to follow the administrative procedures set forth in § 76.7 of the Commission's rules. Section 76.7 provides procedures for petitions for special relief whereby an aggrieved party may petition the Commission for a ruling or file a complaint. We requested comment on this approach as well as other remedial procedures such as the show cause procedures contained in § 76.9 of the Commission's rules.

31. Most parties commenting on this matter favor the use of the special relief procedures proposed in the *Notice*. For example, cable parties and other interests generally endorse the use of the special relief procedures contained in § 76.7 of our rules for adjudication of commercial channel access disputes. Several commenters suggest, however, that specific language be added to the proposed rule to indicate that three prior adjudications are required before the special relief procedures may be invoked.

32. The Cable Television Access Coalition (Access Coalition) and Connecticut PUC contend that the burden of proof in these matters should be on the cable operator and not the petitioner. For this reason, they propose that a show cause procedure be used. NYC, in its comments, suggests that an aggrieved party should be able to choose any course of action, *e.g.*, special relief, show cause of forfeiture proceeding.

33. Some commenters express concern over what constitutes commercial leased access in terms of rate discrimination. The Access Coalition claims the "Commission should emphasize that rate structures * * * must fall within a reasonable scope * * *."

34. After reviewing the comments and replies, we conclude that the administrative procedures proposed in the *Notice* are the most appropriate means of adjudicating commercial channel access disputes. The special relief procedures afford the Commission significant flexibility in conducting a proceeding and in determining an appropriate remedy. While such special relief procedures do place the burden of proof on the petitioner, we believe that this burden is not unreasonable and is consistent with the prior adjudication standard set forth in the Cable Act.[26] Therefore, we are amending our rules to include a new rule section on commercial channel access as proposed in the *Notice*. This new rule section will specify that the special relief provisions contained in § 76.7 shall be used in the case of commercial channel access disputes. We will also specify in this rule section that three prior adjudications are necessary before the Commission will entertain petitions regarding commercial channel access. This action in no way limits the sanction provisions, such as show cause orders and forfeitures, which the Commission may take in response to commercial channel access disputes.

35. With respect to the issue of establishing rules to ensure reasonable rates for commercial leased access, section 612(f) of the Cable Act states that "there shall be a presumption that the price, terms, and conditions for use of [commercial] channel capacity . . . are reasonable and in good faith unless shown by clear and convincing evidence to the contrary." We, therefore, do not believe that additional rules or regulations are appropriate or necessary and will not modify our rules at this time to include language specific to "reasonable" rates for commercial leased access. This action does not prevent parties from filing commercial access dispute petitions that have met the prior adjudication standard based upon unreasonable rates, terms and conditions.

36. *Other Issues.* A number of other issues were raised by the commenters regarding the requirements of sections 611 and 612 of the Cable Act. The law firm of Farrow, Schildhause, Wilson & Rains (Farrow) raises a number of constitutional questions regarding access channels. Farrow suggests that the forced opening of a cable system to PEG and commercial access may be the taking of private property for public use without just compensation or an improper restriction on the First Amendment rights of cable operators. Farrow suggests that the Commission consider raising these constitutional questions and staying access obligations while this question is being litigated. Farrow also proposes that the Commission allow special relief petitions against franchising authorities to permit an operator to test the constitutionality of section 612(h) of the Cable Act. This subsection allows a franchising authority to prohibit a local cable system from carrying leased channel programming that local authorities consider obscene.

37. With respect to the constitutional questions raised by Farrow concerning channel access, similar access matters have been before the courts and have been found to be constitutional.[27] Further, the Commission is charged with implementing the Cable Act in a timely fashion. We do not believe that grant of a stay of all channel access obligations, until all constitutional questions regarding the Cable Act are resolved, is appropriate here.

38. Western Communications, Inc. (WCI) and Gill Industries, in their comments, request clarification of the commercial channel access requirement. They are concerned that a cable operator could be required to permit commercial channel leasees access to the computer systems and associated hardware used by the cable operator.[28] They state that making such access mandatory would not be "reasonable" under section 612(c)(1) of the Cable Act.[29] We concur with the commenters on this issue. We find no basis either in the legislative history or in the Cable Act that would require cable operators to afford mandatory access to control systems by third party commercial channel leasees. However, to the extent that a cable system deliberately configures itself technically to preclude commercial access, such action would likely be viewed as a direct attempt to thwart Congressional intent and could result in sanctions being imposed by a court of competent jurisdiction.

39. As a final matter, Capital Cities Cable, Inc. (Cap Cities) and Hogan & Hartson request clarification concerning the definition of activated channels. Cap Cities contends that the language of the Cable Act is ambiguous. Hogan & Hartson, in its comments, requests clarification on the use of aeronautical channels and channels that have been designated for commerial uses prior to the effective date of the statute.

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[26] There must be three or more adjudicated violations before an aggrieved party may petition the Commission. Furthermore, the special relief process may also protect MSOs from frivolous complaints of violating this section.

[27] *See, e.g., Berkshire Cablevision of Rhode Island v. Burke*, 571 F. Supp. 976 (D.R.I. 1983), *appeal docketed*, No. 83–1800 (1st Cir. Oct. 27, 1983) (state agency jurisdiction question certified to R. I. Supreme Ct., — A. 2d — (R. I. Sup. Ct. Feb. 20, 1985) and returned to 1st Cir. for constitutional questions)

[28] In addressable cable systems, each converter/descrambler is normally controlled by a central computer which uses an integrated program to authorize program choices, automatically generate billing information, and produce reports and accounts for the cable system.

[29] This section of the Cable Act states that the cable operator may establish rates, terms or conditions for commercial use that are sufficient to ensure that such use will not adversely affect the operation of the cable system.

Specifically, it believes that the Commission should declare that channel availability will be judged by the aeronautical rules under which the cable operator elects to operate and that commercial use which commenced prior to December 29, 1984, may still be deemed commercial use for section 612 purposes.

40. Section 612(b)(5)(A) of the Cable Act defines activated channels as "those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use." We do not believe that it is necessary at this time to define "activated channel" in our rules. We believe that the intent of the statute is clear. For purposes of compliance with the access requirements of the statute, we will consider "activated channels" to include all channels used for the provision of video and other programming services generally available to subscribers, *i.e.*, any channel used to provide cable service to subscribers. In addition, those channels not carrying any programming but capable of delivering cable service to subscribers without additional engineering modification of the system will be considered activated for the purposes of access channel allocation.[30]

41. With respect to the questions of aeronautical and prior commercial use, we agree with the commenters on both issues. In determining the base of channels to which the commercial channel percentage requirement is applied, it is up to the cable system to declare under which aeronautical rules it chooses to operate. Commercial use applicants cannot force cable operators to alter the aeronautical channel system under which they operate in order to affect channel capacity. As for prior commercial uses, we see no reason that a channel designated for commercial use before the effective date of the statute cannot continue to be used for the purposes of satisfying this requirement.

Section 613—Ownership Restrictions

42. Section 613 of the Cable Act establishes restrictions on the ownership and operation of cable television systems by local television broadcasters and local telephone companies.

43. *Cable/Broadcast Station Restrictions.* Section 613(a) of the Cable Act prohibits the ownership of a cable system by a television broadcast licensee whose predicted Grade B contour covers any portion of the cable community. This provision is the same in substance as § 76.501(a)(2) of the Commission's rules. Accordingly, we did not propose any change to this rule in the *Notice.*

44. Several commenters, such as WCI and TCI, agree that section 613(a) of the Cable Act and § 76.501(a)(2) of the Commission's rules are equivalent and that no changes should be made to our rules. NYC recommends the adoption of the specific language of the Cable Act. The NLC believes that there is no need to retain this rule since it duplicates the statute. Marsh Media Ltd. (Marsh) believes that any television/cable crossownership rules are unconstitutional and that the Commission should refrain from enforcing these statutory provisions.

45. We believe that our current rule is appropriate and should be maintained. As the rule is currently worded, it has the same effect as section 613(a) of the Cable Act. Therefore, we believe there is no need to substitute the language of the statute, as NYC suggests. We believe that our rules should contain the substance of the significant provisions of the Cable Act. Accordingly, we will not adopt the NLC's suggestion to eliminate this rule.

46. *Cable/Telephone Company Restrictions.* Section 613(b) of the Cable Act establishes regulations pertaining to cable system ownership by a common carrier within its telephone service area. Section 613(b)(1) makes it unlawful for a common carrier to provide video programming to subscribers in its telephone service area, either directly or indirectly through an affiliate. Under section 613(b)(2), a common carrier is prohibited from providing pole or conduit space, or channels of communications, to any entity that it owns or controls, if these facilities are to be used for the provision of video programming directly to subscribers. These provisions of the Cable Act are similar to the cable/telephone company ownership prohibitions contained in §§ 63.54 and 63.55 of the Commission's rules. In the *Notice,* we proposed only to replace the term "cable television service" with "the provision of video programming" language contained in the Cable Act.

47. Many commenters agree with our proposal to amend Part 63 of our rules by substituting "the provision of video programming" for "cable television service." BellSouth states that this amendment would permit telephone companies to provide other programming services, which was the intention of the Cable Act. The joint comments of 105 cable operators (Cable Operators) favor this proposal but add that the Commission should explicitly state that all non-textual video services including pay cable and pay-per-view are within the definition of video programming.

48. Several commenters believe that clarifications may be needed if the language of the statute replaces the wording of our rules. For example, NTIA states that the Commission should ensure that such an amendment will not prevent telephone companies from continuing to offer broadband video transport services under tariff. Centel Communications Company (Centel) believes that we should make it clear that this change in terminology has no effect on our decision to permit affiliates of telephone companies to have blanket Section 214 authorization when they propose to offer cable service outside their telephone service area.[31]

49. A few commenters believe that we should not change "cable television service" to "the provision of video programming." The Joint Cable Operators, Florida Cable Television Association and Cox Cable Communications, Inc. (Cox) state that the intent of section 613(b) is to codify current Commission rules and, therefore, we should retain these rules as presently written. NYNEX sees no need for this change. However, if the rules are amended as proposed, they believe that the definition of "video programming" should also be adopted.

50. Several commenters address other issues not specifically mentioned in the *Notice.* The NLC believes that those rules of Part 63 that duplicate the Cable Act should be deleted. The U.S. Telephone Association (USTA) suggests replacing the term "telephone common carrier" with "common carrier." GTE believes the more appropriate term is "any common carrier * * * in its service area," as used in section 613(b), because

[30] For example, channels that are currently set aside for future expansion of services on the cable system would be counted as "activated channels" whether or not new subscriber equipment would be necessary to receive such services. (It should be noted that there is no requirement that the cable operator provide any such new subscriber equipment necessary to receive channels designated for commercial use.) Additional system capacity that would require new equipment to be installed throughout the cable system would not be considered activated channels for the purpose of determining commercial channel requirements. In this regard, the mere absence of a cable headend processor would not, in and of itself, be an indication of lack of system capacity.

[31] *Report and Order,* Docket 84–28, 49 FR 2133 (1984).

these rules are meant to apply only to traditional exchange telephone companies. Centel states that Note (1)(a) of § 63.54 of our rules is ambiguous and should be modified to allow voluntary cooperation between telephone and cable companies.[32] Telephone and Data Systems Inc. and TDS Cable Communications Company (TDS) comments that Note 1, as currently written, makes it difficult to ascertain what type of "relationship" is permissible without a case-by-case clarification.

51. Farrow believes that telephone companies proposing to offer only broadcast signals on cable systems should not be exempt from the crossownership restrictions. It states that section 613(b)(1) seems to make this clear when the section provides that telephone companies may not sell video programming. However, Farrow indicates that problems may arise since section 602(6) changes the definition of a cable system to exempt systems carrying only broadcast signals. GTE disagrees and states that pure retransmission systems should be exempt.

52. Several cellular radio operators, such as the Cellular Telecommunications Division of Telocator Network of America, Inc. (Cellular), state that the application of crossownership restrictions to non-wireline common carriers is not justified by the policies and proposes of section 613 and would not be in the public interest. Metro Mobile CTS, Inc. comments that the basis of the crossownership restrictions relates to the unique monopoly position held by local landline telephone exchange carriers in their telephone service areas. Non-wireline cellular operators will not have a monopoly. Further, cable operators are not dependent on non-wireline carriers for pole attachments or transmission capacity. Therefore, non-wireline carriers have no incentive for abuse, like landline carriers, and should not be affected by these restrictions. GTE, in its reply comments, believes that there is no reason to incude wireline cellular operators, if non-wireline common carriers are exempted.

53. We will substitute the language of the Cable Act, "provision of video programming," for the term "cable television service" in Part 63 of our rules. We believe that this change is sufficient to make the substance of our rules conform to the statute. The Cable Act is quite clear that its intention is to restrict only the direct provision of video programming to subscribers by common carriers in the same areas as they provide telephone service.[33] In this regard, we believe that the provisions of section 613(b)(1) also apply to telephone companies proposing to offer only broadcast signals on their cable systems. While such cable systems may be exempt from other provisions of the Cable Act, it is clear that these cable systems provide video programming directly to subscribers. Therefore, without a waiver from the Commission, ownership of such a system by a common carrier within its telephone service area would be prohibited.

54. Finally, we will not apply the telephone company/cable crossownership restriction to non-wireline cellular operators and other radio common carriers.[34] Cellular operators provide telephone service to their subscribers using radio communications and do not have telephone service areas in the traditional sense. We have not applied these restrictions to nonwireline common carriers in the past and nothing in the Cable Act or its legislative history indicates that we should change this policy.

55. *Attribution of Ownership.* In the *Notice*, we requested comment on the issue of attribution for the purposes of defining ownership and control as it relates to cable system ownership by a common carrier. While the legislative history specifically states that the Commission's attribution rules apply for broadcast station-cable system crossownership, it is silent on the issue of common carriers. We note that the current Commission attribution standards differ for common carriers and broadcast stations.

56. DOJ and numerous cable interests recommend that we retain the current attribution rules. NCTA/CATA states that we should not modify the attribution limits without specific direction from Congress, as the cable and common carriers rules differ fundamentally in origin and purpose. TCI believes that the attribution standards should not be relaxed since common carriers are not subject to multiple ownership rules and there is the potential for extensive passive ownership. Hogan & Hartson, in its reply comment, states that relaxation of the attribution rules would subvert the independence of the cable industry.

57. A few commenters suggest changes to the attribution rules at this time. Several of these parties favor adoption of the same standards for common carriers as for broadcasters and cable operators. Among them, the American Council of Life Insurance (ACLI) believes that the purpose of section 613 is to develop a uniform approach to ownership restrictions. If Congress had intended a different standard for common carriers, it would have said so in the legislative history, in their view. Further, ACLI states that the current low standard unduly inhibits the availability of investment capital. BellSouth proposes to amend the attribution rules to permit the ownership of telephone companies and cable systems as long as the common parent company's ownership in the cable system is limited to no more than 50 percent of the entire ownership of the cable system.

58. We do not believe that it is appropriate to modify the attribution rules in this proceeding. First, the commenters have not submitted sufficient evidence to indicate the necessity of such an action at this time. Second, there is nothing in the Cable Act or legislative history that indicates that Congress believed this change would be disirable. Specifically, the House Report states that it is "the intent of section 613(b) to codify current FCC rules concerning the provision of video programming over cable systems by common carriers."[35] Accordingly, we will at this time maintain the current attribution limits for common carriers with regard to restrictions on cable ownership.

59. *Rural Crossownership Exemption.* Section 613(b)(3) of the Cable Act exempts telephone common carriers from the ban on cable system ownership in rural areas as defined by the Commission. Under this subsection of the Cable Act, telephone companies will be able to own cable systems that serve rural areas without applying to the Commission for waivers. The House Report indicates that the intent of section 613(b)(3) of the Cable Act is to eliminate all legal and administrative barriers preventing a common carrier

[32] Note (1)(a) of § 63.54 states:

As used above, the terms "control" and "affiliate" bar any financial or business relationship whatsover by contract or otherwise, directly or indirectly between the carrier and the customer except only the carrier-user relationship

[33] The Cable Act defines "video programming" as that which is comparable to the programming provided by a television broadcast station in section 602(16). We interpret this to include broadcast stations, superstations, satellite delivered cable networks and pay cable whether the subscriber fee is on a per channel or per program basis.

[34] For similar reasons, these crossowneership restrictions will not apply to wireline cellular operators in areas in which they operate cellular systems but do not provide wireline telephone service.

[35] *See* House Report at 56.

from providing rural cable television service.[36] According to the House Report, the Commission's role is to define "rural area" and to certify that a service area meets this definition. The *Notice* made no specific proposal for this certification procedure.[37]

60. The Commission's rules currently permit telephone company ownership of a cable system in rural areas, as defined in § 63.58, when "no cable television system is under construction or in existence within the proposed cable television service area." In other cases, the telephone company must apply for a waiver. In the *Notice*, we proposed to expand the exemption from the waiver process by deleting the phrase "if no cable television system is under construction or in existence within the proposed cable television service area" from our rules. The Commission's definition of rural area is based on population criteria using U.S. Department of Commerce, Bureau of the Census, definitions and statistics. We proposed no changes to this definition in the *Notice*.

61. Several telephone company interests and NTIA agree with our proposal to simply delete the qualifying phrase from § 63.58 of our rules. These parties believe that such an action is sufficient to make our rules consistent with the Cable Act.

62. Many cable interests argue that the deletion of the qualification for exemption is not justified by the legislative history or intent of the Cable Act.[38] They state that section 613(b) of the Cable Act was amended after the House Report that the Commission relied on was written. They quote later House comments that the "policy of subsection 613(b) is that telephone companies should not provide video programming directly to subscribers in their telephone service areas." As viewed by cable operators such as the Mid-America Cable Television Association, this statement indicates an absolute ban on the provision of cable service by telephone companies in their service areas including rural areas. Further, these companies argue that the Commission exemption for rural areas was designed only "to allow them [telephone companies] to own cable systems where cable service would otherwise be denied to local residents."[39] Therefore, they state there are no grounds for eliminating the qualifying statement from our rules.

63. The Community Antenna Television Association (CATA) comments that the Commission has previously recognized the importance of independent cable service wherever possible as a matter of public policy and in the interest of fair competition. They believe that the qualification limiting telephone company ownership to those areas where independent cable service is impractical is an integral part of the definition of rural area. Thus, it should not be eliminated. Further, this limitation is justified by a "demonstrated pattern of abuse by telephone companies which results when these companies are unfettered in their dealings with cable systems," according to CATA.[40]

64. With regard to the definition of rural areas as it is now written, several telephone interests agree with our proposal to continue to define rural areas in terms of population. A few cable commenters, Southwestern Bell and DOJ state that this definition should be modified. Southwestern Bell believes that a broader definition is needed to bring cable service as rapidly as possible to rural areas, as Congress intended. However, they make no specific suggestion on how this should be accomplished. DOJ and others state that the definition could be improved by basing it upon a population density standard. DOJ states that the definition should be "crafted to further the policy objective of prohibiting telephone-cable crossownership except in those markets where an unaffiliated cable system would not be economically feasible." Further, DOJ notes that population density has traditionally been a yardstick used by the cable industry to determine potential viability of cable systems. Among the other commenters, Mid-America recommends that the definition include a density standard of less than 10 households per route mile.

65. A further concern of commenters is the process that a telephone company will be required to use to certify that the proposed cable service area is rural. Commenters representing telephone interests assert that the application procedures for certification pursuant to section 214 of the Communications Act of 1934, as amended, and § 63.01 of the Commission's rules are too burdensome and should be modified or eliminated. Clarks Telephone Company *et al.* states that a simple certification that the area is rural should be substituted for the 214 application. TDS believes that all that is required for certification is a map showing the boundaries of the area to be served and a statement that it meets the Commission's definition of a rural area. Eagle Telecommunications, Inc./Colorado, among others, proposes that telephone companies certify that their service area is rural in conjunction with their cable operator registration statement.[41]

66. The cable operators that commented on this issue believe that nothing in the Cable Act or the legislative history exempts telephone companies serving rural areas from the requirements of section 214. TCI, for example, asserts that telepnone companies should demonstrate that the proposed service area is rural in their section 214 applications. In addition, TCI states that telephone companies should also be required to project that the likely future population growth in the area (TCI suggests this be done for perhaps five years) will not remove the area from the rural category. Further, TCI believes any rural exemption request should be put on public notice and formal notification should be given to local cable operators. In its reply, Hogan & Hartson argues that the elimination of the requirements of section 214 is contrary to the instructions of the U.S. Court of Appeals for the D.C. Circuit.[42]

67. It is clear from the statute and the comments of the Congress that section 613(b)(3) is intended to permit telephone company ownership of cable systems in their rural service areas without any qualifications. The amendments made to section 613 after the House Report was written have no effect on subsection (b)(3). The legislative comments referred to by the objecting cable interests were addressing a general policy. Congress has stated that cable systems in rural areas are exceptions to this policy. The proposed legislation in the House Report includes this subsection exactly as it

[36] *See* House Report at 56–57.

[37] Currently, a telephone company that proposes to offer cable service and qualifies for an exemption from § 63.58 of our rules files for section 214 authority by submitting the information described in § 63.01 of our rules and certifies that the service area is rural and that it has applied for a franchise.

[38] Cong. Rec. October 1, 1984, at H10438.

[39] Cong. Rec. October 1, 1984, at H10436.

[40] The CWA disagrees with this position. It states that the most practical means for providing cable service in rural areas is to have telephone companies offer it. These operations would be conducted with the necessary safeguards of all line-of-business operations.

[41] For example, this position was generally supported by the National Telephone Cooperative Association, TDS and BellSouth.

[42] *National Cable Television Association, Inc. v. FCC*, 747 F.2d 1503 (D.C. Cir. 1984). In that decision the Court required the Commission to consider whether "allowing a local phone company to provide cable services will reduce the public convenience and necessity by allowing the local phone company to engage in anti-competitive practices."

was adopted.[43] While the Commission's previous policy was to limit telephone company ownership of cable systems without the grant of a waiver to those areas where there would not be independent cable ownership, the provisions of the Cable Act require that we modify this policy. Accordingly, the exemption qualification will now be eliminated from our rules.

68. The Cable Act and legislative history state that the Commission is responsible for defining "rural area." There is no indication that Congress disapproves of the Commission's current definition. From our experience, these criteria generally define areas that are indeed rural, and are unlikely to be served by independent cable systems. Accordingly, we will not modify the existing definition of rural areas, as given in § 63.58. For cable systems that qualify under our definition of rural, we will adopt an abbreviated process for granting section 214 authority. In doing so, we will eliminate the burden of submitting the detailed information required by § 63.01 of our rules. Instead, we will adopt a new § 63.09 which will require submission of basic information on the system providing video programming and certification that the proposed service area is rural under one of the definitions contained in § 63.58 of our rules. The Part 63 applications will be put on public notice and the public will be given an opportunity to file objections. We believe that this procedure will meet the requirement that we certify that a proposed cable system will serve a rural area without burdening either the telephone company or the Commission. We note that the Cable Act does not specifically address the issue of section 214 authority and the certification process. However, the legislative history emphasizes the need to expedite the provision of cable service to rural areas. We believe that this simple process minimizes the administrative burden and is an important means to accomplish this goal. Finally, we do not agree with those commenters that suggest that a telephone company should be required to project the future population growth of the rural area it proposes to serve. We believe that such a requirement is not in keeping with the intent of this section of the Cable to foster the provision of cable service and that estimates of population growth would be highly speculative at best.

69. *Waivers.* Section 613(b)(4) of the Cable Act permits the Commission to waive these crossownership restrictions in those circumstances where a waiver is justified in accordance with § 63.56 of its rules. TCI comments that a telephone company seeking a waiver should have the burden of demonstrating that it is unlikely that independent cable service would otherwise be provided in the foreseeable future. NYNEX states that the Commission should take steps to prevent the situation whereby once a telephone company demonstrates an interest in filing for a waiver, an independent cable company states its intent to construct a cable system, thereby precluding the telephone company. Viacom International Inc. (Viacom) comments that the Commission should ascertain whether a telephone company is subject to line-of-business restrictions by the AT&T consent decree, before a waiver is granted. If so, we should ascertain whether DOJ approval is likely.

70. We note these comments. However, we believe that our current waiver rules and procedures balance the concerns of all parties. We also note that the Cable Act specifically states that "waivers shall be made in accordance with § 63.56 * * * (as in effect on September 20, 1984)." Accordingly, we will make no changes to § 63.56 of our rules at this time.

71. *Other Matters.* Section 613(c) of the Cable Act gives the Commission the authority to enact rules relating to local crossownership between cable systems and other media of mass communications.[44] Given this authority, we stated in the *Notice* that we believed that this was an appropriate time to consider whether the cable crossownership restrictions should apply to other competing media of mass communications, such as MDS.

72. The cable interests commenting on this issue generally believe that it is unnecessary to apply cable crossownership restrictions to additional mass media, especially MDS. For example, Cap Cities states that cable and MDS typically serve different classes of subscribers with different services and that the situations where they are head-to-head competitors are the exception, rather than the rule. Viacom believes that we should not adopt cable ownership restrictions for these other competing media, unless there is evidence that such restrictions are necessary. DOJ comments that restrictions of this nature would be premature, since there is no indication of concentration of ownership of these other video technologies.

73. Other commenters on this issue believe either that there is a definite need for additional ownership restrictions or there may be such a need. The NLC recommends the initiation of a separate rule making proceeding to consider the possibility of new rules. The Connecticut PUC urges adoption of crossownership restrictions for all other media, including print, at this time.[45] TRAC/H. Geller/D.Lampert (Geller) in reply comments, states that crossownership should be prohibited between a cable operator and either an MDS licensee or a customer-programmer of MDS. While MDS has had difficulty completing with cable, MMDS will be the main competitor to cable, according to Geller. Southwestern Bell states that equity requires crossownership bans for all competing media. The Anchorage Telephone Utility concurs with this opinion in its reply comments. It believes that:

> If the FCC imposes cross ownership restrictions on local broadcasters and telephone compaines on the theory that it will prevent establishment of media monopolies, it must either apply the same restrictions to other competing media or eliminate the restrictions for all competing media.

74. We do not believe that additional ownership regulations are appropriate at this time. We are not aware of any concentration of ownership of the alternative video delivery systems, especially by cable operators. Further, there is no evidence that there is likely to be a problem in the foreseeable future. We again note that we have the authority to establish additional rules. If we deem such restrictions necessary, we will institute the appropriate rule making proceeding to consider the establishment of additional ownership restrictions.

75. Section 613(e) enables a state or franchising authority to own a cable television system as long as editorial control is exercised through a separate entity in order to preclude undue

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[43] *See* House Report at 6, 104. This subsection is quite clear and simple. It states that "[t]his subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in *any* rural area (as defined by the Commission)." (Emphasis added.)

[44] Section 613(g) of the Cable Act defines "media of mass communications" as it is defined earlier in section 309(i)(3)(c)(i) of the Communications Act of 1934, as amended. Media of mass communications are defined as:

Television, radio, cable television, multipoint distribution service, direct broadcast satellite service and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee

[45] TCI also comments that the Commission should not repeal its ban on network ownership of cable systems.

government control of programming. In the *Notice* we stated that we did not believe that this provision of the Cable Act has any impact on our rules. Accordingly, no proposal was made and we will take no further action relating to this section.[46]

76. Section 613(f) of the Cable Act grandfathers any combination of interests held on July 1, 1984, to the extent such interests were not inconsistent with applicable Federal or state law or regulations on that date. In the *Notice*, we indicated that we believe this provision is consistent with our rules. Accordingly, we proposed no changes. Nothing in the comments has convinced us otherwise.[47]

Sections 621 and 622—Franchise Requirements and Fees

77. Sections 621 and 622 of the Cable Act concern franchising requirements and fees. Under section 621, franchising authorities are authorized to grant one or more franchises within their jurisdiction.[48] This section also sets forth certain conditions regarding the construction of cable systems and the use of public rights-of-way. In addition, section 621 requires that franchise authorities assure that no class of potential residential cable subscribers is denied service due to income class. Finally, this section of the Cable Act gives the Commission authority to require the filing of informational tariffs for intrastate, non-cable communications services. Section 622 of the Cable Act limits the franchise fee paid by the cable operator to the franchising authority to no more than five percent of gross revenue.

78. *Use of Public Rights-of-Way.* In the *Notice*, we indicated that section 621 delineates certain conditions regarding the construction of cable systems over public rights-of-way. We stated that cable system construction is authorized over public rights-of-way and through easements designated for compatible uses. The *Notice* also stated that a property owner that has already granted or is obligated to grant an easement for utilities cannot deny cable access. However, the cable franchisee must ensure the safety and appearance of the property accessed through the easement and must bear the costs of the installation, operations or removal of the equipment.

79. Several commenters requested clarifications of this language. Pacific believes that differences between the terms "designated for compatible uses" used in the *Notice* and "dedicated for compatible uses" used in the Cable Act may result in future misinterpretations of this section. A few commenters (e.g., Oxford Development Corp. and Direct Satellite Communications, Inc.) claim that the statutory language should not be construed to mean that franchised cable operators have "mandatory access" rights. Other commenters suggest that the Commission should codify rules to define the Cable Act's easement requirements and obligations and the circumstances of liability under section 621(a)(2) of the Cable Act.

80. We agree with the commenters on the use of the terms "dedicated." Our use of the phrase "designated for compatible uses" in the *Notice* was not intended to be any more or less encompassing than the phrase "dedicated for compatible uses" used in the Cable Act.[49] With respect to the access issue, the House Report states that "[a]ny private arrangements which seek to restrict a cable system's use of such easements or rights of way which have been granted to other utilities are in violation of this section and not enforceable."[50] Based on the legislative history and the clear language of the statute, we find that a cable system does have the right to access through an easement as long as the other conditions of the section are met. Furthermore, we believe that the language and provisions of these sections of the Cable Act are generally self-explanatory and that they need not be codified by our rules.[51]

81. *"Redlining" Prohibition.* In the *Notice*, we stated that section 621 requires that a franchising authority assure that no class of potential residential cable subscribers be denied cable service due to income status. (This practice of denying service to lower income areas is commonly called "redlining"). We stated that the frachising authority must require that all areas of the franchised area be wired. However, we indicated that the franchising authority could award separate franchises within its jurisdiction.

82. Many cable interests claim that the Commission has misinterpreted this section of the Cable Act. These commenters assert that the *Notice* indicates that all areas of the franchise area must be wired when in fact this is not the case. NCTA/CATA, in its comments, indicates that the intent of this section is to prevent "redlining" and does not require wiring of those houses that are too remote to wire economically. We agree that the intent of this section was to prevent the exclusion of cable service based on income and that this section does not mandate that the franchising authority require the complete wiring of the franchise area in those circumstances where such an exclusion is not based on the income status of the residents of the unwired area.

83. *Informational Tariffs.* Section 621(d)(1) authorized the Commission to collect informational tariffs for intrastate, non-cable services offered by a cable system that would be subject to regulation by the FCC if provided on a common carrier basis. In the *Notice*, we suggested that the Commission did not need the information at this time but retains the right to collect this information in the future.

84. Several telephone company interests state that we should collect this information in order to monitor the state of the industry. Southwestern Bell is concerned that without filing tariffs, telephone companies may not find out about such services that may be common carrier in nature. DOJ claims we should require tariffs because the beneficial data they would yield outweighs the marginal cost associated with their use. Pacific, however, suggests we should not require tariffs to be filed and that this requirement is best left to the states. NCTA/CATA, in its reply comments, states that there is no basis for requiring tariffs. It indicates

[46] The Connecticut PUC seeks a clarification as to whether a cooperative of municipalities may hold an interest in a cable system. We do not believe that this type of ownership would be in conflict with the Cable Act as long as editorial control is exercised through an entity separate from the franchising authority

[47] Marsh was the only party to address this issue In its comments and reply comments. Marsh contends that we should change the grandfathering date of July 1, 1970, of § 76.501 of our rules to the July 1, 1984, date of the Cable Act Also, for the purposes of grandfathering the Commission should recognize executory as well as cognizable interests These arguments are the same as those made by Marsh in a petition for reconsideration in Docket 20423. That proceeding will resolve the question of the extent that Marsh's own cross-interest is grandfathered. Marsh appears to be the only cable/broadcast entity that might be affected by a change in our rules. Accordingly we do not believe these issues need be addressed here and will, therefore, give them full and appropriate treatment in the separate proceeding.

[48] Recently the courts have questioned a franchising authority's right to grant an exclusive franchise. *See Preferred Communications, Inc* v *City of Los Angeles et al.* No 84-5541 slip op (9th Cir Mar 1 1985).

[49] Examples of such include easements dedicated for electric, gas or other utility transmission. *See* House Report at 59.

[50] *See* House Report at 59.

[51] In this regard, we believe that any disputes which may occur as a result of the provisions of this section are best settled at the local level utilizing the remedies available therein

that such a tariff requirement would be unduly burdensome and unnecessary

85. We continue to believe that the filing of informational tariffs at this time is unnecessary. We have recently taken action to reduce tariffing requirements for non-dominant common carriers and we see no reason to impose such a new requirement on cable systems.[52] We believe that we can effectively monitor this situation through trade publications and other materials. Therefore, we will not require that informational tariffs be filed, but we do reaffirm our authority to require them in the future should such action be deemed necessary.

86. *Franchise Fees.* Sections 622 of the Cable Act specifies that the franchise fee paid by the cable operator to the franchising authority be no more than five percent of gross revenue. This section also prohibits the Commission or any other Federal agency from regulating the amount of the franchise fee or the use of the funds derived from the franchise fee

87. In the *Notice*, we proposed to delete § 76.31 of our rules concerning franchise standards. This rule limits the franchise fee to three percent of gross revenue with a five percent fee obtainable upon a showing of reasonableness. This rule also contains suggested, but not mandatory, procedures for the local fanchising process.[53] These provisions are generally dealt with in section 621 and other sections of the Cable Act.

88. In general, comments from individual cities and the NLC support deletion of the Commission's franchise fee rules. These parties also contend that section 622(i) of the Cable Act specifically precludes the commission from establishing any regulations that deal with the resolution of disputes between franchising authorities and cable operators. Several commenters suggest that the franchise rules and standards should be retained in some form. The Town of Islip, N.Y., supports retaining § 76.31's recommended procedures for all new franchises and would have the Commission supervise negotiation of renewal between the operator and franchising authority. The American Civil Liberties Union (ACLU) recommends retaining the timely wiring standard found in § 76.31.

89. NCTA/CATA, in its comments, suggests rewording § 76.31 to specify that the franchise fee may not exceed five percent. NCTA/CATA also indicates that the Commission should define what is and is not to be included in the fee. In addition, NCTA/CATA suggests that the Commission specify relief procedures for cable operators seeking enforcement and interpretation of the provisions. A number of other cable interests support deleting the existing rule, but request that the Commission retain and assert its jurisdiction over any disputes that may occur regarding franchise fees. Hogan & Hartson, in its reply comments, states that the "Commission should exercise its jurisdiction to regulate franchise fees * * * to prevent the balkanization that will result if such disputes are left to the courts." Hogan & Hartson also states that the Commission should rule that § 76.31 of the rules was in effect until December 29, 1984, the effective date of the Cable Act. Miami Cablevision echoes this position and further states that the Commission's rules (§ 76.31) should be applied in full force to those fee controversies pending with the Commission on December 29, 1984.

90. After examining the record, we believe our initial proposal to eliminate § 76.31 of the rules concerning franchise requirements and fees is the appropriate course of action. Section 622(i) of the Cable Act clearly states that "[a]ny Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section." We believe that this provision renders our rules invalid with respect to setting franchise fee limits.[54] Section 622 of the Cable Act spells out quite clearly the terms of the franchise fee and how it is defined and administered. Therefore, there is no need for us to further define these matters.[55] We believe that any disputes involving the franchise fee are best resolved through the courts. Accordingly, we are deleting § 76.31 of the rules, entitled "Franchise standards." In addition, we are also deleting § 76.30 concerning applicability of § 76.31.[56]

Section 623—Regulation of Rates

91. Section 623 of the Cable Act specifies the manner in which subscriber rates for cable services may be regulated. In particular, the regulation of basic cable service is permitted by a franchising authority whenever a cable system is not subject to effective competition.[57] The Cable Act specifically charges the Commission with the responsibility of defining effective competition and establishing standards for rate regulation. In addition, the Cable Act requires that the Commission submit a report to Congress within six years on the effect of competition in the marketplace as it relates to rate regulation of cable systems.

Definition of Effective Competition

92. In the *Notice*, we recognized the desirability of defining "effective competition" in a manner that can be easily interpreted and readily applied by a franchising authority within its community or communities. On the other hand, we noted that the definition chosen should also permit the correct identification of those situations where a cable system may have significant market power. The *Notice* also reviewed the actions taken by several states in deregulating cable television service.

93. In the *Notice*, we sought comment on what constitutes effective competition and what kinds of signals or services compete with basic cable service. We also requested comment on defining effective competition in terms of the availability of off-the-air signals in the cable system's community. In this regard, we indicated that if such a signal complement criterion were chosen, one approach would be to define effective competition in a given market as the presence of four unduplicated broadcast signals, including the programming of the three major networks. We also

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[52] *See Fourth Report and Order*, CC Docket 79-252, 48 FR 52452 (November 18, 1983). *See also Fifth Report and Order*, CC Docket 79-252, 49 FR 34824 (September 4, 1983).

[53] For example, these recommendations include that: (1) The franchisee's qualifications and construction arrangements should be approved by the franchising authority as part of a full public proceeding affording due process; (2) initial and renewal franchises should not exceed 15 years; and (3) construction should be significant within the first year of certification and be completed under a reasonable timetable; etc.

[54] In this regard, the House Report states:

Subsection 622(i) prohibits any agency of the United States, including the FCC, from regulating the amount of the franchise fee or the use to which funds collected through the fee will be put. The current FCC regulations which restrict the use of franchise fee revenues to cable-related uses and permit franchise fees of 5 percent only if a waiver is granted by the FCC are invalid by the terms of this legislation. *See* House Report at 65.

[55] As far as reinstating petitions that were pending prior to December 29, 1984, we decline to return them to active status. The Commission no longer has regulatory interest in adjudicating petitions that have been rendered moot by the Cable Act

[56] Section 76.30 states that the existing franchise fee rule is applicable only to systems with 1000 or more subscribers.

[57] Section 623(g) of the Cable Act grandfathers for two years any existing state law which provides for any limitation or preemption of regulations by local franchising authorities. This regulation applies to cable systems franchised after the effective date of these rules, and to all cable systems after December 29, 1986. The Cable Act grandfathers certain franchise rate obligations during the two intervening years

suggested that in determining whether a signal was available in a franchise area the predicted Grade B contour might be a more approapriate criterion than one based on either a specific mileage zone (*e.g.*, 35 miles) or the Commission's must-carry rules. Finally, comments were requested on whether a penetration level criterion should be included in the definition of effective competiton.

94. Most of the parties filing comments or reply comments in this proceeding addressed the issues raised in this section of the *Notice*.

95. *Signal Complement Criteria.* Althought little consensus can be found among the commenting parties, they generally suggest defining effective competition based on some form of signal complement criterion. Well over half of the commenters feel that the proposed requirement of four off-the-air broadcast signals is too strict. Cox, NTIA and Time Inc., for example, suggest a three signal criterion. NCTA/CATA, Hogan & Hartson, and comments submitted by the law firm of Fleischman and Walsh, P.C. on behalf of various cable television interests (VCTI), in comments representive of most cable interests, argue for a two signal criterion.[58] Other commenters argue that the four broadcast signal criterion suggested in the *Notice* is insufficient to ensure effective competition. DOJ and the Telecommunications Research and Action Center (TRAC) assert that a minimum of five broadcast signals is necessary in order for there to be effective competition with cable service.[59] The National Federation of Local Cable Programmers suggests seven signals. The NLC proposes requiring a total of ten signals including five alternative delivery channels.[60]

96. Several of the parties suggesting additional (more than four) signals also indicate that the statute requires that the Commission define the circumstances in which a "cable system" is not subject to effective competition. These parties state that a standard based on alternatives to "basic cable service" only, as suggested in the *Notice*, is not appropriate given the statutory language. This view was expressed by NLC and the City of New York, among others. DOJ and a number of other parties believe that the Commission was correct in limiting the question of effective competition to basic cable service. These parties note that franchise rate regualtion authority is limited to regulation of basic cable service.

97. Several parties in their reply comments criticize the Department of Justice's proposals for an effective competition standard based on five signals. They state that DOJ provides little justification other than supposition and intuition. On the other hand, an empirical study by NCTA/CATA was cited by many as providing factual support for a standard based on fewer than three signals.

98. After full consideration of the record on this issue, we continue to believe that a standard for defining effective competitive based on the availability of off-the-air broadcast signals in the cable system's community is appropriate. In adopting this definition, we do not mean to minimize the importance of the various alternative sources of video programming such as multipoint distributing services, direct satellite reception, and video cassette recorders.[61] Such services are significant providers of video programming services and do, in fact, offer competition to cable services.[62] Congress has already made the decision that nonbasic service should not be subject to such regulation at either the federal or local levels.[63] This decision appears to have been made based, at least in part, on a belief that alternative video delivery systems provided sufficient existing or potential competition to nonbasic services that rate controls would be counterproductive. However, the Cable Act requires the Commission to look at competition for the limited purpose of determining in what situations rate regulation of basic cable service may take place. For the most part, programming provided by basic cable service includes local, over-the-air signals and other services. Therefore, we believe that a standard based on the reception of terrestrial television signals is appropriate and provides a reasonable benchmark for determining effective competition with basic cable service. Furthermore, we feel that this standard meets the congressional intent of an administratively manageable standard for the Commission, franchising authorities and cable operators.

99. *Number of Signals Required.* The number of over-the-air broadcast signals required to provide effective competition to basic cable service must be sufficient to allow viewers adequate and significant programming choices. Further, the number of signals should ensure that the basic tier offering does not become a source of market power for the cable operator. Based on the record in this proceeding, we believe that three broadcast signals are the minimum number of signals needed to meet these objectives. A limited statistical sampling of two, three, four and five signal markets using Arbitron viewing data provides further evidence to support this conclusion.[64] In

[58] Both Cox and VCTI also argue that foreign broadcast station signals (*e.g.*, Canadian and Mexican) represent effective competition in some cable markets and should be counted for this purpose. Section 76.5(b) of our rules defines television broadcast station to include any "station licensed by a foreign government," and accordingly any such stations will be included.

[59] DOJ also suggests that other criteria be considered in addition to the signal complement.

[60] In addition to NLC, a number of commenters (irrespective of their views on the number of signals) support the inclusion of various alternative delivery systems in our effective competition standard. *See, e.g.*, comments filed by the U.S. Conference of Mayors, VCTI, TRAC, and the U.S. Catholic Conference. Other parties argue that the programming provided on these systems (STV, MDS, MMDS, and DBS) is most substitutable with that provided on the pay cable channels and therefore should not be included.

[61] In this regard, we note that the Cable Act amends section 705 of the Communications Act of 1934, as amended, to permit the reception by individuals of any satellite cable programming for private viewing. This action significantly increases the programming options available to all viewers. We also note that the Commission has proposed preemption of certain restrictive local zoning regulation of satellite receive-only antennas. *See Notice of Proposed Rule Making*, CC Docket No. 85-87, FCC 85-144, adopted March 28, 1985.

[62] *See Report and Order* in Dócket No. 83-670, 49 FR 33588 (August 23, 1984); *Report and Order* in Docket No. 19142, 96 FCC 2d 634 (1984); *Report and Order* in Docket No. 83-1009, 49 FR 31877 (August 8, 1984) and *Memorandum Opinion and Order* in Docket No. 83-1009, 50 FR 46666 (February 1, 1985).

[63] Some commenters express concern that cable systems may have market power in the provision of nonbasic service and that this power could be extended to their provision of basic service. Therefore, these commenters contend, rate regulation of basic service should be permitted whenever there is a lack of competition in nonbasic service. We believe the commenters' argument is based upon a concern about the marketing practice of cable operators whereby consumers can subscribe to a pay tier only if they *also* subscribe to the basic. This marketing practice, often called a "tying arrangement," is addressed in the antitrust literature. We believe that the commenter's argument is incorrect. This is so because a cable operator has the ability to charge a price for nonbasic service that is the most profitable. He, therefore, has no incentive to raise basic service rates in order to earn increased profits. Thus, we believe that the manner in which cable operators market basic and nonbasic services represent an efficient business practice and is not a threat to the competitive provision of basic service. "The law's theory of tying arrangements is merely another example of the discredited transfer-of-power theory, and perhaps no other variety of that theory has been so thoroughly and repeatedly demolished in the legal and economic theory." *See* Robert H. Bork, *The Antitrust Paradox*, 1978, p. 372. Accordingly, we see little point in determining whether a cable system may have market power in the provision of a service that a franchising authority is prohibited statutorily from regulating.

[64] *See* Arbitron *1982 County Coverage Surveys, Cable-Controlled.*

comparing the cable viewership of the programming which is most likely to be included in the basic tier with the off-air local broadcast viewership, we found that in two signal markets the viewership share of such programming could be as large or larger than the off-air viewership of the typical local station in such a market. This could potentially be a source of market power for the cable operator. In three signal markets, the cable viewership of such basic programming was in general less than the off-air viewership of a single local signal.[65] In the worst case, the impact of the provision of basic service programming would be comparable to adding one more competitior to a (three competitor) market. Further support for the reasonableness of an effective competition standard of three signals can be found in the economic literature. In an empirical study of American industry, Kwoka demonstrated that the presence of a third competitor of sizable market share may be sufficient to guarantee competition in a given industry.[66] For the case at hand, involving at least three broadcast signals and a cable system, there will generally be not just a third but a fourth competitor of sizable market share. Accordingly, we feel that the programming of basic cable service is not likely to be a significant source of market power in these circumstances and that retaining the four signal standard proposed in the *Notice* could subject a number of cable systems to unnecessary rate regulation.

100. Therefore, after careful consideration of the arguments presented as to the appropriate number of broadcast signals required for effective competition with basic cable service, we have decided to relax the effective competition standard proposed in the *Notice*. We now conclude that the existence of three or more off-the-air broadcast signals in the cable market provides viewers with adequate programming choices and presents an effective constraint on the market power of a cable system in the provision of basic service. We recognize that many cable systems provide a number of services in addition to the retransmission of off-the-air signals. For example, a cable system may typically provide additional broadcast signals, access channels, and certain satellite delivered programming on its basic cable tier.[67] Nevertheless, we do not believe that a cable system gains significant market advantage by the provision of this additional programming in those markets where there are sufficient (*i.e.*, three or more) off-the-air broadcast signals.[68] Accordingly, a cable system will be considered to face effective competition whenever the franchise market receives three or more unduplicated broadcast signals.[69]

101. *Program Content of Signals.* In the *Notice*, we proposed that the programming of three major networks be included as part of the signal complement requirement. A number of commenters support this network programming requirement. For example, DOJ, NLC, the Department of Defense, and TRAC concur with this position. These parties believe that a cable system could conceivably gain market power by importing a signal which provides network programming not receivable off-the-air in the franchise area. Several commenters, NCTA/CATA, VCTI, NTIA, Heritage Communications, Inc., Hogan & Hartson, and California Cable Television Association (CCTA), among others, oppose any programming content requirement.[70] In its comments, VCTI argues that past Commission policies (*e.g.*, spectrum allocation, must-carry rules, etc.) have not been based upon some "entitlement" of viewers to the programming of the three major networks. In addition, VCTI points out that independent and noncommercial programming have become increasingly popular and that the presence of either in a market may contribute more to programming diversity than the offering of a third network affiliate.

102. After weighing the arguments presented on both sides of the issue, we conclude that a programming content requirement based on major network programming should not be included in the Commission's standard for effective competition.[71] We continue to have significant First Amendment concerns with any requirement based on the programming content of broadcasters. We also note that such a requirement would not be consistent with our past efforts to foster alternative program sources. For these reasons, we will not adopt such a requirement.

103. *Signal Availability Standard.* The *Notice* indicated that if a broadcast signal standard is chosen, a method must also be developed for determining when a signal is available in a given franchise area. A number of approaches were suggested in the *Notice* including counting all signals within a specific mileage zone (*i.e.*, the 35-mile zone) and a standard based on the Commission's must-carry rules.[72] In the *Notice*, we suggested a standard based on counting stations that placed a predicted Grade B signal contour over the cable community. Comment was also requested on whether a penetration level should be included in our definition of effective competition.

104. Most cable interests and certain other parties suggest counting a signal if it meets any of the must-carry requirements. For example NCTA/CATA, VCTI, TCI, Cap Cities and CCTA, argue that a signal should be counted if it satisfied any one of a number of criteria, such as Grade B, significantly viewed, 35-mile, or must-carry. NTIA, Hogan & Hartson and Time, Inc., support the Grade B contour criteria proposed in the *Notice*. They indicate that the Grade B proposal is the

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[65] Viewership of basic cable services (excluding must-carry signals) ranged from three quarters to approximately equal to the off-the-air viewership of the typical local signal, which in this sample was about 33%. We feel that a market or viewership share of 33% or less is a reasonable indication of lack of market power. *See U.S. v. Aluminum Co. of America et al.*, 148 F. 2d 416, 424 (1975).

[66] *See* John E. Kwoka, "The Effect of Market Share Distribution on Industry Performance," *Review of Economics & Statistics*, Vol. LXI, No. 1, February 1979, pp. 101–109.

[67] Examples of satellite delivered programming or cable networks are the Entertainment and Sports Programming Network and Cable News Network.

[68] The existence of market power depends on both the level of demand for a particular product and the elasticity of that demand. For these additional basic services to be a source of market power, it must first be shown that a significant demand exists for these services and that such demand is relatively inelastic. None of the commenters were able to present any evidence to support either of these contentions. In fact, several of these same commenters readily concede that no market power is obtained from the provision of some of these additional services, such as the public access channels. In this regard, it should also be noted that most satellite services presently provided on cable systems either are not rated or have very small viewing shares according to the national rating services.

[69] Furthermore, we also agree with those commenters that state that it was the intent of the Cable Act to significantly deregulate the provision of cable service. We believe that a requirement of five or more signals would not have the effect that Congress clearly intended.

[70] CCTA also argues that duplicated signals should be counted. It notes that programming duplication is not an issue in either television license renewal or must-carry requirements.

[71] It should be noted, however, that in the vast majority of markets with three or more unduplicated signals, the programming of the three major networks is provided.

[72] Must-carry signals include all television stations within a 35-mile zone, certain Grade B contour signals and signals that have attained significantly viewed status within the cable community. *See* §§ 76.54, 76.55, 76.57, 76.59 and 76.61 of the Commission's rules.

most cost-efficient and easiest to administer alternative.

105. The majority of the parties associated with the local franchise process and a number of other commenters support a stricter standard for counting signals. NLC and TRAC argue that the 35-mile zone criterion should be used. ACLU and the Cable Television Information Center support using the Grade A city contour. Several commenters, for example, the National Association of Towns and Townships, the Vermont Department of Public Service, DOJ and the Department of Defense argue for a standard based on "actual" as opposed to predicted reception. In addition, a requirement that cable penetration be less than 70% was supported by several of these parties including the NLC and TRAC.[73] These commenters cite penetration as a good indicator of the dependence of viewers on cable service for adequate reception of local broadcast signals.

106. The choice of an appropriate signal reception criterion is a difficult one. The use of any of the above alternatives will result in some cable systems being judged to have effective competition when in fact reception of three or more signals may not always be possible in the franchise area. On the other hand, some cable systems will be judged, whatever the alternative chosen, to not face effective competition when in fact the majority of homes in the franchise area are receiving more than three broadcast signals. Since no compelling arguments were given to the contrary, we believe that weight should be give to the administrative convenience of implementing a signal availability test.

107. Furthermore, given the intent and purposes of the Cable Act, we feel that in developing a standard for the purposes of rate regulation, it is more appropriate to favor a presumption that competition does in fact exist rather than to assume that consumers will make no efforts to seek out alternatives to basic cable service. Clearly, in this regard, there is considerable evidence viewers do take significant measures, such as improved antennas, use of rotors and amplifiers, to receive broadcast signals they deem desirable even if those viewers are in areas with fringe or marginal reception. Accordingly, at this time, a signal will be counted for purposes of effective competition if it places a predicted Grade B contour over any portion of the cable community or is significantly viewed within the cable community.[74] However, in order to ensure that franchise authorities are permitted to rate regulate in those areas where there is not effective competition, franchise authorities may submit showings and engineering studies to indicate that such signals are in fact not available anywhere within the cable community. Such studies shall include field strength measurements made in accordance with § 73.686 of the Commission's rules.

108. With regard to any additional criterion based on cable penetration figures, we are unconvinced that such statistics are reliable indicators of broadcast reception problems. We believe that cable subscriber penetration is determined by a number of factors other than the availability of off-the-air signal reception. More specifically, price, quality of service, income and area viewing tastes will all have a significant impact on the demand for cable service and the resulting subscriber penetration of cable service within a particular area. We find that the adoption of a penetration standard would be arbitrary and unjustifiable for the thousands of cable communities that not only have varying television reception, but also include viewing households with divergent incomes and tastes. We are also sympathetic to commenters' arguments that a penetration criterion would penalize cable operators who have attained substantial subscriber penetration by providing low-priced popular cable offerings and services. In this regard, we believe that a penetration standard could create a disincentive for cable operators to upgrade the quality and level of the services they now provide. Accordingly, we conclude that adoption of a cable penetration criterion as part of the effective competition standard would not be in the public interest.

109. Several commenters express concern that some cable systems may be susceptible to disruption in their long term plans due to the nature of our definition of effective competition. For example, a system operating in a market within three Grade B contours could become subject to rate regulation if one of the broadcast stations should go dark (even temporarily), reduce its power, or directionalize its signal. In this regard, Cox, in its comments, proposes that once a market satisfies the criteria for effective competition, it cannot be reclassified. While we are sympathetic to a cable operator's desire for regulatory certainty, we believe that this solution would be contrary to the intent of the statute and would ignore those situations where effective competition might be removed. Accordingly, in those situations where a cable system has been found previously to be subject to effective competition but subsequently was found to not be subject to effective competition due to changed circumstances in the cable system community, the cable system shall be exempt from rate regulation for a period of at least one year. We believe that this one year period will allow a cable operator sufficient time to make the transition from an unregulated to a regulated entity.

Standards for Rate Regulation

110. Section 623 of the Cable Act also requires that the Commission establish standards for the regulation of basic cable rates by a franchising authority. In the *Notice*, we noted that this involves not only specifying what services can be regulated but also in what manner. Thus, we must define "basic cable service" for the purpose of rate regulation and establish the standards for such rate regulation. These issues are discussed in turn.

111. *Definition of Basic Cable Service.* Section 602 of the Cable Act defines basic cable service as "any service tier which includes the transmission of local television broadcast signals." The House Report encourages the Commission "to fashion a definition of basic cable service most appropriate to achieve the purpose of the regulations consistent with the provisions of Title VI." In this context, we stated in the *Notice* that it was appropriate to include "significantly viewed" as well as local signals. Accordingly, we proposed defining basic cable service as "any service tier(s) which include(s) the retransmission of must-carry television

[73] Several states have such a penetration requirement for statewide deregulation of cable systems. DOJ proposes a variation based on the maximum penetration level of basic service. Specifically, it suggests basic-only subscribers must be less than 30% of all subscribers for there to be effective competition.

[74] We believe that "significantly viewed in the cable community" will give a more accurate analysis of those signals that are available in the cable community and eliminate any problems this standard may have within hyphenated communities. In addition, a number of parties submitted comments on the issue of availability of broadcast signals from television translators. For example, VCTI, Cox, and Hogan & Hartson present arguments for the inclusion of such signals in the determination of effective competition. We agree that broadcast signals of tanslator stations should be considered. However, in view of the varying power and the relatively small geographic service area of translator stations, we believe that it is inappropriate to count translators on an equal basis with broadcast stations. Accordingly, signals of translator stations shall be counted only if such stations are located within the cable community; provided, however, that translators used to retransmit a station already providing a Grade B contour or significantly viewed within the cable community may not be considered for this purpose.

broadcast signals as defined in §§ 76.55 to 76.61 of the rules."

112. There is considerable disagreement among the parties with respect to the Commission's discretion to develop a definition of basic cable service for the purposes of rate regulation different from that contained in section 602 of the Cable Act. NCTA/CATA states that the Cable Act generally reflects Congressional endorsement of the Commission's prohibition on regulation of rates for optional services and therefore gives the Commission discretion to alter the definition of basic cable service in developing standards for rate regulation. In this regard, it quotes extensively from the House Report:

> The Committee wishes to stress that it intends to give the Commission flexibility in promulgating these regulations. The definition in section 602 of basic cable service is intended primarily for use in determining the extent of regulation that will be permitted during the * * * transition period. The regulations of the Commission under this subsection serve a different purpose—defining the circumstances and extent of regulation that may occur beyond the transition period.

NCTA/CATA does not, however, support the Commission's proposed definition. It states that the definition in the statute as well as our proposed modification would permit regulation of multiple tiers of basic service where a cable system offers a lowest-priced basic tier that includes retransmission of local broadcast signals and also offers another tier at a single, higher price that includes everything on the lowest-priced tier plus additional services. NCTA/CATA states that while the statute permits this practice during the two-year transition period as the result of a political compromise, the Commission's preemption policies and the Cable Act's endorsement of the Commission's prohibition on regulation of rates for optional services requires that the Commission prevent such rate regulation from continuing beyond the transition period. Thus, NCTA/CATA recommends that the Commission make clear that basic cable service includes no more than the lowest priced tier of service that includes all local broadcast signals. In addition, NCTA/CATA urges the Commission to affirm that basic cable service includes only the retransmission of local broadcast signals and that any ancillary services provided along with basic service should not be deemed "basic service." Thus, NCTA/CATA asserts, regulated cable systems would be free to remove or retier any of these other services. Such a statement, NCTA/CATA asserts, would simply reaffirm the Commission's fundamental policy in this area,[75] and nothing in the Cable Act requires the Commission to set aside its previous decisions.[76]

113. NTIA states that the Commission "clearly has the power, and probably a mandate to adopt a definition of 'basic cable service' different than the one contained in section 602(2) in order to further effectuate the purposes of the Cable Act." NTIA proposes that the Commission adopt a definition of basic cable service which is based on the retransmission of unaltered broadcast television signals rather than one based on must-carry signals, as proposed in the *Notice*. NTIA states that this alternative definition would ensure that franchising authorities whose cable systems are outside of all television markets (*i.e.*, areas where there are no signals which cable operators are required to carry under the must-carry rules) have the authority to rate regulate the basic service of these cable systems if they are not subject to effective competition. NTIA states that this proposal more fully carries out the intent of the statute.

114. The Department of Justice believes that the Cable Act sanctions the Commission's decision to preempt state and local rate regulation of all but basic cable television service. However, it states that it is not clear whether the Commission has discretion under the Cable Act to define basic cable service. It states that the Cable Act does not authorize the Commission to define basic cable service either generally or for purposes of section 623. "While the legislative history does suggest that the Commission may 'fashion a definition of basic cable services most appropriate to achieve the purpose' of its 'effective competition' criteria, * * * it seems apparent that the Commission could not define 'basic cable service' inconsistently with the Act, *e.g.*, limited to the must-carry channels." DOJ believes, however, that the Commission's proposed definition of basic cable service that interprets local television broadcast signals as the must-carry signals is a proper interpretation of the statute, supported by the legislative history.

115. NLC states, in its reply comments, that the Commission's responsibilities under section 623(b) of the Cable Act should be construed in the context of the plain language of the Cable Act and the purpose of the section to allow for rate regulation in communities when the cable system is not subject to effective competition. NLC agrees with DOJ that the Commission has little discretion to fundamentally alter the definition of basic service contained in the Cable Act. In this regard, NLC states that Congress considered and ultimately rejected both definitions of basic service proposed by the various cable parties (*i.e.*, must-carry signals and the lowest priced tier which includes the must-carry signals). NLC states that the definition of basic service contained in the Cable Act is intended to establish regulatory certainty and stability where conflicting court decisions created confusion with respect to the proper definition of basic service. NLC believes that the definition contained in the statute establishes the necessary distinction between basic and nonbasic services.

116. After careful consideration of the full record in this proceeding including the statute, the legislative history and the comments, we conclude that the Commission does have the discretion to fashion a definition of basic cable service different from that contained in section 602(2) of the Cable Act for the purpose of developing rate regulation standards. While some tension may be created by adopting a definition of basic service for section 623(b) of the Cable Act that differs from the definition in section 602(2), we believe that there is legislative guidance that permits such a change. First, in adopting appropriate regulatory standards we must keep in mind the underlying purposes of the Cable Act which are articulated in section 601. Foremost among these is the intent of the statute to establish "standards which encourage the growth and development of cable systems * * *, assure that cable communications provide * * * the widest possible diversity of information sources and services to the public" and "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic

[75] *See Community Cable TV, Inc.* (hereinafter *Community*), 95 FCC 2d 12[illegible] (1983) and *Community Cable TV, Inc.* (Reconsideration), 56 RR 2d 735 (1984).

[76] The individual cable interests that filed are in general agreement with NCTA/CATA's proposed definition of basic cable service, giving equal support to the concept that basic cable service should include either (1) must-carry signals only; or (2) the lowest-priced tier which contains the must-carry signals. In addition, they state that cable operators must retain the freedom to retier ancillary services out of "basic service" granted them by the Commission's decision in *Community*. These parties include PCTA, TCI, Cap Cities, VCTI, New Jersey Cable Television Association, Time (reply comments), CCTA, Cox, Cable Operators and Hogan & Hartson. We also note that several parties urge that the PEG channels be included in the definition of basic service. These parties include TCI, the City of Boston, the U.S. Catholic Conference, and the New York Citizens' Committee for Responsible Media.

burden on cable systems." We believe that we must implement section 623(b) consistent with these statutory goals.

117. Reflecting these procompetitive goals of the statute, section 623 preempts rate regulation of all cable services provided by those cable systems subject to effective competition. In this regard, it is consistent with the Commission's long-standing policy to preempt local regulation of nonbasic or "pay" cable services, based on the premise that "unnecessary rate and tariff requirements can stifle price competition and service and marketing innovation." [77] As most recently reaffirmed in *Capital Cities Cable, Inc. v. Crisp*, only "preemption of state and local regulation can assure cable systems the breathing space necessary to expand vigorously and provide a diverse range of program offerings to potential cable subscribers in all parts of the country." [78] We also note that in preempting rate regulation of basic service of these cable systems, section 623 goes even further than the Commission's preemption policy. The Cable Act authorizes local rate regulation only for the provision of basic cable service for those cable systems not subject to effective competition and gives the Commission the responsibility to prescribe rules to make effective the national policy with respect to rate regulation of these systems. We believe that the statute and legislative history give the Commission broad discretion to implement this provision consistent with the provisions of Title VI.

118. With this mandate in mind, and in light of the comments, we are convinced that the definition of basic cable service contained in section 602(2), even with the modification proposed in the *Notice*, should not be applied to section 623(b).[79] To do so, we believe, could induce an expansion of rate regulation of cable systems that is inconsistent with the basic goals of the statute. Such a definition of basic service would permit a franchising authority to regulate multiple tiers of cable service where a cable system prices its tiers on a cumulative rather than an incremental basis.[80] Thus, while some cable systems subject to these provisions would have one regulated tier, many systems could have multiple tiers under regulation, and some systems could have all their tiers regulated.[81] Most of these regulated tiers would include services that are universally considered to be "pay" services. This is an unreasonable outcome for two reasons. First, if at all possible, a regulation should not be so constructed that its impact depends upon the manner in which the service is marketed or delivered, as would be the case with this proposed definition.[82] Second, this definition would permit rate regulation of services which has been determined on numerous occasions in the past are best provided on an unregulated basis.[83] Nothing in the statute supports a determination that we must permit the pay services of these cable systems to be rate regulated. We, therefore, intend to modify the definition proposed in the *Notice* and adopt the following definition of basic cable service for rate regulation purposes:

> Basic cable service is the tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in §§ 76.55 to 76.61 of the rules, [or, in the absence of at least three must-carry signals, any unaltered broadcast television signals] and the public, educational and governmental channels, if required by a franchising authority under Section 611 of the Communications Act.[84] [85]

This definition of basic service resolves the problems created by the definition contained in section 602(2) of the Cable Act. In addition, it creates a reasonable, historically based, demarcation between basic and nonbasic services which will permit the rate regulation of only the core or "basic" offering of those cable systems not subject to effective competition.[86] We believe, therefore, that it is consistent with the goals of the statute and longstanding Commission policy.

119. As a final matter, we note the comments made by some parties that the definition of basic cable service adopted in section 602(2) is inconsistent with our decision in *Community*.[87] These parties believe that the statute intentionally reject the policies underlying that decision. We believe that a fair reading of the statute would not support that conclusion. We determined, in *Community*, that the cable operator must have discretion in the selection and packaging of its programming services consistent with First Amendment freedoms and the rigors of the economic marketplace. In this regard, we stated that a cable operator "is free to add, delete, or realign its service as long as the basic

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[77] *See Community* at 740.

[78] *See Capital Cities Cable Inc. v Crisp*, 104 S. Ct. 2694 (1984).

[79] The definition of basic cable service contained in section 602(2) applies to section 623(c) which sets forth the scope of permissible rate regulation during a two-year "transition period" before the Commission's rate regulation rules become effective for all cable systems. This definition of basic service is appropriate for this subsection because we believe this subsection endeavors to paint a broad brush of permissible activity so as not to cause any immediate dislocations in existing agreements between franchising authorities and cable systems.

[80] We note that the legislative history of section 602(2) indicates that Congress contemplated that "basic cable service" as defined therein could include multiple tiers of "basic service." *See* House Report at 40. However, the House Report also indicates that the Commission should not be bound by the section 602(2) definition, except during the two year period between the passage of the Cable Act and the effectiveness of rate regulation under Section 623. *See* House Report at 66. Accordingly, the fact that the section 602(2) definition of basic tier can include multiple tiers is not controlling within the context of section 623. For these purposes, we believe the better definition of "basic service" should be limited to a single tier.

[81] For example, consider the following cases:

Cable system I provides service as follows: Tier A—"must-carry" signals and access channels

Tier B—satellite delivered services such as ESPN and CNN

Tier C—pay services such as HBO and Showtime

Cable system II, according to its franchise agreement, provides the same services as follows: Tier A—"must-Carry" signals and access channels

Tier B—"must-Carry" signals and access channels + satellite delivered services such as ESPN and CNN

Tier C—Tier A and B services + pay services such as HBO and Showtime.

While both cable systems are providing the same services, under the section 602(2) definition of basic cable service Tier A on Cable system I could be regulated by the franchising authority while Tiers A, B, and C on Cable system II could be subject to rate regulation. We believe that such a result is clearly not intended by the statute.

[82] In this regard, we disagree with the comments of the NLC that the definition of basic cable service contained in the statute establishes the necessary distinction between basic and nonbasic services. On the contrary, we believe that this definition fails to draw any meaningful distinction between these two services.

[83] *See United States v. Midwest Video Corp.*, 406 U.S. 649 (1972); *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *New York State Commission on Cable Television v. FCC*, 669 F.2d 58 (2d Cir. 1982); *Brookhaven Cable TV, Inc. v. Kelly*, 573 F.2d 765 (2d Cir. 1978), *cert. denied*, 441 U.S. 904 (1979).

[84] This definition is preferable to the "lowest priced" tier proposal of many of the cable interests. In general, we believe it is imprecise to define a service by its price. Further, in this instance, such a definition would appear inappropriate as the price of the tier in question is to be determined by the regulatory authority

[85] For purposes of rate regulation under section 623 of the Cable Act, superstations or satellite delivered television signals shall not be considered unaltered broadcast television signals as defined in basic cable service. *See* paragraph 27 *supra*. Further, where a cable system carries a large number of unaltered broadcast signals, the Commission may consider waiver requests for permission to retier these signals.

[86] In *Community*, we stated that basic subscriber service consists of that service regularly provided to all subscribers, and that basic service must contain all the signals mandated by the Commission's rules.

[87] *See* comments of DOJ and NLC.

service contains all the signals mandated by the Commission's rules."[88] We believe that the statute goes far to ensure that no restrictions are placed on cable systems that unnecessarily restrict this freedom.

120. Several sections of the Cable Act place limits on a franchising authority's power to regulate cable programming services. Section 624 specifies that for new franchises, and renewals of existing franchises, the franchising authority may not require a cable system, either directly or indirectly, to provide particular video or other information services or even a broad category of such services. Further, the franchising authority may only enforce requirements in the franchise for broad categories of these services. Section 625 specifies procedures available to cable operators in seeking modifications of their franchise obligations. With regard to programming, it provides in subsection (a) that a cable operator may obtain modification of a requirement for services contained in its franchise if it demonstrates to the franchising authority or in court that the "mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification." Subsection (c) permits the cable operator upon 30 days' advance notice to the franchising authority to rearrange, replace or remove a particular cable service if the service becomes unavailable or is available only with substantially higher copyright fees for which the operator has not otherwise been specifically compensated. Subsection (d) provides that a cable operator may freely retier or repackage services where the tiers involved are not subject to rate regulation. Finally, section 9(b) of the Cable Act grandfathers any retiering, repricing or deletion of services pursuant to the *Community* decision, as of September 26, 1984.

121. We believe that the Cable Act does not substantially alter the Commission's *Community* decision and that these sections of the Cable Act, taken together, afford the cable operator substantial freedom to replace and retier its services. Section 625(d) gives cable operators complete freedom to retier and repackage programming services among the tiers that are exempted from rate regulation, notwithstanding any provisions in the franchise agreement to the contrary.[89] When the Commission's rules become effective after the two-year transition period, the majority of cable systems will be exempted from all rate regulation. Most cable operators will, therefore, have complete freedom to retier and repackage all their "basic" and "pay" programming services. Those cable operators subject to rate regulation will have their freedom to retier and repackage restricted somewhat by the statute, but this constriction is applicable only to programs on their regulated tiers. In addition, any cable operator subject to regulation may obtain a modification of a franchise programming obligation under section 625(a) after demonstrating to the franchising authority that the proposed modification will maintain the mix, quality and level of the programming services. While this provision may in fact limit the cable operator's freedom somewhat during the two-year transition period, we do not believe it will be burdensome after this period because most cable systems will not have any regulated tiers of service and, of those systems that do, only the one tier that contains basic cable service will be regulated.

122. *Regulatory Process.* Section 623 of the Cable Act also specifies that the Commission has the responsibility of developing the procedures and methodologies which a franchising authority must follow in regulating basic cable service rates. In the *Notice*, we proposed a number of administrative procedures for the rate setting process. For example, we indicated that there should be formal notice to the public, an opportunity for interested parties to make their views known, and a formal statement when a decision on a rate matter is made. We also stated that rate of return regulation of basic cable service was inappropriate due to its inherent costliness and complexity. We, therefore, proposed in the *Notice* a comparable rate method that would set the regulated basic cable service rate equal to the level in comparable unregulated markets. To ensure greater flexibility and ease of implementation, we also proposed a plus or minus ten percent "zone of reasonableness" of the average rate of the comparable cable systems.

123. Few objections were raised with the adminstrative procedures proposed in the *Notice*. Accordingly, we will require franchising authorities in exercising their right to regulate basic rates to provide (1) formal notice of a rate standard (or change thereof) to the public; (2) opportunities for interested parties to make their views known, at least through written submissions; and (3) a formal statement (including summary explanation) to the public when a decision on a rate matter is made. In response to concern expressed in comments filed by City of Winona, MN, we acknowledge that such procedures would not be binding in the two year transition period provided for exsiting franchises.

124. Many parties urge the Commission to assume the role of arbiter of last resort in disputes between cable operators and franchising authorities. Due to the large and growing number of cable systems and the limited resources of the Commission, our role must necessarily be limited. At this time, we view our responsibilities as largely restricted to the interpretation of our new rules and to those areas where the Cable Act calls specifically for Commission intervention. We believe that other matters must generally be settled through public hearings, negotiations, and, if necessary, by the courts.

125. With regard to the method employed by the franchising authority in establishing basic cable rates, a majority of commenters opposed the "comparable rate" method proposed in the *Notice*. The reason most often cited is the inherent complexity of objectively choosing "comparable" cable systems. As NTIA notes, "the problems associated with determining comparability could bog down rate proceedings and result in costly litigation." The majority of commenters feel that rates should be established through negotiation, although some believe that this might include the "comparable rate" or some other methods as optional tools. After deliberation, we concur that the means by which the appropriate regulated rate is determined is best decided consistent with the statute by the local franchising authority.

126. Many commenters, for example, NCTA/CATA, NTIA, Cable Operators, Hogan & Hartson, and TCI, recommend that cost increases be automatically allowed without the delay and cost of franchising authority approval. Such "pass-thru's" would be presumably in excess of the annual 5% automatic rate increase to which most cable systems are entitled. Most commenters suggest that such "pass-thru's" should be based on identifiable cost increases. For

[88] *See Community* at 9. *See also* In re: Cox Cable New Orleans, Inc. v. City of New Orleans, *Memorandum Opinion and Order*, FCC 85–106, adopted March 5, 1985.

[89] Unlike *Community* which permitted unrestricted deletion (with no replacement) of a programming service, we believe that the Cable Act prevents cable systems from deleting a program service except where the particular category of programming is no longer available, or available only at a substantially higher, uncompensated price

example, increases in programming costs caused by increased distant signal copyright fees. Other commenters, such as the Cable Operators, suggest that cost increases based on the Consumer Price Index should be allowed without franchising authority approval. It is our view that the value of an automatic pass through of costs is the avoidance of *pro forma* administrative proceedings. Accordingly, our rules will permit cable systems to automatically pass through any readily identifiable increase (or decrease) in cost which is entirely attributable to the provision of basic service, *e.g.*, the price of programming appearing on the basic service tier and copyright fees for retransmission of distant broadcast signals appearing on the basic service tier. These rate increases may be taken in addition to the 5% automatic annual increase to which most cable systems are entitled. Furthermore, they may be taken by any cable system which is not otherwise entitled to the 5% automatic anual rate increase.[90] All other rate increases must be obtained through good faith negotiation with the franchising authority.

127. As a final matter, the rules we are adopting today which implement the rate regulation provisions of the Cable Act, delineate what a franchising authority may do in the way of rate regulation. This authority, however is permissive. The Cable Act does not, in any way, require franchising authorities to regulate rates where they find such regulation unnecessary or inappropriate. Indeed, we recognize that rate regulation in many instances may be inefficient and counterproductive to the provision of cable services within a franchise community.[91]

128. *Six Year Report.* Section 623(h) of the Cable Act requires the Commission to submit a report to Congress in six years regarding rate regulation of cable services, including recommendations for legislative changes. In the *Notice*, we proposed that this study would include an economic study of cable rates and offerings as they relate to local demographic and market characteristics as well as the degree of regulatory control. While much of the necessary data could be obtained from trade publications, a formal submission of data may be required of a random sampling of cable operators. This submission could be a much simplified version of the former annual cable financial report (FCC Form 326), as suggested by the U.S. Catholic Conference in its reply comments. To minimize the cost and burden of the study, only a random sample of regulated and unregulated cable systems would be utilized. In its comments, the National League of Cities emphasizes the importance it attaches to this study and suggests several data to be collected or calculated, including rates, offerings, penetrations, subscriberships, and rates of return. The California Department of Consumer Affairs in its comments recommends that the study include: (1) National and state trends in basic service rates; (2) the status of alternative delivery technologies, such as MDS, DBS, LPTV or telephone carriers; (3) the change in the number and mix of channels offered as part of basis services; (4) a summary of complaints filed with the FCC; and (5) a summary of the availability and use of leased access channels. These and other suggestions are appreciated and will be given due consideration at the time of actually designing and implementing the study.

Section 624—Regulation of Services, Facilities, and Equipment

129. *Lockboxes.* Section 624 of the Cable Act states that "[i]n order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber." In the *Notice*, we sought guidance from the commenters regarding the appropriate remedy for the failure of a cable operator to abide by this subsection of the Cable Act.

130. Comments submitted by the Municipal Coalition, the Office of Cable Television of the District of Columbia, and the reply comments of NLC, state that the FCC has no jurisdiction to punish a cable operator for failure to comply with the "lockbox" requirement. VCTI states that the Commission retains jurisdiction in this area. NCTA/CATA in its reply comments, states that the Commission retains general authority since the Cable Act is to be incorporated in the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, and section 1 of the Act gives the Commission the duty to execute and enforce the provisions of the Act.

131. The cable parties ask that the Commission clarify the meaning of this section of the statute. For example, TCI asks that the Commission state that cable operators should not be required to provide a lockbox for commercial access channels. VCTI states that the obligation to provide a lockbox should be triggered upon a judicial finding that programming is obscene or indecent. Hogan & Hartson states that these devices need only be provided to restrict viewing of programming reasonably regarded as obscene or indecent under local community standards and not for protection against all programming. Finally, all the cable parties state that the Commission should ensure that franchise authorities will not penalize them for technical problems associated with lockboxes. For example, lockboxes may cause interference on adjacent channels or they may be unable to block one channel without blocking an entire tier.

132. We believe we have the authority to ensure that the lockbox provisions of Section 624 of the Cable Act are carried out. In this regard we intend to adopt the procedures pursuant to 47 CFR 76.7 *Special relief*, to afford the public, cable operators and franchising authorities a vehicle to ensure implementation of section 624. We also believe that we should clarify the cable operators' responsibilities with respect to this provision. Thus, we believe that the cable operator must provide, upon subscriber request, by sale or lease, a lockbox for any channel over which it has editorial control. (This would exclude commercial access, PEG and must-carry channels.) We do not believe that a judicial or local community finding of obscenity should be a prerequisite for triggering the cable operator's obligation. Indeed, we believe that the provision for lockboxes largely disposes of issues involving the Commission's standard for indecency,[92] and would also be a significant factor in cases related to obscenity and similar offensive programming.[93] Finally, with regard to lockbox technical problems, we expect cable entities to use quality state of the art equipment and we need not resolve this issue at this time.

133. *Technical Standards.* Section 624(e) of the Cable Act allows the Commission to set technical standards related to facilities and equipment

[90] It should be noted that section 623(e) specifies that a fixed basic service rate will not preclude the use of the 5% automatic annual increase by the cable operator.

[91] In light of the discretion we have granted franchising authorities with respect to implementing the rate regulation standard, it bears emphasis that the Cable Act specifically prohibits the regulation of a cable system as a common carrier or a public utility by reason of providing any cable service. (*See* section 621(c) of the Cable Act. *See also* House Report at 60.) Furthermore, we note that neither a cable operator nor a franchising authority may waive mandatory sections of the Cable Act in reaching franchise agreements.

[92] *See FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

[93] *See Miller v. California*, 413 U.S. 15 (1973).

required by a franchising authority pursuant to a franchise agreement. This provision does not affect the authority of a franchising authority to establish standards regarding facilities and equipment in the franchise that are not inconsistent with standards established by the FCC.

134. The parties that commented generally support our proposal. Storer and VCTI request that the Commission reaffirm its 1974 policy statement preempting technical standards.[94] In particular, the parties recommend that we include the preemption policy in our rules.

135. In this *Report and Order* we reaffirm our policy on federal preemption of cable TV technical standards. We did not propose any changes in our preemption policy in the *Notice* and we adopt none now. In the *Notice*, we addressed the narrower issue of whether we should make any changes in the standards we have already adopted. In this regard, we note that the Commission recently adopted a *Notice of Proposed Rule Making* which proposes to revise or delete existing technical standards for cable.[95] It proposes no change in our preemption policy. We believe any revisions in our technical standards are most appropriately dealt with in that proceeding.

Section 639—Obscenity

136. Section 639 of the Cable Act establishes the Federal standards and criminal penalties applicable to the transmission of any cable service which is obscene or otherwise unprotected by the Constitution. Any violation is punishable by a fine of up to $10,000 and/or by imprisonment for up to two years. Section 76.215 of our rules provides that "[n]o cable television system operator when engaged in origination cablecasting shall transit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent." We stated in the *Notice* that these criminal provisions supersede our rule and we therefore proposed to delete § 76.215 of our rules.

137. NCTA/CATA, TCI and Viacom filed comments in support of the Commission's proposal. They state that it is appropriate to delete our rule in deference to the statute. The parties specifically note that the "lockbox" provision of section 624 of the Cable Act provides added justification for deleting § 76.215 of our rules.

138. The NLC states in its reply comments that the Commission has the authority under section 624(f)(2)(A) of the Cable Act to enforce § 76.215 of our rules. However, NLC also states that it is an open question whether government restrictions on indecent materials over cable systems are permissible under the First Amendment. Morality in Media (Morality) states that section 639 of the Cable Act does not specifically prohibit the transmission of indecent material, as does our rule. Therefore, in the opinion of Morality, the new legislation does not supersede the Commission rule. In addition, they state that colloquys in both houses of Congress indicate that Congress expected the Commission to retain its present rule on indecent origination cablecasting. Morality, therefore, proposes that the Commission preserve the indecency concept in § 76.215 of the rules as a separate standard.

139. After careful review of all the comments, we believe it is appropriate to delete § 76.215 of our rules. We believe that our rule is duplicative of and indeed surpassed by other statutory provisions and, thus, the public will continue to be protected from obscene and indecent programming on cable systems despite its deletion. We note in this regard that obscene and other "offensive" programming on cable is restricted in three other provisions of the Cable Act. Section 612 gives the franchising authority the power to prohibit or restrict programming which, in the judgment of the franchising authority is obscene or "in conflict with community standards in that it is lewd, lascivious, filthy or indecent or is otherwise unprotected by the Constitution of the United States." Section 624 allows cable operators and franchising authorities to specify in a franchise or renewal agreement that obscene or otherwise unprotected programming can be prohibited or restricted. In addition, section 624 requires cable operators to offer lockboxes that will enable viewers to restrict the viewing of any given channel. Finally, section 638 maintains all existing criminal and civil causes of action against cable operators and programmers based on the content of their services, including obscenity and other similar laws.

Section 4—Pole Attachments

140. Section 4 of the Cable Act amends section 224(c) of the Communications Act of 1934 by adding a new paragraph section 224(c)(3). This addition provides that a state will not be considered to be regulating the rates, terms and conditions for pole attachments for section 224(c)(1) purposes unless it has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments and takes final action on individual complaints within the time limits specified in the Cable Act. This is in addition to the present requirement that states certify to the Commission that they regulate pole attachments under section 224(c)(2). In the *Notice*, we proposed to amend our rules to reflect the new language contained in the Cable Act by requiring a state to include a statement in its certification that the state has issued and made effective rules and regulations implementing its regulatory authority over pole attachments and to enclose a copy of the rules and regulations with the certification.

141. Several parties submitted comments on our proposed rule change. Most of the cable interests state that the Cable Act requires that the Commission no longer accept a state's *pro forma* certification of compliance with section 224(c). These commenters state that, under the Cable Act, the FCC now has the responsibility to review each state's certification to determine whether in fact the state has complied with the requirements of section 224(c). In this regard, they state that our proposed rule does not explain precisely what constitutes "rules and regulations implementing the state's regulatory authority over pole attachments," and therefore does not meet the intent of the statute. The parties offer modifications to our rules. For example, NCTA/CATA, Michigan Cable Television Association and Hogan & Hartson state that the Cable Act should be interpreted to require that the state's regulations (1) be cable-specific and (2) define with reasonable certainty the methodology used in effecting pole relief. In addition, the Cable Operators propose that in addition to the filing of detailed documentation regarding the determination of certification, states be required to submit a report of any pole attachment rate decisions each year and that the Commission review these rates and consider decertifying the state if the rates fall outside a zone of reasonableness.

142. BellSouth and Pacific, on the other hand, generally support the Commission's proposed rule changes. BellSouth, however, proposes that the rules be revised to recognize that tariffs on file with the state commission be *prima facie* evidence that the state is

[94] *See Report and Order*, Docket No. 20018, 31 RR 2d 1187 (1974).

[95] *See Notice of Proposed Rule Making*, MM Docket No. 85-38, FCC 85-66, adopted February 12, 1985.

regulating pole attachments and to clarify that a state is not required to issue its rules and regulations by the effective date of the Cable Act. Texas Power and Light Company *et al.* states that no new rules are required because the statute is clear on its face. It states that problems can be handled on a case-by-case basis.

143. After review of the comments and replies, we believe that our proposed rule, with one minor change, is the most appropriate interpretation of our new statutory mandate. Thus, we will add to the certification requirement that a state shall certify that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments. We disagree, however, with the commenters who argue that the Commission has the responsibility to review each state's certification to determine whether the state's rules and regulations comply with section 224(c). Indeed there are no requirements in the statute as to the contents or format of the state's rules and regulations. Moreover, there is no indication in either the statute or the legislative history that Congress intended that the rules and regulations adopted by the state must be cable specific or that the Commission should define the methodology to be followed by the states. The legislative history of the original section 224 made it clear that receipt of "certification from the State shall be conclusive upon the Commission" and that the "FCC shall defer to any State regulatory program operating under color of State law."[96] Further, no rate-setting formula was imposed on the states. Congress believed "the States should have maximum flexibility to develop a regulatory response to pole attachment problems in accordance with perceived State or local needs and priorities."[97] There is nothing in the legislative history of the Cable Act that indicates Congress has reversed this position or has now empowered this Commission to act as an arbiter as to the content or form of the rules and regulations adopted by each state. The new section 224(c) merely makes it clear that a state will not be considered to be regulating pole attachments unless it has issued and made effective rules to implement that authority. While we will not define the methodology to be followed by the state, we believe that the rules and regulations should include a specific methodology which has been made publicly available in the state. Therefore, we will require that a state certify that its rules and regulations include a specific methodology for regulating pole attachments. Accordingly, if the state certifies that it has rules in place which include a specific methodology, which has been made publicly available in the state, we will not inquire further unless a complaint is filed with us that alleges that a party attempted to file a complaint at the state level and could not because of the lack of appropriate procedures or that the complaint it filed with the state remained unresolved 180 days after the complaint was filed (or within the applicable period prescribed for final action if the state's rules provide for resolution within 360 days after the filing of a complaint). We believe that the requirement for a timely resolution of complaints should obviate any concern on the part of cable operators that some states may certify prematurely to the Commission that they have issued and made effective rules and regulations. Moreover, since the Commission will not examine the contents of the state's rules and regulations, we have decided that it would be unnecessarily burdensome to require that each state submit a copy of its rules and regulations along with its certification. Thus, we will delete this requirement from the proposed rules. We will, however, require that the state certify that its rules and regulations include a specific methodology. We are not persuaded to adopt the rules proposed by BellSouth. The Commission will not inquire whether tariffs are on file in a particular state, but will rely on the certification by the state. The certification may be made at any time, and the Commission will revise its list as states certify or decertify.

[96] *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977) at 17.

[97] *Id.*

Regulatory Flexibility Final Analysis

144. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and purpose of the rules.* The Cable Communications Policy Act of 1984 establishes guidelines for the regulation of cable service in the areas of ownership, channel usage, franchise, rate and service regulations. The Cable Act directs the Commission to take the appropriate action in these areas in order to encourage the growth and development of cable services as well as to assure that cable systems are responsive to the needs and interests of the communities they serve. As a result of this mandate, we have eliminated some rules, modified others, and promulgated new rules. In so doing, we believe that the stability and certainly essential for continued growth and development of the cable industry has been enhanced.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a resut*—A. *Issues Raised.* No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. However, as a result of implementing certain tenets of the Cable Act, systems with less than 50 subscribers are now subject to Part 76 of the Commission's Rules. Also, all systems that were previously exempt from the franchise standards in our rules are now subject to the franchise standards that appear in the Cable Act. On the other hand, systems that only retransmit broadcast signals, previously subject to the Commission's cable rules, are now exempt as a result of adopting the definition of cable system that appears in the Cable Act.

B. *Assessment.* Since there were no specific comments directed to the initial regulatory flexibility analysis, the Commission views the initial analysis as correct and no additional asessment is necessary.

C. *Changes made as a result of such comments.* None.

III. *Significant alternatives considered and rejected.* The Commission considered all the alternatives presented in the *Notice* and considered all the timely filed comments directed to the various issues in the *Notice*. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Cable Act.

145. Accordingly, it is ordered that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984, Parts 1, 63, 76 and 78 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix B. Pursuant to the requirements of Section 623(b)(1) of the Cable Communications Policy Act of 1984 and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), these rules and regulations are effective April 28, 1985.

146. It is further ordered that this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A—List of Commenters

Initial Comments

1. Aberdeen, SD
2. Adams-Russell Cable Services Division of Adams-Russell, Caribbean Communications Corporation, Joseph S. Gans, Inc., Jones Intercable, Inc., Mid-Coast Cable Television, Inc., Multivision Northwest, Inc., Muncy TV Corporation, Satellite Syndicated Systems Cable Television of Southwest, Inc., and Service Electric Cable TV, Inc.
3. Addison, IL
4. American Civil Liberties Union
5. American Council of Life Insurance
6. Association of Independent Television Stations, Inc.
7. Association of Maximum Service Telecasters, Inc.
8. Athens, OH
9. Austin Satellite Television, Inc., Cablecom Corporation and Cable Dallas, Inc.
10. Austin, TX
11. BellSouth Corporation
12. Booth American Company
13. CBS Inc.
14. 105 Cable Operators
15. Cable Television Access Coalition, Inc.
16. Cable Television Information Center
17. Cable World, Inc.
18. California Cable Television Association
19. California Department of Consumer Affairs
20 Capital Cities Cable, Inc.
21. Carbondale, IL
22. Casco Cable Television, Inc. and Casco Cable Television of Bath, Maine
23. Catawba County, NC
24. Cellular Telecommunications Division of Telocator Network of America, Inc.
25. Centel Communications Company
26. Mayor and Council of Chestertown, MD
27. Gary L. Christensen
28. City Club of New York
29. Clarks Telephone Company, Delta County Tele-Comm. Inc., Ducor Telephone Company, Eastern Nebraska Telephone Company, Golden West Telephone Cooperative, Inc., North-west Telephone Company, The Orwell Telephone Company and the Volcano Telephone Company
30. Clearwater Communications, Inc.
31. Communications Workers of America
32. Community Antenna Television Association
33. Connecticut Department of Public Utility Control
34. Contra Costa County, CA, Public Works Department
35. Consumers Power Company
36. Corporation for Public Broadcasting
37. Cox Cable Communications, Inc.
38. Cumberland, MD
39. Department of Justice
40. Detroit Edison
41. Direct Satellite Communications, Inc.
42. District of Columbia, Office of Cable Television
43. Dubuque, IA, Cable Regulatory Commission
44. Eagle Telecommunications, Inc./Colorado
45. Eastern Shore Association of Municipalities
46. Elmwood Park Cable Commission
47. Farrow, Schildhause, Wilson & Rains
48. Florida Cable Television Association, Inc.
49. Florida League of Cities
50. GTE Service Corporation
51. Gill Industries
52. Guam Cable TV and Northern Marianas Cable TV Corporation
53. Hallandale, FL
54. Heritage Communications, Inc.
55. Hogan & Hartson for Cable Operators and State Cable Associations
56. Hughes Aircraft Company, Microwave Communications Products
57. Huntsville, AL
58. Indianapolis, IN
59. Inkster, MI
60. Islip, NY
61. Joint Cable Operators
62. Keene, NH
63. Kentucky Educational Television Authority
64. Mayor, Longview, TX
65. Los Angeles, CA
66. Louisiana Community Cablevision, Ltd.
67. Luke, MD
68. Major League Baseball
69. Mankato, MN
70. Marsh Media, Ltd.
71. Marshall, MN
72. Maryland Municipal League
73. Metro Companies
74. Metro Mobile CTS, Inc.
75. Miami Cablevision
76. Michigan Cable Television Association
77. Mid-America Cable Television Association, Kansas CATV Association, Nebraska Cable Communications Association and Missouri Cable Television Association
78. Montana Cable Television Association
79. Monticello, NY
80. Morality in Media
81. Morganton, NC
82. Motion Picture Association of America, Inc.
83. Municipal Coalition
84. National Association of Broadcasters
85. National Association of State Cable Agencies
86. National Association of Towns and Townships
87. National Basketball Association, National Hockey League, North American Soccer League and Major Indoor Soccer League
88. National Broadcasting Company, Inc.
89. National Cable Television Association, Inc. and the Community Antenna Television Association
90. National Federation of Local Cable Programmers
91. National League of Cities
92. National Telecommunications and Information Administration
93. National Telephone Cooperative Association
94. New England Cable Television Association, Inc.
95. New Hartford, NY
96. New Jersey Board of Public Utilities
97. New Jersey Cable Television Association
98. New York Citizens' Committee for Responsible Media
99. City of New York
100. New York Telephone Company and New England Telephone and Telegraph Company
101. North Area Cable Television Authority
102. North Carolina Cable Television Association
103. Omaha, NE
104. County of Orange, CA
105. Oregon Cable Communications Association
106. Pacific Bell and Nevada Bell
107. Pennsylvania Cable Television Association
108. Private Cable Systems, Inc.
109. Redmond, WA
110. Richey Cable, Inc.
111. Rochester, MN
112. Romulus, MI
113. St. Joseph, MI
114. St. Louis, MO
115. San Diego, CA
116. Cable Television of Greater San Juan, Inc.
117. Santa Barbara, CA
118. Santa Cruz, CA
119. Scottsdale, AZ
120. Southern Cablevision of Corbin, Inc. and Ayco Cable, Ltd.
121. Southwestern Bell Telephone Company
122. Southwestern Oakland Cable Commission
123. SPACE (The Satellite Television Industry Association)
124. Storer Communications, Incorporated
125. Sweetwater, FL
126. Taconic Telephone Company
127. Tele-Communications, Inc.
128. Telephone and Data Systems, Inc., and TDS Cable Communications Company
129. Troy, MI
130. United Church of Christ, Office of Telecommunication
131. United States Conference of Mayors
132. United States Telephone Association
133. Various Cable Television Interests
134. Vermont Department of Public Service
135. Viacom International Inc.
136. Western Communications, Inc.
137. Mayor and Commissioners, Westernport, MD
138. Winona, MN
139. Wyoming Association of Municipalities
140. Yukon, OK

Reply Comments

11. Adams-Russell Cable Services Division of Adams-Russell, Caribbean Communications Corporation, Joseph S. Gans, Inc., Jones Intercable, Inc., Mid-Coast Cable Television, Inc., Multivision Northwest, Inc., Muncy TV Corporation, Satellite Syndicated Systems Cable Television of Southwest, Inc., and Service Electric Cable TV, Inc.
2. Ameritech Operating Companies
3. Anchorage Telephone Utility
4. Association of Independent Television Stations, Inc.

5. Association of Maximum Service Telecasters, Inc. and National Association of Broadcasters
6. Austin Satellite Television, Inc., Cablecom Corporation and Cable Dallas, Inc.
7. BellSouth Corporation
8. Boston, MA
9. 105 Cable Operators
10. California Cable Television Association
11. Capital Cities Cable, Inc.
12. Carolina Beach, NC
13. Casco Cable Television, Inc., and Casco Cable Television of Bath, Maine
14. Communications Workers of America
15. Cox Cable Communications, Inc.
16. Department of Defense
17. Department of Justice
18. Direct Satellite Communications, Inc.
19. Eagle Telecommunications, Inc./Colorado
20. Florida Cable Television Association, Inc.
21. GTE Service Corporation
22. Gill Industries
23. Guam Cable TV and Northern Marianas Cable TV Corporation
24. State of Hawaii
25. Heritage Communications, Inc.
26. Hogan & Hartson for Cable Operators and State Cable Associations
27. Joint Cable Operators
28. Marsh Media, Ltd
29. Media General Cable of Fairfax County, Inc.
30. Miami Cablevision
31. Michigan Cable Television Association
32. Mid-America Cable Television Association, Kansas CATV Association, Nebraska Cable Communications Association and Missouri Cable Television Association
33. Mid-America Capital Resources, Inc.
34. Morganton, NC
35. National Association of State Cable Agencies
36. National Cable Television Association, Inc. and the Community Antenna Television Association
37. National League of Cities
38. National Telecommunications and Information Administration
39. National Telephone Cooperative Association
40. New England Cable Television Association
41. New York Citizens' Committee for Responsible Media
42. City of New York
43. New York Telephone Company and New England Telephone and Telegraph Company
44. North Carolina Cable Television Association
45. Oxford Development Corporation
46. Pacific Bell and Nevada Bell
47. Pennsylvania Cable Television Association
48. Rogers U.S. Cablesystems, Inc.
49. Cable Television of Greater San Juan, Inc.
50. Signal Master, Inc.
51. SPACE (The Satellite Television Industry Association)
52. Tele-Communications, Inc.
53. Telecommunications Research and Action Center
54. Telecommunications Research and Action Center, Henry Geller and Donna Lampert
55. Telephone and Data Systems, Inc., and TDS Cable Communications Company
56. Texas Power and Light Company, Alabama Power Company, Mississippi Power and Light Company and South Carolina Electric and Gas Company
57. Time Incorporated
58. United States Catholic Conference
59. United States Conference of Mayors
60. United States Telephone Association
61. Various Cable Television Interests
62. Waitfield Cable, Ardmore Data and Broadband Services, Inc., Elkhart Cable Co, Cross Cable Television, Moultrie Telecommunications, Inc., Citizens Telephone Corp. and United Communications Association, Inc.
63. Western Communications, Inc.

Appendix B

Parts 1, 63, 76, and 78 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§ 1.1414 State certification.

(a) If the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

* * * * *

(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

1. The Table of Contents of Part 63 is amended by adding in the proper sequence the following heading for new § 63.09 and by revising the headings to § 63.54 and § 63.57 to read as follows:

§ 63.09 Special provisions relating to projects under § 63.58.

* * * * *

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

* * * * *

§ 63.57 Availability of pole (conduit) rights to cable operators.

* * * * *

§ 63.01 [Amended]

2. Paragraph (r) of § 63.01 is removed.

3. A new § 63.09 is added to read as follows:

§ 63.09 Special provisions relating to projects under § 63.58.

(a) Applications of telephone common carriers proposing to construct and operate or acquire and operate systems providing video programming in rural areas within their telephone service areas either directly or indirectly through affiliates pursuant to § 63.58 need submit only the following information in lieu of that required by § 63.01:

(1) Applicant's name, address and telephone number. This information shall also be submitted for Applicant's affiliate, if applicable;

(2) Whether Applicant or its affiliate will construct, own and operate, or acquire and operate, the cable system;

(3) Location of the proposed system (city, town or village, county, and state);

(4) Certification that the area proposed for service is rural as defined in § 63.58, and as derived from the most recently published statistics of the U.S. Department of Commerce, Bureau of the Census;

(5) Certification that Applicant is franchised to provide the service pursuant to Title VI of the Communications Act, and date of franchise: and

(b) An original and two copies of the application shall be furnished to the Secretary, Federal Communications Commission, Washington, DC 20554. Applicant shall furnish a copy to the Governor of the state in which the line is to be constructed or acquired, and also to the Secretary of Defense, Attn. Special Assistant for

Telecommunications, Pentagon, Washington, DC 20301.

4. Section 63.54 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

(a) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall engage in the provision of video programming to the viewing public in its telephone service area, either directly, or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the telephone common carrier.

(b) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such telephone common carrier, where such facilities or arrangements are to be used for, or in connection with, the provisions of video programming to the viewing public in the telephone service area of the telephone common carrier.

5. Section 63.55 is revised to read as follows:

§ 63.55 Affiliation showings.

Except as provided for in § 63.56, applications by telephone common carriers for authority to construct and/or operate distribution facilities for channel service to cable systems in their service areas shall include a showing that the applicant is unrelated and unaffiliated, directly or indirectly, with the proposed cable operator.

6. Section 63.56 is amended by revising paragraphs (a), (b)(2) and (3), (c), (d) and (e) to read as follows:

§ 63.56 Waivers.

(a) In those areas where the provision of video programming to the viewing public demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the local telephone common carrier, or upon other showing of good cause, the provisions of §§ 63.54 and 63.55 may be waived, on the Commission's own motion or on petition for waiver, if the Commission finds that the public interest, convenience and necessity would be served thereby.

(b) Telephone company waiver requests may enjoy a rebuttable evidentiary presumption to the effect that cable service could not presently exist except through a cable system operated by, controlled by, or affiliated with the local telephone common carrier, if the waiver request includes:

(1) * * *

(2) A demonstration that the proposed service area has a density of less than thirty households per route mile of coaxial cable trunk and feeder line;

(3) Evidence that notice was given by newspaper advertisement(s) or other appropriate means, of waiver petitioner's intention to construct and/or operate the proposed cable system, including the name of the newspaper, the date(s) of the advertisement(s) and the area in which the newspaper is distributed; and

(4) * * *

(c) Telephone company waiver requests shall not enjoy the rebuttable evidentiary presumption of paragraph (b) of this section, and shall contain the showings required by the Commission, including notice as specified in § 63.56(b)(3), if the proposed service area has a density of thirty or more households per route mile of coaxial cable trunk and feeder line.

(d) Interested persons may submit comments on, or opposition to, the petition for waiver within thirty days after the Commission gives public notice that the petition has been filed. Upon good cause shown in the petition for waiver, the Commission may specify a shorter time for such submission. Comments or oppositions shall be served upon the petitioner, and shall contain a complete and detailed showing, supported by affidavit, of any facts or considerations relied upon. An opposition may seek to rebut the evidentiary presumption of paragraph (b) of this section by a showing that:

(1) The density of the area to be served is thirty or more households per route mile; or

(2) The opposing party has a present intention to offer nonaffiliated cable service.

Evidence in support of the showing in paragraph (d)(1) of this section must be submitted within the public notice period. Evidence in support of the showing in paragraph (d)(2) of this section must be submitted within the public notice period unless an extension of time requested within that period is granted for good cause shown; evidence must include financial, technical, and other data sufficient to show the opposing party's ability to institute essentially the same service to approximately the same number of households within the same time frame as proposed by the waiver petitioner. Extensions will generally not be granted for a period to exceed thirty days.

(e) The petitioner may file a reply to the comments, or oppositions, within thirty days after their submission, and shall serve copies upon all persons who have filed pleadings.

* * * * *

7. Section 63.57 is revised to read as follows:

§ 63.57 Availability of pole (conduit) rights to cable operators.

Applications by telephone common carriers for authority to construct and/or operate distribution facilities for channel service to cable systems shall include a showing (in addition to the conditions set forth in the above sections) that the independent cable system proposed to be served had available, at its option, and within the limitations of technical feasibility, pole attachment rights (or conduit space, as the case may be) at reasonable charges and without undue restrictions on the uses that may be made of the channel by the operator. This availability must exist not only at the time of the authorization but also prior to the operator's decision to seek an award of a local franchise, if such is required, and such policy of the applicant must be made known to the local franchising authority. Separate documents, attesting to the above conditions, by the cable operator and, where applicable, by the appropriate local franchising authority must be annexed to the application.

8. Section 63.58 is amended by revising the introductory text to paragraph (a) and the Note to read as follows:

§ 63.58 Exemption.

(a) A telephone common carrier shall be exempt from the provisions of §§ 63.54 through 63.56 if the proposed service area contains none of the following:

* * * * *

Note.—The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and a rural part. If the proposed service area includes a rural part of an extended city, but otherwise includes no territory described in paragraph (a)(1), (2) or (3) of this section, an exemption shall apply.

* * * * *

PART 76—CABLE TELEVISION SERVICE

1. Section 76.5 is amended by revising paragraphs (a) and (ll); by adding new paragraphs (ii), (jj), and (kk) (presently marked (ii)—(kk) [Reserved]); by adding

new paragraphs (oo), and (pp); and by designating the existing Note to paragraph (a) as Note (1) and adding a new Note (2) to read as follows:

§ 76.5 Definitions.

(a) *Cable system or cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that services only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-or-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facililty shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

Note 1: * * *

Note 2.—The provisions of Subpart D and F shall also apply to all facilities defined previously as cable systems on or before April 28, 1985.

* * * * *

(ii) *Affiliate.* When used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(jj) *Person.* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(kk) *significant interest.* A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§ 73.3555, 73.3615, and 76.501.

(ll) *Cable system operator or operator.* Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

* * * * *

(oo) *Cable service.* The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally.

(pp) *Basic cable service.* For the purposes of regulating rates of cable systems found not to be subject to effective competition, basic cable service is the tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in §§ 76.55 to 76.61 of the rules [or, in the absence of at least three must-carry signals, any unaltered braodcast television signals] and the public, educational and governmental channels, if required by a franchising authority under Title VI of the Communications Act.

2. A new § 76.10 is added to read as follows:

§ 76.10 Channel access enforcement.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the Judicial district in which the cable system is located to compel that such capacity be made available.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may petition the Commission for relief upon a showing of three prior adjudicated violations. Records of previous adjudications resulting in a court determination that the operator has violated the provisions of the Communications Act concerning commerical channel access shall be considered as sufficient for the showing necessary under this section.

(c) Petitions filed with the Commission in response to paragraph (b) shall be made in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

3. A new § 76.11 is added to read as follows:

§ 76.11 Lockbox enforcement.

Any party aggrieved by the failure or refusal of a cable operator to provided a lockbox as provided for in Title VI of the Communications Act may petition the Commission for relief in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

§ 76.30 [Removed]

4. Section 76.30 is deleted and removed.

§ 76.31 [Removed]

5. Section 76.31 is deleted and removed.

6. A new § 76.33 is added to read as follows:

§ 76.33 Standards for rate regulation.

(a) A franchising authority may regulate the rates of a cable system granted a franchise after December 29, 1984, and any cable system after December 29, 1986, subject to the following conditions:

(1) Only basic cable service as defined in § 76.5(pp) may be regulated.

(2) Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to have effective competition whenever at least three unduplicated signals serve the cable community. Signals shall be counted if they place a Grade B contour (as defined in § 73.683 of our rules) over any portion of the cable community, are significantly viewed within the cable community (as defined by § 76.54 of our rules) or are translator stations located within the cable community, provided that the translators are not used to retransmit stations already providing Grade B contour or significantly viewed signals within the cable community. The Commission may grant exceptions to this standard where the franchising authority demonstrates with engineering studies in accordance with § 73.686 of the Commission's rules and other showings that such signals are not in fact available within the community.

(3) A cable system once determined to be subject to effective competition shall not be subject to regulation for one year after any change in market conditions which would cause it to be determined not to be subject to effective competition.

(4) A cable system may automatically pass through to the basic service rate without franchising authority approval cost increases that are readily identifiable and entirely attributable to the provision of basic service. Rate increases of this type may be taken in addition to the automatic 5% annual rate increase to which the cable system may

be entitled under the Title VI of the Communications Act.

(b) For franchises granted on or before December 29, 1984, a franchising authority may, until December 29, 1986, to the extent provided in the franchise agreement:

(1) Regulate the rates for the provision of basic cable service;

(2) Require the provision of any tier of service without charge (disregarding any installation or rental charge for equipment necessary for receipt of such tier); and

(3) Regulate the rates for the initial installation or the rental of one set of the minimum equipment necessary to receive basic cable service.

(c) Any state or local law in existence on December 29, 1984, which limits or preempts regulation of rates for cable service by any franchising authority shall remain in effect until December 29, 1986, to the extent that it provides for such limitation or preemption.

(d) In establishing any rate for the provision of basic cable service by cable systems subject to paragraph (a) of this section, the franchising authority shall: (1) Give formal notice to the public; (2) provide an opportunity for interested parties to make their views known, at least through written submissions; and (3) make a formal statement (including summary explanation) when a decision on a rate matter is made.

§ 76.215 [Removed]

7. Section 76.215 is deleted and removed.

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.13 is amended by adding a Note to read as follows:

§ 78.13 Eligibility for license.

* * * * *

Note.—The provisions of this section shall apply to any facility holding a license or other authorization on or before April 28, 1985.

[FR Doc. 85-10468 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2 and 97

[PR Docket No. 84-960; RM-4781; RM-4784]

Amendment To Implement Allocation of Additional Frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service, and the Amateur-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service rules to add the 10.100–10.150 MHz and the 24.890–24.990 MHz frequency bands. These frequency bands are being added for amateur operation in order to implement the Final Acts of the 1979 World Administrative Radio Conference.

EFFECTIVE DATE: June 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Allocations, Radio.

47 CFR Part 97

Amateur radio, Civil defense, Satellites.

First Report and Order

In the matter of amendment of Parts 2 and 97 of the Commission's Rules to Implement allocation of additional frequencies for the Amateur Radio Service, the Radio Amateur Civil Emergency Service and the Amateur-Satellite Service; PR Docket No. 84-960, RM-4781, RM-4784.

Adopted: April 25, 1985.

Released: April 26, 1985.

By the Commission.

1. In the *Notice of Proposed Rule Making*, 49 FR 40611 (October 17, 1984) in this proceeding, we proposed to implement certain frequency band allocations to the Amateur Radio Service pursuant to our *Second Report and Order* in General Docket No. 80-739, 49 FR 2357 (January 19, 1984). Specifically, we proposed: (1) To add the 10.100–10.150 MHz frequency band to the Amateur Radio Service and to the Radio Amateur Civil Emergency Service; (2) to add the 24.890–24.990 MHz frequency band to the Amateur Radio Service and to the Amateur-Satellite Service; and (3) to add the frequency band 902–928 MHz to the Amateur Radio Service. We also proposed to remove the 420–430 MHz band from the Amateur Radio Service north of Line A. (Line A is defined in Section 97.185(c)(5) of the Commission's rules).

2. We received thirty-two comments and reply comments in response to the *Notice of Proposed Rule Making*. There was unanimous support for implementing the 10.100–10.150 MHz and 24.890–24.990 MHz bands in the Amateur Radio Service. Several commenters, however, opposed allocation of the 902–928 MHz band to the Amateur Radio Service. Also, many commenters expressed disapproval of the proposed action for the 420–430 MHz band.

3. The American Radio Radio Relay League (ARRL) urged in its reply comments that noncontroversial actions in this proceeding not be delayed by unrelated contested matters. We agree. We adopt this *First Report and Order* dealing only with the 10.100–10.150 MHz and 24.890–24.990 MHz bands. The matters of the 902–928 MHz band and the 420–430 MHz band north of Line A for amateur operation will be considered in a subsequent Report and Order.

4. *Thirty Meters.*[1] We proposed to add the 10.100–10.150 MHz band to the Amateur Radio Service for operation by General, Advanced or Amateur Extra Class licensees using what are now designated [2] as A1A or F1B (including J2B) emissions. We proposed no special power limitation for this frequency band.

5. Twelve commenters, including the ARRL, urged a 200 watt maximum peak envelope power (PEP) transmitter output for this band, consistent with the current conditions under which amateur operators have been permitted to use the band pending the outcome of this proceeding. They argued that with this band's propagation characteristics 200 watts permit effective domestic and global communications and minimizes the risk of interference in the band. The ARRL saw a 200 watt limitation as consistent with the need to share this band with Fixed Service stations worlwide. For these reasons, we are modify the proposed thirty meter rules and adopting final rules to include a 200 watt PEP transmitter output limitation on amateur transmissions in this band.

6. *Twelve Meters.*[3] We proposed to add the 24.890–24.990 MHz band to the Amateur Radio Service for operation by General, Advanced and Amateur Extra Class licensees using what are now designated as A1A or F1B (including J2B) emissions in the 24.890–24.930 MHz subband and A1A, F3E, G3E, A3C, A3F, F3C and F3F emissions in the 24.930–24.990 MHz subband.

7. John Perlick and three other amateur operators joining in his comments as well as Richard Little, Robert Heiderstadt and Vernon Shearer,

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[1] The frequencies between 10.100 and 10.150 MHz are commonly referred to in the amateur community as the thirty meter band.

[2] See the new frequency and emission tables in the *Order*, 50 FR 13792 (April 8, 1985).

[3] The frequencies between 24.890 MHz and 24.990 Mhz are commonly referred to in the amateur community as the twelve meter band.

urged a lower maximum power limitation (200–250 watts) for transmitter PEP output in this band. However, the ARRL argued against any reduction of the standard power limitation in this band, in large part because, unlike the thirty meter band, there will not be a continued sharing arrangement between amateur operators and Fixed Service users. We concur that there is no need to impose other than the ordinary (1500 watts PEP) power limitation on this band.

8. Because of the required temporary sharing of this band with Fixed Service users pursuant to footnote US248 to the Table of Allocations (47 CFR 2.106), amateur operators must operate on a secondary basis to these users until July 1, 1989. We proposed to codify this by amending footnote US248; the final rule we are adopting makes this amendment to US248 and also amends Part 97 to reflect this restriction.

9. Donald Chester disputed the proposed imposition of subbands at twelve meters. While as a general policy we favor voluntary band plans, there are instances where subbands are in order, such as to assure consistency with the recommended band plans of the International Amateur Radio Union (IARU).[4] With regard to the twelve meter band, the IARU adopted a resolution recommending that the lower portion of the band be used for telegraphy, and the upper portion of the band be devoted to radiotelephony.[5] We believe that Region 2 consistency and international harmony will best be served by the subbands and we are therefore retaining them in the final rules.

10. *Matters applicable to twelve and thirty meters.* Some comments sought to limit the twelve and thirty meter bands to various classes of amateur operators. Larry E. Jones wanted to dedicate the thirty meter band to Novice class use. Arthur Usher wanted to set aside either or both bands exclusively for Amateur Extra class or Amateur Extra and Advanced class use. We believe that we have found an acceptable balance between licensing incentives and operating privileges. The thirty meter band, with a maximum power limit of 200 watts PEP, will provide amateur operators above Technician their first opportunity for low-power experimentation and narrow-band operation free of interference from stations operating at greater power levels without resorting to the Novice bands. The twelve meter band will allow FCC-licensed amateurs to communicate with amateurs in over forty other countries which have authorized its use, and will be structured in a manner consistent with Region 2 IARU recommendations. We therefore decline to adopt the alternatives proposed by Jones and Usher, and instead adopt rules authorizing each band for General, Advanced and Amateur Extra class use.

11. The ARRL commented that implementation of the twelve and thirty meter bands would require its amateur station W1AW to expand its simultaneous bulletin and telegraphy practice transmissions to these bands in order to retain its limited exemption from the prohibitions of § 97.112 of the rules. The ARRL said that this would not necessarily increase W1AW's coverage and requested that § 97.112(b)(2) be amended to require operation on six medium or high frequency amateur bands instead of on all them. We agree that this amendment is warranted. We are therefore amending § 97.112(b)(2) to require operation on only six medium or high frequency bands.

12. This action has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease hours imposed on the public.

13. The Commission has certified in accordance with section 605 of the Regulatory Flexibility Act that these rules do not have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (see 47 CFR 97.3(b)). Moreover, equipment for the twelve meter band will use state-of-the-art technology. Equipment is already available for and amateurs are operating in the thirty meter band.

14. In view of the foregoing, it is ordered, That Parts 2 and 97 are amended as set forth in the attached Appendix. This action is taken pursuant to the authority contained in sections 4(1) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)).

15. It is further ordered, That these rule amendments are effective 0001 UTC, June 22, 1985.

16. For information concerning this proceeding contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

PART 2—[AMENDED]

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. The following sentence is added to footnote US 248 to the Table of Allocations in Part 2:

§ 2.106 Table of frequency allocations.

* * * * *

US 248—

* * * * *

* * * Also, in the interim, transmissions of stations in the amateur service shall not cause harmful interference to operations in the fixed and mobile services outside the United States and stations in the amateur service shall make all necessary adjustments (including termination of transmission) if harmful interference is caused.

* * * * *

PART 97—[AMENDED]

2. In § 97.7 the kilohertz entries for the General, Advanced and Amateur Extra classes are revised, and new subparagraphs (11) and (12) are added to paragraph (b) to read as follows:

§ 97.7 Control operator frequency privileges.

(a) The following transmitting frequency bands are available to amateur radio stations having a control operator of the license class designated, subject to the limitations of paragraph (b) of this section:

Control operator license class and meter band	Terrestrial location of the amateur radio station: ITU Region 1	ITU Region 2	ITU Region 3	Limitations (See paragraph (b) of this section)
*	*	*	*	*
		Kilohertz		
General:				
160		1800–2000	1800–2000	
80	3525–3750	3525–3750	3525–3750	
75		3850–4000	3850–3900	
		5167.5		9

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[4] *See Order,* In the Matter of Elimination of Band Plans and Emission Restrictions in the Amateur Radio Service, Mimeo No. 6670 (September 18, 1984).

[5] *See Regional 2 News,* Journal of the International Amateur Radio Union, IARU Region 2, No 14, January, 1981, at page 4.

Control operator license class and meter band	Terrestrial location of the amateur radio station: ITU Region 1	ITU Region 2	ITU Region 3	Limitations (See paragraph (b) of this section)
40	7025-7100	7025-7150	7025-7100	1
40	....	7225-7300		1
30	10100-10150	10100-10150	10100-10150	11
20	14025-14150	14025-14150	14025-14150	....
20	14225-14350	14225-14350	14225-14350	....
15	21025-21200	21025-21200	21025-21200	....
15	21300-21450	21300-21450	21300-21450	....
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	....
*	*	*	*	*
		Kilohertz		
Advanced				
160		1800-2000	1800-2000	....
80	3525-3750	3525-3750	3525-3750	....
75	3775-3800	3775-4000	3775-3900	....
	....	5167.5	....	9
40	7025-7100	7025-7300	7025-7100	1
30	10100-10150	10100-10150	10100-10150	11
20	14025-14150	14025-14150	14025-14150	....
20	14175-14350	14175-14350	14175-14350	....
15	21025-21200	21025-21200	21025-21200	....
15	21225-21450	21225-21450	21225-21450	....
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	....
*	*	*	*	*
		Kilohertz		
Amateur				
160	....	1800-2000	1800-2000	....
Extra				
80-75	3500-3800	3500-4000	3500-3900	....
		5167.5	....	9
40	7000-7100	7000-7300	7000-7100	1
30	10100-10150	10100-10150	10100-10150	11
20	14000-14350	14000-14350	14000-14350	....
15	21000-21450	21000-21450	21000-21450	....
12	24890-24990	24890-24990	24890-24990	12
10	28000-29700	28000-29700	28000-29700	....

* * * * *

(b) Limitations:

* * * * *

(11) This band is allocated to the fixed service on a primary basis outside the United States and its possessions. Transmissions of stations in the Amateur Radio Service in this band are secondary to foreign fixed service use in this band.

(12) Until July 1, 1989, transmissions of stations in the amateur service shall not cause harmful interference to operation in the fixed and mobile services outside the United States. Stations in the amateur service are required to make all necessary adjustments (including termination of transmission) if harmful interference is caused.

2. Section 97.61 is amended by adding four frequency bands to paragraph (a), the 10100–10150 kHz band to be added between the bands 7150–7300 kHz and 14000–14350 kHz, and the 24890–24990, 24890–24930 and 24930–24990 kHz bands to be added between the bands 21200–21450 kHz and 28000–29700 kHz; and by revising subparagraph (3) of paragraph (b) as follows:

§ 97.61 Authorized emissions.

(a) Emissions table:

Frequency band	Emissions	Limitations (see paragraph (b) of this section)
*	*	*
Kilohertz		
10100-10150	A1A, F1B	
*	*	*
24890-24990	A1A	
24890-24930	F1B	
24930-24990	A3E, F3E, G3E, A3C, F3C, A3F, F3F.	3
*	*	*

(b) * * *

(3) J3E, R3E and H3E emissions may also be used.

* * * * *

3. Paragraph (d) of § 97.67 is revised to read:

§ 97.67 Maximum authorized transmitting power.

* * * * *

(d) The peak envelope power output (transmitter power) of each amateur radio transmitter shall not exceed 200 watts when transmitting in any of the following frequency bands:

(1) 3700–3750 kHz;

(2) 7050–7075 kHz when the terrestrial location of the station is within Regions 1 or 3;

(3) 7100–7150 kHz;

(4) 10100–10150 kHz;

(5) 21100–21200 kHz; or

(6) 28100–28200 kHz.

* * * * *

4. Subparagraph (2) of paragraph (b) of § 97.112 is revised to read:

§ 97.112 No remuneration for use of station.

(b) * * *

(2) The station schedules operations on at least six (6) allocated medium and high frequency amateur bands using reasonable measures to maximize coverage.

* * * * *

5. Section 97.185 is amended by revising the text of paragraph (b) before the table of Frequency or Frequency bands, by adding the frequency band 10100–10150 kHz between the bands 7245–7255 kHz and 14047–14053 kHz in the table, and by adding subparagraph (1) of paragraph (c) to read as follows:

§ 97.185 Frequencies available.

(a) * * *

(b) In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of section 606 of the Communications Act of 1934, as amended (47 U.S.C. 706), RACES stations and amateur radio stations participating in RACES will be limited in operation to the following frequencies and frequency bands unless otherwise directed by the President of the United States, by a person or persons designated by the President of the United States or by the FCC on behalf of the President of the United States:

FREQUENCIES AND FREQUENCY BANDS

kHz	Limitations
* * * * *	
10100–10150	1
* * * * *	

(c) *Limitations* (1) This band is allocated to the fixed service on a primary basis outside the United States and its possessions. Transmissions of stations in the Amateur Radio Service in this band are secondary to foreign fixed service use in this band.

* * * * *

5. Section 97.415 is revised to read:

§ 97.415 Frequencies available.

The following frequency bands are available for space operation, earth operation and telecommand operation:

FREQUENCY BANDS [1]

kHz	MHz	GHz
7000–7100	144–146 [1]	24.00–24.05
14000–14250	[2] 435–438	....

FREQUENCY BANDS [1]—Continued

kHz	MHz	GHz
21000-21450		
24890-24990		
28000-29700		

[1] Unless otherwise specified in this subpart the rules regarding authorized emission modes (§§ 97 61 and 95 65) and authorized transmitting power (§ 97.67) are applicable for each of the listed frequency bands

[2] Stations operating in the Amateur-Satellite Service shall not cause harmful interference to other stations between 435 and 438 MHz. (See International Telecommunication Union Radio Regulations, RR 664 (Geneva, 1979).)

[FR Doc. 85-10591 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 84-959; RM-4774; FCC 85-199]

Amateur Radio Service Rules to Include Additional Authorized Emissions for the Frequency Band 1800-2000 kHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service Rules to authorize additional emissions in the 1800-2000 kHz frequency band. The amendment accommodates the growing use of radioteleprinter techniques by amateur operators using personal computers. The effect of the amendment is that it benefits amateurs by allowing them experimental latitude in their choice of emissions in this band.

EFFECTIVE DATE: June 17, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio.

Report and Order

In the matter of amendment of § 97.61 of the amateur radio service rules to include additional authorized emissions for the frequency band 1800-2000 kHz; PR Docket No. 84-959, RM-4774.

Adopted: April 22, 1985.
Released: April 25, 1985.
By the Commission.

1. On October 4, 1984, the Commission adopted a Notice of Proposed Rule Making (49 FR 40194, October 15, 1984) proposing to amend the amateur radio rules to authorize additional emissions for the 160 meter band (1800-2000 kHz). Six comments were filed in this proceeding. All of the commenters supported the proposal, except Racal Survey, Inc. (Racal). Racal said that the additional emissions should be confined to the 1800-1900 kHz band and not be authorized for the 1900-2000 kHz band. Further, Racal urged the Commission to make clear that any action in this proceeding would not affect any other decisions that the Commission might make in dealing with the Radiolocation Service.

2. The American Radio Relay League, Inc. (ARRL) had confined its original request for rule amendment to the addition of F1 emission (now designated as F1B). In commenting on the proposed rules, which would allow other emissions as well, ARRL stated no objection to these emissions and offered to develop a voluntary band plan for their use. Other commenters showed a marked interest in these other modes of emission. Donald Chester wrote: "There is no reason to single out the 1.8-2.0 MHz band for more restrictive emission mode privileges than those which amateurs enjoy on the other bands." The Society for Promotion of Amplitude Modulation stated:

". . . experimentation with several different modes of operation is beneficial to the individual amateur and amateur radio." The comment from the Coachella Valley Amateur Radio Club best sums up the reasons for authorizing a variety of new emissions in this band:

> With the increase of computers for RTTY use in amateur radio, new frontiers are being explored by amateurs. With the new innovations like AMTOR and packet radio here now there is no reason to stifle their use on 160 meters. The present roadblocks on 160 meters must be pushed aside to allow new growth of amateur activity in the new frontiers on the 160 meter band.

3. In light of the comments, we believe that there are good reasons for authorizing the emissions in the 160 meter band as proposed. The present limitation restricting emission modes in this band to telegraphy and telephony is no longer necessary since that limitation was designed to protect the discontinued LORAN-A radionavigation systems. In addition, the use of radioteleprinter has proliferated because of the availability of personal computers. Therefore, additional emission modes are needed so that amateurs can experiment with radioteleprinter techniques.

4. We will authorize these emissions throughout the entire 160 meter band without specifying particular subbands within the 160 meter band where a particular type of emission may be used. However, we urge amateurs to adhere to the voluntary bandplan which ARRL will develop. Although we are not confining these additional emissions to the 1800-1900 kHz band as urged by Racal, we reiterate that amateur use of the 1900-2000 kHz band is the subject of a Commission proceeding in PR Docket 84-874. Our action here does not in any way limit our discretion in that proceeding. Amateurs are again cautioned that no equities will accrue for investment in equipment which operates only in this band.

5. In view of the foregoing, it is ordered, that Part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303 (e) and (r) of the Communications Act of 1934, as amended. It is further ordered, that these rule amendments shall become effective June 17, 1985.

6. It is further ordered, that the Secretary shall cause a copy of this Report and Order to be published in the **Federal Register.**

7. It is further ordered, that this proceeding is terminated.

8. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

Section 97.61 is amended by designating the table as paragraph (a) and revising its first entry to read, as follows:

§ 97.61 Authorized emissions.

(a) Emissions table:

Frequency band	Emissions	Limitations (see paragraph (b) of this section)
1800-2000 kHz	A1A, F1B, A3E, F3E, G3E, A3C, F3C, A3F, F3F.	3
*	* *	*

[FR Doc. 85-10597 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment.

CROSS REFERENCE: See the "Notices" Section of this **Federal Register** for a related document (FR Doc. 85-10632) published by DoD on Progress Payment Rates.

SUMMARY: The Deputy Secretary of Defense has directed that, effective May 1, 1985, revisions be made to DoD's contract financing policies with respect to progress payment rates.

DATES: Effective May 1, 1985. Comments must be received on or before June 30, 1985. Please cite DAR Case 85-74 in all correspondence to this issue.

ADDRESS: Interested parties should submit comments to: Defense Acquisition Regulatory Council, ATTN: Executive Secretary, OUSDRE(AM)(DARS) c/o OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, OUSDRE(AM)(DARS), c/o OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

Interim Changes to 48 CFR Parts 232 and 252

The Deputy Secretary of Defense has directed that, effective May 1, 1985, the following revisions be made to DoD's contract financing policies.

1. The customary progress payment rate for other than small business concerns be lowered from 90% to 80%;
2. The customary rate for small business concerns be lowered from 95% to 90%;
3. The targeted rate for contractor's investment under flexible progress payments be increased from 5% to 15% (upper and lower bands would also be modified accordingly); and
4. Billing periods remain on a monthly basis.

On April 22, 1985, the DAR Council approved deviations to the Federal Acquisition Regulation and revisions to the DoD FAR Supplement to implement the above direction. These policy changes are expected to be incorporated into all contracts awarded on or after May 1, 1985. This makes it necessary for contracting officers to modify outstanding solicitation provisions to the maximum extent practicable. However, it is recognized that there are special contracting situations which required additional guidance.

Contract Awards In-Process

There may be cases where potential contractors have already responded to solicitations and the progress of the contract action may not allow for timely or practical application of the new contract financing rules. An example might be a competitive award where the contracting officer has already received "Best and Final" offers. Another example might be where sealed bids, received in response to an invitation for bids which included provision for progress payments, have been opened by the contracting officer. Such cases must be governed by sound judgment which balance the Department's intent to reduce contract financing with the overall best interests of the Government. Where application of the lower progress payment rates is deemed to be impractical, the action must be expressly approved through normal contract approval or clearance processes and fully documented in the contract files. These will not be regarded as unusual progress payments within the meaning of FAR 32.501-2.

Previously Priced Contract Actions

It is recognized that there is a time lag between when agreement on contract price is reached between the contracting parties and when the contract is ultimately awarded or definitized. Therefore, if the definitive contract price for the goods or services to be delivered under a contract action was agreed to prior to May 1, 1985, the higher progress payment rate (i.e., 90% or 95%) may be used. On the other hand, if a definitive contract price has not been established prior to May 1, 1985, the contracting officer will incorporate the lower rate. This includes previously awarded letter contracts or similar arrangements. As a rule, the date when price agreement was reached is reflected in the Certificate of Current Cost or Pricing Data (reference FAR 15.804-5).

Modifications to Existing Contracts

Amendments, modifications, supplemental agreements, changes, etc., to existing contracts will generally be financed at the progress payment rate established in the existing contract. The addition of new work to an existing contract, which could have been executed as a separate contract, to retain the higher progress payment rates is unacceptable.

Basic Ordering Agreements

Prompt action should be taken by the contracting officer to modify basic ordering agreements to incorporate the new contract financing policy. All orders placed prior to May 1, 1985, shall be financed at the rate in effect on the date of placement. All orders placed on or after May 1, 1985, shall be financed at the lower rate, unless a definitive order price was previously established.

Foreign Military Sales (FMS)

There are no changes to the progress payment rates for FMS contracts at this time.

Under authority of section 22(d)(1) of the Office of Federal Procurement Policy Act, the Deputy Under Secretary (Acquisition Management) has issued the following waiver:

To eliminate progress payment rates which are excessive in relation to the current inflation and interest rates, there is an immediate need to reduce progress payment rates to more appropriate levels. Accordingly, I hereby determine that compliance with the requirements of section 22(a) of the Office of Federal Procurement Policy Act is impracticable and do hereby waive such requirements.

(Signed) Mary Ann Gilleece,

Deputy Under Secretary, Acquisition Management.

19 April 1985 (Date)

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 232 and 252 is amended as set forth below.

1. The authority for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

232.501-1 [Amended]

2. Section 232.501-1 is amended by adding in the second sentence between the word "the" and the words "CASH II" the words "applicable DoD cash flow computer model (e.g."; and by removing in the second sentence the words "computer program" and inserting in their place the words "or CASH III)".

232.502-1 [Amended]

3. Section 232.502-1(S-71) is amended by removing in the third sentence of paragraph (1) the words "(i.e., 90% or 95%)"; by removing in the third and fourth sentences of paragraph (2) the percentage figure "5%" and inserting in both places the percentage figure "15%"; by removing in the first sentence of paragraph (4) the words "CASH II" and inserting in their place the words "CASH III"; and by removing in paragraph (7) the percentage figures "7%", "3%", and "5%", and inserting in their place the percentage figures "17%", "13%", and "15%" respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232-7004 [Amended]

4. Section 252.232-7004 is amended by removing in the title of the clause the date "APR 1984" and inserting in its place "MAY 1985"; and by removing in the text of the clause the percentages "five percent (5%)", "seven percent (7%)", and "three percent (3%)", and inserting in their place the percentages "fifteen percent (15%)", "seventeen percent (17%)", and "thirteen percent (13%)", respectively.

[FR Doc. 85-10631 Filed 5-1-85; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 175

[Docket No. HM-149D, Amendment 173-187]

Exceptions for Specified Quantities of Radioactive Materials

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Emergency final rule.

SUMMARY: The Materials Transportation Bureau (MTB) is renewing for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421-1 and 173.421-2. These exceptions permit the continued transportation by passenger-carrying aircraft of certain quantities of radioactive material under the existing restrictions. These materials do not present a significant hazard to passengers or crew on an aircraft. This action is necessary on an emergency basis because the existing exceptions will expire on May 3, 1985. Under the provisions of section 553 of the Administrative Procedure Act, agencies are permitted to issue a rule in final form when notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This emergency final rule, entitled "Exceptions for Specified Quantities of Radioactive Materials", has been determined not to be a major rule. Its effect will permit the continued transportation by passenger-carrying aircraft of certain quantities of radioactive materials. Delay in the renewal of these provisions would be contrary to the public interest because the limits imposed on the transport of these materials via passenger-carrying aircraft would have an adverse effect on the nuclear industry, and would disrupt routine and ongoing shipments which have been made safely for 10 years under the previous exceptions. Continuation of the exceptions will have a negligible environmental impact and will not impose any additional costs on shippers, carriers or consumers.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On April 18, 1985, in accordance with the provisions of 49 CFR 106.31, the Department of Energy (DOE) requested the Materials Transportation Bureau (MTB) grant an emergency extension to May 3, 1987, to the provisions of 49 CFR 173.4, 173.421-1 and 173.421-2 to permit the continued transportation of specified quantities of radioactive material by passenger-carrying aircraft.

In accordance with section 107 of the Hazardous Materials Transportation Act (HMTA 49 U.S.C. 1806) governing exemptions, the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2 are limited to two years unless reexamined and renewed. These exceptions expire on May 2 and May 3, 1985. Historically, these exceptions have been issued and subsequently renewed under Docket No. HM-149. The legal background and regulatory history of these exceptions can be found in Docket HM-149C (46 FR 24184) published on April 30, 1981, and in preceding amendments dating back to April 17, 1975 (40 FR 17141).

In accordance with 49 U.S.C. 1806 and 49 CFR 106.13, MTB has reexamined the provisions of the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2. Predicated on this review, and based on the very limited hazard posed by the materials excepted by these sections, MTB is (1) extending the effective dates of these exceptions until May 2, 1987 and, (2) clarifying the wording in §§ 173.448(f) and 175.700(c). No substantive changes have been made by these amendments.

The following terms from the **Federal Register** Thesaurus of Indexing Terms apply to this emergency final rule.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR PART 175

Air carriers and radioactive materials.

In consideration of the foregoing, 49 CFR Parts 173 and 175 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53(e), unless otherwise noted.

2. In § 173.4, paragraph (b) is revised to read as follows:

§ 173.4 Exceptions for small quantities.

* * * * *

(b) A package containing a radioactive material also must conform with the requirements of § 173.421(a) through (e) or § 173.422(a) through (f). After May 2, 1987, a package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

3. In § 173.421-1, paragraph (b)(2) is revised to read as follows:

§ 173.421-1 Additional requirements for limited quantities of radioactive materials and radioactive instruments and articles.

* * * * *

(b) * * *

(2) Sections 171.15, 171.16, 175.45, and 175.700(b) of this subchapter pertaining to the reporting of incidents and

decontamination if transported by aircraft. After May 2, 1987, it is also necessary to comply with §§ 173.448(f) and 175.700(c) of this subchapter.

4. In § 173.421-2, paragraph (d) is revised to read as follows:

§ 173.421-2 Requirements for multiple hazard limited quantity radioactive materials.

* * * * *

(d) After May 2, 1987, a limited quantity radioactive material classed other than radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

5. In § 173.448, paragraph (f) is revised to read as follows:

§ 173.448 General transportation requirements.

* * * * *

(f) No person may offer for transportation aboard a passenger-carrying aircraft any radioactive material that is intended for use in, or incident to, research, medical diagnosis or treatment.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806, 1807, 1808; 49 CFR 1.53(e), unless otherwise noted.

7. In § 175.700, paragraph (c) is revised and the statement of authority at the end of the section is removed as follows:

§ 175.700 Special limitations and requirements for radioactive materials.

* * * * *

(c) Except as provided in §§ 173.4, 173.421-1 and 173.421-2 of this subchapter, no person may carry any radioactive material aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

* * * * *

Note.—The Materials Transportation Bureau has determined that this emergency amendment is not a major rule under the terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4231, et seq.). A regulatory evaluation was not prepared prior to consideration of issuance of this rule, in view of the fact that this is an emergency rule.

Based on information available concerning size and nature of entities likely to be affected, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

Based on the potential adverse impact on shippers, carriers and consumers should relief from the compliance date not be granted, I have determined that, under 5 U.S.C. 553(b)(3) (B), public notice and an opportunity to comment would not be in the public interest, and this rule may be made effective in less than 30 days.

Issued in Washington, D.C. on April 29, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85-10706 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155-4175]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions to reduce further the levels of fishing in 1985 for widow rockfish, the *Sebastes* complex of rockfish, and Pacific ocean perch taken off the coasts of Washington, Oregon and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because these stocks are biologically stressed. These actions are intended to lower fishing rates and reduce biological stress and the probability of a fishery closure before the end of the year.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) April 28, 1985 until modified, superseded, or rescinded. Comments will be accepted until May 13, 1985.

ADDRESSES: Submit comments on these actions to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206-526-6150, E.C. Fullerton at 213-548-2575, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and final implementing regulations were published October 5, 1982 (47 FR 43964). This action supersedes those provisions in the **Federal Register** notice published January 15, 1985 (50 FR 2051) which limited landings of widow rockfish (*Sebastes entomelas*), the *Sebastes* complex of rockfish (all species of rockfish in the Scorpaenidae family except widown, Pacific ocean perch (*S. alutus*), shortbelly (*S. jordani*), and *Sebastolobus* species of rockfishes). The provisions for sablefish (*Anoplopoma fimbria*) published at 50 FR 2051 remain in effect.

As specified in the January notice, the Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery at its April meeting in Portland, Oregon. The conditions of biological stress of widow rockfish and the *Sebastes* complex persist (first documented at 48 FR 8283, February 28, 1983); Pacific ocean perch also is considered stressed and is managed under the rebuilding schedule set forth in the FMP. The Council examined current management measures with the intent of avoiding overfishing and extending the fisheries as long as possible throughout the year. The best scientific data available through March 1985 indicated that the rate of landings of widow rockfish coastwide, and the *Sebastes* complex and Pacific ocean perch caught north of Cape Blanco must be reduced to avoid exceeding the 1985 harvest goals for these species. Accordingly, as specified in the FMP, the Secretary of Commerce (Secretary) announces by this notice measures recommended by the Council to further reduce landings of widow rockfish, the *Sebastes* complex of rockfish, and Pacific ocean perch.

The Council's recommendations for 1985 and actions taken by the Secretary on those recommendations are presented below. Because the vast majority of groundfish caught off Washington, Oregon, and California is taken from the fishery conservation zone (FCZ) 3-200 nautical miles offshore, all groundfish taken in ocean waters off Washington, Oregon, and California and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984.

Widow Rockfish

Council Recommendation

The Council recommended continuation of the 30,000-pound trip limit which allows only one landing a week above 3,000 pounds. However, it deleted the option to land 60,000 pounds once every two weeks. Further, if 90 percent (8,400 metric tons, mt) of the widow rockfish optimum yield (OY) quota is reached before the Council's July 10–11, 1985, meeting, then a trip limit for widow rockfish of 10 percent of all fish on board or 3,000 pounds (whichever is less) will go into effect, eliminating the target fishery. Under this incidental limit, landings of less than 1,000 pounds of widow rockfish will not be restricted. If the OY is reached, all landings of widow rockfish will be prohibited.

Rationale

In 1985, the coastwide OY for widow rockfish is 9,300 mt, the same as in 1984, but 26 percent above the 1985 acceptable biological catch (ABC) of 7,400 mt.

In 1984, the trip limit was set at 50,000 pounds in January, 40,000 pounds in May, and dropped to 1,000 pounds in September when only 100 mt of the OY was left. The OY was reached and on November 28, 1984, the widow rockfish fishery was closed. Biweekly trip limits were not allowed in 1984.

In hopes of avoiding a similar pattern in 1985, the Council recommended that in January the trip limit would be 30,000 pounds (20,000 pounds less then in 1984), and only one landing a week above 3,000 pounds would be allowed. An option for biweekly trips was included so that as much as 60,000 pounds could be landed once in a two-week period, but in only one landing above 3,000 pounds. Data available in March 1985 indicate that landings of widow rockfish are about the same as in 1984 despite the lower trip limits in 1985, and that OY will be reached before the end of the year if the fishing rates are not slowed. Almost half the OY had been landed by the end of March.

Projected landings may be somewhat high because of exceptionally good weather in the early part of the year and, although several large vessels departed to other fisheries in February, earlier than in 1984, this was not yet reflected in the projections. There also was testimony at the April Council meeting that effort on the widow rockfish fishery will be less intense in 1985 than 1984 because some vessels which fished in the whiting joint venture have been diverted to Alaska and thus will not be available to harvest as much widow rockfish this year.

In hopes that the projected landings are too high and that effort will decrease from last year, the Council recommended removing the biweekly option for widow rockfish trips. This option allowed fishermen more flexibility and was more likely to enable them to reach the limit than the weekly restriction. Removal of this option will be most detrimental to large vessels capable of landing more than 30,000 pounds in a trip, especially those traveling long distances to fishing grounds.

Secretarial Action

The Secretary concurs with the Council's recommendation and announces—

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time. There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(2) If it is determined that 8,400 mt of widow rockfish will be taken before the July 10–11, 1985, Council meeting, the Secretary will publish a notice under § 663.23 establishing a trip limit which prohibits taking and retaining, or landing, more than 10 percent of widow rockfish of all fish on board or 3,000 pounds (in round weights) of widow rockfish, whichever is less, per vessel per trip. Landings of widow rockfish less than 1,000 pounds will not be restricted. If the 9,300 mt OY is reached, all landings of widow rockfish will be prohibited.

(3) These restrictions apply to all widow rockfish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(4) Landings of widow rockfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by the regulations at § 663.28.

Sebastes Complex

Council Recommendation

The Council recommended that the poundage limit be reduced by half, from 30,000 pounds per trip of the *Sebastes* complex which no more than 10,000 pounds could be yellowtail rockfish (*Sebastes flavidus*) to 15,000 pounds of the *Sebastes* complex per trip, of which no more than 5,000 pounds could be yellowtail rockfish, and maintained the provision that only one landing above 3,000 pounds could be made per week. It retained the option for biweekly limits; 30,000 pounds of the *Sebastes* complex, of which no more than 10,000 pounds is yellowtail rockfish, could be landed once in two weeks if the appropriate State agency is so notified prior to undertaking the trip. The Council recommended another option as well, a trip limit in which 7,500 pounds of the *Sebastes* complex, of which no more than 3,000 pounds is yellowtail rockfish, could be landed twice a week if the appropriate State agency is so notified in advance.

Rationale

The harvest guideline for the *Sebastes* complex of rockfish caught north of Cape Blanco remains the same in 1985 as in 1984—10,100 mt. Weekly trip limits in 1984 were adjusted to reduce landings from 30,000 pounds in January to 15,000 pounds in May and 7,500 pounds in August. Landings of the *Sebastes* complex in 1984 were about equal to the harvest guideline. However, landings of yellowtail rockfish from north of Cape Blanco, the only species in the complex known to be biologically stressed, remained unacceptably high in 1984 (over 50 percent above its ABC) in spite of limitations on the complex as a whole.

In 1985, the Council sought to reduce landings of yellowtail rockfish, recognizing that they often are caught together with other species in the complex. In January 1985, the trip limit for the complex as a whole was the same as in January 1984, but a separate limit on yellowtail rockfish was added such that 30,000 pounds of the *Sebastes* complex caught north of Cape Blanco, Oregon (42°50′ N. latitude) could be landed per trip, of which no more than 10,000 pounds could be yellowtail rockfish; only one landing above 3,000 pounds could be made in a week. A biweekly option was included which enabled fishermen to land 60,000 pounds, but no more than 20,000 pounds of yellowtail rockfish once in a two-week period.

Data through March 1985 indicate that landings of the *Sebastes* complex are almost 20 percent higher than in 1984, and about 40 percent of both the harvest guideline for the *Sebastes* complex and the ABC for yellowtail will be landed by the end of April. Further reductions in landings are necessary if the harvest guideline and ABC are not to be exceeded before the end of the year.

The species composition in the *Sebastes* landings has changed in 1985. Over half the landings through March were yellowtail rockfish in 1984, compared with about 30 percent in 1985. Since the ABC of yellowtail rockfish is 27 percent of the harvest guideline for the *Sebastes* complex, measures to hold the *Sebastes* landings within the harvest guideline also may keep yellowtail landings at ABC if proportional reductions in the trip limits for yellowtail rockfish and the *Sebastes* complex are made.

The Council confirmed its intent to extend the fishery as long as possible during the year while keeping landings from exceeding the harvest guideline for the *Sebastes* complex and the ABC for yellowtail. Since the rate of landings for the *Sebastes* complex would need to be cut almost in half, the Council recommended halving the trip limit, hoping for a proportional reduction in landings.

The Council also heard testimony that the Dover sole fishery was unduly restricted by the *Sebastes* trip limits. Dover sole vessels normally land more than once a week, and it is not unusual to catch more than 3,000 pounds of *Sebastes* in a trip. Because only one landing above 3,000 pounds of the *Sebastes* complex is allowed in a week, these vessels are forced either to make only one landing or to discard incidentally-caught *Sebastes* over 3,000 pounds. Because these vessels do not target on the *Sebastes* complex and account for only a small part of the *Sebastes* landings, the Council agreed to minimize the impacts the *Sebastes* trip limits have on the Dover sole fishery by allowing landings to be made twice a week: 7,500 pounds of the *Sebastes* complex, of which no more than 3,000 pounds is yellowtail rockfish, may be landed per trip and only two landings above 3,000 pounds are allowed in a week. Both the biweekly and twice-weekly options would require advance notification to the State agency where the fish will be landed. (Even though half the weekly limit for yellowtail rockfish is 2,500 pounds, the twice weekly limit was kept at 3,000 pounds to conform with the provision which does not restrict landings of the *Sebastes* complex under 3,000 pounds.)

All other provisions remain the same as given at 50 FR 2051, January 15, 1985. The 40,000-pound trip limit still applies for the *Sebastes* complex caught south of Cape Blanco and notification procedures have been clarified but not changed.

Secretarial Action

The Secretary concurs with the Council's recommendations and announces—

(1) *Definitions.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* species of rockfish (which includes idiot rockfishes). The *Sebastes* complex includes yellowtail rockfish (*Sebastes flavidus*).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday local time.

(d) All weights are round weights, the weight of the whole fish.

(2) *General.* (a) These restrictions apply to all fish of the *Sebastes* complex taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(b) There is no limit on the number of landings under 3,000 pounds of *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of Cape Blanco (42°50′ N. latitude) were caught north of Cape Blanco unless compliance with paragraph (3) can be demonstrated.

(3) *Operating both north and south of Cape Blanco in a trip.* Unless compliance with this paragraph can be demonstrated, fishing for any groundfish species during a single fishing trip must occur either north or south, but not on both sides, of Cape Blanco if more than 3,000 pounds of the *Sebastes* complex is landed from that trip. The vessel owner or operator must notify the State of Oregon before leaving port on a fishing trip of intent to fish in one area and possess or land in the other, in which case fishing may occur both north and south of Cape Blanco. If fishing occurs both north and south of Cape Blanco during a single fishing trip, then the restrictions on the *Sebastes* complex caught north of Cape Blanco apply.

This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(4) *Restrictions on the Sebastes complex caught north of Cape Blanco.* (a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (4)(b) and (4)(c), no more than 15,000 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Cape Blanco. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

(b) *Biweekly trip limit.* If the appropriate agency is notified as required by this paragraph, up to 30,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Cape Blanco. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to make one landing of the *Sebastes* complex above 3,000 pounds every *two* weeks, which obligates the vessel owner and operator to use only the biweekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; 53 Portway Street,

Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) *Twice weekly trip limit.* If the appropriate agency is notified as required by this paragraph, up to 7,500 pounds of the *Sebastes* complex, including no more than 3,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Cape Blanco. Only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to make two landings of the *Sebastes* complex above 3,000 pounds in a one-week period, which obligates the vessel owner and operator to use only the twice weekly trip limit unless rescinded in writing.

The State of Orgeon or California must receive a written notice declaring intent to use the twice weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this recission is to occur.

The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this recission is to occur. Notifications must be submitted to the same addresses given in paragraph (4)(b) of this section for biweekly trip limits.

(5) *Restrictions on the Sebastes complex caught south of Cape Blanco.* No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Cape Blanco. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Cape Blanco.

Pacific Ocean Perch

Recommendation

The Council recommended reinstating the trip limit which was implemented on August 1, 1984; no more than 20 percent of all fish on board or 5,000 pounds (in round weights), whichever is less, may be Pacific ocean perch caught north of Cape Blanco, Oregon (42°50′ N. latitude).

Rationale

Pacific ocean perch has been overfished and is managed under a 20-year rebuilding schedule. The OY is set in the FMP at 600 mt for the Vancouver area (47°30′ N. latitude to the U.S.-Canada border) and 950 mt for the Columbia area (from Cape Blanco at 42°50′ to 47°30′ N. latitude). On August 1, 1984, the federal trip limit for Pacific ocean perch was reduced to 20 percent of all fish on board, not to exceed 5,000 pounds, from 5,000 pounds or 10 percent, whichever was greater.

Even though the States of Oregon and Washington implemented this change on July 16, 1984, it was too late to slow landings in the Columbia area and this fishery was closed on August 16, 1984. (The federal trip limit could not have been revised earlier because it required an amendment to the FMP which was not effective until July 29, 1984.) However, landings in the Vancouver area were slowed. Projections made in July 1984 indicated that the OY would be reached in late October if the 5,000 pound/10 percent limit were maintained. The Vancouver area OY was not reached in 1984, however, due to the combined effects of weather, markets, and the revised trip limit which virtually eliminated day trip for 5,000 pounds.

The Council relaxed this trip limit in January 1985 by maintaining the 20 percent trip limit for Pacific ocean perch and removing the 5,000 pound limit. This action, taken in conjunction with biweekly trip limits for widow rockfish and the *Sebastes* complex, enabled fishermen to land as much as 24,000 pounds of Pacific ocean perch every two weeks (20 percent of the maximum, biweekly landings of widow rockfish and the *Sebastes* complex). A target fishery on Pacific ocean perch became feasible. Data available in March 1985 indicate that landings in the Vancouver area are four times higher than in 1984, and in the Columbia area are about the same as in 1984. Thus, the OYs for both areas could be reached before the end of the year if landings are not slowed. However, because some of the large vessels capable of making these catches departed the fishery in February, it is believed that the projections might be somewhat high. At its April meeting, the Council recommended a return to the previous limit, keeping in mind that landings have already been so high that OY in the Vancouver and possibly Columbia areas could be reached before the end of the year.

Secretarial Action

The Secretary concurs with the Council's recommendation and announces—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50′ N. latitude) no more than 5,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Inseason Adjustments

At its July 10–11, 1985, meeting in Los Angeles, California, the Council will review the data available through June 1985 and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries again in September or as needed in order to avoid overfishing and to extend the fisheries as long as possible during the year.

Other Fisheries

These limits for widow rockfish, Pacific oeean perch, and the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign processing vessels is limited by separate incidental retention allowances established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions except as may be otherwise specified in the permits.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at § 663.28.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the

Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If current fishing rates continue, the ABC levels for several species unquestionably will be exceeded in 1985. Prompt action to reduce those fishing rates is necessary to protect the *Sebastes* complex and reduce the probability of year-end closures of Pacific Ocean perch and widow rockfish fisheries in 1985. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions therefore are taken in final form effective April 28, 1985.

The public has had opportunity to comment on these actions at the Groundfish Select Group, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in March and April 1985 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**. This action may be modified or rescinded based on public comment.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: April 26, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-10550 Filed 4-26-85; 4:01 pm]

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50 CFR Part 661

[Docket No. 50458-5058]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1985 management measures and request for comments.

SUMMARY: NOAA issues this notice establishing management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1985. Specific measures vary by fishery and area. Together they establish fishing seasons, quotas, legal gear, recreational daily catch limits, minimum sizes, and inseason management procedures for salmon taken in the fishery conservation zone (3–200 miles) off Washington, Oregon, and California. Similar regulations are being adopted for the territorial sea (0–3 miles) by Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the harvest equitably between the ocean commercial and recreational fisheries. The regulations also are calculated to allow salmon to escape the ocean fisheries to provide for treaty Indian and non-Indian inside fisheries and for spawning. These management measures were established using the procedures instituted by the framework amendment to the ocean salmon fishery management plan.

DATES: This notice will be effective from 0001 hours (Pacific Daylight Time) May 1, 1985, until modified, superseded or rescinded. Comments will be accepted until May 15, 1985.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

SUPPLEMENTARY INFORMATION:

Regulatory History

Regulations to implement the ocean salmon fishery management plan (FMP) were published on April 14, 1978 (43 FR 15629) as emergency regulations. From 1979 through 1983, the Pacific Fishery Management Council (Council) amended the FMP annually to establish each year's regulations based on salmon abundance estimates and social and economic factors affecting the fisheries.

The 1984 regulations were implemented on May 3, 1984, by emergency action (49 FR 18853) and extended on August 3, 1984 (49 FR 30948), without amending the FMP. These regulations lapsed on October 28, 1984, after 180 days.

Framework Amendment

Proposed regulations, developed by the Council to streamline the process and to avoid the need for annual amendments and the use of emergency rulemaking, were published on August 14, 1984 (49 FR 32414). Final regulations became effective on November 25, 1984 (49 FR 43679, October 31, 1984).

This framework amendment is a multi-year management plan which allows certain changes to be made annually in the management measures governing the fisheries without having to undergo the unwieldy FMP amendment and emergency regulations process. The framework process allows for more rapid and timely preseason changes in flexible measures including management boundaries and zones, quotas, seasons, recreational daily bag limits, fishing gear restrictions, and minimum lengths of fish for harvest. Even though the framework amendment process is faster, it still allows for full public comment.

The other management measures which are fixed and cannot be modified annually under the framework amendment can still be changed when necessary through the more lengthy FMP amendment process.

Schedule for Establishing or Adjusting Annual Management Measures

The schedule established by the framework amendment for setting the preseason management measures was used for 1985:

First week of March. The Council's Salmon Plan Development Team (Team) and staff economist prepared two reports for the Council, its advisors and the public. The first report, entitled "1984 Ocean Salmon Fisheries Review," summarizes the 1984 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1984. The second report, entitled "1985 Ocean Salmon Fisheries Stock Status Projections, Management Goals, and Regulation Impact Analysis," provides the 1985 salmon stock status projections and analyzes the effects on the stocks and FMP management goals if the 1984 regulations were used in 1985.

March 12–14. The Council met in Portland, Oregon, to develop proposed management options for 1985. Three options presenting various combinations of seasons, quotas and other management measures, calculated to protect the weak stocks and still provide for maximum harvests and time on the water for fishermen, were proposed for further analysis and public comment.

Third week of March. The Team and staff economist prepared a third report, entitled "Proposed Regulatory Options and Regulation Impact Analysis," which analyzes the effects of the proposed 1985 managemement options for distribution to the Council, its advisors and the public.

March 26, 27 and April 4. Public hearings on the proposed options were held in Seattle, Washington, Coos Bay and Astoria, Oregon, Eureka and San Francisco, California, and Boise, Idaho.

April 9–11. The Council met in Portland to adopt the final 1985 management measures and its

recommendations to the Secretary. The Team and staff economist prepared a fourth report, entitled "The Analysis of Impacts of Council Adopted 1985 Regulations," which analyzes the effects of the final recommendations for distribution to the Council, its advisors, and the public.

This notice constitutes the Secretary's approval of the Council's recommendations and establishes the management measures for the 1985 ocean salmon fisheries.

Resource Status. With four exceptions, salmon stocks returning to Washington, Oregon, and California (WOC) rivers and streams in 1985 are expected to be in as good for better condition than in 1984. The four stocks which have not improved from last year are Klamath River fall chinook, southern Oregon south-migrating chincook, Columbia River late coho and Skagit River coho. Some other stocks which contribute to the WOC ocean salmon fisheries are far short of historical levels, but are in better condition in 1985 than they have been in recent years.

Chinook Salmon Stocks. The Central Valley chinook stocks (primarily Sacramento River runs) are expected to return in numbers comparable to recent years and slightly higher than in 1984. These stocks are expected to permit a harvest at least as large as in 1984 and still allow sufficient return so that the number of spawners will fall within the escapement goal range. However, the Klamath River fall chinook stock is expected to be at an exceptionally low level of abundance. The age-three chinook returns to the Klamath in 1985 are estimated to be 27 percent below the previous low record since 1978, and the age-four chinook returns are predicted to be the second lowest since 1979. The total estimated ocean population of Klamath River chinook in 1985 is about 102,000 fish, which compares with the 1984 estimate of slightly over 130,000 fish. An escapement of 87,000 chinook into the river is needed in each of the next two years if the escapement rebuilding program is to stay on schedule toward the goal of 115,000 spawners by 1997. Last year, only 43,000–45,000 fish returned to the river and if the 1984 regulations were in effect with the 1985 estimated run size, the estimate is that only about 38,000 would return this year. The Klamath River chinook situation clearly demands drastic fishing curtailment.

Oregon coastal chinook stocks are divided into two groups—south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks which generally originate in central and northern Oregon streams. The southern stocks continue to be depressed, as they were in 1983 and 1984. These stocks were subjected to winter flooding in 1981–1982 and to El Niño in 1983. Restrictive measures that reduced the harvest of these fish last year need to be continued or made even more stringent to improve spawning escapements and turn around the decreasing population trends. North-migrating Oregon coastal chinook stocks are in stable condition. These runs continue to enjoy adequate escapement and will contribute to ocean fisheries at about the same rate as in recent years. These far north migrating stocks were not negatively affected by El Niño, and also should benefit from implementation of the U.S.-Canada salmon interception treaty. Ocean catches of these stocks in 1985 are expected to be greater than last year in the Cape Blanco to Cape Falcon area.

Columbia River chinook stock conditions are variable. Upriver spring and summer runs continue to be severely depressed. While these stocks are not taken in significant numbers in the WOC ocean fishery, every fish that possibly can be saved should be returned to the spawning areas. Lower river spring chinook runs continue to be in good condition and 1985 returns should be nearly as good as the excellent 1984 returns. The upriver bright fall chinook run will be at least as large as the 1984 return of 130,000 which was the largest since 1973. The Bonneville pool hatchery fall chinook return will be modestly better than 1984 and the lower river fall hatchery run will be about the same as 1984. The harvest of far north migrating runs of upriver spawners probably will not differ greatly from recent years, but lower river fall runs and hatchery stocks will be the primary target of ocean fisheries from Cape Falcon to the Canadian border, and will be only modestly more abundant than in 1984, which was the smallest return in recent years. Washington, coastal and Puget Sound chinook stocks primarily are taken north of the WOC fishery and will not be significantly affected by regulations imposed in the PFMC area.

Coho Salmon Stocks. Oregon coastal and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI). The OPI is an annual index of coho abundance from Leadbetter Point, Washington, south through California. The 1985 OPI is 615,000 coho which is 7 percent less than the 1984 OPI of 658,700 coho and is an all-time low. To the 1985 OPI can be added 96,800 coho which is an independent estimate of the private hatchery production within the OPI area. Columbia River and Oregon coastal coho are managed as one stock under the framework of the OPI because they are largely intermixed in the ocean fisheries. However, Columbia River stocks are managed for full utilization of hatchery production, while Oregon coastal stocks are managed to achieve the rebuilding schedule for naturally spawning adults. Full utilization of Columbia River hatchery returns can usually be accomplished by management of the ocean fisheries and the inside gillnet and sport fisheries. The coastal coho spawning escapement in 1984 was 159,400 adult coho which exceeded the 135,000-fish spawning escapement goal by more than 24,000 fish. The current escapement rebuilding schedule adopted by the Council and included in the framework amendment increases the natural coho spawning escapement goal to 175,000 adult coho in 1985 and to 200,000 coho in 1987.

The preseason estimates indicate that Washington coastal and Puget Sound coho stocks will be more abundant than 1984 preseason predictions except for one Puget Sound stream, the Skagit River. The increases are expected to be slightly higher in Willapa Bay, moderately higher in Puget Sound (except for the Skagit River), substantially higher in north coastal streams and considerably higher in Grays Harbor. The lone exception, the Skagit River run, has been chronically low for several years. Reasonable ocean fisheries for coho, as well as inside fisheries, should be possible and appropriate in 1985 without jeopardizing spawning escapements.

Management Measures for 1985

The Council adopted ocean harvest and management measures for 1985 which, in most cases, were similar to options 1 or 2 of the March management options. One notable exception was the complete closure of the commercial fishery from Point Delgada, California, to Cape Blanco, Oregon, which was option 3. The measures are designed to protect the weak stocks discussed above, while at the same time allowing maximum harvest of runs with surplus stocks available to the ocean fisheries.

Both commercial and recreational fisheries from Point Delgada to the U.S./Mexico border will enjoy nearly the full historical fishing seasons. Sacramento River chinook is the primary stock taken in this area and these runs are in good condition. The harvests are expected to equal or exceed last year's. Spawning escapements should be in the upper end of the escapement goal range. Because Klamath River and southern Oregon

chinook runs are so severly depressed, no season will be allowed for the troll fishery in the area between Point Delgada, California, and Cape Blanco, Oregon. Even so, it is not expected that the spawning escapement goal for the Klamath River will be reached.

Coho quotas in the area south of Cape Falcon (troll 45,000 and recreational 170,000) are modestly higher than catches in 1984 (troll 43,500 and recreational 130,900). Although the 1985 OPI is lower than that for 1984 and the 1985 OPI spawning escapement goal for Oregon coastal wild coho is higher (175,000 in 1985 compared to 135,000 in 1984), a higher harvest was allowed by the Council for socioeconomic reasons. The Oregon Department of Fish and Wildlife (ODFW) recommended that the Council implement a new method of partitioning OPI coho. This methodology would have provided a higher estimate in 1985 of Oregon Coastal natural coho abundance and would have justified the higher ocean harvest for biological reasons unlike the OPI currently in use. The Team and the Scientific and Statistical Committee stated that although they endorsed the theory of the new method, it relies on too many untested assumptions. Because information is not available to determine whether the proposed new method of making stock forecasts is an improvement over the current methodology they recommended that the old method be used again this year. Even though the Council did not adopt ODFW's new methodology, its existence may have encourage the Council to take a somewhat greater risk than otherwise might have been taken in allowing a greater coho harvest south of Cape Falcon to alleviate the serious economic problems currently being faced by not only the Oregon fishermen but also the coastal communities and businesses dependent on fishing activities. Also, the fact that the OPI rebuilding schedule was exceeded in 1984 undoubtedly influenced the Council to accept the risk of not fully meeting the rebuilding schedule in 1985. As in 1984, most of the harvestable coho in the area south of Cape Falcon will go to the recreational fishery. The troll fishery again in 1985 will be largely dependent on chinook.

North of Cape Falcon, as in 1984, ocean and inside harvests, spawning escapement levels, and management measures for 1985 were established by the Council based on negotiations authorized by the U.S. District Court *U.S. vs. Washington*, *U.S. vs. Oregon*, and *Hoh Indian Tribe, et al vs. Baldrige* and involving all of the management entities and most user groups. Harvest levels in 1985 of both chinook and coho in this area are somewhat higher than the small harvest allowed in the ocean in 1984. The 1984 troll catch was 13,800 chinook and 37,500 coho compared with 1985 quotas of 50,900 chinook and 141,700 coho. The 1984 recreational catches were 7,000 chinook and 43,400 coho compared with 1985 quotas of 37,100 chinook and 201,400 coho. Ocean quotas and management measures were geared to protect the weakest stock in the area in 1985, which is Skagit River coho, as well as to minimize the WOC ocean harvest of Bonneville Pool hatchery chinook to insure they will return in sufficient numbers to meet hatchery requirements. Ocean regulations will allow an appropriate inside fishery in the north coastal streams and provide spawning escapements generally in the middle of the desired range of spawners. Puget Sound fisheries and escapements also will be good except for the Skagit River for which all parties have agreed to a reduced escapement for 1985.

The Makah, Quileute, Quinault, and Hoh treaty tribal ocean troll fishery will have a quota of 10,500 chinook and 75,000 coho during May-September compared with 1984 catches of 4,300 chinook and 43,400 coho. These quotas were agreed on by the tribes and the State agencies and are factored into the Council's recommendations and analysis of effects.

The following tables and text reflect the management measures recommended by the Council for 1985. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socioeconomic factors affecting the resource users. The recommendations are consistent with the requirements of the Magnuson Act and other applicable law.

Fishing and related activities covered by this notice are subject to the framework salmon regulations at 50 CFR Part 661. The following management measures are adopted for 1985 under § 661.20.

TABLE 1.—TROLL MANAGEMENT MEASURES FOR 1985 OCEAN SALMON FISHERIES

Area and season	Salmon species	Quota		Minimum size limit (inches)		Special restrictions by area
		Chinook	Coho	Chinook	Coho	
United States—Mexico Border to Point Delgada						
May 1 through May 31	All except coho	None		26		Barbless hooks, not more than 6 lines per boat.
June 1 through Sept. 30	All	None	(ᵃ)	26	22	
Point Delgada to Cape Blanco ᵇ No season						
Cape Blanco to Cape Falcon:ᵃ						
May 1 through June 30	All except coho	None		26		Barbless hooks; during the all-salmon season, no more than one coho more than the number of chinook may be retained *provided* at least one chinook must be retained if one coho is to be retained
July 1 through coho quota	All	None	(ᵃ)	26	16	
Coho quota through Oct. 31	All except coho	None		26		
Cape Falcon to United States—Canada Border: May 1 through earliest of May 31 or chinook quota.	All except coho	27,000		28		Barbless hooks, except that hooks used with whole bait or plugs may be barbed. Conservation Zone 1 (Columbia River mouth) is closed ᵈ
Leadbetter Point to Cape Alava: July 15 through earliest of July 31 or either chinook or coho quota.	All	16,100	78,500	28	16	Barbless hooks, except that hooks used with whole bait and plugs may be barbed
Carroll Island to United States—Canada Border: Aug. 3 through earliest of Aug. 31 or coho quota.	All	ᶜ(5,100)	31,200	28	16	Gear restricted to flashers with bare bladed hooks
Cape Falcon to Leadbetter Point: Aug. 21 through earliest of chinook or coho quota.	All	2,700	32,000	28	16	Barbless hooks, except that hooks used with whole bait and plugs may be barbed; Conservation Zone 1 (Columbia River mouth) is closed ᵈ

ᵃ Coho quota south of Cape Falcon is 55,000. This includes a hooking mortality of 10,000 which leaves 45,000 for harvest. The fishery south of Point Delgada will not be closed when the south of Cape Falcon quota is predicted to be reached.

[c] In addition to the troll seasons listed, the Oregon Department of Fish and Wildlife may establish limited additional all-salmon-except-coho seasons inside State waters in the Tillamook Bay area (Manhattan Beach to Pyramid Rock) from mid-September through October and in the Elk River area during November. The Council agreed that this action would not adversely affect the 1985 management regime.

The 5,100 chinook listed here is not a quota. It is a guideline for the potential incidental harvest of chinook during this directed pink fishery and is not transferable to any other chinook quota.

[d] Conservation Zone 1 is defined as: The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (lighthouse buoy) then due east to shore along 46°11'06" N. latitude.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES APPROVED FOR 1985 OCEAN SALMON FISHERIES

Area and season	Salmon species	Quota		Minimum size limit (inches)		Daily bag limit and special restrictions by [redacted]
		Chinook	Coho	Chinook	Coho	
United States-Mexico Border to OR-CA Border. Feb. 16 through Nov. 17.	All	None	([a])	20	20	2 fish, barbless hooks. Conservation Zone 2 (mouth of Klamath River) is closed Aug. 1 through Aug. 31.
OR-CA Border to Cape Blanco.[b]						
May 25 through May 31	All	None	([a])	None	None	First 2 fish hooked per day must be retained; no more than 2 fish retained per day; no more than 6 fish may be retained in 7 consecutive days.
July 1 through quota	All	None	([a])	None	None	
Quota through Oct. 31	All except coho	None		None		
Cape Blanco to Cape Falcon.[b] July 1 through coho quota	All	None	([a])	None	None	First 2 fish hooked per day must be retained; no more than 2 fish retained per day; no more than 6 fish may be retained in 7 consecutive days.
Cape Falcon to Leadbetter point. June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only	All	12,100	99,000	24	16	2 fish; barbless hooks: Area closures: (1) Red Buoy line on Columbia River mouth[c] north to Klipsan Beach 0–200 miles (2) North of Klipsan Beach to Leadbetter Point closed inside 3 miles—Note: fishery is closed Fridays and Saturdays.
Leadbetter Point to Queets River: June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only	All	23,300	74,000	24	16	2 fish; barbless hooks, closed inside 3 miles—Note: fishery is closed Fridays and Saturdays.
Queets River to United States-Canada Border: June 30 through earliest of Sept. 19 or quotas, Sunday through Thursday only	All	1,700	28,400	24	16	2 fish, except to no more than one chinook; barbless hooks—Note: fishery is closed Fridays and Saturdays.

[a] Coho quota south of Cape Falcon is 170,000. Coho caught south of the OR-CA border count on the total quota but California fisheries will not close when the quota is met.

[b] In addition to the recreational seasons listed, the Oregon Department of Fish and Wildlife may establish limited additional all-salmon-except-coho seasons inside state waters in the Tillamook Bay area (Manhantian Beach to Pyramid Rock) from mid-September through October and in the Elk River area during November. The Council agreed that this action would not adversely affect the 1985 management regime.

[c] Conservation Zone 2 is defined as: The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth) on the west by 124°23'00" W. longitude (approximately 12 miles from shore), and on the south by 41°26'48" N. latitude approximately 6 nautical miles south of the Klamath River mouth.

[d] Red Bouy Line—The line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Lightship Buoy, then due west along 46°11'6" N. latitude.

Special Note.—For the area from Cape Falcon to the U.S.-Canada border, an inseason evaluation will be conducted at the end of the third and sixth weeks of the fishery to determine if any of the following management tools will be used: (a). Modify the number of days of fishing per week by emergency regulation. (b) Modify area closures or bag limits (for example 3 mile closure north of Queets River). (c) Species trade from troll to recreation. Any species trade must be acceptable to respective user groups.

TABLE. 3.—TREATY INDIAN MANAGEMENT MEASURES

Tribe	Boundaries[a]	Open Seasons	Species	Minimum Lengths[b]		Special restrictions by area
				Chinook	Coho	
Makah	That portion of the Fishery Management Area north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude	May 1 to earlier of May 31 or chinook quota[c]	All salmon except coho	24		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines boat, or no more than 4 hand-held lines per person.
		June 1 to earlier of Sept. 30 or chinook or coho quota[c]	All salmon	24	16	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines/boat, or no more than 4 hand held lines per person.
Quileute	That portion of the Fishery Management Area between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River)	May 1 to earlier of May 31 or chinook quota.[c]	All salmon except coho	26		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
		June 1 to earlier of Sept. 15 or chinook or coho quota[c]	All salmon	26	16	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
Hoh	That portion of the Fishery Management Area between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River).	May 1 to earlier of May 31 or chinook quota[c]	All salmon except coho	26		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[c]
		June 1 to earlier of Sept. 15 or chinook or coho quota.[c]	All salmon	26	16	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
Quinault	That portion of the Fishery Management Area between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis)	May 1 to earlier of May 31 or chinook quota[c]	All salmon except coho	26		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[c]
		June 1 to earlier of Sept. 15 or chinook or coho quota[c]	All salmon	26	16	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]

[a] All boundaries may be changed to include such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court.

[b] For subsistence and ceremonial purposes, the minimum total lengths of salmon are: Makah Tribe: None. Quileute, Hoh, and Quinault Tribes: Not more than two chinook salmon between the lengths of 24 and 26 inches per day may be kept.

[c] The overall ocean quotas for the Washington Coastal Tribes are: 10,500 chinook and 75,000 coho.

[d] The area within a 6 miles radius of the mouths of the Queets River (47°31'42" N. latitude), the Hoh River (47°45'12" N. latitude) and the Quillayute River (47°54'18" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1 and 2, the following gear definitions and restrictions will be in effect until modified, superseded, or rescinded.

Recreational Fishing Gear

Recreational fishing gear for the Fishery Management Area (FMA) is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached with not more than four hooks.

However, in that portion of the FMA off Oregon and Washington, the line must be attached to a reel and rod held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks with bait for lures behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Geographical Landmarks

Geographical landmarks referenced in this notice are at the following locations:

Cape Alava	48°10'00" N. lat.
Carroll Island	48°00'18" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
Klipsan Beach	46°28'12" N. lat.
Cape Falcon	45°46'00" N. lat.
Cape Blanco	42°50'20" N. lat.
OR-CA Border	42°00'00" N. lat.
Point Delgada	40°01'24" N. lat.

The following inseason actions have been recommended by the Council and approved by the Secretary for use during the 1985 season if the situation warrants: (1) Modification of coho quotas and seasons based on inseason reassessment of private hatchery contributions; (2) modifications to commercial coho quotas and seasons based on inseason assessment of coho hooking mortality during the all-species seasons (3) modifications to quotas and seasons based on inseason revisions to abundance estimates; (4) reduction in quotas and seasons due to unanticipated salmon catches in the territorial sea; (5) redistribution of quotas to achieve an overall quota; (6) boundary modifications to promote the attainment of quotas; and (7) modification of the daily recreational bag limit. Additional information concerning the procedures to be followed in taking these inseason actions and the nature of the actions which may be taken are provided in 50 CFR Part 661, Appendix III. B. and C.

The Council adopted recreational regulations providing for a five-day fishing week, Sunday through Thursday, north of Cape Falcon. The shortened week also was considered for the Cape Falcon to Cape Blanco area but was rejected. The Council wants to be able to adjust the number of fishing days in these areas during the season, if necessary, to prolong the recreational season. However, the framework amendment does not provide authority for this inseason regulation change. The Council, by separate vote, recommended that authority be granted by Secretarial emergency regulations to use this inseason provision in 1985, if appropriate.

Classification

The 1985 management measures established under the provisions of the framework amendment and implementing regulations are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the Offices of the Directors (see ADDRESSES) during business hours until the end of the comment period.

These actions are taken under the authority of 50 CFR Part 661, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA) and Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.22 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures for 1985 and will invited public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Because of the depressed status of some of the salmon stocks and the need to reduce harvest in some areas are to establish later opening dates for some of the fisheries than those in the current regulations, time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted until May 15, 1985.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, Team, and Advisor meetings, and in public hearings held in Oregon, Washington, California, and Idaho in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: April 26, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-10549 Filed 4-26-85; 4:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 85
Thursday, May 2, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written comments on proposals to terminate the 12-month base-excess plan for paying producers for their milk under the Southern Michigan Federal milk order. The base-excess plan was designed to encourage dairy farmers to maintain stable production levels throughout the year. The action was requested by three dairy farmer cooperative associaitons whose collective membership accounts for about 85 percent of the producers who supply milk to the market. The cooperative contend that the plan is incompatible with efforts towards a balanced supply and demand, and that it no longer accomplishes its intended purpose under current marketing conditions.

DATE: Comments are due on or before May 17, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of AGriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricutural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a signficant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of this order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered:

1. In § 1040.32, paragraph (a).
2. In § 1040.61, paragraph (c), (d), and (e).
3. In § 1040.62(b), the words ", the adjusted uniform price, the price for base milk, and the price for excess milk".
4. In § 1040.71(a)(1)(ii) and 1040.73(c), the words "for base milk".
5. In § 1040.74 the words "the base price and excess price or".
6. In § 1040.75(a)(1), the words "base milk and", and the words "or adjusted uniform price".
7. Sections 1040.90 through 1040.95.

All persons who want to file written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the **Federal Register**. An abbreviated period for filing is provided so that if the termination is granted, then producers will be so informed as soon as possible and therefore be able to plan their production schedules accordingly.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours. (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination would eliminate the order's 12-month base-excess plan for paying producers for their milk. The base-excess provisions of the Southern Michigan order were suspended for the base-forming and base-paying periods of 1984–86, and are currently inoperative. The base-forming provisions are scheduled to be reinstated August 1, 1985.

Producers form bases during the months of August through December, and are paid a higher price on all base milk during the months of Febraury through January and a lower price on all milk produced in excess of their base production. The base-excess plan has no direct effect on handler costs for milk; it is a method of dividing returns among producers in a way that encourages a leveling of seasonal production.

The termination of the base-excess plan on or before August 1, 1985, was requested by Independent Co-operative Milk Producers Association, Inc. (ICMPA), Michigan Milk Producers Association (MMPA), and National Farmers Organization (NFO); three cooperative associations whose combined membership accounts for about 85 percent of the producers who supply the Southern Michigan milk market. In support of their request, the cooperative associations claim that the base-excess plan encourages increased production through the base-building incentive. Each year producers attempt to build larger fall bases because they are paid a higher price for base milk throughout a 12-month period. In their opinion, a plan that encourages an increase in production when supply and demand are not in balance is not acceptable.

One cooperative, MMPA, contends that the base-excess plan no longer accomplishes its intended purpose under current marketing conditions. In that regard, MMPA claims that the price differential between base milk and excess milk is no longer adequate to gain the desired leveling effect on milk production. Whereas the differential in 1968 was $1.20, which was 23 percent of the uniform price, the differential in 1984 was $0.78, only 5.9 percent of the uniform price. With the depletion of the monetary incentive, it is MMPA's opinion that the base-excess plan can not effectively encourage level milk production.

Also, MMPA believes that due to the structure of the milk production industry in the Southern Michigan marketing area (where fewer, more specialized, highly leveraged dairy enterprises produce larger amounts of milk), the need for consistent cash flow will encourage more stable production levels throughout the year. Therefore, there is no need for base-excess regulation in MMPA's view. In addition, because the marketing area of Federal Order 40 borders markets with higher uniform price levels, MMPA fears that if the base-excess plan is reinstated, then those producers with excess milk production will seek other markets for

their milk, thus creating disorderly marketing conditions.

One further point raised was that termination of the base-excess plan would eliminate any confusion concerning pay prices.

For the foregoing reasons, the petitioning cooperatives propose that the provisions of the base-excess plan be deleted from the order.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on April 26, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85–10640 Filed 5–1–85: 8:45 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1985–4]

Contribution and Expenditure Limitations and Prohibitions: Contributions by Persons and Multicandidate Political Committees

Correction

In FR Doc. 85–9179, beginning on page 15169, in the issue of Wednesday, April 17, 1985, make the following corrections.

1. On page 15170, first column, the twenty-fourth line from the bottom of the page should have read "may be for any other election but must not".

2. On page 15170, second column, in the twenty fifth line from the bottom of the page "receivable" should have read "receivables".

3. On page 15172, third column, twenty-third line, "contribution" should have read "contributor".

4. On page 15174:

§ 110.1 [Corrected]

a. In the second column, second line of § 110.1(b)(2), "elections" should have read "election";

b. Also in the second column, ninth line of § 110.1(b)(2)(i), "11 CFR 110.2" should have read "11 CFR 100.2";

c. In the third column, the last line of § 110.1(b)(2)(i)(B) should have read "from that election."

§ 110.2 [Corrected]

5. On page 15176, third column, fourth line of § 110.2(i)(2), "election" should have read "section".

BILLING CODE 1505-01-M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1502

Availability of Records

AGENCY: African Development Foundation.

ACTION: Proposed rule.

SUMMARY: This action proposes the policies and procedures the African Development Foundation plans to establish permitting the inspection and copying of documents of the Foundation in accordance with the requirements of the Freedom of Information Act. The proposed regulations include procedures for requesting documents and for processing such requests, and establishes the fees which shall be charged by the Foundation for costs associated with responding to requests.

DATES: Comments must be received on or before July 1, 1985.

ADDRESS: Comments maybe mailed to the General Counsel, Suite 200, African Development Foundation, 1724 Massachusetts Avenue, NW., Washington, D.C. 20036, or delivered to the same address between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, Ann Richardson, Director, Administration and Finance, (202) 634-9853.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The African Development Foundation has determined that this rule is not a major rule for the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The President of the Foundation certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 1502

Administrative practice and procedures, Freedom of information, Records.

Accordingly, it is proposed to add Part 1502 to 22 CFR Chapter XV to read as follows:

PART 1502—AVAILABILITY OF RECORDS

Sec.

Authority: 5 U.S.C. 552, and 22 U.S.C. 290h-4.

§ 1502.1 Introduction.

(a) It is the policy of the African Development Foundation that information about its operations, procedures, and records be freely available to the public in accordance with the provisions of the Freedom of Information Act.

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Act and the regulations in this part.

(c) The Director of Administration and Finance (A&F) shall be responsible for the Foundation's compliance with the processing requirements of the Freedom of Information Act.

§ 1502.2 Definitions.

As used in this part, the following words have the meanings set forth below:

(a) "Act" means the act of June 5, 1967, sometimes referred to as the "Freedom of Information Act" or the Public Information Section of the Administrative Procedure Act, as amended, Pub. L. 90–23, 81 Stat. 54, codified at 5 U.S.C. 552.

(b) "Foundation" means the African Development Foundation.

(c) "President" means the President of the Foundation.

(d) "Record(s)" includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and other documents provided by the Foundation to the public in the normal course of doing business are not included within

the definition of the word "records." The latter will continue to be made available to the public without charge.

§ 1502.3 Access to Foundation records.

Any person desiring to have access to Foundation records may call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices at 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036. Requests for access should be made to the Director of A&F, at the Foundation offices. If request is made for copies of any record, the Office of A&F will assist the person making such request in seeing that such copies are provided according to the rules in this Part.

§ 1502.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

(a) Address his or her request to: Director, Administration and Finance Division, African Development Foundation, 1724 Massachusetts Avenue, NW., Suite 200, Washington, D.C. 20036.

Both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) Identify the desired record by name, title, author, a brief description, or number, and date, as applicable. The identification should be specific enough so that a record can be identified and found without unreasonably burdening or disrupting the operations of the Foundation. Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted. If the Foundation determines that a request does not reasonably describe the records sought, the requestor shall be advised what additional information is needed or informed why the request is insufficient.

(c) Include a check or money order to the order of the "African Development Foundation" covering the appropriate search and copying fees, or a request for determination of the fee and a promise to pay any amount over $3.00 in connection with the FOIA request.

§ 1502.5 Records available at the Foundation.

The Administration and Finance Division will make available for public inspection and copying, to the extent not authorized to be withheld, the following works or classes of information:

(a) A copy of the Foundation regulations, including those published in Title 22 of the Code of Federal Regulations or of any other title of the Code.

(b) Statements of policy and interpretations which have been adopted by the Foundation and which are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Any indexes providing identifying information regarding any record described in paragraphs (b) and (c) of this section.

(e) Brochures and other printed materials describing the Foundation's activities.

§ 1502.6 Records of other Departments and Agencies.

Request for records which have been originated by, or are primarily the concern of, another U.S. Department or Agency will be forwarded to the particular Department or Agency involved, and the petitioner so notified. In response to requests for records or publications published by the Government Printing Office or other Government printing activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments which accompanied the request.

§ 1502.7 Fees.

(a) *When charged.* Fees shall be charged in accordance with the schedules contained in paragraph (b) of this section for services rendered in respsonding to requests for Foundation records under this sub-part unless the Director of A&F determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Fees shall also not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $3. Ordinarily fees shall not be charged if the records requested are not found, or if located, are withheld as exempt.

(b) *Services charged for and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies $.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing request records, $2.30.

(3) *Non-routine, non-clerical searches.* Where the task of determining which record fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, $5.40. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) *Other charges.* When a response to a request requires services or material other than those described in paragraphs (b)(1) through (b)(3) of this section, the direct cost of such services to the Foundation may be charged, providing the requestor has been given an estimate of such cost before it is incurred.

(c) *Revision of schedule.* The fee schedule will be revised from time to time, without notice, to assure recovery of actual costs of rendering information services to any person. The revised schedule will be available without charge.

§ 1502.8 Exemptions.

The following categories are examples of records which, if maintained by the Foundation, may be exempted from disclosure under 5 U.S.C. 522(b):

(a) Records specifically required by Executive Order to be exempt from disclosure in the interest of the national defense or foreign policy which are property classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of the Foundation;

(c) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), providing that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion, or (2) establishes criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from any person which is privileged or confidential;

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Foundation;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory files (including security investigation files and files concerning the conduct of employees) compiled for law enforcement purposes, except to the extent available by law to a private party.

The Foundation will not honor requests for exempt records or information.

§ 1502.9 Processing of requests.

(a) *Processing.* A person who has made a written request for records which meets the requirements of § 1502.4 shall be informed by the Director of A&F within ten working days of receipt of the Foundation's decision whether to deny or grant access to the records.

(b) *Denials.* If the Director of A&F, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 15 working days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within that time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision and of the right to a judicial review of the decision in the Federal courts.

(c) *Extension of time.* Where it is reasonably necessary to the proper processing of requests, the time required to respond to an FOIA request or an appeal may be extended for an additional 10 working days upon written notification to the requestor providing the reasons for the extension.

§ 1502.10 Judicial review.

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B).

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85-10698 Filed 5-1-85; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25, 200, 203, 205, 207, 213, 221, 227, 232, 234, 242 and 244

[Docket No. R-85-1226; FR-1954]

Use of Commitment Correspondents in Connection with FHA Mortgage Insurance

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Title 24 of the CFR to create a new category of approved program participants in the FHA single family mortgage insurance programs, to be known as commitment correspondents. Commitment correspondents would be authorized, on behalf of approved mortgagees, to accept and process FHA loan applications, obtain commitments from HUD, and assign commitments to approved sponsor mortgagees. With respect to the single family Direct Endorsement program, commitment correspondents could carry out all loan processing up to the point of actual loan closing and submission for endorsement to HUD. The rule would also revise the eligibility criteria for FHA loan correspondents by (1) increasing the net worth requirement from $5000 to $25,000, (2) permitting nonsupervised and governmental HUD-approved mortgagees to sponsor loan correspondents, (3) requiring, except under the direct endorsement program (where loans must be underwritten by the mortgagee-sponsor), that all loans be underwritten and closed in its own name, and (4) permitting loan correspondents to maintain branch offices upon meeting an additional $25,000 net worth requirement for each branch office until an adjusted net worth of $100,000 is reached.

DATE: Comments due July 1, 1985.

ADDRESSES: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Brian Chapelle, Director, Single Family Housing Development Division, Office of Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This proposed rule is designed to take account of recent marketing developments, including increased use of computer technology, in the single family real estate marketplace. These developments show great potential for improving both the efficiency and the timeliness of single family loan originations.

The rule permits a "commitment correspondent" to accept an FHA loan application, process it through receipt of an insurance commitment, and assign the commitment to an FHA-approved mortgagee who would then advance the mortgage proceeds to the homebuyer, close the mortgage loan, and be mortgagee of record. In practice, approved mortgagee-sponsors would furnish information to a commitment correspondence concerning the types of mortgage loans they are willing to make, the commitment correspondent would make the information available to a purchaser, and the purchaser would make a selection from the mortgage loans available. The commitment correspondent would then process an application for FHA commitment and insurance, and would assign the FHA commitment to the mortgagee-sponsor selected by the purchaser.

The process would not necessarily utilize computer technology, but if such technology were utilized, an example of how it would work is as follows: For a standard fee paid to the commitment correspondent by each participating mortgagee, lenders would enter their mortgage offerings into the commitment correspondent's computer system. The fee charged by the commitment correspondent must be standard for all mortgagees and not related to the volume of applications or firm commitments assigned to any particular mortgagee. Using data made available from terminals in participating commitment correspondent's offices, prospective homebuyers would be able to see what each participating mortgagee had to offer in the way of interest rates and terms. Each homebuyer would select the desired mortgage terms and conditions and the correspondent would then obtain a commitment for a specified principal, interest rate, and type of mortgage from the lender, and process the mortgage application for FHA insurance. If a commitment for mortgage insurance were issued by HUD to the commitment correspondent, the commitment subsequently would be assigned to the selected lender. The lender then would close the loan and obtain the FHA insurance as though it had submitted the application to HUD.

With respect to the new single family Direct Endorsement program (see 24 CFR 200.163-164a), this proposed rule would authorize commitment correspondents to carry out all mortgage loan processing, including underwriting, to the point of actual closing and

submission for endorsement to HUD. To participate in the direct endorsement program, a commitment correspondent would have to meet (in addition to otherwise applicable requirements) virtually all the requirements necessary for approval as a direct endorsement mortgagee. Cases processed under direct endorsement will require appropriate certification of the processing performed by the commitment correspondent. Certification will cover two distinct phases (1) all underwriting and related activity leading up to an overall determination of property and mortgagor eligibility and (2) closing of the loan and disbursement of funds (to be performed by mortgagee-sponsor).

The rule also proposes to revise existing regulatory provisions relating to loan correspondents. The main purpose of these revisions is to enable existing loan correspondents to carry out (except for underwriting under the direct endorsement program) the same functions that the rule would authorize commitment correspondents to carry out. The main differences between the two categories will be the loan correspondent's lower net worth requirements and its ability to close mortgage loans in its own name.

The revisions proposed in this rule will adjust current HUD regulatory requirements to structural and technological changes which are taking place in the mortgage lending industry, particularly in methods of mortgage origination. In lieu of performing traditional in-house origination functions, mortgagees are increasingly turning to third parties to generate their mortgage loans and the proposed rule is responsive to this trend.

Description of Rule's Proposed Revisions

24 CFR Part 25—Mortgagee Review Board

24 CFR 25.3 (Definitions) is revised by adding a definition of "mortgagee". A commitment correspondent meeting the requirements of 24 CFR 203.9 is included in this definition. The effect of this amendment would be to make commitment correspondents subject to the jurisdiction of HUD's Mortgagee Review Board established under Part 25.

Part 200—Introduction

24 CFR 200.6 (Application for lender approval) is revised by adding "commitment correspondent" to the categories of lenders for which an application for HUD approval may be made. The revision also substitutes the term "Field Office" for "regional, area or insuring office" to reflect HUD organizational changes. Finally, the title of the section is changed to "Application for approval."

24 CFR 200.147 (Issuance of commitment) is revised to provide that a commitment may be issued to a commitment correspondent for assignment to an approved mortgagee presenting an application for mortgage insurance.

24 CFR 200.149 (Terms and conditions) is revised to specify that where a commitment is issued to a commitment correspondent, the commitment must be assigned to an approved mortgagee before closing.

24 CFR 200.163–200.164 are revised to expressly authorize commitment correspondents to participate in HUD's single family Direct Endorsement program, provided they meet the eligibility requirements set forth in § 200.164. Commitment correspondents would be authorized to carry out processing and underwriting of loans up to the point of loan closing and submission for insurance to HUD.

Part 203—Mutual Mortgage Insurance and Rehabilitation Loans

24 CFR 203.1 and 203.2 (general approval requirements for single family mortgagees) are revised by making commitment correspondents subject to their provisions. However, to the extent that these requirements relate only to the holding, purchasing, servicing or selling of insured mortgages, they would not be applicable.

The proposed rule would also revise 24 CFR 203.5 (Loan correspondents). Loan correspondents would be required, except in the case of mortgages insured under the direct endorsement program (24 CFR 200.163–200.164a), to process and close all mortgage loans in their own name. With respect to mortgages under the direct endorsement program, the underwriting of such loans must be carried out by the approved sponsor mortgagee. The loan correspondent would not have authority to underwrite such loans.

The section would also be revised to (1) increase the adjusted net worth a loan correspondent must maintain from $5000 to $25,000, (2) permit HUD-approved nonsupervised and government institution mortgagees (not just supervised institutions) to sponsor loan correspondents, (3) permit loan correspondents to maintain branch offices for the processing of loan applications and the submission of applications for firm commitment, but only where the loan correspondent meets an additional net worth requirement of $25,000 for each branch until it reaches an adjusted net worth of at least $100,000 and (4) exempt loan correspondents from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor or mortgagee to fund all mortgagees originated by the loan correspondent.

Part 203 also would be amended by adding a new § 203.9 (Commitment correspondents.). The new section defines a commitment correspondent as an institution that processes HUD/FHA loan applications, submits applications to HUD/FHA and obtains firm commitments solely for the purpose of assignment to an approved mortgagee. Where approved by HUD, a commitment correspondent may also carry out full processing and underwriting, up to the point of closing, of a mortgage loan under the single family Direct Endorsement program as authorized in §§ 200.163–200.164a. Section 203.9 also provides that a commitment correspondent must meet the approval requirements for FHA-insured mortgagees contained in § 203.1 and, in general, those contained in § 203.2—the major exception being that it may not close, hold, purchase, service, or sell insured mortgages. In addition, a commitment correspondent must meet the following requirements:

(1) It shall have as its principal business the processing of applications for mortgage financing and shall maintain a net worth or trust estate of not less than $250,000 in assets acceptable to the Commissioner.

(2) It shall not receive, establish, maintain or handle mortgagor escrow accounts.

(3) It shall remain responsible for the processing and underwriting of each loan on which a HUD/FHA firm commitment is issued or which is endorsed for insurance under the Direct Endorsement program.

(4) It shall file with the Commissioner, within 75 days of the close of its fiscal year and at such other times as may be requested, an audit report which shall include:

(i) A Financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and an analysis of the commitment correspondent's net worth adjusted to reflect only assets acceptable to the Commissioner;

(ii) A report on any compliance tests prescribed by the Commissioner;

(iii) Such other information as the Commissioner may require.

(5) It may, on application to the Commissioner, maintain branch offices,

for the processing of loan applications and submission of applications for a firm commitment. A commitment correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(6) It may not receive compensation in excess of the allowable HUD/FHA loan origination fee paid by the mortgagor on each firm commitment or processed loan assigned to an approved mortgagee. Fees charged by the commitment correspondent shall be uniform for all mortgagees and shall not vary with the volume of applications or firm commitments assigned to particular mortgagees.

(7) Its approval must be sponsored by one or more FHA-approved mortgagees, which mortgagees will maintain a loan processing agreement with the commitment correspondent. HUD commitments or processed loans may be assigned only to those mortgagees with whom there is such agreement.

(8) It and its sponsor (or sponsors) shall notify the Secretary promptly upon termination of the loan processing agreement.

(9) It agrees that termination of its loan processing agreement with all sponsors shall be cause for withdrawal of the commitment correspondent's approval.

24 CFR 203.10 (Submission of application) is revised to authorize commitment correspondents to submit applications for the insurance of mortgages to be executed.

Parts 205, 207, 213, 221, 227, 232, 234, 242 and 244—Technical Amendments

Finally, the rule makes conforming technical amendments to those sections in Parts 205 (land development), 207 (rental housing), 213 (cooperatives), 221 (low and moderate income housing), 227 (housing in Federally impacted areas), 232 (nursing homes), 234 (condominiums), 242 (hospitals) and 244 (group practice facilities) that reference affected portions of Part 203. The effect of the amendments is to make clear that a loan commitment correspondent's activities are to be limited to FHA single family programs.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(a)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This Rule was listed as item H-60-84 (Sequence Number 30) under Office of Housing in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684), under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.117, 14.120, 14.123 and 14.133.

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Allowing use of commitment correspondents in HUD's mortgage insurance programs should enhance opportunities for both small and large business entities. Many small lenders, by working through a commitment correspondent, should find that they can increase their business volume appreciably without having to increase their production staff. However, the rule does not include excessive recordkeeping requirements or other features likely to be a special burden on small entities.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding the collection of information requirements of the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. After OMB review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Mortgage insurance, Mortgages, Organization and functions (government agencies).

24 CFR Part 200

Mortgage insurance.

24 CFR Part 203

Mortgage insurance.

Accordingly, 24 CFR Parts 25, 200, 203, 205, 207, 213, 221, 227, 232, 234, 242 and 244 are proposed to be amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

Authority: Secs. 2 and 211 of the National Housing Act, 12 U.S.C. 1703 and 1715b.

2. Section 25.3 is proposed to be amended by removing the paragraph designations from the alphabetical list of definitions included therein, and by adding the following additional definition in its appropriate place alphabetically:

§ 25.3 Definitions.

* * * * *

"Mortgagee." A lender meeting the general requirements of 24 CFR 203.1 and 203.2, and the specific requirements of 24 CFR 203.3 through 203.8, as appropriate. A commitment correspondent meeting the requirements of 24 CFR 203.9 is also regarded as a mortgagee for purposes of this part.

* * * * *

PART 200—INTRODUCTION

3. The authority citation for 24 CFR Part 200 is revised to read as set forth below and any authority citation following any section in Part 200 is removed.

Authority: Secs. 2 and 211 of the National Housing Act, 12 U.S.C. 1703 and 1715b.

4. Section 200.6 is proposed to be revised to read as follows:

§200.6 Application for approval.

An application for approval as a mortgagee, loan correspondent, commitment correspondent, or Title I lending institution must be submitted on a form prescribed by the Commissioner. These forms may be obtained from any Field Office or from the Headquarters Office in Washington, D.C. Fully executed forms must be submitted to the Field Office having jurisdiction, for transmittal to the Headquarters Office, Washington, D.C.

5. Section 200.147 is proposed to be revised to read as follows:

§200.147 Issuance of commitment.

After determining that the mortgagor and the property offered for security meet all requirements for eligibility, a commitment is prepared and issued to an approved mortgagee, or to a commitment correspondent for assignment to an approved mortgagee, setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between the Commissioner and an approved mortgage or commitment correspondent presenting an application for mortgage insurance. Except as set forth in §§200.163(b) and 200.164(g), commitments are not issued by HUD under the single family Direct Endorsement program.

6. Paragraph (a) of §200.149 is proposed to be revised to read as follows:

§200.149 Terms and conditions.

(a) The commitment sets forth the exact conditions under which the FHA will insure the mortgage loan. It indicates the maximum eligible term of years, the amount of such loan, the interest rate and the amount of the monthly installment, including principal and interest. In addition, in connection with proposed construction there may be provision for structural requirements and the number and type of inspections necessary. Where a commitment is issued to a commitment correspondent, the commitment must be assigned to an approved mortgagee before closing. In the case of project mortgages, the commitment may indicate a schedule of advances which will be insured upon a finding that such advances are made in accordance with the commitment.

* * * * *

7. Section 200.163 is proposed to be amended by revising the introductory text paragraph (a); by revising paragraphs (b)(1), (b)(3), and (b)(4); by revising the introductory text of paragraph (c) and removing and reserving paragraph (c)(1); by revising paragraph (e); and by adding a new paragraph (g), to read as follows:

§ 200.163 Direct endorsement.

(a) *Definition and applicability.* Single family mortgage insurance applications eligible for processing under this section are underwritten and closed by eligible mortgagees and the documentation required by paragraphs (b) and (c) of this section is submitted to HUD/FHA for mortgage insurance endorsement in accordance with paragraph (d) of this section. Commitment correspondents meeting the requirements of § 200.164 may carry out the underwriting responsibilities under this section for HUD-approved sponsor mortgagees including sponsor mortgagees that are not direct endorsement mortgagees. HUD-FHA does not review applications for mortgage insurance or issue commitments except as provided by paragraph (b) of this section and § 200.164(g) before the mortgage is executed and submitted to be considered for endorsement.

* * * * *

(b) *Underwriting and Submission for Endorsement*—(1) *Underwriting/due diligence.* A mortgagee authorized to submit mortgages under this section, or a commitment correspondent authorized to carry out underwriting responsibilities for HUD-approved mortgagees, shall exercise due diligence when underwriting mortgages processed under this section. Due diligence means that care which a mortgagee would exercise in obtaining and verifying information for a mortgage in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 200.164(e).

* * * * *

(3) *Appraisal.* An approved mortgagee or commitment correspondent shall appraise the property, using an appraiser assigned by HUD from its current fee panel or a staff appraiser approved by HUD. In those cases where the mortgagee or commitment correspondent has a financial interest in, is owned by or is affiliated with a building or selling entity, the mortgagee or commitment corresponent shall use an appraiser and inspector assigned by HUD from its fee panel. In lieu of appraising the property, an approved mortgagee or commitment correspondent may, for those properties that HUD accepts as proposed construction, utilize a HUD conditional commitment or master conditional commitment, or a Veterans Administration certificate of reasonable value or master certificate of reasonable value.

(4) *Mortgagor's income.* The mortgagee or commitment correspondent shall determine whether the mortgagor's income is and will be adequate to meet the periodic payments under the mortgage, and shall review the eligibility of the property and prospective mortgagor under 24 CFR Parts 203, 221, or 234.

* * * * *

(c) *Underwriter Certification.* The underwriter shall execute an Underwriter Certification for and on behalf of the mortgagee or commitment correspondent on a form prescribed by the Secretary. This Underwriter Certification is in addition to certifications presently required of the mortgagee and/or mortgagor on current HUD forms 92800 and 92900, and the mortgagee certification required by paragraph (g) of this section. For each mortgage reviewed, the Underwriter Certification shall include an identification of the mortgage by type, as identified pursuant to § 200.163(a)(3). The Underwriter Certification shall also include a statement that the underwriter has personally reviewed the appraisal report and the credit application, including the analysis performed on the work sheet and that the proposed mortgage complies with the requirements of this subsection. Finally, the Underwriter Certification shall include, in addition to such supplemental certification items published pursuant to paragraph (f) of this section, each of the below listed items which apply to the mortgage loan submitted for endorsement.

(1) [Reserved]

* * * * *

(e) *Post-endorsement review.* Following endorsement, HUD/FHA will review all documents required by paragraphs (b) and (c) of this section. If, following this review, HUD/FHA determines that the mortgagee or commitment correspondent has not satisfied the requirements of the single family Direct Endorsement program, the Department may place the mortgagee or commitment correspondent on probation, withdraw the authority of the mortgagee or the commitment correspondent to participate in the Direct Endorsement program under § 200.164(h), or withdraw the mortgagee's or the commitment correspondent's HUD/FHA approval under the provisions of 24 CFR Part 25.

* * * * *

(g) *Mortgagee certification.* The mortgagee or its authorized representative, shall personally review the mortgage documents and applications for insurance endorsement processed under this section and shall execute a Mortgagee Certification on a form prescribed by the Secretary evidencing this review. The Mortgagee Certification will cover the loan closing transaction and any supplemental certification items published pursuant to paragraph (f) of this section and shall include a statement that the mortgage

satisfies the requirements of 24 CFR 203.17, or 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45, or 234.25.

8. Section 200.164 is proposed to be revised to read as follows:

§ 200.164 Approval of direct endorsement mortgagees and commitment correspondents.

(a) Mortgagees and commitment correspondents shall comply with the following requirements when applying for approval:

(1) Submit an application to the HUD Field Office in whose jurisdiction the mortgagee or commitment correspondent seeks to process loans under § 200.163;

(2) Submit (i) documentation showing compliance with the applicable provisions of paragraphs (b), (c) and (d) of this section; (ii) a Quality Control Plan which complies with paragraph (e) of this section; and (iii) such other information as the Secretary may require.

(b) To participate in the Direct Endorsement program set forth in § 200.163, a mortgagee must be an approved mortgagee meeting the requirements of 24 CFR 203.3 or 203.4 or 203.7(a), and this section. A commitment correspondent meeting the requirements of 24 CFR 203.9 and this section may also participate in the direct endorsement program.

(c) The mortgagee or commitment correspondent must establish that it meets the following qualifications:

(1) The mortgagee or commitment correspondent has five years of experience in the origination of single family mortgages. The Department will approve mortgagees or commitment correspondents with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages;

(2) The mortgagee, other than a supervised mortgagee or governmental institution, is approved as a Federal National Mortgage Association (FNMA) seller, as an issuer of Government National Mortgage Association (FNMA) seller of Government National Mortgage Association (GNMA) mortgage-backed securities, or has a net worth, in assets acceptable to the Secretary, of not less than $250,000. The commitment correspondent meets the net worth requirements set forth in 24 CFR 203.9.

(d) The mortgagee or commitment correspondent, to be approved for participation in the Direct Endorsement program, must have on its permanent staff an underwriter approved by the Department for participation in this program and authorized by the mortgagee or commitment correspondent to bind the mortgagee or commitment correspondent on matters involving the origination of mortgage loans under this program. The technical staff utilized in the Direct Endorsement program by the mortgagee or commitment correspondent, including appraisers, construction analysts, inspectors, mortgage credit examiners, architects and engineers, must also be approved by the Department. The technical staff my be employees of the mortgagee or commitment correspondent or may be hired on a fee basis from a HUD panel. A mortgagee or commitment correspondent that has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity may originate or process mortgages for this entity under the Direct Endorsement program only if the property appraisals and inspections are done by independent appraisers and inspectors approved, and assigned, by the Department, rather than by appraisers or inspectors on the staff of the mortgagee or commitment correspondent. For proposed construction, where the mortgagee or commitment correspondent does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment, or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, then the mortgagee or commitment correspondent must utilize an architect, engineer or construction analyst approved by HUD to certify that the plans and specifications meet the applicable standards.

(e) A mortgagee or commitment correspondent shall implement an acceptable Quality Control Plan that is designed to assure compliance with HUD underwriting requirements for the Direct Endorsement program. The plan will be kept current and will be available to HUD upon request.

(f) A mortgagee's or a commitment correspondent's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements as a condition to approval under this section.

(g) To be eligible to participate in the Direct Endorsement program, a mortgagee or commitment correspondent qualified to participate in the program under this Part must submit initially fifteen mortgages processed in accordance with the requirements of § 200.163. The documents required by § 200.163 will be reviewed by HUD and if acceptable, commitments will be issued before endorsement of the loans. If the underwriting and processing of these fifteen mortgages is satisfactory, then the commitment correspondent may be approved to process subsequent mortgages and the mortgagee to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163. Unsatisfactory performance by the mortgagee or commitment correspondent at this stage constitutes grounds for denial of participation in the program, or for continued preendorsement review of a mortgagee's or commitment correspondent's documentation and submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (h)(2) of this section.

(h) *Sanctions for noncompliance.* Depending upon the nature and extent of the noncompliance with the requirements of the Direct Endorsement program, as determined by HUD, HUD may take any of the following actions:

(1) *Probation.* HUD may place a mortgagee or commitment correspondent on probation for a specified period of time for the purpose of evaluating the mortgagee's or commitment correspondent's compliance with the requirements of the single family Direct Endorsement program. During the probation period the mortgagee or commitment correspondent may continue to process mortgage loans under § 200.163, subject to conditions required by HUD. HUD may require the mortgagee or commitment correspondent:

(i) To process additional mortgages in accordance with paragraph (g) of this section; (ii) to submit to additional training; (iii) to make changes in its Quality Control Plan; or (iv) to take other actions, including, but not limited to, periodic reporting to HUD and submission to HUD of internal audits.

(2) *Withdrawal of Approval to Participate in Direct Endorsement Program.* (i) HUD may withdraw a mortgagee's or a commitment correspondent's approval to participate in the Direct Endorsement program upon written notice which states the grounds for the action and which provides for the right to an informal hearing before a decision maker in the appropriate HUD Field Office. The hearing shall be expeditiously arranged and the mortgagee or commitment correspondent may be represented by counsel.

(ii) After consideration of the material presented, the decision maker shall advise the mortgagee or commitment correspondent in writing whether the

withdrawal is rescinded, modified or affirmed.

(iii) The mortgagee or commitment correspondent may appeal the decision to the Assistant Secretary for Housing. The decision of the Assistant Secretary shall constitute final agency action.

(3) *Withdrawal of HUD/FHA Approval.* Serious noncompliance with the requirements of the Diriect Endorsement program may also result in withdrawal of a mortgagee's or commitment correspondent's HUD/FHA approval in accordance with the precedures in 24 CFR Part 25.

(i) *Notification of Changes.* The mortgagee or commitment correspondent shall promptly notify each Field Office that has granted approval under this section of any changes that affect qualifications under paragraphs (b), (c) or (d) of this section.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

9. The authority citation for 24 CFR Part 203 is revised to read as set forth below and any authority citation following any section in Part 203 is removed.

10. Section 203.1 is proposed to be revised to read as follows:

Authority: Sec. 203 and 211, National Housing Act, 12 U.S.C. 1709, 1715b.

§ 203.1 Approval of mortgagees and commitment correspondents.

(a) *General.* (1) A mortgagee or commitment correspondent may be approved for participation in the HUD/FHA mortgage insurance programs upon filing a request for approval on a form prescribed by the Commissioner. Approval of the application shall constitute an agreement between the mortgagee or commitment correspondent and the Commissioner which shall govern the mortgagee's or commitment correspondent's continued approval subject to the provisions of this part.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs and to geographic areas designated by the Commissioner. Approval of commitment correspondents shall be restricted to participation in the home mortgage insurance programs.

(3) Separate approval is required under the National Housing Act for participation in the Title I Program and additional approval is required fo partticipation in the Title II Coinsurance Program.

(b) *Prohibited payments.* A mortgagee or commitment correspondent may not pay anything of value, directly, or indirectly, in connection with any insured mortgage transaction or transactions to any person including but no limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if such person has received any other compensation from the mortgagor, the seller, the builder, or any other person for services related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner. The mortgagee or commitment correspondent shall not pay a referral fee to any person or organization, but payments by a mortgagee to a commitment correspondent for services performed shall not be considered to be referral fee.

(c) *Withdrawal of Approval.* (1) Approval of a mortgagee or commitment correspondent may be withdrawn by the Mortgagee Review Board as provided in Part 25 of this title.

(2) Withdrawal of a mortgagee's or commitment correspondent's approval shall not affect the insurance on mortgages endorsed for insurance.

11. Section 203.2 is proposed to be revised to read as follows:

§ 203.2 Approval requirements.

(a) A mortgagee or commitment correspondent approved for participation in the HUD/FHA mortgage insurance programs shall establish to the satisfaction of the Commissioner that it meets the following general requirements and the specific requirements of §§ 203.3 through 203.9, as appropriate.

(1) It is a chartered institution, a permanent organization having succession, or a trust.

(2) It employs trained personnel competent to perform their assigned responsibilities, including matters involving the origination of mortgage loans and servicing and collection activities, and maintains, adequate staff and facilities to process applications for, close and service mortgage loans in accordance with this part, to the extent the mortgagee or commitment correspondent engages in such activities.

(3) All employees who will sign applications for mortgage insurance on behalf of the mortgagee or commitment correspondent shall be corporate officers or will otherwise be authorized to bind the mortgagee or commitment correspondent in matters involving the processing and closing of mortgage loans, to the extent the mortgagee or commitment correspondent engages in such activities.

(4) A mortgagee shall not use escrow funds for any purpose other than that for which they were received.

(5) It shall comply with the provisions of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(6) A mortgage shall comply with the servicing responsibilities contained in Subpart C of this part.

(7) A mortgagee or commitment correspondent shall comply with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

(8) It shall provide prompt notification, on a form prescribed by the Commissioner, of all corporate changes, including, but not limited to: mergers, terminations, name, location, control of ownership, and character of business.

(9) It shall file a yearly verification of its status and operations on a form prescribed by the Commissioner.

(10) It shall, upon request, submit a copy of its latest audited financial statement, submit such additional information as the Commissioner may request, and submit to an examination of that portion of its records that relates to its insured mortgage activities.

(11) It shall implement a written Quality Control Plan which assures compliance with the regulations and other issuances of the Commissioner regarding loan processing and loan origination and servicing.

(12) A mortgagee or commitment correspondent (other than a morgagee meeting the requirements of § 203.7) shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for commitments or for mortgage insurance, in such amounts and at such time as the Commissioner may require, to assist in defraying the cost of approving and supervising mortgages and commitment correspondents.

(b) A limited partnership will be considered a permanent organization having succession for purposes of this section, provided:

(1) The partnership has not more than one general partner, which shall be a chartered institution and which has, as its principal activity, the management of the affairs of the partnership.

(2) The general partner employs trained personnel competent in all aspects of morgage lending activities including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with this part, to the extent (i) the mortgagee engages in such activities, or (ii) the commitment correspondent is authorized to engage in such activities.

(3) All employees who will sign applications for mortgage insurance on behalf of the partnership are officers of the general partner or are otherwise authorized by the general partner to bind the morgagee or commitment correspondent in matters involving the origination of mortgage loans.

12. Section 203.5 is proposed to be revised to read as follows:

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured single family mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a, it must underwrite and close all loans in its own name. It may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program a loan correspondent may not underwrite but shall close in its own name all loans for submission to HUD/FHA for endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under §§ 203.3, 203.4, or 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptible to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before [two years from effective date of rule].

(4) It may not, as authorized in § 203.4(c), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Such approval may be granted where the loan correspondent meets an additional $25,000 net worth requirement for each branch office it maintains until it reaches an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirements.

(5) It and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

13. Part 203 is proposed to be amended by adding a new § 203.9 to read as follows:

§ 203.9 Commitment correspondents.

(a) A commitment correspondent is an institution that processes HUD/FHA single family loan applications, submits applications to HUD/FHA and obtains commitments solely for the purpose of assignment to an approved mortgagee. A commitment correspondent may not close, hold, purchase, service, or sell insured mortgages. In connection with the Direct Endorsement program authorized in §§ 200.163–200.164a of this chapter, the commitment correspondent may perform all loan processing, including underwriting, up to the point of loan closing and submission for endorsement to HUD/FHA. The HUD/FHA approved mortgagee that maintains a loan processing agreement with the commitment correspondent as required under paragraph (b)(7) of this section shall be responsible for the closing of the direct endorsement loan.

(b) An institution may be approved as a commitment correspondent if it meets the requirements of §§ 203.1 and 203.2 and the following requirements:

(1) It shall have as its principal business the processing of applications for mortgage financing and shall have and maintain a net worth of trust estate of not less than $250,000 in assets acceptable to the Commissioner.

(2) It shall not receive, establish, maintain or handle mortgage escrow accounts.

(3) It shall remain responsible for the underwriting of each loan on which a HUD/FHA firm commitment is issued or which is endorsed for insurance under the Direct Endorsement program.

(4) It shall file with the Commissioner, within 75 days of the close of its fiscal year (or within such extensions of time as may be granted in the sole discretion of the Commissioner), and at such other times as may be requested, an audit report based on an audit performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit report shall include:

(i) A financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and an analysis of the commitment correspondent's net worth, adjusted to reflect only assets acceptable to the Commissioner.

(ii) A report on any compliance tests required by the Commissioner.

(iii) Such other information as the Commissioner may require.

(5) It may, on application to the Commissioner, maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment. A commitment correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(6) It may not receive compensation in excess of the allowable HUD/FHA loan origination fee paid by the mortgagor on each insurance application or firm commitment assigned to an approved mortgagee. Fees charged by the commitment correspondent shall be uniform for all mortgagees and shall not vary with the volume of applications or firm commitments assigned to particular mortgagees.

(7) Its approval must be sponsored by one or more FHA-approved mortgagees which maintain loan processing agreements with the commitment correspondent. HUD commitments or processed direct endorsement loan applications may be assigned only to mortgagees with whom the commitment correspondent has an agreement. Such an agreement shall contain such terms and conditions and meet such standards as the Commissioner may require.

(8) It and its sponsor (or sponsors) shall notify the Commissioner promptly upon termination of any loan processing agreement.

(9) It agrees that termination of its loan processing agreements with all sponsors shall be cause for withdrawal of the commitment correspondent's approval.

14. Section 203.10 is proposed to be revised to read as follows:

§ 203.10 Submission of application.

An approved mortgagee or commitment correspondent may submit an application for insurance of a mortgage about to be executed. An approved mortgagee may submit an application for insurance of a mortgage already executed.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT—TITLE X

15. The authority citation for 24 CFR Part 205 is revised to read as set forth below and any authority citation following any section in Part 205 is removed.

16. Section 205.35 is proposed to be revised to read as follows:

§ 205.35 Qualification of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Sec. 211, 1010, National Housing Act, 12 U.S.C. 1715b, 1749ii.

PART 207—MULTIFAMILY MORTGAGE INSURANCE

17. The authority citation for 24 CFR Part 207 is revised to read as set forth below and any authority citation following any section in Part 207 is removed:

Authority: Secs. 207, 211, National Housing Act, 12 U.S.C. 1713, 1715b.

18. Section 207.22 is proposed to be revised to read as follows:

§ 207.22 Qualification of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

19. The authority citation for 24 CFR Part 213 is revised to read as set forth below and any authority citation following any section in Part 213 is removed:

20. Section 213.39 is proposed to be revised to read as follows:

§ 213.39 Qualifications.

The provisions of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter shall apply and govern the eligibility, qualifications and requirements of mortgagees under this subpart.

21. Section 213.502 is proposed to be revised to read as follows:

§ 213.502 Qualifications of mortgagees.

The provisions of §§ 203.1 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Secs. 211, 213, National Housing Act, 12 U.S.C. 1715b, 1715e.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

22. The authority citation for 24 CFR Part 221 is revised to read as set forth below and any authority citation following any section in Part 221 is removed:

23. Section 221.528 is proposed to be revised to read as follows:

§ 221.528 Qualifications of mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of Part 203 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Authority: Secs. 211, 221, National Housing Act, 12 U.S.C. 1715b, 1715l.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

24. The authority citation for 24 CFR Part 227 is revised to read as set forth below and any authority citation following any section in Part 227 is removed:

Authority: Secs. 211, 807, 810, National Housing Act, 12 U.S.C. 1715b, 1748f, 1748h–z.

25. Section 227.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 227.1 Cross-reference.

(a) *General.* The provisions of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

26. Section 227.501 is proposed to be amended by revising paragraph (a) to read as follows:

§ 227.501 Cross-reference

(a) *General.* The provisions of §§ 203.1 through 203.9 of this chapter shall goven the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

27. The authority citation for 24 CFR Part 232 is revised to read as set forth below and any authority citation following any section in Part 232 is removed:

Authority: Sec. 211, 232, National Housing Act, 12 U.S.C. 1715b, 1715w.

28. Section 232.1 is proposed to be amended by revising paragraph (c) to read as follows:

§ 232.1 Definitions.

* * * * *

(c) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named. The mortagagee shall meet the eligibility, qualifications and requirements of §§ 203.1 through 203.4 and 203.6 through 203.8 of this chapter.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

29. The authority citation for 24 CFR Part 234 is revised to read as set forth below and any authority citation following any section in Part 234 is removed:

Authority: Sec. 211, 234, National Housing Act, 12 U.S.C. 1715b, 1715y.

30. Section 234.10 is proposed to be revised to read as follows:

§ 234.10 Submission of application.

An approved mortgagee or commitment correspondent may submit an application for insurance of a mortgage about to be executed. An approved mortgagee may submit an application for insurance of a mortgage already executed.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

31. The authority citation for 24 CFR Part 242 is revised to read as set forth below and any authority citation following any section in Part 242 is removed:

Authority: Sec. 211, 242, National Housing Act, 12 U.S.C. 1715b, 1715z–7.

32. Section 242.25 is proposed to be revised to read as follows:

§ 242.25 Eligible mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility,

qualifications and requirements of mortgagees under this subpart.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

33. The authority citation for 24 CFR Part 244 is revised to read as set forth below and any authority citation following any section in Part 244 is removed:

Authority: Sec. 211, 1104, National Housing Act, 12 U.S.C. 1715b, 1749aaa-3.

30. Section 244.25 is proposed to be revised to read as follows:

§ 244.25 Qualification for mortgagees.

The provisions of §§ 203.1 through 203.4 and §§ 203.6 through 203.8 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Dated: April 24, 1985.

Samuel R. Pierce,

Secretary.

[FR Doc. 85-10734 Filed 5-1-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-03]

Regatta; Pittsburgh Three Rivers Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 0.0 to mile 1.0, Allegheny River, mile 0.0 to mile 0.8, (West End Bridge), Ohio River, and mile 0.0 to mile 0.8, (Smithfield Bridge), Monongahela River.. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event, which will be held on August 1 thru 4, 1985, at Pittsburgh, Pennsylvania.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to: Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri. 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday thru Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO. Phone (314) 425-5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85-03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W.L. Giessman, USCGR, Project Officer, Second Coast Guard District, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Pittsburgh Three Rivers Regatta is sponsored by Pittsburgh Three Rivers Regatta, Inc., and is well known to boaters in the area. This event will consist of Sternwheel boat races, high speed boat races, sailing races, inner tube races, and Anything That Floats race, an Aqua Bike race, sky diving and waterski shows, and a fireworks display. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Patrol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time between such closure periods to transit the area. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-0202 to read as follows:

§ 100.35-0202 Allegheny River mile 0.0 to 1.0, Ohio River mile 0.0 to mile 0.8 (West End Bridge), Monogahela River mile 0.0 to 0.8 (Smithfield Bridge).

(a) *Regulated area.* Allegheny River mile 0.0 to 1.0, Ohio River mile 0.0 to mile 0.8 (West End Bridge), Monongahela River mile 0.0 to 0.8 (Smithfield Bridge) is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times: August 1 thru 4, 1985, between the hours of 8:00 a.m. and 10:00 p.m. each day. These times represent a guideline for possible intermittent river closures not to exceed FOUR (4) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.*

The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so

directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B. F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85-10678 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 85-05]

Regatta; Ohio River Festival Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 220.0 to mile 221.0, Ohio River. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event which will be held on August 10 and 11, 1985, at Ravenswood, West Virginia.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to: Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri, 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lcdr B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO. Phone (314) 425-5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W.L. GIESSMAN, USCGR, Project Officer, Second Coast Guard District, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Ohio River Festival Regatta is sponsored by the Ohio River Festival. This event will consist of hydroplane and outboard runabout speedboat races on a 1.3 mile closed race course. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Patrol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time between such closure periods to transit the area. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-0204 to read as follows:

§ 100.35-0204 Ohio River mile 220.0 to 221.0.

(a) *Regulated area.* Ohio River mile 220.0 to mile 221.0 is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times: August 10 and 11, 1985, between the hours of 10:00 a.m. and 6:00 p.m. each day. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.* The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules

contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the maine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B. F. Hollingsworth,

Rear Admiral U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85-10677 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 85-06]

Regatta; Ohio Rivers Days Championship (River Days)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the area of mile 355.5 to mile 357.0, Ohio River. The regulations are needed to provide for the safety of life and property on navigable waters during an approved marine event which will be held on August 30, 31, and September 1, 2, 1985, at Portsmouth, Ohio.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be mailed to; Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103. The comments and other materials referenced in this notice will be available for inspection and copying at office of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, Missouri 63103. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday thru Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lcdr B.J. Willis, USCG, Chief, Boating Technical Branch, Second Coast Guard District, St. Louis, MO Phone (314) 425-5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 85-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMCM W. L. GIESSMAN, USCGER, Project Officer, Second Coast Guard District, Boating Technical Branch, and LT. R. E. KILROY, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Ohio River Championship (River Days) is sponsored by the River Days Committee. This event will consist of tunnel hull outboard races set on a circular race course. The designated area of this event must be clear of spectator craft and commercial craft movement which could cause wakes and endanger the participants of this event. The assigned Coast Guard Partol Commander will control the movement of all traffic. Pursuant to the authority contained in Title 33, U.S. Code, section 1233, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a special local regulation controlling navigation on the waters will be promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations would affect the spectators and commercial vessels only for short periods of time and all vessels will be afforded enough time beween such closure periods to transit the area. Since the impact of this proposal is expected to be mininal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-0205 to read as follows:

§ 100.35-0205 Ohio River mile 355.5 to 357.0.

(a) *Regulated area.* Ohio River mile 355.5 to 357.0 is designated the regatta area, and may be closed to commercial navigation on or mooring during the following dates and (local) times: August 30, 12 noon to 3:00 p.m., August 31, 9:00 a.m. to 6:00 p.m., September 1, 12:00 noon to 6:00 p.m., and September 2, 12:00 noon to 6:00 p.m., 1985. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special local regulations.* The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in

the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 16, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85-10679 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-05]

Marine Event; Lake Havasu Water Ski Shows

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations for a series of water ski shows under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATES: Comments must be received on or before 19 May 1985.

ADDRESS: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and address, indentify this notice (CGD11 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulations

The Lake Havasu Water Ski Club's "Lake Havasu Wate Ski Shows" will be conducted between 5:45 pm and 7:15 pm on 8, 15, 29 June, 13, 27 July, 10, 24 August and 7 September 1985 under the London Bridge, in the Bridgewater Channel, Lake Havasu City, Arizona. This event will have 3 tournament ski boats, towing up to 35 skiers, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic and is only in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subject in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-05 Lake Havasu Water Ski Show, Lake Havasu City, Arizona.

(a) *Regulated area:* The following area will be closed intermittently to all vessel traffic: that portion of the Bridgewater Channel, Lake Havasu City, Arizona, commencing approximately 200 yards north of the London Bridge, thence southerly along the channel to approximately 200 yards south. Event participants will be transiting under the center span of the bridge.

(b) *Effective dates.* The regulated area will be closed intermittently to all vessel traffic from 5:45 p.m. to 7:15 pm on the following dates:

8, 15 and 29 June 1985
13 and 27 July 1985
10 and 24 August 1985
7 September 1985

(c) *Special local regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants of official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessel shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed

which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: April 22, 1985.

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 85-10681 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11-85-06]

Marine Event; Bullhead City Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule will establish special local regulations for a series of high speed drag boat races, at Riviera Marina, Riviera, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before 19 May 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: Ltjg Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11-85-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulations

The Sunshine Promotions Inc's, "Bullhead City Boat Drags" will be conducted between 8:30 AM and 5:30 PM on 1, 2 June, 10, 11 August and 7, 8 September 1985 at Riviera Arizona. This event will have approximately 80 high speed drag boats, 18 to 21 feet in length, that could pose a hazard to navigation. Race boats will compete in heats starting from the entrance of Riviera Marina; thence 1200 feet north, 1000 additional feet will be allowed for slow down and turn around. They will then idle southernly along the natural flow of the river back to the starting point. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-06-Bullhead City Boat Drags, Riviera, AZ.

(a) *Regulated area.* The following area will be closed intermittently to all vessel traffic: that portion of the Colorado River starting from the entrance of Riviera Marina, Riviera, Arizona to 2200 feet north.

(b) *Effective dates.* The regulated area will be closed intermittently to all vessel traffic from 8:30 am to 5:30 pm on the following dates:

1 and 2 June 1985
10 and 11 August 1985
7 and 8 September 1985

(c) *Special local regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: April 22, 1985.

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District Acting.

[FR Doc. 85-10680 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM020DE; A-3-FRL-2828-9]

Proposed Approval of Revision to the Delaware State Implementation Plan With Respect to Volatile Organic Compound Emissions for Surface Coating of Automobiles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces EPA's proposed approval to extend the final compliances dates for lacquer topcoat and final repair surface coating standards, with respect to automobiles and light-duty trucks for General Motors Corporation in Delaware. This notice is not applicable to Chrysler Corporation because they are using an enamel-based basecoat/clearcoat topcoat and final repair for their surface coating operation. This proposed revision is based on the October 20, 1981 policy statement (46 FR 51386, October 20, 1981), which allows for compliance date extensions to permit affected industries to comply with the final topcoat standards in a more cost-effective manner. EPA is proposing approval of this final compliance date and compliance schedule extension as it meets the necessary requirements of section 110 of the Clean Air Act and current EPA policy.

DATE: Comments must be submitted on or before June 3, 1985.

ADDRESSES: Copies of the proposed extension for automobile and light-duty truck topcoat and final repair surface coating operations and the accompanying suppport documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Street, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM13)

Air Resourcs Section, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn: Robert French.

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, DELMARVA/DC Section at the above EPA Region III address. Please reference the EPA Docket Number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597-9337, at the Region III address above.

SUPPLEMENTARY INFORMATION: On October 15, 1984, the State of Delaware submitted a request to revise their State Implementation Plan to amend Tables I and I(a) in Regulation No. XXIV, Control of Volatile Organic Compound Emissions, section 9, and the corresponding Compliance Schedule. The proposed revision would extend the effective compliance date for the lacquer topcoat and lacquer final repair surface coating standards in Tables I and I(a), from December 31, 1985 and December 31, 1982, respectively, to December 31, 1987. The compliance schedule would correspondingly change for lacquer topcoat and lacquer final repair coating. The proposed changes in the compliance schedule are shown below. (Proposed deletions are in brackets. Proposed additions are underlined.)

COMPLIANCE SCHEDULE

Lacquer coatings	Compliance date	Order materials	Initiate construction	Interim progress report	Complete construction and place in Operation
Topcoat	12/31/[85]*87*	6/15/[84]*86*	11/31/[84]*86*	6/15/[85]*87*	11/31/[85]*87*
Final repair	12/31/[82]*87*	6/15/[81]*86*	11/31/[81]*86*	6/15/[82]*87*	11/31/[82]*87*

All other dates in Tables I and I(a) and in the compliance schedule for volatile organic compound (VOC) emissions for coating lines remain unchanged. The only company that would be affected by these proposed revisions is General Motors. These revisions are not applicable to Chrysler Corporation because they are currently using an enamel based basecoat/clearcoat for their topcoat and final repair surface coating operation and are therefore expected to meet RACT on December 31, 1985. The petition to the State of Delaware for the proposed revisions was initiated by General Motors (GM).

General Motors anticipates start-up of the newly retooled Wilmington plant with the basecoat/clearcoat (BC/CC) topcoating operation in place in late August 1986. However, GM requests the extension of the final compliance date to December 31, 1987 in order to enable the basecoat/clearcoat topcoat operation to consistently meet the existing New Source Performance Standard (NSPS) of 1.47 kilograms VOC/liter applied coating solids (equivalent to 12.27 lbs VOC/gallon applied coating solids). See 45 FR 85410, December 24, 1980, for the complete NSPS rule. EPA has determined that this economic reason, together with the October 20, 1981 policy statement, provides sufficient evidence to warrant proposed approval for this SIP revision.

Conclusion

EPA's decision to propose approval to extend the final compliance dates for meeting lacquer topcoat and final repair paint standards for automobile and light duty truck surface coating Coperations from December 31, 1985 and December 31, 1982, respectively, to December 31, 1987 is based on the determination that it is consistent with the October 20, 1981 policy statement. This rule is not applicable to Chrysler Corporation.

The public is invited to submit comments, to the EPA-Region III address above, on whether or not the proposed extension should be allowed.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Regional Administrator has certified that the compliance date extension will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709, January 27, 1981.

Dated: March 22, 1985.

Stanley Laskowski,

Regional Administrator.

[FR Doc. 85-10655 Filed 5-1-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 30

Claims Collection

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services proposes to revise its regulation at 45 CFR Part 30 for the handling of debts, particularly overdue accounts, owed to the United States. The revision is necessary to implement the Debt Collection Act of 1982 (Pub. L. 97-365), and the Federal guidelines issued by the Department of Justice and the General Accounting Office (49 FR 8889) and the Office of Personnel Management (49 FR 27470) to implement the Act.

The proposed rule will enhance the Department's ability to collect its debts and reduce delinquencies by providing guidance to its officers and employees charged with debt collection and notice to its debtors concerning the effect of the amendments on the collection of debts covered by and excluded from the amendments.

DATE: Comments must be received on or before July 1, 1985.

ADDRESS: Comments may be mailed or delivered to Darrel J. Grinstead, Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, Department of Health and Human Services, Room 5362 North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sarah Hertz or Clara Garcia, 202-475-0155.

SUPPLEMENTARY INFORMATION: The existing Departmental claims collection regulation merely adopts the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice at 4 CFR Parts 101-105. Additional guidance and procedures for the claims collection staff are provided in Chapter 4-70 of the Department's General Administration Manual.

The Federal Claims Collection Act of 1966, codified at 31 U.S.C. 3711 (formally 31 U.S.C. 951-953), the employee offset authority, 5 U.S.C. 5514, the Privacy Act, 5 U.S.C. 552a, and related statutes were amended by the Debt Collection Act of 1982 ("the Act" or "the amendments").

The following actions were taken to assist Federal agencies to implement the amendments: (1) The General Accounting Office and the Department of Justice issued final regulations (49 FR 8889, March 9, 1984) to amend the Federal Claims Collection Standards; (2) The Office of Personnel Management also issued final regulations (49 FR 27470, July 3, 1984) to guide agency collection of employee debts by offset from pay under 5 U.S.C. 5514; and (3) The Office of Management and Budget issued guidelines (48 FR 15556, April 11, 1983) to help agencies interpret the changes made to the Privacy Act of 1974.

The proposed rule will implement the amendments for the Department.

Recognizing that the Federal Claims Collection Act is not the exclusive authority for the collection and other disposition of claims owed to the Federal Government, the proposed rule provides standards for collection under the Federal Claims Collection Act, as amended, and the common law and supplements existing standards under other statutes or regulations.

By amending the Federal Claims Collection Act Congress intended to enhance the Federal Government's ability to collect its debts and to require certain procedures to safeguard the due process rights of persons. The expression of this Congressional purpose in the Act's preamble and throughout its legislative history and the absence of a clear expression to the contrary leads us to conclude that pre-existing authority was not superseded by the Act. This conclusion is consistent with the principle of statutory construction expressed in *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952). Furthermore, it is the position adopted in the amended Federal Claims Collection Standards.

The amended Federal Claims Collection Standards clarify pre-existing authority in two basic areas.

Debts arising under the Social Security Act are excluded from the amendments made by the Act, except as provided by sections 4, 7 and 8, pertaining to information on Federal loan applicants and requests for debtors' addresses from the Internal Revenue Service. In addition, sections 10 and 11, pertaining to administrative offset and assessment of interest, penalties and administrative cost charges on debts owed by "persons," specifically exclude State and local governments from the meaning of "persons." Therefore, debts owed by State and local governments (including Indian tribes, bands or nations) are not covered by these two sections.

In B-210086 (July 28, 1983) the Comptroller General advised the Social Security Administration (SSA) that the effect of the exclusion of debts arising under the Social Security Act is that SSA is not bound by the new administrative offset requirements of the Act in collecting these debts, but is free to exercise its authority to use administative offset under other statutes (*e.g.*, sec. 204(a), Title II of the Social Security Act, 42 U.S.C. 404(a)) or the common law principles expressed in *United States* v. *Munsey Trust Company*, 332 U.S. 234, 239 (1947). The same rationale leads us to conclude that the Act's exclusion of these debts from its interest provision does not affect the right to charge interest on the these debts under other statutes or the common law principles expressed in *Young* v. *Godbe*, 82 U.S. (15 Wall) 562, 565 (1873) and *United States* v. *United Drill and Tool Corp.*, 183 F.2d 998, 999 (D.C. Cir. 1950).

Thus, it is clear, as stated in the preamble to the amended Federal Claims Collection Standards, that the Act does not affect the authority of the Department under the Social Security Act or under common law to charge interest, or use administrative offset, debt collection agencies and credit bureaus to collect debts arising under Social Security Act programs. However, the Act does not require the Department to use any of the collection tools specified in the Act to collect debts arising under the Social Security Act. The Social Security Administration in fact plans no changes in its collection methods for debts owed by beneficiaries under Titles II and XVI entitlement programs. Thus, (except where specifically authorized uder statute regulation or written agreements) beneficiaries under these programs will not be charged interest, will not be subject to administrative offset and will not be referred to private collection agencies or credit reporting agencies. However, all other debtors under Social Security Act programs will be subject to these actions.

State and local governments will also be subject to interest charges and administative offset. In B-212222 (August 23, 1983) the Comptroller General clarified that the Act does not prohibit the Federal Government from charging interest on, or offsetting, debts owed by State and local governments. Rather, the restrictions and procedural prerequisites to offsetting and charging interest on debts owed by "persons" under the Act do not apply to collection of debts owed by State and local governments.

Another provision of Section 11 of the Act must be similarly interpreted. Section 11 excludes from its interest,

administrative cost and penalty provisions any claim under a contract executed before, and in effect on October 25, 1982 (the effective date of the Act). This provision does not affect our right to charge interest on these debts under the common law or under the provisions of the contract or a repayment agreement.

These interpretations have been adopted in the amended Federal Claims Collection Standards at 4 CFR Parts 101–105 (see, in particular, §§ 102.3(b), 102.13(i) and 102.19).

The proposed rule, therefore, permits the Operating Divisions to apply the same standards and procedures used for collecting debts covered by the Act when collecting debts arising under the Social Security Act, those arising under contracts in effect on October 25, 1982 and those of State and local governments to the extent that the application of those standards and procedures is feasible and not otherwise precluded by statute or regulation.

E.O. 12291

The proposed rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. It is unlikely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

Information collection requirements contained in this regulation are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Persons wishing to comment on these reporting and recordkeeping requirements should address their comments to the Office of Information and Regulatory Affairs, the Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, Room 3208, Attention: Desk Officer for HHS (Judy McIntosh).

List of Subjects in 45 CFR Part 30

Administrative practice and procedure, Claims, Government employees, Privacy.

November 15, 1984.

Margaret M. Heckler,

Secretary.

For the reasons set forth in the preamble, we propose to revise 45 CFR Part 30 as follows:

PART 30—CLAIMS COLLECTION

Subpart A—General

Sec.

Subpart B—Collection

Subpart C—Compromise of Claims

Subpart D—Termination or Suspension of Collection Action

Subpart E—Referrals to the Department of Justice or GAO

Authority: Subchapter II of Chapter 37 of Title 31, United States Code, 5 U.S.C. 5514 and 5 U.S.C. 552a as amended by Pub. L. 97–365, 96 Stat. 1749.

Subpart A—General

§ 30.1 Purpose and scope.

This regulation prescribes standards and procedures for the officers and employees of the Department, including officers and employees of the various Operating Divisions and regional offices of the Department, charged with collection and disposition of debts owed to the United States. These standards and procedures will be applied where a statute, regulation or contract does not prescribe different standards or procedures. The authority for the regulation lies in the Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3718; the Federal Claims Collection Standards, at 4 CFR Parts 101–105; related statutes (5 U.S.C. 5512 and 5514, 5 U.S.C. 552a) and regulations (5 CFR Part 550); and the common law. The covered activities include collecting claims in any amount; compromising claims, or suspending or terminating collection of claims that do not exceed $20,000, exclusive of interest and charges; and referring debts that cannot be disposed of by the Department to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 30.2 Definitions.

In this Part, unless the context otherwise requires—

—"Amounts payable under the Social Security Act" means payments by the Department to beneficiaries, providers, intermediaries, physicians, suppliers, carriers or States under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance and Medical Assistance for the Aged); Title II (Federal Old-Age Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health and Crippled Children's Services); Title IX (Unemployment Compensation Program); Title X (Grants to States for Aid to the Blind); Title XI, Part B (Professional Standards Review); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for Aid to Permanently and Totally Disabled); Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled); Title XVII Grants to States to Fight Mental Retardation); Title XVIII (Medicare); Title XIX (Medicaid); and Title XX (Block

Grants to States for Social Services). All other payments made by the Department in the course of administering the provisions of the Social Security Act are not deemed to be "payable under" the Social Security Act for purposes of this regulation.

—"Claim" or "debt" means an amount or property owed to the Department. Debts include, but are not limited to: Loans, salary overpayments to employees; overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue, or delinquent (see 4 CFR 101.2(b)), if it is not paid by the payment due date specified in the notice of the debt to the debtor (see § 30.13(a)) and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement.

—"Debtor" means an individual, organization, association, partnership, corporation, or a State or local government or subdivision indebted to the Department; or the person or entity with legal responsibility for assuming the debtor's obligation.

—"Debts arising under the Social Security Act" are overpayments to, or contributions owed by, beneficiaries, providers, intermediaries, physicians, suppliers, carriers or States under Titles I, II, III, IV, V, IX, X, XI, (Part B), XII, XIV, XVI, XVII, XVIII, XIX and XX of the Social Security Act; all other debts that result from the administration of the provisions of the Social Security Act are not deemed to "arise under" the Social Security Act for purposes of this regulation.

—"The Department" means the United States Department of Health and Human Services and each of its Operating Divisions and regional offices.

—"Local government" means a political subdivision, instrumentality, or authority of any State; the District of Columbia; the Commonwealth of Puerto Rico; a territory or possession of the United States; or an Indian tribe, band or nation.

—"Operating Division" means each separate component within the Department of Health and Human Services, and includes the Office of the Secretary, the Office of Human Development Services, the Office of Community Services, the Health Care Financing Administration, the Public Health Service and the Social Security Administration.

—"The Secretary" means the Secretary of Health and Human Servcies or the Secretary's designee.

§ 30.3 Interagency claims.

This regulation does not apply to debts owed by other Federal agencies. These debts will be resolved by negotiation or referral to the General Accounting Office.

§ 30.4 Other administrative proceedings.

This regulation does not supersede or require omission or duplication of administrative proceedings required under contract, statute, regulation or other agency procedures. Examples: resolution of audit findings under grants or contracts, Chapter 1–105, Grants Administration Manual (GAM); informal grant appeals, 45 CFR Part 75 (Departmental), 42 CFR 50.401 *et seq.* (Public Health Service); formal appeals to the Departmental Grant Appeals Board, 45 CFR Part 16; and review under a procurement contract Disputes Clause and the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), 48 CFR Part 33.

§ 30.5 Other remedies.

The remedies and sanctions available to the Department under this regulation when collecting debts are not intended to be exclusive. The Secretary may impose other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Secretary may stop doing business with a grantee, contractor, borrower or lender; covert the method of payment under a grant from an advance to a reimbursement method; or revoke a grantee's letter-of-credit.

§ 30.6 Property claims.

Any person who converts, or negligently loses or destroys personal property belonging, entrusted or loaned to the Department is liable for the return of the property or payment of its fair market value. A person who damages such property is liable for the cost of repairs or its fair market value, whichever is less. Collection of these debts means the recovery of the property, its fair market value, or the cost of repairs. Demand for payment of these claims means a demand for the return of the property or for payment of its fair market value or the cost of repairs.

§ 30.7 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds of property. Examples of such activity are fraud, embezzlement and theft or misuse of Government money or property. See 128 U.S.C. 641, 643. The Secretary will refer cases of suspected criminal activity or misconduct to the Office of Inspector General. That office will investigate such cases, refer them to the Department of Justice for criminal prosecution and/or return them to the Secretary for collection, application of administrative sanctions or other disposition.

(b) Debts involving anti-trust violations, fraud, false claims or misrepresentation—

(1) Shall be referred by the Secretary to the Office of Inspector General for review. The Office of Inspector General shall refer the claim back to the Secretary for collection or other disposition to the extent authorized by the Department of Justice.

(2) Shall not be compromised, terminated, suspended or otherwise disposed of by the Secretary under these regulations. Only the Department of Justice is authorized to compromise, terminate, suspend or otherwise dispose of such debts.

§ 30.8 Claims arising from GAO exceptions.

The Secretary may not compromise but will collect, suspend or terminate collection of debts due on account of illegal, improper or incorrect payments shown in General Accounting Office notices of exception issued to certifying or disbursing officers. Only the General Accounting Office has the authority to compromise such debts.

§ 30.9 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceilings imposed by 31 U.S.C. 3711(a)(2) and (3) on the Secetary's authority to compromise, suspend or terminate collection of debts. A debtor's liability arising from a particular incident or transaction will be considered a single debt in determining whether the claim exceeds $20,000 for purposes of compromising, suspending or terminating collection efforts.

§ 30.10 Omissions not a defense.

Failure by the Secretary to comply with any provision of this regulation may not serve as a defense to any debtor.

Subpart B—Collection

§ 30.11 Collection rule.

(a) The Secretary will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall, at a minimum; normally include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor, his/her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, discuss the debtor's position regarding the existence, amount or repayment of the debt, and inform the debtor of his or her rights (*e.g.*, to apply for waiver of the indebtedness or to have an opportunity for administrative review) and the effects of nonpayment or delayed payment. The Secretary will exhaust every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, driving license records, automobile title and license records in State and local government agencies, the Internal Revenue Service, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located. Collection of the full amount of the debt will be pursued from each debtor jointly and severally liable. If a debtor is undergoing insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim in the appropriate court. The United States may have priority over other creditors under 31 U.S.C. 3713. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) The Secretary will maintain an administrative file for each debt or debtor, documenting the debt(s), all administrative collection action, including communications to and from the debtor, and disposition of the debt(s). Information from a debt file relating to an individual may be disclosed only for purposes consistent with this regulation, the Privacy Act of 1974, 5 U.S.C. 552a, and any other applicable law.

§ 30.12 Notices to debtor.

(a) The first written demand for payment must inform the debtor of—

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed; and

(3) The assessment under § 30.13 of interest from the date the notice was mailed, and administrative costs starting 30 days from that date if payment is not received within the 30 days.

(b) Where applicable, the Secretary must inform the debtor in writing of—

(1) His or her right to dispute the debt or request a waiver of the debt, citing the applicable review or waiver authority the conditions for review or waiver, and the effect of the review or waiver request on collection of the debt, interest, charges and late payment penalties (see § 30.14);

(2) The office, address and telephone number that the debtor should contact to discuss repayment, reconsideration or waiver of the debt;

(3) The proposed sanctions if the debt is overdue, including assessment of late payment penalties under § 30.13 (if the debt is more than 90 days overdue) or referrral of the debt to a credit reporting agency under § 30.7, or to a collection agency under § 30.18. (See also § 30.5).

§ 30.13 Interest, administrative costs and late payment penalties.

(a) *Interest.* (1) Interest will accrue on all debts from the date when notice of the debt and the interest requirement is first mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date of mailing of the notice. Unless a higher rate is necessary to protect the Government's interest, the Secretary will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts for the twelve-month period ending on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins. Debtors who were not paying interest, or were paying interest at a different rate prior to October 25, 1982, may be charged interest at the Treasury rate in effect on the date that notice of the new interest requirement is mailed after October 25, 1982. Bills sent before a debt is due will include notification of the interest requirement, but interest will begin to acrue on the day after the due date.

(2) The Secretary may, at his or her discretion, extend the 30 day interest-free period an additional 30 days if the Secretary determines that such action is in the best interests of the Government, or otherwise warranted by equity and good conscience. A decision not to extend this period is final and not subject to further review.

(3) The rate of interest, as initially assessed, will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be charged on interest, administrative costs or late payment penalties required by this section. However, if the debtor defaults on a previous repayment agreement, unpaid accrued interest, charges and late payment penalties under the defaulted agreement may be added to the principal to be paid under a new repayment.

(b) *Administrative costs of collecting overdue debts.* Debtors must bear the Department's administrative costs of handling overdue debts, based on either actual or average costs incurred. These costs will include direct (personnel, supplies, etc.) and indirect costs of collecting inhouse and contracting with collection agencies. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. See also § 30.14.

(c) *Late payment penalties.* A penalty charge of 6 percent a year will be assessed on a debt, a payment, or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. See also § 30.14.

(d) *Social Security Act Debts.* (1) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts owed by beneficiaries under Titles II and XVI of the Social Security Act.

(2) The Secretary will not charge administrative costs or late payment penalties on debts arising under the Social Security Act, unless authorized by statute, regulation or written agreement.

(3) *Other debts not covered by 31 U.S.C. 3717.* The Secretary will not charge administrative costs or late payment penalties on debts arising

under a contract executed prior to, and in effect on October 25, 1982, or debts owed by State or local governments, unless authorized by statute, regulation or written agreement.

(f) *Allocation of payments.* Partial or installment payments will be applied first to outstanding administrative costs charges and late payment penalties, second to accrued interest and third to outstanding principal.

(g) *Inactive claims.* Interest, but not administrative cost charges and late payment penalties, will continue to accrue when collection of a debt is suspended under § 30.33(a).

(h) *Waivers.* The Secretary may waive collecting all or part of interest, administrative costs or late payment penalties, if—

(1) The debt or the charges resulted from the agency's error, action or inaction, and without fault on the part of the debtor; or

(2) Collection in any manner authorized under this regulation would defeat the overall objectives of a Departmental program.

Waiver consideration under paragraph (h)(1) may be initiated by the debtor's request or by the Secretary's own action. Waiver under paragraph (h)(2) may be initiated only by the Secretary's own action. A decision to waive interest may be made at anytime; however, interest which has already been collected may not be refunded. A decision under this subsection is final and not subject to review.

§ 30.14 Interest and charges pending waiver or review.

(a) *Rule.* A debtor may either pay the debt, or be liable for interest on the uncollected debt, while a waiver determination, a bona fide dispute or a formal or informal review of the debt is pending. The debtor may also be assessed administrative cost charges and late payment penalties on the unpaid debt for this period if the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

(b) *Exception.* Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver or review under a statute which prohibits collection of the debt during this period, unless the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

§ 30.15 Administrative offset of general debts.

(a) *Rule.* The Secretary will collect debts owed to the Department by administrative offset if—

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be, unsuccessful, or the Secretary and the debtor agree to the offset;

(3) Offset is not expressly or implicitly prohibited by statute or regulation;

(4) Offset is cost-effective or has significant deterrent value;

(5) Offset does not substantially impair or defeat program objectives; and

(6) Overall, offset is best suited to further and protect the Government's interest.

The Secretary may consider the financial impact of the proposed offset on the debtor in determining the method and amount of the offset.

(b) *Offset defined.* "Administrative Offset" means satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. Amounts available for offset include, for example, benefit payments to a program beneficiary overpaid under the same or a different program, amounts due a defaulting or overpaid contractor or grantee under the same or a different agreement, and judgments held by the debtor against the United States. (Offset against judgments will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

(c) *Scope.* (1) This section applies to offset under 31 U.S.C. 3716 of debts owed by organizations and individuals, including former Federal employees and Federal employees whose separation is imminent.

(2) Except as provided in paragraph (c)(3), debts arising under the Social Security Act and debts owed by State or local governments may be collected by offset under an applicable statute or the common law in accordance with this section or any other regulation that complies with 4 CFR 102.3(b); but nothing in this section shall be interpreted to require the offset of such debts. The same standard applies to the collection of any debt by offset from amounts payable under the Social Security Act.

(3) Unless specifically authorized by statute, regulation, or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, administrative offset will not be applied to debts owed by or amounts payable to beneficiaries under Titles II and XVI of the Social Security Act.

(4) Paragraphs (i)–(k) do not apply to debts reduced to judgment, debts already subject to a written repayment or settlement agreement or debts with respect to which the specified procedures have already been afforded.

(5) Section 30.16 covers offset of debts owed by Federal employees from current pay.

(d) *Advance payments.* Under many programs, the Department advances funds to pay for a recipient's anticipated costs. Before offsetting such an advance payment in order to collect a debt, the Secretary may request an assurance that the recipient will incur additional allowable costs whose Federal share is at least equal to the amount of the offset plus the amount of funds actually advanced. If the Secretary believes that the recipient will not incur sufficient costs, it will not offset the advance. The Secretary may request cash payment or convert the method of paying the recipient from an advance to a reimbursement basis and collect the debt by offsetting payments for costs already incurred.

(e) *Interagency offsets.* The Secretary may offset a debt owed to another Federal agency from amounts due or payable by the Department to the debtor; or request another Federal agency to offset a debt owed to the Department. The Secretary will seek to offset an overdue debt from a Federal income tax refund due the debtor where reasonable attempts to obtain payment from the debtor have failed. Interagency offsets will be effected in accordance with the procedures contained in § 30.16 (k) and (l) for offset under 5 U.S.C. 5514; except that "Secretary" is substituted for "Pay Systems Division," and certification should indicate compliance with 4 CFR 102.3 (and with 5 CFR Part 831, Subpart R in the case of offset from the Civil Service Retirement and Disability Fund), rather than 5 U.S.C. 5514.

(f) *Multiple debts.* Amounts available for offset will be applied to multiple debts in accordance with the best interests of the Government as determined on a case-by-case basis. Other factors being equal, recovery wil. be equally apportioned.

(g) *Statutory bar to offset.* (1) Administrative offset will not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the officer responsible for discovering or collecting the debt. For this purpose, a debt accrues when it is administratively

determined to exist, when it is affirmed by an administative appeals board or a court having jurisidiction, or when a debtor defaults on a repayment agreement, whichever is later. Offset is initiated when the notice of the proposed offset is mailed to the debtor under paragraph (i) of this section or under other agency procedures, when money payable to the debtor is first withheld, or when the Department requests offset from money held by another agency, whichever is first.

(2) The 10 year statutory bar does not apply to offset of a debt arising out of the Social Security Act. However, offset against such debts will generally not be initiated more than 10 years after the debt accrued unless the Secretary did not previously have the necessary information or the means by which to collect the debt by administrative offset.

(h) *Offset against assigned claims.* The Assignments of Claims Act of 1940, 31 U.S.C. 3727, 41 U.S.C. 15, strictly limits the conditions under which a contractor or any other person or entity entitled to receive payments from the United States may assign his or her rights to the payments to a third party. The Federal Acquisition Regulations implement at 48 CFR Part 32, Subpart 32.8, the stautory conditions to assignment of a contractor's right to be paid by the United States for performance under a Federal procurement contract. A contractor may assign his or her right to payment by the United States only to a bank, trust company, or other financing institution, as security for a loan to the contractor.

(1) The Secretary normally may not collect a debt owed by a contractor by offset from payments due the contractor if the contractor has properly assigned his or her rights to such payments to a financing institution, the assigned payments are due under a contract with a "no setoff" provision, and—

(i) The contractor's debt to the United States arose independently of the contract; or

(ii) The debt arose under the contract because of renegotiation, fines, penalties other than penalties for noncompliance with the terms of the contract), taxes or social security contributions, or withholding or nonwithholding of taxes or social security contributions. Notwithstanding the satisfaction of all the conditions of this paragraph, offset may be appropriate under certain circumstances, for example: If the financing institution has made neither a loan nor a firm commitment to make a loan under the assignment; or to the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment.

(2) The Secretary may not offset a debt from payments due any debtor if the debtor has properly assigned his or her right to such payments and the debt arose after the effective date of the assignment.

(3) The Secretary may not attempt to satisfy the assignor's indebtedness by recovering payments already made to the assignee.

(i) *Pre-offset notice.* Before initiating offset, the Secretary will send the debtor written notice of:

(1) The nature and amount of the debt and the Secretary's intention to collect the debt by offset 30 days from the date the notice was mailed if payment, or satisfactory response, has not been received by that date;

(2) The debtor's right, if not previously provided an opportunity, to submit a good faith alternative repayment schedule, inspect and copy agency records pertaining to the debt, request review of the determination of indebtedness under this section or other authority, or apply for waiver under an applicable statute;

(3) The applicable interest, administrative costs and penalty requirements under §§ 30.13 and 30.14; and

(4) Where applicable, the Secretary's intention to delay a lump sum or final payment to the debtor in the amount of the debt plus anticipated interest, administrative cost charges and penalties pending compliance with paragraphs (i) and (k) of this section.

(j) *Alternative repayment.* The Secretary may negotiate a satisfactory repayment agreement before offsetting a debt. The debtor is entitled to submit a good faith written repayment proposal. A proposal for delayed lump sum or installment payments, with interest, may be accepted in lieu of collection by administrative offset if in the best interest of the Government. In making this determination, the Secretary will consider factors such as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note or give collateral, past dealings with the debtor and documentation submitted by the debtor indicating that the offset will cause him or her undue hardship and that the debtor will be financially capable of adhering to the terms of the agreement. The Secretary may require documentation from the debtor before considering an installment arrangement.

(k) *Review of administrative determination.* (1) A debt will not be offset normally while a debtor is exercising his or her right to seek formal or informal review under this section or under another statute, regulation or contract. However, interest will accrue during this period and so may other charges. See § 30.14. The Secretary may initiate offset as soon as practical after the debtor waives his or her opportunity to request review, or as soon as practical after the debt is affirmed or reduced to judgment, unless other repayment arrangements have been made.

(2) The Secretary will designate an official(s) or employee(s) of the Department to review administrative determinations of indebtedness which are not reviewable under other Departmental procedures. Prior to offset, a debtor may request review of the existence or amount of a debt if the dispute is not about a question of fact or law already decided by a court of competent jurisdiction or reviewable under other existing procedures. The reviewing officer must receive a written request postmarked no later than 15 days after the date the offset notice was mailed. The request must briefly state the reasons for the dispute, identify supporting witnesses with knowledge and include or identify supporting documents.

(3) The reviewing officer may grant an extension or excuse a delay if the debtor shows good cause for late filing of a request.

(4) A debtor who fails to file on time, and either fails to get an extension or fails to meet the extended deadline, waives his or her right to review and may have the debt offset.

(5) The reviewing officer will advise the debtor and the Secretary in writing of the date the request was received and, if necessary, will request supporting documentation from the debtor and a copy of the debt file from the Secretary.

(6) The reviewing officer will limit review of the case to the issue raised by the debtor. The review may include personal contacts and informal conferences if documentary review is insufficient. A request by a debtor for an informal conference will be considered only if the review (or waiver) determination cannot be made without resolving an issue of credibility or veracity. The hearing officer will keep a summary record of informal conferences. The reviewing officer will issue, normally no later than 60 days after the request for review was filed, a written final decision based on the evidence of record and the applicable law.

(l) *Protection of the Government's interest.* Notwithstanding the provisions

of paragraphs (i) through (k) of this section, the Secretary may take immediate action to delay a lump sum or final payment to the debtor whenever such action is necessary to protect the Government's ability to recover the debt by offset. The amount withheld may not exeed the amount of the debt plus any accrued or anticipated interest, administrative cost charges and penalties. The Secretary shall promptly send the debtor the notice specified in paragraph (i) of this section. The Secretary may not take final action to effect offset of the debt from the withheld amount until the procedures required by paragraphs (i) through (k) have been exhausted. Te appropriate amount will be paid to the debtor as soon as practical after the debt, or a portion of the debt, is found not to be owed.

§ 30.16 Employee salary offset

(a) *Definitions.* For the purposes of this section:

(1) "Hearing" means either an evidentiary or an oral hearing. An evidentiary hearing means a review of the documentary evidence by a designated hearing officer. An oral hearing means an informal conference before a designated hearing officer.

(2) The "hearing officer" is an individual, not under the supervision of the Secretary, appointed by the Department Claims Officer or the Secretary to review and issue a final decision on an employee's dispute of a debt. The hearing officer may be an administrative law judge, an independent contractor of the Department or an employee of another Federal agency. An agency must comply with 4 CFR 102.1 and 5 CFR 550.1107 and provide a hearing officer when requested by another Federal agency.

(b) *Rule.* The Secretary may recover debts from current employees by asking the Pay Systems Division to deduct from the employee's pay pursuant to 5 U.S.C. 5514 and related statutes. "Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay. Deductions may not exceed 15 percent of the employee's disposable pay for any pay period, unless the employee agrees in writing to a larger deduction. The entire amount may be collected in one lump sum if the amount does not exceed 15 percent of disposable pay for the given pay period. Otherwise, an amount not to exceed 15 percent will be deducted from disposable pay each pay period until the entire debt and accrued interest, administrative cost charges and penalties are collected. Multiple debts will be offset in accordance with § 30.15(f). "Disposable pay" means the amount that remains from an employee's Federal pay after withholding of all deductions listed in 5 CFR 581.105(b) and any other deductions required by law (including, but not limited to, Federal State, and local income taxes: Social Security taxes, including Medicare taxes; garnishment for child support and alimony; and Federal retirement programs) as well as voluntary deductions for child support. Interest, administrative costs and penalties will be charged in accordance with § 30.13 and 30.14. If an employee retires, resigns, or is discharged, or if his or her employment or active duty otherwise ends, an amount necessary to satisfy the debt may be offset immediately from payments of any nature due the individual.

(c) *Exceptions.* (1) An employee does nto have a right to a hearing on a factual or legal dispute already decided on the merits by an administrative appeals board or a court of competent jurisdictions. When an employee disputes a lump sum or 15 percent salary deduction to collect a debt that has been affirmed by an administrative appeals board or a court that has not determined the method or schedule of repayment, the employee will be notified of his or her right to request a hearing limited to that issue in accordance with paragraph (f) of this section before offset is initiated.

(2) Debts arising under a Social Security Act program may be offset from current pay only with the employee's written consent. Consent is not necessary to offset these debts from final payments due to former employees or officers.

(3) This section does not apply to collections of overpayments caused by routine delays not exceeding four pay periods in processing deductions from pay when an employee elects or changes coverage under a Federal benefits program such as health or life insurance, which requires periodic deductions from pay. Employee's consent to deductions from pay whenever they elect or change coverage. Affected employees will receive a notice informing them of these retroactive adjustments to pay and the office to contact if the employee disputes the amount of the adjustment.

(4) Except as provided in paragraphs (b)(1) and (h), this section does not apply to offset from payments due an employee who has separated or is in the process of separating. Upon learning that an indebted employee has separated or initiated separation action, the Pay Systems Division will withhold final salary and lump sum payments in accordance with § 30.15 and, if final payments are insufficient to satisfy the debt, will request offset from the Civil Service Retirement and Disability Fund in accordance with 5 CFR Part 831, Subpart R and 4 CFR 102.4.

(5) This section does not apply where collection of a debt by salary offset is provided by or prohibited by a statute other than 5 U.S.C. 5514 (e.g. travel advances under 5 U.S.C. 5705, training expenses under 5 U.S.C. 4108).

(6) This section does not apply to recovery of a debt by a voluntary offset from pay.

(d) *Pre-offset requirements.* Before initiating offset from current pay, the Pay Systems Division will send the employee written notice of the following—

(1) The nature and amount of the debt;

(2) The agency intention to collect the debt by offsetting the lump sum or 15 percent of the employee's pay each pay period (stating the amount, frequency, proposed beginning date and duration of the deductions) unless the employee pays the debt or responds within 30 days from the date the notice was mailed to the employee;

(3) The interest, administrative cost charges and penalties that will or may be assessed under §§ 30.13 and 30.14 if the debt is not paid, or the employee has not consented to a lump sum offset from pay, within 30 days from the date the notice was mailed to the employee;

(4) The employee's right, if a previous opportunity was not provided, to request within 15 days from the date of mailing of the notice—

(i) Copies of agency records pertaining to the debt;

(ii) An alternative repayment schedule; or

(iii) A hearing concerning the proposed offset schedule or, except as provided in paragraph (b) of this section, the existence or amount of the debt;

(5) The employee's right, if any, to request waiver of the debt, interest and/or charges, citing the applicable statutory authority, request procedures and waiver conditions and the effect of the waiver request on collection of the debt, interest and charges by offset;

(6) The office, address and telephone number to whom the employee should address any inquiries or requests;

(7) The requirement that the hearing officer issue a decision at the earliest practical date, but no later then 60 days after the request for the hearing or review was filed unless the employee requested and was granted an extension;

(8) That any knowingly false or frivolous statements, representations or evidence may subject the employee to disciplinary action under 5 CFR Part 752 or any other applicable authority; or criminal or civil penalties under 18 U.S.C. 286, 287, 1001 and 1002 or 31 U.S.C. 3729–3731;

(9) Any other rights and remedies available to the employee under the statutes or regulations governing the program under which the debt is being collected; and

(10) That, unless otherwise provided by statute or contract, amounts collected and later waived or found not owed will be promptly refunded.

(e) *Alternative repayment proposal.* (1) An employee who objects to the proposed offset schedule, but does not wish a hearing or further review of the proposed collection must submit a written alternative offset or cash payment schedule and a statement with supporting documents, indicating in what way the proposed schedule would produce an extreme financial hardship for the employee, given the family's size, income, assets, liabilities, living expenses, and exceptional circumstances. The employee must submit his or her proposal to the Deputy Assistant Secretary for Personnel, Attention: Director, Office of Personnel Policy and Communications, within 15 days from the date that the notice of the proposed offset was mailed to the employee.

(2) The employee will receive written notice of the final administrative determination concerning the proposed offset schedule, including, if the employee's proposal is rejected, notice that offset will begin 20–30 days after the date of mailing of this notice and that the employee may, within 15 days from the mailing date of the notice submit a request for a hearing or waiver, if available, to the indicated person or office.

(f) *Hearings.*—(1) *Request.* An employee may request a hearing to dispute the administrative determination of the existence or amount of the debt or the proposed offset schedule before the initiation of collection by offset. A written request must be submitted to the Department Claims Officer, Assistant General Counsel, Business and Administrative Law Division, U.S. Department of Health and Human Services, Washington, D.C. 20201, postmarked no later than 15 days from the date the notice was mailed to the debtor. The request must be signed by the employee, briefly state the employee's reasons for disputing the collection of the debt, and identify supporting facts, witnesses, and documents. The Department Claims Officer will acknowledge receipt of the request. The Department Claims Officer may appoint or instruct the appropriate Operating Division or regional office to appoint a hearing officer. The Department Claims Officer may grant an extension or excuse a delay if the employee shows good cause for late filing of a request for a hearing. Ordinarily, a reasonable extension will be granted if the employee shows that the delay was caused by circumstances beyond his or her control or because he or she did not receive notice, and was not otherwise aware of the time limit. An employee who fails to meet the filing deadline or to request an extension waives his or her right to a hearing. The Department Claims Officer will so notify the employee in writing and will instruct the Pay Systems Division to proceed with payroll deductions.

(2) *Type of hearing.* The hearing will normally be an evidentiary hearing, unless the hearing officer determines that a decision cannot be made without resolving an issue of credibility or veracity, in which case the hearing officer will provide for an oral hearing.

(3) *Date and place of oral hearing.* The oral hearing will normally be held no later than 30 days from the date of receipt of the hearing request. The hearing officer will give the debtor and the Secretary at least 10 days prior notice of the hearing date, time, place, procedures and issues. The hearing officer, for good cause, may grant the parties each one request to change the hearing date and reschedule the hearing for the earliest practical date. To the extent feasible the hearing will be held at a location convenient to the employee.

(4) *Oral hearing procedures.* The hearing officer will:

(i) Makes a summary record of the hearing;

(ii) Decide the order of hearing the evidence;

(iii) Allow the employee and the agency to introduce relevant evidence not previously submitted and call and cross examine witnesses;

(iv) Allow the employee and the agency to be represented by counsel; and

(v) Limit review of the case to the particulars of the agency determination challenged by the debtor.

(g) *Decision of hearing officer.* The hearing officer will issue a written decision no later than 60 days after the request for a hearing [or a paper review] or the request for an extension was filed. The decision will, at a minimum, state the relevant facts, include the hearing officer's analysis, findings and conclusions based on the issues and, if unfavorable to the employee, inform the employee of any other available rights or remedies.

(h) *Offset pending review.* An employee's pay will not be involuntarily withheld to satisfy the debt pending a review or a hearing (but see charges assessed at § 30.14), unless the individual's employment has terminated or is about to terminate. Unless a statute or contract provides otherwise, any amounts collected and later waived or found not owed will be promptly refunded without interest to the employee.

(i) *Deductions.* Unless it has accepted an alternative repayment arrangement, the Pay Systems Division may begin to collect the employee's debt by salary deductions 30 days after the date the notice of the proposed action was mailed to the employee if no review or hearing is pending, or as soon as practical after a hearing officer's decision affirming the debt.

(j) *Interagency Offsets.*—(1) *Employees of other departments or agencies.* In attempting to collect a debt from an employee of another Federal agency by deduction from the debtors' pay, the Secretary will follow the procedures set forth in this section. When those procedures are exhausted, a written request of offset will be submitted to the employing agency using the claim form specified by the Office of Personnel Management (OPM). The request will—

(i) Certify that the debt is valid;

(ii) Certify the amount and basis of the debt;

(iii) Certify the date the Government's right to collect the debt first accrued;

(iv) Certify that this section, which implements 5 U.S.C 5514, has been approved by OPM;

(v) Either—

(A) Certify that the procedures required by this section have been complied with;

(B) Include the employee's written consent to the offset or acknowledgement of receipt of the required procedures; or

(C) If the debt is reduced to judgment, include a copy of the court judgment; and

(vi) Indicate whether collection is to be made in a lump sum or by installments and the number, amount and beginning date of the installments.

(2) *Debts owed by employees to other Federal agencies.* (i) The Pay Systems Division may deduct from an employee's pay a debt owed to another Federal agency in accordance with paragraph (b) of this section. The creditor agency

must submit the properly certified claim form described in paragraph (j)(1) of this section. An incomplete form will be returned to the creditor for further action under 5 U.S.C. 5514 and 5 CFR Part 550. No deductions will be made until a properly completed claim form is received.

(ii) Before initiating deductions, the Pay Systems Division must send the employee a letter:

(A) Transmitting a copy of the creditor agency's request;

(B) Notifying the employee of the proposed action;

(C) Instructing the employee to contact the creditor agency regarding payment or any dispute of the debt, the certification or the proposed collection; and

(D) Informing the employee of the date that deduction will begin (which should be at the next officially established pay interval) and that deductions will continue until the debt is paid unless the creditor agency directs otherwise.

(iii) The creditor agency must resolve any disputes concerning the debt or the offset and promptly inform the Department of any circumstances affecting the collection by offset. The Department may not review the merits of the creditor agency's decisions.

(iv) The Pay Systems Division may temporarily withhold lump sum or final leave payments to an employee who is in the process of separating or to a former employee for no more than 30 days beyond normal processing time periods pending the creditor agency's certification and proof of compliance with 5 U.S.C. 5514(a)(2).

(v) If the employee subject to salary offset is in the process of separating, and is entitled to payment from the Civil Service Retirement and Disability Fund, the Pay Systems Division will send OPM a copy of the creditor agency's original offset request. If the employee transfers to another Federal agency, the Pay Systems Division will certify in writing the total amount collected on the debt and send one copy of the certification to the employee and another to the creditor agency, with notice of the transfer. A copy of the certification, along with the creditor agency's original offset request will be inserted in the employee's official personnel folder.

(vi) When a new Department employee transfers from another Federal agency and the employee's official personnel folder contains a creditor agency's offset request to the former employing agency and the former employing agency's certification of the amount of the debt already collected, the Pay Systems Division will resume collection by offset. If either item is missing, the creditor agency must comply with paragraph (j)(2)(i).

(3) *Limitation.* The Secretary may not initiate salary offset to collect a debt owed to another agency, or request offset from the pay of an employee of another agency to collect a debt owed to this Department, more than ten years after the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the responsible claims collection officer. Accrual is defined in § 30.15(g)(1).

(k) *Non-waiver of employee rights by payment.* Unless a statute or contract provides otherwise, an employee does not waive any rights under 5 U.S.C. 5514 or any other law or contract by paying all or part of a debt by offset or cash payment.

§ 30.17 Use of credit reporting agencies.

(a) *Overdue debts.* (1) The Secretary will report overdue debts over $100 owed by individuals and all debts over $100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies. Except as provided in paragraph (a)(3), debts which arise under the Social Security Act may be reported under this section.

(2) Debts owed by individuals, except debts arising under the Social Security Act, will be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Secretary must first give the individual, but not the corporate debtor at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address and social security number, and the nature, amount, status and history of the debt.

(3) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts of beneficiaries under Titles II and XVI of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit reporting agencies subject to the conditions stated in paragraph (a)(2), except that such disclosure would be as a routine use under 5 U.S.C. 552a(b)(3), rather 552a(b)(12).

(b) *Credit reports and locator services.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants and potential contractors and grantees; to obtain credit reports when collecting or disposing of debts to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, Social Security number and the purpose for which the information will be used.

(c) Disclosures pertaining to individuals may be made to credit reporting agencies only from the primary systems of records containing information about the debt or the loan, contract or grant application.

(d) Addresses obtained from the Internal Revenue Service may be disclosed to credit reporting agencies only to obtain credit reports (see § 30.21).

§ 30.18 Contracting for collection services.

(a) *Rule.* Except as provided in paragraph (b)(2), the Secretary may contract for collection services to recover outstanding debts. Except as provided in paragraph (b) of this section, the contractor's fee may be paid from the amounts collected, from funds specifically available for that purpose, or from a revolving fund. The amount of the fee must be consistent with prevailing commercial practice. The Secretary may contract for collection services only if reasonable in-house collection efforts and remedies were, or are likely to be, unsuccessful; and the total amount of anticipated recoveries exceeds the total cost of the contract and incidental expenses. The Secretary must retain the authority to resolve disputes, compromise debts, terminate collection action (or recommend such action to the Department of Justice) and refer debts to the Department of Justice for litigation. Contracts for collection services must conform to the standards set forth in the Federal and Departmental Acquisitions Regulations at 48 CFR Chapters 1 and 3. The Secretary may disclose to the contractor the information about debtors necessary to accomplish the purpose of the contract. The contractor must provide any data from its files relating to the account to the Secretary upon request or upon return of the account. The contractor will be subject to the Privacy

Act of 1974, as amended, as specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations regarding debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor will be strictly accountable for all amounts collected.

(b) *Social Security Act Debts.* (1) A contractor's fee for collecting debts arising under the Social Security Act may be paid from any funds available for that purpose, but not from the amounts collected unless those amounts belong to a revolving fund.

(2) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, debts owed by beneficiaries under Titles II and XVI of the Social Security Act will not be referred to private collection agencies for collection.

§ 30.19 Liquidation of collateral.

If the Secretary holds a security instrument with a power of sale or has physical possession of collateral, the Secretary will liquidate the security or collateral when cost-effective and apply the proceeds to an overdue debt. The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds; and will comply with any other requirements under law or contract.

§ 30.20 Installment payments.

The Secretary may enter into a written agreement with a debtor for payment of a debt in regular installments if the debtor is financially unable to pay in one lump sum. The debtor must submit sufficient information to determine his or her ability to pay. See §§ 30.15(j) and 30.16(e). The size and frequency of the payments will reasonably relate to the size of the debt and the debtor's present and future ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less, and include a security or confess judgment provision. The full balance, including accrued interest, charges and penalties, will be immediately due and payable if the debtor defaults on any installment made pursuant to a repayment agreement. When a debtor owes several debts and does not designate how an installment payment should be applied as among the various debts, the payment will be applied according to the best interests of the Government.

§ 30.21 Taxpayer information.

(a) The Secretary may enter into reimbursable agreements with the Internal Revenue Service in accordance with IRS Revenue Procedure 83–29, 26 CFR 601.702, to obtain the current mailing addresses of debtors and to find out whether applicants under included Federal loan programs have overdue tax accounts.

(b) "Included Federal loan program" means any program under which the Department makes, guarantees or insures loans and which appears in the current list of included Federal loan programs published by the Director of the Office of Management and Budget in the **Federal Register**. An applicant for a loan under an included Federal loan program administered by the Department must furnish his or her taxpayer identification number, which, for an individual, means the Social Security number.

(c) Tax delinquency information may not be redisclosed or used for any other purpose. Addresses obtained from the Internal Revenue Service may be used by the Department, its officers, employees, agents or contractors and other Federal agencies to collect or dispose of debts, but may be disclosed to consumer reporting agencies only to obtain credit reports, unless otherwise independently verified.

§ 30.22 Army hold-up list.

The Secretary may use the Army hold-up list to report indebted contractors to the Department of the Army for inclusion in the list and to check whether a prospective contractor is indebted to another agency. The reported information will be limited to the contractor's name, address and taxpayer identification number if available, and the amount of the debt. The Secretary will promptly report any partial or full satisfaction or waiver of a reported debt and will screen the hold-up list periodically and request removal of any debt of less than $1,000 that has been on the list for over twelve months.

Subpart C—Compromise of Claims

§ 30.23 Compromise rule.

The Secretary may attempt to dispose of debts, including accrued interest, charges and penalties, by compromise settlement whenever its ability to collect the full amount is uncertain because of the debtor's financial status or the litigation risks or because enforced collection would not be cost-effective. When the outstanding principal amount of the debt exceeds $20,000 and the debtor has exhausted all Departmental administrative remedies, the debt may be compromised only with the approval of the Department of Justice.

§ 30.24 Exceptions.

The Secretary may not compromise debts—

(a) Which arise out of exceptions made by the General Accounting Office in the accounts of accountable officers (only the General Accounting Office has authority to compromise such debts); or

(b) Where there is an indication of fraud, the presentation of a false claim or misrepresentation by the debtor or any other party having an interest in the claim, or where the claim is based on conduct in violation of antitrust laws (Only the Department of Justice has authority to compromise or terminate collection of these claims.)

§ 30.25 Inability to collect the full amount.

(a) The Secretary may compromise a debt if the full amount cannot be collected because the debtor—

(1) Is unable to pay the full amount within a reasonable time; or

(2) Refuses to pay the full amount and the Government is unable to enforce full collection within a reasonable time.

(b) *Ability to pay.* In determining a debtor's ability to pay, the Secretary may consider the age and health of the individual debtor; present and future income and assets; and the possibility of an improper transfer or concealment of assets by the debtor.

(c) *Amount of compromise.* The amount of the compromise will reasonably relate to the amount recoverable by enforced action, considering such factors as State or Federal exemptions available to the debtor, and the price that collateral will bring at a forced sale.

(d) *Installments.* Compromises will be paid in one lump sum whenever possible. Payment by installments may be accepted on a case-by-case basis bearing in mind the conditions specified in § 30.20.

(e) *Credit information.* If reasonably up-to-date credit information to evaluate a compromise proposal is not available the Secretary may obtain credit reports from credit reporting agencies or a statement from the debtor executed under penalty or perjury showing the debtor's assets and liabilities, income and expenses.

§ 30.26 Litigative probabilities.

The Secretary may compromise a debt if the Government's ability to prove its case in court for the full amount claimed is doubtful either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in

compromise in such cases should fairly reflect the probability of prevailing on the issues and the prospects for full or partial recovery of a judgment, paying due regard to the availability of evidence and witnesses, and related pragmatic considerations.

§ 30.27 Cost of collecting claim.

The Secretary may compromise a debt if the cost or deterrence value of collection do not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into account the time which it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small debts, but not normally in the settlement of large debts.

§ 30.28 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if not prohibited by law and consistent with the agency's enforcement policy.

§ 30.29 Joint and several liability.

When two or more debtors are jointly and severally liable, a compromise with one debtor will not release the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount which will be required from other debtors jointly and severally liable on the debt.

§ 30.30 Further review of compromise offers.

A debtor's firm written offer of compromise for a substantial amount may be referred to the General Accounting Office or to the Department of Justice when the acceptability of the offer is in doubt. (See § 30.37).

§ 30.31 Restriction.

The Secretary may not accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a debt.

Subpart D—Termination or Suspension of Collection Action

§ 30.32 Termination rule.

(a) The Secretary may terminate collection activity and write off a debt, including accrued interest, charges and penalties if the outstanding principal does not exceed $20,000 and:

(1) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's ability to pay (see § 30.25(b)) and the exemptions available to the debtor under State and Federal law;

(2) The debtor canot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;

(3) The cost of further collection action is likely to exceed the recoverable amount;

(4) The basis for the claim has proved to be unsupportable; or

(5) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable.

(b) As required by section 61(a)(2) of the Internal Revenue Code, income arising from the discharge in whole or in part of a debt is to be included in the debtor's gross income for the year in which the debt is discharged. The Secretary will report to the Internal Revenue Service, using Form 1099G, any amount over $600 which becomes uncollectible because the applicable statute of limitations expires or because the Government agrees with the debtor to forgive or compromise a debt. An amount which is in dispute, which is discharged under Title 11 of the Bankruptcy Act or which arises out of an overpayment which was already taxed, will not be reported. See IRS Instructions for Form 1096 and Revenue Procedures 83–48 for further instructions.

§ 30.33 Exceptions.

(a) The Secretary may suspend, rather than terminate collection of a debt that arises out of its activities if the outstanding principal does not exceed $20,000 and the Government cannot collect or enforce collection of any significant sum from the debtor (*e.g.*, the debtor cannot be located or is financially unable to pay), but the prospects of further collection are promising enough to justify periodic review of the debt, and there is no statute of limitations problem. Interest will accrue under § 30.13(a).

(b) Where a significant enforcement policy is involved, the Secretary will, instead of terminating or suspending collection, refer debts to the Department of Justice for litigation.

Subpart E—Referrals to the Department of Justice or GAO

§ 30.34 Litigation.

(a) Debts over $600 that cannot be collected or othewise disposed of by the Secretary or its agents will be referred to the appropriate United States Attorney (if the amount does not exceed $100,000) or the Civil Division of the Department of Justice (if the amount exceeds $100,000) for litigation. Each referral will include all pertinent information, including:

(1) The most current address of the debtor or the name and address of the agent for a corporation upon whom service may be made;

(2) Reasonably current credit data in the form of a credit report or a financial statement showing reasonable prospects of enforcing collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government; and

(3) A summary of prior collection efforts. Credit data may be omitted if a surety bond, insurance, or the sale of collateral will satisfy the claim in full; or the debtor is in bankruptcy or receivership, or is a unit of State or local government.

(b) Debts of $600 or less, exclusive of interest and charges, may be referred for litigation if a significant enforcement policy is involved or the debtor is clearly able to pay and the Government can effectively enforce payment.

§ 30.35 Claims over $20,000.

The Secretary may compromise or suspend or terminate collection of debts where the outstanding principal exceeds $20,000 only with the approval of, or referral to, the appropriate United States Attorney (if the debt does not exceed $100,000) or the Department of Justice (if the debt exceeds $100,000).

§ 30.36 GAO exceptions.

The Secretary will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 30.37 Other referrals.

Debts over $25, where the merit, the amount or the propriety of a compromise, suspension or termination cannot be resolved by the Secretary will be referred to GAO or to the Department of Justice for advice or final disposition.

[FR Doc. 85–10571 Filed 5–1–85; 8:45 am]

BILLING CODE 4150–04–M

Social Security Administration

45 CFR Part 201

Office of Family Assistance; Grants to States for Public Assistance Programs

AGENCY: Office of Family Assistance, Social Security Administration, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services proposes to revise its regulation governing grants to States for public assistance programs under the Social Security Act so that it may conform to the proposed amendments to the Department's Claims Collection Regulation, 45 CFR Part 30, published in this same issue of the **Federal Register**. Section 201.66 governs the States' repayment by installments of debts to the Department arising from audit disallowances under Titles I, IV-A, X, XIV, XVI (AABD) or XIX of the Social Security Act. Paragraph (b)(8) of § 201.66 provides that the Department will not charge the States interest on repayments made under this section unless mandated by court order. The Department proposes to remove this provision.

DATE: Comments must be received on or before July 1, 1985.

ADDRESS: Comments may be mailed to Darrel J. Grinstead, Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sarah Hertz or Clara Garcia, 202-475-0155.

SUPPLEMENTARY INFORMATION: By providing that States will not be charged interest on repayments to the Federal Government under 45 CFR 201.66, paragraph (b)(8) of this section conflicts with the Department's policy regarding interest charges on outstanding debts. This policy is set forth in the proposed amendments to 45 CFR Part 30.

Section 201.66(b)(8) bestows upon the affected debtors a benefit that will not be available to other debtors of this Department. Under the Department's proposed Claims Collection Regulation at 45 CFR Part 30, all debtors will be required to pay interest on debts that are not paid promptly unless a statute provides otherwise, or certain other criteria specified in 45 CFR Part 30.15 are present. A decision not to charge interest on debts that are repaid under 45 CFR 201.66 should be based on the same criteria. A blanket exemption is not justified. Paragraph (b)(8) was not issued pursuant to a statute prohibiting the charging of interest on the covered debts.

Therefore, in the interest of fairness and consistency, we propose to remove Paragraph (b)(8) of 45 CFR 201.66.

E.O. 12291

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 201

Administrative practice and procedure, Claims, Public assistance.

November 15, 1984.

Margaret M. Heckler,

Secretary.

PART 201—[AMENDED]

For the reasons set forth in the preamble, we propose to amend 45 CFR Part 201 as follows:

§ 201.66 [Amended]

In § 201.66, paragraph (b)(8) is removed.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[FR Doc. 85-10572 Filed 5-1-85; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[CC Docket No. 85-117; FCC 85-195]

Elimination of Annual Report of Holding Companies (FCC Form H)

AGENCY: Federal Communications Commissions.

ACTION: Proposed rule.

SUMMARY: The Commission is considering elimination of the Form H, which is the annual report filed by holding companies that do not file copies of the Securities and Exchange Commission Form 10-K. This recordkeeping and reporting requirement is proposed for elimination because it has been tentatively decided that it is no longer needed for the Commission's regulatory purposes. The elimination of this requirement would reduce common carrier recordkeeping and reporting burdens.

DATES: Comments are due on or before June 21, 1985. Reply Comments are due on or before July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Industry Analysis Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

Proposed Rulemaking

In the matter of Elimination of Annual Report of Holding Companies (FCC Form H); CC Docket No. 85-117.

Adopted April 18, 1985.
Released April 25, 1985.

By the Commission.

Introduction

1. Sections 1.785 and 43.21 of the Commission's Rules, 47 CFR 1.785, 43.21, require holding companies of communications common carriers to submit annual reports. In this Notice of Proposed Rulemaking (Notice) the Commission proposes to eliminate from these sections a reporting requirement that is unnecessary and burdensome. Specifically, we propose to eliminate the holding company annual FCC Form H.[1]

2. Companies that are not common carriers and that directly or indirectly control communication common carriers having annual revenues in excess of $2,500,000, are required to file with this Commission two copies of the Form 10-K, which is prescribed by the Securities and Exchange Commission (SEC). However, if no such report is filed with the SEC, such company must file an FCC From H. The Form H is a forty-five page report that contains detailed information on the stock and stockholders; officers and directors; funded debt; property, franchises, and equipment; employees and their salaries; and financial operations of the reporting companies.

Discussion

3. Our primary concern is having sufficient information to fulfill our statutory obligations with respect to the carriers that we regulate. It is only because of our responsibilities regarding these carriers that we require information pertaining to their parent companies. A regulated company's annual report, in conjunction with the regulated company's ultimate parent Form 10-K, provides enough information to satisfy most of our needs. Even if the ultimate parent does not file a Form 10-K with this Commission, we can still require detailed data if the need arises.

4. The Form H reports have only been used on an infrequent and limited basis.

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[1] Three companies filed Form H for 1983. They were American Cable and Radio Corporation, FI Holdings, Inc. and U.S. Telephone and Telegraph Corporation. Four other carriers requested and received waivers of the Form H filing requirement. They were Pacific Telcom, Inc., Willamette Development Corporation, Pacom, Inc., and MCI International, Inc.

Waivers of the filing requirement have been granted in the past because we agreed that the report was duplicative of other information of file with this Commission and extremely burdensome to complete. Much of the information is no longer necessary for regulatory purposes and is produced by the holding companies only to meet our reporting requirement. Therefore, we believe this annual multi-level reporting requirement calls for substantially more information than we need to fulfill our regulatory responsibilities.

5. Furthermore, Form H has never had a substantial revision since its inception in the 1930's. If we continue to require this report, it would need a complete updating and revision.

6. Eliminating the Form H does not preclude the Commission from directing holding companies to file detailed information should the need arise. We think that the Commission's continued needs for data can be adequately served in a more efficient manner. When necessary, special data requests can be tailored to specific needs. Since there is no recurring use of this data, special studies will eliminate the need for all companies to submit annually. This will not only reduce the costs to holding companies, it will also reduce the Commission's costs associated with redesigning, printing, mailing, reviewing and analyzing the reports.

Conclusion

7. The Commission believes that the elimination of this recordkeeping and reporting requirement would be in support of the Paperwork Reduction Act of 1980.[2] Under this Act an agency is required to review its Rules and Regulations and determine whether they are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Commission, as mentioned above, believes that the recordkeeping and reporting requirement discussed in this Notice is no longer needed for its regulatory purposes. Therefore, an elimination of this requirement would be in compliance with the Peperwork Reduction Act of 1980.

8. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the annual report of holding companies (FCC Form H) will not have a significant economic impact and will ease the recordkeeping and reporting requirements of large and small carriers. The rationale for the proposed elimination is outlined in the above discussions.

9. For purposes of the non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a pubic notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

10. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

11. Accordingly, it is ordered, That pursuant to the provisions of section 4(i) and 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220 and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

12. It is further ordered, that all interested persons may file comments on the specific proposals discussed in the Notice on or before June 21, 1985. Reply comments shall be filed on or before July 12, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW., Washington, D.C.

13. It is further ordered, that pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i) That the Secretary shall cause a copy of this Notice to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-10596 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

[2] 44 U.S.C. 3501 *et seq.*

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47 CFR Parts 1 and 43

[CC Docket No. 85-118; FCC 85-194]

Elimination of Monthly Consolidated System Report 901

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is considering elimination of the Consolidated System Report 901, which is the monthly report filed by companies controlling a system of two or more telephone communications common carrier subsidiaries, all of which are subject to the Commission's Rules. This recordkeeping and reporting requirement is proposed for elimination because it has been tentatively decided that it is no longer needed for the Commission's regulatory purposes. The elimination of this requirement would reduce common carrier recordkeeping and reporting burdens.

DATES: Comments are due on or before June 21, 1985. Reply Comments are due on or before July 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Industry Analysis Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

Proposed Rulemaking

In the matter of Elimination of Monthly Consolidated System Report 901: CC Docket No. 85-118.

Adopted April 18, 1985.
Released April 25, 1985.
By the Commission.

Introduction

1. Sections 1.786 and 43.31 of the Commission's Rules, 47 CFR 1.786, 43.31, require holding companies of communications common carriers to submit monthly reports. In this Notice of Proposed Rulemaking (Notice) the Commission proposes to eliminate from these sections a reporting requirement that is no longer necessary. Specifically, we propose to eliminate the telephone company monthly consolidated system Report 901.[1]

2. Companies controlling a system of two or more telephone communications common carrier subsidiaries are required to file FCC Report 901 on a consolidated system basis if all of the subsidiaries are subject to the Commission's Rules. Report 901 is submitted monthly on computer punch cards and contains summary information on operating revenues, expenses, taxes, other operating and income items, messages, and selected balance sheet items.

Discussion

3. Section 43.31 requires holding companies controlling two or more telephone companies, both or all of which are subject to our Rules, to file FCC Report 901 on consolidated system basis. Prior to divestiture, the Commission received only one consolidated Report 901—from American Telephone and Telegraph Company (AT&T). It served as a valuable summary of the Bell System since AT&T eliminated intercompany duplications between itself and its principal subsidiaries.

4. The consolidated system 901 reports have not been of significant value to the Commission since the break-up of the Bell System. At that time, we stopped receiving a consolidated Bell System 901 and began receiving reports from six of the seven regional holding companies. For the most part, the consolidated system 901 reports that are currently filed are nothing more than a summation of the 901 reports filed by the holding companies' respective telephone companies. Eliminating this filing requirement would not cost this Commission any information loss since we could generate it ourselves if and when it becomes necessary. It would also save the Commission the costs associated with receiving the data, installing it on the Commission's computer, printing, reviewing, and mailing the computer generated reports back to the carriers.

Conclusion

5. The Commission believes that the elimination of this recordkeeping and reporting requirement would be in support of the Paperwork Reduction Act of 1980.[2] Under this Act an agency is required to review its Rules and Regulations and determine whether they are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Commission, as mentioned above, believes that the recordkeeping and reporting requirement discussed in this Notice is no longer needed for its regulatory purposes. Therefore, an elimination of this requirement would be in compliance with the Paperwork Reduction Act of 1980.

6. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the monthly consolidated system Report 901 will not have a significant economic impact and will ease the recordkeeping and reporting requirements of all subject carriers. The rationale for the proposed elimination is outlined in the above discussions.

7. For purposes of the non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

8. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

9. Accordingly, it is ordered, that pursuant to the provisions of section 4(i) and 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220, and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

10. It is further ordered, that all interested persons may file comments on the specific proposals discussed in the Notice on or before June 21, 1985. Reply comments shall be filed on or before July 12, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW., Washington, D.C.

11. It is further ordered, that pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i) that the Secretary shall cause a copy of this Notice to be served on each state commission.

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[1] Six regional Bell Holding Companies file monthly consolidated system Report 901s. Other telephone companies that file FCC Report 901 on a monthly basis do not file a consolidated report. In some cases, like Southwestern Bell, the requirement does not apply because they control only one common carrier and in other cases, like GTE, not all of their subsidiaries are subject to FCC Rules.

[2] 44 U.S.C. 3501 *et seq.*

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 85-10595 Filed 5-1-85; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5-67]

Source Selection

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, that will establish procedures and provide guidelines for source selection in competitively negotiated acquisitions. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATES: Comments are due in writing not later than June 3, 1985.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Office of GSA Acquisition Policy and Regulations, (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Impact

The proposed rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed regulation provides procedures and guidelines for use by GSA contracting officers in the evaluation of proposals. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subject in 48 CFR Ch. 5

Government procedure.

(40 U.S.C. 486(c))

Dated: April 10, 1985.
Ida M. Ustad,
Acting Director, Office of GSA Acquisition. Policy and Regulations.
[FR Doc. 85-10717 Filed 5-1-85; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Ch. V

[NHTSA Docket No. T84-01; Notice No. 3]

Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice publishes, for review and comment, data on passenger motor vehicle thefts that the agency has obtained from the National Crime Information Center (NCIC) and the National Automobile Theft Bureau (NATB). One of these sources of data will be used for the purpose of determining the theft rates for existing passenger motor vehicle lines manufactured in 1983 and 1984 and for determining the median theft rate for all of those lines. Lines with a theft rate in those two years that exceed the median rate would be subject to selection for coverage under the theft prevention standard. The agency contemplates using the NCIC data to make these determinations.

DATE: Comments are due on or before June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Director, Office of Market Incentives, Room 5313, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

(a) Background

This notice publishes theft data to aid in implementing Title VI of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). That title was added to the Cost Savings Act by the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547) (Theft Enforcement Act). Title VI requires the National Highway Traffic Safety Administration (NHTSA), by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard for the identification of major parts of new vehicles and of major replacement parts by inscribing or affixing numbers or symbols to such parts. Section 602 of the Cost Savings Act requires that manufacturers mark parts on "high theft lines" only.

The theft data would be used by the agency in identifying one category of high theft lines subject to the standard. That category includes those existing lines, i.e., lines introduced before January 1, 1983, that had a theft rate in the 1983 and 1984 calendar years exceeding the median theft rate for all new passenger motor vehicle thefts in such 2 year period. Section 603(a)(1)(A). To determine the median theft rate and the theft rate for each existing passenger motor vehicle line, section 603(b)(3) requires the NHTSA to "obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment." (Other categories of high theft lines will be selected under criteria and procedures to be established in separate rulemaking proceedings.)

The agency also plans to use these data in its 3- and 5-year reports to Congress, required by section 614, on the effectiveness of the standard in preventing motor vehicle theft.

(b) Sources of Theft Data

The theft data published in this notice were obtained from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI) and from the National Automobile Theft Bureau (NATB). These data are published in tables 1 and 2, respectively. These sources were selected by the agency because they are, as the House Report relating to Title VI notes, the two national, comprehensive sources of theft data. H. Rep. No. 1087, 98th Cong., 2d Sess. at 14 (1984) (hereinafter cited as H. Rep.). This conclusion was further supported by comments made at the December 1984 Public Meeting held by the agency on Title VI.

There are several differences between the NCIC and NATB systems that bear upon the agency's selection of the source to be used for implementing the standard. The NCIC system is a government system which receives vehicle theft information from nearly 23,000 police agencies throughout the United States. Reporting to the NCIC is at the discretion of these state and local enforcement agencies. The NATB system, conversely, is operated by a private agency supported by approximately 600 property-casualty insurance companies. Most of its data are obtained from the individual insurance companies, although two states presently report thefts to the NATB. NATB data reflect stolen,

insured vehicles that are not recovered within the first 48 hours from the time of the vehicle theft report.

NHTSA has tentatively chosen to use the NCIC data to determine the median theft rate and the theft rates of individual passenger car lines, for reasons, set forth below. The agency solicits comments on this decision.

In selecting the NCIC data, the agency took into consideration the expressed Congressional preference for use of government data for the purposes of Title VI, H. Rep. at 15. The agency also based its selection on two advantages which the NCIC system has over the NATB system. The NCIC system includes self-insured and uninsured vehicles and does not have the 48 hour recording delay of the NAIB.

The agency notes that in the House Report relating to Title VI, Congress as well as some private parties had questions concerning the utility, at least initially, of the NCIC data. Public comments, particularly the discussion at the public meeting and with NCIC officials, have led the agency to tentatively conclude that it can successfully implement and monitor the theft prevention standard using NCIC data.

(c) Selection of Vehicle Lines

In preparing the figures in this notice for the theft rates for the various lines, NHTSA tentatively concluded that it should classify as a single "line," for the purposes of the theft prevention standard, all differently styled vehicles bearing the same nameplate. Several factors support this decision. First, section 601(2) of the Cost Savings Act defines "line" as "a *name* which a manufacturer applies to a group of motor vehicle models of the same make . . ." (emphasis added). Second, section 603(b)(1) directs the agency to use figures reported to the Environmental Protection Agency (EPA) to determine production volumes. These data are not broken down beyond the nameplate level. Third, the examples of car lines provided in the House Report identify lines by nameplate. H. Rep. at 10. The agency solicits comments on this tentative decision regarding classification.

The agency identified most of the vehicle lines by using the model type designations compiled by EPA in its final Fuel Economy Guide listings under Title V of the Cost Savings Act. Because small volume manufacturers sometimes introduce vehicle lines late in the calendar year and therefore are not included by EPA in its final Fuel Economy Guide listings, NHTSA added models produced by manufacturers and certified by EPA for sale after publication of the final Guide to the list of lines taken by this agency from the Guide.

Because the definition of "existing lines" in section 601(3) includes only lines introduced into commerce before January 1, 1983, the agency examined sales data and requested manufacturers to provide introduction dates to determine which lines first manufactured in model year 1983 were actually introduced prior to January 1, 1983. The agency requests comments on the accuracy of these determinations.

Reading together sections 601(3) and 603(b)(5), regarding the definition of "new motor vehicle thefts," the agency has determined that Congress intended the agency to calculate theft rates only for those existing lines for which there are two full years of theft data. The list in this notice is comprised of vehicles manufactured in both model years 1983 and 1984, with one exception. It also includes the Chevrolet Corvette even though that vehicle was not produced as a model 1983 vehicle. Notwithstanding the interruption in the sequence of model year designations, the agency believes that inclusion of this line is appropriate since production of the Corvette continued throughout that period.

(d) Calculation of Theft Rates

Section 603(b)(1) of the Cost Savings Act sets forth the equation for calculation of vehicle theft rates. The theft rate for each existing vehicle line is determined by a fraction, whose numerator is the number of thefts of model years 1983 and 1984 vehicles of that line during calendar years 1983 and 1984, and whose denominator is the sum of the production volumes for that line in model years 1983 and 1984.

NHTSA applied this formula to each existing line to tentatively determine each line's theft rate. The agency then ranked the lines by such theft rates to calculate the median theft rate, which section 603(b)(2) defines as the theft rate midway between the highest and lowest theft rates. NHTSA understands Congress' intent to be that the median theft rate be the one that divides the existing lines into two equal groups. Since there are 130 existing lines, 65 lines would fall above the median rate and 65 below that rate. Lines with theft rates exceeding the median rate are "high theft lines" under section 603(a)(1)(A). The agency will select these lines for coverage under the theft prevention standard unless the section 603(a)(3) limitation applies. That section provides that the total number of existing lines and of new lines introduced on or after January 1, 1983 and before the effective date of the standard may not exceed 14.

NATB provided theft data by make and model for 1983 and 1984 model and calendar years. To categorize the NCIC theft data by make and model, NHTSA used the Highway Loss Data Institute's VINDICATOR computer program. This step was necessary because, although the NCIC maintains a listing of stolen vehicle VINs, it does not at this time comprehensively classify these VINs by make and model. Further, NHTSA determined the number of thefts for small volume manufacturers that are not included in the VINDICATOR program by obtaining VIN listings from these manufacturers and comparing them through a computer program with the NCIC list of stolen vehicle VINs.

As mandated by section 603(b)(1), the agency used vehicle production numbers that manufacturers submit to EPA for fuel economy purposes under Title V of the Cost Savings Act. In some instances, final, certified EPA production numbers are not yet available. In such cases, the agency obtained production figures through individual manufacturers, where possible, and through production estimates from mid-model year manufacturers' fuel economy reports. The agency believes the latter figures are accurate because the reports are filed very near to the end of the normal model year. The agency requests comments on the accuracy of these figures. The tables express the theft rates in the form of thefts-per-thousand vehicles for better clarity.

(e) Theft Rankings

The agency has tentatively ranked all existing vehicle lines in descending order by theft rate. Using NCIC data, the agency derived theft rates for all existing lines. Because NATB categorizes "lines" differently than NCIC and EPA and because NATB does not have information for many small volume manufacturers, NHTSA could not calculate theft rates for some lines using NATB data. The accompanying tables indicate this inability to calculate a theft rate by the designation "N/A" in the theft rate column for the particular line.

The agency solicits comments on the accuracy of the data and the methodology it used in determining the ranking of existing passenger motor vehicle lines.

Authority: Sec. 101, Pub. L. 98-547, 98 Stat. 2754 (15 U.S.C. 2021); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on April 29, 1985.

Barry Felrice,
Associate Administrator for Rulemaking.

TABLE I.—F.B.I.

	Manufacturer	Make model (line)	Thefts (FBI) 1983	Thefts (FBI) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Combined thefts/product (1983 and 1984) (1000)
1	General Motors	Buick Riviera	726	966	48908	56094	16.1140
2	Toyota	Celica Supra	404	431	26147	29990	14.8743
3	General Motors	Cadillac Eldorado	952	986	66601	76656	13.5281
4	General Motors	Chevrolet Corvette	([1])	656	([1])	49510	13.2498
5	General Motors	Pontiac Firebird	706	1573	66939	117033	12.3878
6	General Motors	Chevrolet Camaro	1453	3068	143614	244192	11.6579
7	Mazda	RX-7	605	576	60743	41306	11.5729
8	Porsche	911	62	51	5070	5316	10.8800
9	General Motors	Oldsmobile Toronado	380	514	38499	46462	10.5225
10	General Motors	Pontiac Grand Prix	785	914	85693	77313	10.4229
11	General Motors	Buick Electra	618	662	79021	50413	9.8892
12	General Motors	Chevrolet Monte Carlo	742	1433	91336	131016	9.7818
13	General Motors	Buick Regal	1829	2411	220363	216864	9.6975
14	Ford Motor Co	Lincoln-Mercury Town Car	585	777	51662	89901	9.6212
15	General Motors	Cadillac Deville/Brougham (RWD)	1510	1533	170338	154833	9.3582
16	General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	2240	3697	294245	344330	9.2973
17	General Motors	Cadillac Seville	295	328	29753	39080	9.0509
18	Ford Motor Co	Lincoln-Mercury Mark	116	404	30104	32460	8.3115
19	General Motors	Oldsmobile 98	779	655	113290	70351	7.8087
[illegible]	[illegible]	Starion	40	48	6297	5557	7,4237
21	Nissan	280ZX/300ZX	539	421	55832	75374	7.3167
22	Toyota	Celica ST/GT/GTS	621	697	119131	91156	6.2676
23	Ford Motor Co	Ford Mustang	582	870	109377	129586	6.0763
24	General Motors	Cadillac Limousine	5	7	940	1047	6.0393
25	Mercedes-Benz	380SL	50	55	8763	8751	5.9952
26	Ford Motor Co	Lincoln-Mercury Capri	105	123	21832	16825	[illegible]
27	Toyota	Corolla/Corolla Sport	1059	758	138494	178058	5.7400
28	Toyota	Cressida	177	233	39015	36426	5.4347
29	Audi	Quattro	3	[illegible]	522	[illegible]	5.3763
30	BMW	3-Series	197	[illegible]	25505	[illegible]	5.2385
31	BMW	6-Series	17	13	2635	3119	5.2138
32	Mazda	GLC	153	372	50151	53509	5.0646
33	BMW	5-Series	63	100	16233	16667	4.9544
34	BMW	7-Series	31	45	5541	[illegible]	4.9004
35	General Motors	Oldsmobile Delta 88—Custom Cruiser—	[illegible]	1467	[illegible]	278033	4.8145
36	Jaguar	XJ	42	51	6452	12865	4.8144
37	Jaguar	XJ-S	9	11	1344	2812	4.8123
38	Volkswagen	Rabbit	214	607	77523	96381	4.7210
39	Porsche	928	10	13	2062	2850	4.6824
40	Ford Motor Co	Ford Thunderbird	287	936	113834	162124	4.4318
41	Ferrari	Mondial 8	[illegible]	1	113	113	4.4248
42	General Motors	Cadillac Cimarron	[illegible]	94	19070	21767	4.3343
43	General Motors	Chevrolet Impala/Caprice	817	1236	213224	262084	4.3193
44	General Motors	Buick LeSabre	[illegible]	767	139164	163928	4.2990
45	Mercedes-Benz	380SEC/500SEC	7	[illegible]	1910	1625	4.2433
46	Chrysler Corp	Chrysler Fifth Avenue/Newport	374	303	83525	79652	4.1489
47	General Motors	Pontiac 6000	167	617	68456	122196	4.1122
48	Saab	[illegible]	89	141	23273	33011	[illegible]
49	Toyota	Starlet	18	18	7634	1213	4.0692
50	Mazda	626	138	361	47406	75287	4.0671
51	Maserati	Quattroporte	0	1	52	200	3.9683
52	Mitsubishi	Cordia	38	63	12250	13239	3.9625
53	Mitsubishi	Tredia	40	71	14378	14000	3.9115
54	Ford Motor Co	Lincoln-Mercury Cougar	172	584	69979	124576	[illegible]
55	General Motors	Pontiac Bonneville	257	339	80652	72791	3.8842
56	Chrysler Corp	Dodge Aries	377	512	113182	121101	3.7946
57	Nissan	810/Maxima	181	330	63284	76293	3.6611
58	Chrysler Corp	Dodge Diplomat	95	24	11402	22174	3.5442
59	Ford Motor Co	Lincoln-Mercury Continental	[illegible]	96	16485	29826	3.5413
60	Volkswagen	Scirocco	9	76	6263	18261	3.4660
61	Chrysler Corp	Chrysler Lebaron/Town & Country	202	368	70364	10137	3.3190
62	Audi	5000	113	135	16502	59361	3.2691
63	Alfa Romeo	GTV6	3	3	836	1022	3.2293
64	AMC/Renault	Alliance/Encore	214	798	126742	186887	3.2267
65	Mercedes-Benz	380SEL/500SEL	21	7	5213	3618	3.1706
66	Bertone	X-1/9	0	5	1064	521	3.1546
67	Chrysler Corp	Chrysler Executive Sedan/Limousine	1	2	167	789	3.1381
68	Porsche	944	37	50	12309	15538	3.1242
69	Chrysler Corp	Plymouth Reliant	359	575	145916	153101	3.1236
70	General Motors	Chevrolet Chevette	428	678	150775	212311	3.0461
71	Ford Motor Co	Ford LTD	386	632	144676	192608	3.0182
72	Mercedes-Benz	300SD/380SE	60	59	19173	20703	2.9843
73	General Motors	Buick Century	289	655	118116	205298	2.9189
74	Chrysler Corp	Chrysler E-Class/New Yorker	196	281	73168	92822	2.8737
75	Chrysler Corp	Dodge Charger	94	178	41500	54279	2.8399
76	Ford Motor Co	Ford EXP	49	69	19243	22640	2.8174
77	Chrysler Corp	Dodge 600/400	146	193	59511	61776	2.7950
78	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	395	772	157544	260831	2.7894
79	Chrysler Corp	Dodge Omni	61	246	42620	68071	2.7735
80	Alfa Romeo	Spider Veloce 2000	3	[illegible]	1307	2691	2.7514

TABLE I.—F.B.I.—Continued

	Manufacturer	Make model (line)	Thefts (FBI) 1983	Thefts (FBI) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Com-[illegible] thefts/product (1983 [illegible] 1984) (1000)
81	Chrysler Corp	Plymouth Turismo	70	145	32118	49747	2.6263
82	Volkswagen	Jetta	[illegible]	104	9757	[illegible]	2.5417
[illegible]	Toyota	Tercel	327	345	152820	117114	2.4895
84	Chrysler Corp	Plymouth Horizon	[illegible]	[illegible]	46476	78581	2.4629
85	Chrysler Corp	Plymouth Gran Fury	[illegible]	25	7458	14524	2.4566
[illegible]	Chrysler Corp	Dodge Colt/Colt Vista	[illegible]	94	31536	[illegible]	2.4552
87	Nissan	Pulsar	118	128	[illegible]	[illegible]	2.4343
[illegible]	Nissan	Sentra	[illegible]	[illegible]	230240	202624	2.4211
89	General Motors	Pontiac 2000/Sunbird	134	[illegible]	66126	148172	2.4125
[illegible]	Isuzu	I-Mark	20	11	8072	[illegible]	2.4009
91	Nissan	200 SX	[illegible]	122	27573	[illegible]	2.2940
92	Ford Motor Co	Lincoln-Mercury Lynx	160	157	74981	64520	2.2724
93	Ford Motor Co	Ford Escort	527	915	[illegible]	348010	2.2637
94	Ferrari	308	1	1	513	378	2.2447
95	Volkswagen	Quantum	16	[illegible]	9542	15637	2.1844
[illegible]	General Motors	Pontiac T1000/1000	40	[illegible]	24952	35684	2.1769
97	General Motors	Chevrolet Celebrity	213	751	139829	308616	2.1497
98	Chrysler Corp	Plymouth Colt/Colt Vista	43	[illegible]	27466	36322	2.1321
[illegible]	Audi	4000/Coupe	19	[illegible]	[illegible]	26616	2.0877
100	Mercedes-Benz	240D/300D/300CD/300TD	[illegible]	53	[illegible]	21552	2.0673
101	Subaru	Subaru	148	247	[illegible]	101200	2.0442
102	Avanti	Avanti II	0	[illegible]	233	270	1.9881
103	Honda	Prelude	[illegible]	139	38388	57614	1.9270
104	Ford Motor Co	Lincoln-Mercury Marquis	149	154	[illegible]	97577	1.9265
105	General Motors	Buick Skyhawk	103	[illegible]	59551	13056	1.8455
106	General Motors	Buick Skylark	142	214	95995	[illegible]	1.8177
107	Ford Motor Co	Ford LTD Crown Victoria	166	257	92877	143969	1.7860
108	Volvo	760 GLE	14	[illegible]	[illegible]	13427	1.7842
109	General Motors	Chevrolet Cavalier	234	874	[illegible]	[illegible]	1.7407
110	General Motors	Oldsmobile Omega	78	73	47277	42316	1.6854
111	General Motors	Chevrolet Citation	136	163	[illegible]	93161	1.6651
112	General Motors	Oldsmobile Firenza	51	130	[illegible]	73054	1.6455
113	Nissan	Stanza	[illegible]	[illegible]	[illegible]	[illegible]	1.5885
114	Honda	Accord	310	441	221192	260717	1.5584
115	Peugeot	504/505	24	22	11580	[illegible]	1.5119
116	General Motors	Pontiac Phoenix	31	23	21869	15499	1.4451
117	Honda	Civic	[illegible]	227	142164	164639	1.4081
118	AMC/Renault	Fuego	[illegible]	[illegible]	18581	[illegible]	1.4027
119	Volvo	DL/GL	101	134	74571	93239	1.4004
120	Ford Motor Co	Lincoln-Mercury Grand Marquis	109	213	[illegible]	139473	1.3975
121	Pininfarina	Spider 2000	1	2	1073	1093	1.3850
122	AMC/Renault	18I/Sportwagon	[illegible]	0	6133	[illegible]	1.0038
123	Rolls-Royce/Bentley	Corniche	0	0	191	220	[illegible]
124	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	[illegible]	[illegible]	245	[illegible]	[illegible]
125	Rolls-Royce/Bentley	Camargue	0	0	11	10	[illegible]
126	Peugeot	604	[illegible]	0	217	417	[illegible]
127	Bitter GMBH	Bitter	[illegible]	0	[illegible]	[illegible]	0.0000
128	Aurora	GRX Aurora	0	[illegible]	41	[illegible]	0.0000
129	Aston Martin	Saloon/Vantage/Volante	[illegible]	[illegible]	[illegible]	20	0.0000
130	Zimmer	Classic/Elegante/Cabriolet	[illegible]	[illegible]	(²)	(²)	[illegible]

¹ Corvette was manufactured and offered for sale during calendar year 1983 as either a model year 1982 or model year 1984 vehicle. See Notice

² Zimmer production numbers are not available at time of publication

TABLE II.—N.A.T.B.

	Manufacturer	Make model (line)	Thefts (NATB) 1983	Thefts (NATB) 1984	Production (manufacturers) [illegible]	Production (manufacturers) [illegible]	Com-[illegible] thefts/product (1983 [illegible] 1984) (1000)
1	Audi	Quattro	[illegible]	12	522	[illegible]	[illegible]
2	General Motors	Buick Riviera	457	[illegible]	[illegible]	[illegible]	8.7332
[illegible]	General Motors	Chevrolet Corvette (1984 only)	(¹)	413	(¹)	[illegible]	8.3417
4	General Motors	Cadillac Eldorado	[illegible]	523	[illegible]	[illegible]	8.1113
[illegible]	Porsche	911	43	[illegible]	[illegible]	[illegible]	7.3175
[illegible]	Mazda	RX-7	[illegible]	[illegible]	60743	41306	[illegible]
7	General Motors	Pontiac Firebird	[illegible]	705	[illegible]	117033	5.8324
[illegible]	General Motors	Cadillac Seville	214	187	29753	[illegible]	5.8257
9	General Motors	Cadillac Deville/Broughan (RWD)	[illegible]	912	170338	154833	5.5602
10	General Motors	Oldsmobile Toronado	248	216	[illegible]	[illegible]	5.4613
11	Toyota	Celica ST/GT/GTS	556	[illegible]	119131	[illegible]	5.3070
12	General Motors	Buick Electra	397	[illegible]	79021	50413	5.2459
13	General Motors	Chevrolet Camaro	[illegible]	1211	143614	244192	5.2449
14	General Motors	Pontiac Grand Prix	434	[illegible]	85693	77313	5.1102
15	General Motors	Chevrolet Monte Carlo	[illegible]	[illegible]	91336	131016	4.7537
[illegible]	General Motors	Oldsmobile Cutlass Supreme/Cruiser (RWD)	1248	1729	294245	344330	4.6619
17	Mitsubishi	Starion	31	21	6297	5557	4.3867
[illegible]	General Motors	Oldsmobile 98	476	[illegible]	113290	70351	4.2420
19	Nissan	280ZX/300ZX	331	215	55832	75374	4.1614
20	General Motors	Buick Regal	753	1035	[illegible]	[illegible]	4.0894
21	Toyota	Cressida	144	162	39015	36426	4.0561

TABLE II.—N.A.T.B.—Continued

	Manufacturer	Make model (line)	Thefts (NATB) 1983	Thefts (NATB) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Combined thefts product (1983 and 1984) (1000)
22	BMW	3-Series	166	184	25505	66506	3.8039
23	BMW	7-Series	27	27	5541	9968	3.4818
24	Alfa Romeo	Spider Veloce 2000	6	7	1307	2691	3.2516
25	Saab	900	86	94	23273	33011	3.1981
[illegible]	General Motors	Cadillac Cimarron	54	46	19070	21767	2.4488
27	BMW	6-Series	[illegible]	6	2635	3119	2.4331
[illegible]	General Motors	Oldsmobile Delta 88—Custom Cruiser—	496	596	209456	278033	2.2401
[illegible]	BMW	5-Series	43	30	16233	16667	2.2188
[illegible]	Nissan	810/Maxima	139	165	63284	76293	2.1780
31	Volkswagen	Rabbit	131	247	77523	96381	2.1736
32	General Motors	Buick Lesabre	290	344	139164	163928	2.0918
33	Ford Motor Co	Ford Mustang	243	251	109377	129586	2.0673
34	Chrysler Corp	Chrysler E-Class/New Yorker	270	72	73168	92822	2.0604
35	Audi	5000	76	78	16502	59361	2.0300
36	General Motors	Chevrolet Impala/Caprice	456	506	213224	262084	2.0240
37	Porsche	944	29	27	12209	15528	2.0110
[illegible]	Ford Motor Co	Lincoln-Mercury Mark	60	61	30104	32460	1.9340
39	Volkswagen	Scirocco	6	41	6253	18261	1.9165
40	Ford Motor Co	Lincoln-Mercury Capri	44	30	21822	16825	1.9143
41	Mitsubishi	Cordia	27	21	12250	13239	1.8832
42	Toyota	Starlet	11	5	7634	1213	1.8085
43	Ford Motor Co	Lincoln Mercury Continental	36	42	16465	29826	1.6343
44	Toyota	Corolla/Corolla Sport	302	230	138494	175058	1.6806
45	Jaguar	XJ	31	0	6452	12865	1.6048
46	General Motors	Pontiac Bonneville	121	105	80652	72791	1.4729
47	Jaguar	XJ-S	6	0	1344	2812	1.4437
48	Mazda	626	46	131	47406	75287	1.1426
49	General Motors	Pontiac 6000	66	204	68456	122196	1.4162
50	Ford Motor Co	Lincoln-Mercury Town Car	79	101	51662	89901	1.2715
51	Ford Motor Co	Ford Exp	23	30	19243	22640	1.2654
52	Peugeot	504/505	21	16	11580	18846	1.2161
53	Volkswagen	Jetta	7	45	9757	34308	1.1801
54	Subaru	Subaru	86	137	92030	101200	1.1541
55	Chrysler Corp	Dodge Charger	46	63	41500	54279	1.1380
56	Ford Motor Co	Lincoln-Mercury Cougar	55	157	69919	124576	1.0897
57	Chrysler Corp	Plymouth Horizon	28	105	46476	78581	1.0635
58	Nissan	Pulsar	55	51	64509	36546	1.0489
59	Chrysler Corp	Dodge Diplomat	27	8	11402	22174	1.0424
60	Chrysler Corp	Dodge 600/400	55	70	59511	61776	1.0306
61	Chrysler Corp	Dodge Colt/Colt Vista	31	41	31536	40963	0.9931
[illegible]	General Motors	Chevrolet Chevette	148	210	150775	212311	0.9860
63	Ford Motor Co	Ford Thunderbird	105	163	113834	162124	0.9712
64	Volkswagen	Quantum	7	17	9542	15637	0.9532
65	Nissan	200 SX	51	39	27573	68331	0.9384
66	Chrysler Corp	Chrysler Lebaron/Town & Country	80	80	70364	101377	0.9316
67	Mazda	GLC	45	51	50151	53509	0.9261
[illegible]	General Motors	Pontiac T1000/1000	23	33	24952	35684	0.9235
69	AMC/Renault	Fuego	19	6	18581	8510	0.9228
70	Chrysler Corp	Plymouth Colt/Colt Vista	12	46	27466	36322	0.9093
71	General Motors	Buick Century	99	194	118116	205298	0.9060
72	Ford Motor Co	Lincoln-Mercury Lynx	74	45	74981	64520	0.8530
73	Honda	Accord	211	195	221192	260717	0.8425
74	Ford Motor Co	Ford Escort	190	341	289008	348010	0.8336
75	Audi	4000/Coupe	12	17	8350	26616	0.8294
76	Chrysler Corp	Dodge Aries	90	101	113182	121101	0.8153
77	Porsche	928	4	0	2062	2850	0.8143
78	Nissan	Sentra	162	186	230240	202624	0.8039
79	AMC/Renault	Alliance/Encore	78	165	126742	186887	0.7748
80	General Motors	Pontiac 2000/Sunbird	40	123	66126	148172	0.7606
81	Nissan	Stanza	42	39	62159	44860	0.7569
82	Chrysler Corp	Chrysler Fifth Avenue/Newport	0	123	83525	79652	0.7538
[illegible]	Honda	Prelude	16	53	38388	57614	0.7187
[illegible]	Toyota	Tercel	120	72	152820	117114	0.7113
85	General Motors	Oldsmobile Firenza	20	56	36943	73054	0.7091
86	Chrysler Corp	Dodge Omni	25	52	42620	68071	0.6956
87	Volvo	760 GLE	0	15	8992	13427	0.6691
88	General Motors	Pontiac Phoenix	12	12	21869	15499	0.6423
89	Chrysler Corp	Plymouth Reliant	88	102	145916	153101	0.6354
[illegible]	Ford Motor Co	Lincoln Mercury Grand Marquis	49	92	90933	139473	0.6120
91	General Motors	Chevrolet Celebrity	75	198	139829	308616	0.6088
92	General Motors	Buick Skyhawk	50	69	59551	136056	0.6084
93	General Motors	Buick Skylark	44	74	95995	99857	0.6025
[illegible]	Ford Motor Co	Ford LTD	108	90	144676	192608	0.5870
[illegible]	Ford Motor Co	Lincoln-Mercury Marquis	39	52	59699	97577	0.5786
[illegible]	AMC/Renault	18i/Sportwagon	5	0	6133	2833	0.5577
97	General Motors	Chevrolet Cavalier	109	243	202548	433989	0.5530
98	Ford Motor Co	Ford LTD Crown Victoria	56	74	92877	143969	0.5489
[illegible]	General Motors	Oldsmobile Omega	24	25	47277	42316	0.5469
100	Honda	Civic	91	70	142164	164639	0.5248
101	General Motors	Chevrolet Citation	46	47	86409	93161	0.5179
102	Chrysler Corp	Plymouth Turismo	38	[illegible]	32118	49747	0.4642
[illegible]	Mitsubishi	Tredia	NA	12	14378	14000	0.4229
104	Volvo	DL/GL	[illegible]	41	74571	93239	0.2443
[illegible]	Chrysler Corp	Plymouth Gran Fury	[illegible]	2	7458	14524	0.0910
[illegible]	Toyota	Celica Supra	NA	NA	26147	[illegible]	[illegible]
107	Rolls-Royce/Bentley	Camargue	[illegible]	[illegible]	11	10	

TABLE II.—N.A.T.B.—Continued

	Manufacturer	Make model (line)	Thefts (NATB) 1983	Thefts (NATB) 1984	Production (manufacturers) 1983	Production (manufacturers) 1984	Combined thefts/production (1983 and 1984) (1000)
108	Rolls-Royce/Bentley	Corniche	0	0	191	220	0.0000
109	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	0	245	[illegible]	0.0000
110	Pininfanna	Spider 2000	NA	0	1073	1093	0.0000
111	Peugeot	604	0	0	217	417	0.0000
112	Mercedes-Benz	240D/300D/300CD/300TD	NA	NA	36012	21552	0.0000
113	Mercedes-Benz	300SD/380SE	NA	NA	19173	20703	0.0000
114	Mercedes-Benz	380SL	NA	NA	8763	8751	0.0000
115	Mercedes-Benz	380SEL/500SEL	NA	NA	5213	[illegible]	0.0000
116	Mercedes-Benz	380SEC/500SEC	NA	NA	1910	1625	0.0000
117	Maserati	Quattroporte	NA	NA	52	200	0.0000
118	Isuzu	I-Mark	0	0	8072	[illegible]	0.0000
119	General Motors	Cadillac Limousine	NA	NA	[illegible]	1047	0.0000
120	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	NA	NA	157544	[illegible]	0.0000
121	Ferrari	308	0	0	513	[illegible]	0.0000
122	Ferrari	Mondial 8	0	0	113	113	0.0000
123	Chrysler Corp	Executive Sedan/Limousine	NA	NA	167	[illegible]	0.0000
124	Bitter GMBH	Bitter	NA	NA	28	[illegible]	0.0000
125	Bertone	X-1/9	NA	NA	[illegible]	521	0.0000
126	Avanti	Avanti II	NA	NA	[illegible]	[illegible]	0.0000
127	Aurora	GRX Aurora	NA	NA	[illegible]	38	0.0000
128	Aston Martin	Saloon/Vantage/Volante	NA	NA	[illegible]	[illegible]	0.0000
129	Alfa Romeo	GTV6	0	0	836	1022	0.0000
130	Zimmer	Classic/Elegante/Cabriolet	0	0	(²)	(²)	0.0000

[1] Corvette was manufactured and offered for sale during calendar year 1983 as either a model year 1982 or model year 1984 vehicle. See Notice.
[2] Zimmer production numbers are not available at time publication.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50447-5047]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comment.

SUMMARY: NOAA proposes a rule to amend the marine mammal regulations pertaining to U.S. vessels using purse seine gear to fish for tuna associated with porpoise in the eastern tropical Pacific Ocean (ETP) with a certificate of inclusion under the General Permit of the American Tunaboat Association. Under this proposal, several regulations concerning required fishing gear and fishing practices will be modified or deleted in recognition that they are excessively restrictive or have become unnecessary. The changes will complement the rules (see 49 FR 46908) implementing the 1984 Marine Mammal Protection Act (MMPA) amendments, which extended the General Permit and porpoise mortality quotas and established mortality quotas for eastern spinner and coastal spotted dolphin. The proposed amendments will provide flexibility for vessel operators to use porpoise saving gear and techniques most effectively while continuing to purse seine for tuna in association with porpoise.

DATES: Comments on the proposed rule must be postmarked on or before July 1, 1985. Request for a formal, on the record, public hearing on the matter (See Supplementary Information) must be sent by certified mail and postmarked on or before June 3, 1985.

ADDRESS: Comments and request for a hearing should be addressed to Mr. Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235; or Mr. E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731. A Draft Environmental Impact Statement is also available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Hollingshead (Marine Resource Management Specialist, NMFS, Washington, D.C.), 202-634-7471; or Mr. Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, CA) 213-548-2518.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1984, the NMFS published a notice of intent to prepare an Environmental Impact Statement (EIS) and hold scoping meetings to develop a regulatory regime for the porpoise-associated tuna fishery beginning in 1986 (49 FR 1778). Scoping materials were distributed and scoping meetings were held in February in San Diego, California, and Washington, D.C. The NMFS indicated that the EIS and regulatory process would include a review of the status of porpoise stocks; an evaluation of the effectiveness of current regulations; and an assessment of the economic conditions in the U.S tuna industry to determine the economic and technological feasibility of different regulatory measures. The new regulations would succeed the regulations which were effective January 1, 1981, and scheduled to expire December 31, 1985.

In 1984, the Congress passed and the President signed into law (Pub. L. 98-364) an act reauthorizing and amending the MMPA. The amendments—

1. Extend indefinitely, beginning January 1, 1985, the ATA General Permit and porpoise quotas and establish quotas for eastern spinner and coastal spotted dolphin;

2. Establish that the Secretary of Commerce (Secretary) require that the government of any nation wishing to export to the United States yellowfin tuna taken with purse seines in the ETP, or products from such tuna, must provide documentary evidence that the government of the harvesting nation has a regulatory program governing the incidental taking of marine mammals, that this program is comparable to the program of the United States and that the average rate of incidental taking by

the vessels of the harvesting nation is comparable to the average of taking of marine mammals by vessels of the United States; and

3. Require the Secretary to conduct a scientific research program to monitor for at least five years indices of abundance and trends in marine mammal population studies and to take corrective action as necessary if it is found that the take under these amendments is having a significant adverse effect on a population stock.

The amendments authorize the Secretary to amend the regulations concerning fishing gear and practices and allow administration consistent with achieving the goals of the MMPA.

The effect of these MMPA amendments is to narrow the scope of the rulemaking as originally announced January 13, 1984. Only the fishing gear and procedural regulations are being considered in this rulemaking. The proposed rule is issued to establish a flexible framework for vessels to carry out the safety measures for porpoise under the overall marine mammal regulatory program. Limits on total mortality and population stock mortality will be the ultimate control. Mortality rates per set and per ton of yellowfin tuna will be primary measures of the results of the program. The NMFS will continue to place observers on a sample of U.S. vessels' trips to observe fishing practices and monitor mortality. A cooperative observer program will be carried out by the Inter-American Tropical Tuna Commission (IATTC). The Expert Skippers Panel is expected to continue its current program activities. The Panel meets with operators of vessels which have had sets with unusually high mortality levels to determine the possible causes of, and responses to, conditions causing such problems. The results are disseminated to other skippers so such problems can be avoided in the future. The NMFS will continue to cooperate with the IATTC and Porpoise Rescue Foundation (PRF) to determine the effectiveness of alternative lighting systems in reducing mortality from sundown sets and assess the need for subsequent amendments to gear or procedural regulations after two years of additional experience.

The proposed rule eliminates many of the procedural requirements in the current regulations. The NMFS will prepare and distribute to the industry and interested members of the public a set of guidelines to substitute for the deleted procedural requirements. The guidelines will describe the types of procedures for porpoise rescue which have been most effective in responding to different problems such as adverse wind and sea conditions. The guidelines will provide practical and useful information on porpoise rescue and will allow a vessel operator to use the combination of gear and techniques best suited to that vessel to maximize porpoise release. Most if not all U.S. purse seine vessels already have and use the gear and procedures which will be required by these proposed regulations, and the requirement to use the backdown procedure will be retained.

Proposed Action

The proposed action is to amend the current gear and procedural regulations to provide greater flexibility in the application of porpoise saving gear and techniques by operators and crews on U.S. vessels purse seining for tuna in association with porpoise in the ETP.

Most gear requirements would be retained under the proposed action. Those gear and procedural requirements that have been found to be unworkable, unnecessary, or too inflexible would be amended or deleted. The amendments would allow vessel operators to make on-the-spot adjustments in fishing practices to protect porpoise, with emphasis on the results rather than procedural requirements. The level of porpoise mortality is limited by the quotas established by the 1984 amendments to the MMPA (see 49 FR 46908). The regulatory amendments are not expected to affect significantly the level of mortality from purse seining in the ETP. The specific amendments proposed are as follows (see Table 1 for a summary of the regulatory changes):

a. The two speedboat limit for uncertificated vessels is maintained, but a provision is introduced to limit its application to trips involving the General Permit area. A waiver system is established to allow vessel operators or owners to obtain a waiver from the prohibition in order to transit the area with more than two speedboats.

b. The requirement for tuna vessel operators to complete a daily marine mammal log would be dropped because these data are not being used. Observer and research data will be sufficient for NMFS purposes.

c. Technical modifications to the requirements for porpoise safety panels are proposed so that small mesh webbing will cover the same proportion of the perimeter of the backdown channel regardless of the depth of the net.

d. Vessel operators would have the option to use either a "supper apron" or a fine mesh net to minimize porpoise mortality because both systems have been demonstrated to be effective. The skill of the skipper and crew in using porpoise safety gear and procedures is the critical element in preventing mortality.

e. Requirements for placing bunchlines at specific locations would be deleted because the specification sometimes causes problems rather than preventing them.

f. Requirements for each vessel to have a rubber raft and at least two facemasks and snorkels would be modified to allow non-rubber rafts and viewboxes because these would be equally effective for the purpose of locating and rescuing porpoise in a seine.

g. A prohibition of sundown sets would be deleted and that section of the regulations reserved pending the results of an ongoing experiment designed to test the effectiveness of a new lighting system in reducing mortality from sundown sets. A sundown set prohibition under current conditions would be economically impracticable and would impose very high costs on the U.S. tuna fleet. Preliminary data collected by NMFS and IATTC observers indicate that alternate lighting systems being tested by the IATTC and the PRF are effective in reducing rates of mortality in sundown sets. The NMFS will assess their effectiveness after two more years of testing and will consider the need for new gear or procedural regulations at that time, based on the results of ongoing experiments and on performance by industry in reducing mortality rates in sundown sets.

h. Several procedural requirements specifying how and where to use speedboats, hand rescue techniques, rubber rafts, and facemasks and snorkels would be deleted. A set of guidelines would be issued to vessel operators and owners describing gear and techniques which have been most successful in different ocean and weather conditions. The ultimate performance measure will be porpoise mortality for the fleet.

i. A prohibition on bringing live porpoise on board the vessel during retrieval of the bow ortza would be added to the prohibition on brailing live animals to prevent incidental mortality or injury from this practice. The ortza is a section of the net assembly, and on sets in which a small amount of tuna is caught, the ortza is sometimes brought onto the vessel with fish in it.

j. Requirements pertaining to certificates of inclusion, notification of departure, inspections and trial sets, and use of lights would be maintained but with technical amendments to provide some flexibility to address special circumstances in their application.

TABLE 1.—SUMMARY OF REGULATORY CHANGES

Item	Current	Proposed
Speedboat limitation	Uncertificated vessels may not carry more than two speedboats.	Retain; provide for waiver transit through ETP.
Logbooks	Operator must maintain daily marine mammal log.	Delete.
Fine mesh net	Super apron installation required; gear waiver may be obtained	Allow super apron or the fine mesh net system.
Bunchline locations	Currently specified in regulations	Delete.
Rubber raft, facemask and snorkel	Specific gear requirements	Allow alternate gear, that is, non-rubber rafts and viewboxes; convert use requirement to guideline
Sundown set prohibition	Presently permitted by suspension of regulation	Delete language; reserve section.
Use of speedboats	Requires where and when speedboats must be deployed and manned	Convert to guideline
Hand rescue techniques	Specifies at least two crew must be on platform in net to aid in porpoise release.	[illegible]
Backdown	Presently required	Retain.
Lights	Specifies that spotlight and floodlights must be used when dark	Delete specifications; require sufficient light to allow full observation of porpoise release procedures and mortality
Brailing	Prohibited to brail live porpoise on deck	Broaden prohibition to prevent bringing live porpoise on deck when ortza is retrieved.
Modifications	Certain deadlines for surrendering certificates of inclusion, etc.	Delete.
Inspections	Required under variety of circumstances	Limit to be required only after any net modification
Safety panels	Specifies minimum length and location for installation	Clarify to use formula to require proportional coverage of net

Required Statements

Section 103(d) of the MMPA requires that, concurrent with proposed regulations for taking, there be published (a) a statement of the existing levels of the species and population stocks at of the marine mammals concerned; (b) a statement of the expected impact of the proposed regulations on the optimum sustainable population (OSP) of such species or population stocks; (c) a statement describing the evidence before the agency on which the proposed regulations are based; and (d) any studies may by or for the agency and any recommendations made by or for the agency or the Marine Mammal Commission which relate to the establishment of such regulations. The required statements follow.

(a) Estimated Existing Population Levels

The NMFS rulemaking in 1980 included an estimate of existing population levels and replacement yields in 1979 and a projection of the status of those populations in 1985 relative to pre-exploitation stock size (i.e., estimated carrying capacity). The projection incorporation and assumption that actual mortality would equal the U.S. mortality quota levels set for 1981–85 plus an equal amount by non-U.S. vessels in the 1981–85 period.

In July 1984, a Federal appeals court held in *ATA* v. *Baldrige* (738 F.2d 1013) that the NMFS had erred in its determination of the status of populations. The NMFS has reviewed the estimates of status under the directive of the court for three principal target populations: Coastal spotted, northern offshore spotted, eastern spinner. Only these populations were reviewed; all other populations were concluded to be within their respective OSP ranges. Based on the numbers that NMFS was directed to use by the court in *ATA* v. *Baldrige*, all populations on Table 2 are within the OSP range in 1985. Table 2 presents the 1979 estimates for all populations and the adjusted estimates for these three stocks. Table 2 also presents projected 1990 status of populations incorporating actual 1979–84 mortality by species and assuming that annual U.S. 1985–90 mortality will be 20,500 animals in the same species proportions as 1979–84 mortality, with an equal level and distribution of mortality attributable to non-U.S. fishing on porpoise.

TABLE 2.—ESTIMATED CURRENT AND FUTURE POPULATION LEVELS

Species/stock management unit	Estimated 1979 population	1979 status[1]	Adjusted 1979 population[3]	Adjusted 1979 status[1]	Projected [illegible] status[2]
Spotted dolphin:					
Northern offshore	3,150,000	[illegible]	6,115,000	.85	.92
Southern offshore	638,700	.95			.93
Coastal	193,200	.42	414,600	.76	.89
Spinner dolphin:					
Eastern	418,700	.27	918,800	.55	.71
Northern whitebelly	486,600	[illegible]			[illegible]
Southern whitebelly	264,900	[illegible]			[illegible]
Common dolphin:					
Northern tropical	216,900	[illegible]			.94
Central tropical	848,400	[illegible]			[illegible]
Southern tropical	477,100	1.00			[illegible]
Striped dolphin:					
Northern tropical	50,600	1.00			.98
Central tropical	213,300	[illegible]			1.00
Southern tropical	483,000	1.00			1.00

[1] Proportion of pre-explorted stock size.

[2] Projected from adjusted population for northern offshore coastal spotted, and eastern spinner dolphin and from estimated 1979 population for all other populations; includes assessment for equal levels of U.S. and non-U.S. porpoise mortality; incorporates actual 1980–84 mortality; assumes 1985–89 mortality will occur in same proportion as 1979–84 mortality by [illegible]

[3] Adjusted in accordance with court directive only for northern offshore spotted, coastal spotted, and eastern spinner due to question about status of population; other populations were and continue to be healthy and no adjustment was necessary.

(b) Estimated Impact on OSP

OSP of the species and stocks involved is defined as a population which falls in a range from the population level which is the largest supportable within the ecosystem, to the population that results in maximum net productivity (see 41 FR 55536, December 21, 1976). Maximum net productivity is the greatest net annual increment in the population due to reproduction and growth less losses due to natural mortality. Maximum net productivity is interpreted as being the lower limit of the range of OSP. The lower bound of OSP has been determined to be in the range of 50 percent to 70 percent of initial unexploited populations. If a population is below the mid-point of this range, i.e., 60 percent, it is considered to be depleted by NOAA.

As indicated in Table 2, the NMFS projects that every population will be within its OSP range in 1990 even if the estimated total annual mortality of each population occurs each year in the 1985–90 period. The NMFS expects that actual mortality in that period will be less than the estimated levels and that the projected status is a conservative estimate of the 1990 status (see Section V B., Draft Environmental Impact Statement).

(c) and (d) Evidence and Studies

Available information upon which the previous rulemaking was based was described and listed in some detail in the proposed rules published February 15, 1980 (45 FR 10552). While there have been no new reports on the status of populations, there is a substantial body of information concerning the fishery, including the large amount of data collected by observers placed by NMFS and the Inter-American Tropical Tuna Commission and data and analyses compiled by the Porpoise Rescue Foundation. The following reports and documents in addition to the sources cited in 1980 contain the evidence on which the current proposal is based:

Bratten, D., 1983. Reducing Dolphin Mortality Incidental to Purse Seining for Tuna in the Eastern Tropical Pacific Ocean. A review of the Tuna-Dolphin Fishing Gear Program of the IATTC. International Whaling Commission, Cambridge, England.

Coe, J.M., 1976. The Effectiveness of the Porpoise Apron in Improving the Backdown Procedure. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–38).

———, D.B. Holts, and R.W. Butler. 1984. Guidelines for the Reducing Porpoise Mortality in Tuna Purse Seining. National Marine Fisheries Service, NOAA Technical Report NMFS 13.

——— and G. Sousa, 1972. Removing Porpoise from a Tuna Purse Seine. *Marine Fisheries Review*. Nov–Dec. 1972. pp. 15–19.

——— and P.J. Vergne, 1977. Modified Tuna Purse Seine Net Achieve Record Low Porpoise Kill Rate. *Marine Fisheries Review*. 39:6 (1–4).

———, 1977. Modified Tuna Purse Seine Net Achieves Record Low Porpoise Kill Rate. *Marine Fisheries Review*, Paper 1251.

———, M/V *Elizabeth C.J.* Cruise Report (Gear Research). Oct. 1976.

Department of Commerce, 1984. Fisheries of the United States, 1983. Current Fishery Statistics No. 8320. Washington, D.C.

Everett, J.T. *et al.*, 1976. The Use of Speedboats in Reducing Incidental Porpoise Mortality in Tuna Purse Seining. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–15).

———, J.M. Coe, and J.E. Powers, 1976. Porpoise/Tuna Interaction—Technology Based Problems and Solutions. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76–33).

Fabrick & Faverty, 1974. Analysis of Porpoise Kill Data, Contract Report. Science Application Inc., San Diego, CA.

Food and Agriculture Organization of the United States, 1984. Yearbook of Fishery Statistics, 1982. United Nations, Rome, Italy.

Hill, G.D., Jr., 1978. Saving the Porpoise. NOAA Magazine.

Inter-American Tropical Tuna Commission, 1983. Annual Report of the Inter-American Tropical Tuna Commission. La Jolla, CA.

———, 1984a. Tuna-Dolphin Investigation, Background Paper No. 6. October 1984, La Jolla, CA.

———, 1984b. Annual Report of the Inter-American Tropical Tuna Commission. La Jolla, CA.

———, 1984c. Quarterly Report, Fourth Quarter, 1984. La Jolla, CA.

Koplin, S.J., and S.M. Merrick, Jr., 1983. 1983 U.S. Tuna Trade Summary. Southwest Region, Terminal Island, CA (SWR AR No. 84–1).

Lo, N.C., J.E. Powers, B.E. Whalen, 1980. Estimating and Monitoring Incidental Marine Mammal Mortality in the Eastern Tropical Pacific Purse Seine Fishery. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–80–unpublished).

McNeely, R.L. and D.B. Holts, 1974. Cruise Report, *South Pacific*. Oct. 1974.

NMFS, 1972. Report of the NOAA Tuna/Porpoise Review Committee. Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–74–40).

NMFS, 1980. Final Environmental Impact Statement for Incidental Taking of Marine Mammals in the Tuna Fishery in the Eastern Tropical Pacific Ocean. NMFS, NOAA, Department of Commerce, November.

Powers, J.E., N.C. Lo, and B.E. Whalen, 1979. A Statistical Analysis on Effectiveness of Porpoise Rescue Procedures in Reducing Incidental Mortality. National Marine Fisheries Service, Southwest Fisheries Center, La Jolla, CA (SWFC AR No. LJ–76).

Twohig, D., 1974. Cruise Report, *J.M. Martinac*. Oct. 1974.

United States Tuna Foundation, *et al.*, 1984. "Petition for Relief from Imports of Tuna, Prepared or Preserved in Any Manner, in Airtight Containers (Canned Tuna) under Section 201 of the Trade Act of 1974."

Hearing

In accordance with section 103(d), these regulations must be made on the record after opportunity for an agency hearing. If a request for a hearing is made in a timely manner (see **DATES**) a hearing will be held later this year in California. A separate **Federal Register** notice will be published regarding time, date, and location of the hearing, and notification by persons interested in participating in this hearing.

Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the tuna fishery interaction with porpoise. A draft Environmental Impact Statement (DEIS) has been prepared and distributed for public review and comment.

This rule is an administrative action being developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

The proposed rule would eliminate a collection of information requirement that was previously authorized under the Paperwork Reduction Act. Any comments on this measure should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed action will not have a significant effect on a substantial number of small entities.

The Assistant Administrator has determined that the proposed action does not directly affect the coastal zone of a State with an approved coastal zone management act program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedures, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 19, 1985.
Anthony J. Calio,
Deputy Administrator, NOAA.

PART 216—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority.—16 U.S.C. 1361 *et seq.*, unless otherwise stated.

2. In § 216.24, paragraph (d)(2)(ii)(C) is removed and paragraph (d)(2)(ii)(D) is redesignated as (d)(2)(ii)(C); paragraph (d)(2)(iii)(C) is removed and paragraph (d)(2)(iii)(D) is redesignated as (d)(2)(iii)(C); paragraph (d)(2)(iv)(C), (D), (H), and (L) are removed and paragraphs (d)(2)(iv)(E), (F), (G), (I), (J), (K), and (M) are redesignated as (d)(2)(iv)(C), (D), (E), (F), (G), (H), and (I), respectively; paragraphs (d)(2)(vii) (A), (C), (E), and (F) are removed and paragraphs (d)(2)(iii) (B), (D), (G), and (H), are redesignated as (d)(2)(vii)(A), (B), (C), and (D) respectively; paragraphs (a)(2), (d)(2)(ii)(A), (d)(2)(iv) introductory text, (d)(2)(iv)(A) and (B), newly redesignated paragraph (d)(2)(iv)(H), (d)(2)(v)(C), and newly redesignated paragraphs (d)(2)(vii)(C) and (D) are revised; and new paragraphs (a)(3) and (d)(2)(vii)(E) are added to read as follows:

§ 216.24 Taking and related acts incidential to commercial fishing operations.

(a) * * *

(2) A vessel on a commercial fishing trip involving the utilization of purse seines to capture yellowfin tuna which is not operating under a catetgory two general permit and certificates of inclusion, and which during any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear category two operations, must not carry more than two speedboats.

(3) Upon written request in advance of entering the General Permit area, the limitation in paragraph (a)(2) of this section may be waived by the Regional Director of the Southwest Region for the purpose of allowing transit through the General Permit area. The waiver will provide in writing the terms and conditions under which the vessel must operate in order to transit the area with more than two speedboats.

* * * * *

(d) * * *
(2) * * *
(ii) * * *

(A) Marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operators of purse seine vessels must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Marine mammals must not be brailed or hoisted onto the deck during ortza retrieval.

* * * * *

(iv) A vessel having a vessel certificate issued under paragraph (a)(1) of this section may not engage in fishing operations for which a general permit is required unless it is equipped with a porpoise safety panel in its purse seine, and has and uses the other required gear, equipment, and procedures.

(A) *Class I and II Vessels:* For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the propoise safety panel must be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips must be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of the corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distances from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20 fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(B) *Class III Vessels:* For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porposie safety panel must be a minimum of 180 fathoms in length (as measured before installation). It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outbound end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and, if present, the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20 fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

* * * * *

(H) *Facemask and snorkel, or viewbox:* At least two facemasks and snorkels, or viewboxes, must be carried on all certificated vessels.

* * * * *

(v) * * *

(C) Upon failure to pass an inspection or reinspection, a vessel having a vessel certificate of inclusion issued under paragraph (c)(1) of this section may not engage in fishing operations for which a general permit is required until the deficiencies in gear or equipment are corrected as required by an authorized National Marine Fisheries Service inspector.

* * * * *

(vii) * * *

(C) *Prohibited setting at sundown:* [Reserved]

(D) If the backdown maneuver or other release procedures continue past one-half hour after sunset, lights must be used to allow full observation of completion of the set. The light(s) used must provide sufficient light to observe that procedures for porpoise release are carried out and to monitor incidental mortality.

(E) *Porpoise Safety Panel:* During backdown, the porpoise safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. Any super apron must be positioned at the apex of the backdown channel.

* * * * *

§ 216.24 [Amended]

3. In addition to the amendments set forth above, remove the phrase "five (5) days" from the paragraph (c)(1); remove the phrase "at least [sic] ten (10) days" from paragraph (d)(2)(iii)(A)(3), and remove the word "rubber" from newly redesignated paragraph (d)(2)(iv)(G).

[FR Doc. 85-10651 Filed 5-1-85; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 630

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils) have submitted the Fishery Management Plan for the Atlantic Swordfish Fishery for Secretarial review and are requesting comments from the public. Copies of the plan may be obtained from the addresses below.

DATE: Comments on the plan should be submitted on or before July 12, 1985.

ADDRESSES: All comments should be sent to Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Clearly mark, "Comments on Atlantic Swordfish Plan", on the envelope.

Copies of the plan are available upon request from the:

South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699;

New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906;

Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901;

Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy Boulevard, Tampa, Florida 33609; and

Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended, (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

This plan proposes measures for managing foreign fisheries that have an incidental catch of swordfish and domestic commercial and recreational fisheries for swordfish in the Atlantic, Gulf of Mexico, and Caribbean. On March 4, 1983, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this plan (48 FR 9365).

Regulations proposed by the Councils and based on this plan are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: April 29, 1985.

Richard B. Roe,

Director, Office of Protected Species, National Marine Fisheries Service.

[FR Doc. 85–10666 Filed 4–29–85; 3:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 50, No. 85

Thursday, May 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Peppermint Mountain Resort, Draft Environmental Impact Statement, Supplement; Sequoia National Forest Tulare County, CA

Availability of Supplement to Peppermint Mountain Resort Draft Environmental Impact Statement

The Department of Agriculture, U.S. Forest Service, Sequoia National Forest, announces publication of a Supplement to the Peppermint Mountain Resort Draft Environmental Impact Statement. This Supplement focuses specifically on the resort's potential indirect effect on the survivability of the California condor (*Gymnogyps californianus*). The analysis concludes that the project is neutral with respect to the condor.

Starting on this date there will be 45 a day public review period for this Supplement. All interested parties are encouraged to read it and submit written comments to: James A. Crates, Forest Supervisor, 900 West Grand Avenue, Porterville, CA 93257.

These comments will be addressed in the Final Environmental Impact Statement.

For further information contact Julie Allen, Project Coordinator, at the above address or by telephone at 209-784-1500.

James A. Crates,

Forest Supervisor.

[FR Doc. 85-10705 Filed 5-1-85; 8:45 am]

BILLING CODE 3410-11-M

Intermountain Region; Caribou National Forest Grazing Advisory Board Committee; Meeting

The Caribou National Forest Grazing Advisory Board Committee will at *10:00 a.m., June 5, 1985*, at the *Grandine Guard Station, on the Curlew National Grasslands west of Malad.*

The purpose of this meeting is to secure recommendations for use of the range betterment funds, grazing allotment plans, application of vegetative treatments, construction of range improvements, noxious weed treatment and Grazing Agreement management.

The meeting is open to the public. Persons desiring to make the field trip should furnish their own transportation and lunch. During the last stop of the day, there will be a short meeting to finalize recommendations and to receive oral statements and answer any questions from the public. Written statements may be filed at any time for the Board's consideration.

The meeting will terminate at the Grandine Guard Station about 4:00 p.m.

Summary minutes of the tour, meeting, and board recommendations will be maintained in the Forest Supervisor's office in Pocatello and will be available for public inspection within 30 days following the meeting.

Dated: April 25, 1985.

Frank G. Beitia,

Acting Forest Supervisor.

[FR Doc. 85-10704 Filed 5-1-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Houtz and Outlet Sub-Watersheds, Rock Creek Watershed, ID; Finding of No Significant Impact.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334-1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Houtz and Outlet Sub-watersheds, Rock Creek Watershed, Power County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment to reduce sediment damage, to improve water quality, to protect the quality of the land resource and to maintain or increase agricultural production. The planned works of improvement include conservation practices such as conservation tillage systems, no-till systems, permanent vegetation, and terraces.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 23, 1985.

James N. Habiger,

Acting State Conservationist.

[FR Doc. 85-10689 Filed 5-1-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Triple Five Corporation LTD.

On March 8, 1985, notice was published in the **Federal Register** (50 FR 9482) that an application had been filed

by the Triple Five Corporation LTD., Suite 900, Capital Place, 9707 110th Street, Edmonton, Alberta, Canada T5K2L9, for a permit to take marine mammals for the purpose of public display.

Notice is hereby given that on April 24, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: April 24, 1985.

Richard B. Roe,

Director of Protected Species and Habitat Conservation.

[FR Doc. 85–10618 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Scientific and Statistical Committee and Groundfish Management Team will meet jointly at the Portland Motor Hotel, 1414 SW. Sixth Avenue, Portland, OR, May 14–15, 1985, to discuss procedures and coordination of groundfish issues including: Integration of economic and social aspect into management measures, status, and practicalities of limited entry; long- and short-term research needs; management implications of subsuming numerical optimum yield species into the non-economic species complex, and other matters of mutual concern. For further information, contact Mr. Joseph Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR; telephone: (503) 221–6352.

Dated: April 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 85–10653 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Development Team (PDT) will convene a public meeting, April 26, 1985, at the Council's office, 1164 Bishop Street, Room 1405, Honolulu, HI, to discuss the draft Deepsea Shrimp Fishery Management Plan (EMP). The Council's Bottomfish Plan PDT will meet May 1, 1985, at the same location to discuss the draft Bottomfish EMP.

The Council also has changed the agenda for its public meeting (50 FR 16333, April 25, 1985) in Saipan and Guam to include a closed session to discuss personnel and other appropriate matters. The closed session will be held May, 1985 at the Hyatt Regency Saipan, CNMI.

For further information on the above meetings, contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS (808) 546–8923.

Dated: April 26, 1985.

Richard B. Roe,

Director of Protected Species and Habitat Conservation.

[FR Doc. 85–10652 Filed 5–1–85: 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Interim Protection for Mask Works of Swedish Nationals Domiciliaries and Sovereign Authorities

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of initiation of proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of 17 U.S.C. to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10–14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517–44519 and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On April 25, 1985, the Federation of Swedish Industries submitted a request for the issuance of an interim order complying with the aforementioned guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to Sweden for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985, registration cut-off date for chips first commercially exploited on or after July 1, 1983, a date is being set both for the submission of comments in accordance with paragraph F(a), and a hearing date with respect to paragraph F(b) of the guidelines.

DATES: Comments must be submitted on or before May 22, 1985, and a public hearing will be held May 29, 1985, at 9:30 a.m.; requests to present oral testimony should be received on or before May 22, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention Assistant Commissioner for External Affairs, Box 4, Washington, D.C. 20231.

The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public insepction in Room 11C28 Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defiend in 17 U.S.C. 901(a)(2), as:

> "a series of related images, however, fixed or encoded
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office,

or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902: first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On April 25, 1985, the Federation of Swedish Industries submitted a petition for the issuance of an interim order under 17 U.S.C. 914. The petition, including information supplied under the seal of the Swedish Ministry of Justice, is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In his remarks in the **Congressional Record** of October 10, 1984, at page E4434 Representative Kastenmeier suggests that "[i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. * * * With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

In view of these admonitions, comments are invited on this petition and the supplemental information. Particularly, views are solicited as to the relation of the progress in Sweden toward establishing a system of protection for mask works and Chapter 9 of 17 U.S.C.; and to the existence or non-existence of any misappropriation of mask works in Sweden.

Dated: April 26, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

April 12, 1985.

Industriförbundet

The United States Commissioner of Patents and Trademarks,

Box 4, Washington, D.C., U.S.A.

Petition to the Secretary of Commerce to issue an Order extending the privilege of making interim registrations for mask works

The Semiconductor Chip Protection Act of 1984 (Chapter 9 of Title 17 of the United States Code) provides for protection for mask works. Basically such protection is available only for owners of such works who are nationals or domiciliaries of the United States. Protection to foreign rightowners is denied unless the mask works are first commercially exploited in the United States. Protection to foreign rightowners is denied unless the mask works are first commercially exploited in the United States. Section 914(a) of the Act provides, however, that the Secretary of Commerce may extend, by issuing an Order, the privilege of protection under the Act also to nationals of foreign countries under certain conditions. The Assistant Secretary of Commerce and Commissioner of Patents and Trademarks has been delegated the responsibility to receive petitions for such Orders and to issue and terminate them.

The conditions which have to be met by the foreign nation in order to obtain the privilege of interim protection under the Act are: (1) That the foreign nation is making progress toward a regime of mask work protection generally similar to that under the Act, (2) that its nationals and persons controlled by them are not engaging and have not in the recent past been engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works, and, (3) that issuing the Order would promote the purposes of the Act and of achieving international comity toward mask work protection.

In these circumstances and following consultations with the competent authorities in Sweden the Federation of Swedish Industries would like to submit, by means of this letter, to the United States Assistant Secretary of Commerce and Commissioner of Patents and Trademarks a request for an Order extending the privilege of interim protection under the Semiconductor Chip Protection Act also to nationals, domiciliaries and sovereign authorities of Sweden. The Federation of Swedish Industries represents the interests of the Swedish industry as a whole. Some 3,000 enterprises are affiliated to the Federation, among them the major manufacturers of chip products in Sweden.

As the basis for the request the Federation submits that in Sweden high priority is given to the question of establishing an appropriate protection of mask works and that substantive progress is made in this respect. Furthermore the Federation submits that to its knowledge no chip piracy or similar

misappropriation of semiconductor chip products has taken place in Sweden and that the issuing of such an Order would promote the purposes of the Act and of achieving international comity toward mask work protection.

In support of the above submissions the Federation would like to refer to the enclosed statement, with an annex, by the ministry of Justice of Sweden, which is within the Swedish Government responsible for intellectual property law and its international aspects.

Federation of Swedish Industries.

Sven Wallgren,

Chairman of the Board.

Lars Nabseth,

Director General.

[DNR 990-85]

Stockholm, March 27, 1985.

The Under-Secretary of State

Ministry of Justice,

Division for International Affairs, S-103 33 Stockholm, Sweden, Telephone: 763 10 00.

Re: Protection of Integrated Circuits in Sweden

1. Within the Swedish Government, the Ministry of Justice is responsible for intellectual property law both at the national level and as regards its international aspects. On behalf of the Government the Ministry submits the following statement on the protection of integrated circuits in this country.

2. As is stated more in detail below the Ministry has recently initiated a work aiming at clarifying the questions concerning protection of integrated circuits under present intellectual property law in Sweden and at formulating possible amendments to that legislation in order to establish an efficient protection for Swedish as well as foreign such material.

3. At the outset it should be mentioned that the copyright law in the five Nordic countries is almost uniform. This body of law is now under revision. Proposals for amendments to the law are drafted and put forward by Committees for Revision of the Copyright Law which are set up in each one of the Nordic countries. The proposals from the Committees are the subject of government deliberations at an inter-Nordic level. Following such deliberations and the usual hearing process the respective Government puts forward bills to the parliaments on amendments to the laws. The overall aim of the revision work is to preserve and strengthen the unity which exists in the field of copyright law in the Nordic countries.

4. The Revision Committees are giving high priority to the copyright problems relating to the use of computers, including the protection of computer software and of integrated circuits. These issues are at present under discussion within the Committees. As far as the Swedish Committee is concerned proposals for amendments to the copyright law in these respects are expected before the end of 1985. The deliberations within the Swedish Committee are based on preliminary proposals from a special Working Party. A statement by the Chairman of that Working Party is annexed.

5. The proposals from the Revision Committee will be submitted for observations in the usual hearing process. The Ministry intends then to formulate, taking into account the results of the hearing process and in cooperation with the other Nordic countries, final proposals on the issue to be submitted, by the Government to the Parliament. As far as can be envisaged now these proposals could be expected in the second half of 1986.

6. To the knowledge of the Ministry of Justice no nationals, domiciliaries or sovereign authorities of this country, or persons controlled by them, are or have been engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works.

Harald Falth,

Under-Secretary of State of the Ministry of Justice.

[Annex]

Stockholm, March 27, 1985.

Ministry of Justice,

Division for International Affairs, S-103 33 Stockholm, Sweden, Telephone: 763 10 00

Protection of Integrated Circuits

Report of a Working Party to the Committee for Revision of the Copyright Law.

1. At the end of 1984 the Swedish Committee for Revision of the Copyright Law initiated deliberations on the copyright problems in relation to the use of computers. The Committee appointed a small Working Party under the chairmanship of Henry Olsson, Director, Ministry of Justice. In February 1985 the Working Party submitted a final report on its work to the Committee.

2. The report of the Working Party deals with three major issues, viz. (a) copyright problems in relation to the storage and processing of works, and the creation of works, by means of computers, (b) protection of computer programs, and, (c) the protection of integrated circuits.

3. As far as integrated circuits are concerned the conclusion of the Working Party is that the definition of protected works in the Copyright Act—in particular the definition of "descriptive literary works"—might cover also what is called "mask works" in the United States Semiconductor Chip Protection Act of 1984. Furthermore the protection under the Copyright Act against unauthorized reproduction of such works might, according to the Working Party, will be interpreted as covering also the various steps of fixing a mask work in a semiconductor chip product.

4. In order to avoid any uncertainty the Working Party suggests, however, that the Copyright Act be amended in order to clarify the issue and to ascertain that all relevant aspects aiming at the establishment of an efficient and appropriate protection for integrated circuits are taken into account.

5. Certain of the proposed amendments deal with restrictions on the availability of private copying and with the right to control the distribution to the public of copies of works. The most important parts of the proposed amendments deal, however, with two issues. The first one aims at clarifying in the text of the Act that works constituting the patterns for the circuitries in semiconductor chip products are to be included in the concept of literary works in the Act. This would imply that e.g. the reproduction right under the law would be applicable also to such works. The special nature of such works and the special proceedings which are or may be used for the manufacturing of chip products on the basis of the works might, however, imply that one can not be altogether certain that the reproduction right and the copyright protection system in general would in all situations afford the necessary protection. Such an uncertainty can, in the opinion of the Working Party, not be accepted. The chip industry, has a need for a reliable system for the protection of its products. For this reason the Working Party proposes, in addition to the protection which may apply to this kind of works under the general provisions of copyright law, speical additional provisions on the protection of integrated circuits. The new provisions are proposed to be included in a section of the Copyright Act which contains provisions i.e. on protection for certain categories of producers.

6. The proposed additional provisions on protection for the patterns for the circuitry of a semiconductor chip product would grant to the person who creates the circuitry pattern an exclusive right to authorize or prohibit the use of it, (a) for the purpose of making copies of it or reproducing it by any means on a material support, and, (b) by making it available to the public, in its original form or in an adapted form, through sale, leasing, lending or otherwise. The right is proposed to subsist for 10 years from the end of the year during which the pattern was created. The exceptions to these rights would basically be that copying exclusively for analysis of or teaching concerning the particular circuitry pattern would be allowed with the express provision that such copies must not be used for other purposes. Furthermore it is proposed that if the circuity pattern is included in a product which has been put on the market with the consent of the right-owner these copies of the pattern may be further distributed to the public.

Under particular provisions in the present Copyright Act the Government has the power to extend the application of additional provisions like the ones now mentioned also to foreign countries on the basis of reciprocity.

The additional provisions now mentioned would not prevent the application of the general provisions in the copyright law if the circuitry pattern or part of it is considered as covered by copyright.

7. The proposals are now under study in the Revision Committee itself and have also been discussed in a preliminary way at an inter-Nordic level in a meeting between the Chairmen of the Revision Committees. It would seem that there is, in broad terms, at the Nordic level, so far, an agreement on the basic contents of the proposals. The final proposals from the Revision Committee on

these issues could be expected before the end of 1985.

Henry Olsson,

Director, Ministry of Justice, Chairman of the Working Party.

[FR Doc. 85–10686 Filed 5–1–85; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange; Proposed Amendments Relating to the White Wheat Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Minneapolis Grain Exchange has submitted a proposal to amend the delivery procedures for its white wheat futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 3, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581. Reference should be made to the MGE white wheat futures contract rule amendments.

SUPPLEMENTARY INFORMATION: The Minneapolis Grain Exchange ("MGE") is proposing to amend the delivery procedures for the white wheat futures contract. The principal amendments being proposed by the MGE include: (1) The deletion of Seattle and Tacoma, Washington as par delivery points for rail delivery of white wheat; (2) the imposition of a new requirement that rail deliveries of white wheat must consist of a minimum of 10,000 bushels specified for delivery at a single location; (3) a reduction in the shipping period for rail deliveries against outstanding shipping certificates to 10 days from 20 days; and (4) a change in the maximum permissible deviation in the quantity of white wheat loaded out against shipping certificates to 2% of the quantity specified on the shipping certificates cancelled on any one day up to a maximum deviation of 2,000 bushels; currently, a maximum deviation of 100 bushels is permitted under the contract. For deviations of 100 bushels or less, the contract's current requirement—that such deviations be settled based on the settlement price of the nearest trading futures delivery month on the day the variance occurs—would be revised to provide for settlement based on the price at which payment is made for the shipping certificate(s). For deviations in excess of 100 bushels and up to 2,000 bushels, settlement would be based on the cash market price for white wheat on the day the buyer and seller have accurately determined the variance.

The MGE indicated that the amendments are being proposed to clarify certain contract rules primarily related to the rail/barge delivery process. The Exchange indicates that the white wheat contract's delivery rules tend to reflect vessel delivery procedures, whereas all deliveries on the contract during the December 1984 delivery month were made using the rail/barge option. The Exchange indicates that the proposed amendments are intended to alleviate possible complications arising from the imposition of vessel rules upon delivery by rail or barge and to bring the contract's rules into closer conformance with cash market practices for rail and barge movement of white wheat.

The Exchange is proposing that the amendments to the white wheat futures contract be applicable to existing contracts beginning with the next delivery month which expires at least 30 days subsequent to Commission approval of the proposals, as well as to all new contracts listed by the Exchange.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington D.C. 20581, (202) 254–7303.

In accordance with section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposed rule amendments submitted by the MGE concerning its white wheat futures contract are of major economic significance. Accordingly, the MGE's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the MGE in support of its proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)) except to the extent that they are subject to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by June 3, 1985.

Issued in Washington, D.C., on April 29, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–10667 Filed 5–1–85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Progress Payment Rates

AGENCY: Department of Defense (DoD).

ACTION: Notice of change in progress payment rates.

Cross Reference: See the "Rules and Regulations" Section of this **Federal Register** for a related document (FR Doc. 10631) by DoD on Progress Payment Rates.

SUMMARY: The Deputy Secretary of Defense has directed that, effective May 1, 1985, the following revisions be made to DoD's contract financing policies:

1. The customary progress payment rate for other than small business concerns be lowered from 90% to 80%;

2. The customary rate for small business concerns be lowered from 95% to 90%;

3. The targeted rate for contractor's investment under flexibile progress payments be increased from 5% to 15% (upper and lower bands would also be modified accordingly); and

4. Billing periods remain on a monthly basis.

On April 22, 1985, the DAR Council approved deviations to the Federal Acquisition Regulation and revisions to the DoD FAR Supplement to implement the above direction. These policy changes are expected to be incorporated into all contracts awarded on or after May 1, 1985. This makes it necessary for contracting officers to modify outstanding solicitation provisions to the maximum extent practicable.

However, it is recognized that there are special contracting situations which require additional guidance.

1. DoD is modifying the Federal Acquisition Regulation for DoD contracts only, as follows:

32.501-1(a)—Change "90 percent" and "95 percent" to "80 percent" and "90 percent", respectively.

52.232-16

(a)(1)(i)—Change "90 percent" to "80 percent"

(a)(5)—Change "90 percent" to "80 percent"

(b)—Change "90 percent" to "80 percent"

Alternate I: Change "95 percent" to "90 percent" in the preamble and (a)(1)(i) of Alternate I.

2. The Progress Payments clause shall be inserted in full text and identified as a deviation in accordance with FAR 52.102-2 and 252.103, respectively.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 85-10632 Filed 5-1-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Cancellation; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army District, Seattle, Department of Defense.

ACTION: Notice.

SUMMARY: The Seattle District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a DEIS as published in 47 FR 241, 15 December 1982. The DEIS was to be prepared for dredging with intertidal disposal (19 acres); construction of a commercial marina, levee, and bulkhead; and placement of riprap in Fidalgo Bay, Padilla Bay at Anacortes, Washington.

The Notice is cancelled because major adverse environmental effects were identified; the project was found not be be in compliance with the Clean Water Act section 404(b)(1) guidelines promulgated by the Environmental Protection Agency; and the project did not conform with local or state laws, regulations, or codes. Seattle District determined that there was sufficient evidence in the record to support denial of the project as proposed. The cancellation of the Federal Project nullifies any need for environmental review associated with that project.

ADDRESS: Questions can be forwarded to Dr. Fred Weinmann; Environmental Resources Section; U.S. Army Engineer District, Seattle; Post Office Box C-3755; Seattle, Washington 98124-2255. Telephone (206) 764-3625 or FTS 399-3625.

Dated April 23, 1985.

Roger R. Yankoupe;

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-10710 Filed 5-1-85; 8:45 am]

BILLING CODE 3710-GB-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 3, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 29, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Bilingual Education and Minority Language Affairs

Type of Review Requested: Extension

Title: Application for Grants under Transition Program for Refugee Children

Agency Form Number: ED 443-2

Frequency: Annually

Affected Public: State or local governments

Reporting Burden: Responses: 54; Burden Hours: 8,424

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Refugee Act of 1980, as amended, authorizes the award of grants to applicants that meet the purposes and requirements of the Act and the application requirements established in regulations. The proposed data collection informs the applicant of the information required under the law and regulations.

[FR Doc. 85-10687 Filed 5-1-85; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Canal Refining Co. and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Department of Energy.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Canal Refining Company (Canal). This Proposed Remedial Order charges Canal with improperly reporting the tier classification of certain of its crude oil receipts to the DOE Entitlements Program and selling crude oil at prices in excess of those permitted under DOE regulations, all in circumvention and contravention of the Entitlements

Program and price regulations. These charges arose out of purchase and sale transactions between Canal and a reseller in which Canal transferred to the reseller certifications of volumes of predominantly price-controlled crude oil obtained from Canal's historical suppliers in exchange for certifications of equal volumes of crude oil certified stripper and purchased by Canal at discounted prices. The DOE seeks a refund of the entitlements violation amount of $12,546,305.70, before interest. Alterntively, DOE seeks a refund of the pricing overcharges totalling $11,316,442, before interest. Although the audit covered the period July 1980—January 1981, the entitlements violation amount is calculated for the period July–December 1980, since no entitlements list was published for January 1981.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Carl A. Corrallo, Chief Counsel for Administrative Litigation, ERA, U.S. Department of Energy, 1000 Independence Avenue SW., (RG–15), Washington, D.C. 20585, (202) 252–4167.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room, 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 19th day of April, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–10662 Filed 5–1–85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order to Big Muddy Oil Processors, Inc., and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Department of Energy.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Big Muddy Oil Processors, Inc. (Big Muddy). This Proposed Remedial Order charges Big Muddy with selling crude oil at prices in excess of those permitted under the DOE regulations, to purchasers other than ultimate consumers during the period May 1979 through December 1980. The total violation amount is $1,454,876.35, plus interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Avrom Landesman, Director, Office of Enforcement Programs, ERA, U.S. Department of Energy, 1000 Independence Avenue SW. (RG–16), Washington, D.C. 20585, (202) 252–8900.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 21st day of March, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–10661 Filed 5–1–85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85–05–NG]

Czar Resources Inc.; Order Granting Authorization To Import Canadian Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 24, 1985, the ERA Administrator issued an opinion and order granting Czar Resources Inc. (Czar Inc.) authority to import Canadian natural gas for resale to Mobil Oil Corporation (Mobil). The approval authorizes Czar Inc. to import up to 4.6 Bcf of natural gas from Czar Resources Ltd. of Calgary, Alberta, Canada, over a two-year period beginning on the date of first delivery at an international border price of $2.94 (U.S.) per MMBtu. Mobil plans to use the gas, for which it will pay a delivered price of $3.70 (U.S.) per MMBtu, in its Ferndale, Washington, petroleum refinery.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252–9482

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667

Issued in Washington, D.C., on April 26, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

In the matter of Czar Resources Inc.; ERA Docket No. 85–05–NG, DOE/ERA Opinion and Order No. 77; order granting authorization to import natural gas from Canada; DOE/ERA opinion and Order No. 77 April 24, 1985.

I. Background

On February 25, 1985, Czar Resources Inc. (Czar Inc.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to import on an interruptible, best-efforts basis, up to 6,300 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.) Czar Inc. is a wholly-owned U.S. subsidiary of Czar Ltd., a Canadian-based natural gas producer. Under this import proposal, Czar Inc. will purchase a maximum volume of 4.6 Bcf over a period of two years, beginning on the date of first delivery, for resale to Mobile Oil Corporation (Mobil). The imported gas is intended to displace No. 6 fuel oil used at Mobil's Ferndale, Washington, petroleum refinery. Following the initial two-year term, the arrangement is to continue on a month-to-month basis until terminated by any party or until a maximum of 4.6 Bcf of gas has been delivered, whichever occurs first.

The gas would be purchased under an agreement entered into February 15, 1985, by the three companies. The agreement specifies that the gas would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the facilities of

Cascade Natural Gas Corporation which would complete ultimate delivery to the Ferndale refinery. At this time, no final transportation agreements have been reached by the parties.

The sales contract provides that, during the first six months, the price Czar Inc. would pay Czar Ltd. for the gas is $2.94 (U.S.) per MMBtu. The delivered cost to Mobil during that period would be $3.70 (U.S.) per MMBtu. Thereafter, price redeterminations may be made semiannually, subject to mutual agreement, to reflect prevailing market conditions. Any party may terminate the arrangement if agreement on an acceptable import or delivered price cannot be reached. Although the sales contract imposes no minimum purchase obligation or take-or-pay requirement, Mobil has agreed that all of the natural gas needed for fuel oil displacement at its refinery would be supplied by Czar Ltd., provided the volumes requested can be delivered and the price is competitive. Under the contract, Mobil is entitled to determine, at its sole discretion, the amount of gas required daily for its refinery on the basis of operating, economic, or any other consideration.

In support of its application, Czar Inc. asserts that the imported gas would provide Mobil with a cost-effective means of improving refinery economics because it represents a significant saving over Mobil's present cost for No. 6 fuel oil of approximately $3.88 (U.S.) per MMBtu. Czar Inc. further states that no additional pipeline construction is needed to implement the proposed import.

According to the applicant, the import is in the public interest because it would (1) provide an environmental advantage compared to burning fuel oil; (2) reduce or eliminate Mobil's requirement for fuel oil, thus freeing that oil for use by other domestic purchasers; (3) reduce reliance on imported crude oil; (4) serve an incremental market that the existing transmission and distribution systems have not been able to serve under similiar competitive conditions; and (5) increase revenues for the transporting pipelines which will benefit their residential and industrial customers.

II. Interventions and Comments

The ERA issued a notice of the application on March 18, 1985.[1] The notice invited protests or motions to intervene, which were to be filed by April 17, 1985. A motion to intervene was received from Northwest. In its filing, Northwest stated neither support for nor opposition to the proposed import nor did Northwest request the right to be heard further. This order grants intervention to Northwest.

III. Decision

Czar Inc.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [2] The Administrator is guided by the Department of Energy's policy relating to the regulation of natural gas imports.[3] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

The Czar Inc. arrangement is wholly consistent with this public interest test. The volumes will be imported on a short-term, interruptible basis. No minimum purchase provision or take-or-pay obligation is included in the contract. There are to be semiannual price reviews and adjustments as necessary to respond to market changes over the term of the arrangement. These components of the arrangement, taken together, provide sufficient flexibility to ensure that the gas will only be imported when it is fully competitive.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed Mobil will purchase the gas only to the extent it needs such volumes for its refinery operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Czar Inc. is not inconsistent with the public interest and thus should be granted.[4]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Czar Resources Inc. (Czar Inc.) is authorized to import up to 6,300 Mcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery, and to continue thereafter on a month-to-month basis until terminated by either party or until a maximum of 4.6 Bcf has been imported, whichever occurs first, in accordance with the provisions established in the contract submitted as part of the application in this docket.

B. Czar Inc. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Czar Inc. shall file with the ERA the terms of any renegotiated price that may become effective after the initial 6-month period within two weeks of its effective date.

D. The motion to intervene by Northwest Pipeline Corporation is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its motin to intervene and not herein specifically denied, and that the admission of this intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C. April 24, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10719 Filed 5-1-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Finality of Oil Pipeline Valuation Reports; Acorn Pipe Line Co. et al.

April 30, 1985.

The Federal Energy Regulatory Commission, by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

The Board has issued the tentative valuation report(s) for the following common carriers by oil pipeline:

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[1] 50 FR 10835, March 18, 1985.

[2] 15 U.S.C. 717b.

[3] 49 FR 6684, February 22, 1984

[4] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Docket No. PV-	Carrier	Year(s)
1364-000	Acorn Pipe Line Company	1982, 1983
1473-000	Algonquin Pipe Line Company	1981, 1982
1414-000	Allegheny Pipeline Company	1982, 1983
1439-000	Amdel Pipeline, Inc.	1982
1440-000	American Petrofina Pipe Line Company	1981, 1982
1302-000	Amoco Pipeline Company	1982
1329-000	ARCO Pipe Line Company	1982
1291-000	Ashland Pipe Line Company	1982
1381-000	Badger Pipe Line Company	1982, 1983
1430-000	Belle Fourche Pipeline Company.	1982, 1983
1425-000	Black Lake Pipe Line Company	1982, 1983
1322-000	Buckeye Pipe Line Company.	1982, 1983
1382-000	Butte Pipe Line Company	1982, 1983
1465-000	C & T Pipeline, Inc	1980 (Initial), 1981
1404-000	Calnev Pipe Line Company	1982, 1983
1416-000	Chevron Pipe Line Company	1982
1427-000	Chicap Pipe Line Company	1982, 1983
1481-000	Chisholm Pipeline Company	1982 (Initial)
1312-000	Cities Service Pipe Line Company	1982
1472-000	Clarco Pipe Line Company	1979 (Initial)
1464-000	Cochin Pipeline System—U.S.	1980, 1981
1433-000	Collins Pipeline Company	1982, 1983
1422-000	Colonial Pipeline Company	1981, 1982
1316-000	Continental Pipe Line Company	1982.
1426-000	Cook Inlet Pipe Line Company	1982, 1983
1365-000	Crown-Rancho Pipe Line Corporation.	1982, 1983
1349-000	Diamond Shamrock Refining and Marketing Company	1982, 1983
1411-000	Dixie Pipeline Company	1982
1447-000	Dome Pipeline Corporation, Eastern Delivery System	1980, 1981
1385-000	Emerald Pipe Line Company.	1982, 1983
1469-000	Enterprise Pipeline Company	1980 (Initial)
1470-000	Enterprise Products Company of Mississippi	1981 (Initial)
1441-000	Explorer Pipeline Company	1982, 1983
1394-000	Exxon Pipeline Company	1981, 1982
1341-000	Farmland Industries, Inc.	1982, 1983
1389-000	Four Corners Pipe Line Company.	1982, 1983
1478-000	G & T Pipeline Company	1982 (Initial)
1402-000	Getty Pipeline, Inc.	1982.
1436-000	Gulf Central Pipeline Company.	1982
1333-000	Gulf Pipeline Company	1982
1409-000	Hess Pipeline Company	1982, 1983
1431-000	Hydrocarbon Transportation, Inc.	1982
1406-000	Jayhawk Pipeline Corporation.	1982, 1983
1413-000	Jet Lines, Inc	1982, 1983
1375-000	Kaneb Pipe Line Company	1982, 1983.
1299-000	Kaw Pipe Line Company	1982, 1983
1429-000	Kerr McGee Pipeline Corporation.	1982, 1983.
1435-000	Kiantone Pipeline Corporation.	1982, 1983.
1419-000	Lake Charles Pipe Line Company.	1982, 1983
1354-000	Lakehead Pipe Line Company	1982, 1983
1403-000	Laurel Pipe Line Company	1982
1392-000	Marathon Pipe Line Company.	1982.
1395-000	Mid-America Pipe Line Company.	1982.
1353-000	Mid-Valley Pipeline Company	1982, 1983
1448-000	Mobil Eugene Island Pipeline Company	1982.
1311-000	Mobil Pipe Line Company	1982
1332-000	National Transit Company	1982, 1983
1455-000	Ohio Oil Gathering Corporation II	1982
1292-000	Ohio River Pipe Line Company	1982
1471-000	Oiltanking of Texas Pipeline Company.	1980 (Initial)
1417-000	Olympic Pipe Line Company.	1982, 1983
1453-000	Osage Pipe Line Company	1981, 1982
1456-000	Owensboro-Ashland Company	1982, 1983.
1420-000	Paloma Pipe Line Company	1982, 1983
1320-000	Phillips Pipe Line Company.	1982
1372-000	Pioneer Pipe Line Company	1982, 1983
1343-000	Plantation Pipe Line Company.	1982, 1983.
1367-000	Platte Pipe Line Company	1982, 1983
1410-000	Portal Pipe Line Company	1982, 1983
1347-000	Portland Pipe Line Corporation.	1982, 1983
1327-000	Pure Transportation Company.	1982
1428-000	Santa Fe Pipeline Company	1982.
1450-000	Seaway Pipeline, Inc.	1982
1369-000	Shamrock Pipe Line Corporation, The.	1982, 1983
1326-000	Shell Pipe Line Corporation.	1982.
1335-000	Sohio Pipe Line Company	1982
1424-000	Southcap Pipe Line Company.	1982, 1983
1393-000	Southern Pacific Pipe Lines, Inc.	1982
1370-000	Sun Oil Line Company of Michigan.	1982, 1983
1315-000	Sun Pipe Line Company	1982, 1983.
1386-000	Tecumseh Pipe Line Company	1982, 1983.
1300-000	Texaco-Cities Service Pipe Line Company	1982, 1983.
1408-000	Texas Eastern Transmission Corporation	1982
1293-000	Texas-New Mexico Pipe Line Company.	1982
1330-000	Texas Pipe Line Company, The.	1982
1449-000	Texoma Pipe Line Company	1982, 1983.
1466-000	Tomahawk Pipe Line Company.	1982
1357-000	Total Pipeline Corporation	1982, 1983
1379-000	Trans Mountain Oil Pipe Line Corporation.	1982, 1983.
1412-000	Trans-Ohio Pipeline Company.	1982, 1983.
1388-000	West Emerald Pipe Line Corporation	1982, 1983.
1463-000	Western Oil Transportation Company, Inc	1980, 1981, 1982.
1396-000	West Shore Pipe Line Company	1982, 1983.
1362-000	West Texas Gulf Pipe Line Company.	1982
1421-000	White Shoal Pipeline Corporation.	1982, 1983.
1377-000	Wolverine Pipe Line Company.	1982, 1983.
1355-000	Wyco Pipe Line Company	1982, 1983.
1373-000	Yellowstone Pipe Line Company.	1982, 1983.

Section 19a(h) of the Interstate Commerce Act provides that if no protest is filed within thirty days, the valuation shall become final as of the date thereof. Notice is hereby given that no protest to the valuation reports for any of these carriers have been received and that each valuation report is final as of the date to was issued by the Board.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-10630 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI85-2-000]

ARCO Oil & Gas Co., Division of Atlantic Richfield Co.; Petition for Special Relief

April 26, 1985.

Take notice that on March 11, 1985, ARCO Oil and Gas Company, Division of Atlantic Richfield Company, filed a document styled a motion and, concurrently therewith, a notice of change in rates under its Gas Rate Schedule No. 557 covering sales to El Paso Natural Gas Company under a March 11, 1965 contract from the Hugoton and Panoma Fields, Grant and Staton Counties, Kansas. The motion sought expeditious issuance of an order (1) advising of acceptance of the notice filing, (2) confirming the applicability of increased rates set forth therein, and (3) waiving requirements at 18 CFR 154.94(b) for a thirty day notice period applicable to the filing and permitting the rate change to become effective March 12, 1985.

By letter order issued April 10, 1985, ARCO was informed that its motion is being considered as a petition for special relief. Its notice of change in rate was rejected without prejudice to any action taken on the petition for special relief because action regarding the notice could not be taken separately from consideration of the petition.

ARCO states in its filing that the contract expired pursuant to its terms March 11, 1985; that most of the gas was NGPA section 104 "flowing gas" eligible for a rate of $0.501 per MMBtu; that El Paso has unjustifiably refused to enter into a rollover contract with ARCO concerning the 104 gas; and that the gas has nevertheless become eligible for the NGPA section 106(a) rollover rate, $0.914, effective after expiration of the original contract, *i.e.*, March 12, 1985. The notice of change would increase the rate from the section 104 "flowing gas" rate to the section 106(a) rollover rate. ARCO alleges that El Paso refused to enter into a rollover contract with ARCO unless ARCO made certain concessions to EL Paso concerning gas sales and transactions unrelated to the instant sale, including general efforts by EL Paso to decrease its higher gas costs, obtain market-out provisions in some of its gas purchase contracts, and reduce

its take-or-pay obligations. ARCO argues that apart from NGPA section 106(a), section 104(b)(2) permits an increase to a higher rate if it is applicable to a first sale and is just and reasonable under the Natural Gas Act. It argues that the NGPA section 106(a) rate is just and reasonable under the Natural Gas Act because it was derived from a pre-existing rate which had been found to be just and reasonable under the Natural Gas Act.

On April 5, 1985, El Paso filed a motion to intervene and a protest to ARCO's motion. El Paso need make no further filing concerning its participation in response to this notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10625 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-138-000]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 26, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on April 19, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 19, 1985:

Second Revised Sheet No. 51;
First Revised Sheet Nos. 52 and 53

These revised tariff sheets are being filed to implement special provisions as part of its RQ Rate Schedule to provide incentives to its customers to encourage the construction and installation of new cogeneration facilities. Because cogeneration is an efficient means to utilize natural gas, reduces the "burner-tip" cost of energy for both industrial and commercial customers and provides a way to retain or improve local employment and improve local economic stability, Consolidated proposes these tariff changes as a promotional effort to encourage natural gas sales to new cogenerators. In addition, this incentive proposal comports with the congressional intent evidenced in the National Energy Act to stimulate congeneration.

Consolidated proposes to exclude cogeneration sales for resale to new "congeneration load" as defined in the Rate Schedule, from the Winter Requirement Quantity (WRQ) computation as well as waive the WRQ charge adjustment for any customer who exceeds its WRQ due to serving congeneration loads. In addition, these provisions will only apply to Consolidated's RQ customers if they have established their own special congeration sales incentive rate. Consolidated also proposes to limit individual cogeneration sales for resale to six million Dt annually.

Copies of this filing have been served upon Consolidated's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10626 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 85-139-000]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 26, 1985.

Take notice that Consolidated Gas Transmission Corporation on April 19, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 19, 1985:

Third Revised Sheet No. 31
Original Sheet Nos. 75, 76, 77, 78 and 79
First Revised Sheet Nos. 226 and 227

These tariff sheets are being filed to establish a transportation tariff for interruptible congeneration transportation service (Rate Schedule CT). Service would be performed under Consolidated's blanket certificate and under Order Nos. 319 and 234-B. Rate Schedule CT is being filed to encourage the use of natural gas to any end user with a new qualified cogeneration facility. Because cogeneration is an efficient means to utilize natural gas, reduces the "burner-tip" cost of energy for both industrial and commercial customers and provides a way to retain or improve local employment and improve local economic stability, Consolidated proposes these tariff changes as a promotional effort to encourage these services. In addition, this proposal comports with the congressional intent evidenced in the National Energy Act to stimulate cogeneration.

Consolidated proposes the rate under Rate Schedule CT to be the non-gas component of the RQ commodity rate for *incremental* cogeneration load only. This rate schedule will be available only to end users that are customers of Consolidated's RQ customers and are using the RQ customers' facilities to transport further the CT quantities.

Copies of this filing have been served upon the Company's jurisdictional customers and interested commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before May 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10627 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-26-000]

State of Tennessee, NGPA Section 108 Determination, Philadelphia Oil Company, Rainwater Ramsey Well No. P-15, Larkin Stanley Well No. P-32, Steinman Development Well No. P-39, Thomas Bise Well No. P-55, FERC-JD Nos. 82-52245, 82-52248, 82-52250, and 82-52254; Petition To Reopen and Vacate Well Category Determinations

Issued: April 29, 1985.

On March 29, 1985, Philadelphia Oil Company (Philadelphia), filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and vacate final well category determinations under section 108 of the Natural Gas Policy Act of 1978 (NGPA)[1] for four of its wells in the state of Tennessee.[2] Phialdelphia is a wholly-owned subsidiary of Equitable Resources, Inc.

Section 108 determinations have become final for each of the four wells: the Rainwater Ramsey Well No. P-15, the Larkin Stanley Well No. P-32, the Steinman Development Company Well No. P-39, and the Thomas Bise Well No. P-55. However, a recent review of meter charts of these wells indicates that their maximum efficient rate of flow has been greater than the 60 Mcf per day limitation for a stripper gas well under section 108.

Philadelphia asserts that three of the wells otherwise qualify under section 104 of the NGPA and that one (the P-55 well) has otherwise qualified, pursuant to a final Commission determination, under section 103.

The Commission hereby gives notice that the question of whether refunds, plus interest calculated under 18 CFR 154.102(c), will be required is a matter subject to the review and final determination of the Commission.

Protest and petitions to intervene may be filed in this proceeding with the Federal Energy Regulatory Commission at 825 North Capitol Street NE., Washington, D.C. 20426 within 30 days of the publication of this notice in the **Federal Register**. All protests filed will be considered; however, a petition to intervene must be filed to become a party to this proceeding. See Rules 211 and 214 of the Commission's Rules of Practice and Procedure.[3]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10628 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3301-3432 (1982).

[2] The petition was filed pursuant to the provisions of 18 CFR 275.205 (1984).

[3] 18 CFR 385.211 and 385.214 (1984).

[Docket No. CI85-400-000]

Vesta Energy Co.; Applications for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization

April 29, 1985.

Take notice that on April 22, 1985 Vesta Energy Company (Vesta), 2414 Fourth National Bank Building, Tulsa, Oklahoma 74119 filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing a special sales program to be called Vesta Energy Trading (VET or the Program), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Vet Program, and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Vesta also requests the Commission to declare that, with respect to Vesta and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation not otherwise exempt from the NGA or the Natural Gas Policy Act of 1978 (NGPA).

Under The Vet Program, Vesta proposed to purchase and resell on a spot basis natural gas qualifying for the section 102, 103 and 107 or 108 rates under the Natural Gas Policy Act of 1978 (NGPA). Only contractually committed gas will be sold. Vesta or the participating producers will seek temporary releases of gas from the purchases to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10629 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-032]

Pennzoil Co.; Eighteenth Amendment To Application for Immediate Clarification or Abandonment Authorization

April 29, 1985.

Take notice that on April 25, 1985, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-032 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas is required to allow sales of gas to nine new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Eighteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service

to all applicants . . . and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene: Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, May 6, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-032.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10684 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8816-000 et al.]

Hydroelectric Applications (Coffeeville Hydro Associates et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 8816-000.

c. Date Field: December 24, 1984.

d. Applicant: Coffeeville Hydro Associates.

e. Name of Project: Coffeeville Hydro Project.

f. Location: Tombigbee River near Coffeeville, Clarke County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Casey Cummings, 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: June 3, 1985.

j. Competing Application: Project No. 8813-000. Date Filed: December 24, 1984. Comment Due Date: April 1, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Coffeeville Lock and Dam, a 850-foot-long and 300-foot-wide diversion channel and would consist of: (1) A proposed powerhouse located on the north side of the river in the diversion channel housing two 8-MW generators for a total installed capacity of 16 MW; (2) a proposed 44-kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmisson system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 55 GWh. All project energy would be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

2a. Type of Application: Preliminary Permit.

b. Project No.: 8815-000.

c. Date Filed: December 24, 1984.

d. Applicant: Oliver Hydro Associates.

e. Name of Project: W. B. Oliver Hydro Project.

f. Location: On the Black Warrior River near Tuscaloosa, Tuscaloosa County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Casey Cummings, 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: June 3, 1985.

j. Competing Application: Project No. 8814-000. Date Filed: December 24, 1984 Comment Due Date: March 29, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' W. B. Oliver Lock and Dam, a 1,000-foot-long and 100-foot-wide diversion channel, and would consist of: (1) A new powerhouse located on the north side of the river in the diversion channel housing two 7.5-MW generators for a total installed capacity of 15 MW; (2) a proposed 44-kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 60 GWh. All project energy would be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

3a. Type of Application: Conduit Exemption.

b. Project No.: 9008-000.

c. Date Filed: March 7, 1985.

d. Applicant: Los Angeles County Flood Control District (LACFCD).

e. Name of Project: Alamitos Barrier.

f. Location: Pressure Reduction Station, in the City of Long Beach, Los Angeles County, CA.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. T. A. Tidemanson, Chief Engineer, LACFCD, P.O. Box 2418, Los Angeles, CA 90051, (213) 226-4111.

Mr. Peter McAlpin, President, Hydro Electric Constructors, Inc., 932 Town & Country Road, Orange, CA 92668 (714) 547-6867.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of a single turbin-generator unit with an installed capacity of 250 kW, producing an estimated average annual generation of 1.85 GWh, and located at the Central Basin Service Connection No. 44, an underground pressure reducing station vault used for the distribution of water. A tap transmission line would connect the project to an existing 12-kV Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

4a. Type of Application: Conduit Exemption.

b. Project No.: 9007-000.

c. Date Filed: March 7, 1985.

d. Applicant: Los Angeles County Flood Control District (LACFCD).

e. Name of Project: Dominguez Gap Barrier.

f. Location: Pressure Reduction Station, in the City of Carson, Los Angeles County, CA.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. T. A. Tidemanson, Chief Engineer, LACFCD, P.O. Box 2418, Los Angeles, CA 90051 (213) 226-4111.

Mr. Peter McAlpin, President, Hydro Electric Constructors, Inc., 932 Town & Country Road, Orange, CA 92668 (714) 547-6867.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of a single turbine-generator unit with an installed capacity of 275 kW, producing an estimated average annual generation of 2.20 GWh, and located at the West Coast Basin Service Connection No. 37, an underground pressure reducing station vault used for the distribution of water. A tap transmission line would connect the project to an existing 12-kV Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9010-000.

Date Filed: March 8, 1985.

d. Applicant: Benjamin Falls Hydroelectric Company.

e. Name of Project: Benjamin Falls.

f. Location: Airport Brook in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. John L. Warshow, Benjamin Falls Hydroelectric Company, 26 State Street, Montpelier, VT 05602.

i. Comment Date: June 13, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 40-foot-long stone and concrete dam owned by the City of Montpelier; (2) an existing reservoir with a surface area of 6.2 acres and a gross storage capacity of 62 acre-feet at elevation 884 feet NGVD; (3) a proposed 3-foot-diameter, 2,200-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 825-kW; (5) a proposed 6-foot-wide, 20-foot-long, 5-foot-high tailrace; and (6) a proposed 300-foot-long transmission line tying into the existing Green Mountain Power Corporation System. The Applicant estimates a 2,000,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No: 8952-000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Procupine Gulch.

f. Location: On Procupine Gulch Creek in Summit County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,360 feet; (2) a proposed reservoir with a surface area of 450 square feet and a storage capacity of 900 cubic feet; (3) a proposed 4,000-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a total capacity of 300 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 24-kV transmission line, approximately 700 feet long; and (7) appurtenant facilities. The estimated average annual generation of 1.3 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $6,000.

7a. Type of Application: Preliminary Permit.

b. Project No: 8944-000.

c. Date Filed: February 11, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Dry Gulch Creek.

f. Location: On the Dry Gulch Creek in Clear Creek County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,904 feet; (2) a proposed reservoir with a surface area of 200 square feet and a storage capacity of 600 cubic feet; (3) a proposed 3,200-foot-long, 12-inch-diameter penstock; (4) a proposed powerhouse containing a single generating unit of 120 kW capacity; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 1,600 feet long; and (7) appurtenant facilities. The estimated average annual generation of 500,000 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.

8a. Type of Application: Major License (Over 5MW).

b. Project No.: 4369–002.

c. Date Filed: August 23, 1984.

d. Applicant: City of Anoka.

e. Name of Project: Coon Rapids Hydroelectric Project.

f. Location On the Mississippi River in Anoka and Hennepin Counties, MN.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ashok K. Rajpal, Mead & Hunt, Inc., 2320 University Avenue, P.O. Box 5247, Madison, Wisconsin 53705 Mr. Jerry Dulgar, City Hall, 2015 First Avenue, Anoka, Minnesota 55303.

i. Comment Date: June 24, 1985.

j. Description of Project: The Coon Rapids dam is owned by the Hennepin County Park Reserve. The proposed project would consist of: (1) The existing, 2,150-foot-long dam which consists of two earth dikes, a Tainter gate spillway section, and a nonoverflow section. The dam varies in height between 15 feet and 25 feet; (2) an existing reservoir with a surface area of 485 acres and a storage capacity of 4,780 acre-feet at powerpool elevation of 830.1 feet m.s.l.; (3) a proposed headrace; (4) a proposed reinforced concrete powerhouse containing two generating units with a total rated capacity of 10.4 MW; (5) a proposed tailrace; (6) a proposed 13.8–kV transmission line that would be connected to the Northern Power Company's substation located 150 feet south of the existing dam; and (7) appurtenant facilities. The estimated average annual energy output for the project is 47,000,000 kWh.

k. Purpose of Project: Power generated at the project would be sold to the Applicant's customers with the excess sold to the Northern States Power Co.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

9a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7004–001.

c. Date Filed: November 28, 1984, and supplemented February 28, 1985.

d. Applicant: City of Rock Falls, Illinois.

e. Name of Project: Upper Sterling Hydro Project.

f. Location: On the Rock River in Rock Falls, Whiteside County, Illinois.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Honorable Glen R. Kuhlemier, Mayor, City of Rock Falls, 603 10th Street, Rock Falls, Illinois 61071.

i. Comment Date: June 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam approximately 1,300 feet long and 9 feet high inclusive of 28-inch flashboards; (2) an existing 2,400-acre reservoir having a storage capacity of 7,000 acre-feet at an elevation of 636 feet m.s.l.; (3) a proposed powerhouse integral with the dam, located at the east side of the river, housing two 1,000-kW generators for a total installed capacity of 2,000 kW; (4) a proposed buried 35-foot-long 34.5-kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual energy generated would be 15.3 GWh. The Applicant holds all real estate interests necessary to devleop and operate the proposed project.

k. Purpose of Project: All energy produced will be used by the Applicant to reduce wholesale power purchases.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

10a. Type of Application: Amendment to Exhibit R (Recreation Plan).

b. Project No: 2409–004.

c. Date Filed: March 7, 1983.

d. Applicant: Calaveras County Water District, California.

e. Name of Project: North Fork Stanislaus River Hydroelectric Development.

f. Location: Utica and Union Reservoirs, Calaveras County, California.

g. Filed Pursuant to: License Article 44.

h. Contact Person: Mr. Steve Felte, General Manager, Calaveras County Water District, 427 East St. Charles Street, San Andreas, CA 95249 (209) 754–3543.

i. Comment Date: June 7, 1985.

j. Description of Project: The Licensee proposes to construct a boat launching facility with 25 spaces for vehicle parking and 15 picnic sites with 15 spaces for vehicle parking within a 30-acre area adjacent to the southern shoreline of Union Reservoir. All parking facilities would be situated along a Forest Service road and away from the shoreline in order to avoid possible conflicts between adjacent uses. Additionally, twenty overnight campsites with associated access roads, parking, water and sanitation systems would be constructed in a 13-acre area at the southwest end of Union Reservoir. Primitive boat access/walking group camps, one of which would be near the southernmost reach of Utica Reservoir and the other along the northeastern shoreline of Union Reservoir are also proposed. Existing boat access group campsites would be redesignated as primative according to Forest Service guidelines with no facilities in order to manage for potential overuse of the area.

k. This notice also consists of the following standard paragraphs: B, C and D2.

11a. Type of Application: Conduit Exemption.

b. Project No.: 8931–000.

c. Date Filed: February 4, 1985.

d. Applicant: Tuolumne County.

e. Name of Project: Eureka Ditch Hydroelectric Project.

f. Location: Within the Eureka Ditch, part of the Applicant's existing water supply system, Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Billy H. Marr, Water Supervisor, Tuolumne County Administration Center, 2 South Street, Sonora, CA 95370.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-inch-diameter, 1,000-foot-long low pressure pipe; (2) a 10-inch-diameter, 1,000-foot-long penstock; and (3) a powerhouse containing a single generating unit with a rated capacity of 109 kW to operate under a head of 560 feet. A 50-foot-long 12-kV transmission line would connect the project with an existing Pacific Gas and Electric Company (PG&E) line at the site.

k. Purpose of Project: The project's estimated annual generation of 956,000 kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3b.

12a. Type of Application: Conduit Exemption.

b. Project No.: 8937–000.

c. Date Filed: February 6, 1985.

d. Applicant: Amador County Water Agency.

e. Name of Project: Ione Pipeline Hydroelectric Project.

f. Location: On a proposed pipeline that would replace Ione Canal, part of Pacific Gas and Electric Company's Amador Water System, in Amador County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David T. Walker, General Manager, Amador County

Water Agency, 204 Court Street, Jackson, CA 95642.

i. Comment Date: June 7, 1985.

j. Description of Project: The proposed project, near Ione Reservoir, would consist of a generating unit with a rated capacity of 405 kW that would utilize energy that normally would have to be dissipated through pressure reducing values. The head at the generating unit will be between 981 and 1143 feet. A 1,000-foot-long, 12-kV transmission line will connnect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the site.

k. Purpose of Project: the project's estimated annual generation of 1.97 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3b.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9040-000.

c. Date Filed: March 21, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Gordon Dam.

f. Location: On the Little River in Worcester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John R. Anderson and Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 50-foot-long concrete gravity dam; (2) a reservoir with a surface area of 25 acres, a storage capacity of 184 acre-feet, and a normal water surface elevation of 479.0 feet m.s.l.; (3) a proposed intake gate; (4) a proposed concete powerhouse connected to the existing dam containing one generating unit with a capacity of 25 kW; (5) a new transmission line, 100 feet long; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 110,000 kWh. The existing dam is owned by the Gordon Chemical Company, Oxford, Massachusetts.

k. Purpose of Project: Project power would be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.

14a. Type of Application: Transfer of License.

b. Project No: 1651-004.

c. Date Filed: October 4, 1984.

d. Applicant: Lower Valley Power and Light Inc. (Licensee) and Swift Creek Power Company, Inc. (Transferee).

e. Name of Project: Upper and Lower Swift Creek Hydroelectric.

f. Location: On Swift Creek partially within the Bridger-Teton National Forest, in Lincoln County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. E. Farley Eskelson, Swift Creek Power Company, Inc., 165 Wright Brothers Drive, Salt Lake City, UT 84116 and Boyd Parker, Lower Valley Power and Light, Afton, Wyoming 83110.

i. Comment Date: June 3, 1985.

j. Description of Transfer: On October 4, 1984, Lower Valley Power and Light, Inc. (Licensee) and Swift Creek Power Company, Inc. (Transferee), filed a joint application for transfer of major license for the Upper and Lower Swift Creek Hydroelectric Project No. 1651.

The purpose of the proposed transfer of the license is to facilitate the rehabilitation of the Upper and Lower Swift Creek Project which was originally licensed on December 1, 1942, and has been inoperative since 1969. The Transferee fully intends to rehabilitate and operate the project as per three orders amending the license issued on September 4, 1981; September 3, 1982 and November 7, 1983.

The Transferee is a private corporation, organized under the laws of the State of Wyoming, and domesticated in the State of Wyoming. The Transferee submits that it will comply with all applicable laws of the State of Wyoming as required by section 9(b) of the Federal Power Act.

The Licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The Transferee accepts all the terms and conditions of the license, as amended, and agrees to be bound thereby to the same extent as though it was the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

15a. Type of Application: License (Minor).

b. Project No: 8469-000.

c. Date Filed: July 30, 1984.

d. Applicant: Artwill Incorporated.

e. Name of Project: Rhyne Mill No. 1.

f. Location: South Fork Catawba River, Lincoln County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arthur W. Yex, 147 Highridge Drive, Spartanburg, South Carolina 29302.

i. Comment Date: June 21, 1985.

j. Description of Project: Applicant proposes to rehabilitate the existing inoperative Rhyne Mill No. 1 Project owned by Rhyne Mills, Inc. of Lincolnton, North Carolina. The proposed project would consist of: (1) An existing stone masonry gravity dam, about 150 feet in length and 13 feet high; (2) an existing reservoir about 20 acres in surface area, with a storage capacity of 90 acre-feet at a pool elevation of 726.0 feet; (3) an existing powerhouse containing two generating units which would be restored to service, with a total capacity of 345 kW; (4) a proposed 150-foot-long tailrace section about 15 feet wide and 4 feet deep; (5) a proposed high voltage transmission line about 850 feet long leading from the powerhouse area to a point of interconnection; and (6) appurtenant facilities.

The project's estimated average annual generation of 2.4 million kWh would be sold to Duke Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B & C.

16a. Type of Application: Preliminary Permit.

b. Project No: 8954-000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Hoop Creek.

f. Location: On Hoop Creek in Clear County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 9,924 feet; (2) a proposed reservoir with a surface area of 300 square feet and a storage capacity of 600 cubic feet; (3) a proposed 1,500-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a

total capacity of 200 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 200 feet long; and (7) appurtenant facilities. The estimated average annual generation 800,000 kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $4,000.

17a. Type of Application: Preliminary Permit.

b. Project No: 8953–000.

c. Date Filed: February 14, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Mill Creek.

f. Location: On the Mill Creek in Clear County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 9,800 feet; (2) a proposed reservoir with a surface area of 200 square feet and a storage capacity of 600 cubic feet; (3) a proposed 1,200-foot-long, 14-inch-diameter penstock; (4) a proposed powerhouse containing a single generating unit of 130 kW capacity; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 1,500 feet long; and (7) appurtenant facilities. The estimated average annual generation 500,000 kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $4,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 8934–000.

c. Date Filed: February 5, 1985.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Blue Creek.

f. Location: On the Blue Creek in Clear Creek County, Colorado, on lands administered by the Arapahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Stout, 6565 South Dayton, Englewood, Colorado 80111.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4- to 6-foot-high and 25-foot-long proposed diversion dam and spillway structure at an elevation of approximately 10,644 feet; (2) a proposed reservoir with a surface area of 450 square feet and a storage capacity of 900 cubic feet; (3) a proposed 3,000-foot-long, 12-inch-diameter penstock; (4) a proposed powerhouse containing two generating units with a total capacity of 500 kW; (5) a proposed closed channel conduit tailrace 2 feet in diameter and 20 feet long; (6) a proposed 25-kV transmission line, approximately 200 feet long; and (7) appurtenant facilities. The estimated average annual generation of 1 million kWh would be sold to Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 8920–000.

c. Date Filed: February 1, 1985.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Sugar Creek Hydroelectric Project.

f. Location: Catawba River, York County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919 18th Street, NW., Washington, DC 20006.

i. Comment Date: June 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 1,000-foot-long, 50-foot-high earth dam; (2) a proposed reservoir with a surface area of 1,900 acres and a storage capacity of 22,000 acre feet; (3) a proposed powerhouse located in the existing stream bed at the downstream side of the dam, and housing three generating units with a total capacity of 19.5 MW; (4) a proposed 6-mile-long 230-kV transmission line; and (5) appurtenant facilities. The project's estimated average annual generation of 67,000,000 kWh would be sold to a nearby utility.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. The applicant proposes to conduct foundation explorations, including some soil and rock borings along the proposed dam axis, a geophysical seismic survey and geologic mapping in the proposed dam location. No new roads would be constructed for access under these studies and the studies would be conducted without significantly disturbing the land. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

20a. Type of Application: Transfer of License.

b. Project No.: 2966–004.

c. Date Filed: February 14, 1985.

d. Applicant: James C. Katsekas, Zoes J. Dimos, and Clement Dam Development, Inc.

e. Name of Project: Clement Dam Project.

f. Location: On the Winnepesaukee River, near the Town of Tilton, Belknap and Merrimack Counties, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Zoes J. Dimos, 217 Rocking ham Road, Londonderry, NH 03053.

Mr. Eugene J. Garceau, Clement Dam Development, Inc., P.O. Box 1011, Portsmouth, NH 03801.

i. Comment Date: June 6, 1985.

j. Description of Proposed Transfer: On May 17, 1982, a license was issued to Zoes J. Dimos, and James C. Katsekas (Licensees), to construct operate and maintain the Clement Dam Project No. 2966. The Licensees intend to add Clement Dam Development, Inc., to the license in order to obtain the necessary continued financing, and assistance in the operation of the project. For that reason the Licensess and Clement Dam Development, Inc. have filed a request to transfer the license to Zoes J. Dimos, James C. Katsekas, and Clement Dam Development, Inc. (Transferees).

The Licensees have complied with the terms and conditions of the license. The project has been in operation as of December 29, 1984. The Transferees have agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it were the original licensees.

k. This notice also consists of the following standard paragraphs: B and C.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exeption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application and file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date

for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATIONS", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Wahsington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and reponsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other

formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 29, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10685 Filed 5-1-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00062; FRL-2828-6]

Open Meeting of Interagency Toxic Substances Data Committee

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: This notice announces the forthcoming meeting of the Interagency Toxic Substances Data Committee. The date of the meeting has been changed from that announced at the March meeting. The meeting is open to the public.

DATE: The meeting will take place from 9:30 a.m. to 12:30 p.m. on June 11, 1985.

ADDRESS: The meeting will be held in the: First Floor Conference Room, Council on Environmental Quality, 722 Jackson Pl., NW., Washington, D.C. 20006. Please use the entrance on Jackson Place.

FOR FURTHER INFORMATION CONTACT: Gerard Brown (TS-793), Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-333, 401 M Street SW., Washington, D.C. 20460 (202-382-3755).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee usually are held on the first Tuesday of alternate months. Because of the difficulty of holding a meeting during the summer vacation months, the next meeting has been scheduled for September 10, 1985.

Dated: April 25, 1985.

Gerard Brown,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 85-10657 Filed 5-1-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Office of Information Resources Management

Federal Telecommunication Standards

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunication Standard (FED-STD). FED-STD 1028, "Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communication interface.

2. On October 25, 1983, a notice was published in the **Federal Register** (48 FR 49383) that a proposed draft Federal Telecommunications Standard entitled "Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment" was being proposed for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. The approved standard contains four sections. Sections 1 and 2 provide information regarding description, objectives, application, definitions and referenced documents. Sections 3 and 4 provide the technical requirements of the standard.

5. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D Streets, SW, Washington, DC 20407; telephone (202) 472-2205.

Dated: April 4, 1985.

Frank J. Carr,

Assistant Administrator Office of Information Resources Management.

FEDERAL STANDARD

Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard With CCITT Group 3 Facsimile Equipment

This standard is issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

1. *Scope*

1.1 *Description.* This standard specifies interoperability and security related requirements for the use of encryption with CCITT (i.e. International Telegraph and Telephone Consultative Committee) Group 3-type facsimile equipment. The algorithm used for encryption is the Data Encryption Standard (DES), described in Federal Information Processing Standards Publication 46. Requirements contained in section 3 below relate to the interoperation of DES Cryptographic Equipment, or their operation with associated CCITT Group 3 facsimile equipment. Additional security requirements, not directly relating to interoperability, are contained in Federal Standard 1027.

1.2 *Objectives*

1.2.1 *Interoperability.* To facilitate the interoperation of Government facsimile equipment that requires cryptographic protection using the Data Encryption Standard (DES) algorithm.

1.2.2 *Security.* To prevent the disclosure of facsimile documents.

1.3 *Application.* This standard applies to all DES cryptographic components, equipment, systems, and services procured or leased by Federal departments and agencies for the encryption, using the Data Encryption Standard (DES) algorithm, of documents transmitted by CCITT Group 3-type facsimile equipment. Guidance to facilitate the application of this standard, with respect to degradation of security by improper implementation or use, will be provided for in a revision to Federal Property Management Regulation 41, Code of Federal Regulations 101-35.3.

1.4 *Definitions.* Until Federal Standard 1037 is revised to include encryption terms, definitions of encryption-related terms may be found in the National Communications Security Glossary.

2. *Referenced Documents*

a. Federal Information Processing Standards Publication 46: Data Encryption Standard. (Copies of this standard are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

b. Federal Information Processing Standards Publication 81: DES Modes of Operation. (Copies of this standard are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

c. Federal Standard 1026: Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

d. Federal Standard 1027: Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

e. Federal Standard 1062: Telecommunications: Group 3 Facsimile Apparatus for Document Transmission. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

f. Federal Standard 1063: Telecommunications: Procedures for Document Facsimile Transmission. (Copies of this standard are available from the General Services Administration Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407.)

g. National Communications Security Glossary (Controlled Distribution). (Copies of this glossary may be requested from the National Communications Security Committee (NCSC) Secretariat, Room C-2A40, Operations Building 3, National Security Agency, Fort George G. Meade, MD 20755.)

3. *Requirements*

3.1 *Overview.* CCITT (i.e. International Telegraph and Telephone Consultative Committee) Group 3 digital facsimile, transmitted at 2.4, 4.8, 7.2, or 9.6 kbits/s, is encrypted using the Data Encryption Standard (DES) algorithm in the same manner as is described for encrypting synchronous data in Federal Standard 1026. Only Group 3 facsimile documents and optional 2.4 kbit/s binary-coded signals are encrypted. Group 3 facsimile is described in Federal Standard 1062. Binary-coded signals are described in Federal Standard 1063.

3.2 *Mode of Operation.* The 1-bit Cipher Feedback mode of operation shall be used. (Ref. Federal Information Processing Standards Publication 81.)

3.3 *Transmission.* Upon Clear to Send indication (e.g. CCITT Interchange Circuit 106, Ready for Sending, ON) from a primary (i.e. CCITT V.27 ter or V.29) modem, the modem input (e.g. CCITT Interchange Circuit 103, Transmitted Data) is typically in a MARK (all ONES) state. A 48-bit Initializing Vector (IV) is sent at this point in time, preceded by a single ZERO bit (SPACE) to delimit the IV. The first bit transferred of the 48-bit IV is placed in bit position 17 of the DES device input block (Ref. Federal Information Processing Standards Publication 81.) After transmission of the IV, all bits passing through the primary modem are first encrypted. Encryption continues until Clear to Send indication is turned off.

3.4 *Reception.* Upon Receiver Ready indication (e.g. CCITT Interchange Circuit 109, Data Channel Received Line Signal Detector, ON) from a primary (i.e. CCITT V.27 ter or V.29) modem, the moderm output (e.g. CCITT Interchange Circuit 104, Received Data) is typically in a MARK (all ONES) state. The 48 bits received immediately following the first ZERO bit (SPACE) are considered to be the Initializing Vector. All following bits received are decrypted. Decryption continues until Receiver Ready indication is turned off.

3.5 *Encryption Bypass.* Except when DES Cryptographic Equipment is in the bypass mode (reference Federal Standard 1027), it shall not be possible to transmit or receive unencrypted facsimile documents or portions thereof (including Group 1 and 2 documents).

3.6 *DES Key Variable Loading.* The capability shall exist to operate (i.e. encrypt and decrypt facsimile documents) with DES key variables loaded using one of the two methods described in Federal Standard 1027.

4. *Effective Date.* The use of this standard by U.S. government departments and agencies is mandatory effective 180 days following the date of this standard.

5. *Changes.* When a Government department or agency considers that this standard does not provide for its essential needs, a statement citing specific requirements shall be sent in duplicate to the General Services Administration (K), Washington, DC. 20405, in accordance with the provisions of the Federal Property Management Regulation 41 CFR 101-29.403-1. The General Services Administration will determine the appropriate action to be taken and will notify the agency.

Preparing Activity:

National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Military Interests

Military Coordinating Activity: NSA—NS.
Custodians: Army—SC, Navy—EC, Air Force—02.
Review Activities: Army—AD,CR; Navy—AS,OM; Air Force—90; DCA—DC; JTC3A—TT; DLA—DH.
User Activities: Navy—SH,MC.

This document is available from the General Services Administration (GSA), acting as agent for the Superintendent of Documents. A copy for bidding and contracting purposes is available from GSA Business Centers. Copies are for sale at the GSA Specification Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, D.C. 20407; telephone (202) 472-2205. Please call in advance for pickup service.

[FR Doc. 85-10433 Filed 5-1-85; 8:45 am]
BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1985 for a Project Grant for Sexually Transmitted Diseases (STD) Professional Education to be funded under the Sexually Transmitted Diseases Research, Demonstration, and Public and Professional Education Grant Program. Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act, as amended (42 U.S.C. 247c(b)). Regulations governing Grants for Sexually Transmitted Diseases Research, Demonstration, and Public

and Professional Education (formerly Venereal Disease Research, Demonstrations, and Public Information and Education) are codified in Part 51b at Subparts A and F of Title 42, Code of Federal Regulations.

The objectives of this grant program are to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public and professional education programs. The professional education segment of the grant program is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of STD will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished by training, educating, and updating STD clinical personnel in the public and private sectors and demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program and that both are coordinated with CDC to assure that the total traning environment represents a national model. The objective of this specific grant offering is to establish a comprehensive STD Prevention/Training (P/T) Center to serve the clinical and Disease Intervention Specialist training needs of personnel from the Western and Southwestern United States.

Eligible applicants, therefore, are the official State of local health agencies of Arizona, California, and Nevada. Awards will be limited to applicants who meet the following minimum requirements:

1. Plan to locate the P/T Center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients.

b. Serves an average of at least 360 patients per 40 weekly service hours, and

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process.

2. Have at least one university school of medicine in the vicinity and provide evidence of support, experience, and a firm interest in participating from such a local institution.

3. Provide assurance that a full schedule of training activities will begin within 180 days of the date of grant award.

4. Provide evidence of their capability of adhering to the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG) in providing diagnostic and treatment services, and to applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) in the training of health personnel prior to beginning any training activities.

5. Provide evidence of their willingness to adhere to CDC curriculum in the presentation of STD intervention outreach training courses for federal, State and local health department personnel and for members of the U.S. uniformed services.

Approximately $115,000 will be available for Fiscal Year 1985 to fund one new grant award. It is expected that the initial grant will begin on or about August 1, 1985, and will be funded for 12 months in a 2- to 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, compliance with the P/T Center Guidelines and the Clinic QAG, or future updates thereof, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Funds may be used to support a direct assistance (i.e., "in lieu of cash") position in the dual role of P/T Center coordinator/instructor of STD intervention outreach courses. If such a request is made, CDC will make an individual available for assignment at the earliest possible date following the award. CDC will assist in the training and preparation of the person or persons designated to carry out these responsibilities. Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. Funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

An evaluation of each course by each participant (except for the "Update" courses) is required and should be forwarded by CDC within 30 days of the completion of the course. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Applications must include a narrative which, in addition to the minimum requirements for an eligible application as stated above, details the following: (1) Evidence that the State/local health department is willing to work toward meeting the 1990 Objectives for the Nation; (2) evidence that the training component of this project will function in concert with the operating STD clinic and STD intervention outreach components of the local control program; (3) long- and short-term objectives of the proposed training which address the applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period; (4) the activities and methods which will be employed to accomplish the objectives, (including relationships, responsibilities, and procedures that ensure the P/T Center functions according to the Clinic QAG and the P/T Center Guidelines); (5) a description of the existing medical school-health department liaison activities needed to develop and implement clinical training; (6) an evaluation plan which will help determine if the methods are effective and the objectives are being achieved; (7) a budget with justification; and (8) any other information which will support the request for assistance.

Grant applications will be reviewed and evaluated based on the evidence submitted which specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. The applicant conveys a satisfactory commitment from the State/local health department administration toward meeting the 1990 Objectives for the Nation, and specifically, that objective related to the preparation of health providers to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities.

2. The applicant satisfactorily describes how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the

total training environment represents a national model.

3. The applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives.

4. The applicant adequately assures that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. There will be adequate space and staff to accommodate patient volume.

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least 1 evening or Saturday session each week) with no interim daily shutdowns.

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience.

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, PID, herpes, trichomoniasis, human papilloma virus, scabies, etc.).

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation.

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time.

g. Patients will be seen, regardless of sex, by the next available clinician.

h. Confidentiality will be observed during both patient registration and patient care service delivery.

i. A standardized (e.g., "checkoff"), fully auditable, STD medical record will be employed.

j. There will be an on-site laboratory facility which offers a range of available stat tests for commonly seen STD.

k. There will be quality assurance procedures through which clinical care is audited systematically and the proficiency of stat laboratory activities are assessed periodically through smear/culture and serologic test correlations.

l. CDC diagnostic guidelines will be used (e.g., bimanual examinations for women, complete genital examinations for males).

m. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program.

n. CDC recommended treatment schedules will be used.

5. The applicant adequately assures that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center Guidelines, in particular:

a. There will be adequate training space for both clinical and STD intervention outreach courses and assurances that it will be available for all scheduled courses.

b. Classroom space will be adequately furnished and equipped.

c. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position.

d. The curricula will be developed according to P/T Center Guidelines.

e. The clinic and stat laboratory practicum will be structured such that participants are provided "hands-on" practice.

f. There will be an evaluation of participant and medical school teaching faculty performance.

g. A minimum of 400 hours of instruction will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described by the P/T Center Guidelines.

h. The medical school personnel will play a dominant role in classroom training.

6. There is a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T Center which addresses the following:

a. Part of the time of a liaison/coordinating person (a physician, preferably a physician in the second or third year of a fellowship) with the expense of medical school faculty instructional services being covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum that is governed by the P/T Center Guidelines.

c. A minimum of 400 hours of instruction that will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. Faculty assistance from the medical school in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

7. The applicant provides a satisfactory evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

8. The budget request is clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds.

9. The site of the proposed P/T Center is sufficiently near to major highways that accessibility by car is a reasonable option (since driving has been the common mode of travel used by people in the area to attend these courses).

10. The location of the proposed P/T Center is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

Site visits may also be made in connection with the review of applications.

The original and one copy of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on May 31, 1985.

Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or,

2. Sent on or before 4:30 p.m. (e.d.t.) on May 31, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health

Planning and Resources Development Act of 1974.

Information on application procedures, copies of application forms, and other material may be obtained from Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Cheryl A. Blackmore, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329–2558 or FTS 236–2558.

Dated: April 26, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–10641 Filed 5–1–85; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

"Low Income Levels" for Health Careers Opportunity Grants and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Grants, and section 820, Nursing Special Project Grants of the Public Health Service Act.

Sections 57.1804(b)(2) and 57.1905(b)(2) of the program regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the **Federal Register** the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantage backgrounds.

The income figures below were taken from low income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1984.

	Income Level [2]
Size of parents' family [1]	
1	$7,000
2	9,000
3	10,800
4	13,800
5	16,200
6 or more	18,300

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1984.

Dated: April 26, 1985.

Robert Graham, M.D.,

Administrator Assistant Surgeon General.

[FR Doc. 85–10664. Filed 5–1–85; 8:45 am]

BILLING CODE 4160–16–M

Social Security Administration

Transitional-Employment Training Demonstration

SUMMARY: The Acting Commissioner of Social Security announces a demonstration project providing on-the-job training for 350 to 500 mentally retarded individuals who are currently receiving Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act (the Act). The Social Security Administration (SSA) wants to find out from this project the costs and benefits to be derived from this kind of transitional-employment training. This project is authorized under section 1110(b) of the Act. We are publishing this notice to comply with 20 CFR 416.250 which requires SSA to publish a notice in the **Federal Register** describing the project.

FOR FURTHER INFORMATION CONTACT: Dr. Aaron Prero, Office of Policy, ORSIP, SSA, 2–N–7 Annex Building, 6401 Security Blvd., Baltimore, Maryland 21235; Phone (301) 594–6594 or (301) 594–6591.

SUPPLEMENTARY INFORMATION:

Project Objectives

The purpose of this demonstration project is to determine:

(1) The costs of transitional-employment training of mentally retarded SSI recipients; and

(2) The benefits that can be achieved by such training (e.g., the percentage of participants that can be permanently placed in jobs upon conclusion of training).

Description of the Project

This demonstration project will provide on-the-job training at 8 training sites to some 350 to 500 mentally retarded SSI recipients whose ages will range from 18 to 40. The SSI recipients who qualify for the project and who agree to participate will be trained in private sector jobs for up to a year. This on-the-job training will include vocational training but the emphasis will be on providing the participants with the needed social skills for acceptance by supervisors and co-workers. If the training is successful, the project participant will be placed in a potentially permanent position.

An equal number of mentally retarded SSI recipients with ages also ranging from 18 to 40 will serve as a control group. This group will be interviewed and their progress followed through their SSI records. They will serve as a basis for comparison with the worker trainee participants.

This demonstration project is designed under contract with SSA by Mathmatica Policy Research, Inc. (MPR)., PO Box 2393, Princeton NJ 08540. MPR will administer the project, compile the data, and evaluate the results.

Authority to undertake this project is provided by section 1110(b) of the Act (42 U.S.C. 1310(b)). As required by section 1110(b), participation in this project is voluntary and a written consent will be obtained from or on behalf of each participant. Most of the participants will be receiving only SSI benefits under title XVI of the Act. However, a significant percentage also could be concurrently entitled to either disability insurance benefits or childhood disability benefits under title II of the Act.

Since we are conducting this project under the authority of section 1110(b) of the Act only, we may waive for participants only the requirements for eligibility to SSI benefits. A participant who is concurrently entitled to benefits under title XVI and title II could have his or her eligibility for benefits end under title II but continue under title XVI as a result of the work performed under this project.

Statutory and Regulatory Provisions Being Waived To Conduct This Project

We are waiving until April 30, 1988, the following statutory provisions of title XVI of the Act and the implementing regulations so that they will not apply to the 350–500 trainees under this project:

(1) Section 1614(a)(3) (D), (E), and (F): 20 CFR 416.974, and 416.975 to the extent they would require the training work be evaluated under the substantial gainful activity (SGA) criteria.

(2) Section 1614(a)(4) (B), (C) and (D): 20 CFR 416.992 to the extent they would require the training work be counted as

part of the worker trainee's trial period (TWP).

(3) Section 1614(a)(3)(F); 20 CFR 416.992a, 416.994, and 416.1331 regarding the extended period of eligibility (EPE), but only for the purpose of allowing a full EPE at the end of the training period for those participants whose TWP ended at an earlier time.

(4) Section 1611(a); 20 CFR 416.1205, 416.1324 to the extent necessary to exclude accumulated income from this work as part of the worker trainee's resources.

(Catalogue of Federal Domestic Assistance Program No. 13.812—Assistance Payment—Research)

Dated: April 26, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 85-10636 Filed 5-1-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-85-797; FR-1966]

Delegation of Authority

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Delegation of authority

SUMMARY: This delegation of authority delegates from the Secretary to (1) each Regional Administrator-Regional Housing Commissioner the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is reponsible, to act as chief of a Category D Field Office during an absence, disability, or vacancy in the position of chief and (2) each Manager the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 Seventh, SW., Washington, D.C. 20410, (202) 755-7137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 6, 1983, HUD implemented its field reorganization plan (see 48 FR 7562, February 22, 1983). As the result of this plan, all of the categories of field offices (Categories A, B and C) are headed by a Manager, except for the Category D Field Office, which is headed by a Chief.

This delegation of authority delegates from the Secretary to (1) each Regional Administrator-Regional Housing Commissioner, the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is responsible, to act as Chief of a Category D Field Office during an absence, disability, or vacancy in the position of Chief and (2) each Manager the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

Authorities Delegated

(1) Each Regional Administrator-Regional Housing Commissioner is hereby delegated the authority to designate any HUD officer or employee who is employed in the region for which the Regional Administrator-Regional Housing Commissioner is responsible, to act as Chief of a Category D Field Office during an abasence, disability, or vacancy in the position of Chief.

(2) Each Manager is hereby delegated the authority to designate any HUD officer or employee who is employed in the Field Office for which the Manager is responsible, to act as Manager during an absence, disability, or vacancy in the position of Manager.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 23, 1985.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 85-10635 Filed 5-1-85; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-85-1527]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Approval of Advances Under Preliminary Loan Contracts
Office: Public and Indian Housing
Form No.: HUD-51991
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 225
Status: Extension
Contact: George C. Davis, HUD, (202) 755-6444, Robert Fishman, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 9, 1985.

Proposal: Community Development Block Grant (CDBG) Program Small Cities Performance Assessment Report (PAR)
Office: Community Planning and Development
Form No.: HUD-4052
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 60,900
Status: Reinstatement
Contact: Helen Duncan, HUD, (202) 755-6322, Robert Fishman, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 22, 1985.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 85-10633 Filed 5-1-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Becharof National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Becharof National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes five strategies for long-term management of the 1.2 million acre refuge. Each alternative also recommends additions to the National Wilderness Preservation System. The extent of the Refuge that would be recommended varies from approximately 695,000 acres (in Alternative A) to 158,000 acres (Alternative E). At present, about 33 percent of Becharof Refuge is in the Wilderness Preservation System.

DATE: Comments on the final CCP/EIS must be submitted on or before June 28, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

A final CCP/EIS has been prepared for general distribution. Copies of the final comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public hearing/meetings. Copies of the final document are available upon request from Mr. William Knauer.

Copies of the final CCP/EIS have been sent to all agencies that participated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the final may obtain one by contacting Mr. Knauer. Copies of the final CCP/EIS are also available for review at the above location, at the Becharof National Wildlife Refuge Office, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, D.C. 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Becharof National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the final CCP/EIS and Wilderness Review also describes the general wilderness suitability of various acreages of non-wilderness refuge lands, under each management alternative, in order to comply with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1987.

As a result of the public review process several changes have been made in the organization and content of the draft document. Several sections have been added to address comments received or to meet more accurately the planning obligations, as required in ANILCA. Furthermore, responding to public comments about the draft Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Becharof National Wildlife Refuge, the U.S. Fish and Wildlife Service revised the document and changed the preferred alternative, from Alternative C in the draft plan to a *new* Alternative B.

This *new* Alternative B emphasizes: Maintenance of the Refuge's natural diversity and key fish and wildlife populations and habitats by minimizing potential impacts from development; provision for future opportunities for oil and gas exploration in designated areas; recommendation of wilderness designation for (1) the northeast section of the refuge including the drainages of Big Creek, the eastern reaches of the King Salmon River, and Gertrude Creek and (2) the southeast section of the Refuge including Mount Peulik-Gas Rocks area, Mount Becharof, and the drainage of Otter Creek, Featherly Creek, and Island Arm; maintenance of traditional access; provision for continued subsistence use of the resources of the Refuge; and maintenance of opportunities for recreational hunting and fishing.

Major issues addressed by the plan include intensive human use in sensitive fish and wildlife habitats; off-Refuge commercial and sport harvest of adult salmon; loss of wilderness values; lack of resource data; designation of wilderness in the Refuge; protection of fish and wildlife; protection of subsistence lifestyle; provision of additional opportunities for access in the Refuge; development and use of adjacent state and private lands and of inholdings; the refuge planning process; oil and gas development; other economic development in the area; development and use of adjacent state and private lands; and protection of cultural resources and historical sites.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was

published in the October 29, 1981, Federal Register. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version two public meetings were held in the villages of Naknek and Egegik, Alaska, on May 22 and 23, 1984. A public hearing was held in Anchorage, Alaska, on May 30, 1984.

The U.S. Fish and Wildlife Service will issue a Record of Decision on this CCP/EIS no earlier than July 1, 1985.

Dated: April 15, 1985.

Robert D. Jacobsen,

Acting Regional Director.

[FR Doc. 85–10623 Filed 5–1–85; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Wildlife and Plants; Availability of a Draft Environmental Assessment (EA); Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft EA on the proposed protection of endangered bat habitat in Adair and Delaware Counties, Oklahoma, is available for public review. Comments and suggestions are requested. Proposed is the acquisition, by U.S. Fish and Wildlife Service (FWS), of conservation easements on approximately 1,200 acres of land in Adair and Delaware Counties, Oklahoma. The areas proposed for conservation easement would be protected to ensure the continued survival of the endangerd Ozark big-eared bat *(Plecotus townsendii ingens)*, and the endangered gray bat *(Myotis grisescens)*. These endangered bats require protection of their foraging areas and caves used for maternity and hibernation purposes. Five alternative protection measures were considered and the less-than-fee acquisition method was found to be the most cost effective and least disruptive to the local communities.

DATES: Written comments are required by: July 1, 1985.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish had Wildlife Service (RE), P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Bruce G. Halstead, Ascertainment Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (Telephone: (505) 766–2174 or FTS 474–2174).

Individuals wishing copies of the Draft EA for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Bruce G. Halstead is the primary author of this document. The U.S. Fish and Wildlife Service, Department of the Interior, has prepared a Draft EA on its proposal to protect approximately 1,200 acres of endangered bat habitat in Adair and Delaware Counties, Oklahoma. Of the approximately 1,200 acreas proposed for protection, 1000 + acres occur in Adair County and 200 + acres occur in Delaware County. The 1,200 acres are comprised of ten units ranging in size from 5 to 400 acres. Eight units are located in Adair County and are within 5 to 15 miles of the City of Stilwell and two units are in Delaware County and are within 5 to 10 miles of the City of Groves.

The areas proposed for protection would be preserved to ensure the continued survival of the endangered Ozark big-eared bat and the endangered gray bat. These areas contain several cave units used for maternity and hibernacula purposes by the endangered bats. Additionally, the adjacent forested-riparian areas, which are used by the endangered bats for feeding and cover purposes would be protected. This action is considered necessary in order to prevent extinction of the endangered Ozark big-eared bat and help halt the population decline of the endangered gray bat.

These ten areas and the cave units contained in them provide the only know habitat in Oklahoma for the endangered Ozark big-eared bat and support significant numbers of the Oklahoma population of the endangered gray bat. The cave ecosystems also support floral and faunal assemblages that are unique, possibly including the Ozark cavefish, which has been listed as threatened by FWS.

These bats are considered endangered due to their small population size and very limited distribution. Their habit of concentrating large segments of the total population in a small number of caves to form maternity colonies in the spring and summer, and hibernating colonies in the winter has made them highly vulnerable to human disturbance. This distrubance is believed to have increased in recent years due to growing interest in cave related research and sport spelunking. Their vulnerability is further increased by their exotic appearance which makes them targets of collection and intensive observation and their low tolerance to disturbance.

The action is designed to reduce human disturbance and vandalism in caves occupied by the bats. Control of human intrusion on the bats during the maternity and hibernacula periods is considered to be the major action that could lead to the recovery of the bats.

Secondarily, and in conjunction with the reduction in human disturbance, bat foraging an cover habitat must be protected from destruction or other extreme modification. Implementation of these two objectives, coupled with public support and continued research could ultimately lead to delisting these two endangered bats.

By acquiring easements on these lands, FWS would continue to meet its mandate under the Endangered Species Act, by providing for the conservation of habitat necessary to recover the endandered Ozark big-eared and gray bats from endangered status.

This action will result in permanent protection for the bat caves and bat foraging areas. The areas proposed for protection would continue to be used by the landowners for much the same purposes as they are presently being used. No modifications other than posting, some cave gating, and/or fencing will be required. The cave areas would be closed to public and private entry during the periods when the bats are present. Acquisition of easements on the proposed lands would not remove those lands from the local tax rolls.

The major alternatives under consideration that were analyzed and evaluated during planning are:

No Action

No action by the FWS would maintain the status quo and the possible extinction of the Ozark big-eared bat in Oklahoma and allow the population levels of the gray bat to continue to decline.

Protection via Existing Local, State, and Federal Regulations

Protection via existing local, State, and Federal regulations has not proven effective in protecting the bats and the results of relying on this alternative would be the same as for taking no action.

Acquisition/Management by Others

Acquisition/management by others will be encouraged by the FWS to the maximum extent possible. The Nature Conservancy (TNC) has already purchased one of the most important bat caves and foraging areas in Oklahoma. Landowners, caving groups, and other

concerned groups will be supported by the FWS in an effort to gain public support and local protection for the resource. However, it is highly improbable that this alternative will provide the level of protection that is required to halt the downward population trends of these bats.

Less-Than-Fee Acquisition

Less-than-fee acquisition is the preferred alternative. This alternative would allow the FWS to undertake whatever measures are necessary to protect the caves and still allow the landowner to use the land, much as has been done in the past. It is anticipated that perpetual or long-term conservation easements will be the less-than-fee aquisition agreement between FWS and the landowner.

Fee Acquisition

Fee acquisition would accomplish the same goals as the less-than-fee acquisition alternatives, but would displace the landowner and possibly eliminate his use of the land.

Coordination

Other Government agencies and several members of the general public contributed to the planning and evaluation of the proposal and in the preparation of this Draft EA.

All agencies and individuals are urged to provide comments and suggestions for improving this Draft EA as soon as possible. All comments received by the dates given above will be considered in preparation of the Final EA for this proposed action.

The FWS has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821, as amended by E.O. 11949, and OMB Circular A-107.

Dated: April 25, 1985.

Michael Spear,

Regional Director.

[FR Doc. 85-10724 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Carle Foundation Hospital

The public is invited to comment on, the following application for renewal of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Name: Carle Foundation Hospital, 611 West Park Street, Urbana, IL. *File No.* PRT 691972.

Type of Permit: Scientific Research.

Animal: Polar bear—(*Ursus maritimus*).

Summary of Activity to be Authorized: The applicant proposes to import approximately 300 blood samples per year to be analyzed for urea, creatinine, carnitine and other substances felt to be essential for polar bear survival under extreme conditions.

Source of Marine Mammals for Research: Canada.

Period of Activity: Annually.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application is available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: April 29, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-10673 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; International Succulent Institute et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: International Succulent Institute, Orinda, CA; PRT-691945

The applicant requests a permit to export 25 artifically propagated Sneed's pincushion cacti (*Coryphantha sneedii* var. *sneedii*) to N.E. Wilbraham, Cheshire, England for enhancement of propagation.

Applicant: Gary R. Walker, Pueblo, CO; PRT-692112

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the captive herd of Lud de Bruijn, Somerset East, South Africa for the purpose of enhancement of propagation of the herd.

Applicant: James Eugene Gardner, Urbana, IL; PRT-692814

The applicant requests a permit to take (band) Indiana bats (*Myotis sodalis*) and gray bats (*M. grisescens*) from locations in Illinios for scientific research purposes.

Applicant: Scovill Children's Zoo, Decatur, IL; PRT-692989

The applicant requests a permit to purchase a pair of captive-bred Galapagos tortoises (*Geochelone elephantopus*) from International Animal Exchange, Ferndale, MI, for the purpose of enhancement of propagation.

Applicant: Marge & William Moss, McLean, VA; PRT-692534, PRT-692535

The applicants request permits to import personal sport-hunted bontebok (*Damaliscus dorcas dorcas*) trophies culled from the captive-herd of J.J. de Smidt, Douglas, South Africa for purposes of enhancement of propagation of the herd.

Applicant: USFWS/San Francisco Bay National Wildlife Refuge Complex, Newark, CA; PRT 2-10255

The applicant requests to amend their permit for the banding of California clapper rails (*Rallus longirostris obsoletus*) to include the take of 30 rail eggs for a contaminant evaluation study.

Applicant: Leonard Hinckley, Camp Hill, PA; PRT-693097

The applicant requests a permit to import a personal sport-hunted bontebok (*Damaliscus dorcas dorcas*) trophy culled from a captive herd for enhancement of propagation of the herd.

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI; PRT-693096

The applicant requests a permit to export one captive bred female snow leopard (*Panthera unica*) to the Zoologischer Garten of Leipzig, East Germany, for enhancement of propagation.

Applicant: Kenneth M. Henderson, Gilbert, AZ; PRT-692994

The applicant requests a permit to purchase in interstate commerce two pairs of Hawaiian (=nene) geese [*Nesochen* (=*Branta sandviscensis*] from Charles Nugent, Kimbolton, OH, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 29, 1985.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-10672 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Final Determination That the United Lumbee Nation of North Carolina and America, Inc., Does Not Exist as an Indian Tribe

April 19, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary has determined that the United Lumbee Nation of North Carolina and America, Inc., does not exist as an Indian tribe within the meaning of the Federal law. This notice is based on a confirmed determination, following a review of public comments on the proposed finding, that the group does not satisfy five of the seven mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed finding to decline to acknowledge the group was first published on page 14590 of the **Federal Register** on Thursday, April 12, 1984. Interested parties were given 120 days in which to submit factual or legal arguments to rebut evidence used to support the proposed finding. The initial 120-day comment period was subsequently extended for an additional 120 days from September 7, 1984 when it was discovered that some of the principal parties received incomplete reports. The notice of extended appeared in the **Federal Register** on November 1, 1984 on page 44024.

During the comment period and its extension, one letter in agreement with the finding was receiving on July 24, 1984. This letter supported the recommendation against Federal acknowledgment in principle and provided minor corrections to some statements in the proposed finding document. In addition to the letter of support, two reports, one with supporting documents were submitted from the groups's leader, Mrs. Eva Reed, challenging the proposed finding. One was received August 13, 1984 and the other January 10, 1985. These reports were carefully considered to determine whether the evidence and arguments would strengthen the group's overall petition for acknowledgment. While these reports did provide information to correct some minor factual errors in the proposed finding, they did not present evidence which would warrant changing the conclusion that the United Lumbee Nation of North Carolina and America, Inc., does not exist as an Indian tribe within the meaning of Federal law.

Neither the original petition nor the later reports submitted by the group demonstrate that a antecedent Lumbee group existed in that part of California or that an organized group of Lumbee ever migrated there. The petitioners could not establish the group's descendency either culturally, politically, or genealogically from any tribe which existed historically in the area.

Evidence presented demonstrate that the group's membership was quite dispered, and no documentation was provided to show that a substantial portion of the group lives in a distinct community which is recognized as Indian. In addition, no evidence was offered to show that the group exercises any tribal political authority over its members.

The United Lumbee Nation of North Carolina and America, Inc. is a group which can be characterized as a voluntary organization. Members have the option of joining. Prospective members of the United Lumbee Nation are expected to have an interest in Indians and Indian culture and their own membership criteria require 1/16 degree of Indian blood. The group has accepted as members individuals who do not meet the blood degree requirement. United Lumbee Nation members claim to descend from a variety of recognized and unrecognized Indian tribes and groups, including, but not limited to Lumbee. Most claim Cherokee or Choctaw ancestry.

In accordance with 25 CFR 83.9(j) of the acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the United Lumbee Nation could make application for services and other benefits. No viable alternatives could be found due to the group's mixed and uncertain Indian ancestry, the geographical dispersion of its membership, and the group's lack of inherent social and political cohesion and continuity. The conclusion is based on the factual arguments and evidence presented in the group's petition, the group's comments to the proposed finding, and the acknowledgment staff's independent research.

This determination is final and will become effective 60 days from the date of publication, unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10.

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs

[FR Doc. 85-10732 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[W-80359; 5-22823-GP5-4310-22]

Wyoming; Exchange of Public Lands in Crook and Weston Counties for Private Lands in Crook County, Transfer of Administrative Jurisdiction

April 24, 1985.

1. Notice is hereby given that, pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1982), the following public lands, including all minerals except oil and gas, have been conveyed to Homestake Forest Products Company, Lead, South Dakota:

Sixth Principal Meridian, Wyoming

T. 48 N., R. 60 W.,
  Sec. 5, lot 5;
  Sec. 6, lots 8, 9, and 10;
  Sec. 17, SW¼SE¼.
T. 49 N., R. 61 W.,
  Sec. 5, NE¼SW¼;
  Sec. 22, NE¼NE¼;
  Sec. 27, SW¼SE¼.
T. 50 N., R. 61 W.,
  Sec. 6, SE¼SE¼;
  Sec. 8, NE¼NE¼.
T. 51 N., R. 61 W.,
  Sec. 9, SE¼SE¼;
  Sec. 29, SE¼SE¼;
  Sec. 32, NE¼NE¼.
T. 55 N., R. 62 W.,
  Sec. 5, lot 11.

Containing 606.43 acres.

2. The following public land, surface estate only, has been conveyed to Homestake Forest Products Company:

Sixth Principal Meridian, Wyoming

T. 54 N., R. 64 W.,
Sec. 25, SE¼NE¼.
Containing 40.00 acres.

All minerals in the above land are outstanding of record in third parties.

3. In exchange, the United States acquired the following described lands, surface estate only, from Homestake Forest Products Company:

Sixth Principal Meridian, Wyoming

T. 52 N., R. 60 W.,
Sec. 30, E½SW¼ and W½SE¼.
T. 51 N., R. 61 W.,
Tracts 37, 40, and 41.
T. 52 N., R. 61 W.,
Sec. 35, SE¼SW¼.
Containing 640.12 acres.

The above lands are located within the boundaries of the Black Hills National Forest and were acquired by the United States for the benefit of the Department of Agriculture, U.S. Forest Service.

4. Pursuant to section 206(c) of the Federal Land Policy and Management Act of 1976, the lands described in paragraph 3 are hereby transferred to the jurisdiction of the Secretary of Agriculture effective March 15, 1985, the date of acceptance of title to the lands by the United States, for administration as National Forest System lands of the Black Hills National Forest. The lands are open to such forms of appropriation and disposition as may, by law, be made of National Forest System lands, subject to valid existing rights and to all the laws, rules, and regulations applicable to the National Forest System.

James L Edlefsen,
Chief, Branch of Land Resources.

[FR Doc. 85-10720 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-22-M

Intent To Prepare Lemhi Resource Management Plan and Environmental Impact Statement; Salmon District, ID

AGENCY: Bureau of Land Management (BLM), Interior.

This notice supersedes the notice of July 7, 1983. It also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7).

Proposed Planning Action

The Bureau of Land Management is preparing a Resource Management Plan and Environmental Impact Statement for public lands in the Lemhi Resource Area, Salmon District, Idaho.

Location

The Lemhi Resource Area is located in south central Idaho and encompasses approximately 459.566 acres of public land. The Lemhi Planning Area encompasses all of the Lemhi Resource Area within Lemhi County, Idaho. The area takes in the lands surrounding the town of Salmon, laying in the northern end of the Salmon District, and then stretches to the southeast along the Lemhi River Valley and the upper reaches of Birch Creek joining the Idaho Falls District at the Clark County line.

Issues

The following issues have been identified.

1. Livestock Grazing Management

The Issue. a. How should the range resource be managed to meet existing and future livestock demand?

b. How much and where should forage be designated for livestock and wildlife use?

c. What special management techniques should be initiated on livestock grazing to improve sensitive areas?

2. Wildlife Habitat Management

The Issue. a. Management of fisheries habitat and seasonal range for big game and sage grouse.

b. Disposal of public lands containing important wildlife habitat.

c. Management of habitat for threatened and endangered species.

3. Land Tenure Adjustment

The Issue. The disposal or retention of public lands.

4. Forest Management

The Issue. a. The availability of forest lands for intensive forest management.

b. What forest lands should be subject to restricted forest management to protest high recreation, watershed, and wildlife values?

5. Wilderness Suitability

The Issue. The suitability or nonsuitability of the Eighteen Mile Wilderness Study Area (WSA) for wilderness designation.

6. Off-Road Vehicle (ORV) Management

The Issue. Management of ORV use and designation of open, limited, and closed use areas.

7. Recreation Management

The Issue. a. The overcrowding of existing recreational facilities and the deterioration in the quality of recreational experiences in the Lemhi Resource Area.

b. What management practices should occur within areas of National significance?

8. Energy and Minerals Management

The Issue. a. How will energy and mineral resource development be accommodated?

b. What public land, if any, should be withdrawn from energy and mineral exploration and/or development in order to protect surface and groundwater quality, visual quality, wildlife habitat and other resource values?

9. Watershed

The Issue. a. Riparian area degradation due to livestock grazing.

b. Water quality and fisheries habitat degradation due to forestry practices.

c. Early spring turnout and overgrazing by livestock on highly erosive, low elevation rangeland.

The following resources represented in the development of the Lemhi RMP/EIS: Lands, minerals, forestry, range, watershed, soils, wildlife, fisheries, recreation/wilderness, cultural resources, and fire.

Key public input points are as follows:

1. Issue identification, July 7, 1983
2. Finalize issues and Planning Criteria January 15, 1984
3. Prepare Alternatives March 22, 1985
4. Public Review (at least 90 days) October 1985
5. Public Review (at least 30 days) May 9, 1986

Meetings: A public meeting will be held November 1985.

FOR MORE INFORMATION CONTACT: Jerry A. Wilfong, Lemhi Resource Area Manager, Salmon District, BLM, P.O. Box 430, Salmon, Idaho 83467, (208) 756-2201.

Planning documents for the Lemhi RMP/EIS are available at the address shown above.

Dated: April 19, 1985.

Kenneth G. Walker,
District Manager.

[FR Doc. 85-10723 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-GG-M

[OR 38509; 5-00250-162]

Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN

	Acreage
Harney County Tracts	
T 33 S, R 30 E	
Sec 2: Lots 2, 3, 4, SW¼NE¼, S½NW¼, W½SW¼	316.64
Sec 12: SW¼	160.00
Sec 13: NW¼	160.00
Sec 15: S½	320.00
Sec 21: NE¼, E½NW¼, NW¼SW¼, E½SW¼, W½SE¼, NE¼SE¼	480.00
Sec 22: N½, N½S½, SE¼SW¼, S½SE¼	600.00
Sec 24: All	640.00
Sec 25: W½	320.00
Sec 26: E½, NW¼	480.00
T 33 S, R 31 E, WM	
Sec 2: Lots 3 & 4, S½NW¼, SW¼	321.22
Sec 3: Lots 1 & 2, S½NE¼SE¼	322.14
Sec 5: Lots 1 & 2, S½NE¼, SE¼	317.63
Sec 10: E½	320.00
Sec 14: W½	320.00
Sec 15: All	640.00
Sec 17: E½	320.00
Sec 19: Lots 1 thru 4 incl., E½, E½W½	642.95
Sec 21: N½	320.00
Sec 22: NW¼	160.00
Sec 23: NW¼	160.00
Sec 27: W½	320.00
Sec 30: Lots 3, 4, E½SW¼, SE¼	320.56
T 34 S, R 31 E	
Sec 15: N½, N½S½, SE¼SE¼	560.00
Sec 19: NE¼	160.00
Sec 20: W½NW¼	80.00
Sec 22: NE¼NE¼, S½NE¼, E½SE¼	200.00
Sec 27: N½	320.00
T 26 S, R 34 E	
Sec 31: Lots 1 through 4, inclusive	129.45
Grant County Tracts	
T 7 S, R 29 E	
Sec 17: NW¼SE¼	40.00
T 10 S, R 31 E	
Sec 29: W½SW¼	80.00
Sec 30: Lot 2	39.62
T 12 S, R 30 E	
Sec 34: W½W½	160.00
T 12 S, R 32 E	
Sec 26: NW¼	160.00
Sec 28: N½NE¼, SE¼NE¼	120.00
Sec 32: NW¼SW¼	40.00
T 12 S, R 34 E	
Sec 27: SE¼NE¼	40.00
T 13 S, R 29 E	
Sec 28: W½SW¼	80.00
T 13 S, R 30 E	
Sec 4: SE¼SE¼	40.00
Sec 14: NW¼NE¼, NE¼NW¼, S½SE¼	160.00
T 13 S, R 31 E	
Sec 6: Lot 1	40.06
Sec 35: E½NW¼SE¼	20.00
T 13 S, R 33 E	
Sec 4: Lots 3 & 4, S½NW¼, SW¼	320.63

The area described aggregates approximately 9410.59(±) acres in Harney County, and 1340.31(±) acres in Grant County, Oregon. In exchange for all or some of these lands the United States will acquire some of the following described private land from the Trust for Public Land and/or Mr. Rex Clemens (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T 33 S, R 32½ E, WM	
Sec 1: Lots 1 & 2, S½NE¼, S½SW¼, W½SE¼	306.94
Sec 2: S½S½	160.00
Sec 4: SE¼NE¼	40.00
Sec 11: S½S½	160.00
Sec 12: W½W½	160.00
Sec 13: N½, E½SE¼	400.00
Sec 14: NE¼NE¼	40.00
Sec 36: All	640.00
T 34 S, R 32½ E, WM	
Sec 1: Lots 2 & 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼	444.45
Sec 12: N½NE¼, NE¼NW¼	120.00
T 33 S, R 32¾ E, WM	
Sec 13: SW¼NW¼, E[illegible]¼, W½SE¼, SE¼SE¼	320.00
Sec 14: SE¼NE¼, SW¼, E½SE¼	280.00
Sec 15: S½SE¼	80.00
Sec 16: All	640.00
Sec 17: SE¼	160.00
Sec 19: SE¼	160.00
Sec 20: N½NE¼	80.00
Sec 21: W½NE¼, N½NW¼, SE¼SW¼, W½SE¼	280.00
Sec 22: NE¼, E½NW¼	240.00
Sec 23: NW¼	160.00
Sec 24: N½N½	160.00
Sec 28: W½E½	160.00
Sec 30: NW¼NE¼, SE¼SW¼, SW¼SE¼	120.00
Sec 31: Lot 1, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼	226.87
Sec 33: W½E½, SE¼NW¼, N½SW¼, SE¼SW¼	320.00
Sec 32: W½SW¼, SE¼[illegible]¼, SW¼SE¼, E½SE¼	240.00
T 34 S, R 32¾ E, WM	
Sec 2: SW¼	160.00
Sec 3: SW¼NE¼, SE¼SW¼, SE¼	240.00
Sec 4: SW¼SE¼	40.00
Sec 7: Lots 1 & 2	59.39
Sec 8: N½NE¼, E½NW¼	160.00
Sec 9: NE¼, N½NW¼, N½SE¼	320.00
Sec 10: N½N½, SW¼NW¼, NE¼SW¼	240.00
Sec 11: NW¼	160.00

The area described aggregates approximately 7477.70(±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat. Acquisition of these tracts will also provide access to otherwise "locked up" Public Lands as well as providing an access route for portions of the proposed High Desert Trail.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. This exchange may be done in three steps and will entail the use of other or further Federal lands. Another notice will be published when these lands have been identified. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: April 24, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-10722 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-33-M

Albuquerque District, NM, Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will be meeting June 5, 1985, in the 7th Floor Conference Room of the Western Bank

Building, 505 Marquette Street in downtown Albuquerque. The meeting will begin at 10:00 a.m.

The Agenda will include presentations to the Council on the Forest Service/BLM Interchange Program, Albuquerque District planning efforts, the Navajo relocation issue, and the preparation of Wilderness Management Plans for the Bisti and De-na-zin Wilderness Areas.

Public comments to the Council will be accepted at 2:30 p.m.

The District Advisory Council is managed in accordance with the Federal Advisory Committee Act 1972, the Federal Land Policy and Management Act of 1976, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For more information, contact R. Alan Hoffmeister, Public Affairs Officer, (505) 766-2455.

L. Paul Applegate,

District Manager.

[FR Doc. 85-10728 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-FB-M

Safford District, A2; Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, June 7, 1985; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The agenda for the meeting will include:

1. Field tour to see water developments (slickrock catchment, masonry dams) on allotments 5113 and 5103.
2. Proposed Range Improvement projects for Fiscal Year 86.
3. Progress report on Fiscal Year 85 Range Improvements.
4. Grazing fee study.
5. BLM/FS interchange.
6. Discussion on subleasing.
7. BLM management update.
8. Business from the floor.

Board members will meet at the BLM Office, 425 E. 4th Street, Safford, Arizona at 9:00 a.m. From here we will depart via BLM-provided vehicles for the field tour. Members of the public may accompany the tour but must provide their own transportation.

It is expected the Board members will return to the Safford District Office at approximatey 1:30 p.m. to continue with the agenda for the meeting.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, June 6, 1985.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: April 25, 1985.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 85-10721 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-32-M

[OR 26635(Wash; 5-00250-GP5-146]

Franklin County, WA; Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Under the provisions of Pub. L. 97-451 petition for reinstatement of oil and gas lease OR 26635(Wash) for lands in Franklin County, Washington, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1985, the date of termination.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16-⅔%, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: April 24, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-10714 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-33-M

[Group 668]

Filing of Plat of Survey; California

April 24, 1985

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Tuolumne County

T. 2 N., R. 15 E.

2. This plat, representing the dependent resurvey of a portion of the west and north boundaries, a portion of the subdivisional lines, and the boundaries of certain mineral surveys, and the survey of the subdivision of sections 4, 6, 8, 17, 18, 19, 20, and 30, in Township 2 North, Range 15 East, Mount Diablo Meridian, under Group No. 668, California, was accepted April 4, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-10725, Filed 5-1-85; 8:45 am]

BILLING CODE 4310-40-M

[ES-034841, Group 129]

Meridian; Filing of Plat of Dependent Resurvey; WI

April 26, 1985.

1. The plat of the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and subdivision of section 30, Township 40 North, Range 6 East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on Junne 10, 1985.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-10716 Filed 5-1-85; 8:45 pm]

BILLING CODE 4310-GJ-M

Realty Action, Competitive Sale of Public Lands in Bear Lake and Caribou Counties, ID

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Based on public support land use plans, the following lands have been examined and identified for disposal under Section 203(a) of the Federal Land Policy and Management Act of 1976, for no less than the appraised fair market value (FMV).

Tract	Legal description	Acres	County	Fair market value
I-17736	T. 16 S., R. 45 E., B.M., Sec. 11: E1/2SE¼	80	Bear Lake	$6,000
I-19694	T. 5 S., R. 41 E., B.M., Sec. 29: NW¼SW¼	40	Caribou	3,000
I-19713	T. 6 S., R. 39 E., B.M., Sec. 24: NE¼SW¼	40	Caribou	3,000

Sealed bids only are solicited for each tract offered. Acceptable bids must meet the FMV or higher and include a deposit of 30 percent of the full price bid. In addition, a bid for Tract I-19713 will constitute an application for conveyance of all salable and locatable minerals. The declared high bidder will be required to deposit a $50 non-refundable filing fee to process the conveyance. Failure to do so will result in disqualification as high bidder.

The lands will be subject to the following reservations and conditions when patented:

1. Ditches and canals.

2. All minerals for I-17736 and I-19694 and all leasable minerals only for I-19713.

3. All valid existing rights and reservations of record.

4. (I-17736 only) A reservation to the United States of an easement over and across an existing road.

Upon publication in the **Federal Register**, the Tracts are segregated from all forms of appropriation under the public land laws, including he mining laws, but excepting the mineral leasing laws, as provided by 43 CFR 2711.1-2(a), for a period of 270 days, or until patent is issued.

DATES AND ADDRESSES: Sealed bids should be submitted to the Manager, Pocatello Resource Area Office, 250 South 4th Ave., Pocatello, Idaho 83201, prior to sale time. Bids will be opened on July 9, 1985, at 1 p.m. in the basement meeting room B-43 in the Federal Building, 250 South 4th Ave, Pocatello, Idaho. If no bids are received by this date, bids will be accepted until, and opened on, July 30, 1985, at 11 a.m. at the Idaho Falls district BLM Office, 940, Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning reservations, conditions, terms, bidding procedures and other items should be obtained by contacting Wallace Evans, Area Manager, Pocatello Resource Area, 250 South 4th Ave., Pocatello, Idaho 83201, or by calling (208) 236-6860 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Area Manager at the above address.

Dated: April 24, 1985.

O'dell A. Frandsen,

District Manager.

[FR Doc. 85-10715 Filed 5-1-85; 8:45 p.m.]

BILLING CODE 4310-85-M

[C-28263; 5-00258-GP5-053]

Proposed Modification of Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that those orders which withdrew lands for the South Platte Project be modified to expire in 25 years insofar as they affect 8,032.82 acres of national forest system lands. The lands will remain closed to surface entry and mining but have been and will continue to be open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303-294-7635.

The Bureau of Reclamation proposes that portions of the existing land withdrawals made by two Secretarial Orders dated May 13, 1943, as amended, be modified to expire in 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect national forest system lands located in Tps. 7 and 8 S., R. 69 W., and Tps. 7, 8, and 9 S., R. 70 W., 6th P.M. These areas aggregate 8,032.82 acres in Douglas and Jefferson Counties.

The purpose of these withdrawals is for the administration and protection of the proposed South Platte Project. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal modification may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the modification of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-10729 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JB-M

[NM 54691 (OK)]

New Mexico; Correction of Proposed Withdrawal and Reservation of Lands

The Notice published in **Federal Register** Doc. 83-1227 filed January 14, 1983, 8:45 a.m., published on page 2070-2071 in the issue of January 17, 1983, is

corrected as to the time allowed for submitting comments, suggestions, or objections in connection with the proposed withdrawal. The time is extended to allow an additional 38 days from the date of publication of this notice.

Dated: April 24, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-10733 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-FB-M

[AA-055393; 5-00164]

Realty Action; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action lease of public lands in southwestern Alaska (AA-055393).

SUMMARY: This Notice of Realty Action involves a proposed lease on public lands administered by the Bureau of Land Management (BLM) approximately 18 miles south of the Village of Holy Cross. The lease would authorize the construction of a hunting and trapping cabin and use of approximately one (1) acre of public land near Pike Lake. The proposal has been found to be suitable under the provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and is located within the area described as follows:

Seward Meridian, Alaska

Section 5, Township 21 North, Range 56 West.

The lands would be leased on a non-competitive basis. Annual rental has been estimated at $100 per acre per year, subject to final appraisal. No application will be accepted for less than the appraised price per acre. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease.

Applications may be hand-delivered or mailed to the Anchorage District Office, Bureau of Land Management, 4700 East 71nd Avenue, Anchorage, Alaska 99507, within 60 days following publication of this notice. Applications must include a reference to this notice.

For more details of application content, refer to 43 CFR Part 2920, copies of which are available at the BLM Anchorage District Office, McGrath Resource Area. Also available is information on terms and conditions that would apply to the lease, location maps, etc.

For a period of 60 days following **Federal Register** publication, interested parties may submit comments to the McGrath Resource Area Manager, 4700 E. 72nd Avenue, Anchorage, Alaska 99507. Any adverse comments will be evaluated by the Area Manager who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the District Manager, this realty action will become the final determination of the Bureau.

Robert Conquergood,

Area Manager, McGrath Resource Area.

[FR Doc. 85-10713 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JA-M

[22642]

Realty Action; Sale of Public Lands; Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U-52428, sale of public lands in Emery County, Utah.

SUMMARY: The following described parcel of land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713 (FLPMA), using modified bidding procedures (43 CFR 2711.3-2) at no less than the appraised fair market value. Bids at less than such value will be rejected as required by FLPMA.

Legal description	Acreage	Value
Salt Lake Meridian:		
T. 18 S., R. 8 E, Sec. 23, SE¼SE¼; Sec. 26, NE¼NE¼	80.00	$12,000

Sealed bids will be accepted at the San Rafael Resource Area Office, P.O. Drawer AB, 900 North 7th East, Price, Utah 84501, until 11:00 a.m. on June 25, 1985, at which time the bids will be opened. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The oral bidding, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

As there is no public access to the sale lands, Nile Kay and Arvella E. Wilbery and Wayne Wilberg, adjoining landowners of record, will be given a preference right to meet the high bid for a period of 30 days following date of sale. Where two or more designated bidders exercise preference consideration, the designated bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absense of a written agreement, the preference right bidders shall be allowed to continue bidding orally at a supplemental bidding to be held July 26, 1985, at 11:00 a.m., to determine the high bidder. Failure to submit a bid prior to the sale date or meet the highest bid shall constitute a waiver of such bidding provision.

If not sold as outlined above, the parcel remain available for sale over the counter each Monday from July 29 until December 30, 1985 from 10:00 a.m. to 11:00 a.m. until sold or withdrawn.

The terms and conditions applicable to this sale are:

1. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

2. All minerals, including oil and gas, will be reserved to the United States with the right to explore, prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is a available for review at the above office.

3. Patent will be subject to all valid existing rights and reservations of record.

Existing rights of record include:

a. U-54173—Oil and gas lease, Chandler & Associates, Inc., Texas Intenational Petroleum Corp., and Amerada Hess Corp., lessees.

Additional information concerning the land, terms and conditions of sale, and bidding instruction may be obtained from Laurelle Hughes, Area Realty Specialist at above address, (801) 637-4584, or Brad Groesbeck, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the fianl determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be

fully consistent with section 203(g) of FLPMA or other applicable laws.

Upon publication of the Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from the date this Notice is published in the **Federal Register**, whichever occurs first.

Gene Nodine,

District Manager.

April 26, 1985.

[FR Doc. 85-10708 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-DQ-M

[M 64885 (ND)]; 4-20703-ILM

North Dakota; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with the Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Mercer County, North Dakota:

T. 145 N., R. 87 W., 5th P.M.
Sec. 6: SE¼
T. 144 N., R. 88 W., 5th P.M.
Sec. 2: Lots 3,4, S½NW¼
Sec. 2: Lot 1, SE¼NE¼
562.51 acres.

Any party electing to participate in this exploration program shall notify, *In writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and The Coteau Properties Company, 2000 Schafer Street, P.O. Box 2200, Bismarck, North Dakota 58502-2200. Such written notice must refer to serial number M 64885(ND) and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Beulah Beacon, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: April 25, 1985.

Robert T. Webb,

Chief, Branch of Solid Minerals.

[FR Doc. 85-10707 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-DN-M

[Designation Order CO-070-0851]

Grand Junction District Office; Colorado Off-Road Vehicle Designations

AGENCY: Bureau of Land Management.

ACTION: Notice of off-road vehicle designation decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Grand Junction District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 566,042 acres of public land affected by the designations are within the Glenwood Springs Resource Area, which includes portions of public land in Eagle, Garfield, and Pitkin Counties, Colorado. The designations are a result of resource management decisions made in the 1984 Glenwood Springs Resource Management Plan. Comments received from public meetings in 1979 and 1982, coordination with other federal, state, and local agencies, and comments received during a 90-day public comment period held in 1982-1983, which included formal public hearings, influenced these designation decisions. These designations for public land located within the areas listed below become effective immediately and will remain in effect until modified or rescinded by the Authorized Officer. This designation order supersedes a previous emergency off-road vehicle decision for the Glenwood Springs Debris Flow Hazard Zone.

A. Closed Designation

All motorized vehicle use is prohibited year-around.

1. Bull Gulch—9.[illegible] acres located 10 miles north of Gypsum, Colorado.

2. Hack Lake—3.[illegible]2 acres located 15 miles north of Dotsero, Colorado.

3. Deep Creek—2,380 acres located 3 miles northwest of Dotsero, Colorado.

4. Thompson Creek—4, 286 acres located 6 miles southwest of Carbondale, Colorado.

B. Limited Designation

1. Limited to Designated Roads and Trails Year-Around Motorized Vehicle use is permitted only on routes signed as open for use and cross-country travel is prohibited, except for somemobile use.

a. Castle Peak—19,526 acres located 6 miles north of Eagle, Colorado.

b. Eagle—1,683 acres located .5 mile east of Eagle, Colorado.

c. Glenwood Springs Debris Flow Hazard Zone—5,952 acres located adjacent to Glenwood Springs, Colorado.

2. Limited to Existing Roads and Trails Year-Around Motorized Vehicle use is permitted only on existing routes and cross-country travel is prohibited, except for snowmoble use.

a. Blue Hill—3,655 acres located 2 miles northeast of Burns, Colorado.

b. Pisgah Mountain—15,770 acres located 1 miles northeast of McCoy, Colorado.

c. Tenderfoot Gulch—3,970 acres located 1 mile southeast Gypsum, Colorado.

d. Red Hill—14,823 acres located 1 mile southwest of Gypsum, Colorado.

e. Sunlight—1,708 acres located 5 miles southwest of Glenwood Spring, Colorado.

f. Center Mountain—3,709 acres located 8 miles southeast of New Castle, Colorado.

g. Gibson Gulch—8,489 acres located 6 miles south of New Castle, Colorado.

h. East Elk Creek—1,331 acres located 2 miles north of New Castle, Colorado.

i. Ward Gulch—3,777 acres located 8 miles northeast of Rifle, Colorado.

3. Seasonal Limitations. The restrictions listed below are in effect for specific periods of the year. During those periods not listed for a particlar area, the area is open to motorized vehicle use.

a. Transfer Trail—1.6 miles located 1 mile north of Glenwood Springs, Colorado. Between December 1 and April 30, motorized vehicle use is prohibited except for snowmobile use.

b. The Crown—8,482 acres located 3 miles southeast of Carbondale, Colorado. Between December 1 and April 30, motorized vehicle use is prohibited except for snowmobiles operating on the existing road along Prince Creek. Between May 1 and June 1, motorized vehicle use is permitted only on existing roads and trails.

c. East Elk Creek—3,431 acres located 3 miles north of New Castle, Colorado. Between December 1 and April 30, all motorized vehicle use is prohibited. Between May 1 and November 30,

motorized vehicle use is permitted only on existing roads and trails.

d. Flat Iron Mesa—736 acres located 5 miles south of Rifle, Colorado. Between December 1 and April 30, all motorized vehicle use is prohibited. Between May 1 and November 30, motorized vehicle use is permitted only on existing roads and trails.

C. Open Designation

Motorized vehicles may be operated on the remaining 449,518 acres of public land in the Glenwood Springs Resource Area, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

An environmental assessement describing the impact of these designations and maps of the areas are available at the offices listed below.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management Offices:

Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

Glenwood Springs Resource Area Office, P.O. Box 1009, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

Dated: April 24, 1985.

Wright Sheldon,

District Manager.

[FR Doc. 85-10709 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on April 23, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 23, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10726 Filed 5-1-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 2-85]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), notice is given that the Department of Justice proposes to modify a system of records entitled "Alien Status Verification Index, JUSTICE/INS—009," which was last published in the **Federal Register** on November 15, 1983 (48 FR 51989). Specifically, the "Categories of Records in the System" section of the notice has been changed to reflect the addition of the social security account number as a data element in the record, and to correct the term "Immigration and Naturalization Act" to read "Immigration and Nationality Act." The "Retrievability" section of "Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System" is changed to add "name and social security account number" to the data items used to retrieve records from this system. The modified system is reprinted below.

You may submit any inquiries or comments in writing to Thomas F. O'Leary, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

Dated: April 22, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General For Administration.

JUSTICE/INS-009

SYSTEM NAME:

Alien Status Verification Index JUSTICE/INS-009.

SYSTEM LOCATION:

Central, Regional, District, and other files control offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999. Remote access terminals will also be located in state employment security offices (SESA's) and other Federal, State, and local agencies nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records are limited to index and file locater data including name, alien, registration number (or "A-file" number), date and place of birth, social security account number, date and port of entry, coded status transaction data, immigration status classification, and office location of related records files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 290, of the Immigration and Nationality Act, as amended (8 U.S.C. 1360).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEFORIES OF USES AND THE PURPOSES OF SUCH USES:

This system of records is used to verify an alien's status or to locate the INS file control office for the alien file of a particular individual.

A. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local government agency, in rsponse to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the

letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

B. A record from this system may be disclosed to other Federal, State, of local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation, or for criminal or civil law enforcement purposes.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available for systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service:

A record from this system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the related record.

SYSTEM MANAGER AND ADDRESS:

The Associate Commissioner, Information Systems, Immigration and Naturalization Service, Central Office, 425 I Street, NW., Washington, D.C. is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORDS ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. if a request for access is made in mail, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include the name, date and place of birth of the person whose record is sought and, if known, the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the System Manager or to the INS office that maintains the file. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and report on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-10727 Filed 5-1-85; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: May 13-14, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Divisions of General Program, for projects beginning after October 1, 1985.

Date: May 16-17, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Divisions of General Programs, for projects beginning after October 1, 1985.

Date: May 20-21, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Improving Introductory Courses, Promoting Excellence in a Field, and Fostering Coherence Throughout an Institution, for projects beginning after October 1, 1985.

Date: May 23-24, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Improving Introductory Courses, Promoting Excellence in a Field, and Fostering Coherence Throughout an Institution, for projects beginning after October 1, 1985.

Date: May 23-24, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1985.

Date: May 30-31, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1985.

The proposed meetings are for the purpose of panel review, discussion evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 522b of Title 45, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McClearly, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 85-10660 Filed 5-1-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 7, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the third calendar quarter of 1984. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were four abnormal occurrences at the nuclear power plants licensed to operate. These involved degraded isolation valves in emergency core cooling systems, degraded shutdown systems, a loss of offsite and onsite AC electrical power, and a refueling cavity water seal failure, respectively. There was one abnormal occurrence at a fuel cycle facility; the event involved degraded material access area barriers. There were four abnormal occurrences at the other NRC licensees. One involved contaminated radiopharmaceuticals used in several diagnostic administrations. Two involved therapeutic medical misadministrations. The other involved significant internal exposure to iodine-125 to a hospital employee. There was one abnormal occurrence reported by an Agreement State; the event involved contaminated radiopharmaceuticals used in several diagnostic administrations.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol. 7, No. 3 (or any of the previous reports in this series), may be purchased by calling (202) 275-2060 or (202) 275-2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7982. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 26th day of April 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 85-10690 Filed 5-1-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Metal Components and Structural Engineering; Meeting

The ACRS Subcommittee on Metal Components and Structural Engineering will hold a combined meeting on May 23 and 24, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 23, 1985—8:30 a.m. until the conclusion of business

Friday, May 24, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss modifications to General Design Criterion-4 that will account for the use of the leak-before-break concept in piping system in operating plants and plants under construction. Status of the NRC Piping Review Committee reports (NUREG-1061, Volumes 1-5) will also be discussed at this meeting.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meetings when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 29, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-10693 Filed 5-1-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on May 16, 1985 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, PA 17101. The meeting will be open to the public.

At this meeting the Panel will discuss and formulate a position on the level of the Panel's inquiry into health effects studies and data related to the radioactive release during the TMI–2 accident. The Panel will also receive a presentation from representatives of General Public Utilities Nuclear Corporation on plans for reactor fuel removal and storage. The Department of Energy will brief the Panel on the current status of fuel shipping casks that will be used for offsite transport of fuel and debris removed from the reactor. The Nuclear Regulatory staff will provide the Panel with an update on the status of NRC investigations and enforcement actions.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone 301/492–7466.

Dated: April 29, 1985.

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 85–10692 Filed 5–1–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Elecric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Review of goals work plan
- Review related production planning activities
- Development of systemwide distribution policy
- Accounting/modeling, problem and issues
- Other
- Public comment

Status. Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: May 8, 1985. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ronald J. Eggers, 503–222–5161.

Edward Sheets,

Executive Director

[FR Doc. 85–10712 Filed 5–1–85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–21969; File No. SR-CSE-85–2]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Exchange Dues

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1985, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective March 6, 1985, the Board of Trustees of The Cincinnati Stock Exchange revised the Exchange's dues which now are as follows (new language italicized and deleted language bracketed):

EXCHANGE DUES

The dues of all proprietary members shall be [nine hundred dollars ($900)] *fifteen hundred dollars ($1,500)* per annum payable [semi-annually] *quarterly*, in advance, on January 1st, *April 1st*, [and] July 1st, and *October 1st*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Trustees determined that administrative expenses and operational expenditures warrant an increase in Exchange dues. The Proposed Rule Change is based on and consistent with section 6(b)(4) of the Act, which requires the rules of an exchange to provide for the equitable allocation of reasonable dues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the Proposed Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 23, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 24, 1985.

[FR Doc. 85-10696 Filed 5-1-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21971; File No. SR-NYSE-85-11]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Revised Requirements Respecting Allied Member Candidate Examinations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange has proposed to discontinue the currently administered allied member examination and instead require allied member candidates to pass examinations commensurate with their job responsibilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchange, in its continuing effort to review and evaluate the examination criteria applied to its member organizations, has determined to phase out the Allied Member Examination (the "exam") and provide for alternate means of satisfying the examination requirement for allied member candidates as contained in Exchange Rule 304A.

With a move to more functional lines of responsibility, the Exchange has determined that an allied member candidate will be required to pass an examination or examinations which provides an effective test of the candidates' responsibilities. Examinations which could be required are those for sales persons (including registered representative, commodity futures, interest rate options, foreign currency options, direct participation program representative, municipal securities representative, and investment company products/variable contracts) and principals (including securities sales supervisor, general securities principal, registered options principal, supervisory analyst, financial and operations principal, direct participation program principal, investment company products/variable contracts principals, municipal securities principal and municipal securities financial and operations principal). For those candidates for allied membership for which there is no appropriate examination, none will be required. Individuals currently approved as allied members may be subject to new examination requirements if there is a significant change in their duties and if they have not satisified an examination requirement for such responsibilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by May 23, 1985.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.

Dated: April 22, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10695 Filed 5-1-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2168]

Michigan; Declaration of Disaster Loan Area

Monroe and St. Clair Counties and the adjacent Counties of Macomb and Wayne in the State of Michigan

constitute a disaster area because of damage caused by wind swept high water and flooding which occurred March 31 through April 6, 1985. Applications for loans for physical damage may be filed until the close of business on June 25, 1985, and for economic injury until the close of business on August 1, 1985, at the address listed below:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW. Suite 822, Atlanta, GA 30303

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218806 for physical damage and for economic injury the number is 629900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 26, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-10643 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/05-0008]

First Miami Small Business Investment Co.; Licenses Surrender

Notice is hereby given that First Miami Small Business Investment Company, 1195 NE. 125th Street, North Miami, Florida 33161, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). First Miami Small Business Investment Company was licensed by the Small Business Administration on September 5, 1959.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on April 15, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 24, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10649 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *May 1, 1985,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *11.245%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: April 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10642 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Birmingham, AL and Jackson, MI; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, Alabama, and Jackson, Mississippi, will hold a public meeting from 9:00 a.m. to 2:00 p.m., on Thursday, May 30, 1985, in the Howard Johnson, Meridian, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 Eight Avenue, North Suite 200, Birmingham, Alabama 35203, (205) 254-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1985.

[FR Doc. 85-10646 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Jacksonville, FL; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 9:30 a.m. to approximately 3:00 p.m. at the Yearling Room, Ramada Inn, 3810 NW. Blitchton Road, Ocala, Florida 32675 (Junction I-75 and U.S. 27) to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Douglas E. McAllister, District Director, U.S. Small Business Administration, 400 West Bay Street, Jacksonville, Florida 32202. Telephone (904) 791-3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1985.

[FR Doc. 85-10644 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Miami, FL; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Miami, Florida, will hold a public meeting at 9:30 a.m., on Tuesday, May 14, 1985, in the Board Room of the Wackenhut Corporation, 1500 San Remo Avenue, Coral Gables, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 2222 Ponce de Leon Boulevard, 5th Floor, Coral Gables, Florida 33134, telephone (305) 350-5533.,

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1985.

[FR Doc. 85-10645 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Providence, RI Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, May 29, 1985, at Camille's Roman Garden, 71 Bradford Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 380 Westminister Mall, Providence, Rhode Island 02903. Telephone number (401) 528-4562.

Dated: April 25, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-10647 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

Nashville, TN Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, Tennessee, will hold a public meeting at 9 a.m. on Wednesday, June 5, 1985, in the Board Room of Commerce Union Bank, One Commerce Place, Nashville, Tennessee 37219, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219. Telephone (615) 251-5850.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1985.

[FR Doc. 85-10648 Filed 5-1-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/849]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual meeting on Wednesday, June 19, 1985, 9:30 a.m., in Conference Room 1406, Department of State Building, Washington, D.C.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants

II. Greetings from the Department of State

III. Results of Surveys Concerning School Fund-Raising Efforts and Reports Regarding Activities of Regional School Associations

IV. Council's Program of Educational Assistance

(a) Final Report of 1983 Program and Progress Report on 1984 Program

(b) Report of Meeting with Excutive Directors of the Regional Overseas School Associations at the Association for the Advancement of International Education Conference in San Antonio on March 5, 1985

(c) Council's Efforts in Securing Contributions for 1985 Program

(d) Discussions Concerning Plans and Suggestions Related to Future Council's Programs

V. Council Communication with U.S. Corporations and Foundations

VI. Other Business

For purposes of fulfilling building security, members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703-235-9600, prior to June 19. The public may participate in discussions at the Chairman's instructions.

Dated: April 24, 1985.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 85-10731 Filed 5-1-85; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/848]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 30, 1985 at 10:00 a.m., in Room 2925, Department of State, 2201 C Street, NW., Washington, D.C.

Study Group A deals with U.S. Government aspects of international telegram and telephone operations and tariffs; Study Group B deals with international telecommunications terminal equipment.

The Study Groups will discuss international telecommunications questions relating to telephone, telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international meeting of CCITT Study Group VIII (June 5-14, 1985) in Kyoto and will include a debriefing of the meetings of CCITT Study Groups I and III held in May in Geneva.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-3405. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Chairman, CCITT National Committee.

April 24, 1985.

[FR Doc. 85-10730 Filed 5-1-85; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Extension of Deadline for Public Comment on Multifiber Arrangement

A notice was published in the **Federal Register** (50 FR 8428) on March 1, 1985 advising that the Multifiber Arrangement, which governs trade in textiles and apparel and to which the United States is a signatory, expires on July 31, 1986. The notice further invited any party wishing to consult on the renewal, modification or discontinuance of the Multifiber Arrangement, or to provide information on domestic production or the availability of textiles and apparel affected by the Arrangement, to submit such comments or information in ten copies to Ambassador Richard H. Imus, Chief Textile Negotiator, Executive Office of the President, Office of the United States Trade Representative, Washington, D.C. 20506 by April 30, 1985. The purpose of this notice is to advise that the deadline for submitting comments or information has been extended to June 15, 1985.

Richard H. Imus,

Chief Textile Negotiator.

[FR Doc. 85-10674 Filed 5-1-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-85-035]

Ship Structure Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ship Structure Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463: 5 U.S.C. App. 1, section 10(a)(2)).

DATE: June 3, 1985, 9:15 a.m. to 11:30 a.m.

ADDRESS: U.S. Coast Guard Headquarters, 2100 Second Street, SW.—Room 2415, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR D. B. ANDERSON, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G-MTH-5/13), Washington, D.C. 20593, (202) 426-2187.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is as follows: To approve research projects of the Committee for fiscal year 1986 and to review ongoing research projects of the Committee. Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify CDR D. B. ANDERSON, Secretary, Ship Structure Committee not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Dated: April 29, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-10682 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-14-M

Urban Mass Transportation Administration

[Docket No. 84-G]

Exemption From Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of exemption from buy America requirements.

SUMMARY: Section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) provides that Federal funds may not be obligated by the Urban Mass Transportation Administration (UMTA) for mass transportation projects unless steel and manufactured products used in the project are produced in the United States. Section 165 further provides that any of its provisions may be waived if their application would be inconsistent with the public interest. The American Association of State Highway and Transportation Officials (AASHTO) petitioned UMTA to grant public interest waiver for the procurement of microcomputers. The basis of the petition is that presently domestically produced microcomputers fail to meet Buy America requirements because the chips and some major components of the equipments are not made in the United States. UMTA has reviewed and analyzed the comments and recommendations of interested and affected parties, and has decided that a Buy America waiver for microcomputers will be granted for a one-year period.

DATE: This waiver is effected on the date of publication.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-4063.

SUPPLEMENTARY INFORMATION: Notice of this petition was published in the **Federal Register** on Wednesday, January 9, 1985, and an opportunity afforded to all interested parties to provide comments (50 FR 1156.) Twenty-two responses were received on the petition.

Based upon its review and analysis of the comments, UMTA will grant the requested waiver for a one-year period. Under UMTA programs, recipients of Federal funds are given discretion in determining what kind of equipment they will procure with Federal assistance. AASHTO's waiver request indicated that several grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs. Section 165(b)(2) of the STAA provides that a waiver may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Under UMTA regulations, the item being procured is presumed to be unavailable if no responsive bid is received which will provide a domestically produced product.

After considering the comments received, UMTA has determined that the waiver will streamline the purchasing process for all grantees who will need or expect to need microcomputers during this exemption period. However, given the rapid technological changes in an expanding market for domestically produced computers, UMTA will limit the exemption for a one-year period. At the end of this period, UMTA will review the availability of domestically produced microcomputers and evaluate the need for allowing the exemption to continue.

UMTA's analysis is based upon the responses to four specific questions posed in the original notice. UMTA solicited comments on the definition of "microcomputer." Some comments expressed concern that any definition would be too restrictive given the market's rapid technological changes and the varied uses of the equipment in the transit industry.

Of the responses that suggested definitions, those suggestions addressed the need for a definition broad enough to encompass a microcomputer system. UMTA has decided to adopt the definition of microcomputer as published in the *American National Dictionary for Information Processing Systems.* According to that definition, a microcomputer is:

> A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip.

The same source defines computer system as:

> A functional unit consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the date necessary for the execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

UMTA solicited comments on whether the waiver should apply to both hardware and software. Several of the responses indicated that a waiver applicable to microcomputer hardware should also be applicable to microcomputer software to ensure compatibility and cost-effectiveness. UMTA has decided to include software in the waiver's applicability based upon the definition of microcomputer that it has adopted and upon the recommendations received.

Since AASHTO's request highlighted specifically the problems of small to

medium-size transit industries in procuring microcomputers, UMTA requested comments on whether the waiver's application should be limited to grantees of a certain size. The responses were unanimous in indicating that the waiver should apply to all grantees given the expanding use of microcomputers in the transit industry. UMTA has decided, therefore, to apply the waiver to all grantees.

Finally, UMTA solicited comments on whether there should be a dollar limitation on the procurement. Again, a majority of the responses indicated that such a limitation would be too restrictive given the varied types of systems available, and their costs as well as the varying needs of the user. UMTA has decided not to impose a dollar limitation on the applicability of the waive.

Therefore, under the provisions of section 165(b)(1) and (b)(2) of the STAA of 1982, a Buy America exemption is granted to all UMTA grantees for the procurement of microcomputers, as defined in this Notice. Accordingly, requests for individual waivers for purchase of microcomputer hardware and software are not necessary. This general exemption will be in effect until April 30, 1986.

Dated: April 26, 1985.

Ralph L. Stanley,

Administrator.

[FR Doc. 85-10650 Filed 5-1-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[4-00236]

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service; Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 9% for the fourth quarter of FY 1985.

DATE: The rate will be in effect for the period beginning on July 1, 1985 and ending on September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB-711, Washington, D.C. 20226 (Telephone: 202/634-5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for the fourth quarter of FY 1985 reflects the average investment rates for the twelve-month period ended March 31, 1985. The applicable rate will be published on or around the end of the first month of a given quarter for use during the succeeding calendar quarter.

Dated: April 25, 1985.

Richard A. Greenstein,

Director, Working Capital Group.

[FR Doc. 85-10665 Filed 5-1-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains revisions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 29, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits
2. Health Authority Approval-Individual Water-Supply and Sewage-Disposal System
3. VA Form 26-6395
4. On occasion
5. State or local government
6. 15,000 responses
7. 7,500 hours
8. Not applicable

Revision

1. Department of Veterans Benefits
2. Property Management Consolidated Invoice
3. VA Form 26-8974
4. Monthly
5. Business or other for-profit, Small businesses or organizations
6. 240,000 responses
7. 20,000 hours

[FR Doc. 85-10663 Filed 5-1-85; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Admninistration.

ACTION: Notice of matching program—Veterans Administration records of physicians, dentists and other health care professionals/State licensing records.

SUMMARY: The Veteran's Administration is providing notice that the Office of Inspector General will conduct computer matches of VA records of physicians, dentists and other health care professionals with State licensing and registration records.

The goal of these matches is to verify that physicians, dentists, podiatrists, optometrists, and psychologists employed or utilized by the Agency are holding current, unrestricted licenses to practice and that nurses and pharmacists are registered in a State.

DATES: It is anticipated the matches will commence in approximately May 1985.

ADDRESS: Interested individuals may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: Mr. Jack H. Kroll, Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, area code 202-389-5297.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 25, 1985.

Harry N. Walters,

Administrator.

Report of Matching Program: Veterans Administration Records of Physicians, Dentists and Other health care Professionals/State Licensing Records

a. Authority

The Inspector General Act of 1978, Pub. L. 95-452.

b. Program Description

(1) *Purpose:* The Office of Inspector General (OIG) plans to match lists of full and part-time physicans, dentists, podiatrists, optometrists, psychologists, nurses and pharmacists employed by the Agency, as well as consultants, attendings and fee-basis medical practioners utilized by the agency to provide health care, with the licensing and registration records of States having automated records. Title 38, United States Code, section 4105 specifies that any person to be eligible for appointment as a physician, dentist, podiatrist, optometrist, psychologist, nurse or pharmacist in the Department of Medicine and Surgery must hold the appropriate degree from a college, university or school approved by the Administrator of Veterans affairs, have completed an internship satisfactory to the Administrator in the case of physicians and psychologists, and be licensed, certified or registered to practice their profession in a State. The matches will verify that these health care profesionals employed or utilized by the VA possess current, unrestricted licenses or are currently registered in a State. For purposes of this computer matching program, "State" means any of the fifty States, the District of Columbia and the Commonwealth of Puerto Rico.

(2) *Procedures:* The initial match will be conducted with the State of California. The VA OIG will perform the match using extracts of three VA systems of records consisting of names, dates of birth and social security numbers and records in a similar format provided by the State. In the event of a "hit", i.e., the determination through the matching program that a license to practice or State registration has expired, or has been suspended, restricted or revoked, the identify of the individual will be confirmed and the information fowarded to the Chief Medical Director for consideration of appropriate personnel action. When needed to confirm the identities of an individual who may be listed in State records, the OIG will request that the state furnish additional information or the OIG may release additional identifying data to a State in accordance with published routine uses. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter will be investigated and referred for prosecutive consideration.

If the program demonstrates the effectiveness of matching VA and State licensing and registration records as a means of identifying employees or other health care professionals utilized by the VA who do not have current, unrestricted licenses, or current registration, the Inspector General may direct that additional matches be conducted. In conducting matches with States other than California, the OIG will request that the States provide computerized excerpts containing the names, dates of birth, social security numbers and status of the licenses or registration of health care professionals. If the laws or regulations of a State require that the State conduct such a match, the OIG will submit computerized tapes or records containing only names, dates of birth and social security numbers of the records to be matched. The loan of any VA records to a state for matching purposes will be in accordance with OMB Matching Guidelines which require the recipient to agree to the followign: That the source matching file will remain the property of the VA and will be returned to the OIG at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the files previously agreed to; that the file will not be used to extract informatin concerning "non-hit" individuals for any purpose; and that the file will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG. These matches may be cyclical or may be repeated periodically.

c. Records to be Matched

Lists extracted from the following systems of records will be matched with State licensing and registration records:

(1) Individuals Submitting Invoices/Vouchers for Payment-Va (13VA047) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 667).

(2) Patient Fee Basis Medical and Pharmacy Records-VA (23VA136) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 671).

(3) Personnel and Accounting Pay System-VA (27VA047) (Privacy Act Issuances, 1980 Compilation, Vol. V, p. 673).

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. Period of Match

Intermittently from approximately April 1985.

e. Safeguards

Records used in the matches and data generated as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not in use. The matching files to be used in this project will remain under the control of the OIG and will be returned to the Department of Medicine and Surgery and Office of Budget and Finance or destroyed upon completion of the match. The matching file will be used and accessed only to match files in accordance with this notice; will not be used to extract information concerning "non-hit" individuals for any purpose; and will not be disseminated outside the OIG unless authorized by the Chief Medical Director or the Director, Office of Budget and Finance.

f. Retention and Disposition

Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Medicine and Surgery until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 85-10637 Filed 5-1-85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 85
Thursday, May 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, May 3, 1985.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS OF BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10782 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 10, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10783 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 17, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10784 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 24, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10785 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation in the long-term Municipal Bond Index.

Rule 1.62—Contract Market Enforcement of Floor Broker Registration Requirements.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10786 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 31, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–10787 Filed 4–30–85; 1:18 pm]

BILLING CODE 6351-01-M

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"Federal Register" Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting: "Request to Revise Office of Management Service Areas".

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: April 29, 1985.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued April 29, 1985.

[FR Doc. 85–10770 Filed 4–30–85; 1:10 pm]

BILLING CODE 6750-06-M

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"Federal Register" Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting: "Amendments to the Commission's section 4(g) of the ADEA Regulations"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: April 30, 1985.

Cynthia C. Matthews, Executive Officer,

Executive Secretariat.

This Notice Issued April 30, 1985.

[FR Doc. 85-10815 Filed 4-30-85; 3:25 p.m.]

BILLING CODE 6750-06-M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Additional Matter to be Considered at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, in addition to those matters previously announced, the following matter will be placed on the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Monday, May 6, 1985, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.:

Memorandum and resolution re: Issuance of a Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions which policy provides for disclosure and publication of all final orders issued by the Corporation under its statutory enforcement authority.Q04

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10860 Filed 5-1-85; 11:00 am]

BILLING CODE 6714-01-M

10

FEDERAL ELECTION COMMISSION

DATE: Tuesday, May 7, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, May 9, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Eligibility for Candidates To Receive Presidential Primary Matching Funds
Draft Advisory Opinion 1985-13: Gwen Tillemans, Chairman, Committee to Re-Elect Congressman Lagomarsino
Net Outstanding Campaign Obligations (NOCO) Determination—Mondale for President Committee, Inc.
Proposed Regulations Governing Standards of Conduct for Employees
Mid-Year Reallocation Recommendations
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-10806 Filed 4-30-85; 3:25 pm]

BILLING CODE 6715-01-M

11

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol No. 50, Page No. 16385, Date Published—Thursday, April 25, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677).

CHANGES IN THE MEETING: The following items have been withdrawn from the open portion of the Bank Board meeting scheduled Tuesday, April 30, at 10:00 a.m.

Loans-to-one-borrower regulations
Industry conflicts-of-interest regulations

Jeff Sconyers,

Secretary

April 30, 1985.

[FR Doc. 85-10781 Filed 4-30-85; 1:10 pm]

BILLING CODE 6720-01-M

12

FEDERAL HOME LOAN MORTGAGE CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 F.R. 16,386, Thursday, April 25, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Monday, April 29, 1985.

PLACE: 1769 Business Center Drive, Reston Virginia, Main Conference Room.

STATUS: Closed.

CHANGES IN THE MEETING: Thursday, May 2, 1985, 8:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789-4763.

Date sent to Federal Register: April 29, 1985.

Maud Mater,

Secretary.

[FR Doc. 85-10711 Filed 4-30-85; 9:17 am]

BILLING CODE 6720-01-M

federal register

Thursday
May 2, 1985

Part II

Federal Reserve System

12 CFR Part 268

Revision of Rules Regarding Equal Opportunity; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R-0527]

Revision of Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has revised and expanded its Equal Opportunity Regulation principally for the following purposes:

1. To designate clear responsibility for equal opportunity functions in light of changes in the Board's organizational structure; 2. to prohibit discrimination against handicapped persons in programs and activities conducted by the Board; and 3. to provide for review by the Equal Opportunity Commission ("EEOC") of Board decisions on individual and class complaints of discrimination in employment.

EFFECTIVE DATE: June 1, 1985.

Public Inspection: Comments received on the Notice of Proposed Rule Making will remain available for public inspection in the Board's Freedom of Information Office, Room B-1122, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551. Comments may be inspected between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Senior Counsel (202/452-3920); Portia Thompson, EEO Programs Officer (202/452-3549); Joy W. O'Connell, TDD (202/452-3244).

SUPPLEMENTARY INFORMATION: On August 24, 1984, the Board published a Notice of Proposed Rule Making for the purposes of revising and expanding its Equal Opportunity Regulation. 49 FR 33822 (August 24, 1984). The comment period closed October 23, 1984. The Board received ten comment letters in response to its Notice of Proposed Rule Making. The comments and recommendations made are discussed below.

Background

The Board as a matter of policy has long recognized that it should afford to its employees, applicants for employment, and others the same substantive and procedural rights as are enjoyed by such persons in their dealings with other Government agencies. Pursuant to this policy the present Part 268 was issued by the Board to provide for equal opportunity in employment in compliance with the spirit of Title VII of the Civil Rights Act of 1964, as amended. Also pursuant to this policy, the Board has designated an EEO Programs Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, and a Handicapped Program Coordinator, and has formulated and implemented affirmative action plans which are routinely submitted to the EEOC for review and advice.

The present Part 268 has not been updated in several years. The Board believes that certain omissions need to be corrected. The revised Part 268 is also intended to provide Board employees, applicants for employment, and others with the same substantive and procedural rights guaranteed to Government employees and others generally by the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act and thus to comply with the spirit of those laws. The Board has addressed these matters in its revision of Part 268.

The present Part 268 makes no provision for review by the EEOC of Board decisions on complaints of discrimination. The Board now desires to provide for EEOC review of Board decisions on complaints of discrimination, at the request of any complainant, in order to provide its employees and applicants for employment with this additional level of administrative review. The Board believes that such review can be permitted consistent with the Board's independent status as provided for by the Federal Reserve Act. This matter is addressed in subpart H.

Additional revisions in Part 268 are made necessary by changes in the Board's organizational structure within the past several years in order clearly to designate staff responsibility for important equal opportunity functions.

The revised Part 268 is intended to conform in so far as possible to existing regulations issued by the EEOC and, with respect to section 504 of the Rehabilitation Act, by the Department of Justice ("DOJ"). To this end, major portions of the Board's revised Part 268 are derived substantially verbatim from the EEOC's equal opportunity regulations, primarily 29 CFR Part 1613, and DOJ's regulation applying section 504 to Federally conducted programs, 28 CFR Part 39.

Analysis of the Regulation

I. Administration

Subpart B, "Administration", defines the powers and responsibilities of various Board officials under this Regulation. This subpart delegates to the Administrative Governor, a member of the Board of Governors, authority to make decisions on complaints of discrimination on behalf of the Board pursuant to §§ 268.311, 268.412, and 268.711(k), if no member of the Board of Governors elects to have the Board of Governors make the decision on complaints. This subpart also permits the Administrative Governor to delegate such authority to the Staff Director For Management, a Board official responsible directly to the Administrative Governor and to the Board of Governors, or to other appropriate officers and employees of the Board. These delegations of authority are qualified, however, by a requirement that, at the request of any member of the Board, the decision on any such complaint of discrimination shall be made by the Board rather than by any delegee of the Board. Responsibility for day to day management of the Board's equal opportunity programs is vested principally in the EEO Programs Officer, who is also an official of the Board.

II. Processing of Complaints

Subparts C and D of the revised Part 268 establish procedures for processing individual and class complaints of discrimination in employment on the basis of race, color, religion, sex, national origin, age, and physical or mental handicap. These subparts track in large measure the corresponding regulations of the EEOC. The principal difference between Part 268 and the EEOC regulations have to do with decisions on complaints, in light of the Board's organizational structure. Because the Board does not use the title "Equal Employment Opportunity Director", the responsibility for functions assigned generally to the Director in the EEOC's regulation is given to officials specifically identified in the revised Part 268 in order to avoid confusion.

III. Nondiscrimination on Account of Age

Subpart E of revised Part 268 establishes rights conforming to those granted to Federal employees and applicants for employment by the Age Discrimination in Employment Act.

IV. Prohibition Against Discrimination Because of a Physical or Mental Handicap

Subpart F defines rights conforming to those granted to Federal employees and applicants for employment under section 501 of the Rehabilitation Act.

The language of the subpart conforms substantially to the EEOC regulation, 29 CFR 1613.701 *et seq.*

Subpart G, "Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap," defines rights of the kind established by section 504 of the Rehabilitation Act. The Board does not conduct any programs of federal financial assistance within the meaning of section 504. Subpart G defines the rights of handicapped persons in connection with the programs and activities of the Board and tracks to a large extent DOJ's recently promulgated regulation applying section 504 to Federally conducted programs, 28 CFR Part 39. 49 FR 35724 (September 11, 1984). Subpart G does not govern the conduct of Federal Reserve Banks or of depository institutions or other companies supervised or regulated by the Board.

The Board has received a comment proposing that Subpart G should govern the conduct of Federal Reserve Banks and of depository institutions and other companies supervised or regulated by the Board. Federal Reserve Banks are Federally chartered privately owned institutions which perform both governmental and nongovernmental functions. The Federal Reserve Banks are not government agencies for purposes of the Civil Rights Act, the Rehabilitation Act, and other similar laws. For this reason, the Federal Reserve Banks have long interacted with the EEOC under those provisions of Title VII of the Civil Rights Act of 1964, as amended, that apply to nongovernmental employers. *See Cooper* v. *Federal Reserve Bank of Richmond,* 104 S.Ct. 2794 (1984). Depository institutions and other companies supervised or regulated by the Board are nongovernment employers for the purposes of those Acts; and, as set out more fully below, the Board has no authority to enforce such laws with respect to such companies.

V. Review by the Equal Employment Opportunity Commission

Subpart H is intended to provide for review by the EEOC of any Board decision on a complaint of discrimination under the revised Part 268. Subpart H also provides that any findings by the EEOC following its review of a Board determination shall be returned to the Board for consideration by the Board. Subpart H as presented in the Notice of Proposed Rule Making has been amended by deletion of references to automatic reconsideration by the Board following EEOC review. As a result of discussions with EEOC in light of that Agency's comments on the proposed Regulation, the Board has determined that a provision for automatic reconsideration is not required by sections 10(4) and 11(*l*) of the Federal Reserve Act, and that the Board's independence established by these provisions is not offended by the revised language of subpart H. By its terms, section 10(4) of the Federal Reserve Act may be changed only by specific amendments to the Federal Reserve Act itself.

VI. Equal Pay

Subpart I of the revised Part 268 covers matters addressed with regard to other agencies by the Equal Pay Act and by regulations of the EEOC, 29 CFR 1620.21 and 1620.22. The language is Subpart I is adopted from the statute and the cited regulations.

Amendments to the Proposed Rule and Response to Comments Generally

The Board has made certain technical corrections to the text of its final Equal Opportunity Regulation. Since such corrections did not change the substance of the regulation, they are not discussed herein.

In response to a comment from DOJ, the Board has revised the final Equal Opportunity Regulation to make it gender neutral.

One commenter also suggested that these rules should be made retroactive, i.e., applicable to all pending compliants. The Board cannot make the rules retroactive in such a way as to deny any complainant substantive rights that he or she would have under the Board's present Equal Opportunity Regulation; nor would it be appropriate to permit reopening of any concluded proceedings on any such complaints merely because of subsequent changes in the Regulation. However, the final Regulation will be applicable to all further proceedings on any complaints that may be pending on the effective date of the Regulation.

Subpart A—General Provisions

Section 268.101 Authority, purpose, and scope.

The Board has revised § 268.101(a) to add a reference to section 10(4) of the Federal Reserve Act, 12 U.S.C. 244. Section 10(4) provides that the employment, compensation, leave and expenses of Board employees shall be governed solely by the provisions of the Federal Reserve Act, specific amendments of that Act, and rules and regulations of the Board that are not inconsistent therewith.

Section 268.102 Board Program.

Two commenters suggested that the Board incorporate additional provisions of the EEOC's regulation relating to agency programs and policies. One of these commenters erroneously indicated that the Board has no affirmative action program. In response to these comments, the Board has added a new paragraph (a) which commits the Board to provide sufficient resources to its equal opportunity program and to ensure that its officials responsible for carrying out its equal opportunity program meet established qualifications requirements; has redesignated proposed paragraph (a) as paragraph (b); has eliminated proposed paragraph (b) and incorporated its provisions into a new paragraph (m); has revised paragraph (c) to describe some of the ways in which employees may be given opportunities to enhance their skills; has revised paragraph (d) to provide that the Board will solicit community assistance in recruiting employees; has revised paragraph (e) to provide that the Board will work with community groups to improve employment opportunities; has added a new paragraph (m), which incorporates and expands upon provisions of paragraph (b), and which provides generally that the Board will utilize to the fullest extent the skills of its employees; and, has added a new paragraph (n) to provide that the Board will prepare annually equal opportunity plans.

The Board had previously excluded some of these provisions in the interest of avoiding unnecessary verbiage. For example, it should not be necessary for an agency to state that it will devote sufficient resources to do what it has committed itself by regulation to do. Further, the Board has a long standing commitment to implement affirmative action plans without benefit of any specific language in Part 268. Nevertheless, these changes have been made to assure all commenters of the Board's commitment to its equal opportunity program.

Section 268.103 Definitions.

The EEOC noted that some provisions of the proposed Regulation appeared to apply only to employees because applicants for employment are not mentioned in such provisions. The Board did not mention "applicants for employment" in these provisions because it had defined "employee" or "employees" to include "applicants for employment" in proposed paragraph (d) of this section. It appears that at least one of these provisions may have been

ambiguous in light of its wording in relation to that of paragraph (d) of this section. The Board has determined to eliminate the definition of "employee" or "employees" in this section and to revise appropriate language throughout the Regulation in order to avoid any possible confusion regarding the applicability of particular provisons to employees and/of applicants for employment.

DOJ has suggested that the language of the Regulation be made gender neutral. In response, the Board has eliminated paragraph (f)—which defined "he" or "his" to mean "he or she" or "his or her"—and has revised language throughout the Regulation to make it gender neutral.

Subpart B—Administration

Generally

A commenter recommended that the role of the EEO Officer be defined in this subpart. The duties of the EEO Officer are well understood in the civil rights community and the EEOC has not found it necessary to define or otherwise limit the duties of the EEO Officer in other agencies by specific provisions in 29 CFR Part 1613. Accordingly, the Board believes that no useful purpose would be served by specific definition or limitation of the role of the EEO Officer in the Regulation.

Section 268.202 The Administrative Governor.

As set forth more fully below, the Board has made several revisions to proposed subpart G. Accordingly, this section has been revised to reflect the addition of § 268.711(k) to subpart G delegating decision making authority to the Administrative Governor.

A commentator suggested that paragraph (c) of this section be revised to require that any person delegated the authority to make any decisions under this Regulation by the Administrative Governor shall be one who is fair, impartial, and objective. The Board believes that it is understood that any person making decisions under this Regulation and other regulations of the Board must be fair, impartial, and objective and that any statement to that effect in this Regulation only would be unnecessary and potentially confusing. Board employees are strictly prohibited from taking any action which might result in or create the appearance of "losing complete independence or impartiality". 12 CFR 264.735–6(a)(4). Specific allegations of bias in the complaint process can be addressed in due course under the procedures set forth in this Regulation.

Section 268.203 The Staff Director For Management.

This section has been revised to reflect revisions to subpart G delegating authority to the Staff Director For Management to issue letters of findings *See* § 268.711(g).

A commenter suggested that the Staff Director for Management be prohibited from making any decisions under this Regulation if he has any supervisory authority with respect to the Board Division out of which a particular complaint arises. The Board is aware of the need to ensure that decision makers are free of conflicts of interest with regard to matters on which they act. However, such potential conflicts in the administration of this and other regulations of the Board are dealt with generally in the Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264. Repetition of these standards in this Regulation is unnecessary.

Section 268.204 The EEO Programs Officer.

A commenter suggested that because the EEO Programs Officer has not received all the powers held previously by the EEO Director, such differences in functions will diminish the authority and effectiveness of the EEO Programs Officer. Under the Board's structure and this Regulation, essentially all the powers and functions formerly exercised by the EEO Director are given to the EEO Programs Officer, except the power to make final decisions on complaints of discrimination. Under the Board's present Regulation and the corresponding EEOC regulation, an EEO Director can make such decisions only when authorized to do by head of the Agency, but previous EEO Directors at the Board rarely exercised such powers. Accordingly, the Board believes that there has been no substantial change in the Board's procedures and that the EEO Programs Officer has all of the authority necessary to carry out his or her duties effectively under this Regulation. The EEO Programs Officer is an official of the Board.

Two commenters suggested that paragraph (g) of this section and § 268.306(a) be revised to provide that any person appointed to investigate allegations of discrimination be an employee of another agency. Another commenter suggested that such investigative officers not be members of the Board's Legal Division. The commenters have suggested that investigative officers who are employees of the Board, and in particular members of the Board's Legal Division, may have difficulty being fair, impartial, and objective, and that their other duties may create conflicts of interest. In response, the Board notes that it is accepted practice in the Government to use investigators from the agency in which the complaint arose; and the Board sees no problem with this practice so long as the investigators chosen are fair and impartial in accordance with the Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264. As a result of a recent review of the Board's equal opportunity program, it has been determined that personnel of the Board's Legal Division should not be used as investigative officers in the future, and the Board is considering the alternatives of training other employees in this task or hiring an outside agency to perform the investigative functions required under this Regulation. However, the Board does not believe that this issue is required to be addressed further in this Regulation.

Section 268.207 Handicapped Program Coordinator.

DOJ suggested that handicapped persons do not like to be referred to as "the handicapped". At DOJ's request, this section has been revised by substituting "handicapped person" for "the handicapped".

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

Section 268.301 Precomplaint Processing.

Paragraph (a) of this section has been revised to provide that the Equal Employment Opportunity Counselor shall "seek" a solution to a complaint of discrimination rather than "propose" a solution. This revision was made in response to a comment from the EEOC that the Board's use of "propose" rather than "seek", which is used by the EEOC in its regulation, may suggest that the EEO Counselor will not be a neutral party.

Paragraph (a) of this section and § 268.402(c) have been revised on the recommendation of the EEOC to eliminate those provisions which allowed for an extension of the counseling period to seek informal resolution of a complaint. The EEOC pointed out that those provisions could operate to unduly delay the processing of a complaint, and suggested that there are ample opportunities to attempt to informally resolve the complaint during the 180 day processing period.

Accordingly, the Board in making this change does not mean to discourage efforts to achieve early resolution of complaints of discrimination.

Section 268.302 Filing of Complaint.

A commenter noted that paragraph (a)(1)(ii) of this section requires the complainant to file a complaint of discrimination within 15 calendar days of the date of the final interview between the EEO Counselor and the complainant, while § 268.301(a) requires the complainant to file the complaint within 15 calendar days of the date of receipt of the notice of the complainant's right to file a complaint. Since § 268.301(a) requires the EEO Counselor to provide the complainant with the notice of the right to file a complaint during the final interview between the EEO Counselor and the complainant, there is no substantive difference between § 268.301(a) and 268.302(a)(1)(ii). However, if for some reason the EEO Counselor does not provide the complainant with the notice of right to file a complaint of discrimination at the time of the final interview, the Board will accept any complaint of discrimination filed within 15 calendar days of the date of receipt by the complainant of the notice of the right of the complainant to file a complaint of discrimination.

Section 268.306 Investigation.

Several commenters suggested that persons investigating complaints of discrimination should not be Board employees or, in particular, members of the Board's Legal Division. As explained above, members of the Board's Legal will not be used as investigative officers in the future; and the Board will either train other employees or hire outside agencies to perform the investigative functions under this Regulation.

A commenter recommended that this section be revised to provide that, prior to completion of an investigation, the complainant be allowed to rebut any statements by persons interviewed that are contrary to the allegations in the complaint, that the complainant be advised of the names of all witnesses to be interviewed and be allowed to suggest additional witnesses to be interviewed at any stage of the investigation, and that if the investigative officer does not interview any witnesses suggested by the complainant, the reasons why the investigative officer did not interview such witnesses be set forth in writing in the complaint file. The investigative officer under this section is required to conduct a thorough investigation of allegations made in the complaint. The investigative officer is expected to interview the complainant and may receive suggestions from the complainant as to witnesses that should be interviewed. If complainant upon receipt of the investigative file is unsatisfied with statements and other material contained in the investigative file, or desires witnesses who were not interviewed to be heard, he or she may request a hearing and ask that the complaints examiner reopen the investigation pursuant to § 268.308(b). In addition, the complaints examiner may, on his or her own initiative if he or she determines that further investigation is necessary, remand a complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing pursuant to § 268.308(e). The Board does not believe it would be appropriate to impose on the investigative process additional procedures of the type that have been developed for use at the hearing stage. Complainants' rights are well protected by the procedures outlined above, including the right to demand a single hearing; and adoption of unnecessary additional procedures will serve only to unduly delay the complaints process.

Section 268.307 Adjustment of Complaint and Offer of Hearing.

A commenter stated that paragraph (c) of this section authorizes the Board to improperly rescind an agreed upon action to resolve a complaint and that this may be unfair to a complainant. On the contrary, paragraph (c) merely sets forth the procedures to be followed if the Board in fact fails to carry out or rescinds an agreed upon action. Paragraph (c) is thus meant to preserve the rights of a complainant should the Board violate any agreement resolving a complaint of discrimination.

A commenter stated that under paragraph (d) of this section, the complainant should have the right to a decision by someone other than the Administrative Governor or Staff Director For Management because those officials may not be fair, impartial, and objective. The Board's Rules Regarding Employee Responsibilities and Conduct, 12 CFR Part 264, prohibit Board members, officers and employees from acting in matters in which they have any conflicts of interest. In addition, § 268.311(a) of this subpart has been revised to provide that any member of the Board of Governors may elect to have the Board of Governors make the decision on the complaint under that section and § 268.202(d) provides that the Administrative Governor may refer any particular matters to the Board for decision. Accordingly, the Board believes the recommended change is not necessary.

Section 268.308 Hearing on the Complaint.

A commenter suggested that the Board revise paragraph (a) to set forth various professional prerequisites for service as a "claims examiner", since complaints examiners, under this Regulation, possess a host of legal powers. The commentator also suggested that the complaints examiner be required to be an attorney. Except in highly unusual cases, all complaints examiners used by the Board under this section are employees of the EEOC and are certified by that Agency as being qualified to act as complaints examiners. The Board feels it is entitled to rely on the EEOC's expertise in the selection and training of complaints examiners.

Paragraph (a) of this section provides that the Board may use its own employees as complaints examiners where the Board may be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. The EEOC noted that it has complaints examiners having all required security clearances. This exception is meant to apply only if the EEOC cannot provide a complaints examiner with the required clearances.

As recommended by the EEOC, the Board has revised paragraph (c)(1) of this section to eliminate the last sentence of the paragraph which gave the complaints examiner discretion to permit attendance at the hearing of interested persons who are not parties to the complaint. Since the complaints examiner will almost always be an EEOC employee, use of such discretion by the complaints examiner is considered unlikely in view of the narrower provision of the corresponding EEOC regulation, to which this paragraph now conforms.

A commenter has suggested that paragraph (c)(2) of this section be revised to provide an opportunity for the complainant to cross-exam witnesses whose written statements are part of the hearing record, and if such witnesses are not available to be cross-examined, that the complainant be allowed to submit written rebuttals to any written interrogatories. Paragraph (c)(2) permits complainant to submit any relevant evidence, subject to rulings by the complaints examiner, and paragraph (e) permits the complainant to request the

attendance of witnesses to testify on his behalf. For these reasons and those set forth above in connection with this same commenter's remarks on § 268.306, the Board believes that there is no need to revise this paragraph as suggested.

A commenter noted that § 268.408(b) of subpart B provides for discovery of and objection to evidence in class complaints and further noted that paragraph (c)(2) of this section contains no equivalent provision. The commenter stated that the Regulation should provide the same opportunities and rights in the processing of individual and class complaints. Paragraph (c)(2) provides that the complaints examiner shall conduct the hearing so as to bring out the pertinent facts, including the production of documents. While paragraph (c)(2) does not spell out rules of discovery, it is clear that the complaints examiner is required by paragraph (c)(2) to regulate the discovery and production of evidence. The Board believes that paragraph (c)(2) provides for the discovery of and objection to the production of evidence and, accordingly, that paragraph (c)(2) and § 268.408(b) do not differ substantively.

Paragraph (e) of this section has been revised to make it clear that other Federal agencies may be requested to produce witnesses by an EEOC certified complaints examiner. This amendment was made in response to a comment made by the EEOC that its complaints examiners exercise jurisdiction over other Federal agencies and may require such agencies to produce witnesses even though the Board itself does not possess such authority. Except in unusual cases, all complaints examiners used by the Board will be persons employed and certified by the EEOC.

Paragraph (e) of this section has been revised at the suggestion of EEOC to change "[w]hen it is not administratively practicable to comply with the request for a witness, * * *" to "[w]hen it is administratively impracticable to comply with the request for a witness * * *." This revision will have no substantive effect.

A commenter suggested that paragraph (e) be revised to state that the complaints examiner shall request the Board to make available as a witness any employee whose testimony the examiner determines is "relevant" rather than "necessary". The commentator noted that "relevant" is used in the Board's present Equal Opportunity Regulation and that this standard is more liberal. The Board considers "necessary" to be more appropriate in light of the complaints examiner's authority to "exclude irrelevant or unduly repetitious evidence" and the related provision that rules of evidence shall not be applied strictly, § 268.308(c)(2).

A commenter suggested that paragraph (f) of this section be revised by substituting "immediately" for "promptly" in the third and fourth sentences. The commentator stated that the Board's use of the word "promptly" is too vague. The Board believes that "immediately" is too inflexible. The complaints examiner has full authority to regulate the course of the hearing pursuant to paragraph (d)(2) of this section and may use such authority to insure that paragraph (f) is complied with in a manner that is fair to all parties.

Section 268.309 Relationship to Other Agency Appellate Procedure.

Paragraph (a) of this section has been revised to eliminate provisions permitting complaints of discrimination filed under the Board's grievance procedure to be processed under the grievance procedures at a complainant's request and to require that all such complaints of discrimination filed under the Board's grievance procedure be processed under this Regulation instead. This change was made at the suggestion of the EEOC, which indicated that permitting use of the grievance procedure at the complainant's option may impair complainant's rights under this Regulation. The Board believes that complainants were adequately protected under its proposal because the grievance filing was deemed a dual filing under both the grievance procedure and this Regulation. Nevertheless, the Board has determined to accept the EEOC's advice on this point in order to avoid confusion and to further simplify its complaints process. The Board wishes to encourage use of its grievance procedure in all appropriate cases.

Section 268.310 Avoidance of Delay.

Paragraph (b) of this section was revised in response to a comment that this section appears to permit cancellation of a complaint for failure to prosecute without consideration of special circumstances that may have caused the failure to prosecute. This paragraph states that a complaint may be cancelled if a complainant fails to prosecute a complaint "without undue delay". The Board believes that the concept of "undue delay" takes into consideration special circumstances. However, the Board noted that this section differs from the equivalent section applicable to class action complaints, § 268.404, in that it does not provide for notice of proposed cancellation to the complainant. Accordingly, the Board has revised paragraph (b) to provide for such notice in advance of any decision to cancel a complaint.

Section 268.311 Decision on the Complaint.

The Board has revised paragraph (a) of this section to provide that the EEO Programs Officer shall notify the Board of Governors when a complaint is ripe for decision under this subpart, and that at the request of any member of the Board of Governors, the decision on the complaint shall be made by the Board itself. If no such request is made, the Administrative Governor or the Staff Director For Management, if he or she has been delegated authority to make the decision pursuant to § 268.202(c), shall make the decision. The Board has also revised references to this section throughout the Regulation to reflect this revision. The Board believes it is appropriate to retain in the Regulation an opportunity for decisions on complaints by the full Board in appropriate cases.

A commenter stated that this section is unclear as to what determines whether a case will be decided merely on the information contained in the complaint file without a hearing or on the basis of a full hearing. This section provides that the decision maker shall make the decision on the complaint based on the material in the complaint file. Section 268.307(d) permits a complainant to request a hearing prior to a decision on the complaint, and § 268.312 provides for inclusion of the record of any such hearing and the recommended decision of the complaints examiner in the complaint file which is considered by the appropriate decision maker.

Section 268.312 Complaint File.

A commenter suggested that paragraph (a) of this section be revised to require that the complaint file contain correspondence and a record of all meetings and communications between the complainant and the staff of the Board related to the complaint but not contained in the complaint file (e.g., post investigation meetings to agree on adjustment of the complaint). Paragraph (a) describes all the documents that must be included in the complaint file. The complaint file is the record on which decisions on complaints of discrimination are made pursuant to § 268.311. The Board believes that paragraph (a) describes without limitation all documents that must be

included in the complaint file and that other documents not specifically listed may be included in appropriate cases. The Board also believes that adoption of the suggested change may require inclusion in the complaint file of matters which should not be included such as, for example, records of unsuccessful settlement negotiations.

Section 268.314 Freedom From Reprisal or Interference.

The EEOC commented that paragraph (b) of this section which states that a complainant, a representative, or a witness, "if an employee", may have the allegation of reprisal reviewed as an individual complaint of discrimination, implies that applicants for employment are not covered by this section. The Board in § 268.103(e) defined "employee" or "employees" for the purpose of this Regulation to include "applicants for employment". Accordingly, § 268.314 did not apply to employees only. However, in order to avoid confusion in this matter and in other provisions of this Regulation, the Board has eliminated its proposed definition of "employee" or "employees" from § 268.103 and has revised this section and other provisions of this Regulation to specifically mention "applicants for employment".

A commenter objected to the "deletion" of the procedures for review of charges of reprisal which appear in § 268.112(c) of the Board's present Regulation. The procedures for review of changes of reprisals were changed to conform to similar recent changes in the EEOC's regulation. The EEOC stated that it eliminated the 15 day procedure for consideration of charges of reprisal because the 15 day rapid consideration procedure has proven to be impractical and has served to impair an aggrieved individual's right to administrative due process. *See* 48 FR 19705 (May 2, 1983). The Board finds this explanation reasonable and persuasive. The Board believes that the new procedures will deal fairly with complaints of reprisal filed under this Regulation.

Section 268.315 Remedial Actions.

Paragraphs (a)(1) and (b)(1) were revised to reference the addition of a new paragraph (d) which sets out the manner in which back pay is to be calculated.

A new paragraph (d) was added on the recommendation of the EEOC to set forth the manner in which back pay is to be calculated. This paragraph provides for calculation of back pay in the same manner as it is calculated for employees of other Federal agencies under the Back Pay Act and 5 CFR 550.805.

Former Section 268.316 Reconsideration.

A commenter recommended that this section be revised to provide that a complainant shall be advised in writing that he or she has the right to request reconsideration by the Board of Governors. The EEOC recommended that this section be eliminated because the Board of Governors, by taking 30 calendar days to reconsider a decision on a complaint of discrimination by its Administrative Governor or other appropriate official, would unduly delay and unnecessarily complicate the complaint process. Upon further review, the Board has determined that this provision for reconsideration is not necessary and has eliminated this provision and all references to this provision elsewhere in the Regulation.

Section 268.316 Right To File a Civil Action.

Paragraph (a) has been revised and a new paragraph (c) has been added in response to comments made by the EEOC. The EEOC pointed out that the Age Discrimination in Employment Act does not contain a statute of limitation governing the filing of civil actions by Federal employees under the Act. In addition, the EEOC has suggested that the timeframes for filing civil actions under subpart C and D, §§ 268.316 and 268.415, are inappropriate for complaints of denial of equal pay, since such suits against other agencies may be filed within 6 years of the accrual of the cause of action under a statute which allows Federal employees who are members of the competitive civil service to sue the Comptroller General of the United States for back pay. The Board has amended this section by providing that civil actions on complaints of age discrimination and of denial of equal pay shall be filed pursuant to § 268.505, in the case of age discrimination, and § 268.904, in the case of denial of equal pay. These sections incorporate a six year statute of limitations for filing civil actions applicable to suits against the United States, 28 U.S.C. 2401(a).

Paragraph (a) has been revised to insert "or" between paragraphs (a) (3) and (4) on the recommendation of one commentator. Paragraphs (a) (1) through (4) describe the various time limits for filing civil actions.

Paragraph (c) as presented in the proposal for public comment has been eliminated as unnecessary in light of elimination from the final rule of the provision for reconsideration by the full Board of decisions on complaints of discrimination in proposed § 268.316.

Section 268.317 Notice of Right.

This section was revised to reflect revision of § 268.316 and the addition of §§ 268.505 and 268.904.

Subpart D Class Complaints of Discrimination

Section 268.402 Precomplaint Processing

Paragraph (c) of this section was revised to eliminate the provisions of this paragraph which permitted an extension of the counselling period in order to attempt informal resolution of the complaint. This amendment was made at the suggestion of the EEOC which noted with regard to this section and § 268.301 that there are ample opportunities to attempt informal resolution of the complaint during the 180 day processing period for complaints of discrimination.

Section 268.408 Obtaining Evidence Concerning the Complaint.

A commenter noted that paragraph (b) of this section provides for discovery of and objections to evidence in class complaints and further noted that § 268.308(c)(2) contains no equivalent provisions. The commenter stated that the Regulation should provide the same opportunities and rights in the processing of individual and class complaints. This comment is dealt with in the discussion of § 268.308(c)(2) above.

Section 268.412 Board Decision.

The Board has added a new paragraph (a)(1) to this section which provides that the EEO Programs Officer shall notify the Board of Governors when a complaint is ripe for decision under this subpart, and that at the request of any member of the Board of Governors, the decision on the complaint shall be made by the Board itself. If no such request is made, the Administrative Governor or the Staff Director For Management, if he or she has been delegated authority to make the decision pursuant to § 268.202(c), shall make the decision. The Board has also revised references to this section throughout the Regulation to reflect this revision. The Board believes it is appropriate to retain in the Regulation an opportunity for decisions on complaints by the full Board in appropriate cases.

Section 268.415 Right To File a Civil Action.

This section was revised to remove references to reconsideration by the full Board of decisions on complaints of

discrimination and to indicate that civil actions on complaints of age discrimination and denial of equal pay are to be filed in accordance with §§ 268.505 and 268.904 respectively. This section is revised for the same reasons that section 268.316 was revised, as indicated above.

Former Section 268.416 Reconsideration.

The EEOC commented that this section should be eliminated because the Board of Governors, by taking 30 calendar days to reconsider a decision on a complaint of discrimination by its Administrative Governor or other appropriate officials, may unduly delay and unnecessarily complicate process. The Board has eliminated this section and has also eliminated references to this section throughout the body of this subpart.

Subpart E—Nondiscrimination on Account of Age

Section 268.501 Policy Statement.

In its comment letter, EEOC recommended deletion of this section as unnecessary. After further consultation with EEOC, the Board has determined to retain the section to establish for Board employees and applicants for employment the same rights enjoyed by employees and applicants at other agencies. The Board believes such action is necessary because of the provision of the Federal Reserve Act which give the Board authority to determine all matters relating to the employment and compensation of its staff.

Section 268.502 Processing of Complaints.

This section has been revised on the recommendations of EECO to indicate that while individual and class complaints of discrimination because of age are to be processed under Subparts C and D, civil actions against the Board are to be brought pursuant to § 268.505, and to indicate that § 268.315(c) which provides for award of attorney's fees and/or costs does not apply to complaints of age discrimination.

Section 268.504 Exceptions.

This section has been revised on the recommendation of EEOC to provide that the Board may adopt exemptions to this subpart that are adopted by the EEOC. EEOC also advised the Board that certain portions of the proposed section would adopt portions of the Age Discrimination In Employment Act which do not apply to Federal agencies or which apply only to particular agencies specifically identified in the Act.

A commenter stated that the phrase "reasonable factors other than age" in paragraph (a) of this section is too vague. The commenter also stated that the term "reasonable" should be clarified and suggested that "reasonable factors other than age" be determined according to pre-defined job requirements. The phrase "reasonable factors other than age" is deleted in the final rule for the reasons set forth above. Accordingly, the suggested change is moot.

Section 268.505 Right To File Civil Action.

This section has been added in response to EEOC's observation that the Age Discrimination In Employment Act does not contain a statute of limitations for the filing of civil action by Federal employees. This section applies a general statute of limitations, 28 U.S.C. 2401(a), which is applicable to all civil actions against the United States that are not subject to any other statute of limitations. This section requires all complainants to file civil actions on complaints of age discrimination within six years of the date of the matter causing the complainant to believe that he or she has been discriminated against because of age.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

Section 268.601 Definitions.

Several of the proposed definitions under this section applied to Subpart G by cross-reference. Several comments received by the Board indicated some confusion among the commenters regarding the applicability of these definitions. Accordingly, the Board has eliminated all such cross-references. In the final rule, Subparts F and G each contain all definitions applicable to each subpart.

Paragraph (f) defines "qualified handicapped person" to mean, in part, a handicapped person who can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others. A commenter objected to the phrase "without endangering the health and safety of the handicapped person or others". The commenter alleged that this requirement is overly broad, is burdensome, and is unsubstantiated; and the commenter further stated that it could not imagine a situation at the Board where a handicapped person might endanger the health and safety of the handicapped person and others. The commenter also stated that this provision takes the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), out of context.

The Board's proposed definition of "qualified handicapped person" was adopted verbatim from a similar provision in the EEOC's regulation, which itself is based on a definition of "qualified handicapped person" in a 1975 regulation of the former Civil Service Commission. Accordingly, the definition that the Board proposes to adopt is one of long standing in connection with the employment of handicapped persons by Federal agencies. It was not adopted as a result of the Supreme Court's decision in *Davis;* but it is consistent with that decision. There is no evidence that the definition unduly restricts the employment of handicapped persons. The Board believes it owes a duty to its employees, including handicapped employees, and others not to place them in hazardous situations. Accordingly, the Board does not believe that its definition of "qualified handicapped person" is unjustified or that it imposes a unlawful barrier to the employment of handicapped persons. The Board has a long standing commitment to be a model employer of handicapped persons which is reaffirmed in § 268.602 of this subpart. Accordingly, the Board does not believe that any revision to this definition is required.

EEOC's equivalent regulation does not define "facility" for the purposes of employment of handicapped persons. However, because Subpart F uses the term "facility", the Board has decided to define the term for the purposes of Subpart F. Further, the Board has determined that DOJ's definition of "facility" in its regulation apply section 504 of the Rehabilitation Act to Federally conducted programs is equally applicable to employment of handicapped persons under section 501 of the Rehabilitation Act and has, accordingly, adopted DOJ's definition of "facility" for the purposes of Subpart F. Paragraph (f) of this section was amended to add "rolling stock and other conveyances" to the definition of "facility" in order to bring this paragraph into conformity with the definition of facility in DOJ's final rule implementing section 504 of the Rehabilitation Act.

Section 268.602 General Policy.

This section was revised at the suggestion of EEOC to provide that the Board will be model employer of handicapped individuals.

Section 268.603 Reasonable Accommodation.

A commenter noted that the Board's proposed paragraph (a) requires only that the Board "determine" that an accommodation would impose an undue hardship whereas the equivalent EEOC regulation requires that an agency "demonstrate" that an accommodation would impose an undue hardship. The commenter stated that the proposed Regulation would impose a lesser standard on the Board than the EEOC's regulation applies to other agencies by allowing the Board to make subjective determinations while the EEOC's regulation requires proof of undue hardship. The Board has revised this section to require that the Board "demonstrate" that an accommodation would impose an undue hardship.

Paragraph (b) was revised at the request of the EEOC to add reassignment to the list of ways in which reasonable accommodation may be made.

Section 268.605 Preemployment Inquiries.

A commenter suggested that paragraph (c) be revised to prohibit oral questioning about a handicap for affirmative action purposes since oral questioning cannot be monitored. The Board believes that the suggested revision is impracticable and unnecessary. Written questionaires may not be practicable in all cases since written questionaires may not be an appropriate means of communicating with individuals with certian types of disabilities. Further, this section states that a handicapped person may be questioned regarding his or her handicap for only limited purposes and in precisely defined situations. Any violation of this section could be the subject of a complaint of discrimination.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

Generally

The Board does not conduct any programs of Federal financial assistance within the meaning of section 504 of the Rehabilitation Act. Further, the Board is not an executive agency within the meaning of section 504 of the Rehabilitation Act. The Board has promulgated this subpart pursuant to its authority under sections 10(4) and 11(*l*) of the Federal Reserve Act in order to provide handicapped persons in their dealings with the Board with the same rights and privileges that they have in their dealings with other Federal agencies under section 504 of the Rehabilitation Act.

Section 268.701 Purpose and Application.

The wording of paragraph (b) of this section has been changed on the advice of DOJ to focus on the activities conducted by the Board instead of the activities of the public interacting with the Board.

A commenter objected to the Board's statement in the preamble to the Regulation and in paragraph (b)(4) of this section providing that subpart G does not apply to the Federal Reserve banks or to depository institutions and other companies supervised and regulated by the Board. The commenter stated that the Board by this exclusion is abrogating its responsibility to implement section 504 of the Rehabilitation Act. The commenter further asserted that the relationship among the Board, the 12 Federal Reserve banks, and the depository institutions and other companies supervised or regulated by the Board is such that the activities of such Federal Reserve banks, depository institutions and other companies are "Federally conducted programs."

The commenter alleges that because the Board carries out various monetary and fiscal policies through the activities of the Federal Reserve banks, the Federal Reserve banks' activities are "Federally conducted" programs and activities within the meaning of section 504 of the Rehabilitation Act. The Board notes that Federal Reserve banks are not recipients of Federal financial assistance, and notes further that the Federal Reserve has no responsibility for Government fiscal policy. The Federal Reserve banks are not Federal agencies. For this reason, Federal Reserve banks have interacted with the EEOC as nongovernment employers under EEOC's regulations concerning equal opportunity. *See Cooper,* v. *Federal Reserve Bank of Richmond,* 104 S.Ct. 2794 (1984).

The commenter stated that the Board has regulatory power over the depository institutions and other companies and accused the Board of indicating that civil rights enforcement is not one of the Board's responsibilities. The commenter stated that the Board can fulfill many of its "fiscal" responsibilities only through the institutions it supervises and regulates and that the Board's alleged failure to "supervise and regulate" the institutions' conduct with regard to section 504 and other civil rights acts must arise because the Board wishes the supervised institutions to be free agents in this area.

The commenter is reading "federally conducted programs and activities" too broadly. The Supreme Court has held that the fact that a company is supervised and regulated by a Federal agency is not sufficient to give that Federal agency enforcement power under section 504 absent a clear grant of such enforcement power through the statutes giving the agency jurisdiction over such company. *See Community Television of Southern California* v. *Gottfried,* 103 S.Ct. 885 (1983). While the Board may carry out its responsibilities under the Federal Reserve Act and other legislation in part through regulations governing the conduct of depository institutions, such authority does not permit the Board to regulate the conduct of such institutions in matters not germane to those laws. Accordingly, the Board does not believe that it may apply Subpart G to the depository institutions and other companies that it supervises and regulates.

Section 268.702 Definitions.

Several of the comments received by the Board indicated some confusion among the commenters regarding the cross-references in this section to definitions in § 268.601 of Subpart F. In order to avoid further confusion, the Board has deleted all cross-references in this section to the definitions in § 268.601 and has added all crossed-referenced definitions from § 268.601 to this section. Any comments received in connection with Subpart G regarding any definitions in § 268.601 which were formerly incorporated by reference in Subpart G are discussed below.

Paragraph (a) of this section, which defines "auxiliary aids", has been revised to include examples of types of auxiliary aids which may be provided. This revision was made following the receipt of several comments recommending that the Board's definition of "auxiliary aids" include such examples.

One commenter objected to the term "auxiliary" by stating that the term implies something that is extra or discretionary and suggested use of the term "aids for reasonable accommodation". The Board believes that the term "auxiliary aids" adequately indicates what is intended and what should be required. Further, the term "reasonable accommodation" is a term of art applicable only to discrimination in employment of the type addressed by section 501 of the Rehabilitation Act, and its use in

Subpart G would be inappropriate and confusing.

Paragraph (b) of this section was reworded on advice of DOJ to indicate that the "complete complaint" should describe the subject of the complaint rather than describe the nature and date of the complaint as indicated in the original proposed paragraph (b).

The Board has added a new paragraph (c) which defines "facility" for the purposes of Subpart G. Two comments received in connection with the Board's definition of "facility" in § 268.601(f) of Subpart F, which formerly applied by reference to Subpart G, suggested that this definition should be expanded to include all facilities in which programs or activities are conducted by the Board, regardless of whether such facilities are owned, leased, or used on some other basis by the Board. "Facility" as defined in this paragraph refers to structures and not intangible property rights such as leases, easements, and the like. Accordingly, the fact that a structure is owned, leased, or held in some other manner by the Board would have no effect on the scope of coverage of this Regulation on the structures in which the Board's programs and activities are conducted. The Board has added "rolling stock and other conveyances" to its definition of "facility" in §§ 268.601(f) and 268.702(c) in order to conform these definitions with the definition of "facility" in DOJ's final rule implementing section 504 of the Rehabilitation Act.

The Board has added a new paragraph (d) defining "handicapped person" for the purposes of Subpart G. The Board also added a new paragraph (e) defining "physical and mental impairment" for the purposes of Subpart G. These definitions were formerly incorporated in Subpart G by reference from Subpart F in the proposed Regulation as published for public comment.

The Board received comments from the DOJ and two other commenters concerning its definition of "physical and mental impairment" in § 268.601(a) of Subpart F, which formerly applied to Subpart G by reference, that the definition does not include a list of examples of physical and mental impairment. DOJ and other commenters stated that such a list is necessary to define "physical and mental impairment" in connection with Subpart G. This definition was taken verbatim from the equivalent section of EEOC's regulation under section 501 of the Rehabilitation Act concerning employment in Federal agencies which is identical with the definition of "physical and mental impairment" in DOJ's regulation under section 504 of the Rehabilitation Act effecting Federally conducted programs and activities, except that DOJ's regulation contains a list of examples of physical and mental impairment which does not appear in EEOC's regulation. The Board does not believe that the addition of a list of examples of physical and mental impairment such as appears in DOJ's regulation alters the definition of "physical and mental impairment" in any material way. However, in order to reassure the commenters that the Board does not intend to use a definition in this subpart that is different from that used by DOJ in connection with its regulation implementing section 504 of the Rehabilitation Act, the Board has added to its definition of "physical and mental impairment" in this section the recommended list of examples of physical and mental impairment.

The Board has added new paragraphs (f) and (g) defining "major life activities" and "has a record of such an impairment." These definitions were formerly incorporated in Subpart G by reference from Subpart F in the proposed Regulation as published for public comment.

Paragraph (i) of this section (originally proposed as paragraph (d)), defining "qualified handicapped persons", was revised to make clear that a "qualified handicapped person" is one who can achieve the purpose of a program or activity without modifications of the program which the "Board can determine based on a written record" would result in a fundamental alteration of the nature of the program or activity. The purpose of this revision is to require that the Board develop an adequate written record to assist the Board in making such determinations and to assist any judicial review of such a determination. This revision was made in response to a number of comments indicating that the Board's originally proposed definition would allow the Board to make a subjective determination without an adequate basis upon which to review the Board's action. As set forth below, the Board has also revised certain other sections of this subpart to require that all Board determinations that a modification which would result in "fundamental alterations" in a program or activity or in "undue financial and administrative burdens" are made on the basis of a written record which will facilitate Board determinations as well as judicial review.

DOJ and the commenters also recommended that the Board go further by adopting provisions in DOJ's final rule which require the Agency to assume the "burden of proof" with regard to any determination that a proposed modification in a program or activity would cause a fundamental alteration in the nature of the program or activity or result in undue financial or administrative burdens. The Board believes that it cannot usurp the powers of the courts to determine who shall bear the "burden of proof" in any litigation that may arise under this Regulation. DOJ, in discussing the promulgation of its final rule under section 504 of the Rehabilitation Act, acknowledged its own lack of authority to dictate to the courts, standards governing any judicial review of complaints under this section. *See* 49 FR 35724, 35733 (September 11, 1984).

The Board has concluded that it should not include the recommended language regarding burden of proof, because such determinations in judicial proceedings must be left to the courts, and also because such language in the Regulation will most likely be read as permitting a person seeking an administrative determination that he or she is a "qualified handicapped person" or that a proposed modification would not result in "fundamental alterations" or "undue administrative and financial burdens" to rest a claim upon bare allegations without presenting any evidence in support of such allegations. It is the Board's experience that compiling an adequate record in such cases normally requires the cooperation of the complainant. This is especially true where the complainant is not a Board employee.

The Board received comments from two organizations representing handicapped persons which state that the Board is applying lesser standards to its programs and activities under this subpart than standards which are applicable under regulations of other agencies applying section 504 of the Rehabilitation Act to programs receiving Federal financial assistance. These commenters state that the regulations applying section 504 to programs receiving Federal financial assistance do not require that "qualified handicapped persons" achieve the purpose of an activity or program without a modification of the activity or program which would result in a fundamental alteration in the activity or program or in undue administrative or financial burdens. These same commentators and others made the very same comments to DOJ regarding an equivalent provision in the DOJ's final rule implementing section 504 of the Rehabilitation Act. DOJ declined to alter its final rule in response to these comments.

These commenters further state that the Board and DOJ are misapplying *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In *Davis*, the Supreme Court, interpreting section 504 of the Rehabilitation Act with regard to a program receiving Federal finanical assistance, stated that section 504 did not require a school to modify its training program for nurses to accommodate a hearing impaired person, since that person's hearing disability would prevent her from safely participating in the clinical training program and from rendering adequate care to patients. These commenters argue that *Davis* created a narrow exemption to the requirements of section 504 of the Rehabilitation Act and that DOJ's and the Board's actions in inserting a "fundamental alterations" and an "undue burdens" defense regarding modifications of their programs and activities are wrong.

DOJ stated in the **Federal Register** notice accompanying its final rule implementing section 504 of the Rehabilitation Act in connection with Federally conducted programs and activities that *Davis* and several other court decisions indicate that section 504 of the Rehabilitation Act does not require modifications of an activity or program which receives Federal financial assistance if such modifications would result in a fundamental alteration in the nature of the program or activity or would result in undue financial or administrative burdens. *See Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979); *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2nd Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981). DOJ noted that since most of the regulations implementing section 504 for programs receiving Federal financial assistance were written prior to *Davis*, in light of *Davis* and the other cited cases there is no substantive difference between regulations applicable to programs receiving Federal financial assistance and its recent regulation establishing standards for Federally conducted programs and activities. In other words, the prior regulations relating to Federal financial assistance must be read and applied in accordance with the Supreme Court's holding in *Davis*. DOJ also noted that it previously adopted the arguments used by these commenters, but those arguments were rejected by the court in *American Public Transit Ass'n* v. *Lewis, supra*.

The Board has considered the cited cases and other authorities interpreting section 504 of the Rehabilitation Act and has concluded that the proposed sections of this Regulation which provide that the Board is not required to modify a program or activity if such modification would result in a fundamental alteration in the program or activity or in undue financial or administrative burdens are reasonable and should be adopted.

A commenter objected to the fact that Subpart G does not contain definitions of "facility", "handicapped person", "respondent", and "section 504". The Board in its proposed rule had incorporated into Subpart G by reference the definitions of "facility" and "handicapped person" found in § 368.601 of Subpart F. As explained above, to avoid confusion, the Board has added definitions of "facility" and "handicapped person" and other definitions to Subpart G and has removed all cross-references in Subpart G to definitions in Subpart F. The Board has not defined "respondent" in Subpart G because the Board has no supervisory authority over other agencies and has no independent organizational units within the Board. Accordingly, since the Board itself is the only possible respondent under its Regulation, the Board does not believe that "respondent" needs to be defined. The Board also has not defined "section 504" because the Board is not an executive agency subject to section 504. The Board is implementing this subpart because it wishes to provide handicapped persons dealing with the Board with the same rights that are applicable to handicapped persons in their dealings with other Federal agencies. Accordingly, the Board is implementing this subpart pursuant to its authority under the Federal Reserve Act.

Section 268.703 Self Evaluation.

The Board has revised this section to provide for a single evaluation of the Board's policies and practices in light of Subpart G and to provide for the participation of interested persons in the evaluation process. The Board in its original proposed rule was guided by a December 11, 1983, version of DOJ's proto-type rule promulgating section 504 and not a more recent version. This revision was made at the suggestion of DOJ and other commenters and follows almost verbatim DOJ's final rule. It should be noted, however that this change does not preclude the Board from periodically reviewing its policies and practices in the future.

Section 268.704 Notice.

This is a new section which was added in response to comments from DOJ and other commenters who stated that the Board did not provide for adequate notice of the applicability of Subpart G to the Board's programs and activities. This section repeats virtually verbatim an equivalent section in DOJ's final rule. The Board intends to make available to all interested persons information regarding this subpart and to make such information available in any manner that the Board finds necessary to apprise interested persons of this subpart.

Section 268.705 Prohibition Against Discrimination.

As proposed, Subpart G substituted a general prohibition of discrimination for the very detailed specific prohibitions contained in DOJ's model regulation. Several commentators, including DOJ, suggested that the Board insert additional provisions from DOJ's model regulation in its final rule. Upon further consideration, the Board has revised this section by adopting virtually verbatim the equivalent provisions from DOJ's final rule. This was done to avoid confusion regarding the scope of the Board's prohibitions of discrimination against handicapped persons.

The Board has revised this section by adding paragraph (b) which states that the Board shall not refuse to provide a qualified handicapped person, either directly or indirectly, through its administration, criteria, methods, contracts, licensing, or other arrangements, with an aid, benefit, or service available to others. This paragraph also states that the Board shall not afford such person a benefit, aid, or service that is not equal to that afforded by others. Paragraph (b) further states that the Board shall not provide any benefit, aid, or service to qualified handicapped persons that is not as effective as that provided to others, or in a different or separate form than that provided to others without justification. Paragraph (b) also provides that the Board may not deny a qualified handicapped person an opportunity to participate as a member of any planning or advisory board or otherwise limit a qualified handicapped person from enjoying any right, privilege, advantage, or opportunity enjoyed by others.

The Board has added paragragh (c) which permits the exclusion of non-handicapped persons from programs the benefits of which are limited by Federal statute or Board Order to handicapped persons or to specific classes of handicapped persons. The Board has also added paragraph (d) which states that the Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Both DOJ and EEOC noted that the Board's proposed Regulation used the term "reasonable accommodation" in this section. Both DOJ and EEOC indicated that "reasonable accommodation" is a term of art used in the context of employment of handicapped persons under section 501 of the Rehabilitation Act and stated that its use in this section may be confusing and inappropriate. The Board agrees and, accordingly, has removed the reference to "reasonable accommodation" from this section.

A commenter suggested that the Board revise this section to provide that the Board will not aid or perpetuate discrimination against a qualified handicapped person by another agency, organization, or person by providing significant assistance to such other agency, organization, or person that discriminates. The commentator stated that several Federal agencies are not required to promulgate regulations under section 504 of the Rehabilitation Act. The commentator added that such a revision would allow a person who has been discriminated against by another agency, organization, or person to file a complaint with the Board regarding the discriminatory actions of such other agencies if the Board has provided assistance to the discriminating agency. This comment suggests insertion of language applicable to programs receiving Federal financial assistance into this subpart. The Board does not conduct any programs of Federal financial assistance. In addition, the courts have held that a Federal agency having supervisory or regulatory authority over a company does not have authority to enforce section 504 of the Rehabilitation Act against such company absent a clear grant of statutory authority to do so. *See Community Television of Southern California* v. *Gottfried*, 103 S.Ct. 885 (1983). Finally, the Board knows of no lawful bias for refusing to carry out its responsibilities under laws and regulations that it administers because of any perceived violation of the Rehabilitation Act by another Federal agency; and the notion that the Board may adjudicate complaints of discrimination against another agency is simply wrong.

Section 268.706 Employment.

This section was revised on the advice of the EEOC to make clear that complaints of discrimination in employment on the basis of handicap against the Board are to be processed under Subpart F of this Regulation.

Section 268.707 Program Accessibility: Discrimination Prohibited.

This section was revised to delete reference to § 268.709 (originally proposed as § 268.708) which provides that new facilities should be constructed in such a manner as to be accessible to handicapped persons. This revision was made on the advice of DOJ that since new facilities should be planned so as to be accessible by handicapped persons, the reference to § 268.709 is unnecessary.

Section 268.708 Program Accessibility: Existing Facilities.

DOJ and several commenters noted that DOJ in its final rule implementing section 504 assumed the burden of proving that a proposed action to modify a program or activity would result in a fundamental alteration in a program or activity or in undue financial and administrative burdens. DOJ and the other commentators stated that assumption of the burden of proof by Federal agencies is necessary so as to not discourage handicapped persons from filing complaints of discrimination because of the difficulty for a handicapped person to prove that a modification would not result in a fundamental alteration in the agency's programs or activities or in undue financial and administrative burdens for the agency.

As discussed above in connection with § 268.702, the Board believes that it cannot dictate to the courts the standards for reviewing Board actions. However, as stated above, the Board also believes it should develop an adequate record in making determinations under this section. Accordingly, the Board has revised paragraph (a)(2) to require that all Board determinations that a modification would result in "fundamental alterations" in a program or activity or result in "undue financial and administrative burdens" be made on the basis of a written record which will facilitate the Board's determination and any subsequent judicial review. The Board has also revised paragraph (a)(2) by adopting procedures substantially similar to those adopted by DOJ for making a determination that a modification would result in a fundamental alteration in a program or activity or in undue financial or administrative burdens. However, the Board does not believe it should include the recommended language regarding burden of proof, because such determinations in judicial proceedings must be left to the courts, and also because such language may be read as permitting a person seeking an administrative determination that he or she is a "qualified handicapped person" or that a proposed modification would not result in "fundamental alterations" or "undue financial and administrative burdens" to rest a claim upon bare allegations without presenting any evidence in support of the allegations. It is the Board's experience that compiling an adequate record in such cases normally requires the cooperation of the complainant. This is especially true where the complainant is not a Board employee.

The Board has revised paragraph (b) to add home visits and use of accessible rolling stock and other conveyances to the list of modifications the Board may make to comply with the requirements of this section. This revision was adopted to bring the Board's regulation into conformity with the equivalent section in DOJ's final rule.

The Board has revised paragraph (d) at the suggestion of the DOJ to provide for public participation in the preparation of any transition plans to make existing facilities accessible to handicapped persons. DOJ noted that handicapped persons often can provide insight and suggestions about making facilities accessible which are more cost efficient than methods that may be thought of by the agency.

Section 268.709 Program Accessibility: New Construction and Alterations.

This section has been revised by deleting the last two sentences of the original proposed section. This change was made at the suggestion of DOJ which pointed at that since construction of new facilities should take into consideration accessibility by handicapped persons, such construction cannot result in a modification of a program or activity that would be a fundamental alteration or administrative costs.

Section 268.710 Communications.

Paragraph (d) of this section has been revised by eliminating the originally proposed paragraph (d) in light of the adoption of the notice provision in § 268.704 and by redesignating proposed paragraph (e) to (d). New paragraph (d) has been revised to require that the Board make any determinations that a modification would result in a fundamental alteration of a program or activity or result in undue financial or administrative burdens be based on a written record.

Section 268.711 Compliance Procedures.

Paragraph (d) has been revised at the suggestion of the EEOC to make clear that complaints of discrimination in employment by the Board on the basis of handicap are to be processed under Subpart F.

The Board in § 268.711 (originally proposed as § 268.710) sought to simplify the compliance procedures from DOJ's model rule. Several commentators suggested that the Board insert additional provisions from DOJ's model regulation in its final rule. Upon further consideration, the Board has revised this section by adopting virtually verbatim the equivalent provisions from DOJ's final rule. This was done to avoid confusion regarding filing and processing complaints of discrimination under this subpart. These provisions have been added to this section as paragraphs (c) through (k).

Paragraph (c) makes the EEO Programs Officer responsible for implementation of this section. Paragraph (d) sets forth the criteria and procedures for filing a complaint. Complaints must be filed within 180 days of the alleged act of discrimination. Paragraph (e) sets forth the criteria and procedures for accepting a complaint. Paragraph (e) also sets forth the criteria and procedures for cancelling an incomplete complaint. Paragraph (f) sets forth the procedures to be followed in investigating a complaint, requires the investigation be completed within 180 days of receipt of the complete complaint, and provides for resolution of the complaint informally. Paragraph (g) provides that if there is no satisfactory resolution of the complaint, the Staff Director For Management shall issue a letter of findings which shall set forth the results of the investigation, findings of fact and conclusions of law, a remedy for each violation found, and a notice to the complainant of his or her right to appeal the letter of findings to the Board of Governors or the Administrative Governor for a decision under paragraph (k) of this section and to request a hearing. Paragraph (h) sets forth the procedures for filing an appeal, with or without hearing, to the Administrative Governor and requires that notice of such appeal be filed with the EEO Programs Officer within 30 days of issuance of the letter of findings. Paragraph (h) also provides that if no notice of appeal is filed within 30 days of issuance of a letter of findings, the EEO Programs Officer shall certify the letter of findings as the final decision of the Board. Paragraph (i) sets forth the procedures for acceptance of a notice of appeal and also provides complainant with an opportunity to appeal to the Administrative Governor any determination by the EEO Programs Officer that an appeal is untimely. Paragraph (h) set forth the procedures for conducting a hearing and provides that the hearing be conducted by an administrative law judge. Paragraph (h) provides that the hearing, decision, and any administrative review thereof be conducted in accordance with the Administrative Procedure Act. Paragraph (k) provides that the EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this paragraph, and that at the request of any member of the Board of Governors, the Board of Governors shall make the decision on the complaint. Paragraph (k) also provides that if no such request is made, the Administrative Governor shall make the decision on the complaint under this paragraph. Paragraph (k) makes the decision maker responsible for insuring compliance by the Board with his or her decision.

A commentator has suggested that this section be revised to provide for consultations with the Architectural and Transportation Barriers Compliance Board. The Board is not subject to the jurisdiction of the Architectural and Transportation Barriers Compliance Board ("ATBCB") under the Architectural Barriers Act. However, the Board has indicated that it follows ATBCB's guidelines and consults with the ATBCB when necessary. Accordingly, the Board believes that the suggested revision is neither necessary or appropriate.

A commentator has suggested that this section be revised to provide for judicial review of decisions under this section. Section 504 of the Rehabilitation Act does not provide for judicial review of violations of section 504 in connection with Federally conducted programs. Accordingly, the Board believes this question is more appropriately left to the courts and should not be addressed in this Regulation.

Subpart H—Review by the Equal Employment Opportunity Commission

Section 268.801 Entitlement.

The last sentence of paragraph (a) of this section was revised to bring this paragraph into conformity with the equivalent paragraph in EEOC's regulation. This revision was made after a commenter indicated some confusion as to the meaning of this paragraph. This paragraph is intended to avoid a second review by the EEOC of a complaint or issue previously reviewed by the EEOC and submitted by the same complainant, agent, or claimant.

Section 268.803 Time Limits.

A commenter stated that paragraph (a) of this section allows EEOC review only after the Board has made a decision to award or not award attorney's fees. The commenter stated that any decision to award or not award attorney's fees should be made only after the EEOC review process is completed in order to avoid the possibility that such a decision on attorney's fees might deprive a complainant of counsel during the EEOC reiew proceeding. This paragraph was adopted virtually verbatim from the equivalent provision in the EEOC's regulation. The EEOC intended its review process to include any decisions on whether or not to award attorney's fees. Accordingly, the Board is required to make its decision on attorney's fees prior to EEOC review. However, this section is not intended to imply that a complainant may not ask for an award of attorney's fees and/or costs incurred in filing a request for review by EEOC. Section 268.315(c) of Subpart C provides that the complainant may request an award of attorney's fees and/or costs incurred as a result of an appeal to the EEOC of a Board decision on a complaint of discrimination.

Section 268.804 Procedures.

In its comments to the Board, the EEOC stated that it sees no need for automatic reconsideration by the Board of any findings by EEOC's Office of Review and Appeals on a request for review of a Board decision on a complaint because the Board may request reconsideration of the findings of the Office of Review and Appeals by the Commissioner of the EEOC if the Board is not satisfied with the findings of the Office of Review and Appeals. Another commenter stated that the Board should be required to give reasons for a rejection of EEOC's findings, that the EEOC should be given further review powers following any Board rejection of EEOC findings, and that the Board should establish a presumption that the Board will accept the EEOC's findings unless there are strong contrary reasons not to.

As a result of discussions with EEOC in light of that Agency's comments on the proposed regulation, the Board has determined that provision for automatic reconsideration of EEOC's findings on a request for review of a Board decision under this Regulation is not necessary to preserve the Board's exclusive control of the conditions of employment and

compensation of its staff as mandated by sections 10(4) and 11(*l*) of the Federal Reserve Act. By its terms, section 10(4)'s statutory grant of authority may be changed only by specific amendment of the Federal Reserve Act, and the Board may not by regulation waive such authority. *See* 58 *Comp. Gen.* 687 (1979). The Board has agreed with the EEOC to permit EEOC review of Board decisions under this Regulation in order to provide its employees with the same rights and privileges provided to other employees of the Government. The Board has revised this section to provide that any findings of the Office of Review and Appeals or of the Commissioners of the EEOC on a request for review of a decision by the Board on a complaint of discrimination shall be returned to the Board for consideration.

Section 268.805 Review and Consideration

The Board has added a new paragraph (b) to this section which provides that if the Commissioners of the EEOC reopen and reconsider the findings of the Office of Review and Appeal, the findings of the Commissioners shall be returned to the Board for consideration.

Subpart I—Equal Pay

Generally

The EEOC's comment letter indicates that the Board has no jurisdiction to enforce the Equal Pay Act and that the Board has no authority to promulgate this subpart. This subpart is adopted pursuant to its authority under the Federal Reserve act to determine all matters relating to the employment and compensation of its staff. In light of the Federal Reserve Act provision, the Board believes it is required to adopt this subpart if it wants to provide its employees with the same protections offered by the Equal Pay Act to other employees of the Government. After further consultations with EEOC regarding its comment, the Board has determined to retain this subpart.

Section 268.902 Records.

A commenter recommended that paragraph (b) which requires the Board to keep business records for two years be amended to provide that the records be kept longer if they relate to pending administrative or court proceedings. The Board has amended this section to provide that business records are to be kept for at least six years. This amendment reflects the addition of § 268.904 of this subpart that requires a civil action on any complaint of denial of equal pay to be filed within six years of the matter causing the complainant to believe that he or she has been denied equal pay within the meaning of this subpart.

Section 268.903 Procedures.

Paragraph (b) of this section was amended to provide that civil actions under this subpart are to be filed pursuant to § 268.904 of this subpart even though individual complaints and class action complaints under this subpart are to be processed under Subparts C and D respectively.

Section 268.904 Right to File Civil Action For Judicial Review.

The Board has amended this subpart by the addition of this section which provides that Board employees who believe that they have been denied equal pay may file civil actions against the Board within six years of the matter causing them to believe they have been denied equal pay. This section applies the general statute of limitations for filing civil action against the United States, 12 U.S.C. 2401(a). The Equal Pay Act, through the Portal to Portal Act, provides that complainants shall file civil actions within two years, or three years in cases of willful discrimination, of the matter causing them to believe that they have been denied equal pay.

However, Federal employees who are part of the competitive civil service may petition the Comptroller General of the United States at any time up to six years to collect back pay. The Board is not subject to the Equal Pay Act, nor are its employees members of the competitive civil service. Accordingly, the Board believes that use of the general statute of limitations applicable to suits against the United States is necessary and notes that it provides Board employees with the same time limits for filing civil actions under this subpart as are applicable to Federal employees generally under the other statutes cited above.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) the Board certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The regulation focuses primarily of Board personnel and management policies and practices.

List of Subject in 12 CFR Part 268

Civil right, Equal employment opportunity, Buildings and facilities, Handicapped, Federal programs and activities, Administration.

Pursuant to its
10(4) and 11(*l*) of
Act, 12 U.S.C. 24
has amended 12
Opportunity Reg
set forth below:

PART 268—RUL
EQUAL OPPORT

Subpart A—Gener

Authority: Secs. 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

Subpart A—General Provisions

§ 268.101 Authority, purpose, and scope.

(a) *Authority.* This regulation (Code of Federal Regulations, Title 12, Part 268) is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of sections 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

(b) *Purpose and scope.* This regulation sets forth the Board's policy, program, and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental handicap. It also sets forth the Board's policy, program, and procedures for prohibiting discrimination on the basis of physical or mental handicap in programs and activities conducted by the Board.

§ 268.102 Board program.

The Board has established, maintains, and carries out a continuing affirmative program designed to promote equal opportunity in every aspect of the Board's personnel policies and practices in the employment, development, advancement, and treatment of employees and applicants for employment. Under the terms of its program, the Board:

(a) Provides sufficient resources to administer its equal opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal opportunity program meet established qualifications requirements;

(b) Seeks to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, national origin, age, or physical or mental handicap, from the Board's personnel policies and practices and working conditions;

(c) Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work study programs, and other training programs so that they may perform at their highest potential and advance in accordance with their abilities;

(d) Communicates the Board's equal opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, or physical or mental handicap, and solicits their recruitment assistance on a continuing basis;

(e) Participates at the community level with other employers, schools, universities, and other public and private groups in cooperative action to improve employment opportunities;

(f) Reviews, evaluates, and controls managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provides orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal opportunity policy and program;

(g) Provides recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal opportunity;

(h) Informs its employees and applicants for employment of the Board's affirmative equal opportunity policy and program and enlists their cooperation;

(i) Provides counseling for employees and applicants for employment who believe they have been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for resolving informally the matters raised by them;

(j) Provides for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap;

(k) Has established a system for periodically evaluating the effectiveness of the Board's overall equal opportunity effort;

(l) Makes reasonable accommodations to the religious needs of employees and applicants for employment, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the Board;

(m) Utilizes to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements; and

(n) Prepares annually equal opportunity plans of action which include, but are not limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) describes the qualifications, in terms of training and experience relating to equal opportunity, of the principal and operating officials concerned with administration of the Board's equal opportunity program; and

(3) describes the allocation of personnel and resources proposed by the Board to carry out its equal opportunity program.

§ 268.103 Definitions.

(a) "Age" is an inclusive term which means the age of at least forty years.

(b) "Complainant" means any party who files a claim, complaint, or request for counseling under this regulation.

(c) "Complaint of discrimination" means any claim or complaint filed under this regulation or the Board's grievance procedures alleging discrimination in employment because of race, color, national origin, religion, sex, age, or physical or mental handicap.

(d) "Grievance procedures" means the Board's Adjusting Work-related Problems Policy.

Subpart B—Administration

§ 268.201 Equal employment designations.

The Board designates an EEO Programs Officer, an EEO Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, a Handicapped Program Coordinator, and such EEO Counselors and other persons as may be necessary to assist the Board in carrying out the functions described in this Regulation.

§ 268.202 The Administrative Governor.

(a) The Administrative Governor is a member of the Board of Governors. He or she is designated by the Chairman of the Board of Governors, charged with overseeing the internal affairs of the Board and empowered to make decisions and determinations on behalf of the Board of Governors when authority to do so is delegated to him or her.

(b) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(k) of this Regulation, as he or she may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(c) The Administrative Governor may delegate to any officer or employee of the Board any of his or her duties or functions under this Regulation.

(d) The Administrative Governor may refer to the Board of Governors for determination or decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation, and may make any recommendations for any changes in programs and procedures designed to eliminate discriminatory practices or to improve the Board's programs under this Regulation, and may make any recommendations for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminartory practices, or with regard to any other matter which the Administrative Governor believes merits the attention of the Board of Governors.

§ 268.203 The Staff Director for Management.

(a) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations on complaints of discrimination that would otherwise be made by the Administrative Governor under §§ 268.311 and 268.412. The Staff Director for Management shall issue letters of findings under § 268.711(g). The Staff Director For Management shall order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(h) as he or she may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(b) The Staff Director for Management shall review the record on any complaint under this Regulation before a determination is made by the Board of Governors or the Administrative Governor on the complaint and make such recommendations as to the determination as he or she considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(c) The Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity.

§ 268.204 The EEO Programs Officer.

The EEO Programs Officer shall perform the following functions:

(a) Advise the Board, the Administrative Governor, and the Staff Director for Management with respect to the preparation of plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.102, and administer the Board's equal opportunity program;

(b) Evaluate from time to time the sufficiency of the Board's program for equal opportunity and report thereon to the Board, the Administrative Governor, and the Staff Director For Management, with recommendations as to any improvement or correction needed, and may make recommendations regarding remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(c) Recommend changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity;

(d) Provide for counseling by an EEO Counselor, of any aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under §§ 268.302 and 268.403 of the regulation;

(e) Publicize to Board employees and applicants for employment and post permanently on official bulletin boards:

(1) The names and office addresses and the EEO responsibilities of the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the EEO Officer, the Hispanic Program Coordinator, and the Handicapped Program Coordinator;

(2) The names and office addresses of EEO Counselors, the segments of the Board for which they are responsible, the availability of EEO Counselors to counsel an employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap; and the requirement that an employee or applicant for employment must consult the EEO Counselor as provided by §§ 268.301 and 268.402; and

(3) Time limits for contacting EEO Counselors;

(f) Provide to each employee annually (and the Division of Personnel shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this Regulation and specifying where copies of this Regulation can be obtained. The EEO Programs Officer shall ensure that copies of this Regulation are posted in permanent locations in all Board facilities. The EEO Programs Officer shall, on the request of any employee or applicant for

employment provide that employee or applicant with a copy of this Regulation;

(g) Appoint any investigative officers or complaints examiners as necessary to administer this Regulation. The EEO Programs Officer is authorized to request the loan of any investigative officers or complaints examiners from any other agency as necessary to administer this Regulation. The EEO Programs Officer, with the concurrence of the Staff Director For Management, may authorize appropriate reimbursement to such agencies for the services of such investigative officers and complaints examiners;

(h) Provide for the receipt and investigation of individual complaints of discrimination, subject to §§ 268.301 through 268.312; and

(i) Provide for the acceptance and processing and/or rejection of class action complaints in accordance with Subpart D of this regulation.

§ 268.205 Federal Women's Program Manager.

The Federal Women's Program Manager shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

§ 268.206 Hispanic Program Coordinator.

The Hispanic Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

§ 268.207 Handicapped Program Coordinator.

The Handicapped Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of handicapped persons.

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

§ 268.301 Precomplaint processing.

(a) An aggrieved person who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, shall consult with an EEO Counselor to try and resolve the matter. The EEO Counselor shall make whatever inquiry he or she believes is necessary into the matter and seek a solution to the matter on an informal basis. The EEO Counselor shall advise the aggrieved person of the complaint procedure under this subpart, counsel him or her concerning the issues in the matter, keep a record of the counseling activities so as to brief the EEO Officer on those activities, and when advised that a formal complaint of discrimination has been filed by an aggrieved person, shall submit a written report to the EEO Officer with a copy to the aggrieved person summarizing the EEO Counselor's actions and advice to the aggrieved person concerning the issues in the matter. The EEO Counselor shall, insofar as is practicable, conduct the final interview of the aggrieved person not later than 21 calendar days after the date on which the matter was called to the EEO Counselor's attention by the aggrieved person. If, within 21 calendar days, the matter has not been resolved to the satisfaction of the aggrieved person, that person shall be immediately informed in writing, at the time of the final interview, of his or her right to file a complaint of discrimination and of his or her right to representation, including legal counsel. The notice shall inform the aggrieved person of his or her right to file a discrimination complaint at any time up to 15 calendar days after receipt of the said notice, identify to the aggrieved person the officials with whom such complaint may be filed, and advise the aggrieved person that he or she must inform the Board immediately if he or she retains counsel or any other representative in connection with the complaint.

(b) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint.

(c) The EEO Counselor shall not reveal the identity of any aggrieved person who consults with the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has accepted a complaint of discrimination from the aggrieved person.

(d) The EEO Counselor shall have the full cooperation of all employees in the performance of his or her duties under this section.

(e) The EEO Counselor shall be free from restraint, interference, coercion, discrimination or reprisal, in connection with the performance of his or her duties under this section.

§ 268.302 Filing of complaint.

(a) *Time limits.* (1) The Board shall accept a complaint for processing under this subpart only if:

(i) The complainant brought to the attention of an EEO Counselor the matter causing him or her to believe he or she had been discriminated against within 30 calendar days of the date of the matter or, if a personnel action, within 30 calendar days of its effective date; and

(ii) The complainant, or his or her authorized representative, submitted his or her written complaint to an appropriate official within 15 calendar days of the date of his or her final interview with the EEO Counselor.

(2) A complaint shall be deemed to have been filed on the date it was received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints under paragraph (b)(3) of this section.

(b) *Filing requirements.* (1) A complaint of discrimination must be submitted in writing by the complainant, or his or her authorized representative, and must be signed by the complainant.

(2) A complaint of discrimination may be submitted in person or by mail. If a complainant, or his or her authorized representative, submits the complaint by mail, use of registered mail is advised.

(3) The complaint shall be submitted to either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. All complaints received by the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coodinator shall be transmitted to the EEO Officer for acknowledgment of receipt in accordance with § 268.302(c)(1).

(c) *Acknowledgement of receipt of complaint.*

(1) The EEO Officer shall acknowledge receipt of the complaint to the complainant, or his or her authorized representative, in writing.

(2) The EEO Officer shall advise the complainant, or his or her authorized representative, of all administrative rights of the complainant and of complainant's right to file a civil action as set forth in § 268.316, including the

time limits imposed on the exercise of those rights.

(d) *Extensions of time.* (1) The EEO Programs Officer shall extend the time limits set forth in this section:

(i) On written request of the complainant, or his or her authorized representative, when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits; or

(ii) For other reasons considered sufficient by the EEO Programs Officer.

(2) Written requests for extension of time under this section shall be filed with the EEO Programs Officer.

§ 268.303 Right to representation.

At any stage in the presentation of a complaint under this subpart, including the counseling stage under § 268.301, the complainant shall have the right to be accompanied, represented, and advised by a representative, including legal counsel, of his or her choice. Complainant shall be advised of this right in writing by the EEO Counselor or other appropriate person responsible for matters under this regulation at the commencement of processing of any matter subject to this regulation.

§ 268.304 Presentation of the complaint.

(a) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time to present his or her complaint, if he or she is otherwise in an active duty status.

(b) If the complainant is an employee of the Board and the complainant designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if he or she is otherwise in an active duty status, to present the complaint.

§ 268.305 Rejection or cancellation of the complaint.

(a) The EEO Programs Officer shall reject a complaint which was not timely filed under § 268.302(a), unless the time for filing has been extended pursuant to § 268.302(d), and shall reject those allegations in a complaint which are not within the purview of this regulation or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending at the Board or has been decided by the Board. The EEO Programs Officer may cancel a complaint for failure of the complainant to prosecute the complaint. Such action canceling a complaint may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, a written request, including notice of proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(b) The EEO Programs Officer shall transmit any decision to reject or cancel by letter to the complainant, or his or her authorized representative. The decision letter shall inform the complainant of his or her right to have the decision of the EEO Programs Officer submitted to the Equal Employment Opportunity Commission for review as described in Subpart H and of his or her right to file a civil action as described in § 218.316 of this subpart, and of the time limits applicable thereto.

§ 268.306 Investigation.

(a) The EEO Officer shall advise the EEO Programs Officer of the receipt of a complaint. The EEO Programs Officer shall provide for the prompt investigation of the complaint. The EEO Programs Officer shall appoint an investigative officer to investigate the complaint. The investigative officer, if an employee of the Board, shall occupy a position which is not, directly or indirectly, under the jurisdiction of the Director of the Division or Office of the Board in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his or her complaint as compared with the treatment of other employees or applicants for employment in the Board Division or Office in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of witnesses, and copies of or extracts from records, policy statements, or regulations of the Board—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigative officer may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he or she shall not require or coerce an employee to provide this information.

(b) The investigative officer shall be authorized:

(1) To investigate all aspects of complaints of discrimination;

(2) To request all employees of the Board to cooperate with him or her in the conduct of the investigation; and

(3) To require that statements of witnesses be under oath or affirmation without a pledge of confidence.

§ 268.307 Adjustment of complaint and offer of hearing.

(a) The Board shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the EEO Officer shall furnish complainant, or his or her authorized representative, with a copy of the investigative file promptly after receiving it from the investigative officer, and shall provide an opportunity for the complainant, or his or her authorized representative, to discuss the investigative file with appropriate officials.

(b) If an adjustment of the complaint is arrived at and approved, the terms of the adjustment shall be reduced to writing and made a part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. An informal adjustment of a complaint may include an award of backpay, attorney's fees and/or costs, if appropriate, or other appropriate relief. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney's fees and/or costs should be awarded or on the amount of attorney's fees and/or costs to be awarded, the issue of the award of attorney's fees and/or costs or the amount which should be awarded may be severed and shall be the subject of a final decision pursuant to § 268.311. The decision of whether to award attorney's fees and/or costs or of the amount to be awarded may be submitted for review

by the Equal Employment Opportunity Commission, pursuant to subpart H of this Regulation.

(c) If the Board does not carry out, or rescinds any action specified by the terms of the adjustment for any reason not attributable to the actions or conduct of the complainant, the EEO Officer shall, upon the complainant's written request, reinstate the complaint for further processing at the point that processing ceased because of the adjustment.

(d) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing by the EEO Officer:

(1) Of the proposed disposition of the complaint;

(2) Of the complainant's right to a hearing and decision by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), if the complainant notifies the EEO Officer in writing within 15 calendar days of receipt of the notice that he or she desires a hearing; and

(3) Of the complainant's right to a decision by the Board of Governors or the Administrative Governor under § 368.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), without a hearing.

(e) If the complainant fails to notify the EEO Officer of his or her wishes within 15 calendar days of receipt of the notice set forth in § 268.307(d), the EEO Officer shall transmit the complaint file to the Board of Governors or the Administrative Governor, or to the Staff Director For Management if he or she has been authorized to act for the Administrative Governor pursuant to § 268.202(c), for decision under § 268.311.

§ 268.308 Hearing on the complaint.

A hearing, held pursuant to an election by the complainant as provided in § 268.307(d)(2), shall be conducted in the following manner:

(a) *Complaints examiner.* The hearing shall be held by a complaints examiner, who must be an employee of another agency, except in a case where the Board might be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. In that event, the EEO Programs Officer, in consultation with the Equal Employment Opportunity Commission, shall select an impartial employee of the Board to serve as a complaints examiner. In selecting a complaints examiner, the Board shall request the Equal Employment Opportunity Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit to the complaints examiner the complaint file containing all the documents described in § 268.312 that have been acquired up to that point in the processing of the complaint and including the original copy of the investigative file (which shall be considered by the complaints examiner in making his or her recommended decision on the complaint). The complaints examiner shall review the entire complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he or she shall remand the complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing. The requirements of § 268.306 shall apply to any further investigation of the complaint. The complaints examiner shall schedule the hearing at a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the complaints examiner to have direct connection with the complaint.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complaints examiner, the complainant, his or her authorized representative, and representatives of the Board at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the Board in this Regulation, the complaints examiner shall be authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request the Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner to make available as a witness at the hearing any employee(s) requested by the complainant when the complaints examiner determines that the testimony of such employee(s) is necessary. He or she may also request the appearance of any other person whose testimony he or she determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his or her reasons for the denial of a request for the appearance of employees or other persons as witnesses and shall insert those reasons in the record of the hearing. The Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner may make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request for a witness. When it is administratively impracticable to comply with the request for a witness, the Board or other agency shall provide an explanation to the complaints examiner. If the complaints examiner determines that the explanation is inadequate, he or she shall so advise the Board or other agency and request it to make the employee available as a witness at the hearing. If the complaints examiner determines that the explanation is adequate, he or she shall insert it in the record of the hearing, provide a copy of the explanation to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the Board shall be on duty status during the time they are made available as witnesses.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, the Board shall promptly furnish a copy to the complainant. If the complainant submits a document that is accepted, he or she shall promptly make the document available to the Board's representative for reproduction.

(g) *Findings, analysis, and recommendations.* The complaints

examiner shall transmit to the EEO Programs Officer:

(1) The complaint file (including the record of the hearing);

(2) The findings and analysis of the complaints examiner with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose;

(3) The recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose.

The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the EEO Programs Officer, any findings and recommendations he or she considers appropriate with respect to conditions at the Board which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

§ 268.309 Relationship to other agency appellate procedure.

When an employee or applicant for employment makes a written allegation of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap, in connection with an action that would otherwise be processed under a grievance procedure or other system of the Board, the allegation of discrimination shall be processed under this Regulation.

§ 268.310 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Board shall proceed with the complaint as specified in this Regulation without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under § 268.308. When the complaint has not been resolved within such time, the complainant may petition the Staff Director For Management for a review of the reasons for the delay.

(b) The EEO Programs Officer may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. Such action may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, with a written request, including notice of the proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of receipt by the complainant, or his or her authorized representative, of this request. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) When the complaints examiner has submitted a recommended decision finding discrimination and a final decision has not been issued by the Board of Governors or the Administrative Governor under § 268.311, or by the Staff Director For Management if he or she is delegated the authority to act for the Administrative Governor pursuant to § 268.202(c), within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the Board 30 calendar days after its submission to the EEO Programs Officer. In such event, the complainant shall be notified of the decision and furnished a copy of the findings, analysis, recommended decision of the complaints examiner under § 268.308(g), and a copy of the hearing record and shall be advised that at the complainant's request the decision may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this part, of his or her right to file a civil action as described in § 268.316 of this regulation, and of the time limits applicable thereto.

§ 268.311 Decision on the complaint.

(a) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint. The decision on the complaint shall be made based on information in the complaint file and shall be made in a fair, impartial, and objective manner.

(b)(1) The decision on the complaint shall be in writing, shall reflect the date of issuance, and shall be transmitted to the complainant, or his or her authorized representative, either by certified mail, return receipt requested, or by any other method which establishes the date of receipt by the complainant, or his or her authorized representative.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under § 268.308(g) of this subpart and a copy of the hearing record. The decision shall adopt, reject, or modify the recommended decision of the complaints examiner under § 268.308(g). If the decision is to reject or modify the recommended decision, the decision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing under § 268.308 and no adjustment under § 268.307, the decision letter shall set forth the findings, analysis, and decision of the Board of Governors or the Administrative Governor under paragraph (a) of this section, or of the Staff Director For Management if he or she has been delegated the authority to make the decision under § 268.202(c).

(c) The decision shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the decision maker shall:

(1) Advise the complainant, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt;

(2) Require remedial action to be taken in accordance with § 268.315;

(3) Review the matter giving rise to the complaint to determine whether disciplinary action against any alleged discriminatory officials is appropriate; and

(4) Record the basis for his or her decision to take, or not to take, disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for an award of attorney's fees and/or costs, the amount of those awards shall be determined under § 268.315(c). In the unusual situation in which the Board determines not to award attorney's fees and/or costs to a prevailing complainant, the decision shall set forth the specific reasons for denying the award.

(e) The decision letter shall inform the complainant that at his or her request the decision may be reviewed by the Equal Employment Opportunity Commission under Subpart H, of his or her right to file a civil action in accordance with § 268.316 of this

subpart, and of the time limits applicable thereto.

§ 268.312 Complaint file.

(a) The EEO Officer shall maintain a complaint file containing all documents pertinent to the complaint, except as provided in § 268.311(c)(4). The complaint file shall include copies of:

(1) The notice of the EEO Counselor to the complainant, or his or her authorized representative, pursuant to § 268.301(a);

(2) The written report of the EEO Counselor under § 268.301(a) to the EEO Office on whatever precomplaint counseling efforts were made with regard to the complainant's case;

(3) The complaint;

(4) The investigative file;

(5) If the complaint is withdrawn by the complainant, a written statement of the complainant, or his or her authorized representative, to that effect;

(6) If adjustment of the complaint is arrived at under § 268.307, the written record of the terms of the adjustment;

(7) If no adjustment of the complaint is arrived at under § 268.307, a copy of the letter under § 268.307(d) notifying the complainant, or his or her authorized representative, of the proposed disposition of the complaint and of complainant's right to a hearing;

(8) If the decision is made under § 268.307(e), a copy of the letter to the complainant transmitting that decision;

(9) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint;

(10) The recommendations of the Staff Director For Management or the EEO Programs Officer, if any, to the Board of Governors, the Administrative Governor, or the Staff Director For Management; and

(11) If the decision is made under § 268.311, a copy of the letter transmitting the decision.

(b) The complaint file shall contain no document that has not been made available to the complainant, or his or her authorized representative, including a physician designated in writing by the complainant.

§ 268.313 Joint processing and consolidation of complaints.

(a) Two or more complaints of discrimination filed by employees or applicants for employment with the Board consisting of substantially similar allegations of discrimination may, with written permission of the complainants, be consolidated by the EEO Programs Officer.

(b) Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of the EEO Programs Officer, be joined for processing after notifying the complainant that the complaints will be processed jointly.

§ 268.314 Freedom from reprisal or interference.

(a) *Freedom from reprisal.* Complainants, their authorized representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under § 268.301, or any time thereafter.

(b) *Review of allegations of reprisal.* A complainant, his or her authorized representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal for having filed a complaint or for having participated in the processing of a complaint under this subpart, may, if an employee or applicant for employment, have the allegation reviewed as an individual complaint of discrimination subject to the provisions of this subpart.

(c) *Consolidation of complaints.* When a complainant alleges that he or she has been subjected to restraint, interference, coercion, discrimination, or reprisal in connection with the filing of a prior complaint of discrimination and that prior complaint from which the allegation derives is in process at the Board at the time the allegation is made, the complainant may request the EEO Programs Officer to consolidate the allegation with the prior complaint. If the prior complaint is at the hearing stage of the complaint process under § 268.308, the complainant may request the complaints examiner to consolidate the allegation with the complaint at the hearing. The EEO Programs Officer or the complaints examiner may grant the request, *Provided,* that the request is made within 30 calendar days of occurrence of the act which forms the basis of the allegation, or within 30 calendar days of its effective date, if a personnel action. The EEO Programs Officer or the complaints examiner may also deny the request, at his or her discretion, and require that the allegation be processed in accordance with § 268.314(b).

§ 268.315 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When it is determined that an applicant for employment has been discriminated against, the Board shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. The offer shall be made in writing. The applicant shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the Board of his or her decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control prevented the applicant from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant should have been hired, subject to the limitation in paragraph (a)(3) of this section. Back pay, computed in the manner set forth in paragraph (d) of this section, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The applicant shall be deemed to have performed services for the Board during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the applicant shall be awarded a sum equal to the back pay he or she would have received, computed in the manner set forth in paragraph (d) of this section, from the date he or she would have been appointed until the date the offer was made subject to paragraph (a)(3) of this section. The applicant shall be informed in the offer of his or her right to this award in the event he declines the offer.

(2) When it is determined that discrimination existed at the time the applicant was considered for employment but that there is clear and convincing evidence that the applicant would not have been hired even absent the discrimination, the Board shall consider the applicant for any existing vacancy of the type and grade for which he or she was considered initially and for which he or she is qualified before consideration is given to other candidates. If the applicant is not selected, the Board shall record the reasons for nonselection. If no vacancy exists, the Board shall give the applicant priority consideration for the next vacancy for which he or she is qualified. This priority shall take precedence over all other Board employment priorities.

(3) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed. If a finding of discrimination was not based on a complaint, the period of retroactivity or

period for which back pay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When it is determined that a Board employee has been discriminated against, the Board shall take remedial actions which may include, but need not be limited to, one or more of the following:

(1) Retroactive promotion, with back pay computed in the manner set forth in paragraph (d) of this section, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event shall not exceed the date the employee would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, shall not exceed the date he or she would have been promoted;

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. If the employee is not selected, the Board shall record the reasons for nonselection. This priority consideration shall take precedence over all other Board employment priorities;

(3) Cancellation of an unwarranted personnel action and restoration of the employee;

(4) Expunction from the Board's records of any reference to or any record of an unwarranted disciplinary action;

(5) Full opportunity to participate in the employee benefit denied him or her (e.g., training, preferential work assignments, overtime scheduling).

(c) *Attorney's fees or costs*— (1) *Awards of attorney's fees or costs.* The Board may award the complainant reasonable attorney's fees and/or costs incurred in the processing of complaints of discrimination or retaliation under this subpart. In a decision made under §§ 268.307, 268.310, 268.311, 268.314, or under Subpart D of this regulation, or in connection with any review by the Equal Employment Opportunity Commission pursuant to Subpart H, the Board may award reasonable attorney's fees or costs incurred in the processing of the matter.

(i) A finding of discrimination shall raise a presumption of entitlement to an award of attorney's fees.

(ii) Attorney's fees may be allowed only for the services of members of the Bar and law clerks, paralegals, or law students under supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iii) Attorney's fees shall be paid only for services performed after the filing of the complaint under § 268.302 and after the complainant has notified the Board that he or she is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the Board which are signed by the attorney shall be deemed to constitute notice of representation.

(2) *Amount of award.* When it is determined to award attorney's fees and/or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees, as appropriate, to the Board within 20 calendar days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services, and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees and/or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative, and a representative of the Board. Such agreement shall immediately be reduced to writing. If the complainant, the complainant's representative, and the Board's representative cannot reach an agreement on the amount of attorney's fees and costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the amount of attorney's fees and/or costs to be awarded shall be decided under § 268.311 within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(i) The amount of the attorney's fees and costs awarded shall be determined in accordance with the following standards: The time and labor required; the novelty and difficulty of the questions presented by the complaint; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship between the complainant and the attorney; and awards in similar cases.

(ii) The costs which may be awarded include:

(A) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case unless provided by the Board;

(B) Fees and disbursements for printing and witnesses except to the extent already paid for by the Board;

(C) Fees for exemplification and copies of papers necessarily obtained for use in the case except to the extent already paid for by the Board; and

(D) Any other costs determined to be reasonable by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c). Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821. However, no award may be made for a Board or Federal government employee who is in a duty status when made available as a witness.

(d) *Computation of back pay.* (1) The Board will compute for the period covered by the corrective action the pay, allowances, and differentials the complainant would have received if discrimination had not occurred.

(2) No complainant shall be granted more pay, allowances, or differentials under this paragraph than he or she would have received if discrimination had not occurred.

(3) Except as provided in paragraph (d)(4) of this section, in computing back pay under this paragraph, the Board shall not include:

(i) Any period during which the complainant was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(ii) Any period during which the complainant was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the discriminatory actions against the complainant.

(4) In computing the amount of back pay under this paragraph, the Board

shall grant, upon written request of a complainant, any sick or annual leave available to the complainant for a period of incapacitation if the complainant can establish that the period of the incapacitation was the result of illness or injury.

(5) In computing the amount of back pay under this paragraph, the Board shall deduct:

(i) Any amounts earned by a complainant from other employment during the period covered by the corrective action. The Board will include as other employment only employment engaged in by the complainant to take the place of employment from which the complainant had been separated from or did not receive because of discrimination against the complainant; and

(ii) Any erroneous payments received from the Board or other Federal government agencies as a result of the discriminatory actions against complainant, which, in the case of erroneous payments received from the Board's or other Federal government retirement systems, shall be returned to the appropriate system.

§ 268.316 Right to file a civil action.

(a) Except as provided in paragraph (c) of this section, a complainant is authorized to file a civil action against the Board in an appropriate United States District Court:

(1) Within 30 calendar days of receipt of notice of final action on the complaint under §§ 268.305(b), 268.307(b), 268.310 (b) and (c), and 268.311;

(2) After 180 calendar days from a date of filing a complaint with the Board if there has been no decision;

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final action by the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendar days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no findings by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision is not final until the procedures are followed for determining the amount of the award as set forth in § 268.315(c) of this subpart.

(c) A complainant who filed a complaint of discrimination because of age or because of denial of equal pay shall file civil actions within the time limits set forth in § 268.505 of Subpart E of this regulation for complaints of age discrimination and in § 268.904 of Subpart I of this regulation for complaints of denial of equal pay.

§ 268.317 Notice of right.

The Board shall notify a complainant in writing of his or her right to file civil action, and of the 30-day time limit to file civil suit specified in § 268.316, or of the 6 year time limit to file civil action specified in § 268.505 in the case of discrimination because of age and in § 268.904 in the case of denial of equal pay, in any final action on a complaint under this subpart.

§ 268.318 Effect on administrative procedure.

The filing of a civil action does not terminate Board processing of a complaint or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart D—Class Complaints of Discrimination

§ 268.401 Definitions.

(a) A "class" is a group of Board employees or applicants for employment, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by a Board personnel management policy of practice which the Board has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or mental or physical handicap.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class:

(3) The claims of the agent of the class are typical of the claims of the class; and

(4) The agent of the class, or his or her authorized representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing of the class complaint.

§ 268.402 Precomplaint processing.

(a) An employee or applicant for employment who wishes to be an agent and who believes he or she has been discriminated against shall consult with an EEO Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or within 90 calendar days of its effective date if a personnel action.

(b) The EEO Counselor shall:

(1) Advise the aggrieved person of the discrimination complaint procedures, of his or her right to representation, including legal counsel, throughout the precomplaint and complaint process, and of the right to anonymity only during the precomplaint process;

(2) Make whatever inquiry he or she believes is necessary;

(3) Make an attempt at informal resolution through discussion with appropriate officials;

(4) Counsel the aggrieved person concerning the issues involved;

(5) Inform the EEO Officer and other appropriate officials when he or she believes corrective action is necessary;

(6) Keep a record of all counseling activities; and

(7) Summarize actions and advice in writing both to the EEO Officer and the aggrieved person concerning the issues arising from the personnel management policy or practice in question.

(c) The EEO Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the EEO Counselor. During the final interview, the EEO Counselor shall inform the aggrieved person in writing that counseling is terminated, that he or she has the right to file a class complaint of discrimination with appropriate officials of the Board, of the time limits for filing a class complaint, of his or her right to representation, including legal counsel, and of his or her duty to assure that the Board is immediately informed if legal representation is obtained.

(d) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint or to encourage the person to file a complaint.

(e) The EEO Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except when authorized to do so in writing by the aggrieved person.

(f) All Board employees and officers shall fully cooperate with EEO Counselors in the performance of their duties under this section. EEO Counselors shall have routine access to personnel records of the Board without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law and the Board's regulations, rules, and instructions.

§ 268.403 Filing and presentation of a class complaint.

(a) The complaint must be submitted in writing by the agent, or his or her authorized representative, and be signed by the agent.

(b) The complaint shall set forth specifically and in detail:

(1) A description of the Board personnel management policy or practice giving rise to the complaint; and

(2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of final interview with an EEO Counselor pursuant to § 268.402(c).

(d) The complaint must be filed with either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint or claim, and review by the Equal Employment Opportunity Commission of a Board decision on a complaint or claim under subpart H, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing, including legal counsel, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is a Board employee in an active duty status, he or she shall have a reasonable amount of official time to prepare and present the complaint. Board employees, including attorneys, who are representing employees of the Board in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is consistent with the faithful performance of their duties.

§ 268.404 Acceptance, rejection or cancellation.

(a) Within 10 calendar days of the Board's receipt of a complaint, the EEO Officer shall forward the complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the the Equal Employment Opportunity Commission with a request for designation of a complaints examiner qualified to conduct the proceeding.

(b) The complaints examiner may recommend that the Board reject the complaint, or a portion thereof, for any of the following reasons:

(1) The complaint was not timely filed;

(2) The complaint consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending before the Board or which has been resolved or decided by the Board;

(3) The complaint is not within the purview of this subpart;

(4) The agent failed to consult an EEO Counselor in a timely manner;

(5) The complaint lacks specificity and detail;

(6) The complaint was not submitted in writing, or was not signed by the agent; or

(7) The complaint does not meet all of the prerequisites set forth in § 268.401(b) of this subpart.

(c) If an allegation is not included in the EEO Counselor's report, the complaints examiner shall afford the agent 15 calendar days to explain whether the matter was discussed with an EEO Counselor and if not, why he or she did not discuss the allegation with an EEO Counselor. If the explanation is not satisfactory, the complaints examiner may recommend that the Board reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation to the Board for further counseling of the agent.

(d) If an allegation lacks specificity an detail, the complaints examiner shall afford the agent 15 calendar days to provide specific and detailed information. The compleints examiner may recommend that the Board reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the complaints examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The complaints examiner may recommend that the Board extend the time limits for filing a complaint and for consulting with an EEO Counselor when the agent, or his or her authorized representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limits.

(f) When appropriate, the complaints examiner may recommend to the Board that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The complaints examiner may recommend that the Board cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the complaints examiner has provided the agent, or his or her authorized representative, a written request, including notice of proposed cancellation, that the agent provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(h) An agent, or his or her authorized representative, must be informed by the complaints examiner in a request under paragraph (c) or (d) of this section that his or her complaint may be rejected if the information is not provided.

(i) The complaints examiner's recommendation to the Board on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the Board and the agent, or his or her authorized representative. The complaints examiner's recommendation to accept, reject, or cancel shall become the Board's decision unless the EEO Programs Officer rejects or modifies the decision within 10 calendar days of its receipt. The EEO Programs Officer shall notify the agent, or his or her authorized representative, and the complaints examiner of this or her decision to accept, reject, or cancel a complaint. The notice of a decision to reject or cancel the class complaint shall inform the agent of his or her right to proceed with an individual complaint of discrimination under Subpart C, that he or she may request that the Board's decision on the complaint be reviewed by the Equal Employment Opportunity Commission pursuant to subpart H, and of his or her right to file a civil action pursuant to § 268.415, and of the time limits applicable thereto.

§ 268.405 Notification and opting out.

(a) After acceptance of a class complaint, the Board, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the Board or organizational segment(s) thereof involved, its location, and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the EEO Programs Officer within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision on or resolution of the complaint.

§ 268.406 Avoidance of delay.

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

§ 268.407 Freedom from restraint, interference, correction, and reprisal.

(a) Agents, claimants, their authorized representatives, witnesses, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, EEO Investigators, EEO Counselors, and other Board officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 268.402 or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Board employee or applicant for employment, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with the provisions of Subpart C of this regulation.

§ 268.408 Obtaining evidence concerning the Complaint.

(a) *General.* (1) Upon the acceptance of a complaint, the EEO Programs Officer shall designate a Board representative. The Board representative shall not be an alleged discriminating official or any individual designated under Subpart B of this regulation.

(2) In representing the Board, the Board representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials or employees of the Board as necessary. In such consultations, the Board representative shall be subject to the provisions of the Board's regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The complaints examiner shall notify the agent, or his or her authorized representative, and the Board representative that a period of not more than 60 calendar days will be allowed for both parties to prepare their cases. This time period may be extended by the complaints examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the complaints examiner renders his or her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the complaints examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the complaints examiner may, at his or her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an investigator trained and/or certified by the Equal Employment Opportunity Commission.

(4) Both parties shall furnish the complaints examiner all materials that they wish the complaints examiner to examine and such other material as the complaints examiner may request.

§ 268.409 Opportunities for resolution of the complaint.

(a) The complaints examiner shall furnish the agent, or his or her authorized representative, and the Board representative with a copy of all materials obtained concerning the complaint and provide an opportunity for the agent, or his or her authorized representative, to discuss these materials with the Board representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the Board and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the Staff Director For Management. A resolution may include a finding on ther issue of discrimination, and award of attorney's fees and/or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law and the Board's regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the Board. A resolution shall bind all members of the class.

(e) If the Board does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his or her authorized representative, or class members, the Board upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the Board to reinstate the complaint may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

§ 268.410 Hearing.

On the expiration of the period allowed for preparation of the case, the complaints examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 268.308 of Subpart C of this regulation.

§ 268.411 Report of findings and recommendations.

(a) The complaints examiner shall transmit to the EEO Programs Officer:

(1) The record of the hearing;

(2) The complaints examiner's findings and analysis with regard to the complaint; and

(3) The complaints examiner's report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The complaints examiner shall notify the agent, or his or her authorized representative, of the date on which the report of findings and recommendations was forwarded to the EEO Programs Officer.

§ 268.412 Board decision.

(a)(1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint.

(2) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 268.411 of this subpart, the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), shall issue a decision to accept, reject, or modify the findings and recommendations of the complaints examiner.

(3) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), shall be in writing and shall be transmitted to the agent, or his or her authorized representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.

(4) When the decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), is to reject or modify the findings and recommendations of the complaints examiner, the decision shall contain the specific reasons in detail for the action.

(b) If the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), has not issued a decision within 30 calendar days of receipt by the Board of the complaints examiner's report of findings and recommendations, those findings and recommendations shall become the final Board decision. The Board shall transmit the final Board decision and the record of the hearing to the agent, or his or her authorized representative, within 5 calendar days of the expiration of the 30-day period.

(c) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c) of Subpart C of this regulation, shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Board shall:

(1) Advise the agent, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt of the decision;

(2) Review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate; and

(2) Record the basis for its decision to take or not to take disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for the award of attorney's fees and/or costs, the amount of these awards shall be determined under § 268.315(c) of Subpart C of this Regulation. When it is determined not to award attorney's fees and/or costs, the decision shall set forth the specific reasons for denying the award.

(e) The decision shall inform the agent, or his or her authorized representative, that on request of the agent the decision under this section may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this Regulation, of his or her right to file a civil action in accordance with § 268.415 of this subpart, and of the time limits applicable thereto.

(f) A final decision on a class complaint shall be binding on all members of the class and Board.

§ 268.413 Notification to class members of decision.

Class members shall be notified by the Board, through the same media employed to give notice of the existence of the class complaint, of the Board decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 calendar days of the transmittal of its decision to the agent.

§ 268.414 Corrective action.

(a) When discrimination is found, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action, including an award of attorney's fees and/or costs to the agent, in accordance with § 268.315 of Subpart C of this Regulation. Corrective action in all cases must be consistent with law and Board regulations, rules, and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination, he or she would have received employment or an employment benefit, the class member may file a written claim with the EEO Programs Officer within 30 calendar days of notification by the Board of its decision.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The EEO Programs Officer shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or in the absence of a postmark, within 60 calendar days after the date it was received by the EEO Programs Officer, with whom claims may be filed. If the EEO Programs Officer and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the EEO Programs Officer shall refer the claim, with recommendations concerning it, to the complaints examiner.

(e) The complaints examiner shall notify the claimant of his or her right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 268.308 of Subpart C of this Regulation. If no hearing is requested, the complaints examiner, in his or her discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The complaints examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 268.411 and 268.412.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not timely filed, the complaints examiner shall recommend rejection of

the claim and give notice of his or her action to the Board, the claimant and the claimant's authorized representative. Such notice shall include advice that the claimant may request review of the claim by the Equal Employment Opportunity Commission pursuant to subpart H and of claimant's right to file a civil action in accordance with the provisions of § 268.415.

§ 268.415 Right to file a civil action for judicial review.

(a) Except as provided in paragraph (c) of this section, an agent who has filed a compliant or a claimant who has filed a claim for relief based on race, color, religion, sex, national origin, or physical or mental handicap, is authorized to file a civil action against the Board in an appropriate United States district court:

(1) Within 30 calendar days of his or her receipt of notice of final action taken by the Board;

(2) After 180 calendar days from the date he or she filed a complaint or claim with the Board if there has been no final decision on the complaint or claim.

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final decision of the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendars days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no finding by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this Part, the decision of the Board shall be final only when the Board makes a determination on all issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 268.315(c) of Subpart C.

(c) An agent who filed a class complaint of discrimination because of age shall file a civil suit within the time limits set forth in § 268.505 of Subpart E of this regulation. An agent who filed a class complaint of denial of equal pay shall file a civil suit within the time limits set forth in § 268.904 of Subpart I of this regulation.

§ 268.416 Notice of right.

When the agent alleges that the Board discriminated against a class on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, or a claimant files for relief, the Board shall notify the agent or claimant in writing of his or her right to file a civil action following any final action on a complaint or claim under this subpart.

§ 268.417 Effect on administrative processing.

The filing of a civil action by an agent or claimant does not terminate Board processing of a complaint or claim or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart E—Nondiscrimination on Account of Age

§ 268.501 Policy statement.

(a) The Board shall not:

(1) Fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges or employment, because of such individual's age, except as permitted by § 268.504;

(2) Limit, segregate, or classify Board employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee or applicant because of such individual's age, except as permitted by § 268.504; or

(3) Reduce the wage rate of any employee in order to comply with this policy.

(b) The Board shall not discriminate against any employee or applicant for employment because such employee or applicant has opposed any practice forbidden under this subpart or because such employee or applicant has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or litigation under this subpart.

(c) The Board shall not print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification, or discrimination, based on age, except as permitted by § 268.504.

§ 268.502 Processing of complaints.

All individual and class complaints of discrimination on the basis of age shall be filed and processed pursuant to Subparts C and D, respectively, except that civil actions shall be filed pursuant to § 268.505 of this subpart and except that § 268.315(c) providing for award of attorney's fees and/or costs shall not apply to complaints of discrimination under this subpart. A complaint may also be filed by an organization for a complainant with his or her consent.

§ 268.503 Coverage.

A person filing a complaint of discrimination on the basis of age must have been at least 40 years of age at the time the alleged discrimination occurred.

§ 268.504 Exceptions.

The Board may adopt such reasonable exemptions to the provisions of this subpart as have been established by the Equal Employment Opportunity Commission pursuant to 29 CFR 1613.501(c).

§ 268.505 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of the matter causing the complainant, agent, or claimant to believe he or she has been discriminated against because of age.

§ 268.506 Effect on administrative procedure.

The filing of a civil action by an employee does not terminate Board processing of a complaint under this subpart or Equal Employment Opportunity Commission review of any such complaint pursuant to Subpart H.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

§ 268.601 Definitions.

(a) "Handicapped person" is defined for the purposes of this subpart as one who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) "Major life activities" means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) "Has a record of such an impairment" means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having such an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or

(3) Has none of the impairments defined in paragraph (b) of this section but is treated by an employer as having such an impairment.

(f) "Qualified handicapped person" is defined for the purposes of this subpart to mean, with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others, and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

(g) "Facility" is defined for the purposes of this subpart to mean all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

§ 268.602 General policy.

The Board gives full consideration to hiring, placement, and advancement of qualified physically or mentally handicapped persons. The Board shall be a model employer of handicapped individuals. The Board shall not discriminate against qualified physically or mentally handicapped persons.

§ 268.603 Reasonable accommodation.

(a) The Board shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee or applicant for employment unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its programs.

(b) Reasonable accommodation may include, but shall not be limited to:

(1) Making facilities readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions; and

(3) Reassignment to another job position, if practicable.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operations of the Board, factors to be considered include:

(1) The overall size of the Board's program with respect to the number of employees, number and type of facilities, and size of budget;

(2) The type of Board operation including the composition and structure of the Board's work force; and

(3) The nature and the cost of the accommodation.

§ 268.604 Employment criteria.

(a) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the Board, is job-related for the position in question; and

(2) There are not available alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons.

(b) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question, rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 268.605 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, the Board shall not conduct any preemployment medical examination and shall not make preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. The Board may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question (i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question).

(b) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted coincident to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(c) To enable and evaluate affirmative action to hire, place, or advance handicapped individuals, the Board may invite employees and applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) Any written questionnaire used for this purpose, and any employee requesting such information, shall state clearly that the information requested is intended for use solely in conjunction with affirmative action; and

(2) Any such written questionnaire or employee requesting such information shall state clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the employee or applicant for employment to any adverse treatment, and that it will be used only in accordance with this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant for employment shall be kept confidential except that:

(1) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the employee or applicant for employment is a handicapped individual eligible for affirmative action;

(2) Supervisors and managers may be informed regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(4) Government officials investigating compliance with laws, regulations, and instructions relevant to equal opportunity and affirmative action for handicapped individuals shall be provided information upon request; and

(5) Statistics generated from information obtained may be used to manage, evaluate, and report on equal opportunity and affirmative action programs.

§ 268.606 Physical access to buildings.

The Board shall not discriminate against qualified handicapped employees or applicants for employment due to the inaccessibility of its facilities.

§ 268.607 Processing complaints.

All individual complaints of discrimination on the basis of handicap shall be processed under Subpart C. All class complaints of discrimination on the basis of handicap shall be processed under Subpart D.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart is to prohibit discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Application.* This subpart applies to all programs and activities conducted by the Board. Such programs and activities include:

(1) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, D.C.;

(2) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(3) Making available the Board's library facilities; and

(4) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

This subpart does not apply to Federal Reserve banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

(a) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunication devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(b) "Complete complaint" means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory actions in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(d) "Handicapped person" means any person who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(e) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(f) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(g) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(h) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (h)(1) of this section but is treated by the Board as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can determine on the basis of a written record would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

§ 268.703 Self evaluation.

(a) The Board shall, within one year of the effective date of this section, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this subpart, and, to the extent modifications of any such policies and practices are required, the Board shall proceed to make the necessary modifications.

(b) The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Board shall, for three years from the effective date of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 268.704 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make such information available to them in such manner as the Board finds necessary to appraise such persons of the protections against discrimination assured them by this subpart.

§ 268.705 Prohibition against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to handicapped persons.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Board Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Board Order to a different class of handicapped persons is not prohibited by this subpart.

(d) The Board shall administer programs activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 268.706 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of Subpart F of this regulation shall apply to discrimination in employment under this subpart.

§ 268.707 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.708, no qualified handicapped person shall, because the Board's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.708 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the Board to take any action that it can determine, based on a written record, would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing that compliance with paragraph (a) of this section would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to handicapped persons, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock,

or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board gives priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section with which it is not presently complying within sixty days of the effective date of this section except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this section, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Board shall develop, within six months of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes. The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the Board's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the modifications that will make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 268.709 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons.

§ 268.710 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the handicapped person.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signs at a primary entrance to any inaccessible facility, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing compliance with this section would result in such alterations or burdens. The determination that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 268.711 Compliance procedures.

(a) *Applicability.* Notwithstanding any other provision of this Regulation, this section, except as provided in paragraph (b) of this section, rather than Subparts C and D of this Regulation shall apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Employment Complaints.* The Board shall process complaints alleging discrimination in employment on the basis of handicap in accordance with § 268.607.

(c) *Responsible Official.* The EEO Programs Officer shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Officer.

(2) *Confidentiality.* The EEO Programs Officer shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When To file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Officer may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph, a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, or the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. Complaints should be sent to the EEO Programs Officer, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, D.C. 20551. If any Board official other than the EEO Programs Officer receives

a complaint, he or she shall forward the complaint to the EEO Programs Officer.

(e) *Acceptance of complaint.* (1) The EEO Programs Officer shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Officer shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Officer receives a complaint that is not complete, he or she shall notify the complainant, within 30 calendar days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Officer shall dismiss the complaint without prejudice.

(3) If the EEO Programs Officer receives a complaint over which the Board does not have jurisdiction, the EEO Programs Officer shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 calendar days of the receipt of a complete complant, the EEO Programs Officer shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Officer shall forward the investigative report to the Staff Director For Management.

(2) The EEO Programs Officer may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Officer to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Officer shall furnish the complainant with a copy of the investigative report promptly after receiving it from the investigator and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached, the EEO Programs Officer shall transmit the complaint file to the Staff Director For Management. The Staff Director For Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Officer, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of right of the complainant to appeal the Letter of Findings to the Board of Governors or the Administrative Governor for a decision under paragraph (k) of this section; and

(4) A notice of right of the complainant to request a hearing.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Officer within 30 days of receipt from the Staff Director For Management of the Letter of Findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Officer shall transmit the notice of appeal and investigative record to the Board of Governors or the Administrative Governor, whichever is the decision maker under paragraph (k) of this section.

(3) If the complainant does not file a notice of appeal within the time prescribed in paragraph (h)(1) of this section, the EEO Programs Officer shall certify that the Letter of Findings is the final Board decision on the complaint at the expiration of that time.

(i) *Acceptance of appeal.* The EEO Programs Officer shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Officer that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the EEO Programs Officer.

(j) *Hearing.* (1) Upon a timely request for a hearing, the EEO Programs Officer shall request that the Board of Governors appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 calendar days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedures Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and pehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her, and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart or by the provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testmony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees on the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the

employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the EEO Programs Officer within 30 calendar days, after the receipt of the hearing transcripts, or within 30 calendar days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Officer.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the recommended decision with the EEO Programs Officer. Thereafter, each party will have ten calendar days to file reply exceptions with the EEO Programs Officer.

(k) *Decision.* (1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this paragraph. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 calendar days of the receipt by the EEO Programs Officer of the notice of appeal and investigative record pursuant to paragraph (h)(2) of this section or 60 calendar days following the end of the period for filing reply exceptions set forth in paragraph (j)(7) of this section, whichever is applicable. If the decision maker under this paragraph determines that additional information is needed from any party, the decision maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision maker shall have 60 calendar days from receipt of the additional information to render the decision on the appeal. The decision maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision maker Governor may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

Subpart H—Review by the Equal Employment Opportunity Commission

§ 268.801 Entitlement.

(a) A complainant, agent, or claimant may request the Equal Employment Opportunity Commission to review any final decision of the Board under §§ 268.305(b), 268.307(b), 268.310, 268.311, 268.404, 268.409(e), 268.412, and 268.414.

(b) A complainant, agent, or claimant may not request review by the Equal Opportunity Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other request for review by the Equal Employment Opportunity Commission filed by the same complainant, agent, or claimant.

§ 268.802 Filing of the request for review.

The complainant, agent, or claimant shall file his or her request for review in writing, either personally or by mail, simultaneously with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, and with the Board's EEO Programs Officer.

§ 268.803 Time limits.

(a) Except as provided in paragraph (b) of this section, a complainant, agent, or claimant may file a request for review at any time up to 20 calendar days after receipt of the Board's notice of final decision on the complaint or claim, except that the deadline shall be 15 calendar days in connection with any class complaint or claim. A request for review shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by the Equal Employment Opportunity Commission. Any statement or brief in support of the request for review must be submitted to the Equal Employment Opportunity Commission and to the Board within 30 calendar days of filing the request for review. For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint or claim, including whether or not to award attorney's fees and/or costs. If a decision to award attorney's fees and/or costs is made, the decision shall not be final until the procedure is followed for determining the amount of such award as set forth in § 268.315(c) of Subpart C.

(b) The time limits within which a request for review must be filed will not be extended unless, based upon a written statement by the complainant, agent, or claimant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a request for review within the prescribed time limits, the Equal Employment Opportunity Commission determines that the time limit should be extended.

§ 268.804 Procedures.

The Office of Review and Appeals of the Equal Employment Opportunity Commission shall review the complaint or claim file and all relevant written representations made to the Commission. The Office may return a complaint to the Board with a request for further investigation or a hearing if it considers such action necessary. There is no right to a hearing before the Office of Review and Appeals. The Office of a Review and Appeals shall issue a written finding setting forth its reasons for its findings and shall transmit such findings for consideration by the Board. The Office of Review and Appeals shall also issue copies of its findings to the complainant, agent or claimant.

§ 268.805 Review and consideration.

(a) The Commissioners may, in their discretion, reopen and reconsider any

findings of the Office of Review and Appeals when the Board or the complainant, agent, or claimant requesting reopening or reconsideration submits written argument or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the previous finding was issued;

(2) The previous finding involves an erroneous interpretation of law or regulation or misapplication of established policy; or

(3) The previous finding is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) If the Commissioners, in their discretion, reopen and reconsider any previous findings of the Office of Review and Appeals, the Commissioners shall transmit their findings for consideration by the Board. The Commissioners shall also issue copies of their findings to the complainant, agent or claimant.

Subpart I—Equal Pay

§ 268.901 General prohibition of discrimination.

The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

(a) A seniority system;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) A differential based on any factor other than sex or otherwise not prohibited by this regulation.

§ 268.902 Record keeping.

(a) The Board shall preserve any records which are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merits systems, seniority systems, descriptions of practices, or other matters which described or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to determination of whether such differential is based on a factor other than sex.

(b) Such records are to be kept for at least six years.

§ 268.903 Procedure.

(a) Wages withheld in violation of this subpart have the status of unpaid minimum wage or unpaid overtime compensation.

(b) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under Subpart C of this regulation, if a complaint of individual discrimination, or Subpart D of this regulation, if a class action, except that civil actions shall be filed pursuant to § 268.904 of this subpart.

§ 268.904 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of matter causing the complainant, agent, or claimant to believe he or she has been denied equal pay.

Board of Governors of the Federal Reserve System, April 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10620 Filed 5-1-85; 8:45 am]

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May 2, 1985

Part III

Federal Emergency Management Agency

48 CFR Ch. 44

Acquisition Regulations; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

48 CFR Ch. 44

FEMA Acquisition Regulation

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will amend the Federal Emergency Management Agency Acquisition Regulation (FEMAAR). The revisions are intended to update the FEMAAR as a result of the Competition in Contracting Act of 1984, Pub. L. 98–369, of changes in the Federal Acquisition Regulations (FAR), and to more fully comply with the directive of FAR to exclude matters from agency regulations which are covered in FAR. A detailed listing of the proposed changes is given below under the section entitled **SUPPLEMENTARY INFORMATION.** Due to the above made changes, the FEMAAR, as amended, is printed in full text.

DATE: Written comments are due not later than June 3, 1985.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Joseph A. Pegnato, Chief, Policy and Evaluation Division, Office of Acquisition Management, Federal Emergency Management Agency, 500 C Street SW, Washington, D.C. 20472. Telephone (202) 646–3743.

SUPPLEMENTARY INFORMATION:

Background

Since the initial issuance of the Federal Acquisition Regulation (FAR), six Federal Acquisition Circulars (FAC) have been issued. Due to regulatory and statutory changes, as implemented in FAC–1 through FAC–6, and upon further agency review of the interim FEMAAR as published in 49 FR 12646, March 29, 1984, it is proposed that the FEMAAR be amended as set forth below. The changes that have been made in the material brought forward from the interim FEMAAR can be categorized correctly as required by statute and regulation, editorial, made in the interest clarity, brevity, and consistency. Other portions of the interim FEMAAR have been made unnecessary by material written into the FAR and by incorporation into agency internal procedures. As a consequence, the public comment period has been limited to thirty days.

The parts affected by the proposed revision are as follows: Table of Content changes. Section 4401.601 General, changed. Subpart 4401.7 Determinations and Findings, new subpart. Section 4401.707–70, new section. Section 4402.100, Definitions, changed. Section 4405.206, Synopsis of subcontract opportunities, changed. Section 4405.502 Authority, changed. Subchapter B—Competition and Acquisition Planning, title change. Part 4406 Competition Requirements, new part. Subpart 4406.5 Competition Advocate, new subpart. Section 4406.501 Requirement, new section. Section 4409.406–3 Procedures, changed. Section 4409.407–3 Procedures, changed. Part 4414—Sealed Bidding, title change. Subpart 4414.2—Solicitation of Bids, subpart deleted. Section 4414.407 Award, section deleted. Section 4414.407–8 protests against award, section deleted. Subpart 4415.1—General Requirements for Negotiation, subpart deleted. Subpart 4415.3 Determinations and Findings to Justify Negotiation, subpart deleted. Section 4415.406–5 Part IV—Representations and Instruction, deleted. Section 4415.413–72 Disposition of unsuccessful proposals, changed. Subpart 4415.6—Source Selection, subpart deleted. Section 4415.1003 Negotiated procurement protests, deleted. Part 4417—Special Contracting Methods, Part added. Subpart 4417.70 General, subpart added. Section 4417.7001 Preference for local contractors, section moved and changed from 4415.105–70, which was deleted. Section 4452.215–70 Preference for local contractors in Presidentially declared major disasters and emergencies, renumbered to be 4452.217–70.

In addition to the information collections in the FAR which have been approved by the Office of Management and Budget, FEMA information collection requirements under Part 4452 have been approved by OMB under Control Numbers 3067.0016 and 3067–0018.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this proposed rule must remember that lack of coverage of a particular topic in the proposed FEMAAR, as amended, means that the Agency accepts the FAR coverage of the topic without need for further regulatory implementation.

Procedural Requirements

Review Under Executive Order 12291

Procurement rules are normally exempt from review under Executive Order 12291, entitled "Federal Regulation," based on a determination that they generally relate only to the management of an agency function and do not have any major economic impact. The Office of Management and Budget (OMB), has decided, however, that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98–369, warrant review. Accordingly, this proposed rule has been submitted for review in accordance with Executive Order 12291 and OMB Circular 85–6.

Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. FEMA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

National Environmental Policy Act

As this rule deals with administrative matters, it is categorically excluded from FEMA regulation 44 CFR Part 10 providing for preparation of environmental documents.

List of Subjects in 48 CFR Ch. 44

Government procurement.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is proposed to be amended by revising Ch. 44 as set forth below:

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

Authority: 40 U.S.C. 486(c): Reorganization Plan No. 3 of 1978.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acquisition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104-1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the **Federal Register** and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as Chapter 44 of Title 48, CFR.

4401.104-3 Copies.

Copies of the FEMAAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued through internal FEMA issuances such as manuals, standard operating procedures, directives or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of contracting activities and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority. The Director, Office of Acquisition Management, shall exercise the authority delegated under 44 CFR 2.67 FEMA Organization, Functions and Delegations.

4401.603 Selection, appointment, and termination of appointment.

4401.603-2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603-3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the

appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority and its responsibilities and limitations.

Subpart 4401.7—Determinations and Findings

4401.707-70 Signature authority.

The head of the contracting activity shall sign all class Determination and Findings (D&F's) not otherwise reserved to the agency head.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7001-1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001-2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluative character) of the performance of Government program, projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002-1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or anything else of value to a recipient to accomplish a public purpose. The support of stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7002-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Example of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument when the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision of the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned:

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the asssisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

Subpart 4402.1-Definitions

4402.100 Definitions.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Director" means the Director of the Federal Emergency Management Agency.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

"Memorandum of Understanding" means an agreement between two or more agenices, bureaus, or departments of the Federal Government or other entity. Funds are not transferred between the parties.

"Program office" means any office which generates requests for procurement action.

"Project officer" means the program office representative cognizant over the technical aspects of a given procurement action.

(40 U.S.C 486(c); Reorganization Plan No. 3 of 1978.)

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Subpart 4403.2—Contractor Gratuities to Govenment Personnel

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4403.1—Safeguards

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR Part 3, Subpart B.

4403.101-3 Agency regulations.

FEMA "Standards of Conduct" are published in 44 CFR Part 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103-2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103-2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported to the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

PART 4405—PUBLICIZING CONTRACT ACTIONS

Subpart 4405.2—Synopsis of Proposed Contracts

Subpart 4405.5—Paid Advertisements

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4405.001 Policy.

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding the small purchase threshold.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.72(e) authority to approve publication of paid advertisements in newspapers has been delegated to the Director, Office of Administrative Support.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 4406—COMPETITION REQUIREMENTS

Subpart 4406.5—Competition Advocate

4406.501 Requirement

The Chief, Policy and Planning Division, Office of Acquisition Management is designated FEMA's Competition Advocate.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority before contracting for printing.

(40 U.S.C. 486(c); Reorgaaization Plan No. 3 of 1978)

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406-1 General.

The Executive Administrator shall be the debarring official.

4409.406-3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406-2 shall be made by the Executive

Administrator. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, via the Office of General Counsel, to the Executive Administrator for appropriate action. The documented file of the case will be included in the submission.

(b) If the Executive Administrator concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Executive Administrator or designee.

(c) The Executive Administrator or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

4409.407 Suspension.

4409.407-1 General.

The Executive Administrator shall be the suspending official.

4409.407-3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, via the Office of General Counsel, to the Executive Administrator. The Executive Administrator shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders of ACM orders shall be sent to the Department of Commerce through the head of the contracting activity.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—SEALED BIDDING

Subpart 4414.4—Opening of Bids and Award of Contract

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

Subpart 4415.5—Unsolicited Proposals

Subpart 4415.8—Price Negotiation

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.413 Disclosure and use of information before award.

4415.413-2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413-70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413-71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows: Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of

the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413-72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed as soon as practicable after contract award. The one remaining copy of each shall be retained in the official contract file. At the end of six months it may be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.502 Policy.

4415.502-70 Cost sharing.

FEMA's Appropriation Act requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file.

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to:

Federal Emergency Management Agency, Office of Acquisition Management, Policy and Evaluation Division, 500 C Street SW, Room 728, Washington, D.C. 20472.

(b) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

4415.506-1 Receipt and initial review.

The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

PART 4416—TYPES OF CONTRACTS

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basic guidelines governing cost-sharing contracts.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessarily in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.502-70.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fees on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216-70.

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.

4416.603-3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that no other contract type is suitable.

PART 4417—SPECIAL CONTRACTING METHODS

Subpart 4417.70—General

4417.7001 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitive solicitations under a Presidentially declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the **Federal Register** by the Associate Director, State and Local Programs and Support, or his designee. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93-288(k), the provisions set forth in 4452.217-70 shall be included in each competitive solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.217-70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) above, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.)

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR Part 5.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 4429—TAXES

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, within FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation or intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information.

The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4432—CONTRACT FINANCING

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsiblity and authority to make findings and determinations and to approve or disapprove contract terms.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502-70.

(40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978)

Subpart 4436.6—Architect-Engineer Services

4436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

4436.602-4 Selection authority.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities

for acquisitions of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

PART 4450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

Authority: 50 U.S.C. 1431–1435; E.O. 10789; E.O. 12148.

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

4450.201 Delegation of authority.

All authority granted by 48 CFR 50.101 may be exercised by the Director of the Federal Emergency Management Agency. Such authority to approve, authorize, and direct appropriate action under this part and to make all appropriate determinations and findings which do not obligate the United States in excess of $50,000 are delegated to the Director, Office of Acquisition Management. Such authority to approve, authorize, and direct appropriate action under this part and to make all appropriate determinations and findings which may obligate the United States in excess of $50,000 are delegated to the FEMA Contract Adjustment Board. The limitations contained in 48 CFR 50.201 and 50.202 apply.

4450.202 Contract adjustment boards.

As cases arise under the Act, the Director of FEMA may appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff member, not otherwise involved with the action under consideration, from each of the following offices:

(a) Acquisition Management, who shall act as Chairperson

(b) General Counsel

(c) Comptroller.

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4452.2—Texts of Provisions and Clauses.

4452.217–70 Preference for Local Contractors in Presidentially Declared Major Disasters or Emergencies.

Pursuant to the provisions of Pub. L. 93–288 and 4415.105–71, the following provisions shall be included in each competitive solicitation for on-site disaster relief response:

Preference for Local Contractors (APR 1984)

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local offeror shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within 130 percent requirement or the supply of such local offerors is exhausted and award made to the lowest non-local offeror.

(End of Clause)

4452.227–70 Reproduction of reports.

Include the following clause in the contract when the product is a report, data or other written material.

Reproduction of Reports (April 1984)

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½ x 11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of Clause)

4452.227–71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal reporting services (April 1984)

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C. Chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the Contracting Officer.

(End of Clause)

4452.227–72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product.

Publication (April 1984)

(a) *Definition.* For the purpose of this clause "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or other such means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be

published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*

(1) Publication in whole or in part of contractor's reports furnished the Government. Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions and the conditions in paragraph (e)(4) and paragraph (f).

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder. The contractor or technical personnel may issue a publication concerning or based in whole or in part on the results of the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

(3) General conditions if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance. If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) Copies of contractor and technical personnel publications to be furnished the Government. The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the results of the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study thereunder.

(End of Clause)

§ 4452.239-70 Rights in Technical Data and Computer Software.

The following clause shall be used whenever technical data or computer software is involved, unless unlimited data rights are being procured.

Rights in Data (April 1984)

(a) *Definitions.* (1) Technical data means recorded information regardless of form or characteristic of a scientific or technical nature. It may for example document research, experimental, developmental or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Example of technical data include research and engineering data, engineering drawings and associated lists, specifications standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. Technical data does not include computer software or financial, administrative, cost or pricing, and management data or other information incidential to contract administration.

(2) Computer means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example: a device that operates on discrete data by performing arithmetic and logic process on these data, or a device that operates on analog data by performing physical processes on the data.

(3) Computer software means computer programs and computer data bases.

(4) Computer program means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysts programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) Computer data base means a collection of data in a form capable of being processed and operated on by a computer.

(6) Computer software documentation means technical data including computer listings and printouts in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) Unlimited rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) Limited rights means rights to use, duplicate, or disclose technical data in whole or in part, by order for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufactuer or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government except for: (i) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release of disclosure, or (ii) release to a foreign government as the interest of the United States may require, only for such information or evaluation within such Government or for emergency repair or overhaul work by or for

such Government under the conditions of (i) above.

(9) Restricted rights apply only to computer software and include, as a minimum, the right to: (i) Use computer software with the computer for which or with which it was acquired including use at any Government installation to which the computer may be transferred by the Government, (ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative, (iii) copy computer programs for safekeeping (archives) or backup purposes, (iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights, and (v) treat computer software bearing a copyright notice as a published copyrighted work, and in addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government right.*—(1) *Unlimited rights.* The Government shall have unlimited rights in: (i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract, (ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract, (iii) computer data bases, prepared under Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain, (iv) technical data necessary to enable manufacture of end items, components, and modifications, or to enable the performance of processes, when the items, components, modifications, or processes have been, or are being developed under this or any other Government contract or subcontract in which experimental, developmental, or research work is or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below), (v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software, (vi) technical data pertaining to end items, components, or processes, prepared or required to be delivered under this or any other Government contract or subcontract for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit, and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.), (vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes, (viii) technical data or computer software which is in the public domain, or has been or is normally furnished without restriction by the contractor or subcontractor, and (ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined on the basis or subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited rights.* The Government shall have limited rights in: (i) Technical data listed or described in an agreement incorporated into the schedule of this contract which the parties have agreed will be furnished with limited rights and, (ii) technical data pertaining to items, components, or processes developed at private expense, and computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (viii) and (ix); provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), that the piece of data is marked with the legend below in which is inserted:

(A) The number of the contract under which the technical data is to be delivered,

(B) The name of the contractor and any subcontractor by whom the technical data was generated, and

(C) An explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. ——————————

Contractor ——————————

Explanation of Limited Rights

Identification Method Used ——————

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above contractor, be either (a) used, released, or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government except for (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure; or (ii) release to a foreign government as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted rights.* The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which parties have agreed will be furnished with restricted rights provided however notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (v). Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend: RESTRICTED RIGHTS LEGEND

USE, DUPLICATION, OR DISCLOSURE IS SUBJECT TO RESTRICTIONS STATED IN

Contract No. ——————————

With ——————————

(Name of Contractor)

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Material covered by copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all technical data, except computer software documentation bearing a copyright notice and furnished in support of restricted rights computer software, and unlimited rights computer software prepared or required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyright matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the contractor with respect to any technical data or computer software delivered hereunder.

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical

data or computer software furnished hereunder if:

(1) The contractor fails to respond within 60 days to a written inquiry by the Government concerning the propriety of the markings, or

(2) The contractor's response fails to substantiate within 60 days after written notice, the propriety of limited rights, markings by clear and convincing evidence or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

(e) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(g) *Acquisition of data and computer software from subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract without alteration and no other clause shall be used to enlarge or diminish the Government's or the contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire technical data or computer software from their subcontractors for themselves.

(End of Clause)

4452.239-71 Rights in Technical Data—Specific Acquisition.

Use the following clause when unlimited data rights are being procured:

Rights in Data—Specific Acquisition (APR 1984)

(a) *Definition.* Technical data means recorded information regardless of form or characteristic of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost or pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others do so, all or any part of the technical data delivered by the contractor to the Government under this contract.

(c) *Material Covered by Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all technical data required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail, each notice or claim of copyright infringement received by the contractor with respect to any technical data delivered hereunder.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(End of Clause)

Louis O. Giuffrida,

Director.

[FR Doc. 85-10509 Filed 5-1-85; 8:45 am]

BILLING CODE 6718-01-M

federal register

Thursday
May 2, 1985

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulations 342 and 343]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulations 342 and 343 establish the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the periods May 3–May 9, 1985, and May 10–May 16, 1985, respectively. These regulations are needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 342 (§ 908.642) becomes effective May 3, 1985, and Regulation 343 (§ 908.643) becomes effective May 10, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

These regulations are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The regulations are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulations are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on March 26, 1985. The committee met again publicly on April 23, and April 30, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges is slightly improving.

A digest of the VOAC's 1984–85 marketing policy was published in the March 29, 1985, **Federal Register** (50 FR 12515). Interested persons were afforded opportunity to submit written suggestions, views or pertinent information relating to such policy. About 80 comments were received. These comments were considered by the Department of Agriculture (USDA) in connection with the approval of the marketing policy for this program.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.642 is added to read as follows:

§ 908.642 Valencia Orange Regulation 342.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 3, 1985 through May 9, 1985, are established as follows:

(a) District 1: 228,000 cartons;
(b) District 2: 372,000 cartons;
(c) District 3: Unlimited cartons.

3. Section 908.643 is added to read as follows:

§ 908.643 Valencia Orange Regulation 343.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 10, 1985, through May 16, 1985, are established as follows:

(a) District 1: 228,000 cartons;
(b) District 2: 420,000 cartons;
(c) District 3: Unlimited cartons.

Dated: May 1, 1985.

Thomas R. Clark,
Acting Director, Fruit and Vegetable Division, Agriculture Marketing Service.

[FR Doc. 85–10894 Filed 5–1–85; 11:55 am]

BILLING CODE 3410-02-M

federal register

Thursday
May 2, 1985

Part V

Federal Communications Commission

47 CFR Part 73

Changes in AM Technical Rules To Reflect New International Agreements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-752; FCC 85-150]

Changes in the AM Technical Rules To Reflect New International Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends various sections of the Commission's AM technical rules to reflect the provisions of new international agreements which have been or are being negotiated. This action will make it possible for class III stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands to operate with greater power and for stations throughout the United States to have greater flexibility in the choice of operating powers.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Olson, Mass Media Bureau (202) 632-6955.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

In the matter of changes in AM technical rules to reflect new international agreements; MM Docket No. 84-752.

Adopted: March 28, 1985.
Released: April 24, 1985.

By the Commission: Commissioner Rivera issuing a statement at a later date.

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding and the responses to it filed by various broadcast licensees, organizations and consultants.[1]

2. The primary purpose of this proceeding is to consider appropriate revisions of the Commission's AM technical rules to reflect new international agreements already completed (or which are being negotiated).[2] As pointed out in the *Notice*, many AM rules were developed years ago, based on the international agreements then in effect. FCC rules and international agreements are inexorably linked in many areas, particularly with regard to the technical matters, due to the long range propagation characteristics associated with the AM broadcasting band and the attendant need for extensive international coordination.

3. The changes proposed in this proceeding fall into two major categories. The first consists of proposed changes which would substantially affect standards, definitions or approaches relating to AM allocations matters, such as the establishment of intermediate transmitting powers and the power levels to be used by stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands. The second category consists of lesser changes such as the conversion of propagation curves from English units to metric units.

4. *Nominal Transmitting Power.* The first major issue is that raised by our proposal to eliminate the long standing requirement that the nominal power of stations be licensed in discrete steps. We proposed allowing the use of intermediate powers, as this requirement has tended to restrict coverage and limit a station's flexibility in achieving the most economical antenna design for its particular circumstances. The proposed rule would permit any nominal power to be specified, provided that it falls within the range of permitted powers for that class of station.

5. In addition to this substantive change, we sought comments on the procedural approach regarding applications to be filed for increased power. In this regard we inquired whether there was support for a change in the current categorization of any power increase as a major change. We also asked whether we should establish a minimum threshold for the filing of applications for power increases. These latter considerations are important given the potential administrative impact upon the Commission from the large number of applications that this rule change could engender.

6. There was general support for the proposal to eliminate the requirement to specify power in discrete steps, and nearly all commenting parties recognized the Commission's need to balance the proposed rule's benefits against the potential administrative impact that could result. However, with respect to the establishment of a minimum threshold for the filing of applications for power increases and a change in the definition of major and minor changes, there were quite divergent opinions expressed. Recommendations pertaining to a minimum threshold for the filing of applications for power increases varied from no threshold to an increase of 50% of a station's current authorized power. Although several parties have suggested that some power increases could be treated as minor changes, implementation of such an approach would produce difficulties in processing the applications to be filed. As a result, we have concluded that we should continue to categorize all power increases as major changes.

7. Based on the comments and our own experience, we have concluded that it is appropriate to eliminate the requirement that nominal power be specified only in discrete steps. As a result, stations will be able to utilize the maximum power consistent with applicable interference limitations. It is our view that no useful purpose would be served if we were to continue to limit power to arbitrary steps.

8. The definitions of nominal power in § 73.14 of the rules is being expanded to reflect the new usage to be applied to the term. As a result, nominal power will now have two meanings. For licenses granted or for applications on file as of June 3, 1985, the meaning would remain the same as previously. However, for applications filed after June 3, 1985, reference to discrete steps would no longer be applicable, and nominal power would be equal to antenna input power less any power loss through a dissipative network and for directional antennas, without consideration of adjustments specified in paragraphs (b)(1) and (b)(2) of § 73.51 of the rules.

9. Although the specified nominal power should normally fall between the minimum and maximum power levels for each class of station, nominal power below the minimum for the station class will be permitted provided that the effective field produced by the station's antenna system is no less than that which would result from minimum power and minimum antenna efficiency for the station class. For example, a class III-B station would be permitted to specify a nominal power of only 400 watts (minimum power for class is 500 watts) as long as the efficiency of the antenna system is sufficient to produce an effective field of at least 123.7 mV/m at one mile (199.1 mV/m at one kilometer)—see § 73.189(b)(2)(ii).

10. Although there is clear merit to the new approach, it cannot be implemented without taking appropriate steps to minimize its impact upon Commission resources. First, a threshold for the filing of applications for power increases is needed to avoid the filing of applications that do not provide significant improvement in coverage.

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[1] Fourteen comments and two reply comments were filed; see appendix B.

[2] The Final Acts of the Regional Administrative AM Broadcasting Conference (Rio de Janiero, 1981); the Bilateral AM Broadcasting Agreement between the United States and Canada, signed in 1984, and the bilateral agreement between the United States and Mexico now under negotiation.

Also, we believe it appropriate to focus first on the applications offering the greatest benefits. With this in mind we examined the benefits which could be expected from various levels of power increases. This study indicated that provision should not be made for increases of less than 20% as they offer little public benefit. This is because they typically would yield less than a 9.5% increase in radiation and less than a 5% extension of the station's signal. Conversely, important gains can come from an increase of 50% or more which would bring at least a 22% gain in radiation and at least a 10% extension of the station's signal. We believe it is appropriate to focus first on this latter group of applications.

11. Thus, for a period of three years after adoption of the rule, applications to increase power must specify an increase of 50% or greater. An exception is being provided for applications in conflict with power increase applications on "cut-off" lists. In such cases, the application need only specify a 20% increase. After three years, other applications specifying a power increase of 20% or more will be accepted for filing. Those proposing less than a 20% increase would continue to be unacceptable for filing. Applications involving a change in site will not be subject to either of these limitations, as these applications require a full new study and thus become equivalent to the authorization of a new station. It would serve no purpose to exclude an otherwise possible power increase, however small, as part of this new authorization.

12. We believe that this procedure will spread applications out over a longer period of time and will limit the process to applications which can bring a meaningful improvement of service to the public. The 20% threshold will, in the long run, we believe, be sufficient to control the filing of applications of a "trivial" nature.

13. The Commission also proposed to establish a system for rounding off authorized operating power in a manner similar to that currently being used in the FM service (§ 73.212). El Mundo Broadcasting Corporation supported this change and suggested that transmitter powers be rounded to two significant figures as follows:

Nominal power (kW)	Rounded to nearest figure (kW)
0 25 to 0 99	0 01
1 to 9 9	0.1
10 to 50	1

We believe that these are reasonable values to which rounding should be performed, and we are adopting them. Once the new rules become effective, applicants will be required to round off the nominal powers being specified and to adjust the station RMS likewise. If rounding upward to the nearest figure would result in objectionable interference, the applicant must then round downward to the next nearest figure and adjust the RMS accordingly.

14. *Alaska, Hawaii, Puerto Rico and the Virgin Islands.* The second proposal of a substantial nature involves special relief for Puerto Rico and the Virgin Islands. In the *Notice* we specifically proposed to allow Class III stations in Puerto Rico and the Virgin Islands to increase power above the current 5 kW limit and asked whether stations in Alaska and Hawaii also should be included in such a change. Unlike areas in the conterminous U.S., use of higher power in these locations would not effectively limit otherwise possible opportunities for additional stations on the channel.

15. The responses expressed general agreement with our proposal and also supported treating Hawaii and Alaska in a similar fashion in recognition of their distance from the U.S. mainland. There was also support for treating Class IV stations in a similar manner. Here, too, it was not thought that the higher power would have a preclusive effect. One concern, however, was raised. Because of adjacent channel effects, there was doubt concerning whether Class IV stations should be permitted a maximum power of 50 kW.

16. We agree that higher power can offer significant benefits to these stations. It can enable them to extend their coverage generally, and even more importantly, it can help stations in Puerto Rico and the U.S. Virgin Islands overcome the serious interference to which they are now subjected from other countries. Therefore, we are amending the rules in order to permit a maximum power of 50 kW to be used by Class III stations in Puerto Rico, Virgin Islands, Alaska, and Hawaii. It must be emphasized, however, that any station that chooses to increase the power of its facility must fully comply with all interference protection requirements under both international agreements and FCC rules.

17. Several parties suggested increasing the maximum power ceiling for Class III stations within the conterminous United States. This suggestion, however, is outside of the scope of the instant proceeding. Nevertheless, note has been taken of it for possible consideration in future Notice that will be issued to explore further other implementation issues.

18. With regard to the matter of higher power for Class IV stations on the six Local Channels in Puerto Rico, Virgin Islands, Alaska, and Hawaii, no decision is being made at this time. While we believe that there is merit to giving further consideration to such a proposal, we also believe that additional study is required. Among other things, implementation questions arise concerning the technical allocations procedures for the Class IV service. It is our intention to explore this issue in greater detail in a future notice in this proceeding.

19. Although we are adopting rules raising the maximum power ceiling for Class III stations, it should be noted that their full implementation cannot be accomplished until the new bilateral agreement with Mexico, currently under negotiation, is completed and final disposition is made of the North American Regional Broadcasting Agreement. The existing U.S./Mexican Agreement permits Class III stations to use power up to 25 kW at locations greater than 62 miles from the border with Mexico, but NARBA restricts the maximum power of Class III stations to 5 kW. Accordingly, a note will be added to the rules reflecting this point.

20. *Groundwave Curves.* Groundwave curves for various AM frequencies are contained in a series of graphs in § 73.184 of the rules. In the *Notice* we proposed to substitute the 19 graphs which had been incorporated in the 1984 U.S./Canada AM Broadcasting Agreement (and tentatively accepted by Mexico as well) for the 20 graphs currently in the rules. The proposed graphs parallel those adopted in the Region 2 Agreement and provide the same results due to the fact that the calculated points used in plotting them are identical. Although both are in metric format, the U.S./Canadian graphs depict field strength in mV/m versus kilometers, whereas the Region 2 graphs depict field strength in dBu versus kilometers.

21. All of the commenting parties support adoption of the new groundwave graphs. However, du Treil-Rackley suggested an improvement in format. It observed that the proposed graphs contain only 2.2 log fields in the abscissa, thereby depicting only 20 kilometers (12.4 miles) on the upper scales of the graphs, even though the FCC rules require field strength measurements to be taken and analyzed to a distance of 20 miles (32 kilometers) or more. Consequently, the proposed

graphs would have required the use of both upper and lower scales and curves. Thus, to facilitate such data analysis du Treil-Rackley recommended that the groundwave graphs be replotted with 2.5 log fields in the abscissa to permit the upper scales to depict distances up to 50 kilometers (31 miles).

22. We agree with the recommendation and have replotted the groundwave graphs accordingly. Because the proposed graphs depict curves for a smaller number of conductivity values than the graphs being replaced, we are increasing the number of conductivity values depicted to equal those shown on the Region 2 curves. Additionally, as suggested in the *Notice*, the Commission separately will be releasing a printout of the computer program which was employed for calculating the points used in plotting the groundwave curves. A listing of the calculated points for the curves will also be included for use in "look-up" tables where desired. Release of the computer program for the groundwave curves will facilitate use of computer facilities by interested parties for the calculation of field strength values for dielectric constants and conductivity values than those depicted on Graphs 1 to 19. We had suggested in the Notice that release of the computer program would make it possible to delete Graph 20, which provides a graphical method for determining the dielectric constant of the ground and conductivity of the ground. However, we have concluded that Graph 20 should be retained so that parties not having access to the necessary computer facilities will still be able to conduct studies that otherwise would require use of Graph 20. In the expectation that most parties will elect to perform such studies by use of computer facilities employing the Commission's groundwave program, Graph 20 is not being converted to metric format. However, the results of studies must be converted to equivalent metric units before submission to the Commission.

23. *Skywave Propagation.* The *Notice* proposed to convert the curves in § 73.190 of the Rules to metric format and to adopt related formulas for use in calculations pertaining to skywave propagation. The comments uniformly supported this proposal and the following changes are being made: (1) The F(50) curve in the U.S./Canada Agreement (see Figure 4 of that Agreement) is being substituted for Figure 1a of § 73.190 of the Rules. Additionally, for distances greater than 4,250 kilometers, a formula is being adopted to enable field strength values to be calculated at those greater distances. In order to derive F(10) field strength values from the new F(50) curve in Figure 1a, a formula is being adopted which adjusts F(50) field strength values by 8 dB. (2) Figures 1 and 6 are being deleted, (3) Figures 2, 5, 6a, 7, 8, 9, 10, and 11 are being replotted in metric format, and (4) formulas for the three curves contained in Figure 6a are being adopted and, in the event of disagreement, computed values will govern over values obtained directly from Figure 6a.[3]

24. *Applicability of the new rules.* As we observed earlier, there will need to be a delay in implementing the increase in the power limit for Class III stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands. Likewise, some of the power increases for mainland stations cannot be implemented until the second stage, beginning three years after the new rules go into effect. In addition, stations that do not file applications involving engineering changes will continue to be licensed at their old nominal power. However, in granting any application filed on or after June 3, 1985, which involves a change in the technical parameters of the station, the Commission will issue an authorization listing the nominal power as calculated by the new method. Finally, some of the new rules can be given full effect immediately. In this category are the new curves (Graphs 1-19 of § 73.184 and Figures 1a and 2 of § 73.190) which are to be used in the preparation of all future applications to be filed and also will be applied to all pending applications on file when the new rules become effective

25. *Other Matters.* Several additional issues were raised in the comments filed in response to the instant *Notice*. For example, Cox Communications, Inc., proposed prohibiting use of the new Figure 1a for distances of less than 100 km, and the Association of Federal Communications Consulting Engineers suggested that additional equations, such as those used for bearing and distance calculations, could be included in the rules to eliminate disparities arising from different methods of calculation. Consideration has not been given to these matters at this time because they were outside the scope of the specific issues that were raised in the instant *Notice*. However, due note has been taken of them for possible inclusion in future notices that are planned for issuance in this proceeding.

[3] As a practical matter, computations using the formulas should not be carried beyond 0.1 degree.

26. Finally, it should be noted that not all of the propagation curves that are being adopted in this *Report and Order* have been completed for release at this time. We will not delay action at this time in the adoption of the rule amendments. In those cases where completion of the preparation of curves is pending, curves currently existing in the rules may continue to be applied pending release of the new metric curves. At that time, appropriate notice of the issuance of the new curves will be given and effective dates for their use established. The curves that will not be released in this report are Figures 5, 7, 8, 9, 10, and 11 of § 73.190 of the Rules.

Paperwork Reduction Act

27. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

Regulatory Flexibility Analysis

I. Need for and Purpose of the Rule

The *Report and Order* adopts changes to several rules relating to calculation methods to reflect usage in newly enacted and contemplated international agreements. The new rules also provide greater flexibility in the selection of station facilities to provide interference-free coverage in the most efficient manner.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

As discussed in the body of this *Report and Order*, the major issues related to conversion of propagation curves to metric format, adoption of formulas for performing certain calculations, raising the maximum power permitted in localities outside of the conterminous United States and changing rules specifying permitted operating power levels.

B. Assessment

There was general agreement with all of the changes proposed by the Commission, which were expected to be of benefit to small entities.

C. Changes Made as a Result

The Commission's decisions closely follow its proposals made in the *Notice*

and are consistent with the needs of small entities affected by the decision.

III. Significant Alternatives Considered and Rejected

The significant alternatives that were considered dealt with the establishment of a threshold for the level of power increase that could be sought and whether some power increases could be considered as minor changes. The decisions that were taken by the Commission fell within the range of recommendations that were received in comments.

28. Accordingly, it is ordered, pursuant to the authority contained in 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, That Part 73 of the Commission's Rules is amended, effective June 3, 1985, as set forth in the attached Appendix.

29. Further information on this matter may be obtained by contacting Wilson A. La Follette (202) 632-5414 or Larry E. Olson (202) 632-6690.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

1. 47 CFR Part 73, § 73.14 is amended by revising the definition of *Nominal Power and Effective field: Effective field strength* to read as follows:

§ 73.14 AM broadcast definitions.

* * * * *

Effective field: Effective field strength. The root-mean-square (RMS) value of the inverse distance fields at a distance of 1 kilometer from the antenna in all directions in the horizontal plane. The term "field strength" is synonymous with the term "field intensity" as contained elsewhere in this Part.

* * * * *

Nominal power. The antenna input power less any power loss through a dissipative network and, for directional antennas, without consideration of adjustments specified in paragraphs (b)(1) and (b)(2) of § 73.51 of the rules. However, for AM broadcast applications granted or filed before June 3, 1985, nominal power is specified in a system of classifications which include the following values: 50 kW, 25 kW, 10 kW, 5 kW, 2.5 kW, 1 kW, 0.5 kW, and 0.25 kW. The specified nominal power for any station in this group of stations will be retained until action is taken on or after June 3, 1985, which involves a change in the technical facilities of the station.

* * * * *

2. 47 CFR Part 73, § 73.21 is amended by the addition of a new paragraph (b)(2) to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

* * * * *

(b) * * *

(2) Class III stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW in accordance with the maximum power permitted by NARBA.

* * * * *

3. 47 CFR Part 73, § 73.28 is amended by revising paragraph (c) to read as follows:

§ 73.28 Assignment of stations to channels.

* * * * *

(c) Engineering standards now in force domestically differ in some respects from those specified for international purposes. The engineering standards specified for international purposes (see § 73.1650, International Agreements) will be used to determine: (1) The extent to which interference might be caused by a proposed station in the United States to a station in another country; and (2) whether the United States should register an objection to any new or changed assignment notified by another country. The domestic standards in effect in the United States will be used to determine the extent to which interference exists or would exist from a foreign station where the value of such interference enters into a calculation of: (i) The service to be rendered by a proposed operation in the United States; or (ii) the permissible interfering signal from one station in the United States to another United States station.

4. 47 CFR Part 73 is amended by adding a new § 73.31 to the rules to read as follows:

§ 73.31 Rounding of nominal power specified on applications.

(a) An application filed with the FCC for a new station or for an increase in power of an existing station shall specify nominal power rounded to two significant figures as follows:

Nominal power (kW)	Rounded to nearest figure (kW)
0.25 to 0.99	0.01
1 to 9.9	0.1
10 to 50	1

(b) In rounding the nominal power in accordance with paragraph (a) of this section the RMS shall be adjusted accordingly. If rounding upward to the nearest figure would result in objectionable interference, the nominal power specified on the application is to be rounded downward to the next nearest figure and the RMS adjusted accordingly.

5. 47 CFR Part 73, § 73.182 is amended by redesignating the existing Note in paragraph (a)(3) as Note 1 and by adding a new Note 2 to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) * * *

Note 1 * * *

Note 2. Class III stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW in accordance with the maximum power permitted by NARBA.

* * * * *

6. 47 CFR Part 73, § 73.182 is amended by revising paragraph (r) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(r) For the purpose of estimating the coverage and the interfering effects of stations in the absense of field strength measurements, use shall be made of Figure 8 of § 73.190, which describes the estimated effective field for one kilowatt power input of simple vertical omnidirectional antennas of various heights with ground systems of at least 120 one-quarter wave-length radials. Certain approximations, based on the the curve or other appropriate theory, may be made when other than such antennas and ground systems are employed, but in any event the effective field to be employed shall not be less than given in the following:

Class of station	Effective field (at 1 km)
I–A and I–B	362 mV/m.
I–N, II and III	282 mV/m.
IV	241 mV/m.

In case a directional antenna is employed, the interfering signal of a broadcasting station will vary in different directions, being greater than the above values in certain directions and less in others depending upon the design and adjustment of the directional antenna system. To determine the interference in any direction the measured or calculated radiated field (unabsorbed field intensity at 1 kilometer from the array) must be used in conjunction with the appropriate propagation curves. (See § 73.185 for further discussion and solution of a typical directional antenna case.)

7. 47 CFR Part 73, § 73.182 is further amended by revising the text of paragraph (s) and by removing the note to paragraph (s) as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(s) The existence or absence of objectionable groundwave interference from stations on the same or adjacent channels shall be determined by actual measurements made in accordance with the method described in § 73.186, or, in the absence of such measurements, by reference to the propagation curves of § 73.184. The existence or absence of objectionable interference due to skywave propagation shall be determined by reference to the appropriate formulas set forth in § 73.190 and the appropriate propagation curves in Figure 1a, 1b or Figure 2 of § 73.190.

[Note is deleted]

8. 47 CFR Part 73, § 73.182 is further amended by revising paragraph (t) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(t) *Computation of Skywave Field Strength Values:* (1) *Fifty Percent Skywave Field Strength Values (Clear Channel)* In computing the fifty percent skywave field strength values of a Class I–A or I–B clear channel station, use shall be made of Figure 1a of § 73.190 entitled "Skywave Field Strength" for 50 percent of the time. In computing the fifty percent skywave field strength values of a Class I–N station (in Alaska), use shall be made of the formula in § 73.190(c)(1) for deriving such values.

(2) *Ten Percent Skywave Field Strength Values (Clear Channel).* In computing the 10% skywave field strength for stations on clear channels on a single signal basis, the curve in Figure 1a and the formula in § 73.190(b)(2) shall be used unless one or both of the stations being considered are in Alaska: in such a case, the formula included in § 73.190(c)(2) should be used to calculate the 10% values for both stations. In computing the 10% skywave field strength for stations on clear channels on an RSS basis, the formula in § 73.190(c)(2) shall be used in computing the RSS of a station in Alaska. In computing the RSS of a station not in Alaska, the formula in § 73.190(c)(2) shall be used in computing the contribution from stations in Alaska, and the formula in § 73.190(b)(2) shall be used in computing contributions from stations not in Alaska.

(3) *Regional and Local Channels.* In computing the 10% skywave field strength values for stations on a regional channel, on an RSS basis, the formula in § 73.190(c)(2) shall be used in computing the RSS of a station in Alaska. In computing the RSS of a station not in Alaska, the formula in § 73.190(c)(2) shall be used in computing the contribution from stations in Alaska, and the appropriate curve in Figure 2 shall be used in computing contributions from stations not in Alaska. (In the case of Class IV stations on local channels, simplifying assumptions may be made, see Note in paragraph ([illegible])(4) of this section.)

(4) *Determination of Angles of Departure.* In calculating skywave field strength for stations on all channels, the pertinent vertical angle shall be determined by use of the formulas in § 73.190(d).

* * * * *

9. 47 CFR Part 73 § 73.183 is amended by revising paragraphs (d) and (f) to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(d) Example of determining interference by the graphs in § 73.184:

It is desired to find whether objectionable interference exists between a 5 kW Class III station on 990 kHz and a 1 kW Class III station on the adjacent channel of 1000 kHz. The spacing between the two stations is 165 kilometers and both stations operate nondirectionally with antenna systems which produce an effective field of 282 mV/kW at one kilometer. (See § 73.1[illegible] in case of use of directional antennas.) The conductivity at each station and of the intervening terrain is determined to be 6 mS/m. The protection to Class III stations during daytime is to the 500 uV/m (0.5 mV/m) contour. The distance to the 0.5 mV/m contour of the 1 kW station is determined by the use of the appropriate curve in § 73.184, Graph 12. Since the curve is plotted for 100 mV/m at 1 kilometer, to find the distance to the 0.5 mV/m contour of the 1 kW station, it is necessary to determine the distance to the 0.1773 mV/m contour.

$$(100 \times 0.5/282 = 0.1773)$$

Using the 6 mS/m curve, the estimated radius of the 0.5 mV/m contour is seen to be 64.5 kilometers. Subtracting this distance from the distance between the two stations leaves 100.5 kilometers. Using the same propagation curve, the signal from the 5 kW station at this distance is seen to be 0.251 mV/m. Since a protection ratio of one to one, desired to undesired signal, applies to stations separated by 10 kHz, the undesired signal could have a value up to 0.5 mV/m without causing objectionable interference. Consequently, there would be no mutually objectionable interference between the two stations. Had the undesired signal been found to be greater than 0.5 mV/m, objectionable interference would then have existed. For co-channel operation, a desired to undesired signal ratio of no less than 20 to 1 is required to avoid causing objectionable interference.

(e) * * *

(f) An example of the equivalent distance method follows:

It is desired to determine the distance to the 0.5 mV/m and 0.025 mV/m contours of a station on a frequency of 1000 kHz with an inverse distance field of 100 mV/m at one kilometer being radiated over a path having a conductivity of 10 mS/m for a distance of 20 kilometers, 5 mS/m for the next 30 kilometers and 15 mS/m thereafter. Using the appropriate curve in § 73.184, Graph 12, at a distance of 20 kilometers on the 10 mS/m curve, it is seen that the field strength is 2.86 mV/m. On the 5 mS/m curve, the equivalent distance to this field strength is seen to be 14.9 kilometers, which is 5.1 (20−14.9) kilometers nearer to the transmitter. Continuing on this propagation curve, the distance to a field strength of 0.5 mV/m is seen to be 36.4 kilometers. The actual length of the path travelled, however, is 41.5 (36.4+5.1) kilometers. Continuing on this propagation curve to the conductivity change at 44.9 (50−5.1) kilometers, it is seen that the field strength is 0.257 mV/m. On the 15 mS/m propagation curve, the equivalent distance to this field strength is seen to be 94 kilometers, which changes the effective path length by 49.1 (94−44.9) kilometers. Continuing on this propagation curve, the distance to a field strength of 0.025 mV/m is seen to be 231 kilometers. The actual length of the path travelled, however, is 187 (231+5.1−49.1) kilometers.

10. 47 CFR Part 73, § 73.184 is amended by revising paragraphs (a), (b), (d), (f) and graphs (1)–(19) to read as follows:

§ 73.184 Groundwave field strength graphs.

(a) Graphs 1 to 19 show, for each of 20 frequencies, the computed values of groundwave field strength as a function of groundwave conductivity and distance from the source of radiation. The groundwave field strength is here considered to be that part of the vertical component of the electric field which has not been reflected from the ionosphere nor from the troposphere. These 20 families of curves are plotted on log-log graph paper and each is to be used for the range of frequencies shown thereon. The curves themselves were generated by straight-line connection of the plotted computed values of groundwave field strength as a function of distance. The computed and plotted points are sufficiently numerous and closely spaced that the error introduced by straight-line interpolation is neligible. Computations are based on a dielectric constant of the ground (referred to air as unity) equal to 15 for land and 80 for sea water and for the ground conductivities (expressed in mS/m) given on the curves. The curves show the variation of the groundwave field strength with distance to be expected for transmission from a vertical antenna at the surface of a uniformly conducting spherical earth with the groundwave constants shown on the curves. The curves are for an antenna power of such efficiency and current distribution that the inverse distance (unattenuated) field is 100 mV/m at 1 kilometer. The curves are valid at distances large compared to the dimensions of the antenna for other than short vertical antennas.

(b) The inverse distance field (100 mV/m divided by the distance in kilometers) corresponds to the groundwave field intensity to be expected from an antenna with the same radiation efficiency when it is located over a perfectly conducting earth. To determine the value of the groundwave field intensity corresponding to a value of inverse distance field other than 100 mV/m at 1 kilometer, multiply the field strength as given on these graphs by the desired value of inverse distance field at 1 kilometer divided by 100; for example, to determine the groundwave field strength for a station with an inverse distance field of 2700 mV/m at 1 kilometer, simply multiply the values given on the charts by 27. The value of the inverse distance field to be used for a particular antenna depends upon the power input to the antenna, the nature of the ground in the neighborhood of the antenna, and the geometry of the antenna. For methods of calculating the interrelations between these variables and the inverse distance field, see "The Propagation of Radio Waves Over the Surface of the Earth and in the Upper Atmosphere," Part II, by Mr. K.A. Norton, Proc. I.R.E., Vol. 25, September 1937, pp. 1203–1237.

Note.—The computed values of field strength versus distance used to plot Graphs 1 to 19 are available in tabular form. Copies of these tabulations may be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7000.

* * * * *

(d) Provided the value of the dielectric constant is near 15, the curves of Graphs 1 to 19 may be compared with experimental data to determine the appropriate values of the ground conductivity and of the inverse distance field intensity at 1 kilometer. This is accomplished simply by plotting the measured fields on transparent log-log graph paper similar to that used for Graphs 1 to 19 and superimposing this chart over the graph corresponding to the frequency involved. The log-log graph sheet is then shifted vertically until the best fit is obtained with one of the curves on the graph; the intersection of the inverse distance line on the graph with the 1-kilometer abscissa on the chart determines the inverse distance field strength at 1 kilometer. For other values of dielectric constant, the following procedure may be used for a determination of the dielectric constant of the ground, conductivity of the ground and the inverse distance field strength at 1 mile. Before the results of such determinations are submitted to the F.C.C., they must be converted to equivalent metric units. Graph 20 gives the relative values of groundwave field strength over a plane earth as a function of the numerical distance p and phase angle b. On graph paper with coordinates similar to those of Graph 20, plot the measured values of field strength as ordinates versus the corresponding distances from the antenna expressed in miles as abscissae. The data should be plotted only for distances greater than one wavelength (or, when this is greater, fives times the vertical height of the antenna in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna) and for distances less than $50/(f\ \mathrm{Mhz})^{1/3}$ miles (i.e., 50 miles at 1 Mhz). Then, using a light box, place the sheet with the data plotted on it over the sheet with the curves of Graph 20 and shift the data sheet vertically and horizontally (making sure that the vertical lines on both sheets are parallel) until the best fit with the data is obtained with one of the curves on Graph 20. When the two sheets are properly lined up, the value of the field strength corresponding to the intersection of the inverse distance line of Graph 20 with the 1 mile abscissa on the data sheet is the inverse distance field strength at 1 mile, and the values of the numerial distance at 1 mile, p_1, and of b are also determined. Knowing the values of b and p_1 (the numerical distance at 1 mile), we may substitute in the following approximate formulas to determine the appropriate values of the ground conductivity and dielectric constant.

$\chi \cong (\pi/p_1).(R/\lambda)_1 \cos b$

(1)

$(R/\lambda)_1$ = Number of wavelengths in 1 mile.

$\sigma_{e.m.u.} = (\chi f\mathrm{MHz}/17.9731).10^{-14}$

(2)

$\sigma_{e.m.u.}$ = Conductivity of the ground expressed in electromagnetic units.

$f\mathrm{MHz}$ = frequency expressed in megacycles.

$e = x \tan b - 1$

ϵ = dielectric constant of the ground referred to air as unity.

First solve for x by substituting the known values of p_1, $(R/\lambda)_1$ and cos b in equation (1). Equation (2) may then be solved for σ and equation (3) for ϵ. At distances greater than 50/f MHz miles the curves of Graph 20 do not give the correct relative values of field strength since the curvature of the earth weakens the field more rapidly than these plane earth curves would indicate. Thus, no attempt should be made to fit experimental data to these curves at the larger distances.

Note.—For other values of dielectric constant, use can be made of the computer program which was employed by the FCC in calculating the points used for plotting the curves in Graphs 1 to 19. A printout of this program can be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7000.

(e) * * *

(f) This paragraph consists of the following Graphs 1 to 19, and 20.

Note.—Graphs will not be published in the CFR. Copies are available by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, Telephone: (202) 632-7000.

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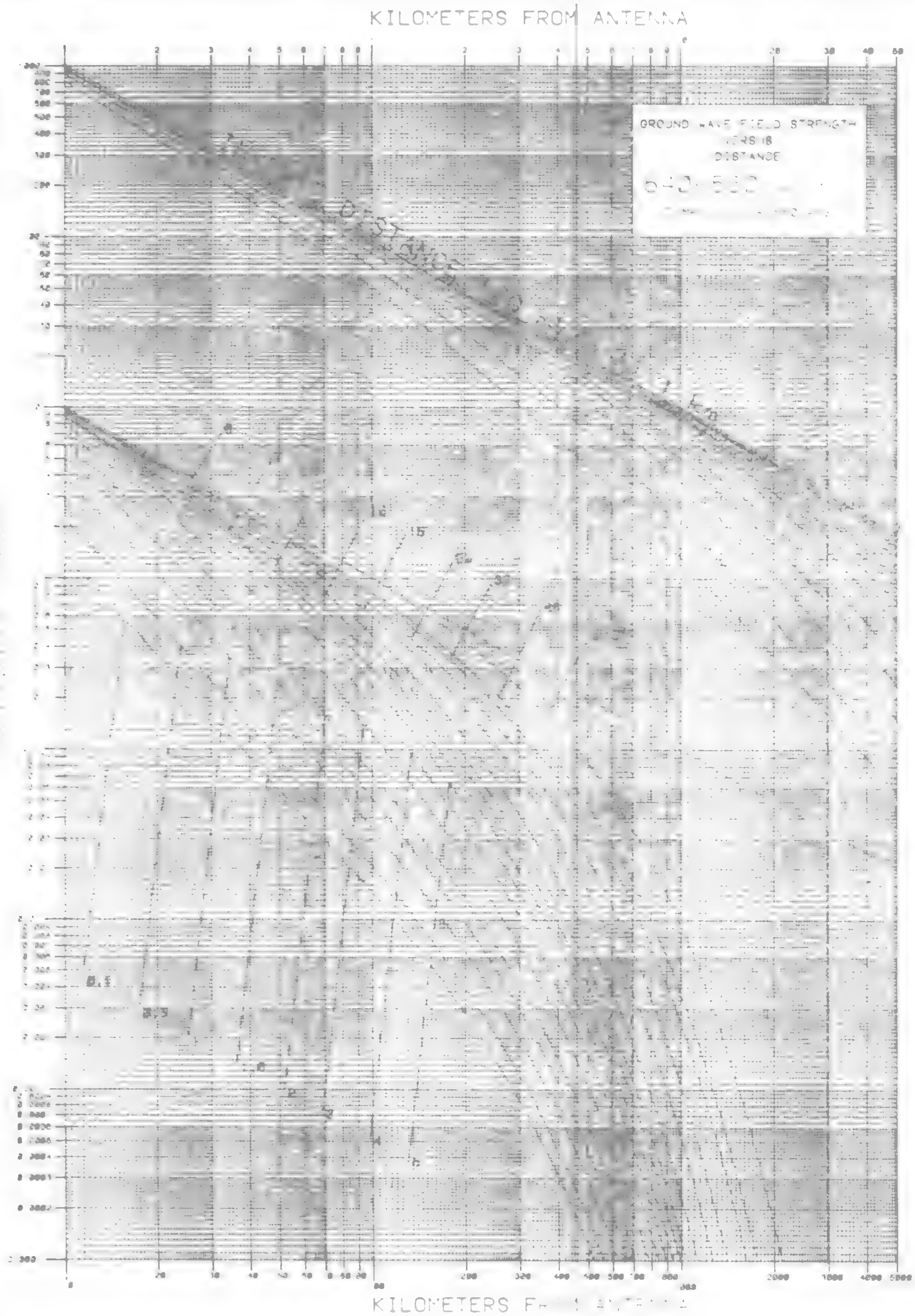
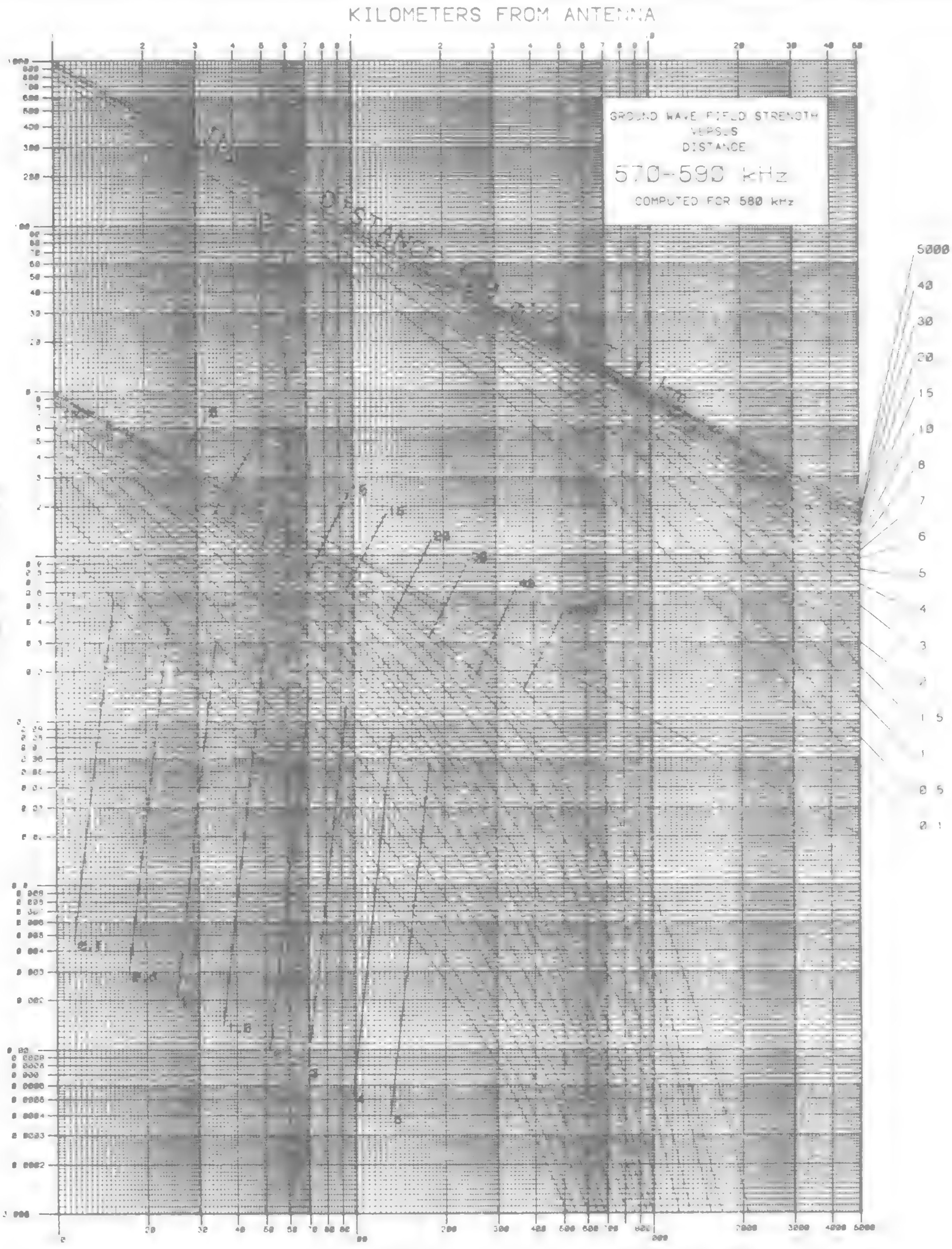


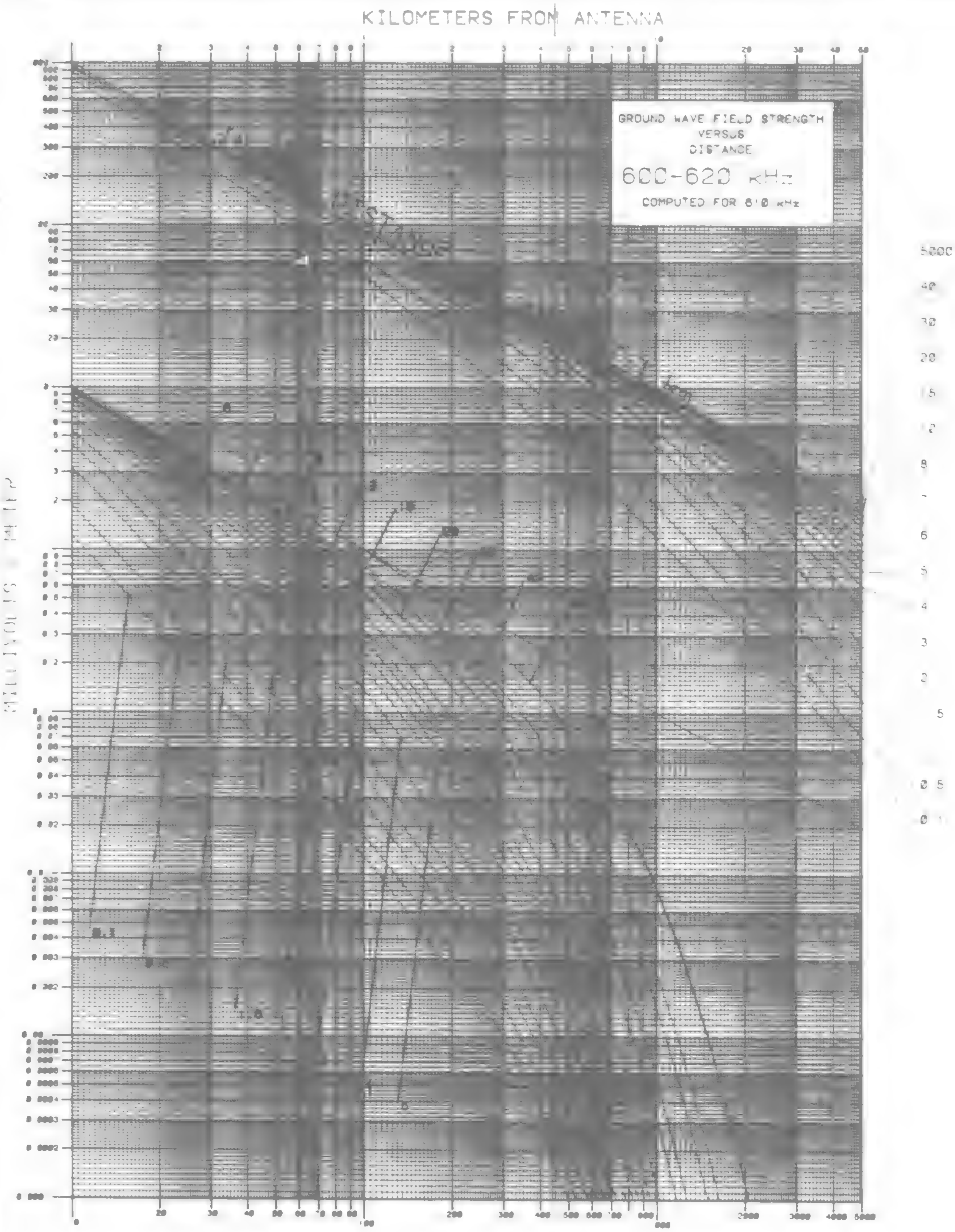
GRAPH

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



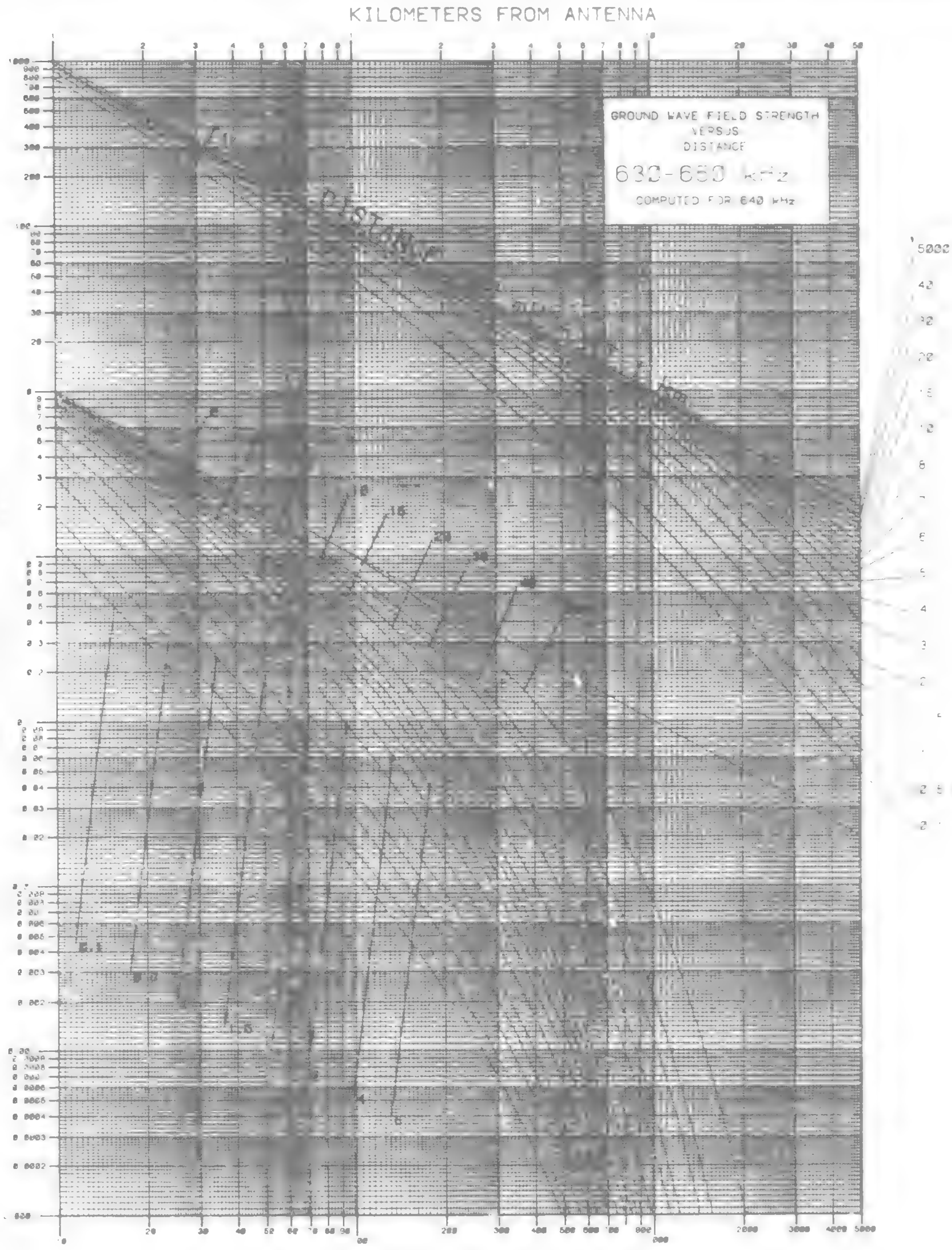
GRAPH 2

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC



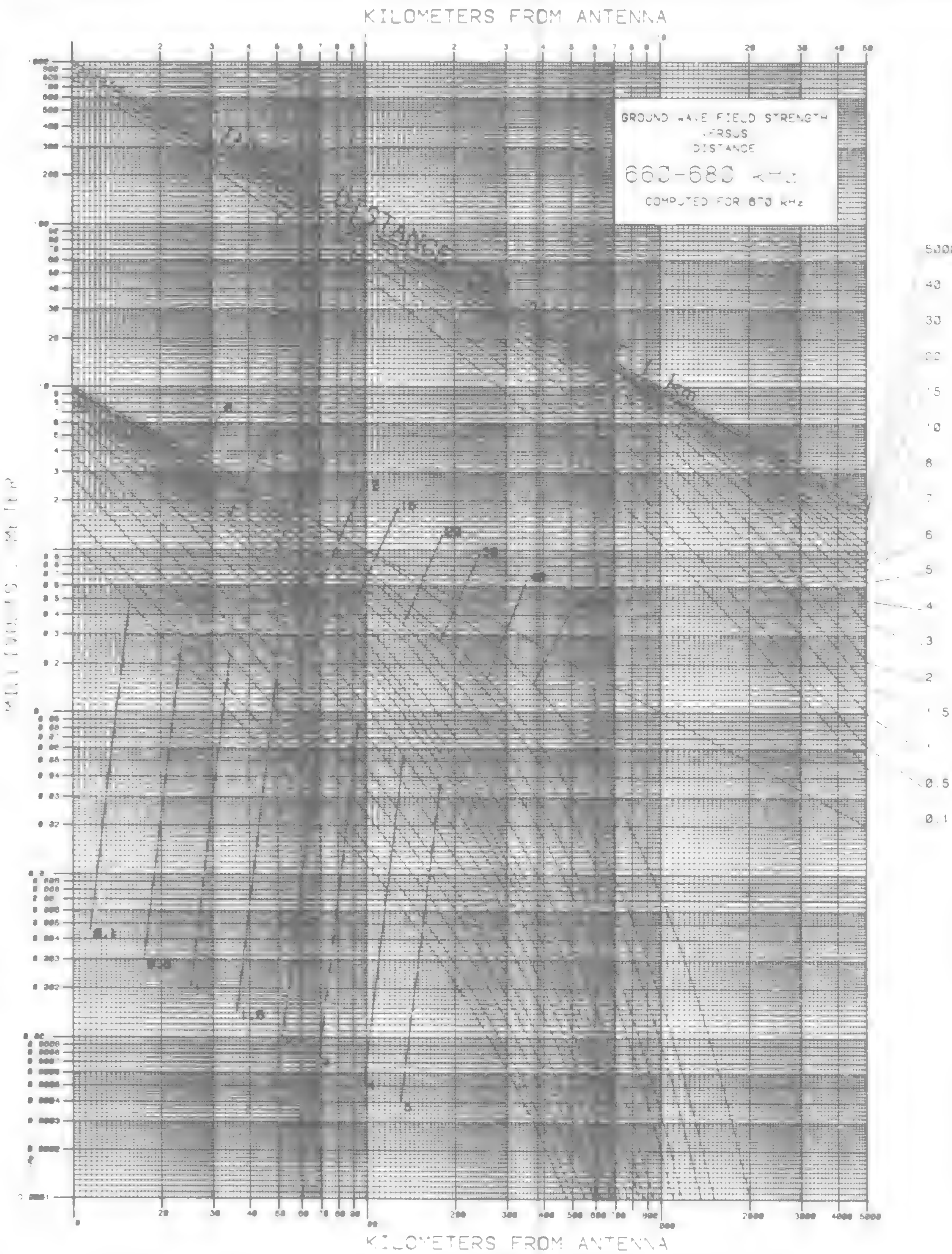
KILOMETERS FROM ANTENNA
GRAPH 3

*THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



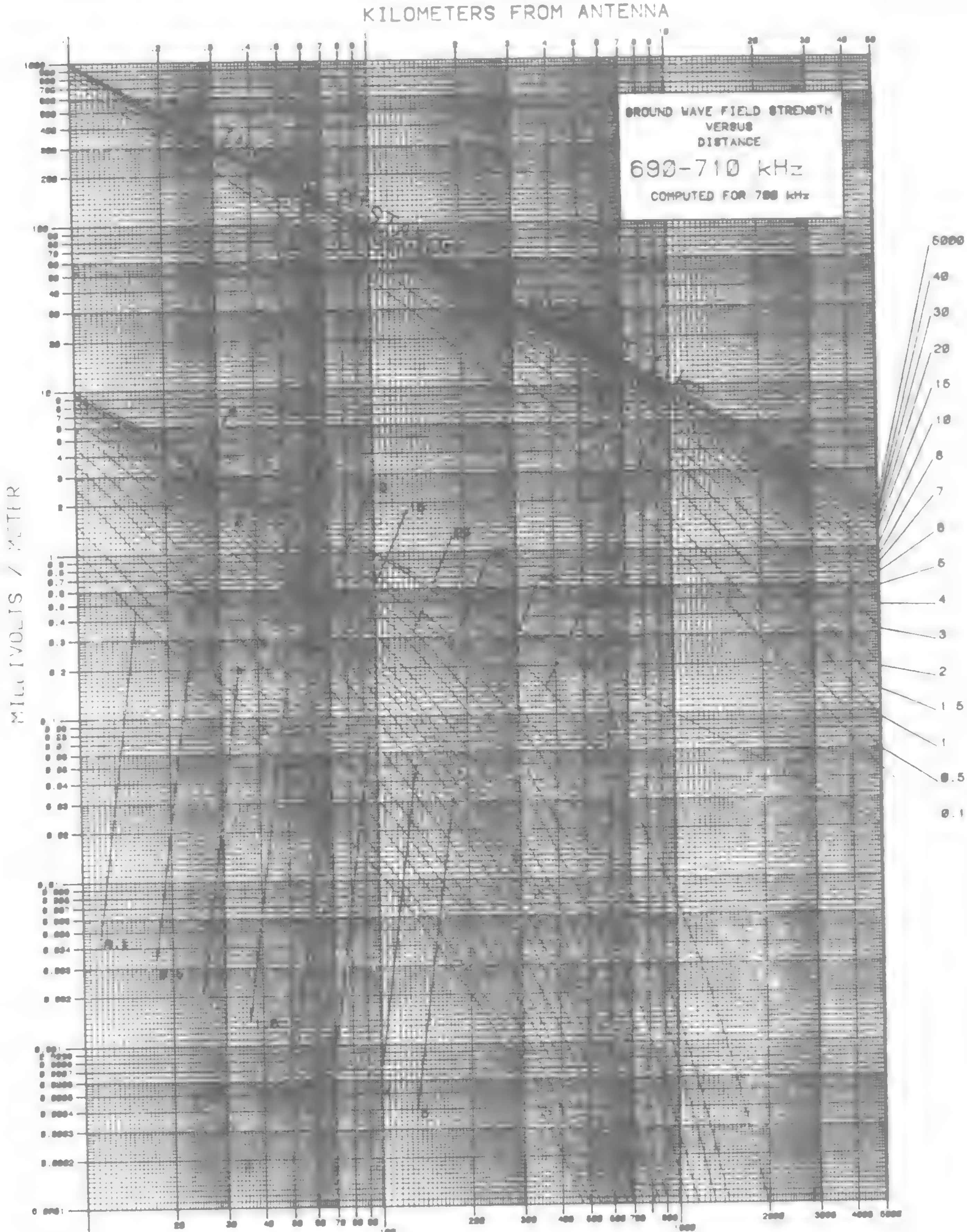
GRAPH 4

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



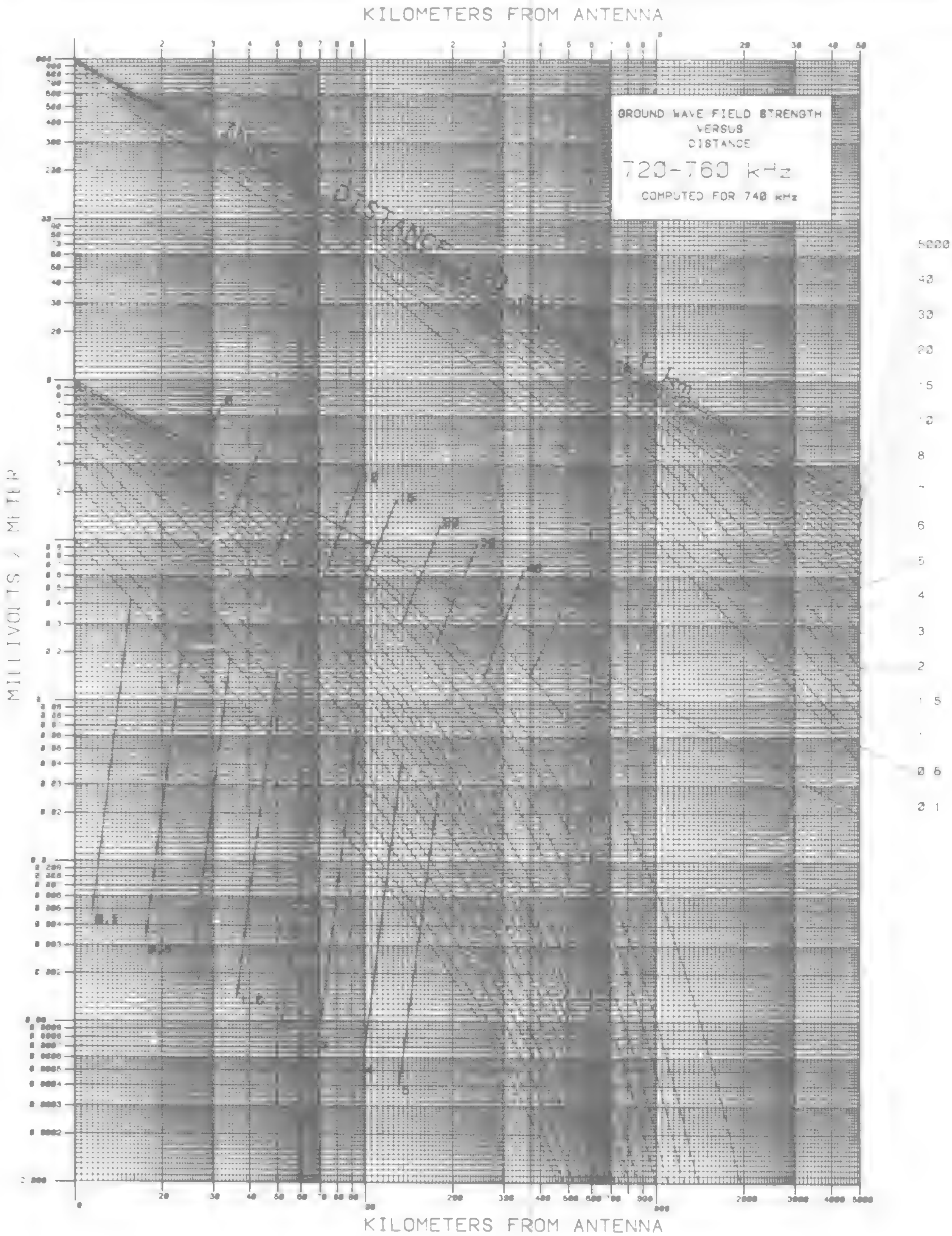
GRAPH 5

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



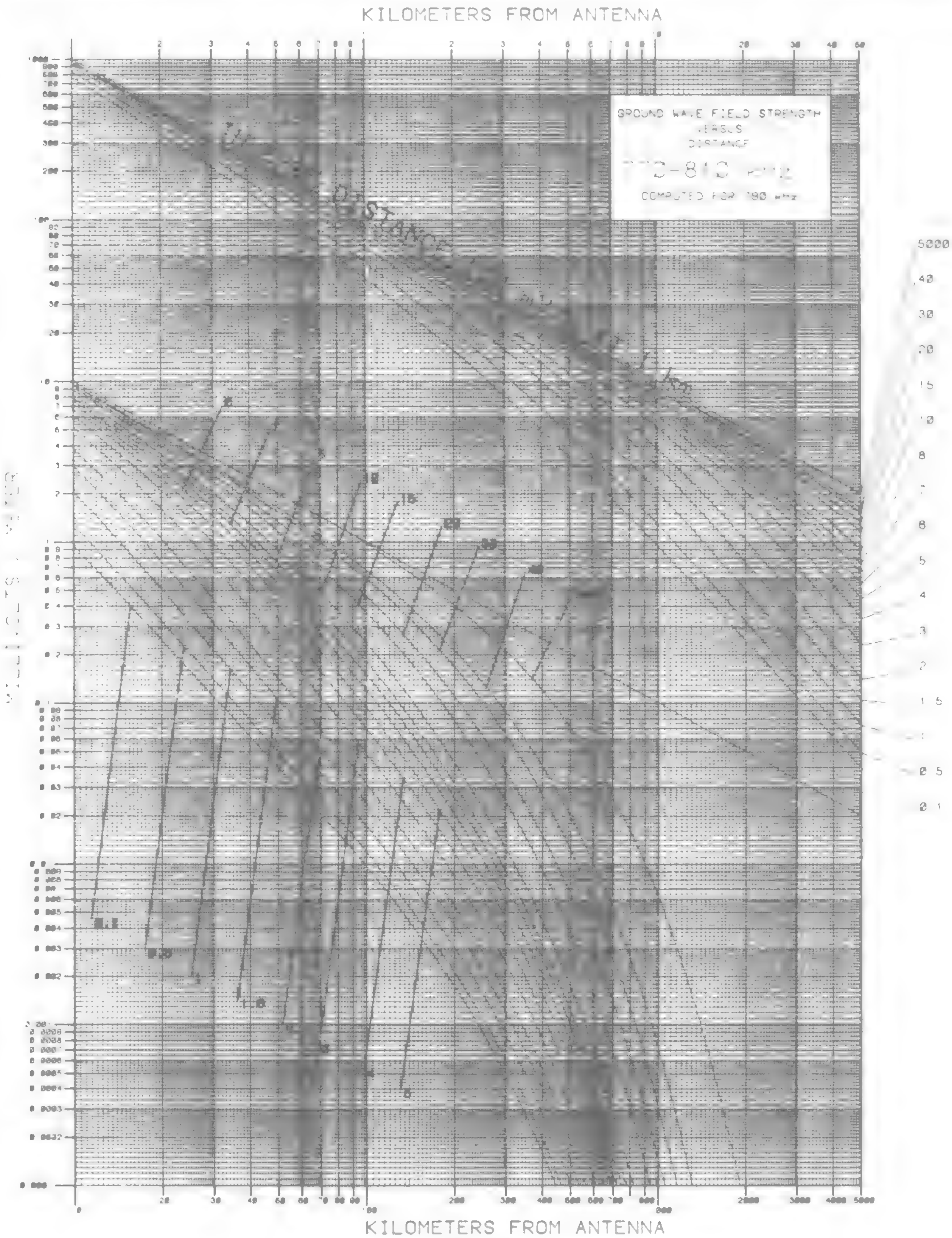
GRAPH 6

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



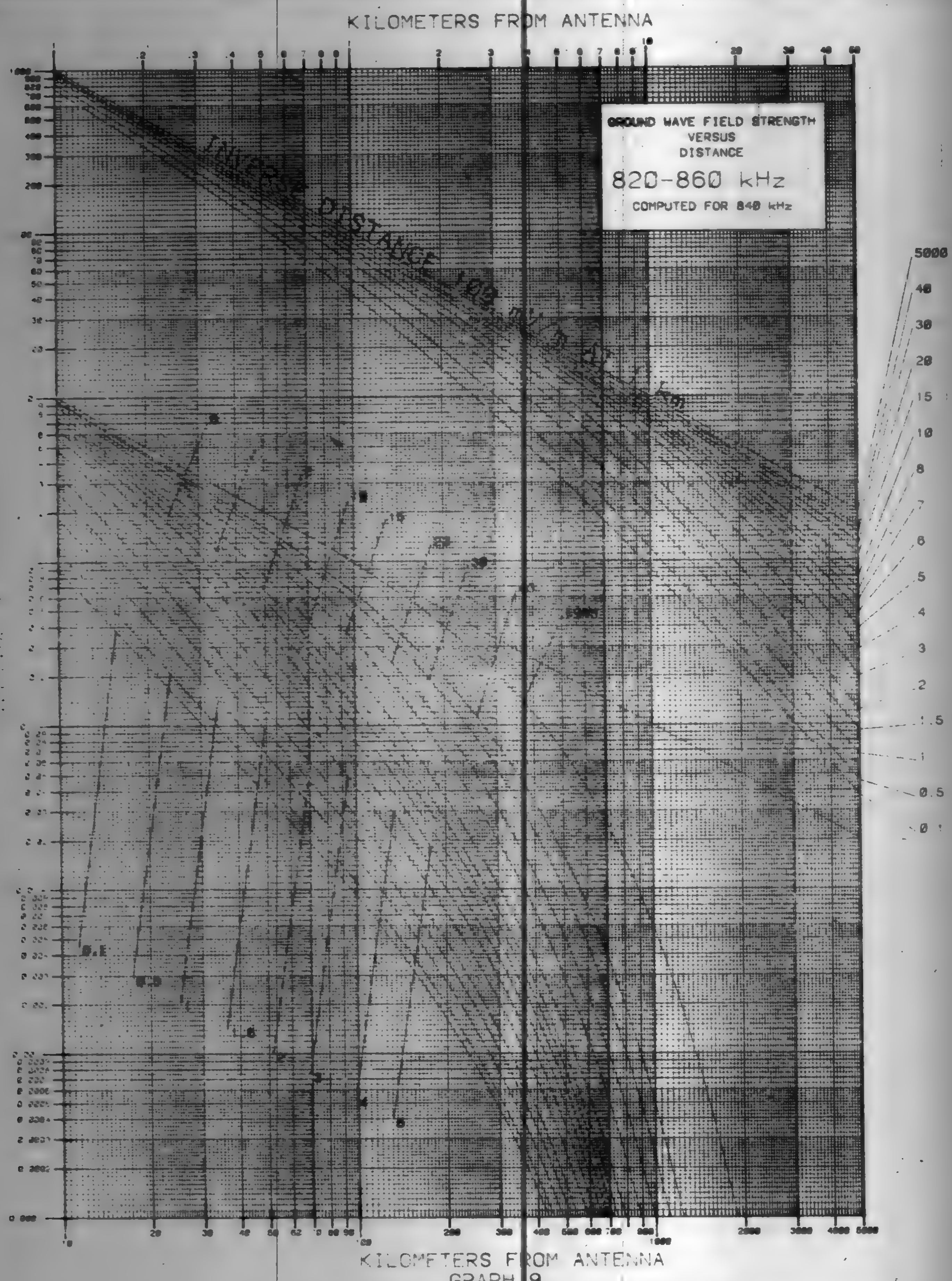
GRAPH 17

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



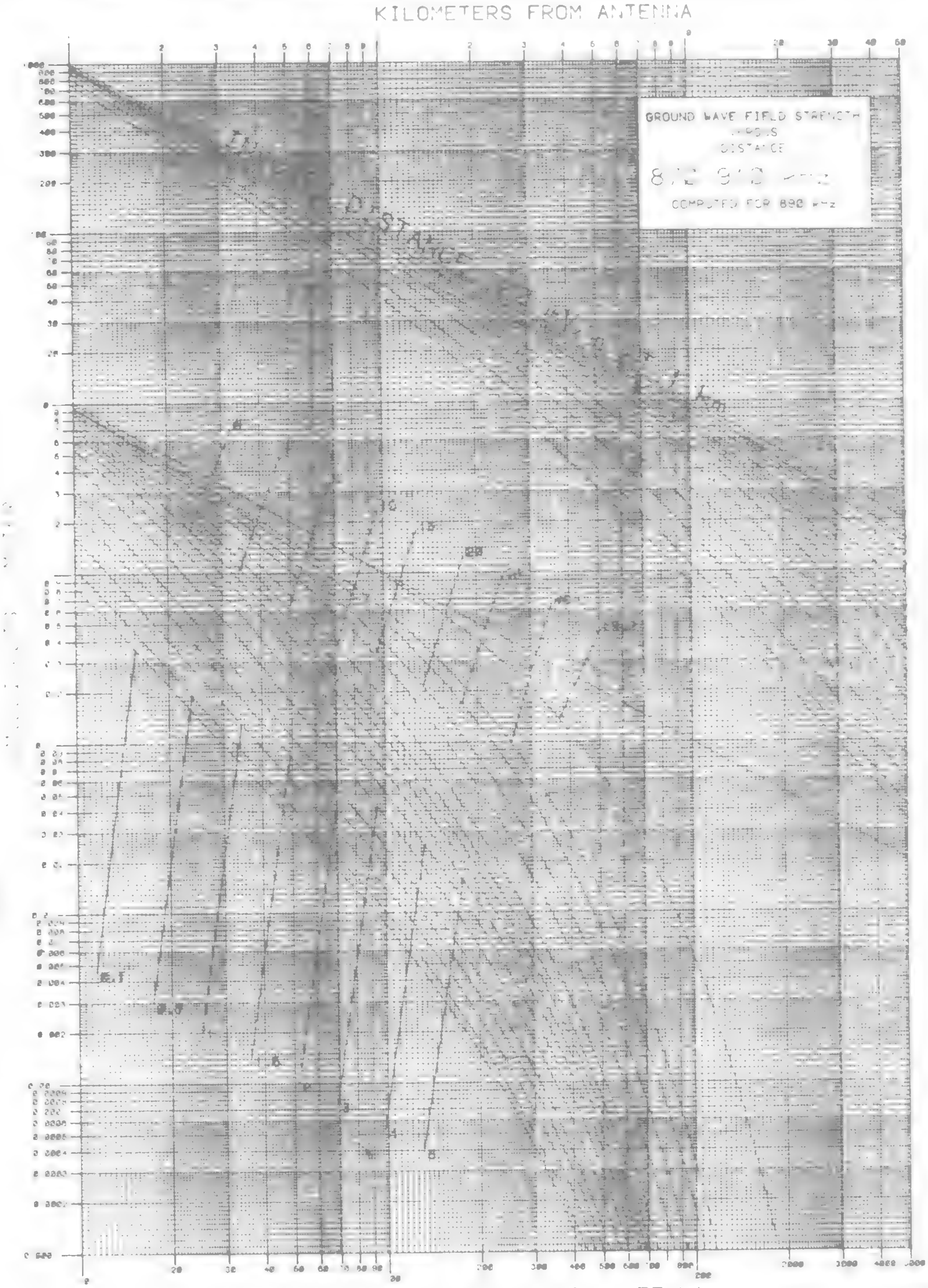
GRAPH 8

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



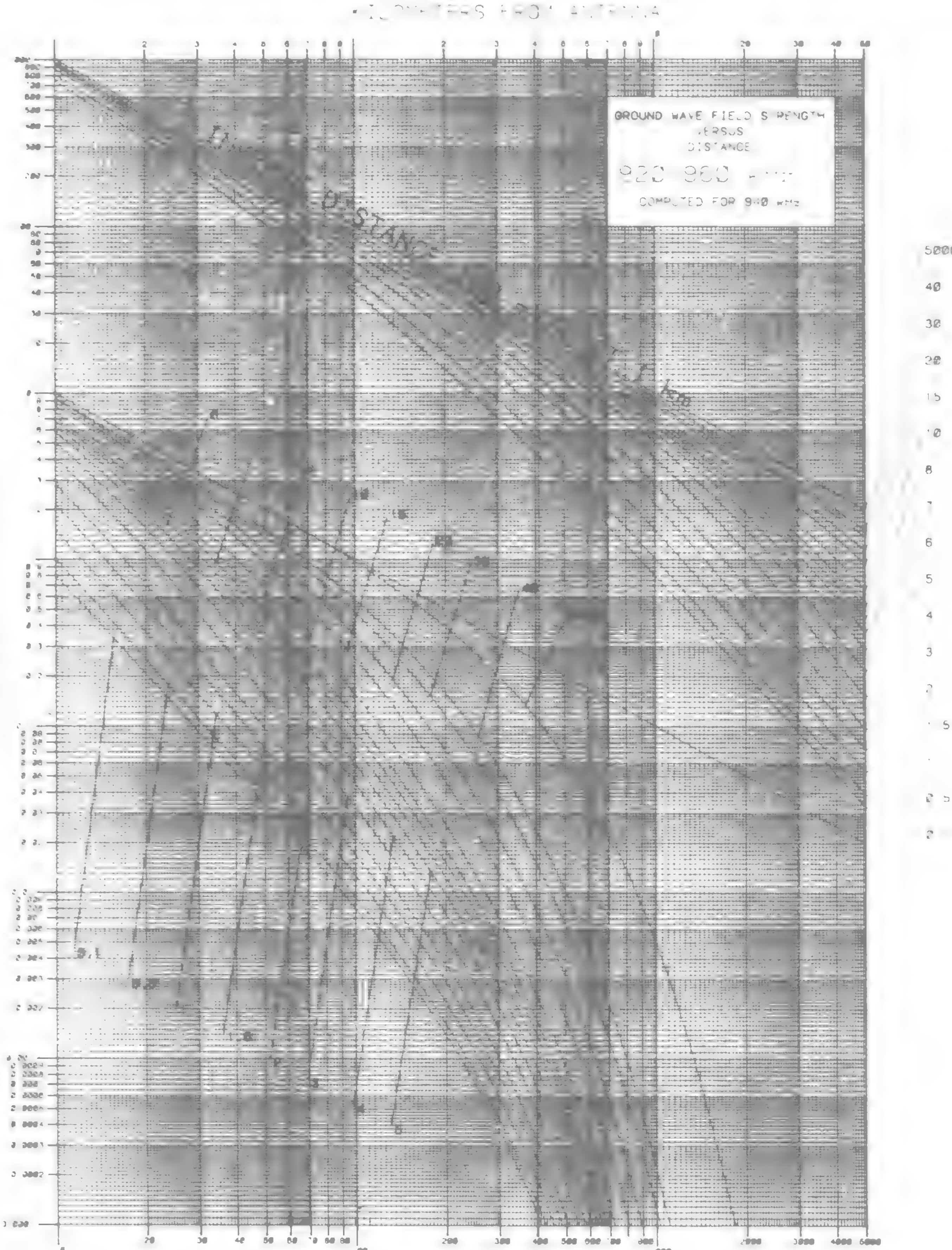
GRAPH 9

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



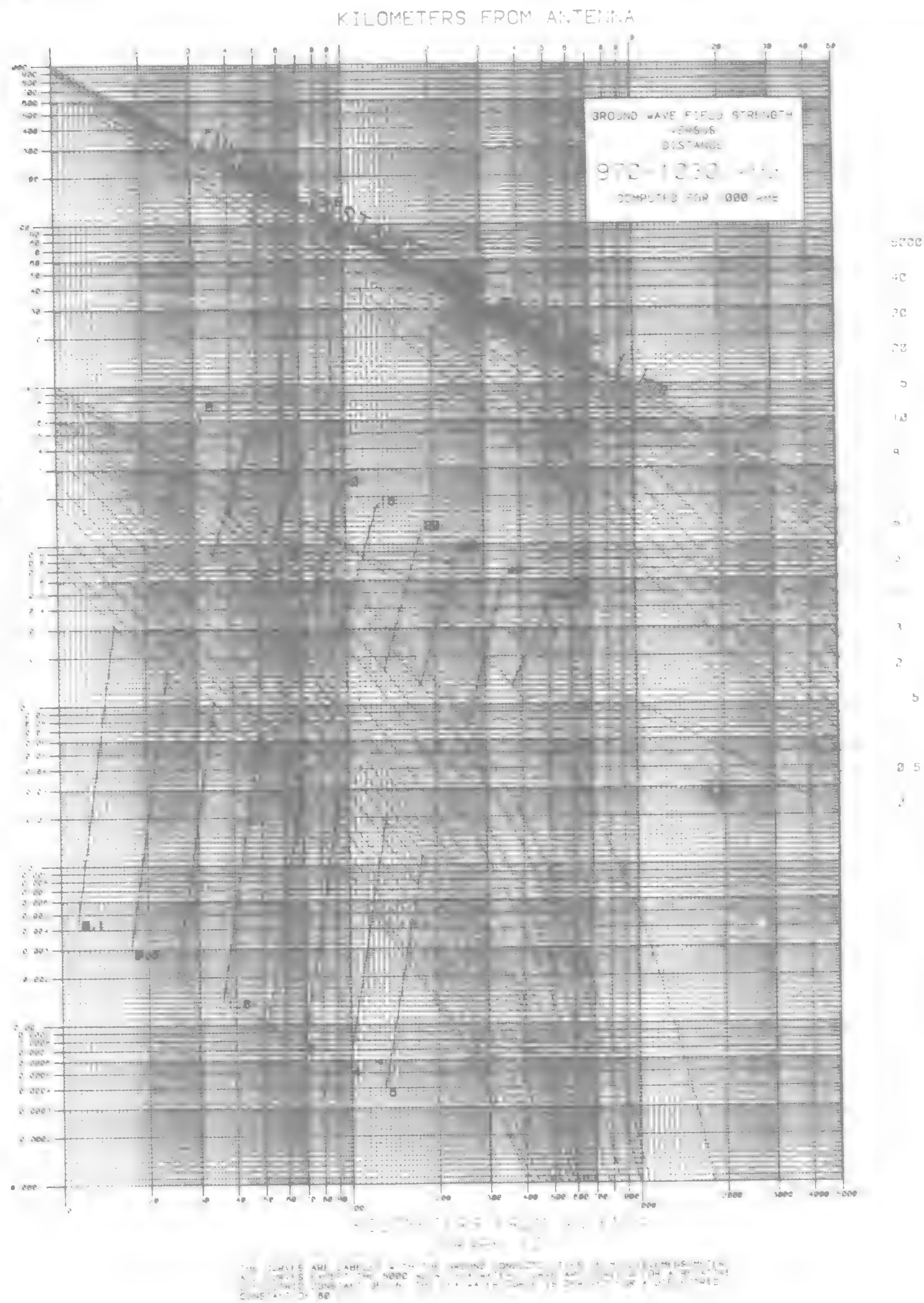
GRAPH 10

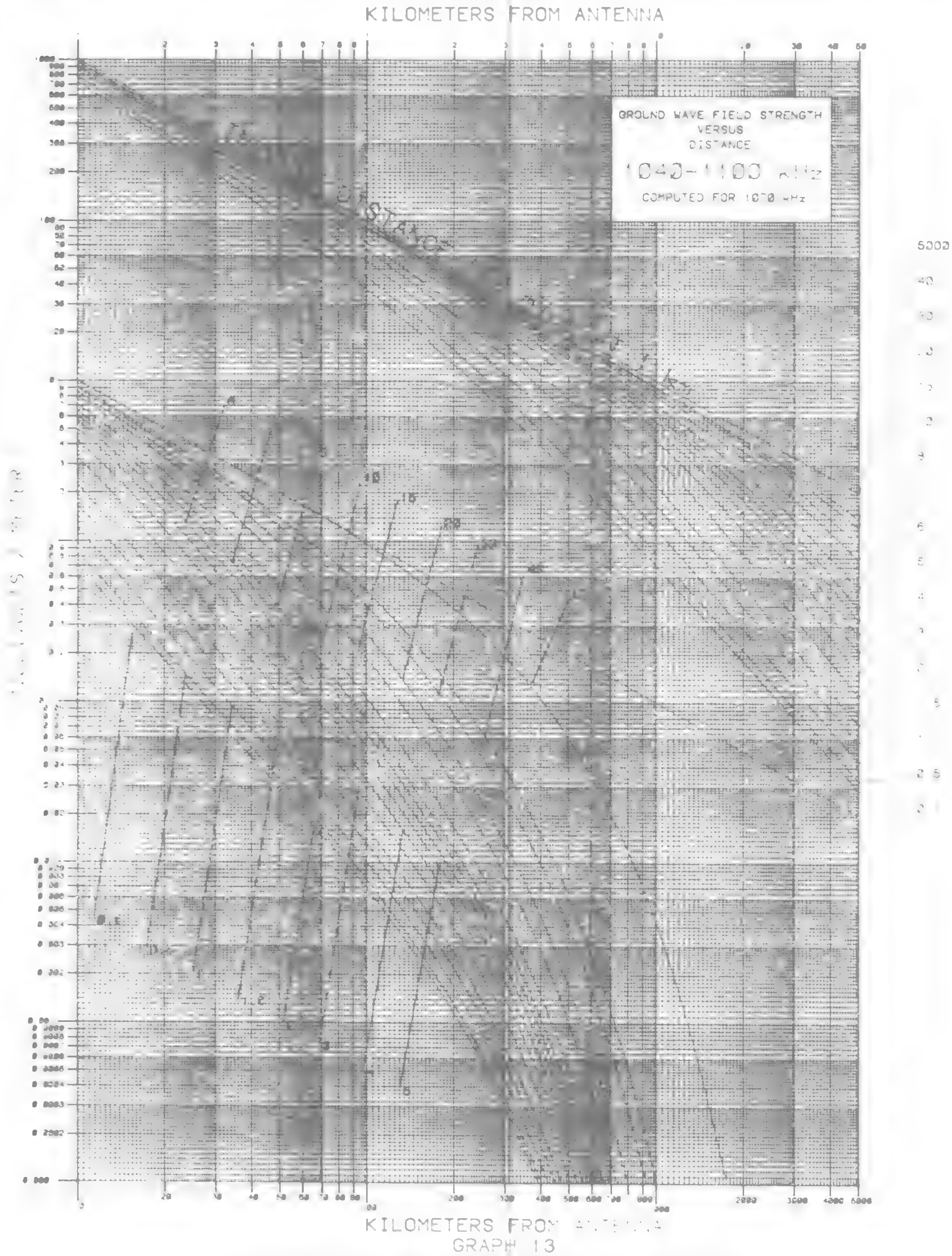
THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



GRAPH 11

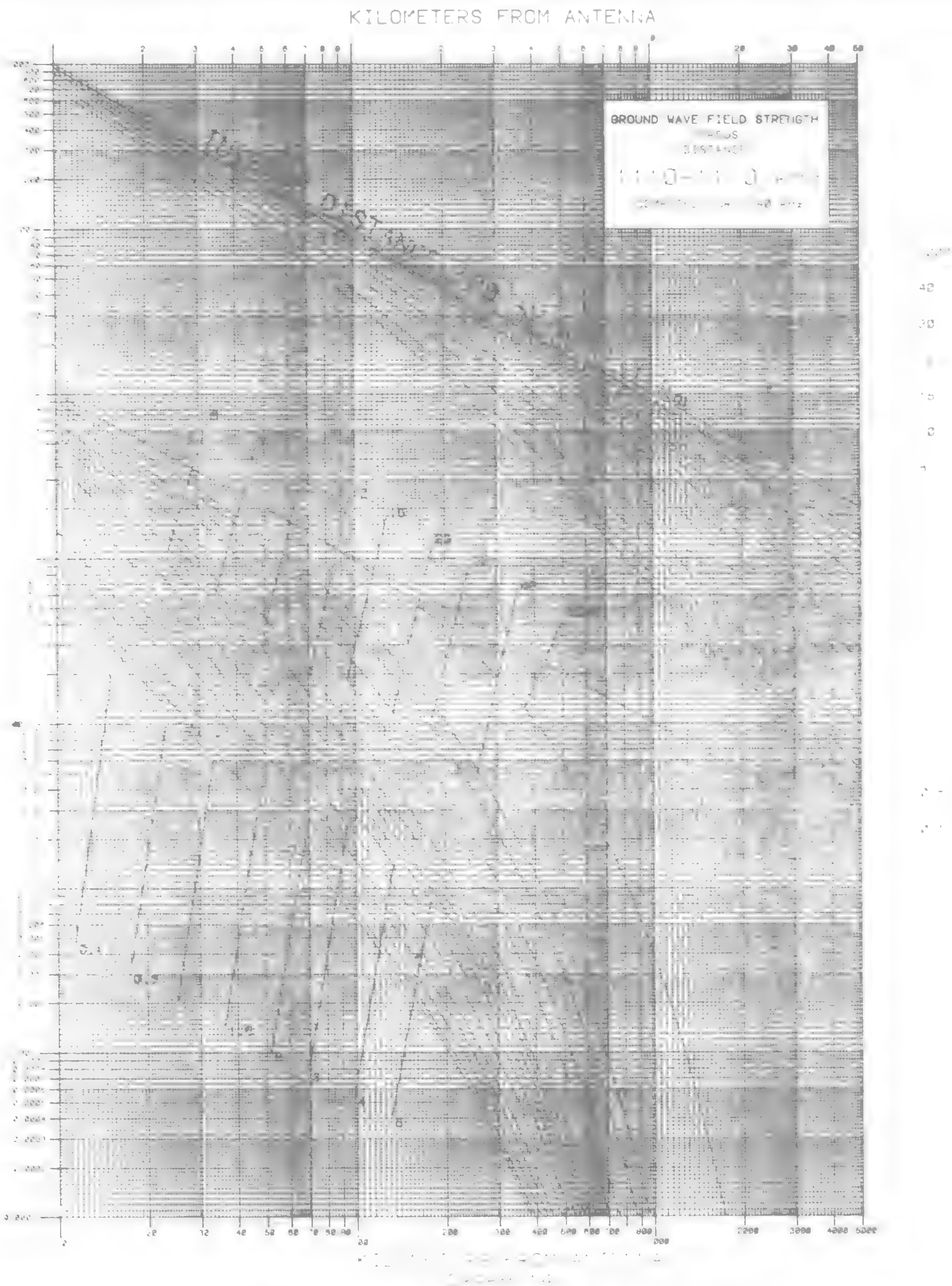
THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80


KILOMETERS FROM ANTENNA
GROUND WAVE FIELD STRENGTH
VERSUS
DISTANCE
COMPUTED FOR 1000 KHZ

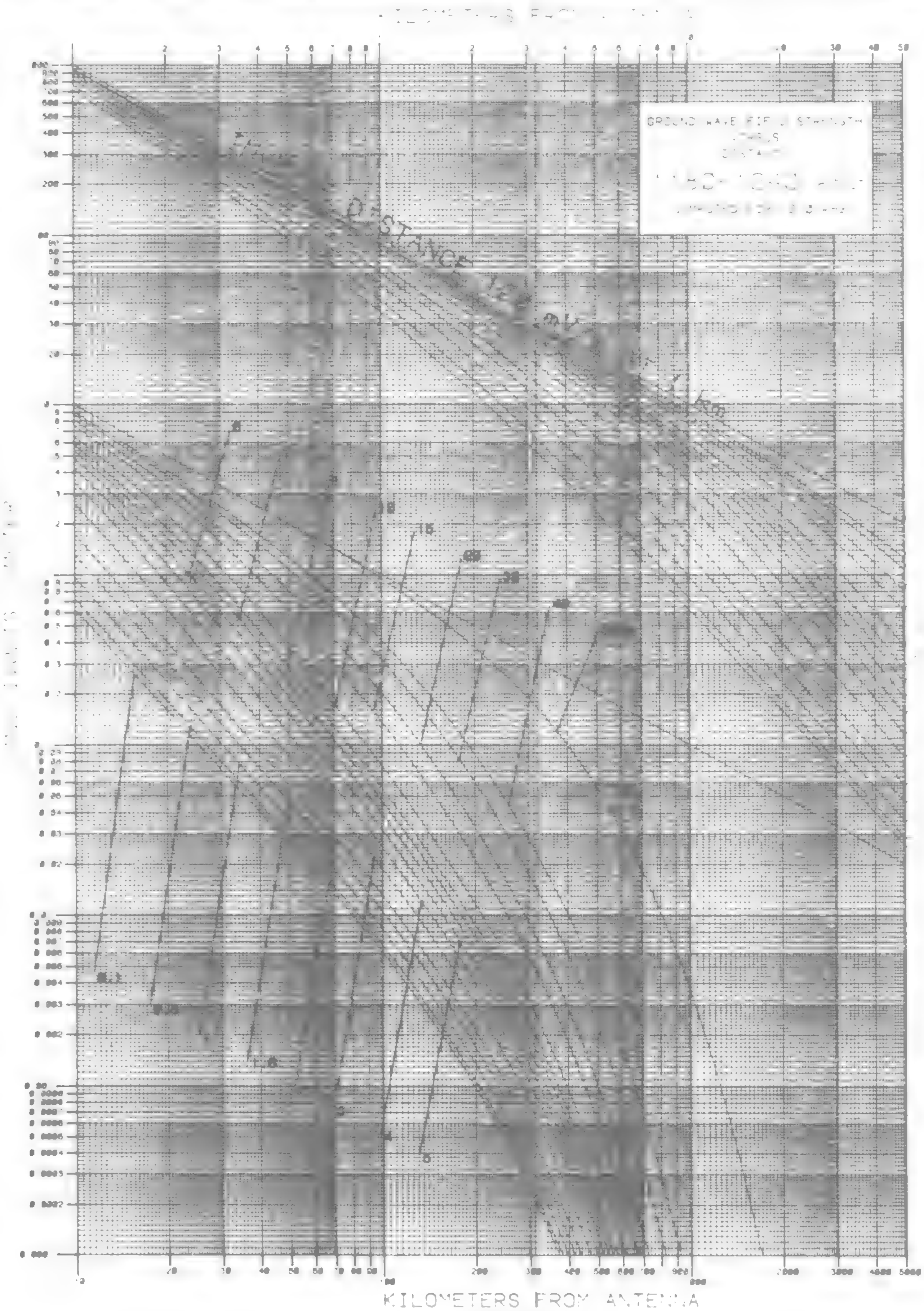


GRAPH 13

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.

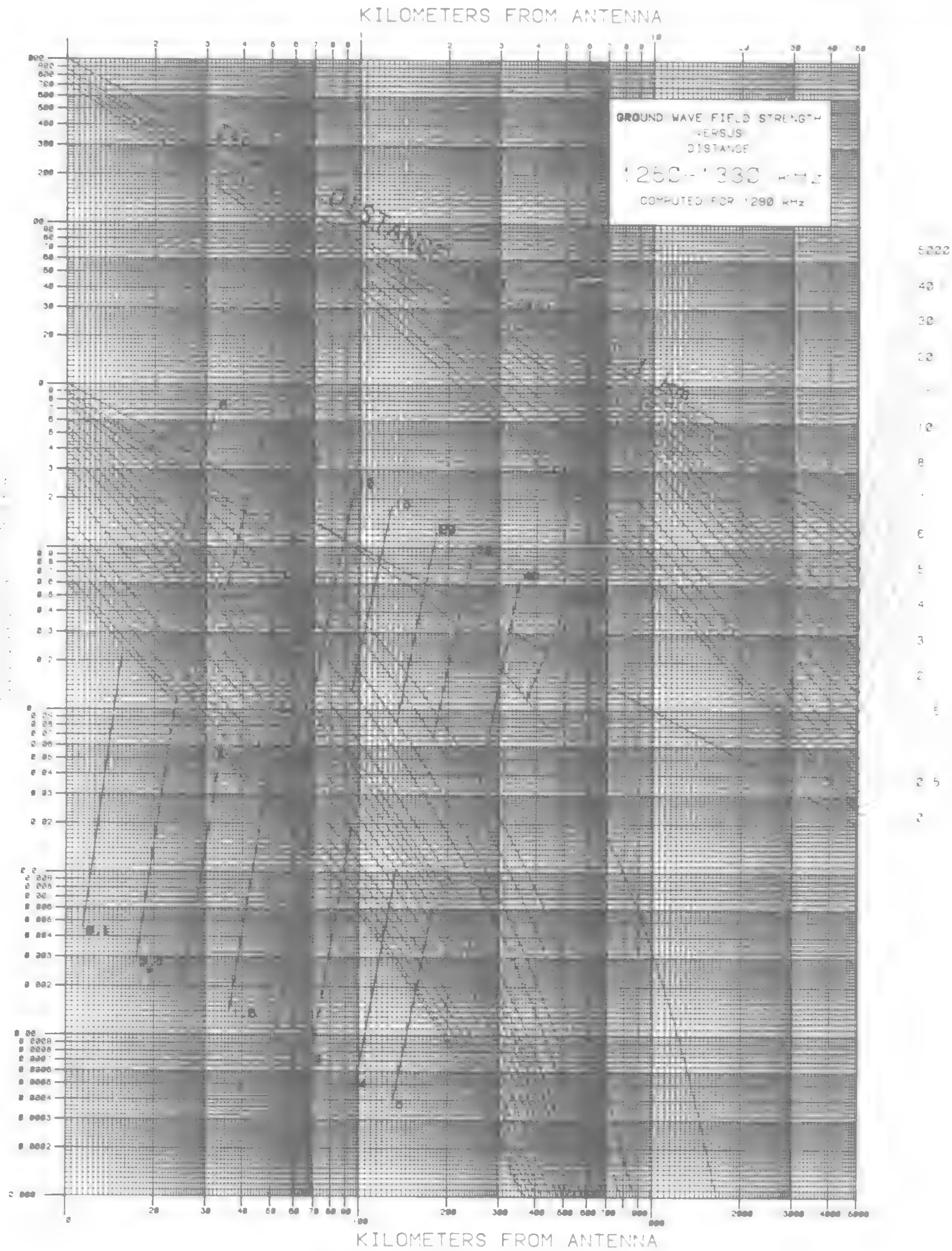


THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS PER METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



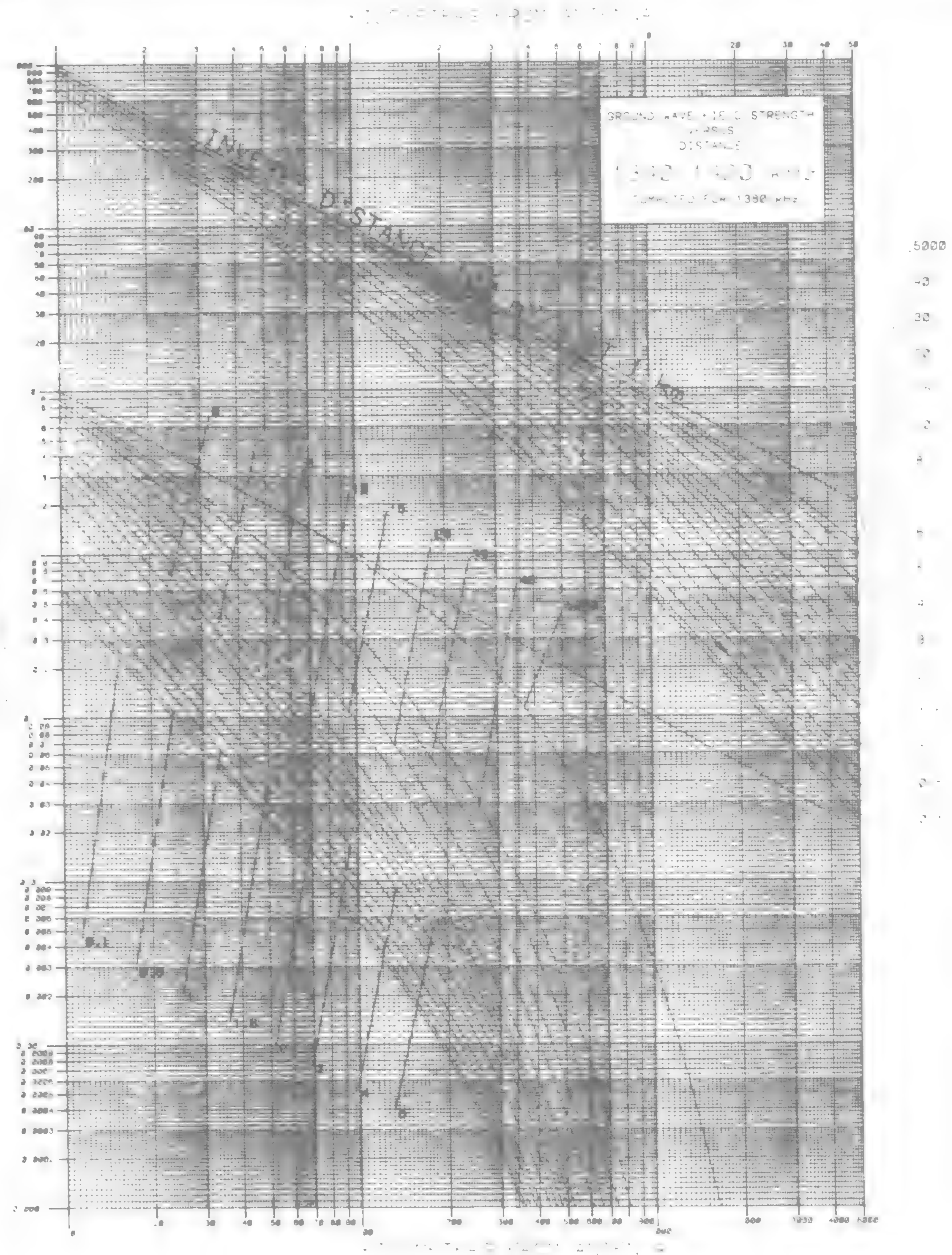
GRAPH 15

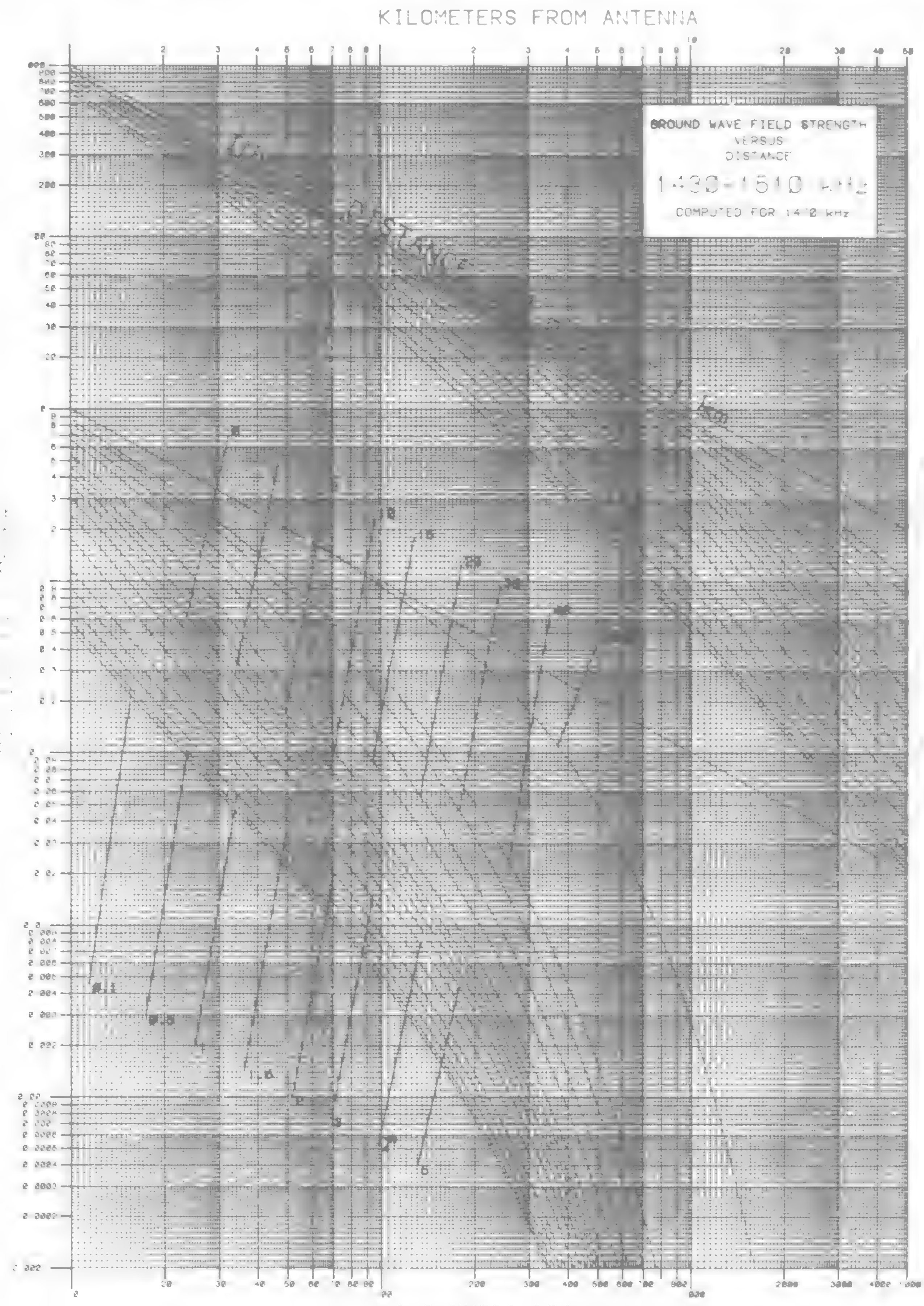
THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS METER ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80



GRAPH 16

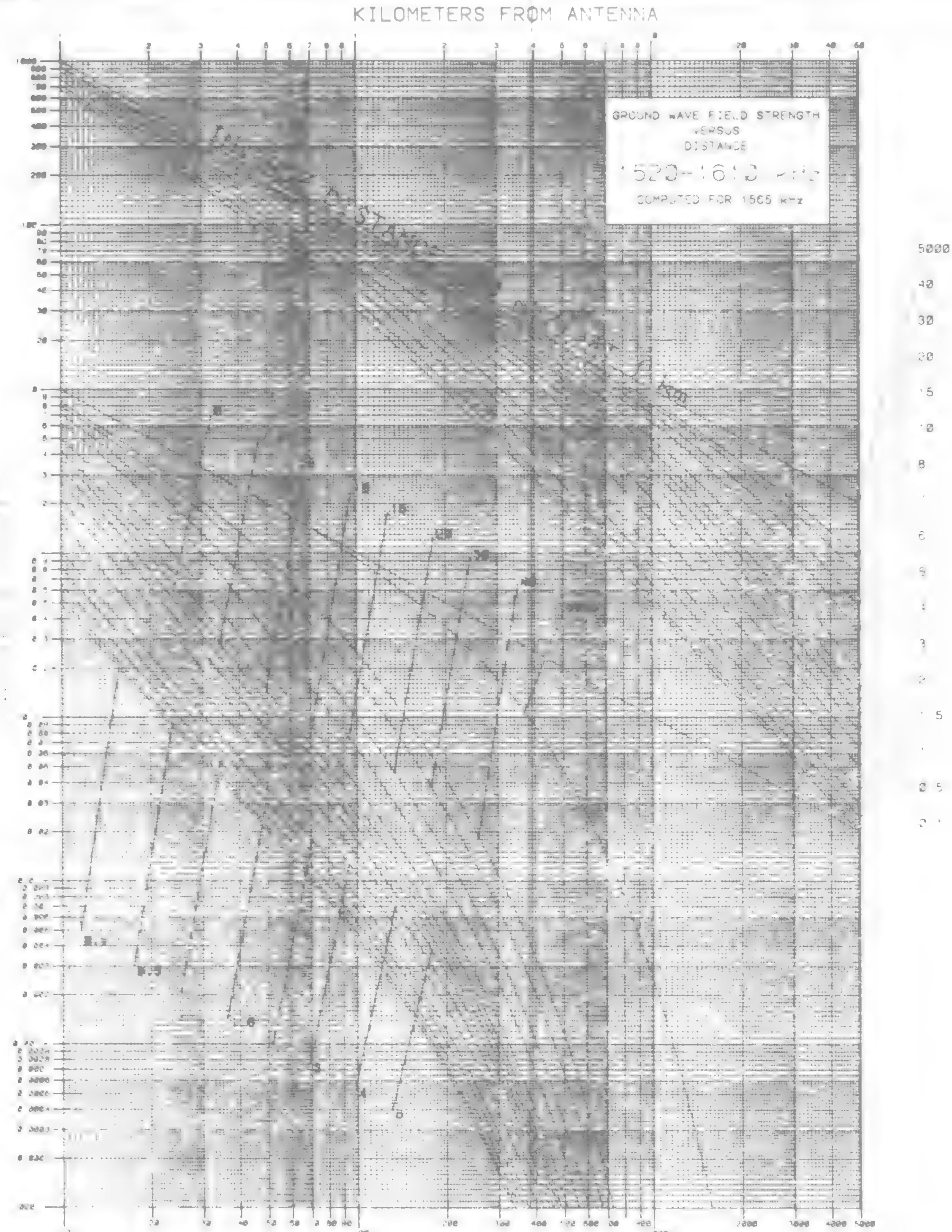
THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80


GROUND WAVE FIELD STRENGTH
VERSUS
DISTANCE



GRAPH 18

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER. ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80.



KILOMETERS FROM ANTENNA
GRAPH 1[illegible]

THE CURVES ARE LABELED WITH THE GROUND CONDUCTIVITIES IN MILLISIEMENS/METER ALL CURVES EXCEPT THE 5000 mS/m (SEA WATER) CURVE ARE DERIVED FOR A RELATIVE DIELECTRIC CONSTANT OF 15. THE SEA WATER CURVE IS DERIVED FOR A DIELECTRIC CONSTANT OF 80

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11. 47 CFR Part 73, § 73.185 is amended by revising paragraphs (b), (c), (d), (e), (f), and (i) and by removing the note to paragraph (j) to read as follows:

§ 73.185 Computation of interfering signal.

* * * * *

(b) For signals from stations operating on clear channels, skywave interference shall be determined from the appropriate formulas and Figures 1a (or 1b) and 6a contained in § 73.190.

(c) For signals from stations operating on regional and local channels, skywave interference is determined from the formulas and Figures 2 and 6a of § 73.190. (Certain simplifying assumptions may be made in the case of Class IV stations on local channels. See note to § 73.182(a)(4).

(d) The formulas in § 73.190(d) depicted in Figure 6a of § 73.190, entitled "Angles of Departure versus Transmission Range" are to be used in determining the angles in the vertical pattern of the antenna of an interfering station to be considered as pertinent to transmission by one reflection. To provide for variation in the pertinent vertical angle due to variations of ionosphere height and ionosphere scattering, the curves 4 and 5 indicate the upper and lower angles within which the radiated field is to be considered. The maximum value of field strength occurring between these angles shall be used to determine the multiplying factor to apply to the 10% skywave field intensity value determined from the formulas in § 73.190(b)(2), § 73.190(c)(2), or Figure 2 of § 73.190 as appropriate. The multiplying factor is found by dividing the maximum radiation between the pertinent angles by 100 mV/m. (Curves 4 and 5 include factors which represent the variation due to variation of the effective height of the E-layer and scattering.)

(e) Example of the use of skywave curves for stations operating on clear channels: Assume a Class II station with which interference may be expected is located at a distance of 724 kilometers from a proposed Class II station. The critical angles of radiation as determined from Figure 6a of § 73.190 are 9.6° and 16.3°. If the vertical pattern of the antenna of the proposed station, in the direction of the other station, is such that between the angles of 9.6° and 16.3° above the horizon the maximum radiation is 260 mV/m at one kilometer, the value of the 50% field, as read from Figure 1a of § 73.190, is multiplied by 2.6 to determine the interfering field intensity at the location in question. In order to obtain the value of the 10% field, this value is then increased by 8 dB. For calculations involving Class I–N stations, Figure 1b and 13dB are employed instead of Figure 1a and 8dB.

(f) For stations operating on regional and local channels, interfering skywave field intensities shall be determined in accordance with the procedure specified in (d) of this section and illustrated in (e) of this section, except that Figure 2 of § 73.190 is used in place of Figure 1a and 1b and the formulas of § 73.190. In using Figure 2 of § 73.190, one additional parameter must be considered, i.e., the variation of received field with the latitude of the path.

* * * * *

(i) Example of the use of skywave curves for stations operating on regional and local channels: It is desired to determine the amount of interference to a Class III station at Portland, Oregon, caused by another Class III station at Los Angeles, California. The Los Angeles station is radiating a signal of 901 mV/m at 1 kilometer, in the horizontal plane, in the great circle direction of Portland, using a 0.5 wavelength antenna. The distance is 1328 kilometers. From Figure 6a of § 73.190, the upper and lower pertinent angles are 7° and 3.5° and, from Figure 5 of § 73.190, the maximum radiation within these angles is 99% of the horizontal radiation or 892 mV/m at one kilometer. The mid-point latitude of the transmission path is 39.8° N and, from Figure 2 of § 73.190, the 10% skywave field at 1328 kilometers is 0.050 mV/m for 100 mV/m radiated. Multiplying by 892/100 to adjust this value to the actual radiation gives 0.277 mV/m as to the interfering signal strength. At 20 to 1 ratio, the limitation to the Portland station is to the 5.5 mV/m contour.

(j) * * *

Note. [Deleted]

* * * * *

12. 47 CFR Part 73, § 73.186 is amended by revising paragraphs (a)(1), (a)(3) and (a)(4) to read as follows:

§ 73.186 Establishment of effective field at one kilometer.

(a) * * *

(1) Beginning as near to the antenna as possible without including the induction field and to provide for the fact that a broadcast antenna is not a point source of radiation (not less than one wave length or 5 times the vertical height in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna), measurements shall be made on eight or more radials, at intervals of approximately 0.2 kilometer up to 3 kilometers (1.87 miles) from the antenna, at intervals of approximately 1 kilometer from 3 kilometers (1.87 miles) to 10 kilometers (6.2 miles) from the antenna, at intervals of approximately 3 kilometers from 10 kilometers (6.2 miles) to 25 or 34 kilometers (15.5 miles or 20 miles) from the antenna, and a few additional measurements if needed at greater distances from the antenna. Where the antenna is rurally located and unobstructed measurements can be made, there shall be as many as 18 measurements on each radial. However, where the antenna is located in a city where unobstructed measurements are difficult to make, measurements shall be made on each radial at as many unobstructed locations as possible, even though the intervals are considerably less than stated above, particularly within 3 kilometers of the antenna. In cases where it is not possible to obtain accurate measurements at the closer distances (even out to 8 or 10 kilometers due to the character of the intervening terrain), the measurements at greater distances should be made at closer intervals. (It is suggested that "wave tilt" measurements may be made to determine and compare locations for taking field strength measurements, particularly to determine that there are no abrupt changes in ground conductivity or that reflected waves are not causing abnormal strengths.

* * * * *

(3) However, regardless of which of the methods in paragraph (a)(2) of this section is employed, the proper curve to be drawn through the points plotted shall be determined by comparison with the curves in § 73.184 as follows: Place the sheet on which the actual points have been plotted over the appropriate Graph in § 73.184, hold to the light if necessary and adjust until the curve most closely matching the points is found. This curve should then be drawn on the sheet on which the points were plotted, together with the inverse distance curve corresponding to that curve. The field at 1 kilometer for the radial concerned shall be the ordinate on the inverse distance curve at 1 kilometer.

(4) When all radials have been analyzed in accordance with paragraph (a)(3) of this section, a curve shall be plotted on polar coordinate paper from the fields obtained, which gives the inverse distance field pattern at 1 kilometer. The radius of a circle, the area of which is equal to the area bounded by this pattern, is the effective field. (See § 73.14.)

* * * * *

13. 47 CFR Part 73, § 73.189 is amended by revising paragraphs (b)(2) (i), (ii) and (iii) to read as follows:

§ 73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(2) * * *

(i) Class IV stations, 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class IV station on a local channel only. In the case of a Class IV station assigned to a regional channel, Curve A shall apply.)

(ii) Class I–N, II and III stations, a minimum effective field strength of 282 mV/m for 1 kW.

(iii) Class I–A, and I–B stations, a minimum effective field strength of 362 mV/m for 1 kW.

* * * * *

14. 47 CFR Part 73, § 73.190 is amended by revising the existing text and designating such text as paragraph (a), and by adding paragraphs (b), (c), (d) and (e) to read as follows:

§ 73.190 Engineering charts and related formulas.

(a) This section consists of the following Figures: 1a, 1b, 2, r3, 5, 6a, 7, 8, 9, 10, 11, and 13. Additionally, formulas that are directly related to graphs are included.

(b) Figure 1a depicts 50% field strength values [F(50)].

(1) For distances greater than 4250 kilometers, the following formula may be used to compute 50% field strength values:

$$F_c = \text{antilog}\left[\frac{\frac{231}{3 + d/1000} - 35.5}{20}\right] \quad \mu V/m$$

where: F = 50% skywave field strength values [F(50)]
d^c = path distance in kilometers

(2) 10% field strength values [F(10)] are derived from Figure 1a by the following formula:

F(10) = F(50) + 8 dB dB(1mV/m)

(c) Figure 1b depicts 50% field strength values F(50) for calculations involving Alaskan stations.

(1) The following formula also may be used for computing field strength values for such applications:

$F_c = 95 - 20 \log_d - 20 ((d + 300)/1000)\ ^1\!/_2$ dB(1 uV/m)

where:
F = 50% skywave filed strength values F(50) in dB (1 uV/m)
d^c = path distance in kilometers

(2) 10% field strength values F(10) are derived from Figure 1b from the following formula:

F(10) = F(50) + 13 dB microvolts per meter

(d) Figure 6a depicts angles of departure versus transmission range. These angles may also be computed using the following formulas:

$$\Theta = \tan^{-1}(K_n \cot \quad \frac{d)}{444.54} \quad \frac{d}{444.54} \quad \text{degrees}$$

Where:
d is distance in kilometers
n = 1 for 50% field strength values
n = 2 or 3 for 10% field strength values
and Where:
$K_1 = 0.00752$
$K_2 = 0.00938$
$K_3 = 0.00565$

Note.—Computations using these formulas should not be carried beyond 0.1 degree.

(e) In the event of disagreement between computed values using the formulas shown above and values obtained directly from the figures, the computed values will control.

15. 47 CFR Part 73, § 73.190 is further amended by removing Figures 1 and 6 and by adding new Figures 1a, and 2, and by revising figure 6a.

BILLING CODE 6712-01-M

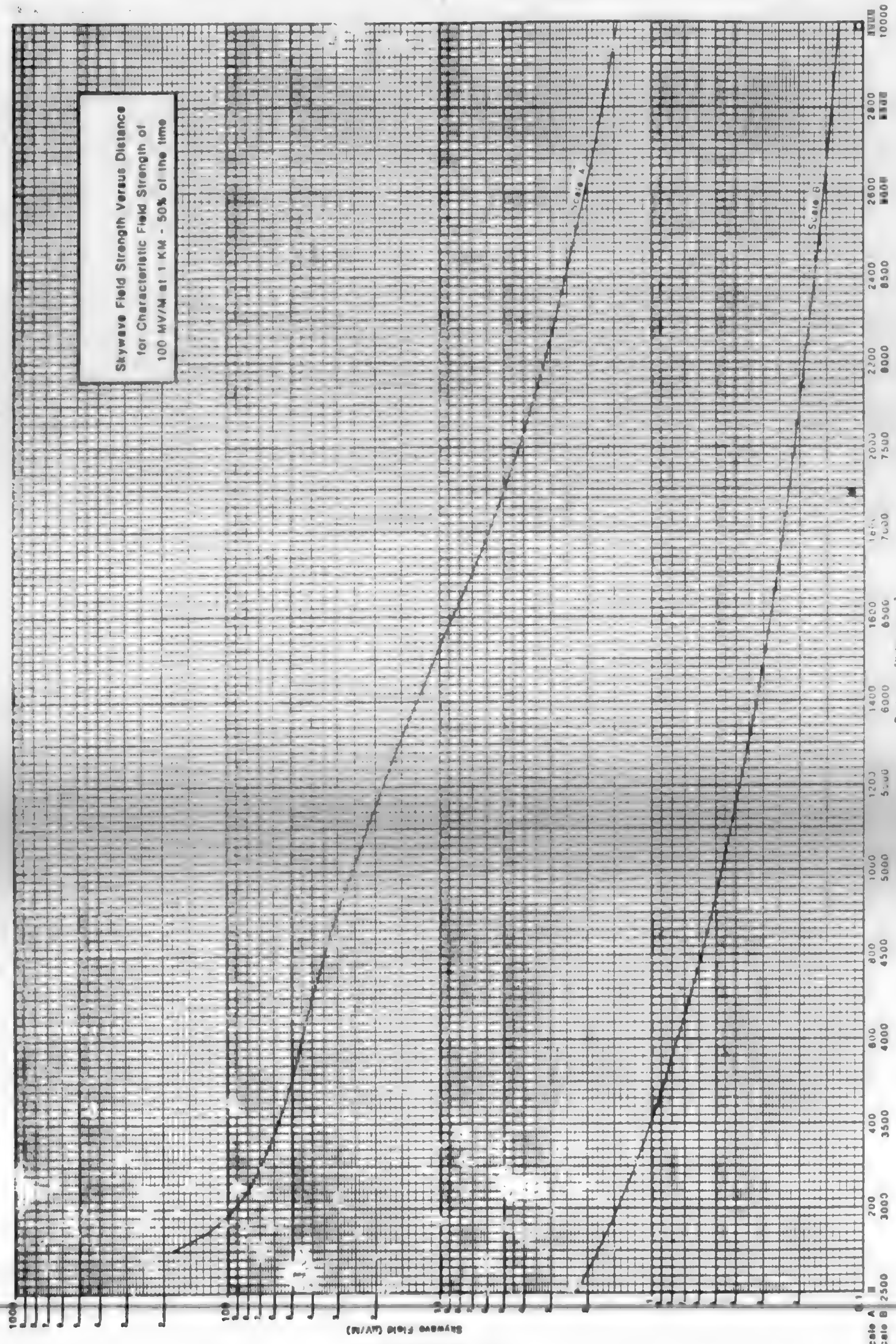
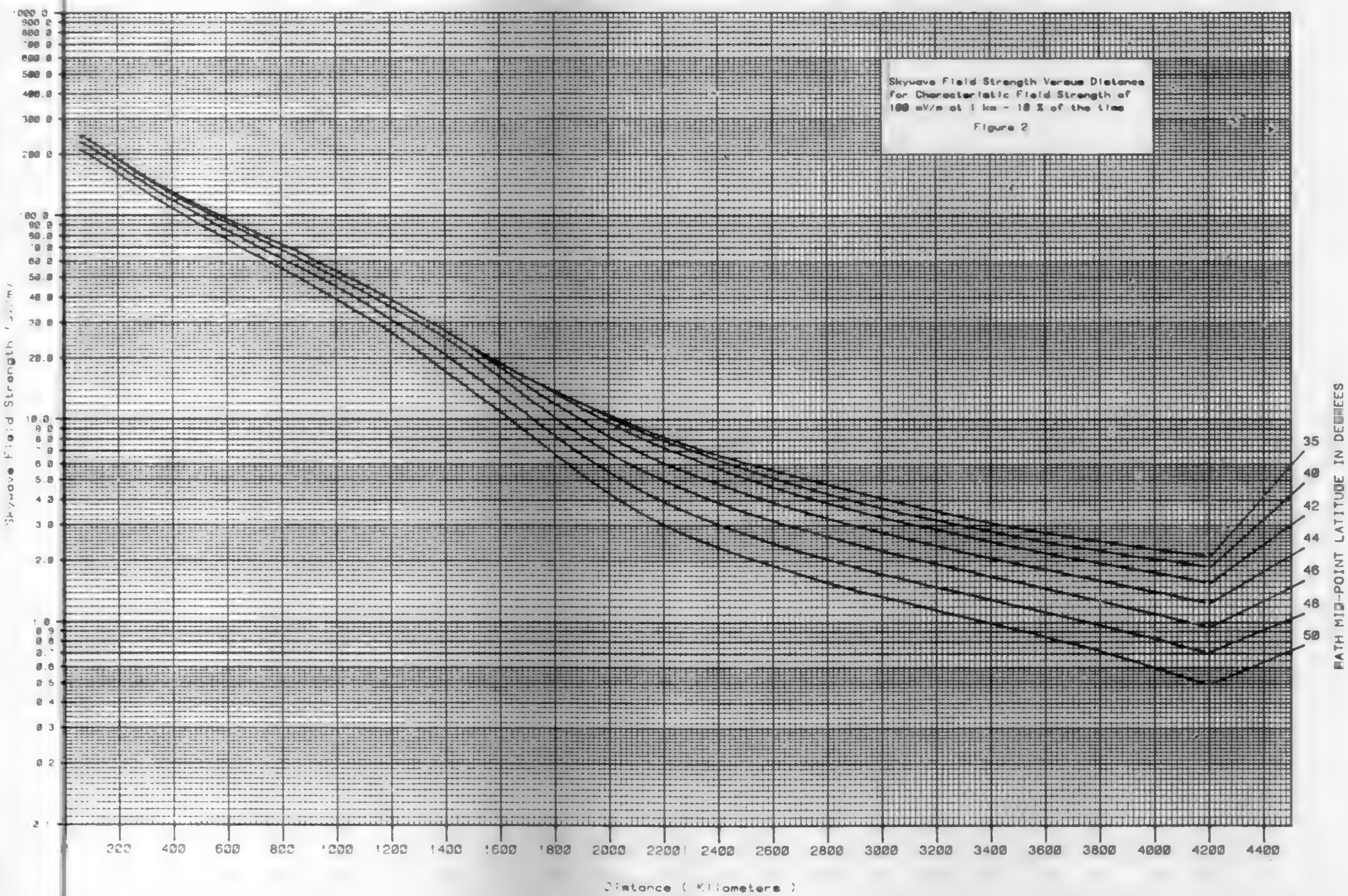
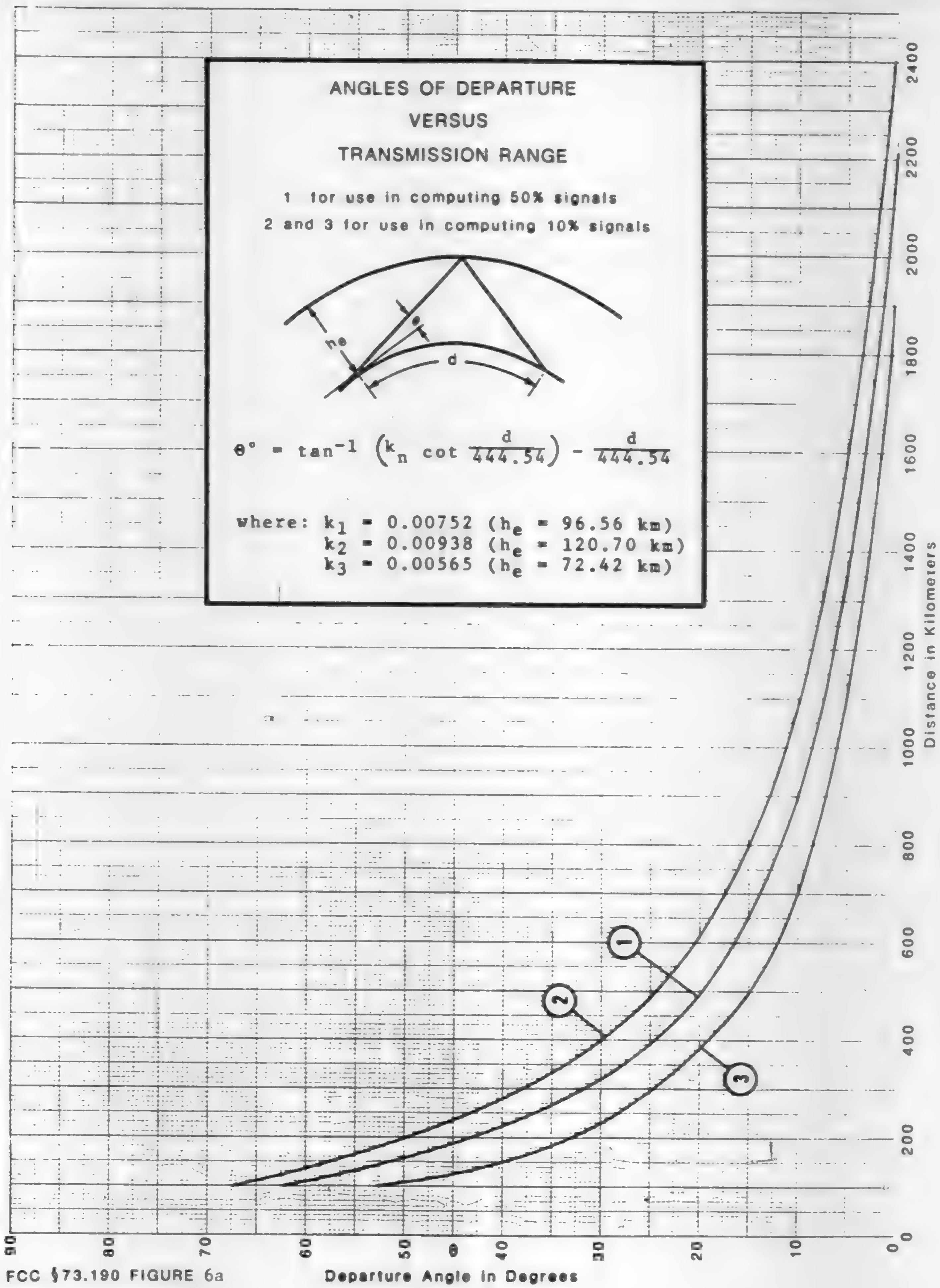

Skywave Field Strength Versus Distance
for Characteristic Field Strength of
100 MV/M at 1 KM - 50% of the time
Scale A
Scale B
Skywave Field (MV/M)
Distance (Kilometers)

Figure 1a


Skywave Field Strength Versus Distance for Characteristic Field Strength of 100 mV/m at 1 km - 10 % of the time
Figure 2
Skywave Field Strength (mV/m)
Distance (Kilometers)
PATH MID-POINT LATITUDE IN DEGREES
35
40
42
44
46
48
50
200 400 600 800 1000 1200 1400 1600 1800 2000 2200 2400 2600 2800 3000 3200 3400 3600 3800 4000 4200 4400



FCC §73.190 FIGURE 6a

BILLING CODE 6712-01-C

* * * * *

16. 47 CFR Part 73, § 73.3571 is amended by adding a new paragraph (d) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(d) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site and which is filed before June 3, 1988, must propose at least a 50% increase in the station's nominal power. However, applications proposing at least a 20% increase and which are in conflict with an application proposing a 50% increase are acceptable for filing.

(2) In order to be acceptable for filing, any application which does not involve a change in site and which is filed on or after June 3, 1988, must propose at least a 20% increase in the station's nominal power.

(3) Applications involving a change in site are not subject to the requirements in paragraphs (d) (1) or (2) of this section and may include a request for an increase in power of any amount.

Appendix B

List of Parties Filing Comments

El Mundo Broadcasting Corporation
Cox Communications, Inc.
National Association of Broadcasters
Alaska Broadcasters Association
Press Broadcasting Company
du Treil-Rackley, Consulting Engineers
Association For Broadcast Engineering Standards, Inc.
Association of Federal Communications Consulting Engineers
Robert A. Jones, P.E.
3-D Communications Corporation
Ronald F. Schatz
Vir James, P.C.
Timothy Cutforth, P.E.
Daytime Broadcasters Association

List of Parties Filing Reply Comments

Association of Federal Communications Consulting Engineers
Association For Broadcast Engineering Standards, Inc.

[FR Doc. 85-10743 Filed 5-1-85; 8:45 am]

BILLING CODE 6712-01-M

Reader Aids

Federal Register

Vol. 50, No. 85

Thursday, May 2, 1985

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Vol. 50 No. 86

federal register

Friday
May 3, 1985

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5-3-85
Vol. 50 No. 86
Pages 18849-18984

federal register

Friday
May 3, 1985

Selected Subjects

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Surface Mining

Surface Mining Reclamation and Enforcement Office

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Federal Register
Vol. 50, No. 86
Friday, May 3, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

Limes Grown in Florida; Postponement of Certain Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule postpones the effective date of the regulation published at 50 FR 15097, April 17, 1985 specifying lime size designations used in marking containers of seedless limes from April 17 to May 20, 1985. This action reflects the fact that lime handlers are unable to pack limes meeting the specified lime size designations primarily due to the lack of adequate size tolerances. Postponement of these requirements is necessary to provide the Florida lime industry with an opportuntiy to consider alternative lime size designations and size tolerances.

EFFECTIVE DATE: Effective date postponed to May 20, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The final rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action was unanimously recommended by the Florida Lime Administrative Committee, established under the marketing order, at a public meeting on April 17, 1985.

The committee reports that the regulation, which was to be effective April 17, 1985, would result in some handlers being unable to pack limes under current packing methods primarily due to the lack of adequate size tolerances. This problem became apparent when inspection was initiated to certify lime packs under the new regulation. It was determined that the specified lime size designations were practically unworkable without modification. The committee is considering alternative lime size designations and size tolerances. In the meantime, it has recommended postponement of the effective date of these requirements.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because: (1) This action relieves restrictions on the handling of limes; (2) handlers are aware of this action as proposed by the Florida Lime Administrative Committee and require no additional time to comply with the regulation; and (3) no purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 911

Marketing Agreements and Orders, Limes, Florida.

PART 911—[AMENDED]

1. The Authority citation for Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Accordingly, paragraph (a)(5) added to § 911.311 Lime Pack Regulation 9 at 50 FR 15097, April 17, 1985 is amended by adding the following phrase at the beginning of the first sentence to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) On and after May 20, 1985, * * *

* * * * *

Dated: April 29, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–10694 Filed 5–2–85, 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported Into the United States; Grade, Size, Quality, and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum requirements for shipments of table grapes grown in southeastern California, and for table grapes imported into the United States, except for the Emperor, Calmeria, Almeria, and Ribier varieties which are not grown in the production area in southeastern California, effective during the period May 3 through August 15, 1985, and the period of May 1 through August 15 of each year thereafter. Such grapes are required to meet the minimum grade and size requirements for U.S. No. 1 Table grade, as defined in the United States Standards for Grades of Table Grapes (European or Vinifera Type), and minimum maturity standards as defined in the California Administrative Code. For table grapes grown in southeastern California additional requirements are effective, including container and pack, container marking, packing holidays, and a requirement to provide adequate facilities for inspection. These actions are designed to assure the shipment of ample supplies of table grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

EFFECTIVE DATES: California Desert Grape Regulation 5 is effective from May 3 through August 15 of the current year and from May 1 through August 15 in each year thereafter. Table Grape Import Regulation 3 is effective from May 6 through August 15 of the current year and from May 1 through August 15 in each year thereafter.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The California Desert Grape Administrative Committee met December 12, 1984, and unanimously recommended grade, size, maturity, container, pack, and other requirements for 1985 season table grapes grown in southeastern California, to be effective for the period May 1 through August 15, 1985. The committee met again on April 11, 1985, and discussed prospective crop and marketing conditions for 1985 season California desert grapes, and reviewed and reaffirmed its earlier recommendations with respect to regulations for the 1985 crop. The California desert grape regulation should become effective May 3, 1985, so that all 1985 season fresh grape shipments are subject to the regulation.

The California desert grape regulation requires shipment of table grapes grown in the production area in southeastern California to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Type), except that grapes of the Flame Seedless variety would be required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch). In addition, fresh shipments of grapes are required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempted from regulation as they are not grown in the production area. The regulation also establishes certain container and pack requirements as well as container marking requirements in order to standardize packing practices. Experimental containers approved by the committee may also be used. A minimum of 22 pounds of grapes must be packed in each of the authorized containers, except for certain packs and experimental containers. Containers must bear the minimum net weight of the grapes in the container, the name of the grape variety, the name of the shipper, and the lot stamp inspection number of the outside of the container. Such requirements are designed to facilitate identification of shipments and promote orderly marketing of these grapes. Packing holidays on Saturdays and Sundays and certain holidays during the regulation period are also established and are designed to prevent an accumulation of excessive supplies of table grapes at distribution points during periods of reduced demand or market inactivity. The regulation exempts "organically-grown" table grapes from the minimum individual berry size requirement. Table grapes for processing are exempt from regulation if certain conditions and safeguards are met.

Also, the California desert grape regulation establishes requirements for person desiring inspection of grapes in the production area. All persons requesting such inspection would required to provide adequate facilities, access to the grapes, and standard equipment and incidental supplies necessary for such inspections to be performed.

The California desert grape regulation is issued under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The table grape import regulation requires imports of table grapes to meet the same minimum grade, size, and maturity requirements as specified in the California desert grape regulation during the specified period. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempt from import requirements as they are not regulated under the California desert grape regulation. The table grape import regulation is issued under section 8e (7 U.S.C. 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Section 8e requires that when specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The Department has determined that the California and import table grape regulations should remain in effect indefinitely, being effective from May 1 through August 15 of each year except as specified for the current season. Grape producers vary their cultural practices early in the grape growing season in order to meet necessary requirements for grade and size at harvest time. This action would afford domestic producers and importers of table grapes ample notice of such seasonal regulations. Similar seasonal requirements have been in effect for the past four marketing seasons for California desert grapes, and for the past two seasons for imported grapes.

Notice of the proposed requirements for California desert and imported table grapes was contained in a proposed rule published in the **Federal Register** (50 FR 13609) on April 5, 1985. The proposed rule provided that interested persons could file comments on the proposals through April 22, 1985.

An exception was filed by the Chilean Ambassador requesting that the import regulation be made effective May 15, 1985, rather than May 1, 1985 as proposed. The exception indicated that an earthquake and adverse weather conditions have retarded the maturity, harvest, and post-harvest handling of Chilean export grapes this season, and that the effective date should be postponed until May 15 to permit shipments of Chilean grapes destined for the United States to arrive before the effective date of the regulation.

The California Desert Grape Administrative Committee filed a comment in support of the proposed rule, and effective period. Shipments of grapes regulated under the Federal marketing order are expected to begin on or about the specified effective date. Moreover, even if substantial shipments do not develop by May 3, there would exist a good possibility for some shippers to harvest immature grapes and ship them prior to May 15 in order to take advantage of the early season high prices. This could negate the effectiveness of the entire seasonal regulation since the desert grape season is relatively short. The intent of the domestic regulation is to prevent the shipment of immature or substandard grapes that could destroy product quality image. Accordingly, it is found that the grade, size, and maturity requirements for imports of grapes should be, and are, the same as those being made effective for grapes covered under this marketing order and the effective period of the domestic and import regulation is May 1, through August 15, of each year, except as otherwise provided for the current season. The exception filed by the Chilean Ambassador is denied.

The specified requirements for both California and imported table grapes will continue in effect from marketing season to marketing season indefinitely

unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, seasonal regulations issued under the marketing order and § 8e were made effective for a single marketing season. The issuance of seasonal regulations which continue in effect from marketing season to marketing season reflects the fact that such regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action could result in a reduction in operational costs to the committee and the government. Although the seasonal regulations will be effective for an indefinite period, the committee will continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the California desert grape crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of California and imported table grapes would tend to effectuate the declared policy of the act.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the California table grape regulation at open meetings at which the committee, without opposition, recommended regulations applicable to California desert grapes to become effective May 1, 1985. California table grape handlers have been apprised of these requirements and the proposed effective date. The import requirements for table grapes are mandatory under section 8e of the act and adequate notice is provided. The provision in the final rule are the same as those in a proposed rule which was published in the **Federal Register**, and which provided a 15-day comment period. It is found that this final rule will tend to effectuate the declared policy of the act.

List of Subjects

7 CFR Part 925

Marketing agreement and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 925.304 and 944.503 are added to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.304 California Desert Grape Regulation 5.

During the period May 3 through August 15, 1985, and May 1 through August 15 of each year thereafter, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided*, That no person shall pack any such grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e).

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in §§ 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and which otherwise meet the requirements of § 1380.19(14) of Article 4, and §§ 1436.37 and 1436.38 of Article 25 of the California Administrative Code (Title 3):

(i) Sawdust pack with inside dimensions of 7¾ x 14¹⁵⁄₁₆ x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅝ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) x 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ x 11½ x 18⅛ inches, specified as container 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) x 15¾ (outside) x 19¹¹⁄₁₆ (outside), specified as container 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing materials, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but no using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the

words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, N.W. Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(g) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes grown in the production area. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51): *Provided:* That all persons who request such inspection and certification must provide adequate facilities in which the inspections may be conducted, and the necessary equipment and incidental supplies that are considered as standard requirements for providing fresh inspection under Federal or Federal-State inspection procedures.

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.503 Table Grape Import Regulation 3.

(a) Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 6 through August 15, 1985, and during the period May 1 through August 15 of each year thereafter, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3). Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

Dated: April 30, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-10847 Filed 5-2-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule eliminating financial qualification review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates. The final rule also reinstates a requirement for financial qualification review and findings for electric utilities which are applying for construction permits. This action is necessary in order to correct an inadvertent omission which could prevent the effectuation of one of the stated purposes of the rule: to reinstate a requirement for financial qualification review and findings for electric utility applicants for construction permits.

EFFECTIVE DATE: October 12, 1984.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (202) 634-1493.

SUPPLEMENTARY INFORMATION: Accordingly, the following corrections are made in the document published on September 12, 1984 (49 FR 35747).

PART 2—[AMENDED]

1. On page 35752, § 2.104, (b)(1)(iii) is corrected to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(b) * * *

(1) * * *

(iii) Whether the applicant is financially qualified to design and construct the proposed facility;

* * * * *

2. On page 35752, 10 CFR Part 2, Appendix A, VI.(c)(1)(iii) is corrected to read as follows:

* * * * *

VI. Posthearing Proceedings, Including the Initial Decision

* * * * *

(c) * * *

(1) * * *

(iii) Whether the applicant is financially qualified to design and construct the proposed facility;

* * * * *

PART 50—[AMENDED]

3. On page 35753, 10 CFR Part 50, Appendix CI.*A*.2. is corrected to read as follows:

* * * * *

I. * * *

A. * * *

2. *Source of construction funds*. The application should include a brief statement of the applicant's general financial plan for financing the cost of the facility, indentifying the source or sources upon which the applicant relies for the necessary construction funds, e.g., internal sources such as undistributed earnings and depreciation accruals, or external sources such as borrowings.

* * * * *

4. On page 35754, 10 CFR Part 50, Appendix C is corrected by adding items III. and IV. to read as follows:

III. Annual Financial Statement

Each holder of a construction permit for a production or utilization facility of a type described in § 50.21(b) or § 50.22, or a testing facility is required by § 50.71(b) to file its annual financial report with the Commission at the time of issuance thereof. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

IV. Additional Information

The Commission may, from time to time, request the applicant, whether an established organization or newly formed entity, to submit additional or more detailed information respecting its financial arrangements and status of funds if such information is deemed necessary to enable the Commission to determine an applicant's financial qualifications for the license.

5. On page 35754, 10 CFR Part 50, Appendix M 4.(b) is corrected to read as follows:

* * * * *

4. * * *

(b) The financial information submitted pursuant to § 50.33(f) and Appendix C shall be directed at a demonstration of the financial qualifications of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

* * * * *

Dated at Washington, DC, this 29th day of April 1985.

For the Nuclear Regulatory Commission.

Martin G. Malsch,

Deputy General Counsel.

[FR Doc. 85-10691 Filed 5-2-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-40-AD; Amdt. 39-5056]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes Equipped With Rolls Royce RB211-22B Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an interim revision to the FAA approved Airplane Flight Manual (AFM) on Lockheed L-1011 series airplanes equipped with RB211-22B engines. This action is prompted by a recent incident of an undetected fire which originated within the gearbox. The accessory gearbox is located at the front bottom outer surface of the engine fan case inside the engine fan case fire zone. Until appropriate corrective actions/modifications are provided by the manufacturer, the AFM revision is required to minimize and contain the potential fire hazard caused by heat damage to the flex fuel feed line from an undetected gearbox fire.

DATE: Effective May 20, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Izumikawa, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: Recently, during cruise, an operator of a Lockheed L-1011 airplane experienced a rapid decrease of engine oil quantity indication from the No. 2 engine. The engine was shutdown by turning off the fuel and ignition switch. The rapid oil loss was caused by an internal accessory gearbox fire which originated from a failed bearing. Fire damage to the gearbox and oil breather line allowed the fire to spread outside the gearbox and impinge on an adjacent fuel line. There was no fire warning due to the localized concentration of the fire. Fuel, under pressure from the fire-damaged flex fuel supply line, continued to feed the undetected fire after the engine had been shut down. After landing, ground observers reported flames coming from the No. 2 engine upper left cowling, and the fire was extinguished by the fire department.

Since this incident occurred, the FAA has learned of eight other gearbox fires caused by failed bearings. Seven of the total fires were contained within the gearbox.

The requirements of this AD are intended only as interim procedures until follow-on regulatory action can be accomplished with respect to the following manufacturer-proposed terminating corrective actions:

A. Extension of the fire detector loop to an area above the gearbox heat zone;

B. Installation of a protective heatshield cover around the No 2 engine position flex fuel supply line;

C. Modification of the gearbox breather tube assembly, replacing the aluminum sections with steel and the flex section with fire-resistant material; and

D. Rewiring of the circuitry of the fire shutoff valve on the No. 2 engine position to close in conjunction with the

off position of the fuel and ignition switch.

The FAA will also consider additional mandatory actions as deemed necessary in the interests of safety.

Since this situation is likely to exist or develop on other airplanes of the same type design, this airworthiness directive is required as an interim action to prevent re-occurrence by revising the AFM emergency inflight shutdown procedure whenever there is a rapid decrease of engine oil quantity indication.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes equipped with RB211-22B engines, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To minimize the potential fire hazard in the event of fire damage to the engine fuel supply line from uncontained gearbox fires, accomplish the following:

A. Revise the FAA approved Airplane Flight Manual (AFM), LR-25925, within 15 calendar days after receipt of this airworthiness directive by incorporation of the emergency engine inflight shutdown procedure whenever there is a rapid decrease of engine oil quantity indication, as follows:

Section 2—Emergencies

Rapidly Decreasing Engine Oil Quantity Indication.

If engine oil quantity indication decreases at an abnormally high rate requiring engine shutdown, assume a failure exists in the accessory gearbox and shutdown the engine as follows:

Throttle	close
Fuel and ignition switch	close
Fuel tank valve	close

Note.—If APU is required, and the No. 2 engine has been shutdown, pull circuit breakers 1L16 and 1L17 to protect hydraulic pump, then pull No. 2 engine fire handle, then open No. 2 tank valve. (If hydraulic quantity decreases, reset CB 1L16 and 1L17 to isolate hydraulic pump and stop fluid loss).

B. A copy of this AD inserted in the AFM may be considered as an acceptable means of compliance.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 20, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 29, 1985.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10645 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-42-AD; Amdt. 39-5057]

Airworthiness Directives; Boeing Model 767-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Boeing Model 767-200 airplanes. The AD requires replacement of the horizontal stabilizer inner pivot pins with improved inner pivot pins, and inspection of the horizontal stabilizer outer pivot pins for cracks. This action is prompted by the discovery that a number of these parts were improperly manufactured. The failure of one pin on the major fatigue test article for the Model 767 was attributed to improper manufacture. The failure of an inner and outer pin at the same joint would compromise the structural integrity of the horizontal stabilizer support structure and could ultimately result in loss of airplane control.

EFFECTIVE DATE: May 20, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yarges, Airframe Branch, ANM-120S; telephone (206) 431-2925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Boeing Model 767 horizontal stabilizer pivot pins form part of two hinged joints (right hand and left hand sides of the airplane with a common axis) that connect the horizontal stabilizer and the airplane aft body structure. Each joint is fail-safe in design concept, having an inner and outer pivot pin; however, manufacturing defects have been found on both pins. Complete failure of either of these joints would seriously jeopardize the pilot's ability to control the airplane.

During the teardown inspection of the Model 767 fatigue test airframe, which had completed 100,000 simulated flight-cycles of testing, a horizontal stabilizer right hand outer pivot pin was found to be completely fractured.

Metallurgical inspection of the broken pin indicated that the break was initiated by fatigue from surface damage caused by improper grinding during manufacture. The crack was propagated by cyclic loading. Evidence of grinding damage has been found on eight out of thirteen outer and inner pins (as manufactured) which have been inspected, and it is highly likely that other damaged pins exist on airplanes in service.

Due to corrosion damage of the fracture surface, neither the time of crack initiation nor the time of final fracture could be established. An analysis has been made of the time for crack propagation and this has been used in establishing compliance times for this AD.

Undetected pin cracking and inner pin corrosion would eventually compromise the fail-safe design of the joint.

The Boeing Company has designed improved pins for replacement which will minimize the possibility of manufacturing defects reoccurring.

The Boeing Company has published Service Bulletin 767-55-0005, dated March 29, 1985, which specifies inspections and/or modifications necessary to ensure the structural integrity of the pivot pin installation. Some airplanes have nearly reached the inspection threshold (6000 landings) specified in the service bulletin.

Since this condition is likely to exist or develop on other airplanes of this same type design, the FAA has determined that an AD is necessary which requires inspections and modifications that will maintain the structural integrity of the pivot pins.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 767-200 airplanes, certificated in all categories, listed in Boeing Service Bulletin 767-55-0005, dated March 29, 1985. This AD is required to detect or avert cracked horizontal stabilizer pivot pins, which could fail during flight, resulting in a reduction in the controllability of the airplane.

Unless already accomplished, accomplish the following prior to the accumulation of 6,000 total landings, or within 200 landings after the effective date of this AD, whichever occurs later, in accordance with Boeing Service Bulletin 767-55-0005, dated March 29, 1985, or later FAA approved revision:

A. Remove the horizontal stabilizer inner pivot pins and ultrasonically inspect the outer pins for cracks.

B. If an outer pivot pin is found cracked, replace it with an improved outer pivot pin before further flight.

C. Replace the inner pivot pins with improved inner pivot pins, whether or not cracks are found in the outer pin.

D. If no cracks are found in the outer pivot pin, the joint must be reassembled with a new inner pivot pin and the existing outer pivot pin must thereafter be reinspected at intervals not to exceed 12,000 landings.

Terminating action for the repeat inspections of the outer pivot pin consists of replacing the existing outer pivot pin with an improved outer pivot pin, in accordance with Boeing Service Bulletin 767-55-0005 dated March 29, 1985, or later FAA approved revision.

Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 20, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 29, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10845 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-103-AD; Amdt. 39-5051]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection and replacement, as required, of the engine pylon and spar attach bolts (fuse pins) on certain Boeing Model 747 airplanes. This amendment eliminates the reporting requirements specified in the existing AD because they are no longer necessary and, in addition, corrects an error in the Service Bulletin reference.

EFFECTIVE DATE: June 4, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to further amend an existing airworthiness directive to delete a reporting requirement which is no longer necessary, and to correct an editorial error, was published in the **Federal Register** on February 14, 1985 (50 FR 6188). The comment period for the proposal closed on February 28, 1985.

Interested persons have been afforded an opportunity to participate in the making of this AD. One comment was received and the commenter supported the proposed amendment in its entirety.

Inasmuch as this amendment merely corrects an editorial error and deletes a reporting requirement which is no longer necessary, it will not impose any additional regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Amendment 39–3529 (44 FR 47924; August 16, 1979), AD 79–17–04, as amended by Amendment 39–4335 (47 FR 9812; March 8, 1982), as follows:

1. Delete paragraph F.; and
2. Revise the reference to the service bulletin in the introductory paragraph to read "747–54–2063."

Effective date: June 4, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10740 Filed 5–2–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–114–AD; Amdt. 39–5052]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires inspection of the shims at the flap track/beam No. 2 attachment for damage and replacement of the bolts. Loose bolts have been found in this structure which could result in bolt failure. This condition can lead to flap asymmetry and create a hazardous flight condition.

EFFECTIVE DATE: June 4, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilité which mandates compliance with the requirements of Airbus Industrie Service Bulletin A300–57–107.

Bolts have been found loose at the flap track/beam No. 2 rear attachment to the wing. Loose bolts may be the result of sealant extrusion under flight loads, causing reduction in bolt tension. Loose bolts will result in fretting between the flap track/beam rear attachment packing block and wing bottom skin, causing a rapid reduction in fatigue life of the bolts due to ground loads. Bolt failure can cause loss of flap track/beam support leading to flap asymmetry and creating a potentially hazardous flight condition. The service bulletin prescribes inspection of the shims at the flap track/beam No. 2 rear attachment for damage and replacement of four titanium bolts and nuts with new steel bolts and nuts.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the action mentioned above was published in the **Federal Register** on January 15, 1985, (50 FR 2059). The comment period closed March 5, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. The manufacturer indicated that Paragraph A. of the proposed amendment should be revised to emphasize the minimum allowable bolt torque as specified in the service bulletin, and the requirement to replace bolts not meeting the minimum torque. The FAA has determined that this requirement exists in the referenced service bulletin, and therefore, the final rule can be revised accordingly without increasing the scope of the AD. The other commenter concurred with the proposal.

It is estimated that 24 U.S. registered airplanes will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $1,500 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $49,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes listed in Airbus Industrie Service Bulletin A300–57–107, Revision 2, dated July 15, 1982, certificated in all categories. To prevent flap asymmetry, within 120 days after the effective date of this airworthiness directive (AD) accomplish the following, unless previously accomplished:

A. Inspect the shims at the flap track/beam No. 2 rear attachment for damage and replace the four titanium bolts with steel bolts in accordance with the accomplishment instructions of the service bulletin. If the shims are found to be damaged or displaced, repeat the inspection of the new bolts at intervals not to exceed 2,500 landings. Any bolt for which the torque is found to be less than 350 inch-pounds must be replaced before further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective June 4, 1985.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10741 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-115-AD; Amdt. 39-5053]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes which requires inspection of a certain area of the lower fuselage skin for cracks or corrosion. This action deletes the requirement for removal of the long range fuel tanks or water injection tanks during this inspection.

EFFECTIVE DATE: June 4, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 12414, Dulles International Airport, Washington, D.C. 20041. This information may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircarft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued AD 83-24-10, Amendment 39-4780 (48 FR 55108, December 9, 1983), which requires inspection of the lower fuselage skin in the area covered by the forward and rear underwing fairings for cracks or corrosion, and repair, as necessary. The manufacturer had submitted substantive comments to the NPRM preceding AD 83-24-10; however, those comments were inadvertently misdirected and did not reach the docket for consideration during the writing of the final rule. In those comments, the manufacturer did not agree with paragraph B. of the NPRM, which required removal of long range fuel tanks on certain airplanes before performing the inspections.

A proposal to amend Part 39 of the Federal Aviation Regulations by amending AD 83-24-10 to delete the requirement to remove the long range fuel tanks before performing the fuselage inspections was published in the **Federal Register** on January 22, 1985 (50 FR 2824). The comment period closed on March 11, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. The only comment received concurred with the proposal.

This amendment deletes an inspection requirement that has been determined to be unnecessary and imposes no additional economic burden on any person.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revising Paragraph B. of Amendment 39-4780 (48 FR 55108, December 9, 1983), AD 83-24-10, to read as follows:

B. On airplanes having long range fuel tanks or water injection tanks installed, accomplish the instructions of paragraph 2.1.3 of the service bulletin.

This amendment becomes effective June 4, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10742 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket 85-ASO-5]

Designation of Transition Area, Tarboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate the Tarboro, North Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Tarboro-Edgecombe Airport. This action lowers the base of controlled airspace, in the vicinity of the airport, from 1,200 to 700 feet above the surface. An instrument approach procedure, predicated on the Tar River VORTAC, is being developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 GMT, August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 26, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Tarboro, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Tarboro-Edgecombe Airport (49 FR 7796). The operating status of the Tarboro-Edgecombe Airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in

FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Tarboro, North Carolina, transition area and lowers the base of controlled airspace, the vicinity of Tarboro-Edgecombe Airport, from 1,200 to 700 feet above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Tarboro, North Carolina, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) as follows:

Tarboro, NC—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tarboro-Edgecombe Airport (Lat. 35°57'00" N., Long. 77°33'00" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69)

Issued in East Point, Georgia, on April 19, 1985.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 85–10746 Filed 5–2–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–6]

Removal of the Rifle, CO Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Rifle, Colorado, transition area was established to ensure segregation of aircraft operating in instrument weather conditions, and other aircraft operating in visual weather conditions. It was established in anticipation of instrument approach procedures to the Garfield County Airport using the Rifle NDB. However, the Rifle NDB has failed certification tests despite efforts to correct the deficiencies and approach procedures cannot be authorized. Therefore, the transition area is no longer necessary.

EFFECTIVE DATE: 0901 GMT: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Art Corwin, Airspace and Procedures Specialist, ANM–532, FAA, Northwest Mountain Region—Docket No. 85–ANM–6, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, the telephone number is (206) 431–2532.

SUPPLEMENTARY INFORMATION:

History

On March 5, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Rifle, Colorado, transition area and thereby release that airspace below 1,200 feet above the ground level for other than instrument weather operations (50 FR 8739).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the Rifle, Colorado, transition area and thereby release that airspace below 1,200 feet above ground level for other than instrument weather operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas/aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Subpart G, § 71.81, of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Rifle, Colorado, Transition Area—[Removed]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10747 Filed 5–2–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 50465–5065]

Amendments To Export Controls on Software and Electronic Computers

Correction

In FR Doc. 85–10288 beginning on page 16468 in the issue of Friday, April 26, 1985, make the following correction: On page 16468, in the third column, in the first line of the "SUMMARY", "delegates" should read "deletes".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4 and 140

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"; Other Regulatory Requirements

Correction

In FR Doc. 85–9730 beginning on page 15868 in the issue of Tuesday, April 23, 1985, make the following corrections.

1. On page 15876, third column, in the next to last line of footnote 55, "offset of the contract may be prudent." should have read "offset of the contract may not be prudent."

§ 4.5 [Corrected]

2. On page 15883, first column, the second line of § 4.5(c)(1)(iv) should have read "paragraph (b) of this section pursuant to".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 80F-0368]

Irradiation in the Production, Processing, and Handling of Food; Response to Submissions

Correction

In FR Doc. 85-9454 appearing on page 15417 in the issue of Thursday, April 18, 1985, make the following correction: In the second column, in the ninth line, "kiloGary" should read "kiloGray".

BILLING CODE 1505-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Cadco, Inc., providing for manufacturing 5-gram-per-pound tylosin premixes. The premixes are used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Monies, IA 50322, is sponsor of a supplement to NADA 91-783 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of 5-gram-per-pound tylosin premixes subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

The firm presently holds an approval for the manufacture of a 40-gram-per-pound tylosin premix for such use. The basis for approval of the 5-gram-per-pound premix is the same as for the approval of the 40-gram-per-pound premix. The supplement to NADA 91-783 providing for the 40-gram-per-pound premix was approved by a final rule published in the **Federal Register** of July 26, 1983 (48 FR 33865). The freedom of information summary made available under the provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), which consisted of a summary of safety and effectiveness data and information submitted to support approval of the previous approval for the 40-gram-per-pound premix, applies also to this application and may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 558.625 by revising paragraph (b)(4) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(4) To No. 011490: 4 and 8 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Effective date. May 3, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-10749 Filed 5-2-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for International Nutrition, Inc., providing for the manufacture of a 5-gram-per-pound tylosin premix and for additional claims for a 10-gram-per-pound tylosin premix. The premixes are used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 L St., Omaha, NE 68117, is the sponsor of a supplement to NADA 95-551 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of 5- and 10-gram-per-pound premixes subsequently used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 558.625 by revising paragraph (b)(3) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(3) To 043733: 4 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. May 3, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated April 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–10750 Filed 5–2–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Dale Alley Co., providing for manufacturing 5- and 20-gram-per-pound tylosin premixes. The premixes are used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 64502, is sponsor of a supplement to NADA 96–512 submitted on its behalf by Elanco Products Co. The supplement provides for making 5- and 20-gram-per-pound tylosin premixes for subsequent addition to beef cattle, chickens, and swine feeds for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 558.625 by revising paragraph (b)(50) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(50) To No. 018083: 4 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 8, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date: May 3, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)))

Dated: April 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–10748 Filed 5–2–85; 8:45 am]

BILLING CODE 4160-01-M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1501

Central Organization of the Foundation

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: Pursuant to the requirements of the Freedom of Information Act, this rule describes the central organization of the African Development Foundation, and the office and location at which the public may obtain information, make submittals or requests, or obtain decisions regarding the operations of the Foundation.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, (202) 634–9853.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The African Development Foundation has determined that this rule is related to internal agency organization and is therefore not subject to OMB E.O. 12291 review.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The President of the Foundation certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 1501

Organizations and functions (Government agencies).

Accordingly, Part 1501 is added to 22 CFR Chapter XV to read as follows:

PART 1501—ORGANIZATION

Substantive Rule of General Applicability

Authority: 22 U.S.C. 290h, 5 U.S.C. 552.

Substantive Rule of General Applicability

§ 1501.1 Introduction.

The regulations of this part are issued pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

§ 1501.2 Background.

(a) The African Development Foundation ("ADF") is a wholly-owned corporation of the United States Government, created by the African Development Foundation Act (Title V, Pub. L. 96–533, 94 Stat. 3151 (22 U.S.C. 290h)). It is a non-profit, non-stock issuing, tax-exempt corporation, and is subject to Title I of the Government Corporation Control Act (31 U.S.C. 9101 et seq.).

(b) The primary function of ADF is to extend financial assistance in the form of grants, loans and loan guarantees to African private and public entities to support self-help activities at the local level in African countries, and to fund development research by Africans. Priority shall be given to projects which community groups undertake to foster their own development and which involve maximum feasible participation of the poor. The maximum assistance which may be extended for a single project is $250,000.

§ 1501.3 Description of central organization and location of offices.

(a) The management of ADF is vested in a Board of Directors (hereinafter referred to as the "Board") consisting of a Chairperson, a Vice Chairperson and five other members appointed by the President, by and with the advice and consent of the Senate. Five of the members are appointed from private life and two from among the officers and employees of agencies of the United States concerned with African affairs. The Board establishes policy for the Foundation and is responsible for its management.

(b) The Board is required to appoint a President of the Foundation upon such terms as it may determine. The President has responsibility for directing the day to day activities of the Foundation. He is assisted by a Vice President, a Congressional liaison officer, a Public Affairs officer, a General Counsel, and the following staff units:

(1) *Office of Administration and Finance.* This office is responsible for the management of the administrative, budgeting, financial and personnel activities of the Foundation.

(2) *Office of Research and Evaluation.* This office is responsible for evaluating, or assisting grantees to evaluate, ADF funded projects; for monitoring evaluations and analyses of grassroots projects conducted by other funding or research organizations; and for identifying and providing assistance to indigenous researchers in Africa working in development projects at the local level.

(3) *Office of Program and Field Operations.* This office is responsible for identifying, reviewing and monitoring projects funded by the Foundation.

(c) The Board is also required to establish an Advisory Council made up of individuals knowledgeable about development activities in Africa, and to consult with the Council at least once each year. The Council shall have not more than 25 members appointed for a period of two years with an option to be reappointed for an additional year.

(d) The Board of Directors and the aforementioned officers, together with the other employees of the Foundation, constitute the central organization of ADF, and are located and function at ADF headquarters, 1724 Massachusetts Avenue NW., Suite 200, Washington, D.C. 20036. It is anticipated that in the future a field organization will be established with offices in selected cities in Africa, but this has not yet occurred.

§ 1501.4 Availability of information pertaining to Foundation Operations.

Rules of procedure and forms used for the funding of ADF projects may be obtained upon application to the Office of Program and Field Operations at ADF headquarters, 1724 Massachusetts Avenue NW., Suite 200, Washington, D.C. 20036.

§ 1501.5 Substantive rules of general applicability.

ADF's regulations published under the provisions of the Administrative Procedure Act are found in Chapter XV of Title 22 of the Code of Federal Regulations and the **Federal Register.** These regulations are supplemented from time to time by amendments appearing initially in the **Federal Register.**

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85–10697 Filed 5–2–85; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8014]

Income Tax—Energy Investment Credit for Leased Qualified Intercity Buses

Correction

In FR Doc. 85–7022, beginning on page 11852, in the issue of Tuesday, March 26, 1985, make the following correction:

On page 11853, second column, in the first line of the amendatory language, "Section 1.48–9(g)(8)" should have read "Section 1.48–9(q)(8)".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS-82020; FRL-2828-8]

Chemical Information Rules; Health and Safety Data Reporting Urea-Formaldehyde Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding the chemical substances known generically as urea-formaldehyde resins (UF resins) to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information rule (PAIR). EPA is also adding UF resins to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of TSCA. The specific chemicals subject to these rules are: urea, polymer with formaldehyde (CAS Number 9011–05–6), and urea, reaction product with formaldehyde (CAS Number 68611–64–3). Thirty days after publication of this rule, UF resins will become subject to 40 CFR Parts 712 and 716.

EFFECTIVE DATE: This regulation becomes effective on June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of

Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Numbers 2000-0420 and 2070-0004.

I. Background

A. Statutory Framework

EPA believes that the Interagency Testing Committee (ITC) designation of methylolurea in its Twelfth Report was actually a recommendation to test UF resins. The substance investigated by the ITC was a material referred to as "methylolurea", but was in fact a brand of UF resin. EPA is therefore considering UF resins to be the substance designated by the ITC.

Under section 8(a) of TSCA, EPA issued PAIR, which was published in the **Federal Register** of June 22, 1982 (47 FR 26992), for reporting by chemical manufacturers. Those companies which manufactured, produced, or imported one of the approximately 250 chemical substances listed were to report general production, use, and exposure data to the Agency by November 19, 1982. This rule is codified at 40 CFR Part 712. An amendment to the rule, published in the **Federal Register** of May 11, 1983 (48 FR 21294), added 40 CFR 712.30(c) which provides that chemicals designated by the ITC may be made subject to the rule by publication of a regulation to that effect in the **Federal Register.**

EPA issued regulations under section 8(d) of TSCA, which were published in the **Federal Register** of September 2, 1982 (47 FR 38780), to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule. This rule is codified at 40 CFR Part 716. Section 716.18(b) of the rule provides that chemicals designated by the ITC for testing consideration may be made subject to the rule by the publication of a regulation to that effect in the **Federal Register.**

B. Reason for Identifying UF Resins

The ITC, in its Twelfth Report to the Administrator of EPA, published in the **Federal Register** of June 1, 1983 (48 FR 24443), recommended that methylolurea be considered for health effects testing. EPA issued rules adding the chemical methylolurea (CAS Number 1000-82-4) to 40 CFR Part 712 on June 22, 1983 (48 FR 28443) and to 40 CFR Part 716 on June 1, 1983 (48 FR 24366). It was apparent to EPA from submissions received under these rules that the methylolurea product reported on was actually a brand of UF resin.

The ITC's recommendation was based on the misconception that methylolurea is a monomer used in the production of UF resins and controlled release fertilizers. Actually the product "methylolurea", which the ITC identified on the TSCA Inventory, and based its recommendations on, is not the isolated monomer methylolurea but a UF resin product.

Urea-formaldehyde resins are the products which result when urea and formaldehyde are combined in aqueous solution. The components of UF resins are the monomeric and oligomeric reaction products of urea and formaldehyde. Methylolurea is one of many reaction products formed, all of which coexist in a dynamic equilibrium.

Although the ITC Report gives specific data for the chemical species methylolurea, the CAS Number (1000-82-4) given actually refers to material which is a reaction product of urea and formaldehyde, and not the chemical species methylolurea. This "methylolurea" product is indistinguishable from other UF resins. A representative of one of the companies which reported manufacturing methylolurea to the TSCA Inventory stated that the particular product it reported as "methylolurea" does not contain analytically detectable levels of the chemical species methylolurea, and that "methylolurea" was a sales term for certain UF resins.

In addition, the ITC's testing recommendation was based on the positive results observed in two genotoxicity studies which were conducted on a material called UF precondensate (another term for a UF resin). The ITC referred to this material as "methylolurea". Because the ITC actually evaluated a UF resin product and based its recommendation on tests conducted on UF resins, EPA believes the ITC recommendation was actually a recommendation to test UF resins.

EPA issued an Advance Notice of Proposed Rulemaking (ANPR) which was published in the **Federal Register** of May 21, 1984 (49 FR 21371), stating EPA's tentative conclusion that health effects testing for UF resins is warranted under section 4(a) of TSCA. The ANPR met EPA's statutory requirement under section 4(e) of TSCA to initiate a rulemaking under section 4(a) of TSCA for ITC designated substances within 1 year of designation. In that ANPR, EPA stated the belief that the ITC recommendation to test methylolurea was in fact a recommendation to test UF resins. Seven persons submitted comments on that ANPR. None of the comments disagreed that the ITC's designation of methylolurea was a designation of UF resins. One comment agreed with EPA's conclusion, stating "* * * the ITC's designation of methylolurea was imprecise, in that methylolurea exists as an unisolated intermediate in the production of urea-formaldehyde (UF) resins."

C. Reasons for Proposing This Rule

In the May 21, 1984 ANPR, EPA solicited data on exposure, production, and environmental release levels of UF resins. One of the commenters submitted a study it sponsored on occupational exposure to uncured UF resins in seven industries. At the present time, EPA believes that the results summarized in this occupational exposure study provide sufficient information on most routes of worker exposure to UF resins at UF resin manufacturer and processor sites. However, the report does not contain sufficient information on production and environmental release levels of UF resins at manufacturing and importing facilities to allow the Agency to fully evaluate all possible routes of exposure to UF resins. In the ANPR, EPA indicated that it was considering developing a regulation under section 8(a) of TSCA if adequate exposure data were not received in response to the ANPR. Because sufficient data on production and environmental release at UF resin importing and manufacturing facilities were not received, EPA is requiring reporting under TSCA section 8(a) from manufacturers and importers of UF resins.

EPA also solicited data on the health effects, chemical fate, and environmental fate of UF resins in the May 21, 1984 ANPR. The Agency indicated that it was considering developing a regulation under section 8(d) of TSCA if sufficient health and safety data were not received. In response to that request for data, the Agency received only a few reports, and the majority of these reports were reprints or abstracts of articles in the published literature. These data are insufficient for the Agency to evaluate the health and environmental characteristics of UF resins. Therefore, EPA is now requiring reporting of all unpublished health and safety data on

UF resins from chemical manufacturers and processors under section 8(d) of TSCA.

II. Chemicals To Be Added

The chemicals for which reporting is required under this rule are as follows:

CAS No	Name
9011-05-6	Urea, polymer with formaldehyde
68611-64-3	Urea, reaction product with formaldehyde

Synonyms listed in the TSCA Inventory for the chemical substance identified by CAS Number 9011-05-6 include: Methylolurea resin, urea-formaldehyde adduct, urea-formaldehyde condensate, urea-formaldehyde copolymer, urea-formaldehyde polymer, urea-formaldehyde precondensate, urea-formaldehyde prepolymer, urea-formaldehyde resin, urea-formaldehye resin UST, and urea-paraformaldehyde polymer. There are no known names for UF resin identified by CAS Number 68611-64-3 other than urea, reaction product with formaldehyde. The manufacture or import of a urea-formaldehyde resin not listed on the Inventory requires the submission of a premanufacture notice under section 5(a)(1) of TSCA.

III. Reporting Requirements

All persons who manufactured or imported a urea-formaldehyde resin during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturers Report (EPA Form No. 7710-35) for each importing or manufacturing site which produces a subject chemical substance. A separate form must be completed for each UF resin, if more than one type of resin is produced, and submitted to the Agency no later than August 1, 1985. Copies of the form are available from the TSCA Assistance Office at the address given above.

Manufacturers who qualify as small with respect to the previously prescribed standards are exempt from this rule under 40 CFR 712.25(c).

Under § 712.30(a)(3) of the Preliminary Assessment Information rule, a company which has voluntarily submitted a Manufacturer's Report to the ITC will be allowed to submit a copy of the original report to EPA. Also under § 712.30(a)(3), persons who previously and voluntarily provided EPA with a Manufacturer's Report on a urea-formaldehyde resin listed in § 712.30(a) must notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission and must follow all other procedures outlined in that section.

This regulation adding UF resins to 40 CFR 716.17 constitutes the notice required by 40 CFR 716.18(b). That paragraph states that substances and designated mixtures designated by the ITC for testing consideration become subject to the section 8(d) rule 30 days after publication in the **Federal Register**. On June 30, 1985, UF resins will become subject to 40 CFR Part 716, Subpart A.

At that time, persons who have manufactured or processed, or have proposed to manufacture or process UF resins during the ten year period ending June 3, 1985 will be required to submit to EPA copies of unpublished health and safety studies in their possession. Persons manufacturing or processing or proposing to manufacture or process UF resins as of June 3, 1985 must submit to EPA lists of all health and safety studies that are ongoing at that date. Persons who initiate studies after August 1, 1985 must notify EPA within 30 days of initiating the study, and submit a copy of the study to the Agency when the study is completed. Copies of studies and lists must be submitted to EPA no later than August 1, 1985.

Any person who believes that reporting on a chemical is unnecessary should promptly submit to the Agency the reasons in detail for that belief. The chemical may then be removed from the rule at the Agency's discretion for good cause. When withdrawing a chemical from the rule, the Agency will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

The Agency will follow the procedures for release of aggregate data and requesting exemptions from release of aggregate statistics as prescribed in the rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Requests for exemptions from release of aggregate data for any substance must be received by EPA no later than August 1, 1985.

V. Economic Impact

A. Preliminary Assessment Information Rule

Employing the analysis prepared for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982, as well as other relevant data, the Agency has estimated the impact of the addition of these chemicals on the firms that must report and upon the Agency in terms of data processing costs.

The Agency used the TSCA Inventory and other published material to generate a list of manufacturers and importers of the subject chemicals. After excluding small manufacturers, 104 companies operating 166 sites were identified as manufacturers or importers of UF resins.

The costs for reporting are broken down as follows:

Reporting Cost (dollars)	
(a) 166 reports expected at $707 per report	$117,400
(b) 166 familiarization cases at $590 per case	97,900
Total	215,300
Average cost per site equals	1,300
Average cost per firm equals	2,100
Reporting Burden (hours)	
(a) Familiarization (18 hours per site times 166 sites)	2,900
(b) Reporting (16 hours per report times 166 reports)	2,660
Total	5,650
EPA Cost (dollars)	
Processing cost ($80 per report times 166 reports)	13,200

B. Health and Safety Rule

EPA estimates that submitting the required data on UF resins will cost industry approximately $57,000. This estimate is based on an expected maximum of 324 firms (manufacturers, importers, and processors) who may be subject to the rule and who will need to perform an initial review to determine if they are subject to the rule. Based upon previous section 8(d) submissions, EPA expects that only 5 of these firms will in fact be subject to the section 8(d) rule, and that these 5 firms will submit a total of 5 lists of studies and 44 copies of studies. EPA's estimate for ongoing reporting is one study for one firm for each year.

The costs for reporting are broken down as follows:

Initial review (324 firms)	$49,248
Corporate review (5 firms)	1,140
File search (5 firms)	2,205
Title listing (5 firms)	95
Photocopying (5 firms)	453
Managerial review (5 firms)	3,344
Ongoing reporting (1 firm)	456
Total	$56,941

VI. Rulemaking Record

EPA has established a public record (docket number OPTS-82020) for this rulemaking document. All documents, including the index to this public record, are available for inspection in the OTS Reading Room, Rm. E-107, 401 M Street SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This record includes basic information considered in developing this rule.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 40 CFR 716.18(b). Those final rules have been previously reviewed by OMB under the terms of the Executive Order.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2000–0420 and 2070–0004.

(Secs. 8(a) and 8(d), 90 Stat. 2027, 2029; 15 U.S.C. 2607 (a) and (d))

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Health and safety data, Hazardous substances, Recordkeeping and reporting requirements.

Dated: April 23, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 712—[AMENDED]

Therefore, 40 CFR Chapter I is amended as follows:

1. The authority citation for Part 712 is revised to read as set forth below and the authority citation following § 712.30 is removed.

Authority: 15 U.S.C. 2601 *et seq.*

2. In Part 712, by adding § 712.30(n) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(n) A Preliminary Assessment Information Manufacturer's Report must be submitted by August 1, 1985, for each chemical substance listed in this paragraph.

CAS No.	Name
9011-05-6	Urea, polymer with formaldehyde.
68611-64-3	Urea, reaction product with formaldehyde.

* * * * *

3. The authority citation for Part 716 is revised to read as set forth below and the authority citation following § 716.17 is removed.

Authority: 15 U.S.C. 2607(d).

4. In Part 716, by adding § 716.17(a)(11) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(11) As of June 3, 1985, the following chemical substances are subject to this Subpart A.

CAS No.	Name
9011-05-6	Urea, polymer with formaldehyde.
68611-64-3	Urea, reaction product with formaldehyde

* * * * *

[FR Doc. 85–10656 Filed 5–2–85; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 86
Friday, May 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Clingstone Peaches

Correction

In FR Doc. 85–9186, beginning on page 15160, in the issue of Wednesday, April 17, 1985, make the following correction:

1. On page 15162, the fourth line of the third column in § 52.2572(c)(1) should have read: " 'fairly good color': Provided, That in all containers".
2. On page 15166, in the first column, the next to the last line of § 52.2575(c)(1) should have read: "count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of ".
3. On page 15166, second column, in the sixth line of § 52.2575(f) "standards" should have read "substandard".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 84-087]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations governing the importation of animals and animal products provide, with certain exceptions, that birds imported from any part of the world shall be quarantined in the United States as a condition of entry into the United States. The quarantine requirements were established to help ensure that birds imported into the United States are free of communicable diseases and poultry. This document proposes to amend the regulations by establishing provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved breeding facility, without quarantine in the United States, under specified conditions. It appears that the provisions set forth in the proposal could be used in lieu of the quarantine provisions without increasing the risk of the introduction of communicable diseases of poultry into the United States.

DATE: Written commepts must be received on or before June 3, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain provisions concerning the importation of birds into the United States. Section 92.11(e) of the regulations provides, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world shall be entered at certain ports and quarantained at a United States Department of Agriculture quarantine facility or at a privately-operated quarantine facility approved by the Deputy Administator for Veterinary Services. The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle disease, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

Persons associated with the commercial bird industry have requested that the Department establish regulations to allow birds to be imported into the United States without quarantine in the United States if from a closed breeding facility containing only birds that originated in the United States and the offspring from such birds.

This document proposes to amend the regulations by establishing provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved closed breeding facility, without quarantine in the United States, under specified conditions set forth in the rule portion of this document.

The proposal includes provisions designated to ensure that birds shipped from the United States to the closed breeding facility have originated in the United States, that the birds are free of communicable diseases of poultry at the time of shipment, that identification of the birds is maintained during shipment, and that the birds do not become infected with communicable diseases of poultry during shipment.

The proposal also includes provisions designed to ensure that an approved closed breeding facility contains only birds that originated in the United States or are offspring hatched in the facility, that the facility would be operated under conditions adequate to prevent the introduction into the facility of communicable diseases of poultry, that any communicable diseases of poultry that might be introduced into the facility would be quickly detected, that birds at the facility or during shipment from the facility to the United States do not become exposed to communicable diseases of poultry, and that the identification of the birds is maintained at the facility and during shipment to the United States. The requirements for an approved closed breeding facility are the same or similar to requirements for an approved privately operated bird quarantine facility in the United States. Differences reflect that requirements for an approved closed breeding facility are designed primarily to prevent the introduction of diseases into the facility while requirements for an approved privately operated bird quarantine facility in the United States are designed primarily to prevent the spread of disease from the facility.

The proposal also includes provisions stating that the operator of the facility shall bear the costs associated with the construction, maintenance and operation of the facility, and the costs of services relating to the facility provided

by Veterinary Services. In addition, the proposal includes provisions for obtaining approval of closed breeding facilities, and for denying or withdrawing approval of such facilities.

It appears that the provisions set forth in the rule portion of this document could be used in lieu of the quarantine provisions without increasing the risk of introduction of communicable diseases of poultry into the United States.

Also, it should be noted that the proposed regulations contain provisions for treating psittacine birds and other birds housed or shipped with psittacine birds with feed containing chlortetracycline (CTC). This is necessary as a preventive measure against chlamydiosis (psittacosis, ornithosis), a communicable disease of birds and poultry and also a disease which can be transmitted to humans. Although chlamydiosis can be spread to birds other than psittacine birds, psittacines are the primary carriers of the disease, and it appears that these proposed treatments would be adequate to protect against chlamydiosis.

Executive Order 12291 and Regulatory Flexibility Act

This proposed action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If the proposed rule is adopted, the raising and selling of birds imported into the United States from closed breeding facilities would compete on the market with birds raised in the United States. It is anticipated that the number of birds imported into the United States from closed breeding facilities would be insignificant compared with the total number of similar types of birds raised and sold in the United States.

Accordingly, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Therefore, it is proposed to amend 9 CFR Part 92 as follows:

1. The authority citation for § 92.11 would be revised to read as follows:

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134d, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (e) of § 92.11 would be redesignated as paragraph (e)(1) and a new paragraph (e)(2) would be added to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(e) * * *

(2) Birds imported from an approved closed breeding facility shall be exempt from the provisions of paragraph (e)(1) of this section if all of the following conditions have been met:

(i) If the birds are banded with a legband pursuant to paragraph (h)(4) of this section;

(ii) If the birds had been maintained together in a separate enclosure from other birds in the closed breeding facility for at least 30 days prior to shipment to the United States port of entry;

(iii) If the birds had been shipped by air directly from the country in which the closed breeding facility is located to the United States port of entry;

(iv) If the birds had been moved from the closed breeding facility to the airplane for shipment to the United States port of entry under the direct supervision of a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located;

(v) If the birds had been moved only on an airplane containing no other birds or poultry;

(vi) If the birds had no contact with poultry or other birds from the time they left the closed breeding facility until entry into the United States;

(vii) If within 21 days prior to shipment to the United States, cloacal samples from all the birds in the shipment, or 150 birds in the shipment, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the facility is located and had tested negative for exotic Newcastle disease and forms of avian influenza lethal to poultry using standard virus isolation procedures (the samples shall have been collected within 28 days prior to shipment);

(viii) If within 21 days prior to shipment to the United States, necropsy samples from lung, trachea, terminal gut, and spleen from all birds maintained in the separate enclosure that died, or 30 birds maintained in the separate enclosure that died, whichever is fewer, had been submitted to the National Veterinary Services Laboratories, Ames, Iowa, by a salaried veterinarian of the national veterinary services of the country in which the closed breeding facility is located and had tested negative for exotic Newcastle disease and forms of avian influenza lethal to poultry using standard virus isolation procedures (the samples shall be from birds maintained in the separate enclosure that died between 30 and 21 days prior to shipment to the United States);

(ix) If for not less than 30 days immediately prior to shipment to the United States all psittacine birds in the shipment and all non psittacine birds in the shipment that had been housed in the same building with psittacine birds at the closed breeding facility had a balanced, medicated feed ration treatment consisting of bird seed coated with not less than .5 mg chlortetracycline (CTC) per gram of seed (for birds 9 inches in length or less measured from the forehead to the end of the tail) or a balanced, medicated feed ration treatment containing not less than 1 percent chlortetracyline (CTC)

with not more than 0.7 percent calcium (for birds more than 9 inches in length measured from the forehead to the end of the tail); and

(x) If all birds in the shipment that die enroute from the closed breeding facility to the United States port of entry are made available to an inspector at the United States port of entry; and

(xi) If, based on port of entry inspection and all other information available there is no evidence to indicate that any bird in the shipment has any communicable disease of poultry.

* * * * *

2. A new paragraph (h) would be added to § 92.11 to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(h) *Standards for an approved closed breeding facility for birds.* To qualify for designation as an approved closed breeding facility for birds and to retain such approval, the facility and its maintenance and operation must meet the requirements of this section: *Provided, however,* That approval of any closed breeding facility shall be contingent upon a determination made by the Deputy Administrator, Veterinary Services, that adequate Veterinary Services personnel are available to provide services required by the facility. The cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator.

(1) *Supervision of the facility.* The closed breeding facility shall be maintained under the supervision of Veterinary Services personnel and a salaried veterinarian of the national veterinary services of the country in which the facility is located. The salaried veterinarian of the national veterinary services of the country in which the facility is located shall inspect the facility at least once each calendar week to determine whether the facility is operating in compliance with the applicable regulations in this part.

(2) *Physical plant requirements.* The closed breeding facility shall comply with the following requirements:

(i) *Location.* The facility shall be located at least one-half mile from any concentration of avian species, such as, but not limited to, poultry processing plants, poultry or bird farms, pigeon lofts, or pet shops containing poultry or birds. Factors such as prevailing winds, possible exposure to poultry or birds moving in local traffic, etc., shall be taken into consideration.

(ii) *Construction and related provisions.* (A) The building or buildings housing birds in the facility shall:

(*1*) Be constructed only with materials that can withstand continued cleaning and disinfection and prevent escape or accidental entry of birds (All walls, floors, and ceilings shall be impervious to moisture; all openings to the outside shall be screened with double layers of insect-proof metal or plastic mesh; and a bird escape-proof barrier screen of not greater than ½ inch hardware cloth shall be placed between the birds and the insect-proof screening);

(*2*) Have bird holding areas of sufficient size to contain intended shipments of birds without overcrowding of the birds (All access into a holding area shall be from within the building and each entryway into such area shall be equipped with self-closing, double doors: *Provided,* That if emergency exits to the outside are required by local fire ordinances, such exits may exist in a bird holding area if constructed so as to allow their opening from the inside of the building only);

(*3*) Have a ventilation capacity sufficient to control moisture and odor at levels that are not injurious to the health of the birds;

(*4*) Have a vermin-proof feed storage area.

(*5*) Have a T.V. monitoring system or a window or windows sufficient to provide a full view of the facility, excluding the clothes changing areas, shower and restrooms.

(B) The closed breeding facility shall:

(*1*) Have office space for recordkeeping;

(*2*) Have a necropsy room containing a necropsy table, a hood with a viewing window over the table, refrigerated storage space for carcasses retained for laboratory examination, and other equipment adequate for specimen preparation and carcass disposal;

(*3*) Have a supply of water adequate to meet all watering and cleaning needs;

(*4*) Have a separate area for washing facility equipment;

(*5*) Have a shower at the entrance into the facility and have a clothes storage and change area at each end of the shower area;

(*6*) Have a receptacle for soiled and contaminated clothing in the clothes change area nearest to the bird holding areas;

(*7*) Have permanent restrooms at each end of the shower area;

(*8*) Have a storage area for equipment necessary for the facility operations; and

(*9*) Be enclosed by a chain link security fence of a minimum of 11½ gauge wire which is at least 6 feet high.

(3) *Operational procedures.*

(i) The facility shall be maintained in a clean, sanitary condition, and shall have equipment, including insect and pest control equipment and cleaning and disinfecting equipment, adequate for such purpose; and after removal of all birds from a holding area, the holding area shall be thoroughly cleaned and disinfected with a disinfectant as provided in § 71.10(a)(5) of this chapter, under the supervision of a salaried veterinarian of the national veterinary services of the country in which the facility is located.

(ii) Waste material from the facility shall be bagged in leakproof bags. Such material shall be handled in a manner that spoilage is kept to a minimum and control of pests is maintained. Such material shall be disposed of by incineration, or burial, or by public sewer or other method authorized by the Deputy Administrator, Veterinary Services. The disposition of such material shall be under the supervision of a salaried veterinarian of the national veterinary services of the country in which the facility is located.

(iii) Surface drainage onto or from the facility shall be controlled to prevent any disease agent from entering.

(iv) The facility shall have protective clothing and footwear adequate to ensure that workers at the facility have clean clothing and footwear at the start of each workday and at any time such articles become soiled or contaminated.

(v) A guard shall be posted at the facility at all times other authorized persons are not present at the facility to prevent contact of birds in the facility with persons not authorized entry to the facility and with other birds and animals. A daily log shall be maintained to record the entry and exit of all persons entering the facility.

(vi) The operator shall allow the unannounced entry into the facility of Veterinary Services personnel, salaried veterinarians of the national veterinary services of the country in which the facility is located, or other persons authorized by the Deputy Administrator, Veterinary Services, for the purpose of inspecting birds in the facility and the operations at the facility and to ascertain compliance with the regulations in this part. Otherwise, access to the facility shall be granted only to persons working at the facility, or to persons specifically granted such access by a salaried veterinarian of the national veterinary services of the country in which the facility is located.

(vii) All persons granted access to a bird holding area shall:

(A) Wear clean protective clothing and footwear upon entering a bird holding area;

(B) Change protective clothing and footwear when they become soiled or contaminated;

(C) Shower when entering and when leaving the facility; and

(D) Have no contact with poultry or other birds outside the facility (except cooked products) for at least 3 days prior to entering the facility.

(viii) The operator of the facility shall handle soiled clothing worn within the facility in a manner approved by the Deputy Administrator, Veterinary Services, as adequate to preclude transmission of poultry disease agents into the facility.

(ix) The operator shall furnish a telephone number or numbers to Veterinary Services at which the operator can be reached on a daily basis or furnish the same for an agent or representative who can act and make decisions on the operator's behalf.

(x) The operator of the facility shall provide Veterinary Services a current list of the legal names and residential addresses of designated personnel employed at the facility who will be used to handle and care for birds in the facility. Additions to the designated personnel list shall be given in advance of such persons working in the facility.

(xi) The operator of the facility shall furnish to Veterinary Services a signed statement from each of the designated personnel employed at the facility which provides that such personnel agree that for a period of 3 days prior to any contact with birds in the facility, such personnel will refrain from having contact with poultry and other birds (other than cooked products).

(4) *Procedures concerning birds.*

(i) The facility shall contain only birds that originate in the United States and the offspring of such birds that were hatched in the facility, and shall not contain any birds that have been removed from the facility.

(ii) Birds shipped to the facility from the United States shall be shipped directly by air (without changing planes) from the United States port of embarkation to the port of entry in the country in which the facility is located. Upon arrival in the country in which the facility is located such birds shall be moved to the facility under the supervision of a salaried veterinarian of the national veterinary services of the country in which the facility is located. Prior to shipment from the United States such birds shall be banded with a serially numbered legband which has been coded to the facility. The legband shall be supplied by the operator of the facility and must be approved by the Deputy Administrator, Veterinary Services, upon written request. Each shipment of birds from the United States to the facility shall be accompanied by a certificate issued by an accredited veterinarian and endorsed by an authorized Veterinary Services veterinarian in the State of origin. The certificate shall state species, breed, and number of birds; legband numbers; that all birds covered by the certificate have been inspected by the accredited veterinarian and that no evidence of Newcastle disease, chlamydiosis (psittacosis, ornithosis), or other communicable disease of poultry was found among the birds; and that insofar as has been possible to determine, the birds were not exposed to any such diseases during the 90 days immediately preceding their exportation from the United States; that such birds were placed into new containers at the premises from which the birds are to be exported from the United States; that such birds have not been vaccinated; that Newcastle disease did not occur anywhere on the premises from which such birds are to be exported from the United States or on adjoining premises during the 90 days immediately preceding the exportation from the United States of such birds and that these premises are not located in any area under quarantine for poultry diseases at any time during such preceding 90 days.

(iii) The facility operator, under the supervision of a salaried veterinarian of the national veterinary services of the country in which the facility is located, shall individually band each bird hatched in the facility within 30 days after hatching, with a serially numbered legband which has been coded to the facility. The legbands shall be supplied by the operator of the facility. The legbands must be approved by the Deputy Administrator, Veterinary Services, upon written request from the operator of the facility.

(iv) Within 7 to 15 days of arrival of any shipment of birds at the facility, a salaried veterinarian of the national veterinary services of the country in which the facility is located shall collect cloacal swabs of all birds in the shipment or 150 birds in the shipment, whichever is fewer, and submit the samples to the National Veterinary Services Laboratories, Ames, Iowa. The samples shall be tested for Newcastle disease and forms of avian influenza lethal to poultry, using standard isolation procedures.

(v) All psittacine birds shipped to the facility and all non psittacine birds shipped to the facility accompanied by psittacine birds shall for not less than 30 days upon entering the facility receive a balanced, medicated feed ration treatment consisting of bird seed coated with not less than .5 mg chlortetracycline (CTC) per gram of seed (for birds 9 inches in length or less measured from the forehead to the end of the tail) or a balanced, medicated feed ration treatment containing not less than 1 percent chlortetracycline (CTC) with not more than 0.7 percent calcium (for birds more than 9 inches in length measured from the forehead to the end of the tail).

(vi) All birds entering the facility shall be kept in a separate enclosure from other birds in the facility for at least 30 days.

(vii) The facility operator shall immediately collect all birds which are dead upon entry into the facility or die while housed in the facility and hold them under refrigeration within the facility, shall account for all birds in the facility, and shall not dispose of any carcass or parts thereof unless authorized to do so by a salaried veterinarian of the national veterinary services of the country in which the facility is located. Birds that die enroute to the facility or while in the facility shall be inspected by a salaried veterinarian of the national veterinary services of the country in which the facility is located who may submit specimens from such birds to the National Veterinary Services Laboratories, Ames, Iowa, for laboratory examination.

(viii) Any birds in the facility shall be subjected to such tests and procedures as are required in specific cases by Veterinary Services personnel or by a salaried veterinarian of the national veterinary services of the country in which the facility is located to determine if the birds are free from communicable diseases of poultry.

(5) *Records.* The operator of the closed breeding facility shall maintain a current daily log concerning all birds in the facility, recording such information as the general condition of the birds, number of birds that die, number of birds that enter the facility (including a separate count of those arriving dead), and number of birds that leave the facility. The operator of the facility shall also maintain copies of certificates accompanying birds pursuant to this section and pursuant to § 92.5 of this part. The daily log and copies of certificates shall be maintained by the operator of the facility for a minimum of 12 months. Any daily logs and copies of certificates kept by the facility shall be made available to Veterinary Services personnel upon request.

(6) *Payment for services required by operator of approved closed breeding*

facility. When a closed breeding facility is approved by the Deputy Administrator, Veterinary Services, as provided in this section, a Trust Fund Agreement in accordance with the provisions of this paragraph shall be executed by the operator of the facility and Veterinary Services and, in conjunction therewith, the operator shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate cost to the Department for two shipments of birds into the United States and one inspection of the facility by a veterinarian of Veterinary Services, and as funds from that amount are obligated, monthly bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level shall be paid within 14 days of the date of receipt of the bill. This will cover all expenses for veterinarians of Veterinary Services inspecting the operations of the facility, including travel, salary, subsistence, other incidental expenses (including excess baggage provisions up to 150 pounds), administrative expenses to carry out the activities under such agreement, and all testing costs associated with maintaining the facility free of communicable diseases of poultry. The Deputy Administrator, Veterinary Services, is authorized to provide services required by the operator of the approved closed breeding facility relating to importation of birds from the facility when the Deputy Administrator, Veterinary Services, determines that the operator has executed a Trust Fund Agreement and has deposited funds (including funds to restore the deposit to its original level) in connection therewith as provided in this paragraph.

(7) Requests for approval and plans for a proposed approved closed breeding facility shall be submitted to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, USDA, Federal Building, Hyattsville, MD 20782. Before a decision is made with respect to the eligibility of any facility for approval, a personal inspection of the facility shall be made by a veterinarian of Veterinary Services, to determine whether it complies with the standards outlined in this section. As a condition of conducting an inspection of the facility, a Trust Fund Agreement in accordance with the provisions of this paragraph shall be executed by the operator of the facility and Veterinary Services and, in conjunction therewith, the operator shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate cost to the Department of all expenses for veterinarians of Veterinary Services inspecting the facility, including travel, salary, subsistence, other incidental expenses, including excess baggage provisions up to 150 pounds, and administrative expenses. If these costs exceed the amount of money deposited, a bill for the extra costs incurred, based on official Veterinary Services accounting records, will be issued to the operator and shall be paid within 14 days of the date of receipt of the bill. If the entire deposit amount is not expended, Veterinary Services will refund to the operator of the facility any unexpended amount.

(8) (i) Approval of any closed breeding facility may be denied and approval of any approved closed breeding facility may be withdrawn at any time by the Deputy Administrator, Veterinary Services, for any of the reasons provided in paragraph (h)(8)(ii) of this section. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal shall become effective pending final determination in the proceeding when the Deputy Administrator, Veterinary Services, determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given to the operator of the facility as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Deputy Administrator, Veterinary Services.

(ii) Except as provided in paragraph (h)(8)(iv) of this section, the approval of a closed breeding facility may be denied or withdrawn if in the judgment of the Deputy Administrator, Veterinary Services:

(A) Any requirement of this section is not complied with, or

(B) The operator or a person responsibly connected with the business of the closed breeding facility is, or has been, convicted of any crime under any law regarding the importation into any jurisdiction of any animal or bird, or

(C) The operator or a person responsibly connected with the business of the closed breeding facility is, or has been, convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of birds into the United States, or

(D) Birds have not been shipped from the facility to the United States for a period of one year.

(iii) For the purposes of this section, a person shall be deemed to be responsibly connected with the business of the closed breeding facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 per centum or more of its voting stock, or an employee of the operator.

(iv) The denial or withdrawal referenced in paragraph (h)(8) of this section shall not be solely based upon the conviction of a person responsibly connected with an approved closed breeding facility if, after issuance of a complaint and upon receipt of notification of such action from the Deputy Administrator, Veterinary Services, the operator of the approved closed breeding facility enters into a consent agreement with the Deputy Administrator, Veterinary Services, in which it is agreed that the responsibly connected person identified in the notification shall not ever be associated with the approved closed breeding facility and the operator complies with the provisions of the agreement. Violation of the consent agreement shall constitute independent grounds for withdrawal of approval of an approved closed breeding facility.

Done at Washington, D.C., this 30th day of April 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Service.

[FR Doc. 85-10842 Filed 5-2-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-4]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before July 8, 1985.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. 3/4, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 26, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No	Petitioner	Description of the petition
24545	Experimental Aircraft Association	Description of petition: To permit the use of previously effective airworthiness standards and procedures for type certification of airplanes not more than two-place having a single engine of not more than 100 horsepower Regulations affected: 14 CFR Portions of Part 11, § 11.15(a) and portions of Part 21, § 21.17(a)(1)
24496	Air Line Pilot Assoc.	Description of petition: To amend §71.12 (TCA description) by establishing minimum upper altitude limit for TCA's at 10,000 feet MSL and concurrently amending § 91.24(b)(4) so as to lower the altitude above which Mode C is required in controlled airspace. Regulation's affected: 14 CFR 71.12 & 91.24(b)(4) so as to lower the altitude above which Mode C is required in controlled airspace. Regulation's affected: 14 CFR 71.12 & 91.24(b)(4).
23758	Academics of Flight	Descripton of Petition: To amend Appendix C of Part 63 to the Federal Aviation Regulations to allow flight engineer students not holding at least a commercial pilot certificate with an instrument rating, the option to substitute 10 hours of training in a simulator which meets the Phase I simulator requirements of Appendix H to Part 121 for the 5 hours of instruction in an airplane required by Appendix C (a)(3)(iv)(a) Regulation's affected: 14 CFR Appendix C of Part 63 and Appendix H to Part 121
24525	M. Edward Gaydos	Description of petition: To amend § 25.832 of the FAR, which sets ozone concentration limits, to limit applicability to only those airplanes for which prescribed levels of cabin ozone concentration must not be exceeded for compliance with applicable operating rules, (§ 121.578) or for which compliance is elected by the applicant. Regulation's affected: 14 CFR 25.832
24597	Air Wisconsin, Inc.	Description of petition: To eliminate the distinction between commuter and air carrier slots at Chicago O'Hare International Airport. Regulation's affected: 14 CFR Part 93, § 93.123. Petitioner's reason for rule: Elimination of the distinction between commuter and air carriers slots at O'Hare International Airport, under the High Density Rule, would permit commuter carriers to use aircraft having a maximum certificated seating capacity of 56 seats or more, thereby allowing commuter carriers to upgrade their fleets and increase efficiency.
24527	Air Line Pilots Assoc.	Description of Petition: Extension of the 20-day comment period to 60 days for published petitions for exemption. Regulations affected: 14 CFR 11.27(c). Petitioner's reason for rule: If granted, this petition would make the time period for comment on petitions for exemption consistent with that of petitions for rulemaking. The 60 day period would allow ALPA's members sufficient time to receive, study and return their comments to ALPA which, in turn, will allow ALPA to have sufficient time to assimilate these comments and mail them to the FAA for due consideration

[FR Doc. 85–10843 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85–NM–29–AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the sealing of eight co-axial connectors on the fuel contents gauging system on certain Short Brothers Ltd. Model SD3–30 airplanes. This action is necessary to prevent moisture ingress, which may result in an erratic indication of the true fuel tank contents.

DATES: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–29–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virgina 22202, or may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invitied to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–29–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion:

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Short Brothers Ltd. SD3–30 airplanes. Moisture ingress in eight co-axial connectors in the fuel tank contents gauging system located adjacent to the fuel tanks may result in the fuel gauges giving inaccurate or erratic readings. To prevent this from occurring, Short Brothers Service Bulletin SD3–28–22 requires that these co-axial connectors be weatherproofed by sealing them with a silicone compound.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require the sealing of the affected co-axial connectors in accordance with the service bulletin.

It is estimated that 56 airplanes would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated to be nominal. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Ltd. Model SD3–30 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3–30 airplanes as listed in Short Brothers Ltd. Service Bulletin SD3–28–22, dated September 1984, certificated in all categories. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished. To prevent erroneous or erratic fuel quantity indications caused by moisture ingress into the fuel tank gauging system co-axial connectors, accomplish the following:

A. Seal the affected co-axial connectors in accordance with Short Brothers Ltd. Service Bulletin SD3–28–22 dated September 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10738 Filed 5–2–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–NM–35–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to add a new airworthiness directive (AD) that would supersede an existing airworthiness directive (AD) which requires visual/borescope inspection (NDI) and replacement, as necessary, of the aft pressure bulkhead tee cap on McDonnell Douglas Model DC–9–10, –20, –30, –40, –50 and C–9 (Military) series airplanes with 60,000 or more landings. This amendment would require the inspection and/or repair of the tee cap of airplanes with a minimum of 35,000 landings, and in addition, requires the repetitive inspections of all affected airplanes. This proposal is prompted by reports of cracks in the aft pressure bulkhead tee caps. This action is necessary to detect fatigue cracks which could result in rapid depressurization and cause severe structural damage to the aircraft.

DATES: Comments must be received on or before May 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–35–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2826.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they my desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–35–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On February 25, 1985, the FAA issued Airworthiness Directive 85–06–03, Amendment 39–5014 (50 FR 10936), which require inspection, and repair as necessary, of the aft pressure bulkhead tee cap on airplanes with 60,000 or more landings. The AD was prompted by reports of cracks which could lead to rapid depressurization and results in severe structural damage to the airplane.

Since the cracking conditions could exist or develop on other airplanes of this same type design, an amendement is proposed which would extend the requirements of AD 85–06–03 to those airplanes having a minmum of 35,000 total landings; this action is considered necessary to ensure detection of cracks before they reach critical length. Accomplishment of the inspections and crack repair/replacement as outlined in McDonnell Douglas DC–9 Service Sketch 3660, dated February 15, 1985, and Service Rework Drawing SR 09530001, (originally identified as MDC–J060305), dated February 15, 1985, will assure the structural integrity of the bulkhead and minimize the potential of extensive structural damage.

Approximately 514 airplanes of U.S. registry would be affected by the proposed AD, and it would require approximately 10 manhours per airplane to accomplish the required inspection. Average labor charge is $40 per hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $205,600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 airplanes are operated by small entities. A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) by superseding Amendment 39–5014 (50 FR 10936), AD 85–06–03, with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9, (Military) series aircraft, certificated in all categories, with 35,000 or more landings. Compliance required as indicated, unless previously accomplished within the past 3,500 landings.

To prevent crack propagation which could result in structural failure of the fuselage aft pressure bulkhead, accomplish the following:

A. Inspect from aft side (above floor) and aft or forward side (below floor) of bulkhead tee cap around the periphery of fuselage in accordance with McDonnell Douglas Service Sketch 3660, dated February 15, 1985. The inspections must be performed in accordance with the compliance schedule shown in the following tabulation:

Note.—The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee, starting at the outboard edge of the bulkhead web. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee fillet radius on the upstanding leg.

Accumulated landings (on effective date of this AD)	Initial inspection from effective date of AD (landings)
35,000 to 49.999	1,500
50,000 to 59.999	1,000
60,000 or more	300

For airplanes with less than 35,000 landings on the effective date of this AD, inspect before the accumulation of 36,500 landings.

B. If no cracks are found, accomplish repetitive inspections in accordance with paragraph A. above, at an interval not to exceed 3,500 landings after initial inspection.

C. If cracking is found, before further flight, accomplish one of the following:

1. Repair by replacing cracked tee cap with a new part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC–J060305), dated February 15, 1985. Prior to accumulating 36,500 landings on new part, perform repetitive inspection(s) at internvals not to exceed 3,500 landings. Perform repetitive inspections on remaining tee cap sections, not to exceed 3,500 landings.

2. Repair by splicing in a section of tee cap, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985. Prior to accumulating 36,500 landings on the repaired part, perform repetitive inspection(s) at intervals not to exceed 3,500 landings. Perform repetitive inspections on remaining tee cap sections, not to exceed 3,500 landings.

D. Alternative means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note. Compliance with paragraph 5.C. of McDonnell Douglas Service Sketch 3660, dated February 15, 1985, constitutes an acceptable alternate means of complying with this AD.

E. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes unpressurized to a base to comply with the requirements of this AD.

G. For the purposes of complying with this AD, existing records of landings will be used subject to acceptance of the assigned FAA Maintenance Inspector. In the absence of such records, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time per flight for the DC–9 airplanes with the approval of the assigned FAA Maintenance Inspector.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10739 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-30-AD]

Airworthiness Directives; Fokker B.V. Model F27 Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of various structural items on certain Fokker F27 series airplanes and modification or repair, as necessary, to correct certain unsafe conditions which may exist. This action is necessary to ensure the structural integrity of the landing gear, the trim tab control bracket, and the wing/fuselage fittings.

DATES: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-30-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherland, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Foreign Aircraft Certification Branch, ANM-1505; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-30-AD, 179000 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on certain Fokker F27 airplanes. These may be corrected by incorporating three (3) separate service bulletins. The unsafe conditions and corrective action are described as follows:

A. Cracks in the drag stay tube of the main landing gear may cause collapse of the gear. Inspection (and replacement if cracks are found) is required to maintain the structural integrity of the main landing gear. (Ref. Fokker Service Bulletin F27/32-147).

B. Tailplane vibrations could cause fatigue damage to the elevator trim tab, the elevator control bracket and the supporting rib structure. Modification of the structure is required to reduce the susceptibility of fatigue damage due to tailplane vibration. (Ref. Fokker Service Bulletin F27/55-31).

C. Fatigue failures of the lug/link attachment in the wing to fuselage joint could compromise the structural integrity of the wing. Inspection and modification of the joint is required to maintain structural integrity. (Ref. Fokker Service Bulletin F27/57-54).

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require inspections, modification, and repairs, as necessary, of affected Model F27 airplanes that are operated under U.S. registry.

There are 31 airplanes on the U.S. Register which are currently active. Not all airplanes are affected by these service bulletins. The estimated costs associated with the above listed actions would be:

A. 24 airplanes at 3 manhours per airplane;

B. 9 airplanes at 40 manhours per airplane; and

C. 28 airplanes at 295 manhours and $4,000 for parts per airplane.

The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be $460,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F27 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contracting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation

Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Fokker B.V: Applies to Model F27 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the time interval specified in each of the following paragraphs, unless already accomplished.

A. To prevent collapse of the main landing gear, within 120 days after the effective date of this AD, inspect the drag stay tube for cracks, in accordance with Fokker Service Bulletin F27/32-147 dated September 1, 1981, and replace if cracks are found.

B. To prevent fatigue damage to the elevator trim tab, the elevator control bracket support and the elevator control bracket supporting rib structure, modify the structure in accordance with Fokker Service Bulletin F27/55-31 dated May 31, 1985, within 120 days after the effective date of this AD.

C. To prevent failure of the wing/fuselage joint, inspect and modify the joint in accordance with Fokker Service Bulletin F27/57-54R, dated April 2, 1984, within 180 days after the effective date of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10735 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-36-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the fuselage skin lap splice between body stations 340 and 400 at stringers S6-L and S6-R on certain Boeing Model 747 series airplanes. The proposed AD is prompted by the recent finding of cracks of up to 18½ inches long on three airplanes. This action is necessary to ensure that an undetected crack will not result in sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

DATE: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-36-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-36-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The manufacturer has notified the FAA of the finding of cracks in the fuselage skin lap splice between body stations 340 and 400, at stringer S6-L and S6-R, on three airplanes. The cracks were initiated in the fastener countersink and propagated as long as 18½ inches along the fastener line due to fatigue. Cabin pressurization was the primary loading source for the fatigue cracking.

If a skin crack is not detected prior to reaching critical crack length it may result in inflight depressurization of the airplane and the inability to withstand fail-safe loads.

Boeing has issued Service Bulletin 747-53-2253 dated December 14, 1984, which defines the specific inspection procedures to be used to check for cracks in the fuselage skin lap splice between body stations 340 and 400, at stringer S6-L and S6-R, on certain Boeing Model 747 airplanes. A modification is described by the service bulletin which consists of replacing the top row of fasteners with protruding head fasteners or installing an external doubler. The inspection requirements would continue after modification.

Since these conditions are likely to exist or develop on other airplanes of this type design, an AD is proposed which would require inspection and/or modification of certain Boeing Model 747 series airplanes.

It is estimated that 151 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $48,320.

For these reasons the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747-53-2253, dated December 14, 1984. To prevent failure of the fuselage skin lap splice between body stations 340 and 400, at stringer S6-L and S6-R, accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions; within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever is later, use high frequency eddy-current procedures to inspect the fuselage skin lap splice between body stations 340 and 400, at stringers S6-L and S6-R for cracking in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions.

(1) If no cracking is indicated repeat the high frequency eddy current inspection at intervals not to exceed 5,000 landings.

(2) If a crack is indicated but is not visible externally, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 500 landings.

(3) If a crack is visible and is less than .15 inch long, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 100 landings.

(4) If a crack is more than .15 inch long, modify in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions, prior to the next pressurized flight. Inspections in accordance with paragraph B. are to continue after modification.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions: within the next 2,500 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 5,000 landings, use high frequency eddy-current procedures to inspect the fuselage skin lap splice between Body Stations 340 and 400, at stringers S6-L and S6-R, for cracking in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions. If a crack is found, repair in accordance with referenced Boeing Service Bulletin prior to the next pressurize flight. Inspections are to continue after repair.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspections and/or modification requirements of this AD.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region, may adjust the inspection times specified in this AD, if the request contains substantiating data to justify the change for that operator.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10736 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-37-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require structural inspections and repair, as necessary, of the side of body rib upper chord at Body Buttock Line (BBL) 70.85 and Body Station (BS)—663.75 on certain Boeing Model 737 airplanes. This action has been prompted by numerous reports of cracking in this area. Failure to detect cracks in the BBL 70.85 rib upper chord prior to their reaching critical length may result in severe reduction of load carrying capability and possible rapid loss of cabin pressure.

DATE: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-37-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-37-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) 25.571, Amendment 45. The reassessment included structural details that have a history of cracking. The

analysis has revealed that certain of these details must receive increased emphasis in the maintenaned program of operators to maintain the structural integrity of the airplane. The BBL 70.85 upper rib chord at wing upper surface side-of-body joint is in this category of details. Continued operation with cracks in this vicinity could result in rapid loss of cabin pressure and inability to carry fail-safe loads required under FAR 25.571(b).

The FAA issued Advisory Circular AC 91–56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. As a result of the structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91–56, the BBL 70.85 rib upper chord has been determined to be critical to the structural integrity of the airplane. On October 23, 1984, the FAA issued an Airworthiness Directive AD 84–21–06, Amendment 39–4933, (49 FR 42556), requiring inspections in accordance with the Boeing 737 Supplemental Structural Inspection Document (SSID) D6–37089. Since the effectivity of AD 84–21–06 is limited to a sample of "candidate airplanes" specified by document D6–37089, fatigue problems discovered through implementation of the SSID program must be addressed by separate AD action. This separate action will include the appropriate service bulletins and will address all affected airplanes. The BBL 70.85 rib upper chord is referenced in D6–37089 as a critical detail, with a known service history, which requires continuing inspection in accordance with a flight safety addendum to the manufacturer's service bulletin.

On January 11, 1985, the FAA issued AD 85–01–07, which requires an inspection program in accordance with Boeing Service Bulletin 737–57–1087, Revision 4, for early production airplanes up to approximately line number 433. Subsequently, the manufacturer issued Service Bulletin 737–57–1137, Revision 2, which provides similar inspection and repair instruction for later Model 737 airplanes.

Since the cracking conditions described above are likely to exist or develop in later Model 737 airplanes of the same type design registered in the United States, an AD is proposed which would require inspections of these later Model 737 airplanes in accordance with Boeing Service Bulletin 737–57–1137, Revision 2.

It is estimated that 96 airplanes of U.S. Registry would be affected by this AD and that approximately 38 manhours per airplane would be required to perform the necessary inspections. Modification, if necessary, requires an additional 668 manhours per airplane. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections and modification would be $146,000 and $2,570,000, respectively.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contracting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administation proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737–57–1137, Revision 2, dated November 9, 1984. Unless previously accomplished, prior to the accumulation of 10,000 landings or within 180 days or 2500 landings after the effective date of this AD, whichever occurs later, accomplish the following to detect cracking which may lead to failure of the body buttock line (BBL) 70.85 rib upper chord:

A. Visually inspect the BBL 70.85 rib upper chord for cracks in accordance with Table I of the Flight Safety Addendum of Boeing Service Bulletin 737–57–1137, Revision 2, or later FAA approved revisions. Repeat the inspection at intervals not to exceed 5000 landings.

B. If cracks are detected, prior to further flight repair cracked parts in accordance with Table or the Preventative Modification Part III or Special Preventative Modification Part IV of the "Accomplishment Instructions" in Boeing Service Bulletin 737–57–1137, Revision 2, or later FAA approved revisions.

C. Parts repaired in accordance with the "stop drilling" interim action in Table I of the "Accomplishment Instructions" of Boeing Service Bulletin 737–57–1137, Revision 2, must be visually reinspected at intervals not to exceed 1500 landings and must be repaired in accordance with the Preventative Modification Part III or Special Preventative Modification Part IV of Boeing Service Bulletin 737–57–1137, Revision 2, or later FAA approved revisions, within two years after the effective date of this AD or within two years after the accomplishment after the interim repair, whichever occurs later.

D. The repetitive inspection requirements of this AD may be terminated if the Preventative Modification Part III or the Special Préventative Modification Part IV of the Accomplishment Instructions in Boeing Service Bulletin 737–57–1137, Revision 2, or later FAA approved revisions, is incorporated.

E. Airplanes may be ferried to a maintenance base for repairs or replacement of parts in accordance with FAR 21.197 and 21.199.

F. For the purpose of this AD, and when approved by an FAA Maintenance Inspector, the number of landings may be computed by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the aircraft type.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents may also be examined at FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

(Secs 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85).

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10737 Filed 5–2–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85-ANM-10]

Proposed Establishment of Transition Area, Quincy, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to provide controlled airspace from 700 feet above the surface for aircraft executing a new instrument approach procedure to Quincy Municipal Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

DATE: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments to: Manager, Airspace and Procedures Branch, ANM-530, FAA/Northwest Mountain Region—Docket No. 85-ANM-10, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the office of Regional Counsel at the above address.

An informal docket may also be examined during normal business hours at the Airspace & Procedures office at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace and Procedures Specialist, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

A person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Airspace and Procedures Branch, at the address listed above. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft conducting instrument flight rules (IFR) operations. Sections of 71.181 of Part 71 of the Federal Aviation Regulations were republished in handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition area/aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Quincy, Washington—[New]

"That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Quincy Airport (Lat. 47°12'42" N. Long. 119°50'25" W.), excluding the Moses Lake, Washington, transition area."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on April 22, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-10744 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-13]

Proposed Revision of Idaho Falls, ID; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Idaho Falls, Idaho, Control Zone to exclude the Rigby-Jefferson County Airport. This action will allow operations to continue at Rigby-Jefferson County Airport based on the weather conditions at that airport without regard to the reported weather conditions at Idaho Falls' Fanning Field.

DATE: Comments must be received on or before July 7, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration Docket No. 85-ANM-13, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM-535. The telephone number is (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, enviornmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ANM–13". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, Washington, 98168, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 17900 Pacific Highway South, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Idaho Falls, Idaho, control zone to exclude the Rigby-Jefferson County Airport. Frequently, Rigby-Jefferson County Airport has VFR weather conditions while, based on the Idaho Falls' Fanning Field weather, the Idaho Falls Control Zone weather is officially below VFR minima; thereby requiring ATC Clearance for operation at Rigby-Jefferson County Airport. Two-way communication capabilities between FAA facilities and aircraft on the ground at Rigby-Jefferson County Airport do not exist. The proposed control zone revision will still provide the controlled airspace necessary for instrument approach procedures into Fanning Field, without unduly restricting VFR operations at Rigby-Jefferson County Airport.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Idaho Falls, Idaho, Control Zone—[Revised]

"Within a 5-mile radius of Fanning Field, Idaho Falls, Idaho, (Lat. 43°30′ 56″ N. Long. 112° 04′ 13″ W); within [illegible] miles each side of the Idaho Falls VOR 223° radial extending from the 5-mile radius zone to 10.5 miles southwest of the VOR; within 4 miles each side of the Idaho Falls VOR 030° radial, extending from the 5-mile radius zone to 8 miles northeast of the VOR."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on April 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10745 Filed 5–2–85; 8:45 am]

BILLING CODE 4910–13–M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1504

Employee Responsibilities and Conduct

AGENCY: African Development Foundation.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on the African Development Foundation's proposal to issue regulations, subject to codification, to implement and interpret E.O. 11222 (3 CFR 1964–1965 Comp.; 5 CFR 735.104); Title 18, U.S.C. 203, 205, 207, 208, 209; and Title II of the Ethics in Government Act of 1978, as amended (5 U.S.C.). The African Development Foundation finds and determines that publication of these regulations in the Code of Federal Regulations is necessary for the effective discharge of its functions and activities.

DATE: Comments must be received on or before July 2, 1985.

ADDRESS: Comments may be mailed to the General Counsel, Suite 200, African Development Foundation, 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036 or delivered to the same address between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, (202) 634–9853.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act of 1980

(Generally, these proposed regulations do not contain substantive new material. It is, therefore, certified that they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.)

Executive Order 12291

The African Development Fundation has determined that this rule is not a major rule for purposes of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the general public.

List of Subjects in 22 CFR Part 1504

Conflicts of interest.

Accordingly, it is proposed to add Part 1504 to 22 CFR Chapter XV to read as follows:

PART 1504—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: E.O. 11222, 3 CFR 1964–1965 Comp., 5 CFR 735.104.

Subpart A—General Provisions

§ 1504.101 Purpose.

The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the African Development Foundation's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interests on the part of employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this Part sets forth the Foundation's regulations prescribing standards of conduct and responsibilities for its employees, and requires statements reporting employment and financial interests.

§ 1504.102 Definitions.

As used in this Part:

(a) "Foundation" or "Agency" means the African Development Foundation.

(b) "Employee" includes anyone serving in the Foundation as:

(1) A person appointed by the President and confirmed by the Senate to a position in the Foundation;

(2) A person appointed by the Board of Directors;

(3) A person appointed by the President of the Foundation or by his/her designee to a position in the Foundation; or

(4) A special Government employee.

(c) "Regular officer or employee" means an employee as defined in paragraph (b) (1), (2), or (3) of this section.

(d) "Special Government employee" means a person who is retained, designated, appointed, or employed to perform temporary duties for the Foundation, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(e) "Member of an employee's family" means a spouse, minor child, or other individual related to the employee by blood, marriage or adoption who are resident in the employee's household.

(f) "Counselor" means the Foundation's Counselor on Ethical Conduct and Conflicts of Interest. The Counselor for the Foundation will be the General Counsel of the Foundation. The Director of Administration and Finance will serve as Deputy Counselor.

(g) "Organization" as used herein includes profit and non-profit corporations, associations, partnership, trusts, sole proprietorships, foundations, and foreign, State and local government units.

(h) "Potential Contractor" means any organization or individual that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek from the Foundation a specific contract or other agreement, including a grant, loan or loan guarantee.

(i) "is associated with" as used in §§ 1504.211 and 1504.212, means:

(1) Is a director of an organization or is a member of a board or committee which exercises a recommending or supervisory function in an organization; or

(2) Serves as an employee, officer, owner, trustee, partner, consultant, or paid advisor in an organization; or

(3) Owns (or his or her spouse, minor child, or other member of his or her immediate household owns) individually or collectively, 1 percent or more of the voting shares of an organization; or

(4) Owns (or his or her spouse, minor child, or other member of his or her immediate household owns), individually or collectively, either beneficially or as trustee, a direct financial interest in an organization through stock, stock options, bonds, or other securities, or obligations, valued at $50,000 or more; or

(5) As a continuing financial interest in an organization, such as participation in or entitlement under a bona fide pension plan, valued at $5,000 or more, through an arrangement resulting from prior employment or business or professional association.

Subpart B—Standards of Conduct

§ 1504.201 General.

(a) All employees of the Foundation are required to conduct themselves in such a manner as to create and maintain respect for the Foundation and the U.S. Government; to avoid situations which require or appear to require a balancing of private interests or obligations against official duties; to be mindful of the high standards of integrity expected of them in all their activities, both personal and official; and to conform with the applicable statutes, rules, and regulations governing their activities. Particularly, an employee shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality of action;

(5) Making a Government decision outside official channels;

(6) Affecting adversely the confidence of the public in the integrity of the Government; or

(7) Using Government employment to coerce, or give the appearance of coercing, a person in order to gain financial benefit for him or herself or for another person, particularly one with whom the employee has family, business or financial ties.

(b) An officer or employee of another Federal agency who is assigned or

detailed to the Foundation shall adhere to the standards of conduct applicable to employees as set forth in this Part.

§ 1504.202 Statutes, rules, and regulations governing conduct of employees.

(a) The "Code of Ethics of Government Services" set forth by the Legislative Branch in House Concurrent Resolution 175, passed in 1958; the "Standards of Ethical Conduct for Government Officers and Employees" set forth by the President of the United States in Executive Order 11222, dated May 8, 1965, and the regulations issued by the Office of Personnel Management pursuant to this Executive Order (5 CFR Part 735); and other statues, rules, and regulations governing conduct of employees, including Foundation regulations, shall govern Foundation employees in their service to the Government.

(b) Conflict of interest statutes: The provisions of 18 U.S.C. 203, 205, 207, 208, and 209 prohibiting conflicts of interests between and employee's Government duties and outside activities are summarized in specific sections of this Part.

(c) Miscellaneous statutory provisions: In addition to the various provisions referred to above, Foundation employees must observe the following:

(1) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interests, as appropriate to the employees concerned.

(2) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(3) The prohibition against striking against the Government (5 U.S.C. 7311; 18 U.S.C. 1918).

(4) The prohibitions against: (i) The disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 783); (ii) the disclosure of confidential information (18 U.S.C. 1905); and (iii) the disclosure of privileged information withheld under the exemptions of the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552).

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(6) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(7) The prohibition against the misuse of the franking provilege (18 U.S.C. 1719).

(8) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(9) The prohibition against Fraud or false statements in a Government matter (18 U.S.C. 1001).

(10) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(11) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(12) The prohibitions against: (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of his/her employment (18 U.S.C. 654).

(13) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(14) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(15) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(16) The prohibition against the employment of an individual convicted to a felonious rioting related offense (5 U.S.C. 7313).

(17) The prohibition against a public official's appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(18) The prohibition against self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined at 26 U.S.C. 4941(d) to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses, or sale to or purchase of property from a private foundation.

§ 1504.203 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) A regular employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government (18 U.S.C. 209). This section does not apply to special Government employees. Nor does it prevent a regular officer or employee from (1) continuing participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer, or (2) receiving payments or accepting contributions, awards, or other expenses in accordance with Chapter 41 of Title 5, United States Code, relating to employee training.

(c) Employees are encouraged to engage in teaching, lecturing, and writing which is not prohibited by law or regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or The Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when the information has been made available to the general public or will be made available on request, or when the Chairman of the Board or the President of the Foundation gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of, or acceptance of an award for, a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization: or

(3) Outside employment otherwise permitted under these regulations.

§ 1504.204 Speeches and participation in conferences.

(a) *Fees and expenses.* An employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is the Foundation or Foundation programs or if such services are part of the employee's official Foundation duties. However, the employee may suggest that the amount otherwise payable as a fee or honorarium be contributed to a not-for-profit organization concerned with African development.

(b) When a meeting, discussion, or other gathering to which paragraph (a)

of this section refers takes place at a substantial distance from the employee's home, he or she may accept such reimbursement, subject to the approval of the counselor, for the actual cost of transportation and necessary subsistence or expenses, as is compatible with this part and for which no Government payment or reimbursement is made. If an employee receives accommodations, goods, or services in kind from a non-Government source while on official travel, such items will be treated as a donation to the Foundation and an appropriate reduction will be made in per diem or other travel expenses payable.

(c) An employee may accept fees for speeches, etc., dealing with subjects other than Foundation programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties, and for which leave of absence, where necessary, is obtained.

(d) No employee may participate for the Foundation in a conference or speak for the Foundation before audiences when he or she has reason to believe that any racial group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

§ 1504.205 Gifts, entertainment, and favors.

(a) An employee shall not receive or solicit, directly or indirectly, for personal benefit or for persons with whom there exist family, business, or financial ties, anything of economic value as a gift, gratuity, loan, entertainment, or favor which might reasonably be interpreted by others as affecting the employee's independence or impartiality, from any person, corporation, or group, if the employee has reason to believe that the entity:

(1) Has or is seeking to obtain, contractual or other business or financial relationships with the Foundation;

(2) Conducts operations or activities which are regulated by the Foundation; or

(3) Has interests which may be substantially affected by the employee's performance or nonperformance of his or her official duty.

(b) Paragraph (a) of this section does not prohibit:

(1) Acceptance of things of economic value arising from obvious family or personal relationships (such as those between the employee and the parents, children, or spouse of the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors:

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on a project tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as, home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as, pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, or accept a gift from an employee receiving less pay than himself/herself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion, such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, nor any other thing from a foreign government unless authorized by Congress as provided by the Constitution, 5 U.S.C. 7342, and the regulations in Part 3 of Chapter 1 of Title 22 ("Acceptance of Gifts and Decorations from Foreign Governments").

(e) Neither this section nor § 1504.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Part and for which no Government payment or reimbursement has been made. However, this paragraph does not allow reimbursement, or payment to be made on the employee's behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits.

§ 1504.206 Financial interests.

(a) Neither a regular nor a special Government employee may participate in a governmental capacity in any matter in which that employee, the employee's spouse, minor child, associate or organization with whom there exists a business relationship, or person or organization with whom there exists negotiation for employment, has a financial interest (18 U.S.C. 208). Such an employee shall not (1) have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with his/her Government duties and responsibilities; or (2) directly or indirectly, engage in any financial transaction as a result of, or primarily relying on, information obtained through his/her Government employment.

(b) An employee may be granted exemption from these restrictions provided: (1) The President of the Foundation for staff, or the Chairman of the Board for members of the Board, is first advised of the nature and circumstances of the particular matter, and the employee makes full disclosure of the financial interest, and (2) he/she receives in advance a written determination by the President or Chairman, as appropriate, that the outside financial interest is deemed not substantial enough to have an effect on the integrity of his/her services.

(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, this section, or these Foundation regulations.

§ 1504.207 Use of Government Property.

An employee shall not directly or indirectly, use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him/her.

§ 1504.208 Misuse of information.

(a) For the purpose of furthering a private interest, an employee shall not, except as provided in § 1504.203, directly or indirectly, use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

(b) This section is not intended to discourage disclosure through proper channels of information which been or should be made available to the public by law.

§ 1504.209 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as, Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, reduced

to judgment by a court, or imposed by law, such as Federal, State, or local taxes. "In a proper and timely manner" means in a manner which the Foundation determines does not, under the circumstances, reflect adversely on the Government as the individual's employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 1504.210 Gambling, betting, and lotteries.

An employee shall not participate, while on Government- owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 1504.211 Association with potential contractor prior to employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a contract to any organization with which that employee has been associated in the past 2 years. When an employee becomes aware that such an organization is under consideration for or has applied for a contract with the Foundation, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision process regarding the contract or agreement.

(b) When an employee becomes aware that an organization with which he or she has been associated in the past 2 years is under consideration for or has applied for a contact with the Foundation, he or she shall refrain from participating in the decision process.

§ 1504.212 Association with Foundation contractor or potential contractor while an employee.

(a) No regular employee may be associated with any Foundation contractor or potential contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a contractor.

(b) No regular or special employee, except in his or her official capacity as a Foundation employee, shall participate in any way on behalf of any organization in the preparation or development of a contract proposal involving the Foundation, or represent any other organization in a matter pending before the Foundation when such participation or representation would result in or create the appearance of the use of public office for private gain. In such cases, if a regular or special employee participates, while an employee of the Foundation, in any aspect of the development of a contract or agreement proposal on behalf of an organization, or represents another organization in a matter pending before the Foundation, that organization shall be suspended from consideration for the contract or other agreement.

(c) No regular or special employee who, prior to his or her employment at the Foundation, participated in the development of a contract or other agreement proposal on behalf of another organization, shall participate in any aspect of the decision process regarding that contract or other agreement, or, if the contract or other agreement is awarded, in any oversight or management capacity in relation to that contract or other agreement. In the event a regular or special employee who participated in the development of the contract or other agreement proposal prior to being employed at the Foundation does participate as a Foundation employee in the decision process for such contract or other agreement, the organization shall be suspended from consideration.

§ 1504.213 Economic and financial activities of employees abroad.

(a) Foundation employees are specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally allowable rates, unless such transactions are duly authorized in advance by the Foundation;

(3) Sales to unauthorized persons, whether at cost or for profit, of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds for persons in one country to persons in another country, including the United States; and

(8) Permitting use of his or her official title in any private business transactions or in advertisements for business purposes.

(b) U.S. citizen-Foundation employees on official travel or assignment abroad are prohibited from engaging in the activities listed below:

(1) Transacting or having an interest in any business or engaging for profit in any profession or undertaking or other gainful employment in any country or countries in which he or she is on official travel assignment in his or her own name or through the agency of any other person.

(2) Investing in real estate or mortgages on properties located in his or her country of assignment. (The purchase of a house and land for personal occupancy is not considered a violation of this subparagraph); and

(3) Investing money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. (Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail); and

(4) Selling or disposing of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her official status as an employee for the U.S. Government.

§ 1504.214 Discrimination.

No employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action, and may not practice, threaten, or promise any action against or in favor of any employee or applicant for employment because of race, color, religion, sex, age, or national origin, and in the competitive service, on the basis of political, marital status, or physical handicap.

§ 1504.215 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudical to the Government.

Subpart C—Procedures

§ 1504.301 Responsibility of employees.

It is the responsibility of each employee (a) to become familiar with the full text of applicable statutes, rules, and regulations before engaging in outside employment and financial activity which might involve a conflict of interest, or other activity which might

involve a violation of standards of ethical conduct or of statutory or regulatory restrictions, and (b) to secure the advice or approval of his or her supervisor and the Counselor before engaging in the contemplated activity.

§ 1504.302 Sources of information and advice.

General information on statutes, rules, and regulations governing the conduct of employees may be obtained from the General Counsel. Specific information may be obtained from the United States Code, from the Federal Personnel Manual, and from Foundation regulations, all of which are available through the General Counsel. A copy (or a summary) of the Foundation regulations will be furnished to each employee in accordance with Office of Personnel Management Regulations (5 CFR Part 735). Clarification of standards of conduct and related laws, rules, and regulations, and advice on their applicability to individual situations, may be obtained from the General Counsel.

§ 1504.303 Executive personnel financial disclosure.

(a) The following employees of the Foundation shall submit completed Executive Personnel Financial Disclosure Reports (SF278) containing information required in accordance with 5 CFR Part 734, Subpart C:

(1) Within 5 days after transmittal by the President to the Senate of their nomination, each member of the Board of Directors of the Foundation.

(2) Within 30 days, after assuming the position, any newly appointed employee of the Foundation whose position is classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS–16 (Step 1).

(3) Within 30 days after designation, the designated Foundation Counselor on Ethical Conduct and Conflicts of Interest.

(b) Employees, who perform the duties of a position or office described in this section in excess of sixty days in any calendar year, must submit annual statements as of May 15 of each year containing the information described in 5 CFR Part 734, Subpart C.

(c) Executive Personnel Financial Disclosure statements filed pursuant to this section shall be made available to the public in accordance with the provisions of 5 CFR Part 734.603.

§ 1504.304 Statement of employment and financial interests.

The following employees of the Foundation shall submit statements of employment and financial interests:

(a) Employees classified at GS–13 or above under Section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, including employees promoted into positions whose incumbents were required to file, as well as, new employees hired who are in positions, the basic duties of which, impose upon the incumbent the responsibility for making a Government decision or taking Government action with regards to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non—Federal enterprises; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise; and

(b) Other employees, including those classified at GS–12 and below whose submission of statements of financial interest has been approved by the Office of Government Ethics, whose duties and responsibilities require them to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and to carry out the purpose of the law, Executive Order 11222, and the Foundation's regulations.

§ 1504.305 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (c) of § 1504.303 may be excluded from the reporting requirement when the President of the Foundation determines that:

(1) The duties of the positions are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote: or

(2) The duties of the position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent, or the inconsequential effect on the intergrity of the Government.

(b) A statement of employment and financial interests is not required by these regulations from members of the Board of Directors and employees of GS–16 and above, who file Financial Disclosure Reports required by § 1504.303.

(c) The President of the Foundation may waive the requirement of this Subpart for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he/she finds that the duties of the position held by that special Government employee are of a nature and at such levels of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meaning given those terms by Chapter 304 of the Federal Personnel Manual.

§ 1504.306 Employees' complaint filing requirement.

Each employee shall have the opportunity for review of a complaint that his/her position has been improperly included in § 1504.303 as one requiring the submission of a statement of employment and financial interests. Employees are reminded that they may obtain counseling pursuant to § 1504.302 prior to filing a compliant.

§ 1504.307 Time and place of submission.

(a) An employee shall submit his/her statement of employment and financial interests to the Counselor no later than:

(1) Ninety days after the effective date of these regulations, if the person has entered on duty on or before that effective date; or

(2) Five days after entrance on duty, if the employee enters on duty after that effective date.

(b) Only the original of the statement, or supplement thereto, required by this Part shall be submitted. The individual submitting a statement should retain a copy for his or her personal records.

§ 1504.308 Information required, and forms.

(a) Employees. The employee's statement of employment and financial interests required by these regulations shall be submitted on the form. "Confidential Statement of Employment and Financial Interests", and shall contain all the information therein required.

(b) Interests of employees' relatives. The interest of a member of an employee's family is considered to be an interest of the employee. The term "member of the employee's family" is defined in § 1504.102(e).

(c) Information not known by employees. If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that

other person to submit information in his/her behalf.

(d) Information not required to be reported. The regulations in this Part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to:

(1) The employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or similar organization, not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants or money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests; (2) an indirect interest, such as ownership of shares in a mutual fund, which in turn owns an interest in other organizations, unless such mutual fund is substantially involved in African ventures. Such an "indirect" interest is hereby determined pursuant to 18 U.S.C. 208(b)(2), to be too remote to affect the integrity of employees' services.

§ 1504.309 Supplementary statements.

(a) Employees, other than those occupying positions requiring the filing of Executive Personnel Financial Disclosure statements, who perform the duties of a position or office for a period in excess of sixty days in any calendar year, including special Government employees, must submit annual statements as of June 30 of each year containing the information described in § 1504.308.

(b) Notwithstanding the filing of reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of Title 18, United States Code, or these regulations.

§ 1504.310 Review of statements and determinations as to conflicts of interest.

(a) On the basis of the statement of employment and financial interests submitted by each employee, or on the basis of information received from other sources, the Counselor shall determine in the light of the duties which that employee is or will be performing whether any conflicts of interest, real or apparent, are indicated. The Counselor shall make the determination based on the applicable statutes, Executive Order 11222, and the applicable regulations of the Office of Personnel Management and the Foundation.

(b) Where the Counselor's determination in a particular case is that a conflict of interest, real or apparent, is indicated, informal discussions with the employee concerned shall be initiated. The discussions shall have as their objectives:

(1) Providing the individual with a full opportunity to explain the conflict or appearance of conflict; and

(2) Arriving at an agreement (acceptable to the Counselor, the individual, and the individual's immediate superior) whereby the conflict of interest may be removed or avoided.

(c) Where an acceptable agreement cannot be obtained pursuant to paragraph (b) of this section, the Counselor shall present his/her findings and recommendations to the President for decision. The President shall decide what remedy is most appropriate to remove or correct that conflict or apparent conflict. Remedial action under this paragraph may indicate disciplinary action or any of the actions enumerated in § 1504.310.

(d) Written summaries of all agreements and decisions arrived at pursuant to this section and § 1504.310 shall be placed in the Counselor's files. Copies shall also be made available to the regular or special Government employee concerned.

§ 1504.311 Penalties for violation.

(a) Violations of these regulations subject employees to remedial or disciplinary action by the Foundation which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee and the findings and recommendations of the Counselor, the President decides that remedial action is required, immediate action to end the conflict or appearance of a conflict of interest, shall be taken. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the regular or special Government employee of the conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 1504.312 Administrative enforcement proceedings.

In the event that the Foundation receives information that there has been a possible violation involving the Foundation of the restrictions against post employment activities contained in section 207 (a), (b), or (c) of title 18 U.S.C., the President or his designee shall follow the procedures set forth in 5 CFR 737.27 with respect to the initiation and conduct of an administrative disciplinary hearing.

§ 1504.313 Confidentiality of employees' statements.

The Foundation shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselor are authorized to review and retain the statements. The Counselor is responsibile for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part. The Foundation may not disclose information from a statement except as the Office of Personnel Management or the President of the Foundation may determine for good cause shown.

§ 1504.314 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit participation in a matter in which such participation is prohibited by law, order, or regulation.

Dated: April 25, 1985.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 85–10700 Filed 5–2–85; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]

Deduction for Certain Foreign Deferred Compensation Plans; Proposed Rulemaking

Correction

In FR Doc. 85–8234, beginning on page 13821, in the issue of Monday, April 8, 1985, make the following corrections:

1. On page 13822, first column, first line, "sections 404(h)" should have read "sections 404A(h)".

2. On page 13825, second column, eighth line of § 1.404A–2(b)(5)(ii), "THIS DOCUMENT" should have read "FINAL REGULATIONS".

3. On page 13826, first column, the line under the *Example* in § 1.404A–2(b)(8), reading "manner in which a protective election" should be removed.

4. On page 13830, in § 1.404A–4(e), in the table following *Example (3)*, the second entry in the column reading "End of year age" reading "41" should have read "42".

5. On page 13831, second column, the line numbered (14) in the "1984—Worksheet for Calculating Amount Taken Into for Qualified Reserve Plans Under 404A" of § 1.404A–4(e), should have read:

(14) (12)−(13)+(11) 9,026,902

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Permanent State Regulatory Program of Ohio; Consideration of Modification of Deadline for Condition of Approval

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: In response to the State's request, OSM is considering modifying the deadline for Ohio to satisfy a condition of approval of the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition concerns the Ohio bonding system.

DATE: Comments not received on or before 4:00 p.m. June 3, 1985 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments must be mailed or hand-delivered to: Office of Surface Mining, Columbus Field Office, 2nd Floor, 2242 South Hamilton Road, Columbus, Ohio 43227.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)–(f)(10), (g), (h)(1)–(h)(3), (i)(1)–(i)(3), (j) and (k)(1)–(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983 (e) by September 16, 1982; and the remaining deficienceis by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy condition (h). On May 24, 1983, the Secretary approved certain of the amendments and removed a number of conditions including (h)(2) and (h)(3), but found that condition (h)(1) was not fully satisfied. Condition (h)(1) requires the State to revise its bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited and to assure there are sufficient funds to finance the alternative bonding program. The Secretary established a deadline of August 8, 1983, for the State to meet condition (h)(1).

On July 26, 1983, Ohio requested an extension of time to meet certain conditions including condition (h)(1). A six-month extension, until February 8, 1984, was granted on October 11, 1983 (48 FR 46027).

Despite the extension, on August 1, 1983, Ohio submitted a proposed program amendment to satisfy condition (h)(1) and explained that it was submitting the amendment in order to allow OSM sufficient time to review it and require any necessary changes. On March 13, 1984, the Secretary determined that the modification did not fully satisfy the condition and extended until April 15, 1984, the deadline for Ohio to satisfy the condition (47 FR 9418).

On April 16, 1984, the Chief of the Division of Reclamation wrote to OSM requesting that Ohio be granted an extension of time to meet this condition. The Division requested a one-year extension, until April 30, 1985. After considering the rationale behind Ohio's request, an one-year extension was granted on July 5, 1984 (49 FR 27505).

By letter dated April 4, 1985 and Chief of the Ohio Division of Reclamation requested an extension of the deadline to meet condition (h)(1) until September 30, 1985. The primary reason for the extension is to allow time for the bill, Substitute House Bill 238, containing the measures necessary to remove the condition to go through the legislative process. The bill would provide the increased funding necessary to fund Ohio's alternative bonding system through increased acreage fees and severance taxes. If passed, the bill would take effect on July 1, 1985. However, the State notes that some past budget bills have not been passed by July 1, and agencies continue to operate on interim budgets.

Therefore, the State requests an extension of the deadline to September 30, 1985, because Substitute House Bill 238 may not pass by the beginning of the fiscal year (July 1), and if the bill does pass, the Division will need time to establish a new account to administer the additional funds and to revise the forfeiture project construction schedule.

In accordance with the State's request, OSM is proposing that the deadline for the State to meet condition (h)(1) be extended until September 30, 1985.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection

requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 26, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-10604 Filed 5-2-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169

[DoD Directive 4100.15]

Commercial Activities Program

AGENCY: Department of Defense, WHS.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to reissue this part to incorporate substantive changes to Part 169 required by Office of Management and Budget (OMB) Circular A-76 "Performance of Commercial Activities," August 3, 1983. It prescribes DoD policy for the establishment and operation of DoD commercial activities.

DATES: Comments must be received on or before June 3, 1985.

ADDRESS: Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), Installation Management, Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Hansen, telephone 202-325-0537.

SUPPLEMENTARY INFORMATION: Part 169 was published in the Federal Register on March 18, 1980 (45 FR 17138) prescribing the policy for the establishment of DoD commercial activities. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to the comments in the preamble of the final rule.

DoD has determined that this action is not a major rule as defined by Executive Order 12291. The part will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost of prices for consumers, industries, State or local governments; or adversely affect competition, employments, investment, productivity, or innovation.

DoD has submitted a request to OMB for review and approval of the part.

This part is not subject to the provisions of the Regulatory Flexibility Act. Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 169

Armed forces, Government procurement.

Accordingly, 32 CFR is proposed to be amended by revising Part 169 to read as follows:

PART 169—COMMERCIAL ACTIVITIES PROGRAM

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

§ 169.1 Purpose

This part accommodates substantive changes required by OMB Circular No. A-76 and prescribes DoD policies and assigns responsibilities for commerical activities

§ 169.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components").

(b) Its provisions encompass DoD policy for commercial activities in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Its provisions are not mandatory for commercial activities staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for commercial activities when they are partially staffed with civilian personnel paid by appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When total installation support is being cost compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with civilian personnel paid by nonappropriated funds.

(d) This part does not:

(1) Apply to governmental functions as defined in the § 169.3;

(2) Apply when contrary to law, Executive orders, or any treaty or international agreement;

(3) Apply in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Apply to the conduct of research and development except for severable in-house commercial activities in support of research and development, such as those listed in Enclosure 3 Part 169a.

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the DoD and contractor employees as described in FAR 37.104 (48 CFR 37104).

§ 169.3 Definitions.

Commercial Activity Review. The process of evaluating commercial activities for the purpose of determining whether or not a cost comparison will be conducted.

Commercial Source. A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to contract. The changeover of a commercial activity from performance by DoD personnel to performance under contract by a commercial source.

Conversion to in-house. The changeover of a commercial activity from performance under contract to performance by DoD personnel.

Cost comparison. The process of developing an estimate of the cost of performance of a commercial activity by DoD employees and comparing it, in accordance with the requirements in Part 169a to the cost to the Government for contract performance of the commercial activity.

Directed affected parties. DoD employees and their representative organizations and bidders or offerors on the solicitation.

Displaced DoD Employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction or reduction in rank). It includes both employees in the function converted to contract and to employees outside the function who are adversely affected by conversion through reassignment or the exercise of bumping or retreat rights.

DoD Commercial Activity (CA). An activity which provides a product or service obtainable (or obtained) from a commercial source. A DoD commercial

activity is not a Governmental function. A DoD commercial activity may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Enclosure 3 of Part 169a. A DoD CA falls into one of two categories:

(a) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

DoD Governmental Function. A function that is so intimately related to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgement in making decisions for DoD. Services or products in support of Governmental functions, such as those listed in Enclosure 1 of Part 169a are CAs and are normally subject to this Part and its implementing instructions. Governmental functions normally fall into two categories:

(a) The act of governing; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navibable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, incluing food and drugs.

(b) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the treasury accounts and money supply; and the administration of public trusts.

DoD Employee. Only civilian personnel of the DoD.

DoD Personnel. Both military and civilian personnel of the DOD.

Expansion. The modernization, replacement, upgrading, or enlargement of a Dod CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

New Requirement. A newly established need for a commercial product or service. It does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential Procurement Programs. Mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority and disadvantaged businesses, and labor surplus area set-asides and awards made under section 8(a) of the Small Business Act.

§ 169.4 Policy.

(a) *Assure DoD Mission Accomplishment.* The implementation of this part shall consider the overall mission of the DoD and the defense objective of maintaining readiness and sustainability to ensure a capability to mobilize the defense force and support structure.

(b) *Retain Governmental Functions In-House.* Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by DoD personnel. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the Commercial Sector.* DoD Components shall rely on commercially available sources to provide commercial products and services. Except when required for national defense, no satisfactory commercial source available, or in the best interest of direct patient care, DoD Components shall not start, expand, or carry on any commercial activities to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve Economy and Enhance Productivity.* Competition enhances quality, economy, and productivity. Whenever performance by commercial source of a DoD in-house commercial activity is permissible in accordance with this part and its implementing instructions, a comparison of the cost of contracting and the cost of in-house performance shall normally be performed to determine who will do the work. The restriction of a solicitation to a preferential procurement program does not negate this requirement.

(1) When adequately justified, cost comparisons involving ten or fewer DoD civilian employees may be waived by ASD (MI&L)IM and the commercial activity converted directly to contract.

(2) In no case shall any commercial activity involving more than ten DoD civilian employees be modified, reorganized, divided or in any way changed for the purpose of circumventing the requirement to perform a cost comparison.

(3) Commercial activities performed exclusively by military personnel, not subject to deployment in a combat, combat support, or combat service support role may be converted to contract without a cost comparison when adequate competition is available and reasonable prices can be obtained from qualified commercial sources.

(4) A cost comparison shall be conducted when contract costs become unreasonable or performance becomes unsatisfactory and re-competition with other satisfactory commercial sources does not result in reasonable prices.

(e) *Interim In-House Operation.* A DOD in-house commercial activity may be established on a temporary basis if a contractor defaults. Action shall be taken to resolicit bids in accordance with 32 CFR Part 169a.

§ 169.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Installations and Logistics)* (ASD (MI&L)) or his designee shall:

(1) Formulate and develop policy consistent with this part for the DOD commercial activity program;

(2) Issue instructions to implement the policies of this part;

(3) Maintain an inventory of in-house DoD commercial activities;

(4) Monitor program implementation;

(5) Approve or disapprove any requests to directly convert without a cost comparison a CA operated by ten or fewer DoD civilian employees;

(6) Ensure that direct conversion appeal decisions are made at a level organizationally higher than the level of the original direct conversion approval;

(7) Establish the use of automatic data processing (ADP) for DoD commercial activities program surveillance and managerial control;

(8) Develop, register, coordinate, and maintain data elements for use in ADP systems and reporting in accordance with the requirements of the DoD Data Elements and Data Codes

Standardization Program (DoD Directive 5000.11) [1]

(9) Review DoD Component decisions to perform in-house for national defense reasons existing DoD CAs, new requirements, or expansions;

(10) Establish criteria for determining whether a CA is required to be operated for reasons of national defense by either DoD military or civilian employees.

(b) The *Heads of DoD Components* shall:

(1) Implement this part in accordance with the instructions issued by the ASD (MI&L);

(2) Designate an official at the Assistant Secretary or equivalent level to implement this part;

(3) Establish an office to serve as a central point of contact for implementing this part;

(4) Evaluate their functions and activities to determine which are commercial activities subject to this part.

(5) Prepare and maintain an inventory that identifies all in-house commercial activities including those retained in-house for national defense reasons, lack of satisfactory commercial source, and in the best interest of direct patient care;

(6) Schedule reviews of the in-house commercial activities listed in their inventories and ensure that the initial reviews and cost comparisons are completed by September 30, 1987. Commercial activities approved for retention in-house for any reason, shall be reviewed again at least once every five years;

(7) Approve or disapprove in-house performance of DoD commercial activities new requirements, and expansions for reasons of national defense (under the criteria established in Part 169a) a lack of a satisfactory commercial source, or in the best interest of direct patient care. Notify ASD (MI&L) of any approvals within one week;

(8) Schedule for cost comparison (unless a waiver is appropriate) commercial activities not justified for in-house performance for national defense, a lack of a satisfactory commercial source, or in the best interest of direct patient care;

(9) Ensure that contracts resulting from cost comparisons conducted under this part are solicited and awarded in accordance with the Federal Acquisition Regulation (FAR) and DoD FAR Supplement (48 CFR Chapters 1 and 2) which requires the inclusion of provisions relating to labor matters such as equal employment opportunities, safety and occupational health, veterans' preference, minimum wages and fringe benefits, and right of first refusal for employment by the contractor for displaced DoD employees;

(10) Ensure that Office of Federal Procurement Policy Letter No. 78–3, "Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement," March 30 1978 [2] is considered in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement;

(11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the commercial activities inventory and conducting the reviews and cost comparisons;

(12) Exert maximum effort to find suitable employment for any displaced DoD Component employee, including:

(i) Placing them in the DoD Priority Placement Program;

(ii) Paying reasonable costs for training and relocation when these will contribute directly to placement;

(iii) Coordinating with the Office of Personnel Management to ensure displaced DoD Component employees have access to Government-wide placement programs, including the OPM-operated Displaced Employee Program (DEP) and the Interagency Placement Assistance Program (IPAP);

(iv) Coordinating with the Department of Labor and other agencies to promote private sector employment for separated workers;

(v) Consistent with post employment restrictions, advising DoD Component displaced employees that they have the right of first refusal for employment on the contract in positions for which they are qualified and assisting them in applying for such employment.

(13) Maintain the technical competence necessary to ensure effective and efficient management of the commercial activities program.

(14) Notify the Joint Committee on Printing (JCP) at least 30 days prior to commencing a cost comparison of a field printing operation. These JCP notifications should be coordinated with the General Counsel of the Department of Defense.

(c) The *DoD Inspector General (Auditoring)* shall:

(1) Independently review appeals from directly affected parties relating to ASD (MI&L) or his designee approvals of DoD Components' requests for conversion of an in-house DoD commercial activities to contract without a cost comparison.

(2) Provide results of the administrative review of the appeal within 30 calendar days of receipt of the appeal to ASD(MI&L).

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer. Department of Defense.

April 29, 1985.

[FR Doc. 85–10688 Filed 5–2–85; 8:45 am]

BILLING CODE 3810–01–M

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[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention: Code 301.

[2] Copies may be obtained if needed, from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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32 CFR Part 199

[DoD 6010.8–R, Amdt. 25]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Elimination of Preauthorization Requirement for Cosmetic, Reconstructive and Plastic Surgery

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This amends portions of the comprehensive CHAMPUS Regulation, DoD 6010.8–R (32 CFR Part 199), by eliminating the administrative requirement for preauthorization for cosmetic, reconstructive, and plastic surgery under CHAMPUS. Elimination of preauthorization relieves the beneficiary of an administrative burden for obtaining benefits under CHAMPUS.

DATE: Written public comments must be received on or before June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Guidance, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone 303–361–3586.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Part 199 requires written pre-approval (preauthorization) for: Admissions to institutions other than acute general or special hospitals, adjunctive dental care, plastic, cosmetic, and reconstructive surgery, and all care provided under the Program for the Handicapped. Although preauthorization is not required for admissions to acute general or special hospitals, care continuing more than 30 days must be recertified.

Under this proposed rule all requirements for preauthorization for cosmetic, reconstructive and plastic

surgery would be eliminated and the CHAMPUS fiscal intermediary would be the single point of contact for initial determinations of care.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this regulation only involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I is amended reading as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. In § 199.10, by revising paragraph (a)(11); by removing paragraph (e)(8)(iv) in its entirety and redesignating paragraph (e)(8)(v) ad (e)(8)(iv).

§ 199.10 Basic program benefits.

(a) * * *

(11) *Preauthorization.* Because CHAMPUS benefits are limited for certain types of care, the beneficiary is required to obtain preauthorization from the Director, OCHAMPUS, or a designee, before the services are provided. The types of care for which preauthorization is required are identified in other parts of this section.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1985.

[FR Doc. 85–10769 Filed 5–2–85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket Nos. AMO64/065-MD; A-3-FRL-2830-5]

Proposed Approval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Regional Administrator's decision to propose approval of Maryland's amendments to the Code of Maryland Regulations (COMAR) 10.18.06.02, and 10.18.09.05 relating to visible emission limits for stationary sources and COMAR 10.18.08 relating to the control of industrial waste incinerators. The major purpose for amending the regulations relating to visible emission limits for stationary sources is to eliminate the need to process each individual exception as a SIP revision. The amendment to the COMAR requirements for industrial incinerators will clarify the definition of "industrial waste" and will lower the prohibited size for industrial waste incinerators.

EFFECTIVE DATE: Comments must be submitted on or before June 3, 1985.

ADDRESSES: Written comments should be addressed to Mr. David L. Arnold at the EPA Region III address shown below. Copies of Maryland's request for amendments to their visible emission regulations and industrial incinerator regulations are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), 841 Chestnut Building, Philadelphia, PA 19107, Attn: Ms. Patricia Gaughan (2AM11)

Maryland Office of Environmental Programs, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: Mr. George P. Ferreri.

FOR FURTHER INFORMATION CONTACT: James Topsale, (215) 579–4553, or Cynthia H. Stahl, (215) 597–9337, at the Region III address above.

SUPPLEMENTARY INFORMATION: The State of Maryland has submitted two requests to revise their State Implementation Plan (SIP).

AMO64–MD

The first request is to amend COMAR 10.18.06.02 and 10.18.09.05 by making definitional and procedural changes such that visible emissions exceptions will not have to be submitted as revisions to the SIP. The requirement that the source is eligible for an exception only if it demonstrates the capacity to meet an alternative visible emission standard as well as all other applicable regulations, remains unchanged. Because the source must meet all other applicable emission standards, including new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP), no increase in emissions and no effects on prevention of significant deterioration (PSD) increments, new source growth in nonattainment areas, or reasonable further progress (RFP) in nonattainment areas are anticipated. The changes will allow certain sources which, for technical or economic reasons, are unable to comply with the applicable VE requirement to apply and receive an alternative VE standard from the State without the need for a source specific SIP revision. The proposed revision is not applicable in Air Quality Control Regions III and IV (Baltimore and Washington).

AMO65–MD

The second request amends COMAR 10.18.08.01, .03, .04, and .05 concerning the control of industrical waste incinerators. The term "industrial waste", previously defined as Type 5 or 6 wastes (according to Incineration Institute of America Standards) is now defined as "any solid, liquid, or semi-liquid waste, generated by a manufacturing industry, that does not contain hazardous waste". The term "refuse", previously defined as Type 0, 1, 2, or 3 waste (according to I.I.A. standards), is now defined as "a mixture of trash, rubbish, and garbage containing up to 50 percent moisture and up to 7 percent incombustible solids from household and commercial activities". The prohibited size for industrial waste incinerators is lowered from a minimum of 2000 lbs per hour (1 ton per hour) to 500 lbs per hour. In addition, the requirement to burn at least 2 tons of industrial waste per day is eliminated. The expected effect of

these changes is to allow sources to take advantage of heat recovery systems throughout their normal period of operation by allowing them to burn smaller quantities of waste while operating for more hours per day. Although the 2 tons per day requirement is eliminated for industrial waste incinerators, if a source burns 500 lbs/hr during an 8 hour day, it will have burned 2 tons per day. The requirement to burn at least 20 tons of refuse per day is also eliminated for refuse incinerators. This is expected to have very little effect since the requirement to burn 5 tons per hour still remains. The State estimates that only sources large enough to operate for a least 5 hours a day would be likely to invest the money necessary to build and operate a refuse incinerator. Allowing incineration of industrial refuse, rather than only industrial by-product waste (Type 5 or 6 waste) will increase opportunities for incineration. However, the State expects only an increase of four or five incinerator (including industrial waste and refuse) permit applications in the next six years. No effects on prevention of significant deterioration (PSD) or reasonable further progress (RFP) in nonattainment areas are expected since the emission standards remain unchanged and no significant increase in the number of industrial waste and/or refuse incinerators is expected. This revison is applicable only in Areas III and IV and includes both attainment and nonattainment areas.

Conclusion

EPA is, as of today, proposing to approve Maryland's State Implementation Plan revisions which include the definitional and procedural changes enabling Maryland to adopt a generic visible emissions exception rule, definitional changes for industrial waste, and lowering the prohibited size for industrial waste incinerators. As a result, EPA proposes approval of these SIP revisions which amend COMAR regulations 10.18.06.02, 10.18. 09.05, 10.18.08.01, .03, .04, and .05.

The Regional Administrator's decision to propose approval of the generic visible emissions exception rule and the changes requested for the control of industrial waste incinerators was based on the determination that they meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Preparation, Adoption and Submittal of State Implementation Plans.

The public is invited to submit, to the EPA Region III address stated above, comments on whether or not the proposed revision to the State of Maryland's SIP should be approved. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Regional Administrator has certified that SIP approvals under section 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: March 22, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-10796 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2830-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designation; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to revise the Total Suspended Particulates (TSP) designation for a small area near Imlay City in Lapeer County, Michigan, from primary nonattainment to attainment. This proposed State Implementation Plan (SIP) revision is based on a redesignation request from the Michigan Department of Natural Resources (MDNR) and on supporting technical data submitted by the Department. Under the Clean Air Act (Act) attainment status designations can be changed if sufficient data are available to warrant such changes. The intent of this notice is to discuss the results of USEPA's review of the MDNR's redesignation request and their supporting technical data, and to solicit public comment on the revision and on USEPA's proposed action.

DATE: Comments on this redesignation and on USEPA's proposed action must be received by June 3, 1985.

ADDRESSES: Copies of the redesignation request, the technical support documents, and the supporting air quality data available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, Michigan 48909.

Comments on this proposed rule should be addressed to (Please submit an original and five copies, if possible): Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, (312) 886-6037.

SUPPLEMENTARY INFORMATION:

Background

Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of Michigan. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised if sufficient data are available to warrant such changes.

USEPA's criteria for section 107 redesignations are summarized in two policy memorandums: (1) An April 21, 1983, policy memorandum from Sheldon Meyers, former Director of the Office of Air Quality Planning and Standards, entitled "section 107 Designation Policy Summary" ' and (2) a December 23, 1983, policy memorandum from G.T. Helms, Chief of the Control Programs Operation Branch, entitled "Section 107 Question and Answers." In general, all available information relative to the attainment status of the area should be reviewed. In addition, a change from a primary nonattainment designation to an attainment designation must be supported by:

(1) The most recent eight consecutive quarters of quality-assured, representative ambient air quality data that show no violations of the appropriate NAAQS, plus evidence of an implemented control strategy; or

(2) The most recent four consecutive quarters of quality-assured, representative ambient air quality data that show no violations of the appropriate NAAQS, plus a state-of-the-art modeling analysis that demonstrates a sound SIP strategy, and a correlation between actual, enforceable emission reductions and recent air quality improvement; and

(3) Any supplemental information, including air quality and emissions data, that can be used to determine whether the monitoring data accurately

characterize the worst case air quality in the area.

State Actions

The amended Clean Air Act (August 1977), required all States to determine attainment/nonattainment status with respect to the NAAQS. On October 27, 1980, based on air monitoring data collected during 1978–1980, the State of Michigan recommended to USEPA that a small area near Imlay City in Lapeer County be designated as secondary nonattainment for TSP.

On November 6, 1981 (46 FR 55108), USEPA redesignated this area to primary nonattainment because of monitored violations of the primary TSP NAAQS in 1978 and 1980. The boundaries of the Lapeer County primary nonattainment area are as follows:

T7N—R12E, that portion of section 17 which lies south of M–21 and east of Fairground Road.

On July 20, 1983, the MDNR requested that USEPA revise the TSP air quality attainment status designation for the primary nonattainment area near Imlay City to secondary nonattainment. The MDNR also submitted eight quartes of TSP monitoring data (1981–1983) that showed no violations of the primary TSP NAAQS, but eight exceedances of the secondary standard. The MDNR attributed the improvement in air quality to the installation of a baghouse at Almont Manufacturing, the only significant TSP source in the area. On September 29, 1983, USEPA requested that the MDNR deomonstrate that the recent emission reductions at Almont Manufacturing were sufficent to attain and maintain the TSP NAAQS throughout the area.

On October 19, 1984, the MDNR revised their July 20, 1983, submittal by requesting that USEPA redesignate the primary nonattainment area near Imlay City in Lapeer County to attainment for TSP. To support this request, the MDNR submitted the most recent four quarters of TSP monitoring data (July 1983-June 1984), as well as their stipulation that Almont Manufacturing was permanently shut down as of April 1983. Since the shutdown of Almont Manufacturing, and the removal of the foundary sand stored at the site, there have been no recorded exceedances of the primary or secondary TSP NAAQS. After reviewing the MDNR's October 19, 1984, redesignation request, USEPA requested additional technical information in order to demonstrate that the exceedances in this area could be directly attributed to emissions from Almont Manufacturing and, therefore, that the recent shutdown of the plant would assure attainment and maintenance of the TSP NAAQS in this area. This information was submitted by the MDNR on February 20, 1985.

Monitoring Data

The MDNR submitted TSP ambient air monitoring data collected from a special purpose monitoring site that had been installed by the MDNR to characterize the TSP air quality in the vincinity of Almont Manufacturing. The data were collected from 1978 to June 1984. The MDNR submitted eight quarters of monitoring data (1981–1983) with its July 20, 1983, redesignation request. The data showed no violations of the primary TSP NAAQS, but eight exceedances of the secondary TSP NAAQS. The MDNR submitted four additional quarters of monitoring data (July 1983–June 1983) with its October 19, 1984, revision to the July 20, 1983, redesignation request. The data showed no violations of either the primary or the secondary TSP NAAQS. On February 20, 1985, the MDNR submitted additional air quality and meteorological data to support its October 19, 1984 request. These data included individual 24-hour TSP observations at the Imlay City monitor for the 1979–1982 period and meteorological data for days with observed secondary standard exceedances. These data showed that, on all 16 days on which an exceedance of the secondary standard was observed at the Imlay City site, the prevailing wind direction was directly from the south or south-west. The only significant TSP source in this area, Almont Manufacturing, is located about 100 meters south-southwest of the monitor.

Conclusion

The improvement in ambient TSP levels in the primary nonattainment area located near Imlay City, Lapeer County, Michigan, can be attributed to the permanent shutdown of Almont Manufacturing. Based on the submitted data, it can be concluded that the previous violations of the TSP NAAQS were directly caused by emissions from Almont Manufacturing and that the NAAQS will be maintained in this area because of the permanent shutdown of Almont. Although MDNR did not submit a state-of-the-art modeling analysis, in addition to the four quarters of data, as suggested by the April 21, 1983, policy memorandum on section 107 redesignations, it is clear from the available monitoring data and from the analyses of past exceedances that the area has attained and will maintain the TSP NAAQS.

In conclusion, the ambient air monitoring data show no violations of the TSP NAAQS at the Imlay monitor from 1983 to 1984 in Lapeer County, Michigan. Additionally, the MDNR has supplied verification of the source shutdown which led to the reduced TSP emission levels. Therefore, USEPA is proposing to approve the redesignation of the Lapeer County primary nonattainment area to attainment, as requested by the State of Michigan. This designation is defined at 40 CFR 81.323.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish the Agency's final action on the redesignation in the **Federal Register**.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended, (42 U.S.C. 7407)

Dated: March 27, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–10795 Filed 5–2–85; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[No. 38590]

Revision to Railroad Annual Report Form R–1

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Interstate Commerce Commission (Commission) is reopening this proceeding. The Final Rule, served March 11, 1982 (47 FR 10041, March 9, 1982) eliminated certain annual report schedules in Railroad Annual Report Form R–1 (Form R–1). On judicial review, the United States Court of

Appeals for the District of Columbia Circuit found that the Commission failed to give adequate notice that the proposed elimination of schedules was to be done in reliance upon a previously announced general policy of limiting periodic reports to information frequently and regularly used by the Commission. The court further found that interested parties were not "accorded the statutorily required opportunity to tell the Commission why the 'regular and frequent use' principle is in their view a bad idea." Interested parties are now being asked to comment on the additional considerations discussed below.

DATE: Written responses should be filed on or before June 3, 1985. The proposed revisions would be effective upon service of the Final Rule.

ADDRESS: Send comments (original and 15 copies) to: No. 38590, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275–7448.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking in No. 38590, *Revision to Railroad Annual Report Form R–1*, 46 FR 45966 September 16, 1981, served September 16, 1981, the Commission proposed elimination of certain schedules in railroad Annual Report Form R–1. In the decision served March 11, 1982 (47 FR 10041 March 9, 1982), 365 I.C.C. 552 (1982), the Commission eliminated 20 schedules (see Appendix).

On judicial review, the United States Court of Appeals for the District of Columbia Circuit found that the Commission failed to give adequate notice that the proposed elimination of schedules was to be done in reliance upon a previously announced general policy of limiting periodic reports to information frequently and regularly used by the Commission. The court further found that interested parties were not "accorded the statutorily required opportunity to tell the Commission why the 'regular and frequent use' principle is in their view a bad idea." No. 82–1503, *Patrick W. Simmons* v. *ICC*, —— F. 2d ——, —— (D.C. Cir. March 19, 1985) (slip op. 9).

We are reopening this proceeding for further comment. A major factor in our decision on whether particular schedules are to be retained will be the Commission's Policy Statement on Financial and Statistical Reporting, 44 FR 27537 (1979). This reporting policy states in part that:

> Periodic reports, annual or quarterly, will be required only for information needed by the Commission regularly and frequently. Information needed occasionally will be collected only when the specific need arises.

The objective of the policy is to ensure that carriers subject to Commission reporting are not burdened with reporting requirements beyond those necessary for the Commission's regular use in performing its duties. The benefits to carriers from the policy include reductions in costs and in time preparing Commission reports.

This previously announced policy of reducing data collection to those materials regularly and frequently used by the Commission is expressly put forward for public comment as a major basis for the proposed [1] elimination of schedules. We note, as the reviewing court did, that reduction of carriers' data-reporting requirements is also consonant with the National Rail Transportation Policy, 49 U.S.C. 10101a(14) and with the Paperwork Reduction Act, 44 U.S. 3501(1). These directives, along with our own policy statement, establish the framework within which we will evaluate the need to maintain particular reporting requirements.

We wish to make it clear that eliminating particular data or schedules from mandatory recurring reports does not preclude the Commission from requesting the data from individual railroads from time to time as needed. Further, both the Paperwork Reduction Act and the Rail Transportation Policy confirm that the Commission's role is not to fulfill the independent information needs or desires of carriers and the public, whether or not they may have relied on Commission reports in the past for their private analysis and monitoring purposes.

When commenting in this proceeding, interested parties should consider that the Commission's objective is to ensure that useful, timely, and accurate data will be collected to meet the Commission's regulatory needs and to reduce paperwork burdens upon carriers. In justifying retention of particular reporting requirements, respondents should clearly specify why particular schedules should be retained and/or why they believe the Commission's general reporting policy is not justified.

[1] This notice will treat the elimination of the identified portions of Form R–1 as a *proposed* action, although the schedules are now deleted and even though the reviewing court stayed the effectiveness of its order for 90 days to allow the Commission to take corrective action.

Interested parties may request copies of the previously eliminated schedules by calling the above telephone number. The former schedule numbers and titles are listed in the Appendix.

Regulatory Flexibility Act

This proposed rule will not have a significant ecnomic impact on a substantial number of small entities. Because this proceeding relates to only the larger Class I railroads, we perceive no likely impact on smaller railroads who are not required to file reports. Comments are requested on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1241

Railroads, Reporting requirements.

These rules are proposed under the authority of 49 U.S.C. 10321, 10326, and 11145, and 5 U.S.C. 553.

Decided: April 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

The following schedules were eliminated pursuant to No. 38590, served March 11, 1982 (47 FR 10041):

Schedule No	Schedule title
300	1. Items in Selected Current Asset Accounts
315	2. Special Funds and Other Investments
319	3 Securities, Advances, and Other Intangibles Owned or Controlled Through Nonreporting Subsidiaries
325	4. Property Used in Other Than Carrier Operations
329	5. Other Assets and Deferred Debits
355	6. Other Elements of Investment
362	7. Noncapitalized Capital Leases.
370	8. Items in Selected Current Liability Accounts.
379	9. Other Long-Term Liabilities and Other Deferred Credits
413	10 Rent for Leased Roads and Equipment.
430	11 Miscellaneous Rent Income
440	12 Miscellaneous Rents (Expense)
445	13. Separately Operated Properties—Profits or Loss
451	14. Railway Tax Accruals
703	15. Miles of Tracks at Close of Year by States and Territories (for Switching and Terminal Companies).
760A	16. Grade Crossings—A Railroad With Railroad
760B	17. Grade Crossings—B Railroad With Highway
761	18. Grade Separations
900	19. Compensation of Officers, Directors, etc.
	20. Annual Report Supplement—Corporate Disclosure

[FR Doc. 85–10813 Filed 5–2–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Erythronium Propullans (Minnesota Trout Lily) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Erythronium propullans* (Minnesota trout lily), as an endangered species. *Erythronium propullans* is presently known at only 14 sites, one to three acres each in size, with a total of a few hundred plants, in Rice and Goodhue Counties, Minnesota. The Minnesota trout lily is the only known plant species endemic to Minnesota. The species is vulnerable due to the low number of individuals, restricted distribution, expansion of housing projects, associated suburban development, and other modifications of natural habitat. A final determination of *Erythronium propullans* to be an endangered species will implement the protection provided by the Endangered Species Act of 1973, as amended. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 2, 1985. Public hearing requests must be received by June 17, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel (see **ADDRESSES** above) (612-725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Erythronium propullans Gray is a member of the lily family. It was first discovered near St. Mary's College in Faribault, Minnesota, in 1870, and was described by Gray (1871). There have been no revisions of its taxonomic status since that time.

The lily-like plant is about 15 centimeters tall, with one pair of mottled green, pointed leaves arising from near the base. A single nodding bell-shaped flower is at the end of a slender, leafless stalk. The recurved petals are pink or roseate. Perianth parts usually number four or five, rather than six as in other species of *Erythronium*. The flowers are generally distinguishable from those of *E. albidum*, the only other *Erythronium* found in the same habitat. The flowers of *E. propullans* are deeper pink in hue than the whitish-pink flowers of *E. albidum*. They are smaller (9–13 millimeters) than those of any other *Erythronium*. The fruits are also smaller and remain in a nodding or horizontal position at maturity.

The outstanding feature of *Erythronium propullans* is the production of a single bulblet from a lateral stem offset below the leaves (Morley, 1982). The other two species of *Erythronium* in Minnesota increase vegetatively by multiple basal offsets from the deeply buried bulbs (Banks, 1980).

Erythronium propullans is a spring ephemeral in deciduous forest blooming in April or May. The aerial parts of the plant completely disintegrate after the forest canopy fills out in early June. The species is usually associated with other spring ephemerals such as Dutchman's breeches (*Dicentra cucullaria*), white dog-tooth violet (*Erythronium albidum*), and snow trillium (*Trillium nivale*).

Etryhronium propullans occurs in the wooded valleys along the Cannon and Zumbro Rivers in Rice and Goodhue Counties, Minnesota. It occupies sites on north-facing slopes, 15–27 meters above the stream beds. Occasionally, the plants occur in moderate to heavy shade, and occasionally on river floodplains (Morley, 1978). Plant colonies or clones are 2–5 decimeters or larger in diameter. Plants also occur as scattered individuals.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. *Erythronium propullans* was named in the Smithsonian Report as threatened and was included in the Service's 1975 notice of review.

Erythronium propullans was also included as a category-1 species in an updated notice of review for plants published in the December 15, 1980 **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Erythronium propullans*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Erythronium propullans* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B) (iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding requires a reevaluation of the petition within 12 months, pursuant to section 4(B)(3)(C) (i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new findings that the petitioned action is warranted and proposes to implement the action in accordance with section 4(b)(3)(B) (ii) of the Act.

Status reports compiled by Morley (1978) and Smith (1981) as well as other pertinent literature (see "References," below) provide the biological basis for this proposed rule. The data demonstrate low numbers of plants and continuing threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Etryhronium propullans* Gray (Minnesota trout lily) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* There are no historical data to indicate that the range of *Etryhronium propullans* may have been larger at one time than its is now. Morley (1978) reported that road construction near the city of Faribault eliminated several colonies. Several large colonies located 1.5 miles

northeast of Faribault were destroyed by conversion of pastureland to cropland. Motorbikes have destroyed one colony within the city of Faribault (Morley, 1978). Threats to the urban sites are overutilization of a recreational potential (i.e., foot paths) and off-the-road vehicles. Other rural sites face destruction from the conversion of woodland to cropland.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is significant threat from wildflower collectors who may reduce populations in more accessible sites. One site was severely damaged in the early 1970's when a large number of plants were removed and replanted in the University of Minnesota Landscape arboretum (Smith, 1981).

C. *Disease or predation.* None Known.

D. *The inadequacy of existing regulatory mechanisms. Erythronium propullans* is officially listed as endangered by the State of Minnesota. The Endangered Species Act offers possibilities for protection of this taxon through Section 6 by cooperation between the State and the Service and through Section 7 (interagency cooperation) requirements. All know populations are privately owned. Two of the sites, with 20 and 110 colonies each, are owned by the Minnesota Chapter of The Nature Conservancy and are managed by them for the preservation of *Erythronium propullans.*

E. *Other natural or manmade factors affecting its continued existence.* None know.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon, in determining to propose this rule. Based on this evaluation, the preferred action is to list *Erythronium propullans* as an endangered species, because of the known losses of local populations of this extermely rare species. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the act, as amended, requires that, to the maximum extent prudent nd determinable, the Secretary designated any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act including recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for land acquisition, if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destory or adversely modify its critical habitat. If an activity may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are now known Federal activities planned in the range of *Erythronium propullans.*

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Erythronium propullans,* all trade prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Erythronium propullans* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species in areas under Federal jurisdiction. *Erythronium propullans,* however, does not occur on Federal lands.

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon one of the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is implemented through Section 8A of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned govenmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Erythronium propullans;*

(2) The location of any additional populations of *Erythronium propullans* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Erythronium propullans.*

Final promulgation of the regulation on *Erythronium propullans* will take

into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** (48 FR 49244) on October 25, 1983.

References

Banks, J. 1980. The reproductive biology of *Erythronium propullans* Gray and sympatric populations of *E. albidum* Nutt. (Liliaceae). Bull. Torrey Bot. Club 107:181–188.

Gray, A. 1871. A new species of *Erythronium.* Amer. Nat. 5:298–300.

Johnson, A.G. and M.K. Smithberg. 1968. A wildflower unique to Minnesota. Minnesota Horticulturalist 96:38–39.

Morley, T. 1978. Distribution and rarity of *Erythronium propullans.* Phytologia 40(5):381–389.

———. 1982. Flowering frequency and vegetative reproduction in *Erythronium albidum* and *E. propullans,* and related observations. Bull. Torrey Bot. Club 109:169–176.

Smith, W.R. 1981. Status report on *Erythronium propullans.* Unpubl. ms. Minnesota Dept. of Natural Resources. 9 pp.

Author

The primary author of this proposed rule is John G. Sidle (see **ADDRESSES** section) (612–725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92. Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Liliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Liliaceae—lily family						
*	*	*	*	*	*	*
Erythronium propullans	Minnesota trout lily	U.S.A. (MN)	E		NA	NA
*	*	*	*	*	*	*

(Proposed: *Erythronium propullans* (Minnesota trout lily)—endangered)

Dated: March 25, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–10807 Filed 5–2–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 86
Friday, May 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m., on June 15, 1985, at the Western Regional Office, USCCR, 3660 Wilshire Boulevard, Room 810, Los Angeles, California. The purpose of the meeting is to discuss plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, the director of the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10830 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaward Advisory Committee to the Commission will convene at 2:30 p.m. and will end at 4:30 p.m. on May 20, 1985, at Boggs Federal Courthouse, 844 King Street, Room 3207, Wilmington, Delaware. The purpose of the meeting is to review the status of current projects and provide an orientation for new Committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson William J. Conner, or Edward Rutledge, director of the Mid-Atlantic Reginal Office, at (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10828 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commisson on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 7:00 a.m. and will end at 8:00 a.m. on May 29, 1985, and on May 30, 1985 at 9:00 a.m. to 6:00 p.m. at the Biscayne Bay Marriott Hotel, 1633 North Bayshore Drive, the Fisher Room, Miami, Florida. The purpose of the meeting is to hold an Advisory Committee briefing and community forum on immigration practices and laws.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Porter, or Bobby Doctor, director of the Southern Regional Office, at (420) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10826 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m. on May 23, 1985, at the Indiana Black Expo Headquarters, 3130 Sutherland Avenue, the Conference Room, Indianapolis, Indiana. The purpose of the meeting is to discuss the status of current projects and provide an orientation for new committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson James Nuechterlein, or Clark Roberts in the Midwestern Regional Office, at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10831 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 4:00 p.m. on May 23, 1985, at the Allegany County Building, 3 Pershing Street, the Commissioner's Room, Cumberland, Maryland. The purpose of the meeting is to hear from community representatives and government officials and discuss discrimination against handicapped and disabled persons and other civil rights issues in Western Maryland.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Lorretta Johnson, or Edward Rutledge in the Mid-Atlantic Regional Office, at (202) 254-6717

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April, 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10827 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 10:00 p.m. on May 16, 1985, at the Flanagan High School, 2606 Hamilton Street, the Capitol Room, and on May 17, 1985 at 9:00 a.m. to 6:00 p.m. at the Red Lion Inn, 1616 Dodge Street, the Dodge Room, Omaha, Nebraska. The purpose of the meeting is to conduct program planning and a community forum on the general status of civil rights in Omaha.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin Jenkins, director of the Central States Regional Office, at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–10829 Filed 5–2–85; 8:45 am]

BILLING CODE 6335-01-M

New Jersey Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 8:30 p.m. on May 28, 1985, at the Quality Inn, Route 1, South, North Brunswick, New Jersey. The purpose of the meeting is for the newly rechartered committee to discuss plans for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Stephen Balch or Ruth Cubero, of the Eastern Regional Office, at (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 30, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–10825 Filed 5–2–85; 8:45 am]

BILLING CODE 6335-01-M

Hearing on the Protection of Handicapped Newborns

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1983, Public Law 98–183, 97 Stat. 1304, that a public hearing of the U.S. Commission on Civil Rights will begin on June 12, 1985, at 12:45 p.m. at the Medical Society of the District of Columbia, 2007 I Street NW., Washington, D.C. It will also convene on June 13–14, 1985, beginning at 8:30 a.m.

The purpose of the hearing is to hear testimony about possible discrimination in medical decisions affecting handicapped newborns and to assess the Federal role, if any, in this area.

The Commission is an independent bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, D.C., April 30, 1985.

Clarence M. Pendleton, Jr.,

Chairman.

FR Doc. 10853 Filed 5–2–85; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Hawaii Advisory Committee to the Commission originally scheduled for May 16, 1985, at the Ala Moana Americana Hotel, 410 Atkinson Drive, the Board Room, Honolulu, Hawaii, (FR Doc. 85–10118, on page 16528) has been cancelled.

Dated at Washington, D.C., April 30, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–10821 Filed 5–2–85; 8:45am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:00 p.m., on May 22, 1985, at the Summit Hotel, 51st Street and Lexington Avenue, the Van Buren Room, New York, New York. The purpose of the meeting is for the newly rechartered committee to discuss plans for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Archer Puddington, or Ruth Cubero, of the Eastern Regional Office at (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–10823 Filed 5–2–85; 8:45 am]

BILLING CODE 6335-01-M

North Dakota Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 p.m. on May 17, 1985, at the Townhouse Motel, 301 Third Avenue, North Fargo, North Dakota. The purpose of the meeting is to discuss future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Robert Feder, or William Muldrow, director of the Rocky Mountain Regional Office, at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–10824 Filed 5–2–85; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 p.m. on June 1, 1985, at the Downtowner Motor Hotel, I–25 and Center Street, Casper, Wyoming. The purpose of the meeting is to discuss the status of current projects and provide an orientation for new committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Fuju Adachi, or William Muldrow in the Rocky Mountain Regional Office, at (303) 844-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-10822 Filed 5-2-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85-134. Applicant: Fred Hutchinson Cancer Research Center, 1124 Columbia Street, Seattle, WA 98104. Instrument: Electron Microscope, Model JEM-100SX with Water Recirculator. Manufacturer: JEOL Ltd., Japan. Intended use: Studies of subcellular materials, cells and tissues related to cancer research. These materials may include human or animal tissue, tissue culture, DNA preparations, almost any tissue or component which demonstrates some aspects of the phenomena which can be described as relating to cancer. The experiments to be conducted will include: (1) The regulation of ribosomal gene transcription; (2) examination of the causative agents of AIDS; (3) chromosome replication; (4) lampbrush chromosome structure; (5) mechanism of Rec BC enzyme action; (6) analysis of RSV-transformed cells using site-directed antibodies against $pp60^{src}$; (7) studies of microtubules and kinetochores and (8) structural aspects of nuclear attachment in cells grown on extracellular matrix. Application received by Commissioner of Customs: March 30, 1985.

Docket No.: 85-137. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Electron Spectrometer. Manufacturer: Fom Institute for Atomic & Molecular Physics, The Netherlands. Intended use: The instrument is intended to be used to detect weak photoelectron signals and conduct new coincidence experiments. Application received by Commissioner of Customs: March 22, 1985.

Docket No.: 85-138. Applicant: Arizona State University, Department of Chemistry, Tempe, AZ 85287. Instrument: Two X-ray Powder Diffractometers, Model D/MAX-RB and Accessories. Manufacturer: Rigaku Corporation, Japan. Intended use: X-ray powder diffraction research consisting of the study of solid state materials, their structures, textures and thermal behavior. The main areas of research to be performed are examination of the structure and phase behavior of compositionally modulated transition metal films, metal ammonia intercalates with transition metal sulfides, metal oxide/metal sulfide corrosion products and various materials of geochemical interest. Other areas of study include structure properties of biaxially deformed high density polymers, the kinetics of solid state reactions and thermal behavior of thin films on single crystal substrates. The primary educational use of the instrument is in the one-on-one training of graduate students in the use and practice of modern X-ray powder diffraction. Application received by Commissioner of Customs: March 22, 1985.

Docket No.: 85-139. Applicant: Dwight David Eisenhower Army Medical Center, Building 300, Fort Gordon, GA 30905-5650. Instrument: Electron Microscope, Model JEM-100CXII with Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended use: Ultrastructural study of kidney disease and various tumors especially the differential diagnoses of the various poorly differentiated anaplastic cancers. The instrument will also be used in the training of residents in pathology in the various aspects of electron microscopy. Application received by Commissioner of Customs: March 22, 1985.

Docket No.: 85-140. Applicant: Queens College, City University of New York, Chemistry Department, 65-30 Kissena Boulevard, Flushing, NY 11367-0904. Instrument: Teaching Flash Kinetic Spectrometer with Accessories. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: The instrument will be used to train undergraduate students in the flash photolysis study of chemical solutions. Short-lived events will be investigated. Application received by Commissioner of Customs: March 22, 1985.

Docket No.: 85-141. Applicant: The University of Texas at Austin, Bureau of Economic Geology, P.O. Box X, University Station, Austin, TX 78713. Instrument: CP/Mass Spectrometer. Manufacturer: VG Instruments, United Kingdom. Intended use: Analysis of geologic rock and mineral samples to determine chemical and to some extent isotopic, composition of the materials. This knowledge is then used to understand a variety of geologic, hydrologic, or environmental processes. Application received by Commissioner of Customs: March 26, 1985.

Docket No.: 85-142. Applicant: University of Texas, Bureau of Economic Geology, P.O. Box X, University Station, Austin, TX 78713. Instrument: Isotope Spectrometer, Model Sira 24. Manufacturer: VG Instruments, United Kingdom. Intended use: Studies of geologic and hydrologic materials to better understand the hydrologic cycle (movement of water through the earth and the atmosphere) and to better understand the chemical reactions which result in mineral precipitation and dissolution of rocks in the deep subsurface. Application received by Commissioner of Customs: March 26, 1985.

Docket No.: 85-143. Applicant: Memorial Hospital for Cancer & Allied Diseases, 1275 York Avenue, New York, NY 10021. Instrument: Electron Microscope, Model EM 410LS. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: Diagnosis of human tumors during ultrastructural studies. The instrument will also be used for interpreting kidney and nerve biopsies, monitoring anthracycline-induced cardiotoxicity (chemo-therapy) using transvenous endomyocardial biopsies, the localization of human tumor antigens using colloidal gold labeled monoclonal antibodies for numerous other cancer research project, and for teaching pathology residents. Application received by Commissioner of Customs: March 26, 1985.

Docket No.: 85-144. Applicant: New Jersey Department of Health, CN 360 John Fitch Plaza, Trenton, NJ 08625. Instrument: Electron Microscope, Model EM 420T with Accessories.

Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: Detection of asbestos fiber concentrations in ambient air, in and around buildings where asbestos containing construction materials are known, or thought to be present. The examinations to be performed on this instrument are an integral part of a comprehensive asbestos policy which will provide a rational, uniform approach towards the management of asbestos problems throughout New Jersey. Application received by Commissioner of Customs: March 26, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-10754 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-501]

Extension of the Deadline for Preliminary Countervailing Duty Determinations; Certain Circular Welded Carbon Steel Pipe and Tube Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is extending the deadline for its preliminary determinations in the countervailing duty investigations of certain welded carbon steel pipes and tubes from Venezuela in order to investigate upstream subsidies provided to pipe and tube manufacturers, producers and exporters in Venezuela through the purchase of subsidized inputs. On March 26, 1985, petitioners presented information which establishes a reasonable basis to believe or suspect that an upstream subsidy is being paid or bestowed on the products under investigation. Under section 703(h) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984 (the Act), we may extend the deadline for a preliminary determination to 250 days after the filing of a petition whenever there is a reasonable basis to believe or suspect that an upstream subsidy is paid or bestowed and we conclude that additional time is required to investigate the upstream allegation. Therefore, the Department will make its preliminary determinations by November 5, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0189 or 377-1785.

SUPPLEMENTARY INFORMATION:

Case History

On February 28, 1985, we received a petition filed by the Subcommittees of the Committee on Pipe and Tube Imports (CPTI) and its member companies on behalf of the U.S. industries producing certain circular welded carbon steel pipe and tube products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Venezuela of certain welded carbon steel pipe and tube products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to U.S. industries.

We found that the petition contained sufficient grounds on which to initiate countervailing duty investigations, and on March 20, 1985, we initiated such investigations (50 FR 12063). We stated that we expected to issue preliminary determinations by May 24, 1985.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, the International Trade Commission (ITC) was notified of our initiations. On April 15, 1985, the ITC preliminarily determined that there is a reasonable indication that these imports materially injure and threaten material injury to U.S. industries.

Upstream Subsidy Allegation

In the petition, the Subcommittees of the Committee on Pipe and Tube Imports alleged that Venezuelan manufacturers, producers, or exporters of certain circular welded carbon steel pipe and tube products receive an "upstream subsidy" through the purchase of subsidized inputs of plate and hot-rolled and cold-rolled sheet. In our notice of initiation, we stated that the upstream subsidy allegation was insufficient to initiate an investigation because the petitioners did not provide "reasonable grounds to believe or suspect" that a competitive benefit is being conferred on the manufacturers, producers, or exporters in Venezuela of certain circular welded carbon steel pipes and tubes.

On March 26, 1985, petitioners requested the Department to re-examine the upstream subsidy allegation and provided further information in support of their allegation. In consideration of the information received, we determine that we now have reasonable grounds to believe or suspect that an upstream subsidy is paid or bestowed on the products under investigation.

Under section 703(h) of the Act, we may extend the deadline for a preliminary determination to 250 days after the filing of a petition, whenever the Department determines that additional time is required to investigate an upstream subsidy allegation. Accordingly, we will make our preliminary determinations on or before November 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-10755 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-504]

Extension of the Deadline of Preliminary Countervailing Duty Determination; Oil Country Tubular Goods From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is extending the deadline for its preliminary determination in the countervailing duty investigation of oil country tubular goods from Venezuela in order to investigate upstream subsidies provided oil country tubular goods manuacturers, producers and exporters in Venezuela through the purchases of subsidized inputs. On April 10, 1985, parties to the proceeding presented information which establishes a reasonable basis to believe or suspect that an upstream subsidy is being paid or bestowed on the product under investigation. Under section 703(h) of the Tariff Act of 1930 as amended by the Trade and Tariff Act of 1984. (the Act), we may extend the deadline for a preliminary determination to 250 days after the filing of a petition whenever there is a reasonable basis to believe or suspect that an upstream subsidy is paid or bestowed and we conclude that additional time is required to investigate the upstream allegation. Therefore, the Department will make its preliminary determination by November 5, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-0189 or 377-1785.

SUPPLEMENTARY INFORMATION:

Case History

On February 28, 1985, we received a petiton filed by the United States Steel Corporation on behalf of the U.S. industries producing oil country tubular goods. On March 5, 1985 we received a letter on behalf of Lone Star Steel Company requesting that the company be added as a co-petitioner. The United States Steel Corporation agreed to include Lone Star in this proceeding. On March 28, 1985 we received a letter from counsel for the members of the oil country tubular goods subcommittee of the Committee on Pipe and Tube Imports requesting that they be considered as parties to the proceeding in the oil country tubular goods investigation. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Venezuela of oil country tubular goods directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure on threaten material injury to U.S. industries.

We found that the petition contained sufficient grounds on which to initiate a contervailing duty investigation, and on March 20, 1985, we initiated such an investigation (50 FR 12066). We stated that we expected to issue a preliminary determination by May 24, 1985.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, the International Trade Commission (ITC) was notified of our initiation. On April 15, 1985, the ITC preliminary determined that there is a reasonable indication that this import materially injures and threatens material injury to U.S. industries.

Upstream Subsidy Allegation

On March 7, 1985, Lone Star filed an amendment to the petition, alleging that Venezuelan manufacturers, producers, or exporters of oil country tubular goods receive an "upstream subsidy" through the purchases of subsidized imputs. In our notice of initation, we stated that the upstream subsidy allegation was insufficient to initiate an investigation because the petitioner did not provide "reasonable grounds to believe or suspect" that domestic subsidies to suppliers of inputs have a significant effect on the cost of manufacturing OCTG or that a competitive benefit is being conferred on the manufacturers, producers, or exporters in Venezuela of oil country tubular goods. Moreover, we stated that Lone Star did not identify the inputs in the manufacture of OCTG that the are benefiting from the subsidies.

On April 10, 1985, the members of the oil country tubular goods subcommittee of the Committee on Pipe and Tube Imports, parties to the proceedings, requested the Department to investigate the upstream subsidy allegation and provided information in support of their allegation. In consideration of the information received, we determine that we now have reasonable grounds to believe or suspect that an upstream subsidy is paid or bestowed on the product under investigation.

Under section 703(b) of the Act, we may extend the deadline for a preliminary determination to 250 days after the filing of a petition, whenever the Department determines the additional time is required to investigate an upstream subsidy allegation. Accordingly, we will make our preliminary determination on or before November 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-10756 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-471-501]

Carbon Steel Wire Rod From Portugal; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether carbon steel wire rod ("wire rod") from Portugal is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission ("ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 23, 1985, and we will make ours on or before September 16, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Steven S. Lim, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-1776.

SUPPLEMENTARY INFORMATION:

The Petition

On April 8, 1985, we received a petition from counsel for Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company on behalf of the domestic wire rod industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Portugal are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

The petitioners based the United States prices on offers for sale of wire rod to U.S. purchasers, less estimated inland freight, ocean freight, handling, off-loading, United States duty and broker commission.

The petitioners based foreign market value on constructed value. The petitioners calculated constructed value based on United States factors of production for raw materials, labor, general selling and administrative expenses and profit.

By comparing the values calculated by the foregoing methods, petitioners alleged dumping margins of 39 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire rod and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether wire rod from Portugal is being, or is likely to be, sold at less than fair

value in the United States. If our investigation proceeds normally, we will make our preliminary determination by September 16, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States.*

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of wire rod from Portugal are materially injuring, or are threatening to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10837 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-505]

Carbon Steel Wire Rod From Venezuela; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether carbon steel wire rod ("wire rod") from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission ("ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 23, 1985, and we will make ours on or before September 16, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Steven S. Lim, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-1776.

SUPPLEMENTARY INFORMATION:

The Petition

On April 8, 1985, we received a petition from counsel for Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company on behalf of the domestic wire rod industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

The petitioners based the United States prices on actual sales of wire rod to U.S. purchasers, less estimated inland freight, ocean freight, handling, off-loading, United States duty and broker commission.

The petitioners based foreign market value on constructed value. The petitioners calculated constructed value based on United States factors of production for raw materials, labor, general selling and administrative expenses and profit.

By comparing the values calculated by the foregoing methods, petitioners alleged dumping margins of 39 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire rod and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether wire rod from Venezuela is being, or is likely to be, sold at less than fir value in the United States. If our investigation proceeds normally, we will make our preliminary determination by September 16, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufacture, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the Tariff Schedules of the United States Annotated.

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of wire rod from Venezuela are materially injuring, or are threatening to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10836 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-401]

Barbed Wire and Barbless Fencing Wire From Poland; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that barbed wire and barbless fencing wire (barbed wire) from Poland is being, or is likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by July 15, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that barbed wire and barbless fencing wire (barbed wire) from Poland are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have determined the weighted-average margin of sales at less than fair value to be 56.9 percent. We also found that critical circumstances do not exist.

If this investigation proceeds normally, we will make a final determination by July 15, 1985.

Case History

On November 19, 1984, we received an antidumping duty petition from Forbes Steel and Wire Corporation, filed on behalf of domestic producers of barbed wire. In compliance with the filing requirements of section 353.36 of our regulations (19 CFR 353.36), the petitioner alleged that imports of barbed wire from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure or threaten material injury to a United States industry. Petitioner also alleged that "critical circumstances" exist, as defined in section 733(e) of the Act. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on December 9, 1984 (49 FR 49128). On January 2, 1985, the ITC determined that there is a reasonable indication that imports of barbed wire from Poland are materially injuring a U.S. industry.

A questionnaire was presented to counsel of PHZ Universal, the only known exporter of barbed wire to the United States, on March 1, 1985. The response was received on April 8, 1985. We have determined that Poland is a state-controlled-economy country for the purpose of this investigation. This is further discussed under "Foreign Market Value".

Scope of Investigation

The products covered by this investigation are barbed wire and barbless fencing wire, as currently provided for in items 642.0200 and 642.1105 of the Tariff Schedules of the United States, Annotated (TSUSA). We investigated all sales of barbed wire, to the United States, for the period June 1, 1984, through November 30, 1984.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, the purchase price of the subject merchandise was used to represent the United States price because the merchandise was sold to an unrelated United States purchaser prior to its importation into the United States. We made deductions for foreign inland freight and ocean freight. Deductions for inland freight were based on barge rates in Hamburg, Federal Republic of Germany.

Export packing costs were based on the packing costs, for barbed wire, in the Republic of Korea.

Foreign Market Value

In accordance with section 773(c) of the Act, we used surrogate prices of barbed wire imported to the United States to determine foreign market value. Petitioner alleged that Poland is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of Poland's economy and consideration of the briefs submitted by the parties, we have preliminarily concluded that Poland is a state-controlled-economy country for purposes of this investigation. Our decision on this issue is mainly based on the fact that the central government of Poland strictly controls the prices and levels of production of the steel industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Section 353.8(a) of our regulations establishes a preference for foreign market value based upon prices at which similar merchandise is sold for consumption in the home market of that country, or to other countries, including the United States. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing barbed wire, we determined that Italy would be an appropriate surrogate. We mailed questionnaires to three Italian producers of barbed wire and, on April 18, 1985, received a response from one of them.

We based foreign market value on the weighted average ex-mill price in the Italian home market. Adjustment for cost differences of similar merchandise, and differences in credit costs, were not made because information necessary for such adjustments was not available. These adjustments, however, shall be considered for the final determination.

Preliminary Negative Determination of Critical Circumstances

The petitioner alleged that imports of barbed wire from Poland present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States, or elsewhere, or the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less

than its fair value: and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short priod.

In determining whether there have been massive imports over a relatively short period, we considered the following factors:

1. Whether recent imports have increased significantly;
2. Whether recent import penetration ratios have increased significantly;
3. Whether the pattern of recent imports may be explained by seasonal factors; and
4. Whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of the import statistics compiled by ITC, and the Department's IM 146, we have determined that imports of the products covered by this investigation were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of barbed wire, or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to barbed wire from Poland.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of barbed wire from Poland that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The weighted average margin rate is 56.9 percent. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR), we will hold, if requested, a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2 p.m. on June 4, 1985, at the U.S. Department of Commerce, room 5611, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 22, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10839 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-407]

Barbed Wire and Barbless Fencing Wire From Brazil: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that barbed wire and barbless fencing wire (barbed wire) from Brazil are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 12, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that barbed wire from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins for the two respondents were based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. The margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We also found that critical circumstances do not exist with respect to imports of barbed wire from Brazil. If this investigation proceeds normally, we will make a final determination by July 12, 1985.

Case History

On November 19, 1984, we received a petition from Forbes Steel and Wire Corporation on behalf of the domestic producers of barbed wire. In compliance with the filing requirements of section 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of barbed wire from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or are threatening material injury, to a United States industry. Petitioner also

alleged that critical circumstances exist, as defined in section 733(e) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 10, 1984 (49 FR 49127). On January 3, 1985, the ITC determined that there is a reasonable indication that imports of barbed wire are materially injuring a U.S. industry.

On February 19, 1985, questionnaires were presented to Companhia Siderurgica Belgo-Mineira (Belgo-Mineira) and Companhia Siderergica da Guanabara (COSIGUA).

Questionnaire responses were not received on the due date of April 8, 1985. We notified the respondents on April 15, 1985, that we might proceed to the preliminary determination using the best information available. To date, we have not received any response.

Scope of Investigation

The merchandise covered by this investigation is barbed wire and barbless fencing wire, currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 642.0200 and 642.1105, respectfully.

According to the petition, Belgo-Mineira and COSIGUA accounted for substantially all the exports of this merchandise to the United States. We investigated all imports of barbed wire during the period June 1 through November 30, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because respondents did not submit responses.

United States Price

We calculated the purchase price of barbed wire as provided in section 772 of the Act, on the basis of average customs value for the period of investigation as provided in the IM146. We used these data as the best information available instead of those provided in the petition in order to obtain a representative figure for the total period of investigation.

Foreign Market Value

We calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was cost of material and fabrication data submitted in the petition. To this amount we added the required statutory minimum of 10 percent for general selling and administrative expenses and eight percent for profit.

Preliminary Negative

Determination of Critical Circumstances

The petitioner alleged that imports of barbed wire from Brazil present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation: or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: (1) whether imports have surged recently, (2) recent trends in import penetration levels, (3) whether the recent imports are significantly above the average calculated over the last three years, and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for barbed wire from Brazil for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we preliminarily determine that imports of barbed wire from Brazil do not appear massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of barbed wire from Brazil or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

For the reasons described above, we preliminarily determine that "critical circumstances" do not exist with respect to barbed wire from Brazil.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of barbed wire from Brazil which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The marigns are as follows:

Manufacturers	Margin (percent)
Belgo-Mineira	47.55
COSIGUA	47.55
All other manufacturers/producers/exporters	47.55

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an adminstrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 5, 1985, at the U.S. Department of Commerce, room 3708, 14th St. and Constitution Ave., N.W., Washington,

D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 29, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Homer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10840 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-501]

Carbon Steel Wire Rod From Poland; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether carbon steel wire rod from Poland is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product injure or threaten material injury to, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 23, 1985, and will make ours on or before September 16, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-0184.

SUPPLEMENTARY INFORMATION:

The Petition

On April 8, 1985, we received a petition in proper form from Atlantic Steel Company, Continental Steel Company, Georgetown Steel Corporation, North Star Steel Company Texas, and Raritan River Steel Company, filed on behalf of the domestic producers of carbon steel wire rod. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring or are threatening to materially injure, a United States industry. The petition further alleges that Poland is a state-controlled economy within the meaning of the Act. It alleges that sales of carbon steel wire rod in Poland do not permit a determination of foreign market value and that the Department of Commerce must choose a surrogate country for the purposes of determining the foreign market values of this product. The petitioners suggest Australia as a surrogate country. The allegation of sales at less than fair value is supported by comparing the average price obtained by the petitioners for ex-plant price charged for the product in Australia to the Polish offers for sale of U.S. purchasers (less amounts for foreign inland freight, ocean freight, handling, off loading, U.S. duty and broker commission). In comparing the United States prices with the foreign market value, the petition alleges a dumping margin of 36.51 percent.

In case involving a state-controlled economy country, the foreign market value of carbon steel wire rod exported from that country must be determined in accordance with section 773(c) of the Act. The surrogate procedure, as prescribed by the Department's regulations (19 CFR 353.8), contemplates the use of prices for such or similar merchandise when sold for consumption in a market economy at a comparable stage of economic development to the non-market economy country, or a constructed value.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegation. We have examined the petition on carbon steel wire rod and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether carbon steel wire rod from Poland is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 16, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classificable under item 607.17 of the Tariff Schedules of the United States Annotated.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at the determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of carbon steel wire rod from Poland are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10838 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-405]

Barbed Wire and Barbless Fencing Wire From Argentina; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that barbed wire and barbless fencing wire (barbed wire) from Argentina are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 12, 1985.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that barbed wire from Argentina is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin for the respondent was based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. The margin for the company investigated is listed in the "Suspension of Liquidation" section of this notice. We also found that critical circumstances do not exist with respect to imports of barbed wire from Argentina. If this investigation proceeds normally, we will make a final determination by July 12, 1985.

Case History

On November 19, 1984, we received a petition from Forbes Steel and Wire Corporation on behalf of the domestic producers of barbed wire. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of barbed wire from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or are threatening material injury, to a United States industry. Petitioner also alleged that critical circumstances exist, as defined in section 733(e) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 10, 1984 (49 FR 49126). On January 3, 1985, the ITC determined that there is a reasonable indication that imports of barbed wire are materially injuring a U.S. industry.

On February 19, 1985, a questionnaire was presented to Acindar Industria Argentia de Aceros S.A. (Acindar).

An incomplete questionnaire response was received on April 8, 1985. We notified the respondent on April 18, 1985, that we might proceed to the preliminary determination using the best information available if we did not receive an adequate response. We did not receive an adequate response in sufficient time to use in the preliminary determination.

Scope of Investigation

The merchandise covered by this investigation is barbed wire and barbless fencing wire, currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 642.0200 and 642.1105, respectively.

According to the petition, Acindar accounted for substantially all the exports of this merchandise to the United States. We investigated all imports of barbed wire during the period June 1 through November 30, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as requred by section 776(b) of the Act because the respondent did not submit an adequate response.

United States Price

We calculated the purchase price of barbed wire, as provided in section 772 of the Act, on the basis of average customs value for the period of investigation as provided in the IM146. We used these data as the best information available instead of those provided in the petition in order to obtain a representative figure for the total period of investigation.

Foreign Market Value

We calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was cost of material and fabrication data submitted in the petition. To this amount we added the required statutory minimum of 10 percent for general, selling and administrative expenses and 8 percent for profit.

Preliminary Negative Determination of Critical Circumstances

The petitioner alleged that imports of barbed wire from Argentina present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short time period, we considered the following factors: (1) Whether imports have surged recently, (2) recent trends in import penetration levels, (3) whether the recent imports are significantly above the average calculated over the last three years, and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for barbed wire from Argentina for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that imports of barbed wire from Argentina do not appear massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of barbed wire from Argentina

or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

For the reasons described above, we preliminary determine that "critical circumstances" do not exist with respect to barbed wire from Argentina.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of barbed wire from Argentina which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers	Margin (percent)
Acindar	64.44
All other manufacturers/producers/exporters	64.44

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determiantion, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 6, 1985, at the U.S. Department of Commerce, Room 3708, 14th St. and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 30, 1985. Oral presentations will be limtied to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85–10841 Filed 5–2–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; U.S. Fish and Wildlife Service, Alaska Maritime National Wildlife Refuge

On March 15 1985, notice was published in the **Federal Register** (50 FR 10526) that an application had been filed by U.S. Fish and Wildlife Service, Alaska Maritime National Wildlife Refuge, 202 W. Pioneer Avenue, Homer, Alaska 99603.

Notice is hereby given that on April 29, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668 Juneau, Alaska 99802.

Dated: April 29, 1985.

William G. Gordon,

Assistant Administrator for Fisheries.

[FR Doc. 85–10818 Filed 5–2–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

April 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended has issued the directive published below to the Commissioner of Customs to be effective on May 3, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212.

Background

On March 4, 1985, a notice was published in the **Federal Register** (50 FR 3586) which established an import restraint limit for cotton vests in Category 359pt., (only TSUSA numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320), produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on January 3, 1985. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 879,414 pounds.

No solution has been reached in consultations on a mutually satisfactory limit. The United States Government has decided, therefore, to control imports of cotton textile products in Category 359pt., exported during the twelve-month period at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Committee for the Implementation of Textile Agreements.

April 30, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981: pursuant to the Bilateral Cotton, Wool and Man-dade Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China: and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 3, 1985, entry for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 359pt.,[1] produced or manufactured in China and exported during the twelve-month period beginning on May 1, 1985 and extending through April 30, 1986 in excess of 879,414 pounds.[2]

Textile products in Category 359pt. which are in excess of the 90-day limit previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), ad amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

[1] In Category 359, only TSUSA numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320.

[2] The restraint limit has not been adjusted to account for any imports exported before May 1, 1985

In carryingout the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Committee for the Implementation of Textile Agreements.

[FR Doc. 85-10802 Filed 5-2-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group D (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:30 a.m., Friday, May 17, 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Crystal Park One, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

April 30, 1985.

[FR Doc. 85-10768 Filed 5-2-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 8:30 a.m., Wednesday and Thursday, 15–16 May 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Crystal Park One, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

April 30, 1985.

[FR Doc. 85-10767 Filed 5-2-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Navy Artificial Intelligence R&D will meet on May 20 and 21, 1985 at SRI International, Inc., 333 Ravenswood Avenue, Menlo Park, California. The first session of the meeting will commence at 8:00 A.M. and terminate at 5:30 P.M. on May 20. The second and final session will commence at 8:30 A.M. and terminate at 5:30 P.M. on May 21. All sessions of the meeting will be open to the public.

The purpose of the meeting is to receive technical briefings from industry and university representatives in order to develop a working definition of artificial intelligence suited to Navy needs; determine the current state of R&D and evaluate its' relevance to Navy needs; establish criteria for evaluating potential applications of artificial intelligence in the Navy and identify the most beneficial applications for the Navy in combat and non-combat roles; identify commercial applications that may be readily adapted to Navy needs; and propose mechanisms for bringing existing artificial intelligence technology to the Navy. The agenda will include presentations and discussions by industry and university representatives on expert systems, natural language, robotics, training, and basic research in artifical intelligence.

For further information concerning this meeting contact:

Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000; Telephone number (202) 696-4870.

Dated: May 1, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-10971 Filed 5-2-85; 9:13 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Public Hearing and Special Commission Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing and meeting for business on May 13, 1985 at 9:30 a.m. in the Lafayette Room of the Holiday Inn, 260 Goddard Boulevard, King of Prussia, Pennsylvania.

Possible Drought Emergency Declaration

Section 10.4 of the Delaware River Basin Compact provides that in the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the Basin, or within any part thereof, the Commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency, the Commission could limit the extent to which water users may divert or withdraw water of any purpose. The Commission is considering whether current and developing conditions of water supply and demand require the declaration of a water supply emergency.

The purpose of this hearing is to permit the public to comment on these matters and to make any suggestions or recommendations concerning possible Commission actions.

All persons wishing to be heard should notify the Secretary of the Commission by 4:00 p.m., May 10.

There will be a business meeting of the Commission immediately following the hearing to consider possible Commission actions relating to the drought situation.

Susan M. Weisman,

Secretary.

April 26, 1985.

[FR Doc. 85-10788 Filed 5-2-85; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Continuation Awards Under the Blingual Education; Demonstration Projects Program

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of fiscal year 1985 Noncompeting Continuation Awards unde the Bilingual Education: Demonstration Projects Program.

SUMMARY: Applications are invited for noncompeting continuation awards, formerly funded under the Demonstration Projects Program, under the Program of Academic Excellence.

The Education Amendments of 1984, Pub. L. 98-511, amended the authorizing legislation for the Demonstration Projects Program. The Secretary has determined that recipients of new awards in Fiscal Years 1983 and 1984 under the Demonstration Projects Program (CFDA No. 84.003E) are eligible for continuation awards as projects under the Program of Academic Excellence, provided that applicants conform to the language of the statute and the requirements of 34 CFR 75.118 and 75.253 of the Education Department General Administrative Regulations (EDGAR).

Authority for this program is contained in Section 721 (a) (4) of Part A of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511.

(20 U.S.C. 3221-3262)

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** on February 7, 1985 (50 FR 5293), withdrawing an application notice inviting applications for noncompeting continuations under the Bilingual Education Act: Demonstration Projects Program published September 28, 1984 (49 FR 38498). The February 7, 1985 notice also indicated that the Secretary was considering the eligibility of current recipients for continuation awards.

Closing Date for Transmittal of Applications.

To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before June 7, 1985.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003E, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

Fiscal Year 1985 continuation awards under this program are governed by the authorizing statute for the program, and the Education Department General Administrative Regulations (EDGAR).

All amendments to an application required by this notice are solely for the purpose of informing applicants of new statutory requirements and ensuring that the applications and projects conform to the amended statute. This notice does not authorize applicants for continuation awards to make programmatic changes or carry out activities that are not within the scope of the original project as approved.

Applicants must amend their applications in the following manner to be considered eligible for support as programs of academic excellence under the amended statute:

1. An applicant must assure that the applicant's program of instruction for children of limited English proficiency is a program of transitional bilingual education which has an established record of providing effective, academically excellent instruction and which is designed to serve as a model of exemplary bilingual education programs and to facilitate the dissemination of the effective bilingual educational practice.

(20 U.S.C. 3223(a)(8))

2. An applicant must assure that parents or legal guardians of students identified for enrollment in the program shall be informed of: the reasons for the selection of their child as in need of bilingual education; the alternative educational programs that are available; the nature of the bilingual education program and the instructional alternatives; and their option to decline enrollment of their children in the program and shall be given the opportunity to decline such enrollment if they so choose.

(20 U.S.C. 3231(d)(1)(D))

3. An applicant must ensure that information regarding the following is contained in its application:

(a) The number of children served by the existing bilingual education program and evidence of their educational condition prior to enrollment in the program.

(b) A description of the existing program as well as the educational background and linguistic competencies of program personnel.

(c) The extent to which the program has promoted student academic achievement as indicated by objective evidence, such as improvements in language, mathematics, and subject matter test scores; grade retention rates; rates of referral to or placement in special education programs; student dropout rates; and, where appropriate, postsecondary education and employment experiences of students.

(d) The extent of parent involvement in and satisfaction with the existing bilingual education program.

(e) The activities which would be undertaken under the grant and how these activities would utilize and promote programs of academic excellence which employ bilingual educational practices, techniques, and methods.

(20 U.S.C. 3231(c)(4))

This description of the application amendments is intended only to aid applicants in applying for continuation awards in accordance with the new statutory requirements. Nothing in this notice is intended to impose any requirements beyond those imposed under the statute.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and selected this program for review:

State	
Alabama	North Dakota
Arizona	Ohio
Arkansas	Oklahoma
Connecticut	Oregon
Delaware	Pennsylvania
Florida	South Carolina
Indiana	South Dakota
Kansas	Tennessee
Louisiana	Texas
Maine	Utah
Massachusetts	Vermont
Michigan	Virginia
Missouri	Washington
Montana	Wyoming
Nebraska	Guam
Nevada	Northern Mariana Islands
New Hampshire	Puerto Rico
New Jersey	Virgin Islands
New Mexico	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

The comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 8, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.003E), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application Forms

Application packages are expected to be ready for mailing on May 6, 1985. They will be mailed to current grantees that have one or more year(s) remaining of an approved multi-year project period. A copy of the application package may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 10 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1885-0003.)

Available Funds

It is expected that approximately $6,600,000 will be available for 38 noncompeting continuation grants for Fiscal Year 1985.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicable Regulations

Regulations applicable to this program are in the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information

For further information contact Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 447-9228.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

(20 U.S.C. 3221-3261)

Dated: May 1, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10934 Filed 5-2-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-10-NG]

Czar Resources Inc.; Amended Application for Order Authorizing the Import of Natural Gas From Canada

AGENCY: Energy Regulatory Administration, DOE.

ACTION: Notice of amendment to application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 25, 1985, of an amendment to the application previously filed by Czar Resources Inc. (Czar Inc.) to import up to 5,800 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.) for resale to Weyerhaeuser Company (Weyerhaeuser). The amendment would increase the price of the proposed import at the international border from $275 (U.S.) per MMBtu to $2.84 (U.S.) per MMBtu.

FOR FURTHER INFORMATION CONTACT:

Olga T. Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9482.

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: On April 8, 1985, Czar Inc. filed an application in ERA Docket No. 85-10-NG to import from Czar Ltd., on a best-efforts, interruptible basis up to 5,800 Mcf per day of Canadian natural gas for resale to Weyerhaeuser over a period of two years (50 FR 15604, April 19, 1985). The imported gas is intended to displace No. 6 fuel oil used at Weyerhaeuser's Longview, Washington, fiber manufacturing facility.

The sales contract provided that during the first three months, the pride Czar Inc. would pay Czar Ltd. for the gas would be $2.75 (U.S.) per MMBtu. The delivered cost to Weyerhaeuser during that period would be $3.70 (U.S.) per MMBtu. Thereafter, price redetermination may be made quarterly, subject to mutual agreement. Czar Inc. has amended its application to reflect an increase in the initial price it will pay Czar Ltd. to $2.84 (U.S.) per MMBtu. The amendment did not change the delivered price to Weyerhaeuser. According to the applicant, the change was needed to meet the Canadian government's current minimum floor price for short-term, interruptible export sales.

Other information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention. Persons who have already filed for intervention in ERA Docket 85-10-NG need not file new motions, but may submit additional comments as appropriate. The filing of a protest with respect to this amended application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

They must be filed no later than 4:30 p.m. May 20, 1985.

A decisional record on the amended application will be developed through reponses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues.

A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comment should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed.

Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Czar Inc.'s amended application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holiday.

Issued in Washington, D.C., on April 29, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-10866 Filed 5-2-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-406-000, et al.]

Natural Gas Certificate Filings; Carnegie Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Carnegie Natural Gas Company

[Docket No. CP85-406-000]

April 26, 1985.

Take notice that on April 15, 1985, Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP85-406-000 a substitute page 4 to its application filed April 1, 1985, in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to revise page 4 of the original application, all as more fully set forth in the substitute page 4 which is on file with the Commission and open to public inspection.

Applicant requests that the enclosed revised page 4 of its application be substituted for original page 4 of that filing. It is indicated that the revision is intended to reflect more accurately that New Jersey Natural Gas Company (New Jersey) and Texas Eastern Transmission Corporation (Texas Eastern) have not finalized their negotiations for the transportation service related to the transaction.

Applicant states that the revised page 4 now indicates that the transportation of natural gas sold under the requested authorization is dependent upon the elicitation of transportation service by New Jersey from Texas Eastern and that such transportation would require separate certification under Section 7 of the Natural Gas Act.

Applicant requests that the Notice of Application which was issued in this proceeding on April 10, 1985, be amended by further notice so as to delete the representation that "Texas Eastern is indicated as having agreed to request such authorization as may be necessary to effectuate the aforesaid transportation."

Comment date: May 17, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85-454-000]

April 26, 1985.

Take notice that on April 19, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-454-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Ashland Oil, Inc. (Ashland), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

It is indicated that pursuant to the terms of a September 20, 1983, gas purchase agreement, Ashland acquired natural gas from Zenith Oil and Gas, Inc. (Zenith), and Southern Triangle Oil, Inc. (Southern), for use as boiler fuel at Ashland's Findlay, Ohio, plant. In order for Ashland to receive its gas, it is explained, Ashland, has entered into a gas transportation agreement dated December 1, 1984, with Columbia. Columbia would receive up to 2,060 MMBtu equivalent of gas per day from Zenith in Perry and Holmes Counties, Ohio, and from Southern in Perry and Guernsey Counties, Ohio, and would redeliver the gas, leas retainage, to Columbia Gas of Ohio, Inc. (Columbia of Ohio), near Findlay for further transportation to Ashland's plant. Columbia states that it began transporting the gas for Ashland on December 1, 1984, pursuant to Section 157.209 of the Commission's Regulations. Columbia herein proposes to transport 500 MMBtu equivalent of gas on an average day and 180,000 MMBtu equivalent of gas on an annual basis on behalf of Ashland through June 30, 1985. Columbia states that it has released up to 500 MMBtu of gas per day which would be sold by Zenith and Southern; the released gas is subject to section 108 of the Natural Gas Policy Act of 1978. Columbia would charge 29.93 cents per MMBtu of gas it transports within Columbia of Ohio's total daily entitlement (TDE) and 41.27 cents per MMBtu for gas in excess of Columbia of Ohio's TDE. These rates are set forth in Rate Schedule TS-1 of Columbia's FERC Gas Tariff. In addition, Columbia states that it would retain a percentage of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. This percentage, as reflected in Rate Schedule TS-1, is said to be currently 2.43 percent.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: June 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket Nos. CP85-416-000 and CP85-416-001]

April 25, 1985.

Take notice that on April 4, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-416-000 a request as amended in Docket No. CP85-416-001 on April 18, 1985, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Sinclair Oil Corporation (Sinclair) under the certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request and amendment to request which are on file with the Commission and open to public inspection.

CIG proposes to transport up to 10,000 Mcf of natural gas per day for Sinclair through June 30, 1985. CIG states that the gas to be transported for Sinclair would be purchased from Tom Brown, Inc., and Koch Hydrocarbon Company, and would be used as fuel gas at Sinclair's refinery in Carbon County, Colorado.

It is indicated that CIG would receive the gas for Sinclair's account from Williston Basin Pipeline Company at existing interconnecting facilities in Park and Fremont Counties, Wyoming. It is further stated that CIG would transport and deliver the gas directly to Sinclair at an existing interconnection in Carbon County, Colorado.

CIG states that it would charge its systemwide transportation rate of 36.08 cents per Mcf for its transportation service. In addition, CIG states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities of gas transported under the arrangement.

CIG also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. CIG would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the amendment and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: June 10, 1985, in accordance with Statndard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-422-000]

April 25, 1985.

Take notice that on April 9, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-422-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to transport and deliver natural gas, on an interruptible basis, to a direct sale customer, Arcadian Corporation (Arcadian), for a term extending through October 31, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authority to transport and deliver up to 45,000 Mcf of natural gas per day to Arcadian to be used primarily as feedstock and process fuel in the manufacture of agricultural fertilizers at its Geismar plant located in Iberville Parish, Louisiana. To effectuate this direct sale of natural gas to Arcadian, Northern states that it has entered into transportation agreements with various third party transporters to transport gas available to Northern in the Gulf of Mexico in order to fulfill Northern's direct sale obligation to Arcadian. Such transporters include High Island Offshore System, U-T Offshore System, Transcontinental Gas Pipe Line Corporation, Faustina Pipeline Company, Northern Intrastate Pipeline Company, ANR Pipeline Company, El Paso Natural Gas Company and Arcadian Gas Pipeline System.

Northern explains that for each Mcf of gas delivered, Northern would charge Arcadian the combined sum of (1) Northern's currently effective Permian area rate as identified in Northern's FERC Gas Tariff, Original Volume No. 2, (2) third party transportation costs incurred by Northern and (3) taxes incurred by Northern. Northern avers that this sale constitutes part of the eight billion cubic feet of off-system sales to Arcadian included in the currently effective rate settlement in Docket No. RP82-71, 23 FERC ¶61,198.

Northern requests permission and approval, pursuant to section 7(b) of the Natural Gas Act, to abandon the transportatio service effective November 1, 1986.

Comment date: May 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85-425-000]

April 26, 1985.

Take notice that on April 10, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-425-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring, regulating and appurtenant facilities in Allen County, Kansas, and to abandon the transportation of gas through these facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central proposes to abandon the facilities because they were installed to make a direct sale to Boyer Oil Company (Boyer), and that sale has been discontinued. It is stated that the facilities were installed in 1962 pursuant to Commisison authorization in Docket No. CP62-123 and that Boyer notified Northwest that they were no longer required in a letter dated August 22, 1984. It is further stated that Boyer requested that Northwest Central remove the facilities in a letter dated December 19, 1984.

Comment date: June 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

Transcontinental Gas Pipe Line Corporation; Transcontinental Gas Pipe Line Corporation; Marengo Corporation

[Docket Nos. CP85-390-000, and CP85-390-001]

April 26, 1985.

Take notice that on March 26, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85-390-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, and that on April 11, 1985, Transco and Marengo Corporation (Marengo) (jointly referred to as Applicants), P.O. Drawer 888, Oneonta, Alabama 35121, filed in Docket No. CP85-390-001 a joint amendment to the application filed in Docket No. CP85-390-000, to reflect Marengo as a co-applicant, all as more fully set forth in the application, as amended, which is on file with the

Commission and open to public inspection.

Applicants propose to transport up to 16,560 dt equivalent of natural gas per day for James River-Norwalk, Inc. (JR–N), on an interruptible basis, until October 31, 1985. It is stated that JR–N has purchased gas from Koch Hydrocarbon Company, a Division of Koch Industries, Inc. (Koch), from the Liberty, Knoxo, Vintage, Reedy Creek, Whitesand, Grange, and Oak Grove fields in Mississippi. It is stated that Transco would receive the gas at the existing points of interconnection between Transco and Koch in Amite and/or Jones Counties, Mississippi, at the existing point of interconnection between Transco and Maxwell Exploration, Inc., in Walthall County, Mississippi, and at the existing points of interconnection between Transco and Mississippi Fuel Company in Jefferson Davis and/or Clarke Counties, Mississippi. Applicants state that Transco would deliver equivalent quantities, less compressor fuel and line-loss make-up to an existing point of interconnection with Marengo in Choctaw County, Alabama. Applicants indicate that Marengo, in turn, would deliver the gas at an existing delivery point to JR–N's pulp mill in Pennington, Alabama. It is claimed JR–N would use the gas for paper machine drying fuel, lime kiln fuel, and boiler fuel.

It is stated that Transco would charge JR–N a transportation rate and retain a percentage of the gas received for line-loss make-up in accordance with the currently applicable rate set forth in Rate Schedule T–II of Transco's FERC Gas Pipeline Tariff. It is further stated that for its transportation Marenco would charge JR–N according to the following schedule:

Quantity of gas transported during each 12-mo period	Cents per dt
First 700,000 dt	12.0
Next 750,000 dt but less than 1,450,000 dt	10.0
Next 550,000 dt but less than 2,000,000 dt	8.5
2,000,000 dt and over	8.0

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Transco would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–10753 Filed 5–2–85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140060; TSH–FRC 2830–7]

Access to Confidential Business Information by Five Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractors, Dynamac Corporation (Dynamac), of Rockville, Maryland; Maxima Corporation (Maxima), of Bethesda, Maryland; MITRE Corporation (MITRE), of McLean, Virginia; Systems Development Corporation (SDC), of Durham, North Carolina; and Technical Resources, Incorporated (TRI), of Rockville, Maryland, with access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information.

FOR FURTHER INFORMATION CONTACT:
Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. EPA must evaluate new chemical substances (i.e., not listed on the TSCA Inventory of Chemical Substances) under section 5 of TSCA. Existing chemical substances (i.e., those listed on the TSCA Inventory) are evaluated by EPA under sections 4, 6, 7, and 8 of TSCA.

EPA has selected five contractors to perform work under six contracts in support of the Agency's activities under TSCA. In accordance with 40 CFR 2.306(j), EPA has determined that those

contractors, Dynamac, Maxima, MITRE, SDC, and TRI, may require access to confidential business information (CBI) submitted to EPA under TSCA to perform work successfully under the six contracts described in the following paragraphs of this notice. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide access to TSCA CBI to these contractors on a need-to-know basis.

Contract No. 68-02-3861 provides that Dynamac, 11140 Rockville Pike, Rockville, Maryland, will assist EPA's Chemical Control Division in assessing chemicals for potential regulation under sections 5 and 6 of TSCA. Dynamac's activities will include assisting EPA in the development of rules under sections 5 and 6 through such means as information gathering and evaluation, preparation of reports and support documents, performing preliminary risk analyses, and analyzing regulatory options. Dynamac's assignments will also include performing analyses of the effects of both proposed and past regulatory decisions by EPA under TSCA. Under this contract Dynamac employees will be allowed access only to CBI submitted under sections 4, 5, 6, and 8 of TSCA. Access to such CBI will take place both at EPA headquarters and at Dynamac facilities in Rockville, Maryland. EPA has approved the security plan of this contractor and inspected the Dynamac facilities and approved them for the storage and use of TSCA CBI. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1985.

Contract No. 68-02-3990 provides that Dynamac will assist EPA's Health and Environmental Review Division in performing risk assessments for selected TSCA section 5 premanufacture notices (PMNs). Dynamac will help EPA in preparing Toxicity Validation Review Reports and other related documents in the PMN review process. Under this contract, Dynamac employees will be allowed access only to CBI submitted under sections 4, 5, and 8(e) of TSCA. Access to such CBI will take place both at EPA headquarters and at Dynamac facilities in Rockville, Maryland. As noted in the preceding paragraph, EPA has inspected Dynamac facilities and approved them for storage and use of TSCA CBI. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1985.

Contract No. 68-01-6716 provides that Maxima, 7315 Wisconsin Ave., North Building, Bethesda, Maryland, will assist the EPA's Office of Toxic Substances by providing clerical support such as typing, editing, and proofreading. Though none of Maxima's activities under this contract will require substantive review of TSCA CBI, some of the materials that Maxima will type, edit, or proofread may contain CBI. Under this contract, Maxima employees will, as their assignments require, be allowed access to information submitted under all sections of TSCA. However, at no time will Maxima employees be allowed to remove TSCA CBI from the premises at EPA headquarters. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1985. This contract is an extension of one allowing access to TSCA CBI previously announced in the **Federal Register** of February 18, 1982 (47 FR 7312).

Contract No. 68-02-3991 provides that the Metrek Division of the MITRE Corporation, 1820 Dolley Madison Blvd., McLean, Virignia, will assist the Health and Environmental Review Division in analyzing the health effects of selected new and existing chemicals. MITRE employees will, on occasion, be assigned to participate in detailed review and Structure Activity Team activities for PMN chemicals. Under this contract MITRE employees will be allowed access only to CBI submitted under section 4, 5, and 8(e) of TSCA. Access will take place both at EPA headquarters and at MITRE facilities in McLean, Virignia. EPA has approved the security plan for this contractor and inspected the MITRE facilities and approved them for the storage and use of TSCA CBI. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1985.

Contract No. 68-01-6658 provides that SDC, 2515 Apex Durham Hwy., Durham, North Carolina, will, with guidance from EPA, manage and operate EPA's secure National Computer Center in the Agency's regional office in Research Triangle Park (RTP), North Carolina. SDC's activities will include systems operations, programming, security, user support, and data base management. SDC's activities will not require substantive review of any TSCA CBI; however, SDC employees will have access to all computerized TSCA CBI to manage and operate the Office of Toxic Substance's computer facilities. This TSCA CBI includes information obtained under sections 4, 5, 6, and 8 of TSCA. SDC's employees will be allowed access to TSCA CBI only at EPA facilities in RTP. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1985. This contract supersedes one allowing for access to TSCA CBI by SDC announced in the **Federal Register** of April 1, 1981 (46 FR 1982).

Contract No. 68-02-3971 provides that TRI, 3202 Monroe Street, Suite 300, Rockville, Maryland, will assist the Economics and Technology Division in analyzing the properties and uses of new and existing chemicals under sections 5 and 6 of TSCA. TRI will generate information on selected chemicals through literature search reviews and other activities. Material generated will include information on physical and chemical properties, chemical synthesis routes, uses and potential uses, substitutes, and identities of by-products, impurities, feedstocks, other related chemicals, and analogues. TRI will also study production processes and technology to control release of and limit exposure to chemicals. Under this contract, TRI employees will be allowed access only to CBI submitted under sections 5 and 8 of TSCA. TRI employees will be allowed access to TSCA CBI only on EPA headquarters premises under this contract. Access to TSCA CBI under this contract is scheduled to expire on September 30, 1986. This contract supersedes on allowing for access by TRI to TSCA CBI announced in the **Federal Register** of November 3, 1981 (46 FR 54640).

All contractors that review confidential materials at their facilities under these contracts will return them to EPA upon the completion of their review.

Dynamac, Maxima, MITRE, SDC, and TRI have been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 24, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-10789 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51569; FRL-2829-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–821, 85–822 and 85–823—July 17, 1985.

P 85–824 and 85–825—July 20, 1985.

P 85–826, 85–827, 85–828, 85–829, 85–830, 85–831, 85–832, 85–833, 85–834 and 85–835—July 21, 1985.

P 85–836, 85–837, 85–838, 85–839, 85–840, 85–841, 85–842, 85–843, 85–844, 85–845, 85–846, 85–847, 85–848, 85–849 and 85–850—July 1, 1985.

P 85–851, 85–852, 85–853, 85–854 and 85–855—July 22 1985.

P 85–856, 85–857 and 85–858—July 23, 1985.

Written comments by:

P 85–821, 85–822 and 85–823—June 17, 1985.

P 85–824 and 85–825—June 20, 1985.

P 85–826, 85–827, 85–828, 85–829, 85–830, 85–831, 85–832, 85–833, 85–834 and 85–835—June 21, 1985.

P 85–836, 85–837, 85–838, 85–839, 85–840, 85–841, 85–842, 85–843, 85–844, 85–845, 85–846, 85–847, 85–848, 85–849 and 85–850,—June 1, 1985.

P 85–851, 85–852, 85–853, 85–854 and 85–855—June 22, 1985.

P 85–856, 85–857 and 85–858—June 23, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51569]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm E–201, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacture on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–821

Manufacturer. Spencer Kellogg Division of Textron Inc.

Chemical. (G) Alkyd resin.

Use/Production. (G) An alkyd resin to be used in an open, nondispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 85–822

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl alkanol.

Use/Production. (G) Plastic stabilizer. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Severe, Eye—Mild/moderate.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–823

Manufacturer. Confidential.

Chemical. (G) Alkene-methacrylate copolymer.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total or 1 worker, up to 3–4 hrs.

Environmental Release/Disposal. 25 kg/day released.

P 85–824

Manufacturer. Confidential.

Chemical. (G) Acrylic modified alkyd resin.

Use/Production. (G) Paint, open non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 8 workers, up to 3 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 2 to 5 kg/batch released to land. Disposal by controlled landfill.

P 85–825

Manufacturer. E. I. du Pont Nemours and Company, Inc.

Chemical. (G) Polyfluoro substituted alkyl, N-substituted amino alcohol.

Use/Production. (G) Surfactant, industrial, non-dispersive. Prod. range: Confidential.

Toxicity Data. Acute oral: 11,000 mg/kg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. Manufacture: Dermal, a total of 3 workers.

Environmental Release/Disposal. Release to land. Disposal by on-site landfill.

P 85–826

Importer. Confidential.

Chemical. (G) 1-H-pyrazole-3-carboxylic acid, 4, 5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl) axo]-, mixed salt.

Use/Import. (S) Paper dye. Import range: Confidential.

Toxicity Data. No data submitted:

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–827

Importer. Confidential.

Chemical. (G) Phenoxazinium, bis(substituted amino), salt.

Use/Import. (S) Textile dye. Import range: 6,200 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Use: Dermal.

Environmental Release/Disposal. Very little release.

P 85–828

Importer. Confidential.

Chemical. (G) Cycloalkenylpentenol.

Use/Import. (G) Ingredient for use in consumer products highly; dispersive use. Import range: 100–1,000 kg/yr.

Toxicity Data. Acute oral: Male and female—>5.0 g/kg; Acute dermal: Male and female—>2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant; Ames Test: Non-mutagenic; Skin sensitization: Non-sensitizer.

Exposure. Use: Dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential. Disposal by private water treatment plant.

P 85–829

Manufacturer. Confidential.

Chemical. (G) Further clarification needed before information can be released to public files.

Use/Production. (G) Chemical intermediate. Prod. range: 2–3 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, inhalation and ocular, a total of 2 workers, up to 0.7 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. No release. Less than 0.05 to less than 0.1 kg/batch incinerated.

P 85–830

Manufacturer. Confidential.

Chemical. (G) Further clarification needed before information can be released to public files.

Use/Production. (G) Contained use in a commercial article. Prod range: 3–4 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manfacutre and processing: Dermal, inhalation and ocular, a total of 14 workers, up to 0.2 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. No release. Less than 0.1 kg/batch incinerated with less than 0.04 kg/batch disposed of by biological treatment.

P 85–831

Manufacturer. Confidential.

Chemical. (G) Further clarification needed before information can be released to public files.

Use/Production. (G) Chemical intermediate. Prod. range: 2.5–3.5 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manfacutre and use: Dermal and ocular, a total of 4 workers, up to 0.6 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. No release. Less than 0.2 kg/batch incinerated.

P 85–832

Manufacturer. Hanna Chemical Coatings Corporation.

Chemical. (G) Polyester resin.

Use/Production. (G) Industrial and commerical polyester vehicle for use in pigmented syntehtic coatings. Prod. range: 15,000–45,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. 1 to 9.4 kg/batch released to land with .3 to 1.35 kg/batch to air. Disposal by landfill.

P 85–833

Manufacturer. Confidential.

Chemical. (G) Urethane with blocked multifunctional isocyanates.

Use/Production. (G) Component for industrial coating with open use. Prod. range: 50,000–555,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manfacutre and processing: Dermal, a total of 42 workers, up to 8 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 2 to 180 kg/batch released to land. Disposal by incineration and approved landfill.

P 85–834

Manufacturer. Confidential.

Chemical. (G) Vinyl-substituted organo-silicone copolymer.

Use/Production. (S) Silicone gum for the production of silicone rubber for industrial, site-limited and commercial use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin-Mild, Eye-Moderate.

Exposure. Manufacture and processing: Dermal, a total of 14 workers, up to 2.0 hrs/da.

Environmental Release/Disposal. 2.5 kg released. Disposal by incineration and approved landfill.

P 85–835

Manufacturer. Confidential.

Chemical. (G) Organosilicone copolymer.

Use/Production. (S) Site-limited and industrial component of a low temperature grease. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acue dermal: >2,000 mg/kg; Irritation: Skin-Mild, Eye-Mild.

Exposure. Manufacture and processing: Dermal, a total of 32 workers, 3 shifts to operators and technicians/batch and 6 workers, 1 shift/da.

Environmental Release/Disposal. 1 kg released. Disposal by incineration, Resource Conservation and Recovery Act (RCRA) approved disposal site.

P 85–836

Importer. EM Industries.

Chemical. (S) (+) 4-n-tetradecyl 4′-(2-methylbutyl) phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–837

Importer. EM Industries.

Chemical. (S) (+) 4-n-hexyloxyphenyl 4-(2-methylbutyl) biphenyl 4′ carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–838

Importer. EM Industries.

Chemical. (S) (+)-4-(2-methylbutyl) phenyl 4-(2-methylbutyl) biphenyl 4′-carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–839

Importer. EM Industries.

Chemical. (S) (+)-4-cyanophenyl-4-(2″-methylbutyl) biphenyl 4′-carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–840

Importer. EM Industries.

Chemical. (S) (+) 4-n-octyloxyl 4′-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin-Slight, Eye-Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–841

Importer. EM Industries.

Chemical. (S) (+) 4-n-hexyloxy 4′-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin-Slight, Eye-Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–842

Importer. EM Industries.

Chemical. (S) (+) 4-n-decyloxy 4′-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–843

Importer. EM Industries.

Chemical. (S) 4-n-dodecyloxy 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–844

Importer. EM Industries.

Chemical. (S) (+) 4'-(2-methylbutyl) phenyl 4'-n-octylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–845

Importer. EM Industries.

Chemical. (S) (+) 4-n-propyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–846

Importer. EM Industries.

Chemical. (S) (+) 4-n-pentyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–847

Importer. EM Industries.

Chemical. (S) (+) 4(2-methylbutyl) phenyl 4'-n-heptylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–848

Importer. EM Industries.

Chemical. (S) (+) 4-n-heptyl 4'-(2 methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure: Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–849

Importer. EM Industries.

Chemical. (S) (+) 4-n-nonyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure: Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–850

Importer. EM Industries.

Chemical. (S) 4-(2-methylbutyl) 4'-phenylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Not mutagenic.

Exposure: Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–851

Manufacturer. Ethyl Corporation.

Chemical. (G) Copolymer of vinyl acetate and olefins.

Use/Production. (G) Fuel additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure: Confidential.

Environmental Release/Disposal. Confidential.

P 85–852

Manufacturer. Confidential.

Chemical. (G) Alkyl ester of phosphorous acid.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >1.2 g/kg; Irritation: Skin—Moderate, Eye—Non-irritant.

Exposure: Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–853

Manufacturer. Confidential.

Chemical. (G) Cycloaliphatic and cycloaromatic composite polyester.

Use/Production. (G) Resin to be used in industrial coating products. Prod. range: 30,000–60,000 kg/yr.

Toxicity Data. No data submitted.

Exposure: Manufacture and processing: Dermal, a total of 35 workers, up to 3 hrs/da, up to 34 da/yr.

Environmental Release/Disposal. 2 to 10 kg/batch released to land. Diposal by incineration and landfill.

P 85–854

Manufacturer. The Dow Chemical Company.

Chemical. (G) Triglycidyl ether of substituted tri(hydroxyphenyl)methane.

Use/Production. (S) Industrial manufacture of structural composite, transfer molding of electronic parts and manufacture of printed circuit board. Prod. range: Confidential.

Toxicity Data. No data on the PMN substannce submitted.

Exposure: Manufacture: Dermal, a total of 10 workers.

Environmental Release/Disposal. Release to water with up to 1 pound sample/batch to air or land. Disposal by incineration or landfill and navigable waterway after treatment.

P 85–855

Manufacturer. The Dow Chemcial Company.

Chemcial. (G) Triglycidyl ether of substituted tri(hydroxyphenyl)methane.

Use/Production. (S) Industrial manufacture of structural composite and printed circuit board and on site intermediate to make an epoxy resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal, a total of 15 workers.

Environmental Release/Disposal. Up to 1 pound sample/batch released to air or land with an estimated less than 0.01 to less than 0.02 to water. Disposal by incineration or landfill and navigable waterway after treatment.

P 85-856

Manufacturer. Confidential.

Chemcial. (G) Oxime based polyurethane.

Use/Production. (G) Adhesive for open-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-857

Manufacturer. Confidential.

Chemcial. Further clarification needed before information can be released to the public files.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Ingestion: Servere; Irritation: Skin—Severe, Eye—Severe; Inhalation: Low vapor pressure.

Exposure. Manufacture and processing: Dermal, a total of 9 workers, up to 5.0 hrs/da.

Environmental Release/Disposal. 0.5 kg/batch released. Disposal by incineration and landfill.

P 85-858

Importer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Import. (S) Industrial and commercial co-reactant for moisture curing, one-pack polyurethane coatings. Import range: 14,000-70,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: A total of 20 workers.

Environmental Release/Disposal. No release.

Dated: April 29, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-10797 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59193; FRL-2829-3]

Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting of the exemptions.

DATE: Written comments by: May 20, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59193]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-4201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-41

Close of Review Period. June 6, 1985.

Manufacturer. Confidential.

Chemical. (G) Acrylate—substituted vinylchloride copolymer resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

T 85-42

Close of Review Period. June 6, 1985.

Manufacturer. Confidential.

Chemical. (G) Acrylate—substituted phenoxy resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: April 29, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division

[FR Doc. 85-10801 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59713, FRL-2829-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of twelve such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-58, 85-59 and 85-60—May 12, 1985.

Y 85-61, 85-62 and 85-63, 85-64 and 85-65—May 14, 1985.

Y 85-66, 85-67, 85-68 and 85-69—May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential

document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-58

Importer. Kay-Fries, Incorporated.
Chemical. (G) Polyester resin.
Use/Import. (S) Industrial coating for building products. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-59

Manufacturer. Confidential.
Chemical. (G) Polyester resin made from dibasic aromatic and aliphatic acids and aliphatic glycols.
Use/Production. (G) Adhesive for flexible laminations. Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85-60

Manufacturer. Confidential.
Chemical. (G) Polyester resin made for dibasic aromatic and aliphatic acids and aliphatic glycols.
Use/Production. (G) Adhesive for flexible laminations. Open non-dispersive use.
Toxicity data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85-61

Manufactuer. Confidential.
Chemical. (G) Urethane modified alkyd resin.
Use/Production. (S) Industrial coatings resin component. Prod. range: 36,500-131,000 kg/yr
Toxicity Data. No data submitted.
Exposure. No data submitted.
Enviromental Release/Disposal. No data submitted.

Y 85-62

Manufacturer. Confidential.
Chemical. (G) Phthalic modified alkyd resin.
Use/Production. (S) Industrial coatings resin component. Prod. range: 11,000-131,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Enviromental Release/Disposal. No data submitted.

Y 85-63

Manufacturer. Confidential.
Chemical. (G) Isophthalic modified alkyd resin.
Use/Production. (S) Industrial coatings resin component. Prod. range: 23,600-218,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Enviromental Release/Disposal. No data submitted.

Y 85-64

Manufacturer. Confidential.
Chemical. (G) Phthalic modified alkyd resin.
Use/Production. (S) Industrial coatings resin component. Prod. range: 18,200-182,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Enviromental Release/Disposal. No data submitted.

Y 85-65

Manufacturer. Ethyl Corporation.
Chemical. (G) Copolymer of vinyl acetate and olefins.
Use/Production. (G) Fuel additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Enviromental Release/Disposal. No release.

Y 85-66

Manufacturer. Superior Varnish and Drier Company.
Chemical. (G) Linseed fatty acid modified polyester.
Use/Production. (S) Industrial printing ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, ocular and ingestions, a total of 7 workers, up to 1 hr/da, up to 8 da/yr.
Enviromental Release/Disposal. No release.

Y 85-67

Importer. Confidential.
Chemical. (G) Polyester.
Use/Importer. (S) Industrial and commercial co-reactant for moisture curing, one-pack polyurethane coatings. Import range: 14,000-70,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing and use: Dermal, a total of 20 people at 4 sites.
Enviromental Release/Disposal. No release.

Y 85-68

Manufacturer. Confidential.
Chemical. (G) Alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 9 workers, up to 8 hrs, up to 100 da/yr.
Enviromental Release/Disposal. .5 kg/batch released to water with .5 to 10 kg/batch to land. Disposal by publicly owned treatment works (POTW) and landfill.

Y 85-69

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 9 workers, up to 8 hrs, up to 100 da/yr.
Enviromental Release/Disposal. .5 kg/batch release to water with .5 to 10 kg/batch to land. Disposal by POTW and landfill.

Dated: April 29, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

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[OPTS-42066; FRL-2810-8]

Isopropyl Biphenyl/Diisopropyl Biphenyl Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's (ITC's) recommendation that EPA consider requiring chemical fate, health effects and ecological effects testing of isopropyl biphenyl (CAS No. 25640-78-2) and diisopropyl biphenyl (CAS No. 69009-90-1) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not at this time initiating rulemaking under section 4(a) to require chemical fate, health effects or ecological effects testing of isopropyl biphenyl or diisopropyl biphenyl. EPA believes that there is no significant release of isopropyl biphenyl or diisopropyl biphenyl to the aquatic environment. Based on the limited exposure to these chemicals during manufacture, production, and use, isopropyl biphenyl and diisopropyl biphenyl are not expected to cause substantial or significant human exposure or present an unreasonable risk of injury to human health or the environment.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington D.C. 20460, Toll free: (800-424-9065). In Washington,

D.C.: (554–1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require health effects testing, ecological effects testing or chemical fate testing of isopropyl biphenyl or diisopropyl biphenyl as designated by the ITC in its Fourteenth Report.

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) establishes the ITC to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC designated Isopropyl Biphenyl (IPBP) (CAS No. 25640-78-2) and Diisopropyl Biphenyl (DPBP) (CAS No. 69009-90-1) for priority testing consideration in its Fourteenth Report, published in the **Federal Register** on May 29, 1984 (49 FR 22389) (Ref. 1). this notice constitutes EPA's response to the ITC's designation of IPBP and DPBP.

The ITC recommended that IPBP and DPBP be tested for chronic health effects, with emphasis on neurotoxic and kidney effects; ecological effects, including acute and chronic toxicity to fish, aquatic invertebrates and algae and bioconcentration; and chemical fate, to include water solubility, octanol/water partition coefficient, persistence and soil mobility.

The ITC based its health effects testing recommendation on the potential for dermal exposure through the use of IPBP and DPBP in carbonless copy paper, and potential human exposure from the consumption of contaminated fish, and potential drinking water contamination from landfill leachate. Studies referencing adverse health effects in office workers when they were exposed to carbonless copy paper, adverse effects in laboratory animals and a lack of chronic toxicity data were offered as rationale for the ITC recommendations for chronic toxicity testing with emphasis on neurotoxic and kidney effects.

The ecological effects testing recommendation from the ITC was based on the detection of IPBP in the aquatic environment and on a study which suggests that IPBP is toxic to fish at concentrations less than 1.0 mg/L. Inconsistencies in this study with respect to solubility limits and a lack of data on the effects of IPBP and DPBP on aquatic invertebrates, algae, and bioconcentration potential served as additional rationale for the recommended ecological effects testing.

The ITC recommended chemical fate testing to determine the potential for transport and persistence of IPBP and DPBP within the aquatic environment.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning IPBP and DPBP, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

II. Review of Available Data

A. Exposure and Release

1. *Background.* Two companies currently manufacture IPBP and DPBP; they are Sybron Chemical Company, Wellford, South Carolina (Refs. 2 and 3) and Koch Chemical Company, Corpus Christi, Texas (Ref. 2). Commercial IPBP is a mixture of isomers of IPBP and varying amounts of DPBP isomers. DPBP is a by-product of IPBP and is not isolated for sale as a separate commercial product (Refs. 4 and 5). Hereafter in this notice the commercial IPBP products containing DPBP as a byproduct will be referred to as IPBP/DPBP. Because DPBP is not separated from the commercially produced IPBP, EPA has focused its testing assessment on IPBP/DPBP rather than on the individual homologues IPBP and DPBP or their various isomers. Koch Chemical Company produces IPBP/DPBP under the tradename Sure Sol ®-250, a mixture containing a minimum of 94 percent IPBP (Ref. 6). Sybron Chemical Company produces three different grades of commercial IPBP/DPBP under the tradenames PG, MPG, and CG (Ref. 4). PG and MPG contain approximately 75 percent IPBP; CG contains, at a minimum, 94 percent IPBP. Combined production by these two firms is

between 2 and 8 million pounds annually (Ref. 7).

The principal uses of IPBP/DPBP are as a dielectric fluid in high-power capacitors and as a solvent for use in carbonless copy paper. Westinghouse Corporation uses Koch Chemical Company's Sure Sol®-250 in its capacitor-impregnating fluid which it calls Wemcol® (Ref. 6). Mead Corporation, the sole user of IPBP/DPBP as a dye solvent for carbonless copy paper, purchases the chemical in tank trucks and dilutes it 15 percent with deodorized kerosene for viscosity control. Colorless dyes are then dissolved in the solution, which is then microencapsulated in modified polyurethane cells. The cells are then mixed with wax in a wiped-film evaporator that drives off water. The hot melt wax product contains 20 to 25 percent capsules and 70 to 75 percent wax. The final product is a wax-flake material which is placed in plastic bags and boxed for shipment. The wax flake material is applied to the paper by common paper coating processes (Ref. 8).

2. *Occupational exposure*. IPBP/DPBP is produced within a closed system. Sybron Chemical Company reported that approximately six to eight workers are exposed to IPBP/DPBP each day, 5 days per week (Ref. 9). The final product is packaged and shipped in tank wagons or drums. Koch Chemical Company (Ref. 10) reported that approximately 20 workers are involved in the manufacture of Sure Sol®-250. The product is manufactured periodically throughout the year. While in production status the material is produced 24 hours per day, 7 days per week, in four shifts. However, Sure Sol®-250 was produced for only 2 to 3 months in 1983 (Ref. 11).

During the processing of IPBP/DPBP for use as a dielectric fluid, 18–24 workers may be exposed (Refs. 12 through 14). The IPBP/DPBP is unloaded, stored, and placed in the capacitors within a closed system.

An estimated six operators (Ref. 8) are exposed to IPBP/DPBP during the wax-flake processing procedure required for its use on carbonless copy paper. Exposure to workers during the coating, slitting, collating, and packaging of carbonless copy paper is minimal because it is economically advantageous for the manufacturers to maintain the integrity of the carbonless copy paper and not release the mixture contained within the polyurethane cells.

3. *General population exposure*. Exposure to IPBP/DPBP through its use and disposal as a dielectric fluid is discussed in Unit II.A.4.C.

Exposure to IPBP/DPBP through its use in carbonless copy paper is estimated to be minimal. The amount of IPBP/DPBP contained on one side of an 8½ x 11 inch sheet of carbonless copy paper is roughly estimated based on the following: Mead recommends applying 1.2 to 1.8 pounds (lbs.) wax per ream of paper (Ref. 15). Thus, the average application is 1.5 lb. wax per 20 lb. ream of 500 (17x22 inch) sheets. One pound of wax contains 25 percent capsules; a capsule consists of microencapsulated cells containing about 13 percent dye and 85 percent solvent. The dye solvent is 85 percent commercial IPBP/DPBP and 15 percent kerosene. On this basis, the amount of IPBP/DPBP per side of an 8½ x 11 inch sheet of carbonless copy paper is estimated to be 31.5 milligrams of IPBP/DPBP per side of an 8½ x 11 inch sheet of the carbonless copy paper. The use of carbonless copy paper causes the polyurethane capsules to break; the chemicals evolve slowly and tend to stick with the paper and dusts (Ref. 21). Therefore, based on the estimated concentration of IPBP/DPBP per sheet of paper and the fact that the IPBP/DPBP is encapsulated on the back portion of the paper, dermal exposure is estimated to be limited.

4. *Environmental Release*. Release may occur through the production, processing, use and disposal of IPBP/DPBP.

a. *Production*. Koch Chemical Corporation (Ref. 11) manufacturing wastes containing IPBP/DPBP are limited to rinsewaters produced when the manufacturing process tanks are switched from Sure Sol®-250 to a different product. The rinsewater is combined with all aqueous wastes generated in the plant. The aqueous wastewater is treated in an on-site system which treats 1 million gallons per day via primary and secondary processes. Primary treatment consists of oil/water separation. Oils are recycled to a cooking unit, sludges are landfarmed, and the effluent is treated in an activated sludge system. The effluent from the activated sludge system is discharged to Corpus Christi Bay under permits from both the EPA and the Texas Department of Water.

Sludges produced during primary treatment are treated on an on-site landfarm. The sludges originate from the primary treatment processes as well as other sources. The landfarm is equipped with monitoring wells and is treated as a hazardous waste area.

Sybron Chemical Company (Ref. 9) reported that their scrubber effluent is treated in an on-site biological system which treats 35,000 gallons per day via secondary processes. Their facility consists of a series of aerated lagoons with holding times of 60 to 90 days. The waste water is pumped from these lagoons through a trickling filter and placed in aerated lagoons. Sybron's effluent is discharged into a stream under permits from the state of South Carolina (Ref. 16).

Material safety data sheets for both manufacturers recommend that, in the event of a spill, the material be absorbed in solid medium and subsequently incinerated or buried in a landfill (Refs. 17 and 4).

b. *Processing*. During the processing of IPBP/DPBP for use as a dielectric fluid in capacitors, the IPBP/DPBP is unloaded, stored and placed into the capacitors within a closed system. Releases are expected to be minimal and are limited to accidental spills. In case of spills, the area is cleaned with absorbents which are placed into drums or barrels and disposed of in landfills (Refs. 14, 13 and 12).

In the manufacture of hot melt wax for carbonless copy paper at Mead Corporation, the process of incorporating the raw IPBP/DPBP into the polyurethane cells is conducted within a closed system (Ref. 18), thereby allowing for minimal release.

Release of IPBP/DPBP to the environment from paper mills that handle recycled carbonless copy paper appears to be limited. The American Paper Institute (Ref. 19) reported that 290 of 304 reporting paper mills are believed to qualify as secondary fiber mills (Table 1). However, only a limited number of these facilities accept carbonless copy paper. Only 85 of the 290 mills are listed as direct dischargers. Of these 85 (Table 2), 52 employ some form of secondary treatment, 15 had primary treatment, 7 had no external treatment, and 11 were unknown with respect to treatment. For those mills reported as sending their waste to Publicly Owned Waste Treatment Facilities (POTWs) it was determined through the 1982 Needs Survey (Ref. 20) that of the 15,425 POTWs listed in the United States 52 percent employ secondary treatment, 16.3 percent employ advanced secondary treatment and 1.4 percent employ tertiary treatment. Therefore, 69.7 percent of all POTWs employ secondary treatment at a minimum. If 155 recycling mills are listed as indirect dischargers, and 69.7 percent of the POTWs in the U.S. have secondary treatment at a minimum, then 108 of the indirect dischargers and 52 of the direct dischargers employ some form of secondary treatment, with 48 mills being self-contained (no effluent discharge).

TABLE 1.—METHOD OF DISCHARGE AMONG MILLS USING WASTEPAPER AS THE PRINCIPAL FIBER SOURCE

	Total mills	Direct disch	Indirect disch.	Self-contained	Irrigation	Unknown
Deink Fine and Tissue	20	13	5	2		
Deink Newsprint	6	2	3			1
Deink Market Pulp	5	1	3			[illegible]
Wastepaper-Tissue	24	11	4	8		1
Wastepaper-Board	163	51	90	18	1	[illegible]
Wastepaper-Molded Products	[illegible]	2	13	2		3
Wastepaper-Construction Prod	[illegible]	5	37	18	1	5
Totals	[1] 304	85	155	[illegible]	2	14

[1] Only 290 mills qualify as secondary fibermills. (Ref. (19))

TABLE 2.—CONTROL TECHNOLOGY EMPLOYED BY DIRECT DISCHARGE SECONDARY FIBER MILLS

	Unknown	No external treatment	Primary treatment only	Secondary treatment: Activated sludge	Secondary treatment: Aerated stabilization basin	Unspecified or other configuration
Deink Fine and Tissue		1	1	[illegible]	3	
Deink Newsprint				1	1	
Deink Market Pulp						[1] 1
Wastepaper-Tissue	2	2	4	1	2	
Wastepaper-Board	9	3	[illegible]	[illegible]	21	4
Wastepaper-Molded Products			1		1	
Wastepaper-Construction Prod		1	1			3
Totals	11	7	15	16	28	[illegible]

[1] System expected to come online in early 1985. (Ref. (19))

c. *Use and Disposal.* The use of IPBP products, carbonless copy paper and dielectric fluid, do not result in a significant release of IPBP/DPBP to the environment. The use of carbonless copy paper causes the polyurethane capsules to break, the chemicals are released slowly and tend to stick with the paper and dusts (Ref. 21). Accidental leakage from electrical capacitors damaged during use or ruptured upon failure are potential sources of IPBP release to the environment. Because IPBP is more flammable than are PCBs, capacitor manufacturers have taken precautions to protect against rupture (Ref. 22).

Disposal of carbonless copy paper is via recycling facilities or sanitary landfills. At present, the disposal of capacitors is extremely limited. IPBP/DPBP is used as a dielectric fluid in capacitors as a replacement for PCBs. The switch did not occur until the late 1970's. The average life span of a large high voltage capacitor is 20 years, the average life of a small appliance capacitor is 15 years (Ref. 22). Therefore, most of the capacitors produced with IPBP as the dielectric fluid are still in service. At present, waste disposal firms would treat IPBP/DPBP capacitors as they do transformers containing PCBs. Liquids would be incinerated, and solids would be placed in secure landfills (Ref. 23).

The placement of IPBP/DPBP-containing products in sanitary or secure landfills would result in IPBP/DPBP partitioning to soil and sediment where it would biodegrade. Based on this biodegradation potential, groundwater contamination through landfill leachates is extremely unlikely (see Unit II.B.).

B. Chemical Fate

IPBP has a low vapor pressure, a high boiling point, a low estimated water solubility and a high octanol/water partition coefficient (Table 3). DPBP has a low vapor pressure, a high boiling point, a low estimated water solubility, and a high octanol/water partition coefficient (Table 3).

TABLE 3.—PHYSICAL AND CHEMICAL PROPERTIES

Data	IPBP	DPBP
Vapor pressure	5.73×10^{-3} mm Hg at 25 °C (est) [a].	6.85×10^{-4} mm Hg at 25 °C (est). [a]
Boiling point	o—IPBP 270 °C [b]; p—IPBP 291 °C [c]	4,4' DPBP 335 °C. [d]
Water solubility	0.10 mg/l [a]	4.3×10^{-4} mg/l (est). [a]
Octanol/water	Log P = 5.5 [a]	Log P = 7.3. [a]

[a] (Ref. 24).
[b] (Ref. 25).
[c] (Ref. 26).
[d] (Ref. 27).

These properties indicate that, under equilibrium conditions, IPBP and DPBP will tend to partition to the soil and sediment where they will bind strongly to the organic matter present. The low water solubility and the low vapor pressure and high boiling point of IPBP and DPBP will tend to retard their entry into the water and air, respectively.

Addison *et al.* (Ref. 28) modeled the equilibrium distribution of IPBP in the environment using the environmental partitioning model developed by Mackay (Ref. 29) and Mackay and Paterson (Ref. 30). The model coverts physical property data to fugacity capacities and then uses these capacities to calculate the partitioning behavior of a chemical in the air, water soil, sediment, suspended aquatic matter, and aquatic biota. The model does not consider any dynamic factors such as rate of degradation of the compound in any compartment. The Mackay model predicts that IPBP will partition primarily to soil and sediment.

The soil adsorption coefficient (Koc) of IPBP was calculated by the method of Kenage and Goring (Ref. 31) to be 23,500. Compounds having a Koc value greater than 1,000 are expected to be tightly bound to organic matter in soil and are considered immobile (Ref. 32). The lower vapor pressure and higher estimated log P of DPBP relative to IPBP indicate that it will partition even more strongly to the soil and sediment than IPBP.

Studies have shown IPBP to be biodegradable. In one river die-away study (Ref. 33) IPBP was added to two sets of Delaware River water samples; one contained only the indigenous river microflora, and the other received an additional inoculum prepared from soil. The IPBP was biodegraded 80 percent within 48 hours, with the biodegradation rate being slightly higher for the sample enriched with the soil inoculum. Biodegradation tests performed with sewer sludge have shown that 60 percent of IPBP biodegrades in 24 hours and 100 percent in less than 1 week (Ref. 34).

Based on the physical and chemical properties of IPBP/DPBP, and the modeling study by Mackay, IPBP/DPBP is expected to partition primarily to soil and sediment where it will rapidly biodegrade. The results of the river die-away study show that the fraction of IPBP/DPBP that is discharged to water is also expected to rapidly biodegrade. Releases to the environment from the production and processing of IPBP/DPBP are expected to be minimal. Secondary waste treatment facilities will be sufficient to reduce the concentrations of IPBP/DPBP discharged to receiving waters to negligible levels. Because closed systems are employed and because of the low vapor pressure

of IPBP/DPBP, EPA expects that atmospheric releases and occupational exposures will be minimal.

c. Environmental Effects

1. *Acute toxicity.* The aquatic toxicity for Wemcol®, a commercial dielectric fluid containing approximately 98 percent IPBP and approximately 1 percent DPBP, was studied in fish by Ozburn *et al.* (Ref. 35). In a 96-hour flow-through assay with flagfish (*Jordanella floridae*) the LC_{50} in adults was >0.75 mg/L. The LC_{50} in fry was 0.28 mg/L. Ozburn also studied the reproductive effects. It was determined that the thresholds for spawning impairment, hatching impairment, and fry survival were >0.42 mg/L, >0.47 mg/L, and 0.43 mg/L, respectively. The bioconcentration in flagfish for Wemcol® was 2.896 at 3.5 µg/L for 28 days and 10.790 at 2.41 µg/L, with half-life depuration periods of 2.88 and 1.61 days, respectively.

2. *Environmental concentrations.* The Wisconsin Department of Natural Resources (Ref. 36) in surveying their lakes and stream fishes tentatively detected IPBP in four of their survey sites and DPBP in two of their sites. Upon review of the study it was noted that gas chromatographic/mass spectral (GC/MS) interpretation techniques were the mode of analysis. IPBP was tentatively detected in three of the four sites. Detection at the fourth site was at the detection limit of the instrument. DPBP was tentatively detected at one site and at the other site at the detection limit of the instrument. No quantitative levels for the respective compounds were given. Peterman in his master's thesis (Ref. 37) tentatively detected IPBP and DPBP in fish from the Fox River in Wisconsin, downstream from a recycling paper mill. However, according to Peterman (Ref. 38) recent fish monitoring studies of the Fox River downstream of the paper mill by the State of Wisconsin have not detected any IPBP/DPBP.

D. Health Effects

1. *Acute Toxicity.* IPBP/DPBP has a low acute toxicity with a reported LD_{50} in a 14-day oral rat study of 4.7 g/kg (Refs. 39 and 40). IPBP/DPBP was not judged to be an eye irritant (Refs. 41 and 42) as normal eye appearance was rated in rabbits 72 hours after a 24-hour dosing period. An acute dermal toxicity was determined in rabbits (Ref. 43) with an LD_{50} >6,000 mg/kg of body weight. Dermal irritation was present but transient, with the skin returning to normal within 5 days. IPBP/DPBP was judged (Refs. 6, 44, and 45) to be a mild to moderate irritant on intact and abraded skin.

Several acute inhalation studies have been reported for IPDP/DPBP. A 1977 study submitted by Mead Corporation exposed a group of 10 rats to an aerosol concentration of 1.67 mg/L (exceeded concentration level) for 1 hour (Ref. 46). No adverse effects were observed. The LC_{50} was determined to be >1.67 mg/L. A 1975 study for Sun Oil (Ref. 47) exposed 10 rats to a reported atmospheric concentration of 20.8 mg/L for 1 hour at 18–20 °C. No deaths occurred. Grooming and slight depression were observed during and immediately following exposure. Animals returned to normal within 1 hour following termination of exposure. Necropsy revealed no gross anomalies. A 1974 study by Scientific Associates (Ref. 48) conducted for the Mead Corporation, exposed 10 albino rats to an ambient chamber concentration of approximately 4 mg/L at a flow rate of 7 liters per minute. The animals were exposed for a period of 1 hour plus an 8-minute equilibration period; a 14-day observation period followed. All animals survived the initial exposure period. Two mortalities were noted in the latter part of the observation period. The authors noted that at this concentration (4 mg/L) they were unable to observe the animals due to the heaviness of the mist. This corrobates the pathology findings for the remaining animals of moderate to severe lung congestion. It was noted that all other tissues were not remarkable. A 1959 (Haley *et al.*) study exposed 12 rats to 15.85 g/m³, (15.85 mg/L) for 1 hour (Ref. 44). They reported 12 out of 12 animals died by the third day. When exposed to 3.87 g/m³ (3.87 mg/L) for 1 hour 5 out of 8 animals died by day 14. At 0.99 g/m³ for 1 hour no deaths occurred at day 14. This study does suggest a higher toxicity than indicated by the previous data, however, although not cited, it is thought that the data were obtained at temperatures higher than 20 °C as the authors noted that they ran hot-air controls. The elevated temperatures could have altered some of the exposure patterns used in this study. The Sun Oil Study (Ref. 47) appears inconsistent with the other studies with respect to the extreme level of the reported exposure concentration (20.8 mg/L) and the lack of any deaths. It appears that the exposure concentration for this study may have been reported incorrectly.

2. *Metabolism.* IPBP was studied for its potential use as an anti-inflammatory agent (Refs. 49 and 50). These characterization studies by Sullivan *et al.*, conducted in accordance with standard toxicology guidelines (Ref. 51) and submitted to the Food and Drug Administration, showed that two distinct metabolic pathways were involved in the biotransformation of IPBP in laboratory animals and in man. In the rat, the metabolite atrolactic (AA) acid must be hydroxylated to be excreted, which in turn produces methyl glycolic acid (MGA). When MGA accumulates, it precipitates in the kidney tubules producing nephrotoxicity in the rat. The dog, unlike the rat, is capable of directly eliminating the atroloactic acid; therefore, no development of nephrotoxicity occurs. In the monkey, the failure to detect the atrolactic acid metabolite indicated that the monkey was also capable of elminating the metabolite, resulting in no development of nephrotoxicity. Human studies showed the subjects did not require conversion of the metabolite to atrolactic acid for elimination, therefore no nephrotoxicity would result.

The Agency believes that, based on the results of the metabolism study showing nephrotoxicity to be species-sensitive for the rat, further chronic testing for nephrotoxicity is unnecessary.

Oral and gastrointestinal absorption is nearly complete (Ref. 49). Tulp *et al.* (Ref. 52) studied the retention of Wemcol® in the abdominal fat of rats using a single oral 12.5 mg dose. After one week, no IPBP could be detected. Sullivan *et al.* (Ref. 49) also studied tissue distribution and retention in the rat using a single 25 mg/kg oral dose of 4-iso(14C) propyl biphenyl. After 48 hours, 88 percent was excreted in the urine and feces, with the remaining 12 percent retained in the carcass. The elimination results of 48 hours after a single intraperitoneal dose were similar. IPBP was retained principally in the liver, where metabolism takes place. The remaining IPBP was sequestered in fat from which it was released slowly into the blood stream for metabolism by the liver and ultimate renal elimination. Thus, 48 hours after a single oral or intreperitoneal dose of IPBP, over 80 percent of the IPBP has been eliminated.

3. *Genotoxicity.* No evidence of mutagenic activity was found for IPBP when it was tested directly or in the presence of rat liver enzyme preparations. The indicator strains used were *Salmonella typhimurium*, *Saccharomyces cerevisiae* and *Escherichia coli* (Refs. 53 through 55).

4. *Human Dermal Irritation.* Repeated insult human patch testing was performed on a total of 687 panelists

using varyious IPBP containing products. The results indicated no evidence of delayed contact hypersensitivity or primary skin irritation (Ref. 56).

5. *Epidemological.* The papers referenced by the ITC with respect to IPBP/DPBP as the cause of health complaints to office workers did not upon review support any inference that these chemicals were the cause of the complaints. Kleinman and Horstman (Ref. 57) did not address the chemical composition of the carbonless copy paper used in their epidemological study; instead they refer the reader to another paper. This paper, Gockel *et al.* (Red. 58) is entitled "Formaldehyde Emissions from Carbonless Copy Paper Forms". This paper does not state that IPBP/DPBP was specifically identified or that IPBP/DPBP was inferentially indicated as being present in the carbonless copy paper being used by the office workers. Additionally, the paper does not state that IPBP/DPBP was, in some other manner, the etiological agent of the complaints by the officer workers.

The paper by Levy and Hanoa (Ref. 59), when translated and reviewed, was found to be taken from a newsletter distributed to physicians in Norway. The paper stated that there were some health complaints from office workers who used a particular lot of carbonless copy paper. The author states that the paper was sent to Sweden for analysis and that it did contain ". . . monoisopropyl biphenyl and other impurities . . ." No quantification or identification was given for the monoisopropyl biphenyl or the impurities. The paper further states that when the specific lot of paper was replaced, the complaints disappeared. The paper does not state if the new lot of carbonless copy paper contained monoisopropyl biphenyl. A study by Jeansson *et al.* (Ref. 60), in cooperation with the National Swedish Board of Occupational Safety and Health, investigated health complaints related to carbonless copy paper. The 1983 study was conducted in three principal areas; the effects of chemicals found in carbonless copy paper on skin and mucous membranes were evaluated with the aid of toxicological literature; patients referred to the Department of Occupational Dermatology at the Caroline Hospital due to medical troubles, in conjunction with carbonless copy paper handling, were examined and tested; and at the Department of Occupational Medicine at the Soder Hospital different brands of paper and handling environments were studied and weighed against health complaints. The report concluded ". . . that no specific relation between the chemicals in the market-leading carbonless copying papers and symptoms has been established and that reported symptoms are unspecific and rapidly disappearing." The market-leading brands of carbonless copy paper did contain IPBP/DPBP.

III. Decision Not to Initiate Rulemaking

EPA has decided that testing of IPBP/DPBP under sections 4(a)(1)(A) of 4(a)(1)(B) of TSCA is not warranted at this time because the potential for an unreasonable risk of injury to health or the environment is extremely limited and because there is no evidence of significant or substantial exposure to humans or substantial release to the environment. The IPBP/DPBP are produced and processed within a closed system. The Agency believes that because of the low vapor pressures of IPBP and DPBD, releases to the workplace resulting in occupational exposure will be minimal. The physical and chemical properties of IPBP and DPBP, in conjunction with the data submitted on biodegradation, show that the secondary waste treatment facilities at the production and paper recycling plants will reduce effluent concentrations to negligible levels. Disposal of IPBP/DPBP containing substances in secure or sanitary landfills will allow for microbial degradation with little or no transport of the chemicals due to their high soil adsorption coefficients.

EPA is unable to make the finding that IPBP/DPBP may present an unreasonable risk of health effects, at this time. The data now available to the Agency do not suggest any unreasonable risk of adverse health effects. The ITC's concern for nephrotoxicity can be dismissed on the basis of comparative metabolism studies which showed that atrolactic acid, which is responsible for nephrotoxicity in the rat, is not formed in humans or other primates. Epidemiological studies referencing adverse health effects, including neurotoxic effects, in office workers exposed to carbonless copy paper did not directly infer that IPBP/DPBP was the cause of health complaints, although this was the basis of the ITC's concern for neurotoxicity.

EPA's review of available information concerning IPBP/DPBP has revealed no basis for requiring testing for health effects, ecological effects or chemical fate.

IV. References

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from B. Millman summarizing telephone conversations with G. Gardner and L. McDonnold, Mead Corporation, P.O. Box 2500, Chillicothe, OH 45601. B. Fetters, Mead Corporation, Columbus, OH, and K. Lopes, Cornell-Dubilier Company, P.O. Box B967, New Bedford, MA 02741-9990. 1984 (June 14).

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V. Public Record

The EPA has established a public record of this testing decision (docket number OPTS-12066). This record includes:

(1) **Federal Register** Notice designating Isopropyl Biphenyl/ Diisopropyl Biphenyl to the priority list and comments received in response thereto.

(2) Contractor reports.

(3) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(4) Confidential Business Information submissions by Sybron Chemical Company, Koch Chemical Company, Mead Corporation. While part of the public record, these submissions are not available for public review.

The record, containing the basic information considered by the Agency in developing its decision, is available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received. (Sec. 4, 90 Stat. 2006; (15 U.S.C. 2603)).

Dated: April 24, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-10794 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44011; FRL-2829-5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the data submissions received by EPA during the first quarter of 1985 from testing programs accepted by EPA in lieu of requiring testing under section 4 of the Toxic Substances Control Act (TSCA). These submissions include results of certain studies and tests on five chemical substances or groups of chemicals.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460

Toll Free: (800-424-9065),

In Washington, D.C.: (554-1404),

Outside the USA: (Operator—800-554-1404),

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting on any test data received pursuant to test rules promulgated under section 4(a). Although not required by section 4(d), EPA also periodically publishes notices of receipt of data from negotiated testing programs and other industry programs, the conduct of which led EPA not to require testing through test rules. This notice announces test data submissions received during the first quarter of 1985 from such industry testing programs under TSCA.

I. Alkyl Phthalates

The Chemical Manufacturers Association (CMA), on behalf of the Phthalates Esters Program Panel, is conducting testing on a number of alkyl phthalates, alkyl diesters of 1,2-benzenedicarboxylic acid, which are primarily used as plasticizers. The CMA's proposal was accepted by the Agency in lieu of a test rule under section 4 of TSCA and is described in the **Federal Register** of October 30, 1981 (46 FR 53775).

On March 29, 1985, EPA received the results of a CHO/HGPRT forward mutation assay on mono-2-ethylhexyl phthalate (MEHP, CAS. No. 4376-20-9), di-(2-ethylhexyl) phthalate (DEHP, CAS. No. 117-81-7), and 2-ethylhexanol (2-EH, CAS. No. 104-76-7).

II. Bis (2-Ethylhexyl) Terephthalate

Eastman Kodak Company is conducting a testing program on bis(2-ethylhexyl) terephthalate (DOTP, CAS. No. 6422-86-2), a plasticizer for polyvinyl chloride and related plastics. This program was accepted by the Agency in lieu of rulemaking under section 4 of TSCA, and is summarized in the **Federal Register** of June 4, 1984 (49 FR 23110).

On March 7, 1985, EPA received the results of water solubility determination in deionized, well, and sea water. On March 27, 1985, the Agency received the results of a dynamic 7-day acute toxicity test on rainbow trout (*Salmo gairdneri*) and an octanol/water partition coefficient determination (K_{ow}) in well water and sea water.

III. Chlorinated Paraffins

The Consortium of Chlorinated Paraffins Manufacturers is conducting a testing program on chlorinated paraffins, substances used primarily as flame retardants and plasticizers. This testing program, described in full in the **Federal Register** of January 8, 1982 (47 FR 1017), was accepted by EPA in lieu of a chlorinated paraffins test rule under section 4 of TSCA.

On February 12, 1985, EPA received the results of a reproduction range-finding study of the intermediate chain length paraffin of 52 percent chlorination in rats.

IV. Dichloromethane

The Halogenated Solvents Industry Alliance has conducted a testing program on dichloromethane (methylene chloride, CAS. No. 75-09-2), a widely used industrial solvent. This testing program was initiated by industry independent of EPA's test rule activities and is described in the withdrawal of the proposed rule on dichloromethane published in the **Federal Register** of June 19, 1984 (49 FR 25009).

On March 5, 1985, EPA received the results of a 2-generation reproductive effects study in rats.

V. Isophorone

The Ketones Program Panel of the Chemical Manufacturers Association is conducting health effects testing on isophorone (CAS. No. 78-59-1), primarily used in coatings and as a chemical intermediate. This program, accepted by the Agency in lieu of a test rule under section 4 of TSCA is described in the **Federal Register** of January 17, 1984 (47 FR 2012).

On February 4, 1985, EPA received the results of an inhalation teratology study in rats and mice.

VI. Public Record

EPA has established a public record for this quarterly receipt of data notice (docket number OPTS-44011). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS reading room, E-107, 401 M St., SW, Washington, D.C. 20460.

Dated: April 24, 1985.

Don Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-10799 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2829-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed April 22, 1985 Through April 26, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850166, Draft, BLM, SD, South Dakota Resource Area, Resource Management Plan, Due: July 26, 1985, Contact: Billy McIlvain (605) 892-2526.
EIS No. 850167, Final, COE, NY, Oneida Creek Watershed Flood Control Plan, Madison and Oneida Counties, Due: June 3, 1985, Contact: Philip Frapwell (716) 876-5454.
EIS No. 850168, Draft, AFS, MT, Stillwater Valley Platinum-Palladium Mining and Milling Project, Operation Approval, Stillwater Co., Due: June 17, 1985, Contact: Phillip Jaquith (406) 446-2103.
EIS No. 850169, Draft, COE, AR, L'Anguille River and Tributaries Flood Damage Reduction, Due: June 17, 1985, Contact: Dr. Morris Mauney (901) 521-3857.
EIS No. 850170, Draft, OSM, MT, CX Ranch Mine Construction and Operation, Permit, Big Horn County, Due: June 17, 1985, Contact: Charles Albrecht (303) 844-5656.
EIS No. 850171, Draft, COE, KY, IL, Lower Ohio River Navigation Study Area, Improvements, Cumberland River to Mississippi River, Due: June 17, 1985, Contact: David Weyer (502) 582-5641.
EIS No. 850172, Draft, EPA, TX, Cummins Creek Surface Lignite Mine, NPDES Permit, Fayette County, Due: June 17, 1985, Contact: Clinton Spotts (214) 767-2716.
EIS No. 850173, Final, COE, AK, Auke Bay Breakwater and Marina Developments, Construction and Expansion, Permit, Auke Bay, Due: June 3, 1985, Contact: Gene Augustine (907) 753-2724.
EIS No. 850174, Final, FHW, OR, S.E. Hubbard Road Extension, 122nd Avenue to US 212, Clackamas County, Due: June 3, 1985, Contact: Dale Wilken (503) 399-5749.
EIS No. 850175, Final, SFW, AK, Bristol Bay Region, Cooperative Management Plan, Bristol Bay, Due: June 3, 1985, Contact: John Kurtz (907) 562-2271.
EIS No. 850176, FSuppl, COE, MN, East Grand Forks Flood Control Plan, Red and Red Lake Rivers, Polk County, Due: June 3, 1985, Contact: Robbin Blackman (612) 725-7746.
EIS No. 850177, Draft, NOA, PAC, REG, Taking of Marine Mammals Associated with Tuna Purse Seining Operations, 1986 Amendments to Regulations, Due: June 26, 1985, Contact: William Gordan (202) 634-7283.
EIS No. 850178, FSuppl, COE, MN, Chaska Flood Control Plan, Minnesota River, Carver County, Due: June 3, 1985, Contact: Robbin Blackman (612) 725-7746.
EIS No. 850179, Draft, FERC, WA, Hamma Hamma Hydroelectric Project, Construction and Operation, Licenses, Mason County, Due: June 17, 1985, Contact: Frank Karwoski (202) 376-1761.
EIS No. 850180, Report, COE, KS, Halstead Local Flood Protection Plan, Construction, Harvey County, Contact: Ken Williams (918) 745-7219.
EIS No. 850181, Report, COE, NC, Pamlico Sound and Beaufort Harbor Connecting Waterway Maintenance, Carteret County, Contact: Richard Jackson (919) 343-4745.

Amended Notices

EIS No. 850143, Final, AFS, NM, Western Spruce Budworm Management Program, Carson National Forest, Taos, County, Due: May 28, 1985, Published FR 4-19-85—Review period reestablished.
EIS No. 850148, Draft, COE, DE, Wilmington Harbor Federal Navigation Project, Dredged Material Disposal Area, Development and Designation, New Castle County, Due: June 3, 1985, Published FR 4-19-85—Inadvertently omitted due date.
EIS No. 850161, Final, DOE, KS, Arkansas City, Flood Control Plan, Arkansas and Walnut Rivers, Cowley County, Due: May 28, 1985, Published FR 4-26-85—Incorrect state.
EIS No. 850164, Final, BLM, CO, Northeast Resource Area, Resource Management Plan, Due: July 23, 1985, Published FR 4-26-85—Review period extended.

Dated: April 30, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-10867 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2830-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 15, 1985 through April 19, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

DRAFT EISs

ERP No. D-AFS-E65031-KY, Rating LO, Daniel Boone Nat'l Forest Land and Resource Mgmt. Plan, KY. **SUMMARY:** EPA believes the DEIS and plan have been well prepared and contain the necessary mitigation measures. EPA did not identify any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-AFS-J65135-MT, Rating LO, Helena Nat'l Forest Land and Resources Mgmt. Plan, MT. **SUMMARY:** EPA reviews the DEIS and found it to be well-written and potential impacts well-analyzed, particularly those related to water quality.

ERP No. D-BLM-G70000-NM, Rating LO, White Sands Resource Mgmt. Plan, NM. **SUMMARY:** EPA has not identified any potential environmental impacts requiring changes to the proposal.

ERP No. D-BLM-K65069-00, Rating EC2, Yuma District Resource Area Mgmt. Plan, AZ and CA. **SUMMARY:** EPA requested that the FEIS clarify Wilderness Study Area designation criteria, provided more detailed analyses of air and water quality impacts, and provide more information on pesticide use in the resource area.

ERP No. DS-COE-E32064-00, Rating EC2, Alabama—Coosa Rivers Navigation Channel, AL and GA. **SUMMARY:** EPA has prononuced environmental concerns about the amount of bottomland hardwoods which we believe are being unnecessarily impacted/sacrificed to achieve project objectives, but feel there are feasible alternative to lessen these impacts within acceptable standards. EPA is currently assessing various changes to the current disposal plan, together with appropriate mitigation, for the unavoidable losses occasioned by spoil deposition.

ERP No. D-COE-H32007-MO, Rating EC2, Southeast Missouri Port Facility Construction, Mississippi R., MO. **SUMMARY:** EPA requested the scope of the economic assessment to be broadened to include the recommended action's impact on existing port facilities and the impact that three other planned port facilities will have on the viability of the recommended action. EPA also asked for additional information related to the location of public recreation facilities, agricultural practices and water quality impacts in the event of a hazardous material spill.

ERP No. D-COE-K36083-CA, Rating LO, Guadalupe R. Flood Control Plan, Improvements, CA **SUMMARY:** EPA had no comments on the DEIS.

ERP No. D-FHW-L40145-OR, Rating EC1, Lester Ave./I-205 Interchange Construction and Improvements, Between Sunnyside Road and Foster Road Interchanges, OR. **SUMMARY:** EPA reviewed the DEIS and had some concerns related to noise impacts. It

was suggested that the FEIS discuss special mitigation measures for residences for which more typical measures such as sound walls are infeasible or inadequate.

ERP No. D-SCS-E36153-00, Rating LO, Wolf and Loosahatchie R. Basins Multipurpose Water Mgmt., TN and MS. **SUMMARY:** EPA believes that the proposed work described in the DEIS will not result in any significant and/or long term environmental degradation. EPA has no objections to the facility and no additional information is requested.

ERP No. D-UAF-K11025-CA, Rating EC2, 146th Tactical Airlift Wing of the California Air Nat'l Guard, Relocation, to Point Mugu Naval Air Station, Norton Air Force Base or Air Force Plant No. 42, CA. **SUMMARY:** EPA requested that the FEIS contain additional analysis on: 1) compliance with wetlands protection Guidelines due to impacts on a wetland Marsh, 2) compliance with RCRA regulations concerning hazardous waste generation, and 3) development of air quality mitigation measures.

FINAL EISs

ERP No. FS-COE-D30001-VA, Virginia Beach, Erosion Control and Hurricane Protection, Virginia Beach, VA. **SUMMARY:** EPA reviewed the proposed erosion control and hurricane activities and found no objections to the structural modifications to the seaward areas. The secondary activities involving inland impoundments were reviewed by the COE and deleted from the FEIS.

ERP No. F-FHW-G40108-AR, N. Belt Freeway Construction, I-440/I-40 Interchange to US 67/167, AR. **SUMMARY:** EPA has not identified any issues of concern with regard to the proposed action.

ERP No. F-FHW-K40117-CA, I-5 Improvement, Construction, Lakehead Undercrossing to Shotgun Creek, CA. **SUMMARY:** The FEIS adequately addressed EPA's earlier comments.

ERP No. F-FHW-L40137-OR, S. Slough (Charleston) Bridge Replacement, Cape Arago Hwy., OR. **SUMMARY:** EPA made no formal comments. EPA found the FEIS to be responsive to EPA comments made on the DEIS.

ERP No. F-OSM-E01005-TN, Tennessee Federal Program Surface Coal Mining Operations Comprehensive Impacts, Permits. **SUMMARY:** EPA believes that the FEIS is an improvement over the DEIS and generally addresses many of the concerns in our comment letter for the DEIS. Although we recognize that the DEIS/FEIS is generic rather than site-specific, we remain concerned with the general descriptions of underground disposal of mine wastes, off-site-generated impacts that are coal-mining-related, historic and cultural resources relative to permitting and field surveys, water quality degradation of private water wells relative to SMCRA regulations, effluent limitation guidelines, and wetland and floodplain delineation and impacts. EPA expects that these topice will be more specifically addressed in mine site-specific Environmental Assessments and possible subsequent NEPA documents

Regulations

ERP No. R-MAR-A86219-00, MARAD procedures for Considering Environmental Impacts, Implementing NEPA, Maritime Admin. Order MA 0600-1 (50 FR 11606). **SUMMARY:** EPA supports MARAD's efforts to promulgate procedures for implementing NEPA. EPA suggests some minor changes to clarify which actions are Categorical Exclusions and of those, which are exceptions and will require NEPA documentation.

Amended Notice

The following review was completed during Week of April 8 through 12, 1985 and should have appeared in the FR Notice published on April 26, 1985.

ERP No. FS-AFS-A82112-00, 1985 Gypsy Moth Suppression and eradication in the U.S. **SUMMARY:** EPA expressed no objections to the program as proposed.

Dated: May 1, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-10870 Filed 5-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1512]

Petitions for Reconsideration of Action in Rulemaking Proceedings

April 29, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Oak Beach and Bay Shore, New York). (MM Docket No. 84-293, RM-4611)

Filed by:

David Tillotson, Attorney for All Shores Radio d/b/a Long Island Radio Company, (WBAB-FM) on 4-17-85.

John Wells King, Attorney for Doubleday Broadcasting of New York, Inc., (WAPP-FM) on 4-18-85.

William J. Tricario,

Secretary, Federal Communications Commission.

[FR Doc. 85-10816 Filed 5-2-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008054-021.

Title: South and East Africa/U.S.A. Conference Agreement.

Parties:

The Bank Line, Limited
Lykes Bros. Steamship Co., Inc.
South African Marine Corp. Ltd.
United States Lines (S.A.), Inc.

Synopsis: The proposed amendment would modify the agreement to provide for intermodal authority and to include all United States ports within the scope. It would also restate the agreement to confirm with the Commission's format, organization and content requirements. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 217-010751.

Title: Costa-Lykes Space Charter and Equipment Rationalization Agreement.

Parties:

Costa Armartori S.P.A.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed agreement would permit the parties to charter space on each others vessels for the carriage of cargo in the trade between United States Atlantic and Gulf ports, and inland points via such ports, and ports and inland points in Spain, Italy and France.

Dated: April 30, 1985.

By the order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-10835 Filed 5-2-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp.; Application To engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *do novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045.

1. *The Chase Manhattan Corporation*, New York, New York to engage *de novo* through its subsidiary, Chase Manhattan National Corporation, New York, New York, in providing as agent or broker credit life, accident, health and credit related involuntary unemployment insurance.

Board of Governors of the Federal Reserve System, April 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10772 Filed 5-2-85; 8:45 am]

BILLING CODE 6120-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire certain insurance agency assets from O.K., Inc., Kearney, Nebraska, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended.

Board of Governors of the Federal Reserve System, April 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10773 Filed 5-2-85; 8:45 am]

BILLING CODE 6210-01-M

Water Tower Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 28, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Water Tower Bancrop, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of

Water Tower Trust and Savings Bank, Chicago, Illinois.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *FT. Elliott Bancshares, Inc.*, Mobeetie, Texas; to become a bank holding company by acquiring 86.4 percent of the voting shares of The First State Bank of Mobeetie, Mobeetie, Texas.

Board of Governors of the Federal Reserve System, April 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10771 Filed 5-2-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 26, 1985.

Social Security Administration

Subject: Quarterly Application for Grant Award—OCSE-65—Extension (0960-0239)
Respondents: State/local governments
Subject: Grantee Survey of Low Income Home Energy Assistance Program—SSA-283/284—Extension—(0960-0330)
Respondents: States, Indian tribes and tribal organizations
Subject: Quarterly Performance Report (ORR-6)—Extension (0960-317)
Respondents: States
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

Subject: Information Requirement Relating to Regulation BPP-504—Medical Program Contracts with HMO's and Prepaid Health Plans—(HCFA-R-27)—Extension—(0938-0326)
Respondents: State/local governments, businesses or other for profit organizations
Subject: Information Collection Requirements in 42 CFR Part 405.1413; 1414 and 1416-Conditions of Participation for Portable X-ray Supplies—Extension—(HCFA-R-43) (0938-0338)
Respondents: Businesses or other for profit, small businesses or organizations
Subject: Information Collection Requirements in BERC 504F Medicaid Contracts with Health Maintenance Organizations and Prepaid Health Plans—Extension—(HCFA-R-28) (0938-0326)
Respondents: State/local governments, small businesses or organizations
Subject: Preclearance for: Prospective Payment and Analytical Support Studies (#002)-(HCFA-490)—New
Respondents: Individuals or households, businesses or other for profit, small businesses or organizations
Subject: Application for Health Insurance Benefit Under Medicare for Individuals with Chronic Renal Disease—(HCFA-43)—Revision-(0938-0080)
Respondents: Individuals or households
Subject: Information Collection Requirements in 42 CFR Parts 405.1722, 1725, 1736 Conditions of Participation for Outpatient Clinics-405.1716, 1717, 1720, 1721—Extension—(HCFA-R-44) (0938-0336)
Respondents: Businesses or other for profit, small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Public Health Service

Centers for Disease Control

Subject: Employee Vital Status Letter—Extension (0920-0035)
Respondents: Individuals

National Institutes of Health

Subject: National Academy of Sciences-National Research Council—Twin Registry: Followup Questionnaire—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Human Development Services

Subject: Final Rule for the Child Abuse and Neglect Prevention and Treatment Program-45 CFR 1340.15-Revision (0980-0165)
Respondents: States
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: April 29, 1985.

Harry A. Hadd,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-10775 Filed 5-2-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 83V-0399]

Availability of Approved Variance for UPC Laser Scanners

Correction

In FR Doc. 85-9570 appearing on page 15785 in the issue of Monday, April 22, 1985, make the following correction:

In the second column nine lines from the bottom, insert the following after the word "applicable":

"to the product. The amended variance also reflects an alternate".

BILLING CODE 1505-01-M

Consumer Participation; Open Meetings

Correction

In FR Doc. 85-9686 beginning on page 15980 in the issue of Tuesday, April 23, 1985, make the following correction:

On page 15981, second column, sixth line, "602" should read "601".

BILLING CODE 1505-01-M

National Institutes of Health

Advisory Committee to the Director; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH, on June 24-25, 1985, at the National Institutes of Health, Bethesda, Maryland 20205. The meeting will take place from 9:00 a.m. to approximately 5:00 p.m. in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will address the topic "The NIH Role in Fostering the Nation's Leadership in Biotechnology."

The Acting Executive Secretary, Kurt Habel, National Institutes of Health, Building 1, Room 137, Bethesda, Maryland, 301-496-3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information.

Dated: April 25, 1985.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 85-10757 Filed 5-2-85; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), June 6-7, 1985, Conference Room 6, Building 31-C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, at approximately 9:00 a.m.

This meeting will be open to the public on June 6 from 9:00 a.m. until 5:15 p.m., and on June 7 from 9:00 a.m. until 10:00 a.m. to discuss administrative details such as budget and legislative updates, new program initiatives such as the Research Centers in Minority Institutions Program, and to provide information on various program activities, including new animal welfare policy. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 7 from 10:00 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. The applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide summaries of the meeting and a roster of the Council members. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research: 13.333, Clinical Research: 13.337, Biomedical Research Support: 13.371, Biotechnology Resources: 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: April 19, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-10760 Filed 5-2-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute, Meeting

Notice is hereby given of the workshop on "Elastase Inhibitors for Treatment of Emphysema-Approaches to Synthesis and Biological Evaluation" sponsored by the Division of Lung Diseases of the National Heart, Lung, and Blood Institute on June 10-11, 1985, from 8 a.m. to 5 p.m., Sheraton Potomac, I-270 at Shady Grove, Rockville, MD 20850, (301) 840-0200.

The entire meeting will be open to the public. The topic areas to be discussed include synthesis of serine protease inhibitors in general and elastase inhibitors in particular; nature of the active site of elastase; naturally occurring elastase inhibitors and their modified analogues; and animal models for evaluation of elastase inhibitors for the treatment of emphysema. A major goal of the workshop will be to develop recommendations for future research in this important area. Attendance by the public will be limited to space available.

Those interested in participating in the workshop should contact: Zakir H. Bengali, Ph.D., Airways Diseases Branch, Division of Lung Diases, NHLBI, NIH, Westwood Building, Room 6A15, Bethesda, MD 20205, (301) 496-7332.

Dated April 26, 1985.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 85-10762 Filed 5-2-85; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, July 17 and July 18, 1985, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 4:00 p.m. on July 17, 1985, and from 9:00 a.m. to 12:00 Noon on July 18, 1985, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 17, 1985, from approximately 4:00 p.m. to 5:00 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Mr. Earl Henderson, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone (301) 496-4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: April 19, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-10761 Filed 5-2-85; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 19-20, 1985, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on June 20, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 18 from 2:00 p.m. to 5:00 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 19 will be open to the public from 8:30 to 11:00 for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d), of Pub. L. 92-463, the regular meeting and the subcommitee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 19, from 11:00 a.m. to 5:00 p.m., and on June 20, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 18 from 2:00 p.m. to 5:00 p.m. These

applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone number: 301-496-4191, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: April 19, 1985.

Betty J. Beveridge,

NIH Committee Managment Officer.

[FR Doc. 85-10759 Filed 5-2-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, June 21, 1985. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, Building 31, Conference Room 8, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 25, 1985.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 85-10758 Filed 5-2-85; 8:45 am]

BILLING CODE 414-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-85-1528]

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendments to existing systems of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act systems of records: (1) HUD/DEPT-2, Accounting Records; (2) HUD/DEPT-28, Property Improvement and Manufactured (Mobile) Home Loans—Default; (3) HUD/DEPT-29, Rehabilitation Grants and Loans Files; (4) HUD/DEPT-32, Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program; (5) HUD/DEPT-62, Claims Collection Records; (6) HUD/CPD-1, Rehabilitation Loans-Delinquent/Default; and (7) HUD/H-8, Property Rental Files.

EFFECTIVE DATE: The amendments shall become effective without further notice in 30 calendar days, June 3, 1985, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone: (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department proposes to amend each system listed by adding a routine use. The new routine use will be the referral of data, for tax purposes, to the Internal Revenue Service on those individuals whose indebtedness has been discharged as a result of compromise or because of applicable statutes of limitations. The debt generally becomes taxable income at the time the debt is discharged. The requirement to report discharged indebtedness is contained in Section 6(a)(12) of the Internal Revenue Code.

The new routine use is consistent with the purposes for which the systems of records were established. The descriptions of the systems are published below in their entirety, as amended, with minor editorial changes.

The prefatory statement, containing General Routine Uses applicable to most of the Department's systems of records, and Appendix A, which lists the addresses of HUD's Field Offices, were published in the "**Federal Register** Privacy Act Issuance 1982/83 Compilation, Volume II."

Authority: 5 U.S.C. 552(a), 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., April 26, 1985.

Judith L. Tardy,

Assistant Secretary for Administration.

HUD/DEPT-2

SYSTEM NAME:

Accounting Records.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors; mortgagees; grant/project and loan applicants and recipients; HUD personnel; vendors; brokers; bidders; managers; tenants; individuals within Disaster Assistance Programs; builders, developers, contractors, and appraisers; individuals writing to the Department; employees on HUD/FHA projects; investors; subjects of audit; closing agents; former mortgagors and purchasers of HUD-owned properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease and loan collection register; schedules of payments receivable and received; premiums due; claim files and fee billing statements; escrow and Certificates of Deposit files; cash flow and budget control files; earnest money register; purchase order log; imprest fund: Field managers' accounting records; restitution, maintenance, and market expenses; distributive shares records; salary; savings bonds; bills of lading; vouchers; invoices; receipts; cancelled checks; mortgages, builders and contractors financial statements, records and audit reports; requests for termination of home mortgage insurance; deposit and receipt records; detailed accounting reports concerning diversified payments, disbursements, and cancelled checks; repurchases of mortgages; adjustments from recoveries, manual adjustments, and defaults; acquired home property records; sales closing papers; statements of accounts; tax records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See 113 of the Budget and Accountig Act of 1950 31 U.S.C. 66a. (Pub. L. 81-784).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Users paragraphs in prefatory statement. Other routine uses: U.S. Treasury—for disbursements and adjustments thereof: Internal Revenue Service—for reporting of sales commissions, for reporting of discharged indebtedness, and to obtain current mailing address; General Accounting Office, General Services Administration, Department of Labor, Labor housing authorities, and taxing authorities—for audit, accounting and financial reference purposes; mortgagee lenders—for accounting and financial reference purposes; HUD contractor—for mortgage note servicing; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Desks; safes; locked filing cabinets; central files; book cases; ledger trays and binders; tables; magnetic tape/disc/drum.

RETRIEVABILITY:

By Social Security number; name; case file number; schedule number; audit number; control number; receipt number; voucher number; contract number; address.

SAFEGUARDS:

Security checks, limited authorization and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records.

RETENTION AND DISPOSAL:

GSA schedules of retention and disposal; destruction after six months; transfer to either a Federal Records Center or Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURES:

For information assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURE:

The Department's rule for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Department Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451, Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; credit bureaus; financial institutions; private corporations or firms doing business with HUD; Federal and non-federal governmental agencies; HUD personnel.

HUD/DEPT-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans—Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, credit applications, Social Securty Number where available, case histories of borrowers; records of payment; financing statements; notes; mortgages and other evidences of indebtedness; delinquent and defaulted loan records and account cards; collection and field reports; records of claims and chargeoffs; creditor requests for collection assistance; justifications for closing collection action; related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I Sec. 2, National Housing act, 12 U.S.C. 1703; Federal Claims Collection Act of 1966 (Sec. 1, Pub. L 89–506).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection afforts and for the institution of suit or other proceedings to effect collection of claims; FBI—investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offsetting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4; to financial institutions that originated or serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens, to local recording offices—for filing assignments of legal documents, satisfactions, etc.; to bankruptcy courts—for filing of proofs of claim; to HUD Contractor—for debt servicing; to state motor vehicle agencies and Internal Revenue Service—to obtain current addresss of debtors; to Internal Revenue Service— for reporting of discharged indebtedness; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(B)(12). Pursuant to 5 U.S.C. 552a(B)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1698a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Claim number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Files are partly active and partly historical and are disposed of in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Title I Insured Loans, HSI, Department of Housing and Urban Development 451 Seventh Street, SW, Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURE:

The Deparetment's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410

RECORD SOURCE CATEGORIES:

Subject individual; current and previous employers; credit bureaus; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

HUD/DEPT-29

SYSTEM NAME:

Rehabilitation Grants and Loans Files.

SYSTEM LOCATION:

Field offices; for a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aplicants who have applied for rehabilitation grants and loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of borrowers, builders, dealers and contractors; loan and grant applications and eligibility information; loan and grant documents; payment records; registration records; collection records; complaint records; related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 312, Housing Act of 1964, as amended (Pub. L. 88–560), 42 U.S.C. 1452(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to local agencies—for monitoring and carrying out the program; to financial institutions—for providing supplemental rehabilitation funds; to creidt reporting agencies, employers, financial institutions, and retail consumer credit grantors—for verification of employment and financial status; to Federal National Mortgage Association and loan servicers—for loan servicing; and to Internal Revenue Service—for reporting of discharged indebtedness.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and/or on magnetic tape/disc/drum.

RETRIEVABILITY:

By name, property address and case file number of individual covered.

SAFEGUARDS:

Records stored in lockable file cabinets and technical restraints are employed with regard to accessing computer files.

RETENTION AND DISPOSAL:

Records are primarily active with some historical information; disposal is in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Rehabilitation Management Division, Office of Urban Rehabilitation and Community Reinvestment, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURE:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (1) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410

RECORD SOURCE CATEGORIES:

Financial institutions; subject and other individuals; federal and non-federal agencies; firms, current and previous employers; law enforcement agencies; credit reporting agencies.

HUD/DEPT-32

SYSTEM NAME:

Delinquent/Default-Assigned/Temporary Mortgage Assistance Payments (TMAP) Progam.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses see Appendix A. Office of

HUD TMAP contractor will maintain some records on TMAP cases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors with HUD/FHA insured single-family mortgages that are delinquent or in default; mortgagors seeking assistance of prevent foreclosures; and mortgagors whose mortgages are held by HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of delinquent mortgages; requests for forebearance or assignment; forebearances or assignment reviews include date on mortgage amount and payments made, employment and income, debts and expenses, reasons for delinquency, recommendations and actions on requests; credit reports; forebearance agreements; deeds of trust; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See 114(a), Housig Act of 1959, (Pub. L. 86-372), 12 U.S.C. 1702 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses; to FHA—for insurance investigations; to IRS and GAO—for investigations; to IRS—for reporting of discharged indebtedness; to state banking agencies to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on this status of cases and referrals of compliants; to counseling agencies—for counseling; to Legal Aid—to assist mortgagors; to HUD TMAP contractor—for processing TMAP; to other Federal agencies for the purposes of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magentic tapes, drums, and discs.

RETRIEVABILITY:

Name; case file number, property address

SAFEGUARDS:

Records maintained in desks and lockable file cabinents; access to automated systems is by passwords and code identification cards access limited to authorized personnel.

RETENTION AND DISPOSAL:

Obsolete records destroyed or shipped to Federal Records Center in compliance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Servicing Division, HSSI, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; other individuals; current or previous employers; credit bureaus; financial institutions; other corporations or firms; Federal Government agencies; non-federal government (including foreign, state and local) agencies; law enforcement agencies.

HUD/DEPT-62

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors; mortgagees; grant/project and loan applicants and recipients; HUD personnel; vendors; brokers; bidders; managers; tenants; builders; developers, contractors, and appraisers; employees on HUD/FHA projects; investors; subjects of audit; closing agents; former mortgagors and purchasers of HUD-owned properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease and loan collection register; schedules of payments receivable and received; premiums due; claim files; fee billing statements; escrow and Certificates of Deposit files; cash flow and budget control files; earnest money register; purchase order log; imprest fund; area managers' accounting records; restitution, maintenance, and market expenses; bills lading; vouchers; invoices; receipts mortgagors, builder's and contractor's financial statements, records and audit reports; deposit and receipt records; disbursements and cancelled checks; repurchases of mortgages; adjustments from recoveries, defaults, acquired home property records; sales closing papers; statemets of accounts; tax records certifications and applications for assistance; and notice of court action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Section 1, Pub. L. 89-508).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Users paragraphs in prefatory statement. Other routine uses; Justice Department—for prosecution of fraud revealed in the course of claims collection efforts, and for the institution of foreclosure or other proceedings to effect collection of claims; FBI—for investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for the institution of proceedings to effect collection of claims; other Federal Agencies—to facilitate collection of claims against Federal employees; Office of Personnel Management—for offsetting retirement payments; to commercial credit bureaus—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4; to other Federal agencies for the purpose of collecting debts owed to

the Federal Government by administrative or salary offset; to IRS for reporting of discharged indebteness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966; 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Desks; safes; locked file cabinets.

RETRIEVABILITY:

Name, Social Security Number, Project Name and Number, and Contract Number.

SAFEGUARDS:

Locked files; limited access by authorized individuals.

RETENTION AND DISPOSAL:

GSA schedules of retention and disposal; destruction one year after statute of limitation expiration.

SYSTEM MANAGER AND ADDRESS:

Department Claims Officer, Officer of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, Contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A, (ii) in relation to appeals of initial denials, the HUD Department Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; credit bureaus; financial institutions; private corporations or firms doing business with HUD; Federal and non-Federal government agencies; HUD personnel.

HUD/CDP-1

SYSTEM NAME:

Rehabilitation Loans-delinquent/Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Rehabilitation loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names credit applications; Social Security Number where available, loan and grant documents, including promissory note, mortgage, deed of trust, title evidence; HUD Section 312 forms and documents; statement of account; sales contract; assumption agreements; compromise agreements; subordination agreements; repayment agreements; collection history, including correspondence with borrower, servicer, and LPA; credit reports; financing statements; records of foreclosures; charge-offs; judgments on the note and deficiency judgments; creditor requests for collection assistance; insurance documents; bankruptcy records and documents; property appraisals; rehabilitation contracts; corresponsence with the LPA's and related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. Sec. 1452b, Housing Act of 1964.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims; FBI—for investigation of possible fraud revealed in the course of claims collection efforts: General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offestting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection conistent with Federal Claims Collection Standards, 4 CFR 102.4; to financial institutions that serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfaction, etc.; to bankruptcy courts—for filing of proofs of claims; to local agencies that service HUD Section 312 (Rehabilitation) loans—to aid in the collection of delinquent loans, to counseling agencies—to provide counseling and assistance in the collection of delinquent Section 312 loans in accordance with HUD/DEPT-32 to state motor vehicle agencies and Internal Revenue Service—to obtain addresses of debtors; to Internal Revenue Service for reporting of discharged indebtedness; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1968 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Case file (Claim) number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are primarily active with some historical information; disposal is in accordance with HUD Handbook 2225.6, Appendix 66.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Rehabilitation Management Division, CRM, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned, appear in CFR Part 16. If additional information or assistance is needed, it may be obtained by contracting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; current and previous employers; credit bureau; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

HUD/H-8

SYSTEM NAME:

Property Rental Files.

SYSTEM LOCATION:

HUD field offices and HUD Area Management Brokers (AMBs) under the jurisdiction of the HUD field offices. For a complete listing of HUD field offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Occupants (prospective, current and former) of the one to four-family properties which HUD expects to acquire, generally as a result of foreclosure, or has acquired or of which HUD expects to or has taken possession.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files consist of documents pertaining to request for continued occupancy, rental applications, and rent payment. The documents will include leases and rental information if the properties are being conveyed or transferred to HUD subject to occupancy; individuals' names, addresses, telephone numbers, identifying numbers such as Social Security Numbers, (if available) income, circumstances of employment, expenses, liabilities, and personal and credit references, and records of rents paid and owned while tenants of HUD, and related correspondence. Also, pursuant to 24 CFR 203.670, where individuals seek to qualify for continued occupancy of a property to be conveyed to HUD because of an illness or injury, certain documentation pertaining to the validity of the individuals' claims will be maintained in these files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act of 1937 as amended (Pub. L. 75-412).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: Consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal claims collection standards, 4 CFR 102.4, to State motor vehicle agencies and Internal Revenue Service—to obtain current addresses of debtors, to Internal Revenue Service—for reporting of discharged indebtedness, to attorneys hired by the Department in connection with eviction related activities—to facilitate eviction related activities, to collection agencies hired by the Department—to collect delinquent rent, to prospective purchasers of tenant occupied properties—to provide them rent rolls and income and expenses data, and to HUD's Area Management Brokers (AMBs)—to permit them to perform their property management responsibilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders.

RETRIEVABILITY:

Case file number, property address, and name of tenant.

SAFEGUARDS:

Desk, file cabinets kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook 2225.6, Records Disposition Management; HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Property Disposition Division, HSSP, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existance of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned apear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Office at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, other individuals, current or previous employers credit bureaus, financial institutions, other corporations or firms, Federal government agencies; non-Federal (including foreign, State and local) government agencies, real estate brokers and agents.

[FR Doc. 85-10634 Filed 5-2-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 868]

California; Termination of Proposed Withdrawal and Reservation of Land

Correction

In FR Doc. 85–8951 appearing on page 14775 in the issue of Monday, April 15, 1985, make the following correction: In the second column, in the first line under **"Mount Diablo Meridian,"** "T. 16 W.," Should read "T. 16 N.,".

BILLING CODE 1505-01-M

Prineville District Advisory Council; Meeting

Notice is hereby given of a meeting of the Prineville District Advisory Council to be held on June 14 and 15, 1985. The meeting will be in the form of a field tour of public lands within the Two Rivers Planning Area.

Agenda items to be discussed by the council include the Draft Two Rivers Resource Management Plan/Environmental Impact Statement and the Statewide Wilderness Environmental Impact Statement as it pertains to the five wilderness study areas within the Two Rivers Planning Area.

The tour will leave the BLM District Office located at 185 East Fourth Street in Prineville at 9:00 a.m. on June 14 and return by 4:00 p.m. on June 15. The public is invited, however, no transportation or accommodations will be provided.

Anyone wishing to attend the tour or address the council should contact the Prineville BLM District Manager at the above address by June 7, 1985.

Dated April 26, 1985.

James L. Hancock,

Associate District Manager.

[FR Doc. 85–10763 Filed 5–2–85; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Service clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: The 1985–86 Public Area Recreation Visitor Survey (PARVS).

Abstract: The proposed collection is a detailed on-site and mailback survey of a representative sample of recreation visitors to Federal lands. Visitors are asked about their activities, experiences and expenditures; and invited to suggest improvements. The results are reported to Congress and used in planning.

Service Form No.: (none)

Frequency: On occasion

Description of Respondents: Individuals visiting Federal and State lands for recreation purposes.

Annual Responses: 10,150

Annual Burden Hours: 5,075

Service clearance officer: Russell K. Olsen, 202–523–5133

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 85–10833 Filed 5–2–85; 8:45 am]

BILLING CODE 4310-70-M

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313

Title: Concessioner Annual Financial Report, 16 USC 1

Abstract: Respondents supply selected financial information with respect to their latest fiscal year. This information allows the National Park Service to determine whether the financial provisions of Pub. L 89–249 are being met.

Bureau Form Number: 10–356 and 10–356A

Frequency: Annually

Description of Respondents: Concessioners operating in National Park Service areas

Annual Responses: 500

Annual Burden Hours: 3,800

Bureau Clearance Officer: Russell K. Olsen 523–5133

Russell K. Olsen,

Chief, Administrative Service Division.

[FR Doc. 85–10834 Filed 5–2–85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transformation for Certain Members

Dated: April 30, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Mid-America Farm Lines, Inc.
(2) 420 North Nettleton, Springfield, MO 65802
(3) 420 North Nettelton, Springfield MO 65802
(4) Gary Hanman, 800 West Tampa, Springfield, MO 65805.

(1) Tennessee Farmers Cooperative
(2) P.O. Box 3003, LaVergne, TN 37086
(3) P.O. Box 3003, LaVergne, TN 37086

(4) Joe L. Wright, P.O. Box 3003, La Vergne, TN 37086.

James H. Bayne,
Secretary.

[FR Doc. 85–10810 Filed 5–2–85; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intends to provide or to use compensated intercorporate hauling as authorized in 49 U.S.C. 10524(b).

1—Parent corporation and address of office: Turner Furniture Companies, Inc., a Delaware Corp., 220 East First Avenue, P.O. Box 907, Lexington, North Carolina 28293–0907.

2—Wholly-owned subsidiary which will participate in the hauling or operation, and address of it's respective principal offices. All companies listed below are incorporated in Delaware:

Jamestown Sterling, P.O. Box 610, Allen Street Extension, Jamestown, New York 17402–0610

DeVille Furniture, P.O. Box 2246, 915 Hwy. 321, North, Hickory, North Carolina 28601

Williams Furniture, P.O. Box 1489, 602 Fulton Street, Sumter, South Carolina 29501

Union Furniture, 122 West George Street, Batesville, Indiana 47006

State of Newburgh, 1–17 Wisner Avenue, Newburgh, New York 12550

United Globe, P.O. Box 907, Lexington, N.C. 27292

Turner Furniture Transports, Inc., 220 East First Ave., P.O. Box 907, Lexington, N.C. 27293–0907

James H. Bayne,
Secretary.

[FR Doc. 85–10809 Filed 5–2–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-247X]

Alabama Southern Railroad Company; Abandonment; Between York and Lilita, AL; Corrected Notice of Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.3-mile line of railroad between milepost SR MP YL 0.0 near York and milepost SR MP YL 10.3 near Lilita, AL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 24, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by May 6, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 14, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles H. White, Jr., 1000 Potomac Street, NW, Suite 501, Washington, DC 20007.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 18, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85–10811 Filed 5–2–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6; Sub-257X]

Burlington Northern Railroad Company; Abandonment; In Mills and Pottawattamie Counties, IA; Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* (Regulations) to abandon its 14.0-mile line of railroad between milepost 475.01 near Pacific Junction and milepost 489.01 near Council Bluff in Mills and Pottawattamie Counties, IA.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

By letter filed April 22, 1985, the Pottawattamie County Conservation Board (Board) has submitted an "application" under the National Trails System Act, 16 U.S.C. 1247(d)(NTSA), to use, for trail purposes, the right-of-way underlying the entire line. The Board, a political body of the State of Iowa, indicates that it is supported by property taxes, by donations of land, and by volunteer organizations, and is in a position to develop, maintain, and manage the right-of-way. It is willing to assume the taxes for which it might be held liable, and to relieve BN of its liability responsibility. The Board urges the Commission to deny BN's "abandonment application".

NTSA was enacted to provide States, political subdivisions, and qualified private organizations with the opportunity to make interim trails use of railroad rights-of-way which otherwise would be abandoned. In Ex Parte No. 274 (Sub-No. 13), *Rail Abandonments—Use of Rights-of-Way as Trails*, served February 20, 1985, and published in the **Federal Register** on February 21, 1985 (50 FR 7200), the Commission issued a notice of proposed rulemaking (NPR) to consider the impact of NTSA on the abandonment process. The NPR reaches a preliminary conclusion that NTSA is applicable to abandonments and abandonment exemptions and that a condition could be imposed in these proceedings requiring the railroad to make the right-of-way available for trails use for as long as the user meets its obligations. Until this issue has been finally determined, however, NTSA proposals must be considered on an *ad hoc* basis. *Compare* Docket No. AB–1 (Sub-No. 159), *Chicago and North Western Transp. Co.—Abandonment—Iowa and Missouri* (not printed), served September 12, 1984.

Although the Board has generally indicated its willingness and ability to comply with NTSA obligations, it has not submitted any evidence of its managerial or financial ability to do so. Therefore, I must deny its NTSA request. Moreover, the Board has not established a basis for denial of the abandonment exemption sought by BN. Rule 1152.50(a) of the Regulations,

supra, states that a proposed abandonment of railroad lines is exempt when the abandoning railroad makes certain certifications relative to the line and otherwise satisfies the criteria of the Regulations. BN has met the prescribed requirements. Therefore, under Rule 1152.50(d)(3), a notice reflecting the abandonment exemption must be published in the **Federal Register**, after which petitions for reconsideration may be filed by any interested person. If the Board wishes to file an appeal, it should submit specific evidence of its ability to meet the financial and management obligations that it prospectively would incur under NTSA.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective June 2, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by May 13, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 23, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to BN's representative: Peter M. Lee, Assistant General Solicitor, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental, public use, or other conditions.

Decided: April 29, 1985

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-10812 Filed 5-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30614]

Wisconsin and Southern Railroad Co.; Exemption From 49 U.S.C. 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Wisconsin & Southern Railroad Company from 49 U.S.C. 11301 in connection with the issuance of a $1,690,000 subordinated promissory note.

DATES: This exemption will be effective on May 3, 1985. Petitions to reopen must be filed by May 23, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30614 to:

(1) Office of the Secretary; Case Control Branch; Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Ronald M. Johnson; Suite 400, 1333 New Hampshire Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Strenio, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 85-10814 Filed 5-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-14]

Granting of Application; Scott J. Loman, D.D.S.

On April 23, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Scott J. Loman, D.D.S. of 450 Sutter Street, Suite 1814, San Francisco, California 94108 (Respondent) proposing to deny his application, executed on December 12, 1983, for registration with DEA as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's conviction of multiple violations of Articles 81, 91, 121 and 134 of the Uniform Code of Military Justice, felony offenses relating to controlled substances. By letter dated May 14, 1984, Respondent requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in San Francisco, California on September 11, 1984. Administrative Law Judge Francis L. Young presided. On January 29, 1985, Judge Young issued his report and recommendations. No exceptions were filed and, on February 26, 1985, Judge Young transmitted the record of these proceedings to the then Administrator. The Acting Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent was a Lieutenant in the Dental Corps, U.S. Naval Reserve, on extended active duty in the Republic of the Philippines (R.P.). While serving in such capacity, Respondent prescribed Schedule II controlled substances to a female friend on three occasions. One prescription was for Demerol and two were for Percodan. There was no legitimate medical justification for the issuance of these prescriptions. The woman had the prescriptions filled and she and Respondent used the controlled substances for their own enjoyment. Respondent had also abused nitrous oxide with the same woman and by himself. Respondent has twice been caught inhaling nitrous oxide by other hospital personnel.

Based on the aforementioned incidents, on December 14, 1982, Lt. Loman was convicted by General Court-Martial at Subic Bay, R.P. of multiple violations of Articles 81, 91, 121 and 134 of the Uniform Code of Military Justice. The charges of which Respondent was convicted are felony offenses. Therefore, there is a lawful basis for denying Respondent's application for registration. 21 U.S.C. 824(a)(2). *See, Serling Drug Co.*, Docket No. 74-12, 40 FR 11918 (1975); *Thomas W. Moore, Jr., M.D.*, Docket No. 79-13, 45 FR 40743 (1980); *Gilbert Miller, M.D.*, [No Docket No.], 49 FR 37863 (1984).

The Administrative Law Judge further found that prior to those convictions, Respondent, while stationed in San Diego, California in December 1980, was found to be in possession of marijuana, a Schedule I controlled substance. That incident was dismissed with a warning at an Admiral's Mast, a form of non-judicial procedure.

Respondent is now a civilian dentist practing oral surgery in Californa. He has a valid dental license in the State of California. Respondent has not been previously licensed by any state licensing authority and he has not been previously registered with DEA. A DEA registration is not required of a dentist serving in the armed forces.

The Administrative Law Judge stated that it appears that Respondent has

undergone a religious conversion since his court-martial. This has resulted in a positive change in Respondent's life-style. Judge Young also concluded that Respondent is highly regarded as a dentist by fellow professionals in a position to know the quality of his work.

Without a DEA registration, Respondent's ability to practice oral surgery would be serverly hindered. At the present, Respondent depends on other dentists who have such a DEA registration to prescribe and administer controlled substances to his patients. Respondent hopes to move to a small community to open a practice. Such a practice would be very restricted because other dentists would not be as readily available to prescribe the necessary drugs needed for the practice of oral surgery.

Given the foregoing reasons and further given the opportunity to observe Respondent at the hearing, the Administrative Law Judge concluded that there is little likelihood that Dr. Loman will ever again abuse controlled substances or participate in the diversion of controlled substances. Based on a proposal submitted by Government counsel, Judge Young recommended that Respondent's applications be granted, subject to the following conditions:

(1) Respondent be required to make a written report semi-annually, on July 1, and on January 1, beginning July 1, 1985, to the DEA Special Agent in Charge in San Francisco, California, or his designee, in a form prescribed by the latter, of all the controlled substances Respondent has prescribed, administered or dispensed—initially, since receiving his DEA registration; thereafter, since the last preceding report.

(2) The filing of these semi-annual reports will continue until the Special Agent in Charge in San Francisco, or his designee, notifies Respondent that they are no longer required.

(3) Any future misconduct by Respondent involving controlled substances will result in the immediate initiation by DEA of proceeding to revoke Respondent's DEA registration as provided by law.

The Acting Administrator adopts the Administrative Law Judge's findings of fact, conclusions of law and recommendations in their entirety. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Scott J. Loman, D.D.S., executed on December 12, 1983, for registration under the Controlled Substances Act be, and it hereby is, granted subject to the conditions outlined above.

Date: April 29, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-10803 Filed 5-2-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Acme Boot Co., Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 3, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C., 20213.

Signed at Washington, D.C. this 22nd day of April 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Acme Boot Co., Inc. (URW)	Clarksville, TN	4/17/85	4/12/85	TA-W-15,926	Boots and shoes
Acme Boot Co., Inc. (URW)	Waverly, TN	4/17/85	4/12/85	TA-W-15,927	Men's and women's boots.
Acme Boot Co., Inc. (URW)	Ashland, TN	4/17/85	4/12/85	TA-W-15,928	Men's and women's boots
Acme Boot Co., Inc. (URW)	Cookeville, TN	4/17/85	4/12/85	TA-W-15,929	Ladies' and children's boots.
Arno Moccosin (workers)	Lewiston, ME	3/27/85	2/28/85	TA-W-15,930	Moccasins, slippers and loafers men and women.
D&F Shirt Co. (ACTWU)	Salisbury, MD	4/03/85	3/28/85	TA-W-15,931	Men's shirts
Laranne Sportswear, Inc. (ILGWU)	Brooklyn, NY	3/18/85	3/14/85	TA-W-15,932	Sportswear, ladies', contractor
Lawrence Shoe (workers)	Lewiston, ME	2/28/85	2/07/85	TA-W-15,933	Contractor handsewn shoes
Mirro Corporation (USWA)	Manitowoc, WI	4/17/85	4/10/85	TA-W-15,934	Housewares (pots and pans, baking, cooking)
New Coat Factory (company)	Highland Park, NJ	4/16/85	3/18/85	TA-W-15,935	Ladies' jackets and children's coats (contractor)
Park Iron & Welding Co. (Ironworkers)	Cleveland, OH	4/09/85	3/25/85	TA-W-15,936	Fabricated metals; steel and aluminum
United Merchants & Manufacturers, Inc., Bath Mill Div. (wkrs)	Bath, SC	4/16/85	4/10/85	TA-W-15,937	Textiles (woven apparel cloth and yarns).
Wire Components, Inc. (United Furniture Wkrs)	Memphis, TN	4/16/85	4/11/85	TA-W-15,938	Electrical wire harnesses.
Abex Corporation (Molders & Allied Workers)	Elyna, OH	4/16/85	4/03/85	TA-W-15,939	Alloy and non-ferros metals sand and centrifugal castings.
Arrow Shirt Co., Distribution Center (ACTWU)	Elysburg, PA	4/16/85	4/12/85	TA-W-15,940	Distribution of men's shirts.
Blake Drilling & Exploration (wkrs)	Midland, TX	3/12/85	3/04/85	TA-W-15,941	Oil, gas drilling.
Colorado Westmoreland, Inc. (wkrs)	Paonia, CO	4/16/85	4/12/85	TA-W-15,942	Mine and ship coal.
Cooperative Metro Politana de Consume (workers)	Bayamon, PR	3/22/85	3/18/85	TA-W-15,943	Food store.
Kayser-Roth Hosiery Inc., Footwear Div. (company)	Marietta, GA	4/16/85	[illegible]	TA-W-15,944	Washable slippers.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Kellwood Company (workers)	Alamo, TN	4/16/85	4/08/85	TA-W-15,945	Lingerie, activewear, swimwear.
Levi Strauss & Co. (company)	Star City, AR	4/16/85	4/09/85	TA-W-15,946	Men's slacks.
Northern Heel Cork (workers)	Lewiston, ME	3/27/85	3/01/85	TA-W-15,947	Finished heels, plastic, wood, leather.
Stride Rite (workers)	Auburn, ME	3/27/85	2/28/85	TA-W-15,948	Men's, women's and children's shoes.
U.S. Steel Mining Co., Inc. Everson Central Shop (UMWA)	Everson, PA	4/17/85	4/12/85	TA-W-15,949	Overhaul of mine maintenance machinery.
U.S. Steel Mining Co., Inc., Filbert Central Shop (UMWA)	Filbert, PA	4/17/85	4/12/85	TA-W-15,950	Overhaul of mine maintenance machinery
Harman-Motive (workers)	Martinsville, IN	4/12/85	4/05/85	TA-W-15,951	Speakers—auto radio.
Lefere Forge & Machine Company (UAW)	Jackson, MI	4/15/85	4/09/85	TA-W-15,952	Commercial steel forgings, carbon and alloy.
Soft Images, Inc. (workers)	Kingston, NY	4/16/85	4/09/85	TA-W-15,953	Fabric wall decor and stuffed mobiles.
J&K Values, Inc. (ILGWU)	Newark, NJ	4/17/85	4/11/85	TA-W-15,954	Raincoats, coats and car coats—ladies'

[FR Doc. 85-10859 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-23-C]

Emery Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Emery Mining Corporation, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Beehive Mine (I.D. No. 42-00082) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. The east return entry in the Main North section is used in parallel with a second return entry on the west side to ventilate old return seals. Together, they course return air through the Main North section of the mine. The east return entry had deteriorated due to a squeeze condition. Part of this return entry is now impassable because of roof falls, rib sloughage, and bad top, even though the area has been extensively cribbed.

3. Petitioner states that rehabilitation of this area would expose miners to hazardous working conditions.

4. As an alternate method, petitioner proposes to establish an air monitoring station at crosscut 34 in the east return. This section will be maintained in safe condition at all times. The quality, quantity, and direction of air flow and methane content will be determined at the monitoring station by a certified person on a weekly basis.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1985. Copies of the petition are available for inspection at that address.

Dated: April 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 10861 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-20-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, P.O. Box 231, Clarington, Ohio 43915 has filed a petition to modify the application of 30 CFR 75.1100-2(b) and (c) (quantity and location of firefighting equipment) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and parallel to all haulage tracks using mechanized equipment in the track or adjacent entry.

2. As an alternate method, petitioner proposes to install a dry pipe fire protection system which can be charged electrically or manually along the entire length of the slope conveyor belt. In support of this proposed alternate method, petitioner states that:

a. The slope is comprised of two compartments, separated by a concrete and steel partition. The conveyor belt is located in the upper compartment and the track in the lower;

b. A four-inch water line is installed parallel to the conveyor belt with firehose outlets at 300-foot intervals. Additional firehose outlets will be installed, extending through the concrete partition into the track compartment at 500-foot intervals.

c. Firehose will be placed at strategic locations along the belt and track;

d. The electric valve will be activated by the automatic fire sensor system installed pursuant to § 75.1103;

e. A manual activating valve will be installed;

f. Limit and alignment switches are installed on the slope belt to reduce the possibility of fire due to friction;

g. Installation of this system will eliminate freezing problems that occur with the present system;

h. A weekly inspection of the components of this system will be made, and a record kept at the mine site; and

i. An annual functional test of the system will be conducted, which will include charging of the dry pipe by activation of the automatic fire sensor system. A record of the test will be kept at the mine site.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1985. Copies of the petition are available for inspection at that address.

Dated: April 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-10862 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-16-C]

Saginaw Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Saginaw Mining Company, P.O. Box 275, St. Clairsville, Ohio 43940 has filed a petition to modify the application of 30 CFR 75.516-1 (installed insulators) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that power wires be supported on well-insulated insulators and not contact combustible material, roof, or ribs; insulated J-hooks may be used to suspend insulated power cables for temporary installation not exceeding 6 months and for permanent installation of control cables used along belt conveyors.

2. As an alternate method, petitioner proposes to use insulated tie wire to support control cables along the belt conveyors and to support insulated power cables for temporary installation because the insulated tie wire has more insulated surface area than an insulated J-hook.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1985. Copies of the petition are available for inspection at that address.

Dated: April 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-10863 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-18-C]

Surefire Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Surefire Coals, Inc., Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. A-4 Mine (I.D. No. 15-14977) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine has a coal height of 40 to 48 inches; the floor is fireclay and the roof has rolls and bumps causing a very uneven area.

3. Petitioner states that canopies cause the equipment to contact the roof and shear off the head and plate of roof bolts installed, causing the haulage route to be unsafe. In addition, equipment operators are forced to lean out from the canopies to see, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 30, 1985. Copies of the petition are available for inspection at that address.

Dated: April 29, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-10864 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-22-C]

Booker Fork Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Booker Fork Coal Corporation, Box 190, Dorton, Kentucky 41520 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 15-13730) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam and ranges from 42 to 50 inches in height, with consistent ascending and descending grades creating dips in the coalbed.

3. Petitioner states that the canopies can strike and dislodge roof support, increasing the chances of an accident. The canopies also limit the equipment operator's visibility and restrict the operator's seating position, creating a potential hazard.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1985. Copies of the petition are available for inspection at that address.

Date: April 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-10860 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-26-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.327-1 (velocity of air) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the velocity of the air current in the trolley haulage entries be limited to not more than 250 feet a minute.

2. As an alternate method, petitioner proposes that a velocity of 1,000 feet a minute be allowed in the 1 East belt and track, 2 East belt and track, 1 North belt and track, 1 North Piggyback belt and track, and the 4 Main belt and track. In support of this request, petitioner states that:

a. The miners will have two separate escapeways;

b. The entries requested for modification are not being used as intake air entries;

c. The air on these entries will be directed to the return entry;

d. The return entry is not a designated escapeway; and

e. If methane would occur, it would be diluted and rendered harmless by the increased air flow.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1985. Copies of the petition are available for inspection at that address.

Dated: April 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 10865 Filed 5–2–85; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85–79; Exemption Application No. D-4732 et al.]

Grant of Individual Exemptions; Maritime Associates, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Maritime Association-I.L.A. Pension Fund (the Plan)

[Prohibited Transaction Exemption 85–79; Exemption Application No. D–4732]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past loan by the Plan of $2 million to Crow-Southpoint #1, Ltd. (Crow), a party in interest with respect to the Plan; and the restrictions of section 406(a) and 406(b)(1) of the Act and sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the receipt by Crow of lease commissions paid by a joint venture that exists between the Plan and Crow, provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 19, 1985 at 50 FR 7014.

Effective Date: The effective date of this exemption is October 27, 1982.

For Further Information Contact: Mr. David Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Broman and Woolley Profit Sharing Plan (the Plan) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 85–80; Exemption Application No. D–5272]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1984, to (1) a lease of certain real property by the Plan to Broman and Woolley, P.C., the sponsor of the Plan; (2) a lease of certain real property by the Plan to Wallace E. Beck, D.D.S., a party in interest with respect to the Plan; and (3) an extension of credit to the Plan by Crown Enterprises, a partnership which is a party in interest with respect to the Plan; provided that all terms of such transactions are at least equivalent to those which the Plan could obtain in dealing at arm's length with unrelated parties.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 26, 1985 at 50 FR 7853.

Effective date: This exemption is effective July 1, 1984.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Retail Clerk's Local 919 Health and Welfare Trust Fund (Non-Food) (the Non-Food Welfare Plan); Retail Employees' Union Local 919 and Subscribing Employers' Health and Welfare Fund (Food); Retail Employees' Union Local 919 Pension Trust Fund (Non-Food); Retail Employees' Union Local 919 (UFCW) and Contributing Employers' Food Pension Fund (the Food Pension Plan); Retail Employees' Union Local 919 (UFCW) and

Contributing Employers' (Non-Food) Legal Services Trust Fund (the Non-Food Legal Plan); and Retail Employees' Union Local 919 and Subscribing Employers' Legal Services Trust Fund (Food) (the Food Legal Plan, collectively, the Plans) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 85–81; Exemption Application Nos. L–5434 and L–5435]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to: 1) the past lease by the Food Pension Plan, the Non-Food Legal Plan and the Food Legal Plan (the New Plans) of certain real property (the Old Office Space Lease) from Retail Employees' Union Local 919, UFCW (the Union); 2) the past lease by the New Plans of data processing time (the Old Computer Time Lease) from the Union; 3) the new lease by the Non-Food Welfare Plan, acting as lead Plan, of office space (the New Office Space Lease) from the Union; 4) the new lease by all of the Plans, with the Non-Food Welfare Plan acting as lead Plan, of data processing time (the New Computer Time Lease) from the Union; and 5) any future extension or renewal by the Plans of the New Office Space Lease and the New Computer Time Lease (the New Leases), provided that the terms and conditions of past and future transactions were and will be at least as favorable to the Plans as the Plans could obtain in arm's -length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 1, 1985 at 50 FR 8414.

Effective Date: The effective date of this exemption is February 1, 1984, until June 30, 1984, with respect to the Old Office Space Lease; October 5, 1983, until March 1, 1984, with respect to the Old Computer Time Lease; March 1, 1984, with respect to the New Computer Lease Time; July 1, 1984, with respect to the New Office Space Lease; and the date of grant of this exemption as to any extensions or renewals of the New Leases.

For Further Information Contact: Mr. David Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Northern New England Benefit Trust (the Plan) Located in Manchester, New Hampshire

[Prohibited Transaction Exemption 85–82; Exemption Application No. D–5469]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the leasing of office space by the Plan to Bruce Wadsworth, Inc., under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 19, 1985 at 50 FR 7011.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Coulter Affiliates Employees' Retirement Plan and Trust (the Plan) Located in Phoenix, Arizona

[Prohibited Transaction Exemption 85–83; Exemption Application No. D–5562]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a ground lease of certain unimproved real property (the Real Property) between the Plan and Coulter Cadillac, Inc. (the Employer); and the exercise by the Plan of a put option requiring the Employer to acquire the Real Property for cash, provided that the terms of the transactions are no less favorable to the Plan than those available in arm's length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 19, 1985 at 50 FR 7012.

Effective Date: This exemption is effective December 1, 1984.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

W. Stephen Kopala, Inc. Employees' Retirement Plan and Trust (the Plan) Located in Wheeling, Illinois

[Prohibited Transaction Exemption 85–84; Exemption Application No. D–5695]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan by the Plan of $190,000 (the Loan) to the 300 North Wolfe Road Joint Venture, a party in interest with respect to the Plan, provided the terms of the Loan are not less favorable to the Plan than those obtainable by the Plan in a similar transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 19, 1985 at 50 FR 7013.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact

that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of April, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-10855 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5543 et al.]

Proposed Exemptions; Sherman Clay & Co. et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sherman Clay & Co., Defined Benefit Pension Plan (the Plan) Located in San Bruno, California

[Application No. D-5543]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to certain past sales by the Plan of Federal Home Loan Bank Bonds bearing an interest rate of 14.2 percent due June 27, 1983, (the Bonds) for cash in the amount of $543,975 to Parker Pace Corp. (Parker Pace) and Ashuelot Paper Company (Ashuelot), parties in interest with respect to the Plan, provided that the amount the Plan received in such sales was at least equal to what it could have received in similar transactions with an unrelated party. Sherman Clay & Co. (Sherman Clay), the sponsor of the Plan, and Ashuelot are wholly owned subsidiaries of Parker Pace.

Effective Date: If the proposed exemption is granted, the effective date will be September 17, 1982.

Summary of Facts and Representations

1. The Plan is a defined benefit plan established November 11, 1947, and amended January 1, 1983, which is administered by a retirement plan committee (the Committee) consisting of three members appointed by the Board of Directors of Sherman Clay. Mr. Fred W. Concklin (Mr. Concklin), president and chief executive officer of Sherman Clay is the Committee member primarily responsible for making the Plan's investment decisions. The Committee is assisted in its investment duties, by Bartco, Inc. (Bartco) an investment advisor. Bartco's duties for the Plan include investment counseling, making specific investment recommendations, execution of certain investment orders, and the purchase or sale of government bonds, and other designated investments without specific authorization from or notice to Sherman Clay.

Bartco has provided investment counseling services to the Plan for the past nine years. During that same time, it also managed investment portfolios for Parker Pace and Ashuelot and provided continuing investment management for Parker Pace, Ashuelot, the Schwartz Trust, and Schwartz Foudnation, organizations affiliated with Sherman Clay.

Bartco is wholly owned by Mr. Alan Bartlett (Mr. Bartlett). Mr. Bartlett does not own any stock in Sherman Clay or any of its affiliates. Mr. Bartlett represents that he receives a flat fee in advance per month from Sherman Clay for all investment advice and actions, without compensation for success or failure, for volume produced, or for favoring one investment account over another and that such fee represents less than 10 percent of his personal income from all sources. He further represents that he receives no outside remuneration from dealers. Mr. Bartlett's professional investment experience extends over 55 years, including affiliations with institutions such as Citibank of New York, California Municipal Statistics, Inc., and the Bank of America's Bond Investment Department in San Francisco. Mr. Bartlett is a chartered financial analyst and an associate member of the Municipal Analysts Society of the U.S. In addition, the applicant represents that

Bartco's recommendation to sell the Bonds, for which it received no benefit other than its normal fee, was based on Bartco's professional analysis of the Plan's portfolio and of objective market conditions.

2. As a part of its assets in September, 1982, the Plan owned the Bonds which it had acquired at a cost of $530,000. The applicant represents that in the fall of 1982, during a period of rapidly declining interest rates and a corresponding rise in the over-the-counter bond market, Bartco advised the Plan to sell the Bonds so that the proceeds from the sales could be used to buy at a total cost of $552,079 Bank of America notes, Wells Fargo notes, and Homes Savings and Loan mortgage certificates with longer terms and at interest rates of 13.25 percent, 13.25 percent, and a variable interest rate respectively. Based on the recommendation by Bartco, Mr. Concklin approved the sale of the Bonds prior to the maturity date of the Bonds.

3. After deciding on the sale of the Bonds, Bartco advised that in order to avoid commissions and maximize the proceeds of the sales for the Plan, the Plan should directly sell the Bonds to Parker Pace and Ashuelot, since Parker Pace and Ashuelot were interested in receiving the short term yield on the Bonds. Subsequently, in four separate transactions, the Bonds were either sold to Parker Pace or to Ashuelot for cash totaling the amount of $543,975. The price for the sales of the Bonds was determined by Mr. Bartlett who was responsible for choosing the date of quotation for sale of the Bonds as well as determining the price the Plan actually received by using as a guide the bid and asked prices for the same government bonds as published in the Wall Street Journal on or for the day chosen as the date of quotation for sale. For each Bond sold, the Plan received the amount of the price for the same government bonds traded in "round lots" of one million dollars or more. No commissions were paid on the transactions.

4. The applicant represents that at the time the transactions were conceived and implemented, neither Bartco nor any of the parties to the transactions realized that the sales of the Bonds to corporations related to Sherman Clay would involve prohibited transactions.

Mr. Bartlett asserts that his representations of both the Plan as seller of the Bonds and Parker Pace and Ashuelot as buyers of the Bonds were fair, objective, without bias, and mutually advantageous for the following reasons:

(a) The price for the Bonds was obtained from quotations published daily in the Wall Street Journal;

(b) The transactions provided the Plan with longer term high yield securities in a declining interest market while at the same time supplied liquidity and a good short term yield to Parker Pace and Ashuelot;

(c) The Plan saved an estimated $1,750 in the private sale by eliminating commissions and the usual 5/32 of one point penalty applicable to an odd lot trade;

(d) By not holding the Bonds and selling them eight months prior to the maturity date and by buying longer term but lower yield bonds with the sale proceeds, the Plan realized a net gain of $9,975.

5. In summary, the applicant represents that the past sales of the Bonds satisfied the criteria of section 408(a) of the Act as follows: (1) the sales were conceived and implemented by the Plan's investment advisor; (2) the price of the sales was determined by using published price quotations; and (3) the Plan did not have to pay commissions or an odd lot differential on the sales.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

George L. Nadler, D.D.S., P.C. Defined Benefit Pension Plan (the Plan) Located in Tucson, AZ

[Application No. D-5949]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a certain parcel of unimproved real property (the Property) located in Tucson, Arizona to George L. Nadler, D.D.S. (Dr. Nadler), the sole shareholder of George L. Nadler, D.D.S., P.C. (the Employer), and the Plan trustee, for $100,000 in cash, provided that such price is not less than the fair market value of the property as of the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. As of October 26, 1984 there were six participants, and as of February 8, 1985 it had assets of $705,634.

2. The Property is an unimproved lot of approximately .78 acres located at the southeast corner of Park Avenue and Fair Street, Tucson, Pima County, Arizona, approximately 10 miles from the Employer's place of business. The Property was purchased by the George L. Nadler, D.D.S., P.C., Money Purchase Pension Plan (the Money Purchase Plan) on November 3, 1980 from Thomas G. Beaham, III, an unrelated third party, for $72,000 plus the assessments. The Money Purchase Plan was terminated effective September 1, 1981 and it assets, including the Property, were transferred as a qualified rollover to the Plan.

3. Since the purchase, the Plan has paid $18,658 in interest, $5,008 for assessments and interest on the assessments, and $1,174 in property taxes. Final payment on the Property was made on April 30, 1984. The total expenditures by the Plan in connection with the acquisition and holding of the Property through October 16, 1984 are $96,840.

4. The Property was appraised on September 21, 1984 by Robert J. Dempsey, M.A.I. (Mr. Dempsey), an independent real estate appraiser in Tucson, Arizona, as having a fair market value of $100,000, which represents 14.2% of the Plan's assets. Mr. Dempsey states in his appraisal report that "all of the economic indications are that the area will continue to grow. As the population and economic growth of the area continues, the demand for most all types of property will continue to improve."

5. The applicant, however, represents that, "there is reason to believe the Property will appreciate significantly in value over the next five years, and that the combination of growth and cash outlay for expensess will likely result in a net-loss for the Plan during this period." The applicant also represents that the Plan's rate of return will be improved if it is allowed to sell the Property and change its investment mix.

6. Dr. Nadler proposes to buy the Property from the Plan for its appraised value of $100,000 in cash. The Plan will pay no expenses, commissions, or fees in connection with the sale.

7. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) The transaction will be one time transaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent, qualified appraiser; and (c)

Dr. Nadler, as the Plan trustee, has determined that is in the Plan's best interest to sell the Property because of its cash drain and projected slow growth in value.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

Columbia Mortgage Company-Orbanco Real Estate Services Co. (ORESCO) Located in Portland, Oregon

[Application No. D-5964]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) as follows:

(I) The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed sale, exchange or transfer between ORESCO and certain employee benefit plans (the Plans) of participation interests (the Participation Interests) in individual multi-family residential and commercial mortgage loans (the Mortgages), or in pools of Mortgages which are originated by ORESCO provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of ORESCO who has authority to manage or control those Plan assets being invested in the Participation Interests;

B. The terms of all transactions between the Plans and ORESCO involving the Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to ORESCO with regard to such sale, exchange or transfer;

D. The decision to invest in a Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of ORESCO, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. ORESCO shall maintain for the duration of any Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider of the Act) described in section 3(14) (F), (G), (H), or (I) solely because of the ownership of a Participation Interest by such Plan.

Summary of Facts and Representations

1. ORESCO, formerly known as Columbia Mortgage Company, is a wholly owned subsidiary of Orbanco Financial Services Corp., a diversified bank holding company with automonous subsidiaries engaged in mortgage loans, commercial banking, commercial finance, and computer services. The fair market value of ORESCO's assets as of December 31, 1984 was $11,051,322. Its principal business is originating, selling, and servicing loans secured by first mortgages on improved real estate. ORESCO presently services approximately $368,000,000 in residential and commercial loans in Oregon, Washington, Idaho and Hawaii. Institutional investors using ORESCO's services include FNMA, GNMA, insurance companies, savings and loan institutions and public employee retirement funds. In addition, ORESCO services loans it has sold to certain private Plans. However, it has not engaged in subsequent loan sales or other prohibited transactions with these Plans.

ORESCO proposes to offer for sale Participation Interests in individual Mortgages or pools of Mortgages to the Plans and other institutional investors. The Mortgages will consist of multi-family residential or commercial permanent first mortgage loans originated by ORESCO in the ordinary course of its business.

2. ORESCO will sell a Plan a Participation Interest in an individual or pooled mortgage but it will not retain any interest in the Mortgage. ORESCO had no pre-existing relationships with any of the Plans which initially purchased the Participation Interests. However, by virtue of ORESCO servicing the Participation Interests, it became a party in interest with respect to the Plans so that any subsequent sale of a Participation Interest would constitute a prohibited transaction under section 406(a) of the Act. The applicant represents that the transactions will not involve a conflict of interest or present a situation where advantage can be taken of the Plans or the trustees of the Plans because all decisions regarding investment in the Participation Interests will be made by Plan fiduciaries who are independent of ORSECO.[1]

3. ORESCO typically initiates a Mortgage by reviewing a loan application from a potential mortagor which includes a mortgage proposal consisting of a summary of facts relating to the loan, setting forth such matters as the terms of the Mortgage, a description of the property securing the Mortage and an appraisal of the property from a qualified appraiser. ORESCO has imposed strict underwriting guidelines concerning the applicant's credit worthiness and the value of the collateral which must be satisfied before any decision is made to fund a Mortgage. Once assembled and verified, a mortgage package is presented to ORESCO's senior loan committee which determines whether the Mortgage is a good risk and should be approved. Thereafter, the mortgage package is presented to investors, typically savings and loan institutions, insurance companies, pension plans,[2] or other

[1] While stating affirmatively that ORESCO will not make investment decisions regarding the Participation Interests, the exemption application is silent about who will make such decisions. In some situations, it is possible that investment decisions will be made by trustees of the Plans. The Department notes that where the construction on the Property which secures the Mortgage is by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the Mortgage, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction will not be covered by this exemption. See also condition D of Part I of this exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[2] The Department notes that the application does not address the separate prohibited transactions under section 406(a)(1)(B) of the Act which would exist should any of the Mortgages originated by ORESCO and subsequently purchased by the Plans involve loans to any party in interest with respect to the purchasing Plan. Accordingly, no relief is afforded by this proposed exemption for such transactions. However, ORESCO will request from the date of the grant of this exemption potential borrowers to list in their loan applications their relationship to any pension plan in an effort to assist a potential purchasing plan in determining whether the borrower may be a party in interest.

financial institutions or federal agencies such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

4. Generally, ORESCO will lend up to 90 percent of the cost of a new project and 75 to 85 percent of the fair market value of completed projects. Commercial loan insurance will be obtained on loans exceeding these guidelines.

Although ORESCO has made no subsequent sales of the Participation Interests to the Plans, it has sold and serviced loans for other institutional investors. These loans have had excellent payment histories. Any necessary foreclosures have been adequately secured and no investors have experienced any losses.

5. The Plans will pay no investment management, investment advisory, sales commission or similar fee to ORESCO with respect to the acquisition or sale of the Participation Interests. The applicant represents that the Plans will pay no more for the Participation Interests than have been or would be paid by an unrelated party in an arms' length transaction.

6. All transactions relating to the Participation Interests will be controlled by a servicing agreement (the Servicing Agreement) which ORESCO represents is typical of bank servicing agreements.[3] The Servicing Agreement, which will be submitted to Plan fiduciaries for their review prior to the Plan's purchase of a Participation Interest, requires ORESCO to represent and warrant the following for each Participation Interest: (a) That the Mortgage is a valid first lien on fee simple absolute title to the mortgaged property; (b) that an American Land Title Association form of mortgagee's title insurance policy for the benefit of the Plan to the extent of the Plan's interest has been obtained; (c) that all revelant security agreements are valid, enforceable and perfected; (d) that ORESCO has inspected the mortgaged property and all representations as to its value and quality are true; (e) that insurance policies providing coverage for fire and other hazards are maintained on the mortgaged property to the extent of the Plan's Participation Interest; (f) that with respect to those Mortgages which are insured in part by commercial mortgage insurance, ORESCO agrees to keep such insurance in effect until mutually terminated by the Plan and ORESCO.

7. ORESCO's duties under the Servicing Agreement include the following: (a) to collect all payments under the Participation Interests as they become due; (b) to deposit all funds received on behalf of each Participation Interest in a separate account on behalf of the relevant Plan and to apply all sums collected by it on account of each such Participation Interest for principal and interest, taxes, assessements, other public charges, repairs and maintenance and hazard, fire and mortgage insurance premiums; (c) to submit to the relevant Plan at least annually an audit of the balances in each Plan's account together with a certificate providing that all disbursements were made for proper purposes and to make any Participation Interest records available for inspection by the relevant Plan; (d) to retain physical possession of the mortgage instruments and policies of insurance; (e) upon default on a Mortgage to give prompt notice of default to the Plan, to foreclose upon the Property, or purchase the mortgaged property at a foreclosure or trustee's sale and, if necessary, manage, maintain or dispose of the property so acquired.[4] However, decisions regarding foreclosure options and determinations as to property management are to be made by Plan fiduciaries independent of ORESCO.

8. ORESCO's compensation for servicing the Participation Interests will be agreed to by the Plans at the time each Participation Interest is accepted by the Plan. The applicant represents that ORESCO's servicing fee is determined on the same basis as are the fees charged investors other than the Plans who similarly invest in similar Participation Interests. Also, ORESCO's fee is consistent with servicing fees charged throughout the United States for similar services.

9. It is understood by the parties to the Servicing Agreement that the sale of a Participation Interest shall be without recourse. However, the Servicing Agreement will provide that in the event of a default on any Mortgage, ORESCO may repurchase from the Plan a Participation Interest by paying an amount equal to the unpaid balance of the Participation Interest plus interest to the date of such repurchase.

10. ORESCO represents that as a result of being a party in interest with respect to a Plan by virtue of servicing the Participation Interests, it would be prohibited from engaging in other commerical transactions with a Plan, such as the making of loans, which have nothing to do with the Participation Interests held by the Plan. The Department has considered ORESCO's request for relief for such transactions and has decided that because the servicing relationship is established as a necessary result of the purchase of a Participation Interest by a Plan, susequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

11. In summary, the applicant represents that the transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) the transactions, which will be between the Plans and ORESCO, are transactions typically made in the regular course of ORESCO's business; (b) all Plan decisions to invest in the Participation Interests will be made by Plan fiduciaries who are independent of ORESCO; (c) the Plans will pay no more for the Participation Interests than would be paid by an unrelated party in an arm's length transaction; (d) ORESCO's servicing fee will be similar to fees charged other investors in Participation Interests an it will be consistent with that charged in the open market; (e) the Mortgages will be first liens on commerical and multi-family residential property; (f) the warranties and representations made by ORESCO regarding the Participation Interests are standard for these type transactions; and (g) the Participation Interests which have been sold by ORESCO to other institutional investors have had a long-term history of successful repayment.

Notice to Interested Persons

In addition to the notice requirement outlined in the general provisions of this notice, ORESCO agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom ORESCO has sold Participation Interests or may contract in the future to provide services as described herein. Such notification will be provided prior to ORESCO entering into a contract to provide such services.

[3] No exemption from section 406 of the Act is being granted for transactions pursuant to the Servicing Agreement beyond that which is provided by the statutory exemption pursuant to section 408(b)(2) of the Act.

[4] The Department notes that the application des not address the separate prohibited transaction under section 406(a)(1)(A) of the Act which would exist where upon foreclosure the Plan acquires title to real property and such property or a portion thereof is leased to a party in interest with respect to a Plan. Moreover, if the party in interest under such lease is an employer of employees covered by the Plan, the acquisition of real property by the Plan would result in the acquisition of employer real property which may violate the provisions of section 406(a)(2) and 407 of the Act. Accordingly, no relief is afforded by this proposed exemption for such transactions.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of April 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-10856 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Executive Committee of the Advisory Committee on Preservation will meet on Wednesday, May 22, 1985, from 9:00 a.m. to 4:00 p.m. in Room 105 of the National Archives Building, Washington, DC.

The agenda for the meeting will be:

1. Committee procedures.
2. Efficacy of shrink-packaging and encapsulation.

The meeting will be open to the public. For further information, call Alan Calmes on 202-523-3616.

Dated: April 22, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-10832 Filed 5-2-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Interdisciplinary Arts Activities Section) to the National Council on the Arts will be held on May 22-24, 1985 from 9:00 am-5:30 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on May 22, 1985 from 9:00-10:30 am to discuss introductions and program review.

The remaining sessions of this meeting on May 22, 1985 from 10:30-5:00 pm and on May 23-24, 1985 from 9:00 am-5:30 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 30, 1985.

[FR Doc. 85-10776 Filed 5-2-85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Section) to the National Council on the Arts will be held on May 21-23, 1985, from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on May 22, 1985 from 2:00-4:30 pm to discuss policy and guidelines.

The remaining sessions of this meeting on May 21, 1985 from 9:00 am-5:00 pm, on May 22, 1985 from 9:00 am-2:00 pm and 4:30-5:30 pm, and on May 23, 1985 from 9:00 am-5:30 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and

9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

April 30, 1985.

[FR Doc. 85-10778 Filed 5-2-85; 8:45 am]

BILLING CODE 7537-01-M

Office for Partnership Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Panel (Locals Test Program Section) to the National Council on the Arts will be held on May 20, 1985 from 9:00 am—5:00 pm and on May 21, 1985 from 9:00 am—2:00 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on May 20, 1985 from 9:00 am—5:00 pm to discuss reports on Round I and II, policy discussion including a category of support "Services to the Field" and guidelines.

The remaining sessions of this meeting on May 21, 1985 from 9:00 am—2:00 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 30, 1985.

[FR Doc. 85-10777 Filed 5-2-85; 8:45 am]

BILLING CODE 7537-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21992; File No. SR-MCC-85-3]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corporation Relating to MCC's Correspondent Delivery and Collection Service (CDCS)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1985, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. Amendments to the proposal, filed on April 10, 1985 and April 22, 1985, are reflected in Items I, II and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the MST Administrative Bulletin regarding CDCS. The Bulletin sets forth MCC's policy regarding the recovery from Participants using CDCS of interests costs incurred in deliveries to non-Participants who fail to pay MCC on day of delivery.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MCC is amending its procedures governing its Correspondent Delivery and Collection Service (CDCS). By the Administrative Bulletin attached to the filing as Exhibit A, MCC is clarifying its present policy of recovering interest costs arising where MCC experiences a delay in receiving payment from a non-Participant to whom securities have been delivered on a Participant's behalf.

Under CDCS, MCC may deliver a Participant's securities to a non-Participant, against payment. In accordance with industry custom, MCC will deliver securities to non-Participants, and credit Participants' accounts, prior to receiving payment from the non-Participants. This industry custom is the acceptance of delivered securities subject to verification and count.

However, in some instances, non-Participants have failed to pay MCC on the day of delivery. Since MCC has already credited Participants, this payment delay results in an interest expense to MCC: MCC is exposed from the time it credits Participants to the time it actually receives payment. This interest expense is not covered by the nominal fee MCC charges its Participants for processing a CDCS transaction, and must necessarily be recovered from Participants' positions.

MCC wishes to continue offering the CDCS service, while insuring that lost interest expense will be minimized. As a result, MCC is clarifying its policy of recovering interest expense in the Administrative Bulletin. For CDCS deliveries less than $50,000, MCC will continue to credit delivering Participants on day of delivery to non-Participants prior to receiving payment. If the receiving party is a non-Participant who fails to pay MCC on the day of delivery, and MCC incurs an interest expense until payment is later received, MCC will pass on this interest expense to the Participant initiating the CDCS movement. If the CDCS movement is $50,000 or more, MCC will not credit the delivering Participant until payment is received from the non-Participant.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it provides an efficient procedure for settling securities transactions and collecting funds, consistent with section 17A(a)(1) of the Act. Further, as required by section 17A(a)(3), the proposed rule change equitably allocates fees and expenses associated with this service among the Participants whose CDCS activities result in such expense.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 23, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10848 Filed 5-2-85; 8:45 am]

BILLING CODE 8010-10-M

[Release No. IC-14490; File No. 812-6042]

Collateralized Mortgage Securities Corporation; Notice of Application

Notice is hereby given that Collateralized Mortgage Securities Corporation ("Applicant"), Park Avenue Plaza, New York, New York, 10055, filed an application on February 7, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a complete statement of the information and representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, Applicant was organized for the limited purpose of acquiring, owning, holding and pledging mortgages and mortgage-backed securities ("Mortgage Collateral"), including GNMA Certificates, issuing and selling series of bonds secured by GNMA Certificates (the "GNMA Secured Bonds"), as well as series of bonds secured by GNMA Certificates and/or other Mortgage Collateral (the "Other Bonds"), and engaging in activities incidental thereto. Each series of GNMA Secured Bonds will be separately secured by collateral consisting of mortgage pass-through certificates ("GNMA Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"). The GNMA Certificates pledged to secure a series of GNMA Secured Bonds may or may not represent the entire beneficial interest in the related mortgage pools. Applicant states that the Mortgage Collateral securing the Other Bonds it proposes to issue will consist of mortgages and/or mortgage-backed securities which represent "interests in real estate" within the meaning of section 3(c)(5)(C) of the Act ("Whole Pool Collateral") in such aggregate principal amount as required to otherwise except Applicant from the definition of an investment company by reason of the provisions of that Section.

Applicant states that each series of Bonds will be separately secured by Mortgage Collateral and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each such series ("Indenture"). Each series of Bonds will be registered under the Securities Act of 1933, unless an appropriate exemption is available from such registration, and sold pursuant to a prospectus or private placement memorandum containing all material disclosures required by the terms of that Act. Indentures for each public offering will be qualified under the provisions of the Trust Indenture Act of 1939.

Each series of GNMA Secured Bonds will be structured so that it will receive one of the two highest ratings from one or more nationally recognized rating agencies. The only Mortgage Collateral for each series of GNMA Secured Bonds will be GNMA Certificates, which will be assigned to and held by the Trustee. Until such GNMA Secured Bonds are paid, Applicant will not be permitted to add any GNMA Certificates to, or substitute other GNMA Certificates for, the original GNMA Certificates pledged to secure a series of GNMA Secured Bonds. At the time of issuance of a series of GNMA Secured Bonds, the cash flow guaranteed by GNMA on the GNMA Certificates, plus the reinvestment earnings thereon at the assumed reinvestment rate specified in the related supplemental indenture, together with the other collateral pledged to secure such bonds, will be sufficient to pay the principal of and interest on the GNMA Secured Bonds when due to bondholders. It is anticipated that the outstanding principal amount of the GNMA Certificates securing a series of GNMA Secured Bonds will be at least equal to the unpaid principal amount of such Bonds on their issue date.

In the event that principal payments on the Bonds are made other than on a monthly basis, the Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate which will provide sufficient income to pay interest on the Bonds. The Bonds may also provide for redemptions at the options of bondholders, but only to the extent that payments received on the Mortgage Collateral are available for such redemptions. Under no circumstances will bondholders be entitled to compel the liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity. The assumed reinvestment rate of interest for a series of Bonds will be no greater than the maximum rate permitted by the nationally recognized statistical rating agency or agencies rating such series of Bonds as a condition to its or their ratings.

The other collateral pledged to secure the Bonds, including the GNMA Secured Bonds, will include a separate collection account ("Collection Account") for each series of Bonds and may include a debt

service reserve fund ("Debt Service Reserve Fund") or other reserve fund ("Reserve Fund"), and payments made under any minimum principal payment agreement. A Debt Service Reserve Fund would consist of cash, a letter of credit or eligible investments in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall relating to any GNMA Certificates which were backed by graduated payment mortgage loans. Any other Reserve Fund would provide additional security for the related series and might be funded by a deposit of cash, a letter of credit, or eligible investments or by the application over time of all or a portion of the excess cash flow relating to the series. The Collection Account for each series will be established by the Trustee for receipt of all monthly principal and interest distributions on the GNMA Certificates securing the series, payments from any Debt Service Reserve Fund or other Reserve Fund, reinvesting income thereon and any initial deposit required by the prospectus supplement.

Amounts in the Collection Account will be invested by the Trustee in eligible investments, which include, among other investments, obligations of the United States or any agency thereof backed by the full faith and credit of the United States, federal funds, certificates of deposit, time deposits and bankers' acceptances sold by eligible commercial banks, other demand or time deposits or certificates of deposit fully insured by the FDIC or the FSLIC and certain repurchase agreements of United States government securities. The Trustee will hold any such securities which are subject to repurchase agreements. Such Collection Account investment will mature on or prior to the next payment date for the series, and will thus be available to make required payments on the Bonds of such series.

Applicant submits that (1) its acquisition of the GNMA Certificates and issuance of GNMA Secured Bonds, and its acquisition of Mortgage Collateral and issuance of Other Bonds secured by Whole Pool Collateral, are not the types of activities intended to be regulated by athe Act, (2) the safeguards afforded to purchasers of the GNMA Secured Bonds fully protect investors in a manner comparable to those protections provided to purchasers of the GNMA-collateralized bonds issued in reliance upon no-action letters under section 3(c)(5)(C) of the Act or exemptions granted under section 6(c) of the Act, and (3) its activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation.

Applicant represents that to the extent practicable, it will attempt to purchase newly-issued GNMA Certificates as collateral for each series of GNMA Secured Bonds. There has, however, developed an extensive secondary market, aggregating in the billions of dollars, for mortgage-backed securities guaranteed by GNMA. Applicant believes it must retain the flexibility to purchase GNMA Certificates in the secondary market to the extent that such instruments are required to collateralize series of GNMA Secured Bonds Applicant proposes to sell.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: April 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10849 Filed 5-2-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

April 26, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

General Homes Corporation
Common Stock, $.01 Par Value (File No. 7-8396)
American President Companies
Common Stock, $.01 Par Value (File No. 7-8397)
First Nationwide Financial Corporation
Common Stock, $.10 Par Value (File No. 7-8398)
BDM International
Class A Common Stock, 2½ Par Value (File No. 7-8399)
Avalon Corporation
Common Stock, $1.00 Par Value (File No. 7-8400)
Pulte Home Corporation (Michigan)
$.10 Par Value, (File No. 7-8401)
CRI Insured Mortgage Investment Limited Partnership Beneficial Assignments of Limited Partnership Interest, (File No. 7-8402)
HealthAmerica Corporation
Common Stock, $.01 Par Value, (File No. 7-8403)
Sierra Health Services
Common Stock, $.01 Par Value, (File No. 7-8404)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 17, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10851 Filed 5-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14491; File No. 812-6060]

Salomon Capital Access Corporation; Notice of Application

Notice is hereby given that Salomon Capital Access Corporation ("Applicant"), RepublicBank Dallas

Tower, Suite 4110, Dallas, Texas 75201, filed an application on February 13, 1985, and an amendment thereto on April 26, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of the provisions referred to herein and in the application.

According to the application, Applicant is wholly owned by Salomon Capital Access for Savings Institutions Inc. which is an indirect wholly-owned subsidiary of Phibro-Salomon Inc. The Applicant was organized for the limited purposes of investing in mortgage loans and mortgage-backed securities and providing, through the issuance of mortgage backed securities ("Bonds"), a source of funds to depository institutions that are engaged in real estate and mortgage finance and whose accounts are insured by the Federal Savings and Loan Insurance Corporation. Under its Articles of Incorporation, the Applicant is authorized only to to issue and deliver Bonds, to make loans out of the proceeds therefrom pursuant to funding agreements, to purchase or to obtain pledges of certain eligible mortgage-related collateral to secure the Bonds and to engage in activities incidental to and necessary to accomplish the foregoing. The Applicant is not otherwise authorized to trade or deal in securities or engage in any other activity.

Applicant proposes to issue one or more series of Bonds ("Series") rated in the highest bond rating category by at least two nationally recognized statistical rating organizations. Each Series will be secured by collateral pledged to secure only that Series ("Bond Collateral"). Each Series will consist of one or more classes of Bonds and will be issued pursuant to an indenture between the Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each Series ("Indenture").

Applicant states that the Bond Collateral will consist primarily of interests in some combination of the following (collectively, "Mortgage Collateral"): (a) Funding agreements together with related promissory notes evidencing loans made by the Applicant to limited purpose financial subsidiaries ("Financial Affiliates") of depository institutions, which notes are secured by Mortgage Certificates and/or Pledged Loans (both as defined below) and (b) fully modified pass-through certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, mortgage pass-through securities guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association, or mortgage participation certificates guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corporation (collectively, "Guaranteed Mortgage Certificates"), (c) other pass-through certificates evidencing an undivided interest in pools of mortgage loans secured by first liens on single family residences (together with Guaranteed Mortgage Certificates "Mortgage Certificates") or (d) mortgage loans secured by first liens on single family (one- to four-family) residences ("Pledged Loans"), together with payments that may become due under certain related mortgage insurance and hazard insurance policies. Bond Collateral may also include certain reserve funds and other credit supports such as various types of insurance policies.

Applicant represents that the Mortgage Collateral for each Series of Bonds will have a scheduled cash flow sufficient, together with reinvestment income thereon at assumed rates acceptable to the rating agencies that initially rate the Bonds, to make payment on the Bonds of such series in accordance with their terms. The Bond Collateral securing each series of Bonds, including the Mortgage Certificates and/or Pledged Loans securing the Notes, will be held by the Trustee.

Substantially all the Mortgage Collateral, and in no event less than 80% in principal amount at the time of issuance of the Bonds, will be pledged to the Applicant by Financial Affiliates. Pursuant to funding agreements between the Applicant and each Financial Affiliate participating in the issuance of a Series of Bonds ("Funding Agreements"), (i) the Applicant will make a loan out of the net proceeds of the sale of such Bond Series to each participating Financial Affiliate, such loan to be evidenced by one or more promissory notes ("Notes"); (ii) each such Financial Affiliate will pledge Mortgage Collateral to the Applicant as security for its loan; and (iii) each such Financial Affiliate will be obligated to repay its loan by causing payments on the Mortgage Collateral that secures its Notes to be made directly to the Trustee. The Applicant will in turn pledge its entire right, title and interest in such Funding Agreements (except as provided in the Indenture), and in the related Notes and Mortgage Collateral to the Trustee as security for such Series of Bonds. Each Financial Affiliate will distribute its loan proceeds to its related depository institution, which in turn is expected to use some or all of such proceeds to invest in mortgage loans and mortgage related securities. Under certain limited circumstances, the Applicant will have the right to sell Notes securing a Series of Bonds, the Proceeds of any such sale to be applied to the payment of such Series of Bonds.

Each Financial Affiliate will have the limited right to substitute Mortgage Collateral ("Substitute Collateral") in place of up to a specified principal amount of Mortgage Collateral initially pledged as security for its Notes so long as such Substitute Collateral will have payment terms similar to, and in no event cash flows less than, those of the Mortgage Collateral it replaces. After giving effect to any such substitution, the scheduled cash flows on the Mortgage Collateral, together with the Reinvestment Income thereon, will be sufficient, according to the application, to make payments on the Bonds in accordance with their terms and to retire each class of Bonds not later than its stated maturity. In no event will a Financial Affiliate be permitted to substitute Private Mortgage Certificates or Pledged Loans in place of Guaranteed Mortgage Certificates. Applicant represents that it will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected by such substitution. The rights of substitution will be within the sole discretion of each Financial Affiliate. The Applicant will not exercise control over any Financial Affiliate generally or with respect to the timing or substance of any such substitution. The Applicant will not have the right to substitute Mortgage Collateral in place of any Mortgage Collateral owned by it and initially pledged to secure any Bond Series.

The Bonds will not be redeemable at the option of the Bondholders but may be subject to redemption by the Applicant under circumstances set forth in the prospectus supplement for each Series. Unless an event of default on a Series has occurred and is continuing, Bondholders will not be entitled to accelerate payment of the Bonds of that Series or otherwise to compel the liquidation of the related Bond Collateral. There will be no defeasance provisions for the Bonds.

Each Series will be sold to institutional or retail investors through one or more investment banking firms, which may include affiliates of the Applicant. It is contemplated that each Series will be registered under the Securities Act of 1933, unless an appropriate exemption is available from such registration, and sold pursuant to a prospectus or private placement memorandum all material disclosures requires by that Act. Indentures for each public offering will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available.

Applicant further submits that there are strong public policy reasons for granting the Applicant an exemptive order. The loan proceeds received by each Financial Affiliate will be distributed to its related depositary institution, each of which is subject to a comprehensive regulatory scheme designed to encourage the investment of substantially all of its assets in mortgage loans and mortgage related securities. Consequently, the Applicant's activities will supply capital to depository institutions engaged in the real estate and mortgage markets and thereby facilitate the financing of housing, filling a critical national need. According to Applicant, a number of depository institutions have been able to raise funds by issuing mortgage related securities directly or through subsidiaries in reliance on section 3(c)(5)(C) of the Act. Applicant submits that there is no public policy reason to require it to register under the Act merely because it proposes to make it possible for a number of smaller depository institutions to achieve the same economies of scale in their financing efforts as have larger depository institutions. It is asserted that the issuance of the Bonds by the Applicant will permit regular bond issuances in principal amounts large enough to ensure economically efficient bond execution despite fluctuations in the volume of Mortgage Certificates and/or Pledged Loans available from depository institutions. As a result, smaller depository institutions can command higher bond proceeds regardless of when they originate their mortgage loans or the size of their mortgage loan portfolios.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon requests or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: April 29, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-10852 Filed 5-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23674; 70-6975]

Conesville Coal Preparation Company et al.; Notice of Proposed Transactions Regarding Leased Coal Mining Equipment and Other Equipment by Subsidiaries

April 26, 1985.

Conesville Coal Preparation Company ("CCPC"), Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo"), Windsor Power House Coal Company ("Windsor"), and Simco, Inc. ("Simco"), 1 Riverside Plaza, Columbus, Ohio 43215, which are indirect subsidiaries of American Electric Power Company, Inc. ("AEP"), a registered holding company, and which are sometimes referred to collectively herein as the "Applicants," have filed with this Commission a post-effective amendment to the application in this proceeding pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

COCCo, SOCCo, and Windsor are wholly owned, coal mining subsidiaries of Ohio Power Company ("Ohio Power"); CCPC, a coal preparation company, and Simco, a coal mining company, are wholly owned subsidiaries of Columbus and Southern Ohio Electric Company ("C&SOE"); and Ohio Power and C&SOE are electric utility subsidiaries of AEP. Pursuant to an order in this proceeding dated May 25, 1984, (HCAR No. 23313), all of the Applicants, except CCPC, have entered into substantially identical Master Leasing Agreements with BLC Corporation, an affiliate of Bankers Leasing Corporation of San Mateo, California ("BLC") under which the Applicants, except for CCPC, are currently leasing new and used office furniture and equipment, communications equipment, automotive equipment, and certain mining equipment. The Applicants, except for CCPC, have been authorized to lease up to an aggregate of $10 million of mining equipment under these leases.

CCPC now proposes to enter into a Master Leasing Agreement with BLC which is substantially identical in form to those Master Leasing Agreements referred to above. Each Applicant also proposes to enter into an amendment to these Master Leasing Agreements under which Master Leasing Agreements, as so amended, BLC will commit to lease to the Applicants additional mining equipment with a total aggregate acquisition cost not exceeding $20,000,000 and certain other equipment. Rental payments will be paid monthly in an amount sufficient to amortize the Acquisition Cost of the equipment in equal amounts on a straight-line basis plus a monthly interest factor on the unamortized Acquisition Cost, as described in the application. After the expiration of the Amortization Period of any equipment, the lessee may purchase such equipment for $1.00.

The amended application and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 20, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as now amended or as it may further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-10850 Filed 5-2-85; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments; Proposed Modification of Duty-Free Treatment of Certain Hearing Aids Pursuant to Section 166 of Educational, Scientific, and Cultural Materials Importation Act of 1982

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review of applications under section 166 of the Educational, Scientific, and Cultural Materials Importation Act of 1982 (96 Stat. 2348) for the narrowing of the scope of, or the placing of conditions upon, the duty-free treatment of conventional (non-custom) hearing aids now provided for in item 960.15 of the Tariff Schedules of the United States. This review is initiated persuant to applications from Beltone Electronics Corporation and Qualitone Corporation, which state that the proportion of the U.S. market supplied by imported conventional hearing aids has increased considerably over the past five years. The application alleges that domestic manufacturers have been damaged by the duty-free treatment, without identifiable benefit to the hearing handicaped.

Comments submitted pursuant to this notice shall contain the following information:

1. The name of the person submitting the comments, the person, firm or asociation represented by that person, and a brief description of interests affected by the application;

2. An identification of the product or products of interest to the persons submitting the comments, both by description and, if relevant, by item numbers of the Tariff Schedules of the United States; and

3. A description of any action desired, together with a statement of the reasons therefor and supporting information.

Interested parties are requested to provide written comments in twenty copies to the Secretary, Trade Policy Staff Committee, Room 500, 600 17th Street, NW., Washington, D.C. 20506 not later than June 29, 1985. A public hearing on the proposed modification will not be scheduled unless specifically requested by an interested party no later than May 30, 1985.

Information submitted in connection with the proposed modification will be subject to public inspection by appointment, except for information granted "business confidential" status. Parties submitting briefs or statement containing business confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that the confidential materials are included. Non-confidential summaries of all confidential materials must be submitted in twenty copies at the same time that the confidential submissions are filed.

For further information call Sandra J. Kristoff at (202) 395-3063.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-10563 Filed 5-2-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Academy of Sciences Committee on Airline Cabin Air Quality; Public Meeting

The National Research Council (NRC) is conducting a study at the request of Federal Aviation Administration into certain safety features and the quality of the air inside airline cabins. A public meeting on the subject will take place on June 12-13, 1985, at the National Academy of Sciences, located at 2101 Constitution Avenue, NW., Auditorium, Washington, D.C. 20418.

The NRC committee is seeking scientific data and views from occupational, industrial, and other interest groups on health and safety aspects of the airline cabin environment, including the amount of fresh air per occupant, humidification, availability of emergency breathing equipment, capabilities for detecting and extinguishing fires and removing smoke and toxic fumes, pressurization, safety procedures, and passenger information. This information will assist the committee in assessing current cabin air quality for the crew and passengers and in formulating recommendations on legislative, regulatory, and industry actions to promote health and safety.

The meeting will take place at the National Academy of Sciences, 2100 C Street, NW., at 9:30 a.m. each day. Individuals wishing to speak or submit written material should notify Dr. Andrew M. Pope at (202) 334-2536. Deadline for written comments is May 31.

Issue in Washington, D.C., April 26, 1985.

Philip J. Akers,

Designated Officer.

[FR Doc. 85-10718 Filed 5-2-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 565]

Appointments of Individuals To Serve as Members of the Performance Review Board; Senior Executive Service

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that the appointment and changes in the membership of performance review boards be published in the **Federal Register.** Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the Bureau of Alcohol, Tobacco and Firearms (AFT) for the rating year beginning July 1, 1984, and ending June 30, 1985. This notice effects changes in the membership of the ATF Performance Review Board previously appointed May 10, 1984 (49 FR 21136).

Name and Title

Edward T. Stevenson—Deputy Assistant Secretary (Operations), Department of the Treasury

David D. Queen—Deputy Assistant Secretary (Enforcement), Department of the Treasury

John W. Mangels—Director, Office of Operations, Department of the Treasury

Henry C. DeSeguirant—Assistant Director of Personnel (Executive Manpower and Employment), Department of the Treasury

Marvin J. Dessler—Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

Chester C. Bryant—Comptroller, Bureau of Alcohol, Tobacco and Firearms

Phillip C. McGuire—Deputy Director, Bureau of Alcohol, Tobacco and Firearms

William T. Drake—Deputy Director, Bureau of Alcohol, Tobacco and Firearms

For further information contact: Daniel F. O'Leary, Personnel Division Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, (202-566-7321).

Signed: April 29, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-10805 Filed 5-2-85; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Office (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 29, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Transfer of Ownership Data-Portfolio Loan
3. VA Form 26–8792
4. On occasion
5. Individuals or households
6. 2,400 responses
7. 200 hours
8. Not applicable

[FR Doc. 85–10774 Filed 5–2–85; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on May 29, 1985, at 2:00 p.m., the Lincoln, Nebraska Regional Office Station Committee on Educational Allowances shall at Room Number 497 of the Robert V. Denney Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebraska conduct a hearing to determine whether approval should be reinstated for K&K Transportation Company of Omaha, Nebraska's Tractor-Trailer Driver Job Training Program as provided in 38 CFR 21.4624. Approval was withdrawn because of an alleged false certification by the employer. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: April 26, 1985.

James C. Smith,

Director, VA Regional Office Lincoln, Nebraska.

[FR Doc. 85–10764 Filed 5–2–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 86
Friday, May 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 p.m. on Friday, April 26, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt:

(A) A resolution making funds available for the payment of insured deposits made in Peoples State Bank, Odebolt, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, April 26, 1985; and

(B) A resolution making funds available for the payment of insured deposits made in First Enterprise Bank, Oakland, California, which was closed by the Superintendent of Banks for the State of California on Friday, April 26, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10925 Filed 5-1-85; 3:09 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:17 p.m. on Saturday, April 27, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Peoples State Bank, Odebolt, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, April 26, 1985; (2) accept the bid for the transaction submitted by Peoples Savings Bank, Odebolt, Iowa, a newly-chartered State nonmember bank; (3) approve the applications of Peoples Savings Bank, Odebolt, Iowa, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Peoples State Bank, Odebolt, Iowa, and for consent to establish the sole branch of Peoples State Bank as a branch of Peoples Savings Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

At that same meeting, the Board also discussed procedures relating to the payment of insured deposits in First Enterprise Bank, Oakland, California, which was closed by the Superintendent of Banks for the State of California on Friday, April 26, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open on public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10926 Filed 5-1-85; 3:09 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, April 30, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Proposed amendments to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendments will govern insured banks' direct and indirect involvement in insurance, real estate, and guarantor or surety activities.

Memorandum and resolution re: Petition for public hearing on proposed amendments to Part 332.

Memorandum and resolution re: Issuance of a Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions which policy provides for disclosure and publication of all final orders issued by the Corporation under its statutory enforcement authority.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of

the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Application of United Penn Bank, Wilkes-Barre, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with Security Bank and Trust Company, Stroudsburg, Pennsylvania, and to establish the eleven offices of Security Bank and Trust Company as branches of the resultant bank.

Application of Victory Savings Bank, Columbia, South Carolina, for consent to relocate its main office from 919 Washington Street to 1545 Sumter Street, within Columbia, South Carolina.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of SouthTrust Bank of Coosa County, Goodwater, Alabama, an insured State nonmember bank, for consent to merge, under its charter and with the title "SouthTrust Bank of Central Alabama," with Alexander City Bank, Alexander City, Alabama, to establish the four offices of Alexander City Bank as branches of the resultant bank, and to redesignate the present main office of Alexander City Bank as the main office of the resultant bank.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: May 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10927 Filed 5-1-85: 3:09 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, April 30, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation: and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(9)(A)(i), and (c)(9)(B)).

Dated: May 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10928 Filed 5-1-85; 3:09 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 8, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendment to Regulation Z (Truth in Lending) regarding variable rate mortgage loan disclosures.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: April 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10857 Filed 4-30-85; 4:41 pm]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, May 8, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of a telephone system within the Federal Reserve System. (This item was originally announced for a closed meeting on May 6, 1985.)
2. Personnel actions (appintments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 425-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 30, 1985.

James MacAfee,

Associate Secretary of the Board.

[FR Doc. 85-10858 Filed 4-30-85; 8:41 pm]

BILLING CODE 6210-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting on April 17, 1985 include an additional item, which was closed to public observation: Conservatorship. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board unanimously voted to add this item to the closed agenda.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Special Assistance to Prevent Liquidation under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 11:00 a.m., in the Williamsburg Hilton, Williamsburg, Virginia.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-10890 Filed 5-1-85; 11:22 am]

BILLING CODE 7535-01-M

federal register

Friday
May 3, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5022	Oct. 5, 1984.
Connecticut: CT84–3016	June 8, 1984.
Georgia: GA85–3022	Apr. 19, 1985.
Iowa: IA82–4044	Aug. 27, 1982.
Louisiana: LA84–4055	Sept. 28, 1984.
Oregon: OR84–5020	June 22, 1984
Texas: TX85–4003	Feb. 22, 1985.
Wisconsin: WI84–5028	Dec. 21, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Virginia: VA81–3015 (VA85–3025)	Mar. 6, 1981.

Signed at Washington, D.C. this 26th day of April 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

MODIFICATIONS P. 1

DECISION NO. CA84-5022 - MOD. #8 (49 FR 39416 - October 5, 1984) Alameda, Alpine, Amador Counties, etc., California	Basic Hourly Rates	Fringe Benefits
OMIT:		
Carpenters:		
Area 5 (Residential)		
CHANGE:		
Carpenters:		
Area 5 (Residential):		
Carpenters	$19.67	$6.455
Hardwood Floor - layers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring Erectors; Saw Filers	19.82	6.455
Change Area Description to read: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties		

DECISION #IA82-4044-MOD.#2 (47 FR 38032-Aug. 27, 1982) WEBSTER COUNTY, IOWA		
CHANGE:		
Electricians	$13.77	$2.70+ 3.75%
Plumbers	15.74	3.15
Sheet Metal Workers	16.13	2.44

DECISION NO. CT84-3016 - MOD. #14 (49 FR 23980 - June 8, 1984) STATEWIDE, CONNECTICUT	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:		
BUILDING CONSTRUCTION:		
Area 4	17.60	3.25+a
HEAVY & HIGHWAY:		
Area 1	14.30	2.10
Area 2	14.57	2.58
Area 3	13.80	2.70
Area 4	14.30	2.35

DECISION #TX85-4003-MOD.#2 (50 FR 7544-Feb. 22, 1985) Bell, Coryell, and McLennan Counties, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers and Pipefitters:		
McLennan County:		
Over 45 miles from McLennan County Courthouse	$15.61	$1.54

MODIFICATIONS P. 2

DECISION NO. GA85-3022-MOD. #1 (50 FR 15692-April 19,1985) CLAYTON, DEKALB, & FULTON COUNTIES, GEORGIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS (FULTON & DE KALB COUNTIES, ONLY)	$15.40	21%
ADD:		
FOOTNOTES:		
a. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day		
b. Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service or 6% for employees with 6 months to 5 years of service.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NUMBER WI84-5028-(49 FR 49827-December 21, 1984) Ashland, Bayfield and Douglas Counties, Wisconsin	Basic Hourly Rates	Fringe Benefits
OMIT:		
Ashland County from decision as originally issued		

DECISION #LA84-4055-MOD.#3 (49 FR 38445-Sept. 28,1984) STATEWIDE, LOUISIANA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Line Construction (All Zones)		
Lineman	$12.10	$1.25+ 3.75%
Groundman	5.85	1.25+ 3.75%
Winch Truck Operator and Tractor Driver	8.72	1.25+ 3.75%
Hole Digger Operator	10.47	1.25+ 3.75%
Plumbers & Pipefitters:		
Zone 3		
When contract price of air conditioning is $150,000 or less or where the contract price of plumbing is less than $100,000.	11.35	1.65
When contract price of air conditioning is in excess of $150,000 or where the contract price of plumbing is in excess of $100,000.	13.35	1.65

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits
DECISION NO. OR84-5020 - Mod#11 (49 FR 25821 - June 22, 1984) Statewide Oregon		
CHANGE:		
PLUMBERS & PIPEFITTERS		
Area 1	$16.79	$4.31
Area 2	19.43	7.23
Area 3	17.75	3.97
Area 4		
Pipefitters	20.48	3.70
Plumbers:		
Where cost of plumbing is (labor+material) is greater than $50,000	20.48	3.70
Where cost of plumbing (labor+material) is less than $50,000	16.00	3.70
Area 5:		
Pipefitters	20.36	3.56
Plumbers:		
Where cost of plumbing (labor + material) is greater than $50,000	19.54	3.56
Where cost of plumbing (labor + material) is less than $50,000	16.00	2.06
Area 6:		
Where cost of plumbing & pipefitting (labor + material) is greater than $250,000	19.58	4.15
Where cost of plumbing & pipefitting (labor + material) is less than $250,000	17.50	4.15
Area 7	20.48	3.15
Area 8	20.48	3.15

[FR Doc. 85-10609 Filed 5-2-85; 8:45 am]

BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: VIRGINIA

LOCATION: Radford Army Ammunition Plant

DECISION NO.: VA85-3025

DATE: Date of Publication

Supersedes Decision No. VA81-3015 dated March 6, 1981 in 46 FR 15666

DESCRIPTION OF WORK: Building Construction, (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	11.93	1.86
BOILERMAKERS	15.80	3.115
BRICKLAYERS	10.00	.30
CARPENTERS	11.75	1.17
CEMENT MASONS	5.95	
ELECTRICIANS	13.60	1.00+ 3½%
IRONWORKERS:		
Structural & Reinforcing	13.25	2.73
LABORERS:		
Common Laborers	7.60	1.10
Mason Tenders	7.70	1.10
Mortarmen & Hod Carriers	7.85	1.10
Electric or Air Tool Opr.	7.85	1.10
Power Saw Operator	7.85	1.10
Motorized Buggy Operator	7.85	1.10
Pipelayers	7.85	1.10
Scaffold Builder	7.85	1.10
Vibrator Operator	7.85	1.10
Burners	8.20	1.10
Wagon Drill Operator	8.05	1.10
Caisson Worker-Topman	7.75	1.10
Caisson Worker-Bottom Man	8.25	1.10
LATHERS	11.75	1.17
LEAD BURNERS	17.35	2.76
MILLWRIGHTS	15.80	.97
PAINTERS		
Brush	10.15	1.15
Spray	10.55	1.15
PLUMBERS & PIPEFITTERS	13.65	2.97
SHEET METAL WORKERS	13.30	1.97
SPRINKLER FITTERS	11.79	2.13
POWER EQUIPMENT OPERATORS:		
Backhoe Operators	7.29	
Bulldozer Operators	12.27	1.03+a
Crane Operators	12.27	1.03+a
Oilers	4.88	
Rollers	9.18	1.03+a
Piledrivers	6.32	

WELDERS - Receive rate prescribed for craft to which welding is incidental.

Unlisted classifications for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR 5.5(a)(1)(ii)).

FOOTNOTE:

a. Paid Holidays: New Year's Day; Memorial Day; Labor Day; Independence Day; Thanksgiving Day and Christmas Day provided employee works the regularly scheduled work day before and after the holiday.

federal register

Friday
May 3, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Least Bell's Vireo

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the least Bell's vireo *(Vireo bellii pusillus)* to be an endangered species. This action is being taken because loss of habitat has greatly restricted the vireo's breeding range, and nest parasitism by the brown-headed cowbird (*Molothrus ater*) has greatly reduced nesting success within much of its remaining breeding habitat. The action is based on a petition received by the Service November 8, 1979. The least Bell's vireo largely occurs in southwestern California and northwestern Baja California, Mexico, an area including only a fraction of its former range. Critical habitat is included with this proposed rule. The proposed rule would provide protection to all populations of this bird. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 2, 1985. Public hearing requests must be received by June 17, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo is a small, gray, migratory songbird that feeds mainly on insects. The nest is usually low in thickets along willow-dominated riparian habitats. The normal clutch is four eggs. Eggs are incubated about 14 days, the young remain in the nest approximately 10–12 days. The least Bell's vireo arrives in its breeding habitat in mid-March to early April, and departs in late August and September for its wintering range, which is unknown but possibly includes southern Baja California.

Three other subspecies of Bell's vireo are recognized by the American Ornithologists' Union (1957): *Vireo bellii bellii* of the midwestern United States; *V. b. medius* of Texas; and *V. b. arizonae* of the southwestern United States and northern Mexico. While all are fairly similar in behavior and life history, all the subspecies are geographically separated on their breeding ranges (Hamilton, 1962). All Bell's vireos winter in Mexico.

Least Bell's vireo also occupies a more restricted nesting habitat than the other subspecies. It only inhabits dense, willow-dominated riparian habitats with lush understory vegetation, which is limited in its range to the immediate vicinity of water courses. The other subspecies may inhabit upland areas such as desert scrub. Thus, the limited habitat of the least Bell's vireo has rendered it more susceptible to major population reductions than the other subspecies.

No other passerine species in California has declined as dramatically as least Bell's vireo in historical times. It presently nests in small, remnant segments of willow-dominated riparian habitats and usually in populations of less than five breeding pairs. Once widespread and abundant throughout the Central Valley and other low-elevation riverine valleys, its historical breeding range extended from interior northern California (near Red Bluff, Tehama County) to northwestern Baja California, Mexico. In the last several decades it apparently has been totally extirpated from the Sacramento and San Joaquin Valleys, which once were at the center of its breeding range. Its current breeding range is restricted to two localities in the Salinas River Valley (Monterey and San Benito Counties), one locality along the Amargosa River (Inyo County), and numerous small populations in southern California south of the Tehachapi Mountains and in northwestern Baja California, Mexico.

The decline of least Bell's vireo has resulted from the widespread loss of riparian habitats and from brood parasitism by the brown-headed cowbird (*Molothrus ater*). Destruction of riparian woodlands may have rendered the least Bell's vireo incapable of withstanding the spectacular increase in brown-headed cowbirds that began in the 1930's (Grinnell and Miller, 1944; Gaines, 1974). The population decline of the vireo has been well documented. In 1973, no least Bell's vireo were found during an intensive search in formerly occupied habitat between Red Bluff, Tehama County, and Stockton, San Joaquin County (Gaines, 1974). In 1977, the USFWS reviewed the literature, examined museum material, and contacted numerous National Audubon Society chapters and knowledgeable field observers for information on the status of the least Bell's vireo.

Since then, several intensive vireo surveys of virtually all potential breeding habitat in California have been conducted (Gaines, 1977; Goldwasser, 1978; Goldwasser *et al.*, 1980; unpublished Fish and Wildlife Service data). In total, least Bell's vireos have been reported from only 45 of over 150 former localities surveyed in the U.S. from 1977 through 1983. Based on this information, the present breeding population status of least Bell's vireo per county in California is as follows:

County	Sites[a]	Pairs[b]
San Benito	1	1
Monterey	1	1
Inyo	1	2
San Bernardino	2	4
Santa Barbara	5	65
Ventura	2	12
Los Angeles	2	3
Riverside	[illegible]	39
San Diego	22	158
Total	45	285

[a] Number of different known breeding localities.
[b] Number of known breeding pairs.

On November 8, 1979, the Service accepted a petition from James M. Greaves to list the least Bell's vireo as endangered. A notice of acceptance of the petition and status review was published on February 6, 1980 (45 FR 8030). Based on the best scientific and commercial data available and other comments submitted during the status review, the Service found that the petitioned action was warranted on October 13, 1983 (49 FR 2485, January 20, 1984); however, action was precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Section 4(b)(3)(B)(iii) recycles such petitions resulting in a new finding deadline of October 13, 1984. A finding was made October 12, 1984, that this action was still warranted. Publication of that finding is expected shortly in the **Federal Register**. Publication of this proposed rule fulfills the deadline requirements imposed by section 4(b)(3)(B)(ii) of the Act.

The Service's response to the petition indicated a decision would be forthcoming subsequent to the evaluation of the latest breeding season data. Based on surveys conducted from 1977–1983, the Service estimates that approximately 300 breeding pairs of least Bell's vireos occur in California

(Fish and Wildlife Service, unpublished data). Preliminary surveys in Baja, California resulted in the location of a number of small populations, but suitable habitat is declining and not abundant. There are probably several hundred breeding pairs in Baja, California (Wilbur, 1980).

Information generated from the February 6, 1980, Notice of Status Review indicates that the Arizona Bell's vireo *(Vireo bellii arizonae)* is relatively common and widely distributed in a variety of habitats in Arizona, New Mexico, and Mexico. It is not restricted to early riparian successional stages as is *V. b. pusillus.* Although density estimates of *V.b. arizonae* along the Colorado River and adjacent areas are very low, the subspecies appears to be doing well throughout most of its geogrpahical range. In view of this, the Service does not believe it appropriate to recommend listing *V. b. arizonae* as endangered or threatened. Hence, this proposal is only for the least Bell's vireo *(V. b. pusillus).*

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; revision published October 1, 1984; 49 FR 38900–38912) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Vireo bellii pusillus are as follows:*

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The least Bell's vireo is largely restricted to dense, riparian habitat on its breeding range in California and northwestern Baja, California. Over 95 percent of historic riparian habitat has been lost throughout its former breeding range in the Central Valley of California, which may have accounted for 60–80% of the original population. Similar habitat losses have also occurred throughout its remaining stronghold in southern California, and habitats are currently declining in Baja, California as well. These widespread losses are mainly attributable to agricultural development, livestock grazing, urban development resulting from rapidly expanding human populations, and flood control and water development projects. Despite growing concern at all levels of government, substantial amounts of riparian habitat continue to be lost each year.

In summary, with about 65 percent of the remaining U.S. population threatened by at least four major construction projects (see factor E below, and the remaining 35 percent restricted to small, isolated habitats vulnerable to a variety of imminent threats, the least Bell's vireo is becoming increasingly threatened by extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* As with other song birds (passerines), least Bell's vireo has always been subject to nest predation. Unlike many other passerines, however, least Bell's vireos typically build their nests within 1 meter of the ground, where they are accessible to a variety of terrestrial predators that prey on eggs or young. Male vireos often sing while on the nest, thereby potentially increasing predation rates by attracting predators. With the introduction of house pets and feral cats and with the surrounding of remnant breeding habitats by encroaching urban development, abnormally high predator densities sometimes occur. In such situations, vireos undoubtedly face greater predation pressure than in larger, more natural habitats.

Recent multi-year studies by Greaves and Gray (unpublished reports) and Salata (1981, 1983) quantified predation rates at the Santa Ynez River and Santa Margarita River populations, respectively. They found that about 40 percent of all nesting attempts along the Santa Ynez River failed because of predation in recent years and that about 30 percent failed because of predation along the Santa Margarita River. Because these two sites represent the largest and most natural habitats remaining throughout the breeding range of least Bell's vireo, predation rates here may actually be lower than at smaller, more degraded breeding areas, especially those adjacent to residential areas.

D. *The inadequacy of existing regulatory mechanisms.* The least Bell's vireo is protected by both State of California and Federal laws. However, its habitat is not presently protected under those laws and is being incrementally destroyed and degraded. The Endangered Species Act offers additional possibilities for protection and management of this species' habitat.

E. *Other natural or manmade factors affecting its continued existence.* The effect of nest parasitism by the brown-headed cowbird has been greatly enhanced by manmade factors, which have increased the cowbird's habitat and range and decreased vireo habitat. The brown-headed cowbird was rare in California prior to 1900, but expanded tremendously in both range and numbers as irrigated agriculture and animal husbandry increased. Cowbirds parasitize the nests of other bird species (i.e., lay their eggs in the nests of other species), usually to the detriment of the host birds' own eggs or young. The first record of nest parasitism on the least Bell's vireo was in 1907, after which reported incidences increased rapidly. The cowbird is not dependent upon the vireo, as it can use a large number of other species as hosts for its eggs. Vireo nests appear to be among the easiest to locate and may be favored, if present.

Recent studies by Greaves and Gray (unpublished reports) and Salata (1981, 1983) have documented parasitism rates of between 20 and 47 percent from 1980–1982 along the Santa Ynez and Santa Margarita Rivers. Although the results of these studies do not indicate inordinately high parasitism rates compared to those of other common host species of brown-headed cowbirds, they do support the hypothesis that cowbird parasitism is significantly reducing least Bell's vireo reproductive success. Rates higher and lower than these would be expected at other breeding locales of least Bell's vireo, depending on an array of environmental factors. Considering the present widespread abundance of cowbirds throughout the historic range of the vireo, it appears that cowbird parasitism may greatly increase the probabilities of localized extinction to many of the small, vulnerable breeding populations. Further, depressed nesting productivity in the larger vireo breeding populations may limit the opportunities for population dispersal into unoccupied habitats or to augment smaller populations and may prevent founding pairs from successfully producing enough young to establish a new local population.

The widespread habitat losses described above have fragmented remaining breeding populations into small, disjunct, widely dispersed subpopulations. Of the 45 localities know to have supported breeding populations since 1977, 35 localities support 4 breeding pairs or less and only seven sites support more than 10 breeding pairs. The four largest remaining populations the Sweetwater River (34 pairs), Prado Basin-Santa Ana River (25 pairs), Santa Margarita River (69 pairs) and Santa Ynez River (60 pairs), represent about 65 percent of the extant U.S. population; each is imminently threatened by major urban development and water control projects planned in the near future (see list under

Critical Habitat section below). Many of the smaller subpopulations are similarly threatened by a variety of projects associated with the increasing human population throughout the range of the vireo.

Biogeographic theories suggest that the 41 small, remnant populations (accounting for about 35 percent of the total population) are more vulnerable to extirpation than several larger populations would be. In short, the smaller and more isolated a given local population, the more likely its chances of extinction. Given the high mortality rates of small migratory song birds and the significant threat posed by brown-headed cowbird parasitism (see above), localized extinctions represent a high probability even without natural or man-caused disasters to local habitats.

In many instances, there may be no other vireo populations close enough or there may not be sufficient population recruitment at other breeding areas to repopulate extirpated populations in later years. Also, if local habitats are destroyed (e.g., by construction projects such as occurred in southern California in 1978 and 1980), there may be no nearby habitat available to which vireos can disperse until destroyed riparian habitat regenerates. In this case, vireos may be forced into habitats less suitable to their nesting and foraging requirements, resulting in heightened mortality and reduced reproductive success.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the least Bell's vireo as endangered. Its greatly reduced distribution and small population size, loss of habitat, and substantial potential for habitat modification or loss from future development projects, indicate the species warrants endangered rather than threatened status. The bird is clearly in danger of becoming extinct throughout its range in the foreseeable future. The reasons for designating critical habitat are given in the following section. A decision to take no action would exclude the least Bell's vireo from needed protection available under the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the least Bell's vireo to include 10 areas of approximately 43,000 acres in Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino and San Diego Counties, California. These 10 areas contain about 75% of the known U.S. population. Critical habitat lies in the Prado Basin-Santa Ana River (Riverside County), and Santa Ynez River (Santa Barbara County), the Santa Clara River (Ventura and Los Angeles Counties), and Sweetwater River, Tijuana River, Coyote Creek, Jamul-Dulzura Creeks, San Luis Rey River, Santa Margarita River, and San Diego River (San Diego County).

Within these areas, floodplains with appurtenant riparian vegetation and associated upland habitats represent primary constituent elements. Vireos obtain all their survial needs (food, cover, nest sites, nestling and fledgling protection) within the riparian zone. As additional information is obtained, other critical habitat areas may be recommended. In winter, they leave the United States. Limitations, if any, on the wintering areas are unknown at present.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation.

Actions that could adversely affect critical habitat for this species include: (1) removal or destruction or riparian vegetation, (2) thinning of riparian growth, particularly near ground level, or (3) increases in human-associated disturbance. Specific actions that could cause the above are stream channelization, water impounding, water diversion, livestock grazing, development of intensive recreation, or conversion of riparian areas to residential, agricultural, or commercial use. Complete or major destruction of riparian vegetation would result in elimination of least Bell's vireos from the affected area, which would in turn further endanger the species throughout the remainder of its range and preclude opportunities for recovery. Thinning of riparian growth would cause abandonment of the area by least Bell's vireos by depriving them of nesting and foraging sites, or could result in lowered reproductive success by forcing them into less suitable habitat. Increases in recreation could cause actual destruction of nests, or could disrupt nesting activities and in turn could lead to nest abandonment, lowered egg hatching, or lowered fledging of young as a result of parental inattention or from increased predation.

A variety of Federal agencies have jurisdiction and responsibilities within the proposed critical habitat, and Section 7 consultations might be required in a number of instances. At this point, known proposals that could require consultation include: modification of Gibraltar Reservoir on the Santa Ynez River (Army Corps of Engineers [CE], U.S. Forest Service), a flood control project on the Santa Ana River (CE), a flood control project (CE) and a highway construction project (Federal Highway Administration) along the San Luis Rey River, urban development in wetlands at the Sweetwater Reservoir (CE), and a water project on the Santa Margarita River (Bureau of Reclamation, U.S. Marine Corps). These projects have the potential for significant adverse effects on the least Bell's vireo. Section 7 consultations usually result in modification, rather than curtailment of such projects.

The Bureau of Reclamation and U.S. Marine Corps that coordinated with the Service concerning possible projects which may be authorized for the Santa Margarita River at Camp Pendleton. An interagency agreement has been established to provide a mechanism leading to the timely implementation of a conservation strategy for native flora and wildlife species of Camp Pendleton and their habitats in the Santa Margarita floodplain and estuary. This agreement has identified the least Bell's vireo and other listed species as important public trust resources to be conserved.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating or not designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time of final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions, against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely in jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal involvement is expected in several water development projects (see list under Critical Habitat section above). Federal, involvement is expected in several water development projects in wetlands as outlined in the Critical Habitat section of this rule. An interagency agreement involving the conservation of the least Bell's vireo and its habitat has also been identified and explained in this section.

The proposed rule would also bring Sections 5 and 6 of the Endangered Species Act into effect with respect to the least Bell's vireo. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Fish and Wildlife Service would be able to grant funds (should they become available) to the State of California for management actions aiding the protection and recovery of the vireo.

Listing the least Bell's vireo as endangered would allow for development of a recovery plan for this bird. Such a plan would draw together the State and Federal agencies having responsibility for conservation of the vireo. The recovery plan would establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate in their conservation efforts. The plan would set recovery priorities and estimate the cost of various tasks necessary to accomplish them. It would assign appropriate functions to each agency and a time frame within which to complete them.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered fish or wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, or to enhance the propagation or surivial of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The least Bell's vireo is not used for economic purposes, is not a commercial species, and is not legally hunted, sold, or traded. Only a few requests for permits are anticipated. Therefore, there should be no significant impacts as a result of the above prohibitions. This bird is presently protected under 50 CFR Part 10 as a migratory bird.

If this species is listed under the Act, the Service will review it to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the least Bell's vireo;

(2) The location of any additional populations of least Bell's vireos and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this bird;

(4) Current or planned activities in the subject area and their possible impacts on the least Bell's vireo; and,

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on the least Bell's vireo will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Salata, L. 1983. Status of the least Bell's vireo on Camp Pendleton, California. U.S. Fish and Wildlife Service, Laguna Niguel, California. Unpublished report.

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Authors

The primary authors of this rule are Mr. Peter Sorensen and Dr. Kathleen E. Franzreb, Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, California 95625, and Mr. Sanford R. Wilbur, formerly of the Endangered Species Office, U.S. Fish and Wildlife Service, 500 Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species: Common name	Species: Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Birds							
*	*	*	*	*	*	*	
Vireo, least Bell's	*Vireo bellii pusillus*	U.S.A. (CA) Mexico....	Entire	E		17.95(b)	NA
*	*	*	*	*	*	*	

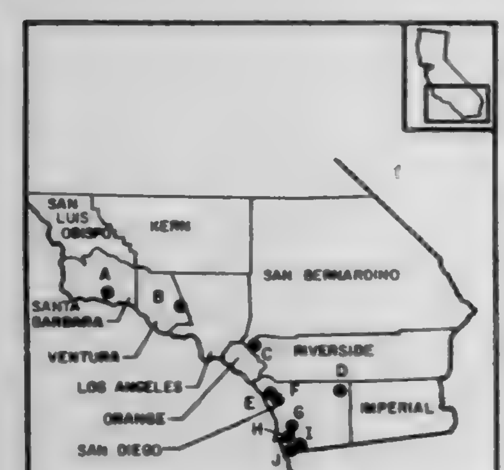
3. It is further proposed to amend § 17.95(b) by adding critical habitat of the least Bell's vireo in the same alphabetical sequence as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

* * * * *

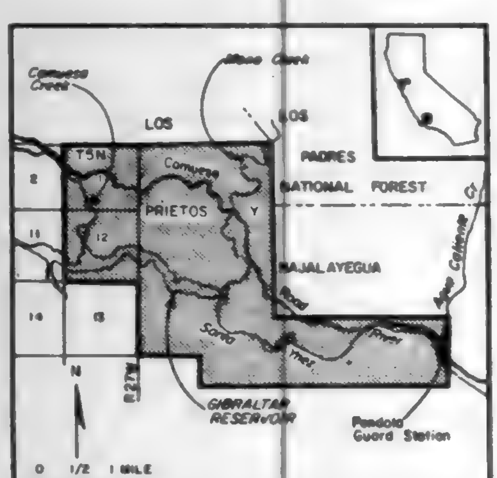
Least Bell's Vireo *(Vireo bellii pusillus)*
California *(San Bernardino Meridian)*



1. *Santa Ynez River, Santa Barbara County* (Index map location A).

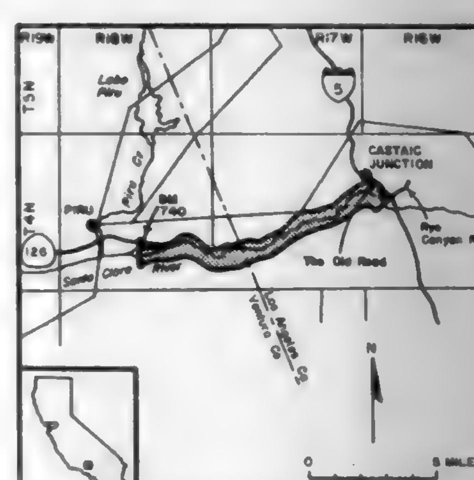
T5N, R27W: Sec. 1 and 12.

Partially surveyed T5N, R26W: approximately Sec. 5, 6, 7, 8, 16 S½, 17, 18 N½, 21 N½.



2. *Santa Clara River, Los Angeles and Ventura Counties* (Index map location B).

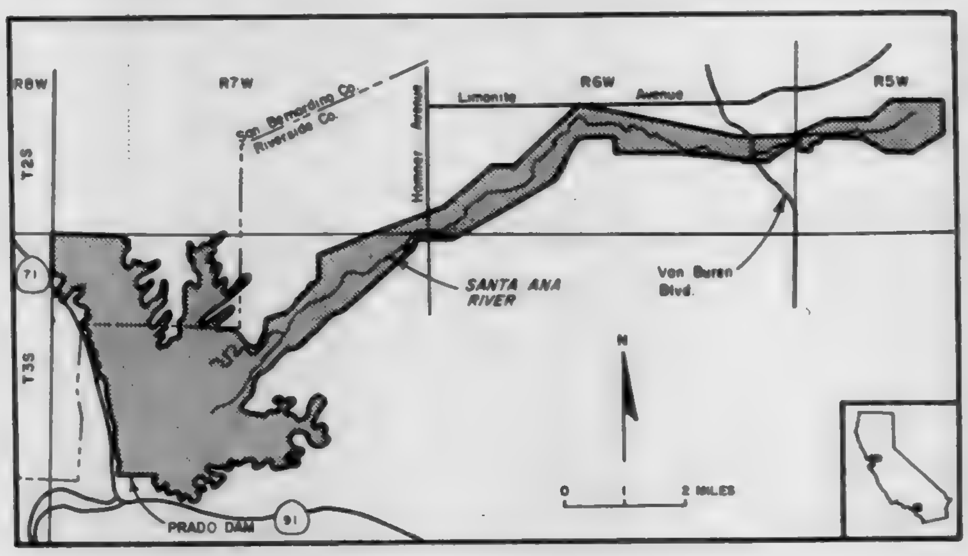
T4N, R18W, and T4N, R17W: all land within 3,500 feet perpendicularly and generally south or west of a line commencing at a point 100 yards west of BM740, a point about 2.3 miles east of the intersection of Main Street and State Highway 126 in Piru; thence east along State Highway 126 to its intersection with The Old Road at Castaic Junction; thence eastward and southward along The Old Road to its intersection with Rye Canyon Road.



3. *Prado Basin-Santa Ana River, Riverside and San Bernardino Counties* (Index map location C).

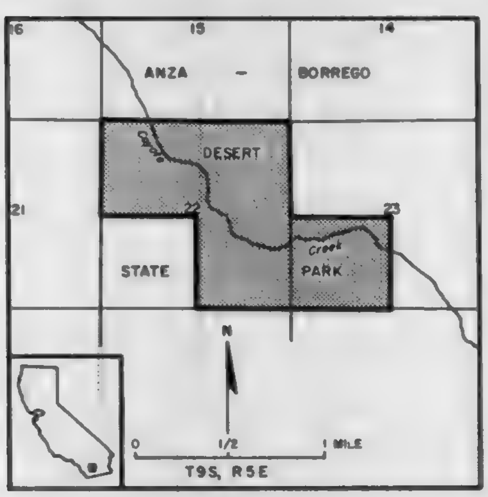
All lands below the 543-foot contour in partially surveyed T3S, R7W, within the Prado Flood Control Basin (upstream from Prado Dam). In addition, the following lands

above the 543-foot contour in the Santa Ana River bottoms and within the following boundaries: commencing at a point 0.1 mi E and 0.2 mi N of SW corner Sec. 2, T3S, R7W; thence N 0.4 mi; thence to a point 0.25 mi E and 0.4 mi N of SW corner Sec. 31, T2S, R6W; thence to NE corner Sec. 31, T2S, R6W; thence 0.35 mi E; thence to midpoint of south section line Sec. 21, T2S, R6W; thence to a point 0.6 mi S of NW corner of Sec. 25, T2S, R6W; thence 0.6 mi E; thence to a point 0.2 mi N of center Sec. 30, T2S, R5W; thence 0.7 mi E; thence to a point 0.6 mi E of SW corner Sec. 20, T2S, R5W; thence 0.8 mi E; thence 0.6 mi S; thence to a point 0.3 mi N of SW corner Sec. 28, T2S, R5W; thence to a point 0.45 mi N of SW corner Sec. 29, T2S, R5W; thence west and south along the Riverside Corporation Boundary (as shown on USGS Riverside Quadrangle, 1980) to its intersection with Van Buren Blvd.; thence to a point 0.2 mi E and 0.75 mi S of NW corner Sec. 27, T2S, R6W; thence 0.25 mi N; thence 0.7 mi W; thence to a point 0.85 mi N of SE corner Sec. 32, T2S, R6W; thence to a point 0.75 mi W and 0.1 mi S of NE corner Sec. 6, T3S, R6W; thence 0.5 mi W; thence to a point 0.3 mi W of SE corner Sec. 2, T3S, R7W.



4. *Coyote Creek, San Diego County* (Index map location D).

T9S, R5E: Sec. 22 N½, SE¼; 23 SW¼.



5. *Santa Margarita River-DeLuz Creek, San Diego County* (Index map location E).

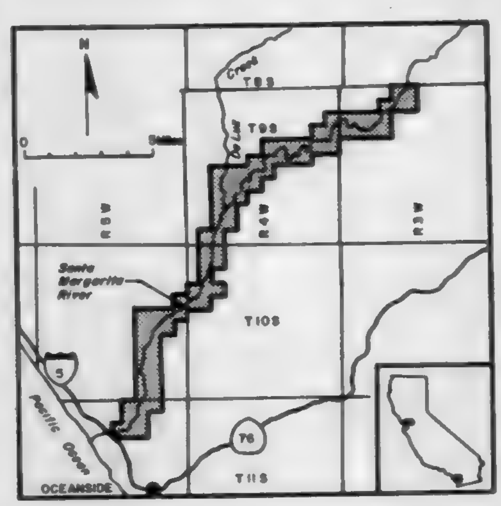
T9S, R3W: Sec. 4; 5 SE¼; 7; 8.

T9S, R4W: Sec. 12 S½, NE¼; 13 N½; 14; 15; SE¼; 20; 21; 22 NW¼; 28 NW¼; 29; 31 SE¼; 32 W½, NE¼.

T10S, R4W: Sec. 5 W½; 6 E½; 7 E½, SW¼; 8 SW¼; 18 N½.

T10S, R5W: Sec. 13 S½, NE¼; 14 S½; 23; 24 NW¼; 26; 35.

T11S, R5W: Sec. 2 N½, SW¼; 3 E½; 10 N½; 11 NW¼.



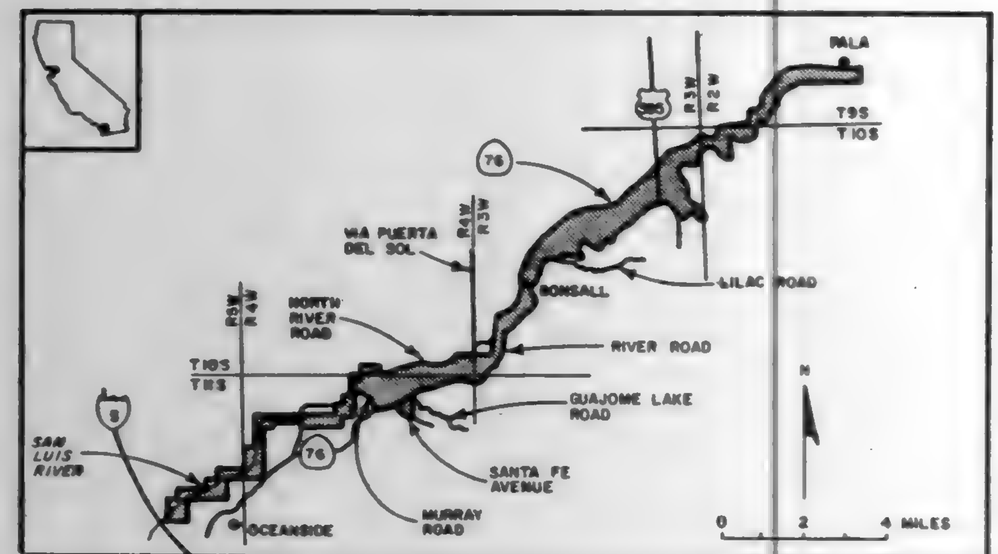
6. *San Luis Rey River, San Diego County* (Index map location F).

T11S, R5W: Sec. 13 S½NE¼, SE¼NW¼, SW¼; 14 SE¼SW¼, S½SE¼; 23 NW¼.

T11S, R4W: Sec. 3 all land north of Murray Road; 4 E½NE¼, E½SE¼SW¼, W½NE¼SE¼, E½NW¼SE¼, SW¼SE¼; 7 N½NE¼NE¼, NW¼NE¼, E½W½, SW¼SW¼; 8 N½NE¼, N½N½NW¼; 9 N½NW¼; 18 NW¼.

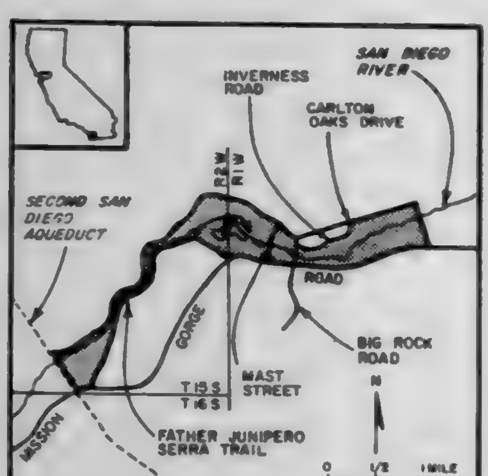
T10S, R4W: Sec. 34 S½SW¼.

Surveyed and unsurveyed portions according to the following metes and bounds: bordered on the north from the intersection of North River Road and the surveyed eastern section line of Sec. 3, T11S, R4W; thence east along said road to its junction with Via Puerta Del; thence along a line due east to its intersection with State Highway 76 in Sec. 31, T10S, R3W; thence north and east along said highway to its intersection with the eastern section line of Sec. 27, T9S, R2W; and bordered on the south from the intersection of Murray Road and the surveyed eastern section line of Sec. 3, T11S R4W; thence south and east along said road to its junction with State Highway 76; thence east and north along said highway to its junction with Santa Fe Avenue; thence southeast 3,000 feet along said avenue; thence northeast along a straight line to Guajome Lake Road at a point 800 feet from the junction of said road and State Highway 76; thence northwest along Guajome Lake Road to its junction with said highway; thence east along said highway to its junction with River Road in Sec. 31, T10S, R3W; thence north along said road to its intersection with the surveyed eastern section line of Sec. 20, T10S, R3W; thence north to and northeasterly along the 250-foot contour in Sec. 21 through partially surveyed Sec. 15, T10S, R3W; thence north to a point about 0.2 mi. S of the NW corner of Sec. 14, and continuing along the 300-foot contour from the west section line of Sec. 14 eastward through unsurveyed Sec. 11, surveyed Sec. 13 and 12, T10S, R3W; and surveyed Sec. 18, T10S, R2W; thence east to and along the 325-foot contour through Sec. 1, T10S, R3W; thence south to and along the 350-foot contour in Sec. 6 and 5, T10S, R2W, and Sec. 32 and 33, T9S, R2W, to the north section line of Sec. 33; thence east approximately 1.5 miles to SE corner of Sec. 27, T9S, R2W; and thence north about 0.4 miles to State Highway 76 in Pala.



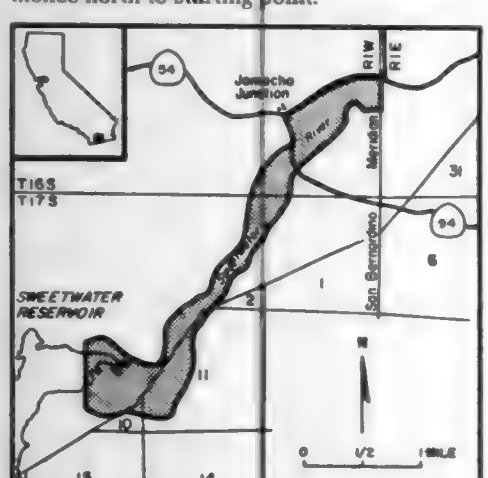
7. *San Diego River, San Diego County* (Index map location G).

T15S, R1W, and T15S, R2W: commencing at the intersection of the Second San Diego Aqueduct and Mission Gorge Road thence eastward along said road to the western-most intersection with Father Junipero Serra Trail; thence northward and eastward along said trail to the eastern-most intersection of said trail and said road; thence eastward along Mission Gorge Road to its intersection with Big Rock Road; thence northward to the western-most intersection of Inverness Road and Carlton Oaks Drive; thence westward along said drive to its intersection with Mast Street; thence westward and southward along the 320-foot contour to its intersection with the Second San Diego Aqueduct on the north side of the San Diego River; thence southeast along said aqueduct to its intersection with Mission Gorge Road.



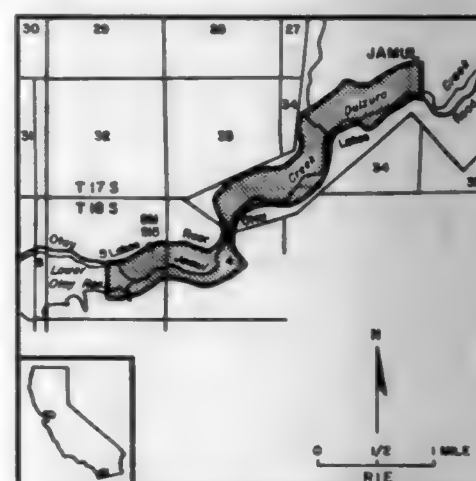
8. *Sweetwater River-Sweetwater Reservoir, San Diego County* (Index map location H).

T16S, R1W, and T17S, R1W: commencing at the intersection of the 320-foot contour and 116°58′14″ W. Longitude immediately north of the confluence of Sweetwater River and Sweetwater Reservoir; thence eastward along the contour to the intersection of said contour with State Highway 94; thence northward along said highway to its intersection with State Highway 54; thence northeastward along said highway to the San Bernardino Meridian; thence south approximately 1,500 feet to the intersection with the 340-foot contour; thence west and south along said contour to the south end of the Steele Canyon Bridge on State Highway 94; thence directly south approximately 900 feet to the 340-foot contour; thence southwesterly along said contour to the intersection with 116°58′14″ W. Longitude; thence north to starting point.



9. *Jamul-Dulzura Creeks, San Diego County* (Index map location I).

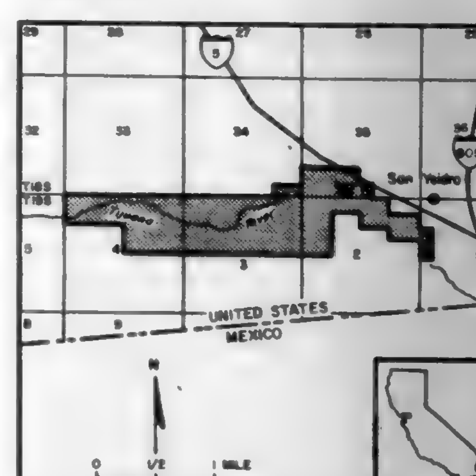
T17S, R1E, and T18S, R1E: commencing from a point approximately 2,200 feet west of BM 515 along Otay Lakes Road, in Sec. 5, T18S, R1E; thence east approximately one-mile to the intersection of said road and a bridge over Jamul Creek, including all land within 1,500 feet southward of Otay Lakes Road as measured perpendicularly from the road; thence eastward for about 2.35 miles along said road and including all lands within 1,500 feet northward of said road as measured perpendicularly from the road; and including all lands within 500 feet of said intersection not otherwise included above.



10. *Tijuana River, San Diego County* (Index map location J).

T18S, R2W: Sec. 34 S½SE¼SE¼; 35 S½SW¼, SW¼SW¼SE¼.

T19S, R2W: Sec. 1 W½SW¼NW¼; 2 S½NE¼NE¼, NW¼NE¼, N½SE¼NE¼, N½NE¼NW¼, W½NW¼; 3 N½; 4 NE¼, N½NW¼.



Constituent elements for the critical habitat of the least Bell's vireo include riverine and floodplain habitats, particularly associated willow- and cottonwood-dominated plant communities that provide for the nesting, foraging and other habitat requirements of least Bell's vireo within its breeding range.

Dated: March 21, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-10808 Filed 5-2-85; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
May 3, 1985

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 514, Lemon Regulation 513, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 335,000 cartons during the period May 5–11, 1985, and increases the quantity of lemons that may be shipped to 325,000 cartons during the period April 28–May 4, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.814) becomes effective May 5, 1985, and the amendment (§ 910.813) is effective for the period April 28–May 4, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 30, 1985, at San Bernardino, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good on all sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.814 is added to read as follows:

§ 910.814 Lemon Regulation 514.

The quantity of lemons grown in California and Arizona which may be handled during the period May 5, 1985, through May 11, 1985, is established at 335,000 cartons.

3. § 910.813 Lemon Regulation 513 is revised to read as follows:

§ 910.813 Lemon Regulation 513.

The quantity of lemons grown in California and Arizona which may be handled during the period April 28, 1985, through May 4, 1985, is established at 325,000 cartons.

Dated: May 1, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–10992 Filed 5–2–85; 11:45 am]

BILLING CODE 3410–02–M

federal register

Friday
May 3, 1985

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 682

Western Pacific Fishery Management Council; Pacific Billfish Management Plan; Public Hearing

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 682

Western Pacific Fishery Management Council; Pacific Billfish Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Western Pacific Fishery Management Council will hold a public hearing on the revised draft Billfish Fishery Management Plan. The draft plan proposes management measures and reporting requirements to regulate the taking of billfish, mahimahi, wahoo, and oceanic sharks by foreign fishing vessels in the fishery conservation zone surrounding Hawaii, Guam, American Samoa, and U.S. island possessions in the Pacific Ocean.

DATE: The hearing will be held on May 6, 1985, at 7:30 p.m.

ADDRESS: The hearing will be held at the Hilton International Guam, Marianas Ballroom II, Agana, Guam. Copies of the proposals are available at the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, telephone 808–523–1368 or FTS 808–546–8923.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 808–523–1368.

Dated: May 2, 1985

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–10996 Filed 5–2–85; 11:48 am]

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Federal Register

Vol. 50, No. 86

Friday, May 3, 1985

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Designating the month of May 1985, as "National Child Safety Awareness Month". (Apr. 30, 1985; 99 stat. 59) Price $1.00

5-6-85
Vol. 50 No. 87

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Monday
May 6, 1985

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Official Records and Forms (General)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) is publishing with slight modification as a final rule, a proposed rule in which certain changes were proposed to be made to the regulations under the United States Grain Standards Act, as amended (Act), concerning Official Records and Forms (General). The changes involve rewriting, revising, and reorganizing these regulations to simplify, clarify, and condense certain language; and facilitate the use of the regulations.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch (RM), FGIS, USDA, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in the final rule have been approved by OMB. No comments concerning these requirements have been received.

Final Action

The review of the regulations concerning Official Records and Forms (General) (7 CFR 800.145–800.155) included a determination of continued need for and consequences of the regulations. The objective of the review was to ensure that the regulations are serving their intended purpose, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS, policy and authority, and should remain in effect. FGIS, however, is amending §§ 800.145–800.155 by reorganizing the text to combine and consolidate compatible sections and make other miscellaneous changes for clarity.

A proposal to amend the regulations was published in the August 10, 1984, issue of the **Federal Register** (49 FR 32074). Comments were to be submitted by October 9, 1984.

Two trade organizations commented on the proposed changes to the regulations. One commenter suggested defining the term "copies" (of official certificates (§ 800.153)) as meaning facsimile reproduction, microfilm, microfiche, computer-generated copies, or similar duplications. This recommended definition would expand upon the form in which official certificates would be maintained. Presently, the term copy is used and applied in its narrowest and simplest sense in the context in which it appears. Accordingly, copies of official certificates generally include only carbon copies. The recommended definition for such copies takes into account many of the currently available methods of duplication. The applicability of such methods to other records maintained pursuant to the Act also may require consideration. In view of the above, this matter requires a full and complete evaluation and review on an agency, if not Departmental, basis. Therefore, FGIS plans to review this matter separately and will publish rulemaking, as appropriate. Accordingly, no change to the proposed rule appears in this final action based upon this commenter's recommendation.

Another commenter noted that in the list of agency records that must be made available to the public (§ 800.154(b)(1)), the term "employee" was substituted for the term "staffing" records. The commenter stated that the two terms are not necessarily synonymous. As proposed, personnel information previously unavailable to the public could possibly have been requested. FGIS changed the subject term as a matter of editorial preference. It was not FGIS' intention to change the type of records available to the public. However, FGIS recognizes the commenter's concern and, as a result, has changed "employee" to "staffing." This same commenter suggested the requirements that records of approved weighers (§ 800.149(b)) be kept for the tenure of the licensee be eliminated because such personnel are not issued licenses. Approved weighers are not issued licenses but by the nature of their employment are given authority to perform weighing. However, to avoid confusion, the phrase "tenure of the licensee" was changed to "tenure of the weigher's employment" as an approved weigher.

The present sections of the regulations contain provisions concerning official records kept by agencies and contractors (§ 800.145); retention periods for official records (§ 800.146); availability of official records (§ 800.147); records issued by the Service under the Act (§ 800.148). Sections 800.149 through 800.155 contain provisions relating to records on: delegations, designations, contracts, and approval of scale testing organizations;

organization, staffing, and budget; licenses, authorizations, and approvals; fee schedules; space and equipment; official inspection, Class X or Class Y weighing, and equipment testing services; and related official records.

The intent and purpose of these provisions is to require that specified records be prepared and maintained in a manner that would facilitate the daily use of the records as well as the review and audit of the records to determine compliance with the Act, regulations, standards, and instructions. This final rule does not alter the intent and purpose of these sections.

In addition to specifying the intent and purpose of these regulations in § 800.145, this final rule reorganizes the text to combine and consolidate compatible sections. The present §§ 800.146 and 800.154 is reorganized to separate out certain provisions in the present sections. This, in part, results in the addition of four new sections with appropriate renumbering of the present sections. Applicable retention periods are included in each section, as appropriate.

The reorganization includes sections providing for maintenance and retention of records as follows: general requirements, § 800.145; delegations, designation, contracts, and approval of scale testing organization, § 800.147; organization, staffing, and budget, § 800.148; licenses and approvals, § 800.149; fee schedules, § 800.150; space and equipment, § 800.151; file samples, § 800.152; and official inspection, Class X or Class Y weighing, and equipment service, § 800.153. Sections 800.154 through 800.159 include provisions as to the availability of official records; detailed work records; official inspection records; official weighing records; equipment testing work records; and related official records.

While approved scale testing organizations are mentioned in the present regulations, more references are included to clarify that the recordkeeping requirements also apply to these organizations. Other minor changes, including grammatical changes, are made to clarify these provisions of the regulations. Even though a reorganization is made, the substance, including the record and sample retention periods, remain unchanged.

In addition to the revisions referenced above, §§ 800.195, 800.196, and 800.198 are amended to reflect the regulatory references changed by the revision of §§ 800.145–.155 and the addition of §§ 800.156–800.159. These amendments are minor nonsubstantive changes that are made to create accurate cross-references to facilitate the use of the regulations. Further, miscellaneous nonsubstantive grammatical changes are made to §§ 800.152, 800.154, 800.155, and 800.158 for clarity and to facilitate the use of the regulations.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure.

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

PART 800—GENERAL REGULATIONS; OFFICIAL RECORDS AND FORMS (GENERAL)

1. Section 800.145 is revised to read:

§ 800.145 Maintenance and retention of records—General requirements.

(a) *Preparing and maintaining records.* The records specified in §§ 800.146–.159 shall be prepared and maintained in a manner that will facilitate (1) the daily use of records and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions.

(b) *Retaining records.* Records shall be retained for a period not less than that specified in §§ 800.146–.159. In specific instances, the Administrator may require that records be retained for a period of not more than 3 years in addition to the specified retention period. In addition, records may be kept for a longer time than the specified retention period at the option of the agency, the contractor, the approved scale testing organization, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

2. Section 800.146 is revised to read:

§ 800.146 Maintenance and retention of records issued by the Service under the Act.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of the Act, regulations, the standards, any instructions issued by the Service, and all amendments and revisions thereto. These records shall be maintained until superseded or revoked.

(Approved by the Office of Management and Budget under control number 0580–0011)

3. Section 800.147 is revised to read:

§ 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of their delegation, designation, contract, or approval. These records consist of a copy of the delegation or designation documents, a copy of the current contract, or a copy of the notice of approval, respectively, and all amendments and revisions thereto. These records shall be maintained until superseded, terminated, revoked, or cancelled.

(Approved by the Office of Management and Budget under control number 0580–0011)

4. Section 800.148 is revised to read:

§ 800.148 Maintenance and retention of records on organization, staffing, and budget.

(a) *Organization.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their organization. These records shall consist of the following documents: (1) If it is a business organization, the location of its principal office; (2) if it is a corporation, a copy of the articles of incorporation, the names and addresses of officers and directors, and the names and addresses of shareholders; (3) if it is a partnership or an unincorporated association, the names and addresses of officers and members, and a copy of the partnership agreement or charter; and (4) if it is an individual, the individual's place of residence. These records shall be maintained for 5 years.

(b) *Staffing.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their employees. These records consist of (1) the name of each current employee, (2) each employee's principal duty, (3) each employee's principal duty station, (4) information about the training that each employee has received, and (5) related information required by the Service. These records shall be maintained for 5 years.

(c) *Budget.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their budget. These records consist of actual income generated and actual expenses incurred during the current year. Complete accounts for receipts from (1) official inspection, weighing, equipment testing, and related services; (2) the sale of grain samples; and (3) disbursements from receipts shall be available for use in establishing or revising fees for services under the Act. Budget records shall also include detailed information on the disposition of grain samples obtained under the Act. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

5. Section 800.149 is revised to read:

§ 800.149 Maintenance and retention of records on licenses and approvals.

(a) *Licenses.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of licenses. These records consist of current information showing (1) the name of each licensee, (2) the scope of each license, (3) the termination date of each license, and (4) related information required by the Service. These records shall be maintained for the tenure of the licensee.

(b) *Approvals.* Agencies shall maintain complete records of approvals of weighers. These records consist of current information showing the name of each approved weigher employed by or at each approved weighing facility in the area of responsibility assigned to an agency or field office. These records shall be maintained for the tenure of the weigher's employment as an approved weigher.

(Approved by the Office of Management and Budget under control number 0580–0011)

6. Section 800.150 is revised to read:

§ 800.150 Maintenance and retention of records on fee schedules.

Agencies, contractors, and approved scale testing organizations shall maintain complete records on fee schedules. These records consist of (a) a copy of the current fee schedule; (b) in the case of an agency, data showing how the fees in the schedule were developed; (c) superseded fee schedules; and (d) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

7. Section 800.151 is revised to read:

§ 800.151 Maintenance and retention of records on space and equipment.

(a) *Space.* Agencies shall maintain complete records on space. These records consist of (1) a description of space that is occupied or used at each location, (2) the name and address of the owner of the space, (3) financial arrangements for the space, and (4) related information required by the Service. These records shall be maintained for 5 years.

(b) *Equipment.* Agencies shall maintain complete records on equipment. These records consist of (1) the description of each piece of equipment used in performing official inspection or Class X or Class Y weighing services under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for equipment testing and the results of the testing, and (5) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

8. Section 800.152 is revised to read:

§ 800.152 Maintenance and retention of file samples.

(a) *General.* The Service and agencies shall maintain complete file samples for their minimum retention period (calendar days) after the official function was completed or the results otherwise reported.

(b) *Minimum retention period.*

(1) Trucks	
In	3
Out	5
(2) Railcars	
In	5
Out	10
(3) Barges (river)	
In	5
Out	25
(4) Ships and barges (lake or ocean)	
In	5
Out	25
Export (sublot samples)	60
(5) Bins and tanks	3
(6) Submitted samples	3

Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

(c) *Special retention periods.* In specific instances, the Administrator may require that file samples be retained for a period of not more than 90 calendar days. File samples may be kept for a longer time than the regular retention period at the option of the Service, the agency, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

9. Section 800.153 is revised to read:

§ 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.

Agencies and approved scale testing organizations shall maintain complete detailed official inspection work records, copies of official certificates, and equipment testing work records for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011.)

10. Section 800.154 is revised to read:

§ 800.154 Availability of official records.

(a) *Availability to officials.* Each agency, contractor, and approved scale testing organization shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours any records maintained under §§ 800.146–.159.

(b) *Availability to the public.* (1) *Agency, contractor, and approved scale testing organization records.* The following official records will be available, upon request by any person, for public inspection during customary business hours: (i) Copies of the Act, the regulations, the standards, and the instructions; (ii) the delegation, designation, contract, or approval issued by the Service; (iii) organization and staffing records; (iv) a list of licenses and approvals; and (v) the approved fee schedule of the agency, if applicable.

(2) *Service records.* Records of the Service are available in accordance with the Freedom of Information Act (5 U.S.C. 552(a)(3)) and the regulations of the Secretary of Agriculture (7 CFR, Part 1, Subpart A).

(c) *Locations where records may be examined or copied.* (1) *Agency, contractor, and approved scale testing organization records.* Records of agencies, contractors, and approved scale testing organizations available for public inspection shall be retained at the principal place of business of the agency, contractor, or approved scale testing and certification organization.

(2) *Service records.* Records of the Service available for public inspection shall be retained at each field office and at the headquarters of the Service in Washington, D.C.

11. Section 800.155 is revised to read:

§ 800.155 Detailed work records—general requirements.

(a) *Preparation.* Detailed work records shall be prepared for each official inspection, Class X or Class Y weighing, and equipment testing service performed or provided under the Act. The records shall (1) be on standard forms prescribed in the instructions; (2) be typed or legibly written in English; (3) be concise, complete, and accurate; (4) show all information and data that are needed to prepare the corresponding official certificates or official report; (5) show the name or initials of the individual who made each determination; and (6) show other information required by the Service to monitor or supervise the service provided.

(b) *Use.* Detailed work records shall be used as a basis for (1) issuing official certificates or official forms, (2) approving inspection and weighing equipment for the performance of official inspection or Class X or Class Y weighing services, (3) monitoring and supervising activities under the Act, (4) answering inquiries from interested persons, (5) processing complaints, and (6) billing and accounting. These records may be used to report results of official inspection or Class X or Class Y weighing services in advance of issuing an official certificate.

(c) *Standard forms.* The following standard forms shall be furnished by the Service to an agency: Official Export Grain Inspection and Weight Certificates (singly or combined), official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. Other forms used by an agency in the performance of official services, including certificates, shall be furnished by the agency.

(Approved by the Office of Management and Budget under control number 0580–0011)

12. Section 800.156 is added to read:

§ 800.156 Official inspection records.

(a) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, consist of one or more pan tickets as prescribed in the instructions. Activities that are performed as a series during the course of an inspection service may be recorded on one pan ticket or on separate pan tickets. The original copy of each pan ticket shall be retained by the agency or field office that performed the inspection.

(b) *Inspection logs.* The record of an official inspection service for grain in a combined lot and shiplot shall include the official inspection log as prescribed in the instructions. The original copy of each inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency, one copy of the inspection log shall be promptly sent to the appropriate field office.

(c) *Other forms.* Any detailed test that cannot be completely recorded on a pan ticket or an inspection log shall be recorded on other forms prescribed in the instructions. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, an approved abbreviation may be used.

(d) *File samples.* (1) *General.* The record for an official inspection service based, in whole or in part, on an examination of a grain in a sample shall include one or more file samples as prescribed in the instructions.

(2) *Size.* Each file sample shall consist of an unworked portion of the official sample or warehouseman's sample obtained from the lot of grain and shall be large enough to permit a reinspection, appeal inspection, or Board appeal inspection for the kind and scope of inspection for which the sample was obtained. In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.

(3) *Method.* Each file sample shall be retained in a manner that will preserve the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained according to the instructions.

(4) *Uniform system.* To facilitate the use of file samples, agencies shall establish and maintain a uniform file sample system according to the instructions.

(5) *Forwarding samples.* Upon request by the supervising field office or the Board of Appeals and Review, each agency shall furnish file samples (i) for field appeal or Board appeal inspection service, or (ii) for monitoring or supervision. If, at the request of the Service, an agency locates and forwards a file sample for an appeal inspection, the agency may, upon request, be reimbursed at the rate prescribed in § 800.71 by the Service.

(Approved by the Office of Management and Budget under control number 0580–0011)

13. Section 800.157 is added to read:

§ 800.157 Official weighing records.

(a) *Scale ticket, scale tape, or other weight records.* In addition to the official certificate, the record for each Class X or Class Y weighing service shall consist of a scale ticket, a scale tape, or any other weight record prescribed in the instructions.

(b) *Weighing logs.* The record of a Class X or Class Y weighing service performed on bulk grain in a combined lot or bulk shiplot grain shall include the official weighing log as prescribed in the instructions. The original copy of each weighing log shall be retained by the field office or agency that performed the weighing.

(Approved by the Office of Management and Budget under control number 0580–0011)

14. Section 800.158 is added to read:

§ 800.158 Equipment testing work records.

The record for each official equipment testing service or activity consists of an official equipment testing report as prescribed in the instructions. Upon completion of each official equipment test, one or more copies of the completed testing report may, upon request, be issued to the owner or operator of the equipment. The testing report shall show the (1) date the test was performed, (2) name of the organization and personnel that performed the test, (3) names of the Service employees who monitored the testing, (4) identification of equipment that was tested, (5) results of the test, (6) names of any interested persons who were informed of the test results, (7) number or other identification of the approval tag or label affixed to the equipment, and (8) other information required by the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

15. Section 800.159 is added to read:

§ 800.159 Related official records.

(a) *Volume of work report.* Field offices and agencies shall prepare periodic reports showing the kind and the volume of inspection and weighing services that they performed. The report shall be prepared and copies shall be submitted to the Service according to the instructions.

(b) *Record of withdrawals and dismissals.* Field offices and agencies shall maintain a complete record of requests for official inspection or weighing services that are withdrawn by the applicant or that are conditionally withheld or dismissed. The record shall be prepared and maintained according to the instructions.

(c) *Licensee record.* Licensees, including licensed warehouse samplers, shall (1) keep the license issued to them by the Service and (2) keep or have reasonable access to a complete record of the Act, the standards, the regulations, and the instructions.

(Approved by the Office of Management and Budget under control number 0580–0011)

16. Section 800.195(f)(10) is revised to read:

§ 800.195 Delegations.

* * * * *

(f) *Responsibilities.* * * *

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145–.159.

17. Section 800.196(g)(10) is revised to read:

§ 800.196 Designations.

* * * * *

(g) *Responsibilities.* * * *

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145–.159.

18. Section 800.198(b)(2) is revised to read:

§ 800.198 Contracts.

* * * * *

(b) *Restrictions.* * * *

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.)*

Dated: April 19, 1985.

K.A. Gillis,

Administrator.

[FR Doc. 85–10891 Filed 5–3–85; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ANM–1]

Alteration of Havre, Montana, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redefines the current geographical boundaries of the Havre, Montana, control zone and 700′ transition area. This action is required due to a magnetic variatin change resulting in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM–535, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The telephone number is (206) 431–2530.

SUPPLEMENTARY INFORMATION:

History

On February 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the current geographical boundaries of the Havre, Montana, control zone and 700′ transition area (50 FR 5399).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redefines the geographical boundaries of the Havre, Montana, control zone and 700′ transition area. A change in the magnetic variation resulted in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions to accommodate these amendments.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, as follows:

Havre, Montana, Control Zone—(Revised)

"Within a 5-mile radius of Havre City-County Airport (lat. 48° 32′39″ N.long. 109°45′41″W.); within 3 miles each side of the Havre VOR 080° radial, extending from the 5-mile radius zone to 7 miles east of the VOR; and within 3 miles each side of the Havre VOR 290° radial, extending from the 5-mile radius zone to 7 miles west of the VOR; within 2 miles each side of the Havre VOR 006° radial, extending from the 5-mile radius area to 7.5 miles north of the VOR. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafter will be continuously published in the Airport/Facility Directory".

Havre, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within a 14-mile radius of Havre VOR within 4.5 miles south and 9.5 miles north of the Havre VOR 080° radial, extending from the 14-mile radius of area to 18.5 miles east of the VOR; and within 4.5 miles north and 9.5 miles South of the Havre VOR 290°radial, extending from the 14-mile radius area to 18.5 miles west of the VOR".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49. U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on April 24, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10897 Filed 5–3–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket No. 50221–5049]

Procedure for Challenging Certain Population and Income Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending 15 CFR Part 90 to eliminate the need to *electronically* record hearings held under this procedure. The provision will now require that the hearings be recorded, thereby allowing the use of standard services such as those provided by court reporters. The legal authority citation also is being changed from 13 U.S.C. 4 to 13 U.S.C. 4 and 181.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Roger Herriot, Chief, Population Division, Bureau of the Census, Washington, D.C. 20233. (301) 763–7646.

SUPPLEMENTARY INFORMATION: On April 6, 1979, the Bureau of the Census published in the **Federal Register** (44 FR 20647) the administrative procedure available to States and units of local government to challenge current estimates of population and per capita income developed by the Bureau of the

Census. This procedure is described in 15 CFR Part 90.

The Bureau is amending Title 15, Chapter 1, Part 90 to delete "electronically" from § 90.14(f) in order to provide flexibility in the method used to record the hearing and to reduce costs to the hearing participants.

This rule is not a major rule within the meaning of Section 1 of Executive Order 12291. It is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is being issued in final without prior notice because it is a rule of agency procedure and is exempt from notice and comment requirements by 5 U.S.C. 553(b)(A). Since notice and opportunity to comment are not required by the Administrative Procedure Act or any other law, this rule is not a "rule" within the meaning of the Regulatory Flexibility Act and neither an initial nor final regulatory flexibility analysis will be prepared.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the APA and other relevant law.

This rule is not a substantive rule and therefore is exempt from the 30-day delayed effective date under 5 U.S.C. 553(d).

This rule does not impose an information collection requirement for purposes of the Paperwork Reduction Act.

The legal authority for Part 90 is 13 U.S.C. 4 and 181.

List of Subjects in 15 CFR Part 90

Census data, Statistics.

John G. Keane,
Director, Bureau of the Census.

PART 90—[AMENDED]

For the reasons set out in the preamble, 15 CFR Part 90 is amended to read as follows:

1. The legal authority line should be amended to include Section 181 of Title 13 U.S.C. as follows:

Authority: 13 U.S.C. 4 and 181.

§ 90.14 [Amended]

2. Section 90.14 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

[FR Doc. 85-10907 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-07-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, and 249

[Release Nos. 33-6578; 34-21982; FR-18; File No. S7-20-84]

Business Combination Transactions; Adoption of Registration Form

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format. In addition, the Commission announces the adoption of corresponding amendments to existing rules and the adoption of an amendment to Form 8-K relating to the time for filing financial statements of acquired businesses and stating the policy implications of delays in filing required information.

DATES: *Effective date:* Form S-4 and these amendments are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter.

Compliance date: Registrants are permitted, however, to use Form S-4 immediately and to use the other provisions amended herein in filings made after publication of this release in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, questions relating to this action should be directed to Patricia B. Magee, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; after the effective date, contact Mauri L. Osheroff, (202) 272-2573, Deputy Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. For questions concerning accounting matters, contact Howard P. Hodges, Jr., Chief Accountant, Division of Corporation Finance (202) 272-2553, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form S-4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act")[1] of securities issued in: (i) Transactions of the type specified in Rule 145(a);[2] (ii) mergers in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers or resales of securities registered on this Form.[3] Form S-4 employs the principles underlying the integrated disclosure system and, thus, permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act")[4] to the same extent as is permitted when a company registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting a number of other amendments in connection with Form S-4, including an amendment to Form 8-K[5] relating to the financial statements of acquired businesses.[6]

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[1] 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), *as amended by* Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982).

[2] 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.

[3] In a separate release, the Commission also is announcing the adoption of Form F-4 (17 CFR 239.34) to be used by certain foreign private issuers to register securities in the context of the same kind of business combination transactions encompassed by Form S-4. See Release No. 33-6579 (April 23, 1985). Form F-4 is to be used by a foreign private issuer, as that phrase is defined in Rule 405 (17 CFR 230.405) under the Securities Act, eligible to use Form 20-F (17 CFR 249.220f).

[4] 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), *as amended by* Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

[5] 17 CFR 249.308.

[6] The Commission today is adopting amendments to: (1) Rule 3-05 of Regulation S-X (17 CFR 210.3-05); (2) Items 502, 512 and 601 of Regulation S-K (17 CFR 229.502, 512, 601); (3) Rules 145, 406, 463, 464.

Continued

I. Executive Summary

This rulemaking action is part of the Commission's Proxy Review Program,[7] and represents the culmination of efforts extending over several years to improve disclosure to investors in business combinations.[8] Commentators generally supported the Commission's effort and the Commission is adopting the Form and related amendments substantially as proposed.[9]

This area has been the focus of attention because the documents delivered to security holders in the context of business combinations (mergers and exchange offers) are frequently unwieldy, often 150 or more pages. Improvements to the business combination prospectus in certain limited contexts were made in 1980 with the adoption, on an experimental basis, of Form S–15 [10] as part of the first phase of the Commission's integrated disclosure system. Form S–4, which will replace Forms S–14 [11] and S–15, expands upon the limited scope of Form S–15 in several respects. First, Form S–4 extends the principles underlying the integrated disclosure system to all business combination registration statements, not just those involving relatively small transactions. The Form also extends the principles of integration to the full extent to which they are applied in the context of primary offerings not involving business combinations. Second, Form S–4 builds upon the foundation laid by Form S–15 by applying the same disclosure requirements to exchange offers and mergers.[12] Thus, Form S–4 provides simplified and streamlined disclosure in prospectuses for business combinations whether the transactions are effected by merger or exchange offer.

The integrated disclosure system, on which Form S–4 is based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. Under Forms S–1,[13] S–2 and S–3,[14] transaction oriented information must be presented in the prospectus. Company oriented information, however, may be presented in, delivered with, or incorporated by reference into the prospectus, depending on the extent to which Exchange Act reports containing the information have been disseminated and assimilated in the market.[15] Thus, for registrants qualified to use Form S–3, the most widely followed companies, company specific information that has been included in Exchange Act reports need not be reiterated in the prospectus, but may be incorporated by reference. Registrants qualified to use Form S–2, reporting companies which are less widely followed, must present certain company information, but may do so either by delivering the annual report to security holders or reiterating that level of company information in the prospectus. Finally, S–1 registrants must present all company information in the prospectus.

The prospectus requirements of Form S–4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the presentation of the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the businesses involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the company could use in making a primary offering of its securities not involving a business combination. The last section sets forth the requirements as to voting and management information. All voting information must be presented in the prospectus, while the amount of prospectus presentation for management information, like company information, depends on which form could be used in a primary offering not involving a business combination.

The use of the S–1–2–3 approach in Form S–4 reflects the premise that decisions made in the context of business combination transactions and those made otherwise in the purchase of a security in the primary or trading market are substantially similar. At the same time, the Commission recognizes that there are significant differences. In particular, business combination decisions are not of the same volitional nature as other investment decisions. Moreover, typically mergers may give rise to a change in security ownership as a consequence of inaction.

To address the differences in the nature of the investment decision, special provisions have been included in the Form. First, a specifically tailored item covering risk factors, ratio of

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473, 475a and 477 under the Securities Act (17 CFR 230.145, 406, 463, 464, 473, 475a, 477); (4) Rules 14a–3, 14a–6, 14c–2 and 14c–5 under the Exchange Act (17 CFR 240.14a–3, 14a–6, 14c–2, 14c–5); and (5) Form 8–K under the Exchange Act (17 CFR 249.308).

[7] These amendments are the fifth rulemaking initiative in the Commission's program. The first initiative was the adoption of a new uniform Regulation S–K item relating to the disclosure of certain relationships and transactions involving management (Release No. 33–6441 (December 2, 1982) [47 FR 55661]). The second initiative was the adoption of amendments designed to facilitate shareholder communications (Release No. 34–20021 (July 25, 1983) [48 FR 35082]). The third was the adoption of amendments to the Commission's shareholder proposal rule, Rule 14a–8 (Release No 34–20091 (August 16, 1983) [48 FR 38218a]). The fourth initiative was the adoption of amendments to the uniform Regulation S–K item governing the disclosure of executive compensation, Item 402 (Release No. 33–6486 (September 23, 1983) [48 FR 44467]).

[8] *See* proposed Form S–14A (Release No. 33–5744 (September 27, 1976) [41 FR 43876]), later withdrawn (Release No. 33–5806 (February 16, 1977) [42 FR 10855]); *See also* Freund and Greene, *Substance Over Form S–14: A Proposal to Reform SEC Regulation of Negotiated Acquisitions*, 36 Bus. Law 1483 (1981), which grew out of work done on a consulting basis with the Division of Corporation Finance.

[9] Release No. 33–6534 (May 9, 1984) [49 FR 20833] The Commission received 43 comment letters on proposed Form S–4. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. *See* File No S7–20–84.

[10] 17 CFR 239.29. Form S–15 was adopted for the registration of securities in connection with relatively small business combination transactions and requires that the registrant's latest annual report to security holders be delivered to security holders and incorporated by reference into the prospectus (*i.e.*, it provides the same level of disclosure as does Form S–2 under the Securities Act (17 CFR 239.12)). *See* Release No. 33–6232 (September 2, 1980) [45 FR 63647], adopting Form S–15.

[11] 17 CFR 239.23. Form S–14 will be retained for use by registered investment companies and business development companies pending the adoption of Form N–14. *See* Section H.2. *infra*, "New Investment Company Merger Proxy Form."

[12] Prior to the adoption of Form S–15 in 1980, exchange offers could be registered on Forms S–1, S–7 or S–11 (17 CFR 239.18). In 1982, the Commission adopted the final phase of the integrated disclosure system and determined generally that Form S–2, which replaced Form S–7 as the middle-tier form, and Form S–3 would not be available for registration of exchange offers pending this business combinations project. Forms S–1 and F–1 (17 CFR 239.31) currently are, and will continue to be, available for registration of securities in the context of exchange offers. *See* fn. 24, *infra*.

[13] 17 CFR 239.11.

[14] 17 CFR 239.13.

[15] Extending the principles of integration to business combinations is, in part, predicated on the fact that annual reports are disseminated to security holders. These annual reports contain the basic information package (financial statements, management's discussion and analysis, selected financial data and market data) adopted in 1980 as the foundation for the integrated disclosure system. *See* Release No. 33–6321 (September 2, 1980). This company information is the same kind of information that would be required to be included in the prospectus. Because it already has been disseminated to security holders, it need not be repeated in the business combination prospectus involving S–3 companies. The Commission has not sanctioned in this proceeding any revision of the basic information package, such as summary annual reports to security holders.

earnings to fixed charges, certain per share data and other information must be presented in the prospectus regardless of the level of disclosure available to the companies involved. This item, as adopted, has been expanded to reflect commentators' suggestions that the item include: (1) Certain additional financial data; and (2) information about regulatory approvals.

While the item highlights certain information discussed more fully elsewhere in the prospectus, or in documents incorporated by reference therein, it is not intended to be a summary of all material information concerning the transaction and the parties thereto. In the case of S–3 companies, where company and management information, including historical financial statements, is not presented in the prospectus, such information will have been furnished to security holders and widely disseminated in the market by means of the company's annual report to security holders. Therefore, this information need not be reiterated in the business combination prospectus. As to other companies, the historical financial statements and other company information will be presented in the prospectus.

Second, the Form establishes a minimum time period if incorporation by reference is used. The time period is designed to address the need for documents incorporated by reference to be delivered to security holders on a timely basis. The proposed Form would have required that, where incorporation by reference is used to take the place of presentation in the delivered document, the prospectus must either: (1) Be sent at least twenty business days in advance of the date of the meeting of security holders or the date of the final investment decision; or (2) be accompanied by the documents from which information is incorporated. The proposal also would have provided that where a registrant wishes to proceed faster than the twenty day time period, it could do so by delivering to security holders, along with the prospectus, all documents incorporated by reference therein.

Commentators generally supported the concept of the twenty business day period and the adopted Form requires the prospectus to be sent prior to the proposed twenty business day period where incorporation by reference is used. Concern was expressed, however, that the alternative of delivering documents incorporated by reference could result in a cumbersome and unreadable prospectus because of the potential multiplicity of documents delivered. Accordingly, Form S–4 as adopted, provides a different alternative. Registrants still may proceed faster than the twenty business day period,[16] but if they wish to do so, they must furnish the required information to security holders at the S–1 level. The same quantum of information will be delivered as was provided in the proposal's alternative, but the S–1 alternative provides a more readable format.[17] In addition, the Commission has added a legend to encourage security holders to request the incorporated documents promptly and an undertaking[18] to require the registrant to respond within one business day by first class mail or other equally prompt means.

In addition to these disclosure and timing measures, the Commission directed particular commentator attention to whether other possible alternatives, involving greater degrees of delivery of information, would be appropriate in view of the nature of the investment decision involved in business combination transactions. Commentators rejected the alternatives and favored the Form S–4 approach.

The one respect in which some commentators expressed reservations about the full streamlining afforded by the proposed Form was in the area of contested exchange offers. More than half of the commentators who directed specific comments to exchange offers, however, supported the S–4 approach. Moreover, some concerns were directed, at least in part, to the timing aspects of exchange offers which were not addressed in proposed Form S–4.

Form S–4 implements Recommendation Eleven of the Commission's Advisory Committee on Tender Offers ("Advisory Committee"),[19] one of the recommendations intended to: (1) Lessen the regulatory disincentives to using securities as consideration in a tender offer; and (2) promote the equivalency of cash and exchange offers. Recommendation Eleven addresses disclosure in exchange offers, recommending that the approach of the integrated disclosure system be used for exchange offers. As noted in the proposing release, the inclusion of exchange offers in Form S–4 does not affect the timetable for exchange offers. Timing for exchange offers is the subject of Recommendation Twelve which would permit an exchange offer to commence on the date the preliminary registration statement is filed rather than the effective date of the registration statement. If adopted, Recommendation Twelve would put exchange offers on the same timetable as cash offers.[20] The Commission wishes to emphasize that Recommendation Twelve is not being implemented with adoption of Form S–4. Moreover, the Form as adopted contains an instruction and an undertaking that ensure Form S–4 cannot be used for this purpose.[21]

The Commission has adopted as proposed the modification of the current procedures for filing reports on Form 8–K in the context of acquisitions. The proposing release also contained policy statements about the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects, and certain of the revised statements have been included in the amended Form 8–K.[22]

II. Synopsis of the Form

The following synopsis is intended to assist interested parties in their understanding of the Form and related amendments. Attention is directed to the text of the Form and amendments for a more complete understanding of this rulemaking action, including certain technical and clarifying changes not described below.

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[16] Of course, Form S–4 makes clear that for exchange offers, there must be compliance with the Williams Act [sections 13(d)–(f) and 14(d)–(g) of the Exchange Act, 15 U.S.C. sections 78m(d)–(f), 78n(d)–(g)], and the regulations thereunder. With respect to mergers, the Commission notes that any accelerated timing must comply with applicable state law. In a recent case, the Delaware Supreme Court stated that ". . . in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate." *Smith v. Van Gorkom*, No. 255, 1982, slip op. at 74 (Del. Jan. 29, 1985) *opinion revised*, March 14, 1985. In this regard, the language in the proposed General Instruction A.2. relating to compliance with applicable federal or state law has been deleted as unnecessary.

[17] This approach is consistent with that of Form S–15, which allowed the S–2 level of disclosure, but provided for 20 day prior delivery.

[18] See Item 22(b) of Form S–4.

[19] *Advisory Committee on Tender Offers Report on Recommendations* ("Report) (July, 1983). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered appropriate or necessary. *See* Release No. 34–19528 (February 25, 1983) [48 FR 9111].

[20] *See* Release No. 33–6534 (May 9, 1984) [49 FR 20833, 20834].

[21] *See* General Instruction H and Item 22(c) of the Form.

[22] *See* Instructions to revised Item 7(a)(4) of Form 8–K.

A. Availability and Use of Form

Form S–4 is available for the registration of securities in connection with Rule 145 transactions as well as other mergers,[23] exchange offers and reoffers or resales of securities registered on the Form.[24] In addition, registrants that choose to use the incorporation by reference feature of the Form must send the prospectus twenty business days prior to the date of the meeting of security holders or, where no such meeting is held, the date the investment decision would become final.[25] For example, in a consent solicitation the prospectus would have to be disseminated at least twenty business days before the consents could be used to effect the proposal.

B. Business Combinations Involving Entities Required To Use Form S–11

Consistent with specific requirements in Form S–11 and administrative practice under Form S–14, special disclosure provisions apply to business combination transactions involving certain real estate entities, described in Instruction A of Form S–11.[26] Form S–4 is available to register securities in connection with busines combinations involving such entities and the special disclosure provisions that apply have been adopted as proposed.[27]

C. Relationship with Exchange Act Rules

The Form S–4 prospectus may serve as the proxy or information statement used in connection with the transaction. It would be deemed to meet the informational and filing requirements of the proxy or information statement rules under section 14 of the Exchange Act and Regulations 14A [28] and 14C [29] thereunder, where applicable to the transaction. All other provisions of those regulations also apply.

In addition, General Instruction E.3. of the Form provides that if the transaction in which the securities being registered are to be issued is subject to sections 13(e), 14(d) or 14(e) of the Exchange Act, the disclosure and other provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of Form S–4. Thus, the provision calling for the more extensive disclosure will prevail, as will the time periods and other substantive provisions of the Williams Act and the Commission's going private and tender offer rules and schedules thereunder.[30]

D. Transactions Involving Foreign Companies

As noted above, the Commission also has adopted new Form F–4,[31] which may be used by foreign private companies when they are involved in business combination transactions. General Instruction F of Form S–4 describes which of the new Forms may be used when a foreign private issuer is one of the businesses involved. Form F–4 contains a similar instruction.

E. Automatic Effectiveness of Certain Registration Statements

General Instruction G provides for automatic effectiveness of registration statements filed for the sole purpose[32] of the formation of a bank or savings and loan holding company [33] where the provisions of Staff Accounting Bulletin 50 ("SAB 50") are satisfied.[34] Under this provision, original registration statements will become effective automatically on the twentieth day after filing, and post-effective amendments will become effective on filing.[35] In response to commentators' suggestions that the Instruction specify the conditions and provisions of SAB 50, rather than include a reference to the SAB, the Instruction has been adopted with these provisions set forth specifically therein for clarity and ease of reference. The Instruction only refers

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[23] Merger transactions to which General Instruction A.1.(2) of Form S–4 would apply include short form mergers pursuant to state corporation laws similar to Section 253 of the Delaware General Corporation Law (the "DGCL") and merger by consent provisions like those found in section 228 of the DGCL. The former provision authorizes a parent corporation owning at least 90 percent of a subsidiary to merge that subsidiary into the parent pursuant to the unilateral action of the board of directors of the parent with the minority holders not entitled to vote or give an authorization or consent. The latter provision authorizes the taking of corporate action without a meeting, without prior notice and without a vote, if consent in writing setting forth the action is signed by the holders of outstanding stock having not less than the minimum number of votes necessary to authorize or take such action at a meeting. A clarifying amendment has been made to General Instruction A.1.(2) of the Form S–4.

[24] Form S–1 will remain available for mergers and exchange offers. For example, registrants may choose to use Form S–1 and to have the company being acquired prepare its own proxy statement so that the company being acquired will assume liability for the information in its own proxy statement. Of course, Forms S–2 and S–3, which are not available for business combination transactions, will remain unavailable for such tranactions because registrants qualifying for use of those forms may use the respective forms' disclosure approaches through the use of Form S–4. Form S–4 also will be availabel for registration of securities in connection with issuer exchange offers.

[25] Form S–4 also contains two related provisions:

(1) The requirement in Item 2 of a legend in the prospectus to inform investors that they need to make prompt requests for documents incorporated by reference; and

(2) A requirement in Item 22 for an undertaking by registrants to respond to requests for documents within one business day and to furnish the requested documents by first class mail or other equally prompt means. Where the registration statement incorporates by reference documents at the S–3 level, a request for such documents would include documents filed subsequent to the effective date of the registration statement up to the date of the response to the request. The undertaking would not require delivery of incorporated documents filed subsequent to such request.

[26] General Instruction A of Form S–11 provides that the Form shall be used to register securities issued by: (i) A real estate investment trust, as defined in section 856 of the Internal Revenue Code; or (ii) other issuers whose businesses are primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose businesses are primarily that of acquiring and holding real estate or interests in real estate for investment.

[27] *See* General Instruction B.2. with respect to the acquiring entity and General Instruction C.2. concerning the entity being acquired. *See also* Release No. 33–6534 (May 9, 1984) [49 FR 20833, 20835].

[28] 17 CFR 240.14a–1 to 14b–1.

[29] 17 CFR 240.14c–1 to 14c–101.

[30] For example, if the transaction is an exchange offer subject to Regulation 14D, the registrant is required to disseminate material changes pursuant to Rule 14d–4(c) (17 CFR 240.14d–4(c)). The relationship between the undertaking to deliver incorporated documents (including those filed subsequent to effectiveness if the S–3 level is elected) and Rule 14d–4(c) is that, if a registrant has delivered requested documents to security holders and those documents reflect the material change, this would constitute compliance with Rule 14d–4(c). If, however, the documents do not reflect the material change or have not been sent to security holders, then the registrant still must comply with Rule 14d–4(c). Similarly, if the transaction is an exchange offer where the vote passes with the tender of shares, then the proxy regulations also will apply to the transaction. The Form S–4 filing may be used to satisfy the Schedule 14D–1 (Tender Offer Statement, 17 CFR 240.14d–100) and, if the parties so choose, the subject company's Schedule 14D–9 (Tender Offer Solicitation/Recommendation Statement, 17 CFR 240.14d–101) filing obligation.

[31] SEC Release No. 33–6579 (April 23, 1985) [—— FR ———].

[32] This Instruction will not apply if there are any other proposals, *e.g.*, antitakeover amendments to a corporate charter.

[33] To date, securities issued in connection with the conversion of banks to bank holding companies and savings and loan associations to savings and loan holding companies have been registered on Form S–1 or S–14, depending upon the nature of the transaction. Legislation that would have exempted such transactions from registration under the Securities Act where only a change in form is contemplated and certain other conditions are satisfied passed the Senate in the 98th Congress as S.2851, 98th Cong., 2d Sess. (1984). No such legislation passed the House of Representatives, however, and the exemptive provision, along with other features of the Senate bill, has not been reintroduced in the 99th Congress.

[34] SAB 50 reflects the staff's position regarding the financial statement requirements in filings involving the formation of one-bank holding companies. Release SAB–50 (March 3, 1983) [48 FR 10043]

[35] As noted in the proposing release, this provision is similar to the automatic effectiveness provisions of Form S–8 (17 CFR 239.16b) and for certain filings on Form S–3 and F–3. In addition, to assist the proper processing of such filings, the Form includes a box on the cover page indicating the registration in connection with the formation of a holding company and compliance with General Instruction G.

to those provisions in SAB 50 which are conditions to the use of automatic effectiveness. Registrants are directed to SAB 50 for further guidance concerning financial statement provisions.[36] The Commission believes that the automatic effectiveness of these registration statements will reduce administrative burdens and provide time and cost savings to registrants. In addition, the Commission, in this release, is adopting corresponding amendments to Rules 406, 464, 473, 475a, and 477 to reflect the automatic effectiveness of such registration statements.

F. Rule 415

Registration statements on Form S–4, because they relate to offerings which are continuous over a period of time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and, if they are to be used for reoffers or resales, to Rule 415(a)(1)(i) (secondary offerings).[37]

General Instruction H has been added to address situations where the registrant uses Form S–4 for an offering of securities in connection with a business combination transaction which will be effected on a delayed basis. In that case, the registrant must furnish information concerning the type of contemplated transaction(s) and the company(ies) being acquired as of the date of initial effectiveness only to the extent practicable. The required information about the specific transaction(s) and the particular company(ies) being acquired generally must be provided by post-effective amendment. For example, where an acquisition will be effected in a multi-step transaction in which there is an exchange offer followed by a merger, the initial registration statement would contain a prospectus that includes information about the exchange offer.[38] A post-effective amendment would have to be filed to provide information with respect to the second step merger.

In order to implement the content of General Instruction H, an undertaking has been added to Item 22 of the Form. This undertaking, to file post-effective amendments with respect to transactions contemplated after effectiveness, is required in addition to the undertakings required by Item 512(a) of Regulation S–K.[39] The new undertaking will ensure that Rule 415 cannot be used to implement Recommendation Twelve of the Advisory Committee's recommendations,[40] by using a prospectus supplement to provide for the immediate commencement of an exchange offer.

On the other hand, if the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act would itself qualify for an exemption from section 5 of the Act, but for the existence of other similar (prior or subsequent) transactions, then a prospectus supplement may be used to provide information necessary in connection with such transaction.[41] General Instruction H codifies this administrative practice with respect to transactions the securities for which currently are registered on Form S–1 or S–14.

G. Structure of the Form

See, e.g., (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 (available January 17, 1973).

The two part structure of Form S–4, separating the information which must be included in the prospectus (Part I) and that which need not (Part II), is the same as other Securities Act forms. Part I of the Form is divided into four separate sections in order to set forth clearly the requirements relating to the transaction, the companies involved, voting and management information.

1. Information Required in the Prospectus—Part I

a. *Information about the Transaction—Section A.* Section A calls for information about the transaction. This information must be presented in the prospectus instead of being incorporated by reference. The items in section A include: Items 1 and 2, information called for by Items 501 [42] and 502 [43] of Regulation S–K; Item 3, risk factors, ratio of earnings to fixed charges and other information; Item 4, terms of the transaction; Item 5, pro forma financial information; Item 6, material contacts between the companies; Item 7, additional information related to resales; and Items 8 and 9, information called for by Items 509 [44] and 510 [45] of Regulation S–K. These items are adopted substantially as proposed; there follows a discussion of areas where changes have been made from the proposal, or that otherwise are highlighted.

(1) *Risk Factors, Ratio of Earnings to Fixed Charges and Other Information—Item 3.*—Item 3 is adopted with modifications and additional items that reflect commentators' suggestions. First, the Item has been redesignated "Risk Factors, Ratio of Earnings to Fixed Charges and Other Information," to clarify that the information set forth in this part of the prospectus is not a summary of all material information concerning the transaction. The Item requires the registrant to furnish information required by Item 503 of Regulation S–K; [46] the name and address of the subject entities; a brief description of business and properties; a brief description of the transaction; certain comparative per share data; a statement concerning dissenters' appraisal rights; a statement comparing the percentage of outstanding voting shares held by directors, officers and their affiliates; the vote required for approval; and a brief statement regarding the tax consequences of the proposed transaction.[47]

Based upon commentators' suggestions, Item 3 has been revised further to require (1) a statement as to whether any federal or state regulatory requirements must be complied with or approvals must be obtained in connection with the transaction, and if so, the status of such compliance or

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[36] Of course, the references to Form S–14 in SAB 50 should be construed to be references to Form S–4 after its adoption.

[37] 17 CFR 230.415(a)(1) (i) and (viii). In view of this position, it was not necessary to include a Rule 415 cover page box in Form S–4 as adopted.

[38] Where such a second step in a multi-step transaction becomes probable, however, pro forma financial information is required at this point as to the effects of both the exchange offer and the second step merger. *See* Financial Reporting Release 2, Release No. 33–6413 (June 24, 1982) [47 FR 29832].

[39] 17 CFR 229.512(a). Item 512(a) requires the registrant, in an offering of securities pursuant to Rule 415 to undertake to update the prospectus by post-effective amendment to reflect: (1) Any prospectus required by section 10(a)(3) of the Securities Act; (2) facts or events arising after the effective date of the registration statement which constitute a fundamental change; and (3) any material information with respect to the plan of distribution not disclosed previously in the registration statement or any material change to such information in the registration statement. The Item also requires an undertaking to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

[40] *See* discussion at page 13, *infra*.

[41] *See, e.g.*, (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 (available January 17, 1973).

[42] 17 CFR 229.501 (forepart of registration statement and outside front cover page of prospectus).

[43] 17 CFR 229.502 (inside front and outside back cover page of prospectus).

[44] 17 CFR 229.509 (interests of named experts and counsel).

[45] 17 CFR 229.510 (disclosure of Commission position on indemnification).

[46] 17 CFR 229.503 (summary information, risk factors and ratio of earnings to fixed charges).

[47] In view of the complexity of the tax consequences of certain business combination transactions, revised Item 3(j) permits registrants to provide, where appropriate, only a cross reference to the information furnished pursuant to Item 4 of the Form.

approvals; and (2) a requirement to furnish the information required by Item 301 of Regulation S-K [48] (condensed financial data for five year trend information) for (1) the registrant; (2) the company being acquired; and (3) if material with respect to the registrant, pro forma data giving effect to the transaction.[49] As a result of this change, the time period requirements for the comparative per share data and equivalent per share data have been revised to reflect that the Item 301 time periods provide the basis for such comparative data.

(2) *Terms of the Transaction—Item 4.*—Item 4 calls for a description of the terms of the transaction, including information about the acquisition agreement, reasons for and consequences of the transaction, description of securities and differences in the rights of security holders. This Item, as adopted, reflects several changes from the proposal in response to commentator suggestions.

Proposed Form S-4 allowed registrants eligible to use Form S-3 to incorporate by reference the description of the securities being issued in the transaction if the same securities are registered under the Exchange Act. The adopted Item has changed the conditions under which the description of securities may be incorporated by reference to require not only that securities of the same class as those being offered must be registered under section 12 of the Exchange Act, but also that these securities must be listed for trading or admitted to unlisted trading privileges on a national exchange, or be securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association. This change responds to commentators' concerns by ensuring that security holders receive the description of any class of securities that previously has not been trading.

The proposed Form would have required disclosure of the effect of the transaction on the registrant, the company being acquired and the existing security holders of both. This requirement has been deleted because commentators believed disclosure of the effect of the transaction would be duplicative of the requirement in Item 4(a)(2) for disclosure of the reasons for the transaction. For example, if the registrant plans to dispose of substantial components or assets of the company being acquired, disclosure of such plans would be called for pursuant to Item 4(a)(2).

Item 4 also has been revised to codify existing administrative practice in the area of investment banking and other opinions. The Item requires that if the registrant or the company being acquired has obtained a report, opinion or appraisal from an outside party as to the transaction and refers to such opinion in the prospectus, then the information called for by Item 9(b)(1) of Schedule 13E-3 [50] must be furnished. The Item does not require that such a report be obtained or that there be an affirmative statement as to whether one was obtained. The Item applies only where a report has been obtained and reference to it is made in the prospectus.

In addition, pursuant to commentators' suggestions, a requirement to furnish a brief statement as to the accounting treatment of the transaction has been added. This item will elicit disclosure as to whether the proposed acquisition will be accounted for as a purchase transaction or as a pooling of interests transaction.

Finally, Item 4(b) of the proposed Form would have required incorporation by reference of the acquisition agreement into the prospectus and an undertaking that the agreement be furnished, without charge, by first class mail or other equally prompt means, to security holders that request it. In this regard, the Commission solicited comment as to whether it should: (1) Give guidance as to which of the provisions of the acquisition agreement registrants should discuss pursuant to Item 4(a) (1); and (2) in keeping with its goal of streamlining disclosure, take further steps to discourage delivery of the acquisition agreement. Commentators generally supported the incorporation by reference requirement, but indicated that timely delivery of the acquisition agreement to security holders that request it would be essential to the adequacy of the requirement. Commentators did not believe any further steps would be appropriate in this area. The Commission agrees and has adopted Item 4(b) with the one modification that the undertaking to furnish the agreement has been deleted because it is duplicative of the new undertaking added as Item 22(b).[51]

(3) *Pro Forma Financial Information—Item 5.*—This Item has been adopted as proposed. The pro forma financial information relating to the transaction pursuant to which a Form S-4 is filed, like other transaction information, must be presented in the prospectus and may not be incorporated by reference. However, pro forma information relating to other business combinations besides the transaction pursuant to which this registration statement is filed, is treated like company information and, therefore, may be presented in the prospectus or incorporated by reference therein.

(4) *Material Contacts Between Companies—Item 6.*—Item 6 of Form S-4, which has been adopted as proposed, calls for information relating to any past, present or proposed material contracts, negotiations, transactions or similar contacts between the registrant and the company being acquired. The Item is designed to elicit information about: (1) Possible conflicts of interest and (2) facts relating to transactions such as pre-takeover transactions or purchases by the registrant of significant blocks of the securities of the company being acquired.

b. *Information About the Registrant—Section B.* (1) *Reporting Companies.*—If a registrant is subject to either section 13(a) or 15(d) of the Exchange Act, the information it would have to present in the prospectus about itself is the same as that required by Form S-1, S-2 or S-3 [52] if it were making a primary offering

[48] 17 CFR 229.301 (selected financial data).

[49] Where S-2 or S-1 companies are involved, this information already is required to be presented pursuant to other items of the Form.

[50] 17 CFR 240.13e-100. Of course, the person rendering such opinion would be an expert within the meaning of section 7 of the Securities Act and, accordingly, would be required to furnish the required consent. Moreover, a requirement to furnish the report, opinion or appraisal as an exhibit to the registration statement, if it has been referenced in the prospectus, has been added in Item 21(c) of Form S-4.

[51] *See* fn. 25, *infra*.

[52] Application of the Form S-3 level includes the forward incorporation feature of that Form, *i.e.*, the incorporation by reference of subsequently filed Exchange Act reports, including all reports filed subsequent to the effectiveness of the registration statement and prior to the termination of the offering. As the Commission noted in proposing Form S-3, however:

Despite the fact that subsequently filed periodic reports under the Exchange Act are incorporated by reference into a Form S-3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

See Release No. 33-6331 (August 6, 1981) [46 FR 41902] at fn. 64. Form S-4 registrants who elect the S-3 level for either entity similarly should be mindful with respect to information actually presented in the prospectus delivered in connection with the transaction. *See also* Rule 14a-9 (17 CFR 240.14a-9) if applicable.

of securities not involving a business combination.[53] Registrants eligible to use Form S–2 or S–3 are not required to present information at the most streamlined level available, but may elect instead to comply with provisions of the Form calling for greater prospectus presentation. General Instruction B explains the operation of the three-tier system in the context of registration on Form S–4 and, as adopted, reflects certain clarifying language changes.

(2) *Non-Reporting Companies.*—For registrants that are not subject to the reporting requirements of the Exchange Act, Form S–4 requires disclosure of company information at the level prescribed by Form S–1. The majority of the commentators supported this approach and these requirements have been adopted as proposed.

In the proposing release, the Commission also sought comment as to whether the disclosure level of Form S–18 [54] should be made available where the company(ies) involved could use that Form for an initial public offering, *i.e.*, where the company is non-public and the value of the securities being registered does not exceed $7.5 million. While the commentators who addressed this point supported the concept, they also questioned its utility in the business combination context in light of the dollar amount limitation. Moreover, the Form S–4 financial disclosure requirements discussed below with respect to non-reporting companies being acquired are less burdersome for non-reporting companies being acquired than are those of Form S–18, which requires a two year audit. Based upon the questionable utility of the S–18 approach and the complexity its implementation would add to Form S–4, with little concomitant benefit, the Commission has determined not to pursue this approach.

c. *Information About the Company Being Acquired—Section C.* (1) *Reporting Companies.*—Form S–4 generally provides for the same prospectus presentation about a reporting company being acquired that would be required by Form S–1, S–2 or S–3 were such company making a primary offering of securities not involving a business combination. Thus, Form S–4 for the most part requires registrants to provide information about the company being acquired as if that company were the registrant.

(2) *Non-Reporting Companies.*—Form S–4 allows registrants to elect to provide information about non-reporting companies being acquired either at the S–1 level or at a level that is the same as that required under Form S–15 for non-reporting companies being acquired. With respect to financial statement requirements, this approach reflects a change from the proposal, which is discussed below. The Commission believes that these revised requirements strike a more appropriate balance between the cost of collecting and processing information not previously developed, and the investor's need for information. In addition, the definition of a non-reporting company being acquired has been modified, in Item 17(b), to include, in addition to companies not subject to the reporting requirements of either sections 13(a) or 15(d) of the Exchange Act, a public company which, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 [55] or Rule 14c–3 [56] for its latest fiscal year.

Proposed Form S–4 would have required non-reporting companies being acquired to provide audited financial statements for the periods required to be presented by Rule 3–05 of Regulation S–X.[57] In addition, the proposed Form carried over the provisions of Item 15 of Schedule 14A [58] that such financial statements need be certified [59] only to the extent practicable, but that reoffers to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) would be prohibited until the required certified statements are provided.

Pursuant to commentator suggestion that some minimum level of disclosure should be required in the Form as to both entities, the financial statement requirements of Form S–4 with respect to non-reporting companies being acquired have been changed to incorporate the current requirements of Form S–15. Thus, Item 17(b)(7) provides that a non-reporting company being acquired must provide three-year financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a–3 (b)(1) and (b)(2) or Rule 14c-3 (b)(1) or (b)(2), had the company being acquired been required to prepare such report. The balance sheet for the year preceding the latest full fiscal year and the income statements for the two preceding years, however, need not be audited if they have previously not been audited. In addition, the quarterly financial and other information that would have been furnished had the company being acquired been required to file Part I of Form 10–Q [60] for the most recent quarter prior to the time of effectiveness of the registration statement must be furnished.

d. *Voting and Management Information—Section D.* (1) *Voting Information.*—If a proxy, consent [61] or authorization is to be solicited, Form S–4 requires registrants to present in the prospectus information concerning (1) the vote needed for approval, (2) dissenters' rights of appraisal, (3) revocability of proxies, (4) interest of certain persons in the transaction, (5) persons making the solicitation and (6) the registrant's relationship with independent public accountants. In the absence of a solicitation, the Form requires prospectus presentation of information about (1) the date of the shareholder meeting, (2) the vote required for approval, (3) dissenters' rights of appraisal, (4) the registrant's relationship with independent public accountants and (5) a statement that proxies, consents or authorizations are not being solicited. These requirements have been adopted as proposed, except that Item 19 has been revised to make clear which provisions thereof are not applicable in the case of exchange offers.

(2) *Management Information.*—Whether or not proxies are to be solicited, Form S–4 requires information concerning voting securities and the principal holders of such shares [62] with

[53] The language in the introduction to Item 11 of Form S–2 and Item 12(a)(3) of Form S–4, which calls for information prescribed by Article 11 (17 CFR 210.11–01 *et seq.*) and Rule 3–05 of Regulation S–X "if not reflected in the registrant's latest annual report to security holders . . ." is not intended to suggest that the annual report to security holders prescribes the inclusion of such information.

[54] 17 CFR 239.28.

[55] 17 CFR 240.14a–3(b) sets forth the information required to be included in the annual report to security holders which must accompany or precede the annual proxy materials.

[56] 17 CFR 240.14c–3(a) sets forth the information to be included in the annual report to security holders which must accompany or precede the annual information statement.

[57] Generally, Rule 3–05 requires audited financial statements for one, two or three years regarding a business that is being acquired depending upon the relative size of the acquisition

[58] 17 CFR 240.14a–101.

[59] In the revised Form S–4 requirements, the word "certified" has been changed to "audited" for consistency.

[60] 17 CFR 249.308a.

[61] In a consent solicitation, the 20 business day period discussed, *infra*, operates to require the registrant to send the prospectus to security holders 20 business days in advance of the date on which such consents may be used to effect the transaction, rather than 20 days in advance of the date on which the requisite consents may be received by the soliciting party. This procedure considers the possibility of revocation of consents and establishes a fixed date for calculation of the 20 business day period in this context.

[62] Item 5 of Schedule 14A (17 CFR 240.14a–101)

respect to all directors and executive officers of both entities and, with regard to the directors and executive officers of the surviving or acquiring company, information about directors and executive officers,[63] certain relationships and related transactions,[64] and executive compensation.[65] The Form permits incorporation by reference of management information to the same extent as would be permitted in a primary offering not involving a business combination under Forms S–1, S–2, and S–3.

2. Information Not Required in the Prospectus—Part II

Part II of Form S–4 prescribes information called for by: (1) Item 702 of Regulation S–K[66] indemnification of directors and officers; (2) Item 601 of Regulation S–K, exhibits; and (3) Item 512 of Regulation S–K, undertakings.

This information would be included in the registration statement, but could be omitted from the prospectus. These requirements have been adopted as proposed, with the addition of the two new undertakings (compliance with requests for information incorporated by reference and post-effective amendments for delayed business combinations) and the new exhibit requirement for reports, opinions or appraisals materially related to the transaction that are referenced in the prospectus.

H. Other Amendments

1. Corresponding Amendments

a. The Commission also has adopted corresponding amendments to Rule 3–05 of Regulation S–X, Items 502,[67] 512 and 601 of Regulation S–K, Rules 406, 463, 464, 473, 475a and 477 under the Securities Act and Rules 14a–3, 14a–6, 14c–2 and 14c–5 under the Exchange Act. These amendments are necessitated by rescission of Form S–15 and its replacement with Forms S–4 and F–4. The changes delete references to Form S–15 and, where appropriate, replace them with references to Form S–4 or F–4. The Commission notes that although Form F–4 is not being published in this release, the technical amendments necessitated by its adoption are included in this release to avoid unnecessary duplication. The amendment to Rule 145(a)(2) to codify the staff position that the Rule's change in domicile exception does not apply to a change in national jurisdiction is included in the F–4 release, however, because it applies in the foreign context.

2. New Investment Company Merger Proxy Form

The Commission notes that registered investment companies and business development companies, as defined in section 2(a)(48) of the Investment Company Act of 1940[68] currently may register securities issued in connection with business combinations on Form S–14. Form S–4 is not available for the registration of securities in connection with a business combination where the registrant is a registered investment company or a business development company. The Commission has proposed a new merger proxy form, Form N–14,[69] that, if adopted, will be available for use by such companies and will replace Form S–14 for these companies. Form S–14 will be retained only for these companies and business development companies on a temporary basis until the new form is adopted, at which time Form S–14 will be rescinded.

3. Item 502 of Regulation S–K

In addition to the corresponding amendments noted above, a clarifying amendment to Item 502 of Regulation S–K also has been adopted. The amendment clarifies that the undertaking required of registrants to send documents that are incorporated and not delivered extends to beneficial owners.

4. Rule 145—Preliminary Note

The Commission has eliminated from the preliminary note to Rule 145 under the Securities Act certain details concerning the history and application of Rule 133. Rule 133, which contained the Commission's previously existing "no-sale" theory, was rescinded effective January 1, 1973 following the adoption of Rule 145.[70] The portions of the preliminary note the Commission has deleted pertain to the applicability of Rule 133 and are no longer relevant.

5. Form 8–K Reports of Acquisitions

The Commission has adopted as proposed a modification of the current procedures for filing reports on Form 8–K in the context of acquisitions. Currently, a reporting registrant must file a report on Form 8–K within fifteen days after it has made an acquisition. In that report, the registrant must provide a description of the acquisition pursuant to Item 2, and the financial statements and pro forma financial information prescribed by Rule 3–05 and Article 11 of Regulation S–X pursuant to Item 7. As amended, Item 7 of Form 8–K provides an extension of up to 60 days, from the date the filing initially is due, for filing the financial statements and pro forma financial information regarding an acquired business. The extension is available where: (1) The provision of such information within fifteen days is impracticable; (2) the registrant so states in its filing on Form 8–K and states the date such financial statements are expected to be filed by an amendment; and (3) the registrant provides such financial information as soon as practicable within the 60 day period. Commentators generally supported the proposed amendment.

Under the amended procedure, registrants, upon notice in the initial Form 8–K report filed in connection with the acquisition, would have up to 60 additional days[71] in which to provide Item 7 financial information where the provision of the required audited financial statements and pro forma financial information within fifteen days would be impracticable. In such an instance, the registrant would have to provide within the regular fifteen day deadline as much of the required financial statements as then were available, including where appropriate, unaudited financial statements.

The proposing release also contained policy statements concerning the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects. In addition, new instructions have been added to revised Item 7(a)(4) in order to set forth certain of the revised policies in the Form itself.

During the pendency of the extension, registrants would be deemed current for purposes of their reporting requirements under the Exchange Act. With respect to filings under the Securities Act, registration statements and post-effective amendments to effective registration statements would not be declared effective. In addition, offers

[63] Item 401 of Regulation S–K (17 CFR 229.401).

[64] Item 404 of Regulation S–K (17 CFR 229.404).

[65] Item 402 of Regulation S–K (17 CFR 229.402).

[66] 17 CFR 229.702.

[67] The Commission also has made clarifying technical changes to the Item 502 references to incorporated material.

[68] 15 U.S.C. 80a–2(a)(48), *as amended by*, Pub. L. 96–477 1980.

[69] Release No. 33–6570 (March 18, 1985) [50 FR 11725].

[70] *See* Release No. 33–5316 (October 6, 1972) [37 FR 23631].

[71] Because the number of days (60) available under the extension runs from the date the filing on Form 8–K is due (fifteen days subsequent to the acquisition), rather than the date of the acquisition, the extension provides a maximum of 75 days from the acquisition date for the registrant to furnish the required information.

and sales should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D [72] where any purchaser is not an accredited investor under Rule 501(a) of that Regulation, until the required audited financial statements are furnished. This prohibition, however, does not affect offerings or sales, made: (1) Upon the conversion of outstanding convertible securities, or the exercise of outstanding warrants or rights; (2) pursuant to dividend or interest reinvestment plans on Form S–3; (3) pursuant to employee benefit plans on Form S–8; (4) in transactions involving secondary offerings; or (5) in reofferings or resales of securities pursuant to Rule 144.[73] These positions respecting the pendency of the 60 day extension are described in new Instruction 1 to Item 7(a)(4) and reflect changes made: (1) To clarify the status of effective shelf registration statements; (2) to rescind the previous position that affiliates of the registrant would not be permitted to resell securities in reliance on Rule 144;[74] and (3) to explain the implications of an extension under Regulation D.

As noted in the proposing release, no further extensions of the filing period will be available. A few commentators indicated that this policy should be modified to allow requests for further extensions of time in the most unusual circumstances, such as in the event that unforeseeable delays are encountered during the course of an audit.

The Commission believes, however, that the purposes of the Exchange Act, "to insure the maintenance of fair and honest markets in securities transactions * * *",[75] may be better served without a further extension procedure.[76] Moreover, it should be noted that the notification procedure and the availability of the 60 day extension should not be an invitation to non-timely filing of the required financial information.

Finally, the proposing release stated that in certain rare instances the Division would consider requests for waiver of some or all of the required financial information. The Commission wishes to emphasize that a waiver of the financial statement requirements will be considered only where the circumstances are so rare as to constitute a unique occurrence in the life of the registrant. The waiver process will be administered for the Commission by the Division of Corporation Finance, on a case by case basis.

As was stated in the proposing release, in determining whether to grant a waiver, the Division will consider: (1) The size of the acquisition relative to the registrant;[77] (2) the reasons why the statements cannot be obtained;[78] and (3) the financial information the registrant can provide.[79] All three factors will be considered together. The larger the acquisition, the more compelling the reasons must be, and the more important that information which can be provided becomes. While certain commentators suggested the need for explicit guidelines as to the standards to be applied to requests for waiver, the unique facts and circumstances under which such requests would be considered make guidelines impracticable.

Where a waiver is not granted and the required financial statements are not supplied in the time prescribed, registrant are notified that the deficiency may affect the registrant for both Exchange Act and Securities Act purposes. Depending on the circumstances and the relevancy of the information, the registrant may not be considered timely or current in its Exchange Act reporting obligations and, where appropriate, enforcement action would be taken. Once the registrant has furnished audited financial statements of the new combined entity for an appropriate period,[80] it could, in some cases, be considered current for Exchange Act purposes, and also may be able to register securities under the Securities Act.

Statutory Authority

The Commission is adopting Form S–4 and the related amendments pursuant to sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 14(a), 14(c) and 23(a) of the Exchange Act.

As required by section 23(a) of the Exchange Act, the Commission has considered specifically the impact that the rulemaking actions revising 17 CFR Parts 210, 229, 230, 239, 240 and 249 taken pursuant to the various provisions of the Exchange Act would have on competition, and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to Form S–4, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposed release (Release No. 33–6534, May 9, 1984 [49 FR 20833]).

The Need for and Objectives of Form S–4

The Form is designed to improve the effectiveness of the business combinations prospectus by requiring that information be presented in a more accessible and meaningful format, and to simplify the registration of securities issued in such transactions. The Commission is implementing these objectives by applying to business combination transactions the principles of the integrated disclosure system

[72] 17 CFR 230.501 to 230.506. With respect to sales made only to accredited investors, however, there are no informational requirements under Regulation D.

[73] 17 CFR 230.144. Rule 144 provides a safe-harbor rule by means of which affiliates and nonaffiliates of the registrant can resell their restricted securities without the need for registration under the Securities Act. Availability of the Rule is conditioned, *inter alia*, on there being adequate current public information concerning the registrant. *See* Rule 144(c).

[74] This position is rescinded because the dangers posed by allowing affiliates, who may have non-public information about the registrant, to continue to sell securities during the pendency of the extension are adequately addressed by: (1) Exchange Act section 10(b) and Rule 10b–5 thereunder (17 CFR 240.10b–5); and (2) the representation made by affiliates in filings on Form 144. Form 144 requires the selling affiliate to represent that he does not know any material adverse information about the current or prospective operations of the issuer of the securities which has not been disclosed publicly

[75] Section 2 of the Exchange Act of 1934, 15 U.S.C. 78b.

[76] This position is consistent with that embodied in Rule 12b–25 (17 CFR 240.12b–25), which provides the procedures for extensions of time for filing all or part of reports on Form 10–K and Form 10–Q. For reports on these Forms, no further extensions beyond that provided under Rule 12b–25 are available.

[77] *See* Article 3–05 of Regulation S–X, which establishes the time periods for which financial statements must be furnished based upon the relative size of the acquisition. The sliding scale of Article 3–05 for the evaluation of the significance of a business acquisition was adopted in Securities Act Release No. 33–6413 (June 24, 1982) [47 FR 29832]. It revised and codified the principles applicable to requests for waiver of certain audited financial statement requirements set forth in Securities Act Release No. 4950 (February 20, 1969) [34 FR 4886], "General Requirements for Certified Financial Statements of Companies Acquired or to be Acquired."

[78] For example, impossibility would be considered relevant. However, cost of an audit alone generally would not be deemed a sufficient basis for a waiver.

[79] For example, an audit of the most relevant portions of the required financial statements, or an audit of two of the three required years' financial statements, may provide an adequate basis for a waiver of the remaining requirements where the other factors (size and reasons) also support such action.

[80] In this regard, what constitutes an appropriate time period will be determined by the staff, based upon the particular facts and circumstances of each case.

developed in the context of primary offerings of securities. Thus, information about the companies involved is presented in, delivered with, or incorporated by reference into, the prospectus to the same extent as provided when such companies are making primary offerings. Form S-4 together with Form F-4 replaces Form S-15 under the Securities Act of 1933 ("Securities Act") and is available for the registration of all business combination transactions, including exchange offers previously registered on Form S-1 under the Securities Act.

Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in Commenting on proposed Form S-4.

Significant Alternatives

Form S-4 is modeled on the disclosure requirements contained in Forms S-1, S-2 and S-3, the basic forms under the Commission's integrated disclosure system. In developing those Forms, the Commission carefully analyzed whether they should be adapted specially for use by small entities. The Commission concluded that the better approach was to address the needs of small entities separately in the context of Regulation D and Form S-18. The Commission in connection with Form S-4, considered whether the disclosure level of Form S-18 should be made available where a company involved could use that Form for an initial public offering. Although some commentators supported the concept, they questioned its utility in the business combination context in light of the $7.5 million limit on the value of securities registered on Form S-18. Moreover, the fact that the financial disclosure requirements of Form S-4 are less burdensome for non-reporting companies being acquired than those of Form S-18, indicates that the Form S-18 approach would increase the complexity of Form S-4, with little concommitant benefit for small entities. Accordingly, the Commission has determined not to implement this alternative. Form S-4 thus requires disclosure according to the levels represented by Forms S-1, S-2 and S-3 in the primary offering context. The Commission does not believe that other alternatives, including use of a performance rather than a design standard, or exempting small entities from all or part of the requirements of the Form would accomplish the Commission's statutory mandate to protect investors.

List of Subjects

17 CFR Part 210

Securities, Reporting and recordkeeping requirements, Holding companies, Insurance companies, Investment companies.

17 CFR Part 229

Securities, Reporting and recordkeeping requirements.

17 CFR Part 230

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraph (b)(1) introductory text of § 210.3-05 to read as follows:

§ 210.3-05 Financial statements of business acquired or to be acquired.

* * * * *

(b) Periods to be presented. (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form S-14. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy statements or in a registration statement filed on Form S-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in Rule 1-02 of Regulation S-X (§ 210.1-02 of this chapter). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGES ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

2. By revising paragraph (c) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(c) *Incorporation by reference.* Where any document or part thereof is incorporated by reference in the prospectus but not delivered therewith, include an undertaking to provide without charge to each person, including any beneficial owner, to whom a prospectus is delivered, upon written or oral request of such person, a copy of any and all of the information that has been incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically uncorporated by reference into the information that the prospectus incorporates), and the address (including title or department) and telephone number to which such a request is to be directed.

* * * * *

3. By revising paragraph (h) introductory text of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Registration on Form S-14, S-4 or F-4 of securities offered for resale.* Include the following if the securities are being registered on Form S-14, S-4 or F-4 (§ 239.25, or 34 of this chapter) in connection with a transaction specified

in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

* * * * *

4. By revising the Exhibit Table and revising paragraph (b)(4)(ii) of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms													Exchange Act forms		
	F-1	F-2	F-3	F-4	S-1	S-2	S-3	S-4	S-8	S-11	S-14	S-18	S-10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	X	X	X	X		X	X	X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
(3) Articles of incorporation and by-laws	X			X	X			X		X	X	X	X			X
(4) Instruments defining the rights of security holders including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X		X	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X		X	X	X		X	X	X	X	X	X			
(7) Opinion re liquidation preference	X	X		X	X	X		X		X	X	X	X			
(8) Opinion re tax matters	X	X	X	X	X	X	X	X		X	X	X				
(9) Voting trust agreement	X	X		X	X			X		X	X	X	X			X
(10) Material contracts	X	X		X	X	X		X		X	X	X	X			X
(11) Statement re computation of per share earnings	X	X		X	X	X		X		X	X		X		X	X
(12) Statements re computation of ratios [1]	X	X		X	X	X	X	X		X	X		X			X
(13) Annual report [3] computation to security holders, Form 10-Q or quarterly report to security holders.							X	X	X							X
(14) Material foreign patents	X			X	X			X			X	X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant														X		
(17) Letter re director resignation														X		
(18) Letter re change in accounting principles															X	X
(19) Previously unfiled documents															X	X
(20) Report furnished to security holders															X	
(21) Other documents or statements to security holders														X		
(22) Subsidiaries of the registrant	X			X	X			X		X			X			X
(23) Published report regarding matters submitted to vote of security holders															X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	X	X		X [2]	X [2]	X
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X	X	X	X	X		X	X	X				
(27) Invitations for competitive bids	X	X	X	X	X	X	X	X				X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(29) Information from reports furnished to state insurance regulatory authorities					X	X	X	X	X		X		X			X

[1] Where incorporated by reference into the text of prospectus as permitted by the registration statement.

[2] Where incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if (1) with respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

* * * * * * *

(b) * * *

(4) * * *

(ii) Except as set forth in paragraph (b)(4) of this section (iii) for filings on Forms S-1, S-4, S-11, S-14 and F-4 under the Securities Act (§§ 239.1, and 25, 18, 23 and 34 of this chapter) and Forms 10 and 10-K (§§ 249.210 and 310 of this chapter) under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. By revising the Preliminary Note to § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note

Rule 145 (§ 230.145 of this chapter) is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (Act), to persons who are offered securities in a business combination of the type described in paragraphs (a) (1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. *See* Release No. 33-5316 (October 6, 1972) [37 FR 23631]. Securities issued in transactions described in paragraph (a) of Rule 145 may be registered on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a) (9), (10), (11) and 4(2), are otherwise available are not affected by Rule 145.

Note 1.—Reference is made to Rule 153a (§ 230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

Note 2.—A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to section 3(a) (9) or (11) of the Act if the conditions of either of these sections are satisfied.

* * * * *

6. By revising the section heading and paragraph (a) of § 230.406 to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

* * * * *

(a) Any person submitting any information in a document required to

be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the "material filed") required to be filed under the Act, *except* that if the material filed is a registration statement on Form S–8 (§ 239.16b of this chapter) or on Form S-3, F-2, F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form, or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), the person shall comply with the procedure in paragraph (b) *prior* to the filing of a registration statement.

* * * * *

7. By amending § 230.463 to include new paragraphs (d) (8) and (9) as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

* * * * *

(d) * * *

(8) In a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; or

(9) In an exchange offer for the securities of the issuer or another entity.

8. By revising the section heading, the introductory paragraph and paragraph (b) of § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S-8 and on certain Forms S-3, S-4, F-2, F-3, and F-4.

Provided, That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter); or on Form S-3, F-2 or F-3 (§ 239.13, 32 or 33 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or in the case of a registration statement on Form S-4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

* * * * *

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 registration statement; or a Form S-3, F-2, or F-3 registration statement relating to a dividend or interest reinvestment plan; or a Form S-4 registration statement complying with General Instruction G of that Form or a Form F-4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statments or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

9. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S–8 (§ 239.16b of this chapter); on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

10. By revising § 230.475a to read as follows:

§ 230.475a Pre-effective amendments on Form S-8 and certain pre-effective amendments on Forms S-3, S-4, F-2, F-3 and F-4 deemed filed with the consent of Commission.

Amendments to a registration statement on Form S–8 (§ 239.16b of this chapter); on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 complying with General instruction F of that Form filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

11. By revising paragraph (b) of § 230.477 to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of a registration statement filed on Form S–8 (§ 239.16b of this chapter); or on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter), relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

12. By removing § 239.29.

§ 239.29 [Removed]

13. By revising the section heading and § 239.23 to read as follows:

§ 239.23 Form S-14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145] by registered investment companies and business development companies.

This form and Form S-1 [17 CFR 239.11] may be used for registration under the Securities Act of 1933 of securities to be issued in a transaction specified in paragraph (a) of § 230.145: *Provided, however*, That Form S-14 shall not be so used unless the registrant is a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940, the prospectus is delivered to security holders whose vote or consent is solicited at least 20 days prior to the date on which the meeting of such security holders is held or the date on which the transaction is effectuated if no such meeting is held: *Provided further*, That if applicable law of the jurisdiction permits the furnishing of a notice of the meeting or other actions within less than the 20-day period specified herein, then compliance with such provisions of such law shall be deemed to satisfy this requirement. Form S-14 may also be used by persons and parties who may be deemed underwriters, for the registration of a public reoffering of securities issued in a transaction specified in paragraph (a) of § 230.145 of this chapter or in a transaction specified in paragraph (a) of § 230.133 of this chapter exempted by the latter section prior to its rescission effective on and after January 1, 1973.

14. By adding § 239.25 to read as follows:

§ 239.25 Form S-4, for the registration of securities issued in business combination transactions.

This Form may be used for registration under the Securities Act of 1933 of securities to be issued (a) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (b) in a merger in which the applicable state law would not require the solicitation of the votes or

consents of all of the security holders of the company being acquired; (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; Secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), (90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n (a), (c), 78w(a))

Note.—The text of Form S-4 does not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Washington, D.C. 20549

Form S-4

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including ZIP Code, and telephone number, including area code, of registrant's principal executive officers)

(Name, address, include ZIP Code, and telephone number including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.☐

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering	Amount of registration fee

General Instructions

A. Rule as to Use of Form S-4

1. This Form may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued (1) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (3) in an exchange offer for securities of the issuer or another equity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

2. If the registrant meets the requirements of and elects to comply with the provisions in any item of this Form or Form F-4 (§ 239.34 of this chapter) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorizations may be used to effect the transaction. Attention is directed to sections 13(e), 14(d) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder regarding other time periods in connection with exchange offers and going private transactions.

3. This Form shall not be used if the registrant is a registered investment company or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940.

B. Information With Respect to the Registrant

1. Information with respect to the registrant shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements of Form S-3 (§ 239.13 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form S-3") for this offering of securities:

(i) the registrant meets the requirements of General Instruction I.A. of Form S-3; and

(ii) one of the following is met:

A. The registrant meets the aggregate market value requirement of General Instruction I.B.1. of Form S-3; or

B. Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and are "investment grade securities" as defined in General Instruction I.B.2. of Form S-3; or

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S-3 is met.

b. Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form S-2 (§ 239.12 of this chapter) or Form S-3 and elects this alternative; or

c. Item 14 of this Form, if the registrant does not meet the requirements for use of Form S-2 or S-3, or if it otherwise elects this alternative.

2. If the registrant is a real estate entity of the type described in General Instruction A to Form S-11 (§ 239.18 of this chapter), the information prescribed by Items 12, 13, 14, 15 and 16 of Form S-11 shall be furnished about the registrant in addition to the information provided pursuant to Items 10 through 14 of this Form. The information prescribed by such Items of Form S-11 may be incorporated by reference into the prospectus if (a) a registrant qualifies for and elects to provide information pursuant to alternative 1.a. or 1.b. of this instruction and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

C. Information With Respect to the Company Being Acquired

1. Information with respect to the company whose securities are being acquired (hereinafter including, where securities of the registrant are being offered in exchange for securities of another company, such other company) shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Item 15 of this Form, if the company being acquired meets the requirements of General Instructions I.A. and I.B.1. of Form S-3 (hereinafter, with respect to the company being acquired, "meets the requirements for use of Form S-3") of Form S-3 and this alternative is elected;

b. Item 16 of this Form, if the company being acquired meets the requirements for use of Form S-2 or S-3 and this alternative is elected; or

c. Item 17 of this Form, if the company being acquired does not meet the requirements for use of Form S-2 or S-3 or if this alternative is otherwise elected.

2. If the company being acquired is a real estate entity of the type described in General Instruction A to Form S-11, the information that would be required by Items 13, 14, 15 and 16(a) of Form S-

11 if securities of such company were being registered shall be furnished about such company being acquired in addition to the information provided pursuant to this Form. The information prescribe by such Items of Form S-11 may be incorporated by reference into the prospectus if (a) the company being acquired would qualify for use of the level of disclosure prescribed by alternative 1.a. or 1.b. of this instruction and such alternative is elected and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

D. Application of General Rules and Regulations.

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed to Regulation S-K (Part 229 of this chapter) for the requirements applicable to the content of non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

E. Compliance With Exchange Act Rules

1. If a corporation or other person submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a-1 through 14b-1 of this chapter) or 14C (§§ 240.14c-1 through 14c-101 of this chapter) under the Exchange Act, then the provisions of such Regulations shall apply in all respects to such person's submission, except that (a) the prospectus may be in the form of a proxy or information statement and may contain the information required by this Form in lieu of that required by Schedule 14A (§ 240.14a-101) or 14C (§ 240.14c-101) of Regulation 14A or 14C under the Exchange Act; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to such person's obligations under such Regulations.

2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction in which the securities being registered are to be issued is subject to Section 139(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

F. Transactions Involving Foreign Private Issuers

If a U.S. registrant is acquiring a foreign private issuer, as defined by Rule 405 (§ 230.405 of this chapter), eligible to use Form 20-F (§ 249.220f of this chapter), such registrant may use this Form and may present information about the foreign private issuer pursuant to Form F-4. If the registrant is a foreign private issuer, such registrant may use Form F-4 and (1) if the company being acquired is a foreign private issuer eligible to use Form 20-F, may present information about such foreign company pursuant to Form F-4 or (2) if the company being acquired is a U.S. company or a foreign private issuer not eligible to use Form 20-F, may present information about such company pursuant to this Form.

G. Filing and Effectiveness of Registration Statement Involving Formation of Holding Companies; Requests for Confidential Treatment; Number of Copies

Original registration statements on this Form S-4 will become effective automatically on the twentieth day after the date of filing (Rule 456, § 230.456 of this chapter), pursuant to the provisions of Section 8(a) of the Act (Rule 459, § 230.459 of this chapter) provided:

1. The transaction in connection with which securities are being registered involves the organization of a bank or savings and loan holding company for the sole purpose of issuing common stock to acquire all of the common stock of the company that is organizing the holding company; and

2. the following conditions are met:

a. The financial institution furnishes its security holders with an annual report that includes financial statements prepared on the basis of generally accepted accounting principles;

b. There are no anticipated changes in the security holders' relative equity ownership interest in the underlying company's assets except for redemption of no more than a nominal number of shares of unaffiliated persons who dissent;

c. In the aggregate, only nominal borrowings are to be incurred for such purposes as organizing the holding company to pay non-affiliated persons who dissent, or to meet minimum capital requirements;

d. There are no new classes of stock authorized other than those corresponding to the stock of the company being acquired immediately prior to the reorganization;

e. There are no plans or arrangements to issue any additional shares to acquire any business other than the company being acquired; and

f. There has been no material adverse change in the financial condition of the company being acquired since the latest fiscal year end included in the annual report to security holders.

Pre-effective amendments with respect to such a registration statement may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, § 230.475a of this chapter). Accordingly, the filing of a pre-effective amendment to such a registration statement will not commence a new twenty-day period. Post-effective amendments to such a registration statement on this Form shall become effective upon the date of filing (Rule 464, § 230.464 of this chapter). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d) § 230.473(d) of this chapter), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this Form pursuant to this instruction become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 406 (§ 230.406 of this chapter) must be processed by the Commission's staff prior to the filing of such a registration statement. The number of copies of such a registration statement and of each amendment required by Rules 402 and 472 (§§ 230.402, 472 of this chapter) shall be filed with the Commission: *Provided, however,* That the number of additional copies referrred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

H. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter)

If the registration statement relates to offerings of securities pursuant to Rule

415(a)(1)(viii), required information about the type of contemplated transaction or the company to be acquired only need be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired, however, must be included in the prospectus by means of a post-effective amendment; *Provided, however,* that where the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act of 1933 would itself qualify for an exemption from Section 5 of the Act, absent the existence of other similar (prior or subsequent) transactions, a prospectus supplement could be used to furnish the information necessary in connection with such transaction.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus. Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

Item 2. Inside Front and Outside Back Cover Page of Prospectus. Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter). In addition, on the inside front cover page include the following statement in bold face type, where applicable:

This prospectus incorporates documents by reference which are not presented herein or delivered herewith. These documents are available upon request from (name, address and telephone number to which a request is to be directed). In order to ensure timely delivery of the documents, any request should be made by (date five business days prior to the date on which the final investment decision must be made).

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information. Provide in the forepart of the prospectus a summary containing the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter) and the following:

(a) The name, complete mailing address (including the Zip Code), and telephone number (including the area code) of the principal executive offices of the registrant and the company being acquired;

(b) A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(c) A brief description of the transaction in which the securities being registered are to be offered;

(d) The information required by Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data) for (i) the registrant; (ii) the company being acquired; and (iii) if material, the registrant, on a pro forma basis, giving effect to the transaction. To the extent the information is required to be presented in the prospectus pursuant to Items 12, 14, 16 or 17, it need not be repeated pursuant to this Item;

(e) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data);

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data);

(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data).

Instructions to paragraph (e)

For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends delcared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

(f) In comparative columnar form, the market value of securites of the company being acquired (on an historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into;

(g) With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates and the vote required for approval of the proposed transaction;

(h) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(i) A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 18 or 19 of this Form; and

(j) A brief statement about the tax consequences of the transaction, or if appropriate, consisting of a, cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the transaction.

(a) Furnish a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) A brief summary of the terms of the acquisition agreement;

(2) The reasons of the registrant and of the company being acquired for engaging in the transaction;

(3) The information required by Item 202 of Regulation S-K (§ 229.202 of this chapter), description of registrant's securities, unless: (i) the registrant would meet the requirements for use of Form S-3, (ii) capital stock is to be registered and (iii) securities of the same class are registered under Section 12 of the Exchange Act, and (i) listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) An explanation of any material differences between the rights of security holders of the company being acquired and the rights of holders of the securities being offered;

(5) A brief statement as to the accounting treatment of the transaction; and

(6) The federal income tax consequences of the transaction.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is

referred to in the prospectus, furnish the same information as would be required by Item 9 (b)(1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus by means of a statement to that effect.

Item 5. Pro Forma Financial Information. Furnish financial information required by Article 11 of Regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instruction

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other items of this Form shall be presented together with the information provided pursuant to Item 5, but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to Item 11 or 15 of this Form only the pro forma results need be presented as part of the pro forma financial information required by this Item.

Item 6. Material Contacts with the Company Being Acquired. Describe any past, present or proposed material contacts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to Part I.B. or C of this Form between the company being acquired or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 7. Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters. If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof, furnish the following information in the prospectus, at the time it is being used for the reoffer of the securities to the extent it is not already furnished therein:

(a) The information required by Item 507 of Regulation S–K (§ 229.507 of this chapter), selling security holders; and

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material change in the registrant's affairs subsequent to the transaction.

Item 8. Interests of Named Experts and Counsel. Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities. Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

B. Information About the Registrant

Item 10. Information With Respect to S–3 Registrants. If the registrant meets the requirements for use of Form S–3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act.

(b) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, a proxy or information statement filed pursuant to Section 14 of the Exchange Act, a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter), or a Form 8–K filed during either of the two preceding fiscal years:

(1) Financial information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(2) Restated financial statements prepared in accordance with Regulation S–X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

(4) Any financial information required because of a material disposition of assets outside the normal course of business.

Item 11. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S–3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraphs (1), (2) and, if applicable, (3) below.

(1) The registrant's latest annual report on Form 10–K (§ 249.310 of this chapter) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in Item 11(a)(1) of this Form; and

(3) If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act and: (i) Listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(b) The prospectus also shall state that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of security holders is to be held, the date on which such meeting is held;

(2) If a meeting of security holders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the date the offering is terminated; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the date the reoffering is terminated.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding

consent to the use of material incorporated by reference.

Item 12. Information With Respect to S–2 or S–3 Registrants. If the registrant meets the requirements for use of Form S–2 or S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. *However,* the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item, if the financial statements in the registrant's latest annual report to security holders do not reflect: (1) restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulations S–X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 (§ 240.14a–3 of this chapter) or 14c–3 (§ 240.14c–3 of this chapter), or a complete and legible facsimile of its latest annual report to security holders:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report to security holders.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and that included the required financial information.

(3) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to tranactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2) (ii) or (iii) of this Item.

(b) If the registrant does not elect to deliver its latest annual report to security holders:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(i) The interim financial information required by Rule 10–01 of Regulation S–X (§ 210.10–01 of this chapter) for a filing on Form 10–Q;

(ii) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

(v) Any financial information required because of a material disposition of assets outside of the normal course of business.

(3) Furnish the information required by the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K (§ 229.101 of this chapter), industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being offered, Item 201 of Regulation S–K (§ 229.201 of the chapter), market price of and dividends on the registrant's common equity and related stockholder matters:

(iii) Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data:

(iv) Item 302 of Regulation S–K (§ 229.302 of the chapter), supplementary financial information:

(v) Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S–K (§ 229.304 of this chapter), disagreements with accountants on accounting and financial disclosure.

Item 13. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S–2 or S–3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (1) and (2) of this Item and, if applicable, the portions of the documents listed in paragraphs (3) and (4) thereof.

(1) The registrant's latest annual report on Form 10–K filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

(3) If the registrant elects to deliver its latest annual report to security holders pursuant to Item 12 of this Form, the information furnished in accordance with the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K, segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being issued, Item 201 of Regulation S–K, market price of and dividends on

the registrant's common equity and related stockholder matters;

(iii) Item 301 of Regulation S–K, selected financial data;

(iv) Item 302 of Regulation S–K, supplementary financial information;

(v) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure.

(4) If the registrant elects, pursuant to Item 12(a)(2)(iii) of this Form, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10–Q.

Instruction

Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (a) (3) and (4) of this Item, are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

Item 14. Information With Respect to Registrants Other Than S–3 or S–2 Registrants. If the registrant does not meet the requirements for use of Form S–2 or S–3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required by:

(a) Item 101 of Regulation S–K, description of business;

(b) Item 102 of Regulation S–K, description of property;

(c) Item 103 of Regulation S–K, legal proceedings;

(d) Where common equity securities are being issued, Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(e) Financial statements meeting the requirements of Regulation S–X, (schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form), as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(f) Item 301 of Regulation S–K, selected financial data;

(g) Item 302 of Regulation S–K, supplementary financial information;

(h) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(i) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure.

C. Information About the Company Being Acquired

Item 15. Information With Respect to S–3 Companies. If the company being acquired meets the requirements for use of Form S–3 and compliance with this Item is elected, furnish the information that would be required by Items 10 and 11 of this Form if securities of such company were being registered.

Item 16. Information With Respect to S–2 or S–3 Companies. If the company being acquired meets the requirements for use of Form S–2 or S–3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

Item 17. Information With Respect to Companies Other Than S–3 or S–2 Companies. If the company being acquired does not meet the requirements for use of Form S–2 or S–3, or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

(a) If the company being acquired is subject to the reporting requirements of Section 13(a) of 15(d) of the Exchange Act, or compliance with this subparagraph in lieu of subparagraph (b) of this Item is elected, furnish the information that would be required by Item 14 of this Form if the securities of such company were being registered; *however,* only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X (§ 210.12–15, 28, 29 of this chapter) need be provided with respect to the company being acquired.

(b) If the company being acquired is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act; or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter) for its latest fiscal year; furnish the information that would be required by the following if securities of such company were being registered:

(1) A brief description of the business done by the company which indicates the general nature and scope of the business;

(2) Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(3) Item 301 of Regulation S–K, selected financial data;

(4) Item 302 of Regulation S–K, supplementary financial information;

(5) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(6) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure;

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a–3(b)(1) and (b)(2) (§ 240.14a–3 of this chapter) or Rules 14c–3(a)(1) and (a)(2) (§ 240.14c–3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c), the financial statements of such companies must be audited for the periods required to be presented pursuant to Rule 3–05.

(8) The quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10–Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

(9) Schedules required by Rules 12–15, 28 and 29 of Regulation S–X.

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, revocability of proxy;

(2) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(3) The information required by Item 3 of Schedule 14A, persons making the solicitation;

(4) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 4 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 5 of Schedule 14A, voting securities and principal holders thereof;

(5) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(6) The information required by Item 22 of Schedule 14A, vote required for approval; and

(7) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S–K, (§ 229.401 of this chapter), directors and executive officers;

(ii) Item 402 of Regulation S–K, (§ 229.402 of this chapter), executive compensation; and

(iii) Item 404 of Regulation S–K, (§ 229.404 of this chapter), certain relationships and related transactions.

(b) If the registrant or the company being acquired meets the requirements for use of Form S–2 or S–3, any information required by paragraphs (a)(4)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (c) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The information required by Item 3 of Schedule 14C, date, time and place of meeting;

(3) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(4) With respect to both the registrant and the company being acquired, a brief description of any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the registrant and of the company being acquired, in the proposed transaction;

Instruction

This subparagraph shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(5) With respect to both the registrant and the company being acquired, the information required by Item 5 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(7) The information required by Item 22 of Schedule 14A, vote required for approval; and

(8) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S–K, directors and executive officers;

(ii) Item 402 of Regulation S–K, executive compensation; and

(iii) Item 404 of Regulation S–K, certain relationships and related transactions.

(b) If the transaction is an exchange offer, furnish the information required by paragraphs (a)(4), (a)(5), (a)(6) and (a)(8) of this Item, except as provided by paragraph (c) of this Item.

(c) If the registrant or the company being acquired meets the requirements for use of Form S–2 or S–3, any information required by paragraphs (a)(5) and (8) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

Part II—Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers. Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 21. Exhibits and Financial Statement Schedules.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S–X and Item 14(e), Item 17(a) or Item 17(b)(9) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of this Item.

(c) If information is provided pursuant to Item 4(b) of this Form, furnish the report, opinion or appraisal as an exhibit hereto, unless it is furnished as part of the prospectus.

Item 22. Undertakings.

(a) Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

(b) Furnish the following undertaking: The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) Furnish the following undertaking: The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Signatures

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19—.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate

each capacity in which he signs the registration statement. Attention is directed to Rule 402 (§ 230.402 of this chapter) concerning manual signatures and Item 601 of Regulation S-K (§ 229.601 of this chapter) concerning signatures pursuant to powers of attorney.

3. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

15. By revising paragraph (a) of § 240.14a-3 to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a-101 of this chapter) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) and containing the information specified in such Form.

* * * * *

16. By revising paragraph (j) of § 240.14a-6 to read as follows:

§ 240.14a-6 Material required to be filed.

* * * * *

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S-14, S-4 or F-4 (§ 239.23 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14, S-4 or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

17. By revising paragraph (a) of § 240.14c-2 to read as follows:

§ 240.14c-2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c-101 of this chapter) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 § 239.25 or 34 of this chapter) and containing the information specified in such Form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided, however*, That in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

18. By revising paragraph (e) of § 240.14c-5 to read as follows:

§ 240.14c-5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S-14, S-4, or F-4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S-14, S-4 or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. By revising paragraph (a)(4) of Item 7 and adding Instructions to Item 7 of Form 8-K described in § 249.308 to read as follows:

§ 249.308 Form 8-K, for current reports.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) * * *

(4) If it is impracticable to provide the required financial statements for an acquired business at the time the report on Form 8-K is filed, the registrant should (i) so indicate in the Form 8-K report; (ii) file such of the required financial statements as are available; (iii) state when the required financial statements will be filed; and (iv) file the required financial statements for an acquired business under cover of Form 8 as soon as practicable, but not later than 60 days after the report on Form 8-K must be filed. In such circumstances, the registrant may, at its option, include unaudited financial statements in the initial report on Form 8-K.

Instructions

1. Requests for further extensions of time for filing the required financial statements will not be considered.

2. During the pendency of an extension pursuant to this paragraph, registrants will be deemed current for purposes of their reporting obligations under section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; *Provided, however*, that the following offerings or sales of securities shall not be affected by this restriction:

(a) Offerings or sales of securities or upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), (c), 78w(a))

Dated: April 23, 1985.

By the Commission.
John Wheeler,
Secretary.
[FR Doc. 85–10577 Filed 5–3–85; 8:45 am]
BILLING CODE 8010-01-M

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17 CFR Parts 230 and 239

[Release Nos. 33–6579; 34–21983; FR–19; File No. S7–21–84]

Business Combination Transactions; Adoption of Registration Form; Foreign Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions involving foreign private registrants. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format.

DATES: Effective Date: The Form F–4 and the amendments to Rule 145 are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter. *Compliance Date*: Registrants are permitted, however, to use Form F–4 immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202) 272–3246, or Martin L. Meyrowitz (202) 272–3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form F–4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act") [1] of securities issued by certain foreign private issuers [2] in: (i) Transactions of the type specified in Rule 145(a); [3] (ii) mergers in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers and resales of securities registered on this Form. Form F–4 employs the principles underlying the integrated disclosure system developed for foreign private issuers. Thus, the Form permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act") [4] generally to the same extent as is permitted when a foreign private registrant registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting an amendment to Rule 145(a)(2) under the Securities Act [5] to codify a prior staff interpretation. In a separate release published today, the Commission is further adopting a parallel form for use by domestic registrants, Form S–4, together with a number of other amendments to certain rules which also have application to Form F–4 (the "Form S–4 Release"). [6]

I. Executive Summary

The Form S–4 Release contains an extensive discussion of Form S–4, as adopted, including the changes from the Form as proposed. Since Form F–4 is the counterpart for foreign private issuers to Form S–4, the discussion in Form S–4 Release may be helpful in understanding the operation of Form F–4. Commentators generally supported the Commission's effort, and the Commission is adopting Form F–4 substantially as proposed. [7]

Form F–4 extends the principles of integrated disclosure to all business combination registration statements. The integrated disclosure system, on which Forms F–4 and S–4 are both based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. The Commission implemented the integrated disclosure system by adopting the three tiered registration system of Forms S–1, S–2, [8] and S–3 [9] for domestic and certain foreign issuers, and by adopting a separate system, Forms F–1, [10] F–2, [11] and F–3, [12] for certain foreign private issuers eligible to use Form 20–F. [13] The integrated disclosure system for foreign private issuers was adopted primarily because the registration and reporting requirements for foreign private issuers under the Exchange Act are significantly different from those for domestic issuers. [14] Another reason for the separate system was the desire of foreign registrants and other public commentators to ensure that future amendments intended primarily for domestic registrants are considered in the light of the different circumstances of foreign registrants. [15]

Like Form S–4, the prospectus requirements of Form F–4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the entities involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the companies could use in making a primary offering of their securities.

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[1] 15 U.S.C. 77a–77aa (1976 and Supp. V 1981), *as amended by* Business Regulatory Reform Act of 1982, Pub. L. No. 97–261, section 19(d), 96 Stat. 1121 (1982).

[2] As defined in Rule 405 (17 CFR 230.405).

[3] 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.

[4] 15 U.S.C. 78a–78kk (1976 and Supp. V 1981), *as amended by* Act of June 6, 1983, Pub. L. No. 98–38, 97 Stat. 205 (1983).

[5] 17 CFR 230.145(a)(2).

[6] Release No. 33–6578 (April 23, 1985). The Commission also adopted amendments to: (1) Rule 3–05 of Regulation S–X (17 CFR 210.3–05); (2) Items 502, 512 and 601 of Regulation S–K (17 CFR 229.502, 512, 601); (3) Rules 145, 406, 463, 464, 473, 475a and 477 under the Securities Act (17 CFR 230.145, 406, 463, 464, 473, 475a, 477); (4) Rules 14a–3, 14a–6, 14c–2 and 14c–5 under the Exchange Act (17 CFR 240.14a–3, 14a–6, 14c–2, 14c–5); and (5) Form 8–K under the Exchange Act (17 CFR 249.308). To the extent that these rules have specific application to Form F–4, the rule amendments in Release No. 33–6578 so reflect.

[7] Release No. 33–6535 (May 9, 1984) (49 FR 20652). The Commission received 5 comment letters addressing solely proposed Form F–4. Forty-three comment letters concerning proposed Form S–4 were also received. As was indicated in the Form F–4 proposing release, the comments received on the proposals in the Form S–4 proposing release were considered in connection with the actions taken today with respect to Form F–4. All the comment letters and a summary of the comments prepared by the staff area available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549 (*see* File No. S7–21–84).

[8] 17 CFR 239.11 and 12, respectively.

[9] 17 CFR 239.13.

[10] 17 CFR 239.31.

[11] 17 CFR 239.32.

[12] 17 CFR 239.33.

[13] 17 CFR 249.220.

[14] For a discussion of these rules and forms and their development, including the Commission's rationale and objectives regarding various aspects of the integrated disclosure system for foreign private issuers, *see* Release Nos. 33–6360 (November 20, 1981 (46 FR 58511), 33–6361 (November 20, 1981) (46 FR 58505), and 33–6362 (November 20, 1981) (46 FR 58507).

[15] *Id.*

The last section sets forth the requirements as to voting and management information. All voting information must be presented in the prospectus, while the amount of prospectus presentation for management information, like company information, depends on which form can be used in a primary offering, other than a business combination transaction.

The F–1–2–3 approach in Form F–4 reflects the premise that decisions made in the context of business combination transactions and those made otherwise in the purchase of a security in the primary or trading markets are substantially similar. At the same time, the Commission recognizes that there are significant differences. In particular, business combination decisions are not of the same volitional nature as other investment decisions. Moreover, mergers typically may result in a change in security ownership as a consequence of inaction.

To address the differences in the nature of the investment decision, special provisions were included in the Form. First, a specifically tailored item covering risk factors, ratio of earnings to fixed charges, certain per share data and other information must be presented in the prospectus regardless of the level of disclosure available to the companies involved. This item, as adopted, has been expanded to reflect commentators' suggestions that the item should include: (1) Certain additional financial data; and (2) information about regulatory approvals.

While the item highlights certain information discussed more fully elsewhere in the prospectus, or in documents incorporated by reference therein, it is not intended to be a summary of all material information concerning the transactions and the parties thereto. In the case of F–3 companies, where company and management information, including historical financial statements, is not presented in the prospectus, such information will have been widely disseminated in the market by means of the company's Form 20–F. Therefore, this information need not be reiterated in the business combination prospectus and, as discussed below, need be furnished only upon request. As to other companies, the historical financial statements and other company information will be presented in the prospectus.

Second, the Form establishes a minimum time period if incorporation by reference is used. The time period is designed to allow for dissemination of documents incorporated by reference to requesting security holders on a timely basis. The proposed Form would have required that, where incorporation by reference is relied upon to take the place of presentation in the delivered document, the prospectus either: (1) Be sent at least twenty business days in advance of the date of the meeting of security holders or the date of the final investment decision, or (2) be accompanied by the documents from which information is incorporated.

Commentators generally supported the concept of the twenty business day period and the adopted Form requires the prospectus to be sent prior to the proposed twenty business day period where incorporation by reference is used. In commenting on Form S–4, however, concern was expressed that the alternative of delivering documents incorporated by reference could result in a cumbersome and unreadable prospectus because of the potential multiplicity of documents delivered. Accordingly, Form S–4 as adopted provides a compromise and, in order to be consistent, Form F–4 includes the same revision. Registrants may still proceed faster than the twenty day period if allowable under applicable law, but if they wish to do so, they must furnish the required information to security holders at the F–1 level. The same quantum of information will be delivered as was provided in the proposal's alternative, but the F–1 alternative provides a more readable format.

If, the registrant files in a timely manner, it may incorporate information by reference, and the information so incorporated need only be furnished upon request. The Commission has added a legend to encourage security holders to request the incorporated documents promptly and an undertaking [16] to require the registrant to respond within one business day by first class mail or other equally prompt means. The Commission recognizes that such an undertaking, while identical to that in Form S–4, may not provide security holders with as much time to obtain the information incorporated by reference as it would if the registrant were a domestic issure. The principal reason for this is the potential delay caused by international mails. To reduce potential time delays and to ensure the availability of documents incorporated by reference, the Commission is requiring an additional undertaking that foreign registrants arrange or provide for a facility in the United States solely for the purpose of receiving and responding to security holder requests for documents incorporated by reference. By doing this, foreign registrants will be as accessible as, and able to respond in a similar manner to, domestic registrants.

In addition to these disclosure and timing measures, the Commission directed particular commentator attention to whether other possible alternatives, involving greater degrees of delivery of information, would be appropriate in view of the nature of the investment decision involved in business combination transactions. Commentators rejected the alternatives and favored the Form F–4 approach.

The one respect in which some commentators expressed reservations about the full streamlining afforded by the proposed Form was in the area of contested exchange offers. More than half of the commentators who directed specific comments to exchange offers, however, supported the F–4 approach.[17] Moreover, some concerns were directed, at least in part, to the timing aspects of exchange offers which were not addressed in the proposed Form F–4.

Form F–4 implements Recommendation Eleven of the Commission's Advisory Committee on Tender Offers ("Advisory Committee"),[18] one of the recommendations intended to: (1) Lessen the regulatory disincentives to using securities as consideration in a tender offer; and (2) promote the equivalency of cash and exchange offers. Recommendation Eleven addresses disclosure in exchange offers, recommending that the approach of the integrated disclosure system be used for exchange offers. As noted in the proposing release, the inclusion of exchange offerings in Form F–4 does not

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[16] *See* Item 22(b) of Form F–4.

[17] Of course, Form F–4 makes clear that transactions subject to the Williams Act [sections 13(d)-(f) and 14(d)-(f) of the Exchange Act, 15 U.S.C. 78m(d)-(f), 78n(d)-(f) (1982)], must comply with that statute and the regulations thereunder. With respect to mergers, the Commission notes that any accelerated timing must comply with applicable law. In a recent case, the Delaware Supreme Court stated that ". . . in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate." *Smith v. Van Gorkum*, No. 255, 1982, slip op. at 74 (Del. Jan. 27, 1985) *opinion revised*, March 14, 1985. In this regard, the language in the proposed General Instruction A.2. relating to compliance with applicable law has been deleted as unnecessary.

[18] *Advisory Committee on Tender Offers Report on Recommendations* ("Report") (July, 1983). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered appropriate or necessary. *See* Release No. 34–19528 (February 25, 1983) [48 FR 9111].

affect the timetable for exchange offers. Timing for exchange offers is the subject of Recommendation Twelve which would permit an exchange offer to commence on the date the preliminary registration statement is filed, rather than the effective date of the registration statement. If adopted, Recommendation Twelve would put exchange offers on the same timetable as cash offers.[19] The Commission wishes to emphasize that Recommendation Twelve is not being implemented with adoption of Form F–4. Moreover, the Form as adopted contains an instruction and an undertaking which ensure that Form F–4 cannot be used for this purpose.[20]

The principal differences between proposed Forms F–4 and S–4 are in the sections specifying the information required with respect to the registrant and the company to be acquired. Since proposed Form S–4 is based on the integrated disclosure system for domestic issuers, the basic Exchange Act filings relied upon are Forms 10–K,[21] 10–Q[22] and 8–K,[23] proxy statements and annual reports to shareholders. The basic documents in the integrated disclosure system for foreign private issuers are Forms 20–F and 6–K.[24] Those foreign private issuers eligible to use Form 20–F are exempt from the proxy solicitation provisions of Section 14 and from all of the provisions of section 16 of the Exchange Act by Rule 3a12–3 thereunder.[25] Except for information required with respect to or as a result of the transaction in which the securities are to be issued, the proposed Form F–4 generally would not require information about foreign companies beyond that now required by Form 20–F as used in the separate integrated disclosure system for foreign private issuers.

In recognition of the fact that business combinations are not restricted by national borders, proposed Forms F–4 and S–4 both contain mutual transitional provisions with respect to the information to be furnished about the company to be acquired when multinational business combination transactions are involved. Thus, the respective integrated disclosure systems will remain substantially intact as to target companies. The registrant's status would continue to control whether Form F–4 or S–4 is to be used.

II. Synopsis of the Form

The following synopsis is intended to assist interested parties in their understanding of the Form, the amendment to Rule 145 and the related rule amendments in Release No. 33–6578. Attention is directed to the text of the Form and amendments for a more complete understanding of this rulemaking action, including certain technical and clarifying changes not described below.

A. Availability and Use of Form

Form F–4 is available for the registration of securities in connection with Rule 145 transactions as well as other mergers, exchange offers and reoffers or resales of securities registered on the Form.[26] In addition, registrants that choose to use the incorporation by reference feature of the Form must send the prospectus twenty business days prior to the date of the meeting of security holders or, where no such meeting is held, the date the investment decision becomes final.[27]

B. Business Combinations Involving Entities Required to Use Form S–11

Consistent with specific requirements in Form S–11 and administrative practices under Form S–14, special disclosure provisions apply to business combination transactions involving certain real estate entities, described in Instruction A of Form S–11.[28] Form F–4 is available to register securities in connection with business combinations involving such entities and special disclosure provisions that apply have been adopted as proposed.[29]

C. Relationship with Exchange Act Rules

The Form F–4 prospectus may serve as the proxy or information statement used in connection with the transaction.

It would be deemed to meet the informational and filing requirements of the proxy or information statement rules under Section 14 of the Exchange Act and Regulations 14A[30] and 14C[31] thereunder, where applicable to the transaction. All other provisions of those regulations also apply.

In addition, General Instruction E.3. of the Form provides that if the transaction in which the securities being registered are to be issued is subject to sections 13(e), 14(d) or 14(e) of the Exchange Act, the disclosure and other provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of Form F–4. Thus, the provision calling for the more extensive disclosure will prevail, as will the time period and other substantive provisions of the Williams Act and the Commission's going private and tender offer rules and schedules thereunder.[32]

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[19] *See* Release No. 33–6535 (May 9, 1984) [49 FR 20852, 20853].

[20] *See* General Instruction F and Item 22(c) of the Form.

[21] 17 CFR 249.310.

[22] 17 CFR 249.308a.

[23] 17 CFR 249.308.

[24] 17 CFR 249.306.

[25] 17 CFR 240.3a12–3.

[26] Form F–1 will remain available for mergers and exchange offers. For example, registrants may choose to use Form F–1 and to have the company being acquired prepare its own proxy statement so that the company being acquired will assume liability for the information in its own proxy statement. Of course, Forms F–2 and F–3, which are not available for business combination transactions, will remain unavailable for such transactions because registrants qualifying for use of those forms may use the respective Form's disclosure approaches through the use of Form F–4. Form F–4 also will be available for registration of securities in connection with issuer exchange offers.

[27] Form F–4 also contains two related provisions:

(a) The requirement in Item 2 of a legend in the prospectus to inform investors that they need to make prompt requests for documents incorporated by reference; and

(b) A requirement in Item 22 for undertaking by registrants to (1) respond to requests for documents within one business day and furnish the requested documents by first class mail or other equally prompt means and (2) arrange or provide for a facility in the U.S. for the purpose of responding to such requests. Where the registration statement incorporates by reference documents at the F–3 level, a request for such documents would include documents filed subsequent to the effective date of the registration statement up to the date of responding to the request. The undertaking would not require delivery of incorporated documents filed subsequent to such request.

[28] General Instruction A of Form S–11 provides that the Form shall be used to register securities issued by: (i) A real estate investment trust as defined in section 856 of the Internal Revenue Code; or (ii) other issuers whose businesses are primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose businesses are primarily that of acquiring and holding real estate or interests in real estate for investment.

[29] See General Instruction B.2. with respect to the acquiring entity and General Instruction C.2 concerning the entity being acquired. See also Release No. 33–6535 (May 9, 1984) (49 FR 20852, 20854).

[30] 17 CFR 204.14a–1 to 14a–101.

[31] 17 CFR 204.14c–1 to 14c–101.

[32] For example, if the transaction is an exchange offer subject to Regulation 14D, the registrant is required to disseminate material changes pursuant to Rule 14d–4(c) (17 CFR 340.14d–4(c)). The relationship between the undertaking to deliver incorporated documents (including those filed subsequent to effectiveness if the F–3 level is elected) and Rule 14d–4(c) is that, if a registrant has delivered requested documents to security holders and those documents reflect the material change, this would constitute compliance with Rule 14d–4(c). If, however, the documents do not reflect the material change or have not been sent to security holders, then the registrant must still comply with Rule 14d–4(c). Similarly, if the transaction is an exchange offer where the vote passes with the tender of shares, then the proxy regulations also shall apply to the transaction. The Form F–4 filing may be used to satisfy the Schedule 14D–1 (Tender Offer Statement, 17 CFR 240.14d–100) and, if the parties so choose, the subject company's Schedule 14D–9 (Tender Offer Soliciation/Recommendation Statement, 17 CFR 240.14d–101) filing obligation.

D. Transactions Involving U.S. and Foreign Registrants Ineligible to Use Form 20–F

New Form S–4 also may be used by U.S. and foreign private registrants which are not eligible to use Form 20–F when they are involved in business combination transactions. General Instruction C.1(d) of Form F–4 directs the registrant to Form S–4 for the information to be provided when such a company is being acquired. Form S–4 contains a similar cross-over provision.

E. Rule 415

Registration statements of Form F–4, because they relate to offerings which are continuous over a period of time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and, if they are to be used for reoffers or resales, to Rule 415(a)(1)(i) (secondary offerings).[33]

General Instruction F has been added to address situations where the registrant uses Form F–4 for an offering of securities in connection with business combination transactions which will be effected on a delayed basis. In the case, the registrant must furnish information concerning the contemplated transaction(s) and the company(ies) being acquired as of the date of initial effectiveness only to the extent practicable. The required information about the specific transaction(s) and the particular company(ies) being acquired generally must be provided by post-effective amendment. For example, where an acquisition will be effected in a multi-step transaction in which there is an exchange offer followed by a merger, the initial registration statement would contain a prospectus that includes information about the exchange offer.[34] A post-effective amendment would have to be filed to provide information with respect to the second step merger.

In order to implement the content of General Instruction F, an undertaking has been added to Item 22 of the Form. This undertaking, to file post-effective amendments with respect to transactions contemplated after effectiveness, is required in addition to the undertakings required by Item 512(a) of Regulation S–K.[35] The new undertaking will ensure that the use of Rule 415 cannot be used to implement Recommendation Twelve of the Advisory Committee's recommendations,[36] by allowing the use of a prospectus supplement to provide for the immediate commencement of an exchange offer.

F. Structure of the Form

The two part structure of Form F–4, separating the information which must be included in the prospectus (Part I) and that which need not (Part II), is the same as other Securities Act forms. Part I of Forms F–4 and S–4 is divided into four separate sections in order to set forth clearly the requirements relating to the transaction, the companies involved, voting and management information.

1. Information Required in the Prospectus—Part I

a. *Information about the Transaction—Section A.* Section A calls for information about the transaction. This information must be presented in the prospectus instead of incorporated by reference. The items in section A include: Items 1 and 2, information called for by Items 501 [37] and 502 [38] of Regulation S–K; Item 3, risk factors, ratio of earnings to fixed charges and other information; Item 4, terms of the transaction; Item 5, pro forma financial information; Item 6, material contacts between the companies; Item 7, additional information related to resales; and Items 8 and 9, information called for by Items 509 [39] and 510 [40] of Regulation S–K.

(1) *Risk Factors, Ratio of Earnings to Fixed Charges and Other Information—Item 3.*—Item 3 is adopted with modifications and additional items that reflect commentators' suggestions. First, the item has been redesignated "Risk Factors, Ratio of Earnings to Fixed Charges and Other Information," to clarify that the information set forth in this part of the prospectus is not a summary of all material information concerning the transaction. The item requires the registrant to furnish information required by Item 503 of Regulation S–K;[41] the name and address of the subject entities; a brief description of business and properties; a brief description of the transaction; certain comparative per share data; exchange rate information; a statement concerning dissenters' appraisal rights; a statement comparing the percentage of outstanding voting shares held by directors, officers and their affiliates; the vote required for approval; and a brief statement regarding the tax consequences of the proposed transaction.[42]

In addition, Item 3 requires a statement as to whether any regulatory requirements other than the U.S. federal securities laws, must be complied with or approvals must be obtained in connection with the transaction, and if so, the status of such compliance or approvals. Finally, a requirement has been added in Item 3(d) to furnish the information required by Item 8 of Form 20–F (condensed financial data for five year trend information) for (1) the registrant; (2) the company being acquired; and (3) if material with respect to the registrant, pro forma data giving effect to the transaction.[43] As a result of this change, the time period requirements for the comparative per share data and equivalent per share data have been revised to reflect that the Item 8 time periods provide the basis for such comparative data.

(2) *Terms of the Transaction—Item 4.*—Item 4 calls for a description of the terms of the transaction, including information about the acquisition agreement, reasons for the transaction, description of securities and differences in the rights of security holders. This item as adopted reflects several changes from the proposal in response to commentator suggestions.

Proposed Form F–4 would have allowed registrants eligible to use Form F–3 to incorporate by reference the description of the securities being issued in the transaction if the same securities

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[33] 17 CFR 230.415(a)(1)(i) and (viii). In view of this position, it was not necessary to include a Rule 415 cover page box in Form F–4 as adopted.

[34] Where such a second step in a multi-step transaction becomes probable, however, pro forma financial information is required at this point as to the effects of both the exchange offer and the second step merger.

[35] 17 CFR 229.512(a). Item 512(a) requires the registrant, in an offering of securities pursuant to Rule 415 to undertake to update the prospectus by post-effective amendments to reflect: (1) Any prospectus required by section 10(a)(3) of the Securities Act; (2) facts or events arising after the effective date of the registration statement which constitute a fundamental change; and (3) any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to information in the registration statement. The Item also requires an undertaking to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

[36] *See* discussion at page 11, *infra.*

[37] 17 CFR 229.501 (forepart of registration statement and outside front cover page of prospectus).

[38] 17 CFR 229.502 (inside front and outside back cover page of prospectus).

[39] 17 CFR 229.509 (interests of named experts and counsel).

[40] 17 CFR 229.510 (disclosure of Commission position on indemnification).

[41] 17 CFR 229.503 (summary information, risk factors and ratio of earnings to fixed charges).

[42] In view of the complexity of the tax consequences of certain business combination transactions, revised Item 3(j) permits registrants to provide, where appropriate, only a cross reference to the information furnished pursuant to Item 4 of the Form.

[43] Where F–2 or F–1 companies are involved, this information is required to be presented pursuant to other items of the Form.

are registered under the Exchange Act. The adopted item changed the conditions under which the description of securities may be incorporated by reference to require not only that securities of the same class as those being offered must be registered under section 12 of the Exchange Act, but also that these securities must be listed for trading or admitted to unlisted trading privileges on a national exchange, or be securities for which bid and offer quotations are reported on an automated quotations system operated by a national securities association. This change responds to commentators' concerns by ensuring that security holders receive the description of any class of securities that previously has not been trading.

The proposed Form would have required disclosure of the effect of the transaction on the registrant, the company being acquired and the existing security holders of both. This requirement has been deleted because commentators believed disclosure of the effect of the transaction would be duplicative of the requirement in Item 4(a)(2) for disclosure of the reasons for the transaction. For example, if the registrant plans to dispose of substantial components or assets of the company being acquired, disclosure of such plans would be called for pursuant to Item 4(a)(2).

Item 4 also was revised to codify existing administrative practice in the area of investment banking and other opinions. The Item requires that if the registrant or the company being acquired has obtained a report, opinion or appraisal from an outside party as to the transaction and refers to such opinion in the prospectus, then the information called for by Item 9(b)(1) of Schedule 13E-3[44] must be furnished. The Item does not require that such a report be obtained or that there be an affirmative statement as to whether one was obtained. The Item applies only where a report has been obtained and reference to it is made in the prospectus.

In addition, pursuant to commentators' suggestions, a requirement to furnish a brief statement as to the accounting treatment of the transaction has been added. This item will elicit disclosure as to whether the proposed acquisition will be accounted for as a purchase transaction or a pooling of interests transaction.

Finally, Item 4(b) of the proposed Form would have required incorporation by reference of the acquisition agreement into the prospectus and an undertaking that the agreement be furnished, without charge, by first class mail or other equally prompt means, to security holders that request it. In this regard, the Commission solicited comment as to whether it should: (1) Give guidance as to which of the provisions of the acquisition agreement registrants should discuss pursuant to Item 4(a)(1); and (2) in keeping with its goal of streamlining disclosure, take further steps to discourage delivery of the acquisition agreement. Commentators generally supported the incorporation by reference requirement, but indicated that timely delivery of the acquisition agreement to requesting security holders would be essential to the adequacy of the requirement. Commentators did not believe any further steps are appropriate in this area. The Commission agrees and has adopted Item 4(b) with the one modification that the undertaking to furnish the agreement has been deleted because it is duplicative of the new undertaking added as Item 22(b).[45]

(3) *Pro Forma Information—Item 5.*—This Item has been adopted as proposed. The pro forma financial information relating to the transaction pursuant to which a Form F-4 is filed, like other transaction information, must be presented in the prospectus and may not be incorporated by reference. However, pro forma information relating to other business combinations besides the transaction pursuant to which this registration statement is filed is treated like company information and, therefore, may be presented in the prospectus or, if already filed, incorporated by reference therein. This Item has been adopted as proposed.

(4) *Material Contacts Between Companies—Item 6.*—Item 6 of Form F-4, which has been adopted as proposed, calls for information relating to any past, present or proposed material contracts, negotiations, transactions or similar contacts between the registrant and the company being acquired. The Item is designed to elicit information about (1) possible conflicts of interest and (2) facts relating to transactions such as pre-takeover transactions or purchases by the registrant of significant blocks of the securities of the company being acquired.

(b) *Information About the Registrant—Section B.* (1) *Reporting Companies.*—As indicated previously, the principal differences between Forms F-4 and S-4 are in the sections specifying the information to be disclosed concerning the companies involved, each relying on the respective integrated disclosure systems adopted for foreign and domestic issuers.

If a registrant is subject to either sections 13 or 15(d) of the Exchange Act, the information it would have to present in the prospectus about itself is the same as required by Form F-1, F-2 or F-3[46] if it were making a primary offering of securities not involving a business combination. Registrants eligible to use Form F-2 or F-3 are not required to present information at the most stream lined level available, but may elect instead to comply with provisions of the Form calling for greater prospectus presentations.

General Instruction B explains the operation of the three-tier system in the context of the registrant on Form F-4 and, as adopted, reflects certain clarifying changes.

(2) *Non-Reporting Companies.*—For registrants that are not subject to the reporting requirements of the Exchange Act, Form F-4 requires disclosure of company information at the level prescribed by Form F-1. The majority of the commentators supported this approach and these requirements have been adopted as proposed. In the proposing release, the Commission also sought comments as to whether non-reporting foreign registrants should be provided a different level of disclosure, *e.g.*, Item 17 of Form 20-F financial statements. Those commentators specifically addressing this point favored the Item 17 approach. Non-reporting foreign registrants making a primary offering other than a business

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[44] 17 CFR 240.13e-100. Of course, the person rendering such opinion would be an expert within the meaning of section 7 of the Securities Act and, accordingly, would be required to furnish the required consent. Moreover, a requirement to furnish the report, opinion or appraisal as an exhibit to the registration statement, if it has been referenced in the prospectus, has been added in Item 21(c) of Form F-4.

[45] *See* discussion at fn. 16, *infra.*

[46] Application of the Form S-3 level includes the forward incorporation feature of that Form, *i.e.*, the incorporation by reference of subsequently filed Exchange Act reports, including all reports filed subsequent to the effectiveness of the registration statement and prior to the termination of the offering. As the Commission noted in proposing Form S-3, however:

> Despite the fact that subsequently filed periodic reports under the Exchange Act are incorporated by reference into a Form S-3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

See, Release No. 33-6331, (August 6, 1981)[46 FR 41902] at fn. 64. Form F-4 registrants who elect the F-3 level for either entity should be similarly mindful with respect to information actually presented in the prospectus delivered in connection with the transaction.

combination, however, would be required to furnish Item 18 of Form 20-F financial statements. To achieve consistency with the integrated disclosure system, the Commission has determined not to adopt this concept.

c. *Information About the Company Being Acquired—Section C.* The following discussion assumes the company being acquired is another foreign private issuer eligible to use Form 20-F. If the company being acquired is not such a company, the registrant shall present information about such other company pursuant to Instruction C of proposed Form S-4.

(1) *Reporting Companies.*—Form F-4 generally provides for the same prospectus presentation about a reporting company being acquired that would be required by Form F-1, F-2, or F-3 were such company making a primary offering of securities not involving a business combination. Thus, Form F-4, for the most part, requires registrants to provide information about the company being acquired as if that company were the registrant.

(2) *Non-Reporting Companies.*—Form F-4 allows registrants to elect to provide information about non-reporting companies being acquired either at the annual report on Form 20-F level or at a lesser level depending upon the extent to which audited financial statements are available. With respect to financial statement requirements, this approach reflects a change from the proposal, which is discussed below. The Commission believes that these revised requirements strike a more appropriate balance between the cost of collecting and processing information not previously developed, and disclosure to investors.

Proposed Form F-4 would have required non-reporting companies being acquired to provide audited financial statements for the periods required to be presented by Rule 3-05 of Regulation S-X.[47] In addition, the proposed Form carried over the provisions of Item 15 of Schedule 14A [48] that such financial statements need be certified [49] only to the extent practicable, but that reoffers to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) would be prohibited until the required certified statements are provided.

Pursuant to commentator suggestion that some minimum level of disclosure should be required in the Form as to both entities, the financial statement requirements of Form F-4 with respect to non-reporting companies being acquired have been changed. Thus, Item 17(b)(5) provides that a non-reporting company being acquired must provide three year financial statements as would have been required to be included in an annual report of Form 20-F had the company being acquired been required to prepare such a report. The balance sheet for the year preceding the latest full fiscal year and the income statements for the two preceding years, however, need not be audited if they have previously not been audited. In addition, any interim financial statements required by Item 3-19 of Regulation S-X [50] also must be furnished. Furthermore, the financial statements required by Item 17(b)(5) need only comply with the reconciliation requirements of Item 17 of Form 20-F to the extent audited.

d. *Voting and Management Information—Section D.* (1) *Voting Information.*—If a proxy, consent [51] or authorization is to be solicited, Form F-4 requires registrants to present in the prospectus information concerning: (1) The vote needed for approval, (2) dissenters' rights of appraisal, (3) revocability of proxies, (4) interest of certain persons in the transaction, (5) persons making the solicitation, and (6) the registrant's relationship with independent public accountant. In the absence of a solicitation, the Form requires prospectus presentation of information about: (1) The date of the shareholder meeting, (2) the vote required for approval, (3) dissenters' rights of appraisal, (4) the registrant's relationship with independent public accountants, and (5) a statement that proxies, consents or authorizations are not being solicited. These requirements have been adopted as proposed, except that Item 19 has been revised to make clear which provisions are not applicable in the case of exchange offers.

(2) *Management Information.*—Whether or not proxies are to be solicited, Form F-1 requires information concerning voting securities and the principal holders of such shares [52] with respect to all directors and executive officers of both entities and, with regard to the directors and executive officers of the surviving or acquiring company, information about directors and executive officers,[53] remuneration and options,[54] and interest of management in certain transactions.[55] The form permits incorporation by reference of management information to the same extent as would be permitted in a primary offering not involving a business combination under Forms F-1, F-2 and F-3.

2. Information Not Required in the Prospectus—Part II

Part II of Form F-4 prescribes information called for by: (1) Item 702 of Regulation S-K [56] indemnification of directors and officers; (2) Item 601 of Regulation S-K,[57] exhibits; and (3) Item 512 of Regulation S-K,[58] undertakings. This information would be included in the registration statement, but could be omitted from the prospectus. These requirements have been adopted as proposed, with the addition of the two new undertakings (compliance with requests for information incorporated by reference and post-effective amendments for delayed business combinations) and the new exhibit requirement for reports, opinions, or appraisals materially related to the transaction that are referenced in the prospectus.

E. Other Amendments

1. Corresponding Amendments

In the Form S-4 Release, the Commission also adopted corresponding amendments to Rule 3-05 of Regulation S-X, Items 502, 512 and 601 of Regulation S-K, Rules 406, 463, 464, 473, 475a and 477 under the Securities Act and Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act. These amendments are necessitated by rescission of Form S-15 and its replacement with Forms S-4 and F-4. The changes delete references to Form S-15 and, where appropriate, replace them with references to Forms S-4 or F-4. To avoid duplication the amendments

[47] Generally, Rule 3-05 requires audited financial statements for one, two or three years regarding a business that is being acquired depending upon the relative size of the acquisition.

[48] 17 CFR 240.14a-101.

[49] In the revised Form F-4 requirements, the word "certified" has been changed to "audited" for consistency.

[50] 17 CFR 210.3-19.

[51] In a consent solicitation, the 20 business day period discussed, *infra*, operates to require the registrant to send the prospectus to security holders 20 days in advance of the date on which such consents may be used to effect the transaction, rather than 20 days in advance of the date on which the requisite consents may be received by the soliciting party. This procedure considers the possibility of revocation for consents and establishes a fixed date for calculation of the 20 business day period in this context.

[52] Item 5 of Schedule 14A. However, the information specified in Item 4 of Form 20-F may be provided in lieu of the information required by paragraphs (d) and (e) of Item 5 of Schedule 14A.

[53] Item 10 of Form 20-F.

[54] Items 11 and 12 of Form 20-F.

[55] Item 13 of Form 20-F.

[56] 17 CFR 229.702.

[57] 17 CFR 229.601.

[58] 17 CFR 229.512.

necessitated by Form F–4 are included in the Form S–4 release.

2. Item 502 of Regulation S–K

In addition to the corresponding amendments noted above, a clarifying amendment to Item 502 of Regulation S–K also has been adopted in the Form S–4 Release. The amendment clarifies that the undertaking required of registrants to send documents that are incorporated and not delivered extends to beneficial owners.

3. Amendment to the Rule 145

Exception for Change of Domicile

The Commission has also adopted an amendment to paragraph (a)(2) of Rule 145 [59] to make clear that the change of domicile exception does not apply when a change of national jurisdiction is involved. This amendment codifies prior staff interpretations.

Statutory Authority

The Commission is adopting Form F–4 and the related amendments pursuant to sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 14(a), 14(c) and 23(a) of the Exchange Act.

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the rulemaking actions revising 17 CFR Parts 230 and 239 taken pursuant to the various provisions of the Exchange Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to Form F–4, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposing release (Release No. 33–6535, May 9, 1984 (49 FR 20852)).

The Need for and Objectives of Form F–4

The Form is designed to improve the effectiveness of the business combinations prospectus by requiring that information be presented in a more accessible and meaningful format, and to simplify the registration of securities issued in such transactions. The Commission is implementing these objectives by applying to business combination transactions the principles of the foreign integrated disclosure system developed in the context of primary offerings of securities. Thus, information about the companies involved is presented in, delivered with, or incorporated by reference into, the prospectus to the same extent as provided when such companies are making primary offerings. The Form, together with Form S–4, replaces Form S–15 under the Securities Act of 1933 ("Securities Act") and is available for the registration of all business combination transactions, including exchange offers previously registered on Forms S–1 and F–1 under the Securities Act.

Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in commenting on proposed Form F–4.

Significant Alternatives

Form F–4 is modeled on the disclosure requirements contained in Forms F–1, F–2 and F–3, the basic forms under the Commission's integrated disclosure system for foreign private issuers. The Form reflects the conclusion that the integrated disclosure system and its benefits are similarly appropriate in the context of business combinations. The Commission does not believe that other alternatives for foreign private issuers, including use of a performance rather than a design standard, or exempting small entities from all or part of the requirements of the Form would be consistent with the Commission's statutory mandate to protect investors.

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising paragraph (a)(2) of § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(a) * * *

(2) *Mergers of Consolidations.* A statutory merger or consolidation or similar plan or acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any person, unless the sole purpose of the transaction is to change an issuer's domicile solely within the United States; or

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By adding new § 229.34 to read as follows (This Form does not appear in the Code of Federal Regulations):

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), eligible to use Form 20–F (§ 249.220(f) of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (a) In a transaction of the type specified in paragraph (a) of (b) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired Rule 145 (§ 230.145 of this chapter); (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1.79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n (a), (c), 78w(a))

Form F–4

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(Translation of registrant name into English)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

(Address, including Zip Code, and telephone number, including area code, of registrant's principal executive offices)

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[59] 17 CFR 230.145(a)(2).

(Name, address, including Zip Code, and telephone number including area code, of agent of service)

Approximate date of commencement of proposed sale of the securities to the public. ___

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

General Instructions

A. Rule as to Use of Form F-4

1. This Form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), eligible to use Form 20-F (§ 249.220f of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (1) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) (b) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

2. If the registrant meets the requirements of and effects to comply with the provisions in any Item of this Form or Form S-4 (§ 239.25) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holder no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorization may be used the effect the transaction. Attention is directed to section 13(e), 14(d) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder regarding other time periods in connection with exchange offers and going private transactions.

3. This form shall not be used if the registrant is a registered investment company.

B. Information With Respect to the Registrant

1. Information with respect to the registrant shall be provided in accordance with the items referenced in one of the following subparagraphs:

(a) Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements for use of Form F-3 (§ 239.33 of this chapter) if (hereinafter, with respect to the registrant, "meet the requirements for use of Form F-3" for this offering of securities) and elects this alternative:

(i) The registrant meets the requirements of General Instruction I.A. of Form F-3, and

(ii) One of the following is met:

A. The registrant meets the aggregate market value requirement of General Instruction I.B.1. of Form F-3; or

B. Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and are "investment grade securities" as defined in General Instruction I.B.2. of Form F-3; or

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.A.6. of Form F-3 is met.

(b) Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form F-2 (§ 239.32 of this chapter) or Form F-3, and elects this alternative; or

(c) Item 14 of this Form, if the registrant does not meet the requirements for use of Form F-2 or F-3 or if it otherwise elects this alternative.

2. If the registrant is a real estate entity of the type described in General Instruction A to Form S-11 (§ 239.18 of this chapter), the information prescribed by Items 12, 13, 14, 15 and 16 of the Form S-11 shall be furnished about the registrant in addition to the information provided pursuant to Items 10 through 14 of this Form. The information prescribed by such Items of Form S-11 may be incorporated by reference into the prospectus if (a) registrant qualifies for and elects to provide information pursuant to alternative 1.a. or 1.b. of this instruction and (b) the documents incorporative by reference pursuant to such elected alternative contain such information.

C. Information With Respect to the Company Being Acquired

1. Information with resect to the company whose securities are being acquired (hereinafter including, where securities of the registrant are being offered in exchange for securities of another company, such other company) shall be provided in accordance with the items referenced in one of the following subparagraphs:

(a) Item 15 of this Form, if the company being acquired meets the requirements of General Instruction I.A. and I.B. (hereinafter, with respect to the company being acquired, "meets the requirements for use of Form F-3" or use of Form F-3 and this alternative is elected;

(b) Item 16 of this Form, if the company being acquired meets the requirements for use of Form F-2, or Form F-3, and this alternative is elected; or

(c) Item 17 of this Form, if the company being acquired does not meet the requirements for use of Forms F-2 or F-3, or if this alternative is otherwise elected.

(d) If the company to be acquired is a U.S. company or a foreign private issuer not eligible to use Form 20-F, the registrant shall present information about such other company pursuant to Instructions C and F of Form S-4 (§ 239.25 of this Chapter).

2. If the company being acquired is a real estate entity of the type described in General Instruction A to Form S-11, the information that would be required by Items 13, 14, 15 and 16(a) of Form S-11 if securities of such company were being registered shall be furnished about such company being acquired in addition to the information provided pursuant to this Form. The information prescribed by such Items of Form S-11 may be incorporated by reference into the prospectus if: (a) The company being registered would qualify for use of the level of disclosure prescribed by alternative I.a. or I.b. of this instruction and such alternative is elected, and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

D. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed of Regulation S-K (Part 229 of this chapter) and Form 20-F for the requirements applicable to the content of non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K or Form 20 F and the item of Regulation S-K or Form 20-F so provides, information need only be furnished to the extent appropriate.

E. Compliance With Exchange Act Rules

1. If a corporation or other person submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a-1 through 14a-101 of this chapter) or 14C (§§ 240.14c-1 through 14c-101 of this chapter) under the Exchange Act, then the provisions of such Regulations shall apply in all respects to such person's submission, except that: (a) The prospectus may be in the form of a proxy or information statement and may contain the information required by this Form in lieu of that required by Schedule 14A (§240.14a-101) or 14C (§ 240.14c-101) of Regulation 14A or 14C under the Exchange Act: and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to such person's obligations under such Regulations.

2. If the proxy of information statement material sent to security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction in which the securities being registered are to be issued is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

F. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction (and the company being acquired) need only be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired must be included in the prospectus by means of a post-effective amendment.

Part I. Information Required in the Prospectus

A. Information About the Transaction

Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (§ 229.501 of this chapter).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter).

In addition, include the following statement in bold face type, where applicable: This prospectus incorporates documents by reference which are not presented herein or delivered herewith. These documents are available upon request from (name, address and telephone number to which a request is to be directed). In order to ensure timely delivery of the documents, any request should be made by (date five business days prior to the date of the meeting on the date on which the final investment decision must be made).

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

Provide in the forepart of the prospectus a summary containing the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter) and the following:

(a) The name, complete mailing address (including the Zip Code), and telephone number (including the area code) of the principal executive offices of the registrant and the company being acquired;

(b) A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(c) A brief description of the transaction in which the securities being registered are to be offered;

(d) The information required by Item 8 of Form 20–F (selected financial data) for (i) the registrant; (ii) the company being acquired; and (iii) if material, the registrant, on a pro forma basis, giving effect to the transaction. If the information is required to be presented in the prospectus pursuant to Items 12, 14, 16 or 17, it need not be presented pursuant to this Item;

(e) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 8 of Form 20–F (selected financial data);

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 8 of Form 20–F (selected financial data); and

(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 8 of Form 20–F (selected financial data).

Instructions

1. For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends declared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

2. Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to United States generally accepted accounting principles ("U.S. GAAP") and Regulation S–X (Part 210 of this chapter).

(f) In comparative columnar form, the market value of securities of the company being acquired (on an historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the date preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into;

(g) With respect to the registrant and the company being acquired, a brief statement comparing the precentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates and the vote required for approval of the proposed transaction;

(h) A statement as to whether any regulatory requirements other than the U.S. federal securities laws, must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approvals;

(i) A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 18 or 19 of this Form; and

(j) A brief statement about the tax consequences of the transaction or if appropriate, consisting of a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction.

(a) Furnish a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) A brief summary of the terms of the acquisition agreement;

(2) The reasons of the registrant and of the company being acquired for engaging in the transaction;

(3) The information required by Item 202 of Regulation S–K (§ 229.202 of this chapter), description of registrant's securities unless: (i) The registrant would meet the requirements for use of Form F–3, (ii) capital stock is to be registered, and (iii) securities of the same class are registered under Section 12 of the Exchange Act and listed for trading on a national exchange, or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) An explanation of any material differences between the rights of security holders of the company being acquired and the rights of holders of the securities being offered;

(5) A brief statement as to the accounting treatment of the transaction;

(6) The tax consequences of the transaction; and

(7) A discussion of any material differences in the corporate laws of the country of the company to be acquired and the country of the surviving company. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights in inspect corporate books and records, rights to inspect the shareholder list, and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the prospectus, furnish the information called for by Item 9(b) (1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus, by means of a statement to that effect.

Item 5. Pro Forma Financial Information.

Furnish financial information required by Article 11 of regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instructions

1. Any other Article 11 information required to be presented (rather than incorporated by reference) pursuant to other Items of this Form shall be presented together with the information provided pursuant to Item 5, but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to Item 11 or 15 of this Form only the pro forma results need be presented as part of the pro forma financial information required by this Item.

Item 6. Material Contacts With the Company Being Acquired.

Describe any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to Part I.B. or C. of this Form between the company being acquired or its affiliates and the registrant or its affiliates, such as those concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 7. Additional Information Required for Reoffering by Persons and Parties Deemed To Be Underwriters.

If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof, furnish the following information in the prospectus at the time it is being used for the reoffer of the securities, to the extent it is not already furnished therein:

(a) The information required by Item 507 of Regulation S-K (§ 229.507 of this chapter); and

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material change in the registrant's affairs subsequent to the transaction.

Item 8. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

B. Information About the Registrant

Item 10. Information With Respect to F-3 Companies.

If the registrant meets the requirements for use of Form F-3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20-F and that have not been described in a report on Form 6-K (§ 249.306 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference from the registrant's latest Form 20-F in accordance with Item 11 are not sufficiently current to comply with the requirements of Rule 3-19 of Regulation S-X (§ 210.3-19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20-F in which case the prospectus shall disclose that the Form 20-F has been so amended, or in a Form 6-K; and

(c) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter), or from a Form 6-K filed during either of the two preceeding fiscal years:

(1) Financial information required by Rule 3-05 (§ 210.3-05 of this chapter) and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(2) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X (§ 210.11-01(b) of this chapter); or

(4) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to Rules 4-01(a)(2) and 10-01 of Regulation S-X (§§ 210.4-01(a)(2) and 210.10-01 of this chapter).

Item 11. Incorporation of Certain Information by Reference.

If the registrant meets the requirements of Form F-3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraph (1) below and, if applicable, (2) and (3) below.

(1) The registrant's latest annual report on Form 20-F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20-F was required to be filed;

(2) All other reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in Item 11(a)(1) of this Form; and

(3) If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, and (i) listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported on an automated quotations system operated by a national securities association the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

Instructions

1. All annual reports on Form 20-F filed by the registrant applicable to Items 11(a) and (b) herein shall contain financial statements that comply with Item 18 of Form 20-F except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F-3.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 to Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, or in a Form 6-K.

3. The registrant may incorporate by reference any Form 6-K meeting the requirements of Form F-3. See Rules 4-01(a)(2) and 10-01 of Regulation S-X and Item 18 of Form 20-F.

(b) The prospectus also shall state that all annual reports on Form 20-F, and any Form 6-K so designated, subsequently filed by the registrant pursuant to section 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of security holders is to be held, the date on which such meeting is held;

(2) If a meeting of security holders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information With Respect to F-2 or F-3 Registrants.

If the registrant meets the requirements for use of Form F-2 or F-3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. *However*, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements in the registrant's latest annual report on Form 20-F do not reflect: (1) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most

recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20–F, or a complete and legible facsimile of such Form 20–F:

(1) indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20–F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 13 are not sufficiently current to comply with the requirements of Item 3–19 of Regulation S–X, provide the information required by Rule 10–01 of Regulation S–X and Item 9 of Form 20–F by one of the following means:

(i) including such information in the prospectus;

(ii) providing without charge to whom a prospectus is delivered a copy of the registrant's Form 6–K report that contains such later information; or

(iii) in an amended Form 20–F in which case the prospectus shall disclose that the Form 20–F has been so amended.

(3) If not reflected on the registrant's latest Form 20–F annual report, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest filing on Form 20–F and that have not been described in a report on Form 6–K delivered with the prospectus in accordance with paragraph (2)(ii) of this item.

(5) Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, or in a Form 6–K.

(b) If the registrant does not elect to deliver its latest Form 20–F annual report to the security holders of the company to be acquired:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year based on the requirements of Items 1 and 2 of Form 20–F. The description shall also take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Item 18 of Form 20–F. In addition, provide:

(i) The interim financial information as required by Rule 10–01 of Regulation S–X sufficient to meet the requirements of Rule 3–19 of Regulation S–X;

(ii) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

(v) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to Item 4–01(a)(2) of Regulation S–X.

(3) Furnish the information required by the following:

(i) Items 1 (a)(3) and (a)(4) of Form 20–F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 Form 20–F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 6 Form 20–F, exchange controls and other limitations on security holders;

(iv) Item 7 Form 20–F, taxation;

(v) Item 8 Form 20–F, selected financial data;

(vi) Item 9 Form 20–F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by Item 18 of Form 20 (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form), and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, Item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with Rule 3–19 of Regulation S–X.

Item 13. Incorporation of Certain Information by Reference.

If the registrant meets the requirements of Form F–2 or F–3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20–F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F was required to be filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Instructions

1. All annual reports on Form 20–F filed by the registrant applicable to Item 13(a) or (b) herein shall contain financial statements that comply with Item 18 of Form 20–F.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, or in a Form 6–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K containing information meeting the requirements of Form F–2. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item of 18 of Form 20–F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20–F or reports on Form 6–K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

Item 14. Information With Respect to Foreign Registrants Other Than F–2 or F–3 Registrants.

If the Foreign registrant does not meet the requirements for use of Form F–2 or F–3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required:

(a) Item 1 of Form 20–F, description of business;

(b) Item 2 of Form 20–F, description of property;

(c) Item 3 of Form 20–F, legal proceedings;

(d) Item 6 of Form 20–F, exchange controls and other limitations affecting security holders;

(e) Item 7 of Form 20–F, taxation;

(f) Item 8 of Form 20–F, selected financial data;

(g) Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operation;

(h) Financial statements required by Item 18 of Form 20–F, (schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form), as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions

other than that pursuant to which the securities being registered are to be issued: and

(i) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X.

Instruction

The financial statements required herein shall comply with Rule 3-19 of Regulation S-X. See also Rules 4-01(a)(2) and 10-01 of Regulation S-X.

C. Information About the Company Being Acquired

Item 15. Information With Respect to F-3 Companies.

If the company being acquired meets the requirements for use of Form F-3 and compliance with this Item is elected, furnish the information that would be required by Items 10 and 11 of this Form if securities of such company were being registered.

Instruction

Notwithstanding the requirements of Items 10 and 11, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20-F.

Item 16. Information With Respect to F-2 or F-3 Companies.

If the company being acquired meets the requirements for use of Form F-2 or F-3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

Instruction

Notwithstanding the requirements of Items 10 and 11, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20-F.

Item 17. Information With Respect to Foreign Companies Other than F-2 or F-3 Companies.

If the company being acquired does not meets the requirements for use of Form F-2 or F-3 or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

(a) If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or compliance with this subparagraph in lieu of subparagraph (b) of this Item is elected, furnish the information that would be required by Item 14 of this Form if the securities of such company were being registered; *however*, only financial statements complying with the reconciliation requirements of Item 17 of Form 20-F, and those schedules required by Rules 12-15, 28, and 29 of Regulation S-X (§ 210.12-15, 28, 29 of this chapter) need be provided with respect to the company being acquired.

(b) If the company being acquired is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, furnish the information that would be required by the following if securities of such company were being registered:

(1) A brief description on the business done by the company which indicates the general nature and scope of the business:

(2) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in amended Form 20-F, or in a Form 6-K;

(3) Item 8 of Form 20-F, selected financial data;

(4) Item 9 of Form 20-F, management's discussion and analysis of financial condition and results of operations;

(5) Financial statements as would have been required to be included in an annual report on Form 20-F had the company being acquired been required to prepare such a report; *provided, however*, that the balance. sheet for the year preceding the latest full fiscal year and the income statements for the two years preceeding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c), the financial statements of such companies must be audited for the periods required to be presented pursuant to Rule 3-05.

(6) Any interim financial statements that would be required to be included in order to comply with Rule 3-19 of Regulation S-X; and

(7) Schedules required by Rules 12-15, 28 and 29 of Regulation S-X.

Instruction

The financial statements required by paragraph (b) (5) and (6) above need only comply with the reconciliation requirements of Item 17 of Form 20-F to the extent audited.

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, revocability of proxy;

(2) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(3) The information required by Item 3 of Schedule 14A, persons making the solicitation;

(4) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 4 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 5 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20-F may be provided in lieu of the information specified in Items 5 (d) and (e) of Schedule 14A.

(5) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(6) The information required by Item 22 of Schedule 14A, vote required for approval;

(7) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 10 of Form 20-F, directors and officers of registrant;

(ii) Items 11 and 12 of Form 20-F, remuneration and options; and

(iii) Item 13 of Form 20-F, interest of management in certain transactions.

(b) If the registrant or the company being acquired meets the requirements for use of Form F-2 or F-3, any information required by paragraphs (a)(4)(ii) or (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20-F.

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The information required by Item 3 of Schedule 14C, date, time and place of meeting;

(3) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(4) With respect to both the registrant and the company being acquired, a brief description of any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the registrant and of the company being acquired, in the proposed transaction;

Instruction

This subparagraph shall not apply to any interest arising from the owership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(5) With respect to both the registrant and the company being acquired, the information required by Item 5 of Schedule 14A, voting securities and principal holders thereof;

Instruction

The information specified in Item 4 of 20-F may be provided in lieu of the information specified in Items 5 (d) and (e) of Schedule 14A.

(6) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(7) The information required by Item 22 of Schedule 14A, vote required for approval; and

(8) With respect to each person who will serve as a director or an executive officer of

the surviving or acquiring company, the information required by:

(i) Item 10 of Form 20–F, directors and officers of the registrant;

(ii) Items 11 and 12 Form 20–F remuneration and options; and

(iii) Item 13 of Form 20–F, interest of management in certain transactions.

(b) If the transaction is an exchange offer, furnish the information required by paragraphs (a)(4), (a)(5), (a)(6) and (a)(8) of this Item, except as provided by paragraph (c) of this Item.

(c) If the registrant or the company being acquired meets the requirements for use of Form F–2 or F–3, any information required by paragraphs (a) (5) and (8) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20–F.

Part II—Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 21. Exhibits and Financial Statement Schedules.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (29.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S–X and Item 14(e), Item 17(a) or Item 17(b)(7) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of this Item.

(c) If information is provided pursuant to Item 4(b) of this Form, furnish the report, opinion or appraisal as an exhibit hereto, unless it is furnished as part of the prospectus.

Item 22. Undertakings.

(a) Furnish the undertakings required by Item 512 of Regulation S–K (229.512 of this chapter).

(b) Furnish the following undertaking: The undersigned registrant hereby undertakes: (i) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means; and (ii) to arrange or provide for a facility in the U.S. for the purpose of responding to such requests. The undertaking in subparagraph (i) above include information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) Furnish the following undertaking: The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Signatures

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19 _____.

(Registrant) ____________________

By (Signature and Title) ____________________

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ____________________

(Title) ____________________

(Date) ____________________

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer of officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 (§ 230.402 of this chapter) concerning manual signatures and Item 601 of Regulation S–K (§ 229.601 of this chapter concerning signatures pursuant to powers of attorney.

3. If the securites to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

* * * * *

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), (c), 78w(a)).

Date: April 23, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–10580 Filed 5–3–85; 8:45 am]

BILLING CODE 6010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2831-1]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Total Reduced Sulfur; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule for a test method to be used at kraft pulp mills that appeared on page 9579 in the **Federal Register** dated Friday, March 8, 1985 (50 FR 9578). The action is necessary to correct a factor used in the emission rate calculation.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: The following correction is made in 50 FR 9578 appearing on page 9579 in the issue dated March 8, 1985:

§ 60.285 [Corrected]

On page 9579 near the bottom of column 2, in § 60.285(d)(3), "[]=0.08844 lb H_2S/ft^3 ppm for English units." is corrected to read "$=0.08844 \times 10^{-6}$ lb H_2S/ft^3 ppm for English units."

* * * * *

Dated: April 26, 1985.

Charles Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–10908 Filed 5–3–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown: Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) Modified
ARKANSAS	
Little Rock, city, Pulaski County (FEMA Docket No. 6630)	
Grassy Flat Creek:	
Downstream side of Converse Drive	*392
Upstream side of Interstate 430	*405
Market Street	*419
Downstream side of Plainwood Drive	*424
Upstream side of Pleasant Valley Drive	*455
Rock Creek:	
Downstream side of Asher Avenue	*265
Upstream side of Asher Avenue	*268
Upstream side of 36th Street	*277
Taylor Loop Creek:	
Approximately 1,200 feet downstream of Taylor Loop Road	*311
Upstream side of Grishman Road	*319
Approximately .37 mile upstream of Grishman Road	*331
Upstream of Pebble Beach Drive	*362
Approximately .47 mile upstream of Pebble Beach Drive	*384
Maps available for inspection at the City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas.	
GEORGIA	
Unincorporated areas of Fulton County (Docket No. FEMA-6630)	
Autry Mill Creek:	
At mouth	*891
About 1,400 feet upstream of mouth	*891
Ball Mill Creek:	
At mouth	*872
About 900 feet upstream of mouth	*872
Boat Rock Creek:	
At mouth	*759
About 600 feet downstream of State Route 70	*759
Caney Creek:	
About 0.39 mile downstream of Shirley Bridge Extension	*994
Just upstream of Shirley Bridge Extension	*1,007
Chattahoochee River:	
About 200 feet upstream of the confluence of Camp Creek	*749
About 700 feet upstream of Interstate 20	*765
Just downstream of Powers Ferry Road	*792
Just downstream of Morgan Falls Dam	*819
Just upstream of Morgan Falls Dam	*851
About 1.2 miles upstream of State Route 141	[redacted]
Colewood Creek:	
At mouth	*806
About 150 feet upstream of mouth	*806
Deep Creek:	
At mouth	*748
About 0.9 mile upstream of State Route 154	*748
Foe Killer Creek:	
At confluence with Big Creek	*962
About 0.15 mile upstream of the confluence with Big Creek	*962
About 0.30 mile upstream of Rucker Road	*1,034
About 0.36 mile upstream of Mid Broadwell Road	*1,055
Long Island Creek:	
At mouth	*778
About 0.32 mile upstream of mouth	*778
Marsh Creek:	
At mouth	*811
About 1200 feet upstream of mouth	*811
Riverside Creek:	
At mouth	*755
About 2000 feet upstream of Riverside Drive	*755
Strickland Creek:	
Just upstream of Houze Road	*1,052
About 0.14 mile upstream of Houze Road	*1,057
Tributary 6:	
About 480 feet upstream of Academy Street	*1,022
About 880 feet upstream of Academy Street	*1,022
Utoy Creek:	
At mouth	*761
Just downstream of Great Southwest Parkway	*761
Maps available for inspection at the Fulton County Courthouse, 165 Central Avenue SW., Atlanta, Georgia 30303	
ILLINOIS	
City of Crystal Lake, McHenry County (Docket No. FEMA-6643)	
Crystal Lake:	
About 4,600 feet downstream of Dartmoor Drive	*853
Just downstream of Dartmoor Drive	*874
Just upstream of Dartmoor Drive	*878
Just downstream of Lake Avenue	*893
Maps available for inspection at the Planning Department, 240 Commerce Drive, Crystal Lake, Illinois.	
INDIANA	
Unincorporated areas of Elkhart County (Docket No. FEMA-6630)	
St. Joseph River:	
About 1.72 miles downstream of the confluence of Pine Creek	*743
About 2.05 miles upstream of the confluence of Washington Township Ditch	*752
About 1,100 feet downstream of the east bound lane of the Indiana East-West Toll Road	*756
About 1.73 miles upstream of the confluence of Trout Creek	*760
Pine Creek:	
At confluence with St. Joseph River	*744
Just upstream of State Route 120	*748
Maps available for inspection at the Planning Department, 401 South Second Street, Elkhart, Indiana.	
KANSAS	
Kansas City, Wyandotte (Docket No. FEMA-[redacted]	
Brenner Heights Creek:	
About 550 feet upstream of Freeman Avenue	*825
Just downstream of Parallel Avenue	*843
About 0.5 mile upstream of 59th Street	*872
Brenner Heights Creek Tributary:	
At confluence with Brenner Heights Creek	*763
About 500 feet upstream of confluence with Brenner Heights Creek	*763
About 1,350 feet upstream of confluence with Brenner Heights Creek	*767
Maps available for inspection at the Planning Department 7th Floor, 701 North Seventh Streetk, Kansas City, Kansas.	
MARYLAND	
Laurel, city, Prince Georges County (FEMA Docket No. 6630)	
Patuxent River:	
Most downstream corporate limits	*120
Downstream side of State Route 198	*134
Crows Branch:	
Confluence with Patuxent River	*122
Approximately 1,000 feet downstream of State Route 197	*126
Maps available for inspection at the Laurel Hall, Laurel, Maryland.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) Modified
MISSOURI	
City of Old Monroe, Lincoln County, (Docket No. FEMA-6630)	
Cuivre River	
About 0.15 mile downstream of Burlington Northern Railroad	*445
About 0.16 mile upstream of State Highway 79	*445
Maps available for inspection at Second and Sycamore Streets, P.O. Box 213, Old Monroe, Missouri [illegible]	
NEW JERSEY	
Atlantic City, city, Atlantic County (FEMA Docket No. 6619)	
Atlantic Ocean. Intersection of Gray Avenue and Rhode Island Avenue	
Maps available for inspection at the City Hall, 1301 Bacharach Boulevard, Atlantic City, New Jersey	
Montville, township, Morris County (FEMA Docket No. 6630)	
Passaic River Upstream Bloomfield Avenue	*174
Rockaway River	
At confluence with Passaic River	*174
Upstream side of U.S. Route 46	*175
Upstream side of Vail Road	*177
Approximately 200 feet upstream Knoll Road	*184
Upstream corporate limits	*196
Crooked Brook: Approximately 700 feet above River Road	*184
Maps available for inspection at the Engineering Office, Sisco House, 132 Chain Bridge Road, Montville, New Jersey	
NEW YORK	
Liberty, village, Sullivan County (FEMA Docket No. 6619)	
Middle Mongaup River	
Most downstream corporate limits	*1,375
Upstream of State Route 17 westbound off ramp	*1,378
Just downstream of State Route 52/corporate limits	*1,382
Corporate limits located just downstream of confluence of Lewis Street Brook	*1,397
Maps available for inspection at 167 North Main Street, Liberty, New York	
OHIO	
Village of Dublin, Franklin, Delaware, and Union Counties (Docket No. FEMA-6643)	
Scioto River	
Just upstream of Hayden Run Road	*772
About 320 feet upstream of confluence of Tributary S3	*788
About 550 feet upstream of confluence of Deer Run	*797
Indian Run	
At confluence with Scioto River	*778
About 270 feet upstream of High Street	*778
Tributary S1	
At mouth	*776
About 600 feet upstream of mouth	*776
Tributary S2	
At mouth	*781
About 550 feet upstream of mouth	*781
Maps available for inspection at 6665 Coffman Road, Dublin, Ohio	
OKLAHOMA	
Tulsa, city, Osage, Rogers, and Tulsa, Counties, (FEMA Docket, No. 6619)	
Little Haikey Creek Tributary	
Confluence with Little Haikey Creek	*706
Upstream of 77th Avenue	*708
Approximately 433 feet upstream of 77th Avenue	*709
Approximately 910 feet upstream of 77th Avenue	*713
Approximately 965 feet downstream of 72nd East Avenue	*716
Downstream of 72nd East Avenue	*722
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma	
PENNSYLVANIA	
Mount Carmel, borough Northumberland County, (FEMA Docket No. 6643)	
Shamokin Creek: At upstream corporate limits	*1,073
Maps available for inspection at the Borough Manager's Office, 100 North Vine Street, Mount Carmel, Pennsylvania.	
RHODE ISLAND	
Portsmouth, town, Newport County (FEMA Docket No. 6619)	
Sakonnet River	
Approximately 200 feet north of intersection of Russell Street and Park Avenue	*18
Intersection of Ormerod Avenue and Pine Street	*16
Maps available for inspection at 2200 Main Road, Portsmouth, Rhode Island	
TEXAS	
Plano, city, Collin and Denton Counties (FEMA Docket No. 6619)	
Stream 2I9	
Approximately 320 feet downstream of Country Place Drive	*646
Approximately 1,800 feet upstream of Country Place Drive	*662
Stream 5B 13: Approximately 1,000 feet upstream of confluence of Tributary to Stream 5B 13	*697
Tributary to Stream 5B 13:	
At confluence with Stream 5B 13	*692
Approximately 480 feet upstream of confluence	*694
McKamy Branch: At downstream corporate limits	*683
Prairie Creek	
Upstream side of Park Boulevard	*709
Approximately 3,650 feet upstream of Park Boulevard	*723
Maps available for inspection at the Municipal Annex Building, Plano, Texas.	
VERMONT	
Orleans, village, Orleans County (FEMA Docket No. 6630)	
Barton River	
Approximately 200' upstream of Main Street	*704
Approximately 400' downstream of State Route 58 bridge	*721
Approximately 300' downstream of State Route 58 bridge	*730
Upstream of State Route 58 bridge	*738
Downstream of third footbridge located downstream of the Canadian Pacific Railroad Bridge	*740
Maps available for inspection at the Orleans Village Office, Memorial Square, Orleans, Vermont	

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–10887 Filed 5–3–85; 8:45 am]

BILLING CODE 6718–03–M

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation

determinations, if promulgated, will not have a significant ecomomic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
ARIZONA	
Mammoth (Town), Pinal County (FEMA Docket No. 6630)	
San Pedro River: Intersection of Main Street and Galiuro Street	*2,348
Maps available for inspection at Town Hall, Mammoth, Arizona.	
CALIFORNIA	
San Bernardino County (Unincorporated Areas), (FEMA Docket No. 6643)	
Sheet Flow: Intersection of Wilson Avenue and Day Creek Channel	#1
Maps available for inspection at Transportation and Flood Control Department, 825 East Third Street, San Bernardino, California	
Ukiah (City), Mendocino County (FEMA Docket No. 6643)	
Orrs Creek: 30 feet upstream of center of Orr Street	*609
Maps available for inspection at Department of Planning, 203 South School Street, Ukiah, California.	
Visalia (City), Tulare County (FEMA Docket No. [illegible])	
Shallow Flooding: (Mill Creek, Mill Creek Ditch, Evans Ditch, and Persian Ditch) Intersection of Walnut Avenue and Heritage Drive	*308
Shallow Flooding: (Packwood Creek) Intersection of Walnut Avenue and Tracy Court	*336
Shallow Flooding: (Mill Creek and Persian Ditch) At Visalia Municipal Airport	*292
Maps available for inspection at City Department of Public Works, 707 W. Acequia Street, Visalia, California.	
MISSOURI	
Columbia (City), Boone County (FEMA Docket No. 6547)	
Goodin Branch:	
About 1,600 feet downstream of Gillespie Bridge Road	*584
About 1,950 feet upstream of Georgetown Road	*627
Hinkson Creek	
About 1.1 miles downstream of Missouri-Kansas-Texas Railroad	*592
About 1,700 feet upstream of Missouri-Kansas-Texas Railroad	*596
County House Branch	
At confluence with Hinkson Creek	*592
About 300 feet upstream of West Boulevard South	*592
Maps available for inspection at 7th and Broadway, Columbia, Missouri.	

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10885 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

Clarification of Filing Dates for Comments on Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Clarification of certain rule sections; petitions for reconsideration.

SUMMARY: This document announces the parties which have filed petitions for reconsideration of the Commission's Order Clarifying §§ 69.5 and 69.115 of the rules (published on March 28, 1985, 50 FR 12254). It also clarifies the filing period regarding oppositions and replies to oppositions to these petitions.

DATES: Oppositions must be filed by May 14, 1985 and replies to oppositions must be filed by May 24, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

May 2, 1985.

The Commission Clarifies Filing Dates for Pleadings on Petitions for Reconsideration of Order Clarifying §§ 69.5 and 69.115 of its Rules.

Ad Hoc Telecommunications Committee ("Ad Hoc"), Aeronautical Radio, Inc. ("ARINC"), and Pacific Bell have filed petitions for partial reconsideration of a Commission Order that clarifies a section of the Commission's Rules governing exemptions from the private line surcharge. Clarification of §§ 69.5 and 69.115 of the Rules of the Federal Communications Commission, Memorandum Opinion and Order, 50 FR 12254 (1985).

In order to clear up any confusion surrounding the filing dates for pleadings on these petitions, this notice establishes May 14, 1985 as the deadline for oppositions and May 24, 1985 as the deadline for replies. Copies of the Ad Hoc, ARINC, and Pacific Bell petitions and subsequent pleadings can be obtained from the International Transcription Service, 1919 M Street, NW., Room 246, Washington, D.C. 20554, (202) 857-3800. Parties should file comments with the Secretary, FCC, 1919 M Street, NW., Washington, D.C. 20554. For further information contact Sandra Eskin, Common Carrier Bureau, at (202) 632-9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11008 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

Potato Research and Promotion Plan, Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on an amendment proposed by the Potato Board to title the six subsidiary officers vice presidents. This change would bring the rules and regulations into conformance with the Bylaws as revised in March 1985.

DATE: Comments due by June 5, 1985.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2036.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Marketing Programs, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The Potato Board is the administrative agency established by the Potato Research and Promotion Plan (7 CFR Part 1207). The Plan is effective under the Potato Research and Promotion Act (7. U.S.C. 2611–2627).

At its public annual meeting at Denver, Colorado, on March 14–16, 1985, the Potato Board amended its Bylaws to specify that the Executive Committee of the Potato Board shall be composed of the President and six Vice Presidents, one of whom shall also serve as the Secretary and the Treasurer. Previously the Executive Committee has been composed of the President, four Vice Presidents, a Secretary and a Treasurer. This proposed rule would amend the Rules and Regulations to conform with the recently changed Bylaws.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION

1. The authority citation for Part 1207 would be revised to read as follows:

Authority: Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627, as amended.

2. Section 1207.507 (37 FR 17379, 42 FR 55879, 44 FR 25621) is hereby proposed to be further amended by revising paragraph (a) as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the President, and six Vice Presidents, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

Dated: April 29, 1985.

D.S. Kuryloski

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–10766 Filed 5–3–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1423

[Amdt. 3]

Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey and Bulk Oils

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations found at 7 CFR 1423.1 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils. The proposed rule would: (1) Permit a parent company to submit a financial statement for a wholly-owned subsidiary; (2) permit warehousemen to submit financial statements on forms other than on Form WA–51; (3) revise the references to CCC regulations governing suspension and debarment; (4) require that a warehouseman leasing warehouse space must have a lease agreement which can be renewed and which provides for a minimum of 120 days cancellation notice; (5) permit CCC to accept an irrevocable letter of credit on forms other than Form CCC–33A; (6) delete the use of a Certificate of Competency issued by the Small Business Administration for a warehouseman who is deficient in net worth; (7) delete certain references to the withdrawal of approval of warehouses by CCC; and (8) make certain other miscellaneous changes.

DATES: Comments must be received on or before July 5, 1985 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013; (202) 447–4018 or 447–7433.

FOR FURTHER INFORMATION CONTACT: Barry W. Klein, 202–447–7911, Warehouse Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals industries,

Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth standards of approval which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for price support loans made available by CCC.

CCC proposes to amend the following regulations which govern the Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR 1423.1 *et seq.*) in the manner described below.

Section 1423.1(d)(2) of the regulations currently requires warehousemen to submit financial statements on Form TW–51 and permits a chain of warehouses owned and operated by a single business entity to submit only one financial statement. That form has been revised and is now form WA–51. Several warehousemen have complained that their independently prepared financial statements should satisfy CCC needs and they should not be required to incur the added expense and paperwork burden of submitting financial information on the CCC's form. Also, several warehousemen whose warehouse facilities are wholly-owned and operated by a parent company have requested that the financial statement which is prepared for the parent company and which includes the combined financial position of the parent company and all subsidiaries be accepted by CCC. These warehousemen believe that to prepare a separate financial statement for each subsidary warehouse is very costly and unnecessary. This proposed rule would permit warehousemen to submit financial statements to CCC on forms other than the WA–51 with the approval of the Director, Kansas City Commodity Office (KCCO), or the Director's designee. In addition, this proposed rule provides that a financial statement from the parent company may be accepted by CCC in lieu of individual statements from each wholly-owned subsidary if approved by the Director, KCCO, or the Director's designee.

Sectin 1423.2(c) of the regulations currently provides that, in meeting the standards of approval, the warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse must not be either suspended or debarred under CCC's suspension and debarment regulations, 7 CFR Part 1407. The Board of Directors of the Corporation has adopted, with limited reservations, the regulations implemented by the Department of Agriculture with respect to the suspension and debarment of individuals and firms contracting with CCC. The provisions of § 1423.2(c) have been revised to merely reference the CCC suspension and debarment regulations. A conforming amendment has also been made in § 1423.6(c)(2).

Section 1423.2(d)(2) of the regulations currently provides that the warehouse must be under the control of the contracting warehouseman at all times. In order to better protect the interests of CCC, this proposed rule would also require that all warehousemen seeking approval for storage from CCC who do not own a warehouse must submit a copy of a written lease agreement to CCC. The lease agreement must establish that the warehouseman has control of the leased warehouse for which CCC approval is sought for a sufficient length of time to make it feasible for CCC to use the warehouse for storage. The lease agreement must also provide that the lessor cannot cancel the lease without giving a minimum of 120 days notice. The purpose for requiring a 120 day notice provision in leases is to coincide with the provisions of the CCC storage contracts which permit the termination of a storage contract based upon 120 days notice.

Section 1423.3(e) of the regulations currently provides that CCC may accept an irrevocable letter of credit in lieu of the required amount of bond coverage if the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation and the letter of credit is submitted to CCC on Form CCC–33A, "Irrevocable Letter of Credit". Several Banks have objected to the use of Form CCC–33A and would prefer to use their own letter of credit form. This proposed rule would permit commercial banks to issue letters of credit on forms other than Form CCC–33A, provided that such forms are approved by the Director, KCCO, or the Director's designee.

Section 1323.5(b) of the regulations currently provides that a Certificate of Competency issued by the Small Business Administration (SBA) for a warehouseman will be accepted by CCC for the purpose of establishing conformance by the warehouseman with certain of the Standards for Approval and the warehouseman will not be required to furnish bond coverage for any deficiency in net worth. The SBA has been reluctant to issue a Certificate of Competency to warehousemen since there is no guarantee that CCC-owned commodities will be stored with a warehouseman who has been issued a certificate. In fact, there have been no processed commodities warehousemen approved with a Certificate of Competency in the recent past. Accordingly, it has been concluded that

the provisions of § 1423.5(b), which reference the use use of a Certificate of Competency, are not needed and this proposed rule would delete that section accordingly.

Section 1423.6 of the present regulations sets forth the procedures under which CCC approves or disapproves a warehouse for the purpose of storing processed commodities owned by CCC. These regulations also provide for the administrative appeal procedures which may be utilized by a warehouseman whose warehouse was not approved by CCC. In addition, § 1423.6 sets forth the procedures and requirements involving the withdrawal of approval of a warehouse by CCC as a result of the failure of the warehouse to continue meeting the standards for approval or for the failure of the warehouseman to perform the contractual obligations specified in the CCC storage agreement. This proposed rule would delete any references in § 1423.6 to the withdrawal of approval of warehouses by CCC since it is felt that these regulations should only relate to the approval, rather than the disapproval, of warehouses by CCC. The terms and conditions with respect to the continuing obligations of the warehouseman to meet the standards of approval and storage commitments will be set forth in the Storage Contract for Processed Commodities entered into between the warehouseman and CCC.

Section 1423.6(c)(1) has also been revised to provide that any request by a warehouseman for reconsideration of a determination by CCC that the warehouseman has failed to meet the Standards for Approval must be in writing. Previously, such a request for reconsideration could be made orally to the Director, KCCO, as well as in writing.

In addition to the foregoing, § 1423.1(b) of the regulations has been amended to correct the mailing address for the Kansas City Commodity Office and the table of contents has been revised and a new § 1423.8 has been added to include control numbers assigned by the Office of Management and Budget (OMB) in accordance with the information collection requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Honey, Oilseeds, Reporting and recordkeeping requirements, Security bonds, Warehouses.

Proposed Rule

PART 1423—[AMENDED]

Accordingly, it is proposed that the regulations at 7 CFR Part 1423 be amended as follows:

1. The table of contents to Subpart-Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils is amended by adding an entry for § 1423.8 to read as follows:

Sec.

* * * * *

1423.8 OMB Control numbers assigned pursuant to Paperwork Reduction Act.

2. The authority citation to 7 CFR Part 1423, Subpart-Standards for Approval of Dry and Cold Storage Warehouses for Processed Commodities, Extracted Honey, and Bulk Oils, is revised to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c).

3. In § 1432.1, paragraphs (b) and (d)(2) are revised to read as follows:

§ 1423.1 General statement and administration.

* * * * *

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

* * * * *

(d) * * *

(2) A current financial statement on Form WA–51, "Financial Statement", supported by such supplemental schedules as CCC may requests. Financial statements may be submitted on forms other than Form TW–51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

* * * * *

4. In § 1423.2, paragraphs (c)(2) and (d)(2) are revised to read as follows:

§ 1423.2 Basic standards.

* * * * *

(c) * * *

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) * * *

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 day notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer.

* * * * *

5. In § 1423.3, paragraph (e) is revised to read as follows:

§ 1423.3 Bonding requirements for net worth.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–3A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

§ 1423.5 [Amended]

6. Section 1423.5 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

7. Section 1423.6 is revised to read as follows:

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's

obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

8. Section 1423.8 is added to read as follows:

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1423) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0052, 0560–0044, 0560–0064, 0560–0065, 0560–0034, and 0560–0041.

Signed at Washington, D.C., on May 1, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–10939 Filed 5–3–85; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 84–016P]

Withdrawal of Three Countries From the List of Those Eligible To Import Meat Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to withdraw the countries of Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the Federal Meat Inspection Act (FMIA). To be eligible to have its meat products imported into the United States, the FMIA requires that the meat inspection system of the exporting country assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States. The countries of Bulgaria, Colombia, and Luxembourg have indicated in written responses, or lack of response, to two Food Safety and Inspection Service (FSIS) cables, that they do not wish to remain eligible to have their products imported into the United States. In addition, these countries have no certified plants, and have not exported meat products to the United States in several years. Therefore, FSIS is proposing to withdraw Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their meat products imported into the United States.

DATE: Comments must be received on or before July 5, 1985.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. William Havlik, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposal would only formally delist three countries that have not exported meat products to the United States for several years.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 because there are no domestic importers of meat products from these countries.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Regulations Office. Please include the docket number which appears in the heading of this document. All comments submitted in response to this proposal will be made available for public viewing in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service the authority to issue regulations and implement appropriate procedures to ensure compliance with

the requirements of the FMIA. The regulations addressing imported meat products are in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat or meat food products into the United States may become eligible to do so.

Part 327 of the Federal meat inspection regulations requires that foreign countries maintain their meat inspection programs at a level "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States if they wish to obtain and/or retain their eligibility to import meat products in the United States. Maintenance of eligibility depends on results of periodic reviews of the foreign meat inspection system by an FSIS representative and submission of information and documentation so that the Administrator can determine their eligibility status.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States under § 327.2(a)(4) (9 CFR 327.2(a)(4)).

* * * Whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all the inspection, building construction standards, and other requirements of the Act and the regulations in this subchapter as applied to the official establishments in the United States: * * *

Recent changes in domestic meat inspection requirements, including provisions contained in the 1981 Farm Bill, which amended Section 20 of the FMIA (21 U.S.C. 620) dealing with imports, prompted FSIS to require demonstrated compliance in certain technical areas to maintain country eligibility. Special evaluations of country performance resulted in the February 1984 withdrawal of six countries actively exporting to the United States from the list of eligible countries because of their inability to comply with United States requirements. Since that time, three of the six countries have corrected their deficiencies and have regained their eligibility.

This eligibility evaluation was subsequently exended to eligible foreign countries that had not exported meat products to the United States in several years and had no certified plants. In March 1984, telegrams were sent to 11 such countries including Bulgaria, Colombia, and Luxembourg, requesting that they inform FSIS of their interest in remaining on the list of eligible countries and of their plans for complying with all United States requirements. These countries would have to provide assurance and verification that all provisions contained in the 1981 Farm Bill, amending Section 20 of the FMIA, including detailed technical procedures for residue testing, would be met. The telegrams stated that "a no response" would be considered a desire to be removed from the eligible list. Two of the 11 countries—Bulgaria and Colombia—failed to respond to that telegram. A third, Luxembourg, indicated its desire to remain on the list; the Agency then requested preparation of supporting documents and data necessary to remain eligible.

In June 1984, telegrams were sent to Bulgaria and Colombia notifying them that since FSIS had not received a reply, the Agency presumed no interest on their part in remaining on the list. On June 28, 1984, Colombia cabled its desire to be removed. On October 10, 1985, Luxembourg cabled its desire to be removed. Since no response has been received from Bulgaria, FSIS has determined that Bulgaria has no interest in remaining on the list.

Therefore, pursuant to §327.2 of the regulations (9 CFR 327.2), the Administrator is proposing to withdraw Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States.

If, at a future date, Bulgaria, Colombia or Luxembourg desire to be placed on the list of eligible countries and the Administrator of FSIS is satisfied that the meat inspection officials of that country have provided verification that their system meets all the provisions of the FMIA and regulations thereunder, that country may again be added to the list of countries eligible to have their meat products imported into the United States.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

Accordingly, § 327.2, paragraph (b) of the Federal meat inspection regulations would be amended as set forth below:

1. The authority citation for Part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by removing the following countries from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States: Bulgaria, Colombia, Luxembourg.

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-10938 Filed 5-3-85; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 85-286b]

Settlement of Insurance; Reconsideration Procedures

Dated: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing for comment an amendment to the regulations of the FSLIC concerning the settlement of insurance on accounts in insured institutions in default, in order to further clarify and increase the efficiency of procedures previously adopted by the Board whereby the holder of such an account may obtain agency reconsideration of a determination that all or a portion of such an account is uninsured.

DATE: Comments must be received by June 5, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Attorney, Office of General Counsel (202-377-6432), or Mary A. Creedon, Director, Insurance Division, Office of the FSLIC (202-377-6620), Federal Home Loan Bank Board, 1700 G. Street, NW. Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 405(b) of the National Housing Act directs the Corporation, in the event of a default by an institution the accounts of which are insured by the FSLIC ("insured institution"), to make payment of insurance on accounts and permits the Corporation to require the filing of

proofs of claims prior to paying insurance. 12 U.S.C. 1728(b)(1982). Section 564.1 of the Regulations of the FSLIC ("Insurance Regulations") provides that, in the event of a default by an insured institution, the Corporation shall determine from the books and records of the institution or otherwise the insured members of the institution and the amount of each insured member's account(s), and shall give each insured member notice of the time and place of payment of insurance on accounts. 12 CFR 564.1(a)(1984). The Board, as operating head of the FSLIC, has delegated on a case-by-case basis the authority to settle and pay insurance, in accordance with section 405 of the National Housing Act and its implementing regulations, to the Director, Deputy Director, an Associate Director, or the Director of the Insurance Division, Office of the FSLIC.

Section 405(b) of the National Housing Act neither precludes reconsideration by the agency of such insurance determinations nor provides a formal mechanism for such consideration. An increase in the number of inquiries by accountholders as to the availability of administrative review of insurance determinations, however, prompted the Board to adopt formal reconsideration procedures by amending § 564.1 of its insurance regulations to provide a two-step process to be followed by the FSLIC and accountholders regarding determinations on the extent of insurance on accounts. See 49 FR 36632 (Sept. 19, 1984) (to be codified at 12 CFR 564.1(d)).

Paragraph (d) of § 564.1 currently delegates authority to the Director or Acting Director of the Insurance Division, Office of the FSLIC ("Director of the Insurance Division"), to notify accountholders in an insured institution in default of the time and place of the FSLIC's payment of insurance on accounts, and to make initial determinations regarding the extent of insurance coverage of such accounts in accordance with the principles for determining insurance coverage set forth in Part 564 of the Insurance Regulations. The determination by the Director of the Insurance Division must specify the bases upon which the determination was made and must be provided to the accountholder in writing. An accountholder who disagrees with the determination by the Director of the Insurance Division may request reconsideration of that determination by the Director or Acting Director of the Office of the FSLIC ("Director"). Pursuant to the present rule, the Director will reconsider only those determinations as to which a request for reconsideration is substantial, *i.e.*, is in writing, seasonably filed, sets forth an issue of law or fact which was not addressed, or in the Director's opinion was not adequately addressed, in the prior determination, and is consistent with one of the regulatory bases set forth in Part 564 for entitlement to insurance. The Director's determination regarding the substantiality of a request for reconsideration, as well as the Director's determination of the extent of FSLIC insurance in those cases in which the request for reconsideration is found to be substantial, must be provided to the accountholder in writing. In the event, however, that the Director determines that a request for reconsideration presents a significant issue of agency policy, that issue will be referred to the Board for decision.

The reconsideration procedures have been in effect for approximately seven months and a number of accountholders have availed themselves of this further administrative remedy accorded to accountholders who receive initial determinations from the FSLIC that all or a portion of their accounts in an insured institution which is in default is uninsured. It has, however, recently been brought to the Board's attention that considerable confusion on the part of accountholders has been and continues to be associated with these reconsideration procedures regarding their purpose, intent and practical application and their effect upon the initial determination procedures previously employed by the Corporation in reaching insurance determinations. This confusion has significantly decreased the efficiency of the reconsideration process and has highlighted administrative difficulties in the reconsideration procedures which previously had not been contemplated.

For these reasons, the Board is proposing to amend § 564.1(d) in order to further clarify and streamline the reconsideration procedures, the procedures regarding initial determinations, and the Board's intent regarding the interrelationship between these two steps in the insurance claims determinations process. The amendments which the Board proposes to make to § 564.1(d) are described below. Comments with respect to these proposed amendments and suggestions regarding other procedures which would achieve the Board's goal of providing a formal administrative avenue for review of initial determinations, without unduly burdening or delaying the insurance claims determinations process, are requested.

Description of the Proposed Rule

The amendments proposed to § 564.1(d) can be organized for purposes of discussion into essentially three categories. First, the proposal incorporates clarifying changes which further delineate the role of initial determinations and determinations on reconsideration in the insurance claims process and accountholders' rights and obligations with respect to each step. More specifically, the proposed amendments would clarify the Board's intent that determinations on reconsiderations of initial determinations, and not initial determinations constitute final agency action on insurance claims, that filing a request for reconsideration is a necessary step in seeking administrative review of an initial determination that an account is not fully insured, and that failure to file such a request regarding a negative initial determination would be deemed to be a waiver of objections to such initial determination and an acceptance of its terms. The proposed amendments also expressly include procedures that would codify the Director's present practice regarding amending and supplementing requests for reconsideration by accountholders, and the ability of the Directors of FSLIC to request and the accountholder to submit additional information in connection with such a request or amendment thereof.

Second, the proposed amendments would delete the present procedures set forth in § 564.1(d)(3) regarding determinations with respect to the substantiality of requests for reconsideration. The Board has discovered that these procedures have been the source of confusion among accountholders, difficult to implement and effectuate and have resulted in an inefficient use of staff resources. For this reason, the Board is proposing more streamlined procedures whereby requests for reconsideration of an initial determination may be granted or denied in writing by the Director of the FSLIC after his review of a request without the issuance of a lengthy substantiality determination. Instead, in the event that the Director of the FSLIC denies a request for reconsideration, the initial determination issued by the Director of the Insurance Division would become final and the accountholder could pursue whatever judicial remedies might be available to it. Conversely, in the event the Director of the FSLIC grants a request for reconsideration, the Director would consider the merits of the insurance claims set forth in the request

and would issue a determination on reconsideration, which would constitute final agency action on the claim. The Board believes that this proposed procedure would provide accountholders with the same level of administrative review of initial determinations as is currently available, and would, at the same time, increase the efficient use of staff resources and the more speedy resolution of claims.

Third, after its experience with the reconsideration procedures during the last seven months, the Board is proposing to amend § 564.1(d) to revise and further clarify the time limits applicable to procedures associated with requests for reconsideration. Thus, the proposed rule would change the present requirement that requests for reconsideration must be filed within 60 days of the *receipt* of an initial determination to within 60 days of the *issuance* of such a determination, *i.e.*, the date indicated on the letter or memorandum constituting the initial determination so that the FSLIC may readily ascertain the date on which the period for filing such a request expires. The proposed rule would also extend the period for the Director's issuance of a determination on reconsideration from 90 days to 180 days. This proposed change is due to the larger than expected volume of requests for reconsideration and the limited available resources to process and review such requests.

Finally, the Board is proposing a conforming change to § 564.1(d)(1) which would grant the Director of FSLIC the same authority to delegate authority to make determinations to a designee as was previously granted to the Director of the Insurance Division in the current rule.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all holders of accounts in institutions that are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would clarify procedures pertaining to agency reconsideration of initial determinations regarding the extent of insurance of accounts in insured institutions without regard to their asset size.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rule.* The provisions of the proposed regulation are based upon the Board's experiences to date with the present procedures for requests for reconsideration and the perceived need for clarification and elaboration of such procedures. The Board is not aware of any alternatives to the proposed rule that would better satisfy the Board's objectives discussed above in SUPPLEMENTARY INFORMATION but has solicited comments regarding any such alternatives.

The Board has determined to provide less than a 60-day comment period because (1) it is in the interests of accountholders for prompt action to be taken by the Board to clarify the subject regulation, and (2) the amendment relates to internal agency procedures regarding the settlement of FSLIC insurance claims.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 564, Subchapter D, Chapter V of Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority for 12 CFR Part 564 would continue to read:

Authority: Sec. 308, Pub. L. 96–221; secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend paragraph (d) of § 564.1 as follows: Amend paragraph (1) by inserting "initial" between the words "make" and "determinations" in the first sentence, inserting "or his or her designee" between "("Director")" and "is", and "made" between "determinations" and "by", in the second sentence, and removing the third sentence in its entirety; amend paragraph (2) by substituting "*Initial determination*" for "*Determination by the Director of the Insurance Division*" in the heading, inserting "initial" between the words "such" and "determination" in the first sentence, and removing the last sentence and substituting the following sentence therefor: "Failure of the accountholder to file with the Director a request for reconsideration pursuant to paragraph (d)(3) of this section shall be deemed to constitute acceptance of the initial determination by the accountholder."; revise paragraphs (3) and (4) as set forth below; and add new paragraphs (5) and (6) as set forth below:

§ 564.1 Settlement of insurance upon default.

* * * * *

(d) *Processing of insurance claims.*

* * * * *

(3) *Request for reconsideration*—(i) *Time for filing.* Within 60 days after issuance of an inital determination by the Director of the Insurance Division that all or a portion of an accountholder's account is uninsured, such accountholder may obtain reconsideration of the initial determination by filing with the Director a written request for reconsideration.

(ii) *Content of request.* Any request for reconsideration must include:

(*a*) A statement of the facts on which the claim for insurance is based;

(*b*) A statement of the basis for the initial determination to which the accountholder objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(*c*) Copies of the accountholder's records, maintained in good faith and in the ordinary course of business, which support the accountholder's claim for insurance;

(*d*) A separate identification and statement of all facts and matters relied upon by the accountholder seeking reconsideration which were not previously provided to the Director of the Insurance Division, together with all records maintained in good faith and in the ordinary course of business which support the accountholder's claim for insurance, in the event that reconsideration is sought based on matters not available for consideration by the Director of the Insurance Division at the time of the issuance of the initial determination.

(iii) *Procedures for review of request.* (*a*) Within 30 days of the date of the Director's receipt of a request for reconsideration, the Director may request in writing that the accountholder submit additional facts and records in support of its request. If additional information is requested by the Director, the accountholder shall have 30 days from the date of issuance of such written request to provide such additional information. Failure by the accountholder to provide such

additional information may, as determined solely by the Director, result in denial of the accountholder's request that the initial determination be reconsidered.

(*b*) Within 60 days from the date of the Director's receipt of a request for reconsideration, the accountholder may amend or supplement the request in writing. In the event that the accountholder does amend or supplement the request, the provisions of paragraph (d)(3)(iii)(*a*) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(*c*) Within 60 days from the last day on which an accountholder may either amend or supplement the request pursuant to paragraph (d)(3)(iii)(*b*) of this section or submit additional information to the Director pursuant to paragraphs (d)(3)(iii) (*a*) and (*b*), whichever is later in time, the Director shall in writing either grant or deny the accountholder's request that the initial determination be reconsidered. In the event that the Director fails to grant or deny the accountholder's request within such 60-day period, the request shall be deemed to be denied for purposes of paragraph (d)(5) of this section.

(iv) *Failure to file request results in waiver*—(*a*) *Complete waiver.* If an accountholder does not file a request for reconsideration within the time permitted under this section, any objection to the initial determination by the accountholder is waived.

(*b*) *Partial waiver.* If an accountholder does not object to a part of an initial determination in its request for reconsideration within the time permitted under this section, any objection by the accountholder to that part of the initial determiantion is waived.

(4) *Determination on reconsideration.* (i) Within 180 days from the date of the Director's issuance of a grant of a request for reconsideration under paragraph (d)(3)(iii)(*c*), the Director shall issue a decision regarding the merits of the accountholder's claim for insurance set forth in the request for reconsideration, determining the extent of the accountholder's insurance pursuant to the rules of this Part.

(ii) The determination by the Director on reconsideration shall be provided to the accountholder in writing, stating the reason(s) for the determination, and shall constitute final agency action regarding the accountholder's claim for insurance.

(iii) If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the accountholder shall promptly surrender to the Corporation the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Director determines that the accountholder is only entitled to a portion of the amount of insurance claimed, upon the accountholder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(iv) Failure by the Director to issue a determination on reconsideration of the accountholder's claim for insurance within the 180-day period provided for under this paragraph (d)(4) shall be deemed to be a denial of such claim for purposes of paragraph (d)(5) of this section.

(5) *Judicial review.* (i) For purposes of seeking judicial review of actions taken pursuant to this section, only the following actions shall constitute final agency action regarding an accountholder's claim for insurance:

(*a*) Any determination on reconsideration issued by the Director pursuant to paragraph (d)(4) of this section;

(*b*) Any initial determination made by the Director of the Insurance Division pursuant to paragraph (d)(2) of this section which was the subject of a request for reconsideration filed with the Director by the accountholder, if such request has been denied by the Director pursuant to paragraph (d)(3)(iii)(*c*) of this section.

(ii) Initial determinations made by the Director of the Insurance Division pursuant to paragraphs (d)(2) of this section which are not the subject of requests for reconsideration filed with the Director pursuant to paragraph (d)(3) shall in no event be considered to constitute final agency action regarding an accountholder's claim for insurance for purpose of seeking judicial review of such determinations.

(iii) Failure by an accountholder to file a request for reconsideration with regard to an initial determination to which it objects shall constitute a failure by the accountholder to exhaust its available administrative remedies and, due to such failure, any objections to the initial determination shall be deemed to be waived in accordance with paragraph (d)(3)(iv) of this section and such initial determination shall be deemed to have been accepted by the accountholder pursuant to paragraph (d)(2) of this section.

(6) The Corporation shall make available to the public copies of the Director's determinations on reconsideration of insurance claims.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10820 Filed 5-3-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-15]

Airworthiness Directives; Garrett TFE 731-2, -3, -3A, -3AR, -3B, -3BR, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection of the rear mount weld attachments to the engine interstage turbine duct, or require modification, or require a replacement of these rear mounts on Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines. The proposed AD is needed to detect and remove from service, ducts with engine mount clevises which were improperly welded during manufacture. Separation of the engine rear mount on certain aircraft may result in an unsafe engine installation.

DATE: Comments must be received on or before July 16, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Docket No. 85-ANE-15, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, delivered in duplicate to the above address, to Room 311.

Comments delivered must be marked: Docket No. 85-ANE-15.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable service documents may be obtained from: Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010.

A copy of each of the applicable service documents is contained in the Rules Docket, Federal Aviation Administration, New England Region

Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Northwest Mountain Region, Western Aircraft Certification Office, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 85-ANE-15". The post card will be date/time stamped and returned to the commenter.

There have been three reports of failures of the Garrett TFE731 rear engine mount. Two failures were found with the engine installed on the aircraft and the other was found during routine inspection at a maintenance shop. One duct which failed on an installed engine had been X-ray inspected. These failures resulted from fatigue cracking of the electron beam weld attaching the rear mount clevis to the turbine interstage turbine duct (hereinafter referred to simply as the duct). These weld attachments cracked due to lack of weld penetration during the original manufacture of the ducts. Weld penetration can be determined by proper X-ray inspection.

A review by the manufacturer of previous X-ray inspections on the ducts accomplished during the manufacturing process and during field inspections conducted in compliance with a previously issued AD 81-24-08, Amendment 39-4248, made effective January 6, 1982, has revealed that specifically identified ducts require either replacement or another X-ray inspection. The manufacturer has issued a service bulletin (SB) which identifies the serial number (S/N) of all ducts which have failed to pass X-ray inspection or require another X-ray inspection. This bulletin provides instructions to X-ray inspect the welds of applicable ducts at any one of several qualified inspection facilities to assure adquate weld penetration. The remainder of the ducts are required to be replaced.

There are, however, provisions to allow these ducts to continue in service. The manufacturer is making available an aft mount auxiliary bracket which, when installed, is capable of supporting all engine mount loads currently approved for the existing rear mount. This auxiliary bracket requires a longer rear engine mount bolt which is a new aircraft part. Therefore, each type aircraft will require an FAA approved aircraft SB to complete the installation.

Since this condition is likely to exist or occur on other engines of the same type design, the proposed AD would require an inspection, repair or modification, if necessary, of the rear engine mount weld joints on certain Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R engines.

Conclusion

The FAA has determined that this proposed regulation involves 1,630 engines. The approximate cost per engine would be $10 for 1,460 engines and $3,000 for the remaining 170 engines. These engines are used in highly sophisticated multi-engine jet aircraft such as the Falcon 50, Lear Jet 55, and Citation III. Aircraft of this class are generally operated by major business corporations rather than "small entities" as that term is used under the criteria of the Regulatory Flexibility Act. For this reason, the FAA believes it highly improbable that a substantial number of small entities would be significantly affected by the proposed rule. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Garrett Turbine Engine Company (formerly the AiResearch Manufacturing Company of Arizona): Applies to all Model TFE731 -2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines installed in aircraft certified in all categories equipped with turbine interstage transition ducts: Part Nos. 3072318-3, 3071486-7, -8, -9, and -10, 3072726-1, and -2 identified by individual S/N (hereinafter referred to as duct(s))

Compliance is required prior to the accumulation of 1,150 hours time in service from the effective date of this AD, unless already accomplished.

To prevent separation of the engine rear mount from the duct accomplish the following:

(a) Determine by visual inspection whether or not the turbine interstage transition duct S/N is included in the lists of ducts identified in Table 1 or Table 2 in Paragraph 2.A of Garrett SB TFE731-72-3309, dated March 7, 1985, hereinafter referred to as Bulletin -3309. Engine visual inspection to assure that the duct serial number is not on Table 1 or Table 2 in Paragraph 2.A of Bulletin -3309 constitutes terminating action for this AD.

Note.—The ducts listed in Table 1 have had X-ray inspection and subsequent review of the X-rays indicate that the rear mounts have inadequate weld penetration. The ducts listed in Table 2 require additional X-ray inspection to determine the adequacy of the rear mount weld penetration.

(b) For all engines which contain ducts listed in Table 2 in Paragraph 2.A of Bulletin-3309, the duct either must be X-ray inspected in accordance with Paragraph (d) or must be in compliance with (c) of this AD, before the engine may be returned to service.

(c) For all engines which contain ducts listed in Table 2 in Paragraph 2.A of Bulletin-3309 which have not been X-ray inspected in accordance with Paragraph (d) of this AD and all engines which contain ducts listed in Table 1 in Paragraph 2.A of Bulletin-3309, the duct must be replaced with a serviceable duct or modified by installing an aft mount auxiliary bracket in accordance with Paragraph (e) of this AD, before the engine may be returned to service.

(d) For ducts not replaced or modified per Paragraph (c) or (e) of this AD, perform radiographic (X-ray) weld inspection of the electron beam attachment of all three engine rear mount clevises on the duct in accordance with instructions provided in Paragraph 2.C of Bulletin–3309.

(1) If X-ray inspections of all three engine mount clevises are acceptable, reidentify duct with identifier code of X-ray facility and by adding "–3309" following the duct part number in accordance with instructions provided in Paragraph 2.C of Bulletin–3309.

Note.—X-ray inspections of the engine mount clevises accomplished in accordance with Paragraph 2.D of Garrett SB TFE731–72–3159, dated April 23, 1981, or Revision 1, dated September 16, 1981, or Revision 2, dated February 1, 1982, or Revision 3 of this bulletin, dated June 29, 1982, and done in compliance with AD No. 81–24–08, Amendment 39–4348, made effective January 6, 1982, hereinafter referred to as Bulletin–3159, are not alternative inspections which provide an equivalent level of safety to this AD.

(2) If the X-ray inspection of the three engine mount clevises reveals an unsatisfactory weld penetration at a position which is not used to mount the engine to the aircraft, the mount is to be destroyed by cutting through the unsatisfactory clevis mounting bolt holes, and the duct reidentified. The bolt hole cut-through must be done in accordance with Paragraph 2.F(1) of Bulletin–3159. The ducts are to be reidentified by electrochemically etching a new part number thereon (0.0004 inch maximum depth) as follows:

Part No. 3072318–3 is reidentified as Part No. 3076070–2.

Part No. 3071486–7 is reidentified as Part No. 3071486–15.

Part No. 3071486–8 is reidentified as Part No. 3071486–16.

Part No. 3071486–8 is reidentified as Part No. 3071486–17.

Part No. 3071486–10 is reidentified as Part No. 3071486–18.

Part No. 3072726–1 is reidentified as Part No. 3076070–3.

Part No. 3072726–2 is reidentified as Part No. 3076070–4.

(3) If the X-ray inspection of the three engine mount clevises reveals an unsatisfactory weld penetration at a position which is used to mount the engine to the aircraft, the duct must either be rejected or modified by incorporating an aft mount auxiliary bracket in accordance with Paragraph (e) of this AD. All unsatisfactory engine mount clevises not used to mount the engine are to have those unsatisfactory clevis mounting bolt holes cut through in accordance with Paragraph 2.F.(1) of Bulletin–3139. Reidentify ducts in accordance with Paragraph (e) of this AD if an aft mount auxiliary bracket is incorporated.

(e) Modify ducts identified in Paragraph (c) or (d)(3) of this AD, by installing an aft mount auxiliary bracket at the mount clevis position which is to be used to mount the engine to the aircraft in accordance with Paragraph 2.B. of Garrett SB TFE731–72–3170, Revision 2, dated March 7, 1985.

The aft mount auxiliary bracket requires a longer rear engine mount bolt which is a new aircraft part. Therefore, each type aircraft will require an FAA approved SB to complete the installation. If an approved aircraft SB is not available for the particular installation required, the aft mount auxiliary bracket may not be used.

Ducts which are modified by incorporating this aft mount auxiliary bracket may not have the bracket removed and be returned to service unless the radiographic (X-ray) inspection of all three engine mount clevises in accordance with Paragraph (d)

AUXILIARY

Old part No	Bracket location (looking forward along engine axis from the rear)	New part No
3071486-7/-8/-9/-10	Left	3073362-1
3071486-7/-8/-9/-10	Top	3073362-2
3071486-7/-8/-9/-10	Right	3073362-3
3072318-3	Left	3073362-4
3072318-3	Top	3073362-5
3072318-3	Right	3073362-6
3071486-7/-8/-9/-10	Left and right	3073362-9
3072318-3	do	3073362-13
3072726-1	Left	3073362-15
3072726-1	Top	3073362-16
3072726-1	Right	3073362-17
3072726-2	Left	3073362-18
3072726-2	Top	3073362-19
3072726-2	Right	3073362-20
3072726-1	Left and right	3073362-23
3072726-2	do	3073362-27

(f) Ducts with an engine mount clevis found to have improper weld penetration or which have had any clevis cut through in accordance with Paragraph 2.F. of Bulletin-3159 may be returned to the engine manufacturer for repair in accordance with Paragraph 2.B(2) of Bulletin-3309. The duct may be returned to service when it is determined to be serviceable.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SBs identified and described in this document.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.85)

Issued in Burlington, Massachusetts, on April 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–10898 Filed 5–3–85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 231, and 241

[Release Nos. 33–6577; 34–21973; 35–23670; IC–14481; File No. 87–18–85]

Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a revision to Rule 3A–02 or Regulation S–X under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed technical amendment would clarify that the rule is subject to the overriding consideration of accounting for the substance of the particular relationship.

DATE: Comments must be received on or before June 29, 1985.

ADDRESS: Five copies of comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–18–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker, Office of the Chief Accountant (202–272–2130), or Howard Hodges, Division of Corporation Finance, (202–272–2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for comment a technical amendment to Rule 3A–02 of Regulation S–K, its regulation relating to the form and content of and requirements for financial statements, under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. IV 1980)].

I. Background and Introduction

Accounting Research Bulletin ("ARB") No. 51, paragraph 1, provides that "there is a presumption that consolidated statements are more meaningful than separate statements and that they are necessary for a fair presentation when one of the enterprises in the group directly or indirectly has a controlling financial interest in the other enterprises." While the usual condition

for a controlling financial interest is ownership of a majority voting interest, the power to control may be evidenced in other ways, depending on particular facts and circumstances.

Rule 3A-02 of Regulation S-X, while stating that the registrant shall follow a consolidation policy which clearly exhibits the financial position and results of operations of the registrant and its subsidiaries, also states that a registrant "shall not consolidate any subsidiary which is not majority owned." That rule was written at a time when the Commission was attempting to prevent registrants who did not, in substance, control a "subsidiary" from consolidating that entity and thereby filing financial statements which did not clearly exhibit the financial position and results of operations of the registrant and its subsidiaries.

Notwithstanding releases[1] which have indicated the Commission's view that the requirement to "clearly exhibit the financial position and results operations of the registrants and its subsidiaries" is the overriding requirement in this rule, some registrants have cited this rule as prohibiting the consolidation of a controlled entity that is, in substance a subsidiary of the registrant.

Therefore, the Commission has determined to consider an amendment of the rule and to use this opportunity to state once again that, as in all accounting determinations, the substance of the transaction, as opposed to its form, must be considered in preparing financial statements.[2]

II. Synopsis

The new proposed first paragraph of the rule would incorporate the guidance in ARB No. 51 that the general presumption is that consolidated financial statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one enterprise directly or indirectly has a controlling financial interest in another enterprise.

The sentence that states that a registrant shall not consolidate any subsidiary which is not majority owned would be amended to indicate that the determination of majority ownership requires a careful analysis of the facts and circumstances of relationships among entities, and that the registrant's accounting policies should be clearly explained in the statement as to principles of consolidation or combination followed as required by Rule 3A-03. The title of Rule 3A-02 would be changed in order to more clearly reflect the contents of the rule to read "Consolidated and Combined Financial Statements of the Registrant and its Subsidiaries and Affiliates," rather than "Consolidated Financial Statements of the Registrant and Subsidiaries." The rest of the rule would be reordered and renumbered, and some additional guidance would be incorporated, but the substance of the Commission's position would remain unchanged.

The Commission believes that the rule as amended would be consistent with generally accepted accounting principles ("GAAP") which emphasize substance over form. No rule can cover all sets of circumstances, particularly in a rapidly changing economic environment. The proposed amendments will continue to require the use of judgment in determining whether to consolidate or combine subsidiaries and other controlled entities; and the Commission will continue to expect registrants and their independent accountants to consider substance over form to determine appropriate consolidation policy.

III. Paperwork Reduction Act Status

The release proposes a technical amendment to Regulation S-X, but the amendment is not material for purposes of the Paperwork Reduction Act because it does not significantly affect the information reporting burden.

IV. Regulatory Flexibility Act Certification

John S. R. Shad, Chairman of the Commission, has certified that the proposed amendment will not have a significant economic impact on any entity subject to its provisions, and therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are consistent with GAAP and would merely codify present interpretations, and therefore, it is anticipated that the effects of the amendment will not be significant for any class of registrants because the compliance burden is not being changed.

V. Request for Comment

The Commission invites written comments on the proposed amendment. Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act.

List of Subjects in 17 CFR Parts 210, 231 and 241

Accounting, Reporting requirements, Securities.

VI. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Article 3A—Consolidated and Combined Financial Statements (17 CFR Part 210)

1. The authority citation for Part 210 would continue to read as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78o, 78w, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37.

2. By revising § 210.3A-02 to read as follows:

§ 210.3A-02 Consolidated and combined financial statements of the registrant and its subsidiaries and affiliates.

In deciding upon consolidation policy, the registrant must consider what financial presentation is most meaningful in the circumstances and should follow in the consolidated or combined financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant. There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has a controlling

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[1] *In the matter of Atlantic Research*, Securities Exchange Act Release No. 4657 (December 6, 1963); *In the Matter of Laventhol & Horwath*, Securities Exchange Act Release No. 13976 (September 21 1977); *SEC v. Digilog, Inc. and Ronald Moyer* Litigation Release No. 10448 (July 5, 1984); and, *In the Matter of Coopers & Lybrand and M. Bruce Cohen, CPA*, Securities Exchange Act Release No 21520 (November 27, 1984.)

[2] This action by the Commission is not intended to change in any substantive way the current consolidation requirements of generally accepted accounting principles.

financial interest in another entity. Other particular facts and circumstances may require combined financial statements, an equity method of accounting, or valuation allowances in order to achieve a fair presentation. In any case, the disclosures required by § 210.3A–03 should clearly explain the accounting policies followed by the registrant in this area, including the circumstances involved in any departure from the normal practice of consolidating majority owned subsidiaries and not consolidating entities that are less than majority owned. Among the factors that the registrant should consider in determining the most meaningful presentation are the following:

(a) *Majority ownership:* Registrants generally shall consolidate subsidiaries that are majority owned and generally shall not consolidate entities that are not majority owned. The determination of "majority ownership" requires a careful analysis of the facts and circumstances of a particular relationship among entities. In rare situations, consolidation of a majority owned subsidiary may not result in a fair presentation, because the registrant, in substance, does not have a controlling financial interest (for example, when the subsidiary is in legal reorganization or in bankruptcy), or when control is likely to be temporary. In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means of control exercised other than through record ownership of voting stock.

(b) *Different fiscal periods:* Registrants generally shall not consolidate any entity whose financial statements are as of a date or for periods substantially different from those of the registrant. Rather, the earning or losses of such entities should be reflected in the registrant's financial statements on the equity method of accounting. However:

(1) A difference in fiscal periods does not of itself justify the exclusion of an entity from consolidation. It ordinarily is feasible for such entity to prepare, for consolidation purposes, statements for a period which corresponds with or closely approches the fiscal year of the registrant. Where the difference is not more than 93 days, it is usually acceptable to use, for consolidation purposes, such entity's statements for its fiscal period. Such difference, when it exists, should be disclosed as follows: the closing date of the entity should be expressly indicated, and the necessity for the use of different closing dates should be briefly explained. Furthermore, recognition should be given by disclosure or otherwise to the effect of intervening events which materially affect the financial position or results of operations.

(2) Notwithstanding the 93-day provision specified in (b)(1) above, in connection with the retroactive combination of financial statements of entities following a "pooling of interests," the financial statements of the constituents may be combined even if their respective fiscal periods do not end within 93 days, except that the financial statements for the latest fiscal year shall be recast to dates which do not differ by more than 93 days, if practicable. Disclosure shall be made of the periods combined and of the sales or revenues, net income before extraordinary items and net income of any interim periods excluded from or included more than once in results of operations as a result of such recasting.

(c) *Bank Holding Company Act:* Registrants shall not consolidate any subsidiary or group of subsidiaries of a registrant subject to the Bank Holding Company Act of 1956 as amended as to which (1) a decision requiring divestiture has been made, or (2) there is substantial likelihood that divestiture will be necessary in order to comply with provisions of the Bank Holding Company Act.

(d) *Foreign subsidiaries:* Due consideration shall be given to the propriety of consolidating with domestic corporations foreign subsidiaries which are operated under political, economic or currency restrictions. If consolidated, disclosure should be made as to the effect, insofar as this can reasonably be determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the registrant and its subsidiaries.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By amending Part 231 by adding this release to the list of interpretive releases set forth thereunder.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. By amending Part 241 by adding this release to the list of interpretive releases set forth thereunder.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

April 23, 1985.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3A–02 of Regulation S–X, contained in Securities Act Release No. 33–6577 will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are consistent with generally accepted accounting principles and would merely codify present interpretations, and therefore, would not be significant for any class of registrants because the compliance burden is not being changed.

John S.R. Shad.

April 23, 1985.

[FR Doc. 85–10786 Filed 5–3–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 740, 746, 750, and 772

Surface Mining Coal Mining and Reclamation Operations; Permanent Regulatory Program; Application Fee for Permit to Conduct Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for processing Mining Plan; Fee for Mid-Term Review of Surface Coal Mining and Reclamation Permit

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of Public Comment Period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (the Department) extends until June 3, 1985, the public comment period on the rule it proposed in the February 22, 1985 **Federal Register** (50 FR 7522). The proposed rule would govern the collection by OSM of application fees for permits to conduct surface coal mining and reclamation operations, and for permits to conduct coal exploration,

as well as fees for processing mining plans and for mid-term review of surface coal mining and reclamation permits. Recipients of these services would be required to reimburse OSM for the actual cost incurred by the Department in providing the service.

The rule would apply to applications for mining on Indian lands, in Federal Program States (Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington), and on Federal lands in States not having State-Federal cooperative agreements. The rule would also require payment to the Department for costs the Department incurs in reviewing and approving mining plans.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on June 3, 1985.

ADDRESSES: Hand-deliver written comments to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C., 20240; Telephone: 202-343-5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM proposed a rule in the February 22, 1985, **Federal Register** which would govern the collection by OSM of fees for certain activities related to the processing of permits and mining plans for surface coal mining and reclamation operations (50 FR 7522). That notice announced a public comment period on the proposed rule closing May 3, 1985. In response to a request for more time to submit public comments on this rule, OSM is extending the closing date of the public comment period by 30 days. Comments will now be accepted by the location given above ("ADDRESSES") until 5 p.m. eastern time on June 3, 1985.

Dated: May 1, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspections.

[FR Doc. 85-11018 Filed 5-2-85; 3:06 pm]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-5-FRL-2828-5]

Indiana; Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The State of Indiana has requested that USEPA change the Total Suspended Particulates (TSP) designation for a portion of Wayne County, Indiana. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change. USEPA proposes for Wayne County (1) to disapprove a redesignation of Wayne Township from unclassified to attainment for TSP, and (2) to approve the redesignation of Webster, Center and Boston Townships to full attainment for TSP.

In addition, the State of Indiana submitted a request to revise the Indiana State Implementation Plan (SIP) for TSP for Richmond State Hospital. USEPA is proposing to approve revised emission limits for this facility.

DATE: Comments on this redesignation and revision and on the proposed USEPA action must be received by July 5, 1985.

ADDRESSES: Copies of the redesignation request, technical support documents, supporting air quality data, and the SIP revision request are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. See 43 FR 8962 (March 3, 1978). These area designations may be revised whenever the data warrants. The primary TSP NAAQS is violated when, in a year, either: (1) the geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

Wayne County Redesignation

The current designation for TSP in Wayne County, Indiana is that the area included within Boston, Center, Wayne, and Webster Townships is designated unclassifiable and the remainder of the County is attainment as codified at 40 CFR 81.315 (1984) [November 2, 1981; 46 FR 543401]. On September 11, 1984, the State of Indiana requested USEPA to revise the TSP designation for Webster, Center, Wayne and Boston Townships from unclassifiable to attainment. To support its request, the State of Indiana submitted 8 consecutive quarters (July 1982–August 1984) of air quality data from two sites in Richmond, which is located in Wayne Township in eastern Wayne County. No violations of the TSP NAAQS were measured during this period.

However, the State of Indiana submitted air quality modeling analyses which indicate that the two monitors are not located in the area of poorest air quality in Wayne Township. These analyses project secondary nonattainment for a small area in the north part of the City of Richmond in Wayne Township. Therefore, without further modeling or monitoring data to support redesignation to attainment for all of Wayne Township, the redesignation of Wayne Township to full attainment cannot be approved. The available modeling and monitor data do indicate that the TSP NAAQS are attained in Webster, Center, and Boston Townships in Wayne County. The technical data are discussed in more detail in the technical support document which is available at USEPA's Region V office.

Therefore, based on the available technical support from the State, USEPA proposes to disapprove the redesignation of Wayne Township from unclassified to attainment for TSP, but to approve the redesignation of

Webster, Center, and Boston Townships in Wayne County to full attainment for TSP. The remainder of the County would remain designated attainment.

Richmond State Hospital

On March 28, 1984, the State of Indiana requested that Richmond State Hospital, a major TSP source in Wayne County, be permitted to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. The current federally approved SIP for Richmond State Hospital allows simultaneous operation of the four boilers, but restricts each boiler to a 0.35 lb/MMBTU emission limit. USEPA proposed to disapprove this SIP revision on May 8, 1984, because the State had not submitted an air quality modeling analysis, consistent with USEPA reference modeling methodology, demonstrating that the revision would not cause or contribute to a violation of the TSP standards. On September 11, 1984, the State submitted additional information which supported the earlier request to revise the SIP for Richmond State Hospital.

In order for there to be an increase in Richmond State Hospital's operations and emissions, the State must demonstrate attainment and maintenance of both the short term and long term TSP NAAQS. The State submitted both a Climatological Dispersion Model (CDM) analysis to estimate the annual TSP concentration in Wayne County and two PTPLU model runs to illustrate the current and proposed short term impact of the SIP revision in the area surrounding Richmond State Hospital.

The CDM model analysis submitted by the State indicates (1) that the proposed Richmond State Hospital's emissions have an insignificant annual impact in the area of Wayne County that modeling projects as a secondary nonattainment area and (2) that the annual TSP standard will be attained and maintained with the relaxation both in the immediate vicinity of the Hospital and elsewhere in the County.

As to the short term TSP standards, these analyses depend on the previous State requirements for the source. As stated earlier, the Federal SIP permits the simultaneous operation of all four Richmond State Hospital boilers. However, the previous State operating permits restricted the operation of these boilers to one boiler at a time, except in the case of emergencies. If Richmond State Hospital was complying with the State's requirements, then a true assessment of the short term impact of the proposed revision for Richmond State Hospital's relative to previous TSP levels in Wayne County must consider the increase in TSP emissions from the operation of one boiler at 0.35 lbs/MMBTU versus four boilers at 0.6 lbs/MMBTU. The PTPLU analysis submitted by the State indicates that the maximum 24-hour impact of this emission increase would be to increase TSP concentrations by 9 mg/m^3.

In addition, USEPA modeled Richmond State Hospital's emission increase using 3 years of National Weather Service meteorological data and the MPTER model to obtain a more refined estimate of the effect of this relaxation on 24-hour concentrations. The highest 24-hour concentration predicted was 2.91 $\mu g/m^3$, significantly less than the 9 $\mu g/m^3$ worst case estimate obtained from the screening model PTPLU.

The available monitoring and modeling data indicate that the small increase in ambient TSP concentrations resulting from the proposed changes for Richmond State Hospital will not threaten the 24-hour TSP NAAQS within Wayne County and will not have a significant impact within the area of projected worst case air quality in the Richmond area (about 3 km east of Richmond State Hospital). Consequently, USEPA proposes approval of the revised emission limit as a revision to the SIP.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations and SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Dated: March 29, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-10910 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50525; FRL-2800-8]

Substituted Tetrafluoro Alkene and Disubstituted Tetrafluoro Alkane; Proposed Determination of Significant New Uses

Correction

In FR Doc. 85-6706 beginning on page 11384 in the issue of Thursday, March 21, 1985, make the following correction:

§ 721.1015 [Corrected]

On page 11390, third column, in § 721.1015(b)(1)(iii), fourth line, insert the word "this" after the word "of".

BILLING CODE 1501-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6656]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to Qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Divison, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain

management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Huntsville, Madison County	Huntsville Spring Branch	About 12,350 feet downstream of Johnson Road	*575	*575
			Just upstream of Johnson Road	*586	*586
			Just downstream of Drake Avenue	*[illegible]	*595
			Just upstream of Governors Drive	*607	[illegible]
			At confluence of Pinhook and Fagan Creeks	*610	*609
		Pinhook Creek	At confluence with huntsville Spring Branch and Fagan Creek.	*610	*609
Maps available for inspection at the Public Works Department, P.O. Box 308, Huntsville, Alabama.					
Send comments to Honorable Joe W. Davis, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804					
Arizona	Yuma City, Yuma County	Colorado River	22nd Avenue extended to north side of Yuma Levee	*134	*135
Maps available for inspection at the Department of Development Services, 3 W 3rd Street, Yuma, Arizona.					
Send comments to the Honorable Philip G. Clark, 200 First Street, Yuma, Arizona 85364.					
Arizona	Yuma County (Unincorporated Areas).	Colorado River	Extension of Avenue D to North Side of Yuma Levee	*131	*132
Maps available for inspection at the Department of Public Works, 2703 Avenue B, Yuma, Arizona.					
Send comments to the Honorable Robert W. Kennerly, P.O. Box 1112, Yuma, Arizona 85365.					
California	Alameda County (Unincorporated Areas).	Arroyo De La Laguna	Downstream edge of Interstate Highway 680	*321	*318
		Arroyo Del Valle	100 feet downstream from the centerline of Isabel Avenue.	*403	(1)
		Bockman Canal	Pile Trestle Bridge crossing	*6	*7
		Line N-3	Southern Pacific Railroad crossing	*8	*7
		San Francisco Bay	Approximately 300 feet southwest of the intersection of Cabot Boulevard and Depot Road.	(1)	*7
		Ward Creek-Line B.	50 feet east of the intersection of New England Village Drive and Huntwood Avenue.	(1)	*10
Maps available for inspection at the Alameda County Flood Control and Water Conservation District, 1221 Oak Street, Oakland, California.					
Send comments to the Honorable John George, 1221 Oak Street, 536, Oakland California 94612.					
California	Avalon (City), Los Angeles County	Avalon Canyon	Intersection of Crescent and Catalina Avenues	*13	*6
		Pacific Ocean	Along shoreline at Catalina Avenue extended	*13	*5
Maps available for inspection at City Hall, Avalon, California.					
Send comments to the Honorable Gilbert Saldana, P.O. Box 707, Avalon, California 90704					
California	Los Angeles County (Unincorporated Areas)	Pacific Ocean	At shoreline, approximately 600 feet from the intersection of Mulholland Highway and Pacific Coast Highway	(1)	*11
Maps available for inspection at Los Angeles County Flood Control, District, 2250 East Alcazar Street, Los Angeles, California.					
1Send comments to the Honorable Dean Dana, 383 Hall of Administration, 500 West Temple Street, Los Angeles, California 90012					
California	Morro Bay (City), San Luis Obispo County	Pacific Ocean	Approximately 600 feet west of the intersection of Beachcomber Avenue and Easter Street along Easter Street Extended.	(1)	*9
Maps available for inspection at the Department of Public Works, 595 Harbor Street, Morro Bay California.					
Send comments to the Honorable Eugene Shelton, 595 Harbor Street, Morro Bay, California 93442					
California	Oxnard (City) Ventura County	Santa Clara River of Harbor Boulevard.	300 feet downstream shown	(1)	*12
		Santa Clara River Breakout	150 feet upstream from mouth	(1)	*7

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Pacific Ocean	Along shoreline, at West Fifth Street extended	(1)	*10
Maps available for inspection at City Hall, 300 West 3rd Street, Oxnard, California					
Send comments to the Honorable Nao Takasugi, 300 West 3rd Street, Oxnard, California 93030					
California	Santa Barbara (City), Santa Barbara County.	Pacific Ocean	East Beach, at mouth of Sycamore Creek	(1)	*8
		Mission Creek (shallow flooding only).	Intersection of San Andres Street and Micheltorena Street	(1)	*82
		Arroyo Burro (shallow flooding only)	Intersection of Palermo Drive and Amalfi Way	(1)	*140
Maps available for inspection at the Department of Building and Zoning, 1235 Chapala Street, Santa Barbara, California					
Send comments to the Honorable Sheila Lodge, P.O. Drawer P-P, Santa Barbara, California 93102					
Colorado	Glenwood Springs (City), Garfield County	Roaring Fork River	Approximately 300 feet east of the intersection of Midland Avenue and Latson Court along Latson Court.	(1)	*5,736
		Colorado River	350 feet south of the intersection of U.S. Highway 6 and Donegan Road	(1)	*5,710
		Threemile Creek	Approximately 35 feet downstream from the center of Midland Avenue	(1)	*5,879
		Mitchell Creek	150 downstream of center of U.S. Interstate 70	(1)	*5,694
Maps available for inspection at the Planning Department, 806 Cooper Avenue, Glenwood Springs, Colorado					
Honorable Carl Schiesser, 806 Cooper Avenue, Glenwood Springs, Colorado 81601					
Colorado	Mesa County (Unincorporated Areas).	230 feet upstream from the center of U.S. Highway 6.		(1)	*4,698
Maps available for inspection at the County Engineering Department, 1000 S. 9th Street, Grand Junction, Colorado					
Send comments to the Honorable Richard C. Pond P.O. Box 897, Grand Junction, Colorado 81502					
Colorado	Sheridan (City), Arapahoe County	Bear Creek	Upsteam edge of South Federal Boulevard Crossing	*5,300	*5,298
Maps available for inspection at City Hall, 4400 S. Federal Boulevard, Englewood, Colorado					
Send comments to the Honorable Roger Rowland, 4400 S. Federal Boulevard, Englewood, Colorado 80110					
Delaware	Sussex County	Atlantic Ocean and Little Assawaman Bay	North side of State Route 54 approximately 1,000 west of the intersection of State Route 58 and State Route 14.	*5	*6
			South side of State Route 54 approximately 1,000 west of the intersection of State Route 58 and State Route 14.	*8	*7
Maps available for inspection at the Planning and Zoning Office, Sussex County Courthouse, Room 112, Georgetown, Delaware					
Send comments to the Honorable Joseph G. Conway, Sussex County Administrator, P.O. Box 407, Georgetown, Delaware 19947					
Georgia	Cobb County	Chattahoochee River	At downstream County Boundary	*757	*761
			Just downstream Morgan Falls Dam	*813	*819
			Just upstream Morgan Falls Dam	*854	*851
			At upstream County Boundary	*858	*862
		Nickajack Creek	At mouth	*762	*766
			About 1,640 feet usptream of US Route 78	*766	*766
		Queen Creek	At mouth	*761	*766
			About 1,000 feet downstream of Queen Mill Road	*766	*766
		Gilmore Creek	At mouth	*769	*774
			About 200 feet downstream of Woodland Brook Drive	*774	*774
		Vinings Branch	At mouth	*771	*775
			About 300 feet downstream of Randall Farm Road	*775	*775
		Powers Branch	At mouth	*792	*794
			Just downstream of Columns Drive	*798	*798
		Terrel Brach	At mouth	*792	*794
			Just downstream of Columns Drive	*802	*802
		Rottenwood Creek	At mouth	*774	*778
			About 1,000 feet upstream of mouth	*778	*778
			Just upstream of Delk Road	*929	*928
			At confluence of Powers Creek	*934	*932
			About 1,900 feet downstream of US Highway 41	*950	*950
		Poorhouse Creek	At mouth	*925	*925
			About 200 feet upstream of mouth	*926	*926
		Powers Creek	About 300 feet downstream of Powers Ferry Drive	*934	*932
			Just upstream of Powers Ferry Dive	935	*935
		Sope Creek	At mouth	*801	*803
			About 350 feet upstream of mouth	*803	*803
		Willeo Creek	At mouth	*858	*862
			About 1,150 feet upstream of Willeo Road	*862	*862
		Timber Ridge Branch	At mouth	*860	*862
			About 150 feet upstream of Timber Ridge Road	*862	*862
Maps available for inspection at the Cobb County Development Control Department, 10 E. Park Square, Marietta, Georgia 30090-9623					
Send comments to Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, Marietta, Georgia 30090-9602					
Idaho	Eagle (City), Ada County	Boise River	On upstream (east) side of Eagle Road (State Highway 69) at Ballentine Canal crossing	*2,557	*2,555
		South Fork Boise River	Approximately 800 feet west along Mace Road from the Mason-Catlin Canal Crossing	(1)	*2,539

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	[redacted]
Maps available for inspection at City Hall, 67 East State Street, Eagle, Idaho.					
Send comments to the Honorable Carol Haley, P.O. Box 477, Eagle, Idaho 83616					
Illinois	DuPage County (uninc. areas)	Spring Brook	Just upstream of Lake Kadijah Spillway	(¹)	*703
			About 540 feet upstream of Medinah-on-the-Lake Road	(¹)	*706
Maps available for inspection at the Department of Public Works, 521 North County Farm Road, Wheaton, Illinois.					
Send comments to Honorable Jack T. Knuepfer, Chairman of the County Board, DuPage County, 421 North County Farm Road, Wheaton, Illinois 60187					
Illinois	Unincorporated Areas of McHenry County	Elizabeth Lake Drain	At confluence with North Branch Nippersink Creek	*788	*788
			At County Boundary	*795	*794
		Crystal Creek	About 5300 feet upstream of Plum Street	(¹)	*828
			Just downstream of McHenry Drive	(¹)	*879
Maps available for inspection at the Planning Department, Room 105, McHenry County Courthouse, 2200 North Seminary, Woodstock, Illinois.					
Send comments to Honorable Clint Claypool, Chairman, McHenry County Board, McHenry County Courthouse, Room 204, 2200 North Seminary, Woodstock, Illinois 60098.					
Maryland	Anne Arundel County, unincorporated areas.	Chesapeake Bay	Intersection of Lake Avenue and Spruce Avenue	*8	*7
			Intersection of Park Avenue and Pine Avenue	*10	*8
Maps available for inspection at the Planning and Zoning Office, Arundel Center, 44 Calvert Street, Annapolis, Maryland.					
Send comments to Honorable O. James Lighthizer, County Executive, Anne Arundel County, Arundel Center, 44 Calvert Street, Annapolis, Maryland 21401.					
Nebraska	City of Wahoo, Saunders County	Wahoo Creek	About 2.16 miles downstream of U.S. Highway 77	(¹)	*1,162
			Just upstream of U.S. Highway 77	*1,184	*1,184
			About 0.21 mile upstream of County Road	*1,191	*1,190
		Sand Creek	About 0.87 mile downstream of County Road	(¹)	*1,162
			About 140 feet upstream of County Road	*1,171	*1,171
		Cottonwood Creek	At confluence with Wahoo Creek	*1,186	*1,186
			Just downstream side of U.S. Highway 30A & State Highway 92	*1,189	*1,188
			About 1.03 miles upstream of U.S. Highway 30A and State Highway 92	*1,194	*1,194
		Dry Run Creek	At confluence with Cottonwood Creek	*1,186	*1,187
			Just downstream of Burlington Northern dismantled railroad bridge	*1,188	*1,188
Maps available for inspection at City Hall, 605 North Broadway Street, Wahoo, Nebraska.					
Send comments to Honorable Daryle Reitmajer, Mayor, City of Wahoo, City Hall, 605 North Broadway Street, Wahoo, Nebraska 68066.					
New York	New Paltz, village, Ulster County	Wallkill River	Downstream corporate limits	*193	*190
			State Route 299	*193	*190
			Upstream corporate limits	*193	*191
Maps available for inspection at the New Paltz Village Hall, New Paltz, New York.					
Send comments to Honorable Robert I. Remsnyder, Mayor of the Village of New Paltz, P.O. Box 877, New Paltz, New York 12561.					
Oklahoma	Moore, city, Montgomery County	North Fork River	Upstream side of NE 22nd Street	*1,235	*1,240
			Downstream side of NE 23rd Street	(¹)	*1,247
			Approximately 500 upstream of NE 23rd Street	(¹)	*1,252
Maps available for inspection at the Planning and Engineering Department, Moore City Hall, Moore, Oklahoma.					
Send comments to Honorable Louis Kindrick, Mayor of the City fo Moore, 125 East Main Street, P.O. Box 7248, Moore, Oklahoma 73153.					
Oklahoma	Tulsa, city, Tulsa, Osage, and Rogers Counties.	Vensel Creek Relocated	At confluence with Arkansas River located southwest of 91st Street and Delaware Avenue intersection.	(¹)	*614
			Approximately 350' upstream of confluence of Tributary 1 to Vensel Creek Relocated.	*629	*628
			Downstream side of South Harvard Avenue	*642	*641
		Tributary 1 to Vensel Relocated	At confluence with Vensel Creek Relocated	(¹)	*614
			Approximately .42 mile upstream of confluence with Vensel Creek Relocated.	(¹)	*617
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.					
Send comments to Honorable Terry Young, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.					
Oregon	Portland (city), Multnomah, Clackamas, and Washington Counties	Johnson Creek	Center of the intersection of Duke Street and SE 102nd Avenue.	*208	*207
		Columbia River	200 feet north of the intersection of Marine Drive and Northeast 148th Avenue.	(¹)	*30
Maps available for inspection at Engineering Department, 1220 SW 5th Avenue, Portland, Oregon.					
Send comments to the Honorable Francis Ivancie, 1220 SW 5th Avenue, Portland, Oregon 97204.					
South Carolina	Town of Summerville, Dorchester County	Sawmill Branch	About 100 feet upstream of Ashley Drive	*42	*42
			About 250 feet downstream of South Gum Street	*44	*46
			Just downstream of Norfolk Southern Railway	*48	*48
Maps available for inspection at 104 Civic Center, Summerville, South Carolina.					
Send comments to the Honorable Berlin G. Myers, Mayor, Town of Summerville, 104 Civic Center, Summerville, South Carolina 29483.					
Tennessee	City of Germantown, Shelby County.	Wolf River Lateral E	About 0.16 mile downstream of confluence of Wolf River Lateral EA.	*297	*291

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just upstream of U.S. Highway 72 (Poplar Avenue)	*308	*308
		Wolf River Lateral EA	At confluence with Wolf River Lateral E	*300	*295
			Just upstream of U.S. Highway 72 (Poplar Avenue)	*326	*326

Maps available for inspection at Germantown Municipal Center, 1930 Germantown Road—South, Germantown, Tennessee 38138

Send comments to the Honorable Boyd Arthur, Jr., Mayor, City of Germantown, P.O. Box 3809, Germantown, Tennessee 38138-3809

State	City/town/county	Source of flooding	Location	Existing	Modified
Tennessee	City of Memphis, Shelby County	Nonconnah Creek	About 200 feet upstream of Airways Boulevard	*243	*243
			About 170 feet downstream of confluence of Hurricane Creek	*248	*247
			At confluence of Tenmile Creek	*255	*255

Maps available for inspection at the Office of Planning and Development, Memphis and Shelby County, 125 North Main, Memphis, Tennessee

Send comments to the Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Main Memphis, Tennessee 38103

State	City/town/county	Source of flooding	Location	Existing	Modified
Tennessee	Unincorporated areas of Shelby County	Fletcher Creek	Just upstream of Whitten Road	*264	*260
			Just upstream of confluence of Fletcher Creek Lateral B	*269	*269
		Fletcher Creek Tributary A	About 0.15 mile downstream of U.S. Route 64	*273	*273
			Just downstream of U.S. Route 64	*277	*273
			About 0.17 mile upstream of Appling Road	*292	*292
		Fletcher Creek Tributary C	At confluence with Fletcher Creek Tributary A	*278	*274
			About 0.45 miles above confluence with Fletcher Creek Tributary A	*282	*282
		Johns Creek	Just downstream of Raines Road	*294	*291
			Just downstream of Tennessee Yards	*301	*301
		Johns Creek Lateral A	At mouth	*297	*295
			About 950 feet upstream of St. Louis San Francisco Railway Spur	*300	*300
		Ten Mile Creek	About 0.4 mile downstream of East Shelby Drive	*319	*318
			Just downstream of East Shelby Drive	*327	*325
			About 420 feet upstream of East Shelby Drive	*331	*331

Maps available for inspection at George Reed, County Engineer, Suite 701 County Administrative Building, 160 N. Mid America Mall, Memphis, Tennessee.

Send comments to Honorable William N. Morris, Mayor, Shelby County, Shelby County Administrative Building, Suite 850, 160 N. Mid America Mall, Memphis, Tennessee 38103

State	City/town/county	Source of flooding	Location	Existing	Modified
Texas	Irving, city, Dallas County	Elm Fork of the Trinity River	Approximately 2,000 feet upstream of the confluence of Hackberry Creek	*429	*428
			Upstream side of Royal Land	*430	*429
			Downstream side of Interstate Route 635	*432	*431
		Delaware Creek	Approximately 500 feet downstream of Story Road	*524	*525
			Downstream side of Story Road	*526	*527

Maps available for inspection at the City Hall Public Works Building, 825 West Irving Boulevard, Irving, Texas.

Send comments to Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O. Box 3008, Irving, Texas 75061

State	City/town/county	Source of flooding	Location	Existing	Modified
Texas	Matagorda County (uninc. areas)	Cottonwood Creek	Approximately .9 mile upstream of Hammon Road	([1])	*44
			Approximately 1.04 miles upstream of Hammon Road	([1])	*45

Maps available for inspection at the Matagorda County Courthouse Building, 1700 Seventh Street, Bay City, Texas.

Send comments to Honorable Burt O'Connell, Matagorda County Court Judge, P.O. Box 1331, Bay City, Texas 77414

State	City/town/county	Source of flooding	Location	Existing	Modified
Texas	Palacios, city, Matagorda County	Tres Palacios Bay	Area at intersection of Welch Avenue and Tenth Street	([2])	*10
			Area at intersection of Eighth Street and Duson Avenue	*10	*12
			Shoreline at south end of Twelfth Street (extended)	*13	*14
			Shoreline at south end of First Street (extended)	*13	*16

Maps available for inspection at the Palacios City Hall, Palacios, Texas

Send comments to Hororable Leonard Lamar, Mayor of the City of Palacios, P.O. Box 845, Palacios, Texas 77465.

State	City/town/county	Source of flooding	Location	Existing	Modified
Texas	San Antonio, city, Bexar County	Leon Creek	Approximately 200 feet upstream of Culebra Road	*755	*756
			At (Abandoned) Potranco Road	*764	*762
		Huebner Creek Tributary	Approximately 500 feet upstream of confluence with Huebner Creek	*839	*841
			At Eckert Boulevard	*852	*850
			At weir	*860	*858

Maps available for inspection at the City Clerk's Office, City Hall, Plaza de Armas, San Antonio, Texas.

Send comments to Hororable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285.

State	City/town/county	Source of flooding	Location	Existing	Modified
Virginia	Newport News, city, Independent City	Hampton Roads	Newmarket Creek, downstream of Chestnut Avenue	*8	8.5
			Intersection of Hampton and Maple Avenues	*9	*8.5
			Buxton Avenue between 19th and 27th Streets	*9	*8.5
			Intersection of Poplar Avenue and 29th Street	*9	*8.5
			Indigo Lake, just below Indigo Dam	*9	*8.5
			Fishers Creek at Madison Lane north	*9	*8.5
			Yoder Pond	*9	*8.5
			Tributary to Deep Creek at Normandy Lane	*9	*8.5
			Deep Creek north of Yoder Pond	*9	*8.5
			Lucas Creek at Tabbs Lane	*9	*8.5

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Warwick River upstream of Moyer Road (extended)	*9	*8 5
			Stony Run, upstream of mouth	*9	*8 5
			Skiffes Creek	*9	*8 5
Maps available for inspection at the Codes Compliance Office, City Hall, 3rd Floor, Newport News, Virginia					
Send comments to Honorable Joseph C. Ritchie, Mayor of the City of Newport News, 2400 Washington Avenue, Newport News, Virginia 23607					
Washington	Des Moines (city), King County	Pacific Ocean	Along shoreline of Puget Sound approximately 475 feet west of the intersection of Marine View Drive South and South 249th Street	(1)	*13
Maps available for inspection at the Engineering Department, 21630 11th Avenue South, Des Moines, Washington					
Send comments to the Honorable Pat De Blasio, 21630 11th Avenue South, Des Moines, Washington 98188					
Wisconsin	City of Foud du Lac, Fond du Lac County	West Branch Fond du Lac River	Just upstream of Highway T	None	*772
			About 0 3 mile upstream of County Highway T	None	*774
		De Neveu Creek	At mouth	*750	*750
			About 3 94 miles above mouth	*804	*806
		Taycheedah Creek	About 0 7 mile above mouth	None	*752
			About 0 1 mile upstream of State Highway 23	None	*769
		Supple Creek	At mouth	None	*750
			About 1 3 miles above mouth	None	*753
Maps available for inspection at the Engineering Department, P.O. Box 150, Fond du Lac, Wisconsin					
Send comments to Honorable Daniel R Thompson, City Manager, City of Fond du Lac, P O Box 150, Fond du Lac, Wisconsin 54935-0150					

[1] None [2] Zone B

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10884 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6658]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participatin in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 proposed to be is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
ALABAMA	
Wetumpka (City), Elmore County	
Coosa River	
About 1.5 miles downstream of West Bridge Street	*172
About 3.2 miles upstream of West Bridge Street	*180
Maps available for inspection at the City Hall, Wetumpka, Alabama.	
Send comments to Honorable Jeanette E. Barrett, Mayor, City of Wetumpka, City Hall, P.O. Box 490, Wetumpka, Alabama 36092.	
COLORADO	
Jefferson County (Unincorporated Areas)	
Bear Creek (Below Mt. Carbon Dam): 800 feet north of the intersection of South Oak Court and Bear Creek Drive	*5,455
Bear Creek (at Morrison): 100 feet upstream from center of Soda Lake Road	*5,731
Bear Creek (at Idledale): On Miller Lane, 150 feet northwest of its intersection with Bear Creek Road	*6,413
Bear Creek (Kittredge to Evergreen)	
At the intersection of Avenue D and Creek Court	*6,822
On Upper Bear Creek Road, 200 feet south of its intersection with Meadow Drive	#2
Bear Creek (above Evergreen Lake): 50 feet upstream from center of Upper Bear Creek Road	*7,410
Bear Creek Tributary Number 1	
At the intersection of Fireweed and Meadow Drive	*7,030
40 feet east of the centerline of Meadow Drive, 575 feet southeast of its intersection with Iris Drive	#2
Bear Creek Tributary Number 2: 20 feet upstream from center of Independence Trail	*7,020
Bear Creek Tributary Number 3	
50 feet upstream from center of Dedisse Park Road	*7,196
On Scenic Drive, 100 feet west of the intersection with State Highway 74	#2
Bear Creek Tributary Number 5: 150 feet upstream from Ward Canal crossing	*5,680
Bear Creek Tributary Number 6: 25 feet upstream from center of State Highway 8 (Morrison Road)	*5,467
Bergen Creek: Intersection of Aspen Lane and Lewis Ridge Road	*7,314
Big Dry Creek: Intersection of creek and center of Indiana Street	*5,609
Buffalo Creek: Intersection of creek and center of South Decker Road	*6,662
Clear Creek: 50 feet upstream from center of McIntyre Street	*5,528
Cold Spring Gulch: 100 feet upstream from center of Bear Creek Road	*6,661
Coon Creek: Intersection of creek and center of South Kipling Street	*5,632
Cub Creek: Intersection of creek and center of Stanley Road	*7,985
Deer Creek: 10 feet upstream from center of Grizzly Drive	*5,883
Dutch Creek	
Intersection of West Weaver Drive and South Eaton Court	*5,420
Intersection of South Webster Street and West Coal Mine Road	#3
Elk Creek (at Pine): 50 feet upstream from center of South Deckers Road	*6,729
Elk Creek (at Sphinx Park): On South Elk Creek Road, approximately 5200 feet north of its intersection with Pine Street	*6,967
Jackson Gulch: Intersection of creek and center of County Highway 93	*6,120
Kenneys Run: On 12th Street, approximately 700 feet northeast of its intersection with Ford Street	*5,651
Kerr Gulch: 180 feet upstream from center of Whaler Road	*7,320
Lena Gulch	
Intersection of D and E Streets	*5,895

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Intersection of Denver West Boulevard and Interstate Highway 70	#1
Lena Gulch Tributary	
50 feet upstream from center of Orchard Street	*5,804
On West 14th Place, 250 feet north of its intersection with West 14th Avenue	#1
Leyden Creek	
170 feet upstream from center of 75th Place	*5,469
Intersection of West 75th Place and Alkire Street	#1
Lilley Gulch	
Intersection of creek and center of West Peakview Drive	*5,514
200 feet west from center of South Wadsworth Boulevard, 950 feet north of its intersection with West Peakview Drive	#2
Little Cub Creek: 30 feet upstream from center of Silver Spruce Lane	*7,090
Massey Draw Tributary: 100 feet upstream from center of South Garrison Street	*5,635
Mount Vernon Creek: 100 feet upstream from center of Red Rocks Park Access Road	*6,101
Myers Gulch: At Center Drive as it crosses stream	*6,329
North Branch Coon Creek	
Intersection of creek and center of South Miller Street	*5,670
Intersection of South Kipling Street and West Montgomery Avenue	#1
North Fork South Platte River: Intersection of river and center of Jefferson Street	*6,731
North Turkey Creek: Intersection of North Turkey Creek and Malamute Drive	*7,695
Parmalie Gulch: Intersection of creek and center of Santa Clara Road	*6,813
Pine Gulch: 50 feet upstream from center of County Highway 126	*6,794
Rooney Gulch: Intersection of creek and center of Old Morrison Road	*5,642
Rooney Gulch Spillway: Approximately 150 feet east from center of Rooney Road, at a point 875 feet south of the intersection with West Alameda Parkway	*5,905
Sand Draw: Intersection of creek and center of Sherman Road	*6,727
Sawmill Gulch: At the intersection of creek and center of South Grapevine Road	*6,861
SJCD 6100: Intersection of creek and center of Kendall Boulevard	*5,482
SJCD 6200: Intersection of creek and center of South Pierce Street	*5,484
SJCD 6200 North Tributary	
South Kendall Boulevard	*5,487
Intersection of West Caryl Avenue and South Ames Way	#1
South Platte River: Intersection of river and center of County Highway 126	*6,309
Swede Gulch: 70 feet upstream from center of Kerr Gulch Road	*7,038
Switzer Gulch: On South Deer Creek Canyon Road, 450 feet north of its intersection with Homewood Park Avenue	*6,637
Troublesome Creek: 50 feet upstream from center of State Highway 74	*7,704
Turkey Creek (above Bear Creek Lake): 100 feet upstream from center of Soda Lake Road	*5,740
Turkey Creek (at Tiny Town): Intersection of South Turkey Creek Road and Ross Road	*6,831
Van Bibber Creek	
Intersection of creek and center of Foothills Road	*5,817
100 feet west of Ulysses Street, 600 feet south of its intersection with West 60th Avenue	#1
Van Bibber Creek Tributary: 50 feet upstream from center of Ulysses Street	*5,688
Weaver Creek	
Intersection of creek and center of South Simms Street	*5,620
Intersection of West Quincy Avenue and South Simms Street	#1
Wilmot Creek: Intersection of creek and center of High School Entrance Road	*7,196
Wilmot Creek Tributary: 30 feet upstream from center of Hazel Road	*7,313

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Maps available for inspection at Planning Department, 1700 Arapahoe Street, Golden, Colorado.	
Send comments to the Honorable Rick Ferdinandsen, 1700 Arapahoe Street, Golden, Colorado 80419.	
COLORADO	
Palisade (Town), Mesa County	
Colorado River: 100 feet upstream from the center of U.S. Highway 6	*4,648
Maps available for inspection at Town Manager's Office, 175 East 3rd, Palisade, Colorado.	
Send comments to the Honorable Larry McNeese, P.O. Box 128, Palisade, Colorado 81526.	
Connecticut	
Guilford (Town), New Haven County	
Long Island Sound	
At intersection of Rosemary Lane and Summer Street	*11
At intersection of Seasidek Avenue and Field Road	*13
At intersection of Andrews Road and Little Harbor Road	*14
Shoreline at Indian Cove	*16
West River	
Upstream side of U.S. Route 1	*11
Upstream side of Sawmill Road	*28
Downstream side of Flat Meadow Road	*56
Approximately 1.0 mile downstream of State Route 80	*113
Downstream side of State Route 80	*144
Approximately 1.0 mile upstream of Race Hill Road	*175
East River	
Upstream side of Bear House Hill Road	*11
Upstream side of White Birch Drive	*18
Approximately 2,200 upstream of North Madison Road	*53
Little Meadow Brook	
At confluence with East River	*23
Upstream side of North Madison Road	*33
Approximately 0.5 mile upstream of North Madison Road	*53
Downstream side of Little Meadow Road	*78
Upstream side of Meadow Hills Drive	*98
Approximately 1,170 upstream of Malleys Pond Dam	*108
Neck River:	
Approximately 800 downstream of Opening Hill Road	*58
Downstream side of Goulds Pond Dam	*77
Maps available for inspection at the Office of Selectman, Guilford, Connecticut.	
Send comments to Honorable Frank Larkins, Jr., First Selectman of the Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	
FLORIDA	
Beverly Beach (Town), Flagler County	
Atlantic Ocean	
About 100 feet landward of shoreline	*9
Along shoreline	*13
Intracoastal Waterway	
At southern corporate limits	*5
At northern corporate limits	*5
Maps available for inspection at the Recreation Building, Beverly Beach Mobile Home Park, Beverly Beach, Florida.	
Send comments to Honorable Sam McBride, Mayor, Town of Beverly Beach, P.O. Box 146, Flagler Beach, Florida 32036.	
IDAHO	
Lemhi County (Unincorporated Areas)	
Lemhi River: 90 feet upstream from center of Lemhi Street	*3,967

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Salmon River: 200 feet upstream from center of U.S. Route 93 bridge at Carmen	*3,867
Maps available for inspection at County Clerk's Office, 206 Courthouse Drive, Salmon, Idaho	
Send comments to the Honorable Louie Demick, 206 Courthouse Drive, Salmon, Idaho 83467	
ILLINOIS	
Unincorporated Areas of Alexander County	
Mississippi River	
Above 7.0 miles upstream of mouth of Ohio River	*334
Above 6.4 miles upstream of State Route 146	*361
Cache River	
About 0.2 mile upstream of Illinois Central Gulf Railroad	*330
About 3.1 miles upstream of Illinois Central Gulf Railroad	*331
Pigeon Creek	
At mouth	*340
About 1.83 miles upstream of State Route 3	*359
Maps available for inspection at the Supervisor of Assessments Office, Alexander County Courthouse, Cairo, Illinois	
Send comments to Honorable C.E. Farris, Chairman, County Board of Commissioners, Alexander County, Alexander County Courthouse, Cairo, Illinois 62914	
Fulton County (Unincorporated Areas)	
Illinois River	
About 0.2 mile downstream of downstream county boundary	*452
At upstream county boundary	*455
Copperas Creek	
About 0.5 mile downstream of U.S. Route 24	*455
About 0.5 mile upstream of U.S. Route 24	*457
Spoon River	
About 0.2 mile downstream of State Route 116	*532
About 0.93 mile upstream of State Route 116	*537
Tributary to Swegle Creek	
About 1.88 miles upstream of mouth	*535
About 2.3 miles upstream of mouth	*539
Maps available for inspection at the County Planning and Zoning Department, 700 East Oak Street, Canton, Illinois	
Send comments to Honorable Melba Ripper, Chairperson, County Board, Fulton County Courthouse, Lewistown, Illinois 61542	
Unincorporated Areas of Morgan County	
Illinois River: Within community	*477
Mauvaisterre Creek	
Just upstream of Poor Farm Road	*558
Just downstream of Sandusky Street	*563
Just upstream of Sandusky Street	*568
About 1,600 feet upstream of Woods Lane	*597
Town Brook	
About 500 feet upstream of Morton Avenue	*596
Just downstream of Massey Lane	*602
Tributary No. 1	
At confluence with Mauvaisterre Creek	*568
Just downstream of Harmony Drive	*607
Tributary No. 2	
Just upstream of Woods Lane	*597
Above 2,500 feet upstream of Township Road 1225	*611
Maps available for inspection at the County Board Office, County Courthouse, Jacksonville, Illinois	
Send comments to Honorable Vern Bergschneider, Chairman, Morgan County Board, Morgan County Courthouse, 300 West State Street, Jacksonville, Illinois 62650	
Northlake (City), Cook County	
Addison Creek	
About 1,850 feet downstream of Hirsch Avenue	*637

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
About 1,700 feet upstream of Chicago and North Western Railroad	*654
Maps available for inspection at the City Manager's Office, Municipal Building, 55 East Lake Street, Northlake, Illinois	
Send comments to Honorable Eugene E. Doyle, Mayor, City of Northlake, Municipal Building, 55 East Lake Street, Northlake, Illinois 60164	
Pike County (Unincorporated Areas)	
Mississippi River	
About 2.2 miles downstream of Lock an Dam No. 24	*457
About 2.4 miles upstream of Burlington Northern Railroad	*477
Illinois River	
About 4.2 miles downstream of Illinois Central Gulf Railroad	*442
About 3,000 feet upstream of State Route 104	*447
Bay Creek	
About 2,400 feet downstream of County Route 10	*479
About 2,400 feet upstream of County Route 10	*483
Maps available for inspection at the Zoning Administrator's Office, c/o County Clerk, Pike County Courthouse, Pittsfield, Illinois.	
Send comments to Honorable Lester Vincent, Chairman, County Board of Commissioners, Pike County Courthouse, Pittsfield, Illinois 62363.	
Unincorporated Areas of Scott County	
Illinois River	
About 2.1 miles downsteam of confluence of Big Sandy Creek	*443
About 1.0 mile upstream of confluence of Coon Run	*447
Wolf Run Creek	
About 2,800 feet downstream of Rockwood Street	*446
About 700 feet upstream of Norfolk Southern Railway	*461
Maps available for inspection at the County Commissioner's Office, Scott County Courthouse	
Send comments to Honorable Richard Hoots, Chairman, County Board of Commissioners, Scott County Courthouse, Winchester, Illinois 62694.	
Sidney (Village), Champaign County	
Salt Fork River: Within community	*659
Right Bank Tributary of Salt Fork River:	
At mouth	*659
About 0.22 mile upstream of Victory Street	*660
Left Branch of Right Bank Tributary of Salt Fork River: Within community	*659
Maps available for inspection at the Village Clerk's Office, Village Hall, Sidney, Illinois	
Send comments to Honorable Dennis Stewart, Village President, Village Hall, Sidney, Illinois 61877	
INDIANA	
Unincorporated Areas of Brown County	
North Fork Salt Creek	
About 1.4 miles downstream of Green Valley Road	*584
About 1.4 miles upstream of Private Road	*656
Beanblossom Creek	
About 1,300 feet downstream of confluence of Plum Creek	*632
About 200 feet upstream of Upper Beanblossom Road (about 1.5 miles upstream of Spruntca Road)	*764
North Fork Beanblossom Creek	
At mouth	*662
Just upstream of State Route 135	*693
Crooked Creek	
About 550 feet downstream of Crooked Creek Road (about 3.25 miles above mouth)	*566

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
About 1,500 feet upstream of Private Road	*627
Lower Schooner Creek	
At mouth	*570
At confluence of Cold Well Hollow	*605
Upper Schooner Creek	
At confluence of Cold Well Hollow	*605
About 300 feet unstream of County Road (about 2.0 miles upstream of confluence of Cold Well Hollow)	*684
Gnaw Bone Creek	
At mouth	*617
About 1.24 miles upstream of Mount Liberty Road	*666
Henderson Creek	
At confluence of Gnaw Bone Creek	*666
Just downstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*704
Just upstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*709
About 0.25 mile upstream of County Road (about 2.86 miles upstream of Mount Liberty Road)	*779
Maps available for inspection at the Brown County Plan Commission, P.O. Box 401, Nashville, Indiana	
Send comments to Honorable Norman McCormick, President, Brown County Commissioners P.O. Box 401, Nashville, Indiana 47448	
Unincorporated areas of Crawford County	
Little Blue River	
Just upstream of Old State Route 37	*467
At confluence of Bird Hollow Creek	*515
Stinking Fork Creek	
At southern county boundary (upstream crossing)	*451
About 0.6 mile upstream of Interstate 64	*513
Potts Creek	
At mouth	*493
About 200 feet upstream of Farm Road	*523
Otter Creek	
At mouth	*471
Just downstream of County Route 9	*549
Tributary No. 1:	
At mouth	*511
About 3,400 feet upstream of mouth	*531
Tributary No. 2:	
At mouth	*526
About 1,200 feet upstream of mouth	*535
Bird Hollow Creek	
At confluence with Little Blue River	*515
About 0.9 mile upstream of State Route 37	*548
Brownstown Creek	
At mouth	*515
About 1.7 miles upstream of mouth	*550
Dog Creek	
At mouth	*527
About 1.7 miles upstream of mouth	*561
Camp Fork Creek	
About 0.75 mile upstream of mouth	*515
About 2.0 miles upstream of mouth	*539
Blue River	
About 1.7 miles downstream of Main Street	*542
About 1.3 miles upstream of Main Street	*554
Ohio River	
About 2.8 miles downstream of confluence of Little Blue River	*422
About 0.9 mile upstream of confluence of Blue River	*432
Patoka Lake: Along shoreline	
Maps available for inspection at the Auditor's Office, Crawford County Courthouse, English, Indiana. Send comments to the Honorable Jim Taylor, President of the Crawford County Board of Commissioners, Crawford County Courthouse, English, Indiana 47118.	
English (town), Crawford County	
Little Blue River	
About 1,500 feet downstream of Norfolk Southern Railway	*502
Just upstream of State Route 64	*515

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Bird Hollow Creek Within corporate limits	*515
Camp Fork Creek	
At mouth	*508
About 2,000 feet upstream of Beasley Road	*519
Maps available for inspection at the Town Hall, English, Indiana. Send comments to the Honorable Mike Gaither, President of the Town Board, Town of English, English Town Hall, English, Indiana 47118.	
———	
Unincorporated areas of Kosciusko County	
Tippecanoe Lake Entire shoreline	*840
James Lake Entire shoreline	*840
Webster Lake Entire shoreline	*855
Winona Lake Entire shoreline	*814
Oswego Lake Entire shoreline	*840
Tippecanoe River	
About 0.05 mile downstream of 100 North Road	*804
Just downstream of Armstrong Road	*840
About 0.03 mile downstream of 675 East Road	*840
Just downstream of Webster Lake Outlet	*853
Turkey Creek	
About 250 feet downstream of 1250 North Road	*820
About 1.52 miles upstream of 300 East Road	*853
Walnut Creek	
At mouth	*810
Just upstream of 300 South Road	*841
Big Barbee Lake Entire shoreline	*841
Ridinger Lake Entire shoreline	*850
Syracuse Lake Entire shoreline	*860
Lake Wawasee Entire shoreline	*860
Maps available for inspection at the Plan Commission Office, County Courthouse, Warsaw, Indiana. Send comments to the Honorable Charles Lynch, President County Commission, c/o Kosciusko County Auditor, County Courthouse, Warsaw, Indiana 46580.	
KANSAS	
City of Albert, Barton County	
Walnut Creek Right Bank Overflow:	
About 0.4 mile downstream of Center Street	*1,916
Just downstream of Center Street	*1,920
Shallow Flooding	
At intersection of Eugene Street and Second Avenue	*1,915
At intersection of Center Street and Second Avenue	*1,917
Maps available for inspection at City Hall, Albert, Kansas. Send comments to the Honorable Warren Brady, Mayor, City of Albert, City Hall, Albert, Kansas 67511	
———	
Hoisington (city), Barton County	
Shop Creek	
Just upstream of Missouri Pacific Railroad	*1,825
Just downstream of Ninth Street	*1,833
Shop Creek Tributary	
At mouth	*1,826
Just downstream of Ninth Street	*1,833
Shallow Flooding (Overflow from Shop Creek Tributary)	
About 250 feet upstream of Ninth Street	*1,834
About 500 feet upstream of Fifteenth Street	*1,844
Maps available for inspection at City Hall, 109 East First Street, Hoisington, Kansas. Send comments to Honorable Oliver Sears, Mayor, City of Hoisington, City Hall, 109 East First Street, Hoisington, Kansas 67544.	
KENTUCKY	
Unincorporated areas of Mogoffin County	
Licking River	
About 0.37 mile downstream of Gifford Road	*843
About 2.86 miles upstream of State Route 1090	*873
State Road Fork	
About 1,200 feet downstream of 4th Street	*856
Just downstream of Bear Branch Road	*885

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Mash Fork	
At mouth	*860
About 0.6 mile above mouth	*865
Burning Fork	
About 0.27 mile downstream of Ward Road	*857
About 0.90 mile upstream of Mountain Parkway	*864
Maps available for inspection at the County Courthouse, Salyersville, Kentucky. Send comments to the Honorable Paul Salyer, Magoffin County Judge Executive, County Courthouse, Salyersville, Kentucky 41465	
MAINE	
Bath (city), Sagadahoc County	
Kennebec River: Entire shoreline within community	*9
Merrymeeting Bay: Entire shoreline within community	*9
Androscoggin River: Entire shoreline within community	*10
New Meadows River: Entire shoreline within community	*10
Maps available for inspection at the City Hall, 55 Front Street, Bath, Maine. Send comments to Honorable J. Michael Lydon, Chairman of the Council for the City of Bath, City Hall, 55 Front Street, Bath, Maine 04530.	
———	
Boothbay (town), Lincoln County	
Atlantic Ocean:	
Shoreline at Dry Point on Reeds Island	*16
Shoreline at Emerson Road (extended)	*21
Shoreline at west end of Middle Road (extended)	*17
Shoreline approximately 1,200' south of Spruce Shores	*10
Shoreline at Paradise Point	*16
Shoreline 400' east of junction of County Routes 840 and 452	*13
Sheepscot River: Entire shorelines of Sheepscot River within community, Back River and Cross River	*10
Damariscotta River	
Shoreline at Farnham Point	*10
Shoreline at northern corporate limits	*10
Shallow Flooding	#1
Maps available for inspection at the Boothbay Town Hall, Boothbay, Maine. Send comments to Honorable Thomas Nickerson, Chairman of the Board of Selectmen for the Town of Boothbay, Town Hall, Boothbay, Maine 04537.	
MASSACHUSETTS	
Nantucket (town), Nantucket County	
Atlantic Ocean:	
Shoreline at Great Point	*15
Shoreline at Quidnet Road (extended)	*16
Shoreline at Hoicks Hollow Road (extended)	*20
Shoreline at confluence of Sasachacha Pond	*11
Shoreline at New Street (extended)	*15
Shoreline at Jonathan Road (extended)	*11
Shoreline at Central Avenue (extended)	*23
Shoreline at Wannacomet Street (extended)	*14
Shoreline at Somerset Road (extended)	*13
Shoreline at Sheep Pond Road (extended)	*13
Entire shoreline of Miacomet Pond	*7
Shallow Flooding	
Dune Area east of intersection of Great Point Road and Wauwinet Road	#1
Dune Area approximately 1,300 feet north of intersection of Chase Lane and Squam Road	#2
Dune Area approximately 600 feet south of intersection of Madaket Road and Chicago Street	#2
Approximately 250 feet east of end of New South Road	*13
At Mioxes Pond	*9
At Sheep Pond	*7
At Reedy Pond	*9
Nantucket Sound:	
Entire shoreline of Coskata Pond	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Shoreline at Propnetor's Road (extended)	*8
Entire shoreline at Polpis Harbor	*8
Shoreline at Five Finger Point	*10
Shoreline at Pocomo Head	*8
Maps available for inspection at the Office of Nantucket Planning and Economic Development Office, Town & County Building, Nantucket, Massachusetts. Send comments to Mr Bernard D Grossman, Chairman of the Town of Nantucket Board of Selectmen, Town & County Building, Broad Street, Nantucket, Massachusetts 02554.	
MICHIGAN	
Corunna (city), Shiawassee County	
Shiawassee River:	
About 1.4 miles downstream of State Road	*734
About 1.2 miles upstream of dam	*741
Maps available for inspection at the City Clerk's Office, City Hall, 402 North Shiawassee Street, Corunna, Michigan. Send comments to Honorable Steven M. Duchane, City Manager, City of Corunna, City Hall, 402 North Shiawassee Street, Corunna, Michigan 48817.	
———	
Woodhaven (city), Wayne County	
Brownstown Creek:	
Just upstream of Vreeland Road	*590
About 2100 feet upstream of West Road	*600
Marsh Creek:	
Just upstream of Vreeland Road	*586
Just downstream of King Road	*592
Clee Drain East:	
At mouth	*591
About 1,900 feet upstream of Van Horn Road	*593
Clee Drain West:	
At mouth	*593
About 5,000 feet upstream of mouth	*594
Maps available for inspection at the City Clerk's Office, City Hall, 21869 West Road, Woodhaven, Michigan. Send comments to Honorable James Lambert, Mayor, City of Woodhaven, City Hall, 21869 West Road, Woodhaven, Michigan 48183.	
MISSOURI	
Lupus (city), Moniteau County	
Missouri River: Within community	*583
Maps available for inspection at the City Hall, Lupus, Missouri.	
Send comments to Honorable Doug Elley, Mayor, City of Lupus, City Hall, Lupus, Missouri 65046	
NEW JERSEY	
East Hanover (Township), Morris County	
Passaic River	
At confluence of Rockaway River	*174
At upstream corporate limits	*176
Rockaway River: Entire length within corporate limits	*174
Whippany River:	
At confluence with Rockaway River	*174
Downstream of Morristown and Erie Railroad	*178
Upstream of railroad spur	*180
At upstream corporate limits	*182
Black Brook: Entire length with corporate limits	*182
Pinch Brook: Entire length within corporate limits	*182
Maps available for inspection at the Municipal Building, 411 Ridgedale Avenue, East Hanover, New Jersey.	
Send comments to Honorable James Marano, Mayor of the Township of East Hanover, Municipal Building, 411 Ridgedale Avenue, East Hanover, New Jersey 07936.	
———	
Ho-Ho-Kus (Borough), Bergen County	
Ho-Ho-Kus Brook:	
At downstream corporate limits	*112

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Upstream side of CONRAIL	*149
At upstream corporate limits	*187
Saddle River: At downstream corporate limits	*90
Maps available for inspection at the Borough Hall, Ho-Ho-Kus, New Jersey	
Send comments to Honorable Richard M. Sayres, 2 E. Franklin Turnpike, Ho-Ho-Kus, New Jersey 07423	
Lincoln Park (Borough), Morris County	
Passaic River	
At downstream corporate limits	*173
At upstream corporate limits	*173
Pompton River	
At confluence with Passaic River	*173
Upstream side of CONRAIL bridge	*178
At upstreaim corporate limits	*181
Beaver Dam Brook	
At downstream corporate limits	*180
At upstream corporate limits	*180
West Ditch	
At confluence with Beaver Dam Brook	*180
Upstream side of Square Place bridge	*189
At upstream corporate limits	*192
East Ditch	
At confluence with Beaver Dam Brook	*180
At upstream corporate limits	*180
Maps available for inspection at the Lincoln Park Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey	
Send comments to Honorable Stephen Marabeti, Mayor of the Borough of Lincoln Park, Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey 07035	
Wayne (Township), Passaic County	
Passaic River:	
At downstream corporate limits	*138
At upstream face of Beatties Dam	*166
At upstream face of State Route 23	*170
At upstream corporate limits	*173
Pompton River	
At confluence with Passaic River	*173
At upstream face of State Route 23	*183
At confluence of Ramapo and Pegunnock Rivers	*186
Ramapo River	
At confluence with Pompton River	*186
At upstream corporate limits	*209
Singac Brook	
At confluence with Passaic River	*172
At upstream face of French Hill Road bridge	*180
At upstream face of Preakness Avenue bridge	*200
At upstream face of Ratzer Road bridge	*241
At upstream face of Paterson Hamburg Turnpike bridge	*268
Approximately 1,400 feet downstream of upstream crossing of Valley Road	*319
Jones Brook	
At confluence with Ramapo River	*207
At confluence of Haycock Brook	*214
At downstream face of Vale Road bridge	*290
Approximately 190 feet upstream of Tulip Terrace bridge	*316
Haycock Brook:	
At confluence with Jones Brook	*214
Downstream face of Pines Lake Drive	*231
At upstream face of dam at Pines Lake	*269
At upstream face of West Pines Lake Drive bridge	*283
At upstream face of Baywood Avenue bridge	*314
Approximately 60 feet downstream of Briar Drive	*345
Naachtounki Brook	
At confluence with Singac Brook	*175
At upstream face of Private Dam	*187
At upstream face of Chadwick Road bridge	*262
At upstream face of Sutters Lane	*333
Approximately 285 feet upstream of last Access Road bridge	*381
Tributary 1 to Singac Brook	
At confluence with Singac Brook	*208
At upstream face of Rose Terrace bridge	*234
Approximately 1,200 feet upstream of Rose Terrace bridge	*240
Tributary 3 to Singac Brook	
At confluence with Singac Brook	*181
At upstream face of MacDonald Drive	*190
Approximately 129 feet downstream of Woodstock Road	*217
Maps available for inspection at the Municipal Building, Wayne, New Jersey	
Send comments to Honorable Walter Jasinski, Mayor of the Township of Wayne, Passaic County, Municipal Building, 475 Valley Road, Wayne, New Jersey 07470	
NEW YORK	
Fenner (Town), Madison County	
Chittenango Creek	
Downstream corporate limits	*548
Approximately 1.1 miles downstream State Route 13	*620
Approximately .04 mile downstream State Route 13	*700
Downstream side of State Route 13	*880
Downstream side of Bingley Road	*1,004
Upstream corporate limits	*1,069
Maps available for inspection at the Town Clerk's Home, David Shepherd, Shepherd Road, Fenner, New York.	
Send comments to Honorable Francis T. Costello, Supervisor of the Town of Fenner, Madison County, P.O. Box 308, Cazenovia, New York 13035.	
Hamptonburgh (Town), Orange County	
Walkill	
Downstream corporate limits	*359
CONRAIL (upstream side)	*361
Upstream corporate limits	*363
Otter Kill	
Downstream corporates limits	*323
CONRAIL (upstream side)	*348
Route 207 (upstream side)	*358
Upstream corporate limits	*366
Otter Kill Tributary 11: Confluence with Otter Kill approximately 600' upstream	*366
Cromline Creek	
Downstream corporate limits	*322
2,500 feet upstream of upstream corporate limits	*325
Maps available for inspection at the Town Hall, Hamptonburgh, New York.	
Send comments to Honorable Robert J. Flynn, Supervisor of the Town of Hamptonburgh, R.R. 1, Box 6300, Campbell Hall, New York 10916	
NORTH CAROLINA	
Laurinburg (City), Scotland County	
Leith Creek	
About 1050 feet downstream of Church Street	*194
Just downstream of Laurinburg and Southern Railroad	*196
Just upstream of Laurinburg and Southern Railroad	*199
About 3000 feet upstream of Gill Street	*208
Maps available for inspection at City Hall, 303 West Church Street, Laurinburg, North Carolina.	
Send comments to Honorable P.G. Vanderburg, City Manager, City Hall, P.O. Box 249, Laurinburg, North Carolina 28352.	
Nashville (Town), Nash County	
Stony Creek	
About 240 feed downstream of County Route 1600	*131
About 290 feet upstream of U.S. Route 64 Bypass (U.S. Route 64 Bypass upstream of West Washington Street)	*152
Maps available for inspection at the Town Hall, 11 North Boddie Street, Nashville, North Carolina	
Send comments to Honorable Raymond Boutwell, Town Manager, City Hall, P.O. Box 987, Nashville North Carolina 27856.	
NEW YORK	
North Salem (Town), Westchester County	
Titicus River	
At Confluence with Titicus Reservoir	*327
Upstream side of June Road	*343
Upstream side of New York Route 121	*377
Upstream side of dam	*455
Upstream side of of Keeler Lane	*461
Upstream side of Norton Lane	*493
At upstream corporate limits	*496
Crook Brook:	
At confluence with Titicus River	*331
Approximately 1,600 feet downstream of New York Route 121	*358
Upstream side, most downstream crossing of Hawley Road	*386
Upstream side, most upstream crossing of Hawley Road	*452
Maps available for inspection at the Town House, c/o Town Clerk, North Salem, New York.	
Send comments to Honorable Jeanette McNamara, Supervisor of the Town of North Salem, Westchester County, Town House, North Salem, New York 10560	
NORTH CAROLINA	
Shallotte (Town), Brunswick County	
Shallotte River: Within community	*11
Mulberry Branch.	
At mouth	*11
About 2300 feet Upstream of Bridgers Drive	*13
Charles Branch:	
At mouth	*11
About 700 feet upstream of Smith Street	*11
Maps available for inspection at the Town Hall, Shallotte, North Carolina.	
Send comments to Honorable Beamon Hewett, Mayor, Town of Shallotte, P.O. Box 27, shallotte, North Carolina 28459.	
OHIO	
Chauncey (Village), Athens County	
Hocking River:	
At confluence of Sunday Creek	*661
About 1800 feet upstream of Conrail	*662
Sunday Creek: Within community	*661
Maps available for inspection at Village Hall, 42 Converse Street, Chauncey, Ohio.	
Send comments to Honorable Roger Hamer, Mayor, Village of Chauncey, Village Hall, 42 Converse Street, Chauncey, Ohio 45719.	
Killbuck (Village), Holms County	
Killbuck Creek:	
About 0.4 mile downstream of Front Street	*812
About 0.4 mile upstream of abandoned railroad	*814
Maps available for inspection at the Mayor's Office, Killbuck, Ohio.	
Send comments to Honorable Henry Yoder, Mayor, Village of Killbuck, P.O. Box Killbuck, Ohio 44637	
Logan (City), Hocking County	
Hocking River.	
About 1,300 feet downstream of State Route 328	*717
About 2,500 feet upstream of State Route 664	*737
Maps available for inspection at City Building, Logan, Ohio	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Send comments to Honorable Edward Tucker, Mayor, City of Logan, 10 South Mulberry Street, Logan, Ohio 43138.	
City of Mansfield, Richland County	
Rocky Fork	
About 1,150 feet downstream of confluence of Painters Creek	*1,138
About 0.7 mile upstream of Old Bowman Street	*1,159
Touby Run	
At confluence with Rocky Fork	*1,150
Just downstream of Bowman Street	*1,169
Painters Creek	
At confluence with Rocky Fork	*1,139
Just downstream of Grace Street	*1,182
Maps available for inspection at the City Building, 30 North Diamond Street, Mansfield, Ohio	
Send comments to Honorable Edward Meehan, Mayor, City of Mansfield, City Building, 30 North Diamond Street, Mansfield, Ohio 44902.	
Mt. Blanchard (Village), Hancock County	
Blanchard River	
About 1,500 feet downstream of Norfolk Southern Railway	*824
About 600 feet upstream of Clay Street	*831
Maps available for inspection at the Mayor's Office, Mt Blanchard, Ohio.	
Send comments to Honorable Max Hindinger, Mayor, Village of Mt. Blanchard, 513 South Main Street, Mt Blanchard, Ohio 45867.	
Nelsonville (City), Athens County	
Hocking River:	
About 1,500 feet upstream of State Route 691	*678
About 0.9 mile upstream of Lake Hope Drive	*690
Maps available for inspection at the City Building, 29 Fayette Street, Nelsonville, Ohio.	
Send comments to Honorable Ralph Davis, Mayor, City of Nelsonville, City Building, 29 Fayette Street, Nelsonville, Ohio 45764.	
Ottawa (Village), Putnam County	
Blanchard River:	
About 1.2 miles downstream of confluence of Tawa Run	*725
About 1.9 miles upstream of Detroit, Toledo, and Ironton Railroad	*732
Tawa Run	
At mouth	*726
About 1.0 mile upstram of Agner Street	*735
Shallow Flooding (sheet flow from Blanchard River to Tawa Run):	
At the intersection of Locust Street and Fourth Street	#1
At the intersection of Hall Street and Main Street	#1
About 200 feet south of the intersection of Locust Street and Main Street	#2
Maps availble for inspection at the Municipal Building, 136 North Oak Street, Ottawa, Ohio	
Send comments to Honorable Louis Macke, Mayor, Village of Ottawa, Municipal Building, 136 North Oak Street, Ottawa, Ohio 45875.	
OREGON	
Hubbard (City), Marion County	
Mill Creek: 60 feet upstream of center of Hubbard Boones Ferry Road	*138
Maps available for inspection at the Public Works Department, City Hall, Hubbard, Oregon.	
Send comments to the Honorable Beverlee Koutmy, P.O. Box 237, Hubbard, Oregon 97032	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
RHODE ISLAND	
Charlestown (Town), Washington County	
Block Island Sound:	
Entire shoreline within community	*18
Intersection of Buddington and Overlook Avenue	*12
Pawcatuck River	
Downstream corporate limits	*39
Upstream side of State Route 91	*52
Upstream crossing of Shannock Road	*74
Approximately 1,500 feet upstream of Biscuit City Road	*90
Maps available for inspection at the Building Inspector's Office, South County Trail, Route 2, Charlestown, Rhode Island	
Send comments to Mr. Gary W. Anderson, President of the Town of Charlestown Town Council, Washington County, P.O. Box 849, Charlestown, Rhode Island 02813.	
Westerly (Town), Washington County	
Mastuxet Brook:	
Approximately 430' downstream of Watch Hill Road	*11
Approximately 99' upstream of Watch Hill Road	*13
Approximately 950' miles downstream of Airport Road	*39
Downstream of Airport Road	*41
Pawcatuck River:	
Approximately 1,950' downstream of State Route 78	*11
Upstream side of State Route 78	*15
Upstream side of dam located below Bridge and Boombridge Roads	*23
Upstream side of Boombridge Road	*26
Approximately 100' upstream of Potter Hill Road	*33
Upstream side of Main Street	*38
Upstream corporate limits	*39
Block Island Sound:	
Shoreline of Thompson Cove within community	*11
Shoreline at Watch Hill Point	*24
Shoreline at Shore Gardens (extended south)	*18
Shoreline at corporate limits at Weekapaug Beach	*18
Block Island Sound: Sheet Flow Areas within Community	#2
Block Island Sound: Ponding Areas within Community	*12
Maps available for inspection at the Office of the Westerly Town Clerk, Town Hall, Westerly, Rhode Island.	
Send comments to Honorable William Gingerella, President of the Town of Westerly, Town Hall, Westerly, Rhode Island 02891.	
TEXAS	
Freeport (City), Brazoria County	
Gulf of Mexico:	
Area in vicinity of Brazos and Stauffer Turning Basin	*12
Corporate limits adjacent to Intracoastal Waterway	*12
Corporate limits at confluence of Upper Turning Basin and Brays Harbor	*12
Extreme southern portion of community (south of levee located south of FM 242)	*12
Southwestern tip of community	*7
West of Brazos River's right bank levee (approximately 6,500' south of State Route 36)	*9
Shallow Flooding	
Brazos River: South of State Route 288	#1
Oyster Creek: South of State Route 332	#1
Maps available for inspection at the City Hall, 128 East Fourth Street, Freeport, Texas	
Send comments to the Honorable Tobey Davenport, Mayor of the City of Freeport, Brazoria County, Texas.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Shady Shores (City), Denton County	
Lynchburg Creek:	
Upstream side of Shady Shores Road at corporate limits	*537
Approximately 1,000 feet downstream of upstream corporate limits	*537
At upstream corporate limits	*540
Stream LC-1:	
Confluence with Lynchburg Creek	*537
Approximately 0.54 mile upstream of confluence with Lynchburg Creek	*537
Upstream side of Shady Shores Road	*548
Upstream side of Denton-Shady Shores Road	*559
Approximately 140 feet upstream of corporate limits	*560
Stream PEC-1	
Approximately .42 mile downstream of most downstream corporate limits	*537
At most downstream corporate limits	*537
Approximately 0.35 mile downstream of Shady Shores Road	*549
Approximately 026 mile downstream of Shady Shores Road	*550
Approximately 700 feet downstream of Shady Shores Road	*552
At most upstream corporate limits (downstream side of Shady Shores Road)	*555
Lewsville Lake: Entire shoreline with community	*537
Maps available for inspection at the Community Building, 101 South Shores Road, Shady Shores, Texas.	
Send comments to the Honorable Olive Stephens, Mayor of the City of Shady Shores, P.O. Box 362, Lake Dallas, Texas 75065.	
WASHINGTON	
Chewelah (City), Stevens County	
Chewelah Creek: Intersection of Lincoln Avenue and Park Street	*1,674
Paye Creek: 50 feet upstream of center of Lincoln Avenue	*1,678
Thomason Creek: At the confluence with East and West Thomason Creeks	*1,660
East Thomason Creek: 50 feet upstream of Main Street	*1,669
West Thomason Creek: 30 feet upstream of Lincoln Avenue	*1,679
Maps available for inspection at Public Works Department, City Hall, Chewelah, Washington	
Send comments to the Honorable Larry Richmond, P.O. Box 258, Chewelah, Washington 99109	
Mukilteo (City), Snohomish County	
Possession Sound: Along entire Coastline within corporate limits	*10
Maps available for inspection at Planning Department, City Hall, Mukilteo, Washington.	
Send comments to the Honorable John C. Corbett, P.O. Box 178, Mukilteo, Washington 98275.	
Winslow (City), Kitsap County	
Puget Sound (Eagle Harbor): 200 feet east from the center of the intersection of Parfitt Way SW and Madison Avenue S.	*10
Maps available for inspection at City Hall, Winslow, Washington	
Send comments to the Honorable Alice Tawusey, P.O. Box 10100, Winslow, Washington 98110	
WEST VIRGINIA	
Hurricane, City, Putnam County	
Hurricane Creek	
Approximately .4 mile downstream of downstream crossing of State Route 34	*621
Downstream side of Lakeview Drive	*626

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Most upstream corporate limits	*634
Maps available for inspection at the Town Hall Hurricane, West Virginia	
Send comments to the Honorable Raymond Teak, Mayor of the City of Hurricane, 2801 Virginia Avenue, Hurricane, West Virginia [illegible]	
Winfield, town, Putnam County	
[illegible] River	
At downstream corporate limits	*579
At upstream corporate limits	*580
Maps available for inspection at the Town Hall Winfield, West Virginia	
Send comments to the Honorable Claude J. Hunt, Mayor of the City of Winfield P.O. Box 269, Winfield, West Virginia 25213	

Issued: April 23, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10886 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 79-184; FCC 85-176]

Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission's present policy for the distribution of circuits among available North Atlantic common carrier facilities expires at the end of 1985. This proceeding is necessary to develop circuit distribution policies for the 1986-1991 period. This Notice of Proposed Rulemaking sets forth the Commission's tentative conclusions regarding the policy for distribution of circuits among available North Atlantic facilities it will follow during the 1986-1991 period and requests comments on those tentative conclusions.

Under the Commission's proposed policy for the 1986-1991 period, AT&T would be permitted, but not required, to increase the percentage of message telephone circuits placed on either cable or satellite facilities by 2 percent per year up to a limit of placing a maximum of 60 percent of such circuits on either type of facility. Circuits used by any carrier for the provision of record services and circuits used by new entrants for any telecommunications service would be subjected to any specified distribution methodology under the policy proposed by the Commission.

DATES: Entities made parties to this proceeding shall, and other interested persons may, submit Comments by May 10, 1985; and Reply Comments by May 28, 1985.

ADDRESS: Responses to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, International Policy Divisions, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

Second Notice of Proposed Rulemaking

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet North Atlantic Telecommunications needs during the 1985-1995 period; CC Docket No. 79-184; FCC 85-176.

Adopted: Aprill 11, 1985.

Released: April 22, 1985.

By the Commission:

I. Introduction

1. We hereby give notice of a proposed rulemaking to develop guidelines governing the distribution (loading) of circuits among available North Atlantic cable and satellite facilities during the 1986-1991 period. The existing circuit-distribution guidelines negotiated by the United States international service carriers and their European correspondents for the North Atlantic region are embodied in the comprehensive facilities construction and use plan developed in Docket No. 18875.[1] Those guidelines, based on the balanced-loading methodology, extend only through year-end 1985. The purpose of this proceeding, then, is to develop distribution (*i.e.*, loading) guidelines governing traffic between the United States and CEPT [2] which can efficiently be implemented beginning January 1, 1986.

2. A fully competitive market does not now exist in the provision of international telecommunications services. Equally important is the fact that certain biases exist in the market which prevent market forces from producing an environment in which costs are minimized, demand is satisfied, service quality is retained, technological development is encouraged and benefits to users are maximized. Therefore, we have tentatively concluded that we should continue to exercise supervision of the activation of cable and satellite circuits during the 1986-1991 period to assure that all facilities in use in the North Atlantic during that period are reasonably and efficiently used.[3] However, we recognize that competition is increasing and that existing biases may, over time, diminish. Therefore, we also tentatively conclude that the public interest would be served by gradually moving away from balanced loading and permit the carriers greater flexibility in making loading decisions. Specifically, we tentatively conclude to continue to exempt from distribution requirements circuits used for international record services and to extend that exemption to new entrants into the international message telecommunications service (IMTS) market. As to the American Telephone and Telegraph Company (AT&T), we tentatively conclude to permit it to increase at a rate of two percent per year over a six-year period the percentage of traffic it routes over cable facilities from 48 per cent to a maximum of 60 per cent. Below we summarize the Third Notice of Inquiry, the comments and reply comments filed in response to the notice, and the joint proposal submitted by the Communications Satellite Corporation (Comsat) and AT&T at the recently-concluded North Atlantic Consultative Working Group

[1] Future Licensing of Overseas Communication Facilities, 73 FCC 2d 326 (1979). *See also* Overseas Communications, 71 FCC 2d 71 (1979). In the earlier phase of this proceeding, *Policies for Overseas Common Carriers*, 84 FCC 2d 760 (1981) (Report and Order), we considered a number of cable and satellite facilities options for the 1985-1995 period and found that the public interest would be served by construction of a digital, optical-fiber submarine cable (TAT-8) to be introduced into service as early as 1988 and by use of either of two proposed designs then under consideration in INTELSAT for the INTELSAT-VI series of satellites. Subsequently, we authorized U.S. participation in the construction of both these facilities: See American Telephone and Telegraph Company, FCC 84-240, ——— FCC 2d ——— (released June 8, 1984) [TAT-8 Authorization] and Communications Satellite Corporation, File No. CSS-82-001-P, FCC 84-236, ——— FCC 2d ——— (released May 25, 1984 [INTELSAT-VI Authorization].

[2] CEPT is the Conference European des Administration des Poste et des Telecommunications, an organization of the postal and telecommunications entities of 26 European nations.

[3] Further, we have tentatively concluded that it would be in the public interest to revisit the issue of loading prior to the end of this period. Of course, if conditions warrant we would revisit the issue at an earlier date.

Meeting. We then indicate our understanding of the views of our carriers' foreign correspondents, analyze the various options, and reach several tentative conclusions.

A. Third Notice of Inquiry

3. We initiated this proceeding on August 3, 1984, with the release of our *Third Notice of Inquiry* (Notice), FCC 84-351, ——— FCC 2d ———. In our Notice we set out the history of our involvement in the development of loading guidelines for facilities use. We particularly noted that our desire ultimately to permit carriers greater flexibility in loading decisions had to be balanced with the realization that Comsat is dependent upon AT&T and the international record carriers (IRCs), entities with a clear economic preference for cable usage, for almost all of its traffic. We stated that our goal is to establish an efficient communications network which balances the need for high-quality service, diverse routes and sufficient capacity with the desire for reasonable rates for users. More specifically, we have through our comprehensive facilities planning proceedings sought to achieve the least-cost combination of facilities capable of meeting demand and of maintaining acceptable levels of service quality and reliability. Our pursuit of this goal has led us, in partnership with interested United States carriers and their overseas correspondents, to examine facilities options and costs to achieve what we hope will be the optimal combination of cable and satellite facilities. Central to this effort, of course, is the question of loading—the distribution of traffic between and among cable and satellite facilities.

4. We indicated in the Notice that AT&T is now generally required to distribute the circuits it uses for IMTS among available cable and satellite facilities in accordance with what is known as the "balanced loading" principle.[4] Circuits for international record services (leased-channel, telex, public message service, Datel, etc.) are not subject to any distribution guidelines.

5. In our Notice we identified essentially three policy options we could follow in fashioning loading guidelines for the 1986–1991 period. The first such option would be to continue to use balanced loading. We noted, as we had in Docket No. 18875, that balanced loading is a useful loading mechanism. That is, balanced loading assures that all existing cable and satellite facilities are reasonably used and facilitates restoration planning. Balanced loading also automatically handles sharp deviations of actual from forecasted traffic levels (either shortfalls or overages), without unduly prejudicing or benefitting the owners of particular facilities. On the other hand, balanced loading treats all facilities as equal and does not have any mechanism to take into account technological improvements which might make one facility more desirable or efficient than others.

6. The second option we identified would be to remove ourselves immediately from circuit-distribution decisions, leaving the matter entirely to the discretion of the carriers. We noted that we have already done this in Docket No. 18875 with respect to record services, merely requiring the record carriers to provide us with their expected distributions, and speculated that it might be possible to adopt the same approach for IMTS circuits. We further noted that such a course would give U.S. carriers flexibility to negotiate acutal distributions with their overseas correspondents as well as to meet their service and economic needs. We emphasized, however, that our concern is the interest of the user, not the carriers, and that it is not clear that unfettered carrier discretion would necessarily serve user interests. International communications are now in transition. Although there have recently been new entrants, the market is not yet competitive: IMTS accounts for 89 per cent of all cable and satellite circuits in use in the North Atlantic and AT&T accounts for in excess of 99 per cent of those IMTS circuits. Also, as a rate-base-regulated entity, AT&T has a bias in favor of facilities it can own (cable) and on which it may earn a return, as compared to facilities it can only lease (satellite) and treat as an expense. We further noted that AT&T's position as a manufacturer of submarine cable systems gives it a pro-cable bias not related to relative costs. Additionally, our 1966 *Authorized User I* decision had required Comsat to lease circuits only to carriers and, thus, prevented it from developing its own customer base.[5] As a result, while we reaffirmed that a "no guidelines" policy might be a valid long-term goal, we indicated that an immediate Commission withdrawal may not be feasible.

7. The third option we identified would be to develop a new distribution mechanism which would increase carrier flexibility and discretion, and reduce Commission involvement in loading decisions, but which would allow us to retain sufficient authority to assure that user interests are protected. We have previously in this proceeding and in Docket No. 18875 considered some alternative guidelines which might be useful and the number of potential approaches is virtually limitless. In particular, we stated in the Notice that loading guidelines might focus solely on AT&T, giving other IMTS carriers and the international record carriers complete freedom to use whatever facilities they feel will best satisfy their requirements. We also indicated that the parties might wish to consider the use of arbitrary cable/satellite ratios, the prescription for use of absolute numbers of cable and satellite circuits, or phase-ins and that they might wish to approach circuit distribution on either a country-by-country or on a region-wide basis.

B. Summary of Comments

8. In our Third Notice we directed interested U.S. international service carriers and Comsat to file information and comments on the designated issues. We directed the parties to make four separate filings. First, we directed the carriers to file their traffic forecasts for the planning period. Second, we directed the parties to file proposed circuit distributions and comments on the three policy options we presented in our Notice. Third, we directed the parties to file their analyses of the proposed circuit distributions filed in the second round. Fourth, we directed the parties to file "final comments" on the plans and the filings of other parties.

9. In response to our Notice, carriers filed updated traffic forecasts on August 31, 1984. On September 14, 1984, we received initial comments and circuit distributions from AT&T, Consat,[6] GTE

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[4] The balanced routing (or balanced loading) methodology distributes circuits among facilities with unused capacity in a manner which, to the extent possible, seeks to place equal number of circuits on all transmission systems between the United States and a given country carrying equal numbers of circuits. When one cable or satellite transmission system reaches the limit of its capacity, it falls out of the loading pattern and subsequent growth traffic is equally distributed among the remaining facilities with unused capacity. When a new satellite or cable facility is introduced into service, all additional growth circuits are placed on that facility until it carries as many circuits as the other balanced systems.

[5] *See* Authorized Users and Authorized Entities, 4 FCC 2d 421 (1966) [Authorized User I], *reconsid grtd in part,* 6 FCC 2d 1446 (1967).

[6] Comsat filed its first-round comments on September 17, 1984, and included therewith, a motion to accept them one business day late.

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Service Corporation (on behalf of its wholly-owned subsidiary the Hawaiian Telephone Company), GTE Sprint Communications Corporation (GTE Sprint), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), and TRT Telecommunications Corporation (TRT).[7] On September 14, 1984, we also received comments on the policy issues in our Notice from two non-carrier respondents, the National Telecommunications and Information Administration in the United States Department of Commerce (NTIA) and Aeronautical Radio, Inc. (ARINC), a large user of international telecommunication services.[8] On October 10, 1984, we received comments from ARINC, AT&T, Comsat, and NTIA. On November 2, 1984, we received comments from ARINC, AT&T, Comsat, ITTWC, NTIA, RCAGC and Satellite Business Systems (SBS). Finally, on November 1, 1984, AT&T filed a revised traffic forecast in which it reduced its estimate of circuit needs during the planning period by 5–9 per cent.

10. In their comments, the commenters addressed separately the question of loading criteria for record services, IMTS by new entrants, and IMTS by AT&T. In brief, they generally favor exemption from loading guidelines for suppliers of record services and suppliers of IMTS other than AT&T. They also generally favor some form of increased flexibility for AT&T—although none favors the immediate elimination of all restrictions on AT&T. Even AT&T, who argues that the market is ripe for reducing restrictions upon it, does not advocate immediate exemption from all restrictions. Rather, it argues for gradually increasing its flexibility over a number of years as competition develops in the marketplace. Only Comsat argues in favor of retaining the current balanced-loading methodology indefinitely, although GTE Sprint favors its retention until the introduction of TAT–8 in 1988. Even Comsat, however, has agreed that some relaxation of balanced loading could be implemented without unduly harming the public interest. In the presentation which follows we will address separately the respondents' arguments for record service, IMTS provided by new entrants and IMTS provided by AT&T.

11. *Record Services.* All of those filing comments either argue that we should continue to exempt record services from any loading requirements or do not oppose such an exemption. The carriers observe that the record-services market is relatively small[9] and that they are therefore unlikely to affect the efficiency of North Atlantic facilities. Moreover, the commenters argue that there are now several providers of such services and that record-circuit loading is subject to market forces. They also state that constraints could inhibit the further development of competition. More importantly, the carriers state that the vast majority of record-service circuits (approximately 85 percent) are used for leased-channel servicn where customers tend to have requirements for a cable or a satellite circuit and that the public interest would be served be giving record carriers flexibility to respond to these customer needs.[10] Comsat did not oppose exemption of record services from binding restrictions.

12. *New Entrants.* Most of those filing comments also advocate extending the exemption from loading restrictions to new entrants into the IMTS market and to existing IMTS providers other than AT&T. The advocates of such an exemption argue that new entrants and existing IMTS providers other than AT&T now provide a very small percentage of IMTS and that their share of the market is expected to grow slowly over the 1986–1991 period. As a result, they argue that such new entities will have a relatively insignificant effect on the loading of overall facilities. Further, some of those filing comments argue that having maximum flexibility in routing traffic over cable or satellite facilities will aid new entrants in obtaining operating agreements from potential correspondents. The commenters also assert that flexibility in routing traffic will result in the most economical provision of service. GTE Service Corporation (on behalf of its affiliate the Hawaiian Telephone Company) states that established, but small, providers of IMTS also need such flexibility. GTE notes that its affiliate has new circuits to Europe and that it can save money by be being able to route its circuits over the lowest-cost facilities. GTE also argues that routing flexibility will allow it to realize the benefits of digital transmission technology: by aggregating all its traffic on one digital facility it would have enough circuits to make use of digital circuit-multiplication equipment. Again, neither AT&T nor Comsat opposed exemption of new and existing providers of IMTS other than AT&T from loading criteria.

13. *AT&T Loading.* The commenters, however, do not support relieving AT&T of loading restrictions for IMTS. Although all parties recognize that our long-range goal is to remove ourselves from the loading question and to rely upon competitive market forces for such decisions, they argue that conditions are not now ripe for such a move. They believe that freeing AT&T too soon would be counterproductive in that it would stifle, rather than spur, the growth of a competitive market. The respondents state that AT&T, unlike other providers of international service, has overwhelming market power—AT&T accounts for over 99 per cent of total IMTS service in the North Atlantic and 89 per cent of total circuits in use in that region. ARINC characterizes AT&T's market power as "monolithic" and argues that the only way we will ever to able to remove ourselves from loading decisions will be to provide users with true alternatives to AT&T's monopoly services. ARINC asserts that the only way this can be guaranteed is to allow users to lease satellite circuits directly from Comsat (*Authorized User II*[11]) and to purchase indefeasible rights of user (IRUs) in cable circuits. Until such choices exist, ARINC argues, removal of loading restrictions will simply stifle competition.[12] ITTWC

Comsat cited as the reason for its lateness a breakdown in its word-processing equipment. Comsat also sought late acceptance of its November 2, 1984, final comments on the grounds that it needed to obtain the review of senior management officials who were absent. Inasmuch as no one was unduly inconvenienced by the slight delays, we shall grant both Comsat's motions.

[7] MCI International, INC. (MCI) filed forecast and circuit distribution data but no comments.

[8] ARINC is a not-for-profit joint venture of the U.S. airline industry which serves the communications needs of its member airlines. ARINC is not a carrier, but an unregulated user group.

[9] Record services as a whole account for less than 11 per cent of circuits in use in the North Atlantic.

[10] For example, the type of data processing equipment a user employs may dictate its choice of facility. Briefly, some older data-processing equipment relies for error detection upon retransmission from the receiving computer to the sending computer. In such equipment, the delay of satellite transmission requires the sending computer to pause, waiting for retransmission, and reduces the amount of processing that can be accomplished in a given time (the so-called "throughput"). Such a user would ordinarily opt for a cable circuit. Newer data-processing equipment incorporates error-correction devices to accommodate satellite delay. Further, high-speed data transmission, which requires greater bandwidth than that of voice-grade circuits, now depends upon satellite circuits which can be more easily and efficiently configured for such broad-band circuits than can cable circuits.

[11] Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, FCC 84–633, ——— FCC 2d ———, 50 FR 2552 (January 17, 1985) (Second Report and Order). *See also* 90 FCC 2d 1394 (1982) (Report and Order), *vacated and remanded sub non.* ITTWC v. FCC, 725 F. 2d 732 (D.C. Cir. 1984).

[12] ARINC devotes the balance of its pleadings to its request for a change in the basis on which

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notes that AT&T's market power is so strong that freeing AT&T of restrictions would raise an unacceptable risk of anticompetitive abuses. GTE Sprint and SBS are particularly concerned that AT&T could immediately use up remaining idle circuits in the TAT-6 and TAT-7 cables, thereby depriving new entrants of access to cable circuits until the introduction of TAT-8 in 1988.[13] They argue that such an occurrence would severely impair the ability of new entrants to establish themselves in the market.

14. In response to the last issue, AT&T counters that the concerns relating to the availability of cable circuits are unfounded. First, it notes that the Commission has retained jurisdiction to reallocate circuits in TAT-7 and TAT-8 cables as required by the public interest. Second, it points out that the decisions authorizing the U.S. carriers to participate in the construction of these cables were conditioned on circuits being available to new entrants. AT&T notes that, in connection with TAT-7, AT&T itself stated that it would make circuits available to any other U.S. international carrier if cable circuits were not generally available to meet the needs of those carriers. AT&T states that none of these parties has provided any foundation for the belief that AT&T would not reasonably make indefeasible right of user interests in cable circuits available to new entrants.

15. Comsat emphasizes that AT&T's preference for cable facilities, which it notes arises both from its substantial investment in such facilities and its position as a manufacturer of cable systems, distorts AT&T's loading decisions. As a result, Comsat argues that Commision withdrawal would merely place loading decisions in the hands of AT&T, not the market. Finally, Comsat argues that AT&T could, absent a loading requirement, severely impair the satellite medium by routing all or virtually all its traffic over cable. The licensing of TAT-8, Comsat argues, enhances AT&T's existing dominance, by increasing its ability to divert future traffic to cable facilities. With respect to its entry as a competitor of AT&T, Comsat argues that it will take time for it to make inroads upon AT&T's currently "overwhelming" market power and that it is therefore unclear how soon, if ever, it would be able to divert enough IMTS traffic from AT&T to support the satellite system on its own.

16. The commenters, however, do not agree on what kind of loading restrictions should be applied to AT&T. Comsat argues that we should continue to impose balanced loading for the foreseeable future. The other commenters[14] agree that we should move away from balanced loading (at least after introduction of TAT-8) in favor of increased flexibility for AT&T.[15] Most argue that balanced loading is too rigid, does not take into consideration any cost differences between facilities, and, thus, will not maximize economy or efficiency. They also argue that balanced loading, by guaranteeing a fixed share of traffic to satellite facilities, will not give Comsat an incentive to enter the retail-service market and to build its own customer base. This is a problem, they argue, because such a guarantee will not encourage intermodal competition and will, thus, not require the owners of either type of facility to reduce costs or improve the quality of their respective facilities. Rather, these parties favor the development of an alternative loading methodology, splitting generally between those calling for cost-based loading and those which would gradually increase the percentage of circuits AT&T each year could place on cable facilities. In all, there were essentially six proposed methodologies which will be described below. These are the AT&T, the Comsat, the GTE Sprint, the ITTWC, the NTIA and the joint AT&T/Comsat compromise approaches.

17. *AT&T Proposal.* AT&T proposes what it describes as a gradual change or "phase-in" of increased loading flexibility over a four-year period (1986-89). At the end of this four-year period AT&T proposes that we withdraw and leave it with total flexibility in loading satellite and cable facilities. During the four-year phase-in (or phase-out) period, AT&T proposes to move from a 52 per cent satellite/48 per cent cable-use ratio which will obtain at year end 1985 under balanced loading to a ratio of 40 per cent satellite /60 per cent cable by year-end 1989.[16] AT&T, thus, seeks an increase of three per cent per year for four years in the flexibility to load cable facilities, although it does not guarantee that it will exercise that flexibilty. AT&T also states that its proposal for a three-per-cent limit should apply to the North Atlantic region as a whole and that no specific country-by-country loading requirement would be imposed. (*i.e.*, although it would have a three-per-cent regional cap it would have total flexiblity in negotiating country-by-country loading plans).

18. AT&T argues that its approach would increase reliance on marketplace forces and represents a more economic use of cable and satellite facilities than does balanced loading. It would, notes AT&T, also encourage Comsat to enter the competitive market to develop its own customer base. AT&T also states that its plan would allow us to continue to monitor its loading decisions to assure compliance with its commitments. Finally, AT&T assures us that its plan will not adversely affect service quality or reliability, and that service reliability will be "comparable" to that now achieved under balanced loading.[17]

19. AT&T emphasizes that allowing it the requested greater freedom will not threaten the INTELSAT satellite system. AT&T notes that its foreign correspondents have a substantial economic and political investment in INTELSAT and are not interested in jeopardizing those commitments. Additionally, AT&T states that it does not anticipate a wholesale abandonment of satellite facilities; that its plan is a

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international cable facilities are now owned. U.S. entities and foreign correspondents own undivided half interests in circuits. ARINC requests us to change cable ownership to an arrangement where U.S. entities and their correspondents would each separately purchase their own whole circuits (the whole-circuit policy). We note that ARINC first raised its whole circuit-ownership argument in connection with our consideration of the U.S. carriers' application for authorization to construct the TAT-8 cable. File No. I-T-C-84-072. ARINC requested us to condition our grant of authority upon the carriers agreeing to modify the TAT-8 agreement to require whole-circuit ownership. We denied ARINC's request as having been presented too late in the TAT-8 matter and suggested that it might better pursue the question in the facilities-planning process, particularly the North Atlantic Consultative Process. *See* FCC 84-240 a para. 51, note 21. ——— FCC 2d ———. ARINC argues, however, that we should address the question in the instant proceeding.

[13] SBS notes that it particualry needs to be assured of access to international cable circuits, since it distributes its traffic domestically via satellite. SBS notes that "double hops" (that is using two satellite links in tandem for the same transmission) are technically undesirable.

[14] TRT and GTE Service Corporation did not address the question of AT&T loading.

[15] SBS states that it might be "advisable" to give AT&T greater flexibility, and states that it favors a gradual relaxing of loading restrictions on AT&T, but does not define any particular plan by which this might be accomplished.

[16] While AT&T's proposal is for a loading ratio of 40/60 for either facility, it is clear that what it really seeks is the ability to use more cable circuits. Under its proposal, AT&T would increase its cable use from a 48 per cent to 51 per cent in 1986, to 54 per cent in 1987, to 57 per cent in 1988 and to 60 per cent in 1989. At the end of the four-year period, AT&T filings indicate that it would increase its cable usage to 66 per cent in 1990 and 71 per cent in 1991.

[17] AT&T acknowledges that, because its methodology would place more circuits on cable, a failure of a cable would interrupt more circuits than would be the case under balanced loading and that service reliability would be adversely affected. However, AT&T argues that improved networking techniques (restoration and network management) will reduce the impact of service interruptions

gradual "phase-in" over a four-year period. Finally, AT&T states that its plan applies only to growth traffic and that it will not deload any satellite or cable facility.

20. *Comsat Proposal.* Comsat argues that any loading methodology we adopt should achieve four objectives. First, such a methodology should provide a framework which encourages intermodal competition. Second, it should be flexible enough to accommodate deviations (shortfalls or overages) from forecasted traffic levels as well as the requirements of new entrants. Third, it should facilitate the planning of international facilities. Fourth, it should lessen the Commission's regulatory involvement. Comsat believes that the loading mechanism which best meets these criteria is balanced loading. Comsat argues that balanced loading assures efficient use of existing cable and satellite facilities, minimizes the effects of the failure of a facility, is easily understood by all parties, can be implemented relatively automatically, and will automatically accomodate traffic fluctuations and new entrants. As a result, Comsat argues that use of balanced loading will minimize Commission involvement in the question of loading. Comsat also asserts that, by assuring that traffic is directed to both cable and satellite facilities, balanced loading will give all parties a firm basis on which they can base their facilities plans—since it believes that facilities owners cannot plan facilities or their timing unless they know how they will be used.

21. *GTE Sprint Proposal.* GTE Sprint also supports a transitional approach which would gradually allow AT&T more loading flexiblity. GTE Sprint, however, notes that, due to the lead time needed to design and construct new cable and satellite facilities, no benefit would result from freeing AT&T from balanced loading until the TAT-8 cable is introduced in 1988. From 1988 until 1992, when GTE Sprint states that TAT-9 cable is scheduled to be introduced, its plan would allow AT&T the flexibility to place between 45 to 55 per cent on either cable or satellite. From 1992 to 1994, the GTE Sprint plan would allow AT&T to place 35 to 65 per cent of circuits on either cable or satellite facilities. Beyond 1994, GTE Sprint would free AT&T from loading requirements, but states that we must nonetheless continue to monitor facilities loading to protect against efforts of overseas telecommunications entities to dictate facility options to U.S. entities of such dictation were contrary to U.S. interests.

22. *ITTWC Proposal.* ITTWC advocates a transitional approach which would permit AT&T over the period 1986–1991 to move away from balanced loading at a rate of two per cent per year (at that rate AT&T would reach its proposed 60/40 ratio in six years).[18] Even after 1991, ITTWC does not recommend freeing AT&T from all loading restrictions. Rather, it would require AT&T to submit distribution plans in which the levels of cable and satellite use are determined by "the cost of available and proposed facilities" in which the lower-cost facility would receive proportionately larger levels of traffic. ITTWC states that its proposed cost-based loading mechanism should apply only to growth traffic (that is, AT&T should not deload any facilities) to avoid disruption of existing investments. ITTWC believes its methodology would increase intermodal competition and lower facilities costs (the only way for a cable or satellite owner to increase its traffic would be to lower the relative cost of its facility) and could lead to the ultimate withdrawal of the Commission from loading decisions. ITTWC recognizes that its approach, like that of NTIA, requires the gathering of cost information not now availale, but notes that the 1986–1991 period could and should be used to gather that information.

23. *NTIA Proposal.* NTIA identifies four options for an alternative loading methodology.[19] The first would be to base cable and satellite loading on their respective revenue requirements. The second option is what NTIA describes as a "transition" to option 1 in which, recognizing that the information necessary to calculate a *regional* revenue requirement for satellite facilities is not now available, would use Comsat's tariff lease charges as a short-term substitute for the satellite revenue requirement. The third option would be to allow customers to decide, for all services, including IMTS, the type of facility to be used. The forth option is what NTIA calls a *laissez faire* approach which is essentially identical to our option of immediate withdrawal from loading decisions.

24. NTIA asserts that Options 3 and 4 (customer choice and *laissez faire*) are not now workable and recommends Option 2 (the transitional approach) which will lead ultimately to Option 1, which it views as the best solution. NTIA argues that Commission withdrawal from loading decisions is not feasible, since the international market is not truly competitive, and that, without such a competitive market, the potential for anticompetitive abuses is too great. With respect to relying upon customer choice, option three, it states that this might also be a good long-term goal, but concedes that it cannot now be implemented since the international dialing system does not permit IMTS customers to select the type of transoceanic facility.[20]

25. NTIA states that Options 1 and 2 should be viewed together, as Option 2 is merely a transitional step toward Option 1, and that they represent the best and most workable approach to achieve our overall goal of the least-cost mix of facilities and least amount of governmental involvement in facilities-loading decisions, while preserving our ability to protect the public interest. The NTIA plan would base loading upon the relative revenue requirements of cable and satellite facilities. That is, NTIA would require the cable and satellite owners to submit the per-circuit revenue requirement of their respective mediums. From these, we would calculate a "composite" facilities revenue requirement for the region. The medium with the lower per-circuit revenue requirement would receive a share of circuits inversely proportional to the relation of its revenue requirement to the average revenue requirements for both mediums. That is, the facility with the lower revenue requirement would receive a proportionately larger share of traffic.

26. NTIA explained the operation of its methodology through a hypothetical example: NTIA assumed that the per-circuit revenue requirement for cable is $9,000 and the satellite revenue requirement (lease charge) is $6,000. The composite would be $15,000 ($9000 + $6000). The ratio of the cable

[18] During the 1986–1991 period, ITTWC advocated actually the continuation of what it called an "equitable loading methodology." In its September 14 comments ITTWC did not define what it meant by the term "equitable," but in its November 2 Final Comments, it stated that it did not mean thereby balanced loading and stated that it believed allowing AT&T to increase cable use by up to two per cent per year would be "equitable."

[19] NTIA first raised its proposed methodology in comments filed in the Pacific Planning Process (CC Docket No. 81-343), but raises them again in its comments in this proceeding. NTIA specifically incorporates its prior pleading by reference. The description of the NTIA proposal which follows in from its Pacific Planning Comments.

[20] NTIA notes that there are a number of technological, institutional, and economic problems, many of which have not yet been identified, which must be solved before customers could be permitted to choose their own routing. For example, NTIA notes that in the case of IMTS service these problems include planning, switching, accounting and coordination. NTIA also notes that the necessity to obtain the agreement of overseas PITs could raise political problems.

revenue requirement to the composite would be .60 [$9000/$15000] and the satellite ratio woud be .40 [$6000/$15000]. Using an inverse ratio, the satellite (the cheaper facility under this hypothetical) would receive 60 percent of the traffic.[21] So as to "normalize" facilities and not "give an apparent advantage to either medium," NTIA would base the initial revenue-requirement calculation upon as assumption that traffic in each region is divided equally between cable and satellite facilities.[22] Recognizing that the cost information needed to calculate a revenue requirement for specific satellite configurations on a regional basis is not now available, NTIA would employ Comsat's bundled monthly lease charges (now $1060 per voice-grade circuit) as a surrogate.[23]

27. NTIA states that the benefit of its methodology is that it would put the cable and satellite mediums into competition, since the only way for a cable owner or for Comsat to increase its share of traffic would be for it to lower the revenue requirement of its facilities. His, in turn, would require such an owner to lower rates for end-user service, introduce innovative pricing policies, introduce new services, keep a tighter rein on variable costs (such as operating and maintenance costs), retire inefficient facilities, use cable facilities to restore satellite facilities instead of having a spare satellite and use satellite to restore cable instead of having excess cable capacity, and use more circuit-multiplication equipment such as TASI or TDMA/DSI. The net effects of these measures, according to NTIA, will be a more efficient use of facilities and lower prices for end users. NTIA notes that its methodology would also shift the risk of facilities investment from users to the shareholders of the carriers.[24]

28. NTIA recognizes that its plan need further exploration and refinement before it could be implemented. One problem area NTIA identifies is the fact that Comsat's lease charges ae not a perfect substitue for the satellite medium's regional revenue requirement. NTIA notes that INTELSAT's costs are averaged worldwide and that Comsat's rates are averaged for the regions (Atlantic and Pacific) that it serves. Further, NTIA notes that, since conditions vary from ocean basin to ocean basin the fully-allocated costs for a particular region may be either above or below INTELSAT's average costs. Still, NTIA notes that these figues are available and can serve as a close, if not perfect, approximation of the regional revenue requirement. NTIA further notes that the INTELSAT costs are only part of Comsat's total costs and argues that any skewing effect of INTELSAT's worldwide cost averaging should be relatively minor. NTIA also recognizes that cable revenue-requirement figures are not now available either and that there may be some dispute as to what elements should be included in their calculation. NTIA, however, believes these issues are manageable. Even though its plan may require substantial Commission involvement in calculating the revenue requirements, NTIA alleges that it will reduce Commission effort in facilities planning and licensing and, after implementation, will largely be self-executing.[25]

C. AT&T/Comsat Joint Proposal

29. The issue of loading mechanisms has also been under examination in the North Atlantic Consultative Process. In a joint submission to a meeting of the North Atlantic Consultative Working group in Orlando, Florida, January 8–11, 1985, AT&T and Comsat submitted a "coordinated plan" which the authors state would "allow a greater degree of flexibility than is present in the current [*i.e.*, balanced-loading] plan while preserving the advantages of a coordinated plan." United States Submission to NACWG, at p. 30. The proposed plan represents a version of the proposal AT&T had submitted in its comments: to allow beginning in 1986 a gradual increase each year in cable/satellite loading flexibility up to a maximum of 60 per cent on either cable or satellite. The joint proposal, however, does not specify the number of years in the "phase-in" period (AT&T had proposed four years) or the percentage of change to be allowed each year (AT&T had proposed 3 per cent per year). These issues were left to future negotiation.

30. Like the AT&T plan, the joint proposal would allow the loading plans for individual countries to differ from the agreed upon percentages, so long as the regional total for the North Atlantic remains within the agreed ceilings each year. The proponents note that this approach would grant service carriers greater flexibility, while giving "due regard to such considerations as the level of existing INTELSAT investments, the need to preserve adequate restoration alternatives, and the economics and preferences of individual carriers and correspondents." *Id.*, at 31. The proponents also state that it is difficult to predict how the market will develop into the 1990's and therefore suggest that the proposed plan apply "for some interim period," with all parties continuing to monitor cable/satellite loading and to exchange views concerning policies for the future.

D. CEPT View

31. Also at the January, 1985, North Atlantic Consultative Working Group meeting, the representatives of the CEPT entities expressed their view that distribution decisions in the North Atlantic region should be left solely to the telecommunications entities which have invested in the cable and satellite facilities used to provide service. The CEPT entities oppose the use of any rigid distribution formulas and support a flexible circuit-distribution methodology based entirely upon bilateral discussions between correspondent pairs. In the CEPT's view any circuit-distribution methodology adopted should:

1. Recognize that satellites and cables are complementary transmission mediums and, thus, allow for an overall network optimization;

2. Take into account the need for media and path diversity;

3. Recognize the different characteristics of different mediums and the impact this may have on planning;

[21] NTIA also recognizes that foreign correspondents may not agree to the loading percentages thus derived. However, since proportions would represent the optimal levels for U.S. interests, NTIA argues that the U.S. carriers could use the calculated usage levels as the starting point in negotiating a mutually-acceptable level.

[22] NTIA notes that, since the cost effectiveness of either medium increases with use, if one facility receives more traffic over a substantial period, its cost per circuit would go down relative to the other facility which was not so heavily used. To avoid imbalances in use caused by carrier choice, balanced loading, or other past practices, and the attendant distortion of cost figures, NTIA would ignore actual, past use levels at the inception of its loading mechanism.

[23] On February 1, 1985, Comsat, pursuant to the requirement in our *Earth Station Ownership* rulemaking, FCC 84–605, 49 FR 50030 (December 26, 1984), filed revisions to its tariff to unbundle its tariff charges into separate charges for space segment and earth-station services.

[24] NTIA's approach would also call for us to shift our regulatory review away from the facilities-authorization stage. That is, the NTIA plan calls for us to approve requests by the carriers and Comsat to build any facilities they want, but to make clear to them that the use of the facilities would be determined objectively by relative costs. As a result, NTIA argues, the facilities owners would be required to keep costs low and to avoid excess capacity, since excess facilities would increase their costs and reduce the number of circuits they could use.

[25] NTIA proposes that the carriers be allowed to apply for blanket authorization of all the cable and satellite facilities they will need in a given period which would automatically be granted unless we rejected it within a specified time.

4. Allow activation of capacities so as to make the best economic use of committed investments;

5. Not include any rigid formulas which would impede flexible planning; and

6. Leave sufficient freedom for bilateral discussions between individual traffic partners.

32. The CEPT representatives stated that they view the joint proposal of AT&T and Comsat as a move in the right direction and that it could serve as a basis for further discussion when further information became available as to the size of the increase in flexibility to be allowed each year and the period over which the proposal would extend. The CEPT entities questioned the imposition of a 60-per-cent limitation on the loading of a given medium. The CEPT representatives also stated their view that the NTIA proposal does not provide the required degree of flexibility and is, therefore, unacceptable to them as a circuit-distribution methodology.

II. Discussion

33. Our goal is to rely on market forces to establish the optimal mix of services, rates and facilities. We believe that a competitive environment best balances the need for high-quality service, diverse routes and sufficient capacity with the desire to minimize rates for users. We further believe that market forces can be used to encourage the efficient use of existing facilities and the development and deployment of the most efficient facilities in the future. After reviewing the comments and information filed in this proceeding, we agree with those filing comments that the market is not now sufficiently competitive to allow us immediately to remove ourselves from circuit distribution decisions with respect to AT&T's international MTS circuits. We also agree with most parties that balanced loading, although providing certain service-reliability benefits, is too rigid a methodology, does not promote intermodal competition, and will not significantly move us toward a greater reliance on market forces.

34. We are entering a transitional period during which carrier and facility competition will develop. In such an environment, it is necessary to fashion a new methodology which will permit AT&T more flexibility than allowed under the current balanced-loading methodology. However, this flexibility should reflect the nascent state of competition while at the same time encourage Comsat and other service providers to compete vigorously. As a result, we tentatively conclude that we should adopt a transitional loading mechanism which will allow AT&T over the next six years to increase by two per cent per year the number of circuits it places on either cable or satellite facilities from the 52 per cent satellite and 48 per cent cable level which will obtain at year-end 1985 up to a maximum of 60 per cent on either medium. During this transitional period, Comsat and other providers will have an opportunity to increase their shares of the international MTS market. We do not, however, see any need to impose circuit-distribution restrictions upon providers of record services, upon new entrants into the international record or MTS markets, or upon providers of IMTS other that AT&T. Such services account for a relatively small number of circuits as compared with IMTS and thus will not significantly affect the efficiency of overall facilities use. As a result, we tentatively conclude to continue to exempt circuits used by these carriers from facilities-use requirements. In the discussion which follows we shall first consider the three broad methodologies we outlined in our Notice: Balanced loading, immediate elimination of guidelines for AT&T and non-imposition of guidelines for other carriers, and phase-in alternatives. We shall then discussion under the alternatives phase-in approach the various proposals presented by the parties for AT&T's IMTS circuits. We shall also describe a staff proposal which ties flexibility for AT&T to increased market entry for other providers of IMTS. Finally, we shall consider an ancillary issue raised by one of the parties outside the issues designated in our Third Notice of Inquiry.

A. Balanced Loading

35. Based upon our analysis of balanced loading and its effect upon our overall policy goals, we have tentatively concluded that we should no longer base circuit use upon that methodology. We do not mean by this that we no longer see benefits in the balanced-loading methodology. It continues to provide the service quality benefits we have previously detailed: It helps service reliability by reducing to a minimum the number of circuits interrupted by the failure of a major transmission facility. It also provides a predictable and automatic technique by which to handle sharp deviations of actual demand from forecasted traffic levels. As indicated by the table appended to this Second Notice of Proposed Rulemaking, the percentage of circuits placed on satellites resulting from application of balanced loading during the 1986–1991 period would range between 45.9 and 53.5 percent. The corresponding range for cable circuits would be 46.5 to 54.1 per cent. This range of percentages should not produce undue adverse effects on AT&T, Comsat, INTELSAT or new entrants. Balanced loading, however, by guaranteeing Comsat essentially one-half of all growth traffic during the 1986–1991 period, provides it with little incentive to enter the IMTS market and to compete for its own customer base. Additionally, it fails to provide Comsat, INTELSAT or AT&T with incentives to build and operate efficient, low-cost facilities. The lack of such incentives would slow the development of a marketplace mechanism for the cost-based distribution of circuits between cable and satellite. We must, therefore, tentatively conclude to reject a continuation of balanced loading.

B. Immediate Elimination of Loading Guidelines

36. As we have indicated, none of the parties to this proceeding argues for the imposition of loading requirements upon providers of record services, upon new entrants in either the record or IMTS markets, or upon IMTS service providers other than AT&T. As discussed below, we see no reason to impose such restrictions on such a relatively small percentage of circuits, where customers frequently designate a medium, where competition appears to be developing, and where no entity has substantial market power.

37. *Record Services.* We tentatively conclude that we should continue to exempt circuits used for record services from any specific circuit-distribution guidelines. The total number circuits in the North Atlantic used for record services is relatively small (less than 11 per cent of total circuits) and thus could have little effect on the overall use of cable and satellite facilities. Further, the vast majority (approxiamtely 87 per cent) of total record circuits are used for leased-channel services, services for which customers often have a specific need for either a cable or a satellite circuit. Additionally, leased-channel and switched record services are offered by multiple international carriers, none of which appears to have an overwhelming market share or to wield market power, and the number of such carriers is likely to increase. Thus, we tentatively conclude that there continues to be a viable marketplace mechanism for distributing leased-channel and switched record circuits between the cable and satellite mediums and that

such circuits should be exempt from any loading requirements.[26]

38. We wish to make it clear that our proposal to exempt record circuits from a specific circuit-distribution methodology would apply to any U.S. international carrier providing such services, including AT&T. At present, the major international record service AT&T provides is leased-channel service. AT&T's leased channels are subject to the same marketplace distribution mechanism as applies to other U.S. carriers. Moreover, AT&T is, in effect, a new entrant into the leased-channel market, inasmuch as we had prohibited AT&T between 1964 and 1982 from providing leased record channels.[27] AT&T does not have a significant share of the record leased-channel market. As of the end of 1984, for example, AT&T provided only 90 of the approximately 1442 leased channels in service between the U.S. and the CEPT countries (6.2 percent). Given the strength of the marketplace mechanism for allocating leased circuits between the cable and satellite mediums and AT&T's relatively small share, we find no public-interest reason to impose greater restrictions upon AT&T's distribution of leased-channel circuits than upon that of other carriers. We thus propose also to exempt AT&T from specific distribution guidelines for leased-channel and other record services.

39. *New Entrants.* We also tentatively conclude that we should not subject new entrants into the international record or MTS service markets to any specific circuit-distribution guidelines. We note, again, that none of those filing comments opposed giving new entrants total loading flexibility. Just as we tentatively concluded that circuits used for the provision of international record services should be exempted from specific circuit-distribution quidelines, we believe the same considerations generally apply to circuits used for such services by new entrants. New providers of leased channels will be subject to the same customer-choice, marketplace mechnanism for distributing such circuits between cable and satellite facilities that we discussed above. New providers of switched record services will employ relatively few circuits and be subject to competition from existing suppliers. Moreover, at least initially, the new entrants will account for only a relatively small portion of the total number of circuits in use and will, thus, have little impact upon the overall use of cable and satellite facilities.

40. New entrants into the IMTS and other international voice-services markets can be expected to use more circuits initially than those providing only record services. However, for the foreseeable future, the number of circuits used by new entrants such as GTE Sprint and MCI will be considerally smalller than the number of circuits AT&T will use for such services. Again, exempting circuits used by new entrants for international MTS is likely to have only a small impact upon the relative use of the cable and satellite mediums and provide these entities with additional economic and technical flexibility to assist them in gaining entry.[28] Similarly, established IMTS providers other than AT&T, such as Hawaiian Telephone, should also be exempt from loading guidelines since they employ few circuits and would benefit from maximum flexibility.

41. *IMTS by AT&T.* No party argues for the immediate elimination of circuit-distribution guidelines for AT&T's provision of IMTS. The problem with such a course, as they view it, is that AT&T has too much market power in the IMTS market and that market forces will not assure that facilities-use decisions will be based on cost. We agree with the parties to this proceeding that the international MTS market is not now competitive, that certain biases exist, and that AT&T has significant market power. To illustrate the parties' concern, at year-end 1984, out of a total of approximately 14,617 voice circuits in use between the U.S. and the CEPT countries for the provision of all international services,[29] approximately 12,965 (88.7 per cent) were used for IMTS. Of these, approximately 12,944 (99.8 per cent) were used by AT&T.[30] International MTS users do not have the ability to select whether their calls will be placed on cable or satellite facilities; that decision is made by AT&T. As a result, in large measure, the distribution of AT&T's IMTS circuits determines the relative use of cable and satellite facilities. AT&T downplays its market power and takes exception to any idea that it would engage in anticompetitive conduct, but even AT&T does not argue for us to remove ourselves from the circuit-distribution question. AT&T, rather, recognizes Comsat's dependency on it for traffic and acknowledges a need for continued Commission oversight for a transitional period, but argues for flexibility which will encourage Comsat to become more competitive.

42. While the distribution of competition into the provision of IMTS can be expected to aid in the development of a marketplace mechanism for determining cost-based circuit distribution, it is unlikely that such a mechanism will be adequately developed by the end of 1985. Moreover, because of delays occasioned by the court stay and remand of our *Authorized User II* policy, Comsat was only afforded the opportunity to offer IMTS and other end-to-end services directly to users in January of this year. Thus, the entity with the strongest incentive to promote the use of satellite circuits as a counter to AT&T's preference for use of cable circuits has not yet been able to enter the IMTS and other end-to-end services markets. These factors lead us tentatively to conclude that the immediate elimination of loading guidelines would not serve the public interest. We do not mean by this that our withdrawal depends only on Comsat's ability to penetrate the IMTS market as a service or facility provider. If this was our only criterion, Comsat would have an incentive not to enter that market or to lower its charges for circuits employed by other carriers for IMTS. It is, however, our intention to give Comsat an adequate opportunity to enter various end-to-end service markets and to make all its operations more efficient. The corollary to this tentative conclusion is that there is a need for us to develop guidelines for the distributon of circuits used by AT&T for

[26] The effectiveness of existing market forces will be further enhanced by several recent events. First, the introduction of INTELSAT Business Service (IBS) will provide users with an additional choice of service and may increase competition in the international leased-channel market. IBS allows the location of smaller, cheaper earth-stations on or near customer premises and can save customers the cost of domestic tail circuits. Further, because we have authorized a number of entities to provide the earth-station portion of IBS, most of whom have no ownership of cable facilities, IBS may introduce price competition between cable and satellite facilities. Price competition should also be stimulated by our recent decision in *Earth Station Ownership* to allow competitive earth-station services in connection with regular INTELSAT satellite services, and our decision in *Authorized User II* to allow Comsat to provide space segment directly to users.

[27] *See* Overseas Communications (TAT–4 Revisited), 92 FCC 2d 641 (1982).

[28] This technical flexibility should satisfy SBS's concern with double satellite hops. *See* note 12, *supra.*

[29] There may be minor errors in the calculation of the total number of voice circuits used for all U.S.-CEPT services at the end of 1984. These data are derived from the monthly circuit reports and a number of the international record carriers are late in filing their reports for December 1984. Thus it was necessary to use the reports for earlier months of 1984 for those carriers.

[30] At the end of 1984 HTC operated 21 voice circuits for the provision of IMTS between Hawaii and the United Kingdom and Germany. In addition, MCII has been authorized to lease 24 satellite circuits for the provision of IMTS between the United States and Belgium.

the provision of IMTS in the North Atlantic region for a transitional period until an effective marketplace for distributing circuits between the cable and satellite mediums develops.

C. Alternative Proposals

43. The major issue in this proceeding is what methodology should be established to govern AT&T's loading of its IMTS traffic. All of the commenters addressed this point in depth. Having rejected both a continuation of balanced loading and an immediate withdrawal of guidelines for AT&T circuitry employed for IMTS, we now turn to the various proposals submitted by NTIA and the carriers. We believe that an alternative methodology can be fashioned which spurs intermodal competition, while recognizing AT&T's dominant position in the international marketplace.

44. In response to our Notice the respondents suggested four phase-in methodologies. AT&T proposes a four-year phase-in which would allow it to increase, on a regional basis, cable use by three per cent per year. On the other hand, GTE Sprint argues for a much slower transition. GTE would allow no increase use over balanced loading until the TAT–8 cable is introduced in 1988. Over the following four years until 1992 (the possible introduction date of TAT–9), GTE would allow AT&T to increase cable loading up to 55 per cent. From 1992 to 1994 a further 5 per cent per year to 65 per cent when GTE would free AT&T entirely. ITTWC proposes that AT&T be allowed to increase cable loading at two per cent per year over six years to 1991. After 1991 ITTWC advocates a relative-cost loading methodology which appears to be similar to the NTIA methodology (although not all spelled out at this stage). Finally, the joint proposal of AT&T and Comsat also suggests a transition to a 60/40 cable/satellite ratio, but does not specify the length of the transitional period or the degree of flexibility to be allowed AT&T each year. Rather, it leaves these questions to future negotiation.

45. Our analysis of the various proposals before us causes us tentatively to conclude that we should adopt a phase-in approach which would permit AT&T a moderate annual increase in the number of circuits it can place on either cable or satellite facilities for international MTS between the U.S. and CEPT up to a maximum of 60 per cent of such circuits on either medium. More specifically, we propose to permit, but not require, AT&T to increase the number of IMTS growth circuits it places on satellite or cable facilities up to two per cent per year for six years, without deloading any facility, until it reaches a maximum of 60 per cent of all U.S.-CEPT IMTS circuits on either medium. As we have stated, AT&T projects that, at the end of 1985, balanced loading will place 52 per cent of AT&T's international MTS circuits on satellite and 48 per cent on cable facilities. If AT&T were to increase its cable loading at a rate of two per cent per year, it would reach the 60 per cent maximum for cable in six years—or by year-end 1991. We believe that this proposal, not dissimilar to the one presented by ITTWC, will provide all entities the proper incentive to become more efficient and to compete vigorously for customers, while protecting the investment of cable and satellite owners against too-rapid change.[31] We also agree with the consensus of the parties that the relative use levels of 60 per cent/40 per cent on either cable or satellite medium represents a useful and beneficial standard for the 1986–1991 period.[32]

46. In opting for a phase-in proposal, we emphasize that we are not necessarily rejecting the NTIA proposal to simulate the market. NTIA's proposal does have some appeal but remains at this time too undefined. As NTIA acknowledges, the costing process is not simple and the variables are many. Further, we note CEPT's generally negative response to this proposal and a need to implement a new methodology in a short period of time. We discuss the various alternative proposals below, including a staff proposal.

47. *NTIA Proposal.* The NTIA proposal to base circuit distribution upon the relative cost of cable and satellite circuit has a number of advantages. Its use could, through regulatory actions, encourage the development of marketplace forces and lead to the least-cost mix of cable and satellite circuits. It could also encourage the development of an unbiased market for cable and satellite circuits. As NTIA recognizes, its proposal can be modified to accommodate other considerations, such as the differing loading preferences of the carriers' foreign correspondents.

48. However, NTIA also recognizes that its proposal is not yet fully defined. There is no universally accepted mechanism for determining the per-circuit revenue requirement for either the cable or satellite medium. Further, as NTIA notes, determination of per-circuit revenue requirements for satellite circuits on a regional basis is a complex task because, among other things, the revenue requirement will vary depending upon the cost and capacity of a given satellite design, changes in the methods used for access to the satellite, and the number and characteristics of the earth stations used with the satellite. Determination of the per-circuit revenue requirements for cable circuits is also complex. Such a determination would include not only the cost of the cables themselves, but would also have to take into consideration the cost of overseas connecting circuits used to extend the cable circuits from the overseas terminals to the countries of final destination.

49. The rapid improvements in circuit-multiplication equipment and satellite-access methods we are now experiencing will further complicate the process of developing accurate determinations of per-circuit revenue requirements. The digital circuit-multiplication equipment which will be used with the TAT–8 cable is still under development, as indeed are some types of access and circuit-multiplication equipment which will be used with the INTELSAT V, V–A and VI satellites. The nature of the equipment which will actually be used has not yet been fully defined, either as to the maximum effective capacity it can be used to generate or as to its cost. Both types of information are required for an accurate calculation of the revenue requirement.

50. We do not believe these difficulties are insurmountable. The process for developing such revenue requirements on a per-circuit basis is not wholly dissimilar from the cost analyses we used in our Docket No. 18875, the earlier phases of this docket and other planning proceedings. Our experience in those proceedings, however, indicates that the determination of the per-circuit revenue requirements will require considerable effort on the part of the carriers, Comsat and the concerned governmental entities. The definition of the elements to be included in the revenue-requirement comparision as well as the methodology to be used in calculating such requirements are likely to be a source of contention among the various parties.

51. We also perceive some potential implementation problems with the NTIA proposal. The proposal appears to

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[31] The ITTWC proposal calls for imposition in 1992 of a cost-based loading formula conceptually similar to the NTIA proposal. As we make clear elsewhere, we shall not now commit to any loading criterion in the post-1991 period, but will review that issue at a later date as competition becomes established in the market.

[32] Comsat's agreement to the joint proposal represents an apparent change from Comsat's prior insistence upon balanced loading as the only acceptable facilities-use methodology. Comsat appears to have accepted the possibility of a phased-in approach.

require substantial regulatory examination of the relative cost efficiencies of cable and satellite facilities and frequent regulatory adjustments to the circuit distributions permitted between those facilities. Our overall goal is to move as rapidly as prudent from regulatory to marketplace determination of circuit distribution. By creating a regulatory substitute for a marketplace mechanism for the cost-based distribution of circuits, the NTIA plan could delay our exit. Further, NTIA's year-by-year approach would complicate the facilities-planning efforts by Comsat, INTELSAT, AT&T and overseas administrations. Such uncertainties could create disequilibrium in facilty capacity and adversely affect service quality.

52. We must, therefore, tentatively conclude that the NTIA proposal is not sufficiently defined at present to permit us to adopt it. However, we do not rule out the possibility of its use if it can be more fully defined and if the questions we identified above can be resolved. The NTIA approach would appear to provide a strong incentive for cable and satellite owners to lower costs and could indeed yield lower user costs. Therefore, in responding to this Second Notice of Proposed Rulemaking, we request the parties to address fully the NTIA proposal. Specifically, we seek comments on the types of cost categories which should be included in developing a revenue requirement for cable and for satellite circuits as well as specific methods by which the revenue requirements should be calculated. We also request the parties to address how a transition from NTIA's proposed methodology for circuit distribution to a marketplace distributon might be accomplished. In this connection, comments should take into account such factors as how to accommodate a foreign correspondent's circuit-distribution preferences and how to account for increasing competition in the provision of international MTS. We will carefully consider this information in making our final determination in our Second Report and Order in this proceeding.

53. *Phase-Ins.* In reaching our tentative conclusion to implement a phase-in methodology, we have considered AT&T's original proposal, the proposals submitted by other carriers and alternative guidelines which would permit increases in loading flexibility at annual rates of 2, 2.5 and 3 per cent per year. All of the proposed guidelines we analyzed, other than AT&T's original proposal, imposed a 60 percent ceiling on the loading of either medium throughout the 1986–1991 period. Our analysis assumed that the flexibility granted by our tentative guidelines was used to increase the percentage of total circuits carried by the cable medium by the maximum allowed annual percentage. We then compared the number of circuits placed on each medium that would result from each of the four alternative guidelines with the distribution of circuits that would have resulted from the continued use of the balanced loading.[33] We then calculated the difference in the revenues Comsat and INTELSAT would receive from the numbers of circuits on satellite each year called for by each of these guidelines compared to those which Comsat would have received under balanced loading.[34] The results of this analysis are set forth in the table appended to this Second Notice of Proposed Rulemaking.

54. As may be seen from that table, the effect of AT&T's proposed guidelines would be to reduce Comsat's revenues by a total of approximately $218.2 million over the six-year period from what it would have received under balanced loading. INTELSAT would receive approximately $160.6 million less over the same period. During the six-year period (1986–91), of the 24,853 growth circuits AT&T projects that it will need for IMTS, it would under its preferred plan place 21,133 (85.0 per cent) on cable facilities and 3,720 (15.0 per cent) on satellite facilities. The majority of this traffic and revenue "diversion" would occur in 1990 and 1991, when AT&T seeks complete freedom in circuit distribution. We calculate that Comsat's revenue loss for 1990 and 1991 would be approximately $58.7 million and $102.0 million, respectively. The corresponding revenue losses for INTELSAT would be approximately $43.2 million and $75.1 million. Under AT&T's proposal, it would activate only 12 additional satellite circuits in 1990 and 15 additional satellite circuits in 1991; all other growth would be on cable facilities.

55. Under the proposed guidelines allowing an annual two percent increase in loading flexibility over the six year period, Comsat and INTELSAT would receive approximately $90.1 and $66.3 million less, respectively, than they would have received under balanced loading. Of the 24,853 growth circuits AT&T projects during that period, AT&T would place 16,691 (67.2 per cent) on cable and 8,162 (32.8 per cent) on satellites. Continuation of balanced loading would require AT&T to place 13,115 circuits (52.8 per cent) on cables and 11,738 (47.2 per cent) on satellite facilities. The revenue and circuit-use figures for the guidelines allowing increased loading flexibility at rates of 2.5 and 3 per cent per year fall between the figures calculated for the 2 per cent annual increase and the those calculated for AT&T's proposed guidelines. The table appended to this document shows the specific figures.

56. From the foregoing, we tentatively find that AT&T's proposed guidelines, if implemented as proposed by AT&T, are not likely to afford a transition period of sufficient length to offset existing biases or to permit development of a marketplace mechanism for distribution of IMTS circuits. While competing carriers are now entering the U.S.–CEPT IMTS market, they are unlikely to make substantial inroads into AT&T's market dominance in the four-year period envisioned by AT&T's proposed guidelines. Moreover, Comsat, the entity with the greatest incentive to use satellite circuits for the provision of international MTS, has only been free to enter that market since January, 1985. We believe that the public interest will not be served by attempted reliance upon market mechanisms until the

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[33] In performing our analyses, we utilized only the traffic forecast which AT&T submitted on August 31, 1984 and the displays of circuit distributions and other analyses that AT&T submitted based on that forecast. AT&T submitted an updated forecast on November 1, 1984, in connection with preparations for the meeting of the North Atlantic Consultative Working Group held January 8–11, 1985. However, AT&T did not update its circuit distribution and analyses to indicate the effect of the new forecast thereon. In addition, AT&T submitted its updated forecast too late to permit the other parties to revise their analyses of AT&T's distributions. Because we believe this information is needed to develop proper distribution guidelines and to allow the other parties and our staff to assess the effect of the changed forecast, we shall require AT&T to include in its comments in response to this Second Notice of Proposed Rulemaking revised circuit distributions for each year of the planning period and revised analyses based on the updated forecast.

[34] Our revenue calculations are based on the assumption that Comsat's existing tariff rate of $1060 per month for voice circuits remains in effect throughout the 1986–1991 period. Changes in this assumption, such as AT&T's providing its own earth stations, or variations in Comsat's tariff, would alter the results or our analysis. Our calculation of INTELSAT revenues is based upon the assumption that the current INTELSAT unit charge of $390 per voice-grade circuit per month remains in effect throughout the 1986–1991 period. It should be noted that INTELSAT'S unit charge for voice circuits provided by means of TDMA/DSI will be 12.5 per cent lower than the current $390 unit charge. Since some of AT&T's circuits may be provided by use of TDMA/DSI, our calculations of the differences in INTELSAT's revenues may be larger than that which will actually occur. Similarily, assuming Comsat's tariff rate reflects the 12.5 per cent lower INTELSAT unit charge for TDMA/DSI circuits, the differences in revenues we calculated for Comsat may also be higher than those which will actually occur.

market has become competitive. That is not likely to be the case by year-end 1989.

57. We are also concerned with the comparatively small percentage (15.0 per cent) of growth circuits AT&T's proposal would place on already procured or planned satellite facilities during the 1986–1991 period. Such comparatively low levels of use could exert undue upward pressure on Comsat's and INTELSAT's per-circuit costs, and hence Comsat's rates for satellite circuits, and thus inhibit the development of intermodal competition. The cable and satellite facilities which will be used to provide service in the North Atlantic region during this period are either already in service or are under construction pursuant to binding procurement contracts. As a result, both INTELSAT's and other cable owners' capital costs for their respective facilities which will be used during this period are, for the most part, sunk.[35] Because this is so, owners will be forced to recover their total revenue requirements from the revenues generated by the number of circuits in each medium which are actually used to provide service. Consequently, activating more circuits in a given medium will have the effect of reducing the actual per-circuit revenue requirements of that transmission medium and, conversely, activating fewer circuits will increase the per-circuit revenue requirement for the other medium.

58. In this connection, we note that the service carriers have reduced the forecast of the number of circuits which will be needed in 1990 by approximately 26 per cent as compared with their June, 1980, forecast, (the forecast on which we relied in planning the TAT–8 and INTELSAT VI projects). Further, again subsequent to the planning of the TAT–8 and INTELSAT VI projects, it appears that technological developments have occurred which have either increased, or which may increase, the effective voice-circuit capacity of the TAT–8 cable and the INTELSAT satellites which will be in use during the 1986–1991 period. As a result, it now appears that there will be substantial excess capacity available throughout the 1986-1991 period. It seems apparent that creation of effective intermodal competition will not be facilitated by adoption of circuit-distribution guidelines which allow a disproportionate portion of the burden of this excess capacity to fall upon the satellite medium. We believe that adoption of the AT&T proposal, which would place 85 per cent of all of AT&T's international MTS growth circuits during the 1986-1991 period on cable facilities would have such a result. We thus do not believe that AT&T's suggested methodology proposes a reasonable use of facilities or that the public interest would be advanced by its implementation.

59. We tentatively conclude that allowing AT&T an annual two-per-cent increase in cable use (up to 60 per cent) represents a fair compromise which will stimulate the development of intermodal competition while not allowing the burden of excess capacity to fall too much on either medium. The approximately $90.1 million reduction in Comsat's revenues which would result from such an approach should give Comsat a strong incentive to enter the international MTS and other markets to try to offset that loss. Similarly, the approximately $66.3 million reduction in INTELSAT's revenues which would result from such an approach should spur that organization to greater construction and operational efficiencies. On the other hand, the amount of revenue loss to Comsat and INTELSAT, while signalling our clear intention to stimulate intermodal competition and to move away from any rigid methodology, is relatively manageable and should not result in any undue upward pressure on satellite tariff rates.

60. The two-percent-per-year guidelines should also provide AT&T with sufficient flexibility to adjust its facilities use to meet increasing competition during the transition period. Under these guidelines, AT&T can place up to 67.2 percent of its IMTS growth circuits on its owned cable facilities. This is a greater percentage of cable-circuit use than we have permitted under any of our previous circuit-distribution guidelines.

61. We also tentatively conclude that these guidelines should remain in place during the entire 1986–1991 period. As we have indicated, our preference is at that time to remove ourselves from circuit-distribution decisions altogether. However, as pointed out by a number of the parties to this proceeding, we cannot now predict with certainty how competition will develop and whether in 1991 there will be a basis for reliance upon a marketplace distribution of circuits.[36] Consequently, we cannot now commit ourselves absolutely to withdraw. As new entrants obtain operating agreements, and competition develops, our willingness to grant AT&T greater flexibility will increase.

62. *Alternative Proposal.* The creation of downward pressures on rates, the reduction of existing biases in the market, the encouragement of the efficient use of existing facilities, the promotion of the construction and use of efficient facilities in the future and the facilitation of our eventual withdrawal from loading decisions and perhaps the facility planning process may be directly related to the degree of competition in the provision of IMTS. Because the provision of international service is a joint undertaking between sovereign states or their carriers, competition tends to develop on a country-by-country basis rather than on a region-by-region basis. Thus, methodology which permits greater flexibility on a regional basis, rather than on a country-by-country basis, may do little to satisfy our long term objectives. However, a methodology which ties flexibility to the acquisition of operating agreements and the establishment of an environment which enhances carrier and facility competition may more closely satisfy these objectives.

63. We therefore request comment on a multi-tiered methodology which would permit AT&T, on a country-by-country basis, less flexibility on routes characterized by little or no competitive entry and greater flexibility on routes characterized by greater competitive entry. While the number of tiers and degrees of flexibility are almost limitless, we specifically request comment on the following example in order to stimulate discussion and facilitate our analysis of this complex issue. Under this proposal, AT&T would be permitted to increase its loading flexibility by 1 percent per year (Tier 1) to all countries and by 3 percent per year (Tier 2) to countries where the administration had entered into operating agreements with additional IMTS providers and where competition was developing.[37] There would be no

[35] Comsat's investment in INTELSAT space segment is not as rigidly fixed. The investment in INTELSAT space segment of Comsat and other INTELSAT signatories is determined by the use each signatory makes of that space segment. The signatories' investment shares are adjusted annually to reflect current use; thus, the investment of Comsat and the CEPT signatories could be reduced, to a degree, by the use of fewer satellite circuits on North Atlantic routes.

[36] Of course, if competition develops rapidly, we may revisit this issue prior to the end of the 1986–1991 period. In such a revisitation we could grant AT&T greater flexibility on a regional basis or on a country-by-country basis if competitive for [illegible] warranted.

[37] Comments are solicited on whether the trigger mechanism should be the number of operating agreements, the terms of the operating agreements or other factors. We also seek comments on whether an increase in loading flexibility of greater than 3 percent should be permitted.

upper limit although the loading methodology would be re-examined by the end of 1991. To the extent that a more competitive IMTS market is encouraged and to the extent such a market stimulates a greater reliance on market forces, this proposal may not be dissimilar to the principles underlying the methodology submitted by NTIA. Of course, interested parties are also invited to submit and discuss any other specific methodologies which would relate relaxation of loading guidelines to increased competition in the provision of IMTS on a country-by-country basis.

64. We are, of course, aware that knowledge of the circuit-distribution mechanism which will be in use after 1991 would be of significant assistance to the planning effects of the carriers, Comsat and INTELSAT in selecting new facilities needed during the 1991–1995 portion of the planning period. For this reason we shall soon begin to examine the facilities requirements and options available during that period, as well as the effect of various potential circuit distributions. While gathering the necessary information for that process, we shall also monitor the development of intermodal competition, competition in the provision of international MTS and the development of a marketplace circuit-distribution mechanism. The Office of Plans and Policy will also conduct a study of these issues. The extent to which effective competition develops will determine how much we need involve ourselves in developing formal guidelines for the construction of facilities and the distribution of circuits for the 1991–1995 period.

D. ARINC's Whole-Circuit Proposal

65. We tentatively conclude that ARINC's proposal that we require ownership in TAT–8 and future cables to be on a whole-circuit basis should not be considered in this phase of this docket. ARINC's proposal is not germane to the question of the circuit-distribution guidelines which should be adopted for use in the post-1985 period; nor will those guidelines affect ARINC's proposal. ARINC's proposal, however, if adopted, would effect major changes in the present structure of international facilities ownership and in the established operating relationships between the U.S. carriers and their overseas correspondents. We denied ARINC's request to require a whole-circuit-ownership policy with respect to TAT–8. More recently, ARINC raised its request at a meeting of the North Atlantic Consultative Process. That is the proper forum in which to address ARINC's proposal.

III. Ordering Clauses

66. Accordingly, pursuant to sections 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976), it is ordered that a rulemaking is hereby instituted into the above-described issues.

67. It is further ordered that Aeronautical Radio, Inc. American Telephone and Telegraph Company, Communications Satellite Corporation, FTC Communications, Inc., GTE Service Corporation, GTE Sprint Communications Corporation, ITT World Communications Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, Western Union International, Inc., and The Western Union Telegraph Company are MADE PARTIES to the rulemaking initiated herein:

68. It is further ordered, pursuant to applicable procedures set forth in §§ 1.410 and 1.415 of the Commission's Rules and Regulations, 47 CFR §§ 1.410 and 1.415 (1983), that, on or before May 10, 1985, all parties to this proceeding must file,[38] and other interested persons may file, comments on the issues in this proceeding and that, on or before May 28, 1985, interested persons may file reply comments. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching decision on this matter, we may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is place in the public file, and provided that the fact of our reliance upon such information is noted in our Report and Order. Participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Those filing comments in this proceeding should serve copies thereof upon the persons named as parties in the preceding paragraph, *supra*. They should serve reply comments upon all those who file comments in this rulemaking. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

69. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time it issues a public notice stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a coy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public tile, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's rules, 47 CFR 1.1231 (1983).

70. It is further ordered that the motions of the Communications Satellite Corporation for late acceptance of its Comments and Final Comments are granted.

71. It is further ordered that the request of Aeronautical Radio, Inc. to include the question of whole-circuit ownership in the issues to be considered in this second notice of proposed rulemaking in denied.

72. Pursuant to section 605(b) of the Regulatory Flexibility Act (P.L. 96–354), it is certified, that sections 603 and 604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages,

[38] AT&T shall also file the circuit distributions and analysis required by footnote 33, *supra*.

corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. 601(2).

Note.—The attachments to this document (Comparisons of the Application of Circuit Distributions Guidelines) will not be published due to the ongoing efforts to minimize printing costs. However, they are filed with the original at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. They may also be reviewed in the FCC Dockets Branch, Room 239 and the FCC Library, Room 639, both located at 1919 M Street, NW., Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-10817 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 9:00 AM to 1:00 PM, on Wednesday, May 15, 1985, to take place in the Department of Transportation's Conference Room 2230, 400 7th Street, SW., Washington, D.C.

Items on the agenda: Election of ATBCB Chairperson, Vice Chairperson, and Members of the ATBCB Executive Committee; proposed Federal Advisory Committee; final decision on the award of the boarding chairs contract; approval of the final comments on the ANSI proposed revisions and the endorsement of the accreditation status; request for Board comments on DOT's revised Notice of Proposed Rulemaking (NPRM) to amend the former Civil Aeronautics Board section 504 rule; and the ATBCB Retreat.

DATE: Wednesday, May 15, 1985—9:00 AM–1:00 PM.

ADDRESS: Department of Transportation's Conference Room 2230, 400 7th Street, SW., Washington, D.C.

The Communications and Attitudinal Barriers Committee and the Transportation Committee will meet with the National Transportation Facilitation Committee Sub-group on Air Travel Accessibility at 1:00–4:00 PM, Monday, May 13. For location and other information, contact Sally Free at (202) 472–2700.

All other committees of the ATBCB will meet on Tuesday, May 14, in the Hubert Humphrey Building, Room 425A, 200 Independence Avenue, SW., or Room 1137 of the HHS North Building, 300 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD).

Robert M. Johnson,
Executive Director.

[FR Doc. 85–10944 Filed 5–3–85; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-588-047]

Chain of Iron or Steel From Japan; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of Japan, the International Trade Commission began an investigation under section 104(b) of the Trade Agreements Act of 1979 regarding chain of iron or steel from Japan. Because of the withdrawal of the petition, the International Trade Commission terminated its investigation. Termination has the same effect as a determination that no industry in the United States would be materially injured, or threatened with material injury, if the countervailing duty order were revoked. The Department of Commerce, consequently is revoking the countervailing duty order. All shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On August 24, 1978, the Treasury Department published in the **Federal Register** a countervailing duty order on chain of iron or steel from Japan (43 FR 37685).

On November 17, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Japanese government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On February 17, 1985, the ITC notified the Department of its termination of the investigation (50 FR 9139, March 6, 1985), based on withdrawal of the petition by the National Association of Chain Manufacturers. This termination has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, by reason of imports of chain of iron or steel from Japan if the countervailing duty order were revoked. As a result, the Department is revoking the countervailing duty order concerning chain of iron or steel from Japan with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: April 29, 1985.

Alan F. Holmer,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–10949 Filed 5–3–85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.–EEC Pipe and Tube Arrangement with respect to double submerged arc welded pipe, API 5L, grade B, without girth weld, in the following outside diameters and wall thicknesses:

A. 26" x 1.125"
B. 26" x 1.250"
C. 36" x 1.75"
D. 36" x 2"
E. 48" x 1.75"
F. 48" x 2"

EFFECTIVE DATE: Comments must be submitted no later than May 16, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, Room 3087B, (202) 377–4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department "* * * shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received requests for acceptance under short supply provisions for the following products:

Double submerged arc welded pipe, API 5L, grade B, without girth weld, in the following outside diameters and wall thicknesses:

A. 26" x 1.125"
B. 26" x 1.250"
C. 36" x 1.75"
D. 36" x 2"
E. 48" x 1.75"
F. 48" x 2"

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than ten days following the publication of this notice. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business propriatary information should clearly so label the business proprietary portion of their submission and also submit with it a submission not containing such business proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 1, 1985.

[FR Doc. 85–10959 Filed 5–3–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. The review covers the period July 1, 1983, through June 30, 1984.

As a result of the review, the Department has preliminary determined the total bounty or grant for the period to be 6.98 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 17559) the final results of its last administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through June 30, 1984, and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) preferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Programs

(1) Incentives for Exports From Southern Ports

This program provides a payment for goods shipped from the southern ports of Argentina. This payment is not a rebate of taxes but rather an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Under resolution M.E. No. 88/83, effective from January 28, 1983, through December 20, 1983, the payments ranged from 8 to 11 percent of the f.o.b. price depending on the port used. Law 23.018/83, effective December 21, 1983, changes the rates to between 8 percent and 13 percent depending on the port used. The law provided for a reduction of 1 percentage point for all ports as of January 1, 1984.

The questionnaire response provided no information on the amount of exports from specific ports. Therefore, we used information from the original investigation as best information for the calculation of the total bounty or grant.

In the original investigation, we found that 93 percent of all wool shipped from

Argentina went through the port of Madryn. The original investigation also found that virtually all the remaining wool was shipped from Buenos Aires, a port not covered by this program. Based on this information, we preliminarily determine the total bounty or grant provided by this program during the review period to be 6.98 percent *ad valorem.*

(2) Reembolso, a Cash Rebate of Taxes

On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine the total benefit from this program during the review period to be zero.

(3) Preferential Pre-export Financing

Exports of wool ineligible for this program. Therefore, we preliminarily determine that there was no benefit.

(4) Other Programs

In the original investigation, the following programs were found to be terminated or suspended. They have not been reinstated during the period of this review.

A. Multiple exchange rates.

B. Government assistance to wool growers in Patagonia.

C. Financial reorganization aids.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant to be 6.98 percent *ad valorem* for the period of review. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 6.98 percent of the f.o.b. invoice price on any shipments exported on or after July 1, 1983, and on or before June 30, 1984.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 6.98 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-10958 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-471-502]

Initiation of Countervailing Duty Investigation; Carbon Steel Wire Rod From Portugal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Portugal of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this act, so that it may determine whether imports of the subject merchandise from Portugal materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before May 23, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 377-0160 or 377-3464.

SUPPLEMENTARY INFORMATION:

Petition

On April 8, 1985, we received a petition in proper form from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Portugal of carbon steel wire rod receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Portugal is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Portugal materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Portugal, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Portugal of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Portugal of carbon steel wire rod receive benefits under the following

programs which constitute subsidies. We are initiating an investigation on the following allegations:

• Export financing at preferential rates.

• Export tax incentives.

• Integrated investment incentives system:

—General regime
—Regional/sectoral priority regime
—Extraordinary regime of capital donations
—Contractual regime for projects of high economic and social impact
—subsidy regime for research and technical development

• Domestic business incentives:

—Ruling 316/78 (November 30, 1978)
—Decree 353–E/77 (August 29, 1977)
—Decree 24/77 (April 1, 1977)

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of carbon steel wire rod from Portugal are causing material injury, or threaten material injury, to a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85–10960 Filed 5–3–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-506]

Initiation of Contervailing Duty Investigation; Carbon Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper from with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before May 23, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0189 or 377-1785.

SUPPLEMENTARY INFORMATION:

Petition

On April 8, 1985, we received a petition in proper form from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CR 355.26), the petition alleges that manufacturers, producers, or exporters in Venezuela of carbon steel wire rod receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Venezuela, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

Scope of the Investigation

The merchandise covered by this investigation is carbon steel wire rod, is a coiled semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS)

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Venezuela of carbon steel wire rod receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

• Preferential Government Loans.

• Government Equity Infusions.

• Sales Tax Exemption.

• Tax Contributions to Cover Debt Service Costs.

• Export Subsidies:

—Preferential Exchange Rates
—Export Certificates for Credit Against Income Taxes

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of carbon steel wire rod from Venezuela are causing

material injury, or threaten material injury, to a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10961 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1985 Summer Study Panel on Practical Functional Performance Requirements; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1985 Summer Study Panel on Practical Functional Performance Requirements will meet in closed session on 28–29 May and 19 June 1985 in Washington, D.C., and 16 July 1985 in Sunnyvale, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Panel will receive classified briefings and hold classified discussions on performance requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1985.

[FR Doc. 85-10954 Filed 5-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Special Operations; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Special Operations will meet in closed session on 29–30 May, 24–25 June, 20–21 August, 9 September, and 29 October 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings and hold discussions about Special Operations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1985.

[FR Doc. 85-10953 Filed 5-3-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Reserve Officer Training Corps Advisory Committee; Meeting

April 10, 1985.

The Air Force Reserve Officer Training Corps Advisory Committee will meet on August 13th and 14th from 8:30 a.m. to 4:00 p.m. and on August 15th from 8:00 to 11:30. a.m., at Air Training Command Headquarters, Building 905, Randolph Air Force Base (AFB), Texas 78150-5000.

Meeting is open to the public.

The committee reviews the programs, policies and objectives of the Air Force Reserve Training Corps, recommends policies to the Commander, Air Training Command, and provides external views, advice, expertise, and influence on policy and operational matters.

For further information, contact John D. Pickett, Jr., AFROTC/XRX, Maxwell AFB AL 36112-6663, Telephone (205) 293-7856.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-10940 Filed 5-3-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday, 21 May 1985.

Times of meeting: 0830-1700 hours (Closed).

Place: TRW, Redondo Beach, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review will meet in an Executive Session to discuss the findings and conclusions as a result of the on-site visits and to prepare materials for the final report. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-10946 Filed 5-3-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday–Thursday, 21–23 May 1985.

Times: 0900-1630 hours (Open) and 21-22 May and 0900-1300 hours (Open) on 23 May.

Place: Headquarters, U.S. Army Training and Doctrine Command (TRADOC), Fort Monroe, Virginia.

Agenda: The Doctrine and Training Integration Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet for briefings and discussions on integrating Army and Air Force operational concepts and doctrine, and to identify elements of doctrine to be trained and methodologies to support the training. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-10947 Filed 5-3-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday & Thursday, 29 & 30 May 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: U.S. Army Atmospheric Sciences Laboratory (ASL), White Sands Missile Range, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Atmospheric Sciences Laboratory (ASL) Effectiveness Review will meet for a follow-up visit of ASL. The study purpose is to ensure the laboratory's continued excellence by providing independent evaluation on problems and causes of deficiencies, if any. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-10948 Filed 5-3-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the Massachusetts State Department of Education Funds Recovered as a Result of a Final Audit Determination (ACN: 01-30001)

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Massachusetts State Department of Education an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination issued on March 17, 1983 by the Assistant Secretary for Elementary and Secondary Education. This notice describes the State educational agency's (SEA's) plan, submitted on behalf of the Boston Public Schools (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before June 5, 1985.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder, Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION:

A. Background

On March 17, 1983, the Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the LEA had improperly spent $88,487 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA during Fiscal Year 1982 conducted by the Department's Office of Inspector General.

The Assistant Secretary concluded in his final audit determination that although effective administrative practices prevailed in the LEA's Title I program, an amount of $88,487 was expended improperly by the LEA.

In particular, the Assistant Secretary determined that a total of $76,006 of Title I funds was used to provide Title I services for ineligible students. These services were provided in five private schools to 96 children who were ineligible because they did not reside in Title I project areas, as required by 34 CFR 201.80 and 201.81 (1981).

The Assistant Secretary also determined that the LEA had used $5,572 for unallowable costs for excess noninstructional duties. Specifically, Title I teachers and aides in 13 project schools had performed noninstructional duties in excess of the 10 percent allowed by 34 CFR 200.61 (1981) and section 134 of Title I (20 U.S.C. 2754).

Finally, the Assistant Secretary concluded that $6,909 in Title I funds was expended for Title I teachers performing regular homeroom supervision and substitute teaching in non-Title I classes in violation of 34 CFR 200.61(a)(3) (1981).

The SEA submitted a check dated July 29, 1983 to the Department in the amount of $88,487 owed as a result of the final audit determination.

B. Authority for Awarding a Grantback.

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were orginally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On January 31, 1985, the SEA formally requested in writing repayment of $66,365 (75 percent of the $88,487 returned to the Department as a result of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its January 31, 1985 request, submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1).

The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the

SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA proposes to use the grantback funds to augment the regular Chapter 1 program during school year 1985–86. Two additional teachers will be hired to expand the Chapter 1 basic skills instructional programs so that a larger number of the eligible children can be served. Funds are also budgeted for materials and fixed charges. Services will be provided to students in grades 6 through 12, and to the extent possible, to those eligible children who were affected by the misexpenditures that resulted in the final audit determination.

Equitable math and reading services will be provided with the grantback funds to eligible children in private schools.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of GEPA, including the SEA's discharge of its payment obligation to the Department in July 1983, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the children who were affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $66,365, which is 75 percent of the funds the Department has recovered as a result of the Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by June 30, 1986.

(3) The SEA, on behalf of the LEA, must submit not later than January 1, 1987, a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Massachusetts SEA on behalf of the Boston Public Schools. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before June 5, 1985.

(Catalog of Federal Domestic Assistance No. 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: May 1, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10933 Filed 5-3-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-03-NG]

Dome Petroleum Corp.; Order Granting Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 29, 1985, the ERA Administrator issued an Opinion and Order granting Dome Petroleum Corporation (Dome Corp.) authority to import natural gas for resale to St. Regis Corporation (St. Regis). The approval authorizes Dome to import up to 3,300 Mcf of natural gas per day and up to 1 Bcf per year from Dome Petroleum Limited of Calgary, Alberta, Canada, for a two-year period beginning on the date of first delivery. The initial price of natural gas delivered to St. Regis will be $4.00 (U.S.) per MMBtu, subject to monthly adjustment; the price at the border will be $3.20 (U.S.) per MMBtu. The imported gas is intended to displace No. 6 fuel oil at St. Regis' Tacoma, Washington, pulp and paper mill.

The text of the Opinion and Order follows:

FOR FURTHER INFORMATION CONTACT:

Robert McCann (Natural Gas Division, Office of the Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6600.

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6667.

Issued in Washington, D.C., on April 30, 1985.

James W. Workman,

Director, Office of Fuels Program Economic Regulatory Administration

United States of America, Department of Energy, Economic Regulatory Administration

[ERA Docket No. 85-03-NG; DOE/ERA Opinion and Order No. 78]

Dome Petroleum Corp.; Order Granting Authorization To Import Natural Gas From Canada and Granting Intervention

April 29, 1985.

I. Background

On January 16, 1985, Dome Petroleum Corporation (Dome Corp.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for authorization to import up to 3,300 Mcf per day and up to 1 Bcf per year of Canadian natural gas from Dome Petroleum Limited (Dome Ltd.). The applicant is a wholly-owned U.S. subsidiary of Dome Ltd., a Canadian natural gas producer and corporation. Under the import proposal, Dome Corp. would purchase the gas for resale to St. Regis Corporation (St. Regis) over a period of two years commencing on the date of first delivery. The imported gas is intended to displace No. 6 fuel oil used at St. Regis' Tacoma, Washington, pulp and paper mill.

The imported volumes would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the distribution facilities of Washington Natural Gas Company (Washington Natural), which would complete ultimate delivery to St. Regis' facility. According to the application, no new facilities will be required to implement the proposed import. Dome Corp. indicates that it is currently negotiating with Northwest and Washington Natural for transportation services.

The gas purchase contract executed by St. Regis and Dome Ltd. on October 17, 1984, entitles St. Regis to purchase up to the maximum daily and annual volumes requested for authorization but imposes no minimum purchase obligation or take-or-pay requirement. Deliveries will be on a "reasonable efforts" basis by Dome Ltd., as requested by St. Regis in monthly volume nominations. Dome Corp. has indicated that an agreement assigning this contract to it currently is being prepared, as well as an import agreement between it and Dome Ltd. Both agreements will be submitted as supplementary filings upon execution.

Under the purchase agreement, the price Dome Ltd. would be paid for the gas at the international border will be the price charged by the applicant to St. Regis, less the sum of the distribution tariff of Washington Natural, included associated taxes, the transmission tariff of Northwest, and the margin to be retained by the applicant. Dome Corp. estimated the initial price paid at the border would be $3.20 (U.S.) per MMBtu. The initial delivered price to St. Regis under the purchase agreement would be $4.00 (U.S.) per MMBtu. The price St. Regis would pay for the gas would be adjusted on a monthly basis to reflect any fluctuation in the price of No. 6 high sulfur residual fuel oil in the Seattle-Tacoma area.

In support of its application, Dome Corp. stated that the import arrangement it proposes would be competitive and not inconsistent with the public interest. The applicant maintained that it has negotiated an arrangement that is designed to serve a carefully and specifically defined incremental market at market-oriented and flexible price and volume terms. Therefore, it asserted that this import conforms with the DOE's gas import policy guidelines.[1] Dome Corp. further asserted that the purchase price for the gas would be sufficiently attractive to encourage St. Regis to convert from high sulfur fuel oil to cleaner burning natural gas with attendant positive impact upon the environment.

II. Interventions and Comments

A notice of the application was issued on February 6, 1985.[2] The notice invited protests and petitions to intervene, which were to be filed by March 18, 1985. The ERA received one motion to intervene from Washington Natural, the aforementioned gas distribution company which serves customers in the State of Washington from supplies purchased mainly from Northwest. This order grants intervention to Washington Natural.

Washington Natural does not expressly oppose the application but does express certain reservations regarding the proposal. Washington Natural's concern is that "[t]he Dome-St. Regis sale erodes Northwest's potential natural market base, and impedes its [Northwest's] ability to meet take and pay for requirements under its Westcoast [Transmission Company Ltd.] contract." Washington Natural contends that this would adversely affect it as a distribution customer of Northwest.[3] In order to mitigate this anticipated effect, Washington Natural requests that ERA condition any order approving the proposed import on a requirement that the volumes sold to St. Regis be credited against Northwest's annual obligations to purchase gas from Westcoast.

Washington Natural also asserts that there have been no negotiations between Washington Natural and the applicant or Washington Natural and St. Regis concerning transportation of the St. Regis gas through Washington Natural's distribution facilities, and Washington Natural claims that it does not have any existing tariff for such service. Washington Natural also alleges that there are no negotiations pending between Northwest and the applicant for transportation from the border to the point of connection with Washington Natural's distribution systems. Washington Natural contends that after backing our taxes, the proposed border price of $3.20, and Northwest's proposed transportation charge from the $4.00 delivery price to St. Regis, a balance of only 33 cents per MMBtu remains, which falls far short of covering Washington Natural's fixed costs associated with such service.

III. Decision

Dome Corp.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[5]

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[1] 49 FR 6684, February 22, 1984.

[2] 50 FR 6237, February 14, 1985.

[3] In the context, Washington Natural also comments on proceedings pending before the Federal Energy Regulatory Commission (FERC). Northwest has filed a general rate increase application (Docket No. RP85-13-000) that includes a special incentive rate. The rate filing would enable Northwest to transport gas, on an interruptible basis, on behalf of an end-user, local distribution company, interstate pipeline company or intrastate pipeline. Washington Natural believes a proposed settlement of the case, if approved, would enable it to compete with the price of No. 6 fuel oil and the services offered to St. Regis by Dome Corp. In addition, Washington Natural indicates the FERC staff recently took a position against the passthrough of the demand-commodity pricing rates contained in Northwest's recently renegotiated contract with Westcoast. If the new rate structure is not approved by the FERC, Washington Natural predicts further limitations on the ability of Northwest to price its gas competitively.

[4] Footnote omitted.

[5] 15 U.S.C. 717b.

The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.[6] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Washington Natural states it does not challenge the competitiveness of the applicant's import proposal but argues other factors warrant consideration in the public interest. However, its principal concern is that the applicant proposes a sale to a market Northwest and Washington Natural would like to occupy. It is particularly concerned about the impact of the proposed sale on Northwest's take-or-pay obligations and the ramifications of this impact on its own operations. Washington Natural wants insulation from this competition, and to this end requests that the ERA impose restrictions on the Dome Corp. import arrangement.

We understand Washington Natural's desire to protect and expand its market. Nevertheless, the policy of this agency is to promote competition and not to limit it. Washington Natural and Northwest must utilize the tools and options available to them to adjust and respond to the market, rather than rely on government regulation for protection. One of the options may be to negotiate with other affected parties concerning Northwest's and Westcoast's minimum take agreement. However, this proceeding is not the appropriate place for such negotiation to occur. We note, moreover, that there is no contractual relationship between this import arrangement and the Northwest-Westcoast arrangement. The intervenor is requesting an adjustment for a take-or-pay obligation in a commercial relationship to which the applicant and its supplier are not parties. The ERA strongly encourages the parties to work out their concerns with each other rather than seek to have the government impose a solution. The ERA will not impose such a condition on Dome Corp., and Washington Natural's request that such a condition be imposed is denied.

The ERA does not have jurisdiction over the interstate transportation rates and tariff matters raised by the intervenor. The appropriate place for Washington Natural to express its concerns is in presently pending or other relevant proceedings before the FERC.[7] Furthermore, the existence of firm transportation contracts is not germane to the decision of whether to approve an import authorization.

[6] *See supra* note 1.

[7] FERC Docket Nos. RP81-47-000, RP85-1-1000, and RP85-13-000.

The ERA finds that the applicant's arrangement fully comports with the public interest test. No one has challenged the competitiveness of the proposed import. The terms and conditions of the contract between Dome Ltd. and St. Regis (to be assigned to the applicant by Dome Ltd.) are flexible and provide assurance that the imported gas will remain competitive over the contract period. The volumes will be imported on a short-term basis and at a proposed rate competitive with the natural gas available to St. Regis and less expensive than the No. 6 fuel oil it currently uses. Deliveries will be on a reasonable efforts basis as requested by St. Regis in daily and annual volume nominations; there is no minimum purchase or take-or-pay obligation. Furthermore, the agreement permits the parties to adjust the initial purchase price of the gas on a monthly basis to reflect market conditions at the time. These and the other contract terms and conditions, taken together, demonstrate that the arrangement is flexible and that the gas will only be imported when it is fully competitive.[8]

Moreover, the gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed that St. Regis will purchase the gas only to the extent it needs such volumes for its plant operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find the authorization requested by Dome Corp. is not inconsistent with the public interest and should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Dome Petroleum Corporation (Dome Corp.) is authorized to import up to 3.3 MMcf per day and up to a maximum annual volume of 1 Bcf of Canadian natural gas for a two-year period beginning on the date of first delivery for resale to St. Regis Corporation in accordance with the pricing and other provisions established in the contract submitted as part of its application.

B. Dome Corp. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Dome Corp. shall file with the ERA in the month following each quarter, quarterly reports showing by month the quantities of gas imported and the average price on an MMBtu basis paid for such gas.

D. The motion to intervene, as set forth in this opinion and order, is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenor shall be limited to matters affecting asserted rights and intersts specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

[8] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Issued in Washington, D.C., April 29, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10888 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 84-20-NG]

Southeastern Michigan Gas Co.; Natural Gas Imports

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 29, 1985, the ERA issued an opinion and order approving Southeastern Michigan Gas Company's (Southeastern) application to import Canadian natural gas from Northridge Petroleum Marketing, Inc. The approval authorizes Southeastern to import at a price of $2.99 (U.S.) up to 20 MMcf per day of natural gas on a best-efforts, interruptible basis for a period beginning on the date of issuance, and ending February 28, 1987.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9760.

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral

Leasing), Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on April 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

United States of America, Department of Energy, Economic Regulatory Administration

[ERA Docket No. 84-20-NG; DOE/ERA Opinion and Order No. 79]

April 29, 1985.

Southeastern Michigan Gas Co.; Order Authorizing the Importation of Natural Gas from Canada

I. Background

On December 21, 1984, Southeastern Michigan Gas Company (Southeastern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, for authorization to import up to 9 Bcf of Canadian gas over a two-year period that would begin on March 1, 1985, and end on February 28, 1987. The gas would be purchased from Northridge Petroleum Marketing, Inc. (Northridge) on a best-efforts, interruptible basis pursuant to a gas purchase contract dated November 7, 1984, and a contract amendment filed April 1, 1985. The contract would be extended automatically in two-year increments.

Under the agreement, up to 20 MMcf of gas per day could be purchased with an annual limitation of 3 Bcf. Because the requested two-year authorization period (Mar. 1, 1985–Feb. 28, 1987) overlaps three complete or partial contract years,[1] the applicant is seeking authorization of up to 9 Bcf, the total possible amount available to Southeastern under the contract during the authorization period.

For the initial contract period ending November 1, 1985, the price of the gas would be $2.99 (U.S.) per Mcf. Sixty days before the end of the initial contract year, Southeastern and Northridge would meet to redetermine the purchase price, taking into consideration the prevailing market conditions of alternative sources of supply available to Southeastern. The parties, by mutual agreement, may redetermine the purchase price at any other time in response to market conditions.

Southeastern proposes to purchase the imported gas supplies for its general system supply for the benefit of all consumers receiving retail gas service in its service areas. It asserts that there is a need for the imported supplies to achieve the lowest reasonable cost of gas for consumers in its service areas, and to exert competitive pressure on its interstate domestic suppliers.

The imported gas would be produced in Alberta, Canada, from fields owned or controlled by five natural gas producing companies (Calco Resources Ltd., Lac Minerals Ltd., Paramount Resources Ltd., Signalta Resources Ltd., and Maynard Energy Inc.), or would be acquired by Northridge from such other sources within Canada as may be required from time to time. It is contemplated that Northridge would enter into agreements with NOVA, an Alberta Corporation, and TransCanada PipeLines Limited (TransCanada) for the transportation of the gas from points of production through existing facilities to a point of delivery on the international boundary near Emerson, Manitoba, Canada. Southeastern proposes to enter into agreements with Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company (ANR) for the receipt and redelivery of the gas to Southeastern at a new delivery point under construction by ANR in Columbus Township, Michigan. The new delivery point in Columbus Township is already under construction for purposes unrelated to this import. No final transportation agreements had been reached by the parties to the proposed arrangement at the time of filing.

Southeastern and Northridge executed an amending agreement to the gas purchase contract on March 28, 1985. The amending agreement, filed on April 1, 1985, as an amendment to Southeastern's pending application, modified the gas purchase contract (1) to lower the purchase price for the gas from $3.10 (U.S.) to $2.99 (U.S.) per Mcf during the first contract year; (2) to expand Southeastern's ability to renegotiate price in response to market conditions; and (3) to make contract termination an option at Southeastern's election, rather than automatic, in the event Southeastern loses its status as a Rate Schedule G-1 customer of Panhandle.

II. Procedural History

A notice of Southeastern's application was issued on January 11, 1985.[2] The notice invited protests and motions to intervene which were to be filed by February 19, 1985. Motions to intervene were filed by Central Illinois Light Company (CILCO), Pan-Alberta Gas Limited (Pan-Alberta), and Panhandle Eastern Pipeline Company (Panhandle).

CILCO, an Illinois electric and gas distributor who purchases 97 percent of its natural gas from Panhandle, supported Southeastern's application. Pan-Alberta, a Canadian supplier to Panhandle via Northwest Alaskan Pipeline Company (Northwest Alaskan) through the prebuild portion of the Alaska Natural Gas Transportation System (ANGTS), intervened in opposition to the application and stated that it has opposed the arrangement before the Canadian National Energy Board (NEB). Panhandle, Southeastern's primary gas supplier who purchases gas from both domestic sources and from Canada through the prebuild, opposed the application and requested additional procedures, including a trial-type hearing, to determine the impact of the proposed import on the public interest and the adverse consequences to Panhandle's import arrangements, system operations, and Michigan consumers.

On February 27, 1985, Southeastern filed an answer in opposition to Panhandle's comments and request for additional procedures, and to Pan-Alberta's motion to intervene.

Because of the concerns raised by the parties and the request for additional procedures, a procedural order was issued on March 20, 1985, which allowed additional written comments to be submitted by March 29, 1985, scheduled a conference at which oral presentations could be made on April 3, 1985, and granted all motions to intervene.

Additional written comments were submitted by Panhandle and Southeastern on March 29, 1985. Panhandle reiterated its requests for a full trial-type hearing and related proceedings to permit evidence to be submitted and addressed by Panhandle.

Panhandle and Southeastern participated in the conference on April 3, 1985. Pan-Alberta attended the conference but did not participate in the proceeding. Both Panhandle and Southeastern made oral presentations. At the conference, Panhandle reiterated its request for a trial-type hearing. No new issues were raised in the additional written comments or at the conference. Panhandle acknowledged being served with the amendment to the purchase

[1] A contract year is defined as the 12-month period ending at 8:00 a.m. on November 1st of any calender year, except the initial period which will be the eight-month period starting on March 1, 1985, and ending on November 1, 1985.

[2] 50 FR 2511, January 18, 1985.

contract and expressed no concern over it.[3]

III. Decision

Southeastern's application has been reviewed to determine if it conforms with section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest."[4] In making this finding, the Administrator of the ERA is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.[5] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

During the course of this proceeding, the parties opposing the proposed import raised a number of issues, both as a basis for challenging the project's consistency with the public interest and as a basis for Panhandle's request for a trial-type hearing.

While professing that it is not adverse to competition, the major issue that Panhandle, and in part Pan-Alberta, raised is that previously approved long-term imports should not have to compete with short-term imports in the same market area. Panhandle is concerned that its sales to Southeastern will be displaced by the proposed import and it will then have to cut back its long-term supplies, including those from Pan-Alberta. Panhandle maintains that Southeastern is opportunistically taking advantage of a lower priced short-term import to displace its purchases from Panhandle, while at the same time continuing to rely on Panhandle as a long-term supply source. Panhandle feels that its other General Service customers may follow Southeastern's example and seek imports of their own to replace their purchases from Panhandle and the cumulative impact would result in a cutback of Panhandle's long-term supply sources.[6]

Southeastern responded to Panhandle's allegations by stating that the "primary issue is not whether the Administration should avoid authorizing short-term imports of gas that is lower priced to protect long-term imports from competition. * * * Instead, we believe that ERA has often said that the primary issue is the competitiveness of the import. * * * Southeastern has shown that the proposed import is competitive today, and it is competitive in the future.[7]

Southeastern has indicated that if the Northridge import were not available it would seek supplies from sources other than Panhandle, as long as those supplies were cheaper than Panhandle's incremental costs. Southeastern is determined to diversify its supplies, and to that extent Panhandle will lose the sales represented by the Northridge import, whether or not the import is approved by the ERA.

The ERA concurs with Southeastern's response, that the competitiveness of the import is the prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. Panhandle has options available to it to meet competition, as do other pipelines. Panhandle has indicated that it is in fact pursuing an option to become more competitive. It "has begun a concerted effort to reduce its gas supply costs."[8]

Panhandle alleged that the proposed import will discourage Canadian suppliers from renegotiating existing contracts and negotiating new ones. However, the ERA is unpersuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the past several years between U.S. and Candaian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the Southeastern/Northridge arrangement will change this.

Panhandle claimed that, since neither Northridge nor Southeastern have firm transportation contracts in place, the import cannot be reliable. Southeastern responded that Panhandle had not explained how the lack of transportation contracts is relevant to a decision on whether the import is in the public interest. Further, it indicated that it expected to have transportation contracts in place by April 14, 1985.[9] It is the ERA's position that contracts for transportation of imported gas do not represent a relevant issue in deciding whether to approve import authorizations, since the ERA only authorizes the import of the gas and not the means of transporting that gas to market. Clearly, the gas will not flow under any arrangement or authorization if all the supply and transportation contracts are not in place.

Panhandle questioned the security of the import since there had been no showing that Northridge had entered into contracts to purchase the gas from the producers. Panhandle alleged that this lack of producer contracts makes the source of supply unreliable.

The ERA has in past orders[10] indicated that the security of the import supply is not a major issue when the gas is to be purchased on a short-term, best-efforts basis. Nothing that Panhandle has alleged leads the ERA to believe that this import it different from other short-term imports is has approved with regard to the issue of the security of supply.

Panhandle has contended that there is no need for this import which it cannot meet. As set forth in the gas import policy statement, the question of the need for an import is a function of its competitiveness, and Panhandle has not challenged the competitiveness of the proposed import, nor demonstrated why some criteria other than competitiveness should be used to evaluate need in this case.

Panhandle has indicated that because of this import and other purchases that Southeastern has made from suppliers other than Panhandle, Southeastern may lose its status as a General Service customer under Panhandle's interstate transportation tariff. This issue, to the extent it may have merit, is a matter for the Federal Energy Regulatory Commission rather than the ERA.

Southeastern's import arrangement fully comports with the public interest test established in the DOE's policy guidelines. The volumes will be imported on a best-efforts, interruptible basis and the only take-or-pay obligation occurs in the event that the gas purchase contract is terminated when Southeastern has nominated volumes which Northridge has delivered to the intervening transporters. The flexibility of the import arrangement, along with the provisions for adjustment of the purchase price contained in the amended gas purchase contract, ensure that the gas will only be imported when

[3] Transcript of Proceedings at 39, Application of Southeastern Michigan's Gas Company, April 3, 1985.

[4] 15 U.S.C. 717b.

[5] 49 FR 6684, February 22, 1984.

[6] Transcript at 23.

[7] Transcript at 7.

[8] Transcript at 22.

[9] Transcript at 33.

[10] See *Northwest natural Gas Company*, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA ¶70.577); *Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶70.578); *Southwest Gas Corporation*, DOE/ERA Opinion and Order No. 69, issued December 18, 1984 (1 ERA ¶70.581); and *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA ¶70.585).

the price is competitive in Southeastern's markets. The pricing flexibility and the other contract terms and conditions, taken together, demonstrate that the import arrangement will be sufficiently flexible to allow Southeastern to respond to its markets over the length of the contract.

In its written submission of March 29, 1985, and during the conference held on April 3, 1985, Panhandle renewed its request for a full trial-type hearing and related proceedings. It alleged that the ERA had no basis in the present record for granting this import authorization. Further, it maintained that the issues of the lack of transportation contracts and reliability of supply were still in dispute. As stated above, the existence or lack of contracts for transportation or contracted producer gas reserves are not relevant to the approval of this import authorization. Instead, the competitiveness of the import is the prime concern, and Panhandle failed to challenge the competitiveness of Southeastern's proposal. As Panhandle failed to demonstrate, in accordance with ERA's procedural rules, that there are factual issues which are genuinely in dispute, relevant and material to the decision, and further failed to show that a trial-type hearing is necessary for a full and true disclosure of the facts, Panhandle's request for a trial-type hearing is denied.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Southeastern is not inconsistent with the public interest and should be granted.[11]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Southeastern Michigan Gas Company is authorized to import up to 9 Bcf of Canadian gas during the period beginning on the date of issuance, and ending February 28, 1987, in accordance with the provisions of the contract between Southeastern and Northridge submitted as a part of the application filed by Southeastern on December 21, 1984, and amended on April 1, 1985.

B. Southeastern shall notify the ERA in writing of the date of the first delivery of gas authorized in ordering paragraph A within two weeks after deliveries begin.

C. Southeastern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price paid for those volumes.

Issued in Washington, D.C., April 29, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10889 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

[11] The Doe has determined that because existing pipeline facilities will be used and no new construction is being undertaken specifically for this import, granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

[Docket Nos. ER85-445-000 et al.]

Pennsylvania Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER85-445-000]

April 29, 1985.

Take notice that on April 19, 1985, Pennsylvania Power Company (PP&L) tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The proposed changes would increase revenues from jurisdiction sales and service by $346,468 or 6.7 percent based on the 12-month period ending June 30, 1985. This increase is composed of an increase in base rate test year revenues of $131,185 effective March 15, 1985 and an increase in the fuel adjustment charge test year revenues of $256,924 effective April 1, 1985. In addition, three changes in the tax adjustment surcharge are included in the filing: (1) A decrease from 5.4 percent to 5.22 effective January 1, 1985; (2) an increase from 5.22 percent to 5.23 percent effective March 15, 1985; and (3) a decrease from 5.23 percent to 4.37 percent effective April 1, 1985. The net effect of these changes in the tax surcharge results in a decrease in test year revenues of $41,642.

PP&L states that the five municipal resale customers served by PP&L entered into settlement agreements effective as of September 1, 1984. These agreements provided that these customers will be charged applicable retail rates as may be in effect during the seven-year terms of the agreements. Changes in rates were agreed to become effective as of these customers simultaneously with changes approved by the PPUC. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon PP&L's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. New York Electric & Gas Corporation

[Docket No. ER85-426-000]

April 26, 1985.

Take notice that on April 1, 1985, New York State Electric & Gas Corporation (NYSEG) submitted for filing a Certificate of Concurrence for the rate schedule and supplements listed below:

An agreement dated December 1, 1976, designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 97 and the supplements thereto:

Supplement No. 1 dated July 24, 1978
Supplement No. 2 and Supplement No. 1 to Supplement dated January 8, 1982
Supplement No. 3 dated May 6, 1982
Supplement No. 4 dated October 28, 1983

Comment date: May 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER85-444-000]

April 29, 1985.

Take notice that on April 19, 1985, Puget Sound Power & Light Company (Puget) tendered for filing Notices of Termination of Puget's Rate Schedule Nos. 23 and 24, such schedules having terminated by their own terms.

Copies of this filing were served upon the Bonneville Power Administration and the Western Area Power Administration.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Corporation

[Docket No. ER85-436-000]

April 26, 1985.

Take notice that on April 15, 1985, Florida Power & Light Company (FP&L), tendered for filing a document entitled Amendment Number Three to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of

Tallahassee, Florida (Rate Schedule FERC No. 47).

FP&L states that under Amendment Number Three, FP&L will transmit power and energy for the City of Tallahassee as is required in the implementation of its interchange agreement with Jacksonville Electric Authority.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Copies of this failing were served on the Electric Department, City of Tallahassee, Florida.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER85-443-000]

April 29, 1985.

Take notice that on April 18, 1985, Illinois Power Company (Illinois Power) tendered for filing proposed Amendment No. 9, dated April 9, 1985, to the Interchange Agreement, dated March 15, 1973, between Iowa-Illinois Gas and Electric Company (IIGE) and Illinois Power.

Illinois Power indicates that this filing is made for the principal purpose of incorporating language for Third-Party Purchase & Resale Transactions, pursuant to FERC Order No. 84, into various related and restated schedules which otherwise do not reflect rate increases.

Illinois Power requests an effective date of July 1, 1985.

Copies of this filing has been served upon IIGE, the Illinois Commerce Commission, and the Iowa State Commerce Commission.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10955 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-25-000]

Applied Energy Services, Inc. v. Oklahoma Corporation Commisson; Extension of Time

April 30, 1985.

On April 29, 1985, the Oklahoma Corporation Commission (OCC) filed a motion requesting an extension of ten days to and including May 9, 1985, for the filing of answers, protests, and additional interventions in this proceeding. It states that Applied Energy Services, Inc. (AES) does not consent to the extension. it further states that counsel for Oklahoma Gas and Electric Corp. and Public Service Company of Oklahoma, who have filed petitions to intervene, do not oppose the extension and that counsel for Smith Cogeneration, Inc., who has also filed a petition to intervene, takes no position with respect to the motion.

The National Association of Regulatory Utility Commissioners (NARUC) filed a motion to intervene and requests that NARUC be permitted to file an answer to the complaint when the OCC's answer is due. International Paper Company, Stone Container Corporation, Potlatch Corporation, Simpson Paper Company, Hammerville Paper Company, Federal Paper Board, Inc., Hollingsworth and Use Company, U.S. Energy Corp., and Ultrapower, Inc. also filed motions to intervene. They note they intend to file further comments in several days, but do not request an extension of time.

In view of the importance of the question raised by the complaint, the importance of the views of the OCC and other Commissions who wish to participate in this proceeding, and the fact that some parties indicate they intend to file comments in a few days, an extension of time, for filing answers, protests and interventions is granted for seven days to and including May 6, 1985. The full ten day extension requested will not be granted because of the 60 day time period provided in section 210(h) of the Public Utility Regulatory Policies Act, after which AES may bring an action in United States District Court. Moreover, in light of this provision, all answers to motions to intervene shall be filed by May 13, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10918 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP80-209-005, et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP80-209-005]

Take notice that on April 16, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP80-209-005, a petition to amend the order issued August 21, 1981, in Docket Nos. CP80-209-000, *et al.*, pursuant to Section 7(c) of the Natural Gas Act so as to authorize a new delivery point in addition to those already specified in the August 21, 1981, order, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that the order of August 21, 1981, authorized, *inter alia*, ANR to transport and deliver gas on behalf of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern). The two delivery points authorized by the order were the proposed interconnection between ANR and Northern in Kiowa County, Kansas, and the existing interconnection between and ANR and United Gas Pipe Line in St. Mary Parish, Louisiana.

It is explained that Northern and Texas Eastern Transmission Corporation (Texas Eastern) have entered into a contract whereby Northern would sell gas to Texas Eastern for system supply.[1] ANR states that a proposed delivery point for this sale would be the existing interconnection between ANR and Texas Eastern in St. Landry Parish, Louisiana (St. Landry). ANR herein requests amendment of the order of August 21, 1981, pursuant to a December 12, 1984, amendment to the agreement between ANR and Northern so as to allow ANR to deliver Northern's gas to Texas Eastern at the St. Landry interconnection.

Comment date: May 20, 1985, in accordance with the first subparagraph

[1] An applicaton for authorization to make this sale is pending in Docket No. CP85-183-000.

of Standard Paragraph F at the end of this notice.

2. International Paper Company

[Docket No. CP81-323-001]

April 30, 1985.

Take notice that on April 4, 1985, International Paper Company (IPCO), International Paper Plaza, 77 West 45th Street, New York, New York 10036, filed in Docket No. CP81-323-001 a petition to amend the order issued November 26, 1982, in Docket No. CP81-323-000 pursuant to Section 7(c) of the Natural Gas Act to increase the transportation from 600 Mcf of natural gas per day up to 2,510 Mcf of natural gas per day through its Springhill pipeline, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

IPCO states that it purchases gas at the wellhead in the Lake Erling Field, from Superior Oil Company, in LaFayette County, Arkansas, and transports this gas to Springhill, Webster Parish, Louisiana, for use as boiler fuel and space heating in its paper mill and chemical plant. By order issued November 26, 1982, in Docket No. CP81-323-000, the Commission authorized IPCO to transport up to 600 Mcf of natural gas per day for such purposes.

IPCO requests the Commission to amend its order of November 26, 1982, by authorizing IPCO to increase the amount of gas it transports from a maximum of 600 Mcf of gas per day to a maximum of 2,510 Mcf of gas per day. It is stated that no new or additional facilities are required for the transportation of gas, as requested, as the Springhill pipeline has a capacity in excess of 8,000 Mcf per day.

Comment date: May 21, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85-433-000]

April 30, 1985.

Take notice that on April 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-433-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one small volume measurement station to accommodate natural gas deliveries to the community of Mayhew Lake, Minnestoa, through Peoples Natural Gas Company (Peoples) under the blanket certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate one small volume measurement station on its 12-inch Brainerd line in Benton County, Minnesota. Applicant states that the facilities would be used for the delivery of up to 44 Mcf of natural gas per day to Mayhew Lake through Peoples, the local distribution company, for residential and commercial uses. Applicant further states that the sale would be made under its Rate Schedule CD 1, Rate Zone B, Group EF and that the required volumes would be served from the firm entitlement designated by Peoples for delivery to Mora, Minnesota. It is indicated that the total estimated cost of the facilities would be $3,286.

Comment date: June 14,1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-426-000]

April 30, 1985.

Take notice that on April 10, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-426-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct, interruptible sale of natural gas to H.S. Ausherman (Ausherman), in Reno County, Kansas, for use in irrigation operations under the certificate issued Docket Nos. CP82-479-000 and CP82-479-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central proposes to tap its transmission pipeline in Reno County, Kansas, and construct measuring, regulating and appurtenant facilities for the direct interruptible sale of natural gas to Ausherman. Northwest Central estimates the cost of these facilities to be $6,030 which it proposes to pay for from available funds.

Northwest Central states that the projected volume of delivery through this point is approximately 5,500 Mcf of gas annually and 132 Mcf on a peak day. Northwest Central states it would not need ot acquire any new gas supply to make this sale and that this sale would not have a detrimental effect on any of Northwest Central's existing customers.

Northwest Central states it would change Mr. Ausherman $1.3330 per Mcf of natural gas delivered plus or minus such monthly adjustments made in accordance with the provisions of their gas sales contract.

Comment date: June 14,1985, in accordance with Standard Paragraph G at the end of this notice.

5. Mountain Fuel Resources, Inc.

[Docket No. CP85-439-000]

April 29, 1985.

Take notice that on April 16, 1985, Mountain Fuel Resources, Inc. (Applicant), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-439-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to operate in accordance with an amended gas transportation and exchange agreement between Colorado Interstate Gas Company (CIG) and Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant explains that on December 8, 1980, a gas transportation and exchange agreement (Agreement) was entered into between CIG and Mountain Fuel Supply Company (Mountain Fuel), Applicant's predecessor in interest to the agreement. It is stated that the agreement provides for concurrent deliveries of natural gas between the parties at specified points on their respective interstate transmission pipeline systems and limits deliveries to certain areas of interest in which gas supplies are owned or controlled by the parties. Applicant asserts that only gas from sources of supply which are within the specified areas of interest is exchanged and transported pursuant to the agreement.

Applicant states that on December 31, 1984, Applicant and CIG entered in to an amendment to the agreement to incorporate new sources of supply which lie outside the areas of interest originally specified in the agreement and to delete areas of interest that are no longer producing or have never produced natural gas. Applicant requests certificate authority to operate in accordance with the amended agreement.

Comment date:: May 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment

date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10917 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-441-003, and G-962-003]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Amendment and Petition to Amend

April 29, 1985.

Take notice that on April 17, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-003, a further amendment to its application filed in Docket No. CP84-441-000, pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) so as (1) to reduce delivery obligations to Columbia Gas Transmission Corporation (Columbia) under Tennessee's Rate Schedule CD-3 by 136,000 Mcf of gas per day, (2) to transfer 30,000 Mcf of gas per day from Tennessee's authorized sales level to Columbia under Rate Schedule CD-3 to Rate Schedule CD-4, (3) to increase certificated sales obligations on a daily and on an annual basis for various customers of Tennessee, (4) to construct and operate facilities necessary to render the revised sales services, and (5) to revise sales delivery obligations to all customers from a Mcf basis to a dekatherm (dt) basis. Tennessee also filed on April 17, 1985, in Docket No. G-962-003 a petition to amend the order issued on March 21, 1985, in Docket No. G-962-000 pursuant to Section 7(c) of the NGA so as to authorize Tennessee to revise its Rate Schedule T-20 transportation service with Columbia to change a delivery point to Columbia. The proposals are more fully set forth in the petition to amend and amendment which are on file with the Commission and open to public inspection.

In Docket No. CP84-441-003 Tennessee proposes to increase the maximum daily quantities (MDQ), annual volume limitations (AVL), and delivery point daily volume limits (DVL) for various customers, and revise sales delivery obligations to all customers from an Mcf basis to a dt basis, as detailed in Appendix A to this notice. Tennessee also requires abandonment authorization, effective February 1, 1986, for a 136,000 Mcf per day or 139,400 dt equivalent of gas per day sales reductions to Columbia; and a transfer of 30,000 Mcf of gas per day (30,750 dt per day) from Tennessee's authorized sales level to Columbia under Rate Schedule CD-3 to Rate Schedule CD-4. Tennessee states that the sales delivery obligation revisions would result in a daily contractual delivery obligation of 4,061,872 dt equivalent of gas and an annual sales delivery obligation of 1,304,196,259 dt. Further, Tennessee states that the revised sales delivery obligations would require an additional 18,000,000 Mcf of storage capacity together with 119,000 Mcf per day of withdrawal capability. Tennessee states that it has reached agreement with Consolidated Gas Transmission Corporation (Con Gas) for 12,000,000 dt equivalent of storage service and that it is currently negotiating for the remainder of the storage service required.

To accomplish the revised sales delivery obligations, Tennessee alleges that approximately 260,000 Mcf per day of additional capacity on its pipeline system is required. As a result, Tennessee proposes to construct and operate approximately $194,960,000 in facilities detailed in Appendix B to this notice to expand its system capacity. Tennessee states in its amendment that the facilities originally proposed in Tennessee's Docket No. CP84-441-000 are entirely superseded by the facilities proposed in Docket No. CP84-441-002 and those proposed herein. It is indicated that the proposed facilities would initially be financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements or short-term financing which will be rolled in to permanent financing.

Tennessee indicates in its amendment that the pending Niagara Interstate Pipeline System's (NIPS) proposals in Docket No. CP83-170-000 when authorized by the Commission, would provide Tennessee with approximately 329,000 Mcf per day of new gas supplies at the border between Canada and the U.S. near Niagara Falls, New York. In the interim, prior to authorization of NIPS and construction of facilities proposed therein, Tennessee states that it contracted with Con Gas for the sales of not less than 80,000 dt equivalent per day and not more than 100,000 dt equivalent per day on a firm basis. Tennessee states that this gas supply would be available to it beginning on the in-service date of facilities proposed in this amended application at the interconnection between Tennessee and Con Gas near Morrisville, New York.

In Docket No. G-962-003, Tennessee proposes a revision to Rate Schedule T-20 which would change on February 1, 1986, Tennessee's current delivery point to Columbia from existing points of delivery in Tennessee's northern rate zone to a point of interconnection with Columbia Gulf Transmission Company near Egan, Louisiana. As a result of this change in delivery point, Tennessee also proposes to revise its Rate Schedule T-

20 transportation charge to Columbia to take effect on February 1, 1986. Tennessee proposes no other changes to its Rate Schedule T–20 transportation service.

Tennessee states in its amendment that Exhibits G through G–2 (system flow diagrams), Exhibit H (gas supply data), and Exhibit I (market data) of its amendment would be submitted as supplements to the amendment when they become available.

Any person desiring to be heard or to make any protest with reference to said amendment and petition to amend should on or before May 20, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed in Docket No. CP84–441–000 need not file again.

Kenneth F. Plumb,

Secretary.

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
Texas Zone						
Hemphill	Hemphill	1,020	100,400	1,046	102,910	1,046
Kountze	Kountze	2,142	287,000	2,196	294,175	2,196
Southwest Gas	Dolen	1,020	60,000	1,046	61,500	1,046
Woodville	Woodville	1,700	359,500	2,462	366,847	2,462
Total Texas Zone		5,882	806,900	6,750	827,432	
Southern Zone						
Adamsville	Milledgeville	1,290	178,280	1,324	184,003	1,324
Alabama-Tennessee		129,144	42,752,600	158,142	48,931,965	
	Corinth					
	Barton					
	Selmar Emergency					
	Florence					
Arkansas-Louisiana	Chicot County	1,394	115,555	1,430	118,560	1,430
Ashland	Ashland	370	40,417	[illegible]	43,683	[illegible]
Baldwyn	Baldwyn	1,500	196,916	1,622	208,546	1,622
Batesville	Batesville	2,787	501,087	4,268	527,995	4,268
Bolivar	Bolivar	4,716	1,126,711	7,500	1,156,006	7,500
Booneville	Booneville	3,000	601,336	4,771	616,971	4,771
Centerville	Centerville Only	1,900	252,480	5,125	470,496	
Central Gas	Florence	2,023	429,610	4,920	[illegible]	4,920
Clarksville	Clarksville	22,730	4,130,992	24,121	4,034,288,366	24,121
Collinwood	Collinwood	410	76,519	675	78,819	675
Corinth	Corinth	7,100	1,183,695	12,000	1,507,904	12,000
Dickson	Dickson	4,025	1,158,678	7,500	1,188,904	7,500
East Tennessee		325,719	102,564,658	333,862	99,063,785	
	Greenbrier No. 1					243,630
	Greenbrier No. 2					
	Lobelville					
Elizabeth	Elizabeth	500	50,00	985	112,861	[illegible]
Entex						
	Coffeeville	350	45,946	554	60,057	554
	Crowder	1,000	153,347	1,731	183,920	1,731
	Drew-Jacquith	[illegible]	161,888	1,628	191,420	1,628
	Ruleville	800	144,913	1,905	206,434	1,905
	Shaw	700	111,667	995	131,367	995
	Sumner	850	120,645	1,606	150,134	1,606
	Lambert	4,817	927,033	4,942	1,058,448	4,942
	Oxford	11,015	1,579,003	11,301	1,772,398	11,301
Forest Hill	Forest Hill	190	36,738	195	37,656	195
Grand Isle	Continental Oil	1,020	64,164	1,200	[illegible]	1,200
Greenbrier	Greenbrier	528	79,546	1,088	96,445	1,088
Hardeman-Fayette	Moscow	1,050	345,017	1,724	353,987	1,724
Harrisonburg	Harrisonburg	727	67,000	1,182	141,690	1,182
Henderson	Henderson	1,750	272,741	2,309	279,830	2,309
Hohenwald	Hohenwald	1,652	432,978	2,206	444,237	2,206
Holly Springs	Holly Springs	4,800	1,171,400	7,500	1,200,685	7,500
Humphreys County		19,299	5,164,193	19,781	5,293,298	
	McEwen					
	Waverly					
Lexington	Lexington	2,901	443,206	7,500	12,173,625	7,500
Linden	Linden	540	90,010	1,284	141,302	1,284
Lobelville	Perry County	406	66,681	416	68,348	416
Louisiana Gas		305	34,700	313	[illegible]	
	Transylvania					210
	Crowville					103
Midwestern		600,780	219,284,700	615,800	224,767,000	
	Portland					
	Will County					
Mississippi Valley	Holcomb	160	17,300	164	17,733	
Nashville		154,575	38,242,900	162,610	39,237,216	
	Nashville No. 1					
	Nashville No. 2					155,633
	Ashland City					3,899
	White House					1,539
	Fairview					1,539

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MCQ	Existing AVL	Proposed MCQ	Proposed AVL	Proposed DVL
New Albany		4,664	[illegible]	7,500	870,199	
	New Albany					
	Cotton Plant					
North Alabama	[illegible]	2,040	744,600	2,091	763,215	2,091
Northwest Alabama	Lamar County	[illegible]	[illegible]	1,100	401,500	1,100
Parsons	Parsons	1,876	302,184	2,565	310,041	2,565
Pontotoc	Pontotoc	2,849	611,979	5,000	[illegible]	[illegible]
Portland	Portland	1,954	376,493	3,116	457,030	3,116
Provencal	Provencal	285	26,377	292	27,036	[illegible]
Ridgetop	Ridgetop	227	21,769	[illegible]	22,334	[illegible]
Ripley	Ripley	4,249	1,538,886	7,500	1,621,552	7,500
Sam Houston	Burns	1,802	[illegible]	2,155	308,312	2,155
Savannah	Savannah	2,941	[illegible]	3,591	338,580	3,591
Senatobia	Sardis	4,410	745,789	[illegible]	776,203	6,500
Shuqualak	Shuqualak	1,530	508,196	1,568	521,408	1,568
Springfield	Springfield	4 895	897,824	7,500	1,380,000	7,500
Texas Gas		26,520	9,679,800	27,210	9,931,650	
	Greenville					27,183
	Greenwood					18,401
	Hardy Springs					10,978
	Mitchellville					21,956
Trans Louisiana	Robeline	140	15,100	144	15,478	144
Vernon Parish	Pitkin	[illegible]	26,129	410	31,349	410
Vina	Vina	151	13,657	1,151	300,000	1,151
Walnut	Walnut	539	67,413	616	69,166	616
Waynesboro	Wayne County	807	121,223	1,250	150,000	1,250
West Tennessee	Sardis	10,840	1,740,00	12,500	2,070,000	12,500
Total Southern Zone		1,393,334	443,561,409	1,512,705	457,215,404	
Kerr-McGee		3,570	1,303,050	3,659	1,335,535	3,659
Central Zones						
Columbia		76,500	27,922,500	78,413	28,620,745	
	North Means					
	Kenova					
	Greenup					
	Richmond					
Delta		10,420	2,139,247	15,648	2,117,585	
	Nicholasville					7,500
	Berea					6,000
	Salt Lick					1,611
	Jeffersonville					537
Grayson	Grayson	1,730	216,932	1,819	222,574	1,819
Inland		51,000	18,615,000	21,500	7,847,500	
	Straight Creek					
	Manity					
Morehead	Rowan County	3,366	491,433	3,450	503 719	3,450
Olive Hill	Olive Hill	1,225	189,787	1,539	194,722	1,539
Texas Gas		3,060	1,116,900	3,140	1,146,100	
	Glasgow					
	Scottsville					
Western Kentucky		39,158	7,436,300	40,515	7,614,771	
	Danville					13,978
	Cambellsville					6,862
	Lebanon					5 778
	Harrodsville					5,607
	Greensburg					
	Hustonville					8,290
	Lancaster					
	Perryville					
Total Central Zone		186,459	58,128,099	166,024	48 267,716	
Eastern Zone						
Cabot		9,180	3,350,700	16,000	4,525,000	
	Lane Branch					
	Institute					
	Salt Rock					
Columbia		466,180	170,155,700	205,185	74,892,525	
	North Ceredo					
	Charleston					
	Frame					
	Broad Run—Cobb					
Consolidated	Broad Run—Cornwell	222,000	81 030,000	227,550	83,055,750	227,550
Cumberland	Salt Rock	1,530	558,450	1,582	577,442	1,582
Total Eastern Zone		698,890	255,094,850	450,317	163,050,717	
Northern Zone						
Columbia		93,800	34,237,000	126,895	46,316,675	
	R-501 Emergency					20,400
	Cambridge					
	Dungannon					
	Brinker					
	New Castle					
	Koppel					106,495
	Unionville					
	Bradford Woods					

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed [illegible]	Proposed AVL	Proposed DVL
	Highland					
	Milford					46,433
Consolidated		310,398	113,295,270	318,158	116,127,670	
	Gilmore					
	Leesville					
	Augusta					
	Petersburg					104,550
	Homewood					52,275
	Pittsburg Terminal					[illegible]
	[illegible]					7,175
	Cochranton					41,820
	Harrison					160,925
	Ellisburg					160,925
	Ellisburg Emergency					[illegible]
Equitable	Pittsburg Terminal	75,863	27,689,995	65,325	23,843,625	65,325
Honesdale	[illegible]	4,787	1,025,946	4,907	1,051,583	4,907
	Milford	[illegible]	232,910	[illegible]	[1]238,732	988
Ellis T. Myers	Carol County	[illegible]	170,000	1,009	190,650	1,009
National Fuel		175,440	64,035,600	179,826	[illegible]	
	Mercer					
	Clark Mills					
	Cochranton					
	Pettis					
	Townville					
	Union City					
	Wattsburg					100,799
	Oil City					
	Russel City					[illegible]
	[illegible]					158,875
	Condersport					
	Ellisburg					112,750
	Sharon					
National Gas & Oil	Muskingum County	5,100	1,861,500	5,228	1,908,220	
North Penn		41,820	15,264,300	37,249	13,595,885	
	Coal Hill					
	Marienville					
	Port Allegheny					
	West Bingham					37,249
	Wellsboro					
	Mansfield					10,455
	Troy					
Penn gas & Water		33,864	12,360,360	38,000	13,870,000	
	Uniondale					
	Auburn					
Penn & Southern	Towanda	12,470	[illegible]	12,782	3,587,500	12,782
T.W. Phillips	Pittsburg Terminal	5,100	1,861,500	5,228	1,908,220	5,288
Pike Natural	Pike	5,100	[illegible]	6,500	850,136	[illegible]
Total Northern Zone		765,690	275,730,681	[illegible]	289,125,386	
New York Zone						
Brooklyn Union	White Plains	20,400	7,446,000	20,910	7,632,150	20,910
Central Hudson		15,810	5,770,650	16,205	5,914,825	
	Cedar Hill					[illegible]
	Mahwah					8,364
Con Edison	White Plains	[illegible]	11,169,000	31,365	11,448,225	
	Knollwood					
	Rye					12,300
	Mahwah					9,045
Consolidated		83,640	30,528,600	85,731	31,291,815	
	Manlia					
	Craigs Emergency					
	Phelps Emergency					
	Niagara Mohawk					
	Cazenovia					
	Morrisville					
	Albany					[illegible]
	Brookview					
Elizabethtown		2,610	373,500	3,300	440,238	
	Sussex					2,500
	Vernon					[illegible]
LILCO	White Plains	5,100	1,861,500	10,444	3,812,060	10,444
National Fuel		114,240	41,697,600	117,096	42,740,040	
	Sherman					
	Mayville					
	Nashville					
	Hamburg					
	East Aurora					
	Clarence					
	Pekin					
	Lewiston					
	Wyoming					
	East Eden					117,096
NYSEG	Lockport	31,901	7,783,100	28,000	6,733,000	28,000
Orange & Rockland		54,802	20,002,730	61,200	22,338,000	
	Pearl River					
	Tappan					
Public Service		35,700	13,030,500	88,271	24,972,357	
	West Milford					

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14 73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
	Ramsey					
	Rivervale					
Total New York zone		394,803	139,663,180	462,522	157 322,710	
New England Zone						
Berkshire		19,948	5,256,650	25,572	5.802 985	
	Pittsfield					12.310
	North Adams					10,250
	Stockbridge					6,125
	Greenfield					8,713
Blackstone	Blackstone	505	145,105	675	194,000	675
Boston Gas		93,912	23,784,605	135,999	34,424,000	
	Southbridge					7,750
	Spencer					4,300
	Clinton					3,450
	Leominster					7,100
	Lexington					5,200
	Burlington					16 200
	Arlington					39 767
	Reading					16 500
	Lynnfield					4,300
	Lynn					14,321
	Revere					5,911
	West Peabody					3 050
	Beverly Salem					25,500
	Gloucester					6,895
Colonial		34,680	10,732,000	40,000	14,600,000	
	Tewksburg					40,000
	Wilmington					12,000
	Dracut					12,000
Commonwealth		55,386	16,858,000	64,155	18,431,216	
	Worcester					54,400
	Farnumsville					6,000
	Hopkinton					30,000
	Hudson					11,000
Concord		5,441	1,468,056	10,100	2,345,520	
	Concord					7,500
	Suncook					2,600
Connecticut Light & Power		44,133	10,465,779	59,000	17,051,000	
	Torrington					5,135
	Winsted					2,500
	Long Ridge Road					26,000
	Norwalk					12,000
	Derby					15,507
	Danburg					14,200
	Wallingford					11,200
	Stamford Emergency					
Connecticut Natural		36,794	11,616,068	37,787	11,929,702	
	Greenwich					11,300
	Putnam Lake					15,900
	New Britain					25,700
	Farmington					10,100
	Bloomfield					5,900
	North bloomfield					8,200
Energy North		23,697	5,491,800	34,953	7,687,500	
	[illegible]					23,081
	Manchester					16,000
	Hooksett					1,322
	Laconia					7,176
	Londenderry					5,228
Essex County		14,519	4,100,200	20,882	5.487.790	
	Wenham,					5,000
	Essex					2,500
	Haverhill					20,000
Fitchburg	Fitchburg	7,506	2,734,215	10,246	2,799,834	10,246
Granite State		83,921	25,223 908	127,391	35,922,237	
	Northampton					6,567
	Agawam					48,000
	East Longmeadow					40,000
	Lawrence					37,849
	Pleasant Street					25,000
Holyoke	Holyoke	7,875	2,787,000	10,200	3,287,875	10,200
Southern Connecticut		38,178	10,674,700	47,040	17,169,600	
	Westport					15,000
	Bridgeport					30,000
	Trumbull					20,000
Valley	Pawtucket	19,995	6,112,800	27,550	8,575,216	27,550
Westfield	Westfield	5,079	1,852,655	6 250	1 342 884	6,250
Total New England Zone		491,569	139,303,441	657,800	187,051,359	
Total System		3,940,197	[1]1,313,591,610	4,061,872	1,304,196,259	

[1] Including North Penn Rate Schedule SO 4 service, the total system AVL is 1,319,089,410 Mcf.

APPENDIX B.—TENNESSEE GAS PIPELINE COMPANY CONSTRUCTION COST ESTIMATE

[Project Summary AVL/MDQ Facilities]

Schedule No and description	Unit	Quantity	Unit cost	Amount	Total dollars
2—30" pipeline loop from MLV 242 + 8.8 to MLV 243, Madison County, New York	Mile	2.5	$630,800.00	$1,577,000	
3—30" pipeline loop from MLV 246 + 6.9 to MLV 246 + 11.4, Otsego County, New York	Mile	4.5	578,222.23	2,602,000	
4—30" pipeline loop from MLV 251 + 3.5 to MLV 252, Albany County, New York	Mile	5.2	629,615.38	3,274,000	
5—30" pipeline loop from MLV 253 to MLV 253 + 4.0, Rensselaer County, New York	Mile	4.0	671,750.00	2,687,000	
6—30" pipeline loop from MLV 254 to MLV 254 + 4.1, Columbia County, New York	Mile	4.1	692,439.02	2,839,000	
7—30" pipeline loop from MLV 259 + 4.2 to MLV 259 + 9.2, Hampden County, Massachusetts	Mile	5.0	848,000.00	4,240,000	
8—30" pipeline loop from MLV 261 + 10.8 to MLV 262 + 6.8, Hampden County, Massachusetts	Mile	9.0	833,000.00	7,497,000	
9—30" pipeline loop from MLV 264 + 3.8 to MLV 265, Worcester County, Massachusetts	Mile	7.4	928,918.92	6,874,000	
10—30" pipeline loop from MLV 314 to MLV 314 + 6.9, Potter and Tioga Counties, Pennsylvania	Mile	6.9	611,014.49	4,216,000	
11—30" pipeline loop from MLV 315-1A to MLV 315-1A + 8.0, Tioga County, Pennsylvania	Mile	8.0	619,000.00	4,952,000	
12—30" pipeline loop from MLV 318 + 3.2 to MLV 319, Bradford County, Pennsylvania	Mile	11.2	641,875.00	7,189,000	
13—30" pipeline loop from MLV 320 + 7.9 to MLV 320 + 12.2, Susquehanna County, Pennsylvania	Mile	4.3	662,558.14	2,849,000	
14—30" pipeline loop from MLV 321 to MLV 322 + 3.8, Susquehanna and Wayne Counties, Pennsylvania	Mile	18.0	641,277.78	11,543,000	
15—30" pipeline loop from MLV 325 + 4.3 to MLV 326 + 3.3, Sussex County, New Jersey	Mile	7.0	1,016,857.10	7,118,000	
16—30" pipeline loop from MLV 329 to MLV 329 + 5.0, Bergen County, New Jersey	Mile	5.0	1,067,400.00	5,337,000	
17—Engine/compressor addition at station 249, Schoharie County, New York	H.P.	3,000	1,999.67	5,999,000	
18—Engine/compressor addition at station 254, Columbia County, New York	H.P.	2,800	2,360.36	6,609,000	
19—Engine/compressor addition at station 261, Hampden County, Massachusetts	H.P.	2,000	2,554.50	5,109,000	
20—Turbine/compressor addition at station 264, Worcester County, Massachusetts	H.P.	3,165	1,311.53	4,151,000	
21—Turbine/compressor addition at station 267, Middlesex County, Massachusetts	H.P.	3,[illegible]	1,371.00	4,113,000	
22—Engine/compressor addition at station 313, Potter County, Pennsylvania	H.P.	2,000	2,938.50	5,877,000	
23—Turbine/compressor addition at station 315, Tioga County, Pennsylvania	H.P.	3,000	1,426.00	4,278,000	
24—Turbine/compressor addition at station 317, Bradford County, Pennsylvania	H.P.	3,165	1,511.85	4,785,000	
25—Turbine/compressor addition at station 321, Susquehanna County, Pennsylvania	H.P.	3,500	1,100.29	3,851,000	
26—Turbine/compressor addition at station 325, Sussex County, New Jersey	H.P.	3,500	1,087.43	3,806,000	
27—10" pipeline replacement, Torrington lateral, from valve 259A-102 to valve 259A-103, Litchfield County, Connecticut	Mile	7.4	355,810.81	2,633,000	
28—10" pipeline loop, Adams lateral, from valve 256A-101.1 + 3.8 to valve 256A-102, Berkshire County, Massachusetts	Mile	6.0	338,666.67	2,032,000	
29—12" pipeline loop, Northampton lateral, from valve 260A-101.1 to valve 260A-103, Hampden and Hampshire Counties, Massachusetts	Mile	12.4	342,903.23	4,252,000	
30—12" pipeline loop, Blackstone lateral, from valve 266C-102 + 4.8 to valve 266A-103, Norfolk County, Massachusetts	Mile	0.9	617,777.78	556,000	
31—8" pipeline replacement, Spencer delivery, from valve 264B-101 to valve 264B-102, Worcester County, Massachusetts	Mile	8.6	345,116.28	2,968,000	
32—10" pipeline loop, Fitchburg lateral, from valve 268A-102 to valve 268A-103, Worcester County, Massachusetts	Mile	7.0	406,428.57	2,845,000	
33—12" pipeline loop, Haverhill lateral, from valve 270B-302 to valve 270B-302 + 3.0, Essex County, Massachusetts	Mile	3.0	461,000.00	1,383,000	
34—10" pipeline loop, Concord lateral, from valve 270B-105 to valve 270B-105 + 15.1, Hillboro and Merrimack Counties, New Hampshire	Mile	15.1	320,529.80	4,840,000	
35—10" pipeline replacement, reading delivery, from valve 270C-201 to valve 270C-201 + 0.7, Middlesex County, Massachusetts	Mile	0.7	757,142.86	530,000	
36—24" pipeline loop, Beverly-Salem lateral from valve 270C-101.1 + 1.6 to valve 270C-101.1 + 9.0, Middlesex County, Massachusetts	Mile	7.4	825,135.14	6,106,000	
37—12" pipeline loop Beverly Salem lateral, from valve 270C-102 + 0.8 to valve 270C-103, Essex County, Massachusetts	Mile	1.6	586,250.00	938,000	
38—10" pipeline replacement, Pittsfield delivery, from valve 256A-201 to valve 256A-201 + 0.6, Berkshire County, Massachusetts	Mile	0.6	693,333.33	416,000	
39—8" pipeline replacement, Winsted delivery, from valve 259A-201 to valve 259A-201 + 0.6, Litchfield County, Connecticut	Mile	0.6	588,333.33	353,000	
40—8" pipeline replacement, Westfield delivery, from valve 260A-201 to valve 260-201 + 1.2, Hampden County, Massachusetts	Mile	1.2	401,666.67	482,000	
41—8" pipeline replacement, Clinton delivery, from valve 268A-201 to valve 268-201 + 3.6, Worcester County, Massachusetts	Mile	3.6	342,500.00	1,233,000	
42—8" pipeline replacement, Loeminster delivery, from valve 268A-301 to valve 268A-301 + 2.2, Worcester County, Massachusetts	Mile	2.2	456,818.18	1,005,000	
43—Modify and/or repalce thirty-one (31) existing meter facilities, systemwide, to handle increased capacities	Lot	1		6,749,000	
Total direct cost—1986					$162,693,000
Overhead	Lot	1			24,404,000
Allowance for funds used during construction	Lot	1			7,484,000
Regulatory fee	Lot	1			379,000
Total project cost—1986					194,960,000

[FR Doc. 85-10920 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $7,914.90 (plus accrued interest) obtained as the result of a Memorandum and Order issued to Glen Martin Heller by the United States District Court in Massachusetts. The funds will be available to customers who purchased motor gasoline from Heller during the period August 1, 1979 through December 1, 1979.

DATE AND ADDRESS: Applications for refund of a portion of the Heller refund amount must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Heller Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0088.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the

procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Memorandum and Order issued to Glen Martin Heller (Heller) by the United States District Court in Massachusetts. The Memorandum and Order adjudicated pricing violations with respect to the firm's sales of motor gasoline during the period August 1, 1979 through December 1, 1979. Under the terms of the Memorandum and Order, $7,914.90 has been remitted by Heller to the DOE and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Heller refund amount. The Proposed Decision and Order discussing the distribution of the Heller refund amount was issued on February 20, 1985 (50 FR 8188, February 28, 1985).

As the Heller Decision and Order indicates, applications for refunds from the refund amount may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased motor gasoline from Heller during the period August 1, 1979 through December 1, 1980. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: April 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy, Special Refund Procedures

April 25, 1985.

Name of Firm: Glen Martin Heller.

Date of Filing: October 13, 1983.

Case Number: HEF-0088.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received from Glen Martin Heller (Heller) of Boston, Massachusetts, pursuant to a federal district court order.

I. Background

Heller is a "retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA audit of Heller's operations during the period August 1, 1979 through December 1, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations.[1] In a Memorandum and Order issued on December 29, 1981, the United States District Court in Massachusetts found that Heller had overcharged his customers by $6,577.76 in sales of motor gasoline at this Beacon Hill Gulf Station during the audit period. *United States v. Heller*, 542 F. Supp. 154 (D Mass. 1981), *aff'd*, DKT. No. 1–12 (Temp. Emer. Ct. App. June 9, 1982).[2] Accordingly, the court orderd Heller to pay a total of $7,914.90 (the overcharge amount plus interest of $1,337.14) into an interest-bearing escrow account under the control of the DOE.

On February 20, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the refund amount. 50 FR 8188 (February 28, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any overcharges made by Heller during the audit period.

A copy of the PD&O was published in the **Federal Register** on February 28, 1985, and comments were solicited regarding the proposed refund procedures. While one of Heller's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Lousiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds in a subsequent proceeding. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline from Heller should submit in an Application for Refund in order to establish eligibility for a portion of the refund amount. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[3] Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as a result of settlement agreements or judicial or administrative orders, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as Vickers). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Heller refund amount. We will therefore grant the ERA's petition and assume jurisdiction over distribution of these funds.

[1] In an enforcement proceeding involving an earlier audit period, December 1, 1976, through June 14, 1979, the DOE has issued a Remedial Order (RO) to Heller, which requires him to refund overcharges of $54,347.98. *Glenn Martin Heller*, 11 DOE ¶ 83,005 (1983). This Order was recently affirmed, with modifications, by a Hearing Officer of the Federal Energy Regulatory Commission. *Glen Martin Heller*, 30 FERC ¶ 62,231 (1985).

[2] In the Memorandum and Order, the court found that Heller had overcharged his motor gasoline customers by a total of $11,359.47, but had refunded $4,781.71 to the market. The court therefore ordered Heller to refund the balance of $6,577.76, plus interest, to the DOE. The court also imposed a civil penalty of 25 percent of the overcharge amount and interest, which the firm paid in full on June 23, 1982.

[3] It is not clear, however, that these states and their citizens have a legitimate interest in the present proceeding, since all of the sales involved were made in Massachusets.

III. Determination of Refund Procedures

As proposed in the PD&O, we will adopt a presumption that the overcharges were dispersed equally in all sales of motor gasoline made during the audit period. The OHA has referred to this presumption in the past as a volumetric refund amount. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged or adjudicated overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[4]

In the PD&O, we noted that the audit records do not identify any purchasers of motor gasoline from Heller's Beacon Hill Gulf Station or list any overcharge amounts by customer. Consequently, we find that the available information is insufficient to base refunds on the amount each individual customer was overcharged. Accordingly, as proposed in the PD&O, we will use the volumetric method to allocate the refund amount. To determine the volumetric factor, the refund amount ($7,914.90) will be divided by the estimated total volume of gasoline sold by Heller during the audit period (176,208 gallons), resulting in a per gallon refund amount of $0.04492.[5] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Heller's customers, all of whom were end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the overcharges adjudicated in the Memorandum and Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the audit period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *See also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of motor gasoline purchased from Heller during the audit period need only document their purchase volumes from Beacon Hill Gulf to make a sufficient showing that they were injured by the overcharges.

We shall also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

In the present case, an end-user must have purchased at least 333 gallons of motor gasoline from Heller during the four month audit period in order to be eligible for a refund amount at or above the minimum level of $15. While many motorists will therefore be ineligible for refunds in this proceeding, we recognize that there may have been persons or firms who purchased relatively large volumes of motor gasoline from Heller during the audit period. In the course of evaluating numerous Applications for Exception from the Mandatory Petroleum Allocation Regulations during the period of price and allocation controls, we learned that it was not unusual for local governmental entities and small businesses regularly to patronize one retail service station, often on a contractual basis. This was particularly true for governmental entities and businesses with multiple vehicles (buses, police and fire vehicles, delivery vans, taxis, etc.) which required a dependable supply of motor gasoline, but did not have bulk storage facilities of their own. It is possible that Heller had such customers during the audit period. In order that these customers may be notified of their opportunity to apply for a refund, we intend to publicize this proceeding in local newspapers in the area where Heller conducted business.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Heller refund amount. Accordingly, we shall now accept applications for refunds from customers who purchased motor gasoline from Heller during the audit period.

In order to receive a refund, each applicant will be required to report the monthly volume of motor gasoline purchased from Heller for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Heller Consent Order Fund, Case No. HEF-0088. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional

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[4] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Heller's pricing practices during the aduit period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1948); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[5] Because our records do not list the volumes of motor gasoline sold by heller during the entire four months of the audit period, we have extrapolated sales figures from the available data. In the PD&O, we calculated a volumetric refund factor of $0.05320 on the basis of an extrapolated total volume figure of 148,777 gallons. Upon closer examination of our records, we have determined that an extrapolated total volume figure of 176,208 gallons is more accurate. Accordingly, we have adjusted the volumetric refund factor to $0.04492.

copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by Glen Martin Heller pursuant to the Memorandum and Order issued by the United States District Court for the District of Massachusetts on December 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: April 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-10902 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of March 25 Through April 5, 1985

During the period of March 25 through April 5, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director Office of Hearings and Appeals.

April 26, 1985.

C&B Warehouse Distributing, Inc., Virginia, Minnesota; HEE-0122, Reporting Requirements

C&B Warehouse Distributing, Inc. filed an Application for Exception which, if granted, would relieve C&B of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 3, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 85-10903 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

April 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Formby Oil Company, Pawhuska, Oklahoma, HEE-0123, Reporting Requirements

Formby Oil Co. filed an Application for Exception which, if granted, would relieve Formby of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 8, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Franklin Oil Company, Creston, Iowa, HEE-0121, Reporting Requirements

Franklin Oil Co. filed an Application for Exception which, if granted, would relieve Franklin of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 9, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Petro Products, Inc., Anchorage, Alaska, HEE-0125, Reporting Requirements

Petro Products, Inc. filed an Application for Exception which, if granted, would relieve Petro Products of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 9, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 85-10904 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of March 25 Through March 29, 1985

During the week of March 25 through March 29, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1985.

Port Petroleum Co., Shreveport, Louisiana, HRO-0282, Crude Oil

On March 27, 1985, Port Petroleum, Inc. (Port), P.O. Box 1837, Shreveport, Louisiana, filed a Notice of Objection to a Proposed Remedial Order which the Dallas Office of Field Operations of the Economic Regulatory Administration issued to the firm on February 15, 1985. In the PRO, the Dallas Office found that during the period from October 1978 to December 1980, Port resold crude oil at prices in excess of those permitted under 10 CFR Part 212, Subpart L. According to the PRO, the Port violation resulted in approximately $12,500,000 of overcharges.

Shell Oil Company, Houston, Texas, HRO-0277, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO, the ERA found that during the period August 1973 through January 1981, Shell unlawfully revised and altered calculations of its unrecouped costs and its maximum allowable prices by changing the reallocation of costs it had previously made from one product category to another. According to the PRO, Shell is liable for any overcharges resulting from these recalculations.

Shell Oil Company, Houston, Texas, HRO-0278, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period February 1, 1975 through December 31, 1976, Shell incorrectly calculated non-product cost increases for its interest, refinery fuel, marketing, pollution control and utility cost categories resulting in overstatements of increased non-product costs available for passthrough in prices charged for covered petroleum products. According to the PRO, Shell must recalculate its non-product costs and refund any resulting overcharges.

Shell Oil Company, Houston, Texas, HRO-0279, Aviation Jet Fuel

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period September 1973 through January 1981, Shell failed to establish a lawful class of purchaser system for its sales of aviation jet fuel. The PRO also alleges that the firm failed to establish lawful May 15, 1973 prices for aviation jet fuel based on actual transactions. The PRO offers two alternative methods for the calculation of overcharges.

Shell Oil Company, Houston, Texas, HRO-0280, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period August 1973 through January 1981, Shell assigned improper and excessive May 15, 1973 selling prices to consumers, retailers, and resellers of gasoline and distillates, as well as to consumers and resellers of propane. The PRO proposes three possible alternative methods for the calculation of overcharges.

Shell Oil Company, Houston, Texas, HRO-0281, Motor Gasoline

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period October 1974 through December 1976, Shell incorrectly calculated and reported its increased costs of motor gasoline and therefore overstated its unrecouped increased costs available for passthrough in sales of motor gasoline. The PRO proposes remedies which would require recalculation of Shell's maximum lawful selling prices for the period October 1974 through January 1981.

[FR Doc. 85-10900 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of April 1 Through April 5, 1985

During the Week of April 1 through April 5, 1985, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1985.

CPI Crude, Inc., Houston, Texas, HRO-0283, Crude Oil

On April 4, 1985, CPI Crude, Inc., 4352 Post Oak Lane, Suite 204, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on February 28, 1985. In the PRO the Dallas District found that during the period February 1976 through December 1977, CPI illegally charged prices for crude oil in excess of its maximum lawful selling price (MLSP). In addition, the PRO alleges that CPI's markup in its sales of crude oil during the months of February, June, July, August, and October 1978, was in excess of its permissible average markup.

According to the PRO the violation resulted in $10,092,903 of overcharges.

[FR Doc. 85-10901 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

[OPPE FRL-2830-4]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Information Requirements for New Source Review and Prevention of Significant Deterioration Permitting Programs (EPA #1230). (This is a revision to an existing information collection.)

Abstract: New or modified major stationary air pollution sources must apply for preconstruction permits. States determine from the applications whether potential emissions would adversely affect the National Ambient Air Quality Standard. In clean air areas prevention of significant air quality deterioration must be achieved by best available control technology; in dirty areas new source reviews require lowest achievable emissions rates.

Respondents: New or modified major stationary air pollution sources.

Office of Pesticides and Toxic Substances

Title: Applications for PCB Disposal Permits (EPA #1012). (This is a renewal of an existing information collection request.)

Abstract: EPA requires applicants for PCB disposal permits to provide a sampling and quality assurance plan as well as an environmental impact assessment. EPA will use this information in evaluating the ability of the facility to dispose of PCBs safely.

Respondents: Toxic waste disposal facilities.

Agency PRA Clearance Requests Completed by OMB

EPA #0824; Ocean Dumping Applications and Reporting (renewal of existing requirements), was approved April 5, 1985 (OMB #2040-0008: expires April 30, 1987).

EPA #0909/1195; Information Requirements for Construction Grants—Delegation to States, was approved April 11, 1985 (OMB #2040-0095: expires June 30, 1986).

EPA #0940; NAAQS: Precision and Accuracy Data—Reporting and Recordkeeping, was approved April 17, 1985 (OMB #2060-0084: expires May 31, 1987).

EPA #0979; CERCLA (Superfund) Natural Resource Claims Procedures and CERCLA Arbitration Procedures, was approved April 19, 1985 (OMB #2050-0043: expires April 30, 1988).

EPA #1013; Request for Discharge Authorization—Ore Recovery Mills, was approved April 4, 1985 (OMB #2040-0093: expires April 30, 1986).

EPA #1100; National Emission Standards for Hazardous Air Pollutants, Standards for Radon-222 Emission from Underground Uranium Mines, was approved April 11, 1985 (OMB #2060-0115: expires April 30, 1988).

EPA #1174; Leaking Underground Storage Tank Survey, was approved April 16, 1985 (OMB #2070-0037: expires April 30, 1988).

* * * * *

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460

and

Wayne Leiss (for #1230)

or

Carlos Tellez (for #1012)

Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: April 29, 1985.

David Schwarz,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-10792 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-000061; FRL-2831-3]

Health Effects Testing Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the availability of certain proposed health effects testing guidelines for genotoxicity which have been developed by the Organization for Economic Cooperation and Development (OECD). Interested persons are requested to review these guidelines and provide to EPA comments on the need for such guidelines, their relevance to hazard assessment, and their technical content. Comments will be considered in determining the need for these guidelines and in redrafting into OECD guidelines the proposed guidelines judged to be necessary.

DATE: Comments should be received by June 30, 1985.

ADDRESS: Written comments should be addressed to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should bear the identifying Document Control Number OPTS-00061. All written comments filed in response to this notice will be available for public inspection in the OTS Reading Rm., E-107, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The reports will be available for review in the OTS Reading Room at the address given above and in all EPA Regional Offices. See Supplementary Information below for a list of those locations.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460.

Toll Free: (800-424-9065).
In Washington: (554-1404).
Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: An initial goal of the Chemicals Program of the OECD was the mutual acceptability of testing data, which depends on consistency in testing methodology or agreed-upon testing guidelines. Already an initial series of guidelines as developed by OECD Expert Groups, an Updating Panel, and a national review process have been agreed upon. Data developed in one country in accordance with OECD Test Guidelines and Good Laboratory Practices will be acceptable in other OECD member states for assessment purposes. Those Test Guidelines can be purchased from the OECD Publication Center, Suite 1207, 1705 Pennsylvania Ave., NW., Washington, D.C. 20006 (202-724-1857).

Additional guidelines are currently being developed and submitted to the OECD Updating Panel by member countries. After an initial review by the Updating Panel, these guidelines are made available for member country comment. The proposed guidelines now available for comment are: "Gene Mutation, *Aspergillus nidulans*"; "Somatic Segregation, *Aspergillus nidulans*"; "Gene Mutation, *Schizosaccaromyces pombe*"; "DNA Damage and Repair, Unscheduled DNA Synthesis, Mammalian Cells *in vitro*"; "Mammalian Germ-Cell Cytogenetics"; Mouse Spot Test"; "Mouse Heritable Translocation." Proposed guidelines

(including these announced today) and revisions to previous guidelines are to be managed via the OECD Updating Program.

The EPA, as the U.S. lead for interaction with the OECD Updating Panel, has established an Ad Hoc Review and Editing Group to coordinate U.S. input for such activities. The group is currently chaired by Dr. William Farland, Deputy Director, Health and Environmental Review Division, Office of Toxic Substances, USEPA. Members of the group include Dr. Robert Moolenaar, Dow Chemical, representing the U.S. Business and Industry Advisory Committee (BIAC) chemical subcommittee; Dr. Ellen Silbergeld, Environmental Defense Fund, representing the public interest group perspective; Dr. Thomas Shellenberger, National Association of Life Sciences Industries (NALSI) representing contract testing laboratory perspective; Dr. Dorothy Canter, National Toxicology Program, representing the Federal toxicology testing program perspective; a representative from the Food and Drug Administration; and others from interested EPA program offices.

This Ad Hoc Group is responsible for assuring that the guidelines are distributed for comment to their constituencies in the United States. Members of the Group may be contacted directly for copies of guidelines under review. The Group will also review and summarize the comments into a report to the OECD. If deemed necessary by the Group, a panel of U.S. experts will be convened and will be asked to provide input for the formulation of the coordinated U.S. comments to be submitted to the OECD, a copy of which will be filed in the public record. Similar reviews will take place in other countries. Based on the national comments, the OECD Updating Panel may convene an ad hoc International Expert Group to conduct a final revision and resubmit to the Updating Program in early 1986. If necessary, further public reviews can be held. When considered ready, guidelines will then be submitted to the Chemicals Program and OECD Council for adoption. Finalization of these guidelines, if appropriate, is expected in late 1986.

EPA headquarters in Washington, D.C., and the following locations will have copies of the guidelines available for public inspection:

1. Environmental Protection Agency, Region I Library, John F. Kennedy Federal Bldg., 22d Floor, Government Center, Boston, MA 02203, (617-223-7210).

2. Environmental Protection Agency, Region II Library, Federal Bldg., Rm. 900, 26 Federal Plaza, New York, NY 10278, (212-264-2525).

3. Environmental Protection Agency, Region III Library, Curtis Bldg., 2d Floor, Sixth and Walnut Sts., Philadelphia, PA 19106, (215-597-9800).

4. Environmental Protection Agency, Region IV Library, 2d Floor, Courtland St. Entrance, 345 Courtland St., NE., Atlanta, GA 30365, (404-881-4727).

5. Environmental Protection Agency, Region V Library, Kluczynski Bldg., 14th Floor, 230 South Dearborn St., Chicago, IL 60604, (312-353-2000).

6. Environmental Protection Agency, Region VI Library, First International Bldg., 1201 Elm St., Dallas, TX 75207, (214-767-2600).

7. Environmental Protection Agency, Region VII Library, 1st Floor, 324 East Eleventh St., Kansas City, MO 64106, (214-374-5493).

8. Environmental Protection Agency, Region VIII Library, 1st Floor, 1860 Lincoln St., Denver, CO 80295, (303-837-3895).

9. Environmental Protection Agency, Region IX Library, 6th Floor, The Fremont Center, 215 Fremont St., San Francisco, CA 94105, (415-974-8153).

10. Environmental Protection Agency, Region X Library, 11th Floor, Park Place Bldg., 1200 Sixth Ave., Seattle, WA 98101, (206-442-5810).

It is suggested that interested persons telephone ahead to be certain of the visiting hours at those locations.

(Sec. 4, 90 Stat., 2006 (15 U.S.C. 2603))

Dated: April 27, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-10914 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. DS-401]

Advisory Committee on Reduced Orbital spacing; Meeting

May 1, 1985.

A meeting of the full FCC Advisory Committee on Reduced Orbital Spacing will take place on Monday, May 20, and Tuesday, May 21, 1985. The purpose of this advisory committee is to obtain expert technical and operational recommendations on how to better implement 2° spacing between satellites in the 4/6 GHz and 12/14 GHz frequency bands. The May 20-21 meetings will be extremely important. Working group chairmen will present specific recommendations for inclusion in Phase I of the Committee's Report. The full Committee will then attempt to reach a consensus on recommendations to be made to the FCC.

Date: May 20-21, 1985.

Time: 9:30 a.m.

Place: Room 856, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

AGENDA

1. Adoption of Agenda.
2. Adoption of Minutes from last meeting.
3. Report from Chairman on schedule for final committee report.
4. Presentation from each of the three working group chairmen on draft working group reports, and discussion of draft reports.
5. Other Business.

This meeting is open to the public. For additional information contact Roger Herbstritt at the FCC at (202) 634-1624.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-10936 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Market Discipline for FDIC-Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has been concerned that bank depositors and other creditors of insured banks do not impose sufficient discipline on the risk-taking activities of banks. As the industry has become more deregulated, the importance of market discipline has become more important. In considering ways in which to increase market discipline and thereby increase the safe and sound operation of banks and decrease risks to the deposit insurance fund, the FDIC has considered two alternatives. One approach would be to modify the deposit payoff procedure when a bank fails so that some of the advantages of a purchase and assumption transaction could be retained, while uninsured depositors and other general creditors would still be exposed to potential loss. The other approach would be to raise capital requirements substantially, allowing subordinated debt to satisfy a significant portion of the increased requirement. Because of the impact on the banking industry and the public that would occur if the modified payoff procedure were used in every bank failure or the required capital level were increased significantly, comment is

being requested in order to help the FDIC evaluate whether one or both of these approaches would be effective and should be utilized.

DATE: Comments must be received by July 5, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. Comments may be hand-delivered to room 6108 between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, and will be available for public inspection during that time.

FOR FURTHER INFORMATION CONTACT: John J. Quinn III, Financial Economist, Division of Research and Strategic Planning, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, at (202) 389-4547.

SUPPLEMENTARY INFORMATION: For some time the Board of Directors of the FDIC has been concerned that bank depositors and other creditors do not impose sufficient discipline on the risk-taking activities of banks. At the present time more than 80 percent of the dollar volume of domestic deposits in insured banks is insured by the FDIC and, for a substantial majority of banks, insurance coverage is in excess of 90 percent. While insurance coverage is lower for larger commercial banks, most large bank failures have been handled by the FDIC through purchase and assumption transactions (P&As) so that all depositors and other general creditors have had their claims assumed by the acquiring bank.

Generally, P&As have had certain advantages over deposit payoffs: they are less disruptive to the community; the payments process is not interrupted; some of the franchise value of the failing institution is preserved; and the cost of a P&A to the FDIC is generally less than the cost of a deposit payoff. However, if depositors perceive that they will not be exposed to loss if their bank fails, they have no incentive to be concerned about risk taking by their banks. In a deregulated deposit environment, riskier depository institutions can outbid sound institutions for deposits and rely on deposit insurance to assuage any depositor concerns about risk or loss. This may impose a cost on the banking system and the insurance fund that is not readily apparent in determining how to handle an individual bank failure.

If the public perception is that large banks will not be paid off, large banks will have an advantage in competing for uninsured funds that may not be reflective of their financial strength. This is an additional matter of concern about the impact of the deposit insurance system.

The problems cited above have existed for several decades. However, as long as banks were heavily regulated and the economic environment was very forgiving of mistakes, shortcomings in the deposit insurance system seemed largely academic. Changes that have occurred in the economic and competitive environment in recent years have exposed problems in the way the insurance system operates. Last year 79 FDIC-insured banks failed, surpassing the number of insured bank failures in any of the previous 50 years of the FDIC's existence. In recent years failures and near-failures have included some of the nation's largest banks.

Supervisory efforts of the federal banking agencies have been upgraded in recent years and will continue to be improved. However, the FDIC's Board believes that it is important to supplement these efforts through greater reliance on market forces. The FDIC is considerling two alternative approaches to enhance market discipline. One approach would be to do an insured deposit payoff on virtually all failed banks in the future, but to modify the payoff procedure so that some of the advantages of the P&A could be retained. The other approach would be to raise capital requirements substantially, but to allow subordinated debt to satisfy a significant portion of the increased requirement. In this way, suppliers of "capital," and particularly subordinated lenders, would supply enhanced market discipline.

These two approaches (which are not necessarily mutually exclusive) are discussed below. The FDIC is seeking public comment on these.

Modified Payoff

The FDIC paid off several banks in March and April of 1984, using a "modified" payoff transaction. In the transaction a failing bank is closed and a receivership is created in the same manner as in a standard payoff. However, instead of paying insured deposits by check, payment is made by transferring these accounts to another bank.

Prior to or at the time of a closing, potential acquiring banks are contacted in much the same manner as in a P&A. They are asked to bid on a package which includes selected nonproblem assets of the failed bank (generally, physical facilities, cash assets, securities priced at market, performing consumer loans and, possibly, other performing loans). They are asked to assume insured deposits, whereas in a P&A they would assume all deposits and other liabilities of general creditors.

Deposit accounts that are fully insured are transferred to an acquiring bank, and when the transaction is effected over a weekend, there is no service interruption for holder of these accounts. Insofar as a premium is paid for the acquired franchise and accounts, that advantage of the P&A is preserved.

In most deposit payoffs uninsured creditors receive no payment on their claims until the funds are collected by the receiver. Periodically, the proceeds of receivership collections on failed bank assets are distributed to uninsured creditors. Initial payments rarely occur within the first year and, typically, future payments are spread over several years.

In the modified payoff, the FDIC promptly estimates the present value of net receivership collections and, on the basis of this estimate, makes a cash advance to uninsured depositors and other general creditors. If receivership collections subsequently exceed initial estimates, the FDIC makes additional payments to uninsured creditors. However, if collections fall short of initial estimates, no attempt is made to recapture any portion of the cash advance.

The modified payoff thus softens the impact of a payoff on uninsured creditors since they obtain early access to a portion of their funds. However, they do not immediately retrieve all their funds as they would in a P&A and, even under favorable collection circumstances, uninsured creditors are likely to incur some loss. Thus, uninsured creditors would have reason to be concerned with the condition of their bank and reason to monitor its riskiness.

There are certain mechanical procedures that the FDIC would have to streamline if this transaction is to work smoothly on banks of all sizes and some potential variations on the transfer of deposit accounts and assets that could conceivably be developed over time. On the deposit side, the FDIC must quickly obtain accurate records regarding insured and uninsured deposits. In a P&A no such separation between insured and uninsured deposits is necessary. In a payoff, aggregation of accounts to determine insurance coverage is a labor-intensive process that typically requires at least a few days. Moreover, it should be noted that the FDIC has never paid off a large bank with a very large number of deposit accounts.

The FDIC's experience in the spring of 1984 suggested that if the deposit

records of the failing bank were in satisfactory condition, a modified payoff could be effected over a weekend for a moderate-sized bank. Additionally, with prescreening of records, some modifications in procedure for aggregating accounts and the development of computer programs to aggregate accounts, the failure of a much larger bank could be handled as a modified payoff over a relatively short period. This would still be a short enough period so that, in most cases, most checks in process would be paid and disruptions in banking service would be minimal. Additional preplanning, additional reporting, and other measures probably would enable the FDIC to handle even the largest banks.

The FDIC requires no additional legal authority to effect modified payoffs in individual instances or to implement a policy of using them in all failures. However, the costs of modified payoffs would be reduced and creditor discipline would be strengthened if certain changes in creditor preferences were enacted by Congress. These changes are included in H.R. 1833 and S. 760 which were recently submitted to Congress.

If the FDIC were to handle all failures through the modified payoff, additional market discipline would be achieved because uninsured creditors would face additional risk of loss if a bank fails. The FDIC is interested on public comment whether the use of modified payoffs in all failures will effectively accomplish its goal without creating other problems. Also, the FDIC is interested in whether depositors and other creditors should be given an opportunity to adjust their relationships with banks if a policy of modified payoffs were adopted universally and, if so, what would be an appropriate phase-in period for such a policy.

Increasing Capital Requirements

An alternative method of achieving market discipline and reducing FDIC risk is to raise the total requirement for FDIC-insured banks substantially over a period of several years to a level of about nine percent of assets. However, the primary capital requirement would be kept relatively constant at six percent. Regulatory capital policy would be revised so that subordinated debt could meet a substantial portion of the total capital requirement. The additional capital would provide an enhanced cushion for the deposit insurance fund and probably would result in fewer bank failures.

Banks perceived to be in a strong financial condition probably would be able to borrow on a subordinated basis to meet the additional capital requirement without materially impairing earnings. Some would be able to lend acquired funds on a sound basis at returns comparable to their borrowing cost. Even if costs exceeded rates earned on acquired funds by one or two percentage points, the overall reduction in net interest earnings would be modest. Those banks perceived to be riskier would have more difficulty borrowing. Their cost would be high or else they would have to meet the higher capital requirement through controlling growth, reducing dividend payments or by the sale of equity. Whether subordinated debt is used would be a marketplace decision. It would be the market that ultimately sets a bank's equity ratio and determines the cost of the increased capital requirement.

Investors in subordinated debt are likely to be in a better position and have greater motivation to assess risk and exercise market discipline than bank depositors. Most will be institutional investors able to devote resources to evaluating a bank's condition and the riskiness of their investment. Their time horizons will be longer than those of most depositors.

When a bank encounters difficulty, uninsured depositors generally have ample notice so that they can withdraw funds without loss and, incidentally, exacerbate the bank's problem. They generally have no incentive to leave uninsured funds with the troubled bank, even if they believe the bank will survive. They will not be sufficiently compensated for the risk and if they are managing the funds of other persons, prudence and fiduciary responsibilities dictate that funds be withdrawn.

Investors in subordinated debt will be exposed to potential market loss if the condition of a bank deteriorates, even if it never fails. Thus, they have more reason to appraise management policies. Once a bank gets into difficulty, efforts by debtholders to get out (by selling in the market) will not cause a liquidity problem for the bank except to the extent that market conditions impair future bank financing. Debtholders or potential lenders that have confidence in the ability of the troubled bank to improve its situation can hold or purchase bank debt and gain in the marketplace if their assessment of the bank proves correct.

Depositor discipline can have little impact on those institutions whose deposits are almost fully insured unless insurance coverage were reduced. However, market discipline from higher capital requirements could have a significant impact on institutions having few uninsured deposit accounts.

Any increased capital requirement would have to be phased in over a period of years. Thus, banks would have some flexibility in timing their financing and financial markets would not be overwhelmed by bank financing. However, it is contemplated that thereafter those banks relying on subordinated debt would tap the market frequently and thus be exposed to market discipline continuously. Much of the financing is apt to be intermediate-term or retired on a serial basis. However, even where longer-term debt is used, banks seeking to maintain their overall leverage would find it necessary to add to their debt periodically as their asset base increased.

For the proposed policy to be effective, capital requirements would have to be enforced by all supervisory agencies. After a bank falls below the requirement, some restrictions would come into play immediately. These might include a prohibition on new branches or acquisitions and possibly a higher insurance premium. As time and/or the capital shortfall increases, additional sanctions might come into force (possibly dividend restrictions or restrictions on some types of deposit-taking or lending). At some point, action would be taken to remove deposit insurance. In most instances, actual closings would be averted because bank management would find it in their and the bank's interest to take earlier corrective action. This might take the form of selling off branches, raising capital or merging. Under adverse circumstances the sale of capital might significantly dilute existing shareholders and, as a result, merger terms might be "unfavorable." However, actions that appear to treat shareholders adversely are apt to be better than the alternative—having the bank closed.

This is an important point of the capital alternative. By setting capital standards high enough and setting the level where sanctions come into force high enough, many bank failures are apt to be averted. They would be replaced by recapitalizations or mergers where FDIC or other supervisory involvement would be limited. From a financial standpoint there would be no FDIC involvement where the system works well.

Under present arrangements, enforcement action sometimes pressures or awakens bank management to recapitalize or merge their institution so that failure is averted. However, frequently the troubled bank is too far gone by the time management considers

recapitalizing or merging. The alternative discussed here would require significant action while the troubled bank is still likely to have value. That is likely to spur management and directors to take action to salvage some of that value.

Fewer bank failures and reduced FDIC outlays will reduce net insurance assessments. These currently run about eight basis points measured as a percentage of deposits. Prior to 1981, when FDIC insurance losses were modest, net assessments averged four to five basis points. For those banks that incur increased net interest cost through the use of subordinated debt, a portion, all, or perhaps more than all, of that increased cost could be offset by a reduction in net insurnace assessments.

If increased capital requirements are to be effective, they would have to be applied uniformly by bank regulators. However, as long as thrifts are subject to lower capital requirements they will have a competitive advantage vis-a-vis banks at the same time they expose the FDIC and the Federal Savings and Loan Insurance Corporation to significant risk. This alternative would subject FDIC-insured thrifts to the same capital requirements as banks, but a longer phase-in period may be necessary.

Invited Comment

The two alternatives outlined above both seek to increase market discipline in order to restrain risk-taking by banks. The FDIC currently has the legal authority to use and, in its discretion, may use the modified payoff in individual instances or as a policy for all bank closings. To raise capital levels uniformly will require joint action of the regulatory agencies or legislation. Comments are invited on both alternatives. The FDIC is specifically interested in comment on whether either alternative will achieve the goal of discipline and, if so, which alternative is preferred, and why. If neither is viewed as effective or desirable, is there another, preferable alternative? The FDIC is interested in general comments (many of the specifics of the two alternatives have not been set forth). However, the FDIC is also interested in any specific suggestions on how these alternatives might be best implemented.

By Order of the Board of Directors, this 30th day of April, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10962 Filed 5-3-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Competitive Challenge Grants; Solicitation of Award of Project Grants

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Civil Defense Act of 1950, will issue a Request for Assistance (RFA) EMW-85-S-2055 on or about May 7, 1985 for project grants under the Public Information Challenge Grants Program to stimulate the development of effective emergency public information strategies at state and local levels. In fiscal year 1985, FEMA will fund up to 75 percent of a project if the prospective grantee can demonstrate a 25 percent financial commitment from another source.

This program is limited to state and local agencies, public and private nonprofit organizations in FEMA Region I (Maine, Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut) and Region VII (Kansas, Nebraska, Iowa and Missouri).

The purpose of this assistance is to increase public awareness of natural and manmade hazards and to stimulate preparedness measures for communities, households, business and industry, schools, etc.

The application package will contain a set of criteria which will be used in the review and selection process. Applications for Assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street SW., Room 728, Washington, D.C. 20472, Attn: Karen Harris, Contract Specialist, EMW-85-S-2055.

Please include a self-addressed mailing label with the request.

It is anticipated that two project grants of approximately $10,000 will be awarded as a result of this request, one in each region of competition. Grant awards are expected in July or August. Proposers may request funding for a second year option, which will be subject to availability of funding, and which will require a 50 percent match.

Robert V. Mahaffey,

Director, Office of Public Affairs.

April 25, 1985.

[FR Doc. 85-10882 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

FEMA Advisory Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Advisory Board.

Date of Meeting: May 15, 1985.

Time: 9:00 a.m. to 5:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW. Washington, DC 20472.

Purpose: FEMA program office staff will provide status reports on their major activities and present issues to the Board for consideration. Work teams will be formed which will report findings back to the Board in late afternoon. Discussions will include issues that involve classified information. The Director has determined that the Board meeting should be closed to the public because discussions will involve information that is specifically authorized to be kept Secret in the interest of national defense or foreign policy and is properly classified pursuant to Executive Order.

Bernard A. Maguire,

Associate Director, National Preparedness.

[FR Doc. 85-10883 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

Senior Performance Review Board; Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Barry G. Oertel, Chief Executive Personnel Division, 500 C Street, SW. Washington, DC 20472, 202./646-4083.

The names of the members of the FEMA Senior Performance Review Board established pursuant to 5 U.S.C. 4314(c) are: John R. Lilley, William F.W. Jones, Paul Krueger, Gerald S. Martin, Joseph A. Moreland, and Robert H. Volland.

Alternates: Dennis W. Boyd, Gregg Chappell, John D. Hwang, Frank C. Sidella.

Dated: April 19, 1985.

Barry G. Oertel,

Chief, Executive Personnel Division.

[FR Doc. 85-10881 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0009

Title: Disaster Assistance Registration Forms

Abstract: Forms used to apply for disaster assistance benefits. Filled out by FEMA interviewers only in Presidentially-declared major disasters.

Type of Respondents: Individuals or Households

Number of Respondents: 46,000

Burden hours: 30,670

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 30, 1985.

Walter A. Girstantas,

Director Administrative Support.

[FR Doc. 85–10879 Filed 5–3–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Beverly Hills Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Beverly Hills Savings and Loan Association, Beverly Hills, California, on April 23, 1985.

Dated: May 1, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–10952 Filed 5–3–85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Concorde/Nopal Line Petition

On January 23, 1985, Concorde/Nopal Line (Concorde/Nopal) petitioned the Federal Maritime Commission pursuant to section 19 of the Merchant Marine Act of 1920 (46 U.S.C. 876) to issue rules to meet or adjust conditions which Concorde/Nopal alleges are unfavorable to shipping in the U.S./Venezuela trade. The Commission notified the Department of State and the public of its intention to issue a proposed rule to meet or adjust the apparently unfavorable conditions. That action was twice deferred, however, in response to requests by Concorde/Nopal which informed the Commission that it expected to reach an amicable resolution of the matter in consultations with the Venezuelan Ministry of Transportation and Communications.

Concorde/Nopal recently withdrew its request that the Commission defer action on its petition because it had been unable to secure a permit from the Venezuelan Government which would allow it to operate in the trade with more than one vessel designated in advance. Concorde/Nopal now again informs the Commission by letter of April 30, 1985, that it expects the matter to be resolved by the imminent issuance of a permit for it to operate in the trade with more than one designated vessel. The Commission will, accordingly, defer further action on the proposed rule and the petition until May 8, 1985. The Commission does so with the understanding that Concorde/Nopal will inform the Commission in writing by May 6, 1985 of its status in the trade.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–10929 Filed 5–3–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 30, 1985.

Background

Notice is hereby given to final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Report of Deposits

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001

OMB Docket number: 7100–0087

Frequency: Weekly, Quarterly, Daily dependent upon report.

Reporters: Depository institutions.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a), 461, 3105] and is given confidential treatment [5 U.S.C. 552b(4) and b(8)].

Package of reports collects information on deposit data from depository institutions that have transactions accounts or nonpersonal time deposits and are not fully exempt from reserve requirements (FR 2900); Eurocurrency deposits from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, 2951); and selected items on the 2900 in advances from large commercial banks (FR 2000) and a sample of small commercial banks (FR 2001). An increase from $15 to $25 million in the deposit cutoff level used to differentiate between weekly and quarterly reporting is proposed for the FR 2900 report.

2. Report title: Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities and Annual Report of Total Deposits and Reservable Liabilities

Agency form number: FR 2910q; FR 1290a

OMB Docket number: 7100–0175

Frequency: Quarterly; annually

Reporters: Depository Institutions

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 461] and is given confidential treatment [5 U.S.C. 552b(4) and b(8)].

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement Corporations) that are exempt from reserve

requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. An increase from $2 million to the equivalent of the reservable liabilities exemption amount ($2.4 million in 1985) in the lower total deposit cutoff level used to determine nonreporter status versus FR 2910a reporting is proposed. An increase from $15 to $25 million is proposed for the upper total deposit cutoff level to determine quarterly versus annual reporting is also proposed.

3. Report title: Bank Holding Company Financial Supplement
Agency form number: FR Y-9
OMB Docket number: 71-0128
Frequency: semiannually, annually
Reporters: Bank Holding Companies
Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR Y-9 data historically has been the primary source of information for the Federal Reserve System's bank holding company (BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of $150 million or more are required to file this report.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Bank Holding Company Financial Statement.
Agency form number: FR 2352
OMB Docket number: will be assigned
Frequency: semiannually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR 2352 data is one of the primary sources of information for the Federal Reserve System's bank holding company (BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of less than $150 million are required to file this report.

Board of Governors of the Federal Reserve System, April 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10874 Filed 5-3-85; 8:45 am]

BILLING CODE 6210-01-M

Bank of Virginia Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such a greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue conentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Virginia Company*, Richmond, Virginia; to engage *de novo* through its subsidiary, Bank of Virginia Insurance Agency, Inc., Richmond, Virginia, in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(1)(8)(6).

Board of Governors of the Federal Reserve System, April 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10875 Filed 5-3-85; 8:45]

BILLING CODE 6210-01-M

Sutton Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 28, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Sutton Bancshares, Inc.*, Attica, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Sutton State Bank, Attica, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of Gulf National Bancorp, Inc., Lake Charles, Louisiana, thereby indirectly acquiring Gulf National Bank at Lake Charles, Lake Charles, Louisiana.

Board of Governors of the Federal Reserve System, April 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10876 Filed 5-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In FR Doc. 85-9801 beginning on page 16151 in the issue of Wednesday, April 24, 1985, make the following correction: On page 16151, in the third column, in the second line, "9:00" should read "9:30".

BILLING CODE 1505-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 48, No. 198, pp. 46440-46441, dated Wednesday, October 12 1983, and **Federal Register**, Vol. 49, No. 133, p. 26114, dated Tuesday, July 10, 1984) is mended to reflect the reorganization of the Office of Financial Operations (OFO), Bureau of Program Operations (BPO), Office of the Associate Administrator for Operations.

—The OFO is being reorganized to streamline operations by consolidating two divisions having similar functions into one new division.

The specific amendments to Part F. are as follows:

—Section FP.20.A. Bureau of Program Operations (FPA) is amended by deleting the functional statements and organizational titles for Section FP.20.A.4.c. Division of Provider Overpayments (FPA73) and Section FP.20.A.4.d. Division of Beneficiary Appeals and Overpayments (FPA74). The abolishment of the two divisions includes deleting the division's subordinate branches in their entirety. The two abolished divisions are replaced by one new division, the Division of Overpayment Prevention.

The new divisional functional statement and organizational title (Section FP.20.A.4.c.) read as follows:

c. Division of Overpayment Prevention (FPA77)

Analyzes the capabilities of the Medicare intermediaries and carriers and Medical fiscal agents and State agencies to ascertain the most efficient application of funds available for auditing HCFA's providers and suppliers. Prepares manual instructions for regional offices, contractors, State agencies, and fiscal agents on the proper determination and recovery of overpayments of Medicare and Medicaid funds. Analyzes, controls, and monitors outstanding overpayments to assure that contractors, State agencies, and fiscal agents are timely in identifying and collecting overpayments. Advises and assists regional officers, contractors, State agencies, and fiscal agents in negotiations with providers, physicians, and suppliers relating to the acceptability of particular techniques of determining the amount of overpayments, the responsibility for repayment, and the method of recovery. Provides assistance in determining when recovery actions may be nonprofitable. Makes final determinations regarding the acceptability of compromises of beneficiary overpayments (up to $20,000). In cases for which recovery action is pursued, maintains the control system relating to the statute of limitations for filing suit and processes uncollectable overpayment cases to, and maintains liaison with, the General Accounting Office, the Office of the General Counsel, and the Department of Justice. Directs the processing of all Medicare (Part A) beneficiary appeals and beneficiary overpayments. Plans, directs, and coordinates the processing of claims submitted for reconsideration and hearings. Reviews decisions by the Social Security Administration's Office of Hearings and Appeals with respect to the liability and amount of beneficiary overpayments. Evaluates and provides input to other HCFA components on the performance of contractors with respect to the processing of beneficiary appeals and overpayments.

Dated: April 4, 1985.

Barlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 85-10893 Filed 5-3-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Powder River Regional Coal Team Meeting

April 29, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting and call for re-expressions of leasing interest.

SUMMARY: This notice is to inform the public that the Powder River Regional Coal Team Meeting will meet on June 5, 1985, to discuss issues related to round two coal activity planning in the Powder River coal region. The public is welcome to attend. The primary purposes of the meeting are to (1) review the coal market interest in the Powder River Region, (2) develop direction for making Federal coal leasing recommendations for round two coal activities, provided that the on-going National coal program review results in the continuation of round two activities, and (3) reevaluate the framework of the *Draft Environmental Impact Statement for Round II Coal Lease Sale in the Power River Region,* January 1984.

DATE: The team will meet at 8:30 a.m. on June 5, 1985.

ADDRESS: The meeting will be held at the Casper Hilton, I-25 and Rancho Road, Casper, Wyoming; telephone (303) 266-6000.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Branch of Solid Minerals, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone (307) 772-2571.

SUPPLEMENTARY INFORMATION: The Powder River Regional Coal Team is a subcommittee of the Federal-State Coal Advisory Board. This team has the duty to guide all phases of the coal activity planning process in the portions of Montana and Wyoming that are within the Powder River Coal Region. The team has not met since June 21, 1983. Since then the Bureau of Land Management published the above-referenced Round II Coal Lease Sale Draft EIS, and issued proposals to implement most recommendations of the Linowes Commission's report on *Fair Market Value Policy For Federal Coal Leasing* and the Office of Technology assessment's report on *Environmental Protection in the Federal Coal Leasing Program,* and published in the *Federal Coal Management Program, Draft Environmental Impact Statement Supplement.* Although the review of the recommendations and proposals in these reports is continuing, the Regional

Coal Team members believe that it is appropriate to review the status of the Round II leasing effort and develop a plan of action for commencing regional coal activity planning in the Powder River Region. Implementation of the plan will be contingent upon the outcome of the on-going National coal program review. If this review results in a decision that activity planning should not continue, then Powder River round two coal leasing activities will cease.

At this meeting, the team will review the basis for the round two draft EIS and the 22 potential lease tracts addressed in this draft EIS. To assist the tract review, the team requests public comments and re-expressions of leasing interest concerning any of the 22 tracts addressed in the draft EIS. Responses are requested to:

1. Describe any portion of an existing coal tract which warrants redelineation consideration and provide detailed supporting justification.
2. Indicate a three year period during which a lease offering would be appropriate and provide detailed supporting rationale for this timeframe, and
3. Provide any new geological or surface data, above and beyond that previously submitted.

This information, a data adequacy review, and an analysis of the Powder River coal market may utimately lead to recommendations for a phased leasing schedule for the 22 tracts currently under consideration for round two leasing, provided that round two coal activity planning continues. The comments and re-expressions of interest concerning the 22 tracts may be sent in advance of the team meeting to the: Chief, Branch of Solid Minerals, Bureau of Land Management (WSO-924), 2515 Warren Avenue, Cheyenne, Wyoming 82001.

A summary of all responses received on or before May 31, 1985, will be announced at the Meeting on June 5, 1985. If no re-expressions of interest are received, then the RCT will assume that leasing interest no longer exists.

The agenda for this meeting is as follows:

1. Introductions
   a. Voting members
   b. Ex-officio members
2. Status of Powder River Regional Coal Team Charter
3. Regional Coal Activity Status
   a. Current Production
   b. Round one leases
   c. Preference Right Lease Applications
   d. Exchanges
4. Market Analysis
5. Round Two Tract Status
   a. Current tract interest summary
   b. Need to expand call for expressions of interest
   c. Redelineation needs
   d. Land use planning status
   e. Tract coal drilling needs
6. Round II Draft EIS
   a. Alternative leasing level adequacy
   b. Geogr付raphic Information System demonstration of data base
   c. Data adequacy standards
   d. Discussion of Science Advisors
   e. Discussion of Review Council
   f. Regional Boundaries
   g. Need for Supplemental Draft EIS
   h. Schedule or steps to Final EIS

Hillary A. Oden,

State Director.

[FR Doc. 85-10919 Filed 5-3-85; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-81]

Passenger Train Operation; Atchison, Topeka and Santa Fe Railway Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Strauss, New Mexico, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Deming, New Mexico, and El Paso, Texas.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission served April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Deming, New Mexico, and a connection with Southern Pacific Transportation Company at El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:00 a.m., (EST), March 30, 1985.

(e) Expiration date. The provisions of this order shall expire at 11:59 p.m. (EST), March 31, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 30, 1985.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-10922 Filed 5-3-85; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-82]

Passenger Train Operation; Union Pacific Railroad Co.

It appearing, that the National Railroad Passenger Corporation (Amtrack) has establihed through passenger train service between Seattle, Washington and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Small, California, are temporarily out of service because of derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that

notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said tranportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:15 a.m., EST, April 1, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EST, April 2, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 1, 1985

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-10821 Filed 5-3-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-28]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Task Force on the Scientific Uses of Space Station.

DATE: May 29-30, 1985, 8:30 a.m. to 5 p.m., and May 31, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 360A, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Sade, Code E, NASA Headquarters, Washington, DC 20546 (301/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Task Force was established under the NAC Space and Earth Science Advisory Committee to counsel NASA on plans for and work in progress on the scientific utilization of new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program.

This meeting will be closed to the public from 8:30 a.m. to 10 a.m. on May 31 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 60 persons including Committee members and other participants). Topics under discussion at this meeting will include data systems for Space Station, the role of humans in Space Station, microgravity and pointing, and momentum management.

Type of meeting: Open.

Agenda

May 29, 1985

8:30 a.m.—Welcome.
8:45 a.m.—Update on Space Station Program.
11 a.m.—Discussion of Task Force Concerns.
1 p.m.—Role of Humans.
3 p.m.—Data Systems for Space Station.
5 p.m.—Adjourn.

May 30, 1985

8:30 a.m.—Momentum Management.
10:30 a.m.—Discussion on Microgravity & Pointing.
1 p.m.—Discussion of Summer Study.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

May 31, 1985

8:30 a.m.—Closed Discussion on Membership.
10 a.m.—General Discussion.
11 a.m.—Recommendations to NASA.
1 p.m.—Tour of Lyndon B. Johnson Space Center.
3 p.m.—Adjourn.

Dated: April 30, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-10871 Filed 5-3-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice (85-27)]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the final Environmental Impact Statement (EIS) for the National Aeronautics and Space Administration Centaur Upper Stage for Use with the Space Transportation System. This document addresses the development and use of the Centaur vehicle as an upper stage in space launch activities.

Comments on the draft EIS were previously solicited from State and local agencies and members of the public through a notice in the **Federal Register** of June 12, 1984.

Copies of the draft and final Statement have been furnished to the Environmental Protection Agency; the Departments of Air Force, Army, Navy, Commerce, Defense, Health and Human Services, Interior, Labor, and Transportation; to appropriate State and local agencies; and to numerous private organizations.

Copies of the final Statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, DC 20546.

(b) NASA Ames Research Center (Building 201, Room 17), Moffett Field, CA 94035.

(c) NASA ARC-Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(D) NASA Goddard Space Flight Center (Building 8, Room 150), Greenbelt Road, Greenbelt, MD 20771.

(e) NASA Lyndon B. Johnson Space Center (Building 1, Room 136), Houston, TX 77058.

(f) NASA John F. Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.

(g) NASA Langley Research Center (Building 1219, Room 304), Hampton, VA 23665.

(h) NASA Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA Gerge C. Marshall Space Flight Center (Building 4200, Room (G-11), Huntsville, AL 35812.

(j) NASA National Space Technology Laboratories (Building 1100, Room A-213), NSTL Station, MS 39590.

(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA GSFC-Wallops Flight Facility (Library Building, Room E-105), Wallops Island, VA 23337.

Dated: April 16, 1985.

C. Robert Nysmith,

Associate Administrator for Management.

[FR Doc. 85-10872 Filed 5-3-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: George Washington University, Academic Center, Smith Hall of Art, 801 22nd Street, NW., Washington, DC 20052.

Date: Tuesday, May 21; and Wednesday, May 22, 1985.

Time: 8:30 a.m.-5:00 p.m., those days.

Type of meeting: Part Open—May 21, 8:30-1 (Open); May 21, 1-4:30 (Closed); May 21, 4:30-5:00 (Open). Part Open—May 22, 8:30-1 (Open); May 22, 1-5:00 (Closed).

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9794.

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda

Tuesday, May 21, 1985

8:30 a.m.—Introductory remarks; Overviews of the NSF, the Directorate for Mathematical and Physical Sciences (MPS), and the Division of Materials Research (DMR).

10:45 a.m.—Status Report, Synchrotron Radiation Center (SRC).

12:00 Noon—Lunch.

1:00 p.m.—Report and Discussion of the *ad hoc* Oversight of the Metallurgy, the Polymers and the Ceramics and Electronic Materials Programs (Closed).

4:30 p.m.—Role of the Department of Energy in the Support of Materials.

5:00 p.m.—Adjourn.

Wednesday, May 22, 1985

8:30 a.m.—Convene, Initial Discussion.

9:00 a.m.—Role of the Directorate for Engineering in the Support of Materials.

9:45 a.m.—The Role of the OASC in the Support of Materials.

10:30 a.m.—Discusson: MRAC Advice to DMR on (1) Aladdin, (2) DMR Budget.

12:00 Noon—Lunch.

1:00 p.m.—Continued Discussion of the *ad hoc* Oversight Reports on the Metallurgy, Polymers, and Ceramics (MPC) Section (Closed).

5:00 p.m.—Adourn.

Reasons for closing: The Oversight Reports involve discussion of proposals containing information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

May 1, 1985.

[FR Doc. 85-10892 Filed 5-3-85; 8:45 am]

BILLING CODE 7555-01-M

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Meeting

The Northern Mariana Islands Commission on Federal Laws, established pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94-241, 48 U.S.C. 1681 note), will meet on Wednesday, May 8, 1985, at 9:30 a.m., in room 7000 of the Main Interior Building, at 18th and C Streets, Northwest, in Washington, D.C. The meeting may extend into the following day, at the same location.

The purpose of the Commission is "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The intended agenda for this meeting is orientation of new Commission members, a review of the Commission's work to date on its next report to Congress, and consideration of pending staff recommendations on the application of particular federal laws in the Northern Mariana Islands.

The meeting will be open to the public. Attendance by the public will be limited to space available.

For further information about this meeting, contact Daniel H. MacMeekin, Executive Director, Northern Mariana Islands Commission on Federal Laws, 4346 Main Interior Building, Washington D.C. 20240, (202) 343-5617.

Interested persons may make oral presentations to the Commission or file written statements with respect to particular federal laws. Persons desiring to make oral presentations should make arrangements with Mr. MacMeekin at least seven days prior to the meeting.

Dated April 26,1985.

Benigno R. Fitial,

Chairman.

[FR Doc. 85-10945 Filed 5-3-85; 8:45 am]

BILLING CODE 4310-93-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co., Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power and Light Company (the licensee) to withdraw its December 2, 1980

application of the H.B. Robinson Steam Electric Plant Unit No. 2 located in Hartsville, South Carolina. The proposed amendment would have revised the provisions in the Technical Specifications for the H.B. Robinson Steam Electric Plant to add Technical Specifications for the operation of Dedicated/Alternate Shutdown System. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on August 23, 1983 (48 FR 38393). By letter dated July 20, 1984, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendment. The Commission has considered the licensee's July 20, 1984 request and has determined that permission to withdraw the December 2, 1980 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated December 2, 1980; (2) the licensee's letter dated July 20, 1984, withdrawing the application for license amendment; and (3) our letter dated April 29, 1985. All of the above document are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this 29th day of April 1985.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 85-10963 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-208]

Columbia University in the City of New York; Proposed Issuance of Order Terminating Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an Order to Columbia University in the City of New York terminating Facility Operating License No. R-128, in accordance with the licensee's request dated January 14, 1985, as supplemented March 27, 1985. The licensee has never operated the facility and no fuel was ever obtained or installed in the reactor. The licensee had modified certain systems so as to render the reactor inoperable.

Prior to issuance of the Order, the Commission will have made the findings by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 5, 1985, the licensee may file a request for a hearing with respect to issuance of the subject Order and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (Columbia University in the City of New York); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Exeuctive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John Mason Harding, Resident University Counsel, Columbia University in the City of New York, New York, 10027.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, or the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated January 14, 1985, as supplemented March 27, 1985, which is available for

public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 29th day of April 1985.

For the Nuclear Regulatory Commission

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85-10964 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-323]

Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Gas and Electric Co; Issuance of Facility Operating License DPR-81

Notice is hereby given that, pursuant to the approval given in a Memorandum and Order dated April 23, 1985, the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-81 (the license) to Pacific Gas and Electric Company (PG&E or the licensee) which authorizes operation of the Diablo Canyon Nuclear Power Plant, Unit 2 (the facility or Diablo Canyon Unit 2). Diablo Canyon, Unit 2 is a pressurized water reactor located in San Luis Obispo County, California. This license authorizes operation at reactor core power levels not in excess of 3411 megawatts thermal (rated power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan. However, the license contains a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate at greater than five percent will require Commission approval.

The application for license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation was published in the **Federal Register** on October 19, 1973 (38 FR 29105).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (issued in May 1973, 38 FR 14183) and its Addendum (issued in May 1976, 41 FR 22895), the NRC Flood Plain Review (dated September 9, 1981) and the NRC Discussion of Environmental Effects of the Uranium Fuel Cycle (dated September 9, 1981) since the activity authorized by this License is encompassed by the overall action evaluated in those documents.

For further details with respect to this action, see (1) the Commission Memorandum and Order dated April 23, 1985; (2) Facility Operating License No. DPR-81 with Technical Specifications (NUREG-1132) and the Environmental Protection Plan; (3) the reports of the Advisory Committee on Reactor Safeguards dated June 12, 1975, August 19, 1977, July 14, 1978, November 12, 1980, February 14, 1984, April 9, 1984, June 20, 1984, and July 16, 1984; (4) the Commission's Safety Evaluation Report (NUREG-0675, Supplements 1 through No. 31); (5) the Final Environmental Statement dated May 1973 and its Addendum dated May 1976; (6) NRC Flood Plain Review of Diablo Canyon Nuclear Power Plant Site dated September 9, 1981; and (7) Discussion of the Environmental Effects of Uranium Fuel Cycle dated September 9, 1981. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407. A copy of the Facility Operating License No. DPR-81 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of NUREG-0675 and the Final Environmental Statement and its Addendum may be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or may be ordered by calling (202) 275-2000 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or Visa or Mastercard Number and expiration date.

Dated at Bethesda, Maryland, the 26th day of April 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-10966 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. et al. (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holders of Facility Operating License No. DPR-66 (the license) which authorizes operation of the Beaver Valley Power Station, Unit No. 1 at steady state reactor power level not in excess of 2652 MWth. The license provides, among other things, that it is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located at Beaver County, Pennsylvania.

II

Section 50.54(a) of 10 CFR Part 50 requires a license authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV. F of Appendix E requires each licensee to conduct an emergency preparedness exercise annually. The last annual exercise at Beaver Valley was held on June 27, 1984. The exercise date was changed in 1984 due to a request by FEMA Region III (Exemption dated October 12, 1983)

By letter dated September 11, 1984, the license requested an exemption to change the annual emergency exercise anniversary date from February 1985 to September 1985. The licensee stated that the change of exercise date for 1985 would enable use of a new simulator facility to develop operational data needed for the exercise. The use of this simulator will provide realistic detailed operational data for the exercise, and thereby will provide more meaningful training. This change will facilitate better coordination among the several NRC and FEMA Regions responsible for ensuring an adequate state of emergency-preparedness. Three FEMA Regions and two NRC Regions have jurisdiction within parts of the emergency planning area surrounding the facility. The licensee further stated that, based on the current Beaver Valley Unit 2 construction schedule, this change will also eliminate the need for two separate emergency exercises in 1986. Since the emergency organization and major facilities are the same for

both units, the schedule change would provide a better, more realistic training opportunity for this dual-unit site. The licensee also stated that the requested change would provide an opportunity to exercise the emergency plan in various weather conditions, as recommended in NUREG-0654/FEMA-REP-1.

The licensee has previously conducted full scale exercises on February 17, 1982, February 16, 1983, and June 27, 1984. During the June 27, 1984 exercise, minor deficiencies were identified involving the Commonwealth of Pennsylvania and Hancock County, West Virginia. Action to correct these deficiencies is being taken by appropriate offsite authorities. The exercise scheduled for 1985 is a partial one with limited offsite involvement and without FEMA observation.

There was no evidence that the delay in conducting the 1984 emergency exercise caused any adverse effects on the state of the licensee's emergency preparedness. There is no reason to expect that a change of the 1985 exercise date would adversely affect the state of emergency preparedness at the Beaver Valley site.

Based on the above discussion, we conclude that a schedular exemption can be granted for the 1985 exercise, and September of each year be designated for scheduling for exercises.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect to the requirements of the 10 CFR 50, Appendix E, Section IV F., as follows:

The next emergency preparedness exercise at the Beaver Valley Power Station, Unit No. 1, shall be conducted during September 1985. The date of scheduling subsequent annual emergency exercises for the Beaver Valley Power Station site shall be September of each year.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 15514, April 18, 1985).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 25th day of April, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-10965 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will met on May 15, 1985, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 8:00 a.m. on May 15. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

A portion of the May 15 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures if the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and 9 (B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C 552b(c)(6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456-7740, prior to 3:00 p.m. on May 13. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings

Executive Director, Office of Science and Technology Policy.

May 1, 1985.

[FR Doc. 85-1009 Filed 5-3-85: 8:45 am]

BILLING CODE 3170-01-M

SMALL BUSINESS ADMINISTRATION

Business Loan Policy; Interest Rates

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Effective on April 28, 1985, and pursuant to § 120.1-2 of our regulations (13 CFR 120.1-2), SBA will extend until September 30, 1985, the pilot program in which the maximum permissible interest rate on an SBA guaranteed loan will be equal to the state legal rate applicable to such loan. This extension applies to fixed rate loans and variable rate loans.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley Special Assistant, Room 800C, 1441 L St. NW, Washington, D.C. 20416, (202) 653-5954.

SUPPLEMENTARY INFORMATION: On April 27, 1984, SBA published a notice (49 FR 18204) for fixed rate loans and final regulations (49 FR 18083) for variable rate loans establishing a one year pilot program in which the maximum permissible interest rate on an SBA guaranteed loan was set at the state legal rate applicable to such loan. This pilot program has been operating in Region II (NJ, NY, PR), Region VII (IA, KS, MO, NE) and Region IX (AZ, CA, HI, NV) only.

The purpose of this pilot was to respond to suggestions by advisory groups that (1) some lenders use the SBA maximum rate as a suggested rate and (2) that the interest rate limits were inhibiting the ability of lenders to make small loans.

The data collected to date do not permit drawing a conclusion regarding lender's use of the SBA maximum as a suggested rate, but the data do suggest that allowing interest rates above the existing 2¾ percentage points above prime maximum encourage lenders to make smaller loans. During the pilot, 158 loans were made with interest rates above the existing maximum. The average size of these loans was $95,000 compared to an average loan size for all loans of $150,000.

Section 120.1-2 of SBA Regulations (13 CFR 120.1-2) authorizes the Administrator to publish a notice providing for a pilot program. This

notice is notification of this pilot to extend no later than September 30, 1985.

During the extension, SBA will continue to evaluate activity in the pilot regions and will make a decision regarding the possibility of proposing this interest rate policy for national implementation.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-10905 Filed 5-3-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0107]

Certified Grocers Investment Corp.; License Surrender

Notice is hereby given that Certified Grocers Investment Corporation, 4800 South Central Avenue, Chicago, Illinois 60638, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Certified Grocers Investment Corporation was licensed by the Small Business Administration on May 17, 1976.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on April 25, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: April 30, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10906 Filed 5-3-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Express Airlines I, Inc. d.b.a. Republic Express

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-5-8, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Express Airlines I, Inc., d.b.a. Republic Express is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 21, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-8 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-5-8 to that address.

Dated: May 1, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-10968 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-62-M

Application of United States Overseas Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-5-9) Docket 42600.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that United States Overseas Airlines, Inc. continues to be fit, willing, and able to conduct operations as a certificated air carrier.

DATE: Persons wishing to file objections should do so no later than May 21, 1985.

ADDRESS: Responses should be filed in Docket 42600 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

Dated: May 1, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-10967 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See, 14 CFR 302.1701 et. seq.); Week Ended April 26, 1985

Subpart Q applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoptions of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
4-24-85	42893	Temsco Helicopters, Inc., c/o Hank Myers, Myers & Company, P.O. Box 7341, Bellevue, Washington 98008. Supplemental Information of Temsco Helicopters, Inc. as requested by Order 85-3-43. Answers may be filed by May 22, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85–10969 Filed 5–3–85; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

[Docket No. 24028–2 (LAC)]

Petition of Lineas Aereas del Caribe, S.A.; Grant of Exemption No. 4302

On March 29, 1985, the United States Court of Appeals for the District of Columbia entered its opinion in *Airmark, et al.* v. *FAA, et al.*, No. 84–1619, remanding to the FAA certain cases dealing with Petitions for exemption from the FAA's aircraft nosie compliance rules. As a consequence of that decision, on April 26, 1985, the FAA issued its decision *In the Matter of the Petition of Lineas Aereas del Caribe, S.A.*, Regulatory Docket No. 24028–2, Exemption No. 4301 (*LAC*). Since the *LAC* decision contains interpretive information useful to all potential petitioners for exemptions from the noise rule, it is published in its entirety for the information of interested persons.

Issued in Washington, DC, on April 30, 1985.

John H. Cassady,

Assistant Chief Counsel.

Grant of Exemption

In the matter of the petition of Petition of Lineas Aereas del Caribe, S.A. for an exemption from § 91.303 of the Federal Aviation Regulation.

[Regulatory Docket No. 24028–2; Exemption No. 4302]

By petition dated April 11, 985, field by Ms. J.W. Young, Barrett Smith Schapiro & Armstong, 1201 Pennsylvania Avenue, NW., Washington, D.C. 20004, on behalf of Petition of Lineas Aereas del Caribe, S.A. (hereinafter "LAC"), petitioner requested an exemption from the Janurary 1, 1985 noise level comliance date contained in 14 CFR Part 91, Subpart E, § 91.303.

The provisions of § 91.303 prohibit any persons, on or after January 1, 1985, from operating any subsonic turbojet airplane covered by Subpart E to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under 14 CFR Part 36. Petitioner conducts scheduled all-cargo air service, using aircraft that do not comply with the noise level requirements. Under section 91.303, absent an exemption, these aircraft cannot now legally be operated in the United States.

On March 29, 1985, the United States Court of Appeals for the District of Columbia Circuit entered its opinion in *Airmark, et al.* v. *FAA, et al.*, No. 84–1619, remanding to the FAA certain cases dealing with petitions for exemption from the FAA's aircraft noise compliance rule. In that decision, the Court indicatd that the FAA had broad discretion both as to the manner in which it could review newly filed exemption petitions and the criteria to be applied in reviewing such petitions. The Court, on April 5, 1985, issued an order concerning petitioner which required the FAS to show cause why the FAA's January 3, 1985, denial of LAC's previous petition for exemption should not be vacated.

In light to this background, this petition has not been published in the **Federal Register** because the FAA has determined that it would be contrary to the public interest to delay disposition of this petition pending publication for comment. This grant contains information for petitioners, including petitioners affected by orders entered by the Court of Appeals who are confronted with early deadlines for filing new petitions with the FAA. Due to the imminence of the Court's filing deadlines, the FAA finds that it is in the public interest to make this information available as quickly as possible to those petitioners affected by the orders of the Court, as well as all others. The FAA has determined, for good cause, that publication in advance in the **Federal Register** should be waived in this case, only, and to issue the exemption herewith since, as noted below, the FAA finds that this petitioner meets the criteria set forth herein.

General Discussion

In reviewing this petition and all other petitions, the FAA has determined that two class of petitions may warrant an exemption from § 91.303. First will be those petitioners who satisfy all five of the criteria set out by the congress in the Conference Report on the Aviation Safety and Noise Abatement Act (ASNA) (H.R. Rep. No. 715, 96th Cong., 1st Sess. 23, reprinted in 1980 U.S. Code Cong. & Ad. News 115, 124). Second, those petitioners who have been designated in U.S. Department of Transportation (DOT) orders to serve routes determined to be essential service may be eligible for an exemption from the noise rule for service on those routes without regard to whether they otherwise satisfy the five criteia set out by Congress.

I. Congressional Criteria

As stated previously, the ASNA Conferees indicated that the FAA in reviewing peitions for exemption from the noise rule should give consideration to hardship situations. The Conferees described a hardship situation as being comprised of the following five necessary components all of which must apply in each case:

—Smaller carrier
—Making a good faith compliance effort
—Needed technology delayed or unavailable
—Could suffer financial havoc
—Performs valuable airline service.

The following is a discussion of the FAA's definition of interpretation of these criteria.

A. The term "smaller carrier" means a carrier which, on January 1, 1985, operated 9 or fewer transport category turbojet aircraft. A "smaller carrier" may also be one which on that date had less than 1500 employees.

These definitions of "smaller carrier" are based upon the FAA's a small entity for purpose of implementing the Regulatory Flexibility Act of 1980 (FAA Order 2100.14, dated, July 15, 1983) and the Small Business Administration definition of "small business concern" contained in 15 U.S.C 632 and in the Small Business Size Regulations promulgated by the Administration on February 9, 1984 (49 FR 5024). Although the FAA and SBA standards were established for purposes other then the aircraft noise rule, they can be used as reliable guidance utilizing available data on industry size.

B. The term "good faith compliance effort" requires that the petitioner have a firm contract entered into no later than March 29, 1985 (the date of the U.S. Court of Appeals decision in the Airmark case), for either hush kits or replacement complying aircraft supported by a non-refundable deposit of at least $75,000 for each affected aircraft, and that the delivery date is the earliest possible date. Exemptions will be limited to aircraft which are the subject of a hush kit or replacement contract. Further, a petitioner may not obtain an exemption for more aircraft than the number of non-compliant aircraft operated by it in the comparable period in 1984, since the purpose of ASNA is to mitigate the noise impact of such aircraft. In addition, if the pertinent contract is for a hush kit, the contract must be with a supplier which had applied for a supplemental type certificate (STC) for the hush kits before January 1, 1985, and is continuing active efforts to obtain the STC. This requirement is necessary to ensure there be a serious likelihood that the non-noise compliant aircraft can be brought into compliance in a reasonable time-frame. Given the general experience of the FAA with the supplemental type certification process and its specific experience with certification of hush kits, any applicants who did not even apply for an STC prior to January 1, 1985, are faced with development efforts requiring a substantial amount of time prior to certification. The clear Congressional intent of ASNA was to place a policy premium on the expeditious delivery of improved noise technology to the market. Allowing later filed STC's to qualify for this criterion would contradict that legislative policy. Thus, to faithfully carry out the Congressional intent, contracts with suppliers who do not fulfill this requirement will not be considered by the FAA as constituting "good faith" compliance efforts for purposes of satisfying this criterion.

C. The FAA has determined that the criterion "needed technology is delayed or unavailable" is essentially met by all petitioners. Those petitioners having aircraft for which the technology to manufacture hush kits was developed in 1973, meet this criterion because the commercial availability of the hush kits has been delayed until recently. Those petitioners that have aircraft for which there are no hush kits currently under development also meet this criterion.

D. In determining whether a petitioner, absent an exemption, could suffer "financial havoc," the FAA will:

1. Presume that, if 20% or more of the petitioner's total operations during the same period in 1984 for which it is seeking an exemption in 1985 would be prohibited, then financial havoc would occur.

2. If however, a petitioner cannot show that it would lose 20% or more of its total operations, but still believes it will suffer financial havoc if it does not receive an exemption, the FAA will apply the following test to the data submitted by the petitioner:

Using publicly available data for 1984, delete revenue produced by non-compliant U.S. operations which would have been barred by the noise rule and which would not be permitted by any other exemption held by the petitioner, from the operator's financial database, along with an equal percentage of variable costs. If the resulting figure results in a net loss of greater than 10% of the operator's assets, the FAA will presume that financial havoc exists in that case.

Given the fact that there are significant carrier-by-carrier variations in economic make-up, (i.e. amount of accured reserves, operating margins, etc.), a single, overall test for financial havoc is inadequate. Rather, the FAA will first apply a presumptive standard (20% of operations) which would reasonably be viewed as resulting in financial havoc if met by a petitioner. However, if an individual carrier fails to meet this presumptive standard, but still believes that its individual situation will result in financial havoc, the carrier may submit particularized information concerning its own profit and loss (10% of assets).

Both the financial havoc tests use historical, publicly available data because such data are sufficiently objective for the FAA to evaluate. Any projections of 1985 operations or financial results would be so subjective that the agency could not adequately determine their validity.

E. In the context of determining eligibility for an exemption from Section 91.303, the criterion "valuable airline service" is met by all petitioners who operated aircraft in charter or scheduled air transportation before January 1, 1985. This date has been used because Congress obviously intended that the service must have been provided prior to the effective date of the prohibition to be deemed "valuable" within the context of the criteria.

II. Essential Air Service (EAS)

Notwithstanding the five criteria explained above, the FAA has determined that carriers which have been designated in DOT orders to perform service on routes which have been designated as EAS routes pursuant to section 419 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1389) warrant special consideration in that maintenance of air service on such routes is, by statute, deemed to be in the public interest. The Congress, in its passage of the Airline Deregulation Act, considered essential air service to be a critical element of the maintenance of air service to small and isolated communities. Despite the primary thrust of the Act to restore competitive incentives to civil aviation, Congress recognized the importance of ensuring that small communities would be given access to the air transportation system, and directed the Board (and how DOT) through section 419 to further:

"* * * the congressional policy to encourage and foster the continuation of safe and reliable scheduled air transportation for small communities and isolated areas." S. REP. No. 95–631, 95th Cong., 2nd Sess., 89 (1978).

The FAA also finds that the public interest requries that the objectives of the ASNA and the aircraft noise abatement program established by the FAA, including the aircraft noise operating rule contained in FAR § 91.303, must also be met insofar as possible consistent with continuation of essential air service. Therefore, the FAA will consider that an exemption from § 91.303 for a designated essential air service route is in the public interest if the petitioner shows that it:

—Is operating noncomplying aircraft on a route for which it has been found by a DOT order to be providing essential air service, and

—Has a firm contract with a hush kit manufacturer which, before January 1, 1985 applied for an STC; is continuing active efforts to obtain the STC; and such contract is supported by a non-refundable deposit of at least $75,000, for the installation of hush kits on each of its aircraft at the earliest available date, and

—Acquired the aircraft for which it seeks an exemption prior to January 1, 1985.

III. Failure of Hush Kit Manufacturers to Obtain STC

Some hush kit suppliers which applied for STC's prior to January 1, 1985 may be unable, for various reasons, to obtain the STC that is required before their hush kit can be used on aircraft engaged in air commerce. To this end, included among the conditions and limitations contained in each exemption will be a provision which permits exemption holders to obtain substitute contracts if their hush kit suppliers are unable to obtain an STC.

Therefore, the FAA will, without affecting the validity of the exemption, allow exemptions which are based on hush kit contracts that meet the good faith compliance criterion, to obtain substitute contracts if the initial hush kit supplier fails to obtain an STC by September 30, 1985. Those substitute contracts must be with suppliers which have obtained STCs by September 30, 1985, be supported by a non-refundable deposit of at least $75,000, and be for the earliest possible delivery date. If the hush kits from the substitute supplier cannot be installed until after December 31, 1985, these exemption holders will be able to continue operations under their exemptions until the earliest available installation date after December 31, 1985. September 30, 1985, has been selected as the date by which the supplier must have received its STC because that date represents the latest date by which a hush kit purchaser may reasonably expect to obtain delivery positions for its aircraft by December 31, 1985. In addition, based on the information the FAA now has concerning the status of hush kit suppliers which applied for STC's before January 1, 1895, September 30, 1985, is the latest date in calendar year 1985 that a hush kit supplier can expect to have obtained its STC and still have a reasonable expectation of being able to install production hush kits within that year.

IV. General Exemption Provisions

All exemptions granted by the FAA will include, but not be limited to, the following conditions and limitations:

—Operations allowed under the exemption will be the same number as in the comparable period in 1984,[1] or in the case of essential air service, the same number of operations for the essential route which was authorized in a previous grant of exemption or, in cases of further DOT orders designating EAS routes, the number of operations needed to meet the EAS requirements.

—All operations except those to Miami International Airport (MIA) and Bangor International Airport (BIA) will be limited to the hours between 0700 and 2200 local time at all airports. The exception for MIA and BIA is based on the Congressional intent evinced in Pub. L. 98–473.

—The FAA will not grant an exemption beyond December 31, 1985, except where the exemption holder has a firm hush kit delivery position after that date, and the hush kit supplier has obtained its STC by September 30, 1985.[2]

—Certain reporting requirements will be required by the FAA to monitor the compliance with the terms of the exemption.

Application of Criteria

Smaller carrier. The FAA finds that the petitioner meets this criterion because, on January 1, 1985 it operated nine or fewer transport category turbojet aircraft.

Good faith compliance. The FAA finds that petitioner meets this criterion because it has a firm contract, entered into on or before

[1] Carriers that engaged in exempted international flights may, in addition, conduct the same number of non-revenue operations for the purpose of refueling that they did last year, at the same locations. This is analogous to the operation of section 124 of Pub. L. 98–473 (the Hawkins-Chiles amendment), pursuant to which exempt carriers en route to Miami are allowed the same number of refueling stops at Bangor that they had in the previous year.

[2] Section 124 of Pub. L. 98–473 required the Secretary to grant exemptions from the noise rule to certain petitioners for operations to Miami or Bangor International Airports. As mandated by that law, the FAA issued 25 exemptions from § 91.303 of the Federal Aviation Regulations. Section 124(e) specifically provided that those exemptions shall expire no later than December 31, 1985, "except that, if the Secretary determines that equipment to insure compliance with the provisions of Pub. L. 96–193 which has been certified by the Department for that purpose will not be available to the holder of the exemption by that date, the Secretary may extend such exemption for such period as the Secretary determines is necessary to insure compliance with such provisions."

Accordingly, in evaluating whether a particular exemption granted under authority of Pub. L. 98–473 should be extended beyond December 31, 1985, the FAA will consider whether the exemption holder has a firm hush kit delivery position after that date and whether the hush kit supplier has obtained the necessary certification from the FAA. This provision assures that operators acquire hush kits for their noncomplying aircraft at the earliest possible time and that hush kit suppliers diligently work toward acquiring the STC.

March 29, 1985, for hush kits for the aircraft for which this exemption will be granted. The contract is supported by a non-refundable deposit of at least $75,000. The hush kit supplier applied to the FAA for a supplemental type certificate (STC) for that product before January 1, 1985.

Needed technology is delayed or unavailable. The FAA finds that petitioner meets this criterion because no hush kits for petitioner's aircraft are commercially available.

Financial havoc. The FAA finds that petitioner meets this criterion because more than twenty percent of petitioner's total operations during the same period in 1984 for which it seeks this exemption would be prohibited by the noise rule absent an exemption.

Valuable airline service. The FAA that petitioner meets this criterion in that it operated aircraft in charter or scheduled air transportation before January 1, 1985, and continues to do so.

In view of the foregoing matters, the FAA concludes that the petitioner has demonstrated that the public interest requires it be granted an exemption from section 91.303. Therefore, under the authority of sections 313(a), 601(c) and 611(b) of the Federal Aviation Act of 1958, as amended, which has been delegated to me by the Administrator (14 CFR 11.53), the petition of Lineas Aereas del Caribe, S.A., for exemption from § 91.303 of the Federal Aviation Regulations is hereby granted, subject to the following conditions and limitations:

Conditions and Limitations

1. This exemption shall apply only to the DC-8-54F aircraft having the following registration and serial number: HK-2632, 45768.

2. A copy of this Grant of Exemption shall be carried on board the above aircraft at all times.

3. This exemption is valid only for the operation of the above aircraft within the United States during the period between the date of this exemption and December 31, 1985, the date by which petitioner states that hush kits will have been installed on its aircraft.

4. This exemption is valid only for the number of operations within the U.S. that petitioner performed between April 1 and December 31, 1984.

5. With respect to the aircraft identified in paragraph 1, above, this exemption is valid only while the "SAI DC-8 Hush Kit Modification Contract" dated January 16, 1985, between Snow Aviation International, Inc. (SAI) and petitioner remains in effect, except that, should SAI fail to receive FAA certification for its hush kits by September 30, 1985, the exemption for the identified aircraft shall remain in effect for a period of sixty days after such failure occurs. If, during the sixty day period, petitioner obtains and submits to FAA a firm substitute contract, supported by a non-refundable deposit of at least $75,000, for installation of hush kits by a hush kit supplier which has obtained its STC by September 30, 1985, then the exemption granted herein shall remain in effect until installation of those hush kits on petitioner's aircraft. In all other cases, this exemption terminates on December 31, 1985.

6. This exemption is valid only while petitioner retains line position number 16 for the hush kits manufactured by SAI.

7. This exemption is valid only as long as petitioner remains the operator of the aircraft described in paragraph 1, above, and shall terminate immediately if petitioner sells, or otherwise disposes of said aircraft while this exemption is in effect.

8. During the period this exemption remains in effect, petitioner shall submit the following reports by an authorized official of the petitioner certifying that they are true and complete (under penalty of 18 U.S.C. 1001): (1) Not later than May 10, 1985, a report which contains at least the following information: the frequency of operations conducted by the petitioner using noncomplying aircraft at the airports used by petitioner for noncomplying aircraft during each of the twelve months preceding the date of issuance of this exemption; and (2) not later than the tenth day of each month commencing in May, 1985, reports containing at least the following information: (a) The frequency of operations conducted by the petitioner at each airport used by the petitioner for noncomplying aircraft during the preceding calendar month; (b) the registration and serial numbers and the number of operations of each noncomplying aircraft used at the airports reported under (a), above, during such month; (c) the status of petitioner's contract with its hush kit supplier, including particularly whether any change has occurred since the last monthly report in the expected date of installation of the hush kits and, if so, exact details of such change.

9. Except at Miami and Bangor International Airports, this exemption is valid only for landings or takeoffs of the above aircraft between the hours of 0700 and 2200 local time.

Except as provided above, this exemption expires on December 31, 1985, the scheduled date for delivery of the hush kits.

Issued at Washington, D.C., on April 26, 1985.

John E. Wesler,

Director of Environment and Energy.

[FR Doc. 85-10896 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-85-8]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final dispostition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 28, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 30, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23956-1	Worldwide Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate at least two Stage 1 Boeing-707-331B aircraft until hush kits are installed.
23992-1	Tradewinds Airways Ltd	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 aircraft in scheduled and charter cargo service to the United States until hush kits are installed.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
23978-1	Airmark Corp	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing-138 until hush kits are installed.

[FR Doc. 85-10899 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Gericault Drawings" (including in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the International Exhibitions Foundation and various foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Pierpont Morgan Library, New York, New York, beginning on or about June 7, 1985, to on or about July 31, 1985; the San Diego Museum of Art, San Diego, California, beginning on or about August 31, 1985, to on or about October 20, 1985; and the Museum of Fine Arts, Houston, Texas, beginning on or about November 9, 1985, to on or about January 5, 1986, is in the national interest.

[1] An itemized list of objects include in the exhibit is filed as part of the original document.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 30, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-10873 Filed 5-3-85; 8:45 am]

BILLING CODE 8230-01-M

OMB Circular A-76 Study of Acquisition of Books, Periodicals and Other Library Materials

The United States Information Agency announces its intention to perform a cost comparison study of its Program Support Division, Office of Cultural Centers and Resources. This office coordinates with suppliers for acquisition of books, periodicals, recordings and a variety of supplies, equipment and materials in response to requests from USIA officers overseas, and in Washington in support of U.S. cultural education programs overseas.

This activity has not been previously scheduled for an A-76 study.

Milestone charts for the in-house and cost comparison studies are being developed and will be published in the **Federal Register** within the next 90 days.

For further information contact Carolyn S. Hillier, Planning and Development Staff, Office of Administration and Technology, on (202) 485-2449.

Dated: May 1, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-10932 Filed 5-3-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—May 8, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting open to the public. The rest of the meeting closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Special Docket No. 1206—Application of Sea-Land Service, Inc. for the benefit of Page & Jones, Inc. as Agent for Sony Magnetic Products, Inc., and Special Docket No. 1238—Application of Pacific Westbound Conference and Sea-Land Service, Inc. for the benefit of Tone Forwarding as Agent for the Mearl Corporation—Consideration of the Records.

Portions closed to the public

1. Agreement No. 207-0101737: Italia/Transatlantica Joint Service Agreement.

2. Petition of Concorde/Nopal Line for Issuance of Regulations to Adjust and Meet Conditions Unfavorable To Shipping in the Foreign Trade of the United States—Consideration of the Record.

3. Docket No. 84-33: Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Consideration of Motion For Suspension of Investigation, and Replies thereto.

4. Agreement No. 202-010689: Actions of the Transpacific Westbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85-10957 Filed 5-1-85; 4:26 pm]

BILLING CODE 6730-01-M

2

TENNESSEE VALLEY AUTHORITY

Meeting No. 1349

TIME AND DATE: 10:15 a.m. (edt), Wednesday, May 8, 1985.

PLACE: Sullivan Central High School, Little Theater, Route 4, Blountville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 23, 1985.

Discussion Items

1. Update on lake levels in Upper Holston Watershed.

Action Items

C—Power Items

C1. Agreement between the Institute of International Education and TVA whereby TVA will conduct an 8-week energy conservation training program for a maximum of 30 program participants from underdeveloped countries.

*C2. Cooperative Agreement No. TV-66579A with the Atmospheric Fluidized Bed Development Corporation for the 160-MW atmospheric fluidized bed combustion demonstration plant project.

*C3. Amendment to Cooperative Agreement No. TV-65607A with Duke Power Company for procurement services for the atmospheric fluidized bed combustion demonstration plant project.

(*Items approved by individual Board members. This will give formal ratification to the Board's action.)

F—Unclassified

F1. Memorandum of Understanding No. TV-66689A between Corps of Engineers, Nashville District, U.S. Department of the Army and TVA covering arrangements for cooperative exchange of engineering and other expertise.

F2. Revised policy code relating to employee development.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 1, 1985.

W.F. Willis,
General Manager.

[FR Doc. 85-11006 Filed 5-2-85; 12:03 p.m.]

BILLING CODE 8120-01-M

federal register

Monday
May 6, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 and 91

Shoulder Harness in Normal, Utility, and Acrobatic Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23 and 91

[Docket No. 23815; Notice No. 85-11]

Shoulder Harnesses in Normal, Utility, and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Parts 23 and 91 of the Federal Aviation Regulations (FAR) to require the installation of shoulder harnesses at all seats of normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment and to require the pilot-in-command to brief passengers on how to fasten and unfasten their shoulder harness for takeoff and landings if shoulder harnesses are installed. This proposal responds to the conclusions of an FAA Crashworthiness Study Report, a Petition for Rulemaking from the General Aviation Manufacturers Association (GAMA), and Safety Recommendations from the National Transportation Safety Board (NTSB). This proposal will enhance the crashworthiness of small airplanes manufactured one year after the effective date of the proposed amendment.

DATE: Comments must be received on or before June 20, 1985.

ADDRESS: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 23815, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked Docket No. 23815. Comments may be inspected in Room 916 between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: J. Robert Ball, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23815". The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn.: Public Information Center (APA-430), 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Amendment 23-7 to Part 23 of the FAR, adopted on August 1, 1969, upgraded many airworthiness standards for small airplanes. Section 23.785 was amended to require that, in addition to the safety belt, each occupant must be protected from head injury by one of the following: (1) A shoulder harness to prevent the head from contacting any injurious objects; (2) elimination of any injurious object within the striking radius of the head; or (3) an energy absorbing rest that would support the arms, shoulder, head, and spine.

On January 31, 1973, the FAA issued Notice No. 73-1 (38 FR 2985) proposing to amend Parts 23 and 91 of the FAR to require: (1) Shoulder harnesses for all occupants of newly certificated airplanes; (2) shoulder harnesses for all occupants of airplanes manufactured one year after the effective date of the amendment, regardless of the type certification basis of the airplane; and (3) shoulder harnesses for all airplanes in service with attachment structural provisions within one year after the effective date of the amendment.

In support of final action on Notice No. 73-1, the FAA obtained the following information: (1) Approximately 80,000 to 90,000 of the 130,000 U.S. registered small airplanes in service would be required to add shoulder harnesses on the basis of existence of structural provisions; (2) the cost per seat for the installation of a shoulder harness would vary from $20 to $200 for most airplanes and installations made at the factory were mainly in the $20 to $40 per seat range; and (3) two percent of the current airplanes were equipped with shoulder harnesses, 50 percent of these shoulder harnesses were used on a regular basis, and the increased availability of shoulder harnesses would contribute significantly to occupant protection in an airplane accident.

As the final action on Notice 73-1, the FAA issued Amendment 23-19 to Part 23 and Amendment 91-139 to Part 91 on June 9, 1977. Amendment 23-19 requires the installation of shoulder harnesses for the front seats of all small airplanes for which an application for a type certificate is received after July 18, 1978 and Amendment 91-139 requires the installation of shoulder harnesses for the front seats of small airplanes manufactured after July 18, 1978. The rationale for the final action is discussed in the preamble to these amendments.

Also, § 23.785(j) was amended to require, in part, the cabin area surrounding each seat within striking distance of the occupant's head or torso be free of potentially injurious objects and if energy absorbing designs are used to meet this requirement, they must protect the occupant from serious injury when the occupant experiences the ultimate inertia forces set forth in § 23.561(b)(2).

As a result of the final action on Notice No. 73-1, the NTSB, on December 8, 1977, issued Safety Recommendations A-77-70 and A-77-71. Safety Recommendations A-77-70 and A-77-71 reiterated the NTSB's concern on what was considered to be the inadequacies of the new rule since the new requirements applied only to the front seats of new airplanes. On December 17, 1980, the Safety Board Completed a review of the FAA's action for accomplishing the safety improvements

sought by Safety Recommendations A–77–70 and A–77–71. Safety Recommendation A–77–70 states:

Amend 14 CFR 23.785 to require the installation of approved shoulder harnesses at all seat locations as outlined in NPRM 73-1. (Recommendation Status: Open, Unacceptable Action.)

Safety Recommendation A–77–71 states:

Amend 14 CFR 91.33 and .39 to require the installation of approved shoulder harnesses on all general aviation aircraft manufactured before July 18, 1978, after a reasonable lead time, and at all seat locations as outlined in NPRM [Notice of Proposed Rulemaking] 73–1.

Since this recommendation had been classified as "open, unacceptable action" for three years, the Safety Board developed recommendations to specify a certain date by which the FAA should accomplish the safety objectives of Safety Recommendation A–77–71 and included them as new recommendations.

On December 31, 1980, the NTSB forwarded to the FAA Administrator their Safety Recommendations A–80–125 through –127 which address the subject of installation of shoulder harnesses and are as follows:

Safety Recommendation A–80–125:

Require that those general avaiation aircraft manufactured to include attachment points for shoulder harnesses at occupant seats be fitted with shoulder harnesses no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in FAA registration. (Class II, Priority Action) (A–80–125).

Safety Recommendation A–80–126:

Develop, in coordination with airframe manufacturers, detailed approved installation instructions for installing shoulder harnesses at each seat location in current models and types of general aviation aircraft in which shoulder harness attachment points were not provided as standard equipment. Publish and provide these instructions to owners of these aircraft by December 31, 1982. (Class II, Priority Action) (A–80–126).

Safety Recommendation A–80–127:

Require that those general aviation aircraft for which FAA-approved harness installation instructions have been developed be fitted with shoulder harnesses at each seat location no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in the FAA registration. (Class II, Priority Action) (A–80–127).

In reply to these safety recommendations, the FAA informed the NTSB that the feasibility of requiring the installation of approved shoulder harnesses at all seat locations was being considered under an existing regulatory project and that the economic impact of the various options was being carefully assessed.

In support of the regulatory project, the FAA's Civil Aeromedical Institute (CAMI) completed a report entitled "Crashworthiness Studies: Cabin, Seat, Restraint, and Injury Findings in Selected General Aviation Accidents," Report No. FAA–AM–82–7. Numerous accidents were reviewed for features of crashworthiness and, in particular, for the injuries to the occupants in relation to the apparent severity of the impact and the adequacy of the function of the cabin and occupant restraint systems. Forty-seven (47) of a greater number of accidents were deemed worthy of more extensive review, in that there appeared to be meaningful information in the accident reports or the CAMI investigators were sufficiently familiar with the particulars of the accidents to provide details. In 23 of the 47 accidents investigated, there were occupants in passenger seats in addition to the pilot and copilot positions. There were 16 accidents in which the most severe injury in the pilot and copilot positions was "serious," yet, in 3 of these accidents, there was at least 1 fatality in the first row of passenger seats. In this context, first row of passenger seats are those immediately behind the pilot and copilot positions. In addition, there were four accidents in which injury to the occupants of the pilot and copilot positions were minor or none and the occupants of the first row of passenger seats received "serious" injuries. In two accidents, the most severe injuries were received by occupants of the second row of passenger seats. In concluding the review, an estimate of the value of upper torso restraint was made by the investigators. In the 47 accidents selected for further review, there were 136 persons involved. Eighty-seven (87) of these 136 were occupying a pilot or copilot seat, and it was estimated that 42 of the 49 passengers involved would have been helped had an upper torso restraint been available and used. From this study, it is clear that upper torso restraint does enhance the crashworthiness of an airplane and, thus, reduces the possibility of serious or fatal injuries to occupants of seats other than that of the pilot and copilot. A copy of this report is in the docket and is also available to the public through the National Technical Information Service, Springfield, Virginia 22161.

The FAA is greatly concerned about the number of injuries and fatalities in small airplane accidents and the General Aviation Manufacturers Association (GAMA) has also expressed concern about the injury rates in general aviation airplane accidents and is actively pursuing programs to both prevent accidents and reduce the risk of injury in those accidents that do occur. Many of these programs require the continuing cooperative efforts by industry, the National Aeronautics and Space Administration (NASA), the FAA's Civil Aeromedical Institute (CAMI), and others, in order to establish new standards for seat and restraint systems. On October 14, 1983, GAMA petitioned the FAA to amend §§ 23.785, 91.14, and 91.33 of the FAR to require the installation and use of shoulder harnesses at all crew and passenger seats in all newly manufactured small airplanes. Manufacturers represented by that organization now provide shoulder harnesses for all crew seats and shoulder harnesses are available as on option for passenger seats. In addition, GAMA members will incorporate structural provisions for the installation of shoulder harnesses in their newly manufactured small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, or nine or less, that are manufactured after December 31, 1984.

Economic Impact

Following a February 1, 1979 meeting between the FAA Administrator and the Chairman of the NTSB on the issues of crashworthiness, the FAA Administrator directed that the shoulder harness requirements be reevaluated to determine if the requirements should be broadened to include all seats, extented to cover older airplanes, or both. Accordingly, in December 1981, the FAA completed a Benefit-Cost Analysis for the installation of shoulder harnesses in all general aviation airplanes. The analysis included nine alternatives for rulemaking action related to the installation and use of shoulder harnesses. The alternatives considered are cited and discussed as follows:

1. Amend Part 23 to require shoulder harnesses at all seats on newly certificated airplanes (extension of the current rule which requires shoulder harnesses at the front seats only).

Although this alternative would not affect existing airplane designs, it would impose a future requirement for new airplanes whether the shoulder harness is used or not used.

2. Amend Part 23 to require structural design provisions to accommodate the installation of shoulder harnesses at all rear seat locations on newly certificated airplanes.

This alternative would provide the opportunity to install shoulder harnesses, at the owner's option, without the need for structural

modification. This alternative would not be applicable to airplanes being manufactured under the provisions of a current type certificate.

3. Amend Part 91 to require a shoulder harness at all seat locations on new airplane models, that is, those new airplane models manufactured under an amended type certificate, within a certain time period after the effective date of the amendment. Time periods of 1, 3, and 5 years were considered for this alternative.

This alternative is similar to alternative 1, except that the scope is broadened to include airplanes manufactured under an amended type certificate and a transition period is provided.

4. Amend Part 91 to require structural provisions to accommodate shoulder harnesses at all seat locations on new airplane designs.

5. Amend Part 91 to require shoulder harnesess at all seat locations on newly manufactured airplanes after a specified date.

6. Amend Part 91 to require structural provisions to accommodate the installation of shoulder harnesses at all seat locations on all small airplanes within a specified time period.

7. Amend Part 91 to require the installation of shoulder harnesses at all seats on all small airplanes after a specified time.

All airplanes which do not have provisions for shoulder harnesses would be required to be modified to meet the crashworthiness standards of Part 23.

8. Amend Part 91 to require structural provisions to accommodate the installation of shoulder harnesses at all seat locations on small airplanes prior to the time of reregistration.

This would require sellers or buyers to modify the airplane before registration to the new owner.

9. Make no regulatory changes.

The study indicated a positive benefit to cost ratio for alternatives one, two, and seven. Alternatives one and two have been rejected because the present proposal provides much greater benefits in addition to those proposed in alternatives one and two.

Because alternative seven is of such complexity and cost and because some of the data upon which the study was based has changed, the FAA believes that further study is required before that alternative can be considered for regulatory action. Some of the factors which led to this conclusion are as follows:

1. The overall cost was estimated to be from $287 million to $328 million in the 1981 study and more recent information indicates even higher costs.

2. The cost of shoulder harness installation can vary appreciably from one airplane to another. For example, owners of airplanes manufactured without the attachment points for shoulder harnesses or whose airplane requires structural strengthening would have to bear significantly greater expense than those that only require the installation of the shoulder harness itself.

3. Rather than retrofit all seats, it may be more appropriate to retrofit only those seats where it can be done at reasonable cost or to only retrofit the front seats since these have much higher occupancy than the rear seats and, therefore, the benefit to cost ratio will be significantly higher.

The FAA will study the practicality of retrofitting the general aviation fleet and requests information from the public relating to this matter. However, the FAA is concerned about the lack of shoulder harnesses in older airplanes and has taken a number of non-regulatory measures to improve occupant safety.

The FAA and a number of general aviation organizations have active educational programs under way emphasizing the advantages of having, and using, shoulder harnesses at all seat positions. The FAA's Accident Prevention Program emphasizes these advantages at the seminars conducted for the general aviation community. In addition, FAA Advisory Circular (AC) No. 43.13–2A, entitled, "Acceptable Methods, Techniques, and Practices—Aircraft Alterations," contains specific guidance for the installation of shoulder harnesses. This AC describes types of occupant restraint systems, effective restraint angles for the shoulder harnesses, and attachment methods, including precautions for an engineering evaluation of installations which involve cutting or drilling of critical fuselage members or skin of pressurized airplanes.

However, the FAA has concluded that the information within this AC is not receiving the widespread distribution necessary to encourage voluntary installation of shoulder harnesses. The FAA is updating the shoulder harness installation information in AC Number 43.13–2A and plans to issue a new Advisory Circular (AC) for the general aviation community. The new AC will encourage the installation of shoulder harnesses at all seat positions and will be available to all small airplane owners in addition to those individuals concerned with airplane maintenance and alterations for which AC 43.13–2A was prepared. As a further effort to encourage the installation and use of shoulder harnesses, the FAA has prepared a pamphlet entitled: "Your Shoulder Harness—If You Got It—Use It", for pilots attending Accident Prevention Seminars. This pamphlet, FAA–P–8740–45, will be available at the FAA's General Aviation District Offices (GADOs) and Flight Standards District Offices (FSDOs) in late 1984.

In the spring of 1983, the FAA called for the formation of a government/industry committee tasked with addressing several critical general aviation safety problems, including occupant protection. Other problems to be addressed included criteria for the dynamic testing of airplane seats/occupant restraint systems and the crashworthiness of airplane fuel systems. This committee, known as the General Aviation Safety Panel (GASP) has had several meetings and technical working sessions directly aimed at resolving issues for improved crashworthiness in general aviation airplanes. In this regard, the Part 23 Airworthiness Review Conference held October 22–26, 1984, discussed these issues and the FAA plans to address them in a forthcoming Notice of Proposed Rulemaking to improve the crashworthiness in general aviation airplanes.

In preparing the benefit-to-cost analysis for alternative number 5, "Amend Part 91 to require the installation of shoulder harnesses at all seat locations on newly manufactured airplanes after a specified date," it was assumed that the cost would include the design, installation of provisions for shoulder harnesses, and the shoulder harness. Further, the actual installation cost of shoulder harnesses at each seat is estimated at $150 to $250 per seat because the attaching means for these shoulder harnesses will be provided in the affected airplanes. The FAA has been informed by the airplane manufacturers, which are members of the General Aviation Manufacturers Association, that after December 31, 1984, their newly manufactured small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, will have structural provisions incorporated for the voluntary installation of shoulder harnesses by airplane owners and operators.

These manufacturers, which produce the majority of small airplanes, will be providing structural provisions for the installation of shoulder harnesses at all seat locations in these small airplanes; therefore, a review of the benefit-to-cost to benefit analysis has shown that

alternative number 5 will now have positive benefits relative to the estimated costs; and, therefore, the FAA concludes that the objectives of alternative 5 should be proposed at this time. For those small airplane manufacturers which are not members of GAMA, the proposed date requiring the installation of shoulder harnesses at all seat positions is considered a reasonable length of time in which to comply with the new requirements.

Discussion of Proposal

Because of the time frame between the completion of the December 1981, Benefit-Cost Analysis and the action proposed by this Notice, the FAA conducted another regulatory evaluation, including regulatory flexibility analysis, to verify the estimated benefits to be derived by this proposal. This latter regulatory evaluation verified that the benefits-cost of this proposal would be positive and are not considered to be major under the procedures and criteria prescribed by Executive Order 12291; however, the FAA does consider this proposal significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Copies of the December 1981, Benefit-Cost Analysis, and the regulatory evaluation for this action are filed in the regulatory docket.

The Federal Aviation Administration proposes a new § 23.2 of the FAR to require, at the time of manufacture, the installation of shoulder harnesses at all seat positions in small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment. This proposal would assure that shoulder harnesses are available in small normal, utility, and acrobatic category airplanes manufactured one year after the effective date of the proposed amendment, prior to their use in air commerce and, thereby, have an enhanced level of crashworthiness.

Section 23.785 of the FAR is proposed to be amended to require shoulder harnesses designed to protect each occupant from serious head injury from contact with any injurious object when the seat occupant experiences the inertia forces prescribed in § 23.561(b)(2).

Part 91 of the FAR is proposed to be amended to require the pilot-in-command to brief passengers on how to fasten and unfasten the shoulder harness and to notify passengers to fasten their shoulder harness for takeoffs and landings if a shoulder harness is installed, and to require the shoulder harness for each seat be designed to protect the occupant from serious injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) on small normal, utility, and acrobatic category airplanes manufactured one year after the effective date of the proposed amendment. In addition, the proposed change to § 91.33(B)(13) makes the requirement clear that shoulder harnesses at the flight crew seats must be designed to permit the flight crewmember, when seated and with safety belt and shoulder harness fastened, to perform all functions necessary for flight operations, thereby providing the flight crew the benefit of shoulder harnesses in the event of an accident.

Note.—This proposal will enhance the crashworthiness of normal, utility, and acrobatic category airplanes with a passenger seating configuration of nine or less, excluding pilot seats, at a minimum cost. The cost of shoulder harness installation has been estimated and a positive benefit-to-cost determined. This proposal, therefore, provides passengers of small airplanes manufactured one year after the effective date of the proposed amendment, an enhanced level of safety and reduction of potential injury in the event of an accident. Accordingly, the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States. A regulatory evaluation has been prepared and has been placed in the public docket.

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety, Safety, Air transportation, Tires.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 23 and 91 of the Federal Aviation Regulations (14 CFR Parts 23 and 91) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. By adding a new § 23.2 to read as follows:

§ 23.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each normal, utility, and acrobatic category airplane having a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment, or such foreign manufactured airplane for entry into the U.S., must meet the requirements of § 23.785(g) in effect after the effective date of the proposed amendment. For the purpose of this paragraph, the date of manufacture is:

(a) The date the inspection acceptance records, or equivalent, reflect that the airplane is complete and meets the FAA Approved Type Design Data; or

(b) In the case of a foreign manufactured airplane, the date the foreign civil airworthiness authority certifies the airplane is complete and issues an original standard certificate of airworthiness, or the equivalent in that country.

2. By amending § 23.785 by adding the words "and shoulder harness" between the words "belt" and "fastened" within the parenthetical phrase of the first sentence of paragraph (j) and by revising paragraph (g) to read as follows:

§ 23.785 Seats, berths, safety belts, and harnesses.

* * * * *

(g) Each occupant must be protected from serious head injury, when subjected to the inertia forces prescribed in § 23.561(b)(2), by a safety belt and shoulder harness, that are designed to prevent the head from contacting any injurious object, for each seat in normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

§ 91.14 [Amended]

3. By amending the title of § 91.14 to read "Use of safety belts and shoulder harnesses"; by adding the words "and shoulder harness, if installed" following the word "belt" in the last sentence of paragraph (a)(1); and by adding the words "and shoulder harness, if

installed" following the word "belt" in the last sentence of paragraph (a)(2).

4. By amending § 91.33 to add a new paragraph (b)(14) to read a follows:

§ 91.33 Powered civil aircraft with standard category U.S. airworthiness certificates; instruments and equipment requirements.

* * * * *

(b) * * *

(14) For normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment, an approved shoulder harness for—

(1) Each front seat that meets the requirements of § 23.785 (g) and (h) of the chapter in effect after the effective date of the proposed amendment;

(2) Each additional seat that meets the requirements of § 23.785(g) of this chapter in effect after the effective date of the proposed amendment.

* * * * *

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); and 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983))

Issued in Kansas City, Missouri on April 29, 1985.

Murray E. Smith,

Director.

[FR Doc. 85-10844 Filed 5-3-85; 8:45 am]

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federal register

Monday
May 6, 1985

Part III

Office of Management and Budget

Issuance of Circular A-128; Audits of State and Local Governments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular A-128 "Audits of State and Local Governments"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular A-128, "Audits of State and Local Governments."

SUMMARY: This OMB Circular provides policy guidance to Federal agencies in the implementation of the Single Audit Act of 1984 (Pub. L. 98-502). It establishes uniform requirements for audits of Federal financial assistance provided to State and local governments and promotes the efficient and effective use of audit services.

EFFECTIVE DATE: This Circular was effective April 12, 1985, and shall apply to fiscal years of State and local governments that began after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

FOR FURTHER INFORMATION CONTACT: Palmer A. Marcantonio, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, (202) 395-3993.

SUPPLEMENTARY INFORMATION: On December 26, 1984, a notice was published in the **Federal Register** (49 FR 50134), asking for comments on a proposed Circular, "Audit requirements for State and local governmemts." Interested parties were invited to submit comments by February 25, 1985. Almost 150 comments were received from Federal agencies, State and local governments, universities, professional organizations, and others. All comments were considered in developing these final requirements.

There follows a summary of the major comments, grouped by subject and a response to each, including a description of changes made as a result of the comments. Other changes have been made to increase clarity, and readability.

Supersession

Comment: One commenter said this section should be expanded to provide clarification that this Circular supersedes not only audit requirements of OMB Circular A-102, but also those related to all forms of Federal financial assistance such as Block Grant programs and contracts awarded under Federal acquisition regulations.

Reply: Block grant audit regulations will be superseded by individual department and agency regulations that will be issued shortly. With respect to contracts, the law makes it clear that assistance-type contracts are covered, and we would expect single audits to cover other cost-type contracts awarded to State and local governments as well.

Comment: Several commenters said this section should state that the Single Audit Act and this Circular do not relieve recipients of their responsibilities under Attachment P to OMB Circular A-102, "Uniform requirements for grants to State and local governments" for the fiscal years beginning before July 1, 1985.

Reply: Section 22 has been revised to say that until this Circular is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

Comment: One commenter suggested that OMB clearly indicate that GAO will take action to supersede the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs."

Reply: The requirement to use the guidelines has been deleted from this Circular. As Circular A-128 is implemented the guidelines will be phased out and auditors will use guidelines developed by appropriate professional bodies.

Background

Comment: One commenter said the law requires recipients that receive $100,000 or more each year to have an audit made for that year. However, the commenter said it was not clear if an audit was required in subsequent years if the funds were expended over a number of years.

Reply: The audit recipient should have audits made in all subsequent years where significant funds are expended.

Definitions

Comment: Several commenters said the definition of internal controls continued in the draft Circular could be construed to include only accounting controls. They recommended that the definition include administrative controls too.

Reply: We were advised by several groups including the General Accounting Office that the term "administrative controls" may cause some confusion in the accounting profession because the term as used in the auditing literature calls for tests of certain controls not contemplated by the Congress. Instead of using the term administrative controls, Section 8 of the Circular says that controls covering expenditures of Federal funds must be tested. We believe this was the intent of the Act.

Comment: A number of commenters asked whether the definition of subrecipient includes commercial or private businesses and organizations.

Reply: The Circular covers all Federal assistance funds whether the subrecipient is a private or public organization. All State or local governments that receive Federal financial assistance and provide $25,000 or more of it to a subrecipient must determine whether subrecipients spent Federal assistance funds in accordance with applicable laws and regulations. For State and local subrecipients and other nonprofit organizations OMB Circulars call for periodic audits. These audits may be used to determine whether the subrecipient spent the funds properly. For commercial or private businesses and organizations receiving Federal assistance funds the State and local governments may use other means such as program reviews to determine if the funds are being spent properly.

Frequency of Audit

Comment: Several commenters recommended that the one-year requirement for the audit report to be forwarded to the Federal Government be changed to "within six months." Other commenters said the requirement should be deleted altogether because it is not a requirement of the law.

Reply: In order for audit reports to be useful they must be timely. The Circular calls for the audit report to be sent no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

Compliance Testing

Comment: One commenter suggested that the title of this section be changed to "Internal Control and Compliance Reviews," and a separate paragraph be devoted to testing and evaluation of internal control systems.

Reply: The title was changed and a separate section is devoted to reviews of internal control systems.

Comment: Several commenters said it was not clear whether the auditor was required to perform a study and evaluation of internal control systems if the auditor did not plan to place reliance on such systems.

Reply: The Circular was changed to make it clear that the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs whether or not the auditor intends to place reliance on these systems.

Comment: One commenter said the testing of non-Federal programs seemed to be limited to testing transactions

selected in the review of financial statements. The commenter suggested that either the auditor be required to make separate tests of programs other than the major ones or that the auditor be required to review the management controls over Federal programs that are not defined as major ones.

Reply: The law is specific as to how much testing will be made of programs other than major ones. It requires the auditor to determine and report on whether the organization has internal control systems that provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations. Further it provides that transactions for other than major programs that are selected in connection with examinations of financial statements and evaluation of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions. The provisions of the Act are reflected in Section 8 of the Circular.

Comment: One commenter said the draft Circular required the auditor to determine whether amounts claimed or used for matching were determined in accordance with Circular A–102, "Uniform requirements for grants to State and local governments," and Circular A–87, "Cost principles for State and local governments." The commenter objected because Job Training Partnership Act (JTPA) grantees and subgrantees are not required to comply with these Circulars. The recipients of JTPA funds may have developed their own cost principles and grant requirements which may differ from Circulars A–87 and A–102. Therefore, it would be impractical to test compliance with these Circulars.

Reply: Although JTPA grantees may not be subject to OMB Circulars A–102 or A–87 the cost principles and regulations adopted by the grantee should be equivalent to those in the Circulars. If there are significant differences between the grantee's regulations and the Circulars they should be included in the audit report.

Comment: Several commenters raised questions about the requirement for governmental units to maintain accounts that identify all Federal funds received and expended and to identify the programs under which they were received. The commenters were concerned that the recipient's official accounting records might have to be modified to meet the requirement.

Reply: The requirement for grantees to keep records on each grant is not a new one. Since Circular A–102 was first issued in 1971 Attachment G, "Standards for Grantee Financial Management Systems," required grantee financial management systems to provide for accurate, current, and complete disclosure of the financial results of each grant program. Therefore, we do not anticipate modification of grantee accounting records will be required as a result of Circular A–128.

Subrecipients

Comment: One commenter said this section may be interpreted as requiring the recipient to determine whether the subrecipient spent all its Federal funds properly, regardless of the source of the funds.

Reply: The section was amended to make it clear recipients were responsible only for the assistance funds provided by them to subrecipients.

Comment: One commenter said the roles of the recipient State agency, the Federal agency, and cognizant agency are unclear.

Reply: We are working with Federal agencies on procedures for distributing audit reports, resolving audit fundings, and carrying out other cognizance responsibilities. We will ask each agency to publish these procedures as soon as possible.

Relation to Other Audit Requirements

Comment: One commenter made a number of suggestions to make the language more precise. One suggestion was to make it clear that the single audit shall be in lieu of any *financial and compliance audit* required under Federal assistance programs.

Reply: We adopted this suggestion as well as a number of other proposed changes to this section.

Cognizant Agencies

Comment: Several commenters said the draft Circular appears to require that all recipients, regardless of funding level, have established formal cognizant agency assignments.

Reply: The Circular was clarified to say, "Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds." No formal arrangement is anticipated for these smaller government recipients.

Audit Reports

Comment: There were a number of comments that said there was confusion between the responsibilities of the cognizant agency and the clearinghouse.

Reply: This section was rewritten to accommodate these concerns.

Comment: One commenter said that all fraud, abuse, or illegal acts should normally be covered in a separate written report.

Reply: The Circular was amended to say a separate report is normally required for fraud, abuse, and illegal acts.

Comment: There were a number of comments on how the report distribution process can be improved.

Reply: The report distribution process has been streamlined. Now recipients are required to send copies of the audit report to Federal agencies providing funds and one copy of the audit report to a central clearinghouse.

Audit Resolution

Comment: A number of commenters asked that the six month audit resolution period begin when program officials receive the report, not when the agency receives it.

Reply: This section was not changed. Six months from the time an agency receives an audit report seems to be ample time for a Federal agency to receive, process and resolve audit findings.

Sanctions

Comment: One commenter said the Circular should have a more comprehensive government-wide policy concerning actions that should be taken if a State or locality does not comply with the Act or the Circular.

Reply: The Circular now lists a number of actions Federal agencies may consider when a recipient is unable or unwilling to have a proper audit made.

Auditor Selection

Comment: One commenter said there should be some analysis made by State and local governments to determine the most economical way to obtain audit services.

Reply: A new section was added to the Circular reiterating the requirement for State and local governments to follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments," when arranging for audit services.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resource use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) the financial statements of the government, department, agency or establishment present fairly its financial

position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) the organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expedítures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local

government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single

Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Attachment—Circular A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal [illegible] program means any program that [illegible]
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

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May 6, 1985

Part IV

Department of Justice

Office of the Attorney General

28 CFR Part 51
Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Proposed Rules

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1091-85]

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Proposed Revision of Procedures

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Attorney General finds it necessary to propose revisions to the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR Part 51, 46 FR 872, Jan. 5, 1981. The revisions are needed to conform the existing Procedures to developments that have occurred since 1981, interpretations of Section 5 contained in judicial decisions, and changes mandated by the 1982 Amendments to the Voting Rights Act. Interested persons are invited to participate in the formulation of the proposed revised Procedures by submitting written comments.

DATE: All comments received on or before July 5, 1985, will be considered. It is proposed that the revised Procedures will be effective 30 days after publication in final form.

ADDRESS: Comments should be sent to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

Comments regarding collection of information requirements contained in these procedures and submitted to the Director of the Office of Management and Budget, should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724-5898.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the Appendix) to obtain "preclearance" from either the United States District Court for the District of Columbia or from the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

Procedures for the Attorney General's administration of Section 5 were first published in 1971. Proposed Procedures were published for comments on May 28, 1971 (36 FR 9781), and the final Procedures were published on September 10, 1971 (36 FR 18186). As a result of experience under the 1971 Procedures, changes mandated by the 1975 Amendments to the Voting Rights Act, and interpretations of Section 5 contained in judicial decisions, revised Procedures were published for comment on March 21, 1980 (45 FR 18890), and final revised Procedures were published on January 5, 1981 (46 FR 870) (corrected at 46 FR 9571, Jan. 29, 1981).

In the four years since the revision became final, the Attorney General has had further experience in the consideration of voting changes, most significantly with respect to submitted redistricting plans adopted following the 1980 census; the courts have made a number of important decisions in cases involving Section 5, and Congress has again amended the Voting Rights Act. This new proposed revision reflects these developments.

The principal change proposed is the addition of the new Subpart F, Determinations by the Attorney General. This new subpart discusses the substantive standards followed by the Attorney General in deciding whether or not to object to submitted changes affecting voting. It includes a general discussion of the principles applicable to all determinations and more specific discussions of the standards for the three most complex types of changes—redistrictings, changes in electoral systems, and annexations. The proposed subpart makes it clear that in making substantive Section 5 determinations the Attorney General follows the law as interpreted by the Supreme Court of the United States and other courts. It is hoped that the new subpart will provide additional guidance to jurisdictions subject to the preclearance requirement of Section 5 and to other interested persons.

Although the 1982 Amendments to the Voting Rights Act, Pub. L. 97-205, 96 Stat. 131, do not amend Section 5 or add any jurisdictions to the coverage of Section 5, they make two significant changes concerning the termination of coverage under Section 5 (bailout).

First, effective in August 1984, the Amendments authorize bailout actions by individual political subdivisions (which are usually counties) of covered States. In the past, if statewide coverage existed, only the State could bail out. Section 51.5 has been revised to reflect this change.

Second, also effective in August 1984, the standard that a jurisdiction must meet to obtain permission from a court to bail out has been changed. In order to secure a bailout order after August 4, 1984, the jurisdiction will have to establish, for the ten year period preceding the filing of the action and while the action is pending, that it—

> and all governmental units within its territory have complied with Section 5 of this Act, including compliance with the requirement that no change covered by Section 5 has been enforced without preclearance under Section 5, and have repealed all changes covered by Section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment.

In addition, the jurisdiction will have to establish, for the same period, that—

> the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court [or withdrawn by the Attorney General]) and no declaratory judgment has been denied under Section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under Section 5, and no such submissions or declaratory judgment actions are pending.

Notice of the new requirements is given in new § 51.62 of Subpart G (old Subpart F), Sanctions.

The following additional changes in the Procedures are proposed:

A new § 51.8, Section 3 coverage, has been added to make clear that the Attorney General also follows the Procedures set forth herein with respect to submissions received from jurisdictions required under Section 3(c) of the Act to preclear voting changes.

A new § 51.17, Special elections, has been added to clarify the application of Section 5 to the conduct of special elections.

Section 51.18 (old § 51.16), Court-ordered changes, has been expanded to reflect the decision of the Supreme Court in *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981).

In §§ 51.24 (old § 51.22), 51.29 (old § 51.27), and 51.31 (old § 51.29) the address to be used for Section 5 communications has been changed to enable the Department of Justice mail room to improve its handling correspondence relating to Section 5.

Section 51.22 (old § 51.20), Premature submissions, has been revised to make clear that the Attorney General will review a redistricting plan resulting from Federal court litigation prior to the court's final order, if the plan is otherwise final.

Section 51.25 (old § 51.23), Withdrawal of submissions, has been revised to eliminate the good cause requirement for withdrawals and to make clear that a request to withdraw a submission must be in writing.

A new subsection (f) has been added to § 51.28 (old § 51.26), Supplemental contents, to indicate that the Attorney General considers it useful to know whether the jurisdiction has made a complete copy of its submission available for public inspection and has given adequate public notice of this availability.

Section 51.33 (old § 51.31), Notice to registrants concerning submissions, has been revised to indicate that the weekly notice of submissions includes notice of Section 5 declaratory judgment actions, and new § 51.62(c) indicates that the weekly notice includes notice of bailout actions.

Section 51.50(d) (old § 51.49(d)), Records concerning submissions, has been revised to reflect the fact that Section 5 files are now kept on microfiche.

The Appendix added to the Procedures in 1981 listed all jurisdictions subject to the Section 5 preclearance requirement because of coverage under Section 4(b) of the Act, 42 U.S.C. 1973b(b), and for each jurisdiction the date after which voting changes made by it or its political subunits are subject to the preclearance requirement. The revised Appendix adds the **Federal Register** citation for the coverage determination. Since the January 5, 1981 publication, sixteen jurisdictions have bailed out—El Paso County, Colorado; Honolulu County, Hawaii; Elmore County, Idaho; Campbell County, Wyoming; three towns in Connecticut, and nine towns in Massachusetts. In addition, a bailout application by the State of Alaska is pending. *State of Alaska* v. *United States*, C.A. No. 84-1362 (D.D.C., filed May 1, 1984).

REDESIGNATION TABLE

Old section	New section
51.1	51.1
51.2	51.2
51.3	51.3
51.4	51.4
51.5	51.5
51.6	51.6
51.7	51.7
	51.8
51.8	51.9
51.9	51.10
51.10	51.11
51.11	51.12
51.12	51.13
51.13	51.14
51.14	51.15
51.15	51.16
	51.17
51.16	51.18
51.17	51.19
51.18	51.20
51.19	51.21
51.20	51.22
51.21	51.23
51.22	51.24
51.23	51.25
51.24	51.26
51.25	51.27

REDESIGNATION TABLE—Continued

Old section	New section
51.26	51.28
51.27	51.29
51.28	51.30
51.29	51.31
51.30	51.32
51.31	51.33
51.32	51.34
51.33	51.35
51.34	51.36
51.35	51.37
51.36	51.38
51.37	51.39
51.38	51.40
51.39	51.51
51.40	51.41
51.41	51.42
51.42	51.43
51.43	51.44
51.44	51.45
51.45	51.46
51.46	51.47
51.47	51.48
51.48	51.49
51.49	51.50
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51.50	51.60
51.51	51.61
	51.62
51.52	51.63
51.53	51.64
51.54	51.65

List of Subjects in 28 CFR Part 511

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Under the definition of section 1(b) of E.O. 12291, 3 CFR 127 (1981 Compilation), these Procedures do not constitute a major rule. Accordingly, a regulatory impact analysis, pursuant to section 3 of E.O. 12291 has not been prepared. Pursuant to section 3(c)(3) of E.O. 12291, these revised Procedures were submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. Issuance of these Procedures does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR Part 61. Because these Procedures are excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The collection of information requirments contained in these Procedures have been submitted to the Director of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) and 5 CFR 1320.13. Comments in this regard should be sent to. Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of Justice, Washington, D.C. 20530.

This statement of revised Procedures is proposed under 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Dated: April 26, 1985.

Edwin Meese III,

Attorney General.

Part 51 is proposed to be revised to read as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Subpart B—Procedures for Submission to the Attorney General

Subpart C—Contents of Submissions

Subpart D—Communications From Individuals and Groups

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either: (1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or (2) it has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. In order to make clear the responsibilities of the Attorney General under Section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of Section 5.

§ 51.2 Definitions.

As used in this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat.131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

(b) "Attorney General" means the Attorney General of the United States or the delegate of the Attorney General.

(c) "Vote" and "voting" are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." Section 14(c)(1).

(d) "Change affecting voting" means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under Section 4(b) and includes, *inter alia*, the examples given in § 51.13.

(e) "Political subdivision" is used, as defined in the Act, to refer to "* * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

(f) "Covered jurisdiction" is used to refer to a State, where the determination referred to in § 51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

(g) "Preclearance" is used to refer to the obtaining of the declaratory judgment described in Section 5 or to the failure of the Attorney General to interpose an objection pursuant to Section 5.

(h) "Submission" is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

(i) "Submitting authority" means the jurisdiction on whose behalf a submission is made.

(j) "Language minority" or "language minority group" is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c)(3) and 203(e). See 28 CFR Part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under Section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of Section 5 takes effect upon publication in the **Federal Register** of the requisite determinations of the Director of the Census and the Attorney General under Section 4(b). These determinations are not reviewable in any court. Section 4(b).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The Appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the **Federal Register** citation for the determination of coverage.

§ 51.5 Termination of coverage (bailout).

A covered jurisdiction may terminate the application of Section 5 (or bail out)

by obtaining the declaratory judgment described in Section 4(a) of the Act. Effective on and after August 5, 1984, Section 4(a) authorizes a political subdivision of a covered State to bring a declaratory judgment action for the termination of coverage.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (1) If the change relates to a public electoral function of the party and (2) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under Section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of Section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under Section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either: (1) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (2) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change affecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, or even though it is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

§ 51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

§ 51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs: (1) The first time such a practice or procedure is implemented by the jurisdiction, (2) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (3) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.15 Enabling legislation and contingent or nonuniform requirements.

(a) The failure of the Attorney General to interpose an objection to legislation: (1) That enables or permits

political subunits to institute a voting change or (2) that requires or enables political subunits to institute a voting change upon some future event or if they satisfy certain criteria does not exempt the political subunit itself from the requirement to obtain preclearance when its seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation.

(b) Such legislation includes for example: (1) Legislation authorizing counties, cities, or school districts to institute any of the changes described in § 51.13, (2) legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunits charter or ordinances specify to the contrary.

§ 51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See § 51.22 below.

§ 51.18 Court-ordered changes.

(a) Changes affecting voting that are specifically ordered by a Federal court as a result of the court's equitable jurisdiction over an adversary proceeding are not subject to the preclearance requirement of Section 5. Changes designed or formulated by a Federal court are not subject to preclearance merely because the court in fashioning a remedy seeks to effectuate legitimate policies of the jurisdiction. When, however, a jurisdiction submits and a Federal court then adopts a proposed change reflecting the policy choices of jurisdiction officials, the change is subject to the preclearance requirement of Section 5. For example, if a Federal court finds a jurisdiction's districting plan unconstitutionally malapportioned or discriminatory, a remedial plan prepared on behalf of the jurisdiction cannot be ordered into effect and implemented without preclearance, except when the court concludes that exigent circumstances (e.g., impending elections) warrant use of such a plan on an interim basis. That the jurisdiction lacks authority under State law to redistrict on its own does not alter the application of this rule.

(b) Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction are subject to the preclearance requirement. For example, although a court-ordered districting plan may not be subject to the preclearance requirement, changes in voting precincts and polling places made necessary by the new plan remain subject to Section 5.

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of Section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered a submission under Section 5.

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

Submissions may be made in letter or any other written form.

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits: (a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Sectin 5 preclearance. However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change affected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

Changes affecting voting shall be mailed or delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.25 Withdrawal of submissions.

If while a submission is pending the submitted change is repealed, altered, or declared invalid or otherwise becomes unenforceable, the jurisdiction may withdraw the submission. In other circumstances, a jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The submission shall be deemed withdrawn upon receipt of said notice, provided that the Attorney General has not theretofore made a decision either to preclear or object to the submission.

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(e) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting either is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A Statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.37.

§ 51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by § 51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of register voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(b) *Maps.* Where any change is made that revises the constitutency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(d) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

(e) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the

opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(f) *Availability of the submission.* Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notice appeared.

(g) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) or racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Subpart D—Communications From Individuals and Groups

§ 51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose of effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of Section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of Section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of Section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT-004, 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given with respect to declaratory judgment actions filed pursuant to Section 5.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State Law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32.

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the

submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of Section 5 (see, e.g., § 51.18), premature submissions (see § 51.22), and submissions by jurisdictions not subject to the requirement of Section 5 (see §§ 51.4, 51.5).

§ 51.36 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request any omitted information from the submitting authority and, upon requesting such information, shall advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. Only that information considered necessary for evaluation of the submission shall be requested from the submitting authority. The request shall be made as promptly as possible after receipt of the original inadequate submission, and only the first such request shall operate to begin anew the 60-day period in which the Attorney General may interpose an objection.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficient to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 described in § 51.51 (b) and (d), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute and action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.32.

§ 51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has request notice of the Attorney General's action thereon.

(e) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. However, Section 5 states: "Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a Section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, notations concerning conferences with the submitting authority or any interested individual or group, and copies of any letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the above-described files, either in paper or in microfiche form, shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.29(d) shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

Subpart F—Determinations by the Attorney General

§ 51.51 In general.

(a) *Basic standard.* Section 5 provides for submission to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under Section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(b) *Burden of proof.* The burden of proof on a submitting authority when it submits a change to the Attorney General is the same as it would be if the change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach,* 383 U.S. 301, 335 (1966).

(c) *Information considered.* The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

(d) *Nature of the determinations.* (1) If the Attorney General determines that a submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(2) If the Attorney General determines that a submitted change has the prohibited purpose or effect, an objection shall be interposed to the change.

(3) If the evidence as to the purpose or effect of a change is conflicting and the Attorney General is unable to determine that the submitted change does not have the prohibited purpose or effect an objection shall be interposed to the change.

§ 51.52 Changes with a discriminatory purpose.

The Attorney General will object to a change affecting voting that is undertaken for a racially discriminatory purpose or a purpose to discriminate on the basis of membership in a language minority group. See *City of Richmond* v. *United States*, 422 U.S. 358, 378 (1975).

§ 51.53 Changes with a discriminatory effect.

The Attorney General will object to a change affecting voting that will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their effective exercise of the electoral franchise. See *Beer* v. *United States*, 425 U.S. 130, 140–142 (1976). Where retrogression is unavoidable, however, the Attorney General will not object to a retrogressive change that nonetheless fairly reflects minority voting strength as it exists. See *City of Richmond* v. *United States*, 422 U.S. 358, 370–371 (1975).

§ 51.54 Changes that violate the Constitution or other Federal statutes.

Because Section 5 is designed to safeguard the right to vote from discrimination on account of race, color, or membership in a language minority group, the Attorney General will object to a change affecting voting that has been shown to deny or abridge the right to vote in violation of the Fifteenth Amendment to the Constitution or any other constitutional or statutory provision providing this safeguard against discrimination. Such statutory provisions include 42 U.S.C. 1971 (a) and (b) and Sections 2, 4(a), 4(f)(2), 4(f)(4), 203(c), and 208 of the Voting Rights Act.

§ 51.55 Relevant factors.

The existence of a reasonable and legitimate justification for a submitted change is generally highly relevant in evaluating that change under Section 5. Also generally relevant is the extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change and took their concerns into account in making the change. Departures from objective guidelines and fair and conventional procedures in adopting the change are likely to be particularly relevant.

§ 51.56 Particularized standards for certain types of changes.

(a) *Introduction.* Many of the types of changes affecting voting are listed in § 51.13. This section and the sections that follow set forth standards—in addition to those set forth above—that are used by the Attorney General in reviewing redistrictings (see § 51.57), changes in electoral systems (see § 51.58), and annexations (see § 51.59).

(b) *Basic principles.* The basic principles relied upon by the Attorney General in deciding whether or not to object to changes involving representation are defined in the following cases: *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971); *White* v. *Regester*, 412 U.S. 755 (1973); *City of Richmond* v. *United States*, 422 U.S. 358 (1975); *Beer* v. *United States*, 425 U.S. 130 (1976); *United Jewish Organizations of Williamsburg, Inc.* v. *Carey*, 430 U.S. 144 (1977); *Connor* v. *Finch*, 431 U.S. 407 (1977); *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980); *City of Rome* v. *United States*, 446 U.S. 156 (1980); *Rogers* v. *Lodge*, 458 U.S. 613 (1982); *City of Port Arthur* v. *United States*, 459 U.S. 159 (1982).

(c) *Section 2 as a basis for objection.* (1) The Attorney General will interpose an objection based upon violation of Section 2 if there is clear and convincing evidence of such a violation that remains unrebutted by the submitting authority after it has been afforded an opportunity to do so. The burden of proof remains, as in suits brought under Section 2, on the party or parties alleging violation of the section, and not on the submitting authority.

(2) A violation of Section 2 may exist—

(i) Where district lines are drawn in a manner that unreasonably fragments minority voter concentrations, *or*

(ii) Where multi-member districts or an at-large election system submerge minority voter concentrations,

and where such fragmentation or submergence results in a denial of access to the political process for minority voters. (A denial of access is determined by reference to all of the factors that the Congress deems relevant to the Section 2 inquiry, as borrowed, *e.g.*, from *White* v. *Regester*, 412 U.S. 755 (1973), and cases referenced at S. Rep. 97–417, 97th Cong., 2d Sess. 23 nn. 78 & 82.

(3) A violation of Section 2 is not established merely upon a showing that a particular election system or aspect thereof or particular district lines are not designed in a manner likely to result in the election of one or more (or a proportional number of) representatives preferred by members of a minority group.

§ 51.57 Redistrictings.

(a) The Attorney General will object to a redistricting plan:

(1) If the submitted plan reflects a discriminatory purpose.

(2) If any significant reduction of minority voting strength under the submitted plan compared to minority voting strength under the existing plan is not required to achieve equal district population or other legitimate governmental goals.

(3) If the submitted plan demonstrably would result in a denial or abridgment of the right to vote in violation of Section 2. See § 51.56(c).

(b) The circumstances that lead to an objection with respect to redistricting plans most often occur when some or all of the following facts are found to exist:

(1) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(2) The submitted plan unnecessarily fragments minority concentrations.

(3) The submitted plan unnecessarily over concentrates minorities in one or more districts.

(4) The jurisdiction rejected or refused to consider alternative plans that would effectuate its legitimate governmental interests and would reduce minority voting strength less than the submitted plan did.

(c) Other relevant factors for determining whether a basis for objection by the Attorney General exists are:

(1) The extent to which minorities have been denied an equal opportunity to participate in the various political activities that take place in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections that take place in the jurisdiction and to influence the decision-making of elected officials in the jurisdiction.

(3) The extent to which continuing effects of past discrimination have resulted in lower voter registration and election participation rates for minority group members than for other persons.

(4) The extent to which the districts created by the submitted plan needlessly depart from objective redistricting criteria such as compactness and contiguity or follow a unique configuration that inexplicably disregards prior district boundaries, boundaries of districts of other contemporaneous plans, political boundaries, prior precinct boundaries,

natural boundaries, or manmade physical boundaries.

(5) The extent to which the submitted plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.58 Changes in electoral systems.

(a) The adoption of an at-large (jurisdiction-wide) system raises significant Section 5 issues, which courts have addressed on numerous occasions. See § 51.56(b). The Attorney General applies the principles extracted from that case law in assessing the permissibility of such changes. The same principles generally govern changes in other aspects of electoral systems, although the impact of these other changes on minority voting strength often is not as significant. Such changes include: use of numbered posts, anti-single shot provisions, candidate residency districts, or staggered terms; plurality versus majority vote requirements; increases or decreases in the size of elective bodies; and partisan versus nonpartisan elections.

(b) The Attorney General will object to a change in a jurisdiction's electoral system:

(1) If the change in the electoral system reflects a discriminatory purpose.

(2) If the new system unfairly or unnecessarily reduces minority voting strength from its level under the old system.

(3) If the new system demonstrably would result in a denial or abridgment of the right to vote in violation of Section 2. See § 51.56(c).

(c) The circumstances that lead to an objection with respect to changes in electoral systems most often occur when some or all of the following facts are found to exist:

(1) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(2) The jurisdiction rejected or refused to consider alternative systems that would effectuate its legitimate governmental interests and would reduce minority voting strength less than the adopting change did.

(3) The change needlessly submerges minority concentrations into electoral units in such a manner as effectively to deprive minority voters of equal access to the political process.

(d) Other relevant factors for determining whether a basis for objection by the Attorney General with respect to the use of an electoral system exists are:

(1) The extent to which minorities have been denied an equal opportunity to participate in the various political activities that take place in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections that take place in the jurisdiction and to influence the decision-making of elected officials in the jurisdiction.

(3) The extent to which the continuing effects of past discrimination have resulted in lower voter registration and election participation rates for minority group members than for other persons.

§ 51.59 Annexations.

(a) Annexations are subject to Section 5 preclearance because they alter the composition of a jurisdiction's electorate. Thus, in analyzing annexations under Section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Selective.* The Attorney General will object if a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(c) *Dilutive.* The Attorney General will object to annexations if they reflect a discriminatory purpose or if *all three* of the following criteria are satisfied:

(1) The annexation will result in a significant reduction in a jurisdiction's minority population percentage. (This reduction is measured at the time of the submission or is based on projections into the reasonably foreseeable future.)

(2) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(3) The electoral system to be used in the jurisdiction does not fairly reflect minority voting strength as it exists in the post-annexation jurisdiction.

Subpart G—Sanctions

§ 51.60 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 5. See Section 12(d).

(b) Certain violations may be subject to criminal sanctions. See Sections 12 (a) and (c).

§ 51.61 Enforcement by private parties.

Private parties have standing to enforce Section 5.

§ 51.62 Bar to termination of coverage (bailout).

(a) Effective on and after August 5, 1984, Section 4(a) of the Act requires that a jurisdiction seeking to have its coverage under Section 5 terminated (or to "bail out") must demonstrate compliance with Section 5, as described in Section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) For purposes of Section 4(a), a jurisdiction shall not be deemed to have failed to comply with Section 5 by reason of an objection interposed and subsequently withdrawn (see § 51.48) by the Attorney General.

(c) Notice of the filing of a bailout action will be given to interested parties registered under § 51.32.

Subpart H—Petition To Change Procedures

§ 51.63 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.64 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.65 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

Appendix—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, As Amended

The preclearance requirement of Section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under Section 4(b).

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	do	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	do	40 FR 43746	Do.
Merced County	do	40 FR 43746	Do.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1976.
Yuba County	do	36 FR 5809	Do.
Yuba County	Nov. 1, 1972	41 FR 783	Jan. 5, 1976.
Florida:			
Collier County	do	41 FR 34329	Aug. 13, 1976.
Hardee County	do	40 FR 43746	Sept. 23, 1975.
Hendry County	do	41 FR 34329	Aug. 13, 1976.
Hillsborough County	do	40 FR 43746	Sept. 23, 1975.
Monroe County	do	40 FR 43746	Do.
Georgia	do	30 FR 9897	Aug. 7, 1965.
Louisiana	do	30 FR 9897	Do.
Michigan:			
Allegan County:			
Clyde Township	do	41 FR 34329	Aug. 13, 1976
Saginaw County:			
Buena Vista Township	do	41 FR 34329	Do.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	do	39 FR 16912	May 10, 1974
Coos County:			
Millsfield Township	do	39 FR 16912	Do.
Pinkhams Grant	do	39 FR 16912	Do.
Stewartstown Town	do	39 FR 16912	Do.
Stratford Town	do	39 FR 16912	Do.
Grafton County:			
Benton Town	do	39 FR 16912	Do.
Hillsborough County:			
Antrim Town	do	39 FR 16912	Do.
Merrimack County:			
Boscawen Town	do	39 FR 16912	Do.
Rockingham County:			
Newington Town	do	39 FR 16912	Do.
Sullivan County:			
Unity Town	do	39 FR 16912	Do.
New York:			
Bronx County		36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	do	31 FR 5081	Mar. 29, 1966.
Bertie County	do	30 FR 9897	Aug. 7, 1965.
Bladen County	do	31 FR 5081	Mar. 29, 1966.
Camden County	do	31 FR 3317	Mar. 2, 1966.
Caswell County	do	30 FR 9897	Aug. 7, 1965.
Chowan County	do	30 FR 9897	Do.
Cleveland County	do	31 FR 5081	Mar. 29, 1966.
Craven County	do	30 FR 9897	Aug. 7, 1965.
Cumberland County	do	30 FR 9897	Do.
Edgecombe County	do	30 FR 9897	Do.
Franklin County	do	30 FR 9897	Do.
Gaston County	do	31 FR 5081	Mar. 29, 1966.
Gates County	do	30 FR 9897	Aug. 7, 1965.
Granville County	do	30 FR 9897	Do.
Greene County	do	30 FR 9897	Aug. 7, 1965.
Guilford County	do	31 FR 5081	Mar. 29, 1966.
Halifax County	do	30 FR 9897	Aug. 7, 1965.
Harnett County	do	31 FR 5081	Mar. 29, 1966.
Hertford County	do	30 FR 9897	Aug. 7, 1965.
Hoke County	do	30 FR 9897	Do.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	do	30 FR 9897	Aug. 7, 1965.
Martin County	do	31 FR 19	Jan. 4, 1966.
Nash County	do	30 FR 9897	Aug. 7, 1965.
Northampton County	do	30 FR 9897	Do.
Onslow County	do	30 FR 9897	Do.
Pasquotank County	do	30 FR 9897	Do.
Perquimans County	do	31 FR 3317	Mar. 2, 1966.
Person County	do	30 FR 9897	Aug. 7, 1965.
Pitt County	do	30 FR 9897	Do.
Robeson County	do	30 FR 9897	Do.
Rockingham County	do	31 FR 5081	Mar. 29, 1966.
Scotland County	do	30 FR 9897	Aug. 7, 1965.
Union County	do	31 FR 5081	Mar. 29, 1966.
Vance County	do	30 FR 9897	Aug. 7, 1965.
Washington County	do	31 FR 19	Jan. 4, 1966.
Wayne County	do	30 FR 9897	Aug. 7, 1965.
Wilson County	do	30 FR 9897	Do.
South Carolina	do	30 FR 9897	Do.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 783	Jan. 5, 1976.
Todd County	do	41 FR 783	Do.

Jurisdiction		Applicable date	FEDERAL REGISTER citation	
			Volume and page	Date
Texas	do		40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964		30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction		Applicable date	FEDERAL REGISTER citation	
			Volume and page	Date
Arizona:				
Apache County	Nov. 1, 1968		36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972		40 FR 49422	Oct. 22, 1975.
Cochise County	Nov. 1, 1968		36 FR 5809	Mar. 27, 1971.
Coconino County	do		36 FR 5809	Do.
Coconino County	Nov. 1, 1972		40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968		36 FR 5809	Mar. 27, 1971.
Navajo County	do		36 FR 5809	Do.
Navajo County	Nov. 1, 1972		40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968		36 FR 5809	Mar. 27, 1971.
Pinal County	do		36 FR 5809	Do.
Pinal County	Nov. 1, 1972		40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968		36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964		31 FR 982	Jan. 25, 1966.

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Part V

Environmental Protection Agency

40 CFR Part 12

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 12

[FRL 2622-1]

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Environmental Protection Agency.

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 5, 1985. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Nathaniel Scurry, Director, Office of Civil Rights, Room 206 West Tower, 401 M Street, SW., Washington, D.C. 20460.

Comments received will be available for public inspection in the Public Information Reference Unit, Room 2904 Mall, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Copies of this notice are available on tape for those with impaired vision. The tape may be listened to in the Office of Civil Rights, EPA, at the above address. For information, please call 202/382-4575.

FOR FURTHER INFORMATION CONTACT: Ms. Nereid Maxey, Office of Civil Rights (A-105), Environmental Protection Agency, Room 211 West Tower, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4567, TDD (202) 382-4565.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by Environmental Protection Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (section 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 12.101 Purpose.

Section 12.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 12.102 Application

The proposed regulation applies to all programs or activities conducted by the agency.

Section 12.103 Definitions.

"Agency." For purposes of this regulation "agency" means Environmental Protection Agency.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 12.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 12.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 12.150 and § 12.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504

coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (1). The language we have proposed comes directly from the Supreme Court's interpretation of section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 12.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

The self-evaluation will be concluded with a report to the Administrator of findings and recommendations. Within 60 days of the receipt of the report, the Administrator will direct that certain actions be taken as he/she deems appropriate.

Section 12.111 Notice.

Section 12.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 12.130 General prohibitions against discrimination.

Section 12.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 12.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 12.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question It woud be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to

admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 12.150–151) and communications (§ 12.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 12.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 12.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 12.140 Employment.

Section 12.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 12.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 12.149 Program accessibility: Discrimination prohibited.

Section 12.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 12.150 and 12.151. The Environmental Protection Agency (EPA) is committed to making its programs accessible to handicapped persons; however, it should be noted that its programs are designed to promote a cleaner and healthier environment. Thus, at this time we anticipate, in a nonemployment context, that this regulation will have its greatest impact on insuring that the various meetings, symposia, and hearings conducted by EPA are accessible. We invite public comment on any other EPA-conducted programs and activities that it is believed will be impacted by this regulation. Please note that EPA-assisted programs and activities are not covered by this regulation but are covered by a regulation found at 40 CFR Part 7. It is that regulation which applies to EPA assistance to build sewage treatment plants and the like.

Section 12.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 12.150 requires

that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 12.150(a)(1)). However, § 12.150, unlike 28 CFR 41.56–.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 12.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 12.160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis* (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted:

> That at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities. 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 12.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app. 2) is applicable to the proposed consultation requirement included in § 12.150(d).

Section 12.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 12.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 12.150.

Section 12.160 Communications.

Section 12.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 12.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an

opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 12.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 12.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 12.150(a)(2)). Unless not required by § 12.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 12.160 would in most cases not result in undue financial and adminstrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 12.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signs at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 12.111 is effectively communicated to handicapped persons.

Section 12.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 12.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 12.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 12.170(g)).

Paragraph (h) provides for the Judicial Officer to hear any appeal. The Judicial Officer is independent of the office which makes the initial determination of compliance or noncompliance.

Paragraph (i) requires appeals to be filed within 30 days of the initial decision. The complainant has an additional 30 days in which to file a statement or brief in support of any appeal taken (§ 12.170(i)(1)). The agency has 30 days in which to respond (§ 12.170(i)(2)). These times may be extended by the Judicial Officer, who must issue a decision within 30 days of receipt of all papers concerning the appeal (§ 12.170(j)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 40 CFR Part 12

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 12 of the Code of Federal Regulations is proposed to be amended as follows:

Part 12 is added to read as follows:

PART 12—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY

Sec.

Authority: 29 U.S.C. 794.

§ 12.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 12.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 12.103 Definitions.

For purposes of this part, the term—

"Agency" means Environmental Protection Agency.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 95–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 12.104–12.109 [Reserved]

§ 12.110 Self-evaluation.

(a) The agency shall, within 60 days of the effective date of this part, begin a nationwide evaluation, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, of its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part.

(b) The evaluation will be concluded within one year of the effective date of this part with a written report submitted to the Administrator that states the findings of the self-evaluation, any remedial action taken, and recommendations, if any, for further remedial action.

(c) The Administrator will, within 60 days of the receipt of the report of the evaluation and recommendations, direct that certain remedial actions be taken as he/she deems appropriate.

(d) The agency shall, for at least three years following completion of the evaluation required under paragraph (b) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made.

§ 12.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 12.112–12.129 [Reserved]

§ 12.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 12.131–12.139 [Reserved]

§ 12.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 12.141–12.148 [Reserved]

§ 12.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 12.150 and 12.151, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 12.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure

that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessiblility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 12.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 19.607 (1982), apply to buildings covered by this section.

§§ 12.152–12.159 [Reserved]

§ 12.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 12.161–12.169 [Reserved]

§ 12.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director of the Office of Civil Rights, EPA or his/her designate.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. The complainant may file a complete complaint at any EPA office. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction,

it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Timely appeals shall be accepted and processed by the Judicial Officer, Environmental Protection Agency.

(i) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 30 days of receipt from the agency of the letter required by § 12.170(g). The Judicial Officer may extend this time for good cause.

(1) Any statement or brief in support of the appeal should be submitted to the Judicial Officer and the agency within 30 calendar days of filing the appeal.

(2) Any agency response should be submitted to the Judicial Office and complainant within 30 days of receipt of the complainant's statement or brief. These times may be extended by the Judicial Officer.

(j) The Judicial Officer shall notify the complainant of the results of the appeal within 30 days of the receipt of the complainant's written statement or brief, if any, and the agency's response, if any. If the complainant files no statement or brief, the Judicial Officer shall notify the complainant of the results of the appeal within 30 days of the close of the time for filing such statement or brief.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 12.171–12.999 [Reserved]

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Monday
May 6, 1985

Part VI

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 76 and 581
Emergency Immigrant Education Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 76 and 581

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations to govern grants made under the Emergency Immigrant Education Program. This program provides financial assistance to State and local educational agencies for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

DATE: Comments must be received on or before June 6, 1985.

ADDRESS: All comments should be addressed to Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education and Minority Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 732–1842.

SUPPLEMENTARY INFORMATION: The Emergency Immigrant Education Program is authorized under the Emergency Immigrant Education Act of 1984, Title VI of the Education Amendments of 1984, Pub. L. 98–511, 20 U.S.C. 4101–4108.

These proposed regulations establish a State-administered grant program authorizing grants to State educational agencies (SEAs) for such supplementary educational services as English language instruction, special materials and supplies and such other bilingual educational services as English as a Second Language (ESL), immersion programs, the use of the native tongue for instruction, as well as for the costs associated with providing such services for immigrant children. State educational agencies then make subgrants to local educational agencies (LEAs) that meet the eligibility requirement for numbers of immigrant children enrolled. To establish administrative procedures for this program that are consistent with procedures used for the Department's other State-administered grant programs, 34 CFR 76.102(x) of the Education Department General Administrative Regulations (EDGAR) is redesignated as 34 CFR 76.102(z) and a new provision is added at 34 CFR 76.102(y). This new provision adds the application submitted by a State under the Emergency Immigrant Education Program to the EDGAR definition of "State plan." As a result of this amendment all the administrative procedures set out in the EDGAR which govern State plans apply to the Emergency Immigrant Education Program.

To simplify the application process, the Secretary proposes that SEAs not be required to resubmit any assurances previously submitted to meet the General Education Provisions Act requirements governing programs under which Federal funds are made available to LEAs through or under the supervision of SEAs. The Secretary also proposes to separate requirements governing the SEAs submission of assurances and the submission of counts of immigrant children. Once an SEA has submitted the required assurances, resubmission of assurances would be necessary. The previously submitted assurances would govern all the awards made under the program. To make awards in a given fiscal year, the Secretary would request an SEA to submit a count, taken at any time during that current school year, that provides information on the enrollment of immigrant children.

The proposed regulations in § 581.4(b)(1) repeat the definition of "immigrant children" contained in section 602(1) of the Act and add the clarification that the term "immigrant" only includes persons who are "immigrants" under the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(15). If the term "immigrant" were not interpreted in accordance with the Immigration and Nationality Act, persons could be counted and served contrary to the purpose of the program and Congressional intent, including United States citizens' children who were born abroad, e.g., while their parents were traveling abroad or serving with the armed forces overseas; and the children of persons temporarily residing in the United States, e.g., children of foreign diplomats. Thus the term "immigrant children" will include only the children, who are not United States citizens, of lawful permanent resident aliens, refugees, asylees, parolees, persons of other immigrant status, and immigrant residents in the United States without proper documentation.

The term will exclude children of foreign diplomats, United States citizens' children who were born abroad, and children of foreign residents temporarily in the United States for business or pleasure. This is not an exhaustive list of exclusions and only provides examples of the children who are not eligible for assistance under this program. For additional categories of ineligible children, please review the definition of "immigrant" under the Immigration and Nationality Act. A copy of the definition will be included in the program information package for this program.

In determining children who meet the definition of "immigrant children" in § 581.4(b)(1), a State must use the definition of "State" in 34 CFR 77.1(c) of EDGAR. EDGAR defines "State" as it is defined under Section 198(a) of the Elementary and Secondary Education Act of 1965 to mean "any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands." The proposed regulations in §581.4(a) incorporate by reference the definition of "State" contained in EDGAR.

Under 34 CFR 76.730–76.734 (made applicable by the proposed regulations in § 581.3(a)), a State and a subgrantee must keep records related to grant funds and compliance with program requirements. To ensure that eligible children are identified for program assistance, the proposed regulations contain provisions regarding determination of children who are eligible to be counted under the Emergency Immigrant Education Program that are similar to provisions in 34 CFR 204.30 of the regulations governing the count of eligible children under the Financial Assistance to State Educational Agencies to Meet Special Educational Needs of Migratory Children Program. The proposed regulations in § 581.51 require SEAs counting immigrant children for assistance under this program to determine that the children meet the definition of "immigrant children" in § 581.4(b)(1) of the proposed regulations and to make a record of the basis on which the children's eligibility was determined. The proposed regulations provide that, in determining eligibility, SEAs may rely on credible information

from any source, including information contained in previous school records and information provided by the child or child's guardian. The proposed regulations do not require an SEA to obtain documentary proof of either the child's eligibility or civil status from the child or the child's parent or guardian.

To receive information necessary to carry out the provisions in section 606(b)(3) of the Act, 20 U.S.C. 4105(b)(3), the Secretary proposes that, in submitting its count of immigrant children, the SEA must also report the number of children eligible under any legal authority, for which funds have been made available for the same fiscal year, that has the same purpose as this program. Funds for the same purpose as this program include, but may not be limited to, funds made available under section 412(d) of the Refugee Act of 1980, as amended (8 U.S.C. 1522) and funds made available under the Refugee Education Assistance Act of 1980, as amended (8 U.S.C. 1522 (note)). The Secretary proposes to identify in the application notice announcing the availability of funds for a given fiscal year any additional legal authorities and funding that may be established by Congress and that have the same purpose as the Emergency Immigrant Education Program.

The proposed regulations in § 581.20 implement the provisions in sections 606(b) and 603(b) of the Act, 20 U.S.C. 4105(b), 4102(b) and explain how the Secretary determines the amount of an award to a State. The proposed regulations in § 581.40 explain how a State determines the amount for subgrants to eligible LEAs that report immigrant children. Section 581.40 also implements section 604 of the Act, 20 U.S.C. 4103, which authorizes administrative costs for a State, not to exceed 1.5 percent of the State award. No allowances for indirect costs other than those included in the maximum 1.5 allowance under § 581.40(a) may be charged to the State grant.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and SEAs, they will not have an impact on small entities, since States and SEAs are not defined as small entities under the Act.

LEAs may apply for subgrants under this program. However, these regulations will not have a significant economic impact on the small LEAs affected because they impose minimal application and compliance requirements. Limitations on the eligibility of LEAs to participate in the program and provisions for the participation of immigrant children in elementary and secondary nonpublic schools are established in section 606(b) of the Act, 20 U.S.C. 4105(b).

Paperwork Reduction Act of 1980

Sections 581.10, 581.11, and 581.51(a)(2) contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provided early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 581

Education, Elementary and secondary education, Grants programs—education, Immigrants, Reports and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number 84.162, Emergency Immigrant Education Program)

Dated: May 2, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for 34 CFR Part 76 would continue to read:

Authority: Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

§ 76.1 [Amended]

2. In the table following § 76.1, Section A. Elementary and Secondary Education Programs is amended by adding the following language at the end of Section A:

Emergency Immigrant Education Program: Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108); Part 581; 84.162.

3. Section 76.102 is amended by redesignating paragraph (x) as paragraph (z) and adding a new paragraph (y) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

* * * * *

(y) *Emergency Immigrant Education.* The application under the Emergency Immigrant Education Program.

* * * * *

§ 76.125 [Amended]

4. In the table following § 76.125, Other Elementary and Secondary Programs is amended by adding the following language at the end:

84.162 Emergency Immigrant Education Program; Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108); 581.

4. A new Part 581 is added to read as follows:

PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Authority: Emergency Immigrant Education Act of 1984, Title VI of Pub. L. 98-511, 20 U.S.C. 4101-4108, unless otherwise noted.

Subpart A—General

§ 581.1 What is the Emergency Immigrant Education Program?

This program provides financial assistance to State educational agencies (SEAs) for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public schools under the jurisdiction of local education agencies (LEAs) in the States and in elementary and secondary nonpublic schools within the districts served by LEAs in the States.

(20 U.S.C. 4106)

§ 581.2 Who is eligible to apply for a grant under the Emergency Immigrant Education Program?

An SEA may apply for a grant if it has one or more LEAs in which the sum of the number of immigrant children who are enrolled, during the fiscal year in which funds are made available under this program, in elementary and secondary public schools under jurisdiction of the LEA and in elementary or secondary nonpublic schools within the district served by the LEA, is equal to at least—

(a) Five hundred (500); or

(b) Three percent of the total number of students enrolled during that same fiscal year in public schools under the jurisdiction of the LEA and nonpublic schools within the district served by the LEA.

(20 U.S.C. 4105)

§ 581.3 What regulations apply to the Emergency Immigrant Education Program?

The following regulations apply to the Emergency Immigrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 76 (State-Administered Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 581.

(20 U.S.C. 4101-4108)

§ 581.4 What definitions apply to the Emergency Immigrant Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Equipment
Fiscal year
Grant
Local educational agency
Nonpublic
Project
Public
Secondary school
Secretary
State
State educational agency
Subgrant
Supplies

(b) *Program definitions.* The following definitions apply to this part:

(1) "Elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954.

(2)(i) "Immigrant children" means children who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years.

(ii) For purposes of awards under this program, the term "immigrant" includes only persons who are "immigrants" under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(15)).

(20 U.S.C. 4101)

Subpart B—How Does a State Apply for a Grant?

§ 581.10 What assurances must a State submit to receive a grant?

An SEA must submit to the Secretrary the following assurances:

(a) An assurance that the educational programs, services, and activities for which payments under this program are made shall be administered by or under the supervision of the SEA.

(b) An assurance that payments under this program shall be used for supplementary educational services and costs for immigrant children.

(c) An assurance that payments made to an SEA under this program shall be distributed among LEAs within the State on the basis of the number of immigrant children counted in those LEAs, after adjusting each LEA's payment to reflect any reductions made to the SEA's award under § 581.20 (b) and (c), based on the level of appropriations for the fiscal year and the funds provided for immigrant children under programs with the same purpose.

(d) An assurance that the SEA shall not finally disapprove, in whole or in part, any application for funds received under this program without first affording the LEA reasonable notice and opportunity for a hearing.

(e) An assurance that the SEA shall submit those reports required by the Secretary under this program.

(f) The following assurances pertaining to the provisions of services to immigrant children enrolled in elementary and secondary nonpublic schools:

(1) An assurance that to the extent consistent with the number of immigrant children enrolled in the elementary or

secondary nonpublic schools within the district served by an LEA, the LEA, after consultation with appropriate officials of the schools, shall provide for the benefit of those children, secular, neutral, and nonideological services, materials, and equipment necessary for their education.

(2) An assurance that a public agency shall administer and maintain control of funds provided under this program and shall administer and maintain title to any materials, equipment, and property repaired, remodeled, or constructed with program funds.

(3) An assurance that—

(i) Services under this program shall be provided by employees of a public agency or through contracts by a public agency with a person, association, agency, or corporation who or which, in the provision of these services, is independent of nonpublic elementary or secondary schools and religious organizations; and

(ii) Any employment or contract as described in paragraph (f)(3)(i) of this section, be under the supervision of the public agency and that funds provided under employment or contract not be commingled with State or local funds.

(20 U.S.C. 4107)

§ 581.11 What counts must an SEA provide?

(a) An SEA shall provide a count, taken during the current school year, of the number of immigrant children enrolled in public and nonpublic elementary and secondary schools for those LEAs in the State, in which the number of immigrant children enrolled is at least—

(1) Five hundred; or

(2) Three percent of the total number of students enrolled in elementary and secondary public schools under the jurisdiction of an LEA and elementary and secondary nonpublic schools within the district served by the LEA.

(b)(1) For the immigrant children counted under paragraph (a) of this section, an SEA must also report the number of those children, who are eligible to receive services, and for whom funds are made available during the same fiscal year, under this program and other Federal programs—

(i) That have the same purpose as the Emergency Immigrant Education Program; and

(ii) For which funds are made available for that same purpose because of the immigrant status of the children eligible to be served by the funds.

(2) The Secretary identifies, for the purposes of counting children under paragraph (b)(1) of this section, the following Federal programs as programs that have the same purpose as the Emergency Immigrant Education Program:

(i) Program(s) implementing Section 412(d) of the Refugee Act of 1980, as amended, 8 U.S.C. 1522.

(ii) Program(s) implementing the Refugee Education Assistance Act of 1980, as amended, 8 U.S.C. 1522 (note).

(3) The Secretary identifies in the application notice announcing the availability of funds under the Emergency Immigrant Education Program any additional legal authorities that may be established by Congress that have the same purpose as the Emergency Immigrant Education Program.

(20 U.S.C. 4105(b)(3))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 581.20 How does the Secretary determine the amount of an award to a State?

To determine the amount of an award to an SEA, the Secretary—

(a) Multiplies by $500 the number of immigrant children reported by each SEA under § 581.11(a) who are enrolled in schools in LEAs that meet the enrollment threshold in § 581.2(b).

(b) Subtracts, from the product under paragraph (a) of this section, the amount of the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(c) Determines each SEA's share of the total funds available under this program based on the ratio of the amount determined for an SEA under paragraph (b) of this section, to the total of the amounts determined for all SEAs under paragraph (b) of this section; and

(d) If necessary, reduces the allocations to the SEAs to the extent necessary to bring the total amount of awards for all SEAs within the limit of the amount appropriated for the fiscal year.

(20 U.S.C. 4102(b), 4103, 4105(b))

Subpart D—[Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 581.40 How does a State determine the amount of a subgrant to an LEA?

(a) An SEA may reserve up to 1.5 percent of its award for the proper and efficient administration of this program.

(b) To determine the amount of a subgrant to an LEA, the SEA—

(1) Subtracts from the State grant, the administrative costs allowable under paragraph (a) of this section;

(2) Multiples by $500 the number of immigrant children reported by each LEA that meets the enrollment threshold in § 581.2;

(3) Subtracts, from the amount determined under paragraph (b)(2) of this section, the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(4) Determines the LEA's share of the total funds available under this program based on the ratio of the amount determined for an LEA under paragraph (b)(3) of this section, to the total amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs in the State; and

(5) If necessary, reduces the allocations to the LEAs to the extent necessary to bring the total amount of subgrants to the LEAs within the amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs.

(20 U.S.C. 4102(b), 4105(b), 4107(a)(3))

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 581.50 How may funds be used under this program?

Subgrants under this program may be used to meet the costs of providing for—

(a) Supplementary educational services necessary to enable immigrant children to achieve a satisfactory level of performance in schools, including but not limited to—

(1) English language instruction;

(2) Other bilingual educational services; and

(3) Special materials and supplies;

(b) Additional basic instructional services that are directly attributable to the presence of immigrant children in the school district, including the costs of providing—

(1) Classroom supplies;

(2) Overhead costs;

(3) Costs of construction;

(4) Acquisition or rental of space; and

(5) Transportation costs; and

(c) Essential inservice training for personnel who will be providing supplementary educational services or basic instructional services to immigrant children.

(20 U.S.C. 4106)

§ 581.51 How is the eligibility of an immigrant child determined?

(a) *Basic requirement.* An SEA may not count a child under § 581.11(a) until the SEA has—

(1) Determined that the child meets the definition of immigrant children in § 581.4(b)(2); and

(2) Made a record of how the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

(2) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

(20 U.S.C. 4101(1), 4105(c))

§ 581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?

(a) An LEA is required, after consultation with appropriate officials of elementary and secondary nonpublic schools within the district served by the LEA, to provide for the benefit of immigrant children enrolled in those schools, secular, neutral, and nonideological services, materials, and equipment necessary for the education of these immigrant children.

(b) If by reason of any provision of law an LEA is prohibited from providing educational services to immigrant children enrolled in elementary and secondary nonpublic schools, or if the Secretary determines that an LEA has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in elementary or secondary nonpublic schools, the Secretary—

(1) May waive the requirement that the LEA serve those children; and

(2) Arrange for the provision of services to those children.

(c) Any waiver of the requirement that an LEA provide services to immigrant children enrolled in elementary and secondary nonpublic schools is subject to consultation, withholding, and notice requirements, in accordance with section 557(b) (3) and (4) of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3806 (b), and the regulations in §§ 581.53–581.59.

(20 U.S.C. 4107(a)(6), 4108(b))

§ 581.53 When does the Secretary implement a bypass?

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing the services under this part for private school children on an equitable basis as required in § 581.52; or

(2) Has substantially failed or is unwilling to provide the services under this part for private school children on an equitable basis as required in § 581.52.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the LEA for providing supplemental educational services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the supplementary educational services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Emergency Immigrant Education Program funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(20 U.S.C. 4108(b))

§ 581.54 What notice does the Secretary give?

(a) Before taking any final action to implement a bypass, the Secretary provides the affected LEA, with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient detail to allow the LEA, to respond;

(2) Cites the requirement with which the LEA allegedly failed to comply; and

(3) Advises the LEA that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA by certified mail with return receipt requested.

(20 U.S.C. 4108(b))

§ 581.55 What bypass procedures does the Secretary follows?

Sections 581.56–581.58 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(20 U.S.C. 4108(b))

§ 581.56 What are the functions of a hearing officer?

(a) If an LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, representatives of the private school children and the Department of Education of the time and place of the hearing.

(20 U.S.C. 4108(b))

§ 581.57 What are the hearing procedures?

(a) At the hearing a transcript is taken. The LEA and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, representatives of the private school children, or Department of Education officials.

(20 U.S.C. 4108(b))

§ 581.58 What are the post-hearing procedures?

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, representatives of private school children, and the Secretary.

(b) The LEA and representatives of private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(20 U.S.C. 4108(b))

Subpart G—What Compliance Procedure Are Used by the Department of Education?

§ 581.60 Under what conditions does the Secretary withhold funds?

(a) If the Secretary determines, after affording reasonable notice and opportunity for a hearing to an SEA, that the SEA has failed to meet the requirements of this program, the Secretary—

(1) Notifies the SEA that further payments under this program will not be made to the SEA; or

(2) Notifies the SEA that it may not make further payments under this

program to specified LEAs whose actions cause or are involved in the failure to meet program requirements.

(b) Payments withheld under paragraph (a) of this section, will not be resumed until the Secretary is satisfied that there is no longer a failure to comply.

(c)(1) If the Secretary determines, after reasonable notice and opportunity for a hearing to an SEA, that any amount of a payment made to a State will not be used by the State for carrying out the purposes of this program, the Secretary makes that amount available to one or more other States to the extent that the Secretary determines that those States are able to use additional funds for carrying out the purposes of the program.

(2) The Secretary considers any additional amount made available to an SEA under this provision from an appropriation for a fiscal year as part of that SEA's award for that fiscal year, but the additional amount remains available until the end of the succeeding fiscal year.

(d) The procedures in 34 CFR Part 78 (Education Appeal Board) governing the withholding of funds apply to any determinations made by the Secretary under paragraphs (a) and (c) of this section.

(20 U.S.C. 4104, 4105 (b) and (c))

[FR Doc. 85-11019 Filed 5-3-85; 8:45 am]

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federal register

Monday
May 6, 1985

Part VII

Central Intelligence Agency

32 CFR Part 1903

Security Protective Service; Final Rule

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1903

Security Protective Service

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency has promulgated regulations which protect its foreign intelligence facilities within the United States. The classified and highly sensitive world-wide activities of the Agency are directed and supervised from these various facilities. Furthermore, all intelligence support functions, including training, for the conduct of the various foreign intelligence activities of the CIA are managed from these facilities. Pursuant to section 401 of the Intelligence Authorization Act for Fiscal Year 1985, the CIA was empowered to promulgate these regulations, which have the force of law and which are effective immediately.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: David Holmes, Office of General Counsel, Central Intelligence Agency (703) 351-5648.

SUPPLEMENTARY INFORMATION: On 8 November 1984, Congress enacted the Intelligence Authorization Act for Fiscal Year 1985, which amend the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*) to permit the Director of Central Intelligence to authorize Agency personnel within the United States to perform functions identical to those performed by special police officers of the General Services Administration in order to protect the foreign intelligence facilities of the CIA.

The legislation empowering GSA special policemen is entitled "An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes" (40 U.S.C. 318). Under this Act, the Administrator of GSA is authorized to appoint uniformed guards as special policemen. Once appointed, the GSA special police are granted the same powers as sheriffs and constables upon property under GSA charge and control and are authorized to enforce laws enacted for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce with criminal penalties any rules and regulations made and promulgated by the Administrator of the General Services Administration.

The Central Intelligence Agency now has the authority to carry out the protective police functions set forth above with respect to property under its charge and control and has promulgated these regulations pursuant thereto.

List of Subjects in 32 CFR Part 1903

Security measures.

32 CFR is amended by adding a new Part 1903 to read as follows:

PART 1903—REGULATIONS TO IMPLEMENT SECTION 401 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1985

Sec.
1903.1 Applicability.
1903.2 Control of activities on protected property.
1903.3 Restrictions on admission to protected property.
1903.4 Control of vehicles on protected property.
1903.5 Enforcement of parking regulations.
1903.6 Security inspection.
1903.7 Prohibition on weapons and explosives.
1903.8 Prohibition on photographic, transmitting and recording equipment, and "Walkman-type" radios.
1903.9 Prohibition on narcotics and illegal substances.
1903.10 Prohibition on alcohol.
1903.11 Restrictions on the taking of photographs.
1903.12 Physical protection of facilities.
1903.13 Disturbances on protected property.
1903.14 Prohibition on gambling.
1903.15 Restriction regarding animals.
1903.16 Soliciting, vending, and debt collection.
1903.17 Distribution of unauthorized materials.
1903.18 Nondiscrimination.
1903.19 Penalties and the effect on other laws.

Authority: Sec. 401, Intelligence Authorization Act for Fiscal Year 1985.

§ 1903.1 Applicability.

These regulations apply to all property under the charge and control of the Security Protective Service of the Central Intelligence Agency and to all persons entering in or on such property (hereinafter referred to as "protected property"). Employees of the Central Intelligence Agency and any other persons entering upon protected property shall be subject to these regulations.

§ 1903.2 Control of activities on protected property.

Persons in and on protected property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of Security Protective Officers and any other duly authorized personnel.

§ 1903.3 Restrictions on admission to protected property.

Access to protected property shall be restricted to ensure the orderly and secure conduct of Agency business. Admission to protected property will be restricted to employees and other persons with proper authorization who shall, when requested, display government or other identifying credentials to the Security Protective Officers or other duly authorized personnel when entering, leaving, or while on the property.

§ 1903.4 Control of vehicles on protected property.

Drivers of all vehicles entering or while on protected property shall comply with the signals and directions of Security Protective Officers or other duly authorized personnel and any posted traffic instructions. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on protected property is prohibited. Driving a non-emergency vehicle above the prescribed speed limit is prohibited. All vehicles shall be driven in a safe and careful manner at all times.

§ 1903.5 Enforcement of parking regulations.

For reasons of security, parking regulations shall be strictly enforced. Except with proper authorization, parking on protected property is not allowed without a permit. Parking without a permit or other authorization, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk, which shall be in addition to any penalties assessed pursuant to § 1903.19. The Agency assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This paragraph may be supplemented from time to time with the approval of the CIA Director of Security by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof. Proof that a vehicle was parked in violation of these regulations or directives may be taken as *prima facie* evidence that the registered owner was responsible for the violation.

§ 1903.6 Security inspection.

Any personal property, including but not limited to any packages, briefcases, containers or vehicles brought into, while on, or being removed from protected property are subject to inspection. A search of a person may accompany an investigative stop or an arrest.

§ 1903.7 Prohibition on weapons and explosives.

No persons entering or while on protected property shall carry or possess, either openly or concealed, firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.8 Prohibition on photographic, transmitting and recording equipment, and "Walkman-type" radios.

No persons entering or while on protected property shall bring or possess any photographic, transmitting, or recording equipment of any kind, or any "Walkman-type" radio, except as specifically authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.9 Prohibition on narcotics and illegal substances.

Entering or while on protected property under the influence of, or using or possessing, any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines is also prohibited. The above prohibitions shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician.

§ 1903.10 Prohibition on alcohol.

Entering or while on protected property under the influence of alcoholic beverages is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on protected property is also prohibited, except on occasions and on protected property for which the CIA Deputy Director for Administration or his designee has delegated in writing to the head of an office or division the authority to grant approval for such use, and approval has been granted. A copy of all such written delegations shall be provided to the CIA Director of Security.

§ 1903.11 Restrictions on the taking of photographs.

In order to protect the security of the Agency's facilities, photographs on protected property may be taken only with the consent of the CIA Director of Security. The taking of photographs includes the use of television cameras, video taping equipment, and motion picture cameras.

§ 1903.12 Physical protection of facilities.

The willful destruction of, or damage to any protected property, or any buildings or personal property thereon, is prohibited. The theft of any personal property, the creation of any hazard on protected property to persons or things, and the throwing of articles of any kind at buildings or persons on protected property are prohibited. The improper disposal of trash or rubbish on protected property is also prohibited.

§ 1903.13 Disturbances on protected property.

Any conduct which impedes or threatens the security of protected property, or any buildings thereon, or which disrupts performance of official duties by Agency employees, or which interferes with ingress to or egress from protected property is prohibited. Also prohibited is any disorderly conduct, any failure to obey an order to depart the premises, unwarranted loitering or other behavior which creates loud or unusual noise or nuisance, or any conduct which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots.

§ 1903.14 Prohibition on gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery, or the selling or purchasing of numbers tickets, in or on protected property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act, as amended (20 U.S.C. 107a(a)(5)).

§ 1903.15 Restriction regarding animals.

No animals except guide dogs for the blind or Agency guard or search dogs shall be brought upon protected property, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.16 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on protected property is prohibited. This does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Central Intelligence Agency; and (b) concessions on personal notices posted by employees or authorized bulletin boards.

§ 1903.17 Distribution of unauthorized materials.

Distributing, posting or affixing materials, such as pamphlets, handbills, or flyers, on protected property is prohibited, except as provided by § 1903.16, as authorized by the CIA Director of Security or his designee at each Agency facility, or when conducted as part of authorized Government activities.

§ 1903.18 Nondiscrimination.

There shall be no unlawful discrimination by segregation or otherwise, because of race, creed, sex, color, or national origin against any person or persons admitted upon protected property in furnishing or by refusing to furnish to such person or persons the use of any services, privileges, accommodations, or activities provided on the protected property.

§ 1903.19 Penalties and the effect on other laws.

Whoever shall be found guilty of violating while on any protected property any provision of these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing in these regulations shall be construed to abrogate or supersede any other Federal laws or any State and local laws or regulations applicable to any area in which the protected property is situated.

Pursuant to delegated authority, issued on 2 May 1985 by:

William R. Kotapish,

Director of Security.

[FR Doc. 85-11047 Filed 5-3-85; 10:35 am]

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federal register

Monday
May 6, 1985

Part VIII

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319
Importation of Mangoes From Belize; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-328]

Importation of Mangoes From Belize

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the "Subpart—Fruits and Vegetables" regulations by adding provisions to allow the entry into the United States of mangoes from Belize if the mangoes originate from premises that have been subjected to specified aerial applications of technical malathion bait spray, and meet certain other conditions. This action appears to be necessary to continue to allow mangoes from Belize to be imported into the United States.

DATE: Written comments concerning this proposed rule must be received on or before May 21, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The "Subpart—Fruits and Vegetables" regulations (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations), among other things, regulate the importation of mangoes into the United States from Belize because of fruit flies of the genus *Anastrepha*. These fruit flies can ruin the marketability of the fruit.

Currently, mangoes from Belize are prohibited from being imported into the United States under the regulations unless, among other things, they are treated against fruit flies of the genus *Anastrepha*. The only approved treatments (see 7 CFR 319.56-2h) for mangoes from Belize are fumigation with ethylene dibromide (EDB) in accordance with the following:

Fruit load in a chamber	Dosage of EDB in ounces per 1,100 cubic feet per 2 hours		
	50 °F to 60 °F	Above 60 °F to 70 °F	70 °F or above
25 percent or less	12	10	8
More than 25 percent to 50 percent	14	12	10
50 percent to 80 percent	16	14	12

Recently the Environmental Protection Agency, established a tolerance for the residues of EDB per se in mangoes at .03 ppm, and further provided that effective September, 1, 1985, such tolerance for residues of EDB would be reduced to zero in mangoes (see 50 FR 2547).

Because of the requirement that the EDB residues be no greater than .03 ppm, it is to longer commercially feasible for mango producers and shippers in Belize to use EDB treatments. Once mangoes are treated with the EDB treatment it is necessary to hold the treated mangoes in cold storage and allow the EDB residues to dissipate. Without being held in cold storage while the residues dissipate, the mangoes would overripen and become unmarketable before they could reach the residue level of .03 ppm of EDB. There are no refrigeration facilities in Belize that could feasibly be used for holding the mangoes for this purpose, and it appears that there are no feasible methods that could be used otherwise for holding the mangoes in cold storage.

An importer of fruits and vegetables has requested that the regulations be amended to establish procedures that could be conducted in Belize and which would be adequate to allow mangoes from Belize to be imported into the United States without presenting a risk of causing the introduction into the United States of fruit flies of the genus *Anastrepha*.

Based on a review of this situation, it is proposed to amend the regulations by adding a new § 319.56-2u which would provide a means for allowing the importation into the United States of mangoes from Belize. Proposed § 319.56-2u reads as follows:

§ 319.56 Administrative instructions concerning the importation of mangoes from Belize.

(a) Mangoes from Belize shall be allowed to enter the United States at any port of entry referred to in § 319.37-14 of this part if the mangoes meet all of the applicable conditions set forth in other sections of this subpart and if the following conditions have been met:

(1) The mangoes originate from a premises determined to be free of any fruit fly infestations of the genus *Anastrepha*, (i) based on a finding by an inspector, that such premises and a buffer zone of at least ⅛ of a mile all around such premises were subjected to aerial applications of technical malathion bait spray at a ratio of 12 ounces per acre (2.4 ounces of malathion and 9.6 ounces of protein bait) every 7–10 days beginning at the time fruit setting starts and continuing until the mangoes were shipped to the United States and (ii) based on the absence of a finding of infestations of fruit flies of the genus *Anastrepha*, during the harvest period;

(2) No pulpy fruits or vegetables (such as citrus, melons, and tomatoes) are grown commercially or otherwise within two miles of the area subjected to such aerial applications of bait spray;

(3) The mangoes had been packed for shipment to the United States in a facility which is located within the area subjected to such aerial application of malathion bait spray and which has all outside openings screened with a mesh not greater than 1/16 inch;

(4) The mangoes were not taken out of such area subjected to such applications of malathion bait spray except for immediate shipment to the United States in an enclosed container or wrapped in 6 mil polyethylene wrap;

(5) The mangoes were grown, packed, and moved from the packing facility to the port of export only by persons who operate pursuant to a valid written compliance agreement with the Animal and Plant Health Inspection Service whereby such persons have agreed to allow Plant Protection and Quarantine inspectors to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(6) The mangoes were grown on premises where inspectors of Plant Protection and Quarantine and persons authorized by inspectors of Plant Protection and Quarantine were allowed to install and service survey traps and to conduct examination of mangoes (including the cutting of mangoes) as determined to be necessary by Plant Protection and Quarantine as a precautionary measure for determining whether any infestations of fruit flies of the genus *Anastrepha* occur on the premises; and

(7) The mangoes are accompanied by a certificate endorsed by a Plant Protection and Quarantine inspector in the country of origin, representing a finding based on monitoring inspections that the conditions in this section are being met.

(b) Persons requesting that services be performed by officials of Plant Protection and Quarantine under this section shall bear the cost for Plant Protection and Quarantine personnel to perform inspections, surveys, and other activities pursuant to this section, including travel, salary, subsistance, and administrative overhead.

(c) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant

to such provisions. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

It appears that compliance with these provisions would be adequate to allow mangoes from Belize to be imported into the United States without presenting a risk of causing the introduction into the United States of fruit flies of the genus *Anastrepha*. Further, it appears that these provisions would provide commercially feasible procedures for the importation of such mangoes.

Based on research and experience, it has been determined that the specified aerial applications of malathion bait spray would be adequate to destroy any fruit fly infestations on the premises subjected to such treatment. Further, the specified applications of malathion bait spray in a ⅛ mile buffer zone and the establishment of a two mile area outside the treatment area where pulpy fruits or vegetables would not be grown would be adequate to ensure that the premises would not be attacked by vagrant flies of the genus *Anastrepha* during the mango growing period.

Compliance with the packing and shipping provisions would add precautionary measures against the mangoes becoming infested with fruit flies of the genus *Anastrepha* during packing, and help ensure that the mangoes would not become infested with fruit flies of the genus *Anastrepha* during shipment to the United States.

It appears that the compliance agreement provisions are necessary to ensure that persons growing, packing, and shipping the mangoes are knowledgeable with respect to the requirements for the importation of mangoes from Belize, and have agreed to comply with them; and to ensure that Plant Protection and Quarantine (PPQ) inspectors are allowed to take actions as necessary to ensure that the requirements for the importation of the mangoes are being met. Proposed § 319.56–2u also contains provisions for cancelling compliance agreements.

The provisions concerning trapping and examinations (including the cutting of mangoes) appear to be necessary as a precautionary measure to help ensure that the aerial applications of malathion bait spray have been effective.

The provisions for the mangoes to be accompanied by a certificate endorsed by a PPQ inspector appear to be necessary to ensure that such an inspector would monitor the growing, packing, and shipping operations and would determine, based on monitoring inspections, that the requirements for the importation of the mangoes are being met.

The proposal also contains provisions that would require persons who have requested that services be preformed in Belize by officials of PPQ to bear the PPQ costs associated with the operations in Belize.

Although this proposal sets forth provisions which only relate to the importation of mangoes from Belize, consideration will be given to amending the regulations to allow the importation of mangoes from other countries if requests are made to do so.

Comments

Written comments are solicited for 15 days following publication of this document. As indicated above, the EDB treatments are no longer feasible for treating mangoes from Belize against fruit flies of the genus *Anastrepha*. Further, if the proposal were to be adopted in time to allow mangoes from Belize to be imported into the United States during the 1985 mango season, it must be adopted as soon as possible.

Executive Order and Regulatory Flexibility Act

The proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would allow mangoes from Belize to continue to be imported into the United States. Further, it is anticipated that the amount of mangoes imported into the United States from Belize would be less than one percent of the amount of mangoes imported into the United States from all countries.

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 319

Agricultural comodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mangoes.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, this document proposes to amend "Subpart—Fruits and Vegetables" (7 CFR 319.56 *et seq.*) as follows:

1. The authority citation for 7 CFR Part 319 would be revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 7 CFR 2.17, 2.51, and 371.2(c).

2. A new § 319.56–2u would be added to read as follows:

§ 319.56–2u Administrative instructions concerning the importation of Mangoes from Belize.

(a) Mangoes from Belize shall be allowed to enter the United States at any port of entry referred to in § 319.37–14 of this part if the mangoes meet all of the applicable conditions set forth in other sections of this subpart and if the following conditions have been met:

(1) The mangoes originate from a premises determined to be free of any fruit fly infestations of the genus *Anastrepha*, (i) based on a finding by an inspector, that such premises and a buffer zone of at least ⅛ of a mile all around such premises were subjected to aerial applications of technical malathion bait spray at a ratio of 12 ounces per acre (2.4 ounces of malathion and 9.6 ounces of protein bait) every 7–10 days beginning at the time fruit setting starts and continuing until the mangoes were shipped to the United States and (ii) based on the absence of a finding of infestations of fruit flies of the genus *Anastrepha* during the harvest period;

(2) No pulpy fruits or vegetables (such as citrus, melons, and tomatoes) are grown commercially or otherwise within two miles of the area subjected to such aerial applications of bait spray;

(3) The mangoes had been packed for shipment to the United States in a facility which is located within the area subjected to such aerial application of malathion bait spray and which has all

outside openings screened with a mesh not greater than 1/16 inch;

(4) The mangoes were not taken out of such area subjected to such applications of malathion bait spray except for immediate shipment to the United States in an enclosed container or wrapped in 6 mil polyethylene wrap;

(5) The mangoes were grown, packed, and moved from the packing facility to the port of export only by persons who operate pursuant to a valid written compliance agreement with the Animal and Plant Health Inspection Service whereby such persons have agreed to allow Plant Protection and Quarantine inspectors to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(6) The mangoes were grown on premises where inspectors of Plant Protection and Quarantine and persons authorized by inspectors of Plant Protection and Quarantine were allowed to install and service survey traps and to conduct examination of mangoes (including the cutting of mangoes) as determined to be necessary by Plant Protection and Quarantine as a precautionary measure for determining whether any infestations of fruit flies of the genus *Anastrepha* occur on the premises; and

(7) The mangoes are accompanied by a certificate endorsed by a Plant Protection and Quarantine inspector in the country of origin, representing a finding based on monitoring inspections that the conditions in this section are being met.

(b) Persons requesting that services be performed by officials of Plant Protection and Quarantine under this section shall bear the cost for Plant Protection and Quarantine personnel to perform inspections, surveys, and other activities pursuant to this section, including travel, salary, subsistence, and administrative overhead.

(c) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writng, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

Done at Washington, D.C., this 3rd day of May 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-11068 Filed 5-3-85; 12:01 pm]

BILLING CODE 3410-34-M

Reader Aids

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Monday, May 6, 1985

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 3, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
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7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
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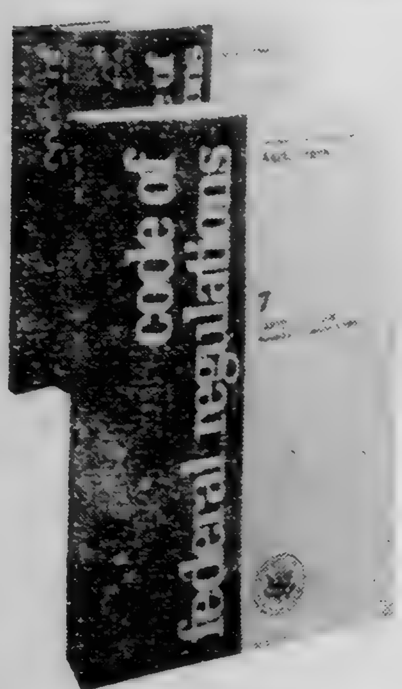
[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.



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Vol. 50 No. 88

federal register

Tuesday
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Marketing Agreements
Agricultural Marketing Service

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Quarantine
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Savings and Loan Associations
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Wildlife
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, May 7, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1984–85 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1984–85 crop year, which began July 1, 1984. The salable percentage is increased from 79 percent to 90 percent, and the reserve percentage is correspondingly decreased from 21 percent to 10 percent. This action is being taken under the marketing order for almonds grown in California and is designed to make more 1984 crop almonds available for immediate shipment, thereby promoting orderly marketing.

EFFECTIVE DATES: July 1, 1984 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year shall apply to all marketable California almonds received by handlers from the beginning of that year. The 1984–85 crop year began July 1, 1984.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for an increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On October 1, 1984, a final rule was published in the **Federal Register** (49 FR 38530) establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for the 1984–85 crop year. That action was based on a unanimous recommendation of the Almond Board of California made at a meeting held on July 25, 1984. The Board works with USDA in administering the order.

On February 26, 1985, the Board met to review the salable and reserve percentages established for the 1984–85 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 79 percent and a corresponding decrease in the reserve percentage to 21 percent. A final rule establishing those revised percentages was published in the **Federal Register** on March 28, 1985 (50 FR 12219).

On March 29, 1985, the Board met again to review 1984–85 salable and reserve percentages and recommended an increase in the salable percentage to 90 percent and a corresponding decrease in the reserve percentage to 10 percent. There is a current momentum in sales and some handlers have already attained a sold-out position on the salable portion of their 1984 crop receipts. In order to ensure that ample supplies of almonds are available to meet trade demand and carryover requirements, the Board recommended these changes. The Board was also cognizant that many growers are facing a cash flow problem in preparing 1985 crop production activities. Customarily, handlers do not pay growers for reserve almonds until such almonds are released for sale to normal markets or until alternate outlets have been designated. Growers normally receive a higher price for almonds designated for normal outlets than for almonds designated for alternate outlets. In arriving at its recommendation, the Board increased the quantity of almonds deemed desirable to be carried out on June 30, 1985, from 138.1 million pounds to 198.9 million pounds.

The estimates used by the Board in making its March 29, 1985, recommendation to revise the salable and reserve percentages are tabulated below. The Board's July 25, 1984, and February 26, 1985, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1984 CROP

[Kernel weight basis in millions of pounds]

	Initial estimate (7/25/ [redacted]	First revised estimate (2/26/85)	Second [redacted] mate (3/29/85)
Production:			
1. 1984 Crop	520.0	581.4	581.4
2. Loss & Exempt—5%	[redacted]	29.1	29.1
3. Marketable Supply	494.0	552.3	552.3

MARKETING POLICY ESTIMATES—1984 CROP—Continued

[Kernel weight basis in millions of pounds]

	Initial estimate (7/25/84)	First [illegible] (2/26/85)	Second [illegible] (3/29/85)
Trade Shipments			
4 Domestic	150 0	140 0	140 0
5 Export	230 0	250 0	250 0
6 Total	380 0	390 0	390 0
Inventory Adjustment			
7 Carryin 7/1/84	91 8	91.8	91 8
8. Estimated Carryover 6/30/85	82 3	138 1	198 9
9 Adjustment	(9 5)	46 3	107 1
Salable Reserve			
10. Salable Supply (Item 6 plus Item 9)	370.5	436 3	497 1
11. Reserve Supply (Item 3 minus Item 10)	123 5	116 0	55 2
12. Salable Percentage (Item 10—Item 3 x 100)	75%	79%	90%
13 Reserve Percentage (100% minus Item 12)	25%	21%	10%

The reserve of 10 percent (55.2 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated 27.6 million pounds of these almonds for use chiefly in the almond butter and school lunch projects begun during the 1982–83 crop year. These long-term projects are a means for the industry to develop new markets for almonds in view of larger crops. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

The remaining portion of the reserve will be held as a contingency for allocation at a later date. All or part of these almonds could be released as salable to augment 1984–85 or 1985–86 salable supplies if the Board later finds that the quantity of salable almonds made available by this revison of the salable percentage is still insufficient to satisfy trade demand and desirable carryover requirements. The Board is required to make all recommendations to the Secretary to increase the salable percentage prior to May 15, 1985. Alternatively, the Board could use contingency reserve almonds to augment supplies for almond butter, school lunch, or other market development projects or dispose of these almonds in other noncompetitive outlets specified in §981.66(c) of the order or as approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing Agreements and Orders, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

2. Section 981.233 is revised to read as follows: [The following provisions will not appear in the Code of Federal Regulations].

Subpart—Salable, Reserve, and Export Percentages

§ 981.233 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1984.

The salable, reserve, and export percentages during the crop year beginning July 1, 1984, shall be 90, 10, and 0 percent, respectively.

Dated: May 1, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 85–10994 Filed 5–6–85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 85–031]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the payment of indemnity for animals destroyed because of burcellosis by adding a breed association to the list of registered breed associations. This action in necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. The effect of this action is to allow for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of these reactor cattle as a disease source.

DATES: Effective date is May 7, 1985. Written comments must be received on or before July 8, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The "Animals Destroyed Because of Brucellosis" regulations (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis. Under these regulations indemnity is paid to an owner of such animals slaughtered because of brucellosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove a foci of infection in an otherwise clean area and thereby prevent transmission of brucellosis to nearby susceptible herds. Under § 51.3(a)(1) of the regulations, the indemnity shall not exceed $250 for any registered cattle or nonregistered dairy cattle or, with certain exceptions, $50 for any other nonregistered cattle or bison.

To receive indemnity for registered cattle destroyed because of brucellosis, a claimant must provide registration papers for each animal, issued in the name of or transferred by the registered breed association to the name of the claimant/owner.

Registered cattle are defined in § 51.1(o) of the regulations as:

> Cattle for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the bovine species, and for which individual registration certificates are issued and recorded by such breed association.

Section 51.1(cc) of the regulations lists known registered breed associations. It also defines a registered breed association as:

> An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions,

By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association.

A claimant is eligible to receive indemnity for cattle as registered animals if they are registered with a breed association listed in § 51.1(cc) of the regulations.

In addition to the registered breed associations already listed, it has been determined that the "National Beefmaster Association" is within the definition of a registered breed association in § 51.1(cc). Therefore, it is necessary to add this registered breed association to the list of registered breed associations in § 51.1(cc).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to make this interim rule effective immediately in order to allow for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of these reactor cattle as a disease source.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon publication in the **Federal Register**. Comments are solicited for 60 days following publication and a final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This change will affect less than one percent of the cattle annually destroyed because of brucellosis in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Under the circumstances referred to above, 9 CFR Part 51 is amended as follows:

1. The authority citation for Part 51 is revised to read:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.1, paragraph (cc) is amended by inserting the "National Beefmaster Association," immediately after "Mid America RX 3 Cattle Company,".

Done at Washington, D.C., this 2nd day of May 1985.

G. J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–10990 Filed 5–6–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 85–037]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Kansas from Class B to Class A. This rule is necessary because it has been determined that this State meets the standards for Class A status. This rule relieves certain restrictions on the interstate movement of cattle from the State of Kansas.

EFFECTIVE DATE: May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on February 11, 1985 (50 FR 5547–5548), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Kansas from Class B to Class A. The amendment, which was made effective February 11, 1985, relieves certain restrictions on the interstate movement of cattle from Kansas.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of February 11, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule had been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Kansas reduces certain testing and other requirements on the interstate movement of these cattle. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine,Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 5547–5548 on February 11, 1985, is adopted as a final rule without change.

Authority: 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 2nd day of May 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-10989 Filed 5–6–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Determining Disability and Blindness; Multiple Impairments

Correction

In FR Doc. 85–5260 beginning on page 8726 in the issue of Tuesday, March 5, 1985, make the following corrections:

1. On page 8727, third column, in the heading for Part 404, third line, "(1950–2—)" should have read "(1950– —)".

§ 404.1520 [Corrected]

2. On page 8727, third column, in § 404.1520(c), eighth line, the semicolon following the word "are" should have been a comma.

3. On page 8728, first column, in § 404.1520(c), fourth line, insert the word "now" between "not" and "have".

§ 416.920 [Corrected]

4. On page 8728, third column, in § 416.920(b), fifth line, "mental" should have read "medical."

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 81N-0381]

GRAS Status of Manganese Salts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that manganese chloride, manganese citrate, manganese gluconate, and manganese sulfate are generally recognized as safe (GRAS) as direct human food ingredients. This rule also deletes manganese oxide from GRAS status for use as a nutrient supplement. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective June 6, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1446, 184.1452, and 184.1461 effective on June 6, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 17, 1982 (47 FR 56513), FDA published a proposal to affirm that manganese chloride and manganese sulfate are GRAS for use as direct human food ingredients. FDA also proposed to remove manganese citrate and manganese gluconate from the list of GRAS ingredients because there were no reports of their use in food and to remove manganous oxide from the list of GRAS ingredients because there are insufficient safety data to evaluate its use in human food. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on manganese salts are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of manganese chloride and manganese sulfate, FDA gave public notice that it was unware of any prior-sanctioned food uses for any of these magnanese salts other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of manganese salts recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for manganese salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of manganese salts under conditions different from those set forth in this final rule has been waived.

Three comments were received in response to the proposal. A summary of these comments and the agency's response follows:

1. Two comments requested that FDA not delete manganese gluconate from the GRAS list. One comment, from a food manufacturer, reported that managanese gluconate is currently added to dairy product analogs as a nutrient at a level of 0.005 percent. The other comment, from a law firm on behalf of clients, submitted manufacturing information and poundage and exposure data on manganese gluconate.

The agency has reviewed these comments. The agency has determined that the safety data contained in the Select Committee's report and the manufacturing and poundage information in the comments provide an adequate basis on which to affirm that manganese gluconate is GRAS for use as a nutrient supplement in dairy product analogs. The final rule therefore affirms the GRAS status of this use of manganese gluconate.

2. One comment stated that it was not clear in the proposal whether manganese gluconate is GRAS for use in dietary supplements, but the comment interpreted the proposal to permit this use.

In the proposal, FDA tried to distinguish between the dietary supplement uses of manganese salts and

the nutrient uses of these ingredients. The agency pointed out that the proposal did not address the dietary supplement uses of manganese chloride, manganese citrate, manganese gluconate, manganous oxide, and manganese sulfate but only their nutrient uses in conventional food. Thus, this rulemaking has no effect on the dietary supplement uses of these ingredients, including manganese gluconate.

3. A comment from a chemical firm requested that food manufacturers be allowed to substitute managanese citrate and manganese gluconate for manganese chloride and manganese sulfate, and, in support of this request, the comment cited the conclusion of the Select Committee that the former two manganese salts are safe. In addition, the comment submitted estimates of potential exposure to manganese gluconate and manganese citrate that it based on the substitution of equivalent amounts of these salts for manganese chloride and manganese sulfate in the food categories in which, according to the National Academy of Sciences (NAS) survey of the food industry, the latter substances are used. The comment also submitted information about the manufacturing processes and specifications for manganese citrate and manganese gluconate.

The agency has reviewed the comment and the information on manufacturing processes, specifications, and estimated exposure for manganese gluconate and manganese citrate that were submitted in the comment. The agency finds that these data meet the requirements for usage data and manufacturing information on manganese gluconate and manganese citrate that were submitted in the comment. The agency finds that these data meet the requirements for usage data and manufacturing information on manganese citrate and manganese gluconate that FDA announced in the proposal would be necessary to affirm the GRAS status of these ingredients. After reviewing the data submitted, the agency concludes that these data, together with the use and safety information in the Select Committee's report, provide a sufficient basis on which to affirm the GRAS status of these ingredients for interchangeable use with manganese chloride and manganese sulfate in conventional food. FDA is therefore modifying the proposal to affirm the GRAS status of manganese citrate and manganese gluconate as nutirents in the following food categories: Baked goods, nonalcoholic beverages, dairy product analogs, fish products, meat products, milk products, poultry products, and infant formulas.

In the proposal of December 17, 1982 (47 FR 56513), the agency erroneously listed alcohlic beverages as a food category for manganese sulfate. The agency actually reviewed the safety of the use of this ingredient in nonalcohlic beverages. The agency has listed the correct food cateogry in this final rule. In addition, the agency has made minor editorial changes in § 184.1446.

No comments or new information were submitted in response to the proposal with regard to use of manganous oxide. Consequently, in accordance with the proposal, the agency is removing manganous oxide from the list of GRAS nutrients.

Because no food-grade spcifications exist for manganese citrate at the present time, the agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. If acceptable specifications are developed, the agency will incorporate them into this regulation at a late date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial manganese citrate complies with the description in § 184.1449 (21 CFR 184.1449) and is of food-grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination. In addition, the agency has considered the effects on small businesses of affirming manganese citrate and manganese gluconate as GRAS. The agency has determined that this action will not have a significant impact on small businesses.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of affirming manganese chloride and manganese sulfate as GRAS. As announced in the proposal, the agency has determined that this action is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination. The agency has considered the economic impact of affirming manganese citrate and manganese gluconate as GRAS and has determined that this action is not a major rule as defined by the order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61; see 49 FR 48183, December 11, 1984), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§§ 182.8446, 182.8449, 182.8452, 182.8461, and 182.8464 [Removed]

1. Part 182 is amended by removing § 182.8446 *Manganese chloride*, § 182.8449 *Manganese citrate*, § 182.8452 *Manganese gluconate*, § 182.8461 *Manganese sulfate*, and § 182.8464 *Manganous oxide*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1446, to read as follows:

§ 184.1446 Manganese chloride.

(a) Manganese chloride ($MnCl_2 \cdot 4H_2O$, CAS Reg. No. 7773–01–5) is a pink, translucent, crystalline product. It is also known as manganese dichloride. It

is prepared by dissolving manganous oxide, pyrolusite ore (MnO_2), or reduced manganese ore in hydrochloric acid. The resulting solution is neutralized to precipitate heavy metals, filtered, concentrated, and crystallized.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 186, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient may be used in infant formulas in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1449, to read as follows:

§ 184.1449 Manganese citrate.

(a) Manganese citrate ($Mn_3(C_6H_5O_7)_2$, CAS Reg. No. 1002–46–65) is a pale orange or pinkish white powder. It is obtained by precipitating manganese carbonate from manganese sulfate and sodium carbonate solutions. The filtered and washed precipitate is digested first with sufficient citric acid solution to form manganous citrate and then with sodium citrate to complete the reaction.

(b) FDA is developing food-grade specifications for manganese citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: baked goods as defined in § 170.3(n)(1) of this chapter; nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; dairy product analogs as defined in § 170.3(n)(10) of this chapter; fish products as defined in § 170.3(n)(13) of this chapter; meat products as defined in § 170.3(n)(29) of this chapter; milk products as defined in § 170.3(n)(31) of this chapter; and poultry products as defined in § 170.3(n)(34) of this chapter. The ingredient may be used in infant formulas in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

c. By adding new § 184.1452, to read as follows:

§ 184.1452 Manganese gluconate.

(a) Manganese gluconate ($C_{12}H_{22}MnO_{14} \cdot 2H_2O$, CAS Reg. No. 648–53–98) is a slightly pink colored powder. It is obtained by reacting manganese carbonate with gluconic acid in aqueous medium and then crystallizing the product.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 186, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: baked goods as defined in § 170.3(n)(1) of this chapter; nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; dairy product analogs as defined in § 170.3(n)(10) of this chapter; fish products as defined in § 170.3(n)(13) of this chapter; meat products as defined in § 170.3(n)(29) of this chapter; milk products as defined in § 170.3(n)(31) of this chapter; and poultry products as defined in § 170.3(n)(34) of this chapter. The ingredient may be used in infant formulas in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

d. By adding new § 184.1461, to read as follows:

§ 184.1461 Manganese sulfate.

(a) Manganese sulfate ($MnSO_4 \cdot H_2O$, CAS Reg. No. 7785–87–7) is a pale pink, granular, odorless powder. It is obtained by reacting manganese compounds with sulfuric acid. It is also obtained as a byproduct in the manufacture of hydroquinone. Other manufacturing processes include the action of sulfur dioxide on a slurry of manganese dioxide in sulfuric acid, and the roasting of pyrolusite (MnO_2) ore with solid ferrous sulfate and coal, followed by leaching and crystallization.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 188, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: baked goods as defined in § 170.3(n)(1) of this chapter; nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; dairy product analogs as defined in § 170.3(n)(10) of this chapter; fish products as defined in § 170.3(n(13) of this chapter; meat products as defined in § 170.3(n)(29) of this chapter; milk products as defined in § 170.3(n)(31) of

this chapter; and poultry products as defined in § 170.3(n)(34) of this chapter.

The ingredient may be used in infant formulas in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall become effective June 6, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: April 12, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-10983 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Crufomate Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing that portion of the animal drug regulations which reflects approval of the new animal drug application (NADA) for Dow Chemical's crufomate liquid (Ruelene Wormer Drench). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of this NADA.

EFFECTIVE DATE: May 17, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 13-514 for crufomate liquid held by Dow Chemical U.S.A. The NADA, originally approved January 14, 1965, provides for use of the product as a wormer drench for cattle, sheep, and goats. This document removes that portion of the regulation reflecting approval of this NADA.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.512 [Removed]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), Part 520 is amended by removing § 520.512 *Crufomate liquid.*

Effective Date. May 17, 1985.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: April 30, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-10950 Filed 5-06-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Febantel-Praziquantel Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayvet Division of Miles Laboratories, Inc., providing for safe and effective use of febantel-praziquantel oral paste as an anthelmintic for dogs and cats.

EFFECTIVE DATE: May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 133-953, which provides for use of a febantel-praziquantel oral paste to treat dogs and cats for infections of certain nematode and cestode parasites. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*)), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for Part 520 continues to read a follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)), unless otherwise noted.

2. By adding new § 520.903d to read as follows:

§ 520.903d Febantel-praziquantel paste.

(a) *Specifications.* Each gram of paste contains 34 milligrams of febantel and 3.4 milligrams of praziquantel.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount*—(i) Dogs and cats (over 6 months of age): 10 milligrams of febantel and 1 milligram of praziquantel per kilogram of body weight (1 gram of paste per 7.5 pounds body weight) administered by mouth or in the food once daily for 3 days.

(ii) Puppies and kittens (less than 6 months of age): 15 milligrams of febantel and 1.5 milligrams of praziquantel per kilogram of body weight (1 gram of paste per 5 pounds body weight) administered by mouth on a full stomach once daily for 3 days.

(2) *Indications for use.* (i) Dogs and puppies: For removal of hookworms (*Ancylostoma caninum*), whipworms (*Trichuris vulpis*), ascarids (*Toxocara canis*), and tapeworms (*Dipylidium caninum* and *Taenia pisiformis*).

(ii) Cats and kittens: For removal of hookworms (*Ancylostoma tubaeforme*), ascarids (*Toxocara cati*) and tapeworms (*Dipylidium caninum* and *Taenia taeniaeformis*).

(3) *Limitations.* Do not use in pregnant animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. May 7, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: April 30, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-10951 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Coopers Animal Health, Inc., providing for safe and effective oral use in dogs of a combination antibacterial drug containing trimethoprim and sulfadiazine.

EFFECTIVE DATE: May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Coopers Animal Health, Inc., 2000 South 11th St., Kansas City, KS 66103, filed NADA 136-741 providing for oral use of Tribrissen® 60 Oral Suspension (10 milligrams (mg) of trimethoprim and 50 mg of sulfadizine per milliliter) for treating certain bacterial infections in dogs. Use of the drug in dogs is indicated where control of bacterial infections is required during treatment of acute urinary tract infections, acute bacterial complications of canine distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections, and abscesse. The NADA is approved and the regulations are amended to reflect the approval. The basis of approval of the NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)), unless otherwise noted.

2. By adding new § 520.2612 to read as follows:

§ 520.2612 Trimethoprim and sulfadiazine oral suspension.

(a) *Specifications.* Each milliliter of oral suspension contains 60 milligrams of drug (10 milligrams of trimethoprim and 50 milligrams of sulfadiazine).

(b) *Sponsor.* See No. 017220 in § 510.600 of this chapter.

(c) *Conditions of use: Dogs*—(1) *Dosage.* 1 milliliter (10 milligrams of trimethoprim and 50 milligrams of sulfadiazine) per 5 pounds of body weight.

(2) *Indications for use.* The drug is used in dogs where systemic antibacterial action against sensitive organisms is required, either alone or as an adjunct to surgery or debridement with associated infection. The drug is indicated where control of bacterial infection is required during the treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections, and abscesses.

(3) *Limitations.* For oral use only. Administer the recommended dose once daily or one-half the recommended daily dose every 12 hours. Administer for 2 to 3 days after symptoms have subsided. If no improvement is seen in 3 days, discontinue therapy and reevaluate diagnosis. Do not treat for more than 14 consecutive days. During long-term treatment, a complete blood count is recommended. The drug should not be used in patients showing marked liver parenchymal damage or blood dyscrasia, nor in those with a history of sulfonamide sensitivity. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. May 7, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 30, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-10981 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Fenthion Solutions

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayvet Division of Miles Laboratories, Inc., providing for topical application of fenthion solutions on dogs for control of fleas.

EFFECTIVE DATE: May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 132-789 which provides for topically applying fenthion solutions on dogs' skin for control of fleas through systemic action. The NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support

approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*)), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 524

Animal drugs, Topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for Part 524 is revised to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).

2. In § 524.920 by adding paragraph (d), to read as follows:

§ 524.920 Fenthion.

* * * * *

(d) *Specifications.* (1) The drug is a solution containing either 5.6 or 13.8 percent fenthion. Each concentration is available in 2 volumes which are contained in single-dose applicators.

(2) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(3) *Special considerations.* Fenthion is a cholinesterase inhibitor. Do not use this product on dogs simultaneously with or within 14 days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Do not use with flea or tick collars.

(4) *Conditions of use*—(i) *Amount.* Four to 8 milligrams per kilogram of body weight.

(ii) *Indications for use.* For flea control on dogs only.

(iii) *Limitations.* Apply the contents of the proper size, single-dose tube directly to one spot on the dog's skin. Frequency of repeat treatments depends upon rate of flea reinfestations. Do not use more often than once every 2 weeks. Treatment at 2-week intervals is not to exceed 6 months. Do not use on puppies under 10 weeks of age. Do not use on sick, stressed, or convalescing dogs. Safe use in breeding males has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. May 7, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 30, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-10982 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Moorman Manufacturing Co., providing for manufacturing 5-, 10-, 20-, and 40-gram-per-pound tylosin premixes. The premixes are used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Moorman Manufacturing Co., 1000 North 30th St., Quincy, IL 62301-3496, is sponsor of a supplement to NADA 95-953 submitted on its behalf by Elanco Products Co. The supplement provides for making 5-, 10-, 20-, and 40-gram-per-pound tylosin premixes for subsequent manufacture of finished feeds for beef cattle, chicken, and swine for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animals drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 558.625 by revising paragraph (b)(12) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(12) To 021930: 2 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. May 7, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-10984 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Maritime Administration

[Docket No. 78]

46 CFR Part 276

Construction-Differential Subsidy Repayment; Total Payment Policy

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule amends 46 CFR Part 276 which sets forth the Department's policy in considering requests for repayment of construction-differential subsidy (CDS), as authorized under the provisions of the Merchant Marine Act of 1936, as amended. This rule permits the total repayment of construction differential subsidies (CDS) for U.S. tanker vessels provided that full repayment is received by June 6, 1986. Once CDS is repaid, the vessel may be used without restriction in the domestic trade. The amendments are necessary to facilitate CDS payback approvals and, thereby, encourage the development of an efficient and competitive U.S. flag merchant marine by minimizing government obstacles to the marketplace decisions of vessel operators. The rule applies to all tanker vessels with no restriction as to size.

EFFECTIVE DATE: This rule is effective on June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Marchessault, Office of Economics, P-30, 400 Seventh Street, SW., Room 9216, Washington, D.C. 20590, (202) 426-4382.

SUPPLEMENTARY INFORMATION:

Background

Section 27 of the Merchant Marine Act of 1920 (the Jones Act) (46 U.S.C. 883) provides that all cargo transported in the domestic trade (sometimes referred to as the "Jones Act trade") between points in the United States must be carried on vessels built in the United States, documented under United States law and owned by United States citizens.

United States vessels operating in the foreign commerce of the United States do not operate under protective legislation such as the Jones Act. Since the construction and operating costs are lower for foreign flag vessels than for comparable U.S. flag vessels, foreign ships are able to compete more successfully in foreign commerce than their U.S. counterparts. Recognizing the economic dilemma of U.S.-built ships operating in foreign commerce, Congress authorized the payment of a construction differential subsidy (CDS) to subsidize ship construction expenses, under Title V of the Merchant Marine Act (the Act) (46 U.S.C. 1151 *et seq.*) exclusively for the purpose of building ships in U.S. shipyards to be operated in foreign commerce, and an operating differential subsidy (ODS), to cover ship operating expenses, under Title VI of the Act (46 U.S.C. 1171) for U.S. flag vessels manned by U.S. citizens and operated in accordance with U.S. safety standards. As a result of the 1970 amendments to the Act, the CDS and ODS programs were expanded to cover bulk carriers.

Under the CDS program, the Secretary of Transportation, through the Maritime Administration (MARAD), may pay as much as half of the construction costs of vessels used in the U.S. foreign trade. There is no corresponding subsidy program for vessels constructed by U.S. owners exclusively for use in the domestic trade. Vessels constructed with CDS are legally prevented by section 506 of the Act (46 U.S.C. 1156) from operating in the domestic trade with certain exceptions. Those exceptions are: (1) A CDS vessel may sail in the domestic trade on the first or last leg of an overseas voyage; and (2) under 46 CFR Part 250, MARAD may consent to the operation of a CDS vessel in the domestic trade for up to six months in any twelve month period whenever MARAD determines "that such transfer is necessary or appropriate to carry out the purposes of the chapter." To take advantage of the second exception, the vessel owner must repay the subsidy on a *pro rata* basis.

All domestic trading restrictions for each CDS-built vessels lapse at the end of the vessel's statutory life. Section 9 of Pub. L. 86-518 (74 Stat. 216) sets a 20 year statutory life for tankers and liquid bulk carriers.

Despite the governmental programs offering CDS and ODS to U.S. vessel owners, U.S. flag tankers operating in the foreign trade, on the whole, have not been financially successful. The decline in Middle East oil production, in addition to an oversupply of tankers built since 1970, has been financially devastating for the world tanker market. The domestic market, however, has not fared as poorly. With the opening in 1977 of the Trans-Alaska Pipeline System, the demand for U.S. flag tanker tonnage has increased and that demand has not been completely met by the existing Jones Act (domestic) fleet.

To alleviate the shortage of suitable Jones Act tanker vessels, CDS-built vessels have been allowed, under section 506 of the Act, to enter the trade for six month periods after repaying the subsidy on a *pro rata* basis. Since 1977, MARAD has approved 41 such applications for tanker service in the Alaska oil trade. However, because of the limited duration and availability of these temporary permissions and the depressed market conditions confronting tankers in the foreign trade, several CDS tanker owners (predominantly those owning very large crude carriers (VLCC's)) have applied for permission to enter the domestic market on a permanent basis in exchange for the total repayment of any unamortized CDS received plus interest.

Prior to 1978, requests for repayment were handled on an *ad hoc* basis. No hearings were held on these requests and notice of the final determinations was not given to the public. However, after MARAD admitted the VLCC "Stuyvesant" to the domestic trade, competitors in that trade brought suit challenging MARAD's action. The District Court for the District of Columbia held that MARAD had the authority to grant permanent release from domestic trading restrictions in exchange for full CDS repayment, but that the MARAD action in admitting the "Stuyvesant", without an accompanying economic analysis, was an abuse of discretion. *Shell Oil* v. *Kreps*, 445 F. Supp. 1126 (D.D.C. 1977).

The U.S. Court of Appeals for the D.C. Circuit reversed on the issue of MARAD's authority to accept CDS repayment, but did not reach the second issue. *Alaska Bulk Carriers, Inc.* v. *Kreps*, 595 F.2d 814 (D.C. Cir. 1979). On writ of certiorari, the Supreme Court reversed. It held that the Secretary's broad contracting powers and discretion to administer the Act encompass the authority to grant permanent release to vessels under CDS restrictions. *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U.S. 572 (1980).

In 1978, MARAD issued a notice of proposed rulemaking (NPRM) that would have set guidelines for CDS repayment. Charterers and owners of six CDS-built vessels applied for CDS repayment. On October 15, 1980, MARAD adopted and made immediately effective an interim rule to govern applications for CDS repayment. Under the interim rule, MARAD retained greater discretion than proposed in the NPRM to determine whether to grant or deny CDS repayment applications. Approvals would be granted only for vessels of at least 100,000 DWT and only in exceptional circumstances, after a determination that no favorable opportunities existed for viable

employment of the vessel in foreign trade during a protracted period. MARAD was to consider a number of factors in determining whether exceptional circumstances existed.

On November 13, 1980, MARAD approved the CDS repayment application for the "Bay Ridge", another Seatrain vessel. MARAD deferred action on the other pending CDS repayment applications. On November 25, 1980, the Independent U.S. Tanker Owners Committee (ITOC) filed a complaint in the U.S. District Court for review of the interim rule and the "Bay Ridge" decision, alleging substantive and procedural defects in connection with both actions. The District Court granted summary judgment for defendants on all counts. An appeal was taken.

The Court of Appeals considered the alleged substantive and procedural defects of the interim rule. The Court concluded that MARAD was not legally obliged to issue regulations limiting its discretion and that the interim rule itself did not constitute an abuse of MARAD's statutory discretion. Nevertheless, the Court vacated the interim rule on procedural grounds. It concluded that the rule lacked a general statement of basis and purpose, as required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), to explain MARAD's position on the various issues raised during the rulemaking proceeding.

The Court of Appeals remanded the case to the District Court with instructions to vacate the interim rule and the approval of the "Bay Ridge" application, but to allow the "Bay Ridge" to continue in domestic operation pending the reconsideration. It also instructed the lower court to order MARAD to conduct new rulemaking proceedings. The Court left it to MARAD's discretion whether to adopt a permanent rule similar to the interim rule so long as the justification for the rule adopted was "clearly and thoughtfully presented in a statement published contemporaneously with the rule". *Independent U.S. Tanker Owners Committee* v. *Lewis*, 690 F.2d 908 (D.C. Cir. 1982).

The Department published a new NPRM on January 31, 1983 (48 FR 4408). That NPRM, which was issued by the Secretary, proposed to permit total CDS repayment for U.S. tanker vessels and it forms the basis for this final rule.

On February 2, 1983, ITOC petitioned the District Court for a writ to enjoin the Secretary from proceeding with the CDS rulemaking. The petition alleged that since Secretary Lewis had delegated his authority to administer the Merchant Marine Act to MARAD, that agency alone can issue a CDS repayment rule. On March 8, 1983, the District Court denied the petition.

On April 1, 1983, ITOC filed a petition for a writ with the Court of Appeals for the D.C. Circuit that was virtually identical to that filed before the District Court. On April 8, 1983, an amended petition was filed. The Court of Appeals denied the petition on May 2, 1983.

Shortly after the close of the comment period on the NPRM, the Congress took action to prevent the Secretary from promulgating a final rule. The DOT FY84 Appropriations Act (Pub. L. 98–78, August 15, 1983) prohibited the enforcement of any rule with respect to the repayment of construction differential subsidy until 60 days following the promulgation of any such rule. Thereafter, the Commerce Department's FY84 Appropriations Act (Pub. L. 98–166, November 28, 1983) imposed an additional restriction that prohibited DOT from enforcing any CDS repayment rule until after June 15, 1984. However, in August of 1984, the FY85 Appropriations Act for Commerce, Justice and State, which provides appropriations for the Maritime Administration, imposed yet another restriction which is still in effect. That Act prohibited the Department from enforcing any CDS repayment rule until May 15, 1985 (Pub. L. 98–411, August 30, 1984).

The Proposed Rule on CDS Repayment

In the NPRM published in the **Federal Register** on January 31, 1983, the Department proposed a policy which would allow any owner or operator of a tanker built with CDS to repay its subsidy and consequently obtain a permanent removal of domestic trading restrictions. The proposed rule applied to tankers only. It was not limited to any particular class or size of tanker, but comments were invited on whether it should be limited to tankers with a capacity of over 100,000 dead weight tons (DWT) or some lesser amount. In spite of the proposed unrestricted CDS repayment, the analysis published with the rule concluded that the only vessels likely to repay their CDS were crude oil tankers—specifically, seven VLCCs (which were all over 200,000 DWT) and eight 90,000 DWT Panamax tankers. (Since two of these are being acquired by the Navy for conversion to hospital ships, the effective number of involved Panamax tankers is now six.)

The terms of repayment proposed by the Department were intended to put the operators of those vessels on an equal competitive basis with existing Jones Act vessels now operating in the domestic trade and, thereby, avoid any argument that the CDS vessels would enjoy an unfair advantage over unsubsidized domestic operators. The amount to be repaid included the unamortized CDS on the vessel plus compounded interest on that amount. The interest rate to be used for computational purposes was the rate at which the original Title XI obligation was made. (The CDS is amortized on a straight-line basis based upon a 20-year statutory useful life for these vessels. Adding compounded interest to this amount, in order to offset any capital cost advantage over Jones Act operators, would mean that the outstanding debt on a vessel which had received and repaid its CDS would equal the debt if it had never obtained the benefit of the subsidy.) The terms for repayment were considered consistent with the Supreme Court's analysis in the *Seatrain* decision.

The Regulatory Evaluation published with the proposed rule concluded that a competitive "displacement" process would take place within the domestic trade with the full-time introduction of the CDS-built tankers into the Alaskan oil trade. Under this displacement process, larger, more efficient tankers would displace older, smaller tankers from particular trades. Thus, according to the Regulatory Evaluation, the major impact of the rule would fall on tankers with capacities of 50,000 DWT and less.

The evaluation concluded that the only domestic tankers likely to be laid-up as a result of the rule were older, smaller vessels; many of these vessels are regarded as having already passed the end of their economic life and are only being kept alive due to high rates in the trade. The Evaluation also stated that many of these vessels would be laid-up eventually, under any circumstances, due to the decline in demand for smaller tankers and the implementation of environmental requirements for these vessels. On the other hand, the Evaluation predicted substantial benefits to be obtained by reason of the policy: use of the more efficient CDS-built tankers, which would also increase competition in the Alaskan oil trade with a beneficial impact on the rate structure in those trades.

The NPRM reviewed the public comments received by the Department in earlier rulemaking proceedings concerning CDS payback. It also included responses to the more important issues raised. A lengthy assessment of the environmental impacts of the proposed rule was not provided with the NPRM. The Regulatory Evaluation did, however, indicate that a significant environmental

impact was not expected to result from the proposal and any impact that might result was expected to be positive.

Summary of the Comments on the NPRM

The docket for comments on the rulemaking closed on May 2, 1983. About 150 comments were considered in the rulemaking. Owners and operators of CDS-built VLCCs or Panamax tankers affected by the rule supported the proposal, except for Seatrain. The shipyards vigorously opposed the rule as did virtually all of the domestic tanker industry and its major trade association, the Independent Tanker Owners Committee (ITOC). With respect to Alaska North Slope (ANS) producers: Exxon first favored repayment for VLCCs only and then withdrew its support; Arco opposed repayment on the grounds that demand is insufficient; and Sohio opposed full repayment. The Department of Justice and OMB expressed their support for the proposal, but the Navy and the Department of Defense opposed the rule.

The rule also received considerable Congressional attention. A number of Senators and House Members wrote letters opposing the proposal, requesting that the Secretary of Transportation withdraw the proposal as an intrusion on the authority of the legislative branch. On the other hand, several House Members and Senators supported the proposed rule.

Many of the commenters who supported the proposal asserted the benefits of increased freedom of entry for CDS-built vessels into the domestic trade, including the beneficial impact of competition on the rate structure in those trades. A number of commenters associated with a single owner of vessels argued that ANS oil production was sufficient to absorb the increase in capacity that would result from CDS repayment. In any event, these commenters argued that they would not repay their subsidies in the absence of serious employment prospects for the vessels. Commenters who supported the proposal further suggested that significant increases in Federal excise (windfall profits) and income tax revenues could result from the lower transportation costs brought about by a rule. Other comments supporting the proposal discussed the likely benefits to the State of Alaska from the rule, including increased royalty and tax revenues. Some commenters suggested that the proposed rule would also have the effect of increasing the retirement of older, less efficient and unsafe vessels. Finally, a few of the proponents argued that the statutory objective of providing parity for subsidized tanker vessels in the foreign trades had failed.

The opponents of the rule suggested strongly that the entry of the CDS-built tankers would create serious overcapacity in the domestic trade, thereby resulting in increased risk to the government of default on Title XI guarantees. They also disputed the "displacement" analysis contained in the proposal, arguing that oil companies would not necessarily retire their vessels and that independent domestic operators would be unduly harmed by the rule. They disputed the proposal's assumption that the terms of repayment would put CDS-built vessels on an equal competitive footing with domestic operators and asserted that it was fundamentally unfair to initiate a major change in policy in this area when the private sector had made investment decisions in reliance on stable government policies. They also asserted that the rule would have a significant adverse effect on the shipbuilding industry. Opponents also referenced comments submitted by the Department of Defense that the proposed rule would have an adverse impact on the availability of smaller, militarily-useful tankers. In addition, some comments opposing the proposal asserted that a substantial number of seamen's jobs would be lost if repayment is allowed. A more detailed discussion of the issues raised by the commenters is set forth below. The discussion includes the Department's response.

The Final Rule

Based on a review of the comments and the new data received, the Department has decided to adopt a final rule, which, in most respects, is identical to the proposal in the January 1983 NPRM. Except as discussed in this final rule and the Regulatory Impact Analysis (RIA), which was prepared in conjunction with its development, the basis for the Department's change in its CDS payback policy remains as set forth in the NPRM. The most important reasons are as follows:

- *Economic efficiency.* The economic benefits of CDS repayment derive basically from the efficiency of the vessels that would be entering the Alaskan oil trades, compared to the older, smaller, less efficient vessels that could be forced into retirement. This greater efficiency would be reflected in oil transport cost savings, which, based on the RIA analysis, total as much as $823 million (net present value (NPV)) in the first ten years.
- *Use of underemployed resources.* CDS repayment would provide full-time employment to the most efficient U.S. tankers, including the six VLCCs which are idle when they are not operating in the ANS trade under six-month permissions. (The seventh VLCC has been employed in the carriage of oil to the Strategic Petroleum Reserve under the Cargo Preference Act, but is currently laid-up.)
- *Increased competition.* By opening up the trade, CDS repayment would increase competition and tend to reduce average tanker rates. The Department believes that additional savings to shippers from this increased competition might reach $2.5 billion NPV through the year 1955.
- *Deregulation.* CDS repayment is consistent with this Administration's pro-competitive, anti-regulatory philosophy. It will eliminate government's role in deciding on six-month permission requests which effectively serves as an entry limiting, anti-competitive mechanism.
- *Equity.* By permitting CDS repayment, the Department would no longer arbitrarily limit repayment to the two Seatrain vessels, which were permitted to repay in 1977 and 1980.

The overall effect of CDS repayment will be a stronger, more viable U.S. merchant marine. In addition to the major reasons mentioned above, the Department also considered the following important impacts in developing the final rule:

- *Effect on Federal revenues.* Repayment by the initial seven VLCC's would provide revenues to the Treasury (including interest) of as much as $277 million. Should additional vessels have their CDS repaid, the U.S. Treasury would receive additional revenues. Offsetting government losses of up to $170 million are possible. Additional savings from reduced ODS payments are possible. DOT also estimated that at one time, there might have been substantial increased windfall profits taxes (because of decreased transportation costs, oil company net prices would have been higher); however, because of the currently low world oil prices, as adjusted for inflation, there will be no immediate increased windfall profits taxes. If world oil prices were to increase, however, this situation could change.
- *Effects on the environment.* The increased use of larger tankers, which would result from CDS repayment, would reduce the number of port calls and decrease the possible frequency of oil spill incidents.

The Department has made one important change to the NPRM proposal in developing this final rule. The NPRM

specified no restriction on the amount of time available to pay back CDS. Based on comments and further consideration by the Department, the final rule includes a one-year time limit after the rule's effective date during which total CDS repayment must be accomplished. A one-year time limit was selected since it provides a reasonable period of time to arrange for necessary financing for those who plan to pay back their CDS. That time limit also minimizes the period of uncertainty regarding future competition that will be faced by those operators of tankers not built with CDS. It will also minimize the period of uncertainty in the shipbuilding industry; after the one-year period, shipbuilders may start receiving new tanker orders since the tanker operators will be better able to predict their new construction requirements.

Discussion of the Comments Received

1. Applicability of the Rule

Comments were requested on whether the scope of the rule should be limited by excluding tankers under 100,000 DWT or some lower tonnage. MARAD's interim rule applied only to vessels of at least 100,000 DWT. Some commenters recommended that the rule be limited to the CDS VLCC's, asserting that other vessels are under charter or are not needed in the Jones Act trade. Others opposed any such restriction.

The Department has given careful consideration to the issue of whether CDS tankers under 100,000 DWT should be excluded from the coverage of the CDS payback rule and has decided to permit repayment, during a one-year period, for all tankers irrespective of size. The Department believes that only the CDS for seven VLCC's will likely be repaid and, therefor, the impact of permitting CDS payback for vessels other than VLCC's should not be great. Two CDS-built ULCC's (over 300,000 DWT) are too large for the ANS trade and competitive circumstances make it unlikely that smaller, non-Panamax tankers of less than 100,000 DWT will repay their CDS. The Department also believes that few, it any, of the operators of the CDS-built Panamax tankers will opt for repayment since several are under long-term charter. Moreover, these tankers, after repayment of their CDS, would have great difficulty in competing with non-CDS built tankers in the ANS trade because their rates, already higher than VLCC's would have to be made higher to cover their large debt service resulting from CDS repayment. Although unlikely, to the limited extent that CDS-built Panamax tankers do enter the Jones Act trade, however, they will foster the economic efficiency, increased competition and deregulatory objectives of this rule.

Some commenters argued that CDS repayment should also apply to liner vessels. Others strongly opposed this. These comments are beyond the scope of the 1983 NPRM, which only dealt with CDS payback for tanker vessels, and the Department sees no need for rulemaking in this area.

Other comments received asserted that CDS repayment should be allowed only for a very brief period, such as for 60 days, to minimize the uncertainty created by the possible entry of CDS-built vessels into the domestic trade. As described above, the Department has revised the proposed rule in response to these comments.

2. Terms of Repayment

Several commenters suggested alternative means of calculating the amount of CDS to be repaid, including using the replacement value of the vessels for repayment purposes. Other commenters also offered views on the proper amount of interest which should accompany CDS repayment.

As stated in the proposal, the amount of CDS that is repaid and the amount of interest charged should place the CDS-built tankers on an equal competitive basis with unsubsidized vessels, and this final rule does that. The Department believes that it would be inaccurate to calculate the amount of CDS to be repaid as the replacement value for the vessels. Calculating a vessel's replacement value would be a highly speculative method for ensuring competitive equity. The Department also believes that it is most fair to require interest rates that would be the same as the long-term interest rate the owner obtained or would have obtained if long-term debt or commercial financing had been used in financing the purchase of the tanker. The best repayment methodology for competitive equity includes the amount of the subsidy given plus compounded interest on that amount, at the original Title XI rate of interest.

The interest payable on the unamortized CDS is to be computed by continuous compounding of the interest until the day of replacement. Owners of CDS-built tankers receive economic benefit from their unamortized CDS from the day it was paid by MARAD to finance construction of the tanker until the day the CDS is repaid. This period—from the date of payment to the date of repayment—is considered to be the appropriate time period over which interest should be charged. Since unamortized CDS will be outstanding during the whole period from the CDS disbursements for construction until the CDS is repaid, continuous compounding of interest is appropriate.

A number of commenters expressed views on whether and to what extent government assistance in the form of Title XI financing should be available for repayment. A few argued that the government should not facilitate repayment by allowing Title XI financing.

This final rule makes no determination as to whether Title XI should or should not be available to finance the repayment of CDS. Applicants who seek such financing must comply, as do other Title XI applicants, with the requirements of the Title XI statute and its implementing rules (46 CFR Part 298).

In this connection, it should be noted that, the Department has published changes to its Title XI implementing regulations (50 FR 9437; March 8, 1985). Under that amendment, an application for Title XI financing would have to be received six months prior to the date on which the funds are needed. Those desiring to apply for Title XI financing should be aware that it can take MARAD an extended period of time to review and process a Title XI application. Therefore, applications for Title XI financing to cover repayment expenses should be submitted to MARAD as soon as possible.

3. Policy of the Merchant Marine Act (46 U.S.C. S 1101).

a. The Effect of the Rule on the Jones Act Fleet

Some commenters argued that the rule is inconsistent with the objective of promoting a "merchant marine sufficient to carry . . . domestic waterborne commerce". Others suggested that this mandate requires that CDS-built tankers be employed in the domestic trade.

The Department believes that the adoption of a CDS payback policy will benefit the U.S. merchant marine. Although it is true, as many commenters pointed out, that some tankers will be forced out of service by more efficient operators, the industry should be more competitive and efficient in the future, especially since some of the most efficient tankers in the U.S. flag fleet would be fully utilized. Moreover, the elimination of the uncertainties that are associated with the 6-month entries of CDS VLCC's and MARAD's discretionary total repayment policy should benefit the U.S. merchant marine.

Overall, the industry should be left in a healthier, more viable condition.

b. The Effect of the Rule on the U.S.-Flag Foreign Fleet

A number of commenters argued that the rule abandons the objective of promoting a fleet capable of carrying a "substantial portion" of U.S. foreign commerce, thus repealing by regulation the program mandated by Congress in the 1970 Act. Others suggested that the rule did not affect the U.S. flag foreign fleet.

In the Department's view, the final rule merely recognizes the existing condition of the U.S. tanker fleet. There currently exist few foreign trade employment opportunities for those vessels and the propects for future employment in the foreign trade are far from bright. The U.S. tanker fleet, after CDS repayment, will be more than adequate to carry an appropriate share of the U.S. foreign oil commerce if such opportunities should arise. New tankers could also be constructed for such commerce.

c. Segregation of the U.S. Flag Foreign and Jones Act Fleets

Many commenters stressed that the rule abandoned the historical separation of the U.S. flag foreign and domestic fleets. These commenters also stated that they had specifically relied on the two fleets being kept distinct. Others argued that this segregation was mythical, citing the Soviet grain operating subsidies and cargo preference premiums for Jones Act vessels.

The Department recognizes the factors that separate the U.S. flag foreign and domestic fleets. This separation principle, however, is subject to a number of exceptions in order to promote efficiency in the U.S. flag fleet as a whole. As indicated in the NPRM, it would not be appropriate to let the various program objectives reflected in the Act stand in the way of achieving the Act's broader policy mandates, including that of promoting a more competitive and efficient merchant fleet.

d. National Security Implications

Some commenters argued that the rule violated the objective of having a fleet capable of serving as a naval and military auxiliary. The Navy Department was particularly concerned over the projected loss of "handy-sized" tankers, since it believes that these vessels need to be available in case a national emergency occurs. Others asserted that the rule would not have any adverse national security implications, and that the Navy can purchase those handy-sized tankers that are laid-up as a result of CDS vessels entering the Jones Act trade.

The Department disagrees that the rule violates the objective of having a fleet capable of serving as a naval and military auxiliary. It is true that the rule may contribute to the current decline in demand for handy-sized product tankers (along with the Port and Tanker Safety Act, the decline in the product tanker trade, and the start-up of the Panama Pipeline). However, the Department believes that the outlook for these old, small product tankers is poor regardless of whether or not this rule is promulgated because of their age and the decline of the U.S. products trade.

We believe that product tankers could be available for defense needs from the Effective U.S. Control (EUSC) fleet, at least half of which is composed of handy-sized tankers with coated tanks. EUSC vessels have been used effectively in past military emergencies. Panamax size tankers (90,000 DWT) could also be useful as could vessels, soon to be scrapped or that are laid-up, that could be procured by the Defense Department and placed in the reserve fleet for military service.

e. Implications for the Modernization of the Fleet

Some commenters argued that the CDS-built vessels are among the most modern and efficient, and their entry would help modernize the Jones Act fleet. Others argued that the entry of CDS vessels would prevent new slow-speed diesel tankers from being built and entering the Jones Act trade.

Modernization of the U.S. domestic fleet will be fostered by this final rule. As several commenters noted, the CDS-built tankers are among the most modern and efficient in the U.S. fleet. The vessels that would be forced out of service because of increased competition are among the oldest and least efficient. The Department does not agree with those commenters who argue that the entry of CDS-built tankers into the Jones Act trade will prevent even more modern tankers from being built and used. Experience shows otherwise; except for two recent orders for VLCC's by EXXON, for a number of years no new orders for large, modern crude tankers have been placed and the Department has no firm evidence that any more orders are planned. The few "new" large tankers that have entered the trade have been foreign tankers that have done so through the application of the "Wrecked Vessel" Statute and these "new" tankers are no more modern than the CDS-built tankers. In the case of EXXON, a compelling reason for ordering two new vessels appears to have been its high, tax-sheltered Capital Construction Fund (CCF) balances which can only be used for the U.S. construction of vessels. There do not appear to be any other companies with similarly high CCF balances that are apt to be used for tanker construction.

f. Effect on the Shipyard Industry

1. *Effect on new shipbuilding.* Several commenters stated that the rule would adversely affect construction of new tankers for the Jones Act trades. The Department disagrees that its rule would adversely affect construction of new Jones Act tankers. Few product and crude tankers have been ordered in the U.S. in the past few years. Demand for crude tankers that was generated by the opening of the Alaska pipeline, over the long term, has been met by CDS vessels operating on six month permissions. Even without CDS repayment, the domestic petroleum trade is not expected to grow enough to require new tanker construction. Thus, repayment by CDS-built vessels, under this rule, is not expected to have a significant impact on domestic tanker construction.

2. *Effect of the rule on ship repairs and modifications.* A number of commenters offered views on whether shipyards would lose contracts for work on existing tankers in regard to both ship repairs and modifications to meet the requirements of the Port and Tanker Safety Act (PTSA). Some commenters stated that if CDS payback is allowed, Jones Act owners will choose not to retrofit their ships to meet PTSA requirements, and shipyards will thus lose this business.

The PTSA will induce many owners of old, marginally viable, product tankers to lay up or scrap their vessels, since the cost of retrofitting and the loss of cargo capacity associated with retrofit is high. Most of these scrappings or decisions to lay-up tankers will occur whether or not repayment is allowed. The Department believes most of these decisions have already been made. As noted before, the demand for product tankers has declined over the long-term with greater transport of oil by pipelines or barges. This decline is expected to continue over the next few years.

g. Equitable Considerations

Several commenters suggested that it was inequitable to initiate a major change in policy of this nature where the private sector had made investment decisions in reliance on a stable government policy. Some commenters suggested that MARAD's treatment of

prior CDS applications had also been inequitable.

The Department does not believe it equitable to only allow entry, in the Jones Act trade, to the two VLOC's that have had their CDS repaid while precluding repayment for other CDS-built tankers. The Department does believe it fair to allow CDS repayment under the terms of this rule. The terms of CDS repayment have been fashioned to establish a substantially equal competitive basis for the operators of CDS-built vessels and existing Jones Act operators. CDS repayment on these terms is no different than any deregulatory activity that is aimed at improving the economic efficiency of an industry; the individual interests of some members of the industry may be better served by continued regulation, but overall efficiency and fairness is better served by improving the conditions of the industry as a whole. That is the case in this proceeding.

h. Effect on Government Regulation of the Maritime Industry

Some commenters expressed the view that this rule involves the further intrusion of government into the marketplace. Others suggested that it would minimize government involvement in regulation capacity in the trade.

The Department strongly disagrees with those commenters who assert that this rule would involve further governmental intrusion into the marketplace. It is the Department's position that the competitive forces of the market, rather than government regulation, should be relied upon, whenever feasible, to allocate transportation capacity and resources in the domestic trade. This rule reflects that position.

4. Competitive Impact of the Rule on Jones Act Tankers

a. Demand in the Jones Act Oil Trades: ANS Production Projections

Several comments disputed the ANS production projections accompanying the 1983 NPRM, and some supplied their own projections. Other commenters supported the rules's projections. In this regard, the RIA presents a more detailed and refined picture of projected ANS production. Those oil poduction projections fully support the needed tanker capacity projections in the RIA.

b. Present Capacity in the Jones Act Trade

A number of commenters argued that the Jones Act trade is already heavily overtonnaged, that rates are competitive and that old vessels are being scrapped. These commenters also argued that entry of CDS vessels into the trade would accelerate lay-ups and scrappage of serviceable vessels. Others suggested that there is a need for more capacity in the trades, citing the steady employment of CDS vessels under the Merchant Marine Act's waiver section.

DOT recognizes that there are a number of tankers currently laid-up and more could be laid up, in part as a result of this rule, but these tankers are generally old, small and inefficient and have only remained in service until now because of the lack of competition from suitable vessels. That lack is due to the restrictions on CDS repayment and the 6-month permissions, which have acted to fill any shortfall in avaliable tanker capacity, thereby eliminating any impetus to build new vessels. (As discussed in the RIA, a number of 6-month permissions were retracted by MARAD for most of 1984 because all tankers of over 100,000 DWT in the Jones Act trade were not employed.) The Department does not view the inability of some economically inefficient, high operating cost tankers to compete in the Jones Act trade as being reflective of overtonnaging.

c. Impact of CDS Vessels on Particular Jones Act Trades

1. Pacific/ANS trade. *Valdez to Panama.* Most commenters on this issue agreed that CDS repayment would have its greatest direct effect on vessels in this trade. The Department agrees. With unrestricted CDS repayment, ships smaller that 170,000 DWT would be forced to leave the Valdez to Panama trade since they would be at a disadvantage competing with the larger vessels that can operate efficiently in that trade. (For more detail, see RIA.)

Valdez to West Coast. With unrestricted repayment, the Department predicts that 567,000 DWT of capacity in vessels in the 170,000 to 190,000 DWT size category, 790,000 tons of capacity in vessels in the 110,000–140,000 DWT categories, 45,000 DWT of capacity in vessels in the 55,000–90,000 DWT categories, and 65,000 DWT in vessels under 55,000 DWT will be needed in the Valdez to West Coast trade. Some vessels of less that 100,000 DWT would continue to be required since terminals have draft and vessel size restrictions.

Overall, the number and total tonnage of 225,000–265,000 DWT tankers would increase significantly. The number of 170,000 to 190,000 DWT tankers in the trade would remain the same. The number of 110,000–140,000 DWT tankers would decline somewhat, but by no more than three vessels, and the number of 55,000–90,000 DWT size tankers in the trade would be about the same. Most product tankers of less than 55,000 DWT and a few crude tankers could be displaced.

2. Atlantic/Gulf trade. Most commenters on this issue agreed that CDS repayment would have a lesser direct impact on this trade. Direct displacement of Jones Act vessels by CDS vessels is less likely here because CDS vessels are needed, commenters argued, in the longer-distance Pacific ANS trade.

The Department estimates that the number of vessels needed to serve this trade could decline from about 27 full-time vessels to 22 vessels after this rule is issued. The reduction would be due to the displacement, or "bumping," process discussed in the NPRM and this rule. The amount of oil being transported would be the same.

d. Impact on Oil Transport Costs

Several commenters predicted that ANS oil transport costs would fall. Others disputed that costs would significantly decrease, and questioned how beneficial such reduced costs would be.

The Department believes that rates will decline as a result of this rule. First, the CDS-built vessels likely to enter the Jones Act trade are more efficient (lower costs on a barrel/mile basis) than the vessels in the trade that they are likely to replace. Moreover, increased competition should act to reduce rates further, perhaps to break even levels. As a result of a generally lower rate structure, inefficient tankers would have to be retired. Over the long term, the Department believes adequate profits will exist for efficient operators.

e. The "Bumping" Analysis

A number of commenters disputed the legitimacy of the proposal's competitive displacement, or "bumping" analysis, arguing that "efficiency" was more complex than simply a matter of rates. Debt service, physical adaptability to ports, and fuel efficiency were all factors to be considered. It was argued that CDS-built vessels were not necessarily "efficient". Other comments supported the proposal's analysis, suggesting that the free market would provide for the orderly redeployment of displaced vessels.

The Department believes that CDS-built tankers will only enter those trade routes where they are capable of carrying a barrel of oil at a lower cost than other tankers and only under those circumstances will the competitive displacement process occur. Those tankers displaced will seek alternative

employment. The end result will be that tankers with the highest cost of transportation per barrel of oil could be forced out of the market. We realize, of course, that other factors must be considered when determining which vessels will leave the trade. For instance, the total demand for oil at each port would determine the tanker size for a particular trade. Port draft and terminal restrictions, vessel dimensions, length of voyage, and tanker operating costs, all affect the type of tanker used and the use of the tanker. Chapter III of the RIA presents a discussion of the Department's analysis of the tankers to be affected, what factors determine their efficiency and their expected deployment after this rule goes into effect.

f. Effect of the Rule on "Modern" Tankers

Several commenters offered views on whether the only vessels likely to be displaced by the rule were vessels over 20 years of age. It was also noted that PTSA requirements do not take effect until 1986, which would be when the Jones Act owners would have to decide whether to retrofit or scrap their vessels.

As stated in the RIA, most product tankers of less than 55,000 DWT and a few older crude oil tankers in the ANS trade could be displaced after entry of the CDS-built vessels. In all, we have estimated that 13 vessels will be forced by competitive forces from the ANS trade. We believe that all but a few, perhaps one or two, Jones Act tankers, over 55,000 DWT, normally in the ANS trade full-time and under 20 years old will be employed.

In response to commenters' assertions that Jones Act owners will wait until 1986, when PTSA requirements go into effect to decide whether to retrofit or scrap their vessels, many of the orders for product tankers since 1977 were spurred by the expected impact of PTSA. Since 1977, 22 new product tankers have been built or are close to completion. While some owners would undoubtedly wait until January 1, 1986 (the day tankers are required to be outfitted with pollution control equipment), others will make the decision sooner. The pending effective date of these requirements will especially accelerate the decisions of owners of older tankers since it only applies to those tankers 15 years or older in the 20,000 to 50,000 DWT range. The Department believes most of the decisions have already been made. In view of the high cost of retrofitting and the loss of cargo capacity associated with retrofitting, the decision will probably be made by owners sooner rather than later.

g. Effect of the Rule on Non-Proprietary "Independent" Operators

A few commenters expressed views on whether these operators would be unduly harmed because oil companies might not retire their older, less efficient proprietary vessels as the proposal implied, and thus would not charter from these operators.

The Department does not agree with these comments. Oil company-owned tankers are subject to the same economic forces that independently owned tankers are. DOT believes that oil companies will shift to independently owned tankers when that will achieve lower transportation costs.

h. Effect of the Rule on Proprietary Operators

Several commenters claimed that the rule would have a devastating impact on proprietary operators. As explained in the RIA, the final rule is likely to result in increased competition and a number of old, inefficient tankers being forced from the trade. However, the rule is in the long-term, best interests of the U.S. merchant marine. Those proprietary operators able to compete will be benefited over the long term.

i. Effect on Maritime Labor

Some commenters suggested that the rule would increase unemployment in the industry. Disagreement existed as to the number of seamen that would become unemployed. Some unions opposed the rule, while one major union supported it.

Based on the Department's analysis, about 800 seamen jobs may be lost as a result of this rule. Less tanker labor is needed, per barrel of oil carried, for the larger, more efficient CDS-built tankers than for those tankers likely to be displaced. However, in the long run, this rule should result in improved prospects for the U.S. tanker fleet, thereby improving the security of the seaman jobs that remain.

j. Economic Impact on the Jones Act Fleet as a Whole

1. *Profitability.* Several commenters offered views on the likely economic consequences of the rule on the Jones Act tanker industry, some operators asserting that they would incur substantial losses as a result of the rule. Other commenters who supported the proposal argued that the only ships displaced would be older, inefficient vessels that would have been displaced in a truly competitive marketplace. The Department believes that virtually all owners of Jones Act crude tankers that are younger than 20 years old are likely to be able to secure adequate employment and profits in the ANS trades after CDS repayment. It is possible that operators of older vessels could suffer losses.

2. *Equal competitive footing.* Some commenters disputed the assertion that the rule would put Jones Act and CDS vessel owners on an equal competitive footing. The Department disagrees. The terms of repayment proposed by the Department were intended to put the operators of the CDS vessels on an equal footing with existing competitors in the domestic trade and, thereby, counter arguments that the CDS vessels constitute unfair competition with the unsubsidized domestic operators in the trade.

5. Other Economic Impacts of the Rule

a. Effect on CDS Vessel Owner/Operators

Several commenters argued that CDS owner/operators had made bad economic investments and they would obtain "windfalls" if repayment is allowed. The CDS owner/operators contended that they should not continue to be penalized for having entered the program.

The Department does not believe CDS owner/operators will reap "windfalls" through CDS repayment. In light of the costs associated with repayment, those owners/operators will merely be placed in an equal competitive position with owners/operators of similar unsubsidized tankers. In the case of certain CDS-built tankers, repayment may not be a wise business undertaking. In all cases, owners/operators that pay back CDS will have to compete for any revenues they receive.

b. Effect on Windfall Profits Tax Revenues

Several commenters estimated an increase in Federal excise tax revenues that would result from the projected lower transportation costs of ANS oil. DOT estimated that, assuming oil prices at 1983 levels, there might have been substantial increased windfall profits taxes, perhaps over $100 million per year. However, because of the current low world oil prices, there will be no immediate increased windfall profits taxes. If world oil prices were to rise, this situation could change. The U.S. Treasury should also receive between $277 and $358 million in repaid CDS and interest payments under the rule.

c. Effect of the Rule on Alaska State Royalty Tax Revenues

Commenters also projected an increase in Alaska State revenues as a result of the rule. The Department agrees that Alaska State royalty tax revenues should increase because of CDS repayment, and the RIA estimates an increase of up to $900 million.

d. Effect on the Title XI Program

A number of commenters project an increase in the government's exposure under the Title XI program if payback is allowed. Others disputed this, projecting no change in the government's liability. Still others projected a reduced risk to the government if repayment is allowed.

Detailed data on the Department's Title XI exposure on U.S. tankers is contained in the RIA. Based on the Department's analysis of the effects of CDS repayment, the overall risk of defaults on Title XI obligations should be reduced under this rule primarily because the CDS-built tankers likely to have their CDS repaid have high Title XI obligations while those vessels likely to be displaced, when CDS payback is allowed, for the most part, are old and have already had their Title XI obligations repaid.

e. Effect of CDS Repayment, and Termination of CDS Payments, on Federal Revenues

Several commenters stated that the Federal Government would benefit from CDS repayment plus interest, as well as by the termination of CDS payments on CDS vessels. Some projected total savings to the government in the billions of dollars.

The Department agrees that the Federal Government will benefit financially from CDS repayment. As mentioned above, as a result of this rule, the U.S. Treasury will receive large sums in repaid CDS plus interest. In addition the United States Treasury may avoid the payment of up to several million in additional funds in CDS payments if CDS is repaid for Panamax tankers.

f. Effect on Federal Income Tax Revenues

Some commenters estimated that Federal income taxes paid by Jones Act operators and their employees would decrease substantially if CDS repayment is allowed. Although these commenters are probably correct in believing that some Jones Act operators might have reduced profits and increased losses and, therefore, pay less in income taxes, other operators might pay more in taxes. In addition, the income tax revenues gained from increased shipper profits, which result from lower shipping rates, should at least partially offset decreased tax revenues from Jones Act operators.

6. Other Effects of the Rule

a. Environmental Impact

A number of commenters offered views on whether the proposed rule would adversely affect the environment. A few questioned the Department's assessment that the preparation of an environmental impact statement was unnecessary.

In part because of these comments, the Department has conducted a more in-depth assessment of the environmental effects of a CDS payback rule. A copy of that assessment is available in the rules docket. That assessment confirms the Department's initial opinion that the rule will not have a significant environmental impact, and any environmental impact that might result should be positive in nature and result from a reduced number of port calls by the newer, more modern tankers that would replace older vessels in the Jones Act trade on a full-time basis.

b. Impact on Small Businesses

Several commenters offered views on whether the proposed rule would adversely affect small businesses. A few questioned the Department's finding that the rule would not have a significant economic impact on a substantial number of small entities.

The Department continues to believe that this rule will not have a significant economic impact on a substantial number of small entities. The only entities to be directly affected significantly by this rule are certain U.S. tanker owners, ANS oil producers, the State of Alaska and the United States. All but the first are clearly not small. Although it might be argued that the corporations set up to operate individual independent tankers are small entities, that argument disregards the reality of the situation. In general, these corporations are wholly owned by larger corporations, partnerships or individuals that own fleets of tankers. In addition, each of these tankers generate substantial revenues over a year. Therefore, under both a "number of employees" criteria and under a "revenue" criteria, the Department believes that few, if any, small entities will be affected by this rule.

c. Analysis of Impacts

Several commenters questioned the Department's failure to prepare a draft RIA when the NPRM was developed. In this regard, the Department did prepare a detailed Regulatory Evaluation and at the time did not believe a draft RIA, which is called for in some rulemakings by E.O. 12291, was needed. The Office of Management and Budget, by clearing the NPRM's issuance under that order, concurred in our view. Based on our reevaluation of the impacts of the rule, a final RIA has been prepared and placed in the rules docket.

7. Effect of Other Government Initiatives or Policies on the Rule

a. Port and Tanker Safety Act

Some commenters asserted that present Jones Act tankers would be at a competitive disadvantage with CDS vessels because they must incur retrofit costs to meet PTSA standards and also retrofit will force these vessels to carry less cargo.

As noted before, some Jones Act tankers will be at a competitive disadvantage with CDS vessels because of PTSA-required retrofits and because they will not be able to carry as much cargo. However, the disadvantaged tankers are the smaller, older tankers that presently only continue in business because of the current limitations on entry. To the extent it becomes desirable to owners to retire many of these economically marginal ships as a result of the PTSA's implementation, there will be less vessel displacement impact associated with the repayment of CDS.

b. Export of Alaskan Oil

Several commenters argued that a change in Presidential policy on exporting Alaskan oil would moot the rule. We agree that a decision to export Alaskan oil to Japan, which has not been made, would raise a number of questions regarding the advisability of a CDS-repayment rule since the oil remaining after export might be inadequate to support the entry of the CDS-built tankers. Thus, the export of Alaskan Oil would have more serious consequences on the Jones Act fleet than a repayment rule. Adoption of this final rule should reduce economic pressures to export ANS oil.

c. Eligibility of CDS Vessels for Cargo Preference

Some commenters suggested that the eligibility of CDS vessels for cargo preference would further damage the Jones Act fleet. The Department believes that, in view of the present eligibility for, and participation of, both Jones Act and CDS-built ships in the preference trades, the economic impact on the Jones Act vessels will not be

worsened by the entry of CDS vessels into the Jones Act fleet.

Moreover, the only ships eligible to carry preference cargoes and that are likely to have their CDS repaid are the VLCCs, six of which have participated in the ANS trade through six-month permissions. The ULCCs that can participate in the preference trade are too large to participate efficiently in the ANS trade and are unlikely to repay. CDS-built smaller tankers are also not expected to repay.

8. Reopening Comment Period and Holding a Hearing

After the close of the comment period, which was extended once at the request of commenters for an additional 30 days, several commenters requested that the Department reopen the comment period or hold hearings to make factual determinations. The commenters based this request on what they perceived as the change in circumstances affecting the ANS trade (e.g., projected oil production, number of ships laid-up, etc.). The Department does not agree with this request. Complying with it would unnecessarily protract the rulemaking proceeding and increase the uncertainty facing the U.S. tanker and shipbuilding industry. The Department is obtaining up-to-date data from ordinary sources (e.g., Department of Energy and trade publication sources) regarding changing circumstances and believes it has been sufficiently apprised of the commenter's views to base its decision to issue this rule.

Regulatory Evaluation and Regulatory Flexibility Act Determination

This rule was evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979. The rule is considered to be "major" as defined by E.O. 12291 because it will have an annual effect on the economy of more than $100 million. The rule is also considered to be "significant" under DOT's Regulatory Policies and Procedures because it concerns a matter on which there is substantial public interest, and, if adopted, it would initiate a substantial change in a policy considered important by the Department.

It is certified that this rule will not have a significant economic impact on a substantial number of small entities. In that connection, it should be noted that the companies owning and chartering tankers in both the foreign and domestic trades are either large oil companies or large independent shipping companies generating substantial revenues and are not small businesses. Moreover, no small government or other small entity would be significantly affected.

A Regulatory Impact Analysis has been prepared for this final rule which fully discusses its economic impacts. The important economic effects of the rule have been discussed above. The RIA has been placed in the rules docket and is available for review or copying by interested persons.

List of Subjects in 46 CFR Part 276

Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

The Rule

PART 276—[AMENDED]

1. The authority citation for Part 276 continues to read as follows:

Authority: Secs. 204(b), 207, 506, and 714, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156, and 1204) Pub. L. 86–518 (74 Stat. 216); Reorganization Plans No. 21 of 1960 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat 1036); and Dept. of Commerce Organization Order 10–8 (38 FR 19707), July 23, 1973), unless otherwise noted.

2. 46 CFR 276.3 is revised to read as follows:

§ 276.3 Total repayment.

(a) In accordance with the terms and conditions of this section and upon receipt of an appropriate application, the Maritime Administration will allow the total repayment of unamortized construction differential subsidy (CDS), with interest, and rescind permanently the domestic trading restrictions related to the grant of CDS for tankers of any deadweight tonnage. Approval of total repayment shall be irreversible. The full repayment amount must be received by June 6, 1986.

(b) *Repayment Terms.* The full repayment amount should consist of the unamortized CDS, as determined by the Maritime Administration, with compounded interest on that amount. The interest rate will be the same as the long-term interest rate the owner obtained, or would have obtained if long-term debt financing had been used, in financing his/her portion of the tanker. Unless the Maritime Administrator determines that using interest rates other than long-term bond rates is justified, such rates will be used. If more than one long-term bond was issued to finance the owner's portion of a specific tanker, or if one or more of such bonds has more than one rate (such as a serial bond) an average interest rate will be computed weighted by the proportion of each bond par value to the total par value of all long-term bonds issued to finance the owner's tanker. The interest payable on the unamortized CDS shall be computed by continuous compounding of the interest until the day of repayment. For purposes of this paragraph, "long-term bond rates" are either actual Title XI bond rates on a specific owner's tanker or the Title XI long-term bond rate at the time the tanker's statutory life began.

Issued in Washington, D.C., on May 3, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85–11045 Filed 5–3–85; 10:28 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Nontoxic Shot Will Be Required for Waterfowl Hunting in the 1985–86 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule contains descriptions of zones in which nontoxic shot will be required for waterfowl hunting in the 1985–86 hunting season. The zones included in this rule are areas where lead shot used by waterfowl hunters poses a threat to bald eagles. These zones are being added to those previously identified in 50 CFR 20.108 (50 FR 5759–5764) to protect waterfowl from ingesting spent lead shot. Lead shot contained in the muscle tissue or digestive tract of waterfowl can be consumed by bald eagles that feed on crippled, sick, or dead waterfowl. Shot ingested in this manner can cause sickness or death to bald eagles. The only approved nontoxic shot available at this time is steel shot. The areas being added are located in Kansas, Iowa, and South Dakota.

EFFECTIVE DATE: August 31, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: An increased number of dead bald eagles recovered in recent years have died of lead poisoning and many of these deaths are due to the ingestion of lead shot contained in the muscle tissue and

digestive tract of waterfowl eaten by bald eagles. U.S. Fish and Wildlife Service records list 83 lead poisoned bald eagles that were submitted to the Service for examination between 1963 and 1984. Forty-seven of these occurred since 1979.

On August 1, 1984, the National Wildlife Federation (NWF) petitioned the Service to give protection to bald eagles by immediately designating nontoxic shot zones for six counties located in five States. In addition, the NWF petitioned that an additional 89 counties in 30 States be proposed as nontoxic shot zones for 1985–86 hunting season. This petition was accompanied by a report entitled, *A National Summary of Lead Poisoning in Bald Eagles and Waterfowl*. On October 30, 1984, the Service published in the **Federal Register** and requested comment on the 95 counties identified by NWF in their petition of August 1, 1984 (49 FR 43571).

The Service responded to the NWF petition on September 14, 1984 (49 FR 36273–36276 and 36290–36293). Pages 36290–36293 of the September 14, 1984 **Federal Register** contained a Notice of Intent which presented a proposed alternative conservation plan for dealing with lead poisoning in bald eagles. This plan was presented as an alternative to the NWF petition, and public comment on it was requested and received until October 29, 1984. The conservation measures proposed by the Service on September 14, 1984 identified five counties in three States as areas where evidence suggested a substantial likelihood of lead poisoning among bald eagles. The plan also identified 14 counties in 11 States where there may be a problem of lead poisoning among bald eagles and 10 counties in seven States where there is a potential for a problem. The plan stated that the subject of lead poisoning among bald eagles would be examined further prior to the publication of a proposed rule. The Service announced in the plan that following a review of additional data, an analysis of public comment on the September 14, 1984 plan, and an analysis of public comment on the NWF petition and report, it would determine the need for additional nontoxic shot zones to protect bald eagles.

On February 13, 1985, the Service published a description of the process it had used and the conclusions it had reached regarding the need for nontoxic shot zones to protect bald eagles in the 1985–86 waterfowl hunting season (50 FR 6018–6022). Contained in the publication of February 13, 1985 was a proposal to require nontoxic shot in 1985–86 waterfowl hunting seasons in portions of 30 counties in eight States. The eight States were Illinois, Iowa, Missouri, Kansas, Oklahoma, South Dakota, California and Oregon. Public comment on this proposal extended from February 13, 1985 to March 18, 1985.

The zones proposed were as follows:

Mississippi Flyway

Illinois

Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union, and Williamson Counties.

Iowa

The area contained within a zone bounded on the west by the Missouri River, on the north by State Highway 127 east to State Highway 183, and then south and west on Highway 183 to the junction with the Missouri River.

Missouri

Holt, St. Charles, Pike, and Lincoln Counties, and those portions of Chariton, Livingston, Carroll, and Linn Counties contained within the Swan Lake Goose Management Area.

Central Flyway

Kansas

The entry for Stafford County would be reworded to include the entire County.

Oklahoma

Sequoyah County.

South Dakota

Stanley, Hughes, Lyman, Brule, Gregory, and Charles Mix Counties.

Pacific Flyway

California

That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the NW corner of Indian Tom Lake; thence south and east on the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the NW side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding Refuge lands on Sheepy Ridge) in the Tule Lake portion of the Klamath Basin.

Oregon

That portion of Klamath County lying west and south of a line commencing at the Oregon-California State line and proceeding along State Highways 39 and 39–140, U.S. Highway 97, and State Highway 62 to the Klamath County-Jackson County line.

Appropriated funds for the Department of the Interior for fiscal year 1985 were restricted in their use by the following provision:

No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

In response to the above law, each of the eight States involved in the proposal of February 13, 1985 received a telegram from the Service requesting State approval to implement and enforce the proposed rule.

Public meetings relating to the proposal of February 13, 1985 (50 FR 6022) were conducted by the Service at the following locations:

DeSoto NWR (Iowa)—February 26, 1985
Sallisaw, Oklahoma—March 4, 1985
Stafford, Kansas—March 1, 1985
Klamath Falls, Oregon—February 28, 1985
Alton, Illinois—March 11, 1985
Monmouth, Illinois—March 12, 1985
Havana, Illinois—March 13, 1985
Crab Orchard National Wildlife Refuge (Illinois)—March 14, 1985.

The wildlife conservation agencies of the eight States with proposed nontoxic shot zones responded to the Service telegram in the following manner:

Illinois Department of Conservation informed the Service that the proposed zones for that State do not meet the criteria for such zones as defined by State law; therefore, approval to implement the proposal was denied.

Missouri Department of Conservation did not approve the proposal for two reasons. They were concerned that the rule would be finalized at a time that would not allow adequate shipments of steel shot to the zones. Also, Missouri has developed a three-year plan for converting to nontoxic shot in the State and the proposal was not consistent with that plan.

Iowa Conservation Commission did not approve the zone as proposed but did approve a modification of it. The zone was not described correctly in the proposal, because road boundaries did not completely enclose the area of interest. An amended description was developed and approved.

Oklahoma Department of Wildlife Conservation did not approve the proposal for that State.

Kansas Fish and Game Commission approved the zone proposed for that State.

South Dakota Department of Game, Fish and Parks approved the implementation of areas that fall within the nontoxic shot zones described by South Dakota State regulations for 1985. These zones are not identical to those proposed by the Service, but they cover approximately the same units of wintering habitat of bald eagles that were proposed by the Service; therefore, the Service has included them in this final rule.

California Fish and Game Commission did not approve the proposal for that State. The Commission will cooperate in further monitoring of the situation but does not believe the evidence presented by the Service indicates lead shot is a threat to bald eagles.

Oregon Department of Fish and Wildlife did not approve the proposal for that State.

State Agency Comments and Service Responses

Comments on the Service proposal were received from 16 State wildlife conservation agencies. These comments and Service responses are presented below.

Iowa requested that the boundaries of the proposed zone for that State be changed to read as follows: A zone bounded on the west by the Missouri River, on the south by Interstate 680, on the east by Interstate 29, and on the north by the Soldier River. This State requested that Iowa regulations on nontoxic shot, that became effective on February 6, 1985, be included in this final rule.

Response. The Service agrees with the suggested changes in the description of the zone and has included this revision in the final rule. The Service did not include in this final rule the State regulations that became effective on February 6, 1985. The Service will first propose such regulations for public comment and we plan to do this for the 1986–87 hunting season. Due to time constraints, it was not possible to propose the State regulation for the 1985–86 hunting season.

Missouri requested that the Service announce proposed expansions in nontoxic shot zones at least one year in advance of their implementation. Missouri notified the Service that the State has a proposed plan that will go beyond the Service proposal in protecting bald eagles, waterfowl, and other wetland wildlife. This plan will be implemented in a timeframe that will be more readily accepted than the Service proposal.

Response. The Service agrees that the schedule should allow a year of advance notice. The Service was petitioned by the National Wildlife Federation on August 1, 1984 to provide additional protection from lead poisoning to bald eagles in 1985 and 1986. In an effort to respond to that petition, the Service proposed amendments to § 20.108 using a shorter timeframe than is usually the case. The proposal for Missouri is not included in this final rule. The Service will review the plans by this State during the coming year.

Kansas notified the Service of a State plan to convert to nontoxic shot over a period of three years beginning in 1985. The State approved the proposal by the Service, even though it was out of phase with the State plan. A larger area involving portions of three counties was preferred to the one-county area proposed by the Service.

Response. The larger area involving portions of three counties would have to be proposed by the Service for public comment. There is not time for an additional proposal prior to the 1985–86 hunting season, but this larger area can be proposed for the 1986–87 hunting season.

South Dakota notified the Service of their proposed State regulations for 1985. These regulations include large portions of the areas identified in the proposal by the Service. South Dakota further notified the Service that the State plan is an effective strategy for protecting migratory birds and the Service proposal confounds and confuses that plan.

Response. The Service regrets any confusion that might have been caused by the proposal. While different from the Service proposal, the State plan includes the same areas of concern. The Service will include areas, as described by State regulation, in this final rule.

California informed the Service that further studies should be conducted to determine the significance of lead poisoning among bald eagles. Decisions on nontoxic shot zones prior to such studies are unjustified.

Response. The Service believes there is sufficient information at this time to conclude that bald eagles congregate in certain areas and feed on dead, crippled, or sick waterfowl and as a result they ingest lead shot. Bald eagles are known to have died of lead poisoning at many locations, though the exact numbers that have died are unknown. The Service believes this to be sufficient information to justify use of nontoxic shot for waterfowl hunting in areas of concern. However, since California did not approve the Service proposal for that State, it has been removed from this final rule.

Oregon opposes the zone proposed for the State because the evidence given for this decision was inadequate. No dead bald eagles have been found in the Oregon portion of the Klamath Basin. Bald eagle populations in that area have increased in recent years. The State of Oregon believes that national criteria for the implementation of nontoxic shot should be developed prior to further decisions to require nontoxic shot.

Response. Since Oregon did not approve the implementation of the proposed zone for that State, that zone has been removed from this final rule.

New Jersey recommended that the New Jersey Counties of Cumberland and Cape May be investigated as possible bald eagle lead poisoning problem areas.

Response. The Service indicated in the proposal of February 13, 1985 (50 FR 6020–6021) that information on the relationship between bald eagle populations and waterfowl populations will be investigated by the Service at numerous locations over the next two years. These Counties will be included in such investigations.

Delaware requested that proposals to protect waterfowl from lead poisoning and those to protect endangered species should be consolidated into one proposal in the future. Also, this State provided reports on the performance of steel shot based upon studies conducted in Delaware, Texas, and South Dakota.

Response. The Service recognizes the complex administrative procedure followed in developing the nontoxic shot regulations for 1985–86. It is our intent to simplify this procedure in the future to the extent possible under Federal laws that regulate this process.

Vermont approved of the Service initiative to reduce bald eagle exposure to lead poisoning.

Florida requested that Polk County, Florida be proposed as a steel shot zone. The State has documented that waterfowl in this County are eaten by bald eagles.

Response. The Service was unaware that a relationship between bald eagle populations and waterfowl in Polk County had been documented. Since this area was not proposed for 1985, it will not be finalized at this time. It will be proposed for the 1986–87 hunting season.

Wisconsin requested that the Service provide leadership to eliminate all lead shot use for waterfowl hunting

throughout the United States. They approved of the proposal as a first step.

Response. It has been the policy of the Service since 1976, when the nontoxic shot program was first initiated, to locate serious problems due to lead shot ingestion by migratory birds. These problem areas are delineated and proposed as nontoxic shot zones.

Indiana approves of the proposal as an initial step, but points out that it does not go far enough to actually correct the problem of lead poisoning among bald eagles.

Response. The Service recognizes that the proposal was an initial step in a process that will require several years to complete.

Arkansas recommended that the documentation of lead poisoning of bald eagles be continued through an expanded research effort. Also, this State mentioned the necessity of a comprehensive education and information program to improve public awareness and understanding of the lead poisoning problem among migratory birds.

Response. The Service agrees with the comments of Arkansas and is currently developing new research and information programs relating to this subject.

Arizona notified the Service that investigations of lead poisoning in the Anderson Mesa area of Coconino County, Arizona, indicate that it is a lead poisoning problem area.

Response. The Service will plan to propose the Anderson Mesa area as a nontoxic shot zone for the 1986–87 hunting season.

New Mexico indicated to the Service that the criteria used in 1985 to locate lead poisoning problem areas was not realistic for use in New Mexico. Colfax County, New Mexico, in the vicinity of Maxwell National Wildlife Refuge, has been identified by the State as a problem area where lead poisoning of bald eagles occurs.

Response. The Service is aware that areas identified in the proposal did not include all areas where bald eagles ingest lead shot while feeding on waterfowl. The Service is working with State agencies to identify additional problem areas and will propose them as nontoxic shot zones in future years.

Washington informed the Service that Grant County, Washington has a bald eagle population that has been observed to feed on waterfowl frequently and this is contrary to the Service's assessment of the situation as discussed in the preamble to the proposal. Benton County, Nisqually River Delta, and Skagit River Delta are other areas where potential problems exist in the State of Washington. The State plans to monitor these locations.

Response. The Service will work cooperatively with Washington and any other State in locating problem areas.

Comments of Private Organizations and Individuals

The Burroughs Audubon Society of Kansas City, Oklahoma Wildlife Federation, Northeast Wisconsin Audubon Society, and American Association of Avian Pathologists wrote letters in support of the proposal.

The Champaign County Audubon Society of Champaign, Illinois; Indianapolis Zoological Society, Inc.; Cary Lobe Group of the Sierra Club, Ames, Iowa; Humane Society, Inc. of Fargo, North Dakota; and the National Wildlife Federation all submitted comments stating that the proposal fell far short of their expectations.

The Mississippi Valley Duck Hunters Association, Inc.; Mississippi Valley Hunters' and Fishermen's Association; Batchtown Sportsmen's Club (Illinois); Migratory Waterfowl Hunters, Inc. (Illinois); Southern Illinois Quotazone Waterfowl Association; Oregon Hunters' Association-Klamath Falls Chapter; Waterfowl Habitat Owners Alliance (California); Winema Hunting Lodge, Inc. (California); California Wildlife Federation; The Wildlife Legislative Fund of America; and National Rifle Association of America-Institute for Legislative Action wrote letters objecting to the proposal and requesting that it not be implemented.

The State Natural History Survey of Illinois offered several comments and suggestions as to how bald eagles can best be protected from lead poisoning. The Federal Cartridge Corporation recommended that amendments to § 20.108 be finalized at least 12 months in advance of their effective date. The Crab Orchard Waterfowl Association, Inc. (Illinois) believes that the problem of the lead poisoning should not be dealt with in a piecemeal manner.

One hundred and eighty-five letters from individuals living in Illinois expressed opposition to the proposed zones for Illinois. Letters from four individuals in that State supported the proposal. In reading the letters in opposition it was apparent that a few individuals had signed the names of a larger number of individuals, making an actual count of authentic signatures impossible.

A petition from California contained 106 names expressing opposition to the proposal for California. An additional seven letters from individuals in California expressed opposition. Eight letters from California supported the proposal, though two of these did not think the proposal was adequate to properly protect bald eagles.

An additional 42 letters from individuals in 23 States supported the proposal, though 14 of these thought the proposal did not go far enough. Twenty-two other letters from individuals in five States opposed the proposal.

The following paragraphs summarize major points expressed in opposition to the proposal and arguments presented for a more extensive proposal to protect bald eagles. Following each is a Service response.

Comment. The loss of bald eagles to lead poisoning is not a serious problem. Most bald eagle populations have increased in size in recent years.

Response. The Service agrees that many bald eagle populations are not adversely influenced by the use of lead shot for waterfowl hunting. However, at certain locations bald eagles congregate for the purpose of feeding on waterfowl that are crippled or sick. Studies conducted in these situations have demonstrated that lead shot ingestion by bald eagles is a frequent occurrence. Bald eagle deaths due to this cause are well documented, though the actual numbers lost each year due to this cause are unknown. It is the position of the Service that, while this problem is not widespread, it is serious at some locations. The proposal identified those areas that the Service believes have the most significant problem.

Comment. Lead that is killing bald eagles is frequently from sources other than ingested lead pellets.

Response. This same issue was raised in previous years in connection with lead poisoning of waterfowl. Lead from other sources, primarily auto exhaust, is widespread throughout the environment. The distribution of lead from this source does not follow the pattern of lead poisoning in waterfowl or in bald eagles. The pattern of lead poisoning in migratory birds is more clearly related to the hunting of waterfowl than to any other source of lead. No other source provides edible particles of lead in anything approaching the quantities provided by spent lead shot.

Comment. The information on lead poisoning among bald eagles is inadequate and additional studies should be conducted before nontoxic shot proposals are developed.

Response. The Service agrees that at many locations the information required to make a decision about lead poisoning in bald eagles is lacking; however, we believe that the areas proposed for 1985 represented situations in which evidence of a problem was present.

Comment. Steel shot does not perform as well as lead shot and additional waterfowl will be crippled if steel is required.

Response. The FWS recognizes the concerns regarding crippling losses. Previous tests conducted to measure crippling losses with lead shot and steel shot have been interpreted in a number of ways. These interpretations and our inability to compare results from the various tests have left uncertainty about lead shot and steel shot performance. For this reason, the Service is designing, and plans to conduct, a comprehensive study on the crippling loss issue.

Comment. The only solution to lead poisoning of bald eagles is the use of steel shot for all waterfowl hunting.

Response. While the Service believes that steel shot is suitable as a substitution for lead shot where a problem due to lead poisoning of migratory birds has been identified, there are a number of disadvantages associated with steel shot that make its general use for all waterfowl hunting questionable at this time. It is not manufactured in all shotgun gauges, it costs more than lead shot, and it is not suitable for use in certain guns that have thin or soft steel barrels.

Comment. The criteria used to identify the proposed areas were arbitrary and unrealistically narrow. The impacts of sublethal and lethal levels of lead in bald eagles require a proposal much larger in scope, such as the 95 counties identified by the National Widlife Federation in the petition to the Service.

Response. The Service recognizes that the scope of the proposal for 1985 is not as broad as that proposed by the National Wildlife Foundation but believes it is best to progress only as fast as adequate information on this subject permits. The Service agrees that Polk County, Florida; Grant County, Washinton; an area surrounding the Quivira National Wildlife Refuge in Kansas; Coconino County, Arizona; Colfax County, New Mexico, and possibly areas yet to be determined should be proposed for the 1986–87 hunting season. As indicated in the preamble to the proposal, further investigations are being conducted. The Puget Sound area, Skagit Delta, Nisqually Delta, and Benton County in Washington; Summer Lake, Oregon; Siskiyou, Lassen, Shasta, and Modoc Counties in California; Southeast Idaho; Great Salt Lake Valley, Utah; Weld County, Colorado; Dawson County, Nebraska; and Cumberland and Cape May Counties in New Jersey are scheduled for further study.

Comment. Zones to protect bald eagles that eat waterfowl are best described in terms of river flood plains rather than counties.

Response. The Service is in complete agreement with this comment. The proposal utilized counties only because bald eagle and waterfowl information are summarized in this way. It is our intention that at the local level more clearly defined areas will be delineated by those familiar with the situation.

This rule will not result in the collection of information from or place recordkeeping requirements on the public under the Paperwork Reduction Act of 1980. In accordance with Executive Order 12291, it has been determined that this rule is not a major rule. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) it was determined that this rule, if implemented without adequate notice, could result in the incorrect distribution of certain types of ammunition supplies. It is believed that adequate notice has been provided. Therefore, it was determined that the rule will not have a significant economic effect on substantial number of small entities. A copy of the analysis relating to these decisions, Determination of Effects of Amendment to Steel Shot Rules for 1985, can be obtained from the U.S. Fish and Widlife Service (MBMO), Washington, D.C. 20240.

An Environmental Impact Statement on the steel shot program was signed in 1976. In addition, Environmental Assessments were prepared on various aspects of the steel shot program in 1977 through 1980.

This final rule was authored by Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Widlife Service, Washington, D.C. 20240.

The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

§ 210.108 [Amended]

2. Section 20.108 is amended by adding the following zone description at the end of the entry for Iowa as follows:

* * * * *

Iowa

* * * * *

3. A zone bounded on the west by the Missouri River, on the south by Interstate 680, on the east by Interstate 29, and on the north by the Soldier River.

* * * * *

3. Section 20.108 is further amended by removing the phrase "That portion of the Quivira National Wildlife Refuge in Stafford County" from the entry for Kansas and replacing the colon after "Stafford County" with a period.

4. Section 20.108 is further amended by adding the following zone descriptions for the State of South Dakota immediately following the descriptions for New Mexico.

South Dakota

Those portions of Potter and Sully Counties lying west of U.S. 83; that portion of Hughes County lying west of U.S. 83 and that portion of Hughes County lying south of U.S. 14; that portion of Hyde County lying south of U.S. 14; and west of Hyde County F.A.S. 6547 (commonly called the Holabird Grade) and that portion of Hyde County lying south of U.S. 34 and west of S.D. 47; and that portion of Buffalo County lying west of S.D. 47. That portion of Lyman and Stanley Counties lying east and north of the Lower Brule-Antelope Creek Road from S.D. 47 to Fort Pierre. That portion of Stanley County lying north of S.D. 34 for approximately 5 miles west of Fort Pierre and east of Stanley County F.A.S. 6193 and S.D. 1806 to Minneconjou Bay. All waters, islands and bars of the Missouri River and its embayments from the north Potter County line downstream to Big Bend Dam, including the Cheyenne River embayment downstream from Minneconjou Bay. On, or within 100 yards of, the Grupe Slough State Refuge in Marshall County. On Lake Andes or within 100 yards of the water's edge in Charles Mix County. On the Missouri River or within 100 yards of the water's edge from Fort Randall Dam to Choteau Creek, including all islands and bars.

Dated: April 11, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–10622 Filed 5–1–85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 88
Tuesday, May 7, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Carrots and Canned Beets

Correction

In FR Doc. 85-9472, appearing on page 15568, in the issue of Friday, April 19, 1985, make the following correction:

Part 52—[Amended]

On the same page, in column three "§ 52.525 [Amended] should be removed, and under paragraph "(2)" and preceding the "five stars", insert:

§ 52.525 Recommended minimum drained weight.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 85-6]

Rules, Policies and Procedures for Corporate Activities; Change in Bank Control

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office" or "OCC") solicits comments on its proposal to revise the disclosure policy contained in 12 CFR 5.50(i) and provide for publication of notices filed under the Change in Bank Control Act of 1978, 12 U.S.C. 1817(j) ("CBCA" or "Act") except in certain public tender offer situations. The office now believes, that the concerns expressed as support for the current disclosure policy should be revisited and weighed against its experience administering the act.

ADDRESS: Comments should be directed to Docket No. [85-6], Communications Division, Third Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., Washington, D.C. 20219, Attention: Lynette Carter. Comments will be available for public inspection and photocopying.

FOR FURTHER INFORMATION CONTACT: James T. Pitts, Assistant Director, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., Washington, D.C. 20219. Telephone (202) 447-1954.

SUPPLEMENTARY INFORMATION:

Background

Under the CBCA, persons seeking to acquire control of any insured bank must submit a prior written notice, describing the proposed acquisition, to the appropriate Federal banking agency. If the notice is not disapproved, the change in control may be consummated.

It was the Office's view in adopting its current disclosure policy under the CBCA, (*see* 45 FR 68607 (1980)) that the public disclosure of the notice could have a material effect upon the ability of the person seeking to acquire control of the bank to consummate the transaction following a nonadverse disposition of the notice. The Office was concerned that the release of such information could provide persons opposed to the subject transaction opportunities, which they might not have otherwise had, to muster various defensive tactics to repel the proposed change of control. Moreover, the Office feared that the release of such information could materially affect the price at which the change of control might be accomplished. The Office viewed that concern to be consistent with the language of the statute and the legislative history. It perceived Congressional intent to be that the Act serve neither as a device for triggering defensive action on the part of persons who might be opposed to the change of control nor to alter the economics of the marketplace in which the control might be acquired.

The Office now believes that the concerns expressed as support for the current disclosure policy should be revisited and weighed against its experience administering the Act. It is possible that the needs for maintaining confidentiality may be outweighed by the legitimate benefits which could result from increasing the sources of information available to the Office in its deliberations regarding CBCA notices. The more information the Office has, the better able it will be to fulfill its responsibilities under the Act and prevent dishonest and unqualified persons from gaining control of financial institutions. The Office now believes that the greater public good may be served by announcing, in the majority of cases, the receipt of a CBCA notice, the name of the affected institution, the proposed acquiror, and the earliest date upon which the transaction may be completed. The remaining information in the notice would, consistent with the current policy, remain confidential. Such public announcement would by its nature solicit public comment relating to the proposed change in control, but would not create standing for any third party intervention or appearance.

The exception to the public announcement procedure would involve those situations in which the proposed acquisition was being made in connection with a public tender offer subject to the requirements of the Williams Act Amendments to the Securities Exchange Act of 1934 ("Exchange Act"). A proposed acquiror may request confidential treatment of the notice filed in advance of filing a Form F-13 (with the OCC) or Tender Offer Statement on Schedule 14D-1 (with the SEC) which triggers the commencement of the tender offer. The confidentiality of the notice, including the fact of its existence, may, in the Office's discretion, be maintained until such time as the proposed acquisition is publicly announced or for thirty calendar days, whichever occurs first. In any event, the filing of the notice will not constitute a "first publication" under Exchange Act section 14(d)(1) nor will the time frames established in the Williams Act or its implementing regulations take precedence over the statutory review period contained in the CBCA.

The proposed revision to the disclosure policy also identifies the items of information contained in Part E of the notice format, previously published in 45 FR 68608 ("Summary Fact Sheet"), and changes the procedure for making that information publicly available. No change in the Summary Fact Sheet is proposed. The proposal

would revise the Office's procedures regarding dissemination of certain summary information required to be submitted by a proposed acquiror under current regulations. The present OCC disclosure policy indicates that the summary will normally be published in the Office's *Weekly Bulletin*. The Office proposes to change that procedure to one in which information is released and made available, upon request, for inspection and copying. It is the Office's view that the publication of notices received in combination with the release of summary information upon request, will increase the amount of timely and useful information available to the public while at the same time saving Office resources.

Comments on Disclosure Policy

Because the Office believes that the subject of public release of information under the CBCA is of broad interest, it requests public comment on the policy generally and on the proposed revision. In particular, the Office solicits comment with respect to the following questions:

1. To what extent would early release of the fact that a notice has been filed, identifying the bank, the proposed acquiror and the earliest date the transaction could be culminated, be useful in eliciting information from the community as to whether a notice of disapproval should be issued?

2. To what extent would the interest of a person filing a notice be prejudiced by the early disclosure of its existence?

Special Studies

This proposal, if adopted, would not require any action of national banks that they do not now perform pursuant to current regulations. Accordingly, the Comptroller of the Currency certifies that this proposal will not have a significant economic impact on a substantial number of small banks, and an Initial Regulatory Flexibility Analysis was not prepared. Similarly, the proposal does not meet the criteria for a major rule as defined in Exec. Order No. 12291, and a Regulatory Impact Analysis was not prepared.

List of Subjects in 12 CFR Part 5

National banks, change in bank control

PART 12—[AMENDED]

For the reasons set forth in the Preamble, the Office proposes to amend the current CBCA disclosure policy in 12 CFR 5.50, as follows:

1. The authority citation for 12 CFR Part 5 is proposed to be revised as follows:

Authority: 12 U.S.C. 1817(j)(13).

2. Paragraph (i) in § 5.50 is revised to read as follows:

§ 5.50 Change in bank control.

* * * * *

(i) *Disclosure policy.* As an aid to administering the Act, the Office will announce upon receipt of a technically complete notice, except as provided in paragraph (i)(9) of this section, the following information: (1) The name of the affected national bank, (2) the identity of the person filing the notice and (3) the date upon which the statutory period for agency review expires. In addition, the announcement will state that a letter of nondisapproval can be issued in advance of the statutory period and further that the Office may extend the period of review consistent with the provisions of 12 U.S.C. 1817(j). The announcement will also inform the public that the remaining portion of the notice will be kept confidential until the Office has acted but at that time, certain additional summary information will be released and will be made available, upon the request of any person, consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"). In order to facilitate that disclosure, Part E of the notice format consists of a summary ("Summary Fact Sheet"), set forth below, which the person subject to the status and regulations is required to complete as part of the notice filing.

Part E—Summary Fact Sheet

Summary Fact Sheet—Change In Bank Control Act ("Act")

a. Name of bank.
b. Address of bank.
c. Name of person filing the notice.
d. Mailing address of person filing the notice.
e. Country of residence of person filing the notice.
f. Status of person (check one or more of the following).

___ Individual
___ Corporation
___ Partnership
___ Trust
___ Association
___ Joint Venture
___ Pool
___ Syndication
___ Sole Proprietorship
___ Unincorporated Organization
___ Other (Describe)

g. Citizenship of place of organization of each person.
h. Number of shares of record owned by the person and the percentage of the class represented thereby.
i. Number of shares owned beneficially, but not of record by the person and the percentage of class represented thereby.
j. Number of class of voting shares to be acquired and the percentage of the class represented thereby.
k. Proposed date of acquisition of control.
l. If the person filing does not object to disclosures of this information upon acceptance of the notice for filing (see instructions), so indicate by checking this box:

Disposition

(This information will be inserted by the Office of the Comptroller of the Currency.)

As used herein, the term "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. 12 U.S.C. 1817Z(j)(8)(A).

Instructions

This Part E sets forth a summary of information required in response to various items set forth in Parts A through D of the notice. The information contained herein will be publicly released as follows:

1. Where there is an affirmative indication in the notice of no objection by the filing person, public release will be made as soon as practicable after acceptance of the notice for filing.

2. Where the statutory period (together with any extensions) expire without the issuance of a written notice of disapproval of a change of control or where a written notice of intention not to disapprove is issued, public release normally will be made after the date set forth in response to Item K of Part E.

3. Where a written notice of disapproval of a change of control is issued, public release normally will be made upon the expiration of any applicable appeal date without appeal being taken or upon appeal being taken to the appropriate U.S. Circuit Court of Appeals.

4. Where the notice is withdrawn prior to disposition, no public release normally will be made.

5. If members of the public become aware of the existence of the notice, public release may be made at the discretion of the Office of the Comptroller of the Currency ("Office") at other times. Necessary verification and inquiry by the Office in processing a notice may result in disclosure of its existence.

6. If the transaction is not completed by the date specified in response to Item K of Part E, public release normally will be made on that date unless a written request is received prior therto which specifies a different date for completion of the transaction of and release of information. Reasonable requests involving abort delays normally will be honored.

7. The public relase of this information in no way affects the obligation and liabilities which the person filing the notice may have under sections 13(d) or 14(d) of the Securities Exchange Act of 1934.

The information provided in the Summary Fact Sheet will be released

and available for public inspection and copying, upon request, in accordance with the specified time sequence described below. In addition, public announcement of the disposition of the notice and the consummation date of the transaction, if applicable, will be made in the *Weekly Bulletin* published by the Office on the Friday following the operative date.

(4) The instructions to Part E of the notice indicate that when the person filing the notice affirmatively indicates no objection to public release of the information contained in the Summary Fact Sheet, public release normally will be made as soon as practicable after acceptance of the notice for filing.

(5) When the Office has not disapproved an acquisition of control within the statutory period (and any extensions thereof), the Office normally will release the information contained in the Summary Fact sheet upon completion of such acquisition of control.

(6) When the Office has issued a written notice disapproving the proposed acquisition of control, the Office normally will release the information set forth in the Summary Fact Sheet upon expiration of the date within which any appeal must be taken or upon the filing of an appeal with the U.S. Court of Appeals for the appropriate circuit.

(7) When a notice under the Act is filed but withdrawn prior to agency action or expiration of the statutory waiting period, the Office normally will not release the Summary Fact Sheet. The filing of the notice, the identity of the person on whose behalf the notice was filed and the time frames within which the notice was to be considered by the agency, would have been previously announced.

(8) If the information contained in the Summary Fact Sheet becomes known to members of the public, the Office may release the Summary Fact Sheet in its discretion.

(9) Notices under the Act that are filed in contemplation of a public tender offer subject to the requirements of the Williams Act Amendments to the Securities Exchange Act of 1934 may be given confidential treatment for up to thirty days after the notice is filed if: (i) The filing party requests such confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with either the Securities and Exchange Commission or the appropriate Federal banking agency, as applicable, will occur within thirty days from the filing of the notice; and (ii) the Office determines, in its discretion, that it is in the public interest to grant such confidential treatment. In other cases of requests for confidential treatment, the Office will be guided by the very strong presumption that the filing of such notices should be public when filed but will, in its discretion, grant such requests of confidential treatment if justified as being demonstratively inconsistent with the purposes of the Act.

(10) The information contained in the notice that is not included in the Summary Fact Sheet will continue to be held confidential by the Office subject to the requirements of the Freedom of Information Act.

(11) Nothing contained herein shall create a private right of action on behalf of any person nor shall any person, including the affected institution, have standing to intervene or otherwise contest or appear before the Comptroller in the deliberations regarding notices filed under the Act.

* * * * *

Dated: March 28, 1985.

C.T. Conover

Comptroller of the Currency.

[FR Doc. 85-10943 Filed 5-6-85; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 85-286a]

Settlement of Insurance

Date: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), is proposing to revise its regulations pertaining to insurance of accounts. The proposal would reorganize those regulations in order to clarify their operation, simplify and expedite the insurance settlement procedure, and limit potential abuses and evasions of the insurance coverage limitations.

DATE: Comments must be received by June 28, 1985.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, or Sandra L. Richardson, Attorney, (202) 377-6432, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTAL INFORMATION: In 1967, the Board adopted final regulations governing settlement of insurance in the event of liquidation of institutions whose accounts are insured by the FSLIC ("insured institutions"). The purpose of the regulations was to clarify insurance coverage for depositors in insured institutions, to simplify the rules, and to protect the FSLIC insurance fund from abuses and attempts at evading the insurance limit. *See* 32 FR 10415 (July 14, 1967). With minor modifications, those regulations have remained in effect. The Board has become concerned, however, that changes in deposit practices in the last 17 years have resulted in an investment environment very different from that which the current rules were intended to address.

Since 1967, the insurance coverage limit has been increased from $15,000 to $100,000. Due to this change, individual insurance determinations now involve much larger sums of money than previously had been the case. The higher insurance limits, coupled with the deregulation of interest rates on accounts, have made insured accounts a much more attractive investment for sophisticated investors than they were in 1967. The increased number of sophisticated investors in the market for insured accounts and the heightened competition engendered by account deregulation in turn has led to an increased use of novel and complex methods of account ownership, such as multiple-level agency relationships, which the current rules do not fully address. The Board has attempted to resolve these issues by interpretation and by rules addressing specific situations, but it believes that a far more desirable approach would be to substantially revise and reorganize the rules to reflect the environment in which they now must operate. The Board is therefore proposing to amend its regulations accordingly. The proposal will also take into account and discuss elements of a proposal issued for public comment by the Board on February 15, 1984 (*See* 49 FR 6736 (February 23, 1984)), which is hereby withdrawn in favor of a more comprehensive review of Part 564. It should be noted, however, that the proposed rules would not cover those issues addressed in the Board's rule on deposits placed by or through deposit brokers. *See* 49 FR 13003 (April 2, 1984).

I. General Structure of the Proposed Rules

The organizational structure of the proposed rules has a dual purpose: to group the rules according to the extent of insurance coverage afforded, and to clarify the interrelationship among the rules. Grouping the rules by the extent of insurance coverage would, in the Board's view, simplify their operation for the public and the insured institutions, this reducing the possibility of persons being less than fully insured through errors in interpretation. In addition, clarifying the interrelationship among the rules would better address the myriad and complex array of potential account relationships.

II. The Specific Rules

Definitions

The proposal would create a specific definitional section for settlement of insurance purposes in Part 564. At present, most of these definitions appear only in the general definitions set forth in Part 561. The Board is of the view that providing definitions in Part 564 instead of requiring reference to Part 561 would significantly increase the clarity of the proposed rules and ease of reference. The Board has also taken this opportunity to propose substantial revisions to existing definitions and to add a number of new definitions, as discussed further below.

More specifically, the proposal would add a definition of the term "employee benefit estate," which would be directly analogous to the term "trust estate" used in the National Housing Act and the current regulations. It would include any interest of an employee beneficiary in an "employee benefit plan", defined as a deferred compensation plan established by a public unit or a plan qualified under section 401 (but not 401(d)) or 457 of the Internal Revenue Code. The definition would exclude any interest retained by or attributable to the settlor or sponsor of the plan, because such interests clearly would not be interests of the employees.

The Board believes that this definition, together with proposed § 564.7 governing insurance coverage of such plans, would simplify and resolve many of the insurance issues currently arising in connection with investments by employee benefit plans, such as "vesting" questions and methods of calculation of interests. The definition of employee benefit plan would be one that virtually all employee benefit plans would meet for purposes other than that of insurance coverage. Plans qualified under the above-cited sections of the Internal Revenue Code, even if not technically in the form of irrevocable express trusts, must provide trust-like safeguards for the interests of their beneficiaries. While the Board is aware that there are a few employee benefit plans in existence which would not qualify for coverage as employee benefit plans under this definition, it believes that some of those plans may still be able to obtain additional insurance coverage under the rules governing the insurance of trusts.

Current § 561.5b defines an "independent activity," in connection with insurance eligibility of corporations, partnerships and unincorporated associations, to mean, "any activity other than one directed solely at increasing insurance coverage." The proposed rule would include an amended definition which would further limit the activities to those with a primary purpose other than the evasion or violation of federal or state law. This additional safeguard would further the purpose of the current regulation in preventing the use of such entities merely to increase insurance coverage, and would ensure that only *bona fide* entities would qualify for separate coverage. The Board notes that this provision would not deny separate insurance status to a corporation violating other types of law, *e.g.,* the Clean Air Act, if that corporation were otherwise engaged in one or more legitimate independent activities. Adoption of the proposed language would affect insurance coverage only with regard to those entities engaged in an independent activity designed primarily to avoid applicable law, *e.g.,* tax evaders.

The proposed definition of "insured account" would codify the Board's current view that the term does not include funds deposited by an insured institution in its own accounts in its corporate capacity. This would clarify the principle that the FSLIC only insures amounts that insured institutions owe to third parties. It would not affect insurance coverage of accounts which an insured institution holds for others as trustee or in other fiduciary capacities.

Proposed § 561.4(f) retains the current definition of "insured institution" set forth in section 561.1, and, in the interests of clarity and convenience, additionally incorporates without change the provisions of current section 564.11, concerning the status of FDIC-insured federal savings institutions.

The Board has become aware of the practice of a number of public units of appointing a large number of persons to be "official custodians" of public funds. This is done to increase insurance coverage under current § 564.8, which provides for separate insurance coverage of funds invested by *each* official custodian of funds of public units. The Board believes that the practical result of this interpretation of the current rules is to provide *de facto* 100-percent insurance coverage to any public unit willing to appoint enough custodians. The Board notes that Congress has specifically rejected the notion of full deposit insurance. *See* H.R. 11221; H. Rep. No. 93–751, January 21, 1974. In order to eliminate this problem, the proposal includes a definition of the term "official custodian." The proposed definition would define the term to include only those officials of public units who, pursuant to statute or ordinance, exercise control over the investment of public unit funds. Officials who do not have some discretionary investment authority conferred upon them by statute or ordinance would not be included in the term. The Board believes that this provision would continue to protect and insure the deposits of persons actually making investment decisions for public units, but would preclude the use of multiple custodians to increase coverage.

The term "public unit" as included in the proposal would incorporate and expand the provisions of current § 561.5 to expressly include nonappropriated-funds instrumentalities of the United States ("NAFIs"). This would codify the current staff interpretation that such an entity is a separate public unit qualifying for separate insurance coverage if it has a separate manager, profit-and-loss statement, and balance sheet.

The proposal also adds a definition of the term "settlor". Existing regulations do not define this term, thus leaving to state law the question of who is the settlor of a trust. The proposed definition would define the term to include any persons who have, directly or indirectly, contributed assets to the corpus of a trust or employee benefit plan, whether or not such persons are settlors under state law. The Board believes that this definition would better serve to prevent persons from obtaining additional insurance coverage by establishing trusts for their own benefit. The Board is now aware of a number of attempts to circumvent insurance limits in this regard through the use of a third party acting as settlor of the trust for the benefit of investors, who supply such third parties with the funds to be invested in the trust. The proposed definition would prevent such evasive devices by deeming any person who either is a settlor under state law, or who directly or indirectly contributes

assets to a trust, to be the settlor of such trust. The definition would exclude employee beneficiaries contributing to an employee benefit plan because the Board believes that the purpose and regulation of employee benefit plans makes it extremely unlikely that one would be used merely to increase insurance coverage.

Finally, the proposal would include the current definition of the term "trust estate" at § 561.4 to the extent that those portions of the definition pertain to irrevocable express trusts. For purposes of clarity, the proposal would add a new clause to the definition to cover the treatment of bondholders' interests in accounts held by the public unit issuing the bonds. This definition would be the same in substance as the provision addressing such interests currently set forth at 12 CFR 564.8(b). Since the current provision is actually in the form of a definition, the Board believes that it would be more appropriate to treat it as such as a matter of regulatory organization. Current references to pension plans and deferred compensation plans in § 561.4 would be covered in the new definition pertaining to employee benefit estates.

Administrative and Recordkeeping Provisions

The proposal would substantially reorganize administrative and recordkeeping provisions of the settlement-of-insurance regulations. The primary aim of the proposed reorganization is to simplify the rules, to reduce duplicative provisions, and to group the rules by the type and extent of insurance coverage for ease of reference. In most cases the proposed reorganization would not affect the extent of coverage.

1. Section 564.1

The proposal essentially would preserve the substance of current § 564.1, but would reorganize it into seven provisions, pertaining to (1) insurance settlement procedures, governing initial insurance determinations and settlement; (2) calculation of the amount of an insured account; (3) procedures to be followed where one person holds a number of accounts or has interests in a number of accounts held by others; (4) reconsideration of initial insurance determinations; (5) payment of insurance proceeds by the FSLIC; (6) choice of law; and (7) representations regarding insurance coverage by insured institutions, employees of the Board or the FSLIC. Paragraph (d), concerning procedures for reconsideration of initial insurance determinations, would not be amended by this proposal. Proposed amendments to the reconsideration provision are addressed in companion Board Resolution No. 85-286b (April 17, 1985).

Proposed paragraph (a), concerning basic settlement procedure, would be unchanged from the current provision.

To clarify the insurance coverage of accounts issued at a discount, and to avoid possible attempts to abuse the insurance rules, the proposal would amend current paragraph (b), which defines the amount of an insured account. In addition to the current provisions, it would provide that, with respect to any account whose face value was more than 10 percent greater than the amount of funds deposited in the account, the amount of the difference between the two will be deemed to be simple interest accruing over the life of the account, compounded yearly. In effect, the amount of the discount would be prorated over the life of the account. Thus, a $1,000 face-value account for 10 years issued in exchange for $500 would not be insured to its face value if the institution was placed in receivership the day after the account was issued. Instead, the amount of insurance payable on such an account would be approximately $500.14. Accounts issued at a discount of 10 percent or less would be insured to full face value plus accrued interest.

Proposed paragraph (c), concerning multiple accounts, would expand the current provision regarding proration of insurance payments to cover multiple accounts held by others in which one person has an interest in the same capacity, as well as multiple accounts held by one person in the same capacity. The proposal would clarify that proration among the different accounts would occur in both cases. It would also provide that, in cases where the insured member owns the entire beneficial interest in the account, insurance could be distributed on multiple accounts on a basis other than proration if the FSLIC and the insured member agree upon such other method of distribution. This last provision would apply only to individual accounts in which the holder of the accounts had the entire beneficial interest, and would not apply, for instance, to accounts held by an agent for others. The Board has preliminarily determined that to further extend the provision could prejudice some beneficial owners of accounts.

The proposed rule would also add a provision setting forth special rules for accounts held by loan servicers. Under both the current and proposed rules, accounts held by a loan servicer are insured as accounts held by an agent for the borrowers. Although the rule provides a significant benefit to loan servicing arrangements by simplifying the insurance coverage applicable to such accounts, the Board has become aware of a number of cases in which, for example, an individual has $100,000 of his own funds in an institution which also, unknown to him, holds funds deposited by a loan servicer for purposes of servicing his mortgage loan. In such a case, applying the general rules of proration would result in a net loss of insurance coverage for the borrower due to the loan servicer's actions in depositing his funds in the same institution, which clearly is beyond his control or knowledge. As an equitable matter, the Board believes that the risk of loss in such case should be born by the lender or holder of the note, and not the borrower. Therefore, the proposal would provide that uninsured amounts resulting from the aggregation of loan servicing accounts with individual accounts of the borrower would be attributed to the loan servicing account. Amounts not insured due to aggregation of the borrower's own accounts would not, of course, be applied to the loan servicing account.

Paragraph (e) would remain fundamentally unchanged from the current rules governing payment of insurance proceeds by the FSLIC to accountholders. It would clarify that the FSLIC would make payment to any accountholder acting in a fiduciary capacity in that capacity. The current provision for payment to be made to a person other than the accountholder would be deleted in order to streamline the payment procedure. It is the Board's preliminary view that other provisions in the proposal recognizing liens against insurance payments eliminate the need for such a provision. The proposal would also provide that, in cases where a creditor has asserted a valid security interest or judicial lien against an account, the FSLIC would make payment of insurance arising from that account subject to that interest or lien. However, with respect to accounts subject to the right of setoff, the proposed rule provides that insurance payment for amounts subject to such right may be made to the receiver of the institution where it requests such payment. Paragraph (e) also provides that, with respect to accounts issued in negotiable instrument form, the insured member would be deemed to be the holder of such account as of the date of default, and that payment of insurance would be made to such holder, provided that affirmative proof is presented that

such person was in fact the holder of the instrument as of the date of default.

Paragraph (f) would substantially incorporate the current provision concerning applicable law in § 564.2(a). The proposal would expressly provide that the rules contained in Part 564 preempt other inconsistent state or local laws or rules in making insurance determinations, although not for other purposes, and that the rules governing payment of insurance would exclusively govern such payment. This would restate the Board's view that the FSLIC rules supersede any conflicting state rules, such as state rules designating persons other than the accountholder as payee. The proposal would also clarify the current provision by providing that, to the extent that reference to state or local law is required in order to reach an insurance determination, it is the substantive law of the state in which the institution's principal office is located that governs.

Proposed paragraph (g) would codify the position taken by the Board in a 1967 resolution that statements and other representations made by insured institutions or others as to the amount or nature of insurance coverage have no binding effect upon the Board or the FSLIC. The Board notes that insured institutions are not in any way its agents, and that even its employees do not have the authority to alter the extent of insurance coverage by representation, opinion, or otherwise. The Board wishes to make as clear as possible that only the provisions of Title IV of the NHA, the Board's rules and regulations, and the Appendix to Part 564 govern the extent of FSLIC insurance.

2. Section 564.2: Recordkeeping Requirements

Proposed § 564.2 would be narrower in scope than the current section. Current § 564.2 contains a number of provisions addressing nonrecordkeeping issues which, in the Board's view, would be more appropriately contained in the substantive sections to which they apply. Therefore, the proposal would relocate current provisions concerning calculation and ascertainability of trust estates to proposed §§ 564.6 and 564.7 concerning insurance coverage of irrevocable trusts and employee benefit plans, respectively.

The Board originally adoped § 564.2 to address a number of issues which arose during a series of FSLIC and FDIC insurance settlements in the early 1960s. The section was designed to create a series of presumptions primarily to address small-scale potential abuses by individuals of low levels of FSLIC insurance coverage. First, it conclusively presumes that an account in the name of an individual is beneficially owned by that person, unless the account records of the institution disclose that the account is held pursuant to a relationship with another person who beneficially owns the funds in the account. Thus, pursuant to the present rules, the FSLIC will not recognize a trust relationship, and instead will insure the trustee who holds the account solely as an individual, unless the existence of the trust relationship is disclosed on the institution's account records. This first presumption was designed to prevent post-default invention of relationships which would fraudulently increase insurance coverage, and to expeditiously provide the FSLIC with information necessary to conduct the settlement process in fulfillment of its statutory mandate to settle insurance as quickly as possible. Second, if such a relationship is disclosed, the rule presumes that no additional insurance coverage is warranted unless this disclosure is supplemented by the disclosure, either in the records of the institution or in records of the accountholder maintained in good faith and in the ordinary course of business, of the details of the claimed relationship and the interests of other persons in the account. The rule established this second presumption to further the aims of the first, and to require a showing by the accountholder that the claimed relationship and the claimed interests of others are in fact *bona fide*. Third, with respect to any trust, the rule conclusively presumes that the trust does not exist absent the existence of a signature card with respect to that trust in the records of the institution. This extra test for trusts reflected the Board's experience that the separate insurance coverage afforded trusts was more likely to be abused than the insurance afforded other account relationships. Finally, the current rules exempt accounts issued in negotiable form from these recordkeeping requirements in the interest of facilitating the transfer of such instruments.

As noted above, the current rules were designed in the 1960s to address potential fraud and evasion of the insurance limits, and to speed the insurance settlement process, in light of the problems encountered in insurance settlements in the early and middle years of that decade. Because of the relative stability of the thrift industry at that time, in contrast to its subsequent growth, such insurance settlements tended to be much smaller, both in terms of the size of the individual institutions and of the volume of cases in any one year, than is now the case. The current rules have achieved the original goal of limiting small-scale fraud and evasion by individuals.

The Board believes, however, that developments since 1967, principally the significant increase in insurance coverage from $15,000 to $100,000 and the deregulation of rates of return on deposits, suggest that a number of changes to these recordkeeping requirements are in order. More specifically, the increase in the insurance limit from $15,000 to $100,000 has not only increased the costs to the FSLIC arising from potential errors, but has also encouraged the development of many complex account ownership devices which now are almost commonplace. In addition, the deregulation of interest-rate limitations, now virtually complete, has resulted in new settlement problems facing the FSLIC which are much more complex than those anticipated in the 1967 insurance provisions. These post-1967 developments have greatly increased not only the possibility, but also the potential cost, of fraud and error. Furthermore, the increased prevalence of complex account devices, and the number, individual size, and aggregate dollar volume of insurance settlements, is beginning to slow the insurance settlement process to the point that the FSLIC is finding it difficult to fulfill its statutory mandate to settle insurance claims speedily while protecting itself from fraud and abuse. Finally, the low level of disclosure required under the current rules does not provide the FSLIC with sufficient information, given the complexity of many account structures, to accurately determine the potential cost of various alternatives in considering courses of action to take with a failing institution, such as whether to liquidate the institution or to merge it with another. This absence of information may in some cases actually reduce the number of alternatives available to the FSLIC, resulting in delays which are potentially costly to the FSLIC and detrimental to public confidence in the FSLIC and the thrift industry.

As a result of these recent developments, in the course of the insurance settlement process the FSLIC now often faces the immensely complicated and time-consuming task of investigating many large-denomination accounts in depth. The time spent on the settlement of such accounts significantly slows the whole insurance settlement process, to the detriment of all accountholders seeking speedy payment of insurance. The complexity of the

arrangements used, together with the large amounts in question, also dramatically increase the possibility of post-default invention of relationships and other fraudulent devices.

The Board therefore believes that the existing recordkeeping requirements may no longer provide the FSLIC with sufficient information for it to fulfull its statutory mandate to pay insurance quickly (and thereby maintain public confidence) while continuing to prevent fraud and circumvention of the insurance limits. The proposal therefore would substantively amend the recordkeeping requirements in a number of respects.

Specifically, although the provision governing disclosure of the existence of claimed relationships would remain substantially unchanged, the proposal would amend its language to clarify that the account records must disclose the existence of an applicable relationship in order for such relationship to be recognized for insurance purposes. The revised language would further emphasize that nondisclosure of a relationship will result in the failure of a claim based on that relationship and that disclosure of a relationship which might provide the basis for additional insurance coverage will result in such coverage only where the disclosed relationship is in fact present.

In the case of accounts established by irrevocable trusts, employee benefit plans, loan servicers, court registries, and public units, the proposed amendments would require disclosure of the details of the relationship (including the identities and interests of persons or entities having an interest in the account) in either the account records of the insured institution or the records of the accountholder maintained in good faith and in the ordinary course of business. This would be identical to current provisions. The Board believes that these types of relationships are not as easily fabricated as, for example, agency and nominee relationships, and that various features of such relationships provide safeguards regarding their genuineness that are lacking in other relationships. Further, the separate insurance coverage afforded to trusts and employee benefit plans diminishes the need to know in advance of potential aggregation problems.

For relationships other than irrevocable express trusts, employee benefit plans, loan servicing accounts, and accounts held by court registries or by public units, the proposed rule would require disclosure of the identities and interests of persons having beneficial ownership interests in the account records of the institution. The proposal provides that the complete details of any relationship (other than those described above) would be required to be disclosed on the records of the insured institution. This provision would, in the Board's view, provide the FSLIC with sufficient information to: (1) Prevent post-default invention of relationships designed to fraudulently increase insurance coverage, (2) determine the insurance on such accounts quickly and efficiently, thus lessening the delay in payment on those and other accounts in an insurance settlement, and (3) make well-informed decisions as to potential costs of various alternatives in considering what course of action to take with respect to an insolvent institution.

The proposal would also eliminate the current recordkeeping exemption for accounts in negotiable form. It is the Board's view, based on its experience in insurance settlements over the last several years, that the limited increase in transferability conferred by the current exemption is outweighed by the potential insurance settlement problems created by the exemption. As noted above, that provision was intended to facilitate the transferability of negotiable accounts by making it unnecessary for an agent or other fiduciary to, in effect, register his capacity with the issuing institution. However, the Board has found that one of the major uses of negotiable accounts is by persons seeking to avoid the recordkeeping requirements which would otherwise be applicable. In the arrangements in question, which usually involve certificates of deposit in multi-million dollar denominations, there is no anticipation that the account would ever be negotiated. Instead, it is issued in such a form only to reduce the recordkeeping required for insurance on the account. The Board believes that this use of the recordkeeping exemption for negotiable accounts is not appropriate. Therefore, the proposal would eliminate the exemption entirely. The Board further notes that the removal of the exemption would not in any way decrease the negotiability of negotiable accounts. It would only require that a person purchasing such an account who wishes to obtain additional insurance coverage over the $100,000 individual limit comply with the recordkeeping requirements applicable to all accounts.

The proposal would also add a provision addressing a particularly common disclosure problem: that a person who is actually an agent mistakenly discloses his capacity as that of a trustee. Under the current rules, such a person could not be insured as a trustee because he was not a trustee, nor could he be insured as an agent because the agency relationship was not disclosed. In order to avoid this result, the proposal would provide that where a relationship pursuant to which an account is held is disclosed as a trust relationship, but is actually an agency or nominee relationship, the disclosure of the "trust" will be deemed sufficient to disclose the actual agency or nominee relationship for purposes of proposed § 564.2(a) only. However, other recordkeeping requirements applicable to agency or nominee relationships, as decribed above, would apply. The Board believes that this provision will avoid loss of insurance coverage due to this one common error, but will not create a loophole in the recordkeeping requirements generally.

The proposal would also add a provision limiting the term "records of the insured institution" to exclude records with respect to any account which are held by a person (other than the insured institution) with an interest in the account. This provision is designed to preclude evasions of the recordkeeping rules through the device of appointing the accountholder as collecting and paying agent on the account he holds.

Finally, the proposal would add a provision to § 564.2 codifying current FSLIC practices, which would permit alternative proof of a claim where the account records of the institution are defective. In order to qualify under the proposed provision, a person would be required to show by clear and convincing evidence that appropriate disclosure was attempted, but that it failed due to some action, or inaction, on the part of the institution. In practice, a claim under this provision would have to show that the accountholder attempted to make adequate disclosure by transmitting the correct information to the institution, but that, for whatever reason, the institution failed to properly record the information in its records, or failed to maintain those records properly. Mere reliance on erroneous advice by the institution as to the extent or nature of the disclosure required would not be sufficient. Rather, the accountholder would have to show that the institution lost or otherwise failed to record or maintain records which would have satisified the disclosure requirements if properly maintained.

Substantive Provisions

1. Individual Accounts

The proposal would create a new classification of accounts, known as "individual accounts." Unlike the current term "individual account", the term as used in the proposal would not denote an account held by an individual natural person in an individual capacity. Instead, the term "individual account" would mean any account subject to the basic individual insurance limit of $100,000, as opposed to an account held by, for example, a trustee or agent which may be insured in excess of $100,000. This change is designed to clarify the distinction between accounts subject to the $100,000 per-legal-person insurance limit, and those which are not. The proposal contains a number of subcategories within this type of account. Accounts held by corporations, partnerships, unincorporated associations, individual natural persons, executors or administrators of estates, and decedents would be included in this overall category.

The proposal would incorporate the current provision concerning individual accounts [12 CFR 564.3(a)] in modified form in proposed § 564.3(a) governing insurance of "personal" accounts. A personnal account would encompass any account held in the name of a natural person (or husband-wife community of which such person is a member), or in the name of a business of which such person is a sole proprietor, in his individual capacity or as sole proprietor. It would be identical to the current provision except that it would add a codification of current staff interpretations that an account of a sole proprietorship is insured as an individual account of the proprietor(s).

Accounts of executors or administrators of estates or of decedents would be insured in the same manner as at present.

Current provisions governing the insurance coverage on partnerships and unincorporated associations (at 12 CFR 564.6 and 564.7) would not be changed in substance by the proposal. Provisions governing insurance of accounts of partnerships, currently contained in the same provision that governs corporate accounts, would be separately delineated in the interest of clarity.

Insurance coverage applicable to corporations under the proposal also would remain substantially the same as that which is currently in effect. The provision regarding accounts owned by corporations, however, would be expanded to include accounts held by investment companies within the basic corporate insurance limit of $100,000.

This proposed change is consistent with amendments to Part 564 which were previously proposed by the Board on February 15, 1984.

2. Joint Accounts

In its February 1984 proposal, the Board included amendments to the rules governing insurance of accounts held jointly. That proposal would have eliminated the signature-card requirement for jointly held time deposits. Because of its concern over the amount of information available to the FSLIC in the event of default of institutions, however, the Board has preliminarily determined to retain the signature-card requirement for joint accounts.

The current provisions concerning the extent of insurance coverage on joint accounts would remain essentially unchanged, with two exceptions. As under the current rule, in order to qualify for separate insurance coverage, each co-owner of the account would have to personally execute a signature card with respect to the account, and every co-owner must possess the right to withdraw funds from the account. However, the proposal would add the requirement that only natural persons could be co-owners of a qualifying joint account. The Board is proposing this constraint because it believes that the use of joint accounts by corporations to obtain additional insurance coverage is inconsistent with such corporations' separate identities, and is often subject to abuse by means of corporations' use of accounts held jointly with their officers or other affiliated persons. In such cases, the use of a joint tenancy is inconsistent with the form of corporate ownership. Since the corporation must, in effect, potentially abrogate its interest in the account to the other joint tenant(s) due to the fact that it must, even under the current rules, give all joint tenants the right to withdraw all of the funds in the account, a presumption arises that one or more of the parties is not a genuine owner of the funds. Therefore, the proposal would limit qualifying joint accounts to those whose owners are natural persons. The Board does not believe that this restriction would preclude any legitimate uses of joint accounts. The proposal would also remove the exemption currently afforded to accounts in negotiable form from the above-mentioned signature-card requirements for the reasons set forth in the discussion of recordkeeping requirements, above.

3. Testamentary Accounts

The proposal would substantially amend the current provisions concerning testamentary accounts. The current provision was designed to afford additional insurance coverage to traditional savings-account trust such as Totten trusts and similar account ownership devices, which create a very simple form of *inter vivos* trust. To that end, it provides that that an account evidencing the owner's intent that the funds should belong on his death to his spouse, child, or grandchild, is insured up to $100,000 for each such beneficiary. The rule limits beneficiaries to those family relationships mentioned because of problems of valuation of beneficiaries' interests arising from the revocable nature of the trust. The rule was not intended to apply to more complex trust relationships, which would have to qualify under the rules governing inrrevocable express trusts in order to secure insurance in excess of the basic $100,000.

Since 1967, developments in estate planning have popularized a relatively complex revocable trust, the so-called "living trust", as an estate planning device. Many persons have attempted to obtain additional insurance coverage for such trusts under the current testamentary account rules. Although such trusts are genuine and legitimate trust arrangements, they do not properly or easily qualify for insurance coverage under the current rules because they are much more complex than the simple trust arrangements contemplated by those rules. The proposal would clarify the current provisions by limiting explicitly the types of trust arrangements which can qualify for insurance as testamentary accounts.

The proposal would provide that a testamentary account would be deemed to exist only where the account records of the insured institution provide for a testamentary disposition of the account which evidences the owner's intent that the funds in the account shall belong to a qualified beneficiary on the owner's death. In the event that a trust agreement is used to demonstrate such intent, the agreement must be contained in the records of the insured institution and must contain no terms or provisions other than the allocation of specific interests to beneficiaries on the death of the owner (although provision for custodial arrangements pending the majority of one or more beneficiaries would be permitted).

A qualified beneficiary of such a testamentary trust would be a person: (1) Who is the spouse, child, or grandchild of the owner of the funds; (2) who will fully own his interest on the death of the owner; (3) whose interest is not subject to a reversionary, remainder,

or similar interest, and (4) whose use of the interest is in no way restricted or limited by the trust's terms.

The proposal would preserve the current provision that non-qualified accounts (amounts not in a qualified testamentary account or not allocable to a qualified beneficiary), would be insured as personal accounts of the owner. The Board believes that these amendments will preserve the limited nature of the additional insurance coverage afforded to testamentary accounts.

4. Irrevocable Express Trusts

The proposal would preserve in general the current provisions governing the insurance of irrevocable trust accounts set forth at 12 CFR 564.10, including the valuation provisions currently found at 12 CFR 564.2(c). The proposed rules concerning trusts are substantially similar to those currently in effect, which provide for coverage of ascertainable interests of beneficiaries of irrevocable express trusts. Three modifications are being proposed. First, interests retained by the grantor of such arrangements would be aggregated with unascertainable trust estates and insured up to $100,000 in the aggregate. Second, the proposal would clarify that the $100,000 aggregate insurance coverage for unascertainable interests applies to all trusts created by the same settlor, rather than to each individual trust. Separate insurance coverage for trust estates would continue to be limited to the ascertainable portion of such interests. Finally, insurance coverage would be limited to some extent for multiple-level trust relationships.

These proposed substantive amendments are intended to prevent the use of trusts to evade the proposed recordkeeping requirements applicable to fiduciary accounts, and to prevent the use of multiple trusts to obtain additional coverage for a single settlor. Although the proposal would provide some coverage for interests retained by settlors, it would limit that coverage to $100,000 per settlor less the amount of any unascertainable trust-estate interests in the account, and would provide that such coverage be aggregated with the individual coverage of the settlor.

Multiple-level trust relationships would have total insurance coverage to $100,000 for each trust estate the beneficiary of which is an irrevocable trust. This provision is intended to prevent the use of multiple-level trust relationships to "pyramid" insurance coverage through use of the separate insurance coverage available to trusts. The provisions would apply only to irrevocable express trusts, and the use of agents or nominees and employee-benefit plans would not be affected.

Trust estates and employee-benefit estates created by the same settlor would not be insured separately from one another, but would be aggregated. This provision is intended to avoid confusion and to prevent schemes to obtain double coverage for the same basic relationship.

5. Employee-Benefit Plans

The proposal would provide separate rules for the insurance of employee-benefit plans. This separate provision is designed to simplify the rules of calculation and ascertainment for employee-benefit plans, and to highlight the distinctions between such plans and trusts.

The proposal provides that employee-benefit estates would not be subject to the same rules of ascertainment as trust estates. The rule for irrevocable express trust estates was originally developed to ensure that no person's interest in a trust would be insured for more than $100,000. To that end, it provides that such trust estates must be reducible to a present value under the federal estate tax tables. This rule was originally adopted, and is proposed in the same form, in order to avoid any situation in which a person could be insured for more than $100,000, in contravention of the provisions of sections 1724 and 1728 of the National Housing Act. Therefore, trust estates are and would be insured only to the extent that it is certain that no person receives more than $100,000 in coverage.

Although the Board originally applied the same rule of ascertainability to pension and other employee-benefit plans, which were and would be insured as trusts, the rule has been difficult to apply to such arrangements because employee-benefit plans are normally subject to a number of contingencies. The Board believes that simplification of the rule is appropriate in view of the extensive regulation of such plans under the Employee Retirement Income Security Act ("ERISA") and section 401 of the Internal Revenue Code, which provide safeguards against abuse of such plans for insurance-of-accounts purposes. Therefore, the proposal would provide that employee-benefit estates arising from a defined benefit plan may be ascertained in accordance with the actuarial method used by the plan to value such interests in the ordinary course of its business. With respect to a defined contribution plan, the proposal would provide that the employee-benefit estate of a beneficiary would be his or her account balance. The Board believes that these provisions would significantly reduce the complexity of determining the insurability of employee-benefit plans and would facilitate the investment in insured accounts by such plans.

The proposal would provide, as in the proposed provision on trust accounts, that unascertainable employee-benefit estates and amounts not attributable to specific employee benefit estates would be added together and insured up to $100,000 in the aggregate.

6. IRA and Keogh Plans

The current provisions for insurance of IRAs and Keoghs would be separated from the current trust provisions at section 564.10 and placed in a new separate section 564.8 in the interest of clarity. The proposal would make no substantive changes in coverage in this area.

7. Accounts Held by Agents and Nominees

The proposal would create a new category of accounts held by agents and nominees which would incorporate the current provisions concerning accounts held by agents or nominees, loan servicers, guardians, custodians under Uniform Gifts to Minors Acts ("UGMAs"), and court registries. The proposed grouping of these provisions is intended merely to increase the logical arrangement of the rules for ease of understanding and reference.

The proposal would not substantively change the current provision for insurance of accounts held by agents or nominees. However, the proposed provision would codify current staff interpretations that insurance coverage can "flow through" a number of levels of agency or nominee relationships to the ultimate principals, and that where a principal is, for instance, holding that interest in the account as trustee, trust insurance may likewise be available. The proposal would accomplish the intended result by putting the principal "in the shoes" of the accountholder for purposes of calculating the amount of insurance coverage. Thus, where an account is held by an agent whose principal is acting as agent for a trustee, the FSLIC would look first to the accountholding agent. If the disclosure requirements were met and the relationship could be recognized, the first agent, assuming he had no beneficial ownership interest in the account, would be ignored in the insurance analysis. The second agent would be treated similarly. Finally, the trustee would be insured to the same

extent as if he held the account directly. This provision is not intended to change the current status of the accountholding agent as the insured member; the agent would still be the insured member. The provision would, however, simplify and clarify the analysis regarding the extent of insurance coverage of that agent.

The proposal would generally retain without substantive change the current provisions concerning loan servicers, guardians, and custodians under UGMAs. A provision would be added to clarify the treatment of accounts held in court registries or by clerks of courts. The proposal would provide that the court or the clerk will be deemed to be acting as the agent of the owners of such funds. This provision would be added to clarify the insurance coverage of such funds. The Board believes that such coverage would be appropriate given the relationship in question, which by its nature cannot be used merely to increase insurance coverage.

6. Public-Unit Account

The proposed provision concerning accounts of public units would be unchanged from the current provisions. Current § 564.8(b), concerning amounts held by a public unit under a bond indenture, would be relocated in the definition of the term "trust estate", for purposes of clarity and consistency.

7. Mergers and Other Acquisitions

In 1982, Congress amended Title IV of the NHA to provide separate insurance coverage to protect depositors where two institutions had merged or where the liabilities of one insured institution were assumed by another. The amendment provided that the accounts in the assumed institution are insured separately from those of the surviving/acquiring institution until six months from the date of the assumption or, in the case of a time deposit, its first maturity after six months. This provision was intended to avoid a loss of coverage to depositors who had accounts in both institutions prior to the assumption until the depositor had the opportunity to withdraw funds to protect himself.

Because there has been some uncertainty as to the application of this provision in specific situations, the Board is proposing to clarify the provision by rulemaking. The proposal would provide that accounts originally in the assumed and assuming institution would be insured separately until six months from the date of the assumption or, for time deposits, the first maturity after six months from the date of assumption. The proposal would not distinguish between accounts that were assumed and those of the acquiring institution.

For example: An accountholder had one $50,000 certificate of deposit ("CD") maturing on June 1, 1986, and another $50,000 CD maturing on July 1, 1986, in institution A. He also has a $100,000 CD in institution B, which matures on September 1, 1986. Institution B is merged into institution A on December 1, 1985. The accountholder would be insured up to $200,000 ($100,000 for the accounts originally in A and $100,000 for those in B) until the first $50,000 CD matured on June 1, 1986, when coverage would drop to $150,000. The other $50,000 CD would retain its separate coverage. On July 1, 1986, the total insurance coverage would drop to $100,000 on maturity of the other $50,000 CD. Even though the assumed account still had not matured, the accountholder would not be eligible for further separate insurance coverage if he deposited further funds into the assuming institution.

The provision would, in the Board's view, effectuate the purposes of the separate insurance provision without allowing use of such insurance where an accountholder is not at risk. In the above example, the accountholder would not need separate insurance coverage after July 1, 1986, because he would have been able to withdraw the two $50,000 CDs on maturity in order to avoid loss of insurance coverage. To allow him to deposit more funds which would be separately insured from the assumed $100,000 CD would be to permit him to benefit from the merger rather than, as Congress intended, that he should only be insured to avoid potential loss of insurance.

Effective Date

In its consideration of any final rules, the Board would be particularly interested in public comment on the question of whether grandfathering should be permitted for existing time deposits, for the convenience of persons who have made long-term investments in insured accounts under the existing rules. The Board would also welcome comments on an appropriate period for delay of effective date should the Board determine to adopt rule changes in this area.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rule.* These elements have been incorporated elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The rule would apply to insured institutions.

3. *Impact of the proposed rules on small institutions.* The rule would encourage investment in insured accounts of all institutions, including small ones, by clarifying insurance coverage.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* This element has been incorporated elsewhere in the supplementary information regarding the proposal.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

According, the Federal Home Loan Bank Board hereby proposes to amend Part 564, Subchapter D, Chapter V of Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority for 12 CFR Part 564 would continue to read:

Authority: Sec. 401, 402, 403, 405, 48 Stat. 1255, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071

2. Add new § 564.0 as follows:

§ 564.0 Definitions.

For the purposes of this Part,

(a) *Emplyee-benefit estate.* The term "employee-benefit estate" means the interest of any person, other than the employer/settlor, in an account owned by an employee benefit plan.

(b) *Employee-benefit plan.* The term "employee-benefit plan" means (1) a deferred compensation plan established by a public unit to provide retirement benefits to employees of such public unit or (2) any employee-benefit plan qualifying under sections 401 or 457 of the Internal Revenue Code of 1954, but shall not include any plan qualified under section 401(d) of such Code.

(c) *Independent activity.* The term "independent activity" means any lawful activity, other than one directed solely at increasing insurance coverage or one whose primary purpose is to evade or violate the provisions of applicable state or federal law.

(d) *Insured account.* The term "insured account" means an insured account as defined in § 561.3 of this

Subchaper, except that an account held by and at the insured institution on its own behalf in its corporate capacity shall not be an insured account for purposes of this Part.

(e) *Insured institution.* The term "insured institution" shall mean an insured institution as defined in § 561.1 of this Subchapter, except that Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation shall not be deemed to be insured institutions for purposes of this Part.

(f) *Insured member.* The term "insured member" shall mean an insured member as defined in § 561.2 of this Subchapter.

(g) *Official custodian.* The term "official custodian" shall mean an officer or other official of a public unit to whom authority is conferred by statute or ordinance to invest funds of such public unit and where such authority includes discretion concerning the manner and nature of such investments. Such discretionary authority may be limited by specific investment criteria or standards provided by such statute or ordinance.

(h) *Political subdivision.* The term "political subdivision" includes:

(1) Any subdivision of a public unit or any principal department of such public unit (i) the creation of which was expressly authorized by statute, (ii) to which some functions of government have been delegated by statute, and (iii) to which funds have been allocated by statute or ordinance for its exclusive use and control; and

(2) Drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between states. Excluded from the term are subordinate or nonautonomous divisions, agenices, or boards within principal departments.

(i) *Public unit.* The term "public unit" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, any other territory of the United States, any county, municipality or any political subdivision thereof, and any nonappropriated-funds instrumentality of the United States with a separate manager, profit-and-loss statement and balance sheet.

(j) *Settlor.* The term "settlor" includes any person who has contributed assets of any kind, directly or indirectly, to the corpus of an express irrevocable trust, or employee-benefit plan, whether or not such person is deemed to be a settlor under local law. The terms shall not include any employee who makes contributions to an employee-benefit plan on his or her own behalf.

(k) *Trust estate.* The term "trust estate" means (1) the interest of a beneficiary of an irrevocable express trust, whether created by trust instrument or statute, in an account held pursuant to valid trust arrangements, but does not include any interest retained or reserved by the settlor; or (2) the interest of legal or beneficial owners of bonds issued by a public unit in funds deposited in insured accounts by or on behalf of such public unit where such funds by law or under the bond indenture are required to be paid to the holders of such bonds. The relationship established by an arrangement described in paragraph (k)(2) of this section shall be deemed to be an irrevocable express trust for purposes of this Part, provided that all applicable recordkeeping requirements set forth in § 564.2 of this Part are met.

3. Revise § 564.1 as follows:

§ 564.1 Settlement of insurance upon default.

(a) *Settlement procedure.* (1) In the event of a default by an insured institution, the Corporation shall promptly determine, from the account contracts and the books and records of such insured institution or otherwise, the identities of the insured members thereof and the amount of the insured account or accounts of each such member.

(2) The Corporation will give to each insured member shown to be such on the records of the insured institution written notice of the time and place of payment of insurance by mail at the last known address as shown on the records of the insured institution. If the insured institution has, at the date of default, any account or accounts issued in negotiable-instrument form, the Corporation shall promptly publish (in a newspaper printed in the English language and of general circulation in the city, county, or locality in which the principal office of such insured institution is located) a notice to all insured members of such insured institution of the time and place of payment of insurance.

(b) *Amount of insured account.* The amount of an insured account is the amount which the insured member would have been entitled to withdraw as of the date of default, plus interest on any savings account accrued to such date or dividends prorated to such date at the announced or anticipated rate without regard to whether such account is subject to any right of setoff, pledge, other security interest, or lien: *Provided*, that the amount of an insured account shall not include any amount the accrual or payment of which is in any way contingent or, in the case of any share account, which has not been announced as of the date of default under the terms of the account.

(1) In the case of a savings account with a fixed or minimum term or notice period that has not expired as of the date of default, dividends or interest thereon shall be computed as if the account could have been withdrawn on such date without any penalty or reduction in rate of earnings. This paragraph (b)(1) shall not be construed as conferring any right of withdrawal without penalty with respect to any transferred account.

(2) In the case of any insured account the stated principal amount of which is greater than 10 percent in excess of the amount of funds deposited in such account, the difference between the stated principal amount and the amount of funds deposited shall be deemed to be simple interest accruing from the date of issuance of such account to the maturity date of the account, compounded annually.

(c) *Multiple accounts.* (1) In the event that an insured member holds more than one account or has an interest in more than one account in the same capacity, and the aggregate amount of such accounts and/or interests exceeds the amount of insurance thereon, the insurance payment may be propráted among the member's accounts held in such capacity on the basis of their withdrawable value as of the date of default: *Provided*, that with respect to individual accounts only, the insurance payment may be applied to such accounts in such manner as the Corporation and the insured member may agree.

(2) Where a borrower has an individual account and imputed interests in accounts held by a loan servicer in the same institution, any amounts which would be uninsured due to the aggregation of such borrower's interest in such loan-servicer account with his individual accounts shall be deducted from the loan-servicer accounts, rather than from the borrower's individual accounts.

(d) [*See* Board Resolution No. 85-286b elsewhere in this issue of the **Federal Register**]

(e) *Payment of insurance.* (1) In the case of accounts held jointly, insurance proceeds will be paid to the accountholders jointly.

(2) In the case of all other accounts, insurance will be paid to the holder of the account, as indicated on the institution's records, whether or not

such holder is the beneficial owner, in the capacity in which the account is held.

(3) Where an account is subject to a valid security interest or judicial lien, payment of insurance on such account will be made subject to that interest or lien.

(4) Where an account is subject to a right of setoff, payment with respect to amounts subject to such right will be made to the receiver of the institution if such payment is requested by the receiver.

(5) With respect to any account in negotiable-instrument form, the insured member shall be deemed to be holder of the instrument as of the date of default, provided that affirmative proof is presented showing that such person was in fact the holder of the instrument as of the date of default. No payment with respect to any such instrument shall be made absent such showing.

(6) Where insurance payment is in the form of a transferred account, the rules of this paragraph (e) shall apply.

(f) *Applicable law.* Any legal authorities which conflict or are inconsistent with the provisions of this Part 564 are preempted. Insofar as reference to rules of local law is necessary to make any insurance determination under any provision of this Part, the substantive law of the jurisdiction in which the insured institution's principal office is located shall govern, so long as such law is not inconsistent with the provisions of this Part.

(g) *Representations concerning insurance coverage.* No opinions, representations, or other statements concerning the insurance coverage afforded in this Part or in Title IV of the National Housing Act, whether made by an insured institution or any other person, whether or not such person is employed by the Board or the Corporation, shall be considered to have any binding effect upon the Corporation or the Board. All opinions, statements, and other representations made by employees of the Board or the Corporation or any publication, other than pertinent resolutions of the Board, this Part, and the Appendix to Part 564, are advisory only.

4. Revise § 564.2 as follows:

§ 564.2 Recordkeeping requirements.

(a) The existence of any relationship pursuant to which funds in an account are invested and upon which a claim by the insured member for additional insurance is founded must be disclosed in the records of the insured institution. No claim for additional insurance coverage based upon any relationship may be recognized in the absence of its disclosure on such records. Specific references in the account title to the capacity of the accountholder as trustee, agent, guardian, executor, or custodian, for example, would provide adequate disclosure of a relationship under this paragraph.

(b) If and only if the records of the insured institution disclose the existence of a relationship which provides the basis for additional insurance coverage, the details of the disclosed relationships and the identities and interests of persons having interests in the account may be determined as follows:

(1) In the case of an account established by or on behalf of an irrevocable express trust, employee-benefit plan, public-unit account, account held by a loan servicer, or a court registry account, the identities and interests of persons or entities with interests in such accounts must be disclosed either in the records of the insured institution or in records maintained by or on behalf of the insured member in good faith and in the ordinary course of business.

(2) In the case of an account established pursuant to any other type of relationship, the identities and interests of persons or entities having interests in the account which provide the basis for additional insurance must be disclosed in the records of the insured institution.

(c) Any account established pursuant to a relationship which is in fact an agency or nominee relationship but was erroneously disclosed as a trust relationship in the records of the insured institution, shall be insured in the same manner as an account held by an agent or nominee which was properly disclosed under paragraph (a) of this section: *Provided,* that all other recordkeeping requirements applicable to accounts held by agents or nominees shall apply to such accounts.

(d) Interests or relationships which fail to meet the disclosure and recordkeeping requirements of this section will not be recognized in determining the amount of insurance coverage on an account.

(e) For purposes of this section, the term "records of the insured institution" shall not include any records held or maintained by any person other than the insured institution with respect to an account held by such person or with respect to which such person has any interest in any capacity.

(f) This section shall not preclude a claim for additional insurance coverage where the insured member shows by clear and convincing evidence that disclosure required under this section was attempted by such insured member, but failed by reason of the improper maintenance or loss of records by the insured institution. The Corporation may require bond or similar security for payments made under this paragraph (f).

5. Revise § 564.3 as follows:

§ 564.3 Individual accounts.

(a) *Personal accounts.* Funds owned by a natural person and invested in one or more accounts in his or her own name, including accounts in the name of one member of a husband-wife community or in the name of a business of which that person is sole proprietor, shall be insured up to $100,000 in the aggregate.

(b) *Accounts of a decedent, and accounts held by administrators and executors.* Funds of a decedent held in one or more accounts in the name of the decedent or the name of the administrator or executor of the estate shall be added together and insured up to $100,000 separately from accounts of the beneficiaries of the estate or of the executor or administrator.

(c) *Accounts owned by corporations.* (1) Funds owned by a corporation engaged in an independent activity and invested in one or more accounts in the name of such corporation shall be insured up to $100,000 in the aggregate. Funds invested in one or more accounts in the name of a corporation not engaged in an independent activity shall be deemed to be held by the person or persons owning such corporation and shall be added to any amounts invested in individual accounts of such persons in the same institution and insured up to $100,000 in the aggregate.

(2) Notwithstanding any other provision of this Part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, or which would be required to so file if it were organized or otherwise created under the laws of the United States or of a State, shall be deemed to be a corporation for purposes of determining insurance coverage. This paragraph shall not apply to common trust funds operated by insured institutions pursuant to Part 550 of this Chapter or in conformity with § 571.15 of this Subchapter.

(d) *Accounts owned by partnerships.* Funds owned by a partnership engaged in an independent activity and invested in one or more accounts in the name of such partnership shall be insured up to $100,000 in the aggregate. Funds invested in accounts in the name of

partnership not engaged in an independent activity shall be deemed to be held by the partners and shall be added to any amounts invested in personal accounts of such partners in the same institutions and insured up to $100,000 in the aggregate.

(e) *Accounts held by unincorporated associations.* Funds owned by an unincorporated association, engaged in an independent activity and invested in one or more accounts in the name of such unincorporated association, shall be insured up to $100,000 in the aggregate. Funds invested in accounts in the name of an unincorporated association not engaged in an independent activity shall be deemed to be held by the members of such association and shall be added to any amount invested in individual accounts of such members in the same institution and insured up to $100,000 in the aggregate.

6. Remove § 564.4, redesignate § 564.9 as new § 564.4 and revise as follows:

§ 564.4 Joint accounts.

(a) *Separate insurance coverage.* Funds in accounts held jointly, whether as joint tenants with right of surviorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from funds invested in accounts held individually by the co-owners.

(b) *Qualifying joint accounts.* A joint account shall be deemed to exist only where (1) all owners of funds in the account are natural persons and (2) each co-owner has personally executed a signature card with respect to such account and possesses withdrawal rights.

(c) *Failure to qualify.* An account owned jointly which does not qualify as a joint account under paragraph (b) of this section shall be deemed to be owned by the named persons as a personal account and such ownership interest shall be added to any other personal accounts of such persons in the same institution and insured up to $100,000 in the aggregate.

(d) *Determination of interests.* The interests of co-owners in a qualifying joint account shall be deemed equal, unless, in the case of a tenancy in common only, the insured institution's records state otherwise.

(e) *Determination of coverage on joint accounts.* (1) All qualifying joint accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate and (2) the interests of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate.

(f) *Non-applicability of section.* Joint-account insurance coverage shall not apply to interests of any kind in testamentary accounts, irrevocable express trust accounts, fiduciary accounts held by agents, custodians or nominees, public-unit accounts, or employee-benefit-plan accounts.

7. Revise § 564.5 as follows:

§ 564.5 Testamentary accounts.

(a) *Insurance coverage.* Funds invested in a qualified testamentary account by a natural person who is the accountholder shall be insured up to $100,000 in the aggregate for the interest of each qualified beneficiary in such account separately from all other accounts of the owner or of the beneficiary.

(b) *Qualified testamentary account.* A qualified testamentary account shall be deemed to exist only where the account records of the institution evidence the owner's intent that the funds in such account shall belong to a qualified beneficiary on the death of the insured member. Where such account is based upon a trust agreement, such trust agreement may contain no terms other than allocating interests to specific beneficiaries or provisions governing custody of the interest of a beneficiary pending the attainment of the age of majority of such beneficiary, and a copy of or evidence of such trust agreement must be contained in the account records of the insured institutions.

(c) *Qualified beneficiary.* A person is a qualified beneficiary of a testamentary account only if (1) he or she is the spouse, child, or grandchild of the owner of the funds; (2) the testamentary agreement provides that, on the death of the owner, such beneficiary's interest shall be owned by the beneficiary; and (3) such beneficiary's interest is not subject to a reversionary, remainder, or similar interest, and the use of the interest is in no way restricted. Provision for a custodial or similar arrangement pending the attainment of the age of majority of a beneficiary shall be considered to provide for full ownership of such interest by such beneficiary if such arrangement provides that the funds may be used only for the benefit of such beneficiary and for full ownership by such beneficiary upon attainment of the age of majority.

(d) Interests of non-qualified beneficiaries and amounts in non-qualified testamentary accounts shall be deemed to be a personal account of the owner of the funds, added to any other personal accounts of the owner established at the same institution and insured up to $100,000 in the aggregate.

8. Revise § 564.6 as follows:

§ 564.6 Irrevocable trust accounts.

(a) *Insurance coverage.* All trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor shall be added together and added to all employee benefit plans created by the same settlor and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such funds or of the settlor or beneficiary of such arrangement: *Provided*, that the total amount of insurance for all trust estates the beneficiaries of which are themselves irrevocable trusts shall not exceed $100,000 for each such trust estate.

(b) *Valuation of trust estates.* Trust estates in the same trust invested in one or more accounts will be separately insured as provided in paragraph (a) of this section only if the value of such trust estates is capable of determination, as of the date of default, in accordance with the present-worth tables and rules of calculation set forth in § 20.2031-10 of the Federal Estate Tax Regulations (26 CFR § 20.2031-10), and such trust estates are not subject to any contingencies other than those covered in that regulation. Trust estates meeting these requirements will be valued in accordance with the referred rules and table.

(c) In connection with trust estates created by the same settlor which are incapable of valuation in accordance with paragraphs (a) and (b) of this section, or where funds are not attributable to specific trust estates, or where one or more settlors retains or holds an interest in the trust, payment by the Corporation to the trustee with respect to all such interests shall not exceed $100,000 in the aggregate: *Provided*, that in no case shall funds attributable to a settlor under this paragraph (c), together with individual accounts of the settlor, be insured in an amount in excess of $100,000.

(d) Each trust estate in any trust established by two or more settlors shall be deemed to be derived from each settlor in proportion to his contribution to the trust.

(e) To the extent that funds deposited in an irrevocable trust account are in excess of the sume of the value of all determinable trust estates (as described in paragraph (b) of this section) and amounts payable under paragraph (c) of

this section, such funds shall not be insured.

9. Revise § 564.7 as follows:

§ 564.7 Employee-benefit plans.

(a) *Insurance coverage.* All employee-benefit estates for the same beneficiary in accounts established pursuant to employee-benefit plans created by the same settlor shall be added together, and further added to all trust estates created by the same settlor, and insured up to $100,000 in the aggregate, separately from other accounts of the settlor, trustee, administrator, or beneficiary of such plan.

(b) *Valuation of employee-benefit estates.* (1) The value of an employee-benefit estate arising from a defined contribution plan shall be deemed to be the account balance of the beneficiary as of the date of default of the insured institution.

(2) The value of an employer-benefit estate arising from a defined benefit plan shall be deemed to be the present value of the beneficiary's interest in the plan, evaluated in accordance with the method of calculation used in such plan, as of the date of default of the insured institution.

(3) For purposes of this section, all interests of beneficiaries in an employee-benefit plan small be deemed to be fully vested as of the date of the insured institution.

(4) Each employee-benefit estate arising from an employee-benefit plan created by two or more settlors shall be deemed to be derived from each settlor in proportion to his or her contribution to the plan.

(c) In the event that employee-benefit estates in an employee-benefit plan are not capable of valuation in accordance with the rules set forth in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the Corporation with respect to all such estates shall not exceed $100,000 in the aggregate.

10. Revise § 564.8 as follows:

§ 564.8 IRA and Keogh accounts.

(a) *IRAs.* All vested interests, excluding remainder interests, of any one individual in amounts deposited in an insured institution which qualify under section 408(a) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 in the aggregate, separately from other accounts held by, or other interests in such accounts owned by the beneficiary, trustee or custodian in the same institution.

(b) *Keogh plans.* All vested interests, excluding remainder interests, of any one individual in amounts deposited in an insured institution which qualify under section 401(d) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 in the aggregate, separately from other accounts held by or other interests in accounts owned by the beneficiary, trustee or custodian in the same institutions.

11. Add new § 564.9 as follows:

§ 564.9 Accounts held by agents and nominees.

(a) *General.* Funds owned by a principal and invested in one or more accounts in the name of names of agents or nominees shall be insured to the same extent as if held in an account in the name of the principal.

(b) *Loan Servicers.* Notwithstanding any other provision of law, a loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for purposes of this Part only, be considered to be an agent of each borrower.

(c) *Clerks of courts or court registries.* Accounts held in an account in the name of any court of the United States or of a State or political subdivision thereof shall be deemed to be held by an agent for the owners of such funds.

(d) *Guardians, custodians, and conservators.* Funds held by a guardian, custodian, or conservator for the benefit of a ward or minor under a Uniform Gifts to Minors Act, and invested in one of more accounts in the name of the guardian, custodian, or conservator, shall be deemed to be accounts held by an agent or nominee.

12. Revise § 564.10 as follows:

§ 564.10 Public-unit accounts.

(a)(1) Each official custodian of funds of the United States, any State of the United States or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, any other territory of the United States or any county, municipality, or political subdivision thereof who lawfully invests such funds in accounts issued by an insured institution is separately insured up to $100,000.

(2) For purposes of this paragraph (a), if the same person is an official custodian of funds of more than one public unit, such person shall be separately insured with respect to the funds held for each unit.

(b) This section does not apply to tax and loan accounts, United States Treasury General Accounts, and United States Treasury Time Deposit Open Accounts.

13. Revise § 564.11 as follows:

§ 564.11 Insurance coverage for assumed accounts.

Whenever the liabilities of an insured institution have been assumed by another insured institution, whether by merger, consolidation or other statutory assumption, or by contract, each insured account so assumed by the surviving institution and each account originally in the surviving institution shall be separately insured to the same extent as if the institutions remained separate entities. Such separate insurance coverage shall continue until:

(a) With respect to any account which is not a time deposit, six months from the date of the assumption; or

(b) With respect to any time deposit, the earliest maturity date of such deposit after six months from the date of the assumption.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10819 Filed 5-06-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21981; File No. S7-20-85]

Request for Comments on Proposed Amendments to Broker-Dealer Successor Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed revisions of a form and related rules.

SUMMARY: The Commission is publishing for comment proposed revisions of Form BD. Form BD is the form which is filed by an applicant to become registered as a broker-dealer under section 15(b) of the Securities Exchange Act of 1934 (the "Act"). The purpose of the proposed revisions to Form BD is to reduce the regulatory burden upon broker-dealers by revising the disciplinary question to remove duplicative information requirements and narrow the scope of tha question, and by clarifying the information required to be disclosed on the schedules. These revisions are the result of discussions with the Forms Revision Committee ("Forms Committee") of the North American Securities Administrators Association, Inc. ("NASAA"). The Commission also is

proposing to make changes to Rule 17a–3 under the Act, in order that the information requested conforms to that required in the revised Form U–4. Finally, the Commission is proposing to change its broker-dealer successor rules so that an amendment to Form BD is required rather than a new complete Form BD.

DATES: Comments should be submitted on or before June 6, 1985.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No S7–20–85. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Valerie S. Golden, Esq. at (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

A. Introduction

In November 1983, the Commission adopted a revised Form BD and revised Form BDW, resulting from the continuing efforts of the NASAA Special Committee to Revise Form BD.[1] The purpose of the revisions was to reduce the regulatory burden of duplicative registration requirements on broker-dealers by allowing them to use a single form to register with the states and self-regulatory organizations, as well as the Commission. In addition, the revisions made Form BD and Form BDW compatible with the Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD and/or registered with a state that participates in the CRD program. The CRD program allows a broker-dealer to file a single form with the CRD and a copy thereof with the Commission and participating states.

NASAA subsequently formed the Forms Committee to review Form U–4, the form used by the states and the self-regulatory organizations to register certain associated persons or broker-dealers.[2] The NASAA Forms Committee was advised by representatives of the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Association of Registration Management, the Securities Industry Association, representatives from the insurance and commodities industries and the staff of the Commission's Division of Market Regulation, Office of the Executive Director and Office of Applications and Reports Services. In the course of the Forms Committee's review of Form U–4, parallel improvements to Form BD were considered. The participants in the Forms Committee unanimously agreed to implement all of the Form BD changes. The NASAA membership approved the revised Form BD and Form U–4 on April 5, 1985. The Commission believes that the proposed changes to Form BD, discussed below, may reduce the regulatory burden upon broker-dealer while at the same time providing more meaningful information to the Commission and other securities regulators.[3]

B. Proposed Revisions to Form BD

Most of the proposed changes to Form BD relate to Item 7, which requests information concerning past disciplinary actions. These changes generally conform to the changes made on Form U–4 for registration of associated persons of broker-dealers and Form ADV for registration of investment advisers.[4] The proposed changes would continue to provide relevant information about statutory disqualifications and other disciplinary concerns. It is expected, however, that the new disciplinary questions will be more understandable and relevant and, as such, will generate more useful responses. In addition, the Commission proposes to amend Schedules A and B of Form BD to clarify that disclosures of the ultimate owner of the applicant is required.

1. The Disciplinary History Question—Item 7

The proposed changes would limit the scope of Item 7 to the broker-dealer itself and its control affiliates. The question in the current Form BD refers to all employees and thus imposes a substantial burden on broker-dealers, particularly large firms. The Commission proposes to define "control affiliate" on Form BD as "an individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant." The definition of control affiliate would include any employees identified in Schedules A, B or C of Form BD as exercising control and would exclude any "employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority." Accordingly, a broker-dealer would not be required to answer the disciplinary questions with respect to a registered representative that was not listed on any of the schedules and had no executive duties or senior policy making authority. The proposed changes would appear to be appropriate because Form BD is used to register the firm itself. In addition, the Commission and other securities regulators have access to Form U–4 for many of the broker-dealer's employees, including its registered representatives.

In addition, as proposed, the revised Item 7 is written in "plain English", not legalese. The Commission believes that the plain English questions will be more understandable and easier to answer. Thus, the Commission expects to receive more useful responses.

The proposed changes also would narrow certain disciplinary questions that have been previously too broad. For example, with respect to licensing, the current Form BD asks whether the applicant or any employee has ever had "any" license, permit, certificate, registration or membership denied, suspended, revoked or restricted. The new Form BD would ask whether the Commission ever denied, suspended or revoked the applicant's or control affiliates' registration or restricted its activities, as well as whether any state or other federal regulatory agency or self-regulatory agency ever took such action. In addition, the current Form BD question concerning "any" orders entered against the applicant or any employee by a foreign government has been narrowed to require disclosure of such orders only insofar as they relate

[1] Rule 15b–1 requires broker-dealers to apply for registration on Form BD.

[2] Form U–4 is no longer a Commission form because of the elimination of the SECO program.

[3] The Commission previously propsed an amendment to Rule 15b3–1 which would have required all broker-dealers to file a new Form BD at a specific date. *See* Securities Exchange Act Release No. 20407. (Nov.22, 1983). The Commission is not proposing such a requirement at this time. This Commission is considering processing Form BD on an electronic basis. Once the Commission determines how to process Form BD electronically, the Commission will require a new Form BD from all broker-dealers as part of the conversion process. The Commission anticipates giving broker-dealers sufficient notice before imposing such a requirement. However, we understand that, assuming that Form BD is adopted by the Commission this summer, all NASD registered broker-dealers will be required to file the new Form BD with the CRD by the end of 1985.

[4] The Commission today is proposing amendments to Uniform Form ADV, the form developed by NASAA and the Commission to register investment advisers. See Investment Advisers Release No. 967 (April 24, 1985).

to investments of fraud and only with respect to the applicant or a control affiliate.[5]

2. Disclosure of Ultimate Owner

Item 6 of Form BD currently requires disclosure of any person, not named in Item 1 or the Schedules, that directly or indirectly through agreement or otherwise exercises or has the power to exercise control over the management or policies of the broker-dealer. The proposed revisions to Form BD involve technical changes designed to clarify the disclosure requirements with respect to ownership and control of the broker-dealer. Schedules A and B of Form BD would be changed to make clear that the Schedules request information on the ultimate owners of the applicant. Schedule A is used by corporate broker-dealers to list officers, directors and owners of varying percentages of the firm's equity shares. Schedule B is used by broker-dealers which are partnerships to list their general partners and certain limited and special partners. The changes would make clear in Items 3 and 4 of these schedules that all intermediate owners, as well as the ultimate owners, of the applicant must be disclosed. Thus, if the broker-dealer is owned by a corporation, disclosure would be required of shareholders that own 5% or more of a class of equity security of that corporation. If the broker-dealer is owned by a partnership, disclosure would be required of general partners or any limited or special partners who have contributed 5% or more of the partnership's capital. If the intermediate corporation or partnership is subject to the reporting requirements of section 12 or 15(d) of the Act, however, disclosure of that corporation's shareholders or partnership's partners would not be required.

C. Amendments to Rule 17a-3

The Commission is proposing to amend Rule 17a-3 in an effort to conform the rule to the revised Form U-4 requirements. In this regard, Rule 17a-3(a)(12)(A) would be amended to delete the information currently required of any "associated person" in Rule 17a-3(a)(12)(A)(3) regarding his education and the information currently required in Rule 17a-3(a)(12)(A)(4) regarding his reasons for leaving any prior employment within the last ten years. Also, Rule 17a-3(a)(12)(A)(8) would be modified to conform to Form U-4 by requiring information concerning any felony, and any misdemeanor involving investments or an investment-related business, fraud, false statements, or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion committed by the associated person rather than, as is the current practice, requiring information on any crime involving violence or dishonesty or conspiracy to commit certain enumerated offenses.

D. Broker-Dealer Successor Rules

The Commission also proposes to simplify its broker-dealer successor rules. Section 15(b)(2)(A) of the Act provides that "any application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor." Rule 15b2-1 permits an existing registered broker-dealer (the predecessor) to file a complete Form BD on behalf of its successor. The successor broker-dealer must then "adopt" the Form BD as its own by filing a statement to that effect within 45 days. Rule 15b1-3 permits a successor broker-dealer to operate on the basis of its predecessor's Form BD for a 75 day period, provided that the successor broker-dealer files a complete Form BD on its own behalf within 30 days of the succession. Paragraph (b) of Rule 15b1-3, however, permits a registered broker-dealer partnership to file an amendment to its Form BD, in lieu of a complete new form, where changes in the membership or composition of the partnership have occurred. The amendment filed by the successor partnership is deemed a new application for purposes of section 15(b)(2)(A) of the Act.

The purpose of the broker-dealer successor rules is to facilitate a smooth transition period when one broker-dealer succeeds to and continues the business of another registered broker-dealer. A broker-dealer succeeds to and continues the business of another broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor broker-dealer. Accordingly, the successor rules cannot be used by a broker-dealer to eliminate a substantial liability. Nor can they be used by another broker-dealer to activate the registration of a "shell" broker-dealer that does not do any business. The successor rules are used when a broker-dealer changes its date or state of incorporation, or changes its form of doing business, such as a change from partnership to corporation, or changes in the composition of a partnership.

Since the successor rules contemplate that the successor broker-dealer will closely resemble the predecessor broker-dealer, the Commission is proposing to rescind Rule 15b2-1 and amend Rule 15b1-3 to require a successor broker-dealer to file an amendment to the predecessor's Form BD within 30 days of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages on which changes have been made. In addition, since the amendments would be deemed an application for registration, the successor broker-dealer would be required to comply with Rule 15b1-2 and file a "Statement of Financial Condition to be Filed with Application for Registration as a Broker-Dealer." The Commission currently permits successor investment advisers to use a similar amendment approach.[6] In addition, some self-regulatory organizations require an amendment for successors. The Commission believes that the amendment process will eliminate unnecessary paperwork and conform the Commission's successor registration process with that of some of the self-regulatory organizations.

From time to time, two broker-dealers may wish to succeed to the business of one broker-dealer, for example, when a full-service broker-dealer determines to separate its introducing broker function from its clearing broker function. The staff has treated the two resulting broker-dealers as successors and has required a complete Form BD from each broker-dealer. If the Commission determines only to require an amendment to Form BD for a succession, it would appear necessary to permit only one of the dual successors to file an amendment and require a complete Form BD for the other successor in order to accurately reflect that there are now two broker-dealers. The Commission proposes to retain subparagraph (a) of Rule 15b1-3 for dual successions. The Commission specifically seeks comment on procedures for dual successions.

E. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a

[5] The Commission proposes to define "investment or investment-related" as "pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association)."

[6] 17 CFR 275.203-1 (c) and (d).

substantial number of small entities." [7] The Chairman of the Commission has certified pursuant to that Act that the proposed revision to Form BD and the related proposed amendments to Rules 15b1–3 and 17a–3, and rescission of Rule 15b2–1, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed changes may provide some cost savings to small broker-dealers in that they may no longer have to consider all their employees in answering the disciplinary question on Form BD and may use an amendment rather than a complete Form BD for successions. It is highly unlikely that the resulting cost savings would be significant, however, given the already small number of employees small broker-dealers currently have to consider on the Form BD. In addition, with respect to the proposed changes to the successor rules, small broker-dealers would merely have to file the pages of the Form BD that changed because of the succession, not the entire form. Since the information required is the same regardless of whether an amendment or a complete Form BD is required and the only change is in the number of pages to be filed, it is highly unlikely that the resulting cost savings to small broker-dealers would be significant.

F. Statutory Authority

The proposed changes to Form BD and the proposed amendments to Rules 15b1–3, 15b2–1, and 17a–3 would be adopted pursuant to sections 15(b), 17(a) and 23(a) of the Act.

List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping Requirements, Securities.

Text of Amendments

Title 17, CFR is proposed to be amended as follows:

[7] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 34–18452 (January 28, 1982). A broker or dealer generally is a "small business" or "small organization" if it has total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d). *See* Rule 0–10(c).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w.

§§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78*o*, 78q, 12 U.S.C. 241 nt.

2. By revising paragraph (b) of § 240.15b1–3 as follows:

§ 240.15b1–3 Registration of successor to registered broker or dealer.

* * * * *

(b) A Form BD filed by a broker-dealer that is not registered when such form is filed and which succeeds to and continues the business of a predecessor registered broker-dealer, shall be deemed an application for registration, even though designated as an amendment, if the succession is based on a change in the predecessor's date or state of incorporation, form of organization or change in composition of a partnership and the amendment is filed to reflect these changes.

2. By removing § 240.15b2–1.

3. By removing paragraph (a)(12)(i)(*c*) of § 240.17a–3, renumbering paragraphs (a)(12)(i)(*d*) through (a)(12)(i)(*i*) as paragraphs (a)(12)(i)(c) through (a)(12)(i)(*h*), and revising newly redesignated paragraphs (a)(12)(i)(*c*) and (a)(12)(i)(*g*) as follows:

§ 240.17a–3 Records to be made by certain exchange members, broker and dealers.

(a) * * *

(12)(i) * * *

(*c*) A complete, consecutive statement of all his business connections for at least the preceding ten years, including whether the employment was part-time or full-time,

* * * * *

(*g*) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions wrongful taking of property or bribery, forgery counterfeiting or extortion, and the disposition of the foregoing.

* * * * *

Text of Form—See Appendix A.

E. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed changes to Form BD and amendments to Rules 15b1–3, 15b2–1, and 17a–3, interested persons are invited to submit written data, views and comments concerning the submission within thirty (30) days from the date of publication in the **Federal Register**. Persons wishing to comment should submit three (3) copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. 20–85.

By the Commission.

John Wheeler,

Secretary.

April 26, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form BD (Rule 15b1–1) set forth in Securities Exchange Act Release No–21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would narrow the scope of some questions thus providing some, albeit, insignificant cost savings to small broker-dealers.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 17a–3 set forth in Securities Exchange Act Release No. 21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would conform the information requested in that rule to that already required in the revised Form U–4.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 15b2–1 and 15b1–3 set forth in Securities Exchange Act Release No. 21981, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the

proposed amendments, if adopted, would allow small broker-dealers to use an amendment rather than a complete Form BD for successions. Thus, small broker-dealers merely would be required to submit those pages of Form BD that had changed by the succession, not the entire form.

Dated: April 24, 1985.

John S.R. Shad,

Chairman.

Appendix A—Form BD—Uniform Application for Broker Dealer Registration

Instructions for Form BD

1. Updating—By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. Contact Employee—The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format.

• Attach an execution page (page 1) with original manual signatures to the initial BD filing and each amendment to the Form or Schedules A through D.

• Type of information.

• Give the broker-dealer and date on each page.

• Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions.

• Applicant—The broker-dealer applying on or amending this form.

• Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 per cent or more of the voting securities or is entitled to 25 per cent or more of the profits is presumed to control that company.

• Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

• Person—An individual, partnership, corporation or other organization.

• Self-regulatory organization—Any national securities or commodities exchange or registered association, or registered clearing agency.

5. Schedule A, B and C—Individuals not required to have a Form U–4 (individual registration) in the CRD who are listed on Schedules A, B or C must attach page 2 of Form U–4. The applicant broker-dealer must appear in U–4 Item 19 or 20. Signatures are not required.

6. Schedule D—Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule E—Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

BILLING CODE 8010-01-M

FORM BD
PAGE
1
(Execution Page)
(revised 4/85)

UNIFORM APPLICATION FOR BROKER DEALER REGISTRATION

OFFICIAL USE

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT FIRM CRD NO.:________________

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

(A) Full name of applicant (If sole proprietor, state last, first, and middle name) (B) IRS Empl. Ident. No.:

(B) Name under which business is conducted, if different:

(D) If name of business is hereby amended, state previous name:

(E) Firm main address:

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different:

(F) Telephone Number:

(Area Code) (Telephone Number) (G) CONTACT EMPLOYEE

EXECUTION: For the purpose of complying with the laws of the State(s) I have designated in Item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date Name of Applicant

By.

Signature and Title

Subscribed and sworn before me this_______day of__________________, 19_____by__________________

My commission expires__________________County of__________________State of__________________

This page must always be completed in full with original, manual signature and notarization.
To amend, circle item(s) being amended.

DO NOT WRITE BELOW THIS LINE . . . . FOR OFFICIAL USE ONLY

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 2

Applicant Name: ______________________

Date ______________ Firm CRD No.: ______________

OFFICIAL USE

2. To be registered with the following. (designate) "1" Initial Registration, "2" Pending, "3" Already Registered. If any license, registration or membership listed herein is of a restricted nature, explain fully on Schedule D.

☐ SECURITIES & EXCHANGE COMMISSION

SRO

☐ ASE	☐ BSE	☐ CBOE	☐ CSE	☐ MSE	☐ NASD	☐ NYSE	☐ PHLX	☐ PSE	☐ OTHER (Specify) ______

JURISDICTION

☐ AL	☐ AK	☐ AZ	☐ AR	☐ CA	☐ CO	☐ CT	☐ DE	☐ DC	☐ FL	☐ GA	☐ HI	☐ ID
☐ IL	☐ IN	☐ IA	☐ KS	☐ KY	☐ LA	☐ ME	☐ MD	☐ MA	☐ MI	☐ MN	☐ MS	☐ MO
☐ MT	☐ NE	☐ NV	☐ NH	☐ NJ	☐ NM	☐ NY	☐ NC	☐ ND	☐ OH	☐ OK	☐ OR	☐ PA
☐ RI	☐ SC	☐ SD	☐ TN	☐ TX	☐ UT	☐ VT	☐ VA	☐ WA	☐ WV	☐ WI	☐ WY	☐ PR

3. Date of formation ______________. Place of filing ______________ for:

☐ Corporation - Complete Schedule A ☐ Partnership - Complete Schedule B ☐ Sole Proprietorship - Complete Schedule C

☐ Other (specify) ______________________ Complete Schedule C

4. If applicant is a sole proprietor, state full residence address and social security number.

Social Security No.: ______________

______________ (Number and Street) ______________ (City) ______________ (State) ______________ (Zip Code)

5. Is applicant a successor to a registered broker-dealer? YES ☐ NO ☐
If "yes," explain on Schedule D . . . .

If "yes," state

(a) Date of Succession ______________

(b) Full name, IRS Empl. Ident. No., SEC File No. and Firm CRD No. of predecessor broker-dealer.

Name ______________________

IRS Empl. Ident. No. ______________ FIRM CRD No. ______________

SEC File Number ______________

6 (a) Does any person not named in Item 1 or Schedules A, B or C, directly or indirectly through agreement or otherwise, exercise or have the power to exercise control over the management or policies of applicant? . . . . YES ☐ NO ☐ 1

(If "yes," state on Schedule D the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise control.)

(b) Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in Item 1, or Schedules A, B or C, in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933, (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240. 15c3-1)? YES ☐ NO ☐ 2

(If "yes," state on Schedule D the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 3

Applicant Name: ______________________

Date: ______________ Firm CRD No.: ______________

OFFICIAL USE

7. ***Definitions***

- **Control affiliate** — An individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant. Included are any employees identified in Schedules A,B or C of this form as exercising control. Excluded are any employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority.
- **Investment or investment-related** — Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- **Involved** — Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

A. In the past ten years has the applicant or control affiliate been convicted of or plead guilty or nolo contendere ("no contest") to:

(1) a felony or misdemeanor involving:
investments or an investment-related business,
fraud, false statements or omissions,
wrongful taking of property, or
bribery, forgery, counterfeiting or extortion? . . . . . YES ☐ NO ☐ 3

(2) any other felony? . . . . . YES ☐ NO ☐ 4

B. Has any court:

(1) In the past ten years enjoined the applicant or a control affiliate in connection with any investment-related activity? . . . . . YES ☐ NO ☐ 5

(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations? . . . . . YES ☐ NO ☐ 6

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? . . . . . YES ☐ NO ☐ 7

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statues? YES ☐ NO ☐ 8

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? . . . . . YES ☐ NO ☐ 9

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? . . . . . YES ☐ NO ☐ 10

D. Has any other Federal regulatory agency or any state regulatory agency:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest unfair, or unethical? . . . . . YES ☐ NO ☐ 11

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? . . . . . YES ☐ NO ☐ 12

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? . . . . . YES ☐ NO ☐ 13

(4) in the past ten years entered an order against the applicant or a control affiliate in connection with investment-related activity? . . . . . YES ☐ NO ☐ 14

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? YES ☐ NO ☐ 15

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? . . . . . YES ☐ NO ☐ 16

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 4

Applicant Name: ______________________

Date: ______________ Firm CRD No.: ______________

OFFICIAL USE

E. Has any self-regulatory organization or commodities exchange:

(1) found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical? . . . . YES ☐ NO ☐ 17

(2) found the applicant or a control affiliate to have been involved in a violation of its rules? . . . . YES ☐ NO ☐ 18

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? . . . . YES ☐ NO ☐ 19

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? . . . . YES ☐ NO ☐ 20

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud? . . . . YES ☐ NO ☐ 21

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? . . . . YES ☐ NO ☐ [illegible]

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? . . . . YES ☐ NO ☐ 23

I. Does the applicant have any unsatisfied judgments or liens against it? . . . . YES ☐ NO ☐ [illegible]

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure initiated? . . . . YES ☐ NO ☐ 25

Item 7 Instructions

If a "yes" answer on Item 7 involves:

- the applicant broker-dealer, or an individual without a Form U-4 (individual registration) in the CRD, give the details on Schedule D.
- an individual with a Form U-4 (individual registration) in the CRD, attach any necessary U-4 amendments to the Form BD. The CRD will update the U-4 and BD.

For each "yes" to Item 7, give the following details of any court or regulatory action:

- the broker-dealer and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action.

8. Does applicant:

(a) Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? YES ☐ NO ☐ 26

(2) Such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240. 15c3-3) holds or maintains funds or securities of applicant or of any of its customers? . . . . YES ☐ NO ☐ 27

(b) Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? . . . . YES ☐ NO ☐ 28

(If the answer to any question of Item 8 is "yes," furnish as to each such arrangement the full name and principal business address of the other person, firm, or organization, and the summary of each such arrangement on Schedule D.)

9. Does applicant control, is applicant controlled by, or is applicant under common control with, directly or indirectly, any partnership, corporation, or other organization engaged in the securities or investment advisory business? . . . . . YES ☐ NO ☐ 29

(If "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. See instructions for definition of control.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 5	Applicant Name: ____	OFFICIAL USE
	Date: ____ Firm CRD No.: ____	

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

(a)	Exchange member engaged in exchange commission business	☐ EMC
(b)	Exchange member engaged in floor activities	☐ EMF
(c)	Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
(d)	Broker or dealer retailing corporate securities over-the-counter	☐ BDR
(e)	Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
(f)	Mutual fund underwriter or sponsor	☐ MFU
(g)	Mutual fund retailer	☐ MFR
(h)	U.S. government securities dealer	☐ GSD
(i)	Municipal securities dealer	☐ MSD
(j)	Municipal securities broker	☐ MSB
(k)	Broker or dealer selling variable life insurance or annuities	☐ VLA
(l)	Solicitor of savings and loan accounts	☐ SSL
(m)	Real estate syndicator	☐ RES
(n)	Broker or dealer selling oil and gas interests	☐ OGI
(o)	Put and call broker or dealer or option writer	☐ PCB
(p)	Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
(q)	Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
(r)	Investment advisory services	☐ IAD
(s)	Broker or dealer selling tax shelters or limited partnerships	☐ TAP
(t)	Other (give details on Schedule D)	☐ OTH

	YES	NO	
11. (a) Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐	30
(b) Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐	31

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule A of FORM BD

(revised 4/85)

FOR CORPORATIONS

Applicant Name ______________________________

(Answers in response to ITEM 3 of FORM BD.) Date: ______________________ Firm CRD No.: ____________

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and
   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the applicant.
3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:
   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or
   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.
   (If the intermediary's shareholders or partners listed under 2 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
4. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
5. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
6. Check "Control Person" column if person has "control" as defined in the instructions to this form.
7. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo	Yr	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME Last	First	Middle	Ending Date Mo	Yr	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule B of FORM BD

(revised 4/85)

FOR PARTNERSHIPS

Applicant Name ____________________

(Answers in response to ITEM 3 of FORM BD.) Date: ____________________ Firm CRD No.: ____________

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for all general partners and those limited and special partners who have contributed directly, or indirectly through intermediaries, 5% or more of the partnership's capital.
3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:
   (a) **corporations**, give their shareholders who own 5% or more of a class of equity security, or
   (b) **partnerships**, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.
   (If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
4. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75% A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
5. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
6. Check "Control Person" column if person has "control" as defined in the instructions to this form.
7. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo	Yr	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule C of FORM BD

(revised 4/85)

FOR APPLICANTS OTHER THAN PARTNERSHIPS AND CORPORATIONS

Applicant Name: ______________________

(Answers in response to ITEM 3 of FORM BD.)

Date: ______________________ Firm CRD No.: ____________

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the nature of their authority and their beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.
5. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME			RELATIONSHIP			CRD Number or, if none, Social Security Number	Description of Authority and Beneficial Interest
			Beginning Date		Title or Status		
Last	First	Middle	Mo	Yr			

List below names reported in the most recent previous filing that are DELETED hereby:

FULL NAME			Ending Date		CRD Number or, if none, Social Security Number
Last	First	Middle	Mo	Yr	

When amending Form BD, provide complete detail for the item(s) being amended. File with a completed Execution page (Page 1).

OFFICIAL USE

Schedule D of FORM BD

(revised 4/85)

Applicant Name: ____________________

Date: ____________________ Firm CRD No.: ____________________

(Use this Schedule to report details of affirmative responses to questions on Form BD.)

Item of Form (Identify)	Answer

Schedule E of FORM BD
(revised 4/85)

Applicant Name: ______________________

Date: ______________________ Firm CRD No.: ______________

INSTRUCTIONS FOR SCHEDULE E: Initial filings must include report of all business locations other than the main office. Amendments must include only those branch offices to be added or amended. Complete addresses, including zip code, are to be listed at all times.

Use the following codes in the Nature of Change Column:

To request registration of a new branch office, enter "A".

To report a branch office closing, enter "B".

To report a change of address list the old address immediately followed by the new address; enter "C" next to the old address and "D" next to the new address.

To report a change in supervisor, enter "S".

Place one asterisk (*) under the OSJ column to report designation of a branch as an office of supervisory jurisdiction.

Place a double asterisk (**) under the OSJ column to eliminate designation of a branch as an office of supervisory jurisdiction.

Complete Address of Branch Office	Name and CRD No. of Supervisor	OSJ	Nature of Change	Effective Date

BILLING CODE 8010-01-C

Securities and Exchange Commission

Washington, D.C. 20549

Special Instructions for Completing Form BD Uniform Application for Registration as a Broker-Dealer or To Amend Such an Application

Under sections 15(b), 17(a) and 23(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form from applicants for registration as a broker-dealer (and persons associated with applicants). Disclosure of the information specified on this form is mandatory prior to processing of applications for registration as a broker-dealer, except Social Security numbers, disclosure of which is voluntary. The information will be used for the principal purpose of determining whether the Commission should grant or deny registration to an applicant; Social Security numbers, if furnished, will be used only to assist the Commission in identifying applicants and, therefore, in promptly processing applications. Information supplied on this form will be included routinely in the public files of the Commission and will be available for inspection by any interested person. A form which is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this form, however, shall not constitute any finding that it has been filed as required or that the information submitted is true, current, or complete. Intentional misstatements or ommissions of fact constitute Federal criminal violations. (see 18 U.S.C. 1001 and U.S.C. 78ff(a).)

Section 709 of title 18 of the United States Code provides that it shall be a criminal offense for anyone to use the words "national," "Federal," "United States," "Reserve," or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the brokerage business, except as permitted by the provisions of that section or as otherwise permitted by the laws of the United States. If any of such word(s) is used as part of the business or firm name of any applicant, there should be included with the completed form BD an opinion of counsel setting forth the basis on which the use of any such word is permitted.

Applicants who are not, and do not intend to become, members of the National Association of Securities Dealers, Inc., should note the provisions of sections 15(b) (7), (8) and (9) of the Securities Exchange Act of 1934 and the rules thereunder.

Introduction

Form BD was revised effective January 1, 1984, and all references herein relate to the revised form.

Who Must File

Every broker or dealer whose registration is effective, or whose application for registration is pending on January 1, 1984, is required to file as an amendment to the registration or application a complete Form BD. Form BD is to be filed the first time an amendment otherwise is filed, but in no event later than January 1, 1985.

Every broker or dealer who submits an application for registration to the Commission on or after January 1, 1984, shall file as an application a complete Form BD.

How and Where to File

Form BD and the appropriate schedules are to be filed *in triplicate* with the Securities and Exchange Commission, Washington, D.C. 20549. All three copies of the form filed with the Commission shall be executed with a *manual signature* and notarized on the execution page. An exact copy should be retained. Copies of the form and schedules may be obtained from any office of the Commission. Copies of the form, mechanically duplicated, are acceptable for filing if an original manual signature is affixed to the execution page of *each* copy after duplication. The form may be duplicated by any method producing legible copies of type size identical to that in the form on good quality, unglazed, white paper 8½ x 11 inches in size.

Filing Form BD as an Application

Rule 15b1–2 requires a statement of finanical condition to be filed *in duplicate* with every application for registration as a broker-dealer with the Securities and Exchange Commission. This rule also requires certain statements and representations concerning the business of the applicant. A separate oath or affirmation must be attached to the financial statement and the statements and representations. (See Securities Exchange Act Release No. 9594, May 12, 1972)

The Designation of Recipient for Service of Notice of Commission Proceeding attached to these special instructions must be completed and submitted *in triplicate* with every application for registration as a broker-dealer with the Commission.

Consult Rules 15b1–5 and 17a–7 under the Securities Exchange Act of 1934 to determine whether any *nonresident* of the United States named in the form is required to file a consent and power of attorney, or a notice or undertaking with respect to books and records. *Appropriate forms will be sent upon request.*

If this form is filed as an application by a broker-dealer on behalf of a successor not yet formed or organized, the information furnished shall relate to the successor to be formed. The form shall be executed by the predecessor. Section 15(b) of the Securities Exchange Act of 1934 and Rule 15b2–1 thereunder provide that registration shall terminate on the forty-fifth day after the effective date unless prior thereto the successor shall adopt the application as its own. *This procedure cannot be used where the successor is a sole proprietor.*

Amending Form BD

Rule 15b3–1 requires that if the information contained in the application for registration, or in any supplement or amendment thereto, is or becomes inaccurate for any reason, an amendment correcting such information must be filed promptly on Form BD.

When any item on a page is amended, it is necessary to answer all items on the page being amended. Pages which contain obsolete information are retired to the Commission's inactive files.

How To Complete Form BD

Item 1. *Broker-dealers who were registered or whose registration was pending with the Commission on January 1, 1984,* designate the filing as an *Amendment* and answer all other items in the form completely. If any item is not applicable, indicate by "none" or "N/A."

Subsequently, when amending Form BD, check and complete those items which are being amended or which have changed since the most recent previous filing, and complete all other items on the page or pages being amended. File the amended pages with completed copies of the execution page.

Broker-dealer filing Form BD as an application for registration, designate the filing as an *Application* and answer all other items completely. If any item is not applicable, indicate by "none" or "N/A".

Item 3. *Reminder*: If a registered partnership is dissolved an a new one is created to continue the business of the old one, the new partnership must file a new application for registration as a broker-dealer. (See Rule 15b1-3 concerning successor filings)

Item 5. Complete if applicant is taking over substantially all the assets and liabilities and continuing the business of a *registered* broker-dealer.

Item 11. Answer this item for the applicant as identified in Item 1 and *not* for associated persons.

OMB APPROVAL
Not subject to provisions of P.L. 96-511

DESIGNATION OF RECIPIENT FOR SERVICE OF NOTICE OF COMMISSION PROCEEDING

Applicant consents that the notice of any proceeding before the Securities and Exchange Commission in connection with its application for registration, or its registration, as a broker-dealer may be given by sending notice by registered or certified mail or confirmed telegram to the person named below, at the address given.

Last Name:	First Name:	Middle Name:
Address (Include number and street):		
City:	State:	Zip Code:

[FR Doc. 85-10779 Filed 5-6-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Texas to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas regulatory program concerning lands unsuitable for mining and notices of violation.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATE: Comments not received on or before 4:00 p.m. June 6, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on May 23, 1985, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103.

If a public hearing is held, its location will be at: The Federal Building, Room 752, 300 East 8th Street, Austin, Texas 78746.

See "**SUPPLEMENTARY INFORMATION**" for addresses where copies of the Texas program amendment and administrative record on the Texas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Texas program amendment, the Texas program and the administrative record on the Texas program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

Office of Surface Mining, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-4855.

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 475-8715.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the

commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business May 17, 1985. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "**ADDRESSSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On July 20, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Texas. On February 16, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Texas program (45 FR 12998, February 27, 1980).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Texas program, can be found in the February 27, 1980 **Federal Register.**

Proposed Amendment

On March 29, 1985, the State of Texas submitted to OSM an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Texas regulations concerning lands unsuitable for mining and notices of violation.

The following changes are proposed:

1. Texas proposes to amend rule 051.07.04.069 concerning general provisions on lands unsuitable for mining, to delete existing language and replace it with a general introductory paragraph.

2. Rule 051.07.04.070 would be amended to revise certain definitions pertaining to lands unsuitable for mining.

3. Texas would amend rule 051.07.04.072 to revise the requirements and restrictions for lands unsuitable determinations.

4. Texas proposes to amend rules 051.07.04.073 through 051.07.04.077 under part 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations. Definitions within this part are proposed to be revised and other minor changes are proposed.

5. Texas proposes to amend Rules 051.07.04.078 through 051.07.04.085 under Part 764, Process for Designating Areas Unsuitable for Surface Coal Mining Operations. The amendment would revise criteria for petitions to have an area designated as unsuitable for surface coal mining operations or to have an existing determination terminated. The revisions would add specific information to be contained in the petitions. The requirements for procedures for initial processing, recordkeeping and notification requirements would be amended. Procedures for hearing requirements and decisions by the Texas Railroad Commission would be revised. A confidentiality provision concerning properties nominated to or listed in *The National Register of Historic Places* would be added. Other minor changes are proposed.

6. Texas proposes to revise paragraph (c) and add paragraphs (f) through (j) of rule 051.07.04.681 concerning notices of violation. The revisions pertain to granting of abatement periods of longer than 90 days under certain circumstances.

The full text of the program modification submitted by Texas for OSM's consideration is available for public review at the addresses listed under "**ADDRESSES.**"

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: 30 U.S.C. 1253.

Dated: April 29, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

[FR Doc. 85-10987 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-47002D; TSH-FRL 2810-7]

Chloromethane; Withdrawal of Proposed Health Effects Test Rule

AGENCY: Environmental Portection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: This notice presents EPA's final decision not to require oncogenicity and structural teratogenicity testing of chloromethane

(CAS No. 74-87-3) and to withdraw these proposed testing requirements for this chemical. The notice also discusses available information on chloromethane's reproductive and mutagenic potential, and provides reasons for EPA's not initiating test rules for these effects.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is withdrawing its proposed rule requiring oncogenicity and structural teratogenicity testing of chloromethane.

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2006 *et seq.*, 15 U.S.C. 2603 *et seq.*) authorizes the Administrator of EPA to promulgate rules which require manufacturers and processors to test chemical substances and mixtures. Data developed through these programs are used by EPA in assessing the risks the chemicals may present to human health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under section 4(a) of the Act. The ITC designated chloromethane for priority consideration in its initial report, published in the **Federal Register** of October 12, 1977 (42 FR 55026). The ITC recommended that chloromethane be tested for carcinogenicity, mutagenicity, teratogenicity and other chronic effects with specific emphasis on the central nervous system, liver, kidneys, bone marrow and cardiovascular system. The ITC recommendations were based upon high domestic production levels (350 million pounds reported in 1974), significant release of 15 million pounds per year to the environment, high numbers of exposed workers (estimated 31,000), structural similarity to other reported carcinogens, implication in chronic diseases and mutagenic activity in micro-organisms.

In the **Federal Register** of July 18, 1980 (45 FR 48524), the Agency issued a proposed rule requiring the manufacturers and processors of chloromethane to conduct oncogenic and structural teratogenic effects testing because available data indicated that chloromethane may present an unreasonable risk of injury to human health. A requirement for oncogenicity testing was proposed by EPA because chloromethane had been shown to be mutagenic in bacteria and capable of causing chromosomal aberrations in plants. It was also known to be a direct alkylating agent in human and animal tissues, to be structurally related to other halomethanes thought to have oncogenic potential, and to be metabolized to formaldehyde which appeared to be oncogenic in some studies. The requirement for teratogenicity testing was based on chloromethane's lipid solubility, low molecular weight, probability of crossing the placenta, and association with a documented fetal death. The proposed rule noted that chronic toxicity/oncogenicity and teratogenicity testing was being sponsored by the Methyl Chloride Industry Association (MCIA). The chronic toxicity/oncogenicity study was being conducted by Battelle Laboratories under contract to the Chemical Industry Institute of Toxicology (CIIT); teratology testing was to be done at CIIT. The proposed rule also noted that after reviewing both test protocols and interim test data from the chronic toxicity/oncogenicity study, EPA found certain limitations that led the Agency to question the abilities of these studies to adequately detect any oncogenic or teratogenic hazard that chloromethane might pose to humans.

After publishing its proposed test rule for chloromethane, EPA received written and oral comments on its proposal. As a result of comments received from MCIA, the Agency decided to await receipt of the study reports from the industry testing program before making its final testing decision (Ref. 1).

CIIT and MCIA have provided the Agency with draft and final reports of their 24-month chronic toxicity/oncogenicity study and teratogenicity study for chloromethane. In addition, CIIT and MCIA have submitted a reproductive effects study in rats for chloromethane.

II. Chemical Profile

The chemical chloromethane (methyl chloride, CAS No. 74-87-3) is produced in the vapor phase by reacting methanol with hydrochloric acid and a catalyst such as alumina. Chloromethane production in the United States is expected to remain steady or to slowly increase over the next few years from an estimated figure of greater than 600 million pounds for 1982. Estimates indicate that 75 to 80 percent of the chloromethane produced today is consumed in the production of methyl silicon compounds and tetramethly lead. Other primary uses include the manufacture of pesticides, quaternary amines, methylated compounds, and various chlorinated methanes. Minor uses include solvent, industrial refrigerant, and blowing agent. Exports constitute approximately 5 percent of production.

For the period of 1972-1974, the National Institute for Occupational Safety and Health (NIOSH) estimated the maximum number of U.S workers exposed to chloromethane to be approximately 50,000 people at nearly 4,000 plants or facilities (Ref. 2). Recent information from an engineering analysis conducted by EPA during 1983 show that 1,500 to 2,000 workers are exposed to chloromethane at no more than 50 plants or facilities (Ref. 3). This analysis also found that in all usage areas for which data are available, chloromethane exposure levels are generally within the 100 part per million (ppm) 8-hour time-weighted average (TWA) established by the Occupational Safety and Health Administration (OSHA). Excursions above this limit do occur but are intermittent and are believed to be brief.

Besides the 100 ppm TWA, OSHA has also established a 200 ppm 15-minute chloromethane ceiling concentration and a maximum acceptable peak concentration allowance of 300 ppm for 5 minutes over a 3-hour period (Ref. 2). The American Conference of Governmental Industrial Hygienists (ACGIH) recommended the establishment of a threshold limit value (TLV) of 100 ppm in 1971, but reduced their recommendation to 50 ppm in 1982 (Ref. 2). The ACGIH also recommends a 15-minute exposure limit of 125 ppm to occur no more than four times a day.

III. Toxicity Profile

The following discussions present new health effects test data on chloromethane. After reviewing and evaluating this testing and the test results, EPA has decided to withdraw each of the proposed health effect testing requirements for chloromethane.

A. Development Toxicity

In its proposed test rule, EPA required that structural teratogenic effects testing of chloromethane be conducted. However, after publication of the proposed rule, teratogenicity testing of chloromethane was initiated at CIIT under the sponsorship of the MCIA (Ref. 4). In these studies pregnant Fischer-344 rats and C57BL/6 mice were exposed from gestation day (gd) 7 to gd 20, and from gd 6 to gd 18, respectively, for 6 hours daily to atmospheres containing 0, 100, 500 or 1,500 ppm chloromethane. On

the final day of gestation all animals were sacrificed for evaluation of maternal reproductive and fetal parameters.

Upon review of the structural teratogenicity study report for chloromethane, EPA found that the data from the rat study indicated that there were no chloromethane-induced external, skeletal, or visceral malformations in the fetuses. In fetuses from the highest exposure group (1,500 ppm), retardation in ossification was observed. Trend analysis indicated that the fraction of fetuses per litter with retarded ossifications may have been increased in the 500 ppm group as well as the 1,500 ppm group. Maternal food consumption and body weight were depressed in dams exposed to 1,500 ppm when measured on gd 15 and 20. Weight gain was depressed in dams exposed to either 500 or 1,500 ppm chloromethane during the first week of exposure (gd 7–15). For the 1,500 ppm group body weight at sacrifice was also depressed as was body weight minus gravid uterine weight. No other maternal or reproductive parameters were affected in any of the exposure groups. Because of these findings, the Agency has concluded that exposure to chloromethane for pregnant rats, during critical periods of embryo and fetal development, was not teratogenic at concentrations which elicited maternal and fetal toxicity.

Results for the mouse study showed that chloromethane was severely toxic to pregnant C57BL/6 mice carrying $B_6C_3F_1$ fetuses following at least 4 days of exposure to 1,500 ppm. These dams exhibited urogenital bleeding and central nervous system (CNS) dysfunction begining on the fourth day of exposure, i.e., gestation day 10. Termination of exposures and histopathological examination of the dams revealed a CNS lesion specific to the internal granule cell layer of the cerebellum.

On gd 18, the females from the lower treatment groups, all of which survived, were sacrificed for evaluation of maternal reproductive and fetal parameters, with 24 females pregnant in the 0 ppm group, 20 in the 100 ppm group, and 17 in the 500 ppm group. In these dams, no alterations were seen in body weight or weight gain during the exposure peroid. Intake of food and water was elevated relative to controls in the 500 ppm group during gd 6–14. Maternal reproductive parameters were not affected in the 500 or 100 ppm groups relative to controls.

Live male fetuses in the 100 ppm group exhibited an increase in crown-rump length relative to controls. There were no other alterations in external appearance in fetuses from any of this exposure groups. Fifty percent of each litter was examined for visceral defects, 50 percent for skeletal defects. Visceral examination of mouse fetuses revealed a small incidence of heart defects in litters of the 500 ppm group. The anomaly, a reduction or absence of the atrioventriculare valve, chordae tendineae, and papillary muscle, was observed on the left side (bicuspid valve) in three fetuses and right side (tricuspid valve) in six fetuses. Three males and six females were affected. No single fetus had both sides involved; one litter had fetuses with left and right side involvement, and five of the six affected litters also had fetuses with normal hearts. In selected skeletal districts, the degree of ossification was positively correlated with increasing exposure concentrations. However, this observation in this particular study may not be related to chemical exposure. No embryo-fetal toxicity or teratogenicity was associated with exposure of mice to 100 ppm of chloromethane during critical periods of embryo and fetal development.

To confirm the teratogenic effects observed in the original mouse study and to attempt to establish a dose-response relationship for those effects, CIIT determined that a supplemental or follow-up teratology study on mice should conducted. In the follow-up study, pregnant C57BL/6 female mice were exposed daily for 6 hours to atmospheres containing 0, 250, 500, or 750 ppm chloromethane, from gd 6 to gd 18 (Ref. 4). Females exposed to 750 ppm chloromethane exhibited ataxia commencing on the seventh day of exposure (gd 12). These dams also showed hypersensitivity to touch or sound, tremors and convulsions. Six females in the 750 ppm group died and one was sacrificed *in extremis* prior to scheduled sacrifice. On gd 18, all other females were sacrificed for evaluation. Only dams exposed to 750 ppm exhibited a decrease in body weight by gd 18, weight gain during the gestation period and absolute weight gain (weight gain minus gravid uterine weight) versus controls. There were no treatment-related effects on these parameters in the lower exposure groups. None of the groups exhibited exposure-related differences in pregnancy rate or maternal liver weight. In additon, there were no significant treatment-related effects on number or percentages of implantations, resorptions, incidence of dead fetuses or non-live (dead plus resorbed) fetuses per litter, nor on the number of live fetuses per litter, sex-ratio or mean fetal body weight per litter in any of the treatment groups relative to controls.

There was an exposure-related increase across groups in the number and percentage of affected (non-live plus malformed) fetuses per litter with the incidence of affected fetuses in the 750 ppm group higher than controls. Visceral examination of the thoracic cavity of all of the fetuses revealed an increase in the incidence of heart defects in the 500 and 750 ppm groups relative to controls. There was an exposure-related increase for the following parameters: numbers and percentage of malformed fetuses and malformed male and female fetuses per litter, with the incidence of all these parameters in the 750 ppm group significantly higher than controls. Numbers of litters with malformations, and numbers of litters with malformed males and females were all elevated in the 750 ppm group versus controls. Numbers of malformed fetuses were elevated in the 500 ppm and 750 ppm, but not in the 250 ppm group relative to the controls. In total, 38 fetuses were malformed, 37 with heart defects.

The Agency has determined from its review of these data and the final study report submitted by CIIT that sufficient test data to reasonably predict the extent of the potential developmental toxicity and teratogenic hazard to humans from exposure to chloromethane now are available. The Agency also concludes that, because positive results were found in this testing, the limitations originally cited by EPA in the study design are no longer of concern. Therefore, EPA believes that the statutory findings necessary to require developmental toxicity or structural teratogenicity testing under section 4(a) of TSCA for chloromethane cannot be made at this time, and is withdrawing its proposed rule of July 18, 1980, requiring structural teratogenicity testing of chloromethane.

B. Reproductive Effects

As part of the ITC's teratogenicity testing recommendation, the committee also called for the initiation of studies to determine the extent of the potential hazard of chloromethane to the reproductive system and the fetus. In its response to the ITC, EPA noted that there were no data to support a conclusion that chloromethane may present an unreasonable risk of reproductive effects. Consequently no testing was proposed. However, recent date from CIIT indicated that chloromethane causes reproductive effects. These effects were first noted in CIIT's chronic toxicity/oncogenicity

inhalation study, which is discussed in detail in Unit III.C., and demonstrated that chloromethane elicits testicular effects in male Fisher–344 rats.

Considering the testicular effects data (i.e., epididymal sperm granulomas and degeneration of the testicular germinal epithelium) and the results of the teratology studies, CIIT undertook a study to evaluate the effects of chloromethane on reproduction and fertility in the rat (Ref. 5). This study, now completed, is adequate for assessment purposes.

In this study, male and female Fisher–344 rats were exposed to chloromethane by inhalation (0, 150, 475 or 1,500 ppm, 6 hours/day, 5 days/week, 40 males and 80 females per group). The only treatment-related clinical signs were a 10 to 20 percent body weight gain depression (BWGD) in both males and females exposed to 1,500 ppm after 2 weeks of exposure and a 5–7 percent BWGD in 475 ppm exposed animals after day 57. After 10 weeks the exposure schedule was changed to 6 hours/day, 7 days/week and each male was mated to two exposed females. The mating period lasted 2 weeks and then 10 males/group were necropsied. The only treatment-related lesions found were severe testicular degeneration (10/10) and granulomas in the epididymis (3/10) in the 1,500 ppm males. The remaining 30 males per group were then mated during a 2-week period with 60 unexposed females. The exposed females were continued on exposure from the start of mating to day 18 of gestation (6 hours/day, 7 days/week). The females were not exposed from gd 18 to postnatal day 4, but exposure (6 hours/day, 7 days/week) of these females was resumed from postnatal day 4 to postnatal day 28. There were no differences between groups in the number of exposed or unexposed females that mated as evidenced by copulation plugs. No litters were born to exposed or unexposed females mated to the 1,500 ppm males. There was no significant difference in the number of litters produced by the 150 ppm groups when compared to the control groups. Fewer litters were born in the 475 ppm groups than in the control groups. No differences in litter size, sex ratio, pup viability or pup growth were found among the 475 ppm, 150 ppm or control F_0 groups. When bred 10 weeks after the cessation of exposures, 5 of 20 of the 1,500 ppm, F_0 males had regained the ability to sire normal litters. The same number of 475 ppm F_0 males were proven fertile as control F_0 males.After weaning, F_1 pups from the 475, 150 and 0 ppm groups were exposed to the same concentrations of chloromethane for 10 weeks and then mated. A trend toward decreased fertility was found in the 475 ppm group.

The Agency has concluded from its review of these data and the final study report submitted by CIIT that sufficient test data to reasonably determine or predict the risk of reproductive effects in humans exposed to chloromethane now are available.

C. Chronic Toxicity and Oncogenicity

In its proposed test rule, EPA also planned to require that oncogenicity testing of chloromethane be conducted. However, prior to publication of the proposed rule, a 2-year chronic toxicity/oncogenicity study had been initiated under the sponsorship of the MCIA and conducted by Battelle Laboratories under contract to CIIT. In this study, male and female Fischer–344 rats and $B_6C_3F_1$ mice were exposed by inhalation to target concentrations of 50, 225, or 1,000 ppm chloromethane for 6 hours/days, 5 days/week. The final chronic toxicity/oncogenicity test report indicates that the Fischer–344 rat's life expectancy was not affected by exposures to chloromethane, whereas both male and female mice were adversely affected at the 1,000-ppm dose level (Ref. 6).

Nearly all male and female mice examined prior to sacrifice from the 1,000-ppm exposure group at 18, 21 (male), or 22 (female) months had signs of neurofunctional impairment (clutch response) that were different from control animals. No exposure-related effect was observed in animals from the lower exposure groups. In male and female rats no neurofunctional impairments were reported that are attributable to chloromethane exposure.

The growth of male mice through the first 18 weeks at 1,000-ppm concentration was less than that of the control mice. The rate of growth for male and female at 1,000 ppm and female rats at 225 ppm of chloromethane was also reduced during the first 24 weeks.

Compound-related hepatocellular changes were observed at the 6-month sacrifice in mice from the 1,000-ppm group. These changes, which included centrilobular to midzonal hepatocellular vacuolization, karyomegaly, cytomegaly, multinucleated hepatocytes, and degeneration, were seen only in males until the 18 to 22-month period when females developed similar but less severe lesions.

Renal tubuloepithelial hyperplasia and karyomegaly were seen at 12 months in 1,000-ppm male mice and progessed in severity and prevalence throughout the study. An increase in renal tumors was noted in 1,000-ppm male mice sacrificed or dying between 12 and 21 months, including renal cortical adenoma, renal cortical adenocarcinoma, papillary cystadenoma, papillary cystadenocarcinoma, and tubular cystadenoma. Sixteen of seventy-seven animals in the highest dose group were demonstrated to have renal adenomas and adenocarcinomas. A renal cortical adenoma was demonstrated in two 225-ppm male mice at the 24-month terminal sacrifice.

Renal cortical cysts were predominantly seen in mice in the 1,000-ppm group, whereas microcysts were noted most frequently in the 50-ppm group at 24 months. Both occurrences were different from controls and may be related to chloromethane exposure.

Cerebellar lesions first appeared in male and female mice at the 18-month sacrifice from the 1,000-ppm group. The lesion, which was characterized by degeneration and atrophy of the cerebellar granular layer, did not appear in mice from any other exposure group or in the controls. This lesion is considered to be related to chloromethane exposure.

Splenic alterations, ranging from lymphoid depletion to splenic atrophy, were present in male and female mice from the 1,000-ppm group as early as 6 months and progressed throughout the study. Depletion was noted in only one control mouse during the study at the 6-month sacrifice. Splenic atrophy was noted in mice dying spontaneously between 0 and 17 months, but was not apparently increased over controls until the 18 to 24-month period. Both lesions are considered by EPA and CIIT to be related to chloromethane exposure.

In rats, the testes were the only organs considered to have chloromethane-induced lesions. Bilateral, diffuse degeneration and atrophy of the seminiferous tubules of the testes were first noted in a 1,000-ppm male rat at the 6-month sacrifice. The occurrence of this lesion increased through the 18-month sacrifice. By 24 months, all male rats had interstitial cell hyperplasia or adenomas associated with aging, and it was impossible to detect further the exposure-related seminiferous tubular degeneration and atrophy. However, with increasing exposure concentrations, the resultant decrease in bilateral compressive degeneration and atrophy and the increase in unilateral compressive degeneration and atrophy (cause by testicular tumors) correlated with a decrease in interstitial cell tumor size.

This observation was supported by decreased testicular weights and tests/body weigh ratios in rats exposed to 1,000 ppm of chloromethane.

In the Agency's review of this study, particularly the mouse data, the maximum tolerated dose (MTD) appears to have been exceeded as indicated by early deaths in the 1,000 ppm dose group. Furthermore, control male mice had poor survival, with only 17 percent surviving to terminal sacrifice. In the male mouse study, therefore, it is difficult to compare lesions or neoplasms in the treated groups with the respective control group because survival in the control group was poor. In the female mouse study survival in the controls was good, but no neoplasms are reported.

The rat study suffers in that it appears that higher doses could have been administered; though how much higher is uncertain. While some effect on weight gain was seen in males and females exposed to 1,000 ppm of chloromethane, presumably an MTD for these rats, no effect on survival or clinical parameters was seen.

In conclusion, the Agency believes that a good attempt was made by CIIT to conduct a proper chronic toxicity/oncogenicity study with chloromethane by the inhalation route. The chemical used was of high purity (99.97 percent). The animals used by CIIT (Fischer 344 rats and $B_6C_3F_1$ mice of both sexes) are routinely used by the National Toxicology Program in long-term studies. The historical incidence of neoplastic and non-neoplastic lesions in these rodents has been well characterized. Animal husbandry prior to the initiation of the study appears adequate (i.e. quarantine), and a subchronic study was conducted to estimate the dosages to be used in the chronic study. Three doses (50 ppm, 250 ppm, and 1,000 ppm) were employed in the study for both species, although only the 1,000 ppm dosage should be considered sufficient for an oncogenicity study. Sufficient numbers of animals were used (approximately 120 per group), with serial sacrifices and complete clinical chemistry, hematology, and urinalysis performed at selected intervals to indicate the health of the animals and target organ toxicities. With 25 to 40 animals programmed to be killed from each group by the eighteenth month of the study, adequate survival was anticipated at terminal sacrifice, barring any unforseen infection in the animal colony or high mortality due to chemical–induced, life–shortening lesions.

However, some problems arose during the study in the area of animal husbandry, namely, missexing and pregnancies. Two additional problems occurred in the handling of the inhalation chambers: (1) Mix-up in dosing on three consecutive days, and (2) brief exposure of controls animals to chloromethane. While these problems are serious flaws in the conduct of the experiment, the Agency believes they do not sufficiently compromise the experiment to negate its results. The effect of pregnancy on the handling of chloromethane by female mice is not known (the report does not mention if missexing occurred also in control mice). Exposure of low dose mice (50 ppm) to a high dose of chloromethane (1,000 ppm) early in the study may have a slight effect (increase) on the incidence of tumors in this group. The exposure of high dose mice (1,000 ppm) to low doses of chloromethane (50 ppm) for 3 days at the beginning of the study, probably would not have a significant effect on the incidence of neoplasms in this group. Brief exposure of control animals to chloromethane may have a slight effect on the incidence of neoplasms in this group. However, taken in the light of a 2-year test, the effect, most likely, would be minimal.

The Agency has determined that the study results are sufficient to indicate that chloromethane is a possible human carcinogen. The Agency also concludes that the technical problems with the study do not negate the positive findings of the test.

D. Metabolism Test Data on Chloromethane

As new health effect information became available under its initial health effects testing plan for chloromethane, the MCIA and CIIT decided to conduct further testing to clarify studies (Ref. 7). Short-term studies chosen by CIIT and MCIA to elucidate chloromethane's mechanism of toxicity showed that the disposition of ^{14}C-chloromethane in male Fischer-344 rats and $B_6C_3F_1$ mice after a single 6-hour inhalation exposure to 100, 375 or 1,500 ppm resulted in 8 to 21 percent of the radioactivity remaining in tissues and carcasses of the animals 48 hours after exposure. This study also showed that chloromethane was extensively metabolized to carbon dioxide in both species, accounting for about 40 to 60 percent of the total body burden of radioactivity.

In a subsequent study to establish a metabolic pathway for generating the labelled carbon dioxide, exposure of rats for 6 hours to 500 or 1,500 ppm chloromethane was found to markedly decrease the reduced glutathione (GSH) in liver, lung, and kidney tissues. GSH blood levels were not affected by exposure to the chemical. This observation suggested to CIIT that chloromethane did not spontaneously methylate cellular sulfhydryl groups *in vivo*, but rather required catalysis by one of more enzymes not present in blood. Subsequent experiments implicated a GSH-S-alkyltransferase as the enzyme probably catalyzing the conjugation reaction. Further experimentation was interpreted by CIIT to show that macromolecular fractions, such as nucleic acids and proteins, isolated from rats exposed to ^{14}C-chloromethane contained significant amounts of nonextractable radioactivity. Chromatographic analyses of the DNA indicated that the radioactivity was incorporated into normal purine bases, and did not represent any detectable methylation of the bases.

In vitro DNA alkylation studies conducted by CIIT using non-radioactive chloromethane and high-pressure liquid chromotography suggested that chloromethane was a weak alkylating agent. These data led CIIT to suspect that an epigenetic mechanism may be responsible for the increased incidence of renal tumors in male mice chronically exposed to chloromethane.

Further study was undertaken to evaluate the nature of the radioactivity associated with the protein fraction using rats treated with cycloheximide, a protein synthesis inhibitor. This study showed that radioactivity associated with the protein fraction was dramatically decreased, suggesting that a majority of the radioactivity was present as a result of its incorporation into amino acids prior to protein synthesis.

A possible mechanism by which chloromethane might be incorporated into macromolecules was thought, by CIIT, to occur through an intermediate capable of entering a one-carbon biosynthetic pathway. This was confirmed by further CIIT testing in which pretreatment with an inhibitor of tetrahydrofolate (an enzyme cofactor involved in one-carbon transfer reactions) significantly reduced radioactivity associated with tissue macromolecules and increased formate concentrations in urine and blood resulting from exposure to ^{14}C-chloromethane. Further metabolism studies showed that formaldehyde appeared to be a probable intermediate in the metabolism of chloromethane.

In another series of tests, CIIT demonstrated that inhalation of chloromethane by mice resulted in a concentration-dependent depletion of gluthathione in liver, kidney, and brain

tissues. Exposure for 6 hours to 100 ppm lowered liver GSH by over 40 percent, while exposure to 2,500 ppm reduced GSH to 2 percent of control levels. For those exposures which decreased liver GSH to less than 20 percent of control levels, the extent of liver GSH depletion was correlated with the capacity of a liver fraction to undergo spontaneous lipid peroxidation. Addition of GSH to the incubation prevented lipid peroxidation. These finding suggested that depletion of GSH by chloromethane to levels insufficient to prevent the occurrence of spontaneous lipid peroxidation may underlie the hepatotoxicity of the chemical.

From the new information on the biochemical mechanisms of chloromethane metabolism, CIIT developed a study program designed to further show the relationship of toxicity to metabolism and in March 1982 made its proposed plan available to the Agency. The primary objective of this project was to evaluate the role of metabolism of chloromethane, in particular that of the GSH-chloromethane conjugate, in mediating the acute and chronic toxicity of chloromethane. Included within this objective was an evaluation of the mechanism(s) underlying the acute and/or subacute brain, liver, and kidney toxicity of chloromethane, and the renal oncogenicity observed with chronic exposures of male mice to chloromethane. CIIT believed the correlation between target sites in the acute toxicity studies and those in the chronic studies suggested that the mechanism of toxicity in short-term exposures could be extrapolated to chronic exposures. As a result of this correlation CIIT updated its study program (Ref. 8) to investigate the following specific areas: Comparison of the absorption, metabolism, and excretion of chloromethane by male and female mice: development of biochemcial markers to evaluate the acute toxicity of chloromethane; determination of the relationship and relevance of the proposed metabolic pathway to the acute toxicity of chloromethane; evaluation of the role of formaldehyde as an intermediate in chloromethane toxicity; investigation of the genotoxic potential of chloromethane; and, characterization of the histopathology of the testicular lesions induced by chloromethane in rats.

As this testing program is completed and new data become available, the Agency believes the study results may further define the biochemical mechanism through which chloromethane induces oncogenicity.

E. Mutagenicity

In its initial report to the Agency, the ITC also recommended supplemental mutagenicity testing consisting of chromosomal aberration studies. The ITC based this recommendation on positive *Salmonella* mutagenicity results in a microsomally activated test system. In the July 18, 1980 proposed rule, EPA stated that mutagenic risk from exposure to chloromethane can most reasonably be determined by performing a sequence of tests for both gene mutation and chromosomal aberration. EPA, however, deferred proposing mutagenicity testing via tiered testing because the Agency had not at the time it issued the proposed test rule yet developed specific criteria for sequencing decisions nor a standard approach to be applied for DNA alkylation tests in tiered gene mutation studies. However, because of existing information showing chloromethane's ability to cause direct-acting gene mutations in bacteria and chromatid breakage in the pollen grains of *Tradescentia paludosa* and in the interest of proceeding with the characterization of chloromethane's mutagenic potential, EPA decided to sponsor all studies in a proposed mutagenicity sequence (45 FR 48540; July 18, 1980) except the final tiered tests.

From these Agency-sponsored studies, test data show that following acute inhalation of chloromethane (6 hours/day for 5 days), dominant lethal effects (chromosomal aberrations) occurred in rats (Ref. 9). Animals exposed to 2,000 or 3,000 ppm (target doses) showed a dominant lethal effect on the postmeiotic germ cells, and the effect was more pronounced in animals exposed to 3,000 ppm. The effect was described as transient, since no dominant lethal effects were seen in animals mated during the week following final exposure. The *Drosophila* sex-linked recessive lethal gene mutation assay results were also positive and confirm other studies which indicate that chloromethane induces gene mutations (Ref. 10).

Under the tiered mutagenicity testing scheme for gene mutation testing now employed by EPA in test rules, the postitive findings in the Agency-sponsored *Drosophila* sex-linked recessive lethal assay would trigger a mouse specific locus study. The positive findings in the Agency-sponsored dominant lethal assay would trigger heritable translocation testing to determine not only the mutagenic activity of chloromethane but also the heritability of such effects.

Nevertheless EPA has determined that in this instance the available data, though inadequate to qunatify the mutagenic risks chloromethane poses to humans, are sufficient to qualitatively classify chloromethane as a potential human germ-cell mutagen. Consequently the Agency is not requiring further chromosomal aberration or gene mutation testing at this time.

IV. Decision to Withdraw Proposed Testing Requirements

By Considering the available oncogenicity, reproductive effects, mutagenicity, and metabolism data for chloromethane and its workplace exposure profile, EPA believes there is sufficient information and experience to reasonably determine or predict chloromethane's potential to cause health effects on humans.

Therefore, the Agency finds that sufficient data and experience are available pursuant to section 4(a) of TSCA to reasonably determine or predict the health effects of chloromethane, and that no further testing is required at this time. Therefore, EPA is withdrawing all health effects testing requirements for chloromethane as proposed in the **Federal Register** of July 18, 1980 (45 FR 48524).

The test rule was proposed in 40 CFR Part 773 and subsequently recodified as 40 CFR Part 799 (49 FR 39820, October 10, 1984).

V. Public Record

The record, containing the basic information considered by the Agency in developing its decision, is available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, in Rm. E-107, 401 M Street SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

The EPA has established a public record of this testing decision (docket number OPTS-47002D). This record includes:

A. Supporting Documentation

(1) The **Federal Register** notice designating chloromethane to the priority list (42 FR 55026; October 12, 1977) and comments received in response thereto.

(2) The **Federal Register** notice proposing health effects testing requirements for chloromethane (45 FR 48524, July 18, 1980) accompanying

supporting documents, and comments received in response thereto.

(3) Communications consisting of letters, contact reports of telephone converations, and meeting summaries.

(4) Testing program being sponsored by MCIA and its supporting documents.

B. References

(1) EPA. (U.S. Environmental Protection Agency). Summary of TSCA Section 4(a) Public Meeting on Chloromethane. Washington, D.C. October 30, 1980.

(2) NIOSH. National Institute for Occupational Safety and Health. Computer printout: National Occupational Hazard Survey, 1972–1974. Retreived December 5, 1978. Washington, D.C.

(3) Preregulatory Assessment of Industrial Methyl Chloride Exposure. Prepared by PEDCo Environmental, Inc. for Office of Pesticides and Toxic Substances, EPA. EPA Contract No. 68–02–3935. January 1984.

(4) CIIT. (Chemical Industry Institute of Toxicology). Study reports for chlormethance. Letter from A.E. McCarthy (CIIT) to S. Newburg-Rinn, Office of Pesticides and Toxic Substances, EPA. December 23, 1981.

(5) CIIT. Reproduction in F–344 rats exposed to methyl chloride by inhalation for two generations. Final report by CIIT. CIIT, RTP, N.C. April 13, 1984.

(6) Battelle Columbus Laboratories. A chronic inhalation toxicology study in rats and mice exposed to methyl chloride. Four volume final report submitted to CIIT. Demember 31, 1981.

(7) CIIT. Chloromethane-related documents. Letter from A.E. McCarthy to S. Newburg-Rinn, Office of Pesticides and Toxic Substances, EPA. January 29, 1982.

(8) CIIT. Additional documents relating to proposed rule (80–T–126). Letter from J.E. Gibson (CIIT) to Document Control Officer, Office of Pesticides and Toxic Substances, EPA. March 18, 1982.

(9) EPA. Dominant Lethal Study of Chloromethane in Rats, Final Report. Prepared by SIR International for Office of Toxic Substances, EPA. EPA Contract No. 68–01–5079. August 1984.

(10) Bioassay Systems Corporation. Drosophila Sex Linked Recessive Lethal Test on Chloromethane, Final Report. Prepared by Ruby Valencia, Univ. of Wisc., Madison, WI. Subcontract No. 416–81 of BSC 10506.

(Sec. 4, TSCA (Pub. L. 94–469, 90 Stat. 2006; 15 U.S.C. 2603))

List of Subjects in 40 CFR Part 799

Environmental Protection Agency (Testing), Environmental Protection, Hazardous material, Chemicals, Testing.

Therefore, 40 CFR 799. 130 originally proposed at 45 FR 48524, July 18, 1980 and subsequently recodified at 49 FR 39820, October 10, 1984 is withdrawn.

Dated: April 23, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–10916 Filed 5–6–85; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 88
Tuesday, May 7, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Tort Claims; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Tort Claims of the Administrative Conference of the United States, to be held at 10:00 a.m., Friday, May 17, 1985, at the Administrative Conference, 2120 L Street NW., Suite 500, Washington, D.C. 20037.

The Committee will meet primarily to plan the scheduled June plenary session discussion on government liability, discuss implementation of prior Conference recommendations in the area, and continue its work toward developing recommendations for further Conference research, statutory change, agency reform, or other action leading to a rationalization of the current system.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information contact Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. (Telephone: 202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
May 2, 1985.
[FR Doc. 85–11038 Filed 5–6–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR Part 246.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, Park Office Center, Alexandria, Virginia 22302, (703) 756–3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291, and has been determined to be nonmajor. The final action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability to compete with foreign-based enterprises in domestic or export markets. The final action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Administrator of the Food and Nutrition Service has certified that the action will not have a significant impact on a substantial number of small entities.

Section 17 of the Child Nutrtion Act of 1966 (42 U.S.C. 1786) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the National School Lunch Act (42 U.S.C. 1758). Under section 9, the income limit for reduced-price school meals is 185 percent of the Office of Management and Budget (OMB) poverty income guidelines, as adjusted.

Section 9 also requires that these guidelines are revised annually for changes in the Consumer Price Index. The annual revision for 1985 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** for March 8, 1985, at 50 FR 9517. The guidelines published by DHHS are referred to as the poverty income guidelines.

The Department published new final WIC regulations on February 13, 1985, at 50 FR 6108. Section 246.7(c) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines establish under section 9 of the National School Lunch Act for reduced-price school meals or are less than 100 percent of the Federal poverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1985, to June 30, 1986. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1985 TO JUNE 30, 1986

Family size	Annual poverty [1]	Annual FNS [2]
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	$5,250	$9,713
2	7,050	13,043
3	[illegible]	16,373
4	10,650	19,703
5	12,450	[illegible]
6	14,250	[illegible]
7	16,050	[illegible]
8	17,850	33,023
For each additional family member add	1,800	3,330
Alaska:		
1	6,560	12,136
2	8,810	16,299
3	11,060	20,461
4	13,310	24,624
5	15,560	[illegible]
6	17,810	32,949
7	[illegible]	37,111
8	22,310	41,274
For each additional family member add	2,250	4,163
Hawaii:		
1	6,040	11,174
2	8,110	15,004
3	10,180	18,833
4	12,250	22,663
5	14,320	26,492
6	16,390	[illegible]
7	18,460	34,151
8	20,530	37,981
For each additional family member add	2,070	3,830

[1] Income guidelines (PIG)
[2] Income guidelines for reduced-price lunches (185% of PIG).

This notice does not contain reporting or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

(42 U.S.C. 1786).

Dated: May 1, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-11011 Filed 5-6-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Injection Footwear Corporation, 8730 Northwest 36th Avenue, Miami, Flroida 33147, producer of men's, women's and children's footwear (April 4, 1985); (2) M.H. Rhodes, Inc., 99 Thompson Road, Avon, Connecticut 06001, producer of timing devices (April 5, 1985); (3) Stowe Canoe Company, Inc., P.O. Box 207, Stowe, Vermont 05672, producer of canoes (April 5, 1985); (4) Moriarty Hat and Sweater Shop, P.O. Box 1127, Stowe, Vermont 05672, producer of sweaters, hats and ski accessories (April 5, 1985); (5) Electronic Associates, Inc., 185 Monmouth Parkway, West Long Branch, New Jersey 07764, producer of simulation computer systems (April 8, 1985); (6) Bryan Fishermen's Cooperative, Inc., P.O. Box 609, Richmond Hill, Georgia 31324, producer of seafood (April 8, 1985); (7) R.H.M. Macaroni Company, Inc., P.O. Box 237, Buffalo, New York 14240, producer of pasta food products (April 9, 1985); (8) Boltmaster Corporation, 119 Bond Street, Elk Grove Village, Illinois 6007, producer of steel rod, chain and bars (April 9, 1985); (9) Adonis Chain Manufacturing Company, Inc., 725 Branch Avenue, Providence, Rhode Island 02904, producer of jewelry chain (April 9, 1985); (10) McIntosh Laboratory, Inc., 2 Chambers Street, Binghamton, New York 13903, producer of electronic audio equipment (April 10, 1985); (11) Rando Machine Corporation, P.O. Box 614, The Commons, Macedon, New York 14502-0614, producer of textile machinery and polyester stuffing (April 10, 1985); (12) The Faulhaber Company, 21-31 Hamilton Street, Monroeville, Ohio 44847, producer of bicycle seats (April 11, 1985); (13) Mag-Nif, Inc., 8820 East Avenue, Mentor, Ohio 44060, producer of games, puzzles and novelties (April 15, 1985); (14) St. Thomas, Inc., St. Thomas Place, Gloversville, New York 12078, producer of purses and other personal leather goods (April 15, 1985); (15) Basham Sportswear, Inc., Highway 108, Coalmont, Tennessee 37313, producer of women's blouses (April 16, 1985); (16) Crossley Machine Company, 30 Monmouth Street, Trenton, New Jersey 08607, producer of hydraulic presses and other machinery (April 16, 1985); (17) Pate Packaging & Manufacturing Corporation, P.O. Box 1897, Pine Bluff, Arkansas 71613, producer of packaging components (April 16, 1985); (18) Tritan Corporation, 9006 Airport Boulevard, Houston, Texas 77061, producer of water blasting equipment and industrial pumps (April 16, 1985); (19) H. P., Inc., 114 14th Street, Ramona, California 92065, producer of ceiling fans and lighting fixtures (April 17, 1985); (20) Cinema Products Corporation, 2037 Granville Avenue, Los Angeles, California 90025, producer of broadcast cameras and accessories (April 22, 1985); (21) Robertson Home Products Corporation, P.O. Box 12912, Oklahoma City, Oklahoma 73157, producer of fabric bathroom products, tablecloths, mattress pad covers, dust mitts and baby bibs (April 22, 1985); (22) National Leather Corporation, Knox Avenue, Johnstown, New York 12095, processor of leather (April 22, 1985); (23) Danmar Industries, 468 Suffolk Avenue, Brentwood, New York 11717, producer of women's footwear (April 22, 1985); (24) Dynamote Corporation, 1200 W. Nickerson, Seattle, Washington 98119, producer of electronic generators and battery chargers (April 23, 1985); (25) Celebrity, Inc., 2590 Park Avenue, Bronx, New York 10451, producer of cosmetic bags, travel accessories and household fragrances (April 24, 1985); (26) Polymetals, Inc., P.O. Box 1091, Angleton, Texas 77515, producer of fabricated metal industrial equipment (April 25, 1985); (27) Creative Embroidery Corporation, 211 Grove Street, Bloomfield, New Jersey 07003, producer of embroideries (April 29, 1985); (28) Samuel Brutin & Company, 468 Totowa Avenue, Paterson, New Jersey 07522, producer of women's coats (April 29, 1985); (29) Tectonic Industries, Inc., 114 New Park Drive, Berlin, Connecticut 06037, producer of plastic strips and sheets (April 30, 1985); and (30) Trogdon Furniture Company, P.O. Box 727, Toccoa, Georgia 30577, producer of wood household furniture (April 30, 1985).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedngs may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Dated: May 2, 1985.

Charles L. Smith,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85-11030 Filed 5-6-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; State Fish and Wildlife Directors Conference

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), Department of the Interior, are sponsoring a State Fish and Wildlife Directors Conference to discuss "Fishery Resource Management for the Remainder of the 1980's: Accommodating Change." Participants will include principal fishery administrators from each of the U.S. coastal and inland States, island governments, the Interstate Fisheries Commissions, Indian tribal commissions, NMFS, and the FWS. Conference participants will assess the priorities for the next five years and identify which programs should be carried out in view of changing policies and fiscal outlooks, and recommend how these programs could be accomplished. The conference will open with plenary sessions, featuring key government, industry, and constituent spokemen, to set the stage for later deliberations. Regional caucuses are to identify needs, focus on priorities for the next five years, and develop options with assigned responsiblities. Caucus findings and conclusions will be reported during concluding plenary sessions.

DATES: The conference will convene June 4, 1985, 8:30 a.m. and adjourn at approximately 3:30 p.m., June 6, 1985.

ADDRESS: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. Limited seating will be available.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Constituent Affairs Staff, National Marine Fisheries Service, Washington, D.C. 20235, telephone: (202) 634-9563.

William G. Gordon,

Assistant Administrator for Fisheries.

May 1, 1985.

[FR Doc. 85-10986 Filed 5-6-85; 8:45 am]

BILLING CODE 3510-00-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting an Import Limit for Certain Cotton Fiber Apparel Products From the Democratic Socialist Republic of Sri Lanka

May 2, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 8, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated May 10, 1984 (49 FR 20751) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 348 (cotton trousers and shorts), produced or manufactured in Sri Lanka and exported during the agreement year which began on June 1, 1984. At the request of the Government of the Democratic Socialist Republic of Sri Lanka, special carryforward in the amount of 20,000 dozen is being applied to the restraint limit for Category 348, increasing it from 275,501 dozen to 295,501 dozen for the current agreement year. The limit for the agreement year beginning on June 1, 1985 for Category 348 will be adjusted to account for carryforward used in the current agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 2, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984, from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produce or manufactured in Sri Lanka and exported during the agreement period which began on June 1, 1984.[1]

Effective on May 8, 1985, paragraph 1 of the directive of May 10, 1984, as amended, is hereby further amended to include an adjusted restraint limit for Category 348 of 295,501 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11010 Filed 5-6-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 127. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 127 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 May 1985 (Except as noted in Footnote 4).

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside

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[1] The agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded during the agreement year by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; and (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

[2] The restraint limit has not been adjusted to reflect any imports exported after May 31, 1984

the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

CIVILIAN PERSONNEL PE DIEM BULLETIN NUMBER 127 TO THE HEADS OF THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: **Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States**

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702 (a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 126 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$19.00
Anaktuvuk Pass	140.00
Anchorage	116.00
Atqasuk	215.00
Barrow	[illegible]
Bethel	138.00
Coldfoot	122.00
College	104.00
Cordova	124.00
Deadhorse	131.00
*Dillingham	114.00
*Dutch Harbor-Unalaska	[illegible]
Eielson AFB	104.00
Elmendorf	116.00
Fairbanks	104.00
Ft. Richardson	116.00
Ft. Wainwright	104.00
Juneau	[illegible]
Ketchikan	113.00
Kodiak	129.00
Kotzebue [3]	123.00
Murphy Dome [3]	104.00
Noatak	[illegible]
Nome	[illegible]
Noorvik	123.00
Petersburg	113.00
*Point Hope [4]	160.00
Point Lay	179.00
Prudhoe Bay	131.00
Sand Point	103.00
Shemya AFB [3]	[illegible]
Shungnak	123.00
Sitka-Mt. Edgecombe	113.00
Skagway	113.00
Spruce Cape	129.00
St. Mary's	[illegible]
Tanana	136.00
Valdez	129.00
Wainwright	165.00
Wrangell	113.00
Yakutat	[illegible]
All Other Localities [3]	[illegible]
American Samoa	81.00
*Guam M.I.	91.00
Hawaii	
Hawaii, Island of	[illegible]
*Oahu	94.00
*All Other Islands	85.00
Johnston Atoll [2]	21.25
Midway Islands [5]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	132.00
5-16—12-15	[illegible]
Carolina:	
12-16—5-15	132.00
5-16—12-15	[illegible]
Fajardon (Including Luquillo):	
12-16—5-15	132.00
5-16—12-15	[illegible]
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	132.00
5-16—12-15	[illegible]
Ponce (Incl. Ft. Allen NCS)	92.00
Roosevelt Roads:	
12-16—5-15	132.00
5-16—12-15	[illegible]
Sabana Seca:	
12-16—5-15	132.00
5-16—12-15	[illegible]
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	132.00
5-16—12-15	[illegible]
All Other Localities	111.00
Virgin Islands of U.S.:	
12-1—4-30	126.00
5-1—11-30	93.00
Wake Island [2]	20.00
All Other Localities	[illegible]

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental [illegible].

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4.00 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply for 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] This rate is effective 8 April 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 2, 1985.

[FR Doc. 85-11026 Filed 5-6-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Naval Special Warfare Panel will meet on May 23, 1985, at the Naval Amphibious Base, Little Creek, Virginia; and at the Naval Station, Dam Neck, Virginia on May 24, 1985. The agenda will include technical briefings on existing capability of the Navy's special warfare forces. The meeting will commence at 9:00 A.M. and terminate at 5:00 P.M. on May 23, and commence at 9:00 A.M. and terminate at 3:00 P.M. on May 24, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the technological capability of Naval Special Warfare forces to respond to warfare situations that require mobile, self-contained forces of an unconventional nature. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(2) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000. Telephone number (202) 696-4870.

Dated: May 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-10972 Filed 5-6-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Aircraft Modernization Requirements Panel will meet on 23–24 May 1985, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 A.M. and terminate at 4:00 P.M. on May 23, and commence at 8:00 A.M. and terminate at 12:30 P.M. on May 24, 1985. The first session of the meeting from 0900 to 1030 on May 23 will be open to the public. The remaining two sessions on May 23 and 24, 1985, will be closed to the public.

The purpose of the meeting is to examine the procedures used to develop program plans and cost estimates for modernizing aircraft in order to develop alternative approaches and recommend an implementation plan. The agenda will include technical briefings on the current procedures used to develop program plans and cost estimates for modernizing aircraft. The open session will consist of welcoming remarks, a conflict of interest briefing and a Terms of Reference background briefing. The remaining two sessions on May 23–24, 1985, constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of those sessions. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that the two final sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 5, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–10973 Filed 5–6–85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Mid-Depth Sea Floor Technology Panel will meet on 29 May 1985, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:30 A.M. and terminate at 4:00 P.M. on May 29, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the strategic implications of exploring mid-depth ocean topography for naval operations, and the utility of currently demonstrated technology for utilizing sea floor topography. The agenda will include discussion concerning technical briefings received to date on this subject. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–10975 Filed 5–6–85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Laboratory Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on May 28–30, 1985. The meeting will take place at the Naval Research Laboratory, Washington, D.C. Sessions of the meeting will commence at 8:30 A.M. and terminate at 5:30 P.M. on May 28 and 29; and commence at 8:00 A.M. and terminate at 12:00 P.M. on May 30, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NRL. The agenda for the meeting will consist of technical briefings by NRL departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. These presentations and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because it will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–10974 Filed 5–6–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Grants to State Educational Agencies To Meet the Special Educational Needs of Migratory Children; Application Notice

AGENCY: Department of Education.

ACTION: Application notice for fiscal year 1985 (school year 1985–86).

Applications are invited for new grants under the Migrant Education Basic State Formula Grant Program, which provides financial assistance to State educational agencies (SEAs) for State and local projects designed to meet the special educational needs of migratory children of migratory agricultural workers and migratory fishers. The statutory authority for this program is section 554(a) of Chapter 1 of

the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35).

(20 U.S.C. 3803(a))

Closing date for transmittal of applications: An applicant SEA must mail or hand deliver its application for a grant by June 6, 1985 unless the Secretary has given the SEA an extension of the deadline. In the event that an applicant SEA is unable to mail or hand deliver its application by June 6, 1985 the applicant SEA should request an extension of time as soon as possible, stating in the request the reason that an extension is necessary. The applicant SEA is advised, however, that any delay in submitting its application may defer the processing and awarding of its Fiscal Year (FY) 1985 grant.

Applications delivered by mail: An applicant SEA that sends its application by mail must address its application to Mr. Louis J. McGuinness, Director, Division of Migrant Education Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB–3), Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant SEA should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. The Secretary notifies a late applicant that its application may not be considered unless that SEA has been granted an extension of the closing date.

Applications delivered by hand: An applicant SEA that hand delivers its application must take the application to the Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, Room 3616, ROB–3, 7th and D Streets SW., Washington, D.C.

The Division of Migrant Education will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

The Division of Migrant Education may not accept an application that is hand delivered after 4:30 p.m. on the closing date—unless that SEA has been granted an extension of the closing date.

Program information: The Secretary awards grants under this program to SEAs to establish or improve State programs and local projects designed to meet the special educational needs of migratory children of migratory agricultural workers and migratory fishers. Information to be submitted is contained in 34 CFR 201.11 and 201.12.

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

• Allows States, after consultation with local officials, to established their own process for review and comment on proposed Federal financial assistance;

• Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and

• Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama
Arizona
Arkansas
California
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine
Maryland
Massachusetts
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Jersey
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Ohio
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Wyoming
Guam
Northern Mariana Islands
U.S. Virgin Islands

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 8, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.011), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as for applications.)

PLEASE NOTE THAT THE ABOVE IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: There is $257.458 million available for FY 1985 (school year 1985–86) grants. It is estimated these funds will support 51 State programs. These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: The U.S. Department of Education's Division of Migrant Education will mail application forms and instructions to all eligible SEAs. An applicant SEA may obtain additional forms and instructions by writing to the Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616, ROB-3), Washington, D.C. 20202.

An applicant SEA must prepare and submit its application in accordance with the regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants in applying for assistance under this program. Noting in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program. The Secretary urges that the narrative portion of an application be as brief as possible. The Secretary also urges that an applicant not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1810-0520)

Applicable regulations: Regulations applicable to this program include the following:

(a) Chapter 1 Migrant Education Program Regulations (34 CFR Part 201), published in the (**Federal Register** on April 30, 1985.

(b) General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs (34 CFR Part 204), Published in the **Federal Register** on April 30, 1985 (50 FR 18415).

(c) 34 CFR 74.62 of the Education Department General Administrative Regulations (EDGAR) concerning fiscal accountability.

(d) 34 CFR Part 79.

Further information: For further information, contact Mr. Louis J. McGuinness, Director, Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3616, ROB-3), Washington, D.C. 20202. Telephone (202) 245-2722.

(20 U.S.C. 3803(a))

(Catalog of Federal Domestic Assistance No. 84.011; Migrant Education—Basic State Formula Grant Program)

Dated: May 2, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-11020 Filed 5-6-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Petroleum Supply Reporting System Forms

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Cancellation of public hearing on May 9, 1985, concerning proposed changes to the Petroleum Supply Reporting System forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicited comments concerning proposed changes to the Petroleum Supply Reporting System forms in the **Federal Register** on April 3, 1985 (50 FR 13275) and announced plans for a public hearing on May 9, 1985.

Requests to speak at the public hearing were initially received from two organizations. Both have subsequently notified the EIA that they wish to rescind their request to provide oral testimony. Therefore, the public hearing has been cancelled.

Issued in Washington, D.C. on May 2, 1985.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 85-11067 Filed 5-6-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-448-000, et al.]

Electric Rate and Corporate Regulation Filings; Dayton Power and Light Company, et al.

May 1, 1985.

Take notice that the following filings have been made with the Commission:

1. Dayton Power and Light Company

[Docket No. ER85-448-000]

Take notice that on April 22, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Arcanum (Arcanum), Ohio.

DP&L states that the proposed Agreement allows Arcanum to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Arcanum.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective May 1, 1985.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light & Power Company

[Docket No. ER85-437-000]

Take notice on April 15, 1985, Connecticut Light & Power Company (CP&L) tendered for filing Notices of Termination of Rate Schedule FERC Nos. 240, 272, and 304, and Rate Schedule FPC Nos. 70, 71, 104, 173, and 236.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Company

[Docket No. ER85-449-000]

Take notice that on April 22, 1985, Alabama Power Company (Alabama) tendered for filing a Transmission Service Delivery Point agreement specifying fourteen additional delivery points to be covered by the Agreement between Alabama and Alabama Electric Cooperative, Inc., for Transmission Service to Distribution Cooperative Members of AEC which was dated August 28, 1980 ("Agreement"). This "Agreement" has been designated Rate Schedule FERC No. 147 by the FERC. The purpose of these agreements is to provide for the commencing of transmission service at these locations under the "Agreement". Transmission service will commence under the "Agreement" on May 31, 1985 for Clarke-Washington Electric Membership Corporation's Coffeeville, Fulton and Thomasville delivery points, for Pea River Electric Cooperative, Inc.'s Newton (Daleville), East Gate and Eufaula delivery points and Wiregrass Electric Cooperative, Inc.'s Ashford, Burch Pond, Columbia, Cottonwood, Hartford, Limestone Creek, Slocomb and Webb delivery points. Alabama also filed Twentieth Revised Sheet No. 38 to its FERC Electric Tariff, Original Volume No. 2 and withdrew Fourth Revised Sheet No. 40 to reflect the termination of wholesale electric service at the above listed delivery points concurrently with the commencement of transmission service.

Copies of the filing were served upon Alabama Electric Cooperative, Inc.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER85-452-000]

Take notice that on April 22, 1985, Duke Power Company (Duke) tendered for filing a revision to the rate calculated under Service Schedule G-1982 Bulk Power Wheeling to the Company's Interconnection Agreement with Carolina Power and Light Company (CP&L). Duke states that this Agreement is on file with the Commission and has been designated Duke Rate Schedule FERC No. 10.

Duke states that the revised rate is an updated rate using 1984 data. Based on a 12-month period ending March 31, 1985, Duke estimates that the proposed change in the firm transmission rate will increase annual revenues from CP&L by approximately $315,444.

Duke proposes an effective date of March 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were mailed to the customer and the North Carolina Utilities Commission.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company

[Docket No. ER85-446-000]

Take notice that on April 22, 1985, Consumers Power Company (Consumers) tendered for filing Consumer's Supplemental Agreement No. 1 to the Service Agreement Wholesale for Resale Electric Service with the City of Hart, Michigan, dated as of April 30, 1980.

Supplement Agreement No. 1 reduces the capacity reservation in the Service Agreement by 966 kW since Hart participates by that amount in the Michigan Public Power Agency's ownership in the J. H. Campbell Unit 3. In addition, for purposes of determining the capacity charges for the month of January, 1985 and succeeding months, the customer's historical demands for each month of the eleven month period preceding the month of January, 1985 shall be reduced by 966 kW.

Consumers requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Consumers Power states that copies of the filing were served on the City of Hart and on the Michigan Public Service Commission.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Dayton Power and Light Company

[Docket No. ER85-447-000]

Take notice that on April 22, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Yellow Springs (Yellow Springs), Ohio.

DP&L states that the proposed Agreement allows Yellow Springs to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Yellow Springs.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective May 1, 1985.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER85-451-000]

Take notice that on April 22, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreements with the following entities:

	[illegible] FERC No.
City of Anaheim	130
City of Azusa	[illegible]
City of Banning	[illegible]
City of Colton	162
City of Riverside	129

Edison requests waiver of the Commissioner's prior notice requirement and an effective date of May 1, 1985, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER 85-450-000]

Take notice that on April 22, 1985, Wisconsin Power and Light Company (WP&L) tendered for filing an undated amendment to the existing wholesale power agreement between the Wisconsin Public Power Incorporated System (WPPIS) and WPL. WPL states that this amendment is for the purpose of accommodating, within the existing contractual framework, new solid-waste fired cogeneration capacity expected to be brought on line by a WPPIS member in early 1986.

WPL requests a waiver of notice requirements under the Commission's regulations in order to effectuate this amendment as soon as practicable.

WPL states that a copy of the amendment and the filing have been provided to the WPPIS and the Public Service Commission of Wisconsin.

Comment date: May 10, 1985, in accordance with standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10985 Filed 5-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM84-6-028]

Refunds Resulting From Btu Measurement Adjustments

Issued May 1, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Denying Stay.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying a petition by Pitts Oil Company, *et al.*, for a stay of the May 3, 1985, deadline established in Order Nos. 399, 49 FR 37735 (Sept. 26, 1984), and 399-A, 49 FR 46353 (Nov. 26, 1984), for payment of Btu refunds by small first sellers. In addition, first sellers may pay into escrow accounts those amounts that are required to be offset under Order No. 399-A, and limit the accrual of interest thereon, in the event such amounts must eventually be paid in cash pursuant to *Interstate Natural Gas Association of America v. Federal Energy Regulatory*

Commission, No. 81-1690 (D.C. Cir. Mar. 5, 1985).

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, Office of General Counsel, Producer Regulation Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 257-8213.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Background

May 3, 1985, is the deadline under Order Nos. 399 [1] and 399-A [2] for payment of refunds by small first sellers.[3] On April 5, 1985, Pitts Oil Company, Sage Energy Company, and Clayton W. Williams, Jr., Company (Pitts Oil *et al.*) petitioned the Commission for a stay of the payment of the refunds by all small first sellers. Pitts Oil, *et al.*, seek the stay on the grounds that the status of Order No. 399-A is uncertain. Specifically, they note that petitions for rehearing of Order No. 399-A are still pending before the Commission; the United States Court of Appeals for the District of Columbia Circuit (Court) has ordered the Commission to vacate the offset provisions of Order No. 399-A; and petitions for rehearing of the Court's decision are pending. The Associated Gas Distributors filed an answer opposing the stay.

On March 5, 1985, the Court concluded that permitting first sellers to offset their Btu refund obligations against undisputed charges to pipelines for production-related costs would further delay refund of Btu overcharges and would circumvent the Court's mandate in *INGAA-I*. Thus, the Court directed the Commission to vacate the offset provisions of Order No. 399-A.[4] The Commission, INGAA and certain producers have filed petitions for rehearing of the Court's decision.

II. Discussion

Regardless of whether the offset procedure of Order No. 399-A remains in effect, as the Commission has requested, or is vacated pursuant to the Court's opinion in *INGAA-II*, Btu refunds in excess of any undisputed production-related costs owed to first sellers are payable by the May 3rd deadline. In view of the Court's decision, however, first sellers may establish escrow accounts, on terms agreeable to their pipeline purchasers, for amounts that are required to be offset under Order No. 399-A, but may have to be paid, with interest, after the Court rules on the petitions for rehearing. This escrow procedure is similar to that authorized in Ordering Paragraph (D) of Order No. 399, and limits the interest obligations on escrowed Btu refunds to amounts that accrue on escrow accounts.[5]

The Commission orders

The petition for stay by Pitts Oil, *et al.* is denied. By the Commission. Commissioner Richard dissented.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10956 Filed 5-6-85; 8:45 am]

BILLING CODE 6717-01-M

[1] Refunds Resulting from Btu Measurement Adjustment, 49 FR 27735 (Sept. 28, 1984) (Final Rule).

[2] *Id.*, 49 FR 46353 (Nov. 26, 1984) (issued Nov. 20, 1984) (Order granting rehearing of Order No. 399).

[3] Order No. 399 implemented the decision of the United States Court of Appeals for the District of Columbia Circuit in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission (INGAA-I), 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984), by establishing refund procedures for overcharges resulting from adjustments to the measurement of the Btu content of natural gas.

[4] Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission (INGAA-II), No. 81-1690 (D.C. Cir. Mar. 5, 1985). For convenience, this decision is called INGAA-II; the decision by the same panel, issued August 9, 1983 (see note 3 above), is called INGAA-I.

[5] Refunds Resulting from Btu Measurement Adjustments, 49 FR 37735, 37745 (Sept. 26, 1984).

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59188A; TSH-FRL-2831-6]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME 85-31 and TME 85-32. The test marketing conditions are described below.

EFFECTIVE DATE: April 30, 1985.

FOR FURTHER INFORMATION CONTACT: Charlotte White, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613A, 401 M Street SW., Washington, D.C. 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes of the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing proposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-31 and TME-85-32. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-31 and TME-85-32. A bill of lading accompanying each shipment must state that use of the substances are restricted to that approved in the TMEs. In addition, each Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance producted.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

Tme 85-31

Date of Receipt: March 19, 1985.

Notice of Receipt: March 29, 1985 (50 FR 12626).

Applicant: Confidential.

Chemical: (G) Functional acrylate type polymer.

Use: (G) Industrial paint ingredient.

Production Volume: 82,000 kilograms.

Number of Customers: Four.

Worker Exposure: Manufacture: dermal, a total of 20 workers, up to 8 hrs/day up to 26 days a year.

Test Marketing Period: Eight months.

Commencing on: April 30, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T 85-32:

Date of Receipt: March 19, 1985.

Notice of Receipt: March 29, 1985 (50 FR 12626).

Applicant: CP Chemicals, Inc.

Chemical: (S) Lead methanesulfonate.

Use: (S) Customer evaluation as an improvement on other lead salts in electroplating operations.

Production Volume: 10,000 pounds.

Number of Customers: Six.

Worker Exposure: Manufacture: dermal and inhalation, a total of up to 3 workers, up to 2 hrs/day for up to 20 days/year each. Use: dermal and inhalation, a total of up to 6 workers, up to 8 hours/day for up to 28 days/year each.

Test Marketing Period: Twelve months.

Commencing on: April 30, 1985.

Risk Assessment: EPA identified potential adverse health effects associated with exposure to the TME substance. However, EPA has determined that, under the conditions outlined above, the estimated exposure to the test market substance will not be significant. Worker exposure is expected to be negligible. EPA did identify environmental concerns for potential ecotoxicity of the TME substance. However, EPA has determined that release of the TME substance in concentrations below those specified in EPA's Effluent Guidelines and Standards for the Electroplating Point Source Category, 40 CFR § 413 for lead will not elicit toxic effects in aquatic organisms or in persons drinking water containing the TME substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 30, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-11014 Filed 5-6-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Hearing Designation Order

In re application of Rita Wyse Family Television Network for construction permit, Vineland, NJ, MM Docket No. 85-123; File No. BPCT-841231KF; File No. BPCT-850108KP.

Adopted: April 22, 1985.

Released: May 1, 1985.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Service Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Rita Wyse and Family Television Network (Family) for authority to construct a new commencial television station of Channel 59, Vineland, New Jersey.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the area and population which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been made that the tower height and location proposed by each of the applicants would not consititute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Acordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pusuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stateing an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-10999 Filed 5-6-85; 8:45 am]

BILLING CODE 6712-01-M

Memorandum Opinion and Order

In re applications of Catoctin Broadcasting Corp. of New York, for renewal of license of station WBUZ Fredonia, NY, Catoctin Broadcasting Corp. of New York (Assignor) and Carl G. Timko (Assignee) for consent to the assignment of license of station WBUZ, Fredonia, NY, MM Docket No. 85-92; FCC 85-155; File Nos. BR-810202VF BR-840201UA; File No. BAL-840524EI (*Deferred*).

Adopted: *March 28, 1985.*

Released: *May 2, 1985.*

By the Commission:

1. The Commission has before it for consideration: (i) The 1981 deferred application of Catoctin Broadcasting Corp. of New York ("Catoctin" or "licensee") for renewal of license of Station WBUZ, Fredonia, New York; (ii)

the 1984 supplemental renewal application filed by Catoctin; (iii) an informal objection to the 1981 renewal application filed by the Chautauqua County Rural Ministry, Inc. (CCRM), the Dunkirk-Fredonia League or Women Voters (LWV), and the National Association for the Advancement of Colored People, Dunkirk Branch (NAACP); (iv) a supplemental informal objection to the 1984 renewal application filed by CCRM and the NAACP (hereafter collectively "objectors"); (v) licensee's oppositions to the objections; (vi) objectors' "Affirmation" of the 1981 informal objection; (vii) supplements to licensee's oppositions;[1] (viii) an application for consent to the assignment of license for WBUZ from Catoctin Broadcasting Corp. of New York to Carl G. Timko; (ix) a petition to deny the assignment application filed by CCRM and the NAACP; and (x) licensee's opposition to that petition. For the reasons stated herein, we cannot now find that a grant of Catoctin's applications will serve the public interest, convenience, and necessity. Accordingly, the applications must be designated for an evidentiary hearing.

2. The informal objection contains allegations that during the 1978-1981 license term, Station WBUZ did not comply with Commission rules or policies concerning the fairness doctrine, personal attacks, station public files, ascertainment, public service announcements (PSA's), station program logs and equal employment opportunity. In addition, the informal objection alleges that Catoctin made intentional misrepresentations in the WBUZ renewal application with regard to its ascertainment and issue responsive programming and that WBUZ's programming did not adequately address community needs. The supplemental informal objection alleges that during the 1981–84 license term, Station WBUZ "pirated" another station's newscast, conducted a fraudulent contest, violated the lowest unit rate requirements for political broadcasts and harassed persons attempting to review the station's public file.

[1] While the objector's affirmation and the licensee's supplements to its oppositions are unauthorized pleadings, (*See* § 1.45(c) of the Commission's Rules) we have, in an effort to obtain as complete a record as possible within this proceeding, considered the substance of these pleadings. Accordingly, objectors' motion to strike licensee's 1984 supplement to opposition is denied.

Informal Objection

Fairness Doctrine

3. Objectors argue that Catoctin violated the fairness doctrine by presenting one side of a controversial issue of public importance without affording a reasonable opportunity for the presentation of contrasting viewpoints. Objectors define the primary issue as whether the City of Dunkirk, New York should build public housing for low to moderate income people. In addition, they advance as a secondary issue whether Dunkirk needs federal funds from the Department of Housing and Urban Development (HUD) to accomplish community development and housing rehabilitation. Objectors submit more than twenty pages of regional newspaper articles, editorials, and letters to local newspapers reflecting local attention to issues relating to publicly sudsidized housing in Dunkirk, and they allege that three lawsuits have been filed in respect to public housing and federal funds.

4. Objectors claim that WBUZ, through its thrice-weekly call-in program, "What's Your Opinion?" (WYO), expressed and encouraged opinions for the "anti-housing" viewpoint but harassed the one guest, Ms. Carol Adams, and callers who voiced "pro-housing" views, and thus allowed only one faction in a local issue of public importance to monopolize the airwaves and consequently neglected the public's right to be informed.

5. In opposition, licensee, by affidavit of its president and sole stockholder, Henry R. Serafin, agrees that housing has been a controversial issue, and contends that it has aired both pro- and anti-housing callers and that it welcomes all points of view. Furthermore, although Catoctin acknowledges that it was unsuccessful in obtaining pro-housing guests, it claims that no harassment of Ms. Adams occurred during her appearance on March 19, 1980 and that Ms. Adams refused three subsequent requests to appear on WBUZ as a guest. In addition, licensee states that WBUZ has covered the housing controversy in its newscasts where statements by all sides have been presented in a straightfoward manner, without comment. Finally, Catoctin contends that it offered to sell air time to objectors, and it concludes that in view of all the foregoing, WBUZ did comply with the fairness doctrine.

6. In rebuttal, objectors note that only one pro-housing advocate has ever appeared on the WYO program and that licensee did not document any attempts on its part to obtain other pro-housing guests.

7. When a broadcast licensee presents one side of a controversial issue of public importance, it has an affirmative duty to afford a reasonable opportunity for the presentation of contrasting views. *Fairness Report,* 48 FCC 2d 1, 7 (1974), *recon. denied,* 58 FCC 2d 691 (1976), *aff'd in relevant part sub nom. National Citizens Committee v. FCC,* 567 F.2d 1095 (D.C. Cir. 1977), *cert. denied,* 436 U.S. 926 (1978). However, the licensee need not provide a forum for opposing views on that same program or series of programs. Rather, it is expected to provide for opposing views in its overall programming. Moreover, the broadcast licensee has the discretion and the responsibility to determine whether a controversial issue of public importance has been presented, and if so, how best to present contrasting views on the issue. *National Committee for Response Philanthropy,* 78 FCC 2d 1072, 1075 (1980). In reviewing such matters, the Commission does not substitute its judgment for that of the licensee but only determines whether the licensee has acted reasonably and in good faith. *Fairness Report, supra,* at 8. In the absence of a clear and convicing showing that the licensee has been unreasonable or that there has been an abuse of journalistic discretion, Commission action is not justified. *James Robison Evangelistic Association, 85 FCC 2d 642, 646 (1981).*

8. Review of the pleadings establishes that Catoctin does not dispute that housing issues have been controversial and of public importance nor does it argue that the issues are other than those claimed by the objectors. There is a dispute, however, as to whether the time and manner of licensee's presentation of the issues were so imbalanced that the public was not adequately informed.

9. In determining whether such an imbalance exists, the Commission considers a licensee's overall programming, including news, as well as evidence relating to the total amount of time afforded to each side, the frequency with which each side was presented, the size of the listening audience during the various broadcasts, and the manner in which each side was presented. *Public Media Center v. KATY,* 59 FCC 2d 494 (1976), *recon. denied, 64 FCC 2d 615 (1977), aff'd in part, remanded in part,* 587 F.2d 1322 (D.C. Cir. 1978), *on remand,* 72 FCC 2d 776 (1979). Considering licensee's overall programming, we note that objectors focus solely on the program "WYO," and they do not rebut licensee's

contention that WBUZ has presented statements by all sides in its newcasts. It is undisputed that Carol Adams, a pro-housing advocate, did appear on WYO and was asked to return on three other occasions.[2] In light of these efforts we cannot find that licensee's presentation of opposing views on housing issues was so imbalanced that the public was left uninformed. *Senator Thomas F. Eagleton*, 81 FCC 2d 423, 427 (1980). At this point, we also wish to reassert the Commission's steadfast position that fairness complaints most apropriately are considered outside the license renewal context. This procedure underwent extensive review in Docket No. 19260 which culminated in the *Fairness Report, supra* at 17–18. Nevertheless objections have not demonstrated that their instant fairness doctrine allegations have raised a substantial and material question of fact concerning licensee's compliance with the fairness doctrine.[3]

Personal Attack

10. Objective charge that WBUZ violated the personal attach rule on four occasions—March 14, 1980, June 30, 1980, July 2, 1980, and January 14, 1981—and that all the attacks occurred during discussions about the Dunkirk public housing contrversy. Objectors allege that on March 14, 1980, during the WYO program, Mr. Serafin stated that the "Carol Adams Rural Ministry" was to receive $30,000 from HUD. After Ms. Adams called WBUZ and asked for a retraction, other callers asked whether Ms. Adams paid income tax. Objectors contend that Mr. Serafin's statement implied that Ms. Adams' pro-housing position was based upon her organization's receipt of federal funds, and that such constituted an attack upon her honesty, integrity, and reputation. Objectors next allege that on June 30, 1980, Mr. Serafin referred to a newspaper article which mentioned Ms. Adams and stated: "Miss . . . or Ms. Adams, I don't know why she kept her maiden name. Her husband's name is Buchanan. It sounds like a colored name, but it isn't." Objectors argue that Mr. Serafin's statement was an implicit accusation that Ms. Adams' motive for keeping her maiden name was racist. Objectors also allege that on July 2, 1980, Frank Lisa, the guest on the WYO program, stated that Ms. Adams' opinions concerning public housing and the poor were influenced by the amount of money she received from her work. Objectors contend that the statements questioned the integrity Ms. Adams' moral commitment and constituted an attack on her honesty. Finally, objectors contend that on January 14, 1981, Mr. Serafin and one caller personally attacked Dr. William Proweller. Objectors allege that after mentioning Dr. Proweller and a Dr. George Sebouhian, another pro-housing advocate, the subject of whether both men condoned pornography was raised, by specifically referring to a drawing hanging in Dr. Proweller's office. Objectors argue these kind of comments attacked Dr. Proweller's integrity and raised questions about the validity of his beliefs in regard to housing. Finally, objectors allege that WBUZ sent no notification of these statements allegedly constituting personal attacks to the subjects of the alleged occurrences.

11. In opposition, licensee acknowleges that questions about Carol Adams income were raised from time to time by telephone callers, but argues that Mr. Serafin's statements of March 14, 1980, merely pointed out a possible conflict of interest on Ms. Adams' part. With respect to the statements allegedly made on June 30, 1980 and July 2, 1980, licensee contends that no attacks on Ms. Adams' integrity were made, and in any event, it notified Ms. Adams by telephone and by letter. Finally, with respect to the January 14, 1981 broadcast, Catoctin claims that "only facts were given" and that in its good faith judgment, any attack made did not violate the personal attack rule.

12. In reply, objectors contend that the statements made on March 14, 1980 regarding Ms. Adams were not questions and were not of an investigative nature but were declarative statements presented as facts. Moreover, objectors claim that no questions of an investigative nature were raised with regard to Ms. Adams' payment of income taxes and that the remarks made were for the sole purpose of impugning the legitimacy of Ms. Adams' prohousing position by suggesting that she had dishonestly failed to disclose an improper ulterior motive. With respect to the June 30, 1980 and July 2, 1980 broadcasts, objectors argue that Mr. Serafin's letter did not contain a summary of the statements made on the programs. Further, with respect to the January 14, 1981 broadcast, objectors note that licensee failed to challenge the veracity of their allegations. Finally, objectors argue that WBUZ will continue to violate the personal attack rule because it does not tape its program or employ any other system which will permit it to transmit a summary of an attack.

13. The personal attack rule, set forth as Section 73.1920 of the Commission's Rules,[4] was designed to effectuate important aspects of the fairness doctrine;[5] namely, to enable the listening public to hear a "response by those most vitally affected and best able to inform the public of the contrasting viewpoint." *Personal Attacks; Political Editorials, Supra. T.* at 723. Thus, the fairness doctrine and the personal attack rule do not prohibit the expression of any view or views but simply impose upon licensees the duty to make their facilities available to permit respones to personal attacks occurring during the discussion of controversial issues of public importance in order to further the First Amendment goal of producing an informed public capable of conducting its own affairs. *Red Lion Broadcasting Co., Inc.* v. *FCC, supra.* Accordingly, before the rule is invoked, the attack must occur during or in relation to a discussion of a controversial issue of public importance and must involve an attack on the honesty, integrity, character, or like personal qualities of an identified person or group. *Strauss Communications, Inc.*, 61 FCC 2d 460 (1976). Finally, in reviewing personal attack complaints, the Commission's function is not to substitute its own judgment for that of the licensee but to determine whether the licensee has acted reasonably and in good faith in arriving at its decision as to whether a personal attack was made.

14. Review of the materials submitted with respect to the March 14, June 30, July 2, 1980 and January 14, 1981 broadcasts leads us to conclude that Catoctin was not unreasonable in determining that no pesonal attacks occurred. Concerning the March 14, 1980 broadcast and Mr. Serafin's assertion that the "Carol Adams Rural Ministry"

[2] We note that Dr. William Proweller, a pro-housing advocate, also states that Mr. Serafin asked him to appear on WBUZ.

[3] No action is warranted in regard to alleged licensee misstatements since objectors do not present extrinsic evidence or documents that on their face reflect deliberate distortion. *Fairness Report, supra*, at 21.

[4] The rule states in pertinent part:

"(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event one week after the attack, transmit to the person or group attacked:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack, and

(3) An offer of a reasonable opportunity to respond over the licensee's facilities.

[5] *Personal Attacks; Political Editorials*, 8 FCC 2d 721, 722 (1967), *aff'd sub nom. Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367 (1969).

was to receive $30,000 from HUD, there is nothing which suggests that Mr. Serafin stated or implied that such a possibility would result from any fraud or impropriety on Ms. Adams' part. In addition, we cannot find that statements questioning whether Ms. Adams paid any income tax were personal attacks. There is no indication that anyone stated or clearly implied that she had acted illegally or dishonestly, and, in any event, we note that Ms. Adams appeared on WBUZ less than one week later and used that opportunity to discuss housing issues. With respect to the broadcast of June 30, 1980, Mr. Serafin's remarks concerning Ms. Adams' use of her maiden name are simply too ambiguous to compel the conclusion that he was accusing her of being racist. Moreover, concerning the broadcast of July 2, 1980, we cannot conclude that Mr. Lisa's statements necessarily constituted an attack on Ms. Adams' honesty, integrity, character, or like personal qualities, since they do not suggest that Ms. Adams is personally dishonest, nor do they clearly imply that she does not believe in the cause with which she is identified. While the statements reveal the speaker's belief that Ms. Adams may be motivated in part by money, there is nothing inherent in such a charge which should have caused licensee to conclude that an attack on her honesty, integrity, or character had been made. Finally, with regard to the broadcast of January 14, 1981, objectors themselves note the statements concerning Dr. Proweller arose in the context of whether Drs. Proweller and Sebouhian condoned pornography. Unlike housing issues, objectors submit nothing which suggests that the pronography issue is either controversial or of public importance in the WBUZ service area. Moreover, since objectors claim that the pronography issue arose "as a corollary to the housing issue,"[6] we are constrained to conclude that objectors have not set forth sufficient facts to establish that any vilification which may have occurred did so during or in relation to a discussion of a controversial issue of public importance. *Strauss Communications, Inc., supra.* Thus, it is of no consequence that licensee did not notify Dr. Proweller within one week's time, provide him with a summary of the statements made, or offer him reply time since its was under no legal obligation to do so. Accordingly, no further inquiry in regard to licensee's compliance with the Commission's personal attack rule is warranted.[7]

Public File

15. Objectors allege that between December 17, 1980 and February 23, 1981, eleven attempts to view licensee's public file were made: Six by Ms. Adams alone, one by Cheryl Anderson, and four by two other people.[8] Concerning those eleven visit, objectors allege that three resulted in no inspection of the file (December 17, 1980; January 7, 1981 at 9:20 A.M.; and the morning of January 13, 1981), while four resulted in only partial inspection. Further, even when inspection was allowed, objectors contend that they were harassed by Mr. Serafin. In this regard, objectors allege that on two occasions, Mr. Serafin stated that he was going "to investigate" the person inspecting the file, that he threatened Reverend Buchanan,[9] and that he verbally abused Ms. Adams.[10] In addition, objectors argue that licensee's public file is not properly maintained. In this regard, they allege that when Ms. Adams inspected the WBUZ public file on January 27, 1981, she found 19 folders, 18 of which had titles and one of which was empty. Of the 18 folders which contained documents, objectors allege that Ms. Adams search thereof failed to disclose community leader survey forms for 1978–1981; documentation concerning licensee's efforts to consult with members of the general public during the period 1978–1981; annual employment reports for the years 1975 and 1976; the 1981 license renewal application; two letters from CCRM to WBUZ; the WBUZ–ABC network affiliation agreement; 1978–1981 composite week program logs; an entry referencing the location of information pertaining to licensee's ownership; and Exhibit 2 of a 1978 application to transfer control of licensee. Objectors also allege that on February 3, 1981, Ms. Adams did not locate the WBUZ renewal application, the composite week logs, or Catoctin's ownership reports, although she did find documents evidencing surveys of community leaders and the general public as well as problems/programs lists. Objectors argue that the incompleteness and disorderliness of the station's public file as well as the harassment they encountered indicate that licensee's rule violations were repeated and wilfull, in violation of § 73.3526 of the Commission's Rules.

16. In opposition, licensee contends that before Ms. Adams and "her associates" came to the station, the file was complete and in good order and that if anything were missing, it was the result of oversight. Catoctin also asserts that steps have been taken to ensure that the file is complete, although it then states that if anything is now missing, it may be because a former employee came back to the station and went through the file. Moreover, licensee acknowledges that some of the file material had been temporarily removed for use in preparing the renewal application.

17. Licensee denies that Mr. Serafin harassed or intimidated anyone looking through the files or that he made the disparaging remarks attributed to him. Licensee argues that if any harassment occured, it was the station which was harassed and not the people looking through the file. In this regard, licensee claims that at the beginning of 1981, people coming to the station to inspect the file became an almost daily occurence; that often there were more than one or two persons at the station; and that demands were constantly made or Mr. Serafin and the staff to provide photocopies of public file materials "almost immediately."

18. In rebuttal, objectors reiterate that from the beginning, the public file was incomplete and in disarray and that Mr. Serafin's responses to objectors' complaints as well as licensee's arguments to the Commission indicate that it does not know and has not taken the time to discover what should be in the WBUZ public file. In this regard, they argue that the titles on the file folders evidence not only a haphazard approach to the organization of the files but also that this disorganization pre-dated objectors' inspection of their contents. Objectors also deny that they harassed licensee, and they contend that their visits to the station and their requests for photocopies were necessitated by licensee's failure to make its public file available for

[6] Informal Objection, p. 165; Carol Adams' second affidavit, Exhibit 38, p.2; William Proweller affidavit, Exhibit 37, p.2.

[7] Although we note that a licensee is responsible for everything broadcast on its station, the Commission has no requirements that licensees make or retain recordings or transcripts of their broadcasts. *WCMP Broadcasting Co.*, 27 RR 2d 1000, 1007 (1973).

[8] The details of the allegations listed herein are supported by the affidavits of Carol Adams, Cheryl Anderson, Bruce Buchanan, and Roxanne Gonzalez.

[9] Objectors allege the following was said:

Buchanan: "I'd appreciate it if in the future when you talk to my wife you keep a civil tongue."

Serafin: "Mind your own damn business. When I talk to Ms. Adams I'm not talking to Mrs. Buchanan. This is my radio station so don't tell me what to do or else I'll kick your butt out the door." Informal Objection, Exhibit 1, pp. 18–19.

[10] Objectors list several insulting statements, and they also allege that licensee required objectors to use a corner of the secretary's desk for their reading of the file and that licensee had them watched the entire time they read the file.

inspection. Further, objectors dispute licensee's claims that it was harassed by objectors' attempts to view the public file, and they note that licensee submitted no affidavits from any person other than Mr. Serafin and that even his affidavit does not describe with any specificity the nature of the harassment. In addition, objectors dispute licensee's denials concerning Mr. Serafin's behavior, and they observe that their charges are often supported by more than one affidavit while Mr. Serafin's denials are unsupported even though other station employees were present.

19. Section 73.3526 of the Commission's Rules requires that certain records be kept available for public inspection at the station or other accessible place in the community and that the records be available at any time during regular business hours. In repeated references to this rule,[11] the Commission has made it plain that our regulatory procedure by which the public participates in the renewal process is premised on the availability of information in the renewal applicant's local public file. *Deregulation of Radio,* 84 FCC 2d 968, 1010, *recon. denied,* 87 FCC 2d 797 (1981), *aff'd in part, remanded in part, sub. nom. Office of Communications of the United Church of Christ, et al.* v. *FCC,* 707 F. 2d 1413 (D.C. Cir. 1983); *Federal Broadcasting System, Inc.,* 59 FCC 2d 356, 366 (1976); *Records of Broadcast Licensees,* FCC 65–273, 4 RR 2d 1664, 1665, *recon. denied,* FCC 65–913, 6 RR 2d 1527 (1965). Accordingly, it is of the utmost importance that licensees not discourage such participation by making access to the public file difficult.

20. Review of the affidavits submitted raises a question as to whether licensee repeatedly violated the public file rule. Specifically, it appears that licensee denied access on three occasions and that it made available only part of its file on four other occasions. Furthermore, with regard to the files' contents, it appears that licensee's inclusion of materials was not always timely. For example, although licensee's renewal application is dated January 24, 1981, it appears that a complete copy thereof was not available in the public inspection file even some thirty days later. Moreover, even if we assume that the file was complete at some point in time, we cannot find that licensee has taken upon itself the responsibility to ensure that the file is now complete. Certain essential documents must be available in a station's public file for deregulation to succeed. *See, Deregulation of Radio, supra,* at 998–99. The evidence presented by objectors raises substantial questions as to whether licensee is complying with § 73.2526.

Misrepresentation of Ascertainment and Problems/Program Lists

21. Objectors argue that licensee's ascertainment procedures violated Commission rules and policies and that licensee misrepresented facts in order to cover up those violations. In support, objectors allege they found in the WBUZ public file 23 community leader interview forms, representing interviews with 22 community leaders,[12] and they contend that this does not comport with licensee's community leader checklist, which indicates that 62 community leader consultations occurred. In addition, objectors argue that licensee failed to interview leaders from all of the then required groups, including Hispanics, American Indians, and Asians,[13] since the community leader interview forms evidence interviews with only four women and two blacks, and they assert that this failure to interview minorities is consistent with licensee's past practice.[14] Further, objectors claim that even though the checklist indicates that at least one leader from each of the 19 elements was interviewed, analysis of the community leader interview forms reveals that leaders from nine of the elements were not interviewed, and that licensee's claims with respect to the number of leaders interviewed from some of the remaining elements are vastly inflated. Finally, objectors charge that a careful viewing of the forms reveals that licensee changed the dates of five of the interviews, and they contend that interviews with Horman Dorsey and Earlie Waller, the two black leaders interviewed, occurred in connection with the 1975–1978 license term ascertainment. Objectors also charge that at least two interviews were "fraudulently obtained." Informal Objection, p. 55. In this regard, they submit the affidavits of two leaders. One claims he does not remember being interviewed for the purpose of ascertainment while the other claims he was told the interview was for a local newspaper. In view of the foregoing, objectors conclude that licensee's community leader ascertainment evidences a flagrant disregard for the Commission's Rules and that licensee fabricated its community leader checklist in an attempt to shield its ascertainment from further scrutiny. In addition, objectors argue that licensee did not consult with a random sample of the general public. In this regard, objectors allege that of the 57 interview forms they found, five evidence interviews with present or former employees of WBUZ while two are of members of the Citizens Action Board (a Dunkirk-based group of which the licensee's president, Mr. Serafin, is a member), but that none of the interviewees was Hispanic and only two were black.[15] Further, objectors allege that the licensee did not place in its public file any explanation of the method its used to conduct the survey or any information relating to the demographics of Fredonia, and they complain that 16 of the forms do not note the address of the interviewee. From the foregoing, objectors conclude that licensee's general public survey was totally flawed.

22. In response, licensee claims that objector's allegations are unsupported and that they have offered no proof that ascertainment interviews were not conducted as represented by WBUZ. Licensee argues that stations have always been able to use means other than formal ascertainment interviews in order to identify community problems. This, licensee concludes, objectors are wrong in assuming that licensee's ascertainment consists only of interviews evidenced by the forms in its public file.

23. In reply, objectors contend that licensee did not address most of its claims and that even when it did respond, it failed to support its averments with any credible evidence. Thus, objectors conclude, licensee did

[11] *See, e.g., Voice of the People,* 82 FCC 2d 200, 202 (1980); *Security Broadcasting of Baton Rouge, Inc.,* 62 FCC 2d 140, 144 (1977); *Intercontinental Radio, Inc.,* 53 FCC 2d 1171, 1172 (1975); *Ubiquitous Corp.,* 51 FCC 2d 780, 798–99 (1975); *Licensee's Local Public Files,* 32 FCC 2d 729 (1971).

[12] Objectors point out that one leader, Earlie Waller, was noted on two forms.

[13] Objectors allege that nearly 2,000 Hispanics live in Dunkirk; that the Cattaraugus Indian Reservation is 15 miles from Fredonia and within the primary service contour of WBUZ and that the area has a few professionals as well as some resettled "boat people . . ." who are Asian. The checklist indicates that 99 female, five black, twelve Hispanic, and two American Indian leaders were interviewed. (Presumably "99 female" is a typographical error meant to be 9 since licensee claims a total of 62 community leader consultations occurred.)

[14] In this regard, objectors charge that licensee did not interview any minority leaders during the 1972–1975 and 1975–1978 license terms and that it interviewed minority leaders in 1978 only after having been requested to do so by the Commission's staff. Objectors also surmise that the interviews of several leaders were utilized by licensee for both the 1975–1978 and 1978–1981 license terms.

[15] Objectors also charge that one of the interviews now relied upon by licensee occurred in 1977 and was utilized by licensee in regard to its previous (1978) renewal application.

not substantiate that it conducted more than 23 ascertainment interviews with community leaders or that it conducted a random survey of the general public. Accordingly, objectors argue, licensee's ascertainment checklist figures and renewal application responses regarding its ascertainment are misrepresentations.

24. Objectors also allege that licensee did not prepare its problems/programs lists until January, 1981, and that in so doing, it violated former § 73.3526(a)(9) of the Commission's Rules.[16] In support, objectors cite an article in the March 21, 1981 edition of the P–J Weekender (Jamestown, New York) newspaper in which John Masiker, the then-news director of WBUZ, is reported to have said that the three problem/programs lists submitted to the Commission were prepared subsequent to the completion of licensee's ascertainment in January, 1981.

25. In addition, objectors argue that licensee misrepresented the programs it broadcast in response to community problems and needs. Once again, objectors point to the March 21 newspaper article which reports that Mr. Masiker said that he prepared a list of problems from the recently completed ascertainment and gave that list to Mr. Serafin, and that Mr. Serafin, in turn, gave him a list of program dates and guests, indicating when various problems were discussed. In this regard, objectors claim that a comparison of licensee's ascertainment forms with its problems/programs lists indicates that licensee simply transposed information from the survey forms to the lists, and they submit one copy of each of the community leader ascertainment survey forms, a summary of the 57 general public survey forms, and some 30 pages of charts and analyses wherein they note when and from whom a particular problem was ascertained as well as when and by whom the problem was supposedly discussed on WBUZ. Objectors argue that their analysis demonstrates that there is a nearly word-for-word resemblance between licensee's ascertainment and licensee's descriptions of its program discussions and that many of the problems discussed were not even ascertained until after the discussions had supposedly occurred.

26. In addition, objectors allege that licensee misrepresented its programming by claiming initially that two or more guests "discussed" several issues on more than one occasion.[17] Although recognizing that licensee, by amendment, subsequently acknowledged that guests did not appear together and that program descriptions included comments from Mr. Serafin and callers, objectors claim that licensee's motive for filing the amendments was to anticipate specific complaints about the problems/programs lists and undercut any challenge which might ultimately be filed.[18] However, objectors argue, licensee continued to misrepresent its past programming since the amendments still imply that discussions of the listed issues actually occurred during WBUZ broadcasts.[19] According to objectors, the majority of the issues noted were raised during licensee's ascertainment and were never discussed on-the-air as claimed.[20] Finally, objectors allege that licensee misrepresented the dates of four broadcasts of WYO.

27. In opposition, licensee asserts that it did not misrepresent any material facts and that any mistakes made in compiling data were inadvertent. In addition, licensee argues that it corrected many of the claimed misrepresentations on its own initiative and that objectors failed to establish a motive for any intentional misstatement. Licensee explains that it made handwritten notes of discussions of its programs and that it noted information on calendars, both of which, it states, were placed in the public file. Thereafter, licensee claims, it removed the notes and calendars from the public file for reference during preparation of the renewal application. Although conceding that "better wording could have been used," licensee contends that when it prepared the problems/programs lists, it had no intention of indicating that the various guests were on the air together on each of the dates listed; rather, the first guest listed was to correspond with the first date listed, while subsequent guests were to correspond with subsequent dates. Licensee further claims that its intention was simply to note the programs which addressed the listed issues. Moreover, licensee asserts, its descriptions of discussions were only meant to indicate some of the statements that were aired during the program. In this regard, licensee acknowledges that the discussions should not have been attributed to guests. Nonetheless, licensee insists that its problems/programs lists are valid since guests did appear on the day or days noted.[21] Finally, licensee states that the program WYO is occasionally broadcast on days other than Monday, Wednesday, and Friday, and it submits a copy of the program log of Thursday, November 13, 1980, in support.[22]

28. In reply, objectors reiterate that licensee's programming claims are fraudulent and were intended to deceive the Commission and anyone who happened to peruse licensee's public file. In this regard, objectors insist that they did establish a motive for licensee's

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[16] In pertinent part that rule provided: "(9) To be placed in the public inspection file every year, on the anniversary date on which the station's renewal application would be due for filing with the Commission, a listing of no more than ten significant problems and needs of the area served by the station during the preceding twelve months. In relation to each problem or need cited, licensees . . . shall indicate typical and illustrative programs . . . which were broadcast during the preceding twelve months in response to those problems and needs. Such a listing shall include the title of the program. . ., its source, tpye, brief description, time broadcast and duration. The third annual listing shall be placed in the station's public inspection file on the due date of the filing of the station's application for renewal of license. Additionally, upon the filing of the station's application for renewal of license, the three annual problems-programs lists shall be forwarded to the Commission as part of that application "

[17] In support, objectors refer to letters submitted by ten of the twenty guests listed by WBUZ. In the main, the guests deny having appeared on all the dates originally noted by licensee, deny having appeared with any of the other listed guests, and deny having discussed the matters attributed to them. Informal Objection, Exhibit 20.

[18] Objectors contend that each amendment resulted solely from licensee learning that a guest disagreed with its programming claims.

[19] In this regard objectors allege that Mr. Serafin usually began "What's Your Opinion?" with the introduction of a guest or a general comment about an issue followed by a request for public response. If a guest were present, Mr. Serafin would, according to objectors, ask the guest some questions, engage in a short discussion, and then invite listeners to telephone the station with their questions or comments. Objectors further state that Mr. Serafin would not restrict callers to the issue first raised but would permit comments about any matters, even those which had no relevance to the guest. See also Informal Objection, Exhibit 20, Letter of Assemblyman Roland E. Kidder and Letter of [State] Senator Jess J. Present.

[20] Objectors further argue that analysis of the WBUZ program descriptions themselves indicate that it is unlikely that the discussions as described by licensee could have occurred. In this regard, objectors ask rhetorically whether one person (the guest) could really believe that there was a need for low income housing, middle income housing and housing for the elderly, yet no need for public housing; whether a superintendent of schools would ever state publicly that there was a need for better schools, that the school board was unresponsive, or that the schools were covering up their problems; or whether a former mayor would admit that he had delusions of grandeur. Objectors contend that these and other inconsistencies further demonstrate that licensee's program descriptions were derived from its ascertainment.

[21] Referring to five of the ten people who submitted letters to objectors, licensee reaffirms that each was a guest, while in regard to three, licensee insists that comments were made as indicated.

[22] Licensee also submits letters from several of its guests, each of whom indicates that the WYO program discusses issues of local public importance.

claimed lying; i.e., licensee wished to make it appear that it had complied with then-existing Commission requirements regarding formal ascertainment and responsive programming. In addition, objectors observe that licensee did not submit any of its notes or calendars, and they assert that they did not find any such material during any of their inspections of licensee's public file. Further, they claim that even by taking licensee's programming amendments at face value, the following discrepancies exist: Two guests are listed for August 15, 1979, although the amendment claims that only one guest appeared per program; two or three major topics were discussed on at least two dates; no guest is listed for the final discussion of the economy; Gilbert Snyder is listed as having appeared on March 14, 1980 with regard to a discussion of zoning matters, when, in fact, Mr. Serafin discussed housing with Carol Adams; and licensee implied that a program was rescheduled to November 13, 1980 in order to accommodate a candidate involved in an upcoming election, when, in fact, the election had already occurred. Moreover, objectors argue that none of the letters submitted by licensee regarding guest appearances contains any statement which confirms licensee's claimed programming discussions, and they contend that licensee has offered no credible explanation for the similarities alleged to exist between ascertainment interview statements and claimed program discussions. In this regard, objectors state that they relied solely upon the documents in licensee's public file for their analysis of licensee's programming, and they insist that they did not remove, lose, or misplace any of licensee's public file material. Finally, objectors note that none of licensee's guests stated directly that he or she appeared on a day other than Monday, Wednesday, or Friday, the regular days for the show.

29. During the license term under consideration, commercial radio licensees were required to consult throughout the license term with community leaders as well as to conduct a random survey of the general public; to present programming which was responsive to some of the problems, needs, and interests which had been ascertained; and to place in their public file documentation regarding their ascertainment efforts and three annual problems/programs lists for the purpose of providing an effective means for both broadcasters and citizens to evaluate the end and aim of ascertainment—namely, programming. The Commission required that a licensee file with its renewal application a copy of each of the three annual problems/programs lists placed in its public file as well as a checklist setting forth the number of consultations licensee had with community leaders.

30. Although the Commission has since reaffirmed the general requirement that a licensee must provide some programming responsive to issues facing the community,[23] it also has determined that commercial radio licensees and applicants no longer need to comply with formal ascertainment procedures, including the preparation of detailed documentation regarding their efforts to identify significant community issues. *Deregulation of Radio, supra.* However, we will consider the retrospective portions of renewal applications filed prior to the effective date of the Deregulation *Report and Order.* Thus, issues could be raised in a petition to deny regarding such areas as past ascertainment or programming performance. Such violations of a past regulation at a time when such regulations were in effect may be relevant to a licensee's qualifications to remain a Commission licensee. *Deregulation of Radio, supra,* at 1013. In ruling on a petition to deny a license renewal application, the operative issue is "whether the commission of such violation(s) raises a substantial and material question of fact as to whether renewal of the license would serve the public interest." *Kaye-Smith Enterprises,* 71 FCC 2d 1406 (1979). Thus, the Commission will consider allegations that a licensee made misrepresentations in regard to its ascertainment documentation and efforts, even though past ascertainment methodology violations, per se, no longer concern us, since no such act of deception can be condoned even as to now immaterial matters. The Commission's concern with past misrepresentation stems from the necessity of continued reliance on a licensee's representations to the Commission. *Fox River Broadcasting, Inc.,* 93 FCC 2d 127, 53 RR 2d 44 (1983). "The fact of concealment [is] more significant than the facts concealed." *Ledfore Broadcasting Co., Inc.* v. *FCC,* 636 F. 2d 454 (D.C. Cir. 1980) citing *FCC* v. *WOKO, Inc.,* 329 U.S. 223, 227 (1946).

31. From the foregoing, it appears that Catoctin's application represents that the licensee consulted with community leaders as represented by its community leader checklist, that it broadcast issue-responsive programming as represented by its problems/programs lists, and that it placed documentation regarding its ascertainment in its public file at the appropriate times. However, review of these materials in light of the ascertainment forms submitted by objectors and objectors' unrebutted allegations concerning the timing of local controversies, the letters of disclaimer filed by WBUZ guests, and the newspaper article relating John Masiker's version of the compilation of the problems/programs lists,[24] leads us to conclude that substantial and material questions of fact exist.

32. Specifically, we cannot reconcile the data from the 23 community leader forms submitted by objectors, with the community leader checklist. In particular, we find no basis for the checklist claims that all community elements were consulted with or that any of the leaders contacted were Hispanic or American Indian. Moreover, even if we assume that licensee's claim of 99 contacts with female leaders is a typographical error and that there were only nine contacts with leaders who were women, the documentation submitted by objectors indicates that only four interviews with female leaders occurred. Finally, review of licensee's ascertainment forms reveals only three interviews with black leaders, not five as claimed by licensee. In view of the above, we cannot be satisfied with licensee's unspecific protestations of veracity nor can we accept without further exploration its failure to provide a credible explanation for the

[23] To that end, the Commission modified slightly the requirements regarding a licensee's documentation of its issue-responsive programming. Specifically, each licensee seeking renewal was to place annually (on the anniversary date on which the stations' renewal application would be due for filing) "in its public file a listing of five to ten issues responded to with programming together with examples of such programming offered." *Deregulation of Radio, supra,* at 999. On partial remand from the U.S. Court of Appeals for the District of Columbia Circuit of our Report and Order in the radio deregulation proceeding, *Office of Communications of the United Church of Christ* v. *FCC,* 707 F. 2d 1413 (D.C. Cir. 1983), the Commission amended § 73.3526 of the Rules to require commerical radio stations to compile on a quarterly basis a list of at least 5 community issues addressed by the station's programming during the proceeding 3 month period. *Second Report and Order, B.C. Docket 79-219,* 55 RR 2d 1401 (1984).

[24] Although the article, standing alone, would not raise a question warranting further Commission inquiry, *see, e.g., Mississippi Authority for Educational Television,* 79 FCC 2d 577, 579 (1980), *recon. granted,* 84 FCC 2d 349 (1981), it, coupled with the facial similarity between much of licensee's ascertainment and the descriptions of its issue-responsive programming as well as the questions raised about the timing of local controversies, raises questions about the circumstances surrounding the preparation of the problems/programs lists which cannot be disposed of in the absence of some reasonable explanation on the part of the licensee.

discrepancies existing between its checklist and the ascertainment interview forms.

33. Moreover, the representations made on licensee's problems/programs lists, even when considered in light of licensee's explanatory amendments, cannot be reconciled with objectors' allegations and supporting documentation. In this regard, we note the following examples: (1) On one of five dates between and including January 10, 1979 and August 15, 1979, comments were supposedly aired on WBUZ concerning the mayor violating the city charter, the need for a "replacement mayor, and replacement council," and "the need to put Republicans back in office but not Snyder." According to objectors' unrebutted allegations, newspaper articles from 1980, and licensee's ascertainment, it was not until 1980, after Democrat Gary Michalak had replaced Republican Gilbert Snyder as Mayor of Dunkirk, that some people began to argue for Mr. Michalak's ouster on the ground that he was violating the city charter, or that anyone would want to put a Republican "back in office." (2) On one of four dates between May 4, 1979 and November 16, 1979, Dr. Charles Weiss supposedly appeared on WBUZ as a guest. However, Dr. Weiss states that he never knew that WBUZ existed until 1981 and that he never entered the WBUZ studio as a guest or for any other purpose until he appeared on January 28, 1981 on the WYO program. (3) On August 15 and/or August 31, 1979, comments were supposedly aired about "Synder's delusions of grandeur" and "the need for investigation and payback of misused funds from Dunkirk urban renewal." According to objectors' unrebutted allegations, these concerns were first raised in ascertainment interviews conducted on December 23, 1980. (4) For March 14, 1980, licensee's problems/programs list shows "Mayor Snyder" as being the guest for a discussion of zoning issues. According to objectors, Mr. Snyder, who, at that point was former Mayor Synder, did not appear on WBUZ, nor did any discussion of zoning issues take place. Rather, March 14, 1980 was allegedly the date Mr. Serafin began mentioning Carol Adams in the context of the Dunkirk housing controversy. (*See* paras. 10 and 11, *supra*.) In view of these and other examples alleged by objectors, we are unable to credit licensee's explanation that mistakes were "inadvertent." Absent a detailed and convincing rebuttal from the licensee regarding the discrepancies alleged by objectors, we can only conclude that a question exists as to whether the problems/programs lists misrepresented what was actually broadcast by WBUZ.

34. Finally, we cannot find that licensee did in fact place in its public file at the "appropriate times" its 1978–79 and 1979–80 problems/programs lists or that it had any basis for so concluding when it represented in its renewal application that it had done so. In this regard, a question exists whether represented 1978 and 1979 program discussions involved comments which probably were not made until 1980 or 1981, and we cannot overlook licensee's failure to address the newspaper story about the origin of the problems/programs lists or to provide any affidavit from John Masiker, the source of much of the story. In view of the above, we believe it necessary to explore in an evidentiary hearing all of the facts and circumstances surrounding the preparation of licensee's community leader checklist, its problems/programs lists, and the license renewal application to determine whether licensee made misrepresentations in its 1981 renewal application for WBUZ.[25]

Programming, Public Service Announcements and Program Logs

35. Objectors next argue that Catoctin failed to present programming in response to ascertained needs. In order to raise a substantial and material question of fact concerning a licensee's past programming, a petitioner must plead specific facts which, if true, would establish that the licensee's overall programming could not reasonably have met the needs and interests of the people within its service area. *Taft Broadcasting Company*, 38 FCC 2d 770, 789 (1973); *RadiOhio, Inc.*, 38 FCC 2d 721 (1973), *aff'd sub nom. Columbus Broadcasting Coalition* v. *FCC*, 505 F. 2d 320 (D.C. Cir. 1974). Accordingly, the Commission will not intervene in this sensitive area unless there is a clear showing that the licensee has ignored a strongly expressed problem of the community or that it has otherwise abused its wide discretion. *Stone* v. *FCC*, 466 F.2d 316, 328, *reh. denied* 466 F.2d 331 (D.C. Cir. 1972); *Newhouse Broadcasting Corp.*, 53 FCC 2d 966, 970 (1975).

36. Although we cannot rely on this licensee's problems/programs lists to determine the community needs licensee chose to address (*see* para. 34 *supra*), we can to some extent, reconstruct licensee's programming from other sources. In this regard, we note that documents submitted by objectors and licensee indicate that WBUZ normally broadcast the public affairs call-in program, WYO, three times per week for periods between one and two and one-half hours and that the program dealt with numerous community concerns during the 1978–1981 license term. Specifically, letters from various WBUZ guests reveal that issues relating to local, state and national government, local elections, the local school board, the local university, local economic development, counseling, minorities, and mental health were discussed.[26] In addition, it appears that housing issues received much attention in 1980 and included the participation of Ms. Adams on at least two occasions. Further, review of licensee's composite week logs indicates that licensee regularly broadcast both local and network news; that it broadcast agricultural reports six days per week; and that it broadcast religious programs in both English and Spanish on Sunday. Moreover, the logs reveal that licensee broadcast public service announcements concerning religion, social security, mental retardation, health and fitness, veterans, and the Internal Revenue Service. Finally, letters in licensee's renewal application indicate that WBUZ broadcast programming in regard to youth employment and displaced homemakers.

37. With regard to licensee's alleged failure to address all community concerns mentioned by more than one community leader, we have recognized that not all problems ascertained merit attention or can be addressed by a station's programming, *Columbia Broadcasting System, Inc.*, 46 FCC 2d 903, 910 (1974), and we have consistently held that licensees possess wide discretion in determining the problems to be addressed and the choice of programming to meet those problems. *Id.* at 911. Thus, the absence of programming in response to a small number of ascertained needs is insufficient to show that licensee "followed either a pattern of prejudice or policy of exclusion or has consistently failed to respond to problems which, under the circumstances, it could not reasonably or in good faith ignore." *Miami Valley*

[25] Rebuttal explanations regarding licensee's apparent mispresentations concerning its ascertainment and problems/programs lists were made in written submissions by licensee's counsel. However, since these statements were neither signed by the licensee nor supported by affidavit or documentary evidence, they have not been considered.

[26] *See generally*, Informal Objection, Exhibits 12 and 20; Opposition to Informal Objection, letters of Gilbert Snyder and Charles St. George; WBUZ license renewal application, Exhibit 22.

Broadcasting Corporation, 48 FCC 2d 177, 185 (1974).[27] In view of the foregoing, objectors' conclusory allegations regarding the responsiveness of licensee's programming to community needs are without merit.

38. Similarly, we do not believe that licensee's choice of programming to address community needs warrants further inquiry. In this regard, we do not find licensee's alleged reliance on listeners' telephone calls for questions and comments as being an unreasonable means of exploring an issue of local concern. Moreover, we find that licensee's admitted willingness to allow callers to raise concerns other than those originally scheduled to be discussed does not support a conclusion that no community issue was reasonably addressed. On the contrary, it seems plausible to us that many more community needs could be raised and discussed using such an approach than if a licensee were to adhere strictly to a topic or topics chosen at the beginning of the program. Moreover, objectors' argument that Mr. Serafin's personal views and his unwillingness to change those views prevented balanced discussion of issues is conclusory and unsupported. Indeed, licensee's uncontroverted assertion that he allows all sides to express their views (see para. 5, *supra*) contradicts objectors' contention. In any event, it is not our role to sit as a censor and subjectively determine whether a particular method of programming is "good," *see, e.g., Mississippi Authority for Educational Television,* 71 FCC 2d 1296, 1309 (1979), *recon. denied,* 79 FCC 2d 300 (1980), and we decline to hold that licensee's WYO program should be changed to suit the tastes of the objectors.

39. Concerning licensee's PSA practices, objectors allege that licensee often refuses to accept PSA's for broadcast from groups that choose not to purchase advertising time, then attempts to sell PSA's to them as advertising. Additionally, objectors allege that on many occasions, licensee declines to provide PSA time to groups whose services the licensee opposes. Further, with regard to licensee's alleged practices, objectors point out that if PSA's were run for those groups who also bought advertising, the PSA's would be bonus spots, not PSA's, and thus would affect the computation of the station's lowest unit rate and, if so, might result in violations of section 315(b) of the Act. With regard to PSA practices, we note initially that licensees are afforded a wide range of discretion with respect to their choice of PSA's. *Miami Valley Broadcasting Corp., supra* at 182. Thus, Commission intervention is appropriate only when an abuse of that discretion has been shown. Although materials submitted by objectors indicate that Catoctin refused to broadcast PSA's from two local organizations because they did not also purchase advertising time on WBUZ,[28] licensee's explanation that it charges such organizations only when they purchase advertising on other stations or elsewhere leads us to conclude that no substantial and material question of fact is raised. In this regard, we cannot find unreasonable licensee's belief that its station should be accorded the same treatment as other media with regard to the advertising practices of local non-profit organizations.[29] In addition, we believe that licensee's PSA practices are consistent with its obligations under section 315(b) of the Communications Act of 1934, as amended, in view of licensee's statement that no bonus spots of any type are given during the pre-election periods. In any event, we note that even if bonus spots were given during pre-election periods, in addition to the spots purchased by a non-profit organization, the lowest unit rate of WBUZ would not have been affected. *See The Law of Political Broadcasting and Cablecasting: A Political Primer 1984 Edition,* pp. 50–51. Finally, objectors' allegations regarding licensee's logging of certain PSA's warrant no further inquiry since there is no indication that any mislogging which may have occurred resulted from an intent to mislead the Commission.

40. With regard to the logging of the WYO program, we note that objectors themselves allege that its duration is generally 50 percent longer than represented by licensee in its renewal application. Informal Objection p. 62. Thus, there appears to be no substantial dispute as to whether the program was aired or as to its duration. Moreover, in view of our decision to eliminate program logs, *Deregulation of Radio, supra,* licensee's alleged mislogging of the program is now immaterial absent evidence that licensee intentionally falsified the logs. Since no such evidence has been produced, we decline to explore the matter further. Similarly, we are not persuaded that licensee misrepresented its analysis of its composite week programming, and our own review of licensee's composite week logs leaves us satisfied that WBUZ did not deviate substantially from its 1978 programming promises and that any failure to state accurately the actual times of its prior programming resulted from carelessness. Finally, we find that alleged renewal application misrepresentations regarding licensee's adherence to previous non-entertainment program promises warrant no further inquiry. In this regard, review of licensee's 1978 and 1981 renewal applications reveals that licensee did no more than relist as its 1981 composite week analysis the numbers and percentages also noted under the column in the 1981 form headed "Previously Proposed," taken from its 1978 renewal application. In our view, such a mistake, without more, does not raise a question of misrepresentation.[30] Accordingly, no hearing issue is raised with regard to licensee's logging practices.

Employment

41. Objectors next charge that although licensee reported in its renewal application that it employed less than five full-time employees, their visits to the station and an interview with an employee indicate that it did have five full-time employees. Objectors claim that CETA regulations [31] required that an employer providing training to CETA clients had to have at least two employees for every CETA employee, and CETA records revealed that licensee had two full-time CETA employees. Objectors conclude that WBUZ was either violating Commission Rules by failing to submit an EEO program or was violating CETA regulations for failing to have the proper number of full-time employees. In addition, objectors allege that licensee discriminated against a black woman by refusing to hire her for reasons based upon race. CETA exhibits submitted by

[27] Licensees are not required to program to meet all community needs, and there is no showing by objectors that the problems listed were ones that licensee either had ignored or could not reasonably or in good faith ignore.

[28] Licensee also states that it declined to run the PSA tendered by the Chautauqua County Association for the Arts because it believed that the PSA would not be of interest to its listeners. Further, with regard to the Chautauqua Day Care Project, licensee states that it supports day care and can think of no reason why it would not have cooperated with the Project.

[29] Nevertheless, we caution licensee that conditioning the giving of PSA time on the purchase of advertising time might, in other circumstances, be deemed an abuse of discretion. See *Northern Television, Incorporated,* 91 FCC 2d 305, (1982).

[30] In addition, objectors' claim that licensee charged the City of Dunkirk for the appearance on WBUZ of two of its employees warrants no further inquiry. The appearances alleged occurred in 1976, more than four years prior to the filing of the instant renewal application, and there is no showing that any wrongdoing occurred or that the city of Dunkirk questioned in any way the propriety of the charges.

[31] Comprehensive Training and Employment Act, 29 U.S.C. 801 *et seq.*

the objectors contain evidence that Mr. Serafin expressed his displeasure to CETA for referring black women to him for staff openings.[32] Objectors also maintain that licensee should have reported a 1977 small claims court lawsuit alleging fraudulent conduct and a 1981 unemployment compensation hearing in its renewal application and that its failure to do so reflects adversely upon its qualifications. In addition, objectors argue that licensee's employment practices require exploration at a hearing in order to determine whether it is complying with the Commission's EEO rules and policies.

42. In opposition, licensee states that it has never had more than four full-time employees; that it presently employs only two persons full-time; and that two persons alleged by objectors to have been full-time employees were only part-time employees. Licensee also denies that it discriminated against a black woman, and it explains that by the time it decided to offer her a job (approximately two weeks after her initial interview), she had already been hired by someone else. With regard to the small claims court suit, licensee states that no adverse finding was made against WBUZ and that, in any event, the matter was settled amicably out of court. Finally, licensee submits a copy of a State administrative decision denying unemployment benefits to a former WBUZ employee on the ground that she had quit work without good cause, as well as a letter from CETA to that same person to the effect that an audit of WBUZ revealed that its records agreed with CETA's records with respect to her compensation.

43. Objectors allege that CETA documents show that Mr. Serafin went to the CETA office the same day of the interview of the black woman and expressed his displeasure regarding the referral and that the woman not hired by WBUZ did not start a new job until 26 days after her initial interview with WBUZ. Further, objectors submit the affidavit of James Walton, who states that his lawsuit with licensee was settled only because it was too expensive to continue pursuit of the matter through the courts, and objectives state that the unemployment hearing referred to by licensee was simply one of several involving licensee.

44. Section 73.2080 of the Commission's Rules provides that all broadcast stations shall afford equal opportunity in employment to all qualified persons regardless of race, color, religion, national origin or sex and that each station shall establish, maintain and carry out a program designed to assure equal opportunity in every aspect of station policy and practice. Further, the rule provides that an EEO program need not be filed with the Commission by any station having less than five full-time employees. Appling the foregoing standards to the matter before us, we find that licensee was under no obligation to file an EEO program with its renewal application since it had less than five full-time employees. Objectors' assertions to the contrary notwithstanding, our research has disclosed no CETA regulation requiring the employment of two non-CETA employees for every CETA employee, and there is no other competent evidence before us which suggests that licensee employed five or more persons full-time at the time it sought renewal of its license.[33]

45. With regard to objectors' charge of intentional employment discrimination, we do find there is too great a discrepancy between licensee's version of the events and the sequence of events evidenced by the CETA documents for us to conclude that licensee has been completely candid with the Commission. In this regard, we note that the document from CETA's files evidencing a derogratory remark from Mr. Sefarin particularly directed at the black referral suggests that Mr. Serafin has not been candid with the Commission regarding this incident. Accordingly, we will designate an issue for an evidentiary hearing regarding this particular matter.

46. However, we do not believe that objectors' other related allegations warrant further Commission inquiry. We find that general complaints from unnamed CETA program employees regarding licensee's general conduct as an employer are too vague to raise a substantial and material question of fact. In addition, since neither the Walton litigation nor the unemployment compensation hearings involve "unfair labor practices," licensee was under no obligation to report any findings in regard thereto. Finally, we note that the Walton litigation involved events which transpired in 1975 and there is no competent evidence indicating that such practices have been repeated in the renewal periods presently under review. Accordingly, Commission action now would be inappropriate since the conduct alleged is too removed in time to relate reasonably to licensee's present qualifications.

Supplemental Informal Objection

Public File

47. The objectors have submitted evidence of further continuing violations by WBUZ of the Commission's public file regulations during the 1981–1984 license term. In view of our decision to designate an issue on this matter as a result of the 1981 informal objection, as outlined in paragraph 20, the issue will also be framed to cover the 1981–84 period and no further discussion of this aspect of the supplemental informal objection is necessary.

Lowest Unit Rate

48. The objections have submitted their review of contracts entered into the WBUZ for political advertising during 1981, 1982 and 1983. They claim that this review demonstrates that the station charged political candidates different rates for spots in the "same time and positions" in violation of section 315(b) of the Communications Act. The licensee does admit to having overcharged one political candidate by 55¢ due to a "mathematical error" but it contends that it otherwise observed the lowest unit rate requirements for political advertising during the 1981–1984 license term. Other than the one obvious error admitted to by the licensee, the objectors have failed to demonstrate that licensee did, in fact, fail to comply with §73.1940 of our Rules. The exhibit filed by the objectors does not account for the day-part in which a given spot was run nor does it discriminate in most instances between spots broadcast on a "run of schedule" basis and those aired at a time selected by the advertiser. Absent more, the objectors have not shown that the licensee has been remiss with respect to the rates charged political advertisers.

Rebroadcast

49. The objectors next allege that WBUZ taped a broadcast of a news "actuality" aired on Station WDOE, Dunkirk, New York, on May 10, 1983, and rebroadcast it without WDOE's consent on May 11, 1983 in violation of §73.1207 (b) of the Commission's Rules. The objectors state that WDOE has an

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[32] A CETA Memorandum (Attachment 9—Affirmation of the Informal Objection to License Renewal Application) alleges that "Hank" (Serafin) stated to CETA, in reference to a referral, that "[the person referred] would make charcoal look white."

[33] In view of licensee's affidavit that it employed no more than four persons full-time, we cannot accept objectors' claim that an unidentified WBUZ employee told them that five persons worked full-time at WBUZ, and we fail to see the relevance of a CETA document dated August, 1980, which shows WBUZ as employing seven persons, since no distinction between full and part-time employees is made therein and the document concerns a period some five months prior to the filing of licensee's renewal application.

exclusive contract with its Albany correspondent for such feeds and such material cannot be sold to any other radio station in the local market. Objectors go on to state that the News Director at WDOE heard the broadcast in question and made a tape of the incident. While the licensee disavows any practice of rebroadcasting other station's material without permission, it does acknowledge the possibility that such a rebroadcast might, because of an errant employee, have occurred on this one occasion. Although it does appear that WBUZ did, in fact violate our stricture against rebroadcast, the objectors have failed to demonstrate how this one violation constitutes a pattern of disregard for Commission Rules or, as alleged, an abdication of license responsibility for control of its station. While we admonish the licensee to ensure future compliance with our rebroadcast rule, we find that this matter does not merit further inquiry since no substantial and material questions of fact remain concerning this incident.

Contest Rule Violations

50. The objectors also note that Station WBUZ conducted a "Valentines" contest prior to February 14, 1984 wherein prizes in various categories were to be awarded. They claim that "the prizes for the winners were to be a Valentine's Day trip to Niagara Falls and a stereo system valued at $500." The objectors further allege that no prizes were awarded, in violation of Section 73.1216 of the Commission's Rules which requires the licensee to "conduct the contest substantially as annonced or advertised." The licensee does not dispute the fact that a contest was held, but it does dispute the fact that any mention was ever made of a stereo as a contest prize, and it does assert that the grand prize of a weekend at the Niagara Hilton in Niagara Falls was awarded. The licensee states that "All of the contest winners were announced over WBUZ including the grand prize winner."

51. It is unclear from the pleadings as to exactly what prizes were to be awarded during the contest in question, with the exception of the grand prize—the weekend in Niagara Falls. While the objectors' accusations with respect to the contest are lean on supporting evidence, the licensee's documentation in response to these accusations is also sparse. The licensee apparently is unable to supply the name of *any* winner of *any* prize supposedly awarded during its self-described "Win For Your Love" Valentine's contest. The licensee has submitted, as an exhibit to its opposition, a copy of a handwritten memo written, it is claimed, (the memo is undated), in February 1984 by the station's then sales manager wherein licensee claims, "Mr. Zatora gives the name of the contest winner," referring to the winner of the weekend at the Niagara Falls Hilton Hotel. The licensee, however, does not anywhere set forth the name of the grand prize winner and the name given in the memo is illegible. Also attached as an exhibit to the opposition is a copy of an undated letter from the Assistant General Manager of the Niagara Hilton awarding the holder of the letter two nights free lodging at the hotel. Again, however, there is no indication as to whom, if anyone, the letter was delivered.

52. While it is understandable that a rather small station such as WBUZ might not have records of all the winners in a promotional contest conducted on the air by the station, we can only conclude that the licensee's failure to supply the name of any winner raises a substantial and material question of fact as to whether the contest was conducted substantially as announced. Accordingly, an appropriate issue will be specified.

Other Matters

53. Also pending is an application for the voluntary assignment of license for WBUZ from Catoctin to Carl G. Timko, a petition to deny the application filed by CCRM and the NAACP, and the licensee's opposition. The petition to deny incorporates by reference the allegations set forth in the objections filed against licensee's renewal applications. A review of that application indicates that Timko is legally, financially and otherwise qualified. However, the Commission's basic policy with regard to applications for change in ownership of a license which has been designated for hearing is that "resolution of outstanding questions concerning the qualifications of licensee-transferors . . . [is] a condition precedent to consideration of a transfer application," *G.A. Richards et al.*, 1 FCC 429, 430 (1950), so that licensees can be "held accountable for their stewardship and will not be allowed to evade the consequence of their misconduct or abuse of a license by selling the station at the end of the license period." *1400 Corp. (KBMI) et al.*, 4 FCC 2d 715, 716 (1966). Thus, the substantial and material questions of fact which exist concerning the qualifications of the current licensee of WBUZ must be resolved before any assignment of license may be considered. Accordingly, consideration of the assignment application must be deferred pending the outcome of the hearing designated herein. If, as a result of that hearing the license renewal application of Catoctin is granted, the assignment application will be considered thereafter.

Conclusion

54. Accordingly, it is ordered, that the informal objections to Catoctin Broadcasting Corp. of New York's 1981 and 1984 license renewal applications for Station WBUZ, Fredonia, New York, filed by the Chautauqua County Rural Ministry, the Dunkirk-Fredonia League of Women Voters, and the Dunkirk Branch of the NAACP, are granted to the extent indicated herein and are otherwise denied; and that each of the foregoing objectors is made a party to the hearing ordered herein.

55. It is further ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above-captioned renewal applications are designated for hearing at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether, during the 1978–1981 and 1981–1984 license terms:

(a) Catoctin Broadcasting Corp. of New York violatd § 73.3526 of the Commission's Rules by not making its general public file available for inspection and/or tendered for inspection a public file which was not complete and;

(b) Whether the local public file of Catoctin Broadcasting Corp. of New York contained all documentation required by § 73.3526 of the Commission's Rules.

(2) To determine whether Catoctin Broadcasting Corp. of New York misrepresented facts to the Commission and/or lacked candor with regard to the following matters concerning the 1978–1981 license term:

(a) Its ascertainment of community leaders, including its community leader checklist;

(b) Its problems/programs list; and

(c) The date or dates on which it placed documentation regarding its ascertainment and problems/programs lists in the public file of Station WRUZ;

(3) To determine whether Catoctin Broadcasting Corp. of New York misrepresented facts to the Commission and/or lacked candor with regard to the consideration for employment and subsequent non-hiring of a black woman by Station WBUZ in October, 1980; and to determine in light thereof whether § 73.2080 of the Commission's Rules was violated.

(4) To determine whether, during the 1981–1984 license term, Catoctin Broadcasting Corporation of New York violated § 73.1216 of the Commission's Rules by failing to conduct a contest substantially as announced.

(5) To determine, in light of the evidence adduced pursuant to issues (1) through (4) above, whether Catoctin Broadcasting Corp. of New York has the requisite qualifications to remain a Commission licensee.

(6) To determine, in light of the evidence adduced pursuant to issues (1) through (5) above, whether the renewal application of Catoctin Broadcasting Corporation of New York should be granted.

56. It is further ordered, that this document constitutes a Notice of Apparent Liability for forfeiture for violation of § 73.3526 and 73.1216 of the Commission's Rules. In so doing, we have determined that in every case designated for hearing involving revocation or denial of assignment, transfer or renewal of license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, we will now, as a matter of course, include this forefeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

57. It is further ordered, that, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof as to issues (1), (2) and (4) shall be on the licensee; with respect to issue (3), the burden of proceeding with the introduction of evidence shall be on the objectors and the burden of proof shall be on the licensee.

58. It is further ordered, That the application for consent to the assignment of license of Station WBUZ from Catoctin Broadcasting Corp. of New York to Carl G. Timko and the petition to deny that application filed by the Chautauqua County Rural Ministry and the Dunkirk Branch of the NAACP be held in abeyance pending the outcome of this proceeding.

59. It is further ordered, that, to avail themselves of the opportunity to be heard, the parties shall file with the Commission, in triplicate, within twenty (20) days of the mailing of this Order, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order, pursuant to § 1.221(c) of the Commission's Rules.

60. It is further ordered, that the licensee shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

61. It is further ordered, that the Secretary of the Commission shall send a copy of this Order, by Certified Mail—Return Receipt Requested to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–11002 Filed 5–6–85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 1, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB No.: 3060–0066

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License

Form No.: FCC 330–R

Action: Revision

Estimated Annual Burden: 35 Responses; 88 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–11003 Filed 5–6–85; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 30, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0282

Title: section 94.17, Shared used of radio stations and the offerig of private carrier communications service

Action: Revision

Respondents: Licensees in the Private Operational-Fixed Microwave Radio Service

Estimated Annual Burden: 300 Recordkeepers; 100 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–11004 Filed 5–6–85; 8:45 am]

BILLING CODE 6712–01–M

Vision Broadcasting Corp. et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85–120.
Vision Broadcasting Corporation.	File No. BPCT–840725KH.
Jean Turner Goins	File No. BPCT–840914KH.
Metro Program Network, Inc..	File No. BPCT–840921KZ.

For Construction Permit Minneapolis, Minnesota.

Adopted: April 22, 1985.

Released: May 1, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Vision Broadcasting Corporation (Vision), Jean Turner Goins (Goins), and Metro Program Network, Inc. (Metro) for authority to construct a new commercial television station on Channel 45, Minneapolis, Minnesota; (2) petition to dismiss or deny the Goins application filed by KSTP–AM, Inc.,[1]

[1] On November 14, 1984, KSTP–AM (KSTP) filed a petition to dismiss or deny Goins' application on the ground that Goins' proposed tower will reradiate KSTP's nighttime signal, thus adversely affecting the nighttime antenna array performance. On December 7, 1984, Goins amended her application to set out specific procedures it will undertake to protect KSTP's signal. KSTP filed a reply conditionally withdrawing its petition if certain conditions are imposed on any grant of Goins' application. While we are not imposing the exact conditions requested (which set out specific procedures), we will impose our standard condition for such cases. The standard condition does not impose any pre-determined procedures but places an obligation on the television applicant to take all necessary steps to eliminate any reradiation problems that may occur The petition to deny will be dismissed.

and (3) an informal objection filed by Vision against Metro.

2. On November 14, 1984, Vision filed a letter with the Commission calling to the Commission's attention the fact that Metro's application (BPCT-830607KF) for a construction permit for a new television station in St. Joseph, Missouri, was designated for comparative hearing (on January 10, 1984) and that a misrepresentation issue was added against Metro by the presiding Administrative Law Judge (MM Docket No. 83-1394). The issue was based on the fact that, at the time the St. Joseph application was designated for hearing, Metro had six other applications for new television stations designated for hearing. In four of those cases, Metro submitted identical integration proposals which stated that Gerald Fitzgerald, Metro's sole stockholder, would work full time at the station as General Manager. As the result of a settlement agreement, Metro's St. Joseph application was dismissed and the misrepresentation issue was never tried. An identical issue, however, was added against Metro in the comparative proceedings for a new television station in Cedar Rapids, Iowa (MM Docket No. 83-1369) and in Ames, Iowa (MM Docket No. 83-1164). Both of these cases were settled pursuant to settlement agreements with Metro remaining as the sole surviving applicant. The issue was tried in the Cedar Rapids proceeding and was resolved in Metro's favor; both the Cedar Rapids and Ames applications were granted. Therefore, the letter (objection) filed by Vision in this proceeding, requesting specification of an identical issue against Metro, will be dismissed as moot.

3. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television serivce of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Each of the applicants proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of any of the applications, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

5. Goins' proposed tower is to be located 2 miles from the directional array of AM station KSTP, St. Paul, Minnesota. Because of the proximity of the applicant's proposed tower to KSTP, any grant of a construction permit to this applicant will be conditioned to ensure that KSTP's radiation pattern is not adversely affected by the construction of the proposed station.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

8. It is further ordered, That, the petition to dismiss or deny filed by KSTP-AM, Inc. against Jean Turner Goins is dismissed.

9. It is further ordered, That the Informal Objection filed by Vision Broadcasting Corporation against Metro Program Network, Inc. is dismissed, as moot.

10. It is further ordered, That in the event of a grant of Vision Broadcasting Corporation's application, the construction permit shall contain the following condition:

> Subject to the condition that operation with effective radiated visual power in excess of 1000 kW after November 1, 1986 is subject to a further extension of consent by Canada.

11. It is further ordered, That in the event of a grant of either Jean Turner Goins' application or Metro Program Network's application, the construction permit shall contain the following condition:

> Subject to the condition that operation with effective radiated power in excess of 1000 kW is subject to the consent of Canada.

12. It is further ordered, That any grant of a construction permit to Jean Turner Goins will be subject to the following condition:

> Prior to construction of the tower authorized herein, permittee shall notify AM Station, KSTP, St. Paul, Minnesota, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the Am station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

13. It is further ordered, That to avail themselves to the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicant herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-11001 Filed 5-6-85; 8:45 am]

BILLING CODE 6712-01-M

WPOW, Inc., et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85-114
WPOW, Inc., WHAZ, East Greenbush, New York: Has: 1330 kHz, 1 kW, D; Req: 640 kHz, 1 kW, 5 kW-LS, DA-N U.	File No. BP-810320AB.
George Kimble, Alan Gerry, Craig Fox and Russell Kimble d/b/a Cohoes Broadcasting Associates, Cohoes, New York: Req: 640 kHz, 1 kW, KW-LS, DA-2, U.	File No. BP-810806AC.
Celia Communications, Inc., WLDM, Westfield, Massachusetts: Has: 1570 kHz, 2.5 kW, D; Req: 640 kHz, 1 kW, 50 kW-LS, DA-2, U.	File No. BP-811231AE.

Adopted: April 11, 1985.

Released: April 26, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of WPOW, Inc. (WPOW), George Kimble, Alan Gerry, Craig Fox and Russell Kimble, d/b/a Cohoes Broadcasting Associates (Cohoes), and Celia Communications, Inc. (Celia). Also before the Commission are motions for leave to amend, filed by Cohoes and Celia, and an opposition to each of these motions filed by WPOW.[1]

2. The last date on which to file amendments as a matter of right ("B" cut-off date) was November 14, 1984. On February 21, 1983, Cohoes tendered an amendment which adjusted its daytime directional antenna pattern to eliminate conflicts with the proposals filed by Clinton Radio Associates, Clinton, Massachusetts (File No. BP-810806AO) and Mount Holly Radio Co., Mount Holly, New Jersey (File No. BP-810806BC).[2] Cohoes asserts that there is good cause, under § 73.3522(a)(2) of the Commission's Rules, to accept the engineering amendment because it increases protection to the Mount Holly and Clinton applicants.

3. On September 28, 1984, Celia submitted an amendment to its engineering statement which also eliminated a prior conflict with the Clinton and Mount Holly proposals. Celia states that its amendment not only resolves the conflict with these applicants, but also provides additional protection to a second adjacent channel, Station WKND, Windsor, Connecticut, and thus, meets the requirements of § 73.3522(a)(2).

4. WPOW's opposition to Cohoes' and Celia's motions are similar and will be considered here together. WPOW's argument that the amendments should not be accepted is premised on three factors:[3] (1) inexcusable delay by the applicants in tendering the amendments; (2) a failure of either applicant to demonstrate "good cause" for acceptance; (3) prejudice to WPOW's comparative status.

5. WPOW's first argument, that of inexcusable delay, is without merit. Unresolved questions between the United States and Canada concerning applicable protection standards prevented the processing of some clear channel applications, including those considered here, until the United States-Canadian Agreement was signed on January 17, 1984. Thus, the time lapse in filing the amendments[4] caused no undue delay, since we were unable to consider the applications until the Canadian issue had been resolved.

6. Good cause to amend applications after the cut-off date is determined on a case-by-case basis. Good cause is construed in light of the purpose of the cut-off rules, which is to prevent unreasonable distruption of the Commission's administrative function. *See, Gross Broadcasting Co.*, FCC 79-716, 46 RR 2d 1093 (1979). So long as our processes are not delayed, and they were not here, it is our loingstanding policy to consider as good cause the elimination of conflicts with other proposals.

7. WPOW's third argument is that acceptance of the other applicants' amendments will detrimentally affect WPOW's comparative position. Prior to the amendments, WPOW's application was the only one of the three that did not conflict with the Mount Holly or Clinton proposal.[5] WPOW claims that it will lose its right to a comparative preference based upon efficiency of use in frequencies if Cohoes' and Celia's motions are granted.

8. WPOW's assertion that it is entitled to such a comparative preference is speculative. In *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965), efficient use of frequencies was deemed to be a comparative consideration, but the Commission declined to delineate the circumstance which would constitute an actual preference. It is far from certain that if pre-amendment conditions were maintained, WPOW would in fact receive a comparative preference. WPOW's claim of prejudice is governed by the holding of *Fine Music, Inc.*, 8 FCC 2d 1018 (Rev. Bd. 1967), where the same argument advanced now by WPOW was rejected. In that case, applicant A was mutually exclusive with applicant B; B, in turn, was mutually exclusive with applicant C. The Board allowed B to amend it application after the cut-off date to eliminate the conflict with C, despite A's assertion of prejudice, stating, "While [A] may be prejudiced to the extent that the amendment will eliminate the mutual exclusivity between the [B] and [C] proposals, we do not regard this as the type of prejudice which should dictate the denial of the amendment . . . ." *Id.* at 544.

9. In light of the above, WPOW has failed to demonstrate that the amendments tendered by Cohoes and Celia will result in unfair prejudice or confer any comparative advantage. WPOW's oppositions to the motions for leave to amend are therefore denied. The amendments filed by Cohoes and by Celia are hereby accepted for filing.

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[1] By letter of December 5, 1984, we independently denied a petition for leave to amend filed on behalf of WPOW. WPOW had requested permission to convert its application from one seeking major changes in an existing facility to one seeking a new facility. WPOW also asked the Commission to authorize the assignment of WPOW's existing license to a qualified minority person or group, should the instant application be granted.

On January 4, 1985, WPOW filed an application for review of our decision. The ultimate resolution of this application could result only in a change in the characterization of WPOW's proposal, from one for major modification to one for a new facility. It would not impact upon the parties or issues set for hearing in this Order in a manner justifying delay. We will therefore designate the proposals for hearing at this time. WPOW should kep the presiding Administrative Law Judge appraised of the status of the process of review.

[2] The amendment also corrected an error in the original coordinates; this portion of the amendment is unopposed by WPOW.

[3] WPOW also contends that Celia's proposal causes an increase in interference to Station WBSO, Clinton, Massachusetts, and thus, Celia violates § 73.37 of the Commission's Rules insofar as that station is concerned. Since a waiver of § 73.37(a) is granted to Celia, *infra*, in paragraph 10 of this Order, that argument is moot.

[4] In its opposition, WPOW erroneously states that Cohoes' cut-off date was November 5, 1981. All three applicants were subject to a cut-off date of November 14, 1983.

[5] Clinton's proposal was subsequently granted.

10. Celia has requested a waiver of Section 73.37(a) of the Commission's Rules, so as to permit overlap up to the 1.0 mV/m contour with first adjacent channel Station WBSO, Clinton, Massachusetts. At the time the Clinton application was granted, the Mass Media Bureau indicated, by letter of May 7, 1984, that is would grant such a waiver to Celia. Section 73.37(b) permits a first primary broadcast service applicant to receive overlap up to its 1.0 mV/m contour from co-channel stations. Section 73.37(b) is silent with respect to two timely-filed, co-pending, first adjacent channel proposals. However, the Commission has applied the spirit of Section 73.37(b) and waived Section 73.37(a) to eliminate the mutual exclusivity in situations such as this. Letter to *Sundial Broadcasting Co.*, Parma, Ohio, File No. BP-17121, Mimeo #87242, FCC 66-747 (August 17, 1966); *Kittyhawk Broadcasting Corp.*, 8 FCC 2d 342 (Rev. Bd. 1967). Accordingly, a waiver is hereby granted to Celia.

11. Section II, page 5, of the 1977 version of the application form (FCC form 301) requires a listing of all other broadcast interests held by the applicant. Celia's application indicates that Curtis H. Hahn holds 450 shares of Capital Cities common stock, but does not state what percentage of shares this constitutes. Celia must therefore file this information with the presiding Administrative Law Judge within thirty days of the release of this Order. If the 450 shares of stock constitute an attributable interest, Celia must submit a list of all broadcast stations owned by Capital Cities to the presiding Administrative Law Judge within thirty days of the release of this Order.

12. The environmental narrative statement submitted by Cohoes did not contain a statement as to the zoning classification of the construction site, as required by § 1.3111(a)(3) of the Commission's Rules. Accordingly, Cohoes will be required to comply with § 1.3111(a)(3) and file the required environmental narrative statement with the presiding Administrative Law Judge within thirty days of the release of this Order. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Section 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See, Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub. nom., Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

13. Section 73.3580 of the Commission's Rules requires broadcast applicants to publish a local notice of the filing of their applications. We have no evidence that WPOW has complied with the Rule; this applicant must therefore comply with the Rule, if it has not, and file the required certification with the Administrative Law Judge within thirty days of the release of this Order.

14. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for a hearing in a consolidiated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

15. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, as a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the proposal of George Kimble, Alan Gerry, Craig Fox and Russell Kimble d/b/a Cohoes Broadcasting Associates which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1.1319 of the Commission's Rules; and

(b) Whether in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

2. To determine (a) the areas and populations which would receive primary aural service from the proposal of Cohoes Broadcasting Associates and the availability of other primary service to such areas and populations, (b) the areas and populations which would gain or lose primary aural service from the remaining proposals and the availability of other primary service to such areas and populations, and (c) in light thereof, and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

16. It is further ordered, That the motion for leave to amend filed by George Kimble, Alan Gerry, Craig Fox and Russell Kimble d/b/a Cohoes Broadcasting Associates IS GRANTED and the accompanying amendment IS ACCEPTED FOR FILING.

17. It is further ordered, That the motion for leave to amend filed by Celia Communications, Inc. IS GRANTED and the accompanying amendment is accepted for filing.

18. It is further ordered, That the request by Celia Communications, Inc. for waiver of § 73.37(a) of the Commission's rules is granted.

19. It is further ordered, That Celia Communications, Inc. must amend its application to specify the percentage of shares of Capital Cities stock owned by Curtis H. Hahn; if those shares constitute an attributable interest, Celia Communications, Inc. must submit a list of all broadcast interests held by Capital Cities. This amendment shall be submitted to the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

20. It is further ordered, That § 1.1317 of the Commission's Rules IS WAIVED to the extent indicated herein. Within thirty (30) days of the release of this Order, George Kimble, Alan Gerry, Craig Fox and Russell Kimble d/b/a/ Cohoes Broadcasting Associates shall submit the environmental impact information as set out in paragraph 12 above, and required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy of the Chief, Audio Services Division.

21. It is further ordered, That WPOW, Inc. comply with the public notice requirements of § 3.3580 of the Commission's Rules, if it has not done so, and certify as to that fact with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

22. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief,

Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

23. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified in this Order.

24. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-11000 Filed 5-6-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Alpha Cargo Service Corp. et al.; Reissuance of License

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No	Name/address	Date reissued
1308-R	Alpha Cargo Service Corporation, 1222 E. Imperial Avenue, El Segundo, CA 90245.	Mar. 1, 1985
106b-R	Chatham Service Corporation, 310 East Bay, Savannah, GA 31402	Mar 29, 1985

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-11029 Filed 5-6-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; E. H. Harrington & Co. et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1987
Name: Edward H. Harrington, Jr., dba E. H. Harrington & Co.
Address: P.O. Box 014838, Miami, FL 33101
Date Revoked: March 1, 1985
Reason: Voluntarily requested revocation.

License Number: 2163-R
Name: Commerce & Transport International, Inc.
Address: 8505 Freeport Parkway, Irving, TX 75063
Date Revoked: March 15, 1985
Reason: Surrendered license voluntarily

License Number: 1940
Name: Transport Industries, Inc.
Address: Light & Redwood Sts., Baltimore, MD 21202
Date Revoked: March 15, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1677
Name: Thomas A. Farrelly Co., Inc.
Address: 2261 Broadbridge Ave., Stratford, CT 06497
Date Revoked: March 16, 1985
Reason: Failed to maintain a valid surety bond

License Number: 728
Name: A. P. Roman Co., Inc.
Address: One World Trade Ctr., ±4539, New York, NY 10048
Date Revoked: March 22, 1985
Reason: Failed to maintain a valid surety bond

License Number: 75
Name: Cohen & Mann, Inc.
Address: 7 Dey St., Rm. 901, New York, NY 10007
Date Revoked: March 24, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2780
Name: Island Forwarders, Inc.
Address: Five Palm Court, Isle of Palms, SC 29451
Date Revoked: March 27, 1985
Reason: Surrendered license voluntarily

License Number: 2067
Name: Fuller's Earth Forwarders, Inc.
Address: 7303 79th Avenue, Maimi, FL 33166
Date Revoked: April 3, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2857
Name: Thru-Container International, Inc.
Address: One Industrial Park Rd., Hammond, LA 70401
Date Revoked: April 4, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2200
Name: Mark V. Systems, Inc.
Address: 406 N. Oak Street, Inglewood, CA 90302
Date Revoked: April 6, 1985
Reason: Failed to maintain a valid surety bond

License Number: 269
Name: Mohegan International Corporation
Address: 61 Broadway, New York, NY 10006
Date Revoked: April 8, 1985
Reason: Voluntarily requested revocation

License Number: 2382
Name: Aut Texas, Inc.
Address: 2000 Post Oak Blvd., Houston, TX 77056
Date Revoked: April 10, 1985
Reason: Surrendered license voluntarily

License Number: 2552
Name: Jovel Forwarders, Inc.
Address: 7448 N.W. 55th St., Miami, FL 33166
Date Revoked: April 16, 1985
Reason: Surrendered license voluntarily

License Number: 2512
Name: Southland International Forwarding, Inc.
Address: 101 No. Front Street, 405, Wilmington, NC 28402
Date Revoked: April 18, 1985
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-11028 Filed 5-6-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Unit International Inc.; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Unit International Incorporated
c/o 2001 N. Ellis Road, Jacksonville, FL 32205
Officers:
Milton Frederick Whelan, President

Warrern P. Powers, Director
Duane L. Ottenstroer, Director
Dale J. Brady, Treasurer
Bruce R. Abels, Secretary
Moving and Packing (M.A.P.) International, Inc.
2303 Nance Street, Houston, TX 77020
Officers:
Jose Miranda, President
Elsa Miranda, Vice President
Mark S. Heep, Secretary
Butler Forwarding International
1809 Mayfair Road,
Jacksonville, FL 32207
Larry Wayne Butler, Partner
Peggy Jean Butler, Partner
E.A.C. International Freight Forwarder, Inc.
1502 Zoreta Drive, Coral Gables, FL 33146
Officers:
Emila A. Clough, President/ Secretary
Harold J. Clough, Jr., Vice President/ Treasurer
Concorde International Freight Forwarding, Inc.
6005 N. Shepherd Drive, G–3, Houston, TX 77091
Officers:
Raymond Doherty, President
Teresa Doherty, Vice President
Emmett Doherty, Treasurer
Andrea Doherty, Secretary
G&A Freight Forwarding Corp.
5109 SW 5th Street, Miami, FL 33134
Officer: Gladys Medina Maitin, President
HIP Forwarding Co., Inc.
One World Trade Center, # 2557, New York, NY 10048
Officers:
Harold I. Pepper, President
Frank A. Prackler, Vice President
Rosanne M. Moss, Secretary/ Treasurer
Bridge International Forwarders, Inc.
11780 SW. 16th, Miami, FL 33175
Officer: Fernando Martinez, Secretary
I. Michael Wolinski
100 Montgomery Lane, Glenview, IL 60025
Mark Alan Roberts
702 Larkspur, Corona Del Mar, CA 92625
Larry Bernard Kaplan
37 Hannah Drive, Dayton, OH 08810
Carolina Western, Inc.,
Rte. 3, Rutledge Lzake Road, Greenville, SC 29602
Officers:
Charles F. Travis, President
Larry W. Byars, Vice President
Helena T. Travis, Secretary
United Freight Systems
145 Hook Creek Blvd., Valley Stream, NY 11851
Officer: Erling C. Kristiansen, President
Cargo-Ships-Brokers, Inc.
2100 N. Central Road, Fort Lee, NJ 07024
Officers:
Joachim J. Schulz-Heik, President
Michael F. Magnus, Vice President
Peter Till, Vice President

By the Federal Maritime Commission.

Dated: May 2, 1985.

Bruce A. Dombroski,

Acting Secretary.

[FR Doc. 85–11027 Filed 5–6–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased on unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, and *Chase Manhattan National Corporation*, both located in New York, New York, to engage *de novo* in providing as agent or broker credit-life, accident, health and credit related involuntary unemployment insurance.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Riverdale Bancorporation, Inc.*, Riverdale Illinois, to engage *de novo* directly in the activities of leasing personal and real property.

Board of Governors of the Federal Reserve System, May 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 10978 Filed 5–6–85; 8:45 am]

BILLING CODE 6210-01-M

Comerica Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire 25 percent of the voting shares of Michigan National Corporation, Bloomfield Hills, Michigan, thereby indirectly acquiring Michigan National Bank of Detroit, Detroit, Michigan National Bank, Lansing; Michigan National Bank-Oakland, Southfield; Michigan National Bank-Mid Michigan, Flint; Michigan National Bank-North Metro, Troy; Michigan National Bank-West Metro, Livonia; Michigan Bank-Port Huron, Port Huron; Michigan National Bank-Central; Wyoming; Michigan National Bank-Valley, Saginaw; Michigan National Bank of Macomb, Warren; Michigan National Bank-South Metro, Dearborn; Michigan National Bank-Michiana, Cassopolis; Michigan National Bank-West Oakland, Novi; Michigan National Bank-West, Kalamazoo; Michigan National Bank-Ann Arbor, Ann Arbor; Michigan National Bank-Sterling, Sterling Hights; Michigan National Bank-Mid South, Litchfield; Michigan National Bank-Grand Traverse, Traverse City; Michigan National Bank-Livingston, Brighton; Michigan National Bank-Huron, East Tawas; Michigan National Bank-Farmington, Farmington Hills; Michigan National Bank-Midland, Midland; Michigan National Bank-North, Petoskey; and Michigan National Bank-Midwest, Jackson, all located in Michigan.

Additionally, Comerica Incorporated has applied under sections 4(c)(8) and 4(c)(13) to acquire the following nonbank companies: Michigan National Investment Corporation, Bloomfield Hills, Michigan (trust investment management for individuals, employee benefit funds, charitable foundations and other institutional accounts); MNC Banks International Finance Corporation, N.V., Curacao, Netherlands Antilles (borrowing funds from the Eurodollar market to lend the proceeds to affiliates); MNC Leasing Company, Farmington Hills, Michigan (leasing business, manufacturing and professional equipment); and Wolverine Life Insurance Company, Bloomfield Hills, Michigan (reinsuring credit life and credit disability insurance on consumer loans).

Board of Governors of the Federal Reserve System, May 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–10977 Filed 5–6–85; 8:45 am]

BILLING CODE 6210-01-M

Lincolnshire Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 29, 1985.

A. **Federal Reserve Bank of Chicago** Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincolnshire Bancshares, Inc.,* Lincolnshire, Illinois; to become a bank holding company by acquiring 70 percent of the voting shares of First National Bank of Lincolnshire, Lincolnshire, Illinois.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *South Central Financial Services, Inc.,* Bricelyn, Minnesota; to become a bank holding company by acquiring 98.5 percent of the voting shares of State Bank of Bricelyn, Bricelyn, Minnesota.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis Missouri 63166:

1. *Bank of Dardanelle Bankshares, Inc.,* Dardanelle, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Dardanelle, Dardanelle, Arkansas.

Board of Governors of the Federal Reserve System, May 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–10979 Filed 5–6–85; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) (2) or (f) of the board's Regulation Y (12 CFR 225.23 (a) (2) or (f) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1985.

A. **Federal Reserve Bank of Kansas city** (Thomas M. Hoenig, Vice President) 925 Grand avenue, Kansas city, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to retain ownership of Lincoln Agency, Inc., Denver, Colorado, thereby engaging in a full range of general insurance agency activities, including acting as agent or broker in the sale of all types of personal and commercial insurance, pursuant to section 4(c) (8) (g) of the Ban Holding Company Act.

Board of Governors of the Federal Reserve System, May 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10980 Filed 5-6-85; 8:45am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 14]

Changes to Federal Travel Regulations

Correction

In FR Doc. 85-9488 beginning on page 15702 in the issue of Friday, April 19, 1985, make the following corrections:

1. On page 15709, in the first column, under paragraph (4), the mathematical sign appearing in the denominator of the applied formula should be a "minus" sign instead of the "multiplication" sign shown.

2. On page 15709, in the second column, in paragraph g, in the eleventh line, "of" should read "for"; and in the twelfth line "withhold" should read "withholding".

3. On page 15709, in the third column, in the certified statement in 2-11.10a., between the 13th and 14th lines, insert the headings "*Forms W-2*" and "*Schedule SE*" above the second and third columns, respectively.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Crufomate Liquid (Ruelene Wormer Drench); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Dow Chemical U.S.A. for use of crufomate liquid (Ruelene Wormer Drench) as an anthelmintic for cattle, sheep, and goats. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: May 17, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857. 301-443-1846.

SUPPLEMENTARY INFORMATION: Dow Chemical U.S.A., Midland, MI 48640, is sponsor of NADA 13-514 for crufomate liquid (Ruelene Wormer Drench). The drug, used as an anthelmintic for cattle, sheep, and goats, was originally approved January 14, 1986. Approval of this NADA is codified in 21 CFR 520.512. In a letter dated January 11, 1985, the sponsor requested withdrawal of approval of the NADA under 21 CFR 514.115 because the drug is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13-514 for crufomate liquid (Ruelene Wormer Drench) is hereby withdrawn, effective May 17, 1985.

Dated: April 30, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-10765 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Task Force on Organ Transplantation; Announcement of Public Hearing

The Task Force on Organ Transplantation announces that it will hold a public hearing on May 22, 1985, beginning at 9:00 a.m. and ending no later than 4:30 p.m., at the University of Illinois Health Sciences Center, 833 South Wood Street, Room 150-E, Chicago, Illinois 60612.

The primary subject of this hearing will be immunosuppressive therapies used to prevent organ rejection and, in particular, identification of problems that patients encounter in obtaining and paying for immunosuppressive medications. To the extent that time permits, the Task Force will also take testimony about problems patients and families encounter in gaining access to and paying for organ transplantation.

Note.—A hearing will be held at a later date to gather additional information relating to access and other transplantation issues.

Organizations and individuals wishing to testify on immunosuppressive therapies will be given first priority in appearing before the Task Force. Persons wishing to testify on access to transplantation will be taken on a first come, first served basis, as time permits. Once final arrangements have been made, those persons who expressed a desire to testify will be notified of the time limitations and other procedures that will apply to the hearing. For example, we intended to limit the number of persons who may testify on behalf of any one organization.

Members of the public wishing to testify should call Ms. Linda D. Sheaffer, Executive Director of the Task Force on Organ Transplantation, no later than May 15 at 301/443-7577. Witnesses unable to present testimony during this public hearing may send it, or other relevant information, to: Task Force on Organ Transplantation, Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, Parklawn Building, Room 17-60, Rockville, Maryland 20857.

Dated: May 2, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85-11122 Filed 5-6-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-20347]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise, Graham, and Greenlee Counties, AZ

Correction

In FR Doc. 85-10046 beginning on page 16357 in the issue of Thursday, April 25, 1985, make the following corrections:

1. On page 16357, third column, under the heading for "(*Cochise Group*)", fifth line, the second "NE¼" should read "NW¼". Also, in the land description beginning T. 19 S., R. 22 E., Sec. 19,

"SE¼" should read "NE¼" and "E½NE¼" should be removed.

2. On page 16358, first column, second line, the first "E½" should be removed.

3. On the same page, second column, land description beginning T. 16 S., R. 30 E., Sec. 11, "N¼" should read "N½".

BILLING CODE 1505-01-M

Bureau of Reclamation

Municipal and Industrial System, Bonneville Unit, Central Utah Project, UT; Intent To Prepare a Supplement to the Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, and pursuant to § 1502.9(c) of the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," the Department of the Interior proposes to prepare a supplement to the final environmental statement (FES 79-55, filed with EPA October 1979) for the Central Utah Project, Bonneville Unit, Municipal and Industrial (M&I) System.

The purpose of the supplement will be to report and evaluate the environmental impacts of proposed modifications to the M&I System plan and impacts not previously covered by the FES. Such items will include relocating U.S. Highway 189 along an alignment different from that described in the FES, adjustments in the reservoir management boundary, assessing the impacts of the water quality management plan for proposed Jordanelle Reservoir, refinements to the fishery mitigation plan for the Provo River between the proposed Jordanelle Reservoir and the existing Deer Creek Reservoir, eliminating boating and tubing from the recreation plan on the Provo River, changes in the wildlife mitigation plan resulting chiefly from road relocations, and any operational changes that may be required in consideration of revised M&I water delivery points or in consideration of instream flow requirements of the June Sucker, a fish recently proposed for listing as an endangered species under the Endangered Species Act.

The Bureau of Reclamation plans to process the supplement in a manner similar to a regular environmental statement. The draft supplement is scheduled to be available for public review and comment about January 1986. Public hearings will likely be held during February or March of 1986. The exact dates, places, and times for the hearing will be announced at a later date.

Contact person for the supplement to the FES is Mr. Jay Henrie, Bureau of Reclamation, 302 East 1860 South, Provo, Utah 84601. Telephone (801) 379-1172 or (801) 379-1000.

Dated: May 1, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-10988 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Migratory Bird Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent that certain areas will not be opened for migratory bird hunting.

SUMMARY: This notice contains an announcement that the waterfowl hunting season will not be opened on selected areas for the 1986-87 hunting season unless the states involved approve the use of non-toxic shot on the identified areas. This action is taken to minimize lead poisoning in waterfowl and bald eagles in specific parts of the nation where significant problems have been identified and to provide sufficient advanced notice of this action to waterfowl hunters.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Officer of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, Telephone (202) 254-3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service has recently identified five National Wildlife Refuges (NWRs) where continued use of lead shot poses a lead poisoning problem in waterfowl (October 30, 1984: 49 FR 43570-74) and areas in 30 counties in eight states where the continued use of lead shot shell pellets poses a lead poisoning threat to bald eagles (49 FR 43571; September 14, 1984: 49 FR 36273-76 and 49 FR 36290-93; February 13, 1985: 50 FR 6017-22).

The five refuges proposed in 49 FR 43570-74 were identified on the basis of data obtained from a waterfowl monitoring program implemented in 1983 on 19 areas. The five NWRs were Missisquoi (Vermont); Stillwater (Nevada); Benton Lake (Montana); and Tule Lake and Lower Klamath (California). The data obtained from this monitoring were shared with state wildlife agency officials in each of the states in which monitoring was conducted.

The areas for the bald eagle, an endangered species in some areas, were identified on the basis of several indicators as described in 50 FR 6017-6022.

The States of California, Montana and Nevada have declined to implement the FWS proposal for waterfowl hunting for the identified NWRs within their states (50 FR 5759-5764). The states of California, Oregon, Illinois, Missouri, and Oklahoma have also declined to implement non-toxic shot in the areas identified within their state in the bald eagle proposal (50 FR 6017-6022). A number of reasons were given for the state denials and these were either summarized in 50 FR 5759-5764 or occur in letters on file in FWS (MBMO). Additional information on these denials ~~will~~ appear in the **Federal Register** in the amended final rules concerning zones in which non-toxic shot will be required for waterfowl hunting in the 1985-86 hunting season.

The FWS feels, however, that the monitoring data for the identified refuges in California, Nevada, and Montana indicate that the continuation of lead shot use in these areas will exacerbate a biologically unacceptable situation and contribute to further lead poisoning on those areas. In addition, the FWS further feels that its conservation responsibilities for the bald eagle are such that the agency cannot wait indefinitely for a reduction in lead shot use in the identified areas in California, Oregon, Illinois, Missouri, and Oklahoma.

The Department's Appropriation Act precludes the Service from requiring the use of steel shot without state approval. Specifically, the Act states that no funds appropriated by this Act shall be available for the implementation or enforcement of any rule or regulation of the U.S. Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any state of the United States unless the appropriate state regulatory authority approves such implementation and enforcement. It does not, however, restrict the Service's authority under the Migratory Bird Treaty Act (MBTA) to leave an area closed to migratory bird hunting. Under the MBTA, all areas of the country are closed to migratory bird hunting unless specifically opened for such hunting through annual migratory bird hunting regulations. Given the biological data before the Service on lead poisoning in the above referenced areas and the decision of the affected states to reject the use of non-toxic shot, the Service has concluded that it has no choice but

to keep the areas closed to hunting altogether.

Accordingly, under authority vested by the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, the Endangered Species Act, and the National Wildlife Refuge Administration Act of 1966, the FWS hereby notifies the aforementioned states and other interested persons that it will propose not to open the refuges and eagle areas in question to waterfowl hunting during the 1986–87 hunting season unless the states take action to approve the use of non-toxic shot on those areas prior to that time.

Dated: May 2, 1985.

Ronald E. Lambertson,

Director.

[FR Doc. 85-11012 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Alabama et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 27, 1985. Pursuant to § 6013 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 22, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Tuscumbia, *Tuscumbia Historic District,* Roughly bounded by N. & E. Commons, Eight St. and Spring Rd., Hooks, W. 5th & S. Milton including Steel Bridge

Pickens County

Carrollton, *Stewart-Blanton House,* AL 86

ALASKA

Upper Yukon Division

Central, *Central House (Proposed Move),* Mile 128, Steese Hwy.

INDIANA

St. Joseph County

South Bend, *All American Bank Building (Downtown South Bend Historic MRA),* 111 W. Washington

South Bend, *Berteling Building (Downtown South Bend Historic MRA),* 228 W. Colfax

South Bend, *Blackstone-State Theater (Downtown South Bend Historic MRA),* 212 S. Michigan

South Bend, *Boswell, D. A., Building (Downtown South Bend Historic MRA),* 213–217 S. Main St.

South Bend, *Cathedral of St. James and Parish Hall (Downtown South Bend Historic MRA),* 117 N. Lafayette and 115 N. Lafayette

South Bend, *Central High School & Boys Vocational School (Downtown South Bend Historic MRA),* 115 N. St. James Court

South Bend, *Citizens Bank (Downtown South Bend Historic MRA),* 112 W. Jefferson

South Bend, *Colfax Theater (Downtown South Bend Historic MRA),* 213 W. Colfax

South Bend, *Commerical Building (Downtown South Bend Historic MRA),* 226 W. Colfax

South Bend, *Formers Security Bank (Downtown South Bend Historic MRA),* 133 S. Main St.

South Bend, *Federal Building (Downtown South Bend Historic MRA),* 204 S. Main

South Bend, *Former First Presbyterian Church (Downtown South Bend Historic MRA),* 101 S. Lafayette

South Bend, *Hager House (Downtown South Bend Historic MRA),* 415 W. Wayne

South Bend, *Hinkle, W. R., and Co. (Downtown South Bend Historic MRA),* 225 N. Lafayette

South Bend, *Hoffman Hotel (Downtown South Bend Historic MRA),* 120 W. LaSalle

South Bend, *I & M Building (Downtown South Bend Historic MRA),* 220 W. Colfax

South Bend, *J. M. S. Building (Downtown South Bend Historic MRA),* 108 N. Main

South Bend, *Kerr, John G., Company (Downtown South Bend Historic MRA),* 121 W. Colfax

South Bend, *Knights of Columbus-Indiana Club (Downtown South Bend Historic MRA),* 320 W. Jefferson Blvd.

South Bend, *Knights of Pythias Lodge (Downtown South Bend Historic MRA),* 224 W. Jefferson

South Bend, *LaSalle Annex (Downtown South Bend Historic MRA),* 306 N. Michigan

South Bend, *LaSalle Hotel (Downtown South Bend Historic MRA),* 237 N. Michigan

South Bend, *Morey House (Downtown South Bend Historic MRA),* 110–112 Franklin Pl.

South Bend, *Morey-Lampert House (Downtown South Bend Historic MRA),* 322 Washington

South Bend, *Morningside Club Residence (Downtown South Bend Historic MRA),* 413 W. Colfax

South Bend, *Northern Indiana Gas and Electric Company Building (Downtown South Bend Historic MRA),* 221 N. Michigan

South Bend, *Palace Theater (Downtown South Bend Historic MRA),* 211 N. Michigan

South Bend, *Second St. Joseph Hotel (Downtown South Bend Historic MRA),* 117–119 W. Colfax

South Bend, *Soldier and Sailor Monument (Downtown South Bend Historic MRA),* 206 W. Washington

South Bend, *South Bend Remedy Company (Downtown South Bend Historic MRA),* 220 W. LaSalle

South Bend, *Summers-Longley House-Building (Downtown South Bend Historic MRA),* 312–314 W. Colfax

South Bend, *Third St. Joseph County Courthouse (Downtown South Bend Historic MRA),* 105 S. Main St.

South Bend, *Tower Building (Downtown South Bend Historic MRA),* 216 W. Washington

LOUISIANA

Orleans Parish

New Orleans, *Uptown New Orleans Historic District,* Roughly bounded by Louisiana, Claiborne, Lowerline and the Mississippi River

MICHIGAN

Ingham County

Mason, *Courthouse Square Historic District (Mason Michigan Historic MRA),* Bounded by Park, E. Columbia, Rodgers and South

Mason, *Ingham County Fairgrounds Grandstand and Track (Mason Michigan Historic MRA),* E. Ash St.

Mason, *Maple Grove Cemetery (Mason Michigan Historic MRA),* W. Columbia St.

Mason, *Merrylees-Post House (Mason Michigan Historic MRA),* 519 W. Ash St.

Mason, *Michigan Central Railroad Mason Depot (Mason Michigan Historic MRA),* 111 N. Mason St.

Mason, *Nice, Philip, House (Mason Michigan Historic MRA),* 321 Center St.

Mason, *Raynor, John, House (Mason Michigan Historic MRA),* 725 E. Ash St.

Mason, *Westside Neighborhood Historic District (Mason Michigan Historic MRA),* Roughly bounded by W. Maple, W. Ash, Lansing and McRoberts Sts.

NORTH CAROLINA

Mecklenburg County

Charlotte, *Trotter, Thomas Building,* 108 S. Tryon St.

[FR Doc. 85-11024 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-70-M

Ice Age National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Ice Age National Scenic Trail Advisory Council will be held May 30–31, 1985, beginning at 1:30 p.m. on May 30 and 9:00 a.m. on May 31 at the Country Inn, 2810 Golf Road, Pewaukee, Wisconsin.

The Commission was originally established on January 19, 1981, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., to advise the Secretary of the Interior on matters relating to the

administration and development of the Ice Age National Scenic Trail.

Matters to be discussed at the May 30 meeting will include development of and funding for the official trail brochure and priorities for trail development statewide. A public information meeting will be held on May 31 which will be followed by short and long hikes on the Waukesha County segment of the trail.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: April 24, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85-11023 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 8:30 a.m., CDT, on Wednesday, May 29, 1985, at the Gary Marquette Park Pavilion, 1 North Grand Boulevard, Gary, Indiana.

The Commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u-7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Bensz
Ms. Anna R. Carlson
Mr. Harry W. Frey
Mr. R. M. Gacki
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Kay M. Rhame
Dr. John Tucker
Mr. Norman E. Tufford.

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report.
2. Superintendent's Report to Commission concerning:

—Update on West Unit Access Road including preliminary assessment by NPS of suggested alternative route.
—Recommendations for format of Superintendent's Advisory Committee.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219-926-7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dunes National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: April 24, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85-11022 Filed 5-6-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-130)]

Seaboard System Railroad, Inc.; Abandonment in Dallas, Wilcox, and Monroe Counties, AL; Findings

The Commission has found that the public convenience and necessity require or permit Seaboard System Railroad, Inc., to abandon its 66.6-mile line of railroad between Corduroy (milepost R-666.3) and Western Junction (milepost R-716.3) and between Camden Junction (milepost CB-670.90) and Camden (milepost CB-687.50) in Dallas, Wilcox, and Monroe Counties, AL. A certificate will be issued authorizing abandonment within 15 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-PFA."

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-11013 Filed 5-6-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extention

Employment Standards Administration
Request for Earnings Information
1215–0112; LS-426
On occasion
Individuals or households
1,900 responses; 475 hours, 1 form.

Report gathers information regarding an employee's average weekly wage. This information is required for determination of compensation benefits in accordance with Section 10 of the Longshore and Harbor Workers' Compensation Act.

Reinstatement

Occupational Safety and Health Administration
Assured Equipment Grounding Conductor Program Records
1218–0062; OSHA 227
Recordkeeping
Businesses or other for-profit; small businesses or organizations
225,000 recordkeepers; 4,875 hours; 0 forms.

Construction employers are required to use one of two different compliance methods, one of which is the assured equipment grounding program. These records are needed so that compliance with the requirement of the assured equipment grounding conductor program can be checked. The records consist of a written description of the employer's program.

Signed at Washington, D.C. this 2nd day of May 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-11035 Filed 5-6-85; 8:45 am]

BILLING CODE 4510-26, 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determiniations regarding eligibility to apply for adjustment assistance issued during the period April 22, 1985–April 26, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales of production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,740; West Point Pepperell, Alamac Division, Ahoskie Plant, Ahoskie, NC

TA-W-15,702; Harwood Companies, Inc., Holston Plant and Marion Plant, Marion, VA

TA-W-15,692; F & L Fashions, Inc., New York, NY

TA-W-15,730; Velnit Knitting Divsion, American Southern Textile Co., Opa Locka, FL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,727; Timberland Company, Newmarket, NH

Separations of workers from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA-W-15,735; National Mines Crop., Isabella Mine, Isabella, PA

A certification was issued covering all workers of the firm separated on or after June 1, 1984 and before March 31, 1985.

TA-W-15,743; Brown Shoe Company, McKenzie, TN

A certification was issued covering all workers of the firm separated on or after January 3, 1984 and before May 1, 1985

TA-W-15,745; D.B. Rosenblatt, Inc., Fergus Falls, MN

A certification was issued covering all workers of the firm separated on or after December 27, 1983 and before January 1, 1985.

TA-W-15,746; D.B. Rosenblatt, Inc., Minneapolis, MN

A certification was issued covering all workers of the firm separated on or after December 27, 1983 and before January 1, 1985.

TA-W-15,737; Prestige Sportswear, Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1984 and before December 31, 1984.

TA-W-15,739; Viner Brothers, Inc., Bangor, ME

A certification was issued covering all workers of the firm separated on or after January 24, 1984.

In hereby certify that the aforementioned determinations were issued during the period April 22, 1985–April 26, 1985. Copies of these determinations are available to inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: April 30, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-11034 Filed 5-6-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Atari, Inc., et al

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 29th day of April 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Atari, Incorporated (workers)	El Paso, TX	4/17/85	4/9/85	TA-W-15,955	Cassettes video games, computer assembly.
BethEnergy Mines, Inc., Mine #84 (UMWA)	Cokeburg, PA	4/18/85	4/16/85	TA-W-15,956	Mine metallurgical coal.
Bethlehem Steel Corp. (IUMSWA)	Sparrows Point, MD	4/25/85	4/23/85	TA-W-15,957	Ocean-going ships, tankers, bulk cargo vessels, ore carriers
Code-A-Phone Corp. (company)	Clackamas, OR	4/25/85	4/22/85	TA-W-15,958	Telephone answering call diverting telephone system equipment.
Commuter Industries, Inc. (company)	Cascade, IA	4/22/85	4/18/85	TA-W-15,959	Three-wheel all terrain vehicles.
Conaway Winter (UFCW)	Willow Springs, MO	4/22/85	4/16/85	TA-W-15,960	Children's shoes.
Eaton Corporation, Engine Component Div. (workers)	Belmond, IA	4/25/85	4/18/85	TA-W-15,961	Engine valves for heavy equipment and aircrafts
International Jensen, Inc. (workers)	Schiller Park, IL	4/16/85	4/10/85	TA-W-15,962	Audio video tuners tv monitor and vcr's for television
Jones & Laughlin Steel Corp., Emerald Mines (UMWA)	Waynesburg, PA	4/17/85	4/12/85	TA-W-15,963	Bituminous coal.
Koppers Co., Inc., Organic materials Group (USWA)	North Tonawanda, NY	4/22/85	4/19/85	TA-W-15,964	Felt paper for roofing.
Luzerne Coal Corp. (UMWA)	East Millsboro, PA	4/22/85	4/16/85	TA-W-15,965	Bituminous Coal Mining.
Nexus Industries, Tropex Togs Div. (company)	Miami, FL	4/17/85	4/12/85	TA-W-15,966	Silk screened T-shirts and sweat shirts type sportswear.
Prince Graphite, Inc. (workers)	El Cajon, CA	4/22/85	4/17/85	TA-W-15,967	Tennis racquets.
Princeton Shirt Co. (ACTWU)	Hopelawn, NJ	4/24/85	4/1/85	TA-W-15,968	Men's shirts.
Texaco, Inc. (workers)	Amarillo, TX	4/22/85	4/10/85	TA-W-15,969	Petroleum refinery.
Uranerz USA, Inc. (workers)	Casper, WY	4/23/85	4/15/85	TA-W-15,970	Uranium research.
United Pioneer Co. (workers)	Waycross, GA	4/18/85	4/1/85	TA-W-15,971	Men's boys jackets and coats.
West Point Pepperell, Grantville Mill (workers)	Grantville, GA	4/23/85	4/18/85	TA-W-15,972	Terry cloth towels and bath mats.
White Stag Manufacturing Co (wkrs)	El Paso, TX	4/22/85	4/15/85	TA-W-15,973	Women's sportswear.

[FR Doc. 85-11046 Filed 5-6-85; 8:45 am]

BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Grants; Request for Comments Pursuant to Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996(1), as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

On or about June 1, 1985, the Legal Services Corporation intends to award one-time grants of $1,000.00 each to 113 LSC legal services programs. These grants will be used to supplement the program's recruitment costs under the Corporation's 1986 Reginald Heber Smith Fellowship Program. The names of the 113 programs are listed as follows:

Recipient name	Basic field per capita 1985
Region I	
Pine Tree Legal Assistance, Inc. in Portland, Maine	7.80
Southeastern Massachusetts Legal Assistance Corporation in New Bedford, Massachusetts	7.80
Western Massachusetts Legal Services, Inc. in Springfield, Massachusetts	7.80
New Hampshire Legal Assistance, Inc. in Concord, New Hampshire	7.80
Region II	
Legal Aid Society of Northeastern New York, Inc in Albany, New York	7.80
Broome Legal Assistance Corporation in Binghamton, New York	7.80
Neighborhood Legal Services, Inc. in Buffalo, New York	7.80
Chautauqua County Legal Services, Inc. in Jamestown, New York	7.80
Mid Mohawk Legal Services, Inc. in Fonda, New York	7.80
Chemung County Neighborhood Legal Services, Inc. in Elmira, New York	7.80
Nassau/Suffolk Law Services Committee, Inc. in Hempstead, New York	7.80
Community Action for Legal Services, Inc. in New York, New York	7.80
Niagara County Legal Aid Society, Inc. in Niagara Falls, New York	7.80
Mid-Hudson Legal Services, Inc. in Poughkeepsie, New York	7.80
Monroe County Legal Assistance Corporation, Inc. in Rochester, New York	7.80
Legal Aid Society of Oneida County, Inc. in Utica, New York	7.80
North Country Legal Services, Inc. in Plattsburg, New York	7.80
Puerto Rico Legal Services, Inc. in Santurce, Puerto Rico	7.80
Santurce Law Office, Inc. in Santurce, Puerto Rico	7.80

Recipient name	Basic field per capita 1985
Region III	
Cape-Atlantic Legal Services, Inc. in Atlantic City, New Jersey	7.80
Bergen County Legal Services in Hackensack, New Jersey	7.80
Hudson County Legal Services Corporation in Jersey City, New Jersey	7.80
Essex-Newark Legal Services Project, Inc. in Newark, New Jersey	7.80
Bucks County Legal Aid Society in Bristol, Pennsylvania	7.80
Community Legal Services, Inc. in Philadelphia, Pennsylvania	7.80
Northern Pennsylvania Legal Services, Inc. in Scranton, Pennsylvania	7.80
Legal Aid of Chester County, Inc. in West Chester, Pennsylvania	7.80
Region IV	
Legal Services of Eastern Michigan in Flint, Michigan	7.80
Legal Services of Central Michigan in Lansing, Michigan	7.80
Lakeshore Legal Services, Inc. in Mt. Clemens, Michigan	7.80
Western Reserve Legal Services in Akron, Ohio	7.80
Stark County Legal Aid Society in Canton, Ohio	7.80
The Legal Aid Society of Columbus in Columbus, Ohio	7.80
Legal Services of Northern Virginia in Arlington, Virginia	7.80
Central Virginia Legal Aid Society in Richmond, Virginia	7.80
Legal Aid Society of New River Valley, Inc. in Christianburg, Virginia	7.80
Tidewater Legal Aid Society in Norfolk, Virginia	7.80
Region V	
Cook County Legal Assistance Foundation in Chicago, Illinois	7.80
Legal Assistance Foundation of Chicago in Chicago, Illinois	7.80

Recipient name	Basic field per capita 1985
Land of Lincoln Legal Assistance Foundation in Alton, Illinois	8.11
Prairie State Legal Services, Inc. in Rockford, Illinois	7.80
West Central Illinois Legal Assistance in Galesburg, Illinois	7.80
Legal Services of Maumee Valley, Inc. in Fort Wayne, Indiana	7.80
Legal Services Program of Greater Gary, Inc. in Gary, Indiana	7.80
Legal Services Organization of Indiana, Inc. in Indianapolis, Indiana	7.80
Legal Services Program of Northern Indiana, Inc. in South Bend, Indiana	7.80
Legal Aid Service of Northeastern Minnesota in Duluth, Minnesota	8.00
Judicare of Anoka County, Inc. in Anoka, Minnesota	7.80
Northwest Minnesota Legal Services, Inc. in Moorhead, Minnesota	7.98
Meramec Area Legal Aid Corporation in Rolla, Missouri	[illegible]
Legal Aid of Southwest Missouri in Springfield, Missouri	7.97
Wisconsin Judicare, Inc in Wausau, Wisconsin	8.14
Region VI	
Legal Services of North Central Alabama, Inc. in Huntsville, Alabama	8.05
Western Arkansas Legal Services, Inc. in Fort Smith, Arkansas	8.02
Ozark Legal Services in Fayetteville, Arkansas	8.11
Central Florida Legal Services, Inc. in Daytona Beach, Florida	7.80
Legal Aid Service of Broward County, Inc. in Ft. Lauderdale, Florida	7.80
Florida Rural Legal Services, Inc. in Bartow, Florida	7.80
Jacksonville Area Legal Aid, Inc. in Jacksonville, Florida	7.80
Legal Services of Greater Miami, Inc. in Miami, Florida	7.80
Legal Services of North Florida, Inc. in Tallahassee, Florida	7.80
Greater Orlando Area Legal Services, Inc. in Orlando Florida	7.80
Bay Area Legal Services, Inc. in Tampa, Florida	7.80
Withlacoochee Area Legal Services, Inc. in Ocala, Florida	7.80
Three Rivers Legal Services, Inc. in Gainesville, Florida	7.80
Northwest Florida Legal Services, Inc. in Pensacola, Florida	7.80
Gulfcoast Legal Services, Inc. in St. Petersburg, Florida	7.80
Atlanta Legal Aid Society, Inc. in Atlanta, Georgia	7.80
Legal Aid Society, Inc. in Louisville, Kentucky	7.80
Central Kentucky Legal Services, Inc. in Lexington, Kentucky	7.80
Northeast Kentucky Legal Services, Inc. in Morehead, Kentucky	8.12
New Orleans Legal Assistance Corporation in New Orleans, Louisiana	7.80
South Mississippi Legal Services Corporation in Biloxi, Mississippi	7.80
Legal Services of Southern Piedmont, Inc. in Charlotte, North Carolina	7.80
Legal Services Agency of Western Carolina, Inc. in Greenville, South Carolina	7.80
Southeast Tennessee Legal Services, Inc. in Chattanooga, Tennessee	7.97
Legal Services of Upper East Tennessee, Inc. in Johnson City, Tennessee	[illegible]
Memphis Area Legal Services, Inc. in Memphis, Tennessee	7.80
Region VII	
Community Legal Services, Inc. in Phoenix, Arizona	7.80
Southern Arizona Legal Aid, Inc. in Tucson, Arizona	7.80
Pikes Peak Legal Services in Colorado Springs, Colorado	7.80
Legal Aid Society of Metropolitan Denver in Denver, Colorado	7.80
Legal Aid Society of Albuquerque, Inc. in Albuquerque, New Mexico	7.80
Dakota Plains Legal Services, Inc. in Mission, South Dakota	7.80
Legal Aid Society of Central Texas in Austin, Texas	7.80
North Central Texas Legal Services Foundation, Inc. in Dallas, Texas	7.80
El Paso Legal Assistance Society in El Paso, Texas	7.80
Gulf Coast Legal Foundation in Houston, Texas	7.80
Laredo Legal Aid Society, Inc. in Laredo, Texas	7.80
Bexar County Legal Aid Association in San Antonio, Texas	7.80
Region VIII	
Fresno-Merced Counties Legal Services, Inc in Fresno, California	7.80
Legal Aid Foundation of Los Angeles in Los Angeles, California	7.80
Channel Counties Legal Services Association in Oxnard, California	7.80
San Fernando Valley Neighborhood Legal Services in Pacoima, California	7.80
Legal Aid Society of Pasadena in Pasadena, California	7.80
Inland Counties Legal Services in Riverside, California	7.80
Legal Services of Northern California in Sacramento, California	7.80
Legal Aid Society of San Diego, Inc. in San Diego, California	7.80
Legal Aid Society of Marin County in San Rafael, California	7.80
Legal Aid Society of Orange County in Santa Ana, California	7.80
Tulare-Kings Counties Legal Services, Inc. in Visalia, California	7.80
Region IX	
Lane County Legal Service, Inc. in Eugene, Oregon	7.80
Legal Aid Service—Multnomah Bar Association, Inc in Portland, Oregon	7.80
Spokane Legal Services Center in Spokane, Washington	7.80
Puget Sound Legal Assistance Foundation in Tacoma, Washington	7.80

Recipient Name

Native American

Alaska Legal Services Corporation in Anchorage, Alaska
Four Rivers Indian Legal Services in Sacaton, Arizona
Native Hawaiian Legal Corporation in Honolulu, Hawaii
Anishinabe Legal Services, Inc. in Cass Lake, Minnesota
Montana Legal Services Association in Helena, Montana
North Dakota Legal Services, Inc. in New Town, North Dakota
Oklahoma Indian Legal Services, Inc. in Oklahoma City, Oklahoma
Oregon Legal Services Corporation in Portland, Oregon

DATE: All comments related to this action must be received by the Office of Field Services of the Legal Services Corporation within thirty (30) calendar days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Barney Hamlin, Reggie Coordinator, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4351.

SUPPLEMENTARY INFORMATION: The purpose of the Reginald Heber Smith Fellowship Program is to provide for the recruitment, placement, and retention of qualified law school graduates and attorneys, including a significant number of minorities and women, to work with Corporation-funded programs that deliver civil legal services to eligible clients.

105 of the programs, which have been designated as 1985–1986 placement programs, represent LSC's lowest-funded field programs with per capita funding levels ranging from $7.80 to $8.14. The average per capita level for the LSC programs is $8.39, and the highest per capita level is $25.47.

The regional allocation of these slots is consistent with the formula that has been applied since 1981, which distributes fellows based on the weighted regional share of population and LSC grant dollars attributed to those geographic areas. The remaining eight fellowship positions were earmarked for selected Native American programs and components.

Dated: May 2, 1985.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85–11007 Filed 5–6–85; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 43065; Order 85–5–17]

Joint Application; Pan American World Airways, Inc., and United Airlines, Inc.; Approval of Acquisition of Assets and Other Relief

Order

Issued by the Department of Transportation on the 1st day of May, 1985.

On April 22, 1985, Pan American World Airways, Inc. and United Airlines, Inc. filed an application for prior approval under sections 401(h) and 408 of the Federal Aviation Act, as amended, of the sale to United of Pan Am's International Pacific division and the transfer to United of Pan Am's underlying route authority in the Pacific. A preliminary review of the application and supporting material has been made, and it appears that the applicants have submitted information under each section of the Department's rules governing supporting information in section 408 cases, and sufficient information has been submitted to allow the Department to begin processing the application.[1] Our initial conclusion, therefore, is that we should not reject the application as incomplete,[2] and

[1] Sections 30 through 38 of Part 303 of the Department's Procedural Regulations, 50 FR 2372, 2420–21, January 16, 1985.

[2] *See* § 303.23(h) of the Department's Procedural Regulations, 50 FR at 2419, January 16, 1985.

should set a timetable for public comment on the application.

We have decided to afford interested persons fourteen days from the date of issuance of this order to comment on the application. Comments may address the merits of the application, whether additional information should be demanded from the applicants, and any other matters interested persons wish to raise at this time. Replies to any answers or comments should be submitted seven days later. However, parties need not request an oral evidentiary hearing. The Department has concluded that the importance of this case requires that it be referred to an administrative law judge for an expedited hearing. The procedures will be addressed in more detail in an instituting order.

Much of the supporting information submitted with the application was filed under the cover of a Rule 29 motion requesting that it be treated confidentially. We will grant the motion, subject to reconsideration at any time for good cause shown. In addition, we will allow counsel for other parties to inspect immediately *in camera* the documents for which the applicants request confidential treatment. Counsel for interested parties may inspect the documents at the offices of the Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, D.C. upon the submission of an affidavit indicating that he or she will preserve the confidentiality of the information contained therein. Any answer or other filing raising matters contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

Finally, we wish to make it clear that we have not ruled here on the adequacy of the information for decisional purposes, nor on any of the substantive issues raised. Rather, we have merely decided not to reject the application at this time. As a result, parties should consider the adequacy of the record and point out areas where additional information may be required. We, of course, also retain the discretion to require that additional information be filed.

Accordingly

1. Answers, comments and other filings relating to this application are due fourteen days from May 1, 1985.
2. Replies are due seven days thereafter;
3. We grant, subject to reconsideration at any time, the Applicant's Motion for Confidential Treatment; and
4. This order will be published in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-11031 Filed 5-6-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Santa Clara County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Santa County, California.

FOR FURTHER INFORMATION CONTACT: D. L. Eyres, Federal Highway Administration, P.O. Box 1915, Sacramento, CA. 95809, telephone (916) 440-3541, or Peder Samuelsen Study Manager, State of California, Department of Transportation, P.O. Box 7310, San Francisco, CA. 94120, telephone (415) 557-1777.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare a draft environmental impact statement for a proposed project which is needed to improve highway operation. The proposed project would widen Route 101 to eight lanes from Route 101/280/680 Interchange to Guadalupe Parkway (Route 87) in Santa Clara County (five miles). Existing interchanges would require modification as a result of the proposed widening. The only alternative to the project identified to date is to "do-nothing."

The scoping process will include an initial public meeting on May 16, 1985 at the San Jose City Hall, 801 No. 1st Street, San Jose, CA. Additional meetings will be scheduled with interested agencies and parties who are not already participating in this study. Those parties are urged to advise the contact person of their interests.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearninghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: April 26, 1985.

D. L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 85-10997 Filed 5-6-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 12-85]

Treasury Notes of May 15, 1988; Series S-1988

Washington, May 1, 1985.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,000,000,000 of United States securities, designated Treasury Notes of May 15, 1988, Series S-1988 (CUSIP No. 912827 SD 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1985, and will accrue interest from that date, payable on a semiannual basis on November 15, 1985, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000.

Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, May 7, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 6, 1985, and received no later than Wednesday, May 15, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4 Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Wednesday, May 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, May 15, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the

inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registerd definitive Notes will not be issued if the appropriate idenifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-11134 Filed 5-6-85; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular; Public Debt Series—No. 13-85]

Treasury Notes of May 15, 1985; Series B-1995

Washington, May 1, 1985.

1. Invitation for Tendens

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of May 15, 1995, Series B-1995 (CUSIP No. 912827 SE 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1985, and will accrue interest from that date, payable on a semiannual basis on November 15, 1985, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other non-business day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchange of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Notes may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washingotn, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 8, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 7, 1985, and received no later than Wednesday, May 15, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking

institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be acompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500.

That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

f. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, May 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, May 15, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes alloted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treatury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hearafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Notes in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity.

A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on May 15, 1995.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF MAY 15, 1995, SERIES B-1995, CUSIP NO. 912827 SE 3

[The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B-1995 due May 15, 1995, CUSIP No. 912820 AC 1]

Interest components	
Designation	CUSIP No. 912833
Treasury interest (TINT) B-1995 due:	
Nov. 15, 1985	GG9
May 15, 1986	GH 7
Nov. 15, 1986	GJ 3
May 15, 1987	GK 0
Nov. 15, 1987	GL 8
May 15, 1988	GM 6
Nov. 15, 1988	GN 4
May 15, 1989	GP 9
Nov. 15, 1989	GQ 7
May 15, 1990	GR 5
Nov. 15, 1990	GS 3
May 15, 1991	GT 1
Nov. 15, 1991	GU 8
May 15, 1992	GV 6
Nov. 15, 1992	GW 4
May 15, 1993	GX 2
Nov. 15, 1993	GY 0
May 15, 1994	GZ 7
Nov. 15, 1994	HA 1
May 15, 1995	HB 9

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000

Coupon (percent)	Minimum face	Interest payment	Coupon (percent)	Minimum face	Interest payment	Coupon (percent)	Minimum face	Interest payment
5.000	$40,000.00	$1,000.00	10.125	$1,600,000.00	$81,000.00	15.250	$800,000.00	$61,000.00
5.125	1,600,000.00	41,000.00	10.250	800,000.00	41,000.00	15.375	1,600,000.00	123,000.00
5.250	800,000.00	21,000.00	10.375	1,600,000.00	83,000.00	15.500	400,000.00	31,000.00
5.375	1,600,000.00	43,000.00	10.500	400,000.00	21,000.00	15.625	64,000.00	5,000.00
5.500	400,000.00	11,000.00	10.625	320,000.00	17,000.00	15.750	800,000.00	63,000.00
5.625	320,000.00	9,000.00	10.750	[illegible]	43,000.00	15.875	1,600,000.00	127,000.00
5.750	800,000.00	23,000.00	10.875	1,600,000.00	87,000.00	16.000	25,000.00	2,000.00
5.875	1,600,000.00	47,000.00	11.000	[illegible]	11,000.00	16.125	1,600,000.00	129,000.00
6.000	100,000.00	3,000.00	11.125	1,600,000.00	89,000.00	16.250	160,000.00	13,000.00
6.125	1,600,000.00	49,000.00	11.250	160,000.00	9,000.00	16.375	1,600,000.00	131,000.00
6.250	32,000.00	1,000.00	11.375	1,600,000.00	91,000.00	16.500	400,000.00	33,000.00
6.375	1,600,000.00	51,000.00	11.500	400,000.00	23,000.00	16.625	1,600,000.00	133,000.00
6.500	[illegible]	13,000.00	11.625	1,600,000.00	93,000.00	16.750	[illegible]	67,000
6.625	1,600,000.00	53,000.00	11.750	[illegible]	47,000.00	16.875	320,000.00	27,000.00
6.750	800,000.00	27,000.00	11.875	320,000.00	19,000.00	17.000	200,000.00	17,000.00
6.875	320,000.00	11,000.00	12.000	50,000.00	3,000.00	17.125	1,600,000.00	137,000.00
7.000	[illegible]	7,000.00	12.125	1,600,000.00	97,000.00	17.250	800,000.00	69,000.00
7.125	1,600,000.00	57,000.00	12.250	[illegible]	49,000.00	17.375	1,600,000.00	139,000.00
7.250	800,000.00	[illegible]	12.375	1,600,000.00	99,000.00	17.500	[illegible]	7,000.00
7.375	1,600,000.00	[illegible]	12.500	16,000.00	1,000.00	17.625	1,600,000.00	141,000.00
7.500	50,000.00	3,000.00	12.625	1,600,000.00	101,000.00	17.750	800,000.00	71,000.00
7.625	1,600,000.00	61,000.00	12.750	800,000.00	51,000.00	17.875	1,600,000.00	143,000.00
7.750	800,000.00	31,000.00	12.875	1,600,000.00	103,000.00	18.000	100,000.00	[illegible]
7.875	1,600,000.00	[illegible]	13.000	[illegible]	13,000.00	18.125	320,000.00	29,000.00
8.000	25,000.00	1,000.00	13.125	[illegible]	21,000.00	18.250	[illegible]	73,000.00
8.125	320,000.00	13,000.00	13.250	800,000.00	53,000.00	18.375	1,600,000.00	147,000.00
8.250	[illegible]	33,000.00	13.375	1,600,000.00	107,000.00	18.500	400,000.00	37,000.00
8.375	1,600,000.00	67,000.00	13.500	400,000.00	27,000.00	18.625	1,600,000.00	149,000.00
8.500	400,000.00	17,000.00	13.625	1,600,000.00	109,000.00	18.750	320,000.00	[illegible]
8.625	1,600,000.00	69,000.00	13.750	160,000.00	11,000.00	18.875	1,600,000.00	151,000.00
8.750	160,000.00	7,000.00	13.875	1,600,000.00	111,000.00	19.000	200,000.00	190,000.00
8.875	1,600,000.00	71,000.00	14.000	100,000.00	7,000.00	19.125	1,600,000.00	153,000.00

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000

Coupon (percent)	Minimum face	Interest payment	Coupon (percent)	Minimum face	Interest payment	Coupon (percent)	Minimum face	Interest payment
9.000	200,000.00	[illegible]	14.125	1,600,000.00	113,000.00	19.250	800,000.00	77,000.00
9.125	1,600,000.00	73,000.00	14.250	800,000.00	57,000.00	19.375	320,000.00	31,000.00
9.250	[illegible]	37,000.00	14.375	320,000.00	23,000.00	19.500	400,000.00	39,000.00
9.375	[illegible]	3,000.00	14.500	400,000.00	29,000.00	19.625	1,600,000.00	157,000.00
9.500	[illegible]	19,000.00	14.625	1,600,000.00	117,000.00	19.750	800,000.00	79,000.00
9.625	1,600,000.00	77,000.00	14.750	800,000.00	59,000.00	19.875	1,600,000.00	159,000.00
9.750	800,000.00	39,000.00	14.875	1,600,000.00	119,000.00	20.000	10,000.00	1,000.00
9.875	1,600,000.00	79,000.00	15.000	40,000.00	3,000.00	20.125	1,600,000.00	161,000.00
10.000	20,000.00	1,000.00	15.125	1,600,000.00	121,000.00	20.250	800,000.00	81,000.00

[FR Doc. 85-1135 Filed 5-6-85; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular; Public Debt Series—No. 14-85]

11¼ Percent Treasury Bonds of 2015

Washington, May 1, 1955.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,000,000,000 of United States securities, designated 11¼% Treasury Bonds of 2015 (CUSIP No. 912810 DP 0), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be issued May 15, 1985, and are offered as an additional amount of 11¼% Treasury Bonds of 2015 (CUSIP No. 912810 DP 0) dated February 15, 1985. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1985, to May 15, 1985. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature Feburary 15, 2015, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Bonds in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Bonds in book-entry form will be issued in multiples of those amounts. Bonds will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Bonds, exchanges of Bonds between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Bonds offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 9, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 8, 1985, and received no later than Wednesday, May 15, 1985.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4 Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New york, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds;

international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6 Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 12.14% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accured interest from February 15, 1985, to May 15, 1985, in the amount of $27.65884 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Wednesday, May 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Accounts on or before Wednesday, May 15, 1985. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted are not required to be assigned if the new Bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Bonds are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, and assignment should be to "The Secretary of the Treasury for (Bonds offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Bonds, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk for the holder.

5.4. Registered definitive Bonds will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Bonds in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Bonds have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The Components of a Bond are: each future semi-annual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $160,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on February 15, 2015.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable

(without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise proivided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Bonds on full-paid allotments, and to maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted from or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF 11¼ PERCENT TREASURY BONDS OF FEBRUARY 15, 2015, CUSIP NO. 912810 DP 0

[The Principal Component is designated 11¼ Percent Treasury Principal (TPRN) 2015 due February 15, 2015, CUSIP No 912803 AA 1]

Interest components	
Designation	CUSIP No 912833
Treasury interest (TINT) 2015 due:	
Aug. 15, 1985	AW 0
Feb. 15, 1986	AX 8
Aug. 15, 1986	AY 6
Feb. 15, 1987	AZ 3
Aug. 15, 1987	BA 7
Feb. 15, 1988	[redacted]
Aug. 15, 1988	BC 3
Feb. 15, 1989	BD 1
Aug. 15, 1989	BE 9
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	[redacted]
Feb. 15, 1992	BK 5

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF 11¼ PERCENT TREASURY BONDS OF FEBRUARY 15, 2015, CUSIP NO. 912810 DP 0—Continued

[The Principal Component is designated 11¼ Percent Treasury Principal (TPRN) 2015 due February 15, 2015, CUSIP No 912803 AA 1]

Interest components	
Designation	CUSIP No 912833
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	[redacted]
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	[redacted]
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0

[FR Doc. 85-11136 Filed 5-6-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 88
Tuesday, May 7, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Tuesday, May 7, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Commission Procedures Review.

The Commission and staff will review internal procedures relating to Commission decisionmaking. (This is a continuation of the March 6, 1985 meeting)

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207: 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-11036 Filed 5-2-85; 5:10 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, May 8, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: *1. Voluntary Standards: Alternatives for Increased Support.*

The staff will brief the Commission on options for increasing CPSC support of voluntary standards activities.

Closed to the Public:

2. Enforcement Matter OS #4665

The staff will brief the Commission on Enforcement Matter OS #4665.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301—492—5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-11037 Filed 5-2-85; 5:10 pm]

BILLING CODE 6355-01

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 PM (Eastern Time), Monday, May 13, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Litigation Authorization: GC Recommendations.
2. Proposed Commission Decision.
3. Options Paper on Enforcement of an ORA Decision.

NOTE—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: May 2, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued May 2, 1985.

[FR Doc. 85-11078 Filed 5-3-85; 12:30 pm]

BILLING CODE 6750-06-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" Citation of Previous Announcement: 50 FR 15699

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 am (Eastern Time), Tuesday April 30, 1985.

CHANGE IN THE MEETING: The following matter has been postponed until further notice:

"Proposed Change in Procedures for Obtaining Commission Approval of a Recommendation to Participate as Amicus Curiae"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: May 2, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This notice Issued May 2, 1985.

[FR Doc. 85-11079 Filed 5-3-85; 12:03 pm]

BILLING CODE 6750-06-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, May 14, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Processing Charges Raising the Issuer of Jurisdiction Over Licensing Agencies.
4. Amendments to EEO–3, Reporting Requirements (Local Union Reports).
5. Proposed Contracts for Expert Services in Connection with Court Cases.

Closed

1. Litigation Authorization: General Counsel Recommendations.
2. Proposed Commission Decision.
3. Options Paper on Enforcement of an ORA Decision.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal**

Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat at (202) 634-6748.

Dated: May 2, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued May 7, 1985.

[FR Doc. 85-11080 Filed 5-3-85; 12:03 pm]

BILLING CODE 6730-06-M

6

FEDERAL COMMUNICATIONS COMMISSION

May 2, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 9, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: *First Report and Order,* Docket 81-413, Authorization of spread spectrum systems under Parts 15 and 90 of the FCC Rules and Regulations. Summary: The Commission will consider changes to Part 15 of the Rules to allow spread spectrum systems to operate in the ISM bands at 902-928, 2400-2483.5 and 5725-5875 MHz on a noninterference basis to other authorized users of these bands. The Commission will also consider changes to Part 90 of the Rules to allow law enforcement officers to operate direct sequence and time hopping spread spectrum transmitters on selected Public Safety Radio Service frequencies.

General—2—Title: Amendment of Parts 2 and 97 of the Commission's Rules and Regulations to authorize spread spectrum techniques in the Amateur Radio Service. Summary: The Commission will consider whether or not to revise the Technical Regulations and Operating Requirements and Procedures for the Amateur Radio Service.

Private Radio—1—Title: Reorganization and revision of Parts 81 and 83 of the rules to provide a new Part 80 governing the maritime radio services. Summary: In this Notice of Proposed Rule Making the FCC will consider whether to propose to revise and reorganize the existing Parts 81 and 83 of its rules to produce a new Part 80 governing the maritime radio services. The objective of the rulemaking would be to review these regulations and eliminate unnecessary language and rules contained in Parts 81 and 83.

Common Carrier—1—Title: Application for waiver of Uniform Settlements Policy, filed by FTC Communications to allow a lower accounting rate for telex service with the U.K. and CEPT nations. Summary: The Commission will consider whether to grant or deny the waiver request under the waiver guidelines of the Uniform Settlements Policy.

Common Carrier—2—Title: North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment. Summary: The Commission will consider whether to adopt an Order which addresses whether certain Centrex features are enchanced services as defined by the Second Computer Inquiry.

Mass Media—1—Title: License renewal applications of Stations KUNA and KSLY-FM, San Luis Obispo, California, and Stations KUSD-AM-AM-TV, Vermillion, South Dakota. Summary: The Commission will consider whether the EEO programs of the above stations are sufficient and whether grant of the license renewal applications is in the public interest.

Mass Media—2—Title: Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Televlsion and Newspaper Entities (MM Docket No. 83-46, incorporating Docket Nos. 20521, 20548 and BC 78-239). Summary: By this *Memorandum Opinion and Order* the Commission will consider, on reconsideration, whether or not to revise the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and the manner in which these interests are reported.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11113 Filed 5-3-85; 2:36 pm]

BILLING CODE 6712-01-M

7

FEDERAL COMMUNICATIONS COMMISSION

May 2, 1985.

Additional Item To Be Considered at Open Meeting, Thursday, May 9, 1985.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 A.M., Thursday, May 9, 1985 at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Mass Media—3—Title: Application for review and petition for reconsideration of Bureau's actions dismissing the applications of Way of the Cross of Utah, Inc. and Way of the Cross of Odessa, Inc. for non-commercial educational television stations to operate in Ogden, Utah, and Big Spring, Texas, respectively. Summary: The Commission will determine whether the applicants are either educational institutions or educational organizations eligible to apply for reserved broadcast channels.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11112 Filed 5-3-85; 2:36 pm]

BILLING CODE 6712-01-M

8

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on April 30, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, May 8, 1985.

CHANGES IN THE MEETING: Addition of the following open item(s) to the meeting:

1. Proposal to reduce risks on large-dollar wire transfer systems. (Proposed earlier for public comment; Docket No. R-0515)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11048 Filed 5-3-85; 10:49 am]

BILLING CODE 6210-01-M

9

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 13, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Buliding, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building proposals regarding the Federal Reserve Bank of Chicago. (This item was originally announced for a closed meeting on May 6, 1985.)

2. Proposed purchase of a telephone system within the Federal Reserve System. (This item was originally announced for a closed meeting on May 6, 1985.)

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated May 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11137 Filed 5-3-85; 3:09 pm]

BILLING CODE 6210-01-M

10

NATIONAL SCIENCE BOARD

DATE AND TIME: May 17, 1985:

8:15 a.m. Closed Session.
9:15 a.m. Open Session.

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

5. Minutes—March 1985 Meeting.
6. Chairman's Report.
7. Director's Report.
8. Annual Report of the Executive Committee.
9. *Science Indicators—1984.*
10. Other Business.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

1. Minutes—March 1985 Meeting.
2. NSB and NSF Staff Nominees.
3. Executive Committee Elections.
4. Grants, Contracts, and Programs.

Margaret L. Windus,

Executive Officer.

[FR Doc. 85-11033 Filed 5-2-85; 4:25 pm]

BILLING CODE 7555-01-M

11

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-9]

TIME AND DATE: 9 a.m., Tuesday, May 14, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Head-on Collision of National Railroad Passenger Corporation (Amtrak) Passenger Train Nos. 151 and 168, Astoria, Queens, New York, New York, July 23, 1984.

2. *Marine Accident Report:* Capsizing of the Excusion Vessel SCITANIC on the Tennessee River, near Huntsville, Alabama, July 7, 1984.

3. *Marine Accident Report:* Explosion and Sinking of the U.S. Tankship SS AMERICAN EAGLE, Gulf of Mexico, February 26 and 27, 1984.

4. *Recommendation* to Federal Railroad Administration, Brotherhood of Locomotive Engineers, United Transportation Union, and Association of American Railroads regarding crew qualifications and authority on freight trains.

5. *Railroad Accident Report:* Collision of Denver and Rio Grande Western Railroad Company Yard Switching Move with its own Train and Release of Hazardous Materials, Denver, Colorado, April 3, 1983.

6. *Railroad Accident Report:* Vinyl Chloride Monomer Release from a Railroad Tank Car and Fire, Formosa Plastics Corporation Plant, Baton Rouge, Louisiana, July 30, 1983.

7. *Railroad Accident Report:* Derailment of New York City Transit Authority Subway Train in the Joralemon Street Tunnel, New York, New York, March 17, 1984.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

Ray Smith,

Federal Register Liaison Officer.

March 11, 1985.

[FR Doc. 85-11164 Filed 5-3-85; 4:06 pm]

BILLING CODE 7533-01-M

12

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 6, 13, 20, and 27, 1985.

PLACE: Comissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 6

Wednesday, May 8

10:30 a.m.
Briefing by AIF on State of the Industry (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

Thursday, May 9

10:00 a.m.
Briefing on Brookhaven Report on Independent Safety Organization (Public Meeting)
2:00 p.m.
Executive Branch Briefing (Closed-Ex. 1)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

a. Options to respond to Remand of *Guard v. NRC*
b. TMI-1 Restart Proceeding—TMIA Motion for Reconsideration of Denial of Section 189 Hearing Request on Licensee's Character
c. TMI-1 Restart: Motions for Reconsideration of Commission's Decision that No Further Hearings are Required

Friday, May 10

10:00 a.m.
Periodic Meeting with advisory Committee on Reactor Safeguards (Publiic Meeting)

Week of May 13—

Tentative

Wednesday, May 15

2:00 p.m.
Briefing on Proposed Revision of Part 20 (Public Meeting)

Thursday, May 16

10:00 a.m.
Mid-Year Budget and Program Review (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

Week of May 20—

Tenative

Thursday, May 23

9:30 a.m.
Discussion of Pending Investigation (Closed—Ex. 5 and 7)
10:30 a.m.
Discussion/Possible Vote of Full Power Operating License for Palo Verde-1 (Public Meeting)
2:00 p.m.
Discussion on Shoreham Adjudication Matter (Closed—Ex. 10) (Tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of May 27

Tentative

Wednesday, May 29

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—EX. 2 and 6)

Thursday, May 30

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2) was held on April 30.

Affirmation of "Export control trigger List—Amendments to Part 110" (Public Meeting) was held on May 1.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

May 2, 1985.

[FR Doc. 85–11155 Filed 5–3–85; 4:04 pm]

BILLING CODE 7590-01-M

13

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: May 15–16, 1985, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

- Staff Presentation and Public Comment on Role of Power Institutions in the 1985 Power Plan Issue Paper.
- Staff Presentation and Public Comment on Draft Resource Portfolio.
- Staff Presentation on Action Plan Issue Paper.
- Council Decision on Council intertie Access Policy Issue Paper.
- Council Decision on Out-of-Region Imports/Exports Issue Paper.
- Public Comment on Potential and Achievable Conservation Issue Paper.
- Public Comment on Research, Development and Demonstration of Promising Resources.
- Public Comment on Lost Opportunity Resources.
- Council business.

Public Comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–11071 Filed 5–3–85; 11:48 am]

BILLING CODE 0000-00-M

federal register

Tuesday
May 7, 1985

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Guidelines on Minimum Criteria for Identification of Nontoxic Shot Zones for Waterfowl Hunting; Notice of Modified Guidelines

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Guidelines on Minimum Criteria for Identification of Nontoxic Shot Zones for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of modified guidelines.

SUMMARY: This notice contains a modified proposal for criteria that would be used as guidelines in determining areas where waterfowl ingestion of lead shotshell pellets is considered to be a significant problem and where nontoxic shot should be used by waterfowl hunters. This modified proposal is the result of public comment received on the initial Fish and Wildlife Service (FWS) proposal published on January 16, 1985. When waterfowl eat spent lead shotshell pellets during the course of feeding, sickness and death may result. The use of nontoxic shot has been found to reduce lead poisoning sickness and mortality. The only nontoxic shot currently available on the market is steel shot. One year after the implementation of these criteria, an analysis will be made to assess their effectiveness and practicality.

DATE: Comments must be submitted by June 20, 1985.

ADDRESS: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (telephone 202–254–3207).

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (telephone 202–254–3207).

SUPPLEMENTARY INFORMATION: The FWS is seeking to reduce losses of waterfowl from preventable causes such as disease and lead poisoning. When waterfowl eat spent lead shotshell pellets, the birds may become sick or die. The ingested pellets provide a highly concentrated and intensive dosage of lead in a rather short period of time.

In dealing with the lead problem, the FWS initiated several actions in recent months of which this criteria proposal is one of the most important. The reason that the criteria are important is that they provide a scientifically sound and businesslike way to identify and designate nontoxic shot zones on a reasonably uniform basis throughout each waterfowl flyway within the United States. Since 1976, the manner in which these zones were established has varied by region and State. Because of this, the method of zone selection has been controversial. By opening the criteria to public comment, the FWS is attempting to maximize public involvement from the start and to use this as a means to supplement its own data and analysis.

As indicated in 50 CFR 20.21(j) and 50 CFR 20.108, nontoxic shot is required for hunting waterfowl in certain designated zones. Since 1978, no nontoxic shot zone could be implemented or enforced by the FWS without approval of the appropriate authorities in each State affected. The restriction on use of funds by FWS has been contained in the Interior Department Appropriations Bill each year. As a consequence, the FWS has proposed additions and deletions to the designated nontoxic shot zones for hunting waterfowl only with the approval of State authorities. As stated in the FWS proposal of January 16, 1985, (50 FR 2298–2301), the Department's policies on lead poisoning are designed to focus designation of nontoxic shot zones on problem areas, on a partnership basis with the States and flyway councils. Further, the Department's efforts in this regard apply only to the hunting of ducks, geese, swans and coots (*Fulica americana*) because the hunting of these species is believed to be the source of most of the lead shot deposited in areas where these birds feed.

Officials of the Department have heard from many interested organizations, States, and individuals concerning the nature, extent, and significance of lead poisoning of waterfowl. Through these discussions it has become clear that States, flyway councils, private organizations, and individuals are seeking greater participation from the FWS in dealing with this problem.

On September 25, 1984, the FWS published in the **Federal Register** a Notice of Intent (49 FR 37672). That notice solicited comments and recommendations from interested parties as to the specific criteria that should be proposed as guidelines in selecting nontoxic shot zones within the four administrative flyways used in managing the waterfowl resource. Comments were received until October 30, 1984.

On January 16, 1985, the FWS published in the **Federal Register** a notice of draft guidelines. These guidelines contained two proposals that would provide guidance in making decisions on the use of nontoxic shot. One was recommended by representatives of the flyway councils, the other by FWS. Both proposals would establish two levels of criteria: Triggering criteria and decision criteria.

Triggering criteria identify counties or other designated areas as having a potential for a significant lead poisoning problem in waterfowl. Designated areas are specific units of waterfowl habitat within a county or within several counties, as identified by the State.

A county or designated area would be triggered for further monitoring if it has a 3-year average annual harvest of 10 waterfowl per square mile or if 3 or more birds were diagnosed to have died from lead poisoning. Under the council representatives' proposal, the triggering criteria would have been a harvest of 5 waterfowl per square mile or one dead bird.

Decision criteria would be used to determine whether or not a significant lead poisoning problem exists in areas meeting either of the triggering criteria.

Under the FWS proposal, three decision criteria were specified. Under the proposal of the flyway council representatives, three of the four flyways would also use three criteria. A county or area identified by either one of the triggering criteria must then be monitored for at least two of the decision criteria. Under the council representatives' proposal, the Pacific Flyway decision criteria would have been based essentially upon the number of dead birds diagnosed as having died from lead poisoning.

The representatives' recommendations and the original FWS proposal as published on January 16, 1985, are shown in Tables 1 and 2, respectively.

On January 27, 1985, the Pacific Flyway Council approved decision criteria that are procedurally similar but somewhat quantitatively different from the other three flyways and the FWS proposal. Modifications to the proposed Pacific Flyway triggering criteria were also approved. Specifically, a harvest level of 20 birds per square mile or a mortality of 5 dead birds would be used as the triggering criteria. This action represents a positive and constructive move by the Pacific Flyway States toward criteria that are reasonably uniform nationwide. It should be noted, however, that California abstained from concurring in either the new triggering criteria or the decision criteria recently approved by the Pacific Flyway Council. They have chosen instead to retain the original Pacific Flyway criteria established in 1981.

The triggering criterion for harvest under the proposal recommended by

FWS would have triggered 487 counties versus 842 counties under the council representatives' recommendations. However, monitoring would not have been required in all of those counties or designated areas because a number already require the use of nontoxic shot. When these are subtracted from the totals, 326 counties would have been actually triggered under the FWS proposal versus 614 under the council representatives' proposal. Unfortunately, this point was not clearly presented in the January 16, 1985, notice.

Under both proposals, any area meeting the gizzard criterion plus either the liver or blood criterion would have been proposed as nontoxic shot zone.

Summary of Public Comment

A wide range of comments were received on the proposed guidelines published on January 16, 1985. The comments are summarized below. The FWS response to the comments follow this summary.

Comments of State Wildlife Agencies

Thirty-eight state wildlife agencies sent letters in response to the proposal. South Dakota requested an extension of the comment period to allow the Flyway Councils to consider and prepare comments on the proposed criteria. Arizona, Nevada, Utah and Washington stated their support for the modified criteria adopted by the Pacific Flyway Council on January 27, 1985. State wildlife agencies in Arkansas, New Mexico, Massachusetts, Texas, Oklahoma, Ohio, Nebraska, Michigan, Minnesota, Maine, Maryland, Iowa, Kansas, New Jersey, North Dakota, South Dakota, and Vermont support a ban on lead shot for waterfowl hunting as the only solution to the lead poisoning problem. However, as an interim measure or as a step in the right direction, several of these states supported a "phase-in" procedure, or the proposals in either Table 1 or Table 2. The need for estimating a target year for banning lead shot for waterfowl was mentioned. New York, Pennsylvania, Rhode Island, and Wyoming basically supported the council representatives' recommendations contained in Table 1. Indiana and Wisconsin stated their support for a 5 duck per square mile harvest that would automatically trigger a nontoxic shot requirement without further monitoring or the need for decision criteria. West Virginia opted for the FWS proposal in Table 2 with an added provision requiring conversion to a nontoxic shot zone if the state elects not to monitor after the triggering criteria are met. Missouri supported Table 2 harvest level of 10 birds/square mile for initial triggering criteria but stated that counties harvesting five birds/square mile should be examined by 1990 to determine if decision criteria are met. Missouri further stated that triggering criteria alone should be adequate to establish nontoxic shot zones and that sampling gizzards and blood or liver lead is redundant. Alabama questioned the inaccurate conclusions that may result from the methods proposed in the current criteria. This questioning stems from lack of method to determine the location that lead poisoning was initiated. Samples collected in Alabama having steel shot indicate shot are picked up elsewhere as birds were not collected in a nontoxic shot zone. Delaware suggests the use of ecological zones rather than counties and when triggering criteria are met, nontoxic shot zones are automatically established without the need for monitoring. Delaware also recommended a phasing-in approach consistent with a realistic increase in anticipated ammunition needs as well as an active educational program. Florida likewise recommended a phasing-in process with progressively more inclusive triggering criteria and noted that the repeal of the restrictive language in the Interior Appropriation's Bill is essential before an effective nontoxic shot program can be implemented. Illinois suggested that the proposed criteria should have acknowledged and included provisions for accepting previous state monitoring data. Illinois also suggested that a provision should be included to require mandatory nontoxic shot zone designation in areas with a die-off involving many ducks or geese; encourage the use of ecological zones; consider a phase-in approach; and address areas that have never been hunted before. Kentucky found the proposals to be arbitrary and requested that the FWS answer several questions before a decision is made. Idaho responded much like Kentucky asking questions and requesting explanations or information, but did not commit its support to either proposal. Louisiana opposed the proposed criteria because, for all practical purposes, the proposal would result in nontoxic shot being required statewide. California requested that it be allowed to continue to use state adopted criteria for designation of nontoxic shot zones.

Comments From Organizations

Twenty-seven organizations submitted comments and suggestions. Seven organizations favored mandatory nontoxic shot requirements nationwide for waterfowl hunting. The National Audubon Society supported a phase-in approach to implementation. The National Wildlife Federation (NWF) commented that its current policy is to support the "hot spot" or "zoning" approach and, in principal, endorsed the FWS proposal. However, NWF criticized the FWS for rejecting the council representatives' triggering criteria and their recommendation to establish nontoxic shot zones automatically on areas that meet the triggering criteria. They suggested that the use of decision criteria be abandoned and felt that monitoring is a waste of time and money. Other points raised by NWF included the following: Any of the decision criteria (ingested lead shot; elevated lead in liver; or elevated lead in blood) are adequate evidence that a lead poisoning problem exists, 5% lead ingestion rate should be based on x-rays rather than visual examination; the FWS does not establish temporal sampling bounds; there are no established protocol for determining blood protoporphyrin levels; and several points concerning rulemaking and criteria evaluation. The Illinois Natural History Survey comments followed very closely to those by the NWF. The American Duck Hunters Association, Inc., favored Table 2 as minimum guidelines for establishing nontoxic shot zones provided all hunters using shotshells are included. The National Rifle Association (NRA) and 13 other organizations (mostly waterfowl hunter groups) opposed the proposed criteria for a variety of reasons including: Sample size is too small; lead ingestion rate is too low; mortality is unsubstantiated; importance of diet was overlooked; the scientific basis for the criteria are not substantiated, the criteria are burdensome, the decision criteria are too low; and the criteria are too broad geographically. The NRA, which favors the current Departmental policy on the establishment of nontoxic shot zones, specifically charged that neither of the proposed triggering criteria has a direct relationship to waterfowl mortality caused by ingestion of lead shot. Concern was also expressed over the lack of recognition of the effect that good wildlife management practices have on the lead poisoning problem. The NRA attacked the attempt to impose a "national standard" as a simplistic approach to the lead poisoning problem. The proposed criteria also were criticized as being arbitrary and little more than a "guesstimate."

Comments From Ammunition Companies

Federal Cartridge Corporation and the Winchester Group of Olin Corporation provided comments on the proposed criteria. Federal Cartridge Corporation endorsed the establishment of standardized criteria for designating nontoxic shot zones and urged cooperation in adopting acceptable criteria that can be used in all four flyways. Winchester's position is that steel shot should be designated for use in "hot spot" areas with a known lead poisoning history. Both companies are concerned that nontoxic shot cannot be supplied unless ample advance notice is provided so they can increase production and have time for proper distribution of the products. Federal Cartridge Corporation proposed a five-year timetable with the first year's nontoxic shot zones being selected from areas that have the highest harvest levels. Winchester predicted that major ammunition shortages would occur if Table 1 or 2 is implemented over broad areas in the 1985–86 hunting season. Further, they expressed concern for dealers and distributors who need time to sell existing inventories of lead shot.

Comments From Individuals

Comments were received from 205 individuals from 31 States. Of the 22 respondents favoring steel shot requirements, 4 supported the council representatives' proposal and one supported the FWS proposal as an interim measure with a complete ban by 1989. One hundred eighty-two letters objected to one or more aspects of the proposal. One hundred eight of the responses were form letters from California duck hunters who opposed the FWS's proposal arguing that the proposed criteria are statistically insignificant, the lead poisoning problem exaggerated, and crippling will increase. They support a lead substitute that will reduce lead poisoning but not result in an increase in crippling.

FWS Response to Comments

1. Concern

The FWS should implement a phase-in approach to establishing nontoxic shot zones and recognize ammunition supply problems.

FWS response: Committees of the International Association of Fish and Wildlife Agencies (IAFWA) held several discussions on the criteria during March 15–17, 1985. Most notable among these were the Migratory Wildlife Committee and its subcommittee, the Interagency Committee on Nontoxic Shot. Representatives of State agencies, conservation and sportsmen's organizations, ammunition manufacturers and the FWS participated in these discussions.

Representatives of the ammunition manufacturers were in agreement that the proposed implementation schedule and magnitude of the increase in nontoxic shot zones would cause major problems regarding the availability and distribution of nontoxic shot. They emphasized that lead time of 12 to 15 months is needed to ensure ammunition availability. Representatives of both Winchester and Federal Cartridge Corporation recommended no major increase in zones over a short period of time and emphasized the need for a slow progressive approach. One suggestion was to announce regulations in August for the year following the upcoming season. It was their view that implementation of both the FWS and council representatives' proposals would be more than they could handle from an ammunition supply standpoint. These comments from ammunition industry representatives were consistent with their written comments.

Because of the problems outlined by the ammunition companies, the monitoring work load that would be imposed on some States, and the need to give adquate notice to hunters and local ammunition distributors, the Committee recommended that the FWS modify its current proposal and use a phase-in approach to triggering areas to be monitored. The approach recommended and accepted by the FWS is as follows: Counties or designated areas meeting specified triggering criteria for harvest would be monitored and qualifying zones established in the year following the upcoming hunting season, as specified below:

Waterfowl harvest per square mile	Year zones implemented
20	1987
15	1988
10	1989
5	1990
Less than 5	1991

The committee further recommended that previously collected monitoring data be used, at the discretion of the State, because several States already have a great deal of current data. This would result in significant cost savings. A final recommendation was that protoporphyrin be added to the decision criteria as a means for determining lead levels in the blood. These recommendations have been incorporated in the modified proposal presented as Table 4 in this notice.

2. Concern.

Blood protoporphyrin should be included as one of the decision criteria.

FWS response: Protoporphyrin is another index for identifying lead poisoning in waterfowl. It is in essence, a measure of the degree of sickness from lead while blood lead analysis is a measure of exposure. Specifically, protoporphyrin measures metabolic disturbance in the hemoglobin production of the red blood cells. Thus, blood samples are required to test for this condition.

Protoporphyrin was not included in the original FWS proposal primarily because analytical capability is not readily available to field people. Currently, there are about six hematofluorometers in use in the United States that can be used to determine protoporphyrin in bird blood. Other methods of measuring protoporphyrin require specialized training and additional equipment. Another reason is the protocol that must be followed for sample handling. Specifically, there are logistical problems with coordination of laboratory support and sample shipment over long distances. Finally, there is considerable confusion regarding the relationship between protoporphyrin and blood lead, and the interpretation of results. If protoporphyrin is used, a rigid protocol for sample handling must be followed to ensure comparable results from one area to another. The FWS recognizes, however, that some States have collected considerable data using this technique and that such States or others who may so desire, should be afforded the opportunity to use this information in their decision process. For this reason, the FWS accepts the recommendation that protoporphyrin be added and has so incorporated it as a part of the decision criteria in the modified proposal.

There is one stipulation to the use of protoporphyrin as a decision criterion. This is, sample techniques and procedures must be approved by FWS so as to ensure that proper sampling and processing techniques are followed. The FWS feels that such coordination is necessary because of the rigid sampling and testing protocol involved. The FWS also reserves the right to subsample up to 10 percent of the protoporphyrin samples for lead concentrations. Any such testing would be as a cross check on the basic protoporphyrin data.

3. Concern

What is the scientific basis or justification for the criteria?

FWS response: For many years, waterfowl hunters and others have often questioned the basis and rationale for establishment of nontoxic shot zones. The FWS clearly understands the legitimate concern of waterfowl hunters regarding this point. This is one of the principal reasons that FWS is striving to develop, in a consultative fashion, a minimum set of criteria that are based upon scientific data and methods, are reasonably uniform, and are practical to implement. These criteria will help identify areas where waterfowl are exposed to lead in amounts significantly beyond that normally expected.

Background or normal levels of lead in the tissues of waterfowl and other animal species have been established through a combination of experimental studies and measurement of lead levels in tissues of birds exposed to lead and those not thought to be exposed to lead. For example, natural exposure data include analyses from tissues of birds involved in die-offs due to lead poisoning vs. analyses from tissues of birds dying of avian botulism.

Liver: Analyses of available data show consisent patterns regarding the levels of lead in livers of waterfowl. The predominance of "normal waterfowl" have background liver lead values of less than 1 ppm (wet weight). Seldom are values of 1.5 ppm or greater encountered in waterfowl not associated with lead shot ingestion or a lead poisoning die-off. As with all biological data, exceptions occur. These exceptions are insignificant in the evaluation of lead exposure to populations of birds or animals.

During the period of 1975-1979, the FWS's National Wildlife Health Lab (NWHL) had approximately 1,300 waterfowl livers from five species analyzed. These waterfowl were not suspected of having died from lead poisoning. Results are shown below.

Species	Sample [illegible]	Mean lead level (WW)	S.E.	Upper limit of 95% confidence internal
Mallard	[illegible]	0.81	0.67	[illegible]
Pintail	[illegible]	.59	.80	.72
Redhead	[illegible]	.42	.190	.73
Canada goose	578	.62	.044	.69
Snow goose	125	.56	.093	.71

The consistency of these data supports 2 ppm as a reasonable value for the lower limit of elevated levels when evaluating lead exposure in populations of birds. These results also compare favorably with the published literature. For example, Bagley and Locke (1967; Bull Environ. Contam. & Toxicol, 2(5): 297–305) report mean liver lead values of 0.5 (range of 0.3–0.8) for 11 pen-reared Canada geese and 0.9 (range of 0.3–2.0) for 16 pen-reared mallards. None of these birds had any known exposure to lead. They report background levels of lead in liver tissue to average 0.5 to 1.5 ppm for 11 different species of waterfowl with no known history of lead exposure.

Finley, Dieter, and Locke (1976; Bull Environ. Contam. & Toxicol, 16(3):261–269) report liver lead values in six pen-reared mallards in the control group of their study to be below limits of sensitivity for their analytical equipment (0.2ppm). In contrast, six female and six male mallards exposed to one number 4 commercial leas shot, each had mean liver lead values of 1.15 (±0.29 S.E.) and 0.58 (±0.19 S.E.), respectively. A similar number of birds exposed to number 4 lead-iron combination shot containing 47.5% as much lead as commercial lead shot, had lead levels in their liver averaging 0.32 ppm (±0.5 S.E.) for females and 0.25 ppm (±0.02 S.E.) for males.

Blood: Examination of lead levels in blood of waterfowl not know to be exposed to lead shot show that most birds contain lead levels of 0.05 ppm or below. Average lead levels in blood of captive mallards that had not been exposed to lead shot was 0.1 ppm in one study and 0.05 ppm in another study. Wild trapped canvasbacks collected at different locations and different years and that had not ingested lead shot recently, were reported to have average lead levels in their blood ranging from 0.06 to 0.18 ppm. For birds that had ingested lead shot recently, average blood lead concentrations ranged from 0.26 to 0.89 ppm, respectively. Selection of 0.2 ppm lead in blood as an elevated level (lower limit for concern) is consistent with the above data and coincides with the level of concern for blood lead concentrations in man.

Gizzards: Examination of gizzards for lead shot provides visible evidence of the type of lead waterfowl are ingesting. These data are usually collected from hunter-killed birds, and are usually obtained early in the hunting season. When paired liver and gizzard samples are collected, gizzard examination often underestimates lead exposure by about one-half when compared with liver lead concentrations. That is, if ingested shot are present in 10 birds in a 100 bird sample, it is likely that at least 20 will have elevated liver lead concentrations. For this reason, and because gizzards are usually collected early in the season when lead shot is generally less available to birds, gizzard analysis reflects minimum prevalence of lead exposure. Because gizzard and liver analyses represent a single point in time, both underrepresent actual lead shot ingestion rates over time. The dynamics of lead exposure, lead ingestion, and assay sensitivity limits will prevent identification of some lead exposed birds by either method. Also since ingestion of a single lead pellet can result in lead intoxication and death, a 5% incidence of lead shot in gizzards represents a significant level of risk within the population.

4: Concern

The decision criteria are too low.

FWS response: The difference between background levels of lead and the level that represents elevated levels is described in the response to comment 3. The NRA felt that the liver criterion was too low and referenced a study that reported acute lead poisoning in mallards occurred when lead residues in the liver reached 6 to 20 ppm.

To supplement the information in the response to comment 3, it is the FWS's position that liver lead concentrations between 2.0 and 7.99 (wet weight) represent elevated lead levels. These concentrations provide demonstrated evidence of exposure beyond the normal background levels. Further, various sublethal effects occur such as reduction in hemoglobin and other circulatory and nerve system disorders. It has been scientifically demonstrated that many diagnoses of lead poisoning are made with liver lead concentrations of 6 to 8 ppm. Bagley and Locke, for example, reported in 1967 (Avian Dis. 11:601–608) that Canada geese deaths from lead poisoning occurred at levels as low as 1.2 ppm. The State of New Jersey found that mute swan deaths had occurred with levels as low as 1 and 3 ppm (New Jersey Performance Report, Project No. W–58–R–2 dated July 23, 1979). There are yet other references in the literature of such water-fowl deaths occurring where the liver lead concentrations were less than 8 ppm. The FWS's National Wildlife Health Lab has also documented a number of deaths where liver lead concentrations were below 8 ppm. The FWS, therefore, feels that it would be acting in a scientifically irresponsible manner to increase the liver criterion to a level any nearer to the toxic range. The intent is to prevent sickness and death from lead poisoning. By using 2.0 ppm as the decision point, the FWS is providing a realistic margin or "buffer zone" between sublethal and lethal levels so that problem areas can be identified and corrective action taken *before* lead concentrations reach the toxic level and thus cause a significant number of deaths.

5. Concern

A sample of 100 birds is too low.

FWS response: The 100 bird sample size is based on statistical and economic considerations associated with a minimum level of detectible lead exposure within the population being sampled. This sample size is associated with a 5% prevalence value. If one finds 5% of birds exposed to lead in a sample of 100, then one can be 95% certain that the actual rate exceeds 1.4% (using one-tailed statistical test). If one finds 5% of birds exposed in a sample of 200, then one can be 95% certain the rate exceed 2.4%; for a sample of 300, this increases to 3.9%. Thus by increasing sample size from 100 to 300, the precision of the 5% estimate is greater, and one can be more certain that the actual exposure rate is close to 5%. In contrast, the chances of obtaining an exposure rate estimate less than 5% when, in fact, the actual rate exceeds 5%, is greater with a sample size of 100 than with a sample of 300. Thus, one is more likely not to detect lead exposure that is occurring with a sample of 100 than with a sample of 300. Further, costs associated with increasing the probability of detecting exposure also increase with sample size. The small increase in precision gained by increasing sample size from 100 to 200 does not warrant a 100% increase in costs. Increasing the sample size from 100 to 300 results in even greater costs, again with only a small gain in precision.

6. Concern

A three dead bird sample is too low as a triggering criterion.

FWS response: The FWS stands by its rationale stated in its proposal published on January 16, 1985, and as restated in the modified proposal herein. It is worthy of note that on January 27, 1985, the Pacific Flyway Council States lowered the mortality required within an area to 5 waterfowl. The FWS feels that this action by the Pacific Flyway States is a highly significant and positive action. Given the fact that the Pacific Flyway prefers 5 dead birds as the criterion, and the three other flyways want 1 dead bird as the criterion, the FWS feels that 3 is better than 1 because it eliminates the chance of coincidence and represents a compromise between 1 and 5. It is now obvious that the professional wildlife organizations are reasonably uniform in their feeling as to what constitutes an appropriate number of dead birds for this criterion. For this reason, the FWS is retaining the 3 dead birds as the level to trigger monitoring.

7. Concern

Too many counties are triggered by the harvest criterion.

FWS responses: The FWS recognizes that a large number of counties are triggered by the harvest criterion. Further, a large number of counties in some states would be triggered, thus creating a significant monitoring workload. Table 3 sets the monitoring workload in perspective from a flyway standpoint for the various harvest criterion under consideration. The FWS has also identified this on a State-by-State basis. As shown in Table 3, some counties or parts thereof are already in nontoxic shot zones so no additional monitoring is necessary. The actual number that would qualify for monitoring under this criterion is identified in the last line of Table 3.

TABLE 3.—NUMBER OF COUNTIES AFFECTED BY TRIGGERING CRITERIA (HARVEST)

Flyway	5 birds or more	10 birds or more	15 birds or more	20 birds or more
Pacific	[illegible]	47	31	22
Central	[illegible]	75	35	21
Mississippi	[illegible]	258	175	121
Atlantic	[illegible]	107	74	51
Total	[illegible]	487	315	215
Less counties or parts thereof in steel	[illegible]	161	122	87
Total subject to monitoring	[illegible]	326	193	128

8. Concern

Use habitat management practices as a way to resolve lead poisoning problems.

FWS response: The FWS agrees that certain habitat management practices can sometimes reduce the rates of ingestion of lead shot by waterfowl. Nothing herein prevents a State from doing this. Such practices include disking or plowing, manipulation of water levels, providing alternative sources of grit, and the planting or cultivation of waterfowl foods that have a high protein and low fiber content. Further, the FWS encourages the use of such practices wherever the state or other management authorities so desire and where funds are available for such purposes.

Unfortunately, it may not be possible to apply such management practices to many areas because of the lack of water control, inability to plow or cultivate or for a variety of other reasons. Further, such practices may be quite expensive and therefore impractical.

While exceptions do exist, it generally has been found that habitat management practices alone do not resolve the problem. The only long term solution is the elimination of additional deposition of lead shotshell pellets in the habitats where waterfowl feed.

9. Concern

The relationship of diet on reducing toxic effects of ingested lead in waterfowl was ignored.

FWS response: The FWS recognizes that the published literature suggests that the amount, types and nutritional value of the various foods eaten by waterfowl may minimize the stress placed on birds by a variety of toxic or infectious agents, including lead poisoning. Indeed, there are many variables that affect lead toxicity in waterfowl. For example, Sanderson and Bellrose in 1979 reported that these included diet, amount and type of soil ingested, age and sex of birds, season of year, size of bird and amount of lead to which the bird had been exposed. There is also scientific evidence available that shows that birds on a low protein, high fiber (e.g., corn or other hard grains) diet, may be more susceptible to lead poisoning than birds on a low fiber (e.g., leafy vegetation), higher protein type diet.

While the FWS understands the concerns raised by reviewers, it does not feel that it is practical or necessary to incorporate such considerations into the criteria. This is not necessary because the decision criteria for liver, blood and protoporphyrin measure lead concentrations that have been assimilated into tissues. If diet is of a high protein, low fiber nature, then fewer birds will show evidence of lead poisoning. Thus, the FWS feels that there is no useful purpose to relating diet to monitoring efforts for it is automatically covered in the criteria. Aside from this, it is not practical becuse, for example, extensive studies of the food habits of waterfowl would be required in specific areas under consideration for conversion to nontoxic shot. This would dramatically increase the cost and workload of the States and the FWS. In many areas such data may be useful for only a short period of time or for a few seasons becaue the habitat conditions and the availability of waterfowl foods may vary from year-to-year, area-to-area, and species-to-species.

The matter of diet is indeed worthy of note as it has larger connotations to the overall management of the nation's migratory bird resources. By maintaining adequate supplies of nutritionally adequate foods, especially during winter and spring migrations, the birds will be

better able to survive all types of stress factors.

10. Concern

Recognize the relationship of other lead sources to the lead level in waterfowl.

FWS response: The FWS recognizes that a variety of other sources of lead are present in the environment. These include industrial wastes, vehicle emissions, smelting operations, and naturally occurring sources. As discussed under the FWS comments concerning the "scientific basis for the criteria," this lead generally is of little consequence and is generally reflected in rather low levels of lead in tissues. The scientific evidence further indicates that biologically incorporated lead in the foods that waterfowl eat does not have the toxic effect as does highly concentrated dosages provided by lead shotshell pellets. For example, Custer, Franson, and Pattel in 1984 (J. Wildl. Diseases 20(1):39–43) fed biologically incorporated lead to American kestrels and found no detectable adverse impacts over a 60 day exposure period, and that biologically incorporated lead alone is not likely to cause clinical lead poisoning. Nevertheless, the FWS recognizes the importance of cooperating in efforts to reduce all forms of lead to which waterfowl and other wildlife may be exposed.

11. Concern

No consideration was given to the use of bottom sampling as a means of determining shot availability to waterfowl.

FWS response: The point was made by some reviewers that some locations where waterfowl are hunted have soft, oozy type bottoms. Some described these as resembling whipped cream in firmness, thus enabling spent lead shotshell pellets to rapidly sink beyond the reach of feeding waterfowl. The FWS has considered this point and how it might be incorporated into the proposal.

In analyzing the implications of such action, it became clear that flooded areas in most habitats have several types of bottoms * * * hard, medium hard, soft, and oozy. The FWS feels that incorporation of bottom firmness data into the proposal as either a triggering criterion or as a decision criterion, would be creating an implementation and enforcement nightmare for the states. Further, it would be very costly and burdensome to the States.

The FWS does recognize that the incidence of shot in the upper 10 to 12 inches of soft sediment is useful information. But, the relevant issue is lead shot ingestion by waterfowl. The criteria selected are designed to measure this ingestion and its subsequent effects on the animals. FWS believes these measurements are more useful in decisions on whether or not to establish nontoxic shot zones. Previous studies have demonstrated that shot is ingested from very soft mud in sediments. Some species may dig deeply into these sediments in search of tubers, seeds, clams, and other foods.

However, because of these concerns, the FWS has chosen to leave this matter to the discretion of the States. The FWS recognizes that in some States, a large number of counties would be triggered by the harvest criterion. Since it will be impractical to monitor all such areas in one year, the consideration of bottom data provides one basis for developing priorities and schedules for areas to be monitored.

12. Concern

Only one decision criterion should be used to substantiate that a lead poisoning problem exists.

FWS response: Several reviewers urged that only one decision criterion be used as the basis for identifying lead poisoning problems. The FWS agrees that if either the blood or liver criterion are met then lead poisoning problems exist. It does not accept the fact that the gizzard criterion alone is adequate justification that a problem exists. The FWS does agree that this criterion provides proof of exposure to spent lead shotshell pellets. The only way to determine if this lead is being assimilated into the tissues of birds is to analyze certain tissues, such as the blood or liver.

The FWS feels there is no alternative but to use the gizzard criterion as the means of proving ingestion of spent lead shotshell pellets and to use this in combination with the lead content in either the blood or the liver as the means for demonstrating whether or not a lead poisoning problem exists.

13. Concern

Establish temporal sampling bounds for the decision criteria.

FWS response: The National Wildlife Federation commented that the FWS proposal did not establish the temporal sampling bounds (time of year) for the decision criteria. The FWS agrees that the time of year that waterfowl are sampled for ingested or tissue-bound lead is an important factor in assessing lead poisoning problem areas. Further, the FWS believes that this was clearly recognized in footnote 6 of the FWS proposal published on January 15, 1985. This is reflected in footnote 5 of the modified proposal summarized in Table 4.

14. Concern

Base the 5 percent ingestion rate in gizzards on X-ray rather than visual examination.

FWS response: The FWS recognizes that published studies show that visual examination of gizzards significantly underestimates lead shot ingestion. The National Wildlife Federation referenced a study that reported visual estimates were up to 28 percent below that shown by X-ray examination. The FWS has included language in the modified proposal encouraging the use of X-ray examination for estimating ingestion rates. The reason this was not made a requirement is because all States may not have the necessary equipment or have the funds to purchase such equipment for this purpose.

15. Concern

Elimination or removal of existing or future nontoxic zones.

FWS response: All existing or future nontoxic shot zones will be retained indefinitely. Should a State desire to conduct additional monitc ing on an existing zone at some future date, it is certainly free to do so. Should such monitoring reveal that tissue lead levels and ingestion rates have declined, it may be confronted with a decision as to whether or not to revert back to the use of lead shot. The FWS position on this is that in the absence of other environmental changes, conversion back to lead will only lead to a recurrence of the lead poisoning problem.

16. Concern

There are no provisions for States that refuse to establish a monitoring program once a triggering criterion is met.

FWS response: The FWS proposal required that States make a commitment to monitor the decision criteria within 90 days of determining that a triggering criterion had been met, and that monitoring will begin within 1 year. Further, if a state cannot meet that commitment, a schedule for monitoring should be submitted to the FWS for approval by the Director. The National Wildlife Federation and others commented that this is an inadequate approach as those States that have historically opposed nontoxic shot can continue to reject Federal intervention.

The FWS has serious questions about its ability or the wisdom of forcing States to implement a monitoring program via the federal regulations process. The FWS is striving to formulate these criteria and procedures

by which nontoxic shot regulations and these criteria can be implemented on a partnership basis with the States. It is encouraged by the progress to date toward this end. The FWS recognizes, however, that a few States might choose to operate in the manner described by the Federation. We are hopeful, however, that this will not be the case and that any concerns and differences can be resolved in a spirit of cooperation and mutual respect.

17. Concern

Delete requirement to initiate separate rulemakings for areas meeting triggering and decision criteria.

FWS response: The FWS is legally bound under the Administrative Procedure Act (APA) to establish its regulatory programs through the informal rulemaking process of public notice and comments. This would apply to regulatory matters that establish procedures, guidelines, or requirements that hunters or others must follow. The National Wildlife Federation has asked that this informal rulemaking process of public notice and comment be deleted and that the FWS proceed directly to issue final regulations on areas that meet the triggering and decision criteria. The FWS cannot accept this recommendation due to the rulemaking procedural requirements of the APA and must continue to issue final regulations on nontoxic shot zones only after proper advance notice to the public.

18. Concern

What is the regulatory status of the criteria being implemented?

FWS response: The FWS proposed criteria published on January 16, 1985, were intended to be a general statement of policy regarding the evaluated process to be used for internal planning purposes by the Migratory Bird Office addressing the problem of lead shot. Necessarily, the text accompanying the proposed criteria discussed the migratory bird hunting regulatory program since that is the administrative program that the general policy statement was intended to apply. Although, the proposed criteria fit within the broad definition of a "rule" under the APA, they do not constitute those types of "rules" which are subject to the informal rulemaking process of public notice and comment under section 553 of the APA. These guidelines were not intended to have the force of regulations. Thus, the criteria could have been developed as a matter of law, without an opportunity for public comment. As a matter of policy, however, the FWS has sought to maximize public involvement in the nontoxic shot program. For this reason, the FWS chose to submit the draft criteria for public comment instead of merely publishing a finalized set of criteria as a finished product. Because the document prepared by the FWS provided for public comment and involves a regulatory program, the **Federal Register** chose to publish it in the "proposed rules" section of the publication instead of the "public notice" section. The FWS views this as a publication matter within the discretion of the **Federal Register** which does not affect the legal status of the document under the APA. Thus, although it was published in the "proposed rule" section of the **Federal Register**, the FWS does not consider the development of the nontoxic shot criteria to be subject to the informal rulemaking procedures of section 553 of the APA.

19. Concern

How will the one-year reevaluation outlined in the FWS proposal be conducted.

FWS response: In the FWS proposal of January 16, 1985, the FWS proposed to analyze the effectiveness and practicality of the criteria after the first year of implementation. At such time, states would have been notified and appropriate announcements made in the **Federal Register** to obtain the benefit of state and public comment for use in such analysis. The National Wildlife Federation has asked that these procedures be clarified.

The specific procedures or process envisioned is to publish a notice in the **Federal Register** that such an analysis will be conducted and request the States provide an assessement of their efforts to implement the criteria. Any recommendations they might have for improving the implementation of the criteria will also be solicited. These responses will then be reviewed by FWS. Any modifications to the criteria will be published in the **Federal Register** as a proposal prior to any changes in the final criteria approved as a result of this current effort.

20. Concern

The criteria are burdensome in that they imposed unnecessarily upon the financial and personnel resources of the States, according to some waterfowl hunter groups.

FWS response: The FWS agrees that financial and personnel resources are necessary to conduct the necessary monitoring and lead analysis work. Many hunters themselves have been concerned about the manner by which nontoxic shot zones have been established in the past and suggested that areas have been established on an inconsistent basis. By its proposals, the FWS is responding to those concerns in a positive and constructive manner. It asks that everyone understand that our intent is to bring a more scientific and rational basis to bear in the establishment of nontoxic shot zones. In so doing, some additional money and work will be required on the part of both the State and Federal governments. But, one of the key rewards to the hunter is a greater confidence that lead poisoning problems truly exists in areas that meet the criteria. The FWS believes that the additional expense will be worth the cost, if the controversy surrounding this issue is resolved and lead poisoning among waterfowl reduced.

21. Concern

Increased emphasis should be placed on the development of a new nontoxic shot substitute.

FWS response: The FWS agrees that increased emphasis is needed on the development of a new nontoxic shot substitute. It is aware that at least five different development efforts are currently underway within the private sector. These initiatives are being monitored by the FWS with great interest.

In 1976, regulations were published concerning the approval of nontoxic shot substitutes. These regulations are now being revised and will be published as proposed rules soon after the publication of this criteria proposal. FWS believes that it must ensure that clear standards exist by which any new substitutes must be tested from a toxicity standpoint. From a ballistics standpoint, it must rely upon the shooting arms manufacturing industry standards as FWS has no expertise on ballistics. The various toxicity standards and testing procedures will be described in the proposed rules mentioned above. It is the intent of the FWS to encourage and cooperate, to the extent possible, with those developers that may soon have a shot substitute ready for testing.

Modified Procedures Proposed by FWS

The criteria and procedures specified below are based upon those described in the January 16, 1985, proposal. Principal modifications include the incorporation of a phase-in approach to implementation, the addition of protoporphyrin as a decision criterion, concurrence with state recommendations that current existing monitoring data be used, and clarifying how bottom data might be used.

Triggering Criteria

A county or waterfowl habitat area within one or a combination of adjoining counties, as identified by the State, would be triggered for monitoring of the decision criteria if it met either of the two triggering criteria below.

Harvest per square mile. The FWS proposes that a waterfowl harvest level of a specified number be used as this criterion. The specified numbers are outlined in the implementation schedule below.

Harvest Level (birds per square mile)	Hunting season that monitoring is to begin	Hunting season in which nontoxic shot to be required in qualifying areas
20	1985-86	1987
15	1986-87	1988
10	1987-88	1989
5.	1988-89	1990

The number of birds determined to be harvested in a county or other designated area will be based upon periodic reports issued by the FWS or upon State harvest data for the counties or designated areas in question.

Obviously, if a state has no counties or designated areas meeting the 20 bird harvest criterion, then it would proceed to monitor the 15 or 10 bird level, whichever is applicable. On the other hand, a few states have so many counties at the 20 and 15 bird harvest levels that it may not be possible to adhere to this schedule. In such cases, the states and the FWS must negotiate an appropriate schedule and any cooperative monitoring work. This would be achieved as follows:

> Within 90 days of determining that a triggering criterion had been met, the state(s) must make a commitment to monitor and that such monitoring will begin within one year. Such commitment and a schedule for monitoring should be submitted to FWS for approval by the Director. At the same time, the state will notify the FWS of its need for any assistance. This is the preliminary step to negotiating an acceptable cooperative approach to the monitoring workload.

Number of dead waterfowl diagnosed as having died from lead poisoning during the year. The FWS proposes that this criterion be three dead waterfowl. The FWS feels that this number is more likely to be representative of a significant problem in that location, since it is therefore likely that the birds picked up the lead in the area where they died. Not only will this focus future efforts on areas where problems are most likely to exist, it will significantly reduce the initial costs associated with monitoring as required under decision criteria discussed below.

Decision Criteria

An area identified by either triggering criterion would then be monitored for ingested shot, and at least one of the other three decision criterion. A sample size of 100 birds would be required.

One or more ingested shot in five percent or more of the gizzards examined, 2ppm lead in five percent or more of the liver tissues sampled (wet weight), 0.2ppm lead in five percent or more of the blood samples drawn from hunter-killed or live-trapped waterfowl, and a protoporphyrin level of 40μg/dl in five percent of the blood samples would serve as the decision criterion. Gizzard samples are an integral part of the monitoring process. Shot in the gizzards reflects the degree of exposure to lead shot. Lead in the liver or blood reveals that either this or some other type of lead has been assimilated in tissues. Lead in the liver or blood, when analyzed in combination with the incidence of shot in gizzards, provides a basis for making decisions on the source and extent of lead poisoning within a given area.

Use of existing monitoring data. States are free to use existing monitoring data on triggered areas, provided the data is recent. Many states have already completed extensive monitoring for some areas. If the State feels that the data are current and can be realistically defended, then no additional monitoring would be necessary or required. This approach would further reduce the financial requirements imposed by these criteria.

Recognition of State authority. The FWS recognizes that State wildlife agencies have the authority to require nontoxic shot on any additional area where they determine that a problem exists by means other than these criteria. The FWS in no way implies by this proposal that states with areas not meeting these criteria should be excluded from nontoxic shot. Individual states may therefore determine for their own management purposes, that the use of lead shot in waterfowl feeding areas in any degree should be prohibited. The FWS will continue to honor States' requests to establish nontoxic shot zones in areas not meeting established minimum Federal criteria. It is the responsibility of the individual States to justify and defend any such actions they take in this regard.

Action upon completion of monitoring. If the results of monitoring are *positive* for the gizzard criterion plus either the liver or blood criteria, the county or designated area will be proposed as a nontoxic shot zone. If the results of monitoring are *negative*, the area would be considered not to have a lead poisoning problem unless, at a subsequent date, three or more dead waterfowl confirmed as lead poisoned are reported from the area. In that event monitoring would be reinstituted. The State may, however, decide to remonitor the county or area for a second successive year or to reschedule it for monitoring at some point in the future when all other counties or areas that have met a triggering criterion have been checked. This additional effort is purely at the option of the State.

Any area that is remonitored and found not to meet the decision criteria should remain as a nontoxic shot zone because this is demonstrated proof that the lead poisoning is being reduced. Should, however, the State decide to revert back to the use of lead on such areas, it would be necessary to remonitor the area at a later date to determine if the area should remain in lead for an additional period. Once any such converted area has been found to have a reoccurrence of the lead poisoning problem, it should not in the future be converted back to a lead area.

Use of bottom data. The FWS recognizes that some specific areas where waterfowl are hunted may have bottoms that are very oozy and are so soft that they resemble whipped cream in firmness. Thus, spent lead shotshell pellets may soon sink out of reach of feeding waterfowl. In such areas, the state may delay monitoring to focus initial monitoring efforts on what it considers to be higher priority areas.

Dated: April 10, 1985.

Robert A. Jantzen,

Director.

TABLE 1.—MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES BASED UPON COMMENTS RECEIVED FROM STATE WILDLIFE AGENCY DIRECTORS REPRESENTING EACH FLYWAY COUNCIL

Criteria	Flyway			
	Atlantic	Mississippi	Central	Pacific
I. Triggering Criteria [1]				
Gizzard (ingested shot)				5% w/2 shot

TABLE 1.—MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES BASED UPON COMMENTS RECEIVED FROM STATE WILDLIFE AGENCY DIRECTORS REPRESENTING EACH FLYWAY COUNCIL—Continued

Criteria	Flyway			
	Atlantic	Mississippi	Central	Pacific
Liver (lead content)				10%—6 ppm.
Blood (lead content)				10%—0.5 ppm.
Harvest (by county, per sq. mi. or other designated area as jointly agreed by State and FWS, harvest levels noted are based on a 3-year running average from FWS data)	5 ducks and geese/sq. mi. or +1% State Harvest within area.	5 ducks and geese/sq. mi	5 ducks and geese/sq. mi	5 ducks and geese/sq. mi
Dead waterfowl (from confirmed lead poisoning)	1	1	1	1
II. Decision Criteria [2]				
Gizzard (ingested shot)	5% w/1 shot	5% w/1 shot	5% w/1 shot	
Liver (lead content)	5% w/2 ppm	5% w/2 ppm	5% w/2 ppm	(3)
Blood (lead content)	5% w/0.2 ppm	5% w/0.2 ppm	5% w/0.2 ppm	
Dead waterfowl (from confirmed lead poisoning)				100 (habitat management option retained).[4]
III. Other Conditions				
Sample size (species known to be susceptible to lead poisoning) [5]	100 (hunter killed or trapped)	100 (hunter killed or trapped)	100 (hunter killed or trapped)	300 confirmed lead poisoned waterfowl.
Period of Sample	A four week period of time during the latest part of the hunting season, weather permitting, beginning the 1985–86 season.			

[1] In areas where any of the triggering criteria are met, the following will occur. (1) If a State does not choose to monitor the area it will be included in the next FWS rulemaking to require nontoxic shot in the subsequent hunting season. (2) If a State does not choose to monitor an area, the State must notify the Director within 90 days of that intention.

[2] Any area meeting two of the decision criteria will be proposed for nontoxic shot.

[3] To be determined.

[4] Pacific Flyway includes management options to reduce lead poisoning before implementing nontoxic shot.

[5] Applies only to decision criteria, except in Pacific Flyway, where it also applies to triggering criteria.

TABLE 2.—FWS PROPOSED MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES

Criteria	Flyway			
	Atlantic	Mississippi	Central	Pacific
I. Triggering Criteria [1]				
Harvest (by county, per sq. mi. or other designated area as jointly agreed by State and FWS; harvest estimate based on most recent 3-year average from FWS data)	10 or more ducks and geese/sq. mi.	10 or more ducks and geese/sq. mi.	10 or more ducks and geese/sq. mi.	10 or more ducks and geese/sq. mi.
Dead waterfowl (individual specimens confirmed as lead poisoned).	3	3	3	3
II. Decision Criteria [2]				
Gizzard (ingested shot)	1 or more shot in 5%	1 or more shot in 5%	1 or more shot in 5%	1 or more shot in 5%.
Liver (lead content)	2 ppm wet weight in 5%	2 ppm wet weight in 5%	2 ppm wet weight in 5%	2 ppm wet weight in 5%.
Blood (lead content)	0.2 ppm in 5%	0.2 ppm in 5%	0.2 ppm in 5%	0.2 ppm in 5%.
III. Other Conditions				
Sample size (species known to be susceptible to lead poisoning). [3]	100 (hunter killed or trapped)	100 (hunter killed or trapped)	100 (hunter killed or trapped)	100 (hunter killed or trapped).
Sampling procedures [4]	Most susceptible species only	Most susceptible species only	Most susceptible species only	Most susceptible species only.

[1] In areas where one or more of the triggering criteria are met, a State must monitor the gizzard criterion and either one of the other two decision criteria. Within 90 days of making a determination that any triggering criterion has been met, the State must provide the FWS with either a commitment to monitor the area within 1 year or submit a proposed schedule for monitoring to begin within one year for approval by the Director.

[2] Any area meeting two of the decision criteria will be proposed for nontoxic shot.

[3] Applies only to decision criteria.

[4] Specimens can be collected by shooting or trapping. No more than 25% of a hunter-killed sample should occur in the first week of the hunting season. At least 50% of sample of hunter-killed birds should occur in the last half of the waterfowl season.

TABLE 4.—FWS PROPOSED MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES

	Harvest level	Monitoring begins	Qualifying areas converted
I. Triggering Criteria [1]			
Harvest (by county, per sq. mi. or other designated areas as jointly agreed by State and FWS; harvest estimate based on most recent FWS or State data)	20 or more	1985–86	1987
	15 or more	1986–87	1988
	10 or more	1987–88	1989
	5 or more	1988–89	1990
Dead waterfowl (individual specimens confirmed as lead poisoned during the year.)		3	
II. Decision Criteria [2]			
Gizzard (ingested shot) [3]	1 or more shot in 5%.		
Liver (lead content)	2 ppm wet weight in 5%.		
Blood (lead content)	0.2 ppm in 5%.		
Protoporphyrin [4]	40 μg/dl in 5%.		
III. Other Conditions			
Sample size (species known to be susceptible to lead poisoning) [5]	100 (hunter killed or trapped).		
Sampling procedures [6]	Most susceptible species only.		

[1] In areas where one or more of the triggering criteria are met, a State must monitor the gizzard criterion and either one of the other two decision criteria. Within 90 days of making a determination that any triggering criterion has been met, the State must provide the FWS with either a commitment to monitor the area within 1 year or submit a proposed schedule for monitoring to begin within one year for approval by the Director.

[2] Any area meeting the gizzard criterion plus 1 of the other decision criterion will be proposed for nontoxic shot.

[3] X-ray examination of gizzards is preferred

[4] Sample techniques and procedures must be approved by FWS so as to ensure that proper sampling and processing techniques are followed. The FWS also reserves the right to subsample up to 10 percent of the samples for lead concentrations.

[5] Applies only to decision criteria.

[6] Specimens can be collected by shooting or trapping. No more than 25% of a hunter-killed sample should occur in the first week of the hunting season. At least 50% of a sample of hunter-killed birds should occur in the last half of the waterfowl season

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federal register

Tuesday
May 7, 1985

Part III

Department of Transportation

Office of Commercial Space Transportation

14 CFR Ch. III

Commercial Space Transportation; Third-Party Liability Insurance for Commercial Space Launch Activities; Request for Public Comment; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

14 CFR Ch. III

[Docket No. 43098; Notice 85-7]

Commercial Space Transportation; Third-Party Liability Insurance for Commercial Space Launch Activities; Request for Public Comment

AGENCY: Office of Commercial Space Transportation, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: DOT's Office of Commercial Space Transportation invites public comment on the issues surrounding the establishment of minimum levels of financial responsibility for damage to third parties caused by the operation of commercial expendable launch vehicles (ELVs), their payloads, and their commercial launch sites.

DATE: Comments should be received by July 8, 1985.

ADDRESS: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room 4107, Docket No. 43098, Department of Transportation, C-55, Washington, DC 20590. Persons wishing acknowledgement that their comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room 4107, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 9:00 AM to 5:00 PM ET Monday through Friday except Federal holidays.

Please Note:—New security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number below before arrival.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 472-5580.

SUPPLEMENTARY INFORMATION:

Background

The President has designated DOT as the lead agency within the Executive Branch for encouraging and facilitating the commercial ELV industry (Executive Order 12465; February 24, 1984.), a responsibility recently confirmed by enactment of the Commercial Space Launch Act (Pub. L. 98-575) ("the Act"), signed by the President on October 30, 1984. The Act requires that DOT license ELV launches and *private* launch sites, and authorizes DOT to prevent the launch of certain payloads deemed inimical to public safety, national security, or foreign policy interests of the United States. Included among the powers assigned DOT is the establishment of minimum levels of financial responsibility for liability to third parties arising from launch operations. Organizations engaged in the commercial development of outer space, including ELV and payload manufacturers and operators, and insurance brokers, have looked to DOT for explanation of its policies regarding third-party liability insurance for such launches.

Need for Insurance

Under the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (the Outer Space Treaty of 1967, 18 UST 2410); and the Convention on International Liability for Damage Caused by Space Objects (the Liability Convention of 1972, 24 UST 2389), the United States is liable to pay compensation for damage to foreign persons or property caused by "space objects" launched (or whose launch is procured) by the United States or from United States territory or facilities. For damage to persons or property on the ground or in flight through the air, such liability is absolute (i.e., no defense is available if a claim is established). For damage to persons or property in space, liability depends upon a showing that the damage was due to negligence. Section 16 of the Act specifically requires that each person receiving a license under the Act have in effect the minimum amount of liability insurance considered necessary by DOT, considering the United States' international obligations.

Domestically, the Government may also be held liable to private parties for damage caused by the launching of private space vehicles and payloads from the national ranges (for example, Cape Canaveral Air Force Station and Vandenberg Air Force Base) because of the operational role that the Government plays in these launches. For these reasons, DOT believes that the insurance required under section 16 also should cover these claims. (It should not cover liability for damage to parties participating in launch operations, or to their employees, agents, or contractors. Hence, those that use Government property in a launch may be subject to additional insurance and/or indemnity requirements with regard to damage caused to such property at the launch site or to activities conducted at the launch site by Government contractors.

Third-party liability insurance coverage for commercial space launch operations is also necessary to protect the public. Insurance of this type provides protection in two ways. First, when an accident does occur, third-party liability insurance guarantees that funds are available to compensate for the resultant damage. Second, liability, backed up by mandatory insurance coverage, can create incentives to operate safely. To the extent that the premium for insurance of this type reflect the risk of harm from commercial launch operations, those that can reduce the risk through safer operation will thereby be able to save on insurance costs.

In a broader sense, requiring third-party liability insurance can benefit the commercial space launch industry as well as the public. Failure to assure the public that its interests are being protected could lead to serious public opposition to this industry. DOT's experience with other potentially hazardous activities—such as transportation of hazardous materials—indicates that the assured availability of funds to compensate for loss is a significant element of public acceptability.

Third-party liability insurance is the only type of space insurance in which DOT has a direct legal responsibility. All other types of space insurance (e.g., pre-launch, launch, and satellite life) are designed to protect the launch service company or payload operator's *business investment*. Although the cost and availability of those types of insurance have an effect on the viability of commercial space endeavors, they are of only indirect public concern.

The purpose of this notice is to solicit the views of the public on third-party liability issues as an aid to DOT in developing its policy and regulations. Comments are invited on the specific issues discussed in this notice, plus any other that are relevant.

Authority: Commercial Space Launch Act, Pub. L. 98-575; 49 CFR 1.68.

Issued in Washington, DC, on May 1, 1985.

Jennifer L. Dorn,

Director, Office of Commercial Space Transportation.

COMMERCIAL SPACE TRANSPORTATION

Third-Party Liability Insurance for Commercial Space Launch Activities

I. Scope

DOT intends to issue regulations requiring third-party liability insurance

for all commercial operations of expendable launch vehicles by United States nationals or from United States territory. This includes existing as well as new vehicle types launched from national ranges or commercial launch sites. The regulations will not address liability for damage to parties participating in launch operations, or to their employees, agents, or contractors.

II. Liability Insurance Requirement

A. Establishment

Commercial launch service companies, operators of payloads launched by commercial launch service companies (to the extent that they are subject to DOT authority), and operators of commercial sites used by commercial launch service companies should demonstrate financial responsibility for third-party liability to ensure that the United States' international obligations are properly met and to protect the public in case damage is done. Financial responsibility for third-party liability would be a condition of any license issued under the statute.

B. Evidence

There are two forms of acceptable evidence of this financial responsibility that DOT is considering. One is commercial insurance. Such insurance would name the United States (as well as the purchaser of the policy) as an insured party. High levels of risk-retention (for the purchaser of the policy, but not for the United States) could be permitted. (Under such risk-retention arrangements, the *insurer* would pay beginning with the very first dollar of loss, but would be reimbursed by the insured for all losses paid up to an agreed limit. It is a means by which an insured can reduce its current premiums through use of a deductible, while ensuring the public that the assets of a regulated insurer will be available for all claims.)

Another possible means for establishing financial responsibility is purchase of a commercial surety bond. (A bond is a guarantee by an insurance or bonding company that, if the insured is required by a court to pay for damages covered by the bond, the insurance or bonding company will pay up to the limits of the bond. With insurance, the contract calls for the insurer to pay most claims; with a bond, the insured pays the claim and the bonding company (the surety) stands ready to pay only in the event of a default by the principal (the insured). Whether one chooses a bond or insurance depends on a number of factors, including level of premiums and financial strength of the principal.) If a bond is used, it would name the United States (as well as the purchaser of the bond) as a bonded party.

DOT invites comment on these two possible means and on any others that may be appropriate. We also seek comment on whether a commercial bond satisfies the statute's requirement of "liability insurance".

C. Subsidy

DOT does not believe that it has authority to provide a subsidy for the purchase of either a bond or insurance, nor that it is appropriate for the Government to provide one even if it had the authority.

III. Means of Determining Appropriate Level of Financial Responsibility

A. General

DOT is considering two methods to determine the appropriate level of financial responsibility for launch vehicles, and seeks comment on the merits and impacts of these two approaches.

B. Maximum Amount Commercially Available

The first method is to require purchase of the maximum amount of third-party liability insurance or bond commercially available at reasonable rates. That amount is generally considered to be $500 million for each payload on the Shuttle, and this is the approach used by the National Aeronautics and Space Administration in the past. (By contrast, lesser amounts have been required of commercial launch service companies, and of payload operators flying on Government ELVs.) We assume that insurance in this amount would be sufficient; were rates for this type of insurance to increase significantly, however, the maximum amount commercially available at reasonable rates may not provide sufficient protection. It is not clear what the maximum amount available at reasonable rates would be for each launch for which DOT might receive a license application.

C. Risk Analysis

The second method is to do an analysis of the risk posed by a launch and set an appropriate financial responsibility level based on that analysis. DOT routinely does this for other transportation modes.

D. Evaluation

In selecting a method for determining the proper level of financial responsibility, DOT is mindful of the potential limitations of each approach. We specifically seek comment on both approaches. The first may impose inordinate burdens upon a small firm lacking the cash for large insurance premiums. The second, although similar to the approach DOT employs for other modes of transportation, may not be appropriate in circumstances involving use of a launch vehicle for which there is little or no prior launch experience. (Since it requires the same type of analysis as would be performed for range safety purposes, however, it may be appropriate for these vehicles.)

We are seeking comments that will help us to understand the range of liability issues that will confront this industry in the future. For example:

(1) What are the circumstances under which the rates for otherwise identical vehicles vary?

(2) Should insurance levels be set by *class* of vehicle? If so, what criteria should be used?

(3) Should DOT adopt one of the two methods discussed above as the standard, utilizing the other only under some circumstances? Which should we choose as the standard and why? Under what circumstances should we use the other?

E. Insurance Industry Practices

As a general consideration, despite the many years that have passed since the beginning of the United States space program, some members of the insurance industry have maintained that there have not been enough launches for the insurance industry to set premiums in the manner it normally does. Some have mentioned that the same situation is true in commercial aviation. (If so, how is rate setting done in aviation, and what elements of that process may be relevant to commercial space launch activities?) How valid is this concern? How relevant is it to this issue? Does this mean that insurance premium rates, useful as an accurate indication of risk for other modes of transportation, in this context may not be valid?

In the entire history of the United States space program, no fatalities to members of the public have resulted from a launch; this safety record may be unmatched in any comparable field. Have there ever been amounts paid under third-party liability insurance for any other types of damage? What factors determine the rates for and availability of this type of insurance? What are the premiums for $100–500 million of third-party liability insurance for commercial space launch activities, in $100 million increments? Under what circumstances might such amounts not

be "commercially reasonable"? What would be the effect on the commercial availability of this type of insurance if one or more accidents led to insurers' paying out large sums of money?

F. Other Methods

Are any other methods appropriate for determining minimum levels of financial responsibility for third-party liability?

G. Launch Sites

What should be the level of financial responsibility for commercial launch sites? Is it sufficient to require that such a site have financial responsibility for third-party liability at least equal to the highest level of financial responsibility applicable to any vehicle that may be launched from the site?

H. Duration

What should be the period of time for which the insurance should remain valid? For an object that enters space, should it be for so long as the object remains in existence? When does the potential for liability of the operator of a launch site cease?

IV. Liability for Damage in Excess of Insurance Coverage

A. General

If the Government is liable, under either international or domestic law, for a loss that exceeds the amount of insurance, the Government must decide whether to seek recovery of the additional amount from the party whose actions gave rise to the loss. It is the position of the United States Government that this decision is best made on a case-by-case basis, after consultation among the Departments of Justice and Transportation, and other affected Federal agencies, and consideration of the particular facts. The Government's discretion in this area may be preserved in advance of any loss by requiring that licensees accept as a condition of the license that:

1. The available insurance is not the Government's exclusive recourse in the event of liability that exceeds the amount of that insurance, and

2. The Government reserves the right to bring an action against the responsible parties for any deficiency. DOT believes that this arrangement best resolves the Administration's objective of facilitating the development of this industry while protecting legitimate national interests.

B. Factors

What factors should the Government consider in determining whether to seek recovery for claims in excess of insurance limits? Possible factors are—

1. The nature, circumstances, extent, and gravity of any failure to observe safe practices that led to the loss;

2. The effect on the commercial launch vehicle and launch site industries, as appropriate; and,

3. With respect to the party whose actions led to the loss:

a. The degree of culpability;

b. Any history or prior failures to observe safe practices;

c. The ability to pay;

d. The effect on the ability to continue to do business;

e. Such other matters as justice may require; and

4. Cost to the United States Government.

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federal register

Tuesday
May 7, 1985

Part IV

Environmental Protection Agency

Toxic Substances Control Act Chemical Substances Inventory; Intent To Remove 106 Incorrectly Reported Chemical Substances

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81012; FRL-2823-9]

Toxic Substances Control Act Chemical Substances Inventory; Intent To Remove 106 Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substance Inventory, EPA has concluded that certain chemical substances were incorrectly reported and listed. EPA intends to remove 106 chemical substances from the Inventory and solicits public comment on the appropriateness of that removal.

DATES: Comments must be received by EPA on or before June 21, 1985.

ADDRESSES: Three copies of the written comments should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 103, East Tower, 401 M St., SW, Washington, D.C. 20460.

Comments should bear the identifying notation OPTS-81012. The administrative record supporting this action is available for public inspection in the OPTS Reading Rm. E-107, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:
Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW, Washington, D.C. 20460.
Toll-Free: (800-424-9065).
In Washington, D.C.: (554-1404).
Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Section 8(B) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469, requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These Regulations provided the basis for the initial compilation of the TSCA Chemical Substance Inventory, which identifies the chemical substances in U.S. commerce.

The Inventory is a compilation of chemical substances that have been manufactured, imported, or processed in the United States for commercial purposes since January 1, 1975. The Inventory's primary purpose is regulatory. It defines a new chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included in the Inventory it is considered a new substance (section 3(9) of TSCA), and a premanufacture notice (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its functions, it must be continuously and accurately updated as new information becomes available. Updated information includes identities of new chemical substances which are being introduced into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the **Federal Register** of July 29, 1980 (45 FR 50544), that it would accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29 **Federal Register** notice relate to chemical identity.

Since the publications of the Inventory and the July 29, 1980 **Federal Register** notice, the Agency has received numerous requests to correct certain previously submitted Inventory reports. In addition, in its review of certain structurally related alkyltin compounds, EPA discovered that one of these compounds was inappropriately reported. The Agency reviewed these correction requests and the corresponding reports originally submitted for the Inventory, and concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of the Inventory submissions, the Agency discovered that each of the incorrectly listed substances was reported only by a submitter who subsequently requested that EPA correct the chemical identity or who subsequently reported a non-TSCA use.

There are various reasons why chemical substances were incorrectly reported for the Inventory. First, the mistake could have been typographical or transcriptional and was not known to the submitter when the original report was submitted. Second, improved analytical equipment and methods may have allowed for a more accurate description of a previously reported substance. Third, EPA may have identified reporting errors and requested corrections. Regardless of the source of error, the result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and currently is included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will be impaired, and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish. In addition, substances which probably should be subject to PMN review before they are manufactured or imported could avoid that review.

To date, EPA has officially removed from the TSCA Inventory 25 chemical substances (see the **Federal Registers** of June 9, 1981 (46 FR 30563) and December 6, 1982 (47 FR 54866)). In this notice, the Agency proposes to remove 106 additional chemical substances. The Agency has found that these chemical substances were incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the 106 chemical substances is further identified by its corresponding Chemical Abstract's preferred name.

Each of the 106 chemical substances proposed for removal was reported for the Inventory. Subsequently, persons who had reported 105 of the chemical substances in question informed EPA that the chemical identities originally reported to EPA and included on the Inventory were incorrect. The corrected identities for these 105 chemical substances have been added to the Agency's Master Inventory File. EPA checked each of these 105 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found.

The remaining chemical substance proposed for removal from the Inventory was identified as a result of the Agency's review of a group of structurally related alkyltin compounds listed on the Inventory. Under the authority of section 4(e) of TSCA, the Interagency Testing Committee (ITC) had previously designated these compounds as candidate substances for testing (48 FR 51361). The ITC was concerned about the environmental effects of these alkyltin compounds because of their analogy to certain trialkyltin compounds registered for use as pesticides under the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA). In reviewing the ITC recommendations, EPA discovered that one of these substances, tributyl fluoro stannane (CAS Registry Number 1983–10–4), had been inappropriately reported for the Inventory. This substance is used solely as a pesticide under FIFRA, and has no reported TSCA commercial uses. According to section 3 of TSCA, any substance which is manufactured, processed, or distributed in commerce for use solely as a pesticide would not be eligible for listing on the Inventory. The Inventory Reporting Regulations further specify that any chemical substance reported for the Inventory must have been manufactured, imported, or processed for a TSCA commercial purpose in the United States since January 1, 1975. Therefore, the substance in question was not eligible for listing on the Inventory when it was reported, and is a candidate for removal from the Inventory.

With the exception of tributyl fluoro stannane, each of the chemical substances was reported by only one submitter—the person who subsequently notified EPA that he had misreported the chemical substance. In accordance with EPA policy (OTS Order 7730.7) an erroneously or incorrectly reported chemical substance should be removed from the Inventory. Accordingly these 106 chemical substances do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the Inventory any of the 106 chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed chemical substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR Part 710.2(p)), by anyone during the period January 1, 1975 through the publication date of this notice. The Agency is also interested to know whether any person can show that any of the chemical substances could have been properly reported for the Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. With the publication of this notice, any on-going manufacture, import, or processing of any of the 106 chemical substances listed below which was begun prior to the publication date of this notice may continue until publication of the final notice of disposition. All such comments must be submitted to EPA within the 45-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the **Federal Register**. EPA will not consider any request to retain any of the listed chemical substances on the Inventory based solely on manufacture, import, or processing of that substance which begins after the publication date of this notice. If the agency determines that any of the chemical substances listed should not be removed from the Inventory, any manufacturers, importers, or processors of these chemical substances would be invited to submit Inventory reports to establish the need to retain the chemical substances on the Inventory. The substances would then remain on the Inventory. On the other hand, if the Agency concludes that a chemical substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition the chemical substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any manufacture or import of the chemical substance from the date of removal.

Chemical Substances Proposed for Removal From the TSCA Inventory

590–66–9—Cyclohexane, 1,1-dimethyl-
625–27–4—2-Pentene, 2-methyl-
822–50–4—Cyclopentane, 1,2-dimethyl-, *trans*
1192–18–3—Cyclopentane, 1,2-dimethyl-, *cis*
1638–26–2—Cyclopentane, 1,1-dimethyl-
1983–10–4—Stannane, tributylfluoro-
6505–91–5—Chromate(5-), bis[7-[(5-chloro-2-hydroxyphenyl)azo]-8-hydroxy-1,6-naphthalenedisulfonato(4-)]-, pentasodium
10127–05–6—Chromate(2-), [2-[[4,5-dihydro-3-methyl-1-(2-methyl-4-sulfophenyl)-5-oxo-1*H*-pyrazol-4-yl]azo]-4-sulfobenzoato (4-)]hydroxy-, disodium
14245–97–7—1,3-Naphthalenedisulfonic acid, 7-[(*p*-amino-*o*-tolyl)azo]-, disodium salt
14387–10–1—Benzeneacetic acid, 4-ethyl-
15623–66–2—2,7-Naphthalenedisulfonic acid, 5-(benzoylamino)-3-[[4-[[4-chloro-6-[(4-sulfophenyl)aminol-1,3,5-triazin-2-yl]amino]-2-sulfo-phenyl]azo]-4-hydroxy-
19074–59–0—Phenol, 2,5-dimethyl-, phosphate
24704–54–9—Benzenesulfonic acid, 4-[4,5-dihydro-4-[3-[5-hydroxy-3-methyl-1-(4-(sulfophenyl)-1*H*-pyrazol-4-yl]-2-propenylidene]-3-methyl-5-oxo-1*H*-pyrazol-l-yl]-
26951–10–0—2,5-Furandione, polymer with 2,2′-[1,2-ethanediylbis(oxy)]-bis[ethanol]
29674–65–5—2,7-Naphthalenedisulfonic acid, 4-amino-6-[[5-[[4-chloro-6-(2-ethoxyethoxy)-*s*-triazin-2-yl]amino]-2-sulfophenyl]azo]-3-[(2,5-disulfo-phenyl)azo]-5-hydroxy-
32781–74–1—2-Naphthalenesulfonic acid, 6-(2,3-dibromo-propionamido)3-[[5-(2,3-dibromopropionamido)-2-sulfophenyl]azo]-4-hydroxy
36508–10–8—3-Pyridinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-1,2-dihydro-6-hydroxy-4-methyl-2-oxo-
38489–07–5—Butanamide, *N*-(5-chloro-2-methylphenyl)-2-[(4-chloro-2-nitrophenyl)azo]-3-oxo-
39951–98–9—Benzoic acid, 4,4′-[1,3-phenylenebis[imino(6-chloro-1,3,5-triazine-4,2-diyl)imino(8-hydroxy-3,6-disulfo-1,7-naphthalenediyl)azo]]bis-
41992–21–6—2-Azo-8-germaspiro[4.5]decane-1,3-dione, 2-[3-(dimethylamino)propyl]-8,8-diethyl-
55067–15–7—7-Benzothiazolesulfonic acid, 2-[4-[[2-(cyanoimino)hexahydro-4,6-dioxo-5-pyrimidinyl]azo]phenyl]-6-methyl-, compd. with 2,2′,2″-nitrilotris[ethanol](1:1)
55719–33–0—2-Propenoic acid, polymer with 2-hydroxypropyl 2-propenoate
56548–81–3—2,7-Naphthalenedisulfonic acid, 3,3′-[1,3-phenylenebis[imino(6-chloro-1,3,5-triazine-4,2-diyl)imino(6-sulfo-3,1-phenylene)azo]]-bis[5-amino-4-hydroxy-6-[(4-sulfophenyl)azo]-
60006–10–2—1-Pyrrolidinecarboxamide, *N,N′*-(2-methyl-1,3-phenylene)bis-
63133–92–6—Benzoic acid, 4-[1-chloro-3,3-dimethyl-2-oxo-1-[[[3-[[1-oxo-2-(3-pentadecylphenoxy)-butyl]amino]phenyl]-amino]carbonyl]butyl]-
63589–31–1—Benzenamine, *N*-(2-methylhexyl)-2-nitro-
64346–41–4—1,5-Naphthalenedisulfonic acid, 3,3′-[carbonyl bis[imino(5-methoxy-2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65072–06–2—Hexanedioic acid, dimethyl ester, polymer with 1,4-butanediol and 1,2-ethanediol
65072–27–7—Benzoic acid, 4-[[1-hydroxy-6-[[[[5-hydroxy-6-[(2-methyl-4-sulfophenyl)azo]-7-sulfo-2-naphthalenyl] amino]-carbonyl]amino]-3-sulfo-2-napthalenyl]azo]-, tetrasodium salt
65072–59–5—Benzoic acid, 5-[(4-aminophenyl)azo]-2-hydroxy-3-methyl-
65104–46–3—Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,3-isobenzofurandione
65151–41–9—1,3-Naphthalenedisulfonic acid, 7,7′-[carbonylbis [imino(5-methoxy-2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65168–18–5—1,3-Naphthalenedisulfonic acid, 7,7′-[carbonyl bis[imino(2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65293–91–6—1*H*-Pyrazole-3-carboxylic acid, 4-[3-[3-carboxy-5-hydroxy-1-(4-sulfophenyl)-1*H*-pyrazol-4-yl]-2-propenylidene-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-, disodium salt

65605–67–6—2-Propenoic acid, butyl ester, polymer with *alpha*-fluoro-*omega*-[2-[(2-methyl-1-oxo-2-propenyl) oxy]ethyl]poly(difluoro methylene) and oxiranylmethyl 2-propenoate

67892–72–2—Nonanoic acid, 2,2′-dimethyl-, oxiranylmethyl ester, polymer with ethenylbenzene, 2-propenoic acid and 3a,4,7,7a-tetrahydro-1,3-isobenzofurandione

67892–89–1—Cyanogen chloride, polymer with 4,4′-(1-methylethylidene)bis[2,6-dibromophenol] and 4,4′-(1-methylethylidene)bis[phenol]

67893–12–3—1*H*-Indene-1,3(2*H*)-dione, 2-benzo[*f*]quinolin-3-yl-, monosulfo deriv.

68081–80–1*—1,3-Benzenedicarboxylic acid, polymer with 1,3-benzenediamine, 1,4-benzenedicarboxylic acid, and 2,4-diaminobenzenesulfonic acid calcium salt (2:1), reaction products with benzoyl chloride

68132–89–8—1,5-Naphthalenedisulfonic acid, 3-[[4-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-5-methoxy-2-methylphenyl]azo]-, lithium salt, compd. with 2,2′,2″-nitrilotris[ethanol]

68140–23–8—1,3-Naphthalenedisulfonic acid, 7-[[4-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-5-methoxy-2-methoxy-2-methylphenyl]azo]-, lithium salt, compd. with 2,2′2″-nitrilotris[ethanol]

68188–78–3*—Fatty acids, tall-oil, [2-(1-methylenenortall-oil alkyl)-4(5*H*)-oxazolyidene]bis(methylene)esters, polymers with acrylonitrile, Et acrylate and Me methacrylate

68239–31–6—2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer with ethenylbenzene and tridecyl 2-methyl-2-propenoate

68311–01–3—9, 12-Octadecadienoic acid (*Z,Z*)-, dimer, polymer with (chloromethyl)oxirane, 1,2-ethanediamine and 4,4′-(1-methylethylidene)bis[phenol]

68457–88–5*—1,3,5,-Triazine-2,4,6-triamine, C_{16-22}-alkyl methoxymethyl derivs.

68541–16–2—2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with 2-ethylhexyl 2-propenoate and 2-propenamide

68541–18–4—2-Propenoic acid, 2-methyl-, ethyl ester, polymer with butyl 2-propenoate and 3-(triethoxysilyl)propyl 2-methyl-2-propenoate

68541–79–7—2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with ethenylbenzene, 2-[ethyl (heptadecafluorooctyl)-sulfonyl]amino]ethyl 2-propenoate and 2-hydroxyethyl 2-propenoate

68551–54–2*—Castor oil, hydrogenated, polymer with *p*-tert-butylbenzoic acid, pentaerythritol and phthalic anhydride

68552–99–8*—Fatty acids, vegetable-oil, polymers with phthalic anhydride and rosin

68605–40–3*—Fatty acids, tall-oil, [2-(1-methylenenortall-oil alkyl)-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-(diethylamino)ethyl methacrylate, hydroxyethyl acrylate and Me methacrylate

68606–21–3*—Glycols, C_{10-16}

68649–56–9*—1,3-propanediamine, *N,N′*-dimethyl-, reaction products with chlorinated polybutadiene

68758–91–8—2-Propenoic acid, 2-methyl-, butyl ester, polymer with 3-(triethoxysilyl) propyl 2-methyl-2-propenoate

68758–93–0—2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with isooctyl 2-propenoate and 2-propenamide

68797–37–5—2-Propenoic acid, 2-methyl-, 3-(triethoxylsilyl) propyl ester, polymer with ethenylbenzene, isooctyl 2-propenoate and 2-propenoic acid

68815–22–5*—Wastes, tonka bean extn.

68815–62–3*—3,5,9-Undecatrien-2-one, 6,10-dimethyl-, cyclized, by-products from, fractionation residues

68908–41–8*—2-Propenoic acid, 2-methyl-, 1-methyl-1,3-propanediyl ester, polymer with diethenylbenzene, ethenyl- ethylbenzene, methyl 2-propenoate and 2-propenenitrile, reaction products with triethylenetetramine

68915–62–8*—Fatty acids, linseed-oil, [2-(1-methylenenorlinseed-oil alkyl)-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-(diethylamino)ethyl methacrylate, hydroxyethyl acrylate and Me methacrylate

68951–88–2*—Protein hydrolyzates, ammonium salts

68951–89–3*—Protein hydrolyzates, Et esters, hydrochlorides

68951–90–6*—Protein hydrolyzates, reaction products with oleoyl chloride, potassium salts

68951–91–7*—Protein hydrolyzates, reaction products with 10-undecenoyl chloride, compds. with triethanolamine

68951–92–8*—Protein hydrolyzates, reaction products with 10-undecenoyl chloride, potassium salts

68952–05–6*—Wastes, cola nut extn.

68952–06–7*—Wastes, *Liatris odoratissima* extn.

68952–07–8*—Wastes, hydrolyzed chicken feather

68952–08–9*—Wastes, vanilla bean extn.

68952–15–8*—Acid chlorides, coco, reaction products with protein hydrolyzates

68952–16–9*—Acid chlorides, coco, reaction products with protein hydrolyzates, compds. with triethanolamine

68956–73–0*—Phosphoric acid, di-C_{8-18}-alkyl esters, compds. with 2-ethyl-1-hexanamine

68964–64–7—Poly(oxy-1,2-ethanediyl), *alpha*-(3-carboxy-1-oxo-2-propenyl)-*omega*-isononylsulfophenoxy)-, disodium salt, (*Z*)-

69011–41–2*—2-Propenoic acid, methyl ester, polymer with diethenylbenzene, ethenylethylbenzene and 2-propenenitrile, hydrolyzed, reaction products with triethylenetetramine

69847–36–5—Manganate(1-), [3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalenecarboxylato(3-)]-, hydrogen

69847–63–8—1,3-Benzenedicarboxylic acid, polymer with 1,3-benzenediamine, 1,4-benzenedicarboxylic acid and 2,4-diaminobenzenesulfonic acid calcium salt (2:1)

69856–13–9—Butanedioic acid, compd. with *tert*-dodecenamine

70198–29–7—Butanedioic acid, polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol

70247–95–9*—Phenol, sulfonated, condensed, sodium salts

70615–24–6—1,3-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,3-diisocyanatomethylbenzene, dimethyl 1,4-benzenedicarboxylate, dimethyl nonanedioate and 1,2-ethanediol

70892–39–6*—Phenol, 4-amino-, reaction products with *m*-phenylenediamine, *p*-phenylenediamine, sodium sulfide (Na_2S), sulfur and *p*-toluidine

70892–52–3*—Formaldehyde, reaction products with *N,N′*-dimethyl-1,3-propanediamine and isobutylenated phenol

71002–44–3—Nickel, bis[(cyano-*N*) triphenylborato(1-)]bis (methanimine)-

71598–37–3—Cobaltate(1-), [4-hydroxy-3-[(2-hydroxy-1-naphthalenyl)azo]-*N*-(1-methylethyl) benzene-sulfonamidato(2-)] [4-hydroxy-3-[(2-hydroxy-1-naphthalenyl)azo]-*N*-phenyl benzenesulfonamidato(2-)]-, hydrogen

71608–42–9*—Benzoic acid, 2-hydroxy-, reaction products with benzyl alc. and bisphenol A-1,2-cyclohexanediamine-epichlorohydrin polymer

71878–16–5—Propanedioic acid, diethyl-, polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol

72102–94–4—Benzamide, 3,3′-[(2,5-dichloro-1,4-phenylene) bis [imino(1-acetyl-2-oxo-2,1-ethanediyl)azo]]bis[4-chloro-*N*-[2-(4-chlorophenoxy)-5-(trifluoromethyl)phenyl]-

72208–14–1—Benzenesulfonic acid, 4-[[3,5-bis[(dimethylphenyl) azo]-2,4-dihydroxyphenyl]azo]-, compd. with *N,N′*-bis(2-methylphenyl)guanidine

72208–16–3—Benzenesulfonic acid, 4-[[5-[(dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo]-, compd. with *N,N′*-bis(2-methylphenyl)guanidine (1:1)

72208–18–5—Benzenesulfonic acid, 4,4′-[[5-[(dimethylphenyl)azo]-2,4-dihydroxy-1,3-phenylene]bis(azo)bis-, compd. with *N,N′*-bis(2-methylphenyl)guanidine (1:2)

72496–85–6—1-Naphthalenesulfonic acid, 5-[[2-amino-4-[[4-[2-(4-nitro-2-sulfophenyl)ethenyl]-3-sulfo-phenyl]azo]-, trisodium salt

72727–58–3—5-Octen-3-one, 2,7-dimethyl-

73138–57–5*—Fatty acids, tall-oil, [2-[1-(tall-oil alkyl)ethenyl]-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-[(1,1-dimethyl)amino]ethyl methacrylate and Me methacrylate

73179–38–1—Phosphoric acid, 2,5-dimethylphenyl bis(2,4,6-trimethylphenyl) ester

73179–40–5—Phosphoric acid, 2,5-dimethylphenyl diphenyl ester

73179–42–7—Phosphoric acid, 2,5-dimethylphenyl phenyl 2,4,6-trimethylphenyl ester

73179–45–0—Phosphoric acid, 2,5-dimethylphenyl 2,6-dimethylphenyl phenyl ester

73179–46–1—Phosphoric acid, 2,5-dimethylphenyl 2,6-dimethylphenyl 2,4,6-trimethyl phenyl ester

73179–47–2—Phosphoric acid, bis(2,5-dimethylphenyl) 2,4,6-trimethylphenyl ester

73179–48–3—Phosphoric acid, 2,5-dimethylphenyl bis(2,6-dimethylphenyl) ester

73179–49–4—Phosphoric acid, bis(2,5-dimethylphenyl) 2,6-dimethylphenyl ester

73507–72–9—Chromate(3-), bis[3-[[4,5-dihydro-3-methyl-5-oxo-1-phenyl-1*H*-

pyrazol-4-yl)methylene]amino]-2-hydroxy-5-nitrobenzenesulfonato(3-)], trisodium
74499-25-5*—Fatty acids, soya, 2-[1-soya alkylethenyl)-4(5*H*)oxazolylidenebis(methylene) esters, polymers with acrylic acid, dodecyl methacrylate, Me methacrylate and styrene
74578-11-3—1,5-Naphthalenedisulfonic acid, 3,3'[carbonylbis [imino(2-methyl-4,1-phenylene)azo]]bis-,tetralithium salt
75752-18-0—1,3-Naphthalenedisulfonic acid, 7-[[4-[[[[4-[(4,8-disulfo-2-naphthalenyl)azo]-2-methoxy-5-methylphenyl]amino]carbonyl]-amino]-5-methoxy-2-methylphenyl]azo]-, tetralithium salt
75752-19-1—1,3-Naphthalenedisulfonic acid, 7-[[4-[[[[4-[(4,8-disulfo-2-naphthalenyl)azo]-3-methylphenyl]amino]carbonyl]amino]-2-methylphenyl]azo]-, tetralithium salt

*CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

Dated: April 15, 1985.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 85-9841 Filed 5-6-85; 8:45 am]

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federal register

Tuesday
May 7, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Minimum Aeronautical Experience Requirements; Instrument Rating; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 23672; Amdt. No. 61-75]

Minimum Aeronautical Experience Requirements; Instrument Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the requirements for the issuance of an original or additional instrument rating added to an airman certificate. It permits the holder of at least a current private pilot certificate to apply for and be issued an instrument rating with less than the present minimum flight time required and thus encourages earlier training in, and development of, instrument flying skills. This amendment responds to recognized current training technology and supports the concept of training to prescribed standards for an instrument rating.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Lauren D. Basham, Certification Branch (AFO-840), General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone (202) 426-8196.

SUPPLEMENTARY INFORMATION:

Background

Part 61, Certification: Pilots and Flight Instructors, of the Federal Aviation Regulations (FAR) prescribes the requirements for issuing pilot and flight instructor certificates and ratings. Part 61 of the FAR also prescribes the conditions under which those certificates and ratings are necessary and the privileges and limitations of those certificates and ratings.

Part 61 of the FAR was revised by Amendment 61-60, effective November 1, 1973. The purpose of that amendment was to upgrade pilot training requirements to reflect the increased complexity of the modern aircraft and its operating environment.

In revised Part 61, the requirements were significantly upgraded to ensure that applicants for pilot certificates or for the addition of a rating to a pilot certificate receive training under the supervision of an authorized flight instructor in the "total operational training concept." Under this training concept, training to develop the aeronautical knowledge and flight skills necessary to qualify the applicant for all phases of pilot operations authorized by the certificate or rating sought is required.

Amendment 61-60 retained, without significant change, the flight experience requirements for the instrument rating. More recently, Amendment 61-70, issued on January 4, 1982 (47 FR 3486; January 25, 1982), deleted the requirement that cross-country experience be gained in a specific category of aircraft and thus permits cross-country experience gained in any powered aircraft to be applied toward the experience requirements for an instrument rating. The above amendment does not diminish the current requirements for an instrument rating; however, because of the relatively high involvement rate of low-time, noninstrument-rated pilots in weather-related accidents, there is a growing concern about the adequacy of current instrument rating requirements which prohibit a pilot from getting an instrument rating before he/she has 200 flight hours.

The FAA is aware that many noninstrument-rated private pilots delay starting instrument training until they have accumulated 150 to 160 hours of flight time. An unfortunate consequence of this practice is that the instrument flight skills necessary to operate a complex aircraft within the variety of meteorological conditions that many of them encounter while operating in the National Airspace System are often not acquired. Additionally, these pilots do not continue their aeronautical education after receiving their private pilot certificate until they have accumulated the 150 to 160 hours. This may require 3-4 years of flying by the average private pilot.

Over the years, revision of minimum aeronautical experience requirements for the issuance of an instrument rating has been considered. Draft Release No. 63-6, issued February 19, 1963 (28 FR 1881; February 18, 1963), proposed a reduction in the total flight time for the private pilot applicant for an instrument rating. This proved to be a controversial issue with strong arguments on each side. After careful consideration of all the issues involved, the FAA concluded that adoption of the proposed change would be inappropriate and the proposed change was dropped.

For more than 40 years, a number of both fatal and nonfatal weather-related accidents have involved pilots with fewer than 200 hours of total flight time and little or no instrument training. National Transportation Safety Board reports covering various time periods for the last several years clearly reveal the negative role of adverse weather in aircraft accidents.

The FAA is unable to establish the overall extent to which pilots involved in weather-related accidents were not qualified for flight operations under instrument flight rules since the data needed are not available. However, it is clear that today's general aviation pilots operate a variety of sophisticated aircraft in a wide range of environmental weather conditions, with resulting increased demands on the pilot. Thus, instrument flight skills have become increasingly critical in the operation of these aircraft and the FAA is convinced that flight-hour requirements alone are no longer necessary as a safety criteria.

The FAA recently contracted with a major aeronautical educational institution to conduct a training experiment. The experiment utilized specific groups of students in an effort to examine the relation of pilot experience, as defined by total flight time, to the acquisition of instrument flight skills. These skills were demonstrated by performance on the instrument certification flight test. Further objectives of this experiment were to: (1) Identify and assess specific differences in the performance of instrument maneuvers by student pilots whose total flight times ranged from 100 to 200 hours; and (2) determine whether differences in total flight times affect the general process by which beginning or advanced instrument flight skills are learned.

This experiment was completed in early 1981. The conclusions it reached were, in general, that: (1) The amount of prior flight time had no effect on the acquisition and demonstration of instrument flight skills within the ranges of preinstrument flight experience examined in connection with the experiment; and (2) the reduction of the present 200-hour flight experience requirement, for the issuance of an instrument rating, to a more realistic level would encourage the earlier acquisition of instrument flying skills. In response to these conclusions, on May 25, 1983, the Director of Flight Operations issued Notice of Proposed Rulemaking No. 83-6 (48 FR 28104; June 20, 1983). The notice proposed to modify minimum flight-time requirements for the issuance of an instrument rating and thus encourage earlier training in, and development of, instrument flying skills.

Discussion of Comments

Interested persons were offered the opportunity to participate in preparing this amendment by Notice No. 83-6. Comments were received from industry organizations, flying schools, flight

instructors, executive operators, and professional pilots. Due consideration has been given to all relevant comments received in response to the notice.

Many of the more than 200 comments received in response to the notice were from private pilots who would be affected by the proposed rule. The flight time reported by the noninstrument-rated private pilots who commented on the proposal ranged from 45 hours to 195 hours for an average pilot flight time of 135 total hours.

Two hundred thirty three (233) of the public comments received generally favor the proposal. Numerous specific comments are offered. Some of these object to particular elements contained in Notice No. 83–6. Others are unclear.

Sixty of the commenters concur without significant comment. Twenty-four commenters object to proposed § 61.65(e)(1) and offer arguments in support of their views. A number of these commenters base their arguments on the contention that persons with no more than 100 hours total flight experience would not have the "seasoning" and "maturity of judgment" believed critical to modern instrument flight rules (IFR) operations. One commenter points out that pilot judgment is not an intuitive process and is only developed through practice over a protracted period of time. Concern is also expressed that adoption of the proposal would merely bring about a change in the identity of the pilots involved in weather-related accidents and would, within a few years time, lead to a drastic increase in weather-related accidents by low-time, instrument-rated pilots. It is also contended that the mere ability to satisfactorily accomplish the maneuvers and procedures required for the instrument rating flight test specified in § 61.65(g) gives no assurance that a pilot would exhibit the same skills and judgment under the stress of actual IFR operations, or that the pilot would retain instrument flight skills, once acquired, for any length of time. Consequently, they argue that the present total flight time requirements provide an overall background of "seasoning" experience which should not be reduced.

The FAA has considered these views, some of which were influential in causing the FAA to withdraw similar proposals involving instrument rating flight experience requirements in recent years. The FAA, however, does not agree that concern over pilot error due to lack of seasoning outweighs the need to increase instrument competency in low-time pilots. Statistical research has clearly established this need. The FAA does agree that some minimum hours of flight experience are necessary to ensure that an applicant for an instrument rating has developed a level of judgment necessary to function safely under IFR in the aviation system.

A review of more than 5,200 nonfatal weather-related accidents during the 11-year period from 1964 to 1974 revealed that 83 percent involved pilots with less than 100 hours of pilot experience. The reduction of the 200-hour minimum flight experience requirements will encourage earlier training to develop instrument skills which will enhance the safety of inexperienced pilots flying under unexpected, adverse weather conditions. The possibility for increases in safety that can be gained through instrument flight training is illustrated with the combined fatal and serious accident rates shown in the following table.

FATAL/SERIOUS ACCIDENT RATES

[IFR rated pilots compared to non-IFR rated pilots]

Flight under instrument flight rules (IFR) conditions by—		Flight under visual flight rules (VFR) conditions by—	
Non-IFR rated pilot	IFR rated pilot	Non-IFR rated pilot	IFR rated pilot
1 accident in 1,459 hours.	1 accident in 12,186 hours	1 accident in 61,000 hours	1 accident in 94,819 hours

SOURCE: Walton Graham, *A Study of General Aviation Safety*, Part II, Volume 1, prepared for Trans Urban East Organization, New York, by Questek, Inc. November 1981.

These statistics support measures such as this rule, which provide incentives for early instrument training.

In 1982, the FAA again contracted with the aeronautical educational institution mentioned above to conduct a second training experiment at its Atlantic City, New Jersey, research facility. This second experiment utilized students with flight experience levels similar to those of the students in the first experiment. However, the second experiment's students were drawn from an age group believed more representative of the broad spectrum of the general aviation pilot population. Additionally, more complex aircraft were used for this group's instrument training. The conclusions reached from this second experiment did not significantly differ from those drawn from the first experiment. While an increase in the error rate of the second student group was noted, all of these students satisfactorily completed the training program and received an instrument rating in the time allotted. The FAA, therefore, is convinced that both experiments equally demonstrate that the amount of prior flight time had a reduced effect on the acquisition and demonstration of instrument flying skills. Consequently, the required number of hours for this rating is being reduced here.

With regard to the retention of instrument flying skills, the proficiency of general aviation pilots depends on the comprehensiveness with which their training addresses their needs and the amount of recurrent instrument flight practice accomplished. Today, the private pilot may acquire a depth of experience that equals that of the corporate or executive pilot. More research is needed, however, to systematically address the total continuation training needs for the different classes of general aviation pilots. A 1973 study, "Identifying and Determining Skill Degradations of Private and Commercial Pilots" (FAA–RD–73–91, Hollister, La Pointe, Oman and Tole—1973) came to no definite conclusions as to how these needs should be met. However, it noted that, on the average, subjects received higher scores on skills employed most often and lower scores on skills seldom practiced, such as stalls and simulated instrument flight.

The development and implementation of flight proficiency standards in pilot operations, procedures, and flight test maneuvers required for the instrument rating is inherent in the concept of training to prescribed standards. This training process is followed to ensure that applicants for an instrument rating are sufficiently skilled to operate an aircraft safely and efficiently under instrument flight rules and conditions in the National Airspace System before the instrument rating is issued. While there are currently no regulations which require specific types of continuation training, a number of less formal methods currently exist for encouraging general aviation pilots to continue their training, to maintain their skills, and to update their knowledge. Sections 61.57 and 61.58 specify limited currency requirements which routinely affect most general aviation pilots. Additionally, the FAA and various general aviation organizations encourage pilots to continue their training through numerous activities designed to upgrade pilot competency. This amendment will encourage private pilots to pursue an instrument rating at an earlier stage of their flight experience and is expected to result in:

(1) A higher level of safety and competency in coping with sophisticated aircraft equipment, navigation aids, and communications systems;

(2) The restructuring of flying courses under Parts 61 and 141 to provide supervised instrument flight rule

experience during the training curriculum; and

(3) The encouragement of continued training to meet both currency and higher certification levels.

The FAA is committed to continuous review, evaluation, and updating of its regulations. This final rule amends the regulations to take advantage of aviation-related modern technology, assessment of flying skills, and training to prescribed standards.

This final rule's reduction of the minimum hours of flight experience required before an original instrument rating is issued, or before an additional instrument rating is added to an airman certificate, appeared in Notice No. 83–6 as the proposed amendment to § 61.65(e)(1). As changed, it represents the FAA's present judgment as to the standards that should now be established. This amendment recognizes current training technology and supports the concept of training to prescribed standards in which the overall ability to perform a function (i.e., knowledge, proficiency, and judgment), meets the desired level of competency. This amendment will also upgrade the competency of pilots who seek to add an instrument rating to their pilot certificate and will allow pilots in the 125-hour-plus experience level greater use of their aircraft without reducing safety.

The majority of the commenters enthusiastically endorse the proposal and urge its immediate adoption. A number of commenters voice general agreement with reducing the flight hour experience requirements for an instrument rating from those presently required by § 61.65(e)(1) but object to the proposed experience requirements. The principal change in flight hour experience suggested is to reduce the pilot-in-command flight hour experience requirements of § 61.65(e)(1) from 75 hours (as proposed in Notice No. 83–6) to 50 hours. The Aircraft Owners and Pilots Association (AOPA), on behalf of its 265,000 members, supports this suggestion. They also contend that both student solo and private pilot pilot-in-command flight time should be credited towards this 50-hour requirement to provide a more realistic measure of flight experience for private pilot instrument rating applicants. Proposed § 61.65(e)(1) was intended to establish the minimum total flight time and minimum pilot-in-command flight experience believed necessary to serve as a basis for acquiring instrument flight skills. The FAA does not agree, however, that solo flight time, logged by the holder of a student pilot certificate, should be credited on an equal basis with pilot-in-command flight time logged by the holder of a private pilot certificate. Except for the specific provisions of § 61.51(c)(1) involving a student pilot serving as pilot in command of an airship under the specific authorization of a certificated flight instructor, it has not been the intention of the FAA to allow the holder of a student pilot certificate to credit student solo time as pilot-in-command flight time for a certificate or rating under Part 61. A student pilot's flight operations must be authorized by a certificated flight instructor and, thus, the student pilot's flight decision-making authority is limited to controlled conditions. Thus, although a student is technically a pilot in command while in solo flight, the FAA has not allowed such time to be credited as pilot-in-command time for the purposes of this rule. A student pilot certificate holder has not yet demonstrated the minimum competency level of at least a private pilot certificate holder authorized to act without the supervision of a certificated flight instructor. On the other hand, a private pilot may, under § 61.51(c)(2), log as pilot-in-command time flight time during which he or she may be required to make safety of flight decisions as the person directly responsible for, and the final authority as to the operation of an aircraft. Since pilot-in-command cross-country experience is an intergral part of a pilot's overall training experience, the FAA intends that the cross-country flight experience used to qualify an applicant for an instrument rating be acquired during the conduct of flight operations during which the applicant holds a private pilot certificate or higher. As adopted, the rule specifies that the required pilot-in-command cross-country experience must be with other than a student pilot certificate. To reiterate, for the purposes of this Final Rule, a student cannot log pilot-in-command time.

The NPRM (Notice No. 83–6) proposed to require a total of 100 hours of pilot flight time, including 75 hours as pilot in command, of which 50 hours were to be cross-country in a powered aircraft. After further consideration, however, the FAA has determined that an appropriate level of experience should be obtained by requiring a total of 125 hours of flight experience, including 50 hours cross-country flight time as pilot in command.

Under the regulations, the minimum flight hour experience at which a private pilot certificate holder may obtain an instrument rating would be at least 90 hours of flight time and 110 hours of total flight experience (including training device time) under Part 61. Under Part 141, it would be 85 hours of flight time and 100 hours of total flight experience. Considering the fact that the national average minimum flight time for pilots to acquire a private pilot certificate presently exceeds 66 hours (rather than the required 40 hours) due to the complexity of requirements, the *average* private pilot may be expected to have approximately 136 hours of total flight experience when certificated as an instrument pilot. Applicants who have a minimum of 125 hours of flight experience which includes at least 50 hours of cross-country flight time as pilot in command should have the judgment necessary to safety exercise the privileges of an instrument rating.

Some commenters offer suggestions which were not considered by the FAA in the development of the proposal. Some of these comments are both impracticable and beyond the scope of the notice. For example, one commenter suggests that an applicant for an instrument rating be required to have at least 5 hours of instrument flight instruction under actual instrument meteorological conditions to be eligible for the instrument rating. Still other comments are merely beyond the scope of the notice.

One comment, however, while beyond the scope of the notice, is worthy of discussion to eliminate apparent confusion by persons commenting on the proposal. This comment is that the FAA should give increased recognition to the use of approved simulators/training devices in connection with § 61.65 and the conduct of checks required of applicants for an instrument rating. It should be noted that of the 40 hours of simulated or actual instrument flight time required for an instrument rating under § 61.65(e)(2), 20 hours may be instrument instruction in a ground training device acceptable to the Administrator. Similarly, under Part 141, Appendix C(3), 15 hours may be instrument instruction in an authorized ground training device.

While the FAA agrees that existing airplane simulators and some ground trainers are adequate for determining pilot competency in certain required flight maneuvers, there is no basis for granting further approvals in connection with this amendment. The FAA is aware that various studies on transfer of training from ground training devices to actual aircraft have produced inconclusive results. Thus, the FAA has no basis for approving the use of a simulator or training device in either Part 61 or Part 141 beyond the scope of approvals currently authorized in these rules.

In this respect, it should be noted that § 61.65(c)(3), which outlines the practical test requirements for an instrument rating, requires that an applicant for an instrument rating be given instrument instruction in VOR, ADF, and ILS instrument approach procedures. However, because ADF and ILS instrument approach facilities are not readily available in some areas, the regulation provides for the use of airborne or ground training devices for the simulation of ILS and ADF instrument approach procedures during training. When taking the practical test, however, the instrument rating applicant must demonstrate each of these instrument approach procedures. In conducting the instrument flight test, at least one of these instrument approach procedures must be demonstrated in flight in an airplane or helicopter, as appropriate. The two remaining approaches may be demonstrated in a simulator or training device acceptable to the Administrator. Therefore, the inspector or examiner conducting the practical test may allow the applicant to perform the instrument approach procedure(s) not selected for actual flight demonstration in a flight simulator or ground training device that meets the requirements of § 141.41(a)(1). Thus, the FAA has given recognition to flight simulators and ground trainers to the degree practicable, where the Administrator has found that the applicant's competency can be determined in such a device as well as in an aircraft.

As stated in Notice No. 83–6, permitting eligibility for an instrument rating at a flight experience level which is lower than that required by the present rule will encourage new private pilots to continue their training for an instrument rating and will enourage low-time, certificated private pilots to enter training for the instrument rating. This view is supported by comments from industry. Today, private pilots as a group have access to, and considerable investment in, a number of complex aircraft. An instrument rating will permit these pilots to gain maximum utilization of these aircraft with a greater degree of safety. With instrument training, pilots learn to have greater respect for weather and more total awareness of personal limitations and the limitations of the aircraft operated. An instrument rating will provide pilots encountering unforecast deteriorating weather conditions with a safe alternative to "scud running." Even if flying an aircraft not fully equipped for instrument flight, instrument flying skills may permit the pilot to return to visual flight rules (VFR) conditions and not experience a catastrophic loss of control in flight.

Some commenters note that § 61.65(e)(1), as currently stated or as proposed in Notice No. 83–6, does not provide a definition of the term "cross-country flight experience," and suggest that a definition is needed for clarification. The FAA does not intend that the scope of cross-country flight experience required for the issuance of an instrument rating should be significantly less than the cross-country flight experience required for a private or commercial pilot certificate applicant. Therefore, § 61.65(e)(1), as amended, specifies that the 50 hours of pilot-in-command, cross-country flight time required for an instrument rating be acquired during flights which contain a landing at a point more than 50 nautical miles from the original point of departure. This is consistent with cross-country flight experience requirements for applicants for private and commercial pilot certificates.

The FAA will, upon adoption of this rule, establish a monitoring system which will be specifically designed to measure the accident rate involving instrument pilots who have obtained their instrument rating under the provisions of this new rule. This accident rate will be compared with the accident rate of pilots who were certificated under the prior rule which required a minimum aeronautical experience of 200 hours. These two rates will be compared, on an annual basis for a period of 5 years, to ensure that the new minimum aeronautical experience requirements for an instrument rating do not pose a safety hazard. Should this comparison indicate that the rule as amended does adversely affect safety, action will be taken immediately to reassess this new rule and appropriate corrective measures will be initiated.

Regulatory Evaluation

The FAA has analyzed this amendment and determined that it will impose no additional costs, will relieve an undue economic burden, and will prevent the waste of aviation fuel without compromising the level of training or testing necessary to ensure safety. The total dollar extent of the cost savings depends on the number of original instrument ratings obtained per year by private pilots and the class of aircraft used to meet the flight experience requirements. For the class of aircraft typically used to meet such training requirements, the operating cost per flight-hour may range from $30 to $100 for fixed wing airplanes and $100 to $225 for helicopters. These costs multiplied by 100 hours, because of the reduction in total flight time required of individuals seeking an instrument rating, could result in an immediate savings to individuals of $2,250 to $7,500 and $7,500 to $16,875 for a rating appropriate to fixed wing and rotary wing aircraft, respectively. These costs, however, are likely to be incurred after the instrument rating has been obtained because of the pilot's newly gained flexibility. In fact, while aircraft time that might have been acquired to expedite eligibility for the instrument rating will be avoided, the increased usefulness of the airman's pilot certificate may induce him or her to acquire more hours in a given period of time after obtaining the rating. Thus, while initial cost savings can accrue to any private pilot applicant for an instrument rating, the net savings cannot be said to be significant.

Savings could also accrue to any size small business or not-for-profit organization underwriting such an application. However, the obtaining of a private pilot's certificate and the acquisition of advanced flying skills are normally accomplished through the sole initiative of an individual undertaking the training. It is reasonable to expect that the number of such entities who would pay for private pilot training for their employees are not substantial.

As a result, the FAA finds that the amendment will not have a significant savings or cost impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act of 1980.

Conclusion

Since this amendment reduces the number of hours of flight experience an airman must have to obtain an original or additional instrument rating added to an airman certificate and, therefore, will not impose any cost or other economic burden on the applicant, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because the number of small entities expected to pay for private pilot training for their employees will not be substantial, I certify that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation for this amendment is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Students, Transportation, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Compensation Education, Teachers.

The Amendment

Accordingly, Part 61 of the Federal Aviation Regulations (14 CFR Part 61) is amended, effective June 7, 1985, by revising § 61.65 (a)(1) and (e)(1) to read as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

§ 61.65 Instrument rating requirements.

(a) * * *

(1) Hold at least a current private pilot certificate with an aircraft rating appropriate to the instrument rating sought;

* * * * *

(e) * * *

(1) A total of 125 hours of pilot flight time, of which 50 hours are as pilot in command in cross-country flight in a powered aircraft with other than a student pilot certificate. Each cross-country flight must have a landing at a point more than 50 nautical miles from the original departure point.

* * * * *

(Secs. 313(a), 601, and 602 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1422); and 49 U.S.C. 106(g) (Revised, Pub. L. 97–449; January 12, 1983))

Issued in Washington, D.C., on April 11, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85–10976 Filed 5–6–85; 8:45 am]

BILLING CODE 4901-13-M

federal register

Tuesday
May 7, 1985

Part VI

Department of Education

34 CFR Part 690

Pell Grant Program; Schedule of Expected Family Contributions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Schedule of Expected Family Contributions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Pell Grant Program Expected Family Contribution Schedule for the 1986–87 award year. These regulations are needed to implement the provisions of section 707 of the Education Amendments of 1984, Pub. L. 98–511. The Family Contribution Schedule sets forth the formulas used in determining the amount, if any, of a student's Pell Grant award. The Pell Grant expected family contribution number is also known as the "student aid index (SAI)."

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1986. The regulations for the 1985–86 award year, which pertain to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1985 through June 30, 1986, are still applicable. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, Chief, Pell Grant Policy Section, or Deborah Cohen, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, (ROB–3, Room 4318), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION:

Current Requirements

Section 707 of the Education Amendments of 1984 (Pub. L. 98–511), enacted on October 19, 1984, in effect requires the Secretary to use, with certain specified modifications, the 1983–84 award year Pell Grant Expected Family Contribution Schedule in award years 1984–85, 1985–86, and 1986–87. The modifications include changes in the family size offsets, and other changes to reflect the most recent and relevant data, such as updating calendar years. The Secretary is, therefore, amending only the relevant sections of the 1985–86 Pell Grant Family Contribution Schedule, and publishing these amendments as final regulations.

Updating the Family Size Offsets To Account for Inflation

Section 707 of the Education Amendments of 1984 in effect requires that the family size offsets for the 1986–87 Pell Grant Expected Family Contribution Schedule be based upon the offsets used in the 1985–86 Pell Grant Expected Family Contribution Schedule, adjusted by a percentage change equal to the percentage increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, rounded to the nearest $100. That section also provides in effect that the percentage change is the percentage difference between the arithmetic mean for the period of October 1, 1983, through September 30, 1984, and the arithmetic mean for the period of October 1, 1984, through September 30, 1985. Finally, that section in effect directs the Secretary to publish the family size offset tables for the 1986–87 Pell Grant Family Contribution Schedule immediately after the Secretary of Labor publishes the Consumer Price Index for September, 1985. Therefore, the family size offsets will be published in the **Federal Register** at that time.

Native Americans

Section 707 of the Education Amendments of 1984 (Pub. L. 98–511) requires the 1985–86 Expected Family Contribution Schedule to be modified for award year 1986–87 to reflect the most recent and relevant data. In addition to the updating of the 1985–86 Schedule for calendar and award years and for family size offsets when the figures are available, a revision has been made to the sections of the Schedule dealing with income and assets to reflect changes in laws pertaining to resources distributed to Native Americans.

Most funds distributed to Native Americans under the Distribution of Judgment Funds Act and the "Per Capita Act," Pub. L. 98–64, shall be excluded in determining the income and assets of Native Americans. The specific statutory provision authorizing this exclusion, 25 U.S.C. 1407(a)(3), provides that

> None of the funds . . . [distributed under relevant acts] shall . . . be considered as income or resources nor otherwise utilized as the basis for denying or reducing the Federal financial assistance or other benefits to which such household or member could otherwise be entitled under the Social Security Act . . . or, *except for per capita shares in excess of $2000,* any Federal or federally assisted program. (emphasis added)

The Secretary has been advised by the Solicitor's Office of the Department of the Interior that the underlined portion of the above quoted statutory provision has been interpreted by the Department of the Interior to mean that any individual payment of $2000 or less that is received by a Native American under the Distribution of Judgment Funds Act or the Per Capita Act is to be excluded in determining Federal assistance. Therefore the Secretary has determined that for purposes of the Pell Grant Program a recipient need not report any payment of $2000 or less made under the Distribution of Judgment Funds Act or the Per Capita Act as income. If a payment is received in excess of $2000, the recipient should report only that portion of the payment that exceeded $2000.

Accordingly, the following sections of the 1985–86 Pell Grant Expected Family Contribution Schedule have been revised to reflect the requirements of these laws: § 690.32(a), § 690.33(c), and § 690.33a(c) for the dependent student, and § 690.43(c) for the independent student.

Regarding the Alaska Native Claims Settlement Act (ANCSA) and the Maine Indians Claims Settlement Act, the Family Contribution Schedule remains unchanged: resources received under these Acts are not to be reported as income or assets. However, a clarification is required regarding ANCSA. Only income or assets received as a *direct* result of the Act are to be excluded; e.g., money received from the sale of any land that was distributed as a settlement from the Act, would *not* be reported. However, stock dividends that have resulted from corporate profits would be counted as income.

Proposed Pell Grant Program Changes

The President's 1986 Budget submission to the Congress includes both appropriation and authorizing language which would substantially revise the Pell Grant Program for the 1986–87 award year. The objectives of the President's proposals are to help restore the traditional role of the student and the student's family in financing postsecondary education costs; provide Federal grant aid only after a reasonable student self-help contribution is taken into account; eliminate eligibility for grants to students whose family incomes place them in the wealthier half of the nation; provide for a decent education for those in need; eliminate current inequities in award calculations; and reduce areas of program abuse.

First, to clearly distinguish the Federal versus the family's responsibility for educational costs the expected family contribution (as determined by this final regulation) would be modified as follows:

—Eligibility for a Pell Grant would be limited to those students whose family Adjusted Gross Income (AGI) is $25,000 or less;
—The assessment rates on the discretionary income of the family of a dependent student would be increased to 18, 20, 25, and 30 percent, for each $5,000 increment, respectively;
—The student would not be included in the household size for purposes of determining the family size offset; and
—The offset for the dependent student's earnings would be limited to $800 (the student's self-help expectation).

Second, the student would be expected to contribute $800 toward the cost of his/her own education in order to be eligible for a Pell Grant. Work-study employment could be used to help meet this expectation.

Third, the maximum award would be $2,100 and the minimum award would be $100. The amount of a student's award would be the lesser of the following:

—Cost of attendance minus $800 (self-help expectation) minus expected family contribution;
—60 percent of cost of attendance minus expected family contribution;
—Maximum award minus expected family contribution.

Fourth, the allowable cost of attendance for the revised Pell Grant Program would be direct educational costs (tuition and fees) plus an allowance for indirect costs (not to exceed $3,000 for students not living with parents and $1,500 for students living with parents). Except for these numerical changes in the indirect costs allowances, the cost of attendance rules for the revised program would be identical to the current Pell Grant cost of attendance rules.

Fifth, the criteria of independent student status would be revised to eliminate a major area of program abuse and to restore emphasis on family responsibility in meeting postsecondary costs. All aid applicants below age 22 (except for special exceptions, such as: orphans and wards of the court) would be classified as dependent on their parents. Those 22 and older would have to show evidence of self-support as well as meet current criteria for establishing independent status.

Sixth, in order to ensure that students complete a basic secondary education before becoming eligible to receive a Federal grant to pursue further training and to eliminate a significant source of program abuse, only recipients of a high school diploma or its equivalent would be eligible for aid. Subjective determination of a non-high school graduate's "ability to benefit" would no longer be sufficient to establish eligibility.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations revise the Pell Grant Family Contribution Schedule used in determining student eligibility for Pell Grants. They do not have an impact on small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes made in these regulations are specifically directed by section 707 of Pub. L. 98–511 and establish no new substantive policy. Public comment could have no effect on the content of these regulations. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.063; Pell Grant Program)

Dated: May 1, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

PART 690—PELL GRANT PROGRAM

1. The authority for Part 690 is revised to read as follows:

Authority: Sec. 411, Higher Education Act of 1965, as amended (20 U.S.C. 1070a), unless otherwise noted.

§ 690.32 Special Definitions [Amended]

2. In § 690.32 under the definition of *"Assets"*, paragraph (a) now reading "(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401 *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*)" is revised to read as follows:

* * * * *

(a) Any assets received under the Per Capita Act (25 U.S.C. 117a, *et seq.*), the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*), except when an award of assets received under the first two listed Acts exceeds $2,000. In that case, only the amount in excess of $2,000 of each award made under the Per Capita Act or the Distribution of Judgment Funds Act shall be considered as assets.

* * * * *

3. In § 690.32, under the definition for "*Dependent of the student's parents,*" in paragraph (d), "1985–86" is revised to read "1986–87."

4. In § 690.32, under the definition "*Medical expenses,*" "1984" is revised to read "1985", and "1985" is revised to read "1986."

§ 690.33 Effective family income [Amended]

5. In § 690.33(b)(1), "1984" is revised to read "1985."

6. In § 690.33(b)(2), "1985–86" is revised to read "1986–87."

7. In § 690. 33, paragraph (c) now reading "(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians

Claims Settlement Act (25 U.S.C. 1721, *et seq.*)" is revised to read as follows:

* * * * *

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Per Capita Act (25 U.S.C. 117a, *et seq.*), the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) or the Main Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*), except when income received under the first two listed Acts exceeds $2,000. In that case, only the amount in excess of $2,000 of each payment made under the Per Capita Act or the Distribution of Judgment Funds Act shall be considered as income.

* * * * *

8. In § 690.33(f), "1984 or 1985" is revised to read "1985 or 1986."

§ 690.33a Effective student income [Amended]

9. In § 690.33a(b), "1984" is revised to read "1985."

10. In § 690.33a, paragraph (c) now reading "(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*)," is revised to read as follows:

* * * * *

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under the Per Capita Act (25 U.S.C. 117a, *et seq.*), the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*), except when income received under the first two listed Acts exceeds $2,000. In that case, only the amount in excess of $2,000 or each payment made under the Per Capita Act or the Distribution of Judgment Funds Act shall be considered as income.

* * * * *

11. In § 690.33a(f), "June 1, 1985 through May 31, 1986" is revised to read "June 1, 1986 through May 31, 1987", and "1984" is revised to read "1985."

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income [Amended]

12. In § 690.34 paragraph (a)(1)(i), now reading "A family size offset in the amount specified in the following table.

FAMILY SIZE OFFSETS

Family members	Amount
2	$6,200
3	7,500
4	9,600
5	11,400
6	12,800

Plus $1,600 for each additional family member over 6." is revised to read as follows:

* * * * *

(a) * * *

(1)(i) A family size offset. (The Secretary determines the amount of the family size offsets in accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 as amended by the Student Loan Consolidation and Technical Amendments Act of 1983 and by the Education Amendments of 1984. The Secretary publishes a table in the **Federal Register** setting forth the offsets immediately after the Secretary of Labor publishes the Consumer Price Index for September.)

* * * * *

13. In § 690.34(a)(2), "1984" is revised to read "1985", and "1985" is revised to read "1986."

14. In § 690.34(a)(3)(ii), "1984" is revised to read "1985", and "1985" is revised to read "1986."

15. In § 690.34(a)(4), "1984" is revised to read "1985", and "1985" is revised to read "1986."

§ 690.34a Computation of the expected family contribution for a dependent student from the effective family income [Amended]

16. Section 690.34a(a)(1) now reading "If the parental discretionary income is positive, the dependent student offset, which is derived from the family size offset (See § 690.34(a)(1)(i)), is in the amount specified below:

DEPENDENT STUDENT OFFSET

Single student	$3,300
Married student	4,900"

is amended to read as follows:

* * * * *

(a) * * *

(1) If the parental discretionary income is positive, the dependent student offset, which is derived from the family size offset, will be the amount published in the **Federal Register** along with the family size offset. (See § 690.34 (a)(1)(i)).

* * * * *

§ 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student [Amended]

17. In § 690.39(a), "1985" is revised to read "1986."

18. In § 690.39(a)(1), "1984" is revised to read "1985", and "1985" is revised to read "1986."

19. In § 690.39(a)(2), "1984" is revised to read "1985", "1985" is revised to read "1986," and "1984 or 1985" is revised to read "1985 or 1986."

20. In § 690.39(a)(3), "1984" is revised to read "1985", and "1985" is revised to read "1986."

21. In § 690.39(a)(5), "1984" is revised to read "1985" and "1985" is revised to read "1986."

22. In § 690.39(b), "1985" is revised to read "1986."

§ 690.42 Special definitions [Amended]

23. In § 690.42, under the definition for "Dependent," "1985–86" is revised to read "1986–87."

§ 690.43 Effective family income [Amended]

24. In § 690.43(b)(1), "1984" is revised to read "1985."

25. In § 690.43(b)(2), "1985–86" is revised to read "1986–87."

26. Section 690.43(c) now reading "For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*)," is revised to read as follows:

* * * * *

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Per Capita Act (25 U.S.C. 117a, *et seq.*), the Distribution of Judgment Funds Act (25 U.S.C. 1401, *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, *et seq.*), except when income received under the first two listed Acts exceeds $2,000. In that case, only the amount in excess of $2,000 of each payment made under the Per Capita Act or the Distribution of

Judgment Funds Act shall be considered as income.

* * * * *

§ 690.44 **Computation of the expected family contribution for an independent student from the effective family income [Amended]**

27. Section 690.44(a)(1)(i) now reading "A family size offset in the amount specified in the following table.

FAMILY SIZE OFFSETS

Family members	Amount
1	$4,900
2	6,200
3	7,500
4	9,600
5	11,400
6	12,800

Plus $1,600 for each additional family member over 6." is revised to read as follows:

* * * * *

(a) * * *

(1)(i) A family size offset. (The Secretary determines the amount of the family size offset in accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 as amended by the Student Loan Consolidation and Technical Amendments Act of 1983 and by the Education Amendments of 1984. The Secretary publishes a table in the **Federal Register** setting forth the offsets immediately after the Secretary of Labor publishes the Consumer Price Index for September.)

* * * * *

28. In § 690.44(a)(2), "1984" is revised to read "1985", and "1985" is revised to read "1986."

29. In § 690.44(a)(3)(ii), "1984" is revised to read "1985", and "1985" is revised to read "1986."

30. In § 690.44(a)(4), "1984" is revised to read "1985", and "1985" is revised to read "1986."

§ 690.48 **Extraordinary circumstances affecting the expected family contribution determination for an independent student [Amended]**

31. In § 690.48(a), "1985" is revised to read "1986."

32. In § 690.48(a)(1), "1984" is revised to read "1985", and "1984" is revised to read "1985."

33. In § 690.48(a)(2), "1984" is revised to read "1985", and "1984" is revised to read "1985."

34. In § 690.48(a)(3), "1984" is revised to read "1985," "1985" is revised to read "1986," and "1984 or 1985" is revised to read "1985 or 1986."

35. In § 690.48(a)(4), "1984" is revised to read "1985", and "1985" is revised to read "1986."

36. In § 690.48(a)(6), "1984" is revised to read "1985."

37. In § 690.48(b), "1984" is revised to read "1985."

38. The citation of authority after each section in subparts C and D of Part 690 is revised to read as follow "(Sec. 5 of Pub. L. 97-301 as amended by Sec. 4 of Pub. L. 98-79 and Sec. 707 of Pub. L. 98-511)".

[FR Doc. 85-10931 Filed 5-6-85; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
May 7, 1985

Part VII

Department of Education

34 CFR Part 690

Pell Grant Program; Cost of Attendance; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Cost of Attendance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Pell Grant Program. The regulations are needed to implement the provisions of section 3 of the Student Financial Assistance Technical Amendments of 1982 as amended by section 707 of the Education Amendments of 1984, Pub. L. 98–511. The regulations are used to calculate a student's cost of attendance under the Pell Grant Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. It should be noted however, that these regulations apply to Pell Grant awards made for the 1985–86 award year which begins on July 1, 1985 and the 1986–87 award year which begins on July 1, 1986. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan, Chief, Pell Grant Policy Section, Office of Student Financial Assistance, ROB-3, Room 4318, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION:

Current Requirements

Section 707 of the Education Amendments of 1984, Pub. L. 98–511, amended section 3 of the Student Financial Assistance Technical Amendments of 1982 to provide that the cost of attendance criteria used for calculating Pell Grant awards for the 1984–85 award year shall be used to calculate such awards for the 1985–86 and 1986–87 award years. Therefore, the Secretary is giving notice that the cost of attendance provisions for the Pell Grant Program, published in the **Federal Register** on February 22, 1984 (49 FR 6668–6670), that were in effect for the 1984–85 award year, shall be used to calculate awards for both the 1985–86 and 1986–87 award years.

Proposed Pell Grant Program Changes

The President's 1986 Budget submission to the Congress includes both appropriation and authorizing language which would substantially revise the Pell Grant Program for the 1986–87 award year. The objectives of the President's proposals are to help restore the traditional role of the student and the student's family in financing postsecondard education costs; provide Federal grant aid only after a reasonable student self-help contribution is taken into account; eliminate eligibility for grants to students whose family incomes place them in the wealthier half of the nation; provide for a decent education for those in need; eliminate current inequities in award calculations; and reduce areas of program abuse.

First, the allowable cost of attendance, as determined by this final regulation, would be modified for the revised Pell Grant Program so that it would be direct educational costs (tuition and fees) plus an allowance for indirect costs (not to exceed $3,000 for students not living with parents and $1,500 for students living with parents). Except for these numerical changes in the indirect costs allowances, the cost of attendance rules for the revised program would be identical to the current Pell Grant cost of attendance rules.

Second, to clearly distinguish the Federal versus the family's responsibility for educational costs the expected family contribution would be modified as follows:

—Eligibility for a Pell Grant would be limited to those students whose family Adjusted Gross Income (AGI) is $25,000 or less;

—The assessment rates on the discretionary income of the family of a dependent student would be increased to 18, 20, 25, and 30 percent, for each $5,000 increment, respectively;

—The student would not be included in the household size for purposes of determining the family size offset; and

—The offset for the dependent student's earnings would be limited to $800 (the student's self-help expectation).

Third, the student would be expected to contribute $800 toward the cost of his/her own education in order to be eligible for a Pell Grant. Work-study employment could be used to help meet this expectation.

Fourth, the maximum award would be $2,100 and the minimum award would be $100. The amount of a student's award would be the lesser of the following:

—Cost of attendance minus $800 (self-help expectation) minus expected family contribution;

—60 percent of cost of attendance minus expected family contribution;

—Maximum award minus expected family contribution.

Fifth, the criteria of independent student status would be revised to eliminate a major area of program abuse and to restore emphasis of family responsibility im meeting postsecondary costs. All aid applicants below age 22 (except for special exceptions such as: orphans and wards of the court) would be classified as dependent on their parents. Those 22 and older would have to show evidence of self-support as well as meet current criteria for establishing independent status.

Sixth, in order to ensure that students complete a basic secondary education before becoming eligible to receive a Federal grant to pursue further training and to eliminate a significant source of program abuse, only recipients of a high school diploma or its equivalent would be eligible for aid. Subjective determination of a non-high school graduate's "ability to benefit" would no longer be sufficient to establish eligibility.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will only affect the determination of a student's cost of attendance and the amount of the Pell Grant award a student receives. They will not have an impact on small entities as defined in the Act.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered or is available from any other agency or authority of the United States.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, section 707 of Pub. L. 98–511 amended Section 3 of the Student Financial Assistance Technical Amendments of 1982 to provide that the cost of attendance criteria used to

calculate grant awards for the 1984–85 award year shall be used to calculate grant awards for the 1985–86 and 1986–87 award years. Since these regulations merely restate the law and establish no new substantive policy, the Secretary has determined that notice of proposed rulemaking in this instance is unnecessary and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: May 1, 1985.

William J. Bennett,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84. 063, Pell Grant Program)

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

PART 690—PELL GRANT PROGRAM

1. The authority for Part 690 is revised to read as follows:

Authority: Sec. 411, Higher Education Act of 1965, as amended (20 U.S.C. 1070a), unless otherwise noted.

2. The statutory citation at the end of each section of Subpart E—Cost of Attendance (§§ 690.51 through 690.57) is changed from "(Sec. 4 of Pub. L. 98–79)" to read "(Sec. 3 of Pub. L. 97–301 as amended by Sec. 4 of Pub. L. 98–79 and Sec. 707 of Pub. L. 98–511)".

[FR Doc. 85–10930 Filed 5–6–85; 8:45 am]

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Federal Register
Vol. 50, No. 88
Tuesday, May 7, 1985

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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5-8-85
Vol. 50 No. 89

federal register

Wednesday
May 8, 1985

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Washington, D.C. 20402

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federal register

Wednesday
May 8, 1985

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

AGENCY: Food and Nutrition Service, NSDA.

ACTION: Final rule.

SUMMARY: This final rule amends Part 226 to implement several provisions of Section 803 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. This regulation establishes the Department's requirements for the documentation of eligibility and for the verification of information on free and reduced-price applications submitted to institutions in the Child Care Food Program (CCFP). These actions are intended to reduce program abuse in the delivery of free and reduced-price meal benefits and to result in additional savings of Federal funds.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura or James C. O'Donnell, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign markets. The final rule will ensure that free and reduced-price benefits are directed to only those children from families whose income falls within the Income Eligibility Guidelines set forth by the Department by household size.

This final rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Pursuant to that review, Robert E. Leard, the Administrator of the Food and Nutrition Service, certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements included in this rule (Sections 226.23(e)(4), 226.23(f) and 226.23(h)) have been submitted and approved by the Office of Management and Budget, under clearance 0584–0055.

Background

The CCFP is authorized by Section 17 of the National School Lunch Act (NSLA), as amended. On April 15, 1983, the Department published proposed rulemaking, CCFP Documentation and Verification of Eligibility, at 48 FR 16278–16286. The proposal was developed to implement a number of changes in the CCFP resulting from the passage of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. In particular, the proposed regulation was developed in response to various amendments made in the NSLA by Section 803 of Pub. L. 97–35. The Department issued an interim rule with further opportunity for comment on August 5, 1983 (48 FR 35589–35598).

The comment period for the interim rule was 120-days to allow State agencies and institutions time to operate under these provisions and to provide comments based on their experience. The Department received 18 comments during this period from Food and Nutrition Service (FNS) regional offices, State agencies, child care institutions, advocacy groups and private citizens. The Department would like to thank all commentors who responded to the interim rule.

Comment Analysis

The Department has incorporated into this final rule commentors' suggestions which clarify or improve verification procedures and yet are consistent with the objectives of the verification and documentation requirements of the NSLA. Following is a discussion of the major issues raised by commentors. Interested parties may wish to refer to the preambles to the proposed and interim rules for a thorough discussion of the Department's reasons for adopting certain verification and documentation requirements.

I. Documentation

a. Definitions (Section 226.2)

The interim rule established eight definitions of terms. While commentors generally agreed with these definitions, one commentor suggested further clarification of the definition of "family" and another commentor felt the definition of "family" should be consistent with that used in the National School Lunch Program (NSLP).

The Department agrees that the definitions and terms used in the NSLP and CCFP should be as consistent as possible. Therefore, the definition of "family" in § 226.2 has been revised in this final rule to be consistent with § 245.2(b) of the regulations governing free and reduced-price eligibility and verification in the NSLP. This regulation defines "family" as a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

One commentor suggested that the definition of "pricing program" (an institution in which a separate charge is made for meals served to children) and "nonpricing program" (an institution in which no such separate charge is made) be clarified by inserting the word "identifiable" between the words "separate" and "charge". The Department agrees with this suggestion and has so revised both definitions in this final rule.

The definition of "verification" has been modified in this final rule to more clearly reflect that verification in a pricing program may include confirmation of income eligibility or current participation in the Food Stamp Program.

b. Application Data Requirements (Section 226.23(e)(1)(ii))

Section 226.23(e)(1)(ii) of the interim rule specified that institutions must request the following documentation on the application for free and reduced-price meals: (1) The names of all children for whom application is made; (2) the names of all other household members; (3) the social security number of all household members 21 years of age and older or an indication that a household member does not possess one; (4) the total current income of the household; and (5) the signature of an adult member of the household. Providing this documentation is a "condition of eligibility" for free or reduced-price meals. Applications which do not contain all of this data are incomplete and cannot be used to claim free or reduced-price meals.

Three commentors believed additional information should be required on the application. One commentor suggested that the birth date of all household members should be included while two commentors recommended that the application be dated by the parent or guardian at the time of completion or by the institution upon receipt. The items enumerated in the interim rule represent the documentation which the Department considers necessary for the proper determination of a child's eligibility for free or reduced-price meals. As the Department noted in the preamble to the interim rule, additional information may be requested on the application form as long as it is not required as a condition of eligibility. In such cases, moreover, the application must indicate that the additional items are not required. With respect to dating, State agencies have the authority to require institutions to date applications either at the time of receipt or at the time of the eligibility determination. The Department strongly suggests that State agencies exercise their authority to ensure the proper time frame of the application.

c. Application Information Requirements (Section 226.23(e)(ii))

In addition to the request for household documentation, § 226.23(e)(1)(ii) requires that a "Privacy Act" statement be included on the application informing individuals that disclosure of social security numbers is not mandatory but is a condition of eligibility for free or reduced-price meals, the statutory authority by which such numbers are solicited, the use to be made of the numbers and the consequences of not providing the numbers. The interim rule included standard wording for this statement and required all State agencies and institutions to include this wording on their applications for free and reduced-price meals.

Two commentors expressed concern about the language of the Privacy Act statement prescribed by the interim regulation. On commentor felt the language was offensive and suggested alternate language. The second commentor wondered why the disclosure of numbers was declared not to be mandatory if refusal to do so would result in loss of benefits to the household.

The Privacy Act statement was developed in the course of a case entitled Alcarez et al v. Block. In its decision on that case, the United States District Court for the Eastern District of California determined that the statement satisfied the requirements of the Privacy Act. That decision was recently affirmed by the United States Court of Appeals for the Ninth Circuit (*Alcarez* v. *Block*, Nos. 83–2137, 83–2149, 83–2483, (9th Cir. November 2, 1984.)) Further, the Department believes that the notice must be detailed in order to fully and accurately explain to applicants the uses which will be made of the numbers and to ensure that the technical requirements of the Privacy Act are satisfied. For these reasons, the Department has made no modification to the statement in this final rule. Nevertheless, the Department recognizes the desirability of allowing States some flexibility in this matter. Therefore, the Department is modifying § 226.23(e)(1)(ii) of this final rule allowing States to develop Privacy Act statements that are "substantially" the same as the one in the final rule. The Department notes that this change is consistent with the requirements of the Privacy Act statement adopted for NSLP

With respect to the second concern, the Department emphasizes that disclosure of social security numbers is a condition of eligibility for free or reduced-price meals in the CCFP, in order that verification activity involving these numbers can be undertaken. Since persons voluntarily submit applications for free and reduced-price meals, there is no general mandate for their submission in this program, as there is in some other areas such as State and Federal taxes. Therefore, no change has been made to this portion of the Privacy Act statement in this final rule.

One commentor also expressed concern regarding the requirement that States inform applicants of all planned uses of social security numbers and make necessary changes in the prototype notice to do so. The commentor is concerned that this provision authorizes limitless uses of social security numbers. The statement concerning other uses was included in the regulations solely to insure that States describe adequately all uses of social security numbers. The statement in context concerns only the use of social security numbers as a means of identifying applicants for the purpose of verification activities. We disagree with the commentor's assessment of the regulation as currently written. However, in order to make this more clear, the words "for CCFP verification purposes" have been added to the statement.

d. Letter To Parents (Section 226.23(e)(2))

The interim rule required parents or guardians to report to appropriate institution officials any increases in income which exceed $50 per month or $600 per year. One commentor felt this requirement was unnecessary since institutions are only required to report annually changes in the number of free, reduced-price and paid children enrolled.

It is true that States are required to obtain enrollment data only once each year for the purpose of determining the rate of reimbursement for their institutions. Nevertheless, many States require institutions to report changes in the number of enrolled children in each category as such changes occur, and the Department encourages States in this activity. In order for institutions to report such changes to the State, there must be some mechanism for ensuring that changes in the status of individual families are reported to the institutions. The Department, therefore, is retaining this requirement as set forth in the interim rule.

e. Determination of Eligibility (Section 226.23(e)(4))

Three comments were received on the requirement for determining eligibility. Two commentors were Head Start Directors who felt that the additional paperwork and staff time necessary to mail out and consider applications for free and reduced-price meals was unnecessary. These commentors were also concerned that their head start funding could be jeopardized if parents failed to provide the required information. While the Department recognizes the possiblity that some institutions could experience some additional workload, it must be reiterated that Pub. L. 97–35 mandated the Department to establish adequate

documentation of eligibility requirements for *all* free and reduced-price applications. Since this documentation is to be a condition of eligibility for free and reduced-price meals for all children, institutions must comply in order to receive CCFP benefits. As noted above, the documentation required of families is the minimum necessary to ensure proper reimbursement for CCFP institutions. Therefore, the Department has made no change in this provision in the final rule.

Another commentor asked if there was a time frame for institutions to inform parents of the original determination of eligibility in a pricing program. Section 226.23(e)(4) of the interim rule requires each family to be provided with a written notice informing them of the results of the eligibility determination. The rule, however, did not address the period of time within which this notice must be provided. While the Department agrees that such notification should be accomplished as soon as possible after the eligibility determination, the Department recognizes the need for institutions to have the flexibility to perform this notification within available staff resources. Therefore, this final rule is being changed to require institutions to "promptly" notify households of the results of the eligibility determinations. This change is consistent with the notification requirements in § 245.10(b) of the regulations governing eligibility for free and reduced-price benefits in the NSLP.

II. Verification (Section 226.23(h))

The Department received a variety of comments on the requirement that verification be conducted by the State agency rather than by institutions. Five commentors were opposed to this requirement, with one commentor maintaining that verification is more appropriately an institution, rather than a State, activity while other commentors asserted that State agency verification was contrary to Pub. 97–35 or cited inconsistencies with similar requirements for the NSLP.

Section 803 of Pub. L. 97–35 authorized the Secretary and State and local authorities to seek verification of the data contained in the application for free and reduced-price meals. In applying this provision to the CCFP, the Department felt it was necessary to modify the procedures from those used for the NSLP because the two programs differ in several respects. In schools, the information on the application for free or reduced-price meals is used not only to determine program payments to the school food authority, but also to establish the amount which the individual student must pay for his meals. This is not generally the case in the CCFP where there are two types of meal programs. They are (1) "Pricing Programs," in which a separate charge is made for meals to make up the difference between the CCFP reimbursement for meals and the actual cost of serving those meals to enrolled children and, (2) "Non-pricing Programs," in which no separate charge is made for the meals served to children. The overwhelming majority of institutions that participate in the CCFP do so as nonpricing programs, charging a general tuition fee which covers all child care services including meals. In nonpricing programs, income eligibility information is necessary solely to determine the institution's rates of program reimbursement, since enrolled children receive the same meals, at no separate charge. Eligibility determinations, therefore, do not affect the parents or guardians of enrolled children because the family does not directly benefit from the determination of free or reduced-price eligibility. This situation, in and of itself, lessens the possibility that parents would "understate" income or "overstate" family size. On the contrary, since the institution directly benefits from the eligibility determination through a higher reimbursement factor, institutions have more incentive to misrepresent the eligibility status of enrollees to the administering agency. The Department, therefore, considers that it is the institution's determinations which need to be verified in the CCFP, and only the State agency can conduct this verification. The Department, therefore, retains this provision in this final rule.

One commentor suggested that verification be conducted at the time of application approval. However, since verification is to be conducted by the State, it would not be feasible for all activity to be conducted at one time. Therefore, this suggestion was not adopted.

One commentor expressed concern regarding the requirement that a State agency must conduct a follow-up review within one year if the verification process discloses *any* problems regarding the determination of eligibility and/or the application process. This commentor felt that the requirement could potentially double the number of onsite reviews which States must conduct, since it was realistic to assume that most institutions might have at least one application which was incorrectly determined.

The Department wishes to clarify that it was not the intent of this provision to require follow-up on-site reviews for a deficiency such as the one cited by the commentor. The Department also recognizes that it would not be cost effective to require follow-up on-site reviews for insignificant deficiencies. The intent of the proposed provision was to emphasize the need for corrective action when deficiencies are found that would result in significant overpayments, since verification may be conducted at a given institution as infrequently as once every four years. Such a time frame could seriously affect the validity of an institution's reimbursement claim if serious deficiencies were not corrected within a reasonable period of time. To clarify the intent of this provision, this final rule has been changed to emphasize that the State agency must conduct follow-up reviews within one year of the date upon which the verification process was completed whenever deficiencies exceed maximum levels as determined by FNS. Instructions will be issued to establish these levels and to assist States with this determination.

One commentor questioned whether an *institution* could verify a child's eligibility for free and reduced-price meals *for cause*, since this interim rule requires the State agency to conduct verification.

Prior to the enactment of Pub. L. 97–35, verification was *limited* to those situations in which local officials had actual cause to believe that information furnished on the application was erroneous. Pub. L. 97–35 removed this *limitation*. Program regulations do not preclude officials at any level from verifying questionable eligibility information.

a. Verification Procedures for Nonpricing Programs (Section 226.23(h)(1))

The interim regulation provided that verification procedures for nonpricing programs consist of a review of the eligibility applications on file for *each* enrolled child so as to ensure that (1) The application has been correctly and completely executed by parents or guardians; (2) the institution has correctly determined and classified the eligibility of enrolled children for free or reduced-price meals or has determined that enrolled children are not eligible for free or reduced-price meals, based on the information included on the application submitted by the parents or guardians; and (3) the institution has accurately reported to the State agency the number of enrolled children meeting

the criteria for free and reduced-price meal eligibility and the number that do not meet the eligibility criteria for those meals. In addition, the interim rule allowed a State agency to conduct further verification in accordance with verification requirements prescribed for pricing programs. The Department received seven comments on this provision.

One commentor believed that the provision required all children enrolled in an institution to complete an application and expressed the opinion that denied applications should not have to be reviewed under any verification process. The Department concedes that the language of the interim regulation appears to require applications for all enrolled children, including those in the paid category. The interim regulation can also be interpeted as applying the verification requirement to disapproved applications. Such was not the Department's intent, however. Applications are required *only* for those children categorized as eligible for free or reduced-price meals, and only this eligibility needs to be verified. Social security numbers, a required element of documentation, are to be collected only as a condition of eligibility for free or reduced-price meals. The CCFP has never required applications for any children in the paid category. Therefore this final rule has been modified to clarify that only approved free and reduced-price applications be verified.

Another commentor suggested deletion of the provision which allows State agencies to conduct further verification in nonpricing programs directed at confirming the documentation on the application submitted by parents or guardians of enrolled children, since parents have no impetus for misreporting income in a nonpricing program. The Department believes that State agencies should be allowed the flexibility to pursue further verification at their option. The requirements set forth in the interim rule represent minimum verification requirements which must be conducted in the CCFP. The Department does not believe that State agencies should be prevented from exceeding these minimum requirements. This final rule, therefore, retains this provision.

Three commentors opposed the requirement that State agencies review the eligibility applications on file at the institution for *each* enrolled child in the free or reduced-price category. Commentors believed that a review of all applications would greatly increase the time and staff required to conduct reviews thus increasing administrative expenses to a level which would not be cost effective. In addition, commentors believed this requirement would be especially burdensome when applied to reviews of large sponsors of centers or day care homes. As an alternative, one commentor suggested that a review of all applications in each facility reviewed as part of the review of a sponsor of centers and all of the day care home provider applications as part of the review of a sponsor, would provide a more feasible and cost effective means of meeting the intent of Pub. L. 97–35.

The Department wishes to emphasize that, given the system of reimbursement payments to an institution which is based on the institution's determinations of program eligibility it is critical that a thorough review of an institution's methods and the results of their eligibility determinations be conducted. The Department also believes that the stipulation contained in the interim rule which allows verification reviews to be incorporated into the administrative review procedure significantly lessens the review burden on State agencies.

Given limited funds and staff resources however, the Department does recognize that a significant review burden could exist in States where sponsors of centers and outside-school-hour care centers do not maintain free and reduced-price applications in a central location. It is also recognized that efforts to have large numbers of applications transferred to a central site could prove unwieldy and could result in an inefficient and unproductive attempt to conduct verification. Therefore, to assist States facing such situations, this final rule is amended to allow State agencies to request the use of alternative approaches to the conduct of verification. FNS may approve such alternative approaches if the State can demonstrate that the results achieved meet the requirements of this final rule. With respect to sponsoring organizations of day care homes, the Department continues to believe that all applications for providers' own children must be reviewed for the following reasons. First, for the majority of sponsors, the number of such applications will not exceed the number of applications on file at a small-to-moderately sized center. Second, the sponsor submits claims to the State agency and makes payments to the provider on the basis of the eligibility of children for meals. In the case of the provider's own children, eligibility for the CCFP is contingent upon their eligibility for free or reduced-price meals. Therefore, these applications should be submitted to the sponsor for determination of eligibility and should be retained on file at the sponsoring organization. Consequently, the review of all of these applications would not impose an unreasonable burden upon the State agency. The Department also wishes to take this opportunity to remind sponsors of their liability for any overclaims that may arise if completed applications documenting the eligibility of the providers' own children for meals are not available for review by the State at the time of the review.

b. Verification Procedures for Pricing Programs (Section 226.23(h)(2))

For pricing programs, the interim rule required that, in addition to the verification procedures described for nonpricing operations, State agencies must also conduct verification of the income information provided by parents or guardians of a representative sample of no less than 3 percent of the applications for free or reduced-price meals. At State agency discretion, verification may also include confirmation of household size. The Department received several comments directed at one or another aspect of "pricing" verification.

Two commentors believed it is inappropriate for State agencies to contact parents directly and become involved in local level operation of the program. The Department recognizes that the process constitutes something of a change in the relationship between the State agency and individual families. As already explained, however, the Department considers that the State agency is best equipped to conduct verification in the CCFP. Since the State agency must verify the completeness of documentation and accuracy of classification for all applications, it is in the best position to verify household circumstances as well. The final rule, therefore, retains the requirement that States conduct all verification.

One commentor requested a clarification of whether the 3 percent requirement pertained to individual pricing programs or to all pricing programs within the State. This commentor also requested a clarification of the term "representative sample."

Since pricing programs, like nonpricing programs, are selected for verification in accordance with the review requirements of § 226.6(k), State agencies must verify 3 percent of the applications submitted by families of enrolled children in pricing institutions being reviewed. The Department's intent in the use of the term "representative

sample" was to require State agencies to select applications for review on a *random* basis rather than to target selection toward a particular group of individuals. Therefore to clarify the Department's intent, "representative sample" has been changed in this final rule to "random sample."

One commentor requested clarification of the 20-day time frame which the interim rule established for households to submit verification information, and suggested State agencies be allowed to set their own time frames. The interim regulation established this time frame to ensure that State agencies could complete their verification activities within a reasonable amount of time. Verification officials are provided flexibility to set time limits in the NSLP, and the Department believes this flexibility should be extended to officials conducting these same activities in the CCEP. This final rule, is therefore, revised to allow State agencies to determine the date by which households must submit eligibility confirmation information.

The interim rule required the State agency to require pricing institutions to terminate or reduce a household's benefits when verification efforts indicate that the household was ineligible, eligible to receive fewer benefits or refused to cooperate with verification efforts. Households must be notified in writing 10 days in advance of this action and advised that they have the right to appeal the action within that 10-day advance notification period.

One commentor recommended that this provision be clarified by stating that the 10-day period would begin upon receipt of the notification by the household, since mail can be delayed or misrouted. The Department considers, however, that such a change would not be necessary in most cases, since the notice would most likely to delivered in person to whoever is authorized to pick up the child at the center. In the event that a notice is mailed, the Department believes that the recommended change would result in a significant expense for the center, since the only way to determine the date of receipt would be to use registered mail. Finally, since any mailings would involve local deliveries only, the Department does not consider that any delays would be significant. For these reasons, this recommendation was not adopted in this final rule.

Two commentors requested that collateral contacts not be authorized as a means of verification. The Department believes, however, that the use of collateral contacts offers a viable means of verification in those situations where the household is unable to acquire written evidence or the written evidence does not confirm income eligibility for benefits. Since all efforts must be made to complete verification, this provision is retained.

Two State agency commentors raised concern regarding the appeal procedure in pricing institutions. One commentor expressed concern that appeals handled by the local agency based on verification decisions made by the State agency would create inconsistencies in program management at the local level. The other commentor believed their State did not have the program staff nor the legal staff to adequately handle an anticipated increase in appeals by households. The Department believes that the appeal procedures provided in § 226.23(h)(2)(ii) are appropriate to safeguard the household's rights. While it is true that the verification is conducted by the State, nevertheless, it is the institution which must decide whether or not charge for meals in accordance with the State's findings. This action can then be appealed by the household. If, as a result of the household's appeal, the institution determines that the State agency erred and the household is eligible for benefits, it is incumbent on the institution to continue benefits to the household. The institution should then request a State agency review of its action to adjust its reimbursement factor.

With respect to the second State agency's comment, the Department does not believe that the appeal procedure will create any significant burden on the State since the number of pricing programs nationwide is very small. Moreover, it is unlikely that many situations will arise in which a household is unable to confirm its eligibility for free or reduced-price meals for the State but can do so for the institution. Consequently, the Department does not envision that institutions will be burdened with a large number of appeals. For these reasons, the Department has not modified the appeal provision in this final rule.

III. Administrative Action (Section 226.23(f) and 226.23(h)(4)

Two commentors expressed concern regarding the correctness of the income eligibility information institutions must annually submit to State agencies. While the interim regulation requires household to submit "current" income on their applications for free and reduced-price meals, the regulation does not indicate how frequently the institution must collect these applications. Prior to the interim rule, the regulations required institutions to base the enrollment data reported to the State on family size and income information established not more than 12 months previously (section 226.23(f)). Unfortunately, this requirement was inadvertently deleted from the interim rule. Consequently the commentors were concerned that the interim rule prevented a State agency from establishing the accuracy and currency of the enrollment categories for an institution or household during reviews or audits. The Department agrees with commentor's concerns. This final rule, therefore, reinstates the requirement that the free, reducted-price and paid meal eligibility figures reported annually by institutions to State agencies be based on current family size and income information of enrolled children collected not more than 12 months prior to reporting.

Finally, one commentor suggested that the August 5 interim rule conflicted with that of the proposed rule on Claim and Report Submission published October 7, 1983 (48 FR 45779) regarding State agency adjustments or an institution's rate of reimbursement based on verification reviews.

The August 5 interim rule required a State agency to adjust an institution's rate of reimbursement if the verification results disclosed that an institution had inaccurately classified or reported the number of enrolled children eligible for free, reduced-price or paid meals. The October 7 proposed rule on Claim and Report Submission, however, provided for upward adjustments after the mandated submission deadlines only if an exception was granted by FNS. Downward adjustments, or course, did not require FNS approval.

When the Department published the final rule on Claim and Report Submission on May 4, 1984 (FR 18983–18989), the Department recognized that audits and reviews routinely reveal the need for legitimate upward adjustments and that State agencies should have the authority to make adjustments without obtaining exceptions from FNS. Thus, the final rule on Claim and Report Submission allows an FNS "authorization" rather than an FNS "exception" to make upward adjustments in claims and reports. This language enables that Department to provide both general authorization for upward adjustments in certain specific situations and case-by-case authorization in all other instances. Consequently, no conflict between the interim rule and the claim and report submission requirements exists.

As a point of explanation, the word "age" has been included in this final rule in §§ 226.6(e)(8), 226.23(e)(2)(iv) and 226.23(h). "Age" was added to the regulations as a protected class in a final rule published at FR 14077–78 on April 10, 1984. Readers will note in the preamble to this rule, that in November 1975, Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). The purpose of this Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance. This Act also contains several exceptions which limit the general prohibition against age discrimination. The exception that is of particular applicability to the CCFP is for any program or activity which provides benefits or assistance to persons based upon the age of such persons or establishes criteria for participation in age-related terms. The objective of the CCFP is to serve nutritious meals to needy *children*. Moreover, the public laws governing the program specifically limit eligibility based on age. As a result, the use of age as an eligibility factor in the CCFP is allowable, since it falls within the "statutory objective" exception to the general prohibition against age discrimination in the Age Discrimination Act of 1975. However, the nondiscrimination requirements does not apply to other aspects of the CCFP. Inserting "age" into the program regulations, does not constitute an "open" policy for participants of all ages to apply. The program by law restricts eligibility based on age with the intent of serving nutritious meals to needy children. "Children" is generally defined in the CCFP as 12 years of age and under with an age exception for the handicapped and migrant worker's children 15 years of age and under.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, Infants and children, Surplus agricultural commodities.

PART 226—CHILD CARE FOOD PROGRAM

The following paragraphs which have not changed from the interim rule published at 48 FR 35589 are adopted as final. However, these are being set out below along with those paragraphs which are being revised for the convenience of the reader. Paragraphs 226.6(e)(8), 226.23(e)(1)(i), 226.23(e)(1)(iii), 226.23(e)(2), 226.23(e)(3), 226.23(e)(5), 226.23(h)(2)(i), 226.23(h)(2)(ii), 226.23(h)(3), 226.23(h)(4), and 226.23(h)(5).

Accordingly, Part 226 is amended as follows:

1. The authority citation for part 226 is revised to read:

Authority: Secs. 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766) sec. 2 Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

1A. In § 226.2, the definitions of "Family", "Nonpricing program", "Pricing program" and "Verification" are revised as listed below. The definition of "Adult", "Current Income", "Documentation", and "Household" have not changed from the interim rule and are adopted as final.

§ 226.2 Definitions.

* * * * *

"Adult" means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.

* * * * *

"Current income" means income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

* * * * *

"Documentation" means the completion of the following information on a free and reduced-price application: (a) Total current household income; (b) names of all household members; (c) social security numbers of all adult household members or an indication that a household member does not possess one; and (d) signature of an adult member of the household.

* * * * *

"Family" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

* * * * *

"Household" means "family", as defined in § 226.2 ("Family").

* * * * *

"Nonpricing program" means an institution in which there is no separate identifiable charge made for meals served to enrolled children.

* * * * *

"Pricing program" means an institution in which a separate identifiable charge is made for meals served to enrolled children.

* * * * *

"Verification" means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced-price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility or current participation in the Food Stamp Program; and, at State discretion, verification may also include confirmation of household size.

2. Section 226.6(e)(8) has not changed from the interim rule and is adopted as final to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(e) *Annual requirements.* * * *

(8) Perform verification of the eligibility of enrolled children for free and reduced-price meals in participating institutions in accordance with the procedures outlined in § 226.23(h). State agencies verifying the information on free and reduced-price applications shall ensure that verification activities are applied without regard to race, color, national origin, sex, age, or handicap.

* * * * *

3. In Section 226.23,

a. Paragraph (e)(1)(ii)(F) is amended by adding the words "which includes substantially the following information" between the words "that" and "section 9" in the first sentence and by adding the word "CCFP" between the words "for" and "verification" in the last sentence.

b. Paragraph (e)(4) is amended by adding the word "promptly" between the words "shall" and "provide" in the second sentence.

c. Paragraph (f) is amended by adding a new sentence after the first sentence, and

d. Introductory text of paragraphs (h) and (h)(2) and paragraph (h)(1) are revised.

The revisions read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced-price meals, institutions other than sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to parents or guardians of children enrolled

in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to day care home providers who wish to enroll their eligible children in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials may *not* contain the income standards for free meals.

(ii) The application shall contain a request for the following information: (A) The names of all children for whom application is made; (B) the names of all other household members; (C) the social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one; (D) the total current income of the household; (E) a statement to the effect that "In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us."; (F) a statement which includes substantially the following information: "Sections 9 and 17 of the National School Lunch Act require that in order for your child to be eligible for free or reduced-price meals, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations, and may include contacting employers to determine income, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and (G) the signature of an adult member of the household.

(iii) The application may also include a question as to whether the household is currently participating in the Food Stamp Program, *provided* that applicants are informed that the provision of this information is not a condition of eligibility.

(2) *Letter to Parents.* Institutions shall distribute a letter to parents or guardians of enrolled children in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(i) The income standards for reduced-price meals, with an explanation that households with incomes less than or equal to the reduced-price standards would be eligible for free or reduced-price meals (the income standards for free meals shall *not* be included in letters or notices to such applicants);

(ii) How a household may make application for free or reduced-price meals for its children;

(iii) An explanation that in order to be considered eligible for free or reduced-price meals, an application must contain complete documentation of eligibility information including the total current household income, names of all household members, social security numbers of all adult household members 21 years of age or older or an indication that a household member does not possess one, and the signature of an adult household member;

(iv) The statement: "In the operation of child feeding programs, no child will be discriminated against because of race, color, national origin, sex, age, or handicap";

(v) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) A statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that recipients of free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income which exceed $50 per month or $600 per year.

(3) In addition to the information listed in paragraph (e)(2) of this section pricing institutions must include in their letter to parents an explanation that indicates that: (i) The information in the application may be verified at any time during the year; and (ii) how a family may appeal a decision of the institution to deny, reduce, or terminate benefits as described under the hearing procedure set forth in paragraph (c)(4) of this section.

(4) *Determination of Eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the children from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determination. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the children from that family as not eligible for free or reduced-price meals and must consider the children as eligible for "paid" meals. When information furnished by a family of children enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price benefits. At a minimum, this notice shall include: (i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (ii) notification of the right to appeal; (iii) instructions on how to appeal; and (iv) a statement reminding parents that they may reapply for free or reduced-price benefits at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(5) *Appeals of denied benefits.* A family that wishes to appeal the denial of an application in a pricing program shall do so under the hearing procedures established under paragraph (c)(4) of this section. However, prior to initiating the hearing procedures, the parent or guardian may request a conference to provide all affected parties the opportunity to discuss the situation, present information and obtain an

explanation of the data submitted on the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The institution shall promptly schedule a fair hearing, if requested.

(f) Free, reduced-price and paid meal eligibility figures must be reported by institutions to State agencies at least once each year and shall be based on current family-size and income information of enrolled children. Such information shall be no more than 12 months old.

* * * * *

(h) *Verification of eligibility.* State agencies shall conduct verification of eligibility for free and reduced-price meals on an annual basis, in accordance with the verification procedures outlined in paragraphs (h) (1) and (2) of this section. Verification may be conducted in accordance with Program assistance requirements of paragraph (k) of this section; however, the performance of verification for individual institutions shall occur no less frequently than once every four years. Any State may, with the written approval of FNSRO, use alternative approaches in the conduct of verification, provided that the results achieved meet the requirements of this Part. If the verification process discloses deficiencies with the determination of eligibility and/or application procedures which exceed maximum levels established by FNS, State agencies shall conduct follow-up reviews for the purpose of determining that corrective action has been taken by the institution. These reviews shall be conducted within one year of the date the verification process was completed. The verification effort shall be applied without regard to race, color, national origin, sex, age, or handicap. State agencies shall maintain on file for review a description of the annual verification to be accomplished in order to demonstrate compliance with paragraphs (h) (1) and (2) of this section.

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that: (i) The application has been correctly and completely executed by parents or guardians; (ii) the institution has correctly determined and classified the eligibility of enrolled children for free or reduced-price meals based on the information included on the application submittted by the parents or guardians; and (iii) the institution has accurately reported to the State agency the number of enrolled children meeting the criteria for free and reduced-price meal eligibility and the number of enrolled children that do not meet the eligibility criteria for those meals. In addition, the State agency may conduct further verification of the information provided by parents or guardians on the approved application for Program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) *Verification procedures for pricing programs.* For pricing programs; in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income information provided by parents or guardians on the approved application for free or reduced-price meals and at State agency discretion, may also include confirmation of household size. State agencies shall perform verification on a random sample of no less than 3 percent of the approved applications submitted by families of children enrolled in an institution which is a pricing program. Households shall be informed in writing that they have been selected for verification and that they are required to submit the requested verification information to confirm eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Selected households shall also be informed that if they are currently participating in the Food Stamp Program they may submit proof of current eligibility for food stamp benefits in lieu of income information. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits. Sources of verification may include written evidence, collateral contacts, institution conferences, and systems of records. *Written evidence* shall be used as the primary source of verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Wherever written evidence is insufficient to confirm income information on the application or current eligibility, the State agency may use collateral contacts. *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced-price meals shall be terminated if it refuses to choose one of these options. Termination shall be made in accordance with paragraph (h)(2)(i) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies. The adult member(s) of the household may be asked to *visit the institution* for a discussion of the information on the application. Households shall be provided sufficient opportunity to schedule the conference. *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income or family size maintained by other government agencies to which the State agency can legally gain access may be used to confirm a household's income and family size. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure. Verification by State agencies for recipients of *food stamp benefits* that choose to provide evidence of food stamp participation in lieu of income information shall be limited to a review to determine that the period of eligibility for *food stamp benefits* is current. If the household chooses to provide income information or the food stamp certification period is found to have expired, the household shall be subject to routine verification of eligibility. The State agency may work with the institution to acquire the information necessary to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(i) If a household refuses to cooperate with efforts to verify, or the verification effort indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial of benefits in accordance with paragraph (e) (4) and (5) of this section. Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of: (A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(ii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing: (A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and (B) Households which are denied benefits upon application shall not recieve benefits.

(3) State agencies shall inform institution officials of the results of the verification effort and the action which will be taken in response to the verification findings. This notification shall be made in accordance with the procedures outlined in paragraph (a) of this section.

(4) If the verification results disclose that an institution has inaccurately classified or reported the number of enrolled children eligible for free, reduced-price or paid meals, the State agency shall adjust institution rates of reimbursement retroactive to the month in which the incorrect eligibility figures were reported by the institution to the State agency.

(5) If the verification results disclose that a household has not reported accurate documentation on the application which would support continued eligibility for free or reduced-price meals, the State agency shall immediately adjust institution rates of reimbursement. However, this rate adjustment shall not become effective until the affected households have been notified in accordance with the procedures of paragraph (h)(2)(i) of this section and any ensuing appeals have been heard as specified in paragraph (h)(2)(ii) of this section.

(The information collection requirements contained in paragraph (e)(4)(f), and (h) were approved by the Office of Management and Budget under control number 0584-0055)

Dated: May 2, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-11032 Filed 5-7-85; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-3241]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Domestic Quarantine Notices" by adding a new subpart, captioned "Mediterranean Fruit Fly." The subpart quarantines the State of Florida and establishes regulations restricting the interstate movement of regulated articles out of a regulated area in Dade County, Florida. This document is necessary on an emergency basis to prevent the artificial spread of Mediterranean fruit fly into noninfested areas of the United States.

DATES: Effective date of this amendment May 8, 1985. Written comments concerning this interim rule must be received or on before July 8, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director, Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Due to the possibility that Mediterranean fruit fly could be spread artificially to certain noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

This document amends the "Domestic Quarantine Regulations" in Part 301 of Title 7, Code of Federal Regulations (7 CFR Part 301) by adding a new § 301.78, captioned "Mediterranean Fruit Fly." Subpart 301.78 quarantines the State of Florida, designates an area in Florida as a "regulated area", designates certain articles as "regulated articles", and imposes conditions on the interstate movement of regulated articles from regulated areas.

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that a portion of Miami, Florida, in Dade County, is infested with the

Mediterranean fruit fly. Specifically, on February 25, 1985, 1 unmated female Mediterranean fruit flies was collected in a Jackson trap on a property in the city of Miami. In addition, on April 9, 1985, inspectors collected from a Jackson trap in a Calamondin tree 2 additional specimens which were later confirmed to be male Mediterranean fruit flies. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except for infestations in Hawaii.

Officials of USDA and State agencies of Florida have begun an intensive Mediterranean fruit fly eradication program in the regulated area in Florida. Also, as explained below, Florida has taken action to impose restrictions on the intrastate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly within Florida. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly. These regulations are described below by section.

Quarantine and Regulations

Section 301.78

Section 301.78(a) of Subpart 301.78 reflects a finding by the Secretary of Agriculture that it is necessary to quarantine the State of Florida and impose regulations on the interstate movement of certain articles designated as regulated articles in order to prevent the artificial spread of Mediterranean fruit fly. Section 301.78(b) prohibits any common carrier or other person from moving interstate from any regulated area any regulated article except in accordance with conditions prescribed in § 301.78-4. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect, seize, quarantine, treat and otherwise dispose of regulated articles in accordance with the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) and the Plant Quarantine Act (7 U.S.C. 164a).

Definitions

Section 301.78–1

Section 301.78–1 contains, for informational purposes, definitions of the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Regulated area," "Regulated article" and "State." These terms are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 162) and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

Regulated Articles

Section 301.78–2

The regulations impose conditions on the interstate movement of articles which present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from areas regulated for Mediterranean fruit fly into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of Mediterranean fruit fly by the movement of these articles. Such articles are designated as regulated articles and are prohibited from moving interstate from regulated areas, except in accordance with conditions specified in sections 301.78–4 through 301.78–10.

Section 301.78–2 designates the following articles as regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Akee (*Blighia sapida*)
Almond with husk (*Prunus dulcis (P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Argan tree (*Argania sideroxylon=A. spinosa*)
Avocado (*Persea americana*)
Barbados cherry, W.I. cherry (*Malpighia glabra, & punicifolia*)
Bourbon orange (*Ochrosia elliptica*)
Calamondin orange (*Citrus mitis & C. japonica*)
Canistel (*Pouteria campechiana*)
Cattley guava (*Psidium cattleianum*)
Ceylon-gooseberry (*Dovyalis hebecarpa*)
Chanar (*Geoffroea decorticans*)
Cherimoya (*Annona cherimola*)
Cherries (*sweet and sour*) (*Prunus avium, Prunus cerasus*)
Citrus citron (*Citrus medica*)
Coffee (*Coffea arabica*)
Custard apple (*Annona reticulata*)
Date (*Phoenix dactylifera*)
Dwarf papaya (*Carica quercifolia*)
Fig (*Ficus carica*)
Golden plum (*Prunus americana* x *P. salicina*)
Gourka (*Garcinia xanthochymus*)
Grape (*Vitis vinifera*)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Hawthorne (*Crataegus* spp.)
Hog plum (*Spondias mombin*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Jocote (*Spondias purpurea*)
Kei apple (*Dovyalis caffra*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lime (*Citrus aurantiifolia*)
Litchi (*Lychee*) (*Litchi chinensis*)
Longan (*Dimocarpus longan*)
Loquat (*Eribotrya japonica*)
Mammee, sapote (*Pouteria sapota*)
Mandarin orange (*tangerine*) (*Citrus reticulata*)
Mango (*Mangifera indica*)
Mock orange (*Murraya paniculata*)
Mombin (*Spondias* spp.)
Mountain apple (*Syzygium malaccense* (*Eugenia malaccensis*))
Myrobalan nut (*Terminalia chebula*)
Natal plum (*Carissa macrocarpa=C. grandiflora* and *Terminalia chebula*)
Nectarine (*Prunus persica*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Papaya (*Carica papaya*)
Passion fruit (*Passiflora edulis*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum annuum* and *Capsicum frutescens*)
Pineapple guave (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava 'Pomiform'*)
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pummelo (Shaddock) (*Citrus maxima*)
Pyriform guajava (*Psidium guajava 'Pyriform'*)
Quince (*Cydonia oblonga*)
Red mombin (*Spondias purpurea*)
Rose apple (*Syzygium jambos* (*Eugenia jambos*)
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona Muricata*)
Spanish cherry Medlar (*Mimusops elengi*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Spanish plum (*Spondias mombin*)
Star-apple (*Chrysophyllum* spp.)
Strawberry guava (*Psidium cattleianum*)
Sugar apple *Annona squamosa*)
Sugarplum (*Arenga pinnata*)
Surinam cherry (*Eugenia uniflora*)
Sweet orange (*Citrus sinensis*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*);

Except that the list does not include any fruits, nuts, vegetables, or berries which have been canned, or frozen below −17.8 °C. (0 °F.);

(b) soil within the drip line of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a); and

(c) any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs

(a) or (b), when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

Articles that are canned, or frozen below −17.8° C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under such conditions. Otherwise, based on research and experience, the articles listed in § 301.78–2 (a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Mediterranean fruit fly. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Mediterranean fruit fly, these articles are regulated by paragraph (c). These articles would have to be determined to present a risk by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 301.78–2(c) on an emergency basis in sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Mediterranean fruit fly, an amendment to this rule to include such items in the list of regulated articles will be considered.

Regulated Areas

Section 301.78–3

An infestation of Mediterranean fruit fly was determined to exist in Miami, Florida, on April 9, 1985. This area in Dade County remains infested at this time. The area to be regulated because of this infestation is specifically described in § 301.78–3 and is designated as a "regulated area". The area in Dade County designated as a regulated area is described as follows:

That part of Dade County beginning at a point 200 feet east of the intersection of the Broward-Dade County line and U.S. Highway 1; then south along an imaginary line 200 feet east of U.S. Highway 1 to a point 200 feet north of 192nd Street Causeway; then east along an imaginary line 200 feet north of the 192nd Street Causeway to State Highway A1A; then southerly along an imaginary line 200 feet east of State Highway A1A to a point 200 feet south of 71st Street; then westerly along an imaginary line 200 feet south of 71st Street and State Highway 828 (which starts on 71st Street) to the intersection of the west shore of Biscayne Bay; then southerly along said shore line to a point 200 feet south of Northeast 61st Street; then west along an imaginary line 200 feet south of Northeast 61st Street to its intersection with the East Coast Railroad; then across the East Coast Railroad to a point 200 feet south of Northeast 62nd Street (which becomes Northwest 62nd Street); then west along an imaginary line 200 feet south of Northwest 62nd Street to its intersection with U.S. Highway 27 (Okeechobee Road); then northwesterly along U.S. Highway 27 to its intersection with Red Road; then north along Red Road to a point 200 feet north of Northwest 183rd Street (Miami Gardens Drive); then east along an imaginary line 200 feet north of Miami Gardens Drive to a point 200 feet west of Northwest 37th Avenue; then north along an imaginary line 200 feet west of Northwest 37th Avenue to Snake Creek Canal; then east along Snake Creek Canal to its intersection with Sunshine State Parkway; then north along Sunshine State Parkway to its intersection with Broward-Dade County line; then east along the Broward-Dade County line to the point of beginning.

It is necessary to designate the above described portion of Dade County as a regulated area because it is an area in which the Mediterranean fruit fly has been found, or in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present or an area deemed necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

Conditions Governing the Interstate Movement of Regulated Articles From Regulated Areas

Sections 301.78–4 Through 301.78–10

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from regulated areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 through 301.78–10 or unless moved as prescribed in § 301.78–4(b).

Specifically, § 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a regulated area, if it is moved directly through the regulated area, if the point of origin is clearly indicated by shipping documents, and if the identity of the article is maintained.

In § 301.78–4, a footnote (number 2) is added to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met during an interstate movement.

Section 301.78–5

Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by the Department that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if: (1) The inspector determines that the article has been treated under direction of an inspector in accordance with § 301.78–10, or if it comes from a premise of origin which is free from Mediterranean fruit fly or the inspector determines that the regulated article is free of Mediterranean fruit fly; and (2) the inspector determines that it will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

A footnote (number 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate which is believed to be infested or infected by plant pests.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if, after consultation with the Deputy Administrator, it is determined that such article is to be moved to a specified destination for specified handling, utilization or processing, and upon evaluation of all of the circumstances involved, the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited

permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b). These initial determinations concerning the eligibility for issuance of a certificate or limited permit are limited to inspectors because of their nature and complexity.

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving of regulated articles who agrees in writing to comply with the provisions of subpart 301.78 and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from regulated areas and are designated to insure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements of Subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations. The holder of the compliance agreement shall be notified of the reasons for cancellation and shall be given an opportunity for a hearing to resolve a conflict as to any material fact. A footnote (number 5) is added to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8 and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote (number 4) is added for informational purposes to indicate how to contract the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.78–9 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the quarantine and regulations in Subpart 301.78 are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

Section 301.78–10

Section 301.78–10 sets forth treatment schedules for certain regulated articles that must be met if such articles are to be certified prior to movement as provided in § 301.78–4. These treatments are recommended because research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly with little or no effect on the regulated article. Treatment schedules have not been developed for all regulated articles. However, § 301.78–10 provides alternatives to treatment by cold storage, methyl bromide or diazinon that can be used if an individual wishes to obtain a certificate or limited permit for the interstate movement of the regulated article from a regulated area.

The treatment schedules for regulated articles in section 301.78–10 are as follows:

(a) Avocado: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45°F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) Tomato: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(c) Bell pepper and tomato: Heat the article by saturated water vapor at 44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

(d) Apple, apricot, cherry, grape, peach, pear, and plum: Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 2.7 °C. (33 to 37 °F.); or 11 days at 6.11 to 8.3 °C. (43 to 47 °F.)
2½ hours	4 days at 3.33 to 4.44 °C. (38 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.)
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 8.88 to 13.33 °C. (48 to 56 °F.)

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(e) Bell peppers: Fumigation with methyl bromide at normal atmospheric pressure with 32g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

Note.—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem calyx.

(f) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, mandarian orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange: Cold treat the article according to one of the following:

10 days at 0 °C. (32 °F.) or below
11 days at 0.55 °C. (33 °F.) or below
12 days at 1.11 °C. (34 °F.) or below
14 days at 1.66 °C. (35 °F.) or below
16 days at 2.22 °C. (36 °F.) or below.

(g) Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk. Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m^3 for 3½ hours at 21 °C. (70 °F.) or above.

Minimum concentration for above fumigations:

26 g minimum gas concentration at first ½ hour

22 g minimum gas concentration at 2 or 2½ hours

21 g minimum gas concentration at 3½ hours.

(h) Grape: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m^3 for 4 hours at 18 °C. (65 °F.) or above.

Minimum concentration for above fumigations:

26 g minimum gas concentration at first ½ hour

22 g minimum gas concentration at 2 or 2½ hours

19 g minimum gas concentration at 4 hours.

(i) Soil: Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a):

Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line of host plants. The diazinon is to be mixed with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour on treatment procedures are acceptable. Soil treated with diazinon shall be eligible for certification only during the first 7 days following treatment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment affects the interstate movement of regulated articles from a portion of Dade County, Florida, which is about 90 square miles in size. It appears that there is very little commercial activity that occurs in the regulated area. Specifically, the regulated area is comprised of private residences and small shops. The small entities in the regulated area that may be affected by this regulation appear to consist of approximately 75 nurseries, 70 retail stores, 125 street vendors and open fruit stands, and fewer than 10 premises with orchards and vegetable plots (ranging in size from ½ acre to 15 acres). Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, that this regulation will have on these entities appears to be minimal. Further, the number of affected entitites mentioned above compares with thousands of small entities that move such articles interstate from nonregulated areas in Florida and many more thousands of small entities that move such articles interstate from other States.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean Fruit Fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the Mediterranean Fruit Fly Quarantine and Regulations in 7 CFR Part 301, a new Subpart (7 CFR 301.78 *et. seq.*) is added to read as follows:

Subpart—Mediterranean Fruit Fly

Quarantine and Regulations

Authority: 7 U.S.C. 150dd, 150ee, 16, 162; 7 CFR 2.17, 2.51, and 371.2(c).

* * * * *

Subpart—Mediterranean Fruit Fly

Quarantine and Regulations

§ 301.78 Quarantine and regulations; restrictions on interstate movement of regulated articles.[1]

(a) *Quarantine and regulations.* The Secretary of Agriculture hereby quarantines the State of Florida in order to prevent the artificial spread of the Mediterranean fruit fly, a dangerous plant pest not heretofore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.78–2.

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditons prescribed in this subpart.

§ 301.78–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.78–5(c).

(b) *Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) *Infestation.* The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

(e) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

(f) *Interstate.* From any State into or through any other State.

(g) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.78–5(b).

(h) *Mediterranean fruit fly.* The insect known as Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) in any stage of development.

(i) *Moved.* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

(j) *Movement or move.* The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

(k) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(l) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

(m) *Regulated area.* Any State, or any portion thereof, listed in § 301.78–3(c) or otherwise designated as a regulated area in accordance with § 301.78–3(b).

(n) *Regulated article.* Any article listed in § 301.78–2 or otherwise designated as a regulated article in accordance with § 301.78–2(c).

(o) *State.* Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

§ 301.78–2 Regulated articles.

(a) The following fruits, nuts, vegetables, and berries are regulated articles:

Akee (*Blighia sapida*)
Almond with husk (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Argan tree (*Argania sideroxylon = A. spinosa*)
Avocado (*Persea americana*)
Barbados cherry, W.I. cherry (*Malpighia glabra, & punicifolia*)
Bourbon orange (*Ochrosia elliptica*)
Calamondin orange (*Citrus mitis & C. japonica*)
Canistel (*Pouteria campechiana*)
Cattley guava (*Psidium cattleianum*)
Ceylon-gooseberry (*Dovyalis hebecarpa*)
Chanar (*Geoffroea decorticans*)
Cherimoya (*Annona cherimola*)
Cherries (sweet and sour) (*Prunus avium, Prunus cerasus*)
Citrus citron (*Citrus medica*)
Coffee (*Coffea arabica*)
Custard apple (*Annona reticulata*)
Date (*Phoenix dactylifera*)
Dwarf papaya (*Carica quercifolia*)
Fig (*Ficus carica*)
Golden plum (*Prunus americana* x *P. salicina*)
Gourka (*Garcinia xanthochymus*)
Grape (*Vitis vinifera*)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Hawthorne (*Crataegus spp.*)
Hog plum (*Spondias mombin*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Jocote (*Spondias purpurea*)
Kei apple (*Dovyalis caffra*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lime (*Citrus aurantiifolia*)
Litchi (Lychee) (*Litchi chinensis*)
Longan (*Dimocrapus longan*)
Loquat (*Eribotrya japonica*)
Mammee, sapote (*Pouteria sapota*)
Mandarin orange (tangerine) (*Citrus reticulata*)
Mango (*Mangifera indica*)
Mock orange (*Murraya paniculata*)
Mombin (*Spondias spp.*)
Mountain apple (*Syzygium malaccense* (*Eugenia malaccensis*))
Myrobalan nut (*Terminalia chebula*)
Natal plum (*Carissa macrocarpa = C. grandiflora* and *Terminalia chebula*)
Nectarine (*Prunus persica*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Papaya (*Carica papaya*)
Passion fruit (*Passiflora edulis*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum annuum* and *Capsicum frutescens*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava 'Pomiform'*)
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pummelo (Shaddock) (*Citrus maxima*)
Pyriform guajava (*Psidium guajava 'Pyriform'*)
Quince (*Cydonia oblonga*)
Red mombin (*Spondias purpurea*)
Rose apple (*Syzygium jambos Eugenia jambos*))
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona Muricata*)
Spanish cherry Medlar (*Mimusops elengi*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Spanish plum (*Spondias mombin*)
Star-apple (*Chrysophyllum* spp.)
Strawberry guava (*Psidium cattleianum*)
Sugar apple (*Annona squamosa*)
Sugarplum (*Arenga pinnata*)
Surinam cherry (*Eugenia uniflora*)
Sweet orange (*Citrus sinensis*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*);

Except that the list does not include any fruits which have been canned, or frozen below −17.8 °C (0 °F);

(b) Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in paragraph (a) of this section, and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions of this section.

§ 301.78–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of the quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine

enforcement purposes from localities in which the Mediterranean fruit fly occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

Florida

Dade County

The part of Dade County beginning at a point 200 feet east of the intersection of the Broward-Dade County line and U.S. Highway 1; then south along an imaginary line 200 feet east of U.S. Highway 1 to a point 200 feet north of 192nd Street Causeway; then east along an imaginary line 200 feet north of the 192nd Street Causeway to State Highway A1A; then southerly along an imaginary line 200 feet east of State Highway A1A to a point 200 feet south of 71st Street; then westerly along an imaginary line 200 feet south of 71st Street and State Highway 828 (which starts on 71st Street) to the intersection of the west shore of Biscayne Bay; then southerly along said shore line to a point 200 feet south of Northeast 61st Street; then west along an imaginary line 200 feet south of Northeast 61st Street to its intersection with the East Coast Railroad; then across the East Coast Railroad to a point 200 feet south of Northeast 62nd Street (which becomes Northwest 62nd Street); then west along an imaginary line 200 feet south of Northwest 62nd Street to its intersection with U.S. Highway 27 (Okeechobee Road); then northwesterly along U.S. Highway 27 to its intersection with Red Road; then north along Red Road to a point 200 feet north of Northwest 183rd Street (Miami Gardens Drive); then east along an imaginary line 200 feet north of Miami Gardens Drive to a point 200 feet west of Northwest 37th Avenue; then north along as imaginary line 200 feet west of Northwest 37th Avenue to Snake Creek Canal; then east along Snake Creek Canal to its intersection with Sunshine State Parkway; then north along Sunshine State Parkway to its intersection with Broward-Dade County line; then east along the Broward-Dade County line to the point of beginning.

§ 301.78–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.[2]

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8;

(b) Without a certificate or limited permit, if

(1)(i) Moved directly through (moved without stopping except under normal traffic conditions, such as for traffic lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth), and

(ii) The article originated outside of any regulated area, and

(iii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

§ 301.78–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the movement of a regulated article of such inspector:

(1) (i) Determines that it has been treated under the direction of an inspector [3] in accordance with § 301.78–10; or

(ii) Determines based on inspection of the premises of origin that the premises are free from the Mediterranean fruit fly and the article has not been exposed to Mediterranean fruit fly; or

(iii) Determines based on inspection of the article that it is free from Mediterranean fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[4] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 301.78–10 (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing, or treatment;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread to the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [4] and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 301.87–10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) or this section; or if the inspector has made the determination

[2] Requirement under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Treatments shall be monitored by inspectors in order to assure compliance with the requirements in this subpart.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C 150dd) provides among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

that such article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.78-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[5] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.78-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector [6] to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.78-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at the times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.78-9 Cost and charges.

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

§ 301.78-10 Treatments.

Treatments for regulated articles shall be as follows:

(a) *Avocado:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m^3 for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45 °F.) or below. The 7 days period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m^3 for 3½ hours at 21 °C. (70 °F.) or above.

(c) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

(d) *Apple, apricot, cherry, grape, peach, pear, and plum:* Fumigation with 32 g/m^3 methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 2.7 °C. (33 to 37 °F.); or 11 days at 6.11 to 8.3 °C. (43 to 47 °F.)
2½ hours	4 days at 3.30 to 4.44 °C. (38 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.)
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 8.88 to 13.33 °C. (48 to 56 °F.).

[5] Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

[6] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

Minimun concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(e) *Bell peppers:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Note.—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem calyx.

(f) *Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange:* Cold treat the article according to one of the following:

10 days at 0 °C. (32 °F.) or below
11 days at 0.55 °C. (33 °F.) or below
12 days at 1.11 °C. (34 °F.) or below
14 days at 1.66 °C. (35 °F.) or below
16 days at 2.22 °C. (36 °F.) or below.

(g) *Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Minimum concentration for above fumigations:

26 g minimum gas concentration at first ½ hour

22 g minimum gas concentration at 2 or 2½ hours

21 g minimum gas concentration at 3½ hours.

(h) *Grape:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 4 hours at 18 °C (65 °F) or above

Minimum concentration for above fumigations:

26 g minimum gas concentration at first ½ hour

22 g minimum gas concentration at 2 or 2½ hours

19 g minimum gas concentration at 4 hours.

(i) *Soil:* Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78-2(a);

Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable. Soil treated with diazinon shall be eligible for certification only during the first 7 days following treatment.

Done at Washington, D.C., this 2nd day of May 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-10995 Filed 5-7-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 918

[Georgia Peach Reg. 3, Amdt. 2]

Fresh Peaches Grown in Georgia; Amendment of Quality and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment of final rule.

SUMMARY: This amendment relaxes quality regulations for shipments of Georgia peaches by deleting minimum grade requirements, except for requiring that such peaches be mature, and by lowering the minimum diameter requirement from 1⅞ inches to 1⅝ inches. Such action recognizes the composition of the crop and current and prospective marketing conditions for Georgia peaches and is in the interest of producers and consumers.

EFFECTIVE DATE: On and after May 1, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based on information submitted by the Industry Committee established under this marketing order, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

Shipments of Georgia peaches, except peaches in bulk to adjacent markets (The States of Florida, Alabama, Tennessee, North Carolina, South Carolina, Mississippi, and that portion of Louisiana which is east of the Mississippi River) are currently required to grade at least 85 percent U.S. No. 1 quality with additional allowances for split pits, damage and decay, and be at least 1⅞ inches in diameter, except peaches shipped to adjacent markets can be as small as 1¾ inches in diameter if they meet specified conditions. All peaches must be inspected and certified as meeting such requirements. Sections 918.54 and 918.400 require such peaches to be mature.

The committee met on April 16, 1985, to consider supply and market conditions and other factors affecting the need for and type of regulations suitable for the 1985 season Georgia peach crop. The committee recommended that for the 1985 season peaches shipped to all markets be mature and measure at least 1⅝ inches in diameter. The committee also recommended that bulk shipments to adjacent markets be exempt from these maturity, minimum size, and inspection and certification requirements. The committee recommended this action based on an appraisal of the current and prospective supply and demand conditions for this season's Georgia peach crop. The Georgia peach production area is one of the first each season to market an appreciable amount of fresh peaches. During the early weeks of the season there is a tendency to ship immature and smaller size fruit. Shipment of such fruit at this item tends to adversely affect consumer demand, with resultant depressing effects on grower returns. The 1985 crop of Georgia

peaches is expected to total 1,227 equivalent trailer loads (based on 788 bushels per load) as compared to 2,035 equivalent trailer loads in 1984. The sharp reduction in crop prospects is due to the January freeze and March frost in the production area. Much smaller peach crops are also expected in other Southeast peach producing states because of unfavorable weather. Shipments of Georgia peaches compete with peach shipments from adjoining states. Specification of minimum size and maturity requirements for shipments of Georgia peaches is necessary to provide consumers with suitable quality peaches and promote orderly marketing of shipments from the 1985 crop. The committee unanimously adopted and has submitted to the Secretary a marketing policy for the 1985 season Georgia peach crop including an analysis of supply and demand factors having a bearing on the marketing of the crop.

The regulation currently in effect (Peach Regulation 3, Amendment 1) was issued September 7, 1984 on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. These less restrictive regulations for Georgia peaches will continue to be in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. The issuance of seasonal regulations which continue in effect from marketing season to marketing season reflects the fact that such regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action could result in a reduction in operational costs to the committee and the government. Although the seasonal regulations will be effective for an indefinite period, the committee will continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Georgia peaches. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will review committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this final rule is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the revisions of the quality and size requirements at an open meeting, at which the committee, unanimously recommended implementation of the requirements specified in this final rule. This final rule relieves restrictions on the handling of peaches, and handlers have been apprised of such provisions and the effective date.

List of Subjects in 7 CFR Part 918

Marketing agreements and order, Peaches, Georgia.

PART 918—[AMENDED]

1. The authority citation for 7 CFR Part 918 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. § 918.325 is revised to read as follows:

§ 918.325 Peach Regulation 3.

On and after May 1, 1985, no handler shall ship peaches unless such peaches are mature as provided in § 918.400, and are not smaller than 1⅝ inches in diameter, except that not more than 10 percent, by count, of such peaches in any lot, and not more than 15 percent, by count, of such peaches in any container in such lot, may be smaller than 1⅝ inches in diameter: *Provided*, That peaches shipped to adjacent markets in bulk are exempt from such maturity and size requirements, and the inspection requirement in § 918.64 shall not apply.

Dated: May 1, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–10993 Filed 5–7–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Pro Air Services

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Pro Air Services to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: April 24, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalizaton Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Pro Air Services on April 24, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3, Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, Pro Air Services.

* * * * *

Dated: May 2, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85-11126 Filed 5-7-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-004]

Semen of Ruminants or Swine From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

Correction

In FR Doc. 85-10030 beginning on page 16458 in the issue of Friday, April 26, 1985, make the following correction:

On page 16459, third column, third line, insert "2.17," between "7 CFR" and "2.51".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In response to a decision by the United States Court of Appeals for the District of Columbia Circuit, the Nuclear Regulatory Commission is revising its emergency planning and preparedness regulations for nuclear power reactors. The decision requires that the NRC remove the provision stating that emergency preparedness exercises are not required for any initial licensing decision.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone: (202) 634-1493.

SUPPLEMENTARY INFORMATION: In *Union of Concerned Scientists* v. *NRC*, 735 F.2d 1437 (D.C. Cir. 1984), the U.S. Court of Appeals for the District of Columbia Circuit vacated the NRC's 1982 amendment (47 FR 30232, July 13, 1982) to its emergency planning and preparedness regulations, 10 CFR 50.47(a)(2) (1984), which stated that emergency preparedness exercises were part of the operational inspection process and thus were not required for any initial licensing hearing or decision. The court held that "Congress did not grant the Commission discretion to remove so material an issue as the results of offsite emergency preparedness from reqauired section 189(a) hearings." 735 F. 2d at 1451. On January 7, 1985, the Supreme Court denied a petition for *certiorari* filed by several Utility-Intervenors in the case, and on January 30, 1985, the Court of Appeals formally vacated the 1982 amendment.

The basic effect of the court's decision and of the rule change which follows is that the results of pre-licensing emergency preparedness exercises may be subject to litigation before the Licensing Board. The revision does not change the general predictive nature of the Commission's findings on emergency planning and preparedness issues.

Because the D.C. Circuit held that the Commission did not have the statutory authority to promulgate the 1982 amendment, it is unnecessary to provide notice and an opportunity to comment on this revision, which should be viewed as an outgrowth of the 1982 rulemaking proceeding. For the same reason the Commission finds good cause for making the revision effective on publication in the **Federal Register**. The revision is an administrative change to conform the text of 10 CFR 50.47(a)(2) to the result in the case.

The court specifically focused on the last sentence added to 10 CFR 50.47(a)(2) by the 1982 Amendment. Thus, this sentence is being deleted from 10 CFR 50.47(a)(2).

Paperwork Reduction Act Statement

This revised rule contains no information collection reuirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Impact: Categorical Exclusion

The NRC has determined that this revised regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this revised regulation. Moreover, when promulgating the original emergency planning and preparedness regulations in 1980, the NRC prepared an "Environmental Assessment for Final Changes to 10 CFR Part 50 and Appendix E of 10 CFR Part 50, Emergency Planning Requirements for Nuclear Power Plants" (NUREG-0685, June 1980), and concluded that under the criteria of 10 CFR Part 51 an environmental impact statement was not required for the Commission's emergency planning and preparedness regulations, which included 10 CFR 50.47(a)(2) as hereby revised.

List of Subjects in 10 CFR Part 2

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the NRC is adopting the following revisions to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as

amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.47, paragraph (a)(2) is revised to read as follows:

§ 50.47 Emergency plans.

(a) * * *

(2) The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are adequate and whether there is reasonable assurance that they can be implemented. A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability.

* * * * *

Dated at Washington, D.C., this 3rd day of May 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 85-11162 Filed 5-7-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 85-7]

Charitable Foundations and Charitable Contributions

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is rescinding its interpretive rulings on charitable foundations and charitable contributions, 12 CFR 7.7445 and 7.7479, respectively. Additionally, the Office is clarifying that a national bank may establish Clifford trusts without seeking prior approval. This final rule is intended to eliminate unnecessary limitations on a national bank's charitable contributions.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Ford Barrett, Assistant Director, Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219, (202) 447-1177.

SUPPLEMENTARY INFORMATION:

Background

Twelve U.S.C. 24 (Eighth) provides that national banks may "contribute to community funds or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare." The Office interprets the statute as authorizing national banks to make charitable contributions and to establish charitable foundations. The statute does not limit charitable contributions except as the "board of directors may deem expedient and in the interests of the association . . . ."

In 1957, the Office issued Interpretive Ruling 7220 concerning the establishment of charitable foundations. The ruling limited contributions by the bank to a charitable foundation to "the amount permitted by federal law as a deduction from income for the purpose of the federal tax on corporate income." In 1963, the ruling was renumbered as Interpretive Ruling 7445, and in 1971, it was codified at 12 CFR 7.7445 without substantive change. In 1971, the Office also issued the charitable contributions ruling, 12 CFR 7.7479. The latter ruling stated that a national bank's contributions should "not exceed that which is allowed by the Internal Revenue Service as a deduction from income."

In 1978, the Office amended both interpretive rulings to include more specific limitations on a national bank's contributions to charity or to its charitable foundation. As a result, since 1978 a national bank has been limited to contributing each half-year "five percent of the sum of 'income before income taxes and securities gains or losses' and 'Securities gains (losses), Gross' registered during the preceding calendar half-year." The Office imposed the five percent limitation to "prevent management of closely-held banks from contributing excessive sums to charities or foundations in which the bank's controlling stockholders had a personal interest." 43 FR 19831, 19832.

Following the 1978 amendments, several banks have applied for exemptions from the limitations on the amount of their contributions to charity and to foundations. The Office usually approved these applications after determining that the contributions were consistent with safe and sound banking practices and the applicant was financially sound.

Rescission of the Rulings

Over the years, there have been few violations of the limitations. Additionally, the Office believes it is no longer necessary to place specific limits on the amounts a national bank may contribute to charity or to its own charitable foundation. The deductible limitations in section 170(b) of the Internal Revenue Code (10% of taxable income) should adequately restrain a bank's charitable activities. Accordingly, §§ 7.7445 and 7.7479 are unnecessary.

The Office assumes that a national bank will generally limit its contributions to the amount allowed as a deduction under the Internal Revenue Code. If a bank exceeds the Code's deductible amount, the board of directors should justify the action in its minutes. Such an action must be, in the language of 12 U.S.C. 24 (Eighth), "in the interests of the association." In these infrequent cases, the board of directors should take into account the bank's financial condition before exceeding the deductible amount.

Use of a Clifford Trust

In addition to rescinding 12 CFR 7.7445 and 12 CFR 7.7479, the Office wants to clarify its policy on a national bank's use of Clifford trusts for charitable purposes. A Clifford trust is a trust that is irrevocable for a period slightly longer than ten years after its creation. This length of time is necessary for the trust to qualify for certain tax benefits under the Internal Revenue Code. During the life of the trust, the trust income is given to a beneficiary. The principal reverts to the donor at the expiration of the trust's term. National banks sometimes use a Clifford trust to make charitable contributions, and such trust are an acceptable charitable activity under 12 U.S.C. 24 (Eighth).

In the past, the Office has required that a national bank obtain prior approval before establishing such a Clifford trust for charitable purposes. The Office's main concern has been that the trust not be used to hold assets not permitted by the banking laws. In the future, the Office will continue to review Clifford trusts during its regular examining process, but will not require a national bank to obtain prior approval to establish the trust.

Regulatory Flexibility Act

Since interpretive rulings are not subject to notice and comment

procedures under 5 U.S.C. 553, preparation of a regulatory flexibility analysis is not required. This final rule is deregulatory, and both small and large entities are expected to benefit equally.

Executive Order 12291

The Office has determined that this final rule does not constitute a "major rule" and, therefore, does not require a regulatory impact analysis. This final rule is deregulatory and beneficial in nature.

List of Subjects in 12 CFR Part 7

National banks, Charitable contributions, Charitable foundations, Clifford trusts.

Authority and Issuance

PART 7—[AMENDED]

For the reasons set out in the preamble, 12 CFR Part 7 is amended as set forth below.

1. The authority cite for Part 7 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

§ 7.7445 [Removed]

2. Section 7.7445 is removed.

§ 7.7479 [Removed]

3. Section 7.7479 is removed.

Dated: April 18, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85–11186 Filed 5–7–85; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 535

[No. 85–323]

Consumer Protections; Unfair or Deceptive Credit Practices

Dated: April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board is statutorily required, with certain exceptions, to promulgate rules similar to the consumer protection rules adopted by the Federal Trade Commission. The Federal Trade Commission adopted such a rule pertaining to consumer credit practices, which became effective on March 1, 1985. That rule prohibits the use of four contract provisions and the pyramiding of late charges, and requires a notice to be given to potential cosigners of consumer credit obligations. The Board proposed for comment a substantially similar rule on January 14, 1985, and has now adopted a final rule on this subject.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ben F. Dixon, Office of Community Investment, Division of Consumer and Civil Rights (202-377-6830), or Nancy Feldman, Associate General Counsel for Regulatory Review, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

The Federal Trade Commission ("FTC") has issued a rule on consumer credit practices ("credit practices rule") (49 FR 7740, March 1, 1984; to be codified at 16 CFR 444.1–444.5), which became effective on March 1, 1985. Under section 18 of the FTC Act ("Act")(15 U.S.C. 57a (1982)), the FTC is given authority to issue regulations to protect consumers from unfair or deceptive trade practices. The only entities which may not be subject to such a rule are federally regulated financial institutions. Under the Act at section 57a(f)), the Federal Reserve Board ("FRB") and the Federal Home Loan Bank Board ("Board") have enforcement and rulemaking authority for the institutions that each regulates. The section of the Act giving the Board authority to promulgate consumer protection rules similar to those of the FTC, covers all associations and savings banks that are members of the Federal Home Loan Bank System ("member institutions"). The Board has 60 days after the effective date of an FTC rule (in this case, March 1, 1985) to (1) promulgate the FTC rule, (2) adopt a substantially similar rule, or (3) decline to adopt such a rule on a finding that the practices being regulated do not constitute unfair or deceptive practices in regard to consumers who are customers of the regulated financial institutions.

The credit practices rule prohibits the following types of loan contract clauses:

1. *Confessions of Judgment*—a "cognovit", which is a type of contract clause providing for a waiver of a debtor's right to notice and the opportunity to be heard in the event of a suit or other process as a result of a debtor's default, and for the entry a judgment against the debtor resulting therefrom.

2. *Wage Assignments*—a contract clause that provides, at the creditor's option, for a transfer of a debtor's wages to the creditor upon default without notice or hearing.

3. *Security Interest in Household Goods*—a contract clause giving a creditor a non-possessory lien on personal property; specifically, the rule is a prohibition against taking a security interest in a debtor's household goods.

4. *Waivers of Exemption*—a contract clause containing a waiver or limitation of exemption from attachment, execution, or other process on a debtor's real or personal property.

The rule also prohibits a lender from engaging in any practice (including any accounting method) which would result in "pyramiding" late charges, that is, charging multiple late charges for one late payment. Finally, the rule requires lenders to disclose in writing to potential cosigners that they will have to repay the loan if the debtor does not.

On January 14, 1985, the Board published for public comment a proposed rule substantially similar to that adopted by the FTC. *See* 50 FR 1863; January 14, 1985. In connection with its proposal, the Board sought comment on issues relevant to whether the practices prohibited or required by the FTC are unfair or deceptive in relation to the activities of member institutions. The Board received 31 comments, from member institutions, law firms public-interest groups, and consumers. Seventeen commenters generally opposed the proposal, 11 supported it, and 22 suggested modifications for specific provisions. No contrary evidence was offered to show that the practices proposed to be banned by the rule are not unfair or deceptive when engaged in by member institutions. Therefore, after reviewing the comments and other available information, the Board has determined to promulgate a final rule very similar to the proposal, with the changes discussed below.

Scope of the Final Rule

A number of questions were raised concerning the types of credit obligations to be covered by the rule. As proposed, the final rule covers all consumer loans as defined in the Board's "Consumer credit" regulation at § 561.38 (12 CFR 561.38 (1984)). That definition is as follows:

> Credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: *Provided,* the association relies substantially upon other factors, such as the general credit standing of the borrower, guarantees, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to

demonstrate justification for such reliance should be retained in an association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

Thus, consumer loans secured in part by real estate, where the institution relies primarily on factors such as general creditworthiness as security for repayment, are covered by the rule. Similarly, loans secured by mobile homes (also called manufactured homes) and other chattel loans are covered by the rule. However, loans on a combination of mobile homes and the underlying land have, under longstanding Board interpretations, been considered real estate loans, as have mobile-home loans considered real-property loans under state law. The Board has chosen to apply this test for loan coverage because it is consistent with the Board's consumer credit rules and, therefore, familiar to most member institutions, and because it is commonly used by thrifts which have investment "baskets." The incorporation of the "consumer credit" definition has been moved to the "consumer" definition section of new Part 535 for ease of reference.

The Board had proposed to apply the rule to all member institutions. The question has arisen, however, whether this coverage would extend to member institutions' service corporations. It has been the longstanding position of the Board's legal staff that service corporations wholly owned by one or more member institutions are subject to the Board's enforcement authority in the area of federal consumer protection law, if such authority is statutorily granted to the Board. The Federal Trade Commission Act clearly gives such authority to the Board. *See* 15 U.S.C. 45(a)(2), and the Financial Institutions Regulations and Interest Control Act of 1978, Pub. L. 95–630, 92 Stat. 3641, 3650, 3651 (granting the Board increased enforcement authority over such service corporations). The final rule has been clarified accordingly.

A question was also raised regarding the coverage of state-chartered savings banks that converted to a federal charter but retained FDIC insurance. *See* section 112 of the Depository Institutions Act of 1982, 42 U.S.C. 1464(c)(1) *et seq.* Such institutions would be subject to the Board's regulatory authority including the Board's consumer protection rule.

Applicability of the Rule to Member Institutions' Business

The rule applies to only a small portion of most member institutions' current loan portfolios. However, consumer loans, as a result of the Depository Institutions Act of 1982 ("DIA") (Pub. L. 97–320, 96 Stat. 1469), are becoming more prevalent in federal institutions' loan mixes. The DIA gave federal savings and loan associations and savings banks more authority to lend funds outside the traditional area of home finance. As a result, the provisions in the Board's rule are relevant to federal institutions which avail themselves of their new powers to lend. Other members of the Federal Home Loan Banks may be more affected by the rule, depending upon their portfolio mix.

Thrifts are, however, generally increasing their involvement in consumer installment credit. Comments and other information available to the Board indicate that practices addressed by the FTC credit practices rule are used in a number of member institutions' consumer loan contracts. *See* the preamble of the proposal, 50 FR 1864 (January 14, 1985), for extensive discussions of two surveys conducted by the Board.

While the practices were not found to be widespread, no comment letter or other information established that such practices, if used, would not be used by member institutions in a manner that would be unfair or deceptive to their customers. One commenter argued that the Board could not rely on the FTC's evidence since the nature of consumer lending by member institutions is not similar to that of finance corporations, citing differences in "lender types" and the clientele of these lenders. These points do not, however, refute the assumption that the use of these practices would have the same effect upon consumers irrespective of what type of lender made use of them.

Therefore, in furtherance of its statutory responsibility, the Board is relying on the comprehensive evidence developed in the FTC proceedings which addressed consumer lending generally. The Board notes that the final regulatory provisions adopted by the FTC reflected, in part, suggestions made by financial depository institution commenters.

The evidence collected by the Board's staff indicates that the rule will be more in the nature of prospective or preventive regulation rather than a rule substantially limiting current practices. Therefore, the rule should not constitute an appreciable burden on member institutions.

Cosigner Notice

The Board's proposal would have required cosigner notices to contain specific language. As a result of a number of comments pointing out that various parts of the notice could be inconsistent with state law, the Board has determined to include the language of the cosigner notice in the final rule as model language rather than as a required format. Member institutions must, therefore, devise notices which are consistent with both the rule and state law. However, if the Board's model notice is not used, a substantially similar notice must contain the following:

(1) A paragraph indicating the obligation the cosigner is entering into (as in paragraph one of the model notice);

(2) A paragraph indicating the extent to which a cosigner is obligated (as in paragraph two of the model notice);

(3) A paragraph indicating the types of remedies available to the creditor against the debtor and cosigner (as in paragraph three of the model notice).

The proposal would have required that a separate cosigner document be used. In response to comments, the Board has decided to give member institutions a choice in this matter. If the cosigner notice is contained within other documents, it must be set forth in a clear and conspicuous manner and must be located immediately above the place reserved for the consumer and cosigner to sign obligating themselves for the debt. If the notice is a separate document, it may only contain the following additional information: the name and address of the member institution, an identification of the debt to be cosigned (e.g., a loan identification number), the date, and the statement, "This notice is not the contract that makes you liable for the debt."

In response to comments, language in proposed § 535.3(b) referring to the "execution" of an agreement obligating the co-signer has been deleted, and a simpler reference to the time the co-signer becomes obligated has been inserted in its stead. The intent of the provision, to require a creditor to inform cosigners of their obligations *before* they become liable for the debt, is unchanged. For example, if an application for a credit card (open-ended credit) is made, the consumer and cosigner become obligated at the point the consumer is able to use the card to incur debt, that is, at the time he or she has the contractual right to obtain extensions of credit. In such a case, a cosigner notice would need to be given

(if a cosigner is involved) only at the point immediately before the card is activated.

Many commenters objected to the definition of cosigner as being variously too narrow, too broad, or too imprecise under state law. The Board finds that a cosigner should be defined in transactional terms. In situations under state law where an additional signatory is required but where that additional person *does* receive compensation (such as a spouse in community property states or where the spouse's signature is required to perfect the security interest), the additional person would not be considered a "cosigner" under this rule.

Cognovits

A number of commenters took issue with the discussion of this prohibition in the proposal preamble. The Board is taking this opportunity to clarify that a notice of presentment, dishonor, and protest is not considered a cognovit or confession of judgment under this rule. On the contrary, the test is whether a consumer has been denied procedural due process rights of notice and hearing that would otherwise be available under state or federal law.

Pyramiding of Late Charges

Several commenters requested a clarification of the term "pyramiding" which was used in the proposal preamble to graphically describe an abusive situation. The practice intended to be prohibited is one in which late charges are subtracted from later installment payments so that the latter are incomplete and the borrower is assessed new late charges each month. For example, a consumer makes a payment late enough to warrant a late charge, and consequently, the late charge is subtracted from the payment. The next month, the consumer makes a timely payment, but is assessed another late charge because a part of that payment was applied to the previous month's debt. On the other hand, under the rule if the second payment were also late, a second late charge could be levied against the borrower.

Security Interest in Household Goods

Eight commenters specifically opposed the proposed prohibition on security interests in household goods, arguing chiefly that credit availability would be adversely affected. However, no convincing evidence to support this conclusion was offered. The Board, noting the FTC's findings in this matter, has therefore determined to adopt the provisions as proposed.

Only the items specified in the rule are included in the term "household goods." Thus, items such as fixtures, automobiles, and so on are excluded.

Waiver of Exemption

This provision prohibits the contractual waiver of the property exemption that is provided to consumers under state law. However, a waiver is permitted if it relates to property which is specifically given as security in connection with the obligation.

Assignment of Wages

This provision specifically excludes payroll deduction plans, and revocable assignments.

State Exemptions

A number of commenters requested that the Board apply a uniform rule to all regulatees without the possibility of state-law substitutions in order to avoid disruption of nationwide lending activities. While the Board recognises the merit of this suggestion, it has determined at this time to follow the regulatory practices of the FTC and the FRB in providing an opportunity for state-law exemptions in this area.

Competent state agencies may, therefore, apply to the Board for a determination on a case-by-case basis if state law is substantially equivalent to this Part.

Application of Rule to Purchased Contracts

The proposal would have prohibited member institutions' purchase of consumer credit obligations containing the cited contract provisions. Upon reconsideration, the Board has determined that making such provisions unenforceable will achieve the purpose of the rule without imposing undue compliance burdens on member institutions, and has modified the provision accordingly. Since all creditors will be prohibited from originating contracts containing these provisions, purchases of contracts containing provisions should become increasingly rare occurrences.

Effective Date

While the FTC gave its regulatees a full year to comply with the credit practices rule, the Board notes that publication of the FTC's rule and the knowledge of the Board's responsibilities under the Act effectively notified member institutions that the Board would be initiating rulemaking proceedings pursuant to section 18(f). The subsequent publication of the Board's proposed rule was further evidence of the Board's intent to consider adoption of a substantially equivalent rule. The Board has therefor determined to apply the rule as of January 1, 1986.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following final regulatory flexibility analysis.

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the rules will apply.* This rule would apply to members of Federal Home Loan Banks.

3. *Impact of the proposed rules on small institutions.* To the extent that the rule would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* At present, the Board has no regulations for non-real estate loans either limiting or allowing the practices to be prohibited by the FTC credit practices rule. Board regulations governing late charges on real-estate-secured loans, and on loans secured by mobile homes, are not in conflict with the FTC late-charge rule.

5. *Alternatives to the proposed rules.* No alternative rules would impose a lesser burden while complying with the Board's statutory mandate.

List of Subjects in 12 CFR Part 535

Federal Home Loan banks.

Accordingly, the Board hereby adds a new Part 535, Subchapter B, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

Amend Subchapter B by adding at the end thereof a new Part 535, as follows:

PART 535—PROHIBITED CONSUMER CREDIT PRACTICES

Authority: Sec. 45, as amended, Pub. L. 93-637, 88 Stat. 2193, 2200, as amended, Pub. L. 96-37, 93 Stat. 95; Sec. 57a, Pub. L. 93-637, 88 Stat. 2193, as amended, Pub. L. 96-37, 93 Stat. 95; Sec 17, 47 Stat. 736, as amended; 12 U.S.C. 1437, Reorg. Plan No. 3 of 1947, 3 CFR 1943-1948 Comp.

§ 535.1 Definitions.

(a) *Act.* For the purposes of this part, the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

(b) *Consumer.* A natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended "consumer credit" as defined in § 561.38 of this chapter.

(c) *Cosigner.* A natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term shall include any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term shall not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

(d) *Creditor.* A member institution.

(e) *Debt.* Money that is due or alleged to be due from one to another.

(f) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(g) *Household goods.* Clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and

(4) Jewelry (other than wedding rings).

(h) *Member institution.* A person who engages in the business of providing credit to consumers, and who is a member of a Federal Home Loan Bank, including, for purposes of this part, service corporation subsidiaries which are wholly owned by one or more member institutions.

(i) *Obligation.* An agreement between a consumer and a creditor.

(j) *Person.* An individual, corporation, or other business organization.

§ 535.2 Unfair credit contract provisions.

(a) In connection with the extension of credit to consumers after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a member institution directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a member institution, any of the following provisions:

(1) A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon;

(2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;

(3) An assignment of wages or other earnings, unless:

(i) The assignment by its terms is revocable at the will of the debtor,

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

§ 535.3 Unfair or deceptive cosigner practices.

(a) *General.* In connection with the extension of credit to consumers after January 1, 1986, it is:

(1) A deceptive act or practice within the meaning of Section 5 of the Act for a member institution, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of Section 5 of the Act for a member institution, directly or indirectly, to obligate a cosigner unless the cosigner is informed, prior to becoming obligated, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) A clear and conspicuous document that shall contain the following statement or one which is substantially equivalent, shall be given to the consigner prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the cosigner becomes obligated for any fees or transaction on the account):

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

(2) Compliance with the disclosure requirement under paragraph (b)(1) of this section shall constitute compliance with the consumer information requirement of paragraph (a)(2) of this section.

(3) If the notice is a separate document, nothing other than the following times may appear with the notice:

(i) The name and address of the member institution;

(ii) An identification of the debt to be cosigned (e.g., a loan identification number);

(iii) The date; and

(iv) The statement, "This notice is not the contract that makes you liable for the debt.".

§ 535.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a member institution, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For the purposes of this Part, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 535.5 State exemptions.

(a) Upon application to the Board by an appropriate state agency, the Board shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Board makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Board.

(c) The Director of the Office of Community Investment in consultation with the General Counsel shall have delegated authority to make such determinations as are required under this Part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-11123 Filed 5-7-85; 8:45 am]

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12 CFR Part 584

[No. 85-324]

Holding Company Indebtedness

Dated: April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations on holding company indebtedness by clarifying the provisions that preapprove debt incurred by bank subsidiaries of nondiversified savings and loan holding companies and service corporation subsidiaries of insured institution subsidiaries of savings and loan holding companies. The effect of the amendments is to require prior Board approval for any debt incurred by a subsidiary bank unless the debt, together with the aggregate indebtedness of the holding company and all of its affiliates, is within the limitations of 12 CFR 584.6(a)(2) or unless the subsidiary meets the definition of a bank or a savings bank in either the Bank Holding Company Act ("BHC Act") or the Federal Deposit Insurance Act, respectively, or is limited by its charter to providing fiduciary services. The amendments further provide that a subsidiary bank (other than one that meets the applicable definitions) of an insured institution is excluded from the Board's preapproval for debt incurred by a service corporation of an insured institution subsidiary of a nondiversified holding company. The Board is adopting these amendments in order that it may make the findings that are required to be made by 12 U.S.C. 1730a(g) prior to approving any nonexempt debt transaction. In this regard, the Board notes that certain matters of concern pertaining to bank subsidiaries—the degree to which the risks associated with debt incurred by banking subsidiaries owned by an entity not subject to the BHC Act differ from those associated with debt transactions by bank subsidiaries of a bank holding company, and the possibility that the forced divestiture of "nonbank banks" by Congress could ultimately prove injurious to the subsidiary insured institution—had not been considered in granting the prior regulatory approvals. The amendments also adopt a grandfather date of July 1, 1983, which allows a subsidiary bank that had been acquired and in operation prior to that date to continue to incur debt on a preapproved basis.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Neil Crowley, Attroney, Corporate and Securities Division, Office of General Counsel, (202-377-6451), Federal Home Loan Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84-716, dated December 10, 1984, 49 FR 48564 (December 13, 1984), the Board proposed to amend its regulations on holding company indebtedness by clarifying the circumstances in which a debt application would be required from a subsidiary bank of a nondiversified savings and loan holding company or of its subsidiary insured institution. The debt of a savings and loan holding company is subject to review by the Board pursuant to Section 408(g)(1) of the National Housing Act ("NHA"), which provides that no savings and loan holding company or any subsidiary thereof, other than an insured institution, may incur debt without the prior written approval of the FSLIC. 12 U.S.C. 1730a(g)(1). That statute further provides, however, that prior approval is not required for debt incurred by a diversified savings and loan holding company or any subsidiary thereof, nor, with respect to any other holding company, for debt incurred by a holding company or subsidiary thereof, which, together with all other debt of the group, aggregates less than 15 percent of the consolidated net worth of the holding company or of such subsidiary, at the end of the preceding fiscal year. 12 U.S.C. 1730a(g)(2). Pursuant to its statutory authority, the Board had previously approved, by means of an "interim" regulation and without requiring submission of an application, the issuance, sale, renewal, guaranty, or assumption of any debt incurred "[b]y a savings and loan holding company's subsidiary bank which is an insured bank of the Federal Deposit Insurance Corporation." 12 CFR 584.6(b)(4). In a similar manner, the Board, by regulation, had approved, without application, and exempted from the computation of the 15-percent limitation, any debt incurred "[b]y a service corporation subsidiary of an insured institution subsidiary of a savings and loan holding company." 12 CFR 584.6(c)(1).

In Resolution 84-716, the Board proposed to amend each of those provisions by excluding from the preapprovals granted therein debt incurred by a bank subsidiary of either a nondiversified holding company or of its subsidiary insured institution if that bank did not fall within the definitions noted in the regulation. The proposal would have amended 12 CFR 584.6(b)(4) to make clear that the preapproval for debt incurred by a nondiversified savings and loan holding company's subsidiary bank would extend only to a bank that fell within either the definition of a bank in section 2(c) of the BHC Act, 12 U.S.C. 1841(c), or the definition of a savings bank in 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g). The proposal also would have amended 12 CFR 584.6(c)(1) to provide that the prior approval and the exemption from the 15-percent limitation granted by that paragraph for debt incurred by a service corporation of an insured institution subsidiary of a nondiversified holding company would not extend to any FDIC-insured bank, other than one that met the above definitions, that was operated as a subsidiary of the insured institution. The effect of the proposed amendments would have been to require a bank subsidiary that did not meet the requirements specified in the regulations to apply to the Board for permission to incur debt, rather than to incur such debt on the basis of the preapprovals in the regulations. To the extent that any proposed debt plus the aggregate outstanding debt of the holding

company and its non-insured institution subsidiaries would be less than 15 percent of the consolidated net worth of the holding company, a subsidiary bank would not have needed to obtain prior Board approval. *See* 12 U.S.C. 1730a(g)(2)(B) and 12 CFR 584.6(a)(2).

Comments

In response to the proposed amendments, the Board received nine comment letters, six of which opposed the amendments and three of which generally favored them. The letters in opposition to the proposal were submitted by two savings and loan holding companies, an insured institution, a thrift trade association, a bankers' association and the Chief Counsel of the Comptroller of the Currency. The bankers' association did not address the particulars of the proposal, but expressed generally its opposition to the expansion of "nonbank banks"—institutions that are chartered as a bank but that are not a bank for purposes of the BHC Act because they do not either accept demand deposits or make commercial loans—into its state. The principal issues raised by the comments were that the proposed amendments would exceed the authority of the FSLIC under 408(g) and that they would allow the FSLIC to usurp the authority of the Comptroller of the Currency and the Federal Deposit Insurance Corporation ("FDIC"). These issues are discussed below.

Authority

One commenter contended that the amendments would grant the FSLIC control over a "nonbank bank" subsidiary's access to those funds, including deposits, that are essential for it to conduct its business and that the effect of requiring prior approval for such debt transactions would be tantamount to precluding a nondiversified holding company from acquiring a "nonbank bank." That commenter further contended that adopting the amendments would constitute an improper use of the debt provisions of 408(g) to achieve a policy objective that was unrelated to concerns about the debt structure of a holding company or its subsidiaries and which the Board could not achieve directly under the NHA, namely prohibiting the acquisition of a "nonbank bank" by a nondiversified unitary holding company. In support of that contention, the commenter argued that the reasons proffered in support of the proposal—that the existing preapprovals were granted on the assumption that the subsidiary bank would be subject to the BHC Act and that the forced divestiture of a "nonbank bank" subsidiary could financially burden a holding company—are illusory and do not justify amending the existing debt preapprovals.

After carefully considering those contentions, the Board believes that the commenter has misperceived both the intent of the Board in proposing the amendments, as well as the authority of the Board to oversee the nonexempt debt of all subsidiaries, including a "nonbank bank" subsidiary, or a nondiversified savings and loan holding company. As was discussed in the proposed amendments, the authority conferred on the Corporation by 408(g) of the NHA to oversee the debt of nondiversified holding companies is clear. Section 408(g)(1) provides that "[n]o savings and loan holding company or any subsidiary thereof which is not an insured institution shall" incur debt without the prior written approval of the Corporation. Section 408(g)(2) exempts from the prior-approval requirement any debt incurred by a diversified holding company or any subsidiary thereof, as well as that portion of the debt of a nondiversified holding company or its subsidiaries that does not exceed 15 percent of the consolidated net worth of the holding company of the subsidiary. There are no further statutory exemptions from the requirement that debt transactions be approved in advance by the Board, as operating head of the Corporation. Moreover, Congress was aware of the breadth of authority conferred by 408(g), and chose not to diminish it. Instead, Congress enacted section 408(g) with the understanding that the Corporation later would preapprove by regulation those obligations that typically were incurred in the ordinary course of business, such as employment contracts, leases, or purchases, and which were not expected to impose a burdensome debt structure. The Board preapproved such obligations in 12 CFR 584.6(g)(1) shortly after the statutory amendments were enacted. *See* 33 FR 3322 (February 22, 1968). In addition, the Board preapproved certain other types of debt transactions by regulation, including debt incurred by a holding company's subsidiary bank whose accounts are insured by the FDIC, as well as debt incurred by a service corporation of a subsidiary insured institution of a holding company, 12 CFR 584.6 (b)(4) and (c)(1).

In those instances in which the Corporation approves debt transactions of a nondiversified holding company or its subsidiaries, either on a preapproval basis by regulation or on an individual basis, it must do so in conformance with the standards of section 408(g)(3), which require a determination that a proposed debt transaction would not be injurious to the subsidiary insured institution in light of its financial condition and prospects. At the time that the Corporation preapproved debt to be incurred by an FDIC-insured subsidiary bank, it did so on the assumption that such a bank would engage in the business of banking as that business was conducted at the time and that it would operate within the regulatory framework as it was perceived at that date. In February 1968, however, when § 584.6(b)(4) was adopted, "nonbank banks"—institutions chartered as banks that are not considered banks for purposes of the BHC Act—were essentially unknown, and the Board therefore could not have considered whether debt incurred by such institutions would be consistent with the standards of section 408(g). In proposing to amend the preapproval provisions, the Board expressed its belief that it would be inappropriate to preapprove debt transactions by a type of institution that the Board had not considered in light of the standards of section 408(g). Accordingly, the proposal sought to clarify that the preapproval provisions, § 584.6 (b)(4) and (c)(1), should not be construed to include an institution such as a "nonbank bank," which, in the Board's view, must submit an application for debt in order for the FSLIC to make the determinations required by section 408(g). The Board believes that the review of individual debt applications represents the best means of ensuring that the debt incurred by such institutions is consistent with section 408(g). It continues to be the Board's opinion that the amendments adopted by this resolution are fully within the authority of the FSLIC under section 408 of the NHA, for the reasons stated above.

With regard to the assertion that the amendments would constitute an improper use of section 408(g), the Board believes that its discussion of the authority conferred by section 408(g) adequately addresses that matter. The Board acknowledges that it has substantial concerns about the implications of a proliferation of "nonbank banks" and believes that Congress should act to close the so-called "nonbank bank loophole" in the BHC Act. Apart from this concern, however, the Board is obliged to review nonexempt holding company debt transactions pursuant to the standards of section 408(g) and, as has been fully discussed above, the Board believes that the amendments as adopted provide an appropriate mechanism to do so.

One commenter argued that in the Board's original adoption of the preapproval for debt incurred by an FDIC-insured subsidiary bank, the Board could not have assumed that such a subsidiary would have been subject to the BHC Act because that Act applies only to a company that controls a bank and to its non-banking subsidiaries, but not to the subsidiary bank itself. The Board is aware of the regulatory system within which banks and their holding companies operate, and did not intend to convey the impression that the Board had preapproved debt of a subsidiary insured bank because it believed that the debt of the bank would be regulated under the BHC Act. What was referred to was that the Board, in preapproving debt for subsidiary insured banks, had assumed that such banks would engage in the business of banking as that business was conducted in 1968. The Board was not relying on the nature of regulation of a bank itself under the BHC Act, since among other things, one-bank holding companies were not subject to the BHC Act in 1968. To the extent that the business of banking has changed since that time, however, the Board must consider those changes insofar as they have a bearing on the debt transactions of a nondiversified holding company or its noninsured institution subsidiaries. Thus, the Board believes that institutions such as "nonbank banks," which have only recently appeared, should not be incorporated into the preapproval provisions, and has amended its regulations accordingly.

Regulatory Overlap

As mentioned previously, one commenter asserted that the proposed amendments, if adopted, would usurp the authority of the Comptroller of the Currency and the FDIC to oversee the debt structure of Banks. The Chief Counsel of the Comptroller also noted that "nonbank banks" are chartered and supervised pursuant to the same standards as apply to full-service banks. He further contended that the proposed amendments would discriminate against federally chartered "nonbank banks" and unnecessarily duplicate the review of the Comptroller. The Board acknowledges that one effect of these amendments could be to subject a "nonbank bank" subsidiary of a nondiversified holding company to an additional layer of regulatory review. The Board also must emphasize, however, that the grant of authority over such subsidiaries is clearly provided by section 408(g) of the NHA. Moreover, any resulting regulatory overlap that may arise is a consequence principally of the decision of a savings and loan holding company to acquire and operate subsidiaries that are subject to separate regulatory systems. There is nothing in the NHA that exempts from its debt-control provisions a subsidiary of a nondiversified savings and loan holding company solely because that subsidiary is subject to regulation by another agency pursuant to a different statute. It is the Board's view that to the extent that a company chooses to acquire subsidiaries that operate in separate regulatory environments, it must accept additional systems of regulation as a necessary consequence of its decision.

Persons commenting on the proposed amendments also complained that the amendments lacked guidelines as to what matters the Board would consider in reviewing a debt application from a subsidiary "nonbank bank." The Board wishes to make clear that the amendments are not intended to establish special standards applicable only to a debt application from a subsidiary "nonbank bank." Such applications will be processed by the Board in the same manner as all other debt applications and reviewed in light of the standards of section 408(g) of the NHA. Thus, "nonbank bank" subsidiaries seeking approval for debt transactions would do so by submitting a form H-(g) pursuant to 12 CFR 584.6, as is required by 12 CFR 589.10(e).

After having considered the comments, the Board has determined to adopt the amendments substantially as proposed, but with two additional provisions suggested by commenters. As proposed, a debt application would have been required from a subsidiary bank that was engaged only in trust or other fiduciary activities. Because the Board believes that such an institution is among those intended to be included within the initial preapproval provision adopted in 1968, it has decided not to exclude such institutions from the preapproval provisions. Accordingly, the final amendments provide that a subsidiary bank of a nondiversified holding company or of an insured-institution subsidiary of a nondiversified holding company may incur debt on a preapproved basis if it meets the definition of a bank in section 2(c) of the BHC Act or the definition of a savings bank in section 3(g) of the Federal Deposit Insurance Act, or if its charter specifically limits it to providing only trust or other fiduciary services. If a subsidiary bank of either a holding company or its subsidiary insured institution does not fall within one of those three categories, it must apply to the Board for permission to incur any debt that, when aggregated with all other debt of the holding company and its subsidiaries, exceeds 15 percent of the consolidated net worth of the holding company.

As part of the process of reviewing a debt application from a "nonbank bank" subsidiary of a nondiversified holding company, the Board will weigh its concerns about the risks associated with such institutions along with the other information submitted in the form H-(g). The Board's principal concerns, which were discussed in the proposal, are that a subsidiary "nonbank bank" may be exposed to different types of risks than is a bank that is controlled by a bank holding company, and that the possibility of forced divestiture of "nonbank banks" could create undue financial burden for the parent company. By requiring the submission of debt applications, the Board will be able to assess those concerns in light of the condition of the institutions involved and determine whether particular debt transactions would be likely to cause any financial injury to the insured institution.

As was discussed in the proposal, the Board is concerned with the unresolved questions pertaining to the status and continued existence of "nonbank banks" under existing law, and the likelihood that entities acquiring a "nonbank bank" will suffer adverse financial consequences if Congress amends the banking statutes to force the divesture of all nonbank banks. During 1984, Congress considered, but did not enact, several bills that were intended to treat "nonbank banks" substantially the same as other banks for purposes of the BHC Act. Notwithstanding the inability of Congress to enact such legislation during its last session, the Chairmen of both the House and Senate Banking Committees have stated, in response to the increasing numbers of charters that have been issued for "nonbank banks," that legislative action to close the so-called "nonbank-bank loophole" under the BHC Act would be a matter of high priority for the 99th Congress. Moreover, the Chairmen have stated that it is the current intention of Congress to require the divestiture of all "nonbank banks" established after July 1, 1983, regardless of the costs of divestiture to entities that have acquired such banks after that date. *Joint Statement on Banking Legislation by Chairman St Germain and Chairman Garn,* October 4, 1984.

In view of the uncertainties surrounding the status of "nonbank banks," the Board is concerned that the forced divestiture of a "nonbank bank" could cause a savings and loan holding

company to incur financial losses or otherwise impair its ability to support its subsidiary insured institution, notwithstanding any grace period within which it may be permitted to divest. The Board believes that until such time that the uncertainties surrounding nonbank banks are resolved, it can best minimize the likelihood of financial injury to the insured institution by actively reviewing the debt to be incurred by a particular "nonbank bank" subsidiaries of a holding company. For that reason, the Board also is amending its delegation of authority in 12 CFR 584.6(f)(2) by excluding from the delegation applications of subsidiary banks, other than those described in the proposed § 584.6(b)(4), to incur debt. In the event of future developments concerning the status of "nonbank banks," the Board would, of course, consider whether it would be appropriate to revisit this issue and would consider further amending its regulations to permit those institutions to incur debt on a preapproved basis.

The final amendments apply only to a subsidiary bank, as defined, of either a nondiversified holding company or its insured institution subsidiary. Diversified savings and loan holding companies and their subsidiaries are not affected. The Board believes that such differing treatment is warranted and is consistent with the statutory distinction between the two types of companies. Congress created that distinction in recognition of the differing composition and earnings base of such firms. A diversified holding company, by definition, engages in substantial business activities that are unrelated to the operation of a savings and loan association and that may be less likely to be affected by conditions that adversely affect depository institutions. By comparison, a nondiversified holding company does not have access to such independent sources of revenue.

Notwithstanding the concerns described above, the Board has further determined, in response to comments, that subsidiaries that would otherwise be subject to the rule, but which were acquired prior to July 1, 1983, should not be excluded from debt preapproval for the reason that the likelihood of harm from forced divestiture is absent for such institutions because Congressional leaders have indicated that only "nonbank bank" subsidiaries acquired after the date will be required to be divested.

Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been discussed elsewhere in the supplementary information regarding the amendments.

2. *Small entities to which the rules would apply.* The rules would apply to all subsidiary banks, as described herein, of a nondiversified savings and loan holding company and of its subsidiary insured institutions.

3. *Impact of the rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the resolution.

4. *Overlapping or conflicting federal rules.* The amendments allow the Board to review the debt structure of "nonbank bank" subsidiaries of a diversified holding company, which also may be subject to review by other banking agencies. Such overlap, however, results from the acquisition of depository institutions that operate in separate regulatory environments. Section 408(g) of the NHA provides no exemption for such institutions from the requirement that their debt transactions must be reviewed in advance by the Board.

5. *Alternatives to the rule.* Other alternatives, such as allowing "nonbank bank" subsidiaries to incur debt on a preapproved basis, may pose certain risks to insured institutions and may be inconsistent with the Board's obligation to determine that such transactions are not injurious to such insured institutions.

List of Subjects in 12 CFR Part 584

Holding companies, Savings and loan associations, Savings and loan holding companies.

Accordingly, the Board hereby amends Part 584, Subchapter F, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

1. The authority for Part 584 would continue to read:

Authority: Sec. 108, 82 Stat. 5 (12 U.S.C. 1730a *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR 1943-1948 Comp., p. 1071.

PART 584—REGULATED ACTIVITIES

2. Amend § 584.6 by revising paragraphs (b)(4) and (c)(1) and adding a sentence at the end of paragraph (f)(2), as follows:

§ 584.6 Holding company indebtedness.

* * * * *

(b) *Approval by the Corporation.* * * *

(4) By a savings and loan holding company's subsidiary bank which is a bank as defined in Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841(c)), or which is a savings bank as defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(g)), or which is specifically limited by its charter to providing only trust or other fiduciary services, or which is an insured bank of the Federal Deposit Insurance Corporation and had been acquired by the holding company and was in operation prior to July 1, 1983.

* * * * *

(c) *Exemptions from computation of 15-percent limitation.* * * *

(1) By a service corporation subsidiary of an insured institution subsidiary of a savings and loan holding company, including any wholly owned subsidiary or such service corporation: *Provided,* that this paragraph (c)(1) does not apply to any service corporation subsidiary or subsidiary of such service corporation that is a bank, other than a bank described in paragraph (b)(4) of this section.

* * * * *

(f) *Approval by Supervisory Agent.* * * *

(2) * * * The delegation of authority conferred by this paragraph (f)(2) shall not apply to any application for a subsidiary bank of a holding company or of its insured institution subsidiary to incur debt, unless the subsidiary bank is a bank described in paragraph (b)(4) of this section.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-11125; Filed 5-7-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-120-AD; Amdt. 39-5058]

Airworthiness Directives; British Aerospace Model HS/BH/DH 125 Service Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to British Aerospace Model HS/BH/DH 125 series airplanes which

requires a visual inspection for flap nose rib cracks. After the AD was issued, the manufacturer released a new revision to the pertinent service bulletin which specifies a modification which the FAA has determined that, if accomplished, will make the inspection no longer necessary. This amendment incorporates this change.

EFFECTIVE DATE: June 17, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued Amendment 39-4392 (47 FR 23694; June 1, 1982) AD 82-12-02 which requires visual inspection of the flap outboard hinge nose ribs for cracks. AD 82-12-02 makes reference to Revision 2 of British Aerospace 125 Service Bulletin 57-58. The manufacturer has since issued Revision 3 to this service bulletin, which introduces Modification 252772. This modification deletes the flap nose ribs and introduces a revised flap vane hinge fitting. Incorporation of this modification on replacement flaps makes the inspection required in AD 82-12-02 unnecessary.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the action mentioned above was published in the **Federal Register** on January 30, 1985 (50 FR 428), and interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received; the commenter had no objection to the proposal.

This document amends an existing AD by deleting a requirement for inspection of the flaps if Modification 252772 is incorporated. This revision imposes no additional regulatory or economic burden on any person

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model HS/BH/DH 125 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Airworthiness Directive 82-12-02, Amendment 39-4392 (47 FR 23694; June 1, 1982) as follows:

1. Revise the first sentence to read as follows:

"Applies to British Aerospace Model HS/BH/DH 125 up to and including series 700 airplanes certificated in all categories except those airplanes incorporating Modification 252772."

2. Change the reference to the service bulletin revision and date in paragraph 1. of the AD to read, "Revision 3, dated September 1, 1983."

This amendment becomes effective June 17, 1985.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11076 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-121-AD; Amdt. 39-5059]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises an existing airworthiness directive (AD) applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes which requires repetitive inspections and repairs, as necessary, of the flap drive screwjacks. This action increases the time interval between repetitive inspections. In addition, reference is made to the latest service bulletin revision.

EFFECTIVE DATE: June 17, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued AD 67-25-02, on September 20, 1967, to detect wear and prevent failure of the flap screwjack assemblies on British Aerospace BAC 1-11 airplanes. Since then, the manufacturer has conducted tests and evaluated service history. This led to the issuance of Alert Service Bulletin 27-A-PM-2992, Issue 4, which allows an increase from 600 to 800 hours time in service for the visual inspection intervals, and from 2800 to 4800 hours time in service for measurement of the nut-to-screw backlash. The United Kingdom Civil Aviation Authority (CAA) concurs with this action and has classified Issue 4 as mandatory.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which amends AD 67-23-02 by extending the repetitive inspection intervals was published in the **Federal Register** on February 14, 1985 (50 FR 6190) and interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received; the commenter had no objection to the proposal.

This document revises an existing AD to the format currently used and amends the existing AD by extending the repetitive inspection intervals. These changes impose no additional regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant

economic effect on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revising Airworthiness Directive 67-25-02, Amendment 39-477 (32 FR 12911; September 9, 1967), as amended by Amendments 39-485 (32 FR 13269; September 20, 1967) and 39-909 (35 FR 13805; December 9, 1969), to read as follows:

British Aerospace: Applies to BAC 1-11 200 and 400 series airplanes certificated in all categories. Compliance required as indicated unless previously accomplished. To prevent serious deterioration and failure of the flap drive screwjacks, accomplish the following:

A. Perform a visual inspection of the flap drive screwjacks for evidence of unusual wear in accordance with paragraph 2.1.1 of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM2992, Issue 4, dated November 30, 1979, prior to the accumulation of 750 landings or 800 hours time in service from the last inspection, whichever occurs earlier. Repeat the inspection at intervals not to exceed 800 hours time in service thereafter.

B. Measure the nut-to-screw in accordance with paragraph 2.2 of the service bulletin prior to the accumulation of 3,000 landings or 4,800 hours time in service from the last check, whichever occurs earlier, and thereafter at intervals not to exceed 4800 hours time in service or 3000 landings, whichever occurs first. If the nut-to-screw backlash exceeds 0.03-inch, the screwjack assembly must be replaced with serviceable parts.

C. Incorporation of modification PM2992, which introduces a new seal for the ball nut, constitutes terminating action for this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

F. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the increase for that operator.

This amendment becomes effective June 17, 1985.

(Sec. 313(a) 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11077 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-3]

Alteration and Revocation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of Birmingham, AL. The revised Federal Airway V-311 inadvertently cited "Wiregrass, GA" in the description rather than "Wiregrass, AL." This action corrects that mistake. Also, a segment of the airway was inadvertently omitted between Columbia, SC, and Charleston, SC, and is added at this time.

EFFECTIVE DATE: 0901 GMT, June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-7028 published on March 26, 1985, altered the descriptions of several VOR Federal Airways located in the vicinity of Birmingham, AL, by deleting some alternate airway segments and renumbered other airway segments (50 FR 11846). An error was found in the description of V-311. The description of V-311 stated in part "Wiregrass, GA" and it should have been "Wiregrass, AL" and this action corrects that description. Also, the segment of V-311 between Columbia, SC, and Charleston, SC, was inadvertently omitted and is added.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Correction

PART 71—[CORRECTED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85-7028, as published in the **Federal Register** on March 26, 1985 (50 FR 11846), is corrected under V-311 by removing the words "From Wiregrass, GA," and substituting the words "From Wiregrass, AL," and by removing the words "to Columbia, SC," and substituting the words "Columbia, SC, to INT Columbia 153° and Charleston, SC, 296° radials; Charleston."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on May 2, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-11075 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-2967]

California Medical Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: In response to a petition filed by the California Medical Association ("CMA"), this Order reopens the proceeding in Docket C-2967, and modifies the consent order entered April 17, 1979, 93 F.T.C. 519, 44 FR 32365, by deleting Paragraph II(C), which prohibits the association from advising in favor of or against any relative value scale developed by third parties, and inserting a provision that permits CMA more freedom to discuss issues relating to reimbursement with governmental entities and third-party payers. Such modification is consistent with the Commission's decision in Docket 9219, *Michigan State Medical Society (Michigan State)*, 48 FR 8997, and its modified order in Docket C-2855, *American College of Obstetricians and Gynecologists*, 49 FR 36366. The Commission, however, denied the other modifications requested by CMA, holding that CMA had failed to show that changed circumstances or the public interest warranted further modification of the Order.

DATES: Consent Order issued April 17, 1979; Modifying Order issued April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/L 301-1, Washington, D.C. 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of California Medical Association, an unincorporated association. Codification appearing at 44 FR 31949 remains unchanged.

List of Subjects in 16 CFR Part 13

Fee schedules, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. C-2967]

Order Reopening and Modifying Final Order in Docket No. C-2967

In the matter of CALIFORNIA MEDICAL ASSOCIATION, an unincorporated association.

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

By petition filed October 1, 1984, the California Medical Association ("CMA") asked the Commission to reopen and modify the Commission order in Docket No. C-2967 ("Order") entered with CMA's consent on April 17, 1979. CMA requested that the Commission modify the Order by (a) deleting Paragraph II(C) of the Order, which prohibits CMA from advising in favor of or against any relative value scale developed by third parties (except that CMA is permitted to provide historical data), and (b) inserting a provision identical to a provision contained in the Commission's Order *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow CMA more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. CMA also requested that the Commission modify the order so that it would no longer prohibit CMA from developing and disseminating a relative value scale. CMA's petition was placed on the public record for comment, and none of the comments received specifically related to the modification of Paragraph II(C).

Upon consideration of CMA's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(C) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. Modification is consistent with both the Commission's decision in *Michigan State* and its modification of the Order in *American College of Obstetricians and Gynecologists*, Docket No. C-2855, August 28, 1984.

The Commission has denied the other modifications requested by CMA because CMA failed to show that changed circumstances or the public interest requires such modifications of the order. Therefore, the Order continues to prohibit CMA from developing or circulating its own relative value guide for use by its members.

Relative value studies may have anticompetitive consequences in several ways. First, they establish price relationships that may become stable without regard to quality or efficiency differences. Second, they may result in new and separate billing categories that are fragmented from others, thereby resulting in higher prices simply because charges are made for more numerous services. Third, if medical associations were permitted to publish RVS's it could lead to concerted or interdependent adherence to an RVS by physicians. Fourth, RVS's may facilitate an actual agreement by physicians to fix prices by providing a "starting point" from which collusion may occur. Given these possibilities of competitive harm and the absence of a convincing showing of the need for CMA to develop an RVS, we believe the public interest lies in the continuation of the prohibition against CMA.

In addition, although the Order no longer will prohibit CMA from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were CMA to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, that this matter be, and it hereby is, reopened and that the Order in Docket No. C-2967 be modified (1) to delete Paragraph II(C) and to redesignate Paragraphs II(D) and II(F) of the Order as Paragraphs II(C) and II(D) respectively; (2) to renumber Paragraphs III, IV, and V of the Order as Paragraphs IV, V, and VI respectively; and (3) to insert the following:

III

It is further ordered that this order shall not be construed to prevent CMA from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

Issued: April 19, 1985.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-11093 Filed 5-7-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 444

Credit Practices; Staff Guidelines for Exemption Proceedings

AGENCY: Federal Trade Commission.

ACTION: Notice of Staff Guidelines for Exemption Proceedings Under the Credit Practices Rule.

SUMMARY: The Federal Trade Commission hereby publishes staff guidelines, prepared by the Bureau of Consumer Protection. These guidelines have not been formally approved or adopted by the Commission. They represent the views of the Bureau of Consumer Protection and do not necessarily represent the views of the Commission or any individual Commissioner.

These staff guidelines explain the procedures that staff will follow in handling requests for state exemptions from the Commission's trade regulation

rule in Credit Practices, 16 CFR Part 444 (1984) (Credit Practices rule), and the procedures that staff will recommend that the Commission follow in granting, denying, or revoking such exemptions. The Credit Practices rule provides [1] that if a state applies for an exemption from a provision of the rule, such exemption will be granted if the Commission determines that: (1) There is in effect a state requirement or prohibition that applies to any transaction to which a provision of the Credit Practices rule applies, and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule's provision. Such an exemption will continue for so long as the state effectively administers and enforces its law. The result of the exemption is that the exempted provision of the Credit Practices rule is not in effect in that state.

These guidelines explain what material states should submit as part of a complete exemption application, what procedures are required by current Commission rules for considering exemption applications, and what specific procedures staff will recommend that the Commission use in granting, denying, or revoking exemptions under the Credit Practices rule. Thus, the guidelines are intended to give states and other interested parties as much advance guidance as possible regarding how the exemption procedures will be handled. Interested persons should understand that, insofar as these guidelines discuss the procedures that staff intends to recommend, the Commission remains free to adopt different procedures.

Call for Comment. Although these guidelines have been tentatively adopted and will be effective immediately, staff invites comments on any aspect of the guidelines. Staff will carefully review and consider all comments received, and will recommend that the Commission authorize the publication of revised guidelines if staff believes that this is warranted in light of the comments received. If not changes to the guidelines are made as a result of public comments, the Commission will publish a notice that these guidelines have become final.

DATE: These guidelines have been tentatively adopted. Comments are invited and must be received on or before June 7, 1985.

[1] Rule § 444.5, 16 CFR 444.5.

ADDRESS: Comments on the Guidelines should be sent to: Secretary, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ruth R. Amberg, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 724-1187.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 444

Consumer credit contracts, Cosigner disclosures, Trade practices.

Staff Guidelines

Criteria for Determination

These guidelines are not intended to set forth substantive criteria for determining whether a state's law or prohibition provides a level of protection that is substantially equivalent to, or greater than, the protection afforded by the Credit Practices rule. Rather, the Commission will make a case-by-case evaluation to determine whether the level of protection afforded by the state is substantially equivalent to the Commission's rule and whether the state law is administered and enforced effectively. The Commission, however, has indicated in the Statement of Basis and Purpose for the rule that the "substantially equivalent" requirement does not require that the state provision mirror the Commission's provision exactly.[2] But, the Commission also indicated that any difference should be minor so that consumers are not deprived of the level of protection ensured by the Commission's rule and so that compliance by interstate creditors is not significantly complicated.[3] In addition to examining the "substantial equivalency" of a state provision to determine whether an exeption is warranted, the Commission will consider the resources committed by the state to enforce its provisions, and the existence of any private rights of action by an aggrieved consumer.

Elements of a Complete Application

States should submit the following information and material as part of a complete application for an exemption. Items (1) and (2) may be submitted by the state agency having primary enforcement responsibility for the law

[2] Statement of Basis and Purpose, 49 FR 7783.

[3] The standard is analogous to that applied by the Federal Reserve Board in determining state exemptions from requirements of the Truth in Lending Act. *See* Board of Governors of the Federal Reserve System, Consumer Leasing, Truth in Lending: Exemption Application * * *, 47 FR 16210, April 15, 1982.

that is the subject of the exemption application, by the state attorney general, or by the state governor.

(1) The application should include a copy of all relevant state statutes, regulations and court cases, and a statement comparing the state law with the relevant provision(s) of the Credit Practices rule, on a provision-by-provision basis, explaining how the state law applies to the same transaction(s) as the rule and how it affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule. This comparison should be made for each provision of the Credit Practices rule for which an exemption is being sought.

(2) The application should provide sufficient information to show the state's willingness and ability effectively to administer and enforce its law. Staff believes that the following information may be relevant to this determination:

(a) A description of the fiscal arrangements and funding of the state agency (or agencies) that are, or will be, enforcing the state law, or other information showing that the state agency has adequate funding properly to enforce the law.

(b) A description of the number and qualifications of persons engaged in the enforcement and administration of the state law, or other information indicating that the state has adequate qualified personnel to administer and enforce the law. In describing the qualifications of personnel, states need not provide detailed resumes, but may indicate the general background and training of the personnel, *e.g.*, whether they are attorneys, accountants, trained investigators, etc.

(c) A description of the state's enforcement procedures and policies, current or planned.

(d) A summary of the state's past history of enforcement of any statutes or regulations governing the practices that are the subject of the rule.

(e) Information regarding the level of compliance with any such state statutes or regulations may also be relevant to the state's enforcement history.

Staff recognizes that some of the information described in items (a)–(e) may not be relevant or available in certain states and that each state application must be tailored to the individual circumstances of that state. States may submit whatever material they believe to be relevant to the issue of their willingness and ability to enforce their laws. However, the Commission's Statement of Basis and

Purpose states that the Commission will consider resources committed by the state to enforce its provisions. The relevance of past enforcement data, in particular, may differ from state to state. For example, some states may have made extensive changes in their law or enforcement policies just prior to filing an exemption, in which case past enforcement data would be less relevant. Other states may have a significant history of enforcing laws comparable to the rule, in which case enforcement data might be highly relevant. These guidelines allow states to decide to submit only such data as is relevant under their circumstances. Once staff has reviewed a state's submission, staff may request additional information that it believes to be relevant.

(3) In addition to the above, a complete application for an exemption must also include a statement from the state attorney general, or from the attorney for the relevant enforcement agency if this agency has independent legal counsel and is not represented by the state attorney general in court, that state law provides adequate authority to support the regulations, conclusions, interpretations, policies and procedures described in the statements submitted pursuant to items (1) and (2) above. Where appropriate, this statement should include citations to the specific statutes, regulations, and judicial decisions that demonstrate adequate authority. The statement should also summarize legal interpretations of the state statutes or regulations, with appropriate citations, and discuss any pending legal challenges to the statutes, regulations, conclusions, interpretations, policies and procedures described in the statements submitted pursuant to items (1) and (2).

Procedures for Public Participation

As stated in the credit practices rule Statement of Basis and Purpose (49 FR 7783), the Commission will follow the procedures of section 1.16 of the Commission's Rules of Practice, 16 CFR 1.16, in considering requests for state exemptions. This section states that any person to whom a rule would otherwise apply may petition the Commission for an exemption from such rule and that the procedures for determining such a petition shall be those of Subpart C of the Commission's rules.

Subpart C of the Commission's Rules of Practice, 16 CFR 1.21—1.26, prescribes the procedures that govern proceedings for exemptions from trade regulation rules. These rules require the Commission, in general, to publish notice of a proposed exemption in the **Federal Register**, and to allow a period of time for interested parties to submit written comments concerning the application.[4] The rules also provide that an oral hearing on a proposed exemption may be held within the discretion of the Commission.[5]

Thus, staff anticipates that once the Commission has received a complete application for an exemption, as described above, the Commission will publish notice of its receipt in the **Federal Register** and allow a period of time for interested persons to submit written comments. During the comment period, staff will specifically solicit the views of the state governor and attorney general to ensure that the Commission becomes aware of the complete views of these officials. While the Commission's rules provide that oral hearings may be held within the Commission's discretion, staff anticipates that in most instances such a period for written comments will be sufficient for a full and fair presentation of significant issues and that there will be no need to schedule oral hearings or additional comment periods.

Staff plans to recommend that the Commission schedule an oral evidentiary hearing only if there are significant factual issues that can be adequately presented only through such a hearing. Staff anticipates that this will usually be true only where cross-examination is necessary to present significant factual issues fully and fairly. Staff does not consider that oral evidentiary hearings should be held routinely or for the purpose of allowing parties to state opinions and facts that could be presented through written comments, and will recommend against evidentiary hearings under such circumstances.[6]

Staff will also recommend that oral presentations before the Commission generally not be allowed, absent unusual and compelling circumstances. Staff considers that, under most circumstances, interested parties will be able to present their views and evidence fully and fairly during the written comment period and any evidentiary hearings or rebuttal comment periods that are scheduled. However, oral presentations may be allowed in limited instances, within the discretion of the Commission.

Subpart C of the Commission's rules does not mention the scheduling of rebuttal comment periods; however the scheduling of such comment periods is within the Commission's discretion. Staff plans to recommend that a period for rebuttal comments be scheduled only if this is necessary for a full and fair presentation of significant issues.

Interested parties may request that the Commission schedule an evidentiary hearing, an oral presentation, or a period for rebuttal comments. (The Commission can also schedule such proceedings on it own initiative, absent a request by interested parties.) Such requests should give specific reasons for scheduling such proceedings and should discuss the criteria that will guide the staff recommendation, discussed above. Staff anticipates that the need for oral evidentiary hearings will generally be determined after the initial comment period. The need for rebuttal comment period could also be determined at that time.[7] The **Federal Register** Notice announcing an exemption proceeding will give specific details regarding how interested parties may file requests for an oral hearing and/or rebuttal comment period.[8]

Grant of Exemption: Notice and Reporting Requirements

As required by § 1.26(d) of the Commission's Rules of Practice,[9] if the Commission decides to grant an exemption after it has considered all the relevant information on the record (including information presented by interested persons in the proceeding), the Commission will publish notice of its decision in the **Federal Register**.

If the Commission grants an exemption, the exemption will continue only for so long as the state effectively administers and enforces its law. To ensure that the conditions for an exemption continue to be met, staff plans to recommend that the Commission require an exempted state to provide notice to the Commission of any changes in its law, policies, or procedures that would significantly

[4] 16 CFR 1.26(b). Public notice and comment may be omitted if the Commission for good cause finds that notice and public comment are impractical, unnecessary or contrary to the public interest and incorporates such findings and a brief statement of the reasons therefor in its final decision. 16 CFR 1.26(b).

[5] 16 CFR 1.26(c).

[6] Staff will recommend that any evidentiary hearings that are scheduled be strictly limited to specific factual issues designated by the Commission.

[7] If, at the time staff receives an exemption application, staff anticipates that a rebuttal period will be necessary, it will recommend at that time that one be scheduled. In many instances, however, it will not be clear whether a rebuttal comment period is necessary until after the initial written comments have been received.

[8] States could also include requests for such proceedings with their exemption application, citing specific reasons why they would be necessary.

[9] 16 CFR 1.26(d).

affect whether the state law provides a level of protection that is substantially equivalent to, or greater than, that afforded by the rule or whether the state is effectively enforcing its law.

Staff also plans to recommend that the Commission require an exempt state to submit such reports regarding its enforcement activities as are necessary or desirable to ensure that the state is effectively enforcing and administering its law. Staff anticipates that the Commission will decide, at the time of granting an exemption, the nature and frequency of any such reports. Staff may also recommend that the Commission change the reporting requirements at a later date, if circumstances warrant, or recommend that the Commission request additional information from a state if the Commission determines that this is needed. Staff anticipates that reporting requirements may vary from state to state (if the Commission determines that different reporting requirements are warranted).

Under extraordinary circumstances, staff may recommend that the Commission grant a conditional exemption, subject to Commission review of the exemption after a prescribed period of time. If such a recommendation were adopted by the Commission, the state would be required to reapply for an exemption at the end of the period by updating its original application and submitting evidence demonstrating effective enforcement activity during the exempted period. After a period for written comments, and possibly oral hearings and a period for rebuttal comments, the Commission would review this material, to determine whether to approve the state's exemption application. The conditional exemption would expire when the Commission issued its decision on the matter.

Staff anticipates that a conditional exemption might be appropriate when a state has little or no history of effective enforcement of laws similar to the rule and yet has presented some evidence of its willingness and ability to enforce its law effectively. Under such circumstances, and perhaps in other situations as well, the staff may recommend that the Commission consider granting an exemption conditioned upon Commission review after a prescribed period of time.

Denial of Exemption

Staff anticipates that if the Commission believes that an exemption should be denied, after considering the evidence submitted during the public proceeding, the Commission may, under some circumstances, want to give the state an opportunity to revise or supplement its application before making a final decision. Thus, under some circumstances, staff will recommend that the Commission give a state an opportunity to make changes in its law, policies or procedures in order to meet the requirements for an exemption. This would occur after the public comments had been received and considered.

Factors that staff believes may be relevant in deciding whether to grant such an opportunity include the nature and extent of any revisions or supplements that may be necessary, the time period needed to implement such revision and the state's intent with regard to implementing the revision. Staff believes that where the time period needed by the state to implement the revisions is extensive or where there is doubt about whether the revisions can or will be made, such a period should not be granted. Rather, under such circumstances, staff believes that it may be preferable to deny the exemption. The state can then submit a new exemption application if and when the revisions have been made. On the other hand, if the necessary revisions can be made fairly quickly and easily, staff believes that it may be desirable to grant a period for revision rather than denying the exemption.

During any period of time granted a state to make revisions, the Commission's rule will remain in effect in such state, until the Commission publishes a notice in the **Federal Register** stating that it has granted an exemption.

If the Commission decides to deny an exemption, after considering all relevant material on the record, and after allowing the state such opportunity for revisions as the Commission decides is desirable, the Commission will publish notice of its decision in the **Federal Register**, along with a concise statement of its reasons, as required by § 1.26(d) of the Commission's rules, 16 CFR 1.26(d).

Revocation of Exemptions

If staff has reason to believe that an exemption that has been granted may no longer be warranted, staff will recommend that the Commission initiate proceedings to revoke the exemption.[10] Interested persons may also file a petition stating reasonable grounds for revoking an exemption, as provided by § 1.25 of the Commission's Rules of Practice, 16 CFR 1.25.

Before recommending that the Commission initiate procedures to revoke an exemption, staff will notify the state of the alleged facts or conduct that staff believes may warrant revocation and will afford the state a reasonable period of time to reply to the allegations or make any changes the state may decide to make.

Staff anticipates that the procedures for revocation proceedings will be similar to those used in the exemption proceeding. Public notice and a period of time for interested parties to submit written comments are generally required by § 1.26(b) of the Commission's Rules of Practice,[11] and oral evidentiary hearings or oral presentations may be held within the discretion of the Commission. Staff plans to recommend that oral hearings or presentations and rebuttal comment periods be scheduled only where necessary for a full and fair presentation of significant issues.

Consultation With Staff

Commission staff will be available to consult informally with state officials and any other interested parties on both procedural and substantive questions that may arise concerning requests for exemptions. State officials should be aware, however, that the Commission may not have ruled on some issues that may arise, and under such circumstances staff may be unable to provide definitive guidance. Also, staff advice will not be binding on the Commission.

After an exemption proceeding has begun, staff intends to place on the public record all correspondence received regarding the proceeding. The staff will also place on the public record any factual information it receives orally after the exemption proceeding has begun and upon which it relies in making its recommendation to the Commission.

Moreover, under the procedures the Commission indicated that it would follow in the Statement of Basis and Purpose for the rule, exemption proceedings will be subject to the restrictions on *ex parte* communications applicable to a Section 18 rulemaking proceeding "adapted in such form as may be appropriate to the circumstances

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[10] Subpart C of the Commission's Rules of Practice deals with revocation proceedings only by stating that procedures for the amendment or repeal of a rule are the same as for the issuance thereof. 16 CFR 1.25.

[11] Public notice and written comment need not be provided if the Commission for good cause finds that notice and public comment are impractical, unnecessary or contrary to the public interest and incorporates such findings and a brief statement of the reasons therefor in its final decision. 16 CFR 1.26(b).

of the particular proceeding." [12] The restrictions on *ex parte* communications in a Section 18 rulemaking proceeding are set forth in § 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c). In brief, they require that a communication on the merits to a Commissioner from a person outside the Commission be placed in the record of the proceeding if timely, and on the public record if untimely, and that a communication on the merits to a Commissioner from the rulemaking staff be disclosed on the record to the extent it contains any fact not already on the record.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-11094 Filed 5-7-85; 8:45 am]

BILLING CODE 6750-01-M

[12] 16 CFR 1.26(b).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 271 and 276

[Release Nos. IC-14492, IAA-969]

Commission Policy and Guidelines for Filing of Applications for Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Statement of Position of Commission's Division of Investment Management.

SUMMARY: The Securities and Exchange Commission has authorized this release to facilitate the review of exemptive applications by the Division of Investment Management and to streamline the process by which such applications are considered. The Commission's Division of Investment Management advises any prospective applicant contemplating filing an application for exemption from some or all of the provisions of the Investment Company Act of 1940 or the Investment Advisers Act of 1940 to follow certain procedures and guidelines. (Where applicable, the procedures and guidelines also should be followed by persons submitting request for no-action or interpretative advice or by persons filing disclosure documents under those Acts.)

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Glen A. Payne, Assistant Director (202) 272-3018, Mary A. Cole, Special Counsel (202) 272-3023, or Meryl Dewey, Staff Attorney (202) 272-3032, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Division of Investment Management (the "Division") requires the cooperation of the mutual fund and investment advisory industries and the securities bar to assist it in the processing of exemptive applications and other filings under the Investment Company Act of 1940 (the "Act") and the Investment Advisers Act of 1940 (the "Advisors Act") (Collectively, the "Acts"). For the reasons stated below, the Division believes that improvements can be made in processing these filings.

Background

Recent years have seen an increase in both the number and complexity of applications requesting exemptions from some or all of the provisions of the Acts. During each of the last three years, the Division has received more than 300 exemptive applications, and this number continues to grow. While the Commission has codified routinely granted exemptions into rules of general applicability wherever possible, the time saved thereby has been more than offset by the time spent processing the increased number of novel applications involving new and sophisticated financial products. In addition, in many instances, the Division's staff must spend more time processing certain exemptive applications than should be necessary because applications have often been filed before the proposed transaction or arrangement has been finalized. Further, applicants have often decided not to effect the proposed transaction or arrangement and have simply withdrawn their applications, thereby wasting the staff time spent reviewing them. Multiple amendments have also been needed where the original application did not comply with the Commission's procedural rules and/or where the applicant misstated or omitted crucial facts or legal analyses needed to justify the request for relief. Consequently, too much staff time has been spent on clearly deficient or repetitive filings to attempt to bring them within the standards of the Acts. Inevitably, these situations have led to processing delays and to an increase in the Division's backlog of pending applications.

Discussion

The Division has taken various internal steps to ensure that all exemptive applications and other filings are processed as expeditiously as possible. [1] However, further measures are needed to reduce delays. While section 6(c) of the Act [15 U.S.C. 80a-6(c)] and section 206A of the Advisers Act [15 U.S.C. 80B-6a] give the Commission authority to grant exemptions where "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Acts, those provisions are not blanket authority to waive any provision of the Acts. Potential applicants should be particularly mindful of this fact when considering filing applications requesting unprecedented exemptive relief seeking a waiver of express statutory prohibitions.

The Division's staff should not have to spend an inordinate amount of time processing clearly deficient or untimely applications at the expense of delaying action on comprehensive or routine applications. Accordingly, to ensure prompt and fair consideration of all exemptive applications, each applicant must adhere to the following procedures. Where applicable, they should be followed for all submissions to the Division, including requests for no-action or interpretative letters and disclosure documents.

Procedures and Guides

1. Persons contemplating filing exemptive applications should carefully review all relevant provisions of the Acts, the rules thereunder and applicable Commission releases before filing an exemptive application. [2] Applicants should recognize the differences between their proposal and prior applications requesting similar relief and, to the extent possible, bring their proposal within applicable precedent. Further, applicants should cite and discuss applicable precedent. Where the request is unprecedented, the applicant should so state in its transmittal letter.

2. The application should be filed in a timely and comprehensive manner.

[1] Division guidelines require, *e.g.*, that (i) initial comments on an exemptive application be given at one time and within 45 days of receipt of the application (novel or complex applications may require a longer review period); (ii) notices of routine applications which require no amendment be published within 60 days; and (iii) orders under delegated authority be issued within two business days after the expiration of the notice period, if no hearing request is filed.

[2] Prospective applicants who are unfamiliar with the exemptive application process should also review prior applications on file with the Commission which concern similar matters. Copies of applications are available from the Public Reference Branch of the Commission's Office of Consumer Affairs.

Exemptive applications that require review of supporting documents (*e.g.*, a registration statement pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] or a partnership agreement in connection with a "two-tier real estate" transaction) should not be filed until all necessary supporting documents have been received by the Commission. Otherwise, the Division will ask that the application be withdrawn unless the applicant can justify, based on the facts of its situation, why they have not been submitted. If the application is not withdrawn, it will be placed on inactive status.

3. Each applicant should state an adequate basis for the relief requested, including detailed justification for removal of any statutory protections, and identify any positive benefits expected for investors and any conditions imposed to protect investors. The Division will not support an application that requests relief not adequately justified. In such instances, the Division will request that the application be either withdrawn or significantly amended.[3]

4. The application should meet the Acts' procedural requirements. Rules 0–2, 0–4 and 0–5 under the Act [17 CFR 270.0–2, 0–4 and 0–5] and Rules 0–4, 0–5 and 0–6 under the Advisers Act [17 CFR 275.0–4, 0–5 and 0–6] govern the execution and filing of exemptive applications. Applications and amendments often fail to include proper authorization and verification. Applicants will have to correct any procedural deficiency by amendment.[4]

5. Rule 0–2(g) under the Act [17 CFR 270.02(g)] and Rule 0–4(g) under the Advisers Act [17 CFR 275.04(g)] require that the application be accompanied by a proposed notice. The Commission is charged approximately $400 per page for publishing notices in the **Federal Register.** To reduce publication costs, the Division has had to devote substantial staff time to condense applications into notices that are brief as well as informative. Thus, proposed notices submitted by applicants should be brief, modeled on releases issued since 1983, and include only statements that are necessary to understand the essence of the requested relief. Generally, a proposed notice should identify the parties involved, briefly describe the relevant transactions and why the applicant believes it qualifies for an exemption, and summarize the critical representations and undertakings contained in the application. An applicant who submits a deficient or verbose proposed notice will be asked to file an amendment to resubmit a notice in usable form.

6. Applications will be reviewed in the order in which they are received.[5] The Division will not be receptive to requests for expedited review absent the most compelling demonstration that the application could not be filed in time to allow it to be processed in due course. Applicants may submit a courtesy copy of their application to the Assistant Director of the Division's Office of Investment Company Regulation or to the appropriate Division Special Counsel (if known), concurrently with the filing of the application. The courtesy copy should be clearly marked to indicate that it is *not* Applicant's official filing. One copy of each relevant supporting document (such as those referred to in Guide 2) should be included with with the courtesy copy.

7. Amendments to an application should be prepared and filed as described in Guides 3 and 4.[6] If desired, a courtesy copy of the amendment (marked to show changes) may also be submitted as described in Guide 6. For processing purposes, an amendment normally will date back to the filing of the original application and will be given priority over new applications. However, if an amendment is required because of a deficient filing as described in Guides 3 or 4, the application will be considered to have been received on the date the staff receives an acceptable amendment.

8. Amendments should be promptly filed.[7] The Division recognizes that amendments to complex or novel applications require more time to prepare than routine amendments.[8] However, in all cases applicants should either file their amendment within 60 days of receipt of comments or explain, in writing, to the reviewer why preparation of the amendment requires additional time. At the discretion of the Division, an applicant who does not do so will have its application placed on inactive status. An applicant who is notified that its application is being placed on inactive status may reactivate the application at any time by filing an appropriate request with the Division or by filing the required amendment, and need not pay any additional filing fee. Action on reactivated applications will commence from the date of receipt of the request or the amendment by the Division and will *not* date back to the filing of the original application.

9. Pre-filing conferences will be scheduled only upon a showing that a proposal involves issues that must be resolved before an application can be formally filed with the Commission.[9] Persons who believe that a pre-filing conference is necessary should contact the appropriate Branch Chief or Special Counsel (if known) or the Assistant Director or Chief of the relevant Division office. Where a pre-filing conference is scheduled, the Division requires submission of written summaries of the issues proposed to be discussed at least four business days prior to the conference.[10] The staff will not, except in the most extraordinary situations, review draft applications or

[3] If the Division cannot support an application, the Division will submit the application to the Commission with a recommendation that the application be set down for a hearing, unless it is withdrawn.

[4] The procedures for filing a request for no-action or interpretative advice are set forth in Investment Company Act Release Nos. 6220 and 6330, dated October 29, 1970, and January 25, 1971, respectively.

[5] All filings are made through the Commission's central filing office. Applicants seeking confidential treatment pursuant to Section 45(a) of the Act [15 U.S.C. 80a–44(a)] or section 210(a) of the Advisers Act [15 U.S.C. 80b–10(a)] with respect to a proposed transaction should not incorporate or attach to the exemptive application that portion for which confidential treatment is sought. Instead, the application should refer to a named exhibit, state that confidential treatment is being requested and explain the basis of the request. The application should then be filed as described herein. The confidential exhibit, and the request for confidentiality, should be submitted to the Division.

[6] An amendment may either take the form of a restated application or a modification of the original application, but must conform to the requirements of Rules 0–2 and 0–4 under the Act [17 CFR 270.0–2 and 0–4] and Rules 0–4 and 0–6 under the Advisers Act [17 CFR 275.0–4 an 0–6].

[7] The Division expects all amendments to respond fully to staff comments or be accompanied by a cover letter, directed to the attention of the reviewer, explaining why the applicant has elected not to meet certain staff comments.

[8] In the case of requests for no-action or interpretative advice, the Division's Office of Chief Counsel, as a matter of policy, will deny any such request if supplemental information is not received within 60 days after it is requested.

[9] This policy on pre-filing conferences specifically applies to all proposals submitted to the Division pursuant to the Acts; *e.g.*, exemptive applications, requests for no-action or interpretative advice and disclosure documents.

[10] While the staff will attempt to be as helpful as possible at pre-filing conferences, the staff must have the opportunity to review actual filings before taking definitive positions on the issues presented.

draft requests for no-action or interpretative advice. Of course, in all cases, the Division's staff is available to respond to telephone inquiries about any aspect of the Acts, including answering specific questions relating to preparation of filings.

The Division believes that adherence to these procedures and guidelines will make optimal use of its staff and result in better overall service to the financial industry and investing public.

List of Subjects in 17 CFR Parts 271 and 276

Investment companies, Investment advisers, Securities.

PARTS 271 AND 276—[AMENDED]

Accordingly, 17 CFR Parts 271 and 276 are hereby amended by adding a reference to this statement of Division position.

By the Commission.

John Wheeler,

Secretary.

April 30, 1985.

[FR Doc. 85-11091 Filed 5-7-85: 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drugs and Biologics Officials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority regarding orphan products and distribution of biological products to update the list of delegates according to changes in organization titles.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In a recent reorganization, the Center for Drugs and Biologics (CDB) amended the titles of two divisions by dropping the word biological from the titles. This document amends § 5.58 *Orphan products* (21 CFR 5.58) by changing reference to the Division of Biological Product Certification to the Division of Product Certification in the list of delegates and § 5.69 *Notification of release for distribution of biological products* (21 CFR 5.69) by changing reference to Division of Biological Product Quality Control to Division of Product Quality Control.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371), unless otherwise noted.

2. By revising § 5.58(c)(3)(ii) to read as follows:

§ 5.58 Orphan products.

* * * * *

(c) * * *

(3) * * *

(ii) The Directors and Deputy Directors of the Divisions of: Anti-Infective Drug Products, Metabolism and Endocrine Drug Products, Product Certification, and Biological Investigational New Drugs, Office of Biologics Research and Review, CDB.

3. By revising § 5.69(c) to read as follows:

§ 5.69 Notification of release for distribution of biological products.

* * * * *

(c) The Director and Deputy Director, Division of Product Quality Control, Office of Biologics Research and Review, CDB.

Effective date. This regulation shall become effective May 8, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: May 1, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11041 Filed 5-7-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-85-1530; FR-2071]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding ten areas and further increasing the limits of two previously designated high-cost areas. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

FOR FURTHER INFORMATION CONTACT: For single family: Brian Chappelle, Acting Director, Single Family Development Division, Room 9270, Telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160, Telephone, (202) 755-6880; 451 Seventh Street SW., Washington, D.C. 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured home lots, and manufactured homes, combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Act of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 2(b) and 214 of the NHA provide for special high-cost limits for insured

mortgages in Alaska, Guam, and Hawaii.

The Housing and Urban-Rural Recovery of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) further amended HUD's insuring authority. Of particular interest here are (1) the authorization to insure condominium in high-cost areas at the same levels as the high-cost limits for one-family residence insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the **Federal Register** on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents also amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the **Federal Register** (see April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam, and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area."

This Document

Today's document adds the following jurisdictions to the listing of high-cost areas: Rockingham County, New Hampshire; Monroe County, New York; Worchester County, Maryland; Blount County, Alabama; Jefferson County, Alabama; St. Clair County, Alabama; Shelby County, Alabama; Walker County, Alabama; Monroe County, Florida; and Elbert County, Colorado.

In addition, the Department is further increasing the limits for Fayette County, Kentucky; Baltimore City, Maryland; Baltimore County, Maryland; Carroll County, Maryland; Harford County, Maryland; Queen Anne's County, Maryland; and the San Juan, PR PMSA Municipios of Barceloneta, Bayamon, Canovanas, Carolina, Catano, Corozai, Dorado, Fajardo, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loiza, Luquillo, Naranjito, Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, and Vega Baja.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding ten jurisdictions and further increasing the limits for Fayette County, Kentucky, Baltimore City, Maryland; Baltimore County, Maryland; Carroll County, Maryland; Harford County, Maryland; Queens Anne's County, Maryland; and the San Juan, PR PMSA Municipios listed above as set forth in Part II of the following table:

National Housing Act High-Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by 80. For example, Bristol County, MA, has a one-family limit of $81,200. The combination home and lot loan limit for Bristol County is $81,200 x .80 or $64,960.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam, and Hawaii).* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Bristol County, MA, has a one-family limit of $81,200. The lot only loan limit for Bristol County is $81,200 x .20, or $16,240.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1). Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

Region I

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Manchester Office				
Rockingham County	$72,350	$81,500	$99,050	$114,300

Region II

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Buffalo Office				
Monroe County	$71,250	$80,250	$97,500	$112,500
HUD Field Office—Caribbean Office				
San Juan, PR PMSA.				
Barceloneta Municipio	87,100	98,100	119,200	137,550
Bayamon Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano Municipio				
Corozai Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guaynabo Municipio	87,100	98,100	119,200	137,550
Humacao Municipio				
Juncos Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Naranjito Municipio				
Rio Grande Municipio				
San Juan Municipio				
Toa Alta Municipio				
Toa Baja Municipio				
Trujillo Alto Municipio				
Vega Alta Municipio				
Vega Baja Municipio				

Region III

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Baltimore Office				
Baltimore, MD MSA (part): Baltimore City	$81,400	$91,700	$111,400	$128,550
Baltimore County				
Carroll County				
Harford County				
Queen Anne's County				
Other areas: Worcester County	71,250	80,250	97,500	112,500

Region IV

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Birmingham Office				
Birmingham, AL MSA	$69,550	$78,300	$95,150	$109,800
Blount County				
Jefferson County				
St. Clair County				
Shelby County				
Walker County				
HUD Field Office—Louisville Office				
Fayette County	85,500	96,300	117,000	135,000
HUD Field Office—Coral Gables Office				
Monroe County	80,750	90,950	110,500	127,500

Region VIII

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Denver Office				
Elbert County	$83,900	$94,500	$114,850	$132,500

Dated: May 2, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing-Federal Housing Commission.

[FR Doc. 85–11187 Filed 5–7–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8007]

Application of Loss Deferral Rules and Rules Similar to Sections 1091 (a) and (d) and Sections 1233 (b) and (d) to Straddles Under Section 1092 and Elections With Respect to Section 1256 Contracts Held on or Before July 18, 1984; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations; correction.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 50 FR 3317, Jan. 24, 1985, of the temporary regulations which were the subject of Treasury Decision 8007. T.D. 8007 relates to straddles and section 1256 contracts under the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective January 24, 1985. The corrections are also effective January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224, Attention CC:LR:T. Telephone 202–566–3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1985, the **Federal Register** published temporary regulations (50 FR 3317) relating to straddles and section 1256 contracts under the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984. Those temporary regulations also served as the text of a notice of proposed rulemaking that appeared in the same issue of the **Federal Register** at 50 FR 3352.

Need for Correction

As published, T.D. 8007 in one location incorrectly includes the language "within 30 days" instead of "no later than 30 days". In another location, the word "settlement" is used instead of the word "statement".

Correction of Publication

Accordingly, the publication of Treasury Decision 8007 which was the subject of FR Doc. 85–1820 is corrected as follows:

§ 1.1092(b)–5T [Corrected]

1. On page 3321, in the third column, in paragraph (n)(3) of § 1.1092(b)–5T, the language "within 30 days" is removed and the language "no later than 30 days" is added in its place.

§ 1.1256(h)–3T [Corrected]

2. On page 3323, in the second column, in paragraph (c)(2) of § 1.1256(h)–3T, the word "settlement" is removed and the word "statement" is added in its place.

Peter K. Scott,

Director Legislation and Regulations Division.

[FR Doc. 85–11184 Filed 5–7–85; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 8008]

Mixed Straddles; Straddle-by-Straddle Identification and Mixed Straddle Account Elections Under Section 1092(b)(2); Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations; Correction.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 50 FR 3324 January 24, 1985 of the temporary regulations which were the subject of Treasury Decision 8008. T.D. 8008 relates to the elections under the Tax Reform Act of 1984 for straddle-by-straddle identification of mixed straddles and for the establishment of mixed straddle accounts.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective January 1, 1984. The corrections are also effective January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224, Attention: CC:LR:T. Telephone 202–566–3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1985, the **Federal Register** published temporary regulations (50 FR 3324) relating to the elections under the Tax Reform Act of 1984 for straddle-by-straddle identification of mixed straddles and for the establishment of mixed straddle

accounts. Those temporary regulations also served as the text of a notice of proposed rulemaking that appeared in the same issue of the **Federal Register** at 50 FR 3351.

Need for Correction

As published, T.D. 8008 included language that was not intended and omitted language that was intended to be included.

Correction of Publication

Accordingly, the publication of Treasury Decision 8008, which was the subject of FR Doc. 85–1817, is corrected as follows:

§ 1.1092(b)–3T [Corrected]

1. On page 3325, in the third column, in *Example (6)* of paragraph (b)(2) of § 1.1092(b)–3T, in the first sentence, the language "non-section 1256 loss" is removed and the language "non-section 1256 gain" is added in its place.

2. On page 3325, in the third column, in *Example (6)* of paragraph (b)(2) of § 1.1092(b)–3T, in the fourth sentence, the language "60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 position" is removed and the language "60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract" is added in its place.

3. On page 3326, in the third column, in *Example (4)* of paragraph (b)(4) of § 1.1092(b)–3T, in the first sentence, the language "section 1256 contract and non-section 1256 position were entered into on December 1, 1985, and the" is added immediately after the language "except that the" and immediately before the language "section 1256 contract".

4. On page 3327, in the second column, in *Example (3)* (i) of paragraph (b)(5) of § 1.1092(b)–3T, the last sentence is revised to read, "Therefore, the rules of both paragraphs (b)(3) and (b)(4) of this § 1.1092(b)–3T apply."

5. On page 3327, in the second column, in *Example (3)* (ii) of paragraph (b)(5) of § 1.1092(b)–3T, in the second sentence, the word "contract" is added immediately after the language "The section 1256" and immediately before the language "net gain".

6. On page 3327, in the third column, in *Example (3)* (iii) of paragraph (b)(5) of § 1.1092(b)–3T, in the first sentence, the word "position" is added immediately after the language "non-section 1256" and immediately before the language "net gain of $700".

7. On page 3327, in the third column, in *Example (2)* of paragraph (b)(6) of § 1.1092(b)–3T, in the second sentence (one occurrence) and in the fourth sentence (three occurrences), the word "loss" is removed and the word "gain" is added in its place.

8. On page 3328, in the first column, in *Example (4)* of paragraph (b)(6) of § 1.1092(b)–3T, in the fifth sentence, the word "capital" is added immediately after the language "short-term" and immediately before the language "gain attributable".

9. On page 3328, in the first column, in the *Example* in paragraph (7) of § 1.1092(b)–3T, at the end of the first sentence, the language "an identified section 1092(b)(2) mixed straddle" is revised to read "a section 1092(b)(2) identified mixed straddle".

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–11183 Filed 5–7–85; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1, 6a, and 602

[T.D. 8023]

Mortgage Credit Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the issuance of mortgage credit certificates. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all holders and issuers of mortgage credit certificates. In addition, the text contained in the termporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective May 8, 1985. These temporary regulations apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, and to elections not to issue qualified mortgage bonds after 1983.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the issuance of mortgage credit certificates under section 25 of the Internal Revenue Code as amended by section 612 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98–369; 98 Stat. 905). Further, new §§ 1.25–1T through 1.25–8T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 25 authorizes States and political subdivisions ("issuers") to issue mortgage credit certificates ("MCCs") in lieu of qualified mortgage bonds. MCCs entitle qualifying individuals to a credit against the individuals' Federal income tax. The amount of the credit is determined by multiplying the certificate credit rate by the amount of mortgage interest paid or accrued by the taxpayer during the taxpayer's taxable year. An individual claiming the credit under section 25 (a) must reduce the amount of the deduction under section 163 for interest paid or accrued during the calendar year by the amount of the credit allowable under section 25 (a) for such year. An individual claiming the credit may be entitled to additional withholding allowances. See section 3402 (m) and the regulations thereunder.

Mortgage credit certificates may only be issued by those issuers with authority to issue qualified mortgage bonds. An issuer with authority to issue qualified mortgage bonds may convert such authority into authority to issue MCCs by filing an election with the Internal Revenue Service. Section 1.25–4T (c) provides that the election must specify the amount of qualified mortgage bond authority that the issuer elects not to issue (the "nonissued bond amount") in order to issue MCCs. An issuer may revoke the election during the calendar year in which the election is made.

In order for an individual to claim the credit provided by section 25 (a), the MCC must be a "qualified mortgage credit certificate" issued pursuant to a "qualified mortgage credit certificate program". Section 1.25–4T (j) provides examples illustrating the manner in which MCC programs may be operated. The requirements that must be met in order for a certificate to be a qualified MCC issued pursuant to a qualified MCC program are provided in §§ 1.25–3T and 1.25–4T. Generally, these requirements are similar to the

requirements of section 103A, relating to qualified mortgage bonds. Thus, in general, holders must meet the residence requirement, the 3-year requirement, the purchase price requirement, and the new mortgage requirement. Sections 1.25–3T and 1.25–4T provide safe-harbor procedures for meeting several of these requirements. In general, these procedures permit issuers of MCCs to rely on affidavits, signed under penalty of perjury, stating that those requirements are met. With respect to the purchase price requirement and the 3-year requirement, additional information must be provided. See § 1.25–3T (e) (3) and (f) (2).

In addition to the previously stated requirements generally applicable to qualified mortgage bonds, MCCs must satisfy a number of other requirements.

Section 1.25–3T (h) limits the transferability of MCCs. While transfers are not prohibited, the transferee must meet certain requirements as if the certificate were being issued for the first time; in addition, the transferee must assume the transferor's mortgage.

Section 1.25–3T (i) places restrictions on the use of MCCs in connection with mortgages provided from the proceeds of qualified mortgage bonds and qualified veterans' mortgage bonds. The regulations permit issuers to rely on affidavits of the MCC holders in determining whether this requirement is met.

Section 1.25–3T (j) provides that issuers may not limit the use of MCCs to indebtedness incurred from particular lenders. Thus, in general, a holder of an MCC must be free to take the certificate to any lender and use it to obtain any type of mortgage. An exception is provided in § 1.25–3T (j) (2), which permits an issuer to impose limitations on the use of MCCs to indebtedness incurred from particular lenders after demonstrating to the satisfaction of the Commissioner that the proposed limitations will result in significant economic benefits to the MCC holders. The notice of proposed rulemaking specifically requests comments on this provision and requests information on the types of limitations that issuers believe will result in significant economic benefits to MCC holders. It is anticipated that the comments received, together with the experience gained from working with issuers in processing ruling requests in this area, will form a basis for specific guidance in the final regulations on the types of limitations that generally have been found to result in significant economic benefits to MCC holders.

Issuers are permitted to allocate MCCs to particular developments provided that the developer certifies that the purchase price of the residence is not higher than it would be without the use of an MCC. See § 1.25–3T (k).

The regulations permit great flexibility in the manner in which MCCs may be issued. Issuers must ensure, however, that each of the eligibility requirements has been met. If each of these requirements is not met, the program will not be a qualified MCC program, and each of the holders of a certificate will not be entitled to claim the credit under section 25(a). To ease the harshness of this rule, the regulations provide good faith compliance procedures similar to those contained in the regulations under section 103A. See § 1.25–4T(i).

Section 1.25–4T(h) permits issuers to charge reasonable fees in connection with the processing and issuance of MCCs.

Section 1.25–5T places a limit on the aggregate amount of MCCs that may be issued by an issuer. The failure of an issuer to comply with this requirement will not result in the invalidation of any MCCs. Noncompliance with this requirement will result in a reduction in the qualified mortgage bond State ceiling for the State in which the issuer is located.

Section 1.25–6T prescribes the form that MCCs must take and the information that must be included on the MCC.

Section 1.25–7T requires that an issuer provide public notice of its MCC program at least 90 days prior to the issuance of any MCCs under the program.

Section 1.25–8T imposes reporting requirements on lenders and issuers. Lenders must file an annual report on Form 8329 containing information on mortgages issued in connection with MCCs. Issuers must file similar reports on a quarterly basis. Section 1.25–4T(e), relating to information reports containing information on the use of MCCs, and § 1.25–4T(f), relating to annual policy statements are reserved. These statements and reports are expected to be similar to those that issuers of qualified mortgage bonds are required to file. Numerous comments have been received with respect to the notice of proposed rulemaking published on December 12, 1984, dealing with policy statements and information reporting requirements for mortgage subsidy bonds, and a public hearing has been scheduled for April 30, 1985, with respect to those regulations. The written comments and those comments received at the public hearing will be given full consideration, and it is anticipated that the information reporting requirements for mortgage subsidy bonds and mortgage credit certificates will be revised. At that time, proposed and temporary regulations relating to annual policy statements and information reports for MCCs will be issued. In addition to the information required with respect to MCCs, it is anticipated that issuers of MCCs will be required to report the exact amount of the fees charged under § 1.25–4T(h)(2)(iii). This information will be studied by the Service to determine whether more specific limitations on fees are desirable.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not requird by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0922.

Drafting Information

The principal author of these temporary regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both sustances and style.

List of Subjects

26 CFR §§ 1.0–1–1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR §§ 1–61–1–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR § 1.6709–1T

Penalties, Mortgage credit certificates.

26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investments in United States real property interests.

26 CFR Part 602

OMB Control Numbers, Paperwork Reduction Act.

Amendments to the regulations

The amendments to 26 CFR Part 1, Part 6a, and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. Regulations §§ 1.25–1T through 1.25–8T are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 25. Regulations § 1.163–6T and § 1.6709–1T are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 1 is amended by adding, "§§ 1.25–1T through 1.25–8T also issued under 26 U.S.C. 25".

Par. 2. New §§ 1.25–1T through 1.25–8T are added following § 1.21–1 to read as follows:

§ 1.25–1T Credit for interest paid on certain home mortgages (Temporary).

(a) *In general.* Section 25 permits States and political subdivisions to elect to issue mortgage credit certificates in lieu of qualified mortgage bonds. An individual who holds a qualified mortgage credit certificate (as defined in § 1.25–3T) is entitled to a credit against his Federal income taxes. The amount of the credit depends upon (1) the amount of mortgage interest paid or accrued during the year and (2) the applicable certificate credit rate. See §1.25–2T. The amount of the deduction under section 163 for interest paid or accrued during any taxable year is reduced by the amount of the credit allowable under section 25 for such year. See § 1.163–6T. The holder of a qualified mortgage credit certificate may be entitled to additional withholding allowances. See section 3402 (m) and the regulations thereunder.

(b) *Definitions.* For purposes of §§ 1.25–2T through 1.25–8T and this section, the following definitions apply:

(1) *Mortgage.* The term "mortgage" includes deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow, and any other form of owner financing.

(2) *State.* (i) The term "State" includes a possession of the United States and the District of Columbia.

(ii) Mortgage credit certificates issued by or on behalf of any State or political subdivision ("governmental unit") by constituted authorities empowered to issue such certificates are the certificates of such governmental unit.

(3) *Qualified home improvement loan.* The term "qualified home improvement loan" has the meaning given that term under section 103A (l) (6) and the regulations thereunder.

(4) *Qualified rehabilitation loan.* The term "qualified rehabilitation loan" has the meaning given that term under section 103A (l) (7) (A) and the regulations thereunder.

(5) *Single-family and owner-occupied residences.* The terms "single-family" and "owner-occupied" have the meaning given those terms under section 103A (l) (9) and the regulations thereunder.

(6) *Constitutional home rule city.* The term "constitutional home rule city" means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(7) *Targeted area residence.* The term "targeted area residence" has the meaning given that term under section 103A (k) and the regulations thereunder.

(8) *Acquisition cost.* The term "acquisition cost" has the meaning given that term under section 103A (l) (5) and the regulations thereunder.

(9) *Average area purchase price.* The term "average area purchase price" has the meaning given that term under subparagraphs (2), (3), and (4) of section 103A (f) and the regulations thereunder. For purposes of this paragraph (b) (9), all determinations of average area purchase price shall be made with respect to residences as that term is defined in section 103A and the regulations thereunder.

(10) *Total proceeds.* The "total proceeds" of an issue is the sum of the products determined by multiplying—

(i) The certified indebtedness amount of each mortgage credit certificate issued pursuant to such issue, by

(ii) The certificate credit rate specified in such certificate.

Each qualified mortgage credit certificate program shall be treated as a separate issue of mortgage credit certificates.

(11) *Residence.* The term "residence" includes stock held by a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b) (1) and (2)). It does not include property such as an appliance, a piece of furniture, a radio, *etc.*, which, under applicable local law, is not a fixture. The term also includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. The preceding sentence shall not apply for purposes of determining the average area purchase price for single-family residences, nor shall it apply for purposes of determining the State ceiling amount. The term "residence" does not, however, include recreational vehicles, campers, and other similar vehicles.

(12) *Related person.* The term "related person" has the meaning given that term under section 103(b)(6)(C)(i) and § 1.103–10(e)(1).

(13) *Date of issue.* A mortgage credit certificate is considered issued on the date on which a closing agreement is signed with respect to the certified indebtedness amount.

(c) *Affidavits.* For purposes of §§ 1.25–1T through 1.25–8T, an affidavit filed in connection with the requirements of §§ 1.25–1T through 1.25–8T shall be made under penalties of perjury. Applicants for mortgage credit certificates who are required by a lender or the issuer to sign affidavits must be informed that any fraudulent statement will result in (1) the revocation of the individual's mortgage credit certificate, and (2) a $10,000 penalty under section 6709. Other persons required by a lender or an issuer to provide affidavits must receive similar notice. A person may not rely on an affidavit where that person knows or has reason to know that the information contained in the affidavit is false.

§ 1.25–2T Amount of credit (Temporary).

(a) *In general.* Except as otherwise provided, the amount of the credit allowable for any taxable year to an individual who holds a qualified mortgage credit certificate is equal to the product of the certificate credit rate (as defined in paragraph (b)) and the amount of the interest paid or accrued by the taxpayer during the taxable year on the certified indebtedness amount (as defined in paragraph (c)).

(b) *Certificate credit rate*—(1) *In general.* For purposes of §§ 1.25–1T through 1.25–8T, the term "certificate credit rate" means the rate specified by the issuer on the mortgage credit certificate. The certificate credit rate shall not be less than 10 percent nor more than 50 percent.

(2) *Limitation in certain States.* (i) In the case of a State which—

(A) Has a State ceiling for the calendar year in which an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar

years for single-family owner-occupied residences located within the jurisdiction of such State, or

(B) Issued qualified mortgage bonds in an aggregate amount less than $150 million for calendar year 1983.

the certificate credit rate for any mortgage credit certificate issued under such program shall not exceed 20 percent unless the issuing authority submits a plan to the Commissioner to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Commissioner approves such plan. For purposes of determining the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences located within the jurisdiction of such State, an issuer may rely upon the amount published by the Treasury Department for such calendar years. An issuer may rely on a different amount from that safe-harbor limitation where the issuer has made a more accurate and comprehensive determination of that amount. The weighted average of the certificate credit rates in a mortgage credit certificate program is determined by dividing the sum of the products obtained by multiplying the certificate credit rate of each certificate by the certified indebtedness amount with respect to that certificate by the sum of the certified indebtedness amounts of the certificates issued. See section 103A(g) and the regulations thereunder for the definition of the term "State ceiling".

(ii) The following example illustrates the application of this paragraph (b) (2):

Example. City Z issues four qualified mortgage credit certificates pursuant to its qualified mortgage credit certificate program. H receives a certificate with a certificate credit rate of 30 percent and a certified indebtedness amount of $50,000. I receives a certificate with a certificate credit rate of 25 percent and a certified indebtedness amount of $100,000. J and K each receive certificates with certificate credit rates of 10 percent; their certified indebtedness amounts are $50,000 and $100,000, respectively. The weighted average of the certificate credit rates is determined by dividing the sum of the products obtained by multiplying the certificate credit rate of each certificate by the certified indebtedness amount with respect to that certificate ((.3×$50,000) + (.25×$100,000) + (.1×$50,000) + (.1×$100,000)) by the sum of the certified indebtedness amounts of the certificates issued ($50,000+$100,000+$50,000+$ 100,000). Thus, the weighted average of the certificate credit rates is 18.33 percent ($55,000/$300,000).

(c) *Certified indebtedness amount*—(1) *In general.* The term "certified indebtedness amount" means the amount of indebtedness which is—

(i) Incurred by the taxpayer—

(A) To acquire his principal residence, § 1.25–2T(c)(1)(i)

(B) As a qualified home improvement loan, or

(C) As a qualified rehabilitation loan, and

(ii) Specified in the mortgage credit certificate.

(2) *Example.* The following example illustrates the application of this paragraph:

Example. On March 1, 1986, State X, pursuant to its qualified mortgage credit certificate program, provides a mortgage credit certificate to B. State X specifies that the maximum amount of the mortgage loan for which B may claim a credit is $65,000. On March 15, B purchases for $67,000 a single-family dwelling for use as his principal residence. B obtains from Bank M a mortgage loan for $60,000. State X, or Bank M acting on behalf of State X, indicates on B's mortgage credit certificate that the certified indebtedness amount of B's loan is $60,000. B may claim a credit under section 25 (e) based on this amount.

(d) *Limitation on credit*—(1) *Limitation where certificate credit rate exceeds 20 percent.* (i) If the certificate credit rate of any mortgage credit certificate exceeds 20 percent, the amount of the credit allowed to the taxpayer by section 25(a)(1) for any year shall not exceed $2,000. Any amount denied under this paragraph (d)(1) may not be carried forward under section 25(e)(1) and paragraph (d)(2) of this section.

(ii) If two or more persons hold interests in any residence, the limitation of paragraph (d)(1)(i) shall be allocated among such persons in proporation to their respective interests in the residence.

(2) *Carryforward of unused credit.* (i) If the credit allowable under section 25 (a) and § 1.25–2T for any taxable year exceeds the applicable tax limit for that year, the excess (the "unused credit") will be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of paragraph (d)(2) (ii), will be added to the credit allowable by section 25 (a) and § 1.25–2T for that succeeding year.

(ii) The amount of the unused credit for any taxable year (the "unused credit year") which may be taken into account under this paragraph (d) (2) for any subsequent taxable year may not exceed the amount by which the applicable tax limit for that subsequent taxable year exceeds the sum of (A) the amount of the credit allowable under section 25 (a) and § 1.25–1T for the current taxable year, and (B) the sum of the unused credits which, by reason of this paragraph (d) (2), are carried to that subsequent taxable year and are attributable to taxable years before the unused credit year. Thus, if by reason of this paragraph (d) (2), unused credits from 2 prior taxable years are carried forward to a subsequent taxable year, the unused credit from the earlier of those 2 prior years must be taken into account before the unused credit from the later of those 2 years is taken into account. § 1.25–2T (d) (2) (ii)

(iii) For purposes of this paragraph (d) (2) the term "applicable tax limit" means the limitation imposed by section 26 (a) for the taxable year reduced by the sum of the credits allowable for that year under section 21, relating to expenses for household and dependent care services necessary for gainful employment, section 22, relating to the credit for the elderly and the permanently disabled, section 23, relating to the residential energy credit, and section 24, relating to contributions to candidates for public office. The limitation imposed by section 26 (a) for any taxable year is equal to the taxpayer's tax liability (as defined in section 26 (b)) for that year.

(iv) The following examples illustrate the application of this paragraph (d) (2):

Example (1). (i) B, a calendar year taxpayer, holds a qualified mortgage credit certificate. For 1986 B's applicable tax limit (*i.e.*, tax liability) is $1,100. The amount of the credit under section 25 (a) and § 1.25–2T for 1986 is $1,700. For 1986 B is not entitled to any of the credits described in sections 21 through 24. Under § 1.25–2T (d) (2), B's unused credit for 1986 is $600, and B is entitled to carry forward that amount to the 3 succeeding years.

(ii) For 1987 B's applicable tax limit is $1,500, the amount of the credit under section 25 (a) and § 1.25–2T is $1,700, and the unused credit is $200. For 1988 B's applicable tax limit is $2,000, the amount of the credit under section 25 (a) and § 1.25–2T is $1,300, and there is no unused credit. For 1987 and 1988 B is not entitled to any of the credits described in sections 21 through 24. No portion of the unused credit for 1986 my be used in 1987. For 1988 B is entitled to claim a credit of $2,000 under section 25 (a) and § 1.25–2T, consisting of a $1,300 credit for 1988, the $600 unused credit for 1986, and $100 of the $200 unused credit for 1987. In addition, B may carry forward the remaining unused credit for 1987 ($100) to 1989 and 1990.

Example (2). The facts are the same as in Example (1) except that for 1988 B is entitled to a credit of $400 under section 23. B's applicable tax limit for 1988 is $1,600 ($2,000 less $400). For 1988 B is entitled to claim a credit of $1,600 under section 25 (a) and § 1.25–2T, consisting of a $1,300 credit for 1988 and $300 of the unused credit for 1986. In

addition, B may carry forward the remaining unused credits of $300 for 1986 to 1989 and of $200 for 1987 to 1989 and 1990.

§ 1.25–3T Qualified mortgage credit certificate (Temporary).

(a) *Definition of qualified mortgage credit certificate.* For purposes of §§ 1.25–1T through 1.25–8T, the term "qualified mortgage credit certificate" means a certificate that meets all of the requirements of this section.

(b) *Qualified mortgage credit certificate program.* A certificate meets the requirements of this paragraph if it is issued under a qualified mortgage credit certificate program (as defined in § 1.25–4T).

(c) *Required form and information.* A certificate meets the requirements of this paragraph if it is in the form specified in § 1.25–6T and if all the information required by the form is specified on the form.

(d) *Residence requirement*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is provided in connection with the acquisition, qualified rehabilitation, or qualified home improvement of a residence, that is—

(i) A single-family residence (as defined in § 1.25–1T (b)(5)) which, at the time the financing on the residence is executed or assumed, can reasonably be expected by the issuer to become (or, in the case of a qualified home improvement loan, to continue to be) the principal residence (as defined in section 1034 and the regulations thereunder) of the holder of the certificate within a reasonable time after the financing is executed or assumed, and

(ii) Located within the jurisdiction of the governmental unit issuing the certificate.

See section 103a(d) and the regulations thereunder for further definitions and requirements.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating his intent to use (or, in the case of a qualified home improvement loan, that he is currently using and intends to continue to use) the residence as his principal residence within a reasonable time (*e.g.,* 60 days) after the mortgage credit certificate is issued and stating that the holder will notify the issuer of the mortgage credit certificate if the residence ceases to be his principal residence. The affidavit must also state facts that are sufficient for the issuer or his agent to determine whether the residence is located within the jurisdiction of the issuer that issued the mortgage credit certificate.

(e) *3-year requirement*—(1) *In general.* A certificate meets the requirements of this paragraph only if the holder of the certificate had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the mortgage on the residence in connection with which the certificate is provided is executed. For purposes of the preceding sentence, the holder's interest in the residence with respect to which the certificate is being provided shall not be taken into account. See section 103A (e) and the regulations thereunder for further definitions and requirements.

(2) *Exceptions.* Paragraph (e) (1) shall not apply with respect to—

(i) Any certificate provided with respect to a targeted area residence (as defined in § 1.25–1T (b)(7)),

(ii) Any qualified home improvement loan (as defined in § 1.25–1T (b) (3)), and

(iii) Any qualified rehabilitation loan (as defined in § 1.25–1T (b) (4)).

(3) *Certification procedure.* The requirements of paragraph (e) (1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that he had no present ownership interest in a principal residence at any time during the 3-year period prior to the date of which the certificate is issued and the issuer or its agent obtains from the applicant copies of the applicant's Federal tax returns for the preceding 3 years and examines each statement to determine whether the applicant has claimed a deduction for taxes on property which was the applicant's principal residence pursuant to section 164 (a) (1) or a deduction pursuant to section 163 for interest paid on a mortgage secured by property which was the applicant's principal residence. Where the mortgage is executed during the period between January 1 and February 15 and the applicant has not yet filed has Federal income tax return with the Internal Revenue Service, the issuer may, with respect to such year, rely on a affidavit of the applicant that the applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his principal residence for the preceding calendar year. In the alternative, when applicable, the holder may provide an affidavit stating that one of the exceptions provided in paragraph (e) (2) applies.

(4) *Special rule.* An issuer may submit a plan to the Commissioner for distributing certificates, in an amount not to exceed 10 percent of the proceeds of the issue, to individuals who do not meet the requirements of this paragraph. Such plan must described a procedure for ensuring that no more than 10 percent of the proceeds of a such issue will be used to provide certificates to such individuals. If the Commissioner approves the issuer's plan, certificates issued in accordance with the terms of the plan to holders who do not meet the 3-year requirement do not fail to satisfy the requirements of this paragraph.

(f) *Purchase price requirement*—(1) *In general.* A certificate meets the requirements of this paragraph only if the acquisition cost (as defined in § 1.25–1T (b) (8)) of the residence, other than a targeted area residence, in connection with which the certificate is provided does not exceed 110 percent of the average area purchase price (as defined in § 1.25–1T (b) (9)) applicable to that residence. In the case of a targeted area residence (as defined in § 1.251T (b) (7)) the acquisition cost may not exceed 120 percent of the average area purchase price applicable to such residence. See section 1093A (f) and the regulations thereunder for further definitions and requirements. § 1.25–3T (f) (1)

(2) *Certification procedure.* The requirements of paragraph (f)(1) will be met if the issuer or its agent obtains affidavits executed by the seller and the buyer that state these requirements have been met. Such affidavits must include an itemized list of—

(i) Any payments made by the buyer (or a related person) or for the benefit of the buyer,

(ii) If the residence is incomplete, an estimate of the reasonable cost of completing the residence, and

(iii) If the residence is purchased subject to a ground rent, the capitalized value of the ground rent.

The issuer or his agent must examine such affidavits and determine whether, on the basis of information contained therein, the purchase price requirement is met.

(g) *New mortgage requirement*—(1) *In general.* (i) A certificate meets the requirements of this paragraph only if the certificate is not issued in connection with the acquisition or replacement of an existing mortgage. Except in the case of a qualified home improvement loan, the certificate must be issued to an individual who did not have a mortgage (whether or not paid off) on the residence with respect to which the certificate is issued at any time prior to the execution of the mortgage.

(ii) *Exceptions.* For purposes of this paragraph, a certificate used in connection with the replacement of—

(A) Construction period loans,

(B) Bridge loans or similar temporary initial financing, and

(C) In the case of a qualified rehabilitation loan, an existing mortage, shall not be treated as being used to acquire or replace an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less. See section 103A(j)(1) and the regulations thereunder for examples illustrating the application of these requirements.

(2) *Certification procedure.* The requirements of paragraph (g)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that the mortage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage (other than one that falls within the exceptions described in paragraph (g)(1)(ii)).

(h) *Transfer of mortgage credit certificates*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is (i) not transferable or (ii) transferable only with the approval of the issuer.

(2) *Transfer procedure.* A certificate that is transferred with the approval of the issuer is a qualified mortgage credit certificate in the hands of the transferee only if each of the following requirements is met:

(i) The transferee assumed liability for the remaining balance of the certified indebtedness amount in connection with the acquisition of the residence from the transferor,

(ii) The issuer issues a new certificate to the transferee, and

(iii) The new certificate meets each of the requirements of paragraphs (d), (e), (f), and (i) of this section based on the facts as they exist at the time of the transfer as if the mortgage credit certificate were being issued for the first time. For example, the purchase price requirement is to be determined by reference to the average area purchase price at the time of the assumption and not when the mortgage credit certificate was originally issued.

(3) *Statement on certificate.* The requirements of paragraph (h)(1) will be met if the mortgage credit certificate states that the certificate may not be transferred or states that the certificate may not be transferred unless the issuer issues a new certificate in place of the original certificate.

(i) *Prohibited mortgages*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is issued in connection with the acquisition of a residence none of the financing of which is provided from the proceeds of—

(i) A qualified mortgage bond (as defined under section 103A(c)(1) and the regulations thereunder), or

(ii) A qualified veterans' mortgage bond (as defined under section 103A(c)(3) and the regulations thereunder).

Thus, for example, if a mortgagor has a mortgage on his principal residence that was obtained from the proceeds of a qualified mortgage bond, a mortgage credit certificate issued to such mortgagor in connection with a qualified home improvement loan with respect to such residence is not a qualified mortgage credit certificate. If, however, the financing provided from the proceeds of the qualified mortgage bond had been paid off in full, the certificate would be a qualified mortgage credit certificate (assuming all the requirements of this paragraph are met).

(2) *Certification procedure.* The requirements of paragraph (i)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that no portion of the financing of the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond.

(j) *Particular lenders*—(1) *In general.* Except as otherwise provided in paragraph (j)(2), a certificate meets the requirements of this paragraph only if the certificate is not limited to indebtedness incurred from particular lenders. A certificate is limited to indebtedness from particular lenders if the issuer, directly or indirectly, prohibits the holder of a certificate from obtaining financing from one or more lenders or requires the holder of a certificate to obtain financing from one or more lenders. For purposes of this paragraph, a lender is any person, including an issuer of mortgage credit certificates, that provides financing for the acquisition, qualified rehabilitation, or qualified home improvement of a residence.

(2) *Exception.* A mortgage credit certificate that is limited to indebtedness incurred from particular lenders will not cease to meet the requirements of this paragraph if the Commissioner approves the basis for such limitation. The Commissioner may approve the basis for such limitation if the issuer establishes to the satisfaction of the Commissioner that it will result in a significant economic benefit to the holders of mortgage credit certificates (*e.g.*, substantially lower financing costs) compared to the result without such limitation.

(3) *Taxable bonds.* The requirements of this paragraph do not prevent an issuer of mortgage credit certificates from issuing mortgage subsidy bonds (other than obligations described in section 103 (a)) the proceeds of which are to be used to provide mortgages to holders of mortgage credit certificates provided that the holders of such certificates are not required to obtain financing from the proceeds of the bond issue. See § 1.25–4T (h) with respect to permissible fees.

(4) *Lists of participating lenders.* The requirements of this paragraph do not prohibit an issuer from maintaining a list of lenders that have stated that they will make loans to qualified holders of mortgage credit certificates, provided that (i) the issuer solicits such statements in a public notice similar to the notice described in § 1.25–7T, (ii) lenders are provided a reasonable period of time in which to express their interest in being included in such a list, and (iii) holders of mortgage credit certificates are not required to obtain financing from the lenders on the list. If an issuer maintains such a list, it must update the list at least annually.

(5) *Certification procedure.* The requirements of this paragraph will be met if (i) the issuer or its agent obtains from the holder of the certificate an affidavit stating that the certificate was not limited to indebtedness incurred from particular lenders or (ii) the issuer obtains a ruling from the Commissioner under paragraph (j) (2).

(6) *Examples.* The following examples illustrate the application of this paragraph:

Example (1). Under its mortgage credit certificate program, County Z distributes all the certificates to be issued to a group of 60 participating lenders. Residents of County Z may obtain mortgage credit certificates only from the participating lenders and only in connection with the acquisition of mortgage financing from that lender or one of the other participating lenders. Certificates issued under this program do not meet the requirements of this paragraph since the certificates are limited to indebtedness incurred from particular lenders. The certificates, therefore, are not qualified mortgage credit certificates.

Example (2). In connection with its mortgage credit certificate program, County Y arranges with Bank P for a line of credit to be used to provide mortgage financing to holders of mortgage credit certificates. County Y, pursuant to paragraph (j) (4), maintains a list of lenders participating in the mortgage credit certificate program. County Y distributes the certificates directly to applicants. Holders of the certificates are not required to obtain mortgage financing through the line of credit or through a lender on the list of participating lenders. Certificates issued pursuant to County Y's program satisfy the requirements of this paragraph.

(k) *Developer certification*—(1) *In general.* A mortgage credit certificate that is allocated by the issuer to any particular development meets the requirements of this paragraph only if the developer provides a certification to the purchaser of the residence and the issuer stating that the purchase price of that residence is not higher than the price would be if the issuer had not allocated mortgage credit certificates to the development. The certification must be made by the developer if a natural person or, if not, by a duly authorized official of the developer.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate and affidavit stating that the has received from the developer the certification described in this paragraph.

(l) *Expiration*—(1) *In general.* A certificate meets the requirements of this paragraph if the certified indebtedness amount is incurred prior to the close of the second calender year following the calendar year for which the issuer elected not to issue qualified mortgage bonds under § 1.25–4T with respect to that issue of mortgage credit certificates. Thus, for example, if on October 1, 1984, and issuing authority elects under § 1.25–4T not to issue qualified mortgage bonds, a mortgage credit certificate provided under that program does not meet the requirements of this paragraph unless the indebtedness is incurred on or before December 31, 1986.

(2) *Issure-imposed expiration dates.* An issuer of mortgage credit certificates may provide that a certificate shall expire if the holder of the certificate does not incure certified indebtedness by a date that is prior to the expiration date provided in paragraph (l) (1). A certificate that expires prior to the date provided in paragraph (l) (1) may be reissued provided that the requirements of this paragraph are met.

(m) *Revocation.* A certificate meets the requirements of this paragraph only if it has not been revoked. Thus, the credit provided by section 25 and § 1.25–1T does not apply to interest paid or accrued following the revocation of a certificate. A certificate is treated as revoked when the residence to which the certificate relates ceases to be the holder's principal residence. An issuer may revoke a mortgage credit certificate if the certificate does not meet all the requirements of § 1.25–3T (d), (e), (f), (g), (h), (i), (j), (k), and (n). The certificate is revoked by the issure's notifying the holder of the certificate and the Internal Revenue Service that the certificate is revoked. The notice to the Internal Revenue Service shall be made as part of the report requred by § 1.25–8T (b) (2).

(n) *Interest paid to related person*—(1) *In general.* A certificate does not meet the requirements of this paragraph if interest on the certified indebtedness amount is paid to a person who is a related person to the holder of the certificate.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that a related person does not have, and is not expected to have, an interest as a creditor in the certified indebtedness amount.

(o) *Fraud.* Notwithstanding any other provision of this section, a mortgage credit certificate does not meet the requirements of this section and, therefore, the certificate is not a qualified mortgage credit certificate for any calendar year, if the holder of the certificate provides a certification or any other information to the lender providing the mortgage or to the issuer, of the certificate containing a material misstatement and such misstatement is due to fraud. In determining whether any misstatement is due to fraud, the rules generally applicable to underpayments of tax due to fraud (including rules relating to the statute of limitations) shall apply. See § 1.6709–1T with respect to the penalty for filing negligent or fraudulent statements.

§ 1.25–4T Qualified mortgage credit certificate program (Temporary).

(a) *In general*—(1) *Definition of qualified mortgage credit certificate program.* For purposes of §§ 1.25–1T through 1.25–8T, the term "qualified mortgage credit certificate program" means a program to issue qualified mortgage credit certificates which meets all of the requirements of paragraphs (b) through (i) of this section.

(2) *Requirements are a minimum.* Except as otherwise provided in this section, the requirements of this section are minimum requirements. Issuers may establish more stringent criteria for participation in a qualified mortgage credit certificate program. Thus, for example, an issuer may target 30 percent of the proceeds of an issue of mortgage credit certificates to targeted areas. Further, issuers may establish additional eligibility criteria for participation in a qualified mortgage credit certificate program. Thus, for example, issuers may impose an income limitation designed to ensure that only those individuals who could not otherwise purchase a residence will benefit from the credit.

(3) Except as otherwise provided in this section and § 1.25–3T, issuers may use mortgage credit certificates in connection with other Federal, State, and local programs provided that such use complies with the requirements of § 1.25–3T(j). Thus, for example, a mortgage credit certificate may be issued in connection with the qualified rehabilitation of a residence part of the cost of which will be paid from the proceeds of a State grant.

(b) *Establishment of program.* A program meets the requirements of this paragraph only if it is established by a State or political subdivision thereof for any calendar year for which it has the authority to issue qualified mortgage bonds.

(c) *Election not to issue qualified mortgage bonds*—(1) *In general.* A program meets the requirements of this paragraph only if the issuer elects, in the time and manner specified in this paragraph, not to issue an amount of qualified mortgage bonds that it may otherwise issue during the calendar year under section 103A and the regulations thereunder.

(2) *Manner of making election.* On or before the earlier of the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. The election (and the certification (or affidavit) described in paragraph (d)) shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The election should be titled "Mortgage Credit Certificate Election" and must include—

(i) The name, address, and TIN of the issuer,

(ii) The issuer's applicable limit, as defined in section 103A (g) and the regulations thereunder,

(iii) The aggregate amount of qualified mortgage bonds issued by the issuing authority during the calendar year,

(iv) The amount of the issuer's applicable limit that it has surrendered to other issuers during the calendar year,

(v) The date and amount of any previous elections under this paragraph for the calendar year, and

(vi) The amount of qualfied mortgage bonds that the issuer elects not to issue.

(3) *Revocation of election.* Any election made under this paragraph may be revoked, in whole or in part, at any time during the calendar year in which the election was made. The revocation, however, may not be made with respect to any part of the nonissued bond amount that has been used to issue mortgage credit certificates pursuant to the election. The revocation shall be

filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The revocation should be titled "Revocation of Mortgage Credit Certificate Election" and must include—

(i) The name, address, and TIN of the issuer,

(ii) The nonissued bond amount as originally elected, and

(iii) The portion of the nonissued bond amount with respect to which the election is being revoked.

(4) *Special rule.* If at the time that an issuer makes an election under this paragraph it does not know its applicable limit, the issuer may elect not to use all of its remaining authority to issue qualified mortgage bonds; this form of election will be treated as meeting the requirements of paragraph (c)(2) if, prior to the later of the end of the calendar year and December 31, 1985, the issuer amends its election so as to indicate the exact amount of qualified mortgage bond authority that it elected not to issue.

(5) *Limitation on nonissued bond amount.* The amount of qualified mortgage bonds which an issuer elects not to issue may not exceed the issuer's applicable limit (as determined under section 103A (g) and the regulations thereunder). For example, a governmental unit that, pursuant to section 103A (g)(3), may issue $10 million of qualified mortgage bonds that elects to trade in $11 million in qualified mortgage bond authority has not met the requirements of this paragraph, and mortgage credit certificates issued pursuant to such election are not qualified mortgage credit certificates.

(d) *State certification requirement*—(1) *In general.* A program meets the requirements of this paragraph only if the State official designated by law (or, where there is no State official, the Governor) certifies, based on facts and circumstances as of the date on which the certification is requested, following a request for such certification, that the issue meets the requirements of section 103A(g) (relating to volume limitation) and the regulations thereunder. A copy of the State certification must be attached to the issuer's election not to issue qualified mortgage bonds, except that, in the case of elections made during calendar year 1984, the certification may be filed with the Service prior to July 8, 1985 provided that mortgage credit certificates may not be distributed until the certification is filed. In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city.

(2) *Certification procedure.* The official making the certification described in this paragraph (d) need not perform an independent investigation to determine whether the issuer has met the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds previously issued by that issuer during the calendar year the official may rely on copies of prior elections under paragraph (c) of this section made by the issuer for that year, together with an affidavit executed by an official of the issuer who is responsible for issuing bonds stating that the issuer has not, to date, issued any other issues of qualified mortgage bonds during the calendar year and stating the amount, if any, of the issuer's applicable limit that it has surrendered to other issuers during the calendar year; for any calendar year prior to 1985, the official may rely on an affidavit executed by a duly authorized official of the issuer who states the aggregate amount of qualified mortgage bonds issued by the issuer during the year. In determining the aggregate amount of qualified mortgage bonds that the issuer has previously elected not to issue during that calendar year, the official may rely on copies of any elections not to issue qualified mortgage bonds filed by the issuer for that calendar year, together with an affidavit executed by an official of the issuer responsible for issuing mortgage credit certificates stating that the issuer has not, to date, made any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that the issuer has not, as of the date on which the certification is provided, exceeded its applicable limit for the year, the official may certify that the issue meets the requirements of section 103A(g). The fact that the certification described in this paragraph (d) is provided does not ensure that the issuer has met the requirements of section 103A(g) and the regulations thereunder, nor does it preclude the application of the penalty for over-issuance of mortgage credit certificates if such over-issuance actually occurs. See § 1.25–5T.

(3) *Special rule.* If within 30 days after the issuer files a proper request for the certification described in this paragraph (d) the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) or, in the alternative, a statement that the issue does not meet such requirements, the issuer may submit, in lieu of the certification required by this paragraph (d), an affidavit executed by an officer of the issuer responsible for issuing mortgage credit certificates stating that—

(i) The issue meets the requirements of section 103A(g) and the regulations thereunder,

(ii) At least 30 days before the execution of the affidavit the issuer filed a proper request for the certification described in this paragraph (d), and

(iii) The State official designated by law (or, if there is no State official, the Governor) has not provided the certification described in this paragraph (d) or a statement that the issue does not meet such requirements.

For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (d)(2).

(e) *Information reporting requirement*—(1) *Annual report.* [Reserved]

(f) *Policy statement requirement.* [Reserved]

(g) *Targeted areas requirement*—(1) *In general.* A program meets the requirements of this paragraph only if—

(i) The portion of the total proceeds of the issue specified in paragraph (g)(2) is made available to provide mortgage credit certificates in connection with owner financing of targeted area residents for at least 1 year after the date on which mortgage credit certificates are first made available with respect to targeted area residences, and

(ii) The issuer attempts with reasonable diligence to place such proceeds with qualified persons.

Mortgage credit certificates are considered first made available with respect to targeted area residences on the date on which the issuer first begins to accept applications for mortgage credit certificates provided under that issue.

(2) *Specified portion.* (i) The specified portion of the total proceeds of an issue is the lesser of—

(A) 20 percent of the total proceeds, or

(B) 8 percent of the average annual aggregate principal amount of mortgages executed during the immediately prceding 3 calendar years for single-family, owner-occupied residences in targeted areas within the jurisdication of the issuing authority.

For purposes of computing the required portion of the total proceeds specified in paragraph (g)(2)(i)(B) where such provision is applicable, an issuer may rely upon the safe-harbor formula provided in the regulations under section 103A(h).

(ii) See § 1.25–1T(b)(10)(ii) for the definition of "total proceeds".

(h) *Fees*—(1) *In general.* A program meets the requirements of this paragraph only if each applicant is required to pay, directly or indirectly, no fee other than those fees permitted under this paragraph.

(2) *Permissible fees.* Applicants may be required to pay the following fees provided that they are reasonable:

(i) Points, origination fees, servicing fees, and other fees in amounts that are customarily charged with respect to mortgages not provided in connection with mortgage credit certificates,

(ii) Application fees, survey fees, credit report fees, insurance fees, or similar settlement or financing costs to the extent such amounts do not exceed the amounts charged in the area in cases where mortgages are not provided in connection with mortgage credit certificates. For example, amounts charged for FHA, VA, or similar private mortgage insurance on an individual's mortgage are permissible so long as such amounts do not exceed the amounts charged in the area with respect to a similar mortgage that is not provided in connection with a mortgage credit certificate, and

(iii) Other fees that, taking into account all the facts and circumstances, are reasonably necessary to cover any administrative costs incurred by the issuer or its agent in issuing mortgage credit certificates.

(i) *Qualified mortgage credit certificate.* A program meets the requirements of this paragraph only if each mortgage credit certificate issued under the program meets each of the requirements of paragraphs (c) through (o) of § 1.25–3T.

(j) *Good faith compliance efforts*—(1) *Eligibility requirements.* (i) A program under which each of the mortgage credit certificates issued does not meet each of the requirements of paragraphs (c) through (o) of § 1.25–3T shall be treated as meeting the requirements of paragraph (i) of this section if each of the requirements of this paragraph (j)(1) is satisfied. A mortgage credit certificate program meets the requirements of this paragraph (j)(1) only if each of the following provisions is met:

(A) The issuer in good faith attempted to issue mortgage credit certificates only to individuals meeting each of the requirements of paragraphs (c) through (o) of § 1.25–3T. Good faith requires that agreements with lenders and agents and other relevant instruments contain restrictions that permit the approval of mortgage credit certificates only in accordance with the requirements of paragraphs (c) through (o) of § 1.25–3T. In addition, the issuer must establish reasonable procedures to ensure compliance with those requirements. Reasonable procedures include reasonable investigations by the issuer to determine whether individuals satisfy the requirements of paragraphs (c) through (o) of § 1.25–3T.

(B) 95 percent or more of the total proceeds of the issue were devoted to individuals with respect to whom, at the time that the certificate was issued, all the requirements of paragraphs (c) through (o) of § 1.25–3T were met. If a holder of a mortgage credit certificate fails to meet more than one of these requirements, the amount of the certificate (*i.e.,* the certificate credit rate multiplied by the certified indebtedness amount) issued to that individual will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in that individual's certificate must be corrected pursuant to paragraph (j)(1)(i)(C).

(C) Any failure to meet the requirements of paragraphs (c) through (o) of § 1.25–3T is corrected within a reasonable period after that failure is discovered. For example, if an individual fails to meet one or more of such requirements those failures can be corrected by revoking that individual's certificate.

(ii) *Examples.* The following examples illustrate the application of this paragraph (j)(1):

Example (1). County X only distributes mortgage credit certificates to individuals who have contracted to purchase a principal residence. County X requires that applicants for mortgage credit certificates present the following information:

(i) An affidavit stating that the applicant intends to use the residence in connection with which the mortgage credit certificate is issued as his principal residence within a reasonable time after the certificate is issued by County X, that the applicant will notify the County if the residence ceases to be his principal residence, and facts that are sufficient for County X to determine whether the residence is located within the jurisdiction of County X,

(ii) An affidavit stating that the applicant had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the certificate is issued,

(iii) Copies of the applicant's Federal tax returns for the preceding 3 years,

(iv) Affidavits from the seller of the residence with respect to which the certificate is issued and the applicant stating the purchase price of the residence, including an itemized list of (A) payments made by or for the benefit of the applicant, (B) if the residence is incomplete, an estimate of the reasonable cost of completing the residence, and (C) if the residence is subject to a ground rent, the capitalized value of the ground rent,

(v) An affidavit executed by the applicant stating that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage,

(vi) An affidavit executed by the applicant stating that no portion of the financing for the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or qualified veterans' mortgage bond and that no portion of the mortgage for the residence is provided by a person related to the applicant (as defined in § 1.25–3T(n)),

(vii) An affidavit executed by the applicant stating that the certificate was not limited to indebtedness incurred from particular lenders, and

(viii) In the case of a mortgate credit certificate allocated for use in connection with a particular development, and affidavit executed by the applicant stating that the applicant received from the developer a certification stating that the price of the residence with respect to which the certificate was issued is no higher than it would be without the use of a mortgage credit certificate.

County X examines the information submitted by the applicant to determine whether the requirements of paragraphs (c), (d), (e), (f), (g), (i), (j), (k), and (n) of § 1.25–3T are met. County X determines that the certificate has not expired. The mortgage credit certificates issued by County X are in the form prescribed by § 1.25–6T and County X provides all the required information and statements. After determining that the applicant meets all these requirements County X issues a mortgage credit certificate to the applicant. This procedure for issuing mortgage credit certificates is sufficient evidence of the good faith of County X to meet the requirements of § 1.25–4T(j)(1)(i)(A).

Example (2). County W distributes preliminary mortgage credit certificates to individuals who have not entered into contracts to purchase a principal residence. County W issues preliminary certificates in the form prescribed by § 1.25–6T to those applicants that have submitted statements that they (i) intend to purchase a single-family residence located within the jurisdiction of County W which they will occupy as a principal residence, (ii) have had no present ownership interest in a principal residence within the preceding 3-year period, and (iii) will not use the certificate in connection with the acquisition or replacement of an existing mortgage. The certificates contain a maximum purchase price, the certificate credit rate, and a statement that the certificate will expire if the applicant does not enter into a closing agreement with respect to a loan within 6 months from the date of preliminary issuance. Holders of these certificates may apply for a mortgage loan from any lender. When the holder of the certificate applies for a loan the lender requires that he submit the following:

(i) An affidavit stating that the applicant intends to use the residence in connection with which the mortgage credit certificate is issued as his principal residence within a reasonable time after the certificate is issued by County W, that the applicant will notify

the County if the residence ceases to be his principal residence, and facts that are sufficient for County W to detrmine whether the residence is located within the jurisdication of County W.

(ii) An affidavit stating that the applicant had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the certificate is issued,

(iii) Copies of the applicant's Federal tax returns for the preceding 3 years,

(iv) Affidavits from the seller of the residence with respect to which the certificate is issued and the applicant stating the purchase price of the residence, including an itemized list of (A) payments made by or for the benefit of the applicant, (B) if the residence is incomplete, an estimate of the reasonable cost of completing the residence, and (C) if the residence is subject to a ground rent, the capitalized value of the ground rent,

(v) An affidavit executed by the applicant stating that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage,

(vi) An affidavit executed by the applicant stating that no portion of the financing for the residence in connection with which the certificate is issued in provided from the proceeds of a qualified mortgage bond or qualified veterans' mortgage bond and that no portion of the mortgage for the residence is provided by a person related to the applicant (as defined in § 1.25-3T(n)),

(vii) An affidavit executed by the applicant stating that the certificate was not limited to indebtedness incurred from particular lenders, and

(viii) In the case of a mortgage credit certificate allocated for use in connection with a particular development, an affidavit executed by the applicant stating that the applicant received from the developer a certification stating that the price of the residence with respect to which the certificate was issued is no higher than it would be without the use of a mortgage credit certificate.

The lender then submits those affidavits, together with its statement as to the amount of the indebtedness incurred, to County W. After determining that the requirements of paragraphs (c), (d), (e), (f), (g), (i), (j), (k) and (n) of § 1.25-3T are met and determining that the certificate has not expired, County W completes the mortgage credit certificate. This procedure for issuing mortgage credit certificates is sufficient evidence of the good faith of County W to meet the requirements of § 1.25-4T(j)(1)(i)(A).

(2) *Program requirements.* (i) A mortgage credit certificate program which fails to meet one or more of the requirements of paragraphs (b) through (h) of this section shall be treated as meeting such requirements if the requirements of this paragraph (j)(2) are satisfied. A mortgage credit certificate program meets the requirements of this paragraph (j)(2) only if each of the following provisions is met:

(A) The issuer in good faith attempted to meet all of the requirements of paragraphs (b) through (h) of this section. This good faith requirement will be met if all reasonable steps are taken by the issuer to ensure that the program complies with these requirements.

(B) Any failure to meet such requirements is due to inadvertent error, *e.g.*, mathematical error, after taking reasonable steps to comply with such requirements.

(ii) The following example illustrate the application of this paragraph (j)(2):

Example. City X issues an issue of mortgage credit certificates. However, despite taking all reasonable steps to determine accurately the size of the applicable limit, as provided in section 103A (g)(3) and the regulations thereunder, the limit is exceeded because the amount of the mortgages, originated in the area during the past 3 years is incorrectly computed as a result of mathematical error. Such facts are sufficient evidence of the good faith of the issuer to meet the requirements of paragraph (j)(2).

§ 1.25-5T Limitation on aggregate amount of mortgage credit certificates (Temporary).

(a) *In general.* If the aggregate amount of qualified mortgage credit certificates (as defined in paragraph (b)) issued by an issuer under a qualified mortgage credit certificate program exceeds 20 percent of the nonissued bond amount (as defined in paragraph (c)), the provisions of paragraph (d) shall apply.

(b) *Aggregate amount of mortgage credit certificates.*—(1) *In general.* The aggregate amount of qualified mortgage credit certificates issued under a qualified mortgage credit certificate program is the sum of the products determined by multiplying—

(i) The certified indebtedness amount of each qualified mortgage credit certificate issued under that program, by

(ii) The certificate credit rate with respect to such certificate.

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example (1). For 1986 City Q has a nonissued bond amount of $100 million. After making a proper election, Q issues 2,000 qualified mortgage credit certificates each with a certificate credit rate of 20 percent and a certified indebtedness amount of $50,000. The aggregate amount of qualified mortgage credit certificates is $20 million (2,000 x (.2 x $50,000)). Since this amount does not exceed 20 percent of the nonissued bond amount (.2 x $100 million = $20 million), Q has complied with the limitation on the aggregate amount of mortgage credit certificates, provided that it does not issue any additional certificates.

Example (2). The facts are the same as in example (1) except that instead of issuing all its certificates at the 20 percent rate, Q issues (i) qualified mortgage credit certificates with a certificate credit rate of 10 percent and an aggregate principal amount of $25 million, (ii) qualified mortgage credit certificates with a certificate credit rate of 40 percent and an aggregate principal amount of $25 million, and (iii) qualified mortgage credit certificates with a certificate credit rate of 30 percent and an aggregate principal amount of $25 million. The aggregate amount of qualified mortgage credit certificates is $20 million ((10 percent of $25 million) plus (40 percent of $25 million) plus (30 percent of $25 million)). Q has complied with the limitation on the aggregate amount of qualified mortgage credit certificates, provided that it does not issue any additional certificates pursuant to the same program.

(c) *Nonissued bond amount.* The term "nonissued bond amount" means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds (as defined in section 103A(c)(1) and the regulations thereunder) which the issuer is otherwise authorized to issue and elects not to issue under section 25(c)(2) and § 1.25-4T(b). The amount of qualified mortgage bonds which an issuing authority is authorized to issue is determined under section 103A(g) and the regulations thereunder; such determination shall take into account any prior elections by the issuer not to issue qualified mortgage bonds, the amount of any reduction in the State ceiling under paragraph (d) of this section, and the aggregate amount of qualified mortgage bonds issued by the issuer prior to its election not to issue qualified mortgage bonds.

(d) *Noncompliance with limitation on aggregate amount of mortgage credit certificates*—(1) *In general.* If the provisions of this paragraph apply, the State ceiling under section 103A(g)(4) and the regulations thereunder for the calendar year following the calendar year in which the Commissioner determines the correction amount for the State in which the issuer which exceeded the limitation on the aggregate amount of mortgage credit certificates is located shall be reduced by 1.25 times the correction amount with respect to such failure.

(2) *Correction amount.* (i) The term "correction amount" means an amount equal to the excess credit amount divided by .20.

(ii) The term "excess credit amount" means the excess of—

(A) The credit amount for any mortgage credit certificate program, over

(B) The amount which would have been the credit amount for such program had such program met the requirements of section 25(d)(2) and paragraph (a) of this section.

(iii) The term "credit amount" means the sum of the products determined by multiplying—

(A) The certified indebtedness amount of each qualified mortgage credit certificate issued under the program, by

(B) The certificate credit rate with respect to such certificate.

(3) *Example.* The following example illustrates the application of this paragraph:

Example. For 1987 City R has a nonissued bond amount of $100 million. City R issues all of its mortgage credit certificates with a certificate credit rate of 20 percent. City R issues certificates with an aggregate certified indebtedness amount of $120 million. The aggregate amount of mortgage credit certificates issued by City R is $24 million, which exceeds 20 percent of the nonissued bond amount. The State ceiling for the calendar year following the calendar year in which the Commissioner determines the correction amount is reduced by $25 million (the correction amount multiplied by 1.25). The correction amount is determined as follows: The credit amount is $24 million (.2×$120 million); the amount which would have been the credit amount for the program had it met the requirements of section 25(d)(2) is $20 million (.2×$100 million); the excess credit amount is $4 million ($24 million—$20 million); therefore, the correction amount is $20 million ($4 million/.2).

(4) *Cross references.* See section 103A(g)(4) and the regulations thereunder with respect to the reduction of the applicable State ceiling.

§ 1.25-6T Form of qualified mortgage credit certificate (Temporary).

(a) *In general.* Qualified mortgage credit certificates are to be issued on the form prescribed by the Internal Revenue Service. If no form is prescribed by the Internal Revenue Service, or if the form prescribed by the Internal Revenue Service is not readily available, the issuer may use its own form provided that such form contains the information required by this section. Each mortgage credit certificate must be issued in a form such that there are at least three copies of the form. One copy of the certificate shall be retained by the issuer; one copy shall be retained by the lender; and one copy shall be forwarded to the State official who issued the certification required by § 1.25-4T(d), unless that State official has stated in writing that he does not want to receive such copies.

(b) *Required information.* Each qualified mortgage credit certificate must include the following information:

(1) The name, address, and TIN of the issuer,

(2) The date of the issuer's election not to issue qualified mortgage bonds pursuant to which the certificate is being issued,

(3) The number assigned to the certificate,

(4) The name, address, and TIN of the holder of the certificate,

(5) The certificate credit rate,

(6) The certified indebtness amount,

(7) The acquisition cost of the residence being acquired in connection with the certificate,

(8) The average area purchase price applicable to the residence,

(9) Whether the certificate meets the requirements of § 1.25-3T(d), relating to residence requirement,

(10) Whether the certificate meets the requirements of § 1.25-3T(e), relating to 3-year requirement,

(11) Whether the certificate meets the requirements of § 1.25-3T(g), relating to new mortgage requirement,

(12) Whether the certificate meets the requirements of § 1.25-3T(i), relating to prohibited mortgages,

(13) Whether the certificate meets the requirements of § 1.25-3T(j), relating to particular lenders,

(14) Whether the certificate meets the requirements of § 1.25-3T(k), relating to allocations to particular developments,

(15) Whether the certificate meets the requirements of § 1.25-3T(n), relating to interest paid to related persons,

(16) Whether the residence in connection with which the certificate is issued is a targeted area residence,

(17) The date on which a closing agreement is signed with respect to the certified indebtness amount,

(18) The expiration date of the certificate,

(19) A statement that the certificate is not transferable or a statement that the certificate may be transferred only if the issuer issues a new certificate, and

(20) A statement, signed under penalties of perjury by an authorized official of the issuer or its agent, that such person has made the determinations specified in paragraph (b) (9) through (16).

§ 1.25-7T Public notice (Temporary).

(a) *In general.* At least 90 days prior to the issuance of any mortgage credit certificate under a qualified mortgage credit certificate program, the issuer shall provide reasonable public notice of—

(1) The eligibility requirements for such certificate,

(2) The methods by which such certificates are to be issued, and

(3) The other information required by this section.

(b) *Reasonable public notice*—(1) *In general.* Reasonable public notice means published notice which is reasonably designed to inform individuals who would be eligible to receive mortgage credit certificates of the proposed issuance. Reasonable public notice may be provided through newspapers of general circulation.

(2) *Contents of notice.* The public notice required by paragraph (a) must include a brief description of the principal residence requirement, 3-year requirement, purchase price requirement, and new mortgage requirement. The notice must also provide a brief description of the methods by which the certificates are to be issued and the address and telephone number for obtaining further information.

§ 1.25-8T Reporting requirements (Temporary).

(a) *Lender*—(1) *In general.* Each person who makes a loan that is a certified indebtedness amount with respect to any mortgage credit certificate must file the report described in paragraph (a)(2) and must retain on its books and records the information described in paragraph (a)(3). The report described in paragraph (a)(2) is an annual report and must be filed on or before January 31 of the year following the calendar year to which the report relates. See section 6709(c) and the regulations thereunder for the applicable penalties with respect to failure to file reports.

(2) *Information required.* The report shall be submitted on Form 8329 and shall contain the information required therein. A separate Form 8329 shall be filed for each issue of mortgage credit certificates with respect to which the lender made mortgage loans during the preceding calendar year. Thus, for example, if during 1986 Bank M makes three mortgage loans which are certified indebtedness amounts with respect to State Z's January 15, 1986, issue of mortgage credit certificates, and two mortgage loans which are certified indebtedness amounts with respect to State Z's April 15, 1986, issue of mortgage credit certificates, and fifty mortgage loans which are certified indebtedness amounts with respect to County X's December 31, 1985, issue of mortgage credit certificates, Bank M must file three separate reports for calendar year 1986. The lender must submit the Form 8329 with the information required therein, including—

(i) The name, address, and TIN of the issuer of the mortgage credit certificates,

(ii) The date on which the election not to issue qualified mortgage bonds with

respect to that mortgage credit certificate was made.

(iii) The name, address, and TIN of the lender, and

(iv) The sum of the products determined by multiplying—

(A) The certified indebtedness amount of each mortgage credit certificate issued under such program, by

(B) The certificate credit rate with respect to such certificate.

(3) *Recordkeeping requirements.* Each person who makes a loan that is a certified indebtedness amount with respect to any mortgage credit certificate must retain the information specified in this paragraph (a)(3) on its books and records for 6 years following the year in which the loan was made. With respect to each loan the lender must retain the following information:

(i) The name, address, and TIN of each holder of a qualified mortgage credit certificate with respect to which a loan is made,

(ii) The name, address, and TIN of the issuer of such certificate, and

(iii) The date the loan for the certified indebtedness amount is closed, the certified indebtedness amount, and the certificate credit rate of such certificate.

(b) *Issuers*—(1) *In general.* Each issuer of mortgage credit certificates shall file the report described in paragraph (b)(2).

(2) *Quarterly reports.* (i) Each issuer which elects to issue mortgage credit certificates shall file reports on Form 8330. These reports shall be filed on a quarterly basis, beginning with the quarter in which the election is made, and are due on the following dates: April 30 (for the quarter ending March 31), July 31 (for the quarter ending June 30), October 31 (for the quarter ending September 30), and January 31 (for the quarter ending December 31). For elections made prior to May 8, 1985, the first report need not be filed until July 31, 1985. An issuer shall file a separate report for each issue of mortgage credit certificates. In the quarter in which the last qualified mortgage credit certificate that may be issued under a program is issued, the issuer must state that fact on the report to be filed for that quarter; the issuer is not required to file any subsequent reports with respect to that program. See section 6709 (c) for the penalties with respect to failure to file a report.

(ii) The report shall be submitted on Form 8330 and shall contain the information required therein, including—

(A) The name, address, and TIN of the issuer of the mortgage credit certificates,

(B) The date of the issuer's election not to issue qualified mortgage bonds with respect to the mortgage credit certificate program and the nonissued bond amount of the program,

(C) The sum of the products determined by multiplying—

(*1*) The certified indebtedness amount of each qualified mortgage credit certificate issued under that program during the calendar quarter, by

(*2*) The certificate credit rate with respect to such certificate, and

(D) A listing of the name, address, and TIN of each holder of a qualified mortgage credit certificate which has been revoked during the calendar quarter.

(c) *Extensions of time for filing reports.* The Commissioner may grant an extension of time for the filing of a report required by this section if there is reasonable cause for the failure to file such report in a timely fashion.

(d) *Place for filing.* The reports required by this section are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19225.

(e) *Cross reference.* See section 6709 and the regulations thereunder with respect to the penalty for failure to file a report required by this section.

Par. 3. New § 1.163–6T is inserted after § 1.163–5T to read as follows:

§ 1.163–6T Reduction of deduction where section 25 credit taken (Temporary).

(a) *In general.* The amount of the deduction under section 163 for interest paid or accrued during any taxable year on a certified indebtedness amount with respect to a mortgage credit certificate which has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(b) *Cross reference.* See §§ 1.25–1T through 1.25–8T with respect to rules relating to mortgage credit certificates.

Par. 4. New § 1.6709–1T is inserted after § 1.6696–1 to read as follows:

§ 1.6709–1T Penalties with respect to mortgage credit certificates (Temporary).

(a) *Material misstatement*—(1) *Negligence.* If any person makes a material misstatement in any affidavit or other statement under a penalty of perjury made with respect to the issuance of a mortgage credit certificate and such misstatement is due to the negligence of that person, that person shall pay a penalty of $1,000 for each mortgage credti certificate with respect to which that misstatement was made.

(2) *Fraud.* If a misstatement described in subparagraph (1) is due to fraud on the part of the person making the misstatement, that person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which the fraudulent misstatement was made. The penalty imposed by this paragraph (a)(2) is in addition to any criminal penalty.

(b) *Reports.* (1) Any person required by § 1.25–8T to file a report with respect to any mortgage credit certificate who fails to file the report at the time and in the manner required by § 1.25–8T shall pay a penalty of $200 for each mortgage credit certificate with respect to which that failure occurred. The preceding sentence shall not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

(2) In the case of any report required under § 1.25–8T(b), the aggregate amount of the penalty imposed by this paragraph shall not exceed $2,000.

PART 6a—[AMENDED]

Par. 5. The authority citation for Part 6a is revised to read:

Authority: Sec. 7805, Internal Revenue Code of 1954, 68A stat. 917 (26 U.S.C. 7805) unless otherwise noted.

Par. 6. Section 6a.103A–2 is amended by revising paragraph (g)(1), by revising the first sentence of paragraph (g)(6)(i), and adding a new paragraph (g)(6)(v). These added and revised provisions read as follows:

§ 6a.103A–2 Qualified mortgage bond.

* * * * *

(g) *Limitation on aggregate amount of qualified mortgage bonds issued during any calendar year*—(1) *In general.* An issue meets the requirements of this section only if the aggregate amount of bonds issued pursuant thereto, when added to the sum of (i) the aggregate amount of qualified mortgage bonds previously issued by the issuing authority during the calendar year and (ii) the amount of qualified mortgage bonds which the issuing authority previously elected not to issue under section 25(c)(2)(A)(ii) and the regulations thereunder during the calendar year, does not exceed the applicable limit ("market limitation") for such authority for such calendar year.

* * * * *

(6) *State ceiling.* (i) Except as provided in paragraph (g)(6)(v), the State ceiling applicable to any State for any calendar year shall be the greater of—

(A) 9 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located within the jurisdiction of such State, or

(B) $200,000,000. * * *

* * * * *

(v) *Reduction in State ceiling.* If for any calendar year an issuer of mortgage credit certificates, as defined in section 25 and the regulations thereunder, fails to meet the requirements of section 25(d)(2) and the regulations thereunder, relating to the limit on the aggregate amount of mortgage credit certificates that may be issued, the applicable State ceiling under paragraph (g)(6)(i) of this section for the State in which the program operates will be reduced by 1.25 times the correction amount (as defined in section 25(f)(2) and the regulations thereunder) with respect to that failure for the calendar year following the calendar year in which the Commissioner determines the correction amount with respect to that failure.

* * * * *

PART 602—[AMENDED]

Par. 7. The authority citation for Part 602 continues to read:

Authority: Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805).

Par. 8. Section 602.101(c) is amended by inserting in the appropriate places in the table, "§§ 1.25–IT thru 1.25–8T . . . 1545–0922".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 22, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85–11017 Filed 5–3–85; 2:59 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Notice of Extension of Deadline for Submission of Program Amendment to the New Mexico Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to further extend the deadline for New Mexico to (1) promulgate rules governing the training, examination and certification of blasters, and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 5, 1984, New Mexico requested an extension of time for the development of a blaster certification program. On May 14, 1984, OSM announced its decision to extend New Mexico's deadline to March 4, 1985 (49 FR 20287). On February 6, 1985, New Mexico requested an additional one-year extension to submit a blaster training program and examination. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional one-year extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSM that it would be unable to meet the March 4, 1984 deadline and requested a one-year extension to develop and adopt a blaster certification program. On May 14, 1984, OSM granted New Mexico an extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of New Mexico Energy and Mineral Department advised OSM that the State would require another one-year extension of time to submit its blaster training and examination program. He stated that the New Mexico Blasting Regulations need to be rewritten and approved by the Coal Surface Mining Commission. In addition, the Director stated that the State must develop a Blaster's Examination for certification of blasters and develop a budget for the blaster training, examination and certification program. An additional one-year extension was requested.

In the March 18, 1985 **Federal Register** (50 FR 10793), OSM proposed an additional one-year extension for New Mexico to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 17, 1985. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for New Mexico to submit a proposed blaster training program until March 4, 1985. This extension will allow the Director of the New Mexico Energy and Minerals Department to develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements

established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 93—NEW MEXICO

1. The authority citation for 30 CFR Part 931 continues to read as follows:

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 470 (30 U.S.C. 1253), unless otherwise noted.

2. 30 CFR Part 931 is amended by revising § 931.16 to read as follows:

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed amendment by the dates specified.

(a) By March 4, 1986, New Mexico shall submit for OSM's approval:

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) Reserved.

[FR Doc. 85–10923 Filed 5–7–85; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the Virginia statute concerning right of entry and right to inspect surface coal mining and reclamation operations.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Acting Director, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register**.

II. Submission of Amendment

By letter dated February 20, 1985, Virginia submitted revisions to section 45.1–244 and added a section 45.1–369.1 to the Code of Virginia (Administrative Record No. VA 550). The revisions relate to the right of entry and right to inspect surface coal mining and reclamation operations. The amendment is submitted by Virginia to comply with revisions to the Federal regulations at 30 CFR 840.12 (47 FR 35633, August 16, 1982, as amended at 48 FR 44781, September 30, 1983).

On March 18, 1985, OSM announced a public comment period and opportunity to request a public hearing (50 FR 10793). A public hearing scheduled for April 12, 1985, was not held since no one requested a hearing. The public comment period closed on April 17, 1985. No comments were received in response to the March 18 **Federal Register** notice.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Virginia on February 20, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

Virginia has revised section 45.1–244 and added a section 45.1–369.1 to the Code of Virginia. The revisions relate to the right of entry and right to inspect and monitor by the State regulatory authority. Specifically, the provisions provide that the authorized representatives of the Director, without advance notice and upon presentation of appropriate credentials shall have the right of entry to, upon, or through any coal surface mining reclamation operation; and shall have the right to inspect any monitoring equipment, any method of exploration, any method of operation, or any records required by this Chapter, and shall have the right to copy any such records. Further, no search warrant shall be required for any entry or inspection under this subsection except with respect to entry into a building.

The Director finds the amendment in accordance with section 517(b) of SMCRA and consistent with the Federal regulations at 30 CFR 840.12.

IV. Director's Decision

The Director, based on the above findings, is approving the February 20, 1985 amendment to the Virginia program. The Director is amending Part 946 of 30 CFR Chapter VII to implement this decision.

V. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no evironmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 946—VIRGINIA

1. The authority citation for 30 CFR Part 946 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 946 is amended by adding a new paragraph (o) to § 946.15 as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(o) The following amendment was approved effective May 8, 1985. Amended Section 45.1–244 and addition of a new section 45.1–369.1 of the Code of Virginia, relating to the inspection and monitoring of coal surface mining and reclamation operations, submitted February 20, 1985.

[FR Doc. 85–10924 Filed 5–7–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

40 CFR Part 180

[PP 2F2603 and 3F2882/R638; FRL–2831–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a rule on thiabendazole that appeared at page 14106 in the **Federal Register** of April 10, 1985. This action in necessary to correct a typographical error.

EFFECTIVE DATE: Effective on May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–1900.

SUPPLEMENTARY INFORMATION:

§ 180.242 [Corrected]

In FR Doc. 85–8034 appearing at page 14107 in the table in paragraph (a) of § 180.242 *Thiabendazole; tolerance for residues,* the parts-per-million entry for "Wheat grain" is corrected from "10.0" to read "1.0."

Dated: April 26, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–10912 Filed 5–7–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP5F3208/R764; FRL–2831–4]

Pesticide Tolerance on an Agricultural Commodity Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide carbaryl in or on the raw agricultural commodity pineapples. This rule to establish the maximum permissible level for residues of carbaryl in or on the commodity was requested by Union Carbide Agricultural Products Co., Inc.

EFFECTIVE DATE: Effective on May 8, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of April 26, 1985 (50 FR 16543), that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709, had filed a petition proposing to amend 40 CFR 180.169 by establishing a tolerance for residues of the insecticide carbaryl (1-naphtyl *N*-methylcarbamate) in or on the raw agricultural commodity pineapples imported from Mexico at 2.0 parts per million (ppm).

The data submitted in the petition and all other relevant material has been evaluated. The toxicological data considered in support of the tolerance included a three-generation rat reproduction study with a no-observed-effect-level (NOEL) of 200 mg/kg, a rat feeding study which was negative for oncogenic effects at 400 ppm (HLT) and has a no-observed-effect level (NOEL) of 200 ppm (10 mg/kg). Also, 10 other studies were used to evaluate the oncogenic potential of carbaryl. No significant increase in the incidence of tumors was observed in these studies at levels as high as 400 ppm (highest level tested). Although each study was found to contain some flaws in scientific design or reporting of data, the Agency believes that when the 10 studies are examined collectively they provide sufficient evidence that carbaryl is not oncogenic in experimental animals and therefore does not pose an oncogenic risk to humans.

Twenty-four studies were used to evaluate the teratogenic potential of carbaryl. After evaluating these studies, the Agency has concluded that the available data do not indicate that carbaryl constitutes a potential human teratogen or reproductive hazard under proper use. However, because certain teratology studies with dogs did not rule out teratogenic effects in that species, concern has been expressed for dogs treated with carbaryl to control fleas and tickss. But because there are problems in these studies, particularly maternal toxicity at all dose levels, it is not clear that carbaryl would prove to be teratogenic in the dog if tested and evaluated under current procedures, or if so, at what levels. The Registration Standard for carbaryl issued in March 1984 required that carbaryl registrants conduct an additional dog teratology study to settle this matter. In response to this requirement, Union Carbide has requested the Agency to reconsider the necessity of another teratology study in the dog. Thus, the Agency is currently reevaluating the need for a repeat dog teratology study. This toxicology data base was previously evaluated when carbaryl was a candidate for Special Review (previously known as Rebuttable Presumption Against Registration). The Agency published its determination and findings in the **Federal Register** of December 12, 1980 (45 FR 81869), that the data did not support allegations of unreasonable adverse effects to humans, and therefore a Special Review was not warranted. Essentially, the Agency concluded that

the data do not indicate that carbaryl constitutes a potential oncogenic, teratogenic, or reproductive hazard under proper use. More recently, the Agency reexamined these data as part of the reregistration process for carbaryl. In the Guidance Document, dated March 30, 1984, the Agency reaffirmed the conclusions reached in the previous evaluation.

Based on the 2-year chronic rat feeding study with a NOEL of 10.0 mg/kg and using a safety factor of 100, the acceptable daily intake (ADI) for humans is calculated to be 0.1 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) resulting in the human diet from this and previously established tolerances utilizes 91.57 percent of the ADI. The requested tolerance on pineapples will increase the TMRC by approximately 0.0016 per cent.

The metabolism of carbaryl is adequately understood, and an adequate analytical method (HPLC) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of carbaryl; however, a nonrodent (dog) feeding study of at least 1-year duration has been determined to be a data gap.

FDA has submitted a pineapple processing study that demonstrates that carbaryl does not concentrate in the edible pulp or juice, but these data do demonstrate that carbaryl does concentrate in the inedible portion (bran). A feed additive tolerance of 20.0 ppm carbaryl will be established at a later date for wet and dry pineapple bran. Although pineapple bran can be a major feed item for cattle, goats, horses, sheep, and swine, the established tolerances in milk and the fat, kidney, liver, meat and meat by-products of cattle, goats, horses, sheep, and swine are adequate to cover any secondary residues in these commodities from this use. In addition, since there is only sufficient fresh pineapple residue data from Mexico, this tolerance will not support carbaryl's use on domestically grown pineapples (Hawaii and Puerto Rico). To support such a use, additional residue data (edible pulp and juice, bran and forage) are needed from Hawaiian grown pineapples and a proposed tolerance on pineapple forage is required. Until these requirements have been met, the Agency is not in a position to entertain applications for registration under sections 3 or 24(c) of FIFRA for carbaryl's use on pineapples grown in the U.S. or its territories.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 26, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for 40 CFR Part 180 is revised to read as follows;

Authority: 21 U.S.C. 346a.

2. Section 180.169(d) is added to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

(d) A tolerance is established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) in or on the raw agricultural commodity pineapples at 2.0 parts per million.

[FR Doc. 85–10913 Filed 5–7–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 85–211]

Permitting Attorneys' Submissions to the Commission Unaccompanied by Their Signatures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 1.52 of the Commission's Rules to permit attorneys and parties not represented by counsel to file facsimile copies of documents with the Commission.

This action is taken by the Commission in efforts to eliminate an unnecessary requirement imposed by our regulations.

EFFECTIVE DATE: June 10, 1985.

ADDRESS: Federal Communications Commission, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Kaminer, Office of General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Report and Order

In the Matter of the Revision of § 1.52 of the Commission's Rules to Permit Attorneys' Submissions to the FCC Unaccompanied by their Signatures.

Adopted: April 25, 1985.

Released May 2, 1985.

By the Commission.

1. Petitioner [1] have requested that the Commission amend § 1.52 of the Commission's Rules, 47 CFR 1.52, to permit attorneys to file documents with the Commission without their actual signature.

2. Section 1.52 now requires documents filed by attorneys to bear the actual handwritten signature of an attorney.[2] The rule reads, in pertinent part, as follows:

The original of all petitions, motions, pleadings, briefs, and other documents filed by an party represented by counsel, shall be signed by at least one attorney of record in his individual

[1] Petitioners, Joseph A. Belisle, Carey L. Ewing, Ashton R. Hardy, Wade Hargove, Dennis F. Kahane, Matthew L. Leibowitz, Larry D. Perry, Frederick A. Polner and John M. Spencer, filed a "Petition for Declaratory Ruling or, in the alternative, for Rulemaking" on May 30, 1984.

[2] Section 1.52 also requires pleadings submitted by parties not represented by counsel to be verified.

name, whose address shall be stated. . . . The signature of an attorney constitutes a certificate by him that he has read the document; that to best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

The Commission's rule parallels that of the federal courts.[3]

3. Petitioners suggest that the rule be amended to permit "(a) employees or agents of a attorney to sign that attorney's signature to pleadings, petitions, motions, briefs or other documents when: (i) The attorney has read the document; and (ii) the attorney authorizes the employee or agent to sign the attorney's name to the document; and (b) pleadings to be filed with facsimile signature pages when: (i) the pleading is actually signed by an attorney; (ii) a facsimile of the signed signature page is transmitted for filing with the Commission; and (iii) the signed pleading is retained in the attorney's files.

4. We have examined the Commission's cases involving violations of the signature requirement contained in § 1.52. In those cases, the Commission seems to have been primarily concerned with whether the affixed signature, when not that of the attorney, was actually authorized,[4] or whether the absence of an attorney's signature signified a lapse in professional responsibility [5] or merely carelessness [6] in the preparation of the papers. The case law indicates that the primary purpose of the attorney signature requirement is to assure accountability on the part of attorneys practicing before this Agency.[7]

5. The rules of other federal agencies differ as to the importance of the presence of an original signature. Some agencies require the signature as the indicia to responsibility.[8] Other agencies require no signature.[9] At least one agency requires an original signature;[10] another has given no such indication.[11]

6. The Securities Exchange Commission (SEC) has recently examined the filing of documents in an electronic format. The SEC's Temporary Rules And Forms For The Pilot Electronic Disclosure System,[12] designated "EDGAR" (Electronic Data Gathering, Analysis and Retrieval), embraces all filings with the SEC. For the use of EDGAR, the SEC assigns personal identification numbers ("PINs") and passwords, to be used singly by individuals, or in combination with one another, by companies. To obtain a PIN, an applicant submits a signed agreement, which remains on permanent file with the Agency until withdrawn. Together, the form and the use of the PIN with each entry constitute a user's signature.

7. We have carefully reviewed Petitioners' arguments and have concluded that the rule requiring the affixation of an attorney's original signature is unnecessary to protect the integrity of the Commission's processes. We are of the view that attorney accountability can be maintained by permitting attorneys to file pleadings which contain facsmile reproductions of their original signatures so long as an original document containing an original signature is retained in the files of the attorney. We are similarly convinced that we can maintain the integrity of our processes while permitting parties unrepresented by counsel to file facsimile copies of documents providing they retain the originals thereof for inspection by the Commission in the event a question as to authenticity is raised.

8. We propose to maintain attorney accountability for facsimile signatures to the same extent as for actual signatures. Therefore, a facsimile signature will constitute a certificate that the signatory has read the document, that, to the best of his knowledge, there is good ground to support it and that it is not interposed for delay.

9. We propose to require attorneys or unrepresented parties to retain the original document until the Commission's decision is final and no longer subject to judicial review.

10. We find that prior notice and comment procedures are unnecessary to implement the rule amendments in the attached Appendix because the amendments involve general rules of agency practice or procedure. *See* 5 U.S.C. 553(b)(3)(A).

11. In view of the foregoing and pursuant to Sections 4 (i) and (j) of the Communications Act of 1934, as amended, it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective June 10, 1985.

12. For further information contact Steve Kaminer, Office of General Counsel, (202) 632-6900.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 1—[AMENDED]

The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Section 1.52 is revised to read as follows:

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. Except

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[3] Rule 11 of the Federal Rules of Civil Procedures requires that pleadings be signed by the representing attorney:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. * * * The signature of an attorney or party consitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose. * * * Fed. R. Civ. P. 11, as codified in 28 U.S.C. § 11.

[4] *University of Houston for Renewal of Licenses of Noncommercial Educational Stations KUHT(TV) and KUHF(FM)*, 68 FCC2d 566, 567 (1978).

[5] *Clayton W. Mapoles*, 34 FCC 2d 1036, 1041 (1972).

[6] American Television Relay Inc., 11 FCC 2d 553, 558 (1968).

[7] The Commission has made it clear that a casual attitude toward the signature requirement will not be tolerated, saying, "[W]e demand full compliance therewith." *See Mapoles, supra*, at 1041.

[8] National Labor Relations Board, 29 CFR 102.21; Patent and Tradmark Office, Department of Commerce, 37 CFR 1.346 and 2.15.

[9] Nuclear Regulatory Commission, 10 CFR 2.101. The party or applicant must provide the name and address of any representative, however, 10 CFR 2.101(a)(3)(ii) (That person apparently need not be an attorney) The Maritime Administration, Department of Transportation, also does not require the signature of an attorney in certain procedures. 46 CFR 202.3. The Department of Energy does not require a signature since a party must inform the Department of any representation by another. 10 CFR 205.4.

[10] "The original of each document filed shall have a hand signed signature by an attorney of record for the party . . . ." Federal Trade Commission, 16 CFR 4.2(e)(1).

[11] *E.g.*, Benefits Review Board, Department of Labor, 20 CFR 802.215.

[12] 49 FR 28044 (July 10, 1984).

when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this rule or if scandalous or indecent matter is inserted.

[FR Doc. 85-11103 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

Amateur Radio Service Rules; Specifying Only That Another Station's Call Sign May Not Be Transmitted for Identification Purposes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document clarifies the Amateur Radio Service Rules by specifying only that an amateur station may not transmit, for purposes of identifying the station, any call sign which has not been assigned to it. This action is necessary to resolve uncertainty as to when another station's call sign may be mentioned. The effect of the rule is to permit the mention of another station's call sign in normal conversation, and other circumstances.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio.

Order

In the matter of amendment of § 97.121 of the amateur radio service rules.

Adopted: April 25, 1985.

Released: May 1, 1985.

1. The Managing Director has under consideration a petition filed by David Popkin, 303 Tenafly Road, Englewood, New Jersey 07631-0528, requesting reconsideration of the Order of January 16, 1985, (50 FR 3525, January 25, 1985). That Order editorially amended § 97.121 of the Amateur Rules to clarify that the call sign of another amateur station could be transmitted when responding to a general call or as part of the required station identification procedure. Petitioner points out that by specifying the circumstances when an amateur radio station may transmit a call sign not assigned to it, the rule now implies all other use of another call sign is unauthorized. No oppositions to the petition for reconsideration have been filed.

2. As examples of his concern, petitioner refers us to one station's use of another's call sign when calling on a pre-arranged schedule, or the mention of a call sign during normal conversation. Petitioner believes that the rule should be amended to prohibit transmission of another call sign only when the other call sign is used for the purpose of identifying the station; or amended to include all the times when an amateur radio station can transmit the call sign of another station.

3. We agree with the petitioner that § 97.121 could be construed as restricting the use of another amateur station's call sign in the circumstances that petitioner cites, although that was not our intent. As stated in the Order of January 16th, the intent of the rule is to preclude the unlawful use of a false call sign as an unlicensed station or to avoid detection. Nevertheless, since some confusion still exists with respect to this rule, we will amend it further to specify only that an amateur station may not transmit, for the purpose of identifying the station, any call sign which has not been assigned to it.

4. Accordingly, in view of the foregoing, the petition for reconsideration is granted.

5. Because this clarifying rule amendment rule is non-substantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable.

6. It is ordered, that § 97.121 of the Commission's Rules is amended as set forth in the Appendix.

7. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.231(d) and 1.106(a)(1) of the Commission's Rules.

8. The effective date of this rule amendment is May 20, 1985.

Federal Communications Commission.

Edward J. Minkel,

Managing Director

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 97 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Section 97.121 is revised to read as follows:

§ 97.121 False signals.

An amateur radio station must not transmit:

(a) False or deceptive signals or communications by radio; *NOR*

(b) For purposes of identifying the station, any call sign which has not been assigned to it. Notwithstanding the foregoing, when a station is operated within the privileges of the operator's class of license but which exceed those of the station licensee, station identification must be made by following the station call sign of the station being operated with the operator's primary station call sign in accordance with § 97.84(b).

[FR Doc. 85-10937 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1314, 1315, 1319, 1331, 1337, and 1353

[Docket No. 50343-5043; Amdt. 85-1]

Acquisition Regulation; Competition in Contracting

AGENCY: Department of Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the Commerce Acquisition Regulation (CAR) to implement the Competition in Contracting Act of 1984, Pub. L. 98-369 (CICA), and amendments to the Federal Acquisition Regulation (FAR) which incorporate and reflect changes to Federal acquisition policy required by the CICA. This interim rule also makes a number of miscellaneous changes to the CAR unrelated to implementing the CICA and FAR revisions. These involve the issuance of internal policy guidance on acquisition matters, uniform procurement numbering, small purchase order forms, small business contracting

procedures, precontract costs, and data reporting forms.

DATES: This interim rule is effective as of April 1, 1985. Written comments on the interim rule will be considered if received on or before June 12, 1985.

ADDRESSES: Send written comments to: Director, Office of Procurement and Administrative Services, HCHB, Room H6316, U.S. Department of Commerce, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, D.C. 20230. Please cite CAR; Amendment 85–1 in any written comments submitted and mark the outside of the envelope, "Comments on CAR; Amendment 85–1". The public docket rulemaking file including all comments received on the interim rule may be inspected by the public during normal business hours in Room H6414 at the above address.

FOR FURTHER INFORMATION CONTACT: David Beveridge, Procurement Analyst, Office of Procurement Management HCHB, Room H6414, U.S. Department of Commerce, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, D.C. 20230, (202) 377–4248.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1984 the Department of Commerce issued a rule known as the Commerce Acquisition Regulation (CAR) (49 FR 12956–12969, March 30, 1984). That rule implemented and supplemented the Federal Acquisition Regulation (FAR) which was separately promulgated by the General Services Administration (CSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA). The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, "Federal Procurement Reforms".

The primary purpose of this amendment to the CAR is to implement the Competition in Contracting Act of 1984, Pub. L. 98–369 (CICA), and recent revisions to the FAR made by CSA, DOD, and NASA to implement that Act. The CICA and the revisions to the FAR require increased use of full and open competition in the acquisition of property and services by agencies of the Federal Government. The CICA requires that any solicitation for bids or proposals issued by the Department on or after April 1, 1985 comply with the requirements of the Act.

This amendment revises the CAR to provide for full and open competition for the Department of Commerce's procurements by requiring that sealed bids be solicited or competitive proposals be requested, or that other competitive procedures be employed, unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. Appointment of the competition advocates required by the CICA is also provided for.

This amendment also revises the authority for issuing internal policy guidance on acquisition matters, provides for the issuance of a Commerce Acquisition Manual to provide long term internal policy guidance to Department contracting offices, changes the approval level for precontract costs, establishes procedures for the review by the Office of Small and Disadvantaged Business Utilization (OSDBU) of subcontracting plans, establishes new contract data reporting procedures and establishes and provides for the use of new small purchase order forms.

Administrative Procedure Act Requirements

Because this amendment involves matters of agency management, public property, and contracts, under subsection 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), it is exempt from all requirements of section 553 including giving notice of proposed rulemaking, providing an opportunity for comment, and delaying the effective date until at least 30 days after publication or service.

Small Business and Federal Procurement Competition Enhancement Act Requirements

Section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98–577, added a section 22 to the Office of Federal Procurement Policy Act requiring that notice of proposed rulemaking and at least 30 days opportunity for comment be given for acquisition regulations having a significant cost or administrative impact on contractors or offerors and specifying that such regulations may not take effect until 30 days after such notice.

Subsection 22(d) of the Office of Federal Procurement Policy Act allows the issuing officer to waive the notice of proposed rulemaking, at least 30 days opportunity for public comment, and 30 days delay in effective date requirements of section 22, if urgent and compelling circumstance make compliance with such requirements impracticable.

To the extent that any portions of the regulation are subject to the notices, comment, and delay in effective date provisions of section 22, the issuing officer hereby finds that because the CICA requires that any solicitation issued by the Department on or after April 1, 1985 comply with the requirements of the CICA, that urgent and compelling circumstances exist which make compliance with the requirements impracticable.

Section 22(d) requires that if this waiver is utilized, the notice issuing the regulation must state that the rules are temporary and must allow the public at least 30 days in which to comment on the temporarty rule, beginning on the date the rule is published.

Accordingly, the rule is issued on a temporary or interim final basis, effective retroactively to Apri 1, 1985. Written comments are invited and will be considered in promulgating a final rule if received on or before June 12, 1985.

Regulatory Flexibility Act Requirements

Since notice and an opportunity for commment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553), and since no other law requires that notice and an opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Impact Analysis has to be or will be prepared.

Executivie Order 12291 Requirements

Under Executive Order (E.O.) 12291, the Department must judge whether this interim rule is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This interim rule is not major because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has to be or will be prepared. This interim rule was submitted to the Office of Management and Budget (OMB) for review in accordance with E.O. 12291 and OMB Bulletin 85–7.

Paperwork Reduction Act Requirements

This interim rule does not contain collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 48 CFR Ch. 13

Government procurement.

For the reasons set forth in the preamble, Chapter 13 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., April 30, 1985.

Hugh L. Brennan,

Director, Office of Procurement and Administrative Services, U.S. Department of Commerce.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Chapter 13 of Title 48 of the Code of Federal Regulation is amended as set forth below:

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

2. Section 1301.301(b) is revised to read as follows:

1301.301 Policy.

* * * * *

(b) The Procurement Executive or designee may issue internal Department guidance in the form of Acquisition Letters, policy manuals, or model operating procedures. Documents issued under this authority are not published in the **Federal Register.**

(1) Acquisition Letters are serially numbered letters which provide immediate short term policy guidance on selected acquisition topics to Department contracting offices. They normally expire within one year from the date of issuance.

(2) The Commerce Acquisition Manual is a manual which provides long term policy guidance on selected acquisition topics to Department contracting offices. The guidance contained in the manual normally remains in effect until cancelled or revised. The numbering system parallels the FAR to the greatest extent practical.

* * * * *

PART 1302—[AMENDED]

3. The authority citation for Part 1302 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

4. Section 1302.1–1 is amended by adding the following definition for "Head of the Operating Unit" after the definition for "Head of the contracting office":

1302.1–1 [Amended]

* * * * *

Head of the Operating Unit means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), acting as the host for the Department's Regional Administrative Support Centers, and any Head of the Operating Unit as defined in Department Organization Order (DOO) 1–1 so long as that Operating Unit is responsible for its own contracting operations.

* * * * *

5. Section 1302.1–1 is further amended by revising paragraph (j) of the list of duties of the Procurement Executive to read as follows:

* * * * *

(j) Promote full and open competition; and

* * * * *

6. A new Part 1304 is added to read as follows:

PART 1304—ADMINISTRATIVE MATTERS

Subpart 1304.6—Contract Reporting

1304.601 Federal Procurement Data System.

(c) The Department uses a computer generated reporting system to collect and report data for contract actions over $10,000. The data collection points are identified within a standardized procurement numbering system format specified in the DOC Procurement Data System Handbook.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

7. The heading of Subchapter B is revised to read as set forth above.

PART 1305—[AMENDED]

8. The authority citation for Part 1305 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

9. Part 1305 is moved from Subchapter A to Subchapter B.

10. A new Part 1306 is added to Subchapter B to read as follows:

PART 1306—COMPETITION REQUIREMENTS

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

(b)(1) Every proposed contract action under the authority of FAR 6.202(a) shall be supported by a determination and findings (D&F) signed by the Head of the Contracting Activity.

Subpart 1306.3—Other Than Full and Open Competition

1306.304 Approval of the justification.

(a) If the action is within his or her delegated authority, the Head of the Contracting Activity may issue class justifications for other than full and open competition for:

(1) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(2) Contracts under the authority cited in FAR 6.302–4 or 6.302–5; or

(3) Contracts for educational services from nonprofit institutions.

(b) No other class justifications are authorized for other than full and open competition.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

The Director of the Office of Procurement Management is designated as the Competition Advocate for the Department. The Head of the Operating Unit shall designate a competition advocate for each contracting activity under his direction. The contracting activity competition advocate shall be designated at a level no lower than the Deputy to the Head of the Contracting Activity.

PART 1314—SEALED BIDDING

11. The authority citation for Part 1314 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

12. The heading to Part 1314 is revised as set forth above.

13. A new subsection 1314.404-1 is added to Subpart 1314.4 of Part 1314 as follows:

1314.401-1 Cancellation of invitations after opening.

The head of the contracting office has been delegated the authority to make the determination under FAR 14.404-1 (c) and (e).

PART 1315—[AMENDED]

14. The authority citation for Part 1315 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

1315.307 [Removed]

15. Part 1315 is amended by removing Subpart 1315.3 consisting of section 1315.307.

16. A new section 1315.608 is added to Subpart 1315.6 of Part 1315 as follows:

1315.608 Proposal evaluation.

The head of the contracting office has been delegated the authority to make the determination under FAR 15.608(b).

PART 1319—[AMENDED]

17. The authority citation for Part 1319 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

18. A new subsection 1319.202-2 is added to Subpart 1319.2 of Part 1319 as follows:

1319.202-2 Locating small business sources.

(b) The contracting officer shall send a copy of the requisition form for all procurement actions expected to exceed $500,000 ($1,000,000 for construction) to the Office of Small and Disadvantaged Business Utilization, as promptly after receipt as possible. The Office of Small and Disadvantaged Business Utilization shall review the procurement actions and recommend action to the contracting officer. Orders under GSA schedule contracts, orders under Department or Government-wide indefinite delivery contracts, or actions within the scope of the changes, value engineering, or similar contract clauses are exempt from the requirements of this subsection.

19. A new Subpart 1319.7 consisting of 1319.705-5 is added to Part 1319 as follows:

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantage Business Concerns

1319.705-5 Awards involving subcontracting plans.

Prior to making an award that requires a subcontracting plan, the contracting officer shall forward the proposed contract (including the plan and supporting documentation) to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to allow that office to review the material and submit advisory recommendations to the contracting officer. The contracting officer shall send the material to the following address:

Director, Office of Small and Disadvantage Business Utilization, U.S. Department of Commerce, Herbert C. Hoover Building, Room H6411, 14th St. between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. 20230.

The Director of the OSDBU will notify the Small Business Administration procurement center representative of the opportunity to review the proposed contract (including the plan and supporting documentation), to allow that representative an opportunity to participate in any advisory recommendations to be submitted to the contracting officer. The Director of the OSDBU shall return the material and any recommendations to the contracting officer within 5 working days after the material is received by OSDBU, providing all pertinent documents have been received by the OSDBU.

PART 1331—[AMENDED]

20. The authority citation for Part 1331 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

21. Subsection 1331.205-32 of Subpart 1331.2 of Part 1331 is revised to read as follows:

1331.205-32 Precontract costs.

The payment of precontract costs must be approved in writing by the head of the contracting office.

PART 1337—[AMENDED]

22. The Authority citation for Part 1337 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

23. Subsection 1337.205 of Subpart 1337.2 of Part 1337 is revised to read as follows:

1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in the Department Administrative Order on *Approval of Advisory and Assistance Services* (DAO 216-13).

PART 1353—[AMENDED]

24. The authority citation for Part 1353 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

25. Subsection 1353.204-2 of Subpart 1353.2 of Part 1353 is revised to read as follows:

1353.204-2 Contract reporting (CD 409).

(a) *CD 409 (11/84) Report of Individual Procurement (over $10,000).* CD 409 is prescribed for Department-wide use in reporting individual contract actions above $10,000, in lieu of SF 279.

26. A new section 1353.213 of Subpart 1353.2 of Part 1353 is added as follows:

1353.213 Small purchase and other simplified purchase procedures (CD 404).

(e) *CD 404 (1/84) Supply, Equipment of Service Order.* In lieu of OFs 347 and 348, CD 404 is prescribed for Department-wide use as follows:

(1) To accomplish small purchases

(2) To issue orders under basic ordering agreements

(3) To issue orders for paid advertisements

(4) To issue orders for construction or dismantling, demolition, or removal of improvements.

27. A new section 1353.232 of Subpart 1353.2 of Part 1353 is revised as follows:

1353.232 Contract financing.

A Department approved procurement request form certifies the availability of adequate funds for contract actions (See FAR 32.702). The Department's procurement request form also transmits technical and other specifications of the request, administrative approvals and clearances, and information for processing payments.

28. Appendix A is amended to remove Form CD 338 and add CD Forms 409 and 404.

Note.—This Appendix does not appear in the Code of Federal Regulations.

Appendix A—Forms

BILLING CODE 3510-17-M

FORM CD-409 (11-84)
PRESCRIBED BY
FAR (48 CFR 4.601)

U.S. DEPARTMENT OF COMMERCE

REPORT OF INDIVIDUAL PROCUREMENT (OVER $10,000)

TRANSACTION TYPE
0 Add
1 Delete
2 Change

1. DOC CONTRACT, PURCHASE OR DELIVERY ORDER NUMBER

2. DOLLARS (Round to Nearest Dollar)

3. OTHER CONTRACT NUMBER (Contract ordered Against)

4. MODIFICATION, TASK, OR CHANGE ORDER NO.

5. EFFECTIVE AWARD DATE — Mo. Day Yr

5A. EST. COMPLETION DATE (Optional) — Mo. Day Yr

6. READY REQUISITION DATE — Mo Day Yr

7. DOLLARS ASSOCIATED WITH ADVISORY AND ASSISTANCE SERVICES (Round to Nearest Dollar)

7A. ADVISORY AND ASSISTANCE PRODUCT SERVICE CODE

8. PRODUCT/SERVICE CODE (From FPDS Product Service Code Manual)

9. PRINCIPAL PLACE OF PERFORMANCE — State or Country; City, Place or County

10. KIND OF PROCUREMENT ACTION
1. Initial Letter Contract
2. Definitive Contract Superseding Letter Contract
3. New Definitive Contract
4. Order Under Reporting Agency's Contract
5. Modification
6. GSA Federal Supply Schedule
7. Order Under Another Agency's Contract
8. Termination for Default
9. Termination for Convenience

11. TYPE OF CONTRACT
A - Fixed Price Redetermination
J - Firm Fixed Price
K - Fixed Price Economic Price Adjustment
L - Fixed Price Incentive
R - Cost Plus Award Fee
S - Cost No Fee
T - Cost Sharing
U - Cost Plus Fixed Fee
V - Cost Plus Incentive Fee
Y - Time and Materials
Z - Labor Hours

12. SUBJECT TO STATUTORY REQUIREMENTS
A. Walsh-Healey Act, Manufacturer
B. Walsh-Healey Act, Regular Dealer
C. Service Contract Act
D. Davis-Bacon Act
E. Not Subject to above Statutory Requirements

13. METHOD OF CONTRACTING
1. 2 Step Formal Advertising
2. Other Formal Advertising
3. Negotiated Competitive
4. Negotiated Noncompetitive
5. Directed Acquisitions for Foreign Governments
6. Tariff or Regulated Acquisition
7. Negotiated Competitive-Restricted Advertising

14. NEGOTIATION AUTHORITY (See Reverse for Codes)

15. EXTENT OF COMPETITION
Competitive
A1 Small Business Total Set-Aside
A2 Small Business Partial Set-Aside
A3 Labor Surplus Area Set-Aside
A4 LSA/Small Business Set-Aside
A9 Other Negotiated Competitive
Noncompetitive Negotiated
B1 Buy Indian
B2 8(a) Program
B3 Follow-On After Competition
B9 Other Negotiated Noncompetitive

16. LABOR SURPLUS AREA (LSA)
3. LSA-Tie Bid Preference
5. Not a LSA Award
7. Total LSA/Small Business Set-Aside Preference
8. Total LSA Set-Aside Preference

17. TYPE OF BUSINESS
Small Business
A1 Disadvantaged 8(a)
A2 Owned by Minority
A3 Other Small Business or Individual
Large Business
B1 Minority Business
B2 Other Large Business
Outside U.S.
E1 Acquired & Used Outside U.S.
E2 Acquired Outside U.S., Used Inside U.S.
Non-Profit
C1 Private Educ. Org.
C2 Hospital
C3 Research Inst. Foundation, Lab
C4 Other Institutions
C5 Minority Non-Profit
C6 Minority Private Educ. Org.
State/Local Gov
D1 Educational
D2 Hospital
D3 Research Organization
D4 Other State/Local
D5 Minority Educational

18. WOMAN-OWNED BUSINESS
1. Yes
2. No
3. Not Certified
0. Exempt

19. TRADE DATA
Number of Bidders Offering Foreign Items
Buy American Act: % Difference
Country of Manufacturer

20. SYNOPSIS CODE
1. Synopsized Prior to Award
2. Not Synopsized Due to Emergency
3. Not Synopsized Due to Other Reasons

21. MULTI-YEAR PROCUREMENT
1. Yes
2. No

22. SUBCONTRACTING PLAN
1. Yes
2. No

23. CONTRACTOR CODE

24. CONTRACTOR NAME AND ADDRESS (Incl. Division)

25. CONTRACT SPECIALIST/PROCUREMENT AGENT
Name ____________

26. CONTRACTING OFFICER SIGNATURE
____
I certify that the above information is accurate

(Instructions on Reverse Side)

USCOMM-DC 84-52015

TRANSACTION TYPE

1 Delete = Removal of invalid report

2 Change = Correction of errors on a previous report except for control field error

0 Add = A new action not previously reported

1. DOC CONTRACT, PURCHASE OR DELIVERY ORDER NUMBER

Enter the DOC contract, purchase, or delivery order number. LEFT JUSTIFY

2. DOLLARS

Enter the dollars (round to the nearest dollar) obligated or deobligated. RIGHT JUSTIFY

3. OTHER CONTRACT NUMBER

Enter the number of the contract being ordered against when placing a delivery order. If not placing a delivery order, leave this blank. LEFT JUSTIFY

4. MODIFICATION NUMBER

Enter the modification, task order or change order number. RIGHT JUSTIFY

5. EFFECTIVE AWARD DATE

Enter the effective date of award

5A. ESTIMATED COMPLETION DATE

Enter the estimated completion date

6. READY REQUISITION DATE

Enter the date the requisition was ready for processing by procurement.

7. DOLLARS ASSOCIATED WITH ADVISORY AND ASSISTANCE SERVICES

Enter dollars obligated or deobligated for advisory and assistance services. (See DOC FPDS Handbook for the list of services reportable under this heading and DAO 216-13 section 3. for their definition.)

7A. ADVISORY AND ASSISTANCE PRODUCT/SERVICE CODE

Enter code for services specified in DOC FPDS Handbook.

8. PRODUCT SERVICE CODE

Enter the 4-character product/service code

9 PRINCIPAL PLACE OF PERFORMANCE

Enter the code to report the principal place of performance.

10. KIND OF PROCUREMENT ACTION

Enter the kind of procurement action

11. TYPE OF CONTRACT

Enter the type of contract

12. SUBJECT TO STATUTORY REQUIREMENTS

Enter the code that identifies the statutory requirement

13. METHOD OF CONTRACTING

Enter the method of contracting

14. NEGOTIATION AUTHORITY

Enter the 2-character negotiation authority only if reporting a negotiated procurement

CODE	MEANING
01	-National Emergency (i.e., Small Business Unilateral Set-Aside, Labor Surplus Area Set-Aside)
02	-Public Exigency
03	-Purchase not more than $25,000
04	-Personal or Professional Service
05	-Services of Educational Institutions
06	-Purchase Outside the United States
07	-Medicine or Medical Supplies
08	-Supplies Purchased for Authorized Resale
09	-Perishable or Non-Perishable Subsistence
10	-Impractical to Secure Competition by Formal Advertising
11	-Experimental, Developmental, Test or Research
12	-Classified Purchases
13	-Technical Equipment Requiring Standardization and Interchangeability of Parts
14	-Negotiation after Advertising
15	-Otherwise Authorized by Law (i.e., Small Business Joint Set-Asides, 8(a) awards)

15. EXTENT OF COMPETITION

Enter the extent of competition

16. LABOR SURPLUS AREA (LSA)

Enter the appropriate code

17. TYPE OF BUSINESS

Enter the type of business

18. WOMAN-OWNED BUSINESS

Enter the appropriate code

19. TRADE DATA

- Enter the number of bidders offering foreign items
- Enter the percentage difference applied under the Buy American Act
- Enter the country of manufacturer

20. SYNOPSIS CODE

Enter the code reflecting Commerce Business Daily synopsis

21. MULTI-YEAR PROCUREMENT

Enter whether or not this is a multi-year procurement action

22. SUBCONTRACTING PLAN

Enter whether or not a subcontracting plan is required

23. CONTRACTOR CODE

Enter the contractor's 9-character DUNS number

24. CONTRACTOR NAME AND ADDRESS

Print the name and address of the contractor. Include the name of the contractor division if applicable.

25. CONTRACT SPECIALIST/PROCUREMENT AGENT

Enter the last name of the contract specialist or procurement agent who is responsible for processing this procurement action.

26. CONTRACTING OFFICER SIGNATURE

To be signed by Contracting Officer who certifies that the information on this form is correct. The original of this form is to be retained in the contract file.

USCOMM-DC 84 52015

UNITED STATES DEPARTMENT OF COMMERCE
SUPPLY, EQUIPMENT OR SERVICE ORDER

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND PAPERS RELATING TO THIS ORDER

PAGE NUMBER	QUOTATION, REF. OR CONTRACT NO.	ORDER DATE	ORDER NUMBER	SUB
OF				

CHECK ONE	TO (Seller)	SHIP TO (Consignee and Destination)
☐ Purchase Order (See Reverse) ☐ Delivery Order (See Block 3)		
1099 ☐ TAX	EMPLOYER IDENTIFICATION NUMBER (EIN)	

LINE ITEM	ACTION CODE	DESCRIPTION	QUANTITY	UNIT ISSUE	UNIT PRICE	AMOUNT
		SELLER'S ORIGINAL				

FOB POINT	DISCOUNT TERMS	TOTAL ➧	
TIME FOR DELIVERY	SHIP VIA		

BILLING INSTRUCTIONS:

DO NOT SHIP ORDER TO THIS ADDRESS (Ship to Consignee Address Above)

Furnish invoice with our ORDER NUMBER to:

U.S. Department of Commerce
Management Service Center/P.O.
Caller Service Number 4025
Germantown, Maryland 20874

FAILURE TO SHOW OUR ORDER NUMBER ON INVOICE WILL DELAY PAYMENT. FREIGHT CHARGE OVER $100 REQUIRES BILL OF LADING

ISSUING OFFICE NAME AND ADDRESS	ORDERED BY (Name and Title)
	PHONE (Area Code and Number)
	CONTRACTING/ORDERING OFFICER SIGNATURE

FORM CD 404 (1 84)
MSC

USCOMM DC 84 2268

SELLER'S ORIGINAL

U.S. DEPARTMENT OF COMMERCE
TERMS AND CONDITIONS OF PURCHASE ORDER

THE FOLLOWING CLAUSES APPLY TO ALL PURCHASE ORDERS. IN ACCORDANCE WITH FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) 52.252, CLAUSES INCORPORATED BY REFERENCE, THOSE CLAUSES LISTED BY REFERENCE HAVE THE SAME FORCE AND EFFECT AS IF THEY WERE GIVEN IN FULL CONTEXT. UPON REQUEST THE CONTRACTING OFFICER WILL MAKE THEIR FULL TEXT AVAILABLE.

1. INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the Government.
2. VARIATION IN QUANTITY (APRIL 84) - FAR 52.212-9
3. PAYMENTS (APRIL 84) - FAR 52.232-1
4. DISCOUNTS FOR PROMPT PAYMENT (APRIL 84) FAR 52.232-8
5. CHANGES - FIXED PRICE (APRIL 84) FAR 52.243-1
6. DISPUTES (APRIL 84) FAR 52.233-1
7. BUY AMERICAN ACT - SUPPLIES (APRIL 84) - FAR 52.225-3
8. SERVICE CONTRACT ACT OF 1965 - CONTRACTS OF $2,500 OR LESS (APRIL 84) - FAR 52.222-40
9. SERVICE CONTRACT ACT OF 1965 (APRIL 84) - FAR 52.222-41
10. EQUAL OPPORTUNITY (APRIL 84) - FAR 52.222-26
11. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APRIL 84) - FAR 52.222-36
12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (APRIL 84) - FAR 52.222-4
13. CONVICT LABOR (APRIL 84) - FAR 52.222-3
14. OFFICIALS NOT TO BENEFIT (APRIL 84) - FAR 52.203-1
15. GRATUITIES (APRIL 84) - FAR 52.203-3
16. COVENANT AGAINST CONTINGENT FEES (APRIL 84) - FAR 52.203-4
17. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM) (APRIL 84) - FAR 52.249-1
18. FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the Contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this purchase order.

[FR Doc. 85-11056 Filed 5-7-85; 8:45 am]
BILLING CODE 3510-17-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Carex Specuicola to be a Threatened Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Carex specuicola*, to be a threatened species under the authority contained in the Endangered Species Act of 1937 (Act), as amended. Critical habitat is being designated. This plant occurs in Coconino County, Arizona, on the Navajo Indian Reservation. The three known populations and their habitat are currently threatened with impacts from livestock grazing and water development. This action implements the protection provided by the Act.

DATES: The effective date of this rule is June 7, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 2, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Region 2, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Carex specuicola is a perennial member of the family Cyperaceae (sedge family). This species was first collected by J.T. Howell in 1948, and the description was published by him in 1949. *Carex specuicola* has a triangular stem 25–40 centimeters (10–16 inches) high, which extends from an elongate, slender rhizome (underground stem). The leaves are pale green, 1–2 millimeters (.04–.08 inches) wide, 12–20 centimeters (4.7–7.9 inches) long, and clustered near the base. The flowers are in 2–4 groups or spikes. The terminal spike has both male and female flowers, with the female flowers above the male flowers. The lateral spikes contain only female flowers. The flowers are reduced and not showy; they consist of small, green-brown, scale-like parts 2–3 millimeters (.08–.12 inches) long and 1–1.5 millimeters (.04–.06 inches) wide. Flowering and fruit set occur from spring to summer, but most of the reproduction appears to be vegetative.

Carex specuicola is known only from sites near Inscription House Ruin on the Navajo Indian Reservation in Coconino County, Arizona. The plants are found around three shady seep-springs. The vegetation is pinyon juniper woodland at elevations of 1,740–1,824 meters (5,707–5,983 feet), with an average annual precipitation of approximately 19.4 centimeters (7.6 inches). Within its habitat *Carex* is locally common, growing in dense clumps from the rhizomes. Each population covers an area of less than 200 square meters (2,152 square feet) along the outflow from its respective seep-spring. In 1980, all plants were healthy and vigorous (Phillips *et al.*, 1981).

Federal actions involving *Carex specuicola* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Carex specuicola* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 7909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Carex specuicola* was included as a category-1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Carex specuicola*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Carex specuicola* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B) (iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published April 11, 1984 (49 FR 14406), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the April 11, 1984, proposed rule (49 FR 14406) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Flagstaff, Arizona, *Arizona Daily Sun* on May 9, 1984, which invited general public comment. Six comments were received, one each from the U.S. Forest Service, the Bureau of Indian Affairs (BIA), the Arizona State Agriculture and Horticulture Department, the Arizona Wildlife Federation, the International Union for Conservation of Nature and Natural Resources (IUCN), and a professional botanist at the University of Arizona. No public hearing was requested or held.

None of the comments contradicted the Service's findings of rarity or need of protection for *Carex specuicola*. Two commenters, the Forest Service and the BIA, however, did suggest additional field surveys be conducted to locate more plants. The Service agrees that the discovery of any currently unknown populations would be very beneficial, but these three populations were the only ones located in past survey work. Three commenters, the Arizona State Agriculture and Horticulture Department, the Forest Service, and the Arizona Wildlife Federation, suggested fencing be used to exclude livestock from the three springs where the species occurs and that water for livestock then

be piped outside the fenced enclosures. The Service finds that these measures may help protect the species, and watering sights are now found away from the *Carex* locations. The Arizona State Agriculture and Horticulture Department suggested not posting fenced areas or mapping plant habitat as these activities could provide locality information to unscrupulous collectors. Because *Carex specuicola* is inconspicuous and not subject to commercial or other trade, the Service does not believe posting fenced areas or mapping habitat will substantially increase the threats to the species. The Arizona Wildlife Federation suggested a monitoring system be established to ascertain population status, and the BIA suggested that in any monitoring system the effect of erosion be considered along with other factors that might jeopardize the species. The Service agrees monitoring will be needed to ensure maintenance of the species.

The BIA described grazing and water use in the areas occupied by *Carex specuicola*. In regard to grazing, the BIA stated there is not record of the number of livestock grazing in the areas prior to 1943. Carrying capacities were established in 1943 and livestock numbers have since remained constant, being regulated by permit. Grazing permits are renewed automatically but BIA action is required to cancel or modify them. With regard to water use, the BIA stated that two of the three seep-springs with *Carex specuicola* populations are presently used to water livestock. At one, livestock drink water caught in a natural basin downhill from the spring. At the other, a stone and mortar diversion has been built to direct water from the spring to a storage structure. Water from the storage structure flows through a pipe to a livestock drinker located away from the area occupied by *Carex specuicola*. These structures were built in the 1930's. Application for any additional livestock water development would have to be approved by the BIA, which states that it would review any proposal for water development with protection of *Carex specuicola* as a priority.

Neither the professional botanist at The University of Arizona nor the IUCN had any substantive comments on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Carex specuicola* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Carex specuicola* J.T. Howell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Carex specuicola* has only been found at its original locality around three seep-springs in the vicinity of Inscription House Ruin on the Navajo Indian Reservation. This habitat is vulnerable to changes resulting from water development for livestock. Heavy trampling in conjunction with livestock watering already occurs around two of the three seep-springs. An increase in the number of livestock could possibly damage the *Carex* populations. Severe impacts to any one of the three populations would have a substantial detrimental effect on the species (Phillips *et al.*, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial or other trade in this plant is not known to exist (Phillips *et al.*, 1981).

C. *Disease or predation.* Many species within the genus *Carex* are palatable to livestock and wildlife. Two of the three *Carex* sites are used as livestock water sources and grazing areas (mainly for sheep), especially the one at Inscription House Ruin Spring. While not expected, an increase in grazing pressure could be harmful to the species, and should be avoided until the grazing impact is thoroughly assessed (Phillips *et al.*, 1981).

D. *The inadequacy of existing regulatory mechanisms. Carex specuicola* is not protected by Federal law or the Arizona Native Plant Law. A permit is needed, however, from the Navajo Tribe for plant study or collection on the Reservation.

E. *Other natural or manmade factors affecting its continued existence.* The specific habitat requirements of *Carex specuicola*, the limited distribution, and small number of populations (3) make the existence of this species especially precarious in the event of habitat disturbance or any activity that results in the loss of a significant number of individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Carex specuicola* as threatened with critical habitat. Threatened status seems appropriate because of the restricted distribution of the species and the small size of populations which, although they are vigorous and reproducing well, are threatened by livestock grazing, habitat deterioration due to water development, and livestock trampling of areas around water sources. Also, the only protection for this species is a Navajo Tribal Law prohibiting study or collection of this species without a permit. No other laws, State or Federal, provide protection to this species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Carex specuicola* to include the entire areas occupied by the three known populations of the plant. The locations are on the Navajo Indian Reservation in Coconino County, Arizona, and are 40 x 5 meter (about 200 square meters) rectangular areas with their long axes in the direction of seep-spring flow, centered on the following points: (1) latitude 36°39′53″ N, longitude 110°47′18″ W; (2) latitude 36°40′07″ N, longitude 110°47′55″ W; and (3) latitude 36°40′18″ N, longitude 110°48′15″ W. The total area designated comprises about 600 square meters (about 0.15 acres), and contains all habitat presently known to be occupied by the species. Constituent elements are moist sandy to silty soils at shady seep-springs within the Navajo Sandstone Formation (Phillips *et al.*, 1981).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may

be affected by such designation. The activities that may potentially affect the critical habitat of *Carex specuicola* or be affected by its designation are spring development and grazing. Spring development could affect the free-flowing seep-springs upon which the species depends. Livestock trampling has contributed to some soil erosion on the steeper sandy soil sites at the Inscription House Ruin Spring site. Withdrawal of the critical habitat area from grazing (representing less than one Animal Unit Month and no grazing fees) or fencing may be warranted to protect the critical habitat from soil erosion or trampling. It is not expected that use of the seep-spring water for livestock watering will affect or be affected by the critical habitat designation because the watering sites are located away from the area where *Carex specuicola* is found. There is a coal mining operation about ten miles away from the critical habitat, but it is located in a different geologic formation and has a different water source than the critical habitat's water source. Small farms in the area may use excess water runoff, but are not expected to affect or be affected by the critical habitat designation. The BIA has informed the Service that it plans to monitor the critical habitat of *Carex specuicola* as part of its plans to develop an informal monitoring system for the resources under its jurisdiction. Currently, no plans for water development, farm use, or additional grazing permit applications are known that would involve Federal funds or permits for the area affected by the critical habitat designation.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained during the public comment period and concludes that no significant economic impacts are expected as a result of the designation and no adjustments to the area proposed as critical habitat are warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and the taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to *Carex specuicola*, if an adverse effect pertaining to spring development is expected and BIA funding or authorization is involved, the BIA must enter into consultation with the Service prior to issuance of a BIA permit. Permits for grazing are also issued by BIA.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Carex specuicola*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commercial trade in *Carex specuicola* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Carex specuicola* when revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. All three populations of *Carex specuicola* are on the Navajo Indian Reservation. It is anticipated that few collection permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

The critical habitat designation as defined in the proposed rule for *Carex specuicola* did not bring forth economic or other impacts to warrant consideration of adjusting the critical habitat designation. The critical habitat area is located entirely on Indian land within the Navajo Indian reservation in Coconino County, Arizona. The Navajo Indian Tribe owns and manages the critical habitat area. The BIA also has

some permitting and management authority over the critical habitat area. Based on BIA's current management and planned monitoring of the critical habitat area, it is not expected that significant economic impacts will result from the designation of critical habitat on the Navajo Indian Reservation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Literature Cited

Howell, J.T. 1949. Three new Arizona plants. Leaflets of Western Botany 5(9):148.

Phillips, A.M., B.G. Phillips, L.T. Green, J. Mazzoni, and N. Brian. 1981. Status report: *Carex specuicola* J.T. Howell. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 12 pp.

Authors

The authors of this final rule are Charles McDonald and Peggy Olwell, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor was E. LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Status information and a preliminary listing package were provided by Dr. A.M. Phillips, Dr. B.G. Phillips, L.T. Green, J. Mazzoni, and N. Brian, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Cyperaceae—Sedge family:						
Carex specuicola	None	U.S.A. (AZ)	T	178	17.96(a)	NA
*	*	*	*	*	*	*

3. Amend § 17.96(a) by adding the critical habitat of *Carex specuicola* as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12.

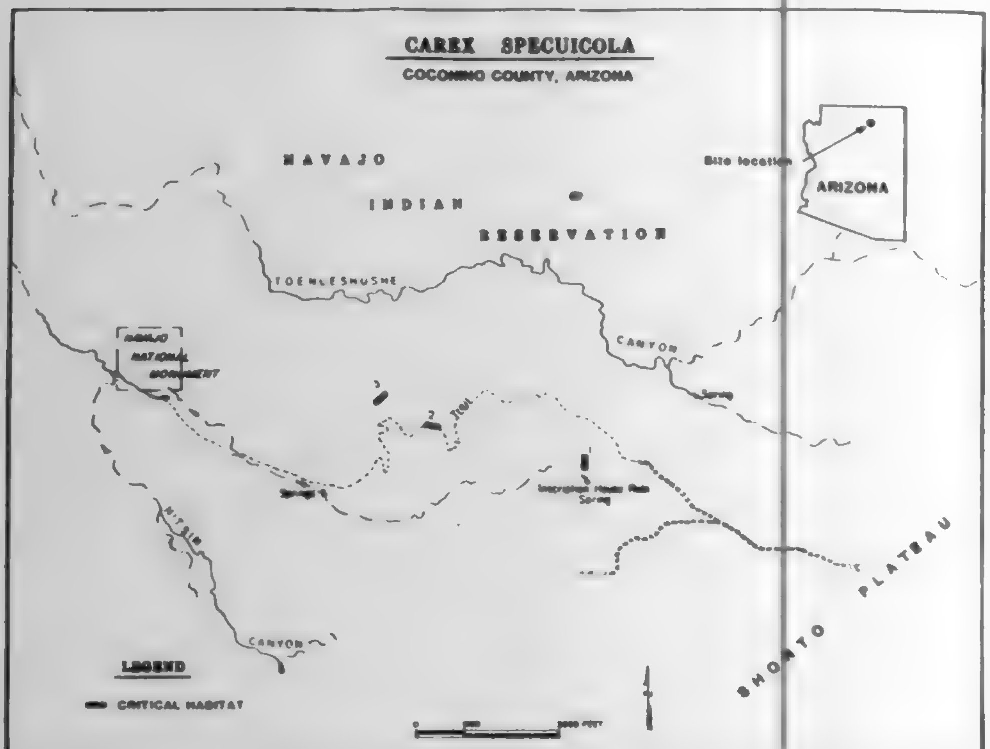
§ 17.96 Critical habitat—plants.

(a) * * *

* * * * *

Cyperaceae—*Carex specuicola*

Arizona: Coconino County; Navajo Indian Reservation. A 40 x 5 meter rectangular area, with its long axis in the direction of seep-spring flow, around each of the following points: (1) Latitude 36°39′53″ N, longitude 110°47′18″ W; (2) latitude 36°40′07″ N, longitude 110°47′55″ W; and (3) latitude 36°40′18″ N, longitude 110°48′15″ W. Primary constituent elements include moist sandy to silty soils at shady seep-springs within the Navajo Sandstone Formation.



* * * * *

Dated: March 25, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11097 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That Amsinckia Grandiflora Is an Endangered Species and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and designates critical habitat for *Amsinckia grandiflora* (large-flowered fiddleneck). This action is being taken because population numbers have declined since historic times, possibly as a result of modification of habitat for agricultural use, intensive livestock grazing, urban development, and other land use activities that have altered the natural plant communities within the large-flowered fiddleneck's historic range. Weedy exotic plants and aggressive *Amsinckia* species are presently invading the grassland habitat at the one site it now occupies. The species has an extremely restricted range, reduced gene pool, and low reproductive potential. The single known population, found in southwestern San Joaquin County, California, on Department of Energy land, has been observed from 1980 to 1984 and found to vary in size from 30 to 70 individuals for those years. There is the possibility that controlled burning and the testing of chemical explosives (both activities occur near its present environment) may be affecting the species. A determination that *Amsinckia grandiflora* is an endangered species and designation of its critical habitat will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is June 7, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address or 503/231–6131 or FTS 429–6131.

SUPPLEMENTARY INFORMATION:

Background

Amsinckia grandiflora was first collected in 1869 by Kellogg and Harford and was described in 1876 by Asa Gray. This annual species has red-orange flowers arranged in a fiddleneck-shaped inflorescence. Its bright green foliage is covered with coarse, stiff hairs. Historically, the species was found in Alameda, Contra Costa, and San Joaquin Counties, California. Today, it is known to survive only at a ½-acre site on Department of Energy (DOE) land, near Livermore, San Joaquin, California. The site is a grassy, steep, west- and south-facing slope of a small ravine with light-textured clay soil.

The reasons for the species' decline are not known, but two factors have been suggested. The reproductive system of *Amsinckia grandiflora* is considered "primitive." The species has two flower morphs, a condition that encourages outcrossing and may lead to lowered fecundity. The displacement of the large-flowered fiddleneck by aggressive fiddleneck species may be due to its inability to compete with species having higher fecundity (Ray and Chisaki, 1957; Ornduff, 1976). Also, the introduction of grazing animals into the Livermore area and the development of lands for agricultural and urban uses are believed to have been responsible for the extirpation of some populations. At this time fewer than 50 individuals are known to exist.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service pubished a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Endangered Species Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including the large-flowered fiddleneck. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including the large-flowered fiddleneck, to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2

years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), including *Amsinckia grandiflora*. On February 15, 1983, the Service published a notice (48 FR 6752) announcing its finding that the listing of this species, as petitioned by the Smithsonian Institution, may be warranted in accordance with section 4(b)(3)(A) of the Endangered Species Act as amended in 1982. On October 13, 1983, a further finding was made that listing of *Amsinckia grandiflora* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. On May 8, 1984, a proposed rule to list the large-flowered fiddleneck as endangered and designate its critical habitat was published (49 FR 19534), constituting a finding that the petitioned listing of the species was warranted.

Summary of Comments and Recommendations

In the May 8, 1984, proposed rule (49 FR 19534) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Oakland Tribune* on June 12 and in the *San Francisco Chronicle* on June 13. Five substantive comments were received from four sources and are discussed below. Also received was a comment from Bureau of Land Management that provided no information or recommendation.

All substantive comments received were favorable to the proposed rule. These comments were received from the Defenders of Wildlife, Dr. A.Q. Howard, Dr. T.O. Duncan, and the California Native Plant Society. Additional information was supplied in three letters of comment. The California Native Plant Society suggested that fire in the habitat might reduce competition from introduced grasses and weedy species of *Amsinckia* and should be studied as a tool for recovery actions. Dr. A.Q. Howard, of the University of California, Berkeley, discussed the establishment of *Amsinckia grandiflora* on the newly purchased Antioch Dunes National Wildlife Refuge, a site considered by her to be the probable "Antioch" site in historical collections. On the basis of studies by Dr. R. Ornduff, Dr. Duncan suggested that the present Corral Hollow site may be a natural site (it has been suggested that the site may be composed of displaced soil) and that construction of a road to the drop-tower may have altered natural drainages, thus affecting the species. He also reported the successful storage of seed by Dr. Ornduff in a home-type freezer. It was pointed out that "media events" held within the critical habitat may be as threatening to the species' survival as is scientific research. Scientific research was discussed under the Summary of Factors Affecting the Species, "Factor B," in the proposed rule.

In response to the above comments, most of the new information received applies to recovery actions to be initiated by the Service after listing of the *Amsinckia* and will be useful in implementing such actions. In response to Dr. Duncan, the discussion in "Factor B" of the proposed rule was not intended as a criticism of research studies on the *Amsinckia*. Such studies have been valuable both in our efforts at protection of the species and also in the field of population biology and evolution. The discussion was included in the proposed rule because such studies are seen as a *potential* threat and because of the need for careful monitoring of studies involving removal of plant material, in order to prevent adverse impacts. No impacts to the large-flowered fiddleneck from public visits are presently known. However, upon listing of the species, DOE will be required to ensure that visits granted to enter the critical habitat will not cause adverse effects to the *Amsinckia*. In addition, any removal and reduction to possession of individuals or parts of this species from the area under DOE jurisdiction will require a permit.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Amsinckia grandiflora* should be listed as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424, see 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amsinckia grandiflora* Gray (large-flowered fiddleneck) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The large-flowered fiddleneck is presently threatened by the invasion of aggressive *Amsinckia* species and weedy exotic plants into the grassland habitat it occupies. The small population occurs next to a drop-tower on DOE land. According to DOE, testing of the integrity of canisters and shipping containers is performed at the drop-tower; however, such tests are infrequent and detonation is not expected. Testing of explosives does not occur in the immediate vicinity of the population. Tests conducted nearby have the potential to start grass fires that could enter the species' habitat and affect the long-term survival of the species. In addition, DOE has authorized laboratory personnel to perform controlled burning in some test areas. Such burns, if conducted in or near the proposed critical habitat, may adversely affect the species and its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The large-flowered fiddleneck has an unusual flower morphology and highly restricted distribution, both of which contrast sharply with most other members of the genus. As a consequence, the species has been the subject of a number of studies concerning the reproductive biology and evolution of the genus *Amsinckia*. Such studies often require the use of plant materials, usually reproductive parts or occasionally whole plants. Such studies are potential threats to the species should population numbers continue to decline and collection of plant material not be monitored or managed to reduce impacts.

C. *Disease or predation.* Grazing may have been responsible, at least in part, for extirpation of some populations of this species. *Amsinckia grandiflora* is part of a remnant native grassland flora at the site it now occupies. The introduction of grazing animals into the Livermore area is thought to have degraded native grasslands that once existed there.

D. *The inadequacy of existing regulatory mechanisms.* Although the State of California lists the large-flowered fiddleneck as endangered, State law does not provide adequate protection for this species in its natural

habitat. The law provides that a landowner who has been notified by the State Fish and Game Commission that a State-listed plant is growing on her or his property must notify the Department of Fish and Game "at least 10 days in advance of changing the land use to allow for salvage of such plant." Although State law also provides for such measures as research, land acquisition, and trade restrictions, provisions of the Endangered Species Act would offer additional protection to this species and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Although very little is known about the ecology of *Amsinckia grandiflora*, recent pollination studies suggest that its reproductive system is primitive and relatively inefficient in comparison with related species (Ray and Chisaki, 1957; Ornduff 1976). Consequently, its inherently low reproductive potential places it at a distinct disadvantage in competition with other more aggressive or "weedy" species of *Amsinckia*. Furthermore, declines in population numbers could place this annual species below the reproductive level needed for replacement and recovery.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Amsinckia grandiflora* as endangered with critical habitat. In view of its demonstrated contraction of range and low population numbers, endangered status is considered most appropriate. The designation of critical habitat is discussed below.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Amsinckia grandiflora* to include one area of approximately 160 acres in San Joaquin County, California. This area includes the known primary constituent elements of a steep, west- and south-facing slope with light-textured but stable soils. The metes and bounds of the critical habitat can be found in the "Regulations Promulgation" section.

The Service is required to consider in determining what areas are critical habitat those physiological, behavioral, ecological, and evolutionary requirements essential to the conservation of the species and which may require special management considerations or protection. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of listed species.

With respect to the large-flowered fiddleneck, although little is known of its biology and ecology, it is the Fish and Wildlife Service's best judgment that the area designated as critical habitat will satisfy most of the plant's requirements on a long-term basis and is essential for its conservation. Thus it appears that the proposed critical habitat, with a steep west- and south-facing slope and light-textured but stable soil, satisfies the fiddleneck's most immediate physiological needs. The area designated may not include the entire suitable habitat of this plant, and revision of critical habitat may be warranted in the future.

The critical habitat designated exceeds the current range of the fiddleneck. The fiddleneck's range is now limited to a ½-acre area. Stabilization of the small population present within that area would likely not constitute recovery for the species, since a single grass fire or other local threat could render it extinct. The area designated as critical habitat is believed to contain places suitable for expansion or relocation; unless such areas are available, recovery would not be likely. Accordingly, the Service believes protection of this area is essential to the conservation of this species.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Any activity that would result in a disturbance of the soil or the hydrological regime where the large-flowed fiddleneck occurs would probably adversely modify the critical habitat. Also, any activity that may increase the frequency of grass fires in the area may adversely affect the population and modify the critical habitat. The University of California's Lawrence Livemore Laboratory has been given funding and authorization by DOE to conduct various activities in the vicinity of the large-flowered fiddleneck population and its critical habitat. The principal concerns are with construction activities, testing of chemical high explosives, and controlled burns. It is believed that these activities could have an adverse impact on the large-flowered fiddleneck and its habitat unless they are undertaken carefully.

Designation of critical habitat may affect Federal activities and actions in the vicintiy of the population by prohibiting or requiring modifications to, test activities, controlled burns, and construction activities. If appropriate, the impacts will be addressed during consultation with the Service as required by section 7 of the Act.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. No additional information has been obtained as a result of the proposed rule on economic or other impacts that might result in a change to the designation of the proposed critical habitat. The species occurs within a research facility on lands owned by DOE. DOE has informed the Service that designation of critical habitat is compatible with present and proposed activities occurring on its land.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection

required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that any activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. DOE funds various activities such as construction, testing of chemical high explosives and controlled burning on its lands. Consultation with the Service will be necessary to ensure that such activities do not adversely affect *Amsinckia grandiflora* or its critical habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Amsinckia grandiflora*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade is known for this species. It is anticipated that few trade permits will be sought or issued for the large-flowered fiddleneck.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Amsinckia grandiflora*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Amsinckia grandiflora* occurs on Federal lands. A few collecting permits for scientific research are anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The critical habitat designation, as defined in the proposed rule, for *Amsinckia grandiflora* did not bring forth economic or other impacts to warrant consideration of revising the critical habitat designation. The critical habitat area is located entirely on DOE lands. No significant changes in DOE management of the proposed critical habitat area are envisioned. DOE management of the area is compatible with the present and foreseeable uses of the area. The designation of critical habitat is not expected to result in any significant economic impact or significant changes in the research activities occurring within the critical habitat or on adjacent lands. No direct costs, enforcement costs, or information collection or record-keeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, at the address found in the "**ADDRESSES**" section.

Literature Cited

Ornduff, R. 1976. The reproductive system of *Amsinckia grandiflora*, a distylous species. Syst. Bot. 1:57–66.

Ornduff, R. 1977. Status report on *Amsinckia grandiflora*. California Native Plant Society. 4 pp. Unpublished.

Ray, P.M., and H.F. Chisaki. 1957. Studies on *Amsinckia*. I and II. Amer. J. Bot. 44:529–544.

Author

The primary author of this rule is Carol Wilson, U.S. Fish and Wildlife Service, at the address found in the "**ADDRESSES**" section.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Boraginaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Boraginaceae—Borage family:						
Amsinckia grandiflora	Large-flowered fiddleneck	U.S.A. (CA)	E	179	17.96(a)	NA
*	*	*	*	*	*	*

3. Amend § 17.96(a) by adding critical habitat of the large-flowered fiddleneck as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in 17.12(h).

§ 17.96 Critical habitat—plants.

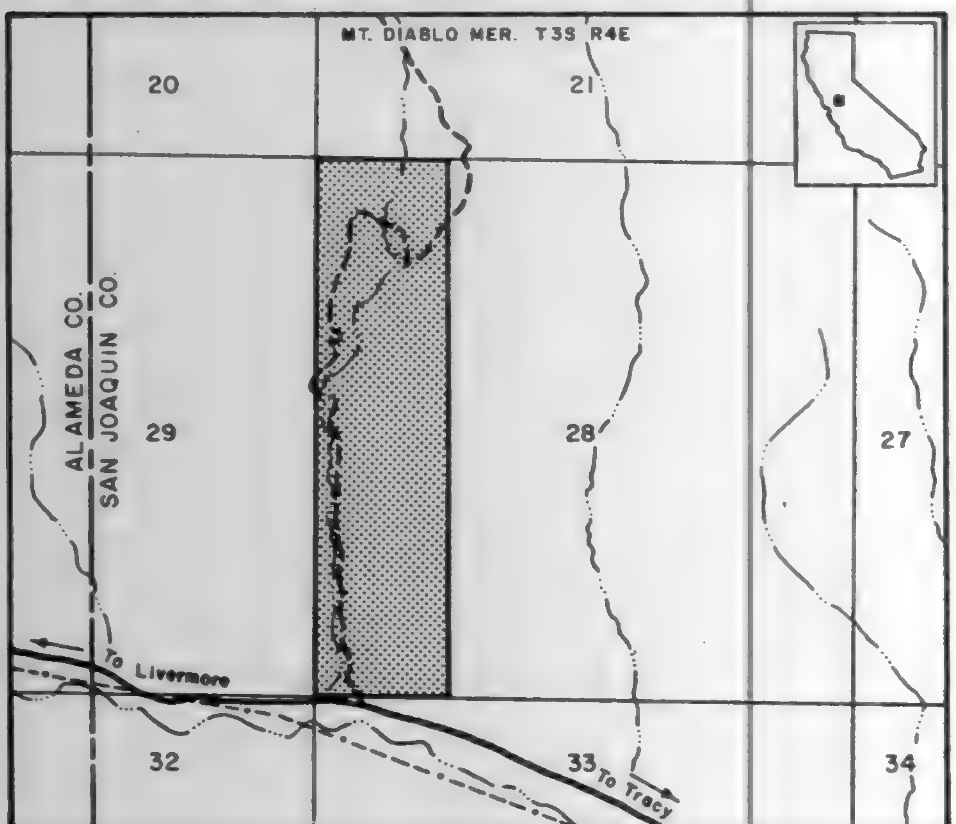
(a) * * *

* * * * *

Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck)

California, San Joaquin County, Mount Diablo Meridian, T3S R4E Section 28 W½ NW¼ and W½ SW¼.

This includes the known primary constituent elements of a steep, west- and south-facing slope with light textured but stable soils.



Dated: March 21, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11096 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 89
Wednesday, May 8, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), publishes for comment a proposed amendment to its regulation concerning the method by which banks for cooperatives' (BCs) earnings are to be distributed. This proposed amendment increases the amount of net savings derived from business done with or for patrons that may be used to create or maintain an unallocated surplus or unallocated reserve account from 10 to 50 percent.

DATES: Written comments must be received on or before July 8, 1985.

ADDRESSES: Submit any comments in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Holland, Assistant Director, Office of Examination and Supervision, (703) 883–4452

or

Kenneth L. Peoples, Office of General Counsel, (703) 883–4020

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: The Farm Credit Act of 1971, as amended (Act), requires that the net savings of banks for cooperatives be applied, under regulations prescribed by the FCA, on a cooperative basis with provision for sound, adequate capitalization. Further, the Act states that such regulations may provide for the establishment of reasonable contingency reserves (unallocated surplus or unallocated reserve accounts). These reserves can help to assure that the banks have an adequate capital base. The current 12 CFR 615.5370 restricts the amounts that may be added to the contingency reserves from the bank's "net savings" from business done with or for patrons, plus the total amount of any net earnings derived from nonpatronage (including nonmember) sources, to 10 percent. In view of current economic conditions, the Federal Board believes that BCs need to retain additional unallocated reserves to build their risk capital and that the present 10-percent limit imposed by 12 CFR 615.5370 is too restrictive. Therefore, the Federal Board proposes to amend 12 CFR 615.5370 to authorize, upon bank board approval, up to 50 percent of net savings from business done with or for patrons to be used to create or maintain the contingency reserve accounts. The amount of net earnings derived from nonpatronage (including nonmember) sources that may be contributed to the contingency reserves remains unchanged. Additional amounts beyond the 50-percent limit may be added with the approval of the FCA. Any amounts added shall first be reduced by related income taxes.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

PART 615—[AMENDED]

As stated in the preamble, it is proposed that Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations, be amended as follows:

1. The authority citation for Part 615 continues to read as follows:

Authority: Sections 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252).

2. Section 615.5370 is amended by revising paragraphs (a) and (c) as follows:

§ 615.5370 Banks for cooperatives' earnings.

(a) Whenever at the end of any fiscal year a bank shall have no outstanding capital stock held by the Governor, the net savings shall first be applied to the restoration of the amount of the impairment, if any, of capital stock, as determined by the bank board. Any remaining net savings or losses shall be distributed as authorized by the bank board. Twenty-five percent of such remaining net savings, or such other percentage as determined by the bank board, derived from business done with or for patrons may be used to maintain an allocated surplus account. Upon approval of the bank board, up to 50 percent of the net savings derived from business done with or for patrons, plus the total amount of any net earnings derived from nonpatronage (including nonmember) sources, may be used to creat or maintain an unallocated surplus or unallocated reserve account. Additional amounts beyond the 50-percent limit may be added with the approval of the Farm Credit Administration. The amount so determined shall first be reduced by related income taxes. For purposes of this regulation, all net savings shall be deemed to be from patronage sources unless otherwise determined by the bank. Cash patronage refunds shall not exceed 25 percent of the total amount of net savings allocated or paid to patrons except with Farm Credit Administration approval. Patronage refunds not paid in cash or allocated surplus shall be paid in capital stock and participation certificates as determined by the bank board. A net loss in any fiscal year shall be absorbed on the basis determined by the bank board. Any costs or expenses attributable to a prior year that are used in the computation of current year's net savings shall not be charged to reserves, surplus, or patronage allocations without the approval of the Farm Credit Administration.

* * * * *

(c) The phrase "service fees" as used in section 3.11(c) of tha Act refers to loan service fees and not income related to "technical assistance and financially related services" referred to in section 3.7 of the Act. If net savings from "technical assistance and financially related services" becomes more than incidental, such net savings shall be distributed as patronage to borrowers using such services.

* * * * *

Donald E. Wilkinson,
Governor.

[FR Doc. 85–11053 Filed 5–7–85; 8:45 am]
BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-1]

Proposed Alterations to VOR Federal Airways; Hawaii

Correction

In FR Doc. 85–9829 beginning on page 16095 in the issue of Wednesday, April 24, 1985, make the following correction on page 16096: In the third column, under V–15 [Revised], in the second line, "163°" should read "162°".

BILLING CODE 1505-01-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85–ASO–9]

Proposed Alteration of VOR Federal Airways and Jet Routes; Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V–51, V–437 and V–492 and Jet Route J–45 located in the vicinity of Vero Beach, FL. During a space shuttle launch or recovery operation it becomes necessary to reroute or vector traffic to circumnavigate that area. This action would reduce the requirement to vector traffic, aid flight planning and reduce controller workload.

DATES: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85–ASO–9, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, ecomonic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airways V–51, V–437, V–492 and Jet Route J–45 located in the vicinity of Vero Beach, FL. When a space shuttle launch or recovery operation is scheduled, it becomes necessary to reroute traffic to circumnavigate the Kennedy Space Center launch and recovery areas. This action would realign the affected airways and jet route clear of the Kennedy Space Center airspace and provide a bypass route in the Vero Beach, FL, area. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA had determined that this proposed regulation only involves an estahblished body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a signifcant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways, Jet routes, Aviation safety.

PART 71—[AMENDED]

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.123 [Amended]

V–51—[Amended]

By removing the words "Vero Beach; Vero Beach 343° INT Melbourne, FL, 161° radials; Melbourne; Melbourne 341° INT Ormond Beach, FL, 161° radials Ormond Beach; Ormond Beach, FL;" and substituting the words "Vero Beach, INT Vero Beach 329°T(320°M) and Ormond Beach, FL, 183°T(183°M) radials, Ormond Beach;" also, by removing the words "The airspace within R–2921, R–2922, R–2926, and R–2927 is excluded."

V–437—[Amended]

By removing the words "From Melbourne, FL;" and substituting the words "From Pahokee, FL; Melbourne, FL;"

V-492—[Amended]

By removing the words "INT Palm Beach 356° and Vero Beach, FL, 143° radials; to Vero Beach." and substituting the words "INT Palm Beach 356°T(359°M) and Melbourne, FL, 146°T(148°M) radials; to Melbourne."

PART 75—[AMENDED]

§ 75.100 [Amended]

J-45—[Amended]

By removng the words "Vero Beach; Ormond Beach, FL" and substituting the words "Vero Beach; INT Vero Beach 329°(329°M) and Ormond Beach, FL, 183°T(183°M) radials; Ormond Beach;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on May 2, 1985.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-11074 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24636; Notice No. 85-12]

Transponder-On Operation

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that all aircraft equipped with an operable radar beacon transponder have the transponder turned on while airborne in the National Airspace System. This action would enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in air traffic control (ATC) facilities. A transponder-on environment is expected to help increase controller awareness and facilitate recognition and resolution of potential traffic conflict situations. The proposed rule would not require installation of transponders.

DATE: Comments must be received on or before June 24, 1985.

ADDRESSES: Send comments on the rule in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, Docket No. 24636, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposal by submitting such written data, views, or arguments as they may desire. They should be submitted to the address indicated above. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on any regulatory, economic, environmental, and energy aspects of the proposal as well as all aspects of a required transponder-on operation as it may affect operations in any controlled airspace area. Communications should identify the regulatory docket or notice number, and be submitted in duplicate to the address listed above. Comments received will be reviewed on a continuing basis and any future FAA proposal or action may be changed in light of the comments received. Commenters wishing the FAA to acknowledge receipt of their comments in response to this rule must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 24636." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarized each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

Currently, Federal Aviation Regulations (FAR) do not contain a general requirement applicable to all controlled airspace wherein an aircraft with an operable transponder must have the transponder turned on. Although no general requirement exists, FAR Part 91 does specify two types of controlled airspace areas within which aircraft are required to operate with the transponder turned on. Specifically, FAR § 91.24 stipulates that aircraft operating above 12,500 feet mean sea level (MSL) or within terminal control areas (TCA) must be equipped with an operable Mode 3/A 4096 code radar beacon transponder and, in addition, the transponder must be replying to the Mode 3/A interrogation with the code specified by ATC.

The FAA believes that improved aircraft positional informational which is now readily available should be made available by requiring that transponders be turned on while aircraft are airborne within all controlled airspace. Transponder replies can greatly assist in obtaining aircraft position information which is essential to the provision by ATC of both safety and traffic advisory information to aircraft in flight.

For some time, the Airman's Information Manual (AIM) has contained information urging pilots to turn transponders on voluntarily as a good operating practice. While the AIM states that transponders should be operated while airborne, it is not a regulatory requirement in airspace outside of TCA's or below 12,500 feet MSL. The requirement to have the transponder turned on in all controlled airspace would enhance aviation safety in the National Airspace System by providing a higher degree of visual flight rules (VFR) aircraft target visibility to radar controllers in air route traffic control centers and terminal control facilities.

A requirement to turn transponders on was recently considered by a National Airspace Review (NAR) task group which, with the exception of a dissenting view by the Aircraft Owners and Pilots Association, adopted a position in favor of such a requirement. The NAR program is a comprehensive review of airspace use and procedural aspects of the ATC system. The joint effort includes representatives from aviation industry, FAA, the Department of Defense (DOD), and other government aviation agencies. Findings of NAR task groups represent a balance of views including users and the FAA. In September 1984, Task Group 2-3 convened in Washington, D.C., to review FAR's related to ATC. NAR Task Group 2-3 recommended that § 91.24 of the FAR be amended to require pilots of aircraft equipped with an operable radar beacon transponder while in controlled airspace, to operate the transponder, (including Mode C, if so equipped), on the appropriate code, or as assigned by ATC. Members of the task group making this recommendation represented the Air Transport Association, the Regional Airline Association, the National Air Transportation Association, the Department of Defense, the Air Line Pilots Association, Allied Pilots Association, Aircraft Owners and Pilots Association, Experimental Aircraft Association, National Business Aircraft Association, and the FAA. The specific recommendation of this task group to require that transponders be turned on

in controlled airspace was formally approved by the NAR Executive Steering Committee and forwarded to the FAA on December 4, 1984.

The FAA is aware that at certain times and in certain places a concentration of beacon targets could confuse and interfere with the efficiency of ATC rather than assist it. For example, during such occasions as high traffic density fly-ins, space launches, or such operations as touch-and-go landings, ATC may specifically ask pilots to turn transponders off or change transponder to "standby" or "low sensitivity" position. In some cases, because of the possibility of ATC radar saturation, clutter, or the phenomenon of "ring-around," ATC may direct pilots to "squawk standby" or "squawk low." In other instances, ATC may request the pilot to turn off a malfunctioning transponder.

It is not the intent of this proposal to create an inflexible requirement that could interfere with the efficiency of the National Airspace System or derogate ATC separation and advisory services. Rather, this action is intended to help increase controller awareness and recognition of potential traffic so that timely, positive actions may be taken to detect and resolve potential traffic conflict situations. This proposal would require no change to the current operational environment. Its purpose is to ensure that when needed for ATC traffic advisory and other services, and where ATC capability exists, aircraft with transponders will operate with transponders turned on. Therefore, consistent with the concept and intent to retain a flexible operational environment, and consistent with the language of the proposed rule which provides ATC authority to assign beacon codes, ATC could continue to instruct pilots to turn transponders off or "squawk standby" or "squawk low," as appropriate. These actions could be taken, as stated, for such purposes as the reduction of clutter in a multi-target area or "ring around" or other phenomena. In this regard, the FAA invites comments relative to situations when continued operation of the transponder could result in possible unsafe or inefficient operation of the National Airspace System.

In addition to leaving the current operational environment intact, the proposed amendment would also make no change to current ATC deviation authority. Under authority of § 91.24, ATC may continue to approve deviations immediately or on a continuing basis when necessary for safety and efficiency.

It is also not the intent of this proposal to change the application of § 91.172 "ATC Transponder Tests and Inspections." This section states that no person may use an ATC transponder that is specified in Part 125, § 91.24(a), § 121.345(c), § 127.123(b), or § 135.143(c) of this chapter unless within the preceding 24 calendar months, that ATC transponder has been tested and inspected and found to comply with Appendix F of Part 43 and certain other test and inspection requirements.

Under § 91.172, an operator of a transponder-equipped aircraft can elect to forego the 24-calendar-month test and inspection requirements and operate without using the transponder in all airspace except in TCA's and above 12,500 feet MSL.

Under this amendment an operator may continue to forego § 91.172 inspections and not use the ATC transponder. However, if the transponder is in compliance with the 24-calendar-month test and inspection requirements of § 91.172, it must be turned on when the aircraft is in controlled airspace.

Because this amendment generates no significant energy, cost, or other impacts on aircraft operators, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Regulatory Evaluation

The proposed requirement that transponders already installed in aircraft be turned on while such aircraft are airborne in the National Airspace System would not have a significant economic impact on airspace users. If adopted, the rule would not require the purchase, installation, or maintenance of any additional equipment nor would it require any additional recordkeeping. Only an imperceptible amount of additional electricity at negligible cost would be required to keep transponders in operation while the aircraft equipped with them are airborne. For the same reasons, a transponder-on-rule would not have a significant economic impact on a substantial number of small entities. While FAA has no estimate of the number, if any, of small entities which would be affected by the rule, the impact on individual operators is so minimal as not to meet the threshold of "significant impact" within the meaning of the Regulatory Flexibility Act. Therefore, it is certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 91

Aviation safety, Air traffic control, Airspace, Safety.

The Proposal

PART 91—[AMENDED]

In consideration of the foregoing, it is proposed to amend § 91.24 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91, § 91.24) by redesignating paragraph (c) as paragraph (d), and by adding new paragraph (c) to read as follows:

§ 91.24 ATC Transponder and altitude reporting equipment and use.

* * * * *

(c) *Controlled Airspace, all aircraft, transponder-on operation.* While in controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.172 of this Part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

* * * * *

(Secs. 307(a) and 313(a) Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)), 49 U.S.C. 106(g) Revised Pub. L. 97–449, January 12, 1983; and 14 CFR 11.45)

Issued in Washington, D.C., on April 3, 1985.

John R. Ryan,

Acting Director, Air Traffic Operations Service.

[FR Doc. 85–11073 Filed 5–7–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 84N–0239]

Draft Guideline for Veterinary Prescriptions and Other Orders; Draft Guideline Withdrawn

AGENCY: Food and Drug Administration.

ACTION: Notice of withdrawal of draft guidelines.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its Draft Guideline for Veterinary Prescriptions and Other Orders. The draft guideline was the subject of a public meeting held on August 22, 1984, and written comments.

FOR FURTHER INFORMATION CONTACT: Gary J. Dykstra, Center for Veterinary Medicine (HFV–201), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301,443–3400.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1984 (49 FR 30076), FDA announced that it would hold a public meeting on August 22, 1984, to discuss a draft guideline concerning the dispensing of veterinary drugs that are permitted to be used only by or on the prescription or other order of a licensed veterinarian (veterinary prescription drugs). The notice reproduced the draft guideline verbatim. The notice also stated that written comments in the draft guideline could be submitted by September 30, 1984. In the **Federal Register** of October 15, 1984 (49 FR 40188), FDA extended the comment period to December 31, 1984.

The draft guideline was developed in an effort to assist the agency in its attempt to control the over-the-counter sale of veterinary prescription drugs. The agency had, in its regulatory activities, enforced several of the criteria that were incorporated into the draft guideline. These criteria included, for example, the requirements of 21 CFR 201.110, a regulation that establishes labeling requirements to be met at the time of retail delivery of a veterinary prescription drug. These criteria also included the requirement that there be written records to document the existence of a veterinarian's prescription or other orders. The FDA's Center for Veterinary Medicine had believed that it might be useful to the public to describe these requirements in a single document, issued as a guideline. In addition, the agency included in the draft guideline several criteria that had not previously been stated as requirements.

Five people made formal oral presentations during the public hearing. In addition, 147 written comments were submitted. A few comments supported the guideline in total, while others supported the guideline in part. Still others, who opposed the guideline in total, appeared to misunderstand the key provisions and purposes of the guideline. For example, some comments assumed that the guideline would make illegal the distribution of any bulk, or large quantities of, veterinary prescription drugs. Many others submitting comments opposed the guideline because they thought that the guideline would require excessive paperwork, would increase the cost of veterinary prescription drugs to farmers and other users, and could limit the availability of such drugs to clients who need them. Certain comments stated that all veterinary drugs, whether labeled as prescription drugs or not, should be allowed to be distributed without a veterinarian's prescription or other order.

The agency has reviewed the comments carefully, and it is persuaded by the weight of the comments that the implementation of the guideline as proposed in unnecessary. Full implementation would place an unwarranted burden on United States livestock and poultry producers and on veterinarians. The agency has, therefore, decided to withdraw the guideline.

Withdrawal of the guideline, however, does not change: (1) The agency's position on the need for a veterinarian's prescription or other order in connection with the sale and use of a veterinary prescription drug; (2) the agency's position that a bona fide veterinarian/patient/client relationship must be involved in the distribution of veterinarian prescription drugs; and (3) the labeling and documentation requirements already imposed by statute and regulation, before the proposal of the draft guideline. For example, this action has no effect on the agency's enforcement of 21 CFR 201.110 or on FDA's policy that veterinarians and other dispensers of prescription veterinary drugs shall keep adequate written records of drugs they dispense. FDA will continue to pursue its efforts to control the illegal distribution of veterinary prescription drugs, especially when those drugs are intended for use in food animals.

Received comments and a transcription of the oral testimony may be seen in the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11042 Filed 5–7; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–245–84]

Mortgage Credit Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations that relate to mortgage credit certificates. Changes to the applicable tax law were made by the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 905). These regulations affect all holders and issuers of mortgage credit certificates. In addition, in the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to mortgage credit certificates. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 8, 1985. The regulations are proposed to be effective for interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, and for elections not to issue qualified mortgage bonds after 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–245–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulatios portion of this issue of the **Federal Register** add new §§ 1.25–1T through 1.25–8T to Part 1 of Title 26 of the Code of Federal Regulations and amend Part 6a of Title 26. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title of the Code of Federal Regulations. For the text of the temporary regulations, see FR Doc. 11017 (T.D. 8023) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

The regulations interpret the provisions of section 25 of the Code, which provides that an issuing authority may issue mortgage credit certificates to individuals to be used in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence. A qualified mortgage credit certificate entitles its recipient to claim a credit against his Federal income tax

based on the amount of mortage interest paid during the year.

The regulations permit great flexibility in the manner in which MCCs' may be issued and programs' administered. Examples are provided illustrating the manner in which certificates may be issued. Comments are requested with respect to other methods of issuing certificates and adminstering programs.

The proposed and temporary regulations provide, in general, that issuers may not limit the use of MCCs to indebtedness incurred from particular lenders. Thus, in general, holder of an MCC must be free to take the certificate to any lender and use it to obtain any type of mortgage. A major exception permits an issuer to impose limitations on the use of MCCs to indebtedness incurred from particular lenders after demonstrating to the satisfaction of the Commissioner that the proposed limitations will result in significant economic benefits to the MCC holders. Comments on this provision and information on the types of limitations that issuers believe will result in significant economic benefits to MCC holders are requested.

These regulations are proposed to be issued under the authority contained in section 25 and section 7805 of the Internal Revenue Code (98 Stat. 905, 26 U.S.C. 25; 68A Stat. 917, 26 U.S.C. 7805).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rule-making that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedures requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-11016 Filed 5-3-85; 2:59 pm]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 564]

Labeling and Advertising of Wine; Application of State Laws to Wine Labeled With a Viticultural Area Appellation

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend regulations relating to the application of state laws for wines labeled with American viticultural area appellations. Under § 4.25a(e)(3)(v) one requirement for use of a viticultural area appellation is that the wine conform to the laws or regulations of all the states contained in the area. In some cases this may subject wines grown, fermented and finished within a single state to the laws of other states even though the grapes or wine never entered any other state. This notice proposes to delete the Federal requirement that wine bearing a viticultural area appellation comply with all such state laws and regulations.

ATF finds compliance with all state laws within a multistate viticultural area inappropriate since it potentially imposes the laws of one state upon interstate or intrastate transactions not involving that state.

DATE: Written comments must be received by July 8, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attention: Notice No. 564.

Written comments will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background, T.D. ATF-53

Until Treasury Decision ATF-53 was issued August 23, 1978 (43 FR 37675), appellations of origin for domestic wines were generally names of states or in a few cases "regions" or "places." Treasury policy set forth in § 4.25(a)(3) required those wines to be made in conformity with the laws and regulations of such "place" or "region" governing the composition, manufacture and designation of wines. Since many domestic wines bore state appellations such as "California" or "New York," this regulation generally required compliance with state laws. This policy recognized the state interest in insuring the quality and integrity of wine bearing that states's name.

With T.D. ATF-53, viticultural areas were established as appellations of origin. American viticultural areas are defined in § 4.25a(e)(1)(i) as delimited grape growing regions distinguishable by geographical features, and recognized in 27 CFR Part 9. Because they are grape growing regions rather than political divisions such as counties or states, their boundaries have no relationship to political boundaries, and some viticultural areas occupy portions of two or more states.

One Federal requirement for use of an American viticultural area is conformity with all the laws and regulations of the states in which the viticultural area is located, § 4.25a(e)(3)(v). Thus, wine bearing a "Napa Valley" appellation is required by Federal regulation to conform to California law. Similarly, this

Federal requirement exists when a viticultural area encompasses more than one state. For example, wine bearing a "Lake Erie" viticultural area appellation is required by this section to conform to New York, Pennsylvania, and Ohio laws and regulations.

Multistate viticultural areas

The proposed "Columbia Valley" viticultural area (Notice No. 483, August 24, 1983, 48 FR 38497), has surfaced a problem with the labeling of wine with multistate viticultural areas. Geographic criteria support the establishment of this viticultural area in portions of both Oregon and Washington. However, both state regulations differ greatly regarding the manufacture and labeling of wine, and Oregon regulations are more stringent than Federal regulations. Since § 4.25a(e)(3)(v) requires compliance with laws and regulations of *all* states within a multistate viticultural area, regardless of where the wine is fermented or finished, wine made from grapes originating and fermented in Washington, and finished and bottled within Washington, is, nevertheless, subject to Oregon law if the wine bears a multistate viticultural area appellation such as Columbia Valley.

As a result, this regulation would appear to place an unfair burden on some wineries within multistate viticultural areas by subjecting a winery in one state to laws issued by another state even when the grapes or wine do not enter the other state during the course of wine production. ATF believes that § 4.25a(e)(3)(v) is unnecessarily strict and should be deleted.

Proposal

ATF is proposing to amend § 4.25a by deleting subparagraph (e)(3)(v) which requires compliance with the laws and regulations of all states contained within the viticultural area. The deletion of this Federal requirement would have no bearing on wines labeled with the name of a viticultural area located entirely within a single state.

The proposed change would affect the application of state laws when a viticultural area is located in portions of two or more states. By deleting § 4.25a(e)(v), only the state law or regulation of the state in which a winery was located would apply to wine bearing a multistate viticultural area appellation. In this way, a vintner producing such a wine would not be governed by state laws or regulations of states in which the producing winery was not located. ATF believes this proposal is especially appropriate when grapes are grown and fermented, and wine is fully finished entirely within one state of a multistate viticultural area. ATF does not believe that Federal regulation should impose the state laws or regulations of one state upon transactions occurring in other states. State laws of the state in which the wine was fermented or finished would, of course, continue to apply to the producing winery. These state laws would be enforced by the state involved.

Public Participation

ATF requests comments from all interested persons concerning this proposed regulation. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed regulation should submit his or her request, in writing, to the Director within the 60 day comment period. The request should include reasons why the respondent believes a public hearing is necessary. The Director reserves the right to determine whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4 is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat 981, as amended (27 U.S.C. 205), unless otherwise noted.

§ 4.25a [Amended]

Par. 2. Section 4.25a is amended by removing paragraph (e)(3)(v).

Signed: December 6, 1984.

W.T. Drake,

Acting Director.

Approved: February 12, 1985.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–11054 Filed 5–7–85; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2620

Valuation of Plan Assets

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth rules for valuing the assets of terminating non-multiemployer pension plans that are covered by Title IV of the Employee Retirement Income Security Act of 1974, *as amended,* (the "Act"). Under Title IV of the Act, the assets of a terminating plan must be valued and allocated to the plan's benefits. Because plan assets are often held in forms that are subject to different valuation methods, this regulation is necessary to provide uniform standards for plan administrators and employers to use in determining the value of plan assets. The effect of this regulation would be to ensure that the parties involved in plan terminations are provided with the guidance necessary to comply with the provisions of Title IV of the Act.

DATES: Comments must be received on or before July 8, 1985.

ADDRESSES: Comments should be addressed to the Director, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, Suite 7300, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection in Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-6476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1976, the Pension Benefit Guaranty Corporation (the "PBGC") published in the **Federal Register** a final regulation on Valuation of Plan Assets, 41 FR 18992 (codified at 29 CFR Part 2611, recodified as Part 2620). The regulation sets forth standards for valuing the assets of a terminating pension plan. In the preamble to the regulation, the PBGC noted that specific rules for the valuation of insurance contracts when they are held as plan assets were not included and that it would provide guidance on that issue in the future. Accordingly, on April 18, 1977, the PBGC published proposed amendments to the Valuation of Plan Assets regulation, setting forth rules for determining the value of insurance contracts and insurance contract rights that are held as plan assets (42 FR 20158).

Because of the passage of time, the PBGC is publishing new proposed rules for valuing insurance contracts and insurance contract rights, in order to receive current public comment on the issues presented. The rules proposed in this document differ substantively from the 1977 proposal in several respects. Additionally, non-substantive changes have been made to simplify the regulation.

In the discussion that follows, unless otherwise stated, references are to sections of the proposed regulation set forth in this document.

Overview of the Regulation

As in the 1977 proposal, this proposed rule would restructure the regulation. For the sake of clarity, the regulation has been divided into three subparts. Subpart A contains the general provisions of the regulation. Subpart B contains the rules for valuing plan assets other than insurance contracts and insurance contract rights. Subpart C sets forth rules for identifying insurance contracts and insurance contract rights that are plan assets and for determining their value.

It should be noted that the scope of this regulation also would be changed by this amendment. Unlike the original rules, this proposal does not apply to multiemployer pension plans (§ 2620.1(b)). The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364 (Sept. 26, 1980), 94 Stat. 1208, established a new insurance program for multiemployer plans, and regulations dealing with valuation of assets by such plans will be issued in the future.

In addition, this regulation has been coordinated with the PBGC's regulation on Determination of Plan Sufficiency and Termination of Sufficient Plans, which was published on January 28, 1981, 46 FR 9532 (codified at 29 CFR Part 2615, recodified as Part 2617). The "Sufficiency" regulation sets forth a procedure for plan administrators to follow in order to demonstrate whether the value of the plan's assets will be sufficient to provide plan benefits on the date the plan's assets are distributed, rather than the date of plan termination which is the valuation date for insufficient plans. Proposed § 2620.3 recognizes that alternate valuation date for sufficient plans.

With those exceptions, the provisions of Subparts A and B of this proposal do not differ substantively from the provisions of the final regulation published on May 7, 1976. Accordingly, the remainder of this preamble addresses Subpart C exclusively.

Valuation and Plan Sufficiency

Because the Sufficiency regulation provides that a plan administrator who demonstrates sufficiency may distribute plan assets to participants in the form elected by the participants, certain of the valuation rules proposed in 1977 are inapposite to a plan that is closing out pursuant to the Sufficiency regulation. For example, in the 1977 proposal, § 2611.12(a) provided that, in order to determine the value of an insurance contract, the contract's greatest cash settlement value had to be determined. Under § 2611.12(c) of that proposal, the greatest cash settlement value was to be either (1) the amount of a lump sum payment or (2) the fair market value of a series of installment payments. It is not productive, however, to require a plan administrator to determine the fair market value of a series of installment payments if the participants have elected to receive immediate lump sum distributions.

Accordingly, this proposal includes a rule to ensure that plan administrators who are demonstrating sufficiency or closing out a plan under the Sufficiency regulation are not forced to follow unnecessary valuation procedures. Under § 2620.13 of this proposal, for purposes of demonstrating sufficiency under Subpart B of the Sufficiency regulation and closing out a plan under Subpart C of that regulation, the plan administrator shall value insurance contracts and participation rights in the manner that reflects the highest value that can be realized in a form that will enable the plan administrator to close out the plan as required by the Sufficiency regulation.

Contract Provisions

Under the 1977 proposed amendments, the value of an insurance contract would have depended upon the alternatives expressly available under the contract as of the valuation date (1977 proposal § 2611.10—definition of "settlement options"). The PBGC reviewed this rule and determined that it was unnecessarily restrictive because the contractholder may be able to negotiate with the insurer for a higher value than the contract provides. Accordingly, a new § 2620.14 provides that the valuation of plan assets shall be based upon the provisions of the insurance contract as of the valuation date or upon other options available

from the insurer as of the valuation date. The existence of options other than those expressly contained in the insurance contract must be demonstrated by means of a written statement by the insurer. That section also makes clear that the plan administrator has the responsibility for obtaining the factual basis for the insurer's computations underlying its determination of value. Where the factual basis used by the insurer would lead to an unreasonable determination of value, the plan administrator is responsible for taking whatever action is necessary to arrive at a fair and reasonable determination of value.

Cash Settlement Value

Under the 1977 proposal, as well as this proposed rule, the basic method for determining the value of an insurance contract is to compare the contract's greatest cash settlement value with the present value of the benefits that can be purchased with the contract funds (1977 proposal § 2611.12(a); this proposal § 2620.15(a)). In the preamble to the proposed 1977 amendments, the PBGC noted that many insurance contracts give the insurer some discretion in calculating the amount of a cash settlement. It was and is the PBGC's expectation that insurers will be fair and reasonable in interpreting and implementing their contracts. This expection does not in any way, however, affect the plan administrator's responsibility to scrutinize the basis upon which the insurer has made its determination and to negotiate a settlement that is both fair and reasonable in light of the factors relevant to a determination of value, *e.g.*, mortality rates, interest rates, the value of future dividend streams and comparable contract prices.

The PBGC did, however, invite suggestions from the public on the need for special safeguards and the type of safeguards that might be adopted. In response to this invitation, one comment stated that many insurance contracts provide that the cash amount available upon liquidation of the contract is determined by means of a formula that is subject to periodic modification called, in insurance parlance, a "secretary formula." The comment suggested that the regulation require the insurer to use the formula in effect during the five-year period preceding plan termination that would produce the highest cash settlement. The PBGC has considered this suggestion but has not adopted it in this new proposal because that formula may no longer be available and, thus, would be irrelevant to an accurate determination of the fair value of the asset.

In the 1977 proposal, § 2611.12(c)(2) provided that "[t]he value of a settlement option requiring cash payments by the insurer in installments is the fair market value, determined in accordance with Subpart B of this part, of the right to recieve that stream of future payments." The PBGC has made three changes in this provision. First, one public comment on the 1977 proposal objected to the use of the term "settlement option" on the ground that its use might cause confusion since it is a term of art referring to the various ways in which the proceeds of life insurance policies can be paid other than in a lump sum. In light of the comment, the PBGC has eliminated from this proposed rule the term "settlement option" and , in its place, uses the term "cash settlement" (§ 2620.15(b)).

Second, in reviewing § 2611.12(c)(2) of the 1977 proposal, the PBGC decided that the fair market value concept set forth in Subpart B of the regulation might not be particularly helpful in valuing the right to receive the stream of future payments from the insurer. Subpart B's fair market value concept depends upon the existence of a market for the asset to be valued. The PBGC is not aware of a market for the right to receive the stream of future payments from the insurer. Accordingly, this proposal sets forth a new method for determining the value of a cash settlement that provides cash installment payments by the insurer. Proposed § 2620.15(b)(2) provides that the value of these installment payments is the present value of the payments calculated as of the valuation date, determined by applying an interest rate that is the sum of the PBGC's interest rate for valuing immediate annuities in effect on the valuation date plus one-half of one percent. The resulting interest rate is the rate the PBGC uses to value immediate annuities before adjusting for benefit administration costs.

Finally, the PBGC has clarified § 2620.15(b)(2) of the proposal to make explicit the fact that it applies to a deferred lump sum cash payment as well as to a series of installment payments.

Value of Participation Rights

The 1977 proposal provided in § 2611.14 that the value of participation rights was to be determined solely by reference to the cancellation of such rights. The PBGC received a number of public comments that were critical of this provision. As suggested by some of the comments, this proposal now provides a method for valuing participant rights that cannot be cancelled.

Section 2620.16(b) provides that if a participation right cannot be cancelled, the value of the right is the present value of the future stream of payments determined by reference to all relevant factors, such as interest rates, mortality rates, the past practice of the insurer regarding participation rights and comparable contract prices. The contractholder is responsible for negotiating with the insurer to make clear, in the contract, that the rights must either be cancellable or, if not, that the insurer must provide information with respect to the future stream of payments based on past dividend practice that is adequate for the plan administrator to determine the fair value of such rights.

Additionally, the rules dealing with the valuation of participation rights that can be cancelled has been slightly modified. Proposed § 2611.14 provided that the value of a participation right was the greater of the cash amount payable by the insurer upon cancellation of the right or the value of the benefits provided by the insurer upon cancellation of the right. Section 2620.16(a) of this proposed rule provides that the value of a participation right is the greater of the cash amount or the value of the additional benefits negotiated by the parties upon cancellation of the right.

In the preamble to the 1977 proposed amendments, the PBGC invited public suggestions on appropriate measures that the PBGC might take to assure that an insurer attributes a reasonable value to a plan's participation rights. In response, one comment suggested that "if abuse really occurs, PBGC might move to requiring prior disclosure of an insurer's practices upon contract termination in . . . greater detail than is now usually provided." The PBGC would be interested in public reaction to that suggestion.

Two comments suggested that, if a participation right cannot be cancelled, the PBGC should become the holder of the right, even in the sufficient plan context. While the PBGC might become the holder of participation rights when it becomes trustee of a plan, a possibility contemplated by this regulation, the situation is different in the case of plans that are not trusteed by the PBGC. Generally, it is the PBGC's view that its involvement with plans that can be closed out in the private sector should be kept to a minimum. It would be

inconsistent with this view of the PBGC's responsibilities under Title IV of the Act for the PBGC to become the holder of a plan's participation rights when the plan is sufficient.

Comments Invited

Interested persons are invited to submit written comments on this proposed regulation. Comments should be addressed to: Director, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each comment should identify this regulation and should include the name and address of the person submitting it and the reasons for any recommendation. This proposal may be changed in light of the comments received.

Classification: E.O. 12291 and Regulatory Flexibility Act

The PBGC has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation or on the ability of United State-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this regulation will not have a significant economic effect on a substantial number of small entities. All pension plans that terminate under Title IV of the Employee Retirement Income Security Act of 1974 must value their assets. By setting forth valuation methods, this regulation will make it easier for administrators of such plans to comply with the law. Compliance with sections 603 and 604 of the Regulatory Flexibility Act is accordingly waived.

List of Subjects in 29 CFR Part 2620

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, it is proposed to revise Part 2620 of Chapter XXVI of Title 29, Code of Federal Regulations, to read as follows:

PART 2620—VALUATION OF PLANS ASSETS IN NON-MULTIEMPLOYER PENSION PLANS

Subpart A—General

Subpart B—Assets Other Than Insurance Contracts

Subpart C—Insurance Contracts

Authority: Secs. 4002(b)(3), 4141, 4044 and 4062, Pub. L. 93–406, 88 Stat. 1004, 1020, 1025 and 1029 (1974), as amended by secs. 403(1), 403(d), 402(a)(7) and 403(g), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 and 1301 (1980) (29 U.S.C. 1302(b)(3), 1341, 1344 and 1362).

Subpart A—General

§ 2620.1 Purpose and scope.

(a) *Purpose.* This part sets forth rules governing the valuation of the assets of a terminating pension plan for purposes of Title IV of the Act.

(b) *Scope.* This part applies to non-multiemployer pension plans for which a Notice of Intent to Terminate is filed on or after the effective date of this part, or for which the PBGC commences a termination action on or after the effective date of this part.

§ 2620.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.*), *as amended.*

"Date of plan termination" means the date of plan termination established under section 4048 of the Act.

"Notice of Intent to Terminate" means a notice filed with the PBGC pursuant to section 4041(a) of the Act and Part 2616 of this chapter.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Non-multiemployer plan" means a pension plan described in section 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated), or by more than one trade or business (whether or not incorporated) all of which are under control within the meaning of Part 2612 of this chapter, or a plan maintained by more than one trade or business not under common control that is not a multiemployer plan as defined in section 4001(a)(3) of the Act.

§ 2620.3 Valuation date.

Except as otherwise provided, the assets of a plan that has been placed into trusteeship by the PBGC shall be valued as of the date of plan termination and the assets of a plan that closes out in accordance with Part 2617 of this chapter shall be valued as of the date plan assets are to be distributed.

Subpart B—Assets Other Than Insurance Contracts

§ 2620.5 Purpose and Scope.

This subpart sets forth rules for valuing plan assets other than plan assets described in § 2620.12.

§ 2620.6 Definitions.

For purposes of this subpart:

"Exchange" means a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

"Fair market value" means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

"National Association of Securities Dealers Automated Quotations Systems" means the automated quotations system sponsored by the National Association of Securities Dealers, Inc., a national securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934.

"Principally traded" means the market place at which the greatest volume of trades normally occurs.

§ 2620.7 General rule.

Plan assets to which this subpart applies shall be valued at their fair market value on the plan's valuation date, using the method of valuation that most accurately reflects fair market value.

§ 2620.8 Fair market value presumptions.

(a) *Treasury bills.* The fair market value of Treasury bills is presumed to be the value computed from the average of the bid and asked discount for the bill on the valuation date, as nationally published in a general circulation daily newspaper.

(b) *Treasury notes, bonds and Federal agency securities.* The fair market value

of Treasury notes, bonds and Federal agency securities is presumed to be the value computed from the average of bid and asked prices for the security on the valuation date, as nationally published in a general circulation daily newspaper.

(c) *Shares in open-end mutual funds.* The fair market value of shares in open-end mutual funds is presumed to be the net asset value (the redemption value) per share of the mutual fund on the valuation date, as nationally published in a general circulation daily newspaper.

(d) *Units of participation in a common trust fund or collective investment fund.* The fair market value of units of participation in a common trust fund or collective investment fund is presumed to be the value per unit of the fund as reflected on a statement of account prepared by the manager of the fund. The value per unit of the fund is to be determined in accordance with the procedures normally employed by the manager of the fund pursuant to the terms of the fund, and federal and state law and regulations, as applicable, and as of the normal date on which the fund is valued if that date is on or within 31 days after the valuation date. This presumption will apply only if there were no distributions from the fund in relation to units of the fund in the interval between the plan's valuation date and the normal valuation date of the fund.

(e) *Common and preferred stocks, warrants and closed-end mutual funds.* The fair market value of common and preferred stocks, warrants, and closed-end mutual funds is presumed to be the value determined in accordance with the rules set forth in Paragraphs (e)(1) through (e)(4) of this section, as follows:

(1) If the security is traded on the New York Stock Exchange and the plan's valuation date is on or before January 26, 1976, or traded on the American Stock Exchange and the valuation date is on or after March 1, 1976, the fair market value is presumed to be the closing sale price on the valuation date as reported by the consolidated last sale reporting system established pursuant to Rule 11Aa3–1, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as nationally published in a general circulation daily newspaper.

(2) If the security is principally traded on an exchange, other than as set forth in Paragraph (e)(1), the fair market value is presumed to be the closing sale price on the valuation date on the exchange where the security is principally traded, as nationally published in a general circulation daily newspaper.

(3) If the security is principally traded otherwise than on an exchange, and is quoted on the National Association of Securities Dealers Automated Quotations System, the fair market value is presumed to be the average of the end-of-day bid and asked prices for the security on the valuation date, as made available for publication by such system and nationally published in a general circulation daily newspaper.

(4) If there is no nationally published closing sale price or end-of-day bid and asked prices on the valuation date, the fair market value of the security is presumed to be—

(i) For securities traded principally on an exchange, the average of the nationally published closing sale price on the date nearest the valuation date and within five trading days before the valuation date and the nationally published closing sale price on the date nearest the valuation date and within five trading days after the valuation date; and

(ii) For securities principally traded otherwise than on an exchange, the average of (1) the average of the nationally published end-of-day bid and asked prices on the date nearest the valuation date and within five trading days before the valuation date and (2) the average of the nationally published end-of-day bid and asked prices on the date nearest the valuation date and within five trading days after the valuation date.

(f) *State and municipal obligations.* The fair market value of state and municipal obligations is presumed to be the average of bid and asked prices for the security on the valuation date, as nationally published in a general circulation daily newspaper. If there are no such nationally published bid and asked prices on the valuation date, the fair market value of the security is presumed to be the average of (1) the average of the nationally published bid and asked prices on the date nearest the valuation date and within five trading days before the valuation date and (2) the average of the nationally published bid and asked prices on the date nearest the valuation date and within five trading days after the valuation date.

Subpart C—Insurance Contracts

§ 2620.10 Purpose and scope.

This subpart sets forth rules for identifying insurance contracts and insurance contract rights that are plan assets and for determining their value.

§ 2620.11 Definitions.

For purposes of this subpart:

"Contractholder" means the owner of an insurance contract purchased with funds contributed to or under a plan. A participant who has received an insurance contract from or under a plan is not a "contractholder" for purposes of this subpart.

"Insurance contract" or "contract" means a valid written agreement between an insurer and a contractholder pursuant to which the insurer agrees to perform services including the payment of specified benefits or their equivalent in return for the payment of premiums or similar consideration. References in this subpart to "an insurance contract" include more than one contract, unless the plural is clearly inappropriate.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

"Participation right" means the right of a contractholder or plan, under an insurance contract, to receive future dividends, rate credits, interest, experience credits or other earnings or distributions from the insurer.

§ 2620.12 Plan assets.

(a) *Insurance contracts.* An insurance contract purchased with funds contributed to or under a plan is a plan asset for purposes of this part if, on the valuation date, the contract has not been distributed to a participant and the insurer's obligations under the contract have not been cancelled.

(b) *Participation rights.* A participation right under an insurance contract purchased with funds contributed to or under a plan is a plan asset for purposes of this part to the extent that the value of the participation right is not included in the value of an insurance contract that is a plan asset.

§ 2620.13 Special rule applicable to demonstrating sufficiency and closing out a plan under Subpart C of Part 2617.

Notwithstanding §§ 2620.14 through 2620.16, for purposes of demonstrating sufficiency under Subpart B of Part 2617 of this chapter and closing out a plan under Subpart C of Part 2617 of this chapter, the plan administrator shall value insurance contracts and participation rights in the manner that best reflects the highest value that can be realized in a form that will enable the plan administrator to close out the plan as required by § 2617.21 of this chapter.

§ 2620.14 Contract provisions.

(a) *General.* The valuation of plan assets under this subpart shall be based upon the provisions of the insurance contract as of the valuation date or upon other options available from the insurer as of the valuation date. The existence of such other options must be

demonstrated by means of a written statement by the insurer.

(b) *Responsibilities of plan administrator.* In determining the value of an insurance contract as of the valuation date, the plan administrator is responsible for critically assessing the reasonableness of the factors underlying the insurer's determination of the contract's cash value or the value of other options provided in lieu thereof. Where the factors underlying the determination are unreasonable, the plan administrator is responsible for taking whatever action is necessary to reach a reasonable value for the asset.

§ 2620.15 Value of insurance contracts.

(a) *General.* The value of an insurance contract is the greater of—

(1) The contract's greatest cash settlement value, determined in accordance with paragraph (b) of this section, as of the valuation date; or

(2) The present value, determined in accordance with Part 2619 of this chapter, of the benefits that can be purchased under the contract as of the valuation date by application of the contract assets described in Paragraph (c) of this section to the purchase of benefits in accordance with the order of priorities prescribed by section 4044 of the Act.

(b) *Cash settlement value.* (1) The value of a cash settlement that provides an immediate lump sum cash payment by the insurer is the dollar amount of the cash payment (including the value of participation rights under § 2620.16).

(2) The value of a cash settlement that provides a deferred lump sum cash payment (including the value of participation rights, if there are any, under § 2620.16) by the insurer or cash payments by the insurer in installments is the present value of such payments calculated as of the valuation date, determined by applying an interest rate that is the sum of—

(i) The PBGC's interest rate for valuing immediate annuities in effect on the valuation date, set forth in Appendix B of Part 2619 of this chapter; and

(ii) .5 (one-half) percent.

(c) *Contract assets.* (1) Contract assets are the funds credited to an insurance contract as of the valuation date that are available to provide benefits, including funds becoming available to provide benefits upon the cancellation of any participation rights held under the insurance contract.

(2) Contract assets do not include—

(i) Funds that the insurer is entitled, under the insurance contract, to withdraw in payment for an irrevocable commitment made by the insurer prior to the date of plan termination;

(ii) Funds that the insurer is entitled, under the insurance contract, to withdraw to satisfy liabilities of the plan that became due and owing prior to the valuation date;

(iii) Funds that the insurer is entitled, under the insurance contract, to withdraw to pay for administrative or other services performed by the insurer; and

(iv) Funds that have been paid to the insurer prior to the valuation date in return for benefits or services, which are credited to an account under the contract solely for the purpose of computing amounts payable pursuant to the plan's participation rights.

(d) *Exclusive plan asset test.* Except as provided in Paragraph (e) of this section, the benefits that can be provided under the contract be determined as if each insurance contract that is a plan asset were the plan's only asset on the valuation date. If two or more insurance contracts owned by a plan expressly provide a basis for coordinated allocation of contract assets in conformance with section 4044 of the Act, the benefits that can be provided under the contracts shall be determined as prescribed by the contracts.

(e) *Optional valuation procedure.* (1) When an insurance contract is not a plan's only asset on the valuation date, the plan administrator may value the contract by applying the contract assets to purchase benefits under the insurance contract without regard to the order of priorities prescribed by section 4044 of the Act, if the plan administrator demonstrates to the PBGC that—

(i) All of the plan's assets on the valuation date, taken together, can be allocated in a manner that complies with section 4044 of the Act;

(ii) Under the combined allocation described in Paragraph (e)(1)(i) of this section, the plan's assets will provide benefits with a total present value that equals or exceeds the total present value of the benefits that could otherwise be provided by the plan's assets; and

(iii) In the case of a plan that receives a Notice of Inability to Determine Sufficiency under Part 2617 of this chapter, arrangements for a specific combined allocation that satisfies section 4044 of the Act were made prior to the date of plan termination.

(2) A plan administrator who elects this optional valuation procedure must furnish the PBGC with evidence, including supporting computations, that the optional valuation meets all of the requirements of Paragraph (e)(1) of this section.

(3) When this optional valuation procedure is used, the total value of the plan's assets is the total present value of the benefits that can be provided through the combined allocation of the plan's assets described in Paragraph (e)(1)(i) of this section.

§ 2620.16 Value of participation rights.

(a) If a participation right can be cancelled, the value of the participation right is the greater of—

(1) The dollar amount negotiated by the parties in accordance with § 2620.14(b) of this part, as payable upon cancellation of the participation right as of the valuation date; or

(2) The present value, determined in accordance with Part 2619 of this chapter, of the additional benefits, negotiated by the parties in accordance with § 2620.14(b) of this part, to be provided upon cancellation of the participation right as of the valuation date.

(b) If a participation right cannot be cancelled, the value of the participation right is the present value, determined by applying the interest rate described in § 2620.15(b)(2), of the future stream of payments, taking into account all relevant factors, including but not limited to the past practice of the insurer with respect to participation rights, mortality rates, interest rates and comparable contract prices.

Approved, pursuant to 29 U.S.C. 552, as an exercise of the duties of the Secretary of Labor and Chairman of the Board of Directors, Pension Benefit Guaranty Corporation.

Ford B. Ford,

Under Secretary of Labor.

Issued pursuant to a resolution of the Board of Directors approving this regulation and authorizing its chairman to issue same.

Edward R. Mackiewicz,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 85-11044 Filed 5-7-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Public Comment Period on a Proposed Amendment to the Alabama Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period

on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would decrease the approved staffing levels for administration and enforcement of the Alabama program.

This notice sets forth the times and locations that the Alabama program and the program amendment are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on June 7, 1985 will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for June 3, 1985, at the address listed below under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business, May 28, 1985.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for public review and copying at the OSM Field Office, the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendment by contacting the OSM Birmingham Field Office.

Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Birmingham Field Office, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the date listed under "**DATES.**" If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020-22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

III. Proposed Amendment

On April 2, 1985, Alabama submitted a proposed amendment to its approval regulatory program to decrease approved staffing levels. The State proposes to decrease the total staffing level from 71 positions to 58 positions. The positions proposed for deletion are: one accounting clerk, one clerk steno in the legal section, six inspectors in the inspection and enforcement section, one clerk steno in the technical section, and four inspectors in the technical section. Alabama said that the Alabama Surface Mining Commission (ASMC) "has over the last two years experienced recurring staff surpluses in certain positions but shortages in a very few." The State said that it wishes to accomplish its objectives efficiently with as few as necessary, especially in light of projected financial constraints. The State said that it has received approval from ASMC for overtime pay to compensate for temporary staff shortages should they occur. The State indicated that the following changes have also been made, but these changes result in no net change in total positions: the carto-drafter and data entry operator positions have been abolished, and a hydrologist position and an attorney position have been created.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act*: The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*: On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirements to

prepare a Regulatory Impact Ayalysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

The authority citation for 30 CFR Part 901 continues to read as follows:

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 407 (30 U.S.C. 1253), unless otherwise noted.

Dated: May 2, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–11180 Filed 5–7–85; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 73

[MM Docket No. 85–108; FCC 85–182]

Compatibility Between the Broadcasting Services and the VHF Aeronautical Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its Rules and Regulations for broadcasting stations to protect airborne radio equipment from interference. The proposal contains criteria for broadcast station siting and power levels, as referenced to the locations of aviation navigation and communications facilities. Comments are invited on the appropriateness of the proposed criteria.

DATE: Comments are due by October 11, 1985 and replies by December 11, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Mass Media Bureau (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 73

Radio broadcast, Television.

Notice of Proposed Rulemaking

In the matter of Compatibility Between the Broadcasting Services and the VHF Aeronautical Mobile Radio Services; MM Docket No. 85–108.

Adopted: April 11, 1985.

Released: April 12, 1985.

By the Commission.

Introduction

1. The Commission, on its own motion, hereby institutes this proceeding to investigate the extent and nature of interference-related compatibility problems between the major broadcasting services (AM, FM, TV, and International Broadcasting) and the VHF aeronautical mobile radio services. The proceeding also proposes to establish compatibility criteria between the services. This action has become necessary as the potential for interference between the services is increasing due to a number of factors, including growth in the numbers of stations in both radio services.

Characteristics of the Radio Services Involved

2. Before considering the exact nature of the compatibility problems, it is beneficial first to examine the characteristics of the radio services involved. Broadcasting stations serve wide segments of the general public, and thus require high operating powers to reach their audiences. These powers vary from several kilowatts for the International Broadcast (IB) stations to five megawatts for UHF-TV stations. Types of modulations also vary from broadcast service to broadcast service. The following table provides a general guide to the broadcast services:

Service	Frequencies	Modulation	Maximum power (kW)
AM	0.5 to 1.6 MHz	AM	[illegible]
International	2 to 27 MHz	AM	[illegible]
TV (Ch 2–6)	54 to 88 MHz	TV/FM	100
FM	88 to 108 MHz	FM	100
TV (Ch 7–13)	174 to 216 MHz	TV/FM	316
TV (Ch 14–69)	470 to 806 MHz	TV/FM	5,000

3. The aviation radio services to be considered in this proceeding fall into two general categories: (1) VHF navigation, and (2) VHF communications. The navigational radio aids can be subdivided further into enroute and terminal approach facilities. As the names suggest, enroute facilities provide guidance information to aircraft enroute from one point to another. The two types of directional aids used by terminal approach facilities, which provide lateral guidance to aircraft as they complete their flights by approaching and landing at airports, are the Instrument Landing System (ILS) localizer and the VHF Omni-Range (VOR). The ILS localizers and VORs operate in the overlapping bands 108–112 MHz and 108–118 MHz, respectively. Aircraft communications are conducted in the band 118–137 MHz and utilize amplitude modulation (AM).

4. VOR and localizer signals differ considerably in modulation schemes used. Ground-based VOR stations transmit in such a manner that the aircraft receives an amplitude modulated signal with two components. The first component is amplitude-varying at a rate of 30 hertz. This component is formed at the VOR station by mechanically or electrically rotating a radiating directional antenna. The rotating signal combines with an omni-directionally transmitted signal to provide the aircraft with a signal that appears to be amplitude modulated with a 30 hertz tone. The depth of modulation is relatively small. The omni-directional signal also contains a subcarrier at 9960 hertz. This subcarrier is frequently modulated (FM) by a 30 hertz tone. The tone on the subcarrier is phased such that by measuring the time difference (at the aircraft) between the 30 hertz AM component of the VHF signal and the 30 hertz FM component of the subcarrier, the relative bearing from the station can be determined. The VOR station also transmits Morse Code identification and voice on its baseband, above 30 hertz and below 9960 hertz.

5. ILS localizers do not transmit signals such that relative bearings can be determined. Instead, localizers provide guidance only in one direction, usually the extended center line of a runway. Transmission schemes for localizers are such that to the left of the center line, a 90 hertz tone is transmitted and to the right of the center line a 150 Hz tone is transmitted. An aircraft on centerline will receive an equal balance of 90 and 150 hertz information. To the left or right of the center line, an imbalance between 90 and 150 hertz will be present at the aircraft.

6. In a 1974 report released by the Department of Commerce entitled *Electromagnetic Compatibility of Simulated CATV Signals and Aircraft Navigation Receivers* (OT Report 74–

39), it was reported that both localizer receivers and VOR receivers have certain critical frequencies. For localizer receivers, these frequencies are 90 hertz or 150 hertz offset from the carrier frequency of the navigation signal (p. 25). For VOR receivers, the frequencies are 30 hertz and 9960 hertz offset (p. 29). Although the report remains silent on the frequency stability requirements to interfere with the VOR, it indicates for localizer interference that, "it was observed that the beat frequency had to be maintained within 2 or 3 Hz of the 90 or 150 Hz in order to have maximum effect in the comparator section of the receiver." This high level of immunity to interference could logically be deduced from the fact that voice and Morse Code modulation are routinely superimposed on localizer and VOR transmissions, with no apparent interference. If the receivers were not immune to extraneous modulation products, they could be expected to react to the voice and tone modulations.

7. Voice communications between the ground and aircraft occur on frequencies between 118 and 137 MHz. The most critical communications on these channels is between the aircraft and the air traffic controlling facility. Pilots may receive information on the condition of an airport, on traffic flow, or on specific courses to fly.

8. VOR, localizer, and communications transmitters are all much lower in power than broadcasting transmitters. For example, many localizer and communications transmitters operate with only 10 watts power. VOR stations are classified according to their use and expected range, but even the highest powered VOR stations operate with powers only in the range of hundreds of watts. VOR stations known as T-VORs (terminal VORs) operate in the band 108-112 MHz with only 50 watts power.

Background

9. The potential interference problem between broadcast stations and aeronautical stations (especially airborne stations) surfaced in the mid-seventies. Pilots began to complain of hearing music in their communications or navigation receivers. This prompted concern over the causes of the interference and led to several investigations by the FCC, FAA, and others. Those investigations uncovered several facts that eventually became the subjects of major world-wide concerns. For example, a particular type of emergency locator transmitter (ELT) was found to produce interference in an aircraft's VHF receivers when the aircraft was being illuminated by strong radio frequency fields of FM Broadcast stations. Also during this time period, VHF equipment was being designed with solid-state components rather than vacuum tubes, rendering it more susceptible to interference. For co-channel sharing purposes, ILS localizer transmitter powers were being reduced from 100 watts to 10 watts. Finally, broadcasting was experiencing tremendous growth.

10. Some of the best early authoritative work was accomplished by the Federal Aviation Administration (FAA) and documented in a publication entitled: *Interference in Communications and Navigation Avionics from Commercial FM Stations*, by Edward M. Sawtelle and James G. Dong. (FAA Report No. 78-35) This report, published in July 1978, provided the first clues as to the nature of the interference mechanisms. The report describes the results of test flights at several locations, including Atlantic City, New Jersey; Indianapolis, Indiana; Kansas City and Topeka, Kansas; Denver, Colorado; Albuquerque, New Mexico; San Antonio, Houston, Dallas, and Fort Worth, Texas; Birmingham, Alabama; and Opa Locka, Florida. In these tests, several grades of aviation receivers were employed, ranging form an inexpensive general aviation type receiver to a commercial airliner type receiver.

11. FAA 78-35 remains an authoritative document even today because it encapsulated the essence of the problem—the susceptibility of aviation receivers. For example, in many of the tests, the poorer general aviation receiver experienced nearly continuous interference while the airliner receiver experienced no interference. Because there were significant differences in the performance of the receivers, it was clear that the poorer receivers were internally generating the apparent interference. The report also provided a basic procedure, the Venn Diagram approach, to predict interference areas regardless of the cause. That approach, though somewhat modified, remains the basic method of interference prediction currently in use by the FAA. The report also provided information on the characteristics of aviation antennas and receiver selectivities. Finally, the report concluded (on page 29) that, "A 10 dB increase of rejection in the avionics receivers to FM signals would nearly eliminate intermodulation interference."

12. Over the next several years, other organizations such as the International Civil Aeronautics Organization (ICAO), the Radio Technical Commission on Aeronautics (RTCA), and the International Radio Consultative Committee (CCIR) continued to investigate the interference mechanisms. In all cases, the susceptibility of the avionics receiver to self-generated interference was found to be a significant cause of the problem.

13. The RTCA sponsored a Special Committee (SC 141) to investigate the interference mechanisms as a result of a request from the FAA on November 6, 1978. The work of SC 141 was published in November 1981, in a report entitled *FM Broadcast Interference to Airborne ILS, VOR, and VHF Communications.* The SC 141 report suggested several steps that should be taken to combat the interference problem. For example, the SC 141 report indicated that general aviation aircraft are statistically more susceptible to interference than commercial aircraft (p. 61). Recommendations included, *inter alia:* (1) Publishing an FAA Advisory Circular warning the aviation community of potential limitations * * * of some airborne equipment, (2) encouraging improvements to existing receivers, (3) investigating improvements in aircraft antenna systems (e.g., RF filtering between the antenna and receiver), (4) developing improved standards for new receivers, and (5) continuing coordination between the FCC and FAA to determine the necessary protection criteria (p. 63).

14. It should also be noted that the ICAO developed standards for new receivers to reduce or eliminate the compatibility problems with the broadcast services. Such improvements in aviation receivers will not be completed until 1998, according to the ICAO timetable, when essentially all existing receivers are planned to be replaced. Although this will provide the solution in 1998, during the interim, some compatibility criteria are needed.

15. During this same timeframe, the International Telecommunications Union (ITU) became aware of the interference potential between the FM Broadcast and the Aeronautical Radio Services. During the General World Administrative Radio Conference in 1979 (WARC-79), the question was addressed particularly with regard to an expansion of the FM Broadcast ban in Regions 1 and 3 (European and Eastern countries) from 100 MHz to 108 MHz (Resolution number 510). It was left to the CCIR to develop recommendations to resolve any differences.

16. Initially, CCIR Study Group 8 (Mobile Radio Services) and Study Group 10 (Aural Broadcast Radio Services) were charged individually with the study task. Each Study Group

held separate Interim Working Party (IWP 8/12 and IWP 10/8, respectively) meetings to bring experts from various countries together to consider the issues. The IWPs assumed that the interference mechanisms fell into two broad categories as being either FM Broadcast transmitter generated, or avionics receiver generated. These categories were again each divided into two sections. Although both Study Groups generally agreed that improvements in aviation receivers would virtually eliminate the problem, there was not agreement on what should be done in the interim to protect the avionics. In particular, considerable disagreement surfaced on whether the worst-performing or some better median-performing receiver should be used as the model to develop protection criteria.

17. In an attempt to resolve the differences between the two IWPs, Study Group 1 (Spectrum Utilization) and the CCIR Secretariat organized a Joint Interim Study Working Party (JIWP 8/10-1). Meetings of the JIWP were held in Geneva in May 1984, to develop a coordinated recommendation to the Regional Administrative Conference for the Planning of VHF Sound Broadcasting (Region 1 and Part of Region 3), to be held in the fall of 1984. The countries of Region 2 (of which the United States is a part) because of their experience in the compatibility issues, where FM assignments in the band 100–108 already existed, formally participated in both IWPs and in the JIWP, but did not participate in the Regional Planning Conference. Throughout the IWPs and the JIWP, the United States position was that anything decided for Regions 1 and 3 did not apply to Region 2, where the compatibility problems had been handled successfully on a case-by-case basis.

18. The Regional Planning Conference (CARR-1(2)) was held in Geneva from October 29, 1984, through December 7, 1984. The work of the CCIR study groups was considered in arriving at several recommendations for the expansion of the FM Broadcast band. A complete report of the CARR-1(2) work can be found in the *Final Acts of the Regional Administrative Conference for the Planning of VHF Sound Broadcasting (Region 1 and Part of Region 3) (Final Acts).* The participants of the CARR-1(2) adopted a detailed coordination procedure based on the interference mechanisms defined by the JIWP 8/10-1, but recognized that several unanswered issues remained in the compatibility question and invited the CCIR to continue work in the matter. To paraphrase somewhat, the CARR-1(2) also recommended that aeronautical assignments in the future take into consideration the frequency assignment plan for the FM Broadcast service and that any actual cases of interference be handled on a case-by-case basis.

19. The Commission continues to believe that the specific CCIR and ITU work as outlined above may not apply directly to Region 2 nor, in particular, to the United States. Nevertheless, we believe that much useful information has been developed over the past few years and that information should be taken into consideration in developing the interim and long-term spectrum compatibility plans for the United States. Therefore, this document will make several references to this work as a preliminary basis for discussion without specifically endorsing its applicability to the United States.

The Interference Mechanisms

20. In the development of the interference protection criteria, we propose to use the same terminology as defined internationally. Chapter seven of the *Final Acts* defines the four types of interference mechanisms as follows:

Type A interference—Due to radiation at frequencies in the aeronautical radio navigation band:

Type A1: Intermodulation or other spurious products radiated from the broadcasting station; and

Type A2: Out-of-band emissions from broadcasting stations in the aeronautical radio navigation band immediately above the band edge of 108 MHz.

Type B interference—Due to radiation at frequencies outside the aeronautical radio navigation band:

Type B1: Intermodulation generated in the receiver; and

Type B2: Desensitization in the RF section of the receiver (also called "brute force" interference).

In brief, the Type A interference emanates from the broadcast transmitter plant and may be corrected, usually through filtering, by the broadcaster. Nothing can be done at the receiver to correct for Type A interference. Type B interference occurs because of a receiver's inability to reject strong, adjacent-band signals. Although one could argue that in the Type B case there would be no interference if broadcast stations were operating at lower power levels, we believe that argument as a compatibility solution has little merit. Improvements in receivers could dramatically reduce or eliminate the Type B interference independent of any actions by the broadcast community. Each interference type will be developed separately.

21. *Type A1 Interference.* This type of interference is caused by an actual signal being transmitted by the broadcast station on an aviation frequency. The signal is unwanted and unintentional. It may occur because of the production of a spurious emission in a single transmitter or it may occur as the result of a mix in the broadcast transmitter between the desired signal and some other radio signal. Such mixes usually occur in the power amplifier stages of transmitters. Outside the United States it is common for several FM broadcast stations to multiplex their transmitters into a single antenna. Such an arrangement gives rise to a high potential for intermodulation production at the transmitter site. Since common antennas are not usually used in the United States (for FM stations only six cases approximately), transmitter-produced mixes are rare. Our concern, therefore, is concentrated on spurious emissions.

22. *Type A2 Interference.* This type of interference occurs because energy from the desired signal of the broadcast transmitter falls on aviation frequencies. The only broadcast service in which this can occur (as referenced to the 108–137 MHz aviation band) is FM Broadcast. Desired modulation products can fall on aviation channels that are immediately adjacent in frequency to the FM station. For example, significant modulation products from a station operating on 107.9 MHz may extend above 108.0 MHz. A station on 107.9 could easily affect navigation channels centered on 108.05 MHz, 108.10 MHz, and 108.15 MHz. Because the "Bessel sidebands" of an FM station fall off rapidly in amplitude to either side of the rest carrier frequency, it appears unlikely that any other FM channels or aviation channels would be involved in Type A2 interference. The *Final Acts* (para. 7.6.4) supports the proposition that this type of interference need not be considered beyond the case of a frequency difference of 300 kHz.

23. *Type B1 Interference.* Receiver "front-end" radio frequency (RF) amplifiers are operated in the Class A (linear) mode. This mode supports a fixed amount of gain for all input signals and discourages the mixing or signals to form intermodulation products. When something happens to change the biasing of the RF amplifier (e.g., operating it in the presence of a strong FM Broadcast station so that the stage is in an "overload" condition), it may change modes of operation and become non-linear. This change in mode to non-

linear will cause the amplifier to begin mixing the input signals to produce undesired intermodulation products. For example, a "third-order" intermodulation product is equal in frequency to twice one signal minus the second signal ($2f_1 - f_2$). This situation could occur for an FM Broadcast signal on 107.7 MHz and another on 106.1 MHz. In this case, the intermodulation product would be on an aviation frequency, 109.3 MHz. The performance of the receiver would probably be unaffected on all frequencies except 107.3 MHz. This mixing can also occur in the "mixer" stage of the receiver. This mixer is intentionally biased into non-linear operation to perform its intended function within the receiver. If the two undesired FM Broadcast signals both appear at the mixer stage, intermodulation products will be produced. This type of interference is difficult to reduce or eliminate with better front-end selectivity but can be overcome by use of FR amplifiers that are more immune to overload.

24. *Type B2 Interference.* As with Type B1 interference, Type B2 interference is caused by overload of the front-end FR stage. It differs from Type B1 in that, rather than just non-linear operation, it results in saturation of the receiver to the point of potentially affecting all frequencies to which the receiver might be tuned. Type B2 can be so severe as to block the receiver from satisfactorily receiving any other signals. In some cases, better front-end selectivity and, generally, use of FR amplifiers that are highly immune to overload would relieve the Type B2 conditions. This type of interference is also commonly known as "brute force" or "desensitization."

Effects of Interference

25. Pilots receive course guidance information from both VOR and ILS localizer navigation aids by the centering of a needle (or similar indicating device such as a series of light emitting diodes or a bearing indication in degrees) in the cockpit of the aircraft. When an aircraft is "centered" on the directional aid, the needle will indicate center scale. A needle indication either to the left or right of center scale will provide guidance to the pilot on which direction to fly to come back to center course. The navigation receiver may also be coupled to an autopilot on the aircraft to allow automatic tracking of a course. For localizers, the full scale left or right indications of the needle equal ∓ 2.5 degrees of the center line. VOR indications are one-fourth as sensitive, such that full scale is ∓ 10 degrees.

26. In addition to the center line needle, cockpit displays also have a second indicator called a warning "flag." The absence of the flag indicates that a valid navigation signal is being received and the indications of the needle can be relied upon. A needle indication may not be used for navigation unless the warning flag disappears. Generally for the enroute phase of a flight, if the flag appears or if there is other reason to believe that the navigation signal is faulty, the pilot would switch to a different navigational aid for guidance. In the terminal phase, changing to a different facility may not be possible because there may be only one such aid serving the airport. Even if more than one aid serves the airport, faulty indications "inside" the Initial Approach Fix" (IAF) are immediate cause to terminate the approach and execute a "missed approach." In other words, once a particular terminal approach procedure has commenced (at the IAF), loss of valid navigation signals would mean the pilot would normally execute a missed approach procedure (as published on the navigation chart) which, as a minimum, would involve climbing to a higher and safer altitude to await further instructions from the Air Traffic Control (ATC) facility.

27. An important point to remember about the navigational facilities is that although they can be used by pilots flying under the visual flight rules (VFR), the aids are primarily required for flights under the instrument flight rules (IFR). Pilots flying under VFR are expected to complete flights by, if necessary, visual contact with references on the ground. IFR pilots often may be in zero visibility conditions in clouds or in fog and must therefore rely entirely on the radio navigation signals. This is a critical distinction between types of flight. The VFR pilot should be able to complete a flight safety without the radio navigational aids. The IFR pilot may not be able to terminate the flight in the customary manner without navigational aid assistance. The IFR pilot also might hit an obstruction if the information being supplied by the radio navigation instruments is faulty. In short, disturbances to radio navigation signals should be no more than inconveniences to VFR pilots, but may be life-threatening to IFR pilots. One other consideration is the effect of interference on autopilot operation. Interference could result in the aircraft automatically flying along a wrong course or in the autopilot decoupling from control of the aircraft. Finally, pilots do not normally listen to the navigation channel, except for brief periods to identify the navigational aid. Unless the interference could be heard at the time the pilot was listening for the identification, the pilot would have no indication of the interference except for needle irregularities or flags.

28. Interference to voice communications will actually be heard by a pilot. Pilots, especially those flying under IFR, must continually monitor a particular communications channel for ATC instructions. Unlike broadcast or navigation signals, communications signals are present only when ATC desires to communicate with a pilot on the channel. When no signals are present, a squelch circuit in the airborne receiver mutes the receiver so that idle channel noise will not be heard. Interference could be so minor as only to "open" the squelch during periods of inactivity on the channel. This level of interference would be an annoyance, but should not be hazardous as long as the ATC communications were not affected. On the other hand, severe cases of interference that block the ATC transmission could cause a pilot to miss a crucial instruction from ATC and could be life-threatening.

Issues

29. There are several issues to be considered in this proceeding. Most basically, the procedures to reduce or eliminate the potential for each type of interference mechanism must be explored. This necessarily requires judgments as to who must take the responsibility where options exist. Are all types of broadcast stations equally likely to cause interference? Finally, should existing and new stations be treated differently? These concerns will be developed in a series of issues, as follows:

1. What are the characteristics of aircraft equipment and installations?
2. Between which types of radio services are spectrum incompatibilities likely to arise?
3. What critical points should be used to evaluate the potential for interference on the stereoscopic service volumes?
4. What protection criteria should be considered for the four types of interference?
5. How should the protection criteria be applied to broadcaster?
6. To what extent should the vertical radiation pattern of a broadcast antenna be considered in evaluating the potential for interference?
7. Should the new protection criteria be applied to all stations, new stations, and/or stations undergoing major modifications?

Each of these issues will be developed separately, along with an example of how to apply the derived protection criteria.

Issue 1: Aircraft Characteristics

30. There are several characteristics of actual aviation installations that must be taken into account when considering what protection criteria should apply. These characteristics include the interference rejection parameters of the avionics equipment, the responses of the antenna systems, and the installation-specific details such as transmission line length and the use of signal splitters. Each of these variables can contribute to the overall interference rejection capabilities of an avionics installation.

31. Based on the various investigations over the past few years, several avionics performance parameters have been developed. For example, Table 1 provides a summary of the JIWP agreed upon Type A2 immunity values. Figure 1 presents the ITU accepted receiver characteristics for Type B2 interference (existing and future values). In developing the protection criteria herein, we have endeavored to use the best available information; however, we request comments on the appropriateness and correctness of any protection values presented.[1] We also request comments on whether the worst-case or some better performing median-case receiver interference rejection characteristics should be used. For example, should receivers used for IFR flight be expected to perform better than those used exclusively for VFR flight? As previously stated, protection of a better-than-worst case receiver would be consistent with the recommendations of the RTCA SC 141.

32. The FAA currently recognizes antenna rejection factors of 3 dB plus 1 dB per MHz below 108 MHz to 88 MHz, 23 dB below 88 dB to 50 MHz, and 15 dB above 175 MHz to 800 MHz for navigation antennas (FAA directive AES-500, June 1984). These values, especially above 175 MHz may be overly conservative. For example, the FAA 78-35 report presents antenna rejection data showing well over 40 dB attenuation of out-of-band signals between 175 MHz and 225 MHz (see Figure 2). Comments on the appropriate rejection values for aircraft navigation and communications antennas to out-of-band signals are requested. In addition, we believe that many or most general aviation installations use only one navigation antenna to feed two receivers. In such cases, the signal from the antenna is divided by a "hybrid splitter." This splitter may add 3 dB or more in the transmission line path. Comments on the extent to which such attenuation should be considered are welcomed.

33. The FCC in its participation in the working groups over the years has proposed the use of low cost add-on filters (we anticipate approximately $300 per installation) to airborne installations to improve the interference immunity. Based on the proposed 10 dB additional rejection capability as indicated in the FAA 78-35 report, a filter seems a reasonable answer to improving compatibility. The aviation community, world-wide, has rejected this proposal based on its projected cost and its impact on precision navigation systems. Concern has been expressed about how a specific filter might interact with the varying input impedance of a receiver. Although the Commission shares the concern that a filter should not endanger air traffic operations, we continue to believe that filters may offer a low-cost retrofit to help eliminate the interference problem on a case-by-case basis. We request comments on the feasibility of allowing a minimal allowance, perhaps 10 dB, for either the use of filters on the poorer quality receivers or as a consideration of typical rejection capabilities for better-than-worst-case receivers.

Issue 2: Incompatabilities Between Services

34. From the previous discussion, it can be concluded that avionics reception systems could be expected to discriminate heavily against signals far removed in frequency from the VHF aviation band due to antenna system response. In addition, front-end selectivity has to be a mitigating factor as the frequency of interest departs from the band for which the receiver was designed. Figure 1, in fact, gives some insight into this level of rejection. Finally, the interference potentials of television signals are quite different from the FM signals, as described in Appendix 1 (letter between Ralph A. Haller (FCC) and Leland F. Page (FAA), dated November 29, 1984). For these reasons, it appears appropriate to limit the discussion of protection criteria to the FM broadcast band, as the other broadcast services have low potentials for causing interference.

35. We believe the most likely conditions for interference are when an aircraft is tuned to either an ILS localizer or a T-VOR. These facilities share the band between 108 and 112 MHz with the ILS localizers occupying the odd frequencies (108.1, 108.3, etc.) and the T-VORs occupying the even frequencies (108.2, 108.4, etc.). In addition to the frequency adjacency with the FM band and the transmitter power level differences between the services, the aircraft tuned to such navigation facilities are typically on approaches to airports. This means that they are at low altitudes, near to, and often directly within the main beam of FM broadcast stations. Although interference may be possible above 112 MHz to either navigation or communications signals, such interference seems more unlikely. For navigation signals above 112 MHz, aircraft would be at enroute altitudes, well above the main beams of FM broadcast antennas. Communications channels do not even begin until 118 MHz, which is fully 10 MHz above the highest FM Broadcast channel. We therefore propose to protect only ILS localizers and T-VORs (that are used for instrument approaches) in this proceeding. Comments on this approach are requested.

Issue 3: Protection of Airspace

36. Each navigational aid has an associated "service volume," outside which interference may occur but would not be considered critical to safe air navigation. Navigational aids are to be considered suitable for navigation only within their assigned steroscopic (three dimensional) service volumes. Service volumes vary depending on the type of navigational aid (ILS or VOR) and its intended coverage area. For example, there are two stereoscopic service volumes for the ILS. The larger ILS extends to a maximum distance of 29 miles from the localizer transmitter, and to ±10 degrees off the center line course. The small ILS extends to 21 miles and ±10 degrees. The maximum altitude of the service volume is 6,250 feet above the ground elevation of the localizer transmitter (see Figure 3). A terminal VOR (T-VOR) serves an area around landing fields to a radius of approximately 29 miles (see Figure 4). For completeness (since we are not proposing protection), we also note that

[1] The Commission has undertaken, in cooperation with other interested parties, including the FAA and the Government of Canada, discussions concerning a major research and development project to establish with a statistically valid number of avionics receivers and FM transmitters, the current state of Avionics-Broadcasting compatibility. (See Appendix 2 for the Draft Work Statement.) This proposed project has been drafted as a Work Statement in five tasks so that interested parties may directly comment, perform, or contract-for specific portions of the test plan. The Draft is currently being coordinated with interested parties. All studies that are used in this proceeding will be made a part of the record and parties will be given an opportunity to comment on them.

a low altitude enroute VOR (L-VOR) serves aircraft operating enroute below 18,000 feet above sea level to a radius of approximately 46 miles and a high altitude VOR (H-VOR) serves aircraft to 60,000 feet above sea level to a maximum radius of 150 miles.

37. Within each of the service volumes, the FAA guarantees certain minimum field strength levels. For the localizer, a minimum signal strength of 40 uV/m (32 dBuV/m) can be expected. Likewise, for a VOR, the minimum signal strength is 90 uV/m (39 dBuV/m). As protection criteria for each interference mechanism developed, it will be assumed that: (1) The navigation signal is being protected only within the assigned stereoscopic service volume, and (2) the minimum expected signal levels from the navigational aid are actually being provided.

38. Although we are proposing to protect the minimum field strength over the full service volume, comments are requested on whether the full service volume needs such absolute protection. For example, as previously discussed, we note that course information for an ILS localizer is given only within 2.5° of the center line. Beyond this sector the needle is designed to indicate a full "left" or "right." However, protection of the entire service volume would dictate criteria ±35° of the center line, out to 12 miles (see Figure 3). We request comments on whether the portions of the sector beyond full scale of the indicator should be protected.

Issue 4: Protection Criteria

39. For our analysis, let us initially assume that the broadcast transmission is omnidirectional in the horizontal and vertical planes, that only the horizontally-polarized component gives rise to interference, and that the field strength at the aircraft may be calculated assuming free-space conditions. Comments on these assumptions are requested. Figure 5 indicates field strength as a function of distance in statute miles for 1 kW effective radiated power (ERP) from the FM broadcast transmitter assuming an aircraft at 2000 feet.[2] Protection criteria will be developed for each interference mechanism. So that all interested parties have a common term-of-reference to evaluate the effects of the proposal, all distances in text of this document are given in statute miles. The actual proposed rules in Appendix 3 use the standard metric conversions.

[2] Propagation curve based on K. Bullington, "Radio Propagation at Frequencies Above 30 Megacycles," *Proceedings of the IRE*, Vol. 35, pp. 1122–1136; October 1947.

40. *Spurious Emissions (Type A1):* Section 73.317 requires that FM broadcast emissions, including spurious emissions,[3] be attenuated as follows:

Removed from carrier	[redacted]
120 to 240 kHz	[redacted]
240–600 kHz	35 dB.
Over 600 kHz	Lesser of 43+10 log P (Watts) or 80 dB.

41. For a spurious component coinciding with the aeronautical frequency, a desired to undesired (D/U) signal ratio (protection ratio) of 14 dB is suggested as affording an adequate level of protection. Since the 17 dB ratio used by the JIWP and the Regional Administrative Conference included an additional 3 dB for multiple antenna entries, which rarely occurs in this country, we propose the 14 dB protection ratio for this type of interference. Further, 14 dB would provide the required protection in most of the limited cases studied by the FAA and Canada (see Table 1).

42. The following procedure can be used to determine the interference criteria:

(a) Determine the undesired field strength:

$E_u = E_d - PR - P_t + S$

where:

E_u = undesired field strength in dB above 1 uV/m (FM station)

E_d = desired field strength in dB above 1 uV/m (Navigational aid)

PR = protection ratio in dB above 1 uV/m (i.e. D/U ratio)

P_t = transmitter power in dB above 1 kW (FM station)

S = spurious attenuation in dB at 108 MHz (FM station)

(b) From Figure 5, read the distance along the abscissa (horizontal) for the undesired field strength on the ordinate (vertical).

For example,

ILS protected signal, E_d = 32 dBu
protection ratio, PR = 14 dB
FM station transmits 100 kW ERP, P_t = 20 dBk
FM spurious attenuation, S = 80 dB

Thus,

the interfering contour E_u = 78 dBu.
which results in a distance of 17 miles from Figure 5.

[3] Spurious emission is defined as "emission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions." "Section 139, International Radio Regulations, ITU, Geneva, 1982.

43. To avoid interference in this situation, a 100 kW FM station would have to locate its transmitter at a distance of 17 miles from the edge of an ILS service volume. Since this requirement is, on face, very restrictive considering that many FM stations and ILS facilities co-exist at lesser distances without interference, we request comments on whether FM stations typically have spurious responses well below the required limits of § 73.317. For example, we note that an attenuation of 100 dB (rather than 80 dB) would reduce this distance to 2 miles. In order not to be overly or unnecessarily restrictive, we propose to allow individual FM stations to identify the minimum distance requirement based on the level of spurious response their stations will actually furnish. In the event of actual cases of harmful interference where spurious emissions are the cause, we would require more than 80 dB suppression (e.g. filters) on an individual basis to the point of no interference. Also, because the entire FM band population has equal probability of injecting spurious emissions throughout the entire aeronautical bands, without regard to the specific frequencies involved, we have not provided a frequency dependent term in this interference type. We request comments on whether a frequency related term would be appropriate.

44. *Adjacent Channel (Type A2):* This type of interference need only be considered for signals close in frequency. The following protection ratios are proposed based on the receiver data of the JIWP (the 5 dB "safety margin for limited survey" has been eliminated).

Frequency separation	Protection ratio
200 kHz	−55 dB.
300 kHz	−73 dB.

45. Separations beyond 300 kHz is not a problem; therefore, the only situation of concern is FM Channel 300 (107.9 MHz). Using Figure 5, the required distance for several classes (ERP) of FM stations to an ILS on 108.1 MHz and a terminal VOR on 108.2 MHz would be:

[redacted]	[redacted]	Distance (miles)	
		ILS(108.1)	VOR(108.2)
A	3 kW at 100 meters HAAT.	11	[redacted]
B	50 kW at 150 meters HAAT.	[redacted]	3
C	100 kW at 600 meters HAAT.	[redacted]	[redacted]

46. Practically, this restriction may result in Channel 300 being limited to Class A operations. However, our research indicates that there are currently no civil ILS assignments within the United States on 108.1 MHz.[4] Consequently, we propose that FM stations on Channel 300 (107.9 MHz) need not consider protecting 108.1 MHz and that any future need for such assignments be individually coordinated.

47. *Receiver-generated intermodulation (Type B1):* Various flight and laboratory tests indicate that FM signals of varying strengths can cause the production of third or higher order intermodulation products in aviation receivers. When one FM signal is strong enough to produce an overload or non-linear response in the receiver, a second FM signal of a lower level (not more than 10 dB lower) may result in interference on "most low-cost general aviation receivers." (Findings of FAA RD 78-35, p. 25.) Thus, areas where FM stations of high or prime signal levels intersect FM station contours of lower or secondary signal levels, represent areas of potential interference. Interference may occur, within these intersected areas, to navigation receivers if the aeronautical operational frequency is on a third intermodulation product (i.p.) frequency of the form:

$f_o = 2f_1 - f_2$ for two signals, or
$f_o = f_1 + f_2 - f_3$ for three signals
Where $f_1 > f_2 > f_3$ are the FM frequencies and f_o is the operational aviation frequency.

48. For navigation receivers, the signal levels (trigger values) previously found in general to produce i.p. interference were −20 dBm (prime) and −30 dBm (secondary). (See FAA RD 78-35.) In discussing received signal levels, the frequency response of the aircraft antenna system must be taken into account. Allowing for a system fixed loss and antenna aircraft loss, signal power at the receiver input may be converted to field strength as follows:

$E_u = P_r + 115 + L_s + L_v - P_t$
where
E_u = undesired field strength in dBu
P_r = desired receiver power in dBm
L_s = system fixed loss of 3.5 dB
L_v = aviation antenna rejection 3 dB + 1dB/MHz below 108 MHz
P_t = transmitter power in dBk

49. For FM stations above 107 MHz the following distances would be computed, using Figure 5:

Class	Facilities	Distances (miles)	
		Prime (−20 dBm)	Secondary (−30 dBm)
A	3 kW at 100 m	2	7
B	50 kW at 150 m	9	22
C	100 kW at 600 m	12	34

50. Using these distances as radii of circles, an area where the prime and secondary signal levels intersect may be identified as an area where aircraft operating on the i.p. frequency could experience interference. We expect that the potential for interference in such areas is high enough to require FM stations to avoid creating an interference situation within ILS or T-VOR service volumes. We propose this approach, known as a Venn diagram technique, as a simplified method of predicting potential interference although it may provide greater protection than the calculation of specific i.p. signal level for each situation. The constants and trigger values chosen for use in this approach require special consideration and comments on them are requested.[5]

51. *Receiver Desensitization (Type B2):* An unacceptable degradation of navigatoin receiver performance may result if the level of an FM signal at the receiver input exceeds the receiver's interference threshold (i.e., front end or brute-force overload). The following are proposed as maximum signal levels at the input to navigation receivers (See Figure 1), assuming existing immunity (for intermediate values use linear interpolation):

Frequency of broadcast signal (MHz)	Maximum level (dBm)
88 to 100	10
104	0
106	−5
107.9	−20

52. Converting these receiver powers to field strength and using Figure 5, the required distances to avoid apparent receiver overload are:

Class	Facilities	Distance (miles)	
		104.1 MHz	107.9 MHz
A	3 kW at 100 m	0	2
B	50 kW at 150 m	0	9
C	100 kW at 600 m	1	12

53. Therefore, higher powered FM stations above 104 MHz would be required to locate 1 to 12 miles from ILS and T-VOR service volumes. From these calculations, it is also apparent that stations below mid-FM band (approximately 104 MHz) have little probability of causing serious degradation to aeronautical radionavigation systems. Therefore, we do not propose Type B2 restrictions for FM stations below 104 MHz.

54. *Summary.* The preceeding calculations indicate that FM stations operating adjacent-band to navigational aids may generate interference within the poorer quality aviation receivers. Although FM siting restrictions are being proposed to avoid this potential, we believe that further discussions and testing to further refine these values are imperative. Additionally, it is apparent that the rejection factor for navigational antennas falls off fairly rapidly. Therefore, we do not propose any restrictions for FM stations operating in the "educational portion" of the FM band (82-92 MHz).

Issue 5: Siting Procedure for FM Broadcasting

55. As an illustration of siting restrictions, assume an FM Broadcast applicant desires to construct a new Class C (100 kW at 600 meters HAAT) FM Broadcast station on Channel 300 (107.9 MHz). The following analysis to determine zones of potential aearonautical interference would be made:

Step 1. Determine the maximum interference range from the Type B1 calculations. Adding the maximum aviation service range to the maximum interference range yields:

R = 29 + 34 = 63 miles for all situations.

Step 2. Identify aviation facilities. Contact the FAA regional field office (see Table 2) to compile a list of radionavigation facilities (ILS and terminal VOR) within the maximum distance, R, of the proposed FM transmitter site. Continuing the example, assume the following aviation facilities are identified:

Facility	Frequency (MHz)	[illegible] (miles)
ILS (Optional)	109.1	15
ILS (Standard)	112.3	[illegible]
VOR (Terminal)	108.2	43

Step 3. Identify existing FM stations. Considering all FM stations within 46 miles (distance of the prime plus the secondary interference contours; see Type B1), identify those FM stations that could have 2 and 3 signal third order intermodulation products corresponding

[4] Although 108.05 MHz is a possible assignable frequency, it is our understanding that this channel is used for temporary test purposes, and, as such, will not be afforded equal protection on a permanent basis.

[5] For additional information on the Venn Diagram technique, see *Procedure To Evaluate Changes To The FM Broadcasting Table of Assignments To Determine If Interference to Aeronautical Radio Facilities Could Result.* FAA Report DOT/FAA/RD—82/4, February 1982.

to the aviation frequencies identified in Step 2. For the following FM stations:

FM stations	Class	Distance (miles)
101.9 (Ch. 270)	C2	22
103.1 (Ch. 276)	[illegible]	[illegible]
103.5 (Ch. 278)	C1	20

the intermodulation products of concern are:

$f_a = 2f_1 - f_2 = 2(107.9) - 103.5 = 112.3$ for 2 signals;

$f_a = f_1 + f_2 - f_3 = 107.9 + 103.1 - 101.9 = 109.1$ for 3 signals.

Step 4. Determine the distance to the contour of potential interference. In accordance with the equations and figures previously discussed, calculate the undesired field strengths and the resulting distances for the various interference types. For our example, the computed field strengths for both the worst-case and the better quality receiver (10 dB improvement) result in the following distances (statute miles):

		Field Strength (dBu)	Distance (miles) worst-case	Distance (miles) improved
Spurious emissions (Type A1)				
ILS		78	17	N/A
VOR		85	9	N/A
Adjacent channel (Type A2)				
ILS (none on	108.1 MHz)	-	-	-
VOR		92	4	N/A
Intermodulation products (Type B1)				
prime for	107.9 MHz	81.5	12	5
(-20 dBm)	101.9	90.5	5	1
	103.1	101.5	1	0
	103.5	86.5	8	3
secondary for	107.9	71.5	34	12
(-30 dBm)	101.9	80.5	14	5
	103.1	91.5	5	1
	103.5	76.5	21	8
Desensitization (Type B2)				
overload		81.5	12	5

Step 5. Determine potential interference zones. On a map, plot the location and service volume of the aviation facilities identified in Step 2. Using the distances calculated in Step 4, plot the areas of potential interference.

Note.—For the case of intermodulcation products, the contour distances are drawn from their respective FM station. For a signal product, the area of potential interference is the intersection of a prime and secondary signal level. For a three signal product, the potential interference area is where the prime signal contour of one station intersects with an area common to the secondary signal levels of the other two stations.

Figures 6 and 7 are plots of the areas of potential interference for our proposed FM station for the worst-case and the better quality (or improved by 10 dB) receiver models, respectively. The potential interference area caused by spurious emissions may be reduced (even eliminated) if the FM station agrees to suppress its spurious response more than 80 dB; consequently, this interference type is not limiting and is represented by dashed lines.

Step 6. Location of FM station. The proposed FM station must be located so that its areas of potential interference do not penetrate the service volume of the related aviation facilities. From this example, observe that the receiver-generated interference mechanisms (Types B1 and B2) offer the greatest restrictions to the location of FM broadcast stations. Consequently, we propose to use the 10 dB improved immunity value in recognition that aircraft flying IFR (*i.e.*, those depending on ILS and terminal VOR for landing approaches), should be equipped with the better quality receivers (see Issue 1 discussion). Approximately half of the general aviation aircraft (80,000) are fitted with receiver installations which permit IFR operations. We request comments on the number of receiver installations that would be affected if the 10 dB factor was adopted.

Issue 6: Vertical Radiation Pattern

56. So far we have discussed the simplified example of the horizontal component of an omnidirectional FM antenna. However, FM broadcast transmissions typically have significant directivity in the vertical plane and an aircraft flying directly over a transmitter will have significantly less potential for interference than one several miles away passing through the main beam.

Thus, due to the radiation characteristics of the aviation facilities (i.e., radiating upward from the transmitter), we believe that the stereoscopic nature of the service volume should be taken into account when computing the interference zone. In other words, an FM station may locate "under" an ILS or VOR system without being a potential source of interference (see Figure 8). We propose to allow use of the vertical radiation pattern in the determination of potential interference zones. Further, the characteristics of a directional FM antenna should also be incorporated, if necessary, to furnish protection to the aeronautical facility. An FM station, therefore, could include in its analysis, the benefits of directional antennas, beam tilt, and/or the vertical characteristics of different antenna systems, to avoid a prohibited penetration of the stereoscopic service volume. However, no allowance has been proposed for polarization differences between the broadcasting and aviation signals. The interfering signals were assumed to have the same polarization as the navigation system. Due to the inherent difficulties in defining the polarization of the aircraft antenna during flight, we believe this approach to be practical. We request comments on this proposal addressing both (1) the accuracy of the protection expected through theoretical calculations and whether actual proofs of performance at flying altitudes are needed, and (2) the method of accomplishing this obviously complex analysis scheme.

Issue 7: Existing FM Stations

57. Since the existing FM stations have operated without incident to air safety, they should be permitted to continue without regard to the new protection criteria proposed. Therefore, we propose that existing FM stations (those for which a license or construction permit has been granted) be grandfathered as long as any changes made would not increase the likelihood of interference to the stereoscopic service volumes of potentially affected aeronautical facilities. In all other cases, the new standard would apply.

Miscellaneous

58. Because serious interference has the potential to be a threat to air safety, the Commission proposes to amend the Rules to oblige licensees causing interference, which jeopardizes safety of life, to promptly eliminate that interference. Additionally, if that interference could not be expeditiously eliminated, the rule amendment would give the Chief of the Field Operations Bureau delegated authority to temporarily suspend the operating authority of the interfering station. This authority to suspend operations would encompass all broadcast stations authorized under Part 73 of the Rules (i.e., AM, FM, TV, International, etc.) and would follow the precedent established by Sec. 0.311 of the FCC Rules.

59. We suggest that the existing power of the Commission to issue Cease and Desist Orders is not sufficient because (1) a violation of license authority must occur first, and (2) the process may be too slow. Where interference can be shown to jeopardize personal safety, we cannot rely solely upon voluntary cooperation. The Commission, therefore, wishing to put all parties on notice of their rights and responsibilities, proposes rules which would give the Commission the device necessary to suspend operation. We expect an emergency order would be exercised only in the most egregious circumstances where a clear case of safety of life has been confirmed by the Commission.

60. Further, for those cases which would normally not be permitted within the distances specified but have unusual circumstances (such as, the move of a grandfathered station, antenna farm, etc.), we propose authorizing the station with the following condition on the construction permit or license:

> Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

Conclusion

61. In considering the compatibility between FM broadcasting and aeronautical radio navigation susceptibility, the rights and responsibilities of each service must be recognized. We have endeavored to meet the questions of compatibility directly and assess a fair burden between the affected services. The requirements suggested in this document are based on international documentation and their applicability, as well as, their accuracy should be extensively evaluated for domestic cases. We emphasize that via this document the Commission is proposing general compatibilty solutions for discussion purposes; and, therefore, the specific criteria and ultimately adopted procedures may change as a result of the compiled record.

Initial Regulatory Flexibility Act Analysis

I. Reason for Action

The proposed action will eliminate or substantially simplify electromagnetic coordination requirements with the Federal Aviation Administration. Currently, the FAA reviews most broadcast applications and issues air hazard determinations if they predict that interference to their facilities may occur. The standards used for such determinations are not specified in any document and have been varied by the FAA from time to time. Further, the standards have resulted in restrictions to the siting of broadcast transmitters, particularly to FM broadcasting, without the benefit of public comment.

II. Objectives

The purpose of this rule making proceeding is to define the protection criteria needed to sufficiently protect avionic equipment without unnecessary restricting the growth of the broadcast industry. Since the FM Broadcast stations have been identified internationally as having a potential for generating interference in aeronautical receivers, specific protection standards have been proposed for the FM Broadcast service. The Commission expects to reduce the likelihood that broadcast applications will be held up due to air hazard determinations if actual standards are developed.

III. Legal Basis

The action taken by this *Notice* is authorized by sections 4(i) and (j), 302, 303, and 403 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

The proposed action defines the protection standards that FM Broadcast applicants are being required to meet when siting their transmitters in the vicinity of FAA facilities. All broadcast applicants, including small entities, will be positively affected because the burdens associated with unknown criteria will be eliminated. In connection with another proceeding (MM Docket No. 84-231), the Commission will be releasing (over a series of months) 689 FM Broadcast allotments to allow interested parties to file applications. The number of small entities that might apply for these, or future allotments, is unknown.

V. Recording, Record Keeping and Other Compliance Requirements

None.

VI. Federal Rules Which Overlap, Duplicate, or Conflict With This Rule

None.

VII. Any Significant Alternative MInimizing Impact on Small Entities and Consistent With Stated Objectives

Under the status quo, the Commission must evaluate each case where the FAA has issued an electromagnetic air hazard determination. The applicant may try to reach an accommodation with the FAA, perhaps by changing the proposed site, to remove the determination or request the Commission to review the air hazard study and begin negotiation to reverse the determination if we disagree. The proposed action should remove the need for such a time consuming process by advising all parties what standards will be applied to determine if interference to avionics is likely to occur. No other alternatives exist which would minimize the impact on small entities.

Paperwork Reduction Act

62. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

Ex Parte Considerations

63. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the time a *Public Notice* is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

64. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 11, 1985, and reply comments on or before December 11, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

Ordering Clause

65. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein. Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as respones to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, as required by section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

66. For further information regarding this proceeding, contact Kayhryn S. Hosford, Mass Media Bureau, (202) 632–[illegible]

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

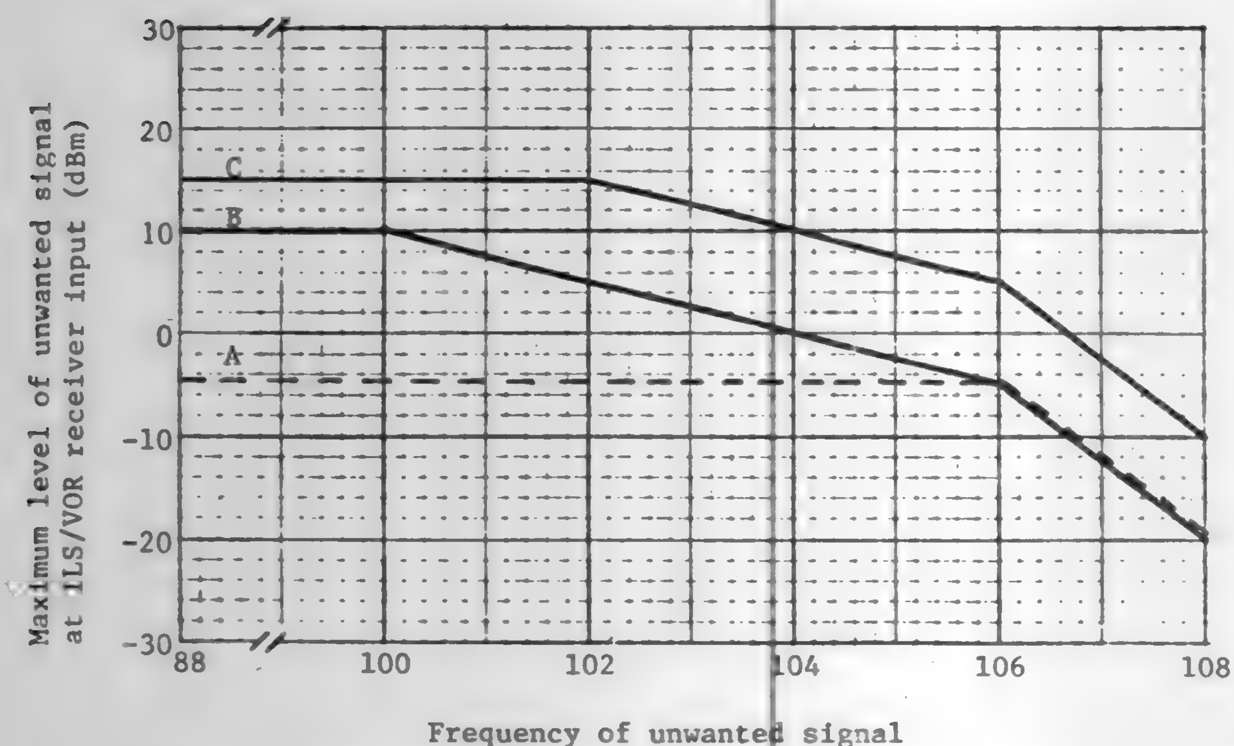
William J. Tricarico,

Secretary.

Note.—Due to the ongoing effort to minimize publishing costs, the Bibliography, the "Acronyms" list, Table 2 (FAA Regional Frequency Management Addresses listing), and Appendix 2 (Draft of Work Statement regarding the Research and Development Project) will not be printed herein. However, copies of the entire text of this document may be obtained from International Transcriptions Services, Inc., located at 1919 M St., NW., Washington, D.C. 20554, (202) 296–7322. Also, a copy is available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both at 1919 M St., NW. and are filed with the original.

BILLING CODE 6712–01–M

Figure 1



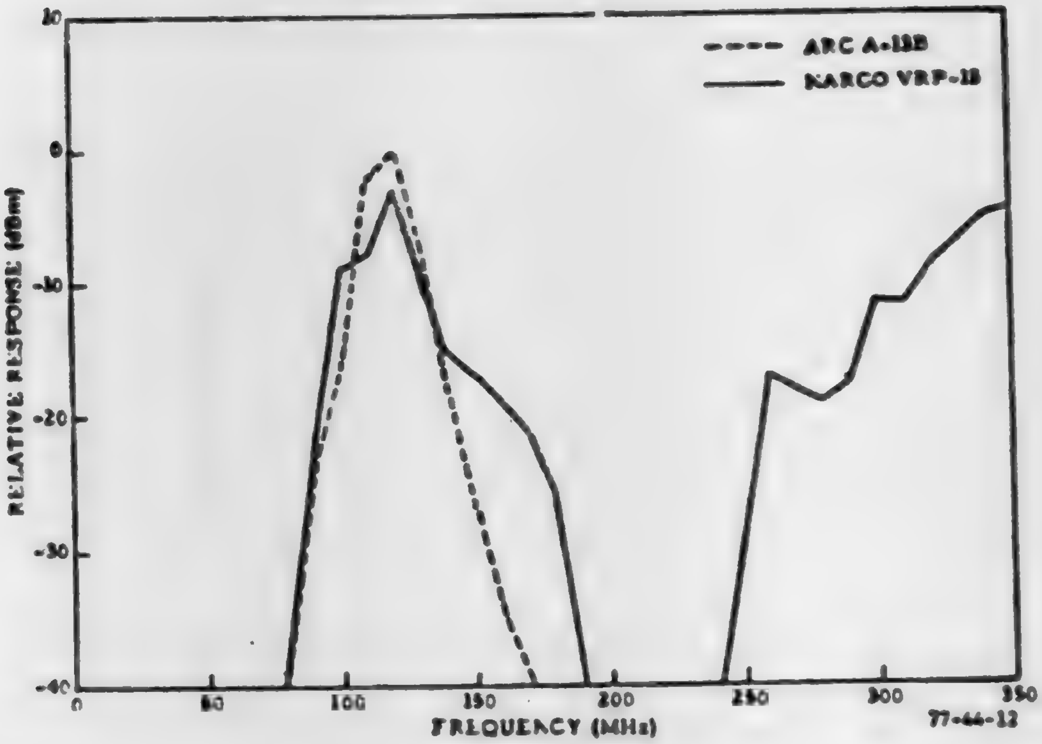
ILS/VOR desensitization immunity criteria (Type B2)

A : First Session CARR-1-82
Assumed existing immunity

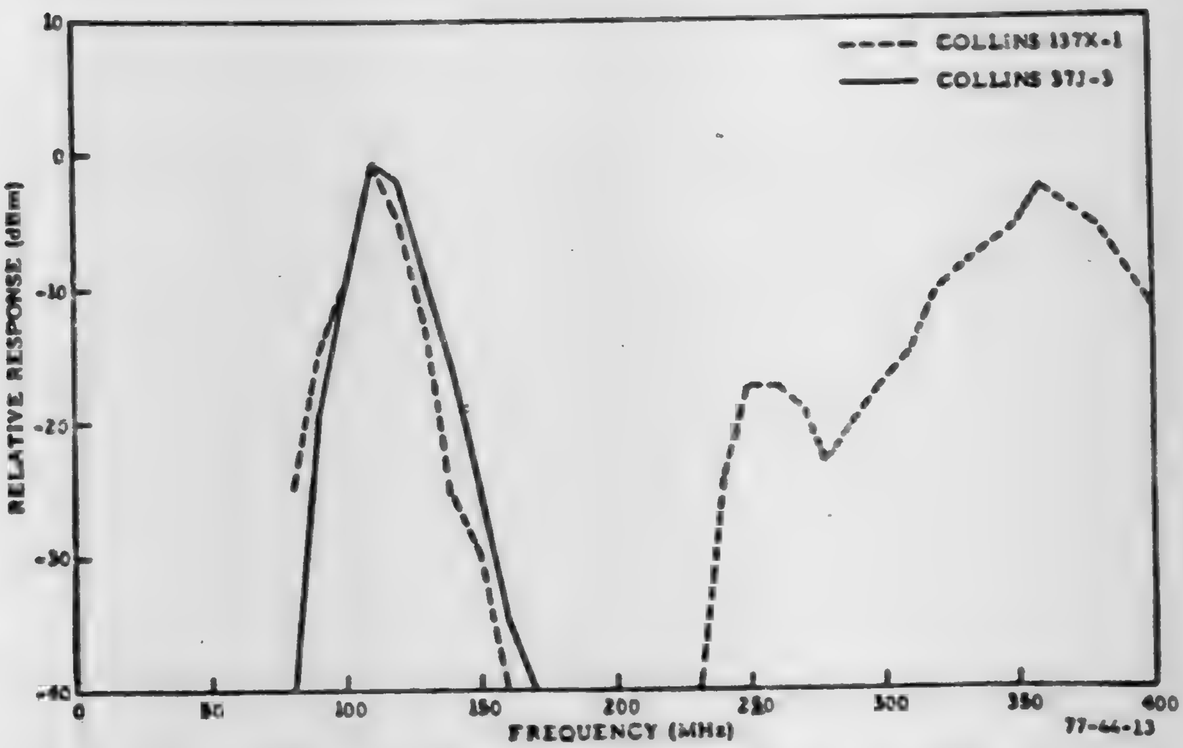
B : JIWP 8-10/1 Existing immunity

C : JIWP 8-10/1 Future immunity

FIGURE 2

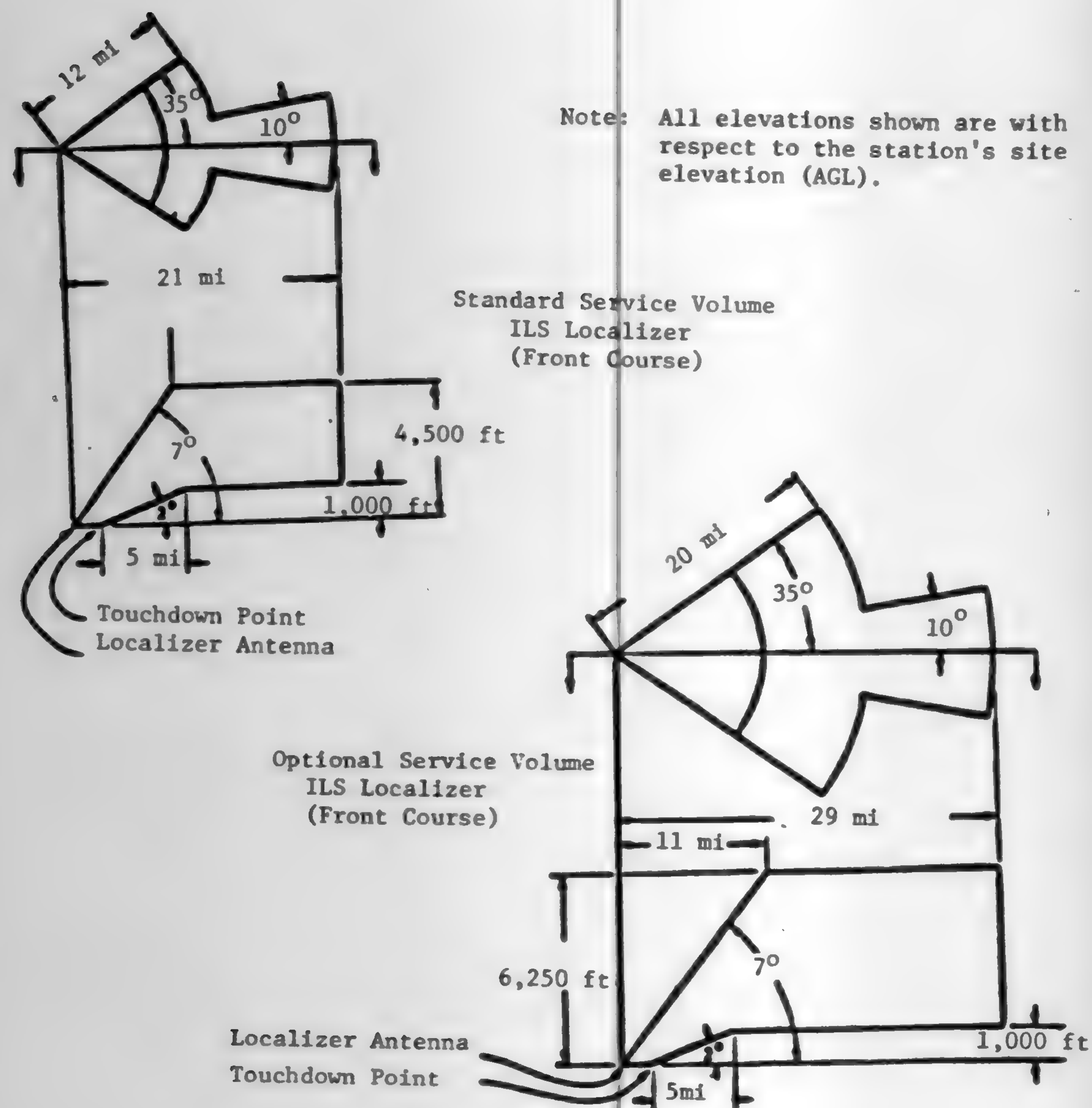


FREQUENCY RESPONSE OF NAVIGATION AIRCRAFT ANTENNAS (GENERAL



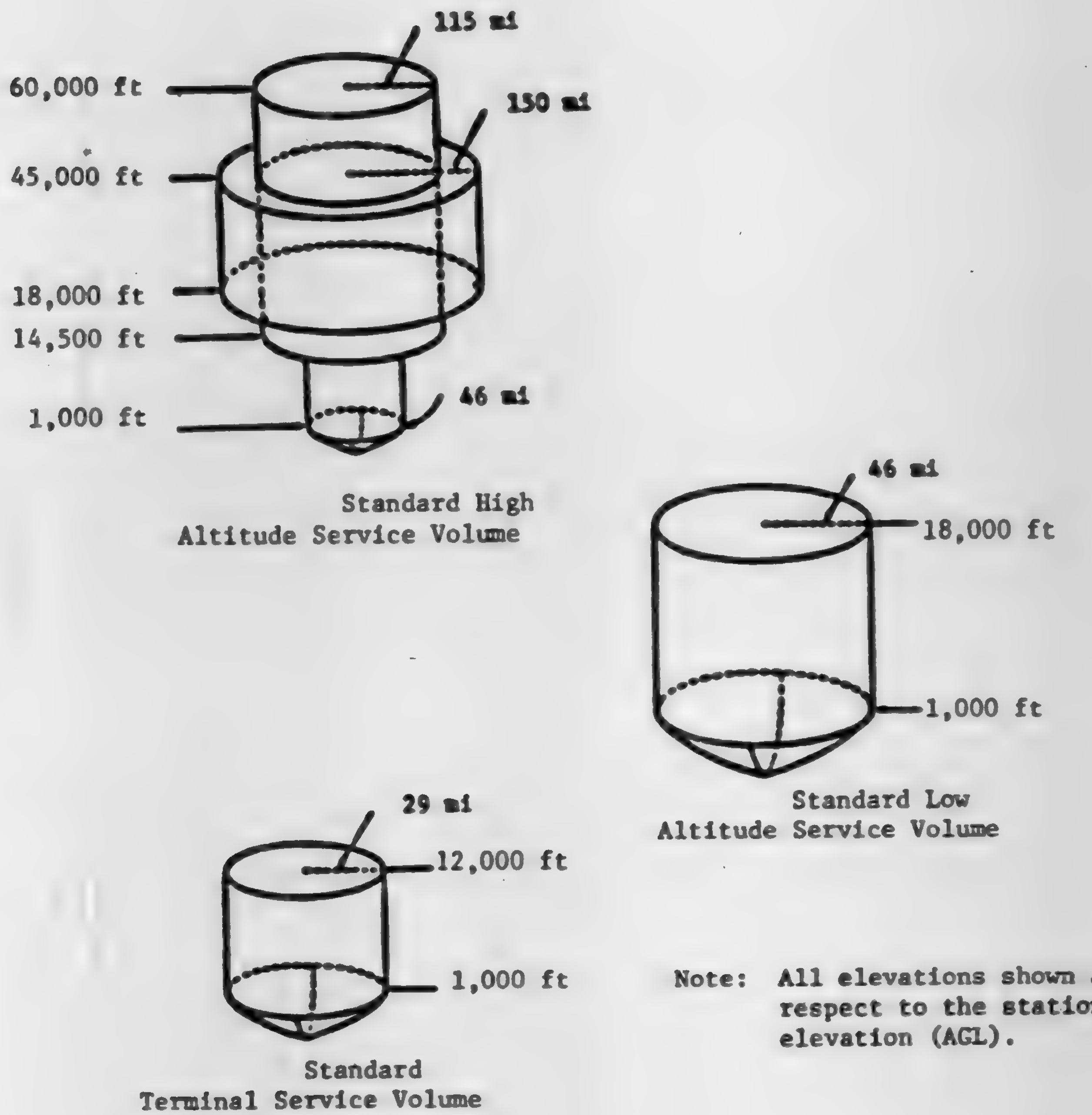
FREQUENCY RESPONSE OF NAVIGATION AIRCRAFT ANTENNAS (COMMERCIAL)

FIGURE 3



Service Volumes for ILS Localizer in the U.S.

FIGURE 4



Note: All elevations shown are with respect to the station's site elevation (AGL).

Service Volumes for VOR in the U.S.

FIGURE 5

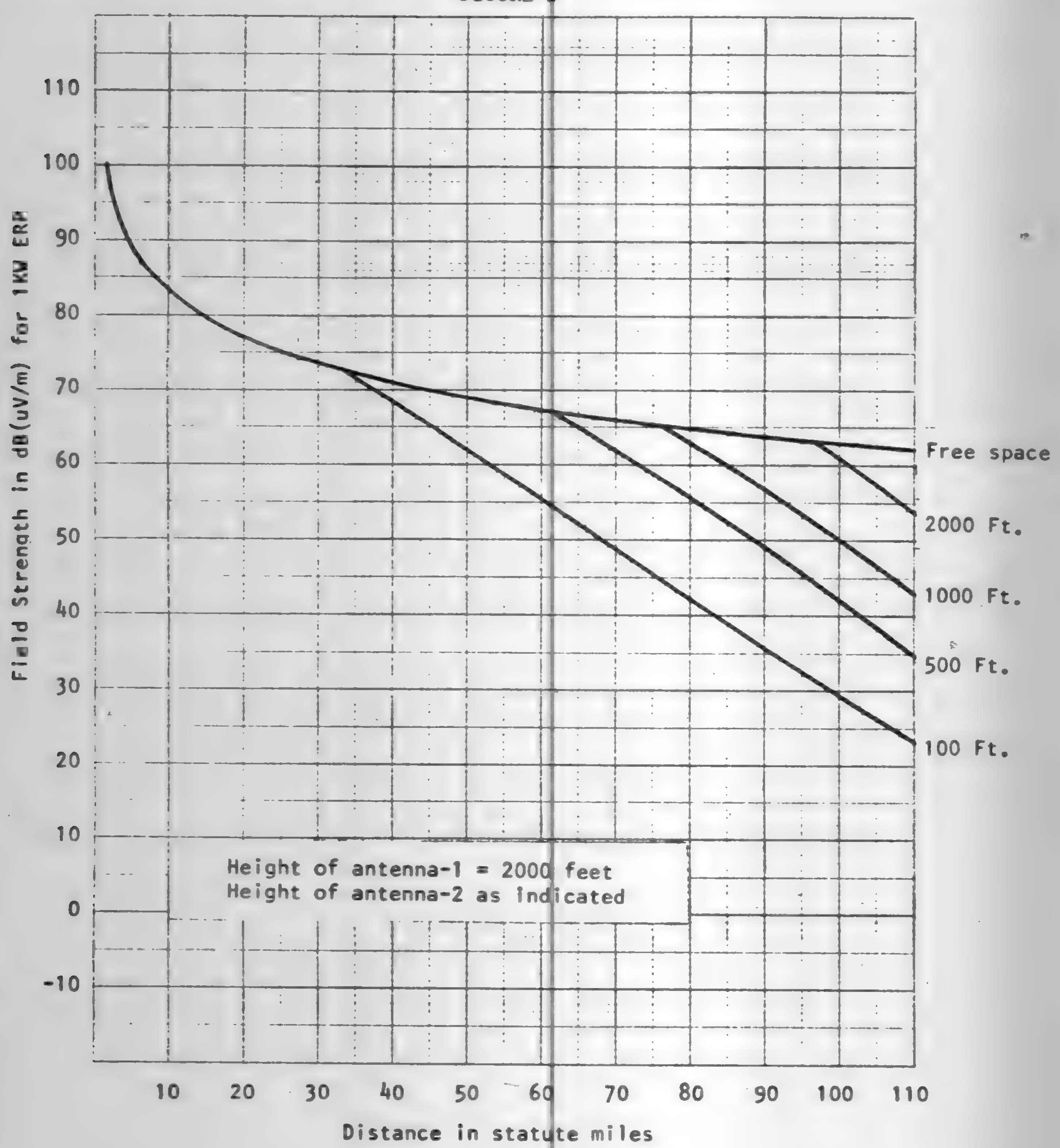

110
100
90
80
70
60
50
40
30
20
10
0
-10
Field Strength in dB(uV/m) for 1KW ERP
Free space
2000 Ft.
1000 Ft.
500 Ft.
100 Ft.
Height of antenna-1 = 2000 feet
Height of antenna-2 as indicated
10
20
30
40
50
60
70
80
90
100
110
Distance in statute miles

FIGURE 6
(worst receiver)

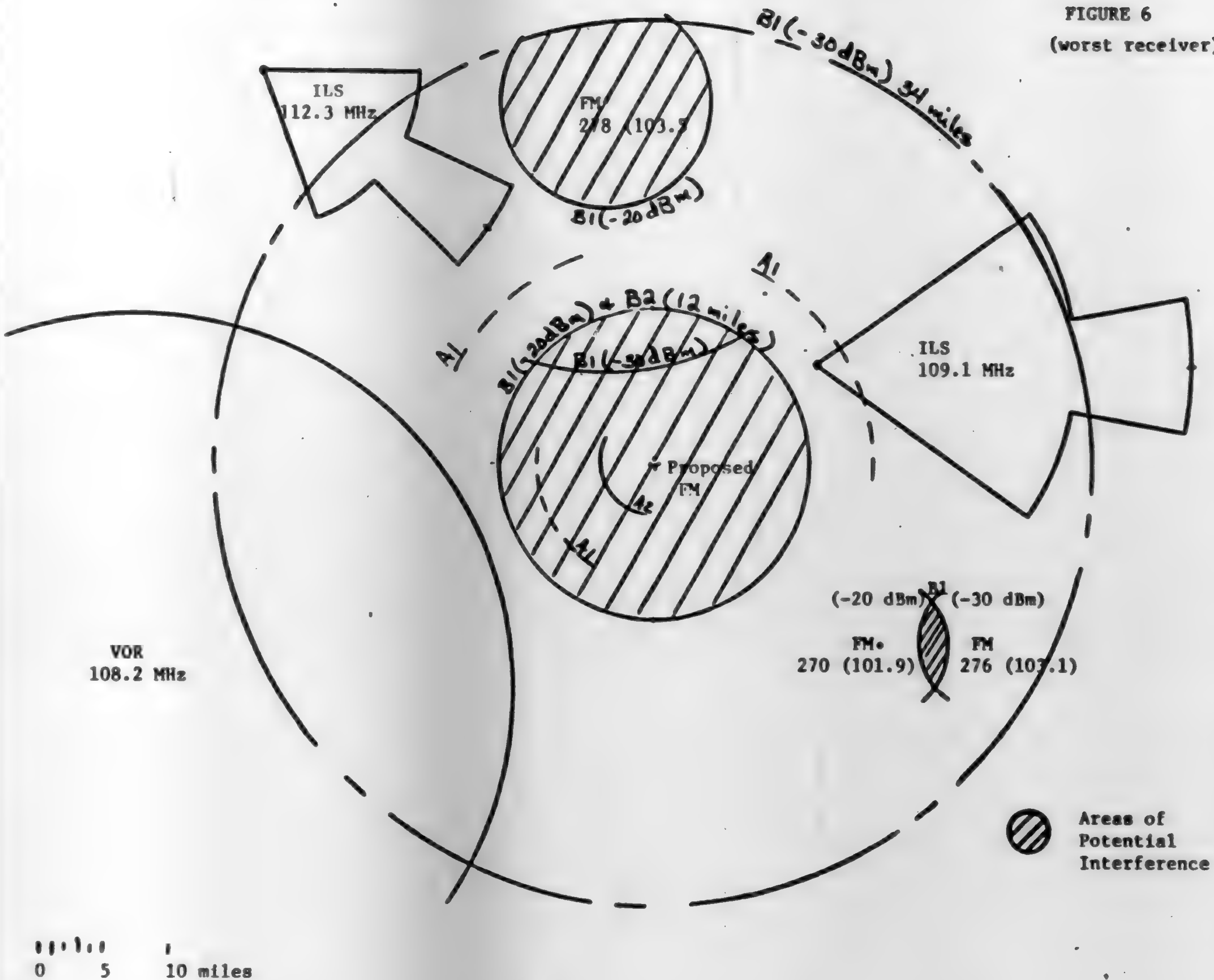


FIGURE 7
(improved receiver)

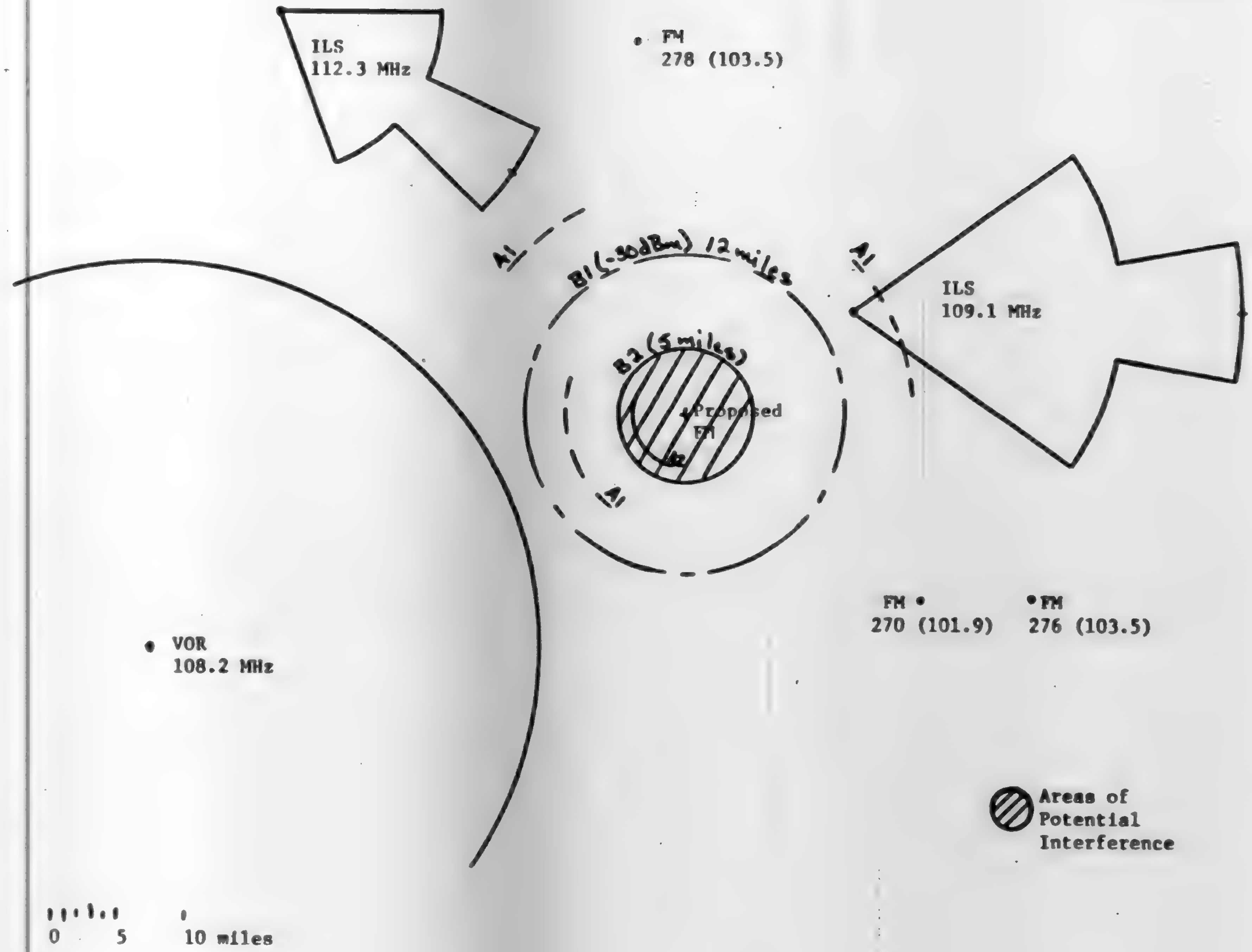


FIGURE 8

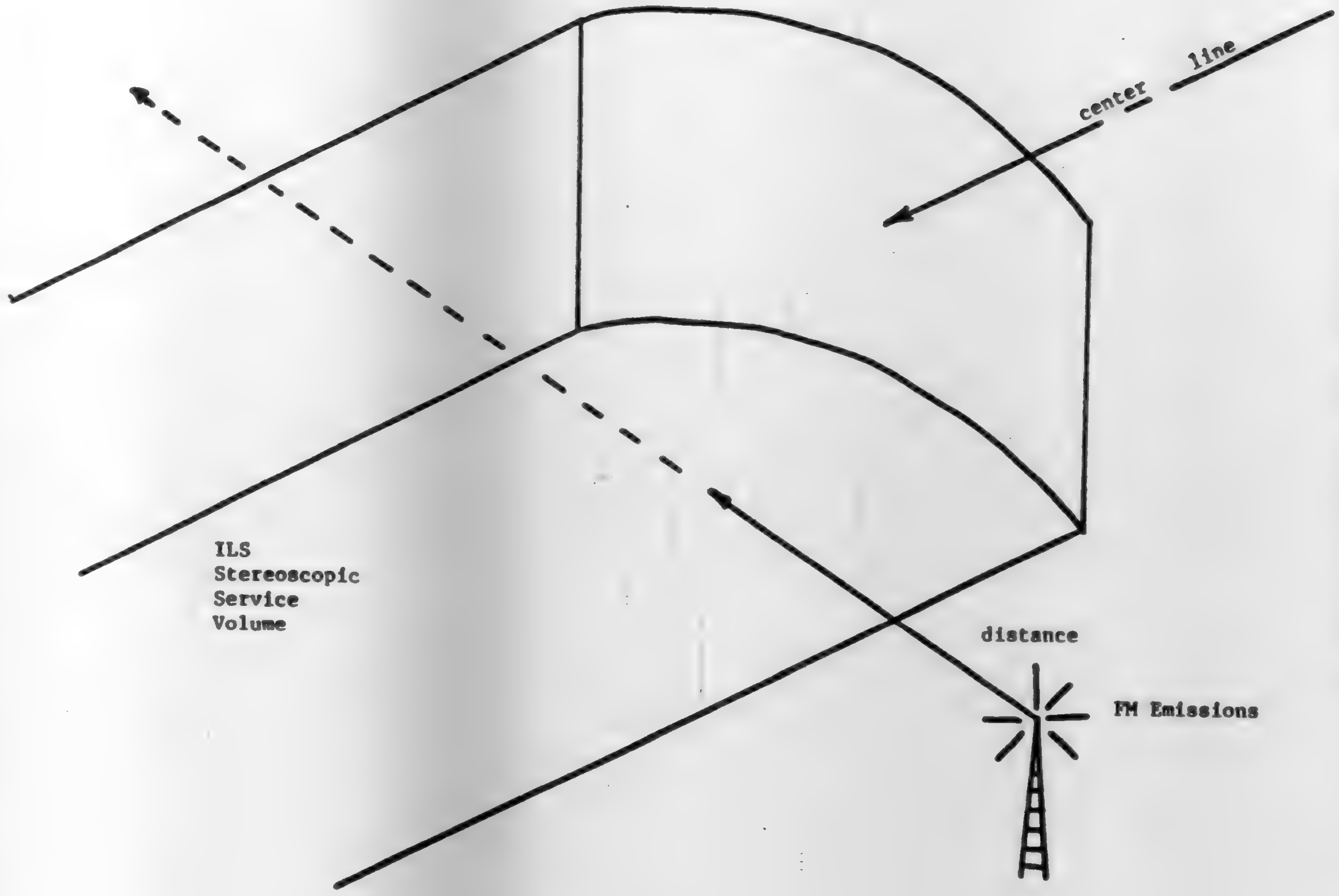

center line
ILS
Stereoscopic
Service
Volume
distance
FM Emissions

TABLE 1.—RF PROTECTION (D/U) RATIOS FOR ILS LOCALIZER RECEIVERS FOR TYPE A2 INTERFERENCE, dB

f kHz	DOC 10/128 CCIR noise		FAA/TC Tests														
			CCIR noise					Voice program material					Rock music program material				
	RX1	RX2	RXA	RXB	RXC	RXD	RXE	RXA	RXB	RXC	RXD	RXE	RXA	RXD	RXC	RXD	RXE
0	+10	+8	+10	+8	+10	+7	+11	+15	+14	+13	+8	+13	+15	+10	+12	+9	+15
50	−4	−16	−4	−3				−2	−6				−4	−2			
100	−23	−44	−27	−22	−32	−30	−28	−23	−32	−32	−33	−28	−35	−31	−36	−31	−30
150	−66	−73															
200	−74	−77	−72	−76	−77	−76	−56	−73	−71	−78	−74	−55	−76	−76	−80	−75	−55
300	−79	−81	−74	−73	−76	−78	−78	−74	−74	−82	−76	−76	−80	−73	−79	−78	−77
500	−79				−80	−78	−82			−77	−79	−81			−80	−79	−79
800	−80		−86	−69	−78	−83	−69	[illegible]	−69	−86	−82	[illegible]	−92	−69	−78	−84	−68

NOTES:
(1) *Re: Doc. 10/128, 22 September 1983 (Ref 1):*
Interference criterion: Δi=9 μamp for DDM=0.155.
Colored noise as per CCIR Rec. 559–1.
Stereo mode.
Quasi-peak deviation=±32 kHz.
(2) *Re: FAA/TC Tests March 1984:*
Interference criterion: Δi=9 μamp for DDM=0.093.
Colored noise as per CCIR Rec. 559–1.
Stereo mode.
Peak deviation=±75 kHz.
Pre-emphasis = 75 μsec.
(3) *General:*
Desired signal=−86 dBm (11 μv).
Receivers A through E are not in the same order as listed in paragraph 4.5.1.

NOTE: No consideration of whether the receivers were in "overload" was given. This oversight may have substantially effected the results.

Appendix 1

November 29, 1984.

Mr. Leland F. Page,

Acting Director, AES–1, Systems Engineering Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591

Reference: General Criteria for Air Hazard Determinations (Electromagnetic Interference—Television)

Dear Mr. Page: During the regular FAA/FCC coordination meeting on October 25, 1984, Mr. Gerald Markey requested that the Commission put into a letter its concerns about electromagnetic interference (EMI) criteria currently being used by FAA Regions. Our particular concern at this time is the criteria outlined in the AES–500 policy statement dated June 1984, for determining potential EMI from *television* (only) broadcast stations. A copy of this policy was just recently received and evaluated by Commission engineers who are coordinating the matter with your agency.

The FAA AES–500 guidance document extends use of the Venn diagram calculations to include the VHF and UHF television bands in a manner which is technically inconsistent with both the basic FAA–RD–78–35 report and the more recent Rome Research Corporation test data. Additionally, the policy statement does not include critical factors which should be taken into account when evaluating television broadcast systems. Television waveforms are among the most complicated found in both time and frequency domains and, as such, cannot be treated as simple extensions of frequency modulated signals for interference evaluations. For your convenience, I have tabulated our basic concerns about these below.

1. The AES–500 policy states that a value of Lr-15 dB (antenna rejection factor due to frequency separation) should be used for either navigation or communication antenna loss when calculating distance (radius) in nautical miles from a broadcast antenna at which a specified interference signal power level would appear to be present from a TV station operating in the frequency band from 175 MHz to 800 MHz. The 15 dB value is noted as an interim standard based on FAA ground antennas (Rome Research Corp., Test Report, Nov. 1, 1982). A copy of the Rome data is attached to the policy statement.

Even as an interim measure, the 15 dB value is too restrictive and is not, in fact, supported by the Rome Report for general application. The Rome test data shows that for a VHF *avionics ground* antenna, loss for frequencies in the range 175–800 MHz varies widely, up to more than 45 dB, depending upon the frequency of interest. Furthermore, Final Report No. FAA–RD–78–35 (pp 41 and 42) shows values of *aircraft navigation and communication* antenna losses that exceed 40 dB, again depending upon the frequency of interest.

We recommend using values more representative of those shown in FAA–RD–78–35 for antenna rejection, as these are from actual aircraft antennas. Frequencies above those shown in the report can, as an interim measure, be derived from the Rome Report. For FCC review of air hazard determinations, we plan to use the antenna rejection values in Report FAA–RD–78–35, or the Rome Report at higher frequencies, until better data becomes available.

2. The formula is used in the television signal EMI analysis incorporates no loss factor for receiver frequency response. A 108–137 MHz avionics receiver would undoubtedly discriminate against signals removed in frequency by hundreds of megahertz, such as the case for broadcast television signals in the USA (175 to 800 MHz band).

3. Interference from a television signal is a function of the *maximum* average video power level, not the peak power. In all of the FAA Regional EMI studies of television signals we have reviewed to date, the levels of synchronizing pulse *peaks* have been used for calculations. The synchronizing power level is 1.68 times the maximum average video power level, for a "worst case" (full black level) television waveform. Of course, full black level *rarely* occurs, and occurrences are for very short durations. Additionally, the 6-microsecond synchronizing pulses would be insignificant considering the relatively long time constants in navigation receivers. Therefore, a correction factor of at least 2.25 dB should be applied to the video power levels used by the FAA in calculations. In practice, with actual non-black level programming, the value will be even greater.

4. The overload values of −10 dBm for communications receivers and −20 dBm for navigation receivers were published by Mr. Charles Cram, and the FAA, for frequency modulated signals near 108 MHz. The only reason for the difference on overload levels is because the test signal was much closer in frequency to the navigation band i.e., the frequency separation from the communications receiver provided 10 dB additional rejection. For frequencies far removed from the aviation bands, both of the values are too high.

5. The AES–500 policy provides no guidance for intermoduation (IM) calculations (perhaps that is given to FAA regions elsewhere). Two types of IM must be considered, viz., receiver-produced IM and transmitter-produced IM. Other types exist, but are practically negligible compared to these two.

For receiver-produced IM, a VHF avionics receiver would typically be driven to non-linear state (overload) by one strong signal and then other signals might be acted upon by the receiver to produce IM. To correctly analyze the EMI, factors for both avionic receiver and antenna frequency response must be used because of the very wide frequency differences involved. After applying antenna and receiver frequency response factors (both being frequency dependent), coefficients of nonlinear transfer (efficiency of conversion), or eqivalent, must be used. These will be nonlinear coefficients themselves, dependent upon the degree of receiver overload. In any event, the conversion efficiency loss will be significant.

Intermodulations studies being conducted by FAA regional offices do not take into account receiver and antenna losses nor conversion efficiency factors. It is important to note that this type of interference is *not* being radiated from FM or TV stations. This interference would occur uniquely because of deficiencies in receiver design. Therefore, as a minimum, the factors described above should be applied.

For transmitter-produced IM, the only meaningful general case is when the transmitters and collocated. These IM products could be from any combination of TV, FM or even other types of transmitters (e.g., land mobile). When television or FM transmitter-produced IM is considered, and transmitters are physically miles apart, space-loss is always sufficient to preclude significant IM production. When physically separated, transmitting antenna frequency response of all stations must be applied, not only with respect to receiving the other strong signals, but with respect to retransmitting any IM product. Additionally, a non-linear conversion efficiency for all signal components contributing to an IM product must be used. The conversion efficiency will be low and generally negligible. For these reasons, significant transmitter-produced IM products do not occur involving TV transmitters that are not collocated. For collocated TV stations, all transmitted products would be at least 60 dB below the power of the station producing the products. The Commission can require additional alttenuation, if required.

In view of the discrepancies, enumerated above, we have serious reservations about restricting the growth of the TV broadcasting service based on FAA air hazard determinations. Evidence is lacking to indicate that a general problem even exists where TV stations are involved in interference. Application of the above mentioned factors and/or more testing may lead to agreed-upon protection criteria; but, for the present, we cannot support the method being employed in general for air hazard determinations involving television stations.

Commission engineers would be happy to discuss further any of the above concerns in the hope of reaching an agreeable solution. In the meantime, we will continue to evaluate the cases and promptly notify you of any air hazard determinations that seem to be in error.

Sincerely,

Ralph A. Haller,

Chief, Technical and International Branch.

cc:

Mr. Sidney Wugalter,

Manager,

Flight Information and Obstructions Branch (AAT-21?), Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591

Appendix 3

It is proposed to amend 47 CFR Parts 0 and 73 of the Commission's Rules and Regulations as follows:

PART 0—[AMENDED]

1. 47 CFR 0.311, paragraph (e) would be revised to read as follows:

* * * * *

(e) The Chief of the Field Operations Bureau is authorized to make determinations and notifications of the presence of harmful interference to radio communications involving safety of life of protection of property which requires temporary suspension of operation under §§ 73.1050 and 74.23 of the Rules. Upon invoking the authority granted pursuant to this section, the Chief of the Field Operations Bureau must immediately inform the Chairman of the Commission.

PART 73—[AMENDED]

2. A new 47 CFR 73.224 entitled "Protection of Aeronautical Services" is added to read as follows:

§ 73.224 Protection of aeronautical services.

(a) FM stations authorized prior to [adopted date] that do not conform to the requirements of this section may continue to operate as previously authorized. Additionally, these FM stations may make such changes as would reduce the potential for causing objectionable interference to aeronautical services as defined in this section.

(b) No application for a FM station on Channels 221–300 (92.1–107.9 MHz) will be accepted if objectional interference is predicted. Objectionable interference occurs when an interference zone of a FM station penetrates the stereoscopic service volume of a protected aeronautical facility.

(c) A protected aeronautical facility is defined as a FAA assigned and operated Instrument Landing System (ILS) or VHF Omni-range (VOR) facility used for airport approaches that occupies one of the following frequencies (MHz):

ILS

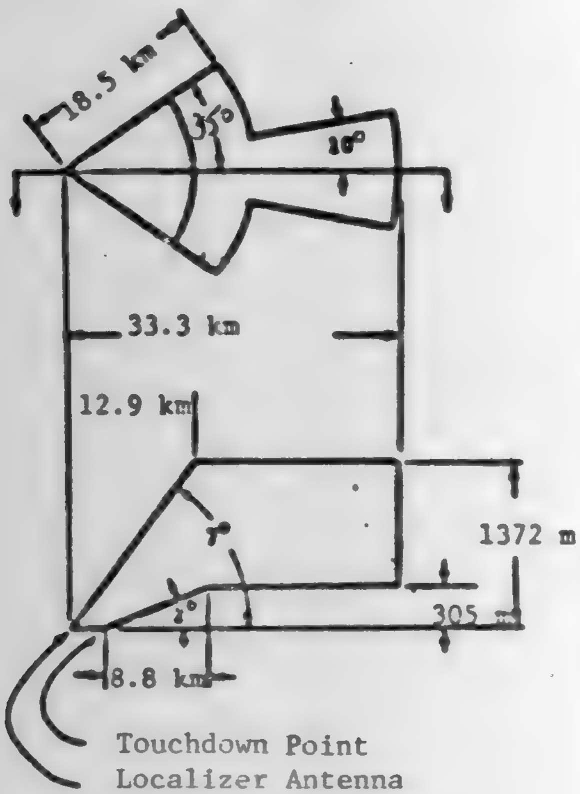
108.3	110.3
108.5	110.5
108.7	110.7
108.9	110.9
109.1	111.1
109.3	111.3
109.5	111.5
109.7	111.7
109.9	111.9
110.1	

VOR

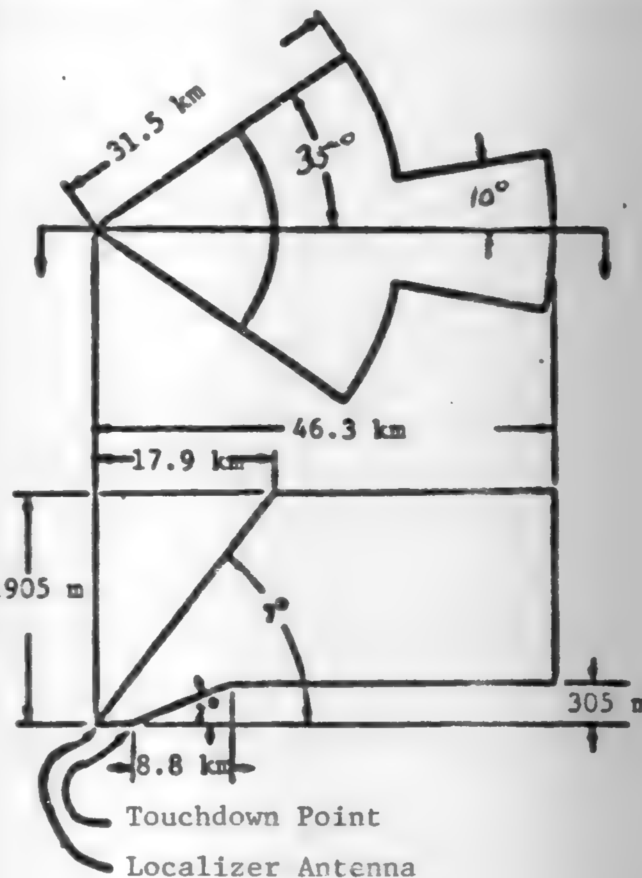
108.2	110.2
108.4	110.4
108.6	110.6
[illegible]	110.8
109.0	111.0
109.2	111.2
109.4	111.4
109.6	111.6
109.8	111.8
110.0	

(d) The dimensions of the stereoscopic service volume to be protected for the ILS (standard and optional) and the VOR facilities are given in the top and side views of the following figures:

BILLING CODE 6712-01-M

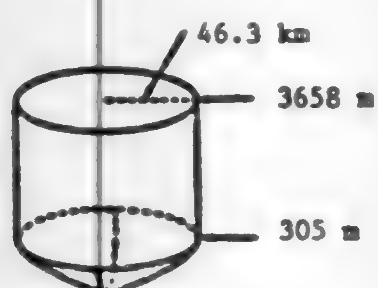


STANDARD SERVICE VOLUME
ILS LOCALIZER
(FRONT COURSE)



OPTION A SERVICE VOLUME
ILS LOCALIZER
(FRONT COURSE)

Note: All elevations shown are with respect to the station's site elevation (AGL).



VOR STANDARD
TERMINAL SERVICE VOLUME

BILLING CODE 6712-01-C

(e) For the four interference types that must be considered, the interference zone is defined as follows:

(1) Spurious emissions type interference potential occurs when the field strength, of a FM station operating on Channels 221–300 (92.1–107.9 MHz), exceeds the following value (depending on the aviation facility of concern):

FS=18−P+S for ILS facilities
FS=25−P+S for VOR facilities

(2) Adjacent channel type interference potential to a VOR facility operating on 108.2 MHz occurs when the field strength, of a FM station operating on Channel 300 (107.9 MHz), exceeds the following value:

FS=112−P for VOR facilities on 108.2 MHz

(3) Intermodulation type interference potential occurs, when two or three FM stations operating on Channels 221–300 (92.1–107.9 MHz) capable of producing third order modulation products corresponding to an ILS or VOR facility, combined according to the following standards:

(i) The intermodulation products are of the form:

$f_a = 2f_1 - f_2$ for two signals
$f_a = f_1 + f_2 - f_3$ for three signals

(ii) For a two signal product, the interference potential occurs where the prime signal level of one FM station intersects the secondary signal level of the other FM station. For a three signal product, the interference potential occurs where the prime signal level of one FM station intersects with an area common to the secondary signal levels of the other two FM stations.

prime: FS=108.5−P+L for both ILS and VOR facilities
secondary: FS=98.5−P+L for both ILS and VOR facilities

(4) Receiver desensitization type interference potential occurs when the field strength of a FM station operating on Channels 281–300 (104.1–107.9 MHz) exceeds the following value:

FS=128.5−P+L−R for both ILS and VOR facilities

Where:
FS=field strength in dBu
f_a=the aviation frequency of concern in MHz
f_1, f_2, f_3=the frequencies of the FM stations such that $f_1 > f_2 > f_3$
P=effective radiated power of the FM station in dBk (vertical plane when applicable)
S=spurious response in dB at 108.0 MHz (see § 73.317)
L=aviation antenna rejection of 3 dB+1 dB/MHz
R=aviation immunity values in dB from the following table.

Channel (Frequency in MHz): R (in dB)

281 (104.1): 0.5
282 (104.3): 1.0
283 (104.5): 1.5
284 (104.7): 2.0
285 (104.9): 2.5
286 (105.1): 3.0
287 (105.3): 3.5
288 (105.5): 4.0
289 (105.7): 4.5
290 (105.9): 5.0
291 (106.1): 6.5
292 (106.3): 8.0
293 (106.5): 9.5
294 (106.7): 11.0
295 (106.9): 12.5
296 (107.1): 14.0
297 (108.3): 15.5
298 (107.5): 17.0
299 (107.7): 18.5
300 (107.9): 20.0

(f) The distances to the field strengths, determined in paragraph (e) of this section, are determined by the following formula for free space propagation. This model is valid for distances up to approximately 40 kilometers (25 miles) without regard to transmitted or received antenna heights. Distances are rounded off to the nearest tenth of a kilometer.

$d = \log^{-10}[(107-FS)/20]$

Where:
d=distance in kilometers
FS=field strength in dBu.

(g) Radiation in any direction in which objectionable interference occurs may be reduced by use of a directional antenna. Application for use of directional antennas must be in conformance with § 73.316(d); and the radiation in any direction must not exceed the maximum permitted under § 73.211(b) for the particular class of station.

3. A new 47 CFR 73.1050 entitled "Interference jeopardizing safety of life" is added as follows:

§ 73.1050 Interference jeopardizing safety of life.

(a) The licensee of any station authorized under this part that causes harmful interference, as defined in § 2.1 of the Commission's Rules, to radio communications involving safety of life must promptly eliminate the interference.

(b) If harmful interference, as defined in § 2.1 of the Commission's Rules, to radio communications involving the safety of life occurs which cannot be promptly eliminated and the Commission finds that there exists an imminent danger to safety of life, operation of the offending equipment shall temporarily be suspended pursuant to the provisions of the Communications Act, *see, e.g.* 47 U.S.C. 316, and shall not be resumed until the harmful interference has been eliminated or the threat to the safety of life has passed. When specifically authorized, short test operations may be made durng the period of suspended operation to check the efficacy of remedial measures.

[FR Doc. 85-10440 Filed 5-7-85; 8:45 am]

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47 CFR Part 25

[CC Docket No. 85-135; FCC 85-238]

Licensing Space Stations in the Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes a rule that specifies the financial qualifications an applicant must demonstrate in order to be granted Commission authorization to construct and operate a domestic fixed-satellite system. Additionally it proposes transponder utilization standards that licensees must demonstrate before the Commission will grant authorizations for expansion satellites. This action was taken to clarify Commission policy on financial eligibility critera and transponder loading requirments for domestic fixed-satellite applicants.

DATES: Comments may be filed on or before June 7, 1985 and reply comments on or before June 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, Cecily C. Holiday or Fern J. Jarmulnek, Satellite Radio Branch, (202) 634-1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Notice of Proposed Rulemaking

In the matter of licensing Space Stations in the Domestic Fixed-Satellite Service. CC Docket No. 85-135; FCC 85-238.

Adopted: May 3, 1985.
Released: May 7, 1985.
By the Commission: Commissioner Rivera not participating.

I. Introduction

1. In its *1983 Processing Order*, the Commission established a cut-off for processing new domestic fixed-satellite

space station applications.[1] Any space station application proposing the use of the 4/6 GHz and 12/14 GHz bands and requesting orbital locations unsable by domestic satellites was required to be submitted on or before November 7, 1983 to be considered in this new processing group. Apendix B of this order specified the information required in these applications. In response, 21 entities submitted applications for 85 domestic satellite authorizations. Public notice was given on March 12, 1984 of the filing of these applications. Comments were solicited on the individual proposals as well as the general processing procedures for the group.[2] In addition to the applicants, 13 other parties submitted comments in this proceeding.[3]

2. It is clearly in the public interest to grant the applications of qualified entities in the pending group as expeditiously as possible. To this end, we have now completed a detailed review of the applications and of the extensive comments submitted in this proceeding. We are in accord with the commenters of the need to complete processing of the pending group as promptly as possible. we find that final authorizations are needed now if companies are to undertake the business commitments to construct the domestic satellite facilities needed to serve the public through the end of the decade.[4] Further delay would only cause uncertainty which could frustrate business planning to the detriment of users who will need satellite services in the late 1980's. We also believe that it is necessary to make such authorizations now to clarify future United States domestic satellite interests at the upcoming Space WARC.[5]

3. In contrast to previous situations when space stations were authorized, we are now faced with more applications than orbital locations available under current spacing criteria. A significant number of these applications appear to be speculative in that the applicant either has not documented firm financial capabilities to construct the proposed satellite system or has requested the assignment of orbital locations in excess of its ability to use them efficiently to provide service to the public. On the other hand, other applications appear to satisfy fully our domestic satellite licensing objectives and merit prompt grant. We have considered all of the alternative processing methods suggested by the commenters. We have concluded that a strict application of qualifications standards will result in the most efficient and expeditious provision of additional domestic satellite services required by the public. We have restated these requirements to ensure that all applicants clearly understand them and have an opportunity to supplement their applications. The Commission then will be in a position to make final ruling on the applications, and to dismiss those not meeting our criteria.[6] We are therefore proposng the rules discussed herein which would require submission of certain additional information from applicants on an expedited basis, enabling us to assign orbital locations as quickly as possible.

II. Summary of Comments

4. The comments submitted in this proceeding suggest a variety of processing approaches. The following is a brief summary and discussion of these comments. Because of the volume of these pleadings, it is neither desirable nor practical to discuss each in detail. However, we have fully considered all of the comments and our decision to proceed with this rulemaking is based on our full evaluation of the record now before us.

5. It has been suggested that the Commission makes a processing distinction between companies with authorized systems and those initially entering the domestic satellite market. Several entities applying for their initial authorizations have advocated a policy favoring new entrants.[7] They associate the benefits of competition and innovation with these applications and suggest that the applications of all qualified new entrants [8] be given expedited treatment.[9] Established carriers,[10] in contrast, have supported the institution of a renewal expectancy similar to that applied in the broadcast field. They argue that such an expectancy is necessary to protect substantial capital investment and unique customer requirements.

6. Several processing approaches have been suggested. These are comparative hearings, lotteries, auctions, or strict application of standards in order to dismiss unqualified applicants. The majority of commenters oppose comparative hearings because of their expense and tendency to delay proceedings. Some, however, suggested that after strict standards were applied to all applicants in order to dismiss those not meeting our criteria, hearings would be appropriate to determine awards to qualified applicants.[11]

7. Parties were concerned that the establishment of a lottery to distribute orbital locations would necessitate major design modifications for applicants awarded a position adjacent to a non-compatible system.[12] In addition, concern was expressed that if all applicants were included in a lottery, there was a substantial possibility of an award to an unqualified company.[13]

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[1] *Domestic Fixed-Satellite Service*, 93 FCC 2d 1260 (1983). This order was relased in conjunction with *Licensing of Space Stations in the Domestic Fixed-Satellite Service*, 54 Rad. Reg. 2d 577 (P&F) (1983) (hereinafter *Reduced Orbital Spacing)* and the individual orders granting the previous round of space station applications. The actual cut-off date was specified by *Public Notice*, Report No. DA-207 (released September 9, 1983).

[2] *Public Notice*, Report No. DS-265 (released March 12, 1984).

[3] A list of these parties is attached as Appendix A.

[4] In our 1983 authorization actions, we noted that the newly authorized satellites would be launched over a 4 to 5 year period. Because of the 3 year construction period required, satellites whose construction was authorized in 1985 would not be available until about 1988.

[5] Such considerations have been taken into account in other Commission proceedings. *See, e.g., Direct Broadcasting Satellite Serive*, 90 FCC 2d 672 (1982).

[6] In the *1983 Processing Order*, 93 FCC 1262, we indicated that applications not supplying the requisite information would be dismissed. In giving public notice of these applications, we reserved the right to dismiss any application if, upon further examination, we determined that it was defective or not in conformance with the Commission's rules, regulations or policies. *Public Notice*, Report No. DS-265 (released March 12, 1984.)

[7] National Exchange, Inc. (NEX), Equatorial Communication Services (Equatorial), Ford Aerospace Satellite Services Corporation (Ford), Federal Express Corporation (Federal Express).

[8] NEX suggests focusing on spectrum efficiency as a method to evaluate new entrants.

[9] We reject a motion filed by Ford, a potential new entrant, for expedited processing of its applications. The processing procedure established by our *1983 Processing Order* is intended to establish a fair and orderly means of authorizing new domestic facilities. We have consistently applied a group approach to processing applications as particular frequency bands become intensively used. We have found this to be the most practical way of authorizing multiple entities in order to provide service to the public as expeditiously as possible. Bifurcation, with some applicants processed and either authorized or dismissed before others, will only lead to business uncertainties and delays in service.

[10] Satellite Business Systems (SBS), GTE Satellite Corporation (GSAT), and GTE Spacenet Corporation (Spacenet). The Western Union Telegraph Company (Western Union) suggests a permanent award of an authorization to be revoked only for good cause.

[11] SBS; *see* Comments of Ford which favor of expedited paper hearings for existing carriers with firm customers needs.

[12] Spacenet; GSAT.

[13] Equatorial, Spacenet.

Other applicants prefer a lottery to comparative hearings because of the higher costs, delays and administrative difficulties caused by the latter method.[14]

8. The possibility of auctioning orbital locations was discussed in some comments. The Bureaus of Economics, Consumer Protection and Competition of the Federal Trade Commission (FTC) advocated this approach based on economic analysis and the assertion that administrative costs would be lower than if a lottery were used.[15] Other parties favored a limited auction for authorizations to existing carriers as opposed to new entrants.[16]

9. The majority of the commenters favored a strict application of the standards set out in the *1983 Processing Order* to eliminate unqualified applicants.[17] The parties asserted that if this approach were followed there would be sufficient orbital positions to accommodate the remaining applications.[18] These standards were discussed by the commenters and included financial,[19] legal and technical criteria.[20] In addition, parties asserted that the Commission should adhere to its policy of awarding two positions to each qualified new entrant and additional locations for non-replacement satellites to existing carriers only where substantial fill and firm customer need were demonstrated.[21]

[14] Comments submitted by Western Union outline possible procedures by which such a lottery could be conducted. *In accord*, see comments of Huges.

[15] *In accord*, comments filed by Henry Geller and Donna Lampert. Another applicant supporting the use of an auction if unqualified applicants were not included was Huges Communications Galaxy, Inc. (Huges).

[16] Equatorial stated that an auction for all applicants would pose a substantial entry barrier to the market.

[17] 93 FCC 2d at 1262.

[18] *See, e.g.*, Hughes, Ford, GSAT, Spacenet, Comsat General Corporation (Comsat), Equatorial.

[19] Systematics General Corporation (SGC) does suggest that its bifurcated processing procedure based on requested orbital locations would permit immediate grants to new entrants. Strict construction deadlines could be applied to monitor these companies' financial qualifications and progress in completion of satellite systems. Digital Telesat, Inc. (Digisat) states in a Consolidated Opposition to Petition to Deny that an applicant should only be required to demonstrate a reasonable assurance of obtaining financing after a construction permit is awarded. Other parties advocated that a strict financial qualifications standard be applied to all applicants. *See* American Satellite Company (American Satellite) which offered detailed suggestions on the requirements to demonstrate financial qualifications for both new and existing carriers.

[20] For example, Hughes suggested deferring action on hybrid satellites as being inherently inefficient.

[21] American Satellite suggested deferring applications for late launches and denial of requests for contiguous positions.

10. Other possibilities such as expansion of the orbital arc[22] and further reductions in satellite spacings were raised.[23] It was suggested that combinations between applicants be favored.[24] In addition, Systematics General Corporation (SGC) suggested a bifurcated processing procedure which would expeditiously grant those applications requesting positions in the far eastern portion of the orbital arc.[25] Other parties suggested the requirement of due diligence bench marks to insure the timely utilization of all authorizations.[26]

III. Discussion

11. It has been more than a decade since we first established our basic domestic satellite licensing policies.[27] They have served the public well and continue to be flexible enough to allow us to respond promptly to changing technological, market and regulatory conditions.[28] Three groups of domestic satellite authorizations have been granted within this policy framework. The initial domestic satellite authorizations were issued in 1973,[29] another group was authorized in 1980,[30] and our most recent authorization actions were taken in 1983.[31] In considering the current group of domestic satellite applications now before us, we will continue to pursue our long-standing objective as announced in our order in *Domsat II*, 35 FCC 2d 844 (1972), to allow qualified applicants the opportunity to demonstrate the advantages to the public derived from satellite communications. As we cautioned in that order, however, entry into this field is not without limitation and we have a statutory responsibility to set qualification standards. Each applicant must make a sufficient showing that it meets these qualifications and that its proposal will sufficiently benefit the public to justify the assignment of orbital locations.

12. We find that the public interest will be best served by an expeditious grant of authorizations to those qualified applicants who will be able to begin construction of their systems immediately and thus offer satellite services to the public expeditiously.[32] In

[22] GSAT, Spacenet.

[23] Parties did not advocate further reduction in spacings although Hughes stated that separations could be slightly narrowed without reducing spacing below 2°. Hughes opposes a reduction below 3° between those satellites serving the cable television industry. Home Box Office (HBO) and the Satellite Television Industry Association (SPACE) requested that spacings between cable satellites be left at 3° and Joint Comments of Cable Television Operators and National Cable Television Association stressed that the move to 2° spacing be made slowly. CBS urged rejection of HBO's proposal. GTE Spacenet suggested that authority be given to fixed-satellite permittees to use frequencies allocated to DBS service. This suggestion was opposed by Satellite Television Corp.

[24] Hughes, Federal Express.

[25] A subsequently filed joint motion of Cablesat General Corporation (Cablesat), Columbia Communications Corporation (Columbia), Digisat and SGC urges that we bifurcate this application proceeding and promptly grant their applications proposing Far Eastern Regional Networks (FERN), *i.e.*, a satellite network using positions east of 55° W.L. FERN applicants argue that their applications are not mutually exclusive with other applicants seeking to provide 48 and 50-state services, because these types of services can be provided only from locations west of 55° W.L. Because all requests for locations east of 55° W.L. can be accommodated, FERN applicants argue that these requests should be immediately granted. GTE Spacenet, Federal Express and RCA Americom, oppose this procedure, contending that FERN locations may be able to be used by non-FERN applicants willing to change their business plans. ISI alleges that its requested orbit assignment will receive unacceptable interference from Digisat. We deny the FERN applicants' motion. Because the orbital locations east of 55° W.L. are usable for domestic satellite services, we do not wish to foreclose non-FERN applicants from the option of modifying their plans. Moreover, we will not, as the FERN applicants suggest, dispense with an independent assessment of FERN applicants' qualifications to the detriment of qualified applicants who may be willing to accept a position east of 55° W.L.

[26] Western Union.

[27] *Domestic Communications Satellite Facilities*, 22 FCC 2d 86 (1970), 35 FCC 2d 844 (1972), *recon. in part*, 38 FCC 2d 665 (1972). (*Domsat I, II*, and *III*, respectively).

[28] *Domestic Fixed-Satellite Service*, 88 FCC 2d 318 (1981).

[29] *American Satellite Corporation*, 43 FCC 2d 348 (1973); *American Telephone and Telegraph Company*, 42 FCC 2d 654 (1973); *Communications Satellite Corp.*, 42 FCC 2d 677 (1973); *GTE Satellite Corporation*, 43 FCC 2d 1141 (1973); *RCA Global Communications*, 42 FCC 2d 774 (1973); *Western Union Telegraph Company*, 38 FCC 2d 1197 (1973).

[30] *Comsat General Corporation*, 84 FCC 2d 547 (1981); *GTE Satellite Corporation*, 84 FCC 2d 562 (1981); *Hughes Communications, Inc.*, 84 FCC 2d 578 (1981); *RCA American Communications, Inc.*, 84 FCC 2d 633 (1981); *Satellite Business Systems*, 86 FCC 2d 180 (1981); *Southern Pacific Communications*, 84 FCC 2d 650 (1981); *Western Union Telegraph Co.*, 86 FCC 2d 196 (1981).

[31] *Advanced Business Communications, Inc.*, 94 FCC 2d 1 (1983); *American Satellite Co.*, 94 FCC 2d 39 (1983); *American Telephone and Telegraph Co.*, 94 FCC 2d 44 (1983); *Hughes Communications, Inc.*, 94 FCC 2d 271 (1983); *Rainbow Satellite, Inc.*, 94 FCC 2d 437 (1983); *RCA American Communications, Inc.*, 94 FCC 2d 441 (1983); *Satellite Business Systems*, 94 FCC 2d 447 (1983); *Southern Pacific Communications Company*, 94 FCC 2d 457 (1983); *United States Satellite Systems, Inc.*, 94 FCC 2d 462 (1983); *Western Union Telegraph Co.*, 94 FCC 2d 467 (1983).

[32] The desirability of expeditious action in the domestic satellite field and avoidance of unnecessary administrative delays in this dynamic industry is well established. *See e.g.*, *U.S.v. FCC*, 652 F.2d 72 (D.C. Cir. 1980).

making this determination, we are fulfilling our legislative mandate to satisfy the public "convenience, interest, or necessity"[33] and an integral part of our public interest conclusion is verifying the qualifications of individual applicants.[34] The explicit licensing standards we are articulating herein constitute the most efficient and reasonable method to judge an applicant's qualifications to proceed expeditiously with the construction, launch and operation of the proposed satellite facilities.[35]

13. Although it has been suggested that either lotteries or auctions are appropriate processing procedures, we have determined that the adoption of either at this time would be premature and could raise substantial problems. Instead, the application of strict qualifications standards might avoid the need to select alternative approaches and therefore, is preferable. As has been pointed out by the parties opposing lotteries, a pool including all applicants probably would result in awarding satellite authorizations to unqualified entities thus causing delays in construction and service, and perhaps even forfeiture of licenses awarded to companies unable to fulfill their application representations. In addition, utilization of a lottery could result in the award of contiguous locations to incompatible systems thus necessitating major design modifications for licensees. In addition, the administrative delays and costs which would result from the institution of a new licensing scheme, such as a lottery, assuming the statutory requirements for using a lottery could be met,[36] militate against its use.

14. Auctions would entail many of the same administrative problems associated with lotteries. In addition, auctions have been proposed as a method for awarding authorizations in other services but have not been employed.[37] Thus, we have no experience by which to evaluate their efficacy in this service. We have concluded that with the assistance of the information requested by the proposed rule, the best approach is to determine expeditiously which applicants meet our strict qualifications. If there are more qualified applicants than we are able to accommodate, we may then need to reexamine these alternatives. The following is a discussion of our proposed rule.

IV. Space Station Licensing Standards

15. The basic information required of each applicant is specified in the *1983 Processing Order*.[38] Applicants were required to file complete and comprehensive proposals for their systems and services, and to demonstrate specifically their ability to proceed promptly with construction and launch of the proposed satellites. Additionally, if more than two orbital locations are requested, applicants were required to submit information on utilization of transponder capacity on in-orbit satellites and firm customer service requirements for additional satellite capacity. Our initial review of the pending applications indicates the information concerning financial qualifications is, in many cases, inadequate to demonstrate an applicant's ability to construct and launch the proposed system promptly. Information with respect to transponder loading is insufficient to demonstrate a need for requested expansion satellites, or of future user requirements.

16. Section 308 of the Communications Act of 1934 authorizes the Commission to grant radio station licenses and section 309(e) provides that if the Commission is unable to make a finding that the public interest, convenience and necessity will be served by granting that application, it "shall formally designate the application for hearing."[39] However, if an application on its face violates a Commission rule, a full hearing is not required. The hearing requirement does not affect the Commission's rulemaking authority.[40] In the *Storer* case, a pending application was dismissed upon the Commission's adoption of multiple ownership rules for broadcast stations because the applicant was already licensed to operate the maximum number of stations permitted. The Court declared that the application could be dismissed without a hearing. Specifically, the Court held: "We do not think Congress intended the Commission to waste time on applications that do not state a valid basis for a hearing."[41] Thus, if applicants in the current domestic satellite system processing group are unable to meet the explicit basic qualifying standards concerning financial qualifications and loading requirements, their applications may be dismissed without a hearing.

A. Financial Qualifications

17. Financial qualifications are required in the domestic satellite field to ensure that the development of the available but unused orbit and spectrum resource is not delayed, and that the public is promptly provided with needed satellite service. Constructing and operating a satellite system requires an enormous capital investment[42] with large risks involved. Close scrutiny of an applicant's financial qualifications assures the Commission that an applicant can immediately begin to construct and operate its system. Without sufficient financial resources at the time a construction permit is granted, an applicant will spend a significant amount of time attempting to raise capital before even beginning to fulfill its representations to the Commission that it can begin constructing its system immediately. Furthermore, experience has demonstrated that there is no guarantee that financing attempts will prove successful even with the issuance of a construction permit by the Commission. In fact, the failure of licensees holding conditional authorizations to obtain financing has resulted in protracted proceedings, placed substantial burdens on other applicants and on our limited processing staff, and delayed the processing of applications for additional facilities. Moreover, grant of an authorization to an applicant who is not financially qualified is now likely to preclude qualified applicants from constructing and operating proposed systems. This, in turn, delays service to the public. Requiring that an applicant demonstrate that it is financially

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[33] 47 U.S.C. 307(a).

[34] *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

[35] *See* 47 U.S.C. 308(b); *see also Domestic Fixed-Satellite Service*, 77 FCC 2d 956 (1980) (hereinafter *1980 Processing Order*); *1983 Processing Order*, 93 FCC 2d 1260.

[36] The criteria the Commission must meet in employing lotteries is set forth in H.R. Rep. No. 97-765, 97th Cong., 2d Sess. (1982).

[37] *See, e.g., In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, 94 FCC 2d 1203, 1260 (1983); *In the Matter of Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries instead of Comparative Hearings*, 93 FCC 2d 952, 988 (1983). In these proceedings the Commission concluded that the specific grant of authority to use lotteries made that processing method more attractive than auctions.

[38] 93 FCC 2d 1260 (1983). The information specified in this order is designed to update the information that has been required of space station applicants since our initial decision in 1970 to accept such applications. *See Domsat I*, 22 FCC 2d 86, at Appendix D, *1980 Processing Order*, 77 FCC 2d 956, at Appendix B.

[39] 47 U.S.C. 308, 309(e).

[40] *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956).

[41] *Id* at 205.

[42] The investment cost for a satellite system averages about $300 million.

qualified also discourages the filing of purely speculative applicants for the purpose of selling a bare license and privately profiting from the regulatory process.

18. Thus, the Commission has, since *Domsat I*, traditionally required all applicants to demonstrate that they are financially qualified to construct, launch and operate their proposed systems promptly.[43] This scrutiny ensures that an applicant is capable of implementing its proposed domestic fixed-satellite system promptly. To aid our assessment, we stated in *Reduced Orbital Spacing* that we believed the standards set forth in *Ultravision*[44] were indicative of the showing that must be made by domestic satellite applicants to demonstrate full financial qualifications.[45]

19. Most parties commenting on this issue affirmatively support close scrutiny of basic financial qualifications. Ford, for example, declares that the Commission should adhere to its statement that it would hold domestic satellite applicants to the *Ultravision* standard for demonstrating full financial qualifications.[46] According to Ford, applications unable to meet this standard should be summarily dismissed. SBS asserts that financial qualifications should include unconditional commitments of sufficient funds to build, launch and operate the proposed systems upon authorization. Many parties, including SBS, American Satellite and Equatorial, oppose any further grant of conditional construction permits such as the ones issued on an experimental basis to three applicants in the previous processing group.[47] SBS points out that the current conditions of scarcity require a more rigorous policy in regard to applicants' qualifications. USSSI states that while it believes that there is some confusion regarding the prevailing standard, the Ultravision "reasonable assurance" test, coupled with a waiver for applicants unable to meet this test, is the prevailing Commission view. SGC is one of the few parties to continue to support the conditional authorizations, at least in the context of FERN applicants, where SGC appears to argue for immediate grant of system authorizations, together with a strict six month deadline for initiating construction. Some applicants, such as Columbia and Rainbow argue that the Direct Broadcast Satellite "due diligence" standard should apply. For reasons discussed in more detail below, we believe that adopting a less stringent standard would be counterproductive. Our experiment with more lenient treatment of applicant qualifications may have been appropriate when the number of competitors was small and it was possible to afford the opportunity to all applicants to pursue their planned systems. Today, however, this is no longer the case.

20. None of the comments in this proceedings convinces us that a lesser standard than *Ultravision* is warranted under current conditions in the 4/6 GHz and 12/14 GHz bands. We believe that only the strictest application of the *Ultravison* standard will allow us to fulfill our regulatory responsibilities and further our long-standing domestic satellite policy objectives.[48] The *Ultravison* test requires that an applicant demonstrate that it has sufficient capital to construct its system and operate it for one year. Until 1983, the documentation of the financial qualifications of applicants was not closely scrutinized because either the applicants' financial resources were a matter of record before the Commission or the applicant clearly had sufficient corporate resources to finance their proposed system. However, in 1983, there of the pending applicants admittedly did not have the financial resources to construct and operate their proposed satellite systems. Rather, they claimed that financial institutions with whom they had been in negotiations were prepared to participate in financing the proposed system once construction permits were granted. Because we were able to grant all applications without delaying any qualified applicant from proceeding with its plans, we were able to try a novel approach for that group, and granted three applicants authorizations conditioned upon their obtaining the necessary financing.[49] We believe, however, that this experiment was not successful.[50] None of the three applicants could arrange conventional financing promptly upon grant, as they had represented they would, nor could any obtain the committed non-contingent financing we would have required under a more traditional approach. Given the existence of applicants who appear to be capable of demonstrating full financial qualifications prior to the issuance of construction permits, the public interest will not be served by repeating this unsuccessful experiment.

21. Based on our extensive experience with the financial qualifications of domestic satellite applicants, and the observations that we have received from the parties in response to our requests for comments on processing methods and individual applications, we believe it desirable to restate and clarify the finacial qualification requirements we stated would apply to future space station applications in *Reduced Orbital Spacing*. Specifically, we propose that each applicant for a domestic satellite space station authorization unequivocally demonstrate, prior to grant, that it has firmly committed financial resources to meet the estimated costs of proposed construction, launch and other initial expenses, as well as the estimated operating expenses for a year. Applicants must demonstrate financial qualifications by submitting audited financial statements or balance sheets for the latest available year demonstrating that the applicant or its parent company, if it is relying on the parent company as a source of financing, has uncommitted current assets sufficient to cover estimated investment costs and the estimated costs of the initial year of operation. Proof must also be submitted that such funds are firmly committed to provide all capital expenditures with respect to the proposed domestic satellite project.[51] This documentation need not be resubmitted if it has already been supplied in the November 7, 1983 application and the applicant certifies that circumstances have not changed. In conjunction with any form of credit arrangement or private equity placement the applicant is relying on the cover initial investment and operating cost, it must also submit the details of the loan or other from of credit or equity arrangement intended to be used to

[43] 22 FCC 2d 84.

[44] *Ultravision Broadcasting*, 1 FCC 2d 544 (1965). That standard basically provides that an applicant must have sufficient capital to construct its system and operate it for one year.

[45] 94 FCC 2d at n. 59.

[46] *See* Consolidated Petitions to Deny or Dismiss and Comments of Ford at 30. Other applicants supporting the full demonstration of financial qualifications include GTE Satellite, GTE Spacenet, American Satellite, Martin Marietta Communications Systems, Inc. (Martin Marietta) and SBS.

[47] *See* para. 20 *infra* for a discussion of this approach.

[48] *See Domsat II*, 35 FCC 2d 844 (1972)

[49] Advanced Business Communications, Inc., 94 FCC 2d 1 (1983); *Rainbow Satellite Inc.*, 94 FCC 2d 437 (1983); *United States Satellite Systems, Inc.*, *94 FCC 2d 462 (1983)*.

[50] *Advanced Business Communications, Inc.*, FCC 85–57 (released February 27, 1985); *Rainbow Satellite, Inc.*, Mimeo No. 2583 (released February 14, 1985); *United States Satellite Systems, Inc.*, Mimeo No. 2584 (released February 14, 1985). (Applications for review pending).

[51] For example, a resolution of the Board of Directors was considered sufficient for this purpose in *RCA Global Communications*, FCC 73–795 (released July 27, 1973).

finance the proposed system. This includes information such as the identity of the creditor (or creditors), letters of commitment, all terms of the transactions including required collateral, and the details of any sale or placement of any equity or other form of ownership interest.

22. Acceptable financial arrangements must demonstrate that financing has been approved and does not rest on contingencies which require further action by either party to the loan.[52] In other words, the instrument of financing must demonstrate that the lender has already determined that the applicant is creditworthy and, absent changed circumstances, is prepared to make the loan immediately on grant of Commission authorization to construct the satellite system.[53] Thus, letters from a financier indicating that it has an interest in the project, or will assist in arranging financing once a construction permit is granted, are not sufficient to demonstrate financial qualifications. Loans contingent on a future action of the applicant, such as marketing a certain number of transponders on the system or entering into contracts with other parties, will also not be considered sufficient. Parties are referred to our discussions in the cases cited in footnote 50 as examples of inadequate financial arrangements. An exact text of the proposed rule is contained in Appendix B.[54]

B. Transponder Loading Requirements

23. Newly authorized systems relying on generalized projections of traffic have consistently been assigned two orbital locations.[55] This policy rests on the basis that two locations are necessary and sufficient to establish a competitive market presence in the absence of firm customer commitments. When an existing operator seeks to expand an authorized system or a new entrant requests more than two orbit locations, however, a concrete showing of need must be made. In *Reduced Orbital Spacing*,[56] citing the *1980 Assignment Order*,[57] we stated that additional locations would be assigned "only upon a showing that in-orbit satellites are essentially filled and that an additional orbit location is needed to satisfy firm customer growth requirements, including reasonable protection requirements."[58] The upper limit on in-orbit spare capacity was set at the equivalent of one spare satellite used for occasional or preemptible services, although we stated that a lower level may be required to enable more satellites to be accommodated. We further stated that forecasted requirements should be related as specifically as possible to the applicant's experience, rather than to general industry forecasts. Thus, applicants requesting more than two locations were required to provide detailed historical use data for their system and projected requirements on a transponder-by-transponder basis.

24. Parties commenting on the general policies that should be followed in authorizing expansion satellites agree that new entrants should continue to be provided two orbital locations. They also agree that warehousing orbital assignments should not be permitted, although they differ in the method proposed to limit the number of expansion satellites granted. Equatorial and NEX argue that capacity of existing locations be utilized to the fullest extent possible and firm customer requirements be demonstrated before additional satellites are authorized. Federal Express argues that existing operators should be limited to the use of locations currently authorized to them until the existing satellites have been replaced with higher capacity satellites and maximum feasible capacity is being used. GSAT and Spacenet believe that expansion should be limited to one assignment in each band, while Martin Marietta asserts that existing operators should be limited to one new orbital assignment upon showing that existing facilities are loaded. SGC argues that assignment of more than one position in each frequency band is unnecessary until an applicant can certify it has binding contracts for non-occasional use of at least 50% of the transponders on a satellite at that location. Finally, American Satellite suggests that no operator should be permitted to obtain more than 25% in-orbit spare capacity in a frequency band.

25. We agree that qualified new entrants in each pair of frequency bands should continue to be initially assigned up to two orbital locations in each band. Further, we agree that requests for additional capacity should be concretely justified and the warehousing of expansion locations prohibited. Requiring licensees to operate their facilities at the maximum feasible capacity will achieve more efficient utilization of the orbit-spectrum resource to the benefit of the using public. Thus, we believe that our traditional policy of authorizing additional locations only when existing satellites are essentially filled and firm customer growth requirements are demonstrated should continue to be applied with certain modifications to facilitate implementation and to recognize that future growth requirements are impossible to predict with absolute certainty.

26. Thus, we propose that applicants requesting an expansion satellite be required to demonstrate that the additional satellite will be 80% filled within three years of launch. This will provide sufficient spare capacity to insure against transponder failure, while maximizing orbit-spectrum use. If no contracts for the additional in-orbit capacity have been executed, the 80% showing may be made by projecting historical customer growth rates for the applicant's existing in-orbit system, taking transponder configuration into account.[59] General industry forecasts will not be sufficient to demonstrate that the additional satellite will achieve the requisite fill. In addition, because transponder sales and long-term leases cannot be projected in the same manner as an applicant's own transponder requirements to serve customers directly, these transactions may not be included in projections of future fill.[60]

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[52] In particular, applicants with insufficient current capital assets committed to meet the test specified above may rely on project financing only if all necessary contracts have been executed. Reliance on anticipated future transponder sales or lease contracts will not be considered sufficient to demonstrate the applicant's financial ability to meet payments required by the spacecraft manufacturer, launch services provider, and other vendors.

[53] The only circumstances we can foresee as an acceptable limitation on a lender's commitment to make a loan is a change in the applicant's creditworthiness or in general market conditions, *e.g.*, soaring interest rates.

[54] We have attempted here to define precisely the showing an applicant must make to demonstrate its existing financial qualifications to construct and operate its proposed satellite system. Parties are on notice that our intent is to interpret the *Ultravision* standard in a manner that, while not impossible to meet, is more stringent than the interpretation applied in some of the cases that followed *Ultravision*. Thus, to the extent that the standard proposed in the discussion above is inconsistent with these cases, our proposed standard will be followed.

[55] *See 1983 Processing Order*, 93 FCC 2d 1260 (1983); *Domestic Fixed-Satellite Service—Orbit Deployment Plan*, 84 FCC 2d 584 (1981) (hereinafter *1980 Assignment Order*).

[56] 54 Rad. Reg. 2d 577.

[57] 84 FCC 2d 584.

[58] *Reduced Orbital Spacing*, 54 Rad. Reg. 2d at para. 81.

[59] Submitting this information should not pose any problems to pending applicants. Historical use data and usage projections were already required to be submitted under Appendix B of the *1983 Processing Order*. We propose that traffic be based on linear extrapolation of the past three years usage taken from the semi-annual transponder loading reports required to be filed with the Commission employing a simple least squares regression model.

[60] Transponder sales are a recent development in domestic satellite marketing, *see Transponder Sales*

Continued

We believe that this approach, in contrast to limiting artificially the number of expansion satellites that may be granted as several commenters suggest, will ensure that demand for domestic satellite services is being satisfied.

27. We recognize, however, that it is often difficult to project firm customer requirements years in advance of launch, especially when an applicant's in-orbit system is not yet, or has only recently, become operational. Thus, we propose that applicants not able to demonstrate that the additional satellite will be at leaast 80% filled nevertheless be provided with the opportunity for expansion at its own risk. This opportunity will be limited to one expansion satellite in each frequency band in which the applicant is authorized to operate. However, to ensure that these grants do not prevent our authorization of a qualified new entrant or of a demonstrably filled expansion satellite, these authorizations will be conditioned upon the permittee demonstrating prior to launch of the satellite that its existing in-orbit system in that frequency band is 80% filled.[61] This should prevent a satellite not actually needed from being launched and thus inefficiently occupying an orbital location. Failure to make this required demonstration of fill by the specified launch date will render the authorization null and void.

28. In addition, to ensure that in-orbit satellites are being adequately utilized, we propose to require each licensee to maintain 80% fill. This fill requirement must be demonstrated on each satellite, or if circumstances warrant, on an average basis over the system. As we noted in *Reduced Orbital Spacing*, if the required traffic fill is not achieved, the unfilled satellite will be considered as an excess spare.[62] This spare assignment will be cancelled and colocation of in-orbit satellites required if pending applications of qualified new entrants or existing entrants concretely demonstrating that an additional satellite will be 80% filled are ready for grant. If an assignment is cancelled, the licensee will be afforded thirty days to notify the Commission which of its assigned locations should be cancelled. Further, as we have done in the past, we will also condition any grant to require construction, launch and operation of the space station by certain dates.[63] Failure to meet these milestones by the specified dates will render the orbital assignment null and void. In this way, we seek to ensure further that orbit locations are not warehoused. An exact text of our proposed rule is contained in Appendix B.

C. Filing Dates

29. The major objective; of this proceeding is to state as clearly as possible the information required to be included in a application for a satellite space station authorization with respect to financial qualifications and transponder loading. Although some of the pending applications may include sufficient detail with respect to these requirements, we are giving applicants the opportunity to amend their filings in order that they might demonstrate compliance with the proposed standards. Because it is necessary to act expeditiously on these pending applications, we are requiring any supplements to applications or certifications of continued financial qualifications [64] filed in compliance with the rules proposed herein to be filed within the time period designated for comments as specified below. The extensive comments received in this matter have already provided a full opportunity for all parties to be heard. In light of that, and the need for prompt action, we believe that any further delay would disserve the public interest. [65] Thus, no extensions of time will be granted for the submissions specified in this notice.

V. Conclusion

30. Authority for this proposed rulemaking is contained in sections 1, 4 (i) and (j), 301, 303, 307(a), 308(b), 309 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 301, 303, 307(a), 308(b) 309 and 403.

31. Pursuant to section 605(b) of the Regulatory Flexibility Act, we certify that our proposed rule will not have a significant impact on a substantial number of small entities. We believe this finding is compelled by the large amounts of financial resources which an entity must possess in order to construct and launch a domestic satellite system. [66]

32. Because it appears that the pending applications considered herein may be mutually exclusive on grounds of electrical interference, the processing of these applications and this rulemaking proceeding is considered to be a restricted adjudicative proceeding. *See* 47 CFR 1.1203. Accordingly, the restrictions on *ex parte* communications in §1.1223 of the rules and regulations, 47 CFR 1.1223, apply to these matters with respect to the use of orbital locations and the frequency bands 3700-4200 MHz, 5925-6425 MHz, 11,700–12,200 MHz and 14,000–14,500 MHz. Specifically, all *ex parte* contacts are prohibited with respect to these proposals. An *ex parte* contact is a message (spoken or written) concerning the merits or outcome of any aspect of this proceeding made to a Commissioner, a Commissioner's assistant or other decision-making staff member, other than comments officially filed at the Commission or oral presentations made with an opportunity for all parties to be present.

33. Accordingly, it is ordered that interested parites may file comments according to an expeditied schedule pursuant to § 1.415 of the Commission's rules on or before June 7, 1985 and reply comments on or before June 27, 1985. Any supplemental information must be filed in conjunction with this comment period and must be received on or before June 7, 1985. Comments on supplemental information must be filed on or before June 27, 1985; and reply comments on or before July 8, 1985. In addition to consideration of all relevant and timely comments, the Commission may take into consideration information not contained in the comments provided that evidence of the existence of such information including its nature and sources is placed in the public record and provided that the fact of the Commission reliance on such information is noted in any order taking final action in this matter.

34. It is further ordered that pursuant to §1.419 of the Commission's rules, an original and five copies of all comments, replies, pleadings, briefs or other documents shall be filed with the

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Order, 90 FCC 2d 1238 (1982), and caution must therefore be applied in extrapolating the initial rate of transponder sales, which may not be reflective of the longer term trend. Because of the highly customized nature of sales and long-term leases, we believe such transactions should be considered as contributing to fill only when contracts have been executed firmly committing purchasers to pay for and use them. Moreover, transponder purchasers and lessees do not report the actual usage data that is necessary to predict future requirements accurately.

[61] This demonstration may be made by referencing the transponder utilization reports required to be filed with the Commission semi-annually or by submitting a separate document.

[62] *Reduced Orbital Spacing*, 54 Rad. Reg. 2d, at para. 84.

[63] *Id.* at para. 82.

[64] *See* para. 21 *supra*.

[65] *See NAB* v. *FCC*, 740 F.2d 1190 (D.C. Cir. 1984). The factors identified in that decision to support concurrent consideration of applications and rulemaking issues are also present here. In this regard, we note that specific U.S. satellite interests will be integral to the United States' negotiating position at the 1985 Space WARC, which convenes August 8, 1985.

[66] *See* para. 17 *supra*.

Commission, and served directly; on the parties listed in Appendix A. Copies of all filings will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

35. It is further ordered that the Chief, Common Carrier Bureau, has delegated authority to require the submission of additional information, make further inquiries and modify the dates and procedures if necessary to provide for a fuller record and more efficient proceeding.

36. It is further ordered that, in addition to the publication of this *Notice of Proposed Rulemaking* in the **Federal Register**, the Secretary shall also cause a copy of this notice to be served by certified mail upon each of the parties listed in Appendix A immediately upon the release of this notice.

37. It is further ordered that the Secretary shall cause a copy of this *Notice of Proposed Rulemaking* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act,. 5 U.S.C. 605(b)

Dated: May 6, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Alascom, Inc
American Satellite Company
American Telephone and Telegraph Company
Cablesat General Corporation
Cable Television Operators
CBS, Inc.
Columbia Communications Corporation
Comsat General Corporation
N.H. Correia
Digital Telesat, Inc.
Equatorial Communication Services
Federal Express Corporation
Federal Trade Commission
Ford Aerospace Satellite Services Corporation
GTE Satellite Corporation
GTE Spacenet Corporation
Henry Geller and Donna Lampert
Home Box Office
Hughes Communications Galaxy, Inc.
International Satellite, Inc.
M/A-Com Development Corporation
Martin Marietta Communications Systems, Inc.
Mobile Satellite Corporation
National Cable Television Association
National Exchange, Inc.
National Telecommunications and Information Administration
Rainbow Satellite, Inc.
RCA American Communications Inc.
Satellite Business Systems
Satellite Television Industry Association
Skylink Corporation
Systematics General Corporation
United States Satellite Systems, Inc.
The Weather Channel
The Western Union Telegraph Company

Appendix B

PART 25—[AMENDED]

The authority citation for Part 25 continues to read;

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 25) is amended as follows:

§ 25.202 [Amended]

In § 25.202 Frequencies, frequency tolerance and emission limitation paragraph (d) is proposed to be revised:

* * * * *

(d) Orbital locations assigned to space stations licensed under this part by the Commission are subject to change by summary order of the Commission on 30 days notice. An authorization to construct and/or to launch a space station becomes null and void if the construction is not begun or is not completed or if the space station is not launched and positioned at its assigned orbital location and operations commenced in accordance with the station authorization, by the respective date(s) specified in the authorization. Frequencies and orbital location assignments are subject to the policies and procedures set forth in the Report and Order, FCC 83-184, adopted April 27, 1983 in CC Docket No. 81-704, and the licensees of such space stations shall comply with the requirements set forth in that decision.

* * * * *

A new Section 25.391 is proposed to be added as follows:

§ 25.391 Qualifications of Domestic Satellite Space Station Licensees.

(a) Radio station applications for new domestic fixed-satellites shall comply with the requirements established in Report and Order in CC Docket No. 81-704. Applications will be unacceptable for filing and will be returned to the applicant if (1) the application is defective with respect to completeness of information, execution, or other matters of a formal matter; or (2) the application does not substantially comply with the Commission's rules, regulations, specific requests for information, or other requirements, such as those specified in the Report and Order in CC Docket No. 81-704.

(b) Each applicant for a space station authorization in the domestic Fixed-Satellite Service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization in the form specified below. Failure to make such a showing shall result in the dismissal of the application.

(c) Each application for authority to construct and/or to launch and operate a space station in this service shall include a detailed statement of estimated investment and operating costs for the expected lifetime of the facility, and shall demonstrate in accordance with paragraph (d) of this section the applicant's current financial ability to meet the:

(1) Estimated costs of proposed construction and/or launch, and any other initial expenses for the space stations(s); and

(2) Estimated operating expenses for one year after launch of the proposed space station(s).

(d) Except as provided in paragraph (e) of this section, each application for authority to construct and/or launch a space station shall demonstrate an applicant's current financial ability to meet the costs specified in paragraph (c) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current within ninety (90) days of the date of the application or any amendment and copies of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exhibit demonstrating that the applicant has uncommitted capital assets, sufficient to satisfy the requirements of paragraph (c) of this section, together with an explicit commitment by management that these assets will be used for the proposed satellite program; and

(2) If the submissions of paragraph (d)(1) of this section do not satisfy paragraph (c) of this section, the applicant shall submit additional

information, for the period of proposed construction plus an initial year of operation, by a statement of committed non-contingent sources of financing as is necessary to demonstrate financial ability through intended credit arrangement or private equity placements by submission of the following detailed information for each of these arrangements:

(i) The terms of any executed loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that paragraph (e) of this section is complied with:

(ii) The terms of any executed sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (d)(2)(i) of this section.

(iii) Any financing arrangements contingent on further action or performance by either party, including marketing of satellite capacity or raising additional financing, will not satisfy the requirements of subsection (c) of this section.

(3) Whatever other information or details the Commission may require.

(e) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

(f) An applicant found to be qualified pursuant to paragraph (b) of this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed and may be authorized to construct up to two ground spares. Authorizations to construct ground spares are at the applicant's risk that launch authorizations will not be granted by the Commission.

(g) Applicants requesting an additional orbital location beyond those initially assigned purusant to paragraph (f) above, must demonstrate, using projections of historical use data for its in-orbit system, that the additional satellite will be 80% filled 3 years after the scheduled launch date. A transponder will be considered full if it is carrying the following amount of active traffic: 2892 voice channels if the transponder is configured to carry FDM–FM; 5000 channels if configured for CSSB; 60 Mbps if configured for digital transmissions; or 1 full-time television channel if configured for FM–TV. If the transponder is configured for frequency division multiple access, the total baseband information carried must be at least 4 MHz if configured for analog transmission or 30 Mbps if configured for digital transmission. Transponders that have been sold or leased for the expected lifetime of the satellite may be considered "full," but such transactions may not be included in projections of future fill. For other types of transponder arrangements, the appropriate fill requirements may be specified by the Commission based on the current state-of-the-art.

(h) A licensee who is now providing domestic satellite service to the public, and is unable to make the showing required in paragraph (g) of this section may be assigned one additional orbital location in each pair of frequency bands in which it is currently providing service. However, this authorization will be conditioned upon the permittee demonstrating, prior to the launch of the additional satellite, that its existing in-orbit satellites in that band are 80% filled. Failure to do so will result in the launch authorization and orbital assignment becoming null and void.

(i) Every orbital assignment is subject to the requirement that the licensee continue to maintain an 80% fill. The 80% fill requirement may be demonstrated on an average basis over all of the licensee's satellites in a particular pair of frequency bands.

(j) In the event that one or more applications satisfying the requirements of paragraphs (b), (c), (f) and/or (g) of this section are ready for grant, any orbital location occupied by a satellite not satisfying the requirement of parargraph (i) of this section may be cancelled and colocation of in-orbit satellites may be required. The Commission will take this action if in so doing, it would allow the grant of applications pending which satisfy the requirements of paragraphs (b), (c), (f) and/or (g). If a cancellation is made, the licensee will be afforded a period of 30 days to notify the Commission which of its assigned locations should be cancelled.

[FR Doc. 85–11197 Filed 5–7–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 31

[CC Docket No. 85–64; FCC 85–120]

Judgments and Other Costs Associated With Antitrust Lawsuits; Conforming Amendments to Annual Report Form M

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, to provide accounting instructions for judgments and other costs associated with antitrust lawsuits.

The rule changes would create a rebuttable presumption that judgments arising from a violation of the antitrust laws, or payments in settlement of suits arising from cases brought under an antitrust cause of action, would not be passed on to the ratepayer at the ratemaking proceeding. Also, the Commission is calling for comments on whether litigation expenses incurred in defense of an antitrust proceeding should continue to be recorded in above-the-line accounts.

The rule changes would end case-by-case determinations of accounting treatment of antitrust lawsuit costs.

DATES: Comments shall be filed by June 24, 1985.

Reply comments shall be filed by July 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Uniform system of accounts.

Proposed Rulemaking

In the matter of notice of proposed rulemaking to amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to account for judgments and other costs associated with antitrust lawsuits, and conforming amendments to the Annual Report Form M: CC Docket No. 85–64.

Adopted: March 14, 1985.

Released: May 3, 1985.

By the Commission: Commissioner Rivera concurring in part and issuing a statement at a later date.

I. Introduction

1. This Notice initiates a rulemaking proceeding to revise the accounting rules contained in Part 31. "Uniform System of Accounts for Class A and Class B Telephone Companies." These accounting changes are being proposed to clarify the accounting treatment for judgments and other costs associated with antitrust lawsuits. Essentially, we are proposing to require that adverse judgments arising from antitrust suits and payments arising from antitrust settlements be recorded in Account 370, a below-the-line account.[1] We also call for comments on the appropriate treatment of litigation costs incurred in defense of antitrust lawsuits (which are now recorded in Accounts 664, 665, and 671, above-the-line accounts). We are also proposing to make conforming amendments to the Annual Report Form M (Annual Report for Class A and Class B Telephone Companies).

II. Background

2. This is not the first time this Commission has addressed litigation expenses. In 1979 we initiated a proceeding by Notice of Inquiry designed to study broadly whether the existing ratemaking treatment of a wide array of litigation expenses was in the public interest. *Common Carrier Litigation Expenses*, 70 FCC 2d 1961 (1979). Litigation expenses at that time were allowed to be booked above-the-line, but those expenditures had generally been insignificant. We were influenced to open our inquiry by the magnitude of the litigation expenses already incurred and likely to be incurred in the future in connection with the government and private antitrust suits then pending against AT&T. *Id.* at 1962. We wanted to determine whether all those expenses—potentially millions and millions of dollars—were reasonably includable in common carrier rates.

3. In 1982 we terminated our proceeding without announcing any policy or altering the *status quo*. *Common Carrier Litigation Expenses*, 92 FCC 2d 140 (1982). Instead, we decided that the treatment of litigation expenses, as well as settlements of antitrust lawsuts should be explored by the Telecommunications Industry Advisory Group (TIAG) in connection with its task of rewriting the Uniform System of Accounts (USOA). Pending recommendations from the TIAG, we found that the public was adequately protected by existing ratemaking and accounting and practices. *Id.* at 144–46. As it turned out, TIAG did not recommend substantive action but rather limited itself to proposing separate expense accounts for litigation costs and antitrust lawsuits. It being apparent that summary disposal of the issues was not warranted, and that exploration of the issues in the USOA proceeding would not elicit the attention or the specific policy analysis that they merited, we announced that we would initiate a separate proceeding in the near future.[2] This NPRM begins that proceeding.

4. In a related proceeding, the Commission recently considered, under the existing accounting rules, the accounting treatment to be given the judgment and other costs incurred by AT&T that arose from the antitrust case *Litton Systems, Inc. v. AT&T*.[3] *Order*, FCC 84–477, released October 2, 1984 (hereinafter *Litton Order*). In that decision, we concluded that liability for actions in violation of the antitrust laws should not be regarded as a routine part of operating a business, and we ordered that both the judgment and the litigation expenses be recorded in Account 370, "Extraordinary income charges," a below-the-line account. Petitions for reconsideration of the *Litton Order* are now pending before the Commission, and we are not addressing those pleadings herein.

III. Discussion

5. *Regulatory Objective.* It is our objective to clarify our accounting rules in regard to antitrust lawsuit litigation, judgment and settlement costs so that subject telephone companies are certain as they proceed in antitrust litigation how their costs are accounted for. While antitrust cases tend to expose the parties to very high litigation and judgment expenses, many federal laws establish civil or criminal penalties for violators, and statutes or courts frequently require unsucessful defendants to reimburse plaintiffs' attorney fees as part of the judgement. The policies and accounting classifications we adopt in this proceeding shall apply broadly to litigation costs, judgments and settlements emanating from alleged civil or ciminal violations of any federal law, even though we focus on antitrust cases for purposes of our analysis. We do not here address judgments and costs arising in the ordinary course of business out of contract disputes, tort liability for accidents, workman's compensation, and the like.[4]

6. The crux of our inquiry here is, of course, whether ratepayers or shareholders must bear the financial consequences associated with certain acts by the firm's directors, officers or employees. While accounting classifications for categories of expenses not clearly allowed or disallowed for ratemaking purposes only create presumptions, as a practical matter the presumptions are difficult to rebut. In the proposals below, we give due regard to the impact our accounting rules may have upon decisions whether to initiate, defend and settle antitrust cases. Desiring not to influence unduly these important corporate decisions, we ask commenters to pay particular attention to the incentives or disincentives our rules may create. On the other hand, we have no intention of permitting companies and their owners to avoid the financial consequences of their unlawful acts by foisting the costs upon captive ratepayers.

7. *Adverse Judgments.* We propose to clarify that, when a subject company has been adjudged guilty of a violation of the antitrust laws, the amount of the judgment, including treble damages and any plaintiffs' attorneys' fees awarded, shall be recorded in Account 370, "Extraordinary income charges." Our reasons for specifying this account are set forth in *Litton Order*, at paras. 5–12. Briefly, we found that the type of liability in question "should [not] be regarded as a routine part of operating a business," and Account 370 explicity provides that "penalties and fines for violations of statutes" shall be recorded there. *Id.* at para. 9.[5]

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[1] A below-the-line account creates a presumption that the expenses listed in it will not be passed on to the ratepayer. An above-the-line account creates a presumption that the expenses listed will be passed on to the ratepayer. At such time as a carrier, in the former case, seeks to include the expenses in its revenue requirement, it may try to rebut the presumption. In the latter case, the burden lies with those who believe the expenses should not be included in the revenue requirement. A tariff filing or other rate proceeding typically provides the forum for reviewing the expenses.

[2] Further Notice of Proposed Rulemaking in Revision of the Uniform System of Accounts, FCC 84–634, 50 FR 1590, released January 3, 1985, at para. 77.

[3] 700 F.2d 785 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 984 (1984).

[4] Expenses associated with judgments and settlements for liabilities of this type are normally recorded in Account 669, "Accidents and Damages," an operating expense account. See 47 CFR 31.669 for a more detailed tabulation of the items recorded in this account. In questionable cases, the carriers may, of course, request interpretations from our staff.

[5] We rejected the arguments of AT&T and the RBOCs that Account 669, "Accidents and Damages," was the proper account for adverse judgments.

8. We intend that Account 370 be used whether a decision is affirmed on appeal as in *Litton Systems* or the company reaches a settlement after an initial finding of guilty by judge or jury. In the latter situation, the amount of the settlement, as well as plaintiff's attorneys' fees, should be recorded in Account 370. The linchpin for the accounting treatment is the finding of guilty, that is, the establishment at trial (or by the defendant's admission) of a violation of the antitrust laws. A post-verdict settlement does no more than fix the defendant's liability and avoid the time and expense associated with appeals; it does not vitiate the finding of guilt.

9. *Settlements.* Settlements before trial, or after trial but before verdict, are more problematic because no liability is established or admitted. Although settlements ordinarily do not include admissions of liability, we believe that most are reached under the realization that the plaintiff has a substantial likelihood of prevailing in court despite the difficult burdens of proof that antitrust plaintiffs have to bear, and that a finding or admission of guilt is likely to precipitate more suits under the same cause of action.[6] Consequently, we do not believe that defendants enter into settlements casually but rather that most settle under the real specter of the consequence of losing the case. On that basis, we propose that settlement amounts even without any finding of liability be recorded in Account 370.

10. We recognize that we depart from prior practice insofar as we permitted AT&T to record antitrust settlements in Account 669 in the *Carterfone* and *Wyly/DATRAN* cases.[7] The Commission has already questioned the propriety of that accounting treatment,[8] and we now have an opportunity to reevaluate on the record that prior treatment. Were we to allow settlements to be booked above the line with the presumption that the ratepayers would absorb the costs, we would be creating a strong incentive for companies to settle regardless of their assessment of the merits of plaintiff's case. Requiring settlements to be recorded below the line is, we believe, more consistent with the treatment of adverse judgments than accepting above-the-line accounting. It rests on the presumption that a carrier settles an antitrust case because it is likely to lose the litigation. If a carrier believes that its reasons for entering into a settlement were of such a nature that the settlement amount should be borne by ratepayers, it can assert its reasons when it seeks to include the amount in its revenue requirement.

11. *Litigation Costs.* We seek comments in this proceeding as to whether litigation expenses associated with the defense of antitrust lawsuits should continue to be recorded in above-the-line accounts, particularly when a carrier is unsuccessful in its defense. As noted in paras. 2–4 *supra,* we have considered this issue two times recently—once in a general rulemaking and once with respect to a specific judgment against AT&T. We believe that this proceeding is the proper forum for prescribing how litigation expenses are to be recorded in the future. We emphasize, however, that we have not arrived at a tentative position herein, and we accordingly do not set forth the text of a proposed rule. We are open to considering a variety of positions in this regard, and after reviewing the comments we will make whatever rule changes, if any, are necessary to reflect our decision.

12. Although we do not now propose any position on litigation expenses, we will set forth some of the arguments which parties may wish to address in their comments. We also encourage additional arguments. Some parties may view antitrust litigation expenses as a necessary, recurring and, in a sense, involuntary cost for a successful company operating in a competitive environment. Moreover, such costs for a particular case may be spread over a long period during which time the carrier's liability is unknown. It might be thought to be contrary to our system of justice to record all such expenses below the line during this period of uncertainty. Moreover, those who favor above-the-line treatment might argue that antitrust litigation involves complex and changing economic concepts of fairness in competition, and that the import of decisions in civil cases may vary from court to court and may also vary over time because of changes in the industry which redefine anticompetitive behavior.

13. Those who favor below-the-line treatment, however, might argue that any other treatment is a form of compensation to the carrier for conduct which may be found to be contrary to Federal antitrust policy—in effect, a reward for violating a statute. Following this reasoning, above-the-line recording would allow carriers to pour millions of dollars into the defense of unlawful activity at no cost to the stockholders, thus providing no stockholder check against management impropriety in decisions involving competitors. However, since this position hinges on the outcome of the case, the question remains as to how to account for the costs pending outcome of the case. Another alternative is to accrue the costs in a balance sheet deferral account until the decision becomes final. If the case is resolved for the carrier, the costs could be amortized above-the-line over a reasonable period. If the judgment is against the carrier, the costs would be charged below-the-line. In any event, below-the-line recording of litigation costs would not necessarily deprive the carrier of recovery thereof in a rate proceeding, as it could argue for recognition of the costs associated with specific antitrust lawsuits.

14. Finally, a case might be made for dividing the litigation expenses equally between ratepayers and shareholders by requiring that the carrier book 50 percent above the line and 50 percent below the line. This approach would be predicated upon a recognition that the issue is not clear-cut and that it is not feasible either to demonstrate or to rebut in a rate proceeding the validity of above- or below-the-line assignment of these costs. Commenters should address all these options and may propose any variations they deem desirable.

15. *Interest.* We do not propose to examine the accounting for interest on antitrust judgments in this proceeding for two reasons. First, there has been no disagreement between the telephone companies and the Commission about the proper account for this type of interest; Account 336 [9] explicitly covers interest on claims or judgments. Second, interest is a part of the return component. To the extent it is consistent with allowable debt financing, interest is included in the return component; to the extent it is not, interest is excluded. Thus, a ratemaking procedure already exists for including or excluding interest based on the underlying debt. However, we propose to require that interest on antitrust judgments be listed in a foot-note to Schedule 11 of Annual Report Form M.

16. We are proposing to make the accounting revisions effective six months after a final decision is issued in this proceeding . We are aware that there are some antitrust cases currently

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[6] Jack Faucett Associates, Inc. v. AT&T, 744 F.2d 118 (1984)

[7] Carter v. Am. Tel. & Tel. Co., Civ. A. No. 3–1294 (N.D. Tex 1969); Wyly Corp. v. Am. Tel. & Tel. Co., Civ. Action No. 76–1544 (D.D.C. 1980).

[8] *Common Carrier Litigation Expenses,* 92 FCC 2d at 146 n. 7.

[9] As stated in Litton Order, at para. 3, Account 336 ("Other interest deductions") is a below-the-line account which has special ratemaking treatment for purposes of calculating the average cost of debt in the allowable rte of return element.

pending for which the affected telephone companies must account prior to the effective date of these rules. Until these rules become effective, we will continue to conduct case-by-case determinations using the principles of the *Litton Order* as our guide. We are proposing to make the Form M revisions effective with the 1985 Form M.

17. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of the proposed amendments. We certify that the accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact.

18. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff, which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each such *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state the docket number of the proceeding to which it relates. *See generally,* Section 1.1231 of the Commission's Rules, 47 C.F.R. 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

19. In reaching its decisions, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

20. Accordingly, it is ordered, that pursuant to the Provisions of sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), there is hereby instituted a notice of proposed rulemaking into the foregoing matters.

21. It is further ordered, that interested persons may file comments on the specific proposals discussed in this Notice on or before June 24, 1985. Reply comments shall be filed on or before July 15, 1985. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street NW., Washington, D.C.

22. It is further ordered, pursuant to section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix

PART 31—[AMENDED]

Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies is proposed to be amended as follows:

1. The authority citation for Part 31 continues to read:

Authority: Secs. 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a).

2. Section 31.370 is revised to read as follows:

§ 31.370 Extraordinary income charges.

This account shall include charges to income resulting from nonrecurring transactions that are not customary business activities of the company. This account shall also include penalties and fines paid on account of violations of statutes, including judgments arising from a violation of the U.S. antitrust laws, and payments in settlement of suits arising from cases brought under the antitrust cause of action.

[FR Doc. 85–11102 Filed 5–7–85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1175

[Ex Parte No. 397]

Exemption of Railroads From Securities Regulation Under 49 U.S.C. 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of time to file comments.

SUMMARY: In the Federal Register notice of April 8, 1985, (50 FR 13841), the date comments were due in this proceeding was set 30 days after Federal Register publication on May 8, 1985. At the request of the Association Of American Railroads, the due date has been postponed 30 days to June 7, 1985.

DATES: Comments are due June 7, 1985.

ADDRESSES: An original and 15 copies of comments referring to Ex Parte No. 397 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: May 1, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85–11182 Filed 5–7–85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 89
Wednesday, May 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.
Date: May 29, 1985.
Place: Minneapolis Grain Exchange, Room 135, 400 South 4th Street, Minneapolis, Minnesota 55415.
Time: 10:00 a.m.
Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on dust handling.

The agenda includes a review of methods used for dust handling after inspection and weighing of U.S. grain exports.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Benny Echelbarger, Subcommittee Chairman, Post Office Box 185, Reardon, WA 99029, telephone (509) 796–4141.

Dated: May 2, 1985.

K.A. Gilles,

Administrator, Federal Grain Inspection Service.

[FR Doc. 85–11064 Filed 5–7–85; 8:45 am]

BILLING CODE 3410–EN–M

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Sevice Advisory Committee.
Date: June 10, 1985.
Place: Agri Industries Office, 2829 West Town Parkway, West Des Moines, Iowa 50306.
Time: 1:00 p.m.
Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on corn moisture.

The agenda includes a review of a more accurate laboratory method than the USDA air oven method for calibrating electronic moisture meters used for official testing of corn moisture.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Ray W. Chartier, Subcommittee Chairman, 1107 Sycamore Ave., Dallas Center, IA 50063, telephone (515) 992–3767.

Dated: May 2, 1985.

K.A. Gilles,

Administrator, Federal Grain Inspection Service.

[FR Doc. 85–11065 Filed 5–7–85; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Termination of Seven-Year Action Plan, Mapleton Ranger District, Siuslaw National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of termination of action plan.

SUMMARY: The Forest Service hereby gives notice that it is terminating the Seven-Year Action Plan on the Mapleton Ranger District of the Siuslaw National Forest in Oregon.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: George M. Leonard, Director, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 448–6893.

SUPPLEMENTARY INFORMATION: At the present time, the Forest Service is not offering, nor does it contemplate offering for sale in the near future, any of the timber included in the Seven-Year Action Plan for the Mapleton Ranger District of the Siuslaw National Forest in Oregon. Termination of the Seven-Year Action Plan will leave all major decisions respecting future timber harvesting in the Mapleton Ranger District to be made after completion of appropriate environmental analysis, as required by the National Environmental Policy Act, for the forthcoming Forest Land and Resource Management Plan (Forest Plan) for the Siuslaw National Forest.

In view of the recent decision in *Thomas, et al.* v. *Peterson, etc., et al.*, No. 84–3887, in the Ninth Circuit Court of Appeals (February 11, 1985), involving required environmental analysis, and the pending litigation involving the Seven-Year Action Plan, the Forest Service has decided to reconsider timber harvests in the Mapleton District. Such reconsideration requires the preparation of an environmental impact statement (EIS). However, an EIS on the Seven-Year Action Plan could not be ready prior to completion of the Forest Plan and the resources used to produce an EIS for the Seven-Year Action Plan might delay completion of the Forest Plan. In addition, because the Forest Plan will supersede all previous planning decisions for the Siuslaw National Forest, any decisions made in reevaluating the Seven-Year Action Plan would have to be reconsidered in the Forest Plan. Therefore, the Forest Service has decided to reconsider timber harvesting on the Mapleton District in the context of the Forest Plan.

Dated: May 2, 1985.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 85–11175 Filed 5–7–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office Of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration
Title: Evaluation of EDA Technical-Assistance Information on Dissemination Programs
Form number: Agency—NA; OMB—NA
Type of request: New
Burden: 1,147 respondents; 574 reporting hours
Needs and uses: This collection will be used to evaluate methods used by EDA-funded organizations to disseminate information on economic development techniques, strategies, etc. to state and local organizations.
Affected public: State and local governments
Frequency: One time
Respondents's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Aveune, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 2, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–11106 Filed 5–7–85; 8:45 am]

BILLING CODE 3510-CW-M

Office of the Secretary

[Docket No. 50469–5069]

Review of Commercial Activities

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce announces that it has inventoried the activities operated by it which provide a product or service which could be obtained from a commercial source ("commercial activities") and that it is reviewing, or plans to initiate reviews for, these activities during fiscal years 1985 and 1986 to determine which, if any, should be performed by commercial sources under Government contract instead of being performed "in house" by Government personnel using Government facilities.

This notice is not an invitation for sealed bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Betsy Menin, Office of Finance and Federal Assistance, U.S. Department of Commerce, Herbert C. Hoover Bldg., Room H–6823, 14th St. between Penn. & Constitution Avenues, NW., Washington D.C. 20230. (202) 377–0641.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 *et seq.*); Office of Management and Budget (OMB) Circular No. A–76, Performance of Commercial Activities; and Department of Commerce Administrative Order (DAO) No. 201–41, "Performance of Commercial Activities". Commercial activities are those which are operated by the agency and which provide a product or service which could be obtained from a commercial source.

The following chart is the inventory of, and review schedule for, the Department's commercial activities. Each activity is listed by the Department's identifier number keyed to the operating unit which performs the activity, the name, location, and description of the activity, approximately how many full time equivalents are currently performing the activity, and the scheduled review start date and the original and revised review end date.

Abbreviations appearing on the chart are as follows:

FTE's—Full Time Equivalents
BEA—Bureau of Economic Analysis
CEN—Bureau of the Census
EDA—Economic Development Administration
ITA—International Trade Administration
NBS—National Bureau of Standards
NOAA—National Oceanic and Atmospheric Administration
NTIS—National Technical Information Service
OS—Office of the Secretary

Dated: May 2, 1985.

Sonya G. Stewart,

Director, Office of Finanace and Federal Assistance.

DEPARTMENT OF COMMERCE PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST

Identifier	Name of activity	Location of activity	Description of activity	Approximate number of FTE's	Review start date	Review end date	Revised review end date
BEA-W001	Data conversion	Washington, DC	Key-to-disk operation converting surveys, coding forms, etc. to machine readable form.	13.0	9/01/86	3/31/87	
CEN-8515	Library	Suitland, MD	Planning, directing, and coordinating library services	21.0	5/01/85	10/01/86	
CEN-8516	Warehousing/stock handling	......do	Receiving, shipping, warehousing, packing, and stock handling services.	16.0	6/01/85	11/01/86	
CEN-8517	Warehousing/Stock handling	Jeffersonville, IN	Receiving, shipping, warehousing, packing, and stock handling services.	34.0	6/01/85	11/01/86	
CEN-8518	Motor pool/vehicle maintenance	Suitland, MD	Provide transportation for employees, mail, supplies, and equipment.	16.0	3/01/85	7/01/86	
CEN-8519	......do	Jeffersonville, IN	Provide for the transportation of employees, mail, supplies, and equipment.	13.0	4/01/86	9/01/86	
EDA-ISS4	Loan application review and processing.	Washington/Field	Loan Application Review and Processing	44.0	4/01/86	9/30/87	
NBS-09	Grounds maintenance	Boulder, CO	Maintain the grounds at the Boulder facility; landscape; snow removal.	8.0	6/30/84	9/01/84	9/30/85
NBS-10	......do	Gaithersburg, MD	Maintain the NBS grounds in Gaithersburg; landscape; snow removal.	19.0	6/30/84	9/30/85	
NBS-14	Instrument shops	......do	Provide instrument design, fabrication, modification, and repair for research and development programs.	31.0	1/15/85	6/01/86	
NBS-16	Janitorial services	Boulder, CO	Clean the Boulder offices and laboratories	15.6	6/30/84/	9/30/85	
NBS-17	Mail service	Gaithersburg, MD	Pick up and deliver mail throughout NBS in Gaithersburg; sort outgoing mail.	13.8	1/31/84	9/30/85	4/30/85
NBS-18	Supply Operations	......do	Package and ship material from the Gaithersburg facility; receive and accept material mailed to the Gaithersburg facility and distribute it to the technical units. Purchase, care, sale and control of inventory in the Gaithersburg, NBS storerooms.	22.6	4/30/86	7/31/87	
NBS-21	Instrument shops	Boulder, CO	Provide instrument design, fabrication, modification, and repair for research and development programs.	16.0	1/15/86	4/30/87	

DEPARTMENT OF COMMERCE PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST—Continued

Identifier	Name of activity	Location of activity	Description of activity	Approximate number of FTE's	Review start date	Review end date	Revised review end date
NBS-25	Central steam chilled water generation plant.	Gaithersburg MD	Provide round-the clock service to insure the continuous and uninterrupted environmental conditioning of all NBS lab and other spaces and to meet utilities systems [illegible]	19.0	12/31/85	12/31/86	
NBS-26	Electric Shop	Gaithersburg, MD	Ensure the continuous operation of site elevators and provide continuous HV (13,700 volt) electrical distribution system service all NBS buildings, labs, and support spaces. Also maintains security, fire alarm and similar supervisory systems. Immediate response is required for emergency situations.	29.0	9/30/86	9/30/87	
NBS-27	Pipe shop	do	Ensure operational reliability of all piping systems (water, chilled water, vacuum, compressed air, gases, etc.) for specialized lab needs.	15.0	3/31/86	3/31/87	
NBS-28	Construction shop	do	Provides prompt facility modification response to changing programmatic needs.	14.0	[illegible]	9/30/86	
NBS-31	Air conditioning and refrigeration shop.	do	Provides continuous environmental control (temperature and humidity) to many laboratories involved in precise measurements and long-term experiments.	17.0	[illegible]	6/30/87	
NBS-33	Visual arts	do	Produces scientific and technical illustrations, technical drafting, record photography film processing and production of material for presentation.	14.3	2/15/86	1/15/87	
NBS-36	Technical support for scientific computer.	do	Provides the human link between the user community and the hardware, software, and procedures which comprise the computing facility.	16.0	[illegible]	9/30/87	
NOA-A003	WASC supply activity	Seattle, WA	Provides warehousing and supply support for ten Western States including Alaska and Hawaii.	16.0	5/01/83	10/01/83	7/01/85
NOA-A004	MASC library	Boulder, CO	Provides library and information services in the fields of interest of the Boulder, CO complex (MASC).	15.0	9/01/83	9/30/84	7/01/85
NOA-A005	MASC supply services	do	Provides supply management services (excluding procurement) for the MASC.	38.0	9/01/83	9/30/84	7/01/85
NOA-E001	National climatic data center	Asheville, NC	Provides ADP, archival, and technical support services for the National Climatic Center.	114.0	4/01/83	9/30/84	7/01/85
NOA-E002	Library and information services.	Rockville, MD	Provides library and information services for both NOAA and non-NOAA interests.	28.0	04/01/83	9/30/84	7/01/85
NOA-E003	NODC ADP operations	Washington, DC	Provides scientific illustrations and ADP support service for NODC.	22.0	4/01/83	[illegible]	4/01/85
NOA-E004	National Geophysical Data Center.	Boulder, CO	Provides Centralized ADP and information services for NGSDC.	4.5	9/01/83	10/01/84	3/01/85
NOA-E005	Office of Satellite Operations	Suitland, MD*	Environmental satellite operations. *Also Wallops Island, VA and Fairbanks, AK.	171.0	4/01/85	10/01/86	
NOA-E006	Office of Satellite Data	Suitland, MD	Satellite data collection, processing and distribution	142.0	4/01/85	10/01/86	10/01/87
NOA-E007	Office of satellite Research and Applications.	Suitland, MD	ADP Services, sensor calibration and technical services	32.0	4/01/85	10/01/86	
NOA-E009	National Climatic Data Center	Asheville, NC, Suitland, MD	Climate records processing, systems programming, climate library and satellite data operations.	94.0	4/01/86	10/01/87	
NOA-E010	National Ocenagraphic Data Center.	Washington, DC	Data base management, product delivery, and systems development.	60.0	4/01/86	10/01/87	
NOA-F001	NW and Alaska fisheries activities.	Seattle, WA	Provides ADP support and facilities maintenance for the Northwest and Alaska Fisheries Center, NMFS. Provides editing and publication coordination services for NMFS scientific publications.	[illegible]	3/21/83	9/30/84	1/01/86
NOA-F002	SE Fisheries Center activities	Miami, FL	Provides ADP support and facilities maintenance for the Southwest Fisheries Center, NMFS. Provides editing services for NMFS scientific publications.	30.0	4/01/83	9/30/84	4/01/65
NOA-F003	NE Fisheries Center activities	Woods Hole, MA	Provides ADP and facilities maintenance support for the Northwest Fisheries Center, NMFS.	[illegible]	4/01/83	9/30/84	9/01/85
NOA-F004	SW Fisheries Center activities	LaJolla, CA	Provides ADP support for the Southwest Fisheries Centers, NMFS.	33.0	4/01/83	9/30/84	6/01/85
NOA-F006	Office of Data and Information Management.	Washington, DC	ADP support	7.0	10/01/85	10/01/86	
NOA-F007	Financial Services Division	Nationwide	Fisheries obligations, guaranteed loans, and Fishery Loan Fund processing in Washington, DC and the regions.	30.0	4/01/85	4/01/86	
NOA-N004	Aeronautical Chart Branch.	Rockville, MD	Constructs and maintains aeronautical charts and related publications to meet the requirements of civil-military aviation.	148.0	3/31/83	9/30/84	10/01/85
NOA-N007	Marine Chart Branch	Rockville, MD	Constructs and maintains nautical charts, Coast Pilots, and other related marine publications.	52.0	3/31/83	9/30/84	10/01/85
NOA-N008	Geodetic Resources Management.	do	Establishes, improves, and maintains a basic horizontal and vertical network of geodetic control. Provides technical and logistical support to geodetic field units and compiles, publishes, and maintains information for the geodetic user community.	292.0	3/31/83	[illegible]	10/01/85
NOA-N010	Atlantic Marine Center	Norfolk, VA	Provides operational and technical support (including ship operation) for all hydrographic, oceanographic, and marine resource activities at AMC.	142.0	3/31/83	[illegible]	10/01/85
NOA-N012	Pacific Marine Center	Seattle, WA	Provides operational and technical support (including ship operations) for all hydrographic, oceanographic, and marine resource activities at the PMC.	576.0	3/01/84	4/01/85	1/01/86
NOA-N014	Photogrammetry Branch	Rockville, MD	Photogrammetry	110.0	4/01/86	10/01/87	
NOA-N021	Office of Marine Operations	do	Engineering	35.0	10/01/85	4/01/87	
NOA-N022	Office of Aircraft Operations	Miami, FL	Aircraft operations	[illegible]	4/01/85	10/01/86	
NOA-R001	GFDL Computer Operations	Princeton, NJ	Provides ADP support for the research activities conducted at GFDL.	[illegible]	5/01/83	9/30/84	11/01/85
NOA-R002	Atlantic Oceanographic Meteorological Laboratory.	Miami, FL	Facilities management and maintenance	12.0	4/01/85	4/01/86	7/01/86

DEPARTMENT OF COMMERCE PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST—Continued

[illegible]	Name of activity	Location of activity	Description of activity	Approximate number of FTE's	Review [illegible]	Review end date	[illegible] end date
NOA-W001	NWS engineering activities	Washington, DC [1]	Provides maintenance, reconditioning and quality control in support of the NWS technical equipment program. Provides engineering, facilities, and instrumentation support to NWS field installations. Provides a full spectrum of engineering support activities for the National Weather Service	214.0	5/01/83	9/30/84	10/01/85
NOA-W004	Test and Evaluation Division	Sterling, VA	Conducts and evaluates laboratory and field tests of meteorological instruments and equipment, and observational methods and procedures.	39.0	4/01/83	9/30/84	4/01/85
NOA-W005	Weather Chart Reproduction	Camp Springs, MD	Provides technical support and weather chart reproduction services for MWS and other weather interests.	13.0	4/01/83	9/30/84	4/15/85
NOA-W007	Communications Operations	Suitland, MD	Provides for the installation, operation, adjustment, and maintenance of communications equipment for NWS.	44.0	4/01/83	1/09/84	4/01/85
NOA-W011	Alaska Regional Weather Service Activities.	Anchorage and Fairbanks, AK	Provides engineering facilities and instrumentation support to NWS field installations. Provides electronic maintenance for NWS instrumentation in the Anchorage, AK area. Provides electronic maintenance for NWS instrumentation at the WSFO, Fairbanks, AK. Provides aviation observations at the Fairbanks WSFO.	35.0	3/01/84	5/01/85	7/01/85
NOA-W013	Hawaii Regional Weather Service Activities.	Honolulu, HI	Provides electronic maintenance for NWS instrumentation at the WSFO, Honolulu, HI. Provides weather observations and communications support for the WSFO, Honolulu, HI	21.0	11/01/83	12/01/84	7/01/85
NOA-W015	NWS New York Area Airport Observations.	New York, NY and Newark, NJ.	Provides aviation observations at the NY/Kennedy WSO, the Newark WSO, and the NY/LaGuardia WSO.	12.0	4/01/84	5/01/85	9/01/85
NOA-W017	NWS LA Area Airport Observations	Los Angeles and Long Beach, CA.	Provides aviation observations at the Los Angeles International WSO/AU, and the Long Beach WSO.	10.0	4/01/84	5/01/85	9/01/85
NOA-W018	Dulles Airport Observations	Chantilly, VA	Provides aviation observations at the Wash/Dulles International WSO	9.0	5/01/83	09/30/84	6/01/85
NOA-W019	NWC Computer Operations	Suitland, MD	Provides comprehensive comuter servcies to NOAA components as well as other DOC organizations. Responsibilities include installation, testing, modification, and operation of IMS computers.	50.0	10/01/84	12/01/85	2/01/86
NOA-W020	O'Hare Airport Observations	Chicago, IL	Provides aviation observations at the Chicago/O'Hare WSO.	6.0	5/01/83	9/30/85	6/01/85
NOA-W021	NWS Overseas Operations	Silver Spring, MD	Support of overseas weather operations.	31.0	4/01/85	10/01/86	
NOA-W022	NWS Intergrated Systems Laboratory	do	Systems development engineering	37.0	4/01/86	10/01/87	
NOA-W023	NWS AFOS Operations Division	do	Operation of communications systems	65.0	10/01/85	4/01/87	
NOAW024	NWS Training Center	Kansas City, MO	Electronics and meteorological training	42.0	1/01/86	7/01/87	
NTIS-001	Information analysis	Springfield, VA	Provide subject analysis and discipline classification for all documents entering NTIS/ colection; maintain the integrity of the NTIS Bibliographic Data Base; design and execute on-line custom subject searches; create microthesauri; develop and produce NTIS Data Base User Guide; develop and maintain customer profiles for the selective dissemination of information (SRIM); key of bibliographic information.	13.0	6/01/83	9/30/84	3/10/85
NTIS-002	Distribution	do	Process orders, store and ship documents and other NTIS products being offered for sale.	34.0	5/01/83	9/30/84	3/10/85
NTIS-004	Automated data processing	do	Plan and operate the agency's automated data processing systems used to process the bibliographic data file, publications and edit programs. Perform studies and analysis of total NTIS systems needs with emphasis on adaptation of automated data processing systems to satisfy needs. Develop detailed systems and associated computer programs to support those processes selected for automated data processing. NOTE.—Study on hold pending completion of requirements study and acquisition of large-scale mainframe.	45.0	6/01/86	12/01/87	
OS-DCSI	Computer services	do	Operates central ADP resource facility to support Office of the Secretary and designated operating units and provide computer resources for selected automated applications of other Government agencies.	26.0	6/01/86	12/01/87	
OS-OMB1	Operations and maintenance	Washington, DC	Provides craftsmen to operate and maintain mechanical systems of HCHB.	20.0	10/01/86	9/20/87	

[1] Also Kansas City, MO; Ft. Worth, TX; Salt Lake City, UT; Garden City, NY.

[FR Doc. 85-11107 Filed 5-7-85; 8:45 am]

BILLING CODE 3510-BR-,

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificates of Review.

SUMMARY: The Department of Commerce has issued export trade certificates or review to World-Wide Sires, Inc. ("WWS") and to Marine Midland Trade, Inc. ("MMT"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to these certificates as "Export Trade Certificates of Review, application number 85-00001 (WWS) and/or 85-00003 (MMT)."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202–377–5131. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

WWS—Application No. 85–00001

Export Trade

Frozen bull semen.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), Canada, Mexico, the Caribbean Islands and all of Central and South America.

Members

Atlantic Breeders Cooperative; Eastern A.I. Cooperative; Kansas Artificial Breeding Service Unit; Louisiana Animal Breeders Cooperative, Inc.; MBC–MVBA Cooperative (formerly Midwest Breeders Cooperative and Minnesota Valley Breeders Association); Noba, Inc.; Select Sires, Inc.; Sire Power, Inc.; and Tri-State Breeders Cooperative.

Export Trade Activities and Methods of Operation

(1) WWS may enter into exclusive agreements with one or more Members wherein:

(a) WWS will purchase frozen bull semen from such Members, and such Members will sell the same to WWS, at prices set by each individual Member, for resale by WWS in the Export Markets, and wherein WWS will market and sell the frozen bull semen in the Export Markets directly or through foreign representatives at prices and on such terms as WWS shall set; and/or

(b) Each Member is prohibited from exporting independently of WWS, either directly or indirectly, and selling, either directly or indirectly, through any other export intermediaries into the Export Markets in which WWS exclusively represents the Members, or to any of WWS's competitors in Export Trade; and/or

(c) WWS agrees to sell in the Export Markets only the frozen bull semen that it obtains from Members and to purchase from Members all frozen bull semen required by WWS for sale in the Export Markets; WWS also agrees not to represent any competitors of such Members in any Export Market, unless authorized by the Members.

(2) The exclusive agreements described in paragraph 1 may have provisions which permit WWS or a Member to terminate said agreement and withdraw therefrom at the end of a period not exceeding three (3) years after giving notice of intent to terminate and to withdraw. Such exclusive agreements may have provisions which require WWS to purchase a minimum amount of frozen bull semen from a Member giving notice of termination during the period commencing with the giving of notice and ending with the effective date of termination. Such exclusive agreements may also have provisions which require WWS and at least a majority of the other Members to such agreement to consent before a Member which gave notice of termination to be readmitted to the group, or before additional Members may be admitted to the group.

(3) WWS may enter into exclusive agreements in which WWS appoints foreign representatives as sales agents, brokers, and distributors for frozen bull semen in the Export Markets, wherein:

(a) WWS agrees to deal in any portion of the Export Markets only through such foreign representatives; and/or

(b) Foreign representatives may agree not to represent WWS's competitors in the Export Markets, unless authorized by WWS.

(4) Periodically, WWS and its Members may meet to discuss general matters specific to exporting (not related to price and supply arrangements between WWS and individual Members) such as relevant facts concerning the Export Markets (e.g. demand conditions in the Export Markets, prices in the Export Markets, transportation costs to the Export Markets), policies and procedures between WWS and its Members, health standards, and changes in import regulations in the Export Markets, subject to certain terms and conditions. Such discussions may be summarized in written form and provided to Members.

(5) In addition to the activities described in paragraph (4) above, WWS may hold annual meetings with its Members to advise Members of WWS's sales results and orders shipped for the previous fiscal year in each Export Market, the amount of frozen bull semen purchased by WWS from each of its Members, the identity of the bull that produced each unit of semen, and the price paid per unit by WWS for such semen. At the annual meetings, WWS and its Members may discuss strategies related to making sales for the Export Markets during the next fiscal year, and discuss issues related to making sales for the Export Markets, subject to certain terms and conditions. At such meetings, the Members may act as a group, or appoint a coordinator to deal with WWS.

MMT—Application No. 85–00003

Export Trade

All products and services

Export Trade Facilitation Services (as they relate to the export of goods and services)

Communication and processing of foreign orders to and for exporters and foreign purchasers, financing, marketing, consulting, international market research, advertising, product research and design, legal assistance, foreign exchange transactions, insurance, transportation and packaging of goods, trade documentation, freight forwarding, and warehousing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Island, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

Marine Midlands Banks, Inc., a Delaware corporation, and Marine Midland Bank, N.A.

Export Trade Activities and Methods of Operation

1. MMT may enter into exclusive agreements with individual U.S. manufacturers and suppliers of products and services, wherein:

(i) MMT agrees not to represent any competitors of such supplier as an

Export Intermediary unless authorized by the supplier; and/or

(ii) The supplier agrees not to sell, directly, or indirectly through any other intermediary, into the Export Markets in which MMT represents the supplier as an Export Intermediary and, if such sales do occur, to pay a commission to MMT.

2. MMT may enter into nonexclusive agreements with U.S. suppliers of products and services, wherein MMT may appoint distributors or sales agents for the Export Markets.

3. MMT may enter into agreements with individual Export Intermediaries (including buyers, distributors and sales agents), wherein:

(i) MMT agrees to deal in particular products and services in particular export markets only through that intermediary, and/or

(ii) That intermediary agrees not to deal in particular products and services in particular export markets with anyone except MMT.

4. MMT may establish prices of products and services in the Export Markets based on its determination of market costs, overhead and profits.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility , Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: May 2, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-11070 Filed 5-7-85; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-145. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: Gas Chromatograph/Mass Spectrometer with Data System, Model ZAB-HS (11/250). Manufacturer: VG Analytical Instruments, Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of pure chemical compounds and mixtures of chemical compounds. These will include, but are not limited to, polynuclear aromatic carcinogenic materials, highly polar oxygenated derivatives of nucleotides and other chemicals of biological/biochemical origin and trace compounds from marine organisms and bacteria. The objectives of these studies are to determine the structure of molecules, whether available in pure form or in mixtures. Application received by Commissioner of Customs: April 3, 1985.

Docket No. 85-146. Applicant: Stanford Linear Accelerator Center, P.O. Box 4349, Stanford, CA 94305. Instrument: Streak Camera, Model IMACON 500 with Accessories. Manufacturer: Hadland Phontonics, Ltd., United Kingdom. Intended use: The instrument is intended to be used for studying the temporal bunch length of the electron and positron bunches accelerated by the linac which is highly relevant to the operation of the SLC. Application received by Commissioner of Customs: April 3, 1985.

Docket No. 85-147. Applicant: University of Illinois at Chicago, Department of Ophthalmology, 1855 W. Taylor, Chicago, IL 60612. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Hitachi, Japan. Intended use: The instrument is intended to be used for diagnostic and research study of eye tissues to assist management of patients and to investigate causes and development of eye diseases in patients and animal models. The objectives pursued in the course of investigations are to:

(1) Employ the ultrastructure investigative techniques to improve diagnosis for the management of patients with eye diseases, (2) demonstrate the different diseases in cornea, lens, retina and trabecular meshwork in animal models to develop insight for these diseases of the eye, (3) employ various cytochemical, histochemical electronprobe microanalytical techniques for enzymatic changes in various eye diseases, (4) show by various ultrastructure tracer tenchiques in the study of blood-retinal barrier and (5) detect antigen-antibody complexes in autoimmune diseases of the eye. Application received by Commissioner of Customs: April 3, 1985.

Docket No. 85-148. Applicant: National Bureau of Standards, B268 Physics Building, Gaithersburg, MD 20899. Instrument: Quartz Beam Splitter and Si-Detector. Manufacturer: Bomem, Inc., Canada. Intended use: The articles are accessories to be used to extend the operating range of a fourier transform spectrometer. These items will permit spectroscopic research on free radicals, electronic absorption and emission spectra, laser induced fluorescence spectra, Raman spectroscopy of gases and other areas of spectroscopy in the near infrared and visible regions. Application received by Commissioner of Customs: April 5, 1985.

Docket No. 85-149. Applicant: National Bureau of Standards, Room B268 Physics Building, Gaithersburg, MD 20899. Instrument: DTGS Pyroelectric Detector. Manufacturer: Bomem, Inc., Canada. Intended use: The article is intended to be used for infrared spectroscopy to be done in the 10-700 cm^{-1} region. The detector is liquid cooled and will be employed in the study of matrix isolation spectra of radicals and ions at moderately high resolution. Application received by Commissioner of Customs: April 5, 1985.

Docket No. 85-150. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: Electron Spectrometer, Model LSH-10 with Accessories. Manufacturer: Leybold-Heraeus Vacuum Products Inc., West Germany. Intended use: Studies of rare gases, halogens or alkali metal adsorbed on a variety of metal surfaces at sub monolayer coverages. Experiments to be conducted will involve measuring differences in the energy distribution of electron emission when a metal surface is covered by submonolayer additions of the adsorbates above. The main objective of these experiments is to determine the way electrons in metals respond to the shock of an optically excited adsorbate. In addition, the instrument will be used in Physics 499 Independent Research for training purposes. Application received by Commissioner of Customs: April 5, 1985.

Docket No. 85-151. Applicant: The University of Utah, Purchasing Department, Room 151, Annex Building, Salt Lake City, UT 84112. Instrument: Magnetometer, Model RS-232. Manufacturer: Molspin Ltd., United Kingdom. Intended use: The instrument will be used for the study of Natural Remanent Magnetization of geologic

specimens in rock magnetic and paleomagnetic investigations. Application received by Commissioner of Customs: April 10, 1985.

Docket No. 85-152. Applicant: Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 62706. Instrument: Conductivity Meter, Model EM 34-3 with Accessories. Manufacturer: Geonics Limited, Canada. Intended use: Study of groundwater conductivity anomalies in the vicinity of waste management facilities. The differences in conductivity between contaminated and uncontaminated groundwater and the conductivity differences between different subsurface strata will be investigated. Application received by Commissioner of Customs: April 10, 1985.

Docket No. 85-153. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Mass Spectrometer, Model JMS-HX110HF with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Studies of complex organic molecules of biological interest. The mass spectra of these compounds are to be measured. Experiments will be conducted to determine the structure of these biomolecules. Application received by Commissioner of Customs: April 9, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11161 Filed 5-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 82-326R. Applicant: National Aeronautics and Space Administration, Pasadena, CA 91109. Instrument: Excimer Laser System, Model EMG-101E and Accessories. Date of denial without prejudice to resubmission: February 1, 1985.

Docket No. 84-83. Applicant: National Institutes of Health, Bethesda, MD 20205. Instrument: Data System for a Mass Spectrometer, Model VG 11/250. Date of denial without prejudice to resubmission: February 21, 1985.

Docket No. 84-153. Applicant: National Aeronautics & Space Administration, Pasadena, CA 91109. Instrument: Laser, Model TEA 820-M and Accessories. Date of denial without prejudice to resubmission: February 1, 1985.

Docket No. 85-13. Applicant: Montana State University, Bozeman, MT 59717-0002. Instrument: Electromagnetic Soil Conductivity Meter, Model EM 38. Date of denial without prejudice to resubmission: February 1, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11160 Filed 5-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-278. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Electron Microscope, Model JEM-4000 EX/TES with TTH 40 Holder. Manufacturer: JEOL, Japan. Intended use: See notice at 50 FR 9476. Instrument ordered: June 19, 1984.

Docket No. 85-062. Applicant: Yale University School of Medicine, New Haven, CT 06510. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 1262. Instrument ordered: October 15, 1984.

Docket No. 85-063. Applicant: U.S. Air Force, MAQCE, San Antonio, TX 78241. Instrument: Electron Microscope, Model H-800 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 50 FR 1262. Instrument ordered: August 22, 1984.

Docket No. 85-065. Applicant: USDA-ARS, Appalachian Fruit Research Station, Kearneysville, WV 25430. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Nissei Sangyo America, Ltd., Japan. Intended use: See notice at 50 FR 7363. Instrument Ordered: August 2, 1984.

Docket No. 85-070. Applicant: St. Francis Hospital Memphis, TN 38119. Instrument: Electron Microscope/TV Scanning Attachment, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany Intended use: See notice at 50 FR 6230. Instrument ordered: October 15, 1984.

Docket No. 85-072. Applicant: The University of Texas Health Science Center at Dallas, Dallas, TX 75235. Instrument: Electron Microscope with Eucentric Side Entry Goniometer Stage, Model JEM-1200 EX/SEG-10 and Accessories. Manufacturer: JEOL, Ltd., Japan, Intended use: See notice at 50 FR 4996. Instrument ordered: October 17, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the Untied States in the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order or each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11158 Filed 5-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Withdrawal of Applications for Duty-Free Entry of Scientific Articles

The following applications have been withdrawn by the applicant. Accordingly, further administrative proceedings will not be taken by the

Department of Commerce with respect to these applications.

Docket No. 84–98. Applicant: Massachusetts Institute of Technology. Instrument: X-ray Microanalysis System, Model MICBEAM 53115A with Accessories. See notice at 49 FR 10138.

Docket No. 84–88. Applicant: University of Chicago, Operator of Argonne National Laboratory. Instrument: 2 Gamma Ray Detector Systems, Model M500A. See notice at 49 FR 10139.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11159 Filed 5–7–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic and New England Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic and New England Fishery Management Councils will convene public meetings at the Carousel Hotel, on the beach at 118th Street, Ocean City, MD; telephone: 301–524–1000, as follows:

May 21 1985—Mid-Atlantic Council (separate public meeting).

Discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP); Squid, Mackerel and Butterfish FMP; Atlantic Demersal Finfish FMP; joint venture applications and policy, as well as other fishery management and administrative matters.

May 21, 1985—New England Council (separate public meeting).

Discuss reports of the Lobster and Enforcement Committees; reports of the Swordfish Working Panel; status of the Magnuson Fishery Conservation and Management Act (MFCMA) amendments, as well as other fishery management and administrative matters.

May 22–23, 1985—Mid-Atlantic and New England Fishery Management Councils (joint public meeting).

Discuss the status of each Council's FMPs; limited entry considerations; MFCMA reauthorization; enforcement matters, as well as other fishery management and administrative matters.

The public meetings may be lengthened or shortened depending upon progress on agenda items. A detailed agenda will be made available to the public around May 10. The Councils also may convene closed sessions to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, DE 19901; telephone: 302–674–2331

Dated: May 3, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–11190 Filed 5–7–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Temporary Visa Waiver for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

May 1, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 8, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated February 6, 1980 (45 FR 8084), as amended, established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Indonesia and entered or withdrawn from warehouse for consumption in the United States. A problem has arisen in the implementation of this requirement. To allow time to resolve this problem, it has been decided to waive shipments of non-import controlled categories of cotton, wool and man-made fiber textiles and textile products in Categories 300–369, 400–469 and 600–669, exported from Indonesia prior to March 27, 1985 and entered before July 1, 1985, which have a pentagon-shaped visa stamp. The letter to the Commissioner of Customs which follows this notice establishes this waiver procedure.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 1, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 6, 1980, as amended, which directed you to prohibit entry into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Indonesia, for which that government had not issued an appropriate export visa.

Effective on May 8, 1985, and until further notice, the directive of Feburary 6, 1980, as amended, is hereby further amended to waive the previously established export visa requirement for categories of cotton, wool and man-made fiber textiles and textile products not currently under import control, which were exported from Indonesia before March 27, 1985 and are entered or withdrawn from warehouse for consumption in the United States before July 1, 1985, which are visaed using a pentagon-shaped stamp.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–11157 Filed 5–7–85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Major Market Index Maxi Futures Contract; Availability of Terms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the Major Market

Index Maxi. The proposed terms and conditions of the CBT's Major Market Index Maxi futures contract are substantially identical to the terms and conditions of the CBT's Amex Major Market Index futures contract approved by the Commission on June 19, 1984, with the exception of contract size. The existing Amex Major Market Index futures contract has a per unit value of $100 "times" ($100×) the Index. The proposed Major Market Index Maxi futures contract would have a per unit value of $250 "times" ($250×) the Index. In accordance with sections 2(a)(1)(B)(iii) and 2(a)(1)(B)(iv)(II) of the Commodity Exchange Act, 7 U.S.C. 2a(iii), 2a(iv)(II) (1982), as amended, the Commodity Futures Trading Commission ("Commission") is making available the proposed contract for public inspection and comment.

DATE: Comments must be received on or before June 7, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT Major Market Index Maxi futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7227.

A copy of the terms and conditions of the proposed CBT Major Market Index Maxi futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by June 7, 1985.

Issued in Washington, D.C., on May 3, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-11115 Filed 5-7-85; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements; Cellulose Insulation Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through May 31, 1988 of information collection requirements in regulations implementing the Amended Interim Safety Standard for Cellulose Insulation. The regulations are codified at 16 CFR Part 1209, and prescribed requirements for testing and recordkeeping by persons and firms issuing certificates of compliance for products subject to the amended standard for cellulose insulation.

Details About the Requested Extension of Approval of Requirements for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Amended Interim Safety Standard for Cellulose Insulation, 16 CFR Part 1209.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of production.

General Description of respondents: Manufacturers and importers of cellulose insulation.

Estimated number of respondents: 250.

Estimated average number of hours for each respondent: 25 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395-7313. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 3, 1985.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 85-11108 Filed 5-7-85; 8:45 am]

BILLING CODE 6355-01-M

Public Hearing Concerning Hazards Associated With All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Jackson, Mississippi, on May 30, 1985, to obtain safety related information on All Terrain Vehicles (ATVs). This will be the first of five hearings on the hazards associated with ATVs the Commission plans to hold across the United States. The second hearing will be held in Dallas, Texas, in June 1985. The Commission also plans to hold hearings in Concord, New Hampshire; Milwaukee, Wisconsin; and Los Angeles, California during the next several months.

The Commission is aware of at least 125 deaths associated with ATVs occurring between January, 1982 through December 1984. Estimates on the number of hospital emergency room treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission is primarily concerned about accidents which result from: (1) Loss of control of the ATV; (2) the ATV overturning by flipping over backward, tipping over forward, or rolling over sideways; and (3) the rider being thrown from the vehicle.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from recreational and occupational owners and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state

and local government officials or organizations involved with ATV safety and training or state legislation; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs. The hearing will specifically focus on the hazards associated with ATVs and ways the industry, the Commission, state and local governments or voluntary standards organizations can address these hazards.

DATE AND ADDRESS: The hearing will be held on Thursday, May 30, 1985, beginning at 9 a.m. in the State Capitol building, Old Supreme Court Room, (Second Floor), Jackson, Mississippi. Requests from persons who wish to make presentations must be received by the Office of the Secretary no later than May 24, 1985. Persons who wish to testify must submit a written copy or summary of their testimony to the Office of the Secretary not later than May 28, 1985. Presentations at the hearing should be limited to approximately 5 minutes.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; or call Mr. Butts on the Commission's toll free hotline number at 800–638–2772 or the Commission's commercial number at 301–492–6800.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is holdig a series of five public hearings across the United States to assist it in obtaining safety-related information of ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Consumer Product Safety Commission is concerned about whether the performance characteritics of ATVs, including dynamic stability and handling, and adequately safe. To address this concern, the Commission will shortly issue an advance notice of proposed rulemaking (ANPR), which formally commences a rulemaking proceeding. In the ANPR, the Commission intends to discuss methods by which any unreasonable risks of injury associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, an administrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA, or the dissemination of safety related information.

An ATV is a motorized machine intended to be ridden by a single person and designed for off-road use. The majority of ATVs have three wheels in a tricycle configuration, although there has been a large increase in the available number of ATVs with four wheels. (The Commission's inquiry at this time is focused only on three and four wheel ATVs.) ATVs typically have gasoline-powered engines of between 50 and 250 cubic centimeters displacement. Currently, ATVs use large, soft, low pressure tires. Most ATVs have no rear axle differential and limited suspension systems.

Sales of all terrain vehicles have increased substantially since the mid-1970s. From 1980 to 1983 sales more than tripled with an average rate of growth over this period of 55% per year. While the number of sales increased sharply in 1984, the percentage rate of growth slowed somewhat to 24%.

The Commission staff estimates that by the end of 1985, 2,480,000 to 2,540,000 ATVs will be available for use, based on an average product life expectancy of 7 to 8 years and on a normally distributed rate of product survival.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that the number of hospital emergency room treated injuries associated with ATVs in 1984 was 66,956. This is almost two and one half times the number of injuries in the previous year and more than seven times the number in 1982. At least 125 ATV associated fatalities are known to the Commision to have occurred from January 1982 through December 1984. The Commission staff review of these 125 reported deaths revealed that 53 victims were under 16 years of age and 27 were under 12 years of age. Almost three-fourths of the victims of ATV-related injuries were between the ages of 5 and 24 years.

The Commission staff believes that the basic configuration of ATVs, and their unique performance characteristics including dynamic stability and handling, appear to play a major role in accidents involving ATVs. Many serious injuries and deaths reported in in-depth investigations conducted by the Commission staff resulted from loss of control of the ATV following an abrupt change in the equilibrium of the vehicle. A number of different factors, such as a change in terrain, or a sudden change in direction can contribute to the change in equilibrium. The subsequent loss of control follows a pattern in which the machine overturns or the rider is thrown off. In many of these accidents, other factors such as drinking, riding with passengers, or operating the vehicle illegally on paved roads, may obscure the pattern of loss of control as the critical element in the incident.

B. Request for Public Participation at Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about ATV handling characteristics; persons who belong to ATV clubs and/or racing associations; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials such as police officers, health and safety officials and legislators who are involved with ATV safety, training or legislation concerning ATVs; persons or organization involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

The hearing will focus on the following areas:

(1) Information which identifies the degree, if any, to which the general design of ATVs as well as specific design and operational features of individual models of ATVs influence the performance characteristics of ATVs and contribute to the risk of injury;

(2) Information identifying any changes in general or specific design characteristics of ATVs, including the costs of these changes, that would reduce or eliminate the risks of injury;

(3) Information concerning the handling characteristics of ATVs and the ability of users at various ages and levels of experience to maintain control of ATVs under various conditions of terrain and speed;

(4) Information relating to techniques of evaluating and testing the performance of ATVs;

(5) Information on current activities to educate or train users of ATVs, including children, in the proper method of operation and ways these efforts could be improved;

(6) Information on any accidents involving ATVs, including information on specific injuries sustained in ATV accidents and the nature, degree, duration, treatment and outcome of such injuries. Copies of physicians' and hospital records are sought;

(7) Information identifying any voluntary standard applicable or adaptable to ATVs which could reduce or eliminate the risk of injury;

(8) Information concerning any state or local licensing requirement, restriction or legislation involving ATVs.

(9) Information concerning the development of the three and four wheel ATVs including information relating to design features which take into account the hazards of overturning, and loss of control; and

(10) Information on the sale, marketing and distribution of ATVs, particularly for use by children.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received in the Office of the Secretary no later than May 30, 1985. Also, persons who cannot attend the hearing or make a presentation should be aware that they will have an opportunity to submit written comments in response to the ANPR.

Dated: May 3, 1985.

Sheldon Butts,

Acting Secretary, Office of the Secretary.

[FR Doc. 85-11109 Filed 5-7-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Voluntary Questionnaire, Department of Defense Overseas Dependents School—DS Form 5012

Responding to the questionnaire is voluntary. Information provides a means of evaluating the effectiveness of Federal EEO program, including handicapped applicants, and DODDS recruiting efforts.

Individuals

Responses 5,500

Burden hours 917

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This collection is not for contract.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85-11150 Filed 5-7-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision of a Currently Approved Collection

Professional Evaluation—Department of Defense Overseas Dependents Schools—DS Form 5011.

Information provides means for evaluating the applicant's abilities and personal traits which may predict success in an overseas teaching assignment with Department of Defense Overseas Dependents Schools.

Individuals

Responses 11,000

Burden hours 5,500

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1213 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This collection is not for contract.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85-11151 Filed 5-7-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision of a Currently Approved Collection

Supplemental Application for Employment with Department of

Defense Overseas Dependents Schools—DS Form 5010.

Information collection is to provide brief, personal, professional, and academic data for use in screening applications for employment with the Department of Defense Overseas Dependents Schools

Individuals

Responses 5,500

Burden hours 2,750

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643. This collection is not for contract.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85–11152 Filed 5–7–85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Follow-on Forces will meet in closed session on 30–31 May 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85–11146 Filed 5–7–85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force On-Site Inspection; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force On-Site Inspection will meet in closed session on 28 May 1985 at the Lawrence Livermore National Laboratory, Livermore, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine concepts for on-site inspection technical sensor systems which could verify possible arms control limits.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85–11147 Filed 5–7–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Marksmanship Club Annual Report, DA Forms 1275, 1275–1, and 1277

Affiliated marksmanship clubs are issued government-owned material in support of the Army program. Based upon membership and club activities, clubs are provided with requested supplies to promote marksmanship training. Statistics are collected in order to supply information to the Director for congressional and budgetary actions.

Non-profit Institutions: (Marksmanship Clubs)

Responses: 2,500

Burden hours: 2,700

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20310–0700, telephone (202) 695–5111.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85–11148 Filed 5–7–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8)

The point of contact from whom a copy of the information proposal may be obtained.

Revision

Civilian Marksmanship Program Enrollment, DA Forms 1271, 1271-1, 1271-2, 1272, 1273 and 1274.

Enrollment forms are used to screen applications and provide a record that the requirements of section 4307 Title 10 USC are met.

Non-profit Institutions (Marksmanship Clubs).

Responses 200.

Burden hours 200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM-ADI, Room 1D667, The Pentagon, Washington, DC 20310-0700, telephone (202) 695-5111.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 3, 1985.

[FR Doc. 85-11149 Filed 5-7-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: Coastal Engineering Research Board.

Date of Meeting: May 22-24, 1985.

Place: Magnolia-Best Western Hotel, Vicksburg Mississippi.

Time: 8:30 a.m. to 4:45 p.m. on May 22; 8:00 a.m. to 5:20 p.m. on May 23; 8:00 a.m. to 11:45 a.m. on May 24.

Proposed agenda: The May 22 session will consist of a review of Coastal Engineering Research Board (CERB) business, orientation on Repair, Evaluation, Maintenance and Rehabilitation Program (REMR), new CERB issues, coastal engineering responsibilities of Corps functional elements, CERB plan of action, and Cresent City Dolos Project.

The morning of May 23 will be devoted to a tour of the U.S. Army Engineer Waterways Experiment Station (WES), including various modeling and flume studies and field data collection facility.

On the afternoon on May 23 discussions will include future Coastal Engineering Research Center facilities plan; research programs for Directional Spectral Wave Generator, Coastal Flooding and Storm Protection, Harbor Entrances and Coastal Channels, Shore Protection and Restoration, Coastal Structures Evaluation and Design; the Duck '86 Experiment; and Coastal Field Data Collection and Monitoring Completed Coastal Projects.

The session on May 24 will consist of a presentation of research needs by the Lower Mississippi Valley Division, discussion of the tour of WES, research programs and facilities plan, and recommendations by the members of the Board.

This meeting is open to the public; participation by the public is scheduled for 9:00 a.m. on May 24. The public may attend the tour but must provide their own transportation.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robert C. Lee, Executive Secretary, Coastal Engineering Research Board, Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180-0631.

Robert C. Lee,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 85-11156 Filed 5-7-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Advisory Committee on Accreditation and Institutional Eligibility; Accrediting Agencies for Review Under a Special Procedure

AGENCY: Notice of accrediting agencies for review under a special procedure.

ACTION: Department of Education.

SUMMARY: The Secretary of Education (the Secretary) publishes a list of nationally recognized accrediting agencies based on the recommendations of the National Advisory Committee on Accreditation and Institutional Eligibility. Recommendations to the Secretary concerning interim reports submitted by recognized accrediting agencies already on the list are handled under a special review procedure. The Advisory Committee relies on the Division of Eligibility and Agency Evaluation staff analyses of these interim reports and public comment on the analyses to formulate its recommendations to the Secretary.

DATE: Comments on these analyses must be received on or before June 7, 1985.

ADDRESS: Comments should be addressed to Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 3030, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Morris L. Brown, Telephone: (202) 245-9703.

SUPPLEMENTARY INFORMATION: This document is intended to advise the public that the National Advisory Committee on Accreditation and Institutional Eligibility, in making recommendations to the Secretary regarding his responsibility for listing accrediting agencies as required by 20 U.S.C. 1141(a), 20 U.S.C. 1094(b)(3) and other statutes, is following a special review procedure regarding some agencies.

Usually the Advisory Committee reviews in detail each report and each staff analysis and hears oral presentations from the petitioning agencies and interested third parties before making recommendations to the Secretary.

The Special Procedure will reduce the depth of review by the Advisory Committee of agencies that were requested to submit interim reports following their last full review. The Advisory Committee will use both staff analyses and public comment before submitting final recommendations to the Secretary regarding the list of these agencies as required under 34 CFR Part 603.

This notice provides the names of agencies to be reviewed under this special procedure. The Department's Division of Eligibility and Agency Evaluation staff has prepared analyses of the reports according to the criteria for recognition in 34 CFR 603.6, and has prepared recommendations on these agencies.

The public is invited to comment on these analyses before the Advisory Committee makes final recommendations to the Secretary.

The reports of the following agenices are under review:

I. Nationally Recognized Accrediting Agencies and Associations

Accreditation Board for Engineering and Technology, Inc.
Proposed Recommendation: Accept the report.
American Board of Funeral Service Education, Committee on Accreditation
Proposed Recommendation: Accept the report.
American Medical Association, Committee on Allied Health Education Accreditation, in cooperation with the following review committees:
Cytotechnology Programs Review Committee, American Society of Cytology
Proposed Recommendation: Accept the report.
Joint Review Committee on Education in Diagnostic Medical Sonography
Proposed Recommendation: Accept the report.
Joint Review Committee on Education in Electroencephalographic Technology
Proposed Recommendation: Accept the report.
Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Proposed Recommendation: Accept the report.
Joint Review Committee on Education in Radiologic Technology
Proposed Recommendation: Accept the report.
Joint Review Committee on Education for the Surgical Technlogist
Proposed Recommendation: Accept the report.
American Society of Landscape Architects, Landscape Architectural Accreditation Board
Proposed Recommendation: Accept the report.
National Association of Schools of Art and Design, Commission on Accreditation and Membership
Proposed Recommendation: Accept the report.
National Association of Schools of Dance, Commission on Accreditation
Proposed Recommendation: Accept the report.
National Association of Schools of Music
Proposed Recommendation: Accept the report.

II. State Agencies for the Approval of Public Postsecondary Vocational Education

Delaware State Board of Education
Proposed Recommendation: Accept the report. Invitation to Comment: A copy of the analysis of any of the reports submitted by the agencies listed in this Notice may be obtained from Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 3030, ROB-3), U.S. Department of Education, Washington, D.C. 20202.

Dated: May 2, 1985.

William J. Bennett,
Secretary of Education.

[FR Doc. 85-11140 Filed 5-7-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services State-Operated Programs for Handicapped Children; Intent To Compromise Claim

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim.

SUMMARY: Notice is given that the Secretary intends to compromise a claim of less than $50,000 against the Colorado Department of Education now pending before the Education Appeal Board (EAB), Docket No. 2-(67)-81 (31 U.S.C. 3711; 20 U.S.C. 1234a(f)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before June 24, 1985.

ADDRESSES: Comments should be addressed to Ms. Ann Marie Reilly, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4091, FOB-6), Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit conducted by the U.S. Department of Health, Education and Welfare Audit Agency. The audit, covering the period of July 1, 1974 through August 31, 1977, concerned the following grant programs administered by the Colorado Department of Education (State educational agency; SEA): the State-Operated Program for Handicapped Children, Section 121 of Title I of the Elementary and Secondary Education Act, Pub. L. 89-10, as amended (20 U.S.C. 241a *et seq.* (1976)) and the program for Assistance to States for the Education of Handicapped Children, Part B of the Education of the Handicapped Act, Pub. L. 91-230, as amended (20 U.S.C. 1411 *et seq.* (1976)).

In his Final Determination Letter (FDL) of December 3, 1980, based upon the audit, the Deputy Assistant Secretary for Special Education issued a claim that the SEA must refund $14,003 to the Department of Education based upon a violation of the maintenance of effort requirement in section 143(c)(2) of Title I (20 U.S.C. 241g(c)(2)) in the Fort Logan Mental Health Center, a recipient of funds under Section 121 of Title I (Title I handicapped program; 20 U.S.C. 241c-1).

In that FDL, the Deputy Assistant Secretary also issued a number of non-monetary determinations against the SEA concerning both the Title I handicapped program and the program for Assistance to States for the Education of Handicapped Children. Those non-monetary determinations are neither the subject of the appeal at issue nor of the claim intended to be compromised.

Under the Title I handicapped program, funds are provided to State agencies which are directly responsible for providing free public education to handicapped children (20 U.S.C. 241c-1(a)). Funds are provided to the State agencies through the SEA for ". . . programs and projects . . . designed to meet the special educational needs of such [handicapped] children . . ." (20 U.S.C. 241c-1(c)). These funds are provided on the basis of a statutory percentage of State average per pupil expenditure multiplied by the number of handicapped children in average daily attendance, as determined by the Secretary (then Commissioner) of Educaition (20 U.S.C. 241c-1(b)).

Under the statute and applicable Title I general provisions regulations (45 CFR Part 116 (1976)), an SEA may not provide Title I funds to an applicant agency unless the SEA finds that the combined fiscal effort of that applicant agency and the State with respect to the provision of free public education by that applicant agency for the preceding fiscal year was not less than such combined fiscal effort for that purpose for the second preceding fiscal year (20 U.S.C. 241g(c)(2); 45 CFR 116.19(a)).

Prior to November 12, 1976, the Title I statute stated that "combined fiscal effort" was to be determined in accordance with Departmental regulations; the Title I general provisions regulations required that that effort was to be measured by the amount of the current expenditures *per pupil* by the applicant agency (emphasis added) (20 U.S.C. 241g(c)(2); 45 CFR 116.19(b).

Effective November 12, 1976, section 323(a)(1) of Pub. L. 94–482 amended the Title I maintenance of effort provision to specifically allow a combined fiscal effort determination on a per pupil or aggregate expenditure basis.

In the FDL, the Deputy Assistant Secretary determined that the SEA had provided $14,003 in Title I handicapped program funds for fiscal year 1976 to the Fort Logan Mental Health Center despite that Center's failure to maintain effort in accordance with the Title I statute and regulations. Although the Center's aggregate expenditures had increased (as had the count of children in average daily attendance under the Title I handicapped program), the Center did fail to maintain effort on a per pupil expenditure basis for fiscal year 1976.

In the audit report upon which the FDL was based, the federal auditors also had concluded that the SEA must refund $14,146 in fiscal year 1977 Title I handicapped program funds expended at the Center because the Center, although increasing aggregate expenditures, had failed to meet the maintenance of effort requirement on a per pupil expenditure basis.

As noted above, effective shortly after the start of fiscal year 1977, the Title I statute was amended to permit a determination of maintenance of effort on either an aggregate expenditures or per pupil basis.

Taking into account that amendment, the Deputy Assistant Secretary did not uphold in the FDL the auditors' findings concerning fiscal year 1977 funds.

For the fiscal year 1976 claim at issue, the SEA has argued in its application for review, filed before the EAB on December 30, 1980, that the Center's change in the method of counting children in average daily attendance resulted in an unrealistic review of and effect on the determination of maintenance of effort on a per pupil expenditure basis.

Beginning in fiscal year 1976, the subject of this audit claim, the Center changed from counting handicapped children on a full-time-equivalent basis to a pupils-served basis. This resulted in an increase in the count of handicapped children in average daily attendance which disproportionately affected the determination of maintenance of effort on a per-pupil basis.

The SEA has indicated that it may be possible to recalculate the fiscal year 1976 count of handicapped children at the Center on a full-time-equivalent basis and that, this being done, the Center would be shown to have met the maintenance of effort requirement for that fiscal year on a per pupil expenditure basis.

Of the $14,003 sought to be recovered in the FDL, approximately $6,000 is barred from recovery by the Statute of Limitations (section 452(g) of the General Education Provisions Act; 20 U.S.C. 1234a(g) (1980)). However, we expect that data can be submitted to show a larger amount is barred from recovery. The Statute of Limitations bars the recovery by the Department of funds expended more than five years prior to the receipt of the FDL by the SEA. The SEA received the FDL on December 8, 1980.

The SEA has offered to repay the Department $3,000 in full settlement of the claim. The Secretary proposes to accept the SEA's offer and to compromise the claim.

Given the relatively low amount of funds that could be recovered by the Department even were it to prevail in this appeal on all issues, given the amount of the recovery under the intended compromise (approximately 40% of that portion of the claim not barred from recovery), and given the fact that through a recalculation of the count of handicapped children, the SEA may show that no funds should be owed, the Secretary has determined that it would not be practical or in the public interest to continue this proceeding. In addition, the Secretary has also taken into account the costs of litigating this claim through the appeal process.

Moreover, the Assistant Secretary for Special Education and Rehabilitative Services is satisfied, given the statutory amendment which permits the SEA to determine maintenance of effort in the manner which is the subject of the claim at issue, that the violation has been corrected.

Because of the specific facts of this case, the proposed compromise will not adversely affect any other audit proceeding currently pending before the EAB.

FOR FURTHER INFORMATION: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Ms. Ann Marie Reilly at the address given at the beginning of this notice.

(31 U.S.C. 3711; 20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84.009, Programs for the Education of Handicapped Children in State Operated or Supported Schools)

Dated: May 2, 1985.

[FR Doc. 85–11139 Filed 5–7–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP–76A]

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of intent by the Department of Energy to prepare an Environmental Impact Statement (EIS) and to hold public scoping meetings to assess the environmental effects of the construction and operation of an electric transmission line crossing the Canadian border.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) to assess the environmental impacts of a proposed DOE action: To grant (with terms and conditions) or to deny an amendment to a Presidential permit authorizing Vermont Electric Transmission Company (VETCO), New England Hydro-Transmission Corporation (NEHTC) and New England Hydro-Transmission Electric Company, Inc. (NEHTEC) to construct, connect, operate and maintain new facilities in Massachusetts and New Hampshire for the transmission of electric energy between Hydro-Quebec, a public agency of the Province of Quebec, and the New England Power Pool (NEPOOL), an association of New England utilities.

Written comments should be addressed to: Anthony J. Como, Office of Fuels Programs (RG–22), Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252–5935.

For general information on the EIS process contact: Elizabeth V. Jankus, Office of Environmental Compliance (PE–251), Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252–6374.

DATE: Scoping meetings—2:00 p.m. and 6:30 p.m., June 4, 1985, in Concord, New Hampshire at the Legislative Office Building, 33 N. State Street, Room 210–211; 9:30 a.m., June 5, 1985, in Boston, Massachusetts at the John F. Kennedy Federal Building, Federal Center, Room E–226. Written comments due: July 22, 1985.

SUPPLEMENTARY INFORMATION: On April 5, 1984, DOE issued Presidential permit PP–76 to VETCO granting it permission, subject to certain conditions, to

construct, connect, operate and maintain at the international border of the United States and Canada, one ±450 kilovolt (kV) direct current (dc) transmission line. Presidential permit PP-76 also authorized the construction of a converter terminal at the southern terminus of the dc transmission line in Monroe, New Hampshire, to convert the dc power to alternating current (AC) power.

These facilities (known as Phase I) are currently under construction. The Phase I converter terminal was designed with a capacity of 690 MW to match the capability of the New England ac transmission system to absorb power delivered to Monroe, New Hampshire. The ±450 kV dc line was designed with the capability to transmit additional power should further contracts with Hydro-Quebec be deemed desirable.

Subsequent to the issuance of Presidential permit PP-76, NEPOOL concluded that additional purchases of hydro electric energy would be desirable. In this connection, NEPOOL, on behalf of its member utilities, recently has reached an agreement in principle with Hydro-Quebec for the purchase of an additional 70 billion KWH of energy over a ten-year period, currently scheduled to begin in 1990. In order to accept delivery of this additional hydro electric energy, it will be necessary for the international interconnection authorized in Presidential permit PP-76 to operate at power levels above the authorized level. In addition, it will be necessary to construct certain new facilities to transmit this additional hydro electric energy to load centers in central New England. Consequently, on March 4, 1985, VETCO applied to ERA to amend the Presidential permit in Docket PP-76, authorizing an increase in the nominal operating level of the previously permitted facilities and the construction of certain new facilities required to implement the new energy purchase agreement with Hydro-Quebec.

The proposed new facilities, referred to as Phase II, consist of three principal elements. The first element is the extension of the ±450 kV dc transmission line predominantly along an existing transmission corridor between the town of Monroe, New Hampshire and the town of Groton, Massachusetts, a distance of approximately 133.1 miles. The second element is the construction of an 1800 MW dc/ac converter terminal at the terminus of the proposed dc line on a site straddling the town line between Groton and Ayer, Massachusetts, adjacent to an existing 345 kV ac substation. The third element is the construction of two new 345 kV ac transmission lines with a combined length of 51.8 miles along existing transmission corridors. These new transmission lines are needed to reinforce the existing New England 345 kV ac transmission system. In addition to these principal elements, other miscellaneous new facilities, such as a communication system and a grounding system, would be required to assure successful operation of the Phase II facilities. DOE intends to prepare an EIS to assess the impact that the construction and operation of the Phase II facilities will have on the environment.

Interested agencies, organizations, and other members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and are encouraged to attend the public scoping meetings which will be held on June 4, 1985, in Concord, New Hampshire, and on June 5, 1985, in Boston, Massachusetts. Parties who desire to present oral comments at the scoping meetings should provide advance notice to DOE as described below under **"Comments and Scoping Meeting."** Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, at which time further comments will be solicited.

The primary purpose of the Phase II facilities, as stated by VETCO, is to reduce oil consumption in the New England region by approximately 12 million barrels per year.

The applicant contends that the construction and operation of the proposed Phase II facilities would increase overall transmission system efficiency and reduce by 900 MW, New England's need to construct new generating capacity which would otherwise be required to meet NEPOOL reliability criteria.

Additional benefits which the construction of the Phase II facilities will provide are: (1) The opportunity for energy banking, whereby NEPOOL members could transmit inexpensive energy north to Quebec during off-peak periods and receive equal amounts of energy during on-peak periods; (2) increased energy interchange, whereby if Hydro-Quebec has additional surpluses of energy, it could sell the surpluses to New England at some percent (less than 100 percent) of New England's avoided fuel cost; and (3) increased capability for emergency transfers of power to either side of the border for mutual reliability purposes.

Preliminary Definition of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS. As background for public comment and suggestions, it is useful to list those environmental issues which have been tentatively identified for analysis and assessment in the EIS. This list is not intended to be all inclusive or to imply any predetermination of impacts.

Additional issues for analysis may be identified as the result of public comment.

A. Environmental Issues Associated With Transmission Line Construction

(1) Permanent removal of growing vegetation from the existing right-of-way, and of all vegetation from tower footings, access roads and substation sites;

(2) Minor relocations and alterations to other existing facilities along the right-of-way;

(3) Temporary disruption of wildlife communities, agricultural production and other land uses along the line route during actual construction;

(4) Temporary socioeconomic perturbations due to the influx of construction workers into sparsely populated areas; and

(5) Temporary noise and air pollution resulting from operation of construction equipment and from burning of rights-of-way slash.

B. Environmental issues Associated With Transmission Line Operation and Maintenance

(1) Continuing limitation on the feasibility or efficiency of some agricultural activities within the right-of-way, particularly of irrigation devices;

(2) Periodic interference with plant and wildlife communities along the rights-of-way, due to required maintenance activities, particularly vegetation control;

(3) Generation of acoustic noise and electromagnetic interference to radio and television reception along the rights-of-way;

(4) Possible biological effects such as reduced growth or viability for plant and animal species resident within or in proximity to the rights-of-way;

(5) Possible long-term effects due to the use of herbicides for vegetation control;

(6) Indirect ecological and socioeconomic effects resulting from easier unauthorized human access to some areas via access roads and rights-of-way, such as increased hunting or use by motorcycles or snowmobiles; and

(7) Permanent visual impacts.

C. Other Specific Environmental Issues

(1) The possibility of affecting threatened or endangered species or critical habitats for such species;

(2) Identification and review of alternatives to construction within a 100-year floodplain or identified wetland and identification and review of mitigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) Possible direct and adverse effects on the values for which a wild scenic or recreational river was established;

(4) Environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge of dredge or fill materials into any waters of the U.S.;

(5) Actions having an impact on the continued use and viability of prime and unique farmlands;

(6) Possible effects on sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or on historical, architectural or archeological sites of national significance; and

(7) Possible adverse impacts on National Forest lands.

Preliminary Definition of Alternatives

The major purpose of an EIS is to define the reasonable alternatives to the proposed action, and the environmental impacts to be expected from each reasonable alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, the broad classes of alternatives which have been tentatively identified are described briefly below:

(1) *Proposed Action by VETCO* to construct and operate the interconnection which would purportedly reduce New England's need to construct new generation capacity which would otherwise be required to meet NEPOOL reliability criteria;

(2) *The traditional course of action* of continuing the operation of oil and coal-fueled generating plants as necessary to meet load, and the construction of new plants as necessary to satisfy future increases in load;

(3) *Develop and construct new types of generating plants*, for example, driven by sun and wind, which could reduce the need for generating electric energy by oil or coal or for future construction of conventional generating plants;

(4) *Load management* by energy storage or conservation, or replacement of some end uses of electricity by other sources of energy, which would reduce seasonal variations in load and total annual electrical energy requirements; and

(5) *Purchases from utilities within the United States* which have differing peaking periods.

Mitigation Alternatives

The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number of alternative possibilities as to where, when and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively identified groups of alternatives for consideration in the EIS include: (a) Design, (b) route selection, (C) construction practices and (seasonal) timing, (d) right-of-way clearing procedures, and (e) right-of-way maintenance practices.

Comments and Scoping Meeting

The scoping meetings will be conducted informally with the presiding officer affording all interested individuals in attendance an opportunity to speak. A transcript of the meetings will be recorded. The DOE has designated Mr. Robert L. Davies as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be alloted approximately 15 minutes for their oral statement. Should any speaker desire to provide for the record further information which cannot be presented within the designated time limit, such additional information may be submitted in writing by July 22, 1985. Written comments will be considered and given equal weight with oral comments.

A transcript for the scoping meetings will be retained by DOE and made available for inspection at the Freedom of Information Library, Room 1E-090, Forrestal Bldg., 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. In addition, anyone may make copies.

Draft EIS Schedule and Availability

The draft EIS (DEIS) will be completed by January 31, 1986, at which time its availability will be announced in the **Federal Register** and public comments will again be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the DEIS for review and comment when it is issued should notify Mr. Anthony J. Como at the address given in the prior section.

One of the requirements placed on the applicant for a Presidential permit (or amendment) is the submission of an Environmental Report. This and other documents to be used in preparation of the DEIS will be made available for public inspection at several public libraries or reading rooms within Vermont and New Hampshire and at other DOE locations throughout the U.S. A notice of the locations for such availability will be provided in the **Federal Register** at a later date.

Issued in Washington, D.C. On April 29, 1985.

William A. Vaughan,

Acting Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 85-11069 Filed 5-7-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-013; OFP CASE No. 67042-9269-20-24]

Acceptance of Petition for Exemption and Availability of Certification by United Cogen, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On March 21, 1985, United Cogen, Inc. (UCI), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requsting a permanent cogeneration exemption for a proposed electric powerplant to be located at the United Airlines Maintenance Operations Center (UALMOC), San Francisco International Airport in San Francisco, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is to consist of one General Electric (GE) LM 2500 21.8 MW combustion turbine generator system, a

supplementary fired waste heat recovery boiler (20.0 MMBtu per hour maximum), and a 6.0 MW extraction condensing steam turbine generator system. It is estimated that approximately 1.2 MW of electrical energy prduced will be consumed, onsite, making the net electric output of the facility 26.6 MW.

The UALMOC maintains an existing steam boiler plant to service the present steam demand. All current plant electrical requirements (approximately 9 MW) are presently supplied through Pacific Gas and Electric Company (PG&E) power grid. The congeneration facility would eliminate the need for the UALMOC steam powerplant and the power from the new plant would be sold to PG&E.

The proposed facility would be fired primarily on natural gas, but would also be designed to burn, a "Jet A" fuel for emergency standby in the event of a natural gas supply disruption. The supplementary firing system (duct burner) will be exclusively fired on natural gas.

The project will exceed the heat input threshold and is expected to sell more than 50 percent of the net annual electrical power to PG&E causing the new cogeneration facility to be classified as a powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DEO, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before June 24, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-85-013 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045J, Washington, D.C. 20585, Phone (202) 252-4708

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: UCI, proposes to install a cogeneration system at the UALMOC, San Francisco International Airport in San Francisco, California. The facility will (1) generate electrical power for sale to PG&E and (2) produce steam to meet the Operations Center heating and cooling requirements. The proposed cogeneration system will be operated by UCI. The facility will consist of a combustion turbine generator system, a supplementary fired waste heat recovery boiler and an extraction/condensing steam turbine generator system. The power from the new plant would be sold to PG&E.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), UCI has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), UCI has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's Guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) and Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition unitl ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that UCI is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. On April 30, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-11072 Filed 5-7-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order and Opportunity for Objection; Oxnard Refining Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial order to Oxnard Refining Company and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Oxnard Refining Company (Oxnard). This Proposed Remedial Order charges

Oxnard with unlawful receipt of small refiner bias entitlements arising from Oxnard's improper reporting of 1,395,000 barrels of crude oil refined pursuant to processing agreements with another refiner. The reporting period was August to December 1976 and February, April, May 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Avrom Landesman, Director, Office of Enforcement Programs, ERA (RG–16), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–2967.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 10th day of April 1985.

Avrom Landesman,

Director, Office of Enforcement Programs Economic Regulatory Administration.

[FR Doc. 85–11145 Filed 5–7–85; 8:45 am]

BILLING CODE 6450–01–M

Rodgers Hydrocarbon Corp. and Ray V. Rodgers, Jr.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Rodgers Hydrocarbon Corporation, Ray V. Rodgers, Jr. This Proposed Remedial Order alleges violations in the amount of $2,782,495.73 plus interest in connection with the resale of uncertified and improperly certified crude oil in violation of the certification provision of 10 CFR Part 212 during the time period September 1977 through January 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James F. Murphy, Economic Regulatory Administration, Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207 or by calling (214) 767–4646. Within fifteen (15) days of publication of this notice any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, Department of Energy, Forrestal Bulding, 1000 Independence Avenue SW., Room: 6F–078, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 26th day of April 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–11144 Filed 5–7–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order; Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Tampimex Oil International, Ltd. (Tampimex) doing business at 11 Greenway Plaza, Suite 1506, Houston, Texas 77046. This proposed Remedial Order alleges that Tampimex charged prices in excess of its actual purchase price in violation of 10 CFR 212.186, 210.62(c) and 205.202 during the period January 1978 through December 1980 in the amount of $169,025.41. In addition, the Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.182 during the same period in the amount of $3,290,801.38.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 11th day of April 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85–11143 Filed 5–7–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EF85–2021–000]

United States Department of Energy, Bonneville Power Administration; Filing

May 3, 1985.

Take notice that the Bonneville Power Administration (BPA) of the United States Department of Energy, on May 1, 1985, tendered for filing proposed transmission rates. BPA requests that these rates be approved on a final basis to become effective as of July 1, 1985, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i) and § 300.21 of the Commission's regulations, 18 CFR 300.21. BPA requests that the Commission grant interim approval of the proposed rates, effective July 1, 1985, pending Commission review of the proposed rates, pursuant to section 7(i)(b) of the Northwest Power Act and § 300.20 of the Commission's regulations, 18 CFR 300.20. BPA has also filed its General Rate Schedule Provisions that are incorporated by reference in its various individual rate schedules.

BPA states that the proposed transmission rates are designed to decrease revenues in FY 1987 by approximately $21 million, a decrease of approximately 17 percent.

The proposed rate approval period is for July 1, 1985 through June 30, 1990. BPA requests waiver, pursuant to § 300.13, of §§ 300.10(e) and 300.11(b)(1) of the Commission's regulations, 18 CFR Part 300, so that its filed revenue data for 27 months may be used rather than data for the entire five year rate period. BPA states that it is also requesting extension of Commission approval of the ET–2, UFT–2, FPT–83.3, TGT–1 and UFT–83 transmission rate schedules. BPA states that the TGT–1 and UFT–83 wheeling rate schedules are formulas that eliminate the need for rate schedule adjustments. BPA requests that approval of the TGT–1 and UFT–3 rate schedules be extended through June 30, 1990, pursuant to § 300.1(b)(5) of the Commission's regulations. BPA states that the ET–2, UFT–2 and FPT–83.3 rate schedules are referenced in existing agreements and are not subject to adjustment by BPA at this time. BPA requests approval of these three rate schedules be extended through October 1, 1987. BPA states that it does not at this time anticipate any major changes in costs or rates over the next few years, but that if a revenue shortfall should

develop, it will promptly initial new rate proceedings under the Northwest Power Act.

The designations of the rate schedules which are the subject of this proposed rate adjustment are as follows: FPT-85.1, Formula Power Transmission; IR-85, Integration of Resources; IS-85, Southern Intertie Transmission; IN-85, Northern Intertie Transmission; IE-85, Eastern Intertie Transmission; and ET-85, Energy Transmission.

Any person desiring to be heard or to protest these filings should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-11141 Filed 5-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF85-2011-000]

United States Department of Energy, Bonneville Power Administration; Filing

May 3, 1985.

Take notice that the Bonneville Power Administration (BPA) of the United States Department of Energy, on May 1, 1985, tendered for filing proposed wholesale power rates. BPA requests that these rates be approved on a final basis to become effective as of July 1, 1985, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i) and § 300.21 of the Commission's regulations, 18 CFR 300.21. BPA requests that the Commission grant interim approval of the proposed rates, effective July 1, 1985, pending Commission review of the proposed rates, pursuant to section 7(i)(6) of the Northwest Power Act and § 300.20 of the Commission's regulations, 18 CFR 300.20. BPA has also filed its General Rate Schedule Provisions that are incorporated by reference in its various individual rate schedules.

BPA states that the proposed wholesale power rates are designed to decrease revenues in FY 1987 by approximately $50 million, a decrease of approximately 2 percent. BPA further states that its annual revenue requirement is approximately $2.9 billion for FY 1986 and for the FY 1987 test year.

The proposed rate approval period is for July 1, 1985 through June 30, 1990. BPA requests waiver, pursuant to § 300.13, of §§ 300.10(e) and 300.11(b)(1) of the Commission's regulations, 18 CFR Part 300, so that its filed revenue data for 27 months may be used rather than data for the entire five year rate period. BPA states that it is requesting approval of the Special Industrial Rate though June 30, 1990, independently of its request for its other wholesale rates, because of the nature of the Special Industrial Rate. BPA further states that it is requesting that the prior approval of the Hanford Contract Rate formula be extended through June 30, 1990. BPA states that it does not at this time anticipate any major changes in costs or rates over the next few years, but that if a revenue shortfall should develop, it will promptly initiate new rate proceedings under the Northwest Power Act.

The designations of the rate schedules which are the subject of this proposed rate adjustment are as follows: PF-85, Priority Firm Rate; IP-85, Industrial Firm Power Rate; SI-85, Special Industrial Power Rate; CF-85, Firm Capacity Rate; CE-85, Emergency Capacity Rate; NR-85, New Resources Firm Power Rate; SP-85, Surplus Firm Power Rate; SE-85, Surplus Firm Energy Rate; NF-85, Nonfirm Energy Rate; SS-85, Share-the-Savings Energy Rate; EB-85, Energy Broker Rate; and RP-85, Reserve Power Rate.

Any person desiring to be heard or to protest these filings should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-11142 Filed 5-7-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-410; FRL-2829-6]

Pesticide Tolerance Petitions; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food/feed additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-410] and the petition number, attention Product Manager (PM-21), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 204670.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail Henry Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency,

Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food/feed additive petitions (FAP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings.

1. *PP 5F3227.* Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes to amend 40 CFR Part 180 by establishing tolerances for the combined residues of;

a. The fungicide beta-(1,1'-biphenyl]-4-yloxy)-alpha-(1,1dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the commodities as follows:

Commodities	Parts per million (ppm)
Apples	7.0
Apricots	3.0
Almonds, hulls	0.2
Almonds, meat	0.01
Cherries	8.0
Nectarines	3.0
Peaches	5.0
Peanut, dry vines	55.0
Peanut, hulls	0.75
Peanut, meat	0.05
Pears	5.0
Plums	3.0

b. The fungicide and its triazole-containing moieties in or on the following commodities:

Commodities	Part per million (ppm)
Meat, fat, and meat byproducts (mbyp) of cattle, goats, hogs, horses and sheep	1.0
Meat, fat, and mbyp of poultry	0.5
Milk	0.1

The proposed analytical method for determining residues is gas chromatography employing a nitrogen specific alkali flame detector.

2. *FAP 5H5461.* Mobay Chemical Corp. Proposes to amend 21 CFR Parts 193 (food) and 561 (feed) by establishing regulations permitting residues of the fungicide beta-([1,1'-biphenyl]-yloxy)-alha-(1,1–dimethylethyl)-1*H*1,2,4-triazole-1-ethanol in or on the following commodities:

CFR Affected	Commodities	Parts per million (ppm)
21 CFR Part 193	Prunes	15.0
21 CFR Part 561	Apple pomace (wet and dry).	62.0

3. *FAP 5H5462.* BASF Wyandotte Corp., 100 Cherry Hill Road, P.O. Box 181 Parsippany, NJ 07054. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its 3,5-dichloroaniline containing metabolites in or on the commodity dried prunes at 75.0 ppm.

II. Amended Petition

1. *PP 4F3129.* Rhone-Poulenc Inc., P.O. Box 125, Black Horse Lane, Monmuth Junction, NJ 08852. In the **Federal Register** of December 12, 1984 (49 FR 48374), EPA issued a notice, which annouced that Rhone-Poulenc submitted pesticide petition 4F3129 proposing to establish tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on certain agricultural and animal-derived commodities.

The petition is amended as follows:

a. The tolerance expression for residues of the fungicide for animal-derived commodities is revised to read "for combined residues or iprodione and its metabolites containing the 3,5-dichloroaniline moiety (expressed as iprodione equivalents)."

b. The proposed tolerances for the following commodities at the level indicated are deleted. Tolerances for these commodities have already been established under 40 CFR 180.399 at the same or higher levels:

Commodities	Parts per million (ppm)
Eggs	0.01
Fat, meat and meat byproducts (mbyp) of poultry	0.05
Kidney of cattle, goats, hogs, horses, and sheep	3.0
Liver of cattle, goats, hogs, horses, and sheep	2.0

c. Decreasing the proposed tolerance levels for meat, fat, and mbyp (excluding liver and kidney) of cattle, goats, hogs, horses, and sheep from 0.6 ppm to 0.5 ppm.

d. Increasing the proposed tolerance level for milk from 0.4 ppm to 0.5 ppm.

2. *FAP 4H5440.* Rhone-Poulenc Inc. EPA issued a notice published in the **Federal Register** of December 12, 1984 (49 FR 48375) which announced that Rhone-Poulenc Inc. had submitted food/feed additive petition 4H5440 to the Agency proposing to amend 21 CFR Parts 193 (food commodity) and 561 (feed commodity), by establishing a regulation permitting the combined residues the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the commodities as follows:

Petition ID	CFR Affected	Commodities	Parts per million (ppm)
FAP 4H5440	21 CFR Part 193	Oil, crude (of peanut fractions)	1.0
FAP 4H5440	21 CFR Part 561	Soapstock (of peanut fractions)	10.0

Rhone-Poulenc Inc. has amended this petition by deleting FAP 4H5440 under 21 CFR Part 193, the commodity oil, crude (of peanut fractions) at 1.0 pp.

(Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)); 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: April 25, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–10798 Filed 5–7–85 8:45 am]

BILLING CODE 6560-50-M

[OPP-240050; PH-FRL 2829-2]

Special Local Need Registrations; Voluntary Cancellations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice lists names of registrants requesting voluntary cancellation of section 24(c) registrations of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The State registration for each of these products has already been cancelled by

the issuing State. Distribution or sale of these products by the registrant, using the section 24(c) label, after the effective date of cancellation will be considered a violation of the FIFRA.

EFFECTIVE DATE: June 7, 1985.

ADDRESS: By mail submit comments to:

Information Servies Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7716).

SUPPLEMENTARY INFORMATION: The following registrants have requested that EPA voluntarily cancel section 24(c) registrations:

1. Abbott Laboratories, North Chicago, IL 60064.
2. Arizona Dept. of Health Services, 411 N. 24th St., Phoenix, AZ 85008.
3. Avitrol Corp., 7644 E. 46th St., Tulsa OK 74145.
4. Ben Lomond State Forest Nursery, 13665 Empire Grade, Santa Cruz, CA 95060.
5. Borderland Products, Inc., 560 Fulton St., P.O. Box 366, Buffalo, NY 14240.
6. Burroughs Welcome Co., Wellcome Animal Health Div., 2000 S. 11th St., Kansas City, KS 66103.
7. Calif. Assn. of Nurserymen, 1419 21st St., Sacramento, CA 95814.
8. Cargill, Inc., Box 9300, Minneapolis, MN 55440.
9. Caribe Biochemicals, Inc., Brandywine Bldg., B-11205, Wilmington, DE 19889.
10. The Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland OR 87218.
11. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804.
12. Clorox Co., P.O. Box 493, Pleasanton, CA 94566.
13. Connecticut Nurserymen's Assn., Inc., Rm. 109, 30 Lafayette Square, Vernon, CT 06066.
14. Del Norte County Agricultural Commissioner, 2650 Washington Blvd., Crescent City, CA 95531.
15. Pennwalt Corp., Three Parkway, Philadelphia, PA 19102.
16. Dowstown Aerocrop Service, Inc., Rd. #1/U.S. 40, Vineland, NJ 08360.
17. East Side Mosquito Abatement District, 2000 Santa Fe Ave., Modesto, CA 95355.
18. Ed J. Lyng Co., Inc., 625 Kearney Ave., P.O. Box 377, Modesto, CA 95352-3777.
19. Falsy and Besthoff, Inc., 143 River Rd., Edgewater, NJ 07020.
20. Farmcraft, Inc., 8900 SW. Commercial, Tigard, OR 97233.
21. FMC Corp., 2000 Market St., Philadelphia, PA 19103.
22. Fresco County Dept. of Agriculture, 1730 South Maple Ave., Fresco, CA 93702.
23. Georgia Dept. of Agriculture, Agriculture Bldg., Capital Square, Atlanta, GA 30334.
24. Gold-Kist, Inc., 244 Perimeter Center Pkwy., NE., P.O. Box 2210, Atlanta, GA 30301.
25. Great Lakes Chem. Corp., P.O. Box 2200, Highway 52, NW., W. Lafayette, IN 47906.
26. Haynes Chemical Co., P.O. Box 30, East Grand Forks, MN 56721.
27. Hopkins Agricultural Chemical Co., P.O. Box 7532, Madison, WI 53707.
28. Kansas State University, Extension Entomology, Waters Hall, Manhattan, KS 66506.
29. Kocide Chem. Corp., P.O. Box 45539, 12701 Almeda Rd., Houston, TX 77045.
30. MFA Oil Co., 200 South Seventh, Columbia, MO 65201.
31. Mobay Chemical Corp., Agricultural Chemicals Div., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120.
32. Monsanto Co., 1101 17th St., NW., Washington, DC 20036.
33. Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803.
34. Pennwalt Corp., Three Parkway, Philadelphia, PA 19102.
35. Perkinson Coptors, Inc., Box 338, Warrensburg, IL 62573.
36. Platte Chemical Co., P.O. Box 667 Greeley, CO 80632.
37. Polk Co. Farmers Cooperative, P.O. Box 47, 8870 Rickreall Rd., Rickreall, OR 97371.
38. Prentiss Drug and Chemical Co., Inc., C.B. 2000, Floral Park, NY 11001.
39. Purdue University, Dept. of Biochemistry, West Lafayette, IN 47907.
40. Riverside Chemical Co., P.O. Box 171376, Memphis, TN 38117.
41. Sacramento County Dept. of Agriculture, 4137 Branch Center Rd., Sacramento, CA 95827.
42. Staple Cotton Cooperative Association P.O. Box 547, Greenwood, MS 38930.
43. Stephenson Chemical Co., Inc., P.O. Box 87188, College Park, GA 30337.
44. Thomas S. Castle Farms, Inc., 190 Mast St., Morgan Hill, CA 95037.
45. Tennessee Dept. of Conservation, 701 Broadway, Nashville, TN 37203.
46. Triangle Chemical Co., P.O. Box 4528, 206 Lower Elm St., Macon, GA 31208.
47. Tri-Cal, Inc., P.O. Box 2, Morgan Hill,. CA 95037.
48. University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources, 3050 Maile Way, Honolulu, HI 96822.
49. Velsicol Chemical Corp. 341 East Ohio St., Chicago, IL 60611.
50. Yolo County Dept. of Agriculture, 1220 N. St., Sacramento, CA 95814.
51. Y-Tex Corp., P.O. Box 1450, Cody, WY 82414.

The following section 24(c) registrations have been voluntarily cancelled:

Special local need Reg. No.	Product name	Registrant	Date registered
	Alabama		
AL 77 0006	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	3/14/77
AL 78 0001	Soilbrom 90 EC	Great Lakes Chemical	1/17/78
AL 78 0005	Roundup	Monsanto	4/10/78
AL 80 0018	Atroban WP	Burroughs Wellcome	6/16/80
AL 81 0006	Atroban Cattle Ear Tags	do	3/25/81

Special local need Reg. No.	Product name	Registrant	Date registered
AL 81 0010	Aquathol K Aquatic Weed Killer	Pennwalt	3/30/81
	Arizona		
AZ 76 00[illegible]	Cythion Insecticide The Premium Grade Malathion	Arizona Department of Health Services	11/12/76
AZ 76 00[illegible]	Malathion ULV Conc. Insecticide	.....do	11/12/76
AZ 77 00[illegible]	Dipel WP	Abbott Laboratories	3/30/77
AZ 78 00[illegible]	Niagara Furadan 10	Mobay Chemical	6/29/78
AZ 78 0017	Kocide SD Seed Dressing Ag. Fungicide	Kocide Chemical	6/08/78
AZ 79 00[illegible]	Dipel WP	Abbott Laboratories	6/06/79
AZ 80 00[illegible]	Atroban WP	Burroughs Welcome	5/13/80
AZ [illegible] [illegible]5	Orthene Forest Spray	Chevron Chemical	5/27/80
AZ 81 0014	Atroban Cattle Ear Tags	Burroughs Welcome	5/21/81
AZ 81 [illegible]	Spencer Sprayule	Mobay Chemical	8/18/81
	Arkansas		
AR 76 0001	Avitrol Corn Chops-99	Avitrol	4/13/76
AR 76 0002	Kocide 101	Kocide Chemical	4/23/76
AR 76 0003	Kocide 404	.....do	4/23/76
AR 77 00[illegible]	Evershield T Seed Protectant	Cargill	3/18/77
AR 77 [illegible]	Stephenson Chemicals 20 percent Lindance EC	Stephenson Chemical	12/19/77
AR 78 00[illegible]	Nemacur 3 Emulsifiable Nematicide	Mobay Chemical	3/07/78
AR 78 00[illegible]	Nemacur 15 percent Granular Turf Nematicide	.....do	3/07/78
AR 78 0012	Roundup	Monsanto	6/17/78
AR 78 00[illegible]	Bushwack Microencapsulated Insecticide	Pennwalt	7/18/78
AR 81 00[illegible]	Soilbrom 90	Great Lakes Chemical	3/09/81
	California		
CA 76 0003	Tri-Brom	Tri-Cal	1/09/76
CA 76 0022	Sodium Hypochlorite	Del Norte Co. Agriculture Commissioner	2/25/76
CA 76 0031	Orthocide 75 Seed Protectant	Ed J. Lyng Co	3/02/76
CA 76 0044	Di-Syston Liquid Conc. Systemic Insecticide	Mobay Chemical	3/19/76
CA 76 0112	Kryocide Natural Cryolite	Pennwalt	5/03/76
CA 76 0117	Dipel WP	Abbott Laboratories	/5/19/76
CA 76 0118	Di-Syston Systemic Liquid Conc. Insecticide	Thomas S. Castle Farms	4/27/76
CA 76 0136	Di-Syston Liquid Conc. Systemic Insecticide	..... do	5/19/76
CA 76 0190	Terr-O-Gas 67 Preplant Fumigant	Great Lakes Chemical	9/16/76
CA 76 0199	Pyrocide Mosquito Adulticide Conc. For ULV Fogg	Eastside Mosquito Abatement District	10/06/76
CA 76 0200	Cythion 8 Aquamal	.....do	10/06/76
CA 76 0202	A-Gel TG-67 Preplant Soil Fumigant	Great Lakes Chemical	10/14/76
CA 76 0212	Kocide 101	Kocide Chemical	11/22/76
CA 76 0217	Ortho BHC 10 Wettable	California Association of Nurserymen	12/09/77
CA 77 0005	Amchem Ambien	Yolo Co. Department of Agriculture	1/10/77
CA 77 0041	Terr-O-Gas 33 Preplant Soil Fumigant	Great Lakes Chemical	3/10/77
CA 77 0042	Terr-O-Gas 50	do	3/10/77
CA 77 0043	GLC Terr-o-gas 75 Preplant Soil Fumigant	do	3/10/77
CA 77 0092	Guthion 50 percent Wettable Powder Crop Insecticide	Mobay Chemical	5/12/77
CA 77 0135	Terr-O-Gas 100 Preplant Fumigant	Great Lakes Chemical	5/23/77
CA 77 0140	Carbon Bisulfide Rodent Fumigant	Yolo Co. Department of Agriculture	5/26/77
CA 77 0141	Methyl Bromide Rodent Fumigant	Yolo Co. Department of Agriculture	5/27/77
CA 77 0215	Dipel WP	Abbott Laboratories	6/15/77
CA 77 0237	That Flowable Sulfur	Kocide Chemical	6/22/77
CA 77 0255	Rodent Bait Block Diphacinone Treated Grain/Paraffin	Fresno Co. Department of Agriculture	6/28/77
CA 77 0266	Carbon Bisulfide Rodent Fumigant	.....do	6/28/77
CA 77 0325	Gas Cartridges Code 1.1	Sacramento Co. Department of Agriculture	8/08/77
CA 77 0439	Rodent Bait Block Fumarin Treated Grain/Paraffin (.025 percent)	.....do	9/15/77
CA 77 0440	Rodent Bait Fumarin Treated Grain (0.25 percent)	.....do	9/15/77
CA 77 0441	Rodent Bait Zinc Phosphide Treated Grain/Paraffin (1.00 percent)	.....do	9/15/77
CA 77 0442	Rodent Bait Zinc Phosphide Treated Grain (2.00 percent)	.....do	9/15/77
CA 77 0530	Rodent Bait Block Diphacinone Treated Grain/Paraffin (0)	.....do	11/17/77
CA 77 0531	Rodent Bait Diphacinone Treated Grain (.005 percent)	.....do	11/17/77
CA 78 0053	Modown 80 percent Wettable Powder	Ben Lomond State Forestry Service	3/16/78
CA 79 0004	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	2/2/79
CA 79 0049	Bromo-O-Gas Methyl Bromide Soil Fumigant	Great Lakes Chemical	4/12/79
CA 80 0175	Orthene Forest Spray	Chevron Chemical	11/4/80
	Colorado		
CO 77 0005	Kocide Flowable Sulfur	Kocide Chemical	5/02/77
CO 78 0004	Clean Crop Conifer Tree Spray	Platte Chemical	2/16/78
CO 78 0010	Orthene Tree and Ornamental Spray	.....do	3/21/78
CO 79 0002	Penncap-E Microencapsulated Insecticide	Pennwalt	1/08/79
CO 80 0004	Roundup	Monsanto	3/04/80
	Connecticut		
CT 76 0003	Kocide 101	Kocide Chemical	12/10/76
CT 77 0002	Chlordane 10 G	Connecticut Nurserymen's Association	4/07/77
	Delaware		
DE 77 0005	Lasso EC	Monsanto	6/14/77
DE 78 0001	Pencap M Microencapsulated	Pennwalt	4/18/78
DE 78 0005	Roundup	Monsanto	4/28/78
DE 78 0007	Lasso EC Herbicide	.....do	5/01/78
DE 78 0010	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	5/08/78

Special local need Reg. No.	Product name	Registrant	Date registered
	Florida		
FL 77 0013	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	5/17/77
FL 78 0001	Soilbrom 90 EC	Great Lakes Chemical	1/27/78
FL 83 0005	Atroban 11 percent EC	Burroughs Wellcome	5/02/83
	Georgia		
GA 76 0005	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	6/18/76
GA 77 0001	Fire Ant Bait (Mirex .1 percent)	Georgia Department of Agriculture	2/28/77
GA 78 0020	Sencor 50 percent W.P. Herbicide	Mobay Chemical	5/22/78
GA 78 0024	Excite Methomyl Bait	Triangle Chemical	7/14/78
GA 79 0012	Parathion 10G	Gold-Kist	3/28/79
GA 80 0006	Bayleton 50 percent Wettable	Mobay Chemical	3/17/80
GA 80 0009	Penncap M	Pennwalt	4/7/80
	Hawaii		
HI 77 0028	Orthene Tree and Ornamental Spray	University of Hawaii	7/15/77
	Idaho		
ID 77 0007	Mesurol 75 percent WP	Mobay Chemical	3/29/77
ID 78 0008	Evershield RTU 1050 Seed Protectant	Cargill	4/20/78
ID 78 0010	Mesurol 50 percent Hopper Box Treater	Mobay Chemical	4/27/78
ID 78 0013	Penncap M Microencapsulated	Pennwalt	5/05/78
ID 78 0017	Mesurol 75 percent WP	Mobay Chemical	5/23/78
ID 78 0018	Sencor 4 FL	do	5/23/78
ID 79 0027	Chemgro Di-Syston 8	do	10/15/79
	Illinois		
IL 77 0008	Roundup	Monsanto	11/17/77
IL 78 0006	Lasso	do	4/27/78
IL 78 0007	Pencap M Microencapsulated	Pennwalt	8/28/78
IL 79 0016	Mokob 2G	Perkinson Coptors	10/03/79
IL 79 0017	Mokor 5G	do	10/03/79
IL 82 0015	Zinc Phosphide	Hopkins Agricultural Chemical	6/17/82
	Indiana		
IN 77 0005	Field Mouse Bait	Purdue University	5/24/77
IN 77 0007	Red Squill Rat Bait	do	5/24/77
IN 78 0003	Roundup	Monsanto	1/23/78
IN 78 0015	Furadan 10 Granules	Mobay Chemical	10/06/78
IN 80 0009	Knox Out 2FM Insect	Pennwalt	7/03/80
IN 80 0013	Lasso & Atrazine & Bladex Tank Mix	Monsanto	9/15/80
IN 81 0002	Knox Out 2FM	Pennwalt	3/12/81
IN 81 0003	Furadan 4 Flowable	Mobay Chemical	3/12/81
IN 81 0017	Gardstar	Y-Tex	3/12/81
IN 83 0006	Di-Syston 8	Mobay Chemical	9/02/83
	Iowa		
IA 77 0005	Roundup	Monsanto	12/01/77
IA 83 0003	Di-Syston 8	Mobay Chemical	8/26/83
	Kansas		
KS 76 0004	Sevin Brand Sprayable Carbaryl Insecticide	Kansas State University	8/23/76
KS 77 0001	Penncap M Microencapsulated	Pennwalt	4/18/77
KS 77 0008	Roundup	Monsanto	11/08/77
KS 78 0007	Penncap E Insecticide	Pennwalt	4/19/78
KS 78 0010	Evershield RTU 1050 Seed Protectant	Cargill	6/28/78
KS 78 0012	Penncap M	Pennwalt	7/27/78
KS 78 0013	Furadan 4F	Mobay	1/18/78
KS 78 0020	Evershield RTU 1050 Seed Protectant	Cargill	9/19/78
KS 79 0005	LVG Ester Weed Killer	Platte Chemical	3/27/79
KS 79 0011	Penncap M	Pennwalt	6/19/79
KS 80 0001	Sencor 50 percent WP	Mobay Chemical	2/05/80
KS 80 0003	Roundup	Monsanto	2/25/80
KS 80 0026	Clean Crop Lo-Vol. 4 lbs	Platte Chemical	12/12/80
KS 80 0027	Clean Crop Amine 4-D	do	12/12/80
KS 81 0019	Gardstar	Y-Tex	3/30/81
KS 81 0024	Banvel Herbicide for Between Cropping System Uses	Velsicol Chemical	4/23/81
KS 82 0010	Penncap ETM Insect	Pennwalt	6/01/82
	Kentucky		
KY 77 0002	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	9/23/77
KY 78 0008	Brom-O-Gas Methyl Bromide Soil Fumigant	Great Lakes Chemical	3/09/78
KY 78 0009	Meth-O-Gas Straight 100 percent Methyl Bromide	do	3/09/78
KY 78 0013	Pencap M Microencapsulated	Pennwalt	5/09/78
KY 78 0015	Pencap M Microencapsulated	do	6/22/78
	Louisiana		
LA 76 0001	Avitrol Corn Chops-99	Avitrol	4/28/76
LA 77 0003	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	1/27/77
LA 77 0004	Mesurol 50 percent Hopper Box Treater	Pennwalt	2/23/77
LA 77 0006	Nemacur 10 percent Granular Turf Nematicide	do	3/13/77

Special local need Reg No	Product name	Registrant	Date registered
LA 77 [redacted]	Roundup	Monsanto	6/20/77
LA 78 [redacted]	Nemacur 3EC	Pennwalt	10/10/78
LA 78 0014	Dipel WP	Abbott Laboratories	5/01/78
LA 78 0027	Sencor 4FL	Pennwalt	5/07/79
LA 79 0004	Soilbrom 90 EC	Great Lakes Chemical	3/03/79
LA 79 0012	Guthion 2L	Pennwalt	5/07/79
LA 79 0013	Mesurol 50 percent	......do	5/08/79
LA 79 [redacted]	Sencor 50 percent WP	......do	9/21/79
LA 79 [redacted]	Knox Out 2 FM	......do	10/29/79
LA 80 0007	Nemacur 3	......do	4/22/80
LA 80 [redacted]	Nemacur 15	......do	4/22/80
LA 81 [redacted]	Sencor Sprayable	......do	2/13/81
LA 81 [redacted]	Sencor Sprayable	......do	3/13/81
LA 81 [redacted]	Gardstar	Y-Tex	3/17/81
LA 81 0011	Monitor 4	Pennwalt	3/23/81
LA 81 0012	Soilbrom 90	Great Lakes Chemical	3/23/81
	Maryland		
MD 77 0002	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	2/23/77
MD 77 0004	Lasso EC Herbicide	Monsanto	6/09/77
MD 77 0005	Roundup	......do	6/06/78
MD 77 0030	Prentox (R) Lindane 20 percent EC	Prentiss Drug and Chemical	3/10/81
	Massachusetts		
MA 78 0001	Clorox	Clorox	3/08/78
	Michigan		
MI 76 0001	Mesurol 75 percent WP	Mobay Chemical	4/14/76
MI 76 0002	Morestan 25 percent WP	......do	5/11/76
MI 76 0002	Mesurol 75 percent WP	......do	4/14/76
MI 76 0005	Lasso EC	Monsanto	2/01/77
MI 76 0006	Lasso EC	......do	2/01/77
MI 77 0017	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	6/27/77
MI 77 0021	Roundup	Monsanto	12/21/77
MI 78 0004	Dipel WP	Abbott Laboratories	5/19/78
MI 78 0005	Pencap M Microencapsulated	Pennwalt	5/11/78
MI 78 0007	2 percent Liquid Conc Pro-Gibb	Abbott Laboratories	6/01/78
MI 78 0008	3.91 percent LC Pro-Gibb	Abbott Laboratories	6/01/78
MI 78 0009	Pencap M Microencapsulated	Pennwalt	6/05/78
MI 78 0012	Guthion 50 percent WP	Mobay Chemical	6/15/78
MI 78 0014	Sencor	......do	7/27/78
MI 79 0011	Sencor	......do	3/20/79
MI 79 0013	Monitor 4	......do	3/23/79
MI 79 0023	Lasso Herbicide	Monsanto	6/19/79
MI 81 0017	Mesurol 75 percent WP	Mobay Chemical	5/06/81
MI 82 0018	Clean Crop Dimethoate 267 EC	Platte Chemical	6/14/82
	Minnesota		
MN 77 [redacted]	Pencap M Microencapsulated	Pennwalt	6/23/77
MN 77 0011	Evershield RTU 1050 Seed Protectant	Cargill	10/14/77
MN 77 0012	Roundup	Monsanto	12/02/77
MN 80 [redacted]	Ramrod Flowable	......do	1/17/80
MN 80 [redacted]	Far-Go	......do	2/21/80
[redacted]	Evershield RTU 1050 Seed Protectant	Cargill	3/03/80
MN 81 0017	Hopkins Sevin Carbaryl Bait	Hopkins Agriculture Chemical Co	6/12/81
MN 81 [redacted]	Clean Crop Sevin 5 Bait	Platte Chemical	6/12/81
MN 81 0020	Granular Far-Flo	Monsanto	12/09/81
MN 82 [redacted]	Gardstar Insecticide Ear Tag	Y-Tex	6/08/82
	Mississippi		
MS 76 0004	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	9/23/76
MS 77 [redacted]	Roundup	Monsanto	6/22/77
MS 78 0011	Nemacur 3 Emulsifiable Nematicide	Mobay Chemical	4/13/78
MS 78 0012	Nemacur 15 percent Granular Turf Nematicide	......do	4/13/78
MS 78 0024	Riverside Sodium Chlorate	Riverside Chemical	8/24/78
MS 79 0025	Sencor 50 percent WP	Mobay Chemical	9/13/79
MS 80 0015	Sencor 50 percent WP	......do	4/08/80
MS 80 0025	Red Panther DSMA Liquid Herbicide	Staple Cotton Cooperation Association	6/06/80
[redacted]	Red Panther DSMA Liquid Herbicide	......do	6/06/80
MS 80 [redacted]	Riverside 912 Herb.	Riverside Chemical	7/09/80
MS 81 [redacted]	Sencor 75 Wettable Granular	Mobay Chemcial	2/13/81
MS 81 0010	Gardstar Insecticide Ear Tag	Y-Tex	2/20/81
MS 81 [redacted]	Sencor 50 percent WP	Mobay Chemical	9/01/81
	Missouri		
MO 77 0003	LO-V 2,4,5-T	MFA Oil	5/20/77
MO 78 [redacted]	Roundup	Monsanto	1/09/78
MO 78 0017	Flowable Ramrod and Atrazine	......do	9/27/78
MO 78 [redacted]	Riverside Sodium Chlorate	Riverside Chemical	11/09/78
MO 79 [redacted]	Ramrod and Atrazine Flowable	Monsanto	10/31/79
MO 79 [redacted]	Ramrod Flowable	......do	10/31/79
MO 80 [redacted]	Nemacur 3 Emulsifiable Nematicide	Mobay Chemical	4/16/80
MO 80 0007	Nemacur 15 percent Granular	......do	4/16/80
MO 80 0010	Atroban WP	Burroughs Wellcome	5/01/80
MO 80 [redacted]	......do	......do	2/12/81
MO 81 0004	Atroban Cattle Ear Tags	......do	3/12/81
MO 81 [redacted]	Atroban Cattle Ear Tabs	......do	3/12/81
MO 81 [redacted]	Soilbrom 90 EC	Great Lakes Chemical	3/16/81

Special local need Reg. No.	Product name	Registrant	Date registered
MO 81 0010	Lasso	Monsanto	3/30/81
MO 81 0012	Gardstar Insecticide Ear Tag	Y-Tex	3/31/81
MO 81 0013	Garstar Insecticide Ear Tag	Y-Tex	3/31/81
MO 83 0004	Atroban 11 percent EC	Burroughs Wellcome	1/31/83
	Montana		
MT 78 0002	Kocide SD Seed Dressing Agr. Fungicide	Kocide Chemical	2/27/78
MT 78 0005	Roundup	Monsanto	3/22/78
MT 78 0011	Evershield RTU 1050 Seed Protectant	Cargill	7/10/78
MT 79 0005	Roundup	Monsanto	2/27/79
MT 79 0008	Sencor 50 percent Wettable Powder Hebicide	Mobay Chemical	3/16/79
MT 79 0009	Far-Go Selective Herbicide	Monsanto	3/28/79
MO 80 0002	Roundup	...do	2/22/80
MO 80 0005	Kocide SD Plus	Kocide Chemical	4/11/80
MO 81 0008	Gardstar Insecticide Ear Tag	Y-Tex	3/20/81
MO 82 0004	Orthene Forest Spray	Chevron Chemical	3/25/82
	Nebraska		
NE 78 0010	Penncap E Insecticide	Pennwalt	5/15/78
NE 78 0011	Lasso EC Herbicide	Monsanto	6/15/78
NE 78 0014	Penncap M Microencapsulated	Pennwalt	7/17/78
	Nevada		
NV 77 0012	Pencap M Microencapsulated	Pennwalt	6/14/77
NV 80 0009	Orthene Forest Spray	Chevron Chemical	6/03/80
	New Jersey		
NV 77 0006	Kerthane 35 Agr. Miticide Wettable Powder	Dowstown Aerocrop Service	6/24/77
NJ 79 0017	Lasso EC Herbicide	Monsanto	5/30/79
NJ 80 0001	Roundup	...do	2/03/80
NJ 81 0012	Mesurol 75 percent WP	Mobay Chemical	5/05/81
NJ 81 0019	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	7/01/81
	New Mexico		
NM 76 0002	Dipel WP	Abbott Laboratories	4/23/76
NM 76 0003	Penncap M Microencapsulated	Pennwalt	4/26/76
NM 78 0003	Roundup	Monsanto	2/14/78
NM 78 0013	Dipel LC-Biological Insecticide Liquid Concentrate	Abbott Laboratories	5/30/78
NM 78 0014	Dipel WP	...do	5/30/78
NM 80 0023	Orthene Forest Spray	Chevron Chemical	2/03/80
	North Carolina		
NC 77 0001	Stephenson Chemical 20 Percent Lindane EC	Stephenson Chemical	1/05/77
NC 78 0010	Roundup	Monsanto	2/16/78
NC 78 0022	Dupont Lexone 41 Metribuzin Weed Killer	Caribe Biochemical	4/04/78
NC 79-0026	Roundup	Monsanto	8/29/79
NC 81 0004	Terr-O-Gas 67, Preplant Soil, Fumigant	Great Lakes Chemical	1/30/81
	North Dakota		
ND 78 0003	Roundup	Monsanto	4/17/78
ND 78 0015	Kocide 5D	Kocide Chemical	12/26/78
ND 79 0012	Sevin Carbaryl Bait	Hopkins Agricultural Chemical	4/19/79
ND 79 0014	Clean Crop Sevin 5 Bait	Platte Chemical	4/07/79
ND 79 0023	4 Percent Malathion Powder Insecticide	Hanes Chemical	8/10/79
ND 81 0016	Sevin Carbaryl Bait	Hopkins Agricultural Chemical	6/09/81
	Ohio		
OH 77 0012	Roundup	Monsanto	12/09/77
OH 81 0002	Gardstar	Y-Tex	2/11/81
	Oklahoma		
OK 78 0001	Roundup	Monsanto	3/15/78
OK 78 0013	Dipel WP	Abbot Laboratories	6/14/78
OK 78 0014	Dipel LC-Biological Insecticide LC	Abbot Laboratories	6/14/78
OK 78 0023	Evershield RTU 1050 Seed Protectant	Cargill	12/31/78
OK 79 0001	Sencor 50 Percent Wettable Powder	Mobay Chemical	1/19/79
OK 79 0002	Sencor 4 FL	...do	1/19/79
OK 80 0007	Kocide 404S	Kocide Chemical	5/08/80
OK 81 0009	Orthene Forest Spray	Chevron Chemical	3/18/81
OK 81 0010	Soilbrom 90	Great Lakes Chemical	4/01/81
	Oregon		
OR 76 0002	Guthion 50 Percent WP	Mobay Chemical	2/21/76
OR 76 0003	Dansanit 15 Percent Gran	...do	2/21/76
OR 76 0034	Kocide 101	Kocide Chemical	9/24/76
OR 77 0014	Mesurol 75 Percent WP	Mobay Chemical	3/06/77
OR 77 0034	Knox Out 2FM	Pennwalt	5/24/77
OR 78 0009	DZN Diazinon 50W	Polk Co. Farmer's Cooperative	2/28/78
OR 78 0013	Morestan 25 Percent Wettable Powder Miticide	Mobay Chemical	3/27/78
OR 78 0015	Morestan 25 Percent Wettable Powder Miticide	...do	3/28/78
OR 78 0024	Mesurol 50 Percent Hopper Box Treater	...do	4/25/78
OR 78 0029	Mesurol 75 Percent Wettable Powder	...do	6/01/78

Special local need Reg. No.	Product name	Registrant	Date registered
OR 78 0036	Norton EC	Fisons	7/26/78
OR 78 0047	Dip 'N' Gro	FMC	9/08/78
OR 78 0058	Sencor 50 Percent Wettable Powder Herbicide	Mobay Chemical	12/05/78
OR 79 0008	Stephenson Chemicals 20 Percent Lindane EC	Stephenson Chemical	2/26/79
OR 79 0009	Roundup	Monsanto	2/28/79
OR 79 0017	Evershield RTU 1050 Seed Protectant	Cargill	4/06/79
OR 79 0038	Captan 7.5/Omite 4	Farmcraft	5/08/79
OR 79 0041	Di-Syston LC Systemic Insecticide	Mobay Chemical	5/11/79
OR 79 0073	Lasso EC Herbicide	Monsanto	11/13/79
OR 80 0016	Roundup	do	2/12/80
OR 80 0057	Terr-O-Gas 67 Preplant Soil Fumigant	Great Lakes Chemical	6/16/80
OR 80 0058	Terr-O-Gas	do	6/16/80
OR 80 0073	Orthene Forest Spray	Chevron Chemical	7/18/80
OR 80 0074	Norton Flowable Herb	Fisons	7/16/80
OR 82 0065	Miller's Wipeout Slug and Snail Bait	Chas. H. Lilly Co	9/28/82
	Pennsylvania		
PA 77 0010	Roundup	Monsanto	12/01/77
PA 78 [illegible]	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	6/13/78
PA 80 [illegible]	Roundup	Monsanto	4/21/80
PA [illegible] [illegible]	Prentox (R)-Lindane 20 percent EC	Prentis Drug and Chemical	7/23/80
PA [illegible] 0004	Atronban WP	Burroughs Wellcome	7/25/80
PA 82 0007	Atroban Cattle Ear Tags	do	3/17/82
PA 82 0008	Gardstar Insecticide Ear Tag	Y-Tex	3/17/82
PA 82 [illegible]	Atroban 11 percent EC	Burroughs Wellcome	10/25/82
	Rhode Island		
RI 78 0001	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	1/17/78
	South Carolina		
SC 76 0001	Stephension Chemicals, 20 percent Lindane EC	Stephenson Chemical	9/23/76
SC 78 0004	Roundup	Monsanto	1/30/78
SC 79 0002	Sencor 50 percent WP Herb.	Mobay Chemical	2/12/79
SC 79 0014	Penncap M Microencapsulated	Pennwalt	4/11/79
SC 79 0030	F & B Sevin 50 percent WP	Falsy & Besthoff	8/13/79
SC 79 0032	Penncap M Microencapsulated	Pennwalt	11/21/79
SC 80 0005	Bayleton 50 percent WP	Mobay Chemical	3/31/80
SC 80 0022	Penncap M Microencapsulated	Pennwalt	[illegible]
SC 81 0016	Sencor 75 Wettable Granular Herbicide	Mobay Chemical	5/04/81
	South Dakota		
SD-77-0003	Penncap M	Pennwalt	6/16/77
SD-78-0010	Di-Syston Liquid Conc	Mobay Chemical	11/30/78
SD-80-0007	Roundup	Monsanto	8/13/80
SD-81-0010	Orthene Forest Spray	Chevron Chemical	3/12/81
SD-81-0018	Gardstar Insecticide Ear Tag	Y-Tex	5/18/81
	Tennessee		
TN-76-0004	Di-Syston Liquid Concentrate	Mobay Chemical	4/06/76
TN-77-0001	Stephenson Chemicals 20 pct Lindane EC	Stephenson Chemical	1/26/77
TN-77-0002	Meth-O-Gas Straight 100 pct Methyl Bromide	Great Lakes Chemical	9/19/77
TN-77-0004	Nemacur 15 pct Granular Turf Nematicide	Mobay Chemical	4/06/77
TN-77-0005	Roundup	Monsanto	6/29/77
TN-77-0006	Meth-O-Gas Straight 100 pct Methyl Bromide	Great Lakes Chemical	6/20/77
TN-77-0006	Bro-O-Gas	do	6/20/77
TN-78-0002	Devrinol 2-E	Tennessee Department of Conservation	1/08/78
TN-78-0002	Modown EC	do	1/18/78
TN-78-0002	Vitavax 200 Flowable Fungicide	do	1/18/78
TN-78-0002	Modown 80 pct WP	do	1/18/78
TN-78-0004	Nemacur 15 pct G	Mobay Chemical	4/06/78
TN-78-0005	Nemacur 3	do	2/13/78
TN-78-0007	Dylox Liquid Sol. Insecticide	do	3/15/78
TN-78-0008	Evershield RTU 1050 Seed Protectant	Cargill	4/17/78
TN-78-0008	Evershield RTU 1000 Seed Protectant	do	4/17/78
TN-78-0009	Dipel WP	Abbott Laboratories	4/24/78
TN-78-0011	Nemacur 3 Emulsifiable	Mobay Chemical	5/04/78
TN-79-0002	Soilbrom 90 EC	Great Lakes Chemical	2/26/79
TN-79-0017	Sencor 50 pct WP	Mobay Chemical	5/03/79
	Texas		
TX 76 0001	Avitrol Corn Chops-99	Avitrol	4/07/76
TX 77 0018	Roundup	Monsato	6/22/77
TX 77 0023	Kocide 220	Kocide Chemical	8/11/77
TX 78 0010	Mesurol 50 percent Hopper Box Treater	Mobay Chemical	3/06/78
TX 78 0012	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	3/23/78
TX 78 0016	Dasanit 15 percent Gran. Nematicide	Mobay Chemical	3/29/78
	Utah		
UT 77 0004	Mesurol 75 percent WP	Mobay Chemical	3/14/77
UT 77 0008	Systox 6 Emulsifiable Systemic Insecticide	do	5/05/77
UT 77 0009	Systox 2 Emulsifiable Systemic Insecticide	do	5/05/77
UT 78 0003	Mesurol 75 percent WP	do	4/18/78
UT 79 0010	Pencap M	Pennwalt	5/04/79
UT 80 0007	Orthene Forest Spray	Chevron Chemical	[illegible]

Special local need Reg. No.	Product name	Registrant	Date registered
	Virginia		
VA 76 0004	Terr-O-Cide 72-27	Great Lakes Chemical	2/4/76
VA 76 0008	Di-Syston LC	Mobay Chemical	3/26/76
VA 77 0008	Brom-O-Gas Methyl Bromide Soil Fumigant	Great Lakes Chemical	5/4/77
VA 77 0010	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	6/5/77
VA 79 0018	Topsin M WP	Pennwalt	7/6/79
	Washington		
WA 76 0003	Dasanit 15 percent Granular	Mobay Chemical	3/31/76
WA 76 0036	Kocide 101	Kocide Chemical	12/10/76
WA 76 0036	Kocide 404	do	12/10/76
WA 78 0035	Norton EC	Fisons	7/6/78
WA 79 0018	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemicals	4/17/79
	West Virginia		
WV 80 [illegible]	Orthene Forest Spray	Chevron Chemical	7/10/80
WV 78 0005	Stephenson Chemicals 20 percent Lindane EC	Stephenson Chemical	3/6/78
WV 78 0007	Roundup	Monsanto	6/14/78
WV 80 0003	Penncap M Microencapsulated	Pennwalt	4/9/80
	Wyoming		
WY 78 0003	Roundup	Monsanto	2/27/78
WY 78 0006	Miller's Mosquitocide 700	Chas. H. Lilly	4/12/78

Cancellation of these section 24(c) registrations shall be effective June 7, 1985. Any sale or distribution by the registrant will violate FIFRA section 12(a)(2)(K). EPA will not consider it a violation of FIFRA for the distributors other than the registrant to sell or distribute existing stocks of any of these cancelled products bearing the section 24(c) label. It should be noted, however, that such sale or distribution may not be permitted by applicable State law.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP 240050]" and the specific section 24(c) registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751) (7 U.S.C. 136)).

Dated: April 22, 1985.

Steven Schatzow,

Director, Office of Pesticide Program

[FR Doc. 85-10659 Filed 5-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66118A FRL-2828-7]

Phosdrin 4EC and Vertac Atrazine Technical; Intent To Cancel Registration; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This notice corrects voluntary cancellations for Phosdrin 4EC and Vertac Atrazine Technical, which were inadvertently published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS-788B), Environmental Protection Agency, 401 M St., SW., Washington D.C. 20460 (202-382-2253).

SUPPLEMENTARY INFORMATION: In FR Doc. 85-4630, appearing in the **Federal Register** of February 27, 1985 (50 FR 7959), the products below were inadvertently listed as voluntarily cancelled:

Registration No.	Product name	Registrant	Date registered
201-269	Phosdrin 4EC	Shell Oil Co., 1025 Connecticut Ave., NW., Suite 200 Washington, DC.	Apr. 15, 1971
39511-14	Vertac Atrazine Technical.	Vertac Chemical Corp., 5100 Poplar Ave., Memphis, TN	Aug. 9, 1972

Phosdrin 4EC was erroneously listed; it has not been cancelled. Vertac Atrazine Technical has been suspended, not cancelled.

Dated: April 24, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-10658 Filed 5-7-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2940/T488 AND PP 4G3035/T489; FRL 2831-2]]

American Hoechst Corp. Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined (residues of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxagolyl)- oxy[phenoxy]propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on certain raw agricultural commodities.

DATE: These temporary tolerances expore April 4, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 27, 1984 (49 FR 26281), announcing the establishment of temporary tolerances for the combined residues of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl)-oxy]phenoxy] propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl) oxy[phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the raw agricultural commodities

rice seed and straw at 0.02 part per million (ppm) (calculated as a parent compound). A temporary tolerance was also published in the **Federal Register** of June 27, 1984, (49 FR 26281) establishing a tolerance for the combined residues of the herbicide and its metabolites in or on the raw agricultural commodity soybean seed at 0.05 ppm. These tolerances were issued in response to pesticide petitions PP 3G2940 and PP 4G3035, submitted by American Hoechst Crop., Agricultural Division, Route 202-206 North, Somerville, NJ 08876. The company has requested extension of temporary tolerances for the combined residues of the herbicide and its metabolites in or on these raw agricultural commodities.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (8340-EUP-8), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experiment use permit.

2. American Hoechst Corp., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 4, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346(j)))

Dated: April 29, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-10915 Filed 5-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00201; FRL-2830-9]

Subcommittee Meeting of Administrator's Pesticide Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC), Subcommitee on Labeling will hold a meeting to discuss existing communication networks used to disseminate information regarding the safe use and handling of pesticides, and the effectiveness of those communication networks. The meeting will be open to the public.

DATE: The meeting will take place on Wednesday, May 22, 1985, at 9 a.m. and adjourn by 3 p.m.

ADDRESS: The Subcommittee meeting will be held in: Environmental Protection Agency, Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-636, 401 M St., SW., Washington, D.C. 20460, (202-382-2916).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, and time will be set aside for public comments concerning the agenda items. Any member of the public wishing to present an oral or written statement relative to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above. A complete agenda will be available at the meeting.

Dated: April 29, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-10909 Filed 5-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53071; FRL 283)-7]

Premanufacture Notices Monthly Status Report for February 1985

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for February 1985.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53071]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Managment Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during February: (b) PMNs received previously and still under

review at the end of February; (c) PMNs for which the notice review period has ended during February; (d) chemical substances for which EPA has received a notice of commencement to manufacture during February and (e) PMNs for the which the review period has been suspended. Therefore, the February 1985 PMN Status Report is being published.

Dated: May 1, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT, FEBRUARY 1985

I. 167 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No	Identity/generic name	FR citation	Expiration date
P 85-457	Generic name: Reaction product of polytetramethylene glycol, methylene bis phenylisocyanate) and alcohols	50 FR 6383 (6384) (2-15-85)	May 1, 1985.
P 85-458	Generic name: Alkyl ester of a trialkoxy-silane	50 FR 6383 (6384) (2-15-85)	May 4, 1985.
P 85-460	Generic name: Substituted succinic anhydride, reaction product with hetero-cyclic amide	50 FR 6383 (6384) (2-15-85)	Do.
P 85-461	Generic name: Hydroxy terminated polyester diol reaction with benzophenone tetracarboxylic dianhydride, terminated with hydroxyethyl methacrylate	50 FR 6383 (6384) (2-15-85)	Do.
P 85-462	Generic name: Acrylic polymer	50 FR 6383 (6384) (2-15-85)	May 5, 1985.
P 85-463	Generic name: Silane	50 FR 6383 (6384) (2-15-85)	Do.
P 85-464	Generic name: Substituted phenyl azo substituted heteromonocycle	50 FR 6383 (6384) (2-15-85)	Do.
P 85-465	Generic name: Mercaptan terminated polyether polymer	50 FR 6383 (6384) (2-15-85)	Do.
P 85-466	N-butyl cyanoacetate	50 FR 6383 (6384) (2-15-85)	Do.
P 85-467	Generic name: Functional vinyl copolymer	50 FR 6383 (6384) (2-15-85)	May 6, 1985
P 85-468	Generic name: Polycyclic sulfonic acid salt	50 FR 6383 (6384) (2-15-85)	May 7, 1985.
P 85-469	Generic name: Phosphate(mono/di) methacrylate monomer	50 FR 6383 (6385) (2-15-85)	Do
P 85-470	Generic name: Substituted alkyl butylester	50 FR 6383 (6385) (2-15-85)	Do
P 85-471	Generic name: Carbomonocylic butyl ester	50 FR 6383 (6385) (2-15-85)	Do.
P 85-472	Generic name: Aromatic polycarbodimide	50 FR 6383 (6385) (2-15-85)	Do
P 85-473	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do.
P 85-474	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do.
P 85-475	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do.
P 85-475	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P 85-476	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	May 8, 1985.
P 85-477	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	Do.
P 85-478	Found to be on the inventory		
P 85-479	2,5-furandimethenol		
P 85-480	Generic name: Cellulose ester	50 FR 7640 (2-25-85)	Do.
P 85-481	Generic name: Polyamic acid polymer A	50 FR 7640 (7641) (2-25-85)	Do.
P 85-482	Generic name: Polyamic acid polymer B	50 FR 7640 (7641) (2-25-85)	Do.
P 85-483	Generic name: Polyamic acid polymer C	50 FR 7640 (7641) (2-25-85)	Do.
P 85-484	Generic name: Polyamic acid polymer D	50 FR 7640 (7641) (2-25-85)	Do.
P 85-485	Found to be on the inventory	50 FR 7640 (7641) (2-25-85)	Do.
P 85-486	Found to be on the inventory		
P 85-487	Generic name: Alkylalcohol ethoxylate, phosphate ester, sodium salt	50 FR 7640 (7641) (2-25-85)	May 11, 1985
P 85-488	Generic name: Vinyl acetate copolymer	50 FR 7640 (7641) (2-25-85)	Do.
P 85-489	Generic name: Polyvinyl alcohol	50 FR 7640 (7641) (2-25-85)	Do.
P 85-490	Generic name: Substituted benzene-sulfonamide	50 FR 7640 (7641) (2-25-85)	Do.
P 85-491	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and hydroxy arene	50 FR 7640 (7641) (2-25-85)	Do.
P 85-492	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-alkyl phenol	50 FR 7640 (7641) (2-25-85)	Do.
P 85-493	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-aralkyl phenol	50 FR 7640 (7641) (2-25-85)	Do.
P 85-494	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-arcycloalkyl phenol	50 FR 7640 (7641) (2-25-85)	Do.
P 85-495	Ethanone, 1-(3-fluorophenyl)-	50 FR 7640 (7642) (2-25-85)	May 12, 1985.
P 85-496	Invalid submission		
P 85-497	2-hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	May 13, 1985.
P 85-498	2-hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	Do.
P 85-499	Generic name: Polyether polyurethane derivative	50 FR 7340 (7642) (2-25-85)	Do.
P 85-500	Generic name: Modified styrene copolymer	50 FR 7640 (7642) (2-25-85)	Do.
P 85-501	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do.
P 85-502	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do.
P 85-503	Generic name: Substituted imidic acid, methyl ester, hydrochloride	50 FR 7640 (7642) (2-25-85)	Do.
P 85-504	Generic name: Substituted diisocyanate polymer	50 FR 7640 (7642) (2-25-85)	May 14, 1985.
P 85-505	Generic name: Propoxylated quaternary ammonium compound	50 FR 74640 (7642) (2-25-85)	Do.
P 85-506	Generic name: Inorganic complex of rosin	50 FR 74640 (7642) (2-25-85)	Do.
P 85-507	Generic name: Substituted quinoline	50 FR 74640 (7642) (2-25-85)	Do.
P 85-508	Generic name: Substituted benzopyran	50 FR 74640 (7642) (2-25-85)	Do.
P 85-509	Generic name: Substituted-substituted-substituted-anthraquinone	50 FR 7640 (7643) (2-25-85)	Do.
P 85-510	Generic name: Poly(oxy-1,2-ethanediyl), alpha-higher alkyl C>30, omega-hydroxy	50 FR 7640 (7643) (2-25-85)	Do.
P 85-511	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	May 12, 1985.
P 85-512	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-513	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-514	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-515	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-516	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-517	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-518	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-519	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-520	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-521	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethylene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do.
P 85-522	Generic name: Polymer of functional acrylates and methacrylates.	50 FR 8390 (8391) (3-1-85)	May 15, 1985.
P 85-523	Generic name: Functionally modified urethane.	50 FR 8390 (8391) (3-1-85)	Do.
P 85-524	Polymer of hydroxy ethyl acrylate, Desmodur W, Duracarb 122, and Jeffamine D230	50 FR 8390 (8391) (3-1-85)	Do.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT, FEBRUARY 1985—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-525	Generic name: Modified acrylic terpolymer	50 FR 8390 (8391) (3-1-85)	May 19, 1985.
P 85-526	Generic name: Modified acrylate terpolymer	50 FR 8390 (8391) (3-1-85)	Do.
P 85-527	Generic name: Vinyl-epoxy ester	50 FR 8390 (8391) (3-1-85)	May 20, 1985.
P 85-528	Generic name: Anthranilate schiff base	50 FR 8390 (8391) (3-1-85)	Do.
P 85-529	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do.
P 85-530	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do.
P 85-531	Prepolymer of ethanol-l,1'-thiobis, ethanol-2-mercapto, reaction product with propylene oxide, and benzene, isocyanato	50 FR 8390 (8392) (3-1-85)	Do.
P 85-532	Generic name: Modified epoxy resin	50 FR 8390 (8392) (3-1-85)	Do.
P 85-533	Generic name: Aminated epoxy resin	50 FR 8390 (8392) (3-1-85)	Do.
P 85-534	Generic name: Alkyl sulfonate	50 FR 8390 (8392) (3-1-85)	Do.
P 85-535	Generic name: Substituted pyridine	50 FR 8390 (8392) (3-1-85)	Do.
P 85-536	Invalid submission		
P 85-537	1-(1-phenylethylidene)-2,2-diphenyl-hydrazine	50 FR 8390 (8392) (3-1-85)	Do.
P 85-538	2,3,3-trimethyl-5-nitro-3H-indole	50 FR 8390 (8392) (3-1-85)	Do.
P 85-539	Generic name: Indolo-isoxazolidinone merocyanine	50 FR 8390 (8392) (3-1-85)	Do.
P 85-540	1,2,3,3-tetramethyl-5-nitro-3H-indolium 4-methylbenzene sulfonate	50 FR 8390 (8392) (3-1-85)	Do.
P 85-541	Generic name: Indolo-pyrrolopyridine carbocyanine	50 FR 8390 (8392) (3-1-85)	Do.
P 85-542	Generic name: Polymethacrylate cationic polymer	50 FR 8390 (8392) (3-1-85)	Do.
P 85-543	2-butenedioic acid (Z-), mono[2-[(1-oxo-2-propenyl)oxy]ethyl]-ester	50 FR 8390 (8392) (3-1-85)	Do.
P 85-544	2-propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,1,4-dioxa-5,12-diaza hexadecane-1,16-diylester	50 FR 10536 (10537) (3-1-85)	
P 85-545	2-propenoic acid-3-(dimethylamino)-2,2-dimethyl-propyl ester	50 FR 10536 (10537) (3-1-85)	Do.
P 85-546	2-propenoic acid, 2-methyl-3,3,5-trimethyl-cyclohexylester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-547	2-propenoic acid, 3,3,5-trimethylcyclo-hexylester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-548	Generic name: Oligoaminoester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-549	Generic name: Poly(methacrylate	50 FR 8390 (8393) (3-1-85)	Do.
P 85-550	Generic name: Poly(methacrylate)	50 FR 8390 (8393) (3-1-85)	Do.
P 85-551	Generic name: 3-carbomethoxypropionyl chloride	50 FR 8390 (8393) (3-1-85)	May 21, 1985.
P 85-552	Generic name: Tetraallyloxyethane/methacrylate polymer	50 FR 8390 (8393) (3-1-85)	Do.
P 85-553	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-554	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-555	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do.
P 85-556	Generic name: 1,3,5-triazine, 2,4,6-traimine, N,N',N"-tris(4-aminophenyl)-	50 FR 8390 (8393) (3-1-85)	Do.
P 85-557	Generic name: Methine dye	50 FR 8390 (8393) (3-1-85)	Do.
P 85-558	Generic name: Waterborne urethane/acrylic polymer	50 FR 9504 (9505) (3-8-85)	May 22, 1985.
P 85-559	Generic name: Alkyl calcaryl acetate	50 FR 9504 (9505) (3-8-85)	Do.
P 85-560	Generic name: Substituted olefinic detone	50 FR 9504 (9505) (3-8-85)	Do.
P 85-561	Generic name: Substituted olefinic alcohol	50 FR 9504 (9505) (3-8-85)	Do.
P 85-562	Generic name: Trimethylolpropane triacrylate octylamino adduct	50 FR 9504 (9505) (3-8-85)	Do.
P 85-563	Generic name: Polyester polymer composed of fumarated rosin, glycerine, diethylene glycol and a polyhydroxyl prepolymer.	50 FR 9504 (9505) (3-8-85)	Do.
P 85-564	Generic name: Polymer of hydroxylethyl acrylate, 4,4'-diphenylmethane diisocyanate; and polymethylene polyphenyl isocyanate.	50 FR 9504 (9505) (3-8-85)	Do.
P 85-565	Generic name: Organo sulfonic acid, zinc salt	50 FR 9504 (9505) (3-8-85)	Do.
P 85-566	Generic name: Alcohol ether sulfate, amine salt	50 FR 9504 (9505) (3-8-85)	Do.
P 85-567	Generic name: Silyl ketone acetal	50 FR 9504 (9505) (3-8-85)	May 25, 1985.
P 85-568	Generic name: Difunctional ester	50 FR 9504 (9505) (3-8-85)	May 26, 1985.
P 85-569	Generic name: Styrene/acrylate/methacrylate polymer	50 FR 9504 (9505) (3-8-85)	Do.
P 85-570	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do.
P 85-571	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do.
P 85-572	Generic name: Quaternary ammonium montmorillonite	50 FR 9504 (9505) (3-8-85)	Do.
P 85-573	Generic name: Quaternary ammonium hectorite	50 FR 9504 (9505) (3-8-85)	Do.
P 85-574	Generic name: Substituted benzocyazol-ethylidine	50 FR 9504 (9505) (3-8-85)	Do.
P 85-575	Generic name: Substituted bisbenzophenone	50 FR 9504 (9506) (3-8-85)	Do.
P 85-576	Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2"-oxybis (ethanol), and Fascat 4100	50 FR 9504 (9506) (3-8-85)	Do.
P 85-577	Polymer of 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 2,2'-oxybis (ethanol), 2,2-dimethyl-1,3-propanediol, and 2,2,4-trimethyl-1,3-pentanediol.	50 FR 9504 (9506) (3-8-85)	Do.
P 85-578	Generic name: Substituted stilbene	50 FR 9504 (9506) (3-8-85)	Do.
P 85-579	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9506) (3-8-85)	Do.
P 85-580	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9506) (3-8-85)	Do.
P 85-581	Generic name: Chlorine-containing styrene copolymer	50 FR 9504 (9506) (3-8-85)	Do.
P 85-582	Generic name: Styrene-containing ion exchange material	50 FR 9504 (9506) (3-8-85)	Do.
P 85-583	Generic name: Chlorosulfonated polystyrene	50 FR 9504 (9506) (3-8-85)	Do.
P 85-584	Generic name: Polymer of acrylate-acrylonitrile, salt	50 FR 9504 (9506) (3-8-85)	May 27, 1985.
P 85-585	Generic name: Alkyd resin	50 FR 9504 (9506) (3-8-85)	Do.
P 85-586	Generic name: Functionally modified acrylic system	50 FR 9504 (9506) (3-8-85)	Do.
P 85-587	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9506) (3-8-85)	Do.
P 85-588	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-589	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-590	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-591	Generic name: Reaction product of mono-sulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-592	Generic name: Heterocyclic substituted butane	50 FR 9504 (9507) (3-8-85)	Do.
P 85-593	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do.
P 85-594	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do.
P 85-595	Generic name: Emulsion tetrapolymer	50 FR 9504 (9507) (3-8-85)	Do.
P 85-596	Generic name: 1-substituted-3-alkyl-heteromonocyclic-4-hydroxybenzene	50 FR 9504 (9507) (3-8-85)	Do.
P 85-597	Generic name: 3-alkylheteromonocyclic-4-hydroxy-1-substitutedbenzene	50 FR 9504 (9507) (3-8-85)	Do.
P 85-598	Generic name: Di(trisubstitutedhetero-monocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-599	Generic name: Di(trisubstitutedhetero-monocyclic (carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-600	Generic name: Di(trisubstitutedhetero-monocyclic (carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-601	Generic name: Disubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-602	Generic name: 2,4-diheteromonocyclic phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-603	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted) (3'-substituted-4'-hydroxyphenylsubstituted) alkyl	50 FR 9504 (9508) (3-8-85)	Do.
P 85-604	Generic name: Di(trisubstitutedhetero-monocyclic(carbomonocyclicsubstituted))heteropolycycle	50 FR 9504 (9508) (3-8-85)	Do.
P 85-605	Generic name: Trisubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-606	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted) (3'-substituted-4'-hydroxyphenylsubstituted) alkyl	50 FR 9504 (9508) (3-8-85)	Do.
P 85-607	Generic name: 2-alkylheteromonocyclic-4-substitutedphenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-608	Polymer of hydroxy ethyl acrylate, Desmodur W, Jeffamine D230, Teracol 650, and Dianol	50 FR 9504 (9508) (3-8-85)	May 28, 1985.
P 85-609	Generic name: Functionally modified methacrylate polymer	50 FR 9504 (9508) (3-8-85)	Do.
P 85-610	Generic name: Aryl-alkyl dithioether	50 FR 9504 (9508) (3-8-85)	Do.
P 85-611	Generic name: Copper complex of substitute-disazo-naphthalene trisulfonic acid	50 FR 9504 (9508) (3-8-85)	Do.
P 85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504 (9508) (3-8-85)	Do.
P 85-620	Generic name: Functionally substituted acrylic/methacrylic/styrene polymer	50 FR 9504 (9509) (3-8-85)	Do.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT, FEBRUARY 1985—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
Y 85-18	Polymer of acrylamide and maleic anhydride	50 FR 8390 (3-1-85)	Mar. 11, 1985.
Y 85-19	Generic name: Polymer polyol	50 FR 8390 (3-1-85)	Mar. 12, 1985.
Y 85-20	Generic name: Vinyl modified alkyd resin	50 FR 8390 (3-1-85)	Do.
Y 85-21	Generic name: Alkyd resin	50 FR 8390 (3-1-85)	Do.
Y 85-22	Generic name: Polyester diol	50 FR 8390 (3-1-85)	Do.
Y 85-23	Generic name: Modified styrene copolymer	50 FR 8390 (3-1-85)	Do.
Y 85-24	Generic name: Polyester polyol	50 FR 9503 (9504) (3-8-85)	Mar. 14, 1985.
Y 85-25	Generic name: Polyester from poly (alkylene ether)glycol and methylene bis (isocyanatobenzene)	50 FR 9503 (9504) (3-8-85)	Do.
Y 85-26	Generic name: Alkyd copolymer	50 FR 9503 (9504) (3-8-85)	Mar. 18, 1985.
Y 85-27	Generic name: A functional methacrylate polymer	50 FR 9503 (9504) (3-8-85)	Mar. 20, 1985.

II. 92 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-365	Polymer of cyclohexanedimethanol, isophthalic acid, pentaerythritol, tetraisopropyl titanate and trimelletic anhydride	50 FR 1630(1631) (1-11-85)	Apr. 1, 1985.
P 85-366	Generic name: Short oil alkyd resin	50 FR 1630(1631) (1-11-85)	Do.
P 85-367	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-368	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-369	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-370	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1632) (1-11-85)	Do.
P 85-371	Generic name: Acrylic alkyd resin	50 FR 1630(1632) (1-11-85)	Do.
P 85-372	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-373	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-374	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-375	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-376	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-377	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-378	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-379	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-380	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-381	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-382	Generic name: Aliphatic dicarboxylic acid polymer with alkane diol	50 FR 1630(1632) (1-11-85)	Do.
P 85-383	Phenol, 2,4-bis[(dimethylamino)methyl]-6-methyl	50 FR 2718(2719) (1-11-85)	Apr. 7, 1985.
P 85-384	Generic name: Epoxy amine adduct	50 FR 2718(2719) (1-11-85)	Do.
P 85-385	Generic name: Acrylic rubber dispersion in expoxy resin	50 FR 2718(2719) (1-11-85)	Do.
P 85-386	Generic name: Acrylate functional epoxy resin urethane	50 FR 2718(2719) (1-11-85)	Do.
P 85-387	Generic name: Halogenated acrylate	50 FR 2718(2719) (1-11-85)	Do.
P 85-388	Generic name: Modified copolymer of acrylic and vinyl aromatic monomers	50 FR 2718(2719) (1-11-85)	April 8, 1985.
P 85-389	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718(2719) (1-11-85)	April 9, 1985.
P 85-390	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718(2719) (1-11-85)	Do.
P 85-391	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718(2719) (1-11-85)	Do.
P 85-392	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718(2719) (1-11-85)	Do.
P 85-393	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 2718(2719) (1-11-85)	Do.
P 85-394	Generic name: Heteropolycycle azo benzeneamine derivative, salt	50 FR 2718(2720) (1-11-85)	Do.
P 85-395	Generic name: Substituted polyester resin	50 FR 2718(2720) (1-11-85)	Do.
P 85-396	Generic name: Metal salt of organo sulfur compound	50 FR 3592 (1-25-85)	Apr. 13, 1985.
P 85-397	Generic name: Acrylated cellulosic	50 FR 3592 (1-25-85)	Do.
P 85-398	Generic name: Vinyl acetate acrylic copolymer	50 FR 3592(3593) (1-25-85)	Apr. 14, 1985.
P 85-399	N-1-pyrenyl-9-octadecenamide	50 FR 3592(3593) (1-25-85)	Do.
P 85-400	N-(9-ethyl-9H-carbazol-3-yl)-9-octadecenamide	50 FR 3592(3593) (1-25-85)	Do.
P 85-401	Generic name: Substituted aminoazo-benzene	50 FR 3592(3593) (1-25-85)	Do.
P 85-402	Generic name: Substituted aliphatic alcohol	50 FR 3592(3593) (1-25-85)	Do.
P 85-403	Generic name: Mixed amine/alkane polycarboxylate	50 FR 3592(3593) (1-25-85)	Do.
P 85-404	Generic name: Mixed amine/alkane polycarboxylate	50 FR 3592(3593) (1-25-85)	Do.
P 85-405	Generic name: Phosphated acrylate	50 FR 3592(3593) (1-25-85)	Do.
P 85-406	Condensation product of nonylphenol-formaldehyde, ethoxylate, benzoic acid, maleic anhydride and sodium sulfite	50 FR 3592(3593) (1-25-85)	Apr. 16, 1985.
P 85-407	Condensation product of bisphenol A diglycidyl ether, tri-sec-butylphenol and ethylene oxide	50 FR 3592(3593) (1-25-85)	Do.
P 85-408	Generic name: Polymer from acrylic acid esters and substituted acrylamide	50 FR 3592(3593) (1-25-85)	Do.
P 85-409	Generic name: Acrylate polymer	50 FR 3592(3593) (1-25-85)	Do.
P 85-410	Generic name: Amine substituted imidazolidines	50 FR 3592(3593) (1-25-85)	Do.
P 85-411	Generic name: Amine substituted imidazolidines	50 FR 3592(3594) (1-25-85)	Do.
P 85-412	Generic name: Amine substituted imidazolidines	50 FR 3592(3594) (1-25-85)	Do.
P 85-413	Generic name: Blocked isocyanate resin	50 FR 3592(3594) (1-25-85)	Do.
P 85-414	Generic name: Arylated alkyd resin	50 FR 4896(4897) (2-4-85)	Apr. 17, 1985.
P 85-415	Generic name: Acrylic ester	50 FR 4896(4897) (2-4-85)	Do.
P 85-416	Generic name: Acrylic resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-417	Generic name: Acrylic resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-418	Generic name: Acrylic resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-419	Generic name: Alkyd resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-420	Generic name: Alkyd resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-421	Generic name: Alkyd resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-422	Generic name: Alkyd resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-423	Generic name: Alkyd resin	50 FR 4896(4897) (2-4-85)	Do.
P 85-424	Diphenylsulfone-3,3'-disulfonylhydrazide	50 FR 4896(4897) (2-4-85)	Do.
P 85-425	Generic name: Ether dicarboxylate	50 FR 4896(4897) (2-4-85)	Do.
P 85-426	Generic name: Complex organo-silane	50 FR 4896(4897) (2-4-85)	Apr. 21, 1985.
P 85-427	Generic name: Unsaturated polyster	50 FR 4896(4897) (2-4-85)	Do.
P 85-428	Generic name: Ester modified phenolic resin	50 FR 4896(4898) (2-4-85)	Do.
P 85-429	Generic name: Polyester	50 FR 4896(4898) (2-4-85)	Apr. 22, 1985.
P 85-430	Generic name: Complex organo-silane	50 FR 4896(4898) (2-4-85)	Do.
P 85-431	Generic name: Complex amino ester	50 FR 4896(4898) (2-4-85)	Do.
P 85-432	Generic name: Polyester polyurethane prepolymer	50 FR 4896(4898) (2-4-85)	Do.
P 85-433	1 Propanol, 3-mercapto-	50 FR 4896(4898) (2-4-85)	Do.
P 85-434	Generic name: Substituted cyclopropane carboxylic acid chloride	50 FR 4896(4898) (2-4-85)	Do.
P 85-435	Generic name: Polyether polyol oligomer	50 FR 4896(4898) (2-4-85)	Do.
P 85-436	Generic name: Halogenated silicon magnesium titanium alkoxids	50 FR 4896(4898) (2-4-85)	Do.
P 85-437	Generic name: Hydroxy-propyl-triazine	50 FR 4896(4898) (2-4-85)	Apr. 23, 1985.
P 85-438	Generic name: Bis(substituted-benzamide), N,N'-substituted-	50 FR 4896(4898) (2-4-85)	Do.
P 85-439	Generic name: Unsaturated polyster	50 FR 4896(4898) (2-4-85)	Do.

II. 92 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-440	Methylmethacrylate-styrene-n-vinyl pyrrolidone terpolymer	50 FR 4896(4898) (2-4-85)	Do.
P 85-441	Generic name: Polymer from N-methyl-N-vinylacetamide, acrylic acid and N-substituted acrylamide	50 FR 8390(8391) (3-1-85)	Apr. 24, 1985.
P 85-442	Generic name: 2-Naphthalenediazonium, 5-sulfo, substituted	50 FR 5416 (2-8-85)	Do.
P 85-443	Generic name: Bis(substituted alkyl) disulfide	50 FR 5416 (2-8-85)	Do.
P 85-444	Generic name: Aromatic amidoamine	50 FR 5416 (2-8-85)	Apr. 27, 1985.
P 85-445	Generic name: Unsaturated polyster	50 FR 5416 (2-8-85)	Do.
P 85-446	2,3-isopropoylidene dioxyphenol	50 FR 5416 (2-8-85)	Do.
P 85-447	Polymer of 4,4'-isopropylidenedicyclo-hexanol-epichlorohydrin, terephthalic acid, isophthalic acid, adipic acid, tetramethyl ammonium chloride, linseed fatty acid.	50 FR 5416 (2-8-85)	Apr. 28, 1985.
P 85-448	Generic name: Tetra-substituted-biphenol	50 FR 5416(5417) (2-8-85)	Do.
P 85-449	Generic name: Phosphorus acid ester	50 FR 5416(5417) (2-8-85)	Do.
P 85-450	Generic name: Alkyd resin	50 FR 5416(5417) (2-8-85)	Apr. 29, 1985.
P 85-451	Generic name: Alkyd resin	50 FR 5416(5417) (2-8-85)	Do.
P 85-452	Generic name: Alkyd resin	50 FR 5416(5417) (2-8-85)	Do.
P 85-453	Generic name: Alkyd resin	50 FR 5416(5417) (2-8-85)	Do.
P 85-454	Generic name: Tetra-substituted-biphenol	50 FR 5416(5417) (2-8-85)	Do.
P 85-455	Palm kernel acids, 2-sulfoethyl ester, sodium salt	50 FR 5416(5417) (2-8-85)	Do.
P 85-456	Generic name: Substituted phenylazopyridone trisulfonic acid, alkali metal salt	50 FR 5416(5417) (2-8-85)	Do.

III. 131 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH

[Expiration of the Notice review period does not signify that the chemical had been added to the inventory]

PMN No.	Identity/generic name	FR citation	Expiration date
P 83-1033	Generic name: C_{8-9} carboxylic acid	48 FR 37699 (37700) (8-19-83)	Feb. 13, 1985.
P 84-792	Generic name: Disubstituted anthraquinone-2-sulfonic acid, alkali metal salt	49 FR 23916 (23920) (6-8-84)	Feb. 4, 1985.
P 84-880	Generic name. Modified melamine formaldehyde polymer	49 FR 28614 (7-13-84)	Feb. 10, 1985.
P 84-927	Generic name: Carbopolycyclic alkenyl ether	49 FR 29451 (29452) (7-20-84)	Feb. 1, 1985
P 84-1042	Generic name. Methylammonium n-methyldithiocarbamate	49 FR 33718 (33719) (8-24-84)	Feb. 9, 1985
P 84-1068	Generic name: N-dimetylthiocarbamylthio-N'-phenyl urea	49 FR 33718 (33722) (8-24-84)	Feb. 1, 1985.
P 84-1184	Generic name: Polychlorofluoro aromatic alkylated hydrocarbon	49 FR 38356 (38357) (9-28-84)	Feb. 28, 1985.
P 85-85	Generic name: Sodium salt of sulfated C_{8-11} alcohol ethoxylate	49 FR 44139 (44142) (11-2-84)	Feb. 6, 1985.
P 85-110	Generic name: Polysulfide polymer	49 FR 45657 (11-19-84)	Feb. 2, 1985.
P 85-111	Generic name: Polymer of disubstituted polysiloxane, substituted phenol and substituted alkanoyl halide	49 FR 45657 (45658) (11-19-84)	Do
P 85-112	Generic name: Alkanediol-maleic anhydride	49 FR 45657 (45658) (11-19-84)	Feb. 3, 1985.
P 85-113	Generic name: Terephthalic acid, polymer with (poly oxyalkylene) bis (N-aryl trimellitimide) and butanediol	49 FR 45657 (45658) (11-9-84)	Do
P 85-114	Generic name: Blocked aromatic isocyanate prepolymer	49 FR 45657 (45658) (11-19-84)	Do.
P 85-115	Generic name: Aromatic polyisocyanate	49 FR 45657 (45658) (11-19-84)	Do
P 85-116	7,9 dimethylspiro (5.5) undecan-3-one	49 FR 45657 (45658) (11-19-84)	Do
P 85-117	Generic name: Hydroxy resin	49 FR 45657 (45658) (11-19-84)	Do.
P 85-119	Generic name: Hydroxy resin	49 FR 45657 (45658) (11-19-84)	Do.
P 85-120	Generic name: Hydroxy acrylic resin	49 FR 45657 (45658) (11-19-84)	Do
P 85-121	Generic name: Acrylic copolymer	49 FR 45657 (45658) (11-19-84)	Do
P 85-122	Generic name. Copolymer of vinyl amides and organic acid salt	49 FR 45657 (45658) (11-19-84)	Do.
P 85-123	Generic name: Copolymer of vinyl amides and organic acid salt	49 FR 45657 (45658) (11-19-84)	Do.
P 85-124	Generic name: Copolymer of vinyl amides and organic acid salt	49 FR 45657 (45658) (11-19-84)	Do.
P 85-125	Generic name: Copolymer of vinyl amides and organic acid salt	49 FR 45657 (45659) (11-19-84)	Do
P 85-126	Generic name. Unsaturated polyester	49 FR 45757 (45659) (11-19-84)	Feb. 4, 1985.
P 85-127	Generic name: Butanamide, N-substituted alkyl	49 FR 45657 (45659) (11-19-84)	Do.
P 85-128	Generic name: Butanamide, N-substituted alkyl	49 FR 45657 (45659) (11-19-84)	Do.
P 85-129	Generic name: Styrene, acrylate polymer.	49 FR 45657 (45659) (11-19-84)	Do.
P 85-130	Generic name: Tetrabromobisphenol A-aromatic tertiary amine salt	49 FR 46482 (11-26-84)	Feb. 6, 1985.
P 85-131	Generic name: Tetrabromobisphenol A-aromatic tertiary amine salt	49 FR 46482 (11-26-84)	Do.
P 85-132	Generic name: Organosilicone copolymer	49 FR 46482 (11-26-84)	Do
P 85-133	Generic name: Aliphatic olefin	49 FR 46482 (11-26-84)	Do.
P 85-134	Generic name: Intermoleculary rearranged triglycerides	49 FR 46482 (11-26-84)	Feb. 10, 1985.
P 85-135	Generic name: Substituted cyclopentadiene	49 FR 46482 (11-26-84)	Feb. 11, 1985.
P 85-136	Generic name: Substituted aliphatic terminated poly(dimethylsiloxane)	49 FR 46482 (11-16-84)	Do.
P 85-137	Generic name: Polyamic acid ester	49 FR 46482 (11-26-84)	Do.
P 85-138	Generic name: Substituted titanocene	49 FR 46482 (11-26-84)	Do.
P 85-139	Generic name: Complex polyester	49 FR 46482 (11-26-84)	Do.
P 85-140	Generic name: Functional copolymer of styrene with acrylate and methacrylate monomers	49 FR 46482 (46483) (11-26-84)	Do.
P 85-143	Generic name: Iron complex of a substituted phenyl azo	49 FR 46482 (46483) (11-26-84)	Feb. 12, 1985.
P 85-144	Generic name: Salt of substituted butyl acetate	49 FR 46482 (46483) (11-26-84)	Do
P 85-145	Generic name: Substituted pyridinium salt	49 FR 46482 (46483) (11-26-84)	Do
P 85-146	Generic name: Biphenyl, 3,3'-dichloro-4-(substituted azo)-4'-((((phenylamino) carbonyl)2-oxoprop-1-yl)azo-	49 FR 46482 (46483) (11-26-84)	Do
P 85-147	Generic name: Biphenyl, 3,3'-dichloro-4-(substituted azo)-4'-((((phenylamino) carbonyl)2-oxoprop-1-yl)azo)-	49 FR 46482 (46483) (11-26-84)	Do
P 85-148	Generic name: Modified acrylic copolymer	49 FR 47108 (11-30-84)	Feb. 13, 1985
P 85-149	Generic name: Epoxy acrylic copolymer	49 FR 47108 (11-30-84)	Do
P 85-150	Generic name: Fluoranthenamine-substituted-aminoanthraquinane	49 FR 47108 (11-30-84)	Do
P 85-151	Generic name: Fluoranthenediamine-bis (substitutedaminoanthraquinone) derivative	49 FR 47108 (11-30-P 85)	Do.
P 85-153	Generic name: Reacted epoxy resin	49 FR 47108 (47109) (11-30-84)	Do.
P 85-154	Generic name. Benzoid diester of acetic acid	49 FR 47108 (47109) (11-30-84)	Do.
P 85-156	Generic name: Disubstituted carbopoly-cyclesulfonic acid salt.	49 FR 47108 (47109) (11-30-84)	Do.
P 85-157	Generic name: Disubstituted carbopoly-cyclesulfonic acid	49 FR 47108 (47109) (11-30-84)	Do
P 85-158	Generic name. Aromatic diol	49 FR 47108 (47109) (11-30-84)	Feb. 16, 1985.
P 85-163	Generic name: Cyanoacetate ester	49 FR 47106 (47109) (11-30-84)	Do.
P 85-164	Generic name: Unsaturated polyester	49 FR 47108 (47109) (11-30-84)	Do.
P 85-165	Polymer of dehydrated castor-oil fatty acids, pentaerithritol, isophthalic acid, linseed oil, dehydrated castor oil, dimethylethanolamine, isononanoic acid and maleic anhydride	49 FR 47108 (47109) (11-30-84)	Do.
P 85-166	Generic name: Aromatic polycyanate resin	49 FR 47108 (47110) (11-30-84)	Feb. 17, 1985.
P 85-167	Generic name: Organo sulfur compound	49 FR 47108 (47110) (11-30-84)	Do.
P 85-168	Generic name: Functional polyether	49 FR 47108 (47110) (11-30-84)	Do.
P 85-169	Generic name: Polyester polyurethane	49 FR 47108 (47110) (11-30-84)	Do
P 85-170	Generic name: Fatty ester	49 FR 47108 (47110) (11-30-84)	Do
P 85-171	Generic name: Fatty ester	49 FR 47108 (47110) (11-30-84)	Do.
P 85-172	Generic name: Fatty ester	49 FR 47108 (47110) (11-30-84)	Do
P 85-173	Generic name: Cyanoacetate ester	49 FR 47108 (47110) (11-30-84)	Do.
P 85-174	Generic name: Alkenyl substituted carbomonocyclic alkenyl ether	49 FR 47108 (47110) (11-30-84)	Do.

III. 131 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month—Continued

[Expiration of the Notice review period does not signify that the chemical had been added to the inventory]

PMN No	Identity/generic name	FR citation	Expiration date
P 85-175	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47110) (11-30-84)	Do.
P 85-176	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47110) (11-30-84)	Do.
P 85-177	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47110) (11-30-84)	Do.
P 85-178	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47110) (11-30-84)	[illegible]
P 85-179	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47110) (11-30-84)	Do.
P 85-180	Generic name: Branched mono-carboxylic fatty acid	49 FR 47108 (47111) (11-30-84)	Do.
P 85-181	1-(2-methoxyethoxy)-4-methylbenzene	49 FR 47108 (47111) (11-30-84)	Do.
P 85-182	Generic name: Alkyl ester	49 FR 47108 (47111) (11-30-84)	Do.
P 85-183	4,5-dihydro-5-ethyl-2-methyl-3-furancarboxylic acid ethyl ester	49 FR 47108 (47111) (11-30-84)	Do.
P 85-184	Generic name: Naphthoquinone diazide-sulphonic acid ester in formulation with phenol formaldehyde resin	49 FR 47108 (47111) (11-30-84)	Do.
P 85-185	Generic name: Substituted phenyl salt	49 FR 47108 (47111) 11-30-84)	Do.
P 85-186	Generic name: Polyalkyleneoxy alkyl, aryl alkyl, alkyl silicone	49 FR 47108 (47111) 11-30-84)	Feb. 18, 1985.
P 85-187	Generic name: Arylalkyl hydrogen alkyl silicone	49 FR 47108 (47111) 11-30-84)	[illegible].
P 85-188	Generic name: Polyester diol	49 FR 47108 (47111) 11-30-84)	Do
P 85-189	Generic name: Alkyl alkoxy siloxane	49 FR 47108 (47111) (11-30-84)	Do.
P 85-190	N,N,-dimethyl-2-nitrobenzenesulfonamide	49 FR 47921 (12-7-84)	Feb. 20, 1985
P 85-191	Phenyl 4-methoxy-3-nitrobenzenesulfonate	49 FR 47921 (12-7-84)	[illegible].
P 85-192	2-amino-N,N-dimethylbenzenesulfonamide	49 FR 47921 (12-7-84)	Do
P 85-193	Phenyl 3-amino-4-methoxybenensulfonate	49 FR 47921 (12-7-84)	Do.
P 85-195	Generic name: Substituted silyl epoxide	49 FR 47921 (47922) (12-7-84)	Do
P 85-196	Generic name: Substituted alkyl silyl urea	49 FR 47921 (47922) 12-7-84)	Do.
P 85-197	Melamine cyanurate	49 FR 47921 (47922) (12-7-84)	Do
P 85-198	Generic name: Alkylated aromatic diamine	49 FR 47921 (47922) (12-7-84)	Feb 23, 1985
P 85-199	Generic name: Hydrocarbon resin	49 FR 47921 (47922) 12-7-84)	[illegible]
P 85-200	Generic name: Cyanoacrylate ester	49 FR 47921 (47922) 12-7-84)	Do
P 85-201	Generic name: Substituted dioxazine	49 FR 47921 (47922) 12-7-84)	Do.
P 85-202	Generic name: Substituted dioxazine	49 FR 47921 (47922) 12-7-84)	Do.
P 85-203[1]	Generic name: Sulfur-containing polyalkylene oxides	49 FR 47921 (47922) 12-7-84)	Do.
P 85-213	Generic name: Aromatic polyurethane prepolymer containing tertiary amine	49 FR 47921 (47922) 12-7-84)	Do.
P 85-214	Generic name: Aromatic polyurethane prepolymer containing polyether	49 FR 47921 (47922) 12-7-84)	Do.
P 85-215	Generic name: Polyester polyol	49 FR 47921 (47922) 12-7-84)	[illegible]
P 85-217	Generic name: Polymer of diisocyanate with glycol	49 FR 47921 (47923) 12-7-84)	Feb. 24, 1985.
P 85-218	Generic name: Polymer of diisocyanate with glycol	49 FR 47921 (47923) 12-7-84)	Do.
P 85-219	Generic name: Polymer of diisocyanate with glycol	49 FR 47921 (47923) 12-7-84)	Do.
P 85-220	Generic name: Polymer of diisocyanate with glycol	49 FR 47921 (47923) 12-7-84)	Do.
P 85-221	Generic name: Polymer of diisocyanate	49 FR 47921 (47923) (12-7-84)	Do.
P 85-222	Generic name: Polymer of diisocyanate	49 FR 47921 (47923) (12-7-84)	Do.
P 85-223	Generic name: Polyester diol	49 FR 47921 (47923) (12-7-84)	Do.
P 85-224	Generic name: Polyster polyol	49 FR 47921 (47923) (12-7-84)	Do.
P 85-225	2-n-butoxyethyl 4-(dimethylamino)benzoate	49 FR 47921 (47923) (12-7-84)	Do
P 85-226	Generic name: Substituted succinic acid	49 FR 47921 (47923) (12-7-84)	Do.
P 85-227	Generic name: Acrylic acid ester	49 FR 47921 (47923) (12-7-84)	Do.
P 85-228	Generic name: Disubstituted pyridinium	49 FR 47921 (47923) (12-7-84)	Do.
P 85-229	Generic name: Epoxy polyester	49 FR 47921 (47923) (12-7-84)	Do.
P 85-230	Generic name: Acrylated alkyd resin	49 FR 47921 (47923) (12-7-84)	Do
P 85-231	Generic name: Polyester base	49 FR 47921 (47924) (12-7-84)	Do.
P 85-232	Chromate (2-), [2-[1-(3-chlorophenyl)-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-4-yl]azo]-5-sulfobenzoato-(2)][2-[4,5-dihydro-5-oxo-1,3-diphenyl-1H-pyrazol-4-yl)azo]benzoato(2-)]-, sodium hydrogen (9Cl).	49 FR 47921 (47924) (12-7-84)	Do
P 85-233	Generic name: Benzeneamine, 4-[dichloro-1,3-benzothiazol-2-yl)azo]-N-methyl-N-(3-phenylpropyl)-	49 FR 47921 (47924) (12-7-84)	Do.
P 85-235	Generic name: Vegetable oil polymer with alkane diols	49 FR 47921 (47924) (12-7-84)	Feb 26, 1985.
P 85-237	Strontium, calcium, barium chloride phosphate; europium activated	49 FR 48801 (48802) (12-14-84)	Feb. 27, 1985.
Y 85-1	Generic name: Polyoxymethylene co-polymer	50 FR 2720 (1-18-85)	Jan. 24, 1985.
Y 85-2	Generic name: Linear saturated polyester resin containing hydroxyl groups	50 FR 2720 (1-18-85)	Jan 27, 1985.
Y 85-3	Generic name: Modified styrene copolymer	50 FR 3592 (1-25-85)	Jan 31, 1985.
Y 85-4	Generic name: Acrylic copolymer	50 FR 3592 (1-25-85)	Jan. 24, 1985.
Y 85-5	Generic name: Polymer of styrene with substituted acrylates and methacrylates.	50 FR 3592 (1-25-85)	Feb 4, 1985.
Y 85-6	Polymer of cyclohexanedimethanol, isophthalic acid, pentaerythritol, tetraisopropyl titanate and trimellitic anhydride	50 FR 3592 (1-25-85)	[illegible].
Y 85-7	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Feb. 7, 1985.
Y 85-8	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	[illegible]
Y 85-9	Generic name: Aromatic polycarbodiimide	50 FR 4790 (2-1-85)	[illegible].
Y 85-10	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Feb. 12, 1985.
Y 85-11	Generic name: Alkyd resin	50 FR 4790 (2-1-85)	Do.
Y 85-12	Generic name: Rosin-modified phenolic resin	50 FR 4790 (2-1-85)	Do.
Y 85-13	Generic name: Polymer of aromatic diisocyanates, aliphatic diisocyanates, aliphatic glycols and aliphatic diacid	50 FR 4790 (2-1-85)	Do.
Y 85-14	Generic name: Rosin-modified phenolic resin	50 FR 5417 (2-8-85)	Feb. 17, 1985.
Y 85-15	Polymer of soybean oil, pentaerythritol, phthalic anhydride, intermediate, 1,2-propanediol, 2,4-tolylene diisocyanate and 2,6-tolylene diisocyanate.	50 FR 5417 (5418) (2-8-85)	Feb. 18, 1985.
Y 85-16	Polymer of phthalic anhydride, trimethylolpropane and Tone 0200 polycaprolactone diol	50 FR 5417 (5418) (2-8-85)	Do.
Y 85-17	Generic name: Ethylene terpolymer	50 FR 5417 (5418) (2-8-85)	Feb. 19, 1985.

[1] PMNs 85-204 through 85-212 have been consolidated into PMN 85-203.

IV. 55 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
P 81-509	Generic name: Lower alkyl ester of an alkyl propionic acid	46 FR 50410 (50411) (10-31-81)	Aug. 10, 1984.
P 82-537	Generic name: Amide/amine salt of dicarboxylic acid	47 FR 35332 (35333) (8-13-82)	Feb. 22, 1985.
P 82-707	Generic name: Neutralized reaction product of an alkanedioic acid and substituted alkane	47 FR 44608 (44609) (10-8-82)	Jan. 11, [illegible].
P 83-279	Generic name: Chlorinated, oleated, hydrocarbon polymer	47 FR 57332 (57334) (12-23-82)	Nov. 10, [illegible].
P 83-474	2-propenoic acid, (2,4,6-trioxo-1,3,5-triazine-1,3,5(2H,4H,6H)-triyl) tri-2,1-ethanediyl ester	48 FR 7299 (7301) (2-18-83)	Oct. 9, 1[illegible].
P 83-1153	Generic name: Urethane compound	48 FR 41638 (41642) (9-16-83)	Jan. 19, [illegible].
P 83-1154	Generic name: Urethane compound	48 FR 41638 (41642) (9-16-83)	Jan. 12, 1984.
P 83-1245	Generic name: Polyester	48 FR 45397 (43400) (9-23-83)	Jan. 24, [illegible].
P 84-26	Generic name: Flexibilized dicyclopentadiene modified unsaturated polyester resin	48 FR 48863 (48865) (10-21-83)	[illegible]. 13, [illegible].
P 84-40	Generic name: Oil modified polyester	48 FR 48863(48866) (10-21-83)	Jan. 17, 1985.
P 84-228	Generic name: Modified copolymer of alkenoic esters and substituted alkenoic esters with styrene	48 FR 55332 (55333) (12-12-83)	Nov. 2, 1984.
P 84-386	Generic name: Substituted Phenylmagnesium cloride	49 FR 6160 (6161) (2-17-84)	Oct. 8, 1984.

IV. 55 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PNM No	Chemical identification	FR citation	Date of commencement
P 84-296	Dipentaerythritol, adipic acid ester	49 FR 6160 (6162) (2-17-84)	Oct. 27, 1984
P 84-477	Generic name. Styrene, alpha olefin, 2,5-furandione copolymer	49 FR 9954 (9955) (3-16-84)	Feb 11, 1985
P 84-478	Generic name: Ammonia salt of styrene, alpa olefin, 2,5-furandione copolymer	49 FR 9954 (9955) (3-16-84)	Do
P 84-490	Generic name. Substituted aminofluorane	49 FR 11009 (11010) (3-23-84)	Jan. 16, 1985
P 84-537	Generic name. Unsaturated amino ester salt	49 FR 13744 (13745) (4-6-84)	Feb. 4, 1985
P 84-598	Generic name: Alkoxy functional alkyl substituted silicone resin	49 FR 16833 (16835) (4-20-84)	Dec 28, 1984
P 84-689	Generic name Sulfurized reaction products of animal oil and vegetable fatty ester	49 FR 21113 (21114) (5-18-84)	Jan 4, 1985
P 84-694	Generic name. Bisphenol A diester	49 FR 22128 (22129) (5-25-84)	Sept 10, 1984.
P 84-763	Polymer of vinyl acetate, butyl acrylate, hydroxy ethyl acrylate and acrylic acid	49 FR 23916 (23918) (6-8-84)	Feb 7, 1985
P 84-792	Generic name: Disubstituted anthraquinone-2-sulfonic acid, alkali metal salt	49 FR 23916 (23920 (6-8-84)	Feb 5, 1985
P 84-793	Generic name: Disubstituted anthraquinone-2-sulfonic acid	49 FR 23916 (23920 (6-8-84)	Do
P 84-860	Generic name: Disubstituted nitrobenzene	49 FR 26800 (26801) (6-29-84)	Jan 22, 1985.
P 84-870	Generic name: Disubstituted nitrobenzoic acid	49 FR 26800 (26802) (6-29-84)	Jan 21, 1985
P 84-882	3,5-dichloro-2-Hydroxybenzenesulfonate, disodium	49 FR 28614 (28615) (7-13-84)	Feb 1, 1985
P 84-896	Indole-3-acrylic acid	49 FR 28614 (28616) (7-13-84)	Dec 1, 1984
P 84-897	3,3',5,5'-tetramethylbenzidine dihydrochloride	49 FR 28614 (28616) (7-13-84)	Feb. 14, 1985.
P 84-927	Generic name: Carbopolycyclic alkenyl ether	49 FR 29451 (29452) (7-20-84)	Feb 4, 1985
P 84-951	Generic name: Substituted aminobenzoic acid ester	49 FR 30238 (30239) (7-27-84)	Jan. 14, 1985
P 84-1042	Methylammonium n-methyldithiocarbamate	49 FR 33718 (33719) (8-24-84)	Feb. 12, 1985
P 84-1043	Generic name: Sulfurized magnesium soap	49 FR 33718 (33719) (8-24-84)	Jan. 6, 1985
P 84-1046	2-naphthylamine-3,6,8-trisulfonic acid, disodium salt	49 FR 33718 (33719) (8-24-84)	Dec. 7, 1984
P 84-1089	Generic name: Modified, maleated metal resinate	49 FR 34572 (34574) (8-31-84)	Nov. 27, 1984
P 84-1139	Generic name: Cellulosic ether	49 FR 36151 (36152) (9-14-84)	Dec. 21, 1984
P 84-1141	Generic name: Phenylene bis-[benzothiazoyloxcalkylamide][methyl-imidazole] derivative mixed salts	49 FR 36151 (36152) (9-14-84)	Jan. 18, 1985
P 84-1164	Generic name: Disubstituted benzoic acid ester	49 FR 37458 (37459) (9-24-84)	Jan 15, 1985.
P 84-1205	Benzeneamine, 2-hydroxy-5-((2-sulfooxy-ethyl)sulfonyl)	49 FR 39379 (39380) (10-5-84)	Jan. 3, 1985
P 84-1226	Generic name: Substituted amine-boron compound	49 FR 39379 (39381) (10-5-84)	Jan. 11, 1985.
P 85-6	Generic name: Alkyl phosphate potassium salt	49 FR 41100 (41101) (10-19-84)	Jan. 10, 1985.
P 85-13	Generic name Substituted borazole polymer	49 FR 41100 (41102) (10-19-84)	Jan. 18, 1985.
P 85-51	Generic name. Monoethanolamine salt of lignin	49 FR 43105 (43107) (10-26-84)	Jan. 16, 1985
P 85-52	Generic name: Modified fatty acid polyamine condensate	49 FR 43105 (43107) (10-26-84)	Feb. 1, 1985
P 85-56	Generic name: Alkylcycloalkenyl ketone	49 FR 44139 (11-2-84)	Jan 24, 1985
P 85-57	Generic name: Cycloalkenyl alkyl oxirane	49 FR 44139 (44140) (11-2-84)	Do
P 85-58	Generic name: Cycloalkenyl alkyl thiirane	49 FR 44139 (44140) (11-2-84)	Do
P 85-59	Generic name: Cycloalkenyl alkyl thiol	49 FR 44139 (44140) (11-2-84)	Do
P 85-72	Lanthanum phosphate, cerium and terbium activated	49 FR 44139 (44141) (11-2-84)	Jan 30, 1985.
P 85-78	Generic name: Substituted propionamide	49 FR 44139 (44141) (11-2-84)	Jan. 23, 1985
P 85-83	Generic name. Polyester from dimethyl terephthalate, ethylene glycol and 3-substituted propanoic acid glycol ester	49 FR 44139 (44141) (11-2-84)	Feb. 4, 1985
P 85-87	Generic name: Sulfonated carbocyclic diester	49 FR 44676 (11-8-84)	Feb 12, 1985
P 85-99	Generic name: (Polyoxyalkylene) bis (N-trimellitimide)	49 FR 44676 (44677) (11-8-84)	Feb. 15, 1985
P 85-102	Generic name: Modifide soybean-tung alkyd resin	49 FR 44676 (44678) (11-8-84)	Feb. 1, 1985
P 85-113	Generic name: Terephthalic acid, polymer with (polyoxyalkylene)bis(N-aryl trimellitimide) and butanediol	49 FR 45657 (45658) (11-19-84)	Feb 15, 1985.
P 85-132	Generic name: Organosilicone copolymer	49 FR 46482 (11-26-84)	Feb 11, 1985

V. 109 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED

PMN No.	Identity/generic name	FR citation	Date suspended
P 83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10-18-82)	Oct 22, 1982
P 83-333	Generic name: Reaction product of polycyclesulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 72 (73) (1-3-83)	Mar 14, 1983.
P 83-401	Generic name: Naphthalenetrisulfonic acid, chlorotriazinylamino-methoxymethyl phenylazo	48 FR 5304 (2-4-83)	Aug. 18, 1983.
P 83-418	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthaleneazo-	48 FR 5304 (5306) (2-4-83)	Feb 19, 1985.
P 83-461	Generic name Substituted alkosy silane	48 FR 7299 (7300) (2-18-83)	July 1, 1983
P 83-634	Generic name: Substituted mono azo aromatic	48 FR 17385 (4-22-83)	July 5, 1983
P 83-669	Generic name: Chromium complex of substitutedphenolazosulfonaphthol with naphtholazosulfonaphthol	48 FR 20490 (5-6-83)	(Aug 5, 1983)
P 83-677	Generic name: 20490 Chromium complex of subsitituted alkylaminoformimidphenol with sulfonaphtholazosulfophenylpyrazolone.	48 FR 20490 (20491) (5-6-83)	Do
P 83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24967 (24968) (6-3-83)	Aug. 15, 1983
P 83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazo-sulfonaphthol.	48 FR 24967 (24968) (6-3-83)	Do.
P 83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30434 (30435) (7-1-83)	Sept. 21, 1983
P 83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino] benzene	48 FR 31460 (31462) (7-8-83)	Do
P 83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31460 (31462) (7-8-83)	Do
P 83-913	Generic name: Copper sulfonylphenazoply-hydroxy phenazobenzoate	48 FR 32381 (32383) (7-15-83)	Oct 1, 1983
P 83-1006	Generic name: (Amino)-(hydorxy)-(substituted) (substituted) naphthalenedi-sulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedi-sulfonic acid, salts with sodium and patassium.	48 FR 36647 (36648) (8-12-83)	Do
P 83-1007	Generic name (Substituted)-(substituted-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36647 (36648) (8-12-83)	Do
P 83-1012	Generic name. Bis(sulfonphenylchloro-triazineaminosulfophenylazo) hydroxyamino-disulfonaphthalene	48 FR 36647 (36648) (8-12-83)	Oct 24 1983
P 83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)phenyl]derivative	48 FR 36647 (36649) (8-12-83)	Do
P 83-1238	Generic name: Substituted anthraquinone	48 FR 43397 (43400) (9-23-83)	Dec 9, 1983
P 84-15	Generic name: Substituted heterocyclic metal complex	48 FR [illegible] (48864) (10-21-83)	Feb. 9, 1985
P 84-17	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48864) (10-21-83)	Do
P 84-18	1(1,1 dimethylethoxy)-propan-2-ol	48 FR 48863 (48864) (10-21-83)	Jan 6, 1984
P 84-36	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48866) (10-21-83)	Feb 9, 1985
P 84-50	Generic name. Substituted heterocyclic metal complex	48 FR 50951 (50952) (11-4-83)	Do
P 84-64	Generic name: Substituted-phenylamino monochloro-triazinylamino sulfophenylazo-substituted-disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt.	48 FR 50951 (59053) (11-4-83)	July 9, 1984
P 84-108	Generic name: Trisubstituted heterocyclic disubstituted monocycle	48 FR 50944 (50945) (11-4-83)	Mar 5, 1984
P 84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50944 (50946) (11-4-83)	Feb 9, 1985
P 84-306	Benzioc acid, 2-((((2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester	49 FR 930 (932) (1-6-84)	Mar 22, 1984
P 84-307	2-propenoic acid, 2-methyl-, 2-((hexahydro 2-oxo-1H-azepin-1-yl)carbonyl)amino)ethyl ester	49 FR 930 (932) (1-6-84)	Do
P 84-375	Generic name. Sodium salt of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Jan 10, 1985
P 84-376	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Do
P 84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-]5-hydroxy-6-[[2-methoxy-5-(ubstituted)phenyl]axo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amioo)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], pentasodium.	49 FR 6160 (6162) (2-17-84)	Apr 27, 1984
P 84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6160 (6162) (2-17-84)	Do
P 84-485	Generic name: Poly(oxy-1,2-ethanediyl) alpha-acyl-w-alkyl	49 FR 11009 (11010) (3-23-84)	June 4, 1984

V. 109 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
P 84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16833 (16835) (4-20-84)	Aug. 21, 1984.
P 84-597	Generic name: Blocked aliphatic poly-isocyanate	49 FR 16833 (16835) (4-20-84)	July 19, 1984
P 84-469	Generic name: Chromate, bis(substituted substituted phenolato)inorganic salts	49 FR 19110 (19113) (5-4-84)	July 20, 1984
P 84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19110 (19113) (5-4-84)	Do
P 84-651	Generic name: Chromate, bis(substituted substituted naphthalenolato)sodium	49 FR 19110 (19113) (5-4-84)	Do.
P 84-664	Generic name: Chromate, bis(substituted substituted phenolato)(substituted substituted substituted substituted [illegible].	49 FR 20060 (20961) (5-11-84)	Do.
P 84-665	Generic name: Chromate, bis(substituted substituted substitutee phenolato), sodium	49 FR 20060 (20061) (5-11-84)	Do.
P 84-669	Oleic, linoleic, palmitic acid ester of ethoxylated $C_{12}C_{14}$ alcohols	49 FR 20060 (20061) (5-11-84)	July 18, 1984
P 84-673	Generic name: Chromate (substituted naphthalenolato) (substituted substituted naphthalenolato) inorganic salts	49 FR 20060 (20061) (5-11-84)	July 20, 1974
P 84-[illegible]	Generic name: 9, 10-Anthracenedione sulfonic acid, sodium salt	49 FR 22128 (22129) (5-25-84)	Aug. 10, 1984
P 84-703	Oxo-octyl acetate	49 FR 22128 (22128) (5-25-84)	Oct 29, 1984
P 84-713	Generic name: Acrylated alkoxylated aliphatic polyol	49 FR 22128 (22130) (5-25-84)	Feb. 1, 1985.
P 84-737	Generic name: Glycol ether	49 FR 22865 (22866) (6-1-84)	Nov. 19, 1984
P 84-738	Generic name: Glycol ether	49 FR 222865 (22866) (6-1-84)	Nov. 29, 1984
P 84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR 22865 (22866) (6-1-84)	Aug. 22, 1984
P 84-796	Generic name: Polyfunctional aziridine	49 FR 24782 (6-15-84)	Dec. 17, 1984
P 84-814	Generic name: Polysubstituted polyol	49 FR 24782 (24784) (6-15-84)	Jan. 4, 1985
P 84-824	Generic name: Brominated aromatic	49 FR 25676 (6-22-84)	Feb. 7, 1985
P 84-858	Generic name: Polyalkylene glycol ether acrylate	49 FR 26800 (26801) (6-29-84)	Jan. 3, 1985
P 84-881	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28614 (28615) (7-13-84)	Oct 31, 1984
P 84-886	Generic name: Triazine derivative	49 FR 28614 (28615) (7-13-84)	Oct 22, 1984
P 84-895	Generic name: Substituted-substituted benzenesulfonic acid coupled with substituted-substituted benzenes and substituted substituted naphthalenedisulfonic acid, sodium salt.	49 FR 28614 (28616) (7-13-84)	Nov. 16, 1984
P 84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris(2,3-dibromopropyl)-	49 FR 28616 (28817) (7-13-84)	Mar 26, 1985
P 84-901	Bis(tetrabromobisphenol A)Bis(tribromophenyl)ethylenetetracarbonate	49 FR 28616 (28817) (7-13-84)	Feb. 7, 1985
P 84-902	Hexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do.
P 84-903	N-methylhexabromodiphenyl amine	49 FR 28616(28617) (7-13-84)	Do
P 84-913	Generic name: N,N′-bis(2-(2-(3-alkyl)thiasoline)vinyl)-1, 4-phenylene diamine double salt	49 FR 28616 (28818) (7-13-84)	Nov. 28, 1984
P 84-938	Polymer of hydroxy ethyl acrylate and polyisocyanate T 1890/100	49 FR 29451 (29453) (7-20-84)	Jan. 3, 1985
P 84-954	Generic name: Substituted aromatic	49 FR 30238 (30239) (7-27-84)	Oct. 10, 1984
P 84-968	Generic name: Modified sodium polyacrylate	49 FR 30238 (30240) (7-27-84)	Feb. 11, 1985
P 84-989	4-amino-3,6-bis[5-[4-(3-carboxypyridinio)-6-(4-chloro-3-sulfonateanilino)-1,3,5-triazin-2-ylamino]-2-sulfonato-phenyl-azo]-5-hydroxy-2,7-naphthalene-disulfonate-dihydroxid, hexasodium.	49 FR 31136 (31137) (8-3-84)	Oct. 16, 1984
P 84-1005	Generic name: Alkyl amine derivative	49 FR 32110 (8-10-84)	Oct. 24, 1984
P 84-1007	Generic name: 3-alkyl-2-(2-anilino)vinyl thiazolinium salt	49 FR 32110 (8-10-84)	Jan. 7, 1985
P 84-1053	Generic name. Ethoxylated vegetable fatty acid	49 FR 33718 (33720) (8-24-84)	Oct 26, 1984
P 84-1062	Methyl vinyl sulfone	49 FR 33718 (33721) (8-24-84)	Mar. 25, 1985
P 84-1074	Generic name: Polyurethane polymer	49 FR 34572 (8-31-84)	Mar. 11, 1985
P 84-1079	Generic name: Alkylated diphenyl oxide	49 FR 34572 (34573) (8-31-84)	Nov 26, 1984
P 84-1114	Generic name: Sodium salt of sulfonated, alkylated diphenyl oxide	49 FR 35414 (35416) (9-7-84)	Nov 19, 1984
P 84-1128	Generic name: Isoalkyleneoxy alkanol	49 FR 35414 (35417) (9-7-84)	Nov 26, 1984
P 84-1129	Acetic acid, ester with C_9–C_{11} iso alcohols, C_{10}-rich	49 FR 35414 (35417) (9-7-84)	Jan. 10, 1985.
P 84-1130	Acetic acid, ester with C_8–C_{10} alcohols, C_9-rich	49 FR 35414 (35417) (9-7-84)	Do.
P 84-1131	Acetic acid, ester with C_{11}–C_{14} iso alcohols, C_{13}-rich	49 FR 35414 (35417) (9-7-84)	Do
P 84-1136	Generic name: Substituted aromatic amide	49 FR 36151 (36152) (9-14-84)	Feb. 4, 1985
P 84-1137	Generic name: Cycloaliphatic epoxide	49 FR 36151 (36152) (9-14-84)	Feb. 4, 1985.
P 84-1144	Generic name: Isoalkyleneoxy alkanoate	49 FR 36151 (36152) (9-14-84)	Feb. 11, 1985.
P 84-1145	Generic name: Alkyltrialkoxysilane	49 FR 36151 (36152) (9-14-84)	Nov 27, 1984
P 84-1182	Generic name: Aminopolyamide-epichloro-hydrin resin	49 FR 38356 (38357) (9-28-84)	Jan 11, 1985.
P 84-1183	Generic name: Aminopolyamide-epichloro-hydrin polymer	49 FR 33356 (38357) (9-28-84)	Do.
P 84-1188	Generic name: Modified acrylamide polymer	49 FR 38356 (38357) (9-28-84)	Dec. 7, 1984.
P 84-1204	Generic name: Substituted, sulfonated naphthylazo sodium salt	49 FR 38356 (38359) (9-28-84)	Dec. 17, 1984
P 84-1219	Generic name: Substituted pyridine	49 FR 39379 (39380) (10-5-84)	Feb. 5, 1985
P 84-1228	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Jan. 8, 1985
P 84-1229	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Do.
P 85-8	Generic name: Polyether polyester urethane	49 FR 41100 (41101) (10-19-84)	Dec. 17, 1984.
P 85-16	Generic name: Acrylamide unsaturated quaternary ammonium copolymer	49 FR 41102 (41103) (10-19-84)	Jan. 4, 1985
P 85-30	Generic name: Carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	49 FR 43105 (43106) (10-26-84)	Jan. 9, 1985.
P 85-31	Generic name: Carbopolycycle sulfonate of substituted heteropolycycle	49 FR 43105 (43106) (10-26-84)	Do.
P 85-36	Generic name: Substituted pyridine	49 FR 43105 (43106) (10-26-84)	Feb. 5, 1985.
P 85-67	2,2′-diallyl-4,4′-sulfonyl diphenol	49 FR 44139 (44140) (11-2-84)	Jan. 23, 1985
P 85-109	Generic name: Arylthiodialkanoylhydrazide	49 FR 45657 (11-19-84)	Jan. 22, 1985
P 85-118	Generic name: Polyurethane	49 FR 45657 (45658) (11-19-84)	Jan. 30, 1985.
P 85-141	Generic name: Polyester acrylate	49 FR 46852 (46853) (11-26-84)	Feb. 12, 1985.
P 85-142	Generic name: Aromatic epoxy ester	49 FR 46852 (46853) (11-26-84)	Do.
P 85-152	Generic name: Reacted epoxy resin	49 FR 47108 (47109) (11-30-84)	Feb. 13, 1985
P 85-155	Generic name: Halogenated aromatic sulfamide	49 FR 47108 (47109) (11-30-84)	Do.
P 85-159	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Feb. 16, 1985.
P 85-160	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do
P 85-161	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do.
P 85-162	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do.
P 85-194	Generic name: Acid amide salt	49 FR 47921 (12-7-84	Feb. 20, 1985
P 85-216	Generic name: Substituted pyridine	49 FR 47921 (47922) (12-7-84)	Feb. 23, 1985.
P 85-234	Generic name: Disubstituted sulfide	49 FR 47921 (47924) (12-7-84)	Feb. 26, 1985.
P 85-236	Generic name: Substituted pyridine	49 FR 48801 (48802) (12-14-84)	Feb 27, 1985.
P 85-301	Generic name: Urethane acrylate	49 FR 50444 (12-28-84)	Mar. 26, 1985.
P 85-459	Generic name: Aromatic tertiary diamine	50 FR 6383 (6384) (2-15-85)	Feb. 19, 1985.

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[OPTS-42064; FRL-2809-6]

1,2-Dibromo-4-(1,2-Dibromoethyl)Cyclohexane; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's (ITC) designation of 1,2-dibromo-4-(1,2-dibromoethyl)cyclohexane (tetrabromoethylcyclohexane or TBEC.

CAS No. 3322-93-8) for priority consideration for health effects, chemical fate, and ecological effects testing. EPA is not initiating rulemaking at this time under section 4(a) of the Toxic Substance Control Act (TSCA) to require any testing of TBEC because EPA's analysis of data obtained under TSCA indicates that few people are exposed to TBEC and then at very low levels, that little if any TBEC is released to the environment, and that existing data do not suggest potential adverse effects from exposure to TBEC given the low exposures that are expected.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require health effects, chemical fate, or ecological effects testing of TBEC as designated by the ITC in its Fourteenth Report.

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC designated TBEC for priority consideration in its Fourteenth Report, published in the **Federal Register** of May 29, 1984 (49 FR 22389). This notice constitutes EPA's response to the ITC's designation of TBEC.

The ITC recommended the following health effects tests for TBEC: (1) Toxicokinetics; (2) subchronic studies including sperm morphology and vaginal cytology examination; and (3) chronic toxicity studies, including oncogenicity if it is determined that there is substantial exposure to the compound. The ITC's rationale for health effects testing was that TBEC is structurally related to ethylene dibromide (EDB), a known carcinogen that has been shown to produce reproductive abnormalities in several species. The ITC also expected releases from production and use to result in human exposure.

The ITC recommended the following chemical fate tests for TBEC: (1) Water solubility: (2) octanol-water partition coefficient; (3) soil mobility; and (4) persistence. The ITC's rationale for chemical fate testing was that releases from production and use are likely to result in environmental exposure including releases to the aquatic environment.

The ITC recommended the following ecological effects tests for TBEC: (1) Acute and chronic toxicity to fish, aquatic invertebrates, and algae; and (2) bioconcentration. The ITC's rationale for ecological effects testing of TBEC was that releases to the aquatic environment from producton and use of TBEC are likely. Athough no data were found, the ITC stated that TBEC may be highly toxic to aquatic organisms and may bioconcentrate substantially. A similar compound, 1,2-dichloro-4-(1,2-dichloroethyl)cyclohexane, adversely affected trout and bluegills after 1 hour of exposure at 5 parts per million (ppm).

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are sufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in which both exposure and toxicity information are considered in making a section 4(a)(1)(A)(i) finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure, or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for TBEC, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of TBEC under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency.

II. Review of Available Data

A. Human Exposure and Environmental Release

One company currently manufactures TBEC, Ethyl/Saytech in Sayreville, NJ., a subsidiary of Ethyl Corporation. Production was about 600,000 pounds in 1982 by Chemtronics, Inc. under contract to Saytex Corporation (an Ethyl Corporation Company) (Refs. 1 and 2). Ethyl Corporation has submitted to EPA production volumes for 1979, 1980, 1981, and 1983 and a projected production volume for 1984 as confidential business information (Ref. 3).

Ethyl/Saytech reports that TBEC is produced in a batch operation involving closed reaction vessels, then dried and packaged in an open operation (Ref. 4). The number of workers potentially exposed to TBEC per shift is small—three during production operations and

one in the baghouse where packaging occurs (Refs. 4 and 5). Exposure to TBEC is unlikely to occur during the wet phase of its production, since the types of closed equipment used for handling liquids normally preclude operator contact. A higher potential for dermal and inhalation exposure to TBEC exists when the compound is handled as a solid (drying and packaging) rather than as a liquid. To minimize worker exposure during packaging, employees are required to wear disposable coveralls, shoe covers, dust caps, cotton gloves, and dust masks. The packaging is done in a separate room within the manufacturing facility, thereby reducing the chance of exposure for workers in other parts of the plant (Ref. 4). At ambient temperatures, the maximum airborne concentration of TBEC vapor that can be attained is approximately 0.04 ppm on the basis of an estimated vapor pressure of TBEC at 20°C of 2.83×10^{-5} torr (Ref. 6). Neither the Occupational Safety and Health Administration (OSHA) nor the American Conference of Governmental Industrial Hygienists (ACGIH) has established a standard for TBEC.

TBEC is used non-consumptively, primarily as an additive type flame retardant in expandable polystyrene (EPS) beads, from which polystyrene bead boards are made. These bead boards are used for thermal insulation in housing. TBEC is also used as an additive type flame retardant in extruded polystyrene foam and as a flame retardant in an adhesive in fabric/vinyl lamination (Ref. 5). None of the companies that process TBEC for any of its applications are manufacturers of the chemical.

During its addition to EPS beads, virtually no human exposure to TBEC is likely to occur, since this process takes place in a closed vessel (Refs. 7 and 8). Routine contact would be limited to a small number of people involved in loading TBEC into process vessels. Ethyl/Saytech recommends that protective clothing including gloves be worn when handling TBEC.

The production of EPS bead board from EPS beads impregnated with 1 percent TBEC requires little direct operator involvement, and hence poses little potential for dermal exposure to TBEC. Routine contact would be limited to loading the EPS beads into the pre-expander feed hopper. Although TBEC vapors could conceivably be released during various processing steps (most notably, pre-expansion), the maximum ambient concentration of TBEC vapor would be limited by its saturated vapor pressure at the ambient air temperature (estimated to be 0.04 ppm at 20 °C) (Ref. 6). Occupational and consumer exposure to TBEC from its use in polystyrene bead board would be extremely low because TBEC impregnated in polystyrene would have little tendency to migrate from the plastic. The low tendency of a flame retardant to migrate from plastics is not an incidental property; it is considered a desirable trait, and one criterion by which a flame retardant is chosen (Ref. 9).

In other processes, such as the extrusion of polystyrene foam, little exposure to TBEC is expected since release of TBEC vapor at very high temperatures would only occur within the extruder; the temperature of the plastic would drop immediately upon extrusion. Little exposure to TBEC is expected to result from its adhesive use, since application of the adhesive would be an automated process (Ref. 10).

From information on production and use of TBEC, EPA concludes that little if any TBEC is released to the environment during its manufacture, processing, distribution in commerce, use or disposal. Ethyl/Saytech reports that it uses baghouse collectors with a rated efficiency of 99 percent to control release of TBEC dust to the atmosphere (Ref. 4). The sole aqueous waste stream associated with the production of TBEC is sent to a holding tank and then distilled. After solvent recovery, still bottoms are sent to a licensed waste dump site (Refs. 11 and 12). All other production wastes are disposed of in a licensed landfill (Ref. 4).

When EPS beads are suspended in water prior to the addition of TBEC, aqueous wastes may result. However, even if water were used on a once-through basis at a rate of 1 lb water/lb polystyrene, the maximum annual release of dissolved TBEC nationwide due to this process would be 60 lb, assuming 60 million pounds of TBEC-treated EPS bead to be produced annually (Ref. 13) and assuming a water solubility of 1 ppm (Ref. 14) for TBEC. In addition, on the basis of estimated soil adsorption coefficients for TBEC of 1,230 and 11,900 (Refs. 15 and 16), any TBEC entering a municipal sewage treatment plant should be adsorbed onto the sludge. It is unlikely that any aqueous wastes containing TBEC would be generated in the production of extruded polystryrene foam, adhesives, or bead board containing TBEC.

The disposal of bead board impregnated with TBEC does not raise EPA concerns for a number of reasons. First, bead board contains a relatively low concentration of TBEC (1 percent w/w). Secondly, the polymer matrix is impreganted with TBEC, and therefore release to the enviroment is expected to be very slow. Finally, as discussed in Unite II.C of this notice, TBEC will strongly adsorb to the organic matter in soil.

B. Health Effects

1. *Toxicokinetics.* Cannon Laboratories (Ref. 17) reported on the pattern of excretion and the tissue distribution of ^{14}C–TBEC in rats. Five rats (age and sex not specified) were given daily oral doses of ^{14}C–TBEC for 14 days, equivalent to a total of 1.13 mg/kg. Two of the five rats were housed in metabolic cages. The other three animals were sacrificed 7, 14, and 30 days after their last dose of ^{14}C–TBEC to determine the tissue distribution of the radiolabel.

Excreta data for the two rats maintained in metabolic cages are as follows. Of the label introduced as ^{14}C–TBEC, between 55 and 66 percent was recovered in the urine; 23 to 28 percent was recovered in the feces. The nature of the substance(s) containing the ^{14}C–label in these samples was not specified. The data also show that 0.28 percent of the ^{14}C was recovered as $^{14}CO_2$, and 0.22 percent as other (unspecified) ^{14}C–labeled volatiles.

The tissue sample concentrations of ^{14}C detected on study day 15 were: liver (2.03–2.40 ppm)>kidney (1.85–2.01 ppm)>fat (0.363–0.427 ppm(>brain (0.207–0.297 ppm)>leg muscle (0.086–0.98 ppm). Thirty days after the last dose of ^{14}C–TBEC, the concentrations of ^{14}C in tissue samples were reduced >77 percent: kidney (0.230 ppm)> liver (0.153)>brain (0.055 ppm)>fat (0.032 ppm)>leg muscle (0.019 ppm).

These data indicate that what TBEC is absorbed is fairly readily excreted.

2. *Acute Toxicity.* In a 14-day acute oral toxicity study in ten Sprague-Dawley rats (5 males and 5 females) an LD50 of 3,220 mg/kg has been reported (Ref. 18).

In a 14-day acute dermal study in rabbits (5 males and 5 females) (Ref. 19), none of the animals died during the 14-day postexposure observation period. Slight to moderate erythema was observed in 5 of the 10 rabbits at 2 and 4 hours after the removal of the TBEC sample. No visible lesions were observed in any of the animals at necropsy. Based on these observations, a dermal LD50 of >5g/kg for TBEC in rabbits was reported.

The results of a primary skin irritation test in six albino rabbits (sex, age and weight not specified) have been reported (Ref. 20). TBEC (0.5 g per area) was applied to two sites, one intact and one

abraded, on each rabbit. The exposed sites were observed at 24 and 72 hours after the removal of TBEC for signs of irritation. Both the 24- and 72-hour observations were negative. In this study, TBEC (0.5 g per site) was not an irritant to either intact or abraded skin in rabbits.

The results of an eye irritation study in six rabbits (age, sex, and weight not specified) have been reported (Ref. 21). TBEC (0.1 g) was instilled into one eye of each animal; the untreated eye of the animal served as the control. Reactions to the treatment were recorded at 24, 48, and 72 hours. An "initial reaction quite severe" was noted for one animal without further details. All other observations were negative.

These data indicate that TBEC does not exhibit a high degree of acute toxicity.

3. *Mutagenicity.* TBEC did not exhibit mutagenic activity in : (1) *Salmonella typhimurium*, strains TA98, TA100, TA1535 or TA1537 (Ref. 22); (2) *Salmonella typhimurium*, strains TA98, TA100, TA1535, TA1538 or *Saccharomyces cerevisiae-D4 (gene conversion assay)* (Ref. 23); or *Salmonella typhimurium*, strains TA98, TA100, TA1535, TA1537 and TA1538 (Ref. 24).

Chromosomal aberration and sister chromatid exchange studies on TBEC in Chinese hamster ovary cells are planned by NTP (Ref. 25).

4. *Subchronic Toxicity.* Cannon Laboratories (Ref. 26) conducted a 90-day feeding study with TBEC in rats. Sprague-Dawley rats (15 males and 15 females per dose level) were fed TBEC [0, 0.01, 0.10, and 1.0 percent, (Groups I–IV, respectively)], mixed in NIH-07 rat mash for 90 days. Doses for groups I–IV, respectively, were approximately 0, 4, 40, and 400 mg/kg/day. The rats were given the control diet (0 percent TBEC) for 12 days before initiation of the study, and from day 91 to autopsy, which was on study day 133 or 136. The active feeding portion of the study was discontinued at day 90.

On day 90, three male and three female rats from each group were sacrificed. All tissues and organs were examined for any gross abnormalities. The liver, both kidneys, thyroid and heart were weighed and the relative organ weights calculated. The remaining animals were sacrificed on day 133 or 136, and their tissues and organs examined for gross abnormalities.

Tissue samples were obtained from all rats sacrificed on day 90, 133, or 136 in the 0 and 1.0 percent TBEC groups and from those in the 0.01 and 0.10 percent TBEC groups that appeared abnormal at autopsy. The following tissues were fixed, stained with hematoxylin and eosin, and examined using a light microscope: adrenals; bone marrow; brain; esophagus; heart, intestine (large or small not specified); kidney; liver; lung; oral mucosa; prostate; salivary glands; spleen; stomach; testes or ovaries; thyroid, urinary bladder; uterus; gross lesions; and tissue masses.

The mean body weights of the 1.0 percent TBEC-treated group were significantly lower than those of the other three groups during weeks 1–19. Mean food consumption values of the rats that received the test material at the 1.0 percent level were lower than the other 3 groups for week 1 and higher than the other 3 groups for weeks 8 and 14 in males, while in females the mean food consumption values were lower than the other 3 groups for week 1 and higher than the other 3 groups for weeks 3, 4, 14, and 15.

In the animals sacrificed on day 90, statistically significant difference (p values not given) were detected in males treated with 1.0 percent TBEC. The 1.0 percent TBEC group mean body weight (416.3 g) was significantly less than that of the control group (522.7 g) and the relative liver weight was significantly greater (5.4 percent) than that of the control group (4.5 percent). In females treated with 1.0 percent TBEC, the mean absolute heart weight was significantly less (0.94 g) than that of the control group (1.17 g), and the relative liver (4.7 percent), kidney (1.08 percent) and thyroid (0.0097 percent) weights were significantly greater than those of the control group (4.0, 0.86, and 0.0068 percent, respectively).

For male rats treated with 1.0 percent TBEC and sacrificed on study day 133 or 136, the mean absolute weights of the thyroid (0.028 g) and heart (1.56 g) and the mean absolute body weight (471 g) were significantly less than those of the control group (0.033, 1.80, and 549.4 g, respectively). No significant difference was found in the relative organ weights between this group and the control group.

For female rats treated with 1.0 percent TBEC and sacrificed on study day 133 or 136, the mean absolute body weight (288.1 g) was significantly less than that of the control animals (319.1 g), and the relative kidney (0.99 percent) and thyroid (0.0095 percent) weights were significantly less than those of the controls (0.86 and 0.0078 percent, respectively).

Histopathologic evaluation found bronchopneumonia, colloid storage in thyroid, lipid depletion in adrenals, dilated tubules in kidneys, or subcutaneous adenocarcinoma, respectively, in 19, 7, 45, 6, and 2 percent (1 animal) of the TBEC-exposed animals examined and 14, 30, 4, 68, and 0 percent of the control group. As noted previously, histopathologic examination was performed on all animals in the control and 1.0 percent dose groups and on only those animals from the 0.01 and 0.1 percent dose group judged abnormal in the gross necropsy. The subcutaneous adenocarcinoma occurred in one animal in the 0.01 percent group. It is most likely a spontaneous tumor of a type that has a very high background level (75 to 95 percent) at one year of age in the Sprague-Dawley rat. In addition, there were sporadic incidences (2–4 percent) of chronic bronchitis, hemorrhagic lungs, chronic renal disease, and hydronephritis of the kidney in the test groups. Cannon (Ref. 26) reported that "no marked differences in the rate of various histopathologic anomalies" were apparent among the 0.01, 0.10, and 1.0 percent TBEC-fed groups. No adverse effects were reported on histopathological examination of the reproductive organs.

While this study is not definitive, the unremarkable effects reported in this study do not support a requirement for additional health effects testing under section 4(a)(1)(A) of TSCA.

C. Chemical Fate

1. *Water Solubility and Octanol/Water Partition Coefficient.* A water solubility of 1.0 mg/L (1 ppm) (Ref. 14) and a log of the octanol/water partition coefficient (log P) of 4.96 for TBEC (Ref. 27) have been estimated. These estimated properties indicate that under equilibrium conditions, TBEC will partition primarily into the soil/sediment compartment.

2. *Soil mobility.* The adsorption properties of TBEC to soil have not been reported in the available literature. However, using equations developed by Kenaga (Ref. 14) and Kenaga and Goring (Ref. 15) a value for the adsorption coefficient (K_{oc}) can be estimated from either the log P or water solubility values. EPA has calculated K_{oc} values of 11,900 and 1,230 from a calculated log P of 4.96 and an estimated water solubility value of 1.0 mg/L, respectively. These estimates of K_{oc} indicate that TBEC will adsorb strongly to organic matter in soil and sediment and therefore can be considered relatively immobile in these media (Ref. 14).

3. *Persistence.* EPA is not aware of any information on the environmental persistence of TBEC in the available literature. However, as discussed in Unit II.A of this notice, little if any TBEC is expected to be released to the

environment as a result of its manufacture, distribution in commerce, processing, use, or disposal.

D. Environmental Effects

1. *Acute Toxicity.* EPA is not aware of any information on environmental effects of TBEC in the available literature. However, a report was found on the acute effects of the corresponding chlorinated compound, 1,2-dichloro-4-(1,2-dichloroethyl)cyclohexane (DDC), mentioned by the ITC, and 1,2-dibromocyclohexane (DBC) in the larval sea lamprey *Petromyzon marinus*, the rainbow trout *Salmo gairdnerii*, and bluegill sunfish *Lepomis macrochirus* (Ref. 28). In a static, 24-hour screening test conducted with 5.0 ppm DDC, two specimens of each species were exposed. The test chemical had no effect on the lampreys but caused unspecified "illness" to both fish species in about 1 hour; no deaths were observed. In contrast, 5.0 ppm DBC produced no effect on sea lamprey and rainbow trout. No testing of DBC was performed with the bluegill fish.

The purpose of this study was to screen as many chemicals as possible for selective toxicity to the lamprey but not to the fish. The experiments utilized only two specimens of each species, and only one concentration of DDC and DBC was tested. No replicates were done. Details on the methodology used for each of the 4,346 chemicals tested were not reported, and "illness" was not defined. Because of the above deficiencies, a definitive conclusion on the toxicity of DDC and DBC cannot be made. However, the data suggest that neither DDC nor DBC was toxic to the sea lamprey larva, but that DDC was toxic to both fish species at 5 ppm. Nonetheless, as discussed in Unit II.A of this notice, little if any TBEC is expected to be released to the environment as a result of its manufacture, distribution in commerce, processing, use, or disposal.

2. *Bioconcentration.* No data were found in the available literature on the bioconcentration of TBEC in food chains and ecosystems. Using the equation ($\log BCF = 0.85 \log P - 0.70$) developed by Veith (Ref. 29), the bioconcentration factor (BCF) for TBEC estimated from its log P value is 3,280. This estimate indicates that TBEC may bioconcentrate to a signficant degree (Ref. 29). However, as discussed in Unit II.A of this notice, little if any TBEC is expected to be released to the environment as a result of its manufacture, distribution in commerce, processing, use, or disposal.

III. Decision Not To Initiate Rulemaking

EPA has decided not to initiate rulemaking at this time to require health effects, chemical fate or ecological effects testing of TBEC. The ITC recommended health effects testing for TBEC because it believed that TBEC was structurally related to EDB and releases from production and use were expected to result in human exposure. Although there are only limited health effects data on TBEC (Unit II.B), they suggest that TBEC is not as toxic as EDB.

Oral LD_{50}s for EDB of 0.117 and 0.246 g/kg have been reported in female and male rats, respectively (Ref. 30). A dermal LD_{50} for EDB of 0.300 g/kg in the rabbit has been reported (Ref. 31). Rowe et al. (Ref. 30) reported increased weight of kidneys, lungs, and liver and decreased weight of testes and spleen in a 13-week subchronic inhalation study with EDB in rats. Exposures were 7 hours per day, 5 days per week at 50 ppm. (This corresponds to an oral dose of 57 mg/kg/day assuming 100 percent absorption). Exposure to 25 ppm EDB for 30.5 weeks (7 hours per day, 5 days per week) showed no adverse effects.

The Occupational Safety and Health Administration (OSHA) in support of its proposal to lower the permissible exposure limit (PEL) for EDB to 0.1 ppm (Ref. 32) has summarized the health effects data on EDB. Reproductive effects of EDB in several animal species have been clearly established, specifically in early stages of sperm development. A series of male reproductive studies was carried out in bulls (Refs. 33 through 41). Reproductive impairment, as measured by decreased sperm density and motility and speam abnormalities, was found after two weeks of exposure to 2 or 4 mg/kg EDB in the diet.

The mutagenic effects of EDB have been reviewed in detail by NIOSH (Ref. 39), Rannug (Reg. 40), IARC (Ref. 41), and EPA (Ref. 42). Mutagenic effects have been detected in a variety of *in vitro* and *in vivo* systems including *Salmonella typhimurium* (Refs. 32 through 48).

On the basis of the scientific evidence presented in its proposal to lower the PEL of EDB to 0.1 ppm (Ref. 32) OSHA stated that it "believes that EDB is a potent animal carcinogen. EDB produces tumors at the site of direct contact and at sites remote from the site of administration" (Ref. 32).

OSHA stated in its proposal (Ref. 32) that it "believes that the total risk to the health of employees exposed to EDB is the result of the compounded risks from carcinogenicity, mutagenicity, spermatotoxicity, teratogenicity, and damage to the kidneys, liver, spleen, respiratory tract, central nervous system, circulatory system, skin and eyes. Therefore, the totality of the adverse health effects associated with exposure to EDB warrant the reduction in the PEL to 0.10 parts per million."

Even if TBEC were as toxic as EDB, a compound with far broader human exposure, expected exposure levels to TBEC are already below the proposed OSHA 8-hour time-weighted average (TWA) permissible exposure limit (PEL) for EDB of 0.10 ppm (Ref. 32). Because few people are exposed to TBEC and at expected exposure levels below 0.10 ppm and because consumer exposure to TBEC is expected to be negligible, EPA concludes that health effects testing for TBEC is not warranted.

The ITC recommended chemical fate and ecotoxicity testing of TBEC because it believed that the production and uses of TBEC made environmental exposure likely, including releases to the aquatic environment. However, EPA concludes that, on the basis of information presented in Unit II.A of this notice, there is neither sufficient environmental release to support TSCA section 4(a)(1)(A) or 4(a)(1)(B) findings for chemical fate and ecological effects testing of TBEC nor existing ecotoxicity data to support a TSCA section 4(a)(1)(A) finding that TBEC may present an unreasonable risk to the environment.

IV. Public Record

EPA has establshed a public record for this decision not to test under Section 4 of TSCA (docket number OPTS-42064). The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notice containing the ITC Report designating 1,2-dibromo-4-(1,2-dibromoethy) cyclohexane to the Priority List.

(2) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(3) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) Memorandum from George E. Parris, Dynamac Corporation, Rockville, MD to TSCA Interagency Testing Committee. Production and use of 1,2-dibromo-4-(1,2-dibromoethyl)-cyclohexane, PIR-327. November 10, 1982.

(2) USEPA. Fourteenth report of the ITC to the Administrator, receipt of report and request for comments, 49 FR 22389. May 29, 1984.

(3) Ethyl Corporation, Baton Rouge, LA. Letter submitted to Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC. Information needs for 1,2-dibromo-4-(1,2-dibromoethyl)-cyclohexane. Confidential Business Information. August 17, 1984.

(4) Dynamac Corporation, Rockville, MD. Letter from W. W. Perry to Martin Grief, Environmental Protection Agency, Washington, DC, with information addendum A on IR-327, 1,2-dibromo-4-(1,2-dibromoethyl)-cyclohexane attached. January 27, 1983.

(5) Ethyl Corporation, Baton Rouge, LA. Answers to questions submitted by Tina Rosenthal, Dynamac Corporation, Rockville, MD. August 17, 1984.

(6) Dynamac Corporation, Rockville, MD. TBEC exposure calculations. August 7, 1984.

(7) Schwarz, R. A. (inventor), Cosden Technology, Inc. (assignee). Foamable polymeric styrene particles. U.S. Patent 4,389,495.

(8) Innes, James, Ethyl Corporation, Baton Rouge, LA. Personal communication with John Harris, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC. August 24, 1984.

(9) Modern Plastics. Plastiscope: better bromides, safer foams pace FR advances 61(5):12,14. 1984.

(10) Innes, James, Ethyl Corporation, Baton Rouge, LA. Personal communication with John Harris, Office of Pesticides and Toxic Substances, U.S. Environmental Proteciton Agency, Washington, DC. August 27, 1984.

(11) Makfinsky, Laverne, Ethyl/Saytech, Sayreville, NJ. Personal communication with John Harris, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC. August 24, 1984.

(12) Dynamac Corporation, Rockville, MD. Letter from Ann Engelkemeir to Laverne Makfinsky, Ethyl/Saytech, Sayreville, NJ. September 13, 1984.

(13) Engelkemeir, Ann, Dynamac Corporation, Rockville, MD. "Calculations: Theoretical Maximum Loss of TBEC Dissolved in Wastewater from Evaporation of TBEC into Beads via Aqueous Suspension." September 27, 1984.

(14) Dynamac Corporation, Rockville, MD. "Estimation of Water Solubility of TBEC at 25°C." October 5, 1984.

(15) Kenaga, E. E. "Predicted Bioconcentration and Soil Sorption Coefficients of Pesticides and Other Chemicals." Ecotoxicol. Environ. Saf. 4:26–38. 1980.

(16) Kenaga, E. E. and C. A. I. Goring. "Relationship Between Water Solubility, Soil Sorption, Octanol-Water Partitioning, and Concentration of Chemicals in Biota." ASTM Spec. Tech. Publ. STP. 707:78–115. 1980.

(17) Cannon Laboratories, Inc. "Excretion and Tissue Distribution of ^{14}C-RW-4-178A Administered Orally to Rats." Laboratory No. 8E-0187. Submitted to Cities Service Corporation, Tulsa, OK, July 17, 1978. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(18) Pharmakon Research International, Inc. "Acute Oral Toxicity Study in Rats (14 Days)." PH 402-ET-004-81. Saytech BCL-462, Lot No. 14-1487E. October 16, 1981. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(19) Pharmakon Research International, Inc. "Acute Dermal Toxicity Test in Rabbits." PH 422-005-81. Saytech BCL-462, Lot No. 14-1487E. October 13, 1981. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(20) WARF Institute, Inc. "Primary Skin Irritation: BCL-462 GR-2-23A." WARF No. 0102052. Madison, WI. October 28, 1970. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

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(22) Weisburger, E. K. TSCA Interagency Testing Committee. Memorandum to D. Canter, National Toxicology Program, NIH. November 8, 1983.

(23) Litton Bionetics, Inc. "Mutagenicity Evaluation of RW 4144-1." Final report. LBI Project No. 20838. Submitted to: Cities Service Company: Tulsa, OK. October, 1977. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(24) Cannon Laboratories, Inc. "Evaluation of the Mutagenic Potential of 1062-462-SB in the Ames Salmonella/Microsome Plate Test." Laboratory No. 9E-6321. October 22, 1979. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(25) Jordan, F., NTP (National Toxicology Program) Results Report. Results and Status Information on All NTP Chemicals Produced from NTP Chemtrack System. November 1, 1984.

(26) Cannon Laboratories, Inc. "Ninety-Day Feeding Study in Rats Evaluating Cities Service Compound RW-4-178A." Laboratory No. 8E-0182. Submitted to: Cities Service Company: Tulsa, OK. September 19, 1978. Submitted to: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC, by Ethyl Corporation, Baton Rouge, LA. August 17, 1984.

(27) Dynamac Corporation, Rockville, MD "Estimation of Log Octanol/Water Partition Coefficient for TBEC." October 5, 1984.

(28) Applegate, V. C., J. H. Howell, A. E. Hall, and M. A. Smith. "Toxicity of 4,346 Chemicals to Larval Lampreys and Fishes." Fish and Wildlife Service, U.S. Department of Interior, Washington, DC. Special scientific report Fisheries No. 207. March 1957.

(29) Veith, G.D., D.L. DeFoe and V.V. Bergstedt. "Measuring and Estimating the Bioconcentration Factor of Chemicals in Fish." J. Fish. Res. Board Can. 36:1040–1048. 1979.

(30) Rowe, V.K., H.C. Spencer, D.D. McCollister, and E.M. Adams. "Toxicity of Ethylene Dibromide Determined on Experimental Animals." Arch. Ind. Hyg. Occ. Med. 6:158–73.

(31) NIOSH. Ethane,1,2-dibromo. Registry of Toxic Effects of Chemical Substances: 1981–2, Vol. II. NIOSH Pub. #83-107. Cincinnati, Ohio. 222. 1983.

(32) OSHA. Occupational exposure to ethylene dibromide; notice of proposed rulemaking. 48 FR 45956. October 7, 1983.

(33) Amir, D. and R. Volcanj. "Effect of dietary ethylene dibromide on bull semen." Nature 206:99–100. 1965.

(34) Amir, D. and R. Volcani. "The effect of dietary ethylene dibromide on the testes of bulls." Fertility and Sterility 18:144. 1967.

(35) Amir, D. "The sites of the spermicidal action of ethylene dibromide in bulls." J. Reprod. Fertil. 35:519–25. Exhibit 4-22. 1973.

(36) Amir, D. "Individual and age differences in the spermicidal effect of ethylene dibromide in bulls." J. Reprod. Fertil. 44:561–65. 1975.

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(38) Amir, D. C. Esnault, J.N. and M. Courot. "DNA and protein changes in the spermatozoa of bulls treated orally with ethylene dibromide." J. Reprod. Fert. 51:453. 1977.

(39) National Institution for Occupational Safety and Health. Criteria for a recommended standard * * * Occupational exposure to ethylene dibromide, DHEW (NIOSH) Publication No. 77-221. Exhibit 4-4. 1977.

(40) Rannug, U. "Genotoxic effects of 1,2-dibromoethane and 1,2-dichloroethane." Mutat. Res. 76(3):269–295. 1980.

(41) IARC, Ethylene Dibromide. In: IARC monographs on the evaluation of the carcinogenic risk of chemicals to man: some fumigants, the herbicides 2,4-D and 2,5-T chlorinated dibenzodioxins and miscellaneous industrial chemicals. Vol 15. World Health Organization, Lyon, France. 195–209. 1977.

(42) USEPA. Ethylene Dibromide: Rebuttable Presumption Against Registration; Position Document 4. Office of Pesticide Programs. U.S. Environmental Protection Agency. Washington, DC. September 27, 1983.

(43) Ames, B.N. "The detections of chemical mutagens with enteric bacteria," in Hollaender, A. (ed): Chemical Mutagens-Principles and Methods for Their Detection. New York, Plenum; Vol. 1, pp. 267–82. 1971.

(44) Buselmaier, W., G. Rohrborn, and P. Propping. [Pesticide mutagenicity investigations by the host medited assay and the dominant lethal test on mice.] Biol. Zentralbl. 91: 311–25 (Ger). 1972.

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(47) McCann, J., E. Choi, E. Yamasaki, and B.N. Ames. "Detection of carcinogens as mutagens in the Salmonella/microsome test: assay of 300 chemicals." Proc. Nat. Acad. Sci. (Washington, D.C.) 72:5135–5139. 1975.

This record includes basic information considered by the Agency in developing this notice, and is available from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in the OPTS Reading Room, Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record periodically with additional relevant information received.

Authority: 15 U.S.C. 2603.

Dated: April 23, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–11121 Filed 5–7–85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–42069A; FRL–2831–9]

Test Rule Development Process Under the Toxic Substances Control Act; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meetings.

SUMMARY: The EPA has scheduled two public meetings to discuss the process for developing test data pursuant to section 4 of the Toxic Substances Control Act (TSCA). These meetings were requested by the Natural Resources Defense Council (NRDC) and the Chemical Manufacturers Association (CMA).

DATES: The meetings will be held on Monday, May 13, 1985, and on Monday, May 20, 1985, from 10 a.m. to 4 p.m. Meeting location: Channel Inn Hotel, Captain's Room, 650 Water St., SW., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, 401 M St., SW., Washington, D.C. 20460. Toll Free: (800–424–9065; in Washington, D.C.: (554–1404; outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION: EPA has scheduled two public meetings to discuss the process for developing test data pursuant to section 4 of TSCA.

I. Background

NRDC and CMA requested to meet with personnel from EPA to discuss the process for developing test data pursuant to section 4 of TSCA. EPA agreed to meet with representatives from both NRDC and CMA and held a public meeting for that purpose on April 17, 1985. At the meeting, CMA, NRDC, and EPA identified and discussed proposed changes that could be made to the current test rule development process under TSCA section 4 that would speed the development process under TSCA section 4 that would speed the development of needed test data. As a result of the April 17th meeting, EPA agreed to schedule two more public meetings to continue these discussions. These meetings are scheduled for May 13 and May 20. Persons interested in attending one or both of these meetings or in receiving more information about the meetings should call the TSCA Assistance Office (TAO). Should EPA agree to hold subsequent meetings after May 20th to continue these discussions, a separate notice of these meetings will not be published in the **Federal Register.** Therefore, anyone wishing to attend any future meetings in this series of discussions should contact TAO by May 21 in order to be notified in advance of such meetings.

II. Public Record

EPA has established a public record for this series of meetings (docket number OPTS–42069). This record will include a summary of the meetings and any correspondence pertaining to the meetings. The record will be available for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record with additional relevant information as it is received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: May 1, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–11119 Filed 5–7–85; 8:45 am]

BILLING CODE 6560-31-M

[SAB–FRL–2832–1]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on May 22–23, 1985, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 1:00 p.m. on May 22, 1985, and adjurn no later than 1:00 p.m. on May 23, 1985.

The principal purposes of the meeting will be (1) to review the scientific adequacy of a draft Addendum to the Health Assessment Document for Dichloromethane (Methylene Chloride) prepared by the Office of Research and Development (ORD) and dated February 1985 (EPA–600/8–82–004FA); (2) to review an Addendum to a paper on the risk from ingestion of asbestos fibers in drinking water from the Office of Drinking Water and (3) to discuss upcoming issues of current interest to the Committee.

For information on how to obtain copies of the draft Addendum to the Health Assessment Document for Dichloromethane (Methylene Chloride), please write the ORD Publications Office, Center for Environmental Reseach Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684–7562.

For additional information on the Addendum to the paper on the risk from ingestion of asbestos fibers in drinking water, please contact Dr. Joseph Cotruvo by phone at (202) 382–7575 or by mail to: Director, Criteria and Standards Division, Office of Drinking Water (WH–550), 401 M Street, SW., Washington, D.C. 20460.

The meeting will be open to the public. Any member of the public washing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382–2552 or by mail to: Science Advisory Board (A–101F), 401 M Street, SW., Washington, D.C. 20460, no later than c.o.b. May 17, 1985.

Dated: April 30, 1985.

Kathleen Conway,

Staff Director, Science Advisory Board.

[FR Doc. 85–11118 Filed 5–7–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85–130]

Dave Reese et al.; Hearing Designation Order

In re applications of:

	File No.
Dave Reese	BPCT–841019LB
Alden Television, Inc.	BPCT–850108KE
Rebecca Rangel Henton	BPCT–850108KJ

	File No.
Texas Spanish Broadcasters.	BPCT-850108KN
Fort Worth Television, Inc. ...	BPCT-850108KR
Channel 52, Fort Worth Television, Ltd., a Limited Partnership.	BPCT-850108KS
Nuevo Mundo Broadcasting, Inc..	BPCT-850108KT
Benjamin T. Perry, III	BPCT-850108KV
Carter Broadcasting Partnership.	BPCT-850108KW
EAM Broadcasting Co of Fort Worth.	BPCT-850108KX
Channel 52 Limited Partnership.	BPCT-850108KY

For Construction Permit Fort Worth, Texas

Adopted: April 29, 1985.
Released: May 3, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 52, Ft. Worth, Texas; petitions to deny the application of Fort Worth Television, Inc. and Nuevo Mundo Broadcasting, Inc. filed by Channel 52, Fort Worth Television, Ltd.; a statement of the Association of Maximum Service Telecasters, Inc. (AMST);[1] petitions for leave to amend and accompany amendments filed by Alden Television, Inc., Benjamin T. Perry, III, EAM Broadcasting Co. of Fort Worth, and Channel 52, Fort Worth Television, Ltd.;[2] and related pleadings.

2. The effective radiated power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and Tabulated at least every 10° plus any minima or maxima. Rebecca Rangel Henton has not supplied this data. Accordingly, Ms. Henton will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. Section V–C, item 10(e), FCC Form 301, requires an applicant to submit the area and population within the proposed Grade B contour. Benjamin T. Perry, III, has not submitted this information. Additionally, Mr. Perry's application does not include a vertical tower sketch as required by Section V–G, item 6. Accordingly, Mr. Perry will be given 20 days from the release date of this Order to submit an amendment which includes the area and population within the Grade B contour and the vertical tower sketch, to the presiding Administrative Law Judge.

6. Dave Reese's application states that the applicant is a general partnership in Section I, item 1, FCC Form 301. However, the Table I information in Section II, item 5, indicates that the applicant is a limited partnership whose limited partners are yet to be determined. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), the Commission stated that henceforth limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and shows that the limited partners will not be involved in any material respect in the management or operation of the proposed station. *Id.* at 1023. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Mr. Reese can submit the necessary certification and showing. If the certification or showing is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Mr. Reese, upon determining his limited partners, will be required either to state that the limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

7. Armando Quintero, 12.5 percent general partner of Texas Spanish Broadcasters (TSB), is currently employed by Station KESS(FM), Fort Worth, Texas.[3] Mr. Quintero's association with the station may violate the Commission's cross-interest policy, since we do not know the nature of Mr. Quintero's employment with KESS(FM),

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[1] The petitions to deny and the statement filed by AMST pertain to the two applicants' failure to comply with § 73.610 of the Commission's Rules concerning the minimum mileage separation requirements. Each of the applicants amended its application to bring its proposal into compliance with the rule. Accordingly, the petitions to deny and AMST's statement will be dismissed as moot.

[2] The deadiline for filing amendments to the above-captioned applications was February 28, 1985 ("B" cut-off date). On March 13, 1985, Alden Television, Inc. (Alden) filed a petition for leave to amend and an accompanying amendment. The amendment updates Alden's legal qualifications pursuant to § 1.65 of the Commission's Rules. The motion and amendment have been reviewed and we conclude that good cause exists for accepting the amendment. However, it is not our intention to allow any comparative advantage to Alden as a result of our action. Benjamin T. Perry, III, filed a petition for leave to amend which was accompanied by an amendment on March 4, 1985. The amendment updated Mr. Perry's broadcast interests. The petition and amendment, which was filed pursuant to § 1.65, have been reviewed and it has been determined that good cause exists for accepting them. However, as with Alden, no comparative advantage will accrue to Mr. Perry because of our decision. EAM Broadcasting Co. of Ft. Worth (EAM) filed an amendment to its application on February 28, 1985, the "B" cut-off date, but the amendment did not contain an original signature. On March 5, 1985, EAM filed a petition for leave to amend and an amendment correcting the omission. Texas Spanish Broadcasters, Ltd. each filed an opposition to the petition for leave to amend. In view of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. The amendment itself was timely filed; only the signature was missing and that was filed five days later. These circumstances are governed by long-standing Commission practice which dictates that the amendment and signature be accepted *nunc pro tunc. Bocanegra/Gerald Broadcasting Group*, Mimeo No. 1470, releaed December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hart*, 44 FCC 2088 (1960). Accordingly, the signature page will be accepted *nunc pro tunc*. Finally, Channel 52, Fort Worth Television, Ltd. filed a petition for leave to amend and accompanying amendment on March 20, 1985. The amendment corrcets the north latitude of the transmitter site which was proposed in the applicant's February 28, 1985, amendment. Both the petition and amendment have been reviewed and, we conclude that, good cause exists for accepting them.

[3] There is no indication in what capacity Mr. Quintero is employed at KESS(FM).

we can not determine if his employment is inconsistent with our cross-interest policy. However, TSB has stated that if it is the successful applicant for Channel 52, Mr. Quintero will terminate any connection with KESS(FM). Therefore, rather than specify a cross-interest issue, we will accept TBS's representation to divest. Accordingly, if TSB is the successful applicant, the construction permit shall be subject to the condition that, prior to the commencement of operation of the television station, the permittee shall certify to the Commission that Mr. Quintero has severed all connection with the licensee of KESS(FM).

8. Section 73.2080 of the Commission's Rules requires an applicant for a new commercial television station to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. Pursuant to these requirements, an applicant who proposes to employ at least five full-time employees must established a program, which must be submitted to the Commission, designed to assure equal employment opportunity for women and minority groups. Benjamin Perry has indicated that he will employ at least five full-time persons. However, he has not submitted a copy of his equal opportunity program. Accordingly, Mr. Perry will be required to submit an amendment which corrects this omission, to the presiding Administrative Law Judge within 20 days after this Order is released.

9. Section II, item 5(a) FCC Form 301, requires the name and residence of each party to the application to be shown in Table I. Carter Broadcasting Partnership has not listed the address of Dorothy Ozan Schutz, a general partner. Accordingly, the applicant will be required to submit an amendment which provides Ms. Schultz's address, to the presiding Administrative Law Judge, within 20 days after this Order is released.

10. Section II, item 9, FCC Form 301, inquires whether there are any documents, instruments, contracts or understandings related to ownership of future ownership rights. Furthermore, an affirmative answer to item 9 requires the applicant to provide information concerning the particulars as an exhibit to the application. EAM Broadcasting Co. of Fort Worth answered affirmatively to item 9. However, the required exhibit was not included. Accordingly, EAM will be required to submit an amendment which corrects this omission, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine, with respect to each of the applicants, whether the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Federal Aviation Administration is made a party respondent with respect to issue 1.

14. It is further ordered, that the petitions to deny filed by Channel 52 Fort Worth and the statement filed by the Association of Maximum Service Telecasters, Inc. are dismissed as moot.

15. It is further ordered, that Rebecca Rangel Henton shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after the release date of this Order.

16. It is further ordered, that Benjamin T. Perry, III, shall submit an amendment which contains his response to FCC Form 301, Section 10(e) and a vertical tower sketch as required by Section V-G, item 6, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that Dave Reese shall submit the certification, statement and/or information required by paragraph 6, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, that, in the event of a grant of the application of Texas Spanish Broadcasters, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Armando Quintero has severed all connection with the licensee of Station KESS(FM), Fort Worth, Texas.

19. It is further ordered, that Benjamin T. Perry, III, shall submit, as an amendment, an equal employment opportunity program to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, that Carter Broadcasting Partnership shall submit an amendment providing the address of Ms. Schultz, as required by Section II, item 5(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

21. It is further ordered, that EAM Broadcasting Co. of Fort Worth shall submit an amendment providing the exhibit required by an affirmative answer to Section II, item 9, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

22. It is further ordered, that the petitions for leave to amend and the amendments filed by Alden Television, Inc., Benjamin T. Perry III, Channel 52, Fort Worth Television, Ltd. and EAM Broadcasting Co. of Fort Worth, are accepted, the latter including the signature page *nunc pro tunc*.

23. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

24. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-11105 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-10-M

Allocations Subgroup of Radio Advisory Committee; Meeting

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting on Friday May 10, 1985, at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW. Washington, D.C.

The Subgroup will give consideration to the development of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band. In particular, these relate to identifying specific broadcast requirements and the means of addressing these requirements through use of the spectrum to become available through expansion of the AM band.

The Allocations Subgroup meeting, a continuing one, will be resumed after the May 10, 1985, session at such time and place as is decided at that session.

All meetings of the Allocations Subgroup are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call the Subgroup Chairman, Jonathan David, at (202) 632-7792

William J. Tricarico,

Secretary, Federal Communications Commissions.

[FR Doc. 85-11110 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

Technical Subgroup of Radio Advisory Committee; Meeting

The technical subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Wednesday May 22, 1985, at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW. Washington, DC.

The subgroup will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band.

The subgroup also may discuss matters relating to the ongoing discussions between the United States and Mexico looking toward the development of a new bilateral AM Agreement. In addition, the Subgroup also may consider other relevant matters of concern to the participants at the meeting.

The meeting, a continuing one, will be resumed after the May 22, 1985, session at such time and place as is decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested parties are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Mr. Wallace F. Johnson, at (703) 841-0500.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11111 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection

Title: Radiological Protection Data Base

Abstract: Increasing use of radioactive materials and nuclear technology require a Radiological Protection Program designed to protect the public. Development and maintenance of a Data Base will assist Federal and State governments to track the status and development efforts to implement radiological protection program with Federal financial and guidance support.

Type of respondents: State or Local Governments

Number of respondents: 3,450

Burden hours: 1,725

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 1, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-11055 Filed 5-7-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-329]

Settlement of Insurance; Information Collection Requirements

Dated: May 3, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Settlement of Insurance Reconsideration Procedures" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments

Comments on the information collection request are welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Office of General Counsel. Phone: 202-377-6432.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-11124 Filed 5-7-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-13]

Marcella Shipping Company Ltd.; Order of Investigation and Hearing

Marcella Shipping Company Ltd. (Marcella) is an ocean common carrier based in Nassau, Bahamas with a tariff on file with the Commission providing for service between ports in Florida and ports in the Caribbean. An examination of Marcella's voyage files for a sample of five voyages which occurred between September 18, 1980 and October 28, 1980, showed that of a total of 186 shipments transported, Marcella apparently charged incorrect ocean freight rates for 45 of the 186 shipments. This involved alleged charges of $2,447.51 more than permitted by the tariff on 34 shipments and $1,892.02 in undercharges on 11 shipments. Marcella also deviated from its tariff by not charging for wharfage for any of the remaining 141 shipments. Incorrect bunker surcharges and handling charges were also assessed against a number of these shipments. This resulted in an additional $746.41 in undercharges for the 141 shipments.

The owner and principal officer of Marcella was informed by the Commission's staff of the above and about similar findings for earlier voyages. The owner stated he was aware that some rates being charged had not been filed with the Commission by Marcella's agent even though the agent had been instructed to file the correct rates. A written confirmation of Marcella's position on this matter was promised but never received. Subsequently, it appeared that Marcella had gone out of business, and Marcella's tariff was routinely cancelled by the Commission effective July 5, 1983 as being an inactive tariff.

Due to the above inquiry into Marcella's tariff rating practices, further efforts were made to determine what had happened to Marcella's operations. It was eventually learned that Bahamas International Shipping of Miami, Florida was advertising sailings on the M/V MARCELLA II and was issuing Marcella bills of lading. It was also determined that the owner of Marcella was involved in the operation of the M/V MARCELLA II as well as in Bahamas International Shipping.

After repeated attempts, the owner of Marcella was contacted in September, 1983 about the operation of the M/V MARCELLA II. He stated he was not aware that the Marcella's tariff had been cancelled by the Commission. He stated Marcella was using the tariff in the operation of the M/V MARCELLA II and the M/V MIRANDA. He was warned that continuing to engage in the transportation of cargo without a tariff on file could violate section 18(d)(1) of the Shipping Act, 1916 (46 U.S.C. app. 817) and was advised that a new tariff would have to be filed. A new tariff, FMC No. 4, was filed effective October 11, 1983.

It was later learned that Marcella had apparently operated 7 voyages as a common carrier between the time its tariff was cancelled and the effective date of its new tariff.

An analysis of rates charged by Marcella on three voyages operated in November, 1983 under its new tariff showed that of a total of 64 shipments, 62 were charged the rates specified in the tariff. The remaining two shipments were both shipments of the same commodity and both were apparently charged a rate not in the tariff which resulted in a total undercharge of $3,508.84. In September, 1984, Marcella published in its tariff the reduced rate it had charged for the two November, 1983 shipments.

Section 18(b)(1) of the Shipping Act, 1916 (46 U.S.C. app. 817), at the time of the activities discussed above, provided:

> Every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established.

Section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817), at the time of the activities discussed above, provided:

> No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariff on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by an device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs * * *.

In July, 1984, Marcella, through an attorney, made a general denial of any violation of the Shipping Act, 1916.

A claim letter was sent to Marcella in September, 1984 to provide Marcella an opportunity to compromise civil penalties for violations of sections 18(b)(1) and 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817). The claim letter was issued pursuant to the Commission's authority to compromise civil penalties provided by section 32(e) of the Shipping Act, 1916 (46 U.S.C. 831) and pursuant to the procedures set forth in the Commission's regulations (46 CFR 505). Marcella refuses to respond to the claim letter.

Therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) and section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710), a formal investigation and hearing is hereby instituted to determine:

1. Whether Marcella violated section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817) by charging rates other than the rates on file with the Commission for the voyages listed in Appendix A.

2. Whether Marcella violated section 18(b)(1) of the Shipping Act, 1916 (46 U.S.C. app. 817) by operating without a tariff on file with the Commission from July 5, 1983, the date of the cancellation of its FMC No. 3 tariff, until October 11, 1983, the effective date of its FMC No. 4 tariff;

3. Whether, in the event Marcella is found to have violated section 18(b)(1) and/or section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817) civil penalties should be assessed and, if so, the amount of such penalties; and

4. Whether, in the event Marcella is found to have violated section 18(b)(1) and/or 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817), Marcella should be ordered to cease and desist from violating the provisions of the Shipping Act of 1984 (46 U.S.C. app. 1701 *et seq.*).

It is further ordered, that Marcella Shipping Company Ltd. be named Respondent in this proceeding;

It is further ordered, that a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the

presiding officer in this proceeding shall be issued by May 5, 1986, and the final decision of the Commission shall be issued by September 5, 1986;

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record;

It is further ordered, that any person having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, that all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

APPENDIX A

Vessel name	Voyage number	Dated sailed
M/V Marcella II	260	9-18-80
M/V Marcella II	261	9-29-80
M/V Marcella II	262	10-09-80
M/V Marcella II	263	10-17-80
M/V Marcella II	264	10-28-80
M/V Miranda II	18	11-09-83

[FR Doc. 85-11114 Filed 5-7-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankamerica Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securites or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation,* San Francisco, California; to engage in an indirect joint venture with BATUS Leasing, Inc., Louisville, Kentucky, in the leasing of personal property and real property. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, May 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11049 Filed 5-7-85; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Jacksonville, FL; Application To Engage in Nonbanking Activities

Barnett Banks of Florida, Jacksonville, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(3), and § 225.23(a)(3) of Regulation Y, 12 CFR 225.23(a)(3), for permission to engage *de novo,* through its wholly owned subsidiary, Verification Inc., in the following activities: (1) To offer a reporting service to credit card holders enabling card holders to report the loss or theft of credit cards via a toll-free telephone call to Verification, Inc., and (2) to offer a credit card voice transaction authorization service to subscribing bankcard issuers, which would enable merchants to ascertain whether a customer's credit card was valid and whether the customer's line of credit on the card was sufficient to cover a proposed purchase.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that these activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto, because the activities are, in Applicant's opinion, either provided by banks or functionally similar to services provided by banks.

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether allowing Barnett to engage in these activities can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 31, 1985.

Board of Governors of the Federal Reserve System, May 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11050 Filed 5-7-85; 8:45 am]

BILLING CODE 6210-01-M

National Penn Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to engage *de novo* through its subsidiary Penn Mortgage Company, Boyertown, Pennsylvania, in the provision of mortgage banking services, including the originating, closing, selling, and servicing of mortgage loans, for the Applicant's account or for the account of another.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation*, Baltimore, Maryland; to engage *de novo* through its subsidiary, Maryland National Leasing Corporation, Baltimore, Maryland, in the leasing of real or personal property or acting as agent, broker or adviser in leasing such property pursuant to section 12 CFR 225.25(b)(5); in making, acquiring or servicing loans or other extensions of credit such as would be made by a commercial finance company; in the sale of credit life and mortgage redemption insurance.

Board of Governors of the Federal Reserve System, May 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11051 Filed 5-7-85; 8:45 am]

BILLING CODE 6210-01-M

New Hampshire Savings Bank Corp. et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *New Hampshire Savings Bank Corporation*, Concord, New Hampshire; to acquire 100 percent of the voting shares of United Savings Bank, Manchester, New Hampshire.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Headland Capital Corporation*, Headland, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Wiregrass Bank & Trust, Headland, Alabama.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Commerce Bancshares of Roswell, Inc.*, Roswell, New Mexico; to become a bank holding company by acquiring 80 percent of the voting shares of Valley Bank of Commerce, Roswell, New Mexico.

2. *Haltom City Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of American Bank of Commerce, Grapevine, Texas.

Board of Governors of the Federal Reserve System, May 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11052 Filed 5-7-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Matching Program—HHS Personnel Records/Federal Bureau of Investigation Identification Records

AGENCY: Department of Health and Human Services.

ACTION: Notification of Matching Program—HHS Personnel/Federal Bureau of Investigation Identification Records.

SUMMARY: The Department of Health and Human Services (DHHS) is providing notice that the Office of Inspector General intends to conduct a match of DHHS personnel records with Federal Bureau of Investigation identification records. A matching report is set forth below.

DATES: The match will begin in May 1985.

ADDRESS: Send any comments to Office of Public Affairs, Office of Inspector

General, Department of Health and Human Service, Room 5640–A, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Richard McGowan, Public Affairs Officer, Office of Inspector General, Department of Health and Human Services, Room 5640–A, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201 or call (202) 472–3142.

SUPPLEMENTARY INFORMATION: The Office of Inspector General has initiated a project to evaluate HHS personnel security practices with regard to DHH employees holding positions involving access to financial or benefit payment systems and/or involving automated data processing who have been convicted of offenses which raise security or suitability questions. Set forth below is the information required by paragraph 5.f.1. of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: April 30, 1985.

Richard P. Kusserow,

Inspector General.

Report of Matching Program: Federal HHS Personnel Records/Federal Bureau of Investigation Identification Records

a. *Authority:* Pub. L. 94–505.

b. *Program Description:* The Office of Inspector General plans to conduct a match of HHS employees identified as holding positions involving access to financial or benefit payment systems and/or involving automated data processing against Federal Bureau of Investigation identification records on arrests and convictions to verify information supplied by the employees on Personal Qualifications Statements (sF–171s) and to up-date information on convictions. Raw hits will be reviewed and verified as necessary with Federal, state and local law enforcement agencies. The information will be used to evaluate the Department's procedures for identifying employees in positions of trust whose convictions for certain offenses raise a security or suitability question and to evaluate whether the Department has taken appropriate corrective action. Information on specific cases identified during the match will be furnished to appropriate officials in the Department where administrative action is necessary.

c. *Records to be Matched:* Selected records on DHHS employees from the General Personnel Records System (OPM/GOVT–1), 47 FR 16489 (April 16, 1982) against the Federal Bureau of Investigation Identification Division Records System, 46 FR 7507 (January 23, 1981).

d. *Period of the Match:* This match will begin in May 1985 and will be completed within 3 months.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in locked file cabinets and under the control of the Office of the Inspector General. All computer source tapes will be returned within 60 days of the match. We protect all computer tapes by the use of passwords to prohibit unauthorized access. All computer files are safegueareded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Manual, Part 6, "ADP Systems Security."

f. *Retention and Disposition of Records:* Records on DHHS employees produced in the match will only be maintained where the information meets predetermined criteria indicating a serious potential security or suitability problem. All records maintained will be destroyed within 6 months except for those records which are necessary to the completion of pending administrative activities of the matching program. Paper listings will either be shredded or burned. the data will be verified to insure accuracy prior to any dissemination of records on individuals.

[FR Doc. 85–11063 Filed 5–7–85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Cooperative Agreement for a Study of Two Apparent Clusters of Teen Deaths in Texas Communities; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the Texas Research Institute of Mental Sciences (TRIMS) in conducting a study of teen suicide clusters in two Texas communities. The study will provide a better understanding of the suicide clustering phenomenon and the characteristics of teens at high risk for suicide in a cluster. The study conclusions are designed to: (1) Help State and local health agencies recognize and investigate subsequent teen suicide clusters; (2) assist school systems, Federal agencies, and private sector groups to develop suicide intervention/prevention strategies; and (3) meet the 1990 Federal Objective for the Nation for reducing suicide rates among persons 15 to 24 years old. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance number is 13.283.

Assistance will be provided only to the Texas Research Institute of Mental Sciences for this study. TRIMS is the designated mental health research agency for the area in which the only two suicide clusters suitable for study have been identified. TRIMS enjoys the widespread community and professional support which is essential in assuring local cooperation to obtain the requisite interviews for this study. Additionally, TRIMS has the requisite preliminary information on the two suitable clusters through a local task force on suicide. It is concluded that TRIMS is the only institution that has the necessary information and working relationships to carry out this project; and no other institution has access to it.

Therefore, this is not a formal request for applications. It is expected that approximately $25,000 will be available during Fiscal Year 1985 to support this study. It is anticipated that the cooperative agreement will be funded for a budget period of 12 months. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575.

Dated: May 1, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–11177 Filed 5–7–85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement for a Project To Study Family and Intimate Homicide and Assaults; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the State of Georgia Department of Human Resources (DHR) to study family and intimate homicides and assaults occurring during 1985 in Atlanta, Georgia, within Fulton County.

The study is designed to: (1) Describe the role of health, social service, law enforcement, and judicial agencies with respect to their contact with affected families prior to death or assault; (2) describe the contacts these agencies had with each other regarding the affected families; (3) identify situational variables or "risk factors" which precede death or assault; (4) generate suggestions for changing health and social service agency responses to such cases; and (5) demonstrate the feasibility of conducting research with a combination of public health, health, social service, and criminal justice agencies. Once the study has been completed, there should be a clearer understanding of the profile of victims and perpetrators of such violence, which will be of use to a variety of State, local, and Federal agencies, as well as to private sector groups and schools of public health. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance number is 13.283.

Assistance will be provided only to the State of Georgia Department of Human Resources for this project. This study requires a coordinating office which can organize data collection, analysis, and feedback of data gathered across different agencies and organizations at the city, county, and State level. The coordinating office must be one which can protect confidentiality of client information despite the fact that personal identifiers will be needed to link agency records of one agency to records of another. The Official Code of Georgia Annotated provides the Georgia Department of Human Resources with empowerment to declare certain diseases and injuries to be diseases requiring notice. The State of Georgia DHR may require reporting to the county board of health and DHR as necessary for prevention of those diseases and injuries, with confidentiality being maintained. The State of Georgia DHR is the only agency with such empowerment in the State. In addition, the State of Georgia DHR recently formed an Interdivisional Task Force on Domestic Violence and is currently approaching the problem as a priority area in need of further attention and analysis. This study requires a site in a major urban area with a high rate of interpersonal assaults, and one where specific agencies are already in communication with each other and willing to cooperate on domestic violence projects. Atlanta fits these study requirements, and is also the location of the offices of Georgia DHR. It is concluded that State of Georgia DHR is the only institution that has the necessary location, agency access, and legal empowerment to carry out this project; and no other institution has such a location, access, and empowerment. Therefore, this is not a formal request for applications. It is expected that approximately $35,000 will be available during Fiscal Year 1985 to support this study. It is anticipated that the cooperative agreement will be funded for a budget period of 12 months. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: May 1, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-11178 Filed 5-7-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Buffalo District Office, chaired by moderator Betty Holmes, Oneida County Consumer Advocate, with panelists Lois M. Meyer, FDA Consumer Affairs Officer; Gay Carl, Assistant Attorney General, New York State Department of Law; and Lucia Frontera, Executive, Better Business Bureau (BBB) Mohawk Valley. The topic to be discussed is Health Frauds Affecting the Elderly.

DATE: Thursday, May 16, 1985, 1 p.m.

ADDRESS: New Hartford First Methodist Church, 105 Genesee St., New Hartford, NY 13413.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202. 716-846-4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between the senior citizens of Oneida County and three principal agencies cooperating in this program. The meeting will identify health concerns that the elderly of Oneida County have and will assist the three agencies in developing programs and mechanisms for attacking the health fraud that plagues the elderly in Oneida County and the surrounding Mohawk Valley.

Dated: May 1, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11040 Filed 5-7-85; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine.

DATE: No cutoff date is established for receipt of nominations.

ADDRESS: All nominations for membership should be submitted to Bert L. Schrivener (address below).

FOR FURTHER INFORMATION CONTACT: Bert L. Schrivener, Center for Veterinary Medicine (HFV-400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4557.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Veterinary Medicine Advisory Committee. The function of the committee is: (1) To review and evaluate available information concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production; and (2) make appropriate recommendations to the Commissioner of Food and Drugs.

Persons nominated for membership shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA asks potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 94–263, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11043 Filed 5-7-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-85-1529; FR-2089]

Section 8 Housing Vouchers; Funding Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces the balance of HUD's Fiscal Year 1985 funding for the Housing Voucher Demonstration Program authorized under section 8(o) of the U.S. Housing Act of 1937. The Notice also describes revised policies and procedures that will apply to both the 1984 and 1985 Housing Voucher Funding. In addition to the Housing Vouchers announced in the Notice of Funding Availability published on February 28, 1985 (for allocation in support of the Fiscal Year 1985 Rental Rehabilitation Program), Fiscal Year 1985 Demonstration funding for the Housing Voucher Program includes: (1) A study of the use of Housing Vouchers by small Public Housing Agencies or in rural areas; (2) Housing Vouchers for Families living in public housing units that are being demolished or disposed of with HUD approval; (3) Housing Vouchers for Families in certain project-based section 8 projects where the owner "opts-out" of an additional term under the section 8 Housing Assistance Payments Program; and (4) Housing Vouchers to be allocated to the HUD Regional Offices by formula distribution.

DATES: Effective Date: May 8, 1985.

Comment Due Date: July 8, 1985.

ADDRESS: HUD invites interested persons to submit comments on this Notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C., 20410. Comments should refer to the docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: For Housing Vouchers: Madeline Hastings, Room 6124, Existing Housing Division, (202) 755-6887, or Gerald Benoit, Room 6128, Existing Housing Branch, (202) 755-6477. For the Rental Rehabilitation Program: Robert Dodge, Room 7170, (202) 755-5685, or Craig Nickerson, Room 7164, (202) 755-5970, Office of Urban Rehabilitation. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Housing Voucher Program

I. Background

In 1983, Congress authorized a demonstration Housing Voucher Program under section 8(o) of the U.S. Housing Act of 1937 (the 1937 Act) (see section 207 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181 (the 1983 Act)). HUD published its first Notice of Funding Availability (NOFA) for Housing Vouchers on July 12, 1984 (see 49 FR 28458). The July 12, 1984 NOFA established a Rental Rehabilitation component and a Freestanding component of the Housing Voucher Program; announced the availability of funding for Certificates under the section 8 Existing Housing (Certificate) Program for use in connection with the Rental Rehabilitation Program; and described the policies and procedures for the use of these Housing Vouchers and Certificates.

The HUD-Independent Agencies Appropriation Act of 1985 (Pub. L. 98–371) approved contract and budget authority for approximately 41,000 Housing Vouchers in Fiscal Year 1985 (FY '85). The Department has published a NOFA announcing the availability of Housing Voucher funding in FY '85 in support of the FY '85 Rental Rehabilitation Program component (See 50 FR 8196, February 28, 1985).

This Notice announces a demonstration of Housing Vouchers to be made available for these purposes: A research component to study the workability of a Housing Voucher Program administered either by small PHAs or in rural areas; Housing Vouchers for families residing in public housing projects being demolished or disposed of with HUD approval; Housing Vouchers for families living in units in projects assisted under the section 8 New Construction or Substantial Rehabilitation Housing Assistance Payments Programs in cases where an owner exercises the option not to renew the HAP Contract for an additional term; and a formula allocation of Housing Vouchers to the HUD Regional Offices. The FY '85 uses

of the Housing Vouchers are the same as many of the current uses of section 8 Certificates. The Department believes that the allocation and use of Housing Vouchers in the manner described in this Notice will demonstrate that Housing Vouchers are as functional as and more flexible than section 8 Certificates. Housing Vouchers will provide participating Families with a greater choice of units in a local housing market and will allow the Department to assist Families in a more cost-effective manner.

The procedures outlines in Part III of this Notice apply to all components of the 1984 and 1985 Housing Voucher program and supersede those published in Part V of last year's July 12 Notice. In many respects the procedures remain unchanged.

After considering the 38 public comments submitted on the July 12, 1984 NOFA, several changes have been made in Part III of this Notice. A complete discussion of these comments appears in Part V of this Notice. Many commenters sought clarification of certain provisions, while others requested that specific changes be made in the program. This Notice makes changes concerning provisions relating to security deposits and owner damage claims, portability of Housing Vouchers, and the application procedures for some of the FY '85 components; revises the provisions concerning the Applicable Payment Standard; and clarifies how the Annual Contributions Contract amount is computed, use of waiting list procedures and income eligibility requirements.

The Department continues to support the development of a permanent Housing Voucher program. Once this demonstration becomes a permanent program the Department may use the substance of the NOFA as the basis for future rulemaking. In such a case, rulemaking is likely to be abbreviated. HUD may, for example, publish a rule for effect very similar in content to this Notice of Funding Availability. Commenters on today's Notice should take this into account so that any rule on the subject matter will have the benefit of comment before effectiveness.

II. Components of the Housing Voucher Demonstration Program

A. Rental Rehabilitation Program

HUD published regulations at 24 CFR Part 511 (see 49 FR 16936, April 20, 1984) implementing the Rental Rehabilitation Program authorized by section 17 of the U.S. Housing Act of 1937 (added by section 301 of the 1983 Act). Under the Rental Rehabilitation Program, HUD makes rental rehabilitation grants to State and local governments to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. Grants are made on a formula basis to cities with populations of 50,000 or more, and to urban counties, States and qualifying consortia of geographically proximate units of general local government within the same State.

The purpose of the Rental Rehabilitation Program is to help provide affordable, standard rental housing for Lower Income Families, and to increase the availability of housing units for the use of Housing Voucher and Certificate holders.

The Department announced the availability of Housing Vouchers and Certificates in support of the 1984 Rental Rehabilitation Program in the July 12, 1984 NOFA and the availability of Housing Vouchers in support of the 1985 Rental Rehabilitation Program on February 28, 1985 (50 FR 8196).

The special requirements for the Rental Rehabilitation component of the Housing Voucher Program were contained in Part III of the July 12, 1984 NOFA and remain unchanged (see 49 FR 28461–28463), except as noted in the February 28, 1985 NOFA. In addition, the provisions in the generally applicable Part V of the FY '84 Notice also apply to the Rental Rehabilitation component. Since certain of the Part V requirements have changed, and for the convenience of the user, the requirements applicable to all Housing Voucher Assistance, including assistance provided in support of the Rental Rehabilitation Program, have been set out in full in this Notice as Part III. Therefore, the Rental Rehabilitation component of the Housing Voucher Program is governed by Part III of the 1984 NOFA, entitled "Allocations of, Invitations for, Applications for, and Use of Certificates and Vouchers in Connection with the Rental Rehabilitation Program," the February 28, 1985 NOFA, and Part III of this Notice.

B. Freestanding Housing Voucher Demonstration

The Department announced the Freestanding Housing Voucher Demonstration in the July 12, 1984 NOFA. The Freestanding Demonstration component of the Housing Voucher Program is designed to compare the Housing Voucher Program with the Certificate Program to determine the effect of Housing Vouchers on Families and PHAs.

The special requirements for the Freestanding Demonstration were contained in Part IV of the July 12, 1984 NOFA and remain unchanged (see 49 FR 28463–28464). In addition, the provisions in the generally applicable Part V of the FY '84 Notice also apply to the Freestanding Demonstration. Since certain of the Part V requirements have changed, and for the convenience of the user, the requirements applicable to all Housing Voucher assistance, including the Freestanding Housing Voucher Demonstration, have been set out in full in this Notice, as Part III. Therefore, the Freestanding Demonstration component of the Housing Voucher Program is governed by Part IV of the July 12, 1984 NOFA, entitled "Invitations for, Applications for, and Use of Vouchers Under the Freestanding Component of the Voucher Program," and by Part III of this Notice.

C. Small PHA/Rural Area Housing Voucher Demonstration

1. General Description

The Small PHA/Rural Area Housing Voucher Demonstration (Small/Rural) is complementary to the Freestanding Demonstration of the Housing Voucher Program. (See section II.B. of this Notice for a brief description of the Freestanding Demonstration.) The Small/Rural Demonstration is designed to test the feasibility of a Housing Voucher Program administered by a small PHA or in a rural area. The issues to be evaluated will include the rates at which families receiving Housing Vouchers are successful in finding units, the impact of the program on rent burdens of families participating in the program, the percent of participants that either move or rent in-place, the rate of turnover among participants, and the costs of administering the program.

This section II.C. sets forth the design features unique to this component of the Housing Voucher Program relating to invitations to apply for the Program, selecting Families, use of Housing Vouchers, and reporting requirements. Part III contains the generally applicable rules for operating all of the elements of the Housing Voucher Program, including the Small/Rural Demonstration. HUD may modify the requirements of this Notice in connection with the implementation of the research design for the Small/Rural component.

2. Invitations for Small PHA/Rural Area Housing Voucher Demonstration Component

(a) Subject to the availability (as determined by HUD) of sufficient contract and budget authority, HUD will invite selected PHAs to apply to

participate in the Small/Rural Demonstration component of the Housing Voucher Program.

(b) HUD will select PHAs to submit applications, taking into account such factors as geographic diversity, degree to which the service area of a PHA is rural, and whether a PHA is operating a Certificate Program of appropriate size (between 100 and 1,000 units) for a small PHA demonstration.

(c) The invitation will state:

(1) That HUD is inviting the PHA to apply to participate in the Small/Rural component of the Housing Voucher Program to be operated in accordance with this Notice;

(2) The amount of contract and budget authority available and the number of units HUD estimates the authority will support based on an average of two-bedroom units;

(3) The deadline for submission of the PHA's application for Housing Voucher assistance;

(4) That relevant information and forms are included with the invitation and that the PHA may obtain additional information from the HUD Field Office; and

(5) Other information or documentation the PHA must submit.

3. Selecting Families and Issuing Housing Vouchers

In addition to the requirements of section III.G. of this Notice, a PHA administering the Small/Rural component of the Housing Voucher Program shall select Families and issue Housing Vouchers in accordance with guidance provided by HUD as part of the research plan. In general, the research plan will provide that when a Housing Voucher becomes available, the PHA will issue that Housing Voucher to the next Family on the waiting list that qualifies for the unit under the PHA's occupancy policy.

4. Reporting Requirements

In addition to reporting required for all components of the Housing Voucher program, a PHA administering the Small/Rural component of the Housing Voucher program shall collect complete and accurate records, as required by HUD, on Housing Vouchers issued under this component. The PHA shall send copies of required forms to HUD or its designee, as HUD may specify, for each Housing Voucher.

D. Targeted Housing Vouchers Demonstration

1. Purpose

The Conference Report accompanying the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1985, states the amounts of contract authority to be used for Housing Vouchers targeted to families living in certain types of projects (H. Rept. 98–867, 98th Congress, 2d. Session, Conference Report to accompany H.R. 5713, June 26, 1984). The Department will make these Housing Vouchers available (on an as-needed basis, subject to the availability of funds) in the situations described in paragraphs D.2. and D.3. of this section. To assist Families in these situations, the Department generally considers 25 to be the minimum feasible program allocation, unless the PHA already has a Housing Voucher program. Using Housing Vouchers in a manner analogous to "targeted" Section 8 Certificates should demonstrate the comparability of Housing Vouchers and section 8 Certificates.

2. Section 8 "Opt-Out" Projects

Certain project-based Section 8 Housing Assistance Payment Contracts provide for an initial contract term not to exceed five years, renewable at the sole discretion of the owner for additional terms of up to five years for not to exceed a specified period. (See 24 CFR 880.109, 1979 Ed. and 24 CFR Part 1273, App. II, 1975 Ed.) Subject to the availability (as determined by HUD) of sufficient contract and budget authority, the Department may make Housing Vouchers available to Eligible Families residing in units in a New Construction or Substantial Rehabilitation project when the owner has the sole discretion, at the end of the initial term or an additional term, not to renew the contract for an additional term and elects not to renew the contract.

3. Demolition or Disposition of Public Housing Units

Part 970 of the Department's regulations sets out the procedures a PHA must follow to receive HUD approval of the demolition of buildings or disposition of real property owned by the PHA which contains public housing dwelling units (Demolition/Disposition).

When the Department grants approval for demolition or disposition of public housing units there may be Families living in the units who qualify for continued assistance, as defined in section III.G. of this Notice. In these cases, subject to the availability (as determined by HUD) of sufficient contract and budget authority, the Department may make Housing Vouchers available for Eligible Families living in the units that are to be disposed of or demolished.

4. Special Requirements

A PHA receiving funding for Housing Vouchers designated for Opt-Out or Demolition/Disposition purposes shall, in use of the funding, establish a preference for selection of applicants who live in a Section 8 Opt-out project or in a public housing building to be disposed of or demolished. In all instances, the assistance must be used in accordance with the PHA's HUD-approved administrative plan, which must be revised, if necessary, to provide for the preference.

A Family that is issued a Housing Voucher because the Family resides in housing in one of the two categories identified in this section II.D. may select a housing unit in accordance with the Finders Keepers policy in section III.I. of this Notice and subseqently request issuance of another Housing Voucher to move to another unit in accordance with sections III.G. and III.I. of this Notice.

PHAs that receive Housing Voucher funding for section 8 Opt-Out or Demolition/Disposition must comply with this section II.D. as well as the generally applicable procedures found in Part III of this Notice. Once the PHA has met the requirements of this section concerning the initial issuance of the Housing Vouchers, the PHA is free to use the allocation for any purpose in furtherance of its Housing Voucher program.

E. Formula Allocation of Housing Vouchers

1. Purpose

The Department will allocate a portion of the FY '85 Housing Voucher funding to its Regional Offices using a formula allocation procedure similar to the "fair share" allocation of section 8 Certificates in 24 CFR Part 791. Each Regional Office may determine the amounts of Housing Voucher funding to be allocated to applicants or it may delegate these decisions to its Field Offices.

2. Invitation for and Allocations of Housing Vouchers

The availability of Housing Voucher funding to be distributed by formula allocation will be announced by the Regional or Field Offices, which will invite PHAs to submit applications for Housing Vouchers to the appropriate Field Office.

The minimum feasible program size a Field Office may approve is 25 Housing Vouchers for a PHA. (This minimum refers to the initial funding increment in the PHA's Housing Voucher program, and does not apply to any additional

funding increment or to approval in response to an emergency as determined by HUD Headquarters).

Preference may be given to PHAs that provide families with the broadest geographical choice of housing, including interjurisdictional and interstate housing choice.

The Field Office may give preference to PHAs whose needs previously have been underfunded in relation to the needs of other localities within the allocation area.

3. Selecting Families and Issuing Housing Vouchers

In addition to the general procedures for selection of Families and issuance of Housing Vouchers stated in section III.G. of this Notice, the PHA shall comply with the following procedure in use of Housing Voucher funding distributed by formula allocation under this section II.E.

In selecting applicants from the waiting list, the PHA shall use the section 8 Certificate waiting list for the Housing Voucher program. A Family may not be penalized for refusing a Certificate if it desires to wait for a Housing Voucher, or conversely, for refusing a Housing Voucher to wait for a Certificate. However, if the Family then refuses the second form of assistance when it is offered, the Family shall be taken off the waiting list. If the Family requests, it will be reinstated on the waiting list, in conformance with the PHA's approved administrative plan or equal opportunity housing plan.

Those jurisdictions receiving a Formula Allocation of Housing Vouchers must comply with this section II.E., as well as the generally applicable procedures stated in Part III of this Notice.

III. Housing Voucher Program Requirements

A. Definitions

For purposes of the Housing Voucher Program, the following definitions apply.

Annual Contributions Contract (ACC). A written agreement between HUD and a PHA to provide annual contributions to the PHA for housing assistance payments and administrative fees.

Congregate Housing. See section III.K.(b) of this Notice.

Decent, Safe, and Sanitary Housing. Housing that meets the Housing Quality Standards of § 882.109 or the requirements for Single Room Occupancy (SRO) Housing.

Eligible Family (Family). A Family as defined in 24 CFR Part 812 that at the time it initially receives assistance under the Housing Voucher program (1) qualifies as a Very Low-Income Family or as a Lower Income Family displaced by Rental Rehabilitation program activity under 24 CFR Part 511 (see section III.G. of this Notice); or (2) has been continuously assisted under the 1937 Act.

Housing Voucher. A document issued by a PHA declaring a Family to be eligible for participation in the Housing Voucher Program and stating the terms and conditions for the Family's participation.

Housing Voucher Contract (Contract). A written contract between a PHA and an Owner, in the form prescribed by HUD for the Housing Voucher program, in which the PHA agrees to make housing assistance payments to the Owner on behalf of an Eligible Family.

HUD. The Department of Housing and Urban Development or its designee.

Independent Group Residence (IGR). See section III.K.(b) of this Notice.

Initial PHA. A PHA administering a Housing Voucher program with a Housing Voucher holder or Housing Voucher participant who desires to move or who has moved to another area.

Lower Income Family. A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Occupancy Policy. Standards established by the PHA for determining the appropriate number of bedrooms for Families of different sizes and compositions.

Owner. Any person or entity having the legal right to lease or sublease Decent, Safe, and Sanitary Housing.

Payment Standard. (See section III.H. of this Notice.)

PHA Jurisdiction. The area in which the PHA is not legally barred from entering into Housing Voucher Contracts.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of lower income housing.

Receiving PHA. A PHA administering a Section 8 Certificate or Housing Voucher program that accepts a Housing Voucher holder or Housing Voucher participant from another PHA.

Single Room Occupancy (SRO) Housing. A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities, as those facilities are defined in § 882.109 (a) and (b), and which is suitable for occupancy by a single eligible individual capable of independent living. (See also section III.K. (c) of this Notice.)

Very Low-Income Family. A Lower Income Family whose Annual Income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger Families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voucher. See Housing Voucher.

Voucher Contract (Contract). See Housing Voucher Contract.

B. Applicability and Purpose

(a) *Applicability.* The provisions of this Part III apply to the use of contract and budget authority for all Housing Voucher assistance authorized by section 8(o) of the U.S. Housing Act of 1937, unless specifically limited in the text. By cross reference in this Notice, certain provisions of the regulations for the section 8 Existing Housing (Certificate) Program (24 CFR Parts 812, 813 and 882, Subparts A and B) are incorporated in this Notice and also apply to the Housing Voucher Program. Unless otherwise specified, references to particular section numbers (e.g., § 882.110) are to regulations in Title 24 of the Code of Federal Regulations. In addition to the general procedures in Part III, each program component may have additional or distinguishing requirements. (See the specific program information in Part II of this Notice to determine whether other procedures also apply.)

(b) *Purpose.* The purpose of the Housing Voucher Program is to assist Eligible Families in affording rents for Decent, Safe, and Sanitary Housing.

C. Equal Opportunity Requirements

Participation in the Housing Voucher Program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all related rules, regulations and other requirements. PHAs also shall comply with section 3 of the Housing and Urban Development Act of 1968 and all related

rules, regulations and requirements. Failure to comply with these equal opportunity requirements shall result in the imposition of sanctions under applicable civil rights laws.

D. Submission of Applications

The PHA shall submit its application for the Housing Voucher Program in accordance with § 882.204, with the following exceptions:

(a) *Number of Bedrooms.* Section 882.204(a)(1) does not apply to the Rental Rehabilitation Program component or to the FY '84 Freestanding Demonstration component. For these components, therefore, the PHA is not required to state in the application the bedroom mix and Family type.

(b) *Equal Opportunity Housing Plan.* Each PHA shall submit an equal opportunity housing plan as required under § 882.204(b)(1), except it shall be a combined plan covering the PHA's entire Certificate Program and Housing Voucher Program. The plan shall include any special rules for use of Housing Vouchers in connection with any program component identified in this Notice.

(c) *Administrative Plan.* Each PHA shall submit an administrative plan as required under § 882.204(b)(3), except it shall be a combined plan covering the PHA's entire Certificate Program and Housing Voucher Program. The special functions related to Housing Vouchers, such as computation of the housing assistance payment and special procedures for selection of Families in support of the Rental Rehabilitation Program, Targeted, Freestanding, and Small/Rural components, shall be covered. (Some functions, such as computation of the Family rent in accordance with section 3(a) of the U.S. Housing Act of 1937, and contract rent adjustments, do not apply to the Housing Voucher Program.)

E. Processing of Housing Voucher Applications

(a) *Processing of Applications.* (1) HUD will send applications for more than 12 units to the appropriate chief executive officer of the unit of general local government for review and comment. This submission will be in accordance with 24 CFR Part 791, as required by section 213 of the Housing and Community Development Act of 1974. Because of the nature of the Freestanding Housing Voucher Demonstration and the Rental Rehabilitation Programs, PHAs are not required to identify the distribution of units by Family type in the application. (see section III.D.(a) of this Notice.) However, communities should be aware that their subsequent HAP performance will continue to be evaluated in terms of the actual number of households assisted by household type.

(2) HUD will evaluate each application on the basis of the requirements of this Notice and other program requirements, and will consider any comments received from the unit of general local government. HUD also will take into account the PHA's ability to administer the Housing Voucher Program, as evidenced, in part, by its performance in operating the Certificate Program, where applicable.

(b) *Approval or Disapproval of Applications.* HUD will notify the PHA and, if applicable, the Rental Rehabilitation Program grantee whether HUD has approved or disapproved its application. Where HUD has disapproved an application, HUD will include a statement of the reasons and, where applicable, the changes required to make the application approvable. HUD will not approve a PHA's application for Housing Vouchers in support of the Rental Rehabilitation Program where HUD disapproves the related program description submitted by a Rental Rehabilitation Program grantee.

F. Annual Contributions Contract

(a) *ACC Execution.* After HUD approves the application for Housing Voucher assistance and, in the case of the Rental Rehabilitation component, receives the PHA certification that the PHA and the grantee under the Rental Rehabilitation Program have executed a Memorandum of Understanding as required under section III.6 of the 1984 NOFA, HUD will execute the ACC with the PHA, in a form prescribed by HUD, in accordance with §§ 882.206(a) and (b).

(b) *Term of ACC.* The ACC term for each funding increment under the ACC shall be five years, commencing with the first HUD advance of annual contributions for the funding increment.

(c) *Single ACC.* HUD and the PHA shall execute one ACC covering all of the authority for the PHA's Housing Voucher Program. However, where (as in the case of some statewide PHAs) the area for which the PHA may execute Housing Voucher Contracts is within the jurisdiction of more than one HUD Field Office, HUD may require one ACC for each Office.

(d) *Amount of Annual Contributions.* (1) The total amount of annual contributions contracted for in the ACC for the five-year ACC term for each funding increment shall be five times the total of (i) the average HUD-estimated annual PHA administrative fee plus (ii) 115 percent of the amount that HUD estimates would be required in the first year of the ACC for housing assistance payments to Owners, assuming a full year of occupancy.

(2) The PHA shall plan administration of its Housing Voucher program in a manner that will ensure its operation within the amounts originally contracted for under the ACC, taking into account (i) the amounts available from reserving 15 percent more than the estimated housing assistance payments for the first year and (ii) the number of Families that may be assisted (including consideration of the effect of changes in the Applicable Standard under section III.H., including adjustments to assure continued affordability, changes in Family income and composition, and portability of Housing Vouchers).

G. Selecting Families and Issuing Housing Vouchers

(a) *Eligible Families.* (1) A Family is eligible for assistance under the Housing Voucher program if, at the time it initially receives assistance under the program, it:

(i) Qualifies as a Very Low-Income Family;

(ii) Qualifies as a Lower Income Family (other than Very Low-Income) and is displaced by Rental Rehabilitation activity under 24 CFR Part 511; or

(iii) Has been continuously assisted under the U.S. Housing Act of 1937.

(2) A Lower Income Family in a Rental Rehabilitation Program project that is forced to vacate a unit because of physical construction, housing overcrowding, or change in use of the unit, is considered "displaced". A Lower Income Family that lives in a project undergoing rental rehabilitation activities whose post-rehabilitation rent would not be affordable is not considered "displaced" for this reason alone, for purposes of determining Housing Voucher eligibility, whether or not the Family chooses to move. (Such a Family may be issued a Certificate allocated for use in connection with the Rental Rehabilitation Program in FY '84, to assist in paying the higher rent or in finding another unit. Certificates do not have the statutory requirement for actual displacement as a condition of eligibility for a Family with Lower (but not Very Low-) Income.)

(3) Although the Family may qualify under this paragraph (a), the PHA may be unable to issue a Housing Voucher to an applicant or to a participant who wants to move to a new unit because of the limitations described in paragraph (b) of this section.

(b) *Compliance with Section 16 of the U.S. Housing Act of 1937*—(1) *Five Percent Cap.* A PHA may issue a Housing Voucher to an eligible Family with an income above 50 percent of area median income as provided in paragraph (a) of this section, subject to the requirements of section 16 of the 1937 Act. Section 16 restricts to five percent nationally the number of 1937 Act units that initially became available for occupancy on or after October 1, 1981, to which Lower Income Families with incomes above 50 percent of median income may be admitted. This restriction is implemented for the section 8 program other than Housing Vouchers in 24 CFR Part 813, which will be amended to cover the Housing Voucher Program and to reflect the requirements stated in this section III.G. (b). Specific procedures for compliance with section 16 are described below.

(2) *Rental Rehabilitation Displacee.* The Technical Amendments Act of 1984 (Pub. L. 98–479, 97 Stat 2218), approved October 17, 1984, extends Housing Voucher eligibility to Families determined to be Lower Income Families at the time they initially receive assistance and that are displaced by Rental Rehabilitation Program activities. However, because of the requirements of section 16 of the 1937 Act, HUD must authorize the issuance of Housing Vouchers for Families under this paragraph (b)(2). The PHA shall report each case to HUD.

(3) *Eligible Family with Income Greater than 50 percent of Median Income that has been Continuously Assisted under the 1937 Act.* A Family with an income greater than 50 percent of median Income that has been continuously assisted under the 1937 Act may be eligible for Housing Voucher assistance in the following circumstances.

(i) The PHA may, without requesting prior HUD approval, issue a Housing Voucher to a Family residing in a public housing unit that is being demolished or disposed of with HUD approval. The PHA shall report each case to HUD.

(ii) The PHA may, without requesting prior HUD approval, issue a Housing Voucher to a Family residing in a unit that was assisted under a project-based section 8 Housing Assistance Payments Contract that is being terminated at the sole discretion of the owner. The PHA shall report such issuance to HUD, unless the Family uses the Housing Voucher assistance to remain in its same unit. If the Family initially used its Housing Voucher assistance to remain in the same unit, but the Family later requests a Housing Voucher to move to a new unit and its income at that time is greater than 50 percent of area median, the PHA shall request approval from HUD before issuing a Housing Voucher.

(iii) The PHA shall request approval from HUD before issuing a Housing Voucher to a Family, if the Family is assisted under another program under the 1937 Act and requests to transfer to the Housing Voucher Program (for example, a Family residing in a public housing project places its name on the PHA waiting list in order to receive a Housing Voucher) or the Family is a Housing Voucher participant and wants to move to another unit with assistance under the Housing Voucher program and its income is greater than 50 percent of area median income.

(c) *Activities to Encourage Participation by Owners and Others.* The PHA shall encourage participation by Owners and others in the Housing Voucher Program as required under § 882.208 for the Section 8 Certificate Program.

(d) *Selecting Families; Issuing Housing Vouchers.* (1) The PHA shall select Eligible Families for participation in accordance with § 882.209(a) and specific procedures identified for individual components in Part II of this Notice, and shall verify the sources of income and other information concerning the Family necessary to determine eligibility and the amount of the housing assistance payment.

(2) The PHA's occupancy policy developed under § 882.209(b) shall provide for the minimum commitment of housing assistance payments necessary to meet the housing quality standards identified in § 882.109(n). The PHA shall issue Housing Vouchers in accordance with its occupancy policy and this Notice, except that for a Family renting a unit with a larger or smaller number of bedrooms than stated on the Housing Voucher, section III.M.(c) shall apply. The PHA shall issue a Housing Voucher for a particular number of bedrooms consistent with its occupancy policy and consistently for all Families of like composition.

(e) PHA Briefing of Families. The PHA shall brief each Family in accordance with §882.209(c), and shall include information on the full range of neighborhoods in which the Family may find units meeting program requirements, and information on possibilities for participating in available portability programs as described in section III.J. of this Notice. Section 882.209(c)(7) shall not apply. Instead, the PHA shall brief the Family on the function of the Applicable Standards, determination of the housing assistance payment, the incentive for selecting a unit renting for less than the Applicable Standard and the minimum rent the Family must pay. In jurisdictions in which the PHA is administering both a section 8 Certificate program and a Housing Voucher program, and the Family is being offered a Formula Allocation Housing Voucher or a Housing Voucher being used in support of the Rental Rehabilitation program, the PHA also shall explain how the principal features of the Housing Voucher program differ from the section 8 Existing Certificate Program.

(f) *Housing Voucher Packet.* The PHA shall give each Family a Housing Voucher Packet in accordance with §882.209(b)(4), except that instead of information on the Total Tenant Payment and the Tenant Rent, the PHA shall give the Family information on how the PHA computes the housing assistance payments.

(g) *Term of Housing Voucher.* Section 882.209(d), Expiration and Extension of Certificate, shall apply to the Housing Voucher Program.

H. Housing Voucher Programs

(a) *Basic Formula.* Except where paragraph H. (d) of this section applies, the amount of the housing assistance payment shall be the amount by which the Applicable Standard (see paragraph H. (b) of this section) for a given Family in a PHA's Housing Voucher program exceeds 30 percent of the Family's Monthly Adjusted Income. The PHA shall compute the Family's Monthly Adjusted Income in accordance with 24 CFR Part 813.

(b) *Applicable Standard.* (1) The Applicable Standard is the amount that applies to a given Family in a PHA's Housing Voucher program. Depending on the circumstances described elsewhere in this paragraph (b), the Applicable Standard will be the Initial Payment Standard, or the appropriate amount from the New Family/Mover schedule or the Adjustment Standard schedule. The appropriate amount is determined by Family size and composition and the PHA occupancy policy. The PHA may establish New Family/Mover schedules (in accordance with paragraph (b)(4) of this section) or Adjustment Standard schedules (in accordance with paragraph (b)(5) of this section). Each schedule shall state the amounts that will be used to determine the Applicable Standard used to compute the amount of the housing assistance that will be paid for the Family. Each schedule established by the PHA shall state the Applicable Standard amounts for units with different numbers of bedrooms. The

PHA's schedule(s) shall apply to all increments of funding in the PHA's Housing Voucher program.

(2) *Payment Standard.*—(i) The "Payment Standard" is the Fair Market Rent (by number of bedrooms) published for effect in the **Federal Register** for the Section 8 Certificate Program, or the exception Fair Market Rent approved by HUD for a designated municipality, county, or similar locality under § 882.106(a)(3). The "Initial Payment Standard" is the Payment Standard based on the Fair Market Rent in effect at the time the ACC is executed by HUD for the first increment of funding in the PHA's Housing Voucher Program.

(ii) The Payment Standard for SRO Housing shall be proposed by the PHA for HUD approval, but shall be in a range from 75 to 100 percent of the applicable published 0-bedroom Fair Market Rent or the HUD-approved exception 0-bedroom Fair Market Rent. Within this range, the Payment Standard for SRO Housing shall reflect the presence or absence of sanitary facilities or food preparation facilities within the unit and what must be paid to obtain privately owned, existing, Decent, Safe, and Sanitary rental SRO Housing of modest (non-luxury) nature with suitable amenities.

(iii) The Payment Standard for a Family residing in an Independent Group Residence (see section III.K.(b)) shall be determined by taking the appropriate dollar amount of the Payment Standard for the entire residence (for example, the 4-bedroom Payment Standard for a 4-bedroom residence) and dividing that amount by the total number of potential occupants (assisted and unassisted), other than the resident assistant, if any, occupying no more than one bedroom.

(3) *Applicable Standard Based on Initial Payment Standard.* Unless the Applicable Standard for a Family is based on a New Family/Mover schedule (under paragraph (b)(4) of this section) or an Adjustment Standard schedule (under paragraph (b)(5) of this section), the Applicable Standard for the Family shall be the Initial Payment Standard for the appropriate number of bedrooms under the PHA occupancy policy.

(4) *Applicable Standard Based on the New Family/Mover Schedule.* —The PHA may establish a New Family/Mover schedule at any time, consistent with the provisions of this paragraph (b)(4). The schedule in effect on the date of initial lease approval (the date the first lease for the unit to be occupied by the Family is approved by the PHA) shall be used to determine the Applicable Standard for the Family.

(i) The currently effective New Family/Mover schedule shall be used to determine the Applicable Standard for:

(A) Any Family entering the PHA's Housing Voucher Program; or

(B) Any participating Family which moves to another dwelling unit with assistance under the Housing Voucher program.

(ii) The Applicable Standard amounts on the New Family/Mover schedule shall be based on:

(A) The Initial Pyament Standard, or, if the PHA has adopted an Adjustment Standard, the applicable Adjustment Standard (see paragraph (b)(5) of this section); or

(B) Any greater amount that does not exceed the Payment Standard based on the FMRs in effect at the time the New Family/Mover schedule is established.

(iii) The Applicable Standard determined by the PHA based on the New Family/Mover schedule in effect at the time of initial lease approval for the unit continues to apply to the Family, except as provided in paragraph (c)(2) of this section.

(5) *Adjustment Standard Schedule.* (i)(A) To assure continued affordability, the PHA may, in its discretion, twice during any five-year period, establish an Adjustment Standard schedule for adjustment of the amount of the Applicable Standard. No Adjustment Standard schedule may be established until at least 60 months have elapsed since the next to the last Adjustment Standard schedule was established.

(B) The PHA may decide to establish an Adjustment Standard schedule that will be used to determine the housing assistance payment for all participating Families or for certain categories of participating Families (for example, by the unit size the Family qualifies for or by type of Family, such as handicapped, elderly).

(C) The PHA may not establish separate Adjustment Standard schedules for structures, neighborhoods, individual Families, one of the components of the Housing Voucher program (such as Small/Rural, Opt-out) or similar categories.

(ii) The amounts in the Adjustment Standard schedule may not exceed the Payment Standard based on the published FMRs in effect at the time the schedule is established. (If the PHA adopts an Adjustment Standard schedule, it also may need to establish another New Family/Mover schedule, to ensure that the New Family/Mover schedule provides at least equal amounts to those contained in the newly established Adjustment Standard schedule.)

(iii) A State agency may establish an Adjustment Standard schedule for any designated municipality, county or similar locality within its jurisdiction. Any such schedule would be considered one of the two authorized adjustments.

(iv) Before establishing an Adjustment Standard schedule to provide affordability adjustments, the PHA shall consult with the public and the unit of general local government for its area of operation regarding the impact of these adjustments on the number of Families that can be assisted.

(c) *Special Rules for Determining the Applicable Standard*— (1) *No Interim Change to Family's Applicable Standard.* The PHA may not change the Applicable Standard at a time other than the regular reexamination, unless the Family moves to a different unit. A Family may request interim reexamination of income, as provided for in section III.P. of this Notice, which may result in a change in Family income or in Adjusted Income, but not in the Applicable Standard.

(2) *Applicable Standard at Regular Reexamination.* (i) The schedule for determining the Applicable Standard that applied to a Family at initial lease approval for the unit continues to be used to determine the Applicable Standard unless:

(A) The PHA subsequently has established an Adjustment Standard schedule (see Paragraph (b)(5) of this section) which applies to the Family, in which case the Applicable Standard is determined from the Adjustment Standard schedule; or

(B) The Family moves to another unit with assistance under the Housing Voucher program, after the establishment of a current New Family/Mover schedule, in which case the current schedule will be used to determine the Applicable Standard.

(ii) Except as provided in paragraph (c)(2)(i) of this section, the Applicable Standard that previously applied to the Family will continue to be used at the regular reexamination unless:

(A) There has been a change in Family size or composition; or

(B) There has been a change in the PHA occupancy policy. In these cases, the Applicable Standard for the appropriate unit size is used.

(iii) Except as specified in paragraph (c)(2)(ii) of this section, the Applicable Standard for a particular Family may not at the time of reexamination be determined to be less than the Applicable Standard previously being used for the Family.

(3) *Assisting More Families.* If a PHA determines that some or all of the

available annual contributions under its ACC are not needed for participating Families, including for future adjustment of housing assistance payments and portability moves, it may assist more Families.

(d) *Minimum Rents.* Notwithstanding the formula under paragraph H.(a) of this section, the housing assistance payment shall not exceed the difference between the rent for the unit, including any applicable Utility Allowance for Family-paid utilities (as determined by the PHA for its Certificate Program), and 10 percent of the Family's Monthly Income (1/12th of Annual Income), computed in accordance with 24 CFR Part 813. In effect, 10 percent of the Family's Monthly Income is its minimum rent—the minimum amount of shelter costs not covered by the Housing Voucher assistance. While HUD expects the majority of Families to have their housing assistance payments based on the difference between 30 percent of Monthly Adjusted Income and the Applicable Standard, the mininum rent ensures that all Families make a contribution toward their rent, including utilities. The PHA shall provide for adjustments of the Utility Allowance in accordance with § 882.214(a) and, where applicable, shall take the current Utility Allowance into account at each Family's reexamination for purposes of determining the Family's minimum rent. (See section III.P.)

(e) *Rent Not Capped by Applicable Standard.* Under the housing assistance payment computation described in paragraphs H.(a)–(d) of this section, the amount of the housing assistance payment does not vary with the amount of the rent for the unit, except where the minimum rent requirement applies. If the unit rents for more than the Applicable Standard, the housing assistance payment is not increased. If the unit rents for less, the Family benefits by paying less than 30 percent of Monthly Adjusted Income towards rent, subject to the minimum rent requirement.

(f) *Prohibition Against Double Subsidy.* In no event may any Family receive the benefit of Housing Voucher assistance while regeiving one of the following: Other section 8 or section 23 housing assistance, section 101 rent supplements, section 236 rental assistance payments, or other duplicative Federal, State or local housing subsidy, as determined by HUD. In the case of section 236 units having only interest reduction subsidy (insured or noninsured) the duplicative subsidy shall be prevented by the Owner setting the unit rent for a Housing Voucher participant at the lesser of the Market Rent for the unit, as approved by HUD, or the Applicable Standard, but not less than Basic Rent.

(g) *No Payments for Vacancies.* If a Family moves out, the Owner shall promptly notify the PHA, and the PHA shall make no additional housing assistance payment to the Owner for any month after the month during which the Family moves. The Owner may retain the housing assistance payment for the month during which the Family moves.

(h) *Utility Reimbursements.* (1) Where the rent to the Owner does not include some or all utilities and the Family pays the utility company directly, occasionally the housing assistance payment will exceed the rent payable to the Owner for the unit. In such a case, the PHA shall pay to Family as a Utility Reimbursement the excees of the housing assistance payment (as determined in accordance with paragraphs H. (a)-(d) of this section) over the rent payable to the Owner. Without this reimbursement, the Family's housing assistance payment would be less than the amount for which the family is eligible under the statutory formula. In accordance with paragraph H.(d) of this section, the Family will, in all cases, be required to pay at least 10 percent of its Monthly Income (1/12th of Annual Income) toward rent, including, where applicable, the Utility Allowance.

(2) For example, given an Applicable Standard of $500. if $120 is 30 percent of a Family''s Monthly Adjusted Income, the housing assistance payment would be $380. If the rent payable to the Owner is $350, and the Utility Allowance is $150, the PHA would pay $350 to the Owner and the remaining $30 of the Housing Voucher payment to the Family as a Utility Reimbursement.

(3) If the Family and the utility company consent, the PHA may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

I. Finders-Keepers Policy

Except as described in paragraph I. (c) below, this section sets forth the same policy as that applicable to the Certificate Program.

(a) A Family with a Housing Voucher is responsible for finding a housing unit suitable to the Family's needs and desires in any area where the PHA (including the Receiving PHA when the Family is paritcipating under the portability procedures in section III.J. of this Notice) determines that it is not legally barred from entering into Contracts. A Family may select the dwelling unit which it already occupies, if the unit is approvable. Upon request, the PHA shall assist a Family in finding a unit where, becaue of age, handicap, large Family size or other reasons, the Family is unable to locate an approvable unit. The PHA also shall provide such assistance where the Family alleges that illegal discrimination on grounds of race, color, religion, sex, national origin, age or handicap is preventing it from finding a suitable unit, and in this case shall provide the Family with a copy of a HUD-903 form for use in filing a housing discrimination complaint. This assistance shall be in accordance with the PHA's approved equal opportunity housing plan.

(b) Neither in assisting a Family in finding a unit nor by any other action shall the PHA directly or indirectly reduce the Family's opportunity to choose among the available units in the Housing market.

(c) This section III.I. applies to al Families holding Housing Vouchers, including Families who are residing in or may wish to reside in Congregate Housing or Independent Group Residences meeting the Housing Quality Standards of § 882.109 or SRO Housing that meets the requirements of section III.K. of this Notice. The Finders-Keepers policy does not apply to the first occupancy of a dwelling unit with Housing Voucher assistance by a Family that agrees to move initially into a project rehabilitated under the Rental Rehabilitation Program. However, after initial use of the Housing Voucher in the rehabilitated project, the Family is free to move to any other approvable unit in the PHA's jurisdiction, consistent with the Finders-Keepers policy, or to move to another PHA's jurisdiction under section III.J. of this Noticed, Portability of Housing Vouchers.

J. Portability of Housing Vouchers

(a) *General Introduction.* (1) This section III.J. announces portability procedures for Families participating in the Housing Voucher program. It is different from, and replaces, the protability procedures described in the 1984 NOFA. Housing Voucher portability is not intended to supplant voluntary mobility programs in place for the Section 8 Certificate program that PHAs wish to extend to Housing Voucher participants.

(2) If a PHA is administering a Housing Voucher program in the location to which a (Housing Voucher holder or participant) Family wishes to move, the PHA shall accept the Family and provide services to the Family as if the Family were part of its Housing Voucher program. Where there is not a Housing Voucher assistance on behalf

of the Family or to issue the Family one of the "Receiving PHA's" available section 8 Certificates. The details of the Housing Voucher portability program are discussed in paragraph (d) of this section.

(b) *Mobility Under Current Section 8 Procedures.* Current § 882.103(c) of the regulations for the Section 8 Certificate program encourages PHAs to promote greater choice of housing opportunities for Eligible Families by:

(1) Seeking participation of Owners within the PHA's jurisdiction;

(2) Advising Families of their opportunities to lease housing throughout the PHA's area of operation;

(3) Cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of section 8 housing assistance payments who wish to move from the operating area of one PHA to another; and

(4) Entering into administrative arrangements with other PHAs in order to permit Certificate holders to seek housing in the broadest range of areas.

(c) *Applicability of Current Mobility Procedures.* Current procedures for the Section 8 Existing Housing Certificate program to facilitate mobility of assisted Families discussed in paragraph (b) of this section apply to the Housing Voucher program, wherever feasible to increase the opportunities of Families participating in the Housing Voucher program. If the Family desires to move and can move with the opportunity for continued Housing Voucher or Certificate assistance under a voluntary mobility program described in paragraph (b) of this section, the PHA is not required to use the portability procedures described in paragraph (d) of this section.

(d) *Portability Under the Housing Voucher Program.*—(1) *Scope.* The procedures in this paragraph (d) are to be used only for the Housing Voucher program.

(2) *General.* The purpose of this paragraph (d) is to establish procedures to be used in the Housing Voucher program when a Family desires to stay in the program, but wishes to move outside its current PHA's jurisidiction.

(i) Portability will provide an opportunity to a Housing Voucher holder or participant to move to any other Housing Voucher jurisdiction, by requiring the Receiving PHA to accept the Family, subject to the limitations identified in this paragraph (d). The Receiving PHA may choose to bill the Initial PHA for assistance payments made on behalf of the Family, or it may decide to provide Housing Voucher assistance to the Family under its own ACC.

(ii) This portability feature also promotes moves of Housing Voucher holders or participants to non-Housing Voucher jurisdictions by encouraging PHSs with Certificate programs to participate on a voluntary basis. If the Family chooses to move to an area without a Housing Voucher program, the Receiving PHA is not required to accept the Family. The Receiving PHA may administer the Housing Voucher and bill the Initial PHA or it may issue the Family one of its Certificates.

(3) *Eligibility for portability.* A Family is eligible for portability if it lives in the Initial PHA's jurisdiction and holds a current Housing Voucher, or if the Family is a current participant (see § 882.209(a)) in the Initial PHA's Housing Voucher program.

(4) *Determination to deny or terminate assistance.* Either the Initial PHA or the Receiving PHA may make a determination to deny or terminate assistance to the Family in accordance with § 882.210, as modified by section III.R. of this Notice.

(5) *Responsibilities of the Initial PHA.* (i) The Initial PHA shall manage its Housing Voucher program in such a way to assure that it has the financial ability to provide continued Housing Voucher assistance in accordance with these portability procedures.

(ii) The Initial PHA may deny the request to move if the number of Families moving under these portability procedures would be more than 25 percent of units under lease in the Initial PHA's Housing Voucher program.

(iii) If a Family eligible for portability notifies the Initial PHA that it wants to move under these procedures and the area to which the Family wants to move, the Initial PHA shall determine whether the PHA in the new area administers a Housing Voucher program and, if it does not, but opeates a Certificate program, whether the Receiving PHA is willing to accept the Family under paragraph (d)(6)(ii) of this section III.J.

(iv) If the Family is going to move under the portability provisions above, the Initial PHA shall notify the Receiving PHA to expect the Family. The Initial PHA shall verify to the Receiving PHA that the Family met the income-eligibility requirement for admission to the program, and that the Initial PHA issued the Family a Housing Voucher consistent with § 882.209(d), and shall state the date by which the Family must submit a Request for Lease Approval in the jurisdiction of the Receiving PHA, which is governed by section III.G. of this Notice.

(v) When the Family moves out of the Initial PHA's jurisdiction, the Initial PHA retains funding for the Housing Voucher under its ACC.

(vi) The Initial PHA shall reimburse the Receiving PHA for the full amount of the housing assistance payments made by the Receiving PHA on behalf of the Family. The amount of housing assistance shall be based on the Applicable Standard in effect at the Receiving PHA. If the Receiving PHA elects to provide assistance to the Family utilizing funding under the ACC for its own Certificate or Housing Voucher program, the Initial PHA is not required to reimburse the Receiving PHA.

(vii) The Initial PHA shall reimbuse the Receiving PHA 80 percent of the Initial PHA's administrative fee for each unit month that the Family is under a Housing Voucher contract in the Receiving PHA's jurisdiction.

(viii) The Initial PHA may receive up to the preliminary fee for new units for cost-justified expenses for this purpose, if the portable Housing Voucher qualifies for the preliminary fee.

(ix) If the portability Family leaves the Housing Voucher program, or if the Receiving PHA elects to provide assistance to the Family utilizing funding under the ACC for its own Housing Voucher or Certificate program, the Initial PHA is free to use for other Families the funding previously needed to support payment of subsidy for the portable Housing Voucher.

(6) *Responsibilities of the Receiving PHA.* (i) A Receiving PHA that administers a Housing Voucher program shall issue a Housing Voucher to a Family moving from the Housing Voucher program of another PHA. (But see paragraphs (c) and (d)(4) of this section.) A Receiving PHA that administers a Housing Voucher program may not limit the number of Housing Vouchers issued to such Families. The Receiving PHA may either bill the Initial PHA for the housing assistance payments on behalf of the Family or may provide assistance to the Family utilizing funding under the ACC for its own Housing Voucher program. As an alternative to issuing a Housing Voucher (if the Receiving PHA also administers a section 8 Certificate program) the Receiving PHA may issue a Certificate to the Family utilizing funding under the ACC for its own Certificate program.

(ii) A Receiving PHA that does not administer a Housing Voucher program but does administer a Certificate program may:

(A) Refer the Initial PHA to a Statewide or other PHA that administers a Housing Voucher program in its jurisdiction;

(B) Administer the Housing Voucher assistance on behalf of the Family and bill the Initial PHA for amounts authorized in this paragraph (d); or

(C) Issue a Certificate to the Family utilizing funding under the ACC for its own Certificate program.

(iii) The Receiving PHA shall recertify the Family's income initially and at least annually thereafter for purposes of determining the housing assistance payments. The Receiving PHA shall not deny the Family a Housing Voucher on the ground that the Family's income exceeds the income limits for Housing Voucher eligibility in the Receiving PHA's jurisdiction.

(iv) The Receiving PHA shall notify promptly the Initial PHA if a Family fails to submit a Request for Lease Approval by the date specified by the Initial PHA.

(v) The amount of Housing Assistance payments to be made on behalf of the Family shall be determined in accordance with section III.H. of this Notice. A non-Housing Voucher PHA shall use a Payment Standard based on the appropriate Fair Market Rent for the Receiving PHA as the Applicable Standard at the Family's initial lease approval.

(iv) The Receiving PHA shall perform all of the functions normally associated with providing assistance to a Family in a Housing Voucher program, including lease approval, annual recertification of income and annual inspection of the unit.

(vii) The Receiving PHA may bill the Initial PHA for an amount equal to 80 percent of the Initial PHA's administrative fee unless it elects to provide assistance to the Family utilizing funding under the ACC for its own Certificate or Housing Voucher program. The Receiving PHA may receive up to the preliminary fee for Housing Voucher for cost-justified expenses.

(viii) The Receiving PHA is responsible for payments it makes on behalf of the Family to the Owner in its jurisdiction. To accomplish this, in cases in which it does not elect to provide assistance to the Family utilizing funding under the ACC for its own Housing Voucher or Certificate program, the Receiving PHA bills the Initial PHA for the amount of the housing assistance payments.

(ix) The Receiving PHA shall promptly notify the Initial PHA if the Family ceases to be a current participant in the Initial PHA's Housing Voucher Program.

(7) *Subsequent moves.* (i) A Family may move more than once, using the portability procedures in this paragraph (d), although the Initial PHA may limit Family moves to not more than once in any twelve-month period.

(ii) When the Family wishes to move from an area in which the Receiving PHA has been billing the Initial PHA, the PHA in the new jurisdiction to which the Family moves becomes the Receiving PHA. It then has all of the choices and obligations of a Receiving PHA as described in this section. The first Receiving PHA is no longer, involved, because the Initial PHA retains funding authority for the Housing Voucher.

(iii) When a Family wishes to move from an area in which the Receiving PHA has elected to provide assistance to the Family utilizing funding under the ACC for its own Housing Voucher program, this Receiving PHA becomes the new Initial PHA. It has all of the choices and obligations of an Initial PHA has described in this section. The PHA in the new jurisdiction to which the Family moves becomes the Receiving PHA and has all of the choices and obligations of a Receiving PHA as described in this section. In this situation, the Initial PHA that originally selected the Family is no longer involved.

K. Eligible Housing

(a) Existing dwelling units determined by the PHA to be Decent, Safe, and Sanitary may be used under the Housing Voucher Program, except for the following types of housing:

(1) A unit that is owned by the PHA administering the ACC under this Notice, including both the Receiving PHA and Initial PHA under the portability provisions of section III.J. of this Notice;

(2) A unit that is receiving other assistance under the U.S. Housing Act of 1937, other than assistance under section 17;

(3) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, or facilities that provide continual psychiatric, medical or nursing services; and

(4) Housing that is occupied by its owner (including the owner of a manufactured home leasing a manufactured home space). However, the 1937 Act provides that a PHA may use up to five percent of Housing Voucher authority to provide assistance with respect to cooperative or mutual housing that has a resale structure that maintains affordability for Lower Income Families, if the PHA determines such assistance will assist in maintaining affordability of such housing for Lower Income Families. The PHA must obtain HUD Headquarters approval before using Housing Vouchers in cooperative or mutual housing. HUD will consider granting such approval on a case-by-case basis, and, for this purpose, may provide for appropriate modifications of requirements under this Notice.

(b) Elderly, handicapped, disabled, or displaced Families and individuals may use Congregate Housing. Eligible elderly, handicapped or disabled Families and individuals who require a planned program of continual supportive services may use Independent Group Residences. The definitions of and relating to Congregate Housing and Independent Group Residences in § 882.102 and the Housing Quality Standards for Independent Group Residences and Congregate Housing under § 882.109 shall apply to the Housing Voucher Program.

(c)(1) SRO Housing may be used only if: (i) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office; (ii) the PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and (iii) the unit of general local government and the local PHA certify to HUD that the property meets applicable local health and safety standards for SRO housing.

(2) The Housing Quality Standards under § 882.109 shall apply to SRO Housing, except for the standards in §§ 882.109 (a), (b), (c), (m), and (n). In the absence of local health and safety standards for SRO housing (see paragraph (c)(1)(iii) of this section), sanitary facilities, space and security must meet the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance. Each SRO unit shall be occupied by no more than one person. Exterior doors and windows accessible from outside the SRO unit shall be lockable.

(d) The 40 percent limitation under § 882.110(c) on the number of certain subsidized units in specified types of federally assisted housing shall apply. The PHA shall count Housing Voucher units in determining compliance with the 40 percent limitation.

L. Shared Housing

The Department published a proposed rule on December 7, 1984 (49 FR 48006) to permit Families to live in shared housing arrangements for all components of the section 8 Housing Assistance Payments Program. Shared

housing in the Section 8 Existing Housing and Moderate Rehabilitation Programs for Elderly Families was authorized by section 211 of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) (Pub. L. 98-181, approved November 30, 1983).

The Department believes that shared housing could provide numerous benefits to assisted tenants. In the section 8 Existing Housing or Housing Voucher Program, it could provide a wider choice of housing types by enabling Families who would otherwise be in apartments to share single family homes. By pooling resources, Families may be able to upgrade both their choice of home and neighborhood. Families also may choose shared housing for the benefits of security and shared responsibilities. Shared housing could help to provide affordable housing, since the shared use of existing homes is a highly cost-effective way to use existing housing stock.

In the proposed rule, the Department also stated its intent to provide for shared housing in the Housing Voucher Program, indicating that when a final shared housing rule is developed a corresponding revision to the Housing Voucher Notice would be published. The Department reaffirms its intention to implement shared housing in the Housing Voucher program. Because a final rule has not been published for shared housing, this Notice does not contain details for program application to Housing Vouchers. A separate notice authorizing shared housing in the Housing Voucher program will be published at the time of effectiveness of the shared housing final rule.

M. Approving Units and Executing Leases and Housing Voucher Contracts

(a) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA shall respond to inquiries from Owners who have been approached by Housing Voucher holders by explaining the major program procedures, including Lease provisions, Lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed Lease, which shall include the lease provisions prescribed by HUD for the Housing Voucher program. At the time of submission of the Lease, it shall be complete except for execution.

(b) *Decent, Safe, and Sanitary Condition of the Unit.* In accordance with § 882.209(h), the PHA shall inspect units to determine whether they are Decent, Safe, and Sanitary before the Housing Voucher Contract is executed.

(c) *Unit Sizes That Vary from Housing Voucher.* (1) Regardless of the number of bedrooms stated on a Housing Voucher, the PHA shall not prohibit a Family from renting an otherwise acceptable unit on the ground that it is too large for the Family.

(2) The PHA may not prohibit a Family from renting a unit with fewer bedrooms than stated on the Housing Voucher. However, the unit must meet the space requirements of the Housing Quality Standards under § 882.109(c) or such variation as HUD may have approved, or must meet the requirements of section III.K.(c) of this Notice, in the case of SRO Housing.

(3) If the PHA determines that the assisted unit occupied by a participant Family does not meet the space requirements of the Housing Quality Standards under § 882.109(c) (or of section III.K.(c) for SRO Housing) because of an increase in Family size or a change in Family composition, the PHA shall issue the participant Family a new Housing Voucher, and the Family and the PHA shall try to find an acceptable unit as soon as possible.

(4) The policies stated in paragraphs (c)(1)-(3) are similar to policies applied in the Certificate Program (see §§ 882.209(i) and 882.213). References to compliance with maximum rent restrictions are not included, since there are no maximum rents under the Housing Voucher Program.

(d) *Lease Requirements.* (1) *General.* (i) The lease between the Owner and the Family shall be in accordance with section III.O. of this Notice and any applicable HUD requirements. The lease shall include all provisions required by HUD and shall not contain any provisions prohibited by HUD.

(ii) In addition to the requirements identified in this paragraph (d), a lease for an Independent Group Residence also shall comply with § 882.209(j)(2).

(2) *Term of Lease.* (i) The term of the lease shall begin on a date stated in the lease and shall continue until:

(A) A termination of the lease by the Owner in accordance with section III.O. of this Notice.

(B) A termination of the lease by the Family in accordance with the lease or by mutual agreement during the term of the lease. The lease shall permit a termination of the lease by the Family without cause, at any time after the first year of the term of the lease, on not more than 60 days written notice by the Family to the Owner (with a copy to the PHA); or

(C) A termination of the Housing Voucher Contract by the PHA.

(ii) The term of the lease shall begin at least one year before the end of the term of the last funding increment under the ACC. The Contract and the lease shall end if the PHA determines, in accordance with procedures prescribed by HUD, that funding under the ACC is in sufficient to support continued assistance.

(iii) The Owner may offer the Family a new lease for execution by the Family after approval by the PHA for a term beginning at any time after the first year of the term of the lease. The Owner shall give the tenant written notice of the offer, with a copy to the PHA, at least 60 days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the Family.

(e) *Approval and Disapproval of Leases and Execution of Housing Voucher Contracts and Related Documents.* The PHA shall approve or disapprove leases and provide for execution of HUD-prescribed forms of Housing Voucher Contracts and related documents in accordance with §§ 882.209(k) and (1) and § 882.215(b). References to approving the amount of rent payable to the Owner and the rent reasonableness certification under § 882.106(b) shall not apply, since there is no maximum rent payable to the Owner under the Housing Voucher Program.

N. Maintenance, Operation and Inspections; Security Deposits

(a) *Maintenance, Operation and Inspections.* The requirements of § 882.211 concerning maintenance, operation and inspections of units shall apply. In addition, the PHA shall not make any housing assistance payments for a unit that fails to meet Housing Quality Standards, unless the Owner promptly corrects the defect and the PHA verifies the correction.

(b) *Security Deposits and Utility Deposits.* (1) If at the time of the initial execution of the lease the Owner wishes to collect a security deposit, the amount shall not exceed the greater of 30 percent of the Family's Monthly Adjusted Income or $50. The amount of the security deposit also shall be limited by any applicable limitation under State or local law. If a Housing Voucher Family rents its pre-program unit, a security deposit collected in excess of the maximum amount that was collected before PHA approval of a lease under the Housing Voucher program does not

have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits from its own resources or from other public or private sources.

(2) Subject to State and local law, the Owner may use the security deposit, including any interest on the deposit, in accordance with the Housing Voucher Lease, as reimbursement for any unpaid rent payable by the Family or for other amounts the Family owes under the lease. The Owner shall give the Family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the Owner, the Owner shall refund promptly the full amount of the unused balance to the Family.

(3) If the Family moves from the unit, the Owner may claim reimbursement from the PHA for:

(i) The amount the Family owes under the Lease (but not more than one month's rent) minus

(ii) The greater of the security deposit actually collected or the maximum security deposit the Owner could have collected at initial lease execution in accordance with paragraph (b)(1) of this section.

(4) Any reimbursement under this section must be applied first toward any unpaid rent due under the lease and then to any other amounts owed. No reimbursement may be claimed from the PHA for unpaid rent for the period after the Family vacates the unit.

O. Termination of Tenancy by Owners

(a) The Owner shall not terminate the tenancy except for:

(1) Serious or repeated violation of the terms and conditions of the Lease;

(2) Violation of Federal, State, or local law which imposes obligations on a tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(3) Other good cause. However, during the first year of the term of the lease, the Owner may not terminate the tenancy for "other good cause", unless the termination is based on malfeasance or nonfeasance of the Family.

(b) The following are some examples of "other good cause" for termination of tenancy by the Owner:

(1) Failure by the Family to accept the offer of a new lease in accordance with section III.M.(d)(iii) of this Notice;

(2) A Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property;

(3) Criminal activity by Family members involving crimes of physical violence to persons or property;

(4) The Owner's desire to utilize the unit for personal or family use or for purpose other than use as a residential rental unit; or

(5) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental).

(c) The list of examples in paragraph (b) of the section is intended as a non-exclusive statement of some situations included in "other good cause", but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list. The owner may not terminate tenancy during the first year of the term of the Lease for "other good cause" (see paragraph (a)(3) of this section) for the grounds stated in paragraph (b)(1), (b)(4), or (b)(5) of this section.

(d) Any notice required under this section III.0. or section III.M.(d) of this Notice may be combined and run concurrently with any notice required under State of local law.

P. Reexamination of Family Income and Composition

(a) The PHA shall reexamine Family income and Family size and composition at least annually, and in accordance with 24 CFR Part 813.

(b) After reexamination, the PHA shall adjust the amount of the housing assistance to reflect any changes in Family Monthly Adjusted Income or Monthly Income, using the Applicable Standard determined in accordance with sections III.H.(b) and (c) of this Notice.

(c) If one year has elapsed since the date of the last housing assistance payment in accordance with section III.H. of this Notice, the Contract will terminate automatically.

(d) At any time, a Family may request a redetermination of the housing assistance payment on the basis of change in Family Income or Adjusted Income.

Q. Family Obligations

(a) A Family shall:

(1) Supply any certificate, release, information or documentation that the PHA or HUD determines to be necessary in the administration of the program, including information for use by the PHA in a regularly scheduled reexamination or interim reexamination of Family income and composition in accordance with HUD requirements;

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice;

(3) Notify the PHA before vacating the dwelling unit; and

(4) Use the dwelling unit solely for residence by the Family, and as the Family's principal place of residence.

(b) A family shall not:

(1) Sublease or assign the lease or transfer the unit;

(2) Own or have any interest in the dwelling unit, except as provided in section III.K.(a)(4);

(3) Commit any fraud in connection with the Housing Voucher Program; or

(4) Receive duplicative assistance under the Housing Voucher Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any other Federal housing assistance program (including any section 8 program).

R. Grounds for Denial or Termination of Assistance

Section 882.210 shall apply to the Housing Voucher Program. However, the applicable Family obligations are covered in section III.Q. of this Notice, not in § 882.118.

S. Informal Review or Hearing

(a) The informal review or hearing requirements of § 882.216 shall apply to applicants and participating Families. References to a participant's right to an informal hearing in cases involving the amount of the Total Tenant Payment or Tenant Rent under § 882.216(b)(i) shall be considered to be references to computation of the amount of housing assistance payment for the Family. Section 882.216(b)(1)(iii), concerning hearings where the PHA determines a Family is residing in a unit with a larger number of bedrooms than appropriate, shall not apply.

(b) If a Housing Voucher holder or participant wants to move with continued assistance under the Housing Voucher program using the portability procedures in section III.J.(d) of this Notice, the Family shall be given the opportunity for an informal hearing in accordance with § 882.216(b) if the Initial PHA or Receiving PHA decides to deny or terminate such continuing assistance. However, a Receiving PHA which does not administer a Housing Voucher Program is not required to give the opportunity for an informal hearing on the PHA's election not to administer Housing Voucher assistance on behalf of the Family.

IV. Waivers

Upon determination of good cause, the Assistant Secretary for Housing-Federal Housing Commissioner may, subject to statutory limitations, waive any

provision of this Notice. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

V. Summary of Comments

The Department received 38 comments on its July 12, 1984 Notice of Funding Availability. Approximately 90 percent of these comments were from Public Housing Agencies, while the remainder were from a professional membership organization, a trainer for section 8 programs, and two consortia of local governments. The comments generally were negative, although many pointed out positive aspects of the program. The principal reason for the negative comments was a feeling of satisfaction concerning the section 8 Existing Housing Certificate Program and lack of interest in a new program.

A. General Dissatisfaction With the Notice of Funding Availability

Eighteen commenters expressed general concern about the program, submitting a common message that the section 8 certificate program works well and that there is, therefore, no need to change it. These same commenters questioned the Department's relinace on the Experimental Housing Allowance Program (EHAP), and sought additional information concerning it. There was a general uneasiness about switching to a housing program that does not control the rent or the amount a family can contribute toward its housing needs.

EHAP was an experiment authorized by Congress in 1970, designed to determine the feasibility of a housing allowance program. The Experimental Housing Allowance Program was begun in 1973 and the final evaluation was completed in 1983. In all, approximately 25,000 families participated, in twelve locations. Some of the conclusions of EHAP confirmed the efficacy of the Section 8 Existing Housing Certificate Program, while several indicated program elements that could be improved. Among those elements were the ceiling on rents and the limit on family contribution.

Specifically, EHAP results indicated that the voucher-style payment served as a "shopping incentive" for families to seek a standard dwelling that met their needs at the most economical rent level. About one-third of the participants in EHAP chose housing units renting at or below the Fair Market Rent (FMR) equivalent, and about half chose units renting above the FMR equivalent. Removing the FMR cap allows assisted families to choose housing units in much the same way that unassisted families choose their units.

It also was found that allowances have virtually no effect on the price of housing. In the two sites where a full entitlement allowance program was implemented, five years of program operation produced a rent increase attributable to the program of only a fraction of one percent per year. Similar results were found when the short-run inflationary impacts of a housing allowance program were modeled for twenty metropolitan areas throughout the country.

The Department believes that the Housing Voucher Program described in this NOFA represents an improved method, as compared with the Certificate Program, of providing housing assistance to those in need. The principal changes made to the Certificate program in developing the Housing Voucher Demonstration reflect conclusions drawn from actual experience. Additional changes to the program have been made in response to the comments, and are described below.

B. Adequacy of Annual Contributions and the PHA Administrative Fee

Eighteen commenters questioned the level of funding for the Housing Voucher Program, with seven questioning the method of determining the annual contributions amount to be included in the Annual Contributions Contract. Sixteen raised questions about the adequacy of the administrative fee.

Annual Contributions. Commenters questioned the adequacy of a system with annual contributions based on 115 percent of the estimated first-year housing assistance payments, noting that slow initial lease-up would result in lower subsidy needs during the first year.

It is true that PHAs will continue to prepare the required financial forms using procedures similar to those used in the Certificate program, estimating the actual number of months a unit will be leased in the initial year based upon the HUD-approved leasing schedule or past experience. However, HUD recognizes that the lease-up rate will vary among PHA's. To accommodate these variations, HUD will compute the base for calculating the 115 percent of first-year subsidy needs by assuming 100 percent lease-up, thus making available an estimated full-year subsidy amount for each unit. If the PHA does not need the full annual amount available during the PHA fiscal year in which the term begins, the excess is available for use later in the ACC term for the funding increment.

Section 8(o)(7)(B) of the U.S. Housing Act of 1937 specifies that "each contract with a public housing agency for annual contributions under this subsection shall provide annual contributions equal to 115 perentum of the estimated aggregate amount of assistance required during the first year of the contract." The Department believes that this amount will be adequate for the five-year term of the ACC, given economic data available to the Department, including a low inflation rate. There should not be inadequate program funding, since the PHA will determine any increases in the Applicable Standard in subsequent years.

PHA Administrative Fee. Commenters questioned the lower administrative fee for the Housing Voucher Program. (The administrative fee for the Housing Voucher Program is based in a percentage of the published two bedroom FMR, as in the Certificate Program. The Housing Voucher administrative fee is 85 percent of the administrative fee for the Certificate Program. Under both programs, the PHA may collect a preliminary fee for cost-justified items up to $215 for each Housing Voucher when it is first issued.) Most PHAs felt that conversion to a new program does not reduce or steamline administrative overhead, and that the possibility of PHAs' monitoring and collecting security deposits actually will increase the burden, particularly since staff will need to be trained to implement the new program.

Before it determined a fee based on a percentage of the amount paid to a PHA in the section 8 Certificate Program, the Department determined that PHAs would not be required to perform certain duties. In administering the Housing Vocher Program, PHAs will not be involved in:

(1) Negotiating rent between the Owner and the Family;

(2) Documenting rent reasonableness;

(3) Determining that rents are within the Fair Market Rent limitations;

(4) Reviewing and approving requests for exception rents; and

(5) Processing request for vacancy payments.

In additional, the Department has changed the provisions of the House Voucher NOFA on security deposits (see section III.N.(b) of this Notice) and has removed references to PHA loans for security deposits, which were the basis for concerns about collection and monitoring functions. The Department also has provided for an additional administrative fee called the "hard-to-house" fee, of $45, to cover the cost of special assistance given by the PHA to a Family with three of more minors to help the Family find acceptable housing. PHAs will receive $45 for each

qualifying Family successfully housed (i.e., for which a lease and Housing Voucher Contract are initially executed). The hard-to-house fee is not provided for a hard-to-house Family that remains in its pre-Housing Voucher program unit. If an assisted large Family meeting the hard-to-house definition moves to another unit with continued Housing Voucher assistance, the PHA will receive another $45 hard-to-house fee.

C. Housing Voucher Payments and Affordability Adjustments

While 31 commenters submitted comments on the housing assistance payments and affordability adjustments provisions of the NOFA, there was no unanimity of position. Several commenters noted that setting the housing assistance payments at the amount by which the applicable payment standard exceeds 30 percent of a Family's monthy income will cause some Families to pay over 30 percent of their income for rent—if their unit cost is higher than the applicable payment standard. Some of these commenters stated that a system that allows such a situation if ill-advised, since many lower income Families cannot afford rent contributions in excess of 30 percent of their income. Others noted that a Family may welcome this as a means of security housing in a desired location or with special facilities.

On the other hand, several commenters stated that some Families will receive a "windfall," if it is possible to pay less than 30 percent of monthly income when unit rents are less than the applicable payment standard.

The Department believes that this feature of the program is beneficial, because it provides an assisted Family with the same flexibility and freedom of choice in the marketplace as an unassisted family. The Department recognizes that if a Family rents a unit for more than the applicable payment standard, the Family will pay more than 30 percent of its income toward rent. The Department believes that this creates a "shopping incentive" for the Family to find the most economical housing it can, within the Housing Quality Standards. If the Family *chooses* to pay more for a unit, it is exercising the same choice as an unassisted Family in the rental marketplace.

Specific comments on the Payment Standard include:

(1) By using the Payment Standard in effect when the ACC is executed by HUD, subsequent increases in market rents will not be reflected.

The PHA is not limited to using the Payment Standard in effect at the beginning of the ACC term. As discussed in section III.H.(b) of this NOFA, the PHA may establish a schedule to determine the Applicable Standard for Families entering the program and participating Families who move into new units based on a variety of factors. The Adjustment Standard schedules discussed in section III.H.(b) of this Notice are designed to allow adjustments in the Applicable Standard for changes in market conditions. Consistent with section 8(o)(7)(A) of the 1937 Act, the NOFA allows the PHA to establish Adjustment Standard schedules as frequently as twice during any five-year period to assure continued affordability of housing by participating Families. The Department affirms its position that the PHA can best manage its own programs to meet local needs.

The Notice states that an affordability adjustment may be made for all participating Families or for certain categories of Families (for example, unit size or Family type (handicapped, elderly)). If the affordability adjustment is made only for certain categories of Families, it still will constitute one of the two statutory affordability adjustments permitted during the five-year period.

In addition, the PHA must consult the public and the unit of general local government for its area of operation regarding the impact of these adjustments on the number of Families that can be assisted. This consultation is required by section 8(o)(7)(D) of the 1937 Act. Although the commenters requested additional instruction concerning the adequacy of "consultation" we have not made the NOFA more specific. Each PHA should determine the most appropriate method of soliciting the comments of the public and of the unit of general local government, based on local circumstances.

(2) Two commenters stated that owners would be "more inclined to accept smaller annual rent increases than only two increases in a five-year period."

These commenters misunderstood the NOFA. What the Owner charges for rent is to be negotiated between the Owner and the Family. The Applicable Standard does not limit the amount the Owner can charge, and the Family does not have to agree to a rent equal to the Applicable Standard. Research findings and HUD experience indicate that rents tend to cluster around a rent cap, when there is one (such as the FMR in the Certificate Program). However, EHAP findings indicate that when there is not a cap, the rents are more widely distributed. Research further demonstrates that there are fewer rent increases if there is no rent ceiling involved.

(3) Commenters stated that the Payment Standard should not include utilities since it only confuses the Owners and Families. The PHA should deal with the utility allowance directly with the Family.

Section 8(o) provides that the assistance payment for a Housing Voucher participant shall be the difference between the Payment Standard and 30 percent of Adjusted Income, and further requires that the Payment Standard be based on the published Fair Market Rents, which include the cost of utilities. Also, section 8(o)(2) (the "minimum rent" provision) requires that the assistance payment may not exceed rent for the unit, including the utility allowance where tenants pay utilities directly, and 10 percent of income. In addition to the statutory requirement, failure to include provision for tenant-paid utilities in the minimum rent calculations would be inequitable to Families in units with tenant-paid utilities.

(4) Commenters objected to the provision that Housing Voucher Program Families are not eligible to receive a utility reimbursement payment where the utility allowance exceeds the household's gross Family contribution. Commenters stated that this is diffferent from the section 8 Certificate program and that this result is contrary to the legislative concept of "rent-paying ability".

Utility reimbursements are treated differently in the Housing Voucher and Certificate Programs because of the differences in the way that the assistance payment on behalf of the Family is determined. With the total tenant payment in the Certificate program fixed at a specified percentage, the utility reimbursement equals the amount by which the utility allowance exceeds the Family's specified total tenant payment. This reimbursement assures that the Total Tenant Payment by the Family is within the statutory limit on rent as a percentage of income. Under the Housing Voucher Program, a Family may reduce the amount it pays for rent, or it may increase it; the subsidy is the fixed element in the formula. Therefore, the utility reimbursement is the amount by which the subsidy (*i.e.*, generally, the applicable standard minus 30 percent of monthly adjusted income) exceeds the amount of the assistance payment due to the Owner.

(5) Commenters also stated that removing the cap on the Family's share of the rent would be a strong impetus for HUD to further minimize increases in

Fair Market Rents to the point that they are no longer fair.

The Department is required to determine Fair Market Rents annually, in accordance with section 8(c) of the 1937 Act. The Department determines rents based on a formula, which is described when the rents are published for comment. The public is invited to submit comments on the adequacy of the rent level for a particular area as well as on the formula itself. The Department finds no basis for the comment submitted on the Housing Voucher NOFA.

D. No PHA Reimbursement for Amounts Family Owes Owner—Owner May Charge a Security Deposit

The 1984 NOFA provided that a PHA would not reimburse an Owner for the portion on the rent not covered by the housing assistance payment, damages or other amounts due under the lease. It also allowed the Owner to collect up to one month's rent as a security deposit. (The NOFA also stated that PHAs may decide to provide repayable advances to Families unable to pay the security deposit.)

Three PHAs were in favor of no PHA reimbursements to the Owner. Twenty-three commenters identified a variety of problems confronting a program designed in this way—including inadequate motivation for Owners to participate; possible security deposit by landlords; unlikelihood of landlords being able to collect any damage claim; and excessive workload for a PHA in taking on "collection agency" functions. Two commenters recommended that security deposits and HAP contract guarantees as provided under the Certificate program be incorporated into the Housing Voucher program.

The 1985 NOFA reflects a revised policy on security deposits and damage claims. The Department is adopting the section 8 provisions, with one change—damage claims will be limited to one month's actual rent (instead of two months). Accordingly, for the Housing Voucher program, the Owner may require a Family to pay a security deposit equal to the greater of 30 percent of the Family's monthly adjusted income or $50. If the security deposit is insufficient to reimburse the Owner for amounts owed under the lease, the Owner may claim reimbursement from the PHA up to the lesser of (1) the amount owed the Owner, or (2) one month's total rent, as reflected in the lease.

E. Portability of Housing Vouchers

Seventeen organizations submitted comments on the portability feature of the Housing Voucher Program. Most commenters liked the concept of portability, but expressed concern about its workability. Several suggested streamlining the procedures to limit the burden on PHAs. Others requested more or fewer restrictions on the categories of eligible Families, or intended use, of the portable assistance.

In addition to the pool of Certificates described in the 1984 Housing Voucher NOFA, the Department has published a proposed rule for a portability program for the section 8 Certificate Program (see the October 19, 1984 issue of the **Federal Register**, 49 FR 41072). The proposal for the Certificate Program was not bsed on a National pool, but on the concept of one PHA working with another PHA. Thus, when a PHA issues a Portability Statement so that one of its participants or Certificate holders could relocate, that PHA would retain contract and budget authority for the Certificate. The second PHA (receiving PHA) would recover money it spends on behalf of the Family by billing the first PHA.

The Department received 174 comments on the Certificate portability rule, and the comments contained numerous questions and alternatives to the proposed rule. Several of the commenters recommended that the Department adopt the pool concept identified in the 1984 Housing Voucher NOFA, while other commenters on the 1984 NOFA stated that a pool was cumbersome. Analysis of the comments on the Certificate proposed rule is continuing.

The Department affirms its commitment to promoting mobility for Families receiving Section 8 assistance. While analysis of portability for Section 8 Certificates continues, portability for holders of Housing Vouchers or those receiving assistance under the Housing Voucher Program is provided for, effective with the publication of this Notice.

However, in response to comments on both the 1984 NOFA and the Certificate program and suggestions contained in those comments, this Notice establishes a new portability procedure in place of the portability program described in the 1984 NOFA. The changes are highlighted below:

1. Portability is available to an Eligible Family that is receiving Housing Voucher assistance or that has just been issued a Housing Voucher and lives in the PHA's jurisdiction.
2. Portability is not limited to those Families whose heads, spouses, or sole member is under 62 years old.
3. Portability is not limited to those moving in search of employment.
4. Portability is not limited to Families wishing to move to a different market area in a different State.
5. Both PHAs will be eligible for up to the preliminary fee for processing a new unit.
6. Portability is not limited to the amount of resources available to fund a limited National pool.

The new Housing Voucher Portability program is described in detail in Section III.J. of this Notice.

F. Housing Vouchers Used in Connection With the Rental Rehabilitation Program

Five organizations submitted comments concerning the use of Housing Vouchers in connection with the Rental Rehabilitation Program. Four commenters questioned different aspects of the actual coordination—why was HUD using Housing Vouchers with the Rental Rehabilitation Program; why cannot PHAs issue Housing Vouchers to non-Very Low-Income Families who reside in properties to be rehabilitated, without case-by-case approval by HUD Headquarters; and won't Housing Voucher Families living in Rental Rehabilitation buildings be living in the least desirable areas?

The legislation authorizing the Housing Voucher Program (section 207 of the Housing and Urban-Rural Recovery Act of 1983, adding section 8(o) to the U.S. Housing Act of 1937) requires the use of Housing Vouchers in support of the Rental Rehabilitation Program. In response to the second comment, any person receiving assistance under the 1937 Act must meet the income requirements of section 16 of the 1937 Act, that limits nationally the number of Lower Income Families with incomes greater than 50 percent of median that can be admitted into the program. However, the Department intends to authorize a specified number of exceptions to the section 16 requirements for each PHA adminstering Housing Vouchers in support of a Rental Rehabilitation program. The PHA will be able to admit eligible displaced Families without prior HUD approval up to the authorized number. The number of such Families admitted must be reported to HUD for recordkeeping purposes.

The third question assumes that Families receiving Housing Vouchers in support of the Rental Rehabilitation program will be limited to using the Housing Vouchers in those properites. However, a Family issued a Housing Voucher because of its occupancy in a project to be rehabilitated is free to move elsewhere with its Housing

Voucher assistance. Some families may be issued a Housing Voucher on condition that they move initially into a Rental Rehabiliation project, but after that initial occupancy they will have the opportunity to move with continued assistance. Thus, Families will not be restricted to Rental Rehabilitation projects.

The last commenter stated that rural areas receiving FmHA assistance were precluded from participating in the Housing Voucher Program, since Housing Vouchers are to be used in connection with the Rental Rehabilitation Program, and the statute excludes rural areas receiving assistance under the FmHA from the Rental Rehabilitation Program.

This year's Small/Rural component, as well as the formula allocation of a certain number of Housing Vouchers to the HUD Regional Offices, should provide increased opportunties for rural areas to participate inthe Housing Voucher Program.

G. Freestanding Component of the Housing Voucher Program

Five commenters submitted questions on the Freestanding component of the Housing Voucher Program. A common concern was the relationship between the size of the PHA and the level of turnover—one commenter suggested that at least 50 percent of the Housing Voucher allocation be matched with Certificates, since Certificate turnover may not be sufficient to issue Housing Vouchers expeditiously, while three commenters said that PHA selection should not be limited to PHAs having Certificate Programs with more than one thousand units.

The design of this demonstration included the selection of programs large enough to ensure a sufficient level of Family turnover (which eliminates the first concern) as well as an adequate mix of Family types and sizes. This required selecting PHAs with a minimum of one thousand units.

One commenter questioned the legality of the Department's providing Housing Vouchers "to people who have specifically applied for section 8 units". The Department considers the Certificate and Housing Voucher Programs as two variations of section 8 assistance. It is appropriate that those who have been on waiting lists who are offered assistance should be provided the opportunity of the first kind that becomes available—whether it is a Certificate or a Housing Voucher. In the Rental Rehabilitation and FY '85 formula allocation programs, Families selected from the waiting list may choose whether to accept the first type of assistance offered or to wait for the other type of assistance to become available.

H. No Payments for Vacancies

Ten commenters objected to the lack of provision for vacancy payments, and cited this as the elimination of an important incentive for Owners to participate in the program.

Section 8(o)(5) of the 1937 Act specifically eliminates any payment for a dwelling unit vacated by a Family after the month in which the unit was vacated.

I. Removal of Rent Reasonableness Certification

Eight commenters requested that HUD restore the requirement for a rent reasonableness determination, because it protects the Family against rent gouging. We disagree with the comment, principally because the results of the EHAP demonstrated a contrary conclusion. The Housing Voucher Program design is intended to give the Family the flexibility and responsibility of rent negotiation. This aspect of the Housing Voucher program will be one area of study in the Freestanding Housing Voucher Demonstration. This research project will evaluate, among other points, the comparative rent burdens of Families with Certificates and those with Housing Vouchers.

J. Unit Sizes That Vary From Housing Voucher Designation

One commenter states that overcrowding will result if a Family is permitted to occupy a rental unit with fewer bedrooms than stated on the Housing Voucher, with a result antithetical to the purpose of the 1937 Act—to provide Decent, Safe and Sanitary housing.

The PHA has an obligation to inspect the unit in the Housing Voucher Program to ensure that it meets Housing Quality Standards (HQS) space requirements. The HQS requires that a unit provide adequate space and security. Acceptability criteria for judging whether a unit meets this requirement state that the dwelling unit shall contain a living room, kitchen area, and bathroom and that the dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of the opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. This procedure should ensure no overcrowding.

K. Miscellaneous Comments

(1) One commenter asked how potential additional monies realized by participants in the Housing Voucher Program will affect Public Aid Grants and Food Stamp Allotments.

It appears that the effect on a Family with regard to AFDC or Food Stamp benefits may be no different when the Family is assisted under the Housing Voucher Program than when it is assisted under the Certificate Program. In both programs, the subsidy payment is made directly to the Owner.

(2) One commenter asked how long the Housing Voucher Demonstration will run.

Each funding increment under an Annual Contributions Contract signed by the Department and the PHA will have an initial life of 60 months (5 years) as prescribed by section 8(o)(6) of the 1937 Act. Future authorizations will determine whether ACCs are extended.

(3) Three commenters raised questions about the Department's announcing this program through a Notice of Funding Availability.

The Department does not know if Housing Vouchers will become a permanent program—although HUD strongly advocates legislation to that end. Until the future of the Housing Voucher Program is known, the Department will continue to publish announcements of its procedures in the same manner that it announces all of its demonstrations—through a Notice of Funding Availability. The Department has made a special effort, however, to solicit and consider the views of interested persons in this process.

(4) One commenter strongly urged the Department to extend the Housing Voucher Program to the renters and owners of manufactured homes and manufactured home space.

Housing Vouchers are available to Eligible Families who wish to rent a manufactured home and space. Housing Vouchers are not available to owners of manufactured homes who need to rent a manufactured home space. The reason for the distinction is statutory. Section 8(j) of the 1937 Act authorizes section 8 Certificate assistance for owners who need to rent the manufactured home space. There in no similar provision authorizing Housing Voucher assistance for owners of manufactured homes who wish to rent a manufactured home space.

VI. Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since

the Certificate Program and the Voucher Program are part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements except the Damage and Security Deposit Claim form have been approved and assigned OMB Control Numbers. The OMB control numbers are as follows: 2052–0123; 2502–0138; 2502–0161 2502–0185; 2502–0348 2502–0350; 2577–0067 and 2577–0083.

Authority: Section 8(o) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 3, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85–11127 Filed 5–7–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Environmental Assessment; Fakahatchee Strand: A Florida Panther Habitat Preservation Proposal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Assessement *"Fakahatchee Strand: A Florida Panther Habitat Preservation Proposal"* is available for public distribution. The U.S. Fish and Wildlife Service proposes the preservation of up to 88,000 acres of habitat in Collier County, Florida, that is critical to the needs and recovery of the Florida panther. The FWS has made a Finding of No Significant Impact concerning the Proposed Action.

Six alternative levels of preservation ranging from "No Action" to complete "Fee Title Acquisition by the FWS" were considered to prevent habitat disruption and water quality degradation in the study area. The Proposed Action (Alternative 6) relies on a "team approach" using the varied resources of the U.S. Department of the Interior and the State of Florida to achieve the resource protection objectives set by the FWS. The primary methods of preservation will be fee title and easement acquisition; however, management agreements, land exchanges, leases, and other means are also proposed to be used by the key participating agencies.

DATE: The EA will be available to the public on May 10, 1985.

ADDRESS: Requests for the EA should be addressed to: U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Butts, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303; Commercial (404) 221–3543 or FTS 242–3543.

SUPPLEMENTARY INFORMATION: The FWS prepared the EA proposing to preserve up to 88,000 acres of habitat in Collier County, Florida, that is critical to the needs and recovery of the Florida panther. Jeffery M. Donahoe, Fish and Wildlife Biologist, Atlanta, Georgia, and Wendell D. Metzen, Wildlife Management Biologist, Jacksonville, Florida, are the primary authors of this document.

The Proposed Action (Alternative 6) calls for the following: (1) The FWS would acquire, in fee title, over 30,000 acres in the northern portions of Fakahatchee Strand; (2) the FWS would encourage the National Park Service to acquire fee title to about 15,000 acres for addition to its Big Cypress National Preserve; (3) the State of Florida and the FWS would cooperate in identifying and implementing protection strategies for the remaining unprotected acres west of the Fakahatchee Strand State Preserve; (4) the FWS would encourage landowners to convey conservation easements on certain lands within the study areas to a third party; and (5) the FES and the State of Florida would cooperatively manage all acquired and protected lands in the Fakahatchee Strand area as a refuge for the Florida panther.

This action is designed to preserve habitat that has been identified as critically important for the survival and recovery of the Florida panther—one of the most endangered mammals in the Nation with only 20 to 30 individuals inhabiting the Big Cypress-Everglades region. The three population centers within the know range of the panther include the Fakahatchee Strand, the Big Cypress National Preserve, and the Everglades National Park. The latter two populations are relatively secure, while large portions of the habitat used by the Fakahatchee Strand population are threatened by developments and other land uses.

This action will result in perpetual preservation of the most important remaining panther habitat that is not in public ownership. Additionally, preservation of the study area will allow the existing ecological, biological, and hydrological values to be maintained and will enhance public use values.

The other major alternatives that were considered are:

Alternative 1, No Action—The FWS would not take any additional action under this alternative, other than to rely on existing Federal, State, and local regulatory authorities to conserve the resource values of the Fakahatchee Strand.

Alternative 2, Strengthen Enforcement of Regulatory Authorities—The FWS would take the following actions under this alternative: (1) Conduct necessary ecological studies to support and document FWS positions in regulatory proceedings; (2) develop a broad statement of FWS concerns and interests for presentation to other agencies; and (3) draft a memorandum of understanding with the U.S. Army Corps of Engineers, the State, and the county to ensure that the FWS is notified of all potentially harmful project proposals.

Alternative 3, Fee Title Acquisition by the Fish and Wildlife Service—The FWS would acquire fee title to the 88,000-acre study area for inclusion in the National Wildlife Refuge System.

Alternative 4, Acquisition of Conservation Easements by the Fish and Wildlife Service—The FWS would acquire conservation easements on lands in the study area.

Alternative 5, Acquisition/Management by Others—The FWS would rely on other agencies and organizations to protect and manage the Fakahatchee Strand area.

Other Government agencies and several members of the general public contributed to the planning, preparation, and evaluation of this EA.

Dated: May 1, 1985.

David B. Allen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 85–11095 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-55-M

Revised Regional Resource Plans

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of revised regional resource plans.

SUMMARY: Notice is given that the Fish and Wildlife Service (Service) has completed the 2nd-cycle (edition) of its Regional Resource Plans (RRP's) and that these revised plans are, or will soon be, available for review. These plans address the five National Species of Special Emphasis (NSSE) and one species group that were added to the NSSE list in 1984 in addition to the previous list of 47 NSSE and 19 groups (see Figure 1). RRPs are not static documents. They are reviewed on a periodic basis to strengthen and refine plans for species addressed in previous planning cycles; to improve coordination among regions, States, and others; and to prepare plans for newly designated NSSE.

DATES: The public is invited to submit comments on RRPs at any time.

ADDRESSES: Revised RRPs are available for review at the Service's regional offices (see Figure 2). Comments should be directed to the applicable Regional Planning Coordinator. Reproduction costs for RRPs may be charge for requested copies because they are voluminous.

FOR FURTHER INFORMATION CONTACT: Dennis Buechler, Project Manager for National Planning, Division of Program Plans, Fish and Wildlife Service (Room 2556), 18th & C Streets NW., Washington, D.C. 20240: telephone (202) 343–4902.

SUPPLEMENTARY INFORMATION: Regional Resource Plans (RRPs) are used by the Service to coordinate resource management activities among regions, programs, and the various organizational levels, and to aid in budget preparation. The development of RRPs consists of seven steps: (1) Pre-planning (including strategies for public participation and interagency coordination); (2) resource analysis; (3) establishment of fish and wildlife objectives; (4) problem analysis; (5) strategy development, evaluation and selection; (6) development of operation plans; and (7) production of Regional Resource Plan. National Species of Special Emphasis (NSSE) are the focus of RRPs and are selected on the basis of biological, social, economic, and political criteria. Defining National Species of Special Emphasis serves to identify priority wildlife management needs on a National scale, and to focus and coordinate Service planning efforts. Some 859 species of special emphasis were initially identified. However, it was fiscally impractical to develop detailed plans for all 859 species. Therefore, the initial 1981 list was narrowed to 46 NSSE with one species (the spotted owl) added after public review. Five more NSSE and one species group were added in 1984 (48 FR 55049, December 8, 1983). To date, the Service has designated a total of 52 NSSE and 20 species groups.

The Service currently has no plans to change the NSSE list, as it is in the process of implementing, evaluating and refining the management plans for the existing NSSE. It should be noted that designation of NSSE does not create any additional regulation of the species, nor does it restrict the Service's ability to respond to management needs concerning other species under FWS jurisdiction.

Dated: May 1, 1985.

F. Eugene Hester,

Acting Director, U.S. Fish and Wildlife Service.

FIGURE 1

National Species of Special Emphasis

Mammals

- Grizzly bear
- Polar bear
- Black-footed ferret
- Sea otter
  - Southern
  - Alaskan population
- Coyote
- Gray wolf
  - Eastern
  - Rocky mountain and Mexican
- Pacific walrus
- West Indian manatee

Birds

- Brown pelican
  - Eastern population
  - California population
- Tundra swan
  - Eastern population
  - California population
- Trumpeter swan
  - Mid-continent population
  - Pacific Coast population
- White-fronted goose
  - Eastern Mid-continent
  - Western Mid-continent
  - Tule population
  - Pacific Flyway population
- Snow goose
  - Greater
  - Lesser
    - Mid-continent population
    - Western Central Flyway
    - Western Canadian Arctic
    - Wrangel Island
- Brant
  - Atlantic
  - Pacific
- Canada Goose
  - Atlantic Flyway
  - Tennessee Valley
  - Mississippi
  - Eastern Prairie
  - Great Plains
  - Tall Grass Prairie
  - Hi-Line
  - Short Grass Prairie
  - Western Prairie
  - Rocky Mountain
  - Pacific population
  - Pacific Flyway
  - Vancouver
  - Dusky
  - Cackling
  - Aleutian
- Pintail duck*
- Wood duck
- Black duck
- Mallard
- Canvasback
  - Eastern population
  - Western population
- Ring-necked duck*
- Redhead
- California condor
- Osprey
- Bald eagle
  - Southeastern population
  - Chesapeake Bay
  - Northern population
  - Southwest population
  - Pacific States
  - Alaska population
- Golden eagle
  - Western population
- Peregrine falcon
  - Eastern
  - Rocky Mountain-Southwestern
  - Pacific Coast
  - Alaska
- Attwater's prairie chicken
- Masked bobwhite
- Clapper rail
  - Yuma
  - Light-footed
- Sandhill crane
  - Eastern
  - Mid-continent
  - Rocky Mountain
  - Lower Colorado River
  - Central Valley
  - Pacific Flyway
- Whooping crane
- American woodcock
- Piping plover*
- Least tern
  - Interior
  - Eastern
  - California
- Roseate tern*
- White-winged dove
- Mourning dove
- Spotted owl
- Red-cockaded woodpecker
- Kirtland's warbler

Reptiles and Amphibians

- American alligator

Fish

- Sea lamprey
- Sockeye salmon (Alaskan)*
- Coho salmon
  - Non-Alaskan U.S. stocks
  - Alaskan stocks
- Chinook salmon
  - Non-Alaskan U.S. stocks
  - Alaskan stocks
- Cutthroat trout (Western U.S.)
- Steelhead trout
  - Non-Alaskan U.S. stocks
  - Alaskan stocks
- Atlantic salmon
- Lake trout (Great Lakes)
- Striped bass

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Species Groups of Special Emphasis

Seabird group
Surface feeding duck group
Bay duck group
Shorebird group
Gull and tern group
Songbird group
Heron and allies group
Hawaiian forest bird group
Hawaiian water bird group
Blackbird and starling group
Endangered freshwater molusc group
Southwest cactus group
Sea turtle group
Pacific salmon group
Stream trout group
Great Lakes percidae group
Upper Colorado River endangered fish group
Shad group
Exotic fish group

*Species added for FY 1984 RRP planning cycle.

Reference: **Federal Register** Vol. 48, No. 237, December 8, 1983.

FIGURE 2

Region 1—CA, HI, ID, NV, OR, WA

Regional Planning Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97323; Telephone (503) 231–2164.

Region 2—AZ, NM, OK, TX

Regional Planning Coordinator, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, NM 87103; Telephone (505) 766–5935.

Region 3—IL, IN, IA, MI, MN, MO, OH, WI

Regional Planning Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 725–3306.

Region 4—AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, and Puerto Rico

Regional Planning Coordinator, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303; Telephone (404) 221–3580.

Region 5—CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV

Regional Planning Coordinator, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158; Telephone (617) 965–5100.

Region 6—CO, KS, MT, NE, ND, SD, UT, WY

Regional Planning Coordinator, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, CO 80225; Telephone (303) 236–7909.

Region 7—AK

Regional Planning Coordinator, U.S. Fish and Wildlfife Service, 1011 E. Tudor Road, Anchorage, AK 99503; Telephone (907) 786–3539.

[FR Doc. 85–11100 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[F–14940–A2]

Alaska Native Claims Selection; Dinyea Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Dinyea Corporation for approximately 19,562 acres. The lands involved are in the vicinity of Stevens Village.

Fairbanks Meridian, Alaska

T. 16 N., R. 7 W.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 7, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–11132 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-JA-M

Cedar City District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, June 6, 1985. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 1579 North Main Street, Cedar City, Utah.

The agenda is as follows: (1) SUSC Allotment Allocation; (2) Report on Wildhorse Gathering; (3) District Ear Tagging Program; (4) Ranking of FY 1986 Projects; and (5) General Board Business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Mangement, 1579 North Main Street, Cedar City, Utah 84720, phone 801–586–2401, by June 3, 1985. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Morgan S. Jensen,

District Manager.

April 30, 1985.

[FR Doc. 85–11153 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-DQ-M

[Serial No. I–8856]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

April 30, 1985.

Notice of an application, serial number I–8856, for withdrawal and reservation of lands was published as **Federal Register** Document No. 74–25195 on page 38243 of the issue for October 30, 1974. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Subpart 2091, such lands will be at 9:00 a.m. on June 4, 1985, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

T. 5 S., R. 3 W.,
Sec. 6, lots 3, 17, 18, 19, 20, 27, SE¼NW¼, E½SE¼.

The area described aggregates 196.54 acres in Owyhee County, Idaho.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85–11166 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-GG-M

Colorado, Craig District Advisory Council; Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be

a meeting of the Craig District Advisory Council on May 22, 1985.

The meeting will begin at 10 a.m. at the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado.

Agenda items will include:

1. Discussion of the Preferred Alternative for the Little Snake Resource Management Plan.
2. Review of Critical Wildlife Habitat Maps.
3. Summary of public comments on Little Snake Resource Management Plan.
4. Update on BLM/Forest Service Land Interchange.

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by May 17, 1985.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: May 2, 1985.

William J. Pulford,

District Manager.

[FR Doc. 85-11318 Filed 5-7-85; 10:14 am]

BILLING CODE 4310-JB-M

[A-20346-B]

Realty Action; Exchange of Public Lands, Pinal, Maricopa, and Yavapia Counties, AZ

Correction

In FR Doc. 85-7222 beginning on page 12083 in the issue of Wednesday, March 27, 1985, make the following corrections:

1. On page 12084, second column, eighth line, the second "SE¼" should read "SW¼".
2. On the same page, second column, land description beginning T. 11 N., R. 2 E., the first line of Sec. 8, add "NW¼" at the end of the line after "NW¼".
3. On the same page, third column, land description beginning T. 9 N., R. 2 E., second line of Sec. 22, add "NW¼" between "NW¼" and ",W½"; and in the fourth line add "NW¼" between "NW¼" and ",W½".
4. On the same page, third column, land description beginning T. 11 N., R. 3 E., Sec. 3, "NW¼" should read "NE¼".
5. On the same page, third column, land description beginning T. 9½N., R. 3 E., Sec. 30, add a comma (,) after "1—4" and after "W½".
6. On the same page, third column, *Pinal County*, second line, the last "SW¼" should read "SE¼"; and the fifth line should read "T. 7 S., R. 13 E.,".
7. On page 12085, first column, ninth line, "NM½SE¼" should read "N½SE¼".

BILLING CODE 1505-01-M

California Desert District Advisory Council; Emergency Change in Meeting Date

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Advisory Council Meeting Date.

SUMMARY: On April 11, 1985, the meeting of the Advisory Council of the Bureau's California Desert District was announced as being scheduled for May 16 to 18, 1985. (FR page 14321, Vol 50, No. 70.) The meeting will now be limited to May 16 and 17 only. The field trip to view areas near Ridgecrest and the Inyo Mountains has been cancelled. The meeting will still be held in Ridgecrest and agenda topics for discussion remain as in the earlier notice.

Dated: May 3, 1985.

Gerald E. Hiller,

District Manager

[FR Doc. 85-11209 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Field Federal Unit Agreement No. 14-08-0001-8850, submitted on April 23, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 299 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised §50.34 of Title 30 of the Code of Federal Regulations.

Dated: April 30, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11176 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-MR-M

Availability of the Draft Environmental Impact Statement and Intent To Hold Public Hearings Regarding Proposed Central and Western Gulf of Mexico Outer Continental Shelf Region; Lease Sales 104 (April 1986) and 105 (July 1986)

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft environmental impact statement (Draft EIS) relating to proposed 1986 Outer Continental Shelf (OCS) oil and gas lease sales of available unleased blocks in the Central and Western Gulf of Mexico (GOM). The proposed Central Gulf Sale 104 will offer for lease approximately 33.1 million acres and the Western Gulf Sale 105 will offer approximately 28.2 million acres.

Single copies of the Draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Post Office Box 7944, Metairie, Louisiana 70010.

Copies of the Draft EIS will be available for review by the public in the following libraries: Austin Public Library, 401 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Southmost College Library, 1825 May Street, Brownsville, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library Post Office Box 131, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, Post Office Box 3427, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, Lake Charles, Louisiana; Harrison County Library, 14th Avenue and Beach Street, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Meyers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

In accordance with 30 CFR 256.26, public hearings pertaining to these lease sales will be held at the following locations and times:

Corpus Christi State University, The Student Union Building, Conference Room One, 6300 Ocean Drive, Corpus Christi, Texas 78412, June 18, 1985—9:00 a.m.

Minerals Management Service, Gulf of Mexico OCS Region, Conference Room 437, 3301 North Causeway Boulevard, Metairie, Louisiana 70010, June 20, 1985—9:00 a.m.

These hearings are for the purpose of receiving comments and suggestions relating to the Draft EIS. Comments concerning this document will be accepted through July 5, 1985, and should be sent to the Regional Supervisor (LE-2), Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, Metairie, Louisiana 70010.

John B. Rigg,

Acting Director, Minerals Management Service.

Approved.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 85-11128 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concurrent Jurisdiction in Iowa

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given that, effective August 10, 1984, concurrent jurisdiction was established over lands and waters administered by the National Park Service within the following units of the National Park System situated in the State of Iowa:

Effigy Mounds National Monument
Herbert Hoover National Historic Site.

Concurrent jurisdiction was conveyed pursuant to Iowa House File 2480, Seventieth General Assembly and accepted by Stanley T. Albright, Acting Director of the National Park Service, pursuant to applicable Federal statutory law. Cession and acceptance of concurrent jurisdiction was acknowledged by letter by the Honorable Terry E. Branstad, Governor of the State of Iowa, on September 13, 1984.

Dated: May 3, 1985.

Stanley T. Albright,

Acting Director, National Park Service.

[FR Doc. 85-11188 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Tehama-Colusa Canal Central Valley Project, CA; Intent To Prepare a Supplemental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a supplement to the Final Environmental Impact Statement (EIS) FES 72-17, Tehama-Colusa Canal, Central Valley Project, California, 1972. The proposed supplement will provide more recent information regarding the marketing of water from Tehama-Colusa and Corning Canals for agricultural purposes in Tehama, Glenn, Colusa and Yolo Counties. The supplement will specifically address any impacts that may result from long-term water contracting.

Portions of the Tehama-Colusa Canal service area are within floodplain and wetland areas. Accordingly, the objectives and requirements of Presidential Executive Orders 11988 and 11990, and the Reclamation Instructions, Chapter 376.5, will be considered throughout the planning and preparation of the EIS.

Meetings to solicit information from all interested public entities and persons to assist in determining the scope of the supplemental EIS will be held during the first part of June, 1985. Notice of meeting places and dates will be issued once they are identified and established.

The contact person for this supplemental environmental impact statement will be Joel Verner, Bureau of Reclamation, Attention: MP-410, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4328.

Dated: April 30, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-11039 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare a Combined Draft Unsuitability Petition Evaluation Document/Environmental Impact Statement for an Area Adjacent to the City of Black Diamond in King County, WA

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a combined draft unsuitability petition evaluation document/environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare a combined draft unsuitability petition evaluation document/environmental impact statement (PED/EIS) on a petition by the Citizens Concerned About Strip Mining (CCASM) to designate certain lands adjacent to the city of Black Diamond in King County, Washington, as unsuitable for surface coal mining and reclamation operations in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In compliance with the National Environmental Policy Act of 1969 (NEPA), the OSM will consider and analyze the impacts of the five alternatives as described in the supplementary information section of this notice. Also, the OSM is opening an additional comment period to provide the public a further opportunity to participate in determining the scope of the document and identifying significant issues, related to the proposed action, that should be analyzed in the PED/EIS. This PED/EIS will assist the Secretary of the Interior in making a decision on the petition.

DATE: Written comments must be received by no later than 4 p.m. on June 7, 1985, at the address below:

ADDRESSES: Written comments should be sent to OSM, Western Technical Center, Attn: Charles Albrecht, Second Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Copies of the petition may be obtained upon request from OSM at the address listed above. The public record on the petition is available for public review during normal working hours at the OSM office listed above and at OSM, 2625 Parkmont Lane, SW., Building B3, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht at the address listed above (telephone: 303–844–5656 or FTS 564–5656).

SUPPLEMENTARY INFORMATION: On August 15, 1984, a notice was published in the **Federal Register** (49 FR 32686) announcing (1) the receipt of a complete petition and (2) the opening of a comment period requesting comments on issues raised in the petition. The scope of evaluation for the petition has been expanded to include the EIS to comply with section 102(2)(C) of the NEPA. Thus, the OSM is opening an additional comment period on the scope of the PED/EIS. (See "Date" and "Addresses.")

According to section 522 of SMCRA, the Secretary of the Interior is required to make a decision on the Black Diamond petition. Because the OSM has already rejected the petition as it relates to that portion of the petition area coinciding with Pacific Coast Coal Company's (PCCC's) proposed John Henry No. 1 mine permit area, this PED/EIS will address the remaining portion of the petition area for which OSM has accepted the petition for further processing. In the PED/EIS, this remaining area will be called the "curtailed petition area." However, the CCASM has filed an appeal with the Interior Board of Surface Mining and Reclamation Appeals to process the petition so as to address the proposed John Henry No. 1 mine permit area as part of the petition area. A decision on this appeal has not yet been rendered. The approximately 472-acre curtailed petition area is located on private lands immediately adjacent to the city of Black Diamond in King County, Washington. The OSM has prepared an EIS (OSM–EIS–13, February 1985) on PCCC's proposed mine, which would extract 5.32 million short tons of run-of-mine coal and disturb 363 acres of land over the 16.2-year life of the mine.

The petition contains four primary allegations, three of which address the entire petition area, including PCCC's proposed John Henry No. 1 mine permit area. These three primary allegations are that (1) natural hazard lands, which are unsuitable for surface coal mining operations, exist in the petition area, (2) fragile lands, which are unsuitable for surface coal mining operations, exist in the petition area, and (3) lands proximate to population, and so unsuitable for surface coal mining operations, exist in the petition area. The fourth primary petition allegation addresses the proposed John Henry No. 1 mine permit area only.

The several alternatives available to the Secretary range from designating all lands in the curtailed petition area unsuitable for all or certain types of surface mining operations to not designating any of the lands in the area as unsuitable. The Secretary also has the option of designating only parts of the area as unsuitable for all or certain types of surface coal mining operations. The alternatives are as follows:

Alternative A: Designate the entire curtailed petition area as unsuitable for all surface coal mining operations.

Alternative B: Not designate any of the curtailed petition area as unsuitable for surface coal mining operations.

Alternative C: Designate parts of the curtailed petition area as unsuitable for surface coal mining operations.

Alternative D: Designate the entire curtailed petition area as unsuitable for surface coal mining operations, but allow underground coal mining.

Alternative E: No action.

Dated: May 3, 1985.

Brent W. Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–11179 Filed 5–7–85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–212]

Certain Convertible Rowing Exercisers, Determination To Review and Reverse Initial Determination Partially Suspending Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review and reverse the administrative law judge's (ALJ) initial determination (ID) (Order No. 6) to suspend the above-captioned investigation as to respondent Weslo Design International, Inc.

Authority:

The authority for disposition of this matter is contained in section 1337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov 24, 1984); to be codified at 19 CFR 210.53–210.56).

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

SUPPLEMENTARY INFORMATION: ON March 29, 1985, the ALJ issued an ID suspending the investigation as to respondent Weslo Design International and an order denying suspension as to all other parties. The Commission investigative attorney petitioned for review of the ID. After reviewing the ID, the petition for review, and the response of Weslo to the petition, the Commission determined to review the ID and to reverse the suspension of the investigation as to respondent Weslo.

Issued: May 2, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11174 Filed 5–7–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–58 (Final)]

Hot-Rolled Carbon Steel Plate From Romania

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on June 6, 1985, to 10:00 a.m. on July 30, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: April 22, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Fulcher (202–523–0290) or Nita Kavalauskas (202–523–5413), Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for June 6, 1985 (50 FR 16166 Apr. 24, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from May 28, 1985, to July 25, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by September 9, 1985.

Staff report

A public version fo the prehearing staff report in this investigation will be placed in the public record on July 16, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 30, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 22, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 25, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 26, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rules requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see §201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 6, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject to the investigation on or before August 6, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

Issued: April 30, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 11172 Filed 05–07–85; 8:45 am]

BILLING CODE 7020-02-M

Report to the President on Investigation No. TA–201–54; Potassium Permanganate

April 30, 1985.

Determination

On the basis of the information developed in the course of investigation No. TA–201–54, the Commission has determined [1] that potassium permanganate, provided for in item 420.28 of the Tariff Schedules of the United States (TSUS), is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Background

On November 30, 1984, the United States International Trade Commission instituted investigation No. TA–201–54, under section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)), in order to determine whether potassium permanganate is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The investigation was instituted following the receipt of a petition for import relief filed on behalf of Carus Chemical Co., the sole domestic producer of potassium permanganate.

Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 19, 1984 (49 FR 49392). The

[1] Commissioner Eckes determined that potassium permanganate is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

hearing was held in Washington, DC on March 5, 1985, at which time all persons were afforded the opportunity to appear in person, present evidence, and be heard. The Commission's determination in this investigation was made in a public meeting held on April 8, 1985.

The report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act. The information in the report was obtained from fieldwork and interviews by members of the Commission's staff, and from information obtained from other Federal agencies, responses to Commission questionnaires, information presented at the public hearing, briefs, submitted by interested parties, the Commission's files, and other sources.

The Commission's public report, Potassium Permanganate (investigation No. TA-201-54, USITC Publication 1682, 19850, contains the views of the Commissioners and information developed during the investigation. Copies may be obtained by calling 202-523-5178 or from the Office of the Secretary, 701 E Street NW., Washington, DC 20436.

Issued: April 30, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11171 Filed 5-7-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-208]

Certain Shoe Stiffener; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Emhart Corporation (Emhart), Bush Co., Ltd. (Bush) and Gould & Scammon Inc. (G&S).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 30, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comment

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 4 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: April 30, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11173 Filed 5-7-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30653]

Walking Horse & Eastern Railroad Co., Inc.; Modified Certificate of Public Convenience and Necessity

May 1, 1985.

On April 16, 1985, a notice was filed by the Walking Horse and Eastern Railroad Company, Inc. (WH&E) for a modified certificate of public convenience and necessity under 49 CFR Part 1150 Subpart C. That carrier is now authorized to provide service over a line of railroad from Shelbyville, TN, at or near milepost JA-8.20 to Wartrace, TN, at milepost JA-0.44 in Bedford County, TN, a distance of approximately 7.76 miles connecting with the Louisville & Nashville Railroad Company at Wartrace. The line was formerly owned by Seaboard System Railroad, Inc. (SSR) but was authorized to be abandoned.[1] The Bedford Railroad Authority (the Authority) intends to acquire the line from SSR by a recorded contract of sale with the Tennessee Department of Transportation (Tennessee DOT). The Authority, in exchange for rehabilitation funding to be provided for the line by Tennessee DOT, will provide service over the line for a minimum of three (3) years. WH&E will operate the line pursuant to a service agreement with the authority.

This notice must be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-11185 Filed 5-7-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Water Act; Atlas Corp.; Correction

This document corrects a notice concerning a proposed consent decree involving Atlas Corporation that appeared at page 13,091 in the **Federal Register** of Tuesday, April 2, 1985 (50 FR 13091). This notice is necessary to correct the description of the facilities which are the subject of the proposed consent decree.

The Department of Justice will receive comments on the proposed decree pursuant to the procedures described in the April 2, 1985 notice until 30 days from the date of this publication.

The following changes are made in the previous notice:

On page 50 FR 13091, first paragraph of the notice, final sentence, "openpit copper mine" is corrected to read "underground uranium mine".

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-11167 Filed 5-7-85; 8:45 am]

BILLING CODE 4410-01-M

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[1] Docket No. AB-55 (Sub-No. 116), *Seaboard System Railroad, Inc.—Abandonment—In Bedford County, TN* (not printed), served March 14, 1985.

Lodging of Consent Judgment Pursuant to Clean Air Act; Lilhead Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 30, 1985, a proposed Consent Judgment in *United States* v. *Lilhead Corporation*, Case No. 84–6050 Civ-NCR, was lodged with the United States District Court for the Southern District of Florida. The proposed Consent Judgment concerns a complaint filed by the United States on January 24, 1984, alleging violations of Title II of the Clean Air Act by Lilhead Corporation. In the proposed Consent Judgment, Lilhead agreed to pay a civil penalty of $2,000 and to advertise warnings about the improper use of leaded fuel. The Consent Judgment provides for a stipulated penalty of $2,000 if Lilhead fails to comply with its obligation to advertise and also specifically provides that it is subject to the provisions of 38 CFR 50.7.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lilhead Corporation* D.J. Ref. 90–5–2–1–647.

The proposed Consent Judgment may be examined at the office of the United States Attorney, 155 South Miami Avenue, Miami, Florida 33130 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1742, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–11168 Filed 5–7–85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Orlando, FL

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on April 30, 1985 a proposed consent decree in *United States* v. *City of Orlando, Florida and State of Florida*, Civil Action 84–0758–Civ-ORL-18 was lodged with the United States District Court for the Middle District of Florida. The complaint filed by the United States alleged violations of the Clean Water Act by the City of Orlando due to its failure since 1983 to meet the requirements of its NPDES permit at its "Iron Bridge Regional Water Pollution Control Facility," located in Oviedo, Florida. The complaint sought injunctive relief to require the defendants to comply with the Clean Water Act and civil penalties for past violations. The consent decree provides that the defendants will comply with the NDPES permit and undertake remedial actions set forth in the consent decree. The defendants are enjoyed from further violations, and are required to pay a civil penalty of $40,000.00 in settlement of the government civil penalty claims. In the event that compliance with the terms of the NPDES permit is not achieved by December 20, 1986, an additional penalty of $60,000.00 will be paid.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Orlando*, D.J. Ref. 90–5–1–1–2157.

The proposed consent decree may be examined at the office of the United States Attorney, 501 Federal Building, 80 N. Hughey Avenue, Orlando, Florida 32801 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1712, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–11170 Filed 5–7–85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Proposed Consent Decree Pursuant to the Clean Air Act; Shell Oil Co.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on April 11, 1985, a proposed consent decree in *United States* v. *Shell Oil Company*, Civil Action No. 83–4494 (E.D. La.) was lodged with the Eastern District of Louisiana. The complaint alleges violations of the Clean Air Act and the National Emission Standards for Hazardous Pollutants (NESHAP) for vinly chloride by the defendants. The complaint seeks both injunctive relief, requiring the defendant to comply with the Clean Air Act and the NESHAP for vinyl chloride in the future, and civil penalties for past violations. The proposed Consent Decree requires Shell Oil Company ("Shell") at its facility in Norco, Louisians, to submit and implement a remedial program prior to the restart of the plant. This program shall include improvements to process design and equipment; the development of a manual with the operating procedures for upset conditions; formal employee training; inspections and preventive maintenance for all equipment in vinyl chloride service. The Decree also requires compliance with the National Emissions Standards for Hazardous Air Pollutants ("NESHAPS") regulations for vinly chloride and the Clean Air Act along with the payment of civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *Shell Oil Company*, Civil Action No. 83–4494 (E.D. La.) D.J. Ref. 90–5–2–1–609.

The proposed consent decree may be examined at Office of the United States Attorney, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130 and at the Region VI Office of the Environmental Protection Agency, Interfirst Two Buildings, 1201 Elm Street, Dallas, Texas 75270. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–11169 Filed 5–7–85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85–9]

Bernard Leroy Langston, III, M.D., Shallotte, NC; Hearing

Notice is hereby given that on December 17, 1984, the Drug Enforcement Administration, Department of Justice, issued to Bernard Leroy Langston, III, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny his application executed on May 25, 1984, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing have been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, May 14, 1985, in Courtroom 401, New Hanover Judicial Building, 4th and Princess Streets, Wilmington, North Carolina.

Dated: April 30, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85–11129, Filed 5–7–85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85–10]

Campbell's Pharmacy, Okeechobee, FL; Hearing

Notice is hereby given that on January 15, 1985, the Drug Enforcement Administration, Department of Justice, issued to Campbell's Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AC5212129, and deny the application, executed on July 9, 1984, for renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, May 21, 1985, in Courtroom I, South Courtroom, Old Courthouse Building, U.S. District Court, 300 NE. First Avenue, Miami, Florida.

Dated: May 2, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85–11130 Filed 5–7–85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85–14]

Michael A. Rush, D.P.M., Hollywood, FL; Hearing

Notice is hereby given that on February 1, 1985, the Drug Enforcement Administration, Department of Justice, issued to Michael A. Rush, D.P.M., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 1:30 p.m., or as soon thereafter as this matter may be reached, on Tuesday, May 21, 1985, in Courtroom I, South Courtroom, Old Courthouse Building, U.S. District Court, 300 NE. First Avenue, Miami, Florida.

Dated: May 2, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85–11131 Filed 5–7–85; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN-50-529-OL, STN-50-530-OL, ASLBP No. 80-447-01 OL]

Arizona Public Service Co., et al., (Palo Verde Nuclear Generating Station, Units 2 and 3 Operating License Proceeding); Public Hearing on Application for Operating Licenses for Palo Verde Units 2 and 3

May 1, 1985.

On July 25, 1980, the U.S. Nuclear Regulatory Commission published in the **Federal Register** a notice of receipt of an application for facility operating licenses for Palo Verde Nuclear Generating Stations Units 1, 2 and 3 and notice of opportunity for hearing (45 FR 49732). The July 25, 1980 notice is a clarification of an earlier notice published in the **Federal Register** (45 FR 46941–46943) on July 11, 1980. Such licenses would authorize Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, and Public Service Company of New Mexico (Joint Applicants) to possess, use and operate Palo Verde Nuclear Generating Station, Units 1, 2 and 3, three pressurized water nuclear reactors (the facilities) located on the Joint Applicants' site in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix.

This operating license proceeding remains before the Licensing Board by reason of its grant of the late petition for leave to intervene of the West Valley Agricultural Protection Council, Inc. (West Valley). On the strength of that grant, the Board reopened the evidentiary record for the purpose of considering the environmental issue raised by West Valley; —*viz.*, the asserted adverse impact that the salt deposition associated with the operation of the Palo Verde facility will have upon the productivity of nearby agricultural lands by West Valley members. *See* LBP–82–117B, 16 NRC 2024 (1982). For reasons stated in that opinion, the Board confined the record reopening to Units 2 and 3 of the Palo Verde facility. In a contemporaneously issued decision, the Licensing Board resolved in the Joint Applicants' favor all issues previously raised by another intervenor. Accordingly, the Board authorized the issuance of an operating license for Unit 1 alone. LBP–82–117A, 16 NRC 1964 (1982).

All persons who request the opportunity to make a limited appearance will be afforded an opportunity to state their views or to file a written statement on the first day of

the hearings or at such other times as the Licensing Board may for good cause designate.

Wherefore, it is ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practices of the Commission, and PLEASE TAKE NOTICE, that an evidentiary hearing in this proceeding shall convene at 9:30 a.m., local time, Tuesday, June 11, 1985, in Courtroom No. 2 (7th floor) of the Federal Building, 230 North First Avenue, Phoenix, Arizona 85025. The hearing shall be conducted continuously day to day until all evidence on matters outstanding has been received or until continued by further order of the Board.

Members of the public are invited to attend the hearing.

Dated at Bethesda, Maryland, this 1st day of May 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-11163 Filed 5-7-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-717]

Application and Opportunity for Hearing: Bear, Stearns & Company.

May 2, 1985.

Notice is hereby given that Bear, Stearns & Company ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the registration provisions of section 12(g) of the 1934 Act with respect to its Class B limited partnership interests.

The Applicant states in part:

1. In the absence of an exemption, Applicant would be required to register its Class B limited partnership interests under section 12(g) of the 1934 Act, and would be required to comply with all reporting requirements thereunder.

2. Applicant believes that the exemptive order it requests is appropriate in view of the fact that all holders of the Class B limited partnership interests of the Applicant are engaged in the Applicant's business, and that there is no market for the Class B limited partnership interests.

For a more detailed statement of the information presented all persons are referred to said application which is on file in the Offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than May 28, 1985 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will received any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, on order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11081 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14499 (File No. 812-6103)]

E. F. Hutton & Company Inc. and The E. F. Hutton Group Inc.; Application and Temporary Order

May 2, 1985.

Notice is hereby given that E. F. Hutton & Company Inc. ("Hutton") and The E. F. Hutton Group Inc. ("Group") (collectively, the "Applicants"), filed an application on May 2, 1985 requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), exempting Applicants from the provisions of section 9(a) of the Act in respect of the circumstances described below a temporary exemption from section 9(a) pending the Commission's determination of the application for a permanent exemption.

Hutton states that it serves as investment adviser and distributor (principal underwriter) for Cash Reserve Management, Inc., Municipal Cash Reserve Management, Inc., Hutton AMA Cash Fund, Inc., Hutton Government Fund, Inc., Hutton Investment Series Inc., Hutton California Municipal Fund Inc., Hutton National Municipal Fund Inc., Hutton New York Municipal Fund Inc, Hutton Telecommunications Tax-Advantaged Trust and Hutton VIP Fund (collectively, the "Registered Investment Companies") each of which Hutton states is an open-end investment company registered under the Act, and Pennsylvania School District Liquid-Asset Fund, Illinois School District Liquid-Asset Fund Plus and Minnesota School District Liquid-Asset Fund Plus (collectively, the "Investment Companies") each of which Hutton states is an investment company as defined in the Act. The Registered Investment Companies and the Investment Companies are collectively referred to herein as the "Funds." Hutton states that from time to time it acts as a depositor and sponsor for unit investment trusts (the "UITs") registered as investment companies under the Act. In addition, Hutton states it may serve as an investment adviser, principal underwriter or depositor for other registered investment companies in the future.

Hutton states it is a registered broker-dealer and registered investment adviser with over 400 offices. Hutton is a wholly-owned subsidiary and the principal operating subsidiary of Group, a publicly owned securities firm holding company. Through its Hutton Asset Management Division, Hutton states it acts as investment adviser to the Funds and as a result has over $10 billion of Fund assets under management. As distributor (principal underwriter) for the Funds, Hutton engages in the sale and redemption of shares of the Funds with, according to Hutton, their over 500,000 shareholders, as well as additional investors in the Funds. Hutton also makes a secondary market for units of the more than 200 series of UITs it has sponsored and anticipates doing so with respect to UITs sponsored by it in the future.

Applicants state that on May 2, 1985, Hutton entered a plea of guilty to an Information (the "Information") filed in the United States District Court for the Middle District of Pennsylvania. Applicants state that the Information charged that Hutton had violated the Federal mail and wire fraud statutes in connection with its handling of its checking accounts it maintained for the deposit of its own funds and enjoined Hutton and Group from engaging in the activities which gave rise to the Information. Applicants state that no criminal charges were brought against Group or any individuals.

Applicants state that the activities forming the basis for the plea took place during the period from July 1, 1980 to February 28, 1982. Applicants state that in December 1981, the first individual instances of such activities came to the attention of management. Applicants state that the offices involved were

ordered to stop such activities and did stop. Applicants further state that when senior management became aware that such activities might be more widespread, they began an internal investigation which Applicants state led to the permanent cessation of all such activities. Applicants state that the injured parties were certain commercial banks to which Hutton will make full restitution. Applicants state that none of the acts alleged in the Information involved funds or securities owned by the Funds, the UITs or any brokerage or other investment advisory clients of Hutton. Applicants state that none of the activities enjoined involved the conduct of Hutton's brokerage and investment advisory business with its customers and clients; thus, it is anticipated that the injunction will have no impact on the conduct of business by the Applicants.

In entering its plea, Hutton agreed to pay a criminal fine of $2,000,000 and $750,000 and defray the costs of the Government's investigation. Hutton states it further agreed to establish a restitution program for the benefit of the banks who may have been damaged. In addition, Hutton states it is installing a new branch information processing system which, among other things, is being designed to prevent future occurences of the activities alleged in the Information.

Section 9(a) of the Act, insofar as it is pertinent here, disqualifies any person or company, from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered open-end company or registered unit investment trust, if such person has been (a) convicted of any felony or misdemeanor arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or (b) permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with acting as an underwriter, broker, dealer or investment adviser. Applicants do not concede that the plea and related injunction would disqualify Hutton under section 9(a) of the Act. In order, however, to resolve fully any questions as to the applicability of that Section and in full compliance with all applicable Federal securities laws, Applicants have submitted this Application pursuant to section 9(c) of the Act for exemption from the provisions of section 9(a).

Section 9(c) of the Act provides that upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that: (a) The prohibitions of section 9(a), as applied to the specific application, are unduly or disproportionately severe; and (b) the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

In support of their position that the Commission should grant Applicants an exemption from the provisions of section 9(a) of the Act, Applicants represent the following:

1. The allegations of the Information and the terms of the injunction and the facts and circumstances to which they relate in no way involve any activities of the Funds, Hutton's activities on behalf of the Funds, the UITs or Hutton's activities with respect to any of its other investment advisory or brokerage clients or customers. No criminal charges were brought against Group.

2. Applicants state that more than three years have elapsed since the activities alleged in the Information took place.

3. Hutton has agreed to pay a $2,000,000 penalty, has put in place a restitution program for the benefit of the banks which may have been damaged. In addition, Hutton is in the process of installing a new branch information processing system designed, among other things, to prevent a recurrence of the violations alleged.

4. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Hutton because they would deprive the Funds of Hutton's investment advisory and distribution services; and deprive the UITs of Applicant's market making function. The prohibition of section 9(a) could thus operate significantly to the detriment of the financial interests of the Funds (which Hutton states have an aggregate of approximately $10 billion in assets) and their shareholders and unitholders of the UITs, none of which were affected in any way by the events that gave rise to the Information, the plea and the injunction.

5. The prohibitions of section 9(a), to the extent applicable to Hutton, would unfairly deprive Hutton of its ability to serve as an investment adviser, principal underwriter or depositor to other registered investment companies in the future.

6. The events that gave rise to the Information, the plea and the injunction are not such as to make it against the public interest or protection of investors to grant Applicant's application.

7. In order to maintain uninterrupted operations of the Funds and the UITs, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary exemption requested herein be issued forthwith.

8. In making its application, Hutton acknowledges, understands and agrees that the application and any temporary exemption issued herein shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemptions from statutory requirements, including, without limitation, the consideration of Hutton's instant application for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act or the revocation or removal of any temporary exemption granted in connection with this application.

9. Hutton further represents and undertakes that:

a. it will cooperate and use its best efforts to cause its present and former officers, directors, employees and agents to cooperate with the Commission in any investigation by the Commission into any matters relating to, regarding or arising out of the facts alleged in the Information; including the production of documents within its possession, custody or control and the testimony of its officers, directors, employees and agents; and

b. it will support an application by the Commission for disclosure, to the Commission or its staff only, of testimony before the Grand Jury or of documents or other things subpoenaed by, submitted to or made available for submission to the Grand Jury in connection with the investigation which led to the filing of the Information, and will not object to disclosure, to the Commission or its staff only, of materials within the scope of Federal Rule of Criminal Procedure 6(e).

10. Applicants have never before applied for an exemption from the provisions of section 9(a) of the Act.

Accordingly, the application concludes that the Applicants believe that granting the requested order and temporary order, pursuant to section 9(c) of the Act, exempting them from the provisions of section 9(a) of the Act is not inconsistent with the public interest and the protection of investors and the purposes fairly intended by the policy of the Act.

The Commission has considered the matter and finds that:

(1) The prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Applicants and any investment companies for which Applicants may be an investment adviser, principal underwriter or depositor and

(2) In order to maintain the uninterrupted services provided by Applicants to the Funds and the UITs, it is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, that a temporary order be issued forthwith.

Accordingly, it is ordered that, pursuant to section 9(c) of the Act, Applicants as of the date of this Order, be and hereby are granted a temporary exemption from the prohibitions of section 9(a) of the Act with respect to their affiliation with the Funds, and UITs and any other investment companies for which Hutton may be an investment adviser, principal underwriter or depositor, for a period of 180 days from the date of this Order, or at such earlier time as the Commission may direct, or unless otherwise extended by the Commission on its own motion or upon further application by the Applicants, pending final determination by the Commission of the application for an order granting an exemption from such prohibtions; provided, however, that this temporary exemption is conditioned upon Applicants' compliance with its undertakings as set forth above.

Notice is further given that any interested person may, not later than May 29, 1985, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matters, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–11085 Filed 5–7–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–716]

Application and Opportunity for Hearing; Greenbelt Cooperative, Inc.

April 30, 1985.

Notice is hereby given that Greenbelt Cooperative, Inc. (the "Applicant"), a consumer cooperative, has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an exemption from certain of the reporting requirements under section 13 of that Act. In the absence of an exemption, Applicant would be required to file periodic reports to the standards specified by Forms 10–K, 10–Q and 8–K under the Exchange Act. Applicant believes that the information required by forms 10–K and 10–Q is not useful to its security holders. Accordingly, Applicant seeks an exemption which would eliminate the Form 10–Q requirement and would permit the filing of modified reports on Form 10–K as outlined in the application.

For a more detailed statement of the information presented, all persons are referred to the application, which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington D.C. 20549.

Notice is further given that any interested person may submit to the Commission in writing, not later than May 27, 1985, his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washingtion, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will rceive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–11082 Filed 5–7–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–720]

Application and Opportunity for Hearing; Manufacturers Hanover Mortgage Corp.

May 1, 1985.

Notice is hereby given that Manufacturers Hanover Corporation ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 13 and from the operation of section 16 of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450, Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person, not later than May 27, 1985, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will received any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the

application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11089 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8734]

Issuer Delisting; Application To Withdraw From Listing and Registration; Medco Containment Services, Inc.

April 30, 1985.

The aboved named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, $.01 Par Value, of Medco Containment Services, Inc. ("Company") from listing and registration on the Boston Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Medco containment Services, Inc., has determined to include its stock in the NASDAQ National Market System and, therefore, wishes to remove its security from listing and registration on the Boston Stock Exchange, Inc.

Any interested person may, on or before May 21, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secratary.

[FR Doc. 85-11086 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22000; File No. SR-AMEX-85-09]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Change and Partial Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 5, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" of "Exchange") proposes to amend Exchange Rule 950 to (i) expand the definition of spread and combination orders and (ii) provide for stock-option orders, thus permitting such orders to be executed under the priority trading rule. *Italic* indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 950 Rules of General Applicability

(a)-(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

* * * Commentary

.01 When a member holding a spread order, a straddle order, [or] a combination order, *or a stock-option order* and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the *options* marketplace, then the order may be executed as a spread, straddle, [or] combination, *or stock-option order* at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers, *or (iii) in the case of a spread order, when the number of contracts to be purchased and sold are not the same, or do not represent the same number of shares at option (if the underlying security is a stock) or the same principal amount (if the underlying security is a Government security), a Registered Options Trader or a Specialist may not execute such spread pursuant to this Commentary .01 with another Registered Options Trader or Specialist.*

.02 No change.

(e) The types of order specified in Rule 131 and the following additional types of orders shall be applicable to Exchange option transactions:

(i) Spread Order-A spread order is an order to buy a stated number of option contracts and to sell *up to three times* the [same] number of option contracts, or contracts representing *up to three times* [same] number of shares at option (if the underlying security is a stock) or *up to three times* the [same] principal amount (if the underlying security is a Government security [or a certificate of deposit]), in a different series of the same class of options.

(ii) Straddle Order-No change.

(iii) Combination Order—A combination order is an order [to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts] *involving a number of call option contracts and the same number of put option contracts in the same underlying security and* representing the same number of shares at option (if the underlying security is a stock) or the same principal amount (if the underlying security is a government security*)* [or a certificate of deposit), which contracts do not have both the same exercise and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts representing the same number of shares at option (if the underlying security is a Government security or a certificate of deposit), which contracts do not have both the same exercise price and expiration date. (E.G., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order)]. In the case of adjusted option contracts, a combination order need not consist of the same number of put and

call contracts if such contracts represent the same number of shares at option.

(iv) Facilitation Order—No change.

(f)—(m)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Over the last several years, the Exchange has observed this significant and continually increasing role that spread and combination orders, as well as certain stock-option transactions, play in the options markets. In that regard, the Exchange is proposing amendments to certain options rules to provide options investors and traders with an efficient and effective marketplace within which to execute such orders.

By expanding the current definition of spread and combination orders and creating a stock-option order, all such orders would be eligible to be executed in trading crowds under the appropriate priority trading rule. The priority rule, Exchange Rule 950(d), governs the execution of certain option orders which have two components ("legs"). The rule permits one leg of such an order to be executed at the established bid or offer (thus taking priority over such bid or offer) so long as the other leg of the transaction is simultaneously executed with the same party at a price which is better than the established bid or offer for such other series.

(1) *Combination Orders.* Conversion and reverse conversion tradig continues to play an active and increasing role in the options markets. Conversion and reverse conversion trading is generally utilized by professional traders and sophisticated investors either to hedge common stock positions or to "lock in" a specific rate of return on an investment over the life of the option components.[1]

Currently, Exchange members wishing to execute the two option legs of a conversion or reverse conversion must enter two separate orders. For example, in the case of a conversion, a member must enter an order to sell a call option and another order to purchase a put option. The member is therefore, at risk in that one of the orders may be filled, while the other order goes unexecuted.

The Exchange now proposes to expand the definition of a combination order to include put and call options on the same side of the market (i.e., long puts and short calls or short puts and long calls) with any combination of exercise prices and expiration months. Accordingly, the operation portions of a conversion or reverse conversion could be entered as a single combination order. Under the new definition, a combination order would involve the same number of puts and calls.

It should be noted that on January 29, 1982 the Commission approved a substantively *identical* rule change proposed by the Chicago Board Options Exchange ("CBOE") (see SEC Release No. 18458).

(2) *Spread Orders.* A spread order is an order to simultaneously buy and sell either put option contracts or call option contracts. Under the current definition, each leg of a spread order relates to the same number of shares of the underlying stock. The Exchange now proposes to amend the definition of spread orders to include ratio orders, with ratios not in excess of 1 to 3.[2] Thus, ratio orders could be entered at a total net debit or credit and executed under the priority trading rule.

Ratio orders are used by investors and traders to "roll" from one option position to another option position, as the price of the underlying stock moves. This strategy typically involves the buying of a certain number of option contracts and the simultaneous selling of up to two or three times that number of option contracts. To ensure that ratio spread orders executed under the spread priority rule facilitate public order, the Exchange further proposes that Registered Options Traders and Specialists may execute spreads under the priority rule only when an off-floor customer order is on the other side of the trade.

(3) *Stock-Options Orders.* Two of the most popular strategies used by public customers in the options markets today are covered call writing and protective put buying. Each strategy involves an underlying stock position and an off-setting (hedged) option position. A covered call is comprised of a long stock position and a short call option; a protective put is comprised of a long stock position and a long put option.

A major objective of investors in writing covered calls is to earn a greater return (from the premium income received when the call is sold) than would be earned on the stock investment alone. With regard to protective puts, investors desiring to protect profits in share of stock currently owned or in newly acquired shares of stock often purchase put options as a hedge against a decline in stock prices. In effect, the put options provide protection—"insurance"—against a sharp near-term decline in the price of the stock.

In recognition of these two popular strategies among public customers, the Exchange proposes to create a new type of order to be called a "stock-option order". The proposal herein is limited to those options strategies that hedge stock positions on a share-for-share basis (e.g., buying 100 shares of stock and selling 1 call option).

Under the proposal, customers would be able to execute stock-option orders under the priority rule only when they are establishing both compenents of a covered call or protective put position. For example, an order to buy 100 XYZ shares and simultaneously sell 1 XYZ call option could be entered as a stock-option order.

Since the stock component of a covered call and protective put position will be executed in another marketplace, the proposed rule will also require stock-option orders to be appropriately marked. This will enable Exchange staff to monitor compliance for executions under the priority rule and, thus, ensure the integrity of the Amex's options marketplace (See Exhibit I).

The Commission has recognized the utility of stock-option orders and has granted such orders limited priority under the priority trading rule (see SEC Release No. 20294, dated October 17, 1983, approving SR-CBOE-83-04). Specifically, the Commission permitted such orders to have priority over bids or the offers in the trading crowd. However, the Commission did not

[1] A conversion is a three component position comprised of a long position in common stock, a short call option and a long put option. A reverse conversion is comprised of a short position in common stock, a long call and a short put. The option components of a conversion of reverse conversion are usually, although not always, transacted with the same exercise price and expiration month.

[2] An example of a spread order under the current definition is:

Buy 1 XYZ July 45 call
Sell 1 XYZ July 50 call

The new definition would permit:

Buy 1 XYZ July 45 call
Sell 3 XYZ July 50 calls

extend priority over bids or offers on the limit order book.

The Exchange strongly believes that the extension of the priority rule is now warranted so that stock-option orders could have priority over both the trading crowd and the limit order book. As stated above, the Commission already has recognized the utility of conversions and reverse conversions (which are strategied primarily transacted by professional traders) and has allowed these orders to fall within the priority rule. Therefore, stock-option orders, which are the "backbone" of the public customer business, should receive similar treatment.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by facilitating the execution of combination, spread and stock-option orders, thus enhancing depth and liquidity in the options markets. Therefore, the proposed rule change is consistent with section 6(d)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With respect to that portion of the proposed rule change described in Sections II.A (2) and (3), within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Accelerated Approval of Proposals Described in Section II.A.(1).

As noted above, the Amex proposal to amend the current definition of combination orders is essentially identical to a CBOE rule proposal the Commission approved several years ago.[1] For the reasons discussed in the order approving that CBOE proposal, the Commission finds that the Amex proposal to expand the definition of combination orders is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6. This Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission previously approved a substantially identical proposal by the CBOE, and has received no adverse comments regarding the CBOE rule.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described in Section II.A.(1) above is approved.

V. Solicitiation of Comments

The Commission is publishing this release to solicit comment on the proposed rule changes described in Sections II.A (2) and (3) above. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

[1] *See* rule filing No. SR-CBOE-81-5, approved in Securities Exchange Act Release No. 18458 (January 29, 1982), 47 FR 5560 (February 5, 1982).

All submissions should refer to the file number in the caption above and should be submitted by May 29, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 30, 1985.

Surveillance of stock-option orders would be conducted as follows:

(1) For every option transaction on the Exchange, a reporter currently captures on a card read by a computer the name of the option, the number of contracts bought or sold, the price and the identifying number of the initiating broker. For all stock-option orders, the reporter also would be required to mark the card with an "S" to indicate such order. (The "S" indicator is presently used on the Amex's audit trail to identify other spread orders.) The card then is fed into the computer, which automatically marks the time of execution. All information later would be reviewed in computer printout form by the Trading Analysis Division to reconstruct the option component of the stock-option order.

(2) All Specialities and Registered Options Traders are currently required to report every order to purchase or sell a security underlying their options trading. These "958C Reports" indicate the terms of each order, the quantity, the price and the time of execution. The Exchange would merely require the Specialist or Trader to write "spread" on all stock transactions that were part of stock-option orders. Thus, the Trading Analysis Division would review the 958C Reports to determine if the Specialist or Trader, in fact, engaged in a stock transaction at the time he entered a stock-option order.

(3) To ensure that the stock was transacted as represented on the 958C Report, the Trading Analysis Division would than verify the information represented on the 958C Report against data passed through the Intermarket Surveillance Group ("ISG"). (ISG is the entity that disseminates intermarket data among the exchanges.) The Trading Analysis Division presently reviews ISG reports to monitor other trading activity. The ISG data captures the terms of each transaction, as well as the clearing information for the buyer and seller. The ISG Reports, in effect, serve as a "double-check" on the 958C Reports in reconstructing the stock portion of the trade.

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[Release No. 34-22001; File No. SR-AMEX-85-8]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Amex/Toronto Trading Linkgage

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1985, the American Stock Exchange ("Amex") Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is requesting SEC approval of a joint Plan and accompanying rule changes implementing an electronic trading linkage between the Amex and the Toronto Stock Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* In December 1984, the Amex and the Toronto Stock Exchange agreed in principle to the establishment of an electronic trading linkage between the two exchanges. The primary objective of the linkage is to provide a mechanism for the direct flow of orders between the two trading floors, thereby providing greater liquidity for issues traded in both markets and affording investors in both Canada and the United States an opportunity to obtain the best price available in either country. The linkage, initially limited to dually-listed stocks, will commence on a pilot basis in approximately seven of the most actively traded issues.[1] As experience is gained with the linkage, the pilot will eventually be expanded to include all dually-listed stocks.

It is anticipated that trading through the linkage could begin on a one-way basis from Toronto to the Amex as soon as approval is received from the SEC and the Ontario Securities Commission. Two-way trading could begin as soon as a mechanism for clearance and settlement of northbound trades is completed, probably in late June of July. Since agreeing in principle in December, both exchanges have been working on the details of the linkage and joint Plan has been developed reflecting agreement with respect to its operation. The Plan, along with implementing rule changes, is now being submitted to the SEC for its approval. A summary of the major provisions of the Plan is set forth below.[2]

1. Quotations. Each exchange will display on its trading floor the quotes distributed by the other exchange in linkage stocks. Amex quotes will be U.S. currency, while Toronto quotes will be displayed as a composite showing the Canadian dollar quote and, as soon as possible, the equivalent price converted to U.S. dollars.[3]

2. *Transmission and Execution of Orders.* Orders will be transmitted between the two trading floors using the existing automated routing systems of the two exchanges—the Post Execution Reporting ("PER") System on the Amex and the Market Order System of Trading ("MOST") on the Toronto.

(a) *Marketable Orders.* Initially, the linkage will provide only for the execution of marketable limit orders. Such orders will be treated as "immediate or cancel" orders, to be promptly executed or cancelled depending on whether they are marketable when received by the market maker. Marketable agency orders will be guaranteed an execution at the best available quote on the receiving exchange up to a specified minimum amount, initially 1,000 shares. The minimum guarantee may be different for specific stocks as they are added to the linkage in the future. Professional orders will not be entitled to a guarantee, but will otherwise be handled in the same manner.

(b) *Away from the Market Orders.* While the linkage will initially be restricted to marketable limit orders, it is planned to eventually accommodate "away from the market" orders up to 1,000 shares. Agency orders will be subject to the normal priority rules on each exchange, while professional orders will be on a parity with the respective market makers on each floor.

In addition, the exchanges have agreed that the bids and offers distributed by each exchange and displayed on the other exchange should be given a limited form of trade-through protection. Due to the complications introduced by differences in currencies and other problems, the details of this arrangement still have to be worked out.

3. *Clearing Trades.* Each exchange will be responsible for submitting trades executed in its market to the National Securities Clearing Corporation ("NSCC") for clearance and settlement. All such transactions will be submitted as locked-in compared trades and will be settled by NSCC through its present interface with the Canadian Depository Service ("CDS").

Both sides of Amex-executed trades will be settled in U.S. funds. For trades executed in Toronto in Canadian dollars, Toronto is in the process of developing a mechanism for the immediate conversion of U.S. and Canadian dollars. This will allow Amex members to settle their side of the trade in U.S. currency and Toronto members to settle the other side in Canadian currency, without being subject to the risk of currency fluctuations.

4. *Surveillance.* Trade data will be exchanged on a regular basis and on request to monitor trading through the linkage. The exchanges have also agreed to cooperate fully with each other in the investigation of any matter involving trading through the linkage.

5. *Administration.* A six-member joint Operating Committee will be responsible for administering the linkage. The Committee, meeting periodically, will oversee the development and implementation of the linkage, review operational concerns, and advise with respect to enhancements of expansion of the linkage. Disputes relating to orders sent through the linkage will be resolved in accordance with the on-floor dispute resolution procedures of the receiving

[1] The pilot stocks are expected to be Asamera Inc., Canadian Marconi Co., Dome Petroleum Ltd., Echo Bay Mines Ltd., Gulf Canada Ltd., Husky Oil Ltd., and Imperial Oil Ltd.

[2] The Amex has included as Exhibit A to its filing the Amex-Toronto linkage plan which describes in detail trading operations, as well as procedures for comparison and settlement, surveillance, investigations, administration, and arbitration. In addition, Amex has included as Exhibit B, the text of the new series 240 rules, designed to implement the linkage plan, as well as specific amendments to existing Amex rules. Exhibits A and B are available for inspection and copying at the Commission's Public Reference Room or at the Amex.

[3] The Toronto Exchange also has the ability to distribute quotes denominated in U.S. dollars and may do so from time to time. Such quotes will also be displayed on the Amex floor.

exchange or pursuant to arbitration, where appropriate.

Linkage Rule Changes

The new series 240 rules are designed to implement the Linkage Plan and assure the applicability of Exchange rules to order received from Toronto and executed on the Amex. Commentary to Rule 244 also makes certain Amex rules applicable to orders sent from the Amex to Toronto where deemed appropriate. The remaining rule amendments make necessary conforming changes to existing Amex rules, enabling them to accommodate linkage orders.

(2) *Basis.* The proposed Linkage Plan and implementing rule changes are consistent with section 6(b) of the Exchange Act in general and further the objectives of section 6(b)(5) in particular, in the the Linkage is intended to provide greater depth and liquidity for issues traded in both markets and afford investors in both Canada and the U.S. an opportunity to obtain the best price available in either country.

B. Self-Regulatory Organization's Statement of Burden on Competition

The proposed Linkage Plan and implementing rule changes will impose no burden on competition, and will in fact enhance competition by providing for the direct flow of orders between the two trading floors.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed Plan and rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

April 30, 1985.

John Wheeler,

Secretary.

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[Release No. 34-22008; File Nos. SR-Amex-85-10; SR-CBOE-85-12; SR-NYSE-85-10; SR-PSE-85-7; SR-Phlx-85-8]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Changes; American, et al.

The American ("Amex"), New York ("NYSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE") ("Exchanges") have submitted proposed rule changes, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder [2] to amend their respective rules concerning the Options Allocation Plan.

I. Background and Description of Proposed Rule Changes

Recently, the Commission approved a proposed rule change by the NYSE which is substantially similar to the NYSE and other Exchange proposals discussed herein.[3] The NYSE proposal already approved by the Commission expands the Allocation Plan currently followed by the Amex, CBOE, PSE and Phlx to accommodate the NYSE as a fifth participant in the Plan. In this connection, the NYSE used a five-by-five matrix similar to the four-by-four matrix adopted by the four existing stock options Exchanges at the inception of the Allocation Plan, in 1980.[4]

Concurrent with its recent approval of the NYSE's Options Allocation Plan proposal, described above, the Commission requested the stock options exchanges to adopt conforming amendments to their respective rules.[5] Accordingly, the five Exchanges have discussed the NYSE's version of the Options Allocation Plan, as approved, and have determined to incorporate that Plan, with certain slight modifications agreed to by all five participants, into their respective rules.[6] As stated in the Exchanges' filings, the primary modification concerns the use of a slightly different selection matrix.[7] In particular, in its filing, the NYSE stated that the new matrix preserves the random selection of the Exchanges and provides for a mathematically fair system of choices for the matrix as a whole, as well as for the *de facto* sub-matrixes that would result should an allocation be called for other than in five rounds. In this connection, the Exchanges believe that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides that

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[1] 15 U.S.C. 78s(b) (1984).

[2] 17 CFR 240.19b-4 (1984).

[3] In Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985) ("NYSE Entry Order"), the Commission approved NYSE entry into the market for individual listed stock options and, simultaneously, the NYSE's proposed Options Allocation Plan, which modified the existing procedures for the selection and replacement of stocks underlying equity options to accommodate the NYSE as the fifth participant in the individual stock options marketplace. (This NYSE Allocation Plan Proposal is contained in File No. SR-NYSE-84-10.)

[4] Approval of the original Allocation Plan, jointly submitted by Amex, CBOE, PSE, and Phlx, was published in Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928 (June 5, 1980) ("May 1980 Release").

[5] NYSE Entry Order, *supra* note 3, 50 FR at 7256.

[6] In their filings, CBOE and Phlx noted that although the Options Allocation Plan is being amended to accommodate the NYSE as a fifth participant, should the NYSE and PSE agree to merge, the Exchanges would expect the Options Allocation Plan to be modified to reflects the change from five to four participants, by having the NYSE and PSE be treated as one, for purposes of the Allocation Plan. In addition, CBOE suggested the potential need for provisions inhibiting the combined entity from participating in certain future allocations or adjusting the options classes allocated to the NYSE and PSE, pursuant to the Allocation Plan as adopted herein, once the combination occurs.

[7] In addition, the Exchanges have made technical amendments to the NYSE plan by including the text of the Plan's history (deleted by the NYSE, intially) although with minor modifications designed to eliminate specific references to previous amendments to the Plan and to clarify the purely historical application of certain provisions.

the rules of the Exchanges be designed to foster cooperation and coordination between persons engaged in regulating the securities marketplace, as well as to promote just and equitable principles of trade and protect the investing public.

II. Solicitation of Comments

The Commission is publishing this release to solicit comment on the proposed rule changes described above. Persons interested in commenting on these proposals should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule changes, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings also are available at the Exchanges.

III. Approval of Proposed Rule Changes

As indicated above, the Exchanges' proposals are substantially similar to the NYSE proposal which the Commission recently approved.[8] The Commission finds that the Exchanges' proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6.[9] In addition, the Commission finds good cause for approving these proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, in that over 30 days ago the Commission published an order approving a substantially similar proposal (File No. SR-NYSE-84-10), after an extended comment period. In this connection, the Commission also notes that the Exchanges have communicated with one another, agreed upon the format of the Options Allocation Plan which shall apply to the five existing options Exchanges, and jointly submitted this plan, the format of which is not dissimilar from the one originally submitted by the NYSE, and approved by the Commission.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes described above are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

May 1, 1985.

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[8] *See* note 3, *supra*.

[9] In the NYSE Entry Order, the Commission discussed the alternatives of multiply trading all listed stock options or options on any remaining listed stocks, and allocating (according to various formulas) the remaining listed stocks for options trading, as has been done in the past. In this connection, the Commission analyzed the commentators' concerns including the competitive concerns associated with these alternatives. The Commission concluded that expansion of the Allocation Plan to the NYSE, as a fifth participant, was most appropriate because it would further legitimate purposes of the Act (including the protection of investors) without imposing unnecessary competitive burdens. *See* generally NYSE Entry Order *supra*, note 3, 50 FR 7255-56.

[10] *See supra* note 3.

[Release No. 34-21999; File No. SR-CBOE-85-11]

Self-Regulatory Organizations; Proposed Rule Change By Chicago Board Options Exchange, Inc.; Relating to Opening Rotations in Government Securities Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

To: All Members and Member Firms
From: Floor Procedure Committee
Re: Summary of Procedures Regarding Opening Rotations in Government Securities Options

The purpose of this memorandum is to summarize the rotation procedures in Government securities options.

In conducting the opening rotation in each class of Government security options, the Post Coordinator has broad discretion concerning the order and timing of opening series for trading. Ordinarily, the following procedure is followed. Frist, the Post Coordinator opens those series with the nearest expiration that are at-the-money, first in-the-money, and first out-of-the-money. The Post Coordinator then opens any other near term options within the class for which a broker requests a market. Next, the Post Coordinator ordinarily opens any longer-term series within the class for which a broker requests a market. The Post Coordinator may then proceed to the next options class, notwithstanding that all series within the previous class may not have been opened.

Series for which there was no buying or selling interest during opening rotation will be opened during the trading day in response to buying or selling interest, or forty minutes prior to the close, whichever is sooner. The Post Coordinator may permit a later opening, where unusual market conditions are present.

No quotations will be posted for series of options until they are opened for trading. Once a series is opened for trading, current market quotations thereon will be maintained and disseminated for the remainder of the trading day.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C), below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Exchange Rule 21.11(a), which was approved by the Commission on December 23, 1981, governs trading rotations in Government securities options.[1] By its terms, Rule 21.11(a) vests the Post Coordinator for Government securities with considerable discretion in determining the sequence and timing of the opening rotation in Government

[1] This rule provides as follows:

Trading Rotations: Rule 21.11(a) The opening rotation in each series of each class of Government securities options shall be overseen by an Exchange employee designated as the Post Coordinator for Government securities options and shall be held as promptly following availability of opening quotations on the quotation display mechanism(s) approved by the Exchange as the Post Coordinator deems appropriate under the circumstances. Generally, the Post Coordinator shall open first those series of a class with respect to which the greatest buying and selling interest has been expressed (deferring opening relatively inactive series); provided, however, that more than one series may be opened simultaneously. These procedures may be altered or supplemented by the Board (or the Committee designated by the Board).

securities options. The rule further provides that the procedures for opening Government securities options may be "altered or supplemented" by the Board of Directors or a committee designated by the Board. Acting pursuant to its delegated authority, the Exchange's Floor Procedure Committee recently voted to standardize and abbreviate the procedure to be followed by the Post Coordinator in opening Government securities options.

The Floor Procedure Committee acted in response to a number of perceived difficulties unique to the trading of bond options. First, the sheer number of series opened for trading, due largely to the greater than usual number of striking prices within each options class, made the opening rotations unduly time-consuming. Second, a number of deep in-the-money and far out-of-the-money series are available, even though there has not been any recent buying or selling interest in such series. Given the number of possible strikes for each options class, maintaining current quotes in all the inactive series has been unduly burdensome. Thus the market quotes in the many inactive series, which quotes are posted and disseminated to traders, can become stale during the trading day, unless traders give these inactive series undue attention instead of properly focusing on the actively trading options.

Furthermore, most bond options traders rely on the Telerate system for their quote information. The Telerate display format is such that in order to arrive at the current bids and offers in the relatively few active options series, the user had to page through several screens of information on options which had not recently been traded.

To eliminate the needless opening at the beginning of the trading day of inactive bond options series, and to facilitate the dissemination of fresh and accurate quotation information, the Floor Procedures Committee has established the following rotation procedures for Government securities options. First, the Post Coordinator ordinarily will open within an options class those series with the nearest expirations that are at-the-money, first in-the-money and first out-of-the money. The Post coordinator will then open any other near term options within the class for which a broker requests a market. Next the Post Coordinator will open any longer-term series within the class of which a broker requests a market. The Post Coordinator may then proceed to open the next options class, notwithstanding that all series within the previously-opened class may not have been opened. Service for which there was no buying or selling interest [2] during opening rotation will be opened during the trading day in response to buying or selling interest, or forty minutes prior to the close, whichever is sooner.[3] No quotations will be posted for series of bound options until they are opened for trading. Once a series is opened, however, current market quotations for such series will be maintained and disseminated.

The proposed rule change is consistent with the requirement of the Securities Exchange Act of 1934 ("the Act") and the rules and regulations thereunder applicable to the Exchange, by alleviating burdens relating to the opening of inactive series of Government securities options and by promoting the dissemination of accurate quotation information in a form that can be most easily interpreted and used by investors. Thus, the proposed rule change furthers the objectives of section 6(b)(5) of the Act in that it protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 29, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11083 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22004; SR-NSCC-85-3]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change on a Temporary Basis

National Securities Clearing Corporation ("NSCC") on April 4, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. The Commission is publishing this Order to solicit comments on the proposed rule change and to approve the proposed rule change temporarily on an accelerated basis.

I. Introduction

NSCC's proposed rule change will implement Phase V of NSCC's Municipal Bond Comparison System. In April 1984, NSCC Implemented Phase IV of its Municipal Bond Comparison System ("MBCS").[1] Phase IV enabled municipal

[2] The term "buying or selling interest" was used by the Floor Procedure Committee in order to track the original language of Exchange Rule 21.11(a).

[3] Of course, in periods of unusual market activity, or when other extraordinary circumstances are present, the Post Coordinator is vested prior to the close of trading then the forty minutes provided for in the Floor Procedure Committee memorandum.

[1] *See* Securities Exchange Act Release No. 20795 (March 28, 1984), 49 FR 13614 (April 15, 1984) and Securities Exchange Act Release No. 20976 (May 18, 1984), 49 FR 22426 (May 29, 1984).

securities brokers, dealers and dealer banks to comply with the requirements of Municipal Securities Rulemaking Board ("MSRB") Rule G-12. That Rule, among other things, provides that, in certain circumstances, municipal securities trades must be compared through an automated comparison system of a registered clearing agency.[2]

II. Description of Proposed Rule Change

NSCC's proposed rule change will allow an increased number of municipal securities trades to be submitted for automated comparison by expanding NSCC's MBCS to permit the submission of: (1) municipal bond when-issued data and (2) trades that require extended settlement time beyond the standard industry practice of five business days.[3] Additionally, under Phase V, the following NSCC procedures will be amended to enhance the processing of municipal securities transactions.

Under Phase V, NSCC will provide municipal securities brokers and dealers with a one-sided delete capability. This will permit a broker to delete a trade from the comparison cycle the day the trade appears, either as a compared or uncompared trade, on its contract sheet.[4] While deleted trades will be exited from NSCC's comparison process, that action will not eliminate the brokers' trade obligations. NSCC believes that this enhancement is necessary because municipal securities brokers sometimes execute trades believing that the traded issue is guaranteed, non-callable or has some other distinguishing feature, and, they subsequently discover from their contract sheets that the issue is materially different *e.g.*, callable or non-guaranteed. NSCC believes that a one-sided delete capability will enable brokers to delete such transactions from the comparison process and to resolve, between the executing parties, differences regarding execution of the trade. After resolution, new trade data would be submitted into NSCC's MBCS.

The proposal also would amend NSCC's procedures regarding Demand As Of's for municipal securities. Currently, Part I.D.10. of NSCC's Procedures provides that a participant may partially accept a Demand As Of Advisory. Partial deliveries, however, are not yet accepted for municipal securities trades.[5] NSCC has found that some municipal securities brokers and dealers have used this partial acceptance feature to circumvent this industry practice. NSCC also has found that Participants are not using the partial acceptance feature for debt issues. Accordingly, under Phase V, NSCC would delete this feature for all debt issues. NSCC believes that this is necessary to avoid confusion that could result if the feature remained available for corporate debt issues and unit trust fund transactions but not for municipal securities issues.

Additionally, because the same bond system is used for all debt issues, it would be very difficult and expensive for NSCC to adjust the system to allow partial acceptance for corporate debt issues and unit trust fund transactions but not for municipal bonds.

The proposed rule change also would modify Part I.E.2.f. of NSCC's Procedures to clarify NSCC's response to the notification of postponement of settlement of, or cancellation of a municipal bond issue. If NSCC receives such a notification after it has produced municipal securities receive and deliver orders, those receive and deliver order will be considered by NSCC to be null and void.

Finally, NSCC Procedure II.D.9. would be amended to remove participants' capability to delete a trade from comparison through the Demand Withhold process. NSCC has found that participants do not use this feature. Participants, however, would be able to continue to delete trades through the Regular Withhold process.[6]

II. NSCC's Rational

NSCC believes that the implementation of Phase V of its MBCS will enhance the automated comparison and settement of municipal securities transactions by allowing and increased number of municipal securities trades, *e.g.*, when issued trades, to be compared through the system. NSCC further believes that the proposed technical amendments will facilitate the prompt and accurate clearance and settlement of municipal securities transactions.

IV. Discussion

For the following reasons, the Commission believes that NSCC's proposed rule change should be approved. The commission believes the NSCC's expansion of its MBCS to allow municipal bond when-issued data into the automated comparison and settlement system will substantially increase the number of municipal securities transactions processed through NSCC's MBCS. Thus, the Commission believes that the proposal enhances the automated comparison and settlement of municipal securities transactions and, accordingly, helps to achieve the goals of MSRB Rules G-12 and G-15.[7]

The Commission further believes that the proposal will facilitate the prompt and accurate clearance and settlement of municipal securities transactions. First, Participants, as part of trade input, will be able to extend settlement date up to 15 days beyond the regular way settlement date. This is beneficial to Participants in situations where a Participant must redeliver the physical securities out-of-town after the when-issued settlement date. NSCC, prior to settlement, would price the bond to the extended settlement date and add the necessary accrued interest to the principal amount. Second, the addition of the one-sided delete capability enhances MBCS by providing municipal securities brokers with a comparison mechanism better tailored to the current nature of the municipal securities market. This new feature should enable participants to more efficiently resolve differences regarding municipal securities trades. Third, the proposal's elimination of partial acceptance of Demand-As-Of's is consistent with current municipal securities industry practice of not accepting partial deliveries. Thus, the proposal will help to reduce the potential for confusion in the municipal securities markets. Finally, the remaining technical amendments clarify NSCC's procedures regarding municipal securities transactions and thereby enhance the automated comparison of municipal securities transactions.

V. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in

[2] *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983).

[3] Under Phase IV, processing of municipal trade transactions was limited to regular-way municipal trades.

[4] NSCC's procedures also provide brokers with a one-sided delete capability for NYSE/Amex equity securities. *See* NSCC Procedure II.B.1.

[5] MSRB Rule G-12(e)(iii) provides that a purchaser is not required to accept partial deliveries of municipal securities. Currently, industry practice in the municipal securities market is to reject partial deliveries for municipal securities.

[6] In a Regular Withhold, previously compared trades may be deleted on any day following T+1 only if both the purchaser and the seller submit Withhold tickets. In a Demand Withhold, either the purchaser or the seller may delete a previously compared trade by submitting a Demand Withhold on T+2 only. *See* NSCC Procedure I.D.9.

[7] MSRB Rule G-15 requires that municipal securities brokers and dealers book-entry settle certain municipal securities transactions through a registered clearing agency.

particular, with section 17A and the rules and regulations thereunder.

NSCC requested accelerated approval of the proposed rule change because it believes that implementation of Phase V will enable the municipal securities industry to comply with the MSRB's intention to obtain maximum usage of automated comparison for municipal securities trades. The Commission agrees with NSCC and, therefore, finds good cause for approving the proposed rule change for a period that will extend 30 days beyond publication of this Order in the **Federal Register**. At the end of the 30 days period, the Commission will decide whether to approve the proposed rule change on a permanent basis.

You may submit written comments within 21 days from the date of publication in the **Federal Register**. Six copies of comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Please refer to File No. SR-NSCC-85-3.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, the NSCC's proposed rule change be, and thereby is, approved for a period, expiring 30 days after publication of this Order in the **Federal Register**.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-11090 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

April 30, 1985.

The above named national securities exchange has filed applications with the Securities and Exhange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Worldwide Energy Corporation
Common Stock, $.20 Par Value, (File No. 7-8405)
Nord Resources Corporation
Common Stock, $.01 Par Value, (File No. 7-8406)
Foothill Group, Inc.
Common Stock, No Par Value, (File No. 7-8407)
Home Depot, Inc.
Common Stock, $.5 Par Value, (File No. 7-8408)
Bowater, Inc.
Common Stock, $1.00 Par Value, (File No. 7-8409)
Gannett, Co., Inc.
Common Stock, $1.00 Par Value, (File No. 7-8410)
Circle K Corporation
Common Stock, $1.00 Par Value, (File No. 7-8411)
General Datacom
Common Stock, $.10 Par Value, (File No. 7-8412)
Louisville Gas & Electric Co.
Common Stock, No Par Value, (File No. 7-8413)
Diebold, Inc.
Common Stock, $1.25 Par Value, (File No. 7-8414)
Wisconsin Public Service Corporation
Common Stock, $8.00 Par Value, (File No. 7-8415)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 21, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11087 Filed 5-7-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-5181]

Calista Business Investment Corp.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Calista Business Investment Corporation, 516 Denali Street, Anchorage, Alaska 99501, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) 1985)) for an exemption from the provisions of the cited Regulation.

Subject to SBA approval, Calista Business Investment Corporation proposes to provide funds to Kwethluk, Inc. for working capital use.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Matthew Nicolai, Vice President of the Licensee, owns 107 shares of the 45,200 shares outstanding, and Messrs. Phillip Guy, Nicori and Moses Nicolai are close relatives of Mr. Matthew Nicolai and are considered Associates of Calista Business Investment Corporation as defined by Section 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Kwethluk, Alaska area.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: April 30, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-11061 Filed 5-7-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5171]

Consumers United Capital Corp.; Issuance of a Small Business Investment Company License

On July 23, 1984, a notice was published in the **Federal Register** (49 FR 29693) stating that an application has been filed by Consumers United Capital Corporation, with the Small business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business August 22, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended,

after having considered the application and all other pertinent information, SBA Issued License No. 03/03-5171 on April 22, 1985, to consumers United Capital Corporation to Operate as a small business investment company.

Dated: April 30, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

[FR Doc. 85-11060 Filed 5-7-85 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5361]

Jeanjoo Finance, Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 (1985)) by Jeanjoo Finance, Inc., 700 South Flower Street, Suite #400, Los Angles, California 90017 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.)*

The proposed officers, directors and shareholders are:

Name and address	Title or relationship	Percentage of shares owned
Chester Koo, 28205 Ridgethorne Ct., Rancho Palos Verdes, California 90274, (213) 404-1224.	Director, President...	95
Kum-Sook Koo, 28205 Ridgethorne Ct., Rancho Palos Verdes, California 90274, (213) 541-0836.	Director, chief financial officer.	0
Sung-Hyun Kim, 2740 Kennington Drive, Glendale, CA 91206, (213) 622-4477.	Director, secretary...	5
Frank R. Romski, 4861 Ashbury Street, Cypress, CA 90630, (714) 826-2836.	General manager.....	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and charter of the proposed owners and management, and probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Los Angles, California.

Dated: April 30, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-11062 Filed 5-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Montpelier, VT

The Small Business Administration Region I Advisory Council located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 A.M., Wednesday, May 22, 1985, at the Chittenden Trust Company, Two Burlington, Square, Burlington, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 229-0538.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 2, 1985.

[FR Doc. 85-11059 Filed 5-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Public Meeting; Hato Rey, PR

The Small Business Administration Region II Advisory Council located in the geographical area of Hato Rey, Puerto Rico will hold a public meeting at 9:00 a.m., Wednesday, May 22, 1985, at Room G-59, Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call Wilfred Benítez Robles, District Director, Small Business Administration, Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico, 00918-(809) 753-4003.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 1, 1985.

[FR Doc. 85-11057 Filed 5-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Portland, OR

The Small Business Administration Region X Advisory Council, located in the geographical area of Portland, will hold a public meeting at 9:00 a.m on Friday, May 17, 1985, in Room 333 of the Edith Green-Wendall Wyatt Federal Building, 1220 S.W. Third Street, Portland, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, and others present.

For further information, write or call Edwin G. Sleater, Acting District Director, U.S. Small Business Administration, 1220 SW. Third, Room 676, Portland, Oregon 97204, (503) 294-5221.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 2, 1985.

[FR Doc. 85-11058 Filed 5-7-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Public Hearings

The purpose of this notice is to announce public hearings, pursuant to the ongoing General Review of the U.S. Generalized System of Preferences (GSP) as announced in the notice published on February 14, 1985 (50 FR 6295), concerning beneficiary country practices. Parties should refer to the February 14 notice for further information concerning the General Review.

1. Deadline for Receipt of Requests to Participate in the Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee will hold public hearings on June 24 and 25 concerning

the practices of GSP beneficiary countries relevant to the ongoing General Review of the GSP Program. Interested parties, including represenatives of beneficiary countries, are invited to submit testimony or written comments.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business June 10. Oral testimony before the GSP Subcommittee will be limited to 10 minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business July 15, 1985. Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, provided that such submissions are received by July 15, 1985. Rebuttal briefs will be accepted if submitted in twenty copies, in English, by close of business August 15, 1985.

The hearing will be held on June 24 and 25 beginning at 10:00 a.m. in Washington, D.C. in the GSA Auditorium at 18th and F Streets. Parties requesting to testify will be notified by June 17 of the date and estimated time of their appearance before the GSP Subcommittee. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company

2. Comments

The General Review is being conducted pursuant to section 504(c)(2)(A) of Title V of the Trade Act of 1974, as amended (the Act). As stated in the February 14 announcement of the General Review, the President must take into account the general level of development of each benficiary country, its competitiveness and the extent to which, commensurate with its level of development, each beneficiary is adhering to the disciplines of the trading system. Opportunities for comments with respect to benficiaries' competitiveness and the application of the competitive need waiver authority will be provided in the fall of 1985.

Comments for this aspect of the review should be keyed to practices of GSP beneficiary countries relevant to the General Review of the GSP Program as delineated in sections 502(c) (4) through (7) of Title V of the Act. They should include: (1) A detailed description of the practice of concern; (2) an estimate of the value of trade affected by the practice, if applicable; and (3) what measures a beneficiary could take to reduce or eliminate any adverse effect resulting from the practice.

Parties are encouraged where possible, to review the considerations in the context of the beneficiaries' level of development, which will be a key consideration in the President's deliberations. Therefore, parties are also encouraged to focus on the factors elaborated in the statute and the efforts currently being taken with respect to the factors in light of beneficiary countries' development levels.

For those parties interested in commenting on the issue of intellectual property rights as it pertains to section 502(c)(5) of Title V of the Act, it should be noted that all written comments provided to the Trade Policy staff Committee (TPSC) pursuant to the notice published on January 28, 1985 (50 FR 3853) will be examined in the contest of the general review. Thus, there is no need for those parties who have submitted statements in accordance with that notice to make separate representation in this review.

3. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and on each page within the document, where appropriate, that confidential material is included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

4. Communications

All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Office of the United States Trade Representative, Room 316, 600 17th Street NW., Washington, D.C. 20506. Questions may be directed to any member of the GSP Information Center at (202) 395-6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-11138 Filed 5-7-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Douglas County

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Wm. H. Wendling, Area Engineer, FHWA, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 471-5527; Gerald Grauer, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479-4795.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads (NDOR), will prepare an Environmental Impact Statement (EIS) on a proposal to upgrade a section of US-275 in Douglas County, Nebraska. The proposed improvement begins at the junction of US-275 and N-36 and extends southeast for about nine miles to the junction of US-275 and N-64 near Waterloo, Nebraska. This proposal is to build a four-lane divided highway utilizing the existing two lanes to carry traffic in one direction and to build a new adjacent two-lane roadway to carry traffic in the opposite direction.

A special study was conducted for a 1.5 mile segment of US-275 in the Valley area where five design alternatives have been studied. One of the proposed alternatives would bypass the town of Valley. Another would be a no build alternative. The remaining three alternatives would follow the existing highway corridor through Valley with some modifications. A brief summary of each alternative in the Valley vicinity is as follows:

Alternative 1 would be a rural four-lane highway which bypasses Valley along the north and east edge of the town and which would provide access to the town at three locations by building short connecting roads. Alternative 2 would be to rebuild the highway on existing alignment and provide a 68 foot back-to-back curb section in the urban area. Alternative 3 would be an urban four-lane divided roadway along a line shifted about 75 feet further away from the railroad than the existing centerline. Alternative 4

would be an urban four-lane divided roadway along a line shifted about 50 feet closer to the railroad. Alternative 5 would be a no build option.

No formal scoping meeting is planned at this time. A public hearing will be held after the Environmental Impact Statement has been made available for public and agency revew and comment. Public notice will be given of the time and place of the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA or the NDOR at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Wm. H. Wendling,

Area Engineer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 85-11165 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Removal From Roster of Approved Trustees

Notice is hereby given pursuant to 46 CFR 221.27 that Alaska State Bank, with offices at Pouch 7015, Anchorage, Alaska, has failed to file its Annual Supplemental Certifications for the periods 1980 through 1985 as required. Therefore, Alaska State Bank has been removed from the Roster of Approved Trustees, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

This Notice shall become effective on the date of publication.

Dated: May 2, 1985.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 85-11066 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-81-M

Saint Lawrence Seaway Development Corporation

Advisory Board Meeting

Pursuant to sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., June 11, 1985, at the Corporation's Administration Offices, Room 5424, 400 Seventh Street SW., Washington, D.C. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 4, 1985, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, D.C. 20590; 202/426-3574.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C., on May 2, 1985.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 85-11154 Filed 5-7-85; 8:45 am]

BILLING CODE 4910-61-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 89

Wednesday, May 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMISSION ON CIVIL RIGHTS

PLACE: Fifth Floor Conference Room, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Friday, May 10, 1985, 9 a.m.–5 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Directors' Report
  A. Status of Funds
  B. Personnel Report
  C. Office Director's Reports
IV. SAC Recharters
V. Delaware and Virginia SAC Reports on Migrant Workers
VI. Presentation by the National Council on the Handicapped
VII. Civil Rights Developments in the Southern Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,

Solicitor.

May 6, 1985.

[FR Doc. 85–11242 Filed 5–6–85; 2:42 pm]

BILLING CODE 6335-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 am., Monday, May 13, 1985.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

ANSI/CPSC Coordinating Committee Meeting

The Commission and staff will meet with members of the American National Standards Institute (ANSI)/CPSC Coordinating Committee to discuss voluntary standard issues of mutual interest.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md 20207 301—492–6800

May 3, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–11189 Filed 5–6–85; 8:45 am]

BILLING CODE 6355-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:25 p.m. on Thursday, May 2, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Bank of Commerce, Chanute, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, May 2, 1985; (2) accept the bid for the transaction submitted by Bank of Commerce, Chanute, Kansas, a newly-chartered State nonmember bank subsidiary of Neosho County Bancshares, Inc., Chanute, Kansas; (3) approve the applications of Bank of Commerce, Chanute, Kansas, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in The Bank of Commerce, Chanute, Kansas, and to establish the two branches of The Bank of Commerce as branches of Bank of Commerce; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At that same meeting the Board also considered a recommendation with respect to the initiation and conduct of removal proceedings against a certain individual participating in the conduct of the affairs of an insured bank (the name of the individual and the name and location of the bank is exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 3, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–11231 Filed 5–6–85; 12:46 pm]

BILLING CODE 6714-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 3, 1985.

TIME AND DATE: 10:00 a.m., Thursday, May 16, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. United States Steel Mining Co., Inc., Docket No. PENN 82–299. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 75.1003, which deals with the guarding of trolley wires.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and §2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–11273 Filed 5–6–85; 8:45 am]

BILLING CODE 6735-01-M

Reader Aids

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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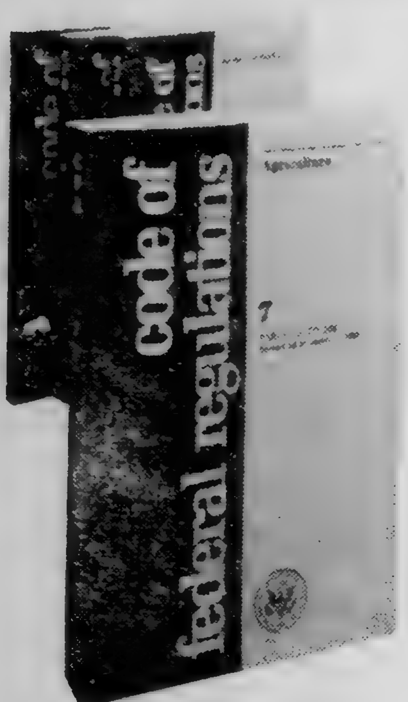

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federal register

Thursday
May 9, 1985

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5335 of May 6, 1985

Dr. Jonas E. Salk Day, 1985

By the President of the United States of America

A Proclamation

One of the greatest challenges to mankind always has been eradicating the presence of debilitating disease. Until just thirty years ago poliomyelitis occurred in the United States and throughout the world in epidemic proportions, striking tens of thousands and killing thousands in our own country each year.

Dr. Jonas E. Salk changed all that. This year we observe the 30th anniversary of the licensing and manufacturing of the vaccine discovered by this great American. Even before another successful vaccine was discovered, Dr. Salk's discovery had reduced polio and its effects by 97 percent. Today, polio is not a familiar disease to younger Americans, and many have difficulty appreciating the magnitude of the disorder that the Salk vaccine virtually wiped from the face of the earth.

Jonas E. Salk always had a passion for science. It was because of this that he finally chose medicine over law as his career goal. Even after his great discovery, he continued to undertake vital studies and medical research to benefit his fellowman. Under his vision and leadership, the Salk Institute for Biological Studies has been in the forefront of basic biological research, reaping further benefits for mankind and medical science.

In recognition of his tremendous contributions to society, particularly for his role in the epochal discovery of the first licensed vaccine for poliomyelitis, and in celebration of the thirtieth anniversary of its mass distribution, the Congress, by House Joint Resolution 258, has designated May 6, 1985, as "Dr. Jonas E. Salk Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 6, 1985, as Dr. Jonas E. Salk Day. I urge the people of the United States to observe the day with appropriate tributes, ceremonies, and activities throughout the Nation and by paying honor, at all times, to this outstanding physician and to his life's work.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and nineth.

Ronald Reagan

[FR Doc. 85–11415
Filed 5–7–85; 3:16 pm]
Billing code 3195–01–M

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Final Rules Establishing Rates of Compensation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules.

SUMMARY: These final rules establish rates of compensation for members of the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC). They slightly amend earlier interim rules in accord with the intent of the orders. The amendments do not change the rates of compensation specified in the interim rules. They clarify the purpose of the compensation committee members and alternates receive in addition to expenses.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: The final rules were reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and were designated as "non-major" rules. William T. Manley, Deputy Administrator, Agricultural Marketing Service, certified that this action would not have a significant economic impact on a substantial number of small entities.

This action is taken under Marketing Orders 907 and 908, as amended (7 CFR Parts 907, and 908), regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended. It is hereby found that this action will tend to effectuate the declared policy of the act.

These final rules set the rate of compensation for committee members and alternates engaged in the performance of their duties. The respective orders provide that members and alternates shall be reimbursed for their expenses and, in addition, shall receive limited compensation at a rate recommended by the committees and approved by the Secretary. These final rules clarify the intent of the interim rules, published on February 12, 1985, (50 FR 5733) which indicated that the specified compensation was linked to certain specified expenses. These final rules reflect the intent of the orders with respect to member and alternate compensation.

The rates at which committee members are compensated for time spent in the performance of their duties was previously limited to $25 per day or portion thereof for any member. Sections 907.31 and 908.31 of the orders were amended on January 11, 1985, however, to permit compensation of grower and handler members and alternates at a rate not to exceed $100 per day or portion thereof and for nonindustry members at a rate not to exceed $250 per day or portion thereof. The budgets for both committees provide for these increases in compensation.

These rates of compensation reflect increases in costs incurred by members and alternates in the performance of their duties since the $25 limit was set in 1970. Between January 11, 1985, and the effective date of the interim rules, committees reimbursed their members at the previously authorized rate.

No comments on the interim rules were received.

It is found that it is impracticable and contrary to the public interst to give preliminary notice, engage in public rulemaking, and postpone the effective date of these final rules until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this amendment effective as specified in that: (1) The committees meet at least weekly during the respective marketing seasons; (2) the final rules do not change the rate of compensation specified in the interim rules; (3) compensation should be paid as intended by the orders; and (4) no useful purpose would be served by delaying the effective date of these rules.

List of Subjects in 7 CFR Parts 907 and 908

Marketing Agreements and orders, California, Arizona, Oranges (navel), Oranges (Valencia).

Parts 907 and 908 are amended as follows:

The authority citations for 7 CFR Parts 907 and 908 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Section 907.103 is revised to read as follows:

§ 907.103 Rates of compensation.

(a) Except as provided in paragraph (b) of this section, grower and handler members, alternates, and additional alternates of the committee shall be compensated while in the performance of their duties at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 907.22(f) shall be so compensated at a rate of $100 per day. In addition, all members, alternates, and additional alternates shall receive $50 for each day spent in travel, excluding the day(s) on which duties are being performed.

(b) When a grower or handler member, alternate, or additional alternate of the Navel Orange Administrative Committee (NOAC) attends both a meeting of the NOAC and a meeting of the Valencia Orange Administrative Committee (VOAC) under Part 908 on the same day, and when compensation is due from both committees, the NOAC shall pay such member, alternate, or additional alternate $37.50 per day for attending

the NOAC meeting and $25 for each day in travel status, excluding the day on which the meeting is held. When the member or alternate nominated and selected pursuant to § 907.22(f) attends both a meeting of the NOAC and the VOAC on the same day, and when compensation is due from both committees, the NOAC shall pay such member or alternate $75 per day for attending the NOAC meeting and $25 for each day in travel, excluding the day(s) on which the meeting is held.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Section 908.103 is revised to read as follows:

§ 908.103 Rates of Compensation.

(a) Except as provided in paragraph (b) of this section, grower and handler members, alternates, and additional alternates of the committee shall be compensated while in the performance of their duties at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 908.22(f) shall be so compensated at a rate of $100 per day. In addition, all members, alternates, and additional alternates shall receive $50 for each day in travel, excluding the day(s) on which duties are being performed.

(b) When a grower or handler member, alternate, or additional alternate of the Valencia Orange Administrative Committee (VOAC) attends both a meeting of the VOAC and a meeting of the Navel Orange Administrative Committee (NOAC) under Part 907 on the same day, and when compensation is due from both committees, the VOAC shall pay such member, alternate, or additional alternate $37.50 per day for attending the VOAC meeting and $25 per day for each day in travel status, excluding the day on which the meeting is held. When the member or alternate selected pursuant to § 908.22(f) attends both a meeting of the VOAC and the NOAC on the same day, and when compensation is due from both committees, the VOAC shall pay such member or alternate $75 per day for attending the VOAC meeting an $25 for each day in travel, excluding the day(s) on which the meeting is held.

Dated: April 30, 1985.

Thomas R. Clark,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-10991 Filed 5-8-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24635; Amdt. No. 1294]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these

SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument procedures.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

. . . *Effective July 4, 1985*

Utica, MI—Berz-Macomb, VOR–A, Amdt. 1
Galion, OH—Galion Muni, VOR RWY 23, Amdt. 10
Mt. Gilead, OH—Morrow County, VOR–A, Amdt. 2
Fort Worth, TX—Oak Grove, VOR/DME–A, Amdt. 2
Seattle, WA—Seattle-Tacoma Intl, VOR RWY 16L/R, Amdt. 9
Seattle, WA—Seattle-Tacoma Intl, VOR RWY 34L/R, Amdt. 6
Prairie Du Chien, WI—Prairie Du Chien Muni, VOR/DME RWY 29, Amdt. 4

. . . *Effective June 20, 1985*

Cedar Rapids, IA—Cedar Rapids Muni, VOR RWY 9, Amdt. 15
Cedar Rapids, IA—Cedar Rapids Muni, VOR RWY 27, Amdt. 10
Hillsdale, MI—Hillsdale Muni, VOR–A, Amdt. 6
Three Rivers, MI—Three Rivers Muni Dr. Haines, VOR–A, Amdt. 9
Tupelo, MS—C.D. Lemons Muni, VOR–A, Orig.

. . . *Effective June 6, 1985*

Williston, ND—Sloulin Field Intl, VOR RWY 11, Amdt. 10
Williston, ND—Sloulin Field Intl, VOR/DME RWY 29, Amdt. 1
Circleville, OH—Pickaway County Memorial, VOR RWY 19, Orig.
Laramie, WY—General Brees Field, VOR RWY 12, Amdt. 4
Laramie, WY—General Brees Field, VOR/DME RWY 30, Amdt. 5

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAP identified as follows:

. . . *Effective July 4, 1985*

Seattle, WA—Boeing Field/King County Intl, LOC BC RWY 31L, Amdt. 9

. . . *Effective June 20, 1985*

Columbia Mt Pleasant, TN—Maury County, SDF RWY 23, Amdt. 3

. . *Effective June 6, 1985*

Plattsburgh, NY—Clinton Co, LOC RWY 1, Amdt. 2, Cancelled

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

. . . *Effective July 4, 1985*

Forsyth, MT—Tillitt Field, NDB RWY 26, Amdt. 2
Glendive, MT—Dawson Community, NDB RWY 12, Amdt. 4
Wolf Point, MT—Wolf Point Intl, NDB RWY 28, Amdt. 1
Wolf Point, MT—Wolf Point Intl, NDB–A, Amdt. 2, Cancelled
Seattle, WA—Seattle-Tacoma Intl, NDB RWY 16L/R, Amdt. 4

. . . *Effective June 20, 1985*

Cedar Rapids, IA—Cedar Rapids Muni, NDB RWY 9, Amdt. 10
Danville, KY—Goodall Field, NDB–A, Amdt. 8
Monroe, NC—Monroe, NDB RWY 23, Amdt. 3
Plymouth, NC—Plymouth Muni, NDB RWY 2, Amdt. 2
Lakeview, OR—Lake County, NDB–A, Amdt. 1
Columbia Mt Pleasant, TN—Maury County, NDB RWY 23, Amdt. 3

. . . *Effective June 6, 1985*

Eliot, ME—Littlebrook Air Park, NDB–A, Orig.
Rochester, MN—Rochester Muni, NDB RWY 31, Amdt. 19
Williston, ND—Sloulin Field Intl, NDB RWY 29, Orig.

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

. . . *Effective July 4, 1985*

Carlsbad, NM—Cavern City Air Terminal, ILS RWY 3, Amdt. 2

. . . *Effective June 20, 1985*

Cedar Rapids, IA—Cedar Rapids Muni, ILS RWY 9, Amdt. 14
Cedar Rapids, IA—Cedar Rapids Muni, ILS RWY 27, Amdt. 3
Lexington, KY—Blue Grass, ILS RWY 4, Amdt. 11

. . . *Effective June 6, 1985*

Louisville, KY—Standiford Field, ILS RWY 1, Amdt. 7
Rochester, MN—Rochester Muni, ILS RWY 31, Amdt. 19
Missoula, MT—Missoula County, ILS–1 RWY 11, Amdt. 8
Missoula, MT—Missoula County, ILS–3 RWY 11, Amdt. 4
Plattsburgh, NY—Clinton Co, ILS RWY 1, Orig.
Williston, ND—Sloulin Field Intl, ILS RWY 29, Orig.
Seattle, WA—Seattle-Tacoma Intl, ILS RWY 16R, Amdt. 8

5. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective July 4, 1985*

Grand Island, NE—Hall County Regional, RNAV RWY 31, Admt. 4, Cancelled
Mosinee, WI—Central Wisconsin, RNAV RWY 17, Amdt. 5

* * * *Effective June 20, 1985*

Cedar Rapids, IA—Cedar Rapids Muni, RNAV RWY 13, Amdt. 6
Cedar Rapids, IA—Cedar Rapids Muni, RNAV RWY 31, Amdt. 6

* * * *Effective June 6, 1985*

Williston, ND—Sloulin Field Intl, RNAV RWY 29, Orig., Cancelled

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 3, 1985.

John S. Kern,

Acting Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 85–11192 Filed 5–8–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 41266–5056]

Removal of Validated Licensing Requirements on Exports of Linear Alpha Olefins and Other Acyclic Organic Compounds

AGENCY: International Trade Administration.

ACTION: Final rule.

SUMMARY: On January 7, 1985, the Department of Commerce published in the **Federal Register** (50 FR 729) an interim rule which lifted short supply validated licensing requirements for the export of linear alpha olefins and other acyclic organic compounds. The public was invited to comment on this interim final rule for 30 days. During this period, the Department received comments from four companies all favoring the interim rule but requesting clarification regarding the scope of products included under Group N. In order to respond to these concerns, the Department is modifying the interim rule to limit Group N only to naphthas classified under Census Schedule B No. 475.3500.

Furthermore, through a related rule published today, linear alpha olefins and other acyclic organic compounds are no longer subject to the export restrictions of the Naval Petroleum Reserves Production Act and may be exported under general license G-DEST.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Director, Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230 (Telephone 202–377–4506).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

(1) The Department has determined that this final rule relieves a restriction, and therefore, pursuant to section 553(d)(1) of the Administrative Procedure Act, it is effective immediately upon publication.

(2) Since notice and opportunity to comment were not required by the Administrative Procedure Act or any other law, this rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*)

(3) The Department has determined that this regulation is not a major rule within the meaning of section 1 of Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

(4) This rule reduces a burden under the Paperwork Reduction Act by eliminating the need for a validated license. The reporting requirement associated with this rule has been cleared under OMB control No. 0625–0001.

List of Subjects in 15 CFR Part 377

Exports.

Issued: April 17, 1985.

John A. Richards,

Director, Office of Industrial Resource Administration.

Accordingly, Part 377 of the Export Administration Regulations is amended to read as follows:

PART 377—[AMENDED]

1. The authority citation for Part 377 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95–223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985); sec. 103, Pub. L. 94–163 as amended (42 U.S.C. 6212); E.O. 11912 of April 13, 1976 (41 FR 15825, as amended); sec. 201(10), Pub. L. 94–258 amending 10 U.S.C. 7430.

2. Group N in Supplement No. 2 is revised to read as follows:

Schedule B No.	Commodity description	Unit of quantity
	Group N	
475.3500	Naphthas, derived from petroleum, shale oil, or both but excluding specialty naphthas which are packaged and exported in containers not exceeding 55 U.S. gallons per container.	Bbl

[FR Doc. 85–11314 Filed 5–8–85; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Part 377

[Docket No. 41267–5057]

List of Commodities Subject to the Naval Petroleum Reserves Production Act of 1976

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On January 7, 1985, the Department of Commerce published in the **Federal Register** (50 FR 835) a notice requesting public comment on a proposal to revise the list of commodities subject to regulations that implement the Naval Petroleum Reserves Production Act of 1976 (NPRPA). Comments were solicited on the proposal to remove from NPRPA requirements those commodities listed in Group Q in Supplement 2 to Part 377 of the Export Administration Regulations.

The Department received comments from eight companies supporting the removal of certain chemical commodities from the list of commodities subject to the NPRPA. Accordingly, we have reviewed the need to apply NPRPA requirements to these petroleum-based chemical commodities contained in Group Q. We have determined that these commodities are highly refined down-stream products of the crude petroleum from which they are produced. It is therefore highly unlikely that removal of NPRPA export restrictions on these commodities would significantly affect the exploitation of Naval Reserves petroleum as a source of supply for export. The Department is, therefore, issuing this rule in final form, removing these commodities from Group Q and from Supplement No. 3.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Director, Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230 (Telephone: 202/377–4506).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

(1) The Department has determined that this final rule relieves a restriction, and therefore, pursuant to section 553(d)(1) of the Administrative Procedure Act, it is effective immediately upon publication.

(2) Because this rule is not likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets, it is not a major rule within the meaning of section 1 of Executive Order 12291. Therefore, a final Regulatory Impact Analysis will not be prepared.

(3) The General Counsel of the Department has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it removes administrative burdens rather than imposes them. As a result, no Regulatory Flexibility Analysis was prepared.

(4) This rule reduces a burden under the Paperwork Reduction Act by eliminating the need for a validated license and a required affidavit. The information collection activities

associated with this rule have been cleared under OMB control Nos. 0625–0001 and 0625–0104.

List of Subjects in 15 CFR Part 377

Exports.

Issued: April 17, 1985.

John A. Richards,

Director, Office of Industrial Resource Administration.

Accordingly, Part 377 of the Export Administration Regulations is amended as follows:

PART 377—[AMENDED]

1. The authority citation for Part 377 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95–223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985); sec. 103, Pub. L. 94–163 as amended (42 U.S.C. 6212); E.O. 11912 of April 13, 1976 (41 FR 15825, as amended); sec. 201(10), Pub. L. 94–258 amending 10 U.S.C. 7430.

Supplement No. 2—[Amended]

2. Group Q in Supplement No. 2 to Part 377 is amended by removing the following entries:

Schedule B No.	Commodity description	Unit of quantity
	Group O	
401.0110	Benzene	Gal.
401.0120	Toluene	Gal.
401.0132	Ortho-xylene	Gal.
401.0134	Para-xylene	Gal.
401.0139	Other xylene	Gal.
* * * * *		
431.0210	Butadiene	Lb.
431.0220	Butylene	Lb.
431.0230	Ethylene	Lb.
431.0240	Isoprene	Lb.
431.0250	Propylene	Lb.
431.0260	Tetrapropylene	Lb.
431.0270	Linear alpha olefins (C-6 to C-30 range).	Lb.
431.0295	Acyclic organic compounds, n.s.p.f.	Lb.
* * * * *		

Supplement No. 3—[Amended]

3. Supplement No. 3 to Part 377 is amended by removing the following entries:

Schedule B No.	Commodity description
401.0110	Benzene.
401.0120	Toluene.
401.0132	Ortho-xylene.
401.0134	Para-xylene.
401.0139	Other xylene.
* * * * *	
431.0210	Butadiene.
431.0220	Butylene.
431.0230	Ethylene.
431.0240	Isoprene.
431.0250	Propylene.
431.0270	Linear alpha olefins (C-6 to C-30 range).
431.0295	Acyclic organic compounds, n.s.p.f.
* * * * *	

[FR Doc. 85–11313 Filed 5–8–85; 8:45 am]

BILLING CODE 3510-DT-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

Appeals Procedure Under the Railroad Retirement and Railroad Unemployment Insurance Acts

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends §§ 260.9 and 320.39 of its regulations to make minor revisions in the procedures for filing appeals to the Board under the Railroad Retirement and Railroad Unemployment Insurance Acts. The amendments conform the procedures for appeals to the Board under the two Acts by shortening the appeal period applicable to Railroad Unemployment Insurance Act appeals from the current 90 days to 60 days and by adding language to the regulations under both Acts to permit the Board to waive compliance with the requirement to file within the appeals period where the appellant requests an extension based on a showing of good cause for failure to make a timely filing.

EFFECTIVE DATE: May 9, 1984.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railorad Retirement Board, 844 Rush Street, Chicago, Illiniois 60611, (312) 751–4935 (FTS 387–4935).

SUPPLEMENTARY INFORMATION: The Board published this rule as a proposed rule on March 12, 1985, and requested public comment (50 FR 9810–9811). No comments were received by the Board on the proposed rule.

The Board's regulations governing appeals from decisions issued by the Board's Bureau of Hearings and Appeals (20 CFR 260.9 and 320.39), previously provided that appeals to the Board under the Railroad Retirement Act be filed within 60 days after notice of the decision by the Bureau of Hearings and Appeals, whereas appeals from such decisions under the Railroad Unemployment Insurance Act were required to be filed within 90 days. There was no particular reason for this difference and it caused confusion concerning the filing of appeals. Accordingly, the Board is amending its regulations to conform the time periods under the two Acts. The new 60-day time period for appeals to the Board from decisions under the Railroad Unemployment Insurance Act shall apply with respect to decisions issued by the Bureau of Hearings and Appeals on and after the date of publication of this final rule.

In addition, where an appellant has been unavoidably prevented for good cause from filing an appeal within the allowable time period, the amendments provide a mechanism whereby the appellant may request an extension of time to file.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Sections 260.9(c) and 320.39 contain reporting requirements that are subject to OMB review under the Paperwork Reduction Act of 1980. In accordance with section 3504(h) of that Act, the board will submit these reporting requirements to OMB for review.

List of Subjects

20 CFR Part 260

Railroad employees, Railroad retirement, Railroads.

20 CFR Part 320

Railroad employees, Railroad unemployment insurance, Railroads.

PART 260—[AMENDED]

Title 20 CFR Chapter II, is amended as follows:

1. The authority citation for 20 CFR Part 260 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

2. Section 260.9(c) of the Board's regulations is revised to read as follows:

§ 260.9 Final appeal for a decision of the referee.

* * * * *

(c) *Timely filing.* The right to further review of a decision of a referee shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must

give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

* * * * *

PART 320—[AMENDED]

3. The authority citation for 20 CFR Part 320 continues to read as follows:

Authority: 45 U.S.C. 362(1).

4. Section 320.39 of the Board's regulations is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of referee.

An appeal to the Board from the decision of a referee shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the referee was mailed to the parties. The right to further review of a decision of a referee shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

(45 U.S.C. 362(1))

Dated: April 30, 1985.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-10998 Filed 5-8-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 83P-0286]

Pineapple Juice; Amendment of Standards of Identity, Quality, and Fill of Container

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the U.S. standards of identity, quality, and fill of container for pineapple juice to: (1) Permit the use of other methods of preservation, including refrigeration and freezing, in addition to heat sterilization; (2) remove all references to the words "canned" and "canning" and add the word "processing," where appropriate, consistent with the use of other methods of preservation; (3) permit the use of filtering as a processing aid; and (4) provide for the removal of excess pulp. The purpose of this action is to promote honesty and fair dealing in the interest of consumers.

DATES: Effective July 1, 1987, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin July 8, 1985. Objections by June 10, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 1984 (49 FR 44652), FDA proposed to amend the standards of identity, quality, and fill of container for pineapple juice (21 CFR 146.185). FDA published the proposal in response to a petition submitted by the Pineapple Growers Association of Hawaii. Interested persons were given until January 7, 1985, to comment on the proposal. FDA received six letters, each containing one or more comments, in response to the proposal. All the comments supported the proposal.

Two comments pointed out that, although one of the stated purposes of the amendment was to remove all references to the word "canning," the proposed language would retain the use of the term in § 146.185(a)(1). The comments requested that the reference to the term "canning" be removed.

FDA agrees and has revised § 146.185(a)(1) accordingly.

Another comment made a suggestion which was outside the scope of the proposal; namely, to provide for a correction for acidity of pineapple juice from concentrate. Anyone who believes that there is a need for such a requirement is invited to submit a petition with supporting data that demonstrate this need.

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354 (5 U.S.C. 601)), FDA has concluded that the amendment will result in providing increased flexibility to all manufacturers related to the pineapple industry and will not impose an additional burden on the industry. Therefore, FDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 146

Canned fruit juices, Food standards, Fruit juices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 146 is amended as follows:

PART 146—CANNED FRUIT JUICES

1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371), 21 CFR 5.10.

2. In § 146.185 by removing the words "canned" and "canning" wherever they appear in the section and by revising the section heading and paragraphs (a)(1) and (c)(1), to read as follows:

§ 146.185 Pineapple juice.

(a) *Identity.* (1) Pineapple juice is the juice, intended for direct consumption, obtained by mechanical process from the flesh or parts thereof, with or without core material, of sound, ripe pineapple (*Ananas comosus* L. Merrill). The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice. Pineapple juice may contain finely divided insoluble solids, but it does not contain pieces of shell, seeds, or other coarse or hard substances or excess pulp. It may be sweetened with any safe and suitable dry nutritive carbohydrate sweetener. However, if the pineapple juice is prepared from concentrate, such sweeteners, in liquid form, also may be

used. It may contain added vitamin C in a quantity such that the total vitamin C in each 4 fluid ounces of the finished food amounts to not less than 30 milligrams and not more than 60 milligrams. In the processing of pineapple juice, dimethylpolysiloxane complying with the requirements of § 173.340 of this chapter may be employed as a defoaming agent in an amount not greater than 10 parts per million by weight of the finished food. Such food is prepared by heat sterilization, refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

(c) *Fill of container.* (1) The standard of fill of container for pineapple juice, except when the food is frozen, is not less than 90 percent of the total capacity of the container, as determined by the general method for fill of container prescribed in § 130.12(b) of this chapter.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 10, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin July 8, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1987, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register**.

Dated: April 30, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11196 Filed 5-8-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Carl S. Akey, Inc., providing for manufacturing 5-, 10-, and 20-gram-per-pound tylosin premixes. Use of the 10-gram-per-pound premix is being extended to include making finished feeds for broiler and replacement chickens. The 5- and 20-gram-per-pound tylosin premixes are to be used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338, is sponsor of a supplement to NADA 103-089 submitted on its behalf by Elanco Products Co. The supplement provides for extending use of a 10-gram-per-pound tylosin premix to include making broiler and replacement chicken feeds. The premix is currently approved for making finished feeds for beef cattle, swine, chickens, and laying chickens. Additionally, the supplement provides for making 5- and 20-gram-per-pound tylosin premixes for subsequent addition to beef cattle, chicken, and swine feeds for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b), unless otherwise noted.

2. In § 558.625 by revising paragraph (b)(48) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(48) To 017790: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. May 9, 1985.

Dated: May 2, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-11195 Filed 5-8-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-15]

Special Local Regulations; Memorial Day Weekend Coney Island Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Memorial Day Weekend Coney Island Air Show. This event is sponsored by the Coney Island Chamber of Commerce. The event will be held on May 24–27, 1985 off Coney Island Beach, New York. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation becomes effective on May 24, 25, 26, 27, 1985 at 12:00 noon and terminates at 3:00 p.m. each day.

FOR FURTHER INFORMATION CONTACT: Lt D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until April 11, 1985 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Memorial Day Weekend Coney Island Air Show is sponsored by the Coney Island Chamber of Commerce. The United States Navy Blue Angels Jet Aerobatic Team will put on a special air show daily during the effective period from 1:00 p.m. to 1:30 p.m. over the waters off Coney Island in Brooklyn, New York. This air show is well known to the boaters and residents alike in this area, as similar events have been held in past years. The Federal Aviation Administration requires that all vessels be kept out of the area under the flight line (show area). The Coast Guard expects a very large spectator fleet for this popular event. The regulated area is a rectangular area 6,000 feet long along the shore and extends out 3,000 feet offshore. The 2 offshore corners of the regulated area will be marked by special purpose buoys. In order to provide for the safety of both participants and spectators, the Coast Guard will close the regulated area to all traffic.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–314 to read as follows:

§ 100.35–314 Memorial Day Weekend Coney Island Air Show, New York.

(a) *Regulated Area.* Atlantic Ocean, off Coney Island, New York in the rectangular area north of a line connecting latitude 40 degrees 33 minutes 47.0 seconds north, longitude 73 degrees 59 minutes 22.0 seconds west and latitude 40 degrees 33 minutes 52.8 seconds north, longitude 73 degrees 58 minutes 04.0 seconds west.

(b) *Effective Period.* This regulation will be effective from 12:00 noon to 3:00 p.m. each day on May 24, 25, 26, 27, 1985.

(c) *Special Local Regulations.* (1) The regulated area will be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(2) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(3) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: April 25, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-11244 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[03-84-13]

Drawbridge Operation Regulations; Kelso Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge over Kelso Bayou, mile 0.7, on LA27 at Hackberry, Cameron parish, Louisiana, by requiring that at least 4 hours advance notice be given for an opening of the draw from 22 December to around 25 May (non-shrimping season), and on signal at all other times. Presently, the draw is required to open on signal at all times. This change is being made because of infrequent requests for opening the draw during the non-shrimping season. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw during the non-shrimping season, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 7 January 1985, the Coast Guard published a proposed rule (50 Fr 861) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 18 January 1985 and in the Local Notice to Mariners of 23 January 1985. In each instance interested persons were given until 21 February 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

Five letters were received. One came from a local shrimper, who apparently misunderstood the advance notice

operation as a bridge closure. To correct this misunderstanding, a letter to the respondent explained the operation and justification for implementation. Another letter came from the Cameron Parish Police Jury expressing concern about the economic representativeness of using 1982 bridge openings to make the case and the effect of the operating change on the local economy, and stemmed in part from condensed information. To allay this concern, a letter to the police jury explained: (1) That 1981 through 1984 bridge openings were used to justify the change, not just 1982, and that these openings are representative of various levels of economic activity; (2) that these openings are few and basically for repeat waterway users; (3) that these mariners can arrange for an opening by calling the bridge owner collect from ashore or afloat, at any time; and, (4) that this type of operation should not have a detrimental economic effect on those mariners or the parish. As a result of the foregoing, there was no indication of any further concern. Three letters were from Federal agencies offering no objections to the change.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the state set non-shrimping season of 22 December to around 25 May, a period of about five months. During this period of 83/84, 82/83 and 81/82, there were 105, 77 and 102 bridge openings, respectively, averaging well below one opening per day for each period. These openings do not vary meaningfully over the three consecutive non-shrimping seasons and are considered representative of waterway related activity. These few vessels can reasonably provide four hours notice for a bridge opening by placing a collect call at any time to the LDOTD District Office at Lake Charles (318) 439-2406. From afloat, this contact may be made by marine radiotelephone through a public coast station. Scheduling their arrival at the bridge at the appointed time would involve little or no additional expense to the mariners. Moreover, should the occasion arise, during the advance notice period, to open the bridge on less than four hours notice to accommodate a bona fide emergency or to operate the bridge on demand for a temporary surge in waterway traffic, the LDOTD has committed to doing so.

Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating § 117.459 as § 117.458 and adding a new § 117.459 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.459 Kelso Bayou.

The draw of the S27 bridge, mile 0.7 at Hackberry, shall open on signal; except that, during the non-shrimping season of 22 December to a date around 25 May, as set by the state yearly, the draw shall open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: April 26, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-11245 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 08-84-08]

Drawbridge Operation Regulations; Sabine River (Old Channel), TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Levingston Shipbuilding Company, the Coast Guard is changing the regulation governing the operation of the pontoon bridge on the Old Channel of the Sabine River, mile 9.5 behind Orange Harbor Island, in Orange, Texas to provide that the draw need not open. The bridge presently is required to open on signal from 7 a.m. to 12 midnight Monday through Friday except Federal holidays, and to open on signal at all other times if at least eight hours notice is given. This change is being made because no requests have been made to open the draw since 1970, when the bridge was constructed. This action will relieve the bridge owner of the burden of having a person available to open the draw.

EFFECTIVE DATE: This regulation becomes effective on June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 17 January 1985, the Coast Guard published a proposed rule (50 FR 2590) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 18 January 1985. In each notice interested persons were given until 4 March 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

There were no responses to the Federal Register. There were three responses to the public notice. These were letters of no objection from the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Texas Historical Commission.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that no vessels, other than those that belong to the bridge owner, pass this bridge. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising § 117.983 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.983 Sabine River (Old Channel) behind Orange Harbor Island.

The draw of the highway bridge, mile 9.5 at Orange, need not be opened for the passage of vessels.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: April 26, 1985

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-11246 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Mobile, AL, Reg. 85-06]

Safety Zone Regulations; Mobile River, Pinto Island to Cochrane Bridge

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Safety Zone in the Mobile River from the mouth of the Mobile River at Pinto Island to the Cochrane Bridge (Mile 2.9). The zone is needed to manage the movement of a large number of vessels and pleasure craft during festivities in Mobile associated with the formal dedication ceremonies of the Tennessee-Tombigbee Waterway. Ceremonies beginning with an afternoon boat parade and ending with an evening fireworks display over the river will require the closure of this portion of the waterway.

EFFECTIVE DATES: This regulation becomes effective at 1500 June 1, 1985. It terminates at 2400 June 1, 1985 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR Albert J. Sabol (205) 690-2286.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation, and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels and general public involved.

Drafting Information

The drafters of this regulation are LCDR Albert J. Sabol, project officer for the Captain of the Port, Mobile and Lt. R.M. Wallar, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the Mobile dedication ceremony of the opening of the Tennessee-Tombigbee Waterway. At approximately 1500 June 1, 1985 a boat parade consisting of up to 200 vessels will be held on the Mobile River between Pinto Island (Mile 0) and the Cochrane Bridge (Mile 2.9). These vessels will proceed northbound along the eastern bank of the river to a position just south of the Cochrane Bridge where they will turn about and proceed southbound along the western bank of the river past a reviewing stand at the foot of Government Street. Later that day a fireworks display centered over the tunnel area of the river will be held commencing approximately 2100 June 1, 1985. Coast Guard patrol boats will be on scene throughout the afternoon and evening periods to manage the expected large numbers of participants and spectator craft, as well as facilitating the movement of commercial traffic as necessary.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new section to read as follows:

§ 165.T825 Safety Zone: Mobile River, Pinto Island to Cochrane Bridge, Mobile, Alabama.

(a) *Location:* The following area is a safety zone: Mobile River from its mouth at Pinto Island to the Cochrane Bridge at Mile 2.9.

(b) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile, Alabama.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: April 12, 1985.

W.J. Ecker,

Captain of the Port, Mobile, Alabama.

[FR Doc. 85-11250 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Mobile Alabama Regulation 85-05]

Safety Zone Regulations; Tennessee-Tombigbee Waterway, Columbus Lake, Columbus Lock and Dam and Adjacent Shore Areas Between Miles 334 and 336.3

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for the Columbus Lake, Mississippi area of the Tennessee-Tombigbee Waterway. The Safety Zone will include the Columbus Lock and Dam as well as the waters and adjacent shore areas of the Tennessee-Tombigbee waterway between mile markers 334 and 336.3. This zone is needed over a three day period, 31 May until 2 June 1985 to control the movement of a large number of vessels and pleasure craft in the Tennessee-Tombigbee Waterway and the shallow waters of Columbus Lake during formal dedication ceremonies. From the evening of 31 May until the afternoon of 1 June, the Columbus Lock itself will be closed to vessel through traffic when the Alabama National Guard erect a "Ribbon Bridge" across the Waterway for pedestrian movement of guests and spectators between the east and west banks. Vessel movement within the Safety Zone will be controlled by the Captain of the Port Mobile, AL.

EFFECTIVE DATES: This regulation becomes effective at 0600 31 May 1985. It terminates at 1800 02 June 1985 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. R.B. Peoples, (205) 690-2286.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafters of this regulation are Lt. R.B. Peoples, project officer for the Captain of the Port Mobile, and Lt. R.M. Wallard, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the official dedication ceremony of the opening of the Tennessee-Tombigbee Waterway which will be held in Columbus, Mississippi. On 31 May, four flotillas comprised of approximately 100-120 pleasure craft and commercial vessels will enter the waters of Columbus Lake to symbolically join in an arrival ceremony which is part of the overall dedication ceremony for the newly opened Tennessee-Tombigbee Waterway. Adding to the congestion created by the flotilla vessels will be numerous small craft and nondescript vessels navigated by local boaters who will take to the waters to witness this historical and colorful event. The Tenn-Tom Waterway which runs primarily north-south at Columbus, and the old Tombigbee River Channel, which winds

through Columbus Lake, are the only two channel areas in the lake that contain safe navigable water. The remainder of the waterbed is very shallow and contains numerous stumps, logs and debris which will pose a hazard to the majority of flotilla vessels who are expected to be unfamiliar with local waters. The U.S. Coast Guard, working with dedicated organizing committees, has predesignated and marked anchorage areas and arranged for water shuttle transportation to ferry personnel from their boats to the courtesy docks of the East Bank of the waterway. Further, security boats manned by Mississippi Department of Wildlife Conservation Officers and others manned by Coast Guard personnel will continuously patrol the Columbus Lake area from 31 May until 2 June 1985 to protect the property and react to emergencies. Finally, Columbus Lock will be physically closed to marine traffic from the evening of 31 May until the afternoon of 1 June while a pedestrian crossing in the form of a "Ribbon Bridge" is erected across the waterway so as to allow participants to partake in activities on both banks of the waterway. All of these multifarious activities in a congested waterway mandate the need for a higher than normal degree of safety and promote the desirability of regulating vessel traffic movement in and about the waterway throughout the period of the official dedication ceremony.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new section to read as follows:

§165.T824 Safety Zone: Tennessee-Tombigbee Waterway Dedication, Columbus Lake, Mississippi.

(a) *Location.* The following area is a safety zone: Tennessee-Tombigbee Waterway, Columbus Lake and Columbus Lock and Dam and adjacent shore areas between waterway Mile 334 and Mile 336.3.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile, Alabama.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: April 4, 1985.

W.J. Ecker,

Captain of the Port Mobile, Alabama.

[FR Doc. 85-11248 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2829-8]

California State Implementation Plan Revision; Six California Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's notice takes final action to approve revisions to the rules of the Madera County, Mendocino County, Monterey Bay Unified and Shasta County Air Pollution Control Districts (APCD's) and the Bay Area and North Coast Unified Air Quality Management Districts (AQMD's). These revisions were submitted by the California Air Resources Board (ARB) as revisions to the California State Implementation Plan (SIP). These revisions generally are administrative and retain the previous emission control requirements. EPA has reviewed these rules and determined that they are consistent with the requirements of the Clean Air Act and EPA policy.

DATE: This action is effective July 8, 1985.

ADDRESSES: A copy of the revisions is available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

EPA Library, Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C.

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Madera County APCD, 153 West Yosemite Avenue, Madera, CA 93637

Mendocino County APCD, Courthouse Square, Ukiah, CA 95482

Monterey County Bay Unified APCD, 1164 Monroe Street, Suite 10, Salinas, CA 93906

North Coast Unified AQMD, 5630 South Broadway, Eureka, CA 95501

Shasta County APCD, 1615 Continental Street, Redding, CA 96001

FOR FURTHER INFORMATION CONTACT: James C. Breitlow, Chief, State Implementation Plan Section, A-2-3, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7461 FTS: 454-7641.

SUPPLEMENTARY INFORMATION:

Background

The following rules were submitted by the State of California for incorporation into the SIP on the dates indicated.

August 6, 1983

Bay Area AQMD

Rule 8-23 Coating of Flat Wood Paneling

April 11, 1983

Madera County APCD

Rule 406 Photochemically Reactive Solvent Disposal
Rule 407 Organic Solvent Emissions
Rule 408 Organic Solvent Degreasing Emissions
Rule 411 Cutback Asphalt Paving Materials
Rule 420 Effluent Oil Water Separaters

Monterey Bay Unified APCD

Rule 425 Use of Cutback Asphalt

July 10, 1984

Shasta County APCD

Rule 1:2 Definitions

October 19, 1984

North Coast Unified AQMD

Rule 130 Definitions
Rule 240 Permit to Operate—Compliance

December 3, 1984

Mendocino County APCD

Rule 1-160 Ambient Air Quality Standards (deletion)
Rule 1-240 Permit to Operate
Rule 1-460 Organic Gas Emissions (deletion)
Rule 1-502.2 Open Burning Procedures—Enforcement

These rules are administrative and do not weaken current emission control requirements. They levy a civil penalty for violations of open burning requirements, limit cutback asphalt rule applicability, exempt sources from monitoring requirements if RACT is not available, alter other categories of exempt sources, revise definitions, and extend the applicability of a wood coating rule. Other rule revisions are

recodifications, deletions or clerical clarifications.

Evaluation

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. All rules submitted have been evaluated and found to be in accordance with the Clean Air Act, EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available for public inspection at EPA's Region 9 office in San Francisco.

EPA Action

This notice approves the rule revisions listed above and incorporates them into the California SIP. This is being done without prior proposal because the revisions are non-controversial and have limited impact. No comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse comments, the approval will be withdrawn and a subsequent notice will be published. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control agency, Incorporation by reference, Ozone, Particulate matter, Hydrocarbons.

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: Sections 110, 171 to 178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7501, 7508 and 7601(a)).

2. Section 52.220 is amended by adding paragraphs (c)(124)(i)(E), (138)(v)(C) and (vi)(B), (155)(vi)(A), (156)(iii)(B), and (158) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(124) * * *

(i) Bay Area AQMD.

(E) Amended Regulation 8, Rule 23.

* * * * *

(138) * * *

(v) Madera County APCD.

(C) New or amended Rules 406, 407, 408, 411 and 420.

(vi) Monterey Bay Unified APCD.

(B) Amended Rule 425.

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(155) * * *

(vi) Shasta County APCD.

(A) Amended Rule 1:2.

(156) * * *

(iii) North Coast Unified AQMD.

(B) Amended Rules 130(c, 1) and 240(e).

* * * * *

(158) Revised regulations for the following Districts were submitted on December 3, 1984 by the Governor's designee.

(i) Mendocino County APCD.

(A) New or amended Rules 1–160, 1–240, 1–460 and 2–502.2.

* * * * *

[FR Doc. 85–10790 Filed 5–8–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 52 and 81

[A–10–FRL–2830–2]

Approval and Promulgation of State Implementation Plans; Designation of Areas for Air Quality Planning Purposes; States of Idaho and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving the redesignation of the Lewiston, Idaho-Clarkston, Washington, nonattainment area to attainment for Total Suspended Particulates (TSP) primary standards. The area will remain designated nonattainment for secondary TSP standards. Final approval is based on a redesignation request and supporting documentation submitted by the Idaho Department of Health and Welfare (IDHW). Concurrence on this request and documentation was received from the Washington Department of Ecology (WDOE) on December 20, 1984.

EFFECTIVE DATE: July 8, 1985.

ADDRESS: Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

Air Programs Branch (10A–84–11), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Idaho, Department of Health and Welfare, 450 W. State Street, Statehouse, Boise, Idaho 83720

FOR FURTHER INFORMATION CONTACT: E. Ann Williamson, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–8633, FTS: 399–8633.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA proposed approval of the redesignation on November 1, 1984, based on supporting draft documentation submitted by IDHW on June 19, 1984.

IDHW and WDOE held a joint public hearing on September 12, 1984. IDHW submitted final documentation of the redesignation request on October 29, 1984. WDOE concurred with this request on December 20, 1984. The final documentation which was essentially the same as the draft is the basis for EPA's final approval.

In addition to the approval of this redesignation, EPA is removing the conditions on the approval of the Lewiston, Pocatello and Soda Springs control strategy for total suspended particulates as published in the July 28, 1982 (47 FR 32535) rulemaking.

II. Response to Comments

In the November 1, 1984 proposal a 30-day public comment period was provided, however, no comments were received.

III. Summary of Rulemaking action

Today's notice approves the redesignation of the Lewiston-Clarkston nonattainment area to attainment for TSP primary standards and removes conditions on the total suspended particulate control strategy for the Lewiston, Pocatello and Soda Springs area.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

(Sections 107(d), 110(a), 172 and 301(a) of the Clean Air Act (42 U.S.C. 7407(d), 7410(a), 7502 and 7601(a)))

List of Subjects

40 CFR Part 52

Intergovernmental Relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

40 CFR Part 81

Air pollution control, National parts, Wilderness areas.

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart N—Idaho

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: Sections 107(d), 110(a), 172 and 301(a) of the Clean Air Act (42 U.S.C. 7407(d), 7410(a), 7502 and 7601(a).

2. Section 52.687 entitled "Control Strategy: Total Suspended Particulate" is removed.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The table in § 81.313 (Idaho) is revised to read as follows:

§ 81.313 Idaho.

IDAHO—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Silver Valley (Shoshone County)			X	
Pocatello-12 square mile industrial area northwest of Pocatello	X			
Pocatello-336 square mile area from Schiller at the northwest to Inkom at the southeast, including Pocatello		X		
Soda Springs-4½ square miles area encompassing Conda and the surrounding industrial area	X			
Soda Springs-96 square miles area encompassing Soda Springs, Conda and the industrial area in between		X		
Lewiston		X		
Remainder of State				X

2. The table in Section 81.348 (Washington) is revised to read as follows:

§ 81.348 Washington.

WASHINGTON—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Seattle—that area including the north portion of the Duwamish industrial area, and extending to the southern boundary of the CBD	X			
Seattle—an area of the Duwamish extending approximately 2½ miles ½ further south than the above area		X		
Renton		X		
Kent		X		
Tacoma—that area including the Tide Flats industrial area, east end of the CBD and the north end of South Tacoma Way corridor	X			
Port Angeles—small area of the CBD				X
Longview—industrial area		X		
Vancouver—small portions of the industrial port area	X			
Spokane	X			
Clarkston		X		
Remainder of State				X

[FR Doc. 85-10791 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR PART 180

[PP 1F2560/R476; FRL-2831-8]

2,3-Dihydro-5,6-Dimethyl-1,4-Dithiin-1,1,4,4-Tetraoxide; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an entry in 40 CFR 180.406 that was incorrectly listed in the **Federal Register** of August 25, 1982.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1800.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-22999, which appeared at page 37172 in the **Federal Register** of August 25, 1982, the commodity "Cottonseed, fat" was incorrectly listed in the table of 40 CFR 180.406 *2,3-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide; tolerances for residues.* The entry was correctly listed as "cottonseed" in the preamble of the document. Therefore, the entry "Cottonseed, fat" in the table in 40 CFR 180.406 is corrected to read "Cottonseed."

Dated: May 29, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-11120 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 45

[CGD 84-058]

Unmanned River Service Dry Cargo Barges; Load Line Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule exempts unmanned river service dry cargo barges operating on short voyages in Lake Michigan from Calumet Harbor, Chicago, Illinois to Burns Harbor, Indiana from the requirements to obtain a load line certificate. This rule will apply only to unmanned barges which carry non-hazardous and non-polluting cargoes and which are, thus, not inspected and certificated.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Randall R. Fiebrandt, Office of Merchant Marine Safety, (202) 426-2606.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Randall R. Fiebrandt, Office of Merchant Marine Safety, and Michael M. Mervin (Project Attorney), Office of the Chief Counsel.

This rule, pursuant to the Coast Guard Authorization Act of 1984 (Pub. L. 98-557), provides for an exemption from the requirements to obtain load line certificates in compliance with the Coastwise Load Line Act of 1935.

On December 14, 1984, the Coast Guard published a proposed rule (49 FR 48762) concerning these exemptions and solicited comments pertaining to the concept of self-certification by the barge owner of certain safety requirements. Interested persons were given until February 12, 1985 to comment on the proposed rules. Ten comments were received. No public hearings were requested and none were held.

Background

The Coastwise Load Line Act of 1935, which applies to the Great Lakes, requires all merchant vessels 150 gross tons and over to be assigned a load line and marked, indicating the maximum draft to which they can be safely loaded.

For the past 30 years, many river barges have operated on lower Lake Michigan between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana without load lines. These barges were uninspected, unmanned, and carried non-hazardous cargoes. Their primary service was in the inland rivers, but occasionally they made short trips between Calumet Harbor and Burns Harbor.

The Coast Guard's position, based on the law, was that all vessels voyaging on the Great Lakes should be assigned load lines and that the vessels should meet full American Bureau of Shipping (ABS) Great Lakes strength requirements. The barge operators were opposed to obtaining load lines for their barges because the vast majority of each barge's time was spent on inland rivers. Therefore, it was felt that load lines neither contributed to safety nor were economically cost effective or administratively practical for their unique operation. On October 30, 1984, 46 U.S.C. 88 was amended to permit the exemption of certain barges operating on the Great Lakes from having a load line certificate and mark, subject to special operating regulations established by the Secretary of Transportation. These regulations establish procedures to obtain an exemption for these unmanned river service dry cargo barges. Because of the nature of the voyage and the excellent safety record over the years, the Coast Guard will accept written certification from the owner that each vessel is in conformance with certain design and operating requirements. The freeboard, coaming heights and all other operating restrictions in the regulations are based on a Towing Safety Advisory Committee recommendation and prior experience with a few load lined barges operating under "fair weather" certificates. The Coast Guard will, within its general authority to conduct boardings (14 U.S.C. 89), make spot-checks for compliance with these operating requirements.

Discussion of Comments

Of the ten comments received, nine expressed support for the proposed rules, four without comment, five with some recommendation for improvement. There was one dissenting opinion.

One comment had no objection to the proposed rules but expressed concern that this might set a precedent for expansion to a similar exempt barge trade elsewhere on the Great Lakes. The Coast Guard has no intention of extending this or similar exemptions to any other barge traffic on the Great Lakes. This singular route out of the inland river system has been in use for at least 30 years with a good safety record and is being granted an exemption only from some of the administrative and inspection procedures. To the best of our knowledge, there does not exist a similar situation elsewhere on the Great Lakes.

One comment recommended certification of the barge's condition and operation for each voyage into Lake Michigan. This would provide timely updates of the actual barges making the transit as well as their condition. The Coast Guard concurs that a "per voyage" certification would provide accurate transit data and serve as a constant reminder of compliance with the structural requirements. However, to reduce the administrative load, we are prepared to accept an initial certification with the intention of placing the burden of compliance solely on the owner and operator. In order to assist in the management of the certifications, we are including a provision that the Officer in Charge, Marine Inspection be notified of any change in service or disposition of the barge, such as change of ownership, physical configurations, or scrapping.

Two comments suggested deleting the term "bulk" in § 45.173(a)(4) to allow the carriage of certain break-bulk cargoes (e.g. steel plate, bags of cement). This suggestion is acceptable with the addition of a cite to 49 CFR Subchapter C, which will prohibit the carriage of packaged hazardous cargoes.

There were three comments which discussed the problems of the owner certifying the condition of a barge far in advance of the transit. It was suggested that the owner should not be responsible for the condition and operation of the barge and also that the owner need not certify the condition of the barge for all times, only when operating on Lake Michigan. These comments also suggested certain changes to reduce redundancy in the rules. The principle of self-certification requires that someone certify, and accept responsibility, that the vessel is in compliance with the standards whenever they apply (i.e. throughout each voyage on Lake Michigan). Due to the nature of the barge business, there can be no other single entity, other than the owner, responsible for the condition and operation of the barge. However, the fact that the owner is responsible in no way lessens the responsibility of the towboat operator to ensure that the barges are operated in a safe manner. The certification section of the rules has been changed somewhat to eliminate redundant statements and requires that the owner certify compliance with § 45.177 before and during voyages on Lake Michigan.

A final comment strongly opposed the proposed rulemaking on the grounds

that this could be the first step in a process to allow river barges to compete with Great Lakes vessels on other routes while not incurring the same costs as Great Lakes vessels. This comment also objected to any relaxation of standards to accommodate river barges to gain an unfair competitive advantage over Great Lakes vessels constructed and maintained to high standards. The Coast Guard does not view these rules as an erosion of safety or a relaxation of standards. All load line exempted barges must still meet the ABS structural design rules, must still operate with minimum freeboards and must still be maintained in a seaworthy condition. Failure to do so is still a violation of the law. These rules are issued only to eliminate an administrative burden on the industry and the Coast Guard for this unique situation. All other routes on the Great Lakes will continue to require vessels that fully qualify for Great Lakes Load Line Certificates.

Where appropriate, the term "unmanned" has been added to clarify that this rule does not apply to manned barges. This point was made in the background to the NPRM but was not included in the proposed rule.

Regulatory Procedures

Regulatory Evaluation

These regulations are considered to be not a major rule under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The basis for this determination was published in the Notice of Proposed Rulemaking (NPRM).

Regulatory Flexibility Act

Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain an information collection request as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Pursuant to requirements of this Act, this request was submitted to the Office of Management and Budget for comment. No comments were received and the OMB Control No. 2115–0043 has been assigned.

List of Subjects in 46 CFR Part 45

Coast Guard, Great Lakes, Vessels, Navigation (water), Marine safety.

PART 45—GREAT LAKES LOAD LINES

In consideration of the foregoing, Part 45 of Subchapter E, Chapter I, Title 46, Code of Federal Regulations is amended as follows:

1. By revising the authority citation for Part 45 as follows:

Authority: 46 App. U.S.C. 88–88i, 49 CFR 1.46.

2. By adding a new paragraph (d) to § 45.15 as follows:

§ 45.15 Exemptions.

* * * * *

(d) Any unmanned river service dry cargo barge that is operated between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana and intermediate ports in Lake Michigan that meets the definition in Subpart E of this part is exempt from load line and marking requirements but is subject to the certification and special operating requirements listed in Subpart E.

3. By adding a new Subpart E, as follows:

Subpart E—Unmanned River Service Dry Cargo Barges

Subpart E—Unmanned River Service Dry Cargo Barges

§ 45.171 Purpose.

This subpart prescribes conditions under which certain unmanned river service dry cargo barges may be exempt from the load line and marking requirements. In lieu of these requirements, they are subject to special certification and operating requirements.

§ 45.173 Vessels subject to this subpart.

(a) This subpart applies to a vessel that is—

(1) An unmanned river service dry cargo barge with a length to depth ratio not to exceed 22 and built to at least the minimum scantlings of the American Bureau of Shipping River Rules;

(2) Operated on the Great Lakes on a voyage between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana and intermediate ports on Lake Michigan;

(3) Operated during fair weather condition only; and

(4) Carrying only dry cargoes that have not been designated as hazardous under 46 CFR Part 148 or 49 CFR Subchapter C.

§ 45.175 Certification.

(a) In order to be exempt from the load line and marking requirements of this part, the owner of a vessel must apply for exemption in writing to the Officer in Charge, Marine Inspection, Chicago, Illinois. The application may be in any form and must be signed by the owner or an officer authorized to represent the barge's owner. The mailing address is Commanding Officer, U.S. Coast Guard Marine Safety Office, 610 S. Canal Street, Chicago, Illinois, 60607. No form or certificate will be returned, however, the owner's certification will be kept on file at the Marine Safety Office, Chicago. The owner of a barge for which a load line exemption is in effect shall notify the OCMI, Chicago of the transfer of ownership, change of service, or other disposition of the barge.

(b) The owner and operator of a vessel for which a load line exemption has been requested are responsible for maintaining the vessel and complying with the special operating requirements.

(c) The application for exemption from the load line requirements must include the following general information:

(1) Barge name.

(2) Type.

(3) External dimensions.

(4) Types of Cargo.

(5) Official Number or other classification numbers.

(6) Owner and operator addresses and telephone numbers.

(7) Place and date built.

(d) The application must state and certify compliance with the following:

(1) The vessel has been designed and built to at least the minimum scantlings of the American Bureau of Shipping River Rules which were in effect at the time of construction.

(2) The provisions of 46 CFR 45.177 will be complied with before and during all voyages between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana and intermediate ports on Lake Michigan.

§ 45.177 Special operating requirements.

(a) Before commencement of any voyage on Lake Michigan, the towboat operator shall ensure the following:

(1) Deck and side shell plating must be free of visible holes, fractures or serious indentations as well as damage that would be considered in excess of normal wear and tear.

(2) Cargo box side and end coamings must be watertight.

(3) All manholes must remain covered and secured watertight.

(b) During the voyage, all vessels subject to this subpart must meet the

following minimum operating requirements in all seasons:

(1) The vessel must be operated during fair weather conditions only.

(2) The freeboard of the vessel must not be less than 24 inches.

(3) The combined operating freeboard plus the height of cargo box coamings must be at least 54 inches.

(4) The voyage must not be farther than 5 miles from a harbor of safe refuge between Calumet Harbor, Chicago Illinois and Burns Harbor, Indiana.

(5) All void tanks must be kept free of excess water.

Dated: May 6, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-11247 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 50, No. 90
Thursday, May 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Lime Reg. 43, Amdt. 4]

Limes Grown In Florida; Amendment Of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would raise the minimum grade requirements for fresh shipments of seedless limes grown in Florida, and for seedless limes imported into the United States, from the current U.S. Combination, Mixed Color, of 60 percent U.S. No. 1 and 40 percent U.S. No. 2, to a modified U.S. Combination, Mixed Color, of 75 percent U.S. No. 1 and 25 percent U.S. No. 2 during the period June 1 through January 31 of the following year. The minimum diameter requirements for such limes would remain at 1⅞ inches. Such action is necessary to assure the shipment of limes of acceptable quality in the interest of producers and consumers.

DATE: Comments Due: May 24, 1985.

Proposed effective date is June 1, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated as a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulations 43 (49 FR 25243). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipment to: (1) Grade at least U.S. Combination, Mixed Color; (2) meet a minimum juice content of 42 percent by volume; and (3) have a minimum diameter of 1⅞ inches. This proposed amendment would increase minimum quality requirements applicable to fresh shipments of Florida seedless limes by requiring such shipments to grade a modified U.S. Combination, Mixed Color, with the stipulation that 75 percent of the limes, by count, grade at least U.S. No. 1 and 25 percent of the limes grade at least U.S. No. 2 during the period June 1 of each year through January 31 of the following year. The current grade requirement is U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent of the lime grading U.S. No. 2). This action was unanimously recommended by the Florida Lime Administrative Committee.

Florida Persian seedless limes are marketed throughout the year, with peak production during the summer months. At that time, market prices and grower returns tend to be low. Traditionally, the winter market for Florida seedless limes is strong. In the past year, however, winter market prices for such limes weakened due to the availability of large volumes of lesser quality limes in the marketplace. Such limes have poor retail acceptance, which has a price-depressing effect on shipments of better quality fruit. In response to deteriorating market conditions of limes during October and November 1984, an amendment to Lime Regulations 43 (49 FR 46703) was issued for the period December 3, 1984 through January 31, 1985, which specified the same modified U.S. Combination, Mixed Color, as contained in this notice of proposed rulemaking. Reports indicate that the institution of higher minimum quality requirements stabilized market conditions. The proposed increase in the percentage of U.S. No. 1 grade fruit in fresh shipments is designed to stimulate consumer demand, result in greater sales volume of limes of preferred quality and improve grower returns.

During the five previous years, fresh shipment of Florida limes have trended upward from 775,337 bushels in 1978–79 to 1,286,127 bushels in 1983–84 primarily due to increased bearing acreage. The 1984–85 crop of Florida limes has already exceeded record levels. Historically, only 50 percent of the crop is shipped to the fresh market with the remainder utilized in processed products. Thus, more than ample supplies of better quality limes should be available to satisfy consumers' demand.

This amendment would be effective from June 1 of each year through January 31 of the following year. From February 1 through May 31 of each year the requirement applicable to seedless limes would be U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent grading U.S. No. 2). These lower grade requirements reflect seasonal changes in supply and demand conditions for Florida seedless limes.

Under section 8e of the act, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, grade requirements for imported seedless limes would also change to conform to the grade requirements for domestic shipments of seedless Florida limes.

The proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the proposed rule must be received by May 24, 1985, so that a final rule, if issued, can be made effective by June 1, 1985 to insure the orderly marketing of Florida limes. All comments received will be considered prior to issuance of any final rule. It is hereby found that this proposal will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Florida, Limes.

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 911.344 Lime Regulation 43 (49 FR 25243) is amended by revising paragraph (a)(2), to read as follows:

§ 911.344 Florida Lime Regulation 43.

(a) * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, That stem length shall not be considered a factor of grade; *Provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the U.S. Standards for Persian (Tahiti) limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in § 911.329; and *Provided further*, That during the period June 1 of each year through January 31 of the following year, no handler shall ship such limes to destinations outside the production area unless they grade at least U.S. Combination, Mixed Color, with the stipulation that stem length shall not be a factor of grade and at least 75 percent, by count, of the limes in the lot grade at least U.S. No. 1 and 25 percent, by count, of the limes grade at least U.S. No. 2.

* * * * *

Dated: May 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 85–11283 Filed 5–8–85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3010]

Wright-Patt Credit Union, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Fairborn, Ohio, credit union, among other things, to cease failing to tell consumers, when applications for credit are denied because of information contained in credit reports (including non-derogatory information), that the adverse action had been taken on the basis of such information; and provide the rejected credit applicants with the names and addresses of the credit bureaus that had submitted the reports. The Order would further bar the organization from failing to identify applications submitted between September 1, 1983, and the date of issuance of the Order, for which adverse action had been taken on the basis of information obtained from a consumer reporting agency, and to send to those rejected applicants who had not been given the legally-required disclosures, a copy of the notification letter attached to the Order as Appendix A.

DATE: Comments must be received on or before July 8, 1985.

ADDRESS: Comments should be directed: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Eileen M. Harrington, FTC/I 501, Washington, D.C. 20580, (202) 724–1188.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 271, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Consumer credit, Trade practices.

Before Federal Trade Commission

[File No. 842 3010]

Agreement Containing Consent Order To Cease and Desist

In the matter of Wright-Patt Credit Union, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Wright-Patt Credit Union, Inc., a corporation, and it now appearing that Wright-Patt Credit Union, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Wright-Patt Credit Union, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Wright-Patt Credit Union is a corporation, a state chartered credit union, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2455 Executive Park Boulevard, City of Fairborn, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in

respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, withour further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions: For the purpose of this order the following definitions are applicable:

A. The terms "consumer", "consumer report", "consumer reporting agency" and "person" shall be defined as provided in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term "no file response" shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied by respondent.

C. The term "non-derogatory information" shall be defined as information in a consumer report, furnished to respondent by a consumer reporting agency, consisting of an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit, or insufficient positive information to meet such criteria.

I

It is hereby ordered that respondent, Wright-Patt Credit Union, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency (including non-derogatory information such as insufficient positive information or a no file response), to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a consumer report and (b) the name and address of the consumer reporting agency making the report.

2. Failing to review each application for consumer credit for which it took adverse action between September 1, 1983, and the date of service of this Order, to identify each of those applications for which such adverse action was taken based wholly or partly upon informtion obtained from a consumer reporting agency.

3. Failing, within sixty (60) days of the date of service herein of this Order, for each application identified according to paragraph 2 above, to send the applicant, as specified herein, a copy of the notice letter attached hereto as Appendix A and described herein. The letter shall bear the name and address of the applicant as shown on the application, the date of mailing, and the name Wright-Patt Credit Union, Inc. No information other than that required by this paragraph shall be included in the notice letter, nor shall any other material be sent to the applicant with the notice letter. The notice letter shall disclose the name and address of the consumer reporting agency that prepared the report used according to paragraph 2 above, together with the specific, principal reason(s) for the adverse action based on this information. A notice letter need not be sent to any applicant whose application was identified pursuant to paragraph 2 above, if the application file clearly shows that respondent Wright-Patt Credit Union, Inc. has previously sent the applicant an adverse action notification in response to the application that complied in all respects with the provisions of paragraph 1 of this Order.

II

It is further ordered that respondent shall maintain for at least three (3) years and upon request make available to the Federal Trade Commission for inspection and copying documents that will demonstrate compliance with the requirements of this Order. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order and the complete application file to which they relate.

III

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

IV

It is further ordered that respondent shall deliver a copy of this Order to

cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing or furnishing notices to consumers as required by this Order.

V

It is further ordered that respondent shall, within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Wright-Patt Credit Union

(Date)

Dear ________: A review of our records indicates that we denied a credit application you submitted sometime after September 1, 1983. At that time, we may not have told you a source(s) of information we relied upon as federal law required.

Whenever a creditor rejects a credit application, the Equal Credit Opportunity Act requires the creditor to tell the applicant the specific, principal reasons for its decision. The Fair Credit Reporting Act requires the creditor to tell the applicant whenever the reasons for its decision are based on information obtained from a credit reporting agency (such as a credit bureau) or from another third party (such as an employer). The Fair Credit Reporting Act also entitles the applicant to learn from the credit bureau what information is contained in his or her credit file and to learn from the creditor the nature of other third party information that the creditor relied on in rejecting the application. We have agreed with the Federal Trade Commission to provide you this information at this time.

In denying your application, we relied upon information concerning your creditworthiness from the following consumer reporting agency or one or more third party sources:

Name ____________________

Address ____________________

You have the right to contact the agency listed above to obtain complete information concerning your credit bureau file.

We denied your credit application for the following reason(s):

____

____

____

Sincerely,

Wright-Patt Credit Union.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Wright-Patt Credit Union, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Wright-Patt Credit Union, Inc., violated section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.*, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by:

- Not telling consumers that information contained in credit reports was used in decisions to deny their loan applications, and not telling consumers the names and addresses of the credit bureaus that prepared the credit reports.

The proposed order prohibits Wright-Patt Credit Union, Inc., from:

- Failing to tell consumers when their credit applications are denied in whole or in part because of information contained in credit bureau reports.
- Failing to tell consumers the names and addresses of credit bureaus providing consumer credit reports that are used in the decisons to deny the consumers' credit applications.
- Failing to identify each consumer who should have received, but was not given, the legally-required notification described above between September 1, 1983 and the date of issuance of this order, and sending each such person a notice that includes the disclosures described above, which should have been sent at the time that credit was denied.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85–11232 Filed 5–8–85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0130]

[Phthalocyaninato(2-)]Copper; Migration from Nonabsorbable Sutures

Correction

In FR Doc. 85–9935 beginning on page 16310 in the issue of Thursday, April 25, 1985, make the following correction: On page 16310, in the second column, in the third complete paragraph, in the ninth line, "headed" should read "healed".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 218

Guidance for the Determination and Reporting of Nuclear Radiation Dose for DoD Participants in the Atmospheric Nuclear Test Program (1945–1962)

AGENCY: Defense Nuclear Agency.

ACTION: Proposed amendment of final rule.

SUMMARY: The Defense Nuclear Agency proposes to amend its existing guidelines for reporting nuclear radiation doses. The proposed amendment will establish minimum standards which will be uniformly applicable to all branches of the Military Services, governing the preparation of radiation dose estimates in response to inquiries by the Veterans Administration in connection with claim for compensation, or by any veteran or survivor. The proposed amendment will provide explicit instructions requiring that each radiation dose estimate include available information regarding all material aspects of the radiation environment to which the veteran was exposed, including inhaled, ingested and neutron doses.

DATE: Comments must be received on or before: July 8, 1985.

ADDRESS: Written comments should be addressed to the Director, Defense Nuclear Agency, Biomedical Effects Directorate, (STBE), Attn: NTPR Program Manager, Washington, D.C. 20305–1000 or may be hand delivered to 6801 Telegraph Road, Alexandria, Virginia 22310–3398, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittigan, Telephone No. (202) 325–7681.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1983, in compliance with a Memorandum Order in the case of *Gott* v. *Nimmo,* Civil Action 80–0906, D.D.C., the Defense Nuclear Agency published a final code rule (48 FR 10645) which set forth policies, procedures, and dose reconstruction methodology to establish standardized scientific

principles for dose reconstruction methodology for DoD participants in the atmospheric nuclear test program (1945–1962). On March 22, 1985, the United States Court of Appeals for the District of Columbia Circuit reversed the decision of the District Court (Civ. Nos. 82–1159; 82–1448; 82–1454; 80–0906). On October 24, 1984, H.R. 1961, "Veteran's Dioxin and Radiation Exposure Compensation Standards Act," was enacted as Pub. L. 98–542. The Act requires the Defense Nuclear Agency to publish guidelines specifying minimum standards for the reporting of dose estimates.

Regulatory Impact Analysis

In accordance with 5 U.S.C. 12291, the Department of Defense has determined that this proposed amendment is not a "major rule" and is not subject to such an analysis.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) the Department of Defense has determined that this proposed amendment will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed amendment does not impose any additional reporting or recordkeeping requiring Office of Management and Budget clearance.

List of Subjects in 32 CFR Part 218

Radiation dose determination, Dose reconstruction, Dose reconstruction methodology, Radiation environment, Radioactive materials.

Authority: Pub. L. 98–542, 98 Stat 2725.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

May 3, 1985.

PART 218—[AMENDED]

Accordingly, 32 CFR Part 218 is proposed to be amended as follows:

1. The authority citation for Part 218 is revised to read as follows:

Authority: Pub. L. 98–542, 98 Stat. 2725 (38 U.S.C. 354 note.)

2. The Table of Contents in Part 218 is amended to include a new section number and title: § 218.4 Dose Estimate Reporting Standards.

3. In § 218.1 paragraphs (a), (b) and (c) are redesignated as (b), (c), and (d) and a new paragraph (a) is added to read as follows:

§ 218.1 Policies.

(a) Upon request by the Veterans Administration in connection with a claim for compensation, or by a veteran or his or her representative, available information shall be provided by the applicable Military Service which shall include all material aspects of the radiation environment to which the veteran was exposed and shall include inhaled, ingested and neutron doses. The minimum standards for reporting dose estimates are set forth in § 218.4.

* * * * *

4. Section 218.4 is added to read as follows:

§ 218.4 Dose estimate reporting standards.

The following minimum standards for reporting dose estimates shall be uniformly applied by the Military Services when preparing information in response to an inquiry by the Veterans Administration, in connection with a claim for compensation, or by a veteran or his or her representative. The information shall include all material aspects of the radiation environment to which the veteran was exposed and shall include inhaled, ingested, and neutron doses, when applicable. To the extent to which the information is available, the responses will address the following questions:

(a) Can it be documented that the veteran was a test participant. If so, what tests did he attend and what were the specifics of these tests (date, time, yield (unless classified) type, location and other relevant details)?

(b) What unit was the man in? What were the mission and activities of the unit at the test?

(c) To the extent to which the available records indicate, what were his duties at the test?

(d) Can you corroborate the specific information relevant to the potential exposure provided by the claimant to the Veterans Administration and forwarded to the Department of Defense? What is the impact of these specific activities on the claimant's reconstructed dose?

(e) Is there any recorded radiation exposure for the individual? Does this recorded exposure cover the full period of test participation?

(f) If recorded dosimetry data is unavailable or incomplete what is the dose reconstruction for the most probable dose, with error limits, if available?

(g) Is there evidence of a neutron or internal exposure? What is the reconstruction?

Upon request, the participant or his or her authorized representative will be informed of the specific methodologies and assumptions employed in estimating his or her dose.

[FR Doc. 85–11133 Filed 5–8–85; 8:45 am]

BILLING CODE 3810-01-M

PANAMA CANAL COMMISSION

35 CFR Part 256

Collection by Salary Offset From Federal Employees Indebted to the United States

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Panama Canal Commission proposes regulations for offsetting a debt against the Federal pay of a current or former Federal employee who is indebted to the United States. These proposed regulations implement debt collection procedures provided for under the Debt Collection Act of 1982.

DATE: Comments must be received on or before June 10, 1985.

ADDRESS: Comments should be addressed to Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, Suite 500, 2000 L Street, N.W., Washington, D.C. 20036 (tel. no. 202–634–6441) or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami 34011 (tel. no. 011–507–52–7511).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 634–6441, or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act of 1982, Pub. L. 97–365, authorizes the Federal Government to collect debts owed to it by its own current and retired military and civilian employees through the use of a salary offset. In this respect, the law puts the Federal Government in a position similar to that of a private employer, since a private employer may collect a debt owed to it by one of its employees without resort to litigation.

Under the law, when the head of a Federal agency determines that one of the agency's employees is indebted to the United States, or is notified by the head of another Federal agency that one of the agency's employees is indebted to the United States, the employee's debt may be collected by offsetting the debt against that employee's pay. The amount of the offset may not exceed 15

percent of the employee's disposable pay. Disposable pay is defined in the law as gross Federal pay minus deductions required by law to be withheld. These deductions include amounts withheld for Federal, State, and local income taxes, Social Security taxes, and Federal retirement programs.

The law also includes safeguards to protect the rights of employees. Thus, at least 30 days before an offset may be initiated, the head of the agency to which the employee is indebted must notify the debtor that he (1) is indebted to the United States, (2) may inspect and copy Government records relating to the debt, and (3) may request a hearing in order to contest the existence or amount of the debt or the proposed offset schedule.

The Administrator is proposing regulations to implement the offset provisions of the Debt Collection Act of 1982 with regard to Federal employees who are indebted to the United States. Debts due and owing to the Commission generally arise from charges for rental of quarters and utilities or other services made available to employees of the U.S. Government in the Republic of Panama. These regulations also provide for the collection by offset from the salary of a Commission employee for debts due and owing to another agency or instrumentality of the Government of the United States, pursuant to the Debt Collection Act of 1982. Debts which may be collected pursuant to these regulations are those which remain unpaid following the requisite notice informing the employee of the outstanding debt and of his procedural rights.

These proposed procedures are intended to serve the major purpose of the offset authority, namely, the collection of debts owed to the United States by current and former Federal employees in a cost-effective and expeditious manner, while permitting the employee to be heard if he disputes the existence or amount of the debt or the manner in which the agency proposes to collect the debt by offset against the employee's pay.

To initiate an offset proceeding, the Commission will notify a Federal employee who is indebted to the United States of the existence and amount of that indebtedness, and the intention of the Commission to satisfy it by offsetting a portion of the employee's pay. The offset procedures provide for reconsideration of the agency's determination regarding the existence or amount of the debt, if the employee can show that the initial determination of the agency was incorrect. In making his argument concerning the existence or amount of the debt, the employee may submit documents to the Commission or raise factual matters not previously raised. Moreover, the Commission may enter into an agreement with the employee to offset a smaller amount from the employee's disposable pay if the employee submits convincing evidence that an offset of 15 percent against his disposable pay would produce an extreme financial hardship. The Commission will allow an employee 45 days from the date of receipt of the agency notification to present any arguments or documents with respect to these issues.

If, after reviewing the material submitted by the employee, the agency agrees that the employee is not indebted to the United States, or that the alternative offset schedule proposed by the employee is appropriate to satisfy that indebtedness, the agency will so inform the employee. If the agency determines that the employee is indebted to the United States, formal notice of this determination, together with the rationale for the determination, will be given to the employee. The employee will also be notified of the agency's intention to collect the debt by offsetting the amount originally scheduled or a modified amount, if it is determined that a modification is appropriate in light of the employee's submissions. The Commission will, in addition, inform the employee of his right to a hearing before a hearing official who is not under the supervision or control of the agency. Such a hearing may be granted if the employee wishes to contest the agency determination of the existence or amount of the debt, or the determination that the proposed schedule will not produce an extreme financial hardship in his case.

The Debt Collection Act of 1982 prohibits the agency from offsetting the pay of an employee to satisfy his debt until the procedures set forth in the Act are completed. The Act also provides, however, that the hearing official, if a hearing is requested by the employee, shall issue his decision as soon as possible, but not later than 60 days after the employee files a petition for a hearing.

Hearings—Existence or Amount of Debt

The Debt Collection Act of 1982 permits an employee to request a hearing on the determination of the agency regarding the existence or amount of debt owed by the employee to the United States. The purpose of the hearing is not to determine anew whether the employee is indebted to the United States; it is, instead, an appeal of the decision of the agency. For that reason, the proposed regulations would establish a standard of review appropriate to an appeal of an agency action: An employee must show that the agency's determination of the existence or amount of the employee's debt was clearly erroneous.

In making his findings, the hearing official shall defer to the statutes and regulations governing the Federal program under which the debt arose and relevant Federal or State law. In view of the limited scope of the hearing regarding the agency's determination of the existence or amount of the debt, the agency's expertise regarding the circumstances which give rise to a debt to the United States under its programs, and the likelihood that hearing officials will lack expertise in these areas, the proposed regulations include a list of legal principles to guide the hearing official in determining whether the agency's decision on the existence and amount of the debt is clearly erroneous.

Hearings—Amount of Offset

The Debt Collection Act also permits the employee to request a hearing regarding the offset schedule established by the agency. In the agency's view, it is appropriate, in most cases in which an employee of the agency is indebted to the United States, to collect the debt by offsetting 15 percent of his disposable pay, the maximum allowed by the statute. It is recognized, however, that there may be circumstances where a 15 percent offset against disposable pay would be inappropriate because it would produce an extreme financial hardship for the employee.

The Act does not establish standards of review for determinations of the amount of an offset. The agency is proposing a standard that it will follow in making determinations as to the amount to be offset and that hearing officials will be directed to follow on appeal. Under the standard proposed in the regulations the offset schedule proposed by the agency will be followed unless the employee shows by clear and convincing evidence that the offset schedule would produce an extreme financial hardship, that is, that the offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his family. Essential subsistence expenses are defined as the cost incurred for medical care, food, housing, clothing, and transportation.

The proposed rules define the family of an employee to include the employee's spouse and legal dependents. In determining whether an

employee will suffer an extreme financial hardship if his pay is offset, it is proposed that the expenses, income and assets of the family unit be taken into account.

If an employee contends that the offset amount determined by the agency would produce an extreme financial hardship, the employee must document that hardship and propose an alternative offset schedule. The documentation required under the regulation includes information concerning the employee's current financial situation, information concerning his financial situation for the one-year period preceding the notice of the offset, and a projection of his situation for the repayment period proposed by the employee.

In determining whether the agency's proposed offset schedule would produce an extreme financial hardship for the employee, the agency will consider the following factors: (1) The family's income from all sources; (2) whether assets could be sold or could serve as collateral for loan to pay the debt; (3) whether the employee's essential expenses could be minimized to accommodate the offset; (4) whether the employee could borrow money to accommodate the offset; and (5) exceptional expenses of the employee and his family, and whether such expenses could be avoided or minimized. The hearing official, in reviewing questions of the property of proposed offset schedules, will consider the same factors.

These proposed rules do not apply to certain overpayments of pay or allowances, or to amounts collected pursuant to other laws.

These proposed regulations have been reviewed in accordance with Executive Order 12291, dated February 17, 1981 (47 FR 13193) and the Commission has determined that they do not constitute a major rule within the meaning of that order. The bases for that determination are, first, that the rule, when implemented, would not have an effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries, or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Certification

The Administrator certifies pursuant to 5 U.S.C. 605(b) that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations will not affect small entities, but only individuals employed by the United States.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the addresses given at the beginning of this document. All comments submitted within 30 days after publication of this document will be considered.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at the above addresses between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 35 CFR Part 256

Claims, Debt collection, Government employees.

Dated: March 26, 1985.

D.P. McAuliffe,

Administrator.

Accordingly, it is proposed to amend Title 35 of the Code of Federal Regulations by adding a new part, Part 256, to read as follows:

PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES

Sec.

Authority: 5 U.S.C. 5514.

§ 256.1 Collection of debts by offset; scope of regulations.

(a) If it is determined that an employee of the United States is indebted to the Panama Canal Commission, the employee's pay may be offset to satisfy that indebtedness under the procedures set forth in this part.

(b) Debts owed by Commission employees to other agencies of the United States may be recovered by offset against the employee's pay in accordance with § 256.13. Similar provision in the regulations of other agencies permit the Commission to recover by offset debts owed to the Commission by the employee of another agency, if the Commission first complies with the provisions of §§ 256.1 through 256.12 of this part.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

(d) The regulations in this part do not apply to, and do not impair the United States' authority with regard to, the collection of a debt, by offset or by other means, if the debt is owed to the United States by a Federal employee and the debt arose under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), or in any other circumstances in which collection of a debt by salary offset is explicity provided by Federal statute, such as the collection authority granted the Commission pursuant to 22 U.S.C. 3645.

(e) These regulations do not preclude an employee from questioning the amount or validity of a debt by submitting a claim to the General Accounting Office, but the Commission need not suspend the collection of the debt because of the filing of such a claim.

(f) These regulations do not preclude the compromise, suspension or termination of collection actions where appropriate under the standards set forth at 4 CFR 101.1 *et. seq.*

(g) An employee's involuntary payment of all or any portion of an alleged debt being collected pursuant to this part shall not be construed as a waiver of any rights which the employee may have under this subpart or any other provision of law, except as otherwise provided by law.

(h) Amounts paid or deducted pursuant to this subpart shall be promptly refunded to an employee if the debt is waived or otherwise found not owing to the United States or if the Commission is directed by a competent judicial or administrative authority to

refund amounts deducted from an employee's current pay.

(i) The procedures in this part and the collection of debt by the Panama Canal Commission shall be carried out by the Chief Financial Officer.

(j) The Commission will not initiate salary offset to collect a debt under this subpart more the ten years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who are charged with discovering and collecting the debt in question.

§ 256.2 Definitions.

As used in this part:

"Agency" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Creditor agency" means the Federal agency to which the debt is owed.

"Day," unless specified otherwise, means a calendar day, and time limits are to be computed by counting calendar days, rather than only those days on which Commisson offices are open for business.

"Debt" means an amont owed to the United States from any source, except as provided in this part. Such debts include, but are not limited to, those arising from loans insured or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalities, damages, interest forfeitures, etc. Interest, penalties, and administrative costs may be assessed on debts collected pursuant to this part. These charges shall be assessed or waived in accordance with the provisions of 4 CFR 102.13.

"Delinquent debt" means (i) a debt which has not been paid, or for which arrangements for payment have not been agreed to by the creditor agency and the employee, by the date specified in the creditor agency's initial written notification or (ii) a debt for which the employee fails to comply with the terms of payment arrangements agreed to with the creditor agency.

"Disposable pay" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Employee" means a current—

(a) Civilian employee, as defined in 5 U.S.C. 2105;

(b) Member of the Armed Forces or Reserves of the United States;

(c) Employee of the United States Postal Service; or

(d) Employee of the Postal Rate Commission.

"Pay" means basic pay, premium pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual or disbursing his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C 5514 by deduction at one or more officially established pay intervals from the current pay of an employee without his consent.

"Waiver" means the cancellation, remission, forgiveness or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 256.3 Pay subject to offset.

(a) An offset from an employee's pay from the Commission may not exceed 15 percent of the employee's disposable pay, unless the employee agrees in writing to a larger offset.

(b) If collection in one lump-sum payment would exceed 15 percent of the employee's disposable pay, an offset shall be made biweekly or at officially established pay intervals from the employee's current pay account. Whenever possible, the installment payments shall be sufficient in size to liquidate the debt during a period not greater than the anticipated period of active duty or employment of the debtor employee.

(c) If an employee retires, resigns, or is discharged, or if his employment period or period of active duty otherwise ends before collection of the debt is completed, an offset may be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the individual from the employing agency, to the extent necessary to liquidate the debt. If the final payment due the employee is insufficient to satisfy the debt, the creditor agency shall take steps necessary to provide for payment of the debt by administrative offset from payments of any kind due to the former employee from the United States pursuant to 31 U.S.C. 3716. (See 4 CFR 102.4)

§ 256.4 Advance notice of debt; request for records; submission on information.

(a) Before initiating an offset proceeding, the Chief Financial Officer of the Panama Canal Commission will establish an individual administrative case file for each employee to be covered by the offset proceeding and notify the employee—

(1) That he has determined that the employee is indebted to the United States in a specified amount as the result of a debt due and owing to the Panama Canal Commission;

(2) That he intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that he is not indebted to the United States or that the proposed offset schedule would produce an extreme financial hardship, as defined in § 256.12 of this part;

(3) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including a description of the conditions under which a waiver must be granted, notice that the employee has an opportunity to request such a waiver, and instructions on how to apply for a waiver; and

(4) The options available to him and time limits within which submissions of additional information or documents must be made.

(b)(1) An employee who has been notified of the Chief Financial Officer's determination of the existence and amount of the debt and the proposed offset schedule, may submit to him a request—

(i) Not later than 10 days from the date the employee receives the notice, for a copy of the records in the possession of the agency relating to the debt,

(ii) Within the time specified in paragraph (c) of this section, that he reconsider his determination of the existence or amount of the debt,

(iii) Within the time set forth in paragraph (c) of this section, that he reconsider the proposed offset schedule, on the basis that it would produce an extreme financial hardship for the employee, and

(iv) Within the time set forth in paragraph (c) of this section, that he consider a request for waiver of the debt, if a waiver provision is applicable to the debt.

(2) If the employee requests a reconsidertion of the determination of the existence or amount of the debt, the employee shall submit a statement, with supporting documents, indicating why the employee believes he is not so indebted.

(3) If the employee requests a reconsideration of the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the schedule proposed by the agency would produce an extreme financial hardship for the employee. The supporting documents must show, for

the employee and his spouse and legal dependents, for the one-year period preceding the receipt of the notice and for the repayment period proposed by the employee in his or her offset schedule, the—

(i) Income from all sources,

(ii) Assets,

(iii) Liabilities,

(iv) Number of legal departments,

(v) Expenses for food, housing, clothing, and transportation,

(vi) Medical expenses, and

(vii) Exceptional expenses, if any.

(c) An employee who requests a reconsideration of the existence or amount of the debt, or the proposed offset schedule, shall submit his statement, with supporting documents, to the Chief Financial Officer no later than—

(1) Forty-five days from the date the employee receives the notice of the debt, if he does not make a timely request for records under subparagraph (b)(1)(i); or

(2) Forty-five days from the date the employee receives the records, if a timely request for records was made.

(d) If the employee submits a timely request for reconsideration under paragraph (b), together with the required documents, the Chief Financial Officer will reconsider whether the employee is indebted to the United States, the amount that the employee owes, or whether the proposed offset schedule is appropriate.

(e) If the employee files a timely request for waiver of the debt, the Chief Financial Officer will consider that request. If the employee files a request for waiver that is not timely, the request will be considered if he establishes that his failure to file within the time prescribed was because of circumstandces beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(f) The Chief Financial Officer's decision on the employee's request for reconsideration will be based on agency records and the material submitted by the employee. He shall promptly notify the employee of his decision concerning the existence and amount of the debt and the appropriateness of the employee's proposed alternative offset schedule.

(g) If the Chief Financial Officer determines that the employee is indebted to the United States, he will include in the notice to the employee the following matters:

(1) A statement of the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for any reduction of the amount of the indebtedness; and

(2) The notice described in § 256.5.

(h) If the Chief Financial Officer determines that his original offset schedule, or a modified schedule (other than the one proposed by the employee) will not impose an extreme financial hardship on the employee, he will include in the notice to the employee—

(1) A statement of the reason for his conclusion that his original or modified offset schedule will not impose an extreme financial hardship, and

(2) The notice described in § 256.5.

§ 256.5 Formal notice to employee

(a) At least 30 days before requesting an agency to offset the pay of an employee or commencing the offset of the pay of an employee of the Commission, the Chief Finanical Officer will send the employee a notice stating—

(1) The nature and amount of the debt he has determined that the employee owes the United States;

(2) His intention to collect the debt by offset;

(3) The amount that the agency determines will be offset from the employee's disposable pay, including the proposed schedule for the deductions;

(4) unless such payments are excused in accordance with 4 CFR 102.13, an explanation of the creditor agency's requirements concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(7) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including notice of the period within which such a waiver must be requested and an explanation of the conditions under which waiver may be granted;

(8) That amounts paid or deducted for the alleged debt which are later waived or found not owed to the United States will be promptly refunded to the employee;

(9) The employee's right to a hearing on the Chief Financial Officer's determination concerning the existence and amount of the debt and the proposed offset schedule. This notice shall include a description of the applicable hearing procedures and requirements.

(10) That the timely filing of a petition for hearing on the existence or amount of a debt or the offset schedule will stay the commencement of collection proceedings: but that a request for a waiver or a hearing on the employee's credibility or veracity in connection with a request for a permissive waiver will not stay the collection proceedings:

(11) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(12) The method and time period for requesting a hearing; and

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary or adverse action;

(ii) Penalties under the False Claims Act, sections 3723–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(b) The formal notice prescribed by paragraph (a) is not applicable to any pay adjustment arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 256.6 Request for a hearing; prehearing submissions.

(a) An employee's request for a hearing or waiver under § 256.5 must be filed not later than 15 days from the date of receipt of the formal notice.

(b) Not later than three days prior to a scheduled hearing date, the employee may notify the Chief Financial Officer of his election to have the matter determined by the hearing official solely on the basis of written submissions. If no such election is filed by the employee, the hearing shall be conducted as an oral proceeding.

(c) If an employee files a timely petition for a hearing, the Chief Financial Officer will—

(1) Notify the employee of the time, date, and location of the hearing, if a determination solely on the basis of

written submissions has not been requested; and

(2) Provide copies of the records in the possession of the agency relating to the employee's debt to the hearing official and, if he has not previously received the records, to the employee.

(d) If the employee files a request for a hearing that is not timely, he will be granted a hearing if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(e) If the employee contests the Commission determination of the existence or amount of the debt, he shall, not later than 10 days prior to the scheduled hearing date, file the following documents:

(1) A statement of the reasons why the employee believes that the Commission determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his belief and any legal arguments supporting his position;

(2) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(3) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(f) If the employee contests the Commission's proposed offset schedule, he shall, not later than 10 days prior to the scheduled hearing date, file the following:

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the proposed offset against disposable pay will produce an extreme financial hardship;

(3) The information required in § 256.4(b)(3) of this part;

(4) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(5) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(g) The Chief Financial Officer shall file, not later than 10 days prior to the scheduled hearing date, a list of witnesses that the Commission intends to call at the hearing.

(h) Material submitted by an employee in connection with a request for reconsideration of for a waiver under § 256.4 need not be resubmitted in connection with the proceeding under this section.

(i) Material required to be filed under subsections (e), (f), and (g) shall be filed with the hearing official and copies shall be provided to the opposing party.

§ 256.7 Hearings; time, date, and location.

(a) If an employee files a timely request for a hearing under § 256.6, the Commission will select the time, date, and location for the hearing. A hearing will be granted on a request for a waiver only if such waiver is provided for by law and if the request, in the judgment of the Chief Financial Officer, raises issues of veracity or credibility of the employee. To the extent feasible, the Commission will select a date and location that is convenient for the employee.

(b) For an employee who resides on the Isthmus of Panama, the hearing will be held in Panama. Hearings may be scheduled in New Orleans or Washington, D.C. for persons not residing in Panama.

§ 256.8 Consequence of employee's failure to meet deadline dates.

(a) An employee shall be considered to have waived his right to a hearing, and will have his disposable pay offset in accordance with the offset schedule proposed by the Commission, if the employee fails to appear at the time fixed for a hearing, or fails to file the required submissions under § 256.6 within five days after the filing date established under that section.

(b) The hearing official may excuse the employee's failure to meet any of the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of subsection (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under § 256.4, submitted written confirmation by the agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of Commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission will not repeat the procedures prescribed by 5 U.S.C. 5514 and agency regulations under section 5514.

(e) If the Commission receives an incomplete or improperly certified debt claim, it will return the claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be complied with and a complete debt claim must be submitted before any action will be taken to collect the debt by offset from the employee's current pay.

(f) If the Commission receives a complete debt claim, deductions shall be scheduled to begin on the next officially established pay interval, if possible. A copy of the debt claim form shall be given to the debtor, together with notice of the date deductions will commence.

(g) The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt.

[FR Doc. 85-11208 Filed 5-8-85 8:45 am]

BILLING CODE 3880-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Lake Chelan National Recreation Area and Ross Lake National Recreation Area, WA; Weapons Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulations set forth below are necessary to designate times and locations where weapons may be carried, possessed and used for target practice within Lake Chelan National Recreation Area and Ross Lake National Recreation Area pursuant to a requirement of the National Park Service General Regulations. It is the objective of these proposed regulations to allow local residents and occasional visitors to continue the established practice of recreational target practice and sighting-in of hunting weapons while at the same time providing for public safety and protection of park resources.

DATE: Written comments, suggestions, or objections will be accepted until June 10, 1985.

ADDRESS: Comments should be addressed to: Superintendent, North Cascades National Park, 800 State Street, Sedro Woolley, Washington 98284.

FOR FURTHER INFORMATION CONTACT: John J. Reynolds, Superintendent, North

Cascades National Park, Telephone: (206) 855–1331.

SUPPLEMENTARY INFORMATION:

Background

As stated in the enabling legislation, Pub. L. 90–544, one of the primary reasons for establishment of the recreation areas was "* * * to provide for the public outdoor recreation use and enjoyment * * *" of these areas. Recreational target shooting is an established outdoor recreational activity in both recreation areas. The legislation also specifically allows hunting in accordance with applicable laws of the United States and of the State of Washington. Hunting weapons must be periodically sighted-in to be safely and effectively used. There are long established facilities for these activities on Federal Lands in both recreation areas.

Residents of the communities of Stehekin, Newhalem and Diablo, located within the recreation areas, have no reasonable alternative to these facilities. Private land holdings are generally limited, and no facilities for these activities have been, nor are they likely to be, developed on them. Access to facilities outside the recreation area would be extremely difficult for Stehekin residents since access is only by water, air or trail. It would be a needless and unreasonable burden for residents of Newhalem and Diablo since a facility already exists within the recreation area. The Newhalem range was built by local residents who were members of the local gun club. No known developed facilities for these activities exist within a 55 mile radius of any of these communities.

The existing facility within Ross Lake National Recreation Area is located in the Southeast Quarter of Section 19 and the Northeast Quarter of Section 30, Township 37 North, Range 12 East, WM, approximately 200 yards northeast of State Route 20 near mile marker 119.

The existing facilities within Lake Chelan National Recreation Area are located as follows:

1. In the East Half of Section 22, Township 33 North, Range 17 East, WM, approximately 100 yards west of the Stehekin Emergency Airstrip in the area known as the gravel pit.

2. In the Southeast Quarter of Section 8, Township 33 North, Range 17 East, WM, approximately 100 yards east of mile point 7 of the Stehekin Valley Road in a converted borrow pit.

All of these sites are screened by trees and other vegetation. There are no other recreational developments or activities in their immediate vicinity which would conflict with their proposed use. The ranges are adequately removed from public roads and firing is away from the roads toward hillsides.

The section-by-section analysis of the final rulemaking for 36 CFR 2.4 published in the Federal Register of April 30, 1984, page 18446, states that target ranges which have been developed with adequate facilities to provide for public safety and which were in use prior to the effective date of the regulation can be designated for continued use by special regulation. This proposal is based on the intent of that analysis.

The Superintendent has determined that the designation of these locations and facilities is consistent with the Purposes for which the recreation areas were established, will not adversely affect park resources and that the design and operation procedures are in compliance with State and local laws relating to public ranges.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writting of these proposed regulations: Jerry D. Lee, Assistant District Manager; Daniel L. Allen, Resource Management Specialist; James S. Rouse, Assistant Superintendent.

Paperwork Reduction Act

This rulemaking contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 19, 1981). This rulemaking would have no significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. The Service makes this finding because the proposed regulation will impose no significant costs on any class or group of small entities.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an Environmental Assessment and Finding of No Significant Impact on these proposed regulations. Both are available at the address noted above.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k)

2. In § 7.62 by adding a new paragraph (c) to read as follows:

§ 7.62 Lake Chelan National Recreation Area

* * * * *

(c) *Weapons.* The following locations are designated for target practice between the hours of sunrise and sunset, subject to all applicable Federal, state, and local laws.

(1) In the East Half of Section 22, Township 33 North, Range 17 East, WM, approximately 100 yards west of the Stehekin Emergency Airstrip, the area known as the gravel pit.

(2) In the Southeast Quarter of Section 8, Township 33 North, Range 17 East, WM, approximately 100 yards east of mile point 7 on the Stehekin Valley Road, a converted borrow pit.

3. In § 7.69 by adding a new paragraph (c) to read as follows:

§ 7.69 Ross Lake National Recreation Area.

* * * * *

(c) *Weapons.* The following location is designated for target practice between the hours of sunrise and sunset, subject to all applicable Federal, state, and local laws:

(1) In the Southeast Quarter of Section 19, and the Northeast Quarter of Section 30, Township 37 North, Range 12 East, WM, approximately 200 yards northwest of State Route 20 near mile marker 119, the area known as the Newhalem rifle range.

Dated: March 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–10868 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-70-M

36 CFR Part 7

Ross Lake National Recreation Area, WA; Aircraft Use Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulation set forth below is necessary to designate locations within Ross Lake National Recreation Area where private and commercial aircraft may land on Ross Lake for the purpose of providing visitor access. It is the objective of this proposed regulation to provide for the preservation and enjoyment of the Ross Lake National Recreation Area in a way that is consistent with aircraft operations policy of the National Park Service and the authority of the Federal Aviation Administration.

DATE: Written comments, suggestions or objections will be accepted until June 10, 1985.

ADDRESS: Comments should be directed to: Superintendent, North Cascades National Park 800 State Street, Sedro Woolley, Washington 98284.

FOR FURTHER INFORMATION CONTACT: John J. Reynolds, Superintendent North Cascades National Park Telephone: (206) 855–1331.

SUPPLEMENTARY INFORMATION:

Background

As stated in its enabling legislation, Pub. L. 90–544, one of the primary reasons for establishment of the recreation area was "* * * to provide for the public outdoor recreation use and enjoyment. * * *" The operation of aircraft on Diablo Lake and Ross Lake is an established outdoor recreational activity in the Ross Lake National Recreation Area. The legislation also specifically provides that the recreation area shall be administered to best provide for "* * * the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, historic, or other values contributing to the public enjoyment."

Aircraft use of lakes within the Ross Lake National Recreation Area was an established activity for nearly 20 years prior to the 1968 establishment act. Floatplanes served as one of the principal means of public access to Ross Lake other than via the long, unimproved road by automobile through British Columbia to reach the north end of Ross Lake at Hozomeen. Highway 20, the North Cascades Highway, was not completed until 1972 and does not provide for automobile access to Ross Lake.

On March 17, 1982, the National Park Service published an extensive revision of Title 36 Code of Federal Regulations as a proposed Rule. Following the review and adoption of suggestions received during the comment period, the Final Rule was published in the **Federal Register** on June 30, 1983. Section 2.17, Aircraft and Air Delivery states, in part, that the use of aircraft is prohibited except at locations designated by special regulation.

The National Park Service, in analyzing requirements for publishing Special Regulations, realized that a long established use of aircraft in the Ross Lake National Recreation Area had to be legitimatized by designating locations in the recreation area as authorized landing sites. The alternative would be to discontinue use.

Special regulations for Ross Lake National Recreation Area were published in the **Federal Register** as a proposed rule on December 27, 1983. Comments from the public were originally accepted through January 26, 1984, but, that comment period was extended until February 25, 1984.

The section-by-section analysis of the final rulemaking for 36 CFR 2.17, published in the **Federal Register** of April 30, 1984, page 18445, states: "In response to public comment on the operation of aircraft on the entire surface of Ross Lake, the Service decided to withdraw this section of the proposed special regulations and retain the provision opening Diablo Lake to aircraft use. The total recreational use of Ross Lake will be reviewed and special regulations considered at a later date." This proposal is based on the intent of that analysis.

Neither of the two locations proposed as designated landing sites are within North Cascades National Park. Only sites within Ross Lake National Recreation Area are proposed. Since this use existed for many years, it is not anticipated that the proposed special regulation will, in itself, be a cause for a rise in such use.

The Superintendent has determined that the designation of these locations is consistent with the purposes for which the recreation area was established, will not adversely affect park resources and that the design and operational procedures are in compliance with federal, state and local laws relating to aircraft use.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in writing of these proposed regulations: Gerry Tays, District Manager; Daniel Allen, Resource Management Specialist; James Rouse, Assistant Superintendent.

Paperwork Reduction Act

This rulemaking contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Service has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (February 19, 1981), 46 FR 13193, and does not require a regulatory analysis under the requirements of the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601 *et seq.*). Aircraft transportation to remote recreation sites is not an extensive activity in this area; the majority of use is expected from a regional base of past use, primarily to deliver people to resorts and campsites based on Ross and Diablo Lakes. A small segment of people would likely use this means for trail access into nearby wilderness areas.

This rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. The Service makes this finding because the proposed regulations will impose no significant costs on any class or group of small entities.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an Environmental Assessment and a Finding of No Significant Impact on these proposed regulations. Both are available at the address noted above.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. In § 7.69, by revising paragraph (b) to read as follows:

§ 7.69 Ross Lake National Recreation Area.

* * * * *

(b) *Aircraft.* (1) The operation of aircraft is allowed on the following designated sites:

(i) The entire water surface of Diablo Lake and Ross Lake, except that:

(A) Operating an aircraft under power on water surface areas within 500 feet of boomlogs or buoys, or on those posted as closed for fish spawning is prohibited.

Dated: March 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11025 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-70-M

36 CFR Part 8

Labor Standards Applicable to Employees of National Park Service Concessioners

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposal is to delete a child labor regulation in its entirety. The existing regulation prohibits employment by National Park Service concessioners of persons under the age of 16 and restricts the employment of persons under the age of 18. The objective of the proposed amendment is to allow children between the ages of 14 and 16 the opportunity to be employed by National Park Service concessioners under the same terms they could be employed elsewhere if otherwise permitted under applicable Federal and State Labor Laws.

DATES: Written comments will be accepted until June 10, 1985.

ADDRESS: Comments should be directed to: David E. Gackenbach, Chief, Concessions Division, National Park Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James Owen, Concessions Analyst, Concessions Division, National Park Service, Washington, D.C. 20240. Telephone: (202) 523-1741.

SUPPLEMENTARY INFORMATION:

Background

36 CFR 8.4. Child labor states in part, "No person under 16 years of age may be employed by a concessioner in any occupation." By deleting § 8.4 in its entirety child labor will be governed by Federal or State labor laws as provided for in § 8.5 wherein it is stated "Concessioners shall comply with the standards established from time to time, by or pursuant to Federal or State labor laws otherwise applicable in the State of employment, such as those concerning minimum wages, child labor, hours of work, and safety, which would apply to the employees of the concessioner if his establishment were not located in a national park."

This amendment will permit concessioners to employ children between the ages of 14 and 16. As such it will enable children to be gainfully employed who otherwise may not be employed. It will benefit young people living near park areas, which are often isolated, by permitting concessioners to employ children under 16 who otherwise might be unemployed or would need to be transported to a place of work at considerable distance. Concessioners would also benefit by enlarging their market for recruiting employees with children who otherwise may not accept employment due to the restriction of the concessioner employing only those over the age of 16, thus providing better service to the visitors.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation amendment to the address noted at the beginning of this rulemaking.

Drafting Information

The following individual participated in the writing of this regulation: James A. Owen, National Park Service, Concessions Division, Washington, D.C.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that no costs should result for any small entity. There may be a limited positive result for children under the age of 16 to be gainfully employed by National Park Service concessioners. Parents living in or near the park would benefit by having their children under 16 years of age eligible to work for the concessioner, thereby not needing to transport children outside of a park area, sometimes at considerable distance, for employment purposes.

The proposed action is categorically excluded from procedural requirements for compliance with the National Environmental Policy Act and thus no environmental assessment or environmental impact statement will be prepared.

List of Subjects in 36 CFR Part 8

Concessions, Labor, National Parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Part 8 as follows:

PART 8—LABOR STANDARDS APPLICABLE TO EMPLOYEES OF NATIONAL PARK SERVICE CONCESSIONERS

1. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 8.4 [Removed]

2. By removing § 8.4.

§§ 8.5, 8.6, 8.7, 8.8, 8.9, 8.10 [Redesignated as 8.4, 8.5, 8.6, 8.7, 8.8, 8.9]

3. By redesignating §8.5 as §8.4, §8.6 as §8.5, §8.7 as §8.6, §8.8 as §8.7, §8.9 as §8.8 and §8.10 as §8.9.

Dated: March 26, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–10869 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AMO43PA; A-3-FRL-2832-9]

Proposed Approval of Revisions to the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the Pennsylvania State Implementation Plan (SIP) with respect to Sulfur Dioxide (SO_2), for

Conewango Township, Warren County. The revision applies to the area surrounding the Warren Power Plant of the Pennsylvania Electric Company (Penelec). The revision specifies measures that will be taken to determine the extent and severity of the SO_2 violations in Conewango Township, and to develop the SO_2 emission control strategy that will be implemented to attain and maintain the SO_2 National Ambient Air Quality Standards (NAAQS).

DATE: Comments must be submitted on or before June 10, 1985.

ADDRESSES: Copies of the proposed SIP revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Street, Eighth Floor, Philadelphia, PA 19107, Attn: Donna Abrams (3AM11)

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597-9134.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief, PA/WVA Section at the EPA, Region III address above, EPA Docket No. AMO43PA.

SUPPLEMENTARY INFORMATION: On March 3, 1978, Conewango Township, Warren County was designated nonattainment for SO_2. Upon designation, Part D of the Clean Air Act was triggered for Conewango Township. Part D required Pennsylvania to submit, to EPA for approval, a plan revision for achieving the SO_2 National Ambient Air Quality Standards (NAAQS) as expeditiously as practicable.

The designation was based upon an air dispersion modeling study performed in 1976. Subsequent to the completion of the study, EPA developed air dispersion modeling guidelines and determined that the study did not meet these guidelines. Furthermore, EPA concluded that while the study was adequate for the purpose of designating nonattainment areas, it was not adequate to define the extent and severity of the violations of the SO_2 NAAQA. As a result, the study could not serve as the basis of a plan for achieving the SO_2 NAAQS. Additionally, it was later determined that invalid meteorological data may have been used in the study. This raised questions on the validity of the original study and the original nonattainment designation.

As a result of these uncertainties, negotiations were initiated between Penelec, whose Warren Power Plant is a major source of SO_2 in Conewango Township and the Pennsylvania Department of Environmental Resources (DER). On December 27, 1982, DER submitted a request to EPA to have Conewango Township reclassified to "Unclassifiable" for SO_2. This redesignation request was submitted, in conjunction with an agreement between DER and Penelec, to conduct a more comprehensive SO_2 ambient air quality monitoring program to resolve the "Cannot Be Classified" status. EPA could not approve this request because the statutory attainment date (December 31, 1982) had passed by the time EPA received the request.

In view of this, DER, on March 17, 1983, requested that the designation be changed to "attainment." On July 13, 1983, EPA advised DER that the request could not be approved because it did not meet the minimum requirements set forth in a policy memorandum, from Mr. Sheldon Meyers, dated September 16, 1982, which requires, for areas dominated by point sources of SO_2, that dispersion modeling be an integral part of any redesignation to attainment.

Subsequent to DER's requested redesignation to attainment and EPA's denial, Penelec relocated and installed monitors coinciding with predicted SO_2 ambient hot spots, and in 1983 and 1984 violations of the SO_2 NAAQS were measured in the vicinity of the Warren Plant. Hence, on February 24, 1984, EPA notified Pennsylvania that a SIP revision, in accordance with Part D of the Clean Air Act, must be submitted for Conewango Township.

In accordance with EPA's request, DER and Penelec entered into a Consent Order and Agreement on December 5, 1984, and on December 28, 1984, submitted this as part of a SIP revision to EPA. The Consent Order and Agreement requires Penelec to conduct a new air quality and meteorological monitoring study at specified locations surrounding the Warren Plant and to report average daily emissions and fuel use for a period of one year (commencing December 31, 1984). The Consent Order and Agreement also recognizes the violations of the SO_2 NAAQS noted above.

Following completion of the required monitoring study, Penelec shall:

1. Perform a comprehensive modeling analysis of the SO_2 concentrations attributed to the Warren Plant.
2. Determine appropriate emission limits in accordance with equations specified in the Consent Agreement.
3. Submit to DER a plan, including a schedule, to attain:

(a) The primary SO_2 NAAQS as expeditiously as practicable, but no later than December 31, 1987.

(b) The secondary SO_2 NAAQS as expeditiously as practicable, but no later than December 31, 1988.

Penelec may resort to the use of an alternate model (Lappes), as opposed to the one (Complex I) stipulated in the Order and Agreement, to establish emission limits, if superior performance can be proven according to a Protocol agreed upon between DER and EPA.

After Penelec and DER have agreed upon the plan and schedule, DER will submit the plan and schedule to EPA for inclusion in the SIP.

In the event that Penelec fails to perform the monitoring study or the modeling analysis or fails to submit a plan by the date specified in the Consent Order and Agreement for attaining the NAAQS, a one hour, not to be exceeded, emission limit, determined by the Valley model, of 0.51 lbs. $SO_2/10^6$ Btu would be imposed on the plant. Penelec would be required to meet this limit as expeditiously as practicable, but no later than December 31, 1987.

During the course of EPA's review, typographical error was noted in Point 8 of Appendix B to the Consent Order and Agreement. EPA will assume that the reference to paragraph 6 should be paragraph 7 unless otherwise notified by DER or Penelec during the public comment period.

Conclusion

EPA's decision to propose approval of the revision is based on a determination that the revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of smalll entities. See 46 FR 8709 (January 27, 1981). The action, if promulgated, constitues a SIP approval under sections 110 and 172

within the terms of the January 27, 1981 certification.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: March 19, 1985.

A.R. Morris,

Acting Regional Administrator.

[FR Doc. 85–11253 Filed 5–8–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL-2832-7]

Proposed Delayed Compliance Order for General Motors Corp., Detroit Diesel Allison—Redford Plant, Detroit, MI

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an Administrative Order to General Motors Corporation, Detroit Diesel Allison-Redford Plant (DDAD). The Order requires the company to bring volatile organic hydrocarbon emissions from its engine primer line and engine topcoat line in Detroit, Michigan into compliance with Michigan Rule R 336.1621, part of the federally approved Michigan State Implementation Plan (SIP). The company is unable to comply with these regulations at this time, and the proposed Order would establish an expeditious schedule requiring final compliance by December 1, 1984. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before June 10, 1985, and requests for a public hearing must be received on or before May 24, 1985. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held twenty-one days after notice of the date, time, and place of the hearing, which will be provided in a separate notice in the **Federal Register**.

ADDRESS: Comments and requests for a public hearing should be submitted to the Office of Regional Counsel, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: James Thunder, Assistant Regional Counsel, Office of Regional Counsel, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604 at (312) 353–2084.

SUPPLEMENTARY INFORMATION: General Motors Corporation operates an engine primer line and an engine topcoat line at its Detroit Diesel Allison-Redford Plant (DDAD) in Detroit, Michigan. The proposed Order addresses volatile organic hydrocarbon emissions from the engine primer line and engine topcoat line at this facility, which are subject to Michigan Rule R 336.1621 (Rule 621), part of the federally approved Michigan State Implementation Plan. Rule 621 limits the emissions of volatile organic hydrocarbons from these sources and specifies the date by which DDAD must be in compliance with said rule. This Order requires final compliance with Michigan Rule R 336.1621 by December 1, 1984, by reformulation to compliant water-based coatings. The source has consented to the terms of the Order, and has agreed to meet the increments established in the Order during the period of this informal rulemaking.

Dated: April 18, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–11255 Filed 5–8–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-2832-5]

Management System; Identification and Listing of Hazardous Waste Notification of Completion and Availability of Study and Request for Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of availability of data and request for comment.

SUMMARY: Today's notice announces the completion and availability of a study of polynuclear aromatic hydrocarbons (PNAs), and requests public comment on the toxicity and mobility evaluations contained in this report. This study will be used in evaluating delisting petitions submitted pursuant to 40 CFR 260.20 and 260.22. Today's notice also announces the availability of, and requests comment on, additional information submitted by the Amoco Oil Company's Wood River facility regarding PNA mobility from their petitioned treatment residue. This information was submitted as an addendum to their delisting petition. Amoco's wastes were proposed to be excluded from 40 CFR 261.32 on October 23, 1984. (See 49 FR 42580–42593).

DATES: EPA will accept public comments on this data until June 10, 1985.

ADDRESSES: The PNA report identified above, any related data, and the additional information submitted by Amoco, are available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in the Docket Office for the Office of Solid Waste, Room S212A., U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments on this study and the conclusions drawn regarding the Amoco, Wood River and Metropolitan Sewer District's delisting petitions should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001 (3)—Delisting Petitions."

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information contact Mr. Myles Morse or Ms. Barbara Bush, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION: On September 21, 1984 the Agency granted a final exclusion under 40 CFR 260.20 and 260.22 to the Metropolitan Sewer District of Greater Cincinnati for a portion of its waste which did not contain PNAs, and deferred judgement on the portion which contained PNAs (49 FR 37066–37070). On October 23, 1984 in a proposed exclusion for Amoco Oil Company (49 FR 42580–42593), the Agency noted concern over the level of polynuclear aromatic hydrocarbons (PNAs) contained in the waste petitioned for exclusion. In each case, the Agency indicated that a study would be undertaken to determine whether the

PNAs should be added as a basis for listing the wastes. The study is now completed and has been used by the Agency to evauate the PNA concentrations in the treatment residues petitioned for delisting by both Amoco and MSD. (See 49 FR 42580–42593 (Amoco) and 49 FR 8962–8967 and 49 FR 37066–37070 (MSD), for more detail regarding these pending delisting decisons.) The Agency also requested Amoco to evauate PNA mobility in their treatment residue using the Multiple Extraction Test and the EP Toxicity Test for Oily Wastes. Based on the information contained in the PNA report and the addtional data provided by the Amoco, the Agency believes that the levels of PNAs in the wastes of these facilities would not pose a threat to human health or the environment. The Agency specifically requests comment on this available report, the additional Amoco data, and on the conclusions drawn from this information regarding the non-hazardous nature of the petitoned treatment residue generated by Amoco and MSD.

Dated: May 2, 1985.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85–11257 Filed 5–8–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 5 and 6

Changes to Freedom of Information Act and Privacy Act Fee Schedules

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing to amend its fee schedule for processing Freedom of Information Act and Privacy Act requests in order to depict the current costs of such services.

DATE: Comments must be received on or before July 8, 1985.

ADDRESS: Comments are to be submitted to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, D.C. 20472.

FOR FURTHER INFORMAION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646–3981.

SUPPLEMENTARY INFORMATION: FEMA's uniform fee schedule for making records available to the public under the Freedom of Information Act and the Privacy Act was last published in 1979 (44 FR 50286, August 27, 1979). The fee schedule as it presently exists does not accurately reflect the cost of making records available to the public. Accordingly, FEMA finds it necessary to propose an increase in the standard fees for searching for and photocopying documents in order to recover some of the considerable expense of administering the Acts.

FEMA has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The principal author of this document is Linda M. Keener, FOIA/Privacy Specialist, Office of Public Affairs.

List of Subjects in 44 CFR Parts 5 and 6

Freedom of Information Act, Privacy Act.

It is hereby proposed to amend 44 CFR Chapter I, Subchapter A, as set forth below:

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

1. The authority citation for Part 5 is revised as follows:

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. In § 5.46, paragraphs (a)(1), (b)(1) and (b)(2) are amended by revising them to read as follows:

§ 5.46 Fee Schedule.

* * * * *

(a) *Reproduction Fees.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½"×14", the charge will be $.15 per page. Preprinted materials will be made available at a charge of $.03 per page.

* * * * *

(b) *Search Fee.* (1) The standard search fee for searches spent by employees in the GS–1 to GS–8 grade levels shall be $9.00 per hour or fraction thereof. No search fee will be applicable if the employee spends less than one hour locating relevant records.

(2) When professional staff must be used to search for the requested records because clerical staff would be unable to locate relevant records, the search fee for employees in the GS–9 to GS/GM–14 grade levels shall be $17.00 per hour or fraction thereof and the search fee for employees in the GS/GM–15 and above grade levels shall be $30.00 per hour or fraction thereof. No search fee will be applicable if the employee spends less than one hour locating relevant records.

* * * * *

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

3. The authority citation for Part 6 is revised to read:

Authority: 5 U.S.C. 552a. Reorganization Plan No. 3 of 1978; and E.O. 12127.

4. In § 6.85, paragraph (a) is amended by revising it to read as follows:

§ 6.85 Reproduction fees.

(a) For copies of documents reproduced on a standard office copying machine in sizes up to 8½"×14", the charge will be $.15 per page. Preprinted materials will be made available at a charge of $.03 per page.

* * * * *

Dated: May 3, 1985.

Louis O. Giuffrida,

Director, Federal Emergency Management Agency.

[FR Doc. 85–11207 Filed 5–8–85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 85–129; RM–4427; FCC 85–212]

Operation of Low Power Communication Devices in the 1.6–10 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 15, Subpart D of its Rules to allow the operation of low power communication devices in the 1.6 to 10 MHz band in response to a petition filed by the Knogo Corporation (RM–4427). The intended effect is to provide additional frequencies for low power communication devices, including ones which use swept frequency techniques.

DATES: Comments must be submitted on or before June 24, 1985 and replies on or before July 9, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Liliane M. Volcy, Office of Science and Technology, Washington, D.C. 20554, tel: (202) 653–8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Notice of Proposed Rule Making

In the matter of The amendment of Part 15 of the Commission's Rules to permit the operation of low power communication devices in the 1.6–10 MHz band; Gen Docket 85–129, RM–4427.

Adopted: April 25, 1985.
Released: May 1, 1985.

By the Commission.

Introduction

1. On April 8, 1983, the Knogo Corporation (Knogo) submitted a petition for rule making,[1] requesting that § 15.305(c) of the Rules be amended to allocate additional frequencies in the upper MF and lower HF regions of the spectrum for the operation of wideband swept frequency field disturbance sensors (WBSS).[2] The purpose of this proceeding is to propose solutions to the problems enumerated in the Knogo petition, not only to benefit the petitioner but also to allow other manufacturers a greater use of the spectrum. To the extent possible, we shall also utilize the subject petition as a vehicle to establish provisions for general purpose low power communication devices (LPCDs) operating in the upper MF and lower HF regions of the spectrum. We shall also consider in this proceeding LPCDs which sweep their operating frequencies over a relatively wide bandwidth in comparison with conventional narrow bandwidth equipment.

Characteristics and Performance of Wideband Swept Sensors

2. Wideband swept sensors currently available on the market are usually utilized for security or control applications. WBSS are field disturbance sensors which utilize relatively large bandwidths in comparison to conventional equipment. WBSS are typically composed of two elements: a wafer placed on the monitored article and a transceiver (detector) situated at the entry or exit of the area under surveillance. An alarm is activated when the wafer is brought into the radio fields emanated from the transceiver. The relatively large bandwidths are necessary to assure that the frequency of resonance of the wafer is recognized by the detector, thereby activating the alarm when the wafer is brought near the transceiver. Knogo and its competitors manufacture basically two types of WBSS (1) anti-pilferage systems (or anti-shoplifting detectors) used as a means of detecting attempts to remove protected article from retail stores, libraries, etc. and (2) patient control systems for monitoring the movements of ambulatory patients in hospitals or other health care facilities.

Knogo Petition

3. Knogo contends that the present Rules covering WBSS hinder technological innovation because at frequencies above 1 MHz (with the exception of three bands for which the technical standards have been relaxed by the Commission in a previous proceeding) it becomes difficult to achieve compliance.[3] [4] By limiting operation to only three frequency bands, Knogo states that manufacturers are prevented from developing devices which might function more efficiently at other frequency ranges. For example, at 3.25 MHz the efficiency of the antenna and the wafer can be increased. Consequently, a 3.25 MHz system performs better overall when operated with the same field strength levels as those produced by 2 MHz equipment, and the number of false alarms can thus be considerably reduced. In particular, Knogo states that to avoid interference with its competitors systems, which utilize the 4.5 MHz and 8.2 MHz bands, it must restrict the design of its systems to the 2 MHz band. Knogo feels that the limited available frequencies inhibit its sales.

4. A short term solution to this problem, Knogo suggests, would be to allow operation on one or two more frequencies in the 2 to 10 MHz band. In addition, Knogo maintains that giving manufacturers the option of using any frequency from 2 to 10 MHz would be a more adequate solution on a long term basis, especially in view of the rapid growth of the alarm industry. Knogo asserts that the present technical regulations set out in §§ 15.321 and 15.323 of the Rules are adequate for operation anywhere within the 2 to 10 MHz band.

Comments and Discussion

5. No opposition to the petition has been received, except from James Weitzman, an amateur radio operator. Mr. Weitzman contends that the use of WBSS in the frequency range in question would be a considerable source of interference to the international broadcasting and amateur radio services. Mr. Weitzman views the allocation of additional frequencies basically as an inappropriate solution to Knogo's problems, a request for an exclusive allocation, and a waste of the HF spectrum. We cannot agree with Mr. Weitzman's allegations, especially since they are not supported either by any interference study or by the Commission's records. Further, the rules regarding [Part 15] RF devices were established by the Commission to protect those radio services, which are authorized under 47 CFR 2.106 from receiving harmful interference. Thus, any action taken by the Commission with regard to Part 15 devices does not supersede the rights vested to the services which have been recognized in the table of frequency allocations.

6. The purpose of the electromagnetic interference (EMI) standards under Part 15 is to allow a greater use of the spectrum on a non-interference basis to authorized radio services. This policy is maintained in this proceeding by extending the scope of the subject petition to cover the operation of general purpose low power communication devices, (including ones which utilize swept frequency techniques), into the upper MF and lower HF regions of the spectrum. While Knogo requests that rules be adopted for a specific device, we find no valid reason for limiting our proposal to permit only the use of WBSS. Such action is made in light of the fact that the present Part 15 rules do not have any provisions for general purpose LPCDs operating in the upper MF and lower HF regions of the spectrum above 1.6 MHz, and because other manufacturers besides Knogo have also shown an interest in designing LPCDs in this frequency range.[5] Also we recognize that the technical standards for LPCDs operating above 1 MHz are intentionally restrictive.[6] For

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[1] *See Petition for Rule Making*, RM–4427 (Public Notice, April 19, 1983, Report No. 1401).

[2] A field disturbance sensor is defined in § 15.4(j) of the Rules as a restricted radiation device which establishes a radio frequency field in its vicinity and detects changes in that field resulting from the movement of persons or objects within the radio frequency field. Examples are sensors for automatic door openers in commercial establishments, intrusion detectors, and anti-shoplifting equipment for retail stores.

[3] *See* 47 CFR 15.305(a) which prescribes a field strength limit of 15 $\mu V/m$ at a distance of $\lambda/2\pi$ in meters.

[4] *See Report and Order* in General Docket No. 20620, 65 FCC 2d 802 (1977) (dealing with the operation of wideband swept RF equipment used as anti-pilferage devices). Special provisions were adopted for the operation of WBSS for the following three bands: 2.0 ± 0.3 MHz, 4.5 ± 0.45 MHz, and 8.2 ± 0.80 MHz.

[5] *See Order Granting Waiver in Part*, FCC 81–322, released July 21, 1981, (dealing with the operation of a low power communication system at 2.5 and 6.0 MHz for the purpose of identifying individual cows).

[6] *See* Section 2.5 of FCC/OST Bulletin 63, "Understanding FCC Rules & Regulations under Part 15 for Low Power Transmitters", (December 1984).

the purpose of this proceeding, we are proposing to relax the technical standards for LPCDs only in the 1.6 to 10 MHz range. We have only been able, at this point, to gather significant data on devices operating with that range. Further, the subject petition, to some extent, follows earlier consideration of the technical standards for LPCDs operating above 1.6 MHz.[7] Finally, no reports of interference to radio services susceptible of receiving interference (amateur, international broadcasting, fixed, maritime mobile, aeronautical mobile, etc.) from LPCDs operating in portions of the HF region of the spectrum have been brought to the attention of the Commission. It should be noted that no interference reports from the operation of LPCDs in the 1700–2300 kHz band to safety services using the frequency 2182 kHz have been received. Comments concerning the need to restrict the use of such devices from operating in portions of the 5 and 8 MHz bands (including those operating at 2182, 5176.5, 5680, 8241.5 and 8765.4 kHz) to protect safety services are requested.

7. We believe that broadening the scope of this proceeding will encourage technological innovation, reduce the need for costly and unwarranted rule making procedures, and assist us in solving the technical problems stated by Knogo. We feel that such action will assist manufacturers in finding new applications and in improving the efficiency of systems such as wideband swept sensors. Possible applications could be in the field of data collection and transmission, telemetering, identification systems, campus radio stations, drive-in theaters, control and security, etc. The technical requirements which we propose to adopt in this proceeding are flexible enough so that any modulation technique may be used: the field strength limits chosen at the fundamental or within the specified band are at least 10 dB below typical manmade radio noise levels from 1.6 to 10MHz in business, residential, and rural areas,assuming free-space propagation.[8] This should provide a sufficient safety margin to preclude any interference to the licensed radio services which operate at power levels far greater that the man-made radio noise levels within the frequency range in question.

8. General concurrence on the matter has been obtained from the Interdepartment Radio Advisory Committee (IRAC), which oversees Federal governmental use of the spectrum, with the understanding that only swept frequency LPCDs with a minimum frequency sweep of $\pm 5\%$ of the fundamental will be allowed. The National Telecommunications and Information Administration (NTIA) in a report to IRAC voiced concerns about allowing stationary or narrowband signals in the lower HF region of the spectrum. NTIA suggests that imposing a minimum sweep rate will minimize the interference potential to government aeronautical, maritime mobile and other services. The question of allowing stationary or narrowband signals in the 1.6 to 10 MHz range is still being discussed with NTIA. Meanwhile we solicit comments from the public on allowing the operation of any type of LPCD from 1.6 to 10 MHz, and also on the future possibility of adopting technical standards for the operation of LPCDs above 10 MHz. In particular, we request information on possible applications and power levels necessary to achieve efficient operation for LPCDs above 10 MHz. We wish to point out, however, the EMI standards under Part 15 are not meant to prevent multiuser interference problems [9] and the standards which are proposed in this proceeding will not necessarily alleviate the multi-LPCD user interference problems encountered by Knogo.

Proposed Rules

9. In summary, we propose to amend Part 15, Subpart D of the Rules, in accordance with the above discussion, to permit the operation of any LPCD from 1.6 to 10 MHz which meets the technical requirements specified in the Appendix. A field strength limit of 100 uV/m at a distance of 30 meters would apply to the emissions within the swept frequency band or the fundamental frequency. Maximum permissible field strength levels of the harmonics, out-of-band, and/or spurious emissions would be the same as those currently prescribed for Class B computing devices. Since different types of devices would be permitted to operate under the new rules, we must take into account the possibility that some systems will be utilized in residential areas and possibly interfere with the operation of AM receivers. To minimize this possibility, we are proposing the same conduction limits which are currently imposed for Class B computing equipment for any LPCD connected to the public power lines, i.e. 250 uV from 450 KHz to 30 MHz.[10]

10. Any measurement procedure acceptable to the Commission may be used. Applicants filing for equipment authorization with the Commission are advised to consult with the FCC laboratory to discuss their procedure prior to submitting their reports of measurements. For purposes of this proceeding, we propose that for swept frequency equipment, the measurements be made with the frequency sweep halted and a peak reading field strength meter. Radiated emissions measurements should be made on an open field site.[11] We request comments on the technical requirements proposed, and in particular, the permissible emission levels, and the advantages/disadvantages of making measurements with the sweep halted or enabled for swept frequency devices. Low power communication devices operating in the 1.6–10 MHz band shall be certificated pursuant to the relevant sections of 47 CFR Part 2, Subparts I and J. Certification and the implementation of a sampling program should deter the marketing of non-complying devices.

Procedural Matters

11. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* the Commission issues the following initial regulatory flexibility analysis:

I. Reason for action

This proceeding is in response to a petition for rule making requesting that additional frequencies be allowed for the operation of wideband swept frequency field disturbance sensors.

II. The objective

The objective of this proceeding is to enhance the use of new technology for low power communication devices in the 1.6–10 MHz band without increasing the interference potential to authorized radio services.

III. Legal basis

The action proposed is in accordance with sections 4(i), 302(a), 303(g), and 303(r) of the Communications Act of 1934, as amended, which permit the

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[7] *See Notice of Proposed Rule Making* in Gen. Docket 20780, FCC 76-347, 41 Fed. Reg. 17938 (1976).

[8] *See* CCIR (International Radio Consultative Committee) Report no. 258-4 "Man-made Radio Noise", (1982).

[9] *See* 47 CFR 15.3

[10] *See* 47 CFR 15.830 and 15.832.

[11] *See* FCC/OST Bulletins such as MP-1, "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers", (February 1983), and MP-4, "FCC Methods of Managements of Radio Noise Emissions from Computing Devices", (December 1983), to the extent practicable, may be used as guidelines. *See also* FCC/OST Bulletin 55, "Characteristics of Open Field Test Sites", (August 1982).

Commission to make reasonable regulations governing the interference potential of radio frequency equipment and to promote the larger and more effective use of radio in the public interest.

IV. Entities Affected; Nature of Economic Impact; Significant Alternatives

This action is expected to have a beneficial economic impact on manufacturers since it will allow greater design flexibility. No significant alternatives are apparent at this time.

V. Recording, Record-Keeping and Other Compliance Requirements

None beyond that required under the existing regulations.

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time that a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commission or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules.

13. Pursuant to the applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 24, 1985, and reply comments on or before July 9, 1985. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Room 239, Washington, D.C. 20554. For further information on this proceeding, contact Liliane M. Volcy, Office of Science & Technology, (202) 653-8247.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 15—[AMENDED]

The authority citation for Part 15 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended 1066, 1982; 47 U.S.C. 154, 303.

Part 15 of the FCC Rules (47 CFR Part 15) is proposed to be amended as follows:

§ 15.115 [Removed]

§ 15.114 [Redesignated as § 15.115]

1. The current § 15.115 is removed and the current § 15.114 is redesignated as § 15.115.

2. A new § 15.114 is added to read as follows:

§ 15.114 Operation between 1.6 and 10 MHz (including swept frequency).

A low power communication device, including one which utilizes swept frequency techniques, may be operated in the 1.6 to 10 MHz band provided it meets the following requirements:

(a) Operation shall be confined to the 1.6 to 10 MHz band.

(b) The field strength of the emissions within the swept frequency band or the fundamental frequency shall not exceed 100 uV/m at 30 meters.

(c) The field strength of the harmonics, out-of-band, and/or spurious emissions shall not exceed:

Frequency range (MHz)	Distance (meters)	Field strength (uV/m)
Below 88	30	10
88 to 216	30	15
Above 216	30	20

(d) A low power communication device which is designed to be connected to a public utility power line shall limit the radio frequency voltage conducted back into the power lines to values below 250 uV between 450 kHz and MHz.

3. Paragraph (a) of § 15.141 is revised to read as follows:

§ 15.141 Measurement procedure.

(a) Any procedure acceptable to the Commission may be used to measure the RF energy emitted or conducted by a low power communication device. For swept frequency equipment, measurements shall be made with the frequency sweep stopped using a field strength meter with a peak reading detector. Radiated emission measurements shall be made, to the extent possible, on an open field site.

* * * * *

4. The table in § 15.142 is revised to specify the frequency range of measurements for devices operating from 1.6 to 10 MHz as follows:

§ 15.142 Range of measurements.

* * * * *

Frequency band in which the device operates	Frequency range of measurements: Lowest frequency	Highest frequency
Below 1600 kHz	10 kHz	20 MHz.
1.6 to 10 MHz	Lowest frequency generated in the device	300 MHz.
26.97 to 27.27 MHz	Lowest frequency generated in the device	400 MHz.
40.66 to 40.70 MHz	Lowest frequency generated in the device or 25 MHz, whichever is lower.	1,000 MHz.
49.82 to 49.90 MHz	Lowest frequency generated in the device or 25 MHz, whichever is lower.	1,000 MHz
70 to 108 MHz	do	1,000 MHz.
108 to 500 MHz	do	2,000 MHz.
500 to 1000 MHz	Lowest frequency generated in the device or 100 MHz, whichever is lower.	5,000 MHz.
Above 1000 MHz	Lowest frequency generated in the device or 100 MHz, whichever is lower.	Tenth harmonic or highest frequency generated.

5. Paragraph (c) of § 15.305 is revised to read as follows:

§ 15.305 General technical specifications.

* * * * *

(c) A field disturbance sensor, as an alternative to paragraphs (a) and (b), may be operated under the provisions of §§ 15.114, 15.141, and 15.142 of this chapter.

* * * * *

§§ 15.321 and 15.323 [Removed]

6. Sections 15.321 and 152.323 are removed.

[FR Doc. 85-11104 Filed 5-8-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 85-126; FCC 85-215]

Review of Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes Rule changes: (1) permitting broadcast and cable sharing of remote pickup frequencies; (2) extending the short term operation rule; (3) revising remote pickup service remote control rules; and (4) extending the 950 MHz wireless microphone band.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The proposed Rule changes are intended to provide broadcasters and cable networks and operators more flexibility in operating auxiliary systems and to promote spectrum efficiency.

DATES: Comments due by July 5, 1985, and Reply Comments due by August 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Proposed Rulemaking

In the matter of review of technical and operational requirements: Part 74-D Broadcast Remote Pickup Service; and Part 74-H Low Power Auxiliary Stations; MM Docket No. 85-126.

Adopted: April 25, 1985.

Released: May 6, 1985.

By the Commission.

Introduction/Background

1. The Commission, on its own motion, proposes to review and revise the rules covering technical, operational, and licensing requirements for broadcast remote pickup stations and low power auxiliary stations. The affected rules are contained in th FCC Rules and Regulations, Part 74, Subparts D, and H. The proposed actions would allow broadcast licensees more liability in the operation of auxiliary systems associated with their stations and further would provide cable networks and cable system operators (cable interests) access to frequencies in the aural remote pickup band.

Issues

2. There are several issues to be considered:

a. Should licensing eligibility for use of the broadcast remote pickup frequencies be extended to cable interests?

b. Should the "short term operation" provisions of Section 74.24 be extended to allow full time local operation of remote pickup stations under the authority conveyed by the basic broadcast license?

c. Should the remote control rules for the remote pickup service be revised to provide more flexibility in system design?

d. Should the 947-952 Mhz wireless microphone band be extended to include 944-952 MHz?

Each issue will be developed separately.

Issue 1: Cable System Eligibility

3. Although the methods of distribution differ, broadcast stations and cable systems deliver similar end products to their audiences, including programs, movies, news reports, and live coverage of special events. As a result, they have similar needs for auxiliary frequencies to aid in program production and related technical communications. The current Rules do not permit cable networks and cable system operators to use broadcast auxiliary service spectrum below 12 GHz. In light of their parallel needs, we propose to extend the eligibility for use of some broadcast remote pickup frequencies listed in § 74.402[1] to provide for shared use by broadcast stations, broadcast networks, cable systems, and cable networks. Comment are invited on this proposal. Comments should also address whether current frequency coordination procedures would require any changes if the auxiliary remote pickup frequencies were to be opened to cable networks and cable system operators.

4. The remote pickup spectrum is already crowded in some areas of the country. To ensure that the impact of new operators entering the spectrum is minimized, we propose to define strict eligibility requirements for cable interests. We seek comments on the appropriate criteria to qualify cable interests as being eligible for licensing in the broadcast remote pickup service.

Issue 2: Short Term Operation Flexibility

5. Section 74.24 permits broadcast licensees to operate auxiliary stations, without prior authorization from the Commission, under the authority conveyed by their Part 73 basic broadcast station licenses. Such operation is permitted except near the border between the United States and Canada, and on certain shared frequencies. The operation is also subject to prior frequency coordination with other stations in the local area, is limited to 720 operating hours per year, and is secondary to other licensed stations. We propose to revise § 74.431(d) to exempt Part 73 licensees operating remote pickup stations within 50 miles of their broadcast facilities from the maximum time and secondary status limitations of § 74.24.[2] A separate license for remote pickup stations would be required only in cases where the conditions of § 74.24 and 74.431(g), as proposed, did not apply.

6. This proposal is intended to permit licensees the option of using frequency agile equipment and advanced frequency management techniques to obtain relief in very crowded areas. For example, as local requirments for channel usage vary, stations would have the option of coordinating and implementing new channel plans to accommodate the changing needs. Comments are invited on this proposal.

Issue 3: Remote Control

7. To unify the broadcast remote control rules, we propose to revise § 74.434 by incorporating language comparable to that in § 73.1410 of the Rules.[3] Licensees would be free to

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[1] Cable systems licensees would not be authorized to use frequencies between 152.87 and 153.35 MHz which are shared with the Private Radio Service. Network entities are not authorized to use frequencies in the ranges of 152.87-153.35 MHz and 161.64-161.76 MHz.

[2] Section 74.431(d) is proposed to be redesignated as § 74.431(g) as indicated in the Appendix. This proposal does not apply to the frequencies between 152.87 and 153.35 MHz which are shared with the Private Radio Service.

[3] MM Docket No. 84-110, 49 FR 47608 (December 6, 1984).

implement any type of remote control systems, provided these systems contained adequate monitoring and control functions for proper station operation in accordance with the terms of the authorization. Comments are invited on this issue.

Issue 4: Wireless Microphones in the 944–947 MHz Band

8. Wireless microphones have been permitted to share the 947–952 MHz band with other auxiliary stations, including Studio to Transmitter Links (STL) and Intercity Relay Stations (ICR). A recent decision[4] allocated an additional 3 MHz of spectrum to that band for STL and ICR use. We believe that wireless microphones should also be allowed to share the new spectrum and propose to amend the Rules accordingly. Comments are invited on this issue.

Other Considerations

9. We propose to make some non-substantive revisions to certain rule sections, as outlined in the appendix, to provide more flexibility to licensees operating auxiliary stations. These sections include: 74.431 Special rules applicable to remote pickup stations; 74.432 Licensing requirements and procedures; 74.436 Special requirements for automatic relay stations; and 74.465 Frequency monitors and measurements; 74.467 Posting of licenses and 74.667 Posting of licenses. Comments are invited on these changes.

Initial Regulatory Flexibility Analysis

10. a. *Reason for action:* This review is necessary to determine the relevance of current rules and to consider whether revision of some portions is warranted.

b. *The objective:* The Commission's proposals are designed to permit broadcast licensees more flexibility in the operation of broadcast auxiliary service systems.

c. *Legal basis:* Action is proposed in accordance with Sections 4(i),303(g) and (r) of the Communications Act of 1934, as amended, which charge the Commission to encourage the most effective use of radio in the public interest.

d. *Description, potential impact, and number of small entities affected:* The proposed Rule changes are permissive in nature and should favorably affect broadcaster stations, cable systems and networks by providing licensees additional options for program production.

[4] Gen. Docket No. 82-335 FR 4655 (February 1, 1985).

e. *Recording, recordkeeping, and other compliance requirements:* None.

f. *Federal Rules which overlap, duplicate, or conflict with this rule:* None.

g. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* None.

Paperwork Reduction Act

11. The proposed contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Actions

12. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*)

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before July 5, 1985, and reply comments on or before August 5, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. For purposes of this nonrestrictive notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

15. Accordingly, it is proposed to amend Part 74 of the Commission's Rules as set forth in the attached Appendix. Authority for the action taken herein is contained in Sections 4(i), 303(g) and (r) of the Communications Act of 1934, as amended.

16. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Policy and Rules Division, Mass Media Bureau, (202) 632–9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 74—[AMENDED]

It is proposed to amend Title 47, Part 74 of the Code of Federal Regulations as follows:

1. The authority citation for Part 74 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 74.401 would be amended by revising the definition for *Network entity* to read as follows:

§ 74.431 Definitions.

* * * * *

Network-entity. For the purpose of this subpart, a network-entity is an organization which produces programs available for simultaneous transmission by 10 or more affiliated broadcast stations (or any number of cable systems with a total of at least 250,000 subscribers), and having distribution

facilities or circuits available to such affiliated stations or cable systems at least 12 hours each day.

* * * * *

3. Section 74.431 would be revised in its entirety to read as follows:

§ 74.431 Special rules applicable to remote pickup stations.

(a) Remote pickup mobile stations may be used for the transmission of material from the scene of events which occur outside the studio back to the studio or production center. The transmitted material shall be intended for the licensee's own use and may be available for the use of any other broadcast station or cable system.

(b) Remote pickup mobile or base stations may be used for communications related to production and technical support of the remote program. This includes cues, orders, dispatch instructions, frequency coordination, establishing microwave links, and operational communications. Operational communications are alerting tones and special signals of short duration used for telemetry or control.

(c) Remote pickup mobile or base stations may communicate with any other station licensed under this Subpart.

(d) Remote pickup mobile stations may be operated as a vehicular repeater to relay program material and communications between stations licensed under this Subpart.

(e) The output of hand-carried or pack-carried transmitter units is limited to 2.5 watts. The output of a vehicular repeater transmitter used as a talkback unit on an additional frequency is limited to 2.5 watts.

(f) Remote pickup base and mobile stations in Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands may be used for any purpose related to the programming or technical operation of a broadcasting station, except for transmission intended for direct reception by the general public.

(g) Remote pickup base or mobile stations may be operated under the provisions of § 74.24 except between 152.87 MHz and 153.35 MHz within 50 miles of the associated licensed broadcast facility without prior authority of the Commission. All conditions of § 74.24 apply to such operations, except that mobile and base stations may operate for an unlimited time and with a primary (co-equal) status. The licensee will be responsible to coordinate use of frequencies with any licensees in the area to prevent interference.

(h) In the event that normal aural studio to transmitter circuits are damaged, stations licensed under Subpart D may be used to provide temporary circuits for a period not exceeding 30 days without further authority from the Commission necessary to continue broadcasting.

(i) Remote pickup mobile or base stations may be used for activities associated with the Emergency Broadcast System and similar emergency survival communications systems. Drills and tests are also permitted on these stations, but the priority requirements of § 74.403(b) must be observed in such cases.

4. Section 74.432 would be amended by removing paragraphs (j), (k), and (l); and revising paragraphs (a), (b), (c), (d), (e), (f) and (g) to read as follows:

§ 74.432 Licensing requirements and procedures.

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM TV, international broadcast or low power TV station; network entity; or local cable system with at least 10,000 subscribers.

(b) Base stations may operate as automatic relay stations on the frequencies listed in § 74.402(a) (6), (7), and (8) under the provisions of § 74.436; however, one licensee may not operate such stations on more than two frequencies in a single area.

(c) Base stations may use voice communications between the studio and transmitter or points of any intercity relay system on frequencies in Groups I and J.

(d) Base stations may be authorized to establish standby circuits from places where official broadcasts may be made during times of emergency and circuits to interconnect an emergency survival communications system.

(e) In Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands, base stations may provide program circuits between the studio and transmitter or to relay programs between broadcasting stations. A base station may be operated unattended in accordance with the following:

(1) The station must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(2) The station must be equipped with circuits to prevent transmitter operation when no signal is received from the station which it is relaying.

(f) Remote pickup stations may use only those frequencies and bandwidths which are necessary for operation.

(g) The license shall be retained in the licensee's files at the address shown on the authorization and a copy shall be retained at each fixed transmitter location.

* * * * *

5. Section 74.434 would be revised in its entirety to read as follows:

§ 74.434 Remote control operation.

(a) A remote control system must provide adequate monitoring and control functions to permit proper operation of the station.

(b) A remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(c) A remote control system must prevent inadvertent transmitter operation caused by malfunctions in the circuits between the control point and transmitter.

6. Section 74.436 would be revised in its entirety to read as follows:

§ 74.436 Special requirements for automatic relay stations.

(a) An automatic relay station must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(b) An automatic relay station may accomplish retransmission of the incoming signals by either heterodyne frequency conversion or by modulating the transmitter with the demodulated incoming signals.

(c) An automatic relay station transmitter may relay the demodulated incoming signals from one or more receivers.

7. Section 74.465 would be revised in its entirety to read as follows:

§ 74.465 Frequency monitors and measurements.

The licensee of a remote pickup station or system shall provide the necessary means to assure that all operating frequencies are maintained within the allowed tolerances.

§ 74.467 [Removed]

8. Section 74.467 *Posting of licenses* would be removed in its entirety.

§ 74.802 [Amended]

9. Section 74.802 would be amended by changing the occurrence in paragraph (a) of "947–952 MHz" to read "944–952 MHz."

§ 74.831 [Amended]

10. Section 74.831 would be amended by changing the occurrence of "947–952 MHz" to read "944–952 MHz."

11. Section 74.832 would be amended by adding a new paragraph (j) to read as follows:

§ 74.832 Licensing requirements and procedures

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization.

* * * * *

§ 74.867 [Removed]

12. Section 74.867 *Posting of licenses* would be removed in its entirety.

[FR Doc. 85-11101 Filed 5-8-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-958)]

Exemption From Regulation; Shipments Subsequently Made Subject to a Contract Rate

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; correction.

SUMMARY: In the prior notice proposing to grant an exemption from the statutory provisions requiring railroads to charge only their published tariff rates, (50 FR 14122, April 10, 1985), 49 CFR 1039.19 inadvertently contained under paragraphs (c) (1)-(4). These paragraphs are deleted from the proposed rule.

ADDRESSES: An original and 15 copies of any comments, referring to Ex Parte No. 387 (Sub-No. 958), should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The text of the proposed revised rule follows as an appendix to this notice.

Additional information is contained in the Commission's full decision, served April 9, 1985. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect the quality of the human environment, energy conservation, or a substantial number of small entities.

Decided: May 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

1. The authority citation for 49 CFR Part 1039 would be revised to read as follows:

Authority: 5 U.S.C. 553, 49 U.S.C. 10321 and 10505.

2. The proposed § 1039.19 appearing at 49 FR 14123 is corrected to read as follows:

§ 1039.19 Transportation of shipments subsequently made subject to a contract rate

Railroad transportation is exempt from the provision of 49 U.S.C. 10761, 11902, 11903, and 11904 to the extent a railroad may apply a contract rate rather than an otherwise applicable tariff rate, and accordingly, pay reparations or waive undercharges, under the following conditions:

(a) A transportation contract under 49 U.S.C. 10713 has been filed with the Commission and has become effective;

(b) The shipment at issue falls within the terms of contract; and

(c) The shipment was transported before the contract could be implemented at the Commission, but after the parties agreed upon the rate to be charged, and they either (1) agreed to be bound by the contract or intended the movement(s) to be covered by it, or (2) signed the contract.

[FR Doc. 85-11315 Filed 5-8-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have submitted Amendment 1 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic for Secretarial review and are requesting comments from the public. Copies of the plan may be obtained from the addresses below.

DATE: Comments on the plan should be submitted on or before July 19, 1985.

ADDRESSES: Comments on the plan should be sent to Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Copies of the plan are available upon request from the: South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407-4699; and Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy Boulevard, Tampa, Florida 33609.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, Regional Plan Coordinator, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that each regional fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

This plan proposes measures to stop overfishing of the Gulf migratory group of king mackerel stock and to rebuild and maintain all stocks at a maximum sustainable yield level through flexible management procedures. On June 29, 1984, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this plan (49 FR 26809).

Regulations proposed by the Council and based on this plan are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-11304 Filed 5-6-85; 4:55 pm]

BILLING CODE 3510-22-M

50 CFR Part 669

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues notice that the Caribbean Fishery Management Council has submitted the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands for Secretarial review and is requesting comments from the public. Copies of the plan may be obtained at the addresses below.

DATE: Comments on the plan should be submitted on or before July 19, 1985.

ADDRESSES: All comments on the plan should be submitted to Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

Copies of the plan, in English or Spanish, are available upon request from the Caribbean Fishery Management Council. Copies of the English version may also be obtained from Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Miguel Rolon (Staff Scientist, Caribbean Fishery Management Council); 809–753–6910; or William Turner (Plan Coordinator, Southeast Regional Office), 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C 1801 *et seq.*), requires that each regional fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to aprove the plan.

This plan proposes measures for managing the domestic commercial and recreational fisheries for species in the shallow-water reef fishery of Puerto Rico and the U.S. Virgin Islands. On June 8, 1984, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this plan (49 FR 23915).

Regulations proposed by the Council and based on this plan are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 85–11305 Filed 5–8–85; 4:55 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 90
Thursday, May 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Impact; Wyoming County Airport Critical Area Treatment RC&D Measure Plan, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wyoming County Airport Critical Area Treatment RC&D Measure, Wyoming County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rolling N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment and is located at the Wyoming County Airport. The measure is designed to stabilize and revegetate 28 acres of land that has an average erosion rate of 43 tons per acre per year. The planned works of improvement include land smoothing, preparation of a seedbed, and revegetation of the 28-acre site.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

May 1, 1985.

[FR Doc. 85–11213 Filed 5–8–85; 8:45 am]

BILLING CODE 3410–16–M

Ferron Watershed, UT; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ferron Watershed, Emery County, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Holt, State Conservationist, Soil Conservation Service, P.O. Box 11350, Salt Lake City, UT 84147, Phone (CML) (801) 524–5050 (FTS) 588–5050.

SUPPLEMENTARY INFORMATION:

The environmental assessment of the federally assisted action prepared by the Bureau of Land Management (BLM) has been adopted by the SCS. In addition, an environmental assessment was prepared by SCS for the installation not covered in the BLM environmental assessment. The environmental assessment (EA) addresses the components of the recreation resource and pump facility that is being assisted by SCS. The EA's indicate that the projects will not cause significant local, regional, nor national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The plan addresses recreation development and a pump for water supply. The planned works of improvement include campsites for 20 family units, restroom facilities, a large group picnic shelter and leveling and grading of a beach area. The pump will supply water through a pipeline installed with non-federal funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt.

No Administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearing house review of Federal and federally assisted programs and projects is applicable)

Francis T. Holt,

State Conservationist.

April 16, 1985.

[FR Doc. 85–11233 Filed 5–8–85; 8:45 am]

BILLING CODE 3410–16–M

Summit Farm Irrigation RC&D Measure, Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Summit Farm Irrigation RC&D Measure, Iron County, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Holt, State Conservationist, Soil Conservation Service, Federal Building, 125 South State Street, P.O. Box 11350, Salt Lake City, Utah 84147, telephone 801-524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure plan concerns installation of a pressure sprinkler irrigation system. The planned works of improvement include installation of a sluice structure in conjunction with grate work on the existing diversion, burying approximately 47,520 feet of pipeline, 459 risers, 13 pressure relief valves, 15 air valves and one pressure reducing station, approximately 41,000 feet of on farm sprinkler lines and irrigation water management.

The Notice of a Finging of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt.

No administrative action on implementaion of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding State and local clearing house review of Federal and federally assisted programs and projects is applicable)

Francis T. Holt,

State Conservationist.

April 23, 1985.

[FR Doc. 85-11234 Filed 5-8-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Determinations of Aluminum-Clad Cold Rolled Steel Sheet; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to aluminum-clad cold rolled sheet, with an aluminum coating of 5 percent or more by volume per side in relation to nominal thickness. The dimensions for the steel in question range in thickness from .20mm or .0079 inch to .30mm or .0118 inch and in width from over 304.8mm or 12 inches to 500mm or 19.69 inches.

EFFECTIVE DATE: Comments must be submitted no later than 10 days after publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides "If the U.S. . . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product . . . an additional tonnage shall be allowed for such product . . ."

We have received a short supply request for the following product:

Aluminum-clad cold rolled sheet with an aluminum coating of 5 percent or more by volume per side in relation to nominal thickness. The dimensions of the steel in question range in thickness from .20mm or .0079 inch to .30mm or .0118 inch and in width from over 304.8mm or 12 inches to 500mm or 19.69 inches.

Any party interested in commenting on this request should send written comments as soon as possible and no later than 10 days following publication of this notice. Comments should focus on the economic factors involved in granting or denying the request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 6, 1985.

[FR Doc. 85-11266 Filed 5-8-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-274-002]

Carbon Steel Wire Rod From Trinidad and Tobago; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Trafiff Act, of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago. The review covers the period from January 1, 1984. Carbon steel wire rod from Trinidad and Tobago became duty-free on January 1, 1984. The Department is authorized to collect countervailing duties and duty-free merchandise from countries that have acceded to the General Agreement on Tariffs and Trade only if the International Trade Commission has found that imports of the merchandise

materially injure, threaten to materially injure, or materially retard the establishment of, a United States industry. Trinidad and Tobago is a signatory of that agreement.

There has been and will be no injury determination with respect to this order on wire rod from Trinidad and Tobago. Because the Department cannot assess countervailing duties on this merchandise, the Department intends to revoke the order. The revocation would apply to wire rod entered, or withdrawn from warehouse, for consumption on or after January 1, 1984, the date all of that wire rod became duty-free. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau of Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 480) a final affirmative countervailing duty determination and countervailing duty order on carbon steel wire rod from Trinidad and Tobago.

Trinidad and Tobago is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930 ("the Tariff Act"). Wire rod from Trinidad and Tobago was dutiable at the time the Department issued its final determination, December 27, 1983. Therefore, the Department completed the investigation under section 303 of the Tariff Act and issued a countervailing duty order without referring the case to the United States International Trade Commission ("the ITC") for an injury determination.

Effective January 1, 1984, wire rod from Trinidad and Tobago became duty-free as a result of the enactment of the Caribbean Basin Economic Recovery Act. Section 303(a)(2) of the Tariff Act requires that there be an affirmative injury determination before we can assess countervailing duties on any duty-free product exported from a country when that determination is required by an "international obligation" of the United States. Trinidad and Tobago is a signatory to the General Agreement on Tariffs and Trade ("GATT"), and GATT membership constitutes such an international obligation for the purpose of the countervailing duty law. Therefore, an injury determination is now required for the imposition of countervailing duties on wire rod from Trinidad and Tobago.

On November 27, 1984, the Department requested the ITC to conduct an injury review under section 751(b) of the Tariff Act of the merchandise subject to the order based on changed circumstances, or alternatively, to determine whether it had already made an injury determination that satisfied section 303(a)(2) of the Tariff Act. (The ITC had made an affirmative injury determination on wire rod from Trinidad and Tobago (48 FR 51178, November 7, 1983) in conjunction with the Department's antidumping investigation of the product.)

On February 11, 1985, the ITC replied that it is without authority to conduct a "review investigation" under section 751(b) because it had not previously made an injury determination under section 701. Further, the ITC stated that it did not believe that an antidumping injury determination can substitute for a countervailing duty injury determination.

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod from Trinidad and Tobago. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1984.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, absent an affirmative injury determination, we lack legal authority to impose countervailing duties on carbon steel wire rod from Trinidad and Tobago. Further, we preliminarily determine that the lack of an affirmative injury determination on wire rod from Trinidad and Tobago provides a reasonable basis for revocation of the order. In light of the date that the wire rod became duty-free, January 1, 1984, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on this product effective January 1, 1984, the date that the merchandise became duty-free. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of wire rod from Trinidad and Tobago which were entered, or withdrawn from warehouse, for consumption prior to January 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication of this notice or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: May 2, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-11264 Filed 5-8-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: BBN Laboratories Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name BBN Laboratories Incorporated (P308B).

b. Address 10 Moulton Street, Cambridge, Massachusetts 02238.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Gray Whale (*Eschrichtius robustus*), 100.

4. Type of Take: Potential harassment while presenting acoustic stimuli to migrating gray whales in their natural environment in order to determine whether or not man-made underwater sound impacts their feeding behavior in any measurable way.

5. Location of Activity: Alaska Peninsula area of the Eastern Bering Sea or near St. Lawrence Island in the Northern Bering Sea.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-11276 Filed 5-8-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Mr. Michael Hunt

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Mr. Michael Hunt (P358).

b. Address: Box 22, Department of Human Sciences, University of Houston-Clear Lake, Houston, TX 77058-1058.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Turiops truncatus*) Unspecified Number.

4. Type of Take: Potential harassment while observing, making sound recording, and recording data in order to analyze the social structure and behavior patterns of the dolphins in the wild.

5. Location of Activity: Gulf of Mexico and off the coast of Galveston, Texas.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 11, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-11270 Filed 5-8-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limit for Certain Apparel Produced or Manufactured in Taiwan

May 6, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1985. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

A review of the import data for man-made fiber headwear in Category 659pt., produced or manufactured in Taiwan and exported during 1982 and 1983, has revealed that the weight for imports under TSUSA items 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560 and 703.1000 was understated on the entry documents during those two years by a total of 827,155 pounds. No mutually satisfactory solution was reached on this issue during consultations held April 16-22. A decision has been reached, therefore, in accordance with the terms of the bilateral agreement of November 18, 1982, as amended, concerning certain cotton, wool and man-made fiber textile products from Taiwan, to charge 750,064 pounds to the restraint limit established for this category during 1985 in accordance with Article 8(b) of the agreement. Charges amounting to 35,457 pounds and 41,634 pounds, respectively, will be made to the levels established for the category during 1983 and 1984. Should a different solution be reached in consultations scheduled on May 20, 1985, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR

13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 6, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs.

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the agreement of December 1, 1982, as amended, concerning imports of cotton, wool and manmade fiber textiles and textile products from Taiwan, I request that, effective on June 1, 1985, you charge 750,064 pounds to the restraint limit established in the directive of December 21, 1984 for Category 659pt. (only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560 and 703.1000), produced or manufactured in Taiwan and exported during 1985. Charges to the 1983 limit for this category should be 35,457 pounds and for 1984, 41,634 pounds.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11265 Filed 5-8-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Twenty-Year U.S. Treasury Strips, Ten-Year U.S. Treasury Strips and Five-Year U.S. Treasury Strips Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in twenty-year U.S. Treasury strips, ten-year U.S. Treasury strips and five-year U.S. Treasury strips. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, making available the proposed contracts for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 8, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the CME U.S. Treasury strips futures contracts.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffee, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed CME U.S. Treasury strips futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of its applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CME in support of its applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by July 8, 1985.

Issued in Washington, D.C., on May 6, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-11235 Filed 5-8-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

United States Army Medical Research and Development Advisory Committee, Medical Defense Against Chemical Agents; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, sections 1-15), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents.

Date of meeting: 29 May 1985.

Time and place: 1200 hours, Kossiakoff Conference Center, Johns Hopkins University Applied Physics Laboratory, Columbia, Maryland.

Proposed Agenda: In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1-15 of Appendix, the meeting will be closed to the public from 1200-1300 hours on 29 May for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

COL Richard Lindstrom, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010 (301/671-2833) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,

Colonel, MSC, Deputy Commander for Science and Technology.

[FR Doc. 85-11317 Filed 5-8-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Meeting Date Change

The following meeting of the Training Technology Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts which was originally announced in the **Federal Register** issue of Monday, 29 April 1985 (50 FR 16733), FR Doc #85-10456, has been changed as follows:

Dates of Meeting: Wednesday & Thursday, 22 & 23 May 1985 (instead of Tuesday, 14 May 1985).

Note.—The meeting is at GE/UCOFT (General Electric/Unit Conduct of Fire Trainer) in Daytona, Florida

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 85-11353 Filed 5-7-85; 11:48 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Application Notice for Fiscal Year 1985.

SUMMARY: Applications are invited for new grants under the Emergency Immigrant Education Program.

Authority for this program is contained in the Emergency Immigrant Education Act, Title VI of the Education Amendments of 1984, Pub. L. 98-511.

(20 U.S.C. 4101-4108)

The Secretary makes awards to State educational agencies (SEAs) described in section 606 of Pub. L. 98-511.

This program provides financial assistance to SEAs for educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

Closing date for transmittal of applications: An applicant SEA must mail or hand deliver its application by June 26, 1985.

Applications delivered by mail: An applicant SEA that sends its application by mail must address its application to the U.S. Department of Education, Application Control Center, Attention: 84.162, Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(1) A legible dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (a) A private metered postmark; (b) a mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. The Secretary notifies a late applicant that its application will not be considered.

Applications delivered by hand: An applicant SEA that hand delivers its application must take the application to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

The Application Control Center will not accept an application that is hand delivered after 4:30 p.m. on the closing date.

Program information: Application requirements, eligible activities, definitions governing the count of eligible children, and other information on the program may be found in the proposed regulations for the Emergency Immigrant Education Program published in this issue of the Federal Register.

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158-29168) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is proposed to be subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why these views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372.

Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Emergency Immigrant Education Program is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice, an applicant SEA should contact the appropriate State single point of contact to see if this program will be included under its State's review process and to comply with the State's process under Executive Order 12372. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process, or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 26, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.162) 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: There is authorized $30 million for Fiscal Year 1985 awards to SEAs.

The Secretary estimates that these funds will support 57 State programs.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicaton forms: The Office of Bilingual Education and Minority Languages Affairs will mail application forms and instructions to all SEAs. A copy of the application package may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW.,

(Room 421, Reporter's Building) Washington, D.C. 20202.

An applicant SEA must prepare and submit its application in accordance with the forms and instructions included in the program information package. However, the program information package is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations governing this program.

(Approved by OMB under control number 1885–0507)

Applicable regulations: Regulations applicable to this program include the following:

(1) Regulations governing the Emergency Immigrant Education Program as proposed to be codified in 34 CFR Part 581. (Applications are being accepted based on the notice of proposed rulemaking for the Emergency Immigrant Education Program which was published in the **Federal Register** on May 6, 1985 (50 FR 19146). If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(2) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 76, 77, 78, and 79.

Further information: For further information contact Mr. Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 732–1842.

(20 U.S.C. 4101–4108)

(Catalog of Federal Domestic Assistance No. 84.162: Emergency Immigrant Education Program)

Dated: May 6, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–11277 Filed 5–8–85; 8:45 am]

BILLING CODE 4001-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, eligibility for assistance under the State Teams Geothermal Research Program has been determined to be restricted to the cognizant agencies of the following states: State of Alaska, State of Idaho, State of Montana, State of New Mexico, State of North Dakota, State of Oregon, State of South Dakota, State of Utah, State of Washington, and State of Wyoming.

Procurement Request Numbers

07–85ID12549.501, 07–85ID12543.501, 07–85ID12601.000, 07–85ID12604.000, 07–85ID12526.501, 07–85ID12524.501, 07–85ID12527.501, 07–85ID12471.501, 07–85ID12478.501, 07–85ID12602.00, 07–85ID12603.00

Program Scope

The Department of Energy is requesting financial assistance applications to support geothermal resource assessment and geothermal technology transfer within the states. The effort includes the collecting and analyzing of geothermal resource data, mapping technology transfer activities, and investigation and analysis of institutional barriers to geothermal development. The emphasis will be on higher temperature geothermal systems.

The work will be a continuation of previous efforts. Eligibility has been determined on the basis of each state's potential for high temperature geothermal systems and the results of previous geothermal assessment and technology transfer efforts.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401, ATTN: Elizabeth M. Hyster, (208) 526–1229.

Issued at Idaho Falls, Idaho on April 30, 1985.

J.F. Marmo,

Director, Contracts Management Division.

[FR Doc. 85–11312 Filed 5–8–85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Proposed Form EIA–846, Manufacturing Energy Consumption Survey (MECS); Rescheduling and Cancellation of Hearings

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, Department of Energy.

ACTION: Rescheduling of Washington, DC hearing of May 6, 1985, and cancellation of public hearing in Denver, Colorado, on May 17, 1985, concerning the questionnaire for the MECS.

SUMMARY: The Energy Information Administration (EIA) solicited comments concerning the questionnaire for the MECS in the **Federal Register** on March 21, 1985, (50 FR 11486) and announced plans for public hearings in Denver, Colorado, and Washington, D.C. In a subsequent notice (50 FR 15606, April 19, 1985), these hearings were rescheduled for May 6, 1985, for Washington, D.C. and May 9, 1985, for Denver, Colorado.

Notice is hereby given that the Washington, D.C. hearing has been rescheduled again and will be held on May 20, 1985, and the Denver, Colorado, public hearing has been cancelled. Written comments are now due by May 20, 1985. The location and time for the Washington, D.C. public hearing is unchanged from the original notice (50 FR 11486, March 21, 1985).

FOR FURTHER INFORMATION CONTACT: John L. Preston, Energy End Use Division, Office of Energy Markets and End Use (202) 252–1128.

Issued in Washington, D.C. May 7, 1985.

Dr. H.A. Merklein,

Administrator, Energy Information Administration.

[FR Doc. 85–11473 Filed 5–8–85; 11:29 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF85–349–000]

Crozer-Chester Medical Center; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 26, 1985.

On April 15, 1985, Crozer-Chester Medical Center, (Applicant) of 15th Street and Upland Avenue, Upland Chester, Pennsylvania 19013–3995, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Crozer-Chester Medical Center, Upland, Pennsylvania. The facility will consist of a dual-fuel engine, with heat recovery boiler. Steam produced through a heat recovery boiler will be used in the hospital for thermal energy and air conditioning purposes, and the hot water recovered through a heat

exchanger from the engine will be used in the laundry. The primary energy source for the facility will be natural gas (No. 2 fuel oil for backup). The electric poser production capacity will be 1.5 MW. The installation of the facility will begin about October 1, 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determinng the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 85-11198 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-405-000]

McCommons Oil Company; Notice of Abandonment Application

April 29, 1985.

Take notice that on April 24, 1985, McCommons Oil Company (MOC) and its joint venture associates of 1700 Commerce Place, Suite 1200, Dallas, Texas 75201, filed an application for abandonment.

MOC states that Natural Gas Pipeline Company of America (Natural) was notified by a January 4, 1984, letter that MOC was no longer able to economically produce gas from any of the leases dedicated to the contract. MOC further states this letter followed several years of effort by MOC to get Natural to honor the redetermination clause in their 1958 contract and served as formal notification that Natural would have to compress all gas produced from the leases involved. MOC states Articles VII, Paragraph 4, option (c) of the subject contract stipulates that Natural either install and operate its own compression equipment if options (a) and (b) were declined by Seller, or within one year release the wells and the acreage assigned to them as provided in option (d).

MOC further states that Mr. Garland C. Campbell, Natural's contract administrator, informed MOC on February 8, 1984 that Natural would support MOC in getting an abandonment of interstate dedication should Natural not be able to justify furnishing compression as required by the contract. MOC states that on January 17, 1985, Natural sealed the meters on three of the four wells then producing under the contract. MOC states these three wells, #1 J.B. Massey, #1 Q.C. Massey and #1 T.M. Wimbley, are incapable of delivering into Natural's gathering system without compression. MOC states that the fourth well, #1 Montgomery Heirs Unit, is capable of delivering a small volume of gas without compression and Natural continues to take gas from the well; however, the volumes delivered are very small and the well is barely economic, so that compression is needed to assure maintaining the leases. MOC states Natural made no effort to notify MOC of its shut-in order on the three wells it sealed and, as of this date it has not released the affected acreage from the contract as required by Article VII.

MOC states that Natural has prevented MOC through its farmee, London and Waggoner Petroleum, from developing any of the acreage in questions and the Natural is now refusing to take any gas from three of the producing wells, while it continues to take gas from adjoining and offsetting properties and has just recently contracted at much higher prices to buy gas previously dedicated to Lone Star Gas Company from wells offsetting MOC's acreage. MOC further states Natural has, *de facto*, abandoned this contract and is now contractually required to release the acreage dedicated to the contract. MOC states that since Natural must release the acreage there is no basis for maintaining the dedication to interstate commerce. MOC requests that it be granted a complete abandonment of service for all acreage dedicated to MOC's August 15, 1958 contract with Natural.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 15, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11199 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-437-000]

Mojave Pipeline Co; Notice of Application

May 2, 1985.

Take notice that on April 15, 1985, Mojave Pipeline Company (Applicant), P.O. Box, Houston, Texas 77001, filed in Docket No. CP85-437-000, an application pursuant to Section 7(c) of the natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities (Mojave Pipeline Project) and authorizing the transportation of an estimated average daily quantity of 600,000 Mcf of natural gas on behalf of contract shippers who would use such gas in enhanced oil recovery (EOR) and associated cogeneration projects in heavy oil fields in the Kern County area of California, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a California general partnership, having its principal place of business located in Houston, Texas. it is explained that the Applicant partners are El Paso Mojave Pipeline Co., an affiliate of El Paso Natural Gas Company; HNG Mojave, Inc., an affiliate of Houston Natural Gas Corporation; and Pacific Interstate Mojave Company and that each partner has a one-third ownership interest in Mojave Pipeline Company. It is indicated that the partnership agreement provides that the purpose of the partnership is to transport natural gas for end us in connection with EOR and associated cogeneration projects in heavy oil fields in California. Applicant also states that the agreement reserves the right for each partner unilaterally to determine its business policies in any other area of activity, which contemplates competition among the partners and with third parties, *inter alia*, in the purchase, gathering and sale of natural gas to and on behalf of California EOR users, and the transportation of such gas to the points where the Mojave Pipeline Project would interconnect with

upstream pipelines near Topock, Arizona; in the sale and transportation of gas within California to non-EOR users; and in the sale and transportation of natural gas to or for EOR users in California.

Applicant proposes to construct the Mojave Pipeline Project in three segments. Applicant states that the first segment would consist of approximately 17 miles of 24-inch diameter pipeline (Mojave Transfer Line) extending from a tap point on an existing 30-inch pipeline owned by Transwestern Pipeline Company (Transwestern) in Mojave County, Arizona, to a proposed compressor station Topock, located near Topock, Arizona, and of interconnection facilities from a tap point on an existing pipeline owned by El Paso Natural Gas Company (El Paso) immediately south of the proposed Topock compressor station to connection into such compressor station. Applicant further states that the second segment would consist of approximately 322.5 miles of 36-inch diameter pipeline (Mojave Mainline) commencing at the proposed Topock compressor station, crossing the Colorado River, and extending to the Bakersfield area in Kern County, California. The third segment of the Mojave Pipeline Project would consist of approximately 44 miles of 20-inch diameter pipeline (Kern Lateral) constructed wholly within Kern County, it is explained. In addition, Applicant proposes to construct and operate a compressor station with installed capacity of 22,500 hosepower at the interconnection of the Majave Transfer Line and the Mojave Mainline. The design capacity of the proposed facilities would be approximately 600,000 Mcf of natural gas per day it is asserted.

Authorization is requested for transportation of an estimated average daily quantity of 600,000 Mcf of natural gas, on a contract basis, from the interconnections of the Mojave Pipeline with existing Transwestern and El Paso lines near Topock, Arizona, to heavy oil fields in the Kern County area of central California. Applicant states that transportation would be provided for contract shippers which have acquired title to the gas at or upstream of Topock and which would use such gas in connection with EOR projects and associated cogeneration projects. Applicant maintains that it would not buy or sell any of the natural gas transported by the Mojave Pipeline Project. Applicant states that procedures for the curtailment of transportation volumes that could occur as a result of pipeline capacity limitations, needed alterations or repairs to the pipeline, or *force majeure* would be established in the service agreements executed with shippers.

The estimated total capital cost of the Majave Pipeline Project in 1985 dollars is approximately $320 million. Applicant states that it intends to fund the construction of the proposed facilities using a financing plan which would permit an approximate 70/30 debt-to-equity ratio. Applicant explains the debt portion of capital would be secured by service agreements negotiated with the contract shippers and that the equity portion would be contributed in equal shares by the three partners. Applicant adds that it looks only to the success of the project for return of and return on the Mojave partners' investment. Applicant further states that the Majave partners' current and indirect customers and their various affiliated regulated transmission and distribution operations would not be exposed to the debt or equity risks of the Mojave project as a result of its financing proposal.

Applicant proposes the following three part rate formula: The first component, the monthly fixed charge, would be paid by shippers regardless of their actual use of the Mojave Pipeline. The monthly fixed charge is designed, it is asserted, to recover all operating and maintenance expenses, all taxes other than income taxes, and repayment of, and interest on, debt. It is asserted that the second component, the transportation charge, is designed to recover all return of and on equity and income taxes. Applicant proposes that the Commission permit it to negotiate transportation charges with each of its shipper customers. It states that this negotiated rate concept would provide Applicant with flexibility to assure market-oriented services and deliveries by permitting it to "levelize," to the extent necessary, certain components of its cost of service, within the parameters of those obligations contained in its debt instruments. The third component, the overrun charge, would serve as a surcharge on quantities of gas transported above the contract maximum, it is stated.

Applicant avers that the proposed financing and rate design are intended to provide it with the flexibility necessary to meet the following criteria: (1) provide lenders with adequate security for the debt portion of capital and provide Applicant with recoupment of operating and maintenance expenses on a current basis (the monthly fixed charge); and (2) provide the shippers with competitively priced transportation services to assure a burner-tip price that is economically competitive with alternative fuels while also providing Applicant with the opportunity to earn a return on investment that reflects the true market value of the project to the shippers (the transportation charge).

Applicant states that no EOR user has, to date, executed a transportation agreement with Applicant, but adds that surveys of EOR users in central California indicate that approximately 18 have expressed a desire to use natural gas for EOR steam injection to produce heavy oil. These potential consumers are said to be currently burning oil for EOR use. Applicant further states that EOR users are attached to natural gas because of the environmental constraints on the burning of additional crude oil and the lower capital, operational, and maintenance costs associated with gas usage. Applicant estimates that EOR and associated congeneration requirements in the Kern County area would equal 770,000 Mcf of natural gas per day in 1986 and increase to 1,019,000 Mcf of natural gas per day in 1990.

Applicant states that its proposed pipeline is designed to serve the needs of this EOR market. It further claims that its strategic location and that of its partners provide access, through the area of transportation and exchange agreements, to most of the producing regions of the country, as well as to sources of gas imports from Canada and Mexico. Applicant adds that the financial, rate and regulatory structure of Applicant are designed to assure EOR users of reliable service at economical rates while further promoting the Commission's goal of increasing gas competition in new market areas.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11202 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-12-000]

Neches Pipeline System; Notice of Petition for Adjustment

May 2, 1985.

On January 2, 1985, Neches Pipeline System (Neches) filed with the Federal Energy Regulatory Commission a Petition For Adjustment under Section 502(c) of the Natural Gas Policy Act (NGPA) seeking relief from the Commission's regulations governing rates for the transportation of gas by intrastate pipelines as set forth in 18 CFR § 284.123(b)(2). Neches proposes to use an intrastate industrial transportation rate of 15 cents per MMBtu, which is on file with the Texas Railroad Commission, for transportation authorized by NGPA Section 311. Neches' petition is on file with the Commission and is available for public inspection.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding shall file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11200 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-435-000]

Northwest Central Pipeline Corp; Notice of Request Under Blanket Authorization

May 2, 1985.

Take notice that on April 15, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-435-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the Cities Service Oil and Gas Corporation (Cities) under the certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central proposes to transport through June 30, 1985, up to 3.5 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Cities. Northwest Central states that Cities has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady and Lincoln Counties, Oklahoma, and in Johnson, Cowley and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above mentioned counties and redeliver the gas for Scissortail on behalf of Cities at an existing interconnection in Reno County, Kansas.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Any 67 person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11203 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-436-000]

Northwest Central Pipeline Corp.; Notice of Request Under Blanket Authorization

May 2, 1985.

Take notice that on April 15, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-436-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the B.F. Goodrich Company (Goodrich), under the certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central proposes to transport through June 30, 1985, up to 5 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Goodrich. Northwest Central states that Goodrich has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady and Lincoln Counties, Oklahoma, and in Johnson, Cowley and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above mentioned counties and redeliver the gas to The Gas Service Company in Ottawa County, Oklahoma, for ultimate redelivery to Goodrich's plant in Miami, Oklahoma, for use as process steam and heat.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205

of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11204 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-167-001]

Trunkline Gas Company; Application Amendment

May 2, 1985.

Take notice that on April 15, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-167-001 an amendment to its pending application filed in Docket No. CP85-167-000 pursuant to Section 7(c) of the Natural Gas Act for authorization to transport natural gas on behalf of Louisiana Industrial Gas Supply System (LIGS), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Trunkline's application in Docket No. CP85-167-000 requests authorization to implement an agreement dated July 12, 1984, between Trunkline and LIGS. By the instant amendment Trunkline seeks authority to operate the point of redelivery of transportation gas in St. Mary Parish, Louisiana. It is asserted that this facility was constructed as a non-jurisdictional facility pursuant to Part 284 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11205 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No ER85-300-000]

Vermont Yankee Nuclear Power Corp.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motions for Rejection and Summary Disposition, Requiring Additional Filing, and Establishing Hearing Procedures

Issued: May 1, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Charles G. Stalon.

On February 13, 1985, as completed on March 13, 1985,[1] Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing a proposed two-step increase in its rates for service to its nine sponsoring utilities [2] which purchase Vermont Yankee's entire output under a formulary rate.[3] The proposed full increase would increase revenues by approximately $11.7 million (8.8%), based on a calendar year 1985 test period. This increase reflects: (1) an increase in the rate of return on common equity to 18%; and (2) a shortening of the remaining depreciable lives of certain components of property and plant in service. The proposed "interim" or first step rates, which reflect an increase in the rate of return on common equity to 15.5%, would increase revenues by approximately $6.2 million (4.7%).[4] In addition, Vermont Yankee's filing would amend its power contracts with its customers to reflect the Commission's current regulations regarding the inclusion of construction work in progress (CWIP) in rate base and treatment of deferred income taxes. As noted, the company states that it intends to include 50% of CWIP in its rates as of January 1, 1986. Vermont Yankee requests an effective date of April 13, 1985 for the full proposed increase. However, in the event that the full increase is suspended for five months, Vermont Yankee requests that its first step rate proposals be suspended for no more than one day. Finally, Vermont Yankee states that each of its sponsors has consented to the proposed rate increase.

[1] The company amended its filing at the request of the Commission's advisory staff to correct numerous mathematical errors and to revise and include certain cost support statements.

[2] Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power Corporation, the Connecticut Light & Power Company, Central Maine Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, Montaup Electric Company, and Cambridge Electric Light Company.

[3] *See* Attachment for rate schedule designations.

[4] In accordance with its February 1, 1968 power contract, Vermont Yankee has, in the past, included all of its CWIP in rate base. The commpany states that it has elected not to include any CWIP in its rates as of January 1, 1985, in order to moderate the cost increases that its wholesale customers will incur as a result of a lengthy shut-down of the reactor (for replacement of recirculation piping) during the fall of 1985. Therefore, Vermont Yankee's present revenues reflect the exclusion of all CWIP from rate base. Vermont Yankee proposes to include up to 50% of its CWIP in rate base as of January 1, 1986.

Notice of the filing was published in the Federal Register,[5] with comments due on or before March 8, 1985. The Vermont Department of Public Service (Vermont Commission) filed a timely notice of intervention, which raises no substantive issues. Additionally, timely motions to intervene were filed by the Attorney General of the Commonwealth of Massachusetts (Massachusetts Attorney General) and a group of municipal customers together with one electric cooperative (Cities).[6]

In support of his request for suspension, the Massachusetts Attorney General claims that Vermont Yankee has failed to provide adequate support for its requested return on equity and for the other components of its requested rate increase, including the depreciation rates.

The Cities request that the Commission reject Vermont Yankee's filing. In the alternative, the Cities request issuance of a deficiency letter, summary disposition, and a five month suspension of the proposed increase. In support, the Cities cite mistakes, omissions, and discrepancies in Vermont Yankee's filing. The Cities allege errors in the company's calculation of rate base, cash working capital, and working capital. The Cities further allege inconsistencies in stating the components of the capital structure and assert that Vermont Yankee has failed to provide a statement showing the basis for computing its allowance for funds used during construction (AFUDC), even though testimony submitted by the company states that it

[5] 50 FR 8655 (1985).

[6] The Cities filed an erratum and supplement to their motion to intervene on March 12, 1985. The Cities filed another supplement in response to Vermont Yankee's amended filing on March 26, 1985. We shall consider both of these supplemental pleadings on their merits.

will charge AFUDC during the test year. Finally, the Cities allege that Vermont Yankee has failed to submit: (1) complete Period II cost statements and workpapers; (2) Statement BM to support its carrying charges on CWIP; and (3) sufficient information to assess the revenue impact of the first step rate proposal and the effect of introducing CWIP in rate base in 1986.

If the Commission does not order rejection or issue a deficiency letter with respect to Vermont Yankee's filing, the Cities move for summary disposition of Vermont Yankee's request for authorization to reflect CWIP in its monthly charges as of January 1, 1986, on the grounds that the company has not submitted Statement BM, requested waiver of that requirement, or shown the revenue impact of reintroducing CWIP in rates in 1986. The Cities also request that Vermont Yankee's first step rate proposal be summarily rejected, because no separate cost of service study was filed to support those rates. In support of its request for a five month suspension, the Cities raise various cost of service issues.[7]

On April 12, 1985, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) jointly filed a motion to intervene out of time, stating that they are direct purchasers of Vermont Yankee's output.

On March 25, and April 4, 1985, Vermont Yankee filed timely responses to the Cities' original and supplemental pleadings. While not opposing the Cities' motion to intervene, Vermont Yankee denies that rejection, summary disposition, or a five month suspension is warranted. On March 26, 1985, Vermont Yankee filed a timely response to the Massachusetts Attorney General's pleading, stating that the issues raised have been addressed in its response to the Cities' pleadings.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notice and motions to intervene serve to make the Vermont Commission, the Massachusetts Attorney General, and the Cities parties to this proceeding In addition, we find that good cause exists to grant the late intervention of Central Vermont and Green Mountain, given their direct interest in the outcome of this case, the early stage of this proceeding, and our belief that no undue prejudice or delay should result.

Notwithstanding the Cities' challenge to the sufficiency of the cost support supplied by the company, we find that the submittal, as completed on March 13, 1985, minimally satisfies the Commission's filing requirements and is not patently deficient. In this regard, we note that Vermont Yankee's amended filing includes a Statement AO to show the computation of the AFUDC rate for the test period, as well as other revised cost statements to clarify certain discrepancies presented by its original filing. As to the company's failure to provide full Period II data, we reaffirm our finding in *Maine Yankee Atomic Power Company*, 29 FERC ¶ 61,055 (1984), that Period II data can be omitted from a company's rate filing, where all of its wholesale customers have consented to the rate increase, even though purchasers under assigned contract entitlements have objected to the proposed increase. *See* 18 CFR § 35.13(d)(2)(ii)(B). Further, we believe that the company has voluntarily filed such Period II cost support as would be applicable to service from a single asset company whose entire output is sold at wholesale under a formulary rate. Therefore, we shall deny the Cities' motion to reject.

We shall also deny the Cities' requests for summary disposition regarding Vermont Yankee's request to reflect CWIP in its monthly charges and the company's first step rate proposal. As noted, Vermont Yankee has now amended its contracts to provide for inclusion of up to 50% of CWIP in rates pursuant to section 35.26 of the Commission's regulations and has proposed to implement this provision as of January 1, 1986. Vermont Yankee has submitted the contract revisions in order to conform the present contracts to reflect current Commission policy. Although we believe that it is desirable to have such amendments on file, Vermont Yankee is advised that it will be required to make a timely filing, including all necessary cost support and a Statement BM or a request for waiver of the requirement to file any portion of that statement, in order to implement its contract amendment providing for CWIP charges. Regarding the company's first step rate proposal, we note that the first step rate differs from the full rate proposal only to the extent that the rate increase in the first step is smaller. Thus, separate cost of service data is not required. However, we shall direct Vermont Yankee to submit a specific contract amendment to reflect the 15.5% return on common equity contained in its first step rate proposal.

Our preliminary review of Vermont Yankee's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Vermont Yankee's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, where our preliminary review indicates that proposed rates may be unjust and unreasonable but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed first step rate increase may not yield substantially excessive revenues. Accordingly, we shall suspend the first step rates for one day from 60 days after filing, to become effective on May 14, 1985, subject to refund. In contrast, our preliminary review indicates that the full rate increase may produce substantially excessive revenues. Accordingly, we shall suspend the full rates for five months from 60 days after filing, to become effective on October 13, 1985, subject to refund.

The Commission orders:

(A) Central Vermont and Green Mountain's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The Cities' motion to reject Vermont Yankee's filing is hereby denied.

(C) The Cities' requests for summary disposition are hereby denied.

(D) Vermont Yankee is hereby directed to submit a contract amendment which specifies the 15.5% return on common equity applicable to its proposed first step rates. In addition, Vermont Yankee shall make a timely filing at such time as it seeks to implement its contract amendments to include up to 50% of CWIP in rate base pursuant to section 35.26 of the Commission's regulations.

(E) Vermont Yankee's proposed rates are hereby accepted for filing; the first step rates are suspended for one day from 60 days after completion of the filing, to become effective on May 14, 1985, subject to refund; the full rates are suspended for five months from 60 days after filing, to become effective on October 13, 1985, subject to refund.

(F) Pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal

[7] The issues raised include: (1) the claimed return on common equity; (2) the proposed increase in depreciation rates; and (3) the proposed working capital allowance.

Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Vermont Yankee's rates.

(G) The Commisson staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(H) A presiding administative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provide in the Commisson's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

VERMONT YANKEE NUCLEAR POWER CORPORATION RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-300-000]

Designation	Description
(1) Supplement No 6 to Rate Schedule FPC No 1	Interim rate proposal at 15.5 percent on common equity
(2) Supplement No. 7 to Rate Scheoule FPC No No. 1 (Supersedes Supplement No 6)	Amendment No. 3 (Full rate proposal at 18.0 percent on common equity)
(3) Supplement No. 8 to Rate Schedule FPC No. 1	Amendment No. 4 (Section 35.25 and 35.26 language)

[FR Doc. 85-11201 Filed 5-8-85: 8:45 am]

BILLING CODE 6717-01-M

A-76 Commercial Activity Cost Comparison Studies Schedule

May 6, 1985.

In accordance with Section C.1.b. of Chapter 1 of the Supplement (August 1983) to OMB Circular A-76, the Federal Energy Regulatory Commission proposes to initiate cost comparison studies for the following activities on the dates indicated to determine if the work can be better performed in-house or by contract. The three activities and the current study initiation dates are (1) Public Information Services, June 3, 1985; (2) Central Files, June 3, 1985; and (3) Dockets and Registry, June 3, 1985. All cost comparison studies will be performed at 941 N. Capitol St., Washington, D.C. Any firm or contractor having the capability to perform any of the above work is invited to submit a statement of interest within 30 days of this notice to: Anthony F. Toronto, Director, Office of Program Management, Room 3300, 941 N. Capitol St., NE, Washington, D.C. 20426. Information should include a description of the firm's or contractor's facilities, personnel, equipment, management, and experience in performing work of this or a similar nature. This is not a solicitation for offers. The governement does not intend to award a contract on the basis of inquiries and information received. No acknowledgement of receipt will be made.

Anthony F. Toronto,

Director, Office of Program Management.

[FR Doc. 85-11285 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST85-67[illegible]-000 et al.]

ANR Pipeline Co. et al.; Self-Implementing Transactions

May 3, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 189 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before May 24, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.*	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date**	Transportation Rate (¢/MMBtu)
ST85-679	ANR Pipeline Co	Peoples Gas Light and Coke Co	[illegible]	[illegible]		
ST85-680	ANR Pipeline Co	LGS Intrastate, Inc	3-01-85	B		
ST85-681	Texas Gas Transmission Corp	Dayton Power and Light Co	3-04-85	[illegible]		
ST85-682	Transwestern Pipleine Co	Gas Co. of Nex Mexico	3-04-85	B		
ST85-683	Northern Natural Gas Co	Marathon Oil Co	2-25-85	F (157)		
ST85-684	Houston Pipe Line Co	Long Island Lighting Co	3-04-85	C		
ST85-685	Houston Pipe Line Co	Consolidated Edison Co. of NY, Inc	3-04-85	C		
ST85-686	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	3-04-85	[illegible]		
ST85-687	National Fuel Gas Supply Corp	Chautauqua Hardware Corp	3-04-85	F (157)		
ST85-688	Tennessee Gas Pipeline Co	ANR Pipeline Co	3-05-85	[illegible]		
ST85-689	Northwest Central Pipeline Corp	Pester Refining Co	3-04-85	F (157)		
ST85-690	ANR Pipeline Co	Orbit Gas Co	3-04-85	[illegible]		
ST85-691	Columbia Gas Transmission Corp	George W. Bollman and Co., Inc.	3-06-85	F (157)		
ST85-692	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	3-06-85	[illegible]		
ST85-693	Columbia Gas Transmission Corp	Briggs, Div. of the Celotex Corp	3-06-85	F (157)		
ST85-694	United Gas Pipe Line Co	Armco, Inc	3-06-85	F (157)		
ST85-695	United Gas Pipe Line Co	Haywood Co	3-06-85	F (157)		
ST85-696	Trunkline Gas Co	Quivira Gas Co	3-06-85	[illegible]		
ST85-697	Panhandle Eastern Piple Line Co	National By-Products, Inc	3-06-85	F (157)		
ST85-698	Trunkline Gas Co	Texas Gas Transmission Corp	3-06-85	G		
ST85-699	Northwest Central Pipeline Corp	B. F. Goodrich Co	3-06-85	F (157)		
ST85-700	Northwest Central Pipeline Corp	Spindletop Gas Distribution System	3-09-85	B		
ST85-701	Producer's Gas Co	Consolidated Edison Co. of NY, Inc	3-06-85	D		
ST85-702	Panhandle Eastern Pipe Line Co	Caterpillar Tractor Co	3-07-85	F (157)		
ST85-703	Transcontinental Gas Pipe Line Corp	City of Shelby, NC	3-07-85	[illegible]		
ST85-704	Northern Natural Gas Co	El Paso Hydrocarbons Co	3-06-85	[illegible]		
ST85-705	Northern Natural Gas Co	Transcontinental Gas Pipe Line Co	3-06-85	[illegible]		
ST85-706	Nothern Natural Gas Co	Union Carbide Co	3-07-85	F (157)		
ST85-707	Acadian Gas Pipeline System	Natural Gas Pipeline Co. of America	3-08-85	C		
ST85-708	Gulf South Pipeline Co	Philadelphia Gas Works	3-08-85	G (HS)		
ST85-709	Florida Gas Transmission Co	Longhorn Pipeline Co	3-11-85	[illegible]		
ST85-710	Mountain Fuel Resources, Inc	Woods Petroleum Corp	3-11-85	F (157)		
ST85-711	Texas Gas Transmission Corp	Occidental Chemical Corp	3-11-85	F (157)		
ST85-712	Consolidated Gas Transmission Corp	Cranberry Pipeline Corp	3-11-85	[illegible]		
ST85-713	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	3-12-85	[illegible]		
ST85-714	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	3-12-85	B		

[FR Doc. 85-11288 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-22-000]

Cities Service Helex, Inc.; Petition for Adjustment and Interim Relief

Issued May 3, 1985.

On April 15, 1985, Cities Service Helex, Inc. (Helex) filed with the Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982). Helex seeks interim and permanent relief from incremental pricing surcharges imposed under NGPA section 201(a), for its gas processing facilities located at Ulysses, Kansas, known as the Jayhawk Plant, with such relief to be effective from April 1, 1985. The Jayhawk Plant is supplied by Northwest Central Pipeline Company, an interstate pipeline.

Helex states that 55% of the natural gas consumed by the Jayhawk Plant is subject to incremental pricing surcharges. Helex alleges that it is suffering special hardship because the incremental price surcharges have contributed to out-of-pocket losses for the Jayhawk Plant in 1983 and 1984. Projected revenue for 1985 indicates that the plant will suffer another out-of-pocket loss for the year. Helex states that elimination of the incremental pricing surcharges would merely reduce the projected loss in 1985 to near the break-even point. Helex alleges that the Jayhawk Plant meets the out-of-pocket cost test that the Commission applied in *Peter Cooper Corp.*, 15 FERC ¶ 61,027 (1981). Helex requests interim relief pursuant to § 385.1113 of the Commission's Regulations, and a waiver of the applicable fee pursuant to § 381.106 of the Commission's Regulations.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart k. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11289 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5251-001]

City of Fort Smith, AR; Intent To Prepare Environmental Impact Statement and Notice of Scoping Session and Public Hearings

May 6, 1985.

The City of Fort Smith, Arkansas (Applicant), filed on November 30, 1983, an application for license for the Lee Creek Project, FERC Project No. 5251, located on Lee Creek, a tributary of the Arkansas River, in Crawford County, Arkansas, and Sequoyah County, Oklahoma.

The proposed project would consist of a 34-foot-high, 1,000-foot-long dam impounding a 634-acre reservoir. A powerhouse containing one 1.5 megawatt generating unit would be constructed on the dam's left abutment. The proposed dam and 94 percent of the reservoir would be located in Crawford County, Arkansas, but development of the project would require some lands in Sequoyah County, Oklahoma.

The proposed 634-acre reservoir would be used primarily for municipal water supply rather than power generation. State health regulations require that a water supply reservoir be surrounded by a 300-foot-wide buffer

zone within which development is restricted. For this reason, Fort Smith would have to acquire far more land than would be occupied by project facilities—approximately 1,400 acres exclusive of flowage easements.

A pumping station for untreated water, a water treatment plant, and a pumping station for treated water would also be constructed adjacent to the powerhouse. These non-project facilities would be the primary users of project power; any excess power would be sold. A 48-inch diameter, 5.2-mile-long water pipeline would convey treated reservoir water to Fort Smith's water distribution system. The water treatment plant, pumping stations, and water pipeline would be built only it the reservoir is.

The Commission's designee accepted Fort Smith's application for filing on January 28, 1985. Public notice of the application was issued on February 8, 1985, with April 15, 1985, as the due date for comments, protests, and motions to intervene.

The Commission staff has concluded that Fort Smith's application, as described above, constitutes a major Federal action significantly affecting the quality of the human environment. Consequently, the project described above requires an environmental impact statement which would, among other things, address possible alternatives to the proposed action.

Scoping Session

Interested persons and agencies are invited to participate in the scoping meeting to discuss the environmental impacts expected from the proposed Lee Creek Project. The scoping session will be convened by the Commission's staff. The session will be held on May 30, 1985, from 9 a.m. to 12 noon at the Municipal Auditorium, 55 South 7th Street, Fort Smith, Arkansas 72901. The purpose of the scoping session is to enable interested persons and agencies to discuss with the Commission staff environmental impacts and other matters that they believe should be included in the environmental impact statement.

Public Hearings

Interested officials and members of the public are invited to express their views about the proposed project in a public hearing. The public hearings wil be held as follows:

May 29, 1985, 7 p.m. to 10 p.m., Municipal Auditorium, 55 South 7th Street, Fort Smith, Arkansas 72901

May 30, 1985, 7 p.m. to 10 p.m., Sallisaw High School Auditorium, Sallisaw, Oklahoma 74955

The public hearings will be conducted by the Commission staff.

At the public hearings, persons may give their statements orally or in writing. The hearings will be recorded by a stenographer, and all statements (oral and written) will become part of the public files associated with this proceeding. In addition, the public record for these hearings will remain open until June 17, 1985, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should clearly show the project name and number (Project No. 5251–001) on the first page.

For further information, please contact Dianne E. Rodman at (202) 376–9045 or Robert F. Koch at (202) 357–5579.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11290 Filed 5–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–140–000]

El Paso Natural Gas Co.; Tariff Filing

May 3, 1985.

Take notice that on April 25, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act, First Revised Sheet No. 210 and Substitute Second Revised Sheet Nos. 211 and 212 to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that the tendered sheets, when accepted for filing and permitted to become effective, will revise the annual purchase requirements contained in the ABD–L Rate Schedules and the billing determinants included in Docket No. RP85–58 attributable to Southern Union Company ("Southern Union").

El Paso further states that in its rate settlement at Docket No. RP82–33, a two-part rate (fixed monthly charge and commodity) was established for El Paso's California customers and its three largest east-of-California ("EOC") customers.[1] In order to distinguish between the availability of Rate Schedules ABD–L (two-part rate) and Rate Schedules ABD–S for the EOC customers, a provision in the Rate Schedules ABD–L identified these rate schedules as being available to those EOC customers who purchase more than 20,000,000 Mcf a year. At the time the annual purchase quantity criteria was established the quantity was appropriate for the large EOC purchasers. However, due to the circumstances described below, the annual purchase quantity established in Docket No. RP82–33 for Rate Schedules ABD–L is no longer appropriate and therefore necessitates a change in said annual purchase quantity.

Southern Union and Public Service Company of New Mexico ("PNM") are parties to a Purchase and Sale Agreement dated April 12, 1984, pursuant to which Southern Union agreed to, *inter alia*, sell and PNM agreed to purchase effective as of January 28, 1985, all assets and properties, including all of the natural gas distribution system, owned and operated by Southern Union through its Gas Company of New Mexico division. To take into account the sale by Southern Union of its New Mexico assets and properties, which resulted in a reduction of the annual purchase requirements of Southern Union, El Paso has (i) revised the total annual purchases required under Rate Schedule ABD–L from 20,000,000 Mcf to 10,000,000 dth; and (ii) revised Southern Union's billing determinants filed at Docket No. RP85–58–000 to remove those volumes of natural gas based on sales in the State of New Mexico and retained only those volumes of natural gas based on sales in the States of Texas and Arizona.[2] Accordingly, El Paso requested authorization to lower the total annual purchase quantity required under Rate Schedules ABD–L to 10,000,000 dth and to substitute the revised billing determinants proposed for Southern Union in lieu of those billing determinants approved at Docket No. RP85–58–000, effective as of July 1, 1985. El Paso proposes that the Commission consolidate this filing with the ongoing rate proceeding at Docket No. RP85–58–000.

El Paso requested that waiver be granted of all applicable rules and regulations of the Commission as may

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[1] Rate Schedule G and Rate Schedules ABD–L contain the two-part rate applicable to El Paso's California customers and its largest EOC customers, respectively. The large EOC customers were Arizona Public Service Company ("APS"), Southwest Gas Corporation ("Southwest") and Southern Union; however, as of November 1, 1984, Southwest acquired the natural gas distribution system of APS.

[2] By order issued January 1, 1985 at Docket No. RP85–58–000, the Commission granted El Paso authorization to implement new rates subject to refund and conditions for its interstate pipeline system, inclusive of the revised billing determinants for Southern Union and others, effective as of July 1, 1985.

be necessary to permit the tendered tariff sheets to become effective as of July 1, 1985.

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11291 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA85-2-000]

Gulf States Oil and Refining Co.; Filing of Petition for Review Under 42 U.S.C. 7194

May 6, 1985.

Take notice that Gulf States Oil & Refining Co. on March 29, 1985, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before May 29, 1985, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11292 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2158-000]

Luther F. Hackett; Application

May 3, 1985.

Take notice that on April 29, 1985, Luther F. Hackett (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Vermont Electric Transmission Company, Inc.
Director—Vermont Electric Power Company, Inc.
Director—Central Vermont Public Service Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11287 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-11-012]

K N Energy, Inc.; Motion To Place Tariff Sheet in Effect

May 3, 1985.

Take notice that K N Energy, Inc. (K N), on April 25, 1985, tendered for filing a motion to place Second Substitute Twenty-First Revised Sheet No. 4 to its FERC Gas Tariff, Third Revised Volume No. 1 into effect. According to § 381.103 (b)(2)(iii) of the Commission's regulations (18 CFR 381.103 (b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 29, 1985.

K N requests that the Commission grant any waiver of its regulations it may deem necessary in order for the rates reflected on Second Substitute Twenty-First Revised Sheet No. 4 to become effective May 1, 1985.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11293 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-142-000]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

May 3, 1985.

Take notice that on April 30, 1985, Louisiana-Nevada Transit Company (LNT) tendered for filing Eighth Revised Sheet No. 4 to its FERC gas tariff changing the rates in its Rate Schedules G-1, X-2 and T-1.

LNT states that the changes in rate filed herein are to comply with § 154.38 (d)(4)(vi)(a) of the Commission's Regulations and establish new Base Tariff Rates.

The new Base Tariff Rate for Rate Schedules G-1 and X-2 amounts to $1.6027/Mcf with a Base Cost of Gas of

$1.3939/Mcf. In addition a current purchased gas adjustment of $.0139/Mcf and a Deferred Cost Adjustment of ($.0164)/Mcf is applicable effective June 1, 1985, for a total rate of $1.6002/Mcf. This is a reduction of $.1745/Mcf from the present rate of $1.7747/Mcf including cumulative and deferred purchased gas adjustments. The reduction for these rate schedules is $229.231 annually.

The rate for Rate Schedule T-1 is increased from $.1430/Mcf to $.2088/Mcf. No service is being rendered under this rate schedule.

Copies of this filing were served upon LNT's jurisdictional customers, Arkansas Louisiana Gas Company and United Gas Pipeline Company, and upon the Public Service Commissions of the states of Arkansas and Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11294 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos.TA85-2-59-000 and TA85-2-59-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; ANGTS Transportation Adjustment Rate Change

May 3, 1985.

Take notice that on April 26, 1985, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets.

Third Revised Volume No. 1

Thirty-Seventh Revised Sheet No. 4a
Twenty-Eighth Revised Sheet No. 4b

Original Volume No. 2

Thirty-Seventh Revised Sheet No. 1c.

Such revised tariff sheets are required in order that Northerm may place decreased rates into effect on June 27, 1985 to reflect the change in the costs of transportation of gas through the Alaska Natural Gas Transportation System (ANGTS) pursuant to Paragraph 21 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Paragraph 4 of Northern's F.E.R.C. Gas Tariff, Original Volume No. 2.

The Company states that copies of the filing have been mailed to each of its Gas Utility customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 or the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11295 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-38-000]

PacifiCorp Doing Business as Pacific Power & Light Co.; Application

May 6, 1985.

Take notice that on April 17, 1985, PacifiCorp doing business as Pacific Power and Light Company (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it to issue and sell its commercial paper from time-to-time in aggregate principal amounts not to exceed $150,000,000 at any one time outstanding. The authority requested is a five-year renewal of authority granted in 1983 and expiring June 30, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11296 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-24-000]

State of Oklahoma, Section 108 NGPA Determination, Graham Resources, Inc., Curtis Stark No. 1, FERC No. JD84-43505; Petition To Withdraw Well Category Determination

May 3, 1985.

On November 23, 1984 Graham Resources, Inc., (Graham) filed with the Federal Energy Regulatory Commission a petition to withdraw a well category determination under Natural Gas Policy Act of 1978 (NGPA) section 108 for the Curtis Stark No. 1 Well, Woods County, Oklahoma, pursuant to Commission authority under the NGPA.[1]

Graham states that it has concluded that the subject well does not qualify as a section 108 stripper gas well because the production averaged more than 60 Mcf per day during the 90-day qualifying period.

The Commission gives notice that the question of whether refunds plus interest as computed under § 154.102(c) will be required is a matter which is subject to the review and final determination of the Commission.

Within 30 days of publication in the **Federal Register**, any person may file a protest to Graham's petition or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. If you wish to become a party to this proceeding, you must file a petition to intervene. See Rule 214 or 211.[2]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11297 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] 15 U.S.C. 3301-3432 (1982).

[2] 18 CFR 385.214 or 385.211 (1983).

[Docket No. GP85-27-000]

Tenneco Oil Co.; Petitions To Reopen and Vacate Final Well Category Determinations and Requests To Withdraw

Issued: May 3, 1985.

In the matter of: State of Oklahoma, Section 108 NGPA Determinations, Tenneco Oil Co., East Columbia Oswego Lime Unit #2-1, FERC No. 8104799, East Columbia Oswego Lime Unit #12-2, FERC No. 8104802 East Columbia Oswego Lime Unit #6-2, FERC No. 8113589.

On April 1, 1985, Tenneco Oil Company (Tenneco) filed with the Federal Energy Regulatory Commission (Commission) petitions to reopen and requests to withdraw applications for final well category determinations that natural gas from three wells, East Columbia Oswego Lime Unit #2-1, East Columbia Oswego Lime Unit #12-2, and East Columbia Oswego Lime Unit #6-2, all located in Kingfisher County, Oklahoma, qualifies as stripper well natural gas under section 108 of the Natural Gas Policy Act of 1978 (NGPA).[1] These determinations by the Oklahoma Corporation Commission became final[2] on December 19, 1980, for Units #2-1 and #12-2, and on March 5, 1981, for Unit #6-2.

In order for a well to qualify as a stripper well, production of oil from a non-associated gas well must not exceed a specific number of barrels of oil per production day. Tenneco states that the data submitted for the 90-day qualifying period ending "January, 1979" was incorrect because the actual number of production days for each well was less than the amount stated in the application for that well. Using the correct number of production days, the average actual daily gas production exceeded the number of barrels of oil allowed to qualify as a stripper well. Finally, Tenneco states that all the gas from the three wells was sold to Eason Oil Company, but that Tenneco never collected the section 108 price for the production from the wells.

The Commission gives notice that the question of whether refunds plus interest as computed under § 154.102(c) will be required is a matter which is subject to the review and final determination of the Commission.

Within 30 days of publication in the **Federal Register**, any person may file a protest to Tenneco's petition or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. If you wish to become a party to this proceeding, you must file a petition to intervene. *See* Rule 314 or 22.[3]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11298 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3301-3432 (1982).

[2] NGPA section 503(d) and 18 CFR 275.202(a).

[3] 18 CFR 385.214 and 385.211.

[Docket No. TA85-2-58-000 and TA85-2-58-001]

Texas Gas Pipe Line Corp.; Tariff Sheet Filing

May 3, 1985.

Take notice that on April 30, 1985, Texas Gas Pipe Line Corporation (Texas Gas) pursuant to § 154.38 of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, filed a Fourteenth Revised Sheet No. 4a to its FERC Gas Tariff, Second Revised Volume No. 1. Texas Gas states that the filed tariff sheet relates to the Unrecovered Purchased Gas Cost Account of the Purchase Gas Adjustment Provision contained in section 12 of the General Terms and Conditions of the Tariff. More specifically, Fourteenth Revised Sheet No. 4a reflects a net increase under that currently being collected of 12.74¢ per Mcf (at 14.65 psia) to be effective June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11299 Filed 5-8-85: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-141-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1985.

Take notice that on April 30, 1985, Texas Gas Transmission Corporation (Texas Gas) tendered for filing its FERC Gas Tariff, Original Volume No. 1, and changes to its FERC Gas Tariff, Original Volume No. 2. The proposed changes would increase revenues from jurisdictional sales and services by approximately $52,546,591 based on the 12-month period ended January 31, 1985, as adjusted, compared with the underlying rates. The underlying rates are MMBTU rates derived from the base tariff rates as set forth on Substitute Forty-Eighth Revised Sheet No. 7, effective February 1, 1985, plus the current purchased gas adjustment.

Texas Gas states that the increased costs are attributable to: (1) A substantial decrease in sales quantities; (2) increases in operating expenses; and (3) an increase in rate of return and related taxes.

Texas Gas requests an effective date of November 1, 1985, for the proposed Tariff Sheets. Texas Gas further states that it served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb

Secretary.

[FR Doc. 85-11300 Filed 5-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-424-000]

Walter Oil & Gas Corp.; Application

May 6, 1985.

Take notice that on April 30, 1985, Walter Oil and Gas Corporation ("Walter") filed an Application for Blanket Limited-Term Partial

Abandonment Authorization, for Blanket Limited-Term Certificates of Public Convenience and Necessity and for Expedited Consideration, pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission. Applicant also requests expedited review of this application and waiver of oral argument pursuant to Rule 801 of the Commission's Rules of Practice and Procedure. Applicant's request is for authorization to operate a special marketing program ("SMP") known as the "Walter SMP" ("WSMP").

Applicant proposes to conduct the WSMP in a manner similar to those SMP extensions authorized by the Commission on September 26, 1984 in Docket CI83–269, *et al.* Under the proposed WSMP, Applicant will market released gas. The authority sought herein would authorize the limited-term abandonment of the sale of gas released from participating interstate pipelines. The subject gas will then be sold to purchasers under the requested blanket sale for resale authority. The Applicant requests pregranted abandonment to discontinue sales to WSMP purchasers as necessary under the spot-term nature of special marketing programs. The Applicant also requests certificant authority, with pre-granted abandonment, that would authorize the transportation of gas under the WSMP by any willing and able interstate, intrastate, or Hinshaw pipeline or local distribution company. Applicant seeks authorization to conduct the WSMP for the period from the date of authorization through October 31, 1985 and has agreed to comply fully with the Commission's SMP orders issued in Docket No. CI83–269, *et al.*

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should, on or before May 20, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in an oral hearing convened therein, if such a hearing is convened, must file a motion to intervene in accordance with the Commission's rules.

Under the procedure provided for herein, and unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–11301 Filed 5–8–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-75-000]

Consolidated System LNG Co., Columbia LNG Corp.; Informal Conference and Further Opportunity to Intervene

May 3, 1985.

Take notice that an informal conference will be convened in the above-docketed proceeding on May 21, 1985, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

The conference will deal with a recent agreement reached between Consolidated System LNG Company (Consolidated LNG) and Columbia LNG Corporation (Columbia LNG) concerning the disposition of their jointly-owned LNG facilities for purpose of settlement of the pending proceeding. In addition, the conference will address issues raised by Consolidated LNG's abandonment filing in this proceeding, by the Commission's Order to Show Cause issued in this docket on August 1, 1983, and by the answer filed by Columbia LNG in response to said order. Under the agreement between Columbia LNG and Consolidated LNG and subject to certain conditions, Columbia LNG would, *inter alia*, take title to Consolidated LNG's undivided, one-half interest in the LNG facilities and include as part of its minimum bill calculation the opeating and maintenance expense and property taxes associated with the facilities.

Participation in this conference will be limited to interested persons, including all direct and indirect customers of Consolidated LNG and Columbia LNG, interested state agencies, state commissions and other persons who may be affected by Consolidated LNG's application or by the disposition of this proceeding with respect to Columbia LNG. However, participation in the conference will not serve to make such participants parties to this proceeding.

Since the filing of Consolidated LNG's original application and the Commission's notice thereof on December 3, 1982, the scope of this proceeding has been expanded. In view of this, the Commission believes it appropriate that interested persons be given an additional opportunity to intervene in this proceeding. Therefore, any person desiring to be heard or to make any protest with reference to such transfer of title should file a motion to intervene with the Federal Energy Regulatory Commission, North Capitol Street NE., Washington, D.C. 29426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions should be filed on or before May 24, 1985. Those persons who have previously intervened in this docket need not intervene again. Copies of the filings in this proceedings, including Consolidated LNG's application, as amended, and Columbia LNG's answer to the Order to Show Cause, are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–11286 Filed 5–8–85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2832-8]

Memorandum of Understanding With the Safety Equipment Institute

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has executed a memorandum of understanding with the Safety Equipment Institute (SEI). This agreement describes the terms of a voluntary certification program to ensure the continued accurate effectiveness rating and the labeling of hearing protector devices as required by the provisions of the Noise Control Act of 1972 as amended.

DATE: This agreement became effective May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Office of Air and Radiation (AR–471C), Environmental Protection Agency, Washington, DC 20460, 703–557–8540.

SUPPLEMENTARY INFORMATION: Under the provisons of Section 8 of the Noise Control Act of 1972 as amended by the Quiet Communities Act of 1978, enumerating the requirements for product labeling or information under this Act, the agency is publishing the

following memorandum of understanding:

Memorandum of Understanding Between the Safety Equipment Institute and the Environmental Protection Agency

I. Purpose

The purpose of this Memorandum of Understanding is to define the general principles of cooperation between the Environmental Protection Agency (EPA) and the Safety Equipment Institute (SEI) with regard to SEI's planned voluntary industry labeling program for hearing protectors.

II. Background

The Safety Equipment Institute has delineated a plan for labeling of hearing protectors under its general certification program for industrial safety eqiupment. The labeling program is intended to conform to the guidelines for a voluntary program as described in the Federal Register notice of September 28, 1979 (44 FR 56124–5). The Institute originally intended to activate this program immediately following the anticipated revocation by Congress of EPA's noise labeling authority under Section 8 of the Noise Control Act of 1972 and the Quiet Communities Act of 1978.

In the absence of Congressional action on this subject and the lack of EPA resources for administering the Federal noise regulatory program, it would be of considerable public value for the SEI to initiate its planned program in an effort to help maintain the continuity and credibility of hearing protector labeling. Although the law does not permit EPA to cede administration of the Federal regulation to an organization in the privaet sector, the Agency is keenly aware of the merit of voluntary industry labeling and enthusiastically supports such efforts within the constraints imposed by law.

EPA and SEI anticipate that SEI's voluntary program will comply with the mandatory noise labeling objectives for hearing protectors as set forth in 40 CFR Part 211, Subpart B, as amended.

By Federal Register notice, the Agency has revoked the reporting and recordkeeping requirements of the Hearing Protector Noise Labeling Regulation (40 CFR Part 211, Subpart B). As a result of this revocation, the manufacturers of hearing protectors are not now required to submit Labeling Verification Reports nor to maintain records nor submit related reports pertaining to the hearing protector Noise Reduction Rating (NRR) tests or evaluations. Thus, if the SEI initiates its own certification program for hearing protectors, the reporting or recordkeeping procedures of the SEI program would not represent a redundant burden to the manufacturers.

To ensure maximal effectiveness of the SEI program, the Agency agrees to provide the SEI with copies of the Labeling Verification Reports, submitted by various hearing protector manufacturers, that are now in the Agency files and are generally available for public inspection. The Agency also agrees to provide technical consultation to the SEI, to the extent available, on problems pertaining to NRR tests and ratings of hearing protectors and to other relevant matters.

III. Substance of Agreement

The SEI agrees to initiate and conduct its certification program for hearing protectors in accordance with the principles and procedures for that program delineated in the SEI's prospectus for that program and within the guidelines for voluntary programs set forth in 44 FR 56122. The SEI also agrees to bring to the attention of the Agency instances in which the Federal labeling regulation for hearing protectors may have become obsolete or in which strict adherence to the Federal labeling regulation would be contrary to the objectives of that regulation or the SEI certification program. In addition, the SEI agrees to answer Agency requests concerning the status of the program.

EPA agrees that manufacturers participating in the SEI certification program may include the SEI logo on the federally required label, in addition to the EPA logo and other required information.

The parties are entering this understanding in the interest of maintaining a continuing effective program for Noise Reduction Rating labeling of hearing protectors, and of ensuring the integrity and credibility of such labeling.

IV. Name and Address of Participating Parties

A. Safety Equipment Institute, 1901 North Moore Street, Arlington, Virginia 2209

B. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW., Washington, DC 20460.

V. Liaison Officers

A. Safety Equipment Institute, Frank E. Wilcher, President, 703–525–1695

B. Environmental Protection Agency, Office of Air and Radiation, Charles L. Elkins, Acting Assistant Administrator, 202–382–7400.

VI. Period of Agreement

This Memorandum of Understanding may be terminated by either party. The terminating party shall give written notice of the termination at least 90 days in advance of the effective date of termination. This understanding may be terminated without cause.

Approved and accepted by the Safety Equipment Institute.

By: Frank E. Wilcher, Jr.
Title: President
Dated: May 2, 1985.

Approved and accepted by the Environmental Protection Agency.

By: Charles L. Elkins
Title: Acting Assistant Administrator for Air and Radiation
Dated: May 2, 1985.

Effective date. This memorandum of understanding became effective May 2, 1985.

Dated: May 2, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–11254 Filed 5–8–85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-2832-6]

Delegation of Additional Authority to the State of Oklahoma for Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA, Region 6 has delegated the authority under the Prevention of Significant Deterioration (PSD) program for approval of extensions of the expiration date of EPA issued permits to the Oklahoma State Department of Health (OSDH). The OSDH is now authorized to approve all future PSD extension requests for permits issued by EPA.

EFFECTIVE DATE: March 29, 1985.

ADDRESS: Copies of the amendment to the State-EPA agreement for delegation of additional authority are available for public inspection at the Air Branch, Environmental Protection Agency, Region 6, InterFirst Two Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Donna M. Ascenzi at (214) 767–9864, Chief Technical Section, Air Branch, address above.

SUPPLEMENTARY INFORMATION: On July 16, 1981, EPA, Region 6, delegated to the OSDH the authority for the technical

and administrative review of the PSD program. An information notice of this partial delegation of the PSD program was published in the **Federal Register** on February 17, 1982. On April 26, 1982, the OSDH was delegated the additional authority for performing PSD inspections and reviewing PSD compliance reports for sources located in the State of Oklahoma. On August 25, 1983, EPA approved the Oklahoma PSD regulations as part of the State Implementation Plan (SIP), thus granting the State permit approval authority for future new sources and major modifications, and enforcement authority over those source permits. The partial delegation, however, remains in effect for EPA issued permits. Modifications to existing EPA issued permits, as well as the authority for taking enforcement actions against violations of these permits, remains EPA's responsibility.

In accordance with 40 CFR 52.21, EPA Region 6 delegated the additional authority to the State of Oklahoma to approve requests for extension of the expiration date of EPA issued permits on March 29, 1985.

With this action, the State of Oklahoma will have full delegated authority for approval of time extensions of EPA issued PSD permits in Oklahoma. The partial delegation, as approved on July 16, 1981, and as modified on April 26, 1982, remains in effect for the modification to and enforcement of existing EPA issued PSD permits.

Effective immediately, all of the information related to PSD extension requests for sources located in the State of Oklahoma should be submitted to the State agency at the following address: Oklahoma State Department of Health, Northeast Tenth and Stonewall, Oklahoma City, Oklahoma 73152.

(Sections 101 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601))

Dated: April 25, 1985.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 85-11256 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51562; FRL-2833-5]

Certain Chemicals Premanufacture Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the PMN chemical name on a premanufacture notice (PMN) published in the **Federal Register** on March 15, 1985 (50 FR 10536).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1985 (50 FR 10536), EPA issued a notice of receipt of a PMN

In FR Doc. 85-6088 appearing at page 10537, first column under "PMN 85-544", the chemical, "(S) 2-Butenedioic acid (Z)-mono[2[(1-oxo-2-propenyl)oxy]ethyl]-ester" is corrected to read "(S) 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxa-5,12-diaza hexadecane-1,16-diylester."

Dated: May 3, 1985.

James A. Combs,

Acting Director, Information Management Division.

[FR Doc. 85-11260 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-1-FRL-2833-1]

Financial Assistance Program Eligible for Review Under 40 CFR 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program (66.456, "Comprehensive Estuarine Management—Pollution Control and Abatement") to support the development of projects for the comprehensive estuarine management program to improve environmental conditions in selected estuaries. Funds are available during FY 1985 for studies and projects in Long Island Sound, Buzzards Bay, Narragansett Bay and Puget Sound.

DATE: All complete applications must be received in EPA Headquarters no later than July 15, 1985, to be considered for FY85 funding awards.

FOR FURTHER INFORMATION CONTACT:

Narragansett Bay, Buzzards Bay and Long Island Sound

Director, Water Management Division, U.S. EPA Region I, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-3478

Puget Sound

Director, Water Management Division, U.S. EPA Region X, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 399-1237.

SUPPLEMENTARY INFORMATION:

Under the authority of the Clean Water Act (CWA), section 104(b)(3), EPA will award grants and cooperative agreements to State Water Pollution Control agencies, interstate agencies, other public or nonprofit organizations, institutions, and individuals.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act. States located in the geographical areas of the estuaries under study and eligible for these awards must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this progam: Grants Policy and Procedures Branch, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

SPOCs and other reviewers should send their comments on an application to the Grants Operations Branch, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, no later than sixty days after receipt of the application/other required material for review.

The comprehensive estuarine management program is implemented through EPA Regional Offices under the guidance of the Office of Marine and Estuarine Protection in EPA Headquarters. Main program objectives for each estuary under study are to (1) evaluate available information on the estuary to define the nature and extent of existing and developing environmental quality problems, (2) identify deficiencies in the available information to develop a remedial program and to support management

decisions, (3) develop and implement action plans to deal with the estuary's priority environmental problems, (4) establish long-term management policies to ensure protection of public health and natural resources, and (5) facilitate program coordination among involved state and local agencies, and public interest groups.

Each estuary program is required to establish its own organizational management structure and also develop a comprehensive management plan. Both will be designed to involve all parties essential to the process of improving the estuary's environmental quality. The essential parties will be identified and organized into a functional managment committee and technical, scientific, and public participation working groups that must agree on the priority problems facing the estuary and develop a plan of action to address those problems.

Each action plan will include projects and tasks necessary to (1) gather existing data from numerous sources where previous research has been conducted in the estuary, (2) conduct research to acquire new and additional data as needed to address the priority problems, and (3) develop mechanisms to increase the public's understanding of the complexities involved and bring public input to the management decisions. Wherever appropriate, financial assistance in the form of grants and cooperative agreements will be available to provide the means to carry out the planned activities. Proposals are being solicited to address management questions, research needs, and implementation of planned actions. The proposals will be reviewed by the respective estuary management committee, working groups and EPA Regional Office, and approved and awarded by EPA Headquarters.

Dated: May 1, 1985

Henry Longert,

Acting Assistant Administrator for Water.

[FR Doc. 85-11251 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003981-003.

Title: Galveston Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (GW)

James J. Flanagan Shipping Corporation (JJFSC)

Galport Terminal, Inc. (Galport)

Synopsis: Agreement No. 224-003981-003 amends Agreement No. 224-003981-002 by modifying Paragraph III thereof, to defer payments of fees by JJFSC to GW, provided by the agreement, from April 1, 1985 to July 1, 1985. This amendment will add JJFSC to the agreement.

Agreement No.: 202-010414-005.

Title: PRC-USA Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.

Lykes Bros. Steamship Co., Inc.

Sea-Land Service, Inc.

United States Lines, Inc.

Waterman Steamship Corporation

Synopsis: The proposed amendment would modify the agreement to clarify the parties' authority to publish more than one Agreement tariff, as permitted by applicable Commission regulations, and enter into participating connecting carrier arrangements with other carriers not party to the Agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 202-010485-004.

Title: United States Atlantic & Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania TrasAtlantica Espanola, S.A.

Costa Line

Farrell Lines, Inc.

"Italia" Societa per Azioni di Navigazione

Sea-Land Service, Inc.

Synopsis: The proposed amendment would divide the conference into sections. Qualifying members serving each section would be authorized to establish rates pertaining to cargo moving within the geographic scope of that section. The amendment would create an Atlantic Section and a Gulf Section. A General Section composed of all voting members would govern rates for cargo originating at U.S. Pacific Coastal points or U.S. inland points. A Special Northern Spain Section would govern rates on certain commodities moving to Northern Spanish destinations.

By Order of the Federal Maritime Commission.

Dated: May 6, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11238 Filed 5-8-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-14]

Cari-Cargo International, Inc. and Jorge Villena; Order of Investigation and Hearing

Cari-Cargo International, Inc. (Cari-Cargo) is a non-vessel operating common carrier with a tariff on file with the Federal Maritime Commission. Cari-Cargo was incorporated on April 17, 1984, and Jorge Villena apparently is its only officer and employee.

Cari-Cargo's tariff was first issued on September 23, 1982 in the name of Cari-Cargo Consolidators, Inc. and became effective on October 23, 1982. Cari-Cargo Consolidators, Inc. was dissolved on November 10, 1983. On March 16, 1983, its tariff was revised to indicate the name of Cari-Cargo.

Since November 10, 1983, Jorge Villena has been conducting business as an NVOCC in the names of Cari-Cargo Consolidators, Inc. and Cari-Cargo. It appears that neither Mr. Villena nor Cari-Cargo have been conducting business in accordance with Cari-Cargo's tariff or any other tariff on file with the Commission.

Section 18(b)(1) of the Shipping Act, 1916 (46 U.S.C. app. 817), and section 8(a)(1) of the Shipping Act of 1984 (46 (U.S.C. app. 1707), require common carriers to maintain tariffs with the Commission showing all their rates, charges, classifications rules, and practices. Section 18(B)(3) of the Shipping Act, 1916 (46 U.S.C. app. 817), and section 10(b)(1) of the Shipping Act of 1984 (46 U.S.C. app. 1709), require common carriers to adhere to their published tariffs.

Therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 815), and section ll of the Shipping Act of 1984 (46 U.S.C. app. 1710), a formal investigation and hearing is hereby instituted to determine:

1. Whether Jorge Villena and/or Cari-Cargo International, Inc. violated section 18(b)(1) of the Shipping Act, 1916, and section 8(a)(1) of the Shipping

Act of 1984, by performing common carrier operations and failing to maintain with the Commission a tariff showing all rates, charges, classifications, rules and practices;

2. Whether Jorge Villena and/or Cari-Cargo International, Inc. violated section 18(b)(3) of the Shipping Act, 1916, and section 10(b)(1) of the Shipping Act of 1984, by charging different rates for the transportation of property than the effective tariff rates filed with the Commission;

3. Whether, in the event Jorge Villena and/or Cari-Cargo International, Inc. is found to have violated sections 18(b)(1) or (3), or the Shipping Act, 1916, and sections 8(a)(1) and 10(b)(1) of the Shipping Act of 1984, civil penalties should be assessed, and, if so, against whom and in what amount; and

4. Whether, in the event Jorge Villena and/or Cari-Cargo International, Inc. is found to have violated section 18(b)(1) or (3) of the Shipping Act, 1916, or section 8(a)(1) or section 10(b)(1) of the Shipping Act of 1984, either or both should be ordered to cease and desist from violating the provisions of the Shipping Act of 1984 (46 U.S.C. app. 1701 *et seq.*).

It is further ordered, That Jorge Villena and Cari-Cargo International Inc. be named Respondents in this proceeding.

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the presiding officer in this proceeding shall be issued by May 5, 1986 and the final decision of the Commission shall be issued by September 5, 1986;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon the Respondents and the Commission's Bureau of Hearing Counsel;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Director of the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf or the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules Practice and Procedure (46 CFR 501.118), as well as being mailed directly to all parties of record.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–11240 Filed 5–8–85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on April 30, 1985, the following agreement was filed with the Commission pursuant to the Commission's February 27, 1985 Report and Order in Dockets Nos. 84–6 and 84–8.

Agreement No.: 201–000091.

Title: New York Assessment Agreement.

Parties:

New York Shipping Association (NYSA)

International Longshoremen's Association,

AFL–CIO (ILA)

Synopsis: The agreement establishes the assessment program for the funding of obligations under NYSA–ILA collective bargaining agreements, and has been filed with a request to postpone its effective date to July 1, 1985.

By Order of the Federal Maritime Commission.

Dated: May 6, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–11239 Filed 5–8–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing , it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Citizens Corporation,* Manchester, Tennessee; to become a bank holding company be acquiring 80 percent of the voting shares of Citizens Bank, Smithville, Tennessee.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Detroit Corporation,* Detroit, Michigan; to become a bank holding

company by acquiring 100 percent of the voting shares of First Independence National Bank of Detroit, Detroit, Michigan.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southside Bancshares Corp.*, St. Louis, Missouri; to acquire 80.25 percent of the voting shares of Bay-Hermann Bank, Hermann, Missouri.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneaspolis, Minnesota 55480:

1. *Belle Plaine BanCorporation*, Belle Plaine, Minnesota; to become a bank holding company by acquirng 100 percent of the voting shares of State Bank of Belle Plaine, Belle Plaine, Minnesota.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Diboll State Bancshares, Inc.*, Diboll, Texas; to acquire 80 percent of the voting shares of Peoples National Bank, Lufkin, Texas.

Board of Governors of the Federal Reserve System, May 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11228 Filed 5-8-85; 8:45 am]

BILLING CODE 6210-01-M

Midsouth Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *MidSouth Bancorp, Inc.*, Lafayette, Louisiana; to engage *de novo* directly in the activities of making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by an consumer finance, credit card, mortgage, commercial finance, or factoring company. These activities would be conducted in the State of Louisiana.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens National Corporation*, Wisner, Nebraska; to engage *de novo* through its subsidiary, Chandler Leasing, Inc., Wisner, Nebraska, in the previously approved activities of leasing real and personal property. This application is for the expansion of the geographic scope of the service area to include the entire United States.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ruston Bancshares, Inc.*, Ruston, Louisiana; to engage *de novo* directly in the activity of leasing personal and real property.

Board of Governors of the Federal Reserve Systems, May 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11229 Filed 5-8-85: 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N-0213]

Amendment to Provisions of the Orphan Drug Act; Availability of Revised Interim Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that by enactment of Pub. L. 98-551, effective October 30, 1984, the criteria for orphan drug designation and the criteria for providing protocol assistance have been amended. FDA has revised its interim guidelines to reflect these changes. This notice announces the availability of the revised interim guidelines.

ADDRESSES: Requests for single copies of the revised interim guidelines to the contact person listed below. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: The Orphan Drug Act (Pub. L. 97-414), which was enacted January 4, 1983, provides incentives to pharmaceutical manufacturers and other appropriate persons to develop and distribute drugs for use in rare diseases or conditions. That act defined disease or condition as "any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug." On September 9, 1983 (48 FR 40784), FDA announced the availability of interim guidelines on the information to be submitted to FDA prospective sponsors of drugs for rare diseases or conditions (orphan drugs) to support requests for written recommendations for protocol assistance under section 525 of the Federal Food, Drug, and Cosmetic Act (the act) and for designation of a drug as an orphan drug under section 526 of the act. The guidelines for section 526 required that sufficient information be submitted to demonstrate that a sponsor

would not recover development costs for a drug within a 7-year period after approval or the remaining life of the patent. The guidelines for section 525 required that a sponsor provide that information for drugs intended for populations greater than 150,000 in the United States in order for protocol assistance to be rendered. By enacting the Pub. L. 98–551 amendments to section 526 of the act, Congress established that it was not necessary to require prospective sponsors to make difficult development cost and marketing projections for drugs intended for patient populations of under 200,000 in the United States.

FDA has revised both interim guidelines in accordance with provisions of Pub. L. 98–551. The guidelines for section 526 waive the necessity for sponsors to submit financial data when requesting orphan drug designation for drugs intended for diseases or conditions with a prevalence in the United States of under 200,000 patients. In addition, these guidelines clarify that the wavier also applies to drugs for therapeutically unique subpopulations of patients with common diseases or conditions. Drugs for populations over 200,000 may still qualify as designated orphan drugs: applications, however, must provide cost recovery information for such drugs as defined in the guidelines. The revised guidelines for section 525 also require cost recovery information for drugs intended for patient populations in the United States greater than 200,000.

Interested persons may submit written comments on the revised interim guidelines to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the interim guidelines are warranted. Comments should be in two copies (except that individuals may submit single copies), identified with the docket number found in brackets in the heading of this document. The revised interim guidelines and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies of the revised interim guidelines may be obtained from the Office of Orphan Products Development (address above).

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11194 Filed 5–8–85; 8:45 am]

BILLING CODE 4160-01-M

Centers for Disease Control

Cooperative Agreement for a Project to Develop a Research and Training Program in Environmental Health Chemistry; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the Emory University Graduate School of Arts and Sciences, Department of Chemistry, for a project to develop a research and training program in environmental health chemistry complementing CDC programs in environmental health and enhancing the research and training of predoctoral students. Projects under this program will involve highly toxic materials and substances requiring special handling and will, therefore, be partially limited to the CDC campus. The nature of this program requires that it be located in the Atlanta area to facilitate close communication and contact among praticipating student, faculty, and CDC personnel. Students will spend a portion of their day in laboratories at both CDC and Emory conducting experimental work using the equipment and facilities of both institutions. Emory University is selected as the institution of choice for this program because of the size and strength of its graduate program in chemistry, it clearly defined faculty interest in research in environmental health chemistry, and its unique emphasis on multi-disciplinary research in the biomedical field. The Catalog of Federal Domestic Assistance Number is 13.283. This program is authorized under section 301(1) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Assistance will be provided only to the Emory University Graduate School of Arts and Sciences for this project. This is not a formal request for applications. It is expected that approximately $50,000 will be available during Fiscal Year 1985 to support this project. It is anticipated that the cooperative agreement will be funded for 12 months with a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575 or FTS 236–6575.

Dated: May 1, 1985.

William E. Muldoon,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85–11219 Filed 5–8–85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85D–0078]

Draft Guideline for Submitting Supporting Documentation for the Manufacture of Finished Dosage Forms

Correction

In FR Doc. 85–9954 beginning on page 16350 in the issue of Thursday, April 25, 1985, make the following corrections:

1. On page 16351, in the first column, in the "DATE" line, "July 23" should read "July 24".

2. On page 16351, in the second column, in the fouth complete paragraph, in the second line, "(July 23" should read "July 24".

BILLING CODE 1505-01-M

[Docket No. 84N–0368]

Preservative-Free Morphine Preparation for Epidural Use for Treatment of Severe Chronic Pain; Invitation To Submit a New Drug Application

Correction

In FR Doc. 85–9957 beginning on page 16351 in the issue of Thursday, April 25, 1985, make the following correction: On page 16354, in the first column, in reference "18", in the second line, "55: 714" should read "55: 714–715".

BILLING CODE 1505-01-M

National Institutes of Health

Laboratory Animal Welfare: Public Health Service Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of availability of revised policy.

SUMMARY: This notice annouces the availability of the revised policy—"PHS Policy on Humane Care and Use of

Laboratory Animals by Awardee Institutions."

ADDRESS: Please send comments or requests for copies of the policy to: Ms. Carol Wigglesworth, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 4B09, Bethesda, Maryland 20205. Telephone (301) 496–7163.

SUPPLEMENTARY INFORMATION: Over the past two years the National Institutes of Health (HIN) has conducted a review and assessment of the 1979 PHS Animal Welfare Policy. The assessment included evaluation of policies for the review of applications for PHS-supported activities proposing to carry out research involving animals; review of cases of noncompliance; and experience gained in administering the 1979 policy. The assessment also included 15 visits conducted by the NIH Office of Extramural Research and Training designed to evaluate the adequacy of the Animal Welfare Assurance system required by the policy.

It was determined that the 1979 policy should be revised in order to ensure that awardee institutions provide appropriate care for animals involved in PHS-funded research and use such animals in a humane fashion. Consequently, in a special edition of the *NIH Guide for Grants and Contracts*, Vol. 13, No. 5, April 5, 1984, the Public Health Service published a proposed revision of the PHS Extramural Animal Welfare Policy, Chapter 1–43 of the DHHS Grants Administration Manual. A notice announcing the availability of the proposed revision was published in the **Federal Register** May 31, 1984 (49 FR 22711). Public comment on the proposal was solicited in writing and at three open hearings held in Kansas City (July 19), Boston (July 24), and Seattle (August 2). NIH received 340 written and oral comments on the proposal; all of the comments were given careful consideration in the development of the final policy.

The policy will be published in the near future in the *NIH Guide for Grants and Contracts*, and the Chapter 1–43 of the DHHS Grants Administration Manual, replacing the policy promulgated in 1979.

A synopsis of the major changes in the policy is set forth below:

1. The policy requires institutions to designate clear lines of authority and responsibility for those involved in the institution's program for animal care and use in PHS-funded research. Institutions must identify an official who is ultimately responsible for the institution's animal program and veterinarian qualified in laboratory animal medicine who will participate in the program.

2. The policy clearly defines the role and responsibilities of Institutional Animal Care and Use Committees and is intended to enhance the involvement of such committees in all aspects of the PHS-supported animal research program. The policy specifies that the membership of the committee must include an individual unaffiliated with the institution, a veterinarian with training or experience in laboratory animal science and medicine, a practicing scientist experienced in research involving animals and a member whose primary concerns are in a nonscientific area.

3. The policy requires each institution to provide detailed information regarding the institution's program for the care and use of research animals in PHS-supported activities. The additional information will aid NIH in assessing each institution's commitment to animal welfare in PHS-supported activities and its ability to comply with the policy.

4. The policy requires Institutional Animal Care and Use Committees to review and approve those sections of applications for PHS funding that relate to the care and use of animals. The policy provides that PHS will not award funds for research involving animals until the institution has submitted verification that the institution's Animal Care and Use Committee has approved the proposal.

5. Any institution that is not accredited by the American Association for Accreditation of Laboratory Animal Care will be required to conduct a self-assessment based on the Guide for the Care and Use of Laboratory Animals which is currently updated by the Institute for Laboratory Animal Resources of the National Research Council, National Academy of Sciences. Significant deficiencies in the program or facilities must be noted and the institution must adhere to an approved time frame for the correction of the deficiencies.

6. Exceptions to the policy may be granted by NIH in writing upon adequate written justification from the awardee institution.

EFFECTIVE DATE: The policy shall become effective six months from the date of publication in the NIH Guide for Grants and Contracts. Institutions that prior to that date are conducting PHS-supported research in accord with an approved Animal Welfare Assurance may continue to do so in accord with the conditions of the Assurance. However, these institutions are encouraged to implement the new policy as soon as it is feasible to do so, and must submit a new assurance in accordance with the new policy by January 1, 1986. NIH will notify the institutions and provide assistance in developing new assurances.

OMB Clearance

With regard to Assurances, reporting and recordkeeping requirements contained in the policy, PHS will seek OMB approval prior to use as required by the Paperwork Reduction Act of 1980 Public comments on these aspects of the policy should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, Room 3002, New Executive Office Building, Washington, D.C. 20503, attention Desk Office for U.S. Public Health Service. NIH will publish a notice in the **Federal Register** of OMB's decision on these aspects as soon as it is available.

Dated: May 2, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 85–11227 Filed 5–8–85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plats of Survey

May 3, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 3, 1985.

The plat, in two sheets, representing the dependent resurvey of a portion of the west boundary, subdivisional lines, and certain mineral claims, and the survey of the subdivision of section 21, T. 12 S., R. 79 W., Sixth Principal Meridian, Colorado, Groups 529 and 564, was accepted April 22, 1985.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of a portion of the north boundaries, subdivisional lines, and certain mineral claims, and the survey of the subdivision of sections 1 and 12, T. 12 S., R. 80 W., Sixth Principal Meridian, Colorado, Group 564, was accepted April 22, 1985.

The plat in six sheets representing the dependent resurvey of a portion of the Base Line through R. 96 W., a portion of the east boundary, the north boundary,

subdivisional lines, and a portion of certain tract lines, and the survey of the subdivision of certain sections in T. 1 N., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 562, was accepted April 26, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the Ninth Standard Parellel North (south boundary), portions of the east, west and north bounaries, and subdivisional lines, and the survey of the subdivision of certain sections, T. 37 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group No. 667, was accepted April 25, 1985.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land shoud be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-11210 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-84-M

Federal Minerals Exchange; Gila, Maricopa, Mohave, Pima, Pinal, and Yavapai Counties, AZ; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange, Federal Minerals in Gila, Maricopa, Mohave, Pima, Pinal, and Yavapai Counties, Arizona.

SUMMARY: The following described federal mineral estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716: Gila and Salt River Meridian, Arizona.

Township 1 North, Range 16 East,
Sec. 19: lots 1-4, W½.
Township 8 North, Range 10 West,
Sec. 33: all;
Sec. 34: all;
Sec. 35: all.
Township 8 North, Range 8 West,
Sec. 9: NW¼, S½;
Sec. 35: all.
Township 8 North, Range 7 West,
Sec. 4: lots 1-4, S½;
Sec. 7: lots, 3, 4, E½SW¼, SE¼;
Sec. 8: NE¼, S½;
Sec. 9: all;
Sec. 31: lots 1-4, E½W½, S½NE¼,SE¼.
Township 8 North, Range 6 West,
Sec. 35: all.
Township 7 North, Range 10 West,
Sec. 1: lots 1-4, S½N½, SW¼;
Sec. 3: lots 1-4, S½N½, S½;
Sec. 4: lots 1-4, S½N½, S½;
Sec. 9: N½, SW¼;
Sec. 10: N½;
Sec. 11: N½;
Sec. 12: NW¼;
Sec. 17: N½;
Sec. 20: S½N½, S½;
Sec. 21: S½N½, S½;
Sec. 22: all;
Sec. 23: all;
Sec. 24: all;
Sec. 25: E½, NW¼, E½SW¼, E½W½†SW¼;
Sec. 26: all;
Sec. 27: all;
Sec. 28: N½, SW¼, S½SE¼, NW¼SE¼;
Sec. 29: all;
Sec. 35: all.
Township 7 North, Range 9 West,
Sec. 13: N½;
Sec. 19: lots 1-4, E½W½, NE¼;
Sec. 20: N½;
Sec. 29: all;
Sec. 30: lots 1-4, E½W½, E½;
Sec. 33: W½.
Township 7 North, Range 8 West,
Sec. 9: S½;
Sec. 10: S½;
Sec. 11: W½SW¼;
Sec. 15: N½.
Township 7 North, Range 6 West,
Sec. 1: lots 3, 4, S½NW¼, SW¼;
Sec. 3: lots 1-4, S½N½, S½;
Sec. 8: SE¼;
Sec. 10: all.
Sec. 13: N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 14: all;
Sec. 19: lots 1, 2, E½NW¼, W½NE¼, NW¼SE¼;
Sec. 20: E½;
Sec. 21: all;
Sec. 28: N½, W½SW¼, NE¼SE¼;
Sec. 29: SE¼;
Sec. 30: lots 1-4, W½NE¼, NE¼NW¼, E½SW¼;
Sec. 31: lots 1-4, E½W½, E½;
Sec. 33: S½NE¼, W½, SE½;
Township 7 North, Range 5 West,
Sec. 7: lots 3, 4, E½SW¼, SE¼;
Sec. 8: SW¼, S½SE¼;
Sec. 14: W½E½, W½;
Sec. 22: all;
Sec. 23: all;
Sec. 24: all;
Sec. 27: N½N½;
Sec. 34: all;
Sec. 35: NW¼.
Township 6 North, Range 7 West,
Sec. 3: lot 4, SW¼NW¼, W½SW¼;
Sec. 4: lots 1-4, S½N½, S½.
Township 6 South, Range 10 East,
Sec. 13: E½, NW¼;
Sec. 20: N½;
Sec. 21: N½;
Sec. 22: S½;
Sec. 23: S½;
Sec. 24: NE¼, S½;
Sec. 25: all;
Sec. 26: all;
Sec. 27: E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 28: all;
Sec. 29: all;
Sec. 34: all;
Sec. 35: all;
Township 6 South, Range 11 East,
Sec. 13: all;
Sec. 17: all;
Sec. 18: lots 1-4, E½W½, E½, less M.S. 4540 (103.305 ac.);
Sec. 19: lots 1-4, E½W½, E½;
Sec. 22: N½, E½SW½, SE¼.
Township 6 South, Range 12 East,
Sec. 4: SW¼NW¼, SE¼SE¼;
Sec. 9: all;
Sec. 10: E½NE¼, Nw¼Nw¼, S½NW¼, SW¼, S½SE¼;
Sec. 11: N½, SE¼;
Sec. 12: all;
Sec. 14: N½, S½S½;
Sec. 15: E½NE¼;
Sec. 17: all;
Sec. 18: lots 1-8, E½W½, E½;
Sec. 19: lots 1-8, E½W½, E½;
Sec. 20: all;
Sec. 21: all;
Sec. 23: N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 27: W½NW¼, SW¼;
Sec. 28: all;
Sec. 29: all;
Sec. 30: lots 1-8, E½W½, E½;
Sec. 31: lots 1-8, E½W½, E½;
Sec. 33: N½, N½S½.
Township 6 South, Range 13 East,
Sec. 3: lots 1-4, S½N½, S½;
Sec. 4: lots 1-4, S½N½, S½;
Sec. 9: all;
Sec. 10: all;
Sec. 11: all;
Sec. 12: all;
Sec. 13: all;
Sec. 14: all;
Sec. 15: all;
Sec. 22: all;
Sec. 23: all;
Sec. 26: all;
Sec. 27: all;
Sec. 33: all;
Sec. 34: all;
Sec. 35: all;
Township 6 South, Range 14 East,
Sec. 5: S½S½;
Sec. 7: lots 1-4, E½W½, E½;
Sec. 9: all;
Sec. 13: all;
Sec. 17: all;
Sec. 18: lots 1-4, E½W½, E½;
Sec. 23: S½;
Sec. 26: N½;
Sec. 27: all;
Sec. 29: all;
Sec. 31: lots 1-4, NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 33: N½, N½SW¼;
Sec. 34: E½, N½NW¼, S½SW¼;
Sec. 35: all
Township 9 South, Range 9 East,
Sec. 26: N½;
Sec. 27: N½.
Township 10 South, Range 6 East,
Sec. 15: SW¼;
Sec. 17: all;
Sec. 18: lots 1-4, E½W½, E½;
Sec. 19: lots 1-4, E½W½, E¼;
Sec. 20: all;
Sec. 21: S½;
Sec. 22: W½;
Sec. 23: S½;
Sec. 24: all;
Sec. 25: all;
Sec. 26: all;

Sec. 27: W½, SE¼;
Sec. 28: all;
Sec. 29: E½;
Sec. 33: all;
Sec. 34: all;
Sec. 35: all.
Township 10 South, Range 7 East
Sec. 4: S½;
Sec. 9: N½, SW¼;
Sec. 10: W½;
Sec. 14: S½;
Sec. 15: all;
Sec. 17: all;
Sec. 18: all;
Sec. 20: W½NE¼, SE¼NE¼, NW¼, S½
Sec. 21: NE¼, S½NW¼, S½;
Sec. 22: all;
Sec. 23: all;
Sec. 24: lots 1–4, 9–16, 21–24, S½SW¼
Sec. 25: lots 1–4, 9–24, SW¼;
Sec. 26: NE¼, S½;
Sec. 28: all;
Sec. 29: all;
Sec. 35: all.
Township 10 South, Range 8 East.
Sec. 1: lots 2–4, S½N½, N½S½
Sec. 14: S½;
Sec. 15: all;
Sec. 18: lots 1–4, E½W½, E½;
Sec. 19: lots 1–4, E½W½, E½;
Sec. 21: all;
Sec. 23: all;
Sec. 24: N½;
Sec. 26: N½;
Sec. 27: N½
Township 10 South, Range 9 East.
Sec. 27: NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 28: E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 33: N½, W½SW¼
Township 11 South, Range 6 East.
Sec. 1: lots 1–4, S½N½, S½;
Sec. 3: lots 3, 4, S½NW¼;
Sec. 4: lots 1–4, S½N½, S½;
Sec. 11: all;
Sec. 12: all;
Sec. 13: all;
Sec. 14: all;
Sec. 15: all;
Sec. 18: lots 1–4;
Sec. 19: lots 1–4, E½W½, E½;
Sec. 20: NE¼, W½SW¼, E½SE¼;
Sec. 22: all;
Sec. 23: all;
Sec. 24: all;
Sec. 28: all;
Sec. 29: E½NE¼, W½NW¼, SW¼;
Sec. 30: lots 1–4, E½W½, E½;
Sec. 31: lots 1–4, E½W½, E½;
Sec. 33: all;
Sec. 34: all;
Sec. 35: all.
Comprising 106,371.415 acres, more or less.

In exchange for the federal mineral estate described above, the United States will acquire the following state-owned minerals estates:

Township 28 North, Range 19 West,
Sec. 32: all.
Township 28 North, Range 17 West,
Sec. 32: N½, N½S½.
Township 28 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 36: N½, SW¼, NW¼SE¼.
Township 27 North, Range 18 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 36: all.
Township 27 North, Range 17 West,
Sec. 2: lots 1–4, S½N½, SW¼, W½SE¼;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.
Township 27 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.
Township 27 North, Range 15 West,
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.
Township 26 North, Range 20 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all.
Township 26 North, Range 17 West,
Sec. 2: lots 1–4, S½N½, S½.
Township 26 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½.
Township 26 North, Range 15 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 36: all.
Township 26 North, Range 14 West,
Sec. 16: lot 1, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 32: all.
Township 25 North, Range 20 West,
Sec. 36: all.
Township 25 North, Range 17 West,
Sec. 36: all.
Township 25 North, Range 16 West,
Sec. 32: E½, NE½NW¼, SW¼;
Sec. 36: all
Township 25 North, Range 15 West,
Sec. 2: 1–3, S½N½, S½.
Township 25 North, Range 14 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: E½, N½NW¼, SW¼;
Sec. 36: all.
Township 24 North, Range 17 West,
Sec. 2: lots 1, 2, 4, S½.
Township 24 North, Range 14 West,
Sec. 2: lots 1–4, S½N½, S½.
Sec. 16: all;
Sec. 36: lots 1–4, W½W½.
Township 23 North, Range 19 West,
Sec. 36: lots 1–4, W½E½, W½.
Township 23 North, Range 18 West,
Sec. 16: all.
Township 23 North, Range 14 West,
Sec. 16: N½, SW¼, NW¼SE¼;
Sec. 32: all.
Township 22 North, Range 19 West,
Sec. 16: all.
Township 19 North, Range 15 West,
Sec. 32: all;
Sec. 36: all.
Township 18 North, Range 17 West,
Sec. 16: all.
Township 17 North, Range 18 West,
Sec. 36: all.
Township 17 North, Range 16 West,
Sec. 16: all;
Sec. 36: all.
Township 17 North, Range 15 West,
Sec. 2: lots1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all.
Township 17 North, Range 14 West,
Sec. 16: all;
Sec. 36: E½.
Township 17 North, Range 13 West,
Sec. 16: lots 1–4, N½S½, N½.
Township 16½ North, Range 19 West,
Sec. 36: all.
Township 16½ North, Range 17 West,
Sec. 36: all.
Township 16½ North, Range 16 West,
Sec. 32: N½, N½SE¼, SE¼SE¼;
Sec. 36: NE¼, E½NW¼, S½.
Township 16½ North, Range 15 West,
Sec. 32: all.
Township 16½ North, Range 14 West,
Sec. 32: all.
Township 16½ North, Range 13 West,
Sec. 36: all.
Township 16 North, Range 20 West,
Sec. 36: all.
Township 16 North, Range 19 West,
Sec. 16: all.
Sec. 32: all.
Township 16 North, Range 18 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 36: W½.
Township 16 North, Range 17 West,
Sec. 2: S½NW¼, SW¼;
Sec. 16: all;
Sec. 32: E½;
Sec. 36: SW½NE¼, S½SE¼.
Township 16 North, Range 16 West,
Sec. 16: all;
Sec. 32: all;
Sec. 36: SE¼NW¼, E½SW¼.
Township 16 North, Range 15 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 14: N½, SE¼;
Sec. 16: all;
Sec. 20: all;
Sec. 24: all;
Sec. 28: W½NE¼, NW¼, S½;
Sec. 32: all;
Sec. 34: all.
Township 16 North, Range 14 West,
Sec. 16: N½, N½NW¼SE¼, E½SE¼;
Sec. 18: lots 1–4, E½W½, E½;
Sec. 28: all;
Sec. 32: W½;
Sec. 34: all;
Sec. 36: all.
Township 16 North, Range 13 West,
Sec. 16: all;
Sec. 36: NE¼, S½NW¼, E½NE¼NW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼.
Township 15 North, Range 18 West,
Sec. 2: lots 1–4, S½N½, S½.
Township 15 North, Range 17 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 32: all;
Sec. 36: all.
Township 15 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.
Township 15 North, Range 15 West,
Sec. 10: all;
Sec. 12: all;
Sec. 14: N½, SW¼;
Sec. 16: all;
Sec. 22: all;
Sec. 24: all;
Sec. 26: all;
Sec. 32: all;
Sec. 36: all.
Township 15 North, Range 14 West,
Sec. 2: lots 1–4, S½N½, S½;

Sec. 6: lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10: all;
Sec. 16: all;
Sec. 18: lots 1–4, E½NW¼, E½;
Sec. 20: all;
Sec. 22: all;
Sec. 24: all;
Sec. 26: all;
Sec. 28: all;
Sec. 30: lots 3, 4, E½W½, E½;
Sec. 32: all;
Sec. 34: all;
Sec. 36: all.

Township 15 North, Range 13 West,
Sec. 36: all.

Township 15 North, Range 12 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all.

Township 14 North, Range 17 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: N½, NW¼SW¼, S½SW¼, W½SE¼;
Sec. 32: all;
Sec. 36: all.

Township 14 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.

Township 14 North, Range 15 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 10: all;
Sec. 16: all;
Sec. 24: all;
Sec. 32: all;
Sec. 36: all.

Township 14 North, Range 14 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.

Township 14 North, Range 13 West,
Sec. 2: lots 1–4, S½N½, SW¼;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.

Township 14 North, Range 12 West,
Sec. 32: all.

Township 13 North, Range 19 West,
Sec. 2: lots 1–4, S½N½, S½.

Township 13 North, Range 18 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 36: all.

Township 13 North, Range 17 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 36: all.

Township 13 North, Range 16 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: all;
Sec. 32: all.

Township 13 North, Range 15 West,
Sec. 2: lots 1–4, S½N½, S½.

Township 13 North, Range 14 West,
Sec. 2: lots 1–4, S½N½, S½.

Township 13 North, Range 13 West,
Sec. 2: lots 1–4, S½N½, S½.

Township 12 North, Range 18 West,
Sec. 2: S½;
Sec. 36: SW¼SW¼.

Township 12 North, Range 17 West,
Sec. 2: lots 1–4, SW¼, NW¼SE¼, S½SE¼;
Sec. 16: all;
Sec. 32: all;
Sec. 36: all.

Township 12 North, Range 16 West,
Sec. 2: lots 1–4, S½;
Sec. 16: N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 32: all;
Sec. 36: all.

Township 12 North, Range 15 West,
Sec. 32: all;
Sec. 36: all.

Township 12 North, Range 14 West,
Sec. 2: lots 1–4, S½;
Sec. 32: NE¼.

Township 11 North, Range 16 West,
Sec. 2: SW¼;
Sec. 16: N½, N½SW¼, N½SE¼, SE¼SE¼.

Township 11 North, Range 15 West,
Sec. 2: lots 1–4, S½N½, S½;
Sec. 16: SE¼;
Sec. 32: all.

Comprising 106,366.2[illegible] acres, more or less.

The purpose of this exchange is to unite State and Federal split estates, thereby eliminating surface management difficulties and providing for the consolidation of surface and mineral ownership. The exchange is consistent with the Bureau's planning system.

The above described mineral estates are not encumbered by mining claim locations. They are, however, encumbered by a number of oil and gas leases.

Based on leasable and locatable mineral potential reports, it has been determined that the overall potential mineral value of the State and Federal mineral estates are approximately equal.

Mineral estates to be transferred from the United States to the State of Arizona will be subject to the following terms and conditions:

1. Oil and Gas leases A–10906, A–10912, A–12055, A–13354, A–14519, A–145343, A–14546, A–15055, A–15162, A–15434, A–15440, A–15456, A–16559, A–16562, A–18623, A–18942, A–19646, and A–19654 and the right of the mineral lessee to occupy and use as much of the surface of the land as may be reasonably necessary for mineral leasing operations, in accordance with the Acts of February 25, 1920 and March 4, 1933 (30 U.S.C. 186, 124). The United States will continue to administer these leases until their expiration or cessation of operations, at which time the leasing function will transfer to the State of Arizona.

2. Subject to all valid existing rights and those applications on record as of the date of that notice.

Minerals to be acquired by the United States from the State of Arizona will be subject to the following terms and conditions:

1. Oil and gas leases 13–78665, 13–86618, 13–86619, 13–86620, 13–86621, 13–86622, 13–86625, 13–86626, 13–86627, 13–86628, 13–86629, 13–86630, 13–86634, 13–86686, 13–86687, 13–86690, 13–86693, 13–86694, 13–86695, 13–86697, 13–86698, 13–86700, 13–86703, 13–86704, 13–87194, 13–87195, 13–87196, 13–87197, 13–87198, 13–87200, 13–87201, 13–87202, 13–87207, and 13–87208 with the right to explore for and remove such deposits. The State of Arizona will continue to administer these leases until their expiration or cessation of operations, at which time the leasing function will transfer to the United States.

Publication of this notice shall segregate the federal minerals, as described in this notice, from appropriation under the mining laws with the exception of the mineral leasing laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the locatable mineral potential, and the leasable mineral potential reports, can be obtained from the Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona, 85027. For a period of forty-five (45) days, from the date of this notice, interested parties may submit comments to the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 3, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85–11212 Filed 5–8–85; 8:45 am]

BILLING CODE 4310–32–M

[M–60334]

Order and Notice; Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public land.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976 (FLPMA), to the operation of the public lands laws. It also informs the public and interested state and local governmental officials of the issuance of the

conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on July 1, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange, by the Noticeof Realty Action published in the **Federal Register** on Sepetember 28, 1984 (49 FR 38370-38371). The segregation terminated on issuance of the deed on April 3, 1985.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976, the following described surface estate in Fallon County, Montana, was conveyed to Arthur McNaney and Agnes Elizabeth McNaney:

Principal Meridian, Montana

T. 10 N., R. 57 E.,
Sec. 6, lots 3-7, SE¼NW¼, E½SW¼.
T. 11 No., R. 57 E.,
Sec. 30, N½NE¼NE¼, W½SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, E½NW¼, NE¼SW¼ and NW¼SE¼;
Sec .31, lots 1-4, E½, E½W½.
Aggregating 1,256.99 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Wibaux County, Montana.

Principal Meridian, Montana

T. 11 N., R. 57 E.,
Sec. 7, lots 1-4, E½, E½W½;
Sec. 18, lots 1-4, E½W½;
Sec. 19, lots 1 and 2, NE¼, E½NW¼.
Containing 1,248.69 acres

3. The values of federal public land and thé nonfederal land in the exchange were both appraised at $125.000.

4. At 9 a.m. on July 1, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.
May 1, 1985.
[FR Doc. 85-11211 Filed 5-8-85; 8:45 am]
BILLING CODE 4310-DN-M

Availability of Draft Environmental Impact Statement; P R Spring Combined Hydrocarbon Lease Conversion

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a DEIS for the proposed P R Spring Combined Hydrocarbon Lease Conversion.

SUPPLEMENTARY INFORMATION: The DEIS assesses the environmental consequences of federal approval of converting existing oil and gas leases within the P R Spring and Hill Creek Special Tar Sand Areas (STSAs) to combined hydrocarbon leases. These leases are located in east-central Utah, including Grand and Uintah counties. The proposed lease conversions include the Beartooth A, Beartooth B, Bradshaw, Duncan, Enercor, Enserch, Farleigh, Kirkwood, Mobil, and Thompson projects. The DEIS addresses the site-specific and cumulative impacts of the 10 proposed actions and No-Action alternatives. Cumulative impacts are those impacts that would occur as a result of the proposed actions plus other interrelated projects planned for development in the project areas during the analysis period.

Comments on this Draft EIS may be submitted in writing or presented verbally at a public hearing scheduled for June 19, 1985, at 7:00 p.m. in the BLM-Vernal District office conference room at 170 South 500 East, Vernal, Utah.

In order to be considered in the final EIS, written comments must be received no later than July 19, 1985. Written comments should be sent to Robert E. Pizel, Project Leader, at the address listed below.

Based on the issues and concerns identified during the scoping process, the DEIS focuses on impacts to Water Resources, Socioeconomics, Air Quality, Soils and Vegetation, and Wilderness.

FOR FURTHER INFORMATION CONTACT: Robert E. Pizel, Project Leader, Division of EIS Services, Bureau of Land Management, 555 Zang Street, First Floor East, Denver, Colorado 80228, (303) 236-1080

Copies of the DEIS may be obtained from the following locations:

Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228
Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078
Bureau of Land Management, Utah State Office, CFS Financial Center, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

In addition, the DEIS can be reviewed at the following Bureau of Land Management (BLM) offices:

Bureau of Land Management, Moab District Office, 125 West Second South, Post Office Box 970, Moab, Utah 84532
Bureau of Land Management, Office of Public Affairs, 18th and C Streets NW., Room 5614, Washington, D.C., 20240.

Dated: May 1, 1985.
Lloyd H. Ferguson,
Vernal District Manager—BLM.
[FR Doc. 85-11218 Filed 5-8-85; 8:45 am]
BILLING CODE 4310-DQ-M

Filing of Plat of Survey; New Mexico

April 30, 1985.

The plats of surveys described below are officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on April 30, 1985.

The dependent resurvey of a portion of the east boundary of the Taos Pueblo Grant and a portion of the west boundary of the Beaubien and Miranda Grant and the survey of a portion of the lands of the Taos Pueblo as described in Pub. L. 91-550, December 15, 1970, New Mexico, Group No. 737, NM, and the survey of lots in Township 23 North, Range 10 East, of the New Mexico Principal Meridian, New Mexico, Group No. 769, New Mexico.

These surveys were requested by the Bureau of Indian Affairs, Albuquerque, and the Taos Resource Area Office, New Mexico.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,
Chief, Branch of Cadastral Survey.
[FR Doc. 85-11215 Filed 5-8-85; 8:45 am]
BILLING CODE 4310-FB-M

Filing of Plat of Survey; New Mexico

April 30, 1985.

The supplemental plat described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico effective at 10:00 a.m. on April 30, 1985.

The supplemental plat shows amended lottings in Township 29 South, Range 3 East, New Mexico Principal Meridian, New Mexico.

This supplemental plat was requested by the Las Cruces District, Bureau of Land Management.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-11217 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plat of Survey; New Mexico

May 1, 1985.

The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on May 1, 1985.

The dependent resurvey of a portion of the south and west boundaries and subdivisional lines and the subdivision of certain sections in Township 10 South, Range 26 East, NMPM, NM, under Group 835, accepted April 17, 1985.

This survey was requested by the Roswell District Manager, Bureau of Land Management, New Mexico.

The dependent resurvey of the Fifth Standard Parallel North on the south boundary and the survey of the west and north boundaries and subdivisional lines of T. 21 N., R. 16 W. The dependent resurvey of a portion of the east boundary of the Navajo Indian Reservation, the survey of the west and north boundaries and the subdivisional lines of T. 22 N., R. 14 W., NMPM, NM, under Group 812, accepted April 10, 1985.

The survey of the west and north boundaries and subdivisional lines of T. 22 N., R. 15 W., the survey of the west and north boundaries and subdivisional lines of T. 22 N., R. 16 W., NMPM, NM, under Group 812, accepted April 11, 1985.

These surveys was requested by the Bureau of Indian Affairs, Albuquerque, New Mexico.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from the office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-11216 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-FB-M

[I-21400]

Realty Action; Direct Sale and Competitive Sale of Public Lands in Cassia County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-21400, direct sale and competitive sale of public lands in Cassia County, Idaho.

SUMMARY: The following described lands have been examined and through development of land use decisions based on public input, it has been determined that the sale of the tracts is consistent with section 203 (a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). The parcels are not presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4-2(b). Parcel 1 will be offered for sale using direct sale procedures (43 CFR 2711.3-3) for the appraised fair market value indicated below. The land will be sold to Mr. Wallace Sears of Connor, Idaho. Mr. Sears has a vested interest in the land in that a portion of his home, backyard and pasture are located on the land.

Parcel 2 will be offered for sale using competitive bidding procedures (43 CFR 2711.3-3) for no less than the appraised fair market value indicated below. Any bids for less than such value will be rejected as required by FLPMA. Only sealed bids will be accepted. A bid will also constitute an application for conveyance of the mineral rights, except geothermal, oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a fifty dollar ($50.00) non-returnable filing fee for the mineral conveyance (43 CFR 2720.1-2(c)) and 30 percent of the full bid price (43 CFR 2711.3-1(d)), with the bid. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market or re-offer them for sale at a later date.

Legal Description	Acres	Appraised fair market value
Parcel 1: T. 13 S., R. 25 E., B.M. Section 24: E½S½S½SE¼SE¼NW¼, S½S½SW¼SW¼NE¼, S½S½SE¼SW¼NE¼	[1] 5	$425
Parcel 2: T. 13 S., R. 25 E., B.M. Section 24: S½N½SW¼SW¼SE¼NW¼, S½SW¼SW¼SE¼NW¼, S½N½SE¼SW¼SE¼NW¼, S½SE¼SW¼SE¼NW¼, W½S½S½SE¼SE¼NW¼	6.25	[illegible]

[1](3.78 Acres of the 5 acres is occupied by Highway 77)

Upon publication of this Notice in the **Federal Register** the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publicaton of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

The patent when issued will contain certain reservations to the United States and be subject to existing rights-of-way. Detailed information concerning these reservations as well as additional information concerning the land, terms and conditions of the sale and bidding instructions may be obtained from Sharon LaBrecque, Snake River Realty Specialist at the Burley District Office.

DATES: The above described lands will be offered for sale on July 3, 1985. All sealed bids (with parcel number 2 and serial number clearly marked in the lower left hand corner of the envelope) must be received by 1:30 p.m. on that date at the Burley District Office, Route 3, Box 1, 200 South Oakley Highway, Burley, Idaho 83318.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice, in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management at the above addresss. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action may become the final determination of the Department of the Interior.

Dated: April 30, 1985.

John S. Davis,

District Manager.

[FR Doc. 85-11220 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

[W-053450]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

April 29, 1985.

Pursuant to the provisions of Pub. L. 31.245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-053450 for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-053450 effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11221 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

[W-0310095]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

April 29, 1985.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-0310095 for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-0310095 effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11222 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

[W-039913-A]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-039913-A for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-039913-A effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section

[FR Doc. 85-11223 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

[W-084911]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

April 29, 1985.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-084911 for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-084911 effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11224 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

[W-053450-A]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

April 29, 1985.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-053450-A for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-053450-A effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11225 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-22-M

Realty Action—Public Land Sale; Minnesota

AGENCY: Bureau of Land Managment, Interior.

ACTION: Direct sale of Federal Land.

SUMMARY: The following public island has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976. The parcel will be sold to current owners of record at no less than the appraised fair market value. The Bureau of Land Management may withdraw the land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States. The parcel will be sold as is on the day of the sale.

The subsurface mineral estate will be offered to the owners since there are no known mineral values present. A $50.00 fee will be charged for processing the transfer of mineral ownership.

The land is offered by direct sale in order to provide fair and equitable relief to the owners of record and the U.S. Government. The owner of record purchased and occupied the property in good faith. It was later determined by resurvey to be in Federal ownership.

The land is subject to all valid and existing rights.

Parcel number and legal description	Acreage	Appraised fair market value
M-19241 T137N., R25W., Sec. 7	1 2	[illegible],460

Information and Instructions

Location: The sale will be held at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin on June 24, 1985 at 1:00 p.m., CDT.

Final Details: The owners of record will be required to submit 20% of the fair market value or $1,092.00 on the date of sale. Full payment for the balance due will be required within 180 days from the date of sale. Failure to submit such payment within the 180-day period shall result in the cancellation of the sale and the bid deposit shall be forfeited.

The land is segregated from all appropriations under the public land laws. This segregation will terminate upon the issuance of patent.

Comments

For a period of 45 days from the date of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: General inquiries or additional information requests concerning this sale may be directed to Larry Johnson at the address below or by calling (414) 291–4400.

Chuck Steele,

District Manager.

[FR Doc. 85–11280 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-[illegible]-M

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on Friday, June 14, 1985. The meeting will be held from 8 a.m. to 5 p.m. in Room 2002 of the Federal Building, 1130 "O" Street, Fresno, California.

SUPPLEMENTARY INFORMATION: Agenda topics will include the proposed nationwide interchange of public lands between the Bureau of Land Management and U.S. Forest Service; the proposed Carrizo Plain Macropreserve; and the Pacific Crest National Scenic Trail within the Bakersfield District. An update on the development of the Coordinated Activity Plan for the Clear Creek/Condon Peak Management Area will also be presented.

The meeting is open to the public, with time allotted at 3 p.m. for oral comments to the Council. If written comments will be presented for the Council's consideration, they must be submitted before the close of the meeting.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for public inspection and reproduction (during regular business hours) within 30-days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, District Public Affairs Officer, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861–4191.

Dated: May 3, 1985.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 85–11272 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-40-M

Lakeview District Multi-Use Advisory Council and Grazing Advisory Board

Notice is hereby given, in accordance with Pub. L. 92–463 that the Lakeview District will conduct a range/riparian tour for the District Grazing Advisory Board and Advisory Council to be held June 11, 1985. Those interested in participating will meet in the District Office at 1000 So. 9th Street, Lakeview, Oregon.

The tour agenda will include the following stops/topics:

1. Willow Creek riparian area.
2. Venator fire rehabilitation seedings.
3. Rabbit/Coyote Hills fire rehabilitation.
4. Warner Valley flood damage/relief.
5. Camas Creek riparian development.

The tour bus will depart from the District Office at 8:15 a.m. and arrive back at approximately 4:30 p.m. Sack lunches will be provided for a nominal fee. The tour is open to the public. Anyone wishing to attend is requested to contact the District Office at the above address prior to June 1, 1985 or call (503) 947–2177.

Dated: May 1, 1985.

Dick Harlow,

Associate District Manager.

[FR Doc. 85–11269 Filed 5–8–85; 8:45 am]

BILLING CODE 4310-33-M

Hearing To Discuss the Use of Helicopters and Motorized Vehicles To Gather Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Battle Mountain District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses in FY 85.

SUMMARY: In accordance with Pub. L. 92–195 and 94–579, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Battle Mountain District during FY 85.

DATE: June 4, 1985—9:00 A.M.

ADDRESS: The hearing will take place at the Tonopah Resource Area Office, Building 102 Old Radar Base, Box 911, Tonopah, Nevada 89049. Telephone (702)482–6214.

SUPPLEMENTARY INFORMATION: The use of helicopters and motorized vehicles to gather horses from the Little Fish Lake and Stone Cabin Wild Horse Herd Management Areas will be discussed.

This hearing is open to the public. Interested persons may make oral or written statements. If you wish to make oral comments please contact H. James Fox by May 31, 1985. Written statements must be received by this date also.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702)635–5181.

Date Signed: April 29, 1985.

H. James Fox,

District Manager, Battle Mountain, Nevada.

[FR Doc. 85–11271 Filed 5–8–85; 8:45 am]

BILLING CODE 4310–HC–M

[ES–034853, Group 126; 5–00256–ILM 4310–GJ]

Wisconsin; Filing of Plat of Dependent Resurvey and Survey of Omitted Lands

May 3, 1985.

1. The plat of the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the reestablishment of the record meander line, and meanders of Shearer Lake to include lands omitted from the original survey in section 35, Township 33 North, Range 1 East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on June 17, 1985.

2. This survey was executed in response to an application for survey of omitted lands submitted by James R. Biersack, Westboro, Wisconsin 54490.

3. All inquiries or protests concerning the legal determination to perform the survey of omitted lands or concerning the technical aspects of either the dependent resurvey or the survey of omitted lands must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, prior to 7:30 a.m., June 17, 1985.

4. All inquiries concerning color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, after June 17, 1985.

5. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85–10935 Filed 5–8–85; 8:45 am]

BILLING CODE 4310–GJ–M

Minerals Management Service

Outer Continental Shelf (OCS) Programwide Policy on Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of OCS Programwide Policy; correction.

SUMMARY: This Notice corrects the Notice on OCS Programwide Policy which was published in the **Federal Register** on April 3, 1985 (50 FR 13289). The correction adds a phrase inadvertently omitted from paragraph 2 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose or Ms. Carol Hartgen, Minerals Mangement Service, MS 643, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone 703–860–7558.

Dated: April 26, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

The following correction is made in FR Doc. 85–7879 appearing on 13289 in the issue of April 3, 1985:

On page 13289, **SUPPLEMENTARY INFORMATION**, paragraph 2, second sentence, add the following phrase between the words "have" and "water": "resulted in the issuance of leases with 10-year primary terms in"

The corrected sentence should read: Since 1982, sale-specific decisions have resulted in the issuance of leases with 10-year primary terms in water depths of 900 meters or more.

[FR Doc. 85–11214 Filed 5–8–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1014, Block 145, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 2, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rough, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised Rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11278 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Raymond A. Hicks at 303-231-3147. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Payor Information Form (PIF).

Abstract: Respondents supply data used to establish payor lease accounts for all mineral leases on Federal and Indian lands using accounting identification numbers assigned by the Minerals Management Service (MMS). MMS is then able to maintain, reconcile and audit lease accounts through the use of its computerized Auditing and Financial System. This information will enable MMS to determine payors responsible for tendering monies from Federal and Indian leases to the Royalty Management Accounting Center.

Bureau Form Number: MMS-4025

Frequency: On occasion

Description of Respondents: Oil and Gas Lessees, Onshore and Offshore

Annual Responses: 30,000

Annual Burden Hours: 15,000

Bureau Clearance Officer: Dorothy Christopher 703-435-6213.

Dated: May 2, 1985.

Robert E. Boldt,

Associate Director for Royalty Management.

[FR Doc. 85-11279 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Champlin Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5321, Block 420, West Cameron Area, offshore Lousiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submited on April 29, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section *Attention OSC Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to §930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Lousisana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practice and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: April 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11274 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Producing Texas and New Mexico, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Producing Texas and New Mexico Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 2721, 2722, 2393, and 3950, Blocks A-595, A-596, A-573, and A-574, respectively, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on May 1, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the Public, pursuant to section 25 of the OCS Lands Act Amendment of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals management Service makes information contained in DOCDs available to affected states, executives of affected

local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 1, 1985

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11275 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Dolores Project, Colorado; Intent To Prepare a Supplement to the Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior proposes to prepare a supplement to the Dolores Project Final Environmental Statement (FES 77-12). This supplement would deal with changes occurring to the Dolores Project as a result of legislative, administrative, and public actions. The Congress passed Pub. L. 98-569 in 1984, which incorporates certain salinity control measures to the Dolores Project. These measures include combining the Towaoc and Highline Canals and lining the combination, the lining of specific sections of the Lone Pine and Upper Hermana Laterals, and the construction of laterals to service part of the Rocky Ford Ditch service area in Montezuma County, Colorado. The people of Dove Creek, Colorado; the Southwestern Water Conservation District; and the State of Colorado have also asked the Bureau of Reclamation to help fund an enlarged Monument Creek Reservoir to be constructed at a location different from that proposed in FES 77-12.

The features to be built under Pub. L. 98-569 have been studied under the salinity control project known as the McElmo Creek Unit of the Colorado River Water Quality Improvement Program. Additional studies are now underway to tie these features into the Dolores Project. More studies are being conducted on the new Monument Creek Reservoir.

For more information, please contact Rick Gold, Projects Manager, Bureau of Reclamation, P.O. Box 640, Durango, Colorado 81302-0640, telephone (303) 247-0247.

May 3, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-11284 Filed 5-8-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-255X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Pierce County, WA; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.40-mile line of railroad between milepost 0.00 near Orting and milepost 1.40 near Orting, In Pierce County, WA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the lne (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on June 8, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by May 20, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 29, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 30, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-11316 Filed 5-8-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-12]

Walker Lanier Whaley, M.D., Jacksonville, FL; Hearing

Notice is hereby given that on January 15, 1985, the Drug Enforcement Administration, Department of Justice, issued to Walker Lanier Whaley, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AW6639681, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, May 22, 1985, in Courtroom I, South Courtroom, Old Courthouse Building, U.S. District Court, 300 N.E. First Avenue, Miami, Florida.

Dated: May 3, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-11237 Filed 5-8-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL MEDIATION BOARD

Appointment of Members to the Performance Review Board

ACTION: Notice of appointment of Members to the Performance Review Board.

Notice is hereby given in accordance with 5 U.S.C. 4314 of the membership of the National Mediation Board's Performance Review Board for the position of Executive Secretary. The members are as follows:

Mr. Walter C. Wallace, Member, National Mediation Board, Washington, D.C.

Mr. Howard W. Solomon, Executive Director, Federal Service Impasses Panel, Washington, D.C.

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Rowland K. Quinn, Jr., Executive Secretary, 1425 K. Street NW., Washington, DC. 20572, (202) 523-5950.

By direction of the National Mediation Board.

Rowland K. Quinn, Jr.,

Executive Secretary.

[FR Doc. 85-11281 Filed 5-8-85; 8:45 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3000]

Finding of No Significant Impact; Issuance of Special Nuclear Material License; Commonwealth Edison Co.; Will County, IL

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1938 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the Braidwood Nuclear Generating Station, Unit 1, in Will County, Illinois. The unirradiated fuel assemblies will be for eventual use in the Braidwood Nuclear Generating Station, Unit 1, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM-1938. On the basis of this Assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H. Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Divison of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 2nd day of May 1985.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-11288 Filed 5-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Washington Public Power Supply System

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Public Power Supply System for the operation of the WPPSS Nuclear Project No. 2 located in Benton County, Washington.

In accordance with the licensee's application for amendment dated March 14, 1985, the proposed amendment to Operating License NPF-21, would provide relief, for one time only, from the WNP-2 Technical Specifications surveillance requirement 4.4.3.2.2, of leak testing three of the eighteen Reactor Coolant System Pressure Isolation Valves. These valves are designated RCIC-V-66, RCIC-V-13 and RHR-V-23 and are identified in Table 3.4.3.2-1 of the Technical Specifications.

Leak testing of these three valves will require either removal of the containment head or personnel access into the more hazardous areas of the containment. The licensee proposes to delay the leak testing of these three valves until the first scheduled refueling outage. The valves will be readily accessible at that time because the shield plug and containment head must be removed for refueling.

In the Pacific Northwest, surplus power from hydroelectric generation results from snow-melt runoff in the spring. To maximize regional resources, the Bonneville Power Administration has directed that the Supply System is to be on a 12 month scheduled outage cycle that will coincide with this regional surplus power. The Power Ascension Test Program conducted between licensing (December 20, 1983) and commercial operation (December 13, 1984) required only limited power generation and concomitant minimal fuel burn up during that period. As a result, refueling is unwarranted at this time but a maintenance outage is scheduled for spring 1985. The first refueling outage is planned for spring 1986.

Thus, the spring 1985 maintenance outage will not require containment head removal. Since head removal will not be accomplished, the ability of personnel to perform these valve leak tests is impaired. Access to these valves under the required test condition (950± 10 psig) exposes personnel to extreme hazards in the upper elevations of the containment and in confined spaces with high pressure test equipment. Head removal, if required, would divert plant resources from scheduled maintenance activities and plant modifications that are essential and would extend the outage. This delay would be contrary to the public interest in the Pacific Northwest.

The system design relies on these valves for protection of low pressure piping. Extreme pressurization of this low pressure piping can occur upon failure of these valves which is unlikely. Leakage testing provides an early indication of valve degradation but little advance indication of imminent gross valve failure. Furthermore, the system design is such that any leakage due to degradation that may develop can be readily detected by existing instrumentation because:

- High pressure interface valve leakage pressure monitors (Quality Class I) are available with an alarm in the Control Room. These monitors are under required surveillance by the Technical Specifications.
- Position indication on each interface valve is available in the Control Room.
- Leakage would be diverted to the suppression pool by relief valves provided for over-pressure protection and narrow range suppression pool level indication is available that is sufficiently sensitive to detect significant leakage.

It should be noted that the operability of these valves is tested at cold shutdown per ASME requirements. To date, no evidence of leakage has been apparent and the valves have not required maintenance since they were last leak tested. Had the valves required maintenance, leak testing would have been accomplished at that time as required by the Technical Specifications. *Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The

licensee has determined that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed schedule for leak testing will not increase the probability of gross valve failure. Any small leakage that could develop over this interval would not jeopardize low pressure piping. Additionally, should leakage occur past any pair of Reactor Coolant System Pressure Isolation Valves, the plant is instrumented to detect it and respond.

(2) Create the possibility of a new or different kind of accident than previously evaluated because no new accident scenarios are credible based on scheduling leakage testing alone.

(3) Involve a significant reduction in a margin of safety because the proposed schedule for leak testing will not provide significantly less indication of a potential for redundant valve failure and the plant design characteristics that permit detection and provide piping protection for over-pressurization are not diminished or altered.

Based on staff review of the proposed rescheduling of the leak testing of these three valves, we find there is reasonable assurance that the integrity of the pressure boundary will not be compromised and that the public health and safety will not be jeopardized.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The Commission is seeking public comments on the proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 10, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also indentify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicolas Reynolds, Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to the action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland, this 3rd day of May 1985.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85–11267 Filed 5–8–85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 26, 1985 (50 FR 11962). Individual authorities established or revoked under Schedules A, B, or C between March 1, 1985 and March 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during March.

Schedule B

No Schedule B exceptions were established or revoked during March.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs. Effective March 1, 1985.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective March 13, 1985.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective March 13, 1985.

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective March 20, 1985.

One Confidential Assistant to the Administrator for Legislative and Public Affairs, Animal and Plant Health Inspection Service. Effective March 20, 1985.

One Private Secretary to the Assistant Secretary for Natural Resources and Environment. Effective March 20, 1985.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective March 22, 1985.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective March 22, 1985.

One Private Secretary to the Deputy Under Secretary for Small Community and Rural Development. Effective March 22, 1985.

Department of the Army

One Staff Assistant to the Deputy Assistant to the President for Presidential Personnel. Effective March 28, 1985.

Department of Commerce

One Confidential Assistant to the Assistant Secretary for Administration. Effective March 1, 1985.

One Confidential Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective March 8, 1985.

One Special Assistant to the Deputy Assistant Secretary for Finance, Economic Development Administration. Effective March 15, 1985.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 21, 1985.

One Special Assistant to the Deputy Assistant Secretary for the Economic Development Administration. Effective March 25, 1985.

Department of Defense

One Special Assistant to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective March 1, 1985.

One Assistant to the Assistant Secretary of Defense (Reserve Affairs). Effective March 14, 1985.

Department of Education

One Confidential Assistant to the Assistant Secretary for Legislation and Public Affairs. Effective March 22, 1985.

Department of Energy

One Special Assistant (Legal) to the Deputy General Counsel for Program Effective March 1, 1985.

One Secretary (Confidential Assistant) to the Assistant Secretary for Fossil Energy. Effective March 4, 1985.

One Secretary (Confidential Assistant) to the Secretary. Effective March 6, 1985.

Two Staff Assistants to the Secretary. Effective March 6, 1985.

One Special Assistant to the Special Assistant to the Secretary. Effective March 18, 1985.

Department of Health and Human Services

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective March 4, 1985.

One Counselor to the Director, U.S. Office of Consumer Affairs. Effective March 4, 1985.

One Writer for the Secretary. Effective March 4, 1985.

One Director, Congressional Affairs Staff, to the Director, Office of Legislation and Policy, Health Care Financing Administration. Effective March 5, 1985.

One Special Assistant to the Secretary. Effective March 6, 1985.

One Director, Division of Research and Demonstrations to the Director, Office of Program Development, Office of Human Development Services. Effective March 13, 1985.

One Associate Commissioner for Children's Bureau to the Commissioner, Administration and Children, Youth and Families, Office of Human Development Services. Effective March 14, 1985.

Department of Housing and Urban Development

One Special Assistant to the Director, Office of Indian Housing, Office of the

Assistant Secretary for Public and Indian Housing. Effective March 6, 1985.

One Special Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation, Office of the Assistant Secretary for Community Planning and Development. Effective March 19, 1985.

One Staff Assistant to the Executive Assistant to the Secretary. Effective March 22, 1985.

One Staff Assistant (Typing) to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective March 28, 1985.

One Staff Assistant (Typing) to the Deputy Under Secretary for Intergovernmental Relations. Effective March 28, 1985.

Department of Interior

One Special Assistant to the Assistant to the Secretary and Director of External Affairs. Effective March 4, 1985.

Department of Justice

One Special Assistant to the Attorney General. Effective March 4, 1985.

Two Special Assistants to the Assistant Attorney General for the Civil Rights Division. Effective March 6, 1985.

One Staff Assistant to the Commission, Immigration and Naturalization Service. Effective March 22, 1985.

Department of Labor

One Executive Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective March 4, 1985.

One Staff Director of Industrial Relations Policy to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Effective March 20, 1985.

One Private Secretary to the Deputy Under Secretary for Intergovernmental Affairs. Effective March 21, 1985.

One Special Assistant to the Assistant Secretary for Policy. Effective March 21, 1985.

One Special Assistant to the Deputy Under Secretary for International Affairs. Effective March 22, 1985.

Department of Navy

One Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs). Effective March 1, 1985.

Department of Transportation

One Receptionist to the Deputy Secretary. Effective March 1, 1985.

One Special Assistant to the Administrator, Federal Highway Administration. Effective March 1, 1985.

One Staff Assistant to the Administrator, National Highway Traffic Safety Administration. Effective March 11, 1985.

Department of Treasury

One Confidential Assistant to the Assistant Secretary for Policy, Planning and Communications. Effective March 8, 1985.

One Confidential Assistant to the Secretary. Effective March 22, 1985.

One Director, Office of Business Affairs to the Assistant Secretary for Business and Consumer Affairs. Effective March 22, 1985.

One Special Assistant to the Assistant Secretary (Administration). Effective March 22, 1985.

One Staff Assistant to the Assistant Secretary (Administration). Effective March 22, 1985.

Council on Environmental Quality

One Confidential Assistant to the Member, Council on Environmental Quality. Effective March 28, 1985.

Federal Trade Commission

One Director to the Chairman, Office of Congressional Relations. Effective March 4, 1985.

One Director to the Chairman, Office of Public Affairs. Effective March 4, 1985.

General Services Administration

One Confidential Assistant to the Director, Office of the Executive Secretariat. Effective March 14, 1985.

One Special Assistant to the Commission, Public Building Service. Effective March 19, 1985.

Small Business Administration

One Confidential Program Assistant to the Chief of Staff. Effective March 14, 1985.

One Executive Assistant to the Director of Women's Business Ownership. Effective March 14, 1985.

United States Trade Representative

One Special Assistant to the Director of Public and Intergovernmental Affairs. Effective March 6, 1985.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

[FR Doc. 85-11193 Filed 5-8-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23680; 70-7103]

Mississippi Power Co.; Proposal To Issue Promissory Note

May 3, 1985.

Mississippi Power Company ("Mississippi"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Mississippi has purchased a historic office building in the City of Gulfport, Mississippi, and plans to restore the building for its use as additional office space. Mississippi desires to utilize the urban renewal procedures of the State of Mississippi to finance the restoration of the building which is estimated to cost up to $1,500,000.

The procedures under the Urban Renewal Act of the State of Mississippi are such that the City of Gulfport will execute an urban renewal installment note (the "Note") in the principal sum of up to $1,500,000 to the Hancock Bank, Gulfport, Mississippi. The Note will bear interest at the rate of 9½% annually and will be payable over a five-year period at up to $300,000 per year with interest being paid semi-annually. Mississippi will execute a promissory note to the City of Gulfport in the same amount, at the same interest rate, and with the same repayment terms and conditions as the Note. The City of Gulfport will then assign the promissory note of Mississippi to the Hancock Bank as collateral for the Note.

Mississippi anticipates that interest on the Note will be exempt from federal and State of Mississippi income taxation thereby resulting in a financing cost saving of approximately two percentage points.

The declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified

of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11306 Filed 5-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22011; SR-PSE-85-8]

Self-Regulatory Organizations; Filing of and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 3, 1985, the Pacific Stock Exchange incorporated ("PSE" or "Exchange") filed with the securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE filed its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("Pilot Program") with the Commission on May 4, 1981. The Pilot Program was amended in 1982, and is scheduled to terminate on March 31, 1985. In order to allow the PSE to review certain suggested revisions to the Pilot Program and to submit any necessary filings to the Commission with respect to the amendment or permanent adoption of the Pilot Program, the Exchange is requesting that the terms of the Pilot Program be extended for a period of three months, through June 30, 1985.

In connection with the proposed extension of the Pilot Program, the PSE proposes to amend sections 1(1) and 11(t) of Rule II of the Rules of the Board of Governors of the PSE, which currently reflect the Pilot Program's scheduled expiration date of March 31, 1985.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Pilot Program was initially filed with the Commission on May 4, 1981, and approved for a period of one year on May 27, 1981. The term of the Pilot Program was subsequently extended several times by the Commission. In December 1982, the Pilot Program was amended. It was scheduled to terminate on March 31, 1985.

The PSE's Board of Governors and the Equity Allocation Committee have requested the Exchange staff to investigate certain proposed modifications to the Pilot Program. To permit the Exchange to review these proposed modifications, and others which may be suggested, and to submit any necessary filings to the Commission with respect to the revision or permanent adoption of the Pilot Program, the PSE is requesting a three-month extension of the Pilot Program, to and including June 30, 1985.

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act in general, and in particular sections 6(b)(5) and 6(b)(7).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

To permit the Pilot Program to remain in effect without interruption, the PSE has requested that this filing be approved on an accelerated basis, effective April 1, 1985.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that it will provide the Exchange with the additional time necessary to review proposed amendments to the Pilot Program and to submit any necessary filings to the Commission, while permitting the Pilot Program to remain in effect without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 30, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 2, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-11302 Filed 5-8-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/850]

The Secretary's Advisory Panel on Overseas Security; Meeting

The Secretary's Advisory Panel on Overseas Security will hold a meeting on Wednesday, May 22, 1985 from 8:30 a.m. until 1:00 p.m. at the Department of State, 2201 C Street, NW., Washington, D.C. 20510.

Due to the national security information that will be discussed, this meeting will be closed to the public.

For further information, please contact the Advisory Panel staff on (202) 653-8533.

Dated: May 2, 1985.

Victor H. Dikeos,

Executive Secretary, The Secretary's Advisory Panel on Overseas Security.

[FR Doc. 85-11241 Filed 5-8-85; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

[Order 85-5-16; Dockets 42854 and 42855]

Application of the Interface Group, Inc. d/b/a Five Star Airlines for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 85-5-16), Dockets 42854 and 42855.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting Five Star Airlines a certificate to engage in interstate, overseas, and foreign charter air transportation of persons, property and mail.

DATE: Persons wishing to file objections should do so no later than May 28, 1985.

ADDRESSES: Responses should be filed in Dockets 42854 and 42855 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, Room 4107, Washington, D.C. 20590 and should be served the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-16 is available for inspection at our Documentary Services Division at the above address.

Dated: May 1, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-11309 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 85-5-28; Docket 42987]

Application of Southwest Airlines Co.; Muse Air Corp. et al.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 85-5-28) Docket 42987.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order approving the acquisition of control of Muse Air by Southwest Airlines under section 408 of the Federal Aviation Act, and denying requests that standard labor protective provisions be imposed as a condition of the Department's approval.

DATES: Persons wishing to file objections or other comments should do so no later than May 20, 1985. Replies should be filed no later than June 3, 1985.

ADDRESSES: Responses should be filed in Docket 42987 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th St., SW., Washington, D.C. 20590 and should be served upon the parties listed in Appendix 8 to the order.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar, Office of General Counsel, Litigation Division, U.S. Department of Transportation, 400 7th St., NW., Washington, D.C. 20590; (202) 426-4731.

Dated: May 3, 1985.

Matthew V. Scocozza,

Assistant Secretary, for Policy and International Affairs.

[FR Doc. 85-11310 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-036]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the seventh meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, June 11, 1985 in Room 1120, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consist of the following items:

1. Call to Order
2. Minutes of the January 15, 1985 Meeting
3. Chairman's Message
4. District Commander's response to the Committee's Recommendation of January 15, 1985
5. Coast Guard Presentation on Mississippi River Casualty Study
6. Presentation by Federal Communications Commission, local Engineer in Charge
7. Discussion
8. New Business
9. Adjournment

The purpose of this committee is to provide a public forum which will furnish to the U.S. Coast Guard consultation, local expertise, and advice on a wide range of matters regarding all facets of navigation safety.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for persentation. The individual making the presentation shall also provide their names, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R.A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589-6901.

Dated: May 6, 1985.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 85-11243 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Davidson and Summer Counties TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Davidson and Sumner Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Ptak, Division Administrator, Federal Highway Administration, Federal Building, U.S. Courthouse, 801 Broadway—Suite A-926, Nashville, Tennessee 37203, telephone (615) 251-5394.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane access control highway on new location from south of the I-95 Interchange at Two Mile Pike to north of Center Point Road in Davidson and Sumner Counties, Tennessee. The proposed improvement would have a length of approximately 3.5 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands.

Options under consideration include (1) taking no action; (2) postponement; (3) reduced facility design; and (4) constructing a four-lane roadway on new location.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state and local agencies in 1981. Public meetings were held in 1981 and 1982. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number of 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program).

Issued on: May 2, 1985.

Thomas J. Ptak,

Division Administrator Tennessee Division Nashville, Tennessee.

[FR Doc. 85-11226 Filed 5-8-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 3, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0789
Form Number: None
Type of Review: Reinstatement
Title: Roper Reports Proprietary Questions
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: New
Form Number: None
Type of Review: New
Title: User Satisfaction Survey
Clearance Officer: Vince Olive (202) 566-9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, N.W., Washington, D.C. 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0018
Form Number: ATF Form 6 Part II (5330.3B)
Type of Review: Reinstatement
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-11236 Filed 5-8-85; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue NW., Room 2575, Washington D.C. 20224, Telephone No. (202) 566-4138 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that a closed meeting of the Art Advisory Panel will be held on June 3, 1985 beginning at 9:30 a.m. in Room 4415, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appeaing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

P.E Coates,

Acting Commisstioner.

[FR Doc. 85-11311 Filed 5-8-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 90
Thursday, May 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 13, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,221–SR—Village Bank, Pueblo West, Colorado
Case No. 46,223–SR—The Bank of Woodson, Woodson, Texas
Case No. 46,224–SR—The Citizens State Bank, Viola, Kansas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
Cherokee County Bank, Centre, Alabama, AP–393 (Memo dated April 10, 1985)
The Coffeen National Bank, Coffeen, Illinois, AP–399 (Memo dated April 11, 1985)
Citizens Bank of Monroe County, Tellico Plains, Tennessee, AP–382 (Memo dated March 4, 1985)
East Texas Bank & Trust Company, Longview, Texas, AP–398 (Memo dated March 13, 1985)
Seminole State National Bank, Seminole, Texas, NR–464 (Memo dated March 5, 1985)

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendments will govern insured banks' direct and indirect involvement in insurance, real estate, and guarantor or surety activities.

Memorandum and resolution re: Petition for public hearing on proposed amendments to Part 332.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 6, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85–11350 Filed 5–7–85; 11:39 am]

BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 13, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Applications for Federal deposit insurance:

Anchor Thrift & Loan Association, an operating noninsured industrial bank located at 1029 Pacific Coast Highway, Seal Beach, California.

City Loan Bank, an operating noninsured industrial bank located at 200 West Market Street, Lima, Ohio.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2), (c)(6), and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 6, 1985.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11351 Filed 5-7-85; 11:39 am]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, May 14, 1985 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, May 16, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft Advisory Opinion #1985-14—Robert F. Bauer, on behalf of the Democratic Congressional Campaign Committee
Advance notice of proposed rulemaking: Enforcement regulations (11 CFR Part 111)
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-11398 Filed 5-7-85; 2:18 pm]

BILLING CODE 6715-01-M

4

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5-85

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Monday, May 20, 1985 at 10:30 a.m.

Subject Matter

Consideration of Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96-606) and decisions involving claims for prisoner of war compensation.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111-20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C. on May 2, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 85-11330 Filed 5-7-85; 10:32 am]

BILLING CODE 4410-01-M

5

NEIGHBORHOOD REINVESTMENT CORPORATION

Seventh Annual Meeting

TIME AND DATE: 2:00 p.m., Wednesday, May 15, 1985.

PLACE: Neighborhood Reinvestment Corporation, 1850 K Street NW., Suite 400, Washington, D.C. 20006.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy S. McCarthy, Associate Director, Communications, 202-653-2705.

AGENDA:

I. Call to Order and Remarks of the Chairman
II. Approval of Minutes, February 6, 1985
III. Executive Director's Activity Report
IV. Treasurer's Report
V. Election of Chairman
VI. Election of Vice Chairman
VII. Appointment of Audit Committee
VIII. Election of Officers
IX. Appointment of Assistant Secretary

Carol J. McCabe,

Secretary.

May 7, 1985.

[FR Doc. 11418 Filed 5-7-85; 3:54 pm]

BILLING CODE 7570-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held a closed meeting on Friday, April, 26, 1984, at 4:30 p.m., at 450 5th Street NW., Washington, D.C., to consider the following items.

Institution of injunctive action.
Formal order of investigation.
Regulatory matter bearing enforcement implications.

Chairman Shad and Commissioners Cox and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272-3085.

John Wheeler,

Secretary.

[FR Doc. 85-11376 Filed 5-7-85; 12:37 pm]

BILLING CODE 8010-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held a closed meeting on Wednesday, May 1, 1984, at 4:30 p.m., at 450 5th Street, NW., Washington, D.C., to consider the following item.

Regulatory matter regarding financial institution.

Chairman Shad and Commissioners Cox and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Joan Stempel at (202) 272-2405

John Wheeler,

Secretary.

May 2, 1985.

[FR Doc. 85-11375 Filed 5-7-85; 12:07pm]

BILLING CODE 8010-01-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 16580 April 26, 1985).

STATUS: Closing meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, April 22, 1985.

CHANGE IN THE MEETING: Additional meeting.

The following additional item was considered at a closed meeting held on Thursday, May 2, 1985, at 4:07 p.m.

Litigation matter.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Joan Stempel at (202) 272-2405.

John Wheeler,

Secretary.

May 6, 1985.

[FR Doc. 85-11366 Filed 5-7-85; 12:07pm]

BILLING CODE 8010-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 13, 1985.

An open meeting will be held on Tuesday, May 14, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, May 14, 1985, at 2:30 p.m., will be:

1. Consideration of whether to adopt amendments to Form 13F under the Securities Exchange Act of 1934 to simplify procedures for requesting confidential treatment of open risk arbitrage positions and to place time limits on confidential treatment of commercial information filed on the form. For further information, please contact Susan P. Hart at (202) 272-2098.
2. Consideration of whether to propose for public comment Form N-7, a new form for registration of unit investment trusts and their securities under the Investment Company Act of 1940 and the Securities Act of 1933, and related rules and rule amendments, and to publish staff guidelines for the preparation of Form N-7. For further information, please contact Stephen C. Beach at (202) 272-3040.
3. Consideration of whether to grant the application of the Association of Publicly Traded Investment Funds requesting a conditional exemptive order under sections 6(c), 17(d) and 23(c) of the Act and Rule 17d-1 thereunder to permit its internally-managed, closed-end investment company members to offer their employees deferred equity compensation in the form of stock options and stock appreciation rights. For further information, please contact Joyce M. Pickholz at (202) 272-3046.
4. Consideration of whether to propose for public comment a revision of Rule 70 and amendments to Rule 50 under the Public Utility Holding Company Act of 1935. The revision of Rule 70 would simplify, clarify and expand the exemptions now available under the existing rule which permit persons affiliated with investment bankers and commercial banking institutions to serve as officers or directors of registered holding companies and their subsidiaries. The amendments to Rule 50 would codify revised competitive bidding procedures and address potential conflicts of interest. For further information, please contact Jack Murphy at (202) 272-3042.
5. Consideration of an amendment to 17 CFR 200.735-8(b), relating to appearances by former Commission employees before the Commission. For further information, please contact Myrna Siegel at (202) 272-2430.

The subject matter of the closed meeting scheduled for Tuesday, May 14, 1985, following the 2:30 p.m. open meeting, will be:

Formal orders of investigation.

Amendment to a formal order of investigation.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive actions.

Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

John Wheeler,

Secretary.

May 6, 1985.

[FR Doc. 85-11365 Filed 5-7-85; 12:07 p.m.]

BILLING CODE 8010-01-M

federal register

Thursday
May 9, 1985

Part II

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, and 307
Child Support Enforcement Program; Implementation of Amendments of 1984; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, and 307

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the Child Support Enforcement Amendments of 1984, Pub. L. 98-378, which amend title IV-D of the Social Security Act (the Act). The statutory changes implemented by these regulations fall within three basic categories.

(1) Availability of Services;
(2) Enforcement Techniques; and
(3) Program Administration and Financing.

For a detailed discussion of these categories see **SUPPLEMENTARY INFORMATION.** These regulations are effective (May 9, 1985).

DATES: The various compliance dates of the statutory requirements are listed below:

September 1, 1984—Imposition of Optional Late Payment Fees on Obligated Parents Who Owe Overdue Support (§ 302.75)
October 1, 1984:
- Collection and Distribution of Support in Foster Care Maintenance Cases (§ 302.52)
- Continuing IV-D Services for Families that Lose AFDC Eligibility (§ 302.51)
- Computerized Support Enforcement Systems (45 CFR Part 307)

December 1, 1984—State Commissions on Child Support (§ 304.95)
October 1, 1985:
- Mandatory State Procedures (§§ 302.70, and 303.100 through 303.105)
- Incentive Payments to States and Political Subdivisions (§§ 302.55 and 303.52)
- Notice of Collection of Assigned Support (§ 302.54)
- Publicizing the Availability of Support Enforcement Services (§ 302.30)
- Mandatory Collection of Spousal Support (§§ 302.17 and 302.31)
- Payment of Support through the IV-D Agency or Other Entity (§ 302.57)

Effective for refunds payable after December 31, 1985, and before January 1, 1991—Collection of Past-due Support from Federal Income Tax Refunds in non-AFDC Cases (§ 303.72)
October 1, 1987—State Guidelines for Child Support Awards (§ 302.56)
October 1, 1987 and thereafter—Reduction in the Federal Matching Rate (45 CFR Parts 301, 304, 305 and 307)

See also the discussion under the heading "Paperwork Reduction Act" regarding information collection requirements.

FOR FURTHER INFORMATION CONTACT: At (301) 443-5350:

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Carol Jordan (Federal and State Income Tax Refund Offset; Access to Federal Parent Locator Service; Continuing IV-D Services for Families that Lose AFDC Eligibility; Guidelines for Setting Child Support Awards; Late Payment Fees)
Michael Fitzgerald (90 Percent Funding for Automated Systems Hardware; Required Application Fee)

SUPPLEMENTARY INFORMATION: The preamble to these regulations contains a detailed summary of the regulatory requirements followed by responses to comments received on the proposed regulations. To help readers locate corresponding portions of the preamble, identical headings are used to describe each section of the summary and each section of the responses to comments.

The following is a summary of the requirements implemented by these regulations.

Mandatory State Procedures

Since the inception of the Federal Child Support Enforcement program there has been a marked difference in the level of success of the programs operated by the various States. In the nine years the Federal program has been in existence, certain procedures which have noticeably increased the effectiveness of State programs have been identified. As a result of this experience, Congress has enacted sections 454(20)a and 466 of the Act to require all States to implement these proven procedures by October 1, 1985. However, if a State demonstrates to the Secretary that State legislation is required to conform the State plan to one or more of the requirements of the new statute, the State's plan shall not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until four months after the end of the first session of the State's legislature which ends on or after October 1, 1985.

These regulations: (A) require that a State plan for child support enforcement must provide that the State has in effect laws governing the mandatory enforcement procedures specified in section 466 of the Act; (B) specify how a State should proceed in order to obtain an exemption from one or more of these procedures and the basis for granting exemptions, and (C) specify the criteria that a State must meet in implementing the mandatory enforcement procedures.

State Plan Requirement (§ 302.70)

The regulation at 45 CFR 302.70 contains the State plan requirement for the use of mandatory practices to improve program effectiveness as specified in the paragraph 454(20) of the Act. The definition of "overdue support" from section 466(e) of the Act that is applicable to all mandatory practices is in the general definitions section 45 CFR 301.1 "Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of the child or for the absent parent's spouse (or former spouse) with whom the child is living, if and to the extent that a spousal support obligation has been established and the child support obligation is being enforced under the State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence, but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the procedures under section 466 and these regulations at § 302.70.

Under § 302.70(a), a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures specified in section 466(a) of the Act for: (1) Carrying out a program for the withholding of amounts from the wages of individuals to comply with support orders; (2) establishing and enforcing support orders by expedited processes; (3) obtaining overdue support from State income tax refunds in cases where support is assigned to the State under

sections 402(a)(26) or 471(a)(17) of the Act and where support is collected under section 454(6) of the Act; (4) imposing liens against real or personal property for amounts of overdue support; (5) establishing a child's paternity at least up to the child's 18th birthday; (6) requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support (7) making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than $1,000 or at the option of the State if the amount is less than $1,000; and (8) including a provision for wage withholding in child support orders issued or modified in the State.

Section 466 requires States to use procedures 3, 4, 6 and 7 except when they determine that the procedures are inappropriate in an individual case. Using guidelines generally available to the public. States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations in determining whether use of a particular procedure is inappropriate in an individual case. States may not develop guidelines that determine a majority of cases in which no other remedy is being used to be inappropriate. We have implemented this requirement in § 302.70(b). Under § 302.70(c), State laws enacted to implement these effective practices must give States sufficient authority to comply with the requirements contained in 45 CFR 303.100 through 303.105. We have not included a section under Part 300 of the regulations on paternity established up to the child's 18th birthday because including the requirement under § 302.70 is adequate to regulate this mandatory procedure.

Section 466(d) of the Act allows the Secretary of HHS to grant a State (or a political subdivision with respect to expedited process) an exemption from enacting and using any of the procedures mandated by the new law if the State demonstrates that the procedure would not increase the effectiveness and efficiency of the State's Child Support Enforcement program. Such demonstration must be supported through the presentation of data pertaining to caseloads, processing time, administrative costs, average support collections or other actual or estimated data that the Secretary may require. The Secretary will review the exemption periodically and terminate it if circumstances, including effectiveness, should change.

Under § 302.70(d)(1), a State may request an exemption from the State plan requirements of paragraph (a) by submitting a request for exemption to the appropriate Regional Office. Under this process, a State may also request an exemption from the requirement for expedited processes for a political subdivision of the State. Under § 302.70(d)(2), the Secretary will grant an exemption for up to three years upon a demonstration by the State that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. To support an initial exemption, the information required by section 466(d) of the Act must be provided and documented by the State. Because the Congress has given the Secretary discretion to determine whether or not to grant an exemption, disapproval by the Secretary of a request for exemption is not subject to appeal.

Section 302.70(d)(3) provides for review by the Secretary and termination of the exemption for the State (or political subdivision in the case of expedited process) if the State cannot demonstrate that it continues to warrant an exemption in accordance with paragraph (d). Under paragraph (d)(4), a State must request an extension of an exemption 90 days prior to the end of the exemption period granted by the Secretary by submitting current data that demonstrates that compliance with the required procedure will not increase the efficiency and effectiveness of its Child Support Enforcement program.

If the Secretary revokes an extension or does not grant an extension of an exemption, paragraph (d)(5) requires the State to enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first session of the State's legislature which ends after the date the exemption is revoked or the extension denied. If no State law is necessary, the State must establish and use the procedure by the beginning of the fourth month after the date the exemption is revoked.

Procedures for Wage or Income Withholding

Section 466 of the Act requires that States provide for by law and have in effect two distinct procedures for dealing with wage withholding. The first, required under section 466 (a)(1) and (b) of the Act, pertains only to cases being enforced through the IV–D agency. Under this requirement, States must have and use a procedure that requires wage withholding to be triggered in IV–D cases whenever an arrearage accrues that is equal to the amount of support payable for one month. Withholding is to begin without amendment to the order or further action by the court. Section 466(b) also specifies other elements of the withholding system for IV–D cases such as the basis for appeal, maximum amounts of withholding, imposing fines on noncooperative employers and so forth.

The second procedure, required by section 466(a)(8) of the Act, provides that all new or modified orders issued in the State include a provision in the order for wage withholding when an arrearage occurs. The intent of the second required State procedure is to ensure that orders not being enforced through the IV–D agency will include in them the authority necessary to permit wage withholding to be initiated by someone other than the IV–D agency (e.g., a private attorney).

The specific requirements for applying wage withholding that are set out for IV–D cases do not apply to wage withholding that ensues solely from the inclusion of a wage withholding clause in an order. States are free to establish the conditions and procedures to be applied for wage withholding for cases not being enforced through the IV–D agency. It is likely that most States will conform these conditions and procedures to those required to be used for IV–D cases. Should the conditions and provisions of the two required procedures differ, however, the procedures required to be used for IV–D cases must be applied in IV–D cases. For example, if an order calls for withholding to begin when the arrearage amount equals the amount payable for two months in accordance with the State's procedure for orders not being enforced under title IV–D, withholding must still begin after one month's arrearage accrues in accordance with the State procedure that applies to all IV–D cases, if that order is now being enforced under the State's IV–D plan.

We implemented sections 466(a) (1) and (8) and (b) of the Act which provide for withholding of income or wages of individuals who owe overdue support by adding a section 45 CFR 303.100. Procedures for wage or income withholding. To implement section 466(b)(1) of the Act, § 303.100(a)(1) requires that States must ensure that in the case of each absent parent subject to a support order in the State which is being enforced under the State plan, so much of his or her wages must be withheld as is necessary to comply with the order. In addition to withholding the amount due for current support, paragraph (a)(2) requires the State to withhold an additional amount of wages

to be applied toward liquidation of overdue support. Paragraph (a)(3) limits the total amount withheld for support and other purposes to an amount not to exceed the maximum permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

In accordance with section 466(b)(2) of the Act, § 303.100(a)(4) requires that the State law be designed so that, in the case of a support order being enforced under the State plan, withholding occurs without the need for any amendment to the support order involved or any further action by the court or entity that issued it. This blanket provision of State law must apply to both existing and new support orders.

Section 466(a)(8) of the Act and § 303.100(h), which implements the second required State procedure discussed above, provide that new or modified support orders established after the effective date of the new law must have a specific provision for withholding. As states earlier, this is to ensure that withholding as a means of collecting support is available if arrearages occur without the necessity of applying for IV-D services. Notwithstanding, if a new or modified support order does not include a provision for withholding and the order is being enforced by the IV-D agency, withholding must occur as required in § 303.100 (a) through (g).

To implement the requirements under section 466(b)(3) of the Act for triggering withholding § 303.100(a)(4) requires that the State take steps to begin withholding on the date on which the parent fails to make payments in an amount equal to one month's support obligation. This does not mean that the individual must miss paying the support obligation for one month. Any combination of unpaid support totalling one month's accrued arrearages would trigger a withholding. Paragraph (a)(4) also requires the State to take steps to implement the withholding at any earlier time that is in accordance with State law or that the absent parent may request. This means that a State could use withholding to collect support in all cases if it chose to do so.

In accordance with section 466(b)(4) of the Act, § 303.100(a)(5) specifies that the only basis for contesting a withholding is a mistake of fact, which means only an error in the amount of current or overdue support or the identity of the alleged absent parent.

Section 303.100(a)(6) requires that States prorate amounts available for withholding where there is more than one notice of withholding against a single absent parent, and that current support be given priority up to the limits imposed by section 303(b) of the Consumer Credit Protection Act.

Section 466(b)(4) of the Act and § 303.100(a)(7) require that withholding be carried out in full compliance with all procedural due process requirements under the State's laws. Paragraph (a)(8) specifies that the absent parent may not avoid imposition of wage withholding simply by paying the overdue support. Section 303.100(a)(9) requires States to have procedures for terminating the withholding promptly, in accordance with section 466(b)(10) of the Act, but in no case should the payment of overdue support be the sole reason for termination. In paragraph (a)(10) we require States to have procedures for promptly refunding to individuals monies that have been improperly withheld.

Under section 466(b)(4), States must provide notice to an individual before notifying the individual's employer concerning a withholding. The notice must inform the individual of the intent to withhold and of the procedures to follow to contest the withholding. An individual may contest the withholding only on the basis of a mistake of fact. If the individual contests the proposed withholding, the State must determine whether or not the withholding will occur and, if so, notify the individual, within no more than 45 days after the provision of the advance notice, of the timeframe within which the withholding is the begin. To implement these requirements, § 303.100 (b) and (c) set forth the criteria that States must meet in giving advance notice and providing an opportunity to contest the withholding. In paragraph (b)(1) on the date the absent parent fails to make payments in an amount equal to the support payable for one month, States must take steps to provide advance notice to the absent parent of the delinquency of support payments and the potential withholding. The notice must inform individuals: (1) of the amount of overdue support that is owed and the amount of wages to be withheld; (2) that the withholding applies to any current or subsequent employer or period of employment; (3) of the methods available for contesting the withholding on the grounds that the withholding is not proper because of mistakes of fact; (4) of the period within which the State must be contacted in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin the withholding; and (5) of the actions the State will take if the individual contests the withholding. Although we are not specifying a period of time within which an individual must notify the State to contest the withholding, States should establish a standard time period (for example, 10 days) that would allow them to complete all required action within the statutory 45-day limit contained in paragraph (c).

As specified in section 466(b)(4) of the Act, paragraph (b)(2)(i) exempts from the requirements for advance notice and State procedures when the absent parent contests the withholding in response to the advance notice any State which has a withholding system in effect as of August 16, 1984, if the system provides, on that date and afterwards, any other procedures necessary to meet the State's procedural due process requirements. Paragraph (b)(2)(ii) requires these States to take steps to send the employer the notice required in paragraph (d) on the date on which the absent parent fails to make payments in an amount equal to the support payable for one month and to meet all other requirements of § 303.100.

Paragraph (c) requires that States establish procedures for use when an absent parent contests a withholding in response to the advance notice. At a minimum, the procedures must provide that the State, within 45 days of giving advance notice to the individual, will: (1) Give the individual an opportunity to present his or her case; (2) decide if the withholding will occur based on an evaluation of the facts; (3) notify the individual whether or not the withholding is to occur and if so, include in the notice the timeframe within which withholding will begin and the information provided to the employer in the notice required in paragraph (d); and (4) if the withholding is to occur, send the notice to the employer required under paragraph (d).

When the absent parent does not contest the withholding within the timeframe specified by the State or has exhausted all procedures established by the State in accordance with paragraph (c), the State must give notice of the withholding to the employer, in accordance with section 466(b)(6)(A) of the Act and § 303.100(d). Clear Congressional intent in the Conference report indicates that Federal employees are subject to the withholding provisions of the new statute. Therefore, in cases involving Federal employees and members of the uniformed services, the notice to the employer must be directed to the appropriate designated official identified in: Appendix A of 5 CFR Part 581 for Federal employees; 32 CFR 54.6(g) of proposed regulations issued October 18, 1982 (47 FR 46297) for members of the military; 42 CFR 21.74

for members of the Public Health Service; and 33 CFR 54.07 for members of the Coast Guard.

Section 466(b)(6) of the Act sets forth specific requirements with respect to notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements, the notice to the employer must contain the elements listed in § 303.100(d)(1). Under paragraph (d)(1)(i) the notice must require the employer to withhold the amount specified in the notice (and include a statement that the amount actually withheld for support and for other purposes, including the fee specified under paragraph (d)(1)(iii), may not be in excess of the amount allowed under section 303(b) of the Consumer Credit Protection Act). Under paragraph (d)(1)(ii), the notice must instruct the employer to pay the amount to the State (or other individual or entity that the State designates) within 10 days of the date the employee is paid. Under paragraph (d)(1)(iii), the State may allow the employer to deduct a fee established by the State and specified in the notice for the administrative costs of each withholding. Under this provision, the State must specify that the fee be withheld from the absent parent's wages in addition to the amount to be withheld to satisfy support.

Under paragraph (d)(1)(iv), the notice must state that the withholding is binding on the employer until further notice by the State. In addition, paragraph (d)(1)(v) requires the notice to specify that the employer is subject to a fine for discharging, refusing to employ or taking disciplinary action against an individual because of a withholding. Paragraph (d)(1)(iv) require the notice to specify that, if the employer fails to withhold wages, the employer is liable for the accumulated amount the employer should have withheld. In paragraph (d)(1)(vii), the withholding must have priority over any other legal process under State law against the same wages as required by section 466(b)(7) of the Act. This means that an employer must withhold amounts for support before complying with any other legal process imposed in accordance with State law. In paragraph (d)(1)(viii), employers may combine withheld amounts in a single payment for each appropriate agency requesting withholding and separately identify the portion of the payment which is attributable to each individual employee, in accordance with section 466(b)(6)(B) of the Act.

In § 303.100 (d)(1) (ix) and (x) and (d)(2), using the authority granted to the Secretary under section 1102 of the Act we require some general requirements to facilitate withholding. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act.

Paragraph (d)(1)(ix) requires the employer to implement the withholding no later than the first pay period that occurs after 14 days from the mailing date on the notice. In paragraph (d)(1)(x), we require that employers must notify the State promptly of the termination of the individual's employment and provide the individual's last known address and the name and address of the individual's new employer, if known. We believe these requirements will ensure the proper implementation of withholding. Under paragraph (d)(2), if the absent parent does not contest the withholding within the time period specified in the advance notice, the State must immediately send the notice to the employer. Paragraph (d)(3) requires that, if the absent parent changes employment within the State while the withholding is in effect, the State must notify the new employer, in accordance with the requirements of paragraph (d)(1), that the withholding is binding on the new employer.

Section 303.100(e) outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. Under § 303.100(e)(1), a State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track and monitor support payments. The State may designate public or private entities to administer the withholding on a State or local basis under the supervision of the designated State withholding agency if the entity, or entities are publicly accountable and follow the procedures specified by the State. The State may designate only one entity to administer withholding in each jurisdiction. Paragraph (e)(2) requires the State under (e)(1) to distribute amounts withheld promptly in accordance with section 457 of the Act and related regulations A State may contract with private firms for the collection and distribution of withheld amounts. If a State contracts with a private firm, the State must reduce its IV–D expenditures by any interest earned by the firm on withheld amounts in the same manner as it would for interest earned on any other IV–D transactions. This is in accordance with section 455 of the Act. Under this requirement, a State may allow the firm to keep interest earned as payment for services provided, but the interest amount must be deducted from the State's IV–D expenditures.

The new section 466(b)(8) gives a State the option to expand its withholding system to include withholding from forms of income other than wages in order to ensure that support owed by absent parents will be collected regardless of the nature of their income-producing activities. Section 303.100(f) implements this optional provision.

Under § 303.100(g)(1), we implemented the requirement in section 466(b)(9) that States extend their withholding systems to include withholding in cases where the support orders were issued in other States. As specified in the statute, this provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parent.

Although the requirements contained in § 303.100 (g)(2) through (g)(7) are not specifically required by the statute, we believe they are necessary for the proper implementation of the statute and to clarify the responsibilities of each State involved in an interstate withholding. We are, therefore, using the authority granted to us under section 1102 of the Act to impose these requirements.

In paragraph (g)(2), we require that the State law require employers within the State's jurisdiction to comply with a withholding notice. Under paragraph (g)(3), we require that once withholding in a particular case is required, the IV–D agency of a State in which the custodial parent applied for IV–D services must promptly notify the IV–D agency of any other State in which the absent parent is employed in order to implement interstate withholding. We require this notification to contain all the information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages. If necessary, the State where the support order is entered must promptly provide the information necessary to carry out the withholding when requested by the State where the custodial parent applied for services. Paragraph (g)(4) requires the State in which the individual is employed to implement withholding promptly upon receipt of the notice to withhold from the State where the custodial parent applied for services.

Since the State where the absent parent is employed must carry out the

withholding with the employer, in paragraph (g)(5) we require that State provide the advance notice to the absent parent, the opportunity to contest the withholding and the notice to the employer. In addition, under paragraph (g)(5), when an absent parent terminates employment within the State, that State must notify the State in which the custodial parent applied for services that the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known. This will allow the State where the custodial parent applied for services to notify the new State where the absent parent is currently employed to implement withholding. Under paragraph (g)(6), all procedural due process requirements of the State where the absent parent is employed would apply. Finally, paragraph (g)(7) provides that, except for specifying when the withholding shall apply which is controlled by the State where the support order was entered, the law and procedures of the State where the absent parent is employed shall apply.

Paragraph (h) requires support orders issued or modified in the State beginning October 1, 1985, to include a provision for wage withholding, as discussed earlier in this preamble.

Expedited Processes

We implemented the requirements of section 466(a)(2) by adding 45 CFR 303.101, Expedited processes. Paragraph (a) of § 303.101 defines the term "expedited processes" as administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in paragraph (b)(2) and under which the presiding officer is not a judge of the court.

To implement the specific requirements of section 466(a)(2) of the Act, paragraph (b)(1) requires States to have in effect and use expedited processes to establish and enforce support orders in intrastate and interstate cases. Under paragraph (b)(2), actions to establish or enforce support obligations in IV-D cases must be completed from time of filing to time of disposition within the following time frames: (1) 90 percent in 3 months; (2) 98 percent in 6 months; and (3) 100 percent in 12 months. Under paragraph (b)(3), the State may use expedited processes for paternity establishment. A State may not simply enact a law authorizing the use of expedited processes but must in fact use them in lieu of full judicial process to ensure more effective and efficient processing of support establishment and enforcement actions. Under paragraph (b)(4), in cases which involve complicated issues requiring judicial resolution, the State must establish a temporary support order under its expedited processes and may then refer the remaining complex issues to the full judicial system for resolution.

Section 303.101(c) sets forth the safeguards that a State's expedited processes must provide. Paragraph (c)(1) requires that orders established under the State's expedited processes have the same force and effect under State law as orders established by full judicial process. Under paragraph (c)(2), the State's processes must ensure that the rights of the individuals involved are protected. Paragraph (c)(3) requires that the State's processes provide the parties with a copy of the support order.

To ensure that presiding officers in the State's expedited processes are qualified, paragraph (c)(4) requires States to have written procedures to ensure their qualifications. Paragraph (c)(5) permits the recommendations of presiding officers under the State's expedited processes to be ratified by a judge. Lastly, paragraph (c)(6) allows any action taken under the State's expedited processes to be reviewed under the State's generally applicable judicial procedures.

Section 303.101(d) sets forth the minimum functions that a presiding officer under a State's expedited processes must perform. In effect, presiding officers must, at a minimum, be delegated the authority to: (1) Take testimony and establish a record; (2) evaluate evidence and make recommendations or decisions to establish and enforce orders; (3) accept voluntary acknowledge of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accept voluntary acknowledge of paternity, and (4) enter default orders if the absent parent does not respond to notice or other State process within a reasonable period of time specified by the State.

The experience of States which use some form of expedited process has shown that presiding officers must have authority to perform the above functions. States may expand the authority of presiding officers to include enforcement of support obligations and issuance of default judgments or may delegate more authority to them based on their particular needs. For example, where a high percentage of absent parents fail to appear for hearings a State might delegate the authority to issue bench warrants to presiding officers. A State must delegate enough authority to presiding officers to allow them to perform in a truly expedited manner.

Under § 303.101(e), in accordance with the statute, a State may be granted an exemption from the requirements of §303.101 for a political subdivision on the basis of the political subdivision's effectiveness and timeliness of support order issuance and enforcement in the same manner that States may be granted exemptions from required procedures in accordance with § 302.70(d).

State Income Tax Refund Offset

We implemented section 466(a)(3) by adding 45 CFR 303.102 which sets out the criteria for implementing State income tax refund offset procedures. The offset process is mandatory for all appropriate IV-D cases, including AFDC, non-AFDC and foster care maintenance cases regardless of whether they are intrastate cases or interstate cases referred from other States.

Section 303.102(a) specifies which overdue support qualifies for offset. Paragraph (a)(1) clarifies that overdue support in all IV-D cases qualifies for State income tax offset. Paragraph (a)(2) specifies that overdue support qualifies for offset if the State does not determine that the case is inappropriate for use of this procedure using guidelines it must develop which are generally available to the public. We have given States maximum flexibility to set which overdue support qualifies for offset to permit each State to establish the most effective and efficient procedures for offsetting State income tax refunds. We recognize that one set of criteria in Federal regulations will not be suitable for all States.

Paragraph (b)(1) requires the IV-D agency to establish procedures to ensure that amounts referred for offset have been verified and are accurate. The regulations do not specify the procedures States must use to ensure accuracy, since procedures may vary from State to State. Paragraph (b)(2) requires the IV-D agency to notify the appropriate State office or agency of any significant reductions in amounts referred for offset.

Under § 303.102(c), a State must inform non-AFDC individuals in advance if the State will first use any offset amount to satisfy any unreimbursed AFDC or foster care maintenance payments. This is in accordance with current policy which allows States to use overdue support collected in non-AFDC cases either to satisfy unreimbursed assistance or to pay non-AFDC individuals.

In accordance with section 466(a)(3)(A) of the Act, § 303.102(d) requires States to send advance notice to the absent parent of the referral for offset and provide an opportunity to contest it. Section 303.102(e)(1) requires States to establish procedures for contesting the referral for offset. Paragraph (e)(2) requires States to have a mechanism for promptly reimbursing the absent parent if the offset amount is found to be in error or to exceed the amount of overdue support. Paragraph (e)(3) requires States to establish procedures, with respect to joint refunds, for ensuring that the absent parent's spouse has an opportunity to request a share of the refund, if appropriate, in accordance with State law.

Section 303.102(f) allows a State to charge a reasonable fee in non-AFDC cases to cover the cost of collecting overdue support using State income tax refund offset, in accordance with section 466(a)(3)(B) of the Act.

Section 303.102(g) sets forth the requirements specified in section 460(a)(3(B) of the Act for distribution of amounts offset. Paragraph (g)(1) requires States to distribute amounts collected from State tax refund offsets within a reasonable time period in accordance with the State law. In AFDC or foster care maintenance cases, distribution procedures at § 302.51(b)(4) and (5) or 302.52(b)(3), and (4) respectively, are applicable because the State must treat amounts collected under the State tax refund offset as past-due support. Under § 302.51.(b)(4), amounts collected in an AFDC case are retained by the State as reimbursement for past assistance payments. Section 302.51(b)(5) provides that any excess amounts remaining after the State is reimbursed in an AFDC case shall be paid to the family. Under § 302.52(b)(3), which governs distribution in foster care maintenance cases, the distribution is the same as for AFDC cases. Under § 302.52(b)(4), excess amounts remaining after the State is reimbursed for AFDC and foster care maintenance payments are retained by the State to be used in the child's best interest. In non-AFDC cases, the State may pay offset amounts to the family first or use them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases. Under § 303.102(g)(2), if the amount collected is in excess of amounts required to be distributed, the excess amount must be refunded to the absent parent within a reasonable period. Paragraph (g)(3) of this section requires the State to credit amounts offset on individual payment records.

Section 303.102(h) requires the State agency responsible for processing State income tax refunds to notify the State IV–D agency of the absent parent's home address and social security number or numbers. The State IV–D agency must provide this information to any other State involved in enforcing the support order. This provision is required by the statute in section 466(a)(3)(C).

Imposition of Liens

We implemented section 466(a)(4) by adding 45 CFR 303.103, Procedures for the imposition of liens against real and personal property. Under paragraph (a) of this section, States must have in effect and use procedures for the imposition of liens against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State. Under paragraph (b), this procedure is applicable for cases not deemed inappropriate under guidelines that must be developed by the State and made generally available to the public.

Posting Security, Bonds or Guarantees

We implemented the requirements of section 466(a)(6) by adding 45 CFR 303.104, Procedures for posting security, bond or guarantee to secure payment of overdue support. In § 303.104(a), States must have in effect and use procedures under which absent parents must post security, bond, or give some other guarantee to secure payment of overdue support. This procedure is applicable for cases not considered inappropriate under the State's generally available guidelines. Examples of appropriate cases might be those in which the absent parent is self-employed or realizes income from commissions or other irregular payments, unless the income realized is so small that it would be counterproductive to require security because the cost of meeting the security would preclude payment of the support obligation. States should screen cases for use of this procedure very carefully in order to use it to its fullest advantage.

Paragraph (b) requires a State to give the absent parent advance notice, in full compliance with the State's procedural due process requirements, of the requirement to post security, bond or give some other guarantee and of the methods to use to contest the action. Under paragraph (c), this procedure is applicable for cases not deemed inappropriate under guidelines that must be developed by the State and made generally available to the public.

Making Information Available to Consumer Reporting Agencies

We implemented requirements of section 466(a)(7) by adding 45 CFR 303.105, Procedures for making information available to consumer reporting agencies. Under § 303.105(a), we define "consumer reporting agency" to mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. This definition is mandated by the statute and found in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

Under paragraph (b), in accordance with section 466(a)(7) of the Act, States must use this procedure when an absent parent is more than $1,000 in arrears and information regarding the amount of overdue support owed by these absent parents is requested by such agencies. The cases in which information is sent to the consumer reporting agency may be further limited by the State under generally available guidelines used to determine cases inappropriate for this procedure.

States have the option of using such procedures in cases where the absent parent is less than $1,000 in arrears. Under paragraph (c), States may charge the agency a fee for providing this information. Any fee charged would be limited to the actual cost of providing the information. Under this requirement, a State may establish a uniform fee to be applied in all cases or develop a fee schedule based on the volume of requests. Paragraph (d) requires the State to provide the absent parent an advance notice and an opportunity to contest the accuracy of the information. Paragraph (e) requires the State to comply with all applicable procedural due process requirements of the State before releasing the information. The requirements imposed in paragraph (d) and (e) are required by the statute.

The requirements of this section do not preclude a State from obtaining information from consumer reporting agencies.

Dates of Collection

Section 302.51(a) provides that the date of collection is the date on which payment is received by the IV–D agency or the legal entity of the State or

political subdivision actually making the collection.

In interstate cases, the date of collection is the date the collection is received by the IV-D agency of the State in which the family is receiving aid. In any case in which collections are received by an entity other than the agency responsible for final distribution under § 302.51, the entity must transmit the collection within 10 days of receipt.

Incentive Payments

Under current section 458 of the Act, States and political subdivisions that enforce and collect support are eligible to receive as an incentive 12 percent of collections made on behalf of AFDC families. States deduct the incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment. The incentive payment is thus set at a fixed rate of the support collection.

The fixed incentive payment rewards States for collections made in AFDC cases, but it does not encourage States to improve program efficiency and effectiveness. The great variance in the efficiency and effectiveness of Child Support Enforcement programs operated by States has become a matter of increasing concern. This disparity has led to a search for ways in which Federal funding might be used to encourage improvement in the performance of State Child Support Enforcement programs.

To encourage and reward States that operate Child Support Enforcement programs in an efficient and effective manner and to stimulate collections, Congress added a new section 454(22) and revised section 458 of the Act. Effective October 1, 1985, section 458 will replace the current incentives system with a new system under which States will receive a minimum incentive payment based on amounts collected on behalf of AFDC families and on behalf of non-AFDC families. States could also receive additional amounts above the minimum payment if their performance meets the criteria established by Congress and promulgated in this document. In addition, section 454(22) requires the State to pass through an appropriate share of its incentive payment to those political subdivisions within the State that financially participate in the program. Since the emphasis of the new system is on program performance, we believe that States will be encouraged to select and develop more effective and efficient methods of operating their programs.

Section 5(c)(2)(A) of the new statute provides that through FY 1985, States will receive incentives on AFDC collections retained to repay assistance payments, and the first $50 collected which is returned to the family in accordance with section 457(b) of the Act as amended by section 2640(b) of the Deficit Reduction Act of 1984. Prior to this provision, incentives were paid only on collections retained to reduce or repay assistance payments.

Revised section 458(b)(4) provides for a transition between the current funding system (12 percent incentives and 70 percent Federal matching rate) and the new system which becomes effective October 1, 1985. Under the transition provision, in FY 1986 and FY 1987, States will be paid an amount equal to the greater of the amount they qualify for under the new incentive and Federal matching rate system or 80 percent of the amount that they would have received under the 12 percent incentive payment (as amended by the new statute to allow incentives to be paid on collections retained to repay assistance payments, and the $50 which is passed through to the family under the Deficit Reduction Act of 1984 (Pub. L. 93-369)) and 70 percent matching rate system, had they remained in effect as they were in effect for FY 1985.

We implemented section 454(22) and the revised section 458 of the Act by adding § 302.55 and revising § 303.52, Incentive payments to States and political subdivisions. In accordance with the new State plan requirement in section 454(22), regulations at § 302.55 require the State plan to provide that, in order for the State to be eligible to receive incentive payments under § 303.52, if one or more political subdivisions participate in the cost of carrying out the IV-D program, those subdivisions shall be entitled to receive an appropriate share of any incentive payment made to the State for the period, as determined by the State in accordance with § 303.52(d), taking into account the efficiency and effectiveness of the political subdivision in carrying out its activities under the IV-D State plan. For example, the State may determine the appropriate share of each locality that participates in the costs of the program using a formula such as the one specified in statute and contained in this document at § 303.52(b). We strongly recommend that if States use that formula, they supplement each locality's share, if necessary, so that localities receive the total incentive payment which would be computed for their performance with respect to the criteria in § 303.52(d).

We implemented the revised section 458 of the Act by revising the current § 303.52. Paragraph (a) of § 303.52 contains four definitions. The definition of "political subdivision" is unchanged from the former § 303.52. To clarify the use of the terms "AFDC collections," "non-AFDC collections" and "total IV-D administrative costs," we added definitions of these terms to § 303.52(a). The definitions of AFDC and non-AFDC collections reflect the provision in section 458(b) which allows States to count collections made in foster care maintenance cases as AFDC collections for purposes of calculating incentive payments.

Paragraph (b) provides that OCSE will pay an incentive payment to a State for each fiscal year in recognition of AFDC collections and of non-AFDC collections. Under paragraph (b)(1), a portion of the State's incentive payment is computed as a percentage of its AFDC collections, and a portion of its incentive payment is computed as a percentage of its non-AFDC collections. The percentage, determined separately for AFDC and non-AFDC incentives, is based on the ratio of the State's AFDC and non-AFDC collections to the State's total IV-D administrative costs, in accordance with section 458(c) of the Act. The percent of collections payable as an incentive to a State in a given fiscal year is specified in the schedule contained in paragraph (b)(1). To implement section 458(b) of the Act, each State will receive an incentive payment of at least six percent of its AFDC and non-AFDC collections. The schedule also sets forth increased incentive payments equal to 5.5 percent of each type of collection if the ratio of AFDC or non-AFDC collections to total IV-D administrative costs equals at least 1.4. An additional incentive of one-half of one percent of AFDC and non-AFDC collections, up to a limit of 10 percent, will be paid for each full two-tenths by which the ratio exceeds 1.4. These two provisions governing increased incentive payments implement section 458(c) of the Act.

Under § 303.52(b)(2), the ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place, since rounding is not permitted under the statute. For example, a State will receive an incentive of seven percent of its AFDC collections if the ratio of AFDC collections to total IV-D administrative costs is 1.79, because in order to receive an incentive of 7.5 percent, the ratio must be at least 1.8.

As provided under section 458(b), paragraph (b)(3) provides that the portion of the incentive payment paid to a State for non-AFDC collections may not exceed the portion paid the State for

AFDC collections in FY 1986 and 1987. However, in FY 1988, the non-AFDC portion of the incentive may equal 105 percent of the AFDC portion of the incentive; in FY 1989, the non-AFDC portion may equal 110 percent of the AFDC portion of the incentive; and in FY 1990 and thereafter, it may equal 115 percent of the AFDC portion of the State's incentive payment.

Under paragraph (b)(4), we list conditions that apply in the calculation of incentive payments. In paragraph (b)(4)(i), we specify that collection distributed and expenditures claimed by a State in a specified fiscal year will be those used to calculate the ratio under paragraph (b)(1).

In paragraph (b)(4)(ii), both the responding State and the initiating State receive credit for collections made in interstate cases. This provision, which implements section 458(d), is designed to encourage States to work interstate cases. It also represents a significant change from current law under which only the responding State receives the incentive payment.

In paragraph (b)(4)(iii), we exclude fees paid by individuals, recovered costs and program income such as interest earned on collections from IV–D expenditures when computing incentives. Excluding these amounts from IV–D expenditures is provided for in section 455(a) of the Act. Section 455(a) requires the Secretary, in determining the total amount expended by a State during a quarter, to exclude the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV–D State plan. As provided for in section 458(c), paragraph (b)(4)(iv) allows States to exclude laboratory costs incurred in determining paternity from their total IV–D administrative costs when computing incentives. Congress provided this option in an effort to encourage States to pursue paternity cases which may not be cost-effective initially but which may pay off over a longer period of time and which also benefit the child. Lastly, under paragraph (b)(4)(v), States must add amounts expended by the State in carrying out specific interstate projects which are provided for under section 455(e) of the Act to their IV–D administrative expenditures when computing incentives. This is in accordance with section 455(e)(4) of the Act.

Under § 303.52(c)(1), we will estimate the amount of the incentive payment to be received by a State for the upcoming year, in accordance with section 458(e) which requires the Secretary to estimate the incentive payment due a State based on the best information available. In order to obtain this information, however, the reports currently submitted by the State must be revised. A revision is currently in process and will be submitted separately to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

In paragraph (c)(2), we require States to include one-quarter of the estimated annual incentive payment amount in their quarterly collection report which will result in a reduction to the Federal share of AFDC collections reported for that quarter. We require this because section 458(e) of the Act provides that estimated incentives be paid quarterly and because this practice is being used currently by States to obtain the 12 percent fixed incentive. Adjustments for any overpayments or underpayments which might have been made in prior quarters will be made in the following fiscal year. Thus, States will know in advance an estimate of the incentive payment they can expect to receive for a year which will allow them to budget for their title IV–D programs with some degree of certainty.

Paragraph (c)(3) provides that OCSE would calculate the State's actual incentive payment for the fiscal year after the end of the current fiscal year based on State performance data. If adjustments to the estimate made at the beginning of the fiscal year are necessary, the State's IV–A grant award will be reduced or increased to ensure that the State receives the appropriate incentive payment.

Paragraphs (c) (4) and (5) contain the special conditions relating to the payment of incentives during FY 1985, FY 1986, and FY 1987 which are specified in section 458(b)(4) of the Act and section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, and described earlier in this preamble.

In accordance with section 454(22) of the Act, paragraph 303.52(d) requires States to calculate and promptly pay incentive payments to political subdivisions that participate in the costs of the IV–D program. Under paragraph (d)(1), we require the State to develop a standard methodology for passing through an appropriate share of its incentive payment to political subdivisions that participate in the costs of the IV–D program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by the political subdivisions. Since many localities perform a substantial amount of work in the enforcement and collection of support, Congress specified in section 454(22) that they must receive an appropriate share of the State's incentive payment, if they participate in program costs. Therefore, under paragraph (d)(1) States must develop a standard methodology that best fits their needs.

Paragraph (d)(2) requires the State to seek local participation in the development of its standard methodology. We require this because we believe that local participation will ensure that the methodology is both fair and equitable. To comply, States may use whatever rulemaking process that includes an opportunity for review and comment that is available under State law or submit a draft methodology to participating localities for review and comment.

Under § 303.52(e), we require an initiating State to identify the case as an AFDC, non-AFDC or IV–E case at the time that the State asks the responding State to make a collection. We also require the initiating State to inform the responding State of any changes in the status of the case.

Lastly, in § 303.52(f) we require that States continue to use the time frame for the transmission of interstate collections and the codes required under the current § 303.52. Therefore, responding jurisdictions are required to forward collections to the initiating State within 10 days and include the code identifying the collecting State or political subdivision as defined by the Federal Information Processing Standards Publication or in the Worldwide Geographical Location Codes.

Reduction in the Federal Matching Rate

Federal funding is available to States for administrative costs incurred pursuant to a State plan for child support enforcement approved under title IV–D of the Act. This funding is authorized by section 455(a)(1) of the Act. Revised section 455(a)(1) reduces the Federal funding rate from 70 to 66 percent over a three-year period beginning in FY 1988.

Federal funding at the 70 percent rate is available for FY 1983 through FY 1987. The rate of 68 percent applies to FY 1988 and FY 1989. Each fiscal year thereafter the matching rate will be 66 percent. To implement this change, we defined the term "applicable matching rate" in 45 CFR Part 301 and substituted that phrase for the phrase "70 percent rate" wherever it appears in 45 CFR Parts 304 and 307. Also, we made a conforming change to § 305.22, State financial participation, to specify that the State share in funding the administrative costs

of the program will increase from 30 to 34 percent over the same period.

Collection of Past-Due Support From Federal Income Tax Refunds

Revised section 464 of the Act provides for the use of Federal income tax refund offsets to collect past-due support owed in non-AFDC and foster care cases, as well as AFDC cases. Previously, this means of collection was available for AFDC cases only. The statutory amendments apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1991.

The regulations implement revised sections 454 and 464 of the Act by amending § 303.72 which governs the use of Federal income tax refund offset. The regulations do not amend § 302.60, the State plan requirement section, because § 302.60 is written broadly enough to cover submittal of AFDC, foster care maintenance and non-AFDC cases for refund offset.

Former § 303.72(a) defined "past-due support." We moved the definition to § 301.1 because it applies to all sections in the regulations governing Federal tax refund offset. We also added a sentence to the definition which, in non-AFDC cases, limits past due support which may be referred for Federal income tax refund offset to support due a minor child. Spousal support due in non-AFDC cases may not be referred for Federal tax refund offset. Section 303.72(b) contains the criteria for determining which past-due support qualifies for Federal tax refund offset. Current § 303.72(b)(1) states, in part, that past-due support qualifies for offset if the support has been assigned to the State making the referral. To implement revised section 464(a) of the Act, § 303.72(a)(1) permits States to refer amounts for offset if there has been an assignment under § 232.11 or section 471(a)(17) of the Act of an application for IV–D services under § 302.33 filed with the State IV–D agency.

The regulations at § 303.72(a)(2)(i) require the amount referred for offset in AFDC and foster care maintenance cases to be at least $150 as specified in current regulations for AFDC cases. The regulations at § 303.72(a) (2)(ii), (5) and (6) require any past-due support referred for offset in AFDC and foster care maintenance cases to have been delinquent for three months or longer require the State to verify the accuracy of the name, social security number and arrearage amount in all cases and provide that the IRS must have received notification of liability for past-due support in all cases.

Section 303.72(a)(3) requires, in non-AFDC cases: that the support is due to or on behalf of a minor, that the amount of past-due support is at least $500; at State option, that the amount has accrued since the State IV–D agency began to enforce the support order; and that the State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family. Section 464(c) limits the amount referred for offset in non-AFDC cases to support due to or on behalf of a minor. Spousal support owed in non-AFDC cases may not be referred for Federal income tax refund offset. Section 464(b)(2) of the Act imposes the $500 minimum amount to be referred for offset in non-AFDC cases and allows States to limit amounts referred to those accrued since the State began to enforce the order.

We used the Secretary's authority under section 1102 of the Act to add a new § 303.72(a)(3)(iv), which require States to check their records for assigned AFDC or foster care maintenance arrearages in non-AFDC cases. It is possible that a non-AFDC individual who has applied for IV–D services and is seeking Federal tax refund offset to satisfy past-due support may provide, locate or other information which the State previously lacked and therefore was unable to collect assigned arrearages which accrued when the non-AFDC individual was receiving AFDC or foster care maintenance payments. Section 303.72(a)(4) requires that the IV–D agency must have in its records a copy of the order and any modifications specifying the date of issuance and the amount of support; a copy of the payment record or an affidavit signed by the custodial parent attesting to the amount owed; and, in non-AFDC cases the current address of the custodial parent.

Section 303.72(b) sets forth requirements for notification OCSE of liability for past-due support. Paragraph (b)(1) which requires IV–D agencies to submit to OCSE, a notification on magnetic tape of liability for past-due support, by the date specified by OCSE in instructions. Paragraph (b)(2)(v) requires the notification of liability for past-due support to indicate for each delinquency whether the past-due support is due a non-AFDC individual who applies for services under § 302.33. Therefore, the State must certify for offset separately amounts to satisfy assigned AFDC and foster care arrearages and other arrearages due in non-AFDC cases. Paragraph (b)(3) addresses additional information a State may include in the notification of liability for past-due support. The remainder of paragraph (b) (formerly paragraph (c)) is unchanged by these regulations.

Former § 303.72(d), governing review of requests for offset was redesignated as § 303.72(c) and paragraph (d)(2), redesignated as paragraph (c)(2), is revised by deleting "December 1." Former §303.72(e), governing notification of changes in case status, is redesignated as § 303.72(d) and minor editorial changes have been made for consistency.

Former § 303.72(f) redesignated as § 303.72(e), requires OCSE or the State IV–D agency to send a pre-offset notice. Section 464(a)(3) of the Act specifies that the notice must include a statement informing the absent parent of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of past-due support and the procedures to be followed in the case of a joint return to protect the share of the refund which is payable to another person. Section 303.72(e) implements the requirement for advance notice to the absent parent, including the procedures and deadlines for responding to the notice. These requirements provide the absent parent with an opportunity to be heard either in the submitting State or if the support order was issued in another State, in that State at the request of the absent parent if he or she does not agree that past-due support is owed or that the amount being referred for offset in accurate. In addition, § 303.72(e)(1) requires the State or OCSE to include a statement in the notice that, in the case of a joint return, the IRS will contact the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. Section 464(a) (1) and (2) of the Act specify that the IRS will notify the taxpayer that the withholding has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to sucure his or her proper share of the refund. Determination of the proper share of a refund depends on the community property laws of the jurisdiction where the absent parent and spouse reside. Section § 303.72(e)(2) sets forth IRS procedures with respect to notice at the time of offset.

The regulations at paragraph (f) address procedures for handling complaints received from absent parents in intrastate cases.

The IV–D agency must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time

and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint. If a complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure a proper shae of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the absent parent to the IRS. If the review results in a deletion of, or a decrease in, the amount referred for offset, the IV-D agency must notify OCSE in writing of the deletion or modification. If, as a result of the administrative review, an amount which has already been offset is found to exceed the amounts of past-due support owed, the IV-D agency must refund the excess amount to the absent parent promptly.

Section 303.72(g) of these regulations describes the procedures for contesting in interstate cases. If the absent parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements of § 303.72(f). If the complaint cannot be resolved by the submitting State and the absent parent requests a review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request and provide all necessary information within 10 days of the absent parent's request for an administrative review. The State with the order sends a notice to the absent parent, and in non-AFDC cases the custodial parent, of the time and place of the administrative review, conducts the review, and makes a decision within 45 days of receipt of the notice and information from the submitting State.

The State with the order notifies OCSE in writing if the administrative review results in a deletion of or decrease in the offset amount and notifies the submitting State promptly upon resolution of a complaint. The submitting State is bound by the decision of the State with the order. If a refund is due the absent parent, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly. For purposes of incentive payments, collections will be treated as having been collected in full by both the submitting State and the State with the order.

OMB Circular A-87 (Cost Principles for State and Local Governments) Attachment B, Section D(1), precludes Federal funding for "any loss arising from uncollectable accounts and other claims, and related costs." In addition section 1102 of the Act requires the Secretary to establish rules necessary for efficient administration of the program. Therefore, costs incurred by States as a result of tax refund offset payments to individuals which are subsequently determined to be erroneous and which the State is unable to recoup from the individual may not be claimed as administrative costs under the IV-D program as these are not appropriate expenditures for which Federal funding is available.

Paragraph (h) requires that collections made as a result of refund offset in AFDC and non-AFDC cases shall be distributed as past-due support under § 302.51(b) (4) and (5). Paragraph (h)(2) requires that collections made as a result of refund offset where there has been an assignment of this support obligation in a foster care maintenance case under section 471(a)(17) of the Act be distributed under § 302.25(b) (3) and (4). Under these provisions, a State must apply amounts offset to AFDC and foster care assigned arrearages submitted for offset first and only pay the non-AFDC family any amounts offset which have not been assigned. Although this distribution order is not specifically mandated in the Act, amended section 6402(c) of the Internal Revenue Code 1954 requires the IRS to apply amounts offset first to satisfy past-due support assigned to the State in AFDC and foster care maintenance cases. We believe Congress intended this distribution order to be followed by States. Therefore, under the authority granted to the Secretary in section 1102 of the Act, we require States to apply amounts offset first to past-due support assigned to the State and submitted for Federal tax refund offset. Paragraph (h)(3) requires States to inform individuals who apply for non-AFDC offset services how the amounts offset will be distributed.

Section 464(a)(3)(D) of the Act requires a State, in any case in which an amount is offset and the State subsequently determines that the amount certified for offset was in excess of the amount owed at the time of offset, to pay the excess to the absent parent or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return. Section 303.72(h)(4) requires IV-D agencies to repay excess amounts offset to the absent parent or the parties filing a joint return within a reasonable period in accordance with State law.

Section 464(a)(3)(B) of the Act provides that, when the Secretary of the Treasury offsets a refund that is based on a joint return, the Secretary of the Treasury shall notify the State that the offset is being made from a refund based upon a joint return and shall furnish the State with the names and addresses of each taxpayer filing the joint return. In the case of an offset made to satisfy past-due support in a non-AFDC case, the State may delay distribution of the offset amount until the State is notified that the other person filing the joint return has received his or her proper share of the refund, but the delay may not exceed six months. Section 464(a)(3)(C) of the Act provides that, when an offset is made, if the absent parent's spouse filing the joint return takes appropriate action to secure his or her proper share of the refund that was offset, the Secretaty of the Treasury will pay the spouse his or her share of the refund and deduct that amount from amounts payable to the State agency.

To implement section 464(a)(3)(B), § 303.72(h)(5) permits States to delay distribution in non-AFDC cases until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from the date the State is informed that an offset is being made from a refund based on a joint return, whichever is earlier. States may wish to send absent parents a second notice at the time of offset to inform them that, unless the absent parent contacts the State within a certain period of time to contest the offset, the State will distribute the amount offset to the family. This may encourage prompt filing of amended returns.

The regulations do not change § 303.72(h)(6), which requires that offset amounts be applied only to satisfy arrearages specified in the advance notice to the absent parent except for minor editorial changes for consistency.

In accordance with section 464(b)(2)(B) of the Act, the regulations revise § 303.72(i), to permit the Secretary of the Treasury to impose a fee on the IV-D agency not to exceed $25 for each non-AFDC case submitted. Amended section 464(b)(1) of the Act provides that any fee paid to the Secretary of the Treasury may be used to reimburse appropriations which bore all or part of the cost of applying offset procedures. Section 454(6)(C) of the Act permits the State to impose a fee of not more than $25 in any case where the State requests offset from a Federal income tax refund to satisfy non-AFDC past-due support. To implement section 454(6)(C), § 303.72(i)(2) requires the State to inform any individual who applies for services under § 302.33 of the amount of any non-

AFDC user's fee charged for submitting past-due support for Federal tax refund offset, if the State IV-D agency chooses to charge a fee. The fee may not exceed $25.

Paragraph (j) of the regulations requires each State involved in a referral of past-due support for offset to comply with instructions issued by OCSE.

In accordance with section 464(a)(2)(B) of the Act, § 303.72(k) limits offset of Federal tax refunds to satisfy past-due support in non-AFDC cases to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Collection and Distribution of Support in Foster Care Maintenance Cases

Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, transferred the AFDC foster care program from title IV-A of the Act to a new title IV-E and authorized Federal matching funds for this newly designated program. Because the foster care program was no longer funded or administered under title IV-A, the provision for assignment of support rights by recipients of AFDC required by section 402(a)(26) of the Act was no longer applicable for foster care cases. This meant that title IV-D child support services were not available to title IV-E foster care cases except as non-AFDC cases. In order to receive IV-D services as a non-AFDC case, the child's parent, legal guardian or the entity given custody of the foster child by judicial determination had to apply to the IV-D agency is accordance with section 454(6) of the Act. To remedy this problem, Congress, effective October 1, 1984, added a new section 471(a)(17) of the Act to require States to take all steps, where appropriate, to secure an assignment of support rights on behalf of a child receiving foster care maintenance payments under title IV-E of the Act and amended sections 454(4)(B), 456(a), 457 and 464(a) of the Act to require IV-D agencies to collect and distribute child support for IV-E foster care maintenance cases.

We implemented provisions of the new section 457(d) which generally parallels the distribution patterns specified for other IV-D collections by amending a number of sections of the IV-D program regulations and adding a new § 302.52, Distribution of support collected in title IV-E foster care maintenance cases. Under § 302.52(a), effective October 1, 1984, a State plan for child support must provide that the support collections in foster care maintenance cases must be distributed in accordance with § 302.51(a). The provisions of § 302.51(a) are general procedures applicable to distribution of support collected in AFDC cases. They require amounts collected to be treated first as payment on the required support obligation for the month in which the support is collected and, if there is excess over the monthly support obligation, it must be treated as payment on the required support obligation for previous months. Section 302.51(a) allows States the option of rounding off converted amount to whole dollars for distribution purposes. It also provides that the collection date is the date the collection is received by the IV-D agency or the legal entity of the State or political subdivision making the collection on behalf of the IV-D agency. In interstate cases, the date of collection is the date on which payment is received by the IV-D agency in the State in which the family is receiving aid.

We believe that distribution of collections in foster care maintenance cases would be facilitated by following the above requirements. Therefore, under the authority granted to the Secretary by section 1102 of the Act, the general requirements of § 302.51(a) apply to support collections made in foster care maintenance cases.

In accordance with section 457(d) of the Act, § 302.52(b) contains procedures specific to the distribution of support collections in foster care maintenance cases. Under paragraph (b)(1), amounts paid on required support obligations on behalf of children for whom foster care maintenance payments are being made under title IV-E must be retained by the State to reimburse it for foster care maintenance payments. The IV-D agency must determine the Federal share of these collections so that the State may reimburse the Federal government to the extent of its participation in financing the foster care maintenance payments.

Under paragraph (b)(2), if the amount collected is in excess of the monthly amount of the foster care maintenance payment but not the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care. The State agency must then use the excess in a manner it determines to be in the best interests of the child. Although we believe the State agency should have wide latitude in determining how this amount might be used in the child's best interest, we have included the two options which are included in the statute: (1) Setting aside such amounts for the child's future needs; or (2) making all or part of the money available to the person responsible for meeting the child's day-to-day needs to be used for the child's benefit.

Under paragraph (b)(3), if the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2), the State must retain the excess to reimburse itself for past unreimbursed foster care maintenance payments made under title IV-E or past unreimbursed assistance rendered by the AFDC program under title IV-A. If past title IV-A or IV-E payments exceed the total support obligation owed, the State may not retain more than such obligation. If amounts are collected which represent support due prior to the first month the family received IV-A or IV-E assistance, the State may retain these amounts to reimburse the State for the difference between the support obligation and the past IV-A or IV-E payments. The IV-D agency must determine the Federal share of these collections so that the State may reimburse the Federal government to the extent of its participation in the assistance payments under title IV-A and foster care maintenance payments under title IV-E. Paragraph (b)(4) requires that any balance after the satisfaction of any unreimbursed payments must be paid to the State agency responsible for supervising the child's placement and care to be used in the child's best interest.

In paragraph (b)(5), we require that no payment can be considered a future payment unless the absent parent's assigned support obligations under sections 402(a)(26) and 471(a)(17) of the Act are fully satisfied. This is necessary for the proper implementation of the distribution procedures required by section 457(d) of the Act.

Lastly, in § 302.52(c), after the termination of the assignment made under section 471(a)(17) of the Act, States are required to attempt to collect amounts of accrued unpaid support which have been assigned. Amounts collected must be distributed as past-due support in accordance with paragraph (b)(3) and a State must give priority to collection of current support in this type of case. This requirement is consistent with the distribution process in section 457 of the Act.

We also amended § 302.31(a)(1) to require States to establish paternity of a child born out of wedlock with respect to whom there is an assignment under section 471(a)(17) of the Act. Although establishment of paternity in foster care maintenance cases is not specifically mandated in the amendments to the statute, we believe Congress intended that all IV-D services be available in

foster care maintenance cases, as was the case prior to enactment of title IV-E of the Act. We are also making a similar technical change to § 305.5. Since establishment of paternity is a necessary prerequisite to securing support, we are using the Secretary's authority under section 1102 of the Act to include these provisions.

In order to implement the State plan requirement in the revised section 454(4)(B) of the Act, we amended § 302.31(a)(2) to require a State plan for child support to provide that a State IV-D agency must undertake to secure support in cases where there is an assignment under section 471(a)(17) of the Act.

We deleted § 302.31(b)(1), which provided that the IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A agency that there has been a finding of good cause for failure to cooperate pursuant to section 402(a)(26)(B) of the Act, except as provided under paragraph (c). We believe paragraphs (b)(1) and (c), discussed below, are redundant.

Section 454(4)(B) was also amended to exempt States from securing support in foster care maintenance cases if the IV-A or IV-E agency determines that it is against the best interests of the child to do so. Consistent with this statutory requirement, we amended § 302.31(b)(2) to require that, upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause, the IV-D agency will suspend all activities to establish paternity or secure support in a foster care case until notified of a final determination by the IV-A or IV-E agency. Paragraph (b)(2) has been redesignated as paragraph (b). Further, under paragraph (c), a IV-D agency will not undertake to establish paternity or secure support in a foster care case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause, unless there has been a determination by a State or local IV-A or IV-E agency that support enforcement could proceed without the participation of the relative.

To implement the revised section 456(a) of the Act, 45 CFR 302.50(a) is amended to provide that support rights assigned to the State under section 471(a)(17) of the Act constitute an obligation owed to the State by the individual responsible for providing the support. Changes to the regulations necessary to authorize offset of Federal income tax refunds to satisfy past-due support in foster care maintenance cases are discussed under the section of the preamble entitled "Collection of Past-Due Support from Federal Income Tax Refunds."

To ensure that required standards for program operations under 45 CFR Part 303 are established for foster care maintenance cases, we expanded the applicability of §§ 303.2 through 303.5 by deleting references to cases referred to the IV-D agency "pursuant to § 235.70 of this title." Since § 235.70 applies only to AFDC cases, by deleting reference to it in the introductory language of these sections, we have expanded the applicability of these sections to all cases referred to the IV-D agency, i.e., AFDC, non-AFDC, foster care maintenance and interstate cases.

Since the collection and distribution of child support in foster care cases will be undertaken as a part of a State's IV-D State plan, we amended § 304.20. Availability and rate of Federal financial participation, by revising paragraph (a)(1) to provide that Federal financial participation is available for necessary expenditures under a State title IV-D plan for the support enforcement services and activities provided in foster care cases where there is an assignment under section 471(a)(17) of the Act. We revised § 304.20(b)(1)(viii) (D) to include the procedures used to transfer collections from the IV-D agency to the IV-E agency.

Finally, we amended §§ 305.25, 305.27 and 305.38 to include foster care maintenance cases in the program audit.

Expansion of 90 Percent Funding for Systems

We revised 45 CFR Part 307, published in the Federal Register on August 22, 1984 (49 FR 33255) to implement the amendments made by section 6 of Pub. L. 98-378. Effective October 1, 1984, section 454(16) of the Act permits States to use computerized support enforcement systems to facilitate the development and improvement of the procedures to improve program effectiveness required under section 466(a) of the Act. Section 307.10 requires each CSES funded at the 90 percent rate to: (1) Be planned, designed, developed, installed or enhanced in accordance with an APD approved under § 307.15; and (2) control, account for, and monitor all the factors in the support collection and paternity determination process under the plan. To implement revised section 454(16) of the Act, § 307.10(b) permits a CSES established under § 307.10(a) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act through: (1) The monitoring of support payments; (2) the maintenance of accurate records on support payments; and (3) the prompt notice to appropriate officials of any support arrearages. We encourage States to develop or enhance statewide CSESs that encompass the procedures referred to above because the automation of such procedures will contribute to efficient and effective program operations. (See the discussion below regarding the availability of Federal funding at the 90 percent rate for these activities.)

The revised section 455(a)(3) of the Act (redesignated as section 455(a)(1)(B) of the Act) allows 90 percent Federal funding to expand the CSES to cover the procedures to improve program effectiveness required under section 466(a) of the Act. Section 307.30(a)(2) provides that 90 percent Federal funding is available for the planning, design, development, installation or enhancement of a CSES that meets the requirements specified in § 307.10(a). To implement revised section 455(a)(1)(B) of the Act, we have revised § 307.30(a)(2) to indicate that Federal funding at the 90 percent rate is also available for the optional expansion of the system as discussed above.

Previously, § 307.30(b) provided that 90 percent Federal funding was only available in expenditures for the rental or purchase of hardware or proprietary software used for the planning, design, development, installation or enhancement of a CSES described in § 307.10. Ninety percent Federal funding was not available in expenditures for hardware incurred during the operation of a CSES. Revised section 455(a)(1)(B) of the Act allows 90 percent Federal funding in expenditures incurred for the full cost of the hardware components of a system that meets the requirements prescribed in section 454(16) of the Act. Therefore, we have redesignated § 307.10(b) as § 307.10(b)(1) and revised the provision to make Federal funding available at the 90 percent rate in expenditures for the rental or purchase of hardware for the operation of a CSES as described in § 307.10(a) or § 307.10 (a) and (b). We believe that this change will encourage States to develop statewide CSESs. Ninety percent Federal funding is available in expenditures for hardware as described above incurred on or after October 1, 1984.

The revised section 455(a)(1)(B) of the Act is silent regarding the availability of Federal funding at the 90 percent rate in expenditures for the rental or purchase of proprietary software. Nonetheless, we believe that enhanced Federal funding should be available for the rental or purchase of proprietary software used for the planning, design, development,

installation, enhancement or operation of a CSES to the extent the software is necessary to operate hardware related to the CSES. Traditionally, the Department has issued instructions that prescribe the availability and rate of Federal funding for systems-related costs.

Therefore, we have added a new § 307.30(b)(2) to specify that, effective October 1, 1984, Federal funding is available at the 90 percent rate in expenditures for the rental or purchase of proprietary operating systems software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the Computerized Support Enforcement (CSES) Guide for enhanced funding. The new § 307.30(b)(2) also indicates that Federal funding at the 90 percent rate is not available for proprietary applications software.

We have revised § 307.30(e) to delete the cross reference to 45 CFR 95.617 to reflect HHS policy regarding HHS rights to software funded at the 90 percent matching rate.

We made the following technical changes to the CSES regulations to conform with the changes discussed above. We revised § 307.15, Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP, by amending paragraphs (a), (b)(2) and (b)(5) to indicate that an APD must address the requirements in § 307.10(a) and the optional provision in § 307.10(b) when the State elects to meet such provisions. These changes reflect the revised § 307.10. We also amended § 307.15 by redesignating the citation "§ 307.10" as § 307.10(a) in paragraph (b)(7) of the section. This change also reflects the amendments to § 307.10.

We amended § 307.25, Review of computerized support enforcement systems eligible for 90 percent FFP, by revising paragraph (b) to indicate that the review of a CSES will include the optional provision prescribed in § 307.10(b) when a State has elected to meet that provision. Lastly, we amended § 307.35, Federal financial participation at the 70 percent rate for computerized support enforcement systems, by revising the title and paragraph (a) to indicate that Federal funding is available at the applicable matching rate for the operation of systems that encompass the optional provision prescribed in § 307.10(b).

Publicizing the Availability of Support Enforcement Services

Effective October 1, 1985, section 454(23) of the Act requires States to regularly and frequently publicize through public service announcements the availability of support enforcement services. To implement this State plan requirement, § 302.30 requires States to publicize support enforcement services available under the IV–D State plan through public service announcements on a regular and frequent basis. In accordance with section 454(23), announcements must include information concerning any application fees and a telephone number or address for obtaining further information. This regulation does not require IV–D agencies to conduct extensive or costly public relations or advertising campaigns. A number of States have already developed imaginative and effective public service announcements for television and radio which inform the public that title IV–D services are available to those who need them. The publicity required by these regulations will increase public awareness of available support enforcement services in all States. Federal matching funds are available for these expenditures.

Mandatory Collection of Spousal Support

Effective October 1, 1985, section 454(4)(B) and 454(6) of the Act require States to collect spousal support if a support order has been established, the child and spouse are living in the same household, and the support obligation established with respect to the child is being enforced under the State's IV–D plan. This amendment clarifies that spousal support must be collected only where child support is being collected along with spousal support. Prior to this amendment, collection of spousal support was optional for States.

Sections 302.17 and 302.31 were revised to require States to collect spousal support when it is part of the support order. References to collecting spousal support at State option were deleted from regulations. In addition, minor editorial changes were made to these sections. No changes are necessary to § 302.33, Individuals not otherwise eligible for paternity and support services, which specifies requirements for non-AFDC cases, because there is no reference to optional collection of spousal support in this section.

Accessing the Federal Parent Locator Service (PLS)

Amended section 453(f) of the Act permits States to access the Federal PLS without first exhausting State parent locator resources, effective August 16, 1984. These regulations delete § 302.35(d) which requires the State to make efforts to locate an absent parent through State resources before submitting a request to the Federal PLS. However, the State PLS is an important tool for locating absent parents and the State should use this resource and any other locate procedures whenever it is efficient to do so. In some situations, information from State resources may be more timely and therefore of greater value than Federal PLS information. This regulation provides States with the flexibility to use both the State and Federal PLS to their maximum effectiveness.

Continuing IV–D Services for Families That Lose AFDC Eligibility

Effective October 1, 1984, section 457(c)(1) of the Act requires States to continue to collect support payments for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV–A program (a total of five months after the final AFDC payment) and pay all amounts collected representing current support to the family. Prior to this amendment, the State had the option to continue to collect support payments for this five-month period. Section 302.51(e) is revised to require (instead of permit) the IV–D agency to continue to provide all appropriate IV–D services during this five-month period. During this period, a State may not recover costs from any collections made. An AFDC family will generally benefit from the continuation of title IV–D enforcement services after they cease to receive AFDC payments. For example, continuing enforcement by the State IV–D agency will help prevent collections from lapsing and the family from returning to the AFDC rolls.

Current regulations at § 302.51(e)(2) are revised and redesignated as (e)(3). The new § 302.51(e)(2) requires the IV–D agency to notify the family, before the end of the mandatory service period, of the consequences of continuing to receive IV–D services, including available services, any fees, and cost recovery and distribution policies. The notice must also indicate that services will be continued unless the IV–D agency is notified to the contrary.

Revised section 457(c)(3) of the Act and § 302.51(e)(3) of the regulations

address State action after the five-month period described above. If the IV-D agency is authorized by the individual on whose behalf the services will be provided, the IV-D agency will continue to provide all appropriate services and pay the net amount collected to the family after deducting, at State option, any costs incurred in making the collection from the amount of any recovery made. Section 454(6)(C) of the Act, as amended by Pub. L. 97-248, permits States to recover costs from either the absent parent or the custodial parent.

In accordance with revised section 457(c)(2) of the Act, § 302.51(e)(3) prohibits State from requiring any formal application or imposing any application fee in cases where the State IV-D agency is authorized to continue to provide IV-D services after a family ceases to receive AFDC payments. The regulations continue to allow States to recover costs incurred in providing services from either the absent parent or the custodial parent because revised section 457(c)(2) of the Act specifies that amounts collected be paid to the family on the same basis as they are paid in other non-AFDC IV-D cases. Paragraph (e)(4) requires States to report collections under paragraph (e) as non-AFDC collections.

We also made a technical revision to § 302.32(b) to specify that the IV-D agency will notify the family that it will continue to provide services pursuant § 302.51(e)(1). Paragraph (b) currently indicates that the family will be notified if the State will continue to provide services.

Notice of Collections of Assigned Support

Effective October 1, 1985, revised section 454(5) of the Act requires States, at least annually, to provide notice of the amount of assigned support payments collected to current or former AFDC recipients. To implement this State plan requirement, § 302.54, Notice of collection of assigned suppport, requires States to provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under § 232.11. This notice must be sent to current AFDC recipients and former AFDC recipients for whom an assignment of support is still effective. We recommend that the notice contain the period for which payments were collected and a telephone number or address for obtaining further information. Under § 302.54(b), the notice must list separately support payments collected for each absent parent when more than one absent parent owes support to the family and indicate the amount of support collected which was paid to the family.

State Guidelines for Child Support Awards

We implemented section 467 of the Act by adding § 302.56, Guidelines for setting child support awards. As required in section 467, § 302.56(a) specifies that, as a condition for approval of its State plan, a State must establish guidelines by law or by judicial or administrative action for amounts of child support obligations set within the State. Section 467 of the Act also requires a State to make these guidelines available to all judges and other officials who have the power to determine child support awards, although the guidelines need not be made binding on them, and to furnish the Secretary with copies of its guidelines. These requirements are implemented by § 302.56 (b) and (d). Section 302.56(c) requires that guidelines be based on specific descriptive and numeric criteria and result in a computation of the support obligation. Although section 467 in not effective until October 1, 1987, States are encouraged to begin their consideration of appropriate guidelines as soon as possible. The guidelines developed by the State in accordance with § 302.56 may be used as the formula required under § 302.53. Under § 302.53, when there is no court order covering a support obligation, there must be a formula to be used by the State in determining the amount of the support obligation.

Imposition of Late Payment Fee on Absent Parents Who Owe Overdue Support

Effective September 1, 1984, section 454(21) of the Act allows a State IV-D plan to provide for the imposition of late payment fees on individuals who owe overdue support. We implemented section 454(21) by adding § 302.75, Procedures for the imposition of late payment fees on absent parents who owe overdue support. In § 302.75(a), the State plan may provide for imposition of a fee on absent parents who owe overdue support in cases in which the IV-D agency is attempting to collect support. In paragraph (b)(1) if a State opts to impose a fee, in accordance with section 454(21)(A), the fee shall be uniformly applied in an amount equal to at least 3 percent but not more than 6 percent of the amount of overdue support. In paragraph (b)(2), we require that the fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of overdue support. Further, the fee may only be collected after the full amount of overdue support is paid (as required by section 454(21)(B)) and after any requirements under State law for notice to the absent parent have been met. In accordance with section 454(21)(B) of the Act, under paragraph (b)(3), collection of the fee may not directly or indirectly reduce the amount of overdue support paid to the individual to whom it is owed. Under paragraph (b)(4), if the State imposes a late payment fee, it must be imposed in foster care, AFDC and non-AFDC cases. In accordance with section 454 of the Act, under paragraph (b)(5), a State may allow fees collected to be retained by the jurisdiction making the collection. Finally, in paragraph (b)(6), States must reduce their IV-D expenditures by any late payments fees collected. Excluding fees collected is required under section 455 of the Act and § 304.50. Only support which becomes overdue for any month beginning September 1, 1984, is subject to the late payment fee.

Payment of Support Through the IV-D Agency or Other Entity

We implemented section 466(c) by adding § 302.57, Procedures for the payment of support through the IV-D agency or other entity. In paragraph (a), in accordance with the statute, States may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the custodial parent or the absent parent regardless of whether or not arrearages exist or withholding procedures have been instituted. In paragraph (b), if a State implements these procedures, the State must monitor all amounts paid and dates of payments and record them on individual payment records, ensure prompt payment to the custodial parent when appropriate, and charge the parent requesting this service an annual fee not to exceed the lesser of $25 or the actual costs incurred by the State, in accordance with the statute.

State Commissions on Child Support

Section 15 of the new law requires the Governor of each State to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system and examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children. The commissions must submit to the Governor and make

available to the public, reports on their findings and recommendations no later than October 1, 1985. Costs of operating the commissions are not eligible for Federal matching funds.

The Secretary may waive the requirement for a commission at the request of a State if it is determined that the State has in place objective standards for child support obligations, has had a commission or council within the last five years, or is making satisfactory progress toward fully effective child support enforcement. This requirement is implemented in § 304.95.

Availability of Services and Application Fee for Non-AFDC Families

We revised § 302.33(a) to clarify the availability of services under that section and the individuals who are eligible to receive such services. We also revised § 302.33(a) to specify that, in an interstate case, only the initiating State may require an application.

To implement the new section 454(6)(B) of the Act, the regulations at § 302.33(c)(2) were clarified to require the State IV-D agency to charge an application fee for each individual who applies for services under § 302.33. Consistent with paragraph (a), § 302.33(c)(3) was changed to specify that, in an interstate case, the application fee is charged by the State where the individual applies for services under this section.

The following provisions of Pub. L. 98-378 are being implemented in separate regulations:

(1) Revisions to the audit, compliance and penalty provisions (see proposed regulations at 49 FR 39488 dated October 5, 1984);

(2) Requirement that the States charge a mandatory application fee, not to exceed $25, for furnishing IV-D services to individuals who are not AFDC recipients (see final regulations at 49 FR 36764 dated September 19, 1984; comments received on this requirement are addressed in this document);

(3) Requirement that State IV-D agencies petition to include medical support as part of any child support order whenever health care coverage is available to the obligated parent at a reasonable cost (see proposed regulations at 48 FR 35468 dated August 4, 1983); and

(4) Requirement that States must continue to provide Medicaid benefits for four calendar months beginning with the first month of AFDC ineligibility (regulations under development).

Public Comment

A notice of proposed rulemaking was published on September 19, 1984 (see 49 FR 36780). The comment period ended on November 19, 1984. One hundred fifty written comments were received. In addition, four public hearings were held to receive comments as listed below:

October 10—Chicago, Illinois
October 12—Dallas, Texas
October 15—Seattle, Washington
October 17—Washington, D.C.

Respondents included: 9 private citizens, 60 organizations including 46 advocacy groups, 78 State and local agencies, and 3 Federal agencies, some of whom commented by letter and some at the hearings.

Meetings to discuss the proposed regulations were held with the following groups: the National Child Support Enforcement Legislative Committee of the National Child Support Enforcement Association; the National Conference of State Legislatures; the National Governors' Association; the National Council of State Child Support Enforcement Administrators; the American Public Welfare Association; the National District Attorneys' Association; and the National Council of Juvenile and Family Court Judges.

We have grouped the comments by subject and discuss them below along with our responses.

Effective Dates

A number of commenters indicated that it is difficult to determine the various effective dates in these regulations and suggested that specific effective dates be added to appropriate sections of the regulations. To avoid confusion we have done so.

General Definitions (45 CFR 301.1)

Some commenters felt the definitions of "overdue support" and "past-due support" were cumbersome and unclear. One commenter felt that the definition of "overdue support" could be easily misinterpreted to allow a State to collect arrearages for children who are not minors only when using procedures for State tax offset, imposition of liens, posting security, bond or guarantee and providing information on the absent parent to consumer reporting agencies. Another commenter asked that we move the definition for "past-due support" to the section on Federal income tax refund offset. Many commenters objected to the term "absent parent" in these definitions because it does not reflect the relationship in "joint" or "shared" custody situations.

The definitions of "overdue support" and "past-due support" restate the definitions for these terms that are used in the Act. Therefore, we will continue to use these definitions, except for a minor change to correct any possible misinterpretation with respect to collecting overdue support when the child is no longer a minor. In addition, we chose not to move the definition for "past-due support" to 45 CFR 303.72 since it also applies to current regulations at 45 CFR 302.60. Upon review of the many comments received on the use of the term "absent parent," we considered replacing that term with the term "obligated parent". We decided not to make this change in the regulations, however, since the Act consistently uses the term "absent parent" and we believe that a change to "obligated parent" would be confusing in situations in which a support order has not yet been established or where shared custody occurs.

Mandatory State Procedures (45 CFR 302.70)

Section 466 of the Act and implementing regulations require that a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures for: (1) Carrying out a program for the withholding of amounts from the wages of individuals to satisfy support obligations; (2) establishing and enforcing support orders by expedited processes; (3) obtaining overdue support from State income tax refunds; (4) imposing liens against real or personal property for amounts of overdue support; (5) establishing a child's paternity up to at least the child's 18th birthday; (6) requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support; (7) making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than $1,000; and (8) including a provision for wage withholding in child support orders issued or modified in the State.

Interstate Applicability of Procedures

A commenter asked if the procedures for imposing liens, posting bonds, offsetting State tax refunds and providing information to consumer reporting agenies (CRAs) are available for interstate cases.

Current regulations at 45 CFR 302.36 require States to cooperate with other States in locating absent parents, securing and enforcing support obligations and establishing paternity. Therefore, the procedures governing liens, bonds, State tax refund offset and

providing information to CRAs must be applied by a State when enforcing an order for another State to the extent allowed by the law of the enforcing State. For example, if the initiating State (the State where the custodial parent applies for services) forwards a case to the reponding State (the State where the absent parent resides), the responding State would review the case information and determine which enforcement technique or techniques would be best suited to the circumstances of the particular case.

Procedures for Wage or Income Withholding (45 CFR 303.100)

Withholding Requirement

The new statute and regulations require States to withhold wages in all IV–D cases when the amount overdue equals one month's support payment, or earlier at the absent parent's request or when the amount overdue is less than one month's payment in accordance with the State law. Withholding must occur without amendment to the order and must be given priority over other legal processes under State law. States must withhold amounts to satisfy the current support obligation and, once current support is met, an amount must be withheld to apply toward liquidation of arrearages. The total amount withheld, including any fee to the employer, may not exceed the limits set forth in section 303(b) of the Consumer Credit Protection Act (CCPA). The withholding must be carried out in full compliance with State procedural due process requirements.

We received many comments on the proposed wage withholding provisions. Some commenters sought clarification as to whether or not the provisions for withholding in cases being enforced under the State plan would be applicable only in cases applying for IV–D services after September, 1985. The provisions for wage withholding are applicable to all IV–D cases regardless of whether or not the case was a IV–D case before October, 1985.

Other commenters wanted clarification on the one-month overdue support requirement for new IV–D applicants seeking withholding. A State must take steps to implement wage withholding in new IV–D cases in which they can verify there is overdue support of one month or more.

We received several comments which were critical of the requirement that withholding must occur in all cases where the absent parent owed overdue support of one month or more. The commenters were concerned that because the regulations require that so much of the absent parent's wages must be withheld as are necessary to comply with the support order up to the maximum amount permitted under section 303(b) of the CCPA (15 U.S.C. 1673(b)), States would be forced to implement withholding in cases which will create economic hardships on the absent parent's second family. Some second families have low incomes and the commenters argued that by reducing this income these families might then qualify for food stamps or other forms of assistance. They urged that the regulation be more flexible in this area, giving the State an option as to whether or not to implement withholding in these cases.

The statute is very clear that withholding must be used in all cases being enforced under the State plan when the absent parent fails to make payments equal to the support payable for one month. We cannot, therefore, give States this type of flexibility.

Once the amount to be withheld satisfies the current month's obligation, we proposed that an additional amount must be withheld to be applied toward the liquidation of arrearages. Many commenters complained that withholding an amount to satisfy arrearages is not required by the statute and felt that withholding of amounts for arrears should be optional. Although it is not explicitly stated in the statute that an amount be withheld for arrears, a reading of House Report No. 96–527 on the statute clearly indicates that Congress intended that an amount be withheld for arrearages. Some commenters stated that in many cases amounts withheld from wages up to the CCPA limit would be inadequate to meet the current support obligation, let alone allow for payment of arrearages. Under the statute and regulations, current support must be withheld first. If current support is satisfied, an additional amount to be applied toward liquidation of arrearages must be withheld. If the CCPA limit is reached before the current support obligation is met, obviously amounts to satisfy arrearages cannot be withheld. Also, since the statute does not require States to withhold up to the maximum of the CCPA limit when establishing an amount to be withheld for arrearages, States have a great deal of flexibility in setting the amount.

Some commenters felt that the regulation should clearly state that the total amount to be withheld for current support, arrearages and the employer fee, if any, cannot exceed the maximum amount permitted under section 303(b) of the CCPA. We have specified in § 303.100(a)(3) that the total of these three amounts may not exceed the CCPA limits.

We received the greatest number of comments on the requirement that withholding must occur without the need for any amendment to the support order involved or any need for further action by the court or other entity that issued the support order. Most of these commenters felt that the requirement violated the due process requirements of States, which require orders to be returned to court for a hearing before withholding can be implemented. They pointed out that the regulations themselves require that withholding be carried out in full compliance with States' due process requirements. Many of these commenters also argued that their State laws require arrearage payments to be established through a formal court process at which a payment schedule is created based on the absent parent's ability to pay.

This regulatory provision is explicitly required by section 466(b)(2) of the Act. State laws which require that a support order must be returned to court must be changed to conform with the Federal statute. The statute and regulations still require protection of the absent parent's due process rights prior to implementing withholding. In response to other comments, this requirement does not rule out a judge signing a withholding order, if this process does not involve a hearing or a court appearance.

We received other comments suggesting that the provision prohibiting amendment of the support order to initiate withholding should apply only to a judgment entered after the effective date of the new law. Commenters felt this was necessary to avoid equal protection problems. Again, this provision is expressly provided for in section 466(b)(2) of the Act. The intent of the statute is to provide an administrative enforcement remedy which is equally available in all cases. We believe that applying special provisions to cases with judgments entered after the effective date of the new law would not be consistent with the new statute.

Because we have received many comments about this provision, we suggest that States enact a statute under which withholding would occur without the need for any amendment to the support orders involved. States might also send out a general notice to all absent parents informing them of the new State law, how it affects them, and how they might appeal. This provision of the Federal statute does not preclude a State from amending orders to incorporate withholding provisions, if

the case is before a court administrative tribunal for other purposes.

Many commenters expressed concern that it would not be possible to implement withholding in all existing cases by the October, 1985 effective date. We agree that identifying cases, locating individuals and employers, verifying information and proceeding with any appropriate withholding action in all existing cases by October 1, 1985 will entail a major effort, considering the magnitude of the caseloads requiring action in each State. However, States will have had over a year since enactment of Pub. L. 98-378 to prepare for the October 1, 1985 implementation date. Because the effective date is specified in the statute, we cannot allow States additional time to implement withholding in appropriate existing cases.

Procedures for Termination of Withholding and for Promptly Refunding Withheld Amounts

The regulations at § 303.100(a) (8) and (9) require States to have procedures for promptly terminating the withholding and for promptly refunding to absent parents amounts which have been improperly withheld.

Commenters on the termination procedures required by the proposed rule expressed concern about the requirement from two different points of view. One group of commenters felt that the termination requirements were not specific enough and needed to be more restrictive. The other group of commenters thought that States should be allowed to determine on what basis they would terminate withholdings. These commenters suggested that States would want to have the option not to initiate a withholding or to terminate an existing withholding based on the payment of all overdue support when it is a large amount, such as $5,000. Other commenters asked for the removal of all examples of circumstances for termination of withholding from the regulation. They suggested that OCSE issue an action transmittal at some later date, which could give examples and guidance in this area. In the final regulation as in the proposed rule, we do not specify criteria for termination of withholding and will allow States to develop their own criteria. We have deleted the examples of when termination of withholding would be appropriate to assure States the necessary flexibility in this area. However, we are specifying in § 303.100(a)(9) that payment of overdue support should not be the sole basis for termination of withholding. Moreover, we are specifying in § 303.100(a)(8) that payment of overdue support may not prevent an initial withholding. We believe that Congress has expressed its intention in House Report No. 98-527 that withholding be used to ensure regular payment as well as collect arrearages.

We also received comments on the proposed regulation provision which requires prompt refunding of improperly withheld amounts. These comments were related to the example of termination of withholding when the address of the children or custodial parent is unknown. The commenters suggested that amounts not be refunded to the absent parent if the custodial parent's address is unknown for a period of time due to the custodial parent moving and failing to inform the withholding agency promptly of the new address. We agree and suggest that those payments be held by the State until the absent parent obtains an order for termination of withholding or return of the payment. We also believe this type of problem will be rare and can be handled by informing custodial parents of the importance of promptly notifying the withholding agency of address changes.

Advance Notice to Absent Parents

The statute and regulations require States to give advance notice to absent parents of the potential withholding and the procedures to follow to contest the withholding. The notice must include the period within which the absent parent may contest the withholding and indicate that the only basis for contesting is a mistake of fact. The absent parent must be told the amount to be withheld and that the withholding applies to current and subsequent periods of employment. Finally, States are not required to provide advance notice if their existing withholding system in effect on August 16, 1984 met and continues to meet due process requirements under State law.

We received varied comments on the requirement for the advance notice to the absent parent. Some commenters complained that the regulation does not contain a time frame for when the advance notice must be sent. The State must take steps to send the advance notice to the absent parent on the date he or she fails to make payments in an amount equal to the support payable for one month. Although this date is found in paragraph (a)(4) of the regulation, we have revised paragraph (b)(1) to include this date as well.

Other commenters suggested that we should require States to state in the advance notice what method of contacting the State would be acceptable and give a specific time frame within which the absent parent must contact the State. The regulations at § 303.100(b)(1) (iii) and (iv) require States to inform the absent parent of the method and time frame for contesting the withholding.

Commenters suggested that the notice should include the total amount of the overdue support owed and that the regulations should give a definition of "mistakes of fact." The commenters believed that this information is essential and would prevent delays in the contesting process. We agree and have included these suggestions in the provision for the advance notice.

One State commented that some States are exempt from the advance notice requirement because they had a system of income withholding for child support purposes which meets State due process requirements in effect on the date of enactment of Pub. L. 98-378. The State felt that the regulations were unclear as to when the 45-day contesting period applies to these States. The State suggested that since they are exempt from the advance notice, they would have the option to set their own control date for the absent parent to contest. Also, the State felt that they should be permitted to allow absent parents the option to contest withholding on grounds beyond the limit of mistakes of fact as provided in the regulation.

While the advance notice provision and the 45-day contesting period do not apply to these States, all other provisions of the regulations are applicable. States which are not required to provide the advance notice required in this regulation must take steps to send a notice to the absent parent's employer on the date the parent owes one month of overdue support. These States must comply with existing procedures in the State which meet the procedural due process requirements of State law and which should provide the absent parent an opportunity to contest the withholding. We also emphasize that under the statute the grounds for contesting withholding are limited to mistakes of fact. We have revised § 303.100 (a) and (b) to clarify the requirements that States which are exempt from providing advance notice must meet.

Procedures for Contesting Withholding

The regulations at § 303.100(c) require that States establish procedures for use when an absent parent contests a withholding. At a minimum, the procedures must provide that a State, which is not exempt from providing advance notice to the absent parent,

within 45 days of giving advance notice to the individual, will: (1) Give the individual an opportunity to present his or her case; (2) decide if the withholding will occur based on evaluation of the facts; (3) notify the individual whether or not the withholding is to occur and, if so, include in the notice the time frame within which withholding will begin and the information provided to the employer in the notice required in § 303.100(d); and (4) notify the employer to begin withholding. The last procedure was added in response to comments suggesting that we require States to send the required notice to the employer within the 45-day time frame. We also specified in § 303.100(d)(2) that, if the absent parent does not contest the withholding within the time period specified in the advance notice, the State must immediately send the notice to the employer.

We received comments from individuals and organizations which requested that the procedures required for contesting withholding include many additional requirements such as not allowing a hearing, requiring a written notice be sent to both the absent and custodial parent and allowing the custodial parent to attend whatever type of forum is provided for contesting.

OCSE has decided to keep the required procedures at the very minimum needed to comply with the statute in order to give States the greatest flexibility in developing their procedures. We do encourage States to adopt some of these suggestions (such as sending a notice to both parties and allowing the custodial parent to attend and participate in the review).

Notice to the Employer

Section 466(b)(6) of the Act sets forth specific requirements for notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements the regulation specifies that the employer notice contain the elements listed in § 303.100(d)(1).

Commenters asked that we clarify in the regulation that the notice to employers must inform them that the amount actually withheld for support and the employer's fee may not exceed the maximum amounts permitted under section 303(b) of the CCPA. We believe these commenters misunderstood the meaning of the phrase "the amount actually withheld for support and other purposes" in paragraph (d)(1)(i). We intended this phrase to include the fee and other deductions for debts from the absent parent's wages, but we have revised the paragraph to refer to the fee directly.

A number of commenters objected to the requirement that employers must send withheld amounts at the same time the absent parent is paid. Some of these commenters felt this requirement was in conflict with section 466(b)(6)(B) of the Act which requires the State to simplify the withholding process for employers to the greatest extent possible. Others argued that because employers use such varied pay periods, bi-weekly, weekly and sometimes monthly, this requirement would cause unnecessary paperwork, accounting problems and additional staff time for withholding agencies. Another commenter was concerned that the requirement would force employers to charge a higher fee for withholding than they would otherwise because the provision increases the costs and burdens of withholding. Each delay in forwarding a collection in turn delays final distribution of that collection. We believe requiring employers, as well as any entity which receives collections and is not responsible for final distribution, to forward collections within 10 days of their receipt is essential to timely distribution. We have, therefore, revised this requirement to provide that employers must send withheld amounts to the State within 10 days of the date the absent parent is paid.

Some commenters asked that we specify the maximum amount that an employer could withhold as a fee for withholding. The statute and § 303.100(d)(1)(iii) specify that the State must establish the amount of the fee if it opts to allow employers to withhold a fee. Generally, the fee for withholding is minimal—$1 to $2 per withholding—in States which presently have such laws.

In the area of employers' liability for failing to withhold wages or to forward withheld amounts, we received several suggestions, including that the regulations specify who is liable in situations such as employer bankruptcy, stolen withheld monies and misdirected checks. We believe these issues should be handled by States under State law and procedures.

We received other comments on this section which suggested that we require that employers be offered an opportunity to contest withholding. The statute does not authorize employers to contest withholding. We strongly urge States to advise employers concerning withholding and to develop good working relationships with them. We believe this will ensure cooperation from employers.

We received a comment critical of the provision which requires that withholding for support have priority over any other legal process under State law against the same wages. This commenter suggested that the requirement is unconstitutional, but did not explain in what way. This provision in the regulation is required by section 466(b)(7) of the Act.

Several commenters asked that we clarify the provision in the regulation which allows employers to combine withheld amounts from absent parents' wages in a single payment. We believe the provision in clear and allows the employer to send one check for a single amount to the appropriate withholding agency, along with a list of amounts attributable to each absent parent. This is a convenient method for employers and avoids the necessity of sending a separate check for each absent parent.

The provision in the regulation concerning the method of handling situations involving more than one withholding against a single absent parent was the focus of a number of comments. We proposed that in these situations the employer must comply on a first-come-first-served basis up to the limits imposed under section 303(b) of the CCPA. All of the commenters objected to this proposal. Some objected to this method because they felt it would at times be unfair to families who may need support more than others. Also, they felt that the method did not put a priority on current support. Some other commenters were concerned that the method put the employer in the middle of support disputes. As an alternative, several commenters suggested that all affected families should receive a prorated share of the withholding up to the CCPA limits.

We agree with the concerns raised by these commenters and we have changed this provision to specify that in situations where there are multiple withholdings against the wages of the same absent parent, current support must be paid first and the amounts available for withholding to meet current support must be allocated among the families. This must be done before amounts are withheld for arrearages, which also must be allocated if withheld. In addition we are requiring the State to control this function rather than the employer and are giving States flexibility to determine the best method of allocating amounts available for withholding. For example, the State could prorate the amounts among all cases, apply a first come first serve basis or use some other mechanism, such as giving top priority to support orders where the custodial parent in receiving AFDC, as AFDC status may indicate special financial

need. States are in the best position to determine which method is the most appropriate for their caseloads. The employer will receive a notice to withhold one amount and the State must prorate that amount appropriately upon its receipt.

On State commented that the requirement that employers implement withholding no later than the first pay period that occurs 14 days following the date that the notice to the employer was mailed conflicts with its State law. They pointed out that under the laws of many States an individual is not responsible until receipt of notice and suggested we change the withholding trigger to the date of receipt by the employer. We realize that some States may have to pass laws to implement withholding which will provide exceptions to their general State laws in some areas, but for uniformity and efficient implementation, we believe it is important to retain the provision based on the mailing date of the notice. Other commenters complained that this provision conflicts with section 466(b)(6)(B) of the Act which requires States to simplify the process for employers as much as possible. We do not think this requirement complicates the withholding process for employers and believe it affords employees ample time to implement withholding.

Commenters asked that we require employers to notify custodial parents as well as the State when the absent parent terminates employment and provide custodial parents with the same information sent to the State. We believe this is a burden for employers. States could notify custodial parents if that is permitted under State law.

Administration of Wage Withholding Procedures

Section 303.100(e) of the regulations outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. The regulations require the State to designate a public or private agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor the collection and distribution of amounts withheld. The designee for withholding must distribute withheld amounts in accordance with section 457 of the Act.

We received several comments which requested that we clarify what is meant by "administer" in the context of these regulations. These commenters wanted to know if enforcement and collection functions must be included in the functions performed by the withholding agency. The State's withholding system must be administered by an agency that is ultimately responsible to ensure that all necessary functions are performed. This agency either must perform the enforcement and collection functions itself or it may delegate the functions under its supervision necessary to carry out withholding to another public agency or private entity. Any such entity must be publicly accountable for its actions. These commenters also stated that the regulations give the impression that the withholding agency must be one statewide organization. There must be one State withholding agency within the State. However, we have clarified in paragraph (e) that the State may designate local entities to administer withholding in each jurisdiction under the supervision of the State withholding agency.

Commenters asked that we specify a time limit by which the withholding entity must distribute withheld amounts. They argued that the word "promptly" is vague and therefore meaningless. We believe that "promptly" has a generally understood meaning which would allow OCSE to enforce this regulation adequately. We believe that it is not reasonable to specify an exact time limit because of the wide variety of State practices and organizational structures involved. In addition, section 466(b)(5) of the Act requires "prompt" distribution.

One State objected to the provision in paragraph (e) which requires the State to reduce is IV–D expenditures by any interest earned by the State designee on withheld amounts. The State felt that this provision was contrary to the provisions of the Debt Collection Act (42 U.S.C. 4213) and 45 CFR 74.47(b). These two requirements pertain to interest earned on advances of grant funds and are not applicable to other interest such as interest on support collections. The treatment of interest earned on support collections specified in paragraph (e) complies with section 455 of the Act.

Interstate Withholding

Section 303.100(g) of the regulation implements section 466(b)(9) of the Act which requires States to extend their withholding systems to include withholding in cases where the support orders were issued in other States. This provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parents.

The provisions on interstate withholding were addressed by several commenters who expressed a wide range of concerns. Some commenters felt the interstate provisions have no statutory base. The statutory base of these provisions is in section 466(b)(9) of the Act which requires States to extend their withholding systems to include income derived within the State in cases where the applicable support orders were issued in other States, in order to assure that support owed by absent parents will be collected without regard to the residence of the child for whom the support is payable or of the child's custodial parent.

Various other commenters complained that the system as outlined in the proposed regulation is unworkable. They argued that involving three States (the State where the custodial parent applies for IV–D services, the State with the order, and the State where the absent parent is employed) in the process on an on-going basis is unnecessary. They questioned whether incentives would be available for all three States. In response to these comments, we have changed the regulation to provide that the State where the custodial parent applies for IV–D services will notify the State where the absent parent is employed to implement withholding. If the State where the custodial parent applies is not the State where the support order was entered, we are requiring that, upon request of the State where the custodial parent applies for services, the State where the order was issued must promptly provide all information necessary to implement withholding.

The statute only provides for the collecting State and the State where the custodial parent applies for IV–D services to receive incentives in interstate cases. Thus, in interstate wage withholding cases, incentives will be paid to the State where the custodial parent applies and the State where the absent parent is employed, since that State will collect the support. Although the State where the order was entered is not entitled to incentives, it must cooperate with other States in accordance with 45 CFR 302.36.

We have been asked by commenters to require that the information provided by the State where the order was issued include, at a minimum, a copy of the support order and the payment record. We agree that this type of information is necessary. Therefore, we have changed this provision to specifically require that a copy of the order and a statement of arrearages be included. These two items are also included in the model statute for interstate withholding developed by the American Bar Association.

In addition, because we believe it is not practical, we have not included specific time frames (such as 90 days

from start to first check received) for interstate withholding as suggested by several commenters. We have, however, added the word "promptly" to all steps of the process. Further, the addition of time frames to the general withholding process should help expedite withholding in all cases. We believe these changes are adequate to ensure timely processing of interestate cases.

These same commenters also requested that the regulation require States to indicate exactly which entity is charged with carrying out withholding. We already require in § 303.100(e)(1) that the State designate an agency to be responsible for withholding.

Several commenters questioned whether States would be prohibited from using their long arm statutes in interstate cases. These commenters felt that the IV–D agency in one State should be able to contact an employer in another State directly. This is a matter of State law and we agree that a State may use its long arm statute for wage withholding if the State statute allows the State to acquire long arm jurisdiction over an employer in another State. Otherwise, the State must contact the IV–D agency in the State where the absent parent is employed to initiate withholding. Another commenter suggested that we require States to exhaust all other methods for enforcement available to them before using interstate withholding. The statute requires withholding to be implemented in intrastate and interstate IV–D cases when one months's support is overdue.

It was suggested by one commenter that we specify in paragraph (g)(7) addressing which State laws apply in interstate cases that, when withholding is implemented, it must be for the full amount of current support, include an amount for arrearages and it must be implemented without amendment to the support order. We believe that other provisions of the regulations are clear on these points. However, we have revised paragraph (g)(7) to specify that the law of the State where the order was entered determines when withholding must be implemented and the law of the State where the absent parent is employed applies in other respects. This includes the determination of the amount that may be withheld, in addition to current support, to apply toward liquidation of arrearages.

General Comments

OCSE received serveral requests for clarification on the provision requiring that all child support orders issued or modified in the State after October 1, 1985 must have a provision for withholding of wages in order to ensure that withholding is available without the necessity of filing an application for IV–D services if overdue support occurs. These commenters wanted to know the relationship between these cases and IV–D cases. This provision refers to all cases and is intended to ensure that withholding be available as an enforcement technique for support orders in the State which are not being enforced under the State's child support enforcement program. The Federal requirements for withholding outlined in the preceding paragraphs are not applicable to these cases unless an application for IV–D services is made or the States choose to extend the procedures applicable to IV–D cases to all child support enforcement efforts in the State. We encourage States to enact laws governing withholding that apply to all child support cases in the State, both IV–D and non-IV–D cases.

Many commenters were concerned that this particular provision raises constitutional questions because they felt it creates two classes in child support cases. Section 466(a)(8) of the Act does not create any classifications at all. It merely requires that all child support orders issued or modified in the State after October 1, 1985 include provisions for income withholding.

Finally, we had two general comments concerning cases in which the absent parent has two employers suggesting that we require States to include penalties in their State plan for employers who fail to carry out their responsibilities in withholding cases. In response to the latter comment, States must include copies of laws governing penalties for employers as part of their State plan in accordance with 45 CFR 302.17. In cases in which the absent parent has more than one source of income, States should follow the procedures outlined in the withholding regulations and notify the primary employer to withhold an appropriate amount to meet the obligation and provide for a payment toward liquidation of overdue support. If the amount actually withheld is inadequate to meet the current obligation and an amount for arrearages, the State should initiate a second withholding action with the other employer.

Expedited Processes (45 CFR 303.101)

Under the proposed regulations, we required States to select either an administrative or quasi-judicial process to establish and enforce support orders and, at State option, to establish paternity. In addition, we also limited use of the State's judicial system to appellate review of determinations made under the State's expedited process and imposed many requirements specific to either an administrative or quasi-judicial process. These final regulations amend many of the provisions in the proposed regulations and, in effect, allow States more flexibility in designing a process or combination of processes that meet their needs. States may request an exemption from using an expedited process in one or more political subdivisions in the State based on the effectiveness and timeliness of support order issuance and enforcement within the political subdivision.

Some commenters believed that the regulations went beyond the intent of the statute by imposing too many requirements on expedited processes. Others indicated that the requirements for the two types of expedited processes should be parallel.

While we do not believe the proposed regulation was beyond the intent of the staute, we recognize the need for fexibility on the part of the States to design expedited processes in light of State and local conditions. Therefore, we revised the proposed regulations on expedited processes to eliminate many restrictions and to make those requirements that were specific to either an administrative or quasi-judicial process apply to expedited processes in general. The requirements which now apply to expedited processes in general are that: Orders established under expedited process must have the same force and effect under State law as orders established by full judicial process; the due process rights of all parties must be protected; the parties must be provided a copy of the order; there must be written procedures for ensuring the qualifications of presiding officers; recommendations of presiding officers may be ratified by a judge; and actions taken under the State's expedited processes may be reviewed under the State's judicial system.

In addition, we revised the requirements that were formerly specific to judge surrogates' authority under quasi-judicial process to apply to the functions performed under expedited processes in general. The functions performed under expedited processes must include at a minimum: Taking testimony and establishing a record; evaluating evidence and making recommendations or decisions to establish and enforce orders; accepting voluntary acknowledgements of support liability and stipulated agreements setting the amount of support to be paid; entering default orders if the absent parent does not respond to notice or other State process within a reasonable

period of time specified by the State; and, if the State establishes paternity using its expedited processes, accepting voluntary acknowledgement of paternity.

Representatives from various groups including the National Governors' Association and several other commenters felt that the proposed regulations should be directed toward time frames and not the structure of systems. In response to the comments received on this section, we removed many of the structural requirements contained in the proposed regulations that were specific to either an administrative or quasi-judicial process. After careful consideration of the comments and Congressional intent that the Secretary measure a State's compliance with the expeditied processes requirement "primarily on the basis of the results it produces" (see Conf. Rep. 98-925, p.36), we added a standard in the regulations to ensure that States' expedited processes are timely. A State's process or combination of processes is expedited when it completes support order establishment or enforcement actions from case filing to disposition in 90 percent of all cases in 3 months, 98 percent in 6 months and 100 percent in 12 months. This standard was approved by the House of Delegates of the American Bar Association and is considered by that group to be an appropriate measure of the length of time in which domestic relations cases should be completed from case filing to disposition. Compliance with this standard will be measured on a disaggregated basis (e.g., court-by-court of similar level) rather than for the State as a whole.

We are not defining the terms "case filing" and "disposition" in the regulations because States may use different terms to describe the events associated with these terms. However, by "case filing" we mean the date on which the case is officially acknowledged or action is taken to invoke the jurisdiction of the State's expedited process system, for example, the date on which the case is given a docket or case number, or notice of support liability is sent or other official action is taken which initiates the process of establishing or enforcing a support obligated. "Disposition" means the date on which a support obligation or enforcement order is officially established and/or recorded.

Several commenters asked if Federal funding is available for administrative costs associated with decisionmakers in administrative and expedited judicial processes. Consistent with our current policy, Federal funding remains available for the costs of decisionmakers in an administrative process. Federal funding is also available for decisionmakers in an expedited judicial process. Therefore, we have revised 45 CFR 304.21(b) to specify that Federal funding is not available for compensation (salary and fringe benefits) of judges only.

Several commenters indicated that the proposed regulations fail to specify methods of enforcement under expedited processes. In accordance with the requirements at § 303.101(b) of the final regulations, States are responsible for ensuring that appropriate enforcement remedies are included under their expedited processes.

An advocacy group recommended that we provide States with technical assistance in implementing expedited processes for support cases and especially for paternity cases. State and local IV-D agencies may request technical assistance from the appropriate OCSE Regional Office in the development and implementation of an expedited process.

One commenter recommended that we allow public hearings at the local level to ensure input from residents on the type of expedited process a locality may adopt. Since there is nothing in the new law prohibiting public hearings at the State and local level, States and localities may elect to conduct public hearings to receive comment and local input on the type of expedited process that would be appropriate in a particular area. We suggest that the commenter contact State and local IV-D agencies or other State officials or legislators to request local public hearings on expedited processes.

One commenter asked if a State's expedited process would apply to non-IV-D cases as well as IV-D cases. The new law requires States to have expedited processes for establishing and enforcing support orders in IV-D cases. Since the new law does not specifically prohibit a State from expanding its process to include non-IV-D cases, the State may elect to do so. However, a State would not be eligible to receive Federal reimbursement for the costs associated with handling and resolving support matters in non-IV-D cases.

Several commenters asked that we clarify the definitions for "expedited process" and "quasi-judicial" because, as defined in the proposed regulations, they each refer to the other. Other commenters believed that the definitions for "hearing officer" and "judge surrogates" limit without reason those who may issue or recommend support orders.

Except for the definition of "expedited processes," which was expanded to incorporate a standard to measure the timeliness and effectiveness of support order establishment and enforcement action under the State's expedited processes, we deleted all of the definitions from this section because we agree they limit State flexibility needlessly.

Several commenters indicated that the proposed regulations failed to provide for incorporating orders that originated from the judicial process into the State's expedited process. Since the new law requires States to enforce support orders using expedited processes, although it is not explicitly stated in the final regulation, any order entered in another forum on behalf of a IV-D client would be enforceable under the State's expedited process.

Many commenters asked that the regulations allow States to create an expedited process within their judicial systems. Some States and one advocacy group felt that limiting States to the selection of either an administrative or quasi-judicial process was contrary to the law since Congress never intended a State's expedited process to be the sole forum for resolving all support matters.

We intended in the proposed regulations that States select either an administrative or quasi-judicial process to establish and enforce support orders and that, if the State selected a quasi-judicial process, it would operate within the State's judicial system. Although Congress did not expect a State's expedited process to be the sole forum for resolving all support matters, it did intend that the process would improve the State's program effectiveness and that the overall processing time of support order establishment and enforcement actions would be reduced in comparison to the processing time under the State's judicial system. To eliminate confusion and to clarify the use of an expedited process within a State's judicial system, we made a number of editorial and substantive changes to this section. We deleted the provision that limited States to selection of either an administrative or quasi-judicial process. As a result, the State may use an administrative or expedited judicial process or both processes as long as the selected process meets the definition of an "expedited process" contained in these regulations in addition to meeting the other requirements of this section.

Several commenters asked if a State could use an administrative process for

some cases and expedited judicial process for other cases that appear more complicated to resolve. A State may implement two processes and apply the procedures of those processes separately depending upon case circumstances, provided that both processes are effective and expeditious and all IV-D cases receive necessary services.

An advocacy group questioned the use of expedited processes for determining paternity because addtional due process protections are needed in paternity proceedings. This commenter and one other recommended that we either add additional requirements for determining paternity under an expedited process or limit paternity proceedings under an expedited process to uncontested cases.

States that opt to include paternity establishment in their expedited process must provide whatever additional due process requirements are necessary for the protection of the parties involved in the proceedings. However, if a case involves non-support-related issues such as countersuits by the putative father, the State may refer the case to its judicial system.

Several commenters indicated that the proposed regulations fail to address the handling of interstate cases under expedited process. Because of the variances among the expedited processes that States may implement, we did not prescribe criteria or methods for handling interstate cases. However, States are required to include interstate cases under their expedited processes and to process these cases as effectively and quickly as intrastate cases are processed.

The majority of comments received on this section pertained to the requirement limiting the State's judicial system to appellate review of support orders established and enforcement actions taken under the State's expedited process. Many commenters asked that we delete this requirement. Others felt that it makes the support award process more burdensome because it creates a two-tier system whereby complicated cases would have the support determined under the State's expedited process and other issues in the case such as property settlements, custody, visitation, etc. determined under the State's juidicial system. Another commenter felt that the proposed judicial limits were not in the best interests of the child.

We recognize that in some cases resolution of issues such as property settlements must be accomplished in order to determine an appropriate support award amount. For these issues, States may use their judicial systems. However, to protect the interests of the children involved, States must determine temporary support awards in these cases under the expedited process before referring the more complex issues to the full judicial system for resolution. We have added this requirement to § 303.101(b) of these regulations.

Several commenters indicated the State's expedited processes should provide for bench warrants, default orders, power to subpoena, and contempt of court proceedings. Other commenters indicated that contempt powers and powers to jail are seldom granted outside the judicial system and recommended that the regulations prohibit such proceedings under an expedited process.

Because States' laws and judicial systems vary greatly, we did not require States' expedited processes to provide for bench warrants and subpoena and contempt powers. However, we do require presiding officials to enter default orders if the absent parent does not respond to notice or some other State process within a reasonable period of time. In addition, these regulations permit States to structure their enforcement mechanisms to include contempt and subpoena powers and bench warrants under their expedited process, provided State law allows this. A State that includes these enforcement mechanisms under its expedited process must provide any additional due process requirements necessary to protect the parties involved in these proceedings.

Several commenters asked if existing orders established by a court could be returned to court for modification. Existing orders may be modified under the expedited process in effect in the State or the State may modify them by court process. We encourage States to modify existing court orders in the most effective and expeditious manner.

One commenter asked that we define "same force and effect" when comparing orders established by expedited process and those established by judicial process. "Same force and effect" means that orders issued under the State's expedited process must be recognized as valid and therefore equally enforceable under the State's judicial system.

Several commenters felt the proposed regulations fail to protect the rights of custodial parents who can also suffer from unfair decisions. We extended the provision pertaining to due process, which previously applied only to absent parents, to include protections for all parties involved in cases resolved under the State's expedited process. This will ensure that the rights of custodial parents as well as absent parents will be protected in accordance with State law.

Many commenters objected to the requirement that the administrative agency must use the State's generally applicable administrative procedures. Some commenters indicated that the State IV-D agency can establish administrative procedures better suited to child support enforcement cases than the State's "generally applicable procedures." Others were confused about the meaning of this requirement and felt that they were required to comply with the Federal Administrative Procedure Act.

We agree this section was confusing. We want to allow States flexibility in establishing administrative procedures that are appropriate for the handling and processing of child support cases. Therefore, we deleted this requirement.

Several commenters asked that we clarify what we mean by "taking testimony and establishing a record" under the States's expedited process. One commenter asked if verbatim testimony is required or if a file containing summaries of testimony and action taken is sufficient.

We feel this is best left to the States to determine what is appropriate. We expect the State's expedited process to conform to whatever constitutes "taking testimony and establishing a record" under other judicial or administrative systems of the State that make binding decisions.

Several commenters felt that we should specify strict standards for exemptions from expedited processes and that we should clarify the standards that will be used to measure "effectiveness and timeliness." We answer this comment under the heading "Exemption from Mandatory State Procedures (45 CFR 302.70(d))."

State Income Tax Refund Offset (45 CFR 303.102)

This regulation contains the criteria for implementing State income tax refund offset procedures.

Qualifications for Offset

One commenter requested clarification of how cases which have been terminated from AFDC and continue to receive IV-D services are treated for purposes of State income tax refund offset. A case which continues to receive IV-D services after being terminated from receipt of AFDC cannot be charged a fee for using the State income tax refund offset if the overdue support is referred for offset during the

period when IV–D services are automatically continued. Any offset amounts collected on behalf of these cases are considered collections on arrearages in accordance with § 303.102(g) and may be paid to the family or applied to reimburse the State for AFDC payments made to the family depending on a State's distribution scheme in non-AFDC cases. If the case is referred for State income tax refund offset after the family authorizes continued services as a non-AFDC case, the State must charge a fee to recover costs of submitting the case for offset (if it has opted to do so in non-AFDC cases) and distribute collections as above.

Accuracy of Amounts Referred for Offset

Several comments were received regarding verification and accuracy of amounts referred for offset. One commenter recommended that States be permitted to include increases as well as decreases of amounts referred for offset in their modification process. The regulation does not prohibit this, but we do not believe States should submit increases as part of the modification process and doubt that it would be permitted in most States under their own procedural due process requirements. Another commenter asked if the State could verify non-AFDC arrearage amounts using an affidavit from the custodial parent. The State may use any procedure to verify the accuracy of the referred amounts that is effective and accurate, including affidavits and information from other States.

In regard to information from other States, one commenter suggested we require the initiating State in interstate cases to verify the residence of the absent parent before requesting offset. Current regulations at § 303.7(c) require the initiating State to provide sufficient identifying information to the extent available to the responding State. However, we cannot require the initiating State to verify the address of the absent parent because specific address information may not be available when the case is referred to a responding jurisdiction. The responding jurisdiction is required to make efforts to locate the absent parent.

Notices

Several comments were received relating to notice requirements. Some of the comments requested clarification of the requirement to provide notice to the custodial parent of how amounts offset will be distributed. One commenter opposed notifying the custodial parent because of increased administrative costs and lack of statutory basis for such a requirement. Several other commenters suggested we require notice to the custodial parent only if the State chooses to reimburse itself for AFDC payments first. We believe notice to the non-AFDC custodial parent is necessary. However, we agree with the majority of commenters that it is only necessary if the offset amount is not paid to the custodial parent first. Final regulations require notice to the custodial parent only if the State chooses to apply amounts offset to unreimbursed AFDC payments before paying the family.

Another commenter recommended that State income tax refund offset notice requirements be the same as Federal income tax refund offset notice requirements. The Federal and State tax refund offset notice requirements are not the same because the statute includes more specific notice requirements with respect to the Federal income tax refund offset process and we have given the States flexibility to develop the specifics of their own State income tax offset program.

In reference to the advance notice to the absent parent, one commenter stated that the regulations should specify what is to be contained in the notice to the absent parent and mandate a 10-day response time. We have not been more specific in these regulations about notice requirements but have chosen to let the States determine the content of their notice in accordance with State laws and due process requirements and procedures.

Contesting Offset

One commenter requested that we provide specific standards for due process and not rely on State procedural due process requirements. Because many States consider child support orders to be final judgments, we have provided States with flexibility to develop a State income tax refund offset procedure which meets the requirements in this regulation and believe the requirement that States establish procedures which are in full compliance with the States' due process requirements is adequate. This requirement to follow the procedural due process requirements of the State is consistent with section 466(a)(3) of the Act, and recognizes the fact that some States which do not consider support orders to be final judgments may have to provide additional procedural safeguards.

Fee for Offset

Two commenters requested clarification regarding the optional fee States may charge in non-AFDC cases. One commenter asked if the offset fee can be charged in advance of the actual offset rather than be deducted from the offset amount. The final regulation clarifies that a fee to cover the cost of using the State income tax refund offset procedure may either be charged in advance or deducted from the amount offset. The other commenter asked if this optional fee can be charged in addition to the initial non-AFDC application fee. This fee may be charged in addition to the mandatory application fee because it is a fee for using this specific service. If the State elects to recover costs, it may also recover any costs in excess of the application fee and the fee for State tax refund offset services.

Distribution of Offset Amounts

We received a few comments regarding the distribution of offset amounts. One commenter asked us to define "reasonable period" for repaying excess offset amounts to the absent parent. The final regulations do not define "reasonable period" for repayment because it will not be the same for all States as a result of varying State offset programs. However, the regulations do specify "a reasonable period in accordance with State law" which we believe will protect the absent parent in this situation. We do not want to restrict State flexibility as long as excess amounts are repaid to the absent parent promptly in accordance with State law.

In response to a comment on timing of distribution, we are replacing the phrase "in a timely manner" with the phrase "within a reasonable time period in accordance with State law". This has been done to be consistent with any protections afforded the absent parent under State law.

We were also asked to clarify whether a State is required to change its current State income tax refund offset procedure prior to the October 1, 1985 effective date. This comment was in reference to current State procedures under which State tax refund offset amounts are distributed first as current support in accordance with existing distribution requirements. States may continue their present policy until the required effective date, after which amounts offset must be distributed as overdue support and may not be treated as current support collections.

Information to the IV–D Agency

Two comments concerned the transmittal of the absent parent's home address and social security number from

the State agency responsible for processing the offset to the State IV-D agency. One commenter recommended we delete the requirement to provide the State IV-D agency with the absent parent's social security number. Since this requirement is in the statute, we cannot delete it.

In response to the other comment, the final rule provides that the agency responsible for processing the offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. We agree with the commenter that it is inefficient for the State IV-D agency to have to request this information. The State IV-D agency will provide this information to any other State involved in enforcing the support order.

Paternity Establishment (45 CFR 302.70(a)(5))

A commenter felt that the proposed regulations gave insufficient attention to the requirement that States have in effect and have implemented laws and procedures for the establishment of paternity for any child at any time at least until the child's 18th birthday.

Current regulations at 45 CFR 302.31 and 302.33 require States to process paternity cases. The Child Support Enforcement Amendments of 1984 require States to allow paternity establishment at least up to the child's 18th birthday. Since it is clear that cases previously considered to be closed because of the child's age will now have to be reopened and services provided, we saw no need to elaborate on this requirement.

Other commenters requested that the regulations be amended to expressly provide that States have the option of permitting the establishment of paternity after the child's 18th birthday. These commenters quoted the House Report which states that "state paternity laws must permit the establishment of an individual's paternity for any child *at least* until the child's eighteenth birthday," and that "states could eliminate statutes of limitation in establishing paternity altogether if they wished." H.R. Rep. No. 527, 90th Cong., 1st Sess. 38. In response to these comments we have revised the regulations to require States to have in effect laws providing for the establishment of paternity of any child at least to the child's 18th birthday.

Imposition of Liens (45 CFR 303.103)

In accordance with the new statute, these regulations require States to have procedures for imposing liens against real and personal property for amounts of overdue support.

Several commenters asked that we require that State laws specifically provide for liens in child support cases to fully recognize the importance of the lien provision. State laws governing liens must contain authority to enable the State to meet the requirements and intent of section 466 of the Act. Therefore, if existing laws or administrative or court rules prevent a State from imposing liens in child support cases, the State must enact a law or amend the existing law or rules to comply with section 466 of the Act.

A few commenters asked that we implement more requirements for imposing liens, such as the amount of overdue support that should trigger imposition of a lien; the date on which liens must be imposed, e.g. 30 days after the amount of overdue support is determined or less; the time period for which liens may be applied towards property; and whether or not State laws should require the disposition of property at the end of a required time period.

To provide States with flexibility in this area, we did not regulate specific requirements for imposition of a lien. Many States have laws currently in effect that address some or all of the suggestions raised by the commenters. Other States may amend their current laws or enact new laws to require specific lien provisions such as a specified time period for disposition of property to satisfy a lien. In addition, the State's guidelines may include that a case may be inappropriate for imposition of a lien if the amount of overdue support is small.

Posting Security, Bonds or Guarantees (45 CFR 303.104)

The statute and regulations require States to enact laws requiring absent parents who have a pattern of overdue support to post a bond, or give security or some other guarantee of payment.

The majority commenters expressed concern that no bonding company will risk underwriting child support payments because of the long-term commitment of the support obligation and the high rate of noncompliance with these obligations. Since this provision is particularly valuable when the absent parent is self-employed or has other income not reachable through other means, we urge States and local IV-D agencies to educate local bonding companies of the efficacy of underwriting child support obligations in cases where the absent parent has been a minimal credit risk in other credit ventures.

We believe, however, that the security and guarantee portion of this provision may be easier to apply than the bond portion because an underwriter such as a bonding company would not be necessary. For example, dependent upon the State's procedures, the State IV-D agency or the court would require an absent parent who has a poor payment record to offer a negotiable instrument such as stocks, bonds, etc. which would be held in escrow by the IV-D agency or the court for payment of support should it become overdue.

Several commenters asked that we require States to establish an escrow account to ensure that the absent parent's assets are conserved for the dependent child. Other commenters asked that we regulate additional requirements for bonds such as the form in which the bond shall be posted, the period of time for which the bond shall remain in effect, and so on.

To provide States with flexibility in this area, we did not regulate specific requirements for posting security, bond or guarantee other than requirements to provide the absent parent with notice and procedures to contest. Some States may have laws that address some or all of the suggested specifications. Other States may amend their current laws or enact new laws to require specific bond, security or guarantee provisions. In addition, the State's guidelines for determining cases that are inappropriate for the bond procedures may include some specifications such as a minimum amount of overdue support for issuance of a bond.

Making Information Available to Consumer Reporting Agencies (45 CFR 303.105)

States are required by the statute and these regulations to provide information to Consumer Reporting Agencies (CRAs) upon their request on the amount of overdue support owed by an absent parent when that amount is in excess of $1000. The State may provide information to CRAs if the overdue support is less than $1000. The State may charge the CRA a fee and must provide the absent parent with notice of the proposed action and an opportunity to contest the accuracy of the information.

Many commenters felt that the CRA would not be interested in requesting information on the amount of overdue support owed by an absent parent from the State IV-D agency. Some of these commenters suggested that we require the State to provide this information to CRAs without having them request it. In addition, the commenter asked if the State would have to comply with the notice requirement in cases where the

State voluntarily forwards the information to the CRA.

The State may voluntarily forward information without request of the CRA regardless of the amount of overdue support. Even if the State provides information voluntarily to CRAs, the State must notify the absent parent and provide that individual with an opportunity to contest the action. To realize the full potential of this provision, we urge State and local IV–D agencies to work with CRAs to encourage their interest in this information, since such information may be an indicator of an absent parent's potential failure to meet other credit obligations. We also anticipate that the new mandatory State laws, especially wage withholding and liens, may have a significant impact upon the absent parents' ability to pay other debts and that CRAs will soon recognize this fact and want the information.

One commenter asked that we allow other State agencies such as the State tax offset office to handle the transfer of information to CRAs. The commenter felt that the State tax offset office would not only be aware of the amount of overdue support owed but would provide tighter confidentiality controls and better management than the State IV–D agency.

We do not feel it necessary to regulate which State office or agency provides absent parent information to CRAs. State IV–D agencies may enter into agreements with other State agencies to meet this requirement as long as the IV–D agency retains ultimate responsibility for meeting the requirements of the Act and these regulations.

One commenter asked if the IV–D agency can give additional information to the CRA such as whether or not the amount of overdue support has been reduced to a judgment, where the judgment is docketed and to whom it is owed. Since the first two examples relate to information on overdue support, the IV–D agency may provide this information to the CRA. However, the IV–D agency may not release the name of the person to whom the overdue support is owed since custodial parent information is confidential and subject to the safeguarding requirements at 45 CFR 303.21.

One commenter asked that we require States to publish a public notice in the local newspaper when absent parents cannot be located. The newspaper notice would give the absent parent's name and request that he or she call the IV–D agency at the number provided. The notification and procedures for contesting the proposed release of information to CRAs must be in compliance with the procedural due process requirements in the State. If the State allows for a newspaper notice, this is acceptable. However, if the notice results in the absent parent contacting the IV–D agency, the State must still send a formal notice of the proposed action to the individual and still must allow the individual an opportunity to contest the accuracy of the information.

One commenter felt that the notice requirement would increase the State's administrative costs thereby reducing the effectiveness of this method. Since the new law specifically requires States to notify absent parents of the proposed action and to provide an opportunity to contest the accuracy of the information, States must incur the costs of this requirement. However, we believe that the costs of this notice requirement will be offset by expected increases in collections since the new law requires States to implement a variety of remedies to ensure that support obligations are met and arrearages paid.

One commenter asked that we set up a national cooperative effort to establish consistent automated procedures between States and CRAs. We have worked directly with the Federal Trade Commission on several occasions to enlist the support of CRAs in child support enforcement matters. Our efforts have improved cooperation between our agencies and CRAs. Some automation has already occurred at the local level. We plan to continue to work for more results locally and believe this will be as effective as striving for a national cooperative effort.

One commenter asked us to require the use of CRAs to determine if the absent parent is covered by private medical insurance. Section 303.105 does not preclude a State from requesting and receiving information if it is available from CRAs on absent parents' private medical insurance coverage provided that a court or administrative support order is in effect for that parent. In fact, we encourage States to use CRAs to obtain information on absent parents for use in establishing or enforcing child and/or medical support orders.

Guidelines for Determining Inappropriate Use of Procedures (45 CFR 302.70(b))

Under section 466 and these regulations, States must offset State tax refunds, impose liens, require posting a security, bond or guarantee, or provide information to CRAs except when they determine that an individual case is inappropriate for use of any one or all of these procedures based on the guidelines developed by the State. The guidelines cannot be written in a way that excludes a majority of cases in which no other enforcement remedy is being used. In developing these guidelines, States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations.

Several commenters asked whether the States' guidelines for determining if a particular enforcement technique is inappropriate in a particular case eliminate judicial discretion. The guidelines eliminate caseworker discretion, but a judicial decisionmaker has discretion to order these remedies within the law.

Several commenters asked if the State has the option of developing guidelines on State tax offset, liens, bonds and for providing information to CRAs. We have clarified in the final regulations that the establishment of guidelines is mandatory. States must have guidelines for all four procedures, unless the State is granted an exemption from implementing one or more of the procedures based on the exemption criteria in 45 CFR 302.70(d). States must use the guidelines for determining which cases are inappropriate for use of a particular procedure.

An advocacy group asked that we require that the States' guidelines be made available to the public. We amended the regulations on each of the four procedures to provide that States' guidelines be available to the public.

Several commenters asked if we would clarify what is meant by requiring the States' guidelines to take into account the payment record of the obligated parent, the availability of other remedies and other relevant considerations. States must consider these factors for determining cases that are inappropriate for use of a particular procedure. We have clarified in the regulation that the guidelines may not be developed in a way that determines a majority of cases in which no other enforcement remedy is being used to be inappropriate. For example, if the absent parent has a poor payment record and is self-employed, the likelihood of using any one or all of these procedures increases. If the absent parent is a wage earner subject to withholding, requiring the posting of a bond or other security may be inappropriate.

Several commenters asked if only one of the four procedures may be used in an individual case. The State may use any one or any combination of the four procedures in an individual case. For example, if the absent parent owns property in the State and has an accumulated arrearage in excess of $1,000, the State may apply its lien

procedures in addition to forwarding the absent parent's name to the local CRA, provided that the absent parent has been notified of the action and given an opportunity to contest the accuracy of the information.

Delays in Implementation

Under the statute, if the Secretary determines that legislation is required to conform the State IV-D plan to one or all of the requirements of section 466 of the Act, the IV-D State plan will not be regarded as failing to comply with the requirements imposed by section 466 prior to the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 1, 1985.

A commenter requested that we require States to request approval for delay in implementation of one or more of the requirements of the statute prior to the October 1, 1985 effective date and limit the Secretary's approval to States where the legislature will not conduct an earlier session which could address the requirements of the new law.

States should have the necessary State legislation enacted by October 1, 1985.

Extending the effective date of the mandatory practices beyond that date should be based on unusual or uncontrollable circumstances. It would be unfortunate and a significant setback for State child support enforcement programs not to vigorously pursue the necessary legislation at the earliest possible time. State legislative action could help the States financially in the receipt of higher incentives under the new formula, also effective October 1, 1985. If, however, a State cannot by reason of State law comply with the requirements of section 466 of the Act by October 1, 1985, the State must indicate in its revised State plan submittal that legislation is necessary and include the State's legal basis for not implementing the mandatory practices.

Exemptions from Mandatory State Procedures (45 CFR 302.70(d))

Under the new law, if a State demonstrates to the satisfaction of the Secretary that any one or all of the laws and procedures specified under section 466 of the Act will not increase the effectiveness and efficiency of the State's child support enforcement program, the Secretary may exempt the State from the requirement(s). A State may also apply for an exemption from using expedited processes for a political subdivision of the State based on the effectiveness and timeliness of support order issuance and enforcement within the political subdivision and the general criteria for exemptions.

Several advocacy groups asked that the final regulation provide for public hearings or notice in the Federal Register before an exemption is granted. We encourage States to hold public hearings. In any case, States must demonstrate to the Secretary's satisfaction that an exemption is warranted. The exemption is subject to the Secretary's continuing review, is time limited and may be terminated if circumstances change. Exemptions are granted only if a State implements a procedure without a statute or if existing procedures are as efficient and effective as the required practice. Thus, the public will not be disadvantaged if a State receives an exemption.

A commenter asked if judicial challenges of the Secretary's decision are barred or if the bar pertains only to administrative appeals of the disapproval. The bar applies only to administrative appeals of the disapproval of a request for exemption since that is the only review within the Secretary's authority.

A commenter recommended that all requests for exemptions be submitted three months prior to the October 1, 1985 effective date of the mandatory practices so that the Secretary's approval or disapproval of these exemptions could be issued to States and political subdivisions by October 1, 1985. The commenter felt that if decisions were final as of October 1, 1985, States would proceed to amend their laws or enact new laws to provide for the mandatory practices during the first legislative session beginning on or after October 1, 1985. We agree with the commenter's recommendations and States should make every effort to submit initial requests for exemptions by June 30, 1985 to ensure full and timely consideration. The Department will respond by September 1, 1985 to State requests which are submitted by June 30. We want to stress, however, that if an initial request for an exemption is denied, a State must implement the mandatory procedure by October 1, 1985 or it will be found out of compliance with the State plan requirement in section 454(20) of the Act and 45 CFR 302.70, unless the State has been granted a delay from implementing the procedure based on the need for State legislation.

One commenter asked how long a State has to enact the law or establish and begin using the procedure if an exemption from enacting a law or using a mandatory procedure is revoked by the Secretary. If the State must enact a law governing the procedure, the State must come into compliance with the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked. We believe it is reasonable to use this time frame because Congress gave States the same time frame after enactment of Pub. L. 98-378 to enact laws and begin using the required practices.

Several commenters objected to the requirement that States must establish a "clear case" for an exemption. They felt this goes beyond the statutory requirement that a State demonstrate, to the satisfaction of the Secretary, that the enactment of a law or the use of a procedure will not increase the efficiency and effectiveness of the State's Child Support Enforcement program.

Our intent is using the phrase "clear case" was to ensure that the burden of proof is on the State to demonstrate that an exemption is warranted. We did not intend the use of "clear case" to be confused with commonly used legal definitions on the standard of proof. We have changed the final regulation to say that the State must "demonstrate to the satisfaction of the Secretary" (rather than "establish a clear case") that the program's effectiveness would not improve by using the procedure.

Some commenters asked if States will receive explicit guidance on the exemption process and the standards that will be used to measure "Timeliness and effectiveness." We intend to issue an action transmittal giving general guidance on the exemption process including standards which we will use to measure the timeliness and effectiveness of the State's current operations.

One commenter asked if a State may request an exemption from enacting a specific provision within a mandatory practice if a State currently uses the practice but does not meet all the requirements in the statute. Exemptions are available only for a complete practice. A State's request must demonstrate where the State conforms with Federal requirements and where it does not. Based on the total information provided, a State may receive an exemption to continue current practice, if the State has shown to the satisfaction of the Secretary that its current practice is as efficient and effective as the requirements in the statute.

A commenter asked whether the State could request an exemption from enacting a law requiring the use of expedited processes for establishing and enforcing support orders when the State currently negotiates consent agreements in 80 percent of its cases.

Obtaining consent agreements in a majority of cases only addresses half of the requirement to have expedited processes to establish and *enforce* support orders. Unless the State was also enforcing a large majority of its cases and could demonstrate that use of an expedited process would not increase the efficiency and effectiveness of the State's current efforts to establish and enforce all support orders, the State would be ineligible for an exemption.

Dates of Collection (45 CFR 302.51(a))

OCSE has received many comments on provisions in the proposed regulations requiring the collection date for distribution purposes in interstate cases to be the date the payment is received by the IV-D agency of the State in which the collection is made and in wage withholding cases the date the employer withholds the wages. This change was proposed because the regulation as it was written did not allow for accurate distribution when current support was collected but not received until a later date by the IV-D agency making the final distribution. For example: State A making collections for State B collects current support payments for June, July and August from an absent parent. These are current payments because the absent parent paid each payment on time. State B does not receive these three payments until November and must distribute the payments in accordance with the current regulation under which November is considered the date of collection. The IV-D agency of State B therefore must distribute an amount up to the monthly support obligation as current support for November and apply any excess over this amount to arrearages. Payments made by the absent parent in State A on time as current support have become arrearage payments in State B.

Many of the comments we received were from State IV-D agencies with automated systems for distribution of support collections. The IV-D agencies cited the high cost of reprogramming their systems to comply with the change. Some of them felt that the change could not be automated. They stated that these cases would have to be handled by a costly and time-consuming manual process which defeated the purpose of automation.

Commenters were also critical of the change because it would require complex, difficult and error prone, retroactive distribution. They cited examples such as a case where the family was not receiving AFDC in June, July, and August, but was receiving AFDC when the payments were received in November. These families would have their assistance lowered or terminated for one month, only to return to their original status in January. Also, a family that received food stamps in the three months would not have been entitled to them, if the payments had been received on time.

Some commenters stated that in many cases the responding State does not specify the period of time for which the payments were collected when sending the collections to the initiating State. The initiating State would have to contact the responding State causing needless delays. This same problem would occur in withholding cases and it would be very difficult to get employers to specify the date.

Another area of concern to commenters was the accounting difficulties that the change would create. They felt that IV-D agencies would have to create two or three sets of books to handle the accounting necessitated by this change. Auditors would not be able to audit the IV-D agencies correctly under these circumstances, they complained.

Other commenters raised various complaints about the change, such as it is not required by the new statute, would cause States to be unable to meet the IV-A reporting requirement under 45 CFR 302.32 and would provide no substantive benefit to custodial parents. One commenter was concerned that the problems which we cited as the reason for the change were caused by a small group of States not following the regulations for sending interstate collections to the initiating State within ten days. This commenter felt that the change in the regulations punished the majority of the States who follow the ten-day requirement for the transgressions of those few States who do not.

After consideration of all comments received we have deleted the proposed dates of collection in interstate cases and wage withholding situations and retained the definitions of date of collection as they appear in the current § 302.51(a).

Therefore, the date of collection is the date on which the payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV-D agency. For purposes of interstate collections, the date of collection is the date on which the payment is received by the IV-D agency of the State in which the family is receiving aid.

We have, however, included a requirement in § 302.51(a) that, in any case in which collections are received by an entity other than the agency responsible for final distribution, the entity must transmit the collection within 10 days of its receipt. Similar revisions have been made in § 303.100 with respect to employers transmitting collections and in § 303.52(f) with respect to responding States transmitting collections to initiating States. This requirement was proposed by the National Council of State Child Support Enforcement Administrators as an alternative to the proposed changes in dates of collection. We believe that this requirement will ensure timely transfer and accurate distribution of collections because responding States or jurisdictions and employers will be required to transmit collections expeditiously, thereby minimizing the total time elapsed between payment by the absent parent and final distribution of the collection. We intend to study the promptness of final distribution to the family, however, because we received numerous comments requesting that strict time frames be imposed to ensure that families receive support payments as quickly as possible. Based on the results of that study, we will consider proposing time frames for final distribution of support collections to families.

Collection of Past-Due Support From Federal Income Tax Refunds (45 CFR 303.72)

This regulation implements the new statute which expands the Federal income tax refund offset program to include past-due support in foster care maintenance and non-AFDC cases. This regulation provides States with criteria for implementing their Federal income tax refund offset programs on behalf of these additional cases.

Two commenters stated that the Internal Revenue Service (IRS) should draft regulations implementing the statutory provisions which amend the Internal Revenue Code. The IRS informed us that they plan to issue regulations which will address the changes to the Federal income tax refund offset program as a result of Pub. L. 98-378.

Definitions

The proposed regulations moved the definition of past-due support from § 303.72 to § 301.1 of the regulations. Some commenters requested we keep the definition of past-due support in § 303.72 or cross-reference the section that contains the definition. In response to these comments, we have added a cross-reference in § 303.72 to the section containing the definition of past-due support.

Support Qualifying for Offset

Several comments were received in reference to what support qualifies for Federal income tax refund offset. One commenter requested we be less restrictive in our offset criteria. Specific criteria regarding what support qualifies for Federal tax refund offset are included in the regulations because we believe the success of the program hinges on submitting cases only on the basis of accurate, verified information. The statute clearly requires that past-due support meet clearly defined criteria for offset to ensure that all individuals subject to the Federal income tax refund offset process are treated fairly and that the authority to offset Federal income tax refunds is not misused or abused.

Another commenter wanted to know how to treat cases which automatically continue to receive IV–D services after being terminated from AFDC. During the period immediately after termination from AFDC, no application fee or cost recovery from the support collection is permitted. Therefore, if a case is referred for Federal income tax refund offset during this time, no fee can be charged for submittal. When the IV–D agency is authorized to continue IV–D services after this period and then refers a case for Federal income tax refund offset, the State must charge a fee for submitting the referral if it charges a fee for Federal tax refund offset. In either situation, the law requires that amounts offset be treated as arrearages and be used first to repay any unreimbursed assistance received by the family.

Several commenters recommended we delete the requirement that reasonable efforts must have been made to collect support before referral of a case for Federal income tax refund offset. One commenter asked us to define reasonable efforts to collect in non-AFDC cases more clearly. In response to these comments we are deleting this provision. The requirement that reasonable efforts to collect had previously been made was not required by the statute and was intended solely to prevent tax refund offset from becoming the State's only enforcement remedy. We believe that the enforcement practices required under P.L. 98–378, particularly wage withholding, will ensure that States use other means to collect support on an ongoing basis in addition to use of the Federal income tax refund offset. Therefore, despite this deletion, the IRS will not be the collector of first resort.

One commenter asked that we require States to certify any past-due support which has been reduced to a judgment in a non-AFDC case. The final rule allows States the flexibility to limit amounts offset in non-AFDC cases to past-due support which accrued since the case became a IV–D case, although we believe most States would choose to include amounts reduced to a judgment. This flexibility is provided for in the statute.

One commenter opposed the option to limit referral of non-AFDC past-due support to amounts accrued after the IV–D agency began to enforce the order. We do not agree. This provision ensures the accuracy of amounts certified for offset. In non-AFDC cases, there may not be an official public record of payment. The State cannot be required to certify amounts for offset it cannot verify. Therefore, final regulations permit States to limit non-AFDC referrals to amounts accrued after the IV–D agency began to enforce the order, in accordance with the statute.

Commenters expressed concern about the different threshold amounts for referral of AFDC and non-AFDC cases for offset. The minimum amounts that may be referred for offset are $150 in AFDC and foster care maintenance cases and $500 in non-AFDC cases. The $500 threshold is contained in statute and cannot be changed by regulation. The lower threshold for AFDC cases reflects the generally lower support obligations for AFDC familes and the fact that States are able to verify these arrearages easily because they are assigned to the State.We have not changed the $150 figure.

Several commenters objected to the provision prohibiting referral of spousal support and support due an individual who is no longer a minor in non-AFDC cases. This provision is in the statute and cannot be changed by regulation. For non-AFDC referrals the State must differentiate between spousal and child support and only submit amounts owed on behalf of a minor child as defined by State law. The statute and regulations do not allow non-AFDC referrals on behalf of an individual who is no longer a minor even if the arrearage accrued while the person was a minor child.

Many commenters objected to the requirement that there be a support order issued in the State submitting a non-AFDC case for offset. The commenters recommended we permit the State where the custodial parent applies for IV–D services to submit non-AFDC cases for offset. In response to comments, the final rule permits the State in which the custodial parent applies to refer a non-AFDC case for offset whether or not there is a support order issued in that State. If the absent parent contests the offset action, the absent parent may request an administrative review either in the submitting State or the State with the order upon which the referral for offset is based. This process is discussed further under "Complaint procedures."

One commenter asked if non-AFDC arrearages can be verified by requiring the custodial parent to attest to their accuracy. We do not specify in the regulations procedures for verifying arrearage amounts, but require States to have certain information in their records before submitting a case for Federal tax refund offset. This information includes a copy of the support order and any modifications upon which the amount submitted for offset is based; a copy of the payment record or, if there is no payment record, an affidavit signed by the custodial parent attesting to the accuracy of the amount of support owed; and, in non-AFDC cases, the custodial parent's current address. The State may use any verification procedures it deems to be effective, including affidavits from the custodial parent and information from other States. States should contact custodial parents in non-AFDC cases to verify their addresses and the amount of past-due support owed prior to submitting these cases. We also encourage States to provide custodial parents a written statement explaining the tax refund offset procedures and notifying these parents when they may expect to receive any refund which is intercepted and specifying that they will be obligated to repay the State in the event of over-payments or subsequent adjustments due to taxpayers' spouses filing amended returns. The State making the referral for offset is ultimately responsible for the accuracy of amounts referred and for refunding any erroneous or excess amounts offset and for reimbursing IRS for adjustments even if amounts offset have already been distributed to the custodial parent.

Notification to OCSE

One commenter opposed requiring States to submit AFDC and non-AFDC arrearages separately for offset. The

Internal Revenue Code requires the IRS to offset assigned support arrearages first (except for amounts owed for back taxes), then to make any other offsets allowed by law, and finally to offset for any past-due support owed to the family. Therefore, it is necessary to designate the arrearages as AFDC or non-AFDC for the IRS to prioritize the order of refund offsets.

Two commenters requested States be permitted to include increases as well as decreases in modifications of amounts referred for offset. The final regulations do not permit this because collections from offset may be applied only against the past-due support specified in the pre-offset notice to the absent parent. The notice of the amount of past-due support referred for offset must be issued before submittal of the case to the IRS.

Two commenters opposed OCSE issuing instructions for referral for offset without benefit of comment. They wanted program instructions to be in regulations and thereby subject to public comment. We do not include operational procedures and instructions in regulations because they are subject to variation and annual change. Program instructions do not add requirements outside of the regulations but merely describe mechanical procedures. For example, if the magnetic tape and data specifications that are part of the instructions were published in regulations, any changes would have to go through the regulatory process. This would be extremely burdensome and inefficient for both OCSE and the States.

Notices of Offset

Several comments were received on the advance notice to the absent parent and the notice to joint filers.

One commenter recommended the absent parent be given 10 days to object to the offset. We believe this time frame is too short to ensure that obligors have sufficient time to respond. Current program instructions require that pre-offset notices be mailed no later than October 31 and absent parents, generally, have at least 30 days to respond before their case is submitted for tax refund offset. Most respondents will contest the offset immediately upon receipt of the notice. Absent parents may also make any objections to the offset after the offset occurs, but we believe it is more efficient to encourage objections during the pre-offset period.

Several commenters believed that the post-offset notice to joint filers by the IRS is insufficient. One problem with providing advance notice to joint filers is that OCSE, or a State that issues the advance notice, has no way of knowing who will be a joint filer when the notice is sent. The IRS does not know who is a joint filer until it processes the tax return. Therefore, in our final regulation, under procedures for contesting, the State IV–D agency must refer the absent parent to the IRS if a complaint concerns a joint tax refund that has already been offset. If the joint tax refund has not yet been offset, the IV–D agency will inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. The determination of the proper share of a refund will depend upon the property laws of the jurisdiction where the absent parent and spouse reside. Because of the structure of the offset process, we believe these procedures are the only procedures that assure that the offset procedure is effective and thereby accomplishes its purpose as intended by Congress.

One commenter suggested we require the same notices to individuals for Federal and State tax refund offset. The final rule does not have the same notice requirements for State and Federal income tax refund offset because procedures, distribution policy and the agency responsible for offset may be different for Federal and State income tax refund offset, depending on State practice. We would like to point out, however, that some States do use a combined notice, which is cost-effective, and we encourage other States to follow this lead.

Complaint Procedures

Several commenters stated that the complaint procedure in the proposed regulation is ambiguous and misleading. They recommended that this section be revised to clarify the use of the complaint procedure before the offset is made and after the offset occurs. The commenters recommended that this section be rewritten to clarify the timing of the procedure and what it will entail.

Other comments concerned the treatment of interstate cases when there is a complaint about the offset. Commenters objected to the proposed regulations concerning the treatment of interstate cases because they only apply to non-AFDC cases. The commenters recommended that we adopt the same procedural requirements for interstate AFDC cases that we have for non-AFDC cases. The commenter also objected to our statement in the preamble of the proposed regulation that there is a distinction between defenses available to absent parents depending upon whether the custodial parent is an AFDC recipient.

Another commenter requested that the final regulation clarify the complaint procedure in relation to the issues which can arise when more than two States are involved or there are different support orders from different States. Finally, one commenter asked that the complaint procedure for Federal Tax refund offset require the involvement of the custodial parent.

In response to these comments, the final regulation does not distinguish between AFDC and non-AFDC cases in the procedures for treating contested cases, except in one respect. A State is required to notify a custodial parent of the time and place of an administrative review only in non-AFDC cases. In AFDC cases, the State may wish to notify the custodial parent, but is not required to do so because the past-due support is owed to the State. The final regulations do specify notice requirements and provide an opportunity for administrative review, in intrastate and interstate cases. In intrastate situations, upon receipt of a complaint from an absent parent in response to the advance notice or concerning a tax refund which has already been offset, the IV–D agency must notify the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review and conduct the review to determine the validity of the complaint. If the complaint concerns a joint tax refund that has not yet been offset, the IV–D agency must conduct an administrative review if there is a question concerning the validity of the arrearage, and must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. The IV–D agency must refer the absent parent to the IRS if the tax refund has already been offset and the taxpayer's spouse wishes to receive his or her share.

If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV–D agency must notify OCSE. If there has already been an offset and it exceeds the amount of past-due support owed, the IV–D agency must take steps to refund the excess to the absent parent promptly, or in the case of a joint return where the unobligated spouse has not filed for and received a portion of the refund, the IV–D agency must take steps to refund the excess to the parties filing the joint return. There may be cases in which an unobligated spouse files for a portion of the refund and the State is unaware of this. The IRS may process the refund at

the same time or after the State refunds the excess to the parties filing the joint return. In this case, the State must recover the excess amount refunded. Federal funding is not available for these erroneous payments but is available for the administrative costs of attempting to recover them.

The procedures for contesting offset in interstate cases permit the absent parent to request an administrative review in either the submitting State or the State with the order upon which the referral for offset is based. If the absent parent requests an administrative review in the submitting State, the IV–D agency of that State must proceed in the same manner as indicated above for intrastate cases.

If the complaint cannot be resolved by the submitting State and the absent parent requests a review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request and provide all necessary information listed in the regulation within 10 days of the date the absent parent requested an administrative review.

The State with the order must notify the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review, and make a decision within 45 days of the receipt of notice and information from the submitting State.

If the administrative review is in response to the advance notice, the State with the order must notify OCSE if the review results in a deletion of, or decrease in, the amount referred for offset. OCSE will notify the submitting State of any modification or deletions that result from the administrative review conducted by the State with the order. If the review concerns an offset which has already taken place, the State with the order must notify the submitting State of its decision promptly. If an excess amount has been offset, the submitting State must take steps to refund the excess amount to the absent parent promptly upon receipt of the decision from the State with the order. The submitting State is bound by the decision made by the State with the order.

If the absent parent has an administrative review in the State with the order, collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order for the purpose of computing incentives.

One commenter asked us to require States to include the county and the case number, if known, when they refer interstate cases. States should include sufficient information in interstate cases to enable a responding State to act on the case, as stated in our regulations on interstate cooperation which are found at 45 CFR 303.7. The final rule requires the submitting State to provide all necessary information to the State with the order, if the absent parent has requested an administrative review in that State. We believe this requirement responds to the commenter's concern.

Distribution of Offset Amounts

Several commenters suggested that, in non-AFDC cases, offset amounts be distributed to the family first. The statute amends the Internal Revenue Code to require the IRS to offset assigned past-due support first (except for amounts owed for back taxes). The regulations conform to the intent of Congress as indicated by the amendment to the Code.

Several commenters opposed the requirement that, in non-AFDC cases, the IV–D agency must inform the custodial parent in advance that amounts offset will be applied first to satisfy assigned arrearages which are referred for offset. The final regulation requires this notice because the custodial parent should be aware that offset collections may be not be paid to the family if the State has submitted assigned arrearages for offset and this information may be a factor in determining whether the individual desires IV–D services. Individuals should be made aware, however, that a referral for offset may also result in locating the absent parent and lead to a wage withholding which will ensure continued payment of support.

One commenter requested we clarify that a non-AFDC applicant may have assigned arrearages owed to the State which would be satisfied first with any offset amounts. We believe the regulations at § 303.72(h)(3) are clear on this point as discussed above.

One commenter recommended that the State IV–D agency refund excess offset amounts to the taxpayer within three days of receipt. Procedures and levels of automation vary greatly among States. Consequently, all States do not have the capability to refund excess amounts to the taxpayer within three days. The current regulatory language requires States to refund excess amounts within a reasonable period in accordance with State law. We believe this language provides States with the necessary flexibility to administer their IV–D programs as efficiently as possible while protecting the right of the absent parent to the funds.

One commenter requested that we address in regulations the treatment of offset amounts when the person who is due the money cannot be located. Instructions are currently being developed on this issue and are expected to be disseminated via the action transmittal covering the 1985 processing year.

One commenter opposed limiting the application of amounts offset to the amount specified in the notice to the absent parent. This is required in the final regulations because otherwise the absent parent would not receive notice of the claim for any subsequently accrued arrearages or have an opportunity to contest the offset. If the offset amount exceeds the past-due support amount specified in the advance notice, the excess must be refunded to the absent parent. However, this does not preclude the State from negotiating directly with the absent parent under State law to apply the refund to other arrearages or future support.

One commenter requested that we define "reasonable period" as it applies to the refund of excess offset amounts. The final regulations define reasonable period relative to State law because the time frame for refunding excess offset amounts depends on how a State administers its program. We encourage States to make refunds as quickly as possible and have specified in instructions that the State or local jurisdiction cannot delay a refund merely because it has not yet received the offset amount.

Several commenters pointed out that the six-month delay for distributing amounts offset from joint returns is not very helpful since taxpayers have three years to file an amended return. We realize that in many instances this will not prevent later adjustments. However, the statute limits this delay and therefore it is included in the final regulations.

State and Local Debts Resulting From Erroneous Payments

Many commenters requested that we make Federal funding available for amounts offset that are distributed to the family or refunded to the taxpayer and later adjusted by the IRS, if the State cannot recover them. Adjustments made by the IRS on amounts offset and sent to the State are not subject to Federal funding under 45 CFR 304.20. OMB Circular A–87 precludes Federal funding for "any loss arising from uncollectable accounts and other claims and related costs." However, funding is available for administrative costs of

recovering or attempting to recover these amounts.

One commenter requested that local jurisdictions should be held harmless for any offset amounts distributed and later adjusted by the IRS if these amounts cannot be recovered. We believe that State and local jurisdictions should determine how local debts resulting from unrecovered adjusted amounts should be treated. As stated above, Federal funding is not available to repay these debts.

Several commenters proposed policies for handling State debts incurred from unrecovered adjustment amounts. One commenter suggested States be permitted to use the offset process to recover such amounts. This is not permitted because adjustments by the IRS which result in erroneous State payments are not child support and therefore do not meet the definition of past-due support qualifying for offset. Another commenter suggested States be allowed to set up interest-bearing accounts using offset amounts in joint refund cases which can be held for 6 months and fees collected in non-AFDC cases to cover amounts adjusted by the IRS. The commenter suggested that States not be required to treat interest earned by these accounts as program income. The State is required under 45 CFR 304.50 to treat all fees and interest as program income that reduces the State's expenditures claimed under the program. However, we encourage States to establish funds to cover amounts adjusted by the IRS as long as fees and interest are counted as program income.

Several commenters suggested the IRS limit the time frame for requesting a joint return adjustment in order to avoid later adjustments which may result in State and local debts. The Internal Revenue Code allows a taxpayer three years to file an amended return. The IRS must conform to the statutory provisions of the Internal Revenue Code.

Several commenters requested clarification regarding whether an individual can apply for Federal tax refund offset services only and, if so, whether the State may charge both an application fee and a fee for submitting the case for offset. An individual must apply for IV-D services and may not apply for Federal tax refund offset services only. The State must charge an application fee when an individual applies for IV-D services, effective October 1, 1985. If the State chooses to charge a fee for Federal tax refund offset services rendered to non-AFDC recipients of IV-D services, this fee must be charged in addition to the application fee. The State is responsible for determining which services are provided to an individual who applies for IV-D services, but may take the applicant's request for a specific service into consideration.

Another commenter asked if the fee can be kept if no offset is made. The fee may be kept in this case.

Financial Provisions—Incentive Payments (45 CFR 302.55 and 303.52)

The new law replaces the current 12 percent fixed incentive system which rewards States for collections made in AFDC cases with a new system whereby States will receive incentives based on collections made in AFDC, foster care maintenance and non-AFDC cases. Under the new system, States will receive a minimum incentive payment with respect to AFDC (including foster care) and non-AFDC collections. In addition, States are eligible to receive additional amounts above the minimum payment if their performance exceeds the criteria established in this regulation. The new system also requires States to pass through an appropriate share of their incentive payments to localities in the State that participate in the costs of the program. States are to develop methodologies to determine the appropriate share due participating localities. To ensure that States develop fair and equitable methodologies, we require States to seek local participation in the development of their methodologies.

Definitions

Two commenters asked that we expand the definitions of "AFDC collections" and "non-AFDC collections." One asked that the "AFDC collections" definition include the $50 payment to the family under section 2640(b) of the Deficit Reduction Act of 1984. The other asked that the "non-AFDC collections" definition include payments of support through the IV-D agency or other entity upon request of a parent under 45 CFR 302.57.

For FY 1986 and beyond, we will calculate the State's AFDC portion of its total incentive payment based upon *gross* collections which were made on behalf of the individuals specified under the "AFDC collections" definition and which have been distributed during the specified fiscal year. Gross collections include the $50 payments to families. Therefore, we believe it is unnecessary to mention the $50 payments under this definition, since these payments refer to the manner in which only one part of the gross collection will be distributed. Incentives will be paid on the $50 payments beginning in FY 1985 under the current incentive system and beginning in FY 1986 under the new incentive payment system.

In addition, it would be incorrect to include payments made under § 302.57 in the definition of "non-AFDC collections" since these payments are not IV-D collections. Congress intended States to provide this service to non-IV-D individuals upon their request for a minimal fee and at no cost to taxpayers.

Computation of Incentive Payments

In calculating the incentive payment due a State, one commenter stated that it is illegal under the Debt Collection Act to exclude fees, recovered costs, and program income such as interest earned on collections from total IV-D administrative costs.

The Debt Collection Act at 42 U.S.C. 4213 refers to interest States may earn on amounts received from the Federal government for grant-in-aid programs. In effect, States are not held accountable for interest earned on these amounts pending their disbursement for program purposes. Section 455 of the Act and implementing regulations at 45 CFR 304.50 require the Secretary, in determining the total amount expended by a State during a quarter, to deduct from gross expenditures the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV-D State plan. The provisions of the Debt Collection Act do not apply to fees, recovered costs or other program income such as interest since these amounts are not grant-in-aid funds.

Many commenters asked if systems expenditures eligible for 90 percent Federal funding and interstate grants expenditures can be excluded from the collections-to-expenditures ratio when calculating incentives. These expenditures may not be excluded. Section 455(e) of the Act explicitly requires that State expenditures in carrying out an interstate grant must be considered in calculating incentive payments under section 458 of the Act. Since the revised section 458(c) of the Act does not authorize the exclusion of expenditures which qualify for 90 percent funding, they must be included in the State's expenditures when calculating incentives.

Several commenters asked if States can receive 70 percent Federal funding of laboratory costs in determining paternity when these costs are excluded from total IV-D administrative costs for purposes of calculating the State's incentive payment. Other commenters asked that we expand laboratory costs in determining paternity to include the

costs of obtaining and transporting samples to the laboratory. In response to the first question, States are eligible to receive 70 percent Federal funding for laboratory costs in determining paternity even though these costs may be excluded from the State's total administrative costs in calculating the incentive payment. With respect to the second question, Federal funding is available for the costs of obtaining and transporting samples to the laboratory.

One commenter suggested that we allow States to receive an additional incentive for collection of non-AFDC arrearages under the new incentive structure. This commenter felt that, unless attention was given to non-AFDC arrearages, States would concentrate only on collections of current support.

The new law does not provide specific incentives for collections of non-AFDC arrearages. However, it does provide incentives based on total distributed collections which include any collections representing payment on arrearages. We believe that many of the provisions of the new law, such as income withholding and State tax refund offset, will increase collections, including collections representing payments of arrearages.

One commenter asked how OCSE will calculate the total incentive payment due a State in a specified fiscal year and the method by which States will receive their incentive payment.

As is currently done, States will submit quarterly estimated collections and expenditure data to OCSE. OCSE will review and analyze the State's data and determine the estimate of collections and expenditures. OCSE will calculate the State's estimated annual AFDC and non-AFDC incentive payments using the table specifed in the regulations and notify the State and the Office of Family Assistance (OFA), HHS, of the total estimated amount of incentive due the State for the upcoming fiscal year. At the beginning of that fiscal year, the State will deduct one-quarter of its total estimated incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward AFDC assistance payments. The State will repeat this process for the remaining three-quarters of the fiscal year until it receives the total estimated incentive payment. (Quarterly adjustment to the Federal share of collections is the method by which States currently receive the 12 percent fixed incentive for AFDC collections.) At the end of the year, the estimated incentive amount will be adjusted to reflect the State's actual collections and expenditures. However, adjustments to the State's estimated incentive payment will be postponed until reliable data are available, if the Office determines that the State's actual collections and expenditure data are unreliable.

One commenter suggested that we make quarterly adjustments to the State's incentive payment so that the State can receive its earned incentive payment in full on an on-going basis. We will determine the annual incentive payment due a State based on the State's estimated performance for the upcoming fiscal year. Quarterly adjustments to the State's incentive payment would be inaccurate because the full extent of the State's performance for the specified fiscal year will not be known until the State submits its actual performance data for the last quarter of that year. Therefore, after the State submits its actual performance data for the four quarters, the State's AFDC grant award will be adjusted for any over or underpayments made for incentives. Adjustments may be postponed, however, if the Office determines that the State's data are unreliable.

Many commenters asked how incentives will be paid on the $50 payment to the family (under section 2640(b) of the Deficit Reduction Act of 1984) after FY 1985. One other commenter asked that we allow the entire $50 payment to be deducted from the Federal share of collections.

For FY 1986 and beyond, the new law provides that States will receive incentives based on *gross* collections. Therefore, all payments to the family in AFDC cases including the $50 payment, amounts collected that satisfy unreimbursed assistance payments and any amounts collected which represent past payments or future payments are eligible for incentives. The distribution sequence set out in the statute and regulations precludes deducting the entire $50 payment from the Federal share of collections because only amounts in excess of the $50 payment will be used to reimburse the State and Federal government for their share in the financing of assistance payments.

Pass-Through of Incentives to Localities

One commenter asked how participating localities will return overpayments of incentives to the State.

We will pay incentives to States based on the State's estimated performance for the upcoming fiscal year. After the end of a fiscal year, we will notify OFA of any adjustments to a State's grant award based on the State's actual performance. We expect States will adjust local incentive payments for any under or overpayments at the same time. However, States have the flexibility to adjust local incentive payments on an annual, quarterly, or other basis if they so choose.

One commenter asked that we require States to extend the "hold harmless" provision for FY 1986 and 1987 to localities. There is no authority in the statute to require this. However, States may opt to extend the "hold harmless" provision to localities.

Several commenters felt that States have too much discretion in determining the standard methodology by which to pass through incentives to participating localities and asked that OCSE determine the methodology. The new law specifically requires a State to determine the appropriate share of it incentive payment to be passed through to those localities in the State that financially participate in the program. Therefore, we have no authority to determine the methodology that States may use to meet this requirement.

One commenter recommended that we replace the term "appropriate share" with "earned share" so that localities that are cost effective will receive their fair share of incentives in relation to localities that are not cost effective. The new section 454(22) of the Act requires States to pass through an "appropriate share" of their incentive payment to financially participating localities, taking into account the efficiency and effectiveness of these local programs. Because the term "appropriate share" is statutorily based, we have not replaced it with "earned share."

One commenter asked that we explain our recommendation that a State's standard methodology also provide for payment of incentives to localities that administer the program, but do not participate in its costs. The new law requires States to pay incentives to localities that participate in the costs of the IV-D program. However, many States have localities that do not participate in program costs but which operate an efficient and effective enforcement program. Therefore, we recommend that States pay incentives to these localities to ensure their continued level of performance. If the State elects to reward these localities, however, it would not have to do so at the same level as it rewards localities that participate in program costs.

Several commenters asked that we delete the provision that requires a State to seek local participation in the development of its standard methodology since this provision has no statutory basis. We met with representatives from various States and localities to discuss the impact of the

new incentive statute on the program at both the State and local level. Localities that currently depend on the 12 percent incentive to finance their programs expressed great concern with the new structure, especially the fact that the States have authority to determine the "appropriate share". Therefore, to ensure that States' standard methodologies are fair to localities, we used the Secretary's authority under section 1102 of the Act to require States to seek local participation in the development of their methodologies. We believe this to be soundly based, since an effective program requires cooperation between the State and the localities that operate the program.

With respect to interstate cases, a commenter stated that case information is not adequate to allow responding States to identify initially whether the case is a non-AFDC or AFDC case. Several other commenters stated that responding States often are unaware of the changes in case status, i.e. whether the case continues to be an AFDC or non-AFDC case. Commenters said that lack of information in both situations will cause problems in computing incentives since both States in interstate cases receive credit for AFDC and non-AFDC collections.

In response to these concerns, we added a provision at § 303.52(e) to require initiating States to identify cases initially as either a non-AFDC or AFDC case. In addition, the provision also requires initiating States to notify the responding State of each change in case status. Furthermore, under the new incentive system, if a State is to receive full credit for its AFDC and non-AFDC interstate collections, the State must be able to correctly identify cases in its existing interstate case load as either AFDC, non-AFDC on IV-E foster care maintenance cases.

Several commenters objected to the provision which requires a State or a political subdivision that makes a collection in an interstate case to transmit that collection to the originating State no later than 10 days after the end of the month in which the collection was made. This time frame has been in current regulations at § 303.52(d)(2) since the inception of the IV-D program. As discussed earlier, in response to comments on the proposed changes in the date of collection in interstate cases, we are retaining the definition of date of collection contained in current regulations. However, in order to ensure accurate and timely distribution by the initiating State, we are requiring the responding State in interstate cases to transmit the collection to the location specified by the initiating State no later than 10 days from its receipt.

Reduction in Federal Matching Rate (45 CFR 304.20, 305.22)

Several commenters objected to the decreases in Federal funding starting in FY 1988. One of the commenters suggested that the required practices would not be implemented efficiently because of the reduced Federal funding levels.

Since the new law reduces the Federal reimbursement of administrative expenditures to 68 percent in FY 1988 and 1989 and 66 percent in FY 1990 and thereafter, we cannot change this provision. Reduction in the matching rate does not, however, result in a reduction of overall program funding, because increased incentive funds are available to States based on performance. Incentive payments are available to States on a gradually increasing basis as administrative matching declines.

Therefore, decreases in the Federal matching of administrative expenditures may be offset by increases in the State's incentive payment, if the State does well collecting support in both AFDC and non-AFDC cases. Moreover, we expect major increases in collections as well as operational efficiencies particularly over time as a result of implementing the required practices.

Expansion of 90 Percent Funding for Systems (45 CFR Part 307)

The statute and regulations explicitly authorize 90 percent funding for automated systems to include monitoring of support payments, maintaining accurate records regarding support payments and notifying officials about arrearages that occur. The 90 percent funding is also extended to the acquisition of computer hardware.

One commenter asked if Federal law and regulations could be revised to permit States to develop software programs for Computerized Support Enforcement Systems (CSES) that perform the basic functions needed in each case and interface with the databases of the Federal PLS and IRS to access and pool data pertinent to child support enforcement.

States make requests to the Federal PLS for locate information regarding absent parents (e.g., address of the absent parent). The Federal PLS obtains information from the records of other Federal agencies and transmits the information to the requesting State. Since the Federal PLS does not retain any of the information it receives, there is no database for interface.

The Internal Revenue Code (26 U.S.C. 6103(1)(6)) places strict limitations on the disclosure of information maintained by the IRS. Although the IRS is authorized to provide certain information to State and local IV-D agencies, the States are prohibited from using this information for purposes other than the collection of child support. We believe that the pooling of IRS and other information, as suggested by the commenter, would make it difficult for the States to safeguard the IRS information. The IRS does not permit State IV-D agencies direct access to its database. Although direct access to the IRS database would enable States to obtain information in a more timely manner, we believe that the IRS disclosure procedures are reasonable and necessary.

One commenter suggested that, within the limits of the statute, we consider making high performing, large, local jurisdictions eligible to receive 90 percent Federal funding for systems development when the State determines that the proposed systems effort is consistent with State objectives.

Section 455 of the Act and the implementing regulations at 45 CFR Part 307 make Federal funding available at the 90 percent rate for the development of statewide CSESs that meet certain requirements. Ninety percent Federal funding is not available for the development of local systems. However, the States have flexibility regarding the design and implementation of a statewide CSES system. A State could implement a statewide CSES in phases, bringing in large, high performing jurisdictions prior to covering the remaining jurisdictions in the State.

Remaining Provisions—Collection and Distribution of Support in Foster Care Maintenance Cases (45 CFR 302.31, 302.52)

The statute requires States to take all steps, where appropriate, to secure an assignment of support rights on behalf of a child receiving foster care maintenance payments under title IV-E of the Act and requires IV-D agencies to collect and distribute child support for IV-E foster care maintenance cases. The regulations require that amounts paid on required support obligations in IV-E foster care maintenance cases must be retained by the State to reimburse it for foster care maintenance payments. The IV-D agency is required to determine the Federal share of collections so that the State can reimburse the Federal government to the extent of its participation in financing the foster care maintenance payment. The regulations

require that, if the amount collected is in excess of the monthly foster care maintenance payment but not the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care. This agency must then use the money in the child's best interests. States should be aware that in setting aside monies for future support under § 302.52(b)(2)(i) that the State's resource limit may be exceeded, thereby resulting in ineligibility for the child. Any amount which exceeds the monthly support obligation must be retained by the State to reimburse itself for past unreimbursed foster care maintenance or unreimbursed AFDC assistance payments.

We received comments on the requirements for collection and distribution of support in foster care maintenance cases which expressed concern that the Federal title IV-E program must give States some guidance on issues that arise in IV-E foster care maintenance cases. They felt that issues such as the procedures for taking assignment, which cases require an assignment to be taken, the penalties for noncooperation, and so on are of great concern to States and were not addressed in the proposed regulations.

Because OCSE is not charged with implementing the assignment provisions under the new section 471(a)(17) of the Act, we cannot give guidance in these regulations. The Department's Administration for Children, Youth and Families plans to issue instructions to guide States in implementing the new section 471(a)(17) of the Act. For further information, please contact Paula Brown at (202) 755-7447.

Other commenters expressed concerns about the provision requiring that monies collected which exceed the IV-E foster care maintenance payment but not the monthly support order must be paid to the State agency responsible for supervising the child's placement and care. One of these commenters felt that, since the support order often is made on the basis of State law and names for former spouse as the payee, State law prohibited the excess being paid to anyone else.

Once an assignment of support is taken by the State in a title IV-E foster care maintenance case, the distribution of collections made under the assignment is guided by section 457 of the Act. We do not believe States would be prohibited from implementing this provision.

The proposed regulations allowed States the option to provide support enforcement services to former IV-E foster care maintenance cases for up to five months after title IV-E eligibility ends. Several commenters felt OCSE had no statutory authority to offer States this option. Another commenter was concerned that the provision requiring States to give priority to current support under this option puts the IV-D agency in a conflicting position because of the requirement that the agency attempt to collect assigned support which has not been reimbursed. Under section 457(c) of the Act, States are required to continue to provide IV-D services to families that lose AFDC eligibility. There is no parallel provision authorizing continued services to a child who loses title IV-E eligibility. Since Congress did not include this provision we have decided to eliminate it in response to these comments and in light of the fact that IV-E foster care maintenance children often return to families receiving AFDC who will continue to receive IV-D services anyway. In cases where the family is not receiving AFDC, the custodial parent would have to apply for IV-D services and pay the mandatory application fee to have IV-D services continued.

Other commenters suggested that we waive the application fee for IV-D services for State-funded foster care cases. We do not have the statutory authority to waive the fee in State-funded foster care cases, or in any other cases. The statute explicity requires an application and an application fee in all non-AFDC cases. These commenters also suggested that we require that an annual notice of collections be sent in IV-E foster care maintenance cases. We have not required such a notice since the statute does not require it, but urge States to consider providing a notice in these cases as in AFDC cases.

Two States commented that their IV-E foster care maintenance program distributes foster care collections now and requested that the regulations be changed to allow them to continue this method. Since the IV-D agency can contract with other agencies to distribute collections as long as it maintains ultimate responsibility for proper distribution, systems such as those mentioned above would be acceptable under the regulation.

Lastly, a commenter wanted us to clarify distribution when a child receiving title IV-E assistance is part of an AFDC family and when the child leaves the IV-E foster care maintenance program and returns to the AFDC program. In IV-E foster care maintenance cases in which the child's family is receiving AFDC payments, support collections must be allocated for distribution purposes between the title IV-A and title IV-E program based on the number of children receiving each type of assistance. When the child returns to the AFDC family, the regulations at § 302.51 regarding distribution of collections are applicable.

Publicizing the Availability of Support Enforcement Services (45 CFR 302.30)

A majority of the comments we received on the provision for publicizing the availability of support enforcement services suggested that we require States to establish a toll free number for disseminating information concerning available child support enforcement services.

We are not requiring that States establish a toll free number but encourage States to do so, because this is one way of disseminating information. We encourage this and any other effective way to disseminate information about IV-D services.

A number of commenters made various suggestions as to other requirements OCSE should include in the regulations, such as requiring States to use newspapers to publicize absent parents' names if they do not pay support owed and requiring that the public service announcements not be aired during early morning hours. We feel these are all areas of State option and as such we are not requiring such activities.

Several commenters suggested that OCSE fund studies to determine whether joint custody and visitation enforcement produce better compliance with support orders and whether there is a correlation between child abuse and nonpayment of child support. A study funded by OCSE is currently under way on the effects of child custody arrangements on child support payments by absent parents. In addition, the Child Abuse Amendments of 1984 require the Secretary of HHS to study the correlation between a parent's failure to pay child support and the incidence of child abuse and to submit findings and recommendations in this area to Congress within two years. We are supplying these comments to the Office of Human Development Services in HHS for their consideration in implementing those requirements.

Commenters also requested that we define the words "regularly and frequently" in the regulations with respect to publicizing services. The commenters asked who would determine what volumes and rates would meet the requirements in the regulations. We do not wish to constrain publicizing of services by defining these terms to specify the minimum effort

required. Acceptable levels of publicity will depend upon many factors and we believe that the terms "regularly and frequently" provide sufficient guidance to States and to us for determining whether the requirement has been met.

Mandatory Collection of Spousal Support (45 CFR 302.17 and 302.31(a)(2))

We received two comments on the requirements to collect spousal support in IV–D cases where a support order has been established and the child and spouse area living in the same household. One commenter asked if the State must collect spousal support if the child and spousal support obligations are in separate orders. States must do so as long as all other conditions for collecting spousal support are met. The other commenter asked, if a custodial parent has two ex-spouses and a child by one of them, must a State collect spousal support from the ex-spouse who is not the parent of the child? Collection of spousal support is only permitted when the obligee is living with the child receiving support enforcement services.

Accessing the Federal Parent Locator Service (PLS) (45 CFR 302.35)

The revised statute and these regulations increase the availability of the Federal PLS to State agencies by deleting the requirement that States exhaust their own State resources first before submitting a request to the Federal PLS.

We received two comments on this provision. One commenter recommended that private attorneys be permittted access to the Federal PLS. These regulations amend the availability of the Federal PLS to State agencies, but make no changes to the definition of who is authorized to obtain information from the Federal PLS. The definition of "authorized person" is found at section 453(c) of the Act and includes the circumstances under which private attorneys may request information from the Federal PLS. Authorized persons include attorneys who have the duty or who are authorized under the IV–D State plan to seek to recover child and spousal support as well as attorneys of children who are requesting information on an absent parent who has a duty to support and maintain the child. However, all requests to use the Federal PLS must be submitted to the State PLS or other IV–D offices designated by the State.

The other commenter requested that the Federal PLS respond to inquiries within three weeks of the request. The final regulation does not mandate time frames for responding to Federal PLS inquiries. The Federal PLS sends requests to other agencies and the response time to inquiries depends on the processing times of those agencies. On the average, the response time is three weeks from the date of initial request.

Continuing IV–D Services for Families That Lose AFDC Eligibility (45 CFR 302.51(e))

This regulation requires States to continue to provide IV–D services for a period of up to five months after an AFDC family ceases to receive AFDC payments. The State is not permitted to require a formal application, recover costs from the support collection, or charge an application fee in these cases. If the State is authorized to continue to provide IV–D services after the five-month period, the State may recover costs, but cannot charge an application fee or require a formal application.

Several commenters asked if a family can choose not to have IV–D services continued during the mandatory service period immediately after termination of AFDC. If an individual does not wish to continue receiving IV–D services, the State IV–D agency cannot force the individual to continue as a IV–D case. However, if a State ceases to provide IV–D services during this period under such circumstances, it should indicate in the case record that IV–D services were terminated at the individual's request.

Several other commenters asked if this provision applies to all AFDC recipients who are terminated from assistance or only those for whom the IV–D agency is collecting and distributing support. We have interpreted this provision to apply to all AFDC recipients, based on Conference Report No. 98–925. This report indicates that Congress intended all individuals who are terminated from AFDC to continue to receive services.

Many commenters asked that we clarify whether States must provide all applicable services to these continued cases or just collection services. We have interpreted this provision based on Conference Report No. 98–925 to require the State IV–D agency to provide all necessary services to these cases. The State IV–D agency determines which services are appropriate and may consider an individual's wishes in doing so.

Two commenters recommended we require States to notify the individual of the action needed to authorize continuation of IV–D services, as well as the time period for taking action. The commenters did not want the family to be required to accept services they do not want. One commenter suggested we require the State to notify the family of its distribution policy when it is authorized to continue services after the period of automatic continuation of services. We have revised the regulations to require States to notify the custodial parent before the end of the mandatory period of continued services about the consequences of continuing to receive IV–D services. The notice must specify the services available for use at the agency's discretion, as well as the State's fees, cost recovery and distribution policies. This notice will provide the custodial parent with adequate information to determine if he or she wants to refuse further IV–D services.

Many commenters asked that we define "authorization" or explain how it differs from an application. The specific procedures for authorizing continued IV–D services may vary from State to State. However, the State must send the notice discussed above to the family and may state that failure to request the IV–D agency to discontinue services will constitute authorization. The State may not notify the family during the five-month period that services will be discontinued unless the IV–D agency is notified to continue services. This is consistent with Congressional intent that continuation of services should be the norm unless the family does not want IV–D services.

Several commenters requested that distribution for cases which continue to receive IV–D services during the five-month period be clarified. During the required service period after termination from AFDC, amounts collected for support must be applied first to the current support obligation and any arrearages accruing during the required service period. These amounts are paid to the family. Payments in excess of these amounts are used to pay the State for unreimbursed AFDC payments. If the State is authorized to continue IV–D services after the mandatory service period, the State may apply arrearages collected either to the family first or to unreimbursed AFDC payments first, depending upon how the State distributes collections of arrearages in non-AFDC cases.

One commenter asked if the State may collect both assigned and unassigned arrearages during the mandatory service period. The State may collect assigned and unassigned support during the mandatory service period. Any collection must be distributed first as current support, which is unassigned.

One commenter asked if a State could "offer" services during the mandatory service period instead of automatically

providing them. The State must provide any appropriate IV-D services to an individual during this period unless the individual expressly requests that no services be provided. The State may not merely "offer" services if this means that providing appropriate IV-D services is contingent on the custodial parent responding positively before the services are provided. The intent of this provision is to continue services to former AFDC recipients without any change in procedures or break in services already being provided. The IV-D agency must determine which services are appropriate and must provided them during the mandatory service period.

Several commenters have indicated that the five months referred to in the proposed regulation is different from the current regulation and statute. These regulations do not change the time period currently in regulations. "Three months from the month following the month" after AFDC ceases equals a total of five months. We used the term five months because it was a more direct way of stating the time frame. However, to eliminate any confusion, we have deleted the term "five-month period."

One commenter asked if States could pass through checks from the absent parent or if they could issue their own checks to the family. The State has discretion to determine whether they pass through checks or issue their own.

Another commenter stated that States will have difficulty identifying cases going from the mandatory service category to the authorized service category. This identification is necessary for purposes of determining whether the State may recover costs. We suggest that the State may want to use the same procedures for identifying these changes in case status as they use currently for identifying changes in status from AFDC to non-AFDC and vice versa.

Notice of Collection of Assigned Support (45 CFR 302.54)

Both the statute and the regulation require that a State provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under § 232.11. The notice must be sent to current AFDC recipients and to former recipients for whom an assignment is still effective. Two of the commenters felt the requirements in the regulation were too general. They argued that AFDC recipients would not receive sufficient information about the amounts and regularity of payments if there was no breakdown of monthly collections in the notice. They also wanted the notice to specify the total amount of support owed including arrearages, the total amount of support paid including arrearages, to whom these arrearages were distributed and the dates on which all payments were made. We are not requiring a monthly breakdown of collections, but States may provide a more complete breakdown if they wish. They could, for example, provide more detailed information to AFDC recipients who request it.

Other commenters requested that we require States to send a notice of collections to absent parents if requested. Many States already provide such information to absent parents upon their request, so we have not changed the regulations.

We received comments from two persons who thought the notice requirement should be eliminated as it created an administrative burden on States and added unnecessary costs to the program. This notice is required by the statute at section 454(5) of the Act.

Another commenter argued that the notice should be sent only upon the request of the receipient. The statute requires the notice to be sent annually in all AFDC or former AFDC cases under assignment.

We also received comments seeking clarification of the notice provision. These commenters asked if States must use the Federal fiscal year or any other one-year period for determining the annual support collected. These commenters also asked if the State must provide the first notice by October 1, 1985 for support collected the previous year or if they could wait until the end of FY 1986 to provide the first notice. States may provide the annual notice based on support collected during any one-year period. States must provide the first notice of support collected in AFDC cases or non-AFDC cases in which there is overdue support assigned to the State by September 30, 1986.

State Guidelines for Child Support Awards (45 CFR 302.56)

The final regulation requires States to develop guidelines by law or by judicial or administrative action for setting child support awards within the State. The State is required to make these guidelines available to all officials who determine child support awards, although the guidelines need not be binding on them.

We received several comments on this provision. Some commenters stated that guidelines should be developed with public participation. The statute does not require this. However, we encourage States to contact the public and allow participation in developing guidelines. Since States are not required to establish guidelines until October 1, 1987, there is adequate time for a State to request and consider public comments of proposed guidelines. In addition, States will have public participation in connection with their State Commissions, which must be comprised of members representing all aspects of the child support system. These Commissions are required to give particular attention to problems associated with establishing appropriate objective standards for support.

Another commenter requested clarification regarding whether a State may use an effective date earlier than October 1, 1987. States are encouraged to develop guidelines for child support awards as soon as possible. They do not have to wait until October 1, 1987 to put guidelines into effect.

One commenter stated that guidelines for support awards should be descriptive rather than numeric. The final regulations require States to develop guidelines based on specific descriptive and numeric criteria that result in a computation of the support obligation. Numeric criteria include factors such as, but not limited to income and resources of the parents and the number and needs of dependents.

Payment of Support Through the IV-D Agency or Other Entity (45 CFR 302.57)

In accordance with the statute and regulations, States may have tracking and monitoring procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the custodial parent or the absent parent, regardless of whether or not arreareages exist or withholding procedures have been instituted. The State must charge the parent requesting this service an annual fee not to exceed the lesser of $25 or the actual costs incurred by the State in these non-IV-D cases.

One commenter asked if a request for tracking and monitoring payments is considered an application for IV-D services. Any absent or custodial parent, in a State which elects this option, may request tracking and monitoring of support payments without applying for IV-D services.

Another commenter asked if Federal funding is available for this service if the fee does not cover the State's costs. Federal funding is available only in the cost of providing services in IV-D cases. In addition, House Report No. 98-527, p.

40, states: "The Committee believes that the costs associated with such voluntary use should be borne by the party requesting the service rather than by taxpayers."

Imposition of Late Payment Fee on Absent Parents Who Owe Overdue Support (45 CFR 302.75)

This regulation allows the State IV-D agency to impose a late payment fee of 3 to 6 percent on individuals who owe overdue support.

One commenter stated that two sections of this provision appeared to be contradictory. One section states that the State plan may provide for imposition of late payment fees while another section states that the late payment fee must be imposed in AFDC, foster care, and non-AFDC cases. The regulations are not contradictory, but use "may" to indicate that it is optional whether a State imposes a late payment fee. However, if a State chooses to impose a late payment fee, it must be imposed in all appropriate IV-D cases, including AFDC, foster care, and non-AFDC cases. For example, the State cannot choose to impose the late payment fee in AFDC cases only.

One commenter asked if the late payment fee is applied cumulatively or compounded and suggested we provide an example or formula to illustrate. The regulations state that the late payment fee is applied to arrearages, accrues as arrearages accumulate and is not reduced upon partial payment of arrears. Therefore, the late payment fee is cumulative and not compounded. The following example illustrates how late payment fees are computed. In the example, the monthly support obligation is $100 and the late fee is 5 percent of the arrearage. In the first month, $100 of arrearage accumulates, making the late payment fee $5. In the second month, an additional $100 arrearage and $5 fee accrues making the total arrearage $200 and total fee $10. In the third month an additional $100 arrearage and $5 fee accrues. In the fourth month, the individual pays current support plus $200 on the arrearage. The total arrearage is reduced to $100 and no additional fee is applied since no additional arrearage accrued. However, the total fee is still $15. The late payment fee is computed on a monthly basis, but cannot be collected until the arrearage has been fully satisfied. This is illustrated in the table below.

	1	2	3	4
Monthly arrearage	$100	$100	$100	−$200
Monthly late payment fee	5	5	5	0
Total arrearages	100	200	[illegible]	100
Total late payment fee	5	10	15	15

Another commenter asked if the late payment fee is in addition to cost recovery. The late payment fee is a penalty for non-payment of support and is charged in addition to cost recovery.

One commenter asked us to indicate the difference between interest and late payment fees. Late payment fees are not considered interest. Interest makes up for loss of purchasing power and is passed on to the family. For purposes of this program, late payment fees are a penalty for non-payment of support and are used to reduce a State's administrative costs. The State may collect both interest and late payment fees.

Another commenter asked that, if a State currently charges a 10 percent late payment fee statewide, is the State limited to imposing a maximum 6 percent rate in IV-D cases? The total late payment fee assessed an absent parent in IV-D cases may not exceed 6 percent of the maximum arrearage that was accumlated.

State Commissions on Child Support (45 CFR 304.95)

Section 15 of Pub. L. 98-378 and these regulations require States to appoint a Commission by December 1, 1984, which includes representatives of all aspects of the child support system. The Commission must examine the State's child support system and report its findings and recommendations to the Governor by October 1, 1985. Waivers of the Commission requirement are available under specified circumstances.

We received several comments on the provisions of the proposed regulations requiring each State to appoint a State Commission on Child Support. One commenter requested that the regulation define the objective standards for child support obligations which States must have in order for the Secretary to waive the requirement. Since the Commissions had to be appointed by December 1, 1984, we did not include criteria in these regulations. Another commenter asked us to include local enforcement representatives on the Commissions. We believe it is unnecessary to single out this group because the requirement calls for the Commission membership to represent all aspects of the child support system and this would include local enforcement personnel.

Three commenters stated that the lack of Federal matching funds for the costs of operating the Commissions would limit their effectiveness and activity. We do not feel that this will be the case. To date, the Governors of many States have expressed their support for the State Commissions.

One commenter felt that the Commissions should address the visitation issue. The statute and regulations call for the Commissions to determine the extent to which the child support system has been successful in securing support and parental involvement, giving particular attention to such specific problems (among others) as visitation. We believe that Commissions will address this issue under this provision.

Two other commenters requested that we publish State requests for waiver of the requirement in the **Federal Register** for public comment. We did not publish requests for waivers in the **Federal Register** because of the December 1 deadline for establishing Commissions. We did evaluate each request very carefully and held States to a very rigorous standard before granting waivers of this requirement. Waiver requests were received from thirteen States. Of these States, Arizona, California, Maryland, Washington, Wisconsin, and Rhode Island were granted waviers on the basis of having established within the previous five years a commission or council with substantially the same functions as the commissions provided for in the new law. Illinois, Maine, Michigan, and Utah were granted waivers based on their having in effect objective standards for the determination and enforcement of child support obligations. Three States Hawaii, Wyoming, and Mississippi) were denied waivers.

Availability of Services and Application Fee for Non-AFDC Families (45 CFR 302.33(c))

Beginning October 1, 1985, States must charge an application fee to individuals applying for non-AFDC services. Final regulations with a comment period on this provision were published in the **Federal Register** on September 19, 1984 (49 FR 36764). We are responding to comments received on that provision in this document.

One commenter asked whether the States will develop guidelines for waiving the application fee in appropriate cases. A second commenter indicated that the mandatory application fee will discourage application for IV-D services by individuals in need of them. A third commenter suggested that the regulations be revised to incorporate the statement in the preamble of the final regulations regarding the deduction of

the application fee from support collections.

States must charge the application fee for IV–D services. However, the regulations specify that the State may collect the application fee from the individual who is applying for IV–D services or pay the fee itself. The regulations also permit a State that elects to impose an application fee on the individual who applies for IV–D services to collect a fee based on the applicant's income. The IV–D agency may recover the fee from the absent parent. Lastly, former AFDC recipients receiving IV–D services under 45 CFR 302.51(e) are not required to pay an application fee.

Since application fees are required as of October 1, 1985, the State must collect the non-AFDC application fee from the non-AFDC individual at the time of application for IV–D services or pay the fee itself to ensure that the fee is paid in accordance with Federal law. In the preamble to the final regulations published September 19, 1984, we stated that States may allow applicants to decide to pay the fee at the time of application or have the fee deducted from collected support. Upon review, we realized that this could lead to cases where the fee is never paid because a collection was never made. To ensure that the statutory mandate is met, we are requiring that the application fee be paid at the time of application regardless of whether the State opts to impose the fee on applicants or pay it itself.

Several commenters suggested that we revise the regulations to specify that the application fee will only be charged by the applicant's State of residence. We have revised the regulations in this regard because the imposition of more than one application fee in an interstate case is inconsistent with Federal law and could place a financial burden on individuals in need of IV–D services. Therefore, the revised regulations specify that, in an interstate case, the application fee is paid in the State where the individual applies for services.

Several commenters suggested that the regulations regarding the mandatory application fee be revised to specify that an application fee cannot be charged to individuals receiving IV–D services prior to October 1, 1985. A commenter also suggested that the regulations regarding the mandatory application fee be revised to specify exemptions to application fee requirements contained in the foster care and post-AFDC distribution regulations.

We agree that the regulations should specify that the mandatory application fee only applies to non-AFDC individuals who apply for IV–D services on or after October 1, 1985 because the new law only imposes an application fee with respect to individuals who apply for IV–D services on or after that date. Therefore, we have revised the regulations to address this matter. It should be noted that, until October 1, 1985, Federal law and regulations permit the State to elect to charge an application fee to each individual who applies for IV–D services prior to that date.

The regulations require States to charge an application fee for each individual who files an application for IV–D service. AFDC cases and foster care maintenance cases are not subject to the application fee provisions because services are provided without the filing of an application for IV–D services. The regulations regarding the continuation of services once the family ceases to receive AFDC indicate that, at the end of the period not to exceed five months after the family went off AFDC, the State, if authorized to do so by the family, must continue to provide services to the family and pay any amounts collected to the family in accordance with the non-AFDC services provisions without requiring a formal application or application fee. The statute does not allow any other exemptions from the application fee.

One commenter asked about the use of application fees collected prior to the Child Support Enforcement Amendments of 1984 which exceed the new maximum application fee. A second commenter wanted to know to whom the application fee is paid when the State elects to pay the application fee itself.

Until October 1, 1985, the regulations permit a State that elects to charge an application fee to each individual who applies for IV–D services to use a fee schedule to determine the fee to be charged each applicant. A fee schedule must be based on applicant's income and designed so as not to discourage application for services by those most in need of them. Before October 1, 1985, a State using a fee schedule may charge certain individuals an application fee that exceeds the maximum $25 application fee that becomes effective on October 1, 1985. Application fees collected by the State IV–D program at any point in time must be treated as program income. The fees are also applied to the costs incurred in a given case prior to any cost recovery. If a State elects under the regulations to pay the application fee, the State must exclude from its quarterly expenditure claims for Federal funding the amount of the application fees.

One commenter suggested that State performance could be more fairly measured if the maximum application fee were changed to a uniform application fee. We believe that the new provisions give the States flexibility to develop application fees that will enable all individuals seeking IV–D services to apply for them. Effective October 1, 1985, the regulations permit the States to: (1) Charge a flat application fee not to exceed $25 or any higher or lower amount as the Secretary may determine to be appropriate to reflect changes in program costs, or (2) charge an application fee based on applicant's income not to exceed $25 or any higher or lower amount as the Secretary may determine to be appropriate to reflect changes in program costs. The regulations also permit the State to collect the mandatory application fee from the individual who is applying for IV–D services or pay the application fee out of State funds in accordance with statewide standards. The State may pay the fee for non-AFDC individuals who cannot afford to pay it. In addition, the regulations permit a State to recover the application fee from the absent parent who owes a support obligation and pay the recovered amount to the applicant or itself.

Several commenters stated that the provisions of the final regulations that require the State either to charge the application fee to the applicant or pay the fee itself are contrary to section 3(c) of Pub. L. 98–378, which provides that the application fee can be paid by the client, or the State, or the absent parent.

We believe that the regulations properly implement the new law. There is no provision in section 3(c) of the law for the fee to be "paid" by the absent parent directly. In discussing the application fee provision of the new law, House Report No. 98–925, page 45, indicates that the State may charge the fee to the custodial parent or pay the fee out of State funds. The Report further indicates in a separate sentence that the State may recover the fee from the absent parent. We believe that the regulations are consistent with Congressional intent.

One commenter suggested that, because the regulations remove from State control the flexibility provided in the statute to vary the application fee based on ability to pay, the regulations should be revised to incorporate the language of the statute. We believe that the regulations properly implement the new statutory application fee provisions. The statutory provisions

permit the States to vary the application fee among IV-D applicants based on ability to pay. However, the statutory provisions do not authorize the imposition of an application fee in excess of $25 unless the Secretary determines that a higher or lower amount is appropriate to reflect increases or decreases in administrative costs. The regulations give the States flexibility in determining the application fee within these statutory limits.

Technical Changes

We have made technical changes to the regulations in order to add clarity, to make them more uniform in style and to correct typographical errors and other inaccuracies.

Paperwork Reduction Act

The following sections of these regulations contain information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511):

Section 302.17
Section 302.30
Section 302.31
Section 302.32(b)
Section 302.33 (a) and (c)
Section 302.50(a)
Section 302.51 (a) and (e)
Section 302.52
Section 302.54
Section 302.55
Section 302.56
Section 302.57
Section 302.70
Section 302.75
Section 303.52 (c)(2) and (d) (1) and (2)
Section 303.72(a)(4), (b), (c) (2) and (4), (d) (1) and (2), (e) (1) and (2), (f) (1), (2) and (3), (g) (2), (3), (4) and (5), (h)(3) and (i)(2)
Section 303.100 (b)(1) and (2)(ii), (c)(3) and (4), (d) (1) and (2), (g) (3) and (5) and (i)
Section 303.101 (c) (3) and (4) and (d)(1)
Section 303.102 (b), (c), (d), (e) (1) and (3), and (h)
Section 303.103 (a) and (b)
Section 303.104(b)
Section 303.105 (b) and (d)
Section 304.95 (d) and (f)
Section 307.10(b) (2) and (3)
Section 307.15(b) (2) and (5)

The public is not required to comply with these information collection requirements until OMB approves them under section 3507 of the Paperwork Reduction Act. A notice will be published in the **Federal Register** when OMB approval is obtained.

Economic Impact

The Child Support Enforcement program was established under title IV-D of the Act by the Social Services Amendments of 1974 for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV-D program collected $2.38 billion in FY 1984—$1.0 billion on behalf of children receiving AFDC and $1.38 billion on behalf of children not receiving AFDC. Federal, State and local expenditures amounted to $699 million. Collections for AFDC families are used to offset the costs of assistance payments made to such families.

The intent of the new law, which this rule implements, is to increase the effectiveness of the Child Support Enforcement program by requiring all States to adopt certain procedures that have been found to be successful in several of the States, by emphasizing the need to serve all families and by changing the incentive system for State participation. As discussed below, the statute has broad impacts, affecting Federal, State, and local participants in the program, employers of absent parents, and the families themselves. One immediate result will be lower welfare costs to the taxpayer. Although hard data are not available, it is expected that the mandatory procedures will result in increased collections and decreased administrative costs.

For the most part this regulation merely restates provisions of the new statute and does not result in any cost or other impacts on its own. The principal impacts of the statute are on Federal and State budgets and State operations. Federal and State expenditures are projected to increase by about $24 million over the five-year period FY 1985 to 1989, an average annual impact of $6 million. Savings will result from the increase in child support collections due to the implementation of the required State enforcement procedures and assumed decline in attendant court and other administrative costs. The additional child support collections on behalf of AFDC families are estimated to be about $45 million in FY 1986, increasing to nearly $92 million in FY 1989. In addition, non-AFDC collections are expected to increase approximately $55 million per year as a result of the new statute.

A number of provisions of the new law are likely to result in a significant increase in the number of non-AFDC families in the program. Federal costs of providing services for the additional families is projected to be $11 million in FY 1986, rising to nearly $15 million by FY 1989. Although the statute requires the States to impose an application fee for non-AFDC families to recover some of these costs, the Department believes that in most cases actual costs will exceed the legislatively mandated ceiling of $25. However, the Department also believes that costs will also be partially offset as a result of reduced public assistance expenditures for these families, including reductions in Medicaid. (As discussed earlier, the application fee provision was implemented separately. Our response to comments on the provision are included in this document.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

—An annual effect on the economy of $100 million or more;
—A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
—Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Virtually all of the economic impact discussed above is a direct result of legislative provisions rather than of regulatory provisions. The few provisions that have been added at the discretion of the Secretary are expected to have an insignificant effect on State and Federal expenditures.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act; and results from restating the provisions of the statute. Those provisions that have any impact on small entities are discussed below.

Section 303.52 prescribes a new incentive system that will award the States and political subdivisions based on AFDC, foster care and non-AFDC collections. The Department estimates that the States and political subdivisions will receive an additional $18 million in incentive payments for FY 1986 increasing to $25 million for FY 1989. A significant portion of the additional incentives will be retained by the States. The legislation requires that States have

the flexibility to determine how to distribute incentive payments to political subdivisions; therefore, we cannot determine the amount of additional incentives that will be paid to political subdivisions or the economic effect of such payments on political subdivisions. However, even if there were a significant effect on a substantial number of political subdivisions, that effect is the result of the new law, and not these regulatory provisions.

Regulations at § 303.100 require the employer to withhold from the individual's wages the amount specified in a notice from the State. The regulations further permit, at State option, the employer to charge a reasonable fee, as determined by the State, for administrative costs incurred for each withholding. These regulatory provisions which implement statutory requirements are expected to have a minimal economic impact on employers because the costs of withholding amounts from the wages of employees will in most instances be offset by fees charged by employers to employees subject to wage withholding and because employers are used to withholding employee wages for other purposes.

Private attorneys whose practices are based on a large number of child support cases could possibly be affected by the required State procedures prescribed in the proposed §§ 303.100 through 303.105. These procedures, which implement statutory provisions in section 466 of the Act, may make IV-D services at both the State and local levels more attractive to custodial parents. However, we believe that the impact on private attorneys will be minimal because many custodial parents who avail themselves of IV-D services have small incomes and are unable to afford the fees of private attorneys. In any event, these impacts result from the statutory provisions rather than these regulations.

List of Subjects

45 CFR Parts 301, 302, 303, and 304

Child welfare, Grant programs—social programs.

45 CFR Part 305

Child welfare, Grant programs—social programs, Accounting.

45 CFR Part 307

Child welfare, Grant programs—social programs, Computer technology.

PART 301 [AMENDED]

The authorities for parts 301 through 305 and 307 are revised to read as follows:

42 U.S.C. 652 through 658, 664, 666, 667, and 1302, unless otherwise noted.

1a. 45 CFR 301.1 is amended by inserting the following definition of the term "Applicable matching rate" after the definition of the term "Act" and the definition of the terms "Overdue support" and "Past-due support" after the definition of the term "Office":

§ 301.1 General definitions.

* * * * *

"Applicable matching rate" means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year as follows:
FY 1983 through FY 1987, 70 percent
FY 1988 and FY 1989, 68 percent
FY 1990 and thereafter, 66 percent

* * * * *

"Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of the child, or for the absent parent's spouse (or former spouse) with whom the child is living, only if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the procedures required under § 302.70 of this chapter.

"Past-due support" means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid. For purposes of referral for Federal income tax refund offset of support due individual who has applied for services under § 302.33 of this chapter, "past-due support" is limited to support owed to or on behalf of a minor child.

* * * * *

PARTS 302 THROUGH 305—[AMENDED]

2. 45 CFR Parts 302 through 305 are amended as follows:

A. By revising § 302.17 to read as follows:

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to determine the paternity of a child born out of wedlock, to establish the child support obligation of a responsible parent, and to enforce a support obligation, including spousal support if appropriate.

B. By adding a new § 302.30 to read as follows:

§ 302.30 Publicizing the availability of support enforcement services.

Effective October 1, 1985, the State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

C.1. By revising § 302.31 to read as follows:

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(b) Upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause under § 232.40 of this title, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the IV-A or IV-E agency.

(c) The IV-D agency will not undertake to establish paternity or

secure support in any case for which it has received notice from the IV–A or IV–E agency that there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV–A or IV–E agency that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV–D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

§ 302.32 and § 302.33 [Amended]

C.2. By substituting the word "that" for the word "if" and the words "provide services" for the words "collect and distribute current support payments" in the last sentence of § 302.32(b), and amending § 302.33 by revising paragraphs (a), (b) and (c) to read as follows:

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV–D agency. In an interstate case, only the initiating State may require an application under this section.

(b) *Definitions.* For purposes of this section:

"Applicant's income" means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV–D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV–D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed $25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

* * * * *

§ 302.35 [Amended]

D. By removing § 302.35(d).

E. By revising § 302.51 (a) and (c) to read as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV–D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section, § 302.52 and § 303.52.) The date of collection shall be the date on which the payment is received by the IV–D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV–D agency. For purposes of interstate collections, the date of collection shall be the date on which the payment is received by the IV–D agency in the State in which the family is receiving aid. In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

* * * * *

(c) Effective October 1, 1984, whenever a family ceases to receive assistance under the title IV–A State plan, the IV–D agency must:

(1) Continue to provide all appropriate title IV–D services for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV–A State plan. The State may not charge fees or recover costs from support collections and must pay all amounts collected which represent monthly support payments to the family;

(2) Notify the family before the end of the period specified in paragraph (e)(1) of this section of the consequences of continuing to receive IV–D services, including the available services and the State's fees, cost recovery and distribution policies. The notice must inform the family that services will be continued unless the IV–D agency is notified to the contrary;

(3) At the end of the period referred to in paragraph (e)(1) of this section, if the IV–D agency is authorized to do so by the individual on whose behalf the services will be rendered, continue to provide all appropriate title IV–D services and pay any amounts collected which represents monthly support collections to the family in accordance with the requirements of § 302.33 of this part, except that the IV–D agency may not require any formal application or impose any application fee; and

(4) Report collections under this paragraph as non-AFDC collections.

* * * * *

§§ 302.50, 304.20, 305.25 and 305.27 [Amended]

F. By inserting the phrase "or section 471(a)(17) of the Act" immediately after the phrase "§ 232.11 of this title" in the following sections: Sections 302.50(a), 304.20(a)(1), 305.25(a)(1) and 305.27(a).

G. By adding a new § 302.52 to read as follows:

§ 302.52 Distribution of support collected in Title IV–E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated

in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under § 232.11 of this title and sections 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

H. By adding a new § 302.54 to read as follows:

§ 302.54 Notice of collection of assigned support.

(a) Effective October 1, 1985, the State plan shall provide that the IV-D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(b) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

I. By adding a new § 302.55 to read as follows:

§ 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under § 303.52 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 305.52(d) of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

J. By adding a new § 302.56 to read as follows:

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 1, 1957, as a condition for approval of its State plan, the State shall establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons.

(c) The guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(d)The State must include a copy of the guidelines in its State plan.

K. By adding a new § 302.57 to read as follows:

§ 302.57 Procedures for the payment of support through the IV-D agency or other entity.

(a) Effective October 1, 1985, the State may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the absent parent or custodial parent, regardless of whehter or not arrearages exist or withholding procedures have been instituted.

(b) If the State opts to establish procedures described in paragraph (a) of this section, the State must:

(1) Monitor all amounts paid and the dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs.

L. By adding a new § 302.70 to read as follows:

§ 302.70 Required State laws.

(a) *Required laws.* Effective October 1, 1985, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve programs effectiveness:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld, in accordance with the requirements set forth in § 303.100 of this chapter;

(2) Expedited processes to establish and enforce child support obligations having the same force and effect as those established through full judicial process, in accordance with the requirements set forth § 303.101 of this chapter;

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part in accordance with the requirements set forth in § 303.102 of this chapter;

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support, in accordance with the requirements set forth in § 303.103 of this chapter;

(5) Procedures for the establishment of paternity for any child at least to the child's 18th birthday;

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support, in accordance with the procedures set forth in § 303.104 of this chapter;

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies, in accordance with § 303.105 of this chapter; and

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arreareages occur without the necessity of filing application for services under § 302.33 of this part, in accordance with § 303.100(h) of this chapter.

(b) A State need not apply a procedure required under paragraphs (a) (3), (4), (6) and (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available to the public which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations. The guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate.

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.105 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2), an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must demonstrate to the satisfaction of the Secretary that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

(3) *Review of exemption.* The exemption is subject to continuing review by the Secretary and may be terminated upon a change in circumstances or reduced effectiveness in the State or political subdivision, if the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this section.

(4) *Request for extension.* The State must request an extension of the exemption by submitting current data in accordance with paragraph (d)(2) of this section 90 days prior to the end of the exemption period granted under paragraph (d)(2) of this section.

(5) *When an exemption is revoked or an extension is denied.* If the Secretary revokes an exemption or does not grant an extension of an exemption, the State must enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked.

M. By adding a new § 302.75 to read as follows:

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

(a) Effective September 1, 1984, the State plan may provide for imposition of late payment fees on absent parents who owe overdue support.

(b) If a State opts to impose late payment fees—

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the absent parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there is an assignment under § 232.11 of this title or section 471(a)(17) of the Act or where an application for services has been filed under § 302.33 of this part.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support Enforcement program by any fees collected under this section in accordance with § 305.50 of this chapter.

§§ 303.2 through 303.5 and 303.7 [Amended]

N. By removing the phrase "pursuant to § 235.70 of this title" in §§ 303.2 through 303.5 and adding the words "or IV-E" between the words "IV-A" and "plan" in § 303.7(b)(1).

O. By revising § 303.52 to read as follows:

§ 303.52 Incentive payments to States and political subdivisions.

(a) *Definitions.* For the purposes of this section:

"AFDC collections" means support collections satisfying an assigned support obligation under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC collections" means support collections, on behalf or individuals receiving services under this

title, satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) of this chapter.

"Political subdivision" means a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court.

"Total IV-D administrative costs" means total IV-D administrative expenditures claimed by a state in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States for a fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the State's total administrative costs and the State's non-AFDC collections to the State total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule.

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	[illegible]
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV-D services and parents residing in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV-D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and

(v) Amounts expended by the State in carrying out a special project under section 455(e) of the Act shall be included in the State's total IV-D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV-A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

(d) *Pass through of incentives to political subdivisions.* The State must calculate and promptly pay incentives to political subdivisions as follows:

(1) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State the participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(2) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

(e) *Information in interstate cases.* If a State or political subdivision requests another State or political subdivision to make a collection, the State where the case originates must identify the case as an AFDC, non-AFDC or foster care maintenance case at the time of the request and at any time the case changes status.

(f) *Time frames and use of codes.* (1) A State or political subdivision that makes a collection on behalf of another State, political subdivision of another State or an individual who resides in another State who has applied for IV-D services shall transmit the entire amount of the collection to the location specified by the State where the case originated, no later than 10 days after the collection was received.

(2) The collecting State or political subdivision forwarding a support collection to another State or political subdivision must include, as appropriate, the code identifying the collecting State or political subdivision as defined in:

(i) The Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards; or

(ii) The Worldwide Geographical Location Codes issued by the General Services Administration.

(3) The State or political subdivision where the case originated shall use the codes to track the collection.

P. By revising § 303.72 to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) *Past-due support qualifying for offset.* Past-due support as defined in

§ 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter.

(2) For support which has been assigned to the State under § 232.11 of this title or section 471(a) (17) of the Act:

(i) The amount of the support is not less than $150; and

(ii) The support has been delinquent for three months or longer.

(3) For support owed in cases where an application for IV-D services is filed with the IV-D agency pursuant to § 302.33 of this chapter:

(i) The support is owed to or on behalf of a minor child;

(ii) The amount of support is not less than $500;

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-AFDC cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the absent parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support on a magnetic tape to the Office by the submittal date specified by the Office in instructions.

(2) The notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D case number and FIPS code for the local IV-D agency where the case originated.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the Treasury and will notify the State IV-D agency in writing of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with a written explanation of why the request could not be transmitted to the Secretary of the Treasury.

(d) *Notification of changes in case status.* (1) The State referring past-due support of offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the IRS.

(2) The State IV-D agency shall within time frames established by the Office in instructions, notify the Deputy Director in writing of any deletion of an amount referred for collection by Federal tax refund offset or any decrease in the amount if the decrease is significant according to guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset.* (1) *Advance.* The Office, or the State IV-D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the absent parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset.* The IRS will notify the absent parent that the offset has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure a proper share of the refund.

(f) *Procedures for contesting in interstate cases.* (1) Upon receipt of a complaint from an absent parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the absent parent to the IRS.

(3) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV-D agency must notify OCSE in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the absent parent promptly.

(g) *Procedures for contesting in interstate cases.* (1) If the absent parent requests an administrative review in the submitting State, the IV-D agency must

meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the absent parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the absent parent's request for an administrative review.

(3) The State with the order must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the State with the order must notify the Office in writing within time frames established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly.

(8) In computing incentives under § 303.52 of this part, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) of this chapter.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV-D agency must inform individuals who apply for services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under §232.11 of this title or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under §§ 302.51(b) (4) and (5) or 302.52(b) (3) and (4) of this chapter, the IV-D agency must repay the excess to the absent parent whose refund was offset or jointly to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV-D agency by the Secretary of Health and Human Services or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

(2) The State IV-D agency may charge an individual who applies for services under § 302.33 of this chapter a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(k) *Limitation of referral for offset of non-AFDC past-due support.*

Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Q. By adding new §§ 303.100 through 303.105 to read as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *Withholding requirement.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (d)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any further action by the court or entity that issued it. The State must take steps to implement the withholding and to send the advance notice required under paragraph (b) of this section on the earliest of: (i) the date on which the parent fails to make payments in an amount equal to the support payable for one month, (ii) such earlier date that is in accordance with State law, or (iii) the date on which the absent parent requests withholding.

(5) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or the identity of the alleged absent parent.

(6) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Corporation Act (15 U.S.C. 1673(b)).

(7) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(8) Payment of overdue support upon receipt of the notice required under paragraph (b) of this section may not be the sole basis for not implementing withholding.

(9) The State must have procedures for promptly terminating the withholding, but in no case should payment of overdue support be the sole basis for termination of withholding.

(10) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(b) *Advance notice to absent parent.* (1) On the date the absent parent fails to make payments in an amount equal to the support payable for one month, the State must take steps to send advance notice to the absent parent regarding the delinquency of support payments and the potential withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequnet employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (c) of this section.

(2)(i) The requirements for advance notice to the absent parent under paragraph (b)(1) of this section and for State procedures when the absent parent contests withholding in response to the advance notice under paragraph (c) of this section do not apply in the case of any State which has a withholding system in effect on August 16, 1984 if the system provides on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (b)(2)(i) of this section applies must take steps to send notice to the employer under paragraph (d) of this section on the date on which the absent parent fails to make payments in an amount equal to the support payable for one month and must meet all other requirements of this section.

(c) *State procedures when the absent parent contests withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 days of advance notice to the absent parent under paragraph (b) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case in the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (d) of this section.

(4) If withholding is to occur, send the notice required under paragraph (d) of this section.

(d) *Notice to the employer.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (d)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State within 10 days of the date the absent parent is paid, unless the State directs that payment be made to another individual or entity;

(iii) That, in addition to the amount withheld under paragraph (d)(1)(i) of this section, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding.

(vi) That if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) If the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with (b)(1)(iv) of this section, the State must immediately send the notice to the employer required under paragraph (d)(1) of this section.

(3) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer in accordance with the requirements of paragraph (d)(1) of this section that the withholding is binding on the new employer.

(e) *Administration of wage withholding procedures.* (1) The State must designate a public agency to administer wage withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments. The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State. The State may designate only one entity to administer withholding in each jurisdiction.

(2) Amounts withheld must be distributed promptly in accordance with section 457 of the Act and §§ 302.33, 302.51 and 302.52 of this chapter. The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(f) *Income withholding.* The State may extend its system of withholding to include withholding from forms of income other than wages.

(g) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) When withholding is required in a particular case, the State in which the custodial parent applied for IV-D

services must promptly notify the IV–D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages. If necessary, the State where the support order is entered must promptly provide the information necessary to carry out the withholding when requested by the State where the custodial parent applied for services.

(4) Withholding must be implemented promptly by the State in which the absent parent is employed upon receipt of the notice required in paragraph (g)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Provide notice to the absent parent in accordance with the requirements in paragraph (b) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding in accordance with paragraph (c) of this section; and

(iii) Provide notice to the employer in accordance with the requirements of paragraph (d) of this section.

(iv) Notify the State in which the custodial parent applied for services when the absent parent terminates employment within the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(h) *Provision for withholding in new or modified child support orders.* Child support orders issued or modified in the State must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services. This requirement does not alter the requirement governing all IV–D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

§ 303.101 Expedited processes.

(a) *Definition.* "Expedited processes" means administrative or expedited judicial processes or both which increases effectiveness and meet processing times specified in paragraph (b)(2) of this section and under which the presiding officer is not a judge of the court.

(b) *Basic requirement.* (1) The State must have in effect and use expedited processes as specified under this section to establish and enforce support orders in intrastate and interstate cases.

(2) Under expedited processes, actions to establish or enforce support obligations in IV–D cases must be completed from the time of filing to the time of disposition within the following time frames: (i) 90 percent in 3 months; (ii) 98 percent in 6 months; and (iii) 100 percent in 12 months.

(3) The State may include paternity establishment in the expedited processes in effect in the State.

(4) If a case involves complex issues requiring judicial resolution, the State must establish a temporary support obligation under expedited processes and may then refer to unresolved issues to the full judicial system for resolution.

(c) *Safeguards.* Under expedited processes:

(1) Orders established must have the same force and effect under State law as orders established by full judicial process within the State

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the order;

(4) There must be written procedures for ensuring the qualification of residing officers;

(5) Recommendations of presiding officers may be ratified by a judge; and

(6) Action taken may be reviewed under the State's generally applicable judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish and enforce orders;

(3) Accepting voluntary acknowledgement of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accepting voluntary acknowledgement of paternity; and

(4) Entering default orders if the absent parents does not respond to notice or other State process within a reasonable period of time specified by the State.

(e) *Exemption for political subdivisions.* A State may request an exemption from the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision, in accordance with the provisions of § 302.70(d) of this chapter.

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under § 232.11 of this title or section 471(a)(17) of the act to the State making the request for offset or an application for IV–D services filed with the IV–D agency under § 302.33 of this chapter, and

(2) The State does not determine, using guidelines it must develop which are generally available to the public, that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Notice to custodial parent in non-AFDC cases.* In non-AFDC cases, the State must inform the non-AFDC custodial parent in advance if it will first use any offset amount to satisfy any unreimbursed AFDC and foster care maintenance payments which have been provided to the family.

(d) *Advance notice to absent parent.* The State must send a written advance notice to inform the absent parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(e) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for an absent parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV–D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the absent parent's spouse can apply for a share of the

refund, if appropriate, in accordance with State law.

(f) *Fee for non-AFDC cases.* In non-AFDC cases, the State may charge a reasonable fee to cover the cost of collecting overdue support using State tax refund offset.

(g) *Distribution of collections.* (1) Within a reasonable time period in accordance with State law, a State must distribute collections received as a result of State income tax refund offset: (i) for an AFDC case under § 302.51(b) (4) and (5) of this chapter, (2) or for a foster care maintenance case under § 302.52(b) (3) and (4) of this chapter; (iii) for a non-AFDC case, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases and must credit amounts offset on individual IV-D payment records.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. The state IV-D agency must provide this information to any other State involved in enforcing the support order.

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the delinquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

§ 303.105 Procedures for making information available to consumer reporting agencies.

(a) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) For cases in which the amount overdue support exceeds $1,000, the IV-D agency must have in effect procedures to make information available to consumer reporting agencies upon their request regarding the amount of overdue support owed by an absent parent. The procedures must include use of guidelines that are generally available to the public to determine whether application of this procedure is inappropriate in a particular case. In cases in which the overdue support is less than $1,000, these procedures are at the option of the State.

(c) The State IV-D agency may charge the agency a fee not to exceed the actual cost of the State of providing the information under paragraph (b) of this section.

(d) The IV-D agency must provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and must inform the absent parent of the methods available for contesting the accuracy of the information.

(e) The IV-D agency must comply with all of the procedural due process requirements of State law before releasing the information.

R. 1. By revising the introductory text of § 304.20(b), (b)(1), (b)(1)(viii) and (b)(1)(viii)(D) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program, except any expenditure incurred in providing location services to individuals listed in § 302.35(c)(4) of this title, including the following:

(1) The administration of the State Child Support Enforcement program, including but not limited to the following:

* * * * *

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans in order to establish criteria for:

* * * * *

(D) The procedures to be used to transfer collections from the IV-D agency to the IV-A or IV-E agency before or after the distribution described in § 302.51 or § 302.52, respectively, of this chapter.

R.2. By deleting the phrase "or other officials who make judicial decisions" in § 304.21(b)(2) thru (4) and the phrase "and other officials who make judicial decisions" in § 304.21(b)(5).

S.1. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in 45 CFR Part 304.

S.2. By adding a new § 304.95 to read as follows:

§ 304.95 State Commissions on Child Support.

(a) As a condition of the State's eligibility for Federal payments under title IV-A or D of the Act for quarters beginning more than 30 days after August 16, 1984, and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall appoint a State Commission on Child Support.

(b) Each State Commission appointed under paragraph (a) of this section shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) Each State Commission shall examine, investigate and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State IV-A or D plan and for

children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under paragraphs (c) and (d) of this section, shall be considered as expenditures qualifying for Federal payments under title IV–A and D of the Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) A state shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply, if the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) Has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations;

(2) Has established within the five years prior to August 1964 a commission or council with substantially the same functions as the State Commissions provided for under this section; or

(3) Is making satisfactory progress toward fully effective child support enforcement and will continue to do so.

T. By revising § 305.22(a) to read as follows:

§ 305.22 State financial participation.

* * * * *

(a) A State must participate financially by incurring the applicable State share of the program's administrative costs as follows:

FY 1983 through FY 1987—30 percent
FY 1988 and FY 1989—32 percent
FY 1990 and thereafter—34 percent; and

* * * * *

§ 305.28 [Amended]

U. By inserting a comma and the reference "302.52" after the reference "302.51" wherever if appears in § 305.28.

PART 307—[AMENDED]

3. 45 CFR Part 307 is amended as follows:

A. By amending § 307.16 by redesignating the introductory phrase as paragraph (a); paragraphs (a) and (b) as paragraphs (a) (1) and (2); paragraphs (b) (1) through (13) as paragraphs (a)(2) (i) through (xiii); and paragraph (b)(4) (i) through (iv) as paragraphs (a)(2)(iv) (A) through (D); changing the reference to paragraph (b)(1) in the old paragraph (b)(2) to (a)(2)(i); and adding a new paragraph (b) to read as follows:

§ 307.10 Computerized support enforcement programs.

* * * * *

(b) Effective October 1, 1984, a State computerized support enforcement system established under paragraph (a) of this section may facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act and § 302.70 and §§ 303.100 through 303.105 of this chapter through:

(1) The monitoring of support payments;

(2) The maintenance of accurate records of support payments; and

(3) The prompt notice to appropriate officials of any support arrearages.

B. By amending § 307.15 by substituting the phrase "§ 307.10(a)" for "§ 307.10" wherever it appears in paragraph (b)(7) and revising paragraph (a) and paragraphs (b)(2) and (b)(5) to read as follows:

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) *Approval of an APD.* The Office shall not approve the initial and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10(a) of this part and the optional provision in § 307.10(b) of this part when elected by the State. Conditions for APD approval are specified in this section.

(b) * * *

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 307.10(a) and the functional requirements of § 307.10(b) when elected by the State and how the system will encompass all political subdivisions in the State within a reasonable period of time;

* * * * *

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10(a) and the optional component of § 307.10(b) when elected by the State and must describe information flows, input data, and output reports and uses;

* * * * *

C. By amending § 307.25 by revising paragraph (b) to read as follows. The introductory text of the section is shown for the convenience of the reader and contains no changes.

§ 307.25 Review of computerized support enforcement systems eligible for 90 percent FFP.

The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10 of this part to determine the extent to which such systems:

* * * * *

(b) Meet the conditions in § 307.10(a) and the optional provision of § 307.10(b) when elected by the State.

D. By amending § 307.30: (1) by revising paragraphs (a)(2) and (b) to read as follows, and (2) by revising paragraph (c) to delete the cross reference to 45 CFR 95.617 as set forth below.

§ 307.30 Federal financial participation at the 90 percent rate for computerized support enforcement systems.

(a) * * *

(2) The Office determines:

(i) The system meets the requirements specified in § 307.10(a); or

(ii) The system meets the requirements specified in § 307.10(a) and the optional provisions in § 307.10(b).

* * * * *

(b) Reimbursement of hardware and proprietary software.

(1) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation, enhancement or operation of a computerized support enforcement system as described in § 307.10 (a) or § 307.10 (a) and (b).

(2) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement

or operation of a computerized support enforcement system in accordance with the Computerized Support Enforcement System (CSES) Guide for enhanced FFP. FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 of this part regarding reimbursement at the applicable matching rate.)

(c) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 307.10. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 in another project or activity funded by the Federal government.

E. By amending § 307.35 by revising the title, the introductory text, and paragraph (a) to read as follows:

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:

(a) The operation of a system that meets the requirements specified in § 307.10(a) of this part and the optional provision of § 370.10(b) when elected by the State if the conditions for ADP approval in § 307.15 of this part are met; or

* * * * *

F. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in Part 307.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: February 27, 1985.

R. Stephen Ritchie,

Director, Office of Child Support Enforcement.

Approved: March 22, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-11021 Filed 5-8-85; 8:45 am]

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federal register

Thursday
May 9, 1985

Part III

Department of Education

National Institute of Handicapped Research

Proposed Funding Priorities for Research Fellowships for Fiscal Year 1985; Notice

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research

Proposed Funding Priorities for Research Fellowships for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Research Fellowships for Fiscal Year 1935.

SUMMARY: The Secretary of Education proposes funding priorities for research fellowships to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1985. NIHR funds some fellowships without specifying priority areas, but the regulations provide that the Secretary may set priorities when there are critical areas to be addressed. The Secretary has determined that research fellows are needed in the areas proposed below.

Authority for the fellowship program of NIHR is contained in section 202(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and by Pub. L. 98–221.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before June 10, 1985.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Mail Stop 2305, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research. Telephone: (202) 732–1139; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: The purpose of this program is to build research capacity and also to allow the Secretary to obtain the benefits of research conducted by highly qualified individuals. This research has a direct bearing on the development of programs, methods, procedures, and devises to assist in the provision of rehabilitative services to individuals.

NIHR fellowship regulations in 34 CFR Part 356, (46 FR 45312, September 10, 1981, as amended June 18, 1984 at 49 FR 24978), authorize the Secretary to establish priorities for fellowships by reserving funds to support fellowships in particular areas. The Secretary intends to fund some fellowships without regard to these priorities as well as to fund some in response to these priorities.

NIHR invites public comment on the merits of the proposed priorities, both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties.

This notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations.

These final priorities will be announced in a notice published in the **Federal Register.** The notice will also solicit fellowship applications and set the closing date.

The following five proposed priorities represent areas in which NIHR proposes to support research and related activities through special fellowships. NIHR has also published an application notice in the **Federal Register** on December 14, 1984 (49 FR 48785) advising the public of its intent to fund up to 10 regular fellowships without regard to the areas covered by these proposed priorities. This notice does not affect the intent or the closing date established by the earlier notice.

The publication of these proposed priorities does not bind the United States Department of Education to fund fellowships in any or all of these research areas. Funding of particular fellowships depends on both the availability of funds and on responses to this notice.

Proposed Priorities

In each of the following priority areas, the fellow would conduct research on the nature, scope, and consequences of current Federal, State, and local policies and practices, and analyze possible alternatives.

- *Fellow in Community Mental Retardation Services*

A fellow in this area would conduct research which would analyze policies of Federal, State, and local governments on community-based services for mentally retarded individuals focusing on one or more of the following areas:

—Alternative means of providing residential assistance, with special emphasis on housing options for individuals in transitional employment programs.

—Use of innovative programs and services such as community colleges, independent living programs, volunteer programs using retired persons, youth and others, and "loan" programs from labor and industry.

—Implications of technology for improving services and service delivery.

- *Fellow in Transitional and Supported Employment*

A fellow in this area would research options and practices and analyze relative benefits of alternative future directions in research and services in one or more of the following areas:

—Trends in transition programs emphasizing "learning-on-the-job" at competitive worksites, work-study, cooperative work, and similar programs.

—Alternative approaches to providing ongoing assistance and support at the worksite.

The fellow might also review research and evaluation studies and compile demographic and statistical data on transitional and supported work, including effects on labor market participation and disability income transfers.

- *Fellow in Early Intervention*

A fellow in this area would conduct research studies on services to disabled or at-risk children from birth to age three and analyze strategies for early intervention programs. Work in this area would include research on one or more of the following topics:

—Guidelines for training personnel to work in early intervention programs, including curriculum requirements.

—Evaluative research to determine appropriate instructional strategies for infants and for ecological approaches to early intervention.

—Systems for coordination among health care providers, social services, rehabilitation services, educational systems, and resource information services for disabled children.

- *Fellow in Medical Research*

A fellow in this area would conduct analytical studies based on the National Spinal Cord Injury Data Base which is maintained by the 17 Spinal Cord Injury Projects supported by NIHR. Aspects of the research would include: Analysis of the cost-effectiveness data included in the data files; studies of complications which have both high incidence and a high associated cost; analyses of the clinical evaluation data available through the system; and analyses of strategies for future research in spinal cord injury and central nervous system trauma.

- *Fellow in Disability Statistics*

A fellow in this area would analyze demographic and other data to provide important information related to disability and rehabilitation research.

Such a fellow would conduct studies in one or more of the following areas:

—Evaluation of major federal surveys and data bases and determination of priorities for secondary analysis.

—Examination of the feasibility of adding disability-related queries to proposed federal surveys, and development of sample questionnaire items and data analysis plans.

—Analysis of studies at the sub-national level to determine the feasibility of extrapolating to national estimates, the development of such estimates, and a pilot survey and evaluation of State data bases containing disability-related statistics.

—Development of national estimates of incidence, prevalence, and related characteristics for major disability groups, and/or in-depth analyses in one or more areas of disability.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before (the 30th day after publication of this document) will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. between the hours of 8:30 A.M. and 4:00 P.M., Monday through Friday of each week except federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: May 6, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-11282 Filed 5-8-85; 8:45 am]

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Thursday
May 9, 1985

Part IV

Environmental Protection Agency

40 CFR Part 403

General Pretreatment Regulations for Existing and New Sources; Proposed Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL-2758]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: Pursuant to section 307(b) of the Clean Water Act ("CWA"), EPA has promulgated pretreatment standards regulating the introduction of pollutants into publicly owned treatment works ("POTWs"). These standards include sets of categorical standards that regulate specific process wastewater streams discharged by particular industrial categories. EPA has also promulgated a formula ("combined wastestream formula") for applying pretreatment standards to facilities that combine regulated process wastestreams with each other or with other wastestreams that are covered by categorical pretreatment standards. Under the formula, such wastestreams are treated in two different ways, depending on whether they are dilute or contaminated. A list of wastestreams that are to be considered dilute is set forth in 40 CFR Part 403, Appendix D. Today, EPA is proposing a revised Appendix D to update this list and to eliminate errors. After considering comments received in response to this proposal, EPA will promulgate a final Appendix D list.

DATE: Comments on this proposal must be submitted June 10, 1985.

ADDRESS: Send comments to Joseph S. Vitalis, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attention: Part 403, Appendix D. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph S. Vitalis (WH-522), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-7172.

SUPPLEMENTARY INFORMATION: On June 26, 1978, EPA promulgated the General Pretreatment Regulations (40 CFR Part 403) establishing mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs) (43 FR 27736). EPA amended these regulations on January 28, 1981 (46 FR 9404) and May 17, 1984 (49 FR 21024).

Including among these regulations is the "combined wastestream formula", 40 CFR 403.6(e), amended by the May 17, 1984 notice. This formula provides a mechanism to apply categorical pretreatment standards to facilities that combine process wastestreams covered by categorical pretreatment standards with each other or with other wastestreams not covered by categorical pretreatment standards. These other wastestreams are divided into two groups and are addressed differently by the formula.

"Dilute" wastestreams are those generally considered to have no more than trace or non-detectable amounts of pollutants of concern as discussed below. Included in this category are boiler blowdown; noncontact cooling water; sanitary wastewater; and process wastestreams that EPA has exempted or could have exempted from categorical pretreatment standards based upon a finding that these wastestreams do not contain more than trace or non-detectable amounts of pollutants of concern. In some cases, wastestreams from boiler blowdown and non-contact cooling water system discharges may be considered "unregulated" process streams. This determination is made by the local control authorities using factors discussed in the preamble in 49 FR 21024.

"Unregulated" wastestreams are those wastestreams not covered by categorical pretreatment standards that are not "dilute" wastestreams; these are presumed, for purposes of applying the combined wastestream formula, to contain pollutants of concern at a significant level. An "unregulated" wastestream could be one for which a categorical pretreatment standard has been promulgated but for which the deadline has not yet been reached, one that currently is not subject to a categorical pretreatment standard (whether or not it will be in the future), or one that is not regulated for the pollutant in question but is regulated for others. For more information on the use of the combined wastestream formula and the basis of its derivation, see the preamble discussion in 46 FR 9419-9423 (January 28, 1981) and 49 FR 21024-21038 (May 17, 1984). For demonstrated calculations, refer to the "Guidance Manual for Electroplating and Metal Finishing Pretreatment Standards" published by the Agency in February, 1984.

To assist industrial facilites and POTWs in determining whether particular wastestreams not covered by categorical pretreatment standards are "dilute" or "unregulated" streams, EPA included in 40 CFR Part 403 Appendix D a list of industrial subcategories that have been or could have been exempted from regulation by categorical pretreatment standards, based on any of four grounds specified in Paragraph 8 of the consent decree in *Natural Resources Defense Council, Inc., et al.* v. *Costle*, 12 ERC 1833 (D.D.C. 1979), as modified. The specified grounds were: (1) The pollutants of concern are not detectable; (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects; (3) the pollutants of concern are present in amounts too small to be effectively reduced by known technologies; and (4) the wastestream contains only pollutants which are compatible with the POTW.

In the introduction to Appendix D, EPA explained that, in some instances, EPA had formally excluded a listed subcategory for reasons other than the four set forth above. EPA included such subcategories in Appendix D only after determining that one or more of these four reasons could also have been used as a basis for excluding the subcategory. See 46 FR at 9459 (January 28, 1981). In addition, EPA promised in the introduction that the list would be periodically updated.

In reviewing the exisiting Appendix D list, the Agency has found that some subcategories had been placed on the list erroneously and others had been omitted by error. For example, in some cases, the Agency found that the reason for the Paragraph 8 exclusion was not one of the four reasons stated above but exclusion from regulation was based on one of the additional three reasons set forth in Paragraph 8; e.g., the caustic and/or water wash subcategory of the paint point source category has been excluded under paragraph 8(a)(iv) because the amount and toxicity of the pollutants of concern do not justify developing national regulations. In addition, further technical studies conducted by the Agency reorganized some industry categories. The newly designated subcategories sometimes do not qualify for the revised Appendix D list; e.g. paint and ink industries.

In still other cases, the Agency has in fact regulated certain subcategories that have been listed on Appendix D, e.g., chemical machining, immersion plating, pickling, bright dipping, iridite dipping, alkaline cleaning and galvanizing. All of

the above subcategories are regulated by categorical pretreatment standards under the electroplating and metal finishing point source categories (40 CFR Parts 413 and 433). Thus they are proposed today to be excluded from Appendix D. Finally some subcategories should have been included and were not, such as groundwood-chemi-mechanical. It is included on the proposed list under paragraph 8(a)(iii) because the pollutants of concern are present in amounts too small to be effectively reduced by known technologies.

Today, EPA is proposing to update Appendix D as well as to correct errors in the original list. The current list fails to include: Car wash; industrial laundries; laundry, garment services; linen supply; rug cleaning; upholstery; capacitors (fluid fill); dry transformers; ferrite electronic devices; fuel cells; insulated wire and cable; insulating devices—plastic and plastic laminates; luminescent materials (existing sources only); motors, generators, alternators; receiving and transmitting tubes; resistance heaters; resistors; switchgear; transformer (fluid fill); sodium bisulfite; sodium hydrosulfite; titanium dioxides; groundwood-chemi-mechanical; wet digestion reclaimed rubber; pan, dry digestion, and mechanical reclaimed rubber; soap manufacture by batch kettle; fatty acid manufacture by fat splitting; soap manufacture by fatty acid neutralization; glycerine concentration; glycerine distillation; manufacture of soap flakes and powders; manufacture of bar soaps; manufacture of liquid soaps; manufacture of spray dried detergents; manufacture of liquid detergents; manufacture of dry blended detergents; manufacture of drum dried detergents; and manufacture of detergent bars and cakes subcategories. All of these subcategories have been excluded from regulation for one of the four reasons listed above and, therefore, are proposed to be listed in Appendix D.

Likewise, Appendix D currently inappropriately includes some subcategories that have not been excluded from regulation for one of the four reasons listed above. The current inclusion of the following is inappropriate: Carbon zinc air cell batteries; lithium batteries; magnesium carbon batteries; magnesium cell batteries; miniature alkaline batteries; nickel zinc batteries; alkaline cleaning; bright dipping; chemical machining; galvanizing; immersion plating; iridite dipping; pickling; military explosive manufacturing; gum resin, turpentine and essential oils; basic oxygen furnace (semiwet); beehive coke process; electric arc furnace (semiwet); borax; boric acid; bromine; calcium carbide; calcium chloride; calcium hydroxide; calcium oxide; chromic acid; cuprous oxide; ferric chloride; ferrous sulfate; fluorine; hydrogen; iodine; lead monoxide; lithium carbonates; manganese sulfate; potassium chloride; potassium dichromate; potassium metal; potassium permanganate; potassium sulfate; sodium carbonate; sodium fluoride; stannic oxide; zinc oxide; zinc sulfate; shoes and related footwear; personal goods; primary arsenic; primary antimony; secondary babbitt; primary barium; secondary beryllium; primary bismuth; primary boron; secondary boron; bauxite; secondary cadmium; primary calcium; primary cesium; primary chromium; primary cobalt; secondary cobalt; secondary columbium; primary gallium; primary germanium; primary gold; secondary precious metals; primary hafnium; primary and secondary indium; primary lithium; primary manganese; primary magnesium; secondary magnesium; primary mercury; secondary mercury; primary molybdenum; secondary molybdenum; primary nickel; secondary nickel; secondary plutonium; primary potassium; primary rare earths; primary rhenium; secondary rhenium; primary rubidium; primary platinum groups; primary silicon; primary sodium; secondary tantalium; primary tin; secondary tin; primary titanium; secondary titanium; secondary tungsten; primary uranium; secondary uranium; secondary zinc; primary zirconium; solvent base process; solvent wash process; converted paper industry; low water use processing (Greige Mills); log washing; particleboard; planing mills; sawmills; veneer; wet storage; and wood preserving (inorganics) process subcategories.

Readers should note that Appendix D is to be used only for the purpose of applying the combined wastestream formula. It is not to be used by industrial users or regulatory authorities for the purpose of determining whether a particular industrial user is subject to, or exempt from, a particular categorical pretreatment standard. To make such a determination, one should refer to the primary sources: The pretreatment standard, its preamble and development document, and other material in the rulemaking record for the standard. When substantial doubt arises after reviewing these materials, EPA's category determination procedures should be used. See 40 CFR 403.6(a), 46 FR 9404 (January 28, 1981).

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed amendment does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 4 U.S.C. 601 *et seq.*, EPA is required to prepare an Initial Regulatory Flexibility Analysis for all proposed rules that have a significant impact on a substantial number of small entities. I hereby certify that this proposed rule will not have significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Solicitation of Comments

EPA invites public participation in this rulemaking. We ask that any perceived deficiencies in the record be addressed specifically. We also ask that any suggested revisions or corrections be supported by relevant information and data.

Finally, readers should note that this proposal is not intended to modify the combined wastestream formula, 40 CFR 403.6(e), in any way. Nor does EPA seek comments on the criteria used to include pollutants on Appendix D. EPA seeks comments only on the accuracy of the Appendix D list.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: April 30, 1985.

Lee M. Thomas,

Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reason set out in the preamble, 40 CFR Part 403 is proposed to be amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Secs. 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 380 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311; 1314 (b), (c), (e), and (g); 1316 (b) and (c); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567; Pub. L. 95–217.

2. Part 403 Appendix D [Revised].

Newly revised Part 403 Appendix D is revised to read as follows:

Appendix D—Selected Industrial Subcategories Exempted From Regulation Pursuant to Paragraph 8 of the NRDC v. Costle Consent Decree

The following industrial subcategories have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the the *Natural Resources Defense Council, Inc., et al.* v. *Costle* Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of May 9, 1985. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries Industry

Car Wash
Carpet Cleaners
Coin Operated Laundries
Diaper Services
Dry Cleaners
Industrial Laundries
Laundry, Garment Services
Linen Supply
Power Laundries
Rug Cleaning
Upholstery

Electrical and Electronic Components [1]

Capacitors (Fluid Fill)
Carbon and Graphite Products
Dry Transformers
Ferrite Electronic Devices
Fixed Capacitors
Fluorescent Lamps
Fuel Cells
Incandescent Lamps
Insulated Wire and Cable
Insulating Devices—Plastic and Plastic Laminates
Luminescent Materials (Existing Sources Only)
Magnetic Coatings
Mica Paper Dielectric
Motors, Generators, Alternators
Receiving and Transmitting Tubes
Resistance Heaters
Resistors
Switchgear
Transformer (Fluid Fill)

Foundries Industry

Nickel Casting
Tin Casting
Titanium Casting

Gum and Wood Chemicals

Char and Charcoal Briquets

Inorganic Chemicals Manufacturing Industry

Ammonium Chloride
Ammonium Hydroxide
Barium Carbonate
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Sodium Bisulfite (PSES only)
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Cordage and Twine
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Timber Products Processing

Barking Process
Finishing Processes
Hardboard—Dry Process.

[FR Doc. 85-11252 Filed 5-8-85; 8:45 am]

BILLING CODE 6560-50-M

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[1] *Footnote:* The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations.

Reader Aids

Federal Register

Vol. 50, No. 90

Thursday, May 9, 1985

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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5-10-85
Vol. 50 No. 91

federal register

Friday
May 10, 1985

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SECOND CLASS NEWSPAPER

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federal register

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May 10, 1985

Selected Subjects

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Motor Vehicles
National Highway Traffic Safety Administration

National Parks
National Park Service

Nicaragua
Foreign Assets Control Office

Nuclear Materials
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Reporting and Recordkeeping Requirements
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Federal Register

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regs. 515, and 514, Admt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 325,000 cartons during the period May 12–18, 1985, and increases the quanity of lemons that may be shipped to 355,000 cartons during the period May 5–11, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.815) becomes effective May 12, 1985, and the amendment (§ 910.814) is effective for the period May 5–11, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee publicly on May 7, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became availabe upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.815 is added to read as follows:

§ 910.815 Lemon Regulation 515.

The quantity of lemons grown in California and Arizona which may be handled during the period May 12, 1985, through May 18, 1985, is established at 325,000 cartons.

3. § 910.814 Lemon Regulation 514 is revised to read as follows:

§ 910.814 Lemon Regulation 514.

The quantity of lemons grown in California and Arizona which may be handled during the period May 5, 1985, through May 11, 1985, is established at 355,000 cartons.

Dated: May 8, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–11530 Filed 5–9–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ANE–14; Amdt. No. 39–5050]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250-C30 and -C30S Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective by individual telegrams to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky Model S–76A helicopters. The AD requires replacement of the two P/N 23001915 magnetic plugs installed in the power and accessory gearboxes with two P/N 6871534 magnetic plugs within the next 50 hours time in service, but not later than May 15, 1985. The AD is needed to prevent undetected bearing wear progressing to a point where an engine inflight shutdown or turbine rotor damage could occur.

DATES: Effective May 10, 1985, to all persons except those persons to whom it was made immediately effective by telegraphic AD (TAD) T85–06–51, issued March 29, 1985, which contained this amendment.

Compliance required within the next 50 hours time in service after the effective date of this AD, but not later

than May 15, 1985, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register effective on May 10, 1985.

ADDRESSES: The applicable service bulletins (SBs) may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420.

A copy of each SB is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 85–ANE–14, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Royace H. Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone 312–694–7132.

SUPPLEMENTARY INFORMATION: On March 29, 1985, TAD T85–06–51 was issued and made effective immediately to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky Model S–76A helicopters. The TAD required replacement of the two P/N 23001915 magnetic plugs, installed in the power and accessory gearbox cover and housing assembly, with two P/N 6871534 magnetic plugs in the next 50 hours time in service after the effective date of the TAD, but not later than May 15, 1985. TAD action was necessary to prevent undetected bearing wear progresssing to a point where an engine inflight shutdown or turbine rotor damage could occur. Bearing wear on occasions has been masked by the automatic fuzz burnoff of accumulated metal by P/N 23001915 magnetic plugs to the point that no prior or sufficient advance chip light indication is provided before a bearing failure occurs. Service experience indicates a marked improvement in metal generation detection capability with Model 250–C30 and –C30S engines that incorporate non fuzz suppressing P/N 6871534 magnetic plugs. These chip detectors are announcing bearing wear well in advance of bearing failure as is intended by the on-condition overhaul concept for the Model 250–C30 and –C30S engine gearboxes.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interests, and good cause existed to make the AD effective immediately by individual telegrams issued March 29, 1985, to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky S–76A helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major evaluation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Engines, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Allison Gas Turbine Division, General Motors Corp. (Allison, formerly Detroit Diesel Allison): Applies to Allison Model 250–C30 and –C30S engines, which incorporate P/N 23001915 magnetic plugs in the power and accessory gearbox cover and housing assembly, installed in Sikorsky S–76A helicopters certificated in any category.

Within the next 50 hours time in service after the effective date of this AD, but not later than May 15, 1985, perform the following:

Replace the two P/N 23001915 magnetic plugs installed in the power and accessory gearbox cover and housing assembly with two P/N 6871534 magnetic plugs, which do not provide for automatic burnoff of accumulated metal fuzz, in accordance with Allison Commercial Engine Alert Bulletin 250–C30, –C30S CEB–A–72–3098, Revision 1 dated January 15, 1985, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) § 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, IN 46206–0420. These documents also may be examined at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 85–ANE–14, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective May 10, 1985, to all those persons except those persons to whom it was made immediately effective by TAD T85–06–51, issued March 29, 1985, which contained this amendment.

(Secs. 313(a), 601, and 603 Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on April 24, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 11364 Filed 5–7–85; 2:25 pm]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ANE–23; Amdt. 39–5054]

Airworthiness Directives; Hartzell Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive.

SUMMARY: Airworthiness Directive (AD) 55–3–2 requires a 25 hour repetitive inspection and repair of certain Hartzell propellers with metal blades installed on Continental E–185, E–225 and O–470, and Lycoming O–320 and O–340 series engines that were damaged by nicks, gouges and scratches within 15 inches of the blade tip. Since this type of inspection and repair is part of routine preflight inspection and normal maintenance, the FAA has determined that there is no further need for this AD. Therefore, AD 55–3–2 is being revoked.

EFFECTIVE DATE: June 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alpiser, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Ave., Des Plaines, Illinois 60018; telephone (312)-694-7130.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FARs) to revoke AD 55-3-2 was published in the **Federal Register** on January 29, 1985 (50 FR 3915). The proposal resulted from a determination that the AD was no longer needed. This determination was based upon the finding that inspection of metal propeller blades for the presence of damage is part of routine preflight inspection, and repair is part of normal maintenance. Considerable information has been published on the hazards of damage to metal propeller blades and the need to inspect and repair damage prior to flight. This inspection is part of the preflight walkaround inspection and is listed on the preflight inspection checklists found in owners' manuals, pilots' handbooks, flight manuals, etc.

Propeller inspection is emphasized during initial pilot training and is also emphasized in Advisory Circulars (ACs) 61-23B (Pilots' Handbook of Aeronautical Knowledge) and 61-21A (Flight Training Handbook). When the AD was issued 30 years ago, pilots were not generally aware of the hazards of damage to metal propeller blades, but it is now reasonable to expect that pilots are fully knowledgable. The 25 hour inspection interval required by the AD was arbitrary in that a propeller blade could be damaged on the first flight after complying with the AD, thereby rendering the propeller unairworthy long before the next inspection was due. As per FAR 91.29(b), the pilot-in-command is responsible for determining that the aircraft is in condition for safe flight. Advisory Circular 43.13-1A (Aircraft Inspection and Repair) provides additional information on inspection and repair of damaged metal propeller blades.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed April 1, 1985. Two comments were received.

One commenter concurred with the proposal. A second commenter recommended that the **SUPPLEMENTARY INFORMATION** be expanded to fully justify the proposal. In response to this comment, the **SUPPLEMENTARY INFORMATION** was expanded to include additional justification to support the proposal. Therefore, in accordance with the agency's policy of eliminating unnecessary regulations when possible, this amendment will be adopted substantially as proposed with minor clarification.

Conclusion

The FAA has determined that this regulation is a relieving action which will have no cost for any aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revoking Hartzell Propeller Products Division AD 55-3-2. This amendment becomes effective June 16, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449 January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on April 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11319 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-1; Amdt. 39-5046]

Airworthiness Directives; McCauley D3A32C90 Series Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires retirement of non-shot peened hubs on certain McCauley D3A32C90 series propellers and inspection and modification of shot peened hubs on other D3A32C90 series propellers after accumulating 1200 hours total time in service. The AD is needed to detect cracks in the propeller hub/blade which could result in failure and subsequent loss of a blade.

DATES: Effective—May 13, 1985.

Compliance schedule—As prescribed in the body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective on May 13, 1985.

ADDRESSES: The applicable service documents may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377.

A copy of each of the service documents is contained in the Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 85-ANE-1, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alpiser, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7130.

SUPPLEMENTARY INFORMATION: The FAA has determined that McCauley Model D3A32C90 series propellers are susceptible to hub/blade failures and possible blade loss due to fatigue cracks. Numerous failures of the threaded retention design have occurred with at least two recent failures of the subject model. Several similar AD's have been issued on other McCauley propellers utilizing the threaded retention design. Since this condition is likely to exist or develop on other propellers of the same type design, an AD is being issued which requires replacement of hubs which are not shot peened and inspection and modification of shot peened hubs to the oil filled configuration on propellers which have accumulated 1200 hours total time in service. The oil filled configuration makes it possible to detect cracks by observing leakage of red dyed oil.

It is estimated that an average of 10 manhours per propeller will be required to comply with this AD. An additional $100 in replacement parts is anticipated to modify these propellers to the oil filled configuration. Also, a small number of hubs that are not shot peened will have to be replaced at an additional cost of $420. The cost to inspect and to modify a propeller to the oil filled hub configuration will approximate $35/hr. x 10 hrs. labor plus $100 parts = $450 per propeller. Modification of the propeller to the oil filled hub configuration is a one-time cost that eliminates the need for repetitive inspections since a crack is readily detectable by red dyed oil leak stains.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation involves about 1000 aircraft at an approximate cost to each aircraft of $450 to $870. A small number will require hub replacement at an approximate cost to each aircraft of $870. Therefore, I certify that this action is not a "major rule" under Executive Order 12291, and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Propellers, Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

McCauley Accessory Division: Applies to the following Model D3A32C90 series propellers installed on, but not limited to, Bellanca 17-30, 17-30A; Cessna A185E, F, A188B, P206A, TP206A, U206A, B, C, D, E, F, TU206A, B, C, D, E, F, 207, 207A, T207; and Navion A thru H: D3A32C90, D3A32C90-A, -B, -C, -J, -K, -L, -BLM, -CLM, -JLM, -KLM, -LM, and -M.

Compliance is required as indicated unless already accomplished.

To detect propeller hub cracks and prevent possible failure, accomplish the following:

(a) Propeller models D3A32C90, D3A32C90-A, -B, -C, -J, -K, and -L: Within the next 50 hours time in service after the effective date of this AD or prior to accumulating 1200 hours total time in service, whichever occurs later, replace hubs with shot peened hubs and modify to the oil filled hub configuration in accordance with Supplement 1 to McCauley Service Manual No. 720415 dated January 7, 1977, or FAA approved equivalent.

(b) Propeller models D3A32C90-BLM, -CLM, -JLM, -KLM, -LM, and -M: Within the next 50 hours time in service after the effective date of this AD or prior to accumulating 1200 hours total time in service, whichever occurs later, inspect the hub in accordance with McCauley Service Letter 1974-3 dated March 29, 1974, or FAA approved equivalent, and modify to the oil filled hub configuration in accordance with Supplement 1 to McCauley Service Manual No. 720415 dated January 7, 1977, or FAA approved equivalent.

(c) Propellers with unknown service histories must comply with paragraphs (a) or (b), as applicable, within the next 50 hours time in service after the effective date of this AD.

(d) Modified propellers showing signs of red dyed oil leakage must be removed from service and replaced with a servicable propeller.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.97 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, ACE-140C, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7130.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377. These documents also may be examined at the Office of Regional Counsel, FAA, Attn: Rules Docket No. 85-ANE-1, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 am and 4:30 pm.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12 1983); and 14 CFR 11.89)

Issued in Burlington, Massachusetts, on April 18, 1985.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85-11320 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-54]

Alteration of Transition Area; Brinkley, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Brinkley, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Frank Federer Memorial Airport. This amendment is necessary since the final approach to the airport has been realigned to approach the airport from a different direction.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2625

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to alter the Brinkley, AR, transition area (50 FR 93).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area at Brinkley, AR, to provide controlled airspace for the protection of aircraft arriving and departing the Frank Federer Memorial Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition area, Aviation Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of

the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Brinkley, AR—Revised

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Frank Federer Memorial Airport (latitude 34°52'48" N., longitude 91°10'35" W.) and 3 miles each side of the 011-degree bearing of the NDB (latitude 34°52'53" N., longitude 91°10'40" W.) extending from the 5-mile radius area to 8.5 miles north of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on April 30, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–11322 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–56]

Designation of Transition Area; Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Mountain View, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Wilcox Memorial Airport. This amendment is necessary since a nonfederal nondirectional radio beacon (NDB) is being installed to serve the Wilcox Memorial Airport. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW–534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2625.

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Mountain View, AR, transition area (50 FR 91).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area for the protection of aircraft arriving and departing the Wilcox Memorial Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Mountain View, AR—New

That airspace extending upwards from 700 feet above the surface within a 6.5 mile radius of the Wilcox Memorial Airport (latitude 35°51'52" N., longitude 92°05'33" W.) and within 3 miles each side of the 044-degree bearing of the NDB (latitude 35°52'03" N., longitude 92°04'40" W.) extending from the 6.5-mile radius area to 8.5 northeast of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on April 30, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–11321 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–13–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2007

Revision of Regulations Relating to the Generalized System of Preferences

AGENCY: United States Trade Representative.

ACTION: Interim Regulations.

SUMMARY: The United States Generalized System of Preferences Program was extended for a period of eight and one-half years pursuant to section 505(a) of Title V of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573, October 30, 1984). In order to ensure that the administration of the GSP program conforms to the amendments included in Title V of the Trade and Tariff Act of 1984 and responds to concerns raised by members of Congress and constituent groups during the consideration of the renewal legislation, we are revising the administrative regulations governing the operation of the GSP program. In order to allow members of the public adequate opportunity to comment, the revised regulations are being issued as interim regulations.

DATE: Effective date: The interim regulations shall become effective May 10, 1985.

Comments: Before adopting the interim regulations as a final rule, consideration will be given to any written comments received on or before July 9, 1985.

ADDRESSES: Comments should be submitted to the GSP Subcommittee, Office of the United States Trade Representative, Room 316, 600 17th Street, N.W., Washington, D.C. 20506. Comments submitted will be available for public inspection in the GSP Information Center, Room 316, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: David Shark, GSP Program Office (202–395–6971); Legal Aspects: Christine Bliss, Office of the General Counsel (202–395–6800); Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION:

Inapplicability of Notice and Delayed Effective Date Provisions

These regulations are not subject to the public notice and comment requirements of 5 U.S.C. 553 because they are procedural in nature and because they are specifically exempted

pursuant to subsection (a)(1) of section 553 as within the foreign affairs function of the United States.

Additionally, as the amendments contained in this document are necessary to conform the regulations to amendments made to Title V of the Trade Act of 1974 by Title V of the Trade and Tariff Act of 1984, it is believed that good cause exists under the provisions of 5 U.S.C. 553 (d)(1) and (d)(3) for dispensing with the normal 30 day delayed effective date requirement.

Executive Order 12291

This interim regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under Executive Order 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) pursuant to section 3 of that Act, are not applicable to this document because the regulation will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from the GSP program as authorized by Title V of the Trade Act of 1974, as amended, and not from the implementing regulations.

Paperwork Reduction Act

The interim regulations are not subject to the Paperwork Reduction Act of 1980, (44 U.S.C. 3500 et seq.) because the regulations do not involve the collection of information within the meaning of subsection (c) of § 1320.7 of the regulations implementing the Act (5 CFR 1320.7(c)).

List of Subjects in 15 CFR Part 2007

Administrative practice and procedure, Foreign trade.

Amendments to Regulations

Part 2007, Office of the U.S. Trade Representative, Regulations (15 CFR Part 2007), is revised as set forth below.

Part 2007—Regulations of the U.S. Trade Representative pertaining to eligibility of articles for the Generalized System of Preference Program (GSP (15 CFR Part 2007)) implementing Title V of the Trade Act of 1974, as amended.

PART 2007—[AMENDED]

Authority: 19 U.S.C. 2461–65, 88 Stat. 2066–2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 3018–3024; Executive Order No. 11846 of March 27, 1975 (40 FR 14291); Executive Order No. 12188 of January 2, 1980 (45 FR 989).

§ 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S.C. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) At any time during the calendar year, including the annual product reviews conducted pursuant to the schedule set out in § 2007.3, any person may file a request to have the status of any eligible beneficiary developing country reviewed with respect to any of the mandatory designation criteria listed in section 502(b) (19 U.S.C. 2462(b)). Such requests must: (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) criteria which the requester believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; and (5) supply any other relevant information as requested by the GSP Subcommittee.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2010.0 et seq., an interested party is defined as a party who has a significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in the English language in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Washington, D.C. 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of § 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in § 2007.0(a).

§ 2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

(a) *General information required.* A request submitted pursuant to this Part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c) of this section. Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States;

(3) A description of the action requested, together with a statement of

the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Request to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm or firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in sections 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461, 2462(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of a request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and to the extent possible other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase if CSP status is granted);

(4) Actual production capacity and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as, considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, Petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Profitability of firms producing the product;

(10) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(11) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(12) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(13) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles.

(a) If the request does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review may be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the **Federal Register** those requests which will be considered for full examination in the product review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the United States International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting reviews, the TPSC may hold public hearings.

(e) As appropriate, the USTR on behalf of the President will request advice from USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representatives who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the

President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend (1) that additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) that product coverage be otherwise modified, the GSP Subcommittee on behalf of the TPSC, the TPRG or the TPC shall review the relevant information submitted in connection with or concerning a request under this part, together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

§ 2007.3 Timetable for reviews.

(a) *Regular product review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule unless otherwise specified by **Federal Register** notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, **Federal Register** announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results will be announced by April and will be implemented on July 1, the statutory effective date of modifications to the program. If the effective date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests which indicate the existence of unusual circumstances warranting an immediate review may be reviewed separately. Requests for such urgent consideration should contain a justification for the urgency.

(c) *General product review.* Section 504(c)(2) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2464(c)(2)) requires that, no later than January 4, 1987, and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in section 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the **Federal Register.** The first general product review was initiated on February 14, 1985 and will be completed by January 3, 1987. The initiation of the review and deadlines for submission of comments and statements were announced in the **Federal Register** on February 14, 1985 (50 FR 6294).

§ 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to § 2007.2 a statement of the fact that the request has been received, the TSUS item number or numbers and description of the article or articles covered by the request, and an invitation for all interested parties to submit views to the TPSC shall be published in the **Federal Register**.

(b) Upon the completion of a review, and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the **Federal Register** including:

(1) A list of requests upon which action has been taken; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP, the party submitting a request with respect to such articles may request explanation of factors considered.

§ 2007.5 Written briefs and oral testimony.

Section 2003.2 and 2003.4 of this part shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this Part.

§ 2007.6 Information open to public inspection.

With the exception of information subject to § 2007.7, an interested person may, upon request inspect at the office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

§ 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General product reviews.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S. imports of the article; or $25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. GNP, using 1984 as the base year). Other articles, except those subject to wavier pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)), will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of general reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)).

(2) *Factors to be considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(1) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(2) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports or products of such countries;

(3) The anticipated impact of such action on the United States producers of like or directly competitive products;

(4) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(5) The level of economic development of such country, including its per capita gross national product, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(6) Whether or not the other major developed countries are extending generalized perferential tariff treatment to such country;

(7) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(8) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(9) The extent to which such country has taken action to—

(i) Reduce trade distorting investment practices and policies (including export performance requirements); and

(ii) Reduce or eliminate barriers to trade in services; and

(10) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-11307 Filed 5-9-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 84N-0327]

Antitumor Antibiotic Drugs; Deletion of LD_{50} Test for Dactinomycin, Doxorubicin Hydrochloride, and Plicamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to delete the LD_{50} test requirement from the accepted standards for dactinomycin, doxorubicin hydrochloride, and plicamycin. FDA is taking this action because the current chemical potency assay, i.e., high-pressure liquid chromatography, can appropriately replace the LD_{50} test for toxicity determination of batches of these antitumor antibiotic drugs.

DATES: Effective June 10, 1985; comments, notice of participation, and request for hearing by June 10, 1985; data, information, and analyses to justify a hearing by July 9, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1984 (49 FR 44919), FDA proposed to amend the antibiotic drug regulations to delete the LD_{50} test requirement from the accepted standards for dactinomycin, doxorubicin hydrochloride, and plicamycin.

As discussed in the proposal, FDA has found that the high-pressure liquid chromatographic (HPLC) assay, specified as the official assay method for content (potency) determination of dactinomycin, doxorubicin hydrochloride, and plicamycin, can be used to determine the toxicity of batches of these antitumor antibiotic drugs by qualitative comparison to designated reference standards. Because the HPLC assay can verify that dactinomycin, doxorubicin hydrochloride, and plicamycin are within an acceptable level of toxicity, FDA has determined that the HPLC assay can be used in place of the LD_{50} test for toxicity determination of batches of these antitumor antibiotic drugs.

Additionally, because all classes of antibiotic drugs are exempted from batch certification, FDA has determined that the interim provisions for LD_{50} testing of dactinomycin, doxorubicin hydrochloride, and plicamycin under 21 CFR 450.1 are no longer relevant.

Interested persons were given until January 14, 1985, to submit written comments on this proposal and until December 13, 1984, to submit request for an informal conference. No requests for an informal conference were received. One comment was received in support of the proposal.

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the final rule would delete a testing requirement, thus eliminating the cost of this test for the manufacturers of these antitumor antibiotic drugs. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 450

Antibiotics, Antitumor.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

The authority citation for Part 450 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

§ 450.1 [Removed].

1. By removing § 450.1 *Interim requirements for LD_{50} testing.*

2. In § 450.20, by removing paragraph (a)(1)(ii) and footnote 1 and redesignating paragraph (a)(1) (iii), (iv), (v), and (vi) as (a)(1) (ii), (iii), (iv), and (v); by revising paragraph (a)(3)(i); and by removing paragraph (b)(2) and redesignating (b) (3), (4), (5), and (6) as (b) (2), (3), (4), and (5). As revised, § 450.20(a)(3)(i) reads as follows:

§ 450.20 Dactinomycin.

(a) * * *

(3) * * *

(i) Results of tests and assays on the batch for dactinomycin content, loss on

drying, absorptivity, crystallinity, and identity.

* * * * *

3. In § 450.24, by removing paragraph (a)(1)(v) and footnote 3 and redesignating paragraph (a)(1) (vi) and (vii) as (a)(1) (v) and (vi); by revising paragraph (a)(3)(i); and by removing paragraph (b)(5) and redesignating (b) (6) and (7) as (b) (5) and (6). As revised, § 450.24(a)(3)(i) reads as follows:

§ 450.24 Doxorubicin hydrochloride.

(a) * * *

(3) * * *

(i) Results of tests and assays on the batch for doxorubicin hydrochloride content, microbiological activity, moisture, pH crystallinity, and identity.

* * * * *

4. In § 450.220, by removing the sixth sentence in paragraph (a)(1) and footnote 1; by revising paragraph (a)(3)(i)(*b*); and by removing paragraph (b)(4) and redesignating (b)-(5) and (6) as (b) (4) and (5). As revised, § 450.220(a)(3)(i)(*b*) reads as follows:

§ 450.220 Dactinomycin for injection.

(a) * * *

(3) * * *

(i) * * *

(*b*) The batch for dactinomycin content, sterility, pyrogens, loss on drying, and pH.

* * * * *

5. In § 450.224, by removing footnote 3 and by revising paragraph (a)(3)(i)(*a*) to read as follows:

§ 450.224 Doxorubicin hydrochloride for injection.

(a) * * *

(3) * * *

(i) * * *

(*a*) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, microbiological activity, moisture, pH, crystallinity, and identity.

* * * * *

6. In § 450.240, by removing the sixth sentence in paragraph (a)(1) and footnote 1; by revising paragraph (a)(3)(i)(*b*); and by removing paragraph (b)(4) and redesignating (b) (5), (6), (7), and (8) as (b) (4), (5), (6), and (7). As revised, § 450.240(a)(3)(i)(*b*) reads as follows:

§ 450.240 Plicamycin for injection.

(a) * * *

(3) * * *

(i) * * *

(*b*) The batch for plicamycin content, sterility, pyrogens, moisture, Ph, depressor substances, and identity.

* * * * *

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 10, 1985, a written notice of participation and request for hearing, and (2) on or before July 9, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective June 10, 1985.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11337 Filed 5-9-85; 8:45 am]

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PANAMA CANAL COMMISSION

35 CFR Parts 101, 107, 111, 113, and 123

Revised Rules for Arriving and Departing Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rulemaking.

SUMMARY: The Panama Canal Commission is today amending the regulations in Title 35, Code of Federal Regulations, which pertain to the requirements for arriving and departing vessels and hazardous cargoes. The Canal Commission is adopting the standards set forth in various International Maritime Organization (IMO) Conventions. By way of background, the IMO was established in 1958 with headquarters in London, England. 9 UST 621, 1958 UKTS 54, 289 UNTS 3. It has, at present, 125 member nations. The Organization has been effective in drawing up a comprehensive body of internationally-accepted regulations and standards covering various aspects of shipping, including the prevention and control of pollution and navigation safety. Copies of the IMO conventions are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1, 7SR, England.

The amendment to Part 101 consolidates in one part the rules describing the anchorages for vessels using the Panama Canal. The amendment to Part 107 requires that officers and crews of vessels meet certain training standards recommended by the IMO or by their country of registry. Part 111 has been revised to change the flag requirements for vessels carrying toxic or radioactive commodities. Part 113 is amended to adopt new dangerous cargo rules and Part 123 is amended to change the requirements for advance radio notification by vessels carrying dangerous cargo.

EFFECTIVE DATE: June 10, 1985. The incorporations by reference in this rule were approved by the Director of the Federal Register June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: 202-634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: On February 12, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 5781) setting forth the revised rules for arriving and departing vessels for the Panama Canal. Interested parties were given the opportunity to submit comments by March 14, 1985. During that time period, a number of comments were received by the agency regarding the proposal to require that officers and crews of vessels in Canal waters meet the standards set forth in

the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). These writers noted that the ratification and implementation of the STCW has been slow and is not universal among maritime nations whose vessels transit the Panama Canal. Concern was expressed that implementation of the provision, while meeting the overall goal of improving the safety and efficiency of passage through the Canal, would, at this time, be premature.

In light of these observations, the Commission has determined that it would be in the best interest of its customers to amend §§ 101.10(b)(5) and 107.1(b). These sections have been modified to include a provision that if the nation of a vessel's registry has not implemented the STCW, then the certification of training in accordance with the standards of the nation of registry will be accepted. In addition, §§ 113.30 and 113.49 of the proposed rules, which required special training for officers and crew of oil, chemical and liquefied gas tankers are being incorporated into the general certification requirement in §§ 101.10(b)(5) and 107.1(b), and §§ 113.30 and 113.49 are deleted as unnecessary.

One further amendment is being made in answer to comments that most of the hotel staff aboard cruise or passenger ships are not responsible for the safe handling of the vessel. A sentence is added to § 101.10(b)(5) which reads, "Certification requirements apply to officers and crew responsible for the safe handling of the vessel only." Finally, the phrase "or liquefied gas in bulk" has been deleted from both §§ 101.10(b)(3) and 101.10(b)(4). The proposed rule had required Safety of Life at Sea and International Oil Pollution Prevention certificates for vessels carrying liquefied gas in bulk or dangerous cargo in bulk. Inasmuch as liquefied gas is a dangerous cargo, the reference to liquefied gas in bulk was redundant. This change is not substantive, and ships carrying liquefied gas in bulk will be required to have IOPP and SOLAS certificates available for inspection.

Following is a summary of how the rules published today will modify the rules which have been in effect concerning arriving and departing vessels and the carriage of dangerous cargo:

Part 101

Presently, the description of the anchorage areas for merchant vessels and small craft are in Part 101, while the description of the anchorage areas for vessels carrying dangerous cargoes is in Part 113. This rule removes the description of the dangerous cargo anchorage area from Part 113 and inserts it in Part 101, thereby consolidating the descriptions of all the anchorage areas in one part. In § 101.10 the list of documents which must be presented to Canal boarding inspectors has been revised to delete certain obsolete requirements and to add new requirements, in order to conform to the revisions in Part 113. Under this change vessels must submit a copy of the Hazardous Cargo Manifest for packaged dangerous cargo and a copy of the Loading Plan for dangerous cargo in bulk. Additional documents which must be made available for inspection by the boarding officer include STCW certifications of training for officers and crew or equivalent certificates issued under national standards and the International Oil Pollution Prevention certificate.

Part 107

This part deals with the manning requirements for vessels navigating the waters of the Panama Canal. Section 107.1 is amended to require that the officers and crews of vessels in Canal waters meet the training standards implemented by the International Maritime Organization or by the nation of registry, if that country has not adopted the IMO standards.

Part 111

Under current regulations all vessels carrying dangerous cargo are required to fly a red flag during daylight. This amendment requires vessels carrying a dangerous cargo to fly the red flag if the cargo is a fire or explosion hazard and the international flag "T", if the cargo is toxic or radioactive.

Part 113

The Panama Canal Commission has also revised the rules for transporting dangerous cargoes. Because of the increasing volume and number of dangerous substances passing through the Panama Canal and the complexity of the safety requirements for them, standardized identification and reporting procedures were needed. Recognizing the international character of Canal traffic, the Commission is adopting the International Maritime Organization's rules concerning dangerous cargoes. These rules have worldwide acceptance, and their adoption will cause minimum inconvenience to world shipping because most maritime nations already have adopted these or similar regulations. Many non-U.S. registered vessels using the Canal, who do not utilize U.S. ports, will find these regulations more convenient than compliance with U.S. Coast Guard Regulations, as required by current regulations. Other minor changes no directly related to the adoption of IMO standards have been made. For example, amended § 113.4 deletes the requirement that vessels communicate to Canal authorities the results of mandatory tests of alarms and safety devices. Instead, the results of the test must be noted in the ship's log. Certain Canal operating procedures are being deleted as being internal matters not required to be published in the Code of Federal Regulations. A more significant change concerns the carriage of nuclear materials. Under present rules, vessels not in compliance with the International Maritime Dangerous Goods (IMDG) Code could be permitted to enter Canal waters if a waiver of the Code regulations were granted by Canal authorities.

This amendment eliminates the waiver provision: Vessels carrying nuclear material must comply with the IMDG Code. In addition, these nuclear carriers shall be required to provide proof of financial responsibility.

Part 123

Section 123.4 requires vessels approaching the Panama Canal to provide advance notification by radio of their estimated time of arrival and of certain other matters. The notification requirements pertaining to dangerous cargoes are amended to conform to the changes in Part 113. Also, an obsolete reference to smallpox vaccinations is deleted from the notification requirement pertaining to quarantine and immigration.

This regulation is not a major rule within the meaning of Executive Order 12291, 3 CFR Part 127 (1981 comp.), and therefore a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612). The incorporations by reference in this rule were approved by the Director of the Federal Register on June 10, 1985.

List of Subjects in 35 CFR Parts 101, 107, 111, 113, and 123

Anchorages, Boarding officers, Dangerous cargo, Incorporation by reference, Manning of vessels, Radio communication.

Accordingly, it is proposed to amend 35 CFR Parts 101, 107, 111, 113 and 123 as follows.

1. The authority citations for Parts 101, 107, 111, 113, and 123 are revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811; E.O. 12215, 45 FR 36043.

PART 101—[AMENDED]

2. Section 101.8 is revised to read as follows:

§ 101.8 Vessel Anchorage Areas.

The following areas are designated as authorized anchorages within Canal waters:

(a) *Atlantic Entrance.*—(1) *Merchant-Vessel Anchorage.* An area to the west of the Canal channel bounded as follows: Starting at a point "A", located in position 9°21′25″ N., 79°55′31″ W., and marked by lighted buoy No. 2, thence 900 yards 270° true to a point "B" located in position 9°21′25″ N., 79°55′56″ W., thence to lighted buoy "I", thence to lighted buoy "H", thence due north to a point "C" located in position 9°22′07″ N., 79°56′41″ W., thence 2,800 yards 59° true to a point "D" located in position 9°22′50″ N., 79°55′29″ W., and thence to the starting point. The line extending due west from the Cristobal Mole through lighted beacon No. 1 and lighted buoy No. 2 (9°21′25″ North) marks the southern limit of the anchorage area. Except as provided by § 105.3, no vessel shall pass this line without having been passed by the boarding officer and without having a Canal pilot on board.

(2) *Outside Explosive Anchorage.* An area bounded by a line from Point A at position 9°23′53″ N., 79°56′29″ W., thence to Point B at position 9°24′40″ N., 79°56′29″ W., thence to Point C at position 9°24′40″ N., 79°57′00″ W., thence to Point D at position 9°23′53″ N., 79°57′00″ W., thence to Point A.

(3) *Inside Explosive Anchorage.* The area included in a rectangle one thousand yards wide immediately south of the West breakwater, the rectangle extending 2000 yards along the west breakwater from a point on the west breakwater one thousand yards from the west breakwater light.

(4) *Small-Craft Anchorage.* An area to the east of the Canal channel bounded as follows: Starting at buoy "A", a flashing amber buoy located in position 9°20′43″ N., 79°55′10″ W., thence 1075 yards 066° true, through fixed amber lighted buoy "B" to fixed amber lighted buoy "C", thence 375 yards 143° true, thence 1760 yards 233° true to the east prism of the Canal channel, thence due north 410 yards to flashing special anchorage buoy "3", thence 525 yards 023° true to the starting point at buoy "A".

(b) *Gatun Lake Anchorage.* An area immediately east of the Canal channel line, bounded by a line extending from the south end of the east wing-wall of Gatun Locks, thence 450 yards 120° true, thence 676 yards 146° true to flashing special anchorage buoy "A", thence 1,415 yards 078° true to flashing special anchorage buoy "1", thence 1,199 yards 155° true to flashing special anchorage buoy "3", thence 2.314 yards 225° true through special anchorage buoy "5" to special anchorage buoy "7", thence 901 yards 220° true to special anchorage buoy "9", thence 952 yards 205° true to the Canal channel line at flashing buoy "11", the channel prism line being the westerly boundary line of the anchorage area.

(c) *Pacific Entrance.*—(1) *Merchant-Vessel Anchorage.* An area bounded as follows: Beginning at a point in position 8°51′50″ N., 79°30′00″ W., marked by a lighted, whistle buoy which is painted with alternating black and white vertical stripes and which shows short-long flashing white light every 8 seconds (i.e., light 0.4 second, eclipse 0.4 second, light 1.6 seconds, eclipse 5.6 seconds), thence due east to longitude 79°28′00″ W., thence due north to 8°54′31″ N., thence due west toward Flamenco Island Light to a point 8°54′31″ N., 79°30′46″ W., thence southwestward touching the northwest corner of San Jose Rock to position 8°53′27″ N., 79°31′23″ W., marked by canal-entrance lighted buoy No. 2, thence southeastward to the point of beginning.

(2) *Explosive Anchorage.* An area south of Naos Island bounded on the east by a line drawn south (true) from canal-entrance lighted buoy No. 1; on the south by a line drawn east (true) from Tortolita Island, and in the north and west by the curve of 30 foot depth.

(d) If there are any discrepancies between the designated anchorage areas as described in this section and the anchorage areas described in paragraph 4 of Annex A of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 and the attachments thereto, the description in the treaty documents shall govern.

3. Section 101.10 is revised to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* All documents listed below shall be ready for immediate delivery to the boarding officer when he boards the vessel upon each arrival of the vessel at the Canal.

Documents Required

(1) Ship's Information and Quarantine Declaration (Panama Canal Form 4398)—1 copy.

(2) Cargo Declaration (Panama Canal Form 4363)—1 copy.[1]

(3) Crew List (Panama Canal Form 1509)—2 copies.

(4) Passenger List (Panama Canal Form 20)—1 copy.

(5) Dangerous Cargo Manifest—1 copy.[2]

(6) Loading Plan—1 copy.[3]

(7) Panama Canal Tonnage Certificate—1 copy.[1]

(8) Ship's plans (general arrangement, engine room, capacity, mid-ship, etc.)—1 copy.[1]

(b) *Documents for Examination Only.* The following documents shall be available for inspection by the Commission boarding officer:

(1) Ship's log,

(2) All ship's documents pertaining to cargo, classification, construction, load lines, equipment, safety, sanitation, and tonnage,

(3) SOLAS certificate, for ships carrying dangerous cargo in bulk,

(4) An International Oil Pollution certificate, for ships carrying dangerous cargo in bulk, and

(5) Certificates showing compliance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), if the nation of registry has implemented the convention standards. If the nation of registry has not implemented the STCW convention, then certifications issued or accepted by the registry nation attesting to the qualifications of officers and crew will be accepted by the agency. Certification requirements will apply only to officers and crew responsible for the safe handling of the vessel.

(c) *Crew List.* For the purposes of additional identification of crew members, all copies of the crew list required by this section shall include for each seaman the serial number of his certificate of identification, continuous discharge book, passport or other satisfactory identifying documentation. In addition, the given name and middle initial, as well as the family name, shall be shown for all seamen.

(d) *Passenger List.* The passenger list required by this section shall be in accurate and legible form and shall be delivered to the boarding officer. The

[1] Required only if vessel transits Canal.

[2] Required only if vessel is carrying packaged, dangerous goods.

[3] Required only if vessel is carrying dangerous cargo in bulk.

list shall show passengers in alphabetical order.

(e) *Dangerous Cargo Manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading Plan.* The loading plan for vessels carrying dangerous cargoes in bulk, as defined in § 113.2(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class, and quantity of dangerous cargo carried in each cargo tank or hold.

(Approved by the Office of Management and Budget under control number 3207-0001.)

PART 107—[AMENDED]

4. Section 107.1 is revised to read as follows:

§ 107.1 Vessels to be fully manned.

(a) A vessel navigating the waters of the Canal shall be sufficiently manned in officers and crew to permit safe handling of the vessel.

(b) If the nation of registry of a vessel has implemented the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), which is hereby incorporated by reference, the officers and crew shall meet the standards set forth therein. This Convention is contained in the International Maritime Organization publication number 938 78.15.E "International Conference on Training and Certification of Seafarers, 1978." In the event that the nation of registry has not adopted the STCW, the certification required for officers and crew as required by the country of vessel registry shall be met.

(c) The Canal authorities may deny transit of the Canal to any vessel which, in their opinion, is insufficiently manned as to officers and crew.

PART 111—[AMENDED]

5. Section 111.23(d) is revised to read as follows:

§ 111.23 Power-driven vessels under way (Rule 23).

* * * * *

(d) A vessel employed in the transportation or transfer of flammable, explosive, toxic, or radioactive commodities shall carry, in addition to her appropriate mooring, anchor, or navigation lights, where it can best be seen, a red light of such a character as to be visible all around the horizon at a distance of at least 2 miles. By day she shall display, where it can best be seen, a red flag if the cargo includes flammable or explosive commodities and the international single flag hoist signal "T" if the commodity is toxic or radioactive only.

6. Part 113 is revised to read as follows:

PART 113—DANGEROUS CARGOES

Subpart A—General Provisions

Authority: Issued under authority vested in the President by 22 U.S.C. 3811; EO 12215, 45 FR 36043.

Subpart A—General Provisions

§ 13.1 Application.

This part does not apply to vessels of war or auxiliary vessels, as those terms are defined in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (September 7, 1977). This part applies to all other vessels, regardless of character, tonnage, size, service, and whether self-propelled or not, and whether arriving or departing, under way, moored, anchored, aground, transiting or passing through Canal waters, that are carrying dangerous cargo as defined in § 113.2(e).

§ 113.2 Definitions.

For the purpose of this part, the following definitions will apply:

(a) *"Bulk Chemical Code"* means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, including amendments thereto, which is generally applicable to ships built on or after April 12, 1972, but before July 1, 1986, and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986.

(b) *"Certificate of Compliance"* means a certificate issued by a national government, or a society on behalf of a government, certifying that the ship is in compliance with the requirements of the Bulk Chemical Code or Gas Carrier Codes.

(c) *"Certificate of Fitness"* means a certificate issued by or on behalf of a national government in accordance with the Bulk Chemical Code or the Gas Carrier Codes, certifying that the construction and equipment of the vessel are adequate to permit the safe carriage of specified dangerous substances in the vessel.

(d) *"Combustible Liquids"* means a volatile liquid having a flashpoint at 61°C (141°F) or above.

(e) *"Dangerous Cargo"* means (1) any substance whether packaged or in bulk, intended for carriage or storage and having properties coming within the classes listed in the IMDG Code, and (2) any substance shipped in bulk not coming within the IMDG Code classes but which is subject to the requirements of the Bulk Chemical Code, the Gas Carrier Codes, or Appendix B of the Solid Bulk Code.

(f) *"Dangerous Cargo in Bulk"* means any dangerous substance, carried without any intermediate form of containment, in a tank or cargo space which is a structural part of a vessel or in a tank permanently fixed in or on a vessel.

(g) *"Gas Carrier Codes"* means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1986, and the Code for Existing Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships delivered before December 31, 1976.

(h) *"IMDG"* means the International Maritime Dangerous Goods Code.

(i) *"IMO"* means the International Maritime Organization (formerly International Maritime Consultative Organization).

(j) *"IMO Class"* means the classification of a dangerous substance under the International Convention for

the Safety of Life at Sea, 1960, as amended. Under this system of classification, dangerous substances are divided into 9 classes and subdivisions based on their particular properties.

(k) "*IOPP Certificate*" means an IMO International Oil Pollution Prevention Certificate certifying that the ship has been surveyed in accordance with regulations of MARPOL 73/78.

(l) "*MARPOL 73/78*" means the IMO International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto. Any annex thereto applies to vessels in waters of the Panama Canal beginning the date on which the annex enters into force by its terms.

(m) "*Packaged Dangerous Goods*" means any dangerous cargo contained in a receptable, portable tank, freight container or vehicle. The term includes an empty receptacle, portable tank or tank vehicle which has previously been used for the carriage of a dangerous substance unless such receptacle or tank has been cleaned and dried, or when the nature of the former contents permits transport with safety.

(n) "*SOLAS*" means the International Convention for the Safety of Life at Sea, 1974, as amended.

(o) "*Solid Bulk Code*" means the International Code of Safe Practice for Solid Bulk Cargoes.

(p) Reference to codes, international agreements, or other regulations shall also be deemed to refer to any amendments or additions thereto on or after the date such amendments or additions become effective.

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Chief, Navigation Division or his designee. Dangerous cargoes shall be divided into the following classes:

(1) Class 1—Explosives.

(i) 1.1—Substances and articles which have a mass explosion hazard.

(ii) 1.2—Substances and articles which have a projection hazard but not a mass explosion hazard.

(iii) 1.3—Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard, or both, but not a mass explosion hazard.

(iv) 1.4—Substances and articles which present no significant hazard.

(v) 1.5—Very insensitive substances which has a mass explosion hazard.

(2) Class 2—Gases: Compressed, liquefied or dissolved under pressure.

(i) 2.1—Inflammable gases.

(ii) 2.2—Nonflammable gases.

(iii) 2.3—Poisonous gases.

(3) Class 3—Inflammable liquids.

(i) 3.1—Low flashpoint group (flashpoint below −18 °C or 0 °F).

(ii) 3.2—Intermediate flashpoint group (flashpoint between −18 °C (0 °F) and 23 °C (73 °F)).

(iii) 3.3—High flashpoint group (flashpoint between 23 °C (73 °F) and 61 °C (141 °F)).

(4) Class 4—Inflammable solids or substances.

(i) 4.1—Inflammable solids.

(ii) 4.2—Substances liable to spontaneous combustion.

(iii) 4.3—Substances emitting inflammable gases when wet.

(5) Class 5—Oxidizing substances and organic peroxides.

(i) 5.1—Oxidizing substances.

(ii) 5.2—Organic peroxides.

(6) Class 6—Poisonous and infectious substances.

(i) 6.1—Poisonous substances.

(ii) 6.2—Infectious substances.

(7) Class 7—Radioactive substances.

(8) Class 8—Corrosives.

(9) Class 9—Miscellaneous dangerous substances.

This class includes any other substance which experience has shown, or may show, to be of such a dangerous character that the application of the hazardous cargo rules are warranted. Class 9 includes a number of substances and articles which cannot be properly covered by the provisions applicable to the other classes, or which present a relatively low transportation hazard.

(b) Combustible liquids having flashpoints above 61 °C (141 °F) are not considered to be dangerous by virtue of their fire hazard.

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety and shutdown devices, and the vessel's firefighting systems shall be tested within 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper working order, a detailed listing of discrepancies shall be included.

(b) This log entry shall be available for inspection by the boarding officer. Any deviations from the "proper working order" condition shall be brought to the attention of the boarding officer.

(Approved by the Office of Management and Budget under control number 3207-0001)

§ 113.5 Inspections.

The Chief, Navigation Division or his designee may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

§ 113.21 Application.

This subpart applies to vessels carrying dangerous gases, liquids, and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk or tankers in ballast condition when their last cargo was a combustible liquid.

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207-0001)

§ 113.23 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Christobal prior to arrival as required by § 101.1 of this title and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the explosive anchorage areas as described in §§ 101.8(a) (2) and (3) and 101.8(c)(2) of this title.

§ 113.24 Signals.

Vessels subject to this subpart shall display the flags and lights described in § 111.23(d) of this subchapter.

§ 113.25 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the following standards set forth in IMO Conventions and Codes, which are hereby incorporated by reference:

(1) All vessels subject to this subpart shall comply with MARPOL 73/78.

(2) Vessels carrying dangerous chemicals in bulk shall comply with the Bulk Chemical Code.

(3) Bulk liquefied gas carriers shall comply with the Gas Carrier Codes.

(4) Solid bulk carriers shall comply with the Solid Bulk Code.

(b) The standards incorporated by reference in paragraph (a) are further described as follows:

(1) MARPOL 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. The Convention is contained in IMO publication number 520 77.14.E "International Conference on Marine Pollution, 1973." The 1978 Protocol is contained in IMO publication number 088 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." The Bulk Chemical Code is in two parts: the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after April 12, 1972, and before July 1, 1986, and is contained in IMO publications 767 80.13.E and 770 83.13.E. (For a complete set of the Code and its most recent amendments, both of these publications must be consulted.) The other part is the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986, and is contained in IMO publication number 100 83.11.E. The Gas Carrier Codes are the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and which is contained in IMO publication number 104 83.12.E, the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1976, and which is contained in IMO publication number 782 83.16.E, and the Code for Existing Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships delivered before December 31, 1976, and which is contained in IMO publication number 788 76.11.E. The Solid Bulk Code is the International Code of Safe Practice for Solid Bulk Cargoes, contained in IMO publication number 258 83.18.E. These publications are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London, SE1 7SR, England.

§ 113.26 Transit requirements.

(a) To better assure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Chief, Navigation Division, or his designee.

(b) Such vessels shall have safety towing pendants ready at hand, fore and aft, prior to entering the locks. Such pendants shall be rigged over the side when anchored or moored in Canal waters.

§ 113.27 Cargo requirements.

(a) The loading, handling, inspection, stowage, segregation, maintenance, and certification of dangerous bulk cargoes shall be in compliance with the IMO standards and regulations which are incorporated by reference in § 113.25.

(b) Any special requirements for carrying chemicals or liquefied gases in bulk as stated on a vessel's Certificate of Fitness or Certificate of Compliance shall be complied with.

§ 113.28 Documents.

(a) Vessels subject to this subpart shall have ready for delivery to the Canal boarding officer a loading plan, as described in § 101.10(e) of this subchapter.

(b) Such vessels shall have ready for examination, as prescribed by § 101.10(a), the following certificates:

(1) A valid MARPOL 73/78 Certificate (same as International Oil Pollution Prevention Certificate).

(2) A valid SOLAS Certificate.

(3) A valid Certificate of Fitness or Certificate of Compliance (required for bulk chemical and liquefied gas carriers only.)

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.29 Prohibited cargoes.

(a) Unstable or explosive substances in bulk which are unduly sensitive or so reactive as to be subject to spontaneous reaction are prohibited in Canal waters.

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Chief, Navigation Division, or his designee to carry such cargoes.

(c) Bulk chemcial and liquefied gas carriers are prohibited from carrying in Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Chief, Navigation Division, or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207–0001)

Subpart C—Vessels Carrying Dangerous Packaged Goods

§ 113.41 Application.

This subpart applies to vessels carrying packaged dangerous goods.

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.43 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Cristobal prior to arrival as required in § 101.1 of this subchapter and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the designated anchorage areas as described in §§ 101.8(a) or 101.8(c).

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Chief, Navigation Division, or his designee may be instructed to anchor in one of the explosive anchorage areas described in §§ 101.8(a)(2)(3) and 101.8(c)(2) of this subchapter.

§ 113.44 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the standards set forth in SOLAS and the IMDG pertaining to the construction, maintenance, inspection, certification, and classification of the vessel, its safety equipment including alarms, and its cargo stowage and handling systems, which are hereby incorporated by reference.

(b) SOLAS, which is incorporated by reference in paragraph (a), is the International Convention for the Safety of Life at Sea, 1974, together with the Protocol of 1978 relating thereto. The Convention is set forth in Treaties and Other International Acts Series number 9700 and the Protocol is set forth in number 10009 of the same series. These publications are for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Convention is also contained in IMO publication number 080 75.01.E "International Conference on Safety of Life at Sea, 1974," and the Protocol is contained in IMO publication number 088 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." IMDG is the International Maritime Dangerous Goods Code, which is contained in IMO publication numbers 200 81.10.E, 236 81.17.E, and 238 82.21.E.

(For current version of the IMDG, all three pubications must be consulted.) The IMO publications referred to in this paragraph are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England.

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than 5 tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Chief, Navigation Division, or his designee, in which case, additional operating restrictions may be imposed.

§ 113.46 Cargo requirements.

The loading, packing, labeling, marking, handling, stowage, segregation, maintenance, inspection, and certification of packaged dangerous goods shall be in compliance with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements.

§ 113.47 Documents.

Vessels subject to this subpart shall have ready for delivery to the Commission boarding officer a dangerous cargo manifest, as described in § 101.10(d) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.48 Prohibited cargoes.

Packaged dangerous goods which are not carried in compliance with the IMDG Code are prohibited in Canal waters.

§ 113.49 Class 1, Explosives.

(a) Vessels carrying explosives shall comply with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8(a) (2) (3) and 101.8(c)(2), respectively, may be used upon approval of the Chief, Navigation Division, or his designee.

(c) The Chief, Navigation Division, or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and piers within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

§ 113.50 Class 7, Radioactive Substances.

(a) Vessels carrying radioactive substances shall comply with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Any cask or container containing radioactive substances, together with any attachments thereto, may not weigh more than 150 tons.

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters, in order that approval may be given by the Chief, Navigation Division, or his designee to carry such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide proof of financial responsibility.

(e) Prior approval and notification is not necessary for the following substances:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 of the IMDG Code.

(2) Radioactive substances carried in limited quantities as specified in Class 7 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

7. In § 123.4(a), the items GOLF and HOTEL are revised to read as follows:

§ 123.4 Advance information required by radio from vessels approaching the Panama Canal.

* * * * *

(a) * * *

GOLF—If the vessel is carrying any explosives or dangerous cargoes in bulk, state the correct technical name, quantity (in long tons), United Nations number, and the International Maritime Organization class for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the correct technical name, United Nations number, and International Maritime Organization class of the previously carried cargo.

HOTEL—If the vesel is carrying any packaged dangerous goods other than explosives, state the International Maritime Organization class and the total quantity (in long tons) within each class.

* * * * *

8. In § 123.4(a), the INDIA item is amended by removing subitem (5) and by redesignating subitems (6) through (11) as (5) through (10), respectively.

9. The following parenthetical text is added at the end of § 123.4:

* * * * *

(Approval by the Office of Management and Budget under control number 3207–0001)

(22 U.S.C. 3811)

Dated: April 22, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85–11414 Filed 5–9–85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2830-3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: The USEPA announces final approval of several revisions to the Wisconsin State Implementation Plan (SIP) for ozone. These revisions incorporate volatile organic compound (VOC) emission limits for large petroleum dry cleaners into the ozone SIP. The revisions consist of changes to section NR 154.01, Definitions, and Section NR 154.13, Control of Organic Compound Emissions, of the Wisconsin Administrative Code (WAC). These sections are being amended to require control of VOC emissions from large petroleum dry cleaners located in southeastern Wisconsin, as part of Wisconsin's strategy to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. USEPA's action is based on a SIP revision request that was submitted by the Wisconsin Department of Natural Resources (WDNR) on January 23, 1984. A notice of proposed rulemaking on these revisions appeared in the August 17, 1984, Federal Register (49 FR 32866).

EFFECTIVE DATE: This final rulemaking becomes effective on June 10, 1985.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of this SIP revision and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401

M Street, SW., Washington, D.C. 20460

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

Section 172 of the Clean Air Act allows USEPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional reasonably available control technology (RACT) emission limits for various types of VOC sources located in the areas needing the extension.

Wisconsin could not demonstrate attainment of the ozone NAAQS in southeastern Wisconsin by the required date of December 31, 1982, so the State requested, and received, an extension to December 31, 1987. The extension, which was granted on May 6, 1981 (46 FR 25244), obligated the State to develop RACT regulations for those sources addressed by Group III Control Technique Guidelines (CTGs) (RACT III), and to develop RACT regulations for major sources not addressed by a CTG (major non-CTG RACT), for VOC sources in the six-county area of southeastern Wisconsin.

On October 6, 1982, USEPA released a CTG (47 FR 44155) for large dry cleaning facilities that use petroleum solvents, entitled "Control of Organic Compound Emissions from Large Petroleum Dry Cleaners." The submission of RACT III VOC regulations for this source category to USEPA by the State of Wisconsin was required by January 1, 1984. These regulations, identified as section NR 154.13(6)(c) of the Wisconsin Administrative Code (WAC), were enacted in Wisconsin by means of Natural Resources Board Order Number A-12-83, and became effective on December 1, 1983. They were submitted to USEPA as SIP revisions on January 23, 1984.

Discussion of Rules

In today's final rulemaking action, USEPA is approving several revisions to the Wisconsin SIP consisting of changes to section NR 154.01, Definitions, and section NR 154.13, Control of Organic Compound Emissions, of the WAC. The revisions amend these rules to require control of VOC emissions from large petroleum dry cleaners, a source category covered by a Group III CTG. The revisions to NR 154.01 create two new definitions and clarify one existing definition. The revisions to NR 154.13 establish organic compound emission limits and work practices representing RACT for those large, existing petroleum liquid solvent dry cleaning facilities that are located in a six-county area of southeastern Wisconsin.

There are three revisions to NR 154.01, Definitions. The first revision adds a definition for "cartridge filter" to NR 154.01 (38m). The second revision adds a definition for "solvent recovery dryer" to NR 154.01 (178m). The third revision amends an existing definition for "dry cleaning facility", identified at NR 154.01(63), by clarifying that this definition applies to facilities that clean leather as well as fabrics. All three of these definitions are consistent with the CTG, and, therefore, USEPA approves these revisions.

The revisions to NR 154.13, Control of Organic Compound Emissions, are applicable to dry cleaning facilities located in southeastern Wisconsin that emit more than 100 tons per year of VOC [NR 154.13(6)(c)]. The requirements of the regulations limit VOC emissions, provide a timetable for repairing solvent leaks, and establish compliance schedules under NR 154.13(12) of the WAC. These revisions are consistent with the CTG, and, therefore, USEPA approves these revisions.

These revisions do not include any testing and monitoring requirements, because the State places these methods in an operations handbook instead of the WAC. In the August 17, 1984, notice of proposed rulemaking (49 FR 32866), USEPA proposed to approve Wisconsin's dry cleaning regulations (RACT III) provided that the WDNR included the test method specified in the CTG in its operations handbook, and submitted this test method to USEPA as a SIP revision prior to final rulemaking. On November 2, 1984, the WDNR submitted the "Air Management Operations Handbook" to USEPA as a SIP revision. USEPA reviewed the handbook and determined that all of the testing and monitoring requirements contained in the CTG were not included in the handbook. USEPA requested that the WDNR revise the Operations Handbook and resubmit it to USEPA, which the WDNR did in a letter dated January 25, 1985. Wisconsin has thus satisfied the conditions set forth in the August 17, 1984, notice of proposed rulemaking. USEPA will act on the Operations Handbook in a separate notice.

Conclusion

USEPA has reviewed the revisions to sections NR 154.01 and NR 154.13 of the WAC, and finds that they are consistent with the guidance provided in the CTG. The complete text of these revisions can be found in the WAC. During the 30-day public comment period, USEPA received no comments on this action. Therefore, USEPA is taking final action to approve these revisions to the Wisconsin SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Carbon monoxide, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: April 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Sections 110, 171 to 178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. §§ 7410, 7501, 7508 and 7601(a)).

2. Section 52.2570 is amended by adding new paragraph (c)(39) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(39) On January 23, 1984, the Wisconsin Department of Natural Resources submitted revisions to sections NR 154.01 and NR 154.13 of the Wisconsin Administrative Code. These revisions incorporate volatile organic compound emission limits for large

existing petroleum dry cleaners located in a six-county area of southeastern Wisconsin into the Wisconsin Ozone SIP [NR 154.13(6)(c)].

* * * * *

[FR Doc. 85-10793 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405 and 447

[BPO-020-F]

Medicare and Medicaid Program; Withholding the Federal Share of Payments to Recover Medicare or Medicaid Overpayments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations facilitate HCFA's recovery of Medicare and Medicaid overpayments. Some institutions or persons that participate (or have participated) in both programs have received a Medicare or Medicaid overpayment which cannot be recovered under that program. Under expanded statutory authority (Section 905 of Pub. L. 96-499 and section 2104 of Pub. L. 97-35), HCFA has authority to withhold the Federal share of Medicaid payments in order to recover Medicare overpayments and to withhold Medicare payments to recover Medicaid overpayments.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Dan Metzman, 301-594-8193.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislation

On February 10, 1983, we published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) with a 60 day comment period which proposed revisions to the regulations to implement sections 905 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) and 2104 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

1. Withholding provisions of Pub. L. 96-499 (Withholding the Federal share of Medicaid payments to recover Medicare overpayments).

Section 905 of Pub. L. 96-499 amends sections 1902(a)(13), 1903(a)(1), 1903(j), and 1903(n) and adds a new section 1914 to the Social Security Act (the Act). This legislation broadens our authority to withhold the Federal share of Medicaid payments to States to recover Medicare overpayments to institutions or persons participating in both programs, and to withhold Federal payments when we are unable to collect the information necessary to determine the amount of Medicare overpayments made.

Under new section 1914, Federal Financial Participation (FFP) in State Medicaid expenditures may be withheld to recover Medicare overpayments to the following entities that participate in Medicaid:

(a) An institution that has a Medicare provider agreement in effect (under section 1866 of the Act), but continues to participate in the Medicare program at such a minimal level as to prevent recovery of the overpayment;

(b) An institution that no longer has a Medicare provider agreement in effect (i.e., the provider has withdrawn or been terminated from participation in the program or has refused to supply information needed to determine whether an overpayment has occurred); and

(c) A Medicaid provider that has previously accepted assignment under Medicare, but has submitted no claims or has submitted claims less than the overpayment amount.

The new provisions broaden the previous withholding authority by extending it beyond overpayments to institutions, to include overpayments to physicians and other suppliers of services, and by allowing the Secretary to require reduction of the State's payment to the overpaid institution or person. The statute also provides that, if the State reduces its payment to the institution or a person under an order from HCFA, the institution or person may not recover that amount from the State.

2. Withholding provisions of Pub. L. 97-35 (Withholding Medicare Payments to Recover Medicaid Overpayments).

Section 2104 of Pub. L. 97-35, adds section 1885 to the Act. This legislation provides new authority for us to withhold Medicare payments under both Parts A and B to recover overpayments made under Medicaid.

We may withhold Medicare payments to any institution that has in effect a provider agreement under section 1866 of the Act, and to any physician or supplier who has accepted assignment under section 1842(b)(3)(B)(ii) of the Act.

Withholding may occur when—(1) the institution or person described above has or previously had in effect an agreement with a State agency to furnish Medicaid services; and (2) the Medicaid agency has been unable to recover overpayments made to the institution or person or to collect the information necessary to enable it to determine the amount (if any) of overpayments made to that institution or person.

Finally, the State agency may not refer Medicaid overpayments to HCFA for collection from Medicare funds in order to circumvent the reporting and collection requirements of any other Federal regulation.

II. Response to Public Comments

In response to our request for comments on the NPRM published February 10, 1983, we received a total of 10 comments from 9 State agencies and one Medicare carrier. The comments and our responses are as follows:

A. Withholding the Federal Share of Medicaid Payments to Recover Medicare Overpayments

1. *Comment*: Two State agencies expressed the view that States should not be required to participate in overpayment recovery for the Medicare program. One commenter was concerned that the State could lose FFP for the State Medicaid program in the effort to recover Federal Medicare overpayments, while having no control over the Medicare program.

Reponse: Withholding of the Federal share of Medicaid payments to States in order to recover Medicare overpayments is authorized by section 1914 of the Act (enacted by section 905 of Pub. L. 96-499). These regulations merely implement the law. We intend to withhold only the Federal portion of Medicaid payments to a provider. States need only pay the State portion of a Medicaid claim from the provider. Thus, States will not lose funds. We believe that the 60-day advance notice of withholding action from HCFA, specified in § 447.30 (e) and (g), provides adequate time to allow States to revise their payment procedures. Thus, only the overpaid provider, not the State, will lose Federal funds until the Medicare overpayment is recovered.

2. *Comment:* One commenter asked that we clarity the term,"any quarter," which appears in section 1914 of the Act in regard to FFP withholding. Section 1914 of the Act provides that the Secretary may adjust FFP to a State for expenditures for medical care or services furnished in any quarter.

Response: We will apply the withholding provisions of section 1914 of the Act ot Medicaid payments otherwise due a provider for any quarter in which a Medicare overpayment is determined to be uncollectible through the Medicare program. We have specified in § 447.30(g) that withholding will become

effective no less than 60 days after the day on which the agency received notice of withholding.

3. *Comment:* One State agency commented that its State Human Resources code provides that State funds may not be used to pay a provider unless matching Federal funds are also available. Whether the State can continue to pay the overpaid Medicare provider solely from State funds, then, raises a legal issue for the State.

Response: Section 1914 of the Act is not intended to affect State payment of the State share of the otherwise allowable Medicaid payment to provider. These regulations merely require that the Medicaid agency withhold the Federal share of a Medicaid payment to a provider which has outstanding Medicare overpayments. It may be necessary for some States to amend State law in order for them to comply with Section 1914 and these regulations.

If we issue an order to a Medicaid agency to reduce payment to an overpaid provider, under the provisions of § 447.30(d), and authorized by section 1914 of the Act, the agency must not include the Federal share in its payment to that provider. We have added paragraph (3) to § 447.30(d) to clarify that we may withhold FFP from any State that does not comply with the order.

4. *Comment:* One State agency believes that the Medicare appeals process should be exhausted before we withold FFP or issue order to a State to reduce payment. Another commenter suggested that the State agency be authorized to grant a provider an extended payment schedule when the agency knows that a provider has insufficient resources to withstand the impact of withholding.

Response: Section 1914(c) of the Act requires only that no withholding of FFP from a State agency or reduction (withholding) of the Federal share of Medicaid payments to an institution or person be made until the State agency and the institution or person are given notice of the action not less than 60 days before it becomes effective. Current regulations at 42 CFR 405.1803(b) already require that we take collection action even though a provider is appealing the Medicare overpayment determination. However, our present Medicare overpayment collection procedures offer providers an opportunity to request an extended payment schedule. A provider has the obligation to request an extended repayment schedule with the fiscal intermediary or carrier when it has insufficient funds to repay an overpayment in a lump sum. We would only withhold the Federal share where a provider has not attempted to repay or has not made satisfactory efforts to meet its obligation to the Medicare program. Therefore, we do not believe that State agencies should be authorized to grant an extended payment schedule.

5. *Comment:* One commenter objected to the Federal government withholding FFP before the State has an opportunity to recover the Medicaid overpayment, when a provider has both Medicare and Medicaid overpayments.

Reponse: Because each overpayment case is unique, the HCFA Regional Offices will have discretion in determining whether to withhold FFP to recover Medicare overpayments. Shortly after these regulations are published, we will issue manual instructions to guide the Regional Offices in making their decisions. We expect those decisions to take into consideration the States' concerns, while protecting the Federal government against financial loss.

6. *Comment:* One State agency commented that its State payment system is not designed to split payments to Medicaid providers into Federal and State shares.

Response: The Federal portion of Medicaid payments is based on the Federal Medical Assistance Percentage, which is determined for each State by the formula described in section 1905(b) of the Act. Because the Federal portion of Medicaid payments is a fixed percentage for each State, it is a simple mathematical calculation to separate the State and Federal portions. This could be done manually, if the State system cannot be programmed to accommodate this change. We expect, however, that there will be a minimal number of cases referred for withholding action, and a manual calculation, if necessary, will not be burdensome.

7. *Comment:* Two State agencies objected to our use of FFP withholding in the grant award process. They suggest, instead, that the State stop the payment which would otherwise be due the provider, and then write a check to the Federal government for the amount withheld from the provider.

Response: While the suggested method appears simple, we believe that section 1914 of the Act only gives us the authority to recover Medicare overpayments by withholding the Federal share of payments to the provider. We do not have discretion under the Act to implement alternative methods.

8. *Comment:* Two State agencies recommended that the potentially higher administrative and legal costs associated with these regulations be reimbursed entirely by the Federal government.

Response: Section 1903(a)(7) of the Act provides that administrative costs under Medicaid are reimbursed at the 50 percent level. We do not have authority to raise this level to 100 percent.

9. *Comment:* One State agency asked whether it would need to place a lien on Medicaid capitation payments to contracting Health Maintenance Organizations (HMOs) which have been overpaid by Medicare. Another commenter asked how withholding would occur when an HMO has a fee-for-service billing arrangement for some beneficiaries and capitation arrangement for others. A third commenter asked that we clarify how the withholding procedure would operate when a State uses a claims payment contractor to pay HMOs. One State agency asked whether the withholding of FFP would apply to all types of Medicaid payments, such as cost settlement amounts, capitation payments, and Medicare coinsurance and deductibles.

Response: Regardless of the method used by the provider to seek payment or the method used by the State to pay providers, including HMOs, the State is required to withhold the Federal portion of Medicaid payments attributable to a particular provider to recover a Medicare overpayment to that provider. Only the Federal portion of Medicaid payments is withheld because the intent of these regulations is to recover Federal funds to which the overpaid provider is not entitled. We do not require that the State withhold the State portion of Medicaid payments.

10. *Comment:* One State agency indicated that the proposed regulations do not appear to give States the right to request a reconsideration of our decision to withhold FFP, which is provided for in section 1116(d) of the Act and regulations at 45 CFR 201.14.

Response: We agree with this comment. To make these regulations consistent with section 1116(d) of the Act, we are revising § 447.30(e) by adding a subparagraph (5) to specify that a State may appeal any disallowance of FFP resulting from the withholding decision to the Grant Appeals Board, in accordance with 45 CFR Part 16. However, the notice of withholding sent to a State which orders it to reduce (withhold) the Federal share of Medicaid payments to a provider is not appealable.

11. *Comment:* Three State agencies anticipated that some overpaid providers may take legal action against States to prevent them from withholding

the Federal portion of the Medicaid payment. One commenter asked that, to protect the State in case of litigation, the Secretary of Health and Human Services (HHS) provide a letter to the State that orders the State to reduce payment to a provider. Two others suggested that, in the event that any legal action occurs, we should terminate the withholding action so that the State will not be penalized.

Response: Regional Office and State Medicaid Manual instructions will provide that when we require a State to reduce the Federal share of a Medicaid payment to an overpaid provider, the order to the State will be in writing, and can be used as verification that we have required the reduction in payment. Should legal action occur, we would, of course, be bound by the terms of an order by a court of competent jurisdiction.

12. *Comment:* One State agency suggested that States be permitted to terminate withholding of payments from a provider when the full overpayment has been collected, rather than wait for a notice of termination from us.

Response: We agree with this comment. Section 447.30(d) is being revised to specify that the order to reduce payment to the provider will remain in effect either until the State determines that the overpayment has been completely recovered or until we terminate the order.

13. *Comment:* One commenter objected to the provision in § 447.30(k) which specifies that if FFP ultimately determined to be in excess of the Medicare overpayment is withheld, HCFA will adjust FFP to restore the excess funds withheld. The commenter, we believe, objects to the use of FFP adjustment to restore excess funds withheld.

Response: We agree with this comment, and are revising § 447.30(k) to delete the reference to adjustment of FFP. Should the amount withheld be in excess of the Medicare overpayment, the intermediary or carrier will restore the excess funds withheld to the provider. Revisions to the Medicare and Medicaid manuals will provide further instructions.

B. Withholding Medicare Payments to Recover Medicaid Overpayments

1. *Comment:* One commenter pointed out that the regulations do not provide for the assessment of interest or penalties by the State on Medicaid overpayments.

Response: Before a State requests that we take Medicare withholding action under these final regulations, we will have already recovered the Federal share of any Medicaid overpayment from the State under existing Medicaid overpayment recovery policy. Therefore, only the State share of the outstanding Medicaid overpayment remains to be recovered through the withholding of Medicare payments under these regulations. However, these regulations do not preclude a State from including an interest or penalty assessment in the amount being reported to us for collection through Medicare.

We have clarified § 405.375(a) to indicate that the amount to be withheld is determined by the State. Therefore, if the State chooses to assess interest or penalties, this should be included in the amount reported to us for collection. Additionally, we plan to study the issue of interest assessment to ensure sound financial management practices.

2. *Comment:* One State agency asked why a 30 day notice to providers is required for an intended Medicare withholding action.

Response: Section 1885 requires that the State provide adequate notice of a Medicaid overpayment determination and an opportunity to appeal that determination before we begin Medicare withholding action. We believe that 30 days notice to a provider is adequate.

3. *Comment:* One State agency suggested that we modify the text of § 447.31(b)(1)(C) to specify that, while the Medicaid overpayment determination is subject to agency appeal procedures, we may withhold Medicare payments to recover the overpayment during the period in which the provider is appealing the agency's overpayment determination.

Response: We agree with this comment, and have revised the text of § 447.31(b)(1)(c) to specify that HCFA may withhold Medicare payments while an appeal by a provider is in progress.

4. *Comment:* Two State agencies believe that too much documentation is required of States; some documentation seems unnecessary (names and addresses of provider's officials and owners; the quarter in which the overpayment is reported; and a copy of the provider agreement).

Response: Section 1885 requires that HCFA take Medicare withholding action only when a State has provided adequate notice of an overpayment determination and provided an opportunity for the provider to appeal that determination. The documentation requested by HCFA is, we believe, the minimum necessary for a State to demonstrate that it has met those requirements.

5. *Comment:* One commenter asked that we clarify who has the responsibility for establishing procedures for the restoration of any withheld amounts that are ultimately determined to be in excess of Medicaid overpayments.

Response: The Medicaid agency must establish procedures satisfactory to us to assure the return to the provider of withheld amounts that are ultimately determined to be in excess of overpayments. This is specified in § 447.31(f). Revisions to the Medicare and Medicaid Manuals will provide further instructions.

C. Comments of a General Nature Applying to Provisions in Both Sections A & B

1. *Comment:* One carrier asked numerous technical operational questions about how the details of the withholding process under both sections A & B would operate.

Response: We will address questions such as which forms are to be used for specific reporting purposes, how forms are to be revised or filled out, and similar technical issues in Medicare and Medicaid manual issuances. We intend to issue these manual revisions shortly after publication of these final regulations.

2. *Comment:* One State agency suggested that we promote the use of a memorandum of understanding between State Medicaid agencies and HCFA (or its contractors administering the Medicare program).

Response: We do not believe that a memorandum of understanding is necessary. The Medicare and Medicaid manual issuances, referred to above, will specify not only the operating procedures, but also the specific responsibilities of each component.

3. *Comment:* Two State agencies suggested that recovery of overpayments through withholding be expanded to include all Federal health programs.

Response: While there may be merit in this proposal, the legislation upon which these regulations are based applies specifically to Medicare and Medicaid. Thus, this legislation does not grant us authority to expand withholding action to other Federal health programs.

III. Technical Changes

We have modified the wording of § 447.30 where appropriate to clarify that under these regulations we will first attempt to recover Medicare overpayments by ordering States to reduce (withhold) the Federal share of Medicaid payments to the providers. If a State fails to comply with such an order and makes full payment to the provider,

we will withhold FFP from the State for the claimed expenditure. This change also eliminates the inconsistency between the title of § 447.30 and the text of that section in the NPRM.

We are also removing paragraph (2) of § 447.30(k) in the NPRM because the intermediary or carrier, not the Medicaid State agency, will be responsible for restoring any excess funds withheld under § 447.30. Revisions to the Medicare and Medicaid manuals will provide further instructions. We have also revised the word order of § 447.31(a) for clarity.

Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

A. Executive Order 12291

The final rules achieve the objectives set forth in Pub. L. 96–499 and 97–35 by amending Medicaid and Medicare regulations to provide for offsets against payments in one program to recover amounts due to the other. We estimate that the use of the withholding procedure will reduce costs for the Federal government because overpayments will be recovered more rapidly, and the need for litigation to recover the overpayments will often be eliminated. We also believe the administrative cost to the Federal Government will be minimal.

Therefore, we have determined that these final rules will not result in an annual economic impact that meets any of the threshold criteria of the Executive Order.

B. Regulatory Flexibility Act

As explained above, the final rule implements legislation which expands HCFA's authority to withhold the Federal share of Medicaid payments to States for provider services, and to recover Medicare overpayments and provides new authority to recover Medicaid overpayments by withholding Medicare payments. The reduction in payment may have an effect on some small health care providers who have been overpaid. While that effect may be adverse, it is appropriate for the Federal Government to recover money to which the overpaid provider is not entitled. Moreover the effect cannot be attributed to these regulations, but to legislative requirements in section 905 of Pub. L. 96–499 and section 2104 of Pub. L. 97–35. However, we believe that the effect is not significant. Accordingly, a regulatory flexibility analysis will not be required.

Therefore, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant impact on a substantial number of small entities.

Information Collection Requirements

Sections 447.30(e)(4), 447.31 (b), (c) and (d) of these regulations contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the NPRM, published February 10, 1983, to the Office of Management and Budget (OMB) for its review of these information collection requirements. OMB has approved the following information collection requirements: (a) Section 447.31(b), (c) and (d), control number 0938–0287; and (b) Section 447.30(e)(4), control number 0938–0067.

In accordance with OMB's regulations for controlling paperwork burdens on the public, 5 CFR Part 1320, we are displaying control numbers assigned by OMB to collections of information contained in our regulations. These control numbers are displayed in 42 CFR 400.310. We are, therefore, revising § 400.310 by adding control numbers 0938–0287 assigned to § 447.31(b), (c) and (d), and 0938–0067 assigned to § 447.30(e)(4).

List of Subjects

42 CFR Part 400

Definitions, OMB Control Numbers.

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, Reimbursement, Rural areas.

42 CFR Chapter IV is amended as set forth below.

PART 400—INTRODUCTION; DEFINITIONS

A. Part 400, Subpart C is amended as set forth below:

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control number
403.232, 403.239–403.258	0938–0264
405.474(b)(2)(iii)	[illegible]
405.476(b), 405.476(d), 405.1042(c), 405.1627, 405.1629	[illegible]
405.481(g) (1) and (3)	0938–0285
416.47(b)	0938–0266
418.22, 418.26, 418.56, 418.58, 418.70, 418.74, 418.100	0938–0302
413.55	0938–0295
434.6–434.20, 434.23–434.27, 434.30, 434.32, 434.36, 434.50, 434.53, 434.55	0938–0325
441.302	0938–0268
441.303	0938–0272
447.31 (b), (c), (d)	0938–0287
447.30(e)(4)	0938–0067
488.56(e), 488.60(a), 488.64(a), 405.262(c)	0938–0267

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405, Subpart C is amended as set forth below:

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh and 1395pp), and 31 U.S.C. 3711.

2. The Table of Contents is amended by adding to Subpart C a new § 405.375 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

3. Section 405.301 is amended by adding three sentences at the end as follows:

§ 405.301 Scope of subpart.

* * * * *

Section 405.374 relates to the collection and compromise of claims for overpayments. Section 405.375 relates to the withholding of Medicare payments to recover Medicaid overpayments. Section 405.376 relates to the charging and payment of interest on overpayments and underpayments to providers and suppliers, and physicians and other practitioners.

4. A new § 405.375 is added to read as follows:

§ 405.375 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* This section implements section 1885 of the Act, which provides for withholding Medicare payments to certain Medicaid providers specified in paragraph (b) of this section that have not arranged to repay Medicaid overpayments as determined by the Medicaid agency or have failed to provide information necessary to determine the amount of overpayment.

(b) *When withholding may be used.* HCFA may withhold Medicare payments to recover Medicaid overpayments that a Medicaid agency has been unable to collect, if—

(1) The Medicaid agency has followed the procedure specified in § 447.31 of this chapter, and

(2) The institution or person is one described in paragraphs (c)(1) or (c)(2) of this section.

(c) *Institutions or persons affected*—(1) HCFA may withhold Medicare payments to recover Medicaid overpayments with respect to any of the following entities that has or had in effect, an agreement with a Medicaid agency to furnish services under an approved Medicaid State plan:

(i) An institutional provider that has in effect an agreement under section 1866 of the Act.

(ii) A physician or supplier who has accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act.

(2) HCFA may withhold Medicare payment from an institution or person specified in paragraph (c)(1) of this section that—

(i) Has not made arrangements satisfactory to the Medicaid agency to repay; or

(ii) Has not provided information to the Medicaid agency necessary to enable the agency to determine the existence or amount of Medicaid overpayment.

(d) *Amount to be withheld.*—(1) HCFA will contact the appropriate intermediary or carrier to determine the amount of Medicare payment to which the institution or person is entitled.

(2) HCFA may require the intermediary or carrier to withhold Medicare payments to the institution or person by the lesser of the following amounts;

(i) The amount of the Medicare payments to which the institution or person would otherwise be entitled.

(ii) The total Medicaid overpayment to the institution or person.

(e) *Notice of withholding.*—If HCFA intends to withhold payments under this section. HCFA will notify by certified mail, return receipt requested, the institution or person and the intermediary or carrier responsible for making Medicare payment to the institution or person of the intention to withhold Medicare payments. The notice will include:

(1) Identification of the institution or person; and

(2) The amount of Medicaid overpayment to be withheld from payments to which the institution or person would otherwise be entitled under Medicare.

(f) *Termination of withholding.* HCFA will terminate the withholding if—

(1) The Medicaid overpayment is completely recovered;

(2) The institution or person makes an agreement satisfactory to the Medicaid agency to repay the overpayment; or

(3) The Medicaid agency determines that there is no overpayment based on newly acquired evidence or a subsequent audit.

(g) *Disposition of funds withheld.* HCFA will return to the Medicaid agency amounts withheld under this section to offset the agency's Medicaid overpayment.

PART 447—PAYMENTS FOR SERVICES

The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

C. Part 447 is amended as set forth below:

1. The Table of Contents for Subpart A is amended by revising the title of § 447.30 and adding a new § 447.31 as follows:

Subpart A—Payments, General Provisions

* * * * *

* * * * *

2. Section 447.30 is retitled and revised to read as follows:

§ 447.30 Withholding the Federal share of payments to Medicaid providers to recover Medicare overpayments.

(a) *Basis and purpose.* This section implements section 1914 of the Act, which provides for withholding the Federal share of Medicaid payments to a provider if the provider has not arranged to repay Medicare overpayments or has failed to provide information to determine the amount of the overpayments. The intent of the statute and regulations is to facilitate the recovery of Medicare overpayments. The provision enables recovery of overpayments when institutions have reduced participation in Medicare or when physicians and suppliers have submitted few or no claims under Medicare, thus not receiving enough in Medicare reimbursement to permit offset of the overpayment.

(b) *When withholding occurs.* The Federal share of Medicaid payments may be withheld from any provider specified in paragraph (c) of this section to recover Medicare overpayments that HCFA has been unable to collect if the provider participates in Medicaid and—

(1) The provider has not made arrangements satisfactory to HCFA to repay the Medicare overpayment; or

(2) HCFA has been unable to collect information from the provider to determine the existence or amount of Medicare overpayment.

(c) The Federal share of Medicaid payments may be withheld with respect to the following providers:

(1) An institutional provider that has or previously had in effect a Medicare provider agreement under section 1866 of the Act; and

(2) A Medicaid provider who has previously accepted Medicare payment on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act; and during the 12 month period preceding the quarter in which the Federal share is to be withheld for a Medicare overpayment, submitted no claims under Medicare or submitted claims which total less than the amount of overpayment.

(d) *Order to reduce State payment.*

(1) HCFA may, at its discretion, issue an order to the Medicaid agency of any

State that is using the provider's services, to reduce its payment to the provider by the amount specified in paragraph (f) of this section.

(2) The order to reduce payment to the provider will remain in effect until—

(i) The Medicaid agency determines that the overpayment has been completely recovered; or

(ii) HCFA terminates the order.

(3) HCFA may withhold FFP from any State that does not comply with the order specified in paragraph (d)(1) of this section to reduce payment to the provider and claims FFP for the expenditure on its quarterly expenditure report.

(e) *Notice of withholding.* (1) Before the Federal share of payments may be withheld under this section, HCFA will notify the provider and the Medicaid agency of each State that HCFA believes may use the overpaid provider's services under Medicaid with FFP.

(2) The notice will include the instruction to reduce State payments, as provided under paragraph (d) of this section.

(3) HCFA will send the notice referred to in paragraph (e)(1) by certified mail, return receipt requested.

(4) Each Medicaid agency must identify the amount of payment due the provider under Medicaid and give that information to HCFA in the next quarterly expenditure report.

(5) The Medicaid agency may appeal any disallowance of FFP resulting from the withholding decision to the Grant Appeals Board, in accordance with 45 CFR Part 16.

(f) Amount to be withheld. HCFA may require the Medicaid agency to reduce the Federal share of its payment to the provider by the lesser of the following amounts.

(1) The Federal matching share of payments to the provider, or

(2) The total Medicare overpayment to the provider;

(g) *Effective date of withholding.* Withholding of payment will become effective no less than 60 days after the day on which the agency receives notice of withholding.

(h) *Duration of withholding.* No Federal funds are available in expenditures for services that are furnished by a provider specified in paragraph (c) of this section from the date on which the withholding becomes effective until the termination of withholding under paragraph (i) of this section.

(i) *Termination of withholding.*

(1) HCFA will terminate the order to reduce State payment if it determines that any of the following has occurred:

(i) The Medicare overpayment is completely recovered:

(ii) The institution or person makes an agreement satisfactory to HCFA to repay the overpayment; or

(iii) HCFA determines that there is no overpayment based on newly acquired evidence or a subsequent audit.

(2) HCFA will notify each State that previously received a notice ordering the withholding that the withholding has been terminated.

(j) *Procedures for restoring excess withholding.* If an amount ultimately determined to be in excess of the Medicare overpayment is withheld, HCFA will restore any excess funds withheld.

(k) *Recovery of funds from Medicaid agency.* A provider is not entitled to recover from the Medicaid agency the amount of payment withheld by the agency in accordance with a HCFA order issued under paragraph (d) of this section.

3. A new § 447.31 is added to read as follows:

§ 447.31 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* Section 1885 of the Act provides authority for HCFA to withhold Medicare payments to a Medicaid provider in order to recover Medicaid overpayments to the provider. Section 405.375 of this chapter sets forth the Medicare rules implementing section 1885, and specifies under what circumstances withholding will occur and the providers that are subject to withholding. This section establishes the procedures that the Medicaid agency must follow when requesting that HCFA withhold Medicare payments.

(b) *Agency notice to providers.*—(1) Before the agency requests recovery of a Medicaid overpayment through Medicare, the agency must send either or both of the following notices, in addition to that required under paragraph (b)(2) of this section, to the provider.

(i) Notice that—

(A) There has been an overpayment;

(B) Repayment is required; and

(C) The overpayment determination is subject to agency appeal procedures, but we may withhold Medicare payments while an appeal is in progress.

(ii) Notice that—

(A) Information is needed to determine the amount of overpayment if any; and

(B) The provider has at least 30 days in which to supply the information to the agency.

(2) Notice that, 30 days or later from the date of the notice, the agency intends to refer the case to HCFA for withholding of Medicare payments.

(3) The agency must send all notices to providers by certified mail, return receipt requested.

(c) *Documentation to be submitted to HCFA.* The agency must submit the following information or documentation to HCFA (unless otherwise specified) with the request for withholding of Medicare payments.

(1) A statement of the reason that withholding is requested.

(2) The amount of overpayment, type of overpayment, date the overpayment was determined, and the closing date of the pertinent cost reporting period (if applicable).

(3) The quarter in which the overpayment was reported on the quarterly expenditure report (Form HCFA 64).

(4) As needed, and upon request from HCFA, the names and addresses of the provider's officers and owners for each period that there is an outstanding overpayment.

(5) A statement of assurance that the State agency has met the notice requirements under paragraph (b) of this section.

(6) As needed, and upon request for HCFA, copies of notices (under paragraph (b) of this section), and reports of contact or attempted contact with the provider concerning the overpayment, including any reduction or suspension of Medicaid payments made with respect to that overpayment.

(7) A copy of the provider's agreement with the agency under § 431.107 of this chapter.

(d) *Notification to terminate withholding.*—(1) If an agency has requested withholding under this section, it must notify HCFA if any of the following occurs:

(i) The Medicaid provider makes an agreement satisfactory to the agency to repay the overpayment;

(ii) The Medicaid overpayment is completely recovered; or

(iii) The agency determines that there is no overpayment, based on newly acquired evidence or subsequent audit.

(2) Upon receipt of notification from the State agency, HCFA will terminate withholding.

(e) *Accounting for returned overpayment.* The agency must treat as a recovered overpayment the amounts received from HCFA to offset Medicaid overpayments.

(f) *Procedures for restoring excess withholding.* The agency must establish procedures satisfactory to HCFA to assure the return to the provider of amounts withheld under this section

that are ultimately determined to be in excess of overpayments. Those procedures are subject to HCFA review.

(Catalog of Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 3, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: November 15, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-11005 Filed 5-9-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6603

[A-19339]

Arizona; Withdrawal of Public Land for Border Patrol Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 11 acres of public land from surface entry and mining for 20 years to be used as an Immigration and Naturalization Service border patrol station. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mildred Kozlow, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for the Immigration and Naturalization Service for use as a border patrol station:

Gila and Salt River Meridian

T. 13 S., R. 5 W.,

Sec. 24, SW¼SE¼SW¼,

S½SE¼SW¼SW¼ lying east of State Highway 86.

The area described contains approximately 11 acres in Pima County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Robert N. Broadbent,

Assistant Secretary of the Interior.

May 7, 1985.

[FR Doc. 85-11408 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6659]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, SW., Donohoe Building—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management, Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance; Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Oklahoma, Okmulgee	Unincorporated areas	400492	Apr. 1, 1985, Emerg	Feb. 7, 1978.
New York, Cayuga	Locke, town of	[illegible]	Apr. 4, 1975, Emerg.; Nov. 4, 1983, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein.	June 11, 1976 and Nov. 4, [illegible].
Do	Niles, town of	360119B	July 21, 1975, Emerg.; Feb. 8, 1984, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein.	Aug. 9, 1974, June 18, 1976 and Feb. 6, 1984.
Do	Sempronius, town of	360123B	Jan. 7, 1976, Emerg.; Nov. 4, 1983, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein	May 31, 1974, May 26 and Nov. 4, 1983.
North Carolina, Dare	Kitty Hawk, town of [1]	370439	Apr. 9, 1971, Emerg.; Oct. 6, 1978, Reg	
California, Lake	Clearlake, city of [2]	060714-New	Feb. 19, 1971, Emerg.; Oct. 17, 1978, Reg	
Georgia, Heard	Unincorporated areas	130105	Apr. 11, 1985, Emerg	Apr. 9, 1976.
New Jersey, Sussex	Sandyston, township of	340455a	Apr. 11, 1985, Emerg	Oct. 21, 1977
Tennessee, Hickman	Unincorporated areas	470091A	do	Dec. 22, 1978.
Oklahoma, Grant	Pond Creek, city of	400433	Apr. 15, 1985, Emerg	Nov. 12, 1976.
Alabama, Baldwin	Orange Beach, town of [3]	015011-New	Apr. 30, 1971, Emerg.; Jan. 12, 1973, Reg	
Illinois, Grundy	Gardner, village of	170261B	Apr. 8, 1985, Emerg.; Apr. 8, 1985, Reg	Sept. 12, 1980 and Feb. 1 [illegible].
Texas, Montgomery	Patton Village, city of	[illegible]	Apr. 15, 1985, Emerg.; Apr. 15, 1985, Reg	Aug. 13, 1976 and Aug. 1, [illegible].
Pennsylvania, Chester	West Caln, township of	421497B	May 19, 1976, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.; Apr. 10, 1985, Rein.	Sept. 6, 1974, Aug. 6 1976 and Jan. 17, 1985
Texas, Hutchinson	Borger, city of	480374A	Aug. 1, 1975, Emerg.; Apr. 15, 1985, Withdrawn	June 28, 1974 and Apr. 16, 1976.
Iowa, Guthrie	Bagley, city of	190700	Apr. 18, 1985, Emerg	Aug. 13, 1976.
Kentucky, Lawrence	Unincorporated area	210258A	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Apr. 17, 1984.
Nebraska, Lancaster	Raymond, village of	310138B	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Oct. 18, 1974, Dec. 12 1975 and Aug. 3, 1981
Colorado, Eagle	Red Cliff, town of	080260A	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Sept. 19, 1975 and June 4, 1980.
Louisiana, Natchitoches Parish	Provencal, village of	220132A	June 27, 1975, Emerg.; Apr. 15, 1985, Withdrawn	May 24, 1974.
Georgia, Dawson	Unincorporated areas	130304	Apr. 29, 1985, Emerg	June 18, 1976
Pennsylvania, Lycoming	Mifflin, township of	422590	Sept. 15, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.; Apr. 29, 1985, Rein.	Dec. 13, 1974.

[1] The Town of Kitty Hawk, (Dare County) North Carolina, is a new community eligible February 22, 1985. Was formerly participating as an unincorporated area of Dare County. The Town has adopted by reference the County's Flood Insurance Study and maps for flood insurance and floodplain management purposes.

[2] The City of Clearlake, (Lake County) California, is a new community eligible February 7, 1985. Was formerly participating as an unincorporated area of Lake County. The Town has adopted by reference the County's Flood Insurance Study and map for flood insurance and floodplain management purposes.

[3] The Town of Orange Beach, (Baldwin County) Alabama, is a new community eligible April 11, 1985. Was formerly participating as an unincorporated area of Baldwin County. The Town has adoped by reference the County's Flood Insurance Study and maps for flood insurance and floodplain management purposes.

Code for reading 4th column: Emerg —Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
		Region I		
Maine, Cumberland	South Portland, city of	230053D	April 17, 1985, suspension withdrawn	Feb. 22, 1974, Sept. 3, 1976, July 6, 1979 and Aug. 17, 1981.
Massachusetts, Barnstable	Chatham, city of	250004C	do	May 31, 1974, Feb. 7, 1978 and Aug. 1, 1980.
		Region II		
New Jersey:				
Morris	Denville, township of	345292B	do	June 25, 1971, July 1, 1974 and Dec. 5, 1975
Middlesex	Monroe, township of	340269B	do	Mar. 8, 1974 and Jan. 7, 1977.
New York:				
Sullivan	Bloomingburg, village of	361473B	do	Nov. 15, 1974 and June 11, 1976.
Westchester	Cortlandt, town of	360906B	do	May 31, 1974 and Aug. 13, 1976.
		Region IV		
Louisiana, LaFourche Parish	Unincorporated areas	225202C	do	May 8, 1971, Jan. 10, 1978 and Oct. 1, 1983.
		MINIMAL CONVERSIONS		
		Region II		
New York:				
Washington	Fort Ann, town of	361231	Apr. 17, 1985, suspension withdrawn	Dec. 6, 1974
Do	Jackson, town of	361444	do	Jan. 17, 1975.
Madison	Smithfield, town of	361294A	do	Oct. 25, 1974 and June 18, 1976
Washington	White Creek, town of	361238	do	Oct. 18, 1974 and July 23, 1976.
		Region III		
Maryland:				
Worcester	Berlin, town of	240141	do	Jan. 21, 1977.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Washington	Clear Spring, town of	240072	do	Feb. 18, 1977
Pennsylvania, Crawford	Hydetown, borough of	420350	do	May 21, 1976
		Region II		
New York				
Oneida	Clinton, village of	360525B	May 1, 1985, suspension withdrawn	Feb 15, 1974 and May 28, 1976.
Ulster	Kingston, city of	360858C	do	May 17, 1974, Jan. 18, 1980 and Nov 28, 1975
		Region III		
Pennsylvania, Allegheny	Bell Acres, borough of	420008B	do	June 7, 1974 and Apr. 23, 1976
		Region V		
Ohio, Hamilton	Village of Indian Hill, city of	390221B	do	June 28, 1974 and June 4, 1976
		Region VI		
Louisiana				
Plaquemines Parish	Unincorporated areas	220139B	do	Jan. 17, 1985
St. Bernard Parish	do	225204B	do	Mar. 13, 1970, July 1, 1974 and Feb. 6, 1975
Terrebonne Parish	do	225206C	do	Nov. 20, 1970, July 1, 1974, Nov. 19, 1976 and Dec 16, 1980
		Region IX		
California				
Kern	Bakersfield, city of	060077B	May 1, 1985, suspension withdrawn	Aug. 16, 1974 and Aug 6, 1976.
Riverside	Cathedral City, city of	060704	do	May 1, 1985.
Contra Costa	Walnut Creek, city of	065070B	do	Nov. 8, 1974 and Oct. 8, 1976
		MINIMAL CONVERSIONS		
		Region II		
New York				
Oneida	Augusta, town of	360517B	May 1, 1985, suspension withdrawn	Sept. 13, 1974 and Apr 9, 1976.
St Lawrence	Fine, town of	361177D	do	Jan. 10, 1975 and Jan 28, 1983
Saratoga	Galway, town of	360716B	do	June 14, 1974, Dec. 26, 1975, Aug. 13, 1976 and Nov. 19, 1976.
Madison	Hamilton, town of	360401B	do	May 31, 1974 and May 21, 1976
St. Lawrence	Oswegatchie, town of	360708C	do	Sept. 13, 1974, May 28, 1976 and Apr. 4, 1984
		Region III		
Maryland, Wicomico	Willards, town of	240082B	do	Jan 21, 1977
Pennsylvania:				
Cambria	Ashville, borough of	422266A	do	Nov 15, 1974
Butler	Bruin, borough of	420211A	do	July 30, 1976
Washington	Deemston, borough of	422132B	do	Nov. 1, 1974 and Oct. 24, 1975.
Armstrong	Madison, township of	421308A	do	Nov. 27, 1974.
Do	Rural Valley, borough of	422302A	do	Jan 24, 1975.
Do	Worthington, borough of	422306B	do	Dec 27, 1974.
West Virginia, Jackson	Unincorporated areas	540063B	do	Jan. 17, 1975 and Oct. 23, 1981

Issued: May 6, 1985.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.

[FR Doc. 85-11342 Filed 5-9-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6660]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
			Region I		
Massachusetts, Barnstable	Harwich, town of	250008C	Dec. 10, 1973, Emerg.; Sept. 30, 1980, Reg.; May 15, 1985, Susp.	July 19, 1974, Oct. 22, 1976 and Sept. 30, 1980.	May 15, 1985.
			Region II		
New Jersey, Morris	Mount Olive, township of	340353B	June 23, 1973, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Jan. 16, 1974 and Mar. 19, 1976	Do
			Region III		
Maryland, Talbot	Unincorporated areas	240066A	Sept. 6, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Apr. 25, 1975	May 15, 1985.
			Region V		
Ohio, Logan	do	390772C	May 21, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Feb. 3, 1978 and July 13, 1979	May 15, 1985.
			Region VI		
Louisiana, Vermilion Parish	Unincorporated areas	220221D	July 1, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	May 31, 1977, May 9, 1978 and Oct. 1, 1983.	May 15, 1985.

MINIMALS

Region II

State and County	Location	Community No	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
New York					
Tioga	Berkshire, town of	361215B	Aug 8, 1977, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp	Mar 11, 1977	May 15, 1985.
Cortland	Cincinnatus, town of	360177B	July 7, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp	Apr. 5, 1974 and July 17, 1976	Do
Do	Cuyler, town of	361386A	June 6, 1977, Emerg., May 15, 1985, Reg., May 15, 1985, Susp	Feb. 28, 1975	Do
Lewis	Denmark, town of	360363B	July 16, 1975, Emerg., May 15, 1985, Reg., May 15, 1985, Susp	June 28, 1974 and May 28, 1976	Do
Warren	Hague, town of	360873	Apr. 19, 1978, Emerg., May 15, 1985, Reg., May 15, 1985, Susp.	Nov. 5, 1976, Mar. 10, 1978, Dec. 21, 1979 and Dec. 11, 1981.	Do
Columbia	Hillsdale, town of	361320A	July 5, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Jan 3, 1975	Do
Cortland	Marathon, town of	361327B	Aug. 23, 1976, Emerg.; May 15, 1985, Reg., May 15, 1985, Susp	Nov. 29, 1974 and July 2, 1976	Do
Essex	North Hudson, town of	361391A	July 30, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	July 11, 1975	Do
Cortland	Preble, town of	360185B	June 19, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Feb. 15, 1974 and July 16, 1976	Do
Tioga	Richford, town of	361216B	Aug. 10, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Dec. 20, 1974 and July 23, 1976	Do
Essex	Schroon, town of	361158B	Jan. 27, 1976, Emerg.; May 15, 1985, Reg., May 15, 1985, Susp.	do	Do
Cortland	Scott, town of	361328B	Dec. 17, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Nov. 1, 1974 and June 25, 1976	Do
Do	Solon, town of	361329A	Feb. 2, 1976, Emerg.; May 15, 1985, Reg., May 15, 1985, Susp.	Jan. 17, 1975	Do
Herkimer	Stark, town of	360319B	June 11, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	June 7, 1974 and July 30, 1976	Do
Cortland	Taylor, town of	361330	May 19, 1977, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	July 14, 1978	Do
Do	Harford, town of	360180B	June 26, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	June 28, 1974 and May 28, 1976	[illegible]

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: May 6, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-11341 Filed 5-9-85; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 70, and 150

Material Balance Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations concerning the submission of source material and special nuclear material inventory reports. The proposed rule would eliminate the requirement to report inventories on Form 742 for all licensees except those reporting under the US/IAEA Safeguards Agreement. The proposed rule would also eliminate the requirement to report inventories on Form 742C for all licensees except those for nuclear reactors and those reporting under the Agreement. The NRC would generate an equivalent report based on transaction data already submitted by each licensee. The proposed rule is intended to reduce the reporting burden on licensees without adversely affecting the domestic safeguards program or the ability to satisfy existing commitments.

DATE: Comment period expires July 9, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to Room 1121, 1717 H Street, NW, Washington, DC between 8:15 am and 5:00 p.m. weekdays.

Copies of the regulatory analysis, the OMB supporting statement, and any comments received on the proposed rule may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427-4004.

SUPPLEMENTARY INFORMATION:

Background

As a part of a reevaluation of the safeguards data collection and processing requirements, the NRC examined the possibility of eliminating the requirements for licensees to report inventories on Forms 742 (Material Balance Report) and 742C (Physical Inventory Listing) for most licensees. The NRC concluded that, with the exception of those licensees reporting under the US/IAEA Safeguards Agreement, the requirements for reporting inventories on Material Balance Reports can be deleted. However, the need for a composition of ending inventory to be submitted on Form 742C by nuclear reactors is necessary to the domestic inspection and enforcement function. Therefore, the requirement for submitting Form 742C would be retained for nuclear reactor licensees.

Material Balance Reports

Currently, NRC licensees who are authorized to possess 350 grams or more of special nuclear material are required to submit an inventory report for each material type on Forms 742 and 742C as of March 31 and September 30 of each year. Also, NRC and Agreement State licensees who are authorized to possess 1,000 kilograms or more of source material are required to submit a yearly statement of their source material holdings as of September 30 of each year. This information is necessary to the domestic inspection program and is needed to provide to the Australian and Canadian Governments a periodic report showing the inventory of all the materials in each U.S. facility that is subject to their respective Bilateral Agreements.

For licensees other than those reporting under the US/IAEA Safeguards Agreement, the proposed rule would eliminate the requirement to submit the Form 742. For all licensees other than nuclear reactors and those reporting under the US/IAEA Safeguards Agreement, the proposed rule would eliminate the requirement to submit the Form 742C. Instead, the NRC would computer-generate, for each licensee, an inventory report based on material transaction reports submitted to the NRC on Form 741 for special nuclear material and foreign origin source material. (In a separate rulemaking action effective July 16, 1984 (49 FR 24705; June 15, 1984), the requirement to report domestic transfers of U.S. origin source material was deleted. Only imports, exports, and domestic transfers of foreign origin source material are currently reported to the transaction data base.) This generated report would be submitted to the licensee for review and verification with the licensee's book inventory data or results of a physical inventory, as the case may be. The licensee would then submit any supplemental data necessary to reconcile any difference between the generated inventory and the licensee's inventory.

The amendment affects approximately 350 NRC and Agreement State licensees of which approximately 150 are small independent industrial manufacturers, each with an estimated annual gross income of less than $1 million and a staff of fewer than 500 people. As a result of this change, the reporting burden for each affected special nuclear material licensee would be reduced by two reports per year and the reporting burden for each affected source material licensee would be reduced by one statement per year. The process of the licensee verification of the computer-generated report will partially affect the reduction in licensee reporting, but the net burden to licensees should be less than the burden of generating and submitting the currently required reports.

Environmental Impact: Categorical Exclusion

The NRC has determined that the proposed amendments to Parts 40 and 70 are the type of action described in categorical exclusion 10 CFR 51.22(c)(3) and that the proposed amendment to Part 150 is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that

are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the draft analysis may be obtained from June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427-4004.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that, if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities due to the decrease in burden for all affected licensees. The proposed rule would reduce from 350 to 250 the number of specific licensees who are required to report inventories of nuclear materials under 10 CFR 40.64, 70.53, and 150.17. Currently, approximately 190 of these licensees submit 2 reports each year to report inventories of special nuclear materials. The remaining 60 licensees submit one report each year to report holdings of source material. The economic impact on all licensees will be reduced due to the fact that approximately 100 small licensees who currently complete a report(s) will not report inventories at all, and the remaining licensees will verify and update a Commission generated statement of inventory instead of completing a report. The current burden of two hours is time needed to complete the report. The estimated time for verifying and updating the Commission generated statement of inventory is one hour.

The approximately 100 licensees who need not complete and submit an inventory report are small independent industrial licensees who currently submit one report each year. This is a reduction of 2 hrs × 100/200 hours each year. The licensees who will verify and update a Commission generated statement of inventory consists of approximately 150 small licensees and approximately 50 other licensees.

The average small independent industrial licensee has an annual gross income of less than $1 million and employs fewer than 500 people. The cost of complying with the proposed requirement will not pose an economic impact. There will be no additional cost for any licensee.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates:

(a) The licensee's size in terms of annual income, revenue, or number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that placed upon a larger licensee; and

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

List of Subjects

10 CFR Part 40

Governmental contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 40, 70, and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 40.64, paragraph (b) is revised to read as follows:

§ 40.64 Reports.

* * * * *

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee who is authorized to posses at any one time and location more than 1,000 kilograms of uranium or thorium or any combination of uranium or thorium, shall verify and update a statement of material balance concerning source material of foreign origin received, possessed, transferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of September 30 of each year and mail it to the licensee by October 15 of each year. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by October 31. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for Part 70 is revised to read as follows:

Authority: Sections, 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d) and 70.58(a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 70.53, paragraph (a)(1) is revised to read as follows:

§ 70.53 Material status reports.

(a)(1) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall verify and update a statement of material balance concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of March 31 and September 30 of each year and mail it to the licensee by April 15 and October 15. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by April 30 and October 31. Persons licensed to operate nuclear reactors shall continue to prepare (on DOE/NRC Form 742C, Physical Inventory Listing) a statement of the composition of the ending inventory as of March 31 and September 30 of each year and file within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

5. The authority citation for Part 150 continues to read as follows:

Authority: Section 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e (2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 4444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)-(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16-150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 150.17, paragraph (b) is revised to read as follows:

§ 150.17 Submission to the Commission of source material reports.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person who is authorized to possess at any one time and location, pursuant to an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall verify and update a statement of material balance concerning source material of foreign origin received, possessed, tansferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of September 30 of each year and mail it to the licensee by October 15. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by October 31. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

Dated at Bethesda, Maryland, this 22d day of April, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 11443 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9080]

Kaiser Aluminum & Chemical Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar an Oakland, Calif. firm, for a period of ten years from the effective date of the order, from acquiring, without prior Commission approval, any U.S. business enterprise that had been engaged in the manufacture or sale of basic refractories within the three calendar years immediately preceding the acquisition.

DATE: Comments must be received on or before July 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, room 136, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John V. Lacci, FTC/L 501-7, Washington, D.C. 20580, (202) 254-8644.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Basic refractories, Trade practices.

Before Federal Trade Commission

[Docket No. 9080]

Agreement Containing Consent Order

In the matter of Kaiser Aluminum & Chemical Corporation, a corporation.

The agreement herein, by and among Kaiser Aluminum & Chemical Corporation, a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondent, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with Commission Rule 3.25 governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Kaiser Aluminum & Chemical Corporation is a publicly-held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 300 Lakeside Drive, Oakland, California 94643.

2. Respondent has been served with a copy of the amended complaint issued by the Commission in this proceeding charging it with violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has filed an answer to said amended complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's amended complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with related materials pursuant to Rule 3.25(f) of the Commission's Rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify respondent, in which event the Commission may take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the amended complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commisison may without further notice to respondent, (1) issue its decision containing the following order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The amended complaint may be used in construing the terms of the order, and not agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order the following definitions shall apply:

1. "Respondent" means Kaiser Aluminum & Chemical Corporation (hereinafter "Kaiser"), a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 300 Lakeside Drive, Oakland, California 94643, and its subsidiaries, affiliates, divisions, successors and assigns. As used herein, the terms "successors" and "assigns" shall not include any person who purchases no more than two of Kaiser's four basic refractories facilities which are currently located at Moss Landing, California; Columbiana, Ohio; Gary, Indiana; and Plymouth Meeting, Pennsylvania.

2. "Basic refractories" means non-metallic insulating materials composed primarily of magnesia, magnesite, dolomite, chromite or chrome ore, or a combination thereof.

3. "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated association, or other business or legal entity.

I

It is ordered that, for a period of ten (10) years from the date of this Order becomes final, Kaiser shall not, without the prior approval of the Commission, acquire, directly or indirectly, any stock, share capital, or interest in any person engaged in, or the assets of any person used in, the manufacture of basic refractories; provided, however, nothing in this Order shall prohibit Kaiser from acquiring any stock, share capital, or interest in any foreign person that, in the calendar year of the proposed acquisition or in any of the three full calendar years immediately preceding the acquisition, has not manufactured or sold basic refractories in, or exported basic refractories to, the United States. The provisions of Paragraph I shall not require prior Commission approval of the receipt by Kaiser of any stock, share capital, or interest in a purchaser of any of the assets of Kaiser's Refractories Division as part of the consideration paid by that purchaser for these assets, provided that said purchaser was not, in the calendar year of the acquisition or in any of the three full calendar years immediately preceding the acquisition, engaged in the manufacture or sale of basic refractories.

II

It is further ordered that Kaiser shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

III

It is further ordered that Kaiser shall, within sixty (60) days after service upon it of this order, and annually thereafter for a period of ten (10) years on the anniversary of the date this order becomes final, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted a proposed consent order from Kaiser Aluminum and Chemical Corporation ("Kaiser"). The order has ben placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the proposed Order.

On April 27, 1976, the Commission issued a complaint alleging that Kaiser's February 28, 1974 acquisition of two basic refractories plants and related assets of the International Minerals and Chemical Corporation's Lavino Division ("Lavino") constituted a violation of section 7 of the Clayton Act and section 5 of the FTC Act in three product markets; namely, basic refractories, basic refractory specialties and basic refractory bricks and shapes. On September 8, 1977, the complaint was amended by order of the ALJ, to add two new product markets, *i.e.*, "B.O.F. bricks and shapes" and "conventionally bonded basic bricks and shapes." After hearings before Administrative Law Judge James P. Timony, and consideration of the Judge's initial decision and proposed findings of fact, the Commission issued its Final Order and Opinion on May 17, 1979, affirming the ALJ's decision that Kaiser's acquisition of Lavino's refractories assets violated section 7 of the Clayton Act and section 5 of the FTC Act in each of five relevant lines of commerce alleged in the amended complaint, and ordered that Kaiser divest the Lavino assets.

The Commission's order was vacated in July 1981 by the United States Court of Appeals for the Seventh Circuit, which remanded the case for further proceedings consistent with the court's decision. *Kaiser Aluminum & Chemical Corporation* v. *FTC*, 652 F.2d 1324 (7th Cir. 1981). The court found that the Commission erred in finding that three types of refractory products, namely, basic refractories, basic refractory bricks and shapes, and basic refractory specialties, constituted relevant lines of commerce. The court found that, while the Commission's findings of a conventionally bonded basic bricks and shapes market and its B.O.F. bricks and shapes market were supported by substantial evidence, the Commission had not properly applied the legal standards enunciated in *United States* v. *General Dynamics Corporation*, 415 U.S. 486 (1974), in determining whether the acquisition was likely to lend to a substantial lessening of competition in those relevant lines of commerce.

In 1982, briefs were filed by the parties addressing the question of what issues remained to be addressed by the Commission on remand. Respondent Kaiser urged that the complaint be dismissed; complaint counsel contended that existing evidence was sufficient to support a finding of illegality and urged that the divestiture order be reinstated by the Commission. Since the acquisition, however, changed competitive conditions, particularly in the steel industry, which is the primary user of refractories products, have resulted in a steep decline in the demand for domestically produced steel and basic refractories products. In addition, improvements in steel production technology, such as the shift away from open hearth furnaces, the use of water-cooled panels in electric arc furnaces and the increased use of continuous casting processes, have resulted in a significant decrease in the amount of refractories utilized per ton of steel produced. Thus, the demand for the type of products manufactured in the former Lavino facilities (B.O.F. bricks and conventionally bonded bricks), has decreased dramatically in the past five years. Consequently, Kaiser has terminated operations at Lavino's Gary, Indiana facility and has ceased the production of refractory bricks at Lavino's Plymouth Meeting, Pennsylvania facility. Kaiser has offered these assets for sale over the past year without success. Due to the depressed condition of the basic refractories industry, other refractories companies have been forced to close numerous basic refractories facilities over the past few years.

In light of these recent developments, the Commission believes that continuation of the litigation to seek an order of divestiture is unlikely to result in the establishment of a new competitive force in the basic refractories industry. Therefore, the Commission's proposed Order seeks to impose a ten year prior approval provision with respect to future acquisitions by Kaiser in the basic refractories market.

Paragraph I of the Order requires that, for a ten-year period, Kaiser may not make any further acquisitions in the basic refractories industry without the prior approval of the Commission. While the Commission no longer believes that the public interest would be served by requiring divestiture of the Lavino assets, the ten year prior approval requirement for future Kaiser acquisitions is appropriate in view of the fact that Kaiser is being allowed to retain a substantial market position in an already highly concentrated industry; thus, should changed competitive conditions result in a more attractive market for basic refractories products, Kaiser may be in a position to exploit its already substantial market position in the production and sale of basic refractories. This provision assures that the Commission will have an adequate opportunity to analyze the competitive ramifications of any proposed acquisition by Kaiser in the basic refractories industry prior to consummation. This provision would not preclude the acquisition by Kaiser of a foreign refractories producer that, in the year of the proposed acquisition, or in the three years immediately preceding the acquisition, has not manufactured or sold basic refractories in, or exported basic refractories to, the United States.

Paragraph II and III of the Order contain standard compliance provisions requiring that Kaiser keep the Commission informed of any proposed corporate changes or other events which relate to compliance obligations arising under the Order.

The purpose of this analysis is to facilitate public comment on the Order and it is not intended to constitute an official interpretation of the agreement and Order or to modify in any way its terms.

Emily H. Rock,
Secretary.

[FR Doc. 85-11394 Filed 5-9-85; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1032

Commission Involvement in Voluntary Standards Activities

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed amendment.

SUMMARY: In June 1984 the Commission proposed to amend its regulations on voluntary standards activities. The proposed amendment involved Commission "recognition" of selected voluntary standards. The Commission is now withdrawing the proposal,[1] after

[1] The Commission's vote to withdraw the proposal was unanimous. Copies of Commissioners' Continued

analyzing extensive public comments, but will continue to pursue alternatives for demonstrating its support of vigorous efforts by industry to establish effective voluntary safety standards.

DATE: The withdrawal is effective on May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Douglas L. Noble, Voluntary Standards Coordinator, Office of the Executive Director, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6550.

SUPPLEMENTARY INFORMATION:

A. Background

During its 12-year existence, the Consumer Product Safety Commission (CPSC) has supported voluntary standards that effectively reduce risks of injury presented by consumer products. Under existing regulations, the Commission both monitors and participates in the development of such voluntary standards. 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. The regulations also address, to a lesser extent, the Commission's role in the support of some voluntary standards that have been adopted and implemented: For example, the regulations state that the Commission's support of the voluntary standards programs "may include . . . [p]roviding assistance on methods of disseminating information and education about the voluntary standard or its use . . . [and] . . . [e]ncouraging state and local governments to reference or incorporate the provisions of a voluntary standard in regulations or ordinances. . . ." 16 CFR 1032.4(b).

Within the Commission and at meetings of the American National Standards Institute/Consumer Product Safety Commission Coordinating Committee, numerous discussions focused on a possible expansion of the Commission's role in supporting effective voluntary safety standards. The discussions led to the proposed amendment of the Commission's regulations that guide our involvement in voluntary standards.

B. Proposed Amendment

On June 19, 1984, the Commission proposed to amend its voluntary standards regulations by adding a new section. 49 FR 25005. The proposal concerned possible "recognition" of voluntary safety standards by the Commission.

The Commission sought public comments not only on the recognition proposal, but also on the general subject of support to voluntary standards. The preamble to the proposed amendment identified two other levels of support: "Adoption," the issuance of a voluntary standard as a mandatory standard, and "endorsement," defined as being a higher level of support than recognition.

The proposed amendment explained that the Commission's active involvement in developing voluntary standards had not been matched by the same level of activity in support of successful voluntary standards development efforts. The purposes of Commission recognition (or endorsement) were described as enhancing consumer selection of safer products and encouraging industry to adhere to effective voluntary standards.

The Commission, under the proposal, could select for recognition a limited number of voluntary safety standards that had been developed with significant CPSC staff involvement. Following recognition of voluntary standards, the Commission could issue public statements encouraging industry and consumers to use them and could undertake other activities designed to promote their use. In particular, the Commission could, where appropriate, encourage states to adopt a voluntary standard in lieu of mandating a different state or local regulation.

C. Public Comments

The Commission received 28 written comments on the proposed amendment. In addition, 13 people (two of whom also submitted written comments) presented oral testimony at a public hearing on July 18, 1984. The public commenters included five manufacturers, four standards-setting organizations, four consumer groups, 13 trade associations, five government agencies, and eight other groups or individuals.

Several standards-setting organizations and trade associations representing a broad range of voluntary standards and products under CPSC jurisdiction were opposed to the proposal. Such groups included Underwriters Laboratories, Inc., the American Society for Testing and Materials, the National Electrical Manufacturers Association, the Gas Applicance Manufacturers Association, and the Association of Home Appliance Manufacturers. Consumer organizations, manufacturers, and government agencies also expressed significant opposition. The primary reasons cited for opposition to the proposal were: Adverse effects on competition in the marketplace, discouragement of innovation in product development, complication of efforts to up-grade or change "recognized" standards, confusion of consumers, potential to involve the Commission in products liability litigation, and large administrative and resource burdens.

Among the standards-setting organizations and trade associations supporting the proposal were the National Spa and Pool Institute, the Upholstered Furniture Action Council, and the National Paint and Coatings Association. Manufacturers, government agencies, and individuals expressed additional support. Reasons cited in favor of the proposed amendment included: Encouragement of improvements in voluntary standards, decrease in likelihood that various government entities would require manufacturers to meet differing regulations for the same risk of injury, reduction in cost to consumers by reducing multiple layers of regulation, and an incentive to increase voluntary standards' level of compliance by encouraging greater participation by manufacturers to obtain government recognition.

The Commission staff evaluated every major issue raised by the 39 different commenters. The briefing package containing summaries of the public comments and the staff evaluations is available from the Office of the Secretary, CPSC, Washington, D.C. 20207, telephone (301) 492-6800.

D. Withdrawal of Proposal

The Commission listened to and questioned the commenters who testified at the public hearing, reviewed the written comments and staff evaluations, and discussed all of the major arguments raised for and against the June 1984 proposed amendment. Based on all available information, the Commission has decided to withdraw that proposal.

This decision is based on the Commission's conclusion that the problem likely to result from the proposal outweigh the anticipated benefits. The Commission nevertheless will continue its strong support of voluntary standards that effectively reduce risks of injury and will consider alternatives designed to bolster that support. However, the following drawbacks (among others) of a recognition (or endorsement) policy contributed to the Commission's decision to withdraw the proposed amendment:

separate statements are available from the Office of the Secretary, Consumer Product Safety Commission Washington, D.C. 20207; telephone (301) 492-6800. The Commission's vote to approve this **Federal Register** document was 3–1, with Vice Chairman Armstrong voting to delete certain portions of the text.

1. Voluntary standards are constantly updated to keep pace with technological advances. Once the Commission recognized a particular standard, it would have to devote scarce resources to evaluating every revision. If it failed constantly to update recognition actions, industry might be reluctant to revise any already-recognized voluntary standard and improvements to it would be stifled.

2. Since the Commission would have resources to recognize only one or two voluntary standards each year, such action could severely lessen competition within an industry. For example, the Commission might recognize a portable electric heater standard but have insufficient time and staff even to consider recognizing a standard for kerosene heaters. Consumers might mistakenly infer a Commission determination that the electric heaters were a safer form of space heating. Although the Commission's action (and non-action) would have been based on resource—and not safety—considerations, the competitive position of kerosene heater manufacturers within the heating industry might be harmed.

3. The forced infrequency of Commission recognition actions could raise additional problems. For example, if limited resources caused the Commission to fail to recognize a potentially worthy voluntary standard, it might be seen, however incorrectly, as a rejection on the merits. Such a result could impair the cooperative relationships the Commission now enjoys with industry and the voluntary standards community.

4. Consumers could become quite confused about the meaning of the Commission's recognition of a voluntary standard. Manufacturers might well misrepresent such action as some official "seal of approval" for their products.

Even if a manufacturer's advertising and labeling made clear that the Commission had recognized only a *standard* and not any *product*, a strong potential for confusion would be present. The manufacturer would claim that its product complied with the Commission-recognized standard, and consumers could logically assume that CPSC had tested the product. Such a test would be quite *un*likely because Commission monitoring of industry's compliance with a recognized voluntary standard would be severely limited by budgetary considerations. In most cases the Commission probably could not conduct any monitoring. In any event, after an initial period, a monitoring program would involve little more than random testing of products or inspecting of manufacturers.

5. Under the program, the Commission would consider for recognition only those voluntary standards which its staff was substantially involved in developing. However, CPSC involvement may not occur unless an industry fails to address an identified risk on its own or a voluntary standard being developed by an industry needs strengthening to address a risk adequately. A recognition program could therefore encourage industries to delay development of a voluntary standard until the Commission became involved, in order to make the standard eligible for CPSC recognition. An undesirable effect could be to "reward" recalcitrant industries by recognizing their voluntary standards.

Another undesirable effect might be to "punish" industries that develop effective voluntary standards *without* Commission involvement. Since such standards would *not* be eligible for recognition, these "responsible" industries would lose that incentive for developing an effective voluntary standard quickly and avoiding the need for CPSC involvement.

E. Conclusion

As part of its interest and growing involvement in voluntary standards, the Commission has placed a high-level staff member in a new position to work full-time on voluntary standards. The position is located in the Office of the Executive Director and is currently filled by a staff member who has broad experience with voluntary standards. Although the Commission has withdrawn its proposed amendment on recognition of voluntary safety standards, it remains firmly committed to supporting such standards in a variety of ways.

Dated: May 6, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-11344 Filed 5-9-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31

Conditions Under Which Non-Eligible Students May Attend Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: It is necessary to amend the regulations to more clearly specify the conditions under which non-Indians and Indian students of less than ¼ degree blood quantum of a Federally recognized tribe may attend Bureau-funded schools. These amended regulations will provide the detail for school administrators and parents to determine more easily which students may be served what circumstances.

DATE: Comments must be received or postmarked on or before June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 19th and C Streets, NW., Room 3512, Washington, D.C. 20245, telephone number (202) 343-2175.

SUPPLEMENTARY INFORMATION: This amended rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

For many years, the Bureau has provided, through the existing regulations, for the discretionary charging of tuition for non-eligible students who may attend Bureau schools where there are no other adequate free school facilities available (25 CFR 31.3(b)). There proposed regulations will resolve the inconsistent tuition charging practices under existing regulations and establish uniform criteria to be used in determining which non-eligible students may be served. One statute (25 U.S.C. 288) specifies that non-Indian students may be served in day schools and that the tuition charged may not exceed the rate charged in the "common" (public) schools in the State or county where the public school is situated. Another statute, (25 U.S.C. 289) allows non-Indian students to be served in boarding schools at a tuition rate to be established by the Department. In the case of Indians of less than one-fourth degree Indian blood, 25 U.S.C. 297 prohibits the expenditure of any appropriated funds where there are adequate free school facilities provided.

For the 1985–86 school year only, for purposes of an orderly transition from the previous regulations to these, adequate free school facilities will be deemed not to exist if:

(1) Public schools are overcrowded to the extent that they cannot immediately accommodate students enrolled at the beginning of the 1984–85 school year in Bureau-funded schools; and

(2) The condition of employment for a Bureau education employee can be fairly interpreted to include providing education for the employee's children in

Bureau-funded schools for the school year 1985–86.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Ths rule will only affect Bureau and tribally-operated schools. Since Bureau and tribally operated schools are widely dispersed throughout the country, any effect on any group, region, or level of government will not be significant. The information collection requirements contained in 25 CFR 31.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0018.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment within 30 days of publication. The primary author of this document is Ms. Elizabeth Holmgren, Office of Indian Education Programs, Bureau of Indian Affairs, 19th and C Street, NW., Washington, D.C. 20245.

List of Subject in 25 CFR Part 31

Indians—Education schools.

Accordingly, it is proposed to amend Part 31 as set forth below.

1. The authority citation for 25 CFR Part 31 reads as follows:

Authority: Section 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted, 34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C 288, 289, 297.

2. Section 31.3 is revised to read as follows:

§ 31.3 Conditions under which non-eligible students may attend Bureau of Indian Affairs-funded schools.

Indian and non-Indian students who are not eligible for enrollment in Bureau-funded schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) Indians of less than one-fourth degree blood quantum are eligible to attend Bureau-funded day schools or boarding schools on a day basis only if no adequate free school facility other than a Bureau-funded school is available and when their presence will not exclude Indian students eligible under § 31.1. An available, adequate free school facility means one which:

(1) Is within 50 miles from the student's home or does not exceed one and a half hour's bus ride;

(2) Provides or is willing to provide bus service to within one mile's walk from a student's home (1½ miles for secondary students);

(3) Meets applicable State standards.

(4) With respect to a handicapped student, even if conditions (1) through (3) exist, those facilities shall be deemed inadequate if either the distance to the bus stop, or the length of the bus ride would be detrimental to the handicapped student. Handicapped student means those as defined in 34 CFR 300.5 as handicapped children.

(b) Non-Indian students may only attend Bureau-funded day schools or boarding schools on a day basis where there are no adequate free school facilities available, when their presence will not exclude Indian students eligible under § 31.1, and when payment of tuition is made for such students in attendance. The tuition rate shall be the fee allowed or charged by the State or county for out-of-district students attending public schools where the Bureau-funded school is located. A request for such non-Indian students to attend Bureau-funded schools must be approved by the Director, Office of Indian Education Programs and must be accompanied by a written agreement stating that the tuition will be paid.

3. A new § 31.8 "Information Collection" is added to read as follows:

§ 31.8 Information collection.

The information collection requirements contained in 25 CFR 31.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0018. The information will be used to determine student eligibility. The response is required to obtain a benefit.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 11423 Filed 5–9–85; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 128

Reporting of International Capital and Foreign Currency Transactions and Holdings, Transfers of Credit, and Export of Coin and Currency

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rule making.

SUMMARY: Subpart B of Part 128, Title 31, Code of Federal Regulations, describes those forms prescribed under Part 128 for reporting of data on international capital transactions. In this Notice, we propose to add to Subpart B a new § 128.11c, which describes and thereby authorizes the issuance of Treasury International Capital (TIC) Form BL–3. TIC Form BL–3 is designed for use by a bank or other financial intermediary in the United States to notify a nonbanking customer that a foreign loan has been arranged and that the customer has an obligation to report on TIC Form CQ–1. The obligation to report on TIC Form CQ–1 applies when such borrowings from foreigners will not be reported by the bank or other financial intermediary on TIC Form BL–2.

DATE: Comments should be received on or before July 15, 1985. Copies of TIC Form BL–3 may be obtained from the agency contact identified below.

ADDRESS: Comments should be addressed to Department of the Treasury, Office of Data Management, Room 5453, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Gary A. Lee, Manager, Treasury International Capital Reporting System, Room 5453, Department of the Treasury, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220 (202–566–3114).

SUPPLEMENTARY INFORMATION: Part 128 of Title 31, Code of Federal Regulations, sets forth the requirements and describes the forms used for reporting international capital and foreign currency transactions and holdings. Large amounts of offshore loans to U.S. nonbank residents are not being properly reported on the TIC C–series forms prescribed in Subpart B of Part 128. Much of this under reporting results from confusion among nonbank borrowers over whether the source of

their loans is domestic or foreign. This confusion is exacerbated by the failure of U.S. intermediaries to comply with existing obligations, specified in the Form BL–2 instructions, either to report certain foreign transactions on behalf of their U.S. customers or to inform those customers of foreign ownership of claims held against them so the customers can themselves report the transactions on their own TIC forms.

New TIC Form BL–3 is designed to rectify this deficiency in the international capital reporting system. It is in the form of a mandatory notification by a bank or other financial intermediary to a nonbanking entity that a foreign loan has been arranged and that it will not be reported as a custody liability held on behalf of the nonbank customer on TIC Form BL–2, "Custody Liabilities of Reporting Banks, Brokers and Dealers to 'Foreigners', Payable in Dollars." New TIC Form BL–3 will advise the nonbanking firm of its own responsibility to report the foreign loan as a liability on TIC Form CQ–1, "Financial Liabilities to, and Claims on, Unaffiliated Foreigners." Banks and other financial intermediaries will also be required to file copies of every Form BL–3 with the Federal Reserve Bank of New York for data monitoring purposes.

Section 128.2(a)(2) of Title 31 mandates that persons subject to the jurisdiction of the United States and engaged in any transfer of credit between any person within the United States and any person outside of the United States shall furnish information concerning such transfers as required by report forms and instructions prescribed in Subpart B of Part 128. The proposed addition to Subpart B of § 128.11c, describing new TIC Form BL–3, will provide the necessary authorization for use of this form.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is intended to provide technical clarification of existing reporting requirements. The Department of the Treasury therefore has determined that it does not constitute a "major" rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. For this reason, it is hereby certified, pursuant to the Regulatory Flexability Act (5 U.S.C. 601 *et seq.*), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 31 CFR Part 128

Banks, banking, Currency, Federal reserve system, Foreign banking, Reporting or recordkeeping requirements.

PART 128—[AMENDED]

Therefore, it is proposed to amend Part 128, Subpart B, Chapter I of Title 31, Code of Federal Regulations as follows:

1. The authority citation for Part 128 continues to read as follows:

Authority: Sec. 8, Pub. L. 79–171, 59 Stat. 515, 22 U.S.C. 286f; Sec. 8, Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3103; E.O. 10033, 14 FR 561, 3 CFR, 1949–1953, Comp; E.O. 11961, January 9, 1977, 42 FR 4321, as amended.

2. In Part 128, it is proposed to add § 128.11c to read as follows:

§ 128.11c International Capital Form BL–3: Intermediary's notification of foreign borrowing.

On this form any intermediary in the United States (i) which arranges foreign borrowings for U.S. persons and U.S. firms (ii) which acts as the U.S. address of "foreigners" in connection with their financial transactions with persons in the United States or (iii) which services the borrowing for a foreign lender is required to notify its nonbanking customer in the United States and the Federal Reserve Bank of New York of that nonbanking customer's obligation to report borrowings from foreigners on Treasury International Capital (TIC) Form CQ–1 if they will not otherwise be reported by the intermediary on TIC Form BL–2.

Dated: May 3, 1985.

Robert A. Cornell,

Acting Assistant Secretary, International Affairs.

[FR Doc. 85–11191 Filed 5–9–85; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

Commercial Activities Program Procedures

AGENCY: Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing to incorporate substantive changes to Part 169a required by OMB Circular A–76 "Performance of Commercial Activities," August 3, 1983. This part implements the policies established in 32 CFR Part 169 and establishes procedures and criteria for use by DoD to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATE: Comments must be received on or before: June 10, 1985.

ADDRESS: Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), Installation Management, Pentagon, Washington D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Doug Hansen, telephone 202–325–0537.

SUPPLEMENTARY INFORMATION: Part 169a was published in the **Federal Register** on April 4, 1980 (45 FR 22924) prescribing the procedures and criteria for use by DoD to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to comments in the preamble of the final rule.

DoD has determined that this action is not a major rule as defined by Executive Order 12291. The part will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost or prices for consumers, industries, State or local governments; or adversely affect competition, employment, investment, productivity, or innovation.

DoD has submitted a request to OMB for review and approval of the part.

This part is not subject to the provisions of the Regulatory Flexibility Act. Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 169a

Armed forces, Government procurement.

For the reasons set out in the preamble, it is proposed that 32 CFR Part 169a revised to read as follows:

PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

Subpart A—General

Subpart B—Procedures

Authority: 5 U.S.C. 301 and 552 and Pub. L. 95-400

Subpart A—General

§ 169a.1 Purpose.

This part reissues Part 169a to accommodate substantive changes required by Part 169a and OMB circular A-76 implements the policies established in Part 169, and establishes procedures for use by the Department of Defense (DoD) to determine whether needed commercial activities should be accomplished by DoD personnel or by contract with a commercial source.

§ 169a.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components").

(b) Its provisions contain DoD procedures for commercial activities in the United States, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico.

(c) Its provisions are not mandatory for commercial activities staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for commercial activities when they are partially staffed with civilian personnel paid by appropriated funds, such as libraries, open messes, and other morale, welfare and recreation (MWR) activities. When total installation support is being cost compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with civilian personnel paid by nonappropriated funds.

(d) This part does not:

(1) Apply to governmental functions as defined in § 169a.3 of this part;

(2) Apply when contrary to law, Executive orders, or any treaty or international agreement;

(3) Apply in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Apply to the conduct of research and development except for severable in-house commercial activities in support of research and development, such as those listed in Enclosure 1.

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the DoD and contractor employees as described in the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

§ 169a.3 Definitions.

Commercial activity review. The process of evaluating commercial activities for the purpose of determining whether or not a cost comparison will be conducted.

Commercial source. A business or non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to contract. The changeover of a commercial activity from performance of DoD personnel to performance under contract by a commercial source.

Conversion to in-house. The changeover of a commercial activity from performance under contract to performance by DoD personnel.

Cost comparison. The process of developing an estimate of the cost of performance of a commercial activity by DoD employees and comparing it, in accordance with the requirements in this part to the cost to the Government for contract performance of the commerical.

Directly affected parties. DoD employees and their representative organizations and bidders or offerors on the solicitation.

Displaced DoD employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction or reduction in rank). It includes both employees in the function converted to contract and to employees outside the function who are adversely affected by conversion through reassignment or the exercise of bumping or retreat rights.

DoD commercial activity (CA). An activity which provides a product or service obtainable (or obtained) from a commercial source. A DoD commercial activity is not a Governmental function. A DoD commercial activity may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Enclosure 1. DoD CA falls into one of two categories:

(a) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

DoD employee. Civilian personnel of the DoD.

DoD governmental function. A function that is so intimately related to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for DoD. Services or products in support of Governmental functions, such as those listed in Enclosure 3, are CAs and are normally subject to Part 169 and its implementing instructions. Governmental functions normally fall into two categories:

(a) The act of governing; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(b) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the treasury accounts and money supply; and the administration of public trusts.

DoD personnel. Military and civilian personnel of the DoD.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment of 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

New requirement. A new requirement is a newly established need for a

commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential procurement programs. Preferential procurement programs are mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority and disadvantaged businesses, and labor surplus area set-asides and awards made under section 8(a) of the Small Business Act.

Subpart B—Procedures

§ 169a.4 Inventory and Review Schedule (Reports Control Symbol DD-M(A)1540).

(a) Information in each DoD Component's inventory shall be used to assess DoD implementation of OMB Circular A-76 and for other purposes. Each Component's inventory shall be updated at least annually to reflect changes to their review schedule and the results of reviews, cost comparisons, and direct conversions. Updated inventories for all DoD Components except National Security Agency/Central Security Service (NSA/CSS) and the Defense Intelligence Agency (DIA) shall be submitted to the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L) within 90 days after the end of each fiscal year. Inventory data pertaining to NSA/CSS and DIA shall be held at that Agency for subsequent review by properly cleared personnel. Enclosure 1 provides the code and explanations for functional area and Enclosure 2 provides procedures for submitting the inventory.

(b) DoD Components review schedules should be coordinated with the DoD Component's Efficiency Review Program and the Defense Regional Interservice Support (DRIS) Program to preclude duplication of efforts and to make use of information already available.

(c) Reviews of commercial activities that provide interservice support shall be scheduled by the supplying DoD Component. Subsequent cost comparisons, when appropriate, shall be executed by the same DoD Component. All affected DoD Components shall be notified of the intent to perform a review.

§ 169a.5 Reviews: Existing in-house commercial activities.

(a) Continued performance of in-house commercial activities without a cost study is authorized only under certain conditions. (Detailed documentation will be maintained to support the decision to continue in-house performance. ASD(MI&L) will be notified within one week of any such decision. Authority to make these decisions will not be redelegated below the level of Deputy Assistant Secretary (DAS) or equivalent). These conditions are:

(1) *National defense.* In most cases, application of this criteria shall be made considering the wartime and peacetime duties of the specific positions involved rather than in terms of broad functions. Detailed documentation is required for DoD commercial activities performed by DoD personnel justified under national defense criteria.

(i) A commercial activity staffed with military personnel who are assigned to the activity, may be retained in-house for national defense reasons when:

(A) The commercial activity is essential for training or experience in required military skills;

(B) The commercial activity is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments; or

(C) The commercial activity is necessary to provide career progression to needed military skill levels.

(ii) Core Logistics Activities. Commercial activities that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations and other emergency requirements. Those CAs considered core logistics and reported to Congress under the provisions of Public Law 98-525, Section 307, shall be retained in-house unless the Secretary of Defense grants a waiver as provided for in Section 307. Requests for waivers shall be submitted to ASD(MI&L).

(iii) If the Component has a large number of similar CAs with a small number of essential personnel in each commercial activity action shall be considered to consolidate the positions consistent with requirements so that economical performance by either DoD civilian employees or by contract can be explored for accomplishing a portion of the work.

(iv) The DoD components may propose to ASD(MI&L) other criteria for exempting CAs for national defense reasons.

(2) *No satisfactory commercial source available.* DoD commercial activity may be performed by DoD personnel when it can be demonstrated that:

(i) There is no satisfactory commercial source capable of providing the product or service that is needed. Before concluding that there is no satisfactory commercial source available, the DoD Component shall make all reasonable efforts to identify available sources.

(A) DoD Components' efforts to find satisfactory commercial sources shall include review of bidders lists and inventories of contractors, consideration of preferential procurement programs and requests for help from Government agencies such as the Small Business Administration.

(B) Where the availability of commercial sources is uncertain, the DoD Component will place at least three notices of the requirement in the *Commerce Business Daily* over a 90-day period. (Notices will be in the format specified in FAR (48 CFR Part 5)). In the case of a *bona fide* urgent requirement, the publication period in the *Commerce Business Daily* shall be reduced to two notices over a 30-day period. Specifications and requirements in the notice shall not be unduly restrictive and shall not exceed those required of Government personnel or operations.

(ii) Use of a commercial source would cause an unacceptable delay or disruption of an essential program. In-house operation of a commercial activity on the basis that use of a commercial source would cause an unacceptable delay or disrupt an essential DoD program requires a specific documented explanation.

(A) Delay or disruption must be specific as to cost, time, and performance measures.

(B) Disruption must be shown to be of a lasting or unacceptable nature. Temporary disruption caused by conversion to contract is not sufficient support for the use of this criteria.

(C) The fact that a DoD commercial activity involves a classified program, or is part of a DoD Component's basic mission, or that there is the possibility of a strike by contract employees is not an adequate reason for Government performance of that activity. Further, urgency alone is not an adequate reason to continue Government operation of a commercial activity. It must be shown that commercial sources are not able, and the Government is able, to provide the product or service when needed.

(3) *Patient care.* Commercial activities at DoD hospitals may be performed by

DoD personnel when it is determined by the head of the DoD Component, in consultation with the Component's chief medical director, that performance by DoD personnel would be in the best interests of direct patient care. Detailed documentation is required when an in-house operation is justified under this criteria.

§ 169a.6 Reviews: Contracts.

(a) When contract costs become unreasonable or performance becomes unsatisfactory, a cost comparison of a contracted commercial activity shall be performed in accordance with Part II of the Supplement to OMB Circular No. A-76 (Office of Federal Procurement Pamphlet No. 4)[1], Part III of the Supplement to OMB Circular No. A-76 (Commercial Activities (CA) Management Study Guide)[1], and Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook)[1] if:

(1) Re-competition with other satisfactory commercial sources does not result in reasonable prices; and

(2) In-house performance is feasible.

(b) Contracted commercial activities that are justified for conversion to in-house performance based on cost comparisons, national defense, or in the best interest of direct patient care will be allowed to expire (options will not be exercised) once in-home capability is established. If the required authorizations cannot be accommodated within the DoD Component's available resources, a request for adjustment will be submitted to OSD.

§ 169a.7 Expansions.

In cases where expansion of an in-house commercial activity is anticipated, a review of the entire commercial activity, including the proposed expansion, shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, the entire activity shall be scheduled for cost comparison. Government facilities and equipment will not normally be expanded to accommodate expansions if adequate and cost effective contractor facilities are available.

§ 169a.8 New requirements.

(a) In cases where a new requirement for a commercial product or service is anticipated, a review shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, then the new requirement shall normally be performed by contract.

(b) However, if there is reason to believe that commercial prices may be unreasonable, an informal preliminary cost analysis shall be conducted to determine whether it is likely that the work can be performed in-house at a cost that is less than anticipated contract performance. The appropriate conversion differentials will be added to the in-house cost before it is determined that in-house performance is likely to be more economical and a cost comparison scheduled.

(c) Government facilities and equipment will not normally be expanded to accommodate new requirements if adequate and cost effective contractor facilities are available. The requirement for Government ownership of facilities does not obviate the possibility of contract operation. If justification for in-house operation is dependent on relative cost, the cost comparison may be delayed to accommodate the lead time necessary for acquiring the facilities.

(d) Approval or disapproval of in-house performance of new requirements involving a capital investment of $500,000 or more shall not be redelegated below the level of DAS or equivalent.

(e) Approval to budget for a major capital investment associated with a new requirement shall not constitute OSD approval to perform the new requirement with DoD personnel. Government performance shall be determined in accordance with this part.

§ 169a.9 Special considerations.

(a) *Communications security.* Before making a determination that an activity involving the full maintenance of communications security (COMSEC) equipment should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national security of using commercial sources. The DoD Component shall consult with the Director, National Security Agency (NSA), in reaching this finding. If the risk to national security is unacceptable, the Director, NSA, will make appropriate recommendations to ASD(MI&L) for consideration of a waiver to the provisions of Part 169 and its implementing instructions.

(b) *National Intelligence.* Before making a determination that an activity involving the collection/processing/dissemination of national intelligence should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national intelligence of using commercial sources. The DoD Component shall consult with the Director, Defense Intelligence Agency (DIA), in reaching this finding. If the risk to national intelligence is unacceptable, the Director, DIA, will make appropriate recommendation to ASD(MI&L) for consideration of a waiver to the provisions of Part 169 and its implementing instructions.

(c) *Cost comparison process.* If performance of a commercial activity by DoD personnel cannot be justified under national defense, nonavailability of commercial source, or patient care criteria, then a cost comparison shall be conducted in accordance with Part II of the Supplement to OMB Circular No. A-76 (Office of Federal Procurement Pamphlet No. 4),[2] Part III of the Supplement to OMB Circular No. A-76 (Commercial Activities (CA) Management Study Guide),[2] and Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook)[2] to determine if performance by DoD employees is justified on the basis of lower cost. The conclusion that a commercial activity will be cost compared reflects a management decision that the work need not be accomplished by military personnel. Therefore, all direct personnel costs shall be estimated on the basis of civilian performance. Funds shall be budgeted to cover either the cost of the appropriate in-house operation required to accomplish the work or the estimated cost of the contract. Neither funds nor manpower authorizations will be removed from the activity's budget in anticipation of the outcome of a study.

(1) *Notification.* (i) *Congressional notification.* DoD Components shall notify Congress of the intention to do a cost comparison for each commercial activity. The DoD Component shall notify ASD(MI&L) of any such intent at least five working days prior to the congressional notification. The cost comparison process begins on the date of congressional notification.

(ii) *Commerce Business Daily*/**Federal Register** notification. DoD Components shall publish their schedules for conducting cost comparisons as soon as practicable after congressional notification, but at least annually, in the *Commerce Business Daily* (CBD) and the **Federal Register** (FR). Schedules for

[1] Copies may be obtained, if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

[2] See footnote 1 to § 169a.6(a).

cost comparisons not requiring congressional notification and decisions to convert commercial activities directly to contract shall also be published in the CBD/FR as soon as practicable after the decision. The cost comparison schedule shall include for each activity, the name, location, and date the cost comparison began or the estimated date the direct conversion will occur.

(iii) *Local notification.* It is suggested, that upon congressional notification, the installation make an announcement of the cost comparison, including a brief explanation of the cost comparison, including a brief explanation of the cost-comparison process. The installation's labor relations specialist should also be apprised to ensure appropriate notification to employees and their representatives in accordance with applicable collective bargaining agreements.

(2) *Performance Work Statement (PWSs).* (i) The PWS and Quality Assurance Plan shall be prepared in accordance with Part II of the Supplement to OMB Circular No. A–76 (Office of Federal Procurement Pamphlet No. 4)[3] The PWS must include reasonable performance standards that can be used to ensure a comparable level of performance for both government and contractor and a common basis for evaluation.

(ii) Each DoD Component shall:

(A) Identify functions where PWSs are needed;

(B) Monitor the development and use of prototype PWSs;

(C) Review and initiate action to correct disputes on PWS discrepancies;

(D) Approve prototype PWSs for Component-wide use;

(E) Coordinate these efforts with the other DoD Components to avoid duplication and to provide mutual assistance.

(iii) When developing a PWS, DoD Components shall determine whether or not Government-owned facilities, equipment, and real property will be made available to contractors. Such determinations shall be based on an informal cost-benefit analysis of what is the most cost advantageous to the Government. Generally, if Government-owned facilities, equipment, and real property are available to in-house commercial activity they will also be made available to the contractor.

(iv) If a commercial activity provides critical or sensitive services, the PWS shall include sufficient data for the in-house organization and commercial sources to prepare a plan for expansion in emergency situations.

(v) DoD Components that provide interservice support to other DoD Components or Federal agencies through interservice support agreements or other arrangements, shall coordinate their PWSs with all affected Components and agencies.

(3) *Management Study.* A management study shall be performed to completely analyze the method of operation necessary to establish the most efficient and cost-effective in-house organization (MEO) needed to accomplish the requirements in the PWS. The MEO must reflect only approved resources for which the CA has been authorized.

(i) The commercial activity management study is mandatory. Part III of the Supplement to OMB Circular No. A–76 (Commercial Activities (CA) Management Study Guide)[4] provides guidance on how to conduct the management study. The study shall identify essential functions to be performed, determine performance factors, organization structure, staffing, and operating procedures for the most efficient and cost effective in-house performance of the commercial activity. The new Government organization becomes the basis of the Government estimate for the cost comparison with potential contractors. In this context, "efficient" (or cost effective) means that the required level of workload (output, as described in the performance work statement) is accomplished with as little resource consumption (input) as possible without degradation in the required quality level of products or services.

(ii) DoD Components have formal programs and training for the performance of management studies, and those programs are appropriate for teaching how to conduct commercial activity management studies. Part III of the Supplement to OMB Circular No. A–76 (Commercial Activities (CA) Management Study Guide)[4] does not purport to replace the DoD Component's own management techniques, but merely to establish the basic criteria and the interrelationship between the management study and the PWS.

(iii) If a commercial activity provides critical or sensitive services, the management study shall include a plan for expansion in emergency situations.

(iv) Early in the management study, management should solicit the views of the employees in the commercial activity under review, and/or their representatives for their recommendations as to the most efficient and cost effective organization.

(v) The management study will be the basis on which the DoD Component certifies that the Government cost estimate is based on the most efficient and cost effective organization practicable.

(vi) Implementation of the MEO shall be initiated within one month after cancellation of the solicitation and completed within six months. DoD Components shall take action, within one month, to schedule and conduct a subsequent cost comparison when the MEO is not initiated and completed as prescribed above. Subsequent cost comparisions may be waived or delayed by the DoD Component's DAS or equivalent when situations outside the control of the DoD Component prevent timely or full implementation of the MEO. This authority may not be redelegated.

(vii) DoD Components shall establish procedures to ensure that the in-house operation, as specified in the MEO, is capable of performing in accordance with the requirements of the PWS. The procedures shall also ensure that the resources (facilities, equipment and personnel) specified in the MEO are available to the in-house operation and that in-house performance remains within the requirements and resources, specified in the PWS and MEO for the period of the cost comparison, unless documentation to support changes in workload/scope is available.

(4) *Cost comparisons.* Cost comparisons shall include all significant costs of both Government and contract performance. Common costs; i.e., costs that would be the same for either in-house or contract operation, need not be computed, but the basis of those common costs must be identified and included in the cost comparison documentation. Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook)[5] provides the basic guidance for conducting cost comparisons. The supplemental guidance contained below is intended to establish uniformity and to ensure all factors are considered when making cost comparisions. Deviation from the guidance contained in Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook)[5] will not be allowed except as provided in the following paragraphs.

(i) *In-house cost estimate.* (A) The in-house cost estimate shall be based on the most efficient and cost effective in-

[3] See footnote 1 to §169a.6(a).

[4] See Footnote 1 to § 169.a.6(a).

[5] See footnote 1 to § 169a.6(a).

house organization needed to accomplish the requirements in the PWS.

(B) Heads of DoD Components or their designees shall certify that the in-house cost estimate is based on the most efficient and cost effective operation practicable. Such certification shall be made prior to the date for receipt of bids or initial proposals.

(C) The Office of the Secretary of Defense (MI&L) will provide inflation factors for adjusting costs for the first and subsequent performance periods. These factors shall be the only acceptable factor for use in cost comparisons. Inflation factors for outyear (second and subsequent) performance periods shall not be applied to portions of the in-house estimate which are comparable with those protions of the contract estimate subject to economic price adjustment clauses.

(D) Military positions in the organization under cost comparison shall be converted to civilian positions for costing purposes. Civilian grades and series shall be based on the work described in the PWS and the MEO determined by the management study rather than on the current organization structure.

(E) All DoD Components shall use the Wholesale Stock Fund Rate of 24.5 percent and the Direct Delivery Rate of 13.4 percent for supplies and materials acquired from the DoD Component supply systems.

(F) The following guidance is applicable to the cost elements below when they are 100 percent attributable to the function under cost comparison:

(1) DoD Components shall assume for the purpose of all depreciation computations that residual value is equal to the disposal values listed in Appendix C of Part IV of the Supplement of OMB Circular No. A–76 (Cost Comparison Handbook [6]). Therefore, the basis for depreciation shall be the original cost plus the cost of capital improvements (if any) less the residual value. The original cost plus the cost of capital improvements less the residual value shall be divided by the useful life (as projected for the commercial activity cost comparison) to determine the annual depreciation.

(2) Purchase services which augment the current in-house work effort and which are included in the PWS, should be included in line 3 (other specifically attributable costs). When these purchases services are long-term and contain labor costs subject to economic price adjustment clauses, then the applicable labor portion shall not be escalated by outyear inflation factors. In addition, purchased services shall be offset for potential Federal income tax revenue by applying the appropriate rate in Appendix D of Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook [7]) to the total cost of purchased services.

(G) Overhead costs shall be computed only when such costs will not continue in the event of contract performance. This includes the cost of any position (full time, part time, or intermittent) which is dedicated to providing support to the activity(ies) under cost comparison regardless of the support organization's location. Military positions providing overhead support shall be costed using current militiary composite standard rates and applicable add-on factors for operating appropriation support and retirement. These rates are issued on a fiscal year basis by each Service.

(ii) *Cost of contract performance.* (A) The contract cost estimate shall be based on competitive bids or negotiated proposals, solicited in accordance with the Federal Acquisition Regulations (FAR) (48 CFR Chapter 1) and the DoD FAR Supplement (48 CFR Chapter 2). Existing contract prices (such as those from GSA Supply Schedules) shall not be used in a cost comparison.

(B) Standby costs are costs incurred for the upkeep of property in standby status. Such costs neither add to the value of the property nor prolong its life, but keep it in an efficient operating condition or available for use. When an in-house activity is terminated in favor of contract performance and an agency elects to hold Government equipment and facilities on standby solely to maintain performance capability, this is a management decision, and such standby costs shall not be charged to the cost of contracting.

(C) A specific waiver is required to use contract administration factors that exceed the limits established in Table 3–1 of Part IV of the Supplement of OMB Circular No. A–76 (Cost Comparison Handbook [8]). The reason for the deviation from the limits, the supporting alternative computation, and documentation supporting the alternative method, shall be provided to the DoD Component DAS or equivalent for advance approval on a case-by-case basis. This authority may not be redelegated.

(D) The following guidance pertains to one-time conversion costs:

(1) Material-related costs. The cost factors below shall be used, if more precise costs are not known, to estimate the cost associated with disposal/transfer of excess government material which result from a conversion to contract performance:

	Percentage of current replacement [illegible] (percent)
Packing, Crating, & Handling (PCH)	3.5
Transportation	3.75

(2) Labor-related costs. If unique circumstances prevail where a strict application of the 2 percent factor for computation of severance pay results in a substantial overstatement or understatement of this cost, an alternative methodology may be employed. The reason for the deviation from this standard, the alternative computation, and documentation supporting the alternative method shall be provided to the appropriate DoD Component DAS or equivalent for advance approval. This authority may not be redelegated.

(3) Other transition costs. Except for the most unusual circumstances, Government personnel shall not be retained beyond the contract start date to assist the contractor in transition to full performance. This condition should be clearly stated in the solicitation so that contractors will be informed that they will be expected to meet full performance requirements from the first date of the contract. When circumstances require full performance on the contract start date, the solicitation shall state that the time will be made available for contractor indoctrination prior to the start date of the contract. Government personnel assistance after the contract start date (to assist in transition from in-house performance to contract performance) requires advance approval of the DoD Component DAS or equivalent. This authority may not be redelegated. This rule makes the inclusion of personnel transition costs in a cost comparison unwarranted, unless prior approval is obtained.

(4) Gain or loss on disposal/transfer of assets. The same factors for PCH and transportation costs prescribed in § 169a.9(c)(4)(D)(ii) for the costs associated with disposal/transfer of materials may be used, if more precise costs are not known, in the computation for this line entry. The estimated disposal value will be the net book

[6] See footnote 1 to § 169a.6(a).

[7] See footnote 1 to § 169a.6(a).

[8] See footnote 1 to § 169a.6(a).

value as derived from the table in Appendix C of Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook [9])

§ 169a.10 Independent review

(a) The estimates of in-house and contract costs which can be computed prior to the cost comparison shall be reviewed by a qualified activity, independent of the task group preparing the cost comparison. This review shall be completed far enough in advance of the bid or proposal opening date to allow the DoD Component to correct any discrepancies found prior to sealing the in-house cost estimate.

(b) The independent review shall substantiate the currency, reasonableness, accuracy, and completeness of the cost comparison. The review shall ensure that the in-house cost estimate is based on the same required services, performance standards, and workload contained in the PWS. The reviewer shall scrutinize and attest to the adequacy and authenticity of the supporting documentation. Supporting documentation must be sufficient to require no additional interpretation.

(c) The purpose of the independent review is to ensure costs have been estimated and supported in accordance with provisions of this part. If no (or only minor) discrepancies are noted during this review, the reviewer indicates the minor discrepancies, signs, dates, and returns the cost comparison form (CCF) to the preparer. If significant discrepancies are noted during the review, the discrepancies will be reported to the preparer for recommended correction and resubmission.

§ 169a.11 Solicitation considerations.

(a) The solicitation shall not be canceled even if there are significant changes, omissions, or defects in the Government's in-house cost estimate. Such corrections shall be made before the expiration of bids or proposals and may require the extensions of bids or proposals.

(b) Bidders or offerors shall be informed that an in-house cost estimate is being developed and that a contract may or may not result.

(c) Bids or proposals shall be on at least a three-year multi-year basis (where appropriate) or shall include prepriced renewal options to cover two fiscal years after the initial period.

(d) All contracts awarded as a result of a conversion (whether or not a cost comparison was performed) shall:

(1) Comply with all requirements of the FAR (48 CFR Chapter 1 and DoD FAR Supplement (48 CFR Chapter 2).

(2) When determined to be necessary in accordance with FAR 22.101-1(e), include the clause at FAR 52.222.1, Notice of the Government of Labor Disputes, requiring the contractor to provide notice of actual and impending labor disputes.

(3) Include in contracts for critical or sensitive services a requirement for the contractor to develop a contingency plan explaining how the contractor will expand operations in emergency situations and ensure there will be no significant interruption of routine contract services due to labor disputes; and

(4) Include all applicable clauses and provisions related to the right of first refusal for employment by displaced employees, equal employment opportunities, veterans preference, and minimum wages and fringe benefits.

(e) Solicitations shall not be restricted for preferential procurement unless the DoD Component has substantial evidence that the commercial prices being offered are fair and reasonable.

(f) Contract defaults may result in temporary performance by Government personnel or other suitable means; e.g., an interim contract source. If the default occurs within the first year of contract performance, the following procedures apply:

(1) If the contract wage rates are still valid, the contracting officer will review the availability among the next lowest responsible and responsive bidders/offerors for a successor contract without resolicitation in accordance with established contracting practice. If the next low bidder/offeror is willing to accept the balance of the contract work at the price bid/offered adjusted on an appropriate prorata basis for the remainder of the contract term, the contracting officer may award to that bidder/offeror. If the Government is the next lowest bidder/offeror, the function may be returned to in-house performance, as a bid, if still feasible. If performance by DoD employees is no longer feasible, the contracting officer may elect either to award to the next lowest responsive and responsible commercial bidder/offeror if that firm is willing to perform at its bid/offered price adjusted appropriately for the remainder of the term or to resolicit as specified in the next paragraph (f)(2) of this section. A return to in-house performance under the above criteria shall be approved at the DoD Component DAS or equivalent.

(2) If the contract wage rates are no longer valid or if the contracting officer, after a review of the availability of the next lowest responsible and responsive bidders/offerors, determines that resolicitation is appropriate, the Government may submit a bid for comparison with other bids/offers from the private sector. Submission of a Government bid requires a determination by the DoD Component that performance by DoD employees is still feasible and that a likelihood exists that such performance may be more economical than performance by contract. In such cost comparisons, the conversion differentials will not be applied to the costs of either in-house or contract performance.

(g) If contract default occurs during the second or subsequent year of contract performance, the procedures of § 169a.6(a) of this part apply.

(h) Grouping of Commercial Activities.

(1) The installation commander should carefully determine which CAs should be grouped in a single solicitation. He should keep in mind that the grouping of commercial activities can influence the amount of competition (number of commercial firms that will bid) and the eventual cost to the Government.

(2) The installation commander should consider the adverse impacts that the grouping of commercial activities into a single solicitation may have on small and small disadvantaged business concerns. Particularly, actions must be taken to ensure that such contractors are not displaced merely to accomplish consolidation. Similarly, care must be taken so that nonincumbent small and small disadvantaged business contractors are not unduly handicapped or prejudiced from competing effectively at the prime contractor level.

(3) In developing solicitations for commercial activities the procurement plan should reflect an analysis of the advantages and disadvantages to the Government that might result from making more than one award. The decision to group commercial activities should reflect an analysis of all relevant factors including:

(A) The effect on competition.

(B) The duplicative management functions and costs to be eliminated through grouping.

(C) The economies of administering multi-function vs. single function contracts, including cost risks associated with the pricing structure of each.

(D) The feasibility of separating unrelated functional tasks or groupings.

(4) When the solicitation package includes totally independent functions which are clearly divisible, severable,

[9] See footnote 1 to § 169a.6(a).

limited in number, and not price interrelated, they will be solicited on the basis on an "any or all" bid. Commercial bidders or offerors will be permitted to submit bids or offers on one or any combination of the functions being solicited. These bids or offers will be evaluated to determine the lowest aggregate cost to the Government. This lowest aggregate cost will then be compared to the in-house cost estimate in accordance with the procedures in Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook [19]).

(5) There are instances when this approach to contracting for commercial activities may not apply: e.g., situations when physical limitations of site (where the activities are to be performed) preclude allowing more than one contractor to perform, when the function cannot be divided for purposes of performance accountability, or for other national security considerations. However, if an "all or none" solicitation is issued, the decision to do so must include a cost-analysis to reflect that the "all or none" solicitation is less costly to the Government or is otherwise in the best interest of the Government, all factors considered.

(6) It is recognized that in some cases, decisions will result in the elimination of prime contracting opportunities for small business. In such cases special measures must be taken. At a minimum, small and small disadvantaged business concerns must be given preferential consideration by all competing prime contractors in the award of subcontractors. For negotiated procurements the degree to which this is accomplished will be a weighted factor in the evaluation and source selection process leading to contract award.

(7) The contract files must be fully documented to demonstrate compliance with these procedures.

(i) In the event that no bids or proposals are received in response to a solicitation, the in-house cost estimate shall remain unopened. The contracting officer shall examine the solicitation to ascertain why no response were received. Depending on the results of this review, the contracting officer shall restructure the requirement, if feasible, and reissue it under restricted or unrestricted solicitation procedures, as appropriate.

(j) Continuation of an in-house commercial activity for lack of a satisfactory commercial source shall not be based upon lack of response to a restricted solicitation.

[19] See footnote 1 to § 169a.6(a).

§ 169a.12 Administrative appeal procedures.

(a) *Appeals of Cost Comparison Decision.* (1) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from cost comparisons performed in compliance with this part. The appeal procedure shall not apply to questions concerning:

(i) Award to one contractor in preference to another; or

(ii) DoD management decisions.

(2) The appeals procedure is to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and in accordance with procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(3) The appeals procedure must be independent and objective and provide for a decision on the appeal within 30 calendar days beginning the day after the end of the appeal period. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the cost comparison decision. The appeal decision shall be final unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(4) All detailed documentation supporting the initial cost comparison decision shall be made available to directly affected parties upon request when the initial decision is announced. The detailed documentation shall include, as a minimum: the in-house cost estimate with detailed supporting documentation (see § 169a.10(b)) of this part, the completed CCF, name of the winning contractor (if the decision is to contract), or the price of the bidder whose proposal would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available at that time, the appeal period shall be extended the number of days equal to the delay.

(5) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(i) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties. The DoD Component may extend the appeal submission period to a maximum of 30 working days if deemed appropriate by the DoD Component;

(ii) Address specific line items on the CCF and the rationale for questioning those items.

(iii) Demonstrate that the result of the appeal may change the decision.

(b) *Appeals of direct conversion.* (1) Directly affected parties may appeal justifications to convert to contract without a cost comparison. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(2) Directly affected parties shall file appeals within 30 calendar days of the date of CBD and FR notification of a decision to convert a commercial activity directly to contract. Section 169a.9(b)(2) of this part applies.

(3) Appeals shall be filed with the DoD Inspector General (Auditing), Room 1201, Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209. The results of the Inspector General's administrative review shall be provided to ASD(MI&L). Appeal decisions by ASD(MI&L) shall be final.

(c) Since the appeal procedure is intended to protect the rights of all directly affected parties, the DoD Component's procedures, as well as the decision upon appeal, shall not be subject to negotiation, arbitration, or agreement.

(d) DoD Components will include administrative appeal procedures as part of their implementing documents.

Subpart C—Reporting Requirements

§ 169a.13 Reporting requirements.

(a) *Commercial Activities Management Information System (CAMIS).*

(1) The purpose of CAMIS is to maintain an accurate DoD data base of commercial activities that undergo an OMB Circular A-76 cost comparison and commercial activities that are converted directly to contract without a cost comparison. CAMIS is used to provide information to the Congress, OMB, GAO, OSD, and others as well as provide the input for the RCS DD-M(Q) 1542 report. The CAMIS is divided into two parts. Part I contains data on CAs that undergo cost comparison. Part II contains data on commercial activities converted to contract without a cost comparison.

(2) The CAMIS report shall be submitted in accordance with the procedures in Enclosure 3.

(b) *Annual Reports to Congress.* To ensure consistent application of the requirements stated in Pub. L. 96-342 as amended by Pub. L. 97-252, hereafter referred to as Section 502 (Enclosure 4), the following guidance is provided:

(1) The geographic scope of section 502 applies to the United States, its territories and possessions, the District

of Columbia, and the Commonwealth of Puerto Rico.

(2) Section 502 applies to proposed conversions of DoD CAs that on or since October 1, 1980 were being performed by more than ten DoD civilian employees.

(3) DoD Components shall notify Congress of the intention to do a cost comparison for each CA, as required by section 502(a)(2)(A). DoD Components shall notify ASD(MI&L) of any such intent at least five working days prior to the congressional notification.

(4) The DoD Components shall notify ASD(MI&L) at least five working days prior to sending the detailed summary report required by section 502(a)(2)(B) to Congress. The detailed summary of the cost will include: The amount of the offer accepted for the performance of the activity by the private contractor; the costs and expenditures that the Government will incur because of the contract; the estimated cost of performance of the activity by the most efficient Government organization; statement indicating the life of the contract; and certifications that the entire cost comparison is available, and that the Government calculation for the cost of performance of such function by DoD employees is based on an estimate of the most efficient and cost effective organization for performance of such function by DoD employees.

(5) The potential economic effect on the local community and Federal Government of contracting for performance of the function shall be included in the report to accompany the above certifications, if more than 50 total employees (including military and civilian, both permanent and temporary) are potentially affected. It is suggested that the Army Corps of Engineers' model (or equivalent) be used to generate this information. The potential economic effect on employees affected shall be included in the report regardless of the number of employees involved. Also include in the report a statement that the decision was made to convert to contractor performance, the projected date of contract award, and the projected contract start date, and the effect of contracting the function on the military mission of that function.

(6) By December 15th of each year, each DoD Component shall submit to ASD(MI&L) the data required by section 502(c). In describing the extent to which CA functions were performed by DoD contractors during the preceding fiscal year, include the estimated number of work years for the in-house operation as well as for contract operation (including percentages) by major OSD functional areas in Enclosure 1; e.g., Social Services, Health Services, Installation Services, etc. For the estimate of the percentage of commercial activities functions that will be performed in-house and those that will be performed by contract during the fiscal year during which the report is submitted, include the estimated work years for in-house commercial activities as well as for contracted commercial activities and include the rational for significant changes when compared to the previous year's data.

Enclosure 1–Codes and Definitions of Functional Areas

This list of functionasl codes and their definitions does not restrict the applicability or scope of the commercial activity program within DoD. § 169a.2 (b) defines the applicability and scope of the program. The commercial activity Program still applies to CAs not defined in this listing. These codes and definitions are a guide to assist reporting. As new functions are identified, codes will be added or existing definitions will be expanded.

Social Services

G001 Care of Remains of Deceased Personnel and/or Funeral Services. Includes commercial activities the provide mortuary services, including transportation from aerial port of embarkation (APOE) to mortuary of human remains received from overseas mortuaries, inspection, restoration, provision of uniform and insignia, dressing, flag, placement in casket, and preparation for onward shipment.

G008 Commissary Store Operation. Includes commercial activities that povide all ordering, receipt, storage, stockage, and retailing for commissaries. Excludes procurement of goods for issue or resale.

G008A: Shelf Stocking.
G008B: Check Out.
G008C: Meat Processing.
G008D: Produce Processing.
G008E: Storage and Issue.
G008F: Other.
G008G: Troop Subsistence Issue Point.

G009 Clothing Sales Store Operation. Includes commercial activities that provide ordering, receipt, storage, stockage, and retailing of clothing. Stores operated by the Army and Air Force Exchange Services, Navy Exchange Services, and Marine Corps Exchange Services are excluded.

G010 Recreational Library Services. Includes operation of libraries maintained primarily for off-duty use by military personnel and their dependents.

G011 Other Morale, Welfare, and Recreation Services. Operation of CAs maintained primarily for the off-duty use of military personnel and their dependents, including both appropriated and partially nonappropriated fund activities. The operation of clubs and messes, DoD Component community service activities, and morale support activities are included in code G011. Examples of activities performing G011 functions are arts and crafts, entertainment, sports and athletics, swimming, bowling, marina and boating, stables, youth activities, centers, and golf. (NOTE: CA procedures are not mandatory for functions staffed solely by civilian personnel paid by nonappropriated fund. This excludes Chaplain-related activities).

G900 Chaplains. Includes commercial activities that perform social services for an installation on behalf of the Chaplain, such as marital counseling and social work. Also includes activities that assist in church-related functions, such as playing an organ and record keeping.

G901 Berthing BOQ/BEQ. Includes commercial activities that provide temporary or permanent accommodations for officer or enlisted personnel. Management of the facility, room service, and daily cleaning are included.

G904 Family Services. Includes commercial activities that perform various social services for families, such as family counseling, financial counseling and planning, the operation of an abuse center, child care center, or family aid center.

G999 Other Social Services

Health Services

H101 Hospital Care. Includes commercial activities that provide outpatient and inpatient care and consultative evaluation in the medical specialties, including pediatrics and psychiatry; the coordination of health care delivery relative to the examination, diagnosis, treatment, and disposition of medical inpatients.

H102 Surgical Care. Includes commercial activities that provide outpatient and inpatient care and consultative evaluation in the surgical specialties, including obstetrics, gynecology, ophthalmology and otorhinolaryngology; the coordination of health care delivery relative to the examination, treatment, diagnosis, and disposition of surgical patients.

H105 Nutritional Care. Includes commercial activities that provide hospital food services for inpatients and outpatients, dietetic treatment, counseling of patients, and nutritional education.

H106 Pathology Services. Includes commercial activities involved in the operation of laboratories providing comprehensive clinical and anatomical pathology services; DoD military blood program and blood bank activities; and area reference laboratories.

H107 Radiology Services. Includes commercial activities that provide diagnostic and therapeutic radiologic service to inpatients, and the processing, examining, interpreting, and storage and retrieval of radiographs, fluorographs, and radiotherapy.

H108 Pharmacy Services. Includes commercial activities that produce, preserve, store, compound, manufacture, package, control, assay, dispense, and distribute medications (including intravenous solutions) for inpatients and outpatients.

H109 Physical Therapy. Includes commercial activities that provide care and treatment to patients whose ability to function is impaired or threatened by disease or injury: primarily serve patients whose actual impairment is related to neuromusculoskeletal, pulmonary, and

cardiovascular systems; evaluate the function and impairment of these systems, and select and apply therapeutic procedures to maintain, improve, or restore these functions.

H110 Materiel Services. Includes commercial activities that provide or arrange for the supplies, equipment, and certain services necessary to support the mission of the medical facility; responsibilities include procurement, inventory control, receipt, storage, quality assurance, issue, turn-in, disposition, property accounting, and reporting actions for designated medical and nonmedical supplies and equipment.

H111 Orthopedic Services. Includes commercial activities that construct orthopedic appliances such as braces, casts, splints, supports, and shoes from impressions, forms, molds, and other specifications.

H112 Ambulance Service. Includes commercial activities that provide transportation for personnel who are injured, sick, or otherwise require medical treatment, including standby duty in support of military activities and ambulance bus services.

H113 Dental Care. Includes commercial activities that provide oral examinations, patient education, diagnosis, treatment, and care including all phases of restorative dentistry, oral surgery, prosthodontics, oral pathology, periodontics, orthodontics, endodontics, oral hygiene, preventive dentistry, and radiodontics.

H114 Dental Laboratories. Includes commercial activities that operate dental prosthetic laboratories required to support the provision of comprehensive dental care; services may include preparing casts and models, repairing dentures, fabricating transitional, temporary, or orthodontic appliances, and finishing dentures.

H115 Clinics and Dispensaries. Includes commercial activities that operate freestanding clinics and dispensaries that provide health care services. Operations are relatively independent of a medical treatment facility and are separable for in-house or contract performance. health clinics, occupational health clinics, and occupational health nursing offices.

H116 Veterinary Services. Includes commercial activities that provide a complete wholesomeness and quality assurance food inspection program, including sanitation, inspection of food received, surveillance inspections, and laboratory examination and analysis; a complete zoonosis control program; complete medical care for Government-owned animals; veterinary medical support for biomedical research and development; support to other Federal agencies when requested and authorized; assistance in a comprehensive preventive medicine program; and determination of fitness of all foods that may have been contaminated by chemical, bacteriological, or radioactive materials.

H117 Medical Records Transcription. Includes commercial activities that transcribe, file, and maintain medical records.

H118 Nursing Services. Includes commercial activities that provide care and treatment for inpatients and outpatients not required to be performed by a doctor.

H119 Preventive Medicine. Includes commercial activities that operate wellness or holistic clinics (preventive medicine), information centers, and research laboratories.

H120 Occupational Health. Includes commercial activities that develop, monitor, and inspect installation safety conditions.

H121 Drug Rehabilitation. Includes commercial activities that operate alcohol treatment facilities, urine testing for drug content, and drug/alcohol counseling centers.

H999 Other Health Services

Intermediate, Direct, or General Repair and Maintenance of Equipment

Definition. Maintenance authorized and performed by designated maintenance commercial activities in support of using activities. Normally, it is limited to replacement and overhaul of unserviceable parts, subassemblies, or assemblies. It includes (1) intermediate/direct/general maintenance performed by fixed activities that are not designed for deployment to combat areas and that provide direct support of organizations performing or designed to perform combat missions from bases in the United States, and (2) any testing conducted to check the repair procedure. Commercial activities engaged in intermediate/direct/general maintenance and/or repair of equipment are to be grouped according to the equipment predominantly handled, as follows:

J501 Aircraft. Aircraft and associated equipment. Includes armament, electronic and communications equipment, engines, and any other equipment that is an integral part of an aircraft.

J502 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

J503 Missiles. Missile systems and associated equipment. Includes mechanical, electronics, and communication equipment that is an integral part of missile systems.

J504 Vessels. All vessels, including armament, electronics, communications and any other equipment that is an integral part of the vessel.

J505 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronic, and communications equipment that is an integral part of a combat vehicle.

J506 Noncombat Vehicles. Automotive equipment, such as tactical, support, and administrative vehicles. Includes electronic and communications equipment that is an integral part of the noncombat vehicle.

J507 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronic and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of ADPE not an integral part of a communications system shall be reported under functional code W825; maintenance of tactical ADPE shall be reported under function code J999.

J510 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipment for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communications and control equipment.

J511 Special Equipment. Construction equipment, weight lifting, power, and materiel handling equipment (MHE).

J512 Armament. Small arms, artillery and guns, nuclear munitions, chemical, biological, and radiological (CBR) items, conventional ammunition, and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

J513 Dining Facility Equipment. Dining facility kitchen appliances and equipment.

J514 Medical and Dental Equipment. Medical and dental equipment.

J515 Containers, Textiles, Tents, and Tarpaulins. Containers, tents, tarpaulins, other textiles, and organizational clothing.

J516 Metal Containers. Container express (CONEX) containers, gasoline containers, and other metal containers.

J517 Training Devices and Audiovisual Equipment. Training devices and audiovisual equipment. Excludes maintenance of locally fabricated devices and functions reported under codes T807 and T900.

J519 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $5,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materiels, components, or end items entailed in manufacturing, maintenance, supply processing, assembly, or research and development operations.

J520 Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment (TMDE) that has resident in it a programmable computer. Included is equipment referred to as automated test equipment (ATE).

J521 Other Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment not classified as ATE or that does not contain a resident programmable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

J522 Aeronautical Support Equipment. Aeronautical support equipment excluding TMDE (and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical equipment reported under J501.

J999 Other Intermediate, Direct, or General Repair and Maintenance of Equipment

Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment

Definition. The maintenance performed on materiel that requires major overhaul or a complete rebuild of parts, assemblies, subassemblies, and end items, including the manufacture of parts, modifications, testing, and reclamation, as required. Depot maintenance serves to support lower categories of maintenance. Depot maintenance provides stocks of serviceable equipment by using more extensive facilities

for repair than are available in lower level maintenance activities. (See DoD Instruction 4151.15 [11] for further amplification of the category definitions reflected below.) Depot or indirect maintenance functions are identified by the type of equipment maintained or repaired.

K531 Aircraft. Aircraft and associated equipment. Includes armament, electronics and communications equipment, engines, and any other equipment that is an integral part of an aircraft. Aeronautical support equipment not reported separately under code K548.

K532 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

K533 Missiles. Missile systems and associated equipment. Includes mechanical, electronic, and communications equipment that is an integral part of missile systems.

K534 Vessels. All vessels, including armament, electronics, and communications equipment, and any other equipment that is an integral part of a vessel.

K535 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronics, and communications equipment that is an integral part of a combat vehicle.

K536 Noncombat vehicles. Automotive equipment, such as tactical support and administrative vehicles. Includes electronic and communications equipment that is an integral part of the vehicle.

K537 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronics and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of ADPE, not an integral part of a communications system, is reported under functional code W825.

K538 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline, electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipments for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communication and control equipment.

K539 Special Equipment. Construction equipment, weight lifting, power, and materiel-handling equipment.

K540 Armament. Small arms; artillery and guns; nuclear munitions, CBR items; conventional ammunition; and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

K541 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $3,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materials, components, or end items entailed in manufacturing, maintenance, supply, processing, assembly or research and development operations.

K542 Dining Facility Equipment. Dining facility kitchen appliances and equipment. This includes feeding equipment.

K543 Medical and Dental Equipment. Medical and dental equipment.

K546 Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment (TMDE) that has resident in it a programmable computer. Included is equipment referred to as automated test equipment (ATE).

K547 Other Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment not classified as ATE or that does not contain a resident progarammable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

K548 Aeronautical Support Equipment. Aeronautical support equipment excluding TMDE (and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical support equipment reported under code K531.

K999 Other Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment.

Base Maintenance/Multifunction Contracts

P100 Base Maintenance Multifunction Contracts. Includes all umbrella-type contracts where the contractor performs more than one function at one or more installations. (Identify specific functions as non add entries.)

Research Development, Test, and Evaluation (RDT&E) Support

R660 RDT&E Support. Includes all effort not reported elsewhere, directed toward support of installation or operations required for research, development, test, and evaluation use. Included are maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships.

Installation Service

S700 Natural Resource Services. Includes those commercial activities that provide products or services that implement natural resource management plans in the areas of fish, game, wildlife, forestry, watershed areas or ground water table, erosion control, and mineral deposit management. Natural resources planning and management is a governmental function and will not be reported.

S701 Advertising and Public Relations Services. Includes commercial activities responsible for public advertising and public relations, such as public affairs offices, installation newspaper and publications, and press release/information offices.

S702 Financial and Payroll Services. Includes commercial activities that prepare payroll, print checks, escrow, or change payroll accounts for personnel. Includes other services normally associated with banking operations.

S703 Debt Collection. Includes commercial activities that monitor, record, and collect debts incurred by overdrafts, bad checks, or delinquent accounts.

S706 Installation Bus Services. Includes commercial activities that operate local, intrapost, and interpost scheduled bus services. Includes scheduled movement of personnel over regular routes by administrative motor vehicles to include taxi and dependent school bus services.

S706A: Scheduled Bus Services.

S706B: Unscheduled Bus Services.

S706C: Dependent School Bus Services.

S706D: Other Bus Services.

S709 Laundry and Dry Cleaning Services. Includes commercial activities that operate and maintain laundry and dry cleaning facilities.

S709 Custodial Services. Includes commercial activities that provide janitorial and housekeeping services to maintain safe and sanitary conditions and preserve property.

S710 Pest Management. Includes commercial activities that provide control measures directed against fungi, insects, rodents, and other pests.

S712 Refuse Collection and Disposal Services. Includes commercial activities that operate incinerators, sanitary fills, and regulated dumps, and perform all other approved refuse collection and disposal services.

S713 Food Services. Includes commercial activities engaged in the operation and administration of food preparation and serving facilities. Excludes operation of central bakeries, pastry kitchens, and central meat processing facilities that produce a product and are reported under functional area X934. Excludes hospital food service operations (under code H105).

S713A: Food Preparation and Administration.

S713B: Mess Attendants and Housekeeping Services.

S714 Furniture. Includes commercial activities that repair and refurbish furniture.

S715 Office Equipment. Includes commercial activities that maintain and repair typewriters, calculators, and adding machines.

S716 Motor Vehicle Operation. Includes commercial activities that operate local administrative motor transportation services. Excludes installation bus services reported in functional area S706.

S716A: Taxi Service.

S716B: Bus Service (unless in S706).

S716C: Motor Pool Operation.

S716D: Crane Operation (includes rigging, excludes those listed in T800G).

S716E: Heavy Truck Operation.

S716F: Construction Equipment Operation.

S716I: Driver/Operator Licensing & Test.

S716J: Other Vehicle Operations (light truck/auto).

S716K: Fuel Truck Operations.

S716M: Tow Truck Operations.

S717 Motor Vehicle Maintenance. Includes commercial activities that perform maintenance on automotive equipment, such as support and administrative vehicles. Includes electronic and communications equipment that are an integral part of the vehicle.

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[11] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

S717A: Upholstery Maintenance and Repair.
S717B: Glass Replacement and Window Repair.
S717C: Body Repair and Painting.
S717D: Accessory Overhaul.
S717E: General Repairs/Minor Maintenance.
S717F: Battery Maintenance and Repair.
S717G: Tire Maintenance and Repair.
S717H: Major Component Overhaul.
S717I: Material Handling Equipment Maintenance.
S717J: Crane Maintenance.
S717K: Construction Equipment Maintenance.
S717L: Frame and Wheel Alignment.
S717M: Other Motor Vehicle Maintenance.

S718 Fire Prevention and Protection. Includes commercial activities that operate and maintain fire protection and prevention services. Includes routine maintenance and repair of fire equipment and the installation of fire prevention equipment.
S718A: Fire Protection Engineering.
S718B: Fire Station Administration.
S718C: Fire Prevention.
S718D: Fire Station Operations.
S718E: Crash and Rescue.
S718F: Structural Fire Suppression.
S718G: Fire & Crash/Rescue Equipment Major Maintenance.
S718H: Other Fire Prevention and Protection.

S719 Military Clothing. Includes commercial activities that order, receive, store, issue, and alter military colthing and repair military shoes. Excludes repair of organizational clothing reported under code J515.

S724 Guard Service. Includes commercial activities engaged in physical security operations that provide for installation security and intransit protection of military property from loss or damage.

S724A: Ingress and egress control. Regulation of person, material, and vehicles entering or exiting a designated area to provide protection of the installation and Government property.

S724B: Physical security patrols and posts. Mobile and static physical security guard activities that provide protection of installation or Government property.

S724C: Conventional arms, ammunition, and explosives (CAAE) security. Dedicated security guards for CAAE.

S724D: Animal control. Patrolling for, capture of, and response to complaints about uncontrolled, dangerous, and disabled animals on military installations.

S724E: Visitor information services. Providing information to installation resident and visitors about street, agency, unit, and activity locations.

S724F: Vehicle impoundment. Removal, accountability, security, and processing of vehicles impounded on military installations.

S724G: Registration functions. Administration, filing, processing, and retrieval information about privately owned items that must be registered on military installations.

S725 Electrical Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned electrical plants and systems.

S726 Heating Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned heating plants and systems over 750,000 BTU capacity. Codes Z991 or Z992 will be used for systems under 750,000 BTU capacity, as applicable.

S727 Water Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned water plants and systems.

S728 Sewage and Waste Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned sewage and waste plants and systems.

S729 Air Conditioning and Refrigeration Plants. Includes commercial activities that operate, maintain, and repair Government-owned air conditioning and refrigeration plants over 5-ton capacity. Codes Z991 or Z992 shall be used for plants under 5-ton capacity as applicable.

S730 Other Services or Utilities. Includes commercial activities that operate, maintain, and repair Government-owned services or utilities.

S731 Base Supply Operations. Includes commercial activities that receive, store, and issue nonmission stocks and relocate office furniture.

S732 Warehousing and Distribution of Publications. Includes commercial activities that receive, store, and distribute publications and blank forms.

S740 Installation Transportation Office. Includes technical, clerical, and administrative commercial activities that support traffic management services related to the procurement of freight and passenger service from commercial for hire transportation companies. Excludes restricted functions that must be performed by Government employees such as the review, approval, and signing of documents related to the obligation of funds; selection of mode or carrier; evaluation of carrier performance; and carrier suspension. Excludes installation transportation functions described under codes S706, S716, S717, T810, T811, T812, and T814.
S740A: Installation Transportation Management and Administration.
S740B: Materiel Movements.
S740C: Personnel Movements.
S740D: Personal Property Activities.
S740E: Quality Control and Inspection.
S740F: Unit Movements.

S750 Museum Operations

S760 Contractor-Operated Parts Stores and Contractor-Operated Civil Engineering Supply Stores

S999 Other Installation Services

Other Nonmanufacturing Operations

T800 Ocean Terminal Operations. Includes commercial activities that operate terminals transferring cargo between overland and sealift transportation. Includes handling of government cargo through commercial water terminals.

T800A: Pier Operations. Includes commercial activities that provide stevedore and shipwright carpentry operations supporting the loading, stowage, and discharge of cargo and containers on and off ships, and supervision of operations at commerical piers and military ocean terminals.

T800B: Cargo Handling Equipment. Includes commercial activities that operate and maintain barge derricks, gantries, cranes, forklifts, and other materiel handling equipment used to handle cargo within the terminal area.

T800C: Port Cargo Operations: Includes commercial activities that load and unload railcars and trucks, pack, repack, crate, warehouse, and store cargo moving through the terminal, and stuff and unstuff containers.

T800D: Vehicle Preparation. Includes commercial activities that prepare Government and privately owned vehicles (POV) for ocean shipment, inspection, stowage in containers, transportation to pier, processing, and issue of import vehicles to owners.

T800E: Lumber Operations. Includes commercial activities that segregate reclaimable lumber from dunnage removed from ships, railcars, and trucks remove nails; even lengths; inspect; and return the lumber to inventory for reuse. Includes receipt, storage, and issue of new lumber.

T800F: Materiel Handling Equipment (MHE) Operations. Includes commercial activities that deliver MHE to user agencies, perform onsite fueling, and operate special purpose and heavy capacity equipment.

T800G: Crane Operations. Includes commercial activities that operate and perform first-echelon maintenance of barge derricks, gantries, and truck-mounted cranes in support of vessels and terminal cargo activities.

T800H: Breakbulk Cargo Operations. Includes commercial activities that provide stevedoring, shipwright carpentry, stevedore transportation, and the loading of noncontainerized cargo.

T800I: Other Ocean Terminal Operations.

T801 Storage and Warehousing. Includes commercial activities that receive materiel into depots and other storage and warehousing facilities, provide care for supplies, and issue and ship materiel.

T801A: Receipt. Includes commercial activities that receive supplies and related documents and information. This includes materiel handling and related actions, such as materials segregation and checking, and tallying incident to receipt.

T801B: Packing and Crating of Household Goods. Includes commercial activities performing packing and crating operations described in T801H, incident to the movement or storage of household goods.

T801C: Shipping. Includes commercial activities that deliver stocks withdrawn from storage to shipping. Includes onloading and offloading of stocks from transportation carriers, blocking, bracing, dunnage, checking, tallying, and materiel handling in central shipping area and related documentation and information operations.

T801D: Care, Rewarehousing, and Support of Materiel. Includes commercial activities that provide for actions that must be taken to protect stocks in storage, including physical handling, temperature control, assembly

placement and preventive maintenance of storage aids, and realigning stock configuration; provide for movement of stocks from one storage location to another and related checking, tallying, and handling; and provide for any work being performed within general storage support that cannot be identified clearly as one of the subfunctions described above.

T801E: Preservation and Packaging. Includes commercial activities that preserve, represerve, and pack materiel to be placed in storage or to be shipped. Excludes application of final (exterior) shipping containers.

T801F: Unit and Set Assembly and Disassembly. Includes commercial activities that gather or bring together items of various nomenclature (part, components, and basic issue items) and group, assemble, or restore them to or with an item of another nomenclature (such as parent end item or assemblage) to permit shipment under a singel document. This also includes blocking, bracing, and packing preparations within the inner shipping container; physical handling and loading; and reverse operation of assembling such units.

T801G: Special Processing of Nonstock Fund-Owned Materiel. Includes commercial activities performing special processing actions described below that must be performed on Inventory Control Point (ICP)-controlled, nonstock fund-owned material by technically qualified depot maintenance personnel using regular or special maintenance tools or equipment. Includes disassembly or reassembly or reserviceable ICP-controlled materiel being readied for movement, in-house storage, or out-of-house location such as a port to a commercial or DoD-operated maintenance or storage facility, property disposal or demilitarization activity, including blocking, bracing, cushioning, and packing.

T801H: Packing and Crating. Includes commercial activities that place supplies in their final, exterior containers ready for shipment. Includes the nailing, strapping, sealing, stapling, masking, marking, and weighing of the exterior container. Also, includes all physical handling, unloading, and loading of materiel within the packing and shipping area; checking and tallying material in and out; all operations incident to packing, repacking, or recrating for shipment, including on-line fabrication of tailored boxes, crates, bit inserts, blocking, bracing and cushioning shrouding, overpacking, containerization, and the packing of material in transportation containers. Excludes packing of household goods and personnel effects reported under code T801B.

T801I: Other Storage and Warehousing.

T802 Cataloging. Includes commercial activity that prepare supply catalogs and furnish cataloging data on all item of supply for distribution to all echelons world wide. Include catalog files, preparation, and revision of all item identifications for all logistics functions; compilation of Federal catalog sections and allied publication; development of Federal item identification guides, and procurement identification descriptions. Includes printing and publication of Federal supply catalogs and related allied publications.

T803 Acceptance Testing. Includes commercial activities that inspect and test supplies and materiel to ensure that products meet minimum requirements of applicable specifications, standards, and similar technical criteria; laboratories and other facilities with inspection and test capabilities; and activities engaged in production acceptance testing of ammunition, aircraft armament, mobility material, and other military equipment.

T803A: Inspection and Testing of Oil and Fuel.

T803B: Other Acceptance Testing.

T804 Architect Engineering Services. Includes commercial activities that provide architect engineer (A–E) services. Excludes engineering technical services (ETS) reported in functional area T813, and those required under The Brooks Act.

T805 Operation of Bulk Liquid Storage. Includes commercial activities that operate bulk petroleum storage facilities. Includes operation of off-vessel discharging and loading facilities, fixed and portable bulk storage facilities, pipelines, pumps, and other related equipment within or between storage facilities or extended to using agencies (excludes aircraft fueling services); handling of drums within bulk fuel activities. Excludes aircraft fueling services reported under code T814.

T806 Printing and Reproduction. Includes commercial activities that print, duplicate, and copy. Excludes user-operated office copying equipmet.

T807 Audiovisual Services. Includes commercial activities that provide base audiovisual (AV) support, AV production, AV depositories, technical documentation, and broadcasting.

T807A: Base AV Support. Includes commercial activities that provide still photographic products and services, graphic arts products and services, AV library services, AV training aids, models and displays, presentation services, and AV equipment maintenance. May also include photographic or electronic documentation for local use.

T807B: AV Production. Includes commercial activities that produce, distribute, and are accountable for all AV productions, as defined in DoD 5040.2–R[12]

T807C: AV Depositories. Includes commercial activities that store, issue, receive, and maintain AV products at the central library level. Includes records center operations for AV products.

T807D: Technical Documentation. Includes commercial activities that provide medical or intelligence documentation, optional instrumentation, and armament recording.

T807E: Broadcasting. Includes commercial activities that produce, reproduce, and distribute AV products/productions only for broadcast use.

T807K: AV Design Service. Includes commercial activities that provide professional consultation services involving the selection, design, and development of AV equipment or AV facilities.

T808 Mapping and Charting. Includes commercial activities that design, compile, print, and disseminate cartographic and geodetic products.

T809 Administrative Telephone Service. Includes commercial activities that operate and maintain the common-user, administrative telephone systems at DoD installations and activities. Includes telephone operator services; range communications; emergency action consoles; and the cable distribution portion of a fire alarm, intrusion detection, emergency monitoring and control data, and similar systems that require use of a telephone system.

T810 Air Transportation Services. Includes commercial activities that operate and maintain nontactical aircraft that are assigned to commands and installations and used for administrative movement of personnel and supplies.

T811 Water Transportation Services. Includes commercial activities that operate and maintain nontactical watercraft that are assigned to commands and installations and are used for administrative movement of personnel and supplies.

T811A: Water Transportation Services (except tug operations).

T811B: Tug Operations.

T812 Rail Transportation Services. Includes commercial activities that operate and maintain nontactical rail equipment assigned to commands and installation and used for administrative movement of personnel and supplies.

T813 Engineering and Technical Services. Includes commercial activities that advise, instruct, and train DoD personnel in the installation, operation, and maintenance of DoD weapons, equipment, and systems.

These services include transmitting the technical skill capability to DoD personnel in order for them to install, maintain, and operate such equipment and keep it in a high state of military readiness.

T813A: Contractor Plant Services. Includes commercial manufacturers of military equipment contracted to provide technical and engineering services to DoD personnel. Qualified employees of the manufacturer furnish these services in the manufacturer plants and facilities. Through this program, the special skills, knowledge, experience, and technical data of the manufacturer are provided for use in training, training aid programs, and other essential services directly related to the development of the technical capability required to install, operate, maintain, supply, and store such equipment.

T813B: Contract Field Services (CFS). Includes commercial activities that provide services of qualified contractor personnel who provide onsite technical and engineering services to DoD personnel.

T813C: In-house Engineering and Technical Services. Includes commercial activities that provide technical and engineering services described in codes T813A and T813B above that are provided by Government employees.

T813D: Other Engineering and Technical Services.

T814 Fueling Service (Aircraft). Includes commercial activities that distribute aviation

[12] See footnote 11 of Enclosure 1.

petroleum oil lubricant products. Includes operation of trucks and hydrants.

T815 Scrap Metal Operation. Includes commercial activities that bale or shear metal scrap and melt or sweat aluminum scrap.

T816 Telecommunication Centers. Includes commercial activities that operate and maintain telecommunication centers, nontactical radios, automatic message distribution systems, technical control facilities, and other systems integral to the communication center. Includes operations and maintenance of air traffic control equipment and facilities.

T817 Other Communications and Electronics Systems. Includes commercial activities that operate and maintain communications and electronics systems not included in T809 and T816.

T818 Systems Engineering and Installation of Communications Systems. Includes commercial activities that provide engineering and installation services including, design and drafting services, associated with functions specified in T809, T816, and T817.

T819 Preparation and Disposal of Excess and Surplus Property. Includes commercial activities that accept, classify, and dispose of surplus Government property, including scrap metal.

T820 Administrative Supply Services. Includes commercial activities that provide centralized administrative support services not included specifically in another functional category. These activities render services to multiple activities throughout an organization or to multiple organizations; such as a steno or typing pool rather than a secretary assigned to an individual. Typical activities included are word processing centers, reference and technical libraries, microfilming, messenger service, translation services, publication distribution centers, etc.

T820A: Word Processing Centers.

T820B: Reference and Technical Libraries.

T820C: Microfilming.

T820D: Internal Mail and Messenger Services.

T820E: Translation Services.

T820F: Publication Distribution Centers.

T820G: Field Printing and Publication. Incudes those activities that print or reproduce official publications, regulations, and orders. Includes management and operation of the printing facility.

T820H: Compliance Auditing.

T820I: Court Reporting.

T821 Special Studies and Analyses. Includes commercial activities that peform research, collect data, conduct time motion studies, or pursue some other planned methodology in order to analyze a specific issue, system, device, boat, plane, or vehicle for management.

Such activities may be temporary or permanent in nature.

T821A: Cost Benefit Analyses.

T821B: Statistical Analyses.

T821C: Scientific Data Studies.

T821D: Regulatory Studies.

T821E: Defense, Education, Energy Studies.

T821F: Legal/Litigation Studies.

T821G: Management Studies.

T900 Training Devices and Simulators. Includes commercial activities that provide training aids, devices, simulator design, fabrication, issue, operation, maintenance, support, and services.

T900A: Training Aids, Devices, and Simulator Support. Includes commercial activities that design, fabricate, stock, store, issue, receive, and account for and maintain training aids, devices, and simulators (does not include audiovisual production and associated services or audiovisual support).

T900B: Training Devices and Simulator Operation. Includes commercial activities that operate and maintain training device and simulator systems.

T999 Other Nonmanufacturing Operations

Education and Training

Includes commercial activities that conduct courses of instruction attended by civilian or military personnel of the Department of Defense. Terminology of categories and subcategories primarily for military personnel (marked by an asterisk) follows the definitions of the statutory *Military Manpower Training Report* submitted nnually to the Congress. This series includes only the conduct of courses of instruction: it does not include education and training support functions (that is, Base Operations Functions in the S series and Nonmanufacturing Operations in the T series). A course is any separately identified instructional entity or unit appearing in a formal school or course catalog.

*U100 Recruit Training** The instruction of recruits.

*U200 Officer Acquisition Training** Programs concerned with officer acquisition training.

*U300 Specialized Skill Training** Includes Army One-Station Unit Training, Naval Apprenticeship Training, and health care training.

*U400 Flight Training** Includes flight familiarization training.

*U500 Professional Development Education**

*U510 Professional Military Education** Generally, the conduct of instruction at basic, intermediate, and senior Military Service schools and colleges and enlisted leadership training does not satisfy the requirements of the definition of a DoD commercial activities and is excluded from the provision of this part.

*U520 Graduate Education, Fully Funded, Full-Time**

*U530 Other Full-Time Education Programs**

*U540 Off-Duty (Voluntary) and On-Duty Education Programs** Includes the conduct of basic skills education program (BSEP), english as a second language (ESL), skill development courses, graduate, undergraduate, vocational/technical, and high school completion programs for personnel without a diploma.

U600 Civilian Education and Training Includes the conduct of courses intended primarily for civilian personnel.

U700 Dependent Education Includes the conduct of elementary and secondary school courses of instruction for the dependents of DoD overseas personnel.

U800 Training Development and Support (not reported elsewhere)

U999 Other Training

Automatic Data Processing

W824 Data Processing Services. Includes commercial activities that provide ADP processing services by using Government-owned or leased ADP equipment; or participating in Governmentwide ADP sharing program; or procuring of time-sharing processing services (machine time) from commercial sources. Includes all types of data processing services performed by general purpose ADP and peripheral equipment.

W824A: Operation of ADP Equipment.

W824B: Production Control and Customer Service.

W824C: ADP Magnetic Media Library.

W824D: Data Transcription/Data Entry Services.

W824E: Transmission and Teleprocessing Equipment Services.

W824F: Acceptance Testing and Recovery Systems.

W824G: Punch/Card Processing Services.

W824H: Other ADP Operations and Support.

W825 Maintenance of ADP Equipment. Includes commercial activities that maintain and repair all Government-owned ADP equipment and peripheral equipment.

W826 Systems Design, Development, and Programing Services. Includes commercial activities that provide software services associated with nontactical ADP operation.

W826A: Development and Maintenance of Applications Software.

W826B: Development and Maintenance of Systems Software.

W827 Software Services for Tactical Computers and Automated Test Equipment. Includes commercial activities that provide software services associated with tactical computers and TMDE and ATE hardware.

W999 Other Automatic Data Processing

Products Manufactured and Fabricated In-House

Commercial activities that manufacture and/or fabricate products in-house are grouped according to the products predominantly handled as follows:

X931 Ordnance Equipment. Ammunition and related products.

X932 Products Made from Fabric or Similar Materials. Including the assembly and manufacture of clothing, accessories, and canvas products.

X933 Container Products and Related Items. Including the design, engineering, and manufacture of wooden boxes, crates, and other containers; includes the fabrication of fiberboard boxes, and assembly of paperboard boxes with metal straps. Excludes on-line fabrication of boxes and crates reported in functional area T801.

X934 Food and Bakery Products. Including the operation of central meat processing plants, pastry kitchens, and bakery facilities. Excludes food services reported in functional areas S713 and H105.

X935 Liquid, Gaseous, and Chemical Products. Including the providing of liquid oxygen and liquid nitrogen.

X936 Rope, Cordage, and Twine Products: Chains and Metal Cable Products

X937 Logging and Lumber Products. Logging ans sawmill operations.

X938 Communications and Electronic Products

X939 Construction Products. The operation of quarries and pits, including crushing, mixing, and concrete and asphalt batching plants.

X940 Rubber and Plastic Products

X941 Optical and Related Products

X942 Sheet Metal Products

X943 Foundry Products

X944 Machined Parts

X999 Other Products Manufactured and Fabricated In-House

Maintenance, Repair, Alteration, and Minor Construction of Real Property

Z991 Buildings and Structures-Family Housing. Includes commercial activities that are engaged in exterior and interior painting and glazing; roofing, interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 Btu capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not included in other activities. Includes fencing, flagpoles, and other miscellaneous structures associated with family housing.

Z991A: Rehabilitation-Tenant Change.
Z991B: Roofing.
Z991C: Glazing.
Z991D: Tiling.
Z991E: Exterior Painting.
Z991F: Interior Painting.
Z991G: Flooring Painting.
Z991H: Screens, Blinds, etc.
Z991I: Appliance Repair.
Z991J: Electrical Repair. Includes elevators, escalators, and moving walks.
Z991K: Plumbing.
Z991L: Heating Maintenance.
Z991M: Air Conditioning Maintenance.
Z991N: Emergency/Service Work.
Z991T: Other Work.

Z992 Buildings and Structures (Other Than Family Housing). Includes commercial activities that are engaged in exterior and interior painting and glazing; roofing, interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 Btu capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not reported under other functional codes. Includes fencing, flagpoles, guard and watchtowers, grease racks, unattached loading ramps, training facilities other than buildings, monuments, grandstands and bleachers, elevated garbage racks, and other miscellaneous structures.

Z992A: Rehabilitation—Tenant Change.
Z992B: Roofing.
Z992C: Glazing.
Z992D: Tiling.
Z992E: Exterior Painting.
Z992F: Interior Painting.
Z992G: Flooring.
Z992H: Screens, Blinds, etc.
Z992I: Appliance Repair.
Z992J: Electrical Repair. Includes elevators, escalators, and moving walkways.
Z992K: Plumbing.
Z992L: Heating Maintenance.
Z992M: Air Conditioning Maintenance.
Z992N: Emergency/Service Work.
Z992T: Other Work.

Z993 Grounds and Surfaced Areas. Commercial activities that maintain, repair, and alter grounds and surfaced areas defined in codes Z993A, B, and C below.

Z993A: Grounds (Improved). Includes improved grounds, including lawns, drill fields, parade grounds, athletic and recreational facilities, cemeteries, other grounds areas, landscape and windbreak plants, and accessory drainage systems.

Z993B: Grounds (Other than Improved). Small arms ranges, antenna fields, drop zones, and firebreaks. Also grounds such as wildlife conservation areas, maneuver areas, artillery ranges, safety and security zones, desert, swamps, and similar areas.

Z993C: Surfaced Areas. Includes airfield pavement, roads, walks, parking and open storage areas, traffic signs and markings, storm sewers, culverts, ditches, and bridges. Includes sweeping and snow removal from streets and airfields.

Z997 Railroad Facilities. Includes commercial activities that maintain, repair, and alter narrow and standard gauge two-rail tracks, including spurs, sidings, yard, turnouts, frogs, switches, ties, ballast, and roadbeds, with accessories and appurtenances, drainage facilities, and trestles.

Z998 Waterways and Waterfront Facilities. Includes commercial activities what maintain, repair, and alter approachs, turning basin, berth areas and maintenance dredging, wharves, piers, docks, ferry racks, transfer bridges, quays, bulkheads, marine railway dolphins, mooring, buoys, seawalls, breakwaters, causeways, jetties, revetments, etc. Excludes waterways maintained by the Army Corps of Engineers (COE) rivers and harbor programs. Also excludes buildings, grounds, railroads and surfaced areas located on waterfront facilities.

Z999 Other Maintenance, Repair, Alteration, and Minor Construction of Real Property

Enclosure 2—Commercial Activities Inventory Report and Five-Year Review Schedule

A. General Instructions

1. Submit reports to the Assistant Secretary of Defense (Manpower, Installations and Logistics) before 1 January. Reports are assigned Reports Control Symbol DD–M(A)1540 and may be transmitted using punched cards, magnetic tape, or terminals as a medium.

2. If cards are used, wrap securely with the outer wrapper containing identification of the submitting department, the title of the report, "Commercial Activities Inventory Report and Five-Year Review Schedule," and the fiscal year covered. Cards shall be interpreted.

3. If tape is medium chosen, then use nine-track tape Extended Binary Coded Decimal Interchange Code (EBCDID), 1600 or 6250 density, even parity. The data record must contain 68 characters, blocked 10 logical records to a block. Omit headers and trailers. Use a tape mark (end of file) to follow the data. An external label shall be used on the reel to identify the organization to which the reel is to be returned, the title of the report, the fiscal year covered, and the tape characteristics.

4. If a remote work station terminal is to be used as the transmittal medium, then concurrence and interface requirements shall be established between the Defense Manpower Data Center (DMDC) and sender before transmission of data.

5. *Data Format: In-house DoD commercial activities*

Data element	Tape positions	[illegible]	Type[1] [illegible]
Designator	1	A	A
Installation		A1	
—State, territory, or posses- [illegible]	2–3	A1a	A
—Place	4–9	A1b	A/N
*Function	10–14	A2	A/N
In-house civilian workload	15–20	A3	[illegible]
Military workload	21–36	A4	N
*Reason for in-house operation	49	[illegible]	A
*Most recent year in-house operation approved	50–51	[illegible]	[illegible]
*Year DoD CA scheduled for next review.	52–53	A10	N

[1] A = Alpha; N = Numeric.

NOTE.—A and A/N data shall be left justified space filled. N data shall be right justified and zero filled.

General note for personnel processing these reports: Coding shall be as indicated in the instructions. When specific coding instructions are not provided, reference must be made to DoD 5000.12–M.[13] Failure to comply with the coding instructions comtained herein or those published in Pub. L. 96–342 will make the noncomplier responsible for required concessions in data base communication. Items marked with an asterisk (*) have been registered in the DoD Date Element Dictionary.

6. Instruction for Preparing Data Entries

Field	Instruction
A	Enter an A to designate that the data to follow on this record pertains to a particular DoD commercial activities.
A1a	Enter the two-position alpha code for State or U.S. territory or possession as shown in Attachment 1.
A1b	Enter the unique alpha numeric code established by the DoD Component for military installation, named populated place, or related entity where the commercial activity workload was performed during the fiscal year covered by this submission. A separate look-up listing or file should be provided showing each unique place code and its corresponding place name.
A2	Enter the function code from Enclosure 3 that best describes the type of commercial activity workload principally performed by the commercial activity covered by this submission. Left justify
A3	Enter total (full and part-time) in-house civilian workyear equivalents applied to the performance of the function during the fiscal year Round off to nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and 0.9 should be entered as one.) Right justify. Zero fill

[13] See footnote 11 to enclosure 1.

Field	Instruction
A4	Enter total military workyear equivalents applied to the performance of the funciton in the fiscal year. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one.) Right justify. Zero fill.
A8	Enter the reason for in-house operation of the commercial activity as shown in Attachment 2.
A9	Enter the last two digits of the most recent fiscal year corresponding to the reason for in-house operation of the commercial activity as stated in field A8. If field A8 is coded "N" this field should be left blank; otherwise an entry is required.
A10	Enter the last two digits of the fiscal year in which next review is scheduled to begin for the DoD CA. (Data element reference YE-NA.) Enter WP if a waiver of review has been approved by the ASD(MI&L).

Attachment 1—Code for Denoting States, Territories, and Possessions of the United States

a. State Codes:

AL Alabama
AK Alaska
AZ Arizona
AR Arkansas
CA California
CO Colorado
CT Connecticut
DE Delaware
DC District of Columbia
FL Florida
GA Georgia
HI Hawaii
ID Idaho
IL Illinois
IN Indiana
IA Iowa
KS Kansas
KY Kentucky
LA Louisiana
ME Maine
MD Maryland
MA Massachusetts
MI Michigan
MN Minnesota
MS Mississippi
MO Missouri
MT Montana
NE Nebraska
NV Nevada
NH New Hampshire
NJ New Jersey
NM New Mexico
NY New York
NC North Carolina
ND North Dakota
OH Ohio
OK Oklahoma
OR Oregon
PA Pennsylvania
RI Rhode Island
SC South Carolina
SD South Dakota
TN Tennessee
TX Texas
UT Utah
VT Vermont
VA Virginia
WA Washington
WV West Virginia
WI Wisconsin
SY Wyoming

b. Codes for Territories and Possessions:

AS American Samoa
GU Guam
JA Johnston Atoll
CM Northern Marianas Islands
MW Midway Islands
PR Puerto Rico
TT Trust Territory of the Pacific Islands
NI Navassa Island
MP U.S. Miscellaneous Pacific Islands
VI Virgin Islands
WK Wake Island

Attachment 2—Codes for Denoting compelling Reasons for In-House Operations of Planned Changes in Method of Performance

1. In-House Performance (for Entry in Field A8)

Code and Explanation

A. Indicates that the DoD commercial activity has been retained in-house for national defense reasons in accordance with § 169a.5(a)(i)(iii) of this part.

C. Indicates that the DoD commercial activity is retained in-house because the commercial activity is essential for training or experience in required military skills, or the commercial activity is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the commercial activity is necessary to provise career progression to a needed military skill level in accordance with § 169a.5(a)(1)(i) of this part.

D. Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program.

E. Indicates that there is no satisfactory commercial source capable of providing the product or service needed.

F. Indicates that a cost comparison has been conducted and that the Government is providing the product or service at a lower total cost as a result of a cost comparison.

G. Indicates that the commercial activity is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending the results of a scheduled cost comparison.

H. Indicates that the commercial activity is being performed by DoD employees now, but will be converted to contract because of cost comparison results.

J. Indicates that the commercial activity is performed at a DoD hospital and, in the best interests of direct patient care, is being retained in-house.

K. Indicates that the commercial activity is being performed by DoD employees now, but a decision has been made to convert to contract for reasons other than cost.

2. Use of Other Codes

Enter an "N" in tape and card field A8 if the method of performance has never been reviewed and approved. Do not make an entry in tape or card field A9.

Enter a "Z" in tape and card field A8 or B9 if the cost comparison study has been held in abeyance because of direction from higher authority (such as congressional moratorium).

Enclosure 3—Commercial Activities Management Information System (CAMIS)

Upon approving a cost comparison or direct conversion, the DoD Component shall create the initial entry using the format at attachment 1 for cost comparisons and attachment 2 for direct conversions. Quarterly printouts of cost comparison records (CCRs) and direct conversion records (DCRs) shall be provided to the DoD Component by the Defense Manapower Data Center (DMDC). The DoD Component shall annotate the printout and return it to DMDC within 30 days of the end of each quarter. DMDC shall then use these annotated printouts to update the CAMIS and shall return the updated printout along with the annotated printout within two weeks. Instead of this manual update procedure, the DoD Component may submit automated data (tape or cards) to the DMDC.

At the completion of all required data entries, DMDC shall flag the record as being complete and it will no longer be included in the printout provided quarterly to the DoD Component for update. All records, flagged or ongoing, shall be included in the printout provided to each DoD Component at the end of the fiscal year and upon request.

Part I—Cost Comparison

The record for each cost comparison is divided into six sections. Each of these sections contains information provided by the DoD Components. The first five sections are arranged in a sequence of milestone events occurring during a cost comparison. Each section is completed immediately following the completion of the milestone event. These events are as follows:

1. Cost comparison is approved by DoD Component.
2. Solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded/solicitation is canceled.
5. Contract starts.

The events are used as milestones because upon their completion some elements of significant information concerning the cost comparison become known.

A sixth section is utilized for CCRs that result in award of a contract. This section contains data elements on contract cost and information on subsequent contract actions during the second and third year of contract operation.

The data elements that comprise these six sections are defined in this enclosure.

Part II—Direct Conversions

The record for each direct conversion is divided into five sections. Each of the first four sections is completed immediately following the completion of the following events:

1. Direct conversion is approved by DoD Component.
2. Solicitation is issued.
3. Contract is awarded.
4. Contract starts.

The fifth section is utilized to record contract cost and subsequent contract

actions during the second and third year of contract operation.

The data elements that comprise these five sections are defined in this enclosure.

CAMIS Entry and Update Instruction

Part I—Cost Comparisons

The bracketed number preceding each definition in sections one through five is the DoD data element number. All date fields should be in the format MMDDYY (such as June 30, 1983=063083).

Section One

Event: DoD Component Approves Conducting a Cost Comparison

All entries in this section one of the cost comparison record (CCR) shall be submitted by DoD Components upon approving the start of a cost comparison.

These entries shall be used to establish the CCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing cost comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the manpower in this section of the CCR will be in all cases those manpower figures identified in the correspondence approving the start of the cost comparison.

DoD Componets shall enter the following data elements to establish a CCR:

[1] Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific cost comparison. The first character of the cost comparison number must be a letter designating DoD Component as noted in data element [3], below. The cost comparison number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] Announcement/Approval Date. The date of the congressional notification required by Section 502(a)(2)(A) of P.L. 96342 or the date the DoD Component headquarters approves a cost comparison that does not require congressional notification.

[3] DoD Component Code. Use the following codes to identify the Military Service or Defense Agency conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Agency
D—Office of the Secretary of Defense-OCHAMPUS
E—Defense Advanced Research Projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Services University of the Health Sciences
X—Inspector General, Department of Defense
Y—Defense Audio Visual Agency

[4] Command Code. The code established by the DoD Component headquarters to identify the command responsible for operating the commercial activity undergoing cost comparison. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit this on cards or tape, the format should be as follows:

Column	Entry
1–6 (left justify)	Command code.
7	[illegible]
880 (left justify)	Command name.

[5] Installation Code. The code established by the DoD Component headquarters to identify the installation where the CA(s) under cost comparison is physically located. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on cards or tape, the format should be as follows:

Column	Entry
110 (left justify)	Installation code.
11	[illegible]
1280 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component and display it with the code on the quarterly printout that is provided to the DOD Component for update.

[6] State Code. A two-character postal abbreviation for the State or U.S. Territory where elements [5] is located. Two or more codes shall be separated by commas.

[7] Congressional District (CD). Number of the congressional district(s) where [5] is located. If representatives are selected "at large," enter "01" in this data element: for a delegate or resident commissioner (e.g., District of Columbia or Puerto Rico) enter "98". If the installation is located in two or more CDs, all CDs should be entered and seperated by commas.

[8] Joint Interservice Resource Study Group (JIRSG) Arena Code. The (JIRSG) Area that [5] is assigned to for coordination of the Defense Regional Interservice Support (DRIS) Program. This is a four-charcter alpha/numeric date element. For instance, "NO15" is the National Capitol Region (as published in DRIS Point of Contact Directory).

Note.—A DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: state code, congressional district, and JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code		[7] CD	[8] JIRSG area code
AAAAA, BBBBB, CCCCC	GA, CA, NJ	42;15	05, 06;	SO03, WE10,*

When multiple values within a data element are reported for a single installation code semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the value shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The cost comparison package above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th congressional districts BBBBB is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas SO03, and WE10, respectively; CCCCC is not in a JIRSG area.

[9] Title of Cost Comparison. The title that describes the commercial activity(ies) under cost comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

[10] DoD Functional Area Code(s). The four or five alpha/numeric character designators listed in Enclosure 2 that describe the type of activity undergoing cost comparison. This would be one code for a single activity or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

[11] Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the cost comparison is started. Despite the outcome of the cost comparison, this code does not change. The coding is as follows:

I—In-house
C—Contract
N—New requirement
E—Expansion

[12] Cost Comparison Status Code. A single alpha character that identifies the current status of the cost comparison. Enter one of the following codes:

P—In progress

C—Complete
X—Canceled. The CCR shall be excluded from future update listings.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The CCR for the cost comparison that has been consolidated shall be excluded from future update listings. (See data element [16].)
B—Broken out. The cost comparison package has been borken into two or more separate cost comparisons. The previous CCR shall be excluded from future update listings. (See data element [16].)

[13] Commerce Business Daily/Federal Register Dates. § 169a.9(c) of this part requires DoD Components to publish their schedules for conducting cost comparisons in the Commerce Business Daily (CBD) and the Federal Register (FR). These dates shall reflect when the activity undergoing cost comparison was identified in these publications as a cost comparison. The DBD date shall be listed first, followed by a comma and the FR date.

[14] Approval Announcement-Manpower Estimate Civilian and [15] Approval Annoucement—Manpower Estimate Military. The number of civilian and military authorizations allocated to the commercial activity(ies) undergoing cost comparison at the time the start of the cost comparison is approved by the DoD Component headquarters or announced to Congress. This number in all cases shall be those manpower figures identified in the correspondence approving the start of a cost comparison. This number is used to give a preliminary estimate of the size of the activity.

[16] Revised/Original Cost Comparison Number. The number of the cost comparison (revised cost comparison number). This cost comparison has been consolidated into or the number of the cost comparison (original cost comparison number) from which this cost comparison has been broken out.

When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost comparison number of the new CCR in data element [16] and code "Z" in data element [12]. In the new CCR, data element [16] should be blank and data element [12] should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates.

When a single cost comparison is being broken into multiple cost comparisons, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element [16], enter the cost comparison number of the original cost comparison from which each was derived, and in data element [12], enter the current status of each cost comparison. For the original cost comparison, data element [16] should be blank and data element [12] should have a code "B" entry. Only the derivative record entries require future updates.

When either a consolidation or a breakout, an explanatory remark shall be entered in data element [57] (such as "part of SW region cost comparison," or, "separated into three cost comparisons").

Section Two

Event: The Solicitation is Issued

The entries in this section two of the CCR provide information on the manpower authorized to perform the workload in the performance work statement (PWS), the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[17] Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

[18] Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

F—Formal Advertised
N—Negotiated

[19] Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a)
C—National Industries for the Severely Handicapped (NISH)
D—Other mandatory sources
U—Unrestricted
W—(optional suffix) Unrestricted after initial restriction

[20] Current Authorized Civilians and [21] Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manning documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [14] and [15]).

[22] Baseline Workyears Civilian and [23] Baseline Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the most efficient organization (MEO) study of the in-house organization; do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a fiscal year. Also include in this total the workyears for full-time employees who do not work on a full-time basis on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an "as needed" basis. Their total hours performing this workload is 4,172 hours. This would be reflected as two workyears. Less than one-half year of effort should be rounded down and one-half year or more should be rounded up.

These workyear figures shall be the baseline for determining the manpower savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the cost comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the cost comparison.

The DoD Component shall enter the following date elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

[24] Cost Comparison/Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a formal advertised procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selection offeror.

[25] Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time the bids or offers are compared. The entries are limited to two possibilities:

I—In-house
C—Contract

[26] Cost Method Code. A one-character numeric designator indicating the procedures under which the cost comparison was/is being conducted. Enter one of the following codes:

1—Cost comparison conducted under the incremental costing procedures in effect prior to 1980.
2—Cost comparison conducted using the full costing procedures in DoD 4100.33.H.
3—Cost comparison conducted under the alternative costing procedures implemented by the Department of Defense in March 1982.
4—Cost comparison conducted under the new costing procedures in the OMB Circular A76 published August 4, 1983, and implemented by the Department of Defense in March 1984.

[27] Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the cost comparison form.

The DoD Component shall enter the following data elements in the First quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[28] Contract Award/Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a formal advertised solicitation or the date contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to the solicitation canceling it).

[29] Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

I—In-house
C—Contract

[30] Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall either be performed in-house or by contractor, based on cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the preaward survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost
N—No satisfactory commercial source

[31] Contract-Type Code. Enter one of the following alpha codes for the type of contract used in the cost comparison. This entry is required for all completed studies, regardless of their outcome.

FFP—Firm Fixed Price
FP-EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[32] Prime Contractor Size.

S—Small or small/disadvantage business
L—Large business

[33] MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid.

For data elements [34] through [37], enter all data after all adjustments required by appeals board decisions. Do not include the minimum cost differential (line 31 old cost comparison form (CCF) or line 14 new CCF or line 16 new expansion, new requirements, and conversion to (ENRC) in-house form) in the computation of any of these data elements. If a valid cost comparison was not conducted (that is, all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements [34] through [37]. Explain lack of valid cost data in data element [58], DoD Component comments.

[34] First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

[35] Cost Comparison Period. Expressed in months, the total period of operation covered by the cost comparison; this is the period used as the basis for data elements [36] and [37], below.

[36] Total In-House Cost ($000). Enter the total cost of in-house performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 9 plus line 22 of the old CCF (line 6 of the new CCF or line 8 of the new ENRC CCF).

[37] Total Contract Cost ($000). Enter the total cost of contract performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 17 plus line 30 of the old CCF (line 13 of the new CCF or line 15 of the new ENRC CCF).

[38] Notification Date. The date Congress is notified, if required, that the DoD Component intends to convert a commercial activity to contract performance.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[39] Contract Start Date. The actual date the contractor began full operation of the commercial activity(ies) as reflected in the contracting documents.

[40] Permanent Employees Transferred To Equal Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the start date of the contract.

[41] Permanent Employees Transferred To Lower Positions. The number of permanent employees who were changed to lower grade positions as of the start date of the contract.

[42] Employees Taking Early Retirement. The number of employees who took early retirement as of the start date of the contract.

[43] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the start date of the contract.

[44] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the start date of the contract.

[45] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the start date of the contract.

[46] Employees Entitled To Severance. The estimated number of employees entitled to severance upon their separation from Federal employment as of the start date of the contract.

[47] Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars as of the start date of the contract.

[48] Number of Employees Hired by the Contractor. The number of DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or his subcontractors estimated at the start date of the contract.

Administrative Appeal

[49] Filed—Were administrative appeals filed? Answer: Y or N.

[50] Source—Who filed the appeal? Answer: In-house (enter I), contractor (C), or both (B).

[51] Result—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain result in data element [58]). If appeal is still in progress as of the start date of the contract, enter P.

GAO Protest

[52] Filed—Was a protest filed with GAO? Answer: Y or N.

[53] Source—Who filed the protest? Answer: In-house (enter I), contractor (C), or both (B).

[54] Result—Was the protest finally upheld? Answer: Y or N (explain result in data element [58]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[55] Requested—Was the FLRA asked to arbitrate? Answer: Y or N.

[56] Result—Was the case found arbitrable. Answer: Y or N (explain result in data element [58]). If arbitration is still in progress as of the start date of the contract, enter P.

General Information

[57] Staff-Hours Expended. Reflect the estimated number of staff hours expended by the installation on the cost comparison from the time it was announced until the final decision was made. Do not include any time that was spent on general policy or procedures applicable to all studies.

[58] DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the cost comparison.

[59] Effective Date. "As of" date of the most current update for the cost comparison. Will be generated by DMDC.

Section Six

Event: Quarter Following Contract/Option Renewal

The entries in this section identify actual contract costs and original contract bid and information or subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[60] Contract Bid/Offer ($000). Enter the contractor bid price or offer reflected in column one (the first performance period) of the CCF in thousands of dollars, rounded to the nearest thousand. This is line 10 column 1 of the old CCF (line 7 of the new CCF or line 9 of the new ENRC CCF).

[61] Actual Contract Cost First Performance Period ($000). Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[62] Actual Contract Cost Second Performance Period ($000). Enter the actual contract cost for the second performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[63] Actual Contract Cost Third Performance Period ($000). Enter the actual contract cost for the third performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[64] Contractor Change. Enter one of the following alpha codes to indicate whether the contract for the second or third performance period has changed from the original contractor.

Y—Yes, the contractor has changed
N—No, the contrctor has not changed

Data elements [65] through [66] are not required if the answer to [64] is no (N).

[65] Prime Contractor Size.

S—New contractor is small/small disadvantaged business
L—New contractor is large business

[66] Reason for Change.

I—Performance Returned In-House
U—Contract workload consolidated into a larger (Umbrella) cost comparison
C—Contract workload consolidated with other exisitng contract workload

Part II—Direct Conversions

The bracketed number preceding each definition in sections one through four is the DoD data element number. All data fields should be in the format MMDDYY (such as June 30, 1983 = 063083).

Section One

Event: DoD Component Approves the Direct Conversion

All entries in this section of the direct comparison record (DCR) shall be submitted by DoD Components upon approving direct conversion. These entries shall be used to establish the DCR and to identify the geographical, organizational, political, and functional attributes of the commercial activity(ies) scheduled for conversion to contract without a cost comparison.

DoD Components shall enter the following data elements to establish a DCR:

[1] Direct Conversion Number. The number assigned by the DoD Component to uniquely identify a specific direct conversion. The first character of the direct conversion number must be a letter designating the DoD Component, as noted in data element [3], below. The number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] Approval Date. The date the DoD Component's headquarters approves the direct conversion.

[3] DoD Component Code. Use the following codes to identify the Military Service or Defense Agency converting the CA(s) to contract:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Agency
D—Office of the Secretary of Defense—OCHAMPUS
E—Defense Advanced Research Projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unitied and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Service University of the Health Sciences
X—Inspector General, Department of Defense
Y—Defense Audio Visual Agency

[4] Command Code. The code established by the DoD Component headquarter to identify the command responsible for operating the commercial activity to be converted to contract. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1–6 (left justify)	Command code.
7	Blank.
8–80 (left justify)	Command name.

[5] Installation Code. The code established by the DoD Component's headquarters to identify the installation where the commercial activity to be converted to contract is located physically. Two or more codes (for packages encompassing more than one installation) be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1–10 (left justify)	Installation code.
11	Blank.
12–80 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the quarterly printout that is provided to the DoD Component for update.

[6] State Code. A two-character postal abbreviation for the state of U.S. territory where element [5] is located. Two or more codes should be separated by commas.

[7] Congressional District (CD). Number of the CD where [5] is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (such as, District of Columbia or Puerto Rico) enter "98". If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

[8] JIRSG Area Code. The Joint Interservice Resource Study Group (JIRSG) Area that [5] is assigned to for coordination of the Defense Regional Interservice Support (DRIS) Program. This is a four-character alpha/numeric data element. For instance, "N015" is the National Capitol Region (as published in the DRIS Point of Contact Directory).

Note.—The DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: state code, congressional district, JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code		[7] Congressional district	[8] JIRSG area code
AAAAA, BBBBB, CCCCC	GA, CA, NJ	42;15	05, 06;	SO03, WE10*

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation code; commas will be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing member of a series of values the asterisk (*) symbol shall be used.

The direct conversion above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th congressional districts BBBBB is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas S003 and WE10, respectively; CCCCC is not in a JIRSG area.

[9] DoD Functional Area Code(s). The four or five alpha/numeric character designator listed in Enclosure 1 that describes the type of commercial activity to be converted to contract. This would be one for a single commercial activity or possibly several codes for a large package. A series of codes shall be separated by commas.

[10] Status Code. A single alpha character that identifies the current status of the conversion. Enter one of the following codes:

P—In progress
C—Complete
X—Canceled. The DCR shall be excluded from future update listings.
Z—Consolidated. The conversion has been consolidated with one or more other contracts into a single contract package. The DCR for the contract that has been consolidated shall be excluded from future update listings. (See date element [16].)
B—Broken out. The conversion has been broken into two or more separate contracts. The previous DCR shall be excluded from future update listings. (See data element [16].)

[11] Approval Announcement—Manpower Estimate Civilian and [12] Approval Announcement—Manpower Estimate Military. The number of civilian and military authorizations allocated to the commercial activity(ies) to be converted. This number in all cases shall be those manpower figures identified in the correspondence approving the direct conversion.

Section Two

Event: The Solicitation Is Issued

The entries in this section of the DCR provide information on the manpower authorized to perform the workload in the PWS, the number of work-years used to accomplish the workload in the PWS, the type and kind of solicitation, and the number of bids or offers received.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[13] Date Solicitation Issued. The date the solicitation was issued by the contracting officer.

[14] Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

F—Formal Advertised
N—Negotiated

[15] Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the solicitation for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restricted to small business
B—Small Business Adminstration 8(a)
C—National Industries for the Severely Handicapped (NISH)
D—Other mandatory sources
U—Unrestricted
W—(optional suffix) Unrestricted after initial restriction

[16] Current Authorized Civilians and [17] Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manning documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [11] and [12]).

[18] Baseline Annual Workyears Civilian and [19] Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS.

[20] Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Three

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section provide information on the contract.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[21] Contract Award/Solicitation Cancellation Date. This is the date a contract shall be awarded in a formal advertised solicitation or the date the contractor shall be authorized to proceed on a conditioned award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation is canceled (when the contracting officer publishes an amendment to the solicitation canceling it).

[22] Contract-Type Code. Enter one of the following alpha codes for the type of contract used in the direct conversion.

FFP—Firm Fixed Price
FP—EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[23] Prime Contractor Size.

S—Small/small disadvantaged business
L—Large business

[24] Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

Section Four

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the direct conversion.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[25] Contract Start Date. The actual date the contractor began full operation of the commercial activity or commercial activities, as reflected in the contracting documents.

[26] Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equal grade as of the start date of the contract

[27] Permanent Employees Changed to Lower Positions. The number of permanent employees who are reassigned to lower grade positions as of the start daste of the contract.

[28] Employees Taking Early Retirement. The number of employees who took early retirement as of the start date of the contract.

[29] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the start date of the contract.

[30] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the start date of the contract.

[31] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the start date of the contract.

[32] Employees Entitled To Severance. The estimated number of employees entitled to severance upon their separation from Federal employment.

[33] Total Amount of Severance Entitlement ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, as of the start date of the contract.

[34] Number of Employees Hired by the Contractor. The number of DoD civilian employees (full-time or otherwise) that will be hired by the contractor, or his or her subcontractors estimated at the start of the contract.

Administrative Appeal

[35] Filed—Were administrative appeals filed? Answer: Y or N.

[36] Source—Who filed the appeal? Answer: in-house (enter I), contractor (C), or both (B).

[37] Result—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain the result in data element [43]). If appeal is still in progress as of the start date of the contract, enter P.

GAO Protest

[38] Filed—Was a protest filed with GAO? Answer: Y or N.

[39] Source—Who filed the protest? Answer: in-house (enter I), contractor (C), or both (B).

[40] Result—Was the protest finally upheld? Answer: Y or N (explain result in data element [43]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[41] Requested—Was the FLRA asked to arbitrate? Answer: Y or N.

[42] Result. Was the case found arbitrable? Answer: Y or N (explain result in data element [43]). If arbitration is still in progress as of the start date of the contract, enter P

General Information

[43] DoD Component Comments. Enter comments, as required, to explain situations that affect the direct conversion.

[44] Effective Date. "As of" date of the most current update for the direct conversion Shall be generated by DMDC.

Section Five

Event: Quarter Following Contract/Option Renewal

The entries in this section identify actual contract costs and original contract bid and information or subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[45] Contract Bid/Offer ($000). Enter the contractor bid price or offer.

[46] Actual Contract Cost First Performance Period ($000). Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[47] Actual Contract Cost Second Performance Period ($000). Enter the actual contract cost for the second performance period, including all changes orders, in thousands of dollars, rounded to the nearest thousand.

[48] Actual Contract Cost Third Performance Period ($000). Enter the actual contract cost for the third performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[49] Contractor Change. Enter one of the following alpha codes to indicate whether the contractor for the second or third performance period has changed from the original contractor.

Y—Yes, the contractor has changed
N—No, the contractor has not changed

Data elements [50] through [51] are not required if the answer to [49] is no (N).

[50] Prime Contractor Size.

S—New contractor is small/small disadvantaged business
L—New contractor is large business

[51] Reason for Change.

I—Performance returned in-house
U—Contract workload consolidated into a larger (umbrella) cost comparison
C—Contract workload consolidated with other existing contract workload

Attachment 1—Cost Comparison Record (CCR)

Section One

(1) Cost Comparison Number: ____
(2) Announcement/Approval Date: ____
(3) DoD Component Code: ____
(4) Command Code: ____
(5) Installation Code: ____
(6) State Code: ____
(7) Congressional District: ____
(8) JIRSC Code: ____
(9) Title of Cost Comparison: ____
(10) DoD Function Area Code(s): ____
(11) Current Operation Code: ____
(12) Cost Comparison Status Code: ____
(13) CBD/FR Dates——, ——:
(14) Approval Announcement—Manpower Estimate Civilian: ____
(15) Approval Announcement—Manpower Estimate Military: ____
(16) Revised/Original Cost Comparison Number: ____

Section Two

(17) Date Solicitation Issued: ____
(18) Solicitation-Type Code: ____
(19) Solicitation Kind Code: ____
(20) Current Authorized Civilians: ____
(21) Current Authorized Military: ____
(22) Baseline Workyears Civilian: ____
(23) Baseline Workyears Military: ____

Section Three

(24) Cost Comparison/Initial Decision Date: ____
(25) Cost Comparison Preliminary Results Code: ____
(26) Cost Method Code: ____
(27) Number of Bids or Offers Received: ____

Section Four

(28) Contract Award/Solicitation Cancellation Date: ____
(29) Cost Comparison Final Result Code: ____
(30) Decision Rationale Code: ____
(31) Contract-Type Code: ____
(32) Prime Contractor Size: ____
(33) MEO Workyears: ____
(34) First Performance Period: ____
(35) Cost Comparison Period: ____
(36) Total In-House ($000) ____
(37) Total Contract Cost ($000): ____
(38) Notification Date: ____

Section Five

(39) Contract Start Date: ____
(40) Permanent Employees Transferred to Equal Positions: ____
(41) Permanent Employees Transferred to Lower Positions: ____
(42) Employees Taking Early Retirement: ____
(43) Employees Taking Normal Retirement: ____
(44) Permanent Employees Separated: ____
(45) Temporary Employees Separated: ____
(46) Employees Entitled to Severance: ____
(47) Total Amount of Severance Entitlements ($000): ____
(48) Number of Employees Hired by the Contractor: ____

Administrative Appeal

(49) Filed: ____
(50) Source: ____
(51) Result: ____

GAO Protest

(52) Filed: ____
(53) Source: ____
(54) Result: ____

Arbitration

(55) Requested: ____
(56) Result: ____

General Information

(57) Staff Hours Expended: ____
(58) DoD Component Comments: ____
(59) Effective Date: ____

Section Six

(60) Contract Bid/Offer ($000): ____
(61) Actual Contract Cost First Performance Period ($000): ____
(62) Actual Contract Cost Second Performance Period ($000): ____
(63) Actual Contract Cost Third Performance Period ($000): ____
(64) Contractor Change: ____
(65) Prime Contractor Size: ____
(66) Reason for Change: ____

Attachment—Direct Conversion Record (DCR)

Section one

(1) Direct Conversion Number: ____
(2) Approval Date: ____
(3) DoD Component Code: ____
(4) Command Code ____
(5) Installation Code: ____
(6) State Code: ____
(7) Congressional District: ____
(8) JIRSG Area Code: ____
(9) DoD Functional Area Code(s): ____
(10) Status Code: ____
(11) Approval Announcement—Manpower Estate Civilian: ____
(12) Approval Announcement—Manpower Estate Military: ____

Section two

(13) Date Solicitation Issued: ____
(14) Solicitation-Type Code: ____
(15) Solicitation-Kind Code: ____
(16) Current Authorized Civilians: ____
(17) Current Authorized Military: ____
(18) Baseline Annual Workyears Civilian: ____
(19) Baseline Annual Workyears Military: ____
(20) Number of Bids or Offers Received: ____

Section three

(21) Contract Award/Solicitation Cancellation Date: ____
(22) Contract-Type Code: ____
(23) Prime Contractor Size: ____
(24) Performance Period: ____

Section four

(25) Contract Start Date: ____
(26) Permanent Employees Reassigned to Equivalent Positions: ____
(27) Permanent Employees Changed to Lower Positions: ____
(28) Employees Taking Early Retirement: ____
(29) Employees Taking Normal Retirement: ____
(30) Permanent Employees Separated: ____
(31) Temporary Employees Separated: ____
(32) Employees Entitled to Severence: ____
(33) Total Amount of Severence Entitlement ($000): ____
(34) Number of Employees Hired by the Contractor: ____

Section five

Administrative Appeal

(35) Filed: ____
(36) Source: ____
(37) Result: ____

GAO Protest

(38) Filed: ____
(39) Source: ____
(40) Result: ____

Arbitration

(41) Requested: ____
(42) Result: ____

General Information

(43) DoD Component Comments: ____
(44) Effective Date: ____

Section five

(45) Contract Bid/Offer ($000): ____
(46) Actual Contract Cost First Performance Period ($000): ____
(47) Actual Contract Cost Second Performance Period ($000): ____
(48) Actual Contract Cost Third Performance Period ($000): ____
(49) Contractor Change: ____
(50) Prime Contractor Size: ____
(51) Reason for Change: ____

Enclosure 4—Public Law 96–342, as Amended by Public Law 97–252 (Hereafter Referred to as Section 502)

Section 502. (a) No commercial- or industrial-type function of the Department of

Defense that on October 1, 1980, is being performed by the Department of Defense civilian employees may be converted to performance by a private contractor—

(1) to circumvent any civilian personnel ceiling or

(2) unless the Secretary of Defense provides to the Congress in a timely manner—

(A) notification of any decision to study such commercial- or industrial-type function for possible performance by a private contractor;

(B) a detailed summary of a comparison of the cost of performance of such function by Department of Defense civilian employees and by private contractor which demonstrates that the performance of such function by a private contractor will result in a cost savings to the Government over the life of the contract and a certification that the entire cost comparison is available;

(C) a certification that the Government calculation for the cost of performance of such function by Department of Defense civilian personnel is based on an estimate of the most efficient and cost-effective organization for performance of such function by Department of Defense personnel; and

(D) a report to be submitted with the certification required by subparagraph (C) showing—

(i) the potential economic effect on employees affected, and the potential economic effect on the local community and the Federal Government if more than 50 employees are involved of contracting for performance of such function;

(ii) the effect of contracting for performance of such function on the military mission of such function; and

(iii) the amount of the bid accepted for the performance of such function by the private contractor whose bid is accepted and the cost of performance of such function by Department of Defense civilian employees, together with costs and expenditures which the Government will incur because of the contract.

(b) If, after completion of the studies required for completion of the certification and report required by subparagraphs (C) and (D) of subsection (a)(2), a decision is made to convert to contractor performance, the Secretary of Defense shall notify Congress of such decision.

(c) The Secretary of Defense shall submit a written report to the Congress by February 1 of each fiscal year describing the extent to which commercial- and industrial-type functions were performed by the Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

(d) Except as provided in subsection (a)(1), subsections (a) through (c) may not apply to a commercial- or industrial-type function of the Department of Defense that is being performed by ten or fewer Department of Defense civilian employees.

(e) In no case may any commercial- or industrial-type function being performed by the Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a)(2) the conversion of all or any part of such function to performance by a private contractor.

(f) The provisions of this section may not apply during war or a period of national emergency declared by the President or the Congress.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 6, 1985.

[FR Doc. 85-11230 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2806-8]

Standards of Performance for New Stationary Sources: Appendix A; Addition of Alternative Procedure to Method 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this rule is to add an alternative procedure to Method 1 for determining the acceptability of sampling locations that do not meet minimum criteria now in the method. The alternative is the application of a directional flow-sensing probe to determine pitch and yaw angles and would be applicable where the measurement location is less than two equivalent stack diameters downstream or less than half a diameter upstream from a flow distrubance. The proposed revision defines the directional probe equipment and procedure, the acceptance criteria, and calibration procedures. The intended effect is to add flexibility to the sampling location requirements in Method 1. With the addition of this alternative procedure, source owners may choose to use an existing sampling location, if the criteria in the alternative procedures are met, instead of installing new ports and access equipment at another location.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: Comments must be received on or before July 1, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 30, 1985 a public hearing will be held on June 27, 1985 beginning at 10:00 a.m.

Persons interested in attending the hearing should call Ms. Shelby Journigan at the telephone number listed under FOR FURTHER INFORMATION CONTACT to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by May 30, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-84-50, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-84-50, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

Ms. Shelby Journigan for persons interested in attending the hearing, (919) 541-5578.

SUPPLEMENTARY INFORMATION: The EPA promulgated the present Method 1 on August 18, 1977 (42 FR 41754), with revisions published on March 23, 1978 (43 FR 11984), and on September 30, 1983 (48 FR 45034). The method includes criteria for determining acceptable sampling site locations based on the relative locations of flow disturbances and the stack or duct configurations. In some cases, the criteria may cause a sampling location with acceptable flow characteristics to be rejected or cause expensive site modifications to be made unnecessarily. The proposed

amendments supplement the present criteria to allow sampling locations, that would be rejected under the present Method 1 criteria, to be tested for acceptability.

The Agency has reviewed a procedure proposed in "Pollution Engineering" (August 1983) by W.S. Smith and D.J. Grove that includes determination of the angle of gas flow at each sampling point using a three-dimensional pitot and comparing the results with minimum acceptability criteria. The Agency reviewed the procedure in light of potential effects on mass emission measurements and determined that the procedure would provide acceptable measurements of mass concentration and velocity. The number of sampling points required has been increased for these alternate sampling locations from the present requirements in Method 1 in addition to the requirements to meet specific criteria for acceptable angle of gas flow at each sampling point.

In addition, as a result of the review of the effects of nonparallel gas flow of the measurement of mass concentrations, the Agency has determined that the acceptable limit for the rotation angle should be increased from 10° to 20° in Section 2.4-Verification of Absence of Cyclonic Flow.

The Administrator requests comments on the applicability of this procedure and other procedures for determining the acceptability of sampling locations.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because this is not a new requirement but an alternative procedure.

List of Subjects in 40 CFR Part 60

Air pollution control.

Dated: April 30, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

It is proposed to amend Appendix A, Method 1 of 40 CFR Part 60 as follows:

1. The Authority citation for 40 CFR Part 60 continues to read as follows:

Sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

2. By amending Section 2.1 by adding a second paragraph as follows:

* * * * *

2. *Procedure.*

2.1 * * *

A second alternative procedure is available for determining the acceptability of a measurement location not meeting the criteria above. This procedure, determination of gas flow angles at the sampling points and comparing the results with acceptability criteria, is described in Section 2.5.

* * * * *

3. By amending Section 2.4 by changing in the last sentence of the second paragraph the value "10°" to "20°," and by adding a third paragraph as follows:

* * * * *

2.4 * * *

The alternative procedure described in Section 2.5 may be used to determine the rotation angles in lieu of the procedure described above. The limit of acceptability for the average value of α would remain 20°.

* * * * *

4. By adding a new Section 2.5 to Section 2 as follows:

* * * * *

2.5 Alternative Measurement Site Selection Procedure. This alternative applies to sources where measurement locations are less than two equivalent stack or duct diameters downstream or less than a half duct diameter upstream from a flow disturbance. The alternative should be limited to ducts larger than 24 inches in diameter where blockage and wall effects are minimal. A directional flow-sensing probe is used to measure pitch and yaw angles of the gas flow at 40 or more traverse points, the resultant angle is calculated and compared with acceptable criteria for mean and standard deviation.

Note:—Both the pitch and yaw angles are measured from a line passing through the traverse point and parallel to the stack axis. The pitch angle is the angle of the gas flow component in the plane that INCLUDES the traverse line and is parallel to the stack axis. The yaw angle is the angle of the gas flow component in the plane PERPENDICULAR to the traverse line at the traverse point and is measured from the line passing through the traverse point and parallel to the stack axis.

2.5.1 Apparatus.

2.5.1.1 Directional Probe. Any directional probe, such as United Sensor Type DA Three-Dimensional Directional Probe (NOTE: Mention of trade name or specific products does not constitute endorsement by the U.S. Environmental Protection Agency) capable of measuring both the pitch and yaw angles of gas flows is acceptable. Assign an identification number to the directional probe, and permanently mark or engrave the number on the body of the probe. The pressure holes of directional probes are susceptible to plugging when used in particulate-laden gas streams. Therefore, a system for cleaning the pressure holes by "back-purging" with pressurized air is required.

2.5.1.2 Differential Pressure Gauges. Inclined manometers, U-tube manometers, or other differential pressure gauges (e.g., magnehelic gauges) that meet the specifications described in Method 2, Section 2.2.

Note.—If the differential pressure gauge produces both negative and positive readings, then both negative and positive pressure readings shall be calibrated at a minimum of three points as specified in Method 2, Section 2.2.

2.5.2 Traverse Points. Use a minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts for the gas flow angle determinations. Follow Section 2.3 and Table 1-1 or 1-2 for the location and layout of the traverse points. If the measurement location is determined to be acceptable according to the criteria in this alternative procedure, use the same traverse point number and location for sampling and velocity measurements.

2.5.3 Measurement Procedure.

2.5.3.1 Prepare the directional probe and differential pressure gauges as recommended by the manufacturer. Capillary tubing or surge tanks may be used to dampen pressure fluctuations. It is recommended, but not required, that a pretest leak check be conducted. To perform a leak check, pressurize or use suction on the impact opening until a reading of at least 7.6 cm (3 in.) H_2O registers on the differential pressure gauge, then close off the impact opening. The pressure of a leak-free system will remain stable for at least 15 seconds.

2.5.3.2 Level and zero the manometers. Since the manometer level and zero may drift because of vibrations and temperature changes, periodically check the level and zero during the traverse.

2.5.3.3 Position the probe at the appropriate locations in the gas stream and rotate until zero deflection is indicated for the yaw angle pressure gauge. Determine and record the yaw angle. Record the pressure gauge readings for the pitch angle and determine the pitch angle from the calibration curve. Repeat this procedure for each traverse point. Complete a "back-purge" of the pressure lines and the impact openings prior to measurements at each traverse point.

2.5.4 Calculate the resultant angle at each traverse point, the average resultant angle, and the standard deviation using the following equations. Complete the calculations retaining at least one extra

significant figure beyond that of the acquired data. Round the values after the final calculations.

2.5.4.1 Calculate the resultant angle at each traverse point:

R_i = arc cosine [(cosine Y_i) (cosine P_i)]

Eq. 1–2

Where:

R_i = Resultant angle at traverse point i, degree.

Y_i = Yaw angle at traverse point i, degree.

P_i = Pitch angle at traverse point i, degree.

2.5.4.2 Calculate the average resultant for the measurements:

$$R = \frac{R_i}{n} \qquad \text{Eq. 1–3}$$

Where

R = Average resultant angle, degree.

n = Total number of traverse points.

2.5.4.3. Calculate the standard deviations:

$$S_d = \frac{\sum_{i}^{n} (R_i - R)^2}{(n-1)} \qquad \text{Eq. 1–4}$$

Where:

S_d = Standard deviation, degree.

2.5.5 The measurement location is acceptable if $R \leq 20°$ and $S_d \leq 10°$.

2.5.6 Calibration. Use a flow system as described in Sections 4.1.2.1 and 4.1.2.2 of Method 2. In addition, the flow system shall have the capacity to generate two test-section velocities: one between 365 and 730 m/min (1200 and 2400 ft/min) and one between 730 and 1100 m/min (2400 and 3600 ft/min).

2.5.6.1 Cut two entry ports in the test-section. The axes through the entry ports shall be perpendicular to each other and intersect in the centroid of the test-section. The ports should be elongated slots parallel to the axis of the test section and of sufficient length to allow measurement of pitch angles while maintaining the pitot head position at the test-section centroid. To facilitate alignment of the directional probe during calibration, the test-section should be constructed of plexiglass or some other transparent material. All calibration measurements should be made at the same point in the test-section, preferably at the centroid of the test-section.

2.5.6.2 To ensure that the gas flow is parallel to the central axis of the test-section, follow the procedure in Section 2.4 for cyclonic flow determination to measure the gas flow angles at the centroid of the test section from two test ports located 90° apart. The gas flow angle measured in each port must be $\pm 2°$ of 0°. Straightening vanes should be installed if necessary to meet this criterion.

2.5.6.3 Pitch Angle Calibration. Perform a calibration traverse according to the manufacturer's recommended protocol in 5° increments for angles from $-60°$ to $+60°$ at one velocity in each of the two ranges specified above. Average the pressure ratio values obtained for each angle in the two flow ranges, and plot a calibration curve with the average values of the pressure ratio (or other suitable measurement factor as recommended by the manufacturers) versus the pitch angle. Draw a smooth line through the data points. Plot also the data values for each traverse point. Determine the differences between the measured data values and the angle from the calibration curve at the same pressure ratio. The difference at each comparison must be within $\pm 2°$ for angles between 0° and 40° and with $\pm 3°$ for angles between 40° and 60°.

2.5.6.4. Yaw Angle Calibration. Mark the three-dimensional probe to allow the determination of the yaw position of the probe. This is usually a line extending the length of the probe and aligned with the impact opening. To determine the accuracy of measurements of the yaw angle, only the zero or null position need be calibrated as follows. Place the directional probe in the test section and rotate the probe until the zero position is found. With a protractor or other angle measuring device, measure the angle indicated by the yaw angle indicator on the three-dimensional probe. This should be within $\pm 2°$ of 0°. Report this measurement for any other points along the length of the pitot where yaw angle measurements could be read in order to account for variations in the pitot markings used to indicate pitot head positions.

5. By adding Citations 13 and 14 to Section 3, as follows:

3. Bibliography

* * * * *

13. Smith, W.S. and D.J. Grove. A Proposed Extension of EPA Method 1 Criteria. "Pollution Engineering". XV(8):36–37. August 1983.

14. Gerhart, P.M. and M.J. Dorsey. Investigation of Field Test Procedures for Large Fans. University of Akron. Akron, Ohio. (EPRI Contract CS-1651). Final Report (RP-1649-5) December 1980.

[FR Doc. 85-11392 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 516

[Docket No. 85-10]

Marine Terminal Agreements; Correction

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects the proposed rule relating to marine terminal agreements that the Commission issued on April 2, 1985, and which appeared in the **Federal Register** of Friday, April 5, 1985, beginning at 50 FR 13617. This action is necessary to correct a substantive error in the Supplementary Information. Minor typographical and other errors in the Supplementary Information and in the text of the regulations will be corrected, as necessary, in the final rule.

DATE: Comments on or before June 4, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5787

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5866.

The following corrections are made in FR Doc. 85-8184 beginning on page 13617 in the issue of Friday, April 5, 1985:

Supplementary Information [Corrected]

On page 13621, in the first column:*

1. The discussion under section 516.5(a) should read:

This section exempts marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services from the filing and effectiveness/approval requirements of both the 1984 and 1916 Acts and 46 CFR Parts 572 and 560. This section also exempts proprietary marine terminal agreements from the filing and approval requirements of the 1916 Act and 46 CFR Part 560.

2. The headings and discussions for section 516.5(b) and section 516.5(c) are removed. Note that in the proposed rule there is no § 516.5(c) or § 516.5(d).

3. The heading "§ 516.5(d)" should read "§ 516.5(b)". The discussion following this section remains unchanged.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11389 Filed 5-9-85; 8:45 am]

BILLING CODE 6730-01-M

* Pages 16 and 17 of the Commission issuance.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 541 and 567

[NHTSA Docket No. T84-01; Notice No. 04]

Performance Standards and Criteria for Selection of Covered Vehicles and Replacement Parts—Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes performance standards for inscribing or affixing identification numbers onto certain major original and replacement parts of high theft lines of passenger motor vehicles. It further proposes guidelines and procedures for selection of such high theft lines, and establishes which major parts are to be included in the marking program. Finally, it proposes a manner and form for certifying compliance with the standard and specifies who will be authorized to certify such compliance.

This rulemaking is undertaken pursuant to the Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98-547. The law creates a comprehensive program to reduce vehicle thefts through use of the following: parts identification; expansions in federal criminal penalties for motor vehicle theft, and new criminal sanctions against tampering with identification markings; and tighter controls on the import and export of motor vehicles. This rulemaking constitutes the first phase of the NHTSA's implementation of its responsibilities under Pub. L. 98-547.

DATES: Comments on this NPRM are due no later than June 10, 1985. The agency anticipates publication of the Final Rule by August 12, 1985. The theft prevention standard would become effective 6 months after issuance and apply to passenger cars and replacement equipment for them beginning with model year 1987.

Written comments should refer to the docket number and the number of this notice, and should be submitted to: Docket Section, Room 5109 Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Director, Office of Market Incentives, Room 5313, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1714).

SUPPLEMENTARY INFORMATION:

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I. Background: The New Law

In response to growing national concern over the problem of motor vehicle theft, Congress, in October 1984, enacted the Motor Vehicle Theft Law Enforcement Act of 1984. The new law is, in the words of the House Energy and Commerce Committee, "a comprehensive package . . . designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be fenced, while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry . . . It also gives law enforcement officials at all levels of government the . . . prosecutory tools to crack criminal theft rings and . . . to apprehend, successfully prosecute and punish motor vehicle thieves." House Report at 2-3.

A. Congressional Intent

Congress determined that legislation was needed to address the auto theft problem because its nature and scope has changed dramatically in the past twenty years. Whereas auto theft was once largely the province of "joyriding" teenagers, it has overwhelmingly become a professional criminal enterprise. The percentage of those arrested for motor vehicle theft who were juveniles dropped to its lowest rate in history in 1983. The recovery rate for stolen vehicles has fallen steadily, along with the value of those vehicles which are recovered, as the crime has been "professionalized."

Congress found that cars are frequently stolen so that they can be "chopped" into component parts that are subsequently resold to repair shops and used to repair damaged vehicles. Once a car is "chopped" into its component parts and those parts are separated from the identifying Vehicle Identification Number (VIN) plate and numbered engine and transmission, it is no longer possible for law enforcement officials to establish that they were stolen, much less to trace them to a particular stolen vehicle. As a result, thieves often cannot effectively be prosecuted when found in possession of such unmarked parts, and stolen cars or component parts, once recovered, cannot be traced and returned to the original owners or their insurers.

B. Comprehensive Approach Taken

The Motor Vehicle Theft Law Enforcement Act mounts a comprehensive attack on vehicle theft by combining the following elements: a marking system for the major component parts of frequently stolen vehicles; increased federal criminal penalties for vehicle theft (including listing in the Racketeering Influenced and Corrupt Organizations Act (RICO) as a predicate felony), and penalties for tampering with the new marking system; tighter controls on the import and export of motor vehicles; and a series of studies over the next five years of the new theft prevention program's effectiveness, to determine if the program should be modified or expanded.

The new law calls for swift implementation of the parts-marking standard, requiring that a proposed standard be published promptly. It calls

for selection of vehicles to be covered by the standard within one year of the date of enactment, i.e., by October 24, 1985.

C. Scope of This NPRM

Responsibilities for implementation of the Motor Vehicle Theft Law Enforcement Act of 1984 are distributed among several Federal agencies, primarily the Department of Transportation and the Department of the Treasury (U.S. Customs Service). Full implementation of the Department's responsibilities will require several phases of rulemaking.

This Notice of Proposed Rulemaking, which represents the first phase, addresses some of the responsibilities assigned by the statute to the Department of Transportation (which are, in turn, delegated to the National Highway Traffic Safety Administration). It focuses on the key near-term elements of the major component parts-marking standard to be implemented. Those elements are: the performance standard for affixing or inscribing major parts with identifying numbers or symbols; the criteria and procedures for selection of covered high theft lines and their major parts; certification of compliance with the standard; and the manner and form of certification to be employed.

This Notice reflects the agency's consideration of comments received by the agency since enactment of the Theft Law Enforcement Act. The agency has received many written and oral comments in that time. A public meeting was conducted on December 6th and 7th, 1984, at which all interested persons were invited to comment on a series of questions related to implementation of the law. Copies of all written materials submitted to the agency during and after the public meeting, as well as a copy of the agenda and a transcript of the meeting, are in the docket. In addition, many written comments were submitted during the comment period which ended December 17.

D. Future Rulemaking Action Planned

Subsequent rulemakings will take up other matters not on the statute's accelerated rulemaking schedule, such as: Reporting requirements for manufacturers, Sec. 603(c); reporting requirements for insurance companies, Sec. 612; procedures for exempting up to two lines of passenger motor vehicles per manufacturer per year if they are equipped with effective anti-theft devices, Sec. 605; and a possible voluntary theft prevention standard for vehicles not required to be covered under the terms of the statute, Sec. 613.

II. Definitions for the Theft Program

"Car line" or "line" means a group of motor vehicles of the same make, which have the same body or chassis, or otherwise are similar in construction or design. Some examples of makes and lines are AMC-Alliance, BMW-BMW 320, Chevrolet-Cavalier, Chrysler-New Yorker, and Ford-Escort. If the same car line nameplate were placed on 2-door, 4-door, station wagon and hatchback versions of a vehicle, then all of those versions would be in the same line.

"Committee report" or "report" refers to the House Energy and Commerce Report, "Motor Vehicle Theft Law Enforcement Act of 1984," H. Rept. 98-1087, 98th Cong. 2d Sess.

"Interchangeable part" means a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line that it could be used to replace the similar part on a vehicle of the other line, with no modification to the vehicle other than to the interior or exterior trim.

"Model year," with reference to any specific calendar year, means a manufacturer's annual production period for a particular line (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period for that line, the model year is the same as the calendar year. (Note: the EPA Administrator uses the manufacturer's start of production to determine model year.) Since the annual production periods for a manufacturer's lines may differ, a manufacturer may have model years with different beginning and ending dates for different lines.

"Public Meeting" refers to the December 6th and 7th, 1984 public meeting held by the NHTSA at the Department of Transportation in Washington, D.C., at which all interested persons were invited to respond to a series of questions about implementation of Title VI.

"Title VI" refers to Title VI of the Motor Vehicle Information and Cost Savings Act. Section 101 of the Motor Vehicle Theft Law Enforcement Act of 1984 (MVTLEA) amended the Cost Savings Act by adding a new Title VI. All of the portions of the statute which create responsibilities for the National Highway Traffic Safety Administration are contained in the new Title VI. Hereinafter this NPRM will refer to Title VI rather than the MVTLEA.

III. The Theft Prevention Standard

A. Original Parts

Title VI requires the agency to promulgate a theft prevention standard. It is to be a minimum performance standard for the identification of major parts of new motor vehicles (and major replacement parts designed as replacements for such major parts), to be achieved by inscribing or affixing numbers or symbols to such parts. The agency proposes the following basic elements of the standard:

1. The number of symbol to be used must consist of the Vehicle Identification Number (VIN) or a derivative thereof.

Discussion

While the statute itself is silent, the committee report on Pub. L. 98-547 calls for the use of the full VIN, or if that is too costly or difficult, a derivative (i.e., some subset of the VIN's seventeen digits) for the inscribed or affixed identification of major parts. The report states (at p. 12) that ". . . it is most desirable if the number used for identification of major parts is the same as that required for the vehicle identification number (VIN) . . ." The law enforcement advantages of using the full VIN over a derivative of the VIN or some other, altogether different number system are significant.

First, each vehicle's 17-character VIN is a unique "signature" that, in order to comply with the applicable Federal Motor Vehicle Safety Standards, cannot be repeated on any two vehicles during a period of thirty years. Since manufacturers are allowed to repeat assembly sequence numbers on vehicles of the same make and model manufactured at separate assembly plants, use of some derivatives could lead to confusion. Use of the full VIN allows a law enforcement agency to differentiate two identical make and model vehicles from different assembly plants. Therefore, if a vehicle's VIN is used to mark its major parts and those parts are stolen and recovered, they can still conclusively be identified as having come from that vehicle. Prosecution of motor vehicle thieves is far more likely to be successful if this link between the initial vehicle theft and the thief's possession of the part from the stolen vehicle can be firmly established.

Second, the full, 17-character VIN is the basis for the National Crime Information Center's vehicle theft reporting system, which is used by law enforcement officials around the nation to detect and track stolen vehicles. When a vehicle is reported stolen, local and state law enforcement officials file uniform theft reports with the NCIC, usually within 24 hours. Once a vehicle theft report is entered into the system, all participating law enforcement

agencies nationwide have access to it and can check the VIN of suspected stolen vehicles against the NCIC master list. Thus, use of the VIN for the theft prevention standard will enable law enforcement officials to employ the existing NCIC data base with ease, rather than develop a new or modified one, to query whether component parts uncovered during investigations were once attached to vehicles reported stolen.

Third, since the full VIN is the commonly used vehicle identifier for all law enforcement agencies, its continued use would mean minimal disruption of the vehicle identification processes of those agencies and avoid the necessity for training of the personnel of those agencies for a new or modified system.

Because of these considerations, the Agency is proposing tht manufacturers be required to employ the VIN in marking covered major component parts. *See* committee report at 12.

However, several factors militate against a requirement that the entire VIN appear on every covered major part.

First, the statute provides that, if any manufacturer is already engaged in identifying vehicle engines and transmissions in a manner which substantially complies with the theft prevention standard at the time the standard goes into effect, that manufacturer shall not be required to conform to an identification system that imposes greater costs. All manufacturers now stamp engines and transmissions with a derivative of the VIN rather than the entire seventeen digits.

Second, the committee report raises the possibility that there may be some identification technologies (although it did not identify any) for which the costs of affixing or inscribing the entire VIN would be higher than the costs of affixing or inscribing a shorter derivative. *See* report at 12.

In view of the foregoing, the agency is proposing as an alternative the use of a VIN derivative. The agency believes that there may be some derivatives that would enable an investigator to determine if a particular component comes from a stolen vehicle. Comments are requested on the specific composition of derivatives that would be sufficient for that purpose and on the cost differential between the use of those derivatives and the full VIN. Further, the agency is proposing that manufacturers which are placing a VIN derivative other than the one specified above on engines and transmissions as of the effective date of the standard be permitted to continue using that derivative on those particular engines and transmissions even if the agency ultimately decides to require the use of the full VIN on other parts.

2. The theft prevention standard must be a performance rather than a design standard; it must be practicable; and it must employ relevant, objective criteria.

Discussion

The committee report indicates that the Agency must take into account all relevant factors involving reasonableness and achievability in drafting a practicable standard (and, of course, must take into account the statute's $15.00/car limit). These factors include the availability of technology and a reasonable lead time for implementing the standard. It specifies that the agency should use either "general criteria" or "performance tests" in drafting the standard. *See* committee report at 10. The standard should promote the statute's goal of making parts more easily traceable and recoverable, and hence an "important objective . . . will be to ensure that the number is as permanent as possible and cannot be easily altered, tampered with or obliterated." Committee report at 12.

"Practicable" and "objective," as used in Title VI, are to be given the same meaning as they are given in interpretation of the Safety Act. That is, "practicable" means "economically and technologically capable of being done"; "objective" means "capable of being measured objectively without recourse to any subjective determination." For further discussion of these terms, *see* page 16 of H. Rept. No. 1776 on the Motor Vehicle Safety Act of 1966, 89th Congress; *Chrysler* v. *DOT*, 472 F. 2d. 659, 675 (6th Cir. 1972).

The Agency has identified a number of criteria that it believes are relevant to the goals of reducing vehicle theft, improving traceability and recoverability of stolen parts, and aiding prosecution, and are reasonable and objective. These criteria are expressed below in terms of performance rather than design, as required by Title VI.

The Agency is proposing that the following criteria be met by the manufacturer's inscription or affixation of the VIN or a derivative onto covered major parts. Comments are requested on the appropriateness of these criteria in light of the above goals and the available technology. (Comments are also requested whether any performance requirement proposed to apply to labels only should be extended to inscriptions.)

(a) The inscription or affixation must meet the same SIZE AND STYLE requirements as the current standard for the Vehicle Identification Number (VIN); i.e., it must have a minimum height of 4 mm; must consist of the Arabic or Roman numerals and/or letters set out in Table 1 of § 571.115; and must consist of capital, sans-serif characters.

(b) The inscription or affixation must be AS PERMANENT AS POSSIBLE. This requirement is not intended to be absolute, i.e., it is not intended to result in inscriptions or affixations that are immune to damage under all possible circumstances. Instead, it is intended that the identification be made in such a way that, under normal conditions of wear, tear, and repair, it will continue to meet the other performance requirements of the theft standard for the average life of the car (ten years).

The agency is also proposing, as an alternative to the "permanence" requirement, a requirement that the marking remain legible only for the average length of time during which cars are generally susceptible to high theft rates. Comments are invited regarding the appropriateness of this approach, and regarding the length of time during which most vehicles are susceptible to high rates of theft.

(c) Locations selected for labels must provide Protection From Damage as a result of normal maintenance and exposure conditions while still being Accessible to investigators Without Further Disassembly once the parts are removed from the vehicle. Further, to ensure that the label is placed in a consistent location on a particular type of part, the identification must be placed in the same 5 cm X 5 cm area on each part of that type. The manufacturer may select any location, consistent with the above requirements. Identifications placed on parts by means of inscription would be subject to the requirements concerning accessibility and consistent location. Given the greater durability of inscriptions, there does not appear to be any need to require that they be placed in a location where they are protected from accidental damage.

(A different location for the parts identifier is being proposed for replacement parts; *see* III B.1 below. The locations selected by the manufacturer would have to accommodate both the original and the replacement part marking standards.)

The committee report specifies that the agency should "consider the location of the number on a particular part, to ensure that the purposes of the Act are satisfied." It instructs the agency to "consider the location of the number so that it will not be easily susceptible to damage in the normal course of dealer preparation (for such procedures as rustproofing and undercoating), or be

easily damaged in the course of repair, or regular automobile maintenance by repair shops or car owners." Committee report at 12.

The agency interprets the committee report to mean that the standard should be written in such a way that a complying identification would be placed in a location where it was as protected as possible from unintentional obliteration, while still serving the law enforcement purposes of the statute. In other words, the markings must be placed where they are protected from damage due to repairs or repainting, but where they can readily be found by law enforcement personnel conducting an investigation.

One representative of the law enforcement community has commented that, as a general rule, parts discovered during field investigations are already disassembled when they are found so that accessibility of markings on fully assembled vehicles was not essential. However, another expert indicated to the agency that there are times when it would be helpful for the police to be able to read an identifier without taking the vehicle apart, and that markings should be placed accordingly. Both commenters agreed, however, that NHTSA's regulations should ensure that investigators will not have to conduct any *additional* dismantling (over and above what the chop shops, parts dealers or thieves have ordinarily done) to locate the identifier on parts removed from a vehicle.

At the public meeting, manufacturers' representatives indicated that, due to variations in vehicle design and marking technologies, it would be very difficult to draft a regulation establishing a uniform location for the placement of all identifying markings for each component part to which the standard will apply. Moreover, law enforcement experts who spoke at the meeting (and provided additional information in subsequent conversations with agency personnel) indicated that the standard need not provide for uniformity of location in order to ensure its effectiveness.

Uniformity among different manufacturers and car lines is unnecessary because the National Automotive Theft Bureau (NATB) currently makes available to law enforcement officials information which it receives from the manufacturers about the location on each car line of identifying numbers on engines, transmissions and elsewhere. This system is probably adaptable to the motor vehicle theft standard, and obviates the need for a standard which specifies a uniform location for the marking on each covered part.

However, since the NATB system depends upon the manufacturer consistently placing its identifiers in the same spot for the entire model year of a car line, the agency has tentatively determined that the manufacturers be permitted to choose the location for labels or inscriptions on each car line as long as that location remains consistent. Comments are solicited as to whether uniformity of placement should be required for the entire time period during which a covered line is produced, or whether the requirement would adequately serve law enforcement purposes if it applies only on an annual basis.

For the reasons discussed above, it is the agency's tentative view that the dual goals of protection from obliteration and accessibility to law enforcement officials are best served by establishment of performance criteria for location selections, rather than by requiring manufacturers to place markings in a particular location. It is therefore proposing that actual location of identifiers be left to the discretion of the manufacturer, subject to the criteria outlined above.

(d) Removal of the affixation must cause the affixation to SELF-DESTRUCT and ALTER THE APPEARANCE of the vehicle part. For example, it must not be possible to remove the affixation from one part and transfer it to another without leaving evidence of the tampering on the original part. Removal of the affixation must uncover or create a "footprint" (i.e., physical evidence that an affixation was originally present or required to be present) on that part. Similarly, removal or alteration of an inscription must ALTER THE APPEARANCE OF THE PART.

Thus, the fact that a marking was transferred to another part must be obvious enough to be discerned by a trained investigator who inspects the part under field conditions. For example, if an inscription is removed and re-welded into another part, the traces left by re-welding would satisfy the standard. If a labelling method is used, self-destruction of the label or rendering the number on it illegible will ensure that it cannot be reaffixed to a new part.

(e) The affixation must be RESISTANT TO COUNTERFEITING; that is, it must be extremely difficult for an unauthorized person systematically to duplicate the marking, or it must be so expensive to duplicate the marking that the price of an illegally obtained part would begin to approach the price of a legitimately purchased replacement part. For example, the 3-M corporation maintains that the process by which it manufactures its security tape, "Confirm," has thus far proven impossible to counterfeit. (Information on this and other attributes of "Confirm" may be found in agency memoranda summarizing meetings with 3-M. Copies of these memoranda are in the public docket.) The agency requests comments on whether it is reasonable to expect that compliance with this requirement would be voluntarily supplemented through the imposition by label and vehicle manufacturers of stringent controls at their plants to safeguard the labels and the marking system so that blank labels could not be stolen, marked and applied by thieves.

As a further guard against counterfeiting of labels, each label would be required to bear a distinctive logo or trademark identifier along with the VIN. Especially if this marking is incorporated in the material of the label itself instead of simply being stamped on the label, use of the marking would make counterfeiting of the label more difficult and expensive because standard templates could not be readily located or purchased.

In proposing the above performance criteria, the agency recognizes that the performance standard might have been stated in test-specific terms such as resistance to levels of abrasion or, for labels, resistance to removal by various common solvents. The tentative decision to state the performance criteria in more general terms was reached because of the following considerations:

First, the time limitations imposed by the language of the statute preclude any of the extensive experimentation by either the agency or the manufacturers which would be necessary to devise appropriate temperature, abrasion or chemical tests. Congress imposed an extraodinarily tight timetable, and urged the agency to avoid seeking extensions unless absolutely necessary. (". . . the Committee expects the Secretary to promulgate the standard as expeditiously as possible so that major parts may begin to be numbered by the earliest applicable model year.") It may be inferred that the legislators placed a higher priority on swift implementation of the standard than they did on the development of one which is more precise. Indeed, the committee report expressly contemplates the course tentatively selected by the agency: "(t)he DOT will establish the test *or general criteria* which the identification must meet." *See* report at 10–11 (emphasis added).

Second, the committee report repeatedly stresses the importance of avoiding formulations that could hinder development of new unanticipated technologies. By stating the standard in more general terms the Agency reduces the possibility of impeding technological advancement.

Third, both industry and law enforcement participants in the public meeting noted that the Agency's current standard for the VIN label or plate, worded as general performance criteria, has resulted in affixation of VIN plates that are very helpful to law enforcement. (The standard provides simply that "(t)he VIN of each vehicle shall appear clearly and indelibly upon either a part of the vehicle other than the glazing that is not designed to be removed except for repair or upon a separate plate or label which is permanently affixed to such a part," and that it shall be "readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions . . . etc., and . . . . (e)ach character in the VIN . . . shall have a minimum height of 4 mm." 49 CFR 571.115 S4.5 and 4.6.) The agency invites comments regarding whether the criteria of Standard 115 are equally well suited to achieving the goals of the theft prevention standard and Title VI.

3. Parts to be covered by the standard

Section 602 of Title VI provides that this standard is to apply only to major parts, and limits the number of covered major parts to fourteen per vehicle. Section 601(7) of Title VI defines the term "major part" by listing a number of parts and including a provision under which the agency may select for coverage other parts of comparable design or function. The list consists of the following 15 (or 17) parts:

"(A) The engine;

"(B) The transmission;

"(C) Each door allowing entrance or egress to the passenger compartment;

"(D) The hood;

"(E) The grille;

"(F) Each bumper;

"(G) Each front fender;

"(H) The deck lid, tailgate, or hatchback (whichever is present);

"(I) Rear quarter panels;

"(J) The trunk floor pan;

"(K) The frame or, in the case of a unitized body, the supporting structure which serves as the frame; and

"(L) Any other part of a passenger motor vehicle which the Secretary, by rule, determines is comparable in design or function to any of the parts listed in subparagraphs (A) through (K)." Sec. 601(7).

The committee report provides that "the actual selection or choice of the major parts is done in accordance with other specified sections of the tile" (sic). Committee report at 10, presumably referring to the provision in Section 603(a)(2) that "(t)he specific lines, and the major parts of the vehicles within such lines, which are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary."

Discussion

Because the list of "major parts" appearing at 601(7) contains 15 to 17 parts (depending on whether a covered vehicle has 2 or 4 doors) and the statute limits the standards to a maximum of 14 major parts per covered vehicle, the drafters obviously anticipated that the agency would select among the parts listed (or would select by rule additional unlisted parts that serve the same or comparable functions) or permit affected manufacturers to so select, in order to derive an appropriate list of covered parts.

Based upon comments offered by law enforcement officials and other persons at the public meeting and in other conversations with the NHTSA, the agency has developed three alternative proposals regarding the parts which should be marked. Under the first proposal, the following parts, if present, would be required to be marked on all covered car lines:

1. Engine;
2. Transmission;
3. Right front fender;
4. Left front fender;
5. Hood;
6. Left front door;
7. Right front door;
8. Front bumper;
9. Rear Bumper;
10. Left rear quarter panel;
11. Right rear quarter panel; and
12. Decklid, tailgate or hatchback (whichever is present).

These parts were selected from the statute's list because they were found to be most frequently repaired or most costly to replace. A more detailed discussion of replacement costs and frequency of repairs appears in section III of the PRIA.

Comments are solicited regarding the existence of any other parts, comparable in design or function, that should be covered by the standard in addition to or in place of the parts on the above list.

While engines and transmissions may not be subject to frequent accidental damage, Congress' intent to include these two parts in the standard is clearly expressed in both the statute and the committee report. In addition, while the frame is an expensive part, it may be the case that the frame is rarely stolen alone; rather, a part of the frame is stolen while still attached to other parts. For this reason, a separate identifier on the frame was given a lower priority. Comments are invited regarding this selection.

The second and third alternative proposals are based on the agency's recognition that vehicles will not uniformly be designed to have all twelve parts listed under the first alternative proposal. The second proposal would be like the first, except that it would require the marking of two additional parts. The standard would not specify the two additional parts but would permit manufacturers individually to propose the additional two parts to the agency for agreement. NHTSA would agree to the manufacturer's proposal if the two parts proposed were on the statute's list. If the manufacturer proposed marking a part that was not on the list but was comparable in design or function, rulemaking by the agency would be necessary before approval could be granted. (See Sec. 601(7).) Timing problems might be created if such rulemaking had to be conducted each year. Comments are requested on the extent of such problems and how they might be minimized.

The third proposal would be like the second, except that the two additional parts to be marked would be specified in the standard. Those two parts would be selected based on the comments from interested parties on this notice. Candidates for the additional parts to be selected are: Rear doors (if present); grille (if present); floor pan; and frame.

The agency is proposing, as well, to permit the certification plate or label (now affixed to the left front door or pillar) to serve as the left door's identification for the purposes of Title VI if affixed to that door. This approach appears reasonable because the certification plate or label must already meet legibility, permanence and non-transferability requirements comparable to the ones proposed for the theft prevention standard, and must include the VIN. *See* 49 CFR 567.4. Since Title VI prohibits the agency from issuing a rule requiring more than one marking per part, it appears consistent with Congress' intent for the agency not to require a second affixation or inscription of the VIN on the door.

After considering the proposal, offered by the National Automobile Theft Bureau (NATB) at the public meeting, that each vehicle be subdivided into three zones and the manufacturer be permitted to make limited selections regarding which parts to mark within each zone, the agency has tentatively

rejected that approach as unnecessarily complex.

4. Cost of compliance with the theft prevention standard

Sec. 604(a) of Title VI provides that the theft prevention standard "may not . . . impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of $15 per motor vehicle . . ." The committee report explains that "[t]his is a limitation on DOT. If DOT, when promulgating the standard, determines that this cost will be exceeded, the standard should not be issued until it is adjusted to be within the limitation. In short, there is no authority to issue a standard that exceeds the cost limitation." Committee report at 16.

Sec. 604(c) (1) and (2) require that the $15.00 cap be annually adjusted to 1984 dollars as reflected in the Consumer Price Index (CPI). Percent changes in the CPI are to be certified to the Agency by the Bureau of Labor Statistics each year, and published in the **Federal Register.**

Discussion

The agency interprets the above statutory language and legislative history to mean that it is NHTSA which determines the cost of compliance with the standard, after consultation with vehicle manufacturers and with manufacturers of the various types of marking technologies. NHTSA may not issue a standard which cannot reasonably be met by all manufacturers for $15, but the standard need not be capable of being met for $15 with every technology by every manufacturer. In other words, the standard would meet this requirement if for each manufacturer there was at least one reasonable means of compliance that, based on reasonable and generally accepted management and accounting techniques, would cost not more than $15. The agency has broad discretion to make adjustments to the standard so that it falls within the $15 limit. Such adjustments would then be generally applicable to all manufacturers. But Congress clearly did not contemplate that no standard would issue merely because one manufacturer claims unverified or reasonable costs above that limit. Nor did Congress contemplate that the agency would have the authority to exempt a manufacturer entirely or modify the standard for a particular manufacturer to bring its costs to that manufacturer below $15. The same performance requirements must pertain to all manufacturers even if adjustments are necessary in order to comply with the $15 limitation.

Based on public comments and statements in the committee report, the agency does not anticipate that any manufacturer will make a claim that it is unable to meet the standard for $15 per vehicle. Given the availability of inexpensive labeling and engraving technologies, every manufacturer should be able to find at least one marking system adaptable to its assembly and management techniques within the cost limitation.

If an occasion does arise in which a manufacturer is able to demonstrate that it cannot despite diligent effort meet the $15 limit, the non-conforming manufacturer should petition the agency to adjust the standard. The manufacturer would not automatically be exempted from the requirements of the standard.

Comments are solicited as to whether other methods for resolving such issues would better serve the goals of Title VI.

B. Performance Standards for Replacement Parts

Title VI provides that the theft prevention standard shall apply to replacement parts as well as to the parts originally installed by the manufacturer.

Sec. 602(d)(2) specifies that the standard may not require identification of any replacement part which is not designed as a replacement of a major part required to be identified under the standard. It further provides that the standard can not provide for the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

The committee report notes that the standard for replacement parts "for example, could be a manufacturer's logo with the initial 'R' for replacement part affixed or inscribed on the part." Committee report at 12.

Discussion

1. Number or Symbol to be Used: Location of Marking. Numerous commenters have noted that the theft prevention standard is only as good as the replacement part-marking standard, because motor vehicle thieves will seek to obliterate identifying unique VIN's on original equipment parts and to replace those VIN's with counterfeit logos and "R" designations. It may be far easier repeatedly to counterfeit a single letter and logo than it is to counterfeit a new unique VIN for each stolen part.

To address the problem of criminals removing VIN's and replacing them with an "R" and a logo, NHTSA is proposing that the *standard* for replacement part identifiers be identical to that for major parts, (i.e., permanent, non-transferable, leave physical evidence if altered or removed, etc.) but that it be combined with a requirement that a different *location* be selected and exclusively used for placement of the "R" and logo. Comments are requested on the burdens that such a requirement would place on manufacturers who produce replacement parts, but not original equipment parts. Such manufacturers would have the burden of learning the location of the theft standard identification on original equipment parts.

If a different location must be selected for replacement part markings, it would be easier for law enforcement officials to discern that a replacement marking has been improperly placed on an original equipment part. It would not be possible, for example, to remove a unique identifier label and place a "replacement part" label over the same spot on the part to obscure the fact that the part's marking had been tampered with.

2. Cost Limitations of the Replacement Part Standard. Sec. 604 of Title VI provides that costs of complying with the standard for any manufacturer of replacement parts shall not be in excess of a reasonable amount, less than $15, per replacement part. The agency must specify that amount in the standard.

Discussion

The agency notes that while the $15 limitation applies to the entire vehicle, the "reasonable lesser amount" limitation applies to each replacement part. This difference in approach presumably reflects factors such as the difference in economies of scale between original parts manufacturers and replacement parts manufacturers. Comments are solicited regarding what "reasonable lesser amount" should be specified and whether it should be the same for each covered part. Comments are specifically requested on the appropriateness of the following amounts: $1 and $5 per part. The amount ultimately specified would be adjusted for inflation in the same manner as the $15 per car cost limitation, and the agency would be limited to a standard that reasonably could be complied with at that per part cost.

Commenters at the public meeting appeared to concur with the agency's interpretation that the language in Sec. 604 gives NHTSA flexibility to determine, for example, that because of the special danger posed by counterfeit replacement part logos, it is necessary to require use of a more costly technology such as stamping for the marking of replacement parts.

The proposed rule does not presently contain such a requirement, but interested parties are invited to comment on that option.

IV. Designation of High Theft Lines; Selection of Such Lines To Be Covered by the Standard

The theft prevention standard applies only to high theft lines, there are three different groups of vehicle lines that may qualify as high theft lines. The first group consists of those "existing lines" (i.e., lines introduced before the beginning of the two calendar years immediately preceding the year in which the standard is promulgated) which are determined to have had a "new passenger motor vehicle theft rate in the 2 calendar years immediately preceding the year in which the final standard is promulgated which exceeds the median theft rate for all new passenger motor vehicle thefts in such 2-year period." Sec. 603(a)(1)(A).

Subsection (b)(5) of 603 provides that new passenger motor vehicle thefts', when used with respect to any calendar year, refers to those thefts in the United States in such year which are of passenger motor vehicles with the same model-year designation as that calendar year."

The second group consists of lines which are introduced into commerce in th United States at any time after the beginning of that two year period, and which are "determined" by agreement between the manufacturer and the agency (or by the agency alone, if the two are unable to reach agreement) to be "likely to have a theft rate exceeding" the median. Sec. 603(a)(1)(B).

The third group includes those low theft lines or likely low theft lines containing major parts that are interchangeable with the majority of the major parts of a line subject to the standard. An exception is made for a group of low theft lines produced by a manufacturer if they account for more than 90 percent of the production of all lines of that manufacturer containing those interchangeable parts. Sec. 603(a)(1)(C).

For manufacturers producing more than a combined total of 14 high theft lines in the first and second categories, Sec. 603(a)(3) provides that, "of those passenger motor vehicle lines initially introduced by a manufacturer into commerce in the United States before the effective date of the standard, no more than 14 of the lines of any manufacturer shall be selected as high theft lines." In such cases, Sec. 603(a)(2) provides that the "lines which are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree as to such selection, the Secretary shall select such lines after notice to the manufacturer and opportunity for written comment . . ."

Discussion

The agency interprets the "selection-by-agreement" provision in Sec. 603(a)(2) to be applicable to those situation in which a manufacturer has more than fourteen high theft lines introduced into commerce before the effective date of the standard.

In those cases where a manufacturer is found to have less than fourteen high theft lines, the agency intends to "select" them all without negotiation. Although the wording of the statute is ambiguous, comments made by manufacturers at the public meeting and in other discussions with the agency indicated that this interpretation is consistent with the intent of Congress. In view of the timetable for implementation of the standard established by the drafters, it is unlikely that Congress contemplated that a separate agreement would have to be reached with each manufacturer having high theft lines where there is no necessity to select among that manufacturer's high theft lines.

For manufacturers having more than fourteen high theft lines introduced into commerce before the effective date of the standard, the agency proposes to establish criteria to be applied in selecting among those lines to determine which ones should be covered by the standard. Rather than incorporate these criteria into the Rule itself, NHTSA proposes to adopt them as binding policy and publish them in an Appendix to the Rule. Comments are solicited on the criteria themselves as well as on the appropriateness of this approach.

Proposed criteria for selection of each of these three categories of "high theft lines" are discussed in turn below. Comments are additionally invited regarding the relative priorities that should be given to high theft lines as between the three groups of lines.

A. Existing Lines

For existing car lines (defined in Secs. 601 and 603(a)(1)(A) as lines introduced into commerce before the beginning of the two year period consisting of the two calendar years immediately preceding the year in which the final standard is promulgated), the statute provides that the following procedures are set to be followed in order to select which lines are to be covered by the theft prevention standard:

1. Determine the theft rate for each line.

The theft rate for a line is expressed by a fraction, whose numerator and denominator are as follows:

NUMERATOR

new passenger motor vehicle thefts for that line in the two calendar years immediately preceding the calendar year in which a final rule is promulgated

DENOMINATOR

production volumes of all passenger motor vehicles of that line (as reported to the EPA) which were produced in the two model years having the same model-year designations as the two calendar years immediately preceding the calendar year in which the final rule is promulgated.

Discussion

To make the theft rate determinations, the agency had to make tentative selections of data bases regarding car thefts and production. There were two data sources for nationwide thefts available for NHTSA's consideration: the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation, and the National Automobile Theft Bureau (NATB), an independent organization funded mainly by insurance companies. NHTSA examined the merits of both systems and tentatively decided to use NCIC data in determining the value of the numerator in the theft rate fraction. This agency believes that the NCIC system has two advantages over the NATB system. First, the NCIC system includes self-insured and uninsured vehicles. Second, it includes vehicles that are recovered within the first 24 to 48 hours of theft. By contrast, the NATB system does not record the theft to those quickly recovered vehicles except in the few states where entry of those thefts is mandatory. In choosing the NCIC system, NHTSA also considered Congressional intent and public comments. The Committee Report (at 15) indicates a preference for using government provided data. Although NHTSA initially had some concern regarding the accuracy and comprehensiveness of NCIC data, public comments, particularly those by NCIC representatives, have eliminated these concerns.

In determining which NCIC data to use, the agency interpreted the definition of "new passenger motor vehicle thefts" when used with respect to any calendar year, to mean that, for the purposes of making theft rate calculations, it is to include, for example, 1983 model-year cars stolen in calendar year 1983, and 1984 model-year cars stolen in calendar year 1984.

NHTSA's interpretation of that definition appears to rule out inclusion of 1983 model-year cars stolen in 1984, and 1984 model-year cars (some of which will be on the road before calendar year 1984) stolen in 1983. The agency recognizes that this definition may result in a skewing of the data relied upon for determining theft rates, since some manufacturers may begin their model year earlier or later than others, resulting in a higher- or lower-than normal number of their cars being on the road and subject to theft during the relevant calendar year.

Comments are solicited regarding any inequities which may result from this anomaly. Comments are also solicited on any alternative interpretation of the legislative language that can be supported.

A second problem with the accuracy of the data base may arise because the numerator of the fraction may include vehicles stolen that were not included in the EPA production data which comprises the denominator. Some vehicles reported stolen in the United States (and hence appearing in the NCIC's data base that will make up the numerator) have been imported into the U.S. by parties other than the manufacturer under the bonding procedures of the Safety Act (i.e., "direct imports"). Such vehicles would not be "counted" by the original manufacturers when those manufacturers supply domestic production totals to the EPA.

The agency has identified two possible ways for adjusting the data to correct for the imbalance that may result. The first is to eliminate from the numerator all vehicles reported stolen that do not have a U.S. VIN. Direct imports are labeled with Euro-VINs, and it is the Euro-VIN that has been used by the NCIC in recording reported thefts of these vehicles. Removing such cars from the numerator would mean that the theft rate for the lines affected would be calculated based on the line's U.S. authorized dealership sales only; other vehicles of the same line would be omitted from both numerator and denominator. The agency has tentatively concluded that this is the preferable approach, and is proposing to use this method in calculating the theft rate.

This approach is attractive because it is consistent with the statute's instruction to the agency that it adjust the NCIC figures for accuracy, as appropriate. However, a possible problem may affect the accuracy of the results obtained. If for any reason the theft rate for direct imports within a vehicle line differs significantly from the theft rate for the vehicle line as a whole, elimination of all direct imports from the numerator and denominator would skew that line's theft rate in relationship to other lines. However, the agency believes that this is unlikely to occur, and has seen no evidence to suggest that the theft rates of direct imports are anything other than proportional to their numbers in the vehicle population.

An alternative approach would be to augment the denominator's production figures by adding to it the number of vehicles (of the appropriate model years) of the line in question which have been certified as in compliance with the Safety Act and imported into the U.S. during the same calendar year, and which are therefore "on the road" and subject to theft in the U.S. during the relevant time period. However, the statute instructs the agency to use only the EPA production figures in the denominator and does not expressly authorize the agency to amend these figures even if doing so will improve their accuracy.

The agency solicits comments on the two approaches outlined above—and on the third possible approach, which would be to leave the formula undisturbed and presume that the inaccuracies are not statistically significant.

A third issue related to the accuracy of the theft rate calculations arises because of the time delay in receiving accurate end-of-year production figures from manufacturers. The NHTSA is instructed to rely on production data provided to EPA and will, presumably, need final figures for 1983 and 1984 to calculate the denominators of the theft rate fraction. Yet, the final 1983 figures had still not been provided by all manufacturers as of December 1984.

To address this problem, the agency proposes to rely on the 1984 estimated production data for domestic vehicles appearing in the November 19, 1984 issue of Ward's Automotive Reports Weekly for all car lines that have not submitted final production data to EPA. NHTSA has been informed that the EPA regularly relies on these data in the absence of final figures from manufacturers, and that the figures are more accurate than the manufacturers' mid-model year estimates provided to the EPA. Manufacturers who view the figures as inaccurate are free to suggest a more accurate source of data or to submit final production data as soon as possible to the EPA and to the NHTSA. The latter course of action would enable the agency to rely on the manufacturers' own totals.

Because no comparable listing appears in Ward's for imported vehicles, the agency proposes to rely on the mid-model year projections of total U.S. sales that are submitted by foreign manufacturers to the EPA in those cases where final production figures are not yet available. Comments are invited regarding whether this approach will provide NHTSA with the most accurate possible data base for calculating vehicle theft rates in accordance with the statutory formula.

To summarize: If the statute's formula is strictly applied (and assuming that a final rule is promulgated in 1985) the following fraction will determine the theft rate for an existing line:

$$\frac{\text{MY 83 cars stolen in CY 83 + MY 84 cars stolen in CY 84}}{\text{EPA production volume for MY 83 + EPA production volume for MY 84}}$$

2. Determine the median theft rate.

Sec. 603(b)(2) provides that the median theft rate is "that theft rate midway between the highest and the lowest theft rates" for car lines (as determined above). If an even number of theft rates is determined to exist, "the median theft rate is the arithmetic average of the two adjoining theft rates midway between the highest and the lowest of such theft rates."

3. Determine high theft lines.

Sec. 603(a)(1) provides that all lines with theft rates above the median are high theft lines.

4. Select high theft lines to be covered by the standard.

Discussion

(a) Criteria. The agency proposes that the following criteria, set forth at the end of the notice in Appendix B, be applied to "existing high theft lines" for the purpose of selecting such lines for coverage under the standard. As outlined above, the criteria would be applied only in those cases in which a manufacturer produces more that fourteen high theft lines. (Note: many of these criteria were drawn from the record of the public meeting):

i. How close to the median theft rate does the line fall? Vehicles close to the top of the list should be given higher priority than those on the margin.

ii. How many of such vehicles are scheduled to be produced in the upcoming model year or years? Obviously, if a vehicle line involves a large number of vehicles, the overall impact of the theft prevention standard will be greater and the vehicle line should be given higher priority. Alternatively, if a line is scheduled to be discontinued in the near future, it should be given lower priority.

iii. Is the line's design going to be altered materially, such as through downsizing? If so, the new car design's parts will not all be interchangeable with earlier model years and, by beginning to mark the line in the new model year, all vehicles with interchangable parts within the car line will be identified from the outset. Such lines, like entirely new lines to be discussed below, should receive the highest priority.

iv. Does the line have a higher-than-average whole-vehicle recovery rate? If the whole-vehicle recovery rate is significantly higher than average, it might mean that the particular line is often stolen for joyriding, or that it is popular with car rental agencies whose vehicles are often abandoned by customers unable to pay. If that is the case, the line should receive a relatively low priority in selection because marking the parts wouldn't address the problem of vehicle theft attributable to professional thieves.

v. Is the manufacturer likely to begin installation of an anti-theft device for which it intends soon to seek an exemption from the standard? If the manufacturer can demonstrate a strong likelihood that it will seek and procure and exemption based on installation of a theft prevention device as standard equipment, then the vehicle should be given a relatively low priority. It will be protected by other means, and since subsequent model years' parts would not be marked, the marking system will be devalued even for the interim period during which the standard was applicable. (Comment is requested on whether this criterion should be applied before the agency has completed the rulemaking necessary to implement the provision in Title VI for exempting vehicles with anti-theft devices.)

vi. What is the status of models with interchangeable parts? If the line in question does not have parts that are interchangeable with *any* non-covered lines, it should be given higher priority because marking is likely to be the most effective for such a line. Decreasing priority should be given to vehicles based on the number (i.e., total production number, not number of lines) of other vehicles which have interchangeable parts but which are not covered by the standard.

Selection of vehicles to be covered is not expected to be an exact science. The agency tentatively proposes to apply the above criteria, and to "rank" a manufacturer's vehicles accordingly, in making its selections.

Comments are solicited as to whether a more numerically precise method would better serve the goals of Title VI: for example, it has been suggested by one commenter that these criteria be given numerical values and the vehicles scoring highest be selected for coverage under the standard. The agency also solicits comments on any additional criteria which should be taken into account in selecting high theft lines for coverage.

(b) Procedures. Procedures to be used in reaching agreement with manufacturers regarding which high theft lines are to be covered by the theft prevention standard. The following is a summary of the procedures that NHTSA plans to publish for comment in a subsequent proceeding:

i. A manufacturer with more than fourteen existing high theft lines as determined by the statute's formula and the agency would meet to discuss the application of the criteria outlined above to all the manufacturer's high theft lines and the rationale for the resulting ranking.

ii. If the agency did not agree with the manufacturer's rankings, it would provide the manufacturer with its own rankings and the rationale for those rankings.

iii. The manufacturer could request the agency to amend them.

iv. The agency would make a final selection of covered lines. That selection would be a final decision of the agency, and hence would be subject to a review by the courts.

(c) Lead Time. Sec. 603(a)(4) provides that the agency shall prescribe procedures designed to assure that, to the extent practicable, selection of lines which were introduced initially before the effective date of the standard and are to be subject to the standard should be completed at least six months before the first applicable model year beginning after such selection.

Sec. 603(a)(5) specifies that "(a) manufacturer shall not be required to begin to comply with the standard pursuant to any selection [done in accordance with the agreement process discussed above] for a model year beginning earlier than 6 months after the date of selection."

Sec. 602(a)(4) provides that the theft prevention standard "shall take effect not earlier than 6 months after the date such final rule is prescribed," unless NHTSA finds that an earlier date is in the public interest.

Finally, sec. 602(a)(5) provides that "[t]he standard may apply only with respect to . . . major parts which are installed by the motor vehicle manufacturer in any passenger motor vehicle which has a model year designation later than the calendar year in which such standard takes effect."

The agency anticipates that the above-noted constraints on lead time and effective dates will lead to the following implementation schedule:

The agency intends to publish, simultaneously with the theft prevention standard, those "selections" of covered lines which do not require reaching agreement with the manufacturers. In addition, the agency plans to publish a Notice of Proposed Rulemaking that outlines the requirements for submission of information necessary to "select" likely high theft new lines, and to "select" among those high theft lines of manufacturers producing more than fouteen of such lines.

The agency proposes that, in accordance with sec. 602(a)(4), the theft prevention standard take effect six months after promulgation. As explained below, the practical effect of such an effective date would be that manufacturers are required to begin marking vehicles in model year 1987.

Domestic manufacturers generally begin new model years in August to October of the preceding calendar year. Foreign manufacturers may gear introductions to the calendar year. It is the agency's view that "selection" of covered lines by this fall will mean that the standard will go into effect for all 1987 models introduced in calendar year 1986, so long as those introductions are at least 6 months after this fall. This conclusion is based on the statute's constraints outlined above, coupled with the following considerations:

The time necessary to complete the rulemaking process and the "selection" process mean that, for some manufacturers at least, model year 1987 is the first year in which the standard could legally be applied. The agency considers it inequitable to require those manufacturers whose high theft lines can be "automatically" selected to comply sooner than those manufacturers having more than fourteen covered lines (selection of which must await the rulemaking), and the committee report clearly states that "(t)he standard cannot apply to a car in the middle of the model year." Report at 11. It therefore seems appropriate uniformly to apply the standard beginning in model year 1987. Comments are invited regarding the timetable outlined above.

The agency encourages manufacturers of existing lines that have been selected at the time the final theft prevention standard is promulgated to begin voluntarily to comply with the standard in model year 1986, as well.

B. New Lines

Sec. 601(4) defines as a "new line" any line introduced into commerce on or after the beginning of the two calendar years immediately preceding the calendar year in which a final rule is promulgated. Assuming a final rule is promulgated in 1985, the agency believes that new lines would include any lines introduced into the marketplace on or after January 1, 1983.

Sec. 603(a)(1)(B) instructs the agency to determine which new lines are "likely to" have high theft rates, and then to select such lines for coverage under the anti-theft standard by agreement with the manufacturer. If no agreement can be reached, the agency will "select" the line(s) itself.

Discussion

As with the criteria outlined above (some of which will also be applicable to selection of likely high theft "new lines"), the agency is proposing to establish criteria for making selections and to publish them as an Appendix to the final rule. Procedures for selecting likely high theft lines are summarized below and NHTSA plans to publish for comment in a later proceeding.

1. Criteria. Proposed criteria for determining whether a line is "likely to" have a high theft rate (Note: many of these criteria were suggested by participants at the public meeting):

a. What is the anticipated retail price of the vehicle?

b. What is the vehicle's "image" (e.g., sporty; low-priced; suitable for a family car; exotic; etc.)? The answer to this question will of necessity be partially subjective, but will be based in part on the manufacturers' views regarding styling, equipment and performance as well as planned advertising campaigns or other indicators of the marketing strategy for the vehicle.

c. Against what other vehicles does the manufacturer expect the new line to compete? If those competing vehicles have high theft rates, the new line can be expected to be similarly subject to high theft rates.

d. What existing car line (and hence purchasing audience) of the manufacturer's own lines does the new line replace, if any? If the existing line has a high theft rate, it is more likely that its successor will have the same.

e. Are there any new devices or systems—perhaps short of a vehicle anti-thefit device but nevertheless effective—that can be expected to reduce the theft rate?

f. If any theft data are available, what do they reveal? (This criterion requires that the agency factor in the usual months-long delay that generally occurs after introduction of a new line, while thieves become familiar with the vehicle's theft-prevention system and learn to disable it. Nevertheless, vehicles demonstrating a high theft rate immediately upon introduction into the marketplace would be likely candidates for coverage under the standard.)

Unlike the selection of existing high theft lines for coverage under the standard, selection of any new line for coverage will have to be done on a case-by-case basis through agreement between manufacturer and agency with the agency making final determination in case agreement cannot be reached.

2. Procedures. The agency tentatively intends to rely on the following procedure for the selection of new lines likely to have high theft rates. The selection process would begin long enough in advance for a final selection to be reached eight months before scheduled start production. The initial selection would be made by the agency based on available information. If a manufacturer objects to the selection of one of its lines, it would be permitted to seek reconsideration.

The NHTSA is aware that sensitive confidential business information will have to be made available to the agency to facilitate selection of new lines likely to have high theft rates. It is the agency's current assessment that its existing confidentiality regulations, at 49 CFR 512, will be adequate to protect such information; however, comments are solicited regarding any confidentiality issues needing further agency attention.

C. Lines With Interchangeable Parts

Sec. 603(a)(1)(C) defines as "high theft lines" those low theft lines or likely low theft lines containing major parts which are interchangeable with the majority of the major parts of a line subject to the standard. An exception is made for such lines if the low theft lines account for more than 90 percent of the production of all lines which contain those interchangeable parts.

Discussion

Based on comments made at the public meeting, the agency believes that "interchangeability" should be fairly broadly construed and should not require that parts be absolutely identical to be regarded as "interchangeable".

As one commenter pointed out, thieves would prefer to steal a car for which a part's interior trim need not be redone in order to serve as an adequate replacement part. However, once it becomes known that, for example, the front door of an interchangeable line has different trim but *is not marked with an identifying number,* the interchangeable vehicle will become the target of theft. Under this analysis, it is appropriate to read the term "interchangeable" broadly: otherwise, this year's low theft model will, if only broadly interchangeable and unmarked, be next year's high theft model anyway.

NHTSA intends soon to undertake a rulemaking, as mandated by 603(c), to "require each manufacturer to provide information necessary to select . . . the high theft lines and the major parts to be subject to the standard." At that time, the agency hopes to establish the form and manner in which manufacturers must provide data regarding interchangeability of parts.

Once interchangeability has been determined, the agency proposes to apply the mathematical formula spelled out in sec. 603(a)(1)(C). It should be noted that interchangeable lines introduced into commerce before the effective date of the standard are not "counted" against the initial fourteen-line limit for each manufacturer. *See* sec. 603(as)(3). With respect to new lines, the selection of covered interchangeable parts' lines will be based on an initial decision as to whether a line is likely to be high theft: if so, interchangeable lines will be covered unless the statute's formula exempts them. The agency intends to make selections of new and interchangeable-part high theft lines simultaneously, in accordance with the leadtime schedule set out in IV.A.4. (iii) above.

V. Certification of Compliance With the Theft Prevention Standard

Sec. 606(c)(1) provides that "[e]very manufacturer of a motor vehicle subject to the standard . . . and every manufacturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard." It further provides that the agency may issue rules prescribing the manner and form of such certification.

Sec. 607(a) prohibits any person from importing into the United States any motor vehicle or part covered by the standard, unless it is in conformity with the standard. The committee report states that "[a]ny motor vehicle not in compliance will be refused admission into the United States." Report at 18.

The committee report indicates that the agency should take "into consideration its present certification practices in the case of safety" in

determining the method and form of certification for the theft prevention standard. *Id.*

A. Who May Certify

Title VI provides, as noted above, that every manufacturer of a motor vehicle or motor vehicle replacement part covered by the standard shall furnish certification of compliance with the theft prevention standard at the time of delivery, and that the certification shall accompany the vehicle until the delivery of the vehicle to the first purchaser. *See* Sec. 606(c)(1).

"Manufacturer" is defined in section 2(7) of the Motor Vehicle Information and Cost Savings Act as "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale."

Discussion

While it is clear from the statute that compliance with the theft prevention standard must be certified by the "manufacturer," the question arises whether each and every "manufacturer," as that term is defined in section 2(7), should be permitted to certify that a vehicle or part is in compliance. In other words, should the authority to certify compliance be limited by the agency to some narrower subset of the universe of "manufacturers"?

Some of the participants at the pubic meeting argued strenuously that the power to certify vehicle or replacement part compliance with the theft prevention standard should be granted only to the original manufacturers of such vehicles and parts.

A rule restricting power to certify compliance to original manufacturers would effectively preclude "direct importers"—individuals who are manufacturers under the statutory definition because they "import motor vehicles or motor vehicle equipment for resale"—from bringing vehicles into compliance and so certifying. This, in turn, could significantly affect the market for "direct imports," which consists primarily of European luxury vehicles not originally manufactured in accordance with U.S. safety standards.

Both the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) and the Clean Air Act and their attendant regulations currently allow for the importation of such non-complying vehicles under bond. Direct importers then make changes in or add the equipment necessary to bring the vehicles into compliance with U.S. law. The vehicles are then "certified" as in compliance by the importer/manufacturer to the satisfaction of NHTSA and EPA, and the customs bond is liquidated. This system was anticipated by Sec. 108(b) of the Safety Act, which specifies that the Secretary may issue regulations allowing the importation of non-complying vehicles subject to terms and conditions (such as the furnishing of a bond) that will ensure that the vehicles are brought into compliance or exported.

Proponents of the original-manufacturer-only approach to regulating compliance with Title VI (primarily law enforcement personnel and representatives of European vehicle manufacturers and their authorized dealers) made several arguments as to why the theft prevention standard should be treated differently from the safety and emissions standards, for which importer/manufacturers are currently permitted to certify compliance.

First, it was argued, the prosecutorial goals of the statute would best be served by limiting the number of persons who are legitimately in possession of the tools and equipment to mark vehicle parts in accordance with the theft prevention standard. The broader the distribution of the marking technologies, they argued, the less secure from tampering and counterfeiting the system will be.

A former prosecutor (now representing a vehicle manufacturer) argued, for example, that if only original manufacturers can certify compliance, then suspected thieves found in possession of marking technology (such as blank labels or etching equipment) could not argue that they had a legitimate reason for possessing the equipment; i.e., they could not claim to be importers for resale, or "manufacturers," intending legally to mark legitimate imports. Prosecutors could more easily prove criminal intent based on possession of the marking equipment. Evidence of tampering or alteration of identifying markings could more easily be tied to persons in possession of such equipment if it is not widely available.

The 3–M Corporation's representative expressed concern that producers of security labelling technology like 3–M are able to guarantee the usefulness of their product only when the distribution of the product can be tightly controlled. If they are required to make their security tape more widely available in the marketplace, the system's integrity and uniqueness will be more easily compromised.

It was further argued that Congress had important prosecutorial goals in mind when it did not provide for bonding and temporary importation of non-complying vehicles as it had under the Safety Act. In fact, earlier versions of the legislation contained bonding provisions which were dropped before the law's enactment.

While the Safety Act permits the temporary importation into the U.S. of non-complying vehicles, the committee report on the Theft Prevention Act states that vehicles not in compliance with the Theft Prevention Act will be "denied admission to" the United States. This, it was argued, showed an intent to prevent importation under any circumstances of non-complying vehicles.

Moreover, while Title VI neither expressly endorses nor repudiates the definition of "manufacturer" spelled out in section 2(7), it was argued that the wording of certain portions of the Title indicates Congress did not contemplate that every manufacturer (as the term is defined in section 2(7)) would be involved in complying with the theft prevention standard. Proponents of this narrower reading pointed to the language of sec. 602(a)(1), which provides that the standard will apply to "the covered major parts *which are installed by manufacturers* into passenger motor vehicles," and to 602(d)(1), which also refers to "major parts *installed by the motor vehicle manufacturer*". (Emphasis added to both.) It was argued that importer/manufacturers may *alter* but do not *install* major parts, and that Congress intended by these provisions to refer only to original or assemblying manufacturers. Senator Percy, the original sponsor of the Senate's anti-theft bill, stated during Floor debate that, "[u]nder the bill, motor vehicle manufacturers would be required to apply these numbers *before each vehicle leaves the factory.*" (Emphasis added.) (130 Cong. Rec. S13585, Oct. 4, 1984). This statement, it was argued, supports a narrower reading of Congress' intent.

Proponents of the narrow reading of the statute recognized that limiting compliance certification authority to original manufacturers would adversely affect certain parties—i.e., both individuals and direct importers would be prevented from bringing non-complying covered vehicles into the U.S They argued, however, that the adverse impact must be balanced against the adverse impact on the overall theft prevention program if parties other than original manufacturers were given certification authority.

They argued that persons purchasing imported vehicles from the original manufacturer's authorized dealers would be harmed if there is a loss of central control over the marking authority and technology. If numerous types of markings and technologies could legitimately be present on "converted" imports of a given car line, police would find it more difficult to distinguish the genuine from the forged identifiers. Criminals would therefore find it less risky to steal those lines of cars and tamper with the original manufacturer's markings on manufacturer-authorized dealers' vehicles, because investigation of such thefts would be more difficult. This, it was argued, would make imported vehicles still more attractive to thieves than they already are. Because the presence of only a small number of illegitimately-marked vehicles of a particular line can compromise the integrity of the entire marking program for that line (by providing defendants with the defense that possession of a questionably-marked vehicle part is inconclusive), it was argued, the adverse impact on the few (manufacturer/importers) should not be permitted to impose a hardship on the many (those who purchase from original manufacturers).

Finally, it was argued, permitting the widespread marking of vehicles would encourage the importation of stolen vehicles by lending stolen and "marked" vehicles a false imprimatur of legitimacy.

Proponents of permitting certification of compliance by persons other than the original manufacturer, primarily representatives of direct importers, argued strenuously that a broader approach more effectively serves the purposes of the Act.

First, they argued, the statute was clearly intended to have only a minimal economic impact on the auto industry, of which they are an important, if small, competitive segment. Statutory limitations on the cost of the standard, and the requirements that the standard be practicable, reasonable and achievable, indicate that any standard which would put a substantial segment of the market out of business would not be consistent with Congressional intent.

Proponents of a broader authority to comply and certify under the theft prevention standard argued that NHTSA could devise a workable system to achieve the Congress' anti-theft goals without imposing harsh economic consequences on direct importers. While the statute does not expressly authorize importation under bond (for marking in the United States), they argued, it does not expressly forbid this approach if it makes sense for the agency to allow it. Since vehicles are now routinely imported under bond for conversion to U.S. safety and emissions standards and then certified, they contended, there is no reason why that system cannot be expanded to include compliance with the theft prevention standard, as well.

Alternatively, they proposed that either the Department of Transportation or the U.S. Customs Service could establish a program for the controlled issuance of security labels or other identifiers to supply to manufacturers other than original manufacturers. If the government were to control access to the marking system, and to require, for example, photographic evidence that each label had been applied in compliance with the standard, then concerns about the integrity of the system could be met without unnecessarily restricting direct imports.

The proponents further argued that, while "importation" of uncertified vehicles may arguably be prohibited by Title VI, a vehicle need not be defined as "imported" until a posted customs bond has been liquidated and the vehicle in question has passed into commerce in the United States. Thus, they maintained, a vehicle could be brought to the U.S. but not actually "imported" by an importer/manufacturer under the statute; brought into compliance while under bond on U.S. soil; certified by the manufacturer; and then "imported" once the bond had been liquidated.

Finally, they argued, it is inconsistent with the United States' international trade policies to erect non-tariff barriers to the entry of foreign goods.

After giving careful consideration to the arguments made at the public meeting and in other discussions with affected parties, including law enforcement and manufacturing representatives and the U.S. Customs Service, the agency has tentatively determined that the purposes of the statute will be better served if only original manufacturers are authorized to certify compliance with the theft prevention standard.

This decision is based on several considerations. First, the agency is persuaded that the effectiveness of the overall theft prevention program is only as good as its weakest link. In combating a highly organized and professional criminal enterprise, law enforcement officials must anticipate that every possible avenue for bypassing the new law will be sought out, and must act to plug as many loopholes as possible.

Limiting the legitimate possession of marking techniques to a few major manufacturers of vehicles and parts would mean that other persons in possession of such technologies can be more easily linked to their criminal enterprises. (Similarly, replacement parts covered by the standard, mostly large sheet metal or heavy duty cast parts, will tend to be produced only be established industrial manufacturers rather than by many small shops and producers. The universe of replacement part manufacturers legitimately possessing marking technologies will not include many parties not directly linked to the original vehicle manufacturers.) While the statute does not make illegal the mere possession of the marking tools or labels, possession of these instruments will be valuable evidence in a prosecutor's case if a lawful purpose for their possession cannot be argued by the defendant.

Second, the NHTSA interprets the statute's repeated references to *manufacturer's* compliance and certification as precluding DOT's issuance of secure labels in the type of government program proposed by several of the commenters. Sec. 606(c)(1) provides that "[e]very manufacturer of a motor vehicle subject to the standard . . . shall furnish at the time of delivery . . . a certification that such vehicle . . . conforms to the applicable motor vehicle theft prevention standard." The committee report directs the agency to "take() into consideration its present certification practices in the case of safety." Report at 18. In the view of the agency, government participation in assisting manufacturers with achieving compliance would be inconsistent with current practice under the Safety Act.

The responsibility for compliance with the Safety Act is entirely with the manufacturer, and the NHTSA does not "approve" designs or equipment for manufacturers. The same is true for the Motor Vehicle Theft Law Enforcement Act. This is an essential element in the regulatory philosophy of "performance standards" and self-certification (such as specified by Title VI and the Safety Act) as contrasted with "design standards" and pre-sale government type approval mechanisms. DOT should not play a role in compliance by providing labels, or otherwise assist in the process of bringing a vehicle into compliance; if it did, the agency would then become involved in accepting certification of its own compliance, since compliance would be measured in part by whether the agency had provided "complying" products (i.e.,

labels) to manufacturers. (Similarly Customs officials would be placed in the untenable situation of issuing "complying" products and then enforcing certification of compliance at the border if that agency were to undertake the task of issuing labels or other identifiers.) This type of procedure surely was not contemplated by the drafters. It differs radically from practices under the Safety Act; no resources in the budget are available; and Title VI provides for neither additional budget authority nor authority to seek reimbursement through user fees or some other mechanism.

Third, while it is true that the legislative history indicates a combined purpose for the new law of both curbing automobile theft and "minimiz(ing) regulation of the domestic and foreign motor vehicle manufacturing industry," the agency believes that minimizing regulation at the expense of the effectiveness of the overall theft prevention program would run counter to the Congress' intent. Law enforcement officials and European manufacturers' representatives argued that a marking system known to have less integrity for the imported vehicles than for the domestic (since the original manufacturer/importer for resale issue does not arise in the case of domestically-produced vehicles) can only make all lines of imported vehicles more attractive to thieves. Moreover, the wide availability of the marking equipment would mean that domestic vehicles would also be less protected from counterfeiting and tampering.

It should be added that the agency disagrees with the argument, offered at the public meeting, that "importation" does not occur until a posted customs bond has been liquidated. The U.S. Customs Service has indicated that it does not concur with that analysis; according to the Customs Service's interpretation of the law, the vehicle is "imported" and a bond is posted only to ensure that it is later brought into compliance with U.S. standards. Liquidation of the bond indicates compliance is completed.

If only original manufacturers can apply markings and certify compliance, the enforcement and inspection burden on the agency will be vastly simplified. If the task of properly policing compliance with the theft prevention standard is not manageable, and hence is ineffectively carried out, professional criminals will swiftly learn that the system's integrity is easily breached. Once again, the prosecutorial value of the standard will suffer. Based on NHTSA's experience with the odometer tampering enforcement program, the agency believes that strict inspection and enforcement of the standard, particularly in the beginning years, is essential to the overall success of the program.

The agency notes that the importation of passenger cars not originally manufactured to comply with Federal motor vehicle safety standards (the so-called "gray market"), subject to bonding and subsequent modification to assure compliance, has increased substantially in popularity in recent years. While section 607 of the Cost Savings Act prohibits the importation into the U.S. of any vehicles subject to the theft standard which do not comply with the theft standard, the agency specifically seeks comments on whether it would be consistent with the Theft Act to construe the term "manufacturer" so as to permit entities other than the original manufacturer to certify compliance with the standard.

Commenters should discuss whether any alternative scheme is consistent with the agency's authority under the Theft Act and the Congressional intent underlying that Act. Commenters are also invited to address the effects of both the agency's proposal and any alternative certification scheme on international trade and on U.S. purchasers of foreign-manufactured motor vehicles. In particular, the agency seeks comments and data on the costs and benefits of different certification proposals, as well as on the effects of the various proposals on the avenues through which foreign-manufactured automobiles may be sold in the United States. Are there other alternatives possible within the constraints of the Theft Act that would not adversely affect the gray market?

Commenters should also provide details as to how any proposed alternative certification schemes would be structured. In particular, the agency seeks comments on whether separate certifications should be permitted for compliance with vehicle safety and theft standards, and whether such certifications could be made by different entities. The agency also requests commenters to specify what type of manufacturer "logo" would be used by entities other than original equipment manufacturers. The agency is particularly interested in receiving comments on the effects of any alternative certification scheme on law enforcement agencies, including the use of Euro-VINs rather than U.S. VINs in theft markings, the ability to trace persons other than original equipment manufacturers, and whether inexpensive marking systems such as paper labeling could continue to be used for marking purposes. The agency also seeks comments as to whether parties other than original manufacturers could comply with the standard for less than the $15 cost cap established by the Act, and whether an alternative certification scheme would require modifications to the performance standard for theft markings that would increase compliance costs for original manufacturers.

Because the agency is tentatively taking the position that only original manufacturers should be allowed to certify compliance with the standard, it need not address in detail the question of what number or identifier, other than a U.S. VIN, would be placed on the major parts of vehicles not assigned U.S. VIN's.

With respect to vehicles which are not in other respects designed to be in compliance with U.S. safety and emissions standards, comments are invited as to whether foreign manufacturers should be permitted to comply with the theft prevention standard via use of the Euro-VIN initially assigned to their vehicles, and then to certify compliance through affixation of a certification plate or label comparable to the U.S. certification plate (as explained further below) but limited to certification of compliance with the theft prevention standard alone rather than in conjunction with the safety and bumper standard compliance certification statements. Such a system would ensure that a vehicle retains its "signature" VIN, which all interested parties appear to consider essential for law enforcement purposes. At the same time, it would permit continued importation and "conversion" of direct imports without compromising the integrity of the parts-marking program if foreign manufacturers so desired. Comment is also requested on whether foreign manufacturers would be likely to certify compliance with the theft prevention standard alone. Commenters should discuss why foreign manufacturers would or would not be likely to so certify.

B. Manner of Certification

1. Major parts.

At present, manufacturers are required under the Safety Act to affix a permanent plate or label to each vehicle providing a number of pieces of information including the following statement:

"This vehicle conforms to all applicable Federal motor vehicle safety

standards in effect on the date of manufacturer shown above."

In the case of passenger cars, the expression 'and bumper' has been included in the statement following the word 'safety' for all vehicles manufactured on or after September 1, 1978.

The agency proposes to require that, for vehicles covered by the theft prevention standard, the statement on the certification plate be modified to read:

"This vehicle conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture."

The legislative history of Title IV, which urges the agency to consider its Safety Act certification method and which stresses minimization of the regulatory burden on manufacturers (see committee report at 2) favors this simple approach to certification. As discussed above, since the agency intends to limit to original manufacturers the authority to certify compliance, requiring alterations in the certification plate should prove feasible for all affected parties.

2. Replacement Parts.

Once again relying on the committee report's instructions that the agency take into account current certification practices under the Safety Act, NHTSA proposes that certification of compliance with the standard for replacement parts be achieved by marking each replacement part with the symbol "DOT". This method of certification can easily be combined with the marking requirement of the theft prevention standard itself. The DOT symbol should be placed immediately adjacent to the "R" and logo required by the theft prevention standard.

While a member of the public suggested at the public meeting that the agency permit crates or boxes containing replacement parts be marked, instead of the parts themselves, with a "DOT" for the purposes of certification, the agency has tentatively rejected this proposal for several reasons.

First, most or all of the major parts to be covered by the standard are too large to be shipped in boxes or crates. Certification by means of marking the shipping containers, while appropriate for small parts such as lamps, brake hoses or seat belts, is impracticable when each part is likely to be shipped separately or to be separated rapidly from any crate or box in which it may have been shipped.

Second, the law enforcement officials who commented on this issue suggested that the value of the certification lies in its being present and visible on the major replacement part at the time an inspection is undertaken. If the certification disappears with the packaging material, its value as legal evidence will be lost because its absence will have no significance.

NHTSA proposes to adapt the language of the certification standard for motorcycle helmets, at 49 CFR 571.218 S5.6.1. The standard would provide that "the symbol DOT constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard."

VI. Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

The agency has determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures, but not as a major rulemaking within the meaning of E.O. 12291. A Preliminary Regulatory Evaluation (PRE) is being placed in the public docket simultaneously with the publication of this Notice. A copy of the Evaluation may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590.

The Department's determination that the proposed rule is significant is based on the costs that the rule will impose on manufacturers, as well as on the benefits (in terms of reduced thefts, increased vehicle recoveries, and lower insurance premiums) that are anticipated from its promulgation. The rule is further expected to affect "direct imports," possibly resulting in a significant reduction of the market for those services.

As discussed in more detail in the PRE, the agency estimates that approximately 43% of all cars produced would be selected as high theft models subject to the standard. Assuming 10 million passenger car sales per year, 4.3 million cars annually would be covered. Costs of compliance are estimated at $8.40 per vehicle for stamped identifiers, and $3.60 per vehicle for label identifiers. The total annual fleet costs are thus estimated at $35 million for stamped identifiers ($8.40 × 4.3 million), and $15 million for label identifiers ($3.60 × 4.3 million).

Benefits of the proposed rule are estimated in the PRE based on the anticipated reductions in thefts attributable to the marking system. Assuming that the marking system will reduce thefts of high theft lines by 10%, the agency estimates that 23,000 thefts per year might be averted by the rule. Since the average value per stolen vehicle is $3,900, the annual value of the assumed 10% reduction in thefts is $90 million (23,000 thefts averted × $3,900) Because no systematic data on theft reductions attributable to marking systems currently exist, this estimate should be considered preliminary.

B. Small Business Impacts

Because of the proposed rule's potential impacts on "direct importers," this action is likely to have a significant economic effect on a substantial number of small entities. Accordingly, a preliminary regulatory flexibility analysis has been incorporated in the PRE.

The NHTSA estimates that there are approximately 400 separate enterprises engaged in one or more aspects of vehicle conversion; many of those enterprises would be designated "small businesses" under the terms of 13 CFR Part 121 because they derive annual revenues of less than $3.5 million (for servicing) or less than $11.5 million (for retail sales) from those businesses. The industry association estimates that a majority of these 400 enterprises are engaged solely in vehicle conversion. Those establishments that now depend on direct importing high theft lines for a significant part of their revenues could be forced either to expand into other fields or to go out of business. Comments are invited regarding the number of enterprises and employees that would be affected by the proposed rule.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and anticipates no significant environmental effects. Accordingly, no Environmental Impact Statement will be filed.

D. Paperwork Reduction Act

The Office of Management and Budget has already approved the NHTSA requirement that vehicle identification numbers appear on all new vehicles (OMB # 2127–0051). However, since this notice proposes to expand the scope and uses of the vehicle identification number system, it would impose additional information collection requirements, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

VII. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

VIII. The Rule

1. Title 49 of the CFR would be amended by adding a new Part 541, to read as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

Sec.

Authority: Sec. 101, Pub. L. 98–547, 98 Stat. 2754 (15 U.S.C. 2021); delegation of authoirty at 49 CFR 1.50.

§ 541.1 Scope.

This standard specifies performance requirements for identifying numbers or symbols to be placed on major parts of certain passenger motor vehicles.

§ 541.2 Purpose.

The purpose of this standard is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles.

§ 541.3 Application.

This standard applies to those passenger car parts identified in § 541.5(a) that are present in the car lines listed in Appendix A. It also applies to major replacement parts for those cars.

§ 541.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) below.

(b) *Other definitions.* (1) "Interior surface" means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) "Line" or "car line" means a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon and hatchback vehicles of the same make.

(3) "Manufacturer" means the orignial producer who installs or assembles the covered major parts of the passenger motor vehicle.

(4) "Passenger car" is used as defined in § 571.3 of Part 571.

(5) "VIN" means the vehicle identification number required by Part 565 and § 571.115 of this chapter.

§ 541.5 Requirements for passenger cars.

(Proposal 1)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(12), if present on the vehicle.

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Front bumper.
(9) Rear bumper.
(10) Right rear quarter panel.
(11) Left rear quarter panel.
(12) Deck lid, tailgate, or hatchback (whichever is present.)

(Proposal 2)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(12), if present on the vehicle, and on two additional parts, selected by the manufacturer and agreed to by the Administrator from the parts specified in paragraphs (a)(13) through (a)(16).

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Front bumper.
(9) Rear bumper.
(10) Right rear quarter panel.
(11) Left rear quarter panel.
(12) Deck lid, tailgate, or hatchback (whichever is present.)
(13) Frame.
(14) Grille.
(15) Trunk floor pan.
(16) (Parts to be determined in the final rule which are comparable in design or function to any of the parts listed in paragraphs (a)(1) through (a)(15).)

(Proposal 3)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(14), if present on the vehicle.

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Front bumper.
(9) Rear bumper.
(10) Right rear quarter panel.
(11) Left rear quarter panel.
(12) Deck lid, tailgate, or hatchback (whichever is present).
(13) (To be determined in the final rule.)
(14) (To be determined in the final rule.)

(b) (1) Except as provided in paragraph (b)(2) of this section, the number required by paragrah (a) shall be the VIN of the passenger car.

(2) In place of the VIN, engines and transmissions being marked with any derivative of the VIN on the day preceding the effective date of this standard may be marked with that derivative.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) of this section must be identical in size and style to the characteristics of the VIN as provided for in S4.7 and S4.8 of § 571.115 of this Title.

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) Labels.

(i) The number must be printed indelibly on a label, and the label must be permanently affixed to the car's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed in the vehicle and is protected from damage during maintenance or repair of the vechicle.

(iii) The number must be placed on each part specified in paragraph (a) of this secion in a location that is visible without further disassembly once the vehicle part has been removed from the vehicle.

(iv) The number must be placed within the same 5 cm × 5 cm region of the part, on each part specified in paragraph (a) of this section [the duration of the model year OR the duration of production of such vehicle line].

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) discernibly alter the appearance of the vehicle part by creating or uncovering evidence that a label was originally present or required to be present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed on the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) Other means of identification.

(i) Removal or alteration of any portion of the number must visibly alter the appearance of the vehicle part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicles.

(iii) The number must be placed within the same 5 cm × cm region of the part on each part specified in paragraph (a) of this section for [the duration of the model year OR the duration of production of such vehicle line].

§ 541.6 Requirements for replacement parts.

(a) Each replacement part for a part which is specified or selected under § 541.5 must have the registered trademark of the manufacturer of the replacement part and the letter "R" affixed or inscribed on such replacement part by means that comply with § 541.5(d), except as provided for in paragraph (c) of this section.

(b) The trademark and letter "R" required by paragraph (a) must be at least 1 cm high.

(c) The trademark and letter "R" must be placed in a location that is at least 15 cm away from the location where the original part's theft prevention marking is placed.

(d) The trademark and letter "R" must be placed within the same 5 cm × 5 cm region of the part for [the duration of the model year OR the duration of production of such replacement part].

(e) Each replacement part must bear the symbol "DOT" in letters at least 1 cm high, within 5 cm of the trademark and letter "R". The symbol "DOT" constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard.

Appendix A

Passenger car lines covered by the motor vehicle theft prevention standard (reserved for inclusion of list).

Appendix B

Criteria for limiting selecting for coverage under the theft prevention standard to 14 lines of a manufacturer.

Scope

These criteria specify the factors which the Administrator will take into account in determining which high theft lines initially introduced by a manufacturer into commerce in the United States before [insert effective date of the standard] will be selected for coverage under the theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, with the agreement, if possible, of the manufacturer, those high theft lines for which the greatest benefits in reducing motor vehicle theft are likely to be achieved by being made subject to the theft prevention standard.

Application

These criteria apply to those high theft lines produced by a manufacturer of passenger motor vehicles having more than fourteen "high theft lines" that have been introduced into commerce in the United States before [insert effective date of the standard].

Methodology

For each manufacturer producing more than fourteen high theft lines that were introduced into commerce in the United States before [insert effective date of the standard], these criteria will be applied in order to rank such lines against one another. Each manufacturer's lines will be considered in relationship to other lines produced by the same manufacturer. Once the manufacturer's lines have been ranked according to which lines appear likely to demonstrate the greatest benefits in reducing vehicles theft if covered by the standard, the Administrator will select, by agreement with the manufacturer, if possible, and in accordance with the procedures set out elsewhere in this Appendix, up to fourteen of such lines for coverage under the theft prevention standard.

Criteria

1. Proximity of the line's theft rate, calculated in accordance with the statutory formula, to the median theft rate. Higher theft rate receives higher priority.

2. Approximate number of vehicles within such line scheduled to be produced in the upcoming model year. Larger total number receives higher priority. However, if the line is scheduled to be discontinued in the near future, it should be given lower priority than one which will continue to be produced.

3. Likelihood of significant changes in the design of the line (such as downsizing or restyling) that would reduce the number of interchangeable parts within such line as between the new model year and previous model years. Lines with significant style changes receive higher priority.

4. Whole vehicle recovery rate for such line in the most recent calendar year for which data are available. Lines with higher recovery rates receive lower priority.

5. Plans for installation of an anti-theft device for which the manufacturer intends to seek an exemption under Sec. 605 of Title VI. Lines likely to be exempted receive lower priority. (This criterion would not be applied until the agency has completed rulemaking regarding that exemption process.)

6. Number of lines, and actual number of vehicles produced, having interchangeable parts. Lines for which numerous low theft vehicles or lines have interchangeable parts receive lower priority.

Appendix C

Criteria for Selecting New Likely High Theft Lines.

Scope

These criteria specify the factors which the Administrator will take into account in determining whether a new line is likely to have a high theft rate and whether such line should therefore be covered by the theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, by agreement, if possible, with the manufacturer, those new lines which are likely to be high theft lines and therefore should be subject to the theft prevention standard.

Application

These criteria apply to lines of passenger motor vehicles initially introduced into commerce in the United States at any time after the beginning of the 2 calendar years immediately preceding the year in which the final theft prevention standard is promulgated; i.e., "new lines".

Methodology

These criteria will be applied to each "new line." The likely theft rate for such new line will be determined in relation to the national median theft rate, as detemined for the 2 calendar years immediately preceding the model year in which such new line will be introduced. If the new line is determined to be likely to have a theft rate above the national median, then the Administrator may select such line for coverage under the theft prevention standard.

Criteria

1. Retail price of the vehicle line.

2. Vehicle "image" or marketing strategy.

3. Vehicle lines against which the new line is intended to compete, and theft rate(s) of such line(s).

4. Vehicle line(s), if any, which the new line is intended to replace, and theft rate(s) of such line(s).

5. Presence or absence of any new theft prevention devices or systems.

6. For new lines already introduced into commerce on the date the final theft prevention standard is promulgated, preliminary theft rate(s), if known, based on data available.

PART 567—CERTIFICATION

Part 567 would be amended as follows:

2. The authority citation for Part 567 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

3. Section 567.1 would be revised to read as follows:

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the label or tag to be affixed to motor vehicles as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) (the Safety Act) and by sections 105(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c) and 2026(c)) (the Cost Savings Act), and to provide the consumer with information to assist him in determining which of the Federal Motor Vehicle Safety Standards (Part 571 of this chapter) and Theft Prevention Standards (Part 541 of this chapter) (Standards) are applicable to the vehicle.

4. Section 567.2 would be revised to read as follows:

§ 567.2 Application.

(a) Except as povided for in subsection (c) of this section, this part applies to manufacturers and distributors of motor vehicles to which one or more standards are applicable.

(b) In the case of imported motor vehicles, the Safety Act requirement of affixing a label or tag applies to importers of vehicles admitted to the United States under 19 CFR 12.80(b)(1) to which the required label or tag is not affixed.

(c) In the case of imported motor vehicles, certification of compliance with the Motor Vehicle Theft Prevention Standard, as required by Section 606 of the Cost Savings Act, applies only to the manufacturer of the motor vehicle, as defined in § 541.4(b) of this chapter.

5. Section 567.4(g)(5) would be revised to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety and bumper standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal."

(i) In the case of passenger cars manufactured on or after [insert the effective date of the theft prevention standard], and subject to the theft prevention standard of part 541, the expression ", bumper, and theft prevention" shall be substituted in the statement for the expression "and bumper".

* * * * *

(Sec. 101, Pub. L. 98–547, 98 Stat. 2754 (15 U.S.C. 2021); delegation of authority at 49 CFR 1.50)

Issued on May 3, 1985.

Diane K. Steed,

Administrator.

[FR Doc 85–11206 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 85–06; Notice 1]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new Standard No. 135, *Passenger Car Brake Systems*, which would replace Standard No. 105, *Hydraulic Brake Systems*, as it applies to that vehicle type. The new standard would differ from the existing one primarily in that it contains a revised and shortened test procedure based on a draft harmonized international procedure developed by the United Nations Economic Commission for Europe (ECE). NHTSA believes that the new standard would ensure the same level of safety for the aspects of performance covered by Standard No. 105, while improving safety by addressing some additional safety issues. The standard would make it easier for manufacturers to build the same braking systems for installation in cars to be sold in different parts of the world, thereby resulting in cost savings. Compliance costs would also be reduced by the shorter test procedure.

DATES: Comments must be received on or before October 7, 1985. The proposed changes in the Code of Federal Regulations would become effective 30 days after publication of a final rule in the **Federal Register**, at which time optional compliance with the new standard instead of Standard No. 105 would be permitted. The proposed effective date for mandatory compliance with the new standard is September 1, 1991.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Office of Vehicle Safety Standards, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2800).

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, NHTSA has had a policy of reviewing its Federal motor vehicle safety standards to assess the current effectiveness of and necessity for each of those standards. Efforts to identify ineffective or unnecessarily burdensome provisions have taken several courses. The agency on its own has initiated a variety of rulemaking actions to modify or eliminate such provisions while preserving the safety goals of the affected standards. The agency has also worked with international standards bodies to revise some of its standards through the harmonization process.

This rulemaking action, which relates to the brake requirements for passenger cars, grew out of that process. As the automotive industry has become an increasingly worldwide industry, interest in international harmonized standards has increased. With harmonized standards, manufacturers can build the same product to sell in different parts of the world. Significant cost savings can be achieved in areas of vehicle design, production, inventory and certification. Harmonization takes on additional importance under the Trade Agreements Act of 1979. That Act provides that Federal agencies may not engage in standards-related activity which creates unnecessary obstacles to the foreign commerce of the United States. In developing standards, agencies are required to take into consideration international standards and, if appropriate, base the standards on international standards. However, agencies are not required to base standards on international standards if it would be inappropriate to do so for reasons of safety.

Over the past several years, the United Nations Economic Commission for Europe (ECE) has worked toward developing an international harmonized brake standard for passenger cars. As a member of ECE, the United States has participated in that work.

This notice proposes a new Standard No. 135, *Passenger Car Brake Systems* which would replace Standard No. 105, as it applies to that vehicle type. The new standard differs from the passenger car provisions of Standard No. 105, *Hydraulic Brake Systems*, primarily in that its test procedure would be shorter. Standard No. 105 incorporates a very lengthy and complex test procedure, much of which consists of various conditioning procedures. The new test procedure is based on a simplified one developed during the ECE harmonization process.

The agency believes that the proposed standard would ensure the same level of safety for the aspects of performance covered by Standard No. 105, while improving safety by addressing some additional aspects of performance. Like Standard No. 105, the proposed standard would specify requirements for service brake effectiveness, fade and recovery, partial system failure, parking brakes, and equipment integrity. For the first time, the agency would establish adhesion utilization requirements, for the purpose of ensuring stability during braking under all conditions of traction, including wet roads. Unlike Standard No. 105, the proposed standard would not include water recovery requirements. As discussed below, the agency tentatively concluded that water recovery requirements can be eliminated since they are not necessary for disc brakes and all passenger cars now sold in the United States have front disc brakes.

In developing this proposal, NHTSA carefully evaluated a proposed harmonized test procedure and tentative performance requirements developed by an ad hoc committee of the ECE, as well as Standard No. 105. Performance data for vehicles tested according to these two procedures, and various other available data were also evaluated. Evaluation of any braking standard must include consideration of two major components: the test procedure and actual performance requirements. The test procedure of a braking standard consists primarily of numerous stops under various test conditions. Single vehicles are required to be capable of going through the entire test procedure while meeting specified performance requirements, e.g., stopping distances.

To the extent that the ECE draft harmonized test procedure adequately addressed aspects of performance covered by Standard No. 105, the agency tentatively adopted the ECE draft procedure for the proposal. Where the ECE draft contained requirements addressing aspects of performance not covered by Standard No. 105, the agency evaluated the appropriateness of proposing such requirements. Finally, where the ECE draft did not cover aspects of performance subject to the requirements of Standard No. 105, the agency evaluated the appropriateness of retaining or deleting such requirements.

During this process, the agency recognized that major deviations from the ECE draft harmonized test procedure, other than at or near the end, could reduce the usefulness of test data accumulated from tests run according to that procedure, for purposes of harmonization. As a vehicle goes through the test procedure, there are cumulative effects on the vehicle's braking performance. If NHTSA were to adopt a standard with major changes in the early part of the harmonized test procedure, the rest of the test procedure might no longer be comparable in terms of stringency to the original ECE draft. To the extent that changes are made only at or near the end of the harmonized procedure, the earlier parts of the test procedure remain comparable.

In considering specific performance requirements, the agency largely focused on the current levels established by

Standard No. 105. Those performance requirements have now been in effect for a decade and have not caused manufacturers any significant difficulty. The requirements have been justified in the past, and NHTSA does not believe that they should be reduced in stringency. The bulk of the proposed standard's test procedure is consistent with the ECE draft. Adoption of the proposed standard would be a major step toward harmonization and would make it much easier for manufacturers to build vehicles for the world market.

While the agency has sought to propose requirements that are similar in stringency to those of Standard No. 105, it should be emphasized that the issue of what levels of performance for the proposed standard are equivalent to Stadard No. 105 is a difficult one. Test procedures can significantly affect the stringency of performance requirements, both by the sequence of testing, i.e., the cumulative effects noted above, and by the various test conditions. As discussed below, the test procedure for the proposed standard is significantly different than that of Standard No. 105, making comparisons fairly difficult. The agency has devoted comsiderable effort to the task of estimating equivalent levels of stringency, including conducting a test program. The proposed performance requirements have been compared to the requirements of Standard No. 105 using several different methods for determining equivalent stringency, each of which has several advantages and disadvantages. The different methods and their results are discussed in the agency's Regulatory Evaluation. The agency requests comments on them and on the issue of whether any other methods should be considered. Results of NHTSA's test program are available in Docket 79–18–GRRF.

The agency emphasizes that the proposed standard is in many respects an entirely new standard. While this preamble discusses the more significant differences between the proposed standard and Standard No. 105, commenters are encouraged to carefully compare the regulatory texts.

Effectiveness Requirements

A crucial test of a vehicle's brake system is its effectiveness in bringing the vehicle to a quick and controlled stop in an emergency situation. Like Standard No. 105, the proposed standard would test a vehicle's braking performance in both a pre-burnish or new condition and after burnish, i.e., in a broken-in condition. (As discussed below, however, manufacturers would have the option of omitting the burnish procedure and going directly from the pre-burnish tests to the tests ordinarily conducted after burnish.) The pre-burnish tests are conducted under fully loaded conditions. The after-burnish tests are referred to as cold effectiveness tests in the proposed standard and would be conducted under both fully loaded and lightly loaded conditions. Performance requirements are specified in terms of stopping distances.

The ECE draft international harmonized test procedure does not include a pre-burnish test. The agency tentatively concludes that such a test should be included in the new standard since braking performance can vary significantly between pre-burnished and post-burnished conditions, and vehicles may be driven for many miles in a pre-burnished state. In order to preserve harmonization of the test procedure, the proposed standard incorporates the pre-burnish effectiveness test into the ECE draft's burnish procedure.

As noted above, manufacturers would have the option of omitting the burnish procedure and going directly from the pre-burnish tests to the cold effectiveness tests. The agency tentatively concludes that this option would minimize compliance costs while ensuring that vehicles are adequately tested during the cold effectiveness tests. In many cases, vehicle performance improves with burnish. If a manufacturer chooses the option of foregoing burnish, it may thus be more difficult to meet the cold effectiveness test requirements. In this situation, there does not appear to be any reason to impose the burnish procedure on the manufacturer. It is also possible that a vehicle's braking performance may be degraded by burnish. However, the agency believes that other requirements included in the standard would prevent any significant degradation caused by burnish. The reasons discussed below concerning why the agency believes that several of the proposed standard's requirements would ensure that a vehicle's braking performance is not significantly degraded by heating during fade are also relevant to this issue.

The three proposed tests discussed above; i.e., pre-burnish; cold effectiveness—fully loaded; and cold effectiveness—lightly loaded, correspond generally to Standard No. 105's first, second and third effectiveness tests.[1]

Standard No. 105 also includes a fourth effectiveness test. This test is conducted near the end of the test sequences, after the fade and recovery tests. As discussed below, the fade and recovery tests simulate the conditions experienced during a mountain descent. A vehicle's brakes become very hot during such conditions, which may affect subsequent braking performance. The fourth effectiveness test ensures adequate braking effectiveness after experiencing high temperatures. The test also includes a high speed test to ensure adequate braking for vehicles which are capable of very high speeds.

While NHTSA believes that these aspects of performance are important, it has tentatively concluded that they can adequately be addressed by means other than a full fourth effectiveness test. As discussed below, the proposed standard's fade and recovery tests include a hot stop test and a recovery stop test. These tests would help ensure that a vehicle's braking performance is not significantly degraded by the simulated fade conditions. Moreover, a final effectiveness test, which consists of 4 stops from 100 km/h (62.1 mph) and is included at the end of the proposed standard, following spike stops, would protest against significant degradation due to the simulated fade conditions. The proposed standard also includes high speed effectiveness tests, conducted before the fade and recovery tests, under both fully loaded and lightly loaded conditions. The agency believes that all of these tests together would adequately ensure the aspects of performance addressed by Standard No. 105's fourth effectiveness test and that including an additional test in the proposed standard would merely lengthen the test procedure without offering any concomitant benefits.

30-mph Tests

The agency also notes that the proposed standard's effectiveness tests do not include tests corresponding to Standard No. 105's 30-mph tests, which are part of that standard's first, second and fourth effectiveness tests. Tests at a speed of this magnitude were not included in the ECE draft harmonized test procedure because there was general agreement among the

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[1] The proposed standard does not use the terminology of first, second, third and fourth effectiveness tests. As used in Standard No. 105, that terminology is based in part on the organization of the regulatory text. It should be noted in comparing the regulatory texts that they have different organizations. For example, the regulatory text of Standard No. 105 concerning effectiveness tests is organized in part by loading conditions, i.e., the second effectiveness test is at the fully loaded condition while the third effectiveness test is at the lightly loaded condition, whereas comparable tests in the proposed standard are organized together as part of the cold effectiveness test.

international delegates that such tests offer little information not provided by the higher speed tests. The agency tentatively agrees with this view. Assuming that a vehicle is capable of meeting the proposed standard's higher speed tests, the agency believes that it is highly unlikely that the vehicle would have difficulty meeting a 30-mph test of similar stringency.

Adhesion Utilization

The purpose of adhesion utilization requirements is to ensure that a vehicle's brake system is able to utilize whatever adhesion is available at the tire-road interface in such a way that a stable stop can be made within a specified distance. Adhesion utilization is addressed to some extent by Standard No. 105's (and the proposed standard's) service brake effectiveness requirements, since stops must be made within specified distances without leaving a lane of a specified width. All of those stops are made on a high friction surface, however. Standard No. 105 does not include any requirements concerning stops made on lower friction surfaces, such as wet roads.

The proposed adhesion utilization requirements are similar to those in the ECE's current braking standard, Regulation 13, and the corresponding directive of the European Economic Community (EEC). The requirements are expressed in terms of plots on a graph of the amount of adhesion utilized at each axle of the vehicle to produce a given level of deceleration. Using a specified test procedure, the adhesion utilized is graphically compared to the level of adhesion available at the tire/road interface. Four adhesion curves are plotted, representing the front and rear axle brake performance at each of two load conditions.

Two basic performance requirements would be established. First, none of the curves could cross an upper line for coefficients of friction between 0.2 (a low friction surface) and 0.8 (a high friction surface). The purpose of this requirement would be to ensure that, on all road surfaces from very slippery to dry, one axle is not overbraked with respect to the other. Put another way, this requirement would limit the amount that the performance of an individual axle could deviate from theoretically ideal brake balance. The effect of the overbraking of one axle with respect to the other would be to reduce the overall braking efficiency of the vehicle and make wheel lock-up at the axle more likely.

The second requirement would be that for all deceleration rates between 0.15 g (a mild stop) and 0.8 g (a severe stop), the curve for the front axle must be above that for the real axle. The purpose of this requirement would be to ensure stability of the vehicle by requiring the front axle to have a greater adhesion utilization than the rear axle. In practical terms, this means that if a driver applied the brakes hard enough to get wheel lockup, the front brakes would be the first to lock. Since locked wheels always tend to lead, the vehicle would skid but would remain stable, i.e., heading forward. However, if the rear wheels were to lock first, there would be a spin-out since those wheels would tend to lead.

The proposed adhesion utilization requirements differ from those of Regulation 13 in three ways. First, the proposal does not follow Regulation 13 in including an exception to the requirement that, for all deceleration rates between 0.15 and 0.8 g, the curve for the front axle must be above that for the rear axle. Between 0.3 and 0.45 g, Regulation 13 permits the curves to invert, as long as they remain close to theoretically ideal adhesion. NHTSA does not believe that there is any reason to adopt the exception. Wheel lockup can easily occur on slippery wet roads in the range of decelerations between 0.3 and 0.45 g, which could result in spin-outs.

Second, the proposed adhesion utilization requirements take into account the engine retardation effects of a vehicle being braked in gear, whereas Regulation 13 does not. NHTSA believes this approach is more realistic, since it is not typical for a driver to place the car in neutral or declutch at the beginning of a stop. The effect of considering engine retardation is to move the adhesion utilization curves for the driven axle to the right.

Third, while the proposed standard specifies a test method for determining adhesion utilization, Regulation 13 does not. In Europe, compliance with safety standards is based on type approval. Manufacturers submit various information to governmental authorities which approve or disapprove a vehicle based on the information and on vehicle testing. In the United States, the government does not engage in approving or disapproving vehicles with respect to their safety performance. Under the National Traffic and Motor Vehicle Safety Act, manufacturers must certify that their vehicles comply with applicable safety standards. Safety standards are required to be objective to enable manufacturers to ensure that their vehicles are in compliance. To provide such objectivity, the agency must specify a specific method for determining adhesion utilization.

The proposed method involves a road test to determine actual braking force as a function of brake line pressure for each axle separately. From this information, plus brake valve characteristics, coast-down effects, engine braking effects, and center of gravity, the curves of adhesion utilized versus deceleration can be plotted. While the final curves are based on calculations, the input variables are all actual test measurements made under specified conditions. The proposed method takes account of rolling friction, aerodynamic drag and engine braking, which are present in actual braking situations but are not considered in theoretical design calculations, which are generally used for type approval.

The curves would be generated for a speed of 50 km/h (31.1 mph), which represents a value in the middle of the range of speeds that a vehicle ordinarily experiences during braking. Although higher initial speeds are used for stopping distance testing, the agency believes that 50 km/h is an appropriate speed for adhesion utilization testing because a vehicle shows more sensitivity to wheel lockup at slower speeds than at higher speeds and because a slower speed makes the test easier and safer to run. Curves would be calculated for vehicle performance in gear in order to account for engine braking effects normally present in actual driving situations. The adhesion utilization test procedure is discussed at length in a paper published by the Society of Automotive Engineers (SAE). Radlinski, R.W., and Flick, M.A., "A Vehicle Test Procedure for Determining Adhesion Utilization Properties," #840334, February 1984. The proposed procedue has been revised slightly from that in the SAE paper, to decrease its sensitivity to testing variability. The agency specifically requests comments on the proposed test procedure and on any others that should be considered.

The agency notes that there are limitations to any possible single adhesion utilization test, since brake balance, like most other aspects of braking performance, can change in use and over time. It is not feasible at this time to establish specific performance requirements which test a vehicle's adhesion utilization under all of the many varied conditions a vehicle is likely to experience during its lifetime. The proposed requirements would ensure reasonable adhesion utilization for new vehicles, a significant step toward ensuring safer vehicles. A vehicle meeting such requirements could become unsafe over time if the brake balance significantly changed. However,

by using sound engineering judgment, manufacturers could design vehicles in such a manner that good brake balance will be maintained over a vehicle's lifetime.

The agency also emphasizes that it is not proposing to decrease the level of stringency of any of Standard No. 105's other requirements in light of the proposed adhesion utilization requirements. In particular, available data clearly show that Standard No. 105's stopping distance requirements can easily be met by vehicles which have good adhesion utilization.

The proposed adhesion utilization requirements would apply only in part to vehicles equipped with fully operational anti-lock systems. The stability aspect of adhesion utilization would automatically be satisfied as long as the anti-lock system prevented wheel lockup as intended. Anti-lock-equipped vehicles would still have to meet the braking efficiency aspect of the adhesion utilization requirement, however. Regulation 13 includes special requirements to test anti-lock-equipped vehicles which have not been adopted in this proposal. In testing two vehicles with anti-lock systems to these ECE requirements, NHTSA encountered problems with the test procedure. One vehicle showed braking efficiencies of well over 100%, which is theoretically impossible. The ECE is currently considering possible changes to the anti-lock requirements. At present, NHTSA does not believe that it should propose any similar requirements.

The agency notes that five out of 19 cars tested failed the proposed adhesion utilization requirements. The agency believes that the vast majority of cars can meet the proposed requirements with either no changes or relatively minor changes. It is possible that manufacturers may choose to meet the requirements for some cars by using variable proportioning valves. The agency particularly requests comments on the types of changes that may be necessary to meet the proposed requirements and the number of vehicles that would be affected.

Fade and Recovery

The purpose of the fade and recovery tests is to ensure adequate braking capability during and after exposure to the high brake temperatures caused by prolonged or severe use. Such temperatures are typically experienced in long, downhill driving. The proposed requirements consist of a heating sequence, a hot stop test, a cooling sequence and a recovery stop test.

The agency is not proposing to adopt the ECE draft test procedure's heating sequence. In vehicle tests, that heating sequence produced brake temperatures more than 100 °F. lower than Standard No. 105's second fade test procedure. The temperatures produced by Standard No. 105's procedure had previously been verified as being representative of the temperatures experienced by vehicles travelling in mountainous areas. The agency is particularly concerned about this difference because the relationship between temperature and fade is not a linear one. For one brake lining, there is a "knee" in the curve, above which degradation due to fade is much more pronounced. If that "knee" occurred at a temperature between those produced by the ECE draft test procedure and Standard No. 105 procedure, a vehicle's braking system could meet the ECE draft requirements but still experience a sharply increased propensity to fade during mountain descents.

The agency has developed a new heating sequence for this proposal, based on SAE Recommended Practice J1247 (Apr 80), Simulated Mountain Brake Performance Test Procedure. This sequence produces temperatures similar to those of the Standard No. 105 procedure. The agency believes that it produces a temperature cycle that more closely approximates an actual mountain descent than either Standard No. 105 or the ECE draft test procedure.

As an alternative, the agency is considering modifying the ECE draft test-procedure by shortening the time interval between snubs from 45 seconds to 30 seconds. This would result in temperatures that compare with those obtained in Standard No. 105. One problem, however, is that some cars are not powerful enough to accelerate to the 120 km/h test speed in the time interval permitted. The primary advantage of this alternative is that it would be closer to the heating sequence of the ECE draft test procedure.

The agency requests comments on both alternatives and, with respect to the second alternative, comments on how vehicles that cannot accelerate to 120 km/h in the specified time interval should be tested. Since NHTSA believes that the first alternative more closely approximates an actual mountain descent, the agency would particularly appreciate more detailed comments from any commenters which support the second alternative. The agency contemplates adopting one or the other alternative and not providing an option in this area.

The proposed test procedure and the ECE draft procedure differ in the method used for determining the amount of force to be applied to the brakes during fade and other brake testing. The proposal uses the constant output method while the ECE draft harmonized test procedure uses the constant input method. In the constant output method, vehicle deceleration is held constant and pedal force is varied as necessary to keep deceleration at the prescribed level. In the constant input method, either pedal force or brake line pressure is held constant and the deceleration of the vehicle is allowed to vary.

Although the choice of method is not very important for most types of brake testing, the agency believes that it is important for fade testing. Brake fade is caused by heat buildup in the brake components. This heat buildup is a function not only of the total amount of energy imparted to the brakes during the stops or snubs, but also the rate at which that energy is applied. For a given sequence of brake applications, the total energy input depends only on the number of applications, and the initial and final speed. That will be the same with either method. For the constant decleration method, the rate of application of that energy will also be fixed. For the constant pedal force method, however, the deceleration rate (and hence the time to input the energy) will vary with the performance of the brakes. If the brakes fade, the deceleration drops off. A drop in deceleration decreases the amount of work being done by the brakes, which decreases the amount of heat buildup (the factor that causes fade). Therefore, the test becomes easier for vehicles that perform poorly. This result leads the agency tentatively to disfavor the constant input method because NHTSA believes that a test that varies in severity according to the performance of the vehicle being tested is inappropriate for a Federal motor vehicle safety standard. Accordingly, the constant output method appears preferable.

Another reason in favor of a constant output method is that it produces less variability in testing. With the constant output method, the test driver attempts to maintain the prescribed deceleration throughout each test run, and any random errors will tend to cancel each other out. With the constant input method, however, the pedal force maintained is based on the average pedal force on two baseline snubs. Any errors made in determining the baseline pedal force will therefore also be introduced in each subsequent brake application, and the effect will be additive, rather than self-cancelling. With the constant output method, there is no need for the baseline snubs.

As noted above, the proposed fade and recovery test includes two

performance tests. The first, a hot stop test, specifies both a minimum stopping distance and a percentage limit on degradation from the performance achieved in the cold service brake test. This latter requirement would limit the amount of reduction in performance that a driver experiences when brakes are heated. The allowable pedal force could not exceed the mean pedal force actually used on the best cold stop.

The second, a recovery stop test, places both lower and upper limits on the difference in performance after recovery from that achieved in the cold service brake test. These limits are the same as included in the ECE draft. The upper limit is included to ensure that brakes do not become too sensitive when heated and "over-recover."

It is difficult to directly compare Standard No. 105's fade and recovery test with the proposed test, since the test procedures are entirely different. The proposed requirements are more simple than Standard No. 105's, since only one series of tests is run instead of two. Standard No. 105 does not include a hot stop performance test, although there is a limit on the pedal force applied during the heating stops. As noted above, both the proposal and Standard No. 105 include a recovery performance test. The agency believes that the proposed requirements would reduce the costs of testing while, particularly in light of the hot stop performance test, better ensuring safety.

Partial System Failure

Like Standard No. 105, the proposed standard would specify stopping distance requirements for conditions of circuit failure, power assist failure, and anti-lock or proportioning valve failure. If part of the service brake system should fail, it is crucial that the vehicle's brake system still be able to bring the vehicle to a controlled stop in a reasonable distance.

The agency notes that 11 out of 43 cars tested failed the proposed stopping distance requirement for power assist failure. As discussed by the Regulatory Evaluation, the primary factor which explains the failures is the lower maximum allowable control force of the proposed standard as compared to Standard No. 105 (500 N versus 667 N). This proposed test condition change, which is the same as the ECE draft, would increase the stringency of the requirement and necessitate redesigning of brake components on some cars to provide as greater mechanical or hydraulic gain. The test data indicate that while some redesign would be necessary, passenger cars can easily meet the proposed requirements. As discussed below, the agency believes the 500 N control force limit is justified based on human factors data. The proposed stopping distance, which is not significantly different from the specified in Standard No. 105, is derived from the proposed requirement for service brake stopping distance, using the same mathematical relationship used in the ECE draft. Since the agency is proposing a more stringent service brake stopping distance than that tentatively selected for the ECE draft, however, the proposed stopping distance for power assist failure is also more stringent. Given the number of failures in the test program, the agency particularly requests comments on the proposed requirements of power assist failure.

The proposed standard would also establish a new requirement for brake performance after engine failure. The requirement would ensure that a driver can make at least one stop with 90 percent of full service brake performance following engine failure. Since engine failure is a relatively common occurrence, the agency believes this is a reasonable requirement.

The vast majority of all cars already meet the proposed engine failure requirement, which requires the use of a supplemental source of stored energy for the booster, such as a vacuum reservoir or hydraulic accumulator. Of 44 cars tested, one failed the proposed requirement. That car was equipped with a hydraulic booster without an accumulator. The agency requests comments on the costs associated with meeting the requirements and the specific number of vehicles that would be affected.

Parking Brake

Like Standard No. 105, the proposed standard would require that the parking brake of passenger cars be able to hold the vehicle when it is parked on a specified gradient and a force not exceeding a specified amount is applied to the parking brake. There are several significant differences in test conditions, however.

Since the static parking brake test is a pass/fail type of test, i.e., the parking brake either holds the vehicle or it does not, the test conditions determine the stringency of the performance requirement. Two conditions are of primary importance, the gradient and allowable control force. The two are interrelated in that, for the same parking brake system, it is generally true that the higher the force that is applied to the control, the steeper the gradient on which the vehicle can be held in place.

The agency believes that the proposed parking brake requirement would have a level of stringency approximately the same as that of Standard No. 105. The standard would specify a less stringent gradient, 20 percent instead of 30 percent, in line with the ECE draft harmonized test procedure. To offset that change and thereby maintain the existing level of stringency, the agency is also proposing a more stringent, i.e., lower, allowable control forces, 500 N (113 pounds) for foot-operated parking braking systems instead of 125 pounds and 320 N (72 pounds) instead of 90 pounds for hand-operated parking brake systems.

The agency notes that of 18 passenger cars with foot-applied parking brakes that were tested to the proposed requirements, five failed. The agency believes that the vast majority of cars can meet the proposed requirements with either no changes or relatively minor changes, such as improving the mechancial advantage of some foot-applied parking brakes. The agency requests comments on the types of changes that may be necessary to meet the proposed requirements and the number of vehicles that would be affected.

While Standard No. 105 tests the parking brake with the vehicle in both a fully loaded condition and a lightly loaded condition, the proposed standard would only test the vehicle in the fully loaded condition. The purpose of testing in a lightly loaded condition is to ensure that the parking brakes do not simply lock a very lightly loaded axle and allow the vehicle to slide. Wheel slide is not likely to be a problem on a 20 percent gradient given the weight distribution of passenger cars. Gradients which are significantly greater than 20 percent are very rare in the United States, and the agency does not believe that this aspect of performance needs to be tested.

The agency notes that Standard No. 105 includes a barrier impact test of the strength of a transmission or driveline parking mechanism, as part of an option. For vehicles with a transmission or transmission control incorporating a parking mechanism that must be engaged before the ignition key can be removed (most automatic transmissions have this feature), manufacturers have the option of meeting the 30 percent gradient test with the transmission's parking mechanism engaged, so long as certain other requirements are also met. These include passing the same test on a 20 percent grade without the parking mechanism engaged and the moving barrier test. Since the proposed standard would specify a 20 percent grade instead

of a 30 percent grade, the agency does not believe this type of option should be provided. The agency requests comments on not providing the option.

The proposed standard would establish a new dynamic stopping test using the parking brake. NHTSA believes that the primary means for emergency stopping should be the service brakes. That aspect of performance is addressed by the partial failure requirements. Nevertheless, drivers could occasionally use the parking brake as an emergency brake. The proposed parking brake dynamic stopping test, which is identical to that in the harmonized test procedure, would improve safety by ensuring that drivers can also use the parking brake for that purpose.

The ECE draft harmonized test procedure also includes a parking brake test which NHTSA is not proposing, a test with a trailer. That test requires a passenger car's parking brake to be able to hold the vehicle and an attached trailer on a 12 percent grade. Based on engineering analysis, the agency has determined that the proposed parking brake test without a trailer ensures that a vehicle would be able to meet this requirement so long as trailer weight is not more than about 65 percent of passenger car weight. Accordingly, the agency does not believe there is a safety need to include the trailer test in the proposed standard for passenger cars.

Equipment Integrity

Like Standard No. 105, the proposed standard would test the capability of a vehicle's braking system to withstand a series of severe "spike" stops without loss of structural integrity. A final effectiveness test follows the spike stops to ensure that the vehicle still has adequate braking capability. While these tests are not included in the ECE draft harmonized test procedure, the agency believes that the tests address an important aspect of safety performance. Since a vehicle's brakes are occasionally subjected to sudden, very hard applications during normal usage, it is important that the brake system components be strong enough to avoid being bent or otherwise damaged by those applications. As noted above, the final effectiveness test following the spike stops would also help ensure that a vehicle's brakes are not significantly degraded by conditions of fade.

The spike stop test and final effectiveness test are relatively simple to conduct. Since they are conducted at the end of the test sequence, their inclusion would not affect the relative stringency of the preceding portion of the test procedure.

Since these tests are not included in the ECE draft harmonized test procedure, the agency specifically requests comments on the desirability of their inclusion in the proposed standard. Any commenters opposing adoption of the tests should provide detailed arguments in favor of their position, including comments addressing the above discussion.

Equipment Safety and Failure Warning Requirements

Standard No. 105 includes a number of equipment and failure warning requirements, most notably for reservoir capacity, failure warning indicators, and fluid reservoir labeling. Regulation 13 contains similar, but in some cases different, requirements. While these requirements have been discussed to some extent as part of the ECE harmonization process, they have not yet received the degree of attention that has been given to the road tests. Most of the proposed requirements are essentially the same as those in Standard No. 105.

One notable addition is a requirement that the fluid level in a master cylinder reservoir be able to be checked without removing the cap. The agency believes that this is in the interest of safety for two reasons. First, since it would be easier to check fluid level, drivers and maintenance personnel would be more likely to routinely make such checks. Second, it is desirable not to have to remove the cap since that creates a situation where the brake fluid can be contaminated. Under the proposal, the requirement could be met by a means to check fluid without removing the reservoir cap, e.g., by constructing the reservior of a transparent material or by having a fluid level sensor. There is already a trend in passenger car design to use transparent material to enable checking of the brake fluid without removing the cap. If a passenger car had a fluid level seneor, i.e., activation of the brake warning light in situations of low fluid level, the requirement would be deemed met. With a fluid level sensor, drivers would automatically be warned about low fluid level. The agency notes, however, that drivers would have to remove the cap to determine the actual level of brake fluid. Also, drivers might want to remove the cap to check brake fluid level rather than rely on the sensor for that purpose. The agency requests comments on permitting use of a fluid level sensor to meet this requirement.

Water Recovery

Unlike Standard No. 105, the proposed standard would not include a water recovery test. The purpose of a water recovery test in Standard No. 105 is to ensure that a vehicle will have adequate braking capability after exposure to water, such as would occur in going through a flooded area. Standard No. 105's test assesses the effects of such exposure by providing for driving a vehicle through a water trough and then testing its braking capability.

Application of a water recovery test to cars sold in this country does not appear to be necessary to ensure safe braking, for several reasons. First, there is little evidence that the potential adverse safety effects of water on braking capability is a problem for today's passenger cars. This is due in large part to the fact that all passenger cars sold in the United States now have disc brakes on at least the front axle. In the past, passenger cars had drum brakes on both the front and rear axles. While brake drums can trap water, the design of disc brakes is such that they tend to expel water. Indeed, with Standard No. 105's current test procedure, disc brakes on vehicles driven through the water trough often become completely dry before the vehicle's braking capability can be tested.

Second, the agency does not believe that inclusion of a water recovery test is necessary to ensure that manufacturers continue to equip their cars with front disc brakes. In Europe, where there is no water recovery requirement, almost all passenger cars have front disc brakes.

Third, the agency believes that the brakes of modern cars are sufficiently shielded from direct water spray to make water fade unlikely. Moreover, the application of friction materials that are highly resistant to wet fade is fairly widespread on current passenger cars.

Test Conditions

Many of the proposed standard's test conditions are different from those of Standard No. 105. Some of those differences are discussed above. Other significant difference include the following:

A. Burnish. The proposed standard's burnish procedure, which is based on the ECE draft harmonized test procedure, is significantly shorter than that of Standard No. 105. The nature of many brake linings is such that a break-in period is needed for the braking system to achieve its full capability. Inclusion of a lengthy burnish procedure, however, significantly increases the cost of testing. The agency believes that brakes can adequately be burnished using a shorter procedure than that specified by Standard No. 105, thereby decreasing testing costs. As

discussed above, manufacturers would be permitted the option of foregoing burnish entirely as a way of making even greater cost savings.

B. Number of runs per test condition. Standard No. 105 generally specifies that six stops be made for each test condition. Prescribed performance must be achieved on at least one stop. The purpose of specifying multiple stops is to enable test drivers to achieve a vehicle's best performance. The proposed standard would specify four stops, thereby reducing testing costs. Testing experience indicates that it takes only three or four stops for a test driver to attain the best possible performance.

C. Wheel lockup. Standard No. 105 generally permits lockup of one wheel during stopping distance tests. The proposed standard, in line with the ECE draft harmonized test procedure, would prohibit all lockup (except during spike stops). A vehicle's stopping performance is usually at its best with a brake application just short of that which would cause wheel lockup to occur. A test driver attempting to obtain a vehicle's best performance may thus inadvertently lock one or more wheels. With four stops permitted, however, the agency believes test drivers can determine a vehicle's best performance on at least one stop while avoiding all lockup.

For anti-lock-equipped vehicles, Standard No. 105 permits controlled lockup during the stopping distance tests. The proposed standard, in line with the ECE draft harmonized test procedure, would prohibit all lockup. The agency believes this is appropriate, since a well-designed, anti-lock system would pervent all lockup during the specified tests.

D. Control forces. The proposed standard specifies a more stringent control force limit for the service brake test than Standard No. 105, in line with the harmonized test procedure. The agency believes that these more stringent control forces are justified based on human factors data. In a study by Ford Motor Company,[2] female test subjects, chosen to be a representative sample of the female population, were confronted with an actual emergency braking situation in which maximum braking force applied over a ½ second interval was measured. The results indicate that only 56 percent of the female driving population can be expected (with 95 percent confidence) to be able to generate the 150 pound pedal force (667 N) specified by Standard No. 105 during an actual panic stop. By decreasing the control force limit to 500 N, at least 86 percent of the female driving population can be expected (with 95 percent confidence) to be able to generate the specified force during an emergency brake application. Other human factor studies have reached similar but not identical conclusions.[3] The agency has greater confidence in the results of the Ford study, however, since the others were conducted under laboratory conditions rather than actual driving situations.

As noted above, these lower control forces may necessitate redesigning of brake components on some cars to provide a greater mechanical or hydraulic gain, particularly to meet the requirements for performance with a failed power assist unit.

E. Road Surface. Like Standard No. 105, the proposed standard would specify road surface friction in terms of skid number. This test condition has proven to be satisfactory over many years.

The agency recognizes, however, that skid number is not generally used for this purpose in Europe. During the ECE harmonization meetings, there was some discussion about specifying road surface friction in terms of peak coefficient of friction. However, no procedure was developed for that purpose.

Road surface friction is an important test condition which the agency believes should ideally be the same in harmonized brake standards. For this reason, the agency requests comments on whether it should consider a method other than skid number for the proposed standard. Depending on the comments, the agency could issue a supplemental NPRM proposing an alternative method or initiate separate rulemaking or research to develop such a method for the future.

The agency notes that the International Standards Organization (ISO) has developed two draft test procedures which are relevant to this issue. One procedure, ISO/DTR 8350, Road Vehicles—High Friction Test Track Surface—Specifications, provides specifications for constructing a road test surface. The other procedure, ISO/DTR 8349, Road Vehicles—Measurement of Road Surface Friction, provides a method for measuring road surface friction. The agency requests comments on whether it should consider using these ISO documents in developing a specification of road surface in terms of peak coefficient of friction. If the agency were to propose specifying test surface in terms of peak coefficient of friction, it would contemplate proposing a specific number. If any commenters favor using the ISO documents for this purpose, the agency would appreciate analysis concerning the specific peak coefficient of the ISO test surface, whether test tracks constructed to the ISO specifications may have varying peak coefficients of friction either on a particular track or between tracks, how the peak coefficient of friction changes over time and as the track is used for testing, and how the test surface compares with that specified by Standard No. 105.

The agency also requests comments on any other documents or research that should be considered for specifying road surface friction in terms of peak coefficient of friction, and on any methods other than skid number or peak coefficient of friction that should be considered for specifying road surface.

F. Brake Adjustment. Standard No. 105 permits automatic brake adjusters to be locked out during testing. The proposed standard, in line with the ECE draft harmonized test procedure, would require automatic brake adjusters to be operational. The agency believes this is reasonable. Since automatic adjusters are operational in vehicle use, it is reasonable to require that they be operational during testing.

Analyses; Costs and Benefits

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency's detailed analysis of the economic effects is set forth in a preliminary regulatory evalution, copies of which are available from the Docket Section.

The preliminary regulatory evaluation concludes that the current Standard No. 105 has been successful in substantially upgrading brake performance and that the proposed requirements would improve safety by ensuring an equivalent level of safety for those aspects of performance covered by Standard No. 105 and by addressing several additional areas of brake performance which are safety

[2] Eaton, Dennis A. and Dittmeier, Henry J., "Braking and Steering Effort Capabilities of Drivers," Ford Motor Company, Automotive Research Office, Dearborn, Michigan, 1970 (published as SAE paper #700363, 1970 International Safety Conference Compendium (P-30), New York, NY, 1970, pp. 153–158).

[3] Stoudt, H. W., et al., "Vehicle Handling: Force Capabilities for Braking and Steering," Harvard School of Public Health, May 1969 (DOT Contract FH-11-6910); Mortimer, R.G. et. al, "Brake Force Requirement Study: Driver-Vehicle Braking Performance as a Function of Brake System Design Variables," Highway Safety Research Institute, April 1970 (DOT Contract FH-11-6952).

significant. Moreover, compliance testing costs would be reduced by the shortened test procedure, and the proposed five-year leadtime would enable manufacturers to make any necessary changes to meet the proposed requirements as part of their regular design cycle, with little or no impact on cost.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As discussed by the agency's preliminary regulatory evaluation, only relatively simple changes would generally be needed for all passenger cars to meet this proposed standard. These changes would not significantly affect the purchase price of a vehicle. No changes would be needed for many cars. While some reduction in compliance costs would occur, the reduction would not be of a magnitude which would significantly affect the purchase price of a vehicle. For these reasons, neither manufacturers of passenger cars, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the proposed standard. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

The brake fluid reservoir labeling requirements in this proposal are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Leadtime

While only relatively simple changes would be needed for virtually all passenger cars to meet the proposed standard, with no changes needed for many cars, any brake system redesign involves a certain amount of leadtime. The proposed standard's test procedure is sufficiently different from that of Standard No. 105 that implementation of the standard could require substantial testing by manufacturers before they could be sure what components would require redesign. In order to keep the costs of implementation low, a long leadtime is being proposed. Thus, manufacturers could incorporate any necessary changes into their normal design cycles, minimizing cost impacts.

Accordingly, the agency is proposing a mandatory effective date of September 1, 1991. It is contemplated that this would provide a leadtime of approximately five years after issuance of a final rule. The agency proposes an optional effective date for certifying passenger cars to the new standard instead of Standard No. 105 beginning 30 days after publication of a final rule in the **Federal Register**. The agency finds good cause for a short leadtime on an optional basis since the new standard would result in safety benefits over those of Standard No. 105, and, since compliance would be optional, there would be no imposition of mandatory new requirements during that time period.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available to the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

1. Section 571.105 would be amended by revising S3 to read as follows:

* * * * *

S3. *Application.* This standard applies to multipurpose passenger vehicles, trucks, and buses with hydraulic brake systems, and to passenger cars manufactured before September 1, 1991, with hydraulic brake systems. At the option of the manufacturer, passenger cars manufactured before September 1, 1991, may comply with the requirements of Federal Motor Vehicle Safety Standard No. 135, *Passenger Car Brake Systems*, instead of the requirements of this standard.

* * * * *

1. Section 571.135—Federal Motor Vehicle Safety Standard No. 135 would be added to read as follows:

§ 571.135 Federal Motor Vehicle Safety Standard No. 135.

Passenger Car Brake Systems

S1. *Scope.* This standard specifies requirements for service brake and associated parking brake systems.

S2. *Purpose.* The purpose of this standard is to ensure safe braking

performance under normal and emergency driving conditions.

S3. *Application.* This standard applies to passenger cars manufactured on or after September 1, 1991. In addition, passenger cars manufactured before September 1, 1991, may, at the option of the manufacturer, meet the requirements of this standard instead of Federal Motor Vehicle Safety Standard No. 105. *Hydraulic Brake Systems.*

S4. *Definitions.*

"Adhesion utilization curves" of a vehicle means curves showing, for specified load conditions, the adhesion utilized by each axle plotted against the braking ratio of the vehicle.

"Anti-lock system" means a portion of a vehicle's service brake system that automatically controls the degree of rotational wheel slip of one or more road wheels of the vehicle during braking.

"Backup system" means a portion of a service brake system, such as a pump, that automatically supplies energy in the event of a primary brake power source failure.

"Brake power assist unit" means a device installed in a hydraulic brake system that reduces the amount of muscular force that a driver must apply to actuate the system, and that, if inoperative, does not prevent the driver from braking the vehicle by a continued application of muscular force on the service brake control.

"Brake power unit" means a device installed in a brake system that provides the energy required to actuate the brakes, either directly or indirectly through an auxiliary device, with driver action consisting only of modulating the energy application level.

"Braking ratio" means the deceleration of the vehicle divided by the gravitational acceleration constant.

"Hydraulic brake system" means a system that uses hydraulic fluid as a medium for transmitting force from a service brake control to the service brake, and that may incorprate a brake power assist unit, or a brake power unit.

"Initial brake temperature" means the average temperature of the service brakes on the hottest axle of the vehicle 0.32 km (0.2 miles) before any brake application.

"Lightly loaded vehicle weight" or "LLVW" means unloaded vehicle weight plus 180 kg (396 pounds), including driver and instrumentation.

"Maximum speed" of a vehicle means the highest speed attainable by accelerating at a maximum rate from a standing start for a distance of 3.2 km (2 miles) on a level surfaces, with the vehicle at its lightly loaded vehicle weight.

"Parking mechanism" means a component or subsystem of the drive train that locks the drive train when the transmission control is placed in a parking or other gear position and the ignition key is removed.

"Pressure component" means a brake system component that contains the brake system fluid and controls or senses the fluid pressure.

"Skid number" means the frictional resistence of a pavement measured in accordance with American Society for Testing and Material (ASTM) Method E-274–70 (as revised July, 1974) at 40 mph, omitting water delivery as specified in paragraphs 7.1 and 7.2 of that method.

"Snub" means the braking deceleration of a vehicle from a higher reference speed to a lower reference speed that is greater than zero.

"Spike stop" means a stop resulting from the application of 900 N (202.3 pounds) of force on the service brake control in 0.08 second.

"Split service brake system" means a brake system consisting of two or more subsystems actuated by a single control designed so that a leakage-type failure of the pressure component in a single subsystem (except structural failure of a housing that is common to two or more subsystems) does not impair the operation of any other subsystem.

"Stopping distance" means the distance traveled by a vehicle from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

"Variable proportioning brake system" means a system that automatically adjusts the braking force at the axles to compensate for vehicle static axle loading and/or dynamic weight transfer between axles during deceleration.

S5. *Requirements.* Each vehicle shall meet the requirements of this section, under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. If a vehicle is incapable of attaining the specified test speed, it is tested at the speed that is a multiple of 5 Km/h (3.1 mph) and is 4 to 8 km/h (2.5 to 5.0 mph) less than its maximum speed, and its performance shall be within a stopping distance given by the formula provided for the specific requirement.

S5.1. *Full service brake system performance.*

S5.1.1. *Stopping performance.* The service brakes shall stop each vehicle in four series of effectiveness tests within the distances and from the speeds specified in S5.1.1.1 through S5.1.1.4.

S5.1.1.1. *Preburnished effectiveness.* In the preburnished effectiveness test, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 72 m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.2. *Cold effectiveness.* In the cold effectiveness tests, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 65 m (214 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.3. *High speed effectiveness.* In the high speed effectiveness test, the vehicle shall stop, with its transmission in gear, from a speed which is 80% of the maximum speed of the vehicle, within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.4. *Final effectiveness.* In the final effectiveness test, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 72 m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

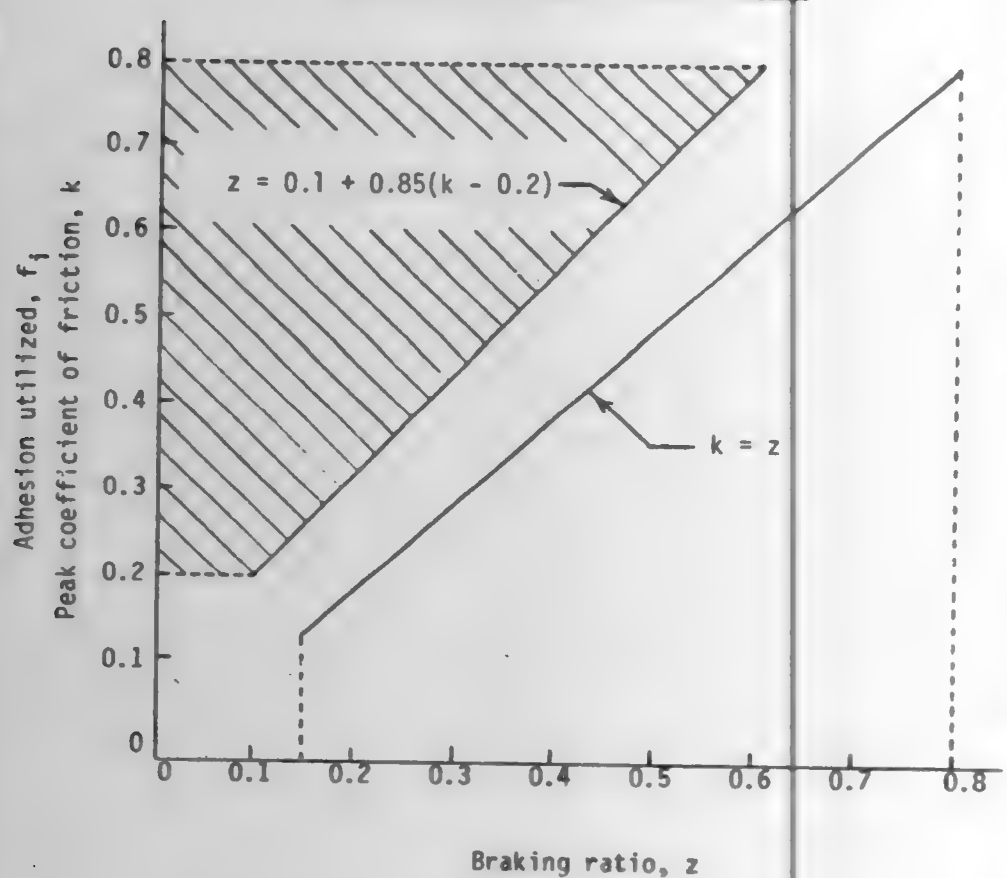
S5.1.2. *Adhesion Utilization.* Adhesion utilization curves for both front and rear axles of the vehicle are generated for a speed of 50 km/h (31.1 mph), in gear, for both GVWR and LLVW conditions. If the vehicle is not equipped with an anti-lock systems, the adhesion utilization curves shall meet the requirements of S5.1.2.1 and S5.1.2.2, as shown in Figure 1. If the vehicle is equipped with an anti-lock system, the curves are generated with the anti-lock system disabled, and only the requirement of S5.1.2.1 shall be met.

S5.1.2.1. *Braking efficiency of individual axles.* For all values of peak coefficient of friction, k, between 0.2 and 0.8, each adhesion utilization curve shall be situated to the right of a line defined by $z = 0.1 + 0.85 (k - 0.2)$, where z is the braking ratio.

S5.1.2.2. *Wheel lockup sequence.* For all braking ratios between 0.15 and 0.8, each adhesion utilization curve for a front axle shall be situated above the corresponding curve for the rear axle.

Figure 1

Adhesion Utilization Requirements



S5.1.3. *Fade and recovery.*

S5.1.3.1. *Hot performance.* After heating according to the procedure specified in S7.11.1, the vehicle shall stop, from 100 km/h (62.1 mph), with its transmission in neutral and with a pedal force equal to the average pedal force on the shortest cold effectiveness stop at GVWR, within a distance equal to the shorter of:

(a) 91 m (298 ft), or

(b) The shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 60%.

If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the cold effectiveness test at GVWR, and the distance in (a) is given by $S=0.05V+0.0086V^2$, where S is the maximum stopping distance in m and V is the test speed in km/h.

S5.1.3.2. *Recovery performance.* After conducting the cooling stops according to procedure specified in S7.11.3, the vehicle shall stop from 100 km/h (62.1 mph), with its transmission in neutral and with a pedal force equal to the average pedal force on the shortest cold effectiveness stop at GVWR, in a distance that is:

(a) Not longer than the shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 70%, and

(b) Not shorter than the shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 120%."

If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the cold effectiveness test at GVWR.

S5.1.4. *Spike stops.* Each vehicle shall make 10 spike stops from 50 km/h (31.1 mph).

S5.2. *Partial service brake system performance.*

S5.2.1. *Hydraulic circuit failure.*

S5.2.1.1. For vehicles manufactured with a split service brake system, in the event of any rupture or leakage type of failure in a single subsystem, other than a structural failure of a housing that is common to two or more subsystems, the remaining portions of the service brake system shall continue to operate and shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 155 m (509 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $s=0.05V+0.015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.1.2. For vehicles not manufactured with a split service brake system, in the event of any one rupture or leakage type of failure in any component of the service brake system and after activation of the brake system indicator as specified in S5.4.5.1, the vehicle shall, by operation of the service brake control, stop 10 times consecutively from 100 km/h (62.1 mph) within a distance of 155 m (509 ft.) If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.2. *Inoperative brake power assist unit or brake power unit.*

S5.2.2.1. *Engine failure (system charged).* The service brakes on a vehicle equipped with one or more brake power assist units or brake power units, with all such systems fully charged at the beginning of the stop but the vehicle's engine not running, shall stop the vehicle once from 100 km/h (62.1 mph) within a distance of 72m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.0067V^2$, where S is the maximum stopping distance in m and V is the test speed in km/h.

S5.2.2.2. *Unit failure (system depleted).* The service brakes on a vehicle equipped with one or more brake power assist units or brake power units, with one such unit inoperative and depleted of all reserve capability, shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 155 m (509 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.0015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.3. *Failed anti-lock or variable proportioning system.* The service brakes on a vehicle equipped with one or more anti-lock or variable proportioning systems, in the event of any single failure (structural or functional) in any one such system, shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 80 m (263 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.005V+0.0075V^2$, where S

is the maximum stopping distance in m, and V is the test speed in km/h.

S5.3. *Parking brake system performance.* The requirements of S5.3.1 and S5.3.2 shall be met with a force applied to the parking brake control not exceeding 500 N (113 lb) for a foot-operated system or 320 N (72 lb) for a hand-operated system.

S5.3.1. *Gradient holding.* The parking brake system shall hold the vehicle stationary for 5 minutes in both a forward and reverse direction on a 20 percent grade, with the vehicle's transmission in neutral.

S5.3.2. *Dynamic performance.* The parking brake system shall stop the vehicle, with its transmission in neutral, from 60 km/h (37.3 mph) within a distance of 73 m (238 ft). In addition, the final deceleration rate just prior to stopping shall be at least 1.5m/sec^2 (4.92 ft/sec^2).

S5.4. *Equipment requirements.*

S5.4.1. *Service brake system.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the brakes shall be compensated for by means of a system of automatic adjustment.

S5.4.2. *Parking brake system.* Each vehicle shall be equipped with a parking brake system of a friction type with solely mechanical means to retain engagement.

S5.4.3. *Controls.* The service brakes shall be activated by means of a foot control. The control of the parking brake shall be independent of the service brake control, and may be either a hand or foot control. All service brake system requirements, including the partial system requirements of S5.2, shall be met solely by use of the service brake control.

S5.4.4. *Reservoirs.*

§ 5.4.4.1. *Master cylinder reservoirs.* A master cylinder shall have a reservoir compartment for each service brake subsystem serviced by the master cylinder. Loss of fluid from one compartment shall not result in a complete loss of brake fluid from another compartment.

§ 5.4.4.2. *Reservoir capacity.* Reservoirs, whether for master cylinders or other type systems, shall have a total minimum capacity equivalent to the fluid displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoirs move from a new lining, fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position, as determined in accordance with § 7.15(c) of this standard. Reservoirs shall have completely separate compartments for each subsystem except that in reservoir systems utilizing a portion of the reservoir for a common supply to two or more subsystems, individual partial compartments shall each have a minimum volume of fluid equal to at least the volume displaced by the master cylinder piston servicing the subsystem, during a full stroke of the piston. Each brake power unit reservoir servicing only the brake system shall have a minimum capacity equivalent to the fluid displacement required to charge the system piston(s) or accumulator(s) to normal operating pressure plus the displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoir or accumulator(s) move from a new lining fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position.

§ 5.4.4.3. *Reservoir labeling.* Each vehicle shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (1/8 inch) high: "WARNING, Clean filler cap before removing. Use only ____ fluid from a sealed container." (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g., "DOT 3".) The lettering shall be:

(a) Permanently affixed, engraved or embossed;

(b) Located so as to be visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap; and

(c) Of a color that contrasts with its background, if it is not engraved or embossed.

§ 5.4.4.4. *Fluid level indication.* Brake fluid reservoirs shall be so constructed that the level of fluid can be checked without need for the reservoir to be opened. This requirement is deemed to have been met if the vehicle is equipped with a brake fluid level indicator meeting the requirements of § 5.4.5.1(b).

§ 5.4.5. *Brake system warning indicator.* Each vehicle shall have one or more visual brake system warning indicators, mounted in front of and in clear view of the driver, which meet the requirements of § 5.4.5.1 through § 5.4.5.5. In addition, a vehicle manufactured without a split service brake system shall be equipped with an audible warning signal that activates under the conditions specified in § 5.4.5.1(a).

S5.4.5.1. *Activation.* An indicator shall be activated when the ignition (start) switch is in the "on" ("run") position and whenever any of conditions (a), (b) or (c) occur.

(a) A gross loss of fluid or fluid pressure (such as caused by rupture of a brake line but not by a structural failure of a housing that is common to two or more subsystems) as indicated by one of the following conditions (chosen at the option of the manufacturer):

(1) A drop in the level of the brake fluid in any master cylinder reservoir compartment to less than the recommended safe level specified by the manufacturer or to one-fourth of the fluid capacity of that reservoir compartment, whichever is greater.

(2) For vehicles equipped with a split service brake system, a differential pressure of 1.5 MPa (218 psi) between the intact and failed brake subsystems, measured at a master cylinder outlet or a slave cylinder outlet.

(3) A drop in the supply pressure in a brake power unit to a one-half of the normal system pressure.

(b) A total functional electrical failure in an anti-lock or variable proportioning brake system.

(c) Application of the parking brake.

S5.4.5.2. *Function check.* All indicators shall be activated as a check of function either when the ignition (start) switch is turned to the "on" ("run") position when the engine is not running, or when the ignition (start) switch is in a position between "on" ("run") and "start" that is designated by the manufacturer as a check position, and the transmission shift lever is in a position other than a forward or reverse drive position.

S5.4.5.3. *Duration.* Each indicator activated due to a condition specified in S5.4.5.1. shall remain activated as long as the condition exists, whenever the ignition (start) switch is in the "on" ("run") position, whether or not the engine is running.

S5.4.5.4. *Function.* When a visual warning indicator is activated, it may be continuous or flashing, except that the visual warning indicator on a vehicle not equipped with a split service brake system shall be flashing. The audible warning required for a vehicle manufactured without a split service brake system may be continuous or intermittent.

S5.4.5.5. *Labeling.* (a) Each visual indicator shall display a word or words, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by Standard No. 101 and/or this section may be provided for purposes of clarity.

(b) Vehicles manufactured with a split service brake system may use a single common brake warning indicator. If a single common indicator is used, it shall display the word "Brake"

(c) A vehicle manufactured without a split service brake system shall use a separate indicator to indicate the failure condition in S5.4.1(a). This indicator shall display the words "STOP—BRAKE FAILURE" in block capital letters not less than 6.4 mm (¼ inch) in height.

(d) If separate indicators are used for one or more than one of the functions described in S5.4.5.1(a) to S5.4.5.1(c), the indicators shall display the following wording:

(1) If a separate indicator is provided for the low brake fluid condition in S.5.4.5.1(a)(1), the words "Brake Fluid" shall be used except for vehicles using hydraulic system mineral oil.

(2) If a separate indicator is provided for the gross loss of pressure condition in S5.4.5.1(a)(2), the words "Brake Pressure" shall be used.

(3) If a separate indicator is provided for anti-lock failure as specified in S5.4.5.1(b), the single word "Antilock" or "Anti-Lock" may be used. The letters and background of a separate indicator for an antilock system shall be of contasting colors, one of which is yellow.

(4) If a separate indicator is provided for application of the parking brake as specified for S5.4.5.1(c), the single word "Park" may be used.

(5) If a separate indicator is provided for any other function, the display shall include the word "Brake" and appropriate additional labeling.

S5.5. *Brake system integrity.* Each vehicle shall meet the complete performance requirements of S5 without:

(a) Detachment or fracture of any component of the braking system, such as brake springs and brake shoe or disc pad facing, other than minor cracks that do not impair attachment of the friction facing. All mechanical components of the braking system shall be intact and functional. Friction facing tearout (complete detachment of lining) shall not exceed 10 percent of the lining on any single frictional element.

(b) Any visible brake fluid or lubricant on the friction surface of the brake, or leakage at the master cylinder or brake power unit reservior cover, seal, and filler openings.

S6. *Test Conditions.* The performance requirements of S5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle shall meet the requirements of all points within the range.

S6.1. *Ambient conditions.*

S6.1.1. *Ambient temperature.* The ambient temperature is any temperature between 0 °C (32 °F) and (40 °F).

S6.1.2. *Wind speed.* The wind speed is not greater than 5m/sec (11.2 mph).

S6.2. *Road test surface.*

S6.2.1. *Skid number.* The road test surfact has a skid number of 81.

S6.2.2. *Gradient.* Except for the parking brake gradient holding test, the test surface has no more than a 1% gradient in the direction of testing and no more than a 2% gradient perpendicular to the direction of testing.

S6.2.3. *Lane width.* Road tests are conducted on a test lane 3.5m (11.5ft) wide.

S6.3. *Vehicle conditions.*

S6.3.1. *Vehicle weight.* Except for the test at LLVW in S7.7, S7.8 and S7.9, the vehicle is loaded to its GVWR such that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR, except that the fuel tank is filled to 100 percent of capacity at the beginning of testing (corresponding to full GVWR loading) and may not be less than 75 percent of capacity during any part of the testing. However, if the weight on any axle of a vehicle at lightly loaded vehicle weight exceeds the axle's proportional share of the gross vehicle weight rating, the load required to reach GVWR is placed so that the weight on that axle remains the same as at lightly loaded vehicle weight.

For the tests at LLVW specified in S7.7, S7.8 and S7.9, the vehicle is loaded to its lightly loaded vehicle weight, with the added weight distributed in the front passenger seat area.

S6.3.2. *Lining preparation.* At the beginning of preparation for the road test in S7.1, the brakes of the vehicle are in the same condition as when the vehicle is manufactured. No burnishing or other special preparation is allowed, unless all vehicles sold to the public are similarly prepared as a part of the manufacturing process

S6.3.3. *Adjustment and repairs.* the requirements must be met without replacing any brake system part or making any adjustments to the brake system except as specified in this standard. Where a brake adjustment is specified in this standard, adjust the brakes, including the parking brakes, in accordance with the manufacturer's recommendation. Automatic adjusters are operational throughout the entire test sequence and are adjusted manually or by making stops, as recommended by the manufacturer. The brakes are adjusted in this manner prior to the beginning of the road test sequence.

S6.3.4. *Tire inflation pressure.* Tires are inflated to the pressure recommended by the vehicle manufacturer for the GVWR of the vehicle.

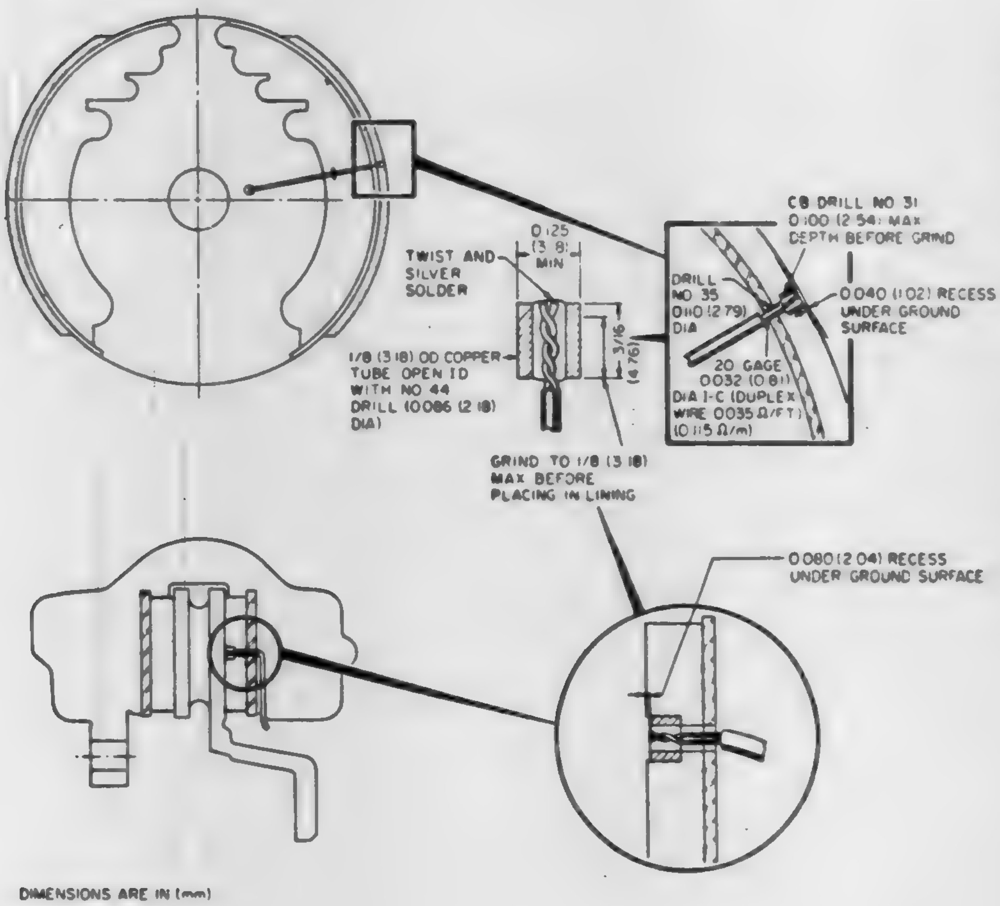
S6.3.5. *Engine.* Engine idle speed and ignition timing settings are according to the manufacturer's recommendations. If the vehicle is equipped with an adjustable engine speed governor, it is adjusted according to the manufacturer's recommendation.

S6.3.6. *Vehicle openings.* All vehicle openings (doors, windows, hood, trunk, convertible top, cargo doors, etc.) are closed except as required for instrumentation purposes.

S6.4. *Instrumentation—Brake temperature.* The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width the most heavily loaded shoe or disc pad, one per brake, as shown in Figure 2. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the metal rubbing surface of a drum or rotor. For center-grooved shoes or pads, thermocouples are installed within 3 mm (.12 in) to 6 mm (.24 in) of the groove and as close to the center as possible.

Figure 2

Typical Plug-Type Thermocouple Installations



S6.5. *Procedural conditions.*

S6.5.1. *Vehicle position and attitude.* The vehicle is aligned in the center of the lane at the start of each brake application. Stops are made without any part of the vehicle leaving the lane and without rotation of the vehicle about its vertical axis of more than ±15° from the center line of the test lane at any time during any stop. Steering corrections are permitted.

S6.5.2. *Transmission selector control.* For tests in neutral, the transmission selector control is in neutral for all decelerations. For tests in gear, the transmission selector is in the control position recommended by the manufacturer for driving on a level surface at the applicable test speed. To avoid engine stall during tests required to be run in gear, a manual transmission may be shifted to neutral (or the clutch disengaged) when the vehicle speed is below 30 km/h (18.6 mph).

S6.5.3. *Wheel lockup.* Unless otherwise specified, stops are made without lockup of any wheel at speeds greater than 15 km/h (9.3 mph).

S6.5.4. *Control forces.* Unless otherwise specified, the force applied to a service brake control is not more than 500 N (172.4 lb) nor less than 65 N (14.6 lb).

S6.5.5. *Initial brake temperature.* Unless otherwise specified, the initial brake temperature is 50 °C (122 °F) to 100 °C (212 °F). If the lower limit of initial brake temperature for the first stop in a test sequence (other than a parking brake grade holding test) has not been reached, the brakes are heated to the initial brake temperature by making one or more brake applications from a speed not exceeding 100 km/h (62.1 mph), at a deceleration not greater than 3 m/sec^2 (9.8 ft/sec^2).

S6.5.6. *Stopping distance.* The braking performance of a vehicle is determined by measuring the stopping distance from a given initial speed. Unless otherwise specified and subject to the constraints above, the vehicle is to be stopped in the shortest distance achievable (best effort) on all stops. Where more than one stop is allowed for a given set of test conditions, a vehicle is deemed to comply with the corresponding stopping distance requirements if at least one of the stops is made within the prescribed distance.

S7 *Test procedures and sequence.* Each vehicle shall meet all the applicable requirements of S5 when tested according to the procedures and in the sequence set forth below.

When the transmission selector control is required to be in neutral for a deceleration, a stop or snub is made in accordance with the following procedures: (1) Exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph); (2) close the throttle and coast in gear to approximately 3 km/h (1.9 mph) above the test speed; (3) shift to neutral; and (4) when the test speed is reached, apply the brakes.

S7.1. *Preparation*

S7.1.1. *Instrumentation.* Install shut-off valves and pressure transducers in the hydraulic system to allow the front and rear brakes to be operated independently and to allow measurement of front and rear brake line pressures. Valves and transducers are located downstream of any proportioning valves.

S7.1.2. *Load vehicle.* Load the vehicle to its GVWR, with the load distributed between the axles in proportion to the GAWR's.

S7.1.3. *Pretest instrumentation check.* Conduct a general check of instrumentation by making 10 stops from a speed of not more than 50 km/h (31.1 mph), at a deceleration of not more than 3 m/sec^2 (9.8 ft/sec^2). The lower force limit of S6.5.4 does not apply to these stops. If instrument repair, replacement, or adjustment is necessary, make not more than 10 additional stops after such repair, replacement, or adjustment.

S7.2. *Service brake system—preburnish effectiveness test.* Make four stops from 100 km/h (62.1 mph).

S7.3. *Service brake system—cold effectiveness test at GVWR.*

S7.3.1. *Burnish.* At the option of the manufacturer, the brakes may be burnished by making 36 stops from 80 km/h (49.7 mph) at a deceleration rate of 3 m/sec^2 (9.8 ft/sec^2), with the transmission selector control in gear.

The lower force limit of S6.5.4 does not apply to these stops. The internal from the start of one service brake application to the start of the next is either the time necessary to reduce the initial brake temperature to 100 °C (212 F), or the distance of 2 km (1.24 mi), whichever occurs first. Accelerate to 80 km/hr (49.7 mph) after each stop and maintain that speed until making the next stop. After burnishing, adjust the brakes as specified in S6.3.3.

S7.3.2 *Cold effectiveness stops.* Make four stops from 100 km/h (62.1 mph).

S7.3.3. *Reburnish.* At the option of the manufacturer, the brakes may be given an additional burnish of 50 stops according to the procedure specified in S7.3.1.

S7.3.4. *Cold effectiveness stops—retest.* If the optional reburnishing is selected, the four stops from 100 km/hr specified in S7.3.2 are also repeated. For purposes of determining required performance on the hot performance and recovery stops of the fade and recovery sequence, the best performance achieved of all stops in S7.3.2 and S7.3.4 and the corresponding mean pedal force is used as a baseline.

S7.4. *Adhesion utilization tests.*

S7.4.1. *Test procedure.*

S7.4.1.1 *Coast downs in neutral and in gear.* Coast in neutral and determine the time required to decelerate from 55 to 45 km/h (34.2 to 28.0 mph). Make six runs starting from 65 km/h (40.4 mph). Repeat with the transmission in gear appropriate for decelerating from 65 to 45 km/h (40.4 to 28.0 mph).

S7.4.1.2. *Preliminary snubs to determine front and rear brake pressures needed to achieve 6.4 m/sec² (21 ft/sec²) with all brakes operational.* With an initial brake temperature of 50–100 °C (122–212 °F) in each case, make four preliminary snubs to determine the front and rear brake pressures when the vehicle deceleration is 6.4 m/sec² (21 ft/sec²). Accelerate the vehicle to 70 km/h (43.5 mph), coast in gear to 65 km/h (40.4 mph), shift to neutral and apply the brakes at a constant front brake pressure until the vehicle reaches 45 km/h (28.0 mph). For subsequent snubs, adjust the brake pressure so that the deceleration time from 55 to 45 km/h (34.2 to 28.0 mph), is between .40 seconds and .46 seconds. The front and rear brake pressures for the snub having a deceleration time closest to 0.43 seconds are used in the front-only and rear-only brake tests which follow.

S7.4.1.3 *Front brake only test.* Make six snubs, in neutral, at the constant front brake pressure determined in S7.4.1.2, using the same initial brake temperatures. Determine the average value of the brake pressure actually maintained between 55 and 45 km/h (34.2 and 28.0 mph) for each snub, by recording brake pressure versus time. Record deceleration times from 55 to 45 km/h (34.2 to 28.0 mph) for each snub.

S7.4.1.4. *Rear brake only test.* Repeat S7.4.1.3 with only the rear brakes operational using the rear brake pressure determined in S7.4.1.2.

S7.4.1.5. *Determination of front versus rear brake pressure.* Determine the front versus rear brake pressure relationship over the entire range of line pressures. Unless the vehicle has a load sensing valve, this determination is made by static test. If the vehicle has a load sensing valve, dynamic tests are run with the vehicle both empty and loaded. Between 20 and 25 snubs are made for each of the two load conditions, using the same speed and initial conditions specified in S7.4.1.2.

S7.4.1.6. *Determination of front and rear brake push-out pressures.* Determine the level of pressure required at each brake to initiate torque. Do this by jacking the vehicle and rotating the wheel by hand while slowly increasing brake pressure until brake torque is first detected. Record the pressure. Average the pressures for the two front brakes together and the two rear brakes together to obtain the front and rear brake push-out pressures respectively.

S7.4.2. *Calculations.*

S7.4.2.1. Calculate the coastdown deceleration for each of the six runs in neutral and each of the six runs in gear in accordance with the following formula:

$$Z = \frac{2.778}{tg}$$

Where Z = deceleration (g), g = 9.8 m/sec² and t = time (seconds) to decelerate from 55 to 45 km/h (34.2 to 28.0 mph). Average the six coastdown decelerations in neutral (^{z} coast in neutral) and the six coast-down decelerations in gear (^{z} coast in gear).

S7.4.2.2. Determine the decelerations as in S7.4.2.1 for the front brakes only tests and the rear brakes only tests. Subtract the average coastdown deceleration in neutral from each of the six decelerations in each test series.

S7.4.2.3. Determine the front and rear braking forces from each of the six decelerations in each test series by:

T = PZ

Where T = braking force (N), P = total vehicle weight (N), and Z is the deceleration (g).

S7.4.2.4. Determine the braking force versus brake pressure relationship for the front brakes and for the rear brakes as follows:

Fit a straight line through the push-out pressure, zero force point and the group of six pressure, force data points determined in the snubs. The group of six data points is fit using the method of least squares. With this method, the slope of the line is defined as follows:

$$s = \frac{\sum_{i=1}^{6} (T_i \; x_i)}{\sum_{i=1}^{6} (x_i)^2 - x_0 \sum_{i=1}^{6} x_i}$$

Where s is the slope of the braking force versus brake pressure relationship (N/MPa), T_i is the braking force measured on snub i (N), x_i is the average brake pressure for snub i (MPa) and x_0 is the push-out pressure (MPa).

S7.4.2.5. Using the linear relationship for rear braking force versus rear brake pressure from S7.4.2.4 and the front versus rear brake pressure relationship from S7.4.1.5, determine rear braking force versus front brake prsessure.

S7.4.2.6. At any value of front brake pressure, the total vehicle deceleration is calculated from:

$$Z_T = \frac{T_1 + T_2}{P} + Z_{coast\ in\ gear}$$

Where Z_T + total vehicle deceleration (g), T_1 + front braking force (N) at the given front brake pressure, T_2 = rear braking force corresponding to the same front brake pressure, P = total vehicle weight (N), and $Z_{coast\ in\ gear}$ is the average coastdown deceleration in gear.

S7.4.2.7. At any level of front brake pressure, the adhesion utilization of the brakes on both axles is calculated from:

$$f_1 = \frac{T_1 + D}{P_1 + Z_T \frac{h}{E} P}$$

$$f_2 = \frac{T_2 + D}{P_2 - Z_T \frac{h}{E} P}$$

Where f_1 = adhesion utilization of the front axle, f_2 = adhesion utilization of the rear axle, P_1 = static weight on the front

axle (N), P_2 = static weight on the rear axle (N), h = center of gravity height (mm), E = vehicle wheelbase (mm), D = engine and drive train drag such that:

For non-driving axle: D = O
For the driving axle:
$D = P(Z_{coast\ in\ gear} - Z_{neutral})$

S7.4.2.8. The adhesion utilization for all other states of load is determined by repeating S7.4.2.6 and S7.4.2.7 using appropriate values of P, P_1, P_2 and h, and adjusting the coastdown deceleration in gear by multiplying it by the ratio:

$$\frac{P_{p\,test\ weight}}{P_{desired\ weight}}$$

(Values of T_1, T_2, D and E are independent of vehicle loading).

S7.4.2.9. Plot f_1 and f_2 versus Z_T for both the laden and the unladen condition. These are the adhesion utilization curves for the in-gear case.

S7.5. *Service brake system—high speed effective tests at GVWR.* Make 4 stops from 80 percent of the maximum speed of the vehicle, in gear.

S7.6 *Stops with engine off.* (For vehicles equipped with one or more brake power units or brake power assist units). Make four stops from 100 km/h (62.1 mph), in neutral, with the engine not running. All reservoirs are fully charged prior to the beginning of each stop.

S7.7. *Service brake system—cold effectiveness tests at LLVW.*

S7.7.1. *Unload vehicle.* Decrease the vehicle load to LLVW.

S7.7.2. *Cold effectiveness stops.* Make four stops from 100 km/h (62.1 mph).

S7.8. *Service brake system—high speed effectiveness tests at LLVW.* Make 4 stops from 80 percent of the maximum speed of the vehicle, in gear.

S7.9. *Partial system test at LLVW.*

S7.9.1. *Circuit failure.* Alter the service brake system to produce any one rupture or leakage type of failure, other than a structural failure of a housing that is common to two or more subsystems. Determine the control force, pressure level, or fluid level (as appropriate for the indicator being tested) necessary to activate the brake warning indicator. After the brake warning indicator has activated, make four stops if the vehicle is equipped with a split service brake system or 10 stops if the vehicle is not so equipped, each from 100 km/h (62.1 mph) in neutral, by a continuous application of the service brake control. Restore the service brake system to normal at the completion of this test. Repeat the entire sequence for each of the other subsystems.

S7.9.2. *Failed anti—lock or variable proportioning system.* (For vehicles equipped with anti-lock and/or variable proportioning brake systems). Disconnect the functional power source, or otherwise render the anti-lock system inoperative, or disconnect the variable proportioning brake system. Make four stops, each from 100 km/h (62.1 mph). Determine whether the brake system indicator is activated when any electrical power source to the ant-lock or variable proportioning unit is disconnected. Restore the system to normal at the completion of this test. If more than one anti-lock or variable proportioning brake subsystem is provided repeat for each subsystem provided.

S7.10. *Partial system tests at GVWR.*

S7.10.2. *Load vehicle.* Restore the vehicle to its GVWR loading.

S7.10.2. *Circuit failure.* Repeat S7.9.1.

S7.10.3. *Failed anti-lock or variable proportioning system.* Repeat S7.9.2.

S7.10.4. *Inoperative brake power assist unit or brake power unit.* (For vehicles equipped with one or more brake power units or brake power assist units). Disconnect the primary source of power for one brake power assist unit or brake power unit, or one of the brake power unit or brake power assist unit subsystems if two or more subsystems are provided. If the brake power or brake power assist unit operates in conjunction with a backup system and the backup system is automatically activated in the event of a primary power source failure, the backup system is operative during this test. Exhaust any residual brake power reserve capability of the disconnected system. On vehicles with brake power units, disconnect the primary source of power. Make four stops, each from 100 km/h (62.1 mph) by a continuous application of the service brake control. Restore the system to normal at completion of this test. For vehicles equipped with more than one brake power unit or brake power assist unit, conduct tests for each in turn.

S7.11. *Fade and recovery tests (GVWR).*

S7.11.1. *Heating snubs.* [Proposed alternative 1] Make 80 snubs from 55 km/h to 25 km/h (34.2 to 15.6 mph), at a constant deceleration rate of 2.4 m/sec² (7.9 ft/sec²). The lower force limit in S6.5.4 does not apply to these snubs. Establish and initial brake temperature before the first brake application of 55 to 65 °C (131 to 149 °F). Initial brake temperatures before brake applications for subsequent stops are those occurring at the distance intervals. Attain the required deceleration within one second and, as a minimum, maintain it for the remainder of the snub. Maintain an interval of 15 seconds between the start of brake applications. Accelerate as rapidly as possible to the initial test speed immediately after each snub. Immediately after the 80th snub, accelerate to 100 km/h (62.1 mph) to commence the hot performance test.

[Proposed alternative 2] Make 15 snubs from 120 km/h (74.6 mph) or 80% of the maximum speed of the vehicle, whichever is slower, to one-half the initial speed. Maintain a constant deceleration rate of 3.0 m/sec² (9.8 ft/sec²). The lower force limit in S6.5.4 does not apply to these snubs. Establish an initial brake temperature before the first brake application of 55 to 65 °C (131 to 149 °F). Initial brake temperatures before brake applications for subsequent stops are those occurring at the distance intervals. Attain the required deceleration within one second and, as a minimum, maintain it for the remainder of the snub. Maintain an interval of 30 seconds between the start of brake applications. Accelerate as rapidly as possible to the initial test speed immediately after each snub. Immediately after the 15th snub, accelerate to 100 km/h (62.1 mph) to commence the hot performance test.

S7.11.2 *Hot performance test.* Make one stop from 100 km/h (62.1 mph), in neutral, at a pedal force not greater than the mean pedal force actually measured on the best cold performance stop in either S7.3.2 or S7.3.4. Immediately after the stop, drive 1.5 km (.93 mi) at 50 km/h (31.1 mph) before the first cooling stop.

S7.11.3. *Brake cooling.* Make four stops from 50 km/h (31.1 mph), in gear, at a constant deceleration rate of 3.0 m/sec² (9.8 ft/sec²). The lower force limit in S6.5.4 does not apply to these stops. Immediately after the first through third stops, the vehicle shall be accelerated at the maximum rate to 50 km/h (31.1 mph) and that speed maintained until beginning the next stop at a distance of 1.5 km (0.95 mi) since the beginning of the previous stop. Immediately after the fourth stop, accelerate the vehicle at the maximum rate to 100 km/h (62.1 mph) and maintain that speed until beginning the recovery performance stop at distance of 1.5 km (0.93 mi) after the beginning of the fourth cooling stop.

S7.11.4. *Recovery performance test.* Make one stop from 100 km/h (62.1 mph), under the same conditions as for the hot performance test in S7.11.2.

S7.12. *Parking brake performance.*

S7.12.1. *Conditions.*

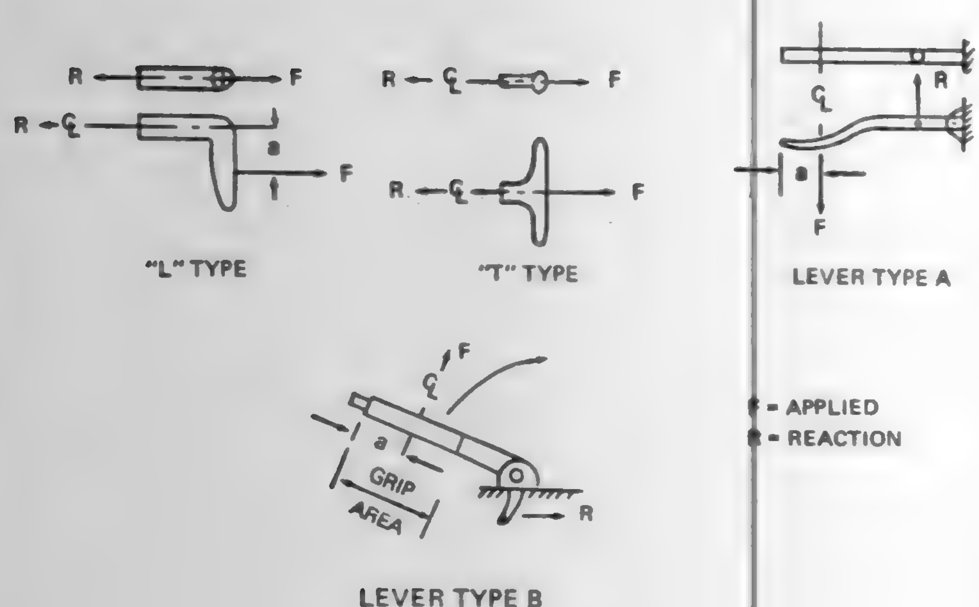
S7.12.1.1. *Application force.* The parking brake shall be actuated by a single application not exceeding the limits specified in S5.3, except that a series of applications to achieve the

specified force may be made in the case of a parking brake system design that does not allow the application of the specified force in a single application. The force required for actuation of a hand-operated brake system shall be measured at the center of the hand grip area or at a distance of 40 mm (1.57 in) from the end of the actuation level, as illustrated in Figure 3.

Figure 3

Location for Measuring Brake Application Force

(Hand Brake)



Dimension a = 40mm (1.57 in)

S7.12.1.2. The lower temperature limit of S6.5.5 does not apply to the test in S7.12.2 and S7.12.3.

S7.12.1.3. For vehicles with parking brake systems not utilizing the service brake friction elements, the friction elements of such a system are burnished prior to the parking brake tests, according to the published recommendations furnished to the purchaser by the manufacturer. If no recommendations are furnished, the vehicle's parking brake is tested in an unburnished condition.

S7.12.2. *Gradient Hold.* Drive the vehicle onto a 20 percent grade with the longitudinal axis of the vehicle in the direction of the slope of the grade, stop the vehicle and hold it stationary by application of the service brake control, and place the transmission in neutral. With the service brake applied sufficiently to just keep the vehicle from rolling, apply the parking brake as specified in S7.12.1.1. Following the application of the parking brake, release all force on the service brake control and, if the vehicle remains stationary, start the measurement of time. If the vehicle does not remain stationary, reapplication of a force to the parking brake control at the level specified in S7.12.1.1 as appropriate for the vehicle being tested (without release of the ratcheting or other holding mechanism of the parking brake) may be used twice to attain a stationary position. Verify the operation of the parking brake application indicator. Following observation of the vehicle in a stationary condition for the specified time in one direction, repeat the same test procedure with the vehicle orientation in the opposite direction on the same grade.

S7.12.3. *Dynamic test.* Make one stop from 60 km/h (37.3 mph), in neutral, with a force applied to the parking brake control not exceeding the values specified in S7.12.1.1. If the required performance is not achieved, a second attempt is permitted.

S7.13. *Spike stops.* Make 10 successive spike stops from 50 km/h (31.1 mph) with the transmission in neutral, with no reverse stops. Make the spike stops by applying a control force of 900 N (202.3 lb) while recording control force versus time. Maintain the control force until the vehicle has stopped. The prohibition of wheel lockup in S6.5.3 does not apply to this test.

S7.14. *Service brake system-Final effectiveness test.* Make four stops from 100 km/h (62.1 mph).

S7.15. *Final inspection.* Inspect—

(a) The service brake system for detachment or fracture of any components, such as brake springs and brake shoes or disc pad facing.

(b) The friction surface of the brake, the master cylinder or brake power unit reservoir cover, and seal and filler openings, for leakage of brake fluid or lubricant.

(c) The master cylinder or brake power unit reservoir for compliance with the volume and labeling requirements of S5.4.4.2 and S5.4.4.3. In determining the fully applied worn condition, assume that the lining is worn to (1) rivet or bolt heads on riveted or bolted linings or (2) within 0.8 mm (1/32 inch) of shoe or pad mounting surface on bonded linings, or (3) the limit recommended by the manufacturer, whichever is larger relative to the total possible shoe or pad movement. Drums or rotors are assumed to be at nominal design drum diameter or rotor thickness. Linings are assumed adjusted for normal operating clearance in the released position.

(d) The brake system indicators, for compliance with operation in various key positions, lens color, labeling, and location, in accordance with S5.4.5.

Issued on May 3, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11402 Filed 5-7-85; 3:43 pm]

BILLING CODE 4910-59-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on pending petitions and description of progress on listing actions.

SUMMARY: The Service announces its findings on pending petitions to revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within one year of the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 13, 1983 to October 12, 1984.

DATES: The findings announced in this notice were made on October 12, 1984. The description of the Service's progress in revising the lists is current as of October 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions at section 2(b)(1) of the Endangered Species Act Amendments of 1982 (hereafter called Amendments) require that petitions pending on the date of enactment of the Amendments (hereafter called pending petitions) be treated as having been filed on that date. Findings (hereafter called 12-month findings) on these petitions were therefore made on October 13, 1983, and reported in the **Federal Register** of January 20, 1984 (49 FR 2485). This notice reports findings made on October 12, 1984, on pending petitions, and describes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the second year following the enactment of the Amendments.

Findings

The petitions that are the subjects of this notice are ones that the Service initially determined had presented substantial scientific or commercial information indicating that the petitioned action may be warranted. Some of these determinations were made and announced in the **Federal Register** before the enactment of the Amendments. A series of such determinations was announced in the **Federal Register** of February 15, 1983 (48 FR 6752). The remainder of the initial findings for taxa considered here were announced in the **Federal Register** on January 16, 1984 (49 FR 1919).

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition containing substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and the petitioned action will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species.

Petitioned actions found to be warranted [(ii) above] are the subjects of proposals that will be published or have already been published in the **Federal Register**. Findings of "not warranted" and "warranted but precluded" [(i) and (iii) above, respectively] for pending petitions are reported here.

The Service's 12-month findings of "not warranted" and "warranted but precluded" on pending petitions for U.S. native animal taxa are given in Table 1. Petitioned actions that are found to be not warranted are indicated by the word "No" in the "Warranted?" column opposite the name of the affected species. Species that are the subjects of petitioned actions that are found to be warranted but precluded are designated with either "Yes" or "Yes*" corresponding to categories 1 and 2, respectively, in the general animal notices of review. The general notice for vertebrate animals was published on December 30, 1982 (47 FR 58454), and can be consulted on the definitions of these category designations. The general notice on invertebrate animals was published on May 22, 1984 (49 FR 21664).

TABLE 1.—CURRENT 12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS

Species	Petitioner	[redacted]	Warranted
Carolina sponge, *Corvomeyenia carolinensis*	Ronald M. Cowden	June 17, 1974	Yes*
Oklawaha sponge, *Dosilla palmeri*	do	do	Yes*
Kissimmee sponge, *Ephydatia subtilis*	do	do	Yes*
Pennsylvania sponge, *Heteromeyenia longistylis*	do	do	Yes*
Oneida sponge, *Spongilla heterosclerifera*	do	do	Yes*
Central Missouri cave amphipod, *Allocrangonyx hubrichti*	National Speleological Society	Sept. 9, 1974	Yes*
Oklahoma cave amphipod, *Allocrangonyx pellucidus*	do	do	Yes*
Pennsylvania cave amphipod, *Crangonyx dearolfi*	do	do	Yes*
Hobbs cave amphipod, *Crangonyx hobbsi*	do	do	Yes*
Illinois cave amphipod, *Gammarus acherondytes*	do	do	Yes*
Bousfield's amphipod, *Gammarus bousfieldi*	do	do	Yes*
Noel's amphipod, *Gammarus desperatus*	do	do	Yes*
Diminutive amphipod, *Gammarus hyalleloides*	do	do	Yes*
Pecos amphipod, *Gammarus pecos*	do	do	Yes*
Tidewater interstitial amphipod, *Stygobromus araeus*	do	do	Yes*
Arizona cave amphipod, *Stygobromus arizonensis*	J. Holsinger	July 12, 1974	Yes*
Balcones cave amphipod, *Styogobromus balconis*	National Speleological Society	Sept. 9, 1974	Yes*
Barr's cave amphipod, *Stygobromus barri*	do	do	Yes*
Bifurcated cave amphipod, *Stygobromus bifurcatus*	do	do	Yes*
Bowman's cave amphipod, *Stygobromus bowmani*	do	do	Yes*
Clanton's cave amphipod, *Stygobromus clantoni*	do	do	Yes*
Bournsville Cove cave amphipod, *Stygobromus conradi*	do	do	Yes*
Cooper's cave amphipod, *Stygobromus cooperi*	do	do	Yes*
Cascade Cave amphipod, *Stygobromus dejectus*	do	do	Yes*
Elevated Spring amphipod, *Stygobromus elatus*	do	do	Yes*
Greenbriar Cave amphipod, *Stygobromus emarginatus*	do	do	Yes*
Ephemeral cave amphipod, *Stygobromus emphemerus*	do	do	Yes*
Ezell's Cave amphipod, *Stygobromus flagellatus*	do	do	Yes*

TABLE 1.—CURRENT 12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS—Continued

Species	Petitioner	Date	Warranted
Grady's cave amphipod, *Stygobromus gradyi*	J. Holsinger	July 12, 1974	Yes*
Devil's Sinkhole amphipod, *Stygobromus hadenoecus*	National Speleological Society	Sept. 9, 1974	Yes*
Hara's cave amphipod, *Stygobromus harai*	J. Holsinger	July 12, 1974	Yes*
(No common name), *Stygobromus heteropodus*	National Speleological Society	Sept. 9, 1974	Yes*
Matheur Cave amphipod, *Stygobromus hubbsi*	J. Holsinger	July 12, 1974	Yes*
Tidewater amphipod, *Stygobromus indentatus*	National Speleological Society	Sept. 9, 1974	Yes*
Long legged cave amphipod, *Stygobromus longipes*	do	do	Yes*
MacKenzie's cave amphipod, *Stygobromus mackenziei*	J. Holsinger	July 12, 1974	Yes*
Mountain cave amphipod, *Stygobromus montanus*	National Speleological Society	Sept. 9, 1974	Yes*
Morrison's cave amphipod, *Stygobromus morrisoni*	do	do	Yes*
Bath County cave amphipod, *Stygobromus mundus*	do	do	Yes*
Norton's cave amphipod, *Stygobromus nortoni*	do	do	Yes*
Onodaga Cave amphipod, *Stygobromus onodagaensis*	do	do	Yes*
Ozark cave amphipod, *Stygobromus ozarkensis*	do	do	Yes*
Minute cave amphipod, *Stygobromus parvus*	do	do	Yes*
Peck's cave amphipod, *Stygobromus pecki*	do	do	Yes*
Pizzini's amphipod, *Stygobromus pizzinii*	do	do	Yes*
Wisconsin well amphipod, *Stygobromus puteaks*	do	do	Yes*
Redell's cave amphipod, *Stygobromus redelli*	do	do	Yes*
Alabama well amphipod, *Stygobromus smithi*	do	do	Yes*
Spring cave amphipod, *Stygobromus spinatus*	do	do	Yes*
Stellmack's cave amphipod, *Stygobromus stellmacki*	do	do	Yes*
Subtle cave amphipod, *Stygobromus subtilis*	do	do	Yes*
Wengerors' cave amphipod, *Stygobromus wengerorum*	do	do	Yes*
Alabama cave shrimp, *Palaemonias alabamae*	J. Holsinger	July 12, 1974	Yes*
Palm Springs Cave crayfish, *Procambarus acherontis*	National Speleological Society	Sept. 9, 1974	Yes*
Texas cave shrimp, *Palaemonetes antrorum*	do	do	Yes*
Squirrel Chimney cave shrimp, *Palaemonetes cummingi*	do	do	Yes*
Dollolf Cave spider, *Meta dollof*	do	do	Yes
Columbia River tiger beetle, *Cicindela columbica*	Thomas S. Briggs	Oct. 25, 1983	No
Uncompahgre fritillary butterfly, *Boloria acrocnema*	Gary Shook	Dec. 15, 1979	Yes*
San Francisco tree lupine moth, *Grapholita edwardsiana*	Lawrence F. Gall	Nov. 5, 1979	Yes
Wiest's sphinx moth, *Euproserpinus wiesti*	Richard Arnold and Jerry R. Powell	Dec. 12, 1982	Yes*
Bliss Rapids snail, Genus and species undescribed	Jo Brewer	Jan. 26, 1981	Yes
Snake River physa snail, *Physa sp.*	Peter A. Bowler	Feb. 7, 1980	Yes
Bonneville cutthroat trout, *Salmo clarki utah*	do	do	Yes
Shoshone sculpin, *Cottus greenei*	P.G. Sanchez, Desert Fishes Council	Oct. 23, 1979	Yes
Puerto Rican sharp-shinned hawk, *Accipiter striatus venator*	Peter A. Bowler	Dec. 13, 1979	Yes*
Puerto Rican broad-winged hawk, *Buteo platypterus brunnescens*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Radak Micronesian pigeon, *Ducula oceanica ratakensis*	do	do	Yes*
Truk Micronesian pigeon, *Ducula oceanica teraoki*	do	do	Yes*
Mariana fruit dove, *Ptilinopus roseicapillus*	do	do	Yes*
Palau Nicobar pigeon, *Caloenas nicobarensis pelewensis*	do	do	Yes*
Virgin Islands screech owl, *Otus nudipes newtoni*	do	do	Yes*
Ponape short-eared owl, *Asio flammeus ponapensis*	do	do	Yes
Truk monarch, *Metabolus rugensis*	do	do	Yes*
Guam rufous-fronted fantail, *Rhipidura rufifrons uraniae*	do	do	Yes*
Palau white-breasted wood-swallow, *Artamus leucorhynchus pelewensis*	Paul M. Calvo, Governor of Guam	Dec. 23, 1981	Yes
Rota bridled white-eye, *Zosterops conspicillata rotensis*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Truk greater white-eye, *Rukia ruki*	do	do	Yes*
Least Bell's vireo, *Vireo bellii pusillus*	do	do	Yes*
Amak song sparrow, *Melospiza melodia amaka*	James M. Graves	Nov. 8, 1979	Yes
Palau blue-faced parrotfinch, *Erythrura trichroa pelewensis*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Silver rice rat, *Oryzomys argentatus*	do	do	Yes*
	Center for Action on Endangered Species	April 12, 1980	Yes*

An additional finding of "warranted but precluded" is reported here in the case of 58 foreign bird species for which listing was petitioned in 1980 by Dr. Warren B. King, Chairman, United States Section, International Council for Bird Preservation. The Service published a notice of review for these species on May 12, 1981 (46 FR 26464). Readers should refer to that notice for the names of the species involved.

A finding of "not warranted" in regard to a petition to list *Meta dollof* (Dollof Cave spider) requires some additional explanation of circumstances that favor continuation of a status review for this species. At the time the petition was submitted, the presence and restricted known distribution of this organism had not been given specific consideration in a planning process underway for development of lands belonging to the University of California in Santa Cruz County, California. At the same time, its distribution and biology have received very little systematic scientific investigation at all. The petition by Thomas S. Briggs acknowledged these unknowns both in our biological understanding and in the directions that possible threats might take. However, without specifically considering this animal, all the planning documentation that has been made public to date includes ecological considerations for its environment, and the likely immediate threats have not materialized. Because of the apparent absence of direct threats, the existence of one more known colony that can be added to the two described in the petition, and the need for further understanding of its distribution and biology, the Service considers the petitioned listing of the Dollof Cave spider not to be warranted at this time. As in the situation for the alligator snapping turtle discussed in the **Federal Register** for February 29, 1984 (49 FR 7416), however, the Service also continues to regard *Meta dollof* as a possible candidate for future listing as endangered or threatened (category 2 in the general notice of review).

"Not warranted" and "warranted but precluded" findings for pending plant petitions are announced in this notice by categories; their application to individual taxa is published in a notice of review for plants in the December 15, 1980, **Federal Register** (45 FR 82480) as updated in a supplementary notice of review in the November 28, 1983, **Federal Register** (48 FR 53670). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are hereby reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted

but precluded" are hereby reported by the designation of category 1, 1*, 1**, 2, or 2* for such subject taxa. The complete definitions of these category numbers are described in the supplement to the 1980 general plant notice (45 FR 82479).

The following eleven plant species, placed in categories 1 or 2 in the 1980 notice of the 1983 supplement, were found not to warrant listing in 1984: *Arabis* sp. nov. ined. (Gray Knolls, Uintah Co., Utah), *Astragalus barnebyi, Astragalus lutosus, Astragalus striatiflorus, Cryptantha jonesiana, Eriogonum lancifolium, Opuntia basilaris* var. *woodburyi, Penstemon nanus, Sclerocactus spinosior,* and *Sphaeralcea caespitosa.*

Section 4(b)(3)(C)(i) of the Act requires that a petition found to be warranted but precluded be treated as an accepted petition newly submitted on the date of the finding. A finding on such a petition must then be made again within 12 months of the date of the last 12-month finding.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditions progress in revising the lists. The Service's progress in revising the lists in the year following October 13, 1983, the current date of the previous report, is described in this section of the present notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service has complied with section 4 by publishing revised regulations covering listing procedures under the Act (codified at 50 CFR Part 424, see 49 FR 38900, October 1, 1984) to comply with the Amendments. Provisions of the Amendments that address the handling of petitions have made it necessary for the Service to implement extensive new procedures for conforming to deadlines and making findings on petitions. These internal procedures have been set down by the Service in a June 15, 1984, document entitled *Petition Management Guidelines*, which is available from the Service on request (see "**FOR FURTHER INFORMATION CONTACT:** above).

The Service's progress in revising the lists during the 12-month period following October 13, 1983, is represented by the publication in the **Federal Register** of final listing actions on 52 species, proposed listing actions on 62 species, and emergency listings on 2 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2.—LISTING ACTIONS DURING THE PERIOD OCT. 14, 1983 THROUGH OCT. 13, 1984

Type of action	Number of species affected
Emergency endangered status	2
Final endangered status with critical habitat	[illegible]
Final endangered status	37
Final threatened status with critical habitat	[illegible]
Final threatened status	1
Final designation of critical habitat	[illegible]
Final removal from lists	[illegible]
Final change from threatened to endangered status	1
Final change from endangered to threatened status	[illegible]
Proposed endangered status with critical habitat	21
Proposed threatened status with critical habitat	10
Proposed endangered status	20
Proposed threatened status	8
Proposed change from endangered to threatened status	1
Proposed change from threatened to threatened due to similarity of appearance	1
Proposed removal from lists	1

As of October 13, 1984, the Service's Washington Office of Endangered Species was also reviewing documents that would propose or make final listing actions on 63 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCT. 13, 1984

Type of action	Number of [illegible]
Final endangered status with critical habitat	5
Final endangered status	2
Final threatened status	[illegible]
Final designation of critical habitat	[illegible]
Proposed endangered with critical habitat	22
Proposed threatened with critical habitat	[illegible]
Proposed endangered status	16
Proposed threatened status	[illegible]
Proposed change from endangered to threatened status	2
Proposed removal from lists	[illegible]

The Service has also identified 190 species for which listing documents are to be developed during the fiscal year beginning October 1, 1984. The numbers of species affected and types of listing actions are given in Table 4. The Service anticipates that listing actions in addition to these will be identified during the fiscal year.

TABLE 4.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE EXPECTS TO DEVELOP DRAFT LISTING DOCUMENTS DURING THE FISCAL YEAR BEGINNING OCT. 1, 1984.

Type of action	[illegible] affected
Final endangered status with critical habitat	25
Final endangered status	5
Final threatened status with critical habitat	[illegible]
Final threatened status	[illegible]
Proposed endangered status with critical habitat	[illegible]
Proposed threatened status with critical habitat	[illegible]
Proposed endangered status	[illegible]
Proposed threatened status	7
Final change from threatened to threatened due to similarity of appearance	1
Proposed change from endangered to threatened status	5
Proposed change from endangered and threatened to threatened due to similarity of appearance	1
Proposed revision of critical habitat	1
Final removal from lists	1
Proposed removal from lists	15

The Service also funded status surveys for 173 species during the 12-month period following October 13, 1983. These surveys are designed to gather any additional data needed to make a determination on whether the subject species are eligible for protection under the Act.

Author

This notice was prepared by Dr. George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 3, 1985.

Susan Reece,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11409 Filed 5–9–85; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 682

Western Pacific Fishery Management Council; Pacific Billfish Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Western Pacific Fishery Management Council will hold additional public hearings on the revised draft Billfish Fishery Management Plan. The draft plan proposes management measures and reporting requirements to regulate the taking of billfish, mahimahi, wahoo, and oceanic sharks by foreign fishing vessels in the fishery conservation zone surrounding Hawaii, Guam, American Samoa, and U.S. island possessions in the Pacific Ocean.

DATES: Individuals and organizations may comment in writing to the Council if they wish to add to statements made at a hearing or if they are unable to attend the hearings. The public comment period will close June 28, 1985. See "**SUPPLEMENTARY INFORMATION**" for dates and locations of the hearings.

ADDRESS: Copies of the proposals are available at the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, telephone 808–523–1368 or FTS 808–546–8923.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 808–523–1368.

SUPPLEMENTARY INFORMATION: The dates, time, and locations of the public hearings are scheduled as follows:

Kona, Hawaii
- May 13, 1985—7:30 p.m.; First Hawaiian Bank, Kona Branch Meeting Room, 74–5593 Palani Road, Kailua-Kona, Hawaii

Hilo, Hawaii
- May 14, 1985—7:30 p.m.; County Council Room, 25 Aupuni Street, Hilo, Hawaii

Kauai, Hawaii
- May 16, 1985—7:30 p.m.; Kauai County Council Office, County Building, Lihue, Kauai

Oahu, Hawaii
- May 20, 1985—7:30 p.m.; Waianae High School Cafetorium, 85–251 Farrington Highway, Waianae
- May 21, 1985—7:30 p.m.; McCoy Pavilion, Ala Moana Park, Honolulu
- May 22, 1985—7:30 p.m.; Haleiwa Elementary School Cafetorium, 66–505 Haleiwa Road, Haleiwa
- May 23, 1985—7:30 p.m.; Benjamin Parker Elementary School Cafetorium, 45–259 Waikalua Rd., Kaneohe

American Samoa
- May 27, 1985—4:30 p.m.; American Samoa Government Convention Center, Fagatogo, Pago Pago

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–11308 Filed 5–9–85; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Cigar-Binder (Types 51 and 52), Dark Air-Cured (Types 35 and 36), and Fire-Cured Types 21-24) Tobacco; Referenda Results: 1985 Through 1987 Crops of Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of results of marketing quota referenda for the 1985 through 1987 crop of cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (type 21-24) tabacco.

SUMMARY: This notice proclaims the results of the marketing quota referenda for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco which were held during the period February 19 through February 22, 1985, in accordance with Section 321(c) of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"). The referenda were conducted in order to determine whether producers of these kinds of tobacco favor or oppose marketing quotas.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4281.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this notice will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title-Commodity Loan and Purchases, Number-10051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 19115 (June 24, 1983).

On January 24, 1985, the Secretary of Agricultural announced that national marketing quotas would be in effect for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco for the three marketing years beginning on October 1, 1985, subject to approval by producers of each of these kinds of tobacco in separate referenda. Section 312(c) of the 1983 Act provides that, if more than one-third of such producers voting in the referenda oppose national marketing quotas, such results shall be proclaimed by the Secretary and national marketing quotas shall not be in effect. During the period February 19 through February 22, 1985 referenda for the 1985-1987 crops of cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco were conducted.

Since the only purpose of this notice is to announce the results of referenda, it has been determined that no further public rulemaking is required. Accordingly, the results of such referenda are set forth below:

Results of the National Marketing Quota Referenda for the 1985 Through 1987 Crops of Cigar-Binder (Types 51 and 52), Dark Air-Cured (Types 35 and 36), and Fire-Cured (Typed 21-24) Tobacco.

(1) *Referenda period.* The national marketing quota referenda for the 1985-1986, 1986-1987 and 1987-1988, (marketing years for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco were held during the period February 19 through February 22, 1985, in accordance with 7 CFR Part 717.

(2) *Producers Voting.* The following is a summary by State, of the results of each referendum:

State	Yes	No	Total
Cigar-Binder (Types 51 and 52) Tobacco [1]			
Connecticut	6	57	63
Massachusetts	28	5	33
Totals	34	62	96
Dark Air-Cured (Types 35 and 36) Tobacco [2]			
Indiana	[illegible]	1	7
Kentucky	5,154	322	5,486
Tennessee	1,702	143	1,845
Totals	6,862	476	7,338
Fire-Cured (Types 21-24) Tobacco [3]			
Kentucky	2,865	158	3,023
Tennessee	3,393	272	3,665
Virginia	1,601	202	1,803
Totals	7,859	632	8,491

[1] Of those voting, 34 producers, or 35.42 percent, favored marketing quotas for cigar-binder (types 51 and 52) tobacco, and 62 producers, or 64.58 percent, opposed quotas.

[2] Of those voting, 6,862 producers, or 93.51 percent, favored marketing quotas for dark air-cured (types 35 and 36) tobacco, and 476 producers, or 6.49 percent, opposed quotas.

[3] Of those voting, 7,859 producers, or 92.56 percent, favored marketing quotas for fire-cured (types 21-24) tobacco, and 632 producers, or 7.44 percent, opposed quotas.

(3) *Marketing quotas will not be in effect for the 1985 crop of cigar-binder (types 51 and 52) tobacco.* Since more than one-third of the producers of cigar-binder (types 51 and 52) tobacco voting in the referendum opposed quotas, national marketing quotas shall not be in effect for cigar-binder (types 51 and 52) tobacco for the 1985-86 marketing year. In accordance with Section 312 of the 1938 Act, the Secretary of Agriculture will proclaim national marketing quotas for cigar-binder (types 51 and 52) tobacco for the next three marketing years beginning with the 1986-87 marketing year. Producers engaged in the production of such kind of tobacco quota for such kind of tobaccos in the 1985 crop-year will vote again in 1986 to determine if marketing will be in effect for the next three succeeding marketing years beginning with the 1986-87 marketing year.

(4) *Marketing quotas will be in effect for the 1985 through 1987 crops of dark air-cured (types 35 and 36) and fire-cured (types 21-24) tobacco.* Since less than one-third of the producers of dark air-cured (types 35 and 36) and fire-cured (types 21-24) tobacco voting in

referenda voted to disapprove marketing quotas and since the 1984–85 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect, national marketing quotas shall be in effect for dark air-cured (types 35 and 36) and fire cured (types 21–24) tobacco for the marketing years 1985–1986, 1986–1987, and 1987–1988.

(Secs. 312(c), 52 Stat. 46, as amended (7 U.S.C. 1312(c)))

Signed at Washington, D.C., on May 7, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-11419 Filed 5-9-85; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Food Stamp Program; Adjustment of Income Eligibility Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is adjusting the limits on gross and net income which a household may have and still be eligible for food stamps. The Food Stamp Act of 1977, as amended, requires the Department to make this adjustment each year. By adjusting the income eligibility limits, the Program takes into account changes in the cost of living.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3461.

SUPPLEMENTARY INFORMATION: .

Classification

Executive Order 12291. The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512-1. This action will affect the economy by less than $100 million a year. It will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Publication. State agencies must implement the new standards on July 1, 1985, and these offices need adequate advance notice of the new standards to carry out all steps necessary for them to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the gross and net monthly income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking procedures.

Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will primarily affect State and local welfare agencies and future food stamp applicants. The effect upon the welfare agencies is not significant.

Paperwork Reduction Act. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food Stamp Act requires that the gross (130 percent of poverty line) and net (equal to poverty line) income eligibility standards take into account the annual adjustments of the poverty guidelines issued by the Department of Health and Human Services. Section 3(i) of the Act provides that elderly individuals (and their spouses) unable to prepare meals because of certain disabilities may be considered separate households even if they are living and eating within another household. The Act limits this exception to those persons who meet both of the following requirements: (1) Their own income may not exceed the net income eligibility standards; and (2) The income of those with whom they reside does not exceed 165 percent of the poverty line. Since the gross, net and elderly/disabled income eligibility standards are based on the poverty line, each is adjusted, as set forth in the following tables:

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 pct. of poverty line]

Household size	[illegible] States[1]	Alaska	Hawaii
1	438	547	504
2	[illegible]	735	676
3	738	922	849
4	[illegible]	1,110	1,021
5	1,038	1,297	1,194
6	1,188	1,485	1,366
7	1,338	1,672	1,539
8	1,488	1,860	1,711
Each additional member	+150	+188	+173

[1] Includes District of Columbia, Guam and Virgin Islands

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 pct of poverty line]

Household size	[illegible] States[1]	Alaska	Hawaii
1	569	711	655
2	764	955	[illegible]
3	959	1,199	1,103
4	1,154	1,442	1 328
5	1,349	1.686	1,552
6	1,544	1,930	1.776
7	1,739	2,174	2,000
8	1,934	2,417	2,225
Each additional member	+195	+244	+225

[1] Includes District of Columbia, Guam and Virgin Islands

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED A SEPARATE HOUSEHOLD

[165 pct of poverty line]

Household size	[illegible] States[1]	Alaska	Hawaii
1	722	[illegible]	831
2	970	1,212	1,116
3	1,217	1,521	1,400
4	1,465	1,831	1,685
5	1,712	2,140	1.969
6	1,960	2,449	2,254
7	2,207	2,759	2,539
8	2,455	3,068	2,823
Each additional member	+248	+310	+285

[1] Includes District of Columbia, Guam and Virgin Islands.

(91 Stat. 958 (7 U.S.C. 2011–2029)

(Catalogue of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: May 3, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-11368 Filed 5-9-85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Regional Guide for the Pacific Northwest Region; The Entire States of Washington and Oregon and Minor Portions of Idaho and California; Intent To Prepare a Supplement to the Final Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Regional Guide for the Pacific Northwest Region. The Guide provides Standards and Guidelines to be used in the development of Land and Resource Management Plans for each of the 19 National Forests in the Pacific

Northwest Region. The Supplement will address Standards and Guidelines that relate to planning for management of habitat of the northern spotted owl.

In a review of my decision to implement the Regional Guide, appealed by the National Wildlife Federation, the Deputy Assistant Secretary of Agriculture for Natural Resources and Environment reversed my decision only as it related to the northern spotted owl. The Deputy Assistant Secretary remanded the Regional Guide and FEIS for preparation of a Supplement to the FEIS which addresses the relevance of biological information on the northern spotted owl that has become available since 1980. This notice of intent is being issued as the first step in preparing the Supplement.

During the preparation of the Supplement, meetings will be held with invited participation by the appellants, intervenors, agencies, and others having specific knowledge of the subject matter of this Supplement. If public meetings are used as one of the methods for public involvement, they will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of the scheduled dates. The purpose of all such meetings will be to gather biological information on the northern spotted owl, especially that which has become available since 1980 and to identify sources thereof.

Alternatives which may be considered include the following:

1. No further reduction in suitable spotted owl habitat on National Forest System lands in the Pacific Northwest Region.

2. The appellant's proposal in a January 3, 1985, letter, which in general calls for management of 1,000 Spotted Owl Management Areas (SOMA's) each preserving at least 2,200 acres of suitable old-growth habitat.

3. An alternative based upon the Oregon-Washington Interagency Wildlife Committee's recommendations of March 6, 1981, which in part call for the Forest Service to maintain a minimum of 290 nesting pairs of northern spotted owls in Oregon SOMA's each containing 1,000 acres of old-growth habitat.

4. An alternative that proposes less than the Oregon-Washington Interagency Wildlife Committee's March 6, 1981, recommendation.

5. No formal measures to protect the owl habitat.

The Bureau of Land Management, U.S. Department of the Interior (USDI); Fish and Wildlife Service, USDI; the National Park Service, USDI; the Soil Conservation Service, U.S. Department of Agriculture; the State of Washington Department of Game; the State of Oregon Department of Fish and Wildlife; and Oregon State University may be requested to participate as cooperating agencies. These agencies may participate through their representatives on the Oregon-Washington Interagency Wildlife Committee.

The responsible official for the Supplement to the Final Environmental Impact Statement is R. Max Peterson, Chief, Forest Service.

A Draft Supplement to the Final Environmental Impact Statement is expected to be available for agency and public review by January 1, 1986, and a Final Supplement should be available by July 1, 1986.

Comments or questions about this Notice and the proposed Supplement to the FEIS may be sent to Allan O. Lampi, Director of Planning, Pacific Northwest Region, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208.

Dated: May 6, 1985

R. Max Peterson,

Chief.

[FR Doc. 85-11332 Filed 5-9-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-401-402, C-433-402, C-307-403]

Extension of the Deadline for Final Countervailing Duty Determinations; Certain Carbon Steel Products From Austria, Sweden, and Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the United States Steel Corporation, the Department of Commerce is extending the deadline for its final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden, and Venezuela to correspond to the date of the final determinations in the antidumping investigations of the same products pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 377-3464 or 377-1785.

SUPPLEMENTARY INFORMATION:

Case Histories

On December 19, 1984, we received antidumping and countervailing duty petitions filed by the United States Steel Corporation against (1) carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Venezuela and (2) hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Austria. We also received a countervailing duty petition against carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Sweden.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of certain carbon steel products from Austria and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure or threaten material injury to a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Austria, Sweden, and Venezuela of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping and countervailing duty investigations, and on January 8, 1965 we initiated such investigations (50 FR 2318, 50 FR 2319, and 50 FR 1905). On March 14, 1985, we issued affirmative preliminary determinations in the countervailing duty investigations (50 FR 11220, 50 FR 11224, and 50 FR 11227). Preliminary determinations in the antidumping investigations will be made on or before May 28, 1985.

On March 22, 1985, the United States Steel Corporation filed a request for extension of the deadline date for the final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden, and Venezuela to correspond with the date of the final

determinations in the antidumping investigations of the same products.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation * * * which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the Petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden and Venezuela to August 12, 1985, the current deadline for the final determination in the antidumping investigations.

May 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11343 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Red Raspberries From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We determine that red raspberries from Canada as described in the "Scope of the Investigation" section of this notice are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. We further determine that "critical circumstances" do not exist.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: David Johnston, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-2239.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (the Act). One exporter, Abbotsford Growers Cooperative Association, was excluded from this determination because we found *de minimis* margins of sales at less than fair value.

We have found that the foreign market value of red raspberries exceeded the United States price on 55.0 percent of the sales compared. These margins ranged from 0.3 percent to 25.8 percent. The overall weighted-average margin on all sales compared is 2.41 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We further determined that critical circumstances do not exist.

Case History

On July 3, 1984, we received a petition from the Washington Red Raspberry Commission, the Red Raspberry Committee of the Oregon Caneberry Commission, the Red Raspberry Committee of the Northwest Food Processors Association, the Red Raspberry Member Group of the American Frozen Food Institute, Rader Farms (a grower/packer of red raspberries), Ron Roberts (a grower of red raspberries), and Shuksan Frozen Foods Inc. (an independent packer of red raspberries) on behalf of themselves and the domestic producers of red raspberries. The petition was amended to include the Washington Red Raspberry Growers Association, and the North Willamette Horticultural Society as co-petitioners.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury or threaten material injury to a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We also investigated whether there were sales in the home market at less than the cost of production. We notified the ITC of our action and initiated such an investigation on July 23, 1984 (49 FR 30342). On August 20, 1984, the ITC determined that there is a reasonable indication that imports of red raspberries are threatening material injury to a United States industry (49 FR 34424).

On September 11, 1984, questionnaires were sent to Abbotsford Growers Cooperative Association (AG), East Chilliwack Fruit Growers Cooperative (EC), Mukhtiar & Sons Packers Ltd. (M&S) and Jesse Processing Ltd. (JP), processors of red raspberries. On November 1, 1984, we received their responses. On October 25, 1984, cost of production questionnaires were sent to AG, EG, M&S, JP, and a representative sample of growers (Mukhtiar Growers Ltd., J.J. Martens, Chester Lien, Harnack S. Gill, H.P. Riemer, Darshan Mahil, Nachattar Bains, Hoege Driegen, Sandhu Fruit Farms, John Enns, Egan Foerderer, and Jesse Farms, Ltd.).

On November 20, 1984, we received an allegation from petitioners that critical circumstances exist. On December 10, 1984, we preliminarily determined that there was a reasonable basis to believe or suspect that red raspberries from Canada were being sold in the United States at less than fair value (49 FR 49129). On December 21, 1984 we received a letter from respondents requesting that the final determination be postponed. On January 14, 1985, through January 25, 1985, we conducted the verification of the responses. On February 5, 1985, we postponed the final determination to May 2, 1985 (50 FR 5654). At the request of the respondents, we held a hearing on March 22, 1985, to allow the parties an opportunity to address the issues arising in this investigation. We received written comments from the parties and have taken them into consideration in this determination.

Scope of Investigation

The merchandise covered by this investigation is fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. We treated fresh and frozen red raspberries packed in bulk containers suitable for further processing as the same class or kind of merchandise because we determined that the only difference between the two is the freezing cost, which is a post-processing and packing quantifiable cost.

Fair Value Comparisons

For purposes of determining whether there were sales at less than fair value, we compared the United States price to the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of certain sales of red raspberries to represent the United States price for sales by EC and JP when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the f.o.b. plant, packed price. We made no deductions.

As provided in section 772(c) of the Act, we used the exporter's sales price in certain sales of red raspberries to represent the United States price for sales by AG, EC, and M&S when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the duty paid, f.o.b. warehouse, packed price. We made deductions for freight, commissions to unrelated agents, U.S. customs duties, brokerage, discounts, quality control, cold storage, puree processing, and all costs and expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.

Foreign Market Value

In accordance with section 773 of the Act we based the foreign market value for EC and JP on constructed value and home market prices for AG and M&S.

The petitioners alleged that home market prices were below the cost of producing the raspberries. The DOC verified the cost of production for the four major processors. This verification included the cost of growing raspberries by the growers because they were related to the processors. Therefore, a sample of ten growers was selected scientifically to represent the cost of raspberries supplied by Canadian growers (material cost for the raspberry processors) to two of the processors, AG and EC. The two remaining processors, JP and M&S, purchase nearly all raspberries from their own farms. For them, we treated the cost of production of the farm as representative of the processor's cost of raspberries.

When determining the cost of production the DOC used the cost of growing raspberries, which included materials, labor, maintenance, equipment, interest on debt, property taxes, and insurance. The costs for cultivation include deferred plant cost, irrigation, fertilizers, and labor. Harvesting expenses included contract labor, hired labor, and machinery depreciation expenses.

Farm land is not depreciated and therefore a depreciation cost was not included. If the farm mortgaged, the interest expense was included in the cost. New plantings are normally a deferred expense in the first year and amortized over the next ten years, and were treated as such. Replacement plantings were expensed in the year of replacement.

Most growers did not include administrative costs in their responses. Although the grower may be compensated for management from the residual profits of the farm, a value for such expense was included as a cost. One processor, M&S, did not include a management charge since all payments were made as a bonus. We allocated a portion of the bonus as an administrative expense.

Income from the Farm Insurance Income Program (FIIP), and government wage rebate benefits were included as offsets to cost since these benefits are attributable directly to raspberry production. Premiums paid into FIIP were treated as an expense, and were included in the cost of production. We excluded other income which was not considered directly related to the raspberry production, such as income from the sale of fertilizer and chemicals and income from property rentals.

The two co-ops received interest-free loans from their members. Since these loans represent virtually all operating capital, we consider them as owners' equity and not as interest-bearing loans.

One processor, JP, considers juice stock raspberries, which are subject to this investigation, as a by-product of its primary individual quick frozen berry business. We do not agree, since the subject product represents a significant portion of revenue and production for the processor. We treated the products as co-products for the calculation of production cost and processing.

After determining such costs, we found that all of the home market sales were below the cost of production for EC and JP. These sales were made over an extended period and in substantial quantities, and were not made at prices which would permit the recovery of all costs within a reasonable period, in the normal course of trade. Therefore, in accordance with §§ 353.6 and 353.7 of the Commerce Regulations (19 CFR 353.6, 353.7), we used constructed value for the determination of foreign market value for EC and JP for comparisons to sales of red raspberries imported in fresh and frozen condition. We used the statutory minimums of 10 percent for selling, general and administrative expenses and 8 percent profit for JP since the actual amounts were below the statutory minimum. For EC, the actual selling, general, and administrative expenses were used since they were greater than 10 percent and the statutory minimum of 8 percent for profit was used since the actual profit was below the statutory minimum.

Sufficient home market sales for M&S and AG were found to be above the cost of production. Therefore, for M&S and AG we used home market sales for the determination of foreign market value. We calculated the foreign market value on the basis of the f.o.b. plant or delivered, packed or unpacked, prices as appropriate. We made deductions for freight, where appropriate. In accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit expenses. Where exporter's sales prices was used as United States price, we made deductions for indirect selling expenses incurred in the home market up to the amount of U.S. sales commissions and indirect selling expenses, in accordance with § 353.15 of the Commerce Regulations. We made adjustments for packing costs. We made no deductions for in-transit warehousing as this expense was paid by the customer. We found fresh raspberries similar to frozen raspberries and made a difference in merchandise adjustment to account for the cost of freezing.

Determination of Critical Circumstances

Petitioners alleged that imports of red raspberries from Canada present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of red raspberries from Canada in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping

duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on red raspberries from Canada.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than fair value. It is the Department's position that this test is met where margins calculated are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices or the constructed value. In this case, the margins calculated are not sufficiently large that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that the importer did not have knowledge of sales at less than fair value. Since there is no history of dumping in the United States or elsewhere and we have no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we did not consider whether there had been massive imports over a relatively short period.

Based on the foregoing, we determine that critical circumstances do not exist with respect to imports of this product.

Petitioner's Comments

Comment 1: Petitioners claim that substantially all home market sales from the 1983 harvest were at prices below the cost of production. Sales to third country export markets were negligible and also at prices below the cost of production. Home market sales were made over an extended period and in substantial quantities and were not at prices which would permit recovery of all costs within a reasonable period in the normal course of trade. Therefore, the DOC should use constructed value for the determination of foreign market value.

In computing constructed value the DOC should include Canadian packing costs and Canadian processing costs.

DOC Position: We found that substantial sales in the home market by EC and JP were below cost, and used constructed value for those processors. M&S and AG had sufficient home market sales above cost to allow use of those sales for their foreign market value. Where sales were found in substantial quantities below the cost of production we determined the constructed value. We included processing costs but excluded Canadian packing costs because these costs are not part of the cost of the merchandise sold to the United States. We added the cost of United States packing in accordance with section 773(e)(1)(c) of the Act.

Comment 2: The sample used by the DOC is flawed for the following reasons: it is not stratified between hand-pick and machine-pick farms; it assumes that variation of costs is very small among growers regardless of size and level of investment; the sample covers only small percentages of total acres and pounds harvested; and, it is incorrect to use only Jesse Farm's cost of production to determine JP's material cost because 40 percent of the raspberries supplied to JP are from sources other than Jesse Farms and are therefore not covered. The British Columbian Provincial Government administers the British Columbian Farm Income Insurance Program (FIIP), which establishes the cost of producing raspberries using a model farm concept and above-average efficiency. The DOC should use the FIIP model farm as the best information available for the cost of production.

DOC Postion: We disagree with the contention that the sample of farms investigated as a basis for the cost portion of this determination is flawed. The techniques used to establish the sample were in accordance with recognized and appropriate practice and more importantly, were recommended by experts familiar with the factors that affect raspberry production cost.

The DOC solicited advice from both U.S. and Canadian government experts on commercial raspberry horticulture, specifically attempting to identify factors which affect cost and price before we chose a sample. These experts said that units differed very slightly due to economies of scale, and that the technical limitation of raspberry-picking machines diminish the effect of machinery on total cost. Differences in scale in land and labor also were not significant. Further, the 10 farms selected for the sample were representative. The two other growers were selected because they were the preponderant suppliers for two of the processors under investigation and are representative of the other suppliers for these processors. An analysis of variations in the cost information actually received in the investigation substantiated the working assumptions on the nature of the population which helped establish the size of the sample.

Finally, the DOC feels that the acutal market information obtained through the sample is representative, and certainly is perferred as a basis for determination to a modelled cost of production as suggested by respondent.

Comment 3: If the DOC does not use either the cost of production as calculated by the FIIP or the Ministry's Raspberry Production Budget as the best information available, then it should use such studies to impute costs to reflect the industry norm where the cost reported by a grower is substantially below that shown in the studies.

DOC Position: The DOC used verified information of the respondents and considered all other information supplied by the respondents and petitioners when computing the appropriate cost of production. Only with regard to management expenses of the growers, did we use FIIP study information.

Comment 4: The DOC should use the grower's cost of production unless the price the grower receives for its raspberries is higher, in determining the packer's cost of production. If the transaction price is higher it should be used regardless of whether it includes profit and regardless of whether the grower is related to the processor. Profit is a necessary part of the material cost in either related or unrelated party transactions.

DOC Position: We disagree. In the preliminary determination our sample included some growers which were known to be related to the processors and others which were not known to be related to the processors. We used the cost of production of the sample of growers as the minimum material cost of the processors where the processors indicated a material cost. Where processors listed higher material costs, the higher costs were used. This was done because we assumed that the sample consisted of both related and unrelated growers. Verification showed that all growers in the sample were related to processors. In accordance with § 353.6(b) of the Commerce Regulations, in our final analysis we cannot use transaction price because all growers are related to the processors. Therefore we used the average cost of production of the growers as the material cost for the processors where the sample was used. For JP and M&S the actual cost of production of Jesse Farms Ltd. and Mukhtiar and Sons Growers Ltd. were used for the respective processor's material cost.

Comment 5: It is improper to compare sales of frozen packed raspberries with sales of fresh packed raspberries. The two products have different physical characteristics and different commercial values. Fresh packed raspberries are perishable, and frozen are not.

demonstrating the difference in physical characteristics. A seven percent U.S. duty is applicable to frozen packed raspberries while there is no duty on fresh packed raspberries imported during the growing season, demonstrating the difference in commercial value.

DOC Position: We disagree. We learned during verification that the only difference in the physical characteristics of fresh and frozen raspberries is the freezing. The cost of freezing is easily quantified and has been verified. Therefore, we have made a difference in merchandise adjustment by adjusting for the freezing costs. As for there being a difference in commercial value due to the different tariff provisions, we have seen price variation in both the U.S. and Canadian markets and cannot attribute an identificable difference in commercial value to the U.S. duty.

Comment 6: Raspberries packed in pails should not be compared with raspberries packed in drums. Raspberries packed in pails receive a higher price than raspberries packed in drums. Where a similar pail-to-pail, drum-to-drum merchandise comparison cannot be made, constructed value should be used.

DOC Position: The product is identical whether packed in drums or pails. We deducted home market packing from the foreign market value and then added the packing for the U.S. sale being compared.

Comment 7: Sales prices in both the U.S. and Canadian markets of respberries packed in pails varied 29 precent. It is not reasonable to compare the price of each U.S. sale with the weighted-average price of sales in the Canadian market over the entire period of investigation. Instead, monthly average prices should be compared to each U.S. sale and constructed value should be used when there are no sales in the Canadian market in a given month for comparison with U.S. sales.

OC Position: We disagree. Although there are price variations, these variations are likely due to differences in level of trade, quantity purchased and other price negotiation factors.

Comment 8: The DOC did not obtain surveys, aerial photos or other supporting documents to verify the amount of land devoted to raspberries.

DOC Position: During verification the DOC used whatever information was available to verify the respondent's data. Aerial photos and land surveys are useful only if they show the 1983 crop year. There were none available. The DOC used the yield and cost per acre data supplied by all respondents and petitioners to verify the reasonableness of the raspberry production and acreage allocations.

Comment 9: The DOC should not offset the cost of producing raspberries with the revenues received from the FIIP.

DOC Position: To determine if the FIIP payment should be considered in the growers' costs, the DOC reviewed the relationship of such payments to the production and sale of respberries. Receipt of the FIIP was directly related to this activity. Therefore, in accordance with the DOC's policy of accounting for "other revenues" which arise as a result of producing the product under investigation, the DOC accounted for such FIIP payments as a "financial gain" in calculating the cost of production. The FIIP premium was included as a cost.

Respondents' Comments

Comment 1: The Canadian dollar declined by almost 7 percent in value compared with the U.S. dollar over the investigative period. The DOC used only the third quarter exchange rate to convert Canadian dollar values into U.S. dollar values. Current DOC regulations require conversion of foreign currencies as of the date of exportation, if an exporter's sales price is the basis of comparison. However, recent amendments to the antidumping statute establish that foreign market value must be determined at the time imported merchandise is first sold by the importer to an unrelated purchaser in an exporter's sales price situation. Therefore, foreign market value should be determined at the time of sale and converted to U.S. dollars at the exchange rate on the date of sale.

DOC Position: We agree that, if possible, the exchange rate in effect at the time of the U.S. sale should be used to convert foreign currency to U.S. dollars. This appears to be more consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of the Commerce regulations which predates the 1984 Act.

Comment 2: The authority to average United States price and foreign market value is provided in the 1984 Act. It is appropriate to use the average U.S. and Canadian net sales prices since the investigation period is a full year (longer than the normal investigative periods of six months).

DOC Position: We used a weighted-average of home market sales by M&S and AG, and constructed value for EC and JP to determine their foreign market value. We did not average U.S. prices of the subject merchandise because there was not a sufficiently large number of sales or large number of adjustments to the prices to warrant the use of averaging.

Comment 3: East Chilliwack Cooperative made a number of small-volume sales in the Canadian market to institutional customers (other than large volume remanufacturers and brokers). These sales are distinguishable from sales to remanufacturers and brokers by the volume and price of the sale. The Commerce regulations provide that comparisons must be made on sales of comparable quantities. DOC should either exclude the small-volume sales from price comparison or make an adjustment for differences in quantity, level of trade or customer category.

DOC Position: We agree. The sales made to the institutional buyers were in fact sales to consumers, whereas, sales to remanufacturers and brokers are sales at the wholesale level of trade. We excluded the sales of instititional buyers because they were made at a different level of trade. By volume, these sales account for less than two percent of total volume sold.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the growers' and processors' operations, and examination of accounting records and selected documents containing relevant information.

Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of red raspberries packed in bulk containers suitable for further processing from Canada except those from Abbotsford Growers Cooperative Association, which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price.

This suspension of liquidation will remain in effect until further notice. Imports of red raspberries sold by AG are excluded from this suspension of liquidation, since the weighted-average margin is 0.19 percent, which is *de*

minimis. The weighted-average margins are as follows:

Manufactures	Weighted-average margins (percent)
Abbotsford Growers Cooperative Assoc.[1]	0.19
Jesse Processing Limited	22.76
Mukhtar & Sons Packers Ltd	1.21
East Chilliwack Fruit Growers Coop.	3.39
All Other Manufacturers/Producers/Exporters	2.41

[1] De minimis, excluded

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation.We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all cash deposits, securities or bonds posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess an antidumping duty on red raspberries from Canada entered, or withdrawn from warehouse, for consumption, on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85–11345 Filed 5–9–85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; American Health Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84–316. Applicant: American Health Foundation, Valhalla, NY 10595. Instrument: Cigarette Smoking Machine, Model RM 20/CS. Manufacturer: Heinrich Borgwaldt, West Germany. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument simultaneously measures tar and nicotine content of up to 20 cigarettes with the following parameters: (1) Puff time range of 0.02 to 99.9 seconds, (2) puff frequency range of 1 per 20 to 400 seconds, and (3) puff volume range of 20 to 50 milliliters. The National Institutes of Health advises in its memorandum dated February 26, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11348 Filed 5–9–85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Augustana Hospital and Health Care Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–284. Applicant: Augustana Hospital and Health Care Center, Chicago, IL 60614. Instrument: Kinetic Polarization Fluorometer with Spare Parts. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: See notice at 49 FR 39356.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a prototype which provides the sensitivity required to measure lymphocyte fluorescence polarization in a test method for determining the presence of cancer. The National Institutes of Health advises in its memorandum dated January 3, 1985 that (1) the capability of a foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11347 Filed 5–9–85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Harvard College

This decision is made pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–59R. Applicant: Harvard College, Cambridge, MA 02138. Instrument: STEM System for Scanning Transmission Electron Microscope. Original notice of this resubmitted application was published in the Federal Register of March 2, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an existing instrument perviously entered duty-free, which will allow it is to be used as a scanning

transmission electron microscope. The capability of the foreign article described above is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11346 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held Wednesday, May 22, 1985 at 10:30 a.m., Room 718, #6 World Trade Center, New York, New York. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials on problems and conditions in the textile and apparel industry.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: May 7, 1985.

Ronald I. Levin,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-11469, Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DR-M

Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 4, 1985 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

DATE: Time and place: May 29, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room B849, 14th Street and Constitution Ave., NW., Washington, D.C.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: May 7, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-11400 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Minority Business and Industry Associations/Minority Chambers of Commerce Application Announcement

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: On August 22, 1984 MBDA announced its Minority Business and Industry Associations/Minority Chambers of Commerce (MB&IA/C of C) Program in the **Federal Register** Volume 49, page 33298.

MBDA announces it is soliciting competitive applications (national, regional or local) for financial assistance awards to MB&IA/C of C. Funding will usually be for a twelve (12) month period.

All applications for funding will be competed according to the total project cost proposed by the applicant. The cost categories are:

$50,000-$100,000
$125,000-$175,000
$200,000-$250,000

The highest ranking applicant will be the first funded in each category. Additional projects will be awarded based on:

1. Availability of funds;
2. Minority business development needs; and
3. Geographic coverage needs.

Closing Date: The closing date for applications is June 10, 1985.

Funding Instrument: The funding instrument will be a grant, as defined by the Federal Grant and Cooperative Agreement Act of 1977.

Program Description: This program is designed to provide financial assistance to Minority Business and Industry Associations/Minority Chambers of Commerce which act as advocates for their members and the minority business community.

In addition, they function as part of Minority Business Development Agency's (MBDA) service network and supplement the Minority Business Development Center Program in responding to minority business needs. MB&IA/C of C play an important role in supporting MBDA goals, expending business opportunties for minority firms, and increasing the contribution of minority business enterprises to the national economy.

The following activities will be performed by the MB&IA/C of C:

1. Develop and Expand Membership,
2. Disseminate Information,
3. Educational Programs,
4. Advocate Minority Business Develpment,
5. Development Resources,
6. Identify Membership.

Eligibility Requirements: Competition is open to established business, industry, professional, and trade associations and chambers of commerce.

It is advisable that the applicants have an existing office in the geographic region for which they are applying.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Office of Resource Development (ORD), Minority Business Development Agency, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5096, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: Applications kits (including Evaluation Criteria), and applicable regulations can be obtained at the above address. Questions concerning the preceding information can be addressed to the Assistant Director, Office of Resource Development, at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Joseph Cooper,

Assistant Director, ORD, Washington, D.C.

Dated: April 29, 1985.

[FR Doc. 85-11327 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Bureau of Standards will host an informal public workshop on June 17, 1985, to provide interested parties an opportunity to participate in the development of technical requirements for accrediting laboratories that perform electromagnetic compatibility and telecommunications equipment testing.

DATE: The workshop will be held on Monday, June 17, 1985, from 12:30 p.m. to 4:30 p.m.

Place: The workshop will be held at the National Bureau of Standards, Administration Building, Lecture Room D, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Peter Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A531, Gaithersburg, MD 20899; (301) 921-3431. Please contact Mr. Unger not later than June 14 if you plan to attend the meeting.

SUPPLEMENTARY INFORMATION: On February 8, 1985, the National Bureau of Standards published in the **Federal Register** (50 FR 5411-12) a request to establish a laboratory accreditation program (LAP), for accrediting laboratories that perform electromagnetic compatibility and telecommunications equipment testing, under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP). Based upon public comments and an analysis of other pertinent information on this matter, the Director of the National Bureau of Standards has determined that there is a need to establish such a LAP. A memorandum recording this determination and the accompanying summary and analysis of comments, dated April 29, 1985, is available for inspection and copying at the NBS Freedom of Information Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland 20899.

The requestor, Walter A. Poggi, President of Retlif, Inc. Testing Laboratories, has initiated development of recommendations for the technical requirements for implementing and administering this LAP. Mr. Poggi has formed a task group which is developing draft documents that will be reviewed and discussed at the workshop. For further information on this development effort, contact Mr. Poggi at Retlif, Inc., 795 Marconi Avenue, Ronkonkoma, NY 11779; (516) 737-1500.

The following procedures have been established for the workshop:

1. *Purpose.* The purpose of the workshop is to provide all interested persons with an opportunity to participate in the development of technical requirements for accreditation of laboratories that perform electromagnetic compatibility and telecommunications equipment testing.

2. *Conduct of Workshop.* The workshop will be an informal nonadversarial meeting. The presiding officer from NBS has the right to allocate the time available for discussion of each issue to be addressed, and to exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to maintain order. Mr. Poggi and/or participants in his task group will be allocated time to present the task group's recommendations.

3. *General Provisions.* This workshop will be open to the public. Summary minutes of the workshop will be prepared. A copy of those minutes will be available for inspection and copying in the NBS Freedom of Information Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland 20899.

Dated: May 6, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 85-11333 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-13-M

Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing Research Grants Program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Automated Manufacturing Research Facility (AMRF), Center for Manufacturing Engineering, National Bureau of Standards, which conducts a program of basic and applied research in computer automated manufacturing, also administers a program of research grants in highly selected areas of research related to the mission of the AMRF. Funding available for grants is variable, depending upon levels of external support for AMRF research. During fiscal year 1984, AMRF awarded grants totaling approximately $1 million. The grant program is limited to unsolicited proposals and is highly competitive.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Nanzetta, Project Manager, AMRF, B-112 Metrology Building, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3119.

SUPPLEMENTARY INFORMATION: The NBS Center for Manufacturing Engineering conducts a program of basic and applied research in computer automated manufacturing. During fiscal year 1984, approximately $1 million was made available for grants and cooperative research under this program. Grants made under this research program are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the AMRF. Areas of active research include:

(a) Realtime Control. Realtime control of robots, clusters of robots and machine tools (workstations), material handling systems, supporting devices, and aggregations of workstations.

(b) Automated Systems Integration. Architectural issues for large computer automated systems, initialization, restart, orderly shutdown, error detection and recovery.

(c) Sensory Systems and Adaptive Control. Sensors and applications of sensors to closed-loop control of major systems.

(d) Factory Floor Communications. Development and testing of factory floor communications networks.

(e) Data Management. Development and testing of architectures for distributed data management on the factory floor.

(f) Robot Metrology. Characterization and measurement of errors in robot motion and development of techniques to accommodate those errors.

(g) Robot Vision and Sensory World Modeling. Study of models for processing and inference from vision and other complex source sensory systems.

(h) Machine Tool Metrology. Application of software and hardware techniques for improvement of machine tool accuracy and evaluation of machine tool performance.

(i) Automated Process Planning. Development of systematic approach to computer aided process planning, leading to fully generative systems.

(j) Organization and Processing of Manufacturing Geometry Data. CAD-directed inspection, common domain data formats, integration of vision data, automated feature selection, automated generation of machining sequences from geometry.

(k) Application of expert systems and artificial intelligence to automated manufacturing systems.

(l) Software Engineering Tools applied to real-time control systems. Development of tools for specification, design, testing, and verification of software for automated manufacturing.

(m) Quality control issues in an automated factory. Development of tools and procedures for measuring quality control during manufacturing operations.

(n) Scheduling in an automated factory. Development of algorithms and simulation/emulation techniques for planning factory scheduling.

Proposal Review Process

Unsolicited proposals are assigned to the relevant group leader(s) and Division Chiefs for technical review and recommendation of funding. External peer review is employed as appropriate. The technical value of the proposal, the direct relationship of the proposed work to the needs of the group's research program, the applicability of the proposed research to high priority issues of the AMRF, and the availability of funds are taken into consideration in the group leader's and Division Chief's decisions. If the proposal is funded, a member of the Center's professional staff who performs related research will be appointed "Scientific Officer" to monitor the progress and facilitate the application of the work.

Since supported research must be directly related to the AMRF, it is generally expected that senior workers on the project will find it appropriate to conduct a major portion of their effort on-site at the National Bureau of Standards in Gaithersburg, Maryland.

Grant proposals should be addressed to Grants Office, Office of Acquisition and Assistance, Room B-141 Building 301, National Bureau of Standards, Gaithersburg, MD 20899, with an information copy to Dr. Nanzetta.

In order to avoid unnecessary effort, it is suggested that before preparing a proposal, you write or call Dr. Nanzetta at the address shown above, to ascertain whether there is possible interest in your idea, and whom to contact for further discussion if such interest does exist.

Dated: May 6, 1885.

Ernest Ambler,

Director.

[FR Doc. 85-11331 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 6, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 10, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On March 15, 1985 a notice was published in the **Federal Register** (50 FR 10527), which established an import restraint limit for polyster/cotton lightweight fabrics in Category 613pt (currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059), produced or manufactured in Indonesia and exported during the ninety-day period which began on January 31, 1985 and extends through May 1, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the period which began on January 31, 1985 and extends through the end of the agreement year, June 30, 1985, to 4,947,216 square yards.

The notice also stated that merchandise which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the prorated limit.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the designated limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 6, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 10, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 613pt.,[1] produced or manufactured in Indonesia and exported during the period which began on January 31, 1985 and extends through June 30, 1985, excess of 4,947,216 square yards.[2]

Textile products in Category 613pt.[1] which have been exported to the United States during the previously established ninety-day period which began on January 31, 1985 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for

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[1] In Category 613, only TSUSA numbers 38.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059).

[2] The limit has not been adjusted to reflect any imports exported after January 30, 1985.

consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–11349 Filed 5–9–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 317pt. (Twill)

May 7, 1985.

On April 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton twill fabric in Category 317pt., (only TSUSA numbers 310.—through 331.—with statistical suffixes 51, 52, 85, 89, 91 and 95), produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textiles in Category 317pt., produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on April 30, 1985 may be restrained at 6,441,771 square yards.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 317pt. is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Turkey—MARKET STATEMENT

Category 317 pt.—Cotton Twills

April 1985.

Summary and Conclusions

U.S. imports of Category 317 Pt.—cotton twill fabric from Turkey during the year-ending February 1985 were 7.8 million square yards, more than 19 times the 400,000 square years imported a year earlier; 2.9 million square yards of this entered during January–February 1985. Imports of cotton twills from Turkey totalled 5.3 million square yards in 1984. Prior to 1984 Turkey did not export cotton twills to the U.S.; however, in 1984 Turkey was the eighth largest U.S. supplier. It accounted for 19.4 percent of cotton twill imports during the January–February 1985 period.

The U.S. market for cotton twill fabric is disrupted by imports and the sharp increase from turkey is contributing to the disruption.

U.S. Production and U.S. Imports

U.S. production of cotton twill fabric declined by 7 percent from 138.2 million square yards in 1983 to 128.0 million square yards in 1984. Imports of cotton twill fabric, on the other hand, increased 49 percent from 78.5 million square yards in 1983 to 117.3 million square yards in 1984.

Import Penetration

The ratio of imports to U.S. production has increased steadily over the years. From a ratio of 37.5 percent in 1982, it increased to 56.8 percent in 1983 and to 91.6 percent in 1984.

Market Share

The U.S. producers share of the market for domestically produced and imported cotton twill fabric declined from 72.7 percent to 63.8 percent in 1983 and to 52.2 percent in 1984.

Import Value vs Domestic Producer's Price

Approximately 61 percent of Category 317 Pt.—cotton twill fabric—from Turkey enter under TSUSA No. 320.0058, wholly cotton with yarn count 1–9, and the remaining 39 percent under TSUSA No. 320.1058 wholly cotton with yarn-count 10–19. These imports enter at duty-paid values below the U.S. producer price for comparable cotton twill fabric.

[FR Doc. 85–11401 Filed 5–9–85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Commitee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement List of the commodities listed below was published in the **Federal Register** on December 7, 1984 (49 FR 47890). Two comments were received in response to the notice. One commentor indicated that the addition would cause the loss of jobs in his firm which is located in an area of substantial unemployment. The other commenter indicated that his firm was a small business and that the addition erodes the firm's ability to compete for Government business.

The Committee considered the comments received as well as other pertinent information and determined that the addition will not result in serious adverse impact on the current or most recent contractor for the item involved.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1985:

Class 7530

Index Sheet Set, Looseleaf Binder: 7530-00-160-8474, 7530-00-160-8475, 7530-00-160-8476, 7530-00-959-4441

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11397 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: June 12, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 1670

Adapter Web, Lowering Line: 1670-01-065-8169

Class 7510

Eraser, Blackboard: 7510-00-244-9145

Class 8340

Line, Tent, Manila: 8340-00-252-2280, 8340-00-252-2282, 8340-00-252-2297, 8340-00-252-2293

Class 8915

Potatoes, White, Fresh: 8915-00-456-6111 (whole), 8915-00-228-1945 (diced)
(Requirements for North Carolina and South Carolina only)

SIC 7349

Janitorial/Elevator Operator, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11396 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities, military resale commodities and services to be provided by Workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 14, October 26, November 9, December 21, 1984 and February 1, February 15 and March 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 36133, 49 FR 43087, 49 FR 44788, 49 FR 44789, 49 FR 49694, 50 FR 4726, 50 FR 6376 and 50 FR 10529) of proposed additions to and deletions from Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1985:

Class 8465

Bag, Personal Effects: 8465-00-174-0808

Military Resale Item Nos. and Names

No. 519, Fabric Softener Sheets, Reusable (4" x 8¾")
No. 921, Mop, Anglematic
No. 931, Refill, for #921

SIC 0782

Grounds Maintenance, Bergstrom Air Force Base, Texas (Portion not on Procurement List)

SIC 7349

Janitorial/Custodial, Federal Building, 536 South Clark Street, Chicago, Illinois
Janitorial/Custodial, Umpqua National Forest-Radio Shop, 2691 NE. Diamond Lake Boulevard, Roseburg, Oregon
Janitorial/Custodial, William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania
Janitorial/Custodial, Naval Air Station, Whidbey Island, Building 102, Oak Harbor, Washington

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1985:

Class 8105

Bag, Plastic: 8105-00-NSH-0001, 8105-00-NSH-0002, 8105-00-NSH-0003, 8105-00-NSH-0004
(Requirements for Naval Weapons Support Center, Crane, Indiana only)

Sic 7349

Janitorial Service, Federal Office Building Cass & Stephens Streets, Roseburg, Oregon

SIC 7374

Keypunch and Verification, General Services Administration, Region 2, Automated Data Management Services Division "overflow" requirements

SIC 7399

Repair of Air Cargo Pallet Top and Side Nets, McChord Air Force Base, Washington

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11395 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 4-5 June 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: Los Alamos National Laboratory, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

May 7, 1985.

[FR Doc. 85-11352 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday and Thursday, May 29 and 30, 1985.

Times and Places: 0830-1700 hours (Closed) at Depot Systems Command, Chambersburg, Pennsylvania on 29 May; 0830-1700 hours (Closed) at HQS, Army Materiel Command, Alexandria, Virginia on 30 May.

Agenda: The Mobilization Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet to receive background briefings concerning current and future logistics and logistics initiatives in preparation for the 2-week working session in August. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11355 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, June 4 and 5, 1985.

Times of meeting: 0830-1700 hours on both days (Closed).

Place: Boeing Aerospace Company, Seattle, Washington.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet for classified briefings and discussions on airborne optical adjunct and associated topics. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, Subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11356 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Wednesday, June 5, 1985.

Time: 0830-1700 hours (Open).

Place: The Pentagon, Washington, D.C.

Agenda: The Chairperson of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet with the Chairs of the three subpanels (Training Effectiveness, Training Technology, and Doctrine & Training Integration) for an internal study organization and planning session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the comittee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc.85-11357 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, June 6 and 7, 1985.

Times of Meeting: 0830-1700 hours on both days (Closed).

Place: Johns Hopkins University Applied Physics Laboratory, Laurel, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Atmospheric Sciences Laboratory (ASL) Effectiveness Review will meet to prepare a draft report of the panel recommendations. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5 U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Office, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Office, Army Science Board.

[FR Doc. 85-11358 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, June 6 and 7, 1985.

Times of Meeting: 0830-1700 hours (Closed) on both days.

Places: Both National Security Agency and Systems Exploitation Detachment at Fort Meade, Maryland on 6 June; both Central Intelligence Agency, Langley, Virginia and Armed Forces Medical Intelligence Center, Fort Detrick, Maryland on 7 June.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will visit the above-designated agencies for classified briefings and discussions on technical collection, CW/BWI analysis and production and methods of

dissemination. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-11359 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Friday June 7, 1985.

Times of Meeting: 0830-1700 hours (Closed).

Place: Hughes Aircraft Company, Fullerton, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Signals Warfare Laboratory (SWL) Effectiveness Review will meet to prepare as draft report of the panel recommendations. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11360 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Navy Artificial Intelligence R&D will meet on May 30 and 31, 1985, at Carnegie-Mellon University, Pittsburgh, Pennsylvania. The first session of the meeting will commence at 8:00 A.M. and terminate at 5:30 P.M. on May 30. The second and final session will commence at 8:30 A.M. and terminate at 5:30 P.M. on May 31. All sessions of the meeting will be open to the public.

The purpose of the meeting is to receive technical briefings from industry and university representatives in order to develop a working definition of artificial intelligence suited to Navy needs; determine the current state of R&D and evaluate its relevance to Navy needs; establish criteria for evaluating potential applications of artificial intelligence in the Navy and identify the most beneficial applications for the Navy in combat and non-combat roles; identify commercial applications that may be readily adapted to Navy needs; and propose mechanisms for bringing existing artificial intelligence technology to the Navy. The agenda will include presentations and discussions by industry and university representatives on expert systems, natural language, robotics, training, and basic research in artificial intelligence.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U. S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-11385 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Application Notice for Noncompeting Continuation Awards Under the Bilingual Vocational Training Program and the Bilingual Vocational Instructor Training Program for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for noncompeting continuation award under the Bilingual Vocational training Program and the Bilingual Vocational Instructor Training Program.

Authority for this program is contained in section 441 of Part E. Title IV of the Carl D. Perkins Vocational Education Act. (20 U.S.C. 2441)

Current recipients of grants under these programs that have one or more year(s) remaining of an approved project period may apply for continuation of their present projects.

The purpose of the awards of the Bilingual Vocational Training Program is to provide financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare them for jobs in recognized occupations and new and emerging occupations.

The purpose of the awards of the Bilingual Vocational Instructor Training Program is to provide training programs for persons seeking to improve their skills and qualifications as instructor in bilingual vocational training programs for persons of limited English speaking ability.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before June 10, 1985.

If a application is late, the Department of Education may lack sufficiant time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84:077A, for Bilingual Vocational Training; and 84.099B, for Bilingual Vocational Instructor Training, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Educations.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Befor relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays

Intergovernmental Review

On June 24, 1983, the Secretary published final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) in the **Federal register**. This implemented Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect september 30, 1983

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama	New Jersey
Arizona	New Mexico
Arkansas	New York
California	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Hawaii	Pennsylvania
Indiana	Rhode Island
Kansas	South Carolina
Louisiana	South Dakota
Maine	Tennessee
Massachusetts	Utah
Michigan	Vermont
Mississippi	Virginia
Missouri	Washington
Montana	Wyoming
Nebraska	Virgin Islands
Nevada	Northern Mariana Islands
New Hampshire	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 10, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.050), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please Note That the Above Address is not the Same Address as the one to Which the Applicant Submits Their Completed Application. *Do Not Send Applications To the Above Address.*

Application Forms

Application forms and program information packages will be available on May 10, 1985. These packages may be obtained by writing to the Office of Vocational and Adult Education, U.S. Department of Education, (Room 5028, Regional Office Building 3) 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed five pages.

The Secretary further urges that applicants not submit information that is not requested

(The application is approved under OMB control number 1830–0013)

Available Funds

It is expected that approximately $1,350,000 will be available for the Bilingual Vocational Training Program for 10 noncompeting continuations, and approximately $700,000 will be available for 4 noncompeting continuations under the Bilingual Vocational Instructor Training Program in FY 1985.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable Regulations

The following regulations apply to this program:

(1) The regulations governing the Bilingual Vocational Training and Bilingual Vocational Instructor Training Programs, as proposed to be codified in 34 CFR Parts 407 and 408. The proposed regulations were published on January 25, 1985 (50 FR 3650–3653). Applicants should prepare their applications based on these proposed regulations. Applicants will be given an opportunity to amend their applications if the final regulations are changed significantly form the proposed regulations.

(2) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 78, and 79.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ron Castaldi, Office of Vocational and Adult Education, U.S. Department of Education, (Room 5028, Regional Office Building 3) 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone: (202) 245–2614.

(20 U.S.C. 347(a))

(Catalog of Federal Domestic Assistance No. 84.077A, Bilingual Vocational Training and 84.099B, Bilingual Vocational Instructor Training)

Dated: May 3, 1985.

Robert M. Worthington,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85–11362 Filed 5–9–85; 8:45 a.m.]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Near Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Delay of Termination of Interim Intertie Access Policy (Interim IAP). *BPA File No.:* IAP-1.

SUMMARY: BPA is delaying termination of the Interim IAP. This delay is necessary to allow BPA to evaluate a recent Ninth Circuit Court of Appeals decision on Intertie access and to determine how best to incorporate the decision into the Near Term IAP and Record of Decision.

Responsible Official: James L. Jones, Deputy Power Manager.

DATES: The Interim IAP has been in effect since September 7, 1984. The Interim IAP will terminate not later than May 31, 1985, at which time a Near Term IAP will be adopted.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn W. Baker, Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Reginald Kaiser, Puget Sound Area Manager, 415 First Avenué North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION: On April 26, 1985, BPA notified interested parties on BPA's Intertie Access Policy mailing list that BPA is extending the effective period of the Interim IAP for a period not longer than 30 days, from May 1, 1985, to May 31, 1985. The Interim IAP has been in effect since September 7, 1984, and was previously scheduled to be replaced on May 1, 1985, by a Near Term IAP.

This extension is necessary in order to allow BPA to evaluate the recent Ninth Circuit Court of Appeals Decision in the *Department of Water and Power of the City of Los Angeles* v. *BPA* (No. 84-7618, April 24, 1985) and to determine how best to incorporate the decision into the Near Term IAP and Record of Decision. The extension will also allow for completion of the internal and departmental review process for BPA's environmental findings on this Policy. Copies of the final Near Term IAP along with notice of the availability of the Record of Decision will be mailed to interested parties.

Issued in Portland, Oregon on May 2, 1985.

James J. Jura,

Executive Assistant Administrator.

[FR Doc. 85-11533 Filed 5-9-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 84-19-NG; DOE/ERA Opinion and Order No. 80]

Tenngasco Exchange Corp. and LHC Pipeline Co.; Final Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on May 6, 1985, the ERA Administrator issued an opinion and order granting Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) a blanket authorization to import natural gas from Canada as a supplemental supply for sale in their domestic short-term, spot sales program. The order authorizes TGX and LHC to import up to 110 Bcf of natural gas for a term of two years beginning on the date of first delivery. The ERA is to be notified of the date of first delivery within two weeks after the occurance. The order also requires TGX and LHC to file with the ERA quarterly reports of the details of each sale of the gas imported under this authorization.

The text of the opinion and order follows:

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr. (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C., 20585, (202) 252-[redacted]

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on May 6, 1985.

James W. Workman,

Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

1. Background

On December 7, 1984, Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) filed an application with the Economic Regulatory Adminstration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, requesting a blanket authorization to import Canadian natural gas as supplemental supply for sale in their domestic short-term, spot sales program. The applicants requested authority to import a volume of natural gas not to exceed 110 Bcf for the first two years and a volume not to exceed 120 Bcf for the succeeding two years for a four-year term beginning on the date of first delivery of the import. The applicants propose to buy natural gas from reliable Canadian sources, resell the gas to various customers, or act as an agent on behalf of sellers or purchasers, and if required, assist in the arrangements for transporting the gas to the end users.

ON December 20, 1984, the ERA issued a notice of application inviting protests, interventions and written comments by February 6, 1985.[1] Fourteen motions to intervene representing sixteen parties were received.[2] One intervenor, Columbia

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[1] 50 FR 879, January 7, 1985.

[2] Intervenors are: Northern Natural gas Company; Joint Petition of Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Lake Superior District Power Company; The Brooklyn Union Gas Company; Pacific Gas Transmission Company; Cabot Energy Supply Corporation; United Distribution Companies;

Continued

Gas Transmission Company (Columbia) protested the application and asked that it be denied, or in the alternative, any order granting the requested import authority be conditioned to require that applicants provide 30 days notice of any proposed sales and to prohibit, for the most part, sales of such gas to an interstate pipeline's core market.

New York State Electric and Gas Corporation (NYSE&G) expressed concern that the applicants would be potential competitors in its service area under circumstances where the applicants could offer gas in an unregulated manner, thereby disrupting the present market such that the NYSE&G could lose must of its interruptible sales market.

Niagara Mohawk Power Corporation (Niagara Mohawk) believed that the application was too vague to evaluate and pointed out that the ERA should consider in its evaluation the current excess deliverability of domestic gas which is causing disorder in affected markets.

It was the position of the Pacific Gas Transmission Company (PGT) that the ERA must reserve for itself the ability to determine whether each transaction comported with the DOE's import policy guidelines. PGT also contended that the ERA should impose safeguards adequate to avoid the adverse impacts such a proposal might have on consumers in general and on the maintenance of competitive terms in long-term, firm import arangements. As one such safeguard, PGT suggested the imposition of a provisions stating that the proposed sales would not displace other Canadian gas sales.

Transcontinental Gas Pipeline Corporation (Transco) expressed concern about the capacity of point of entry facilities and requested that any order issued to the applicants be conditioned to assign a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facility.

On March 20, 1985, after after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicants' blanket authorization to a term of two years and to a maximum volume of 100 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.[3] The order required comments to be filed and served on all parties by April 3, 1985, and responses to be filed and served by April 10, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only Niagara Mohawk, PGT and Transco submitted additional comments. No new issues were raised by the comments to the procedural order, nor did the parties making comments change their position from their previous comments on the application. Columbia did not file a restatement of its protest of the application. Since Columbia and all other parties were notified by telephone on March 20 or 21, 1985, that each had been mailed a copy of the March 20, 1985, order, it is presumed that Columbia purposefully decided not to pursue its protest, and no longer is opposed to the application.[4]

II. Decision

The application filed by TGX and LHC has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [5] The Administrator is guided by the DOE's natural gas import policy guidelines.[6] Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that the import made under the blanket authorization will be too competitive rather than not competitive in the markets served.

Niagara Mohawk, both in its original intervention and in its comments in response to the procedural order, expressed concern that the ERA should evalute whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further potential market disruptions caused by short-term, interruptible sales skimming off the large industrial customers from present suppliers. In addition, Niagara Mohawk stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

TGX and LHC, in their response, perceived Niagara Mohawk's concern over the lack of justification for the new import in the face of excess domestic deliverability as an attempt to protect and insulate its market from potential competition. With respect to "skimming" of industrial customers to the detriment of the long-term suppliers and its other customers, the applicants asserted this is bare allegation, unsubstantiated by any reason except that of attemping to seek protection from possible competition. TGX and LHC pointed out that Niagara Mohawk's criticism of the application's specificity is without merit and moot since the ERA has already granted authorizations to import gas based on applications containing information and terms not materially different nor more detailed than the applicant's.

The ERA agrees with the position taken by the applicants on Niagara Mohawk's comments. The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.[7] The addition of spot sales

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Algonguin Gas Transmission Company: New York State Electric & Gas Corporation: Niagara Mohawk Power Corporation: Public Service Electric and Gas Corporation: Transcontinental Gas Pipeline Corporation: Columbia Gas Transmission Corporation: National Fuel Gas Supply Corporation: and Consolidated Gas Transmission Corporation.

[3] *See Cabot Energy Supply Corporation.* DOE/ERA Opinion and Order No. 72, issued February 28, 1985 (1 ERA ¶ 70.124) and *Northwest Alaskan Pipeline Company.* DOE/ERA Opinion and Order No. 73, Issued February 28, 1985 (1 ERA ¶ 70.585).

[4] We note that a subsidiary of Columbia Gas System, Inc., which in turn is an affiliate of Columbia, is a limited partner in the U.S. Natural Gas Clearinghouse, Inc., which is requesting blanket authorization to import up to 1 Bcf per day of Canadian natural gas for four years for short-term, spot market sales. *See The U.S. Natural Gas Clearinghouse, Ltd.*, Application to Import Natural Gas from Canada: ERA Docket No. 85–06–NG. (50 FR 10533, March 15, 1985).

[5] 15 U.S.C. 717b.

[6] 49 FR 6684, February 22, 1984.

[7] In *Increasing Competition in the Natural Gas Market: Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a

Continued

to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to renegotiate their arrangements to make them more competitive and market-responsive.

PGT, in its comments in response to the procedural order, reiterated the concerns stated in its initial intervention. Specifically, PGT requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. PGT restated its request that the ERA provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just a particular short-term buyer. Finally, PGT reiterated its concern that the proposed quarterly report required to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

In response to PGT's concern that the ERA reserve its ability to determine that each individual import transaction complies with the policy guidelines, applicants stated that, given the characteristics of the short-term, spot market sale, the proposed required quarterly reporting of sales data is precisely such a safeguard. TGX and LHC replied to PGT's reiterated concern that long-term imports of Canadian gas not be displaced by short-term sales by restating their belief that additional imports from additional sources foster price competition which is consistent with the policy goal of allowing market forces to keep the price of natural gas at market-clearing levels.

The ERA made a decision on PGT's concerns when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation and Northwest Alaskan Pipeline Company.[8] In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. PGT has not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

Transco, in both its original intervention and in its comments in response to the procedureal order, stated its concern that transportation of its firm Canadian import volumes could still be interrupted by even the reduced volumes proposed by the ERA in the event that insufficient pipeline capacity exists at its point of entry to transport all authorized gas imports. Accordingly, Transco repeated its request that, in any order granting the requested import, the ERA assign a higher priority for firm import volumes than for interruptible volumes through any existing point of entry facility.

In reply to Transco's restated request, the applicants repeated their previous argument that such decisions are best left to the contracting parties and asserted that there is precedent for the ERA to deny Transco's request for a conditioned order.[9]

The ERA is not persuaded by Transco's arguments that the ERA should assign priority rights in its import orders for transporting Canadian gas through existing point of entry pipeline facilities. Such priority rights are best negotiated in the ordinary course of arranging for product transportation by the contracting parties.

In sum, the ERA finds that the parties opposing the import have failed to raise issues or present evidence which would support a finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. Further, it is noted that the applicants, in their response, indicated their willingness to accept the restrictions on the import arrangement of a two-year term and volumes not to exceed 110 Bcf, as proposed by the ERA in its March 20, 1985, procedureal order.

This modified version of the applicants' request for authorization represents an opportunity to test the use of imported natural gas as a supplemental supply for the domestic spot market, where until recently it has been prinicipally restricted to supplementing supplies for meeting long-term, domestic market requirements. Under this blanket import authority the applicants will be able to import, within fixed limits, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic sport market. Additional regulatory approval of each import sale will not be necessary. The ERA, through review of the contract sales information submitted by TGX and LHC in required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served. Other than the quarterly reporting requirement, no additional conditions to this order are necessary.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authroization to import up to 110 Bcf of Canadian gas oer a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.[10]

Order

For reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) are authorized to import up to 110 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. TGX and LHC shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this order, TGX and LHC shall file with the ERA in the month following each calender quarter, quarterly reports showing, by month, whether sales have been made, and if so, the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

Issued in Washington, DC., on May 6, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-11453 Filed 5-9-85; 8:45 am]

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tightly regulated environment towards fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

[8] *See supra* note 3.

[9] *See Tennessee Gas Pipleine Company,* DOE/ERA Opinion and Order No. 59, issued September 4, 1984 (1 ERA ¶ 70,569).

[10] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

[Docket Nos. CP78-41-003, et al.]

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission

[Docket No. CP78-41-003]

May 3, 1985.

Take notice on April 12, 1985, that Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, (referred to collectively as Petitioners) filed in Docket No. CP78-41-003 a petition to amend the Commission's order issued April 13, 1978, in Docket No. CP78-41 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The April 13, 1978, order authorized Petitioners, *inter alia*, to transport and exchange natural gas pursuant to a transportation and exchange agreement dated October 18, 1977, which is filed in Columbia's FERC Tariff, Original Volume No. 2, Rate Schedule X-70, and Equitable's FERC Gas Tariff, Original Volumne No. 2, Rate Schedule X-13. Petitioners state that this agreement provides that delivery of exchange volumes of natural gas may be made at such other points not enumerated therein as are mutually agreed upon.

It is stated that Petitioners have agreed upon and request authorization for a new point of delivery from Columbia to Equitable at an existing point of interconnection between Columbia and Texas Eastern Transmission Corporation (Texas Eastern) near Waynesburg, Greene County, Pennsylvania. It is further stated that deliveries at this location would not exceed 30,000 Mcf of gas per day on a firm basis and in addition up to 20,000 Mcf per day on a best-efforts basis, provided that the combined delivery at this location plus deliveries at the existing Waynesburg delivery point do not exceed 50,000 Mcf per day for the five-month period, November through March, and 30,000 Mcf per day for the seven-month period, April through October. It is explained that all deliveries made at the new delivery point would be made by Columbia to Texas Eastern for Equitable's account.

Comment date: May 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP78-30-002]

May 3, 1985.

Take notice on April 12, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 filed in Docket No. CP84-30-002 a petition to amend the order issued December 20, 1984, in Docket No. CP84-30-000 pursuant to section 7(c) of the Natural Gas Act, so as to delete authorization for a delivery point, add authorization for three additional delivery points and to authorize an increase in its transportation volumes, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee is currently authorized to transport, on an interruptible basis, certain quantities of Conoco, Inc.'s (Conoco), natural gas reserves produced from West Cameron Blocks 66A, 66B, 66C, and 34D production platforms, offshore Louisiana, and at the Gibbstown separation facilities on Tennessee's system in Cameron Parish, Louisiana. Tennessee is authorized to transport this natural gas to Louisiana Gas System, Inc. (LGS), for the account of Conoco, and deliver the gas at two interconnections located between Tennessee's and LGS's systems in Calcasieu and Allen Parishes, Louisiana, for further transportation by LGS on Tennessee's behalf.

Tennessee requests authorization to provide Conoco with a revised transportation service in accordance with an amendment dated September 11, 1984, to the gas transportation agreement dated August 26, 1983, between Tennessee and Conoco.

Pursuant to the amendment, Tennessee requests authorization to add three new points of delivery whereby Tennessee would transport and deliver thermally equivalent quantities of natural gas received from the production reserves in the West Cameron Block 66 Area, offshore Louisiana, for the account of Conoco to Florida Gas Transmission Company near Vinton in Calcasieu Parish, Louisiana, and to Transcontinental Gas Pipe Line Corporation near Kinder in Allen Parish, Louisiana, and near Crowley in Acadia Parish, Louisiana. Additionally, pursuant to the September 11, 1984, amendment, Tennessee requests authorization to revise the transportation quantity for the years 1985 and 1986 from 15,000 Mcf of gas per day to 25,000 Mcf per day and delete the Lake Charles chemical plant as an LGS delivery point.

Comment date: May 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-461-000]

May 3, 1985.

Take notice that on April 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-461-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the Petrolite Corporation (Petrolite) under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central proposes to transport through June 30, 1985, up to 1.5 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Petrolite. Northwest Central states that Petrolite has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady, Logan, Creek, Woods and Lincoln Counties, Oklahoma, and in Johnson, Cowley, Montgomery and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above-mentioned counties and redeliver the gas for Scissortail on behalf of Petrolite at an existing interconnection in Osage County, Oklahoma.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-462-000]

May 3, 1985.

Take notice that on April 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-462-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the Pester Refining Company (Pester) under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central proposes to transport through June 30, 1985, up to 3.0 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Pester. Northwest Central states that Pester has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady and Lincoln Counties, Oklahoma, and in Johnson, Cowley and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above-mentioned counties and redeliver the gas for Scissortail on behalf of Pester at an existing interconnection in Butler County, Kansas.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP85-431-000]

May 3, 1985.

Take notice that on April 12, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-431-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales meter station in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) under the certificate issued in Docket No. CP82-432-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to install and operate a sales meter station in order to permit the delivery of natural gas to SUG for resale to consumers in the City of Flagstaff, and environs, in Coconino County, Arizona. Applicant states that the sales meter station would consist of two 2-⅝ inches O.D. tap and valve assemblies, one 4-½ inches O.D. standard orifice-type meter and one American 500B positive meter, with appurtenances. Applicant states further that the meter station would be known as the Flagstaff No. 3 Meter Station and would be located at a point on Applicant's San Juan Mainline and San Juan First Loop Line in Coconino County, Arizona. Applicant estimates deliveries the third year of 359 Mcf of gas on a peak day.

Applicant estimates the cost of the facility to be $75,710 which would be financed through the use of internally generated funds.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85-452-000]

May 3, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-452-000 pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a request for authorization to transport natural gas on behalf of the City of Coffeyville, Kansas (Coffeyville), under the certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is no file with the Commission and open to public inspection.

Northwest Central proposes to transport up to 1.7 billion Btu of natural gas per day for Coffeyville for a term through June 30, 1985. Northwest Central states that the gas to be transported would be purchased by Coffeyville from Colonial Corporation (Colonial) and would be used as boiler fuel in Coffeyville's power plant. It is indicated that Northwest Central would receive the gas at an existing delivery point with Colonial in Cowley County, Kansas, and redeliver the gas to Union Gas System, Inc., the distribution system serving Coffeyville.

Northwest Central states that it would charge Coffeyville in accordance with Northwest Central's Rate Schedule TS-1, FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Gas Transport, Inc.

[Docket No. CP85-456-000]

May 3, 1985.

Take notice that on April 19, 1985, Gas Transport, Inc. (Applicant), P.O. Box 1323, Parkersburg, West Virginia 26101, filed in Docket No. CP85-456-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of interconnecting facilities and the transportation of natural gas for Anchor Hocking Corporation (Anchor Hocking), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 2,000 Mcf of natural gas per day for Anchor Hocking. Applicant states that it would accept the quantities to be transported on its existing gathering system located near Gravel Bank, Ohio, and redeliver thermally equivalent volumes to Hope Natural Gas Company (Hope) in Wood County, West Virginia. Hope, a natural gas distributor, would then deliver these quantities of natural gas to Anchor Hocking's glass plant in Clarksburg, West Virginia, it is asserted. Applicant proposes to charge Anchor Hocking rates which are currently approved for its Rate Schedule T-1. Such rate is currently 22.66 cents per Mcf. The proposed term of service would be until May 30, 1986, and then would be continued year to year thereafter.

Applicant also requests authority to construct and operate a tap at the proposed interconnection of its system with Hope. It is also stated that Hope would install and operate a meter and regulation station for which Applicant would reimburse Hope. Applicant estimates that the costs associated for the proposed facilities would be $37,990.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Mountain Fuel Resources, Inc.

[Docket No. CP85-443-000]

May 3, 1985.

Take notice that on April 17, 1985, Mountain Fuel Resources, Inc. (Applicant), P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP85-443-000 and application pursuant

to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the restaging of the existing centrifugal compressor unit at its Fidlar compressor station (Fidlar station) located in Uintah County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the Fidlar station, which consists of one reciprocating compressor unit and one centrifugal compressor unit, is used to boost the pressure in Applicant's Main Line No. 40 for the delivery of natural gas to Mountain Fuel Supply Company (Mountain Fuel), and to deliver natural gas into Applicant's Main Line No. 59 for redelivery to Northwest Pipeline Corporation (Northwest) at the Red Wash exchange point.

Applicant indicates that the centrifugal unit, which serves as a back-up for the reciprocating unit, does not currently have the capability of compressing natural gas to the discharge pressure required to deliver gas to Northwest and Mountain Fuel during certain periods. During such periods, should the reciprocating unit be inoperable or both units be required to operate in parallel, Applicant states that it may experience reductions or interruptions of its certificated service obligations.

Applicant proposes to restage the centrifugal compressor unit so that its discharge pressure would be sufficient to make the deliveries to Northwest and Mountain Fuel. Applicant indicate that the estimated total cost, excluding filing fees, of the project is $94,140 and that such cost would be financed from internally generated funds or from short term borrowings.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Louisiana Resources Company

[Docket No. CP85-478-000]

May 3, 1985.

Take notice that on April 12, 1985, Louisiana Resources Company (LRC), P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP85-478-000 an application pursuant to §§ 284.123 and 284.127 of the Commission's Regulations for authorization to transport natural gas on behalf of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), and for approval of the proposed rates and charges therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LRC proposes to receive Northern's gas at points of interconnection between ANR Pipeline Company and LRC and between Transcontinental Gas Pipe Line Corporation and LRC in Cameron Parish, Louisiana, and to transport and redeliver the gas for Northern's account to a point of interconnection between Faustina Pipe Line Company and LRC in Vermilion Parish, Louisiana. LRC states that the contract between Northern and LRC for this transportation service is dated March 1, 1985, and is for a term of two years from the date of initial deliveries. This service, LRC states, would enable Northern to fulfill its contractual undertaking to sell and deliver natural gas to Arcadian Corporation (Arcadian) at Arcadian's Geismar plant in Iberville Parish, Louisiana.

LRC continues by stating that Northern, in a separate application filed in Docket No. CP85-422-000, is also seeking authorization to transport and deliver this gas to Arcadian.

Further, it is stated, since this transportation by LRC is on behalf of Northern, and LRC alleges that the gas is not returned to Northern's system supply; specific approval is required for this transaction. LRC estimates the maximum quantities of gas to be transported are approximately 45,000 Mcf per day subject to available capacity.

LRC would charge a rate of 5.516 cents per million Btu transported and redelivered for this transportation service. This rate is a negotiated rate for a limited-term transportation service to be performed between specific points on LRC's system, and is not a general system-wide transportation rate, it is stated.

Comment date: May 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP85-419-000]

May 3, 1985

Take notice that on April 8, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed a Docket No. CP85-419-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for an eligible end-user under the certificate issued in Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport up to 26 billion Btu of natural gas per day for Inland Steel Company (Inland) pursuant to a gas transportation agreement dated February 18, 1985 (agreement)

Natural states this transportation service commenced on February 18, 1985, pursuant to the automatic provisions of § 157.209(e)(1) of the Commission's Regulations. Natural proposes to continue this service through June 30, 1985, under the requested authorization. The agreement provides for service through two years from February 18, 1985, the date of initial deliveries, in the event that the Commission's Regulations are amended to allow service past June 30, 1985, it is indicated.

Natural states it would receive volumes of gas for the account of Inland, at four separate points, at the interconnection between the facilities of (1) Natural and Oklahoma Natural Gas Company (ONG) located in Custer County, Oklahoma; (2) Natural and ONG located in Woodward County, Oklahoma; (3) Natural and Kaiser-Francis Oil Company (KF) located in Woodward County, Oklahoma; and (4) Natural and M.V. Pipeline Company (MV) located in Caddo County, Oklahoma. Natural would transport and redeliver equivalent volumes of gas to Northern Indiana Public Service Company (NIPSCO), for the account of Inland, at a point of interconnection between the facilities of Natural and NIPSCO located on the state border of Cook County, Illinois and Lake County, Indiana. Natural indicates that Inland has made arrangements with NIPSCO, a local distribution company, for subsequent movement of the gas for Inland's end use in its Indiana Harbor, Indiana, plant.

Natural states that it would charge Inland transportation and fuel charges as follows:

Receipt points and location	Transportation fee (cents per million Btu)	Fuel charge (cents per million Btu)
ONG—Custer Co	27 2	22 8
ONG—Woodward Co.	27 2	21.8
KF—Woodward Co.	27 2	21 8
MV—Caddo Co.	27 9	27 2

It is explained that these rates are based on Natural's settlement cost of onshore transmission in Docket No. RP83-68 and are consistent with Natural's EUT-1 rate schedule on file with the Commission.

Natural, in addition, requests flexible authority to add or delete receipt/

delivery points associated with sources of gas acquired by the end-user. The flexible authority requested appies only to points related to source of gas supply, not to delivery points in the market area. Natural will file a report providing certain information with regard to the additon or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities. Natural indicates the end use of the gas is for blast furnaces, boilers, and reheat furnaces with alternative fuel capability at Inland's plant and is advised that Inland purchased this gas in a first sale and the natural gas was not committed or dedicated to interstate commerce on November 8, 1978, and was not produced by an interstate pipeline.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP85-444-000]

May 6, 1985.

Take notice that on April 17, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-444-000 a request pursuant to § 17.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Armco Inc. (Armco) under the certificate issued in Docket No. CP82-430-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport 18,180 Mcf of natural gas per day for Armco for a term through June 30, 1985. It is stated that the gas to be transported would be purchased from EnTrade Corporation (EnTrade) and would be used as boiler fuel in Armco's Middletown, Ohio, plant.

It is indicated that United would receive the gas from EnTrade at existing receipt points in Gregg, Wood, and Harrison Counties, Texas, and would redeliver the gas to Texas Gas Transmission Corporation (Texas Gas) at an existing interconnection of the two pipeline's facilities in Panola County, Texas. United explains that Texas Gas would then transport the gas to Armco's plant in Middletown, Ohio, under separate authorization.

It is stated that United would charge Armco its Rate Schedule IT transportaion rate, currently 11.09 cents per Mcf.

Comment date: June 20, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company; Trunkline Gas Company

[Docket No. CP85-43-009]

May 6, 1985.

Take notice that on April 16, 1985, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Applicants), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82-43-009 a petition to amend the order issued February 25, 1982, in Docket No. CP82-43-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional delivery point in Kiowa County, Kansas, for the delivery of natural gas transported for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants request authorization to implement a certain amendment dated October 24, 1984, to the transportation agreement dated October 13, 1981, between Applicants and United. Pursuant to this agreement, Applicants propose to add a secondary point of redelivery to United near Greensburg, Kansas, where Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), would accept the pursuant to an exchange agreement between United and Northern. All other terms of the transportation agreement remain the same, it is stated.

Comment date: May 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP85-434-000]

May 6, 1985.

Take notice that on April 15, 1985, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet Avenue, Houston, Texas 77001, filed in Docket No. CP85-434-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Phillips Petroleum Company (Phillips) Panhandle's S-Bar booster station, Campbell County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle explains that all compressor facilities have been removed from the site and that it has no current or future use for the remaining facilities. Panhandle states that Phillips has agreed to pay $21,275 for these facilities for use at another location and would restore the site to its original condition.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any persons desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 159.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 11421 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 18-001, et al.]

Applications Filed With the Commission; Hydroelectric Applications (Idaho Power Co., et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Revised Relicense Application.

b. Project No.: 18-001.

c. Date Filed: February 19, 1985.

d. Applicant: Idaho Power Company.

e. Name of Project: Twin Falls Hydroelectric.

f. Location: On the Snake River in Jerome and Twin Falls Counties, Idaho, partially on lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)-825(r)].

h. Contact Person: Lee Sherline, Leighton & Sherline, Suite 803, 1701 K Street, NW, Washington, DC 20006.

i. Comment Date: June 10, 1985.

j. Expiration of Initial License: June 10, 1984.

k. Description of Project: The project proposed for relicensing would consist of the facilities currently licensed as Project No. 18, including: (1) The Twin Falls dam, which has three sections, a concrete arch dam across the north falls with a 474-foot-long overflow crest at elevation 3508 feet, 3511.4 feet with flashboards, a non-overflow concrete gravity dam across the south falls with a 203-foot-long crest at elevation 3520 feet, and a concrete dike across the island between the north and south falls in two sections, one 108 feet long with the crest at elevation 3516 feet and the other 207 feet long with the crest at elevation 3509 feet, 3512 feet with flashboards; (2) the Twin Falls reservoir, which has a storage capacity of about 1000 acre-feet at normal pool elevation 3511.4 feet; (3) a gated intake structure in the non-overflow gravity section; (4) a 10-foot-diameter, 136-foot-long inclined penstock; (5) a 40-foot-long, 37-foot-wide concrete powerhouse containing a generating unit with a rated capacity of 9 MW and an average annual energy output of 65.8 GWh; and (6) a 1-mile-long, 138 kV transmission line connecting to the Applicant's distribution system. The existing project will be subject to Federal takeover upon expiration of the initial license under Sections 14 and 15 of the Federal Power Act. As of July 1, 1983, the Applicant's estimated net investment in the project is $1,074,017 and estimated severance damages are $126,070,341.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

2 a. Type of Application: New License (Over 5 MW).

b. Project No.: 1966-003.

c. Date Filed: December 20, 1984.

d. Applicant: Wisconsin Public Service Corporation.

e. Name of Project: Grandfather Falls.

f. Location: On the Wisconsin River in Lincoln County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C 791(a)-825(r).

h. Contact Person: Mr. Eugene R. Mathews, Senior Vice President, Power Supply and Engineering, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19001, Green Bay, WI 54307-9001.

i. Comment Date July 5, 1985: .

j. Description of Project: The existing project would consist of: (1) The 410-foot-long and 36-foot-high reinforced concrete dam; (2) the reservoir with a surface area of 200 acres and a storage capacity of 2,540 acre-feet at powerpool elevation of 1,396 feet m.s.l.; (3) the 4,000-foot-long by 300- foot-wide by 11-foot-deep power canal; (4) the two 1,400-foot-long, 13.5-foot and 11-foot diameter wood stave penstocks which connect to two steel penstocks that are 61.5 feet and 68.75 feet long; (5) the powerhouse containing two generating units rated at 6,240 kW and 11,000 kW, respectively, for a total installed capacity of 17,240 kW; (6) the tailrace; (7) the 6.9-kV transmission line; and (8) appurtenant facilities. The average annual energy generation is estimated to be 102.8 GWh.

k. Purpose of Project: The energy generated at the project is distributed to the applicant's load centers in north central Wisconsin.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

3 a. Type of Application: Exemption 5 MW or less.

b. Project No.: P-2644-001.

c. Date Filed: December 27, 1984.

d. Applicant: The Bowersock Mills & Power Co.

e. Name of Project: Kansas River.

f. Location: On the Kansas River in Douglas County, Kansas.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Stephen H. Hill, The Bowersock Mills & Power Co., Box 66, Sixth and New York Streets, Lawrence, Kansas 66044.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project would utilize a currently licensed facility. Licensee/Applicant plans to increase the installed capacity of the project from 1.85 to 1.91 MW. The exempted project would consist of: (1) An existing 665-foot-long, 20-foot-wide dam including spillway at elevation 808 feet m.s.l. owned by the Applicant; (2) an existing 200-acre reservoir with a storage capacity of 900 acre-feet at elevation 812 m.s.l.; (3) an existing powerhouse to house a rebuilt turbine/generator with a capacity of 1.91 MW which would discharge flows back into the Kansas River; (4) an existing three phase transmission line 600 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 6.5 million kWh operating under a new hydraulic head of 17 feet. Project power will be sold to the Kansas Power and Light Company.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

l. *Purpose of Exemption*—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4 a. Type of Application: Transfer of License.

b. Project No: 5089-004.

c. Date Filed: February 20, 1985.

d. Applicant: Fall River Rural Electric Cooperative, Inc. and Hydro Valley Development, Inc.

e. Name of Project: Felt Hydroelectric.

f. Location: Teton River, near Tetonia, Teton County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. McNeill Watkins II, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th St. NW., Washington, DC 20036

and

Charles L. Dawsey, Fall River Rural Electric, Cooperative, Inc., P.O. Box AE, Ashton, ID 83420

i. Comment Date: June 17, 1985.

j. Description of Transfer: On February 20, 1985, Fall River Rural Electric Cooperative, Inc. (Licensee); and Hydro Valley Development Inc. (Hydro Valley) filed an application for transfer of major license for the Felt Hydroelectric Project No. 5089, issued on September 9, 1983, to Licensee and Hydro Valley (Joint Transferrees).

The purpose of the proposed transfer is to facilitate the financing of the project and to provide lower rates to the consumers.

Hydro Valley is a private corporation organized under the laws of the State of Utah and is wholly-owned by Bonneville Pacific Corporation. Joint Transferees state that they will comply with all applicable laws of the State of Utah as required by section 9 (b) of the Federal Power Act.

Under the agreement of transfer, Licensee agrees to lease certain lands and water rights to Hydro Valley's parent corporation, as necessary to construct and operate the project. Hydro Valley, for its part, will own all power facilities to be constructed under the license. Hydro Valley claims that its construction and ownership of the project's power facilities will achieve a better cost-benefit ratio.

The Licensee certifies that it has fully complied with the terms and conditions of its license, and accepts its continuing obligation to comply with those terms and conditions as a Joint Transferee. Hydro Valley accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

5 a. Type of Application: Major License.

b. Project No.: 8285–000.

c. Date Filed: May 4, 1984, as amended on October 18, 1984, and December 14, 1984.

d. Applicant: Puget Sound Power and Light Company.

e. Name of Project: Noisy Creek Hydroelectric.

f. Location: On Noisy Creek, partially within the Mount Baker-Snoqualmie National Forest, near concrete, in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert V. Myers, Vice President, Engineering and Operations, Puget Sound Power & Light Company, Puget Power Building, Bellevue, WA 98009.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 100-foot-long concrete diversion dam at elevation 1,420 feet creating an impoundment with a gross storage capacity of 3 acre-feet; (2) an intake structure with gates; (3) a 2200-foot-long, 66-inch-diameter low pressure pipeline; (4) a 2500-foot-long, 66-inch-diameter penstock; (5) a 98-foot-long, 47-foot-wide partially buried concrete powerhouse containing two generating units with a total capacity of 10.7 MW; (6) a 10-foot-long, 9-foot-wide tailrace discharging into Baker Lake; (7) a 1200-foot-long, 12-foot-wide gravel access road to the powerhouse; (8) a 30-foot-longs 30-foot-wide fenced switchyard adjacent to the powerhouse; and (9) a 2.9-mile-long, 34.5-KV transmission line connecting to the proposed Swift Creek Project transmission line.

The Applicant estimates that the average annual energy production would be 44.3 million kWh. The cost to construct the project would be approximately $17 million in 1987 dollars.

k. Purpose of Project: The project dollars will help Puget Power and other utilities in the Pacific Northwest Region meet their electrical demands.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

6 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8519–000.

c. Date Filed: August 13, 1984, and supplemented January 22, 1985.

d. Applicant: City Mills Company.

e. Name of Project: City Mills Hydro Project.

f. Location: On the Chattahoochee River in Columbus, Muscogee County, Georgia.

Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Lloyd G. Bowers, Jr., President, City Mills Company, 918th Street, Columbus, Georgia 31901.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project is owned by the City Mills Company, and would consist of: (1) An existing 730-foot-long, 10-foot-high, stone and masonry gravity dam with a crest elevation of 226 feet m.s.l.; (2) an existing 114-acre reservoir with minimal storage capacity; (3) the proposed rehabilitation of 2 existing powerhouses located on the east bank of the river and described as Powerhouse A, housing three 85-kW generating units, and Powerhouse B, housing three 160-kW generating units for a total combined installed capacity of 735 kW; (4) a proposed 4.16-kV transmission line or equivalent approximately 100 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 5,805 MWh

K. Purpose of Project: The Applicant proposes to sell all the generated power to a local utility company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the subject.

7 a. Type of Application: Minor License.

b. Project No.: 8601–000.

c. Date Filed: September 17, 1984.

d. Applicant: Merle Jore and Sons.

e. Name of Project: Jore.

f. Location: On an unnamed tributary of Mollman Creek in Lake County, Montana near the town of Ronan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Matthew Jore, Route 1, Box 134–B, Charlo, MT 59824.

i. Comment Date: July 1, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 10-foot-long concrete dam at elevation 4,075 feet; (2) an 8-inch-diameter pipe located through the front wall of the dam to maintain minimum streamflow; (3) a 22-foot-long concrete trough located on a side wall of the dam containing three 15-inch-diameter, 1,600-foot-long pipes; (4) three 16-inch-diameter, 1,700-foot-long iron penstocks; (5) a powerhouse containing a single generating unit rated at 1,000 kW operating under a hear of 475 feet; (6) a 3-foot-diameter corrugated tailrace with a 6-foot-diameter, 6-foot-high dissipator and; (7) a 700-foot-long 7.2-kV transmission line tying into an existing Department of Interior line at the Flathead Irrigation Project. The average annual energy output would be 3,168 MWH.

The estimated cost of the project is $250,000.

k. Purpose of Project: Project Power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

a. Type of Application: Preliminary Permit.

b. Project No: 8799–000.

c. Date filed: December 13, 1984.

d. Applicant: Missisquoi Hydroelectric Company.

e. Name of Project: Richford Dam.

f. Location: Missisquoi River in Franklin County, Vermont.

g. Files Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas J. Stuwe, RD #1, Barre, VT 05641.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would utilize the proposed Army Corps of Engineers Richford Dam and would consist of: (1) A proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 750-kw; (2) a proposed 600-foot-long transmission line tying into the existing Citizens Utilities Company's system; and (3) appurtenant facilities. The Applicant estimates a 3,200,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project power construction and operation, and project potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8942–000.

c. Date Filed: February 8, 1985.

d. Applicant: Rocky Mountain Water Works Company.

e. Name of Project: Independent Blue Ditch Hydropower.

f. Location: On the Blue River in Summit County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William B. DeOreo, 3030 15th Street, Boulder, Colorado 80302.

i. Comment Date: July 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing headgate diversion structure about 3 feet in height, consisting of two steel slide gates approximately 36 inches in diameter; (2) a reservoir with negligible storage capacity; (3) about 200 feet of 30 inch diameter steel penstock; (4) a new powerhouse approximately 12 feet by 10 feet that will contain one turbine-generator unit with an installed capacity of 150 kW; (5) a proposed tailrace; (6) approximately 500 feet of new transmission line at 12.5-kV; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 930,000 kWh.

K. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $20,000.

10 a. Type of application: Preliminary Permit.

b. Project No: 8946-000.

c. Date Filed: February 12, 1985.

d. Applicant: Snake River Energy Company.

e. Name of Project: Willow Creek.

f. Location: On Willow Creek in Cassia Country, Idaho.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ted S. Sorenson, 550 Linden Drive, Idaho Falls, Idaho, 83401.

i. Comment Date; June 27, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, diversion dam at elevation 5,400 feet; (2) an 11,800-foot-long, 24-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 740 kW and an average annual generation of 2.7 million kWh; and (4) a 1-mile-long transmission line.

k. Purpose of Project: Project power would be sold to Idaho Power.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

11 a. Type of Application: 5 MW Exemption.

b. Project No.: 9000-000.

c. Date Filed: March 5, 1985.

d. Applicant: STS Consultants, Ltd.

e. Name of Project: Morrow Dam Hydro.

f. Location: On the Kalamazoo River in Kalamazoo County, Michigan.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Mark J. Sundquist, STS Consultants, Ltd. 3340 Ranger Road, Lansing, Michigan 48906.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing dam about 3,770 feet in length and 26 feet in height, which includes a spillway mounted with four 24-foot-wide by 14-foot-high steel Tainter gates; (2) an existing reservoir with a water surface area of about 1,000 acres and an estimated storage capacity of 6,000 acre-feet at elevation 776.0 N.G.V.D.; (3) a new powerhouse approximately 80 feet by 60 feet, housing four turbine-generator units with a total installed capacity of 880 kW, and located in two bays of the spillway; (4) approximately 2,250 feet of new transmission line at 4,800 volts; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 4,500,000 kWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Consumers Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

12 a.Type of Application: Preliminary Permit.

b. Project No.: P–9076–000.

c. Date Filed: April 1, 1985.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Monroe Dam.

f. Location: On the Salt Creek in Monroe County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John E. Fisher P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corp of Engineer's Monroe Dam and Reservoir and would consist of: (1) An existing 12-foot-diameter penstock 455 feet in length branching into two smaller penstocks at the intake to; (2) a proposed 58-foot-long and 46-foot-wide powerhouse to contain 3 turbine/generators with a total installed capacity of 3800 kW; (3) a proposed 58-foot-long and 46-foot-wide concrete-lined tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 10.6 million kWh operating under a net hydraulic head of 48 feet. Project power will be sold to the Public Service of Indiana and Indianapolis Power and Light.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminay permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: P–9077–000.

c. Date Filed: April 1, 1985.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Salamonie Dam.

f. Location: On the Salamonie River in Wabash County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John E. Fisher, P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: June 28, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corp. of Engineer's Salamonie Dam and Reservoir and would consist of: (1) An existing 16-foot-diameter penstock 565 feet in length branching into two smaller penstocks at the intake to; (2) a proposed 60-foot-long and 40-foot-wide powerhouse to contain two turbine/generators with a total installed capacity of 2,700 kW; (3) a proposed 90-foot-long and 60-foot-wide concrete-lined tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 9.3 million kWh operating under a net hydraulic head of 65 feet. Project power will be sold to the Public Service of Indiana and Indiana and Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

14 a. Type of Application: Amendment of License application.

b. Project No.: 5226–002.

c. Date Filed: February 19, 1985.

d. Co-Applicants: Incorporated County of Los Alamos and Middle Rio Grande Conservancy District.

e. Name of Project: El Vado Hydro Project.

f. Location: On Rio Chama in Rio Arriba County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. James B. Harder, Utilities Manager, Incorporated County of Los Alamos, P.O. Box 30, Los Alamos, NM 87544

Mr. Charles R. Martinez, General Manager, Middle Rio Grande Conservancy District, 1932 Second Street, SW., P.O. Box 581, Albuquerque, NM 87103.

i. Comment Date: June 17, 1985.

j. Description: An amendment of license application to include a co-applicant, Middle Rio Grande Conservancy District with the Incorporated County of Los Alamos, for the El Vado Hydro Project No. 5226, has been filed pursuant to Section 4.35 of the Commission's regulations. The project description remains that provided in the public notice issued March 29, 1984 for Project No. 5226–001.

k. This notice also consists of the following standard paragraphs: B, C.

15 a. Type of Application: Conduit Exemption.

b. Project No: 8831–000.

c. Date Filed: December 26, 1984.

d. Applicant: Hydrodynamics.

e. Name of Project: South Dry Creek.

f. Location: On Rock Creek-Clear Creek Ditch, near the town of Red Lodge in Carbon County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Susan Young, Hydrodynamics, Inc., P.O. Box 413, Red Lodge, MO 59068.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed project would consist of: (1) A box/weir concrete diversion at elevation 5,700 feet; (2) an 8,000-foot-long, 24-inch-diameter pipeline: (3) a power house containing a single generating unit with a capacity of 1,800 kW and an average annual generation of 7.1 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs. A3, A9, B, C and D3b.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8905–000.

c. Date Filed: January 30, 1985.

d. Applicant: Henderson Hydro Company.

e. Name of Project: Dark and Henderson Canyons.

f. Location: On unnamed Tributaries to Thomes Creek in Tehama County, California; within Mendocino National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Drive, B–4, Sacramento, CA 95865.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) Two 5-foot-high, 26-foot-long diversion dams located at elevation 2,920 feet on two unnamed tributaries of Thomes Creek; (2) a 10,000-foot-long, 30-inch-diameter diversion conduit; (3) a 28-inch-diameter, 3,200-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,200 kW, located at elevation 920 feet; and (5) a 5-mile-long, 12.5-kV transmission line interconnecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of 120,000. No new roads would be constructed to conduct these studies.

The estimated 19.3 million kWh generate annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 8906–000.

c. Date Filed: January 30, 1985.

d. Applicant: Canyon Hydro Company.

e. Name of Project: Canyon Creek.

f. Location: On Canyon Creek in Nevada County, California; within Tahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul E. Eichenberger, Eichenberger Associates,

4020 El Camino Drive, Sacramento, CA 95821.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 103-foot-long diversion dam at elevation 4,200 feet; (2) a 4,000-foot-long, 53-inch-diameter diversion conduit; (3) a 1000-foot-long, 37-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 4,300 kW, located at elevation 3,600 feet; and (5) a 4.5-mile-long, 12.5-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $125,000. No new roads would be constructed to conduct these studies.

The estimated 16.9 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

18 a. Type of Application: License (Under 5 MW).

b. Project No.: 8914-000.

c. Date Filed: February 1, 1985.

d. Applicant: Colorado River Water Conservation District & Water User's Association No. 1 in the Colorado Water Conservation District.

e. Name of Project: Taylor Draw.

f. Location: White River, Rio Blanco County, Colorado, located partially on lands administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Roland C. Fischer, Secretary-Engineer, Colorado River Water Conservation District, P.O. Box 1120, Glenwood Springs, CO 81602.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would be located at the Applicant's Taylor Draw Dam and Kenney Reservoir presently under construction for water supply purposes. The proposed project works would consist of: (1) The Taylor Draw Dam, a 1,100-foot-long earth fill structure, about 75 feet in height; (2) the Kenney Reservior, which has a surface area of approximately 615 acres at a normal water surface elevation of 5317.5 feet, and a storage capacity of 13,800 acre-feet; (3) an existing submerged intake; (4) an existing 96-inch-diameter conduit approximately 300 feet long, bifurcating into an 80-inch-diameter penstock section, approximately 200 feet long; (5) a proposed powerhouse containing a single 1,600 kW generating unit; (6) a proposed 100-foot-long, 20 feet wide tailrace; (7) a proposed 12.5-kV transmission line about 7 miles long; and (8) appurtenant facilities. The estimated average annual generation of 11,225,000 kW would be sold to Moon Lake Electric Association, Inc.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 8933-000.

c. Date Filed: February 4, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Bear Rock Falls.

f. Location: On Bear Rock Stream in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John R. Anderson and Joseph D. Brostmeyer, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 5-foot-high, 30-foot-wide, 5-foot-long, timber diversion structure; (2) a proposed impoundment of negilgible size at a normal maximum surface elevation of 1651 ft m.s.l.; (3) a proposed 5,300-foot-long, 0.75-foot-diameter steel penstock; (4) a proposed powerhouse which will contain an installed generating capacity of 130 kW; (5) a proposed 4-foot-wide, 20-foot-long, open channel tailrace; (6) a proposed 100-foot-long, 35.4 kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy generation to be 570 MWh. It is anticipated that Massachusetts Electric will purchase the power.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

20 a. Type of Application: Exemption of Small Conduit Facility.

b. Project No.: 8962-000.

c. Date Filed: February 19, 1985.

d. Applicant: City of Boulder.

e. Name of Project: Kohler Power Generation Facility.

f. Location: Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Bill Mitzelfeld, City of Boulder, Utilities Division, P.O. Box 791, Boulder, Colorado 80306.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed project would utilize the City of Boulder's existing 24-inch water distribution system and would consist of: (1) A proposed powerhouse site located on the distribution system which will house either a single vertical turbine or twin pump turbines for an installed capacity of 149 kW discharging into a proposed 6 inch drain line; and (2) appurtenant facilities. The estimated average annual energy produced by the project would be 770,000 kWh using the vertical turbine and 755,200 kWh using the pump turbine operating under a net hydralic head of 240 feet. Project power will be used for the city's domestic energy needs.

k. This notice also consist of the following standard paragraphs: A3, A9, B, C, & D3b.

l. Purpose of Exemption; An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from the permit or licence applicants that would seek to take or develop the project.

21 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8998-000.

c. Date Filed: March 4, 1985.

d. Applicant: Donald K. Lee.

e. Name of Project: Bluff Springs.

f. Location: Bluff Springs, near Manton, in Tehama County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. Donald K. Lee, P.O. Box 327, Chico, California 95927, (916) 891-5577.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A concrete drop inlet structure below an existing 24-inch culvert on Bluff Springs Creek; (2) a 15-inch-diameter, 3,900-foot-long PVC pipeline; (3) a 14-inch-diameter, 2,200-foot-long steel penstock; (4) a powerhouse containing a single 100 kW impulse turbine-generator unit with an estimated average annual generation of 0.617 GWh at a design flow of 3.9 cfs and 450 feet of head; (5) a tailrace discharging to Pacific Gas and Electric Company's (PG&E) Union

Canal; and (6) a 1,000-foot-long, 12-kV transmission line connecting the project to an existing PG&E line. Project power would be sold to PG&E. Real property interest in private lands is evidenced by lease agreements.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license permit application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be receive on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATIONS", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, local agencies are invited to file comments on the described applications. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. It an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 7, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11420 Filed 5–9–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-215-002, et al.]

Northwest Pipeline Corp., et al.; Extension Reports

May 3, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before May 28, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [1]
ST81-215-002 [2]	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110.	Southwest Gas Corp	4-02-85	G	3-26-85	7-01-85
ST81-416-003	Panhandle Eastern Pipe Line Co., P.O Box 1642, Houston, TX 77001	Delhi Gas Pipeline Corp	4-15-85	B	7-15-85	
ST81-430-003	Delhi Gas Pipeline Corp, 1700 Pacific Ave., Dallas, TX 75201.	Panhandle Eastern Pipe Line Co	4-15-85	C	7-15-85	
ST81-441-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Delhi Gas Pipeline Corp	4-05-85	B	7-29-85	
ST83-532-001	Tennessee Gas Pipeline Co., P.O Box 2511, Houston, TX 77001.	Bridgeline Gas Distribution Co	4-04-85	B	7-07-85	
ST83-544-001	Oklahoma Natural Gas Co., P.O. Box 871, Tulsa, OK 74103	Kansas Power and Light Co	4-15-85	C	7-13-85	
ST83-596-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Delhi Gas Pipeline Corp	4-15-85	B	7-19-85	
ST83-627-001	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206.	Florida Gas Transmission Co	4-01-85	C	6-04-85	
ST83-631-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	El Paso Gas Transportation Co	4-12-85	B	7-18-85	
ST83-633-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	West Texas Gas, Inc	4-15-85	B	7-27-85	
ST83-638-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	West Texas Gas, Inc	4-05-85	B	7-27-85	
ST83-658-001 [2]	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Producer's Gas Co	4-02-85	B	6-28-85	7-01-85
ST83-719-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Wester Transmission Co	4-05-85	B	7-28-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations

[FR Doc. 85-11422 Filed 5-9-85: 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER79-97-001, et al.]

Electric Rate and Corporate Regulation Filings; Alamito Co., et al.

Take notice that the following filings have been made with the Commission:

1. Alamito Company

[Docket No. ER79-97-001]

May 3, 1985.

Take notice that on April 1, 1985, Alamito Company (Alamito) submitted for filing a compliance report pursuant to the Commission's order dated June 25, 1979.

Alamito included in its filing the required justification for the rate of return for the Phase Four period at the power sale. The Phase Four period will commence when Alamito's Springerville Unit 1 goes into commercial service and will continue through May 31, 1987. The unit is expected to go into commercial service on June 1, 1985.

Comment date: May 14, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER84-576-001]

May 3, 1985.

Take notice that on April 29, 1985, Wisconsin Power and Light Company (WP&L) submitted for filing a compliance report.

WP&L included in its filing a summary of the amounts billed, the corrected billings, the amounts of the refunds and the interest calculated for each of its wholesale billing customers that arose because of a clerical error in the fuel clause computations for the months of January and February, 1985.

Comment date: May 21, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Dayton Power and Light Company

[Docket No. ER85–453–000]

May 3, 1985.

Take notice that on April 23, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Lakeview (Lakeview), Ohio.

DP&L states that the proposed Agreement allows Lakeview to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Lakeview.

DP&L requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company

[Docket No. ER85–455–000]

May 3, 1985.

Take notice that on April 23, 1985, Northern States Power Company (Minnesota), tendered for filing the Transmission and Transformation Service Agreement between Northern States Power Company and The State Board of Higher Education for the University of North Dakota (Transmission and Transformation Service Agreement).

The Transmission and Transformation Service Agreement filed in accordance with this letter supersedes FERC Rate Schedule No. 404. The Transmission and Transformation Agreement essentially provides that Northern States Power Company will provide transmission and transformation service associated with the delivery of Western Area Power Administration power and energy.

Northern States Power Company requests an effective date of June 23, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER85–454–000]

May 3, 1985.

Take notice that on April 23, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the City of Tipp (Tipp City), Ohio.

DP&L states that the proposed Agreement allows Tipp City to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Tipp City.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective May 1, 1985.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Electric Light and Power Company

[Docket No. ER85–458–000]

May 6, 1985.

Take notice that on April 26, 1985, Iowa Electric Light and Power Company (Iowa Electric) and the Resale Power Group of Iowa, (RGPI), which represents the complete class of Iowa Electric's jurisdictional companies, tendered for filing proposed changes in its FERC Electric Service Tariff. The proposed changes would modify the fuel adjustment clause from an historical to a forecasted cost basis, and provide for recovery of nuclear waste disposal and coal contract termination costs.

Iowa Electric requests an effective date of July 1, 1985.

Copies of the filing were served upon the public utility's jurisdictional customers, and the Iowa State Commerce Commission.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER85–457–000]

May 6, 1985.

Take notice that on April 22, 1985, Utah Power & Light Company (UP&L) tendered for filing in accordance with the provisions of Section V of Exhibit C of the Residential Purchase and Sale Agreement between the Company and Bonneville Power Administration (BPA), BPA's written report, for an exchange period beginning September 13, 1984 and ending September 30, 1984.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85–456–000]

May 6, 1985.

Take notice that on April 25, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled "Amendment Number Four to Contract for Interchange Service Between Florida Power & Light Company and Tampa Electric Company."

FPL states that Amendment Number Four amendments Service Schedules A and B to the Contract for Interchange Service to allow gas, at the option of the Seller, to be included in the deviation of the replacement cost of fuel and to allow more flexibility in the assignment of units under said Service Schedules.

FPL states that the effect on the amount of sales, services, or revenues, if any, brought about by the above described modifications to Servcie Schedules A and Service Schedules B cannot be projected and respectfully requests a waiver of the Commission's regulations.

FPL requests waiver of the Commission's regulations be granted to the extent necessary to permit the proposed Amendment Number four to become effective May 1, 1985.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company

[Docket No. ER84–146–002]

May 6, 1985.

Take notice that on March 18, 1985, Union Electric (Union Electric) Company submitted for filing a refund compliance report pursuant to a Commission letter request of February 21, 1985.

Union Electric submitted a copy of the bill for service to Malden for the billing periods December 31, 1984 to January 14, 1985 and January 15, 1985 to January 31, 1985. Also included are various work sheets which show those bills were calculated and how the refund and interest were determined.

Comment date: May 14, 1985, in accordance with Standard Paragraph H at the end of this notice.

10. Consolidated Edison Company of New York

[Docket No. ER85–459–000]

May 6, 1985.

Take notice that on April 26, 1985, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement and initial rate schedule implementing the agreement between the Power Authority of the State of New York and Con Edison. The rate schedule contains an effective date of July 1, 1986 and provides that Con Edison will deliver a maximum of 16 megawatts of Power Authority power and associated energy to one customer and 10 megawatts of Power Authority power and associated energy to another, both located in Con Edison's service area. Under the rates contained in the

initial rate schedule, Con Edison would realize about $4.7 million in annual revenues for this service.

Con Edison states that the allocation of low-cost Power Authority nuclear power was made pursuant to special state legislation (Ch. 521, N.Y. Laws of 1984) designed to stimulate the economy of southeastern New York State. The agreement provides that in the event Con Edison and the Power authority fail, as they have, to reach an agreement as to the rates, terms and conditions of this service, the New York State Public Service Commission will review the rate schedule subject to ultimate review by the Commission.

Copies of the filing were served upon the public utility's only jurisdictional customer the rate schedule, *i.e.*, the Power Authority of the State of New York.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11338 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-359-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Cogenic Energy Systems, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

May 3, 1985.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems, Inc.

[Docket No. QF85-359-000]

On April 26, 1985, Cogenic Energy Systems, Inc., (Applicant) of 127 East 64th Street, New York, New York 10021, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Arkay Packaging Corporation, 22 Arkay Drive, Hauppauge, New York. The facility will consist of an internal combustion engine/ synchronous generator with waste heat recovery from both jacket water and exhaust gases to produce low pressure steam for space heating, air conditioning and domestic hot water. The electric power production capacity of the facility will be 456 kW. The primary energy source will be natural gas.

2. Himolene-FWF Partnership

[Docket No. QF85-348-000]

On April 15, 1985, Himolene-FWF Partnership (Applicant), of of 5690 Lindbergh Lane, Bell, California, 90201 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Kern County, California. The facility will consist of a maximum of nine vertical axis wind turbine/ generators with each unit rated at 150 kilowatts for a 36 miles per hour wind. The planned electric power capacity of the facility will be 1.35 megawatts. The primary energy source is wind. Small amounts of electric energy will be required for starting purposes only.

3. International Paper Company

[Docket No. QF85-354-000]

On April 25, 1985, International Paper Company, (Applicant) of 77 West 45th Street, New York, New York 10036 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's paper mill in Mobile, Mobile County, Alabama. The facility contains six boilers, two extraction steam turbine generators and one extraction/ condensing steam turbine generator. The steam is primarily used for paper drying, concentrating spent liquor, and heating wood chips for pulping. The primary energy sources are biomass in the forms of wood and spent pulping liquor, and coal. The net power production capacity of the facility is 85 MW. The facility was installed in November 1978. No electric utility, electric utility holding company or any combination thereof, has any ownership interest in the facility.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11339 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59714; FRL-2833-6]

Certain Chemicals Premanufacture Notices; Acrylic Copolymer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certian types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period: Y 85-70—May 20, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the on-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-70

Importer. Confidential.

Chemical. (G) Arcylic copolymer.

Use/Import. (S) Emulsion pressure sensitive adhesive for self wound tapes, for self adhesive labels/decals and self adhesive parts for product assembly and emulsion polymer base for waterborne adhesives and caulks. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: Dermal, up to 250-365 da/yr, 2-8 persons/shift, 1-3 shifts/da.

Environmental Release/Disposal. No release. Disposal by landfill.

Dated: May 3, 1985.

James A. Combs,

Acting Director, Information Management Division.

[FR Doc. 85-11262 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51570; FRL-2833-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-859, 85-860, 85-861, 85-862, and 85-863—July 24, 1985.

P 85-864, 85-865, 85-866, 85-867, 85-868, 85-869, 85-870, 85-871, 85-872, 85-873, 85-874, 85-875, 85-876, 85-877, 85-878, 85-879, 85-880, 85-881, 85-882, 85-883, 85-884, 85-885, and 85-886—July 27, 1985.

P 85-887, 85-888, 85-889, 85-890, 85-891, and 85-892—July 29, 1985.

P 85-893, 85-894, 85-895, 85-896, 85-897, 85-898, and 85-899—July 30, 1985.

Written comments by:

P 85-859, 85-860, 85-861, 85-862, and 85-863—June 24, 1985.

P 85-864, 85-865, 85-866, 85-867, 85-868, 85-869, 85-870, 85-871, 85-872, 85-873, 85-874, 85-875, 85-876, 85-877, 85-878, 85-879, 85-880, 85-881, 85-882, 85-883, 85-884, 85-885 and 85-886—June 24, 1985.

P 85-887, 85-888, 85-889, 85-890, 85-891, and 85-892—June 29, 1985.

P 85-893, 85-894, 85-895, 85-896, 85-897, 85-898, and 85-899—June 30, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51570]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-859

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 10 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 85-860

Manufacturer. Confidential.

Chemical. (G) Functionally modified acrylate type polymer.

Use/Production. (G) Polymer product with an open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 29 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 5 to 60 kg/batch released to land. Disposal by incineration and landfill.

P 85-861

Manufacturer. Confidential.

Chemical. (G) Ammonium salt.

Use/Production. (G) Coatings specialty additive. Prod. range: 100-6,400 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 21 workers, up to 6 hrs/da, up to 28 da/yr.

Environmental Release/Disposal. 1 to 3 kg/batch released to land. Disposal by incineration and landfill.

P 85-862

Manufacturer. Confidential.

Chemical. (G) Blocked aliphatic polyisocyanate.

Use/Production. (S) Industrial water dispersible blocked cross-linking agent for glass fiber sizing formulations and coil coatings incorporating polyurethane an epoxy water dispersion. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation: a total of 30 workers, up to 6 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 0.1 to 2.0 kg released to air with 2.0 kg to water. Disposal by biological treatment and incineration.

P 85-863

Importer. CdF Chimie North America, Inc.

Chemical. (S) Polymer of ethylene, ethylene acrylate and maleic anhydride.

Use/Import. (S) Industrial bonding layer in coextrusion and coating; adhesive polymer in manufacture of hot-melts; thermal adhesive film for bonding tissues and others non extrudable materials and an additive in synthetic rubber and plastic material as processing aid or impact modifier. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 1,000 workers.

Environmental Release/Disposal. No data submitted.

P 85-864

Manufacturer. Confidential.

Chemical. (G) Dimethylhydrogen terminated polysiloxane.

Use/Production. (G) Polymerization initiator. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Not mutagenic.

Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 11 da/yr.

Environmental Release/Disposal. 5 to 80 kg/batch incinerated. Disposal by waste water treatment.

P 85-865

Manufacturer. Rohm and Haas Company.

Chemical. (G) Substituted acetonitrile.

Use/Production. (S) Site-limited pesticide intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Between 5.0 to 0.5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames Test: Non-mutagenic.

Exposure. Manufacture and use: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.75 kg/batch released with 0.0156 kg/batch to water and 40 kg/year to land. Disposal by publicly owned treatment works (POTW), biological treatment facility and incineration.

P 85-866

Manufacturer. Rohm and Haas Company.

Chemical. (G) Substituted acetonitrile.

Use/Production. (S) Industrial pesticide intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Inconsequential irritant; Ames Test: Not mutagenic.

Exposure. Manufacture and use: Dermal, a total of 5 workers.

Environmental Release/Disposal. 0.25 to 0.75 kg/batch released with 0.0096 kg/batch to water and 60 kg/year to land. Disposal POTW and incineration.

P 85-867

Manufacturer. Confidential.

Chemical. (G) Ketopolycyclic polyacid.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.003 to 0.008 kg released to land. Disposal by landfill.

P 85-868

Manufacturer. Confidential.

Chemical. (G) Diacetyl polycyclic hydrocarbon.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. 0.01 kg released to land. Disposal by landfill.

P 85-869

Manufacturer. Confidential.

Chemical. (G) Ketopolycyclic polyacidchloride.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.01 to 1.225 kg released to land. Disposal by landfill.

P 85-870

Manufacturer. Confidential.

Chemical. (G) Isocyanate-terminated polyurethane.

Use/Production. (S) Used internally as an intermediate in the production of an adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 1 hr/da, up to 70 da/yr.

Environmental Release/Disposal. 200 grams to 5 kg incinerated.

P 85-871

Manufacturer. Confidential.

Chemical. (G) Hydroxyl-terminated polyurethane.

Use/Production. (S) Laminating adhesive in ethyl alcohol solution. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/da, up to 42 da/yr.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

P 85-872

Manufacturer. Confidential.

Chemical. (G) Amidoamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 0.1 kg released to water with less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

P 85-873

Manufacturer. Confidential.

Chemical. (G) Amidoamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, and inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 0.1 kg released to water with less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

P 85-874

Importer. Products Research and Chemical Corporation.

Chemical. (S) 3-thiahept-5-ene-1-ol.

Use/Import. (S) Site-limited, industrial monomer for production of polymers. Import range: 4,500–115,000 kg/yr.

Toxicity Data. Acute oral: Male and female—3,430 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Processing: Dermal, a total of 12 workers, up to 0.5 hr/da, up to 100 da/yr.

Environmental Release/Disposal. .05 kg/batch/drum released to land. Disposal by approved landfill.

P 85-875

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-876

Manufacturer. Confidential.
Chemical. (G) Alkylamidopropyl betaine.
Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-877

Manufacturer. Confidential.
Chemical. (G) Alkylamidopropyl betaine.
Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-878

Manufacturer. Confidential.
Chemical. (G) Alkylamidopropyl betaine.
Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-879

Manufacturer. Confidential.
Chemical. (G) Alkylamidopropyl betaine.
Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-880

Manufacturer. Confidential.
Chemical. (G) Sodium bisulfite, reaction product with an epoxidized natural oil.
Use/Production. (G) Open, non-dispersive. Prod. range: 50,000–115,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 11 da/yr.
Environmental Release/Disposal. 25 kg released to water.

P 85-881

Importer. Confidential.
Chemical. (gG) 2,2,6,6-tetramethyl-4-N-(substituted) aminopiperidine.
Use/Import. (S) Industrial UV absorber for paints, varnishes, lacquers, etc. Import range: Confidential.
Toxicity Data. Acute oral: Male and famale—2,180 mg/kg, ±127 mg; Irritation: Skin—Slight, Eye—Slight.
Exposure. Use: Dermal, a total of 15 workers.
Environmental Release/Disposal. No data submitted.

P 85-882

Manufacturer. Confidential.
Chemical. (S) Octadecenamide, N-[2-[(2-hydroxyethyl)amino]ethyl]–, monohydrochloride (salt).
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 workers up to 1 hr/da, up to 15 da/yr.
Environmental Release/Disposal. Approximately 15 kg/batch released to sewer water. Disposal by POTW.

P 85-883

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Industrial paint ingredient. Prod. range: 50,000–150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 47 workers, up to 8 hrs/da, up to 33 da/yr.
Environmental Release/Disposal. 10 to 350 kg/batch released to land. Disposal by incineration and landfill.

P 85-884

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane.
Use/Production. (G) Industrial coating component. Prod. range: 15,800–47,300 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 46 workers, up to 8 hrs/da, up to 33 da/yr.
Environmental Release/Disposal. 1 to 250 kg/batch released to land. Disposal by incineration and landfill.

P 85-885

Manufacturer. Koppers Company, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Industrial, commercial and consumer wall panels building and recreational vehicles construction and outdoors signs. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 4 hrs/da, up to 13 da/yr.
Environmental Release/Disposal. 1,300 kg/batch released to air. Disposal by incineration.

P 85-886

Manufacturer. Koppers Company, Inc.
Chemical. (G) Brominated unsaturated polyester resin.
Use/Production. (S) Industrial, commercial and consumer wall panels building and recreational vehicle construction and outdoor signs. Prod. range: Confidential.
Toxicity Data. Ames test: Positive.
Exposure. Manufacture: Dermal, a total of 6 workers, up to 4 hrs/da, up to 25 da/yr.
Environmental Release/Disposal. Trace release to air.

P 85-887

Manufacturer. GTE Products Corporation.
Chemical. (S) Indium orthoborate.
Use/Production. (S) Industrial and commerical luminescent chemical (phosphor) to be used in CRT display screens. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 0.005 kg/batch released to air with 0.002 to 0.003 kg/batch released to water. Disposal by navigable waterway and chemical waste treatment.

P 85-888

Manufacturer. Mazer Chemical, Incorporated.
Chemical. (G) Modified polyglycol polymer.
Use/Production. (G) Metalworking fluid component. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–889

Manufacturer. Ashland Chemical Company.
Chemical. (G) Copolymer of acrylic acid esters, vinyl acetate, acrylic acid amide, crotonic acid, and fumaric acid ester.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 4 hrs/da, up to 10–20 da/yr.
Environmental Release/Disposal. Less than 13 kg/batch released to air.

P 85–890

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 6 workers.
Environmental Release/Disposal. Release to air.

P 85–891

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. Acute oral: >3,200 mg/kg; Acute dermal: >2,000 mg/kg Irritation: Skin—Not-irritating, Eye—Slight/moderate.
Exposure. Manufacture; Dermal, a total of 6 workers
Environmental Release/Disposal. Release to air.

P 85–892

Manufacture. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. Acute oral: Between 1,000–3,200 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Not-irritating, Eye—Not irritating.
Exposure. Manufacture: Dermal, a total of 6 workers.
Environmental Release/Disposal. Release to air.

P 85–893

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Polyfluoro substituted alkyl-N-substituted amino alcohol acetate.
Use/Production. (G) Surfactant, industrial non-dispersive. Prod. range: Confidential.
Toxicity Data. Acute oral: 7,500 mg/kg; Irritation: Skin—Slight, Eye—Moderate.
Exposure. Manufacture: Dermal, a total of 3 workers.
Environmental Release/Disposal. Release to land. Disposal by on-site landfill.

P 85–894

Manufacturer. Confidential.
Chemical. (G) Epoxidized natural oil.
Use/Production. (G) Non-dispersive open use. Prod. range: 50,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 21 da/yr.
Environmental Release/Disposal. 30 kg/batch released to water.

P 85–895

Manufacturer. Mazer Chemicals, Incorporated.
Chemical. (G) Modified polyglycol ether copolymer.
Use/Production. (G) Metalworking fluid component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–896

Importer. Marubeni America Corporation.
Chemical. (S) Cuprate(3-), [2-[[[3-[(4,6-dichloro-1,3,5-triazin-2-yl)amino]-2-hydroxy-5-sulfophenyl]azo]phenylmethyl]azo]-4-sulfobenzoato(5-)]-, disodium hydrogen, (SP-3)-.
Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames Test: Negative; TLM 48 hrs (Orange medaka): Above 1,000 parts per million (ppm).
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–897

Importer. Marubeni America Corporation.
Chemical. (S) 2,8,10-trioxa-5-azadodecanoic acid, 5-[5-chloro-2-methoxy-4-[(5-nitro-2-thiazolyl)azo]phenyl]-9-oxo-, ethyl ester.
Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames Test: Negative; TLM 48 hrs (Orange medaka): Above 1,000 ppm.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–898

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, alkyl esters.
Use/Production. (G) Hydrocarbon additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 22 workers, up to 9.5 hr/da, up to 10 da/yr.
Environmental Release/Disposal. Nil release to air, 56 kg/batch released to water and 20 kg/batch to land. Disposal by POTW.

P 85–899

Manufacturer. The Minnesota Mining and Manufacturing Company.
Chemical. (G) Ethoxylated polyester.
Use/Production. (G) Surface treatment—non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin–Non-irritant, Eye—Minimal; Ames test: Non-mutagenic; IC_{50} (Photobacterium phosphoreum): >1,000 mg/l; COD: 0.43, 0.44, 0.48 and 0.49; EC_{50} 48 hr (Daphnia magna): >1,000 mg/L; BOD_5: Nil; IC_{50} (Green algae): >1,000 mg/L; LC_{50} 96 hr (Fathead minnow): >1,000 mg/L.
Exposure. Manufacture: Dermal, a total of 8 workers, up to 8 hrs/da, up to 8 da/yr.
Environmental Release/Disposal. Less than 5 kg released to water. Disposal by navigable waterway.

Dated: May 3, 1985.

James A. Combs,

Acting Director, Information Management Division.

[FR Doc. 85–11263 Filed 5–9–85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59194; FRL-2833-7]

Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: May 28, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59194]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-43

Close of Review Period. June 13, 1985.

Manufacturer. Air Products and Chemicals, Incorporated.

Chemical. (G) Alkylated aromatic diamine.

Use/Production: (G) Polyurethane chain extender. Prod. range: Confidential.

Toxicity Data: Acute oral: Male and female—>500mg/kg; Acute dermal: >1.0 g/kg; Irritation: Skin—Mild; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

T 85-44

Close of Review Period. June 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Halogen substituted alkyl polyalkyleneoxide.

Use. Confidential. Prod. range: 17,000 lbs/9 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: Dermal and inhalation, a total of 2 to 4 trained personnel, up to 20 min to 2 hrs, up to 9 mos and a total of 35 workers, up to 8 hrs/da, up to 14 da/9 mos.

Environmental Release/Disposal. Negligible release to air and water. Disposal by publicly owned treatment works (POTW), incineration, and deepwell injection.

T 85-45

Close of Review Period. June 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Halogen substituted alkylpolyalkyleneoxy sulfonic acid salt.

Use. Confidential. Prod. range: 17,000 lbs/9 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: Dermal and inhalation, a total of 2 to 4 trained personnel, up to 20 min to 2 hrs, up to 9 mos and a total of 35 workers, up to 8 hrs/da, up to 14 da/9 mos.

Environmental Release/Disposal. Negligible release to air and water. Disposal by publicly owned treatment works (POTW), incineration, and deepwell injection.

Dated: May 6, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-11261 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2833-6]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed April 29, 1985 Through May 3, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850182, DSuppl, COE, IL, MO, Mississippi and Illinois Rivers, Pools 24, 25, and 26, Operation and Maintenance, Permits, Pool 26 Shoreline Management Plan for Fleeting, Due: June 24, 1985, Contact: Owen Dutt (314) 263-5711.

EIS No. 850183, Final, AFS, OR, Williamette Pass Alpine Winter Sports Site, Master Plan, Expansion and Development, Williamette and Deschutes National Forest, Lane and Klamath Counties, Due: June 10, 1985, Contact: Connie Frisch (503) 782-2291.

EIS No. 850184, Final, NASA, PRO, FL, Centaur Upper Stage Launch Vehicle, Design, Development and Implementation, Space Transportation System, Due: June 10, 1985, Contact: John Castellano (202) 453-2478.

EIS No. 850185, FSuppl, COE, OH, Cleveland Harbor Navigation Project, Improvement, Cuyahuoga County, Due: June 10, 1985, Contact: William Butler (716) 876-5454.

EIS No. 850186, Final, AFS, SC, Francis Marion National Forest, Land and Resource Management Plan, Berkeley and Charleston Counties, Due: June 24, 1985, Contact: Donald Eng (803) 765-5222.

EIS No. 850187, Final, AFS, CA, Dodge Ridge Ski Resort, Expansion, Stanislaus National Forest, Tuolumne County, Due: June 10, 1985, Contact: Edmund Rosenbaum (209) 965-3434.

EIS No. 850188, Draft, AFS, ID, Clearwater National Forest, Land and Resource Management Plan, Due: August 15, 1985, Contact: James Bates (208) 476-4541.

EIS No. 850189, Draft, COE, ID, Salmon River Flood Reduction Study, Construction, Lemhi County, Due: June 24, 1985, Contact: Witt Anderson (509) 522-6626.

EIS No. 850190, Draft, BLM, NM, New Mexico Statewide Wilderness Study Areas, Wilderness Designation, Due: July 29, 1985, Contact: Joe Sovcik (305) 988-6565.

EIS No. 850191, Draft, BLM, OR, Oregon Wilderness Study Areas, Designation, Due: August 31, 1985, Contact: Jerry Magee (503) 231-6867.

EIS No. 850192, Draft, MMS, MXG, AL, MS, LA, TX, 1986 Cental and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales Nos. 104 and 105, Leasing, Due July 5, 1985, Contact: Joseph Christopher (504) 837-4720.

EIS No. 850193, Final, AFS, AK, Becharof National Wildlife Refuge Comprehensive Conservation Plan, Designation, Due: June 10, 1985, Contact: William Knauer (907) 786-3399.

Amended Notice

EIS No. 850167, Final, NY, Oneida Creek Watershed Flood Control Plan, Madison and Oneida Counties, Due: June 10, 1985, Published FR 5-3-85—Review period reestablished.

Dated: May 7, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-11451 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2833-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 22, 1985 through April 26, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-E65032-00, Rating EC2, Cherokee Nat'l Forest land and Resource Mgmt. Plan, TN and NC. **SUMMARY:** EPA's review identified potential environmental impacts to water quality that should be avoided in order to fully protect the environment. A more thorough description of the mitigation plans for preserving water quality should be included in the FEIS.

ERP No. D-BLM-K67006-CA, Rating EC2, Amselco Colosseum Gold-ore Extraction and Milling Project, Reopening and Expansion, Operating Plan Approval, Mohave Desert, CA. **SUMMARY:** EPA has concerns regarding the potential for contamination of ground water due to the seepage from tailings pond and waste rock piles. EPA also had concerns regarding the effectiveness of the reclamation program.

ERP No. D-FHW-F40282-MI, Rating: Alt. A, B, C, and D=LO2; Alt. E=EO2, US 31 Improvement, US 31 and US 10 Intersection to US 31 North of Scottville, MI. **SUMMARY:** EPA has no objection to the implementation of Alternatives A, B, C, and D. Objection was expressed regarding implementation of Alternative E due to the significant impact on wetlands, woodlands, agricultural lands and unique ecosystems and habitat.

Final EISs

ERP No. RF-CGD-A52156-00, Ballast Tanks and Crude Oil Washing System Stds. Regulatory Impact Analysis, 33 CFR Amend. of Pollution Prevention Regs. to Implement 46 U.S.C. 3705(c) and 3706(d). **SUMMARY:** EPA made no formal comment. EPA had rated the DEIS an LO 1.

ERP No. F-FHW-G40106-TX, Farm to Market Rd. 317, Athens Loop, Construction, TX. **SUMMARY:** EPA has not identified any issues of concern with regard to the proposed action.

ERP No. F-FHW-H40126-KS, Southern Arterial Construction, Ft. Riley Blvd./KS 18 to Tuttle Creek Blvd./US 24, Manhattan, KS. **SUMMARY:** EPA's previous concerns were considered by the FHWA. EPA has not further objections to the project.

Dated: May 7, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-11452 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 84-607]

Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services; Second Notice of Inquiry

Adopted: April 25, 1985.
Released: May 7, 1985.
By the Commission.

Purpose

1. The purpose of this *Second Notice of Inquiry* is to invite public comment on the ITU Radio Regulations that should be on the agenda for the 1987 Mobile Conference, to present the agenda for a forthcoming International Civil Aviation Organization (ICAO) meeting and activity underway in the ICAO Future Air Navigation Systems Committee, to present the results of the 28th session of the Subcommittee on Radiocommunications of the International Maritime Organization (IMO), and proposed changes to the ITU Radio Regulations prepared by the IMO drafting group on operational procedures, all of which impact on our Mobile Services WARC preparatory effort.[1] The discussions concerning these matters are contained in Sections I and II. (Also see Appendices 1, 2, and 3).

Background

2. Although the detailed agenda for the World Administrative Radio Conference for the Mobile Services has not been established by the ITU, the Conference is expected to have jurisdiction to consider and revise many of the provisions of the international Radio Regulations pertaining to the use of radio by the mobile services.[2] Thus, a thorough preparatory review and assessment of United States' options for the conference is necessary. It is important that the process begin expeditiously. There are large sections of the Radio Regulations devoted exclusively to mobile services, and significant portions devoted both to mobile and non-mobile services. To accomplish a review of this magnitude will require extensive effort to ensure that all U.S. interests have been satisfied to the extent practical prior to the submission of U.S. proposals to the Conference.[3] We anticipate that proposals wil be due in Geneva about January 1, 1987.

I. Items for Inclusion on the Mobile WARC Agenda

3. The *First Notice of Inquiry* solicited comments on issues that should or should not be addressed by the Mobile WARC. Appendix 1 to that *Notice* was an initial list of items prepared by the ITU Administrative Council in April 1984, and comments on it were requested.[4] The parties that responded to this request generally supported providing the WARC with authority to revise portions of Article 8 of the ITU Radio Regulations concerning the allocation of frequency bands.

4. Aeronautical Radio Incorporated (ARINC) indicated that allocation authority was needed at 900 and 1600 MHz, which would also have to include authority to modify definitions, Article 1, without affecting the non-mobile radio services. ARINC indicated that such authority was needed in order to

[1] The results of that IMO Sub-Committee on Radiocommunications meeting were agreed during the week of September 17-21, 1984; they were developed by an Ad Hoc Group dealing with Operational matters during the week of September 10-14, 1984. The IMO Drafting Group on operational procedures met January 21 through February 1, 1985.

[2] A list of "Items of Concern for Preparation For The World Administrative Radio Conference For the Mobile Services" was Appendix 1 to our *First Notice of Inquiry*, (General Docket No. 84-607) FCC 84-262, 49 FR 26301 Adopted June 15, 1984. Published June 27, 1984.

[3] As an adjunct to the process, a Federal Advisory Committee was established. See Memorandum Opinion and Order (General Docket No. 84-607) adopted February 22, 1985. Published March 29, 1985.

[4] In Appendix 1 to that *Notice* we indicated that while that list was not the official version, we did not anticipate significant changes from the list that would be forthcoming from the ITU Secretary-General. This has now been confirmed, as we have compared that Appendix 1 list against the ITU Secretary General Circular-Letter No. 42, dated October 18, 1984, a copy of which is being placed in this Docket file. Responses by administrations to this Circular-Letter were due in Geneva not later than February 28, 1985. The response by the United States is attached as Appendix 1.

address the aeronautical public correspondence needs, using either terrestrial or satellite techniques. It went on to say that while the spectrum area at 900 MHz is the primary contender, it may also be possible to satisfy this need in unused portions of the 1535–1660.5 MHz band once air-traffic control and company operational control requirements are satisfied. ARINC further indicated that allocation competency was needed in order to provide for the world-wide implementation of a satellite based radiodetermination-satellite service for the mobile services. ARINC indicated that the 1987 WARC is the only conference on the horizon to provide for these types of services.

5. AT&T indicated that the 4000–4063 and 8100–8195 kHz bands, presently shared between the fixed and maritime mobile services, should be allocated on an exclusive basis to that latter service. AT&T went on to indicate further that if sharing must be employed, then some order of priority between the two services must be developed. The Association of American Railroads (AAR) indicated that the Radio Regulation, in Article 8, Footnote 613, that permits land mobile communications in portions of the 160–162 MHz maritime band, should be maintained.

6. GEOSTAR Corporation (GEOSTAR) indicated that based on the assumption that the FCC will allocate domestic frequencies for a radiodetermination-satellite service, the United States should support the need for the WARC to have allocation authority, permitting worldwide implementation of such a system. GEOSTAR cited several reasons behind this request, namely, that both the 1979 WARC and the 1983 Mobile WARC were limited conferences, that certain existing ITU Radio Regulation Resolutions and Recommendations relate to the need to include radionavigation matters and new technologies on the agenda of the next competent Mobile WARC, that the radiodetermination-satellite service has not been reviewed since 1971 and that the ITU Convention permits a WARC to be competent noting Item 6A in the Appendix 1 list attached to the *First Notice*. GEOSTAR indicated that the radiodetermination-satellite service would not receive international protection without recognition in the ITU Radio Regulations, that such a system presents the possibility for world-wide search-and-rescue systems, and that the radiodetermination-satellite system presents the opportunity for world-wide marketing of such technology. GEOSTAR also indicated that the 1987 WARC will be the last opportunity in this century to effect such changes.

7. RCA Global Communications, Incorporated, (RCA) indicated opposition to sharing of the allocations at 4000–4063 and 8100–8195 kHz unless specific time frames for the use of these bands are established for the maritime mobile and the fixed services. Skylink Corporation, (Skylink), indicated a need to establish an allocation for a mobile-satellite service at 1600 MHz. It indicated that such an allocation is necessary in order to provide for an eventual expansion of the use of the mobile-satellite service at 800 MHz. It also indicated that such an allocation shoud be consistent with that proposed by Canada.

8. The three reply comments were also mainly concerned with allocation issues. ARINC was opposed to the need expressed by Skylink of frequencies at 1600 MHz as this might jeopardize those frequencies that were set aside for a planned aeronautical mobile satellite system. ARINC based its opposition on 3 points: (1) The request is beyond the competence of the 1987 Mobile WARC, as item 6A in Appendix 1 to the *First Notice* indicates a need to review only those matters that were excluded from consideration at the 1979 WARC, and that conference revised the allocations within 1500–1600 MHz. ARINC points out, however that it is not opposed to the consideration of definitions and allocations concerning the radiodetermination-satellite service at the 1987 WARC, since this service has not been reviewed since the early 1970's; (2) significant domestic and international activity has taken place over the past decade to evaluate the need for an aeronautical mobile satellite service at 1600 MHz, and that studies are continuing which may take up to 5 years to complete; and (3) any mobile-satellite use, although perhaps economically beneficial to share a transponder, would mean that the aeronautical service would have to compete for access with such shared use in order to accomplish such functions as safety of life and property.

9. GEOSTAR noted in its reply comments that the NPRM's in Dockets 84–689 and 84–690 has just been released proposing domestic allocations in the bands in the vicinity of 1600, 2500, and 5150 MHz for the radiodetermination satellite service. This, it indicated, means that the United States should propose allocation authority at the 1987 WARC, particularly since there will be no other ITU conference scheduled for this century that might be vested with that authority.

10. The National academy of Sciences, through its Committee on Radio Frequencies (CORF), while presenting no opinion on whether or not the 1987 conference should have allocation authority, is concerned about the impact on radio astronomy of new or modified allocations at 1610 and 1660 MHz. CORF, in its reply requirements of all services if allocation authority is given to the 1987 WARC.

11. Additional comments by the Radio Technical Commission For Marine Services was also submitted on February 20, 1985. In those comments RTCM indicated a preliminary list of issues that perhaps should be addressed by the 1987 Mobile WARC. Included on this list was the need for limited allocation authoirty for certain services in bands above 1500 MHz.

12. These comments and reply comments indicate to the Commission that threre is a public consensus that the 1987 Mobile WARC should have some allocation authority. Allocation authority is needed to extend internationally any domestic decisions that may be taken in the Notices of Proposed Rule Makings for the radiodetermination and mobile-satellite services.[5]

13. The allocation authority recommended in Appendix 1 includes the bands 4000–4063 and 8100–8195 kHz where we suggest that the 1987 Mobile WARC should have the authority to examine and, if appropriate, change the status of the allocations so that the maritime mobile service may utilize these bands in a more meaningful way than at present. This point was made in some of the comments mentioned earlier. It is also in line with other comments received from AMCOM Incorporated, Mobile Maritime Radio, Incorporated, the Radio technical Commission for Maritime Services, and WCM Radio Cincinnati, Incorporated.

14. The allocation authority recommended in Appendix 1 also includes that the bands from 1400–2500 MHz and the 5 GHz range may be examined and allocation changes made as necessary to accommodate the needs of the mobile satellite service and the radiodetermination satellite services. This is in line with the comments

[5] *Notice of Proposal Rule Making*, General Docket No. 84–689, and Docket No. 84–690, RM 4426, FCC 84–319 49 FR 36512, adopted July 12, 1984, and *Notice of Proposed Rule Making*, General Docket No. 84–1234, RM–4247, adopted November 21, 1984, published February 28, 1985, 50 FR 8149.

received and the two recent NPRM's that were adopted on these services. See paragraph 12.

15. In addition to these allocation issues, we are requesting comments on which Articles, Chapters, Appendices, Resolutions and Recommendations of the ITU Radio Regulations should be included on the agenda for the 1987 Mobile WARC in order to develop the United States position to the Administrative Council in 1985. Comments should address the United States preliminary view given in Appendix 1, either adding or deleting items from that list. We are not at this time requesting comments on the issues themselves. To provide all parties the opportunity for consideration, comments will be accepted up to June 1, 1985, and reply comments will be accepted up to June 15, 1985. Comment dates for other matters are indicated later in Sections II and III.

II. ICAO and IMO Activities

16. As noted in Appendix 2, the International Civil Aviation Organization will hold a Communications Divisional Meeting, September 4–28, 1985, in Montreal. Agenda Items 8 through 11 of the agenda for that meeting involve matters affecting United States preparation for the 1987 Mobile WARC. Comments are requested on ideas that should be put forward on these agenda items by the United States at that meeting.[6] Also placed in the docket file is the recent FAA submission to the ICAO Future Air Navigation Systems (FANS) Committee. Here, comments/reply comments are also required by June 1, and June 15, 1985, respectively.

17. The International Maritime Organization has also been preparing for the 1987 WARC. The Sub-committee on radiocommunications addressed this matter at its 28th Session, September 17–21, 1985.[7] The Sub-Committee recommended that certain ITU matters be considered for inclusion on the 1987 WARC agenda. The Sub-Committee also requested comments on initial changes to the Radio Regulations that were developed by a drafting group under the Ad Hoc Group on operational matters. These initial changes to the ITU Radio Regulations are intended to implement the Future Global Maritime Distress and Safety System (FGMDSS), and involve essentially a proposed new Chapter to the Radio Regulation. IMO intends to complete this effort at its 30th Session in September, 1985.

18. Appendix 3 includes certain extracts from the result of this last IMO meeting involving the 1987 Mobile WARC. It also includes the results of an IMO Drafting group on operational procedures. Comments are requested. Since however, the 30th Session of the IMO Radio Sub-committee will be held in October, 1985, we request that comments be submitted no later than June 15, and reply comments no later than July 10, 1985.

III. Conclusion/Administrative Matters

19. Comments are requested on the matters raised in this *Second Notice of Inquiry*. Specifically, we request comments on the points indicated in Appendices 1 through 3, and on any other matters relevant to Mobile WARC preparations that parties may wish to address. As we indicated in the *First Notice*, the Commission will develop its proposals for the WARC in coordination with National Telecommunication and Information Administration (NTIA) for eventual forwarding to the Departments of State as recommended United States proposals to be sent to the ITU for consideration at the Mobile WARC. This proceeding was initiated to develop U.S. proposals for the conference. It will not propose any changes to the FCC Rules and Regulations. Subsequent to conference action, however, changes may occur to the FCC Rules and Regulations through further docket proceedings.

20. Pursuant to the authority set forth in sections 4(i), 303, and 403 of the Communications Act of 1934, as amended, it is ordered that a *Second Notice of Inquiry* is hereby adopted.

21. Pursuant to applicable procedures set forth in § 1.430 of the FCC Rules and Regulations, persons interested in submitting comments to this *Notice* may do so as follows:

A. On the issues addressed in Section I, items for inclusion on the Mobile WARC agenda, comments are due on or before June 1, 1985 and reply comments are due on or before June 15, 1985.

B. On the issues addressed in Section II, ICAO matters only, comments are also due on or before June 1, 1985, and reply comments on or before June 15, 1985;

C. On the issues addressed in Section II, IMO matters only, comments are due on or before June 15, 1985, and reply comments are due on or before July 10, 1985.

Although § 1.419 of the Commission's Rules and Regulations requires that an original and five copies of all statements, briefs, or comments be filed in response to this *Notice*, ten additional copies would be useful. All relevant and timely comments and reply comments filed in this proceeding, as well as other pertinent information available to the Commission, will be considered.

20. Point of contact on this matter is Gordon F. Hempton, FCC, at (202) 632–7073.

Note.—The various appendices and attachments of this NOI will not be published herein due to the ongoing effort to minimize printing costs. Copies of the entire text of this NOI may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554; (202) 296–7322. Also, a copy is available for public inspection in the FCC Library, Rm. 639, and the FCC Dockets Branch, Rm. 239, both also located at 1919 M St., NW.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–11403 Filed 5–9–85; 8:45 am]

BILLING CODE 6712-01-M

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[6] Some initial work has already been accomplished by an ICAO Frequency Management Study Group (FMSG) at a meeting in March, 1984. The Report of that FMSG meeting (FMSG-Memo/30 of 8/21/84) has been placed in this Docket file.

[7] We note too, that the IMO Sub-Committee on Standards of Training and Watchkeeping is beginning to address matters involving the ITU and the 1987 Mobile WARC. The Report (STW 17/11) of that Sub-Committee meeting of July, 1984, to the IMO Maritime Safety Committee (MSC), has also been placed in this Docket file.

[Report No. 1513]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 3, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices.

Potential effects of a reduction in the allowable level of radiofrequency radiation of FCC authorized communications services and equipment. (Gen Docket No. 79–144)

Filed by: Henry L. Bauman & Barry D. Umansky, Attorneys for National Association of Broadcasters on 4–19–85.

James A. McKenna, Jr., Thomas N. Frohock & William K. Keane, Attorneys for TV Broadcasters All Industry Committee on 2–19–85.

Subject: Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services. (CC Docket No. 81–893)

American Telephone and Telegraph Company, Request for Approval to Supplement the Capitalization of AT&T Information Systems in Connection with the Transfers of Embedded Customer Premises Equipment. (File No. ENF 83–18)

Filed By: James A DeBois & David J. Ritchie, Attorneys for AT&T Information Systems, Inc. on 4–5–85.

Subject: Investigation of Access and Divestiture Related Tariffs. (CC Docket No. 83–1145, Phase I and Phase II, Part I)

Filed by: Robert L. Barada, Maya A. Mathews & Stanley J. Moore, Attorneys for Pacific Bell on 4–22–85.

John A. Ligon, Attorney for ITT Communications Services, Inc., on 4–22–85.

H. Richard Juhnke, Arthur H. Simms & Lawrence P. Keller, Attorneys for Western Union Telegraph Company on 4–22–85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–11381 Filed 5–9–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Part-Time Career Employment Program

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed commission order.

SUMMARY: The Federal Employees Part-time Career Employment Act (Pub. L. 95–437) requires an agency to publish for comment in the **Federal Register** regulations promoting part-time employment. This notice sets forth the policies and procedures for the establishment of the Federal Maritime Commission Part-time Career Employment Program.

DATE: Comments must be recevied by the Office of the Secretary within thirty (30) calendar days following the date of publication of this notice in the **Federal Register.**

ADDRESS: Send comments (original and 4 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Susan M. Sienkiewich, Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5773.

Part-Time Career Employment Program

Section 1. Purpose

1.01 This Order describes the policies and procedures to implement Pub. L. 95–437, the Federal Employee Part-Time Career Employmnent Act of 1978, by establishing a continuing program in the Federal Maritime Commission to provide career part-time employment opportunities.

Section 2. Definitions

2.01 *Part-time career employment* is regularly scheduled work of from 16 to 32 hours per week performed by individuals serving under permanent appointments in the excepted service or career or career-conditional appointments in the competitive service.

Section 3. Policy

3.01 It is Commission policy to employ persons on the basis of merit without regard to political, religious, or labor organization affiliation or nonaffiliation, race, color, religion, sex, national origin, age, or nondisqualifying physical handicap. In keeping with this commitment to equal employment opportunity and in accordance with the Federal Employees Part-Time Career Employment Act of 1978, the Commission will provide career part-time employment opportunities in positions up to GS–16 (or equivalent) in the competitive or excepted service, subject to availability of resources, personnel ceilings and mission requirements. Consistent with this policy, managers are encouraged to use part-time employment as an alternative to full-time employment in planning for the accomplishment of the work of their organizations. Such categories as the physically handicapped, persons with family responsibilities, students or others desiring part-time employment to continue their education, older persons and others, as appropriate, will be considered as valuable recruitment sources of part-time employees.

3.02 With the exception of a change to a part-time work schedule at the request of a full-time Commission employee, no occupied position will be abolished in order to make the duties available to be performed on a part-time career employment basis.

Section 4. Responsibilities

4.01 *The Office of Personnel* is responsible for:

(a) Coordinating efforts to determine functions that can be effectively performed by part-time employees;

(b) Identifying and developing recruitment sources;

(c) Designating an individual to coordinate the part-time employment program;

(d) Overseeing the development and implementation of part-time employment goals and timetables;

(e) Providing assistance to managers and supervisors in restructuring jobs and work schedules as appropriate;

(f) Preparing reports on part-time employment for transmittal to the Office of Personnel Management (OPM) and the Congress; and

(g) Notifying the public of vacant part-time positions through the posting of vacancy announcements.

4.02 *Managers and Supervisors at all levels* are responsible for:

(a) Implementing the policies set forth in this Order;

(b) Reviewing positions which become vacant to determine those which could be effectively performed by part-time employees; and

(c) Restructuring jobs and changing work schedules, as necessary, to maximize opportunities for effective use of part-time employees.

Section 5. Procedures for Requesting and Evaluating Conversion to Part-Time Employment

5.01 Employees desiring to change from full-time to part-time career employment should submit a written request to the immediate supervisor stating the reasons for the request and the work schedule desired.

5.02 The immediate supervisor will evaluate the request, taking the following factors into consideration:

(a) Regular and peak workloads which might lend themselves to part-time schedules and the ease of filling the "second half" of the position (part-time employees are counted toward personnel ceilings on the basis of the fractional part of the 40-hour week actually worked);

(b) Adaptability or flexibility of the work to be performed on a part-time basis;

(c) Special space and equipment requirements, if any; and

(d) Benefits to employee e.g., would alleviate child care concerns for parents, would lessen pressure of a full day's work on those with health problems, would allow those near retirement to discontinue work gradually.

5.03 Based on the above considerations, the employee's immediate supervisor will approve or deny the request and forward it to the second level supervisor for review of and concurrence with the decision. There is no employee right of appeal outside the Commission for denial of a request for conversion to a part-time tour of duty. However, an employee may grieve a denial of a request to change work schedules through the Commission's administrative grievance system (C.O. 65, Revised).

5.04 All approved requests for conversion to part-time employment will be forwarded to the Office of Personnel along with a Standard Form 52, "Request for Personnel Action", for processing. These requests will be maintained in the Personnel Office for statistical purposes.

Section 6. Effect on Employee of Appointment or Conversion to Part-Time Employment

6.01 Appointment or conversion to a part-time tour of duty does not change the employee protections from removal (or lack thereof) conveyed by status under a probationary, career-conditional, or career appointment.

6.02 An employee's work schedule has no effect on the classification of a position, since the grade of a position is determined by the level of difficulty of the work.

6.03 Part-time experience is credited on a pro-rata basis according to the relation it bears to a full workweek. In order to be eligible for promotion, such accumulated experience must meet the amount of experience required by the Office of Personnel Management Handbook of Qualification Standards (X–118), which is available for review in the Office of Personnel.

6.04 A part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purposes of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases, leave accrual rate, and time-in-grade restrictions on advancement.

6.05 The rate of pay is directly proportional to the time scheduled to work. Overtime pay or compensatory time off for an eligible part-time employee is provided only for work in excess of 8 hours a day or over 40 hours in a week. A part-time employee receives straight time pay for work which is in excess of scheduled hours but which does not exceed 8 hours per day or 40 hours per week.

6.06 Annual leave is earned according to the number of hours worked in a pay period. An employee's leave earning category is based on the employee's length of service. Maximum carry-over at the end of a leave year remains the same as for full-time employees. Sick leave is earned at the rate of one hour for every 20 hours in pay status. No leave (annual or sick) is earned for hours worked in excess of 80 in a pay period. A part-time employee accrues Military Leave prorated on the basis of tour of duty. A part-time employee is eligible for other leave categories e.g., Absence Without Leave, Funeral Leave, Court Leave, excused absence, on the same basis as a full-time employee. For all categories of leave for which a part-time employee is eligible, leave is charged only for absences during those hours the employee is scheduled to work.

6.07 Holiday pay is received only if an employee is regularly scheduled to work on that day, and only for the number of hours covered by the employee's regular tour of duty.

6.08 The amount of life insurance carried by a covered employee is based on annual salary and is computed on the basis of hours in the tour of duty times base pay rate. The minimum amount of insurance is $10,000.

6.09 The Government's contribution for the health insurance of an eligible employee who becomes part-time after April 8, 1979, is prorated on the basis of the fraction of a full-time schedule worked. An employee who was working under a permanent part-time schedule on April 7, 1979, receives a full Federal health benefits contribution for as long as the employee remains part-time. In addition, a change in status of employment from full-time to part-time is an event which allows an employee to change health insurance enrollment to another plan and/or option within 31 days from the effective date of change in status.

6.10 Retirement benefits are computed in the same way for all career employees both full-time and part-time. Annuities are based on an employee's length of service and the highest average annual pay received for any three consecutive years.

6.11 In a reduction-in-force, part-time employees compete only for other part-time jobs. A full-time employee may not displace a part-time employee.

Section 7. Job Sharing

7.01 A form of part-time employment in which two employees hold a single full-time position by alternating their work schedules to cover a full 40 hour work week is known as job sharing.

7.02 A variety of different work scheduling arrangements may be used including split days, alternate days or split weeks. However in order to be eligible to earn leave, each job sharer must work at least one hour of regularly scheduled work in each of the two weeks of the bi-weekly pay period.

7.03 Job sharing can provide managers with considerable work scheduling flexibility, since one member of a job sharing team may cover in the absence of the other.

7.04 Each job sharer has his or her own position description which may or may not be identical. Similarly, the duties of job sharers may be the same or different.

7.05 Subject to the approval of the Director, Office of Budget and Financial Management, the work schedules of a job sharing team may occasionally overlap and total more than 40 hours per week. This may be necessary to provide for coverage during periods of heavy workload (without the use of costly overtime) or to allow job sharers to attend meetings or training.

Section 8. Increasing Hours of Part-time Tour of Duty/Converting to Full-Time Employment

8.01 A part-time employee's tour of duty may be changed to meet the needs of the Office. A change must be made in advance of the administrative workweek in which the change is to occur and must be approved by the employee's immediate supervisor. In addition, for fund control purposes, the Director, Office of Budget and Financial Management must be notified prior to increases in tours of duty to assure that funds and work years are available. An increase in the tour of duty of a part-time employee above 32 hours per week is not permitted for more than two consecutive pay periods.

8.02 It is contrary to merit principles to appoint an individual to work part time with the intent to convert the employee to full-time after a brief interval. Unexpected increases in workload may, however, require an agency to change the work schedule of

part-time employees to full time on either a temporary or permanent basis. The Commission will make every effort to accommodate an employee with a part-time tour, particularly if a change to full-time would result in a hardship to the employee. However, if there are no other ways to accomplish the work within available resources, the Commission may require that an employee convert to a full-time tour of duty.

8.03 When the Commission determines that it must change the schedule of a part-time employee to full-time, a minimum of two calendar weeks notice will be given to the employee.

8.04 Procedures for requesting conversion to a full-time tour of duty are the same as described in Section 5.01. There is no guarantee of return to a full-time position once vacated. Conversion to a full-time tour of duty is subject to personnel ceiling controls, availability of funds and the availability of work to support a full-time tour of duty.

Section 9. Position Changes

9.01 A part-time employee is covered by the Commission's Merit Staffing Program (C.O. 61) and is reassigned, detailed and promoted in accordance with and under the same circumstances as other career and career-conditional employees.

9.02 A movement from a part-time to a full-time position is not subject to competition unless required by the Commission's merit staffing procedures.

Section 10. Inquiries

10.01 Any inquiries concerning the provisions of this Order should be directed to the immediate supervisor or the Office of Personnel.

Section 11. Effect on Other Orders

11.01 This is a new Commission Order.

Alan Green, Jr.,

Chairman.

Appendix A

Annual Goals for Establishment of Part-time Positions

Year	Target
1985	.5 percent of the Commission's workforce to be employed on a parttime basis.
1986	1 percent of the Commission's workforce to be employed on a parttime basis.
1987	1.5 percent of the Commission's workforce to be employed on a parttime basis.

[FR Doc. 85-11391 Filed 5-9-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

One Valley Bancorp of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later that June 3, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Western Greenbrier National Bank, Rainelle, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BOL Banshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Louisiana in New Orleans, New Orleans, Louisiana.

2. *Hibernia Crporation*, New Orleans, Louisiana; to merge with Guaranty Commerce Corporation, Alexandria, Louisiana, thereby indirectly acquiring Guaranty Bank & Trust Company of Alexandria, Louisiana, Alexandria, Louisiana.

c. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas, 75222:

1. *Republicbank Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares of Republicbank Countryside, N.A., San Antonio, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11325 Filed 5-9-85; 8:45 am]

BILLING CODE 6210-01-M

Society Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies: and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) fo the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Society Corporation*, Cleveland, Ohio; to merge with Centran Corporation, Cleveland, Ohio, thereby indirectly acquiring Central National Bank of Cleveland, Cleveland; Centran Bank of Akron, Akron; The Richland Trust Company, Mansfield; The Franklin Bank, Comumbus; and The Farmers and Savings Bank, Loudonville, all located in Ohio.

Additionally, Society Corporation has applied under section 4(c)(8), to acquire Centran Life Insurance Company, Berea, Ohio (credit reinsurance and underwriting); Security Capital Leasing Inc., of Mississippi, Berea, Ohio (consumer finance activities); and Berea, Ohio (leasing activities); CFS One, Inc., Berea, Ohio (consumer finance business, sale of credit-related property and casualty insurance); CFS One Inc., Protective Loan Corporation, Berea, Ohio (consumer finance activities).

Board of Governors of the Federal Reserve System, May 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11326 Filed 5-9-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection package it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 3, 1985.

Social Security Administration

Subject: Certification by Religious Group—SSA-1458-Extension-(0960-0093)

Respondents: Individuals

OMB Desk Officer: Judy A. McIntosh

Public Health Service

Food and Drug Administration

Subject: 21 CFR Part 25—National Environmental Policy Act; Policies and Procedures—Revision (0910-0190)

Respondents: Businesses, federal agencies, small businesses

Subject: Regulations Under the Federal Import Milk Act

Respondents: State/local governments, farms, small businesses

OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Information Collection Requirements in HSQ-110, Acquisition, Protection and Disclosure of Peer Review Organization Information—42 CFR 476.104, 476.105, 476.116 and 476.134—(HCFA-R-70)—New

Respondents: Peer review organizations, businesses or other for profit, small businesss or organizations

Subject: Preclearance for: Competitive Bidding for Durable Medical Equipment Demonstration (#003)—(HFCA-491)—New

Respondents: Individuals or households, businesses or other for profit, non-profit institutions, small businesses or organizations

Subject: Hospice Request for Certification in the Medicare Program—Extension (0938-0313)

Respondents: Small businesses or organizations

Subject: State Medicaid Manual, Part 3 on Assignment of Rights—(HCFA-R-75)—New

Respondents: Individuals or households, state/local governments

OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503 ATTN: (name of OMB Desk Officer).

Dated: May 7, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11367 Filed 5-9-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85E-0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tonocard Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product, Tonocard Tablets, and is publishing this notice of the determination as required by law. This determination follows from the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions shoud be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Sasinowski, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (the act) (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed.

Under the act, a product's "regulatory review period" forms the basis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigation of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until permission to market the drug product is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review

period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has determined that the applicable regulatory review period for Tonocard Tablets (tocainide hydrochloride) is 3,956 days. Of this time, 2,169 days occurred during the testing phase of the regulatory review period while 1,787 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act involving this drug product became effective: January 10, 1974.

The applicant claimed December 7, 1973, as the date that commenced the testing phase, however, FDA did not receive the exemption until December 12, 1983. Moreover, under FDA regulations (21 CFR 312.1(b)(4)), the exemption did not become effective until 30 days after the notice of claimed investigational exemption for the drug was received by FDA.

2. The date an application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: Dember 19, 1979.

The applicant claimed that the approval phase of the regulatory review period began on May 20, 1982, when the new drug application that was ultimately approved was submitted for the drug product. However, earlier the applicant had initially submitted a new drug application which was received by FDA on December 19, 1979.

After review of this earlier application FDA declared it nonapprovable in a June 30, 1980, letter to the applicant. This subsequent FDA action on the December 1979 application did not preclude that application's commencement of the approval phase of the regulatory review period. the legislative history to the act explains that "an application * * * is considered to be 'initially submitted' if the applicant has made a deliberate effort to submit an application containing all information necessary for agency review to begin. As long as the application was complete enough so that agency action could be commenced, it would be considered to be 'initially submitted'." (See H. Rept. 98–857, Part 1, 98 Cong., 2d Sess., 44, 1984.)

In this case, while the December 1979 application was not approvable, it was sufficiently complete to permit agency action to begin. Accordingly, the first day of the approval phase of the regulatory review period is December 19, 1979.

3. The application was approved on November 9, 1984.

FDA has verified that NDA 18–257 was approved on November 9, 1984, as stated by the applicant.

This determination of the regulatory review period establishes the maximum potential amount of patent extension. However, the United States Patent and Trademark Office applies several statutory limitations in its calculation of the actual period of patent extension. Accordingly, in its application for patent extension, this applicant seeks 342 days of patent extension.

Anyone with knowledge that any of the dates as published is in error may, on or before July 9, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 6, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98–857, Part 1, 98 Cong., 2d Sess., 41–42, 1984.) Petitions should be in the format described in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–11336 Filed 5–9–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0167]

American Medical Optics; Approval of Supplemental Premarket Approval Applications for the Sauflon® 70 (Lidofilcon A) Soft Contact Lens for Daily or Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental applications by American Medical Optics, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Sauflon® 70 (lidofilcon A) Soft Contact Lens for not-aphakic daily or extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental applications.

DATE: Petitions for administrative review by June 10, 1985.

ADDRESS: Written requests for copies of the summaries of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On April 7, 1980, FDA approved an application for premarket approval of the Sauflon® PW (lidofilcon B) Hydrophilic Contact Lens for extended wear. The application was submitted by American Medical Optics, Irvine, CA 92714. In the **Federal Register** of September 16, 1980 (45 FR 61368), FDA announced that the application had been approved. On September 1, 1981, and August 26, 1982, American Medical Optics submitted to CDRH supplemental applications for premarket approval of the Sauflon® 70 (lidofilcon A) Soft Contact Lens for daily and for extended wear. This lens is indicated for both daily and extended wear by not-aphakic persons, in power of −12.50 to +8.00 diopters, for the correction of visual acuity in persons with nondiseased eyes that are myopic or hyperopic and who may have astigmatism of 2.00 diopters or less. On March 26, 1982, and January 28, 1983, respectively, the Ophthalmic Devices Panel reviewed the supplemental applications. On September 23, 1982, and May 9, 1983, respectively, CDRH approved the applications by letters to the applicant from the Acting Director of the then Bureau of Medical Devices and the Associate Director for Device Evaluation of the then Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the

definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III device (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

The summaries of the safety and effectiveness data on which CDRH based its approvals are on file with the Dockets Management Branch (address above) and are available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Copies of all approved labeling are available for public inspection at CDRH—contact Richard E. Lipman (HFZ-460), address above.

Restrictive labeling has been established for approved contact lenses made of polymers other than PMMA. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with contact lenses made of polymers other than PMMA. An applicant who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve these applications. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the applications and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 2, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-11334 Filed 5-9-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0166]

International Hydron Corp.; Premarket Approval of X-70 (Lidofilcon A) Soft Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by International Hydron Corp., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the X-70 (lidofilcon A) Soft Contact Lens. The lens is to be manufactured under an agreement with American Medical Optics which has authorized International Hydron Corp. to incorporate by reference information contained in its approved premarket approval application for the Sauflon® 70 (lidofilcon A) Soft (Hydrophilic) Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 10, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On July 28, 1983, International Hydron Corp., Woodbury, NY 11797, submitted to CDRH an application for premarket approval of the X-70 (lidofilcon A) Soft Contact Lens. The spherical lens ranges in powers from −12.50 diopters to +8.00 diopters and is indicated for both daily and extended wear of from 1 to 30 days between cleaning and disinfection (as directed by the eye care practitioner), for the correction of visual acuity in persons with nondiseased eyes that are not-aphakic and have myopia or hyperopia. The lens may be worn by persons who have refractive astigmatism of 2.00 diopters or less which does not interfere with visual acuity. The application included authorization from American Medical Optics, Irvine, CA 92714, to incorporate by reference the information contained in its approved premarket approval

application supplements for the Sauflon® 70 (lidofilcon A) Soft (Hydrophilic) Contact Lens for both daily and not-aphakic extended wear (Docket No. 85M-0167). On March 29, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the X-70 (lidofilcon A) Soft Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 2, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 11335 Filed 5-9-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Virginia State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 19, 1985, in Philadelphia, Pennsylvania to reconsider our decision to disapprove Virginia State Plan Amendment 84-12.

CLOSING DATE: Requests to participate in the hearing as a party must be received by May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Virginia State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae

must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Virginia's proposals to implement changes to its treatment of real property as a countable resource for purposes of eligibility for Medicaid for the medically needy and to implement changes to treatment of non-real property for purposes of eligibility for Medicaid violate section 1902(f) and 1902(a)(10)(C)(i)(III) of the Social Security Act and Federal regulations at 42 CFR 435.121.

Virginia is a 209(b) State, meaning that it may use more restrictive eligibility criteria for Medicaid than are used by the Supplemental Security Income (SSI) program. However, section 1902(f) of the Social Security Act and 42 CFR 435.121 require that a 209(b) State may not have eligibility criteria which are more liberal than those used by SSI, or more restrictive than those in the State's Medicaid plan on January 1, 1972.

Section 201.5 of Virginia's proposed plan amendment sets forth the conditions under which non-home real property will not be counted as a resource for purposes of eligibility for Medicaid. This section to some extent parallels the "bona fide effort to sell" instruction currently found in the SSI POMS (section 01130.330). To the extent the instruction would permit a blanket exclusion for an asset that is not salable at the asking price or original current market value, the POMS provision is not a correct reflection of SSI resource policy. This policy is reflected in Social Security Administration Ruling (SSR 83-30a) under which there is no "bona fide effort to sell" policy in SSI that would create such a blanket exclusion of resources. Section 201.5 of the proposed plan amendment is more liberal that the SSI policy. Therefore, HCFA has determined that § 201.5 of the proposed plan amendment is in violation of section 1902(f) and 42 CFR 435.121(b)(i).

Section 300 governs the scope of the other sections in the 300 series (from 301 through 303). Section 301 states that for real property "the regulations in sections 100, 201.2 through 201.5 above apply." Sections 201.2 through 201.5 contain the methodologies for determining countable resources for the aged, blind, and disabled. Under section 1902(a)(10)(C)(i)(III) of the Social Security Act the methodologies used to determine medically needy eligibility must be those employed by the most closely related cash assistance program. For families and children, these would be the AFDC methodologies. The plan proposes using methodologies related to the aged, blind and disabled instead of AFDC's methodologies. Therefore HCFA has determined sections 300 and 301 of the proposed plan violate section 1902(a)(10)(C)(i)(III) of the Act.

The notice of Virginia announcing an administrative hearing to reconsider our disapproval of § 201.5, 300 and 301 of its State plan amendment reads as follows: Mr. Ray T. Sorrell,

Director, Department of Medical Assistance Services, Richmond, Virginia

Dear Mr. Sorrell: This is to advise you that your request for reconsideration of the decision to disapprove sections 201.5, 300 and 301 of Virginia State Plan Amendment 84-12 was received on April 9, 1985. You have requested a reconsideration of whether this plan amendment, which would implement a number of changes with regard to the State's treatment of real property as a countable resource for purposes of eligibility for Medicaid for the medically needy and would implement several other changes with regard to treatment of non-real property for purposes of eligibility for Medicaid conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on June 19, 1985, at 10 a.m., in Room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 2, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-11377 Filed 5-9-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Poarch Band of Creeks; Establishment of Reservation

Correction

In FR Doc. 85-9416, beginning on page 15502 in the issue of Thursday, April 18, 1985, make the following corrections:

On page 15502, second column:

1. In the twelfth line of the land description under *Elmore County* T. 18 N., R. 18 E., "thence 59°56" East" should have read "thence S 59°56" East";

2. In the nineteenth line, "89°29'W" should have read "80°29'W".

BILLING CODE 1505-01-M

Bureau of Land Management

[F-14908-A]

Alaska Native Claims Selection, Sitnasuak Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Sitnasuak Native Corporeation for approximately 9.031 acres. The lands involved are in the vicinity of Nome.

Portions of Mineral Survey No. 1339 and Mineral Survey No. 410.

A notice of the decision will be published once a week for (4) consecutive weeks, in THE NOME NUGGET. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 10, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371,

February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11405 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-JA-M

Public Lands; Alaska; Acceptance of Mining Claim Recordation Filings

AGENCY: Bureau of Land Management, Interior.

ACTION: Acceptance of Mining Claim Recordation Filings at the Anchorage District Office located at 4700 East 72nd Avenue, Anchorage, Alaska 99507.

SUMMARY: With the recent decentralization of the Bureau of Land Management, Alaska State Office, certain functions are now the responsibility of the Anchorage District Manager. The decentralization has extended the authority to accept mining claim recordation filings to the Anchorage District Office. Mining claim recordation filings can also continue to be filed at the Alaska State Office and Fairbanks District Office

Accordingly, the Branch of Case File Processing will accept all new mining claim recordation affidavits of annual labor or notices of intent to hold mining claims. All future filings and affidavits involving mining claim recordation will be received at the Anchorage District Office during the normal business hours.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage Alaska 99507.

Wayne A. Boden,

District Manager.

[FR Doc. 85-11406 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-JA-M

Alaska; Filing and Transfer of Mineral Patent Applications and Casefiles to the Anchorage District Office on Forest Service Administered Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing and Transfer of Mineral Patent Applications and Casefiles to the Anchorage District Office on Forest Service Administered Land.

SUMMARY: The filing of mineral patent applications and location of all related casefiles for the Forest Service Administered Lands has been officially transferred to the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507, (907) 267-1200.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, Alaska 99507.

Wayne A. Boden,

District Manager.

[FR Doc. 85-11407 Filed 5-9-85 8:45 am]

BILLING CODE 4310-JA-M

[CA 17208]

Geothermal Resources Lease Sale

Notice is hereby given that approximately 95,201.62 acres of land in 50 parcels within Coso (11,689.83 acres), Dunes (3,280.47 acres), East Brawley (7,253.52 acres), Glamis (17,939.39 acres), Geysers (28,560.05), Lake City Surprise Valley (15,276.44), and Salton Sea (11,201.92) KGRA's in Imperial, Lake, Lassen, Mendocino, Napa, and Sonoma Counties, California, will be offered competitively for lease under the Geothermal Steam Act of 1970 through sealed bids to the qualified responsible bidder of the highest cash amount per parcels. Bids will re received until 10:00 a.m. on June 25, 1985.

For further information contact the California State Office, Division of Operations, Room E-2605, 2800 Cottage Way, Sacramento, California 95825 Phone (916) 484-4492.

Dated: May 3, 1985.

Joan B. Russell,

Chief, Leasible Minerals Section, Branch of Lands and Minerals Operations.

[FR Doc. 85-11404 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0367, Block 32, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on April 29, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11328 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Land Protection Plans; Availability, Cape Cod National Seashore

May 10, 1985.

AGENCY: Cape Cod National Seashore, Interior.

ACTION: Notice of Availability of Land Protection Plan and Opportunity for Public Participation.

SUMMARY: This notice of May 10, 1985 announces that a Draft Land Protection Plan for Cape Cod National Seashore is available for public review and comment for 45 days beginning with this publication date at the Cape Cod National Seashore headquarters building, Marconi Station, South Wellfleet, Massachusetts 02663.

DATE: May 10, 1985 to June 24, 1985.

Interested persons may review this document and make written comments to the official listed below within the above comment period. Further information concerning this Plan can be obtained for Jim Killian at the above address or telephone (617) 349-3785.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

April 22, 1985.

[FR Doc. 85-10378 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Postponement of ICC Practitioner Examination

The Commission has voted to postpone the July 1985 ICC Practitioner's Examination.

The examination is a composite of questions submitted by all the bureaus and offices of the Commission. These submissions are reviewed, edited, and put together by the Employee Board on Education and Practice, in conjunction with the Grading Committee. Registration, printing, distribution and administration of the examination are handled by the Office of the Secretary. The examination is administered at various locations throughout the country where applicants are located. Grading of the examinations and determination of passing grades are the functions of the Grading Committee and Employee Board, respectively, under the supervision of the Vice Chairman.

Recent budget problems at the Commission have resulted in furloughs for all employees. The employees who prepare, administer and grade the examination do so on a voluntary basis and must perform these collateral duties with their regular full-time jobs. With the shortened work week, precedence must be given to statutorily mandated work. In addition, current restrictions on employee travel would preclude administration of the examination at the various test sites near the applicants.

Every effort will be made to reschedule the examination as soon as possible after the end of the furloughs. Applicants will be notified to time, date, and test site.

Questions concerning this postponement should be directed to the Commission Service Section (202) 275-7233.

Decided: April 17, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11378 Filed 5-9-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30648]

Santa Cruz, Big Trees & Pacific Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of (1) 49 U.S.C. 10901, the acquisition and operation by Santa Cruz, Big Trees & Pacific Railway Company of 9 miles of track between Santa Cruz and Felton, CA, in Santa Cruz County, CA, and its lease of 0.418 miles of incidental trackage rights in Santa Cruz, and (2) 49 U.S.C. 11301, the issuance by Santa Cruz, Big Trees & Pacific Railway Company of securities in an amount not to exceed $1,750,000.

DATES: These exemptions are effective on May 10, 1985. Petition to reopen must be filed by May 30, 1985.

ADDRESSES: Send pleadings to Finance Docket No. 30648 referring to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: E. Barrett Prettyman, Jr., Hogan & Hartson, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James E. Bayne,

Secretary.

[FR Doc. 85-11379 Filed 5-9-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-33 and AB-37 (Sub-17x and 31x)]

Union Pacific Railroad Co.—Exemption to Discontinue Operations—First and Second Main Lines at Seattle, WA and Oregon-Washington Railroad & Navigation Co.—Exemption To Abandon First and Second Main Lines at Seattle, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the discontinuance of service by the Union Pacific Railroad Company over, and the abandonment by Oregon-Washington Railroad Navigation Company of, lines of rail known as the First and Second Main Lines, for approximately 1.94 miles in Seattle, King County, WA, from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, subject to employee protection conditions.

DATES: This exemption will be effective on June 10, 1985. Petitons to stay must be filed by May 20, 1985. Petitons for reconsideration must be filed by May 30, 1985.

ADDRESSES: Pleadings in this matter should all refer to Docket No. AB-33 (Sub-No. 31X) and Docket No. AB-37 (Sub-No. 17X) and be sent to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additonal information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11380 Filed 5-9-85; 8:45 am]

BILLING CODE 7035-01-M

Study of the Estimated Traffic Diversion and Viability of the Divestiture Proposals Resulting From the Acquisition of the Consolidated Rail Corporation by Norfolk Southern Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of a study.

SUMMARY: Based on a request from the Honorable James J. Florio, Chairman of the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce of the United States House of Representatives, we are conducting a study. The study will estimate the traffic that would be diverted from other railroads if Consolidated Rail Corporation (Conrail) is sold to Norfolk Southern Corporation (NS). The study will also analyze the viability of Guilford Transportation Industries, Inc. (Guilford), and the Pittsburgh and Lake Erie Railroad Company (P&LE) after they receive the lines of Conrail and NS that the Department of Justice has required Conrail and NS to divest to alleviate the anticompetitive effects of the acquisition.

DATES: 1. On May 15, 1985, all parties that intend to participate in this study must notify the Secretary of the Commission in writing.

2. On May 20, 1985, the Secretary of the Commission will issue a service list of all parties participating in this study.

3. On May 24, 1985, opening statements of (i) those railroads claiming diversion must be filed, and (ii) all parties commenting on the divestiture plans must be filed.

4. On June 7, 1985, reply statements must be filed.

5. On June 19, 1985, (i) parties to the diversion analysis must submit a joint summary indicating those areas of diversion on which they disagree and the reasons for their disagreement, and (ii) parties to the viability analysis must submit a summary (not to exceed 20 pages) of their arguments on the viability of Guilford and P&LE.

6. The staff study will be submitted to the Subcommittee by August 2, 1985.

ADDRESS: Send an original and 15 copies of all statements, referring to this study by placing "Conrail Study" on the outside of all envelopes to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

A. Diversion Analyses

All diversion studies must include the following information: (1) Name of the carrier; (2) origin-destination corridor; (3) commodity; and (4) pre-diversion and post-diversion routing. This data should be arrayed in a manner showing the gateways at which the diversion will occur. *All* system gateways of both Conrail and NS's railroad subsidiaries must be included.[1]

All diversion studies must also specify the year in which the traffic moved. The studies may be based on statistically valid samples. In addition, the studies should summarize the gross revenues to be diverted, and indicate the net revenues that will be lost. All statements of diversion and conclusions on revenue loss for each movement must be justified. In addition, if a sample is used, the validity of the sample must be explained.

The results of the traffic studies should be translated into proposed operational changes anticipated by the railroad, including the impact on equipment, yards, shops, main line traffic densities, financial investment needed to rehabilitate lines if necessary, and the changes in employment by craft.

B. Viability of the Divestiture Analysis

In analyzing the viability of the divestitures, the following information must be provided in the form of sworn statements: (1) The exact lines being acquired; (2) the nature of the acquisition of each line (*e.g.* lease, purchase, etc.); (3) the agreement covering the acquisition of the line; (4) the cost of each line; (5) the means of paying for each line; (6) the proposed marketing [see the information required by 49 CFR 1180.7] and operating [see the information required by 49 CFR 1180.8(a)] plans of Guilford and P&LE; and (7) the projected financial results of the marketing and operating plans, including *pro forma* balance sheets and income statements.[2]

In the foregoing analyses, Guilford and P&LE should show the gains in traffic expected as a result of the acquisition of specific Conrail and NS lines. The condition of lines (including the Federal Railroad Administration class of track) and investment needed to rehabilitate the lines, if necessary, should be presented.

[1] The diversion studies should also specify those instances in which a port will be affected.

[2] The divestiture analyses should also indicate the effect that these divestitures will have on ports.

C. Other Information

Parties may submit any other evidence that they consider relevant on specific estimates of traffic diversion, including the ability to maintain essential services and to remain an effective competitor, or specific aspects of the viability of the P&LE and Guilford after they obtain the divestitures required by DOJ.

D. Procedural Matters

All papers that are submitted in this study must be sent to all parties on the service list. An original and 15 copies must be filed with the Commission. All evidence must be in the form of verified statements. Confidential material must be submitted to the Commission according to the procedures at 49 CFR 1104.14 (1984).

At the conclusion of the evidentiary presentation, the record will be analyzed, and the analyses will be submitted to Chairman Florio.

Authority: 49 U.S.C. 10311, 10321, 11145, and 11701.

Decided: May 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Andre, Sterrett, Simmons, Lamboley, and Strenio. Vice Chairman Gradison and Commissioner Strenio dissented with separate expressions. Commissioner Andre would have declined to initiate this proceeding. Commissioner Lamboley would also transmit a copy of the record upon which the staff report is based with appropriate notation of any confidential or privileged material submitted.

James H. Bayne,

Secretary.

Vice Chairman Gradison, Dissenting

By a slim majority, the Commission has elected to participate in a study dealing with the sale of Conrail despite firm notice to the contrary from three Members of Congress. In so doing, this Commission has placed itself squarely in the middle of varying Congressional requests even though we have been advised by these Members that the Commission does not have the legal authority to conduct such a study *and* that such a review would be duplicative, unnecessary and an ill-advised expenditure of scarce resources.

This kind of analysis actually constitutes Commission review of the Secretary's recommendation—a Commission role *not* contemplated by the statute. Subsection (c) of Section 408 of the Regional Rail Reorganization Act of 1978 states:

No transfer of the Corporation's stock or rail properties and freight service

responsibilities under this title shall be subject to judicial review *or to review by the Commission.* (Emphasis added.)

I continue to believe it is essential that we do our utmost to respond to *all* Members of Congress. In this instance we cannot comply until the existing statutory obstacles are removed by the entire Congress. I believe that the Commission is blatantly disregarding the intent of the statute which we are sworn to uphold.

I respeactfully dissent.

Commissioner Strenio, Dissenting

The Commission has made the wrong choice in deciding to institute this investigation at this time. Although I normally would insist that the Commission respond completely to any Congressional inquiry, in this instance the circumstances compel a different result.

Most importantly, these are far from normal times. The Commission is now in the midst of its fourth harsh week of agency-wide furloughs, with no certainty whether or when relief will be forthcoming. Productivity and morale at the ICC have been devastated by the furloughs. As a result, the agency is no longer certain of timely meeting all its existing statutory duties. Under these severe constraints, the Commission can not responsibly undertake any additional projects not clearly required by law. Since a complex investigation of this kind will necessarily draw upon resources now devoted to difficult ongoing Commission proceedings, the result can only be a diminution in the quality and timeliness of the Commission's statutorily-required work.

In addition, Congressional intent here is at least ambiguous. Serious questions have been raised whether the agency could legally conduct the requested study given the restrictions imposed under the terms of the Northeast Rail Service Act of 1981 (NERSA). The Commission is in receipt of a letter from three Congressmen stating that the agency should not perform the proposed analysis because it would be inconsistent with NERSA.

In light of the agency's inability to comply due to the budget crisis, even in the absence of the other issues that have been raised, the proper course of action is clear. Accordingly, the Commission should have decided to regretfully and respectfully reply that it is unable to fulfill this request.

[FR Doc. 85-11488 Filed 5-9-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed Program Priorities for Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment a notice of proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, in Fiscal Year 1985. Four million dollars have been appropriated for Fiscal Year 1985.

DATE: Comments are due on or before July 9, 1985.

ADDRESS: Send comments to Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 30531. (202) 724-7751.

FOR FURTHER INFORMATION CONTACT: Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7751.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Childrens Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator is announcing his proposed priorities and inviting public comment on these priorities for sixty days.

The proposed priorities follow:

1. National Incidence Study to Determine the Actual Numbers of Missing Children

This study will determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnappings and the number of children who are recovered each year. We will also determine the number of children whose whereabouts are known to their legal custodians because they are runaways, or for other reasons.

2. Law Enforcement Assistance

Law enforcement procedures for handling Missing Children reports and investigative follow-up vary greatly from jurisdiction to jurisdiction. Evaluation of procedures and recommendations on the most effective police methods of handling missing childrens reports and investigative follow-up will help in this area.

Involvement in the Federal Law Enforcement Training Center at Glynco is a way to reach large numbers of law enforcement officers with training in missing children and runaway cases. Model investigative practices can be taught in Glynco courses with an emphasis on citing specific police department examples of successful application.

3. Research

After assessment of what research currently exists, the following three areas will be explored:

a. The relationship between Missing and Abducted Children and Sexual Exploitation—Information is sketchy, but the correlation between abducted, and other missing children and sexual exploitation appears to be high. More factual information on the correlation between missing children and sexual exploitation and, whether children, and which children are abducted for sexual purposes would help in dealing with this phenomenon.

b. Psychological consequences of abduction and sexual exploitation—on the federal level, state level and local level, we are making progress in setting up effective apparatus to attempt to retrieve missing children. But once we retrieve a child, how can we best help parents and child back to normalcy. There is a need to develop treatment for the adverse psychological consequences of abduction and sexual exploitation.

c. The child victim as witness—children are serving more frequently as witnesses in trials of their accused abductors and abusers. Research is needed on the effectiveness of children as witnesses, the negative effects of the proceedings on children as well as other aspects of the child victim as witness.

4. Technical Assistance to PVOS

Private Voluntary Organizations (PVOs) across the country are working to help missing and exploited children. PVOs are, for example sponsoring Child Safety Days in schools organizing court-watcher groups for trials of abductors and abusers, and working to encourage constructive reform in procedures for retrieving and rehabilitating missing and exploited children.

We recommend assisting these groups in their operation and management, with a number of small grants.

Dated: May 8, 1985.

Alfred S. Regnery,

Administrator, OJJDP.

[FR Doc. 85-11511 Filed 5-9-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Board of the Business Research Advisory Council; Meeting

The spring meeting of the Board of the Business Research Advisory Council will be held at 2:00 p.m., May 30, 1985, in Room S-4215 A,B&C of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairperson's Opening Remarks—William J. Hawkes
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Employment and Unemployment
   (b) Price Indexes
   (c) Occupational Safety and Health Statistics
   (d) Wages and Industrial Relations
4. Other Business
5. Chairperson's Closing Remarks.

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523-1347.

Signed at Washington, D.C., this 7th day of May 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-11429 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council Committees; Meetings and Agenda

The spring meetings of committees of the Business Research Advisory Council will be on May 29 and 30, 1985, in Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Wednesday, May 29

10 a.m.—Committee on Employment and Unemployment Statistics, Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Local Area Unemployment Statistics Methodology Review
2. Subcommittee Report on the Temporary Help Industry
3. Other Business

2 p.m.—Committee on Price Indexes, Room 2736, GAO Building, 441 G Street NW.

1. Producer Price Index Status
2. Consumer Expenditure Survey Status
3. Consumer Price Index Status
   a. CPI Revision
   b. CPI Futures Market
4. International Price Program Status
5. Other Business

Wednesday, May 29

2 p.m.—Committee on Occupational Safety and Health Statistics, Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Recordkeeping Guidelines
2. Work Injury Reports and the Development of Standards
3. National Academy of Sciences Committee on National Statistics Study of Survey Quality
4. Recordkeeping Case Studies Project
5. Other Business

Thursday, May 30

9:30 a.m.—Committee on Wages and Industrial Relations Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Review of Work in Progress
2. Special Research from the Professional, Administrative, Technical and Clerical Pay Survey
3. New Data on Collective Bargaining Settlements for State and Local Governments
4. New Data on Labor Organizations' Membership and Comparison of Union/Nonunion Earnings Data Derived from the Current Population Survey
5. WIR Subcommittee Report on the Treatment of Lump-Sum Payments
6. Other Business.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, D.C. this 7th day of May 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-11428 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Federal Supplemental Compensation; Unemployment Insurance Program Letter No. 18-85

Pub. L. 99-15 amended the Federal Supplemental Compensation (FSC) Act of 1982 to provide for continuation of compensation to individuals who received FSC payments for the week which included March 31, 1985. The amendments are effective for weeks beginning after the week which includes March 31, 1985. The Department of Labor has issued instructions to all State employment security agencies for continuing the FSC program as amended by Pub. L. 99-15. The instructions are contained in Unemployment Insurance Program Letter No. 18-85, which is published below:

Dated: May 6, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 18-85

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Subject: Public Law (Pub. L.) 99-15 Amendments to the Federal Supplemental Compensation (FSC) Program

1. *Purpose.* To provide instructions for implementing the Federal Supplemental Compensation Act of 1982, as amended by Pub. L. 99-15. This program letter supersedes the instructions for ending the FSC program in UIPL 11-85.

2. *Reference.* Title VI-A of Pub. L. 97-248, section 310 of Pub. L. 97-448, Title V of Pub. L. 97-424, Title V-A of Pub. L. 98-21, Title I of Pub. L. 98-135; Pub. L. 99-15; UIPL 14-81 and Changes; the Federal-State Extended Unemployment Compensation Act of 1970, as amended; 20 CFR Part 615; GALs 21-81 and 22-81; GAL 1-83 and Changes; and UIPL 7-48.

3. *Background.* The Federal Supplemental Compensation (FSC) Act of 1982 (Pub. L. 97-248) created a temporary, nationwide, federally funded program which provides unemployment compensation to eligible claimants who have exhausted their benefits on regular unemployment compensation claims and, when applicable, extended unemployment compensation (EB) claims. Title I of Pub. L. 98-135 amended the FSC Act of 1982 to extend the FSC program to March 31, 1985.

Pub. L. 99–15 further amended the FSC Act to continue the payment of FSC from previously established individual accounts for the consecutive weeks of unemployment immediately following March 31, 1985, to any individual who "is receiving" FSC for the week which included March 31, 1985.

Recissions: UIPL 11–85

Expiration date: May 31, 1986.

4. *Instructions for the Phaseout of FSC.*

a. *Eligibility for FSC for weeks Beginning After March 31, 1985.* Public Law 99–15 specifies that FSC may continue to be paid to any individual who "is receiving" FSC for the week which includes March 31, 1985. "Is receiving" for purposes of this phaseout amendment to the FSC Act means the individual was eligible for FSC and in active claims status. In other words, FSC may continue to be paid only to the individual who requested payment for the week and who was eligible for FSC payment (payment includes offset of overpayments and deductions for child support) for the week which includes March 31, 1985. The amendments to the Act do not provide for the establishment of any reopened, new or initial (additional) FSC claims for any week of unemployment beginning after the week which includes March 31, 1985. The amendments to the Act do not include a specific date for ending FSC payments, except that the 2-year rule is still in effect. No payment of FSC may be made to any individual for any week of unemployment which begins more than 2 years after the benefit year ending date of the individual's parent claim.

No FSC payments may be made for weeks of unemployment beginning after March 31, 1985 to any individual whose FSC claim was inactive because of employment, an extended benefit claim, or who was ineligible (subject to a denial of FSC payment) for any reason for the week which included March 31, 1985.

Special Eligibility Rule. SESAs shall continue payments of FSC for weeks beginning with the week which immediately follows the week which includes March 31, 1985 only to an individual:

- Who meets the eligibility requirement of the FSC Act and the applicable provisions of State law, and
- Who remains in active claims status for *consecutive* weeks.

An individual's rights to FSC payment shall end with the week ending prior to any week with respect to which the individual's weekly claim series is interrupted or denied for a week because of employment or excessive earnings or for failure to satisfy a condition of eligibility for FSC such as reporting or registering for work, availability for work, or conducting an active search for work. States shall promptly notify eligible FSC claimants of the special eligibility requirement regarding claiming consecutive weeks.

b. *FSC Account-Remaining Balances.* SESAs may continue to make FSC payments to eligible individuals for weeks for unemployment beginning after the week which includes March 31, 1985, only to the extent of the remaining balance in each individual's FSC account. No changes may be made to any individual's FSC account after the week which includes March 31, 1985, based on changes in the insured unemployment rate (IUR) in the State.

The limitation on payments to interstate claimants remains the same, i.e., the claimant is entitled to the lesser of duration in the agent or liable State. This means that a claimant's duration may be increased if he moves to a State with higher duration. (See UIPL 7–84 dated December 29, 1983, *Interstate claimants*, pages 25 and 26 for explanation.)

c. *Effects of Amendments on Prior Issuances.* The amendments to the FSC Act supersede UIPL 11–85 and affect the following sections of UIPL 7–84:

1. *Beginning and Ending of the FSC Program.* By adding the requirement in 4a of this program letter.

2. Section C. *Eligibility Requirements for FSC.* By adding the eligibility requirement in 4a of this program letter, and

3. Section E. *Maximum FSC Benefits Payable.* By adding the limits regarding the remaining balances in FSC accounts in Section 4b of this program letter.

d. *Nonmonetary Determinations.* SESAs shall issue written appealable notices of nonmonetary determination to any individual who is a FSC claimant and who is denied FSC because: (a) he/she was not eligible ("is receiving") for payment for the week which includes March 31, 1985, or (b) the individual's weekly FSC claim series subsequent to March 31, 1985, was interrupted for a week by employment or by a week with excessive earnings. SESAs may report as workload items only those determinations which are denials if all other requirements for reporting a nonmonetary determination are met (week claimed, documentation, etc.) in column 10—Other on the ETA 207 report for FSC.

Only 1 workload item may be reported under the appropriate "issue" column on the ETA 207 when the FSC claims series is interrupted by ineligibility. These notices of determination must inform the individual that as provided by the FSC Act he/she is not eligible for FSC payments following a week of ineligibility for FSC payment for any reason because the individual did not "receive" FSC for consecutive weeks for the weeks immediately following the week which includes March 31, 1985.

5. *Disposal of FSC Records.* Upon a State agency's request, records on a FSC claim may be transferred to a State agency accountability 3 years after final action on the claim, or such records may be transferred in less than the 3-year period if microphotographed. The microphotography of FSC records must be in accordance with appropriate microphotography standards outlined in the *ES Manual*, Part V, Section 9194. After transfer of FSC records, a State agency shall follow its State law for disposal of records. This procedure applies to all FSC claims. The records affected are as follows:

(a) Individual claim files consisting of new, additional, reopened, and continued claims for FSC; determinations of entitlement; reports of interviews; claim record forms; and other related documents, records, and correspondence.

(b) Appeal records consisting of petitions appealing FSC determinations; copies of subpoenas; notices and transcripts of hearings; exhibits; decisions; and other related documents, records, and correspondence.

(c) Claimant payment records consisting of benefit history files (e.g., ledger cards or sheets); cancelled checks, copies of checks, and check registers or similar controls; records of overpayments, and adjustments; and other related documents, records, and correspondence.

(d) Individual claim records relating to administrative penalties and criminal prosecution in cases of fraudulent claims.

For any items above kept on computer, States are requested to create and retain magnetic tapes for the same period of time as for microfilming.

6. *Reporting Procedures.* Reporting should continue for FSC for activity through June 30, 1985, as required in RAL No. 2–82 and its changes. The reports affected are:

ETA 5159, Claims and Payment Activities (OMB Control No. 1205–0010; expires 12/31/87).

ETA 5130, Benefit Appeals (OMB Control No. 1205–0172; expires 7/31/86).

ETA 207, Nonmonetary Determination Activities (OMB Control No. 1205–0150; expires 3/31/86).

ES 218, Benefit Rights and Experience (OMB Control No. 1205–0177; expires 10/31/85).

ETA 227, Overpayments Detection and Recovery Activities (OMB Control No. 1205–0173; currently at OMB for extension of expiration date).

ETA 5210, Weekly Report of Claims-Taking Activities (OMB Control No. 1205–0007; expires 6/30/85).

Any FSC activity after the quarter ending June 30, 1985, may be reported in the comments section of the appropriate report.

7. *Action Required.* SESA Administrators should provide the above information and instructions to appropriate staff.

8. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 85–11435 Filed 5–9–85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,430]

Quality Unlimited, Inc., East Newark, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 1984, applicable to all workers of Quality Unlimited, Incorporated, East Newark, New Jersey. The Notice of Certification was published in the **Federal Register** on January 4, 1985 (50 FR 570).

Based on additional information furnished to the Office of Trade Adjustment Assistance on worker separations at the firm prior to the

January 1, 1984 impact date in the certification, findings in the investigation were reviewed to ascertain whether they support an earlier impact date. Those findings support moving the impact date to November 1, 1983 to cover all workers of Quality Unlimited who were affected by the decline in sales or production of women's coats and suits related to increased import competition.

Therefore, the certification for workers at the East Newark plant is amended as follows:

All workers of Quality Unlimited, Incorporated, East Newark, New Jersey who became totally or partially separated from employment on or after November 1, 1983 and before May 31, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of April 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-11434 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-273-C]

A & F Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

A & F Coal Company, Inc., 205 Ohio Street, Terre Haute, Indiana 47807 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Arclar Mine (I.D. No. 11-02800) located in Gallatin County, Indiana. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of keyed locks to secure battery nips in place on the mine's S & S Scoops.

2. As an alternate method, petitioner proposes to put a bracket on the battery with a set screw type arrangement to lock it down.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11432 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-267-C]

Monterey Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Monterey Coal Company, P.O. Box 496, Carlinville, Illinois 62626 has failed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements: correction of hazards; program requirements) to its No. 1 Mine (I.D. No. 11-00726) located in Macoupin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions, and that all instruments be monitored at intervals not exceeding seven days.

2. Petitioner seeks a modification of that portion of the standard which requires the operator to inspect impoundments at intervals not to exceed seven days and to monitor instruments at intervals not to exceed seven days.

3. As an alternate method, petitioner proposes to inspect the impoundments and monitor instruments on a monthly basis in lieu of every seven days. The monthly inspections would be supplemented by additional inspections if major precipitation or runoff occurs.

4. In support of this request, petitioner states that the Smith Reservoir and the Recirculation Pond are engineered structures which were rigidly controlled during their construction. They have not changed in geometry since completion in 1970. The impounding embankments have an excellent vegetative cover and in addition have been riprapped above and below the water line. Weekly inspections over the past 8 years have shown no signs of erosion problems or other signs of instability. Neither miners nor the general public work or live within several miles downstream of these structures.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11431 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-27-C]

Powell Mountain Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Powell Mountain Coal Company, Inc., 2537 Fourth Avenue E., Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.316-2(b) (permanent stoppings) to its Pomoco Mine No. 1 (I.D. No. 44-05913) located in Lee County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permanent stoppings be erected between the intake and return aircourses in entries and maintained to and including the third connecting crosscut outby the faces of the entries.

2. As an alternate method, petitioner proposes to maintain stoppings to include the fourth open crosscut instead of the third open crosscut outby the working faces.

3. Petitioner is requesting this modification in order that the open crosscut nearest the face could be used for ventilation of the working faces without shuttle cars waiting for change-out, which would restrict ventilation or cause the line curtain to be torn down by the traffic of the shuttle car, thus interrupting ventilation of the face being mined. Two roadways are required for the shuttle cars to operate.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4105 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 85-11430 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-1-C]

Storm King Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Storm King Mines, Inc., 9137 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Coal Ridge No. 1 Mine (I.D. No. 05-03716) located in Garfield County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Petitioner intends to use the hydraulic mining method to cut, mine and transport the coal from the face to the surface. This method consists of cutting coal by powerful jets of water from hydraulic monitors operated by remote control. The coal is cut and flushed away by the water. The broken coal is sized and then transported from the working face to the surface by means of gravity fluming.

3. As an alternate method, petitioner proposes to develop the coal mine with a two-entry system with hydraulic flume system located in the return aircourse.

4. In support of this request, petitioner states that:

a. There are no conveyors anywhere in the mine, which reduces fire risks;

b. There is a minimal amount of electricity and moving equipment in the working area, thereby reducing sparking risks;

c. A minimal amount of dust is generated, thereby simplifying ventilation requirements and reducing explosive hazards;

d. Less methane is liberated because water partially dissolves free methane.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11433 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Virgin Islands Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1973, notice was published in the **Federal Register** (38 FR 24896) of the approval of the Virgin Islands plan and adoption of Subpart S to Part 1952 containing the decision.

TheVirgin Islands plan provides for the adoption of Federal standards as Virgin Islands standards by reference. The authority to adopt such standards is contained in Title 3, Section 940, of the Virgin Islands Code.

In response to Federal standards changes, the State has submitted supplements, and incorporated as part of the plan, State certification documenting promulgation of State standards comparable to Occupational Exposure to Lead, Respirator Fit Testing, Corrections to 29 CFR 1910. 1025 as published in the **Federal Register** (48 FR 9641) dated March 8, 1983; Occupational Noise Exposure; Hearing Conservation Amendment, Corrections to 29 CFR 1910.95 as published in the **Federal Register** (48 FR 29687) dated June 28, 1983; Marine Terminals 29 CFR Part 1917 as published in the **Federal Register** (48 FR 30885) dated July 5, 1983; Hazard Communication, 29 CFR 1910.1200 as published in the **Federal Register** (48 FR 53279) dated November 25, 1983; Servicing Multipiece and Single Piece Rim Wheels, Corrections to 29 CFR 1910.177 as published in the **Federal Register** (48 FR 4338) dated February 3, 1984; Occupational Exposure to Ethylene Oxide 29 CFR 1910.19 and 1910.1047 as published in the **Federal Register** (49 FR 25733) dated June 22, 1984. Virgin Islands has stayed (administratively) enforcement of the Hearing Conservation Amendment pending OSHA appeal of the decision in *Forging Industry Association* v. *Secretary of Labor*, 12 BNA OSHC 1041 (4th Cir., Nov. 7, 1984) (petition for rehearing granted in the Fourth Circuit) which overturned the Federal hearing conservation standard.

2. Decision

Having reviewed the Virgin Islands Regulations providing for the adoption of Federal standards by reference, it has been determined that Virgin Islands Regulations are identical to Federal standards and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Region II, 1515 Broadway, Room 3445, New York, New York 10036; Office of the Director for Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210; Department of Labor, Government of the Virgin Islands, Dronigans Gade, Charlotte Amalie, St. Thomas, V.I. 00801, and at Hospital Street, Christiansted, St. Croix, V.I. 00820.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which

may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virgin Islands plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal Law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective May 10, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this eleventh day of March 1985.

Gerald P. Reidy,

Regional Administrator.

[FR Doc. 85–11437 Filed 5–9–85; 8:45 am]

BILLING CODE 4510–26–M

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated May 22, 1984 from Richard E. Martin, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, an amendment to revoke State standards comparable to the revocation of 29 CFR 1910.141, Sanitation, as published in the **Federal Register** (43 FR 49726) on October 24, 1978 and subsequent corrections in the **Federal Register** (43 FR 51759) on November 7, 1978.

These State standards which were originally contained in WAC 296–24–210, received OSHA approval, and notice to that effect was published in the **Federal Register** (41 FR 4687) on January 30, 1976. The amendment was adopted as Washington Administrative Order No. 81–32 on November 13, 1980 and became effective on December 13, 1980. Significant differences are as follows: The State has added three rules addressing dust control during cleaning operations, proximity of drinking water to working operations, and lunchroom criteria relating to toxic dusts or materials. Responses to the following revoked Federal standards have been retained by the State: 29 CFR 1910.141 (b)(1)(ii), (b)(1)(iv), (b)(1)(vii), and 1910.141(c)(1)(V).

2. Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State's amendments, including repeals, have no adverse effect on other State and Federal standards. These standards have been in effect since December 13, 1980. During this time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standards applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore, approves these standards. However, the right to reconsider this approval is reserved should subtantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washingtonm 98501; or the Office of State Programs, Room N–3476, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective May 10, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 28th day of March 1985.

James W. Lake,

Regional Administrator.

[FR Doc. 85–11436 Filed 5–9–85; 8:45 am]

BILLING CODE 4510–26–M

Office of the Assistant Secretary for Veterans' Employment and Training

Special Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1985

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veteran's employment and training programs in the States of Alaska, Louisiana, Mississippi, Nevada, and South Dakota in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 CFR Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA is available for issuance as of the date of this notice.

The closing date for receipt of grant applications in response to the SGA is June 21, 1985.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the following address: U.S. Department of Labor, Office of Procurement Services, Frances Perkins Building, Room S-5526, 200 Constitution Avenue, NW., Washington, D.C. 20210, Re. SGA—IV–C.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., Rm. S1316, Washington, D.C. 20210, Telephone (202) 523–9110, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: On March 1, 1985, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued SGA #4 for the Job Training Partnership Act Title IV, Part C, Program Year 1985. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on March 12, 1985.

The March 1, 1985 SGA limited eligible applicants to (1) State Governors utilizing the JTPA administrative entity in each State and (2) service delivery area administrative entities as described in Sections 101 and 103 of JTPA including single statewide service delivery. The SGA also stated that if in any State no eligible applicant applied for funds, the definition of eligible applicant would be broadened in those States and a special solicitation would be issued to provide services to targeted veterans in those States.

No eligible applicant applied for funds in the States of Alaska, Louisiana, Mississippi, Nevada, and South Dakota. Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs in each of these States in the following amounts.

State	Amount available
Alaska	$55,000
Louisiana	123,000
Mississippi	62,000
Nevada	55,000
South Dakota	55,000

Applications for funds based on the SGA will be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions, and private for profit and nonprofit organizations. Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State in which the proposed program would be implemented. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for fund must be received by the appropriate State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address cited below on June 21, 1985.

SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3–7000, Juneau, Alaska 99802, (907) 465–2723

ASDVETS Leonard Walters Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 94094, Room 242, Baton Rouge, Louisiana 70804–9094, (504) 589–2195

SDVETS W.H. (Willie) Cooper, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1699, Jackson, Mississippi 39205, (601) 961–7588

SDVETS Claude U. Shipley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3331, Reno, Nevada 89505, (702) 885–4632

SDVETS Earl R. Schultz, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1730, Aberdeen, South Dakota 57401, (605) 225–0250, Ext. 289

It is anticipated that grant awards will be made by November 30, 1985.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training.

Signed at Washington, D.C., May 7, 1985.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85–11438 Filed 5–9–85; 8:45 am]

BILLING CODE 4510-79-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award by the Legal Services Corporation to the Charleston County Bar Association

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special grant of $135,850 in 1985 to the Charleston County Bar Association (South Carolina) and the Neighborhood Legal Assistance Program, Inc. (Charleston, South Carolina) to provide legal services to minor children in child abuse and/or neglect cases.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit within thrity (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Keith Osterhage, Acting Manager, OFS/PDSS, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4356.

SUPPLEMENTARY INFORMATION: The area of child abuse and/or neglect litigation has been identified as a high priority in the Charleston County, South Carolina service area. Under the Charleston County Bar Association project, which will be administered by the Neighborhood Legal Assistance Program, Inc., The Bar Association will contract with area private law firms for the handling of 300 child abuse and/or neglect cases. In addition to providing such legal services to LSC-eligible clients, this project will provide two training sessions for participating attorneys. The training sessions will address the broad spectrum of issues surrounding child abuse and neglect cases. LSC is provding its support to this efforts as a model project.

Interested person are also invited to submit written comments and/or recommendations concerning this grant action to Keith Osterhage.

Dated: May 7, 1985.

Thomas J. Opsut,

Interim President.

[FR Doc. 85–11390 Filed 5–9–85 am]

BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection:

10 CFR Part 40—Domestic Licensing of Source Material
10 CFR Part 70—Domestic Licensing of Special Nuclear Material
10 CFR Part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

3. The form number if applicable: Not applicable.

4. How often the collection is required:

Licensees under 10 CFR Parts 40 and 150—Annually.
Licensees under 10 CFR Part 70—Semiannually.

5. Who will be required or asked to report: Any licensee authorized to possess more than 1,000 kilograms of uranium or thorium or any combination thereof, and any licensee authorized to possess more than 350 grams of special nuclear material (uranium-235, uranium-233, or plutonium) in any combination.

6. An estimate of the number of responses: 10 CFR Part 40–40; 10 CFR Part 70–400; 10 CFR Part 150–10.

7. An estimate of the total number of hours needed to complete the requirement or request: One hour per response, for a total of 450 hours.

8. An indication of whether Section 3504 (h), Pub. L. 96–511 applies: Not applicable.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission
Patricia G. Norry,
Director, Office of Administration.

[FR Doc. 85–11444 Filed 5–9–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–414]

Duke Power Co., North Carolina Municipal Power Agency Number One, Piedmont Municipal Power Agency; Issuance of Amendment to Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Construction Permit No. CPPR–117 for Catawba Nuclear Station, Unit 2. The amendment modifies the construction permit to reflect issuance, by the Commission, of a limited schedular Exemption dated April 23, 1985, from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion 4 with respect to installation of certain protective devices and consideration of certain dynamic effects. The amendment is effective as of its date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendment. Prior public notice of this amendment was not required since the Commission has determined that this amendment does not involve a significant hazards consideration.

By June 10, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility construction permit and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in a 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has determined that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regalartory Commission, Washington, D.C. 20555, and to William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause of the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to the action, see (1) the application for amendment dated April 17, 1985, (2) Amendment No. 3 to Construction Permit No. CPPR-117, (3) the Commission's related Safety Evaluation, (4) the Exemption dated April 23, 1985 (50 FR 16758, April 29, 1985), and (5) the Notice of Environmental Assessment and Finding of No Significant Impact dated April 17, 1985 (50 FR 15802, April 22, 1985). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. In addition a copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11449 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143, License No. SNM-124, EA 84-60]

Nuclear Fuel Services, Inc., Erwin, TN; Modification of Order Imposing Civil Penalty

I

Nuclear Fuel Services, Inc. (the "licensee") is the holder of Operating License No. SNM-124 issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the licensee to operate the Nuclear Fuel Services, Inc. (NFS), Erwin, Tennessee facility in accordance with the conditions specified therein. The license was issued on March 16, 1979.

II

A safeguards inspection of the licensee's activities was conducted from May 20-24, 1984. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated July 27, 1984. The Notice stated the nature of the violation, the requirements of the Commission that the licensee had violated, and the amount of the civil penalty proposed for the violation in the Notice. The proposed civil penalty was escalated by 20% from the base penalty of Eighty Thousand Dollars to One Hundred Thousand Dollars because multiple examples of the violation were identified. The licensee responded to the Notice by letter dated September 14, 1984. The NRC reviewed the licensee's response and determined that the One Hundred Thousand Dollars ($100,000) proposed civil penalty should be mitigated to Eighty Thousand Dollars ($80,000).

III

On April 1, 1985 NRC staff members met with representatives of NFS to discuss issues relevant to this enforcement action. On April 9, 1985 NRC staff members from Headquarters and Region II visited the licensee's Erwin facility. During the site visit the NRC straff observed the extent of the licensee's corrective actions which not only included physical upgrades but programmatic changes. In addition, the licensee discussed further plans to evaluate and upgrade both the physical security program and the health and safety program.

Because of the extensive nature of the licensee's corrective actions take and planned to further upgrade the physical security program, the Director, Office of Inspection and Enforcement has determined that mitigation of the imposed civil penalty is warranted. Accordingly, the Eighty Thousand Dollars ($80,000) civil penalty imposed by the Order dated January 22, 1985 is to be mitigated to Fifty Thousand Dollars ($50,000).

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violation this Order should be sustained.

Dated at Bethesda, Maryland this 1st day of May 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-11448 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352, 50-353]

Philadelphia Electric Co., Limerick Generating Station, Units 1 and 2; Supplement to Request for Action Under 10 CFR 2.206 Regarding Supplemental Cooling Water for the Limerick Facility

Notice is hereby given by its supplementary letter dated March 28, 1985 that Del-AWARE Unlimited, Inc. supplements its earlier request dated November 21, 1984 to the Director of Nuclear Reactor Regulation regarding the Philadelphia Electric Company's (Licensee) provision of supplemental cooling water for the Limerick Generating Station. The letter requests the Nuclear Regulatory Commission to determine that recent measures by the licensee to secure an interim source of supplemental cooling water would be the appropriate long term solution to the Limerick Generating Stations' needs. The letter also provides other comments regarding alternates to the Point Pleasant Diversion Project, its impact on the Delaware River and the prospects for completing construction of the Point Pleasant Diversion Project.

The letter is being treated as a supplement to the earlier Petition pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the letter is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington D.C. 20555 and at the local public document room for the Limerick Generating Station located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, the 6th day of May 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11450 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Notice of Meeting

The previously announced meeting (Vol. 50, No. 83 Tuesday, April 30, 1985) of the NRC Advisory Committee on Reactor Safeguards with the NRC Commissioners on May 10, 1985 will include a brief report by Committee representatives regarding the status of ACRS activities on consideration of seismic events in connection with emergency planning in addition to the previously noticed item on the ACRS role in the civilian radioactive waste management program.

Dated: May 7, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-11442 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on June 5, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 5, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue its discussion of the proposed NRC Safety Research Program and Budget for FY 1987. Also, it will discuss a draft ACRS report to the Commission on the NRC Safety Research Program and Budget for FY 1987.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 6,1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-11445 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Meeting

The ACRS Subcommittee on State of Nuclear Power Safety will hold a meeting on May 31, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 31, 1985—8:30 a.m. until the conlusion of business

The Subcommittee will begin to discuss reactor safety issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange views regarding matters pertaining to the Subcommittee Charter and its activities.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m.,

EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 6, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-11446 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-223-SP; ASLBP No. 85-509-02 SP]

Establishment of Atomic Safety and Licensing Board to Preside in Proceeding; University of Lowell

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

University of Lowell

Training and Research Reactor Facility Operating License No. R-125

This Board is being established pursuant to a notice published by the Commission on March 29, 1985 in the **Federal Register** (50 FR 12668-69) entitled, "Consideration of Application for Renewal of Facility License." The proposed renewal would extend the expiration date of Facility Operating License No. R-125 for thirty years from date of issuance in accordance with the licensee's timely application for renewal dated February 14, 1984.

The Board is comprised of the following Administrative Judges:

Herbert Grossman, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Ernest F. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526

Dated at Bethesda, Maryland, this 6th day of May 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-11447 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13806]

Application and Opportunity for Hearing; First Bank System, Inc.

May 3, 1985.

Notice is Hereby given that First Bank System, Inc., a Delaware corporation (the "Applicant"), has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank, a New York Corporation ("Chemical") under an Indenture dated as of September 1, 1982, between the Applicant and Chemical Bank, as supplemented by a First Supplemental Indenture dated as of September 15, 1982, and a Second Supplemental Indenture dated as of February 22, 1983 (collectively the "1982 Indenture"), pursuant to which the Applicant's $75,000,000 aggregate principal amount of 13⅛% Notes Due September 15, 1992, (the "1992 Notes"), $100,000,000 aggregate principal amount of 11⅛% Notes Due March 7, 1993 (the "1993 Notes") and $25,000,000 aggregate principal amount of 10% Notes Due March 1, 1986 (the "1986 Notes") are outstanding, and as successor trustee under an Indenture dated as of May 15, 1979, by and between the Applicant and Manufacturers Hanover Trust Company (the "1979 Indenture") pursuant to which the Applicant's $125,000,000 aggregate principal amount of Floating Rate Notes Due 1989 (the "1989 Notes") are outstanding, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical from acting as trustee under the 1979 Indenture with respect to the 1989 Notes or from acting as trustee under the 1982 Indenture with respect to the 1992 Notes, the 1993 Notes or the 1986 Notes.

Section 310(b) of the Act, which is included in section 608 of the 1979 Indenture and section 7.08 of the 1982 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within 90 days after ascertaining that it has such a conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Securities and Exchange Commission (the "Commission") and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) On May 15, 1979, the Applicant entered into the 1979 Indenture with Manufacturers Hanover Trust Company ("MHT") as trustee, providing for the issuance, from time to time, of the Applicant's unsecured 1989 Notes. The 1979 Indenture was filed as Exhibit (b)(2) to a registration statement on Form S-16 (File No. 2-64436), which registration statement and Statement of Eligibility and Qualification of the Trustee on Form T-1 (File No. 22-9953) were filed with the Commission on May 11, 1979 and declared effective on May 18, 1979.

In 1982, the Company entered into an Indenture dated as of September 1, 1982 (such Indenture, as supplemented as described below, is hereinafter referred to as the "1982 Indenture"), with Chemical Bank ("Chemical"), as trustee, providing for the issuance, from time to time, of the Company's unsecured notes in one or more series. The 1982 indenture was filed as an exhibit to a registration statement on Form S-3 (File No. 2-791.36), which registration statement and a Statement of Eligibility and Qualification of Trustee on Form T-1 (File No. 22-11850) were filed with the Commission on September 1, 1982 and thereafter declared effective on September 10, 1982. On September 29, 1982, the Company issued a first series $75,000,000 aggregate principal amount of notes designated as "13⅛% Notes Due September 15, 1992" (the "1992 Notes") pursuant to a First Supplemental Indenture to the 1982 Indenture dated as of Sepember 15 1982. The 1982 Notes were offered by a

prospectus dated September 10, 1982, as supplemented by a Prospectus Supplement dated September 22, 1982.

On March 1, 1983, the Applicant issued the 1993 Notes and the 1986 Notes under the Second Supplemental Indenture dated as of February 22, 1983. The 1993 Notes and the 1986 Notes were offered by a prospectus each dated February 23, 1983.

(2) In the event that trustee under the 1979 Indenture develops a conflicts, section 608 of the 1979 Indenture and section 310(b) of the Trust Indenture Act of 1939 require that the trustee either eliminate the cause of such conflict or resign as trustee within 90 days of the development of such conflict. As a result of the fact that MHT has developed a conflict and therefore cannot continue to act as trustee under the 1979 Indenture, the Company has appointed Chemical as trustee under such Indenture effective as of the close of business April 24, 1985.

(3) Section 310(b)(1)(ii) of the Act provides, subject to certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. The substitution of Chemical as trustee under the 1979 Indenture would create a conflict and disqualify Chemical from acting as trustee under either the 1979 Indenture or the 1982 Indenture unless the Commission approves the Company's application hereby to exclude Chemicals's trusteeship under such Indenture from the operation of section 310(b)(1) of the Act pursuant to clause (ii) of subsection (1) of the section. Section 7.08 of the 1982 Indenture and section 608 of the 1979 Indenture contain the provision permitted by the proviso to section 310(b)(1) of the Trust Indenture Act of 1939 with respect to situations in which a trustee shall not be deemed to have a conflicting interest when serving under more than one indenture.

(4) The Applicant is not in default in any request under the 1979 Indenture or the 1982 Indenture.

(5) The Applicant's obligations pursuant to the 1979 Indenture and under the 1982 Indenture are both senior and wholly unsecured and such obligations rank pari passu inter se.

(6) The principal differences between the Indentures or between the above-referenced notes arise from, or are related to, the following causes, none of which raise material conflict of interest concerns:

(a) The denominations, interest rates, interest payment dates, and maturity of the notes differ.

(b) The 1982 Indenture is "open-ended", permitting the issuance thereunder of one or more series of unsecured notes. In contrast, the 1979 Indenture pertains only to the 1989 Notes.

(7) Trusteeships under the 1979 Indenture with respect to the 1989 Notes and under the 1982 Indenture with respect to the 1992 Notes, the 1993 Notes and the 1986 Notes are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical from acting as trustee under each said Indenture.

Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission.

For a more detailed statement of the matters of fact and law, all persons are referred to said application, which application is a public document on file in the office of the Commission's Public Reference Section 450 Fifth Street, NW., Washington, D.C. 20549.

Notice if further given that any interested person may, no later than May 28, 1985, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after such date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11374 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6933]

Issuer Delisting; Application To Withdraw From Listing and Registration; Data Architects, Inc.

May 2, 1985

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, $.01 Par Value, of data Architects, Inc. ("Company") from listing and registration on the Boston stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include its stock in the NASDAQ National Market system and, therefore, wishes to remove its security from listing and registration of the Exchange.

Any interested person may, on or before May 23, 1985, submit by letter to the Secretary of the Securities and Exhange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11373 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14494; 812-6068]

Massachusetts Mutual Life Insurance Co. et al.; Application for Orders

April 30, 1985.

Notice is Hereby Given that Massachusetts Mutual Life Insurance Company ("Insurance Company"), a Massachusetts mutual life insurance company and MassMutual Corporate Investors Inc. ("Fund"), registered under the Investment Company Act of 1940 ("Act"), as a non-diversified, closed-end management investment company (together, "Applicants"), 1295 State Street, Springfield, Massachusetts 01111, filed an application on March 1, 1985, and amendments thereto on March 12, 1985, and April 17, 1985, for an order: (1) Pursuant to section 17(d) of the Act, and rule 17d-1 thereunder, permitting the concurrent investment by the Insurance Company and the Fund in certain debt securities of a corporation ("Newco") to be organized to bring about a leveraged buy-out of Knapp King-Size Corp. ("Knapp"); (2) pursuant to section 17(b) of the Act, exempting from the provisions of section 17(a) of the Act the prospective sale by the Insurance

Company to the Fund of thirty percent (30%) of these debt securities in the event that (a) the order requested in clause (1) above is not issued prior to the closing of the Newco private placement, and (b) the Insurance Company purchases at closing the entire lot of securities available for allocation between it and the Fund: and (3) pursuant to section 17(d) of the Act, and Rule 17d-1 thereunder, amending the conditions prescribed in a prior blanket order issued by the Commission on June 4, 1979 (Investment Company Act Release No. 10688), which grants permission, pursuant to section 17(d), and Rule 17d-1, to the Insurance Company to invest concurrently for its general account in each issue of securities it makes available for purchase by the Fund at direct placement. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that Newco is a newly-organized corporation formed for the purpose of effectuating the purchase by the management of Knapp of the shoe manufacturing business, and possibly the clothing manufacturing business of Knapp. It is contemplated that Knapp will thereafter be liquidated, and its assets distributed. It is stated that neither the Insurance Company nor the Fund has any interest in Knapp, nor in any of its affiliates, except that the Insurance Company presently holds 41,472 shares of the common stock of Knapp, representing approximately 8.78% of such shares outstanding. The Insurance Company acquired this interest through the exercise of warrants it had acquired in 1970. The Insurance Company expects to receive approximately $3.3 million as a liquidating distribution upon the liquidation of Knapp.

Applicants state that the Insurance Company proposes to purchase $10,000,000 aggregate principal amount of 15½% Subordinated Notes ("Notes"), and of that amount $212,500 principal amount will be convertible into 425,000 shares of Newco common ("Convertible Notes") (42.5% of the shares outstanding) at $0.50 per share ("Convertible Notes"), and the remaining $9,787,500 principal amount will not be convertible ("Non-Convertible Notes"). The Notes mature 13 years from the closing of the purchase, with annual sinking fund payments of $1,250,000 to be made in the sixth through thirteenth years. The Convertible Notes are not callable, while the Non-Convertible become callable after five years, at premiums scaling down from 108.50 in the sixth year to pay in the twelfth or thirteenth years.

Applicants state that the Insurance Company has offered the Fund the opportunity to purchase $5,000,000 principal amount (50%) of the Notes, including $106,250 principal amount (50%) of the Convertible Notes. However, the Fund believes that a purchase of $3,000,000 principal amount (30%) of the Notes, including $63,750 principal amount (30%) of the Convertible Notes, would be more appropriate for its portfolio. Applicants state that unless the requested order is granted, the Fund will be required either to purchase 50% of the Notes, or not to purchase any portion at all.

Applicants state that the purchase of the Notes is expected to close on or about April 24, 1984. Pursuant to paragraph 3 of the 1979 Order, the Insurance Company will purchase the entire investment on the closing date, and if the Commission enters the requested order within three months of the closing date, the Insurance Company will sell to the Fund $3,000,000 principal amount of the Convertible Notes, at the price paid by the Insurance Company, plus accrued interest. If such order is not be granted within three months after such closing date, the Insurance Company's obligation to sell any portion of the Notes to the Fund will terminate.

Applicants submit that the proposed transaction is consistent with the policies of the Fund and with the provisions, policies and purposes of the Act, and will not be on a basis less advantageous to the Fund than to the Insurance Company. They state that the Fund has determined that an investment in the Notes would be appropriate for its portfolio, but believes that the appropriate size for such an investment would be $3,000,000. The Fund will pay the same unit price for the Notes as that paid by the Insurance Company, plus an amount equal to the interest accrued on the Notes between the closing date and the date of resale by the Insurance Company to the Fund. Applicants state that the terms of the proposed resale of the Notes by the Insurance Company to the Fund would therefore be reasonable and fair and would not involve overreaching by or profit to the Insurance Company. Applicants state that if the requested order is denied, the Fund will not be able to participate in an attractive investment opportunity and may suffer disadvantage. Applicants state that the size of the Fund's investment in the Notes will be approved by its board of directors, including a majority of the Directors who are not "interested persons" of the Fund, as defined in the Act, and the Fund's determination and the reasons therefor will be recorded and become a part of the permanent records of the Fund.

Applicants further state that on June 4, 1979, the Commission issued an order, pursuant to section 17(d) of the Act, and Rule 17d-1 thereunder, permitting the Insurance Company, subject to certain conditions, to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement. The conditions contained in the 1979 Order require, among other things, that the Insurance Company offer one-half of all appropriate direct placement investments to the Fund. If the Fund wishes to participate in such investments, it must participate equally or obtain an order of the Commission allowing it to acquire a lesser (or greater) than equal prcentage than the Insurance Company. According to Applicants, this latter alternative could result in the forfeiture of appropriate business opportunities because of the substantial time and expense involved in obtaining an order. On the other hand, Applicants assert that if the Fund were to be able to participate in direct placement opportunities by purchasing less than the entire amount of securities offered to it by the Insurance Company, the Fund would be able to make investments of a size more appropriate for its portfolio.

In order to allow the Fund to continue to participate in appropriate investments with the Insurance Company, while ensuring that the Fund's investment portfolio remains suitably diversified, Applicants desire to amend the conditions contained in the 1979 Order to allow the Fund to participate in direct placements on a less than equal percentage basis than the Insurance Company. The Insurance Company would continue to be required to offer one-half of all appropriate investments to the Fund, and a special order of the Commission would continue to be required for the fund to acquire a greater percentage of any investment than the Insurance Company. Applicants submit that the order so amended would continue adequately to effectuate the purposes of the Act and Rule 17d-1 thereunder.

Therefore, Applicants request that the 1979 Order be amended to rescind all conditions contained therein, and

substitute, in lieu thereof, the following conditions:

1. Each time the Insurance Company proposes to participate in a direct placement involving its purchase of securities the purchase of which would be consistent with the investment policies of the Fund, the Insurance Company will offer the Fund the opportunity to purchase an amount of each class of such securities equal to the amount of such securities proposed to be purchased by the Insurance Company. The Fund may choose to purchase none of such securities or any amount of such securities up to the entire amount of securities offered to it by the Insurance Company.

2. If the Fund chooses to participate in a direct placement with the Insurance Company, the Insurance Company and the Fund may purchase such securities at the same times and at the same unit prices without further order of the Commission. If the Fund chooses to participate in a direct placement but to purchase less than the entire amount of securities offered to it by the Insurance Company, the Fund's decision must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested directors" of the Fund, as defined in the Act. The Fund's determination to purchase less than all of such securities and the reasons therefor will be recorded and become a part of the permanent records of the Fund.

3. If the Fund chooses not to participate in a direct placement offered to it by the Insurance Company, the Fund's decision must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested persons" of the Fund, as defined in the Act. The Fund's determination not to participate in a direct placement, and the reasons therefor, will be recorded and become a part of the permanent records of the Fund.

4. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will exercise warrants of a class held by both the Fund and the Insurance Company, or conversion privileges, or other rights relating to securities of a class held by the Fund and the Insurance Company, except at the same times and in amounts proportionate to their respective holdings of such securities.

5. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will sell, exchange, or otherwise dispose of any interest in any security of a class held by both the Fund and the Insurance Company unless such dispositions are made at the same times, for the same unit consideration, and in amounts proportionate to their respective holdings of such securities.

6. The expenses, if any, of the distribution of any securities registered for sale under the Securities Act of 1933 and sold by the Insurance Company and the Fund at the same time will be shared by the Insurance Company and the Fund in proportion to the respective amounts they are selling.

For purposes of the order, any securities purchased or held by Applicants which are identical in all respect except for the fact that only the Fund's securities have voting rights shall be considered to be of the same class of securities.

Applicants submit that the proposed amended order will provide the Fund with the necessary flexibility to invest in direct placements on an other than equal basis with the Insurance Company. Applicants submit that it is in the best interest of the Fund to have the flexibility to acquire any percentage between 0% and 50% of all investments offered to it by the Insurance Company. If the fund has the discretion to invest a lesser percentage than the Insurance Company, it may immediately take advantage of such opportunity while ensuring that its investment in any one issuer is prudently proportionate to its own asset base.

Since any decision to invest in a lesser percentage than the Insurance Company must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested persons" of the Fund, as defined in the Act, and since the Insurance Company will always have the same or a greater amount as the Fund "at risk" in each investment, Applicants submit that there are ample safeguards to assure that any participation by the Fund in such direct placements will not be on a basis less advantageous than that of the Insurance Company.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than Man 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretcry.

[FR Doc. 85-11371 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IA-970; File No. 803-38]

TCW Asset Managment Company; Application for an Amended Order in Connection With a Performance-Based Investment Advisory Fee

May 3, 1985.

Notice is hereby given that TCW Asset Management Company ("Applicant"), a California corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on March 25, 1985, requesting an order of the Commission pursuant to section 206A of the Act amending an existing order, Investment Advisers Act Release No. 938 (October 12, 1984) (the "Existing Order"), which exempts Applicant from the provisions of section 205(1) fo the Act to the extent necessary to allow it to be compensated on the basis of a share of the profits and losses of a certain limited partnership. Applicant seeks an amended order to allow it to reduce the minimum net worth and minimum investment required of investors wishing to participate in the partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, to the Act for the text of its relevant provisions, and to the notice of the filing of the application for the Existing Order (Investment Advisers Act Release No. 931; October 12, 1984) for a more complete summary of Applicant's operations.

Applicant states that it and certain of its associated person have established the TCW Special Placements Fund I, a California limited partnership (the "Partnership"). Applicant will manage the Partnership through TCW Partners, a California general partnership which will act as the general partner (the "General Partner") of the Partnership. Applicant will be the managing partner of the General Partner and will have full charge of the overall management, conduct, administration and operation of the Partnership's investments.

On October 12, 1984, the Commission issued the Existing Order permitting a performance-based advisory fee arrangement entered into by the General Partner in connection with the Partnership. The Existing Order requires that the limited partners in the Partnership be sophisticated investors such as pension plan trusts, charitable trusts, foundations and endowments and insurance companies, or sophisticated individual investors who have a net worth (or a joint net worth with their spouses) at the time of investment in excess of $10,000,000 and whose investment in the Partnership represent no more than 15% of the gross value of the assets in which those investors (and spouses) have a beneficial interest. The Existing Order also requires that an investor make a minimum investment of $2,000,000 in the Partnership.

Applicant states that since the issuance of the Existing Order, it has been approached by several financially sophiscated individuals who wish to invest in the Partnership but do not meet the foregoing $10,000,000 net worth test, and who wish to invest less than $2,000,000 in the Partnership. Applicant proposes to change the minimum qualifications for individual investors in the Partnership to allow for sophisticated individual investors who have a net worth (or a joint net worth with their spouses) at the time of investment in excess of $1,000,000 and whose investment in the Partnership would represent no more than 15% of the gross value of the assets in which they have a beneficial interest. Applicant further proposes to set the minimum investment by an investor in the Partnership at $250,000. Applicant believes that these new standards will still ensure that the investors in the Partnership are of such a caliber that they do not need the protection afforded by section 205(1) of the Act. Applicant therefore requests that the Commission issue an order pursuant to section 206A of the Act amending the Existing Order to exempt Applicant from the provisions of section 205(1) of the Act to permit the revised investor suitability requirements set forth above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 29, 1985, at the 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11372 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23676; 70-6832]

Ohio Power Co. and Central Ohio Coal Co.; Proposed Repayment of Cash Capital Contribution

April 29, 1985.

Ohio Power Company ("OPCo") and Central Ohio Coal Company ("COCCo"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702, subsidiaries of American Electric Power Company, Inc. ("American"), a registered holding company, have filed with this Commission post-effective amendments to the application-declaration in this proceeding pursuant to section 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 46 promulgated thereunder.

By order in this proceeding dated April 12, 1983 (HCAR No. 22911), OPCo was authorized to make an additional investment of $20,000,000 in COCCo, consisting of a cash capital contribution in the amount of $9,120,000 and a loan in the amount of $10,880,000. (COCCo is a subsidiary of OPCo and was organized in 1946 for the purpose of conducting coal mining operations for OPCo.) OPCo made the $20,000,000 investment on May 31, 1983. OPCo's loan to COCCo is evidenced by COCCo's promissory note, which bears interest at 12.93%, and matures December 31, 2012. The loan and the cash capital contribution made by OPCo to COCCo were in the same proportion as the debt-equity ratio of OPCo as of December 31, 1982.

It was anticipated that $9.2 million of the additional investment would be used to finance the rebuilding of COCCo's 220 cubic yard dragline, known as the "Big Muskie Dragline," and that $10.8 million would provide COCCo with an increase in working capital required to operate the mine operations of COCCo at their then current levels. It is now stated, however, that these anticipated cash needs did not materialize. Following the aforementioned additional investment, coal billing revenues from OPCo have continually exceeded the curent cash needs of COCCo. The excess cash generated has been invested by COCCo in short-term commercial paper ($21,575,000 invested at February 28, 1985). It is presently estimated by the companies that these short-term investments will increase by approximately $4 million during the remainder of 1985.

In light of the present level of the short-term investments, it has become apparent to the companies that the financing authorized in this proceeding is no longer needed. Therefore, OPCo and COCCo are planning to discontinue such financing and propose that the $9,120,000 cash capital contribution portion of such investment in COCCo be returned to OPCo. The promissory note from COCCo to OPCo is, by its terms, repayable by COCCo at any time prior to maturity, and, therefore, no approval for the repayment of such by COCo is required.

The amended application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or requres a hearing should submit their views in writing by May 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11384 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22015; File Nos. SR-CBOE-85-14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc. ("CBOE"); Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Extension of the CBOE's RAES Pilot Program

I. Introduction and Background

On April 29, 1985, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] to authorize CBOE to extend and expand the Exchange's retail automatic execution system (RAES) pilot program, which permits the automatic execution of certain public customer market orders in a limited number of OEX series.[3] The proposal would: (1) Extend the pilot program for 90 days, until August 2, 1985;[4] (2) expand the contract limit for RAES eligible orders from five to ten; and (3) expand the number of OEX series in which options orders would be eligible for RAES from eight to any number of CBOE may choose to so designate.[5]

Currently, the RAES pilot program permits the automatic execution of public customer market orders, for five or fewer contracts, in the four contiguous OEX put and four OEX call series in the nearest term expiration month with the highest public customer volume.[6] As originally approved, the RAES pilot was to be implemented for a three month period, beginning February 1, 1985, and ending on April 30, 1985.

In its filing, CBOE states that the RAES pilot program has been highly successful, and that customer orders on RAES have been handled efficiently and fairly, with customer's brokers receiving execution reports on RAES orders sometimes within the same minute as the order is entered into the System. In addition, CBOE notes that since the inception of the pilot program, RAES has been in operation over 90 percent of the time that OEX has been open for trading. As a result of RAES' operational success, CBOE believes an extended and expanded pilot program is appropriate.

In the January Order, the Commission concluded that the RAES pilot "offers the potential for a significant improvement in the accuracy and efficiency with which small public orders are processed * * *." At the same time, however, the Commission expressed concern about the reduced priority accorded public customer limit orders on the book which may result from the absence of a linkage between RAES and the public customer limit order book.[7] Specifically, when a booked public limit order is at the same price as the best bid or offer, a RAES transaction will still occur at that price, without filling the public limit order, as a exception to the CBOE's priority rule.[8] Nevertheless, the Commission determined to approve RAES, on a pilot basis, in view of the limited nature of the pilot program (*i.e.*, the small number of orders affected, and the short duration of the pilot), as well as the CBOE's commitment "to integrate public customer [limit] orders with RAES should the pilot be extended."[9]

II. Discussion

Since the January Order, the CBOE has had an opportunity to evaluate the initial effects of RAES and the possible near-term alternatives of integrating limit orders on the book with RAES. In brief, the CBOE believes that, in view of the significant efficiency advantages provided by RAES, it would be counterproductive to encumber RAES with a manual interface to facilitate the execution of booked limit orders in light of the fact that "it is extremely unlikely that booked limit orders will remain unexecuted at times when market-makers are effecting trades with RAES orders at the prices of those limit orders."[10] In addition, the CBOE noted that, while it remains committed to the development of an electronic book, such an "effort is fraught with difficulty and uncertainty."[11] Accordingly, it stated that its commitment to implementation of an electronic book and integration of RAES into such a book must be viewed in light of these very real hurdles.[12]

As stated in the January Order, the Commission recognizes that accommodations may be necessary to integrate new trading systems with the existing exchange market, but does not believe that increased efficiency and book priority are mutually inconsistent objectives. Regarding the RAES 90-day extension and expansion, the Commission believes the proposal should provide the benefits of more timely and cost-effective executions of small options orders, as demonstrated in the initial pilot phase, to a greater number of OEX orders.[13]

In addition, in light of the CBOE's representation that, even though RAES may by-pass public customer limit orders at the same price, those limit orders generally are executed, the Commission does not believe that a 90-day extension of the pilot is inappropriate. Nevertheless, the Commission expects that during the extension the CBOE will (1) monitor the execution of booked limit orders to verify that they are, in fact, executed, notwithstanding the expansion of RAES, (2) specify its estimate of the costs associated with a near-term integration of booked limit orders and RAES and (3) clarify its long-term automation plans, to the extent practicable. Accordingly, in light of the CBOE's representations, the Commission finds that the expanded pilot program contemplated by the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with sections 6(b)(5) and 11(A) of the Act.

III. Solicitation of Comments

The Commission is publishing this Release to solicit comment on the CBOE proposed rule change. Persons interested in commenting on this

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] For a more complete description of RAES, see the Commission's initial order approving CBOE's implementation of the RAES pilot program in Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823 (February 1, 1985) (File No. SR-CBOE-84-30) ("January Order").

[4] The RAES pilot program, as originally approved, ended on April 30, 1985.

[5] Currently, RAES eligible orders must be in one of four contiguous call and four contiguous put series in OEX in the nearest-term expiration month. CBOE has the flexibility to determine daily which four contiguous call and put series are most likely to have the highest public customer volume and, therefore, should be included in RAES. The instant proposal similarly would authorize CBOE to make a daily determination as to which OEX series would be included in RAES.

[6] The obligations and responsibilities of CBOE member firms participating in RAES are discussed in detail in the January Order, *supra* note 3.

[7] *See* January Order, *supra* note 3.

[8] *See* CBOE Rule 6.45.

[9] January Order, *supra* note 3, 50 FR at 4823 n.9.

[10] Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 9, 1985, at 2 ("Henry Letter"). The CBOE also questioned whether the Act requires such protection of public limit orders.

[11] *Id.* at 5.

[12] *Id.*

[13] During March 1985, there were approximately 450 transactions in RAES per day, or 7 percent of the public customer orders of member firms on the System. The CBOE estimates that under an expanded RAES "as many as 30% of the public customer orders in OEX will go through RAES." Henry Letter, *supra* note 10, at 1. In addition, as indicated in the January Order, *supra* note 3, by reducing the number of transactions that have to be executed manually on the exchange floor, RAES offers the possibility of increased efficiency in the handling of non-RAES orders.

proposal should submit six copies of their comments within 21 days from the date of publication of the notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the proposed rule change, including amendments, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 5 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the CBOE.

IV. Approval of Proposed Rule Change

Finally, the Commission finds good cause to accelerate approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because (1) the Commission already has approved the temporary operation of the pilot with similar terms; (2) the operation of RAES, to date, has been represented to be successful and without technical or other difficulties; and (3) extending the duration of the pilot and expanding the capacity of RAES, as defined above, would not appear to impose any undue burdens on public customers of OEX, or on any other public customers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.
May 6, 1985.

[FR Doc. 85-11383 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22012; Filed No. SR-OCC-85-4]

Self-Regulatory Organizations; Options Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change

On April 22, 1985, the Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to clarify OCC Rule 604 governing use of letters of credit. The Commission is publishing this notice to solicit public comment on the proposal.

OCC Rule 604 allows OCC clearing members to use letters of credit to satisfy OCC margin requirements. Under current Rule 604(c), a clearing member may request in writing that OCC allocate to the clearing member's customers' account at OCC some or all of a letter of credit amount to meet OCC margin requirements. OCC's proposal clarifies Rule 604(c) by specifying that clearing members may make these allocations only when the letter of credit itself does not specify to which account(s) it may be applied. If a letter of credit on its face designates the account(s) to which it may be applied, only the bank issuing the letter of credit can make a designation change.

OCC believes that the proposal enhances the safeguarding of funds in OCC's control by clarifying requirements for letters of credit held by OCC for margin purposes. OCC believe, therefore, that the proposal is consistent with the Act.

OCC's proposal has become effective under section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days fromthe date the proposal was filed, however, the Commission may summarily abrogate the proposal if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of all documents related to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal offices.

Written data, views and arguments concerning the proposal are invited within 21 days from the date this notice is published in the **Federal Register**. Please file six copies of comments, refering to File No. SE-OCC-85-4, with the the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by May 31, 1985.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

Dated: May 2, 1985.

John Wheeler,
Secretary.

[FR Doc. 85-11382 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14505; File No. 812-6028]

Daily Income Fund, Inc. and Reich & Tang, Inc.; Application and Opportunity for Hearing

May 6, 1985.

Notice is hereby given that Daily Income Fund Inc. (the "Fund"), an open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), and Reich & Tang, Inc., the investment adviser to the Fund (the "Adviser"), both located at 100 Park Avenue, New York, New York 10017 (the Fund and the Adviser collectively referred to herein as "Applicants"), filed an application on January 22, 1985 pursuant to section 17(d) of the Act and Rule 17d-1 thereunder for an order of the Commission to permit the transaction described below. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and to the text of the Act and the rules thereunder for the applicable provisions.

According to the application, in April 1981, a shareholder of the Fund (the "plaintiff") filed a complaint in the United States District Court for the Southern District of New York (the "district court" or the "court") commencing an action captioned *Martin Fox* v. *Reich & Tang, Inc. and Daily Income Fund, Inc.*, 18 Civ. 2602. The plaintiff alleged that the Adviser breached its fiduciary duty to the Fund under Section 36(b) of the Act by charging the Fund excessive fees for the investment advisory services it provided to the Fund. The district court dismissed the action on Applicants' motion holding that, under the Federal Rules of Civil Procedure, the plaintiff should not have brought suit before making a demand on the Board of Directors of the Fund. The plaintiff appealed to the Court of Appeals for the Second Circuit which reversed the district court, holding in the plaintiff's favor. Applicants appealed to the United States Supreme Court, which upheld the decision of the Court of Appeals and remanded the case to the district court for trial.

Applicants state that, in the interim, the same plaintiff, following a demand made on the Board of Directors, filed a second action in the same court in July, 1982, containing essentially the same allegations. That action remained inactive pending the resolution of the first action.

Applicants represent that, after discovery, the parties entered into a proposed stipulation of settlement of both actions, which was submitted to the district court on January 17, 1985. The two actions are being consolidated for purposes of settlement. The Fund will provide to its shareholders a notice, in a form which has been approved by the court, setting out the terms of the proposed settlement and advising the shareholders of their right to file objections to the settlement and to appear at a hearing held by the court to determine the appropriateness of the proposed settlement. At the time of filing of the application it was represented that, at a hearing scheduled for April 8, 1985, the court would consider the proposed settlement and if the settlement was approved a final order would be entered dismissing the action in its entirety with prejudice to the plaintiff and all shareholders of the Fund. Applicants state that under the terms of the proposed settlement the court may award the plaintiff not more than $212,000 for his litigation expenses. The Adviser will be required to pay all of the plaintiff's attorney's fees and expenses awarded by the court and, subject to the receipt of an exemptive order of the Commission, the Fund will reimburse the Adviser for one-half of such expenses. Applicants represent that the maximum amount of the Fund's contribution under the proposed settlement would be $106,000.

Applicants submit that the proposed transaction is consistent with the provisions, policies, and purposes of the Act and that the Fund's participation is not disadvantageous to it. Applicants state that since the Fund, as the beneficiary of a settlement of derivative actions brought on its behalf, would ordinarily be required to pay all of the plaintiff's litigation expenses, the Adviser's agreement to pay one-half of those expenses conveys a direct benefit to the Fund. Applicants submit that since the Fund is bearing no more of the plaintiff's litigation expenses than the Adviser, the Fund's participation is not on a basis that is different from or less advantageous to it than to the Adviser. Applicants further state that the Fund will obtain benefits from the settlement that more than compensate for the expenses it will bear under the fee payment provision. Those benefits include rebates of a portion of its future advisory fees and freedom from the expense, inconvenience and disruption that continued litigation would cause. Applicants further submit that the amount of plaintiff's litigation expenses to be borne by the fund under this arrangement is substantially less than the amount of legal expenses the Fund would have incurred had the litigation continued through a trial and subsequent appeals. Moreover, the disinterested directors of the Fund, as well as the entire Board of Directors of the Fund have unanimously approved the fee payment arrangement described above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 30, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11425 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14502; File No. 811-3889]

Hartford Government Securities Fund, Inc.; Application and Opportunity for Hearing

May 6, 1985.

Notice is hereby given that Hartford Government Securities Fund, Inc. ("Applicant"), Hartford Plaza, Hartford, CT 06115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 18, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant represents that it has never made a public offering of its securities, has fewer than 100 securityholders for purposes of Section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. Applicant further states that it has not made any sales of securities of which it was the issuer.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 31, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11426 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14497; File No. 812-5977]

Source Capital, Inc.; Application for Exemptive Order To Permit Odd-Lot Repurchase Offer

May 1, 1985.

Notice is hereby given that Source Capital, Inc. ("Applicant"), 10301 West Pico Boulevard, Los Angeles, CA 90064, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on November 2, 1984, and amendments thereto on February 15, and May 1, 1985, for an order, pursuant to section 23(c)(3) of the Act, to permit Applicant to repurchase shares of its common and preferred stock from beneficial and record owners of less than 40 shares at a premium of up to $1.00 per share over the market value of such shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the provisions cited in the application.

Applicant represents that its outstanding shares consist of 6,000,000 shares of common stock ("Common shares") and 2,017,530 shares of

preferred stock ("Preferred shares"). Applicant states that about 112,000 shares, or approximately 2%, of its Common shares are owned of record by approximately 7,000 shareholders who individually own less than 40 Common shares. Applicant states further that about 190,000 shares, or about 9%, of its Preferred shares are owned of record by approximately 12,500 shareholders who individually own less than 40 Preferred shares.

Applicant proposes to offer to its shareholders who own less than 40 shares of its Common shares or Preferred shares as of fixed, but yet to be determined, record dates the opportunity to tender such shares to Applicant for cash ("Odd-Lot Repurchase"). In addition to the payment of the market price (i.e., last reported NYSE sale price) on the first business day following the last day on which shares may be tendered pursuant to the Odd-Lot Repurchase, Applicant proposes to pay a premium of $1.00 per share, but in no event shall the per share price exceed net asset value per share with respect to repurchases of Common shares, or liquidation preference per share with respect to repurchases of Preferred shares.

It is anticipated that the Odd-Lot Repurchase will remain open to eligible shareholders for a minimum of 30 and a maximum of 40 days. Applicant states that securities tendered pursuant to the Odd-Lot Repurchase may be withdrawn at any time until the expiration of ten business days after the commencement of the repurchase program.

Applicant states that the Common shares have historically traded at a discount, although recently such shares were traded at a premium. Applicant represents that no offer would be made to purchase Common shares unless such shares are trading at a discount at the commencement of the Odd-Lot Repurchase. It is stated that the Preferred shares have always traded at a discount from their liquidation preference of $27.50 per share.

Applicant states that its current annual maintenance cost per shareholder account is estimated to be $9.00 regardless of account size. Accordingly, the proportionate expense of maintaining smaller accounts as compared to the investment in Applicant represented by such accounts is greater than that of larger accounts. Applicant asserts that the maximum acceptance rate for the Odd-Lot Repurchase would be about 2% or 112,000 of the total outstanding Common shares and 9% or 190,000 of the total outstanding Preferred shares, covering approximately 19,500 shareholder accounts. In such instance a premium of $302,000 would be payable. Assuming a market price of $31.875 per Common share, a 2% discount from a net asset value of $32.56, and a market price of $19.25 per Preferred share (which were the reported closing prices and net asset value on August 17, 1984), the total cost of implementing the Odd-Lot Repurchase would be $7,500,000 and would be paid from general corporate funds. Applicant states that, if all 19,500 accounts holding less than 40 shares of either class were to be closed, an annual savings of approximately $175,000 would result. Applicant represents that less than two years of such savings would be required to recoup the total premium over market price paid by Applicant for the shares acquired pursuant to the Odd-Lot Repurchase.

Applicant requests an order pursuant to section 23(c)(3) of the Act to permit the Odd-Lot Repurchase. Applicant cannot rely on the exemption from the repurchase prohibition of section 23(c)(3) of the Act provided by Rule 23c-1 thereunder (the "Rule") because each repurchase of Applicant's Common or Preferred shares at a premium over market value would be contrary to the requirement of paragraph (a)(6) of the Rule that such repurchases be made at a price not above the market value, if any, or the asset value of such securities, whichever is lower, at the time of purchase. For purposes of the requested order, Applicant undertakes to otherwise comply with all other applicable provisions of the Rule.

Applicant represents that the Odd-Lot Repurchase will not be made in a manner or on a basis which unfairly discriminates against any holders of its Common or Preferred shares. In support thereof, Applicant asserts that the Odd-Lot Repurchase is voluntary and that no shareholder will be required to tender shares. Applicant states that those eligible shareholders who choose to tender their shares will have the opportunity to sell their small amount of odd-lot Common or Preferred shares to Applicant at up to a $1.00 premium per share, and without incurring brokerage charges, stock transfer fees or stock transfer taxes. It is stated that for those who choose to remain as shareholders, as well as those who are not being offered an opportunity to tender their shares, the purchase of these odd-lots will save Applicant the cost of maintaining a number of small accounts which will reduce expenses for the benefit of remaining shareholders.

Applicant represents that holders of Common shares not participating in the Odd-Lot Repurchase will benefit from increases in the net asset value attributable to such shares to the extent that Common shares are repurchased at less than net asset value or Preferred shares are repurchased at less than liquidation preference. Applicant represents further that the asset coverage of the Preferred shares will remain substantially above the minimum 200% required by section 18(a)(2)(B) of the Act.

With respect to extending the Odd-Lot Repurchase to record and beneficial shareholders, Applicant asserts that, while a reduction in the number of odd-lot beneficial owners of shares held in street name accounts will not reduce Applicant's transfer agency fees, savings will result from reduced requirements for shareholder reports and proxy statements, as well as reduced costs of reimbursing brokers for forwarding such documents to their customers. With respect to limiting the Odd-Lot Repurchase to shareholders owning less than 40 shares, Applicant represents that its board of directors reviewed the estimated costs of the repurchase offer and considered such costs as well as the transaction costs, including the proposed maximum premium, for shares repurchased in determining that the repurchase offer would be in the best interests of Applicant and its shareholders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 27, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11303 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 6, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Apple Computer, Inc.
Common Stock, No Par Value (File No. 7-8416)
Convergent Technologies
Common Stock, No Par Value (File No. 7-8417)
Digital Switch Corp.
Common Stock, $.01 Par Value (File No. 7-8418)
Intel Corporation
Common Stock, No Par Value (File No. 7-8419)
MCI Communications Corp.
Common Stock, $.10 Par Value (File No. 7-8420)
Tandem Computers, Incorporated
Common Stock, $.02½ Par Value (File No. 7-8421)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 28, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-11427 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/851]

Shipping Coordinating Committee, Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 1:30 p.m. on May 23, 1985, in room 2409 (Mall) Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

The purpose of the meeting is to review and discuss the report of the Expert Panel on the Review of Scientific and Technical Considerations Relevant to the Proposal for the Amendment of the Annexes to the London Dumping Convention Related to the Dumping of Radioactive Wastes. This report was prepared for the London Dumping Convention for use in considering a proposal to ban all ocean disposal of radioactive waste. Prior to submission to the London Dumping Convention, the report will be considered at a meeting of the Expanded Panel on Radioactive Waste Dumping, June 3-7, 1985, in London.

For further information, contact Ms. Norma Hughes, Executive Secretary, Committee on Ocean Dumping (WH-556), Environmental Protection Agency, Washington, D.C. 20460, telephone: (202) 755-2927.

The chairman will entertain comments from the public as time permits.

Richard E. Benedick,
Deputy Assistant Secretary, Environment, Health and Natural Resources.

May 1, 1985.

[FR Doc. 85-11416 Filed 5-9-85; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

[Docket 41035]

Dominion Intercontinental Airlines, Inc., Fitness Investigation; Continuing Assignment of Proceeding

The Department's Order 85-5-27, issued May 3, 1985, remanded the proceeding to the Chief Administrative Law Judge for assignment, noting that the Civil Aeronautics Board's Order 84-11-130, adopted on November 30, 1984, remanded the proceeding to the presiding Administrative Law Judge for further hearings and further development of the record. This notice is to advise that this proceeding continues to be assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should continue to be addressed to him at the Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated at Washington, D.C., May 6, 1985.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 85-11329 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-9]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 3, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 6, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24597	Air Wisconsin, Inc.	14 CFR 93 123	To allow petitioner to operate commuter slots at O'Hare International Airport using aircraft with a certificated maximum passenger seating capacity of 56 or more.
24536	Professional Aviator Training	14 CFR 61 63 (d)(2) and (d)(3)	To permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, to substitute the practical requirements of § 61.157(a) for those of § 61.63 (d)(2) and (d)(3) to complete a portion of that practical test in a simulator as authorized by § 61.157(d)
24533	Chrysler Aviation, Inc.	14 CFR 61 63 (d)(2) and (d)(3)	To permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, to substitute a practical test that includes the items and procedures for testing in an airplane simulator as set forth in the appendix of Part 61, although petitioner does not have an operating certificate issued under Part 121.
24579	Dallah AVCO Trans Arabia	14 CFR 91 303	To allow petitioner to operate a Stage 1 Boeing 707-123B aircraft for a brief time of no more than four weeks duration sometime during the period June through September 1985.
24586	Wendy's International, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24572	E.I. duPont deNemours & Company, Inc.	14 CFR 91 83(c)(1)	To permit petitioner to have lower alternate weather minimums for helicopters.
24589	Department of the Navy, Atlantic Fleet Weapons Training Facility.	14 CFR 101 23(b)	To allow petitioner relief from the unmanned rockets in controlled airspace provisions in order to allow for the launching of antisubmarine rockets (ASROC's) in the St. Croix, U.S. Virgin Islands controlled firing area
24580	Balair AG	14 CFR 91 303	To allow petitioner to operate a Stage 1 DC-8-63 aircraft at Stewart International Airport for a flight on or about November 1, 1985, and December 6, 1985.
24595	Blandin Paper Co.	14 CFR 21 181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24596	Union Camp Corporation	14 CFR 21 181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24590	REB Ltd	14 CFR 21 181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23717	Garrett Turbine Engine Company	40 CFR 87.21(e) and SFAR 27	To amend Exemption 4228 to include all of petitioner's engine models in the TFE31 series. The original petition specified only Garret's models TFE31-2, -3R, -3A, -3AR, -3B, -3BR, -5 and -5R and allowed partial relief from the specific smoke number required by 40 CFR 87 21(e)
24585	Pacific Northwest Bell	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24575	USAir	14 CFR Appendix H of Part 121	To allow petitioner to continue to conduct Phase IIA training and checking utilizing a Phase I simulator until October 1, 1985, 15½ weeks in excess of the 3½ years as permitted by Appendix H of Part 121.
24576	United Airlines	14 CFR 61.151(e)	To allow W. F. Predhome, Jr., to qualify for an Airline Transport Pilot certificate (simulator-only) and to exercise the privileges of a simulator instructor under § 121.411 for petitioner. Mr. Predhome suffers from diabetes and is not eligible for a medical certificate under Part 67
24574	McFillen Air Park	14 CFR 135.243	To allow pilots employed by petitioner to haul freight-only in instrument flight rule conditions without possessing the necessary experience requirements.
24547	United States Parachute Association	14 CFR 105.43	To allow foreign participants to use parachutes which do not meet the parachute equipment and packing requirements of § 105.43 in the U.S. National Skydiving Championship to be held at Muskogee, Oklahoma, during the period of June 20 through July 17, 1985.
24490	United Technologies	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
17324	Gulf Air Company	14 CFR Portions of Part 21	Extension of Exemption 2468 to allow petitioner to operate two leased U.S.-registered L-1011 aircraft, N92TA and N92TB, using a Federal Aviation Administration (FAA)-approved minimum equipment list and an FAA-approved continuous maintenance program.
23512	Accelerated Ground Training	14 CFR 61 63(d) (2) and (3)	Extension of exemption 3817 to permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3) and to complete a portion of that practical test in a simulator authorized by § 61.157(d) subject to certain conditions and limitations.
24582	Armstrong World Industries, Inc.	14 CFR 21 181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24583	Bunn-O-Matic	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
21882	China Airlines Limited	14 CFR Portions of Part 21	Extension of Exemption 3360 to allow petitioner to operate two Boeing 747-SP aircraft, N4508H and N4522V, using a Federal Aviation Administration (FAA)-approved continuous airworthiness maintenance program.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24577	Pacific Western Airlines	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: B-737-200: CF-TAN. *Granted 4/3/85.*
24342	ERA Helicopters, Inc	14 CFR SFAR 38 and Part 121	To allow petitioner to operate Boeing Vertol 234 helicopters under the provisions of Part 135. *Granted 4/5/85.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No	Petitioner	Regulations affected	Description of relief sought disposition
23465	Everts Air Fuel	14 CFR 91.31(a)	To permit it to operate its McDonnel Douglas DC-6B aircraft, S/N 45174, at a 5 percent increased zero fuel and landing weight for the purpose of transporting diesel fuel to isolated native villages and seismic exploration teams in the Alaskan back country in the manner permitted by §§ 121.198 and 129.23. *Granted 4/5/85.*
22558	Boeing Commercial	14 CFR 47.69(b)	Extension of Exemption 3513C to allow the petitioner to continue to conduct Airplane Company flights outside of the United States while the agency considers amending the regulations. *Granted 4/19/85.*
12464	Air France	14 CFR 21.181	Amendment of Exemption No. 1690F to permit petitioner to operate an additional leased U.S.-registered B-747 aircraft using the FAA-approved master minimum equipment list and an FAA-approved continuous airworthiness maintenance program. *Partial Grant 4/11/85*
23290	Air Transport Assoc. of America	14 CFR 121.391(d) 121.311(f)	To renew the terms of Exemption 3652, which expired 12/31/84. The petition allows certain Part 121 certificate holders to operate B-767 airplanes, with either four or five required flight attendants positioned as follows: one or two flight attendants near the forward floor-level exists, one in the mid-cabin, cross-aisle area, and two near the aft floor-level exits. *Granted 4/9/85.*
24416	Airline Flight Training	14 CFR 61.63(d) (2) (3) and 61.157(d)(1)	To allow petitioner's trainees to complete the practical test for issurance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane as set forth in Part 61, Appendix A. *Granted 4/11/85.*
24203	Dunn & Bradstreet Corporation	14 CFR 21.181	To allow petitioner to operate a Gulfstream Airspece GIII Model 1159A aircraft utilizing the provisions of a minimum equipment list. *Granted 4/24/85.*
24285	Southern Natural Gas Company	14 CFR 21.181	To allow petitioner to operate Falcon 20C aircraft utilizing the provisions of a minimum equipment list. *Granted 4/24/85.*
23675	Executive Air Fleet Corporation	14 CFR 21.181	To permit petitioner to operate various aircraft using a FAA approved minimum equipment list. *Granted 4/26/85.*
[illegible]	Zephyrhills Parachute Center	14 CFR 91.15(a)(2) 105.43(a)(2) and 91.47	To renew and make permanent the provisions of Exemption 3096. That exemption allows petitioner to carry 40 parachutists in DC-3/C47 aircraft and 20 parachutists in Lockheed L-18 aircraft subject to certain conditions and limitations. *Partial Grant 4/18/85.*
20817	do.	14 CFR 91.15(a) and (a)(2) and 105.43(a)	To renew and make permanent the provisions of Exemption 3097. That exemption allows foreign nationals to participate in skydiving events without complying with the parachute equipment and packing requirements of these sections, subject to certain conditions. *Partial Grant 4/18/85.*

[FR Doc. 85-11363 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[RS&I-Ap-No. 1010]

Iowa Interstate Railroad, and Northeast Illinois Railroad Corp.; Notice of hearing

The Iowa Interstate Railroad Company (IAIS) and the Northeast Illinois Railroad Corporation (NIRC) have petitioned the Federal Railroad Administration (FRA) seeking relief from the requirements of section 236.566 of the Rules, Standards and Instructions (RS&I) (49 CFR 236.566) to the extent that the IAIS be permitted to operate locomotives not equipped with automatic cab signals responsive to the roadway equipment on the trackage of the NIRC between Blue Island, Illinois, and Joliet, Illinois. This proceeding is docketed as FRA RS&I Application No. 1010.

After examining the carriers' proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on June 26, 1985, in the 14th Floor Conference Room of the One North Western Building at 165 North Canal Street in Chicago, Illinois.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FAR Rules of Practice (49 CFR 211.25), by a representative designated by the FAR.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on May 6, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-11388 Filed 5-9-85 am]

BILLING CODE 4910-06-M

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, section 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain data about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stess" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Eight railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), Athison, Topeka and Santa Fe (ASTF), Missouri Pacific (MoPac), Illinois Central Gulf (ICG), Seaboard

System (SBD), and Burlington Northern (BN) have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in a notice that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432), the UP and ATSF proposals appeared in the March 6, 1985 issue (50 FR 9146) and the MoPac and ICG proposals appeared in the March 11, 1985 issue (50 FR 9753). In the recently filed SBD and BN proposals, FRA has been offered additional equipment to be used in any test program that FRA deems appropriate. SBD volunteered the use of a fleet of approximately 20,000 hopper cars notes that these cars are in dedicated service. The commodities normally hauled in these cars include phosphate, aggregate and coal. In addition, BN has offered the use of a fleet of approximately 8,000 freight cars of that includes approximately 2,000 gondola cars, 4,900 hopper cars, 650 ore cars, 400 refrigerated box cars, and 15 flat cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate a large portion of their mileage while operating on BN's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by these railroads, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for May 13, 1985. This hearing was announced in the Federal Register on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. Although the hearing had to be rescheduled from March 12, 1985 until May due to unforeseen scheduling conflicts, FRA anticipates that persons testifying at this hearing will address the topic of initiating the type of test program sought by these railroads as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 10:00 a.m. on May 13, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW, Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H-83-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before June 21, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C., on May 7, 1985.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 85-11387 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: (1)—Motor vehicle, (2)—Rail freight, (3)—Cargo vessel, (4)—Cargo-only aircraft, (5)—Passenger-carrying aircraft.

DATE: Comment period closes June 10, 1985.

ADDRESS: *Comments to:* Dockets Branch, Office of Regulatory Planning and Analysis, Material Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No	Applicant	Regulation(s) affected	Nature of exemption thereof
9424-N	VTG Vereinigte Tanklager, und Transportmittel GmbH, Hamburg West Germany	49 CFR 173.315	To authorize shipment of dichlorodifluoromethane, classed as a nonflammable gas in non-DOT specification IMO-5 portable tanks comparable to DOT Specification 51 except for ASME Code Certification and constructed of German Steel (Modes 1, 2, 3.)
9425-N	American Chemical & Refining Company Inc Waterbury, CT.	49 CFR 177.848(b)	To authorize certain cyanide solutions, classed as poison B and palladium ammonium hydroxide solutions, classed as corrosive material to be transported in the same motor vehicle. (Mode 1.)
9426-N	Rheem Manufacturing Company, Edison NJ	49 CFR Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification six gallon capacity polyethylene containers comparable to DOT Specification 34 except for open head for shipment of certain flammable or corrosive liquids. (Modes 1, 2, 3.)
9427-N	Sherrill Associates, Homewood, IL	49 CFR 173.242	To authorize shipment of limited quantities of hydrochloric acid, classed as a corrosive material and isopropyl alcohol, classed as a flammable liquid, contained in polyethylene containers overpacked together in a fiberboard box (Modes 1, 3.)
9428-N	CGTX Inc., Montreal, Quebec, Canada	49 CFR 179.102-2(a)(30)	To authorize shipment of chlorine, classed as nonflammable gas, in CTC 105A500W tank cars insulated with fiberglass and ceramic fiber. (Mode 2.)
9429-N	Witch Industries, Inc., South Houston, TX	49 CFR 173.119(a), (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specifications cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids. (Mode 1.)
9431-N	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.87	To authorize shipment of a kit containing 7 different types of class A and B explosives contained in ammo cans cushioned with polypropylene, overpacked in a military specification box. (Modes 1, 2, 4.)
9432-N	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3HT for shipment of helium, classed as nonflammable gas (Modes 1, 2, 4.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9433–N	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.302(f), 173.303, 173.304	To authorize shipment of certain flammable gases, at atmospheric pressure, in glass bulbs not exceeding 1 liter capacity overpacked in a DOT Specification 12A or 12B fiberboard box, cushioned with foam, one bulb per box
9434–N	Ropak Central, Inc., Elk Grove Village, IL	49 CFR 178.16–19	To authorize shipment of a dry corrosive material in approximately 712 polyethylene containers made to a DOT Specification 35 except for marking (Mode 1.)
9435–N	L'Air Liquide, Paris, France	49 CFR 173–315	To authorize shipment of certain nonflammable pressurized liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.)

This notice of receipt of application for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 3, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 85–11323 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–60–M

Materials Transportation Bureau; Office of Hazardous Materials Regulation; Applications for Renewal or Modification of Exemption or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemption from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes May 28, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No	Applicant	Renewal of exemption
3121–X	U.S. Department of the Army, Falls Church, VA.	3121
3126–X	Hercules, Incorporated, Wilmington, DE [1]	3126
3600–X	U.S. Department of the Army, Falls Church, VA	3600
4719–X	Dow Chemical U.S.A., Freeport, TX	4719
4990–X	Schenley Distillers, Inc., Lawrenceburg, IN.	4990
5600–X	Amoco Oil Company, Whiting, IN	[illegible]
5600–X	Genus, Material Sciences Division, San Marcos, CA	[illegible]
5876–X	FMC Corporation, Philadelphia, PA	5876
6122–X	Pennwalt Corporation, Buffalo, NY [2]	6122
6232–X	U.S. Department of the Army, Washington, DC	6232
6452–X	Pennwalt Corporation, Buffalo, NY	6452
6712–X	Air Products and Chemicals, Inc., Allentown, PA	6712
6759–X	Austin Powder Company, Cleveland, OH	6759
6759–X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	6759
6762–X	Anderson Chemical Company, Macon, GA	6762
6769–X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	6769
6800–X	Plasti-Drum Corporation, Lockport, IL [3]	6800
6824–X	GPS Industries, City of Industry, CA	6824
7007–X	Allied Universal Corporation, Miami, FL	7007
7051–X	Ozark-Mahoning Company, Tulsa, OK	7051
7060–X	Federal Express Corporation, Memphis, TN.	7060
7060–X	Central Skyport Inc. Columbus, OH	7060
7458–X	Exohwerks Company Eastlake OH	7458
7555–X	Provost Cartage Incorporated, Ville d Anjou, Quebec NC	7555
7735–X	Rheem Manufacturing Company, Edison, NJ	7735
7835–X	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	7835
7857–X	Makhteshim Daron (Ramat Hovav) Ltd., Beer Sheva Israel.	7857
7886–X	W. M. Barr & Company, Inc., Memphis, TN	7886
8127–X	Union Explosivos Rio Tinto, S.A., Madrid, Spain.	8127
8131–X	National Aeronautics and Space Administration, Washington, DC	8131
8156–X	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	8156
8178–X	National Aeronautics and Space Administration, Washington, DC	8178
8194–X	Pennwalt Corporation, Buffalo, NY	8194
8196–X	GCS Container Service, SA, Chiasso, Switzerland	8196
8196–X	Allied Chemical, Morristown, NJ	8196
8209–X	Coastal Planes Airways, Incorporated, Warner Robins, GA	8209
8215–X	Olin Corp., East Alton, IL	8215
8228–X	Bureau of Alcohol, Tobacco and Firearms, Washington, DC	[illegible]
8232–X	GCS Container Service, SA, Chiasso, Switzerland.	8232
8573–X	Alstar Company, Tracy, CA	8573
8573–X	All Pure Chemical Company, Inc., Tracy, CA	8573
8573–X	Hasa Chemicals, Inc., Saugus, CA	8573
8621–X	Atlantic & Gulf Stevedores of Alabama, Mobile, AL	8621
8667–X	Federal Emergency Management Agency, Washington, DC	8667
8678–X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	[illegible]
8684–X	General American Transportation Corporation, Chicago, IL	[illegible]
8725–X	CNG Cylinder Corporation, Long Beach, CA [4]	8725
8862–X	ABERCO Inc., Seabrook, MD	[illegible]
8911–X	Olin Corp., East Alton, IL [5]	8911
8912–X	Rheinpfalzische Emballagenfabrik G. Schonung & Co., Weinstrasse, West Germany	8912
8965–X	Pressed Steel Tank Company, Inc., Milwaukee, WI [6]	[illegible]
8975–X	Baker Brothers Welding, Inc., Norman, OK	8975
8977–X	Eurotainer S.A., Paris, France	8977
8986–X	Cook Slurry Company, Salt Lake City, UT	8986
9023–X	Eurotainer, S.A., Paris, France	9023
9026–X	Continental Fibre Drum, Inc., Lombard, IL	9026
9030–X	LND Incorporated, Oceanside, NY	9030
9040–X	Continental Fibre Drum, Inc., Lombard, IL	9040
9062–X	UOP Process Division, Des Plaines IL	9062
9069–X	Ford Aerospace & Communications Corp., Palo Alto, CA	9069
9077–X	Central Vermont Railway, Inc., St. Albans, VT [7]	9077
9138–X	National Aeronautics and Space Administration, Washington, DC	9138
9332–X	Engelhard Corporation, Edison, NJ [6]	9332

[1] To authorize an alternate vehicle loading configuration.

[2] Request for modification to authorize use of a different style corrugated box for shipment of polyethylene bags containing an organic peroxide

[3] To authorize shipment of hydrogen peroxide not to exceed 70%.

[4] To authorize reinspection and hydrostatic testing of cylinders every 5 years instead of 3

[5] To authorize a 62 cubic feet capacity aluminum hopper bottom bin as an additional type container, for shipment of scrap guillotined small arms ammunition

[6] To authorize a new series of design qualification tests and to extend retest period from 3 years to 5

[7] To increase number of railway track torpedoes contained in flagging kits from 7 to 18

* Request an increase of an ammonia solution containing up to a maximum 11% (as platinum) of a soluble explosive platinum salt classed flammable solid

Application No	Applicant	Parties to exemption
2709-P	Atlas Powder Company, Dallas, TX	2709
4453-P	Ren-Lor, Inc., Bridgeville, PA	4453
4453-P	Explo, Inc., Bridgebille, PA	4453
4453-P	H. L. & A. G. Balsinger, Inc., Bridgeville, PA.	4453
4453-P	Mountaineer Explosives, Inc., Kingwood, WV	4453
5206-P	D. C. Guelich Explosive Co., Clearfield, PA	5206
5206-P	Amos L. Dolby Company, Conca, PA.	5206
6418-P	PureGro Company, West Sacramento, CA.	6418
6418-P	Full Circle, Inc., DBA CENEX Soil Service Center, Connell, WA.	6418
6530-P	Fitch Industrial & Welding Supply, Inc., Lawton, OK	6530
6614-P	Bison Laboratories, Inc., Buffalo, NY	6614
8283-P	PVS Chemicals, Inc., Detroit, MI	8283
8450-P	Atlantic Research Corporation, Camden, AR	8450
8554-P	CTL Distribution, Inc., Mulberry, FL	8554
8582-P	Consolidated Rail Corporation, Philadelphia PA.	8582
8627-P	Omega Treating Chemicals, Inc., Midland, TX.	8627
8691-P	Witco Chemical Corporation, Pearsall Division, New York, NY.	8691
8723-P	Atlas Powder Co., Dallas, TX	8723
8723-P	CTL Distribution, Inc., Mulberry, FL	8723
8966-P	Haviland Products Company, Grand Rapids, MI.	8966
9027-P	Witco Chemical Corporation, Melrose Park, IL.	9027
9130-P	Calgon Corporation, St. Louis, MO	9130
9401-P	Parlefer S.A.R.L., Paris, France	9401
9401-P	ATOCHEM, Paris, France	9401

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e).

Issued in Washington, DC, on May 3, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-11324 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Delegation Order 85-14; Docket # 85-8]

Delegation of Authority

Pursuant to 12 U.S.C. 1 *et seq.*, 4, and 4a, I hereby delegate to Michael Patriarca, Deputy Comptroller for Multinational Banking, all powers, duties, authorities and responsibilities currently delegated to the Senior Deputy Comptroller for Bank Supervision. Mr. Patriarca is authorized and directed to assume these powers, duties, authorities and responsibilities immediately. Prior subdelegations of any of these powers duties, authorities and responsibilities by the Senior Deputy Comptroller for Bank Supervision that are in force as of this date shall remain in force.

The Comptroller of the Currency reserves the authority to act on any matter delegated herein.

Dated: May 3, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-11361 Filed 5-9-85; 8:45 am]

BILLING CODE 4810-33-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Syracuse, NY; 500-Car Parking Structure; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a 500-Car Parking Structure and has determined that the potential environmental impacts will be minimal from the development of this project.

The multi-story parking garage will be located on the medical center site.

Because most of the vehicles are presently driven to the site, air pollutants will not significantly increase. This is also true for pollutants that enter the storm system. These pollutants are snow borne de-icing chemicals and dirt carried on automobiles, dropped in the parking lot and conveyed into the storm water.

The land being proposed for the parking structure is presently paved; therefore, there will be no change to the ecosystem. There is no native wildlife in the area that will be adversely affected.

Findings conclude that the proposed action will not cause a significant effect on the physical and human environment.

Mitigating action should include noise abatement measures.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Susan Livingstone, Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: May 6, 1985.

By direction of the Administrator:

Everett Alvarez Jr.,

Deputy Administrator.

[FR Doc. 85-11412 Filed 5-9-85; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)92), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on June 24 and 25, 1985. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 8:00 a.m. both days in the Omar Bradley Conference Room. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Patricia Kane, Veterans Administration Central Office (phone 202/389-2115) prior to June 19, 1985.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: May 6, 1985.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11413 Filed 5-9-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, May 14, 1985, 9:30 AM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Processing Charges Raising the Issue of Jurisdiction Over Licensing Agencies.
4. Amendments to EEO-3, Reporting Requirements (Local Union Reports).
5. Proposed Contracts for Expert Services in Connection with Court Cases.
6. Proposed FY 86 Funding Principles for State and Local Fair Employment Practices Agencies.
7. Amendments to the Commission's Section 4(g) of the ADEA 29 U.S.C. Section 623(g).

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Commission Decision.
3. Options Paper on Enforcement of an ORA Decision.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: May 7, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85-11439 Filed 5-8-85; 9:10 am]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Register Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 14, 1985.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the May 14, 1985 meeting:

"Proposed FY 86 Funding Principles for State and Local Fair Employment Practices Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: May 7, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-11440 Filed 5-8-85; 9:10 am]

BILLING CODE 6750-06-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Register Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

POSTPONEMENT: The following matter has been postponed from the May 7, 1985 open portion of the meeting and added to the May 14, 1985 open session.

"Amendments to the Commission's Regulation Implementing Section 4(g) of the ADEA, 29 U.S.C. Section 623(g)"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: May 7, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-11441 Filed 5-8-85; 9:10 am]

BILLING CODE 6750-06-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:00 p.m. on Friday, May 3, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers Savings Bank, Massena, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, May 3, 1985; (2) accept the bid for the transaction submitted by Union National Bank, Massena, Iowa, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:01 p.m., and at 7:58 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank, St. Joseph, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Friday, May 3, 1985; (2) accepted the bid for the transaction submitted by Farmers' State Bank of Buchanan County, St. Joseph, Missouri, a newly-chartered State nonmember bank; (3) approved the applications of Farmers' State Bank of Buchanan County, St. Joseph, Missouri, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Farmers State Bank, St. Joseph, Missouri, and for consent to establish the sole branch of Farmers State Bank, St. Joseph, Missouri as a branch of Farmers' State Bank of Buchanan County; and (4) provided such financial assistance, pursuant to section 13(c)(2) to the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director

Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11369 Filed 5-8-85; 12:19 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11424 Filed 5-7-85; 4:07 pm]

BILLING CODE 6210-01-M

federal register

Friday
May 10, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Florida: FL85-3024	Apr. 26, 1985.
Illinois: IL85-5008	Feb. 8, 1985
Louisiana: LA84-4059	Oct. 5, 1984
Minnesota:	
MN84-5015	May 25, 1984.
MN85-5000	Jan. 11, 1985
MN85-5006	Feb. 1, 1985.
Missouri: MO85-4005	Apr. 12, 1985
New Mexico: NM84-4099	Oct. 19, 1984.
New York:	
NY81-3045	July 17, 1981.
NY83-3027	July 22, 1984.
NY83-3018	May 20, 1983.
Ohio: OH83-5122	Nov. 25, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Kansas:	
KS84-4038 (KS85-4006)	May 25, 1984
KS84-4039 (KS85-4007)	Do.
KS84-4040 (KS85-4008	Do.
KS84-4026 (KS85-4009)	Apr. 27, 1984.
New Jersey: NJ82-3013 (NJ85-3027)	Mar. 19, 1982.
New York: NY81-3039 (NY85-3026)	June 12, 1981.
Oklahoma:	
OK84-4049 (OK85-4012	Sept. 7, 1984.
OK84-4050 (OK85-4011	Do.
Texas: TX84-4057 (TX85-4010	Oct. 5, 1984.

New General Wage Determination Decision

Texas, TX85-4013

Signed at Washington, D.C., this 3rd day of May 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits
DECISION NO. FL85-[illegible]-MOD. #1		
(50 FR 16610-April 26, 1985)		
Cape Canaveral AFS, Patrick AFB, Kennedy Space Flight Center, & Melabar Radar Site in Brevard & Volusia Counties in Florida		
BUILDING, HEAVY & HIGHWAY CONSTRUCTION		
CHANGE:		
SPRINKLER FITTERS	$16.[illegible]	3.49

	Basic Hourly Rates	Fringe Benefits
DECISION #LA84-4059-MOD. #1		
(49 FR 39431-Oct. 5, 1984)		
Jefferson, Orleans, St. Bernard, Bossier, Caddo, Calcasieu, Strategic Petroleum Reserve in Cameron Parish, Cameron, Beauregard, Jefferson Davis, Allen, Plaquemines, & St. Charles Parishes, Louisiana		
CHANGE:		
Electricians:		
Zones 1, 6 & 7:		
Electricians and Cable Splicers	$ 16.45	$1.68+ 9%
Line Construction:		
All Zones:		
Lineman	12.10	1.25+ 3.75%
Groundman	5.85	1.25+ 3.75%
Winch Truck Oper. or Tractor Driver	8.72	1.25+ 3.75%
Hole Digger Oper.	10.47	1.25+ 3.75%
Painters:		
Zones 1, 6, & 7	11.00	2.11
Plumbers & Pipefitters:		
Zones 3, 4, & 5	12.46	3.00

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IL[illegible]-MOD. [illegible]		
([illegible] FR 5486 - Feb. [illegible], 1985)		
Adams, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Clinton, DeKalb, Fulton, Greene, Hancock, Henderson, Henry, Jersey, JoDaviess, Knox, LaSalle, Lee, Livingston, Logan, McDonough, McLean, Macoupin, Marshall, Mason, Menard, Mercer, Monroe, Montgomery, Morgan, Ogle, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Stark, Stephenson, Warren, Washington, Whiteside, Winnebago & Woodford Counties, Illinois		
ADD:		
BOILERMAKERS:		
Area 3	$18.50	$[illegible]
CHANGE:		
BRICKLAYERS; Caulkers; Cleaners Pointers & Stonemasons:		
Area [illegible]	[illegible].00	[illegible]
CARPENTERS; Lathers; Millwrights Piledrivermen & Soft Floor Layers		
Area 4:		
Carpenters, Lathers, Piledrivermen, Soft Floor Layer	15.80	[illegible]
Millwrights	18.045	[illegible]
Area 5:		
Carpenters, Lathers, Soft Floor Layers	15.805	[illegible]
Millwrights	16.305	3.0[illegible]
Area 6:		
Piledrivermen	16.305	3.01
Area 8:		
Carpenters, Piledrivermen, Soft Floor Layers	15.30	2.95
Area 13:		
Carpenters, Soft Floor Layer	14.00	1.08
Millwrights, Piledrivermen	14.70	1.08
Area 17:		
Carpenters, Piledrivermen, Soft Floor Layers	14.90	2.60
Millwrights	16.48	3.25
Area 18:		
Millwrights	16.48	3.25
OMIT:		
CARPENTERS:		
Areas 14 & 15 (Lathers)		

	Basic Hourly Rates	Fringe Benefits
DECISION NUMBER MN84-5015 - MOD. #5		
(49 FR 22154 - May 25, 1984)		
Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota		
Change:		
Bricklayers; Stonemasons:		
Area 3	14.41	$.75
Area 5	14.41	.7[illegible]
Area [illegible]	15.46	1.90
Area 11	14.41	.75
Area 12	16.46	.75
Area 13	14.76	2.10
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 8:		
Carpenters; Piledrivermen	15.5[illegible]	4.12
Area 19:		
Carpenters; Millwrights; & Piledrivermen	14.93	1.30
Area 20:		
Carpenters	14.93	1.30
Area 21:		
Carpenters; Soft Floor Layers	15.0[illegible]	1.55
Millwrights	16.04	1.55
Cement Masons; Plasterers:		
Area 4	13.65	.75
Area 5:		
Cement Masons	17.03	2.27
Area 8	13.65	.75
Area 15	13.65	.75
Area 16	15.70	.75
Area 17:		
Cement Masons	15.65	1.90
Ironworkers:		
Area 2	17.10	3.89
Painters:		
Area 4:		
Brush; Drywall Finishers; & Paperhangers	16.00	2.76
Drywall Sanders	12.00	2.76
Sandblaster; Spray; Steel	16.75	2.76
Area 7:		
Brush; Roller; Wallpaper	16.11	2.93
Sandblast; Spray; Steel	16.56	2.93
Finishers & Tapers	17.05	1.97
Sanders	12.50	1.97

	Basic Hourly Rates	Fringe Benefits
Painters (Cont'd):		
Area 8:		
Brush	$14.61	$[illegible].05
Paperhangers; Spray; Steel & Taping	15.21	2.05
Sheet Metal Workers:		
Area 7:		
Over $250,000.00 H.V.A.C. Contract	15.26	[illegible]+ d+1
Under $250,000.00 H.V.A.C. Contract	12.00	2.79+ d+1
Area 9:		
Light Commercial ($175,000 and less H.V.A.C.) Contract	12.35	1.61+ d+1
All Other Work	15.79	1.61+ d+1
Sprinkler Fitters	16.47	3.3[illegible]
Terrazzo Workers	17.61	2.10
Tile Setters:		
Area 2	16.65	2.57
Power Equipment Operators:		
Class 1	19.09	2.90
Class 2	18.75	2.90
Class 3	17.95	2.90
Class 4	17.34	2.90
Class 5	17.00	2.90
Class 6	16.53	2.90
Class 7	15.32	2.90
Class 8	14.20	2.90
Class 9	13.64	2.90
Omit:		
Area Descriptions:		
Sheet Metal Workers:		
Area 8		
Add:		
Sheet Metal Workers:		
Area 11	17.32	1.75
Area 12:		
Light Commercial ($30,000.00 & Under)	12.765	1.75
All Other Work	17.0[illegible]	1.75

[illegible] NUMBER [illegible]-5015 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Area Descriptions:		
Sheet Metal Workers:		
[illegible]: Cottonwood, Jackson,		
Le Sueur, Lincoln, Lyon,		
[illegible], Nicollet, Nobles,		
[illegible]od, & Waseca Cos.		
Area 11: Dodge, Goodhue,		
[illegible]e, & Wabasha Cos.		
Area 12: Winona Co.		
[illegible]:		
1. [illegible]		

[illegible] NUMBER [illegible] -
MOD. [illegible]
(50 FR [illegible]78 - January 11, 1985)
Anoka, [illegible]nton, Carlton, Chisago,
Cook, [illegible]kota, Hennepin, Lake,
Ramsey, St. Louis, Scott,
Sherburne, Stearns, Washington,
Winona, & Wright Counties,
Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 4	$15.50	$1.55
Cement Masons:		
Area 1	17.03	[illegible]
Area 2	15.70	.75
Ironworkers:		
Area 1	17.10	[illegible]
Painters:		
Area 1:		
Brush; Roller	16.11	[illegible]
Sandblaster; Spray; Steel; Swing Stage; & Epoxy	[illegible]	[illegible]
Laborers:		
Area 1:		
Class 1	12.75	3.10
Class 2	12.90	3.10
Class 3	12.95	3.10
Class 4	13.10	3.10
Class 5	13.20	3.10
Class 6	13.45	3.10

	Basic Hourly Rates	Fringe Benefits
Laborers (Cont'd):		
Area 2:		
Class 1	$10.25	$3.00
Class 2	10.40	3.00
Class 3	10.45	3.00
Class 4	10.60	3.00
Class 5	10.70	3.00
Class 6	10.95	3.00
Area 3:		
Class 1	12.13	3.25
Class 2	12.28	3.25
Class 3	12.33	3.25
Class 4	12.48	3.25
Class 5	12.58	3.25
Class 6	12.53	3.25
Area 4:		
Class 1	12.93	2.45
Class 2	13.08	2.45
Class 3	13.13	2.45
Class 4	13.28	2.45
Class 5	13.38	2.45
Class 6	13.58	2.45
Area 5:		
Class 1	12.40	1.95
Class 2	12.55	1.95
Class 3	12.60	1.95
Class 4	12.75	1.95
Class 5	12.85	1.95
Class 6	13.10	1.95
Power Equipment Operators:		
Area 1:		
Group 1	16.72	2.90
Group 2	16.17	2.90
Group 3	15.99	2.90
Group 4	15.87	2.90
Group 5	13.58	2.90
Group 6	12.82	2.90
Area 2:		
Group 1	15.96	2.90
Group 2	15.41	2.90
Group 3	15.24	2.90
Group 4	15.11	2.90
Group 5	12.84	2.90
Group 6	12.12	2.90

DECISION NUMBER MN85-5000 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators (Cont'd):		
Area 3:		
Group 1	$14.15	$2.90
Group 2	13.22	2.90
Group 3	13.02	2.90
Group 4	12.91	2.90
Group 5	11.35	2.90
Group 6	10.84	2.90

DECISION NUMBER MN85-5006 -
MOD. #5
(50 FR 4837 - February 1, 1985)
Anoka, Benton, Carlton, Carver,
Cook, Dakota, Hennepin,
Itasca, Koochiching, Lake,
Ramsey, St. Louis, Scott,
Sherburne, Stearns, &
Washington Counties,
Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 2	$16.46	$.75
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Building Construction:		
Area 1:		
Commercial:		
Carpenters; Piledrivermen	15.86	4.12
Residential:		
Carpenters	13.91	4.12
Drywall	13.91	4.12
Area 4:		
Commercial inclu. 4-story Apartments:		
Carpenters; Millwrights; & Piledrivermen	14.93	1.30
Residential, inclu. single dwellings, duplexes, row houses, town houses, & walk-up apartments not to		

	Basic Hourly Rates	Fringe Benefits
Carpenters (Cont'd):		
exceed 3 stories in height above ground:		
Carpenters	$11.70	$1.30
Area 5:		
Carpenters	14.93	1.30
Area 6:		
Carpenters; Soft Floor Layers	15.00	1.85
Millwrights	16.04	1.65
Carpenters; Piledrivermen:		
Site Prep., Excav., & Incid. Paving:		
Area 4	15.50	1.85
Cement Masons (Building):		
Area 1	17.03	2.27
Area 2	15.70	.75
Cement Masons (Site Prep., Excav., & Incid. Paving):		
Area 1	17.03	2.27
Ironworkers:		
Area 1	17.10	3.89
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 1:		
Tile Setters	16.65	2.57
Area 3:		
Terrazzo Workers	17.61	2.10
Painters:		
Area 1:		
Brush; Roller & Wall Paper Hanger	16.11	2.93
Sandblaster; Spray; Steel; Swing Stage & Epoxy	16.86	2.93
Drywall Tapers	17.06	1.97
Sanders	12.80	1.97
Residential of 8 units or less	80%JR	2.93
Area 3:		
Commercial Repaint & Residential:		
Brush	12.00	2.08
Paperhanger; Spray; Steel; & Taping	12.60	2.08

DECISION NUMBER MN85-5006 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Painters (Cont'd):		
Area 3 (Cont'd):		
Industrial Repaint:		
Brush	$13.61	$2.08
Paperhanger; Spray; Steel; & Taping	14.21	2.08
New Commercial & New Industrial:		
Brush	14.61	[illegible]
Paperhanger; Spray; Steel; & Taping	15.21	2.08
Area 4:		
Brush; Drywall Finishers; & Paperhangers	16.00	2.76
Drywall Sander	12.00	2.76
Sandblaster; Spray; Swing Stage, Boatswain Chair, Window Jack, Safety Belt, & Erected Structural Steel	16.75	2.76
Plasterers:		
Area 3	15.70	.75
Sprinkler Fitters	15.4[illegible]	3.38
Laborers (Site Prep., Excav., & Incid. Paving):		
Area 1:		
Class 1	12.75	3.10
Class 2	12.90	3.10
Class 3	12.95	3.10
Class 4	13.10	3.10
Class 5	13.20	3.10
Class 6	13.45	3.10
Area 2:		
Class 1	10.25	3.00
Class 2	10.40	3.00
Class 3	10.45	3.00
Class 4	10.60	3.00
Class 5	10.70	3.00
Class 6	10.95	3.00
Area 3:		
Class 1	12.13	3.25
Class 2	12.25	3.25
Class 3	12.33	3.25
Class 4	12.48	3.25
Class 5	12.55	3.25
Class 6	12.53	3.25

	Basic Hourly Rates	Fringe Benefits
Laborers (Cont'd):		
Area 4:		
Class 1	$12.93	$2.45
Class 2	13.05	2.45
Class 3	13.13	2.45
Class 4	13.28	2.45
Class 5	13.38	2.45
Class 6	13.58	2.45
Area 5:		
Class 1	10.25	1.65
Class 2	10.40	1.65
Class 3	10.45	1.65
Class 4	10.60	1.65
Class 5	10.70	1.65
Class 6	10.95	1.65
Power Equipment Operators: (Building):		
Group 1	19.09	2.90
Group 2	15.75	2.90
Group 3	17.95	2.90
Group 4	17.34	2.90
Group 5	17.00	2.90
Group 6	16.83	2.90
Group 7	15.32	2.90
Group 8	14.20	2.90
Group 9	13.64	2.90
Power Equipment Operators: (Site Prep., Excav., & Incid. Paving):		
Area 1:		
Group 1	16.72	2.90
Group 2	16.17	2.90
Group 3	15.99	2.90
Group 4	15.87	2.90
Group 5	13.58	2.90
Group 6	12.82	2.90
Area 2:		
Group 1	15.96	2.90
Group 2	15.41	2.90
Group 3	15.24	2.90
Group 4	15.11	2.90
Group 5	12.84	2.90
Group 6	12.12	2.90

DECISION NUMBER MN85-5006 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators:		
Area 3:		
Group 1	$14.15	$2.90
Group 2	13.22	2.90
Group 3	13.02	2.90
Group 4	12.91	2.90
Group 5	11.35	2.90
Group 6	10.84	2.90

DECISION NO. MO85-4005 - MOD. #1
(50 FR 14568 - 4/12/85)
Statewide Missouri

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement masons - Zone 3	$15.87	2.38

DECISION NUMBER OH83-5122 - MOD. #13
(48 FR 53254 - November 25, 1983)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 14:		
Carpenters	$15.76	$3.53+ 3%
Piledrivermen	16.58	3.53+ 3%
Area 15:		
Carpenters	16.20	3.80
Piledrivermen	17.11	3.80

DECISION #NM84-4099-MOD. #4
(49 FR 41140-Oct. 19, 1984)
Statewide (excluding Eddy and Lea Counties for Building Construction in New Mexico)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers, Pipefitters, and Leadburners:		
Light Commercial - all 5-N type construction work under the uniform building code of a project of 150 fixture units or less; Motels not over two stories in height regardless of type of construction; Refrigeration-limited to 40 tons per unit or less for comfort refrigeration only; Indoor swimming pools in conjunction with work covered above; All utilities except on industrial work; and all remodel work up to $120,000 in volume:		
Bernalillo County	$10.00	$2.31
Remainder of New Mexico	9.00	2.31
All Irrigation and Lawn Sprinkler Work	7.00	2.31

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY81-3045 - MOD. #7 (46 FR 37204 - July 17, 1981) NIAGARA COUNTY, NEW YORK		
CHANGE:		
BRICKLAYERS:		
Remainder of County:		
Bricklayers & Stone Masons	15.00	2.95
IRONWORKERS:		
Jobs on which the total project cost is $3 million or less	15.01	2.62
Jobs on which the total project cost is over $3 million	16.68	2.62
Pre-engineered buildings	11.50	2.62
DECISION NO. NY83-3027 - MOD #6 (48 FR 33622 - July 22, 1983) NASSAU & SUFFOLK COUNTIES, NEW YORK		
CHANGE:		
PLUMBERS:		
Nassau County:	18.57	5.32
Jobbing (repair to present plumbing system that does not change the existing roughing or any other minor alteration job where the change to the existing roughing does not have a labor cost over $1,500	12.35	4.31
Suffolk County:	19.50	6.45
DECISION NO. NY83-3018 - MOD. #10 (48 FR 22870 - May 20, 1983) DUTCHESS, ORANGE, SULLIVAN & ULSTER COUNTIES, NEW YORK		
CHANGE:		
ELECTRICIANS:		
Area [illegible]	18.75	1.65+ 11.6[illegible]

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: KANSAS

COUNTIES: Barber, Barton, Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greely, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Lincoln, Logan, Meade, Mitchell, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlings, Rice, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace and Wichita

DECISION NO.: KS85-4006 DATE: Date of Publication

Supersedes Decision No. KS84-4038, dated May 25, 1984, in 49 FR 22181
DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels; Building Structures in Rest Area Projects; Railroad Construction) and Water and Sewer Line Construction.

AREA I	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 6.69	
Asphalt Paving Machine Operator	7.03	
Asphalt Plant Operator	7.82	
Asphalt Raker	6.70	
Backhoe Operator	8.63	
Batching Plant Scaleman	6.29	
Blowing Mechanism or Mulch Seeder Operator	7.00	
Brick, Block and Stonesetter	8.20	
Bulldozer Operator (Push Cat)	7.61	
Carpenter	8.00	
Carpenter (Rough)	6.78	
Concrete Finisher	8 693	
Crane or any Machine Power Swing	8.54	
Crusher and Screening Plant Operator	6.58	
Distributor Operator	6.94	
Electrician	7.94	
Form Liner and Setter	6.49	
Front End Loader Operator	7.45	
Laborer (Construction)	5.91	
Mechanic	8.87	
Mixer, Concrete Portable Operator	7.82	
Motor Grader Operator (Finish)	8.26	
Motor Grader Operator (Rough)	8.21	
Motor Scraper Operator	7.55	
Paving Equipment Operator	9.95	
Post Driver and/or Auger Operators	7.00	
Roller/Compactor Operator (Self-Propelled)	6.28	
Rotary Broom Operator	6.58	

	BASIC HOURLY RATE	FRINGE BENEFITS
Rotomill Operator	$10.60	
Sandblaster (Structural Steel and Bridge)	8.00	
Slurry Machine Operator	7.[illegible]0	
Spreader Box Operator (Self-propelled)	6.00	
Tractor Operator	7.00	
Trenching Machine Operator	7.35	
Truck Driver (Single Axle)	6.90	
Truck Driver (Tandem Axle)	6.41	
Truck Driver (Triple Axle and Semi)	7.74	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KANSAS County: Sedgwick

DECISION NO.: KS85-4007 DATE: Date of Publication

Supersedes Decision No. KS-84-4039, dated May 25, 1984, in 49 FR 22183

DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels; Building Structures in Rest Area Projects; Railroad Construction) and Water and Sewer Line Construction.

AREA II	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 8.00	
Asphalt Paving Machine Operator	9.25	
Asphalt Raker	7.24	
Backhoe Operator	8.25	
Blowing Mechanism/Mulch Seeder Operator	7.00	
Bulldozer Operator (Push Cat)	8.85	
Carpenter	8.86	
Carpenter (Rough)	7.85	
Concrete Finisher	8.69	
Concrete Saw Operator	7.50	
Crane or any Machine Power Swing	9.02	
Crusher and Screening Plant Operator	9.15	
Distributor Operator	7.[illegible]	
Form Liner and Setter	8.08	
Front End Loader Operator	7.91	
Laborer (Construction)	6.36	
Mechanic	[illegible].01	
Motor Grader Operator (Finish)	[illegible].40	
Motor Grader Operator (Rough)	7.87	
Motor Scraper Operator	7.96	
Painters (Structural Steel & Bridges)	[illegible].00	
Paving Equipment Operator	[illegible].23	
Pavement Breaker Tamper Operator(self-propelled)	8.30	
Piledrivermen	[illegible].50	
Roller/Compactor Operator(self-propelled)	8.25	
Sandblaster (Structural Steel & Bridges)	[illegible].00	
Servicemen (Equipment)	7.43	
Slurry Machine Operator	6.60	
Steel Workers	7.70	
Tank Heater Attendant	5.78	
Tractor Operator (80 HP or less)	7.61	
Tractor Operator (80 HP or more)	[illegible].00	
Trenching Machine Operator	7.25	
Truck Driver (Single Axle)	6.69	
Truck Driver (Tandem Axle)	[illegible].54	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KANSAS

COUNTIES: Allen, Anderson, Atchinson, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Clay, Cloud, Coffey, Cowley, Crawford, Dickinson, Doniphan, Elk, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Kingman, Labette, Linn, Lyon, Marion, Marshall, McPherson, Montgomery, Morris, Nemaha, Neosho, Osage, Ottawa, Pottawatomie, Reno, Republic, Riley, Saline, Sumner, Wabaunsee, Washington, Wilson, and Woodson
HIGHWAY CONSTRUCTION: Geary, Riley Labette & Saline Cos. only

DECISION NO. KS85-4008 DATE: Date of Publication
Supersedes Decision No. KS84-4040, dated May 25, 1984, in 49 FR 22182
DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels, Building Structures in Rest Area Projects; Railroad Construction; and Water and Sewer Line Construction.

AREA III	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 7.61	
Asphalt Paving Machine Operator	9.01	
Asphalt Plant Operator	9.50	
Asphalt Raker	7.33	
Backhoe Operator	7.75	
Batching Plant Scaleman	6.19	
Blowing Mechanism or Mulch Seeder Operator	6.67	
Bulldozer Operator (push cat)	8.52	
Carpenter	8.26	
Carpenter (rough)	7.81	
Concrete Finisher	9.62	
Concrete Saw Operator	7.76	
Crane or any Machine Power Swing	9.53	
Crusher and Screening Plant Operator	6.73	
Distributor Operator	8.05	
Electrician	13.00	
Form Liner and Setter	6.70	
Front End Loader Operator	9.17	
Laborer (Construction)	6.06	
Mechanic	9.72	
Mechanic Helper	6.92	
Mixer, Concrete Portable	8.63	
Motor Grader Operator (finish)	8.52	
Motor Grader Operator (rough)	8.03	
Motor Scraper Operator	7.82	
Painters (Structural Steel & Bridge)	10.00	
Paving Equipment Operator	9.00	
Post Driver and/or Auger Operator	8.64	
Reinforcing Steel Setter	8.18	
Roller/Compactor Operator (self-propelled)	8.42	
Rotary Broom Operator	6.70	
Rotomill Operator	8.58	

DECISION NO.: KS85-4008 Page 2

	BASIC HOURLY RATE	FRINGE BENEFITS
Serviceman (Equipment)	$ 6.99	
Tractor Operator	6.90	
Truck Driver (Single Axle)	7.50	
Truck Driver (Tandem Axle)	7.23	
Truck Driver (Triple Axle and Semi)	8.04	
Welder	8.57	

Unlisted Classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: KANSAS
COUNTIES: Douglas, Jefferson, Leavenworth, Miami and Shawnee
DECISION NO.: KS85-4009
DATE: Date of Publication
Supersedes Decision No. KS84-4026, dated April 27, 1984 in 49 FR 21244.
DESCRIPTION OF WORK: Highway Construction.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	$11.20	1.80
Zone 2	16.05	2.67
Zone 3	15.14	1.80
CEMENT MASONS:		
Zone 1	15.17	2.23
Zone 2	12.50	1.05
Zone 3	12.20	1.05
ELECTRICIANS:		
Zone 1	16.18	10%+ 2.51
Zone 2	15.55	3%+ 2.13
IRONWORKERS	17.51	3.37
LINE CONSTRUCTION:		
Zone 1:		
Lineman	17.80	8½%+ 1.00
Lineman Operator	16.60	8½%+ 1.00
Groundman Powderman	12.47	8½%+ 1.00
Groundman	11.87	8½%+ 1.00
Zone 2:		
Lineman	16.20	3½% +1.00
Cable Splicers	17.02	3½% +1.00
Groundman	9.[illegible]	3½% +1.00
Powderman	13.[illegible]	3½% +1.00
Line Truck & Equipment Operator	13.34	3½% +1.00
LABORERS:		
Zone 1		
Group 1	7.65	2.30
Group 2	7.90	2.30

	[illegible] Hourly [illegible]	Fringe Benefits
LABORERS (Cont'd):		
Zone 2		
Group 1	$8.45	2.30
Group 2	8.70	2.30
Zone 3		
Group 1	8.85	2.25
Group 2	9.10	2.25
Zone 4		
Group 1	7.65	2.30
Group 2	7.90	2.30
POWER EQUIPMENT OPERATORS		
Zone 1: Leavenworth County		
Group 1	15.30	4.07
Group 2	15.05	4.07
Group 3	14.35	4.07
Group 4: Oiler	10.33	4.07
Oiler Driver, all types	13.35	4.07
Zone 2: Jefferson, Miami, Douglas & Shawnee Cos.:		
Group 1	12.87	2.70
Group 2	12.62	2.70
Group 3	12.37	2.70
Group 4	12.02	2.70
Group 4A	12.12	2.70
TRUCK DRIVERS		
Zone 1: Leavenworth & Miami Counties:		
Group 1	14.27	4.25
Group 2	14.02	4.25
Group 3	13.71	4.25
Group 4	13.51	4.25
Group 5	13.29	4.25
Zone 2: Douglas Shawnee & Jefferson Cos.		
Group 1	9.40	1.75
Group 2	9.50	1.75
Group 3	9.65	1.75

ZONE DESCRIPTIONS

CARPENTERS AND PILEDRIVERMEN:
Zone 1: Douglas, Shawnee and Jefferson Counties
Zone 2: Leavenworth County
Zone 3: Miami County

CEMENT MASONS:
Zone 1: Leavenworth and Miami Counties
Zone 2: Douglas and Shawnee Counties
Zone 3: Jefferson County

ELECTRICIANS:
Zone 1: Leavenworth County (Delaware, High Prairie & Kickapoo Townships) City of Leavenworth & Fort Leavenworth Military Reservation
Zone 2: Douglas, Jefferson, Miami, Shawnee and the remainder of Leavenworth County

LINE CONSTRUCTION:
Zone 1: Leavenworth County, north of Fairmont, Strainger, and Tanganoxie Townships
Zone 2: Douglas, Jefferson, Miami, Shawnee Counties, and remainder of Leavenworth County

LABORERS:
Zone 1: Jefferson County
Zone 2: Douglas and Shawnee Counties
Zone 3: Leavenworth County
Zone 4: Miami County

TRUCK DRIVERS
Zone 1:
Group 1 - Mechanics and Welders
Group 2 - A-frame lowboy - boom truck drivers
Group 3 - Material Trucks, Tandem Two Teams; Semi-trailers; Winch Trucks-Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix, Tank Wagon Drivers, Single Axle; Tank Wagon Drivers; Tandem or Semi-trailer; Isley Wagons; Dump Trucks, Excavator, 5 cu. yds. and over; Dumpsters; Half-tracks; Speedace; Euclids and other similar excavating equipment
Group 4 - One Team; Station Wagons; Pickup Trucks; Material trucks, single axle; Tank Wagon Drivers, single axle
Group 5 - Oilers and Greasers

Zone Description Cont'd

TRUCK DRIVERS: (Cont'd)
Zone 2:
Group 1 - Pickups; Panel Trucks; Station Wagons; Flat Beds; Dump and Batch Trucks, single axle
Group 2 - Tandem Trucks; Warehousemen or Partsmen; Mechanic Helpers and Servicemen
Group 3 - Lowboys; Semi-trailers; all Transit Mixer Trucks (single or tandem axle); A-frame and Winch Trucks when used as such; Euclid, End and Bottom Dump; Tournarockers, Atheys, Dumpsters and similar off-road equipment and mechanics on such equipment

CLASSIFICATION DEFINITIONS

LABORERS

1. Board Mat Weavers & Cable Tiers, Georgia Buggy (Manually operated), Mixerman-No Skip Lift, Salamander Tenders, Track Men, Tractor Swamper, Truck Dumper, Wire Mesh Setter, Water Pump up to 4 inches, and all other general laborer including Flagman.

2. Air tool Operators, Cement Handlers (Bulk), Chain Saw, Georgia Buggy (Mechanically Operated), Grademan, Hot Mastic Kettleman, Crusher Feeder, Joint Man, Jute Man, Mason Tender, Material Batch hopper & Scale Man, Mixer Man, Pier Hole Man (working 10 Feet Deep), Pipelayer - Drainage (Concrete and/or Corrugated Metal, Signal Man (Crane), Truck Dumper - Dry Batch, Vibrator Operator, Wagon & Churn Drill Operator, Asphalt Raker, Barco Tamper, Concrete Saw, Creosote Material - Handling & Applying, Nozzle Burner (Cutting Torch and Burning Bar), Conduit Pipe, Water and Gas Distribution Lines, Tile and Duct Line Setter, Form Setter & Liner on Concrete Paving, Powderman, Sandblasting & Gunite Nozzleman, Sanitary Sewer Pipe Layer, Steel Plate Structure Erectors, Screed Man.

POWER EQUIPMENT OPERATORS
Zone 1: Leavenworth County:
Group 1 - Asphalt Paver and Spreader; Asphalt Plant Console Operator; Auto Grader; Back Hoe; Blade Operator, all types; Boiler, 2; Booster Pump on Dredge; Boring Machine (truck or crane mounted); Bulldozer Operator; Clamshell Operator; Compressor Maintenance Operator, 2; Concrete Plant Operator, Central Mix; Concrete Mixer Paver; Crane Operator; Derrick or Derrick Trucks; Ditching Machine; Dragline Operator; Dredge Engineman; Dredge Operator; Drillcat with compressor mounted on cat; Drilling or Boring Machine; Rotary, self-propelled; High Loader-Fork Lift; Locomotive Operator, standard guage; Mechanics and Welders; Maintenance Operator; Mucking Machine; Pile Driver Operator; Pitman Crane Operator; Pump, 2; Quad-trac; Scoop Operator, all types; Scoops in Tandem; Self-propelled Rotary Drill (Leroy or equal-not

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: (Cont'd)
Air Trac); Shovel Operator; Side Discharge Spreader; Sideboom Cats; Skimmer Scoop Operator; Slip-form Paver (CMI, REX, or equal); Throttle Man; Truck Crane; Welding Machine Maintenance Operator, 2; Hoisting Engine, 2; Active Drums
Group 2: "A" Frame Truck; Asphalt Hot Mix Silo; Asphalt Plant Fireman, drum or boiler; Asphalt Plant Mixer Operator; Asphalt Plant Man; Asphalt Roller Backfiller Operator; Chip Spreader; Concrete Batch Plant, dry power operated; Concrete Mixer Operator; Skip Loader; Concrete Pump Operator; Crusher Operator; Elevating Grader Operator; Greaser, hoisting engine, 1 drum; Latourneau Rooter; Multiple Compactor; Pavement Breaker, self-propelled of the Hydra-hammer or similar type; Power Shield; Pug Mill Operator; Stump Cutting Machine; Towboat Operator; Tractor Operator, over 50 H.P.
Group 3: Boilers, 1; Chip Spreader (Front Man); Churn Drill Operator; Compressor Maintenance Operator, 1; Concrete Saws, self-propelled; Conveyor Operator; Distributor Operator; Finishing Machine Operator; Fireman, Rig; Float Operator; Form Grader Operator; Pump; Pump Maintenance Operator, other than Dredge; Roller Operator, other than high type asphalt; Screening and Washing Plant Operator; Self-propelled Street Broom or Sweeper; Siphons and Jets; Sub-grading Machine Operator; Tank Car Heater Operator, combination boiler and booster; Tractor, 50 H.P. or less without attachments; Vibrating Machine Operator, not hand; Welding Machine Maintenance Operator, 1

Group 4:
Oilers
Oiler driver, all types

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP 1 RATE
Clamshells, 3 yd. capacity or over; crane or rigs, 80 ft. boom or over (including jib); draglines, 3 yd. capacity or over; pile drivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yd. capacity or over.

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS
Zone 2: Jefferson, Miami, Douglas & Shawnee Counties:

Group 1 - Asphalt Paver & Spreader; Backhoe; Boring Machine; Blades, all types; Clamshell; Concrete Mixer Paver Operator; Concrete Plant Operator (automatic); Crane; Truck Crane; Pitman Crane; Hydro Crane or any machine with power swing; Derrick or Derrick Trucks; Dragline Operator; Dredge Operator; Dozer; Ditching Machine; Euclid Loader; Hoist, 2 active drums; Loader, all types; Mechanic or Welder; Mixermobile; Multi-unit Scraper; Piledriver Operator; Power Shovel Operator; Quad Track; Scoop Operator, all types; Sideboom Cat, Cherry Picker; Skimmer Scoop Operator; Pushcat Operators
Group 2 - Asphalt Plant Operator; Elevating Grader Operator
Group 3 - A-frame Truck; Asphalt Roller Operator; Asphalt Plant Boiler Fireman; Backfiller Operator; Barber Green Loader; Boiler, other than asphalt; Bull Float Operator; Churn Drill Operator; Compressor Operator (1); Concrete Central Plant Operator; Concrete Mixer Operator, Skip; Concrete Pump Operator; Crusher Operator; Distributor Operator; Finish Machine Operator, concrete; Fireman, other than asphalt; Flex Plane Operator; Fork Lift; Form Grader Operator; Greaser; Hoist, 1 drum; Jeep Ditching Machine; Pavement Breaker, self-propelled (of the Hydra Hammer or similar type); Pump Operator, 4" or over, two; Pump Operator, other than Dredge Screening and Wash Plant Operator; Small Machine Operator; Spreader Box Operator, self-propelled; Tractor Operator, over 50 H.P.; Self-propelled Roller Operator, other than Asphalt Siphons and Jets; Subgrading Machine Operator; Tank Car Heater Operator; Combination Booster and Boilers; Towboat Operator; Vibrating Machine Operator, not hand
Group 4 - Concrete Gang Saw, Self-propelled (con-cut); Conveyor Operator; Harrow, disc. Seeder; Oiler; Tractor Operator, 50 H.P. or less without attachments
Group 4A - Oiler; Motor Crane

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW JERSEY COUNTIES: OCEAN & MONMOUTH
DECISION NO. NJ85-3027 DATE: Date of Publication
Supersedes Decision Nos. NJ82-3013, dated March 19, 1982, in 47 FR 12028, NJ83-3024 dated July 15, 1983, in 48 FR 32458.
DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	13.80	1.83
CARPENTERS	9.43	
CEMENT MASONS	8.00	
DRYWALL - SHEETROCK MECHANICS	15.00	
ELECTRICIANS	9.09	
INSULATIONS MECHANICS	9.84	
IRONWORKERS, Structural	13.35	3.81
LABORERS:		
Laborers	5.97	
Mason Tenders	9.50	
PAINTERS	12.05	1.30
PLUMBERS & PIPEFITTERS	11.00	1.19
ROOFERS	11.75	1.65
SHEET METAL WORKERS	14.09	28%+ .21
SOFT FLOOR LAYERS	12.73	16%
TILE SETTERS	12.92	.70
POWER EQUIPMENT OPERATORS		
Backhoe	8.00	
Bulldozer	9.00	
WELDERS - Rate for craft to which the welding is incidental		

	Basic Hourly Rates	Fringe Benefits
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: NEW YORK
COUNTY: MONROE
DECISION NO. NY85-3026
DATE: DATE OF PUBLICATION
Supersedes Decision No. NY81-3039 dated June 12, 1981 in 46 FR 31189.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.33	4.09
BOILERMAKERS	18.50	4.79
BRICKLAYERS, STONEMASONS, CEMENT MASONS (Building), & PLASTERERS	15.52	4.45
CARPENTERS, Building	14.63	4.44
Millwrights & Piledrivermen	15.08	4.63+a
CARPENTERS & PILEDRIVERMEN		
Heavy & Highway	12.74	4.405 +b
CEMENT MASONS		
Heavy & Highway	13.61	3.20+c
ELECTRICIANS	18.05	3.75+ 3.5.
ELEVATOR CONSTRUCTION:		
Elevator Constructors	18.03	3.29+ d+e
Helpers	12.62	3.29+ d+e
Probationary Helpers	9.015	
GLAZIERS	14.23	3.43
IRONWORKERS		
Ornamental, Reinforcing, Stone Derrickmen, Rigger, Rodman, Structural, Machinery Movers, Fence Erectors, Precast Concrete Erector	16.02	3.69
Sheeter	16.27	3.69
Sheeter Bucker-up	16.15	3.69
LABORERS (Building)		
Common Laborers	11.60	4.63
Blasters	12.97	4.63
Powder Monkey	12.47	4.63
Air Track Drill Asphalt Rakers and Wagon Drill	12.00	4.63
Chuck Tender, all work on hanging or swinging scaffold, work at heights outside the building where safety lines or belts are required, and Bosun Chair	11 80	4.63
Jackhammers, Paving Breakers Mortar Mixers, Concrete Vibrators, Barco Tampers, and Jumping Jacks Pipelayers, Cutters for wrecking and demolition work, burners	11.90	4.63
Concrete Vibrator for Architectural Concrete	12.10	4.63
New Chimney Work:		
From Base to 100'	12.60	4.63
From 100' to 150'	12.85	4.63
From 150' to 200'	13.10	4.63
From 200' to 250;	13.35	4.63
From 250' and up	13.60	4.63
LABORERS: (Heavy & Highway):		
Class A	10.61	4.63+f
Class B	10.81	4.63+f
Class C	11.01	4.63+f
Class D	11.21	4.63+f
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technicial	17.75	4.35+g +6.25%
Cable splicer	19.525	4.35+g +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+g +6.35%
Mobile equipment operators; groundman truck drivers; mechanic	13.464	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Overhead transmission line work (where no other work is or has been involved: Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+g +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+g +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+g +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+g +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%
MARBLE, TILE & TERRAZZO WORKERS	16.91	2.54
MARBLE, TILE & TERRAZZO FINISHERS	13.05	4.38
PAINTERS		
Brush; Roller; Taper	13.77	4.01
Drywall wiper	13.97	4.01
Wallcovering; Stilts	14.02	4.01
Swing scaffold, window brackets or other hanged scaffold, cherry pickers, mechanical lifts & mechanical aerial ladders on or in building or structures 2 or more stories in height; structural steel or iron up to 40 feet	14.27	4.01
Spray painting, water hydroblasting & metal blasting; Mechanical taper	14.37	4.01
Structural steel and iron 40 ft. and over	14.47	4.01
Sandblasting (from ground or solid platform)	14.52	4.01
Sandblasting (from any hanging platform	14.77	4.01
Steeplejack:		
Brush & Roll	15.27	4.01
Spray painting	15.87	4.01
Sandblasting	16.27	4.01
Bridges:		
Brush & Roll	15.27	4.01
Spray	15.87	4.01
Sandblasting	16.27	4.01
PLUMBERS & STEAMFITTERS	17.74	5.845
POWER EQUIPMENT OPERATORS (Building Construction)		
Group I:		
121 ft. and under	16.34	3.40+h
Between 121 and 151 ft.	16.29	3.40+h
Between 151 and 201 ft.	16.54	3.40+h
Between 201 and 251 ft.	16.79	3.40+h
Between 251 and 301 ft.	17.29	3.40+h
Between 301 and 351 ft.	17.79	3.40+h
Between 351 and 401 ft.	18.29	3.40+h
Between 401 and 451 ft.	18.79	3.40+h
Group II	16.04	3.40+h
Group III	15.61	3.40+h
Group IV	14.13	3.40+h
Group V	11.62	3.40+h
Group VI	16.82	3.40+h
POWER EQUIPMENT OPERATORS (Heavy & Highway Construction - includes excavating for site preparation)		
Master Mechanic	16.78	4.30+i
Group I	15.81	4.30+i
Group II	15.27	4.30+i
Group III	13.74	4.30+i
Group IV	12.39	4.30+i
ROOFERS	16.69	2.25
SHEET METAL WORKERS	16.43	4.88
SOFT FLOOR LAYERS	14.73	2.665
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS (Heavy & Highway):		
Class 1	13.24	2.70+[illegible]
Class 2	13.29	2.70+[illegible]
Class 3	13.34	[illegible]
Class 4	13.49	2.70+[illegible]
Class 5	13.64	[illegible]

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WELDERS - Rate for craft to which the welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, Part 5.5(a)(1)(II)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Paid Holiday: D, provided the employee works the regular working day preceding and the regular working day after holiday.

b. Paid Holidays: C and D.

c. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

d. Employer Contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

e. Paid Holidays: A through F, and the day after Thanksgiving.

f. Paid Holiday: A.

g. Paid Holidays: A through F, and Washinton's Birthday, Good Friday, Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

h. Paid Holidays: A through F, provided the employee works on the work day either immediately preceding the holiday or on the scheduled work day immediately following the holiday.

i. Paid Holidays: A through F, provided the employee works the day before and the day after the holiday.

j. Paid Holidays: A through F, provided the employee has worked the working day before and after the holiday.

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CLASSIFICATION DESCRIPTIONS

LABORERS (Heavy and Highway Construction)

Class A: Laborers, drill helpers, outboard and hand boasts.

Class B: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breader, handlers of all steel mesh, small generators for laborers tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1 1/2" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

Class C: All rock or drill machine operators (except quarry master and similar type), acetylene torch operators, asphalt raker, powderman.

Class D: Blasters, form setter, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (Building Construction)

Group I: Cranes (cable and hydraulic, climbing and tower).

Group II: Air tugger, derrick, dredge, big generator plant, cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating), bridge crane (all types), caisson auger and similar type machine, forklift (with factory rating of 15 ft. or more of lift), hoist (on steel erection), mucking machines, ross carrier (and similar types), three drum hoist (when all three drums are in use).

Group III: A-frame truck backfilling machine, hoist (1 or 2 drums) barber green and similar type machine, maintenance engineer (mechanic), mechanical slurry machines (all kinds), belt crete and similar type machines, bituminous spreading machine, post hole digger, bulldozer, carry all type scraper,core drill, pumps (regardless of motive power-no more than (4) in number not to exceed 20 inches in total capacity,) fine grade and finish rollers, side boom tractor, stone crusher, compressor (4 not to exceed 2000 CFM combined capacity or less with more than 1200 CFM, but not exceed 2000 CFM concrete mixer, concrete placer, concrete pumps, tournadozer and similar types, crane-hoe-shovel 3/8 yd. capacity or less (factory rating), tournapull and similar types, dinky locomotives (all types), tower-moble and similar types, elevating grader, elevator, trenching machines, fine grade machines (all elevating grader, elevator, trenching machines, fine grade machines (all kinds), welder, front end loader forklift with factory rating of less than 15 feet or lift, well point system, high pressure boiler.

POWER EQUIPMENT OPERATORS (CONTINUED)
(Building Construction)

Group IV: Any combination (not to exceed 3 pieces of equipment), welding, machine or mechanical conveyor (over 12 ft in length), fireman, belt crete generator, mechanical heater, roller (fill & grade), pumps (regardless of motive power-no more than (3) in number, not to exceed twelve inches total capacity), rubber tired tractor, compressor 3 or less, not to exceed 1200 CFM combined capacity, longitudinal float.

Group V: Truck crane.

Group VI: Master mechanic.

POWER EQUIPMENT OPERATORS (Heavy and Highway Construction)

Group 1: Automated concrete spreader (CMI), automatic finegrader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes, & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4. c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum, mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel sideboom, slip form paver, tractor drawn belt type loader, truck crane, tunnel shovel.

Group 2: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill, truck or tractor mounted), boring machine, cage hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 CFM combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders,locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

POWER EQUIPMENT OPERATOR (CONTINUED)
HEAVY & HIGHWAY

Group 3: A-frame truck, compressor (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grader fork lift (under 15 ft.), gunnite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp well point.

Group 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors(, dust collectors, generators, pumps, welding machines (3 or less of any type of combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump, (jacking system), light plants, mulching machine, oiler, parapet-concrete or pavement grinder, power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loader, and straddle (ross) carrier

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Adair,Atoka,Bryan,Cherokee, Coal,Craig,Creek,Delaware,Haskell, Hughes,Latimer,LeFlore,McIntosh, Mayes,Muskogee,Nowata,Okfuskee, Okmulgee,Osage,Ottawa,Pawnee, Pittsburg,Pushmataha,Rogers,Sequoyah, Tulsa,Wagoner,Washington

DECISION NO.: OK85-4012

DATE: Date of Publication

SUPERSEDES DECISION NO. OK84-4049, dated September 7, 1984 in 49 FR 35473.

DESCRIPTION OF WORK: BUILDING PROJECTS (excluding single family homes and apartments up to and including 4 stories); and Heavy Construction within the City of Muskogee.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$17.16	$2.76
Area II	17.76	2.33
BOILERMAKERS	16.125	2.95
BRICKLAYERS-STONE-MASONS:		
Area I	16.00	2.35
Area II	15.31	2.25
Area III	14.84	2.34
Area IV	15.31	1.54
Area V	16.90	
Area VI	14.50	1.40
CARPENTERS - AREA I		
Carpenters	11.85	1.70
Millwrights, Piledrivermen	13.20	1.70
CARPENTERS - AREA II		
Carpenters	12.88	.85
Millwrights, Piledrivermen	14.33	.85
CARPENTERS - AREA III		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA IV		
Carpenters	14.08	2.02
Millwrights	14.38	2.02
Piledrivermen	14.38	2.02
CARPENTERS - AREA V		
Carpenters	13.50	
Millwrights	16.40	
Piledrivermen	16.10	
CARPENTERS - AREA VI		
Carpenters	12.19	1.87
Millwrights, Piledrivermen	12.69	1.87

	Basic Hourly Rates	Fringe Benefits
CARPENTERS - AREA VII		
Carpenters	$12.65	$1.40
Millwrights, Piledriverman	14.33	1.40
Power Saw Operator	12.90	1.40
CARPENTERS - AREA VIII		
Carpenters	12.62	1.50
Millwrights, Piledriverman	12.87	1.50
CEMENT MASONS:		
Area I	10.80	
Area II	13.83	.85
Area III	15.14	.76
POWER TOOL OPERATOR:		
Area I	11.05	
Area II	14.08	.85
Area III	15.54	.76
ELECTRICIANS:		
Area I - Zone I	14.55	3-1/4% +.80
Zone II	14.95	3-1/4% +.80
Area II	14.90	3.5%+ 2.40
Area III	17.10	9%+.80
Area IV	15.90	3%+ 1.77
CABLE SPLICERS:		
Area I - Zone I	14.95	3-1/4% +.80
Zone II	15.35	3-1/4% +.80
Area II	15.15	3.5% 2.40
Area III	18.81	9%+.80

DECISION NO. OK85-4012

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	$15.34	3.00+a
Helpers	70%JR	3.00+a
Probationary Helper	50%JR	
Area II		
Journeymen	15.43	3.00 +a
Helpers	70%JR	3.00 +a
Probationary Helper	50%JR	
GLAZIERS		
Area I	15.72	.30
Area II	15.04	
Area III	14.68	1.96
IRONWORKERS:		
Area I	16.19	2.92
Area II	14.60	2.67
LABORERS - AREA I		
Group I	10.65	1.30
Group II	10.95	1.30
LABORERS - AREA II		
Group I	9.65	1.30
Group II	9.95	1.30
LABORERS - AREA III		
Group I	9.25	1.30
Group II	9.55	1.30
LABORERS - AREA IV		
Group I	9.30	1.30
Group II	9.55	1.30
PAINTERS - AREA I		
Brush,Sheetrock handtools	14.70	.90
Highwork & Stage	15.10	.90
Spray, & Sandblasting, Sheetrock Power Tools	15.70	.90
Hot & Bituminous	16.00	.90
PAINTERS - AREA II		
Brush & Roller	9.90	1.03
Brush, Roller (Strl. Steel)	10.15	1.03
Spray	10.55	1.03
Swing Stage, Bosun Chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA III		
Brush,Roller,Tapers & Paperhangers	13.02	.60
Spray,Steamclean,Sandblast & Pot Tenders	13.52	.60
PLASTERERS - AREA I	15.45	.01
AREA II	13.45	

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	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS:		
AREA I	$16.62	$2.83
AREA II	17.25	2.35
AREA III	16.64	2.27
AREA IV		
Mechanical Contracts under $150,000.00	14.00	2.475
Mechanical Contracts $150,000.00 & over	15.50	2.475
AREA V	15.20	2.25
[illegible]	12.40	1.39
SHEET METAL WORKERS:		
AREA I	16.15	3.30
AREA II	16.58	3%+ 1.89
SOFT FLOOR LAYERS:		
AREA I	14.60	2.03
AREA II	13.47	1.88 +b
SPRINKLER FITTERS	16.17	3.23
LATHERS - AREA I	14.25	2.04
AREA II	12.62	1.50
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS:		
AREA I	16.84	1.50
AREA II	15.[illegible]	3.10
TILE & MARBLE FINISHERS:		
AREA I	13.35	
AREA II	12.72	2.00
TERRAZZO FINISHERS:		
AREA I	14.20	
AREA II	12.72	2.00
TERRAZZO FLOOR MACHINE:		
AREA I	14.50	
AREA II	12.92	2.00
TERRAZZO BASE MACHINE:		
AREA I	14.[illegible]	
AREA II	13.[illegible]	2.00
LINE CONSTRUCTION (except Braden, Pocola & Spiro Townships in LeFlore Co.):		
Linemen	16.24	3-1/2% +1.25
Cable Splicers	17.54	3-1/2% +1.25
Hole Digger Operator & Heavy Equipment Op. (pole or cat equivalent)	14.41	3-1/2% +1.25
Jack Hammerman	11.50	3-1/2% +1.25

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Braden, Pocola, and Spiro Townships in LeFlore Co.; that portion east of Brent, Prices Chapel, Rocky Mountain & Sallisaw Townships in Sequoyah Co.:		
Lineman, Heavy Equipment Operator	14.54	1.30+ 3-3/4%
Cable Splicer	14.79	1.30+ 3-3/4%
Powderman	90%JR	1.30+ 3-3/4%
Truck Driver	75%JR	1.30+ 3-3/4%
Groundman	75%JR	1.30+ 3-3/4%
POWER EQUIPMENT OPERATORS:		
Group I	$15.75	$2.18
Group II	15.25	2.18
Group III	14.75	2.18
Group IV	14.50	2.18
Group V	14.25	2.18
Group VI	14.00	2.18
Group VII	13.75	2.18
Group VIII	12.75	2.18
Group IX	13.35	2.18
TRUCK DRIVERS:		
AREA I		
Group I	12.90	
Group II	12.[illegible]	
Group III	12.95	
AREA II		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	
[illegible] AND COMMUNICATION TECHNICIAN	12.[illegible]	

Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:
AREA I - Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

BRICKLAYERS - STONEMANSONS:
AREA I - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Haskell, LeFlore, Latimer and Pushmataha Counties
AREA II - Hughes, Coal, Atoka and Bryan Counties
AREA III - Creek, Tulsa, Rogers, Mayes, Craign, Ottawa and Delaware Counties
AREA IV - Okfuskee, Okmulgee, McIntosh and Pittsburg Counties
AREA V - Osage, Washington and Nowata Counties
AREA VI - Pawnee County

CARPENTERS - MILLWRIGHTS & PILEDRIVERMEN:
AREA I - Okmulgee, Okfuskee, Pittsburg, Latimer, LeFlore, the western part of McIntosh County - the line running straight south from the east line of Okmulgee County, Haskell County south of Highway #9 and north one-half of Atoka County
AREA II - Pushmataha, Bryan and south one-half of Atoka County
AREA III - Coal and Hughes County
AREA IV - Tulsa, Rogers, Mayes, Creek, Craig and Delaware Counties and that part of Osage Co. South of Hwy.#20, including all of the town of Hominy and that part of Pawnee Col east of State Hwy. #99.
AREA V - Washington, Nowata and Eastern two-thirds of Osage County
AREA VI - Muskogee, Wagoner, Adair, Cherokee, Sequoyah, Eastern part of McIntosh and Haskell County north of Highway #9
AREA VII - Pawnee and western one-third of Osage County
AREA VIII - Ottawa County

CEMENT MASONS - POWER TOOL OPERATORS:
AREA I - Western one-third of Osage County
AREA II - Pawnee County west of a line running due north from the western boundary of Creek County
AREA III - Remaining Counties

ELECTRICIANS - CABLE SPLICERS:
AREA I - Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, LeFlore, Latimer, Atoka and Pushmataha Counties
ZONE I - 30-mile radius from Post Office of the City of Muskogee
ZONE II - Area outside Zone I
AREA II - Osage and Pawnee Counties west of Highway #18
AREA III - Bryan County
AREA IV - Washington, Nowata, Craign, Ottawa, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Okmulgee, Okfuskee, Hughes, Pittsburg, Coal, Osage and Pawnee east of Highway #18

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELEVATOR CONSTRUCTORS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Pawnee, Creek, Tulsa, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, and Sequoyah Counties
AREA II - Remaining Counties

GLAZIERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Ottawa and that portion of Craig County east of Vineta
AREA III - Remaining Counties

IRONWORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

LABORERS:
AREA I - Creek, Tulsa, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Washington and Okmulgee Counties
AREA II - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Okfuskee, McIntosh, Haskell, LeFlore Counties
AREA III - Hughes, Pittsburg, Latimer, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage, and Pawnee Counties

GROUP I - All digging and dirt work, firing of salamanders and portable space heaters; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning of windows; wrecking and razing of building and all structures; cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons, or plasterers; water boys, when used; carpenter tender.

GROUP II - All machine tool operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; oprs. of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers; mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finisher laborer; work on swinging scaffold; all kettle & potmen, tank cleaning, all pipe doping treating & wrapping, including all men working with dope; mortar & plaster mixing machine, pump-crete machines, and gunite mixing machines including placing of concrete; handling creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies; all laborers screening sand, running sand drier, and feeding oper. sandblasterer, except nozzle; and cutting torch oprs. in connection with laborers work; concrete greader.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LATHERS:
AREA I - Atoka, Coal and Hughes
AREA II - Ottawa County

PAINTERS:
AREA I - Pawnee, Osage, Washington, Nowata, Rogers, Mayes, Creek, Tulsa, Okfuskee, Okmulgee, Wagoner, Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, and Pushmataha
AREA II -Hughes, Coal, Atoka and Bryan Counties
AREA III - Craig, Ottawa and Delaware Counties

PLASTERERS:
AREA I - Adair, Cherokee, Craig, Creek, Delaware, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Rogers,Tulsa, Wagoner, Washington, and the northern and western portions of Sequoyah County north and west of a line running southwesterly from the northeastern corner of Sequoyah County including the town of Sallisaw.
AREA II - LeFlore County and the southern and eastern portions south and east of a line running wouthwesterly from the northeast corner of Sequoyah County

PLUMBERS - PIPEFITTERS:
AREA I - Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Tulsa, Creek and Osage and Pawnee Counties east of Highway #18
AREA II - Adair, Cherokee, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Sequoyah and Wagoner Counties
AREA III - Hughes, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage and Pawnee Counties west of Highway #18
AREA V - Washington County

SHEET METAL WORKERS:
AREA I - Hughes and Coal Counties
AREA II - Remaining Counties

SOFT FLOOR LAYERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

TILE LAYERS & TERRAZZO WORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

TILE & TERRAZZO FINISHERS - TERRAZZO FLOOR MACHINE - TERRAZZO BASE MACHINE:
AREA I - Bryan County
AREA II - Remaining Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I - All crane type equipment with 300' of boom or over (including jib).

GROUP II - All crane type equipment with 200-300' of boom (including jib).

GROUP III - All crane type equipment with 100-200' of boom (including jib, all tower cranes and all crane type equipment of 3 cu. yards or more).

GROUP IV - Side boom (booms 30' and over); Guy Derrick

GROUP V - Heavy duty mechanic, welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; pile-driver engineer, dragline, shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane, cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30').

GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade.

GROUP VII - Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment, generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator, crushing plants; oiler distributor; pulvi-mixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man or large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.

GROUP VIII - Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX - Greaser and tilt top trailer operator.

SOUND AND COMMUNICATION TECH. - Classification Area

Coal	Hughes	Okmulgee	Payne 3/	Wagoner 4/
Craig	Mayes	Osage 1/	Pittsburg	Washington
Creek	Nowata	Ottawa	Rogers	
Delaware	Okfuskee	Pawnee 2/	Tulsa	

1/ That portion east of State Highway No. 18
2/ That portion east of State Highway No. 18
3/ Eagle, Indian, Mound and Union Townships
4/ Adams Creek, Cherokee, Coal Creek, Lone Star and Shanhan Townships

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'd):

TRUCK DRIVERS:

AREA I - Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Creek, Tulsa, Okmulgee, Okfuskee and Mayes and Wagoner Counties west of Highway #69.

GROUP I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver.

GROUP II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.

GROUP III - Ready mix concrete truck; tractor-trailer and similar equipment.

AREA II - Bryan, Atoka, Pushmataha, Coal, Hughes, Pittsburg, Latimer, LeFlore, McIntosh, Haskell, Sequoyah, Muskogee, Cherokee, Adair, Delaware, and Mayes and Wagoner Counties east of Highway #69.

GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards.

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards.

GROUP V - Ready-mix concrete trucks up to but not including 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

a - 6 months to 5 years 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

b - 6 paid holidays - A through E plus G

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Alfalfa, Beckham, Blain, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Tillman, Washita, Woods and Woodward.

DECISION NO. OK85-4011

DATE: Date of Publication

SUPERSEDES DECISION NO. OK84-4050, dated, September 7, 1984 in 49 FR 35477.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
AREA I	$15.20	2.37
AREA II	17.76	2.33
AREA III	17.16	2.76
BOILERMAKERS	16.125	2.95
BRICKLAYERS, STONEMASONS:		
AREA I	15.48	2.23
AREA II	15.65	
AREA III	13.35	2.17
AREA IV	15.31	2.25
AREA V	14.50	1.40
AREA VI	14.74	2.15
AREA VII	15.48	1.67
CARPENTERS - AREA I		
Carpenters	13.75	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA II		
Carpenters	10.95	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA III		
Carpenters	11.25	1.74
Millwrights	11.50	1.74
Piledrivermen	11.50	1.74
CARPENTERS - AREA IV		
Carpenters	12.15	1.80
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
CARPENTERS - AREA V		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA VI		
Carpenters	12.35	1.59
Piledrivermen	12.85	1.59
Power saw operator	12.475	1.59
CARPENTERS - AREA VII		
Carpenters	12.40	1.67
Millwrights	12.90	1.67
Piledrivermen	12.90	1.67
Power saw operator	12.75	1.67
CARPENTERS - AREA VIII		
Carpenters	11.60	1.10
Millwrights	12.425	1.10
Piledrivermen	12.425	1.10
Power saw operator	11.85	1.10
CARPENTERS - AREA IX		
Carpenters	12.65	1.40
Millwrights	14.33	1.40
Piledrivermen	14.33	1.40
Power saw operator	12.90	1.40
CARPENTERS - AREA X		
Carpenters	12.88	.85
Millwrights	14.33	.85
Piledrivermen	14.33	.85
CEMENT MASONS - AREA I		
Cement Masons	$10.[illegible]	
Power tool operator	11.05	
CEMENT MASONS - AREA II		
Cement Masons	15.14	.76
Power tool operator	15.54	.76
CEMENT MASONS - AREA III		
Cement Masons	13.[illegible]	.85
Power tool operator	14.0[illegible]	.85

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
AREA I	$15.60	9%+ 1.10
AREA II	14.90	3.5%+ 2.40
AREA III	14.05	3-1/4% +1.50
AREA IV	17.10	9%+.80
AREA V	15.90	3%+ 1.77
CABLE SPLICERS:		
AREA I	15.85	9%+ 1.10
AREA II	15.15	3.5%+ 2.40
AREA IV	18.81	9%+.80
ELEVATOR CONSTRUCTORS:		
Journeymen	15.43	3.00 +a
Helpers	10.80	3.00 +a
Probationary Helper	7.715	
GLAZIERS	15.72	.30
IRONWORKERS:		
AREA I	14.60	2.67
AREA II	13.625	2.95
AREA III	14.30	3.00
AREA IV	16.19	2.92
AREA V	15.29	1.14
LABORERS - AREA I:		
GROUP I	10.65	1.30
GROUP II	10.90	1.30
LABORERS - AREA II:		
GROUP I	8.95	1.30
GROUP II	9.20	1.30
LABORERS - AREA III:		
GROUP I	9.10	1.30
GROUP II	9.35	1.30
LABORERS - AREA IV:		
GROUP I	9.30	1.30
GROUP II	9.55	1.30
LABORERS - AREA V:		
GROUP I	9.25	1.30
GROUP II	9.55	1.30
LABORERS - AREA IV:		
GROUP I	5.35	
GROUP II	6.59	
LATHERS:		
AREA I	$14.25	1.74
AREA II	12.15	1.80
MARBLE MASONS, TILE SETTERS & TERRAZZO WORKERS	16.84	1.50
MARBLE & TILE FINISHERS:		
AREA I	13.35	
TERRAZZO FINISHERS:		
AREA I	14.20	
TERRAZZO FLOOR MACHINE MAN:		
AREA I	14.50	
TERRAZZO BASE MACHINE MAN:		
AREA I	14.90	
PAINTERS - AREA I:		
Brush & Roller	9.90	1.03
Brush & Roller (Strl. steel)	10.15	1.03
PAINTERS - AREA I:		
Spray	10.55	1.03
Swing, stage, bosun chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA II:		
Brush	13.55	2.53
Spray under 30 ft.	14.05	2.53
Spray over 30 ft.	14.55	2.53
Paper hanging	14.55	2.53
Tapers using machine tools	14.05	2.53
PLASTERERS:		
AREA I	15.60	.95
AREA II	14.20	
PLUMBERS - AREA I:		
Mechanical contracts under $150,000.00	14.00	2.475
Mechanical contracts of $150,000.00 & over	15.50	2.475
PLUMBERS - AREA II	16.64	2.27
ROOFERS	12.40	1.39
SHEET METAL WORKERS	16.15	
SOFT FLOOR LAYERS	14.60	2.03
SPRINKLER FITTERS	16.17	3.23
LINE CONSTRUCTION:		
Linemen	16.24	3-1/2 +1.25
Cable splicers	17.54	"
Hole digger operator, heavy equipment opr.	14.41	"
Line truck driver (winch operator)	12.69	"
Jackhammerman	11.50	"

DECISION NO.: OK85-4011

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Powderman	$13.99	3-1/2+ 1.25
Groundman	10.31	"
Truck driver (flat bed, ton-half & under)	10.96	"
POWER EQUIPMENT OPERATORS		
GROUP I	15.75	2.18
GROUP II	15.25	2.18
GROUP III	14.75	2.18
GROUP IV	14.50	2.18
GROUP V	14.25	2.18
GROUP VI	14.00	2.18
GROUP VII	13.75	2.18
GROUP VIII	12.75	2.18
GROUP IX	13.35	2.18
TRUCK DRIVERS - AREA I		
GROUP I	9.70	
GROUP II	9.40	
AREA II		
GROUP I	12.80	
GROUP II	12.85	
GROUP III	12.95	
AREA III		
GROUP I	10.43	
GROUP II	10.53	
GROUP III	10.63	
GROUP IV	10.58	
GROUP V	10.73	
SOUND AND COMMUNICATION TECHNICIAN -	12.02	

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Basic Hourly Rates	Fringe Benefits

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CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:

AREA I	Harper, Ellis, Roger Mills, Beckham, Greer and Harmon Counties
AREA II	Kay County
AREA III	Remaining Counties

BRICKLAYERS - STONEMASONS:

AREA I	Logan, Payne, Canadian, Oklahoma, Cleveland and McClain Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Blaine and Kingfisher Counties
AREA III	Harmon, Jackson, Tillman, Comanche, Cotton and Jefferson Counties
AREA IV	Lincoln, Pottawatomie, Seminole, Pontotoc, Johnston and Marshall Counties
AREA V	Kay and Noble Counties
AREA VI	Caddo, Grady, Stephens, Garvin, Murray, Carter and Love Counties
AREA VII	Roger Mills, Beckham, Greer, Dewey, Custer, Washita and Kiowa Counties

CARPENTERS - MILLWRIGHTS - PILEDRIVERMEN - POWER SAW OPERATORS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Pottawatomie, McClain, Cleveland, and Lincoln County south of the Turner Turnpike
AREA II	Dewey, Custer, Washita and Blaine Counties
AREA III	Caddo and Grady Counties
AREA IV	Alfalfa, Grant, Major and Garfield Counties
AREA V	Love, Murray, Carter, Pontotoc, Seminole, Johnston, Garvin and Marshall County west of highway #99
AREA VI	Beckham, Jefferson, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Stephens and Tillman Counties
AREA VII	Payne County, Northern Half of Lincoln County and Noble County east of Interstate 35 and south of Black Bear Creek
AREA VIII	Woodward, Woods, Harper, Ellis and Roger Mills Counties
AREA IX	Kay and Noble Counties north of Black Bear Creek and west of Interstate #35
AREA X	Marshall County east of highway #99

CEMENT MASONS - POWER TOOL OPERATOR:

AREA I	Kay County
AREA II	Johnston and Marshall Counties
AREA III	Ellis, Roger Mills, Beckham, Dewey, Custer, Grady, Carter, Oklahoma, Logan McClain, Washita, Blaine, Caddo, Kingfisher, Canadian, Cleveland, Garvin, Lincoln, Payne, Noble, Woodward Murray, Harper, Major, Woods, Alfalfa, Grant Garfield, Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson and Love Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELECTRICIANS - CABLE SPLICERS:
AREA I . Oklahoma, Cleveland, Canadian, Grady, McClain, Garvin, Carter, Murray, Johnston, Pontotoc, Seminole, Pottawatomie, Lincoln, Logan, Kingfisher, Garfield, Grant, Alfalfa, Major, Blaine, Caddo, Washita, Custer, Dewey, Woodward, Woods, Harper, Ellis, Roger Mills, Beckham, Love and that portion of Payne County which is closer to Oklahoma City than Tulsa

AREA II Kay and Noble Counties
AREA III: Comanche, Jackson Stephens, Harmon, Greer, Kiowa, Tillman, Cotton and Jefferson

AREA IV Marshall County
AREA V That portion of Payne County closer to Tulsa than Oklahoma City

IRONWORKERS:
AREA I Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Custer, Dewey, Garfield, Garvin, Grady, Johnston, Kingfisher, Kiowa, Lincoln, Major, Logan, McClain, Murray, Noble, Oklahoma, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita, Woodward, and western Payne County to a line due north of state highway #177 and #33
AREA II Beckham, Greer, Harmon, Jackson, Tillman, Cotton, Jefferson and Love Counties
AREA III Harper and Ellis Counties
AREA IV Marshall County
AREA V Alfalfa, Grant, Kay, and Woods Counties

LABORERS:
AREA I Logan, Canadian, Oklahoma, Lincoln, Cleveland and Pottawatomie Counties
AREA II Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Dewey, Blaine and Kingfisher Counties
AREA III Roger Mills, Custer, Beckham, Washita, Caddo, Grady, McClain, Harmon, Greer, Kiowa, Comanche, Stephens, Garvin, Tillman, Cotton, Jefferson, Murray, Carter, Love and Marshall Counties
AREA IV Kay, Noble and Payne Counties
AREA V Seminole, Pontotoc and Johnston Counties
AREA VI Jackson County

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LABORERS (CONT'D):
GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages of stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning windows; wrecking and razing of building and all structures; cleaning when the manis directly tendering, lathers, masons or plasters; common laborers.
GROUP II _ All machine tools operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finishers laborer; work on swinging scaffold; all kettle and potmen, tank cleaning, all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machines, and gunite mixing machines including concrete, creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or plants; all laborers screening sand, running sand drier, and feeding operator sand blasterer, except nozzle; and cutting torch operators in connection with laborers' work; concrete grader.

LATHERS:
AREA I Oklahoma, Logan,Canadian, Kingfisher, Custer, Washita, Blaine, Pottawatomie, Dewey, Beckham, Caddo, Cleveland, Ellis, Garvin, Grady, Johnston, McClain, Murray, Noble, Pontotoc, Roger Mills, Seminole, Woodward, Lincoln County south of Turner Turnpike and Payne County up to and including the city of Cushing.
AREA II Alfalfa, Grant, Garfield and Major Counties

PAINTERS:
AREA I Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson, Carter, Love, Pontotoc, Johnston and Marshall Counties
AREA II Remaining Counties

PLASTERERS:
AREA I Ellis, Roger Mills, Beckham, Greer, Harmon, Jackson, Dewey, Custer, Washita, Kiowa, Tillman, Blaine, Caddo, Comanche, Cotton, Kingfisher, Canadian, Grady, Stephens, Jefferson, Logan, Oklahoma, Cleveland, McClain, Gargin, Murray, Carter, Love, Payne, Lincoln, Johnston and Marshall Counties
AREA II Pontotoc, Pottawatomie and Seminole Counties

PLUMBERS - PIPEFITTERS
AREA I Kay County
AREA II Remaining Counties

MARBLE & TILE FINISHERS, TERRAZZO FINISHERS, TERRAZZO FLOOR MACHINE MAN, TERRAZZO BASE MACHINE MAN:
AREA I Kay, Noble; Payne, Lincoln, Pottawatomie, Seminole, Pontotoc and Johnston

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I	All crane type equipment with 300' of boom or over (including jib)
GROUP II	All crane type equipment with 200-300' of boom (including jib)
GROUP III	All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
GROUP IV	Side boom (booms 30' and over); Guy Derrick
GROUP V	Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline, shovel; clamshell; backhoe (3/4 yd. and over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' and longer mast); motor patrol (blade); side boom (under 30')
GROUP VI	Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller and compactors with dozer blade
GROUP VII	Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator; crushing plants, oiler distributor, pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed operator; concrete pump; form grader; screening plant; well point pump operator; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS CONT'D):

GROUP VIII	Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man
GROUP IX	Greaser and tilt top trailer operator

TRUCK DRIVERS:

AREA I	Alfalfa, Beckham, Blaine, Caddo, Carter, Canadian, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson Johnston, Kingfisher, Kiowa, Logan, Love, Major, McLain, Murray, Oklahoma, Pontotoc, Pottawatomie, Payne, Roger Mills, Seminole, Stephens, Tillman, Washita, Wood and Woodward Counties
GROUP I	Truck drivers for heavy equipment such as lowboys, heavy winch and floats, heavy earth moving equipment such as dump trucks and euclids
GROUP II	Truck drivers and swampers, such as dump trucks, flat beds, stakebodies, and 3/4 and ½ ton pick-up trucks
AREA II	Kay, Noble and Lincoln Counties
GROUP I	Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver
GROUP II	3 tons or 4 yards up to but not including 4 tons or 6 yards
GROUP III	Ready mix concrete truck; tractor trailer and similar equipment
AREA III	Marshall County
GROUP I	Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, state bodies and buses
GROUP II	3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III	5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV	Ready-mix concrete trucks up to but not including 3 yards
GROUP V	Ready-mix concrete trucks 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES

a - 6 mos. to 5 yrs. 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day.

SOUND AND COMMUNICATION TECH. Classification Area

Coal	Hughes	Okmulgee	Payne 3/	Wagoner 4/
Craig	Mayes	Osage 1/	Pittsburg	Washington
Creek	Nowata	Ottawa	Rogers	
Delaware	Okfuskee	Pawnee 2/	Tulsa	

1/ That portion east of State Highway No. 18
2/ That portion east of State Highway No. 18
3/ Eagle, Indian, Mound and Union Townships
4/ Adams Creek, Cherokee, Coal Creek, Lone Star and Shanhan Townships

SUPERSEDEAS DECISION

STATE: TEXAS
COUNTY: BOWIE
DECISION NO. TX85-4010
DATE: DATE OF PUBLICATION
Supersedes Decision No. TX84-4057, dated 10/5/84 in 49 FR 39440
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway General Wage Determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.71	$2.94
BRICKLAYERS	11.33	
CARPENTERS	12.20	
CEMENT MASONS	8.47	
ELECTRICIANS	14.52	1.50+ 3.25%
GLAZIERS	8.25	A
IRONWORKERS	10.25	
LABORERS:		
General	5.05	
Plasterer Tenders	8.80	1.10
LATHERS	13.16	
PAINTERS	8.50	
PLASTERERS	12.95	
PLUMBERS AND PIPEFITTERS	14.60	1.85
ROOFERS	7.06	
SHEET METAL WORKERS	9.18	
SOFT FLOOR LAYERS	7.50	
TILE SETTERS	12.00	
POWER EQUIPMENT OPERATORS:		
Backhoes	7.00	
Motor Grader Operator	7.00	
WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.		

FOOTNOTE FOR GLAZIERS:
A - 2 weeks paid vacation per year & 6 paid holidays-New Year's Day, Independence Day, Labor Day, Memorial Day, Thanksgiving Day, & Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

NEW DECISION

STATE: Texas
COUNTY: Bexar
DECISION NO.: TX85-4013
DATE: Date of Publication
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.54	3.24
BRICKLAYERS/STONEMASONS	12.88	2.32
CARPENTERS	10.37	
CEMENT MASONS	11.51	
ELECTRICIANS	12.78	1.00+6%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.59	3.24+a
Helpers	70%JR	3.24+a
Helpers (Prob.)	50%JR	
GLAZIERS	10.93	.32+ 9.5%
IRONWORKERS:		
Structural & ornamental	9.56	
Reinforcing	8.69	
LABORERS:		
Unskilled	6.34	
Mason tenders	8.36	1.78
Plasterers' & lathers' tenders	8.36	1.78
Formsetters	6.53	
LATHERS	15.00	
METAL BUILDING ERECTORS	5.64	
PAINTERS	9.53	
PIPEFITTERS	$17.90	2.03
PLASTERERS	15.00	
PLUMBERS	13.62	1.61
ROOFERS:		
Roofers	9.54	
Waterproofers	7.76	
Kettleman	6.28	
SHEET METAL WORKERS	16.90	2.32+1%
SOFT FLOOR LAYERS	9.10	
SPRINKLER FITTERS	16.17	3.23
TAPERS/DRYWALL FINISHERS	10.34	
TILE SETTERS	13.27	2.27
TILE SETTER FINISHERS	8.57	1.31
TRUCK DRIVERS	5.80	
POWER EQUIPMENT OPERATORS:		
Backhoes	13.20	2.65
Cranes	13.20	2.65
Forklifts	9.15	
Foundation drill op.	13.20	2.65
Front end loaders	13.20	2.65
Oilers	9.15	2.65

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 years - 6%; over 5 yrs. - 8% of basic hourly rate. Also 7 Paid Holidays A thru G

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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federal register

Friday
May 10, 1985

Part III

Federal Emergency Management Agency

44 CFR Part 205

Coastal Barrier Resources Act; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Coastal Barrier Resources Act

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as the act applies to disaster assistance granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93-288). CBRA prohibits new expenditures and new financial assistance for any purpose within the Coastal Barrier Resources System (CBRS) except for certain activities expressly permitted by the CBRA. This rule specifies which disaster assistance actions may or may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by the Federal Emergency Management Agency (FEMA).

DATE: Comment due date: July 9, 1985.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Charles Stuart, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, D.C. 20472, Telephone (202) 646-3691.

SUPPLEMENTARY INFORMATION: On October 18, 1982, the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) was signed by the President. The purpose of this Act is to minimize the loss of human life, wasteful expenditure of Federal revenues and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. This purpose is to be achieved by: (1) Restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, (2) establishing a Coastal Barrier Resources System, and (3) considering the means and measures by which the long-term conservation of these fish, wildlife and other natural resources may be achieved. The provisions of the Act cover those coastal barriers which, as of October 18, 1982, were undeveloped and unprotected by any Federal, State, or private refuges. The act has established the Coastal Barrier Resources System, which is depicted on 177 maps published by the Department of the Interior (DOI). Any new Federal expenditure or financial assistance for any purpose is prohibited within the System except as otherwise provided in section 6 of CBRA. Section 6 lists certain types of activities that are allowed only after consultation with the Secretary of the Interior. There is a subgroup of those activities that also requires an evaluation of the action's consistency with the purposes of CBRA.

Types of Disaster Assistance

Under Pub. L. 93-288, the Federal Emergency Management Agency (FEMA) may make grants to State and local governments and certain private nonprofit organizations to fund repairs of damages suffered in a Presidentially declared major disaster or emergency. These grants may be of three types: for emergency purposes, for permanent restoration of structures and facilities, and for certain social program needs of individuals and families. Emergency grants are made to save lives and to protect public health and safety or property. Grants may be made to States to provide up to $5,000 to individuals and families to meet expenses relating to restoration of permanent residences. Direct grants may be made to families (as a form of temporary housing) to restore structures to a habitable condition. Grants may also be made to State and local governments and certain private nonprofit organizations to restore facilities to predisaster condition in accordance with current standards. Other grants to States may provide social services such as crisis counseling, legal services, and unemployment assistance.

These last types of assistance, which have a social program orientation, are entirely unrelated to development, because they do not provide assistance for acquisition or construction of property or facilities. For this reason they are excluded from the prohibitions of CBRA [Sec. 3(3)(E)] and are not subject to the substantive and procedural requirements of these regulations. These regulations address the other two types of actions, emergency assistance and permanent restoration assistance, separately, prescribing different criteria and procedures for each.

Prohibitions

The prohibitions of CBRA against new expenditures and new financial assistance apply to all disaster assistance within the CBRS. The requirements of CBRA for consultation with the Secretary of the Interior and for consistency with the purposes of CBRA for certain exceptions also apply to all disaster assistance within the CBRS. There are two exceptions to the prohibitions, which include the majority of disaster assistance actions. The first is that publicly owned or operated facilities may be maintained, replaced, reconstructed, or repaired if they are essential links in a larger network or system or if they are consistent with the purposes of CBRA. The second is that all actions essential to the saving of lives and the protection of property and the public safety and are performed pursuant to Sec. 305 and 306 of the Disaster Relief Act of 1974, Pub. L. 93-288, may be carried out if they are consistent with the purposes of CBRA. As a result of these exceptions, repair, restoration or replacement of publicly owned or operated facilities and emergency assistance will often not be prohibited within the CBRS. Certain disaster assistance actions, however, are absolutely prohibited by CBRA. No new or expanded structures or facilities may be constructed in the CBRS with Federal assistance except for certain types of facilities as provided in Sec. 6 of CBRA.

Disaster assistance for families or individuals is provided in the form of temporary housing and other personal needs. Included in these forms of individual assistance is real property repair/construction which is not included in the exceptions for which Federal expenditures or assistance is allowed by Section 6 of CBRA. Therefore, except for repair/construction assistance when provided under sections 305/306 of Pub. L. 93-288, assistance to individuals or families within a unit of the CBRS is limited to that of a social program nature.

A requirement for all Federal actions within the CBRS is that the responsible agency consult with the Secretary of the Interior before committing funds to the project. That responsibility has been delegated to the Assistant Secretary for Fish and Wildlife and Parks and is accomplished through regional representatives. In addition, some of these actions must be consistent with the purposes of CBRA. A determination of that consistency must be made a part of the consultation process.

Exceptions

The exceptions to the prohibition of new Federal expenditures or financial assistance as contained in Section 6 of CBRA include facilities that may involve FEMA disaster assistance.

The first group of exceptions allows Federal expenditures after consultation with the Secretary of the Interior. The group includes: (1) The maintenance, replacement, reconstruction, or repair but not the expansion of publicly owned or publicly operated roads, structures or facilities that are essential links in a larger network or system, (2) facilities necessary for the exploration, extraction, or transportation of energy resources that can be carried out only on, in, or adjacent to coastal water areas because the facility requires access to the coastal water body, and (3) the maintenance of existing channel improvements and related structures, such as jetties and including disposal of dredge materials related to such improvements. An existing channel improvement or related structure is defined as one for which all or a portion of the funds for such improvement or structure were appropriated before October 18, 1982, the enactment date of CBRA.

The second group of exceptions allows Federal expenditures after consultation with the Secretary of Interior *if the action is consistent with the purposes of CBRA*. This group includes: (1) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including but not limited to stabilization projects for fish and wildlife habitats and recreational projects; (2) the establishment, operation, and maintenance of air and water navigation aids and devices and for access thereto; (3) facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research and development applications; (4) actions essential to the saving of lives and the protection of property and the public health and safety and performed pursuant to sections 305 and 306 of Pub. L. 93–288 and that are limited to actions that are necessary to alleviate the emergency; (5) nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems; and (6) the maintenance, replacement, reconstruction, or repair but not the expansion of publicly owned or publicly operated roads, structures, or facilities that are not part of a larger network or system.

Emergency Work

As noted before, the major categories of disaster assistance actions are emergency work and permanent restoration work. The emergency assistance granted by FEMA is for the purpose of saving lives and protecting property and public health and safety. These emergency actions that would come under the provisions of CBRA may include, for example, protective measures to prevent injuries or further damage, or clearance of debris from public or private property to allow access for emergency purposes. Another example may be emergency repairs to utilities and other facilities, including residences, to restore service necessary for protecting lives or property or public health and safety. Emergency actions are unique in that they must be performed during or immediately after the disaster event and may be performed without waiting for advance approval. This emergency work is subject to the consultation requirement and also the requirement that the actions be consistent with the purposes of CBRA. Because of the emergency nature of the actions, a consultation procedure different from that for permanent restorative work has to be used.

In an advance consultation carried out with DOI, FEMA has presented a description of the types of emergency work and a determination that the actions are consistent with the purposes of CBRA. In summary, the consultation describes the emergency actions as those necessary to save lives, protect public health and safety, or protect property and necessary to alleviate the emergency. These actions serve only the existing population and do not provide for or encourage expansion of facilities or their use. In general they do not involve work on facilities or the natural features of the land. Emergency assistance may involve grants to State or local governments, to certain private nonprofit organizations, or to individuals. This assistance is limited to that necessary to alleviate the immediate emergency.

The Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that emergency assistance actions are consistent with the purposes of CBRA and that these activities may be approved for FEMA grant assistance without further consultation. The procedure established for emergency work is a relatively simple one of identification of the project and site, with appropriate documentation of that data. The information is to be furnished by FEMA to the Regional Director for Fish and Wildlife and Parks.

Permanent Work

FEMA disaster assistance for permanent restorative work involves repairs or replacement of facilities such as roads and bridges, water control facilities, buildings and equipment, utilities, and park and recreational facilities. These facilities may be publicly owned or operated or they may be owned and operated by certain types of private nonprofit (PNP) organizations. Assistance for those PNP facilities owned or operated by eligible private nonprofit organizations is subject to certain additional restrictions. To be eligible for assistance, the PNP facility on a unit of the CBRS must qualify under one of the other exceptions in section 6 of CBRA—those facilities that need not be publicly owned or operated to qualify as exceptions. Briefly, these exceptions are: Energy related facilities, existing channel improvements and structures, facilities for fish and wildlife study and management, air and water navigation aids, facilities for scientific research, nonstructural shoreline stabilization projects, and facilities for which emergency assistance is necessary.

Publicly owned or operated facilities such as roads, utilities, or water control facilities that are essential links in a larger network or system are eligible for assistance for their repair or replacement but not their expansion, after FEMA has consulted with the Secretary of the Interior. An example of an essential link is a road or utility service for which the route through the system unit is the only practicable route. Expansion in this context is interpreted to refer to physical size or capacity of the facility. One intention of the prohibitions in CBRA is to not encourage development on a coastal barrier unit. A replacement facility of greater capacity than the original would encourage development; therefore, such expansion will not be allowed under these regulations. For example, a replacement bridge may not be any wider than the original, because it would have greater capacity. There may be exceptions to this requirement. If an approach road adjacent to the bridge were washed out along with the bridge, it might be less expensive to lengthen the span of the bridge rather than fill in the area for the road. This would not be interpreted as expansion.

Another type of facility that might be eligible for assistance on a unit of the CBRS after FEMA consults with the Secretary of the Interior is a navigation channel along with related structures such as a breakwater. If such a facility were owned or operated by a public entity or an eligible private nonprofit organization and met other programmatic requirements for disaster assistance, it could receive assistance

from FEMA. It must also meet the definition of an existing improvement or structure by having had funds for its construction appropriated in whole or in part before the enactment date of CBRA, October 18, 1982.

Facilities for energy resource exploration, extraction, or transportation that are functionally dependent on the coastal location may receive assistance if they meet other requirements for disaster assistance. The facilities may be owned or operated by a public entity or an eligible private nonprofit organization. FEMA must consult with the Secretary of the Interior before approving assistance for these facilities.

The remaining disaster assistance actions permitted within the CBRS require a determination of the actions' consistency with the purposes of CBRA in addition to the consultation. These are the six types of facilities listed in the third paragraph under Exceptions. A written record of the determination will be included as part of the consultation.

Consultation

The procedure for consultation with the Secretary of the Interior for the above three types of actions is a simple one in which the FEMA Regional Director consults with the Regional Director of the Fish and Wildlife Service. Before approving a grant for permanent restoration, in written communication FEMA will inform DOI of the CBRS unit in which the action is taking place and will provide a description of the facility, the proposed repair or replacement work, and the amount of Federal funding proposed. The description of the facility shall fully justify it as an exception under section 6 of CBRA. This would include a discussion of how a facility was an essential link in a larger network or system or how an energy facility was dependent upon its coastal location in order to function. Information on how a channel facility meets the definition of an existing facility (funds appropriated before October 18, 1982) must also be provided.

The DOI representative will provide technical information to FEMA and an opinion on whether or not the action meets the criteria for an exception and on the consistency of the proposed action with the purposes of CBRA. DOI is expected to respond within 12 working days from the date of the request for consultation. If a written response is not received within the time limit, the FEMA Regional Director will assume concurrence by DOI and will proceed with the approval of the proposed action.

The time provided for this response to a consultation request is necessarily short because of the urgent nature of disaster recovery work. Local applicants frequently rely upon the advance of funds from FEMA (75 percent of the approved amount) in order to start the repair work. FEMA cannot make that advance for a particular project until the project is approved. Delays caused by the consultation process may impose a hardship on many of the smaller applicants for disaster assistance. The short response time is designed to avoid these delays. Conducting the consultation process at the local level will better allow the 12 day time frame to be met. If the DOI regional representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the matter will be referred to the respective national offices. Concurrence by the Secretary of the Interior is not required for FEMA to approve a grant.

Consistency Determination

In making the determination, the Regional Director will identify possible impacts of the proposed action and measures that might mitigate adverse impacts. Impacts to be evaluated will be risks to human life; risks of damage to the facility being repaired or to other facilities; risks of damage to fish, wildlife, and other natural resources; and encouragement of development or redevelopment. The restoration of a facility would be inconsistent with the purposes of CBRA if more lives would be exposed to the flood hazard, or if it encouraged more people to expose themselves to such risks. If the risk of danger to the facility itself cannot be minimized, its restoration would be inconsistent with the purpose of CBRA. The risk of damage to the natural land caused by the facility must be assessed and minimized. The effects of seawalls and groins or erosion and the transport of sand is an example of this.

Most of the units within the Coastal Barrier Resources System are also within the 100-year frequency or base floodplain. Actions within the base floodplain are subject to FEMA's Floodplain Management regulations, 44 CFR Part 9. Those regulations require an impact identification and evaluation process for certain proposed actions in the floodplain. The factors considered in both evaluations are very similar. Where the evaluation for practicability of the floodplain location and for minimization of harm is already required, it may also be used for the CBRA consistency determination. This procedure will avoid a duplication of effort for those actions within the floodplain area of the coastal barrier resources system.

The direct impact of risks to human life, facilities and natural floodplain values in both evaluations are identical. The practicability determination under 44 CFR 9.9 that evaluates these impacts requires that the importance of the floodplain site must clearly outweigh the requirement to minimize the risks and adverse impacts noted above if such impacts cannot be eliminated. In addition, new construction, including replacement, in the coastal high hazards area (V-zone) is prohibited except for facilities that are functionally dependent on a location in close proximity to the water or which facilitate an open space use (44 CFR 9.11). The evaluation under this criteria may therefore result in no Federal assistance for a proposed action in the base floodplain. The evaluation under CBRA may also result in a decision not to provide Federal assistance.

Similar to 44 CFR Part 9, the evaluation for consistency with CBRA includes whether the action does or does not encourage new development on the coastal barrier. Therefore, expansion of public facilities is not allowed, as such action would encourage additional development.

The evaluation under CBRA additionally includes consideration of whether the reconstruction encourages redevelopment of the area. There will have been few residences and businesses in these locations in the first place because of the criteria used in designating the CBRS units. If these existing structures are undamaged or minimally damaged, the owners of those structures will have little alternative to rebuilding. The failure to restore a public road or other facility probably will not prevent that rebuilding. Therefore, the infrastructure should be restored to its predisaster condition so as not to deny Federal assistance to those citizens. On the other hand, if all or most of the development is substantially damaged so that Federal flood insurance will be denied for those structures, the owners may decide not to rebuild. Although not absolutely prohibited, the rebuilding of the infrastructure may be inconsistent with the purpose of CBRA in that it would encourage the redevelopment of the coastal barrier.

If the required evaluation determines an action to be inconsistent with the purposes of CBRA, then FEMA may not grant assistance for that action.

Special Requirements

Actions in the group that require consultation and the consistency detemination discussed above are in two categories. The first group consists of publicly owned or operated roads, structures or facilities that are not essential links in a larger network or system. The second group consists of facilities specifically permitted by Sec. 6 of CBRA that may be either publicly or privately owned. These are facilities for the study, management, or protection of wildlife resources; air and water navigation aids; facilities for scientific research; and nonstructural shoreline stabilization systems.

The publicly owned or operated roads, structures, and facilities may not be expanded beyond their predisaster design when they are being restored after a disaster. The intention of this prohibition is to be consistent with the purpose of CBRA not to encourage development. A change that increased the capacity of the facility would encourage additional users of the facility. Therefore, such change is prohibited. Other changes not affecting capacity may be allowed.

Each of these facilities must also have been an existing completed facility or under construction on October 18, 1982, in order to be eligible for permanent restoration assistance. If work on a facility had progressed beyond clearing of the land, such as grading for a roadbed or excavation for bridge foundations then it would be considered under construction. If a facility, originally built or under construction before October 18, 1982, had been substantially improved after that date, it would then be ineligible for permanent restoration assistance in a subsequent disaster. This prohibition would apply whatever the source of funding for the substantial improvement, even if it were FEMA disaster assistance for an earlier event. Substantial improvement is any repair or other improvement of a structure or facility, the cost of which equals or exceeds 50 percent of the replacement cost of the facility.

These restrictions were imposed to be consistent with the intent and purpose of CBRA. CBRA recognized that the Federal Government had long supported development on coastal barriers both by direct grants for new construction and by flood insurance and disaster assistance programs that substantially reduced property owner's risks. This was in conflict with Federal and other efforts to protect coastal barriers and their valuable natural resources. Therefore, CBRA was intended to stop direct Federal investment in these areas and to stop Federal encouragement of private development. Without these restrictions, a publicly owned or operated facility built or substantially improved after October 18, 1982, and damaged in a declared major disaster could be eligible for restoration assistance. This would be inconsistent with the purposes of CBRA because, in effect, development would be encouraged by making restoration assistance available to facilities the construction of which began after October 18, 1982. It would also be inconsistent with the policy of the National Flood Insurance Program which is to not encourage development within the CBRS. Therefore, such assistance is restricted to facilities built or under construction before October 18, 1982, and not substantially improved after that date.

Of the group of facilities specifically permitted by Sec. 6 of CBRA, facilities for the study, management or protection of wildlife resources; air and water navigation aids; facilities for scientific research; and nonstructural shoreline stabilization systems are not restricted with respect to expansion or the date on which the facility was built. These have been termed special purpose facilities in the regulation. Section 6 of CBRA recognized that these types of facilities could be consistent with the purposes of the Act, although repair of an individual facility must still be determined consistent with CBRA. Because CBRA allows the continued establishment of these types of facilities on coastal barriers, disaster assistance may be granted for facilities built after October 18, 1982. Disaster assistance that involved expansion of one of these special purpose facilities would also be permitted for the same reason.

As noted before, this group of facilities which is permitted by Sec. 6 of CBRA may be either publicly or privately owned. In addition, two other types of facilities permitted by Sec. 6, an existing channel improvement or an energy exploration, extraction, or transportation facility, may be either publicly or privately owned. There is limited FEMA assistance available to private organizations. FEMA may, however, assist certain private nonprofit organizations in the repair of eligible educational, utility, emergency, medical, and custodial care facilities owned by these organizations. However, the facilities must also meet the criteria for exception to the CBRA prohibitions. It is unlikely that many facilities will meet these dual criteria. One example might be a scientific research facility that qualified also as an educational facility owned by a private nonprofit college. The repair of the facility must also be determined to be consistent with the purposes of CBRA. The repair of such facilities will be evaluated for consistency using the same criteria used for the restoration of publicly owned facilities.

Grant-in-lieu and Flexible Funding

The prohibition against expansion of facilities will affect two other features of the disaster assistance program. These are the options in which a grant recipient may construct an enlarged or different facility than that which existed before the disaster.

The first is a grant-in-lieu in which, under regular disaster rules, an applicant may combine the FEMA grant with other funding to construct a facility larger than the one damaged or destroyed by the disaster. The choice of this option could result in Federal participation in a facility expansion that is not allowed by CBRA. Therefore, FEMA may not approve a grant-in-lieu that would expand a facility within the CBRS, unless it is of the type expressly allowed by section 6 of CBRA.

The other option is flexible funding, in which the applicant accepts a grant equal to 90 percent of the estimated cost of permanent restoration of all of its damaged facilities. The applicant may then use that grant to restore some selected damaged facilities and build new facilities in place of others that it determines are no longer needed by the community (Sec. 402(f) of Pub. L. 93-288). If the new facility were built on a system unit, this, in effect, would be new financial assistance, also not allowed by CBRA. Therefore, a new facility on a system unit may not be approved as a project under a flexible funding grant or under the flexible funding feature of small project grants (Sec. 419 of Pub. L. 93-288), unless it is of the type expressly allowed by section 6 of CBRA.

Procedure

Compliance with CBRA in the administration of disaster assistance on a unit of the Coastal Barrier Resources System is designed to be simple and is integrated with other existing procedures where possible. The initial step is a location determination. Is the proposed action on a designated undeveloped coastal barrier? This is answered by consulting the appropriate FEMA Flood Insurance Rate Map (FIRM) issued on or after October 1, 1983, which has boundaries of the CBRS units on it. If the facility is not within or connected to a unit of the CBRS, such as with a bridge or causeway, no further

processing under these regulations is required.

The next step is to determine the category of the action and whether or not it meets the criteria for exception from the prohibitions of CBRA. Actions of a social program orientation that are unrelated to development or construction were discussed earlier and are not subject to CBRA or these regulations. If the action is emergency assistance under section 305 or 306 of Pub. L. 93–288 and it is in the CBRS, then the consultation requirements have already been met, including a determination that the action is consistent with the purposes of CBRA. Those permanent restoration actions subject to CBRA should be identified as to whether they require only consultation with the Secretary of the Interior or also a determination of consistency with the purposes of CBRA. The criteria for assigning these categories has been discussed previously, as has also the process of carrying out the consultation.

Environmental Considerations. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), FEMA has prepared an environmental assessment of the issuance by FEMA of the regulations for the implementation of the Coastal Barrier Resources Act.

The Act prohibits new expenditures and new financial assistance, with certain exceptions, within the Coastal Barrier Resources System. The exceptions include emergency actions essential to the saving of lives and the protection of property and the public health and safety under sections 305 and 306 of the Disaster Relief Act of 1974 (Pub. L. 93–288) that are necessary to alleviate the emergency. Also included is permanent repair or replacement of publicly owned or operated roads, structures, or facilities. Expansion of these facilities is not permitted. The regulations provide that permanent restoration assistance is not permitted for facilities built or substantially improved after October 18, 1982. FEMA's assistance will serve only those facilities that existed prior to October 18, 1982, and will not encourage development of the designated undeveloped coastal barriers. With the exception of roads, structures and facilities that are essential links in a larger system, FEMA's actions must be consistent with the purposes of CBRA.

It has been determined that there will be no significant impact on the environment caused by FEMA's issuance of this regulation to implement the Coastal Barrier Resources Act (44 CFR Part 205, Subpart N). On this basis an environmental impact statement will not be prepared.

Copies of the environmental assessment are available for inspection at: Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, D.C. 20472, Telephone (202) 287–0395.

Executive Order 12291, "Federal Regulations"

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

Accordingly, Chapter I of Title 44, Code of Federal Regulations is proposed to be amended by adding a new Subpart N to Part 205 as follows:

PART 205—[AMENDED]

* * * * *

Subpart N—Implementation of Coastal Barrier Resources Act

Authority: 16 U.S.C. 3501, 3505; 42 U.S.C. 5201.

Subpart N—Implementation of Coastal Barrier Resources Act

§ 205.501 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97–348) as the Act applies to disaster relief granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93–288). CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 205.502 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under Pub. L. 93–288.

§ 205.503 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 205 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) "Existing facility" means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in § 205.2(a)(16). This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure,

or system, including those used for educational or recreational purposes or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" means an approval by FEMA of a project application or other disaster assistance after October 18, 1982.

(h) "Start of construction" for a structure means the first placement of permanent construction such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and filling, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include grading and filling such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) either:

(1) Before the repair or improvement is started, or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred.

If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System Unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by section 4 of the CBRA, or as modified by the Secretary in accordance with the Act.

§ 205.504 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Legal assistance; and

(4) Disaster unemployment assistance.

§ 205.505 Limitations on Federal expenditures.

Except as provided in §§ 205.506 and 205.507, no new expenditures or financial assistance may be made available under authority of Pub. L. 93-288 for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 205.506 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 205.505.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and are limited to actions that are necessary to alleviate the emergency;

(2) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided below at § 205.508(c)(5);

(3) Repair and maintenance of air and water navigation aids and devices, and of access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 205.507 Applicability to disaster assistance.

(a) Emergency Assistance. The Regional Director may approve assistance pursuant to sections 305 or 306 of Pub. L. 93-288 for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Restoration of access to private property;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, provision of safe water supply, provision of minimal cooking facilities, or provision of access to a private residence;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Minimal repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible familes in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of publicly owned or operated facilities and certain private nonprofit facilities. Such actions, which are subject to these regulations, inlcude but are not limited to the repair, reconstruction, or replacement of:

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 205.508 Requirements.

(a) *Location Determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to a CBRS unit and thereby subject to these regulations. The appropriate FEMA Flood Insurance Rate Map (FIRM) issued on or after October 1, 1983, will be the basis of such determination.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 205.509 and 205.510.

(b) *Emergency Disaster Assistance.* For each emergency disaster assistance action listed in § 205.507(a), the Regional Director shall perform the required consultation. CBRA requires that the Agency consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of the Act as defined in section 1 of CBRA.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 205.507(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) *Notification.* As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent Restoration Assistance.* For each permanent restoration assistance action including but not limited to those listed in § 205.507(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the channel or related structures beyond predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished.

(3) *Energy Facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed, or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research and development applications; and, nonstructural facilities that are designed to mimic, enhance, or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 205.509 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purpose of CBRA in accordance with § 205.510.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), or (4) of this paragraph:

(i) No facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations (44 CFR 205.70 et seq.) and of the type described in paragraphs (c) (1), (2), (3) or (4) above:

(i) Consultation in accordance with § 205.509 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is

otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(7) *Grant-in-lieu.* A grant-in-lieu may not be made for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraphs (c) (1), (2), (3), or (4) of this section, then a grant-in-lieu for such facilities is not precluded.

(8) *Flexible funding.* A new or enlarged facility may not be constructed on a unit of the CBRS under the flexible funding provisions of section 402(f) or section 419 of Pub. L. 93-288 unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

§ 205.509 Consultation.

As required by section 6 of CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; includng identification of the facility as an exception under Sec. 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 205.510.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and provide an opinion on whether or not the action meets the criteria for an exception, and on the consistency of the action with the purposes of CBRA when such consistency is required. DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. The comments of the DOI consultation officer will be carefully considered before the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 205.510 Consistency.

Section 6(a)(6) requires that certain actions be consistent with the purposes of CBRA if they are to be carried out on a unit of the CBRS. The purpose of CBRA as stated in section 2(b) is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedure, and it shall be included in the written request for consultation with DOI.

(a) *Impact Identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;

(3) Risks of damage to other facilities;

(4) Risks of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources. The Regional Director may require such measures at the expense of the applicant if they are not otherwise eligible for FEMA funding.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

Dated: May 6, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

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Friday
May 10, 1985

Part IV

Department of the Interior

National Park Service

36 CFR Parts 7 and 13

Glacier Bay National Park and Preserve, AK; Protection of Humpback Whales; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 7 and 13

Glacier Bay National Park and Preserve, AK; Protection of Humpback Whales

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is establishing permanent regulations for the protection of the humpback whale, an endangered species, at Glacier Bay National Park and Preserve. These regulations establish a permit system, vessel operating restrictions, and a mechanism for designating whale waters and vessel limits; in addition, they prohibit the harvest of certain species of fish and crustaceans which are prey species of the humpback whale. These regulations replace temporary regulations which expired in 1983. For informational purposes, the National Park Service has included within this rule the 1985 whale season temporary restrictions established pursuant to existing regulations.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Tollefson, Superintendent, Glacier Bay National Park and Preserve, Bartlett Cove, Gustavus, Alaska 99826, Telephone: (907) 697–2232.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay, is a marine body of water located within Glacier Bay National Park and Preserve. It has been recognized since the early 1960's as a summer feeding ground for the humpback whale, a declining species placed on the Endangered Species List in 1970. Research conducted in the 1970's established that 10–24 whales used the bay for summer feeding during the several years prior to 1978. This pattern drastically changed in 1978, when approximately 17 of 20 identified whales abandoned the bay shortly after entering it. Only three whales remained for the summer. This reduced level of whale use occured again in 1979. On August 6, 1979, in accordance with the Endangered Species Act, the National Park Service requested a formal consultation with the National Marine Fisheries Service ("NMFS") to assess the problem. NMFS concluded that the uncontrolled increase of vessel traffic, especially erratically traveling craft, may have altered humpback behavior, and that a continued increase in vessel traffic was likely to further jeopardize the existence of the humpback whale in Southeast Alaska. NMFS recommended that vessel traffic be restricted to 1976 levels, additional research be conducted, and regulations be promulgated to address vessel routing, maneuvering, and speed.

Responding to the NMFS opinion, the National Park Service published two sets of regulations in 1980 to protect the humpback whale in Glacier Bay. One set concerned cruise ship activity as well as vessel routing, maneuvering, and speed. See 45 FR 32228 (May 15, 1980) (codified at 36 CFR 7.23 (b)–(d) (1982). In summary, these regulations limited the entry of cruise ships into Glacier Bay to 89 vessels during the whale season (June 1 through August 31), with not more than two entries per day. Regardless of the size or type of vessel, all motorized vessel operators were prohibited from intentionally positioning their vessels closer than one-fourth nautical mile from a whale, or otherwise pursuing or attempting to pursue a whale. In the event of a vessel-whale encounter, these regulations established certain vessel operation requirements to restore the one-fourth nautical mile separation with minimal disturbance to the whale. Finally, the regulations authorized the superintendent to designate areas in Glacier Bay as "whale waters" where vessels were required to maintain a constant speed (not to exceed 10 knots) and course, except to avoid coming within one-quarter nautical mile of a whale. This final rulemaking deletes the last duplicative provision that remains of these former regulations in 36 CFR 7.23.

The second set of regulations addressed small boat activity and a limited category of commercial fishing in Glacier Bay. See 45 FR 32234 (May 15, 1980), 45 FR 85471 (December 30, 1980) (codified at 36 CFR 7.23 (e)–(f)(1982); 46 FR 50370 (October 13, 1981) (codified at 36 CFR 7.23(q)(1982)). These regulations limited small vessel entries into Glacier Bay to 538 (339 private vessels) during the whale season. They also prohibited commercial harvesting of major organisms upon which humpback whales feed.

The National Park Service intended these two sets of regulations to be temporary pending the completion of more conclusive research on the whales at Glacier Bay. Upon completion of the research, the National Park Services intended again to request formal consultation with NMFS and thereafter to propose appropriate changes in the regulations. In order to review the research data, obtain an opinion from NMFS, and develop appropriate regulations, the National Park Service extended the temporary regulations applicable to vessel operations and entries until August 31, 1983. 48 FR 21947 (May 16, 1983). In 36 CFR 13.65, paragraphs (b) through (f) were redesignated from § 7.23 at 48 FR 30294, June 30, 1983, effective October 3, 1983. During the summer of 1984 temporary vessel operating restrictions and entry levels were established pursuant to 36 CFR 13.30. Thus, the National Park Service prevented an "unregulated situation" in Glacier Bay, a situation which NMFS warned could have disrupted the whale's behavior contrary to the mandates of the Endangered Species Act and other law.

On June 22, 1983, NMFS issued its second Biological Opinion which stated in part:

> Based on our recent review of new research as well as additional information, NMFS concludes that current National Park Service operational and total vessel numbers restrictions are not likely to jeopardize the continued existence of the southeast Alaska stock of humpback whales. We also reiterate the conclusion in our 1979 Biological Opinion that if the amount of vessel use were allowed to increase without limit in Glacier Bay, or if present vessel operational restrictions were removed the associated disturbance would be likely to jeopardize the continued existence of the Southeast Alaska humpback whale stock.
>
> The amount of vessel use that would have the effect of total displacement from Glacier Bay cannot now be defined or predicted. We believe some increase in the amount of vessel use can occur without jeopardizing the continued existence of the Southeast Alaska humpback whale stock, provided increases are implemented in a conservative manner and with an appropriate monitoring program.
>
> Consultation must be reinitiated if new information reveals impacts of the proposed activities that may affect the humpback whale, if the identified activities are modified in a manner not considered during the consultation, or if a new species is listed or critical habitat designated that may be affected by the proposed activities.

After reviewing the Biological Opinion, the National Park Service met with NMFS in August, 1983 to clarify certain aspects and to discuss permanent regulations. Based on those meetings, the Biological Opinion itself, and additional research and monitoring conducted by the National Park Service, the National Park Service has concluded that failure to implement protective regulations would be detrimental to the humpback whale in Glacier Bay.

The National Park Service published proposed rules designed to protect the humpback whale on April 18, 1984 (49 FR 15482). The period for public comment closed on May 18, 1984.

The Department of the Interior has determined that good cause exists for establishing an effective date of May 31, 1985, which is less than 30 days after publication of this rulemaking in the **Federal Register**. This determination is based on the fact that humpback whale protection regulations must be in place and in effect on June 1, which is the beginning of whale season. A later effective date would result in a situation whereby whales could be present in Glacier Bay without appropriate protective programs in effect.

Summary of Comments

The National Park Service received 58 timely comments on its proposals. Of these, 41 comments were from private individuals, 15 comments were from organizations and two were from government agencies.

Public meetings were held in Juneau, Gustávus, Elfin Cove, Pelican, Hoonah, and Anchorage, (47 individuals attended). All meetings were taped and a summary of meetings has been placed in the park file.

The National Park Service has carefully considered each of these comments and has adopted several suggestions made. The National Park Service has also made technical changes to certain regulations in order to clarify their intent. The comments received and the service's reason for accepting or rejecting them are as follows:

Analysis of Comments

Section 13.65(b)(1) Definitions.

Several commenters expressed concern over the new vessel categories in the definition section. One commenter felt the charter vessel size limitation of under 100 tons gross and up to 49 passenger rating could result in larger charter vessels entering Glacier Bay in the future.

The majority of the commenters objected to the 1980 substitution of larger scheduled tour vessel entries for much smaller 6 passenger fishing vessel entries. The National Park Service established separate categories for charter vessels and tour vessels in order to prevent further substitution between significantly different vessel types. The vessel categories have incorporated U.S. Coast Guard vessel size and capacity distinction in order to keep these regulations uniform with other marine regulations. Further control of charter vessel use and size can be incorporated into the concession permits without the need to increase the complexity of these regulations. Future tour vessel use will be established by the superintendent under concession contract and permit provisions.

Comments were evenly divided over the one-half nautical mile distance provision in the definition of "pursue". Some commenters suggested that the one-quarter nautical mile distance referred to in the operating restriction be incorporated into the "pursue" definition. Other comments suggested that one-half mile be the minimum distance allowed between vessels and whales at any time. One commenter recommended that the definition of "pursue" be amended to read "alter or maintain a vessel's course . . ." The National Park Service will leave the definition of "pursue" unchanged. Recent research has indicated that vessel changes in speed and course at distances greater than one-fourth nautical mile can alter whale behavior. However, when vessels pass by humpback whales at distances greater than one-quarter nautical mile without alteration of speed or course, observable changes in whale behavior are infrequent.

Several commenters questioned the need for the "vessel use day" definition. Some commenters objected to vessel use days establishment from 8:00 am to 8:00 am the next day. The National Park Service agrees that the vessel use days should be measured from 12 midnight to 12 midnight the next day. By proposing a motor vessel entrance limit based on the number of motor vessels in the Bay each day rather than merely the number entering each day, the accumulation of vessels should not reach disruptive proportions. The proposed entrance limit would be based on the number of vessels in the Bay. For example, if the limit were 21 vessels, and 21 vessels were already in the bay on a given day, no more would be allowed to enter. NMFS agrees with the approach of limiting the total number of motor vessels in the Bay at any given time.

The term entry is defined in the definition section. For clarification, an entry must meet one of the following criteria: (1) Each time a motor vessel passes the mouth of Glacier Bay on the way into the bay, (2) each time a private motor vessel activates or extends a permit, (3) each time a vessel based at Bartlett Cove leaves the dock, except private vessels based at Bartlett Cove that the gaining access or egress to or from outside the park or (4) the first time a local private motor vessel utilizes a day of the seven use day permit. Further clarification of this definition will be outlined in the park's whale management program.

Several commenters recommended that seaplanes should be included under the operating restrictions section of these regulations. The National Park Service agrees. By changing the definition of "vessel" so that it includes seaplanes on the water, this will be accomplished. This would prohibit a seaplane on the water from intentionally positioning itself within one quarter nautical mile of a whale and would prohibit a seaplane on the water from pursuing a whale. A seaplane on the water, which is accidentally positioned within one quarter nautical mile of a whale, will be required to maintain a one quarter mile separation only when practical for safe take-off requirements. The definition of "motor vessels" will not apply to aircraft.

The definitions of "mouth of Glacier Bay", "large vessels", and "small vessels" were deleted. The definition of "mouth of Glacier Bay" is described as part of the definition of "Glacier Bay". The large and small vessel definitions were deleted because more descriptive definitions are now in use. Large vessels are cruise ships. Small vessels include charters, private and tour vessels.

Sections 13.65(b) (2), (3), and (4) have been reformated to provide a more logical progression in the regulations. These sections are set forth as follows:

(2) Public Use Limits And Temporary Restrictions

(3) Permits

(4) Operating Restrictions

Section 13.65(b)(2)(iv) was removed from the permit section and placed in the public use limits and temporary restrictions section. In order to maintain consistency within 36 CFR, the term "public use limit" is considered synonymous with "vessel entry and use levels". Section 13.65(b)(2) now describes public use limits as defined in § 1.5, as well as whale waters designations and vessel use restrictions

From this point, the reference to section numbers refers to the section as listed in the final rule.

Section 13.65(b)(2) Public Use Limits and Temporary Restrictions.

Several commenters suggested that § 13.30 did not provide the necessary timeliness in establishing public use limits, whale water designations and operating restrictions. Further the one year limitation on regulatory actions that could be initiated pursuant to § 13.30 was insufficient to address the two year evaluation and monitoring period that has been established as the minimum time period between any increases in entry levels. The National Park Service has determined that the rule making for these regulations meets

the requirements of Alaska National Interest Lands Conservation Act, section 1110(a) (Pub. L. 96-487). Section 13.30 was designed, in part, to address the closure provisions of section 1110(a) of ANILCA and those requirements have been satisfied. Since § 13.30 fails to adequately provide the administrative remedies to protect the whales, the National Park Service has modified the regulations and provided the Superintendent the necessary authority to modify use levels and establish vessel restrictions pursuant to § 13.65(b)(2). For this reason, references to § 13.30 have been removed from § 13.65.

The implementation of § 13.65(b)(2)(i) was clarified to mean that increases can be incremental up to 20%, but that any increase in use levels will be maintained for two years, during which use levels and entries will not be further increased. As a result, the entry and use levels will be set for two years instead of the annual adjustment originally specified. It is not practicable to initiate public hearing or comment regarding the establishment of whale waters and vessel operating restrictions, due to the mobility and unpredictability of the whales and the timeliness of the action required. Public notice, comment, standards and criteria have been established through the public participation process for this rule. However, informational meetings may be conducted to gather data as well as provide information to the general public.

A few commenters objected to a potential 20% increase. They felt it was too high an increase in any one year. Some commenters felt that an increase in vessel use should be allocated to the vessel categories that are less disruptive of whale behavior. The National Park Service will take a conservative approach in setting any percentage increase in vessel entries.

Pursuant to § 13.65(b)(2)(i), the superintendent may increase vessel entry and use levels by up to 20 percent above the 1976 base figures. This regulatory section would establish limitations on any such increase in accordance with the following excerpt from the NMFS Biological Opinion:

> We believe that no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remain equal to or is greater than the 1982 level. If under these conditions, the National Park Service proposes to increase total vessel use from the present level, NMFS believes that an additional increase of no more than 20 percent for the large ship and small vessel categories would be prudent.

Section 13.65(b)(2)(ii) has been amended to indicate, that an incremental increase may be implemented only if the number of whales entering Glacier Bay remains equal to or greater than the 1982 level. The whale monitoring activity during the whale season in 1982 resulted in the identification of 20 different whales within Glacier Bay. Whale monitoring will continue to occur each year between June 1 and August 31. An increase of 20% could be allowed if 20 different whales are identified and if research indicated the increase would be appropriate. Whale monitoring will also determine the length of stay of whales and which whales are returning from previous years. When determining comparability between the current year and 1982, the National Park Service will consider the length of observational period and observational effort. At this time whale residency will only be used as a secondary factor in determining comparability. The 1982 data was based on daily observations by five biologists between July 9 and August 16. Future year increases beyond this 20 percent level increase will require additional consultation with the National Marine Fisheries Service under section 7 of the Endangered Species Act and notice and comment rulemaking.

Several commenters suggested that mandatory requirements were not established to determine when the superintendent should lower entry and/or use level. Some individuals felt that the superintendent might lower vessel use levels without sufficient cause. Other individuals felt that the superintendent might use discretionary authority too sparingly. The National Park Service will amend the phrase, "that, in the superintendent's judgement" to "that whale research findings demonstrate".

The 1983 Biological Opinion states that "present level of vessel use and operational management of vessels in Glacier Bay are not likely to jeopardize the continued existence of Southeast Alaska humpback whale stock". It is therefore unlikely that any reduction of vessel entries below the 1976 base level will occur unless new research findings and additional consultation with the National Marine Fisheries Service indicate the possibility of jeopardy.

A few commenters suggested that the whale water designation procedures were subject to too much individual interpretation. The National Park Service disagrees. The decision to establish whale waters is based on several considerations. Among them are: (1) Consultation with the National Marine Fisheries Service; (2) actions consistent with the Glacier Bay National Park General Management Plan; (3) consultation with interested public agencies; (4) public comment; (5) vessel use traffic, and (6) research and whale monitoring activity in Glacier Bay. Most elements of the designation process have been utilized previously and worked well.

When considering the designation of whale waters the National Park Service will review the level of recent whale activity in the area, evidence of feeding, historic use of the location by whales, and expected level of vessel traffic in the vicinity. If an established feeding pattern is likely to be disrupted by vessels, whale waters will be designated.

Appropriate vessel use restrictions will be included in designated whale waters to prevent vessels from influencing whale behavior. Typically, these restrictions will require a reduced speed of ten knots or less and a steady, or mid-channel course when operating a vessel in whale waters. As in the past, the National Park Service will attempt to designate the minimum area necessary to provide for whale needs without unnecessarily restricting normal boating activities. When the whale leaves the area, the whale waters designation will be removed. By necessity, the National Park Service must be able to initiate the designation process quickly.

Some commenters suggested that under certain circumstances some of the provisions in the regulations would imperil life and property. The National Park Service recognizes that departure from these whale protection regulations may be necessary to avoid immediate danger to vessel or crew. In complying with the regulation, vessel operators shall give due regard to all dangers of navigation and collision. Vessels may enter sheltered waters in order to seek safe refuge from weather or for problems relating to the safe operation of the vessel.

Section 13.65(b)(3) Permits.

Most commenters recommended the continuation of some form of vessel entry restrictions. A few commenters recommended that private motor vessels be allowed to enter Bartlett Cove without a permit. The National Park Service will continue to impose entry limits on private motor vessels, within the entrance of Glacier Bay, to approximate 1976 entry levels as recommended by the National Marine Fisheries Service. Bartlett Cove cannot be exempted from the permit system since whale activity and feeding regularly occur within the cove. Bartlett Cove is one of the few adequate

anchorages and fuel docks in the region. Within the existing permit system provisions may be made for vessels to enter Bartlett Cove the day prior to issuance of a permit. It should be noted Bartlett Cove can be used as a safe anchorage anytime adverse weather or other circumstances affect the safety of vessel operation.

An error was made in presenting the figures for tour and charter vessels. The number of tour vessels entries should be 230. The original charter vessel entries should have been 217 with an adjusted total 226 as described below.

One commenter stated that the limit of 217 charter vessel entries during the whale season was inaccurate in that it did not include all of the actual charter vessel entries during June, July, and August of 1976 (the base period). The National Park Service reviewed the specific information provided and determined nine additional entries had been made during the base period by charter vessels based outside of Glacier Bay. Currently, 33 of the 217 charter vessel entries are allocated to vessels based outside of Glacier Bay. These nine entries allocated to vessels based outside of Glacier Bay bring the totals to 42 of the 226 total charter vessel entries.

Section 13.65(b)(3) of the regulations requires the superintendent to establish a permit system, requiring all motor vessel operators (except commercial fishing vessels engaged in fishing and official vessels of the State or Federal Government) to obtain a permit prior to entering Glacier Bay. The permit system would explain how permits could be obtained, and whom the vessel operator must contact upon entering, as well as outlining the number of vessels in the bay at any given time when whales are present.

One commenter suggested that kayaks be placed under the private permits. Another commenter suggested that sailboats and jet boats be excluded from the private permit. The National Park Service will continue to require permits for all motor vessels but not for nonmotorized vessels. The vessel operating restrictions apply to non-motorized vessels and should adequately limit the number and severity of interactions between whales and non-motorized vessels. Kayaks have not been shown to have disruptive effects on whales and they generally travel in areas infrequently used by whales.

Most commenters supported the exemption of commercial fishing vessels from the private permit system. A few commenters objected to this exemption because fishing boat design is similar to many private vessels that require permits. It was also suggested that commercial fishing vessels be restricted to 1976 levels. The National Park Service will continue to exempt commercial fishing vessels from the private permit system. The State limited entry requirements for many commercial fishing activities tend to limit total vessel numbers. The result is that vessel use in Glacier Bay during past summers has remained below 1976 levels. The only exception is the commercial halibut fishery where vessel use has increased in recent years. The commercial halibut season may occur during whale season. In the event that commercial fishing vessel levels approach the 1976 use levels a permit system will be established. Although some fishing vessels are identical in design to private vessels that require permits, most fishing activities require slow vessel operation that has little likelihood of being disruptive to whales.

Several commenters recommended that the vessel categories refer to number of "vessels per day" rather than "vessel entries per day" for cruise ships and tour boats in § 13.65(b)(3)(ii). The National Park Service agrees and has changed the wording so that the entries from a previous day would not create a situation where more than two cruise ships and three tour boats could be in the bay on a given day. Cruise ships are currently limited in their concession permits to a 14-hour stay per entry.

Section 13.65(b)(4) Operating Restrictions.

Several commenters recommended language changes in the operating restrictions section. The National Park Service, in reviewing this section, made several changes. The phrase "without changing into a reverse gear" was changed into "without shifting gears", thus eliminating the need for the fourth sentence of this section. The third sentence was amended to read "The vessel must be maintained on as steady a course as practicable away from the whale until one-quarter nautical mile of separation is established". Research has noted a close correlation between sudden changes in sound intensity and onset of whale behavior changes. Many of the sudden changes in sound intensity were the result of changes in engine speed or propeller pitch.

Several commenters objected to the fact that commercial fishing vessels which are actively trolling or setting long lines would be allowed to operate within one-fourth mile of a whale. Other commenters supported this exception and also recommended the "pulling long lines" be included. The National Park Service amended the regulations to include "setting or pulling long lines". These types of fishing methods involve operation of a vessel generally in a very slow, steady speed on a straight course without extreme fluctuation of engine RPM. Previously all fishing vessels were allowed within ¼ mile of a whale regardless of their fishing methods. Fishing methods other than trolling and setting or pulling long lines may involve erratic actions that might disrupt whales located within a one-quarter nautical mile radius of the activity. Another commenter objected to research vessels operating within one-quarter mile of a whale. Whale research vessels minimize operation time within close vicinity of whales to that which is necessary to sample whale prey or identify whale flukes. Vessel operation generally flows a slow and steady speed similar to trolling vessels.

Several commenters recommended that vessels be required to maintain a one-half mile distance from whales at all times. The National Park Service will retain the one-quarter mile distance requirement. The one-quarter mile distance was selected for three reasons: (1) Beyond this distance it is less likely that a vessel (especially smaller craft) will elicit strong behavioral responses from whales; (2) this distance is sufficient to allow vessel operators both to account for most sudden whale movements and to navigate safely away from a closing situation with whales; and (3) this is a distance which most vessel operators with average navigational ability can estimate. As discussed previously, the definition of pursue does incorporate a one-half nautical mile distance. Pursue means to alter a vessel's course or speed in a manner which results in retaining a vessel at a distance of less than one-half nautical mile from a whale.

Section 13.65(b)(5) Restricted Commercial Fishing Harvest.

A few commenters suggested that all commercial fisheries be restricted within Glacier Bay proper. The National Park Service feels that such a broad restriction is not justified by the result of currently available research with regard to humpback whale protection. Several small inlets within Glacier Bay National Park were designated by the Alaska National Interest Lands Conservation Act as wilderness waters and will be closed to commercial fishing harvest in accordance with the Wilderness Act.

The proposed regulation lists the various genera which have been identified as whale prey at some time in their life cycle. This list is not all inclusive, but represents those genera

which could be pursued by fishermen with consequent impact upon the whale's food supply. Pollock have been shown to be a significant humpback whale food item in Southeast Alaska. Therefore, pollock (Theragia), has been added to those genera that cannot be "actively fished for or retained if accidently caught" in Glacier Bay.

Numerous commenters supported the closure of Glacier Bay to shrimp harvest by trawling. However, many of the commenters recommended that Glacier Bay be opened to the commercial harvest of shrimp by shrimp pots. Although there is limited scientific evidence to determine the importance of various Pandalus species as whale food, it was generally suggested that the species caught by shrimp pots represent a sporadic food source for humpback whales.

The National Park Service will continue to restrict commercial harvest of Pandalopsis and Pandalus shrimp by any method. Some species of shrimp that actively swarm most of their life cycle are a food source for humpback whales. Bottom dwelling shrimp that tend to be caught by pot shrimping are free swimming during juvenile stages of their life cycle and could be food source for humpback whales. Also, studies have shown that baleen whales occasionally feed on bottom organisms. It should also be noted that whales in Glacier Bay frequently feed in shallow waters adjacent to the shoreline.

The National Park Service must manage conservatively because of the endangered species status of humpback whales. Commercial shrimp pot harvest tends to deplete shrimp stocks rapidly and requires frequent movement of pots to new areas. The restriction of commercial harvest of Pandalopsis and Pandallus applies only to Glacier Bay proper, where commercial harvest activity of shrimp was very limited in the past. Protection of marine species will allow researchers to study the relationship among natural food cycles, food availability, and whale behavior in Glacier Bay more accurately.

Temporary Restrictions

Several commenters recommended that motor vessel use limits and whale waters should be implemented through permanent rather than temporary regulations. The National Park Service will continue to develop, announce, and implement temporary restrictions as appropriate during a specific whale season. This will allow the superintendent to make appropriate adjustments to vessel use levels or whale water designations based on new research findings and whale monitoring observations.

Several commenters supported the issuance of permits based on seven vessel use days rather than seven calendar days for individuals from local communities. Some of these commenters indicated that all individuals residing in the Icy Strait region should be included and not just the four listed communities. The National Park Service will amend the temporary restrictions to read "those individuals living in or near Gustavus, Hoonah, Pelican, Elfin Cove, and Excursion Inlet". Individuals living adjacent to the boundaries of these communities could also be provided permits based on actual vessel use days. Much of the past local use has been sport fishing activity that has involved sporadic single day entries into the bay. This type of local use was not adequately recorded in 1976 vessel counts but is now included under the vessel entry restrictions. The allocation of vessel use days for local residents will result in increased permit availability for private vessel operators from more distant locations without increasing the total vessel use days beyond 1976 levels.

One commenter suggested that charter boat entries of local charter operators be altered by changing the accompanying calendar days to use days. The National Park Service disagrees with this suggestion. The charter boat entries are established by concession permit and reflect the actual entries in 1976.

Several commenters suggested that vessel use should have been allowed to increase in 1984. They felt vessel limits are currently too restrictive. Some individuals also felt that the limits may not accurately reflect actual use in 1976. The National Park Service does not agree with these comments except as previously noted for charter boats. The vessel entry levels were determined from the best available historic use data for 1976.

The National Park Service Organic Act, 16 U.S.C. 1, the Endangered Species Act, 16 U.S.C. 1536(a), and the Marine Mammal Protection Act, 16 U.S.C. 1361(2) and 1332(a), mandate the National Park Service to take actions necessary and appropriate to conserve the humpback whale within Glacier Bay. Because scientific data indicate that humpback whales react adversely to interactions with some vessels the National Park Service deems it necessary and appropriate to impose the regulations.

In establishing temporary restrictions, the National Park Service will be guided by consultation with NMFS, input received during public hearings on the development of these regulations, as well as during the development of the General Management Plan, and ongoing research and whale monitoring. Moreover, the National Park Service must review and evaluate whale activity for the full preceding season before considering adjusting entry limits. For these reasons, the National Park Service expects to set entry and use levels for those classes of vessels that have met the two year mandatory period or are otherwise eligible for an entry adjustment as a result of not previously benefiting from an increased entry allocation. The date of September 30 would allow 30 days from the end of whale season for the National Park Service to analyze research, compile data and make the necessary determinations. In addition, it would allow eligible permittees time to make known their needs for the season.

The National Park Service is currently considering fair and equitable methods for allocating possible additional vessel entries in future years. Vessel noise is a major concern in the management of the humpback whale environment in Glacier Bay. A 20 decibel sound level spread exists between the quietest and the loudest cruise ships. A 20db gain would be equivalent to a hundred-fold increase. Smaller boat sound signatures also vary significantly.

Several commenters recommended that any additional authorized entries should be allocated to the quieter vessels within each class. If expanded acoustical and behavioral research supports such actions, the National Park Service may indeed give preference to quieter vessels in the future.

Two commenters felt that the whale water designation "between the mouth of Glacier Bay and a line drawn from the northern tip of Strawberry Island to the northern tip of Lars Island" should be expanded to include more of Glacier Bay. Additional commenters suggested that whale water designations be included as a part of the final rule instead of as a temporary restriction. Other individuals recommended that no "season-long" whale water designation be established in the temporary restrictions. They suggested the whale waters be designated only after repeated sightings of whales. For 1985, the National Park Service will leave whale water designations unchanged. The designated area is based on frequent and consistent historic use by humpback whales. This area includes the entrance of Glacier Bay where all whales must pass before dispersing to

various locations within the Bay. Additional whale waters can be added during the whale season if necessary in accordance with 36 CFR 13.65(b)(2).

Provisions for monitoring are an administrative rather than a regulatory concern. The National Park Service recognizes that this is an issue of the utmost gravity and will pursue its monitoring responsibilities with vigor and diligence. Whale monitoring will be conducted from vessel and shore stations to determine how many individual whales enter Glacier Bay during the season and how long they remain. Whale monitoring will occur during the whale season, June 1 to August 31. The only way to obtain the information accurately is by fluke photo-identification. The amount of time needed for an experienced whale biologist to conduct whale monitoring activities is somewhat dependent on: (1) how many whales enter, (2) where whales spend most of their time and their mobility, and (3) weather and sea conditions.

Several commenters objected to the 10 knot speed limit designated in whale waters. They stated the 10 knot speed hampered commercial fishing vessel transiting and tour vessel scheduling. The National Park Service will maintain the 10 knot speed limit in effect for the 1985 restrictions. Acoustical research has shown that vessels operating at 10 knots were 7 to 11 db quieter than at 15 or more knots. Radiant noise from ships has been found to contribute significantly to underwater sound levels.

Although whale vocalization is infrequent in Glacier Bay, the possibility of limited masking of whale vocalizations by similar frequency sounds from vessels exists. If expanded acoustical and behavioral research indicated that noise duration is more important than noise level, future regulations may allow faster travel through the lower bay.

One commenter objecting to the speed limit alleged that such speed would reduce planing hull vessel efficiency and maneuverability. If vessel safety is endangered then vessel operation can be modified. However, discussions with the United States Coast Guard indicate that a speed limit of 10 knots relative to the water will not normally endanger vessel safety.

Open skiffs are common up to 18 feet in length. For this reason the exception to the mid-channel rule in whale waters has been increased from 16 to 18 foot vessels.

Trawling Within the Waters of Glacier Bay

On April 6, 1983 the National Park Service published regulations that proposed to close certain areas within Glacier Bay National Park to the use of aircraft, motorboats and snowmobiles. Included within these proposed regulations was a proposal to prohibit trawling within the waters of Glacier Bay. This proposal was subject to public review and hearing during the comment period which began on April 6, 1983 and ran for 120 days until August 6, 1983. Since the prohibition on trawling is not related to the other access issues the National Park Service has determined that it is necessary and appropriate to set forth the final rule in this rulemaking.

The regulation is designed to protect the bottom environment of the bay and those small crustaceans which are a food source of the endangered humpback whale. It was originally proposed as § 13.65(a)(6). Public comment on the proposal was limited and failed to provide convincing rationale that the proposal should be modified or withdrawn. Therefore, National Park Service has adopted the regulation and it will be codified at § 13.65(b)(6).

Bottom trawling is a fishing method which disrupts feed beds and changes the contour of the bottom of the bay, causing serious resource damage to the bottom ecosystem. Non-commercial, non-targeted species are frequently taken by bottom trawling and the fishing method causes unnatural changes in bottom habitat. These unnatural changes include the selective destruction of sessile organisms such as sea pens and their replacement by more motile organisms. Even in midwater trawling, non-targeted, incidental species are frequently taken. These include significant numbers of shrimp (Pandalidae), a food source of the humpback whale. In summary, the National Park Service has determined that the closure is essential to protect the bottom ecosystem of the bay and those organisms which serve as a food source for the endangered humpback whale and other species.

Temporary Restrictions for June 1–August 31, 1985

The following temporary restrictions are established pursuant to the authority of 36 CFR 13.30. These are presented for informational purposes and as an example of future restrictions that may be imposed under the authority of § 13.65(b)(2). The National Park Service announced its 1985 vessel entry and use levels, whale water designations, and permit system details through publication in the state and local media and public meetings. The temporary restrictions were also subject to public meetings on October 2 and 3, 1984, in Juneau and Gustavus.

In accordance with NMFS biological opinion the temporary restrictions reflect an increase in vessel traffic for 1985.

The following temporary restrictions are to be applied for 1985 in conjunction with permanent regulations set forth in 13.65(b). These temporary restrictions describe activities that are prohibited.

I. Permit System Details for 1985

A. The number of cruiseship, tour vessel, and charter vessel entries into Glacier Bay will be limited by means of concession agreements.

B. Private motor vessels will be limited by vessel permits within Glacier Bay.

1. Private motor vessel permits will be issued up to 60 days in advance on a first come basis for up to seven calendar days. Only two consecutive permits may be issued to any motor vessel operator, except between July 1 and July 15 when only one permit will be issued. Five entry permits may be issued each day between June 14 and August 15, and three permits may be issued each day during the remainder of whale season. Motor vessel operators must confirm their permits 48 hours in advance of their scheduled entry.

Unconfirmed reservations will be canceled. Permits can be obtained by contacting Glacier Bay National Park and Preserve, Gustavus, Alaska 99826. Phone (907) 697-2268.

2. Local private vessels—those individuals living in or near Gustavus, Hoonah, Pelican, Elfin Cove, and Excursion Inlet—may be issued entry permits in accordance with the private vessel permit system. These permits for local private motor vessels will be valid for seven use days rather than seven calendar days.

C. Prior to entry into or departure from Glacier Bay, all motor vessel operators must notify the park office by phone at (907) 697-2268 or marine radio, channel 16, KWM20, Bartlett Cove.

II. Motor Vessel Entry and Use Levels for 1985

A. Cruiseship entries into Glacier Bay are limited:

1. To two cruiseships per day;
2. To no more than two vessels in the bay on any given day;
3. To a total of 102 use days.

B. Tour vessel entries into Glacier Bay are limited:

1. To three tour vessels per day;
2. To no more than three vessels in the bay on any given day;
3. To the 229 use days currently authorized by concession agreements.

C. Charter vessel entries into Glacier Bay are limited:

1. To the 271 authorized in concession agreements;

2. To no more than five vessels in the bay any given day;
3. To a total of 511 use days.

D. Private motor vessel entries into Glacier Bay are limited:
1. To 407 vessel entries per whale season;
2. To 25 vessels in the bay on any given day;
3. To 1714 vessel use days during whale season.

III. Whale Water Designation

A. Whale Waters

Designated whale waters are located between the mouth of Glacier Bay and a line drawn from the northern tip of Strawberry Island to the northern tip of Lars Island, including Bartlett Cove and Beardslee Entrance.

B. Vessel Operations

Operators of motorized vessels in these whale waters will maintain speeds of ten knots or less through the water. Operators of motorized vessels over 18 feet in length, that are not engaged in fishing or under sail, will navigate as close to the mid-channel course as possible between the northern and southern limits of these whale waters. Where possible, motor vessels shall remain at least one mile from the shoreline at all times

Drafting Information

The primary authors of these regulations are Michael J. Tollefson and Gary W. Vequist, Glacier Bay National Park and Preserve.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501, et seq., and assigned clearance number 1024–0016.

Compliance With Other Laws

The National Park Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). In accordance with the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601 et seq.), the National Park Service has determined that these regulations will not have a significant economic effect on a substantial number of small entities, nor do they require the preparation of a regulatory analysis. The National Park Service makes this finding because the proposed regulations will impose no significant costs on any class or group of small entities.

As required by the National Environmental Policy Act (42 U.S.C. 4322, *et seq.*), the National Park Service has prepared an environmental assessment and a Finding of No Significant Impact. Copies of these documents are available at the address listed at the beginning of this rulemaking. In addition the National Park Service has consulted with NMFS as required by section 7 of the Endangered Species Act.

List of Subjects

36 CFR Part 7

National Parks.

36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Vessel traffic regulations.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. Revise the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C 1361, 1531.

2. Add a new § 13.65 as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) [Reserved]

(b) *Whale Protection*—(1) *Definitions.* As used in this section:

"Charter Vessel" means any motor vessel under 100 tons gross that is rated to carry up to 49 passengers for hire on an unscheduled basis.

"Commercial Fishing Vessel" means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

"Cruise Ship" means any motor vessel at or over 100 tons gross carrying passengers for hire.

"Entry" means each time a motor vessel passes the mouth of Glacier Bay on the way into the bay; each time a private motor vessel activates or extends a permit; each time a vessel based at Bartlett Cove leaves the dock, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside the park; or the first time a local private motor vessel utilizes a day of the seven use day permit.

"Glacier Bay" means all marine waters within Glacier Bay National Park north of the mouth of Glacier Bay, defined as an imaginary line between Point Gustavus and Point Carolus.

"Motor Vessel" means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power.

"Private Vessel" means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing, or official business.

"Pursue" means to alter a vessel's course or speed in a manner which results in retaining a vessel at a distance less than one-half nautical mile from a whale.

"Tour Vessel" means any motor vessel under 100 tons gross that is rated to carry more than 49 passengers for hire or any smaller motor vessel regularly scheduled for hire.

"Vessel" includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

"Vessel Use Day" means any continuous period of time that a vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

"Whale" means any humpback whale (*Megaptera novaeangliae*).

"Whale Season" means the period from June 1 through and including August 31 of each year.

"Whale Waters" means any portion of Glacier Bay, designated by the Superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) *Public Use Limits and Temporary Restrictions*—(i) *Authority.* Consistent with the Biological Opinion issued on June 22, 1983, or as such may be modified or supplemented by the National Marine Fisheries Service the superintendent may:

(A) Increase the vessel entry and use levels incrementally by up to 20% above the 1976 levels for any or all categories of vessels as listed in paragraph (b)(3)(ii) of this section.

(B) Designate whale waters and establish temporary vessel use restrictions upon a determination that such action is necessary to conserve the humpback whale and the supporting habitat.

(ii) An incremental increase authorized pursuant to paragraph (b)(2)(i)(A) of this section may be implemented only if the number of whales entering Glacier Bay remains equal to or is greater than the 1982 level and only following public notice and hearing in the vicinity and other areas as appropriate. An increase allocated to any class of vessels shall be followed by two years during which entry and use levels for the affected class of vessels remain at or below the increased allocation. The superintendent shall lower entry and or use levels by any percentage necessary to achieve a level

that whale research findings demonstrate will not be detrimental to the humpback whale.

(iii) The superintendent shall base the establishment of public use limits, the designation of whale waters and the establishment of temporary vessel use restrictions on the following factors:

(A) Consultation with the National Marine Fisheries Service;

(B) Glacier Bay National Park and Preserve General Management Plan;

(C) Consultation with interested public agencies;

(D) Research and monitoring of whale activity in Glacier Bay;

(E) Public and vessel operators comments;

(F) Vessel traffic patterns; and

(G) Such other considerations as may be deemed appropriate.

(iv) Maps of designated whale waters and notices of applicable vessel use restrictions shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners".

(v) Failure to comply with public use limits, designated whale waters, or vessel use restrictions established pursuant to paragraph (b)(2)(i) of this section is prohibited.

(3) *Permits.* (i) The superintendent shall develop, and implement a motor vessels permit system which details:

(A) How permits can be obtained;

(B) Whom the operator must contact when entering and leaving Glacier Bay;

(C) The maximum number of motor vessel entries to be allowed each day during the whale season;

(D) The maximum number of motor vessels to be allowed in Glacier Bay on any given day during the whale season;

(E) The maximum number of motor vessel use days for the whale season;

(F) The allocation of entry permits among commercial and private motor vessels; and

(G) The maximum length of stay in Glacier Bay for motor vessels.

(ii) The superintendent shall base the permit system on the following base figures derived from 1976 motor vessel use:

(A) Cruise ships are limited to two vessels within Glacier Bay on any given day with a total of no more than 89 vessel use days during the whale season.

(B) Tour vessels are limited to three vessels within Glacier Bay on any given day with a total of no more than 230 vessel use days during the whale season.

(C) Charter vessels are limited to five vessels within Glacier Bay on a given day with a total of no more than 226 entries and 426 vessel use days during whale season.

(D) Private vessels are limited to 21 vessels within Glacier Bay per day with a total of no more than 339 entries and 1428 vessel use days during whale season.

(iii) Operating a motor vessel in Glacier Bay without a permit issued pursuant to this section is prohibited, except:

(A) A commercial fishing vessel engaged in commercial fishing within Glacier Bay, *provided* that commercial fishing vessel use levels remain at or below their 1976 use levels; or

(B) A motor vessel engaged in official business of the State or Federal government.

(4) *Operating Restrictions.* Except for a vessel being used in conjunction with official whale research or monitoring for the Federal government or a commercial fishing vessel actively trolling or being used to set or pull long lines, the following are prohibited:

(i) Operating a vessel within one-quarter nautical mile of a whale. The operator of any vessel accidentally positioned within one-quarter nautical mile of a whale shall slow the vessel to ten knots or less without shifting gears unless impact is likely. The operator shall then maintain the vessel on as steady a course as possible away from the whale until one quarter nautical mile of separation is established.

(ii) Pursuing or attempting to pursue a whale.

(5) *Restricted Commercial Fishing Harvest.* Fishing for, or retaining if accidentally caught, herring (Clupea), capeline (Mallotus), sandlance (Ammodytes), pollock (Theragra), euphausids (Thalasia), or shrimp (Pandalus and Pandalopsis) within Glacier Bay is prohibited.

(6) Trawling within Glacier Bay is prohibited.

(7) The information collection requirements contained in paragraph (b)(3) of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1024–0016. The information is being collected to allow the superintendent to issue permits to allow vessels into Glacier Bay during the whale season. This information will be used to grant administrative benefits.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

§ 7.23 [Reserved]

3. The authority for Part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

4. Remove and reserve § 7.23.

Dated: April 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11249 Filed 5-9-85; 8:45 am]

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federal register

Friday
May 10, 1985

Part V

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On May 1, 1985, the President issued Executive Order 12513, declaring a national emergency with respect to Nicaragua, invoking the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordering specified controls with respect to Nicaragua, and delegating his authority under that Act to the Secretary of the Treasury. In implementation of that order, the Treasury Department is issuing the Nicaraguan Trade Control Regulations. These Regulations: (a) prohibit imports into the United States of goods and services of Nicaraguan origin; (b) prohibit exports from the United States of goods to Nicaragua, except those for the organized democratic resistance; (c) prohibit vessels of Nicaraguan registry from entering U.S. ports; (d) prohibit transport by Nicaraguan air carriers to or from the United States; and (e) prohibit transactions relating to the preceding prohibitions.

EFFECTIVE DATE: 12:01 a.m. Eastern Daylight Time, May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376–0395.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the **Federal Register**.

List of Subjects in 31 CFR Part 540

Foreign trade, Nicaragua, Penalties.

Accordingly, 31 CFR Chapter V is amended by adding a new Part 540 to read as follows:

PART 540—NICARAGUAN TRADE CONTROL REGULATIONS

Authority: Secs. 201–207, 91 Stat. 1626 (50 U.S.C. 1701–1706); E.O. 12513.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 540.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 500, 505, 515, 520, and 535 of this chapter. Those parts do not relate to Nicaragua. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. In addition, licenses or authorizations contained in or issued pursuant to any other provision of law or regulations do not authorize any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations. For example, no license or authorization contained in or issued pursuant to this part authorizes the export of goods or the export of technical data for which a validated license would be required under the Export Administration Regulations (15 CFR Part 368 *et seq.*) in the absence of such validated license.

Subpart B—Prohibitions

§ 540.204 Prohibited imports of goods and services from Nicaragua.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, the following may not be imported into the United States:

(a) Services of Nicaraguan origin; or

(b) Goods of Nicaraguan origin.

§ 540.205 Prohibited exports of goods to Nicaragua.

Except as authorized, no goods may be exported from the United States either to or destined for Nicaragua, except those for the organized democratic resistance, and except donated articles such as food, clothing, and medicine, intended to be used to relieve human suffering.

§ 540.206 Prohibited transactions with Nicaraguan vessels.

Vessels of Nicaraguan registry are prohibited from entering into United States ports.

§ 540.207 Prohibited transactions with Nicaraguan air carriers.

Nicaraguan air carriers are prohibited from providing air transportation to or from points in the United States.

§ 540.208 Prohibited related transactions.

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data subject to the prohibitions of this part, with knowledge or reason to know that a violation of the International Emergency Economic Powers Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to such commodity or technical data.

(b) Payments are not prohibited if the transaction to which they relate is not prohibited.

§ 540.209 Evasions; effective date.

(a) Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

(b) Unless otherwise specified, the prohibitions in this part shall be effective from 12:01 a.m., Eastern Daylight Time, May 7, 1985.

Subpart C—General Definitions

§ 540.301 Effective date.

The term "effective date" means 12:01 a.m., Eastern Daylight Time, May 7, 1985.

§ 540.302 Nicaragua; Nicaraguan.

The term "Nicaragua" means the country of Nicaragua and any Nicaraguan territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof, or any territory which is controlled or occupied by the military, naval or police forces or other authority of Nicaragua. The term "Nicaraguan" means pertaining to Nicaragua as defined in this section.

§ 540.308 Person.

The term "person" means an individual, partnership, association, corporation or other organization.

§ 540.316 Nicaraguan origin.

The term "goods or services of Nicaraguan origin" includes:

(a) Goods produced, manufactured, grown, or processed within Nicaragua;

(b) Goods which have entered into Nicaraguan commerce; and

(c) Services performed in Nicaragua or by a Nicaraguan national. However, the term "services of Nicaraguan origin" does not include diplomatic and consular services performed on behalf of the Nicaraguan Government.

§ 540.321 United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof, including the Trust Territory of the Pacific Islands.

Subpart D—Interpretations

§ 540.401 Offshore transactions.

(a) The prohibitions contained in section 540.204 do not apply to the importation into locations outside the United States of goods or services of Nicaraguan origin.

(b) The prohibitions contained in § 540.205 do not apply to the export of goods to or destined for Nicaragua from locations outside the United States.

§ 540.402 Technical data.

The term "goods" shall include, *inter alia*, technical data in tangible form including, but not limited to, a model, prototype, blueprint, drawing, operating manual, computer software, tape recording, microfiche, or other material in machine readable form. The term "goods" does not apply to oral transmission of technical data in the course of performance of services, telephone communications, lectures, seminars, or plant visits.

§ 540.403 Imports of services of Nicaraguan origin.

(a) Services of Nicaraguan origin are imported into the United States when:

(1) Such services are performed in Nicaragua and are contracted for, or on behalf of, a person within the United States and for the benefit of a person within the United States; or

(2) Such services are performed in the United States by a national of Nicaragua who is in the United States for purposes of performing such services as an employee or contractor of a business or governmental entity located in Nicaragua.

Example #1: A company located in the United States requests an opinion from a Nicaraguan accounting firm. Section 540.204 prohibits the U.S. firm from contracting for and receiving such an opinion.

Example #2: A company located in the United States contracts with an airline company located in Nicaragua to provide maintenance personnel for the U.S. company's aircraft in the United States. Section 540.204 prohibits the U.S. company from contracting for and receiving such services.

(b) Services of Nicaraguan origin are not imported into the United States when such services are provided in the United States by a Nicaraguan national who, during indefinite residency in the United States, works as, for example, a teacher, athlete, restaurant or domestic worker, or a person employed in any other regular occupation.

(c) Section 540.204 does not prohibit a U.S. person from obtaining technical, custodial, legal, accounting, banking, shipping, or other services from Nicaragua when they are to be rendered outside the United States, including in Nicaragua.

§ 540.404 Transshipment through United States prohibited.

(a) The prohibitions in § 540.205 apply to the import into the United States, for transshipment or transit, of goods which are intended or destined for Nicaragua.

(b) The prohibitions in § 540.204 apply to the import into the United States, for transshipment or transit, of goods of Nicaraguan origin which are intended or destined for third countries.

§ 540.405 Imports from third countries; transshipments.

(a) Imports into the United States from third countries of goods containing raw materials or components of Nicaraguan origin are not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

(b) Imports into the United States of goods of Nicaraguan origin that have been transshipped through a third country without being incorporated into manufactured products or otherwise substantially transformed in a third country are prohibited.

§ 540.406 Exports to third countries; transshipments.

(a) Exports from the United States to third countries of goods to be incorporated into products for re-export to Nicaragua are not prohibited where the exporter has reasonable cause to

believe that the goods will be incorporated into manufactured products or otherwise substantially transformed before shipment to Nicaragua.

(b) Exports from the United States to third countries are prohibited where the exporter has reason to believe that the goods will be transshipped to Nicaragua without being incorporated into manufactured products or otherwise substantially transformed in a third country.

§ 540.407 Imports into bonded warehouse or foreign trade zone.

The prohibition in § 540.204 applies to imports into a bonded warehouse or foreign trade zone of the United States.

§ 540.408 Release from bonded warehouse or foreign trade zone.

Section 540.204 does not prohibit the release from a bonded warehouse or a foreign trade zone of goods of Nicaraguan origin imported into a bonded warehouse or a foreign trade zone prior to the effective date.

§ 540.409 Import and export of goods in transit before the effective date.

(a) Section 540.204 does not apply to goods: (1) If imported by vessel, where the vessel arrives within the limits of a port in the United States prior to the effective date with the intent to unlade such goods; or (2) if imported other than by vessel, where the goods arrive within the Customs territory of the United States before the effective date.

(b) Section 540.205 does not apply to goods: (1) If exported by vessel or airline, where the goods are laden on board before the effective date; or (2) if exported other than by vessel or airplane where the goods have left the United States before the effective date.

(c) Payments relating to goods described in paragraph (a) and (b) of this section are authorized, even where such related payments occur after the effective date.

§ 540.410 Transactions relating to unprohibited offshore transactions.

The prohibitions in Subpart B do not extend to transactions by a person located in the United States relating to transactions outside the United States which are themselves not prohibited by Subpart B, such as financial, service or brokerage transactions involving offshore transactions with Nicaragua.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 540.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transactions prohibited by any provision of Parts 500, 505, 515, 520, or 535 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law

§ 540.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 540.504 Imports paid for prior to May 1, 1985.

(a) Goods of Nicaraguan origin that were entirely paid for prior to May 1, 1985, may be imported into the United States after the effective date, upon certification by the importer to U.S. Customs of the prior full payment.

(b) Upon application to the Office of Foreign Assets Control, specific licenses may be issued authorizing the importation into the United States after the effective date of:

(1) Goods of Nicaraguan origin that were partially paid for prior to May 1, 1985; and

(2) Services of Nicaraguan origin that were fully or partially paid for prior to May 1, 1985.

§ 540.505 Exports pursuant to prior contractual commitments.

(a) Goods that were in transit to Nicaragua before the effective date may be exported in accordance with the provisions of § 540.409.

(b) Specific licenses will normally be granted authorizing the export of goods from the United States to Nicaragua after the effective date and before November 1, 1985, provided the exporter demonstrates that it has a legal obligation to export the goods to Nicaragua under a contract entered into prior to May 1, 1985, and either that:

(1) The exporter's obligation is guaranteed under an outstanding performance bond which can successfully be invoked by the Nicaraguan importer; or

(2) The exporter is unable to sell the goods to any other purchaser without incurring a loss.

§ 540.533 Certain exports authorized.

(a) All transactions ordinarily incident to the exportation of any item, commodities, or products from the United States to or destined for Nicaragua are authorized if such exports are authorized under one or more of the following regulations administered by the Department of Commerce:

(1) 15 CFR 371.6, General license BAGGAGE: accompanied and unaccompanied baggage;

(2) 15 CFR 371.13, General license GUS: Shipments to personnel and agencies of the U.S. Government;

(3) 15 CFR 371.18, General license GIFT: Shipments of gift parcels;

(4) 15 CFR 379.3, General license GTDA: technical data available to all destinations;

(5) 15 CFR 371.19, General license GATS: relating to foreign-registry civil aircraft (except that transactions relating to Nicaraguan-registered air carriers are not authorized), and to U.S air carrier aircraft and other U.S.-registry civil aircraft.

(b) All transactions are authorized ordinarily incident to the exportation from the United States to or destined for Nicaragua of the following items described as cited:

(1) 15 CFR 399.1, Commodity Control List, Group 5, CCL No. 7599I: microfilm

that reproduces the content of certain publications, and similar materials.

(2) 15 CFR 399.1, Commodity Control List, Group 9, CCL No. 7999I: certain publications and related materials.

§ 540.534 Certain imports for diplomatic or official personnel authorized.

All transactions ordinarily incident to the importation of any goods or services into the United States from Nicaragua are authorized if such imports are destined for official or personal use by personnel employed by Nicaraguan diplomatic missions or Nicaraguan missions to international organizations located in the United States, and such imports are not for resale.

§ 540.535 Certain services relating to participation in various events authorized.

The importation of services of Nicaraguan origin into the United States is authorized where a Nicaraguan national enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event.

§ 540.536 Import of publications authorized.

The importation into the United States is authorized of all Nicaraguan publications, including books, newspapers, magazines, films, phonograph records, tape recordings, photographs, microfilm, microfiche, posters, and similar materials.

§ 540.537 Import of certain gifts authorized.

The importation into the United States is authorized for goods of Nicaraguan origin sent as gifts to persons in the United States where the value of the gift is not more than $100.

§ 540.538 Import of accompanied baggage authorized.

Persons entering the United States directly or indirectly from Nicaragua are authorized to import into the United States personal accompanied baggage normally incident to travel.

§ 540.539 Commercial exports of certain medical supplies.

Commercial exports to Nicaragua of medicines and supplies intended strictly for medical purposes are authorized.

§ 540.540 Exports for humanitarian, educational, and religious purposes.

Applications for specific licenses to export goods to Nicaragua for humanitarian, educational, or religious purposes will be considered on a case-by-case basis.

§ 540.541 Certain exports by intergovernmental organizations.

Applications by intergovernmental organizations in the United States for exportation of U.S. goods to Nicaragua will be considered on a case-by-case basis.

§ 540.542 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Nicaragua are authorized.

Subpart F—Reports

§ 540.601 Required records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction in which he engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§ 540.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, investigate any such transaction or property or any violation of the provisions of this part regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 540.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act, which provides in part:

> A civil penalty not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.
>
> Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

This section of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 540.702 Detention of shipments.

Import shipments into the United States of goods of Nicaraguan origin in violation of § 540.204 and export shipments from the United States of goods to or destined for Nicaragua in violation of § 540.205 shall be detained. No such import or export shall be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Such shipments shall be subject to licensing, penalties, or forfeiture action, under the Customs laws or other applicable provision of law, depending on the circumstances.

Subpart H—Procedures

§ 540.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses.

(b) *Specific licenses.*— (1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific licenses. The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Federal Reserve Bank of New York.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part are to be filed in duplicate with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* The applicant must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury or the Office of Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any designated person, agency, or instrumentality.

§ 540.803 Decisions.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute a final agency action.

§ 540.805 Amendment, modification, or revocation.

The provisions of this part and any rulings; licenses, whether general or specific; authorizations; instructions; orders; or forms issued hereunder may be amended, modified, or revoked at any time.

§ 540.806 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, and except when interpretative rules, general statements of policy, or rules of agency organization, practice, or procedure are involved or when notice and public procedure are impracticable, unnecessary or contrary to the public interest, interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with oral presentation in the discretion of the Director. In general, rulemaking by the the Office of Foreign Assets Control involves foreign affairs functions of the United States. Wherever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment or repeal of any rule.

§ 540.807 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12513 or the International Emergency Economic Powers Act may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 540.808 Customs procedures: merchandise specified in § 540.204.

(a) With respect to merchandise specified in Section 540.204 appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Entry, transfer or withdrawal from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone, unless either:

(i) The merchandise was imported prior to 12:01 a.m., May 7, 1985, or

(ii) A specific license pursuant to this part is presented, or

(iii) Instructions from the Office of Foreign Assets Control, either direct or through the Federal Reserve Bank of New York, authorizing the transaction are received.

(b) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the appropriate Customs officers in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation shall be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its

issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(c) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license is required in connection therewith, the appropriate Customs officer shall withhold action thereon and shall advise such person to communicate directly with the Federal Reserve Bank of New York, Foreign Assets Control Division, to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto.

§ 540.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with the Nicaraguan Trade Control Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

Dated: May 8, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved.

John M. Walker, Jr.,

Assistant Secretary, Enforcement & Operations.

[FR Doc. 85-11522 Filed 5-8-85; 5:04 pm]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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federal register

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Selected Subjects

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Radio and Television Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Federal Energy Regulatory Commission

Retirement
Personnel Management Office

Surface Mining
Surface Mining Reclamation and Enforcement Office

Veterans
Defense Department
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 85-029]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the National Poultry Improvement Plan (NPIP) and its auxiliary provisions by: (1) Amending the definition of Salmonella to include the arizona group; (2) adding the microhemagglutination inhibition test and the enzyme-labeled immunosorbent assay (ELISA) test as supplemental tests for *M. gallisepticum* and *M. synoviae* for chicken breeding flocks and turkey breeding flocks and as a supplemental test for *M. meleagridis* for turkey breeding flocks; (3) establishing criteria for allowing egg yolk testing for monitoring testing for the *M. gallisepticum* and *M. synoviae* classifications for multiplier chicken breeding flocks; (4) establishing criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens"; (5) establishing criteria for classifying turkey breeding flocks as "U.S. M. Synoviae Clean"; (6) providing that primary breeding flocks of waterfowl and of exhibition poultry located in U.S. Pullorum-Typhoid Clean States may be qualified under certain conditions as "U.S. Pullorum-Typhoid Clean" with less than an annual test of 300 birds; (7) and establishing procedures for filling vacancies of certain positions on the General Conference Committee. It has been determined that changes (1) through (6) are necessary in order to incorporate in the NPIP the latest effective procedures to facilitate control of poultry diseases. The intended effect is to improve poultry and poultry products. It has been determined that change (7) is warranted in order to help provide orderly procedures for ensuring full and fair participation on the General Conference Committee.

EFFECTIVE DATE: June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 828, Federal Building, Hyattsville, MD 20782, (301) 436-5140.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on January 18, 1985 (50 FR 2684-2689), the Department proposed to amend portions of the provisions governing the National Poultry Improvement Plan and Auxiliary Provisions (contained in 9 CFR Parts 145 and 147 and referred to below as the regulations) by (1) amending the definition of Salmonella to include the arizona group; (2) adding the microhemagglutination inhibition test and the enzyme-labeled immunosorbent assay (ELISA) test as supplemental tests for *M. gallisepticum* and *M. synoviae* for chicken breeding flocks and turkey breeding flocks and as a supplemental test for *M. meleagridis* for turkey breeding flocks; (3) establishing criteria for allowing egg yolk testing for monitoring testing for the *M. gallisepticum* and *M. synoviae* classifications for multiplier chicken breeding flocks; (4) establishing criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens"; (5) establishing criteria for classifying turkey breeding flocks as "U.S. M. Synoviae Clean"; (6) providing that primary breeding flocks of waterfowl and of exhibition poultry located in U.S. Pullorum-Typhoid Clean States may be qualified under certain conditions as "U.S. Pullorum-Typhoid Clean" with less than an annual test of 300 birds; (7) and establishing procedures for filling vacancies of certain positions on the General Conference Committee.

Comments were solicited concerning the proposal for a 60-day period ending March 19, 1985. Three comments were received. These comments were from representatives of the poultry industry. These comments have been carefully considered and are discussed below. Based on the reasons set forth in the proposal, the provisions of the proposal have been adopted in the final rule except as explained below.

U.S. M. Gallisepticum Clean State, Meat-Type Chickens

The three comments concerned the proposal to establish a new § 145.34(b) to set forth a mechanism for designating a State as a "U.S. M. Gallisepticum Clean State, Meat-Type Chickens." Proposed § 145.34(b) provided the following:

U.S. M. Gallisepticum Clean State, Meat-Type Chickens. (1) A State will be declared a U.S. M. Gallisepticum Clean State, Meat-Type Chickens, when it has been determined by the Service that:

(i) No *M. gallisepticum* is known to exist nor to have existed in meat-type chicken breeding flocks in production within the State during the preceding 12 months;

(ii) All meat-type chicken breeding flocks in production are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iii) All hatcheries within the State which handle meat-type chicken products must handle products which are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iv) All shipments of meat-type chicken products other than those classified as U.S. M. Gallisepticum Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all meat-type chicken specimens that have been identified as being infected with *M. gallisepticum;*

(vi) All reports of *M. gallisepticum* infection in meat-type chickens are promptly followed by an investigation by the Official State Agency to determine the origin of the infection;

(vii) All meat-type chicken flocks found to be infected with *M. gallisepticum* are quarantined until marketed under supervision of the Official State Agency.

(2) Discontinuation of any of the conditions described in paragraph (b)(1) of this section, or if repeated outbreaks of *M. gallisepticum* occur in meat-type chicken breeding flocks described in paragraph (b)(1)(ii) of this

section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing.

The three commenters apparently were concerned that the terms "meat-type chicken products," "meat-type chicken specimens," "meat-type chickens," and "meat-type chicken flocks" as used in proposed § 145.34(b) would be interpreted to include products, specimens, chickens, and flocks from other than meat-type chicken breeding flocks. The commenters requested that the regulations be clarified to indicate that a State's eligibility for such a designation would depend solely on factors relating to meat-type chicken breeding flocks and would not depend on factors relating to any other types of poultry, such as exhibition poultry.

It was intended that the criteria for such designation be based solely on factors relating to meat-type chicken breeding flocks, which are a part of the commercial broiler industry. The designation was not intended for any other types of poultry, such as exhibition poultry. Therefore, in the final rule the references in § 145.34(b) to products, specimens, chickens, and flocks are clarified to indicate that they relate solely to meat-type chicken breeding flocks.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291, and has been classified as not a "major rule." The Department has determined that this action will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulations, among other things, provide for testing for pullorum-typhoid, *M. gallisepticum, M. synoviae,* and *M. meleagridis.* The blood testing and egg yolk testing provisions included in the final rule are designed to provide additional testing alternatives, for use at the flockowner's option. The criteria for classifying States as "U.S. M. Gallisepticum Clean State, Meat-Type Chickens," and for classifying turkey breeding flocks as "U.S. M. Synoviae Clean" will allow recognition of those States and flocks that meet optimum control program standards. The amendments will not cause significant changes in the costs of producing or buying poultry and poultry products or in the amount of poultry and poultry products marketed.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, National Poultry Improvement Plan.

Accordingly, Parts 145 and 147 of 9 CFR are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for 9 CFR Part 145 is revised to read as set forth below and the authority citations following all the sections in Part 145 are removed:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 145.1, paragraph (cc) is revised to read as follows:

§ 145.1 Definitions.

* * * * *

(cc) *Salmonella.* Any bacteria belonging to the genus Salmonella, including the arizona group.

* * * * *

3. In § 145.10, the text of paragraphs (c) and (e) is revised and a new paragraph (j) is added to read, respectively, as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(c) *U.S. M. Gallisepticum Clean.* (See § 145.23(c), § 145.23(f), § 145.33(c), § 145.33(f), § 145.43(c), and § 145.53(c).)

* * * * *

(e) *U.S. M. Synoviae Clean.* (See § 145.23(e), § 145.23(g), § 145.33(e), § 145.33(g), and § 145.43(e)).

* * * * *

(j) *U.S. M. Gallisepticum Clean State, Meat-Type Chickens.* (See § 145.34(b).)

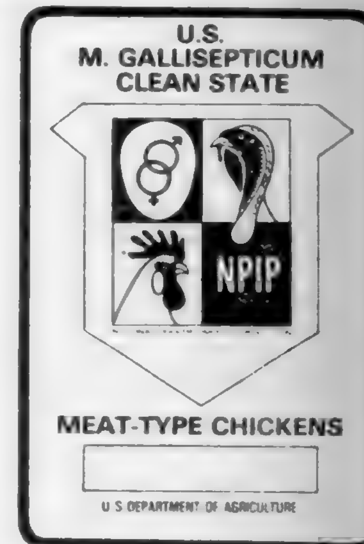

Figure 11

4. In § 145.14, "or Arizona" is removed from the fourth sentence of paragraph (a)(10).

5. In § 145.14, paragraph (b)(1) is revised and a new paragraph (c) is added to read as follows:

§ 145.14 Blood testing.

* * * * *

(b) *For M. gallisepticum and M. synoviae:* (1) The official blood tests for *M. gallisepticum* and *M. synoviae* shall be the serum plate agglutination test, the tube agglutination test, the hemagglutination inhibition (HI) test, the microhemagglutination inhibition test, the enzyme-labeled immunosorbent assay (ELISA) test [1] or a combination of two or more of these tests. The HI test, the microhemagglutination inhibition test, and the ELISA test shall be used to confirm the positive results of other serological tests. HI titers of 1:40 or less may be interpreted as equivocal, and final judgment may be based on further samplings and/or culture of reactors.

* * * * *

---

[1] Procedures for the enzyme-labeled immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, "Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry," *Avian Diseases,* Vol. 27, No. 1, pp. 21–35, January–March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, "Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum," *Avian Diseases,* Vol. 27, No. 3, pp. 773–786, July–September 1983; and

H.B. Ortmayer and R. Yamamoto, "Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA)," *Proceedings, 30th Western Poultry Disease Conference,* pp. 63–66, March 1981.

(c) *For M. meleagridis.* The official blood tests for *M. meleagridis* are specified in § 145.43(d)(2).

6. Section 145.23 is amended by adding a new paragraph (c)(1)(ii)(C) to read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

7. In § 145.23, paragraph (e)(1)(ii) is revised to read as follows:

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 50 birds shall be tested: *Provided,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period; or

(*b*) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

8. Section 145.33 is amended by adding new paragraph (c)(1)(ii)(C) to read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

9. In § 145.33, paragraph (e)(1)(ii) is revised to read as follows:

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 50 birds shall be tested: *Provided,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period; or

(*b*) At intervals of not more than 30 days, egg yolk testing shall be conducted in accordance with § 147.8.

* * * * *

10. In § 145.34, a new paragraph (b) is added to read as follows:

§ 145.34 Terminology and classification; States.

* * * * *

(b) *U.S. M. Gallisepticum Clean State, Meat-Type Chickens.* (1) A State will be declared a U.S. M. Gallisepticum Clean State, Meat-Type Chickens, when it has been determined by the Service that:

(i) No *M. gallisepticum* is known to exist nor to have existed in meat-type chicken breeding flocks in production within the State during the preceding 12 months;

(ii) All meat-type chicken breeding flocks in production are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iii) All hatcheries within the State which handle products from meat-type chicken breeding flocks only handle products which are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for *M. gallisepticum* control under official supervision;

(iv) All shipments of products from meat-type chicken breeding flocks other than those classified as U.S. M. Gallisepticum Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all specimens from chickens from meat-type chicken breeding flocks that have been identified as being infected with *M. gallisepticum;*

(vi) All reports of *M. gallisepticum* infection in chickens from meat-type chicken breeding flocks are promptly followed by an investigation by the Official State Agency to determine the origin of the infection;

(vii) All chickens from meat-type chicken breeding flocks found to be infected with *M. gallisepticum* are quarantined until marketed under supervision of the Official State Agency.

(2) Discontinuation of any of the conditions described in paragraph (b)(1) of this section, or if repeated outbreaks of *M. gallisepticum* occur in meat-type chicken breeding flocks described in paragraph (b)(1)(ii) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing.

11. In § 145.43, paragraph (d)(2) is revised and a new paragraph (e) is added to read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(2) The official blood tests for *M. meleagridis* shall be the serum plate agglutination test, the tube agglutination test, or the microagglutination test. The hemagglutination inhibition (HI) test, microhemagglutination inhibition test, serum plate dilution test, microagglutination test and the enzyme-labeled immunosorbent assay (ELISA)[2] test may be used as supplemental tests to determine the status of the flock, in accordance with § 147.6(b).

* * * * *

(e) *U.S. M. Synoviae Clean.* (1) All birds, or a sample of at least 100 birds from flocks of more than 100 and each bird in flocks of 100 or less, have been tested for *M. synoviae* when more than 4 months of age in accordance with the procedures in § 145.14(b): *Provided,* That to retain this classification a minimum of 30 samples from male flocks and 60

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[2] Procedures for the enzyme-labeled immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, "Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry," *Avian Diseases,* Vol. 27, No. 1, pp. 21–35, January–March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, "Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum," *Avian Diseases,* Vol. 27, No. 3, pp. 773–786, July–September 1983; and

H.B. Ortmayer and R. Yamamoto, "Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA)," *Proceedings, 30th Western Poultry Disease Conference,* pp. 63–66, March 1981.

samples from female flocks shall be retested at 28–30 weeks of age and at 4–6 week intervals thereafter.

(2) When reactors to the official test are found and can be identified, tracheal swabs and their corresponding blood samples from 10 (all if fewer than 10) reacting birds shall be submitted to an authorized laboratory for serological and cultural examination. If reactors cannot be identified, at least 30 tracheal swabs and their corresponding blood samples shall be submitted. In a flock with a low reactor rate (less than five reactors) the reactors may be submitted to the laboratory within 10 days for serology, necropsy, and thorough bacteriological examination. When reactors to the official test are found, the procedures outlined in § 147.6 will be used to determine the status of the flock.

(3) Flocks located on premises which, during 3 consecutive years, have contained breeding flocks qualified as U.S. M. Synoviae Clean, as described in paragraph (e)(1) above, may qualify for this classification by a negative blood test of at least 100 birds from flocks of more than 100 and each bird in flocks of 100 or less, when more than 4 months of age, and by testing a minimum of 30 samples from male flocks and 60 samples from female flocks at 28–30 weeks of age and at 45 weeks of age.

12. In § 145.53, paragraph (b)(5) is amended by changing the punctuation mark at the end of the paragraph from a period to a colon and adding a new proviso to read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(b) * * *

(5) * * * *And Provided further,* That when a flock is a waterfowl or exhibition poultry primary breeding flock located in a State which has been deemed to be a U.S. Pullorum-Typhoid Clean State for the past three years, and during which time no isolation of pullorum or typhoid has been made that can be traced to a source in that State, a bacteriological examination monitoring program or a serological examination monitoring program acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

13. The authority citation for 9 CFR Part 147 is revised to read as set forth below and the authority citations following all the sections in Part 147 are removed:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 147.6 [Amended]

14. In the heading for § 147.6 "Mycoplasma gallisepticum and Mycoplasma synoviae" is changed to "Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis."

15. In the material preceding the colon in paragraph (a) of § 147.6, "M. gallisepticum or M. synoviae:" is changed to "M. gallisepticum, M. synoviae, or M. meleagridis:".

16. Part 147 is amended by adding a new § 147.8 to read as follows:

§ 147.8 Procedures for preparing egg yolk samples for diagnostic tests.

The following testing provisions may be used for retaining the classification U.S. M. Gallisepticum Clean under § 145.23(c)(1)(ii)(C) and § 145.33(c)(1)(ii)(C), and for retaining the classification U.S. M. Synoviae Clean under § 145.23(e)(1)(ii)(*b*) and § 145.33(e)(1)(ii)(*b*).

(a) Under the supervision of an Authorized Agent or State Inspector, the eggs which are used in egg yolk testing must be selected from the premises where the breeding flock is located, must include a representative sample of 30 eggs collected from a single day's production from the flock, must be identified as to flock of origin and pen, and must be delivered to an authorized laboratory for preparation for diagnostic testing.

(b) The authorized laboratory must identify each egg as to the breeding flock and pen from which it originated, and maintain this identity through each of the following:

(1) Crack the egg on the round end with a blunt instrument.

(2) Place the contents of the egg in an open dish (or a receptacle to expose the yolk) and prick the yolk with a needle.

(3) Using a 1 ml syringe without a needle, aspirate 0.5 ml of egg yolk from the opening in the yolk.

(4) Dispense the yolk material in a tube. Aspirate and dispense 0.5 ml of PBS (phosphate-buffered saline) into the same tube, and place in a rack.

(5) After all the eggs are sampled, place the rack of tubes on a vortex shaker for 30 seconds.

(6) Centrifuge the samples at 2500 RPM (1000 x g) for 30 minutes.

(7) Test the resultant supernatant for *M. gallisepticum* and *M. synoviae* by using test procedures specified for detecting IgG antibodies set forth for testing serum in § 147.7 (for these tests the resultant supernatant would be substituted for serum); except that a single 1:20 dilution hemagglutination inhibition (HI) test may be used as a screening test in accordance with the procedures set forth in § 147.7.

Note.—For evaluating the test results of any egg yolk test, it should be remembered that a 1:2 dilution of the yolk in saline was made of the original specimen.

§ 147.11 [Amended]

17. In § 147.11, "or arizonae" is removed from the first sentence of paragraph (h).

§ 147.21 [Amended]

18. In § 147.21, "and Arizona" is removed from the second sentence of paragraph (f).

19. In § 147.43, paragraph (c) is revised to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(c) Three regional members shall be elected at each Plan Conference. All members shall serve for a period of 4 years, subject to the continuation of the Committee by the Secretary of Agriculture, and may not succeed themselves: *Provided,* That an alternate member who assumed a Committee member vacancy following mid-term would be eligible for re-election to a full term. When there is a vacancy for the member-at-large position, the General Conference Committee shall make an interim appointment and the appointee shall serve until the next Plan Conference at which time an election will be held. If a vacancy occurs due to both a regional member and alternate being unable to serve, the vacant position will be filled by an election at the earliest regularly scheduled national or regional Plan Conference, where members of the affected region have assembled.

* * * * *

Done at Washington, D.C., this 8th day of May 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–11482 Filed 5–10–85; 8:45 am]

BILLING CODE 3410–34–M

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83–031F]

Swine Post-Mortem Inspection Procedures and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations by establishing new swine post-mortem staffing standards using a more efficient inspection procedure for one- and two-inspector swine slaughter configurations, and for three-inspector swine slaughter configurations with heads detached. For these configurations, the rule will increase the number of swine that can be inspected before a third inspector is required, as well as the number of sows and boars that can be inspected on a detached head inspection configuration. The rule also sets forth certain related facility requirements for inspection. This action allows higher production rates for the establishments and greater inspection efficiency for the Department.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Taylor, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2987.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Through the use of an improved inspection procedure, this rule could increase inspection efficiency and industry productivity in as many as 700 swine slaughter establishments, at little or no extra cost.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). Small and medium-sized establishments (with one or two inspectors) will benefit by gaining more flexibility in the planning of slaughter operations, as well as the opportunity to increase their productivity, at little or no extra cost.

Background

Introduction: Post-Mortem Inspection

Section 4 of the Federal Meat Inspection Act (21 U.S.C. 604) requires that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of the carcasses and parts of certain domestic food animals, including swine, when these animals are slaughtered in an establishment that is subject to inspection under the Act. Post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera (internal organs), and carcass of each animal slaughtered, for the purpose of detecting disease or other conditions that could render the carcass or any part thereof unfit for human food or otherwise adulterated.

With the appropriate facilities, equipment, and placement of inspection stations, a swine slaughtering establishment can set its own production rates, and the Food Safety and Inspection Service (FSIS) assigns sufficient inspectors to carry out inspection at that rate. In establishments with relatively low production rates, one inspector performs the inspection of the head, viscera, and carcass of each animal slaughtered at one station. In establishment with higher slaughter rates, two or more inspectors may be needed. On a two-inspector configuration, these three inspection tasks are divided between the two inspectors. On a line with three or more inspectors, each of these three inspection tasks is performed by a different inspector. Where two or more inspectors are required, they rotate between the tasks during the workday to equalize the workload.

New Post-Mortem Inspection Procedures for Large Establishments

On August 28, 1981, FSIS published an interim rule in the **Federal Register** (46 FR 43406) establishing new swine post-mortem inspection rates based on more efficient inspection procedures. The interim rule was adopted as a final regulation on August 4, 1982 (47 FR 33673). The new procedures applied only to those operations requiring three or more inspectors and where the swine heads are inspected while still attached to the carcass.[1] The 1981 interim rule expressed FSIS's intention to extend the new procedures to the other classes of establishments upon completion of additional studies, which is the main purpose of this rule.

Testing the New Procedures in Other Swine Establishments

Studies were undertaken to determine the impact, applicability, and effectiveness of the new procedures and staffing standards to establishments which require less than three inspectors and to those establishments with three inspectors where the swine heads are inspected after being detached from the carcasses.[2]

These studies were conducted at swine slaughter establishments operating with a one- or two-inspector line configuration and slaughtering both market hogs, and sows and boars. An evaluation of the elements in the one- and two-inspector configurations showed that most of the inspection tasks are identical to the inspection tasks on which the approved work measurement standards for the three- to seven-inspector configurations are based, and that it takes the same amount of time to perform the work in all configurations. As a result of these studies, the Department on September 12, 1984, in the **Federal Register** (49 FR 35782) proposed improved inspection procedures which appear to be as effective in detecting conditions relating to adulteration as the current procedures.

Factors Influencing Increased Rate of Inspection

1. Revised Post-Mortem Inspection Procedures. The revised post-mortem inspection procedures require fewer motions, and hence less effort and time to perform, than the procedure used prior to 1981. This has resulted from the installation of a mirror at the carcass station to eliminate turning the carcass, from the substitution of visual inspection for some of the palpation at the viscera station, and from the elimination of the requirement to turn and examine the carcass at the head station.

2. Attached and Detached Heads. The inspection of the head requires the

[1] The tests are reported in two studies titled "A Study on the Effectiveness of Current and Proposed Swine Post-Mortem Inspection" and "A Study on the Applicability of Proposed Swine Post-Mortem Inspection to Sows/Boars." Copies of these reports may be obtained without charge by writing to the Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] A copy of the report on these studies, "Work Measurement Staffing Standard for the One to Three Inspector Swine Slaughter Configurations," may be obtained without charge from Mr. Paul Taylor, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

examination of mandibular lymph nodes. These nodes are made accessible to the inspector in two ways. The head may be disjointed from the neck and left attached to the carcass by a flap of skin, or it may be removed and placed in a head rack, nose down, for the inspector's examination. Most establishments requiring three or more inspectors provide for the inspection of the head while it is still attached to the carcass by the flap of skin. However, most one- and two-inspector line configurations provide for the removal of the head from the carcass for inspection. Removal of the heads does not affect the inspection rate on market hog slaughter lines. The carcasses are short enough so that the market hog heads can be inspected while attached without requiring stooping by the inspector. Sow and boar heads hang nearer to the floor which requires the inspector to stoop and, therefore, more inspection time is necessary for sow and boar head inspection.

3. Addition of a Mirror at the Carcass Inspection Station. Mirrors are required for three or more inspector slaughter lines where the swine heads are inspected while still attached. The criteria for such mirrors are set forth in § 307.2(m)(6) of the Federal meat inspection regulations (9 CFR 307.2(m)(6)). The mirror allows the inspector to view the back of the carcass without turning the carcass which decreases the time required.

4. Arrangement of Facilities Determines the Inspector's Walking Distance. In one- and two-inspector configurations, the inspector must sometimes walk from one of the three inspection stations to another. The arrangement of the facilities, therefore, influences the rate of inspection. If the stations are located close to each other, the inspector can perform his/her duties with less walking time. The less walking involved, the more animals that can be inspected per hour and, thus, the faster the line speeds may be set.

The Proposal

On September 12, 1984, FSIS published a proposal in the **Federal Register** (49 FR 35782) to establish new swine post-mortem inspection procedures and staffing standards.

FSIS received two comments in response to the proposed rule—1 from an industry association and 1 from a State department of agriculture. Both commenters expressed full support of the proposal. FSIS is therefore adopting the proposal as published, except for minor changes made for clarification purposes, as described below.

The Final Rule

1. This rule requires mirrors at the carcass inspection stations on those sow and boar three-inspector lines where the heads are detached from the carcasses in addition to the current requirement that mirrors are required for three or more inspector slaughter lines where swine heads are inspected while still attached. In establishments where one or two inspectors are assigned, a mirror is not required unless the establishment desires to increase production to the point where an additional inspector must be assigned. In that event, the inspection service will have the option to require a carcass mirror rather than place another inspector in the establishment. Section 310.1(b)(3) has been amended to clarify that the inspection service, rather than the inspector, has the authority to require a mirror in such cases. The inspection rates on one- and two-inspector configurations may be slightly higher if mirrors are provided. Therefore, to receive the faster inspection rate, such establishments will be required to install mirrors meeting the criteria in § 307.2(m)(6).

2. The new staffing standards for one- and two-inspector lines are based upon the distance the inspector walks between the inspection stations. The new procedures provide an incentive for smaller plants to increase productivity by rearranging their facilities to minimize the distance between the inspection stations.

3. As previously mentioned, when two inspectors are assigned to an establishment, the three inspection tasks are divided between them. Various combinations of inspection tasks have been included in this rule, some of which are more productive than others.

The inspection rate for market hog two-inspector configurations is the same for both attached and detached heads. Sow and boar rates for detached heads are different from those for attached heads because the inspection time is greater for attached heads due to the necessary stooping by the inspector. The "Note" following the footnotes under Tables 2 and 3 has been clarified by changing "On multiple-inspector kills" to "In multiple-inspector plants".

4. As previously discussed, the inspection rates for three or more inspector lines, with heads inspected while attached to the carcasses, were promulgated on August 4, 1982. Those rates were previously contained in two tables (9 CFR 310.1(b)(3))—one for butcher hogs and one for sows and boars. For purposes of organization, this rule combines the two tables into one as Table 4, making no distinction, except as otherwise noted, between swine slaughter lines with heads attached and those with heads detached. The "Note" following the footnote under Table 4 has been clarified by changing "On multiple-inspector kills" to "In multiple-inspector plants".

5. Staffing standards for various inspection station configurations are contained in this rule for those establishments that have low slaughter production rates. If such establishments desire increased production rates that would require an additional inspector, FSIS has the option of implementing a different inspection configuration rather than adding an inspector. This would require that such establishments install mirrors at the inspection stations as set forth in section 310.1(b)(3).

List of Subjects

9 CFR Part 307

Facilities, Meat inspection, Official establishment.

9 CFR Part 310

Meat inspection, Post-mortem inspection, Slaughter.

Final Rule

The Federal meat inspection regulations are revised as follows:

1. The authority citation for Parts 307 and 310 continues as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 307.2(m)(6) is revised to read as follows:

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) * * *

(6) For swine slaughter lines requiring three or more inspectors, and for those one- and two-inspector configurations where the establishment installs a mirror: At the carcass inspection station one glass or plastic, distortion-free mirror, at least 5 feet × 5 feet, mounted far enough away from the vertical axis of the moving line to allow the carcass to be turned, but not over 3 feet away, and so mounted that any inspector standing at the carcass inspection station can readily view the back of the carcass.

3. Section 310.1(b)(3) is revised to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b) * * *

(3) *Swine Inspection.* The following inspection staffing standards are applicable to swine slaughter configurations. The inspection standards for all slaughter lines are based upon the observation rather than palpation, at the viscera inspection station, of the spleen, liver, heart, lungs, and mediastinal lymph nodes. In addition, for one- and two-inspector lines, the standards are based upon the distance walked (in feet) by the inspector between work stations; and for three or more inspector slaughter lines, upon the use of a mirror, as described in § 307.2(m)(6), at the carcass inspection station. Although not required in a one- or two-inspector slaughter configuration, except in certain cases as determined by the inspection service, if a mirror is used, it must comply with the requirements of § 307.2(m)(6).

TABLE 1.—ONE INSPECTOR—STAFFING STANDARDS FOR SWINE

Distance walked [1] in feet is—	Maximum inspection rates (head per hour)			
	Market hogs (heads attached or detached)		Sows and boars (heads detached)	
	Without mirror	With mirror	Without mirror	With mirror
0 to 5	140	150	131	143
6 to 10	134	144	126	137
11 to 15	129	137	122	132
16 to 20	124	132	117	127
21 to 35	120	127	113	122
26 to 30	116	122	110	118
31 to 35	112	118	106	114
36 to 40	108	114	103	110
41 to 45	105	110	100	106
46 to 50	101	107	97	103
51 to 55	98	103	[illegible]	100
56 to 60	[illegible]	100	91	97
61 to 65	93	97	89	94
66 to 70	[illegible]	95	87	92
71 to 75	88	92	85	[illegible]
76 to 80	86	89	82	87
81 to 85	84	87	80	[illegible]
86 to 90	82	85	79	[illegible]
91 to 95	[illegible]	[illegible]	77	[illegible]
96 to 100	[illegible]	81	75	79

[1] Distance walked is the total distance that the inspector will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, head, and washbasin)

TABLE 2.—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS

Distance walked [1] in feet by inspector B is—	Maximum inspection rates (head per hour with heads attached or detached)		
	Line configuration		
	Carcass,[2] head viscera [3]	Viscera,[2] head carcass [3]	Head,[2] viscera carcass [3]
Without Mirror			
0 to 5	151-253	151-271	151-296
6 to 10	151-239	151-255	151-277
11 to 15	151-226	151-240	151-260
16 to 20	151-214	151-227	151-244
21 to 25	151-204	151-215	151-231

TABLE 2.—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS—Continued

Distance walked [1] in feet by inspector B is—	Maximum inspection rates (head per hour with heads attached or detached)		
	Line configuration		
	Carcass [2] head viscera [3]	Viscera,[2] [illegible] carcass [3]	Head,[2] viscera carcass [3]
With Mirror			
0 to 5	151-253	151-303	151-318
6 to 10	151-239	151-283	151-304
11 to 15	151-226	151-265	151-289
16 to 20	151-214	151-249	151-270
21 to 25	151-204	151-235	151-254

[1] Distance walked is the total distance that inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).
[2] Inspector A
[3] Inspector B.

Note.—In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 3.—TWO INSPECTORS—STAFFING STANDARDS FOR SOWS AND BOARS

Distance walked [1] in feet by inspector B is—	Maximum inspection rates (head per hour)			
	Line Configuration			
	Carcass,[2] head viscera,[3] heads detached	Viscera,[2] head carcass,[3] heads detached	Head,[2] viscera carcass,[3] heads detached	Head,[2] [illegible] carcass,[3] [illegible]
Without Mirror				
0 to 5	144-248	144-254	144-267	144-267
6 to 10	144-235	144-240	144-253	144-253
11 to 15	144-222	144-227	144-239	144-239
16 to 20	144-211	144-215	144-226	144-226
21 to 25	144-201	144-205	144-214	144-214
With Mirror				
0 to 5	144-248	144-292	144-305	144-292
6 to 10	144-235	144-273	144-291	144-280
11 to 15	144-222	144-256	144-272	144-268
16 to 20	144-211	144-241	144-255	144-255
21 to 25	144-201	144-228	144-240	144-240

[1] Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin)
[2] Inspector A.
[3] Inspector B

Note.—In multiple-inspector plans, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE

Maximum inspection rates (head per hour with heads attached)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
Market hogs				
319 to 506	1	1	1	3
507 to 540	1	2	1	4
541 to 859	2	2	1	5
860 to 1,022	2	3	1	6
1,023 to 1,106	3	3	1	7
Sows and boars				
306 to 439	1	1	1	3
306 to 462 [1]	1	1	1	3
440 to 475	2	1	1	4
476 to 752	2	2	1	5
753 to 895	3	2	1	6

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE—Continued

Maximum inspection rates (head per hour with heads attached)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
896 to 964	3	3	1	7

[1] This rate applies if the heads of sows and boars are *detached* from the carcasses at the time of inspection

Note.—In multiple-inspector plants, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload.

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11479 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Parts 317 and 318

[Docket No. 84-028F]

Agar-Agar in Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of agar-agar as a stabilizer and thickener in certain meat food products (canned jellied meat food products). The Food and Drug Administration (FDA) has affirmed this substance as generally recognized as safe (GRAS) for use in foods under certain conditions. The petitioner has supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2), for amending the Federal meat inspection regulations to permit the requested use. The Administrator has determined that it is appropriate to add agar-agar to the list of acceptable binders commonly used in foods.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Written comments to U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, D.C. 20250. (See also "Comments" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries, Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the optional use of agar-agar as a binder in certain meat food products. The current Federal meat inspection regulations provide only for the labeling of agar jelly when it is used as a packing substance (9 CFR 317.8(b)(17)). Industry will benefit from this action through the ability to use a wider variety of binders (stabilizers and thickeners).

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this rule will impose no new requirements on industry. The implementation of this rule will merely allow meat processors to use a new class of thickeners and stabilizers in meat food products.

Comments

This is a final rule consistent with the provisions of § 318.7(a) (2) and (3) of the Federal meat inspection regulations (9 CFR 318.7(a) (2) and (3)). As such, no prior request for public comments is required (see "Background" for rationale). However, interested persons may inform the Department of any available data which raise questions about this action within the 60 day period between publication and the effective date of this final rule.

Background

The Agency has been petitioned by Trinity Alimentari Italia S.p.A. through James Hurson Associates, Inc., Arlington, Virginia to amend the existing regulations to allow the use of agar-agar as a stabilizer and/or thickener in certain meat food products—canned jellied meat food products.

The petitioner maintains that agar has a higher gel strength and higher melting temperature at lower concentrations than similar gelling agents, which makes agar-agar advantageous for sterilization and retorting. The physical and chemical properties of agar-agar are consistent with the petitioner's processing requirements for its canned meat food products. The petitioner has supplied analytical data at FSIS's request supporting its claims and indicating that wholesomeness is not affected when products are processed with this gel ingredient. The data are available from the Standards and Labeling Division at the address given under "**FOR FURTHER INFORMATION CONTACT**."

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Agency published a final rule on new procedures for the approval of added substances in meat products. The final rule amended the Code of Federal Regulations, Title 9, § 318.7. Under this rule, applicants are required to show that a proposed added substance has been approved as GRAS (generally recognized as safe) by the Food and Drug Administration (FDA) as a food additive or color additive for use in meat or meat food products, and is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. If this is established, the use of the added substance will be permitted upon further determination by the Administrator that the requested use in meat products will not render the product adulterated or misbranded, it is suitable as well as functional for that particular product, and it is used at the lowest level necesssary to accomplish the technical effect.

The substance for which approval has been requested has been listed and affirmed as GRAS by FDA. Agar-agar was affirmed as GRAS in the **Federal Register** of April 3, 1979 (44 FR 19389) and is listed in 21 CFR 184.1115.

The Administrator concurs with FDA's conclusions regarding the safety of agar-agar. He further finds that information provided by the petitioner in addition to other available data, indicate that (a) the proposed use of this substance will have an appropriate technical effect on the product and (b) the substance will be used at the lowest level necessary to accomplish its intended technical effect.

Therefore, the Agency is amending the Federal meat inspection regulations to include agar-agar in the table of approved substances in Part 318, Title 9, Code of Federal Regulations.

The Agency is also amending the labeling provisions in Part 317 (9 CFR Part 317) to encompass the approval of agar-agar by requiring a qualifying statement contiguous to the product name identifying this substance when it is used. This is being done in order that the product will not be misbranded.

Indexing Terms: Pursuant to 1 CFR 18.20, following are the index terms for this regulation:

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, and Meat and meat food products.

9 CFR Part 318

Food additives, Meat inspection.

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*; 33 U.S.C. 1254 unless otherwise noted.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

2. Section 317.8 is amended by adding a new paragraph (b)(35) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(35) When agar-agar is used in canned jellied meat food products, as permitted in Part 318 of this subchapter, there shall appear on the label in a prominent manner, contiguous to the product name, a statement to indicate the use of agar-agar.

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat 584, 84 Stat. 91, 21 U.S.C. 71 *et seq.*, 601 *et seq.*, unless otherwise noted.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

4. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), the substance agar-agar is added to the chart of substances approved for use in the preparation of products, and is placed in alphabetical order under the class of substances entitled "Binders."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Binders.......	Agar-agar...	To stabilize and thicken.	Thermally processed canned jellied meat food products.	0.25 percent of finished product.
*	*	*	*	*

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11478 Filed 5-10-85; 8:45 am]

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9 CFR Part 318

[Docket No. 84-031F]

Protective Film Consisting of Water, Corn Syrup Solids, Sodium Alginate, Calcium Chloride and Sodium Carboxymethylcellulose

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of a mixture of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethylcellulose to form an edible protective film of calcium alginate on freshly dressed meat carcasses. The Food and Drug Administration (FDA) has determined these substances to be generally recognized as safe (GRAS) for use in foods. The petitioner has supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2) for amending the Federal meat inspection regulations to permit the requested use. The film will have several benefits including reducing dehydration. Carcasses coated with the protective film will be marked to denote the presence and the composition of the film.

EFFECTIVE DATE: July 12, 1985.

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, D.C. 20250.

(See also "Comments" under "Supplementary Information.").

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Service, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the discretionary use of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethylcellulose to form an edible protective film of calcium alginate on freshly dressed meat carcasses. Industry may benefit from this action through the ability to protect dressed carcasses against shrinkage and surface deterioration. Minor benefits are described in the Background Statement.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because this will impose no new requirements on industry. The implementation of this final rule will merely allow the meat industry to use a new type of surface protection to help maintain meat carcass quality. Costs for equipment, material and markings would be incidental and offset by the elimination of fabric shrouds and reduction of shrinkage. The choice to use the mixture is voluntary.

Comments

This is a final rule consistent with the provisions of Section 318.7 of the Federal meat inspection regulations (9 CFR 318.7). As such, no request for comments is being made. However, interested parties may inform the Agency of any additional information which raises questions about this action during the 60 day period between publication of this rule and its effective date.

Background

Food Research, Inc., Tampa, Florida has requested that FSIS permit freshly dressed meat carcasses to be sprayed with certain GRAS substances which form an edible protective film coating on the surface of the sprayed carcass. This coating is claimed by Food Research, Inc. to reduce dehydration during storage, inhibit surface deterioration, improve the surface for subsequent grade marking, and eliminate the need for costly fabric shrouding of carcasses. Tests approved by the Department have been carried out to determine the efficacy of the procedures, and analysis of the data indicates that treating carcasses as proposed does result in the claimed beneficial effects. Testing data will be available from the Department, upon request.

The coating of carcasses with the subject protective film has been under intermittent investigation for about ten years by FSIS, the petitioner and meat slaughterers. Several plants have been involved in the development of equipment and process techniques. Agency personnel have monitored all testing conducted in official establishments. Specialists in FSIS in statistics, process control procedures, and standards and labeling have reviewed the materials, procedures and test results and have found the process to be acceptable for commercial use.

The process consists of spraying freshly dressed, weighed, and washed carcasses with two solutions. The first solution consists of water, corn syrup solids and sodium alginate which is sprayed on the carcass. Immediately after application of the first spray a second spray consisting of water, calcium chloride and sodium carboxymethylcellulose is applied. The calcium chloride reacts with the sodium alginate to form an insoluble film of calcium alginate which performs the protective function. The quantity of solutions required to form the film is not more than 1.5% of the carcass weight. Evaporation of moisture results in less than 0.2% of the carcass weight consisting of the substances used in forming the protective film.

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Agency published a final rule on new procedures for the approval of certain added substances in meat and poultry products. Under that rule, applicants are required to show (1) that a proposed added substance has been previously approved by FDA for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe

(GRAS), and (2) that the substance is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. Once this is established, the use of the added substance will be permitted upon a further determination by the Administrator that (1) its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the stated technical effect, and (2) that the substance will not render the product adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act.

In this case, these substances have been listed or affirmed as GRAS in 21 CFR Parts 182 or 184, respectively. Calcium chloride and sodium alginate are affirmed as GRAS and are listed in 21 CFR 184.1193 and 184.1724, respectively. Sodium carboxymethylcellulose is listed as a multiple purpose GRAS food substance in 21 CFR 182.1745. Calcium alginate, the substance formed by reaction of calcium chloride with sodium alginate, is affirmed as GRAS at 21 CFR 184.1187. Corn syrup solids are listed in section 318.7(c)(1) of the meat inspection regulation (9 CFR 318.7(c)(1)) as substances which may generally be added to meat and meat food products. Furthermore, FDA has stated in a letter dated April 20, 1981 that it would consider calcium chloride, sodium alginate, sodium carboxymethylcellulose, calcium alginate, and corn syrup solids to be GRAS for use as a protective coating on meat carcasses when used in accordance with good manufacturing practice.

The Administrator concurs with FDA's conclusions regarding the safety of these substances for their proposed use. He further finds that information provided by the petitioner and other data available to the Agency indicate that (1) the proposed use of these substances is functional and suitable for the product, (2) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (3) the use of these substances will not render the product on which it is used, adulterated, misbranded, or otherwise not in accordance with the requirements of the Act.

Carcasses which have been coated with the protective film will be marked with a statement that identifies the presence and composition of the film, e.g., "Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride, and sodium carboxymethylcellulose." Trimmings from coated carcasses will be labeled to denote the presence of the coating material. However, processed products made in part from such trimmings need not declare the film components on labels as they are considered incidental additives on the basis of the minute amount present and the lack of technical effect. The requirement that chilled weight not exceed hot weight is to ensure that the carcass does not gain weight by the process.

Therefore, the Department is amending the table of approved substances in 9 CFR 318.7(c)(4), Federal meat inspection regulations, to include the use of calcium chloride, sodium alginate, sodium carboxymethylcellulose, and corn syrup solids in solutions to form an edible protective film of calcium alginate on freshly dressed meat carcasses.

Indexing Terms: As required by 1 CFR 18.20, the following are the indexing terms for this regulation:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

1. The authority citation for Part 318 (9 CFR 318) continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91 (21 U.S.C. 71 *et seq.*, 601 *et seq.*), unless otherwise noted.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENT; REINSPECTION AND PREPARATION OF PRODUCTS (AMENDED)

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), a new Class of Substance named "Film forming agents" is added to the chart of approved substances in alphabetical order following "Emulsifying agents."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amounts
*	* *	*	* *	*
Film forming agents.	A mixture consisting of water, sodium alginate, calcium chloride, sodium carboxymethyl-cellulose, and corn syrup solids.	To reduce cooler shrinkage and help protect surface.	Freshly dressed meat carcasses. Such carcasses must bear a statement "Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethyl-cellulose.	Formulation may not exceed 1.5% of hot [illegible] weight when applied. Chilled weight may not exceed hot weight
*	* *	*	* *	*

Done at Washington, D.C. on: April 26, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–11477 Filed 5–10–85; 8:45 am]

BILLING CODE 3410–DM–M

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9 CFR Parts 327 and 381

[Docket No. 83–040F]

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On July 23, 1984, the Food Safety and Inspection Service (FSIS) published an emergency interim rule, effective immediately, to ensure that "refused entry" product will not enter into United States' commerce. The interim rule prohibits the reentry into the United States of any meat or poultry product that has been refused entry into United States' commerce. FSIS learned that some "refused entry" product, after being exported to other countries, is being reshipped to the United States for export. FSIS solicited comments on the interim rule and, in considering all comments received, has determined that the interim rule shall be made a final rule.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has made a determination that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. (See Effect on Small Entities statement.)

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). This rule strengthens the current regulation by prohibiting the return to the United States of any previously designated "refused entry" product which was required to permanently leave the United States in the initial regulation.

Background

On August 19, 1982, FSIS published in the **Federal Register** (47 FR 36109) an interim rule, effective immediately, establishing new procedures for handling imported product to decrease the likelihood that "refused entry" meat and poultry product will enter into United States' commerce. FSIS had received information from the Department of Agriculture's Office of the Inspector General revealing that some product that had been refused entry at United States' ports because it was adulterated or misbranded had entered into the United States for use as human food.

The interim rule was made a final rule on April 13, 1983, with an effective date of May 13, 1983 (48 FR 15587). The rule provides, among other things, stricter controls on the movement and sale of "refused entry" product, one of which requires that such product be exported to another country within 45-day period unless the owner or consignee, within 45 days, causes it to be destroyed as human food or converts it to animal food.

As a result of information received and follow-up investigations, FSIS learned that some "refused entry" product had been exported to another country within the 45-day limitation but then returned to the United States through another port and/or under license provided for the transshipment of product not intended for sale in the United States. This practice defeats the intent of the April 13, 1983, final rule, which is to decrease the likelihood that adulterated product will enter into United States' commerce. Based on these recent events, and the minimal inspection resources that can be devoted to controlling such product, FSIS determined it necessary to modify its regulations to protect the consuming public from "refused entry" product. Therefore, on July 23, 1984, FSIS published in the **Federal Register** (49 FR 29567) an interim rule, effective immediately, revising the Federal meat and poultry products inspection regulation by clearly prohibiting the reentry into the United States of any meat or poultry product that had been refused entry into United States' commerce.

Comments on the Interim Rule

FSIS received one comment in response to the interim rule. The commenter, a meat importers association, expressed concern over the prohibition of transshipment of product from the original export vessel to another vessel within United States' port zones. The commenter asserts that the reexportation of "refused entry" product is usually in conjunction with resale to a third market, noting that most such product is wholesome product refused entry because of excess fat and similar deviations from product requirements. The final destination of this product may only be accessible via one specific port in the United States which may not necessarily be the original port of entry. It was suggested that the language of the interim rule be amended to allow such transshipment in a timely manner to properly dispose of the "refused entry" product.

The intent of the interim rule was not to inhibit the export of "refused entry" product from the United States."Refused entry" product frequently is located at a port in the continental United States where there are no ships sailing to the country to which the product is destined. This requires the "refused entry" product to be shipped to a port where a vessel is sailing to the product's final destination. For example, such product may be shipped from the original port of entry in the continental United States to Puerto Rico where it can be loaded into smaller vessels for delivery to the final destination of the Caribbean Basin countries.

In this example, the product was not exported and then returned to the United States. The Federal Meat Inspection Act applies to the Commonwealth of Puerto Rico or organized territories, as well as all States. Therefore, the product was merely transshipped between domestic ports prior to its disposal. Only when that product leaves Puerto Rico would it be considered to have left the United States. Note, however, that the 45 days allowed for removal of "refused entry" product from the United States is not extended for any such such transshipment.

Under the regulations (9 CFR 327.13(a)(3)), such transshipment between U.S. ports within the 45-day limit may be made with the consent of the Administrator based on full information provided by the shipper concerning the identification of the vessel involved in the transshipment and the times of arrival and departure from Puerto Rico or other United States' ports. The type of shipment the commenter is addressing in his letter would not be prohibited. The shipper would contact the Foreign Programs Division, International Programs, Food Safety and Inspection Services, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-7610.

Final Rule

After careful consideration of the comment received on the interim rule, the Administrator has determined that the interim rule should be published as permanent regulations as set forth below.

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

Part 327 of the Federal meat inspection regulations (9 CFR Part 327) and Part 381 of the poultry products inspection regulations (9 CFR 381) are revised as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 continues reads as follows:

Authority: 34 Stat. 1260,. 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 327.13 is amended by revising a new paragraph (a)(7) to read as follows:

§ 327.12 Samples; inspection of consignments; refusal of entry; marking.

(a) * * *

(7) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

PART 381—[AMENDED]

3. The authority citation for Part 381 continues reads as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

4. Section 381.202(a) is amended by revising a new subparagraph (6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(6) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

Done at Washington, DC, on: April 25, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-11480 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-6-AD; Amdt. 39-5060]

Airworthiness Directives; British Aerospace Model 3101 Jetstream Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Model 3101 Jetstream airplanes which requires inspection of the engine rear turbine bearing oil feed pipe for proper clearance between the oil feed pipe and the bleed air pre-cooler. BAe has reported that insufficient clearance can exist which can cause damage to the oil feed pipe, loss of the engine oil, and subsequent engine failure. This AD will detect and correct improper oil feed pipe clearances to preclude engine failure.

DATES: *Effective:* June 18, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) No. 71-A-JM7418, dated May 25, 1984, applicable to this AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. B. Sexton, FAA, ACE-104, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the engine rear turbine bearing oil feed pipe for proper clearance between the oil feed pipe and the bleed air pre-cooler on certain BAe Model 3101 Jetstream airplanes was published in the Federal Register on March 12, 1985 (50 FR 9806). The proposal resulted from BAe having received a report of fouling between the rear turbine oil feed pipe on the right hand side of the engine and the bleed air pre-cooler which caused chafing of the oil feed pipe. Investigation has revealed that the clearance between the oil pipe and the bleed air pre-cooler can be less than required. Failure of the oil feed pipe will lead to loss of engine oil and subsequent engine failure. As a result, BAe has issued ASB No. 71-A-JM7418, dated May 25, 1984, which specifies (1) an initial inspection of the oil feed pipe for chafing and adequate clearance from the bleed air pre-cooler and (2) corrective actions for any airplane which does not meet the specified clearance criteria.

The United Kingdom Civil Aviation Authority (UKCAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB No. 71-A-JM7418, dated May 25, 1984, and the mandatory classification of this Alert Service Bulletin by the UKCAA and determined that a Notice of Proposed Rulemaking was appropriate.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately eleven airplanes affected by the AD. The cost of complying with the AD is estimated to be $2,750 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

British Aerospace: Applies to Model 3101 Jetstream (serial numbers 601 to 624 inclusive, and 627), airplanes certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure that adequate clearance exists between the rear turbine bearing oil feed pipe and the bleed air pre-cooler accomplish the following:

(a) Inspect the rear turbine bearing oil feed pipe for chafing and for adequate clearance between the rear turbine bearing oil feed pipe and the bleed air pre-cooler on LH and RH engines in accordance with sub-paragraphs (a), (b) and (c) of the *Part A—Inspection* requirement of paragraph 2 of British Aerospace (BAe) Alert Service Bulletin No. 71-A-JM7418.

(1) If no damage is apparent and clearance is 0.25 inches (6.35 mm) or greater, no further action is required.

(2) If clearance is less than 0.25 inches and no pipe damage is apparent repeat the

inspection required by paragraph (a) of this AD at intervals not to exceed 400 hours time-in-service or until either BAe Modification JM7418 or BAe Modification JM7388 is accomplished.

(3) If pipe damage is apparent, prior to further flight, accomplish either BAe Modification JM7418 or BAe Modification JM7388.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on June 18, 1985.

Issued in Kansas City, Missouri, on May 2, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-11457 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ANE-26]

Control Zone; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a New Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

EFFECTIVE DATE: 0901 G.M.T., July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139.

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide protected airspace for Instrument Flight Rules aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedures (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire [50 FR 90].

Interested parties were invited to participate in this Rulemaking Proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in this Notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rules aircraft executing a New Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

§ 71.171 Lebanon, New Hampshire Control Zone [Amended]

Following the words "Lebanon, New Hampshire", insert: "within 4 miles each side of the DV LOM 007° bearing (023° Magnetic) extending from the 5 mile radius to 9.5 miles northeast of the DV LOM"; (The remainder is unchanged.)

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Burlington, Massachusetts, on May 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11458 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-16]

Transition Area; Moab, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published description of the Moab, Utah, transition area. An airway referred to in the description has been renumbered. This action does not increase the size of the transition area but makes only an editorial change in the description.

DATES: Effective date—0901 G.m.t., July 15, 1985. Comments must be received on or before June 28, 1985.

ADDRESS: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this is in the form of a final rule, which involves editorial changes to the description of the Moab, Utah, transition area and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the

regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make an editorial change to the published description of the Moab, Utah, transition area. Airspace docket 84-ANM-18 (50 FR 15540) redescribed an airway contained in the description of this transition area, i.e., V-187W/391 to V-391. This action does not enlarge the size of the transition area but makes only an editorial change in the description.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Since this amendment is only editorial or corrective in nature, and imposes no additional regulatory or economic burden on any person, notice and public procedure hereon are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Moab, Utah [Amended]

Replace "V-187W" with "V-391."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on May 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11459 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On November 19, 1984, the Commission issued its opinion and order in *Newman v. Bache Halsey Stuart Shields, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 22,432 (November 19, 1984), which established a new method, to be derived from 28 U.S.C. 1961(a), for calculating interest on reparation awards. This decision supersedes § 12.407(d)(1984), which prescribed the former method for interest computation, for all cases in which the initial decision (or a final decision in a voluntary decisional proceeding) is filed on or after November 19, 1984. The Commission is amending § 12.407(d) to conform the provisions of that regulation to the change effected by the *Newman* decision.

DATE: Effective date is May 13, 1985.

ADDRESS: Interested persons wishing to comment may submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention of the Secretariat. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 1984, the Commission adopted § 12.407(d) of its rules relating to reparation proceedings,[1] which

[1] 17 CFR § 12.407(d) (1984). Section 12.407(d) applies to all reparation cases in which the complaint was filed on or after April 23, 1984. *See* 17 CFR 12.1(c) (1984).

prescribed a method of calculating interest on reparation awards. § 12.407(d) provided that interest on reparation awards should be computed according to section 6621 of the Internal Revenue Code, a method of calculation utilized in tax cases for judgments in favor of or against a U.S. taxpayer. That rate was computed once annually by the Secretary of the Treasury and was based on adjustments to the prime lending rate which banks charged their most preferred customers.[2]

Since § 12.407(d) was adopted, however, the Commission, by adjudication, has changed the method by which interest on reparation awards shall be calculated. In *Newman v. Bache Halsey Stuart Shields, Inc.*,[3] the Commission announced that for initial decisions rendered on and after November 19, 1984, it would abandon the method of interest rate computation derived from section 6621 of the Internal Revenue Code in favor of a rate computed in accordance with 28 U.S.C. 1961(a) (1982), which governs interest rate calculations for money judgments awarded in federal district courts.[4] Accordingly, the Commission has determined to amend § 12.407(d) of its reparation rules to conform the interest rate provisions of that rule to its *Newman* decision. The amendment to § 12.407(d) establishes 28 U.S.C. 1961(a) (1982) as the new reference for calculating interest on reparation awards.

Consistent with 28 U.S.C. 1961(a) (1982), the interest rate to be applied to any particular reparation award is the "coupon issue yield equivalent . . . of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date" of the initial decision (or final decision in a voluntary decisional proceeding).[5] The amount of interest due in connection with a reparation award is computed by multiplying the number of days that interest has accrued by a fraction, the numerator of which is the equivalent coupon issue yield multiplied by the amount of the reparation award, and the denominator of which is the number 365.[6]

Once the relevant coupon issue yield equivalent is ascertained (*i.e.*, by looking to the most recent treasury bill auction prior to the date of the initial decision),[7] that same rate applies to the computation of interest on the reparation award regardless of: (1) Whether there are subsequent appeals (which ultimately sustain all or part of the award); (2) how long the reparation award remains unpaid; and (3) whether coupon issue yield equivalents determined in subsequent Treasury bill auctions vary from the relevant coupon issue yield equivalent.[8] Moreover, the Commission announced in the *Newman* decision that the relevant date for ascertaining the rate of prejudgment interest in summary and formal decisional proceedings shall be the same as the date for the determining the rate of postjudgment interest—which is the date of the initial decision.[9]

Section 4(a) of the Administrative Procedure Act, 5 U.S.C. 553 (1982), generally provides that a notice of proposed rulemaking must be published in the **Federal Register** and that an opportunity for comment be afforded to the public when an agency proposes new regulations. However, the notice and comment requirements do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest." [10] For the following reason, we find the notice and comment procedure contemplated by 5 U.S.C. 553 to be unnecessary.[11]

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[2] *See* 127 Cong. Rec. S 14699 (Dec. 8, 1981, daily ed.).

[3] Comm. Fut. L. Rep. (CCH) ¶ 22,432, at 29,919 (November 19, 1984).

[4] *Id.*, at 29,919.

[5] If the initial decision is rendered on the same day as a Treasury bill auction, the coupon issue yield equivalent derived from the previous treasury bill auction would apply.

[6] For purposes of illustration only, the following method of calculation would achieve the correct result. Assume that the relevant coupon issue yield equivalent is a rate of 14.62%, that the amount of the reparation award is $20,000, and that twelve days of interest have accrued.

The following equation will provide the correct amount of interest.

$$\frac{(\text{Coupon issue yield equivalent} \times \text{amt. of judgment}) \times (\text{Number of days of interest has accrued})}{365}$$

$$\text{or } \frac{.1462 \times \$20,000}{365} \times 12 = \$96.13$$

[7] The Administrative Office of the U.S. Courts issues a regular advisory on the rate, which refers to the coupon issue yield equivalent within the meaning of 28 U.S.C. 1961(a) as the "equivalent coupon issue yield." It is also available by telephone, at (202) 287-4100.

[8] *See Newman, supra*, at p.29,919.

[9] *Id.*

[10] 5 U.S.C. 553(b)(B) (1982).

[11] For the same reason, we have determined not to delay the effective date of this rule for the thirty day period contemplated by 5 U.S.C. 553(d). *See* 5 U.S.C. 553(d)(3) (1982).

As indicated, earlier, the Commission has already announced by way of adjudication a substantive change in its procedure of computing interest on reparation awards—from a method derived from 26 U.S.C. 6621 (1982) to a method derived from 28 U.S.C. 1961(a) (1982). This change became effective on November 19, 1984, and applied to "all initial decisions awarding reparations after the date of this opinion and order."[12] The *Newman* rule has been regularly followed without controversy. The amendment of § 12.407(a) effected hereby only codifies the Commission's holding in *Newman v. Bache Halsey Stuart Shields, Inc.*, and does not in itself impose any new or different substantive rights or liabilities upon any parties subject to the rule as amended.[13]

II. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies when promulgating rules to consider the economic impact of the rules on small business entities. Because the rule promulgated herein simply codifies an amendment to the reparation rules brought about through adjudication, the rule itself would have no economic impact on any small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as amended herein, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

§ 12.407 [Amended]

2. In Part 12, § 12.407(d) is revised to read as follows:

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961(a) from the date directed in the final order to the date of payment.

* * * * *

Issued in Washington, D.C., on May 3, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–11117 Filed 5–10–85: 8:45 am]

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12 *Newman supra*, at p. 29.919.

13 The Commission is concurrently proposing a further amendment to § 12.407(d) that would allow compounding of interest that has accrued for more than a year, in accordance with 28 U.S.C. 1961(d) (1982). The subject of compounding was not addressed in the Commission's *Newman* decision and, hence, the Commission is inviting public comment on its proposal to permit compounding of interest.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 389

[Docket No. RM85-12-000; Order No. 418]

Amendments to FERC Form No. 1, Addition of Rule Requiring Filing of Form No. EIA-714, and Elimination of Rule Concerning FERC Form No. 12

Issued May 8, 1985

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is deleting from FERC Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others, certain schedule pages which required the reporting of data that will now be reported on other forms. The Commission is adding to its rules a requirement for electric utilities to file Form No. EIA-714. Also, the Commission is removing from its regulations a provision requiring the filing of FERC Form No. 12. That regulation does not require the filing of information that covers any year after 1981. The information collected under the various provisions of this rule is used to help the Commission meet its responsibilities under the Federal Power Act.

DATE: This rule will be effective June 12, 1985.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8504.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Charles G. Stalon.

Amendments to FERC Form No. 1, Addition of Rule Requiring Filing of Form No. EIA-714, and Elimination of Rule Concerning FERC Form No. 12; Docket No. RM85-12-000.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others,[1] by deleting certain schedule pages which required data that will now be reported on the Energy Information Administration's (EIA)[2] Form No. EIA-860. The Commission also adds to 18 C.F.R. § 141.51 a requirement that the same entities file Form No. EIA-714, which is required by both the Commission and then EIA. Finally, the Commission eliminates from the Commission's rules a provision which at one time required the filing of FERC Form No. 12,[3] but which does not require

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1 The regulation which requires filing this form is 18 CFR 141.1 (1984).

2 The EIA is part of the Department of Energy. It is the government's primary collector of energy information. Department of Energy Organization Act, 42 U.S.C. 7103 (1982).

3 The regulation which required filing this form is 18 CFR 141.51 (1984). The entities which were required to file this form were those which operate facilities for the generation, transmission, or distribution of electric energy, whose systems generate all or part of system requirements, who have an owned operable generating capacity of more than 25 megawatts, and for whom the sum of net energy for system plus firm sales for resale exceeds 100,000 megawatthours per year.

that information for any year after 1981 be filed.

The information collected under the various provisions of this rule is used to help the Commission meet its responsibilities under the Federal Power Act (FPA).[4] This rulemaking is part of the Commission's continuing effort to simplify its forms and reduce duplication in reporting requirements.

II. Background

FERC Form No. 12, which is being replaced by Form No. EIA-714, is an annual form which was required to be filed for years up through 1981 by certain public and private entities which operate facilities for the generation, transmission, or distribution of electric energy. The form was last collected in 1983 and covered 1981 data. The form collected information about the electric power systems of those entities, including their generating and transmission facilities and transactions with other electric utility systems. The Commission uses the information to analyze utility operations in order to resolve wholesale electric rate cases and hydroelectric licensing proceedings; to determine the prudence of utility operations and investments and the value of equivalent electric energy, and to understand and make decisions respecting the electrical network of jurisdictional and nonjurisdictional entities. For example, the information is used to analyze issues raised by proposed interconnection agreements, wheeling contracts, and applications to recover construction work in progress.

On February 7, 1983,[5] the Commission issued a final rule which stated that Form No. 12 would be required for the last time for 1981 data and would be replaced by a new form being developed by the Commission and EIA jointly—Form No. EIA-714—for data on 1982 and succeeding years. However, that rulemaking did not delete from the Commission's regulations the specific provision pertaining to FERC Form No. 12, 18 CFR 141.51.

The Commission's Form No. 1, the Annual Report of Major Electric Utilities, Licensees and Others, requires some data which will now be collected by EIA on Form No. EIA-860. On January 19, 1982,[6] the Commission announced its plans to examine the operating data schedules of Form No. 1 as part of its evaluation of Form No. 12. In the final rule on Form No. 12, the Commission noted that the Form No. EIA-714 would be designed to eliminate the duplication between Form No. 12 and Form No. 1.

III. Description of Changes and Comment Anaylsis

As noted, the changes made in this rule are part of the Commission s continuing effort to simplify its forms and reduce duplication whenever possible.

A. Amendments to FERC Form No. 1

The following schedules are deleted from FERC Form No. 1 for the reporting year ending December 31, 1985, and thereafter:

—Steam-Electric Generating Plant Statistics (Large Plant) (page 404)
—Changes Made or Scheduled to be Made in Generating Plant Capacities (page 411)
—Steam-Electric Generating Plants (pages 412–413)
—Hydroelectric Generating Plants (pages 414–415)
—Pumped Storage Generating Plants (pages 416–418)
—Internal-Combustion Engine and Gas-Turbine Generating Plants (pages 420–421)

B. Requirement To File Form No. EIA-714; Deletion of FERC Form No. 12

Section 141.51 of the Commission's regulations is amended to require filing Form No. EIA-714, rather than FERC No. 12. Form No. EIA-714 must be filed by May 1 of each year for the preceding year, beginning with data for calendar year 1985. It must also be filed for the period after 1981, when the FERC Form No. 12 was last filed, on the following schedule: data for 1982 are due July 15, 1985; data for 1983 are due August 15, 1985; data for 1984 are due September 15, 1985. The Form No. EIA-714 will be used for the same purposes as the FERC Form No. 12, as described in the Background section above.

C. Comments on Form No. EIA-714

The Commission notes in general that the data requirements in Form No. EIA-714 are based on those in the old FERC Form No. 12 and thus are not new requirements.

The following comment discussion addresses the comments received and is organized according to the schedules in the proposed form.

1. General Comments

Commenters generally support Form No. EIA-714 as an improvement over FERC Form No. 12. They state that the new form is better organized, more readable, and easier to complete. Some also note that there was duplication between the previously proposed Form No. EIA-714A and FERC Form No. 1. The Commission agrees, and this duplication was eliminated through prior modifications to Form No. EIA-860 and the Form No. EIA-714.

Many of the comments request clarification of the instructions or of the terms used in Form No. EIA-714. The Commission and EIA have clarified this language as much as possible; further questions about the meaning of the terms or how to fill out the form should be addressed to EIA for assistance

One commenter suggests that the EIA and the Commission collect data from power pools and use only regional or power pool level data. The agencies would then direct any specific questions to individual utilities. Commenters also suggest various other sources from which data could be drawn.

The Commission uses other sources as much as possible, but none of them provides data at the individual system level, where they are needed. As explained in the discussion of the Commission's use of Form No. 12 (which Form No. EIA-714 is replacing) in the Background section, above, the data are needed to understand how interconnected networks operate so that informed decisions can be made about matters such as proposed interconnection agreements and individual utility proposals to recover in current rates construction work in progress.

Some commenters say that the value of the data gathered by the Form No. EIA-714 is outweighed by the burden of collecting the information. The Commission does not agree. It needs the data to meet its statutory responsibilities, as described above, and the EIA-714 is designed to be less burdensome than its predecessor, FERC Form No. 12.

A few commenters ask that they be allowed to report the information on a fiscal rather than calendar year basis, since they operate on this basis. The requirement for calendar year data is not new to Form No. EIA-714. Further, the required information is operational rather than accounting data, so use of the fiscal year is not appropriate. Moreover, comparative analyses would be hindered with some utilities reporting on a fiscal year basis and others reporting on a calendar year basis.

2. Cover, General Instructions, Definitions, etc.

Several commenters request clarification of who must submit the form. This language has been clarified as much as possible. In addition, the

[4] 16 U.S.C. 792–828c (1982).

[5] Revision of Power System Statement: Form No. 12, 48 FR 6,699 (Feb. 15, 1983) (Order No. 282).

[6] 47 FR 1,287 (Jan. 12, 1982).

Commission has prepared a mailing list, and EIA will inform those entities of which it is aware who must submit the form.

One commenter argues that information should be required only for utilities regulated by the Commission. The Commission does not agree. The Commission will use the data in the EIA-714 to understand how an individual jurisdictional utility interacts with the other electric systems to which it is interconnected. In order to understand the operation of interconnected systems, the Commission needs information on all the elements, including those interconnected utilities not under its jurisdiction.

One commenter asks that a threshold be set allowing small systems not to report. The Commission notes that there is already such a threshold in the form. The instructions for the form and this rule in § 141.51 state that the form is to be submitted only for systems that own generating capacity of more than 25 megawatts and for which the sum of net energy for system and firm sales for resale exceeds 100,000 megawatthours for the reporting year.

One commenter asks whether a utility that operates two systems, only one of which qualifies as a "system" for Form No. EIA-714 purposes, must submit data only for the qualifying system. Data are required only for the qualifying system, but the utility may submit data for its combined systems if they better represent its operations.

A commenter explains that it wheels electricity to its customers over another utility's lines, which are not in the commenter's system. The other utility wheels electricity of its customers over the commenter's system. Under the definition of a system as "facilities operated as a unit under one control," the commenter suggests that neither utility would claim these two groups of customers and the data would not be reported. If a utility wishes to include or to exclude such a load in its report to be sure that its loads are accurately reported, it should contact EIA for coordination of energy accounting between reporting systems.

Several commenters ask for clarification of the definitions of "borderline customer," "wheeling customer," "net capability," "partial requirements customer," "in-load," "net energy for load," and "net energy for system." These definitions have been clarified.

3. Capability and Output of Generating Plants

a. *General Comments.* A commenter asks how dual-fueled combustion turbines (oil or gas) should be reported. They should be reported as "combustion turbine," regardless of how they are fueled. The fuel type does not matter, if the unit is a combustion turbine. A commenter asks that another plant code be added for "run-of-river" hydroelectric plants. Run-of-river plants are included as "conventional hydroelectric," and the instructions have been modified to make this clear.

A commenter suggests that run-of-river units should not be treated as "base load" units. Hydroelectric units are not required to be identified as "base load" or otherwise, and need only be reported under the Conventional Hydroelectric grouping.

Several commenters want to know whether an operator of a plant owned partially by others should report their shares as energy delivered on Schedule 2. A new instruction on this schedule makes it clear that in this situation, the respondent may either report the energy on this schedule as output or on the "Energy Transfers" schedule as energy received.

A commenter asks whether a large gas-fired unit designed for base load, but used only for summer load, is a base load or a peaking unit. It could be either, depending on whether it is used all summer or only for parts of each day. The instructions have been rewritten to make it clear that units need not be categorized as such on the form.

b. *Net Capability at Time of System Peak Load.* Several commenters say that they consider units on reserve shutdown (such as combustion turbines, which can be started up quickly) to be available, but not needed. The instructions have been rewritten to classify such units as units not available to meet load.

c. *Pumping Energy.* A commenter asks whether energy required for pumping water upstream for a pumped storage project should be excluded from net generation. It should, since this energy is not available to meet the utility's load, and the instructions have been rewritten to make this clear.

d. *Integrated Net Demand at Peak.* Several commenters state that they cannot produce exact data. Estimated data are acceptable if the respondent adequately explains why exact data are not available.

e. *New Data Requests.* Several commenters suggest that unit rather than station data be collected. The Commission needs data for stations operated within the reporting system. The Form No. EIA-860, which collects data on a unit basis, does not necessarily define the system within which the units are operated.

A commenter suggests that if station data are required, it should also include the number of generating units, the number of annual scheduled maintenance days, the number of forced outage delays, and the 5-year forced outage rate. This information is available on FERC Form No. FERC-580.

4. Energy Transfers

a. *Data Availability and Usefulness.* Numerous commenters say that energy transfer data by transaction type are not available, especially for short-term energy purchases and sales. This requirement has been deleted.

Several commenters assert that they do not always know the provider or recipient of the energy transferred because the transactions are with power pools or agencies serving as brokers for small utilities. The Form No. EIA-714 does not require the name of the particular provider or recipient, just the name of the system of which the recipient is a part.

b. *Jointly-Owned Generating Units.* A commenter argues that if data reported on Schedule 2 are to be metered quantities, the power received from off-system jointly-owned units cannot be distinguished from other energy received by the system. The metering will not reveal the source of the energy, but the utility has other records which show what power was received from an off-system, jointly-owned unit.

c. *Duplicate Data Collection.* A commenter points out that similar data are required by the California Public Utilities Commission. However, this Commission's needs cannot be met by collecting data from State agencies. Not all states collect energy transfer data, and those that do may not collect them in a format adequate for the Commission's needs.

d. *In-Load and Borderline Transfers.* A commenter suggests that borderline energy transfers (in which a customer of one system receives energy from another system by arrangement between the systems) should be reported with other energy transfers instead of being combined with in-load energy transfers. The Commission does not agree. Borderline energy transfers are equivalent to in-load energy transfers in that the load responsibility is on the utility that actually makes the transfer.

e. *Energy Transfer Data.* A commenter states that energy transfer data should be collected at the time of the annual system peak load. In the Commission's view, this would undermine the value of the information. The annual system peak load is measured for only a one-hour period.

5. System Net Generation and Energy Transfers

a. *Usefulness of Data.* Several commenters question the usefulness of the data collected on this page. The Commission finds that the data are useful. These data are used to assess the system's ability to satisfy monthly loads and how it met its load responsibility, which is part of the analysis necessary to determine the system's power surplus adequacy and reliability. One commenter says that comparisons between system net capability and system peak are not meaningful in determining ability to meet firm load. The Commission generally finds such comparisons meaningful, although they may not be in individual instances.

b. *Reporting Burden.* Several commenters argue that the data on Schedule 3, Part A have never been collected on a monthly basis. The Commission disagrees. FERC Form No. 12 collected the same data on a monthly basis.

A commenter says that EIA could complete Schedule 3, Part A itself with the data provided in Schedules 1 and 2. Again, the Commission disagrees. EIA could not disaggregate accurately these data into monthly information.

A commenter suggests eliminating columns g and h (net energy for load and net energy for system), arguing that EIA can calculate the data and pointing out that the Commission eliminated the same data from FERC Form No. 12. Upon further consideration, the Commission has determined that the data should not be eliminated. The presence of columns g and h should improve the quality of the data submitted, because respondents will be able to verify their calculated figures.

6. System Peak Load

a. *General.* A commenter argues that the value of the data required by this schedule does not justify the burden. The Commission does not believe that it is excessively burdensome. The information is essential for comparing one year with the next so that trends can be seen, and the Commission believes the burden is justified by the value of the information.

b. *Data Duplication.* Several comments say that Forms EP–411 and EIA–119M collect most of the same data. The Commission does not agree that Form EP–411 collects the same data. Form EP–411 collects capability data for regional electric reliability councils and reporting parties, while Form No. EIA–714 collects capability data for individual electric systems. With respect to any alleged duplication in Form EP–119M, that form will be replaced now with the Form No. EIA–714.

c. *Data on Net Capability.* Commenters argue that the data on net capability are not available at the time of system peak load or that they are not useful data. The Commission disagrees. These data can be obtained, and although this involves some burden, the data are important because they enable the Commission to see the overall picture of power flow at the time of system peak. This information is useful in determining transmission usage for allocating wheeling costs among when wheeling customers, for instance.

d. *Maximum Hourly Load.* Several commenters say that sixty-minute integrated demand data are not available. One commenter recommends collecting 15-minute integrated demand data.

Instruction 1 provides two alternatives if 60–minute data are not available: adjusting available data or reporting available data with a note specifying the time interval.

e. *Minimum Hourly Load.* Several commenters say that the minimum hourly load data are not available, that the burden of collecting the data is excessive, or that the data will be useless, since the entire load curve is not known. The Commission and EIA have reduced the burden as much as practicable by requiring this information and hourly loads for three typical weeks rather than for an entire year. These data should provide a general picture of annual load without creating an excessive burden.

7. System Hydroelectric Data

a. *General.* A commenter suggests collecting seasonal instead or monthly data. The commission does not believe that it is overly burdensome for respondents to submit monthly data, particularly since only systems with substantial hydroelectric capacity have to report the data and much of the information will not change every year.

b. *Updating.* Commenters make various suggestions concerning when this schedule should be updated. Some suggest that every third or fifth year would be sufficient, while others assert that updates are necessary only when system capability changes significantly.

The form need only be updated every five years. This should provide reasonably up-to-date information without creating an unjustified burden. It is also consistent with the updating requirements for the rest of the form.

c. *Size of Hydroelectric Facilities Reporting.* Commenters suggest various thresholds for the size on the hydroelectric capability for which data must be reported. The form contains such a Threshold: a respondent must report these data only if hydroelectric generation is more than 10% of annual system net generation.

One commenter says that run-of-river facilities should be excluded, arguing that such projects often are not available with significant contributions. The Commission does not agree. Run-of-river plants generate significant amounts of energy, although they cannot store energy. The objective of this schedule is to collect information on how much energy would be generated.

8. System Load Data by Specified Week

a. *Data Duplication.* One commenter says that this schedule is unnecessary, because the Edison Electric Institute (EEI) compiles national load data and makes them available to EIA. However, the EEI data are primarily for investor-owned utilities and are not in the format that the Commission needs.

b. *Frequency of Data Collection.* A commenter suggests that detailed annual data are not necessary and that data could be collected every five years. The Commission agrees, and has changed the instructions to require these data every five years.

9. Summer and Winter Peak Load and Annual Energy Forecasts

a. *Data Duplication.* Several commenters argue that Form No. EP–411 collects 10-year load forecasts which duplicate this part of Form No. EIA–714. The Commission does not agree. Form No. EP–411 collects forecasts for regional electric reliability councils and reporting subregions, whereas Form No. EIA–714 collects forecasts for individual electric utility systems. Reporting parties usually consist of more than one electric system.

b. *Accuracy of 15- and 20-year Forecasts of Net Energy for Load and Peak Demand.* Several commenters contend that forecasts beyond ten years are speculative, which reduces their usefulness. The form now requires only 15-year forecasts. Although the Commission recognizes that such forecasts are not as accurate as shorter-term predictions, they are still useful.

c. *Seasonal peak load forecasts.* One commenter says that it does not make winter forecasts because its winter peak load is significantly less than its summer peak load. It recommends eliminating the reporting requirement if winter load is less than 75% of summer peak load. The Commission rejects this suggestion. The data are needed to reconstruct load curves for the whole year, and the

Commission does not believe this requirement to be unduly burdensome.

A utility comments that it records 15-minute rather than 60-minute integrated demand and says that it would be burdensome to furnish 60-minute data. Revised Instruction 1 makes it clear that this is acceptable.

d. *Annual energy forecast.* One commenter states that the date on which the forecast was made and the time period it covers should be reported. The Commission does not agree that the date of the forecast is needed. All that is important is that the forecast be current as of the filing date. The time period covered by the forecast is already required.

10. Distribution of System Load by Service Area

a. *Need for Data.* Numerous commenters argue that the data required on this schedule are not useful or accurate, because there are many options for designating a service area and respondents change service areas from year to year. The Commission needs this schedule to analyze physical flows of energy in the system. Collection will be made every five years to minimize the reporting burden. The Commission will take into account the kinds of changes the comments mention. It does not anticipate much change, based on its experience with the FERC Form No. 12.

b. *Availability and Usefulness of Data.* Several commenters say that energy data are not always available by primary substation. Others say that the distribution of system load data is not available by service area and that peak load data are not available by service area. The Commission will accept estimated data where necessary.

11. High Voltage Line Data

a. *Availability and Usefulness of Data.* Many commenters argue that much of the data required on this schedule are not available and not useful. The Commission needs these data to understand the use of system transmission facilities. The information is useful in rate filings for review of specific facilities and their interconnected systems. To reduce the burden, the form now requires only one off-peak month, and the Commission has deleted the October data element.

b. *Line Load Data.* One commenter suggests that annual maximum one-hour line load be collected, arguing that this would indicate actual line load better than the load at the time of system peak. Other comments say that data on maximum possible line load at time of system peak are not available.

As the instructions note, the Commission will accept simulations. The form uses the load at the time of system peak because this is the basis used by the other schedules and there is a need for consistency.

12. System Maps and Diagrams

a. *Level of Detail.* Numerous commenters object to the level of detail required. They argue that the information is not available in such detail and would not be useful. The final form demands less detail. It should be possible for most utilities to use the maps and diagrams that they prepare for their own use.

b. *Annual Updates Versus Resubmission.* One commenter says that requiring a complete system description every year will greatly increase the cost of maintaining a transmission system data base. The commenter argues that because most of the data do not change from year to year, collecting only the annual changes would be adequate.

The Commission believes, on the contrary, that the request for available maps and diagrams should minimize respondents' burden while giving the Commission a current and complete description of the electric system. Requesting annual changes would force either respondents or the Commission or EIA to compare current maps and diagrams with those produced a year earlier.

c. *Data Confidentiality.* One commenter says that some of the required data are confidential. The Commission disagrees. System maps and diagrams submitted on FERC Form No. 12 are currently available in the Commission's public reading room.

IV. Compliance with APA Public Participation Provisions

The Commission finds that there is no need for further public comment on Form No. EIA-714, since EIA has already solicited comments on behalf of both the Commission and EIA.[7] The Commission has considered the comments and responded to them above, where appropriate. The Commission therefore finds that further public comment on this aspect of the rule is unnecessary under section 553 of the Administrative Procedure Act (APA).[8]

The deletion from the Commission's regulations of the requirement to file FERC Form No. 12 has no substantive effect, because this information has not been required for years after 1981. The changes to Form No. 1 also have no substantive effect; the same information will now be picked up and made available to the public on Form No. EIA-860. Thus, the Commission finds under section 553 of the APA that public comment on these aspects of this rule is unnecessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[9] requires agencies to prepare certain statements, descriptions, and analyses of rules that would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule would not have such an impact.

Most electric utilities do not fall within the RFA's definition of a small entity.[10] Since the reporting burden on any small entity covered by this rule would either be reduced by this rule or remain unchanged, any economic impact from this rule will be beneficial. The Commission does not believe that this impact will be "significant" within the terms of the RFA. Pursuant to the RFA, therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act Statement and Effective Date

The requirement in this rule that utilities file Form No. EIA-714 has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1984). On March 20, 1985, OMB approved the information collection requirements of Form No. EIA-714 and issued OMB Control Number 1902-0140.[11]

[7] Request for Comment on Proposed Form EIA-714A, "Annual Electric Power System Report," 49 Fed. Reg. 3.685 (Jan. 30, 1984).

[8] 5 U.S.C. 553 (1982).

[9] 5 U.S.C. 601-612 (1982).

[10] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. See also SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[11] OMB's aproval of FERC Form No. 12 lapsed several years ago, so no further OMB action on this aspect of the rule is needed.

The changes in the information collection provisions in FERC Form No. 1 are being submitted to OMB for its approval under the Paperwork Reduction Act and OMB's regulations. Interested persons can obtain information on the proposed information collection provisions in Form No. 1 by contacting the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 (Attention: Jan Macpherson, (202) 357–8470). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will be effective June 12, 1985. If OMB has not approved the changes to FERC Form No. 1 by that date, the Commission will publish a notice in the **Federal Register** suspending the effectiveness of this aspect of the rule.

List of Subjects

18 CFR Part 141

Electric power, Reporting and record-keeping requirements, Statements and reports (schedules).

18 CFR Part 389

Reporting and record-keeping requirements.

In consideration of the foregoing, the Commission amends Parts 141 and 389, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 389—[AMENDED]

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1980).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "141.51" in numerical order in the section column, and "0140" in the corresponding position in the OMB Control Number column.

PART 141—[AMENDED]

3. The authority citation for Part 141 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. §§ 2601–2645 (1982), unless otherwise noted.

4. Section 141.51 is revised to read as follows:

§ 141.51 Form No. EIA-714, Annual Electric Power System Report.

(a) *Who must file.* Any electric utility, as defined under Section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602 (1982), must complete and file with the Energy Information Administration Form No. EIA-714, Annual Electric Power System Report, for every system that:

(1) Generates all or part of its load requirements;

(2) Owns and/or operates operable generating capacity of more than 25 megawatts (MW); and

(3) Has net system and firm sales for resale in excess of 100,000 megawatthours (MWh) for the reporting year.

(b) *When to file.*—(1) *General.* Form No. EIA-714 must be filed on or before each May 1 for the preceding calendar year, beginning with data covering calendar year 1985, which must be filed on or before May 1, 1986.

(2) *1982–1984 data.* Data covering 1982 are due July 15, 1985. Data covering 1983 are due August 15, 1985. Data covering 1984 are due September 15, 1985.

(c) *What to file.* An original and three conformed copies of the Form No. EIA-714 must be filed, in accordance with the instruction in that form.

[FR Doc. 85–11516 Filed 5–10–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 431, 436, 440, 442, 444, 446, 448, 449, 450, 452, 453, 455, 460, 536, 539, 540, 544, 546, 548, and 555

[Docket No. 83N-0378]

Antibiotic Drugs; Deletion of Safety Test

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to delete the original safety test requirement for antibiotic drugs for both human and veterinary use. Because of greatly improved manufacturing technology since the early years of antibiotic drug manufacture, and because of FDA's ability to assure use of other specific tests and improved manufacturing technology through its review of antibiotic applications and factory inspections, the agency has determined that the original safety test requirement is unnecessary.

DATES: Effective June 12, 1985; comments, notice of participation, and request for hearing by June 12, 1985; data, information, and analyses to justify a hearing by July 12, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drugs Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1984 (49 FR 30325), corrected on August 20, 1984 (49 FR 33025), FDA proposed to amend the antibiotic drug regulations to delete the safety test requirement for antibiotic drugs for both human and veterinary use.

As discussed in the proposal, there has been a significant improvement in the extraction and chromatographic separation of antibiotic drug substances from fermentation broths since the imposition of the safety test requirement in 1945. This improvement in manufacturing technology has resulted in the production of highly purified antibiotic drug substances. Based on antibiotic Forms 5 and 6 application reviews and factory inspections conducted by FDA under section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374), the agency has determined that methods, facilities, and conditions of production for all FDA-regulated antibiotic drugs are adequate in design and application to preclude the presence of the extraneous toxic impurities that the safety test was intended to detect. In addition to the overall improvement in antibiotic manufacturing technology, individual regulations for these antibiotic drugs prescribe other special tests (e.g., identity, pyrogen, chromatographic potency assay) that provide assurance of the absence of extraneous toxic impurities.

Interested persons were given until September 28, 1984, to submit written comments on this proposal and until August 29, 1984, to submit requests for an informal conference. Eight comments were received in response to the proposal. All comments supported the proposal. No requests for an informal conference were received.

In the **Federal Register** of August 30, 1984 (49 FR 34350), FDA amended the

antibiotic regulations to remove §§ 442.19 and 442.219 (21 CFR 442.19 and 442.219). Accordingly, all references to these sections made in the proposed rule have been removed in the final rule.

In the **Federal Register** of October 10, 1984 (49 FR 39670), FDA amended the antibiotic regulations to provide for the inclusion of accepted standards for a new antibiotic drug, clavulanate potassium, and its use with amoxicillin trihydrate in two new antibiotic dosage forms. In the **Federal Register** of November 16, 1984 (48 FR 45420), FDA amended the new animal drug regulations to provide for approval of a new animal drug application for amoxicillin trihydrate and clavulanate potassium film-coated tablets. In the same issue of the **Federal Register** (48 FR 45421), FDA also amended the new animal drug regulations to provide for approval of amoxicillin trihydrate for intramammary infusion. Sections 440.103d, 440.103e, 540.103g, and 540.803 (21 CFR 440.130d, 440.130e, 540.103g, and 540.803) that were promulgated in those regulations contain a safety test requirement for the amoxicillin trihydrate used in making batches of these dosage forms. In order to update these regulations to be in conformance with the agency's determination that the safety test is unnecessary, references to these sections have been included in the final rule.

The following sections, which should have been included in the proposal for revision, were inadvertently omitted: §§ 540.103d(a)(3)(i)(*a*); 540.103e(a)(3)(i)(*a*); 540.103f(a)(3)(i)(*a*); and 544.275(a)(3)(i)(*a*). These sections are included for revocation in this final rule.

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule deletes a testing requirement, thus reducing overall assay costs for manufacturers of antibiotic drugs under this final rule. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

21CFR Part 431

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

21 CFR Part 442

Antibiotics, cepha.

21 CFR Part 444

Antibiotics, oligosaccharide.

21 CFR Part 446

Antibiotics, tetracycline.

21 CFR Part 448

Antibiotics, peptide.

21 CFR Part 449

Antibiotics, antifungal.

21 CFR Part 450

Antibiotics, antitumor.

21 CFR Part 452

Antibiotics, macrolide.

21 CFR Part 453

Antibiotics, lincomycin.

21 CFR Part 455

Antibiotics.

21 CFR Part 460

Antibiotics.

21 CFR Part 536

Animal drugs, Antibiotics.

21 CFR Part 539

Animal drugs, Antibiotics, bulk.

21 CFR Part 540

Animal drugs, Antibiotics, penicillin.

21 CFR Part 544

Animal drugs, Antibiotics, oligosaccharide.

21 CFR Part 546

Animal drugs, Antibiotics, tetracycline.

21 CFR Part 548

Animal drugs, Antibiotics, peptides.

21 CFR Part 555

Animal drugs, Antibiotics, chloramphenicol.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 431, 436, 440, 442, 444, 446, 448, 449, 450, 452, 453, 455, 460, 536, 539, 540, 544, 546, 548, and 555 are amended as follows:

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

1. The authority citation for Part 431 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 431.53 [Amended]

2. Part 431 is amended in § 431.53 *Fees* by removing the item "Safety test" from the table in paragraph (b)(1).

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

3. The authority citation for Part 436 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 436.33 [Removed and Reserved]

4. Part 436 is amended by removing and reserving § 436.33 *Safety test.*

PART 440—PENICILLIN ANTIBIOTIC DRUGS

5. The authority citation for Part 440 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

6. Part 440 is amended by reserving and revising the following: Sections 440.3(a)(1)(ii) and (b)(2); 440.5(a)(1)(ii) and (b)(2); 440.7(a)(1)(ii) and (b)(2); 440.7a(a)(1)(iv) and (b)(4); 440.8 (a)(1)(ii) and (b)(2); 440.9a (a)(1)(iv) and (b)(4); 440.11 (a)(1)(ii) and (b)(2); 440.13a (a)(1)(iv) and (b)(4); 440.15 (a)(1)(ii) and (b)(2); 440.17 (a)(1)(ii) and (b)(2); 440.19 (a)(1)(iv) and (b)(2); 440.19a (a)(1)(ii) and (b)(4); 440.25 (a)(1)(ii) and (b)(2); 440.29 (a)(1)(ii) and (b)(2); 440.29a (a)(1)(iv) and (b)(4); 440.36a (a)(1)(iv) and (b)(4); 440.37a (a)(1)(iv) and (b)(4); 440.41 (a)(1)(ii) and (b)(2); 440.41a (a)(1)(iv) and (b)(4); 440.49 (a)(1)(ii) and (b)(2); 440.49a (a)(1)(iv) and (b)(4); 440.51 (a)(1)(ii) and (b)(2); 440.55a (a)(1)(iv) and (b)(4); 440.71 (a)(1)(ii) and (b)(2); 440.73 (a)(1)(ii) and (b)(2); 440.74a (a)(1)(iv) and (b)(4); 440.80a (a)(1)(iv) and (b)(4); 440.81a (a)(1)(iv) and (b)(4); 440.83a (a)(1)(iv) and (b)(4); 440.90a (a)(1)(iv) and (b)(4); 440.207(b)(4); 440.210(b)(4); 440.219b(b)(4); 440.229b(b)(4); 440.236(b)(4); 440.241(b)(4); 440.249(b)(4); 440.255b(b)(4); 440.255c(b)(4); 440.255d(b)(4); 440.274b(b)(4); 440.274c(b)(4); 440.280b(b)(4); 440.281b(b)(4); 440.1080a (a)(1)(iv) and (b)(4); 440.1081a (a)(1)(iv) and (b)(4).

7. By removing the word "safety," wherever it appears from the following: Sections 440.3(a)(3)(i); 440.5(a)(3)(i); 440.7(a)(3)(i); 440.7a(a)(3)(i); 440.8(a)(3)(i); 440.9a(a)(3)(i); 440.11(a)(3)(i); 440.13a(a)(3)(i); 440.15(a)(3)(i); 440.17(a)(3)(i); 440.19(a)(3)(i); 440.19a(a)(3)(i); 440.25(a)(3)(i); 440.29(a)(3)(i); 440.29a(a)(3)(i); 440.36a(a)(3)(i);

440.37a(a)(3)(i); 440.41(a)(3)(i); 440.41a(a)(3)(i); 440.49(a)(3)(i); 440.49a(a)(3)(i); 440.51(a)(3)(i); 440.55a(a)(3)(i); 440.71(a)(3)(i); 440.73(a)(3)(i); 440.74a(a)(3)(i); 440.80a(a)(3)(i); 440.81a(a)(3)(i); 440.83a(a)(3)(i); 440.90a(a)(3)(i); 440.103a(a)(3)(i)(*a*); 440.103b(a)(3)(i)(*a*); 440.103c(a)(3)(i)(*a*); 440.103d(a)(3)(i)(*a*); 440.103e(a)(3)(i)(*a*); 440.105a(a)(3)(i)(*a*); 440.105b(a)(3)(i)(*a*); 440.105c(a)(3)(i)(*a*); 440.105d(a)(3)(i)(*a*); 440.107a(a)(3)(i)(*a*); 440.107b(a)(3)(i)(*a*); 440.107c(a)(3)(i)(*a*); 440.107d(a)(3)(i)(*a*); 440.107e(a)(3)(i)(*a*); 440.108a(a)(3)(i)(*a*); 440.108b(a)(3)(i)(*a*); 440.111(a)(3)(i)(*a*); 440.115a(a)(3)(i)(*a*); 440.115b(a)(3)(i)(*a*); 440.117a(a)(3)(i)(*a*); 440.117b(a)(3)(i)(*a*); 440.119a(a)(3)(i)(*a*); 440.119b(a)(3)(i)(*a*); 440.125a(a)(3)(i)(*a*); 440.125b(a)(3)(i)(*a*); 440.129(a)(3)(i)(*a*); 440.141b(a)(3)(i)(*a*); 440.141a(a)(3)(i)(*a*); 440.141c(a)(3)(i)(*a*); 440.149a(a)(3)(i)(*a*); 440.149b(a)(3)(i)(*a*); 440.151a(a)(3)(i)(*a*); 440.151b(a)(3)(i)(*a*); 440.155c(a)(3)(i)(*a*); 440.155d(a)(3)(i)(*a*); 440.171a(a)(3)(i)(*a*); 440.171b(a)(3)(i)(*a*); 440.171c(a)(3)(i)(*a*); 440.173a(a)(3)(i)(*a*); 440.173b(a)(3)(i)(*a*); 440.173c(a)(3)(i)(*a*); 440.173d(a)(3)(i)(*a*); 440.180a(a)(3)(i)(*a*); 440.180c(a)(3)(i)(*a*); 440.180f(a)(3)(i)(*a*); 440.180g(a)(3)(i)(*a*); 440.207(a)(3)(i)(*b*); 440.210(a)(3)(i)(*b*); 440.219b(a)(3)(i)(*b*); 440.229b(a)(3)(i)(*b*); 440.236(a)(3)(i)(*b*); 440.241(a)(3)(i)(*b*); 440.249(a)(3)(i)(*b*); 440.255b(a)(3)(i)(*b*); 440.255c(a)(3)(i)(*c*); 440.255d(a)(3)(i)(*b*); 440.274a(a)(3)(i)(*a*); 440.274b(a)(3)(i)(*b*); 440.274c(a)(3)(i)(*b*); 440.280(a)(3)(i)(*b*); 440.281b(a)(3)(i)(*b*); 440.1080a(a)(3)(i); and 440.1081a(a)(3)(i).

8. In paragraph (a)(1) of §§ 440.207; 440.210; 440.219b; 440.236; 440.241; 440.249; 440.255b; 440.255c; 440.255d; 440.274b; 440.274c; 440.280b; and 440.281b by removing the sentence "It passes the safety test" wherever it appears.

§§ 440.229b [Amended]

9. In § 440.229b(a)(1), by revising the third sentence to read as follows: "It is sterile and nonpyrogenic."

PART 442—CEPHA ANTIBIOTIC DRUGS

10. The authority citation for Part 442 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

11. Part 442 is amended by removing and reserving the following: Sections 442.6 (a)(1)(ii) and (b)(2); 442.8a (a)(1)(iv) and (b)(4); 442.9a (a)(1)(iv) and (b)(4); 442.11a (a)(1)(iv) and (b)(4); 442.13a (a)(1)(iv) and (b)(4); 442.14a (a)(1)(iv) and (b)(4); 442.21 (a)(1)(ii) and (b)(2); 442.23a (a)(1)(iv) and (b)(4); 442.25a (a)(1)(iv) and (b)(4); 442.27 (a)(1)(ii) and (b)(2); 442.29a (a)(1)(iv) and (b)(4); 442.40 (a)(1)(ii) and (b)(2); 442.40a (a)(1)(iv) and (b)(4); 442.41 (a)(1)(ii) and (b)(2); 442.208(b)(4); 442.209(b)(4); 442.225b(b)(4); 442.225c(b)(4); and 442.240a(b)(4).

12. By removing the word "safety," wherever it appears from the following: Sections 442.6(a)(3)(i); 442.8a(a)(3)(i); 442.9a(a)(3)(i); 442.11a(a)(3)(i); 442.13a(a)(3)(i); 442.14a(a)(3)(i); 442.21(a)(3)(i); 442.23a(a)(3)(i); 442.25a(a)(4)(i); 442.27(a)(3)(i); 442.29a(a)(3)(i); 442.40(a)(3)(i); 442.40a(a)(3)(i); 442.41(a)(3)(i); 442.106a(a)(3)(i)(*a*); 442.106b(a)(3)(i)(*a*); 442.106c(a)(3)(i)(*a*); 442.121a(a)(3)(i)(*a*); 442.121b(a)(3)(i)(*a*); 442.127a(a)(3)(i)(*a*); 442.127b(a)(3)(i)(*a*); 442.127c(a)(3)(i)(*a*); 442.140a(a)(3)(i)(*a*); 442.140b(a)(3)(i)(*a*); 442.140c(a)(3)(i)(*a*); 442.141(a)(3)(i)(*a*); 442.208(a)(3)(i)(*b*); 442.209(a)(3)(i)(*b*); 442.225b(a)(3)(i)(*b*); 442.225c(a)(3)(i)(*b*); and 442.240a(a)(3)(i)(*b*).

13. In paragraph (a)(1) of §§ 442.208; 442.209; 442.225b; 442.225c; and 442.240a by removing the sentence "It passes the safety test." wherever it appears.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

14. The authority citation for Part 444 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

15. Part 444 is amended by removing and reserving the following: Sections 444.6 (a)(1)(ii) and (b)(2); 444.20 (a)(1)(ii) and (b)(2); 444.20a (a)(1)(iii) and (b)(3); 444.30 (a)(1)(ii) and (b)(2); 444.30a (a)(1)(iii) and (b)(3); 444.42(a)(1)(ii) and (b)(2); 444.42a (a)(1)(iv) and (b)(4); 444.50 (a)(1)(ii) and (b)(2); 444.62 (a)(1)(ii) and (b)(2); 444.70a (a)(1)(iv) and (b)(4); 444.80(a)(1)(ii) and (b)(2); 444.81a (a)(1)(iv) and (b)(4); 444.206(b)(4); 444.220(b)(3); 444.230(b)(3); 444.262(b)(4); 444.270b(b)(4); 444.280(b)(4); and 444.942a(a)(1)(ii).

16. By removing the word "safety" or "toxicity" wherever it appears from the following: Sections 444.20(a)(3)(i); 20a(a)(3)(i); 444.30(a)(3)(i); 444.30a(a)(3)(i); 444.42(a)(3)(i); 444.42a(a)(4)(i); 444.50(a)(3)(i); 444.62(a)(3)(i); 444.70a(a)(3)(i); 444.80(a)(3)(i); 444.81a(a)(3)(i); 444.130(a)(3)(i)(*a*); 444.142a(a)(3)(i)(*a*); 444.142b(a)(3)(i)(*a*); 444.150a(a)(3)(i)(*a*); 444.150b(a)(3)(i)(*a*); 444.206(a)(3)(i) (*a*) and (*b*); 444.220(a)(3)(i) (*a*) and (*b*); 444.230(a)(3)(i)(*b*); 444.262(a)(3)(i) (*a*) and (*b*); 444.270b(a)(3)(i)(*b*); 444.280(a)(3)(i)(*b*); 444.320a(a)(3)(i)(*a*); 444.320b(a)(3)(i)(*a*); 444.342a(a)(3)(i)(*a*); 444.342b(a)(3)(i) (*a*), (*b*), and (*c*); 444.342c(a)(3)(i)(*a*) and (*b*); 444.342d(a)(3)(i)(*a*) and (*b*); 444.342g(a)(3)(i)(*a*); 444.342h(a)(3)(i)(*a*)and (*b*); 444.342i(a)(3)(i)(*a*) and (*b*); 444.342j(a)(3)(i)(*a*) and (*b*); 444.342k(a)(3)(i)(*a*) and (*b*); 444.380a(a)(3)(i)(*a*); 444.380b(a)(3)(i)(*a*); 444.942a(a)(4)(i); and 444.942b(a)(3)(i)(*a*) and (*b*).

17. In paragraph (a)(1) of the following sections remove references as follows: Section 444.142a, remove "(iv)" from the fifth sentence; § 444.142b, remove "(iv)" from the fifth sentence; 444.342a, remove "(iv)" from the fifth sentence; § 444.342b, remove "(iv)" from the fourth and fifth sentences and "(ii)" from the sixth sentence; § 444.342c, remove "(iv)" from the fifth and sixth sentences; § 444.342d, remove "(iv)" from the fifth and sixth sentences; § 444.342g, remove "(iv)" from the sixth sentence; § 444.542f, remove "(iv)" from the fifth sentence and "(ii)" from the sixth sentence; and § 444.942b, remove "(iv)" from the fifth and sixth sentences.

18. In paragraph (a)(1) of §§ 444.206; 444.220; 444.230; 444.262; 444.270b; and 444.280 by removing the sentence "It passes the safety test." wherever it appears.

19. In paragraph (a)(1) of §§ 444.442g; 444.442h; 444.520a; 444.520b; and 444.542a by removing ", except safety" or "and, if for ophthalmic use, paragraph (a)(1)(iv) of that section" wherever they appear.

§ 444.542a [Amended]

20. By revising § 444.542a(a)(3)(i)(*a*) to read "The neomycin sulfate used in making the batch for potency, pH, and identity."

§ 444.542f [Amended]

21. By revising § 444.542f(a)(3)(i)(*a*) to read "The neomycin sulfate used in making the batch for potency, moisture, pH, and identity."

22. By revising § 444.542f(a)(3)(i)(*b*) to read "The gramicidin used in making the batch for potency, moisture, residue on ignition, melting point, crystallinity, and identity."

§ 444.942a [Amended]

23. By revising § 444.942a(b) to read "*Tests and methods of assay; potency, moisture, pH, and identity.* Proceed as directed in § 444.42a(b)(1), (5), (6), and (7)."

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

24. The authority citation for Part 446 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

25. Part 446 is amended by removing and reserving the following: Sections 446.10(a)(1)(ii) and (b)(2); 446.10a(a)(1)(iv) and (b)(4); 446.15(a)(1)(ii) and (b)(2); 446.16(a)(1)(ii) and (b)(2); 446.20(a)(1)(ii) and (b)(2); 446.20a(a)(1)(iv) and (b)(4); 446.21(a)(1)(ii) and (b)(2); 446.50(a)(1)(ii) and (b)(2); 446.60(a)(1)(ii) and (b)(2); 446.65(a)(1)(ii) and (b)(2); 446.65a(a)(1)(iv) and (b)(4); 446.66(a)(1)(ii) and (b)(2); 446.67(a)(1)(ii) and (b)(2); 446.67a(a)(1)(iv) and (b)(4); 446.75a(a)(1)(iv) and (b)(4); 446.76a(a)(1)(iv) and (b)(4); 446.80(a)(1)(ii) and (b)(2); 446.81(a)(1)(ii) and (b)(2); 446.81a(a)(1)(iv) and (b)(4); 446.82(a)(1)(ii) and (b)(2); 446.181b(b)(2)(ii); 446.220(b)(4); 446.260(b)(4); 446.265(b)(4); 446.267(b)(4); 446.275a(b)(4); 446.276a(b)(4); and 446.281d(b)(4).

26. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 446.10(a)(3)(i); 446.10a(a)(3)(i); 446.15(a)(3)(i); 446.16(a)(3)(i); 446.20(a)(3)(i); 446.20a(a)(3)(i); 446.21(a)(3)(i); 446.50(a)(3)(i); 446.60(a)(3)(i); 446.65(a)(3)(i); 446.65a(a)(3)(i); 446.66(a)(3)(i); 446.67(a)(3)(i); 446.67a(a)(3)(i); 446.75a(a)(3)(i); 446.76a(a)(3)(i); 446.80(a)(3)(i); 446.81(a)(3)(i); 446.81a(a)(3)(i); 446.82(a)(3)(i); 446.110(a)(3)(i)(*a*); 446.115a(a)(3)(i)(*a*); 446.115b(a)(3)(i)(*a*); 446.115c(a)(3); 446.116a(a)(3)(i)(*a*); 446.116c(a)(3)(i)(*a*); 446.116d(a)(4); 446.120a(a)(3)(i)(*a*); 446.120b(a)(3)(i)(*a*); 446.120c(a)(3)(i)(*a*); 446.121(a)(3)(i)(*a*); 446.150a(a)(3)(i)(*a*); 446.150b(a)(3)(i)(*a*); 446.160a(a)(3)(i)(*a*); 446.160b(a)(3)(i)(*a*); 446.160c(a)(3)(i)(*a*); 446.165a(a)(3)(i)(*a*); 446.165c(a)(3)(i)(*a*) and (*b*); 446.165d(a)(3)(i)(*a*); 446.165e(a)(3)(i)(*a*) and (*b*); 446.166(a)(3)(i)(*a*); 446.167(a)(3)(i)(*a*); 446.180a(a)(3); 446.180b(a)(4); 446.180c(a)(3)(i)(*a*); 446.181b(a)(3); 446.181d(a)(3)(i)(*a*); 446.181e(a)(3)(i)(*a*); 446.182(a)(3)(i)(*a*); 446.220(a)(3)(i)(*b*); 446.260(a)(3)(i)(*b*); 446.265(a)(3)(i)(*b*); 446.267(a)(3)(i)(*b*); 446.275a(a)(3)(i)(*b*); 446.275b(a)(3)(i)(*a*); 446.276a(a)(3)(i)(*b*); 446.276b(a)(3)(i)(*a*); 446.281c(a)(3)(i)(*a*); 446.281d(a)(3)(i)(*b*); 446.282(a)(3)(i)(*a*); 446.310(a)(3)(i)(*a*); 446.367c(a)(3)(i)(*a*); 446.367e(a)(3)(i)(*a*) and (*b*); 446.381a(a)(3)(i)(*a*); and 446.381b(a)(3)(i)(*a*).

27. In paragraph (a)(1) of §§ 446.181b; 446.220; 446.260; 446.265; 446.267; 446.275a; 446.276a; and 446.281d by removing the sentence "It passes the safety test." or "It is nontoxic." wherever it appears.

28. In paragraph (a)(1) of §§ 446.265, in the ninth sentence; 446.267, in the ninth sentence; 446.581c, in the seventh sentence; and 446.581d, in the fifth sentence by removing the words "safety," and "safety, and".

29. In paragraph (a)(1) of §§ 446.467; 446.510; 446.567a; 446.567b; 446.567c; 446.567e; and 446.667 by removing the words ", except safety" wherever they appear.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

30. The authority citation for Part 448 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

31. Part 448 is amended by removing and reserving the following: Sections 448.10(a)(1)(ii) and (b)(2); 448.10a(a)(1)(iii) and (b)(4); 448.13(a)(1)(ii) and (b)(2); 448.13a(a)(1)(iii) and (b)(3); 448.15a(a)(1)(iii) and (b)(3); 448.20a(a)(1)(iii) and (b)(4); 448.21(a)(1)(ii) and (b)(2); 448.25(a)(1)(ii) and (b)(2); 448.30(a)(1)(ii) and (b)(2); 448.30a(a)(1)(iv) and (b)(4); 448.910(a)(1)(ii) and (b)(2); 448.913(a)(1)(ii) and (b)(2); and 448.930a(a)(1)(ii) and (b)(2).

32. By removing the word "safety," from the following: Sections 448.10(a)(3)(i); 448.10a(a)(3)(i); 448.13(a)(3)(i); 448.13a(a)(3)(i); 448.15a(a)(3)(i); 448.20a(a)(3)(i); 448.21(a)(3)(i); 448.25(a)(3)(i); 448.30(a)(3)(i); 448.30a(a)(3)(i); 448.121(a)(3)(*a*); 448.310b(a)(i)(3)(*a*), (*b*), and (*c*); 448.310c(a)(3)(i)(*a*); 448.313a(a)(3)(i)(*a*) and (*b*); 448.313b(a)(3)(i)(*a*) (*b*), and (*c*); 448.321(a)(3)(i)(*a*); 448.513d(a)(3)(i)(*a*), (*b*), and (*c*); 448.513e(a)(3)(i)(*a*), (*b*), and (*c*); 448.910(a)(4)(i); 448.913(a)(4)(i); 448.930a(a)(4)(i); and 448.930b(a)(3)(i)(*a*).

33. In paragraph (a)(1) of §§ 448.421; 448.430; 448.510a; 448.510d; 448.510e; 448.513a; 448.513b; 448.513c; and 448.513f by removing ", except safety" or ", except for safety" wherever it appears.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

34. The authority citation for Part 449 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

35. Part 449 is amended by removing and reserving the following: Sections 449.4(a)(1)(iii) and (b)(3); 449.4a(a)(1)(iii) and (b)(3); 449.20(a)(1)(ii) and (b)(2); 449.50(a)(1)(ii) and (b)(2); and 449.204(b)(3).

36. By removing the word "safety," wherever it appears from the following: Sections 449.4(a)(3)(i); 449.4a(a)(3)(i); 449.20(a)(3)(i); 449.50(a)(3)(i); 449.104(a)(3)(i)(*a*); 449.120a(a)(3)(i)(*a*); 449.120b(a)(3)(i)(*a*); 449.120c(a)(3)(i)(*a*); 449.120d(a)(3)(i)(*a*); 449.150a(a)(3)(i)(*a*); 449.150b(a)(3)(i)(*a*); 449.150c(a)(3)(i)(*a*); 449.204(a)(3)(i)(*b*); 449.550b(a)(3)(i)(*a*); and 449.650b(a)(3)(i)(*a*);

§ 449.204 [Amended]

37. In § 449.204(a)(1) by removing the sentence "It passes the safety test."

§§ 449.550c, 449.550e, 449.550g, and 449.550h [Amended]

38. In paragraph (a)(1) of §§ 449.550c; 449.550e; 449.550g; and 449.550h by removing the phrase "except safety" wherever it appears.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

39. The authority citation for Part 450 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

§ 450.10a, 450.45, and 450.245 [Amended]

40. Part 450 is amended by removing and reserving the following: Sections 450.10a(a)(1)(iv) and (b)(4); 450.45(a)(1)(ii) and (b)(2); and 450.245(b)(4).

§ 450.10a, 450.45, and 450.245 [Amended]

41. In §§ 450.10a(a)(3)(i); 450.45(a)(3)(i); and 450.245(a)(3)(i)(*b*) by removing the word "safety," wherever it appears.

§ 450.245 [Amended]

42. In § 450.245(a)(1), by removing the sentence "It passes the safety test."

PART 452—MACROLIDE ANTIBIOTIC DRUGS

43. The authority citation for Part 452 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

44. Part 452 is amended by removing and reserving the following: Sections 452.10(a)(1)(ii) and (b)(2); 452.15(a)(1)(ii) and (b)(2); 452.25(a)(1)(ii) and (b)(2); 452.25a(a)(1)(iii) and (b)(3); 452.30a(a)(1)(iii) and (b)(4); 452.35(a)(1)(ii) and (b)(2); 452.75(a)(1)(ii) and (b)(2); 452.225(b)(3); and 452.232(b)(4).

45. By removing the word "safety," wherever it appears from the following: Sections 452.10(a)(3)(i); 452.15(a)(3)(i); 452.25(a)(3)(i); 452.25a(a)(3)(i);

452.30a(a)(4)(i); 452.35(a)(3)(i); 452.75(a)(3)(i); 452.110a(a)(3)(i)(*a*); 452.110b(a)(3)(i)(*a*); 452.110c(a)(3)(i)(*a*); 452.115a(a)(3)(i)(*a*); 452.115b(a)(3)(i)(*a*); 452.115c(a)(3)(i)(*a*); 452.115d(a)(3)(i)(*a*); 452.115e(a)(3)(i)(*a*); 452.115f(a)(3)(i)(*a*); 452.125a(a)(3)(i)(*a*); 452.125b(a)(3)(i)(*a*); 452.125c(a)(3)(i)(*a*); 452.125d(a)(3)(i)(*a*); 452.125e(a)(3)(i)(*a*); 452.135a(a)(3)(i)(*a*); 452.135b(a)(3)(i)(*a*); 452.135c(a)(3)(i)(*a*); 452.175a(a)(3)(i)(*a*); 452.175b(a)(3)(i)(*a*); 452.175c(a)(3)(i)(*a*); 452.175d(a)(3)(i)(*a*); 452.225(a)(3)(i)(*b*); 452.232(a)(3)(i)(*b*); 452.310(a)(3)(i)(*a*); and 452.710(a)(3)(i)(*a*).

§§ 452.110b, 452.310, and 452.710 [Amended]

46. In paragraph (a)(1) of the following sections remove references as follows: Section 452.110b, remove "(ii)" from the sixth sentence; § 452.310, remove "(ii)" from the sixth sentence; and § 452.710, remove "(ii)" from the fourth sentence.

§§ 452.225 and 452.232 [Amended]

47. In paragraph (a)(1) of §§ 452.225 and 452.232 by removing the sentence "It passes the safety test." wherever it appears.

§ 452.510b [Amended]

48. In § 452.510(b)(a)(1) by removing the words "safety and" from the sixth sentence.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

49. The authority citation for Part 453 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

50. Part 453 is amended by removing and reserving the following: Sections 453.20(a)(1)(iii) and (b)(3); 453.21(a)(1)(ii) and (b)(2); 453.22(a)(1)(iii) and (b)(3); 453.22a(a)(1)(v) and (b)(5); 453.30(a)(1)(ii) and (b)(2); 453.30a(a)(1)(iii) and (b)(3); 453.222(b)(4); and 453.230(b)(3).

51. By removing the word "safety," wherever it appears from the following: Sections 453.20(a)(3)(i); 453.21(a)(3)(i); 453.22(a)(3)(i); 453.22a(a)(3)(i); 453.30(a)(3)(i); 453.30a(a)(3)(i); 453.120(a)(3)(i)(*a*); 453.121a(a)(3)(i)(*a*); 453.121b(a)(3)(i)(*a*); 453.130a(a)(3)(i)(*a*); 453.130b(a)(3)(i)(*a*); 453.222(a)(3)(i)(*b*); and 453.230(a)(3)(i)(*b*).

§ 453.130b [Amended]

52. In § 453.130b(a)(1), remove the reference "(ii)" from the fifth sentence.

§§ 453.222 and 453.230 [Amended]

53. In paragraph (a)(1) of §§ 453.222 and 453.230 by removing the sentence "It passes the safety test." wherever it appears.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

54. The authority citation for Part 455 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise noted; 21 CFR 5.10.

55. Part 455 is amended by removing and reserving the following: Sections 455.10(a)(1)(ii) and (b)(2); 455.10a(a)(1)(iv) and (b)(4); 455.11(a)(1)(ii) and (b)(2); 455.12a(a)(1)(iv) and (b)(4); 455.20(a)(1)(ii) and (b)(2); 455.50(a)(1)(ii) and (b)(2); 455.51(a)(1)(ii) and (b)(2); 455.51a(a)(1)(iv) and (b)(4); 455.70(a)(1)(ii) and (b)(2); 455.80a(a)(1)(v) and (b)(5); 455.85(a)(1)(ii) and (b)(2); 455.85a(a)(1)(iii) and (b)(3); 455.90a(a)(1)(iii) and (b)(3); 455.210(b)(4); 455.230(b)(4); and 455.251(b)(4).

56. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 455.10(a)(3)(i); 455.10a(a)(3)(i); 455.11(a)(3)(i); 455.12a(a)(3)(i); 455.20(a)(3)(i); 455.50(a)(3)(i); 455.51(a)(3)(i); 455.51a(a)(3)(i); 455.70(a)(3)(i); 455.80a(a)(3)(i); 455.85(a)(3)(i); 455.85a(a)(4)(i); 455.90a(a)(3)(i); 455.110(a)(3)(i)(*a*); 455.111(a)(3)(i)(*a*); 455.120(a)(3)(i)(*a*); 455.150(a)(3)(i)(*a*) (both sentences); 455.151a(a)(3)(i)(*a*); 455.151b(a)(3)(i)(*a*); 455.170a(a)(3)(i)(*a*); 455.170b(a)(3)(i)(*a*); 455.185(a)(3)(i)(*a*); 455.210(a)(3)(i)(*b*); 455.230(a)(3)(i); 455.251(a)(3)(i)(*b*); 455.290(a)(3)(i)(*a*); 455.310a(a)(3)(i)(*a*); 455.310b(a)(3)(i)(*a*); and 455.390(a)(3)(i)(*a*).

§§ 455.150, 455.251, and 455.310c [Amended]

57. In paragraph (a)(1) of § 455.150 by removing "(ii)" from the fifth and sixth sentences; in § 455.251(a)(1) by revising the fourth sentence to read "It is sterile and nonpyrogenic." and by removing "(iv)" from the seventh sentence; and in § 455.310c(a)(1) by removing "(iv)" from the sixth sentence.

§§ 455.210 and 455.230 [Amended]

58. In paragraph (a)(1) of §§ 455.210 and 455.230 by removing the sentence "It passes the safety test." wherever it appears.

§§ 455.410 and 455.510d [Amended]

59. In paragraph (a)(1) of §§ 455.410 and 455.510d by removing the words ", except safety" and ", concerning safety" wherever they appear.

§ 455.310c [Amended]

60. In paragraph (a)(4)(i)(*a*) of § 455.310c by removing the phrase ", and for toxicity if the ointment is intended for ophthalmic use".

§ 455.310d [Amended]

61. In paragraph (a)(3) of § 455.310d by removing the words "and toxicity".

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

62. The authority citation for Part 460 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357), unless otherwise amended; 21 CFR 5.10.

§ 460.42 [Amended]

63. Part 460 is amended in § 460.42(a)(1) in the seventh sentence by removing the word "toxicity,".

PART 536—TESTS FOR SPECIFIC ANTIBIOTIC DOSAGE FORMS

64. The authority citation for Part 536 is revised to read as follows:

Authority: Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357, 360b); 21 CFR 5.10, 5.83.

§ 536.50 [Amended]

65. Part 536 is amended in § 536.507 by removing and reserving paragraph (c).

§ 536.513 [Amended]

66. In § 536.513(b) by removing "toxicity," and ", and § 440.80a(b)(5)(iii)".

PART 539—BULK ANTIBIOTIC DRUGS SUBJECT TO CERTIFICATION

67. The authority citation for Part 539 is revised to read as follows:

Authority: Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357, 360b); 21 CFR 5.10, 5.83.

68. Part 539 is amended by removing and reserving the following: Sections 539.3 (a)(1)(iv) and (b)(4); 539.15 (a)(1)(iv) and (b)(4); 539.170 (a)(1)(ii) and (b)(2); 539.210a (a)(1)(ii) and (b)(2); 539.210b (a)(1)(ii) and (b)(2); 539.310a (a)(1)(ii) and (b)(2); and 539.310b (a)(1)(ii) and (b)(2).

69. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 539.3(a)(3)(i); 539.15(a)(3)(i); 539.170(a)(4)(i); 539.210a(a)(4)(i); 539.210b(a)(4)(i); 539.310a(a)(3)(i); and 539.310b(a)(3)(i).

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

70. The authority citation for Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

71. Part 540 is amended by removing and reserving the following: Sections 540.114(a)(1)(ii) and (b)(2); 540.114a(a)(1)(iii) and (b)(3); 540.203(b)(4); 540.207b(b)(4); and 540.274d(a)(1)(iv) and (b)(3).

72. By removing the word "safety," or "toxicity," wherever it appears from the following: Sections 540.103a(a)(3)(i)(*a*); 540.103b(a)(3)(i)(*a*); 540.103c(a)(3)(i)(*a*); 540.103d(a)(3)(i)(*a*); 540.103e(a)(3)(i)(*a*); 540.103f(a)(3)(i)(*a*); 540.103g(a)(3)(i)(*a*); 540.105(a)(3)(i)(*a*); 540.107a(a)(4)(i)(*a*); 540.107b(a)(3)(i)(*a*); 540.107c(a)(3)(i)(*a*); 540.107d(a)(3)(i)(*a*); 540.107e(a)(3)(i)(*a*); 540.114(a)(3)(i); 540.114a(a)(3)(i); 540.119(a)(3)(i)(*a*); 540.129a(a)(3)(i)(*a*); 540.129b(a)(3)(i)(*a*); 540.129c(a)(3)(i)(*a*); 540.203(a)(3)(i)(*b*); 540.207a(a)(3)(i)(*a*); 540.207b(a)(3)(i)(*b*); 540.274c(a)(4); 540.803(a)(3)(i)(*a*); 540.814(a)(3)(i)(*a*); 540.814a(a)(3)(i)(*a*); 540.815(a)(3)(i)(*a*); 540.815a(a)(3)(i)(*a*); 540.829(a)(3)(i)(*a*); 540.874e(a)(1); and 540.874f(a)(3)(i)(*a*) and (*b*).

§§ 540.203 and 540.207b [Amended]

73. In paragraph (a)(1) of §§ 540.203 and 540.207b by removing the sentence "It passes the safety test." wherever it appears.

§ 540.274c [Amended]

74. In § 540.274c(a)(1), in the last sentence, by revising the phrase "§ 440.74a(a)(1) (ii), (iii), and (iv) of this chapter." to read § 440.74a(a)(1) (ii) and (iii) of this chapter."

§ 540.274d [Amended]

75. In § 540.274d(a)(4)(ii) (*a*), (*b*), and (*c*) by removing the words "toxicity and".

§ 540.380a [Amended]

76. In § 540.380a(a)(1), in the fifth sentence, by removing the phrase "and (iv)" in the cross-reference to § 440.80a(a)(1); in the sixth sentence by removing the phrase "and except § 440.80a(a)(1)(iv) of this chapter"; and by removing the next to the last sentence that reads "The 1-ephenamine penicillin G used conforms to the requirements of § 440.65a(a)(1) except paragraph (a)(1) (ii), (iii), and (iv) of that section."

§ 540.380a [Amended]

77. In § 540.380a(a)(4)(i)(*a*) by removing the words", and for toxicity if the ointment is intended for ophthalmic use."

§ 540.380b [Amended]

78. In § 540.380b(a)(1) in the sixth sentence, by revising the phrase "except paragraph (a)(1) (ii), (iii), and (iv)" to read "except paragraph (a)(1) (ii) and (iii)"; and in the next to the last sentence, by removing the phrase "except the standard for toxicity".

§ 504.874e [Amended]

79. In § 504.874e(a)(1), in the fifth sentence, by revising the phrase "except § 440.74a(a)(1) (ii), (iii), and (iv)." to read "except sterility and pyrogens.", and in the last sentence by removing the word "safety,".

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

80. The authority citation for Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

81. Part 544 is amended by removing the word "safety" wherever it appears from the following: Sections 544.170a(a)(4)(ii) (*b*), (*c*), and (*d*); 544.170b(a)(4)(i); 544.173a(a)(4)(ii)(*b*); 544.173b(a)(4)(ii)(*b*); 544.173d(a)(4)(ii)(*b*); 544.173e(a)(4)(ii)(*b*); 544.211a(b)(3); 544.211b (a)(4)(ii)(*a*) and (b)(3); 544.274(a)(4)(ii)(*a*); 544.275(a)(3)(i)(*a*); 544.370a (a)(4)(i) and (b)(2); 544.373a(a)(1); and 544.373b(a)(1).

§§ 544.170b and 544.173c [Amended]

82. In paragraph (a)(1) of §§ 544.170b and 544.173c by removing the sentence "It passes the safety test." wherever it appears.

§§ 544.170b, 544.173c, and 544.211b [Amended]

83. By removing and reserving the following: Sections 544.170b(b)(2); 544.173c(b)(3); and 544.211b(a)(1)(ii).

§ 544.170a [Amended]

84. In § 544.170a(a)(1) in the fourth sentence by revising the phrase "except § 444.70a(a)(1), (ii), (iii), and (v)" to read "except for sterility, pyrogens, and depressor substances," and by revising the fifth sentence to read "The polymyxin used conforms to the standards as prescribed by § 448.30(a)(1) of this chapter."

§§ 540.211a and 540.211b [Amended]

85. In paragraph (b)(3) of §§ 544.211a and 544.211b by removing the number "(4)" in the cross-reference to § 444.70a(b).

§ 544.370a [Amended]

86. In § 544.370a(b)(2) by revising the cross-reference "§ 444.70a(b) (2) through (7)" to read "§ 444.70a(b) (2), (3), and (5) through (7)."

§ 544.370b [Amended]

87. In § 544.370b(a)(1) by revising the phrase "§ 444.70a(a)(1) of this chapter, except paragraph (a)(1) (ii), (iii), (iv), and (v) of that section" to read "§ 444.70a(a)(1) of this chapter, except for sterility, pyrogens, and depressor substances," and by revising "§ 452.10(a)(1) of this chapter, except paragraph (a)(1) (ii), (v), (vi), and (viii) of that section." to read "§ 452.10(a)(1), except for residue on ignition, heavy metals, and crystallinity."

§ 544.373a [Amended]

88. In § 544.373a(a)(1) by revising the phrase "requirements of § 444.70a(a)(1) of this chapter, except paragraph (a)(1), (ii), (iii), (iv), (v), and (vi) of that section." to read "requirements of § 444.70a(a)(1) (i), (vii), and (viii) of this chapter."

§ 544.373b [Amended]

89. In § 544.373b(a)(1) by revising the phrase "requirements of § 444.70a(a)(1) of this chapter, except paragraph (a)(1) (ii), (iii), (iv), and (v) of that section." to read "requirements of § 444.70a(a)(1) (i), (vi), (vii), and (viii) of this chapter."

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

90. The authority citation for Part 546 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

91. Part 546 is amended by removing the word "toxicity," wherever it appears from the following: Sections 546.110b(a)(4)(ii)(*b*); 546.110c(a)(4)(ii)(*b*); 546.110d(a)(5)(ii)(*b*); 546.110g(a)(4)(ii)(*b*); 546.113a(a)(4)(ii)(*b*); and 546.312a(a)(1)(iii).

92. By removing the word "safety," wherever it appears from the following: Sections 546.180e(a)(3)(i)(*a*); 546.180g(a)(3)(i) (*a*) and (*b*); 546.180h(a)(3)(i) (*a*) and (*b*); and 546.180i(a)(3)(i) (*a*) and (*b*).

§ 546.180h [Amended]

93. In § 546.180h(a)(1) by revising the cross-reference "§ 446.81a(a)(1) of this chapter, except for § 446.81a(a)(1) (ii), (iv), and (v)." to read "§ 446.81a(a)(1) of this chapter, except for sterility and depressor substances.

§ 546.312a [Amended]

94. In § 546.312a(a)(1)(iii) by revising the cross-reference "§ 444.70a(a)(1) of this chapter, except paragraph (a)(1)(ii), (iii), (iv), and (v) of that section." to read "§ 444.70a(a)(1) of this chapter, except for sterility, pyrogens, and depressor substances."

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

95. The authority citation for Part 548 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

96. Part 548 is amended by removing the word "safety," wherever it appears from the following: Sections 548.112a(a)(3)(i)(*a*); 548.112b(a)(3)(i) (*a*) and (*b*); 548.112d(a)(3)(i) (*a*) and (*b*); and 548.314a(a)(3)(i) (*a*), (*b*), and (*c*).

§ 548.112d [Amended]

97. In § 548.112d(a)(1) by removing the phrase ", and in addition, it passes the safety test".

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

98. The authority citation for Part 555 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b), unless otherwise noted; 21 CFR 5.10, 5.83.

99. Part 555 is amended by removing the word "safety," wherever it appears from the following: Sections 555.110a(a)(3)(i)(*a*); 555.110b(a)(3)(i)(*a*); 555.110c(a)(4)(i)(*a*); 555.111(a)(3)(i)(*a*); 555.210(a)(4)(i)(*b*); and 555.310d(a)(3)(i)(*a*).

§ 555.210 [Amended]

100. In § 555.210 by removing the sentence "It passes the safety test." from paragraph (a)(1), and by removing and reserving paragraph (b)(4).

§ 555.310e [Amended]

101. In § 555.310e(a)(1) by removing the phrase ", except safety."

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before June 12, 1985, a written notice of participation and request for hearing, and (2) on or before July 12, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11467 Filed 5–10–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. N-85-1506; FR-2101]

Mortgagee Approval; Revision of Fee Schedule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION; Mortgagee Approval—Revision of Fee Schedule Notice.

SUMMARY: HUD is revising the amount of application fees it charges to mortgagees that apply for HUD–FHA approved status and the amount of annual recertification fees they must pay to retain their approved status. The Department's Authority for imposing fees and establishing amounts is contained in regulations at 24 CFR 203.2(a)(11).

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Lender Activities and Land Sales Registration, Room 9146, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–5000, Telephone (202) 755–6924 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 24 CFR 203.2(a)(11) HUD established a mortgagee application and annual recertification fee schedule in 1980 by publication of a Notice in the **Federal Register** on October 14, 1980. (45 FR 67779). The purpose of this fee schedule is to help defray the administrative cost to the Department of approving and monitoring mortgagees participating in HUD's mortgage insurance programs. The 1980 fee schedule has never been revised.

Since 1980 the Department has significantly increased its monitoring of mortgagee activities as part of an overall effort to assist mortgagees in orginating quality loans, prevent program violations, and avoid unnecessary losses to HUD's insurance funds. This has resulted in increased administrative costs to the Department. To defray this increased cost, this Notice raises the amount of application and annual recertification fees it charges to mortgagees by $50. It also establishes a fee of $100 to be charged to HUD-approved Loan Correspondents requesting the approval of additional sponsors. The fee for additional Loan Correspondent sponsors is needed because of a significant increase in the number of applications by Loan Correspondents for approval of additional sponsors, with associated increases in HUD's administrative costs.

The Department is reducing its application fee for HUD-approved Authorized Agents from $250 to $100, the same amount as is payable by HUD mortgagees for approval of a branch office. HUD regulations (24 CFR 203.3(e)) have, since 1983, required Authorized Agents to be HUD-approved mortgagees and, as such, they are required to pay appropriate mortgagee application and annual recertification fees. Also, operating experience by HUD since 1980 has shown that the administrative costs of approving Authorized Agents does not warrant retaining the higher original application fee.

Accordingly, the following revised schedule of application fees and annual fees for mortgagees will take effect on May 1, 1985:

Application Fees

All mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR § 203.7, must submit a nonrefundable application fee to HUD of $300 for their home office and $100 for

each branch office that will submit applications to HUD.

All mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR § 203.7, must submit to HUD upon application for approval of an Authorized Agent, a nonrefundable application fee of $100.

All Loan Correspondents as described in 24 CFR § 203.5 must submit a nonrefundable application fee of $100 to HUD for each new, additional sponsor, where such request for approval is made after the initial application for HUD-approved status has been filed.

The application fees must be submitted to the HUD Field Office having jurisdiction over the mortgagee's home office, branch office or Authorized Agent's facility. An application by a Loan Correspondent for an additional sponsor must be submitted to the HUD Field Office having jurisdiction over the Loan Correspondent's home office.

The appropriate application forms may be obtained from HUD Field Offices. Applications submitted without the required fees or with an incorrect payment will be returned to the applicant.

Annual Fees

All approved mortgagees, other than Government institutions and National Mortgage Associations as described in 24 CFR§ 203.7, must remit to HUD an annual recertification fee of $200 for their home office and $100 for each branch office approved to submit applications to HUD, in order to retain HUD-approved status.

Payment of the annual recertificiation fees must be submitted with Form HUD 92001V, Yearly Verification Report, which HUD mails annually to all approved mortgagees. Mortgagees must remit their annual fee with Form HUD 92001V to: *Department of Housing and Urban Development, P.O. Box 100170, Atlanta, Georgia 30384.*

Government institutions and National Mortgage Associations, as described in 24 CFR § 203.7, must submit Form HUD 92001V, Yearly Verification Report, even though they are not required to remit the annual fee.

Form HUD 92001V, Yearly Verification Report, has been approved by the OMB and assigned approval number 2502–0017.

Authority: Sections 203 and 211 of the National Housing Act, 12 U.S.C. 1709, 1715b.

Dated: May 1, 1985

Shirley McVay Wiseman,

Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–11528 Filed 5–10–85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 203, 226, and 234

[Docket No. R-85-1173; FR-1935]

Single Family and Condominium Mortgage Insurance; Changes to Loan-to-Value Limitation for Modestly Priced Homes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a provision of the Housing and Urban-Rural Recovery Act of 1983 which authorizes a higher loan-to-value ratio for a HUD-insured owner-occupied home or family unit with an appraised value of $50,000 or less. Because a higher loan-to-value ratio means the purchaser needs a smaller minimum downpayment, this amendment will help those persons traditionally served by FHA—homebuyers with sound credit and income and strong motivation to support mortgage debt, but with a limited amount of liquid assets to provide a larger downpayment. This amendment will particularly help first-time homebuyers who do not have equity in a previous home to use for a downpayment.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Brian Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, D.C. 20410. Telephone: (202) 755–6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1701–1749) authorizes the Federal Housing Administration (HUD/FHA) to insure mortgages for single family residences. This authority includes one-to four-family residences (see section 203) and one-family units in condominiums (see section 234).

HUD/FHA insures lenders against losses on insured home morgages, thereby lowering lenders' risk and encouraging a flow of credit for homeownership. The Department's insurance program has increased the opportunity for homeownership—one of the fundamental objectives of the Department. The limits on how much the Department may insure are set by the National Housing Act. Maximum mortgage amounts depend on whether the buyer intends to live in the home, the appraised value of the property, the number of family units in the dwelling, and the prevailing housing prices in the area. The insured mortgage amount cannot exceed a fixed percentage of the appraised value, called the loan-to-value ratio.

In most single family mortgages, when the mortgagor (purchaser) is going to occupy the residence, the loan-to-value ratio is the sum of the 97 percent of the first $25,000 of the appraised value plus 95 percent of the appraised value in excess of $25,000. Appraised value is defined as the estimated value of the property plus estimated closing costs or the acquisition cost, whichever is less. (See 24 CFR 203.18 and 234.27 for loan-to-value ratios in other circumstances.)

Section 424 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, November 30, 1983) (1983 Act) amends section 203(b) of the NHA by establishing a special loan-to-value ratio for owner-occupied modestly priced homes. If the appraised value of the property (estimated value plus estimated closing costs) does not exceed $50,000, section 424 allows a loan-to-value ratio of 97 percent of the entire appraised value of the property as of the date the mortgage is accepted for insurance. Section 420 of the same Act provides that the maximum mortgage limits authorized for one-family residences under section 203(b) of the NHA also apply to section 234 condominium units. (See rule implementing section 420 in the April 11, 1984 issue of the **Federal Register,** 49 FR 14336.)

The Proposed Rule

On October 10, 1984 (49 FR 39686), the Department proposed amendments to Parts 203 and 234 to implement section 424 of the 1983 Act to increase the loan-to-value ratio for owner-occupied, modestly priced single family homes, including condominium units. The proposed change would reduce the minimum downpayment requirement for purchasers of modestly priced single family homes. Under current loan-to-value limitations, a $50,000 home requires a $2,000 minimum downpayment. As proposed, the rule would require a $1,500 minimum downpayment on a $50,000 home. This reduction in the necessary initial cash investment would permit more moderate and middle income homebuyers to own

their own homes. Because the 1983 Act specifically limits this loan-to-value limitation to owner-occupants, the proposed rule would amend HUD's regulations to make it clear that investor-owners may not qualify for this special low downpayment.

The proposed rule also contained technical amendments to Part 226, Armed Services Housing—Civilian Employees, to make it consistent with Part 203.

In addition, the proposed rule stated that the Secretary had made the finding required by the 1983 Act that the implementation of this provision will not adversely affect the actuarial soundness of HUD's single family mortgage insurance programs, taking into account the already higher loan-to-value ratio resulting from the advance payment of mortgage insurance premiums in effect for most of the section 203 programs. The Secretary made such a finding, and submitted his report to Congress at the time the proposed rule was submitted to Congress in September, 1984, for prepublication review.

This Rule

Today's document adopts the proposed rule as final without change. While the Department received seven comments on the proposal, all were positive. Two comments were from banks, four were from professional organizations, and one was from an individual. The two issues raised by commenters are discussed below.

The first comment recommended expansion of the rule to include property whose value exceeds $50,000. The Department has no discretion to expand the rule in the manner suggested. As discussed in the proposed rule and earlier in this document, section 203(b)(2) of the National Housing Act establishes the maximum mortgage amounts eligible for insurance, including specific loan-to-value ratios. It is only because Congress amended section 203(b)(2) for homes valued at $50,000 or less that we are able to implement today's rule. Any expansion of the program would require statutory amendment.

The second comment expressed concern that the benefits of today's rule not be offset by increased payments required in the one-time mortgage insurance premium program. The Department does not regard implementation of the higher loan-to-value ratio provided for in this rule as requiring any change in the one-time mortgage insurance premium program. The Department could only implement the one-time mortgage insurance premium program (applicable to most Mutual Mortgage Insurance Fund programs) after it had determined that the program would not adversely affect the actuarial soundness of the Fund. Similarly, the one-time mortgage insurance rate must be based on a formula assuring actuarial soundness. And, too, the 97 percent loan-to-value ratio provision could only be implemented after the Department determined that it anticipated no increased actuarial risk to the Fund.

What this means is that the Department must, and does, reserve the option of increasing the one-time mortgage insurance premium rate, or withdrawing the one-time mortgage insurance premium program, if future experience demonstrates that these programs pose a significant risk to the actuarial soundness of the Fund.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule merely carries out a statutory policy and does not impose any new administrative or economic burdens on small entities.

This rule was listed as item number 48 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (see 49 FR 41684, 41702) under Executive Order 12291 and the Regulatory Flexibility Act.

The applicable Catalog of Federal Domestic Assistance program numbers are: 14.108; 14.117; 14.123; 14.133; 14.159; 14.161; 14.165; 14.172; and 14.175.

List of Subjects

24 CFR Part 203

Home improvement; Loan programs: Housing and community development; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy

24 CFR Part 226

Government employees; Mortgage insurance.

CFR Part 234

Mortgage insurance; Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Parts 203, 226, and 234 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 is revised to read as set forth below and any authority citation following any section in Part 203 is removed.

Authority: Secs. 203 and 211, National Housing Act, (12 U.S.C. 1709, 1715b).

2. Section 203.18 is amended by revising paragraphs (a)(2), (a)(3) and the introductory language of paragraph (c) to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) * * *

(1) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

(c) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See § 203.18(a)(3).) A mortgage executed by an owner who is not the occupant of the property may equal:

* * * * *

3. In § 203.50, paragraphs (f)(1) and (f)(2) are amended by removing the reference "§ 203.18(a) (1) and (2)" and adding in its place the reference "§ 203.18(a) (1) and (3)".

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

4. The authority citation for 24 CFR Part 226 is revised to read as set forth below and any authority citation following any section in Part 226 is removed.

Authority: Secs. 807, 809, National Housing Act, (12 U.S.C. 1748f, 1748h–l).

5. Section 226.5 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) * * *

(1) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(2) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(1) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value to the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

6. The authority citation for 24 CFR Part 234 is revised to read as set forth below and any authority citation following any section in Part 234 is removed.

Authority: Secs. 211, 234, National Housing Act, (12 U.S.C. 1715b, 1715y).

7. Section 234.27 is amended by revising paragraphs (a)(2), (a)(3), and the introductory language of paragraph (d) to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) * * *

(1) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a family unit is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance, unless the family unit—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such family unit had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a family unit is approved for mortgage insurance before the beginning of construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the family unit does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the family unit exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the family unit as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-

paid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

(d) *Nonoccupant mortgagors.* A nonoccupant mortgagor may not qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See § 234.27(a)(3).) A mortgage executed by an owner who is not the occupant of the property may equal:

* * * * *

Dated: May 2, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85-11526 Filed 5-10-85; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-84-1198; FR-1975]

Public Housing Development; Prototype Costs

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's public housing development regulations governing the calculation of prototype cost limits. Under this final rule, currently published unit prototype costs will be used to compute dwelling construction and equipment cost limits and total development cost ceilings. This change will promote greater control of project costs and encourage cost savings.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410-5000, telephone (202) 426-0938. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department's regulations at 24 CFR Part 941 govern procedures for the development to public housing projects under the United States Housing Act of 1937. Under these procedures, HUD is required to establish project prototype cost limits (PPCLs). These PPCLs represent the ceiling amounts that may be approved for dwelling construction and equipment for projects involving new construction. Additionally, total development cost (TDC) caps for all projects are computed by multiplying a set percentage times the PPCL. See 24 CFR § 941.406(a).

The method of computing PPCLs is described in 24 CFR 941.204. Under this rule, the Department is required to publish unit prototype costs annually in the **Federal Register.** These unit prototype costs represent the dwelling construction and equipment costs for modest housing of various unit sizes and structure types for economically similar areas. At the time that HUD invites a proposal under 24 CFR 941.402 or approves a proposal under 24 CFR 941.403, HUD is required to establish a base project prototype cost for the project, based on the then-current unit prototype costs for the involved structure and the number and types of units to be in the structure. HUD computes the PPCL by multiplying the base project prototype cost times an adjustment factor based on a commercial index that reflects cost changes occuring after the effective date of the unit prototype costs.

On October 10, 1984, the Department published a proposed rule in the **Federal Register** (49 FR 39694) to amend 24 CFR 941.204. Under the proposed rule, PPCLs would be based on the currently effective unit prototype costs, rather than the unit prototype costs that were effective when HUD invited or approved a particular proposal. Indexing of the unit prototype costs would be discontinued.

Interested parties were invited to submit comments by December 10, 1984. Comments were received from: Area Housing Commission, Pensacola, Florida; San Diego Housing Commission; Housing Authority of the City of San Luis Obispo, California; Department of Housing and Community Development, Fairfax County, Virginia; Housing Authority of the County of Santa Cruz, California; Housing Authority of the City of Reno, Nevada; and Boston Housing Authority.

One commenter alleged that the real problem that the proposed rule attempts to address is one of excessive processing time for public housing development. This commenter stated that the proposed regulations should be withdrawn until HUD takes steps to reduce excessive processing time.

Through issuances such as Handbook 7417.1 Rev-1, HUD has attempted to reduce the amount of time between HUD's invitation for proposals under 24 CFR 941.403 (or HUD's approval of a proposal under 24 CFR 941.402) and the date of execution of the construction contract (conventional) or the contract of sale (turnkey). Notwithstanding these efforts, the Department must provide a method to ensure that PPCLs and TDCS keep pace with cost changes during development.

Several commenters argued that the PPCLs and TDCs computed under the proposed rule would not adequately reflect inflation occurring after publication of the unit prototype costs and that the rule would result in cost limits that would be too difficult to meet. To ensure reasonable cost limits, these commenters suggested that the final rule: (1) Retain the existing method of computing PPCLs; (2) modify the proposed rule by permitting the use of indexed PPCLs whenever inflation exceeds a stated level (*e.g.*, five percent per year); or (3) provide that the TDCs will be computed as 175 percent of PPCLs, rather than the 145 and 160 percent figures stated at 24 CFR 941.406(a).

The Department has not revised the proposed rule in response to these comments. PPCLs and TDCs developed for projects under this rule will adequately reflect development costs for comparable housing in economically similar marketing areas. While PPCLs and TDCs computed under the final rule will not consider inflation (or deflation) occurring during the year following the effective date of the unit prototype costs, this omission is not significant. In recent periods, the rate of inflation has stabilized at relatively low levels. Indeed, the most recent government figures indicate that inflation was 3.7 percent during 1984. "Economic Indicators—January 1985," Prepared for the Joint Economic Committee by the Council of Economic Advisors (United States Government Printing Office, 1985). Even if inflation were to increase dramatically during some future period, this increase should not significantly delay public housing development since PHAs may exceed PPCLs by up to 10 percent with the approval of the Secretary under 24 CFR 941.204(e).

Two Commenters believed that the proposed rule is workable only if the regulations require HUD to publish the unit prototype annually and if HUD can demonstrate that it is able to update the schedules annually. The requirement for annual publication of the unit prototype costs is already included in the regulations at 24 CFR 941.204(b). HUD's ability to meet this annual schedule is demonstrated by our publication record. In the past, HUD published prototype costs on January 20, 1984 (49 FR 2608) and December 6, 1984 (49 FR 47772).

Finally, one commenter questioned the accuracy of HUD's past annual unit prototype determinations. In all annual notices establishing unit prototype costs, the Department has stated that it will permit the submission of written comments and will make appropriate amendments to the cost determinations based on these comments (see 49 FR 47772). Parties seeking the revision of our unit prototype cost determinations are encourged to submit appropriate comments in these proceedings. This rulemaking, however, is not the appropriate forum for consideration of these issues.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the proposed amendment is intended to have the effect of containing development costs for public housing projects, it may have an economic impact on builders or developers of public housing, some of whom may constitute small entities, but it is not believed that the number of small entities affected will be substantial.

This rule was listed as item 255 in the Department's Semiannual Agenda of Regulations published October 22, 1984 (49 FR 41684, 41737) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2577–0036.

The catalog of Federal Domestic Assistance program number and title is 14.146, Low-Income Housing-Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 941

Loan programs—housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

Accordingly, 24 CFR Part 941 is amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR Part 941 is revised to read as set forth below and any authority citation following any section in Part 234 is removed.

Authority: Section 6, U.S. Housing Act of 1937, (42 U.S.C. 1437(d)).

2. In 24 CFR 941.204 paragraphs (c), (d), and (e) are revised to read as follows:

§ 941.204 Prototype costs.

* * * * *

(c) *Project Prototype Cost Limit.* Except as provided in paragraph (d) of this section, the Field Office shall establish the project prototype cost limit as follows. When the Field Office invites proposals under § 941.403 or when it approves a proposal submitted under § 941.402, the Field Office shall determine the project prototype cost limit by multiplying the most recently published applicable unit prototype cost limit for each structure type by the number of units for a specific bedroom type. The cumulative total will be the project prototype cost limit. The project prototype cost limit shall be recalculated, if necessary, to reflect changes to unit prototype costs published in the **Federal Register** that became effective on or before the date of execution of the construction contract (conventional) or on or before the date of execution of the contract of sale (turnkey).

(d) *Exceptions.* For turnkey projects funded after October 1, 1980 for which the PHA has been notified of proposal approval before [effective date of the regulations] and for conventional projects funded after October 1, 1980 on which the PHA has advertised for bids before June 24, 1985, the project prototype cost limit will be calculated as follows:

(1) The Field Office shall establish the base project prototype cost at the time it invites proposals under § 941.403, or at the time it approves a proposal submitted under § 941.402. The base project prototype cost shall be computed by multiplying the then-current applicable unit prototype cost by the number of units for that unit size and structure type and then adding the amounts for all units in the proposed project.

(2) The Field Office, using a commercial construction cost index specified by the Assistant Secretary, shall determine the percentage of actual changes (increases or decreases) in construction costs from the effective date of the unit prototype cost to the execution date of the construction contract or contract of sale. The resulting percentage is the prototype cost adjustment factor.

(3) The Field Office shall determine the project prototype cost limit by multiplying the base project prototype cost by the prototype cost adjustment factor.

(e) *Request to Exceed Project Prototype Cost Limit.* The amount approvable by the Field Office for dwelling construction and equipment may not exceed the project prototype cost limit as computed in paragraphs (c) or (d) above. The limit may be exceeded (in accordance with section 6(b) of the Act) by up to ten percent, with the approval of the Assistant Secretary. (Approval of the Assistant Secretary to exceed 100 percent prototype costs is also required for projects being processed under a Program Reservation issued before October 1, 1980.) A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed.

(Approved by the Office of Management and Budget under OMB Control Number 2577–0036)

Date: May 1, 1985.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 85–11527 Filed 5–10–85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On February 7, 1985, the State of Indiana submitted to OSM Senate Bill 28 containing modifications to the Indiana statute concerning coal mining sites operating under interim program permits, the Small Operator Assistance Program (SOAP), suspension or revocation of permits, bond forfeiture, effluent limitations, program fees, interest rates on escrowed penalty payments, and permit condition violations. On March 22, 1985, Indiana submitted a modified version of the bill, containing non-substantial changes to the February 7 submission.

OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. The Federal rules at 30 CFR Part 914 which codify the Indiana permanent regulatory program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 13, 1985.

ADDRESSES: Copies of the Indiana program and the administrative Record on the Indiana Program are available for public inspection and copying during business hours at:

Office of Surface Mining, Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone (317) 269–2600.

Office of Surface Mining, Room 5124, 1100 L Street, N.W., Washington, D.C.; Telephone: (202) 343–7896.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1982, the Secretary of the Interior approved the Indiana State Program subject to the correction of nine minor deficiencies. The approval was effective July 29, 1982 (47 FR 32071, July 26, 1982). The Secretary removed the last of the conditions on August 19, 1983 (48 FR 37626). Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register.**

II. Discussion of Program Amendments

On February 7, 1985, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment is titled Senate Bill No. 28. On March 22, 1985, the State submitted a modified version of the bill, containing non-substantial changes to the February 7 submission. This statutory amendment modifies requirements concerning coal mining sites operating under interim program permits, the Small Operator Assistance Program (SOAP), suspension or revocation of permits, bond forfeiture, effluent limitations, program fees, interest rates on escrowed penalty payments, and permit condition violations.

On March 18, 1985, OSM announced receipt of the amendments and procedures for a public comment period and for a public hearing on the substantive adequacy of the proposed amendments (50 FR 10791).

The March 22, 1985 modified amendment was entered into the public record as document number IND–0430 on March 26, 1985, to allow for public review and comment. Since no requests for public meetings or hearings were received, a public hearing scheduled for April 12, 1985, was not held. The comment period ended on April 17, 1985.

III. Director's Findings

A. General Findings

The Director finds, in accordance with 30 CFR 732.17, that the amendments submitted by Indiana on February 7, 1985, as modified on March 22, 1985, meet the requirements of SMCRA and the Federal regulations. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be consistent with SMCRA and no less effective than the Federal regulations. The amended provisions are cited at the end of this notice in the amendatory language for § 914.15. Indiana has also made some non-substantive changes to its statute. The Director finds these changes consistent with SMCRA and the Federal regulations.

B. Specific Findings

1. The proposed amendment would amend the Indiana Code at IC 13–4–6–1.5 and at IC 13–4–6–1.6 to provide that all coal mining activities that operate under a permit issued under IC 13–4–6 (the Indiana interim program statute) or Acts 1978, Pub. L. 159, Acts 1979, Pub. L. 314, Acts of 1930, Pub. L. 101, or Acts 1981, Pub. L. 331 (all applying to the Indiana interim permits), would be subject to certain requirements. These requirements are those contained in: IC 13–4.1–11, Indiana statutory requirements for inspections, monitoring and enforcement; IC 13–4.1–12, State statutory requirements for fines and penalties; IC 13–4.1–13, State statutory requirements for judicial review; the Federal statutory requirements for interim program operations found in Sections 502, 510(d) and 522(e) of SMCRA; and the Federal regulatory requirements for interim program operations found in 30 CFR 710 through 716.

The Director finds that these provisions would restore the State's statutory enforcement authority for enforcement of interim standards on interim program permits in the State. The provisions would make these permits subject to State enforcement for any violations of Federal statutory and regulatory requirements for interim program permits, except for provisions of 30 CFR 717. Provisions of 30 CFR 717 relate to underground mines of which there are no interim sites remaining in Indiana. Therefore, the Director finds these provisions to be consistent with

and no less effective than Federal requirements.

2. IC 13–4.1–1–7 is added to the Indiana Code to provide that persons operating without a permit are subject to the criminal, civil and regulatory provisions of Article 13–4.1. IC 13–4.1–3–1 is amended to delete dates which define operations which must hold a valid mining permit, so that all operators in the State must hold such permits.

The Director finds these provisions consistent with SMCRA section 502 and 30 CFR 773.11, which require a permit to engage in surface coal mining and reclamation operations.

3. IC 13–4.1–3–3.5 is added as a new section to specify when operators who have received assistance under the Small Operator Assistance Program would be required to reimburse the Department.

The Indiana statutory provisions are substantially the same as the Federal regulatory provisions in 30 CFR 795.12. Therefore, the Director finds the amendatory provision no less effective than the Federal rule.

4. IC 13–4.1–5–8 is added as a new section to allow the Natural Resources Commission to suspend or revoke a permit if the permit is not revised as required by the Commission.

Although the Federal rules do not contain a counterpart to this rule, the rule expressly states a power that is implied for the regulatory authority in the Federal rules. The Director finds the rule no less effective than 30 CFR 774.13 for permit revisions and 30 CFR 843.13 for suspension or revocation of permits.

5. IC 13–4.1–6–9 is added as a new section to establish statutory provisions for bond forfeiture.

The Director finds the Indiana provisions consistent with the overall bonding requirements in SMCRA sections 509 and 519, and no less effective than 30 CFR 800.50, forfeiture of bonds, when considered with the State's regulatory provisions for bond forfeiture.

6. IC 13–4.1–8–1 is amended to change requirements pertaining to additions of suspended solids to streamflow.

The provisions is modified to change the requirements [similar to SMCRA section 515(b)(10)(B)(i)] that surface coal mining and reclamation operations be conducted to prevent to the extent possible using the best technology currently available (BTCA) "additional contributions * * * of suspended solids to streamflow or runoff outside the permit area" in excess of applicable State or Federal laws, to the requirement that operations prevent to the extent possible using BTCA, "violations of the effluent limitations for coal mining operations established under applicable State or Federal law."

The Director finds this provision consistent with SMCRA section 515(b)(10)(B)(i) since the amended Indiana provision is broader than the Federal provision and encompasses the requirements contained in the Federal provision.

7. IC 13–4.1–10–1 is amended to provide that the Natural Resources Commission shall fix a fee to cover the cost of "implementing the program established under this section."

"This section" refers to Section 1 of IC 13–4.1–10, which relates to the training, examination and certification of blasters. The Director finds this provision consistent with section 719 of SMCRA. Although the Federal provision does not provide for a fee, the State's inclusion of such provision does not render the requirement inconsistent with or less effective than the Federal provision.

8. IC 13–4.1–12–1 would be amended at subsection (d) to set the annual interest rate for escrowed penalty payments at eight percent.

SMCRA section 518(c) requires that the annual interest rate for escrowed penalty payments be "at the rate of 6 percent, or at the prevailing Department of Treasury rate, whichever is greater." The Director finds that the amended Indiana provision provides protection to the person whose penalty payments have been escrowed comparable to that provided by the Federal provision, and finds the provision consistent with the Federal provision.

9. IC 13–4.1–12–2 is amended with respect to violations of subsection (a), which addresses violations of the Surface Mining Act provisions (IC 13–4.1). The amended provisions subject persons who violate subsection (a) to requirements of appropriate sections of IC 13–4.1, and provide for possible denial of a permit application for such violators. The Director finds this provision consistent with the provisions in SMCRA section 521.

10. Various non-substantive and editorial changes are proposed throughout these sections. The Director finds that these editorial changes do not change the effect of the sections.

IV. Public Comments

There were no public comments received on these amendments to the Indiana State program.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: May 1, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (f) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendments are approved effective May 13, 1985. Revisions to the Indiana Statute as contained in Senate Bill 28, submitted February 7, 1985, as modified on March 22, 1985. The bill amends provisions at IC 13–4–6–1.5, IC 13–4.1–3–1, IC 13–4.1–8–1, IC 13–4.1–10–1, IC 13–4.1–12–1, and IC 13–4.1–12–2; and adds IC 13–4–6–1.6,

IC 13-4.1-1-7, IC 13-4.1-3-3.5, IC 13-4.1-5-8, and IC 13-4.1-6-9.

[FR Doc. 85-11354 Filed 5-10-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 918

Permanent State Regulatory Program of Louisiana

AGENCY: Office of Surface Mining Reclamation and Enforcememt (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSM is announcing his decision to modify the deadline for Louisiana to promulgate and submit rules governing the training, examination and certification of blasters. On January 22, 1985, Louisiana requested an extension of time to promulgate rules concerning blaster certification. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension until May 31, 1986, to submit a proposed blaster certification program.

DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Louisiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On January 22, 1985, Louisiana requested an extension until May 31, 1986, to promulgate blaster certification rules. The Louisiana Department of Natural Resources, Office of Conservation, the regulatory authority for Louisiana program, advised OSM that the State would require the additional time in order to promulgate and submit proposed rules on blaster certification. The letter stated the first actual surface mining operations are not scheduled to begin until the third quarter of 1985.

Further, as previously discussed with OSM, the State does not anticipate the need for blasting for surface mining operations in Louisiana. This is due to the physical nature of the unconsolidated overburden materials associated with coal and lignite in Louisiana. In the interim, Louisiana would recognize and accept as valid a current blasters certification legitimately obtained from any other State Regulatory Authority (or the Federal Government) having an approved blaster certification program pursuant to 30 CFR Part 850.

In the February 28, 1985 **Federal Register** (50 FR 8147), OSM proposed the extension of May 31, 1986, for Louisiana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 1, 1985. No comments were submitted to OSM during the comment period.

Directors' Determination

In accordance with the State's request, the Director has decided to extend the deadline for Louisiana to submit a proposed blaster training and certification program until May 31, 1986.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702 of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1985.

J. Steven Griles,

Deputy Asst. Secretary for Land and Minerals Management.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 918—LOUISIANA

30 CFR Part 918 is amended to read as follows:

1. The authority citation for Part 918 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

2. 30 CFR Part 918 is amended by adding § 918.16 to read as follows:

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17, Louisiana is required to submit for OSM'S approval the following proposed program amendments by the dates specified.

(a) By May 31, 1986, Louisiana shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters, and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) [Reserved]

[FR Doc. 85-10668 Filed 5-10-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-08]

Special Local Regulations: Energy Spells Progress Air Show Over the Columbia River at Kennewick, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Energy Spells Progress Air Show to be performed above the Columbia River at Kennewick, Washington. This event will be held on May 18, 1985, from 2:00 p.m. to 3:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on May 18, 1985, at 2:00 p.m. and terminate on May 18, 1985, at approximately 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lt M.P. Rand, USCG, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217 (503) 240–9333.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until April 15, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt M.P. Rand, USCG, project officer, U.S. Coast Guard Marine Safety Office, Portland, Oregon, and LCdr D. Gary Beck, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulations

The Energy Spells Progress Air Show is being held as part of Energy Spells Progress Week. A portion of the air show is scheduled to be conducted above the Columbia River between the S.R. 12 Bridge and the eastern end of Hydro Island at Kennewick, Washington. This air show is sponsored by Energy Spells Progress, a non-profit organization, and this rule making is undertaken at their request. FAA regulations require that no spectators be below where the air show aerobatics are to be held. A large number of spectators is expected to gather in the waters near the air show. To promote the safety of both the spectators and the participants, this special regulation is required. The economic impact of this regulation is expected to be minimal as it affects a short section of the Columbia River with light commercial traffic and will be in effect for approximately one hour.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water). Regulations.

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–1304 to read as follows:

§ 100.35–1304 Energy Spells Progress Air Show Over the Columbia River at Kennewick, Washington.

(a) *Regulated Area:* By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of the Columbia River at Kennewick, Washington, from the western side of the S.R. 12 Bridge to the eastern end of Hydro Island from 2:00 p.m., May 18, 1985, until approximately 3:00 p.m. May 18, 1985.

(b) *Special Local Regulations:* (1) Vessels or persons shall not enter or remain in the area described in paragraph (a) during the hours this regulation is in effect.

(2) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard vessels bounding the area described in paragraph (a). The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 30, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85–11497 Filed 5–10–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–03]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is temporarily revising the seasonal regulations governing the Sunrise Boulevard bridge, Broward County, Florida to make them applicable year-round through November 14, 1986. This change is being made because all vehicular traffic is using the 2-lane westbound bridge while the eastbound bridge is being replaced. This action will accommodate the needs of vehicular traffic and yet provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on 16 May 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia C. Reyes, Bridge Administration Specialist at (305) 350–4103.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published proposed rules (50 FR 9288) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 19, 1985. In each notice interested persons were given until April 22, 1985 to submit comments. The Coast Guard is making these regulations effective May 16, 1985, less than 30 days after publication of this final rule, because traffic has already been detoured to the westbound bridge. Permitting unrestricted bridge openings until a full 30 days have elapsed would cause severe traffic congestion.

Drafting Information

The drafters of these regulations are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

In response to the proposal, eight letters of support were received. Two of the letters were on behalf of one hundred property owners of the Sunrise East Condominium Association. Four letters not only favored the extended regulations, but suggested making them permanent. No objections to the proposal were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 3, Code of Federal Regulations, is amended by revising § 117.261(t) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(t) The draw of the Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale, shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m., the draw need be opened only on the quarter-hour and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(G)(3))

Dated: April 30, 1985.

A.R. Larzelere,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 85-11500 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 8-84-07]

Safety Zone; Corpus Christi Ship Channel, Corpus Christi, TX

Correction

In FR Doc. 85-9616, beginning on page 15743, in the issue of Monday, April 22, 1985, make the following correction:

On page 15744, second column, second line of § 165.808(b), "33 CFR 165.33" should have read "33 CFR 165.23".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effect of the Veterans' Benefits Improvement Act of 1984 Upon VEAP

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulation.

SUMMARY: This regulatory change implements a provision of the Veterans' Benefits Improvement Act of 1984 which affects people eligible to receive benefits under VEAP (Post-Vietnam Era Veterans' Educational Assistance Program). This regulatory change will acquaint the public with the way in which this Act affects VEAP.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement Act of 1984 contains a provision which sets new monthly benefit rates for some VEAP recipients who are pursuing a high school diploma or equivalency certificate. The law allows the VA and the Department of Defense no discretion in this matter. The new rates are prescribed by law effective October 1, 1984. These technical amendments simply update the rates shown in VA regulations. Public participation in this regulatory change, therefore, is unnecessary. The VA and the Department of Defense find that good cause exists for making this regulatory change final without publishing a notice of proposed rulemaking.

Since a notice of proposed rulemaking is not required and will not be published for this change, the change does not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(b). Therefore, this change is not subject to the requirements of that Act.

The VA and the Department of Defense have determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 27, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator, Veterans Administration.

E.A. Chavarrie,

Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended by revising paragraphs (b)(1) (i) through (iv) in § 21.5136 to read as follows:

§ 21.5136 Benefit payments—secondary school programs.

* * * * *

(b) *Monthly rate.* * * *

(1) * * *

(i) $376 for full-time training.

(ii) $283 for three-quarter time training.

(iii) $188 for half-time training.

(iv) $94 for quarter-time training.

(38 U.S.C. 1641, 1691; Pub. L. 98-543)

* * * * *

[FR Doc. 85-11411 Filed 5-10-85; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Increased Rates of Educational Assistance Veterans' Benefits Improvement Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543) which affect people eligible to receive benefits under the dependents' educational assistance program or the G.I. Bill. They also implement the provisions of that Act which affect veterans eligible to train under the Emergency Veterans' Job Training Program. These regulations will show

how this Act affects these three programs.

EFFECTIVE DATES: The effective date for the amendments to §§21.4612 and 21.4632 is October 24, 1984. The effective date for all other amended regulations is October 1, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, 810 Vermont Ave. NW, Washington, DC 20420 (202) 389–2092.

SUPPLEMENTARY INFORMATION: Various regulations in the 38 C.F.R. §§ 21.1000, 21.3000, and 21.4000 series are amended to reflect higher rates of payment provided by law to recipients of dependents' educational assistance and to recipients of educational assistance under the G.I. Bill. Some regulations are also amended to reflect extensions of some deadlines which previously existed in the Emergency Veterans' Job Training Program.

The VA finds that good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. All the changes contained in these regulations are specifically required by law. Public participation in this rulemaking is, therefore, unnecessary.

The VA is making these regulations effective retroactively on October 1, 1984 and October 24, 1984. Retroactive effect is justified because these are liberalizing regulations which merely place in the Code of Federal Regulations changes which are required by law.

Moreover, the VA finds that good cause exists for proposing that these regulations, like the sections of the statute they implement, shall be made retroactively effective on October 1, 1984 and October 24, 1984. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date for these regulations would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitle by law to it.

The VA has determined that these regulations are not major rules as that term is defined by E.O 12291, entitled Federal Regulations. The regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that the regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the rate changes affect individual benefit recipients. The other changes affect either veterans or businesses. However, the impact on businesses will be the result of the underlying law. The regulations themselves will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational rehabilitation.

Approved: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended as follows:

1. In § 21.1041, paragraph (d)(2)(ii)(B) is revised to read as follows:

§ 21.1041 Periods of entitlement.

* * * * *

(d) *Extension.* * * *

(2) * * *

(ii) * * *

(B) The additional amount that $1,053 will provide, whichever is less;

(38 U.S.C. 1786(a); Pub. L. 98–543)

* * * * *

2. In § 21.1045, paragraph (g)(2) (vi) and (vii) are revised and (viii) is added so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

* * * * *

(g) *Entitlement charge: correspondence course.* * * *

(2) * * *

(vi) $327 paid after September 30, 1980, and before January 1, 1981,

(vii) $342 paid after December 31, 1980, and before October 1, 1984, and

(viii) $376 paid after September 30, 1984.

(38 U.S.C. 1786(a); Pub. L. 89–358; Pub. L. 92–540; Pub. L. 93–508; Pub. L. 93–602; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

* * * * *

3. In § 21.3046, paragraph (c)(4)(ii) is revised to read as follows:

§ 21.3046 Periods of eligibility—spouses and surviving spouses.

* * * * *

(c) *Extension to ending date.* * * *

(4) * * *

(ii) The total additional amount of instruction that $1,053 will provide.

(38 U.S.C. 1711(b); Pub. L 98–543)

4. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) *Duration of special restorative training.* The VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of $119 per calendar month. See §§ 21.3303 and 21.3333(b).

(38 U.S.C. 1741(b), 1742; Pub. L. 88–361; Pub. L. 88–433; Pub. L. 93–508; Pub. L. 93–602; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

* * * * *

5. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate effective October 1, 1984 except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training	$376	If costs for tuition and fees average in excess of $119 per month, rate may be increased by such amount in excess of $119. (38 U.S.C. 1742)

(b) *Accelerated charges.* (1) Effective October 1, 1984, the VA may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $12.58 that the special training allowance exceeds the basic monthly rate of $376.

(2) The VA will:

(i) Charge fractions of more than one-half day as 1 day;

(ii) Disregard fractions of one-half or less; and

(iii) Record charges when the eligible child is entered into training.

(38 U.S.C. 1742; Pub. L. 93–508; Pub. L. 93–602; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466)

* * * * *

6. In § 214.136, paragraph (a) and paragraph (c)(2) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$376	$448	$510	$32
¾ time	283	336	383	24
½ time	188	224	255	17
Less than ½ but more than ¼ times [1]	188	(²)	(²)	
¼ times or less [1]	94	(²)	(²)	
Cooperative, other than farm cooperative (full time only)	304	355	404	23
Apprentice or on-job (full time only but see footnote [3] below.)				
Payment designated training assistance allowance:				
First 6 months	274	307	336	14
Second 6 months	205	239	267	14
Third 6 months	136	171	198	14
Fourth 6 months and succeeding periods	68	101	131	14
Correspondence	55 percent of the established charge for number of lessons completed by the veteran and serviced by the school.[4]			
Flight training	60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay [5] Allowance paid monthly based on actual flight training received. See § 21.1045(e)			
Farm cooperative:				
Full time	304	355	404	23
¾ time	228	266	303	18
½ time	152	178	202	12

[1] If a veteran under chapter 34 receiving benefits under § 21.4272(h) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94, as appropriate per month if the maximum allowance is not initially authorized

(38 U.S.C. 1682(e), Pub. L. 98-543)

[2] See para. (b)

[3] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month

[4] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. Those veterans and service persons who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g)

(Pub. L. 97-35, sec. 2004(b))

[5] If a veteran or serviceperson enrolls in a flight course before September 2, 1980 he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. If a veteran or serviceperson enrolls in a flight course after September 1, 1980 and before September 1, 1981, and is not entitled to receive 90 percent of the established charge for the course, he or she will receive 60 percent of the established charge for the course provided he or she remains continuously enrolled in his or her program. If a veteran or serviceperson enrolls in a flight course during September 1981, and this does not form part of a continuous enrollment begun before September 1, 1981, he or she will receive 60 percent of the established charge for that portion of the course completed during September 1981. He or she will receive no payment for any portion if the course completed after September 30, 1981. If, after September 30, 1981, a veteran or serviceperson receives flight training after breaking the continuity of his or her enrollment or after enrolling in a flight course for the first time, the VA will make no payment for the flight training. The VA will consider the continuity of enrollment broken any time the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months

(Pub. L. 97-35, sec. 2003 and 2006).

(38 U.S.C. 1677, 1682, 1786, 1787, Pub. L. 90–77, Pub. L. 90–631, Pub. L. 91–219, Pub. L. 92–540, Pub. L. 93–508, Pub. L. 94–502, Pub. L. 95–202, Pub. L. 96–466, Pub. L. 98–543)

* * * * *

(c) *Active duty.* * * *

(2) The appropriate rate from this table:

Measurement	Rates effective Oct. 1, 1984
Full time	$376
¾ time	283
½ time	188
Less than ½, but more than ¼ time	188
¼ time or less	94

(38 U.S.C. 1682; Pub. L. 90–77, Pub. L. 90–219, Pub. L. 92–540, Pub. L. 93–508, Pub. L. 93–602, Pub. L. 94–502, Pub. L. 95–202, Pub. L. 96–466, Pub. L. 98–543) (Oct. 1, 1984)

* * * * *

7. In § 21.4137, paragraph (a) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1984:

Type of courses [1]	Monthly rate
Institutional:	
Full time	$376.
¾ time	$283
½ time	$188
Less than ½ but more than ¼ time [2]	$188.
¼ time or less [2]	[redacted]
Cooperative, other than farm cooperative (full time only).	$304.
Apprentice or On Job (full time only but see footnote [1] below) Payment designated training assistance allowance:	
First 6 months	$274.
Second 6 months	$205
Third 6 months	$136
Fourth 6 months and succeeding periods	[redacted]
Farm cooperative:	
Full time	$304.
¾ time	$228
½ time	$152
Correspondence	50 percent of the established charge for number of lessons completed by eligible spouse and serviced by the school [3] Allowance paid quarterly. (38 U.S.C. 1786, Pub. L. 97-35)

[1] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month

[2] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $188 or $94 as appropriate per month, if the maximum allowance is not initially authorized (38 U.S.C. 1732(c)(3); Pub. L. 95-202, Pub. L. 96–466, Pub. L. 98-543)

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser. Eligible spouses or surviving spouses who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. Those spouses and surviving spouses who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons (Pub. L. 97-35, sec. 2004(b))

* * * * *

8. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or § 21.4137, the VA will authorize the cost of the

tutorial assistance in an amount not to exceed $84 per month effective October 1, 1984. (38 U.S.C. 1692(b); Pub. L. 91–219; Pub. L. 92–540; Pub. L. 93–508; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

(d) *Entitlement charge.* The VA will make no charge against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of $1,008 effective October 1, 1984. (38 U.S.C. 1690, 1692, 1693; Pub. L. 91–219; Pub. L. 93–508; Pub. L. 94–502; Pub. L. 95–202; Pub. L. 96–466; Pub. L. 98–543)

9. In § 21.4279, paragraph (b)(1) is revised to read as follows:

§ 21.4279 Combination correspondence-residence program.

* * * * *

(b) * * *

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month entitlement charged for each $376 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 96–466, Pub. L. 98–543)

* * * * *

10. In § 21.4503, paragraph (b)(2) (iii) and (iv) are removed and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* * * *

(i) $376, effective October 1, 1984 for eligible persons and veterans enrolled in a course other than a flight training course, and

(ii) $317, effective January 1, 1981, for veterans enrolled in a flight training course.

(38 U.S.C. 1798(b); Pub. L. 93–508, Pub. L. 94–502, Pub. L. 95–202, Pub. L. 96–466, Pub. L. 98–543)

* * * * *

11. in § 21.4612, paragraph (c)(2) is revised to read as follows:

§ 21.4612 Applications and certifications.

* * *

(c) *Certificates.* * * *

(2) A certificate expires 90 days from the date on which it is furnished to the veteran. A certificate may be renewed for an additional 90 days if at the time the veteran applies for renewal, the provisions of paragaph (b) of this section are met. (Pub. L. 98–77, sec. 5; Pub. L. 98–543, sec. 212)

12. In § 21.4632, paragraph (e)(2) (i) and (ii) are revised to read as follows:

§ 21.4632 Payments.

* * * * *

(e) *Limitations on payments.* * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after February 28, 1985;

(ii) For any job training program which begins after September 1, 1985; (Pub. L. 98–543, sec. 212)

* * * * *

(38 U.S.C. 210(c))

[FR Doc. 85–11410 Filed 5–10–85; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–750; FCC 85–125]

Processing of FM and TV Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to provide an initial filing window period for applications for new commercial FM service and for applications to facilities in this service. Applications filed during the window would be grouped for consolidated consideration, with mutually exclusive applications being evaluated in comparative hearings. After a window closes, applications for a vacant allotment and for modifications to facilities affecting such vacant allotments or other existing facilities will be processed on a "first come/first serve" basis. This action is taken in an effort to expedite service to the public and to provide increased certainty and efficiency in the applications processing system.

DATES: To provide a transitional period, the *Order* freezes the filing of all commercial FM applications until 30 days following the date of publication in the **Federal Register.**

The freeze on applications is effective on the date of adoption of the *Report and Order*, March 14, 1985. Rule changes will become effective on June 12, 1985. FCC Form changes will become effective upon approval by the Office of Management and Budget.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lane Howard Moten, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications; MM Docket No. 84–750.

Adopted: March 14, 1985.

Released: May 6, 1985.

By the Commission.

Introduction

1. The Commission has before it a *Notice of Proposed Rule Making* (*"Notice"*) in the above-captioned proceeding,[1] and comments filed in response thereto. The *Notice* proposed replacing the existing two-step cut-off procedure utilized to process applications for new commercial FM and TV stations and modifications to existing stations in these services[2] with an alternative processing system designed to expedite authorization of new or expanded service to the public.[3] Under the proposed approach, the Commission would announce a one-time, fixed filing period—or "window"—governing all applications for currently vacant channels in the commercial FM and TV Tables of Allotments or for modifications to existing facilities.[4] All

---

[1] FCC 84–356 (released September 7, 1984), 49 FR. 36523 (September 18, 1984).

[2] Parallel provisions for the processing of television and FM applications are contained, respectively, in Sections 73.3572 and 73.3573 of the Commission's rules.

[3] We observed in the *Notice* that "we do not contemplate application of these procedures to noncommercial FM and TV channels" because of the "special problems of . . . applicants [for such channels] in securing funding, staff and programming before applying for a new station." *Notice* at n.10. We are convinced that our initial reasoning on this matter remains valid. Accordingly, we will not generally apply the new processing standards adopted herein to applications for reserved, noncommercial channels. In certain limited cicumstances, however, where conflicts between noncommercial and commercial facilities occur, "first come/first serve" procedures applicable to commercial licensing will affect noncommercial applicants. *See* n.35 and para. 37 *infra.*

[4] The FM "Table of Allotments" is found in § 73.202 of the Commission's rules and the TV "Table of Assignments" is found in § 73.606. Both tables shall be referred to herein as "Tables of Allotments." At present, the FM Table contains 76 available commercial channels and the TV Table contains 129 vacant commercial channels. A list of these vacant allotments will be published in the near future. Our decision, however, in the *Report and Order* in BC Docket No. 80–90, 94 FCC 2d 152 (1983), and subsequent implementing actions, will add some 689 new allotments to the FM Table. *See* n.12 *infra.*

mutually exclusive applications filed during the window would be subject to comparative hearings to determine the best applicant. If only a single acceptable application is filed during the window, then that application alone would be grantable, subject to the usual qualification criteria. In the event a window closes and no acceptable applications have been filed during the window period, a "first come/first serve" processing standard would then apply whereby the first acceptable aplication received would cut off the filing rights of any subsequent applicants. Applications for allotments added by future Commission orders would be subject to similar filing windows, as announced in the appropriate allotment order.[5]

2. Commenters were invited to address the legal ramifications of the proposed changes, with particular reference to the notice requirements, to review the practical efficacy of the proposal, and finally to comment on the specifics of the proposal, including the appropriate duration of the window periods. After careful review of the record and analysis of the probable costs and benefits of the proposed changes, we are persuaded that, with certain modifications, adoption of the alternative processing procedures set forth in the *Notice* is warranted.

Comments

3. The commenting parties generally opposed the changes,[6] contending that a filing window will encourage a "gold rush" mentality with its attendent mass filings and abuse by professional application promote. The National Association of Broadcasters and Dow. Lohnes, and Albertson argue that the proposed process substitutes artificial regulatory incentives for actual demand and that broadcasters will be forced to file defensive modification applications in order to avoid being "locked out" of future facilities changes. Most commenters also point to the Commission's experiences with date-certain filing procedures, such as those governing the low power television, cellular radio and multichannel multipoint distribution services, and maintain that the problems in these services of massive application filings and the Commission's inability to timely process those applications will be repeated here if we implement the proposed changes. Many commenters fear that a sudden influx of applications, which they predict will result from the proposed processing system, will force the Commission to adopt a lottery mechanism for TV and FM services. Several commenters suggest, as well, that actions less drastic than implementation of a filing window and "first come/first serve" procedure can achieve the Commission's stated goals yet avoid the dangers they see inherent in our proposal. They contend, for example, that requiring more stringent showings as to financial qualifications and site availability would cut down on "strike" applications.

4. Citizens Communications Center and Black Citizens for a Fair Media ("CCC–BCFM"), as well as other commenters, express concern that the proposed 45 day duration for the filing window will particularly disadvantage minorities, women and small businesses. They maintain that only well-financed and established entities will be able to respond within such a limited time frame. These commenters also focus on the "first come/first serve" aspect of the proposed changes, asserting that no public interest rationale has been advanced for barring competing applications after the window is closed. They argue that the public is best served when the Commission's applications processing procedures emphasize selection of the best possible candidate rather than expedition of service or administrative savings.

5. Commenters supporting the proposed changes agree with our suggestion in the *Notice* that the new procedures will deter strike applications and promote rapid service to the public. Newport Engineering specifically contends that the reduction in comparative hearings, and the expenses and delays attendant to such hearings, resulting from the elimination of existing cut-off procedures will particularly benefit minorities and small businesses.[7]

Discussion

6. As an initial matter, we have decided to apply the window filing and "first come/first serve" processing system to FM services only. Upon review, it became apparent that the TV processing line, because of significantly lower applications volume, has not experienced the range and intensity of problems that have faced the FM processing line. There is no appreciable backlog in TV nor is there the pressure of a large number of new allocations such as the 689 new channels added to the FM Tables as a result of Docket 80–90. Therefore, television applications will continue to be processed under their current rules.

7. The Table of Allotments for FM broadcast frequencies is designed to promote "fair, efficient and equitable distribution" of these services among various communities.[8] The Commission's role in designing an appications process to assign these frequencies is not simply to administer spectrum allocations or to prevent stations from interfering with one another. Rather, the Commission also strives to ensure that an expansive menu of programming alternatives is made rapidly available to the American public. In developing processing guidelines, then, the Commission must strike a balance between the dual and sometimes divergent goals of selecting the best possible applicant and the commitment to bring new service to the public as expeditiously as possible.

8. In an effort to limit delays in the authorization of new broadcast service, our current processing rules utilize a cut-off list procedure to restrict the filing rights of applicants. Under these rules, once a channel is assigned through a rule making, a construction permit application can be filed. After an initial review, the lead application is placed on an "A" cut-off list. The public notice announcing the "A" cut-off list states that the lead application is acceptable for filing. This notice alerts the public to the cut-off date (at least 30 days subsequent) by which applications mutually exclusive with and petitions to deny the lead application must be filed. The lead applicant is permitted, as a matter of right, to make major amendments to its application during this period. The second stage of the process involves an initial review of applications filed in response to the "A" cut-off list, a determination as to which of these applications are mutually exclusive with the lead application, and, finally, publication of a list—the "B" cut-off list—enumerating such applications. The "B" list sets forth a date for filing petitions to deny against those applicants on the "B" list and for filing minor amendments as a matter of right.

[5] A more detailed description of the filing window—"first come/first serve" processing system is provided at paragraph 27–36, *infra*.

[6] Parties filing comments in this proceeding are: Lauren Colby; Doug McConnell; Black Citizens for a Fair Media and Citizens Communications Center, filing jointly; National Association of Broadcasters; National Radio Broadcasters Association; Dow, Lohnes, & Albertson; International Broadcasting System; Thomas C. Smith; South Wisconsin Co. and Terry Posey, filing jointly; Cohen and Dippell; Newport Engineering; and, Eric Hilding

[7] Reply comments were filed by the National Radio Broadcasters Association, CCC–BCFM and A.D. Ring and Associates. These commenters reiterated their opposition to the proposed processing scheme, maintaining that the Commission will not achieve any real benefit by its adoption.

[8] 47 U.S.C. § 307.

9. Our experience indicates that this cut-off processing procedure, particularly the publication of the "A" cut-off list which identifies the lead applicant and gives notice that its application is on file with the Commission, has had the effect of facilitating competing applications that are intended to block or delay the initial application. Such applications are anticompetitive in nature and effectively postpone service to the public by precipitating unnecessary comparative hearings.[9] Beyond delay, of course, these hearings also visit substantial costs on both the lead applicant and the Commission. Further, as we stated in the *Notice*, "these costs and delays may deter investors in new broadcast ventures and may have a deleterious effect on an individual applicant's ability to finance a new broadcast station."[10]

10. Additionally, we have noted the filing of what appear to be purely speculative applications that take advantage of the effort and expense of the initial applicant and the announced availability of its application by copying costly engineering data from the lead application. These applications seem to be motivated by a desire to elicit a settlement from the lead applicant or to simply enhance the filing party's chances of success by substantially and inexpensively increasing the number of active applications before the Commission on its behalf. Like blocking applications, these speculative filings encumber and delay the processing of the applications of "ready, willing and able" applicants and thus contravene our processing policy objectives of expediting service to the public and minimizing administrative costs for both applicants and the Commission.

11. We also are concerned that our existing approach to processing minor modification applications lacks sufficient certainty and, as a result, may be wasteful of the Commission's and applicants' resources. Currently, when an application for a minor modification is filed, notice of its acceptance is given and it is placed in line for processing. Applications in conflict or mutually exclusive with the minor modification application may be filed up until the day the latter application is granted. Thus, after full review of the modification application itself is complete, the Commission is required to search its applications files in an effort to determine prior to grant whether conflicting applications have been filed. Further, since there is some unavoidable delay between receipt and posting of modification applications, it is impossible to make this determination without manually sorting through the most recent filings. It is possible, therefore, to grant a modification application and subsequently discover a timely filed conflicting application, which would necessitate revoking the grant and reopening the application process. This uncertain and time-consuming process has proven frustrating both to the Commission and to applicants and is clearly undesirable.

12. Moreover, our concern with efficiency and finality in modification processing is considerably heightened by our recent decision significantly expanding the scope of facilities changes deemed to be minor modifications.[11] That action should increase appreciably the number of applications to be processed under minor modification standards and underscores the necessity that these standards be clear, certain and workable.

13. Finally, the need to reduce processing delays affecting applications for new stations and modifications and to more effectively utilize our applications processing resources has become increasingly urgent as the Commission continues planning for the expected influx of FM applications for the 689 new allocations stemming from our decision in BC Docket No. 80–90.[12] This large group of newly-designated allocations must not become entangled in a processing morass if our underlying objective of substantially expanding the availability of FM broadcast service to the public is to be achieved.

14. Despite the reservations expressed by the commenters, we are pursuaded that the filing window and "first come/first serve" processing system outlined in the *Notice* can significantly ameliorate the foregoing problems. The filing window approach, for example, should dramatically reduce the filing of anticompetitive and speculative applications. These applications depend inherently on access by potential competing applicants to the lead application prior to the filing deadline. The existing "A" cut-off list processing system ensures such availability by utilizing the lead application to trigger the 30 day filing period for mutually exclusive applications. By contrast, the new processing system will generally use the allotment order adding a new channel to the Tables to trigger a filing window for applications directed to that channel.[13] Potential applicants must file during this window, without the assurance of prior access to other applicants' applications, or risk losing the channel to an applicant that does file in the window or that files first after the window closes. Similarly, the "first come/first serve" aspect of the new processing system will reduce delays in authorizing service and encourage "ready, willing and able" applicants by eliminating the competing application stage in cases where the channel in question has already been subject to a filing window and applications have not been forthcoming. The revised processing standards will also remedy the present uncertainty associated with minor modification applications. After an initial filing window prescribed in this *Report and Order*, most minor modification applications filed by existing FM stations would be subject to "first come/first serve" standards whereby an applicant's rights would vest upon filing.

15. In sum, we believe the proposed processing system offers numerous benefits. Before examining the details of this processing scheme, however, and the specific objections to it of various commenting parties, we must first consider whether our proposed approach properly accommodates the procedural rights of prospective broadcast applicants to a hearing, as delineated in existing case law.

16. The Commission traditionally has balanced an applicant's right to a comparative hearing with the public's interest in having frequencies occupied and operating. As we observed in the *Notice*, the Communications Act of 1934, as amended, does not specifically provide for the filing of mutually exclusive applications for new facilities. The Act does provide that applications for new facilities cannot be granted for thirty days following public notice of their acceptance for filing and that those

[9] Comparative broadcast hearings may require as long as two to three years to complete.

[10] *Notice* at para. 2.

[11] In the *First Report and Order* in MM Docket No. 83–1377, FCC 84–298 (adopted June 27, 1984), the Commission changed the definition of minor modification to encompass all changes in power, antenna location or antenna height, without regard to their effect on coverage area.

[12] The *First Report and Order* in MM Docket No. 84–231, FCC 84–640 (adopted December 19, 1984), added 689 channels to the FM Table, thereby implementing our decision in the *Report and Order* in BC Docket No. 80–90, 94 FCC 2d 152 (1983).

[13] Application filing windows for vacant channels currently on the Tables, of course, were not prescribed in the original allotment orders adding those channels. This *Report and Order* will serve that purpose. Furthermore, as explained below, we will announce filing windows for allotments added as a result of our actions in Dockets 80–90 and 84–231 by separate public notices in order to control the Commission's workload. In all cases, however, the filing windows will be independent of any lead application for the channel concerned.

applications cannot be denied without affording the applicant the right to a hearing. 47 U.S.C. § 309. In *Ashbacker* v. *FCC*, 326 U.S. 327 (1945), the Court construed these provisions to require the Commission to consider two mutually exclusive broadcast applications, both of which had been accepted for filing, in a comparative hearing before denying one and granting the other. The Court noted, however, that the Commission could promulgate regulations limiting the filing rights of competing applicants.[14] Thus, while *Ashbacker* requires comparative hearings in choosing between mutually exclusive applicants, it leaves to the Commission's discretion the circumstances under which applications are considered mutually exclusive.[15]

17. The Commission has exercised this discretion over the years and limited the filing rights of competing applicants in order to provide certainty, to avoid disruptions in the processing procedures for high demand services or to further other compelling public interest objectives. In the *Report and Order* in MM Docket No. 83–1148,[16] for example, we determined that competing applications should not be permitted to be filed against the application of an incumbent licensee for a higher class channel where additional channels of similar class were available for which other applicants could compete. In this situation, the Commission found that expedition of service and the promotion of enhanced service from existing licensees outweighed the interest in selecting licensees by comparative processes.[17] Similarly, in the domestic one-way paging service, the Commission insulates certain applicants proposing to change frequencies from competing applications in order to expedite service and encourage the negotiation and settlement of frequency conflicts.[18] Finally, the use of cut-off procedures has been acknowledged by the Court as a reasonable and necessary limitation on the statutory right to a comparative hearing.[19] However, any regulations limiting the right to a hearing must give fair notice to the public of what is being cut-off.[20] Therefore, although the Commission can be flexible in establishing "housekeeping" rules,[21] applicants must be treated equally and fairly by giving them notice of the due dates for their applications.

18. Under the window filing the "first-come/first serve" processing system full and complete notice is achieved. Each frequency added to the Table of Allotments is the result of a notice and comment rule making in which the public has had an opportunity to participate. Thus, inclusion in and publication of the Tables in the **Federal Register** constitutes notice to the world of a channel's availability.[22] By designating "window" filing dates, all interested parties will be on notice that the Commission will grant the vacant channel to a sole qualified applicant who files or that it will designate mutually exclusive applicants for a comparative hearing.[23] Under the "first come/first serve" aspect of our proposal, all vacant channels that are not applied for during the window will be granted to the first qualified applicant to file. Of course, the statutory right to file petitions to deny will be preserved to assure that any allegations that an application is inconsistent with the "public interest, convenience and necessity" may be raised.[24] We believe this system fully comports with the requirements of *Ashbacker* and subsequent cases.

19. Turning from legal requirements to policy considerations, many of the commenters maintain that the proposed processing system will create a "gold rush" mentality with applicants filing out of fear of being foreclosed rather than in response to marketplace stimulus. To the extent the window filing and "first come/first serve" system motivates interested parties to act quickly rather than to wait for the lead applicant to come forward, we believe it directly furthers the public interest. A fallow frequency on the Tables of Allotments represents a loss to the community and the public benefits from serious candidates moving quickly to bring service on line. To the extent commenters may be suggesting that parties will file protectively even though economic conditions do not warrant proceeding, we are not convinced that this possibility poses any real risk.

20. Many commenters point to the flood of applications received in other services subject to "date-certain" application proceses, *i.e.*, low power television, cellular radio, and multichannel multipoint distribution, as evidence supporting their predictions of a large influx of applications if the proposed processing criteria are implemented. Beyond the fact that these are all new services, several factors distinguish our decision here from those referred to by commenters. First, all applications received during the window for FM channels are subject to full comparative hearings if mutually exclusive applications are received. The substantial effort and expense involved in such proceedings should serve to discourage frivolous and speculative applications.

21. Moreover, we now have the advantage of hindsight in reviewing our past experiences with date-certain filings and we are acutely aware of previous shortcomings. Those experiences and useful suggestions by various commenters in this proceeding have prompted us to take a "hard-look" approach to the processing of applications in order to deter the frivolous filings that frustrate ready applicants and the Commission's processing systems.

22. Several commenters suggested that site availability certification be utilized to deter speculative applications. We think this proposal has merit. The Commission has held that although an applicant need not necessarily go as far as to demonstrate absolute assurance, an applicant should be able to show some reasonable assurance that the site for each proposed transmitting antenna is available. A mere possibility that a site will be available is not sufficient. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). Commission requirements will be satisfied when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the

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[14] *See Ashbacker* v. *FCC*, 326 U.S. 327, 33 n.9.

[15] *MCI Airsignal International, Inc.*, FCC 84–397, Mimeo No. 34965 (released August 17, 1984).

[16] FCC 84–358, 49 FR 34007 (August 28, 1984), 56 RR 2d 1253 (1984).

[17] *See Report and Order* in MM Docket No. 83–1148, FCC 84–358, Mimeo No. 34861 (released August 16, 1984).

[18] *See MCI Airsignal International, Inc., supra* n. 15 and *Digital Electronic Message Serivce*, 88 FCC 2d 1716, 1723 and nn.10, 12 (1982).

[19] *Radio Athens v. FCC*, 401 F.2d 398, 400–401 (D.C. Cir. 1968).

[20] *See Ridge Radio v. FCC*, 292 F.2d 770, n.6 (D.C. Cir. 1961).

[21] *Century Broadcasting Corp. v. FCC*, 310 F.2d 864, 867 (D.C. Cir. 1962).

[22] Window processing may be found appropriate for nontabled services when another event constitutes notice. *See Report and Order* in MM Docket No. 83–1350 (Low Power Television and Translator Service), 49 FR 47637 (December 7, 1984).

[23] There is now substantial Commission precedent for the use of filing "windows" or date-certain processing to expedite service. Date-certain procedures have been used, for example, in processing common carrier [*First Report and Order*, 89 FCC 2d 1337 (1982)], private radio [*Second Report and Order*, 90 FCC 2d 1281 (1982)], and low power television [*Report and Order* in MM Docket No. 83–1350, *supra* n.22] applications.

[24] The Communications Act of 1934, as amended, section 309(d)(i) secures the right of any party in interest to file a petition to deny and § 73.3504 of the Commission's rules sets forth the procedures for making such filings.

proposed site will be available for the intended purpose. Therefore, we are adding a question to FCC Form 301[25] which will require an applicant to certify that reasonable assurance has been obtained from the property owner that the site will be available. In the interim, before the changed Form 301 is available, applicants should attach such certification to the old form. The certification will include a reference to the name and telephone number of the person contacted. This additional step simply requires verification of our current policy and will aid in deterring frivolous applications that frustrate our processing goals. To that same end, the Commission will contact, on a random basis, the property owners or their agents who have been named in an application to determine whether the required assurances have been obtained.

23. As a further component of our "hard look" approach we are instituting a tender review of applications. Under our previous system, many errors in key portions of the applications remained undetected until considerable processing time and effort had already been expended. Discovery of fundamental errors so far along in the processing chain resulted in significant delays both in disposing of the flawed applications and in processing problem-free but mutually exclusive applications as well as impeded the disposition of unrelated, problem-free applications. Therefore, to prevent carelessly prepared, unprocessable applications from burdening the processing system, we will require applications to be substantially complete at tender or they will be returned, thereby losing their filing status. In order to assist applicants in satisfying our tender standards, we are attaching hereto as Appendix "D" a detailed list of the criteria utilized in evaluating the substantial completeness of applications. This strict approach to the tenderability of applications comports with our concurrent commitment to strictly enforce construction permit schedules.[26] Both will deter the filing of speculative applications by parties not ready, willing and able to construct.

24. As an additional component of our "hard-look" approach, we reiterate our position with respect to multiple applications. Applicants will not be permitted to "flood the Commission's processing line and hearing docket with multiple applications many of which could not be granted under our multiple ownership rules." *Storer Broadcasting Co.*, 43 FCC 1254, 1256 (1953). Accordingly, we shall regard Section 73.3555 as establishing the maximum number of applications acceptable for filing by an applicant. Applications tendered in excess of this number shall be considered inconsistent with § 73.3518 and returned as unacceptable for filing. In this regard, we note that stations in which the applicant currently holds a cognizable ownership interest would be taken into account in determining the maximum number of acceptable applications.[27]

25. The Commission believes that important benefits can be obtained from this "hard-look" approach. First, the reduction of frivolous and speculative applications will enable us to expedite the processing of applications tendered by serious candidates who are "ready, willing and able" to rapidly bring service to the public. Secondly, streamlining our processing procedures will minimize the Commission's administrative costs, enabling us to make more efficient use of our limited staff and other resources. These benefits are critical to making the window filing and "first come/first serve" process work smoothly and with minimal delay in processing large numbers of applications.

26. Finally, several commenters maintain that minorities, women and small businesses are disadvantaged by the short filing cycles which they believe will result from the adoption of the proposed processing system. We note, however, that a routine notice and comment rule making proceeding to establish a new allotment requires at least 90 days to complete. Adding this period to the 45 days normally required before an allotment order becomes effective and the subsequent 30-day filing window, yields a lead time of at least 165 days in which interested parties may prepare applications. This length of time seems entirely adequate to avoid any disadvantage to minorities, women or small businesses in availing themselves of newly allotted channels. Similarly, in the case of the estimated 689 new channels allocated in the wake of our decision in BC Docket No. 80-90, all interested parties will have fully adequate time to prepare. The *First Report and Order* in MM Docket No. 84-231, which specified the channels which would be added to the FM Table and the communities in which such channels would be available, was adopted in December 1984.[28] Today, in a companion item, we are announcing a random selection system that will be used to determine the sequence in which these allotments will be opened for applications.[29] The first window in a series of windows for these allocations will probably open sometime this summer and subsequent windows will be opened on a rolling basis until all are completed. Therefore, even for the first availability, parties will have had several months to prepare and will have several years for the last allocation in this group. Finally, we note that the new processing system is intended to reduce the incidence of unnecessary comparative hearings and to expedite applications processing generally. We believe this will directly benefit minorities and other prospective applicants with limited resources.[30]

The Filing Window—"First Come/First Serve" Processing System

27. The following is a brief discussion of the details of the applications processing system we are today adopting. For purposes of clarity, we will break the system discussion into two parts: (A) treatment of applications filed within the window period and (B) treatment of applications for channel allotments that received no applications during their filing windows and are thus subject to "first come/first serve" processing.

A. The Window Processing System

28. With respect to channels which, as of the adoption date hereof, are either already in the Table and available for

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[25] "Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station." *See* Appendix B.

[26] Section 73.3598(b) of the Commission's Rules specifies a 12-month construction period for new FM stations or modifications to existing FM facilities. The Commission will not favorably consider applications for extensions of this time to construct except in the most unusual circumstances. *See* Public Notice, "Guidelines Established for Processing of Applications for Additional Time Within Which to Construct AM and FM Broadcast Stations," released May 14, 1984, Mimeo No. 4144. Failure to comply with the construction deadlines imposed by the permit will result in forfeiture of the authorization pursuant to § 73.3599 of the Commission's Rules.

[27] In the event that multiple applications exceeding the prescribed limits are filed on the same day, the Commission will sequentially consider them in whatever order they are reached on the processing line until the multiple ownership limit is reached. Any remaining applications will be returned.

[28] *See* n.12 *supra*.

[29] *Second Report and Order* in MM Docket No. 84-231, FCC 85-124, adopted March 14, 1985.

[30] Congress, in its Conference Report on lotteries, stated "It is clear that the current comparative hearing has not resulted in the award of significant numbers of licenses to minority groups. Many minority applicants are simply unable to participate in comparative hearings which often take a considerable period of time and require substantial economic resources." H.R. Rep. No. 97-765 (accompanying H.R. 3239), 97th Cong., 2d Sess. 44 (1982).

application or will be added to the Table pursuant to orders previously adopted by the Commission but which are not yet effective, the 30-day filing window will open on the thirty-first (31st) day after the dat of publication of this *Report and Order* in the **Federal Register** and will close on the sixtieth (60th) day after such publication. An existing licensee or permittee should file an application for modification during this window period if its proposed change would affect or be affected by potential operations on a vacant channel allotment or by modifications to other existing stations.

29. For future allotments, we will use the Commission's decision to add a channel to the FM Table of Allotments as the invitation to all interested parties to file applications for that channel. Each *Report and Order* designating a new channel will identify a window filing period which will begin upon the effective date of the allotment *Order* and continue for not less than 30 days thereafter. In the case of the 689 new allocations created by Docket 80–90, the Audio Services Division of the Commission's Mass Media Bureau will issue Public Notices establishing applicable window filing periods as its workload permits.

30. All applications filed within the relevant window period will be processed for consolidated consideration, with appropriate opportunities for the filing of petitions to deny. Any mutually exclusive applications for new facilities or for modifications to existing facilities filed during the window will be grouped for comparative hearings.

31. In evaluating applications, any and all amendments filed before the close of the applicable filing window will be considered with the application. Applications will be thereafter restricted as to when amendments may be filed.[31] Applications which have been found acceptable for tender purposes will be placed on publicly released *Notices of Tenderability*. From the release of such notice, applicants will have a 30 day period to amend or perfect their applications at will and as a matter of right. However, if an incomplete application has been inadvertently accepted for tender, it will be stripped of its file number and returned; it may not be perfected to pass tender review. Amendments may only go to the acceptability or grantability of an application.[32] The amendment period will have one further restriction, an application may not retain window status if it is amended, even for perfecting purposes, after the window closes and the effect of such amendment is to produce a conflict with an application filed prior to the amendment. We believe this restriction is essential to maintain the integrity of the new processing system and that it is fully consistent with *James River Broadcasting v. FCC*, 393 F.2d 581 (D.C. Cir. 1968). That case held that the Commission had violated its own rules in refusing to permit an applicant to perfect its application with an amendment and to retain its initial filing status. The court also stated that, as a policy matter, perfecting amendments should be allowed "[so] long as the defect can be removed without otherwise injuring any public or private interests . . . ." *Id.* at 584. First, we note that the processing rules that were the basis for *James River* are herein dramatically changed. In any event, to permit a perfecting amendment that creates a conflict with an application filed prior to such amendment harms the public interest in expedition of service and processing certainty that the window processing system seeks to accomplish. Under such a system, we would be unable to process otherwise grantable applications on the possibility that unrelated applications might be amended to produce a conflict. Moreover, to allow such amendments to retain priority as to intervening applications for other channels or in other communities would prejudice the private interests of the applicants for these other channels who sought in good faith to initiate service to the public. Finally, the nonacceptance of a perfecting amendment in *James River* resulted in an applicant being foreclosed from the comparative process because, by being disqualified and thereby missing the cut-off date, he lost his opportunity to compete for a license. Here, the limitation on perfecting amendments that create a conflict with prior applicants results not in foreclosure but simply in site restriction.

32. Following the passage of the 30-day amendment period, the application and any amendments will be studied for acceptability, i.e., compliance with the technical requirements for FM facilities. If the application is found acceptable, it will be placed on a publicly released "Notice of Acceptability" inviting the filing of petitions to deny. If the application is found to be unacceptable, it will be returned. Resubmission of such an application with a curative amendment will not gain it *nunc pro tunc* status since applicants were afforded 30 days after the release of the *Notice of Tenderability* to amend their applications into acceptable form. To permit curative amendments after that period poses too great a threat to the orderly functioning of our new processing procedures.

B. The "First Come/First Serve" Processing System

33. If no applications are filed during the window, the first acceptable application for the channel will cut-off the filing rights of subsequent applications for that channel and applications for any channel in conflict with or for modifications to existing facilities that are inconsistent with the first-filed application. If an application for modification is the first-filed after the window closes, applicants for the new channel and applicants for inconsistent modifications would be limited thereby in their site selections. We believe that any subsequent applicants were on notice of the availability of the channel from its inclusion in the Table, and they had ample opportunity to file during the window or to be first-filed after the window period. Therefore, cutting off such applications is not unreasonable and will expedite new service to the public on a fallow channel. All "first come" applications will be considered as simultaneously filed if filed on the same day. As with window applications, we will process the application(s), entertain petitions to deny and, where appropriate, designate applications for hearings.

34. Applications received after the lead application will be grouped behind the lead application in a queue according to the date of filing. Priority rights for the lead applicant as against other applicants for the same channel, applicants for other channels or in other communities whose applications conflict with the lead application and applicants for modifications to existing facilities that are inconsistent with the lead application are determined by the filing date of the lead application. The filing dates of subsequent applicants for that channel and community, however, only determine their place in the queue. The rights of an applicant in the queue would ripen as to applicants outside the

[31] It is proper for us to make these revisions to the amendment process on our own motion. Both the Administrative Procedure Act and our own regulations exempt rules of practice and procedure from notice and comment rule making requirements. 5 U.S.C. 553(b)(A); 47 CFR 1.412(a)(5).

[32] There are two classes of amendments that are acceptable at any time: (1) amendments required by 47 CFR 1.65 and (2) amendments which extricate an application from conflict with other applications and which trigger no new conflicts, including amendments filed pursuant to an agreement between applicants under 47 CFR 73.3525.

queue only upon a finding that the lead application is unacceptable and then only if the queued application is reached and found acceptable. We will process within the queue until we find an acceptable application. If a queued applicant is determined to be acceptable, his rights, vis a vis applicants outside the queue, vest on the date of his acceptance. The queue will remain behind the lead applicant until a constuction permit is granted.[33] If there is no queue or no queue member is found to be acceptable, that channel remains subject to "first come/first serve" treatment. At the grant of a construction permit the queue dissolves.

35. With respect to amendments in the "first come/first serve" processing system, applicants may amend their applications for a period of thirty days following the issuance of the *Notice of Tenderability*. For reasons directly analogous to those underlying our restriction on certain amendments of applications filed during a window, we will not permit a "first come" applicant to amend its application and to retain its initial filing priority date as to applicants for other channels or in other communities or for modifications to existing facilities and with whom the amendment creates a conflict.[34] As with window applications, we believe this approach is necessary to preserve the certainty and expedition that our new processing system is intended to achieve and that it is entirely consistent with the court's decision in *James River Broadcasting v. FCC, supra.*

36. If a channel allotment is vacated after issuance of the construction permit, regardless of whether the construction permit was granted as a result of window or "first come/first serve" processing, we will, by public notice, announce a subsequent filing window for the acceptance of new applications for that channel.

Other Matters

37. In a small number of cases where the commercial and non-commercial FM bands are adjacent, our decision to apply the window processing system to commercial channel applicants but not to applicants for reserved channels may create some problems.[35] It is appropriate, therefore, that we clarify our procedures for these exceptional cases. If an applicant for a reserved channel has generated a cut-off list that overlaps a commercial window, the commercial applicant must file within the cut-off period—it may not rely on its window deadline—if it seeks mutually exclusive status with the educator. After the relevant commercial window closes, and educator and a commercial applicant would both be subject to "first in time, first in right" status as to each other.[36] Of course, any conflict between educational applicants will continue to be resolved through the traditional cut-off procedures. We anticipate minimal effect on educators, but alert them that in those areas of the FM band where spacing as against commercial licensees is problematical they may be affected by the "first come/first serve" rules applicable to the commercial FM band.

38. To ensure a smooth transition to the new processing guidelines, we are hereby instituting a freeze on applications for new commercial FM stations and modifications to existing facilities in these services for a period of 30 days following publication of this document in the **Federal Register**. This step is essential to permit the Commission to reduce the number of currently pending applications, to which existing processing criteria apply, in preparation for shifting over to the new processing system and standards.

39. Procedural fairness requires us to complete processing of those applications for new channels or major modification of existing facilities that are currently on file. Therefore, applications and petitions to deny tendered after today will be accepted only if they are in response to "A" and "B" cut-off lists of pre-freeze applications.

40. The only minor modification applications that will be acceptable during the freeze are those filed in response to applications already on file as of the adoption date of this decision. Moreover, the applicant must identify the application that he is filing against.[37] However, in keeping with current minor modification processing practices, any application now on file may be granted at any time and such grant will cut-off the filing rights of all subsequent applicants.

41. Pursuant to the requirements of Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, a final regulatory flexibility analysis has been prepared and is attached hereto as Appendix C.

42. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified reqirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

43. Accordingly, it is ordered, that Part 73 of the Commission's Rules is amended, effective June 12, 1985, as set forth in the attached Appendix A.

44. It is further ordered, that effective as of the close of Commission business on the day of adoption of this *Order* and until 30 days after its publication in the **Federal Register,** applications *may not be filed* either for new commercial FM channels or for modification of existing facilities in this service, except to the extent such applications are filed in response to Commission cut-off lists resulting from applications filed prior to the adoption date of this *Order* or are filed against and in conflict with modification applications already on file as of the adoption date of this *Order*.[38]

45. It is further ordered. That the Secretary shall cause a copy of the *Report and Order* to be printed in the FCC Reports.

46. It is further ordered, that the Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy, Small Business Administration.

47. It is further ordered, that this proceeding is terminated.

48. This action is taken pursuant to the authority contained in Sections 1, 4 (i) and (j), 5(d)(1), 303 and 309(b) of the Communications Act of 1934, as amended.

49. For further information concerning this proceeding, contact Lane Howard Moten, Mass Media Bureau (202) 632–7792.

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[33] Any applicant determined by the Commission to be unacceptable would be deleted from the queue.

[34] *See* para. 31 *supra.*

[35] Noncommercial, educational entities applying for a channel on the commercial band will be subject to the filing window and "first come/first serve" processing system.

[36] Commercial applicants whose filing window has not yet opened at the time a potentially conflicting noncommercial application is filed may not file a competing application for the commercial channel in response to the noncommercial applicant's "A" cut-off list. To permit such a filing would undermine the control over applications processing that the window mechanism is intended to provide. The prospective commercial applicant may, of course, file a petition to deny against the noncommercial application within the prescribed filing period for such petitions.

[37] This requirement is necessary in order to simplify and expedite the processing of modifications during the freeze. Any modification application not so identifying a pre-freeze applications as a basis for filing will be judged unacceptable for filing during the freeze period.

[38] Immediate implementation of this *Order* is required because a 30-day delay would frustrate the purpose of the freeze.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303.

§ 73.3564 [Amended]

1a. § 73.3564 is amended by revising paragraphs (a), (c) and (d) to read as follows:

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator applications and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of non-reserved band FM applications, those found to be substantially complete at tender are accepted for tender and are given file numbers. Non-reserved band FM applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete will be returned to the applicant.

(b) * * *

(c) At regular intervals, the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing, except for non-reserved band FM stations and low power TV and TV translator stations. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d) such notice shall establish a cut-off date (not less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

(d) New and major change applications for non-reserved band FM stations (except for Class D stations) and for low power television and television translator stations will be accepted only on date(s) specified by the Commission. Low power TV and TV translator station filing period(s) will be designated by the Commission in a Public Notice. Non-reserved band FM facilities and major change applications will have filing dates designated by the Commission in the following manner:

(1) For all vacant non-reserved band FM allocations listed on the FM Table of Allotments, § 73.202, as of March 14, 1985, a one-time filing period or "window" will open for 30 days, beginning on the 31st day after the date of publication of the *Report and Order* in MM Docket No. 84–750 in the **Federal Register** and will close on the 60th day after such publication. (This filing window does not apply to the 689 FM channels added to the FM Table of Allotments by the Commission's decision in MM Docket No. 84–231).

(2) The 689 FM allocations added to the FM Table of Allotments by MM Docket 84–231 will be subject to a series of windows. The Audio Services Division of the Mass Media Bureau will establish, by Public Notice, the window filing dates for this group of allotments.

(3) Each *Report and Order* specifying a new non-reserved FM band allocation will identify the window filing period which will begin upon the effective date of that *Order* and continue for at least 30 days.

(4) Where no applications are tendered during a window filing period, applications may be tendered any time after the window closes. These applications will be processed on a "first come/first serve" basis and will be treated as simultaneously filed if filed on the same day. Any applications received after the filing of a lead applicant will be placed in a queue, according to filing date, behind the lead applicant.

(5) If a non-reserved band FM channel allotment is vacant after the grant of a construction permit becomes final, because of a lapsed construction permit or for any other reason, the FCC will, by Public Notice, announce a subsequent filing window for the acceptance of new applications for such channels.

(6) However, no application will be accepted for tender unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

2. § 73.3573 is amended by revising paragraphs (d) and (e) and adding paragraphs (f) and (g) to read as follows:

§ 73.3573 Processing FM broadcast and FM translator station applications.

* * * * *

(d) Applications for reserved band and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(e) Where reserved band plus Class D applications are mutually exclusive because the distance between their respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.507, such applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the FCC.

(f) Processing non-reserved FM broadcast station applications.

(1) Applications for non-reserved FM broadcast stations will be processed as nearly as possible in the order in which they are tendered. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. The FCC will specify, pursuant to § 73.3564(d), the filing periods for non-reserved band FM applications.

(2) All applications received during the appropriate filing period or "window" which are found to be mutually exclusive will be designated for hearing. All other applications will, if the applicants are duly qualified, receive grants. The FCC will periodically release a Public Notice listing applications pending hearings or grant and announcing a date (not less than 30 days after issuance) by which petitions to deny must be filed.

(3) If, after the close of the appropriate window filing period, a non-reserved FM

allotment remains vacant, processing for that channel will be on a "first come/first serve" basis with the first acceptable application cutting off the filing rights of subsequent applicants. All applications received on the same day will be treated as simultaneously tendered and, if they are found to be mutually exclusive, will be designated for hearing. Applications received after the tender of a lead application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, as against all other applicants, are determined by the date of filing but the filing date for subsequent applicants for that channel and community only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves. If there is no queue or if no queue member is found acceptable, that allotment remains subject to "first come/first serve" processing. The FCC will periodically release a Public Notice listing those pending hearings or grant and announcing a date (not less than 30 days after issuance) by which petitions to deny must be filed.

(g) Resolving processing conflicts between the reserved and non-reserved bands. The reserved bands include Class D stations.

(1) Reserved band applicants, applying for a channel on the non-reserved band are subject to the processing procedures in Section (f).

(2) If a reserved band applicant has generated a cut-off list that overlaps a non-reserved band window filing period, the non-reserved band applicant must file within the cut-off if he seeks mutually exclusive status with the reserved band applicant.

(3) Following the close of a non-reserved band application filing window, the non-reserved band applicant is subject to the "first come/first serve" rules and would lose to a pre-filed reserved band applicant.

3. § 73.3522 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) Predesignation amendment. (1) Subject to the provisions of §§ 73.3525, 73.3571, 73–3572, 73.3573, and 73–3580, and except as provided in paragraph (a)(2) of this section, any application, other than an application for a low power TV, TV translator station, or a non-reserved bank FM station may be amended as a matter of right prior to the adoption date of an order designating such applications for hearings, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 73.3513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573 and 73.3580, and except for applications for low power TV, TV translator stations, or a non-reserved band FM station, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 30 days after issuance) in the FCC's Public Notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

* * * * *

(6) Subject to the provisions of §§ 73.3525, 73.3573 and 73.3580, applications for non-reserved bank FM stations (minus Class D) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3564(d). For a period of 30 days following the FCC's issuance of a Notice of Tenderability announcing the acceptance of the applications, amendments that go to the acceptability or grantability of an application may be filed as a matter of right. Subsequent amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. However, an amendment to a non-reserved band application will not be accepted after the close of the appropriate filing window if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment.

* * * * *

4. § 73.203 is revised to read as follows:

§ 73.203 Availability of channels.

Applications may be filed to construct FM broadcast stations only at the communities and on the channels contained in the Table of Allotments (§ 73.202(b)). Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the Table, will not be accepted for tender.

Appendix B

To be included with FCC Form 301, Application to Construct or Make Changes in an Existing Commercial Broadcast Station.

Certification of Site Availability

1. The applicant certifies that it has reasonable assurance in good faith that the site or structure proposed in Items 1 and/or 2, Section V–G, FCC Form 301, as the location of its transmitting antenna, will be available to the applicant for applicant's intended purpose.

Yes ——— No ———

If no, explain fully:

———————————————

2. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

Name of Person Contacted ———————

Telephone Number ———————

Person contacted (check one):

Owner ———————

Owner's Agent ———————

Other (specify) ———————

Applicant's Signature ———————

Date ———————

Appendix C

Final Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

Our experience indicates that the current cut-off procedures for the acceptance of competing applications for commercial full service FM and TV stations delay service to the public and disrupt the processing of the initial application. The filing of speculative and anticompetitive, delaying applications often precipitate costly and unnecessary comparative hearings. Also, current modification procedures lack sufficient certainty and, as a result, may be wasteful of the Commission's and applicants' resources.

The purposes of the rule changes adopted herein are to limit applications to those seriously interested in providing better service and to provide more certainty within the processing system.

II. Flexibility Issues Raised in the Comments

The most significant regulatory flexibility issue raised in the comments concerns the

duration of the window filing period. Several commenters maintained that only well-financed, established entities would be able to respond within the proposed 45 day window and therefore the system would particularly disadvantage minority groups and small businesses. However, under the new rules, a slightly longer filing period will be provided than under the current procedures. (*See* para. 29.) In addition to a slightly longer filing period, small business groups and minorities should benefit from the expected reduction of speculative and dilatory applications. These filings entail processing delays and often result in costly and unnecessary comparative hearings that disadvantage groups with funding limitations.

III. Significant Alternatives Considered But Not Adopted

The only significant alternative considered but not adopted was the implementation of an extended window filing period. Since the new processing procedures will allow for a longer period to prepare filings than does the current system, further lengthening the filing window period appeared unwarranted, particularly since such action would contravene the important Commission goal of expediting service to the public.

Appendix D

Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Are Otherwise Defective

As part of our effort to expedite applications in conjunction with the implementation of the new "window" and "first come, first serve" processing procedures (*Report and Order* in MM Docket 84–750, Adopted March 14, 1985), we are adopting a new policy with respect to the definition and treatment of applications that are defective or not substantially complete when filed. [1]

Expedition of processing in the face of the possibility of a large increase in commercial FM applications compels us to shift to the beginning of the process some of the application checks previously made later in the process. This shift may well result in a loss of filing status for a returned application that it otherwise would have retained under the previous processing procedures. Such an outcome cannot be avoided if we are to achieve the benefits of the new window and first come, first serve processing procedures.

At the time an application for a commercial FM station or for a modification to an existing commercial FM station is tendered and before an application reference number is assigned, the application will be given a thorough initial review to determine if it is substantially complete. Although all applicable elements of Form 301 are examined by the Commission staff in the course of processing a construction-permit application, certain items are much more critical than others. Without them, processing simply cannot commence. A substantially complete application, one that the Commission deems in condition or sufficient for tender, must meet all of the following requirements.

1. The applicant's name and address must be provided. Failure of an applicant to do so renders it impossible for the processing staff:

a. to communicate with the applicant concerning the contents of the application; and

b. to discern and resolve issues relating to the applicant's identity, e.g., multiple-ownership and alien-interest questions.

2. In recent years, the Commission has reduced the amount of information required to be provided in applying for a construction permit and has accordingly simplified Form 301. Applicants are now permitted to make certifications of various types instead of having to provide evidentiary showings. Having relieved applicants of the need to make such showings, the Commission attaches considerable importance to the certifications that take their place. Accordingly, certifications in the following areas are crucial in the absence of full showings.

a. Compliance with 47 U.S.C. 310(b). An application which violates the alien-interest provisions of the Communications Act is statutorily ungrantable. Failure to respond to the question by which certification of compliance is invited renders the application so fundamentally defective that further processing is unwarranted.

b. Financial ability to construct. The Commission authorizes new or changed facilities with the expectation that such will be built quickly and that service will be expeditiously provided via those facilities to the public. It is pointless to grant an authorization of facilities that cannot be built. It is likewise pointless to process an application where a response to certification of financial ability to construct is not provided.

c. Compliance with the local public notice provisions of 47 CFR 73.3580. It is important that local public notice occur. An informed local populace can bring to the Commission's attention information about the applicant or the facility proposal that might otherwise remain undetected. Thus, where local public notice is required, an applicant who fails to respond to the appropriate item of Form 301 will have its application returned as not sufficient for tender.

d. Site availability. The Commission does not require of applicants absolute certainty of site availability, but rather reasonable assurance. An application specifying an unavailable site *per se* frustrates the Commission's stated goal of expeditious introduction of service. Such a filing requires an amendment specifying a site change before grant or a further application for construction-permit modification after grant. To avoid vacuous and sequential filings, the Commission has imposed a requirement of site-availability certification which includes the name and address of the site owner or his agent. Failure of an applicant to provide the requisite certification in the form set forth in Appendix B of the *Report and Order* in Docket 84–750, *supra*, will result in the application being deemed not substantially complete.

3. Questions 6 and 8 of Section II, Form 301 deal with matters crucial to multiple-ownership determinations. In response to these questions, applicants are to indicate whether or not they or their relatives (immediate family) have any other pending applications or broadcast interests. If the answer to either question is positive, explanatory exhibits must be provided. Leaving these questions unanswered, as a practical matter, makes it impossible for the processing staff to begin a multiple-ownership analysis. In light of our expressed policy dealing with the filing of multiple applications (*see Second Report and Order* in Docket 84–231, FCC 85–124, Adopted March 14, 1985 and Released April 12, 1985), failure to respond prevents the staff from beginning its ownership analysis and thus renders the applicant's filing not substantially complete.

4. Compliance with the Commission's technical rules is evaluated in the course of an acceptability study. Certain engineering data must be present for such a technical acceptability study to be made. The absence of one or more elements of those data, listed below, prevents a determination of acceptability and thus renders the application not substantially complete.

a. The geographic coordinates, to the nearest second, of the proposed transmitter site must be provided. Absence of these data makes it impossible to determine the distances from the proposed site to other proposed or existing broadcast facilities and to the community of license. In the commercial FM service, spacing determines acceptability of an application where mutual exclusivity exists with respect to a given allocation, *see Trend Broadcasting, Inc.*, 18 FCC 2d 749 (1969), and determines when mutual exclusivity exists between applicants for or permittees of different allocations. The geographic location also determines whether protection must be afforded to Commission monitoring facilities and to radio quiet zones (*see* 47 CFR 73.1030), mark the center of the "blanketing" area (*see* 47 CFR 73.315), and is fundamental to analysis of a proposal's environmental effects and electromagnetic effects on other, nearby communications facilities.

b. A transmitter site map as described in Form 301, Section V–B, Item 13, and in our *Public Notice*, Mimeo 3693, released April 5, 1985. Such a map allows the staff to verify the coordinates of the proposed site, the presence of other, nearby communications facilities and of obstructing terrain features (*see* 47 CFR 73.315), and the ground elevation of the transmitter site. The last parameter has a key influence on important features of the antenna installation—radiation-center heights above ground and mean sea level, from which, with other data, antenna height above average terrain (HAAT) is derived.

c. The channel number and community of the allocation must be supplied. Since the commercial FM allocation system is organized on the basis of a Table comprising numbered channels and targeted communities, any evaluation of an

[1] This policy applies only to commercial FM applicants. AM applicants and non-commercial FM applicants are still subject to the policy set out in our *Public Notice* of August 2, 1984. TV applicants remain subject to applicable case law.

application must consider these fundamental items.

d. Effective Radiated Power must be specified. Our technical rules prescribe minimum and maximum permissible power levels. Application processing includes a determination that proposed operating power falls within the range defined for the particular class of station occupying or intended to occupy the allocation. Certain allocations have limitations imposed on ERP, as do some stations authorized prior to implementation of the Table Method of Allocations. International agreements also influence permissible ERP levels in border areas. The operating power is so basic a parameter of a broadcast facility that is simply must be specified. Accordingly, its absence will render an application not substantially complete.

e. Also necessary are the antenna heights above average terrain, above ground level, and above mean sea level. These three are interrelated and must be specified consistently, as is the case with all other crucial engineering parameters. Antenna height is as elemental a facility parameter as is ERP. It also is subject to permissible-range values as a function of station class and, with ERP, determines the coverage area of a facility for a given signal strength. Antenna height is also limited in certain cases by international treaty or by allocation constraints. Antenna height and ERP are also used to determine adverse potential to radio quiet zones, adjacent and co-channel "grandfathered" stations, and to FCC monitoring facilities. Antenna height above ground affects the environmental and aerial-navigation aspects of a facility proposal. Clearly, the various antenna heights are employed in a number of processing evaluations by the staff. Their absence, or the absence of any one of them, renders the application not substantially complete.

f. An answer to Item 7, Section V–B must be provided, as whether or not a directional antenna is proposed is a fundamental issue. If a positive response is given, *all* data specified in 47 CFR 73.316(d) must be included in an accompanying engineering exhibit. Without this information, the processing staff cannot determine the proper location of signal-strength contours, whether city-grade coverage is provided as required, whether adequate protection to short-spaced stations is to be given, and whether or not the proposed directional response complies with our technical rules and appears to be stable.

g. A map or maps satisfying the requirements of Item 10, Section V–B and *clearly* and *legibly* showing the proposed 60 and 70 dBu contours and the legal boundaries of the community of license must be provided. Such maps permit ascertainment of compliance with city-grade requirements and permit verification of signal-strength contour predictions. They are also employed in determining comparative levels of proposed service.

h. Section V–G must be provided as part of any Form 301 application proposing construction of a new facility or *any* change in transmitter site or antenna-structure height to existing facilities. In accord with our existing procedure, for side-mounting proposals involving an existing support structure, Section V–G shall show the application's purpose as "Alteration of existing antenna structure." The "Facilities Requested" portion shall contain a description of the side-mounting proposal. Section V–G will be accompanied by a tower-sketch exhibit as required by Item 6.

Further, because of the critical importance of the applicant's certification of the correctness of the data contained in the application as of the date of filing, unsigned applications will not be accepted for tender.

If any of the above information is missing, the application will be returned as not sufficient for tender. If any of the above information is present but, on the face of the application, visibly incorrect or inconsistent, the application will be treated in accordance with the following guidelines. If the needed information can be derived or the discrepancy resolved, confidently and reliably, drawing on the application as a whole, such defect will not render the application not sufficient for tender. However, if the critical data cannot be derived or the inconsistency resolved within the confines of the application and with a high degree of confidence, the presence of the clearly void data will be treated as functionally equivalent to the absence of such data. In such instances, the defective application will be deemed not sufficient for tender. If the application is returned during the initial check as not sufficient for tender, we will not permit the applicant to remedy the defect and have its resubmitted application accepted *nunc pro tunc* in order to be grouped with other applications filed by a window closing date or in order to be considered first filed when a window does not apply.

Where an application is timely filed within and in response to a filing window, at the initial screening we will consider the application as originally filed, together with any amendments filed within the window period. Where "first come, first serve" processing rules apply, the application *only* as originally filed will be considered. If an applicant discovers that its "first come" application is not sufficient for tender, it must file a new, corrected application (and request return of its earlier application) to cure the tenderability defect. *Nunc pro tunc* treatment will not be afforded in such cases.

If any of the defects listed above are overlooked during the initial review and are found later in the process, the application will be returned as inadvertently accepted for tender and, if resubmitted, will not be accepted *nunc pro tunc*. Return of the application will void the application reference number inadvertently assigned and whatever rights of tender might have been associated with it.

An application found to be sufficient for tender will be studied to determine its acceptability for filing, that is, to determine whether it is in compliance with applicable Commission rules. If it is found acceptable for filing, it will be included in a Public Notice of Acceptance. If found to be unacceptable for filing, it will be returned and will not be accepted later on a *nunc pro tunc* basis.

If an application is accepted for filing but is subsequently found not to be grantable, the applicant, if not mutually exclusive with other applicants, will be given one opportunity to correct the application. If the acceptable but not grantable application is mutually exclusive, an appropriate issue will be specified in the Hearing Designation Order, or a post-designation amendment, if appropriate, will be required.

[FR Doc. 85–11370 Filed 5–10–85; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 41046–4171]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing those FMPs. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; optimum yields (OYs) are established by the FMP for Groundfish of the Gulf of Alaska. These FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at 50 CFR 611.92 and 611.93 and Parts 672 and 675. The TACs and

OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1985 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director), to fishermen and processors in September 1984. The Regional Director initiated another survey in March 1985, for which the analysis is not yet available.

Because most U.S. fisheries have just begun, there has been insufficient fishing time to determine what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen and reapportioning any DAH to TALFF at this time is therefore not possible. Reapportionment of DAH along with any reserves not released by this action will be considered at a later date.

1. Bering Sea and Aleutian Islands Area (BSA)

As soon as practicable after April 1, June 1, and August 1, or on other dates as are deemed necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportions to TALFF the remainder of the reserve that will not be apportioned to DAH. When the initial DAH and TALFF for 1985 were established (50 FR 11369, March 21, 1985), DAH and TALFF were supplemented with 31,890 mt from the initial 300,000-mt reserve, thereby reducing it to 268,110 mt. This action supplements DAH and TALFF by an additional 134,055 mt from the reserve, reducing it to 134,055 mt. The changes are summarized in Table 1.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Current	This action	Revised
Pollock (Bering Sea Area only)	DAP	17,680		17,680
TAC=1,200,000; EY=1,100,000	JVP	393,584		393,584
	TALFF	608,736	+104,438	713,174
Pollock (Aleutians Area only)	DAP	10,540		10,540
TAC=100,000; EY=100,000	JVP	13,966		13,966
	TALFF	60,494	+7,500	67,994
Pacific cod	DAP	100,000		100,000
TAC=220,000; EY=347,400	JVP	63,190		63,190
	TALFF	37,000	+2,600	39,600
Yellowfin sole	DAP	1,770		1,770
TAC=226,900; EY=310,000	JVP	82,200		82,200
	TALFF	108,895	+17,017	125,912
Other Species	DAP	0	+2,500	2,500
TAC=37,580; EY=51,200	JVP	3,000		3,000
	TALFF	28,943		28,943
Total	DAP	139,360	+2,500	141,860
TAC=2,000,000	JVP	663,072		663,072
	RES	268,110	−134,055	134,055
	TALFF	929,458	+131,555	1,061,013

Apportionments to DAH: To provide bycatch of "other species" to DAP Bering Sea operations, 2,500 mt of the non-specific reserve is transferred to the "other species" DAP, increasing it from 0 mt to 2,500 mt.

Apportionments to TALFF: Amounts from the reserve are transferred to TALFF as follows: Bering Sea area pollock, 104,438 mt; Aleutian Islands area pollock, 7,500 mt; Pacific cod, 2,600 mt; and yellowfin sole, 17,017 mt. Based on the industry surveys discussed above and reports of catch to date, it is found that these fish will not be taken by U.S. fishermen during 1985.

2. Gulf of Alaska

Apportionments to DAH and TALFF will be considered at a later date pending reevaluation of DAP and JVP needs for 1985. The current specifications were established by a notice published in the **Federal Register** (50 FR 467, January 4, 1985).

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: All Pacific cod reserves in the Gulf of Alaska, Bering Sea and Aleutian Islands should be released to DAP at this time. All reserves of pollock in the Gulf of Alaska, Bering Sea and Aleutian Islands should be withheld from TALFF pending reevaluation of the intended domestic fisheries.

Repsonse: In the Gulf of Alaska, no reserves of any species are reapportioned, pending reevaluation of DAH needs.

In the Bering Sea and Aleutian Islands Area: Last year's DAP performance (actual compared to projected catches), this year's catch to date, and the results of the recent NMFS DAP industry survey (the BSA portion of which is essentially complete), do not indicate a need to supplement the current 100,000-mt Pacific cod DAP at this time. Of the initially unapportioned Pacific cod TAC amount (19,810 mt), 2,600 mt is apportioned to TALFF to provide a minimal bycatch of Pacific cod to support the 128,955 mt of target species (pollock and yellowfin sole) apportioned to TALFF by this action.

The Bering Sea area and the Aleutian Islands area pollock TALFFs are supplemented by 104,438 mt and 7,500 mt, respectively, from the reserve. Remaining unapportioned pollock TACs are 75,562 mt (Bering Sea) and 7,500 mt (Aleutians). If these remainders are added to the current pollock DAPs, the sum is twice the amount currently estimated as needed for all 1985 pollock operations by the commenter and other BSA DAP operators.

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulations regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that providing an opportunity for further public comment and delaying the effective date of this notice would be impraticable, unnecessary, and the contrary to the public interest.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: May 8, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11513 Filed 5-8-85; 4:58 p.m.]

BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 41154-4151]

Tanner Crab off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that a fishery closure is necessary to protect Tanner crab stocks in part of the Pribilof Subdistrict of the Bering Sea District of Registration Area J. The Secretary of Commerce (Secretary) therefore issues this notice closing fishing for all Tanner crab in the Pribilof Subdistrict south of 58°00′ N. latitude by vessels of the United States. This action is intended as a management measure to conserve *C. opilio* stocks.

DATE: This notice is effective from noon Alaska Daylight Time (ADT), May 8, 1985. Public comments on this notice of closure are invited until May 23, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at the (1) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska, and (2) the NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, Kodiak Field Office, NMFS) 970-486-3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(c) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Bering Sea District, for which the FMP specifies the optimum yields for Tanner crab (*Chionoecetes opilio*) to be 20.0 to 130.0 million pounds and Tanner crab (*C. bairdi*) to be 5.0 to 28.5 million pounds. This district is further divided into three subdistricts. One of these is the Pribilof Subdistrict, in which desired harvest levels are established on the basis of NMFS preseason trawl surveys. The surveys are designed to determine harvestable *C. opilio* biomass north and south of 58°00′ N. latitude. The survey estimate of *C. opilio* in the Pribilof Subdistrict south of 58°00′ N. latitude was 25 million pounds. Reasons for the closure of the southern part of the Pribilof Subdistrict follows:

The 1985 fishing season in the Pribilof Subdistrict began on January 15. Forty-two vessels delivered approximately 21.9 million pounds of *C. opilio* through April 21. The catch has declined from an average of about 224 to 149 crabs per pot during the past seven weeks. Inseason fishery performance indicates that no more than 25 million pounds of *C. opilio* should be harvested in the Pribilof Subdistrict south of 58°00′ N. latitude. This amount will be achieved by noon ADT, May 8, 1985. Fishing for all Tanner crab (*C. opilio* and *C. bairdi*) will be prohibited in this portion of the Pribilof Subdistrict south of 58°00′ N latitude to make the closure enforceable. The other Tanner crab species, *C. bairdi*, is caught only incidentally in the *C. opilio* fishery.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that—

1. The actual condition of *C. opilio* Tanner crab stocks in the Pribilof Subdistrict south of 58°00′ N. latitude is substantially different from the condition anticipated at the beginning of the fishing year; and

2. This difference reasonably supports the need to protect those *C. opilio* stocks by closing that part of the Pribilof Subdistrict defined in § 671.26(f)(1)(vi)(B) south of 58°00′ N. latitude to all Tanner crab fishing, from noon ADT, May 8, 1985, until noon ADT, August 1, 1985, at which time the closure of this subdistrict for this species prescribed § 671.26(f)(2)(vi) will begin.

This closure will become effective under § 671.27(a)(2) after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director, at the address above, for 15 days following the effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifyng it, or rescinding it.

Other Matters

Tanner crab stocks of the species *C. opilio* in the Pribilof Subdistrict south of 58°00′ N. latitude will be subject to damage by overfishing unless this closure takes effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under § 671.27 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain a request for the collection of information, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11512 Filed 5-8-85; 4:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ACE-05]

Proposed Revocation of Transition Area Humboldt, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revoke the Humboldt, Nebraska, transition area. It was anticipated that instrument approaches would be made to the Humboldt, Nebraska, Airport utilizing the Pawnee City VORTAC as a navigational aid. The transition area was established, based on this VORTAC, to ensure the segregation of aircraft utilizing the instrument approach procedures under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). However, traffic data indicates that no instrument approaches have been made into Humboldt for the past two years. Therefore, the transition area is unnecessary.

DATES: Comments must be received on or before June 18, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by revoking the 700-foot transition area at Humboldt, Nebraska. The City of Humboldt has taken action to abandon one of their two runways and to eliminate all runway lights. Also, traffic data indicates that no instrument approaches were made into Humboldt during 1983 and 1984. Therefore, the transition area is no longer necessary. Accordingly, the FAA proposes to release that airspace below 700 feet above the ground level for other than instrument flight operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

Humboldt, Nebraska [Revoked]

Revoke transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

Issued in Kansas City, Missouri, on May 2, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-11455 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ANM-9]

Proposed Establishment of Transition Area; Cowley, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to provide controlled airspace 700 feet above the surface for aircraft executing a new instrument approach procedure to North Big Horn County Airport. The purpose of the transition area is to segregate aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be shown on aeronautical charts enabling pilots in visual weather conditions to circumnavigate the area of otherwise comply with instrument flight rules.

DATE: Comments must be received on or before July 11, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, FAA/Northwest Mountain Region—Docket No. 84-ANM-9, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the Airspace & Procedures Branch at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. This proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures office at the address previously listed, both before and after the closing date for comments. A report summarizing each substantive public contact will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, ANM-530, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application process.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft conducting instrument flight rules (IFR) operations.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Cowley, Wyoming (New)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the North Big Horn County Airport (lat. 44 54 45 N long./108 26 39 W) from the 324 true bearing from the airport clockwise to the 134 true bearing from the airport: and within a 12 mile radius of the airport from the 134 true bearing from the airport clockwise to the 324 true bearing from the airport, excluding the Powell, Wyoming, 700 foot transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(G) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65))

Issued in Seattle, Washington, on May 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11454 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-8]

Proposed Establishment of Transition Area; Greybull, WY

ACTION: Notice of proposed rulemaking.

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice proposes to provide controlled airspace from 700 feet and 1200 feet above the surface for aircraft executing a new instrument approach procedure to South Big Horn County Airport. The purpose of the transition area is to segregate aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The areas will be shown on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

DATE: Comments must be received on or before July 11, 1985.

ADDRESS: Send comments on the proposal to: Manager, Airspace & Procedures Branch—Docket No. 84-ANM-8, FAA/Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the above address.

An informal docket may also be examined during normal business hours at the Airspace & Procedures office at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-553, 17900 Pacific Highway South C-68966, Seattle, Washington 98168, The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, at the address previously listed, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft conducting instrument flight rules (IFR) operations.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "signifcant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Greybull, Wyoming [New]

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the South Big Horn County Airport (Lat. 44°31'06" N/long. 108°05'09" W) from the 344°T bearing from the airport clockwise to the 144°T bearing from the airport; and within a 13 mile radius from the 144°T bearing from the airport to the 334°T bearing from the airport; and that airspace extending upward from 1,200 feet above the surface beginning at (lat. 44°45'00" N/long. 108°11'00" W; to lat. 44°45'00" N/long. 108°00'00" W; to lat. 44°30'00" N/long. 107°48'00" W; to lat. 44°15'00" N/long. 107°48'00" W; to lat. 44°15'00" N/long. 108°11'00" W; thence northward to point of beginning, excluding the Worland, Wyoming, 1,200 foot transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised. Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65))

Issued in Seattle, Washington, on May 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountaing Region.

[FR Doc. 85-11456 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On this date, the Commission adopted an amendment to § 12.407(d) of its reparation rules which recognizes a prior Commission adjudicatory decision changing the way interest on reparation awards is calculated. The Commission also today is proposing a further amendment to § 12.407(d) to authorize the compounding of interest on an annual basis whenever the period for which interest has accrued exceeds one year.

DATE: Comments must be received by July 12, 1985.

ADDRESS: Comments on the proposal should be sent to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On this date, the Commission amended § 12.407(d) to reflect a change in the method for calculating the amount of interest that has accrued on reparation awards. This amendment, which codifies the Commission's decision in *Newman* v. *Bache Halsey Stuart Shields, Inc.,*[1] makes clear that for all initial decisions rendered on and after November 19, 1984, interest shall be computed in accordance with 28 U.S.C. 1961(a). As a result, interest on reparation awards will be computed with reference to the appropriate rate for 52-week U.S. Treasury bills as is done in the case of money judgments obtained in federal district courts.[2]

[1] Comm. Fut. L. Rep. (CCH) ¶ 22,432 (November 19, 1984).

[2] Consistent with 28 U.S.C. 1961(a) (1982), the interest rate to be applied to any particular reparation award is the "coupon issue yield equivalent * * * of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date" of the initial decision (or final decision in

Continued

Another provision in the same statute (28 U.S.C. 1961(b) (1982)) requires interest to be compounded on an annual basis. No Commission decision has previously required the parties to pay compounded interest on a reparation award: the *Newman* decision did not specifically address the issue of compounding interest. Under these circumstances, the Commission believes that the question should now be decided and is proposing to amend § 12.407(d) expressly to allow interest on reparation awards to be compounded annually whenever the period for which interest has accrued exceeds one year.

From the time it first recognized its authority to assess interest as a component of damages in reparation proceedings, the Commission has considered interest to be "an adjunct to the award of damages, a differential paid to compensate for the loss of the use of a sum of money for a period of time." [3] By adopting the methodology of 28 U.S.C. 1961 (1982), the Commission has determined that this differential should be calculated with reference to the 52-week U.S. Treasury bill rate. Under this approach, a party who has received an award should be entitled to receive as interest an amount that he or she would have earned had the amount of the award been invested in 52-week United States Treasury bills from the date upon which interest first accrued.[4] In the event that this period exceeds one year (for example, because prejudgement interest was awarded or the losing party appealed the initial decision without success), a prevailing party who had had the funds to invest in a 52-week Treasury bill would also have had the opportunity to invest in a second bill because the first 52-week Treasury bill would have reached its maturity. Thus, the prevailing party would have been in a position to reinvest in a new 52-week Treasury bill both the original amount of the reparation award and the amount representing the accrued interest on the award (arising from the first 52-week T-bill). Such a person would therefore enjoy the effect of compounded interest. The Commission believes that compounding on an annual basis in the manner just described is appropriate to ensure that a party deprived of the use of funds is restored as nearly as possible to the financial status he or she would otherwise have enjoyed.

Our proposal to allow the annual compounding of interest on a reparation award is consistent with Congress' intention in enacting the compunding provisions of 28 U.S.C. 1961(b) (1982). Those provisions were enacted to provide an economic disincentive to losing parties who might file frivolous appeals "simply to gain the advantage of artificially low interest rates on judgments while judgments were tied up in the courts for months or even years.[5] Requiring that interest on reparation awards be compounded annually prevents the equivalent of a compulsory below-market interest rate loan from the winning party to the losing party. A losing party may otherwise be encouraged to delay paying a reparation award for as long as possible because, by depriving the prevailing party of funds upon which interest would not accrue ona compounded basis, the losing party would be in a position to invest the same funds in a transaction which earns compounded interest, and thereby profit at the prevailing party's expense. This, of course, would invite the filing of unjustified appeals and frustrate the Commission's recent efforts to make reparations a more expeditious and efficient remedy.[6]

Finally, the fact that annual compounding is expressly authorized by 28 U.S.C. 1961(b) is in itself reason to permit annual compounding of interest on reparation awards. The Commission, in adjudicating private claims for money damages based on violations of the Act, Commission rule or order, is performing a role analogous to a federal district court in cases brought pursuant to section 22 of the Act. The Commission does not see why there should be any distinction between awards in reparation cases and judgments in section 22 actions in federal district court, insofar as compounding of interest is concerned.

For all of the foregoing reasons, the Commission is proposing to amend § 12.407(d) of its reparation rules to authorize interest on reparation awards to be compounded on an annual basis. The Commission is proposing to make this rule applicable to all initial decisions (or final decisions in voluntary decisional proceedings) rendered on and after the rule's effective date. The Commission invites comments from interested persons on this proposal, in particular, whether it should adopt a rule requiring the annual compounding of interest on reparation awards and, if so, when the rule should take effect.

II. Regulatory Flexibility Act and Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies when proposing rules to consider the impact of those rules on small businesses. While the proposed rule could augment a litigation-related cost to one of the parties to a reparation proceeding, it would be speculative to quantify the likelihood that a particular small business entity will become a party in a reparations proceeding, and thus subject to this increased cost. Since the proposed rule will not impact on any small business entities unless and until they become losing litigants in a reparations case, and since it is consistent with what federal courts now require, the proposed rule is not likely to have any economic impact on small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as proposed to be amended herein, would not have a significant economic impact on a substantial number of small business entities.

The Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. Because the rule proposed herein—one permitting the annual compounding of interest in connection with a reparation award—does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchange, commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

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a voluntary decisional proceeding). The amount of interest due in connection with a reparation award is computed by multiplying the number of days that interest has accrued by a fraction, the numerator of which is the equivalent coupon issue yield multiplied by the amount of the reparation award, and the denominator of which is the number 365.

[3] *Sherwood* v. *Madda Trading Company*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,728, at 23,026 (January 5, 1979).

[4] As the Commission's *Newman* decision makes clear, the relevant date for ascertaining the rate of interest is the date of the initial decision: the period for which interest is to be computed may often be the amount of time from the date of the loss caused by the violation to the initial decision (prejudgment interest) as well as postjudgment interest. *See Newman, supra,* at p. 29919.

[5] 127 Cong. Rec. S 14699 (Dec. 8, 1981, daily ed.).

[6] *See* 49 FR 6602 (1984)

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

§ 12.407 [Amended]

2. In part 12 § 12.407 is proposed to be amended by revising paragraph (d) to read as follows:

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961 (a) and (b) from the date directed in the final order to the date of payment, compounded annually.

* * * * *

Issued in Washington, DC., on May 3, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-11116 Filed 5-10-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modification to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Kansas as amendments to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed changes to the Kansas regulations concerning the creation of a per ton assessment mechanism; a general reporting regulation; the definition of "moist bulk density"; clarifying permit application requirements including when an operator must publish a public notice; revisions to civil penalty regulations; bonding; performance standards on incidental boundary markers, blasting, water monitoring, revegetation, and alternate engineering designs; training and certification of blasters; conducting aerial inspections and inspections of non-active sites, and the Memorandums of Understanding (MOU) with other State agencies to assist in permit review. This notice sets forth the times and locations that the Kansas program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. June 12, 1985 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Kansas regulatory program. A public hearing on the proposed amendments has been scheduled for June 7, 1985. Any person interested in speaking at the hearing should contact Mr. Richard D. Rieke at the address or telephone number listed below by May 28, 1985. If no person has contacted Mr. Rieke by the date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in Room 502, Kansas City Field Office, 1103 Grand Avenue, Kansas City, Missouri 64106. Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. Richard D. Rieke, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-5527.

Copies of the Kansas program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Office of Surface Mining, Room 5124, 1100 "L" Street NW., Washington D.C. 20240.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, Pittsburgh, Kansas 66762.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FDR 5892). Information pertinent to the general background, revisions, modifications, and amendments to the Kansas Program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 **Federal Register**.

II. Submission of Revisions

By letter dated April 4, 1985, Kansas submitted program amendments consisting of the following:

1. A revision to K.S.A. 1984 Supp. 49-406(g) which creates a per ton assessment mechanism.
2. K.A.R. 47-1-11 proposes a general reporting regulation giving the Kansas regulatory authority the authority to require specific reports needed to properly implement its program.
3. The term "moist bulk density" has been added to the definitions in K.A.R. 47-2-75.
4. K.A.R. 47-3-42 has been amended to clarify and update requirements for applications for mining permits.
5. Article 5—Civil Penalties—has been amended to incorporate changes made to the Federal regulations.
6. K.A.R. 47-8-9 has been amended to delete langauge requiring forfeited bonds be placed in an interest bearing escrow account and allows the surety, after demonstrating its ability to do reclamation, to reclaim forfeited sites.
7. Article 9—Performance Standards-proposes amendments that clarify and update performance standards in compliance with revised Federal regulation changes.
8. Article 13 has been added to fulfill Federal requirements for a program to train and certify blasters.
9. Article 15—Inspection and Enforcement—has been revised to reflect changes made to Federal regulations.

10. Eight memorandums of understanding (MOU) with State agencies to assist Kansas in reviewing mining permits for technical adequacy.

The full text of the proposed program amendments submitted by Kansas is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are consistent with the Federal regulations. If approved, the amendments will become part of the Kansas program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, The Office of Management and Budget (OMB) granted OSM an exemption from sections 3,4,7, and 8 of Executive Order 12291 for actions directly related to approved or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 3, 1985.

Ted D. Christensen,

Director, Office of Surface Mining.

The authority citation for Part 916 of 30 CFR continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 85-11501 Filed 5-10-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-07]

Marine Event: Coronado 4th of July Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the Annual Coronado 4th of July Demonstration and Fireworks Display, including the rehearsals prior to the event. This event takes place each year on the 4th of July, in Glorietta Bay, Coronado, California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the rehearsals and the event itself.

DATE: Comments must be received on or before 7 June 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California. Normal office hours are between 7:30 am and 3:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LtJg Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822. Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Citizens Committee for the Coronado 4th of July Celebration annually conduct the 4th of July Demonstration and Fireworks Display in Glorietta Bay, Coronado, California. The U.S. Navy Underwater Demolition Seal Team usually demonstrate water, parachute, and helicopter operations during the event which could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat. Rehearsals prior to the event will also be regulated.

Economic Assessment and Certification

These regulations are considered to be non-major Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11-85-07-4th of July Fireworks Display, Coronado, California.

The Annual Coronado 4th of July Demonstration and Fireworks Display is conducted annually, in Glorietta Bay, California. The U.S. Navy Seal Team demonstration usually takes place between 2:00 PM and 4:00 PM, with the fireworks following at 9:00 PM. The special local regulations are effective during the rehearsals prior to the event and on the 4th of July. Further

information on exact time, date and location are published by the Eleventh Coast Guard District in the Local Notice to Mariners and/or Special Local Regulations promulgated usually 30 days prior to the event. Special local regulations for this year's event read as follows:

(a) *Regulated Area:* The following portions of Glorietta Bay, Coronado, California will be closed intermittently to all vessel traffic:

(1) Demonstration Area—from the tip of the marina, Latitude 32 degrees 40'43.5"N, Longitude 117 degrees 10'20.5"W; northeast to Latitude 32 degrees 40'48.5"N, Longitude 117 degrees 10'10.5"W; east along the shoreline to Latitude 32 degrees 40'43.5"N, Longitude 117 degrees 10'00"W; east to Latitude 32 degrees 40'46"N, Longitude 117 degrees 09'58"W; south to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'56.5"W; east to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'49"W; northeast to Latitude 32 degrees 40'54"N, Longitude 117 degrees 09'30"W (Navy Restricted Area); thence southwest along shoreline to the initial point.

(2) Fireworks Display Area—from Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'56.5"W; south to Latitude 32 degrees 40'33"N, Longitude 117 degrees 09'56.5"W; northeast to Latitude 32 degrees 40'41"N, Longitude 117 degrees 09'49"W; thence west to the initial point.

(b) *Effective Dates:* These regulations will be effective from 1:00 PM to 4:30 PM on 27 June, 2 July (3 July inclement weather backup date) and from 2:00 PM to 4:00 PM and 9:00 PM to 10:00 PM (Fireworks area only) on 4 July 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state of local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

John I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 85–11496 Filed 5–10–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7–85–15]

Drawbridge Operation Regulations: Oklawaha River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Marion County Commission the Coast Guard is considering changing the regulations governing the State Road 46 drawbridge at Moss Bluff to provide that the draw need not open for the passage of vessels. This proposal is being made because no requests have been made to open the bridge in the past 6 years. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw and yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 27, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida 33130. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Existing regulations provide that the draw shall open on signal if at least 3 hours advance is given. The proposed regulation would provide that the draw need to be opened for passage of vessels. Over the past 6 years the draw was only opened for testing. A replacement fixed bridge with a vertical clearance of about 20 feet above normal high water is in the design phase with constuction anticipated in the spring of 1988. The Oklawaha is a completed federal project with a cleared channel depth of 4 feet to Leesburg. No additional improvements are planned for the waterway and the adjacent cross Florida Barge Canal is in an inactive status. It is reasonable to assume that navigation upon the waterway will not change in the foreseeable future.

Economic Assessment and Certification:

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory polices and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge has not been opened for vessels in the past six years. since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.319 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.319 Oklawaha River.

(a) The draws of the Sharpes Ferry (SR 40) Bridge, mile 55.1, Muclan Farms bridge, mile 63.9, and the Starkes Ferry (SR 42) bridge, mile 73.0 shall open on signal if at least three hours notice is given.

(b) The Draw of the Moss Bluff (SR46) bridge, mile 66.0 need not be opened for the passage of vessels.

(33 U.S.C. 449; 49 CFR 1.46(a)(5); 33 CFR 1.05–1(g)(3))

Dated: April 26, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 85–11499 Filed 5–10–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[SWH–FRL 2834–2]

Hazardous Waste Management System: Definition of Solid Waste and Standards for the Management of Specific Wastes and Specific Types of Facilities

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On January 11, 1985 (50 FR 1684), EPA proposed regulations regarding hazardous waste and used oil burned for energy recovery in boilers and industrial furnaces. A number of questions have been raised in this rulemaking regarding the jurisdictional and regulatory status of certain reclaimed oils. We, therefore, are reopening the comment period on a limited set of issues regarding reclaimed oils.

DATE: Comments on this notice are due June 12, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424–9346 or at (202) 382–3000. For technical information contact, Matthew A. Straus, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. See 50 *FR* 614. Among other things, this rulemaking defined which secondary materials are wastes when burned for energy recovery. In a related rulemaking proposed on January 11, 1985, EPA proposed to amend its existing regulations to begin to regulate those hazardous wastes and contaminated used oils burned for energy recovery. The proposal contains both substantive standards on actual burning, and administrative controls on persons who market and burn hazardous waste and contaminated used oil for energy recovery. Thus, these two rulemakings begin to lay out EPA's strategy for controlling hazardous wastes and used oils burned for energy recovery.

Since these publications appeared in the **Federal Register**, EPA has received a number of questions concerning the regulatory status of oils that are recovered from hazardous wastes that are generated at a petroleum refinery and which recovered oils are fed back to the petroleum refinery for processing. The issue of whether such oils should be classified as wastes or products is a difficult one, and one on which the Agency would like further public comment. Under amended § 261.3(c)(2) (50 *FR* 664), reclaimed materials that are recovered from a hazardous waste are generally not considered to be a waste. However, this general principle does not apply if the recovered material is used as a fuel or is incorporated into a fuel; in addition, any fuels that contain these wastes likewise are solid wastes. *Id.* One possible reading of this provision is that oils that are recovered at a petroleum refinery from treatment of hazardous waste indigenous to petroleum refining (*i.e.*,) oil recovered from the slop oil system that contained hazardous wastes), and that are put back into the refining process are still hazardous wastes, as are the fuels derived from processing these materials. (As explained in the January 11 proposed rule, and in a Technical Correction Notice to the definition of solid waste, all of these fuels are presently exempt from regulation to the extent they are hazardous waste fuels. See 50 FR at 1689–90 and 50 FR 14216, April 11, 1985.) EPA would like to receive further comment on this reading of the rules. In particular, commenters should address the relationship of the rules of RCRA amended sections 3004(r)(2) and (3), which deal explicitly with the question of indigenous petroleum refining wastes that are reintroduced into the refining process.

Since the recovered oil may be similar in composition to the raw crude oil used in the refining process, and the practice of reintroducing the reclaimed oil to the refining process is widespread, the Agency would also like comment as to the product-like nature of these recovered oils. In particular, the Agency would like comment on whether this practice is potentially eligible for the closed-loop variance in § 260.31(b) based on the factors cited in that section (§ 260.30(b)(1)–(8)) of the January 4 regulations. See 50 FR 662. Commenters also should indicate how the levels of toxic metals in the recovered oils compare to the levels found in crude oil.

EPA will deal with these comments as part of its rulemaking on hazardous waste fuels and used oil fuels as part of its consideration of the effects of reintroduction of wastes to the petroleum refining process (see 50 FR 1689–1690.)

Dated: May 2, 1985.

Jack W. McGraw,

Assistant Administrator.

[FR Doc. 85–11399 Filed 5–10–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84–902; RM–3975, FCC 85–236]

Allocation of Additional Channels in the 470–512 MHz Band for Public Safety and Other Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has issued a Further Notice of Proposed Rule Making which proposes three alternatives in addition to the one proposed in its October 1984 Notice. These alternatives are proposed to permit the Los Angeles County Sheriff to construct a communications system suitable for his Department while minimizing the effect on television reception in the Los Angeles area. The Sheriff maintains his existing system is inadequate to satisfy his present and future requirements. In addition to its outstanding proposal that the Sheriff use UHF–TV Channel 19 spectrum, the Commission's Further Notice of Proposed Rule Making proposes

alternatively to permit the Sheriff to use either portions of Channel 16, Channels 19 and 15, or Channels 19 and 14.

DATES: Comments are due June 13, 1985. Reply comments are due June 28, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Don Precure, Office of Science and Technology, Room 7314, 2025 "M" Street NW, Washington, DC 20554, (202) 653-8170.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 2, 73, and 90

Frequency allocations, Radio.

Further Notice of Proposed Rule Making

In the matter of Amendment of Part 90 and Part 73 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470—512 MHz for Public Safety and other Land Mobile Services; Gen. Docket 84-902, RM-3975, FCC 85-236.

Adopted: May 1, 1985.
Released: May 7, 1985.
By the Commission.

I. Introduction

1. On September 26, 1984, the Commission adopted a Notice of Proposed Rulemaking ("*Notice*") [1] to allow the use of Channel 19 frequencies for public safety services in Los Angeles. This *Notice* was in response to a petition (RM-3975) filed by the Los Angeles County Sheriff's Department ("Sheriff"). On December 7, 1984, the Sherifff filed a Motion to Modify the *Notice* ("Motion") to consider use of Channel 16 as an alternative to the use of Channel 19. Comments were filed both supporting and opposing this motion.[2] This Further Notice discusses the alternative requested by the Sheriff and proposes to considere it and other alternatives that offer the possibility of relief.

2. Channel 19 was initially proposed because it appeared to offer a solution for the Sheriff's public safety spectrum needs without any loss of full-powered television service. The Sheriff had asserted that a system could be engineered to meet his needs without causing interference to TV reception. A test plan, to include both laboratory work and field tests, was devised to demonstrate the feasibility of his use of Channel 19 frequencies. In his Motion, the Sheriff includes his analysis of preliminary results of laboratory tests performed for him by an independent consulting firm. The Sheriff concludes that the interference to Channel 18 may, in some areas and on some television receivers, be greater than originally anticipated. Consequently, sufficient flexibility in locating land mobile facilities operating on Channel 19 may not be obtainable. The Sheriff has requested that this proceeding be broadened to include an alternative, use of Channel 16 frequencies, that would not cause interference to the reception of the signal and operating television station.[3] On January 11, 1985, the Sheriff submitted the consultant's report on which his recommendation is based.[4]

II. Discussion

3. After careful review of the Sheriff's findings as well as the comments of various parties to both the Motion and the *Notice*,[5] the Commission agrees that alternatives to the proposed use of Channel 19 should be considered before a final decision in this matter is made. We will expand this proceeding to include those alternatives for several reasons. First, laboratory test results on the use of Channel 19, particularly on the lower portion, cause enough concern about potential interference to Channel 18 that other means of meeting the Sheriff's communications requirements need to be explored so that we can properly balance the competng concerns and alternatives. Second, we believe that there are other alternatives in addition to Channel 19 that may serve the Sheriff's needs. With a variety of viable alternatives presented for consideration and public comment, the Commission can analyze and compare each alternative from the standpoint of impact on television service as well as the ability to satisfy the Sheriff's requirements. This will provide the Commission with a complete record on which to base its decision. Those alternatives proposed are described below in paragraph 13 through 25.

4. With regard to the outstanding proposal to use Channel 19, the Sheriff has based his current position on laboratory tests conducted by his consultant. The Sheriff had planned to perform field tests showing the extent to which system engineering could minimize interference to TV reception. In his Test Report, the Sheriff states:

> [I]t was determined that filed tests would contain variable such as EMI from other sources and degradation of reception due to propagation anomalies which would produce inaccurate results. Therefore field tests were not deemed to be sufficiently reliable to produce a valid base of information. The anomalies were eliminated in the laboratory tests.[6]

The purpose of filed tests, however, would be to demonstrate performance despite the variances which, at times, are found in every locale. While it is possible to eliminate most of these variances in the laboratory, it is, unfortunately, not possible to do so in the filed. The need for a field test to support use of Channel 19 is not obviated by the Test Report or the mathmatical propagation model filed by the Sheriff. Should the Channel 19 alternative become the favored solution to the Sheriff's needs, we believe a field demonstration may still be necessary before routine use by the Sheriff can be authorized.

5. With regard to the alternatives set forth below, considerable information and studies have been filed from which these alternatives were developed. Many commenters made specific recommendations, while others provided data which supported certain aspects of the alternatives to be considered. The Sheriff, for example, submitted studies questioning the use of Channel 19 and recommended that Channel 16 be considered as an alternative. The results of these Channel 19 studies also suggest that land mobile could make use of a portion of the first adjacent channel to an existing television station. The Sheriff's study indicates that the interference potential to television Channel 18 reception from land mobile operation on the upper portion of Channel 19 would be no greater than from land mobile operation on Channel 20. Since Channel 20 has been used successfully for land mobile operations in the Los Angeles area for the last decade, it appears that utilization of the upper portion of Channel 19 by the Sheriff is feasible. Similarly, the lower portion of Channel

[1] *Notice of Proposed Rulemaking* in Gen. Docket 84-209, FCC 84-444, 49 FR 45875, (adopted November 21, 1984) [hereafter cited as *Notice*].

[2] Comments were filed by Channel Islands Television Corp., California Broadcasting Corp., the Association of Maximum Service Telecasters, and Global Television, Inc. Global was licensed to operate station KSCI-TV Channel 18 in San Bernardino. The license was assigned to KSCI, Inc., effective January 1, 1985.

[3] See Motion to Modify, at 8.

[4] "Report of Tests Conducted to Determine Impact of Public Safety Land Mobile Operation Operating in Adjacent Channel 19 Spectrum Upon Reception of Station KSCI, Channel 18 San Bernardino, California" ("Test Report"). At the Sheriff's request, comment and replies on the *Notice* were extended to February 11 and 26, 1985, respectively, to allow the public 30 days to review this Test Report. Subsequently, on Feb. 5, 1985, the Sheriff submitted additional material "Report of Terrain Modeled Service Area, KSCI, San Bernardino, California".

[5] For a listing of those who filed comments, see Appendix 1.

[6] Test Report at 2.

15 could be used by land mobile without any greater potential for interference to the proposed Channel 16 station than that from the existing land mobile use of Channel 14 (a second adjacent channel to Channel 16). Therefore, in addition to the use of Channel 16 we propose for consideration two other alternatives incorporating the concept of land mobile use of portions of first adjacent channels to television stations.

6. In the comments, several alternatives other than those described herein were suggested. The Association of Maximum Service Telecasters ("MST"), for example, indicates that UHF-TV channels, other than Channels 16 and 19 could be used by the sheriff in Los Angeles. UHF-TV channels 26, 32, 48, 54 and 66 are indicated as possible candidates. MST also suggests that consideration be given to other frequency bands such as the 900 MHz "reserve" and the 216-225 MHz bands. While these alternatives suggested by MST are noteworthy, the Commission does not consider them to be promising in the near term. As MST points out, land mobile equipment for use above Channel 20 and below Channel 70 may not be readily available to the Sheriff. Similarly, use of the 900 MHz reserve spectrum does not offer a near-term solution for the Sheriff's problem since the Commission only recently adopted a proposal to make spectrum at 900 MHz available to public safety.[7] With regard to the 216-225 MHz band, MST notes that operational restrictions would be required to protect the adjacent Channel 13 (210-216 MHz). Such restrictions make this alternative unfavorable. These alternatives, although not part of our proposal, are in any case open for comment.

The Sheriff's Requirements

7. The Sheriff currently operates two basic systems: a "patrol" system operating in the 39 MHz band and an "invetigative" system in the 470 MHz band. His petition and supplement describe two problems: excessive time delays on both his systems due to channel congestion and his inability to equip his patrol officers with suitable portable hand-held radios because 39 MHz frequencies are incompatible with such units. We issued our *Notice* proposing Channel 19 frequencies because we were convinced that the Sheriff's patrol officers, like officers in other cities, need to be equipped with portable radios.[8] We did not reach the issue of spectrum congestion in the *Notice* and do not need to reach it here.

8. In his comments and reply comments to our *Notice*, the Sheriff has described requirements in addition to the portable hand-held unit requirement that caused us to initiate this proceeding. He describes his proposed system as consisting of 50 channels for voice and 5 channels for digital data. The integrated portable radio voice system would use 48-channel portables with long-range repeaters on each channel to extend each unit's range. Each portable unit would have automatic digital unit number identification, emergency "trigger", and digital voice encryption capability. Each mobile unit would have a high speed digital mobile terminal.[9] Both portable and mobile units should be capable of operating in the "talkaround" or simplex mode. To accommodate this system, the Sheriff states that he needs 4.4 MHz of contiguous spectrum which will permit the location of base stations "at virtually any point in the County" with power up to 1000 watts and the operation of 50-watt mobiles and 5-watt portables "anywhere in the County".[10] Thus he argues in his reply comments that split-channel operation, using frequencies from more than one television channel, is not appropriate because suitable equipment is not available to meet his needs.[11]

9. We do not agree that split-channel operation should not be considered in this proceeding. Indeed, in light of both the data regarding Channel 19 frequencies submitted in the Test Report and the pending applications to construct a full service television station on Channel 16 in Ventura, California, we believe that public safety land mobile use of frequencies from both the upper portion of Channel 19 and the lower portion of Channel 15 may offer the most satisfactory solution to the Sheriff's spectrum problem, without depriving any community of full service television.

10. Split-channel operation using Channels 19 and 15 dismissed by the Sheriff by noting "bandwidth" covered by available equipments and stating that the 27 MHz separation between these channels is greater than that available in existing equipment. The Sheriff, however, is treating as synonymous two terms that are unrelated. Split-channel operation does not require that equipment have a bandwidth covering the enter frequency range included by the separated channels. Split-channel mobile equipment is in use today in Boston, Chicago, Cleveland, Detroit, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Washington. split-channel mobile equipment used in Los Angeles by common carriers on channels 20 and 14 have a separation of 36 MHz. Portables capable of "talkaround" on both Channels 19 and 15 are similarly available.[12]

11. Finally, the Sheriff states that only one company makes the digital scrambling equipment he requires and that equipment "can only accommodate a 12 MHz spacing between transmit and receive channels" and therefore cannot be used on Channels 19/15. This is a repeat of the "bandwidth" vs. "separation" argument already discussed. However, manufacturers other than the one whose radio is described by the Sheriff report no problems with split-channel operation. Also, we are aware that most police departments desiring digital voice encryption achieve it by using an external encryption device. These devices are available from a number of sources, are compatible with most land mobile equipment, and can be limited in use to only those officers needing encryption without otherwise affecting the compatability of their radios with other radios in the system.[13]

12. Split-channel operation appears viable and we therefore propose alternatives employing such operation in addition to our outstanding proposal regarding the reallocation of Channel 19 for use by the Sheriff. We recognize the Sheriff's assertion that such alternatives are less desirable than having a single full television channel alloted for his use. However, as is evident from both the Test Report and the Discussion herein, no solution is without problems from some perspective. We are seeking here a solution which minimizes the problems to all who might be affected, including the public, while satisfactorily meeting the Sheriff's need for spectrum suitable for portable hand-held units. We believe that the additional requirements can be met, at least to some extent, from the alternatives being considered here, but we caution the

[7] *See Notice of Proposed Rulemaking* in Gen. Docket 84-1233, FCC 84-575, 50 FR 1582 (Adopted November 21, 1984).

[8] See *Notice, supra*, at 5.

[9] Comments of the Los Angeles County Sheriff's Department, at 16-19.

[10] Comments of the Los Angeles County Sheriff's Department, at 21.

[11] Reply Comments of the Los Angeles County Sheriff's Department, at 15.

[12] Mobile equipment for 19/15 operation is available from the catalog of at least one manufacturer with no price premium. Portables are available from another, and base equipment is the same as for conventional operation.

[13] While the Sheriff has stated an encryption requirement, he has not provided information about this need or its scope.

Sheriff that he may have to make some tradeoffs in his system design or equipment selection to take best advantage of any spectrum we may make available at the conclusion of this proceeding.

III. Proposal

13. The Commission proposes three alternatives for consideration in this proceeding in addition to the use of Channel 19 previously proposed. These are:

1. Permit Channel 16 to be used by the Sheriff within Los Angeles County.
2. Permit portions of Channel 19 and portions of Channel 15 to be used by the Sheriff within Los Angeles County.
3. Permit protions of Channel 19, matched with portions of Channel 14, to be used by the Sheriff within Los Angeles County.

Alternative 1: Channel 16

14. The Sheriff has requested that Channel 16 be made available for his use should it be decided excessive interference would accompany his use of Channel 19 as proposed in our original *Notice*. While we agree with the Sheriff that land mobile use of Channel 16 in Los Angeles is practical in that there should be no interference to any existing television station,[14] we also note such use would preclude the granting of a TV assignment on the Channel 16 allotment for Ventura. Competing applications had been filed for the allotment and an Initial Hearing Decision was released. This decision was appealed and the case was remanded to the Adminstrative Law Judge for a further hearing. The Sheriff points out that since Channel 41 was recently allotted to Ventura it can be considered as a substitute channel for the parties to the Channel 16 hearing proceeding. However, this would result in a net loss of one of two TV channels currently allotted in Ventura. Furthermore, we note that Channel 41 cannot be sued by the present applicants in the Channel 16 compearative hearing without substantial modifications to their applications, including selection of a new site meeting the Commission's technical requirements.[15] In light of the time and expense spent by the parties in prosecuting the Channel 16 applications to date, we have serious reservations about imposing this burden on the applicants, the community of Ventura, and the Commission at this late stage in the Channel 16 proceeding, particularly since we believe the Sheriff's requirements can be met from other spectrum.

15. The other alternatives proposed herein, added to our outstanding proposal regarding the reallocation of Channel 19, provide flexibility in selecting an acceptable solution to the Sheriff's near-term needs. Therefore, we tentatively conclude that Channel 16 is not a desirable alternative, although we welcome comments on this proposal.[16]

Alternative 2: Channel 19/15

16. As mentioned in paragraph 5 above, studies indicate that the Sheriff could operate in portions of first adjacent channels to television stations and could obtain from 50 to 80 land mobile channels. Specifically, upper portions of Channel 19 (503–506 MHz) and lower portions of Channel 15 (476–479 MHz) can be used with protection to television reception on Channels 16 or 18 comparable to that adopted in Docket 18261. This alternative is supported in the record.

17. The Sheriff asserts that use of the upper portion of the first adjacent channel to Channel 18 (*i.e.*, Channel 19) has no greater potential for interference to television reception than does use of the second adjacent channel (Channel 20). He states:

> Moreover, when land mobile operation on the upper half of the first adjacent channel (*i.e.*, that part of the channel which is 3 MHz distant from the operating TV channel) is considered, there is no perceptible interference caused to the reception of the television station until the undesired-to-desired ratio reaches approximately 40 dB. This latter level of performance is similar to second channel performance and means that, for practical purposes, the upper half of the first adjacent channel is no different than the second adjacent channel on which sharing is now allowed under the conservative standards adopted in Docket 18261.[17]

18. Comments from broadcast parties support the Sheriff's contention. KSCI–TV, Channel 18 in San Bernardino, expresses its concern about interference from land mobile use of Channel 19. However, this concern centers on the use of the lower portion of Channel 19 by mobile units, which is not proposed in this alternative. No use of lower Channel 19 frequencies of any kind is proposed in this alternative. The Association of Maximum Service Telecasters ("MST") states:

> Although even on the upper 1.5 MHz of channel 19 (504.5–506 MHz) the interfering range of a base station is large, it may be possible, through very careful siting, to use those frequencies for base stations without objectionable interference to channel 18 service. (comments, pg. 3)

MST further states:

> As many as sixty 25–kHz land mobile channels could be derived from the upper 1.5 MHz of channel 19 frequencies tested by the (Sheriff's) Department. (comments, pg. 4)

19. For similar reasons, land mobile use of "low 15" should not interfere with the proposed Channel 16 station near Ventura. Channel 15 is a first adjacent channel and the test data shows such usage is no more troublesome than use of the second adjacent channel, Channel 14, which has been successfully used by land mobile for the past decade under rules adopted in Docket 18261. The use of any portion of Channel 15 by land mobile would be co-channel to the existing TV station KPBS–TV, Channel 15 in San Diego. With apropriate precautions, we believe that a public safety system could be engineered to provide adequate protection to TV reception of KPBS.[18]

20. The Sheriff, in his Motion, encourages innovation in finding the best solution for his needs. He cites an earlier example where the Commission allowed land mobile operation with mobiles on one TV channel and base stations on another.

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[14] In order to protect Channel 17 in Bakersfield in accordance with Docket 18261 protection criteria, certain site restrictions might be required. In his filing, the Sheriff recognizes this limitation and points out that because of the mountainous region between the city of Bakersfield and Los Angeles County, terrain shielding could be an effective means of protecting Channel 17 viewers from potential interference from land mobile signals in Los Angeles County. *See* pp. 4–5 of Appendix B to Sheriff's comments filed Feb. 11, 1985.

[15] Other possible substitutes suffer from the same problems.

[16] On October 3, 1984, a lottery was held among eight applicants proposing low power television and television translator service on Channel 16 in the Los Angeles metropolitan area (L84–240). The translator application of Neighborhood TV Company, Inc. ("Neighborhood") was chosen as the tentative selectee of this lottery. Subsequently, the Los Angeles County Sheriff's Department filed a petition to deny this application or, alternatively, to defer a grant to Neighborhood pending the outcome of this proceeding. Since we acknowledge that the proposed low power station would conflict with the Sheriff's proposal on Channel 16 and possibly with other proposals made herein, a low power grant on this channel will await the outcome of this proceeding.

[17] The 40 dB figure referred to here is based on the Test Report (*supra* footnote 4) which reported the 40 dB figure at frequencies 4.5 megahertz from the edge of Channel 18 (504.6375 MHz). While this reported result directly supports land mobile use of 1.5 megahertz of "upper 19", it only implies support of the 3 megahertz the Sheriff speaks of here.

[18] With regard to KPBS, current technical rules adopted in Docket 18261 would permit use of Channel 15 by mobile or portable units with 50 watts of effective radiated power anywhere in Los Angeles County but would require power and height reductions if base stations were sited in the southernmost portions of the County.

There is ample precedent for the Commission to seek alternative methods of meeting a public need for additional frequencies. In 1970, the Commission determined that a public need existed for additional DPLMRS in the Pittsburgh area. Channel 18 therefore was allocated for this purpose. However, the Commission later became aware that the Channel 18 frequencies which were to be used in the DPLMRS would be unusable because operation on them could cause destructive interference to nearby UHF television stations on Channels 17 and 19. Therefore, the Commission, in order to meet the need, used the next best alternative, which was to reassign half of the Channel 14 frequencies for mobile unit use. The need by the Sheriff for additional frequency space requires similar creative efforts by the Commission.[19]

In the case cited by the Sheriff, mobile operation on Channel 18 frequencies could have caused interference to adjacent channel TV operations for some distance from the mobiles whenever the mobiles transmitted. However, the DPLMRS service also had available frequencies in Channel 14 where land mobile operations did not cause interference. Interference from mobile units, whose locations are not readily controlled, was avoided by allowing mobile units to use the "base" Channel 14 frequencies, and using both the "base" and the "mobile" Channel 18 frequencies for base stations only. No television interference resulted from Channel 18 base stations since their location and operation could be carefully controlled. The alternative we propose here is similar.

21. Base station equipment capable of transmitting in one TV channel (such as "high 19") and receiving in another (such as "low 15") is routinely available without any price penalty. Base receivers and transmitters are normally packaged separately rather than combined on a single chassis. Mobile equipment does not operate across the entire 470–512 MHz band may require module substitution or shifting of existing components to support this alternative. This is not a significant effort and should allow for the availability of equipment of an off-the-shelf, cost effective basis. Administering a new line of equipment for this particular operation may place a slight premium on the cost of this equipment.

22. Unlike the Channel 19 alternative proposed in the *Notice*, this alternative would provide protection to Channel 18 reception comparable to that afforded broadcast services by land mobile operation under the criteria established in Docket 18261. Further, unlike use of Channel 16, no full service television operation is precluded by this alternative.

Alternative 3: Channel 19/14

23. In making the proposal above to pair frequencies from the upper portion of Channel 19 with frequencies from the lower portion of Channel 15, we have assumed that land mobile use of the Channel 15 frequencies will cause no greater interference to proposed Channel 16 use in Ventura than land mobile use of Channel 14 frequencies would. We have also assumed that the Sheriff can avoid causing harmful interference to the reception of station KPBS, Channel 15 in San Diego, California, within that station's Grade B service contour. However, in the event there are unanticipated problems with land mobile use of Channel 15 frequencies, we are also proposing to allow pairing of frequencies from the upper portion of Channel 19 with those frequencies from Channel 14 now licensed to the Sheriff.

24. The Sheriff currently holds licenses for 10 channel-pairs (10 mobile frequencies and 10 base frequencies) in the 470–476 MHz band (UHF–TV Channel 14). His 10 channels could be doubled if all 20 of his Channel 14 frequencies were paired with 20 matching frequencies in "high 19", while the remaining portion of "high 19" could be used to accommodate other requirements described by the Sheriff.[20] The use of "high 19" here is similar to its use in Alternative 2.[21]

25. This alternative would provide only 20 channel-pairs for the Sheriff where he has requested 55. However, it would provide at least some interim relief to the Sheriff pending the outcome of the Commission's rulemaking in Gen Docket 84–1233 and the Commission's study of long-term public safety needs in PR Docket 84–232.[22] The Sheriff would have the option of increasing the capacity of this spectrum somewhat through adaptation to his needs of the trunked mobile technology now used for the common carrier Domestic Public Land Mobile Radio Service in the lower UHF television band. However, since the portable units available in this band are not trunked, accommodation of portable units using conventional channel assignment techniques would limit the benefitrs possible from adapting a common carrier trunked system to public safety use. As we said at paragraph 17 of our *Notice*, we do not believe that trunking or the emergent narrowband technology can provide a current solution in this case. Thus, while we are proposing a means to increase somewhat the capacity of the Sheriff's present UHF spectrum, we view this as a less desirable alterntive to be pursued only if our other proposals concerning use of Channel 19 frequencies prove infeasible.

IV. Conclusions

26. We are proposing three alternatives as possible options for the Sheriff to construct a modern communications system, compatible with operation of portable units, as well as to adequately serve his traffic today and for the next several years. We have, however, tentatively concluded that the Channel 16 proposal is not desirable. The other two alternatives, if adopted, would not significantly disrupt receiption of the signal from any existing TV station nor affect any existing TV allotment. All three alternatives are specific in that they only address the problem of the Sheriff's stated present inability to update his communications system in order to meet sufficiently the public safety needs of the Los Angeles County residents. As we recognized in our *Notice*, the Sheriff needs to equip his patrol officers with portable radios. The alternatives proposed herein do not address the more general issue of nationwide public safety requirements contained in PR Docket 84–232.

27. We will consider the tests underway in Los Angeles, the resulting reports, comments supporting and opposing the tests, and comments associated with this Further Notice as well as our previously-issued *Notice* regarding the use of Channel 19 in determining whether any of the proposed alternative solutions is feasible and in deciding whether a rulemaking or waiver is more appropriate.

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[19] Motion to Modify, at 11, 12.

[20] For example, the Sheriff could use the remaining portions of "high 19" to construct and operate a "portable-only" system. Such a system is practical if technical problems are avoided by locating base receivers some distance from base transmitters. The Sheriff has stated his intention to use separate receive sites for channels supporting portable units.

[21] We are aware "low 15" frequencies could be used instead of "high 19" as proposed here. Either could be paired with the Sheriff's current Channel 14 frequencies. We propose the latter because it appears to provide more flexibility in designing a land mobile system. However, if our proposal to make spectrum available from both Channel 19 and Channel 15 is adopted, there is no reason why the Sheriff could not integrate his Channel 14 spectrum into a new system to meet special needs such as digital voice encryption.

[22] *See Notice of Inquiry* in PR Docket 84–232, 49 FR 9754 (adopted March 1, 1984).

V. Procedural Matters

28. Authority for issuance of this Further Notice of Proposed Rulemaking is contained in sections 4(i), 302, 303 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 302, 303 and 316. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before June 13, 1985, and reply comments on or before June 28, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. The Sheriff's Motion to Modify is GRANTED as set forth above.

29. The Secretary is directed to serve a copy of this Further Notice by First Class Mail to those applicants for low power television stations listed in the attached Appendix 2.

30. The Secretary is further directed to serve a copy of this Further Notice by Certified Mail on KSCI, Inc., ("KSCI"), the licensee of KSCI-TV, Channel 18 San Bernardino, California; on the Board of Trustees the California State University for San Diego State University, the licensee of KPBS-TV, Channel 15 San Diego, California; on California Broadcasting Corporation and on Channel Islands Television Corporation, applicants for the Channel 16 allotment in San Bernardino, California, and on Neighborhood TV Company, Inc., tentative selectee of the Channel 16 low-power TV lottery in Los Angeles.

31. All parties in this proceeding are afforded an opportunity to submit comments on the relevant proposals contained herein within the comment and reply period specified above and specifically to state reasons why such actions should not be taken, if they have any objection.

32. This is restricted rule making subject to §§ 1.1207, 1.1209 and 1.1229 of the Commission's Rules. For further information concerning this proceeding, contact Don Precure, Office of Science and Technology, (202) 653-8170. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments and potential modifications to outstanding broadcast licenses. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the parties constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

33. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96-354, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. It does not propose to display anyone assigned to any of the bands being considered in this proposal. Any allocation alternative being considered herein would only provide spectrum, which is presently unused by its assigned service, for shared use by public safety users.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX 1

Commenters on the Notice of Proposed Rulemaking in Gen. Docket 84-902

American Petroleum Institute, Central Committee on Telecommunications
Associated Public-Safety Communications Officers, Inc.
Association of Maximum Service Telecasters [1]
California Broadcasting Corporation [2]
California Public-Safety Radio Association, Inc.
California Peace Officer's Association
California Public-Safety Radio Association, Inc.
City of Glendora
City of Pasadena
City of San Buenaventura
County of Los Angeles, Board of Supervisors [1]
County of Orange, California, Letters of endorsement attached from:
City of Santa Ana
City of Garden Grove
City of Irvine
City of Orange
City of Anaheim
County of Riverside
County of San Bernardino
County of Ventura, Board of Supervisors
Electronic Industries Association, Consumer Electronics Group
International Association of Chiefs of Police
International Association of Fire Chiefs, Inc.
International Municipal Signal Association
KGET TV, Inc. (Channel 17 Bakersfield) [2]
KSCI, Inc. (Channel 18, San Bernardino) [1]
Los Angeles County Police Chief's Association
Los Angeles County Sheriff's Department [1]
Los Angeles Police Department
National Association of Broadcasters [1]
National Translator Association
Pasadena Police Department
Pomona Police Department
Special Industrial Radio Service Association, Inc.

[1] Filed comments and reply comments.
[2] Filed reply comments only.

APPENDIX 2

LPTV Applicants Possibly Affected by LM Use of Channels Proposed for Use by the Los Angeles County Sheriff

Blacks Desiring Media, Inc., Austin B. Petersen
Howard LP Television, Inc., Bernard B. Petersen
Carter Broadcasting Corp. (Ch. 19), Debra M. Kamp
Connecticut Home Theatre, Gregory A. Petersen
Echonet Corp., Kurt J. Petersen
Figgie Communications, Quentin L. Breen
George Fritzinger, Theresa P. Miller
Minority Communications, Cassidyne Productions Inc.
N & K LPTV Inc., Charles Billings
Wade Comm. Group Inc., Metro TV
Baby Boom Broadcasting, Media Properties
American Television Network, Millard V. Oakley
Catholic Views Broadcasting, Northcoast Broadcast Corp.
Tel-Radio Communications Properties, Vistacom
High Desert Broadcasting, Hi-Desert Publishing Co.
Arnold M. Applebaum (Ridgecrest), Arnold N. Applebaum (Paso Robles)
Evangelina Garcia Garza, Marie G. Bernier
Evarista Romero, Response Broadcsting Corp. (Ch. 19)
Jo Ann's Balloon Boutique, Eddie Robinson
Juan Ramon Ortiz, Ventures in Communications, Inc.
Juan Villareal, Citizen Television Corp.
Lidia Rodriguez, Star Seven Broadcasting
Mike A. Mendoza, Canal Cine Hispanic, Inc.
Minerva Rodriquez Frias, Carter Broadcasting Corp. (Ch. 16)
Latin America TV Ltd., Natl. Comm. Affiliates of Cal.
Response Broadcasting Corp. (Ch. 16)

[FR Doc. 85-11494 Filed 5-10-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 12]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes three new types of standardized replaceable light sources to be used in replaceable bulb headlamp system on motor vehicles. In the two light source system designed by General Motors Corporation "(GM)" one source would provide the upper beam, and the other the lower beam. The thrid proposed light source, a variation of the European H4 bulb would incorporate both upper and lower beam filaments. To differentiate replaceable light sources, it is further proposed that the present dual filament light source be designated "HB1" (Headlamp Bulb 1), the new GM bulbs "HB3", and "HB4" and the H4 variant "HB2".

The notice reiterates many aspects of the proposal published on December 7, 1984 (49 FR 47880) to allow use of four HB1 light sources in replaceable bulb headlamp systems.

This rulemaking action implements the agency's grants of petitions for rulemaking by GM and Volkswagen of America Corp. "(VW)".

DATE: Comment closing date for the proposal is June 27, 1985. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). Effective date of the amendment would be 30 days after publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket number and notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine (HB3 and HB4) and Jere Medlin (HB2), Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590. (202-426-2720).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, to allow the use of a replaceable bulb headlamp system, (48 FR 24690). This system is comprised of two headlamps, each with a standardized replaceable light source containing both an upper and lower beam filament.

Subsequently, General Motors Corporation ("GM") petitioned the agency for rulemaking to allow a two-lamp system with two standard dual-filament replaceable light sources in a single cavity. Volkswagen of America ("VW") petitioned that a four-lamp system be permitted, each with its own standard dual filament replaceable light source. The agency granted those petitions and in implementation published a notice of proposed rulemaking on December 7, 1984 (49 FR 47880).

Subsequent to its initial petition, on January 19, 1984, GM asked for further rulemaking to allow "the use of a pair of new standardized replaceable light sources for headlamps", one to provide the upper beam, and the other the lower. Various benefits were ascribed to them. Each incorporates an axial filament rather than a transverse one, thus allowing headlamps with a lower profile and concomitant lowering of the front end to improve the aerodynamic qualities of motor vehicles. The tolerance of the filament locations with respect to the mounting plane base of the bulb would be reduced by over one-half of that presently allowed to improve mechanical aiming accuracy. GM recommended that minimum performance levels at various beam test points be increased. After review, the agency granted GM's petition.

Specifically, in its petition, GM presented its views that the dual filament standardized replaceable light source presently allowed had certain design characteristics that limited its potential application in future, low profile headlamp systems. These were a transverse filament configuration which requires a relatively large lamp reflector height, an O-ring seal which adds unnecessary cost to a vented headlamp assembly an also makes bulb removal difficult, a large filament positioning tolerance which makes it difficult to provide the mechanical aim consistency and photometric tolerance that it deems desirable, and the long length of the light source base which requires more space to be left behind the headlamp to allow the light source to be easily changed. GM has designed two new single filament halogen bulbs which it believes will overcome these shortcomings of the present dual filament bulb. The bulbs incorporate axial filaments whose positioning will allow smaller bulbs and improved optical characteristics and hence a headlamp of lesser height, and so contribute even further to the aerodynamic efficiency that is being designed into the front ends of motor vehicles. GM has reduced the tolerance of the filament locations with respect to the mounting plane of the bulb base to less than half that allowed on the current bulb, ±0.20 mm in the left-right, up-down, and ahead-behind directions. This will improve accuracy of mechanical aim and also improve the headlamp's photometric performance. To provide more light down the road, GM has designed the bulbs to permit headlamps to meet photometrics similar to that recently adopted for the Type F sealed beam headlamp systems.

In addition, GM has designed headlamps with the new bulbs to be vented, so that an O-ring seal would serve no useful purpose. It recommends, however, that these light sources intended for use in non-vented systems retain the O-ring seal feature of the current standardized replaceable light source, and has so provided in its design of these bulbs for those manufacturers desiring to build semi-sealed headlamps.

This notice also implements the partial grant of a petition for rulemaking submitted by VW to amend Standard No. 108 to allow use of the European H4 type bulb in passenger car replaceable bulb headlamp systems.

The agency has reviewed the GM and VW petitions, and its own past and present rulemaking actions on headlamps. The first issue to be addressed is proliferation. Over the years, the agency sparingly adopted new sealed beam headlighting systems, concerned that the distribution system might not be able to accommodate a variety of lamps for replacement purposes. No discernible problems have occurred. When the replaceable bulb headlamp was adopted in 1983, the agency realized that an infinite number of lens/reflector combinations was possible, but believed that the concerns of proliferation could be met by standardization of the replaceable light source. Since replaceable light sources are more compact than headlamps, it seems logical that retail outlets will have space available to stock not only the existing light source but the additional proposed light sources as well. Because of the design advantage they offer, NHTSA believes it likely, should approval be given, that a large percentage of domestic motor vehicles manufactured from 1987 onward could be equipped with headlamps with the GM-designed smaller light sources, that many European manufacturers may instead prefer an H4 type bulb, and that because of the apparent widespread intended use of these three proposed light sources, there should be no problem with finding replacement sources when needed.

The second issue is the relatively simple one of nomenclature. None was needed for a single standardized light source. But with the advent of three more light sources, designation of each will be necessary to identify and distinguish between the sources and their performance capabilities. Thus NHTSA proposes that the currently allowed dual filament source be known

as HB1 ("Headlamp Bulb 1"), that the modified H4 be known as "HB2" and that the proposed GM upper and lower beam sources be known respectively as "HB3" and "HB4". To help insure correct replacement of light sources by consumers, it is further proposed that each lens of a replaceable bulb system be marked with the three character designation of the light source type used immediately behind it, similar in method to that used in Europe. Figure 3 gives the physical dimensions of the current HB1 source, proposed Figures 19 and 20 contain the dimensions of the HB3 and HB4 sources, and Figures 21 and 22 contain the modifications to the H4 light source and socket resulting in Type HB2.

The next issue is the photometric performance of the lamps. Recently, the agency adopted modified photometrics for the new Type F sealed beam headlighting system (49 FR 50176) developed by GM, and it is proposing similar photometrics in Figures 17 and 18 modified for the HB3 and HB4 light sources. Today, in a separate **Federal Register** notice, the agency is also proposing for the Type F sealed beam headlighting system that the lower beam could be used simultaneously with the upper beam in a four-lamp system. Similarly it is proposed for the HB3 and HB4 light sources that simultaneous use of lower beam and upper beam be permitted because Figure 18 contains limits at the H–V and 4D–V test points restricting maximum output on the upper beam on four lamp systems.

The primary regulatory description of the H4 replaceable light source is contained in Annexes 5 and 6 to ECE Regulation No. 20 (Rev. 1), 1 September 1976. To allow greater flexibility in promulgating a final rule on the H4, should it be adopted, the agency is proposing that the lamp provide, alternatively, the same photometrics as the original standardized replaceable light source, the HB1, or those proposed in Notice 10 to Docket No. 81–11 which are similar to the Type F photometrics recently adopted. The agency therefore seeks comments on the safety implications of a final rule which adopts one of two different photometric requirements proposed for headlamps using Type HB2 light sources. As ECE Regulation No. 20 does not prescribe a durability standard, the agency also proposes that the HB2 should meet the same average life requirements as the HB1, 320 hours for the lower beam, and 150 hours for the upper beam, at 14 volts.

NHTSA believes that some modification to the interface between the bulb and socket is needed to distinguish between existing lamp systems that use the existing H4 bulb and those that would use the proposed HB2 bulb. This modification will help prevent inadvertent misuse of light source and lamp assemblies which may be available and legal for single headlamp motorcycle use under Standard No. 108, but which do not meet all of the specifications set forth for multiple headlamp passenger cars. This proposed action will eliminate any potential safety problem of excessive glare on upper beam which might result from such misuse. Therefore, it is proposed to change the location of one mounting lug and to add a slot in the mounting ring of the bulb and a matching slot and new lug to be located in the socket of the reflector assembly. To assure the capability of mechanical aim, the agency is also proposing specifications and tolerances for fit between the HB2 light source and the headlamp socket which are comparable to those now required for the current HB1 light source. This will help reduce the errors associated with mechanical aiming that would exist if the ECE specifications, which have no socket dimension specifications and are not designed for mechanical aim, were adopted. NHTSA requests that specific attention be directed to these and all the proposed bulb and reflector socket dimensions, and seeks comments on whether these exceed reasonable production tolerance limits. NHTSA also requests revised drawings with any suggestions for other solutions to assure non-interchangeability.

Regarding replaceable bulb headlamps in general, comments by Hella and ETL to Notice 10, Docket No. 81–11 (the proposal, 49 FR 47880, December 7, 1984, to allow systems which use four HB1 light sources) noted that in the temperature and internal heat tests of S6.7, no flash rate is specified for a turn signal that is incorporated in a headlamp housing. The essence of their concerns is that the test for heat build-up from a steady-burning turn signal lamp (which was in the proposal) would be unrealistically stringent because in normal use turn signals flash and are not on continuously. This concern would also apply to tests for lamps which use HB2, HB3, and HB4 light sources. For this reason, NHTSA is proposing to include a flashing rather than a continuously burning turn signal, at the test condition of 90 flashes per minute with a 75 ±2% current "on-time" performance. This represents a more realistic condition than the current requirement for a steady-burning turn signal lamp. It is based upon the permissible area of the polygon shown in Figure 1 of SAE J590b *Turn Signal Flashers*. This would apply to all replaceable bulb headlamps incorporating a turn signal unit.

Because the proposed replaceable light sources have filament locations different than that of the current standardized replaceable light source, the bulb deflection test would be changed to accommodate these differences. The point of deflection would be a specific measured distance from a reference plane instead of being located in reference to the filament. This change is also proposed for the existing standarized replaceable light source but the actual point of deflection would remain the same. Additionally, for only the new light sources, the direction of force application is specified to be radially inward anywhere in the perpendicular plane located at the application point. This is in contrast to the test for the existing light source which implies testing deflection in only one specific radial direction.

This proposal deals with only those headlamp system configurations requested by petitioners, i.e., the use of only HB2 light sources in a headlamp system, or the use of only HB3 and HB4 light sources in a system. NHTSA realizes that other configurations (such as an intermix of HB2 with HB3/HB4 on a single vehicle) are possible, resulting in mixes of light source types within a headlamp system. NHTSA seeks comments on whether there are any safety reasons, such as excessive glare, excessive candela, or insufficient illumination, to prohibit such intermixes; and, conversely, also seeks appropriate photometric and other specifications which would be required to permit such intermix, should commenters deem that course of action desirable.

Paragraph S4.3.1.1.36(a)(2) and Figure 4–1 would be revised to permit greater freedom in the size of the mechanical aiming device locating plate setting markings located on the lenses of replaceable bulb headlamps. A new minimum height of 4 mm. for the setting markings would replace the current 0.25 inch minimum. This proposal is in response to part of a Motor Vehicle Manufacturers Association petition for rulemaking. Legibility of the setting markings is not affected. Additionally, since all three legs of the mechanical aiming device locating plate available in the field are adjustable, it is proposed that the wording pertaining to "horizontal" and "vertical" be modified.

NHTS has considered this proposal and has determined that it is not major within the meaning of Executive Order

12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and placed in the public docket. Since use of the proposed replaceable light source is optional, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the use of headlighting systems.

NHTS has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps and aimer adjusters will be ninimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity for vehicle, headlamp, and replaceable light source manufacturers to plan production and distribution on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

The engineers and lawyer primarily responsible for this proposal are Richard Van Iderstine (HB3 and HB4) and Jere Medlin (HB2) and Taylor Vinson, respectively.

List of Subjects in 40 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 and 571.108, Motor Vehicle Safety Standard No. 108, *Lambs, Reflective Devices, and Associated Equipment*, be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. A new definition "Aiming Reference Plane" would be added to S3 *Definitions to read:*

* * * * *

"Aiming Reference Plane" is the plane which is perpendicular to the longitudinal axis of the vehicle and tangent to the forwardmost aiming pad on the headlamp.

* * * * *

3. The definition of "Replaceable Bulb Headlamp" in S3 *Difinitions* would be revised to read:

* * * * *

"Replaceable bulb headlamp" means a headlamp comprising a bonded lens and reflector assembly and one or two standardized replaceable light sources.

* * * * *

4. The definition of "Standardized replaceable light source" in S3 *Definitions* would be revised to read:

* * * * *

"Standardized replaceable light source" means an assembly of a capsule, base, and terminals as described in Figures 3, 19, 20, or as in Annex 5 (excluding lumen tolerance values) for 12 volt bulbs and Annex 6, ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev. 1/Add. 19/Rev. 1)), 1 September 1976, *Uniform Provisions Concerning the Approval of Motor Vehicle Headlights Emitting an Asymmetrical Passing Beam or a Driving Beam or Both and Equipped with Halogen Lamps (H4 Lamps) and of the Lamps Themselves*, as modified by Figures 21 and 22.

* * * * *

5. In paragraph S4.1.1.36 the word "two" would be removed between the word "with" and the phrase "replaceable bulb headlamps".

6. In paragraph S4.1.1.36, paragraph (a)(1) would be revised to read:

* * * * *

(a) (1) Each replaceable bulb headlamp shall include components which are designed to conform to the applicable specifications of paragraph S4.1.1.38 and paragraph S4.1.1.39, and, as applicable, Figure 3 *Specifications for the Type HB1 Standardized Replaceable Light Source;* Annex 5 (exluding lumen tolerance values) for 12 v. bulbs and Annex 6 of ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev. 1/Add. 19/Rev. 1)), 1 September 1976, *Uniform Provisions Concerning the Approval of Motor Vehicle Headlights Emitting an Asymmetrical Passing Beam or a Driving Beam or Both and Equipped with Halogen Lamps (H4 Lamps) and of the Lamps Themselves*, as modified by Figures 21 and 22 *Specifications for the Type HB2 Standardized Replaceable Light Source;* Figure 19 *Specifications for the Type HB3 Standardized Replaceable Light Source;* or Figure 20 *Specifications for the Type HB4 Standardized Replaceable Light Source*, including filament location, base and socket

dimensions, electrical connector dimensions, and maximum design wattage.

* * * * *

7. In paragraph S4.1.1.36, the last sentence of paragraph (a)(2) would be removed and the following three sentences added:

* * * * *

(a) * * *

(2) * * * Except as provided in paragraph (a)(3), a whole number which represents the distance in tenths of an inch (i.e., 0.3=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens. The height of any number shall be not less than .157 inch (4mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number shall represent the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close to the lens as possible without causing interference.

* * * * *

8. A new paragraph (a)(3) would be added to paragraph S4.1.1.36 to read:

* * * * *

(a) * * *

(3) If the forwardmost aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the lens. The dimension for the outboard aiming pad (Dimension F in Figure 4) shall be followed by the letter "H" and the dimension for the center aiming pad shall be followed by the letter "V". The dimensions shall be expressed in tenths of an inch.

* * * * *

9. A new paragraph (a)(4) would be added to paragraph S4.1.1.36 to read:

* * * * *

(a) * * *

(4) A motor vehicle, other than a motorcycle, may be equipped with any one of the following replaceable bulb headlamp systems:

(i) 2 lamps, each using one HB1 light source,

(ii) 2 lamps, each using two HB1 light sources,

(iii) 2 lamps, each using one HB2 light source,

(iv) 2 lamps, each using two HB2 light sources,

(v) 2 lamps, each using one HB3 an one HB4 light source,

(vi) 4 lamps, each using one HB1 light source,

(vii) 4 lamps, each using one HB2 light source,

(viii) 4 lamps, 2 using one HB3 light source each, and

(ix) 2 using one HB4 light source each.

* * * * *

10. The introductory text of paragraph (b) of paragraph S4.1.1.36 would be revised to read:

* * * * *

(b) Each replaceable bulb headlamp shall be designed to conform to the following sections of the specified SAE Standards and Recommended Practices with any standardized replaceable light source intended for use in such headlamp.

* * * * *

11. Paragraph (b)(2) of S4.1.1.36 would be revised to read:

* * * * *

(b) * * *

(2) Section 3.1—Test Voltage, and Section 3.5—Photometric Design Requirements and Figure 3 of SAE J579c "Sealed Beam Headlamp Units for Motor Vehicles", December 1978,

(A) Including, for a headlamp equipped with a Type HB1 light source, Table 1 of SAE J579c, or

(B) Including, for a headlamp equipped with a Type HB2, HB3, or HB4 light source, the specifications of subparagraph (e) of this paragraph.

(C) The term "aiming plane" in paragraph 3.5 of SAE J579c shall mean "aiming reference plane."

* * * * *

12. In paragraphs (d)(1), (d)(3), (d)(5), (d)(6)(A), (d)(6)(B), and (d)(7) of paragraph S4.1.1.36, the words "of SAE J579c 'Sealed Beam Headlamp Units for Motor Vehicles', December 1978" would be removed and the words "applicable to the headlamp system under test" substituted.

13. Paragraphs (A) and (B) of paragraph S.4.1.1.36(d)(6) would be amended by adding the words "of each standardized replaceable light source" between the phrases "mechanical axis" and "with the exterior surface of the lens".

14a. The following amendments would be made to achieve headlighting systems utilizing Type HB2 light sources, or Type HB3 and HB4 light sources.

A new paragraph (e) would be added to S4.1.1.36 to read:

* * * * *

(e) (1) There shall be no mechanism that allows adjustment of an individual standardized replaceable light source, or adjustment of reflector aim on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by filaments designed for an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing one or two type HB2 standardized replaceable light source(s), shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the upper one if arranged vertically) or single light source, designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978; or

(B) By both light sources, designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles, Dec. 1978.*

(ii) The upper beam shall be provided in one of the following ways;

(A) By the inboard light source (or the lower one if arranged vertically) or single light source, designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles, Dec. 1978; or*

(B) By both light sources, designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single Type HB2 light source, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "U".

(5) The lower and upper beams of a headlamp system consisting of two lamps each containing one Type HB3 and one HB4 light source, shall be provided as follows;

(i) The lower beam shall be produced by the outboard light source (or the uppermost if arranged vertically), designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(6) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single standardized replaceable light source, either Type HB3 or HB4, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "U".

14b. As an alternative to the provisions of paragraph 13a, the following amendments would be made to achieve a headlighting system utilizing only Type HB2 light sources. The proposed amendments for headlighting systems utilizing Type HB3 and HB4 light sources would be only those of amendatory instruction 14a above.

A new paragraph (e) would be added to S4.1.1.36 to read:

* * * * *

(e) (1) There shall be no mechanism that allows adjustment of an individual standardized replaceable light source, or adjustment of reflector aim on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by filaments designed for an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing one Type HB2 light source, or two standardized replaceable light sources (two Type HB2, or one each Type HB3 and HB4) shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) or single light source, designed to conform to the lower beam requirements of Figure 17; or, in the case of lamps with two HB2 light sources,

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) or single light source, designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single light source, either type HB2, HB3 or HB4, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "U".

15. Paragraph S4.1.1.37 would be revised to read:

* * * * *

S4.1.1.37 Each lens-reflector unit manufactured as replacement equipment for a replacement bulb headlamp system shall be designed to conform to the requirements of S4.1.1.36 when any standardized replaceable light source appropriate for such unit is inserted in it.

* * * * *

16. Section 4.1.1.39 would be removed. S4.1.1.40 would be redesignated S4.1.1.38 and revised as follows:

* * * * *

S4.1.1.38 The lens of each replaceable bulb headlamp and the base of each standardized replaceable light source shall be marked as follows:

(a) With the symbol "DOT" horizontally or vertically which shall constitute certification that the headlamp or light source conforms to all applicable Federal motor vehicle safety standards.

(b) The base of each HB2, HB3, and HB4 standardized replaceable light source shall also be marked with the name of the manufacturer or importer, and its HB Type Designation.

(c) The lens of each HB2, HB3, and HB4 replaceable bulb headlamp shall permanently display the standardized replaceable light source Type Designation(s) at the center of the lens in front of each light source.

* * * * *

17. Paragraph S4.1.1.38 would be redesignated S4.1.1.39 and revised as follows:

* * * * *

S4.1.1.39 Each standardized replaceable light source shall conform to the following requirements:

(a) A type HB1 light source shall conform to the dimensions specified in Figure 3 and shall incorporate a silicone O-ring. A Type HB2 light source shall conform to the dimensions specified in Annex 5 for 12 volt bulbs, and Annex 6 of ECE Regulation 20 (E/ECE/324, E/ECE/TRANS/505 (Rev.1/Add.19/Rev.1)), 1 September 1976, as modified by Figures 21 and 22. A Type HB3 light source shall conform to the dimensions specified in Figure 19. A Type HB4 light source shall conform to the dimensions specified in Figure 20.

(b) Each standardized replaceable light source conform to the following general specifications:

Specification	Lower beam	Upper beam
Maximum power, watts:		
HB1	50	70
HB2	68	75
HB3		70
HB4	[illegible]	
Luminous flux, lumens:		
HB1	1,067 ± 10%	1,738 ± 10%
HB2	1,000 ± 10%	1,650 ± 10%
HB3		1,700 ± 12%
HB4	1,000 ± 15%	
Minimum average design life, hours: all	[illegible]	150

(c) The standardized replaceable light source filament(s) shall be subject to seasoning before measurement of maximum power and luminous flux.

(d) Measurement of maximum power and luminous flux shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage (13.2v for a Type HB2 light source, 12.8v for other light sources). The measurement of luminous flux is made with the black cap installed on Type HB2 and Type HB4, without the black cap on Type HB1, without the base on Type HB1, and with the base covered with a white cover shown in Figures 19–1 and 20–1 for the HB3 and HB4.

(e) Measurement of average life shall be made at 14.0v for all light sources. Testing is conducted in a completed headlamp assembly, or equivalent, placed in the attitude in which the assembly is to be installed on a motor vehicle.

(f) The capsule, lead wires and/or terminals on each Type HB1 light source, and on each Type HB3 and Type HB4 light source that is manufactured as replacement equipment, shall be installed in the base so as to provide an airtight seal. Such a seal exists on Type HB3 and Type HB4 if no air bubbles appear on the low pressure side after a

light source has been immersed in water for one minute while being subjected to a minimum air pressure of 69 kPa (10 P.S.I.G.) on the glass capsule side.

(g) After the force deflection test conducted in accordance with S7, the permanent deflection of the glass envelope shall not exceed 0.005 in. (0.13mm) in the direction of the applied force.

(h) Each Type HB3 and Type HB4 light source intended as original equipment on a motor vehicle need not be provided with a seal groove, seal, and keyway as shown in Figure 19 and Figure 20. When a seal is provided for replacement equipment, or if used as original equipment, no air bubbles shall appear on the low pressure side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture of 0.678±0.004 in. (17.22±0.10mm) (Type HB3) or 0.875±0.004 in. (22.22±0.1.mm) (Type HB4) and subjected to a minimum air pressure of 69 kPa (10 P.S.I.G.) on the glass capsule side.

* * * * *

18. New paragraphs S4.5.8, S4.5.9 and S4.5.10 would be added to read:

* * * * *

S4.5.8 On a motor vehicle equipped with a headlighting system comprising four replaceable bulb headlamps designed to conform to the photometry of Figure 18, the filaments of the lamps marked "L" may be permanently wired to remain activated when the filaments of the lamps marked "U" are activated.

S4.5.9 The wiring harness or connector assembly of a replaceable bulb headlamp with two identical standardized replaceable light sources or a four-lamp replaceable bulb headlamp system which uses identical light sources in all four lamps shall be designed so that the filaments not intended to be used with the lens prescription in front of such filament shall not be illuminated.

S4.5.10 The filaments in a dual filament standardized replaceable light source shall not be activated simultaneously except either momentarily when switching between beams, or for signalling purposes.

* * * * *

19. Paragraph S6.1 would be revised to read:

* * * * *

S6.1 *Photometry.* A headlamp shall be tested according to paragraph S3.5, Photometric Design Requirements, and Table 1 of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles,* Dec. 1978, or by Figure 17 or 18 of Standard 108, as applicable, after the test specified in S6.2, S6.4, S6.6, S6.7.1, S6.7.2, and S6.8.

* * * * *

20. Paragraphs S6.7 and S6.8 would be revised to read:

* * * * *

S6.7 *Temperature and internal heat tests*—A headlamp with one replaceable standardized light source shall be tested according to S6.7.1(a) and S6.7.2(a). A headlamp with two standardized replaceable light sources shall be tested according to S6.7.1(b), S6.7.1(c), S6.7.2(b) and S6.7.2(c).

S6.7.1 *Temperature cycle.*

S6.7.1(a) *Test for a headlamp with one standardized replaceable light source.* A headlamp, mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the highest combination of filaments wattages, including the headlamp beam plus such other filaments as turn signal, fog lamp, or parking lamp, that are intended to be used simultaneously in the headlamp, shall be energized at design voltage commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute with a 75±2% current "on time". Separate or single test chambers may be used to separate the temperature environment described by the thermal profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.1(b) *Test for the lower beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages, such as turn signal, upper beam, fog lamp, or parking lamp, that are intended to be used simultaneously in the headlamp when operating on lower beam, shall be energized at design voltage simultaneously commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute a 75±2% current "on time". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed opening of the headlamp shall be in their normal operating positions.

S6.7.1(c) *Test for the upper beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on aheadlamp test fixture shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages, such as turn signal, lower beam, fog lamp, or parking lamp, that are intended to be used simultaneously when the headlamp is operating on upper beam, shall be energized at design voltage simultaneously commencing at point "A" of Figure 6 and de-energized at point "B". If a turn signal is provided, for purposes of the test it shall flash at 90 flashes a minute with a 75±2% current "on time". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.2 *Internal Heat Test.*

S6.7.2(a) *Test for a headlamp with one standardized replaceable light source.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point H–V of the upper beam to 25±2% (or the test point ½ °–1½ D °R for the lower beam) of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(a)(1), the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to the indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0 °F (35+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized for one hour in a still air conditon, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature of 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. Photometric output of the upper beam shall be determined according to S6.1.

S6.7.2(b) *Test of the lower beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point ½ °D−1½ °R of the lamp to 25±2% of the output originally measured in the lower beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(b)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0 °F (35+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on lower beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. The photometric output of the lamp on lower beam shall be determined according to S6.1.

S6.7.2(c) *Test of the upper beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point H–V of the lamp to 25±2% of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometic output of the lamp has been reduced as specified in S6.7.2(c)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7−0 °F (33+4−0 °C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95 °F (35 °C).

(3) The lamp shall be returned to a room ambient temperature 73+7−0 °F (23+4−0 °C) and relative humidity of 40±10%. The lens shall then be cleaned. The photometric output of the lamp on the upper beam shall be determined according to S6.1.

S6.8 *Humidity.* The headlamp mounted on a test fixture shall be placed in a controlled environment consisting of a temperature of 100+7−0 °F (38+4−0 °C) with a relative humidity of not less than 90%. All drain holes, breathing devices, and other designed openings shall be in their normal operating positions. The headlamp shall be subjected to 20 consecutive 6-hour test cycles. In each cycle, it shall be energized at design voltage with the highest combination of filament wattages that are intended to be used, including a turn signal flashing at 90 flashes a minute with a 75±2% currrent "on-time", if so equipped, and then de-energized for 5 hours. After completion of the last cycle, the lamp shall be soaked for 1 hour at 73+7−0 °F (20+4−0 °C) and relative humidity of 40±10% before it is removed for photometric testing. The headlamp shall be tested for photometrics at 10±1 minutes following completion of the humidity test.

* * * * * * *

21. Section S7 would be revised to read:

S7 *Deflection test for standardized replaceable light sources.* Each Type HB1 standardized replaceable light source shall meet the requirements of S4.1.1.38(b)(6) when tested in the following manner. With the standardized replaceable light source rigidly mounted in a fixture in a manner indicated in Figure 8, apply a force of 4.0∓0.1 pound (17.8∓o.4N) perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force application shall be applied using a rod with a hard rubber tip with a minimum spherical radius of 0.039 in. (1 mm). The bulb deflection shall be measured at the glass capsule surface at 180 degrees opposite to the force application. Each Type HB2, HB3 and HB4 light source shall meet this same requirement except that the force shall be applied radially to the surface of the glass capsule in any and all locations in a plane parallel to the reference plane and spaced distance "A" from that plane.

22. In Tables II and IV, Column 2 for the Headlamps would be revised to read:

Headlamps	On the front, each headlamp providing the upper beam, at the same height, 1 on each side of the vertical centerline; each headlamp providing the lower beam, at the same height, 1 on each side of the vertical centerline, as far apart as practicable. If a single standardized replaceable light source is used to provide the lower beam in a headlamp with two standardized replaceable light sources, it shall be the farthest one from the vertical centerline.

23. The title of Figure 3 would be revised to read, "Specifications for the Type HB1 Standardized Replaceable Light Source."

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24. Figure 4–1 would be revised as follows:

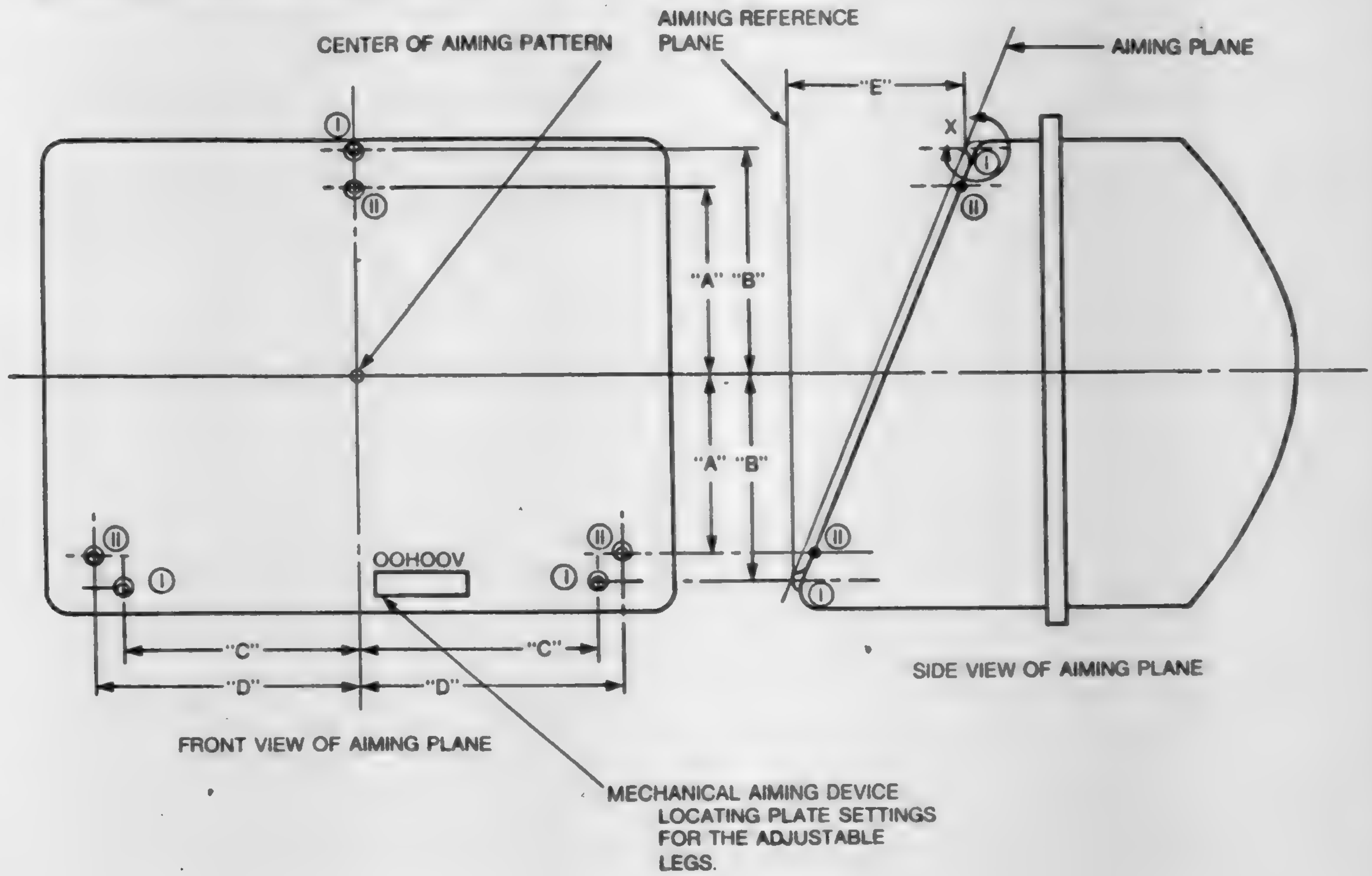


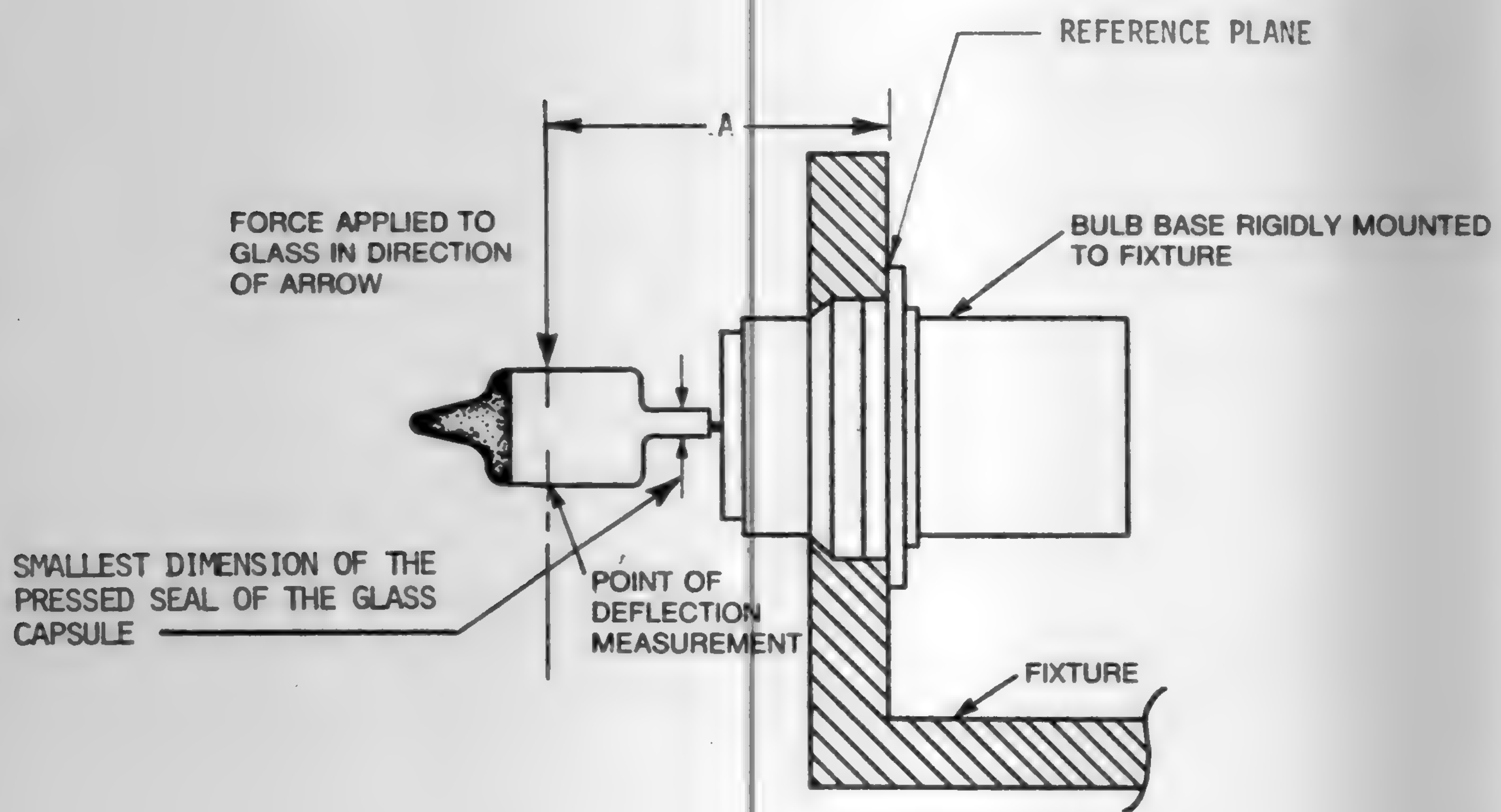
Figure 4-1. Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units

BILLING CODE 4910-59-C

25. Figure 8 would be revised as follows:

Figure 8

BULB DEFLECTION TEST



STANDARDIZED REPLACEABLE LIGHT SOURCE TYPE	DIMENSION "A"
HB1	44.50 ± 0.38MM (1.75 ± 0.015IN)
HB2	31.25 ± 0.40MM (1.23 ± 0.012IN)
HB3	31.50 ± 0.20MM (1.24 ± 0.008IN)
HB4	31.50 ± 0.20MM (1.24 ± 0.008IN)

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26. New Figures 17, 18, 19, 20, 21, and 22 would be added as follows:

FIGURE 17.—PHOTOMETRIC TEST POINT VALUES

[2-lamp systems]

Upper beam			Lower beam		
Test points deg[b]	cd max	cd min.	Test points deg[b]	cd max.	cd min
2U-V		1,500	10U-90U[a]	125	
1U-3R and 3L		5,000	1U-1-1/2L to L	700	
H-V	75,000	40,000	1/2U-1-1/2L to L	1,000	
			1/2D-1-1/2L to L	[illegible]	
			1-1/2U-1R to R	1,400	
H-3R and 3L		15,000			
H-6R and 6L		5,000	1/2U-1R to 3R	2,700	
H-9R and 9L		3,000	1/2D-1-1/2R	[illegible]	10,000
H-12R and 12L		1,500	1D-6L		1,000
			1-1/2D-2R		15,000
1-1/2D-V		5,000	1-1/2D-9L and 9R		1,000
1-1/2D-9R and 9L		2 000	2D-15L and 15R		[illegible]
2-1/2D-V		2,500	4D-4R	12,500	
2-1/2D-12R and 12L		1,000			
4D-V	12,000				

[a] From the normally exposed surface of the lens face
[b] A tolerance of ± ¼ deg in location may be allowed for at any test point

FIGURE 18.—PHOTOMETRIC TEST POINT VALUES

[For 4-lamp systems]

Upper beam			Lower beam		
Test points deg[b]	cd max.	cd min.	Test points deg[b]	cd max	cd min
2U-V		1,500	10U-90U[a]	125	
1U-3R and 3L		5,000	1U-1-1/2L to L	[illegible]	
H-V	70,000	[illegible]	1/2U-1-1/2L to L	1,000	
			1/2D-1-1/2L to L	[illegible]	
			1-1/2U-1R to R	1,400	
H-3R and 3L		15,000			
H-6R and 6L		[illegible]	1/2U-1R to 3R	2,700	
H-9R and 9L		3,000	1/2D-1-1/2R	[illegible]	10,000
H-12R and 12L		1,500	1D-6L		1,000
			1-1/2D-2R		15,000
1-1/2D-V		[illegible]	1-1/2D-9L and 9R		1,000
1-1/2D-9R and 9L		[illegible]	2D-15L and 15R		850
2-1/2D-V		2,500	4D-4R	12,500	
2-1/2D-12R and 12L		1,000			
4D-V	5,000				
			4D-V	7,000	
			H-V	[illegible]	

[b] From the normally exposed surface of the lens face.
[a] A tolerance of ± ¼ deg. in location may be allowed for any test point.

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FIGURE 19

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

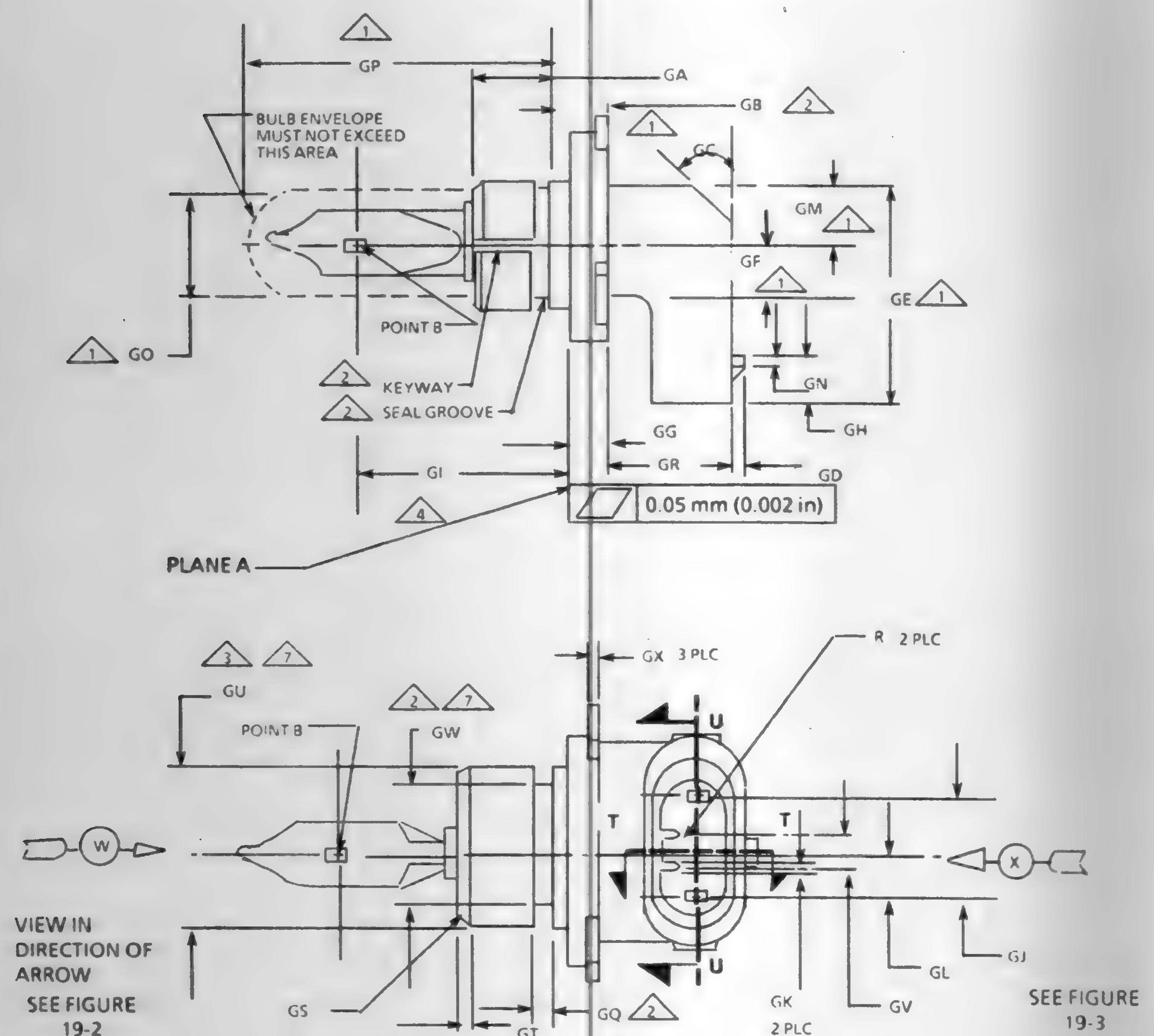


FIGURE 19 (cont.)

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

DIMENSION	INCHES	MILLIMETRES
GA	0.591MAX/0.217 MIN	15.00 MAX/5.50 MIN
GB	0.236	6.00
GC	45°	45°
GD	0.079	2.00
GE	1.45	36.85
GF	0.27	6.9
GG	0.157 MIN	4.00 MIN
GH	0.346	8.80
GI	1.240 ± 0.008	31.50 ± 0.20
GJ	0.433	11.00
GK	0.055	1.40
GL	0.217 ± 0.006	5.50 ± 0.15
GM	0.36	9.1
GN	0.06	1.5
GO	0.630 DIA	16.00 DIA
GP	2.165	55.00
GQ	0.093	2.36
GR	0.748	19.00
GS	45° CHAMFER	45° CHAMFER
GT	0.039	1.00
GU	0.787 ± 0.002	20.00 ± 0.05
GV	0.138	3.50
GW	$0.687^{+0.004}_{-0.000}$	$17.46^{+0.10}_{-0.00}$
GX	0.079	2.00

TOLERANCES UNLESS OTHERWISE SPECIFIED

INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

1. Dimensions shown are maximum-may be smaller.

2. Seal groove & keyway required for afterkmarket only. Bulbs equipped with seal must withstand a minimum of 69kPa. (10 P.S.I.G.) when bulb-seal assembly is inserted into a cylindrical aperture of 20.22 ± 0.10mmk (0.875 ± 0.004 in) (optional for bulb assemblies produced for original equipment headlamps).

3. The entire filament coil at operating temperature must be contained within a 1.90mm (0.075 in) DIA cylinder whose center is at the design position of the filament. The axis of the cylinder is perpendicular to Plane "A" and concentric with noted diameter GU (HA).

4. Measured at filament operating temperature.

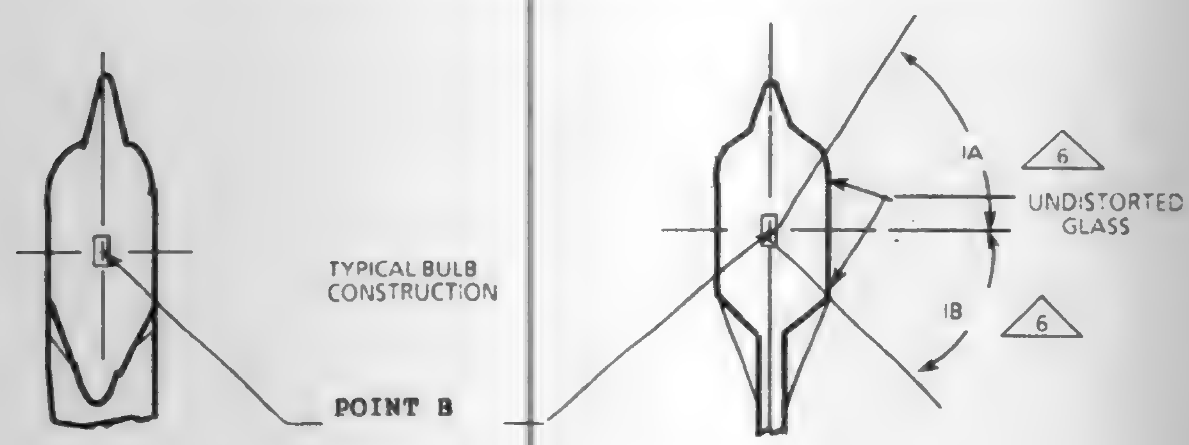
5. Diameters must be concentric within 0.20mm (0.008 in).

6. Glass bulb periphery must be optically distortion free axially within the included angles about point B.

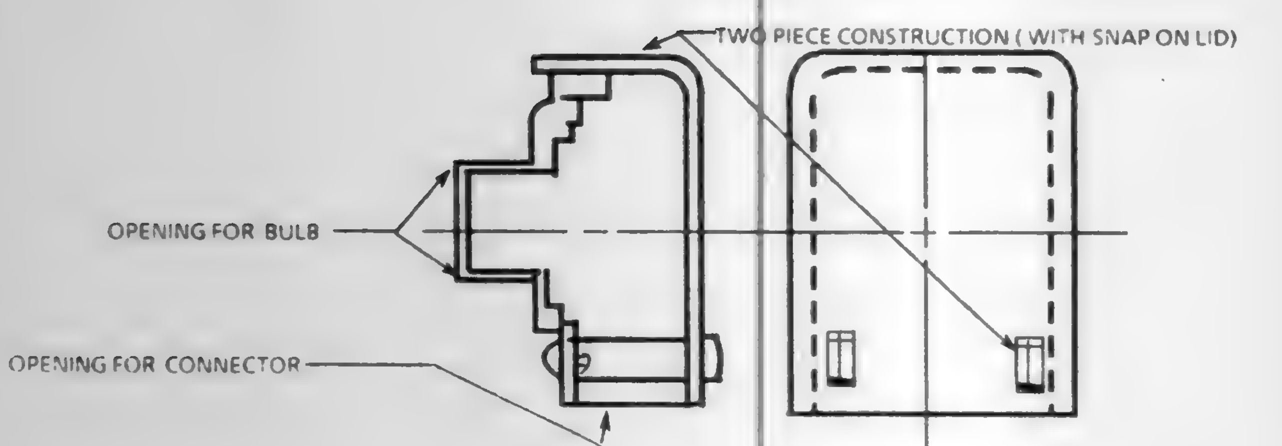
7. Diameters must be concentric within 0.20mm DIA (0.008 in)

FIGURE 19-1

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



DIMENSION	INCHES	MILLIMETRES
IA	45° MIN	45° MIN
IB	52° MIN	52° MIN

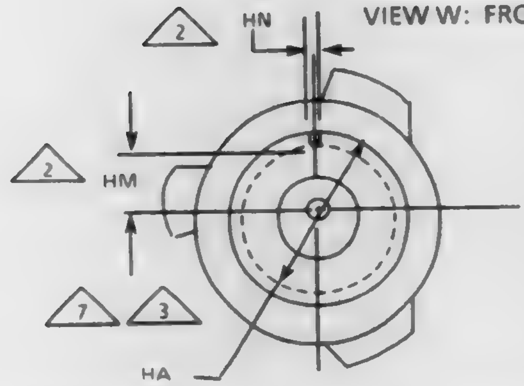


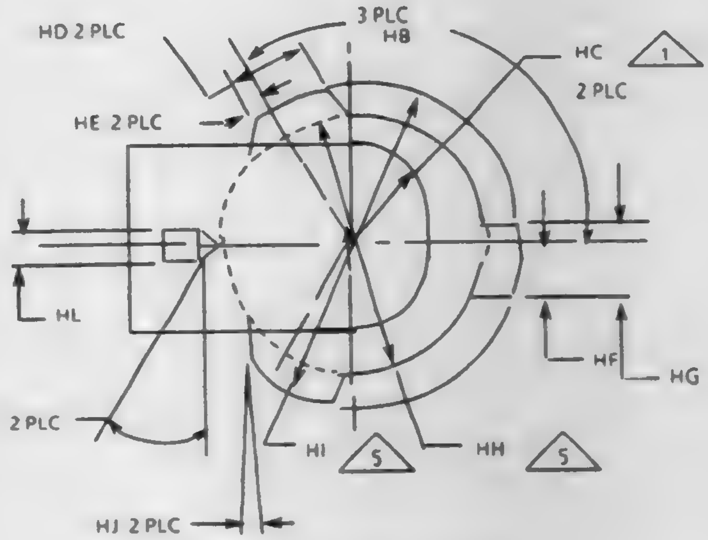
CONNECTOR COVER USED IN LUMINOUS FLUX TEST

FIGURE 19-2

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

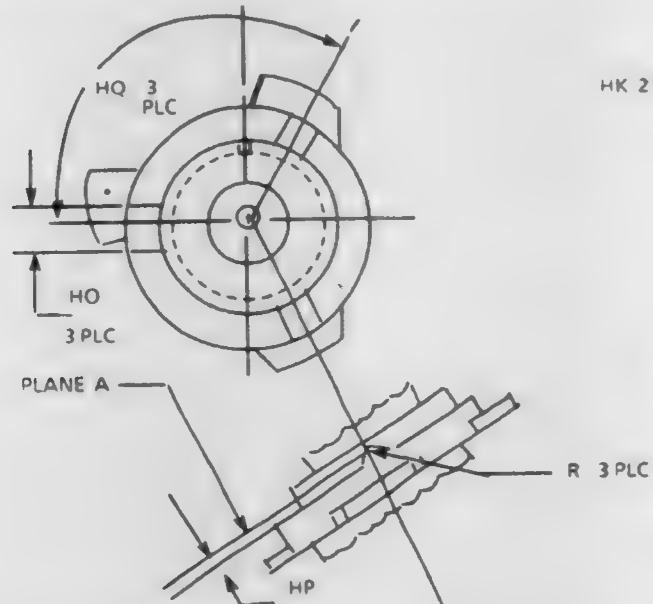
VIEW W: FROM BULB END





VIEW X: FROM CONNECTOR END

OPTIONAL CONSTRUCTION (VIEW W: FROM BULB END)

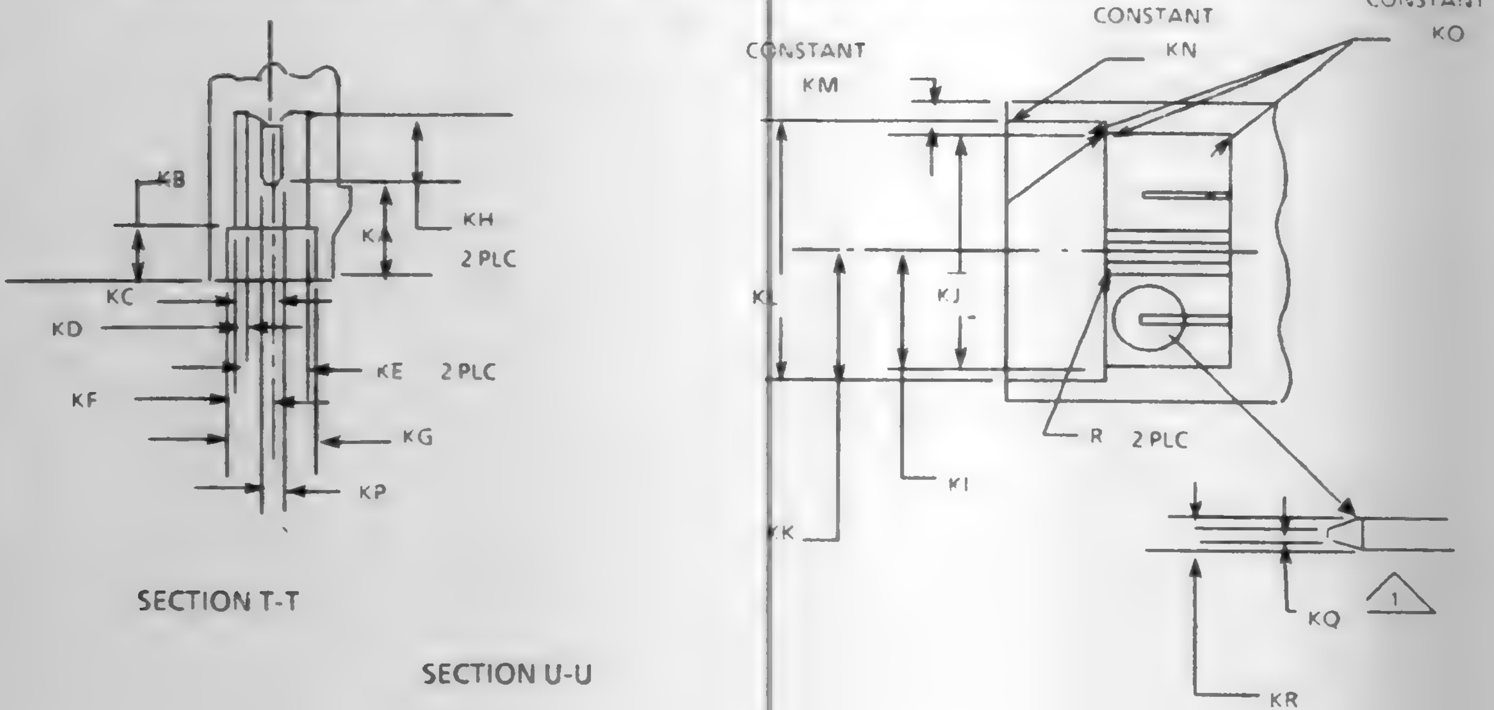


TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

DMENSION	INCHES	MILLIMETRES
HA	0.787 ± 0.002 DIA	20.00 ± 0.05 DIA
HB	120 ± 0°30	120° ± 0°30′
HC	0.36 R	9.1 R
HD	0.394	10.00
HE	0.118	3.00
HF	0.079	2.00
HG	0.315	8.00
HH	1.181 DIA	30.00 DIA
HI	1.417 DIA	36.00 DIA
HJ	3°	3°
HK	30°	30°
HL	0.157	4.00
HM	0.346 +0.004 -0.000	8.80 +0.10 -0.00
HN	0.079 ± 0.004	2.00 ± 0.10
HO	0.197	5.00
HP	0.030	0.75
HQ	120°TYP	120°TYP

FIGURE 19-3

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION T-T

SECTION U-U

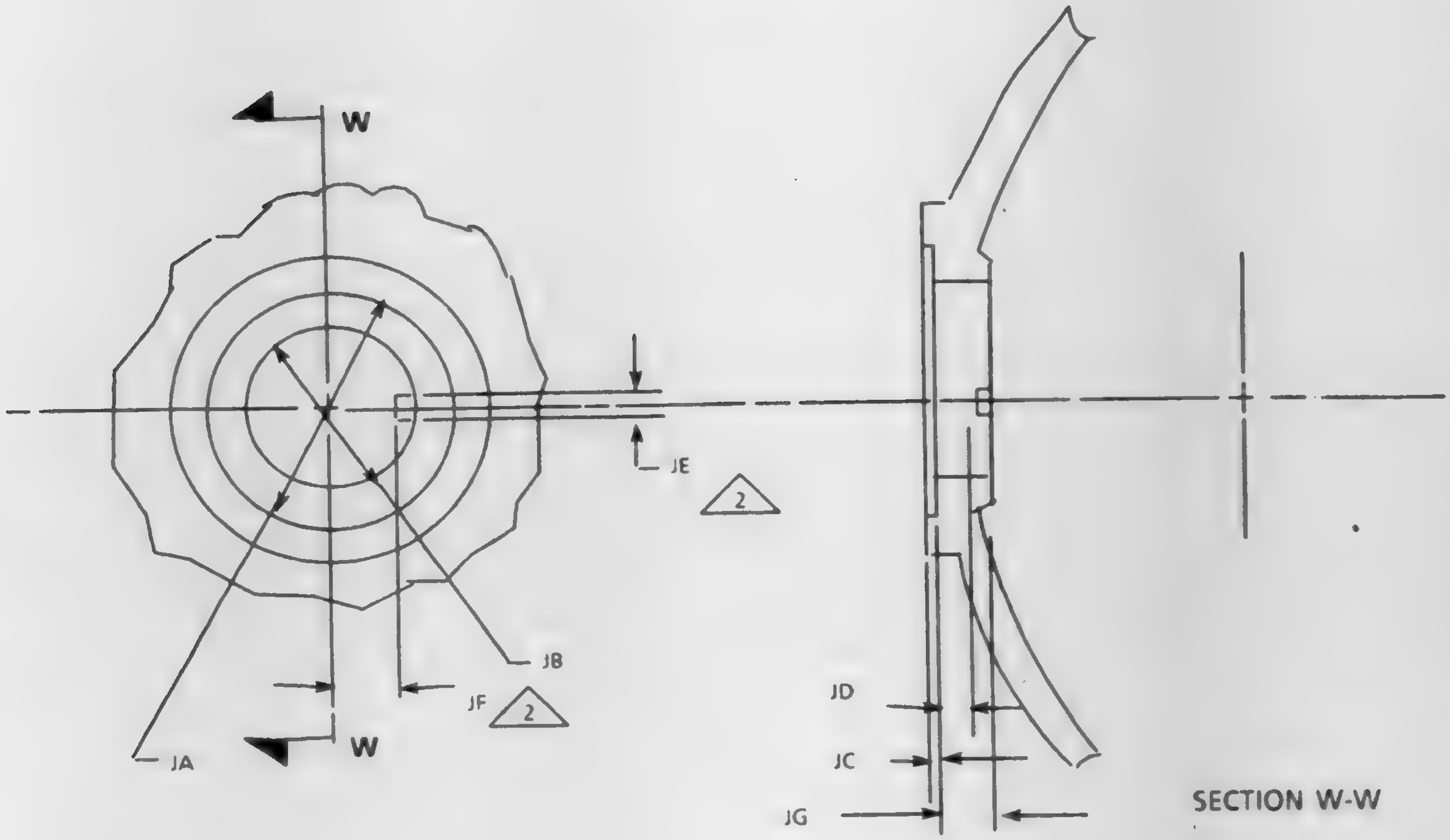
DIMENSION	INCHES	MILLIMETRES
KA	0.384	9.75
KB	0.315	8.00
KC	0.171	4.35
KD	0.055	1.40
KE	0.343	8.70
KF	0.242 ± 0.006	6.15 ± 0.15
KG	0.484	12.30
KH	0.404	10.25
KI	0.368 ± 0.006	9.35 ± 0.15
KJ	0.736	18.70
KK	0.439 ± 0.006	11.15 ± 0.15
KL	0.878	22.30
KM	0.059	1.50
KN	0.03 R	0.8 R
KO	0.016 R	0.40 R
KP	0.110 ± 0.004	2.8 ± 0.10
KQ	0.024	0.60
KR	0.033 ± 0.001	0.83 ± 0.03

TOLERANCES UNLESS OTHERWISE SPECIFIED:	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

FIGURE 19-4

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

SOCKET (IN REFLECTOR)



DIMENSIONS	INCHES	MILLIMETRES
JA	1.240 DIA REF	31.50 DIA REF
JB	0 ± 0.004 DIA REF	20.22 ± 0.10 DIA REF
JC	0.039 REF	1.00 REF
JD	0.172 +0.010 -0.000 REF	4.36 +0.30 -0.00 REF
JE	0.067 ± 0.004 REF	1.70 ± 0.10 REF
JF	0.298 +0.010 -0.000 REF	7.35 +0.30 -0.00 REF
JG	0.236 REF	6.00 REF

FIGURE 20

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

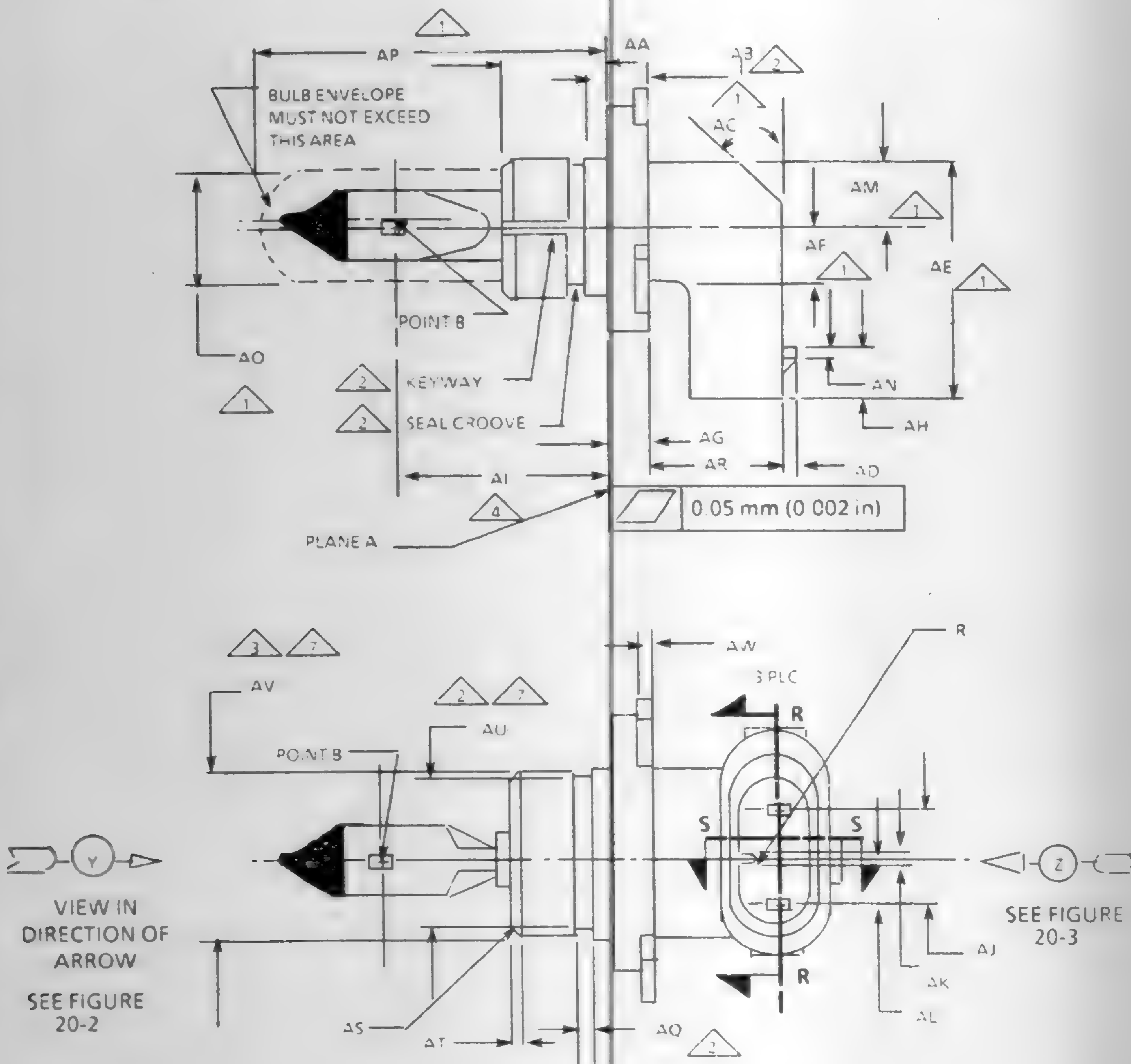


FIGURE 20 (CONT.)

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

DIMENSION	INCHES	MILLIMETRES
AA	0.591 MAX/0.217 MIN	15.00 MAX/5.50 MIN
AB	0.236	6.00
AC	45°	45°
AD	0.079	2.00
AE	1.45	36.85
AF	0.27	6.9
AG	0.157 MIN	4.00 MIN
AH	0.346	8.80
AI	1.240 ± 0.008	31.50 ± 0.20
AJ	0.433	11.00
AK	0.055	1.40
AL	0.217 ± 0.006	5.50 ± 0.15
AM	0.36	9.1
AN	0.06	1.5
AO	0.630 DIA	16.00 DIA
AP	2.165	55.00
AQ	0.093	2.36
AR	0.748	19.00
AS	45° CHAMFER	45° CHAMFER
AT	0.039	1.00
AU	$0.766 {}^{+0.004}_{-0.000}$ DIA	$19.46 {}^{+0.10}_{-0.00}$ DIA
AV	0.866 ± 0.002 DIA	22.00 ± 0.05 DIA
AW	0.079	2.00

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

1 Dimensions shown are maximum-may be smaller.

2 Seal groove & keyway required for aftermarket only. Bulbs equipped with seal must withstand a minimum of 69kPa. (10 P.S.I.G.) when bulb-seal assembly is inserted into a cylindrical aperture of 22.22 ± 0.10mm (0.875 ± 0.004 in) (optional for bulb assemblies produced for original equipment headlamps).

3 The entire filament coil at operating temperature must be contained within a 1.90mm (0.075 in) DIA cylinder whose center is at the design position of the filament. The axis of the cylinder is perpendicular to Plane "A" and concentric with noted diameter AV(BA).

4 Measured at filament operating temperature.

5 Diameters must be concentric within 0.20mm (0.008 in)

6 Glass bulb periphery must be optically distortion free axially within the included angles about Point B

Diameters must be concentric within 0.20 mm (0.008).

FIGURE 20-1

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

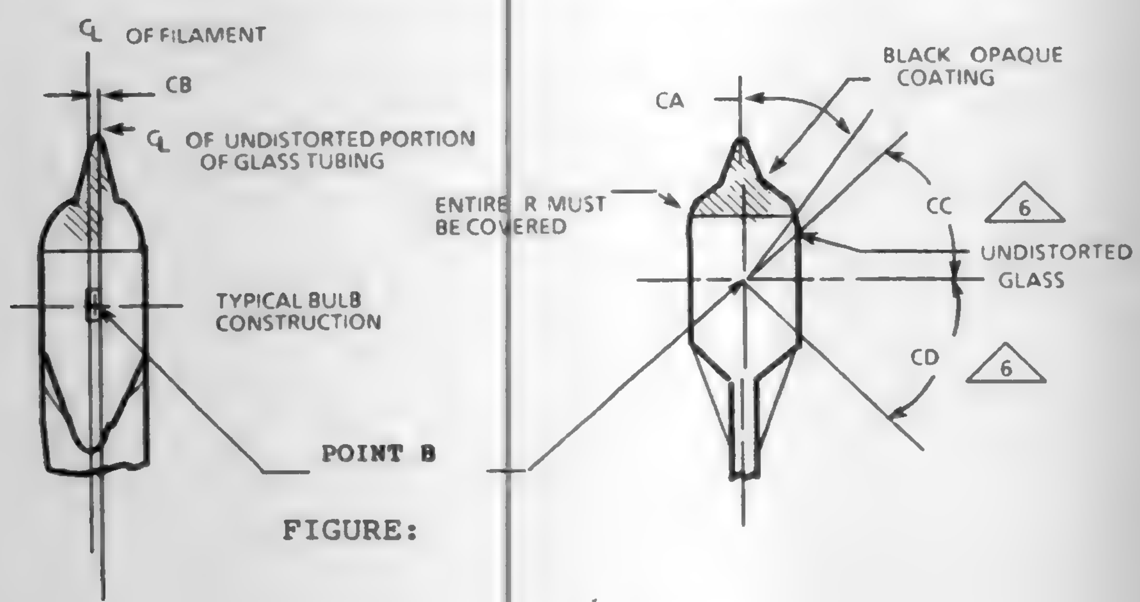
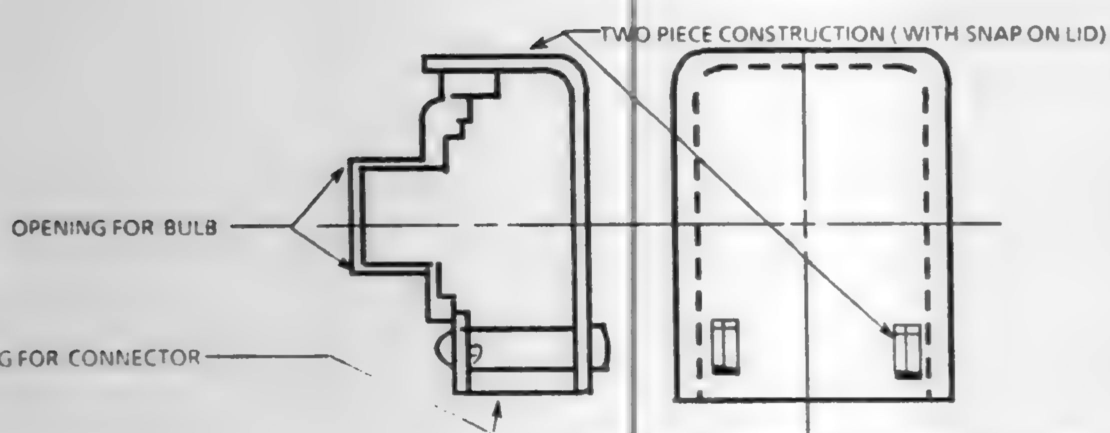


FIGURE:

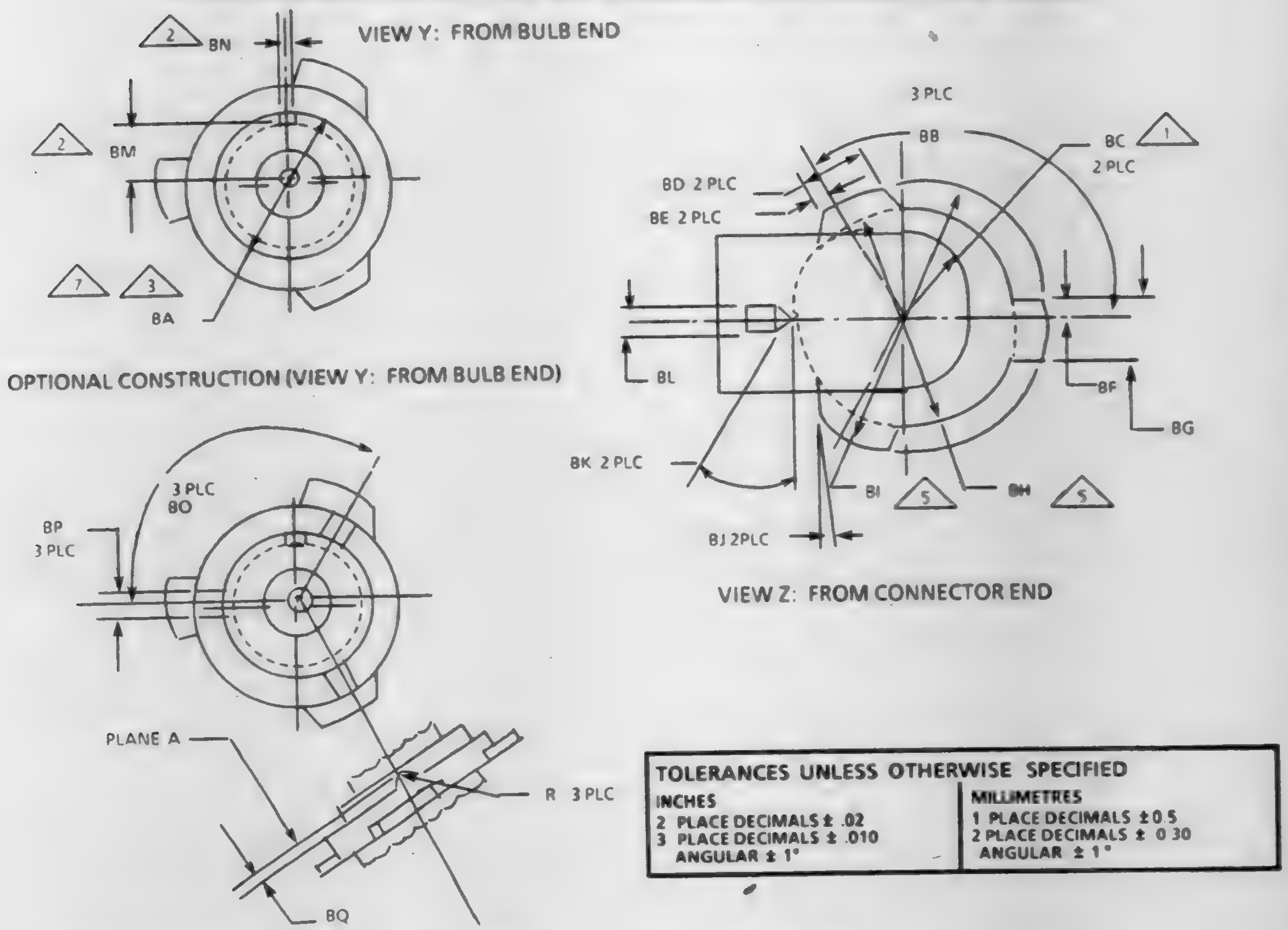
DIMENSION	INCHES	MILLIMETRES
CA	43° +2° -5°	43° +2° -5°
CB	0.030 ± 0.020	0.75 ± 0.50
CC	45° MIN	45° MIN
CD	52° MIN	52° MIN



CONNECTOR COVER USED IN LUMINOUS FLUX TEST

FIGURE 20-2

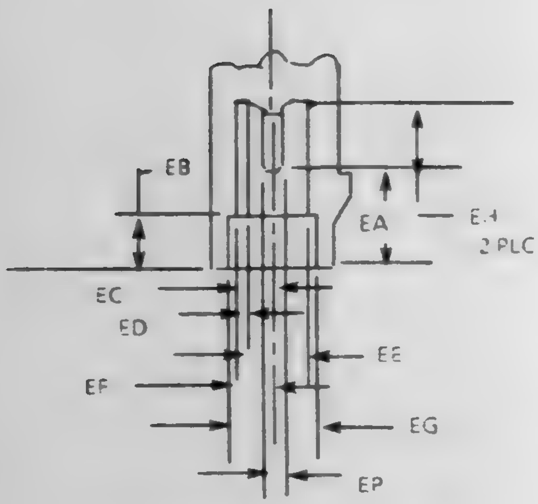
SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



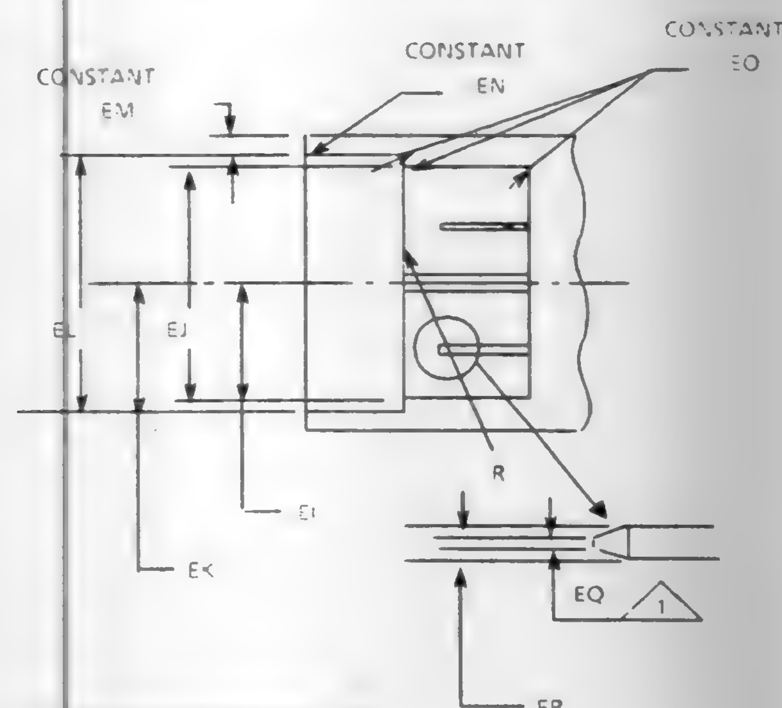
DIMENSION	INCHES	MILLIMETRES
BA	0.866 ± 0.002 DIA	22.00 ± 0.05 DIA
BB	120 ± 0°30′	120° ± 0°30′
BC	0.36 R	9.1 R
BD	0.394	10.00
BE	0.118	3.00
BF	0.079	2.00
BG	0.315	8.00
BH	1.181 DIA	30.00 DIA
BI	1.417 DIA	36.00 DIA
BJ	3°	3°
BK	30°	30°
BL	0.157	4.00
BM	0.384 +0.000 -0.010	9.75 +0.00 -0.30
BN	0.079 ± 0.004	2.00 ± 0.10
BO	120°TYP	120°TYP
BP	0.197	5.00
BQ	0.030	0.75

FIGURE 20-3

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION S-S (FROM FIG. 20)



SECTION R-R (FROM FIG. 20)

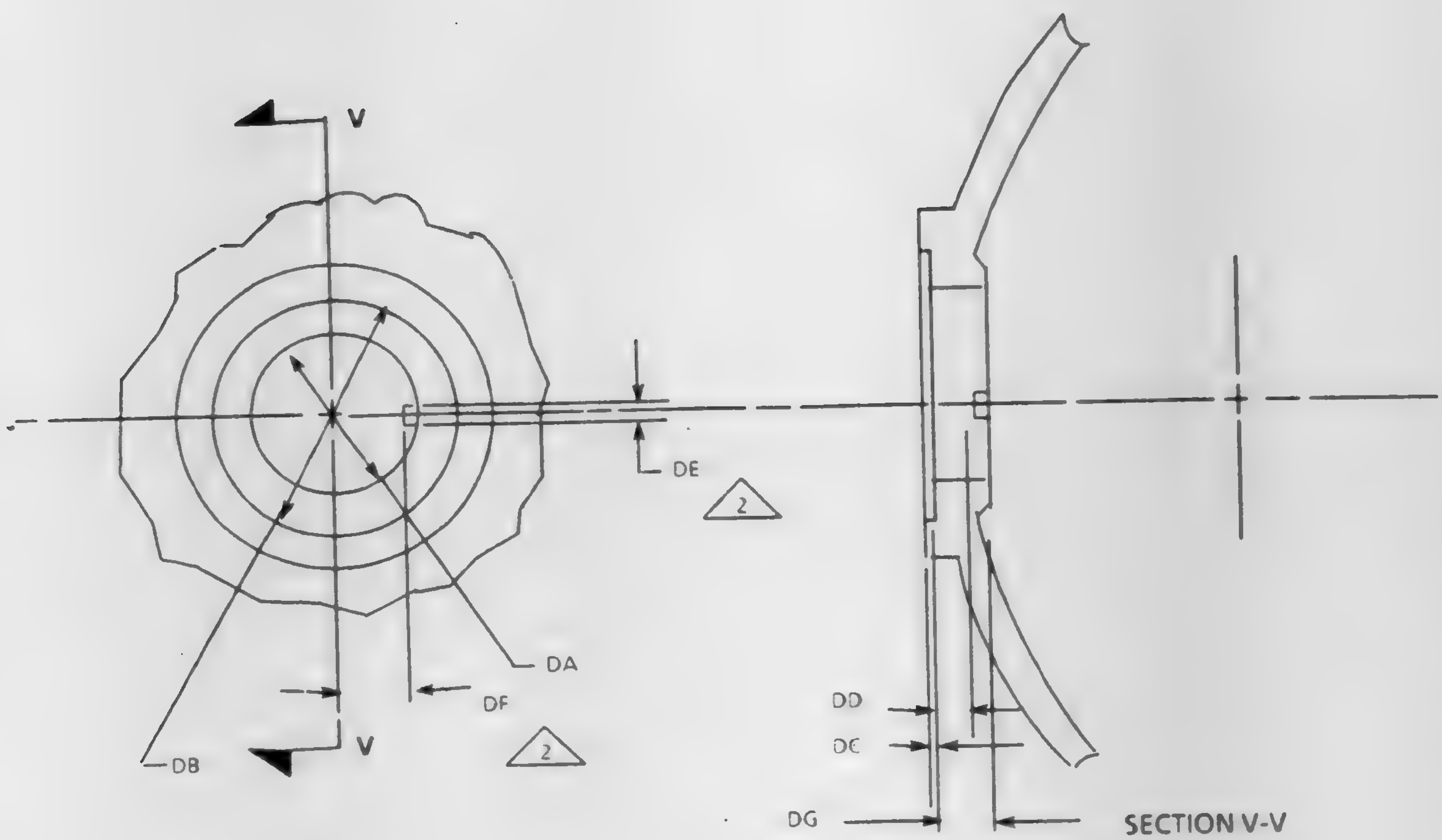
DIMENSION	INCHES	MILLIMETRES
EA	0.384	9.75
EB	0.315	8.00
EC	0.171	4.35
ED	0.079	2.00
EE	0.343	8.70
EF	0.242 ± 0.006	6.15 ± 0.15
EG	0.484	12.30
EH	0.404	10.25
EI	0.368 ± 0.006	9.35 ± 0.15
EJ	0.736	18.70
EK	0.439 ± 0.006	11.15 ± 0.15
EI	0.878	22.30
EM	0.059	1.50
EN	0.03 R	0.8 R
EO	0.016 R	0.40 R
EP	0.110 ± 0.004	2.80 ± 0.10
EQ	0.024	0.60
ER	0.033 ± 0.001	0.83 ± 0.03

TOLERANCES UNLESS OTHERWISE SPECIFIED:

INCHES	MILLIMETRES
2 PLACE DECIMALS ± .02	1 PLACE DECIMALS ± 0.5
3 PLACE DECIMALS ± .010	2 PLACE DECIMALS ± 0.30
ANGULAR ± 1°	ANGULAR ± 1°

FIGURE 20-4

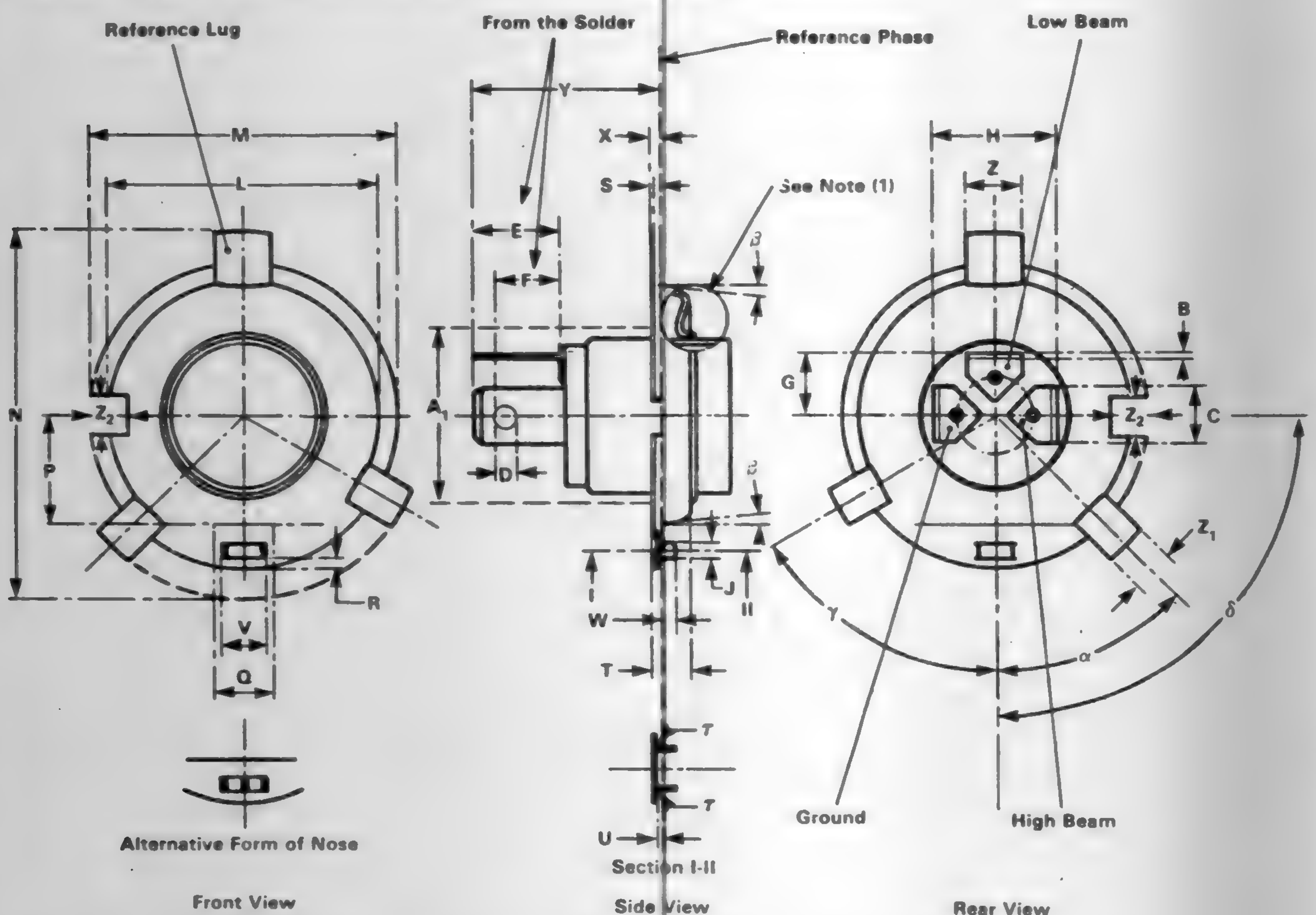
SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE SOCKET (IN REFLECTOR)



DIMENSION	INCHES	MILLIMETRES
DA	0.875 ± 0.004 DIA REF	22.22 ± 0.10 DIA REF
DB	1.240 DIA REF	31.50 DIA REF
DC	0.039 REF	1.00 REF
DD	0.172 + 0.010 -0.000 REF	4.36 + 0.30 -0.00 REF
DE	0.067 ± 0.004 REF	1.70 ± 0.10 REF
DF	0.388 + 0.010 -0.000 REF	9.85 + 0.30 -0.00 REF
DG	0.236 MIN REF	6.00 MIN REF

Assembly of Ring and Cap on Finished Lamps

Dimensions in Millimeters—
The Drawing is Intended Only to Indicate the Dimensions to Be Controlled.



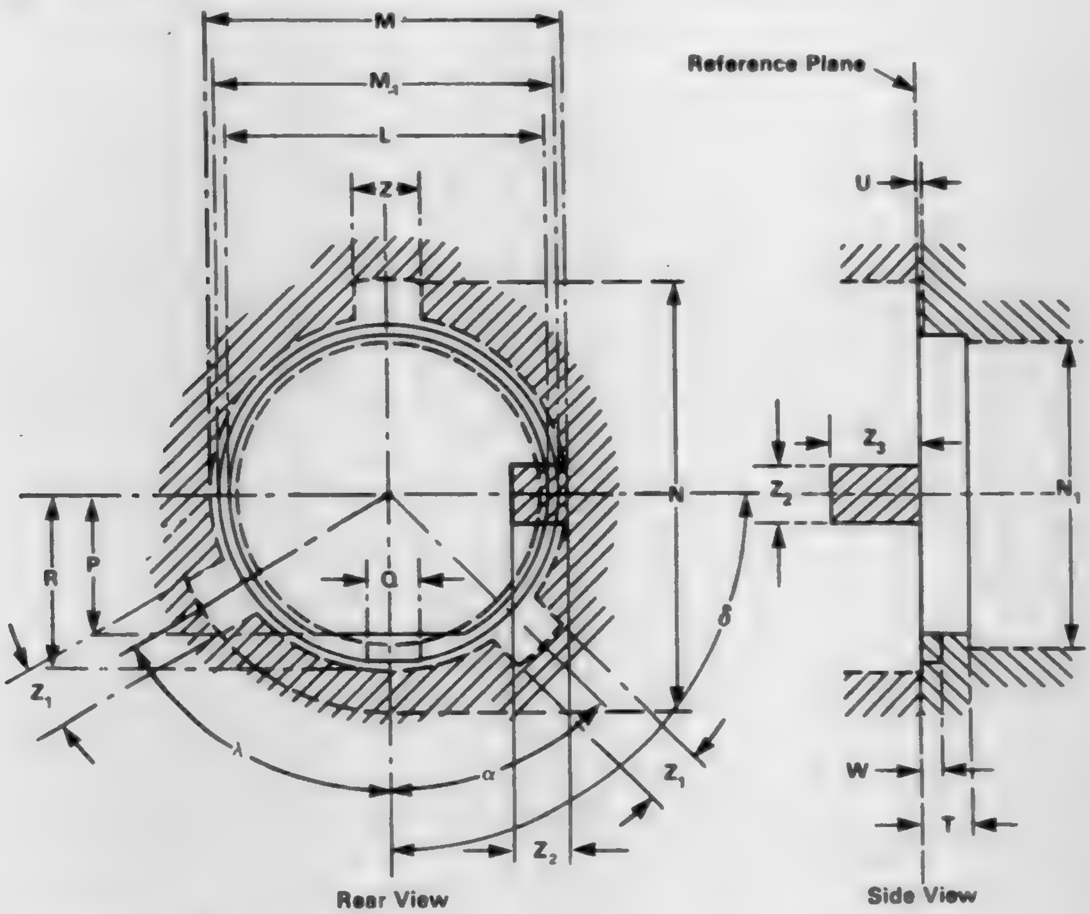
Dimension	Min.	Max.
A_1 (8)	25.0	—
B	0.7	0.8
C (9)	7.7	8.1
D	3.0	3.3
E(5)	11.8	13.6
F	8.8	10.3
G(6)(9)	8.5	9.0
H(6)(9)	17.0	17.9
J	1.9	2.1
L(2)(4)	37.8	38.0
M(3)	42.0	43.0
N	51.6	52.0
P(2)(7)	15.3	15.5
Q(2)(7)	8.5	—

Dimension	Min.	Max.
R	1.3	1.7
S	0.5	—
T	5.0	8.0
U	(10)	
V(2)(5)	6.3	6.5
W	1.8	2.2
X	1.1	1.3
Y	—	32.0
Z(6)	7.9	8.0
Z_1	5.8	5.9
τ	(10)	
α	— 45°	—
β	—	5°
Z_2	6.2	6.3
γ	— 60°	—
δ	90°	

Figure 21 – Specifications for the Type HB2 Standardized Replaceable Light Source

Reflector Bulb Cavity

Dimensions in Millimeters—
The Drawing is Intended Only to Indicate the Dimensions to Be Controlled.



Dimension	Min.	Max.
L	38.05	38.2
M	43.2	—
M_1	—	42.0
N	52.2	—
N_1	38.0	—
P	15.7	19.1
Q	6.55	6.65
R	20.5	—
T	5.5	—
U	0.5	—
W	2.5	—
Z	6.2	—
Z_1	5.8	6.0
α	45°	
λ	50°	
Z_3	10	—
Z_2	6.0	6.1
δ	90°	

Figure 22 – Specifications for the Type HB2 Standardized Replaceable Light Source

BILLING CODE 4910-59-C

Issued on May 2, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11098 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 84-04; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Safety Standard No. 108 that would allow a manufacturer to provide an enhanced upper beam in Type F headlamp systems by wiring the Type F lower beam headlamp to be activated simultaneously with the upper beam.

Type F headlamps feature identical aiming and seating planes, with the intention that re-aiming would not be necessary when a correctly aimed Type F headlamp is replaced with another Type F. It is also proposed that each half of the system be simultaneously aimed if the manufacturer chooses (aiming the lower beam headlamp would automatically re-aim the upper beam lamp). The upper beam headlamp in such a "co-aimed" system would be prohibited from being adjusted independent of the lower beam headlamp.

It is further proposed that the Type F system be permitted to have an auxiliary filament in the lower beam lamp to be used for purposes other than lower or upper beam performance. This rulemaking action results from comments to Notice 1, Docket 84-04, which originally proposed these features to the Type F system.

DATES: Comment closing date for the proposal is June 12, 1985. Effective date of the amendment would be July 1, 1985. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period (49 CFR 553.19).

ADDRESS: Comments should refer to the docket number and notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Standard No. 108 has been amended to allow the Type F headlamp system, consisting of four rectangular headlamps smaller than those currently in use (49 FR 50176). When the system was proposed on April 30, 1984 (49 FR 18321), comments were specifically asked on the issues of use of the lower beam headlamps when the upper beam lamps were activated, simultaneous aim of pairs of headlamps on each side of the vehicle and the desirability of an optional auxiliary filament in the lower beam lamp. In evaluating the comments and preparing the rule adopting the system, NHTSA decided that further comment on these issues was required before a decision could be made about incorporating them into the Type F system. This notice therefore discusses the original proposal and NHTSA's views, the comments received to the NPRM, and the present proposal.

Comments on the Type F system were received from a number of motor vehicle and lighting equipment manufacturers, the Motor Vehicle Manufacturer's Association (MVMA), and the California Highway Patrol (CHP).

One issue raised is what type light, if any, should be provided by the lower beam lamp (LF) during operation of the upper beam (UF) lamp if a manufacturer so desired. NHTSA finds merit in the concept of having additional light during upper beam operation to increase roadway illumination. Such light is readily available from the lower beam filament in the LF lamp. There is an energy penalty, but of little consequence over the life of the vehicle.

Sylvania was the only commenter to Notice 1 which thought that the lower beam headlamp should emit light during upper beam selection, and that the best option for that purpose seemed to be the auxiliary filament. General Electric (GE) was not opposed to either independent use of the upper beam lamp or simultaneous use of the upper and lower beam lamps during upper beam selection, but it favored simultaneous use because heating and edge delineation benefits would be provided while both beam patterns could be optimized for the seeing task. GE recommended language to insure that the lower beam lamps remain activated when the upper beam lamps were activated and suggested use of the main lower filament for that purpose. It recommended deletion of the auxiliary filament.

The MVMA and Volkswagen (VW) commented on their belief that optional use of either the upper beam lamp alone or both lamps was already permitted by the standard. American Motors (AMC) concluded that it was premature for anyone to conclude that two or four beam operation during upper beam selection was superior.

NHTSA found merit in providing additional light during upper beam selection if such light could increase roadway illumination. However, since Type F's upper beam lamp alone can meet current upper beam photometeric requirements and already exceeds current minimum requirements, there is little or no basis upon which to mandate even more light by requiring the simultaneous use of the upper and lower beam lamps during upper beam selection. And, as General Motors (GM) and the CHP noted, any heating or vehicle position benefits seem hard to appreciate and are not adequate for justifying mandatory simultaneous use of the upper and lower beam lamps. NHTSA therefore rejects Sylvania's and GE's recommendation to require use of the lower beam lamp during upper beam operation and Sylvania's recommendation to use the proposed auxiliary filament for that purpose.

Except for a comment by Sylvania about an energy penalty, no commenter objected to the simultaneous use of the upper beam lamp and the main lower beam filament during upper beam selection. However, GM submitted additional, more detailed photometric data from pre-production lamps after Notice 1 was published, and that new data indicated that at least one of the two current maximum values for upper beam photometrics could be exceeded if this option were permitted. In its comments to Notice 1, the CHP also believed that this current maximum value—7,500 cd. at 4D-V—would likely be exceeded during simultaneous use since current standards permitted a nearby test point (4D-4R) for the lower beam lamp to have a maximum value of 12,500 cd. The more detailed GM data indicated the following key candela (cd.) photometric values for three lower and two upper beam lamps that were tested by GM:

Lower Beam Lamp Photometric Intensities (main lower beam filament)

H-V (cd)	4D-V (cd)	½D-1½R (cd)	4D-4R (cd)
2,025	5,160	12,300	6,380
1,755	5,815	14,600	[redacted]
3,220	4,180	19,100	5,600

Upper Beam Lamp Photometric Intensities

H-V (cd)	4D-V (cd)
64,500	3,145
70,000	2,000

As these test data demonstrate, there is a small likelihood of exceeding the current H–V maximum value of 75,000 cd. when both lamps are illuminated (a summation of the lower beam H–V intensity and the upper beam H–V intensity). The highest intensity upper beam lamp (70,000 cd. at H–V), in combination with the highest intensity lower beam lamp (19,100 cd. at ½D–1½R) produces a total H–V value of 73,220 cd. (70,000 cd. + 3,220 cd.). This is just below the maximum intensity of 75,000 cd. permitted for other upper beam systems. However, there is a high likelihood of exceeding the current upper beam 4D–V point maximum value in Standard 108 of 7,500 cd. when both lamps are illuminated. At the 4D–V test point, the upper beam lamps provide a range of 2,000 to 3,145 cd. and the lower beam lamps provide a range of 4,180 to 5,815 cd. With both lamps illuminated, a range of 6,180 to 8,960 cd. would be produced at the 4D–V point by the test lamps, at times exceeding the 7500 cd. limit. Since simultaneous use of the main lower beam filament and the upper beam lamp can produce light that exceeds the current maximum value permitted for the 4D–V test point, such use is not now permitted by Standard No. 108.

However, NHTSA's evaluation of the GM data and the CHP claim, suggested that for headlamp systems with Type F photometry there may no longer be a reason to retain a 7,500 cd. maximum limit at the 4D–V test point. The 7,500 cd. value at 4D–V was originally adopted by NHTSA when it adopted the upper beam H–V maximum value of 37,500 cd. in SAE J579a. Subsequently in 1974, SAE decided to increase the H–V maximum value from 37,500 cd. to 75,000 cd., but it did not change the other maximum value in the standard, the 4D–V value. There was good reason for this—SAE had increased only the H–V maximum value but did not increase the H–V minimum value. The H–V minimum value remained at 25,000 cd. Without an increase in the H–V minimum value, an increase to the 4D–V value is not desirable for upper beam photometrics because such a change could permit lamp performance that might focus the driver's attention on a brighter foreground point instead of the H–V point, which is the farthest point down the road. This situation would not exist with the Type F system because NHTSA has adopted a higher H–V minimum value of 40,000 cd.—1.6 times the minimum required for current lamp systems. Because the upper beam must now be brighter at H–V, NHTSA believes that the upper beam intesity at 4D–V can be higher than that of current lamp systems without the adverse safety effect mentioned above. If the H–V minimum and the 4D–V maximum are both increased proportionately by a factor of 1.6, the relative amount of light between the 4D–V and H–V points will be similar to that permitted for existing lamp systems. As a result, a driver's attention would not necessarily be drawn to a brighter foreground point.

The new 4D–V combined maximum for Type F upper and lower beam lamps would be 12,000 cd. (1.6 × 7,500 cd. = 12,000 cd.). Since the upper beam lamp alone now has a maximum value of 5,000 cd. at the 4D–V point, 7,000 cd. would be available as a maximum value for the lower beam lamp at the 4D–V test point.

The light intensity of the lower beam lamp, according to the new GM data, is between 4, 180 cd. and 5,815 cd. at the 4D–V test point. Therefore, NHTSA believes that manufacturers of Type F systems will not exceed a new 4D–V test point maximum value of 7,000 cd. for the lower beam lamp.

A maximum value should also be established at the H–V pint for the lower beam lamp so that the current Standard 108 maximum value of 75,000 cd. is not exceeded during simultaneous use. The H–V maximum value for the Type F upper beam lamp is 70,000 cd., leaving 5,000 cd. for the lower beam lamp at H–V. The GM data show that none of the test lamps exceed this value; the highest intensity achieved on the highest performance lamp (19,100 cd at ½D–1½R) was 3220 cd. at H–V. Thus, NHTSA believes that manufacturers should be able to design and build lamps that meet a new H–V test point maximum value of 5,000 cd. for the lower beam lamp. Accordingly, adopting these new maximum test point values at H–V and 4D–V for the lower beam lamp should allow safe, simultaneous use of the lower and upper beam lamps during upper beam selection.

GM also recommended a method to aim simultaneously both the lower beam and the upper beam lamps. Both lamps would be mounted in a common housing and would have a common aim adjustment. It would be possible to have simultaneous aim adjustment for both lamps as long as the combination of the two lamps could meet the overall photometric requirements. Therefore, NHTSA was willing to consider this "co-aim" of both lamps. However, the agency believed that the lower beam lamp should be used for aiming purposes and the upper beam lamp should be incapable of independent aim to avoid errors in mis-aiming the more critical lower beam lamp. Therefore, NHTSA had proposed that the upper beam lamp in a co-aiming assembly should not be mechanically aimable. NHTSA had also proposed that the vehicle manufacturers certify that the entire lower beam/upper beam headlamp assembly should meet the photometric requirements of both the lower and upper beam when tested sequentially, without reaim greater than ± ¼ degree as currently required for independently aimed lamps, and with any replacement lamp of the same type. NHTSA requested comment on this issue in order to assess how closely production lamps could meet the requirements.

Seven commenters (Lucas, Sylvania, Chrysler, VW, Ford, AMC, and MVMA) did not directly address the co-aiming concepts. GM endorsed its own recommendation, but felt that the proposed requirement to prevent mechanical aiming of the upper beam lamp in a co-aimed system was redundant with the requirement that the entire headlamp assembly be designed to meet photometric requirements. NHTSA does not believe that such a requirement to prevent mechanical aiming of the upper beam is necessarily redundant. However, since the entire headlamp assembly is required to be designed to meet the photometric requirements, when either lamp is correctly aimed, the other lamp should also be correctly aimed. This should occur regardless of whether optical or mechanical aiming methods are used, and in spite of any skew error, between the lamps' aiming planes. Therefore, NHTSA will not require this additional safeguard of preventing mechanical aim of the upper beam in a co-aimed system.

The CHP and GE reported that the requirement for the entire headlamp assembly to meet photometric requirements was not normal industry practice, noting the potential for manufacturing tolerances in the mounting assembly to induce photometric errors. GE recommended deleting any reference to the mounting assembly in this requirement while the CHP indicated that it was necessary to specify what portion of the photometric re-aim tolerance of ± ¼° would be assigned to the headlamp mounting assembly and what portion for the headlamps, especially for the separate aftermarket production of the assembly and headlamps.

This CHP suggestion about the need to specify such tolerances may have merit. There may be a need to limit both lamp and mounting assembly tolerances for co-aimed headlamps because significant nonparallelism could occur between the upper and lower beam lamps in the common mounting assembly. NHTSA notes that any proposal of the type recommended by the CHP would also require a reduction in the ±¼° re-aim tolerance that is currently permitted for upper and lower beam lamps when they are photometrically tested. Otherwise, the lamps could use all of the available tolerance when they are mounted in a co-aiming assembly. In an August 21, 1984, letter, GM suggested removing the ±¼° re-aim tolerance for the upper beam lamp only and permitting that tolerance to be allowed for the co-aiming mounting assesmbly. GM noted that photometric tests of Type F lamps indicated there was sufficient intensity at the upper beam test points to move the lamp up to ¾° in any direction and still meet all the upper beam test point requirements. Therefore, removing the re-aim tolerance from the upper beam lamp was feasible.

The GM modification seems more appropriate and feasible than other schemes for assigning tolerances, and is therefore being proposed for public comment. In the recent final rule (49 FR 50176), NHTSA has retained the ±¼° re-aim tolerance for the upper beam lamp because the Type F system has been adopted without the co-aiming provision. Its removal is now proposed.

Incorporation of an optional auxiliary filament in the Type F system is the last item originally proposed, but the agency has found that further discussion is required. In the preamble to the final rule (49 FR 50176), NHTSA determined that there were no safety reasons to mandate the use of either the auxiliary filament or the lower beam, during upper beam use, nor to permit the use of the auxiliary filament during upper or lower beam use. And, since the auxiliary filament in the original Type F design did not serve a headlighting function, NHTSA has already accepted GM's recommendation, and deleted that filament for road illumination purposes (49 FR 50176). However, because Chrysler Corporation strongly recommended the incorporation of the auxiliary filament for purposes other than upper or lower beam use, the agency is continuing to seek comments.

The other use of the auxiliary filament as desired by Chrysler would be for increased conspicuity during daytime operation of the vehicle. This is known as daytime running light (DRL). The reason for interest in DRL is that Canda has been considering the issuance of a notice that would propose DRL for its country's vehicles. Chrysler, as did GM, the originator of the Type F system, anticipated that the auxiliary filament could be used for such purpose. GM's recommended performance for an auxiliary filament was 1500 to 5000 candela at the H–V test point.

In responding to the NHSTA proposal that the manufacturer be permitted to place an optional auxiliary filament in the Type LF lamp, GM suggested that it be eliminated altogether. GM also stated that if the option were permitted, an additional headlamp would have to be supplied to the aftermarket. Ford also made such a statement and added that it would create unnecessary proliferation of the headlamp types.

GM provided reasons for eliminating the filament if it would not be used for roadway ilumination. These included: Elimination of the filament shadow on the reflector, a higher degree of reliability and its associated savings due to fewer electrical connections and potential leakage paths in both the halogen capsule and the sealed lamp unit, a smaller glass tube for the capsule that may allow longer life, lower piece cost, and less capital investment. With reference to DRL, GM stated that 70 watts would be required for its recommended design, and that as noted in the NPRM, the beam would be only "extraneous" and not light specifically designed to a test point. GM then suggested that if the UF headlamp were energized at a reduce voltage, it would be possible to produce similar H–V performance with only 32 watts of power, and achieve a beam pattern evenly distributed about the H–V point, implying that this is more appropriate for DRL purposes. GM concluded that for these reasons it would choose to eliminate the auxiliary filament in the headlamps it intends to manufacture. It pointed out that as the initial user of the Type F system, it planned to use over 3.25 million "LF" lamps within the first two years after approval and suggested since these would be without the auxiliary filament, that the action should influence the design of the headlamp that is first stocked in the aftermarket. Because GM felt so strongly, it sent letters explaining its position to 41 members of the vehicle and lighting industries.

Only Chrysler of the ten commenters to the NPRM requested that the filament be included for DRL purposes. Therefore, the issue to be addressed is, should Standard No. 108 permit the use of an auxiliary filament in Type F headlamp systems and, if so, how should that be done?

While GM's arguments appear sound, the fact remains that the LF lamp was originally designed to perform within the standard while incorporating the auxiliary filament. Consequently, there appears no reason to either prohibit or mandate the auxiliary filament, as long as it does not interfere with the required safety performance of the lamp.

While the type LF lamp is regulated by the standard as a headlamp, the auxiliary filament is proposed for an unregulated use such as DRL. Therefore, also at issue is whether the auxiliary filament and its performance should be regulated. NHTSA proposes to regulate only the interchangability aspects to assure that the incorporation of any such auxiliary filament does not jeopardize the proper replacement and functioning of the regulated portion of the LF headlamp. Additionally, since deletion of this filament necessitated alteration of the type LF's terminals to prevent inadvertent electrical connection to the UF's electrical connector (49 FR 50176), the subsequent incorporation of an auxiliary filament would now necessitate a further alteration from that proposed in the original notice. Additionally, because the inclusion of the auxiliary filament would render that type of LF unique and non-interchangeable with a type LF without the auxiliary filament, a new identifier is proposed: LFA, meaning type LF with auxiliary filament. Thus, a new Figure is proposed to be added to the standard which incorporates these proposed changes. The type LFA would be required to meet all the same performance requirements as the type LF, but it would have an unregulated auxiliary filament to be used in whatever manner as defined by the manufacturers. Because Type LFA is a category of the Type LF headlamp, all references to Type LF in the standard should read as applicable to Type LFA as well, except where the text specifically refers to Type LFA.

In view of the foregoing, NHTSA would like comment on the following proposals: Whether it should prohibit the use of an auxiliary filament in the Type F system, or permit the use of a type LFA lamp as an option to the LF lamp in the Type F system.

In reviewing Standard No. 108, it has been observed that Type F headlamps and those incorporating standardized replaceable light sources are designed to meet requirements of SAE J579c December 1978, while all sealed beam headlamps intended for original

equipment use must be designed to conform to SAE J579c December 1974. For regulatory clarity, NHTSA believes that the requirements should be standardized and that J579c December 1978 be the sole version incorporated by reference. It is therefore proposing its adoption.

The differences between the two versions may be simply stated. With reference to upper beam photometrics on headlamps of 7-inch diameter, Table 1 of the 1974 version contains Footnote a, "Maximum candela at any test point shall not exceed 75,000." This does not appear in the 1978 version but the maximum of 75,000 candela still applies for only test point H–V in Table 1. In essence, this general limitation has been removed from all test points except H–V. The agency believes that there is no substantive effect in practice. As for Table 2, with reference to upper beam photometrics for Type 1 and Type 2 headlamps, 5¾-inch diameter, a footnote has been removed which read: "The combined maximum candela at any test point shall not exceed 75,000." But the test point values given in the 1974 version are identical to those in the 1978 version. The earlier version with the "combined maximum" wording required the upper beam headlamp and the auxiliary filament in the lower beam headlamp to meet photometry both as an individual lamp, and as part of the any two-lamp set providing the upper beam. Removal of this footnote means that a general limitation has been removed from all applicable lamps and all their test points, except H–V. There should be no substantive effect occurring from this removal since the 75,000 cd. maximum still applies at H–V.

In reviewing Standard No. 108, it has also been observed that Type F headlamps and those incorporating standardized replaceable light sources are designed to meet requirements of SAE J580 AUG 79, "Sealed Beam Headlamp Assembly" while all other sealed beam headlamps intended for original equipment manufacture must be designed to conform to SAE J580b of December 1974. For regulatory clarity, NHTSA believes that in this instance also, the requirements should be standardized and that J580 AUG 79 be the version incorporated by reference. It is therefore proposing its adoption.

The differences between the two versions may be simply stated as editorial changes and clarifications, and are discussed below by citing the applicable paragraph from SAE J580 AUG 79.

1. Scope—This paragraph adds the newer headlamp assemblies not originally covered; however, Standard No. 108 supersedes this paragraph.

3. Reference Standards—The specific version of SAE J575 is given, however, since S5.1 of Standard No. 108 specifically states the version of J575 applicable, this paragraph is moot.

4. Dimensional Specifications—This cites specific references for all headlamp systems except Type F; however, Standard No. 108 supersedes this paragraph.

5.1 The specific reference for mechanical aimer compatibility is now specified; in the past it was not.

6.1.2 A value of "4 in. (100 mm.)" specified instead of the exact metric conversion "4 in. (102 mm.)".

6.1.3 A value of "± ⅛ in. (3 mm.)" is specified instead of the exact metric conversion "± ⅛ in. (3.2 mm.)".

6.3.2 Additional flange thicknesses for the retaining ring test have been added to accommodate the test of headlamp unit designs not originally covered in this standard when it was written, even though Standard No. 108 requires that all sealed beam lamps meet the test requirements.

6.5.1 The amount of allowable deflection from the application of torque, simulating the use of a mechanical aimer, was changed from 0.25 degree to 0.30 degree.

Figures 3 and 4, depicting deflectometers, were added to accommodate other headlamp systems under the torque deflection test.

The agency believes that there will be no substantive effect on safety by such action, and this proposal does offer reduced burden to the industry in that only one set of test procedures need to be met for original equipment headlamps instead of two.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a final regulatory evaluation was prepared for the Type F headlamp system, and this evaluation addressed the simultaneous use, co-aiming, and auxiliary filament features that are being considered in this proposal. (See Public Docket No. 84–04; Notice 2). Since use of Type F headlamps is optional, the proposal would impose no additional requirements but would permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes

available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their coments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph (1) S4.1.1.44 shall be redesignated (a) and revised to read:

* * * * *

(a) The designation "UF" if it provides an upper beam, "LF" if it provides a lower beam, or "LFA" if it provides a lower beam and contains an auxiliary filament; and

* * * * *

2. A new paragraph S4.1.1.46 would be added to read:

* * * * *

S4.1.1.46 Type F headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming of both headlamps, provided that:

(a) When tested in accordance with Section 3.5.2 of SAE Standard J579c, *Sealed Beam Headlamp Units for Motor Vehicles*, December 1978, and mechanically aimed on the LF lamp, the mounted assembly (Type UF and Type LF headlamps, mounting rings, aiming rings, and aim adjustment mechanism) shall be designed to conform to the test point values of Figure 15 for both lower and upper beams tested sequentially without reaim greater than ¼ degree when any conforming Tupe UF and LF headlamps are tested and replaced by another set of conforming headlamps of the same type, and

(b) There shall be no provision for adjustment between the common or parallel aiming and seating planes of the two lamps.

* * * * *

4. A new paragraph S4.5.8 would be added to read:

* * * * *

S4.5.8 On a motor vehicle equipped with a Type F headlighting system, the lower beam headlamps (Type LF) may be wired to remain permanently activated when the upper beam headlamps (Type UF) are activated.

* * * * *

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5. Figure 15 would be revised as follows:

FIG. 15

PHOTOMETRIC TEST POINT VALUES

UPPER BEAM

Test Points deg	cd. max.	cd. min.
2U-V	--	1,500
1U-3R and 3L	--	5,000
H-V	70,000	40,000
H-3R and 3L	--	15,000
H-6R and 6L	--	5,000
H-9R and 9L	--	3,000
H-12R and 12L	--	1,500
1-1/2D-V	--	5,000
1-1/2D-9R and 9L	--	2,000
2-1/2D-V	--	2,500
2-1/2D-12R and 12L	--	1,000
4D-V	5,000	--

LOWER BEAM

Test Points deg[b]	cd. max.	cd. min.
10U-90U[a]	125	--
1U-1-1/2L to L	700	--
1/2U-1-1/2L to L	1,000	--
1/2D-1-1/2L to L	3,000	--
1-1/2U-1R to R	1,400	--
1/2U-1R to 3R	2,700	--
1/2D-1-1/2R	20,000	10,000
1D-6L	--	1,000
1-1/2D-2R	--	15,000
1-1/2D-9L and 9R	--	1,000
2D-15L and 15R	--	850
4D-4R	12,500	--
4D-V	7,000	--
H-V	5,000	--

[a] From the normally exposed surface of the lens face.

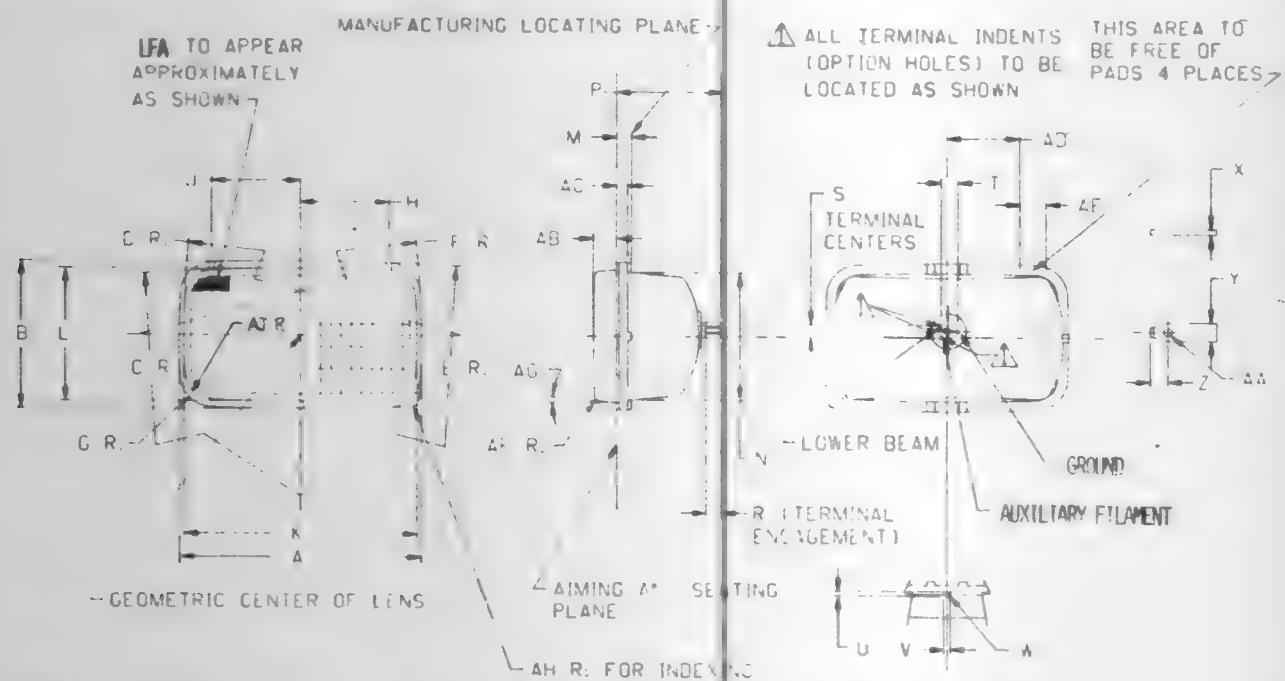
[b] A tolerance of ±1/4 deg in location may be allowed for at any test point.

6. Paragraphs S4.1.1.13(b), S4.1.1.21, S4.1.1.33, S5.1 and Tables I and IIIf (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") would be amended by changing "December 1974" to "December 1978."

7a. In Tables I and III the right hand column "Applicable SAE standard or recommendated practice" would be amended by adding the wording "(See S5 for subreferenced SAE materials)".

7b. Tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") would be amended by changing "J580b February 1974" to "J580 AUG 79."

8. A new Figure —— would be added as follows:



LETTER	INCH	MM
A	5.93 + [illegible] − .040	[illegible]0.50 + 1.20 − 1.00
B	3.64 + [illegible] − [illegible]	[illegible].50 + 1.20 − 1.00
C	63.0 ± 3 [illegible]4	1600.0 ± 100.0
D	23.6 ± 1 [illegible]	[illegible] ± 50.0
E	63.0 ± 3 [illegible]4	1600.0 ± 100.0
F	23.8 ± 1 [illegible]	[illegible] ± 50.0
G	.787 ± .0[illegible]	20.00 ± 0.30
H	2.16 ± .0[illegible]0	55.0 ± 0.30
J	2.16 ± .010	[illegible] ± 0.30
K	5.689 + .008 − .040	144.50 + .020 − 1.00
L	3.252 + .008 − .040	82.60 + .020 − 1.00
M	.46 MAX	11.7 MAX.
N	3.19 MAX.	81.0 MAX.
P	2.87 MAX.	73.0 MAX.

LETTER	INCH	MM
R	.41 MIN	10.5 MIN.
S	.30 ± .010	7.6 ± 0.30
T	.41 ± .010	10.43 ± 0.30
U	.024 MIN.	0.60 MIN.
V	.315 MAX.	8.0 MAX.
W	RADIUS	RADIUS
X	.032 ± .002	0.82 ± 0.04
Y	.110 ± .004	2.80 ± 0.10
Z	.104 ± .010	2.65 ± 0.30
AA	.051 ± .010 DIA.	1.30 ± 0.30 DIA.
AB	.54 ± .020	14.3 ± 0.50
AC	.295 MAX.	7.50 MAX.
AD	1.77	45.0
AE	.63	16.0
AF	.13 ± .02	3.2 ± 0.5
AG	5° ± 1°	5° ± 1°
AH	.24 ± .02	6.0 ± 0.5
AJ	.63 MIN.	16.0 MIN.

FIG. — TYPE LFA RECTANGULAR SEALED BEAM HEADLAMP UNIT

Because the proposals are refinements of certain proposals on which public notice has already been provided, and because of the need of manufacturers to finalize tooling so that the new headlamp systems may be made available on motor vehicles manufactured on or after July 1, 1985, the agency is providing a comment period of only 30 days following publication of this notice.

Issued on: May 2, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11099 Filed 5-10-85; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 50, No. 92

Monday, May 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Commodity Processing System for Processing USDA Donated Food; Termination

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Effective June 30, 1985, the National Commodity Processing (NCP) System will end. Under an interim rule published June 28, 1983, the Food and Nutrition Service (FNS) entered into agreements with processors to convert dairy commodities end honey into various and products. The Secretary of Agriculture authorized operation of the program through June 30, 1985. The effectiveness of the program has been assessed. The program will not be renewed.

FOR FURTHER INFORMATION CONTACT: Mary Lou Wheeler, Special Operations Branch, Nutrition and Technical Services Division, FNS, 3101 Park Center Drive, Room 416, Alexander, Virginia 22302, Telephone (703) 756–3888.

EFFECTIVE DATE: July 1, 1985.

SUPPLEMENTARY INFORMATION: Section 203 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c *note*), directed the Secretary of Agriculture to encourage the consumption of commodities through processing agreements with private companies. Section 212 of that act indicates that section 203, along with other sections of the act, expires on September 30, 1985. The Food and Nutrition Service, exercising discretionary authority, chose to implement the statutory mandate as a new program specifically designed to fill the gaps that existed under state processing as it was and is currently structured. Interim regulations governing the operations of the NCP System were published June 23, 1983 (48 FR 28609). The Program was authorized through June 30, 1985, as indicated by the June 23 publication (48 FR 28610).

FNS hoped through NCP agreements to encourage the consumption of bonus dairy commodities and honey by making them available to all eligible outlets in processed forms. The NCP System was to supplement the processing program administered by state agencies. It was not the intent of FNS to replace state processing agreements.

The goals of the NCP System were to:

- Provide an opportunity for many recipient agencies to receive processed end products;
- Reduce the paperwork for private industry associated with entering into many individual state agreements;
- Utilize an additional 100 million pounds of commodity products held in Commodity Credit Corporation (CCC) storage; and
- Provide an incentive to processors to develop new products for use by eligible recipients which, in turn, would incease the demand for surplus commodities.

The Food and Nutrition Service, in its assessment of the need and effectiveness of the program, has determined that the goals of the program were not met. Program indicators show that NCP accomplishments were limited in terms of the amount of donated food sold, recipient agency participation, geographic areas served and processors involved. NCP has not achieved its sales goals, reduced Federal storage costs or extended bonus processing to new states and recipient agencies. Specifically:

- NCP sales during the two year period were much lower than the anticipated level of 100 million pounds. Approximately 40 million pounds of donated food were ordered since the NCP System began. Sales figures for the two-year period represent inventory drawdowns of only 20 million pounds.
- The Federal cost of administering the NCP System considerably exceeded savings due to reduced food storage costs.
- Recipient agency registration was concentrated geographically and by recipient agency/outlet type.
- The majority of NCP sales were made to a small number of schools located in select states.
- NCP sales and food orders were concentrated among a few processors.
- The NCP lacks accountability. During the course of the program, FNS conducted two sales verification tests. Sales reported by processors could not be verified by the purchasing recipient agencies. Recipient agencies also could not verify that they received the total value pass-through for the donated food used to manufacture the end products. It was evident that there were major reporting and recordkeeping problems that needed to be addressed to strengthen the overall accountability of the NCP System.

Since NCP was implemented, many state agencies discontinued all state processing agreements involving bonus dairy commodities, believing them to be duplicative of NCP efforts. The operation of two similar processing programs generated a great deal of confusion among processors, state agencies and recipient agencies. NCP sales activity was concentrated only in those states that dropped state processing agreements.

There was minimal evidence of new product development. Types of outlets purchasing NCP end products were almost entirely those previously involved in state processing programs. Sales activity reported for charitable institutions, nutrition programs for the elderly and other eligible outlets (with the exception of schools) was minimal.

Therefore, the Department has decided that the NCP System will not be renewed. The current NCP contract year expires on June 30, 1985. All agreements will therefore be allowed to expire by their terms. Termination of the contracts on that date will allow for an orderly phasing out of the program.

The Department plans to propose regulations in the near future to strengthen the state processing program so that the elimination of the NCP System will not result in gaps in services provided under state processing programs. The proposed regulations will encourage uniformity in the State processing program to assure benefits of processing activities are available to all interested eligible recipient agencies. The regulations will strengthen the accountability and monitoring requirements of the state processing program to assure that processors pass

on the full value benefits to all participating recipient agencies.

(Catalog of Federal Domestic Assistance No. 10.550)

Authority: (Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431))

Dated: May 7, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-11489 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Northern Rio Arriba Electric Cooperative, Inc., Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, The Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has adopted an Environmental Assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC) and made a Finding of No Significant Impact with respect to a project proposed by Northern Rio Arriba Electric Cooperative, Inc. (Rio Arriba), the County of Los Alamos and the Middle Rio Grande Conservancy District. The project consists of construction, operation and maintenance, as agent for the County of Los Alamos, of a 69 kV switching station and transmission line and one 6 MW hydroelectric generating unit at the existing El Vado Dam. The project is located in Rio Arriba County, New Mexico.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact (FONSI), the EA prepared by FERC as supplemented by REA and Rio Arriba's Borrower's Environmental Report (BER), may be reviewed at or obtained from the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382-1915), or at the office of Northern Rio Arriba Electric Cooperative, Inc. (Mike Avant, Manager), P.O. Box W, Chama, New Mexico 87520, telephone (505) 756-2181, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for approval from Rio Arriba, has reviewed the BER submitted by Rio Arriba as well as the EA and other documents obtained from FERC and has determined that they represent an accurate assessment of the environmental impact of the proposed project. Rio Arriba's project consists of constructing and operating, as agent for the County of Los Alamos, 19 km (12 mi.) of 69 kV transmission line and a 69 kV switching station to serve as outlet facilities for a 6 MW hydroelectric generating unit which the County of Los Alamos proposes to install at the existing El Vado Dam. Operation of the dam and reservoir would not be affected by the installation of the hydroelectric generating facilities.

REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands or threatened and endangered species.

Alternatives examined for the proposed transmission facilities include no action and alternative line routes. REA determined that the proposed project is an acceptable alternative to wheel energy from a renewable resource to the County of Los Alamos.

Based upon support documents, FERC prepared an EA concerning the proposed project and its impacts. The EA was supplemented by REA based upon the BER received from Rio Arriba. REA has independently evaluated the proposed project and has concluded that technical assistance and approval of the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with their regulations, FERC published notices and requested comments on the application submitted by the County of Los Alamos in the **Federal Register** and newspapers local to the project on March 29, 1984. There were no adverse comments. The notices published by FERC meet the REA notice requirements contained in 7 CFR Part 1794.62.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated: May 6, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85-11481 Filed 5-10-85; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-40. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Electron Loss Spectrometer, Model ELS 22 with Accessories. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended use: See notice at 49 FR 50419.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) high resolution electron loss spectroscopy capable of examining energies over a range of 1 to 50 electron volts and (2) ion scattering spectroscopy. The National Bureau of Standards advises in its memorandum dated February 25, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11472 Filed 5-10-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Tennessee; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301).

Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No. 84-298. Applicant: University of Tennessee, Knoxville, TN 37920. Instrument: Titanium Product System for Osseointegration. Manufacturer: Befors Nobelpharma, Sweden. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is necessary to the intended research and teaching of jawbone-anchored titanium bridgework based upon the principle of osseointegration. The National Institutes of Health advises in its memorandum dated January 3, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11471 Filed 5-10-85; 8:45 am]

BILLING CODE 3510-05-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Turkey

May 7, 1985.

On March 22, 1985 a notice was published in the **Federal Register** (50 FR 11534) announcing that, on February 28, 1985 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton sheeting in Category 313, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached on a mutually satisfactory solution concerning this category, the United States Government has decided to control imports of cotton sheeting in Category 313, produced or manufactured in Turkey and exported during the twelve-month period which began on February 28, 1985 and extends through February 27, 1986 at a level of 12,713,472 square yards. Should further consultations result in agreement, further notice will be published in the **Federal Register.**

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States of consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313, exported during the period which began on February 28, 1985 and extends through February 27, 1986 in excess of the designated limit.

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 7, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 13, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 313, produced or manufactured in Turkey and exported during the twelve-month period which began on February 28, 1985, in excess of 12,713,472 square yards.[1]

Textile products in Category 313 which have been exported to the United States prior to February 28, 1985 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on December 13, 1982 (47 F.R. 55709), as amended on April 7, 1983 (48 F.R. 15175), May 3, 1983 (48 F.R. 19924), December 14, 1983 (48 F.R. 55607), December 30, 1983 (48 F.R. 57584), April 4, 1984 (49 F.R. 13397), June 28, 1984 (49 F.R. 26622), July 16, 1984 (49 F.R. 28754), November 9, 1984 (49 F.R. 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11470 Filed 5-10-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

Summary

The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours

[1] The level has not been adjusted to reflect any imports exported after February 27, 1985.

needed to provide the information: (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 4 and Related Clauses in Part 52.204.

Information concerns certain data (e.g., DUNS identification codes) required to support management information system requirements. This, in turn, supports the generation of various reports including those to Congress.

Small business firms.

Responses: 40,541.

Burden Hours: 3,142.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, DC 20301-3060, telephone (202) 697-8334. This is a revision of an existing collection.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

May 8, 1985.

[FR Doc. 85-11468 Filed 5-10-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Discretionary Grant Program Application Notice for Bilingual Education: Education Personnel Training Program for New Projects; Correction

In the application notice published in the Federal Register on April 30, 1985 on page 18403, in the third column under *Available Funds*, the first sentence beginning "It is expected that $37,000,000 * * *." is changed to read, "It is expected that $3.7 million * * *."

For further information contact: Ramon Chavez, Telephone (202) 245-2695.

(Catalog of Federal Domestic Assistance No. 84. 003, Bilingual Education Program)

Dated: May 7, 1985

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-11507 Filed 5-10-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Technical issues associated with the IEA's Fifth Allocation Systems Test (AST-5) and the AST-5 Test Guide.
3. Any technical issues relating to:
(a) Stocks and supply disruptions;
(b) Review of emergency response programs of Canada, Japan, and the United Kingdom; and
(c) Oil statistical reports.
4. Subcommittee A organization, leadership and succession.
5. Future work program.

II. A joint meeting of Subcommittees A and C of the IAB will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 2:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action: Federal Trade Commission staff questions regarding Industry Supply Advisory Group (ISAG) /IEA Secretariat use of price information.

III. A meeting of Subcommittee C of the IAB will be held on May 20, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, commencing immediately upon completion of the joint meeting of Subcommittees A and C that is scheduled to begin on that date at 2:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Status of U.S. legislation.
4. Antitrust clearances for AST-5.
5. Breach of contract defense
6. Dispute Settlement Center.
7. Future work program.

IV. A meeting of the IAB will be held on May 21, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. If space is not available at the IEA offices, the meeting will be held at the Delegation du Benelux, 12-14 rue Octave-Feuillet, Paris, France. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note of IAB meeting of January 15, 1985.
3. Correspondence and communications with IEA and Reporting Companies.
4. Report from Subcommittee A.
5. Report from Subcommittee C.
6. AST-5 issues, including ISAG/Secretariat Operations Manual and AST-5 Test Guide.
7. Stocks and supply disruptions.
8. Review of emergency response programs of Canada, Japan and the United Kingdom.
9. Oil statistical reports.
10. Draft program of work for the IEA's Standing Group on Emergency Questions.
11. ISAG staffing and work program.
12. IAB organization, leadership and succession.
13. Date of next meeting and future business.

V. A meeting of the IAB will be held on May 22, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 50th meeting.
3. AST-5:
(a) Oral report by the Chairman of the AST-5 Technical Sub-Group:
(b) AST-5 Test Guide (IEA/SEQ (85) 26);
(c) Oral report on the data test; and
(d) Briefing meetings (IEA/SEQ (85) 23).
4. Emergency preparedness:
(a) Progress report on follow-up on stocks and supply disruptions:
(i) Minimum operating stock requirements;
(ii) Cost of stocks (IEA/SEQ(85)14);
(iii) Logistical constraints (IEA/SEQ(85)21);
(iv) Effectiveness and consequences of oil consumption reduction methods;
(v) Member countries legislation (IEA/SEQ(85)22);

(vi) Short-term fuel switching; and
(vii) Trends in OECD oil stocks (IEA/SEQ(85)25).
(b) Review of emergency response programs:
(i) Canada (IEA/SEQ(85)6);
(ii) Japan (IEA/SEQ(85)7); and
(iii) United Kingdom (IEA/SEQ(85)8).
5. 1986 Draft Program of Work (IEA/SEQ(85)12).
6. Oil supply and demand:
(a) End April Oil Market Report (IEA/SEQ(85)19);
(b) Current Oil Market Situation (IEA/SEQ(85)20);
(c) Quarterly Oil Forecast (IEA/SEQ(85)17); and
(d) Base Period Final Consumption (IEA/SEQ(85)18).
7. Any other business.
8. Date of next meeting.

VI. A meeting of the IEA Group of Reporting Companies will be held on May 23, 1985, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. This is a briefing meeting for personnel of IEA Reporting Companies and their affiliates, and for others who will participate in AST-5. The agenda for the meeting is under the control of the IEA. It is expected that the following draft agenda will be followed:
1. Opening remark.
2. Emergency Sharing System.
3. Background of AST-5.
4. AST-5 Test Guide:
(a) Objectives and scope;
(b) Timetable;
(c) Organization and responsibilities
(i) Secretariat;
(ii) ISAG;
(iii) Reporting Companies/Reporting Company Affiliates; and
(iv) National Emergency Sharing Organizations
(d) Data;
(e) Voluntary offer process; and
(f) Non-implementation of some voluntary offers.
5. National Programs.
6. Appraisal Reports.
7. Question and Answer Session.
8. Closing Remarks.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meetings are open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, representative of members of the IEA Group of Reporting Companies, and invitees of the SEQ. The meeting of the IEA Group of Reporting Companies is open only to representatives of members of the Group of Reporting Companies, representatives of the afforesaid U.S. government agencies, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, representatives of IEA member governments, and invitees of the IEA.

Issued in Washington, D.C., May 8, 1985.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 85-11632 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: Pursuant to 10 CFR 600.7(b), the DOE announces that it intends to award on a restricted eligibiilty basis a grant providing support to the 1985 Eighth Annual Summer Field Institute on Western Energy and Minerals Opportunities Problems and Policy Issues. The DOE will provide partial support for this effort in the amount of $50,000.

Procurement Request No. 01-85FE60653.

Project Scope: The Colorado School of Mines is sponsoring a Summer Field Institute during July and August 1985, open to participants from Federal, state and local governments, industry, the media, banking and academias. The program consists of a series of on-site conferences at which the participants are introduced to the technological, economical, environmental, social and policy-related aspects of western energy and mineral development. As DOE has a vital interest in energy and mineral development, it has been determined that DOE's partial support to the Colorado School of Mines for Field Institute on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on May 7, 1985.

Ben Goldman,

Director, Contract Operations, Office of Procurement Operations.

[FR Doc. 85-11474 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order; Petroleum Supply, Inc. and Don Ragland

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amended Proposed Remedial Order to Petroleum Supply, Inc. and Don Ragland.

SUMMARY: Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Amended Proposed Remedial Order which was issued to Petroleum Supply, Inc. and Don Ragland, (collectively referred to as PSI), 8705 Katy Freeway, Suite 200, Houston, Texas 77024. This amended Proposed Remedial Order alleges that PSI charged prices in excess of its maximum lawful selling price in violation of 10 CFR 212.10 and 210.93 during the period May 1977 through December 1977 in the amount of $142,744.50. In addition, the Amended Proposed Remedial Order alleges that PSI engaged in conduct (1) that circumvented or contravened or resulted in the circumvention of contravention of applicable regulations in violation of 10 FR 205.202 and (2) that constituted a means to obtain a price for crude oil which was higher than permitted by the regulations in violation of 10 CFR 210.62(c) during the period May 1977 through December 1977 in the amount of $142,744.71. The Amended Proposed Remedial Order also alleges that PSI charged prices in excess of its actual purchase prices during the period January through June of 1978 without performing any service or other function traditionally and historically associated with the resale of crude oil in violation of 10 CFR 212.186, 210.62(c) and 205.202 in the amount of $49,680.35.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office

of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 7th day of May, 1985.

Avrom Landesman,

Director, Enforcement Programs.

[FR Doc. 85-11531 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission; Pontook Hydro Partners, Ltd. and New Hampshire Water Resources Board

May 8, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: P-2861-010.

c. Date Filed: April 18, 1985.

d. Applicant: Pontook Hydro Partners, Ltd. and New Hampshire Water Resources Board.

e. Name of Project: Pontook Project.

f. Location: On the Androscoggin River in the Town of Dummer, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: William J. Madden Jr., Bishop, Liberman, Cook, Purcell & Reynold, 1200 Seventeenth St., N.W., Washington, D.C. 20036.

i. Comment Date: May 30, 1985.

j. Description of Proposed Transfer: On March 26, 1981, a license was issued to Robert W. Shaw to construct, operate, and maintain the Pontook Project No. 2861. On August 23, 1983, the license was transferred to Pontook Hydro Partner, Ltd (Licensee). The Licensee intends to add the New Hampshire Water Resources Board to the license in order that the New Hampshire Water Resources Board can maintain ownership of the Dam and surrounding property. For that reason the Licensee and the New Hampshire Water Resources Board have filed a request to transfer the license to Pontook Hydro Partner, Ltd and the New Hampshire Water Resources Board (Transferees).

The Licensee has complied with the terms and conditions of the license. The Transferees have agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as it were the original licensees.

k. This notice also consists of the following standard paragraphs: B.

l. Filing and service of Responsive Documents: Any filing must bear in all capital letters the title "COMMENTS", "PROTEST " or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicant specified herein.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11514 Filed 5-10-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearing Appeals

Cases Filed; Week of March 29 Through April 5, 1985

During the Week of March 29 through April 5, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar 29 through Apr. 5, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Apr 1, 1985	Economic Regulatory Administration/Almarc Manufacturing, Inc., Washington, DC	HRW-0026	Remedial order finalization. If granted: The Proposed Remedial Order issued to Almarc Manufacturing, Inc. on Oct. 1, 1984, would be issued as a final Remedial Order.
Do	J.H. Seale & Son, Inc., Sumter, SC	HEE-0136	Exception to the reporting requirements. If granted: J.H. Seale & Son, Inc. would not be required to file Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Apr 2, 1985	Revere Petroleum Corp and Richard Dobyns, Houston, TX	HRD-0278	Motion for discovery. If granted: Revere Petroleum Corp. and Richard Dobyns would receive discovery in connection with a Proposed Remedial Order issued to them (Case No. HRO-0125).
Apr 3, 1985	Kent Oil & Trading Co., Washington, DC	HEF-0576	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with a Jan. 20, 1984 Settlement Agreement between the DOE and Kent Oil & Trading Co.
Do	MAPCO, Inc., Washington, DC	HEF-0577	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with a Consent Order between the DOE and MAPCO, Inc.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Mar. 29 through Apr. 5, 1985]

Date	Name and location of applicant	Case No	Type of submission
Do	McTan Corp., Washington, DC	HEF-0576	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Oct 3, 1984 Consent Order between the DOE and McTan Corp
Apr 5, 1985	Russell Daniel Oil Co., Inc., St. Francisville, LA	HEE-0137	Exception to the reporting requirements. If granted: Russell Daniel Oil Co., Inc. would not be required to file Form EIA-1905-0139 regarding its sales of diesel and kerosene

REFUND APPLICATIONS RECEIVED

[Week of Mar 29 to Apr 5, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/2/85	Waller/Baltimore County Public Schools	RF78-7
4/1/85	Beindge/Chevron, USA	RF124-1
4/1/85	Stinnes Interoil/Gulf States Oil & Refining Co.	RF125-1.
4/1/85	Point Landing/Farmers Export Co.	RF122-4.
4/1/85	Hertz/Bandag, Inc	RF76-127
4/1/85	Hendel's/Andrew McPhee	RF79-11
4/1/85	Little America/Nebraska Public Power District.	RF112-6
4/1/85	Seminole Refining/The Milwhite Co., Inc	RF111-6.
4/3/85	OKC Corp./Rainey Oil Co	RF13-36
4/3/85	Waller Petroleum Co./Tower Sales, Inc.	RF78-8
4/3/85	Tenneco Oil Co./E.P. Misbet Co	RF7-112.
4/3/85	Tenneco Oil Co./Felkel Oil Co., Inc.	RF7-113
4/3/85	Tenneco Oil Co./Steffey & Findlay, Inc.	RF7-114.
4/3/85.	Tenneco Oil Co./Moore Oil Co., Inc	RF7-115
4/3/85	Tenneco Oil Co/H V Johnson & Son	RF7-116
4/3/85	Tenneco Oil Co./Seiler Oil Co., Inc.	RF7-117
4/3/85	Tenneco Oil Co./Wiseman Oil Co., Inc.	RF7-118
4/3/85	Tenneco Oil Co./Joel F. Hollowell Oil.	RF7-119.
4/3/85	Tenneco Oil Co./Blue Oil Co	RF7-120.
4/3/85	Tenneco Oil Co./Lease Warner, Inc	RF7-121
4/3/85	Tenneco Oil Co./Maxton Service Co.	RF7-122
4/3/85	Tenneco Oil Co/Wilhelm Energy Ser.	RF7-123
4/4/85.	Seminole Refining/Dixie Oil Co., Inc.	RF111-5
4/1/85 to 4/5/85	Gulf Refund Applications	RF40-2611 to RF40-3005

[FR Doc. 85-11537 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 1 through April 5, 1985

During the week of April 1 through April 5, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Remedial Order

South Central Terminal Co., Inc. (Formerly Bi-Petro Refining Co., Inc.), April 5, 1985; HRO-0146

Bi-Petro Refining Co., Inc. (now South Central Terminal Co., Inc.) objected to a Proposed Remedial Order (PRO) issued to it on the grounds that the products sold by the firm were not covered products within the meaning of 10 CFR 212.31. According to Bi-Petro, the regulation describing the products sold by the firm was limited by technical industry standards for specification gasoline. However, the OHA determined that both the agency and Congress intended the DOE's regulations to apply to the widest possible range of petroleum products, not just those meeting industry specifications. The OHA further found that Bi-Petro's products were suitable for use as a fuel in internal combustion engines and, therefore, that they were governed by the regulatory provisions involving the sale of gasoline. Accordingly, the OHA found that Bi-Petro had failed to properly establish its maximum lawful selling price for that product, and that the PRO, as modified, should be issued as a final Remedial Order.

Request for Exception

W.T. Waggoner Estate, April 5, 1985; BEE-1399

The W.T. Waggoner Estate (Waggoner) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart L. The firm sought retroactive exception relief allowing it to charge a price of $.20 per barrel above the sum of its acquisition cost, transportation and gathering cost, and administrative overhead, in its resales of crude oil during the period January 1, 1978 through November 30, 1980. In considering the request, the DOE found that Waggoner qualified for retroactive exception relief, in that the firm had demonstrated compelling reasons for a grant of such relief. However, in arriving at a level of relief which would allow Waggoner a reasonable rate of return in its crude oil resales, the DOE found that the firm had exaggerated the magnitude of the costs it was allowed to recover under the Subpart L regulations. The DOE concluded that a $.30 per barrel gross markup above the acquisition cost was a reasonable level of relief for Waggoner's operations during the period in question.

Interlocutory Order

Economic Regulatory Administration, April 3, 1985; HRZ-0236; HRZ-0237

The ERA filed a motion to amend the Proposed Remedial Order (PRO) issued to United Independent Oil Company (United) in order to add the specific legal finding that the firm's actions resulted in the circumvention or contravention of the Entitlements Program in violation of 10 CFR 205.202. The ERA also filed a motion to join Peter L. Hirschburg as a party respondent to the United PRO. In considering these motions, the OHA found that the motions were not filed at an unduly late stage of the proceeding, that their acceptance would further the agency's goal of presenting a complete and effective case, and that United and Mr. Hirschburg would not be prejudiced by the amendments. Accordingly, the ERA motions were granted.

Supplemental Orders

Kentucky Oil & Refining Co., April 2, 1985; HYX-0010; HYX-0013

In this Decision and Order, the DOE reviewed exception relief that Kentucky Oil & Refining Company received under the DOE Crude Oil Entitlements Program during the firm's fiscal year ending on December 31, 1981. The DOE rejected Kentucky's request that the amount of exception relief be increased to alleviate a special hardship that the firm experienced in 1980. The DOE concluded that the special hardship, if any, was not caused by the DOE regulatory programs, and did not justify and increase in exception relief. The DOE also summarized outstanding exception orders issued to Kentucky under the Entitlements Program, and determined that Kentucky had a net final entitlements purchase obligation of $1,634,630. The DOE ordered that this obligation be satisfied in accordance with the policies inunciated in the agency's Notice issued on January 9, 1985.

Thriftway Company, April 4, 1985; HYX-0019

In this Decision and Order, the DOE summarized outstanding exception orders issued to Thriftway Company under the DOE Crude Oil Entitlement Program. The DOE determined that Thriftway had a final net entitlements purchase obligation of $378,347. The DOE ordered that this obligation be satisfied in accordance with the policies enunciated in the agency's Notice issued on January 9, 1985.

Implementation of Special Refund Procedures

Beverly Hills Oil Company, et al., April 4, 1985; HEF-0328, et al.

The DOE issued a Decision and Order concerning Petitions for Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in the matters of Beverly Hills Oil Co. (HEF-0328); Jim Cox Oil Co. (HEF-0345); E. Dunlap Corp. (HEF-0351); James W. Harris Production Co. (HEF-0369); and Prosper Energy Corp. (HEF-0485). ERA requested that the OHA formulate a mechanism by which those parties potentially injured by the five firms' crude oil pricing practices during a stipulated time

period could apply for a refund from moneys received as a result of enforcement proceedings or court actions or from consent order funds which the firm agreed to pay in settlement of disputes regarding its compliance with DOE regulations. The Decision and Order determined that, because of the similarities between the violations alleged in the present cases and other previously-instituted refund proceedings involving crude oil producers, the application procedures formulated in the *Alkek, Adams,* and *A. Johnson* proceedings would be utilized. The Decision further determined that those parties who filed refund applications in those proceedings would be deemed to have filed an application for refund in the *Beverly Hills* proceedings.

Collins Oil Company; C.C. Dillon Company; Enterprise Oil & Gas Company; Foster Oil Company, April 3, 1985; HEF-0051; HEF-0063; HEF-0070; HEF-0075

On April 3, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final decision and Order establishing procedures for the disbursement of $94,797.28 (plus accrued interest) obtained as a result of Consent Orders entered into by Collins Oil Co., C.C. Dillion Co., Enterprise Oil & Gas Co., and Foster Oil Co. The funds will be available to customers who purchased refined petroleum products from the consent order firms during the relevant consent order period. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the amount they were allegedly overcharged by the particular consent order firm.

Kiesel Company; L.P. Rech Distributing Company, April 2, 1985; HEF-0107; HEF-0152

The DOE issued a Decision and Order implementing a plan for the distribution of $7,500 and $7,853.08 received as a result of two consent orders which the DOE entered into with Kiesel Co. and L.P. Rech Distributing Co., plus enterest that has accrued on these amounts. The Kiesel consent order was entered into on January 14, 1981. The DOE determined that a portion of the Kiesel settlement fund should be distributed to fifty-six customers who purchased petroleum products from Kiesel during the March 1, 1979 through July 31, 1979 consent order period. The Rech consent order was entered into on September 15, 1980. The DOE determined that the entire Rech settlement fund should be distributed to one customer who purchased petroleum products from Rech during the September 1, 1979 through November 30, 1979 period, provided that the purchaser can demonstrate injury. In both cases, the customers were identified by DOE audits, and will be allotted refunds (after each files an application for refund) based on presumptions of injury which have been employed in prior, similar proceedings. Applications for refunds filed by other firms will also be considered. Any such claims will, of course, be analyzed and, if necessary, refunds to identified purchasers will be adjusted to accommodate successful applicants.

Refund Application

Vangas Inc./Michael J. Grimm, et al., April 4, 1985; RF68-00001, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 22 end-users of Vangas propane. The applicants purchased the Vangas products directly, and applied for refunds in accordancewith the Vangas special refund procedures. *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984). After examining the statements and supporting information submitted by the applicants, the DOE determined that 21 of the applicants would be eligible for refunds of less than $15, and in accordance with the *Vangas* decision, these applications were denied. One applicant, Elmco Merzoian Bros. Farm Management, received a refund of $20, including interest.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 2, 1985.

[FR Doc. 85-11535 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

H. Michael Clyde, April 8, 1985; HFA-0277

H. Michael Clyde filed an Appeal from a partial denial by the Director, Classification and Technical Information Division of the Albuquerque Operations Office, of a Request for Information which Mr. Clyde had submitted under the Freedom of Information Act. Mr. Clyde had requested access to documents concerning the compliance with affirmative action and equal employment opportunity obligations by Los Alamos National Laboratory (LANL) and the University of California (UC). In considering the Appeal, the DOE found that the majority of withheld documents were exempt from mandatory disclosure pursuant to the attorney work-product privilege of Exemption 5. In reaching this conclusion, the DOE determined that the UC/DOE contract provided DOE with an interest in UC/LANL litigation sufficient to support the application of the work-product privilege. In addition, since the DOE must determine whether to pay UC/LANL's litigation costs or to intervene in litigation, the DOE determined that several documents were properly withheld pursuant to the deliberative process privilege of Exemption 5. The DOE further determined that documents prepared by another agency may be referred to that agency for release under the FOIA. However, if the requester protests the referral, the DOE must process the request in consultation with the other agency. Finally, the DOE determined that the Director should issue a new determination concerning the withholding of the names of individuals contained in settlement documents pursuant to Exemption 6. In this regard, the DOE noted it was unclear how release of this information would constitute an unwarranted invasion of personal privacy. Accordingly, the Appeal was granted in part.

Remedial Order

Whitaker Oil Company, April 10, 1985; HRO-0035

Whitaker Oil Company (Whitaker) filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to the firm on February 24, 1982, by the Economic Regulatory Administration (ERA). In the PRO, the ERA alleged that during the period November 1973 through March 1974, Whitaker charged prices for motor gasoline, No. 2 diesel fuel, kerosene, toluene, and xylene which exceeded the firm's maximum lawful selling prices for those products by $992,427.93. In its Statement of Objections, Whitaker asserted, among other things, that enforcement of the PRO was barred by the doctrine of laches and the Georgia statute of limitations; various rulings and regulations were not properly promulgated or applied; and the ERA made numerous errors in its audit concerning non-product cost increases, classes of purchaser, pricing periods, treatment of inventory on a firm-wide rather than a separate-inventory basis, and treatment of the firm's exchange transactions. Whitaker also challenged the inclusion of sales of toluene and xylene in the ERA's audit of the firm. After considering Whitaker's arguments, the Office of Hearings and Appeals (OHA) determined that the PRO should be issued as a final Remedial Order with certain modifications: (1) The alleged overcharges attributable to Whitaker's sales of motor gasoline, $511,000, should be eliminated in accordance with exception relief granted the firm in *Whitaker Oil Co.* 12 DOE ¶ 81,024 (1985); (2) the overcharge amount in sales of other products should be reduced by $725.38 to reflect ERA's practice in prior cases of not applying the equal application rule in periods prior to September 1974; and (3) overcharges of $47,330.47 alleged in sales of xylene for the period January 30 through March 31, 1974, should be eliminated pursuant to OHA's finding that the product was not subject to federal price controls during that period.

Request for Exception

Seneca Oil Company, April 11, 1985; HEE-0075

Seneca Oil Company filed an Application for Exception from the provisions of § 212.79 which, if granted, would have permitted Seneca to certify as "newly discovered crude oil" certain quantities of crude oil produced from five properties during the period November 1, 1979 through December 31, 1980. The approval of exception relief would have relieved Seneca of any obligation to refund revenues obtained as a result of improperly classifying the production of the properties as "newly discovered crude oil." After a review of the firm's contentions, the DOE determined that Seneca had not satisfied the applicable criteria for the approval of exception relief. Accordingly, Seneca's Application for Exception was denied.

Motion for Evidentiary Hearing

Knox Oil of Texas, Inc., and Michael L. Reed, April 9, 1985; HRH-0029

Knox Oil of Texas, Inc. and Michael L. Reed filed a Motion for Evidentiary Hearing regarding a Proposed Remedial Order (PRO) issued to them in connection with crude oil sales made by Kelly Oil Company. They requested the evidentiary hearing in order to inquire into the factual basis for the PRO's allegation that they are jointly and severally liable for Kelly's overcharges. The OHA found that the PRO set forth sufficient and readily comprehensible factual allegations regarding Knox's and Reed's control of Kelly and their benefits from the allegedly improper Kelly transactions. Accordingly, OHA determined that no discovery was warranted, and the motion was denied.

Interlocutory Order

Getty Oil Company, April 11, 1985; HRZ-0238

On November 7, 1983, Getty Oil Company requested the recusal of 52 current or former Department of Energy employees from participation in *Economic Regulatory Administration/Getty Oil Co.*, Case No. HRR-0074. In considering Getty's request, the DOE determined that Getty did not establish sufficient support for its contentions of unauthorized *ex parte* communications involving DOE personnel or improper congressional influence upon the DOE decision-making process. Accordingly, DOE concluded that Getty's request for recusal of the DOE employees be denied.

Implementation of Special Refund Procedures

Blex Oil, Inc.; Cross Oil Company; Independent Oil and Tire Company, April 10, 1985; HEF-0038; HEF-0058; HEF-0094

On April 10, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $4,314.31 (plus accrued interest) obtained as a result of Consent Orders entered into between the DOE and Blex Oil, Inc., Cross Oil Co., and Independent Oil & Tire Co. The funds will be available to customers who puchased refined petroleum products from one of the consent order firms during the relevant consent order period. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the volume of refined petroleum products they purchased from one of the consent order firms.

Columbia Oil Company; Empire Oil Company, April 10, 1985; HEF-0052; HEF-0068

On April 9, 1985, the Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for distributing $17,179.41 (plus accrued interest) as a result of Consent Orders entered into between the DOE and Columbia Oil Co. and Empire Oil Co. Under these procedures the funds will be distributed to customers who purchased motor gasoline from Columbia during the period April 1, 1979 through September 30, 1979, or from Empire during the period March 1, 1979 through July 31, 1979, and who can establish that they were injured as a result of these purchases. The Decision states, however, that end-users or resellers requesting refunds of $5,000 or less will not be required to provide a separate, detailed showing of injury. The Decision sets forth specific information which must be included in refund applications.

Cosby Oil Company, April 10, 1985; HEF-0056

On April 10, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $47,616.73 (plus accrued interest) obtained as a result of a Consent Order entered into between the DOE and Cosby Oil Company. The funds will be available to customers who purchased motor gasoline from Cosby during the period November 1, 1973 through April 30, 1974. Reseller applicants requesting refunds of $5,000 or less and end-users will not be required to provide a detailed showing of injury in order to receive a refund. Successful applicants will receive refunds proportionate to the amount they were allegedly overcharged by Cosby.

Refund Applications

Arcone Oil Company, Agway, Inc., et al., April 11, 1985; RF21-1, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three first purchasers of No. 2 fuel oil from Arcone Oil Co., Inc. The DOE denied two of the Applications because the claimants were spot purchasers and had failed to show injury. The third applicant was also a spot purchaser. However, since this applicant is an agricultural cooperative, the DOE determined that it was eligible to receive a refund based on the volume of No. 2 fuel oil that it bought from Arcone and sold to members of the cooperative. The refund granted in this proceeding totals $11,364.

Petro-Lewis Corporation/Enterprise Products Company, April 9, 1985; RF63-0001

Enterprise Products Co. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and Petro-Lewis Corporation. In assessing the merits of the Application, the DOE found that Enterprise paid above-market average costs during several months of the Petro-Lewis consent order period. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Enterprise's competitive disadvantage from negative $1,193,308 (the firm's net excess cost) to $63,637 (the firm's above-market price volumetric share) to $205,749 to (the firm's gross excess cost). A refund of $63,637 was found to equitably compensate Enterprise for the disadvantage it suffered as a result of Petro-Lewis' overcharges. In addition, the firm received accrued interest which brought the total refund amount to $105,109.

Windham Gas and Oil/Hi-Lo Oil; Workingman's Friend Oil, April 12, 1985; RF43-00010; RF43-00011

The DOE issued a Decision and Order concerning Applications for Refund filed by two resellers of fuel oil. Hi-Lo purchased the Windham proucts directly from Windham, while Workingman's Friend purchased from Hi-Lo. Both applied for refunds in accordance with the Windham special refund procedures. *Windham Gas & Oil*, 12 DOE ¶ 85,074 (1984). The DOE determined that Hi-Lo should not receive a refund for the gallons of product that it sold to Workingman's Friend, because it could be presumed to have passed along any overcharges. After examining the statement and supporting information submitted by the applicants, the DOE approved refunds totalling $1,339 including interest.

Dismissals

The following submissions were dismissed:

Name of Company and Case No.

Dersch Oil Company, Inc.—HEE-0127
Southwestern Gulf Petroleum Co.—HRO-0194

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-11536 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with

the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 6, 1985.

Field Energy Resources, Inc., Houston, Texas, HRO–0284, Crude Oil

On April 8, 1985, the State of Texas filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Tulsa Office of the Economic Regulatory Administration (ERA) issued to Fields Energy Resources, Inc. (Fields) on February 18, 1985. Fields formerly did business at 7500 San Felipe, Suite 350, Houston, Texas 77063. In the PRO, the ERA alleges that Fields charged prices in excess of its maximum lawful selling prices in violation of 10 CFR 210.62 (the normal business practices rule) and 212.186 (the anti-layering rule) during the period May through December 1980 in the amount of $561,669.80. The ERA also alleges violations of 10 CFR 212.183 (the permissible average markup rule) during August and November of 1980 in the amount of $163,351.48.

[FR Doc. 85–11532 Filed 5–10–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Crystal Oil Corp. et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $3,807,115 in consent order funds to members of the public. This money is being held in escrow following the settlements of separate enforcement proceedings involving Crystal Oil Co. (Case No. HFF–0204), Howell Corp. and Quintana Refinery Co. (Case No. HEF–0212), and Pride Refining, Inc. (Case No. HEF–0218).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the appropriate case number(s).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to three separate consent orders entered into by Crystal Oil Co., Howell Corp. and Quintana Refinery Co., and Pride Refining, Inc. (collectively referred to as the consent order firms), which settled possible regulatory violations in the firms' sales of certain refined petroleum products during the relevant audit periods.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the consent orders. The DOE has tentatively established procedures under which purchasers of consent order products from a consent order firm during the relevant audit period may file claims for refunds from the consent order funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 2, 1985.

George B. Breznay,

Director, Office of Hearings and

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 2, 1985.

Names of Firms:
- Crystal Oil Co.
- Howell Corp. (Quintana Refinery Co.)
- Pride Refining, Inc.

Date of Filing:
- October 13, 1983

Case Numbers:
- HEF–0204
- HEF–0212
- HEF–0218

The procedural regulations of the Department of Energy (DOE) provide that the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to implement special refund procedures for the purpose of providing restitution to persons who were injured by alleged or adjudicated violations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations may be used in situations where the DOE is unable to identify readily those persons who may have been injured by such alleged or adjudicated violations or to ascertain readily the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

On October 13, 1983, the ERA filed a petition requesting that the OHA establish refund proceedings in order to distribute funds totalling $3,807,115.00 received pursuant to three separate consent orders entered into by the DOE and the following firms: Crystal Oil Co. (Crystal), headquartered in Shreveport, Louisiana; Howell Corp. (Howell) and Quintana Refinery Co. (Quintana), both headquartered in Houston, Texas; and Pride Refining, Inc. (Pride) headquartered in Abilene, Texas. These four firms shall be referred to collectively in this Proposed Decision as "the consent order firms."

During the periods covered by the consent orders, all of the consent order firms were refiners of crude oil and engaged in the sale of refined petroleum products. ERA audits of the consent order firms revealed possible violations

of the Mandatory Petroleum Price Regulations.[1] In order to settle all claims and disputes between the ERA and the firms with respect to their sales of certain specified petroleum products during specified periods of time, Crystal and Pride each entered into separate consent orders with the DOE and Howell and Quintana together entered into a consent order with the DOE.[2] Pursuant to these consent orders, the firms remitted specified amounts to the DOE which are currently being held in separate escrow accounts pending distribution by the DOE.[3] Information regarding the three consent order firms and the scope of the consent orders is set forth in Appendices A–C to this Proposed Decision.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such procedures with respect to the funds remitted by the consent order firms. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings to parties who were injured by alleged or adjudicated regulatory violations is the focus of Subpart V proceedings. *See generally Vickers*. Based upon our experience with Subpart V cases, we propose that the distribution of refunds in the present cases should take place in two stages. In the first stage, we will attempt to refund moneys to identifiable customers who were injured by the consent order firms' alleged regulatory violations during the appropriate consent order periods. After meritorious claims are paid in the first stage, a second-stage refund procedure may become necessary.

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers and refiners acting in the capacity of resellers) of the products covered by the consent orders, and (ii) firms, individuals, or organizations that were consumers (end-users) of the consent order products.[4] The products purchased by claimants will have been purchased either directly from a consent order firm or from another firm in a chain of distribution leading back to that firm. As explained below, we propose that the consent order funds be distributed to claimants who demonstrate satisfactorily that they have been injured by a consent order firm's alleged regulatory violations.

A. Claims Based Upon Alleged Overcharges

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of consent order products made by the consent order firms during the appropriate consent order periods. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we intend to adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are proposing to adopt in these cases are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficent way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. In the present cases, the audit files do not contain specific alleged overcharge amounts to particular customers that might serve as a basis for allocating the refunds. Therefore the volumetric approach is appropriate in these cases. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products C./Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984). To determine the per gallon volumetric amount, each consent order amount will be divided by the estimated total volume of refined petroleum products which the consent order firm sold during the consent order period.[5] Refunds will be calculated by multiplying the volumetric amount by the total amount of the products within the scope of the consent order that an applicant purchased from a consent order firm during the consent order period. The interest which has accrued on the money in each escrow account will be distributed to each successful claminant in proportion to its refund amount.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the consent orders that are the subjects of these proceedings is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 (1982). As we have

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[1] The Pride consent order also resolves allegations concerning Pride's compliance with the Mandatory Petroleum Allocation Regulations.

[2] None of the consent orders contains an admission by a consent order firm or a finding by the DOE that any DOE regulations were violated.

[3] In addition, under the terms of their respective consent orders, Crystal reduced its bank of unrecovered increased motor gasoline costs by $5 million, and Howell and Quintana made direct refunds to certain customers. *See* Appendix B.

[4] Several products covered by the consent orders were deregulated during the course of the consent order periods. *See* Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,535. Claimants will, of course, be ineligible for refunds based upon purchases of products subsequent to the deregulation of those products.

[5] The per gallons volumetric amount for Crystal is specified in Appendix A. We are awaiting additional information as to the refined product sales of the other consent order firms so that we may calculate volumetric amounts in those cases. The volumetric amounts will be included in a final Decision and Order, at which point potential claimants will be able to compute the refunds for which they may qualify.

noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to utilize its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered products from the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happend downstream of that initial impact.

Under the presumptions we propose to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on monthly purchases below a threshold level.[6] Previous OHA refund decisions have expressed the threshold either in terms of a purchase volume figure from the consent order firm, or as a dollar refund figure. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984) (TOGCO), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.*, at 88,210. We propose to follow the same approach here. The adoption of a threshold level below which a claimant does not have to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to make a detailed showing of injury not to exceed the amount of the refund to be gained in the present cases, we believe that the establishment of a presumption of injury for all volumetric claims of $5,000 or less is reasonable. *See id.*; *Marion Corp.*, 12 DOE ¶85,014 (1984).

In addition to the presumptions we intend to adopt in these proceedings, we are making a finding that end-users or ultimate consumers including businesses that are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent orders.[7] Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order periods, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of the petroleum products specified in the consent orders need only document their purchase volumes from a consent order firm in order to make a sufficient showing that they were injured by the alleged overcharges.

B. Allocation Claims in the Pride Proceeding

In addition to resolving allegations of overcharges, the Pride consent order covers any alleged allocation violations by Pride during the consent order period. Accordingly, purchasers of allocated products from Pride may file applications for refund based on allegations of Pride's violation of the allocation regulations.

Claims for refunds based on alleged allocation violations are substantially different from those based on alleged overcharges. Allocation claims are based on a consent order firm's alleged failure to furnish petroleum products that it was obligated to supply the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. In prior cases, we have generally found that an allocation claimant should have been aware of the alleged violation at the time it occurred, and we have required that the claimant have taken some contemporaneous action to mitigate the injury. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 at 88,220 (1982). In contrast to the per gallon volumetric refund amount usually given in the case of an alleged price violation allocation claimants have been awarded refunds in the nature of damages attributable to the monetary loss that was caused by the alleged failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶85,012 (1982). An allocation claimant in this proceeding must therefore have contemporaneously complained of Pride's alleged allocation violations and must provide a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury that it sustained. *See Aztex Energy Co.*, 12 DOE ¶85,116 n.6 (1984).

C. General Issues

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban*, 9 DOE at 88.225; *see also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until a final Decision and Order is issued. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to notify potential claimants for whom we have addresses in order to publicize the

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[6] Two groups of purchasers shall be presumed not to have been injured by any overcharges and will therefore be ineligible for refunds in this proceeding. [illegible] resellers that were spot purchasers from a consent order firm will be ineligible to receive any refunds unless they make a showing that rebuts the presumption that they were not injured. As we have previosly noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through to their own customers the full amount of the firm's quoted selling price at the time of [illegible]. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that it would be [illegible] to presume that the firm had [illegible] as to where and when to make the purchases upon which the refund claim is based. Second, purchasers from a consent order firm that were affiliated with that firm in such a way that any refunds received by them would inure to the benefit of the consent order firm shall be presumed to be

[7] [illegible] as resellers, cooperatives will be excused from the requirement that they make a detailed showing of injury with respect to that portion of their purchases that was resold to their members, since any refunds received by cooperatives will be passed on to their customers, who typically are also their members. *See Office of Special Counsel*, 9 DOE [illegible]

distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, we will provide copies to several petroleum marketing organizations.

In the event that money remains after all first-stage claims have been disposed of, those funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first-stage refund procedures are completed.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms listed in the Appendices to this Decision and Order will be distributed in accordance with the foregoing Decision.

Appendix A

Crystal Oil Co.

Case Number:
HEF-0204
Consent Order Number:
641S00098
Consent Order Effective Date:
March 9, 1981
Period Covered by Consent Order:
August 19, 1973 through December 31, 1975
Consent Order Amount:
$1,000,000.00
Consent Order Products:
Motor gasoline, diesel fuel, No. 6 fuel oil, jet fuel, naphtha, butane, propane, natural gasoline, asphalt flux.
Location of Firm:
Headquarters: Shreveport, LA. Other operations in Arkansas, Texas, Indiana, Ohio, Michigan, Florida, Mississippi, Alabama, Georgia.
Names of Subsidiaries:
Mercury Discount Co.,
Berry Petroleum Corp., Tulsa Oil Corp.,
Crystal Petroleum Co., Inc.,
Eastern Petroleum Co.,
Longview Refining Co.,
Adobe Refining Co.,
Stone's Independent Oil Co.,
Stone's Independent Oil, Inc.,
Stone's Independent Oil Distributors, Inc.,
Triangle Oil Co.,
Joe E. Hutchison Distributing Co.,
Hi-Octane Terminal Co.,
Panhandle Towing Co.,
Crystal-Princeton,
Crystal-Sharjah Oil Co.,
Rico Argentine Mining Co.
Volume of Products Covered by Consent Order Sold During Consent Order Period:
858,727,230 gallons
Volumetric Refund Amount:
$0.00117 per gallon

Special Information

Several Crystal subsidiaries were acquired during the consent order period. Specifically, the Longview Refining Co. was acquired in October 1973, the Adobe Refining Co. in November 1973, and Crystal-Princeton in December 1973. Refunds based on purchases from these Crystal subsidiaries will only be available for purchases occurring after these acquisition dates.

The Crystal consent order does not specify that it is limited to sales of refined petroleum products and Crystal apparently sold some crude oil during the consent order period. However, we have concluded that this special refund proceeding should be limited to refined products in light of the fact that Crystal in 1976 entered into a separate consent order that specifically covered crude oil sales. In fact, the **Federal Register** notice of the proposed Crystal consent order referred only to sales of refined petroleum products. 46 FR 5050 (January 19, 1981).

Appendix B

Howell Corp., Quintana Refinery Co.

Case Number:
HEF-0212
Consent Order Number:
610S00068
Consent Order Effective Date:
September 25, 1979
Period Coverdd by Consent Order:
August 19, 1973 through December 31, 1978
Consent Order Amount:
$2,207,115.00
Consent Order Products:
Motor gasoline, distillates, general refinery products
Locations of Firms:
Consent Order covered sales from two refineries in Corpus Christi and San Antonio, Texas. *See* Special Information below.
Volume Sold During Consent Order Period:
See footnote 5.
Volumetric Refund Amount:
See footnote 5.

Special Information

The Howell/Quintana consent order was negotiated with Howell, Quintana, and a joint venture called the Quintana-Howell Joint Venture (QHJV). It resolves violations allegedly committed by Howell, both separately and as a partner in the QHJV, and by Quintana as a partner in the QHJV. The violations alleged in the consent order involved a San Antonio, Texas refinery operated by Howell and a Corpus Christi refinery owned by Howell and operated by the QHJV. The Consent Order also coveres sales made by "certain independent processors, many of whom are stockholders in Quintana." Consent Order ¶A2.

In addition to remitting $2,207,115.00 to the DOE, Quintana and Howell made direct refunds totalling $5,776,723.00 to several purchasers who were identified as allegedly overcharged paties. These purchasers were: the City Public Service Board (San Antonio, TX), Consolidated Edison, Texas Utility Fuel Co. (Dallas, TX), #2 SW Methodist Hospital (San Antonio, TX), Veterans Administration Hospital (San Antonio TX), and the Southwest Research Institute (San Antonio, TX). These purchasers shall be deemed to have received restitution for the alleged overcharges and shall be ineligible for any refunds in this proceeding.

Appendix C

Pride Refining, Inc.

Case Number:
HEF-0218
Consent Order Number:
6D0S00036
Consent Order Effective Date:
May 20, 1983
Period Covered by Consent Order:
January 1, 1973 through January 28, 1981
Consent Order Amount:
$600,000.00
Consent Order Products:
Refined petroleum products
Location of Firm:
Abilene, Texas
Volume Sold during Consent Order Period:
See footnote 5.
Volumetric Refund Amount:
See footnote 5.

[FR Doc. 85-11534 Filed 5-10-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2834-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a

notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–233); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460, telephone (202) 382–2742 or FTS

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

- *Title:* Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, Distribution in Commerce and Use Prohibitions: Use in Electrical Equipment (EPA = 1000). (This renewal of an existing regulation has reduction of burden hours.)

Abstract: EPA requires owners of certain PCB transformers to maintain records of inspection and maintenance. EPA can review these records to ensure compliance with TSCA.

Respondents: Owners of certain PCB transformers.

* * * * *

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW, Washington, D.C. 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: May 6, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–11393 Filed 5–10–85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2834-3]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to IBM Corporation (EPA Project Number SFB 84–03)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 10, 1985, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR § 52.21 to the applicant named above. The PSD permit grants approval to construct a 65-megawatt cogeneration facility to be located at 5600 Cottle Road, San Jose, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 25 ppmv at 15% O_2.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: James Hanson (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8218, FTS 454–8218.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of selective catalytic reduction and water injection.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Court of Appeals. A petition for review must be filed by July 12, 1985.

Dated: May 1, 1985.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 85–11490 Filed 5–10–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Revisions to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purpose of this notice is to make revisions to existing systems of records.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending ten (10) existing systems of records to specifically include the taxpayer identification number (which may be the social security number) in the categories of records section of each system of records in which a debt may be incurred and which may have to be turned over to a "consumer reporting agency" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Keener, Freedom of Information and Privacy Specialist, (202) 646–3981.

SUPPLEMENTARY INFORMATION: On October 25, 1983, 48 FR 49376, FEMA published a compatible disclosure to consumer reporting agencies to relevant systems of records in accordance with the Debt Collection Act of 1982. Section 4 of the Debt Collection Act of 1982 requires each Federal agency to require applicants to furnish their taxpayer's identification number. For individuals, that number is their Social Security number. This provision satisfies the Privacy Act's requirement (in section 7) that agencies must have an authorizing Federal statute in order to condition the provision of a benefit on the applicant providing his or her taxpayer's identification number. At this time, FEMA is amending the categories of records section of the relevant systems of records to specifically include the taxpayer's identification number (which for individuals is the Social Security number).

Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97–375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A–108, Transmittal Memoranda Nos. 1 and 3. Thus, a change to the system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice.

The relevant systems are: FEMA/RMA–1, Payroll and leave accounting; FEMA/RMA–2, Travel and Transportation Accounting; FEMA/RMA–9, Claims Collection Files; FEMA/NETC–3, Student Academic and Course Records; FEMA/FIA–1, Federal Crime Insurance Progam; FEMA/FIA–2, National Flood Insurance Application and Related Documents Files; FEMA/GC–1, Claims (litigation); FEMA/GC–2, FEMA Enforcement (Compliance); FEMA/SLPS–1, Disaster Recovery Assistance Files; FEMA/SLPS–2, Temporary Housing Files; and FEMA/SLPS–12, Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files.

Dated: May 6, 1985.

Robert Mahaffey,

Director, Office of Public Affairs, Federal [illegible]

FEMA/RMA-1. Payroll and leave accounting. The complete text of this notice appears at 46 FR 49727. October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49377. At the end of the section entitled, "Categories of records in this system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA-1

SYSTEM NAME:

Payroll and leave accounting.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM.

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/RMA-2. Travel and Transportation Accounting. The complete text of this notice appears at 46 FR 49728, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA-2

SYSTEM NAME:

Travel and Transportation Accounting.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/RMA-9. Claims Collection Files. The complete text of the notice appears at 47 FR 53487, November 26, 1982. Amendments were made on March 23, 1983, 48 FR 12133, and October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence of read, "This system may also include the taxpayer identification number (social security number)."

FEMA/RMA-9

SYSTEM NAME:

Claims Collection Files

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/NETC-3. Student Academic and Course Records. The complete text of this notice appears at 47 FR 53489, November 26, 1982. Amendments were made on March 23, 1983, 48 FR 12133; October 25, 1983, 48 FR 49376, and November 15, 1984, 49 FR 45257. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/NETC-3

SYSTEM NAME:

Student Academic and Course Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

FEMA/FIA-1. Federal Crime Insurance Program. The complete text of this notice appears at 46 FR 49720, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; June 26, 1984, 49 FR 26144; and February 11, 1985, 50 FR 5684. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/FIA-1

SYSTEM NAME:

Federal Crime Insurance Program.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/FIA-2. National Flood Insurance and Related Documents Files. The complete text of this notice appears at 47 FR 53492, November 26, 1982. Amendments were made on October 25, 1983, 48 FR 49376 and February 17, 1984, 49 FR 6188. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

FEMA/GC-1. Claims (litigation). The complete text of this notice appears at 46 FR 49471, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; December 13, 1984, 49 FR 48612; and March 11, 1985, 50 FR 9713. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/GC-1

SYSTEM NAME:

Claims (litigation).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/GC-2. FEMA Enforcement (Compliance). The complete text of this notice appears at 46 FR 49742, October 7, 1981. Amendments were made on October 25, 1983, 48 FR 49376; December 13, 1984, 49 FR 48612; and March 11, 1985, 50 FR 9714. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/GC-2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS-1. Disaster Recovery Assistance Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer

identification number (social security number)."

FEMA/SLPS-1

SYSTEM NAME:

Disaster Recovery Assistance Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS-12, Temporary Housing Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. An amendment was made on October 25, 1983, 48 FR 49376. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/SLPS-2

SYSTEM NAME:

Temporary Housing Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

FEMA/SLPS-2, Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files. The complete text of this notice appears at 48 FR 15710, April 12, 1983. Amendments were made on October 25, 1983, 48 FR 49378 and October 18, 1984, 49 FR 40969. At the end of the section entitled, "Categories of records in the system," add a new sentence to read, "This system may also include the taxpayer identification number (social security number)."

FEMA/SLPS-12

SYSTEM NAME:

Temporary and Permanent Personal and Real Property Acquisitions and Relocation Files.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * This system may also include the taxpayer identification number (social security number).

* * * * *

[FR Doc. 85-11492 Filed 5-10-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

William P. Fitch, 221 East Gordon Street, Savannah, GA 31401

Cargo Master Corp., 1402 N.W. 82nd Avenue, Miami, FL 33126

Officers:

Julio Blanco, President/Director

Jesus S. Moreira, Vice President/Director

Polo Express International Corporation, 12811 SW 43rd Drive, Unit A-124, Miami, FL 33175

Officer: Leopoldo D. Tejada, President

Belcap International Corp., 174 E. Nassau Street, Islip Terrace, NY 11752

Officers:

James Capezio, President

Susan J. Accardi, Vice President

Exxacta International, Ltd., 8000 Cooper Avenue, Bldg. #3, Glendale, NY 11385

Officers:

Hans J. Hottenrott, President

Janice Peral-Hottenrott, Secretary/Treasurer

Dade Foreign Service, Inc., 9708 N.W. 6th Terrace, Miami, FL 33172

Officers:

Maria E. Palacio, President

Ismael Roque, Secretary

ITS Forwarding Company, c/o Lavino Shipping Company, North Carolina Maritime Bldg., Wilmington, NC 28401

Officers:

Francis H. Muldoon, Chairman/President

William J. Neumann, Senior V.P./Chief Finance Officer

Craig N. Johnson, Executive Vice President

Jack Tilley, Vice President

Thomas J. McConney, Jr., Treasurer

William C. Miller, Secretary, General Counsel

Michael Lanier, Controller

Dated: May 8, 1985.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11508 Filed 5-10-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2465

Name: General Transportation Services, Inc.

Address: 11 St. Marks Street, Linden, NJ 07036

Date Revoked: April 16, 1985

Reason: Voluntarily requested revocation

License Number: 2377

Name: Air-Ocean International, Inc.

Address: 1614 Del Norte Street, Houston, TX 77039

Date Revoked: April 19, 1985

Reason: Failed to maintain a valid surety bond

License Number: 382

Name: Erskine Freight Forwarding Company, Inc.

Address: 822 Broadway, Bayonne, NJ 07002

Date Revoked: May 3, 1985

Reason: Surrendered license voluntarily.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-11509 Filed 5-10-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire Banc One Credit Corporation, Columbus, Ohio, thereby engaging in the activities of making, acquiring, selling, and servicing for its own account and the account of others loans and other extensions of credit including issuing letters of credit and accepting drafts, agricultural loans, commercial loans, consumer loans, industrial loans, credit card loans, mortgage loans and loan factoring. These activities would be conducted from offices in Columbus, Ohio and Casselberry, Florida.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11461 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to continue to engage *de novo* through its subsdiary, Trefoil Capital Corporation, New York, New York, in the previously approved activities of commercial finance and factoring; and to expand the geographic scope of these activities to include the entire United States.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street N.W., Atlanta, Georgia 30303:

1. *National Banking Corporation of Florida, Inc.*, Miami, Florida; to engage *de novo* through its subsidiary, Confidata Corporation, Pompano Beach, Florida, in data processing activities in the State of Florida.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11462 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

Malden Trust Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in sections 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested person may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 3, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Malden trust Corporation*, Malden, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Malden Trust Company, Malden, Massacusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Great American Corporation*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares or assets of State Bank & Trust Company of Golden Meadow, Golden Meadow, Louisiana.

C **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Shawneetown Bancorp, Inc.*, Shawneetown, Illinois; to acquire 100 percent of the voting shares or assets of

Saline County State Bank, Stonefort, Illinois.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City Missouir 641098:

1. *Granite Bancshares, Inc.*, Granite, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Granite, Granite, Oklahoma.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *CapitolBank Corporation*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11463 Filed 5-10-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements; State-Based Diabetes Control Programs; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for Cooperative Agreements for short-term State-Based Diabetes Control Programs that address the prevention of blindness due to diabetic retinopathy. Catalog of Federal Domestic Assistance Number is 13.988. This cooperative agreement program is authorized by section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Diabetic retinopathy is the leading cause of new cases of legal blindness in American adults under the age of 75 years. The risk of blindness due to diabetic retinopathy is greatest in people with Type I diabetes and increases with duration of diabetes in both Type I and Type II. In the 1970's the National Institutes of Health conducted a nationwide clinical trail called the Diabetic Retinopathy Study. It demonstrated that timely diagnosis and panretinal laser photocoagulation treatment of persons with advanced proliferative diabetic retinopathy can reduce the incidence of severe visual loss by approximately 60 percent. Other studies have suggested that eye care for people with diabetes is frequently inadequate. Patients at high risk for visual loss are those who are not under the care of ophthalmologists and who have either had Type I diabetes for 5 or more years or who have Type II diabetes. The objective of the cooperative agreement program is to implement programs to prevent blindness due to diabetic retinopathy and develop systems to document their efficacy.

Eligible applicants for this program are official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

Purpose and Cooperative Activities

A. Purpose

The purpose of the cooperative agreements is to implement programs to ensure that diabetic patients who are at high risk for visual loss due to diabetic retinopathy are identified, examined, and treated. (Project funds may not be used for treatment.) The focus of the program is on diabetic retinopathy, but since patients with diabetes are at increased risk for visual loss due to glaucoma and cataract, examination should also include acuity testing and tonometry, and appropriate treatment of these conditions must be assured.

B. Cooperative Activities

1. Recipient Activities

a. Identify a high-risk target population.

b. Identify available diagnostic and treatment resources.

c. Assess current patterns of care.

d. Define and coordinate the activities of State agencies and other groups participating in the project, such as professional and voluntary organizations and third-party payers.

e. Ensure that high-risk patients are examined by sensitive diagnostic techniques. (Clinical examination through undilated pupils is not adequate to diagnose proliferative diabetic retinopathy.) Acceptable techniques to diagnose diabetic retinopathy include:

1. Examination by general ophthalmologists or retinal specialists.

2. Examination by other health-care professionals who have demonstrated the ability to perform sensitive diagnostic examinations.

3. Fundus photography using standard fundus cameras.

4. Fundus photography using "non-mydriatic" cameras. Examinations must also include acuity testing and tonometry, and should include blood pressure measurement.

f. Ensure that necessary referral and followup systems are in place which will assure that patients are treated through non-project resources.

g. Conduct appropriate patient and professional education.

h. Develop a system to monitor and document the impact of the program, which at a minimum will include assessment of the number of high-risk patients examined, the number found to have treatable eye disease, the number referred for treatment, and the number treated. Counting blindness is optional.

2. Centers for Disease Control Activities

a. Develop and disseminate public health recommendations for the diagnosis and treatment of diabetic retinopathy.

b. Collaborate in the planning, operation, and evaluation of program activities through site visits, telephone and written consultation, and through CDC sponsored meetings.

c. Collaborate on the development of data systems and in the State's analysis and evaluation of data.

d. Participate in the development of patient and professional education, screening, referral, tracking, and monitoring program components.

Approximately $800,000 will be available in Fiscal Year 1985 to award from seven to nine cooperative agreements. Priority consideration will be given to funding approximately five applications from States that do not currently have diabetes cooperative agreements with CDC. The average award will be $100,000, with individual cooperative agreements ranging from approximately $40,000 to $110,000. The cooperative agreements will be funded for a 12-month budget period. The duration of the project period will be 1 year.

Progress reports must be submitted on a quarterly basis. Final financial status and progress reports are required no later than 90 days after the end of the project period.

Guidelines for Applications

Applications for cooperative agreements must include a narrative which describes:

1. The background and need for support including a description of the high-risk population, and a description of the problem with a discussion of contributing factors.

2. Specific objectives which are consistent with the purpose of the cooperative agreement, and which are measurable. (Include a milestone chart

consistent with the timeframe of the project period.)

3. The methods and activities undertaken to accomplish the objectives including:

a. How the high-risk target population will be identified.

b. How the applicant plans to utilize currently available health care resources.

c. How the appliant plans to define and coordinate the activities of State agencies and other groups participating in the project, such as professional and voluntary organizations, and third-party payers.

d. How the target population will be examined by sensitive diagnostic techniques and referred to ensure treatment, with treatment provided through non-project resources.

e. How patient and professional education efforts will be conducted.

f. How the applicant plans to obtain adequate staff by the start of the budget period.

g. Identification of all personnel to be involved in the project, their qualifications, duties, and the extent of their involvement.

4. How the impact of the program will be assessed, including as a minimun, the number of high-risk patients identified, examined, referred for treatment, and the number treated.

5. The level of professional and community support and involvement in the program. (Letters of support from practitioners in the community, general ophthalmologists and/or retinal specialist, and voluntary organizations should be included.)

6. A budget justification and any other information which will support the need for assistance.

Review Criteria

Applications will be reviewed and evaluated based upon the following factors:

1. The need for support as demonstrated by the description of the target population, the problem, and the contributing factors.

2. The consistency of the measurable objectives with the state purpose of the cooperative agreement and the ability to complete the objectives and milestones of the project within the specific time period.

3. The adequacy of the applicant's plans to ensure examination of high-risk individuals by sensitive diagnostic techniques, to refer those in need for treatment, and to assure adequate treatment (paid for by non-project resources) for patients needing treatment.

4. The ability of the applicant to generate community and professional support and involvement in the program, to utilize available resources, and to coordinate the activities of groups participating in the program including governmental agencies, professional and voluntary organizations, third party payers, consultants, and the diabetes community at large.

5. The adequacy of the applicant's plans to conduct patient and professional education.

6. The ability of the applicant to identify staff for the program who are available at the start of the budget period and trained to carry out the required tasks.

7. The adequacy of the applicant's plans to monitor and document the impact of the program.

8. The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds.

Application Information

The 8th Annual CDC Diabetes Control Conference will be held May 20–23, 1985, at the Atlanta American Hotel, Atlanta, Georgia. The Tuesday afternoon plenary session will address Diabetic Eye Disease: A Comprehensive Approach. Following the afternoon plenary session, there will be a pre-application meeting beginning at 5:45 p.m., for anyone interested. Attendance or non-attendance at this meeting will have no bearing on the applicant's ranking in the review process.

The original and one copy of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 155 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.), on Monday, June 24, 1985.

Deadline

Applications will be considered to meet the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before 4:30 p.m. (e.d.t.), on June 24, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575, or FTS 236–6575. Technical assistance may be obtained from Lisle S. House, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–1851, or FTS 236–1851.

Dated: May 3, 1985.

William E. Muldoon,

Assistant Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85–11464 Filed 5–10–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 82N–0224]

Quality Assurance in Nuclear Medicine Facilities; Availability of Final Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of final recommendations prepared by its Center for Devices and Radiological Health (CDRH) on quality assurance programs in nuclear medicine facilities. The final recommendations include the agency's rationale for the recommendations as well as references that can be used as guides in conducting quality control monitoring. These final recommendations are available as a technical report in CDRH's radiation recommendations series. They are intended to encourage and promote the development of voluntary quality assurance programs in nuclear medicine facilities.

ADDRESSES: Single copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402. Written comments on the final recommendations may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Phyllis Segal, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION: FDA is making available a document entitled "Recommendations for Quality Assurance Programs in Nuclear Medicine Facilities." These recommendations, prepared by CDRH's Office of Training and Assistance, are directed to all nuclear medicine facilities where radiopharmaceuticals are used for diagnosis or therapy or where in vitro assays involving radioactive materials are performed. "Quality assurance," as referred to in the document, means the use of planned systematic actions that result in consistently high-quality performance of all components of the nuclear medicine procedure and minimum ionizing radiation exposure to patients and personnel.

In the **Federal Register** of January 14, 1983 (48 FR 1823), FDA published a notice of availability of draft recommendations for quality assurance programs in nuclear medicine facilities. The comments received in response to the notice of availability indicated a widespread interest in comprehensive voluntary recommendations. The agency received many valuable suggestions that have been incorporated into the final recommendations. The final recommendations are part of the radiation recommendations series issued by CDRH, and they represent the agency's use of an educational approach to foster development of quality assurance programs in nuclear medicine facilities.

Interested persons may at any time submit additional data and comments relating to quality assurance in nuclear medicine facilities. The comments will be considered in determining whether further updates are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The final recommendations, comments received, and an analysis of those comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

The "Recommendations for Quality Assurance Programs in Nuclear Medicine Facilities" may be purchased from the Superintendent of Documents (address above) for $1.[illegible]. To order, reference 017–015–00225–0.

Dated: April 30, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11466 Filed 5–10–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Administration

[Docket No. N–85–1531; FR–2116]

Productivity Review List

AGENCY: Office of Assistant Secretary for Administration, HUD.

ACTION: Notice of Revised OMB Circular A–76 Productivity Review List.

SUMMARY: Notice is hereby given that under Office of Management and Budget (OMB) Circular A–76, the Department of Housing and Urban Development (HUD) is publishing its productivity review list (previously known as Schedule for Conducting Cost Comparison Studies) of commercial activities currently performed by the Department. In accordance with OMB's Productivity Improvement memorandum of September 27, 1984, this inventory replaces the one published at 49 FR 35254 on September 6, 1984. All activities currently under review were announced in the previous **Federal Register** notice. All activities are located at HUD Headquarters in Washington, D.C.

Contracts may or may not result from the review of each activity. Results of the review of an activity will be made available upon request to any interested party.

FOR FURTHER INFORMATION CONTACT: Margaret L. Harrison, Office of the Assistant Secretary for Administration, telephone (202) 755–6940. (This is not a toll-free number.)

Dated: May 7, 1985.

Judith L. Tardy,

Assistant Secretary for Administration.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PRODUCTIVITY REVIEW LIST, SUBJECT TO A–76 REVIEWS

Activity	Estimated start date	Estimated completion date
1. Computer operations support	05/84	04/85
2. Production and data control	05/84	09/85
3. Computer operations software development and testing	01/86	03/86
4. Computer operations-voice and data communications	01/86	09/86
5. Telecommunications services	10/86	09/87
6. ADP Systems development and maintenance	01/87	09/87
7. Training	09/86	09/87
8. Audiovisual	01/85	12/85
9. Warehouse	10/85	09/86
10. Motor Pool	10/86	09/87

[FR Doc. 85–11529 Filed 5–10–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 8, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forward to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 28, 1985.

Carol D. Shull,

Chief of Registration National Register.

To assist in the preservation of historic properties the 15-day commenting period for the following nominations has been waived.

MARYLAND

Dorchester County

Wingate, *WILMA LEE (Chesapeake Bay Skipjack Fleet TR)*, Bishops Head Rd., Hearns Creek

Somerset County

Chance, *IDA MAY (Chesapeake Bay Skipjack Fleet TR)*, Upper thorofare

Deal Island, *SEA GULL (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare

Wenona, *CALEB W. JONES, (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare

Wenona, *CITY OF CRISFIELD, (Chesapeake Bay Skipjack Fleet TR)* Lower thorofare

Wenona, *CLARENCE CROCKETT* (*Chesapeake Bay Skipjack Fleet TR*) Lower thorofare
Wenona, *F.C. LEWIS, JR (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *FANNIE L. DAUGHERTY (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *H.M. KRENTZ (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *HELEN VIRGINIA (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *HOWARD (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *SOMEREST (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *SUSAN MAY (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare
Wenona, *THOMAS W. CLYDE (Chesapeake Bay Skipjack Fleet TR)*, Lower thorofare

St. Mary's County

Piney Point vicinity, *DEE OF ST. MARY'S (Chesapeake Bay Skipjack Fleet TR)*, St. George's Creek

Talbot County

Clairborne, *CLAUDE W. SOMERS (Chesapeake Bay Skipjack Fleet TR)*, Old Ferry Terminal, Washington St.
St. Michaels, *ROSIE PARKS (Chesapeake Bay Skipjack Fleet TR)*, Mill St.
St. Michaels, *STANLEY NORMAN (Chesapeake Bay Skipjack Fleet TR)*, Edgar Cove
Tilghman, *ANNA McGARVEY (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *E.C. COLLIER (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *ELSWORTH (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *ESTHER F. (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *HILDA M. WILLING (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *KATHRYN (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *LADY KATIE (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *LORRIANE ROSE (Chesapeake Bay Skipjack Fleet TR)*, Knapps Narrows.
Tilghman, *MAGGIE LEE (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *MARTHA LEWIS (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *MINNIE V (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *NELLIE L. BYRD (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *RALPH T. WEBSTER (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *REBECCA T. RUARK (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *RUBY G. FORD (Chesapeake Bay Skipjack Fleet TR)*, Gibsontown Rd.
Tilghman, *SIGSGEE (Chesapeake Bay Skipjack Fleet TR)*, Knapps Narrows
Tilghman, *VIRGINIA W (Chesapeake Bay Skipjack Fleet TR)*, Knaps Narrows

[FR Doc. 85-11417 Filed 5-10-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-180X)]

Chicago and North Western Transportation Co., Abandonment Exemption; Dodge, Cuming, Stanton, and Madison Counties, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Chicago and North Western Transportation Company of a 78-mile line in Dodge, Cuming, Stanton, and Madison Counties, NE, subject to standard labor protective conditions.

DATES: This exemption will be effective on June 12, 1985. Petitions to stay must be filed by May 23, 1985. Petitions for reconsideration must be file by June 3, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-180X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative, Anne E. Keating, Esq., One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11487 Filed 5-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-39 (Sub-8X); Finance Docket No. 30630]

St. Louis Southwestern Railway Co. Discontinuance of Service Exemption in Coryell and McLennan Counties, TX; the Atchison Topeka and Santa Fe Railway Co.—Lease Exemption in McLennan County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the following transactions, subject to the standard employee protective conditions: (1) Docket No. AB-39 (Sub-No. 8X), The St. Louis Southwestern Railway Company (SSW), from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, for the discontinuance of service on 18.08 miles of its rail line in Coryell and McLennan Counties, TX; and (2) Finance Docket No. 30630, The Atchison, Topeka and Santa Fe Railway Company, from the prior approval requirements of 49 U.S.C. 11343, to lease and operate 1.9 miles of the above SSW rail line in McLennan County, TX.

DATES: These exemptions will be effective on June 12, 1985. Petitions to stay must be filed by May 23, 1985 and petitions for reconsideration must be filed by June 3, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 18X) and/or Finance Docket No. 30630, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Joint petitioners' representatives: Gary A. Laakso, St. Louis Southwestern Railway Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

Michael W. Blaszak, The Atchison, Topeka and Santa Fe, Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11486 Filed 5-10-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Kaiser Aluminum & Chemical Corp. and Reynolds Metals Co.; Notice of Cooperative Research Development Agreement

Notice is hereby given that pursuant to Section 6(a) of the National Cooperative Research Act of 1984, Public Law No. 98–462 (the "Act"), Kaiser Aluminum & Chemical Corporation and Reynolds Metals Company have filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to a cooperative research and development agreement effective January 29, 1985 and (2) the nature and objectives of the venture. Notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The parties to the cooperative research and development agreement are Kaiser Aluminum & Chemical Corporation and Reynolds Metals Company. The venture is for the research and development of suitable ingot metallurgy and manufacturing processes for the manufacture of commercially acceptable aluminum-lithium alloy products from ingots, and appropriate aluminum-lithium recycling technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-11444 Filed 5-10-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Eli Lilly Industries, Inc.; Registration as Manufacturer of Controlled Substances

By Notice dated January 22, 1985, and published in the **Federal Register** on January 30, 1985; (50 FR 4282) Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7 State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above from for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 1, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11476 Filed 5-10-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Committee Management Advisory Committee for Design, Manufacturing, and Computer Engineering; Notice of Establishment

Pursuant to the Federal Advisory Committee Act (Pub.L. 92–463), I have determined that the establishment of the Advisory Committee for the Division of Design, Manufacturing, and Computer Engineering is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Design, Manufacturing, and Computer Engineering.

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impact of Foundation-supported research and related activities in design, manufacturing, and computer engineering.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The committee will operate on a continuing basis subject to its renewal every 2 years.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be individuals eminent in design, manufacturing, and computer engineering. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities, women and minorities, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, Foundation policy and procedures, GSA Interim Regulations on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Erich Bloch,

Director.

May 8, 1985.

[FR Doc. 85-11495 Filed 5-10-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325/324]

Carolina Power & Light Co.; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considerating issuance, pursuant to 10 CFR 20.302(a), of an approval to burn radioactively contaminated oil, to the Carolina Power & Light Company (CP&L, the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The approval would permit the licensee a one-time approval to dispose of 12,000 gallons of oil containing about 21 μCi of Co-60 by incineration in the incinerator built and approved for operation by the State. Any approval for continuous burning during the plant lifetime would require Technical Specifications.

The Need for the Proposed Action

The approval is requested because burning the oil rather than burying it at a low level waste disposal site would save a significant amount of money (about one-third of a million dollars) and a significant amount of burial space (over 4,000 cubic feet).

Environmental Impact of the Proposed Action

A. Radiological Impact Assessment/ Public Radiation Exposure

The staff's estimates of the impacts on the public from the proposed burning of contaminated oil considered the major sources of radioactivity and the principal environmental pathways. Public radiation exposure from the proposed burning of contaminated oil at

the Brunswick plant can be evaluated by comparing the estimated quantity 21 μCi of Co-60 released from burning the oil with the annual average release of Co-60 from normal operations. Table 1 compares this release rate with the effluent releases of Co-60 for the years 1976 through 1981 from the plant for normal operations. The maximum release of Co-60 from the burning of contaminated oil is about 0.1% of the average of the plant's actual annual releases of Co-60 for normal operations.

TABLE 1. COMPARISON OF THE ESTIMATED QUANTITY OF COBALT-60 AIRBORNE RELEASE FROM ONE TIME BURNING OF 12,000 GALLONS OF CONTAMINATED OIL WITH THE ANNUAL AVERAGE AIRBORNE RELEASES OF COBALT-60 FROM NORMAL OPERATIONS

Year of normal operations	Airborne releases of Cobalt-60 per year per reactor [1] (microcuries)
1976	1,200
1977	14,000
1978	7,800
1979	19,000
1980	78,000
1981	17,000
Average	23,000
Burning of contaminated oil	21

[1] Carolina Power and Light Company, "Brunswick Steam Electric Plant, Semiannual Environmental and Effluent Release Reports," January 1, 1976 through December 31, 1981.

On the basis of this comparison, the staff concludes that the offsite environmental impact that may occur during the period of this procedure will be much smaller than that which occurs during normal operation.

The staff has estimated the doses to individual members of the public as well as the population as a whole in the area surrounding Brunswick based on burning oil containing 21 μCi of Co-60 using the calculational methods presented in Regulatory Guide 1.109. The staff estimated the total body and organ doses for the ground shine and inhalation pathways for individual members of the general public of all ages at the worst site boundary location, 914 meters northeast of the plant resulting from the release of airborne radioactive effluents during incineration of the waste oil. All of the activity in the oil was conservatively assumed to be released as an effluent. A conservative atmospheric dispersion factor

$$\frac{X}{Q} \text{ of } 8.4\times10^{-4}$$

sec/m ^{3} and relative deposition factor,

$$\frac{D}{Q} \text{ of } 6.4\times10^{-9}$$

for ground level release (USNRC 1983) were used in these estimates. These dose estimates are presented in Table 2.

TABLE 2. DOSES TO THE MAXIMALLY EXPOSED INDIVIDUAL MEMBERS OF THE GENERAL PUBLIC OF ALL AGES RESULTING FROM THE INCINERATION OF WASTE OIL RELEASING RADIOACTIVITY EQUIVALENT TO 21 MICRO-CURIES OF CO-60

Pathway/age group	Highest dose (mrem/yr)	
	Total body	Any organ
Ground shine/all ages	<0.001	[1] <0.001
Inhalation/ Adult	<0.001	[2] <0.003
Teen	<0.001	[2] <0.005
Child	<0.001	[2] <0.004
Infant	<0.001	[2] <0.003

[1] Skin.
[2] Lung.

The total body and skin doses to individual members of the public of all ages due to the external gamma radiation from Co-60 deposited on the ground surface are estimated to be less than 0.001 mrem/yr. The total body and lung doses to individual members of the general public of all ages via the inhalation pathway were estimated to be less than 0.01 mrem/yr.

To provide a perspective on the radiological impact of burning the waste oil, note that the preceding dose estimates are less than 0.1% of the NRC dose design objectives of Appendix I to 10 CFR 50 and the EPA radiation protection standards in 40 CFR Part 190.

The doses to the population of 190,000 within 80 kilometers of the plant site (USAEC, 1974) are estimated to be less than 0.0005 person-rem to the total body from the airborne effluents of burning the waste oil.

By comparison, every year the same population of about 190,000 persons will receive a cumulative total body dose of more than 19,000 person-rems from natural background radiation of about 0.1 rem per year person (NCRP-45, 1975). Thus, the total body dose to the population from the burning of oil is estimated to be less than one ten-millionth of the annual dose due to natural background. On this basis, the staff concludes that the doses to individuals in unrestricted areas and to the population within 80 kilometers due to airborne effluents from the burning of oil will not be environmentally significant.

In summary, the estimated radioactive releases resulting from the burning of oil are less than those due to normal plant operation. The doses due to these releases are small compared to the NRC dose design objectives in Appendix I to 10 CFR 50, the EPA dose standards in 40 CFR Part 190 and to the annual doses from natural background radiation. Therefore, the radiological impact of the incineration of waste oil will not significantly affect the quality of the human environment.

B. Radiological Impact Assessment/ Occupational Exposure

This section contains the staff's estimates of the radiological impacts on the plant workers from the proposed burning of contaminated oil. Potential onsite radiation dose problems are minimized by the small quantity of radioactivity (21 μCi of Co-60) present in the oil. Normal radiation control procedures (NUREG-0800 and Regulatory Guide 8.8) should preclude any significant doses from surface contamination and special procedures and containment to control any spillage of contaminated oil are not required. If all of the Co-60 contained in the contaminated oil were deposited at one point in the auxiliary boiler or general purpose incinerator over the expected 20–30 year life of the plant, the maximum 1-foot exposure rate is estimated to be approximately 2.5 mR/hr. It is highly unlikely that all of the Co-60 contained in the contaminated oil will be accumulated at one point.

Assuming an average worker exposure time of 1 hr/day, the annual dose to the worker would be 0.070 rem/yr at a distance of 3 feet. This dose estimate to the worker due to the proposed burning of oil is less than 2% of the 10 CFR 20 dose limit of 5 rem/yr.

Based on the above assessment, the staff concludes:

(1) The licensee has taken appropriate steps to ensure that occupational dose will be maintained as low as is reasonably achievable and within the limits of 10 CFR Part 20.

(2) The estimated doses to the general public are:

(a) Much less than those incurred during normal operation at Brunswick Steam Electric Plant, Units 1 and 2, and

(b) negligible in comparison to the dose members of the public receive each year from exposure to natural background radiation.

C. Non-Radiological Impacts/Air Pollution

The licensee applied to the State of North Carolina (the State) for a permit to build and operate an incinerator. Among the wastes to be incinerated was waste lubricating oil. The State issued a

permit (No. 5556R) to allow the construction and operation of the incinerator on October 22, 1984. The permit limits the amounts of PCB, Pb, etc. that may be in the waste to be incinerated. A consultation with the State revealed that an evaluation of the incineration of the waste lubricating oil, as well as other wastes, resulted in combustion products that were within the limits of the air quality standards and, based on its review, the State issued the permit.

The State is aware of the Auxiliary Boilers (register No. 15 NCAC 2D.0202) at the Brunswick Plant and, while operating these boilers with No. 2 fuel oil, CP&L does not need a permit.

Based on consultation with the State and its review of the operation of the incinerator, including waste lubricating oil, we find operation of the incinerators with waste lubricating oil is an acceptable impact. Operation of the Auxiliary Boilers with waste lubricating oil is not an acceptable impact without a State permit.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff consulted with the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management and the Department of Human Resources, Radiological Protection Branch. Based on that consultation, the staff found that the Auxiliary Boiler is registered under No. 15 NCAC 2D.0202 which does not include the combustion of waste lubricating oil, and the Incinerator is operated under Air Permit No. 5556R which does permit the combustion of waste lubricating oil.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed approval.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for approval dated November 21, 1983, as supplemented April 20, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Southport-Brunswick County Library, 104 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

References

USAEC, 1974, "Final Environmental Statement related to the continued construction and proposed issuance of an operating license for the Brunswick Steam Electric Plant, Units 1 and 2," United States Atomic Energy Commission, p. V–43, Docket Nos. 50–324 and 50–325, January 1974.

U.S. Nuclear Regulatory Commission, RG 1.109, Revision 1, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I," October 1977.

USNRC, 1983, Memorandum dated December 19, 1983 from I.W. Spickler to J.V. Nehemias on "Burning of Contaminated Oil at Brunswick," Docket Nos. 50–325/324.

National Council on Radiation Protection (NCRP), 1975, "Natural Background Radiation in the United States," NCRP Report No. 45.

U.S. Nuclear Regulatory Commission, NUREG–0800, "Radiation Protection," in: "Standard Review Plan," Chapter 12, July 1981 (formerly issued as NUREG–75/087).

U.S. Nuclear Regulatory Commission, Regulatory Guide 8.8, Revision 3, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations will be as Low as is Reasonably Achievable," June 1978.

[FR Doc. 85–11505 Filed 5–10–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

Dairyland Power Cooperative; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Provisional Operating License No. DPR–45, issued to the Dairyland Power Cooperative for operation of the La Crosse Boiling Water Reactor (LACBWR) in Vernon County, Wisconsin. Notice of consideration of issuance of this amendment was published in the **Federal Register** on October 26, 1983 (48 FR 49584).

The amendment, as proposed by the licensee, would change the LACBWR Technical Specifications to require that Type A containment leakage tests be performed no less often than every 18 months if two consecutive tests are failed. The requirements in 10 CFR Part 50, Appendix J, Section III.A.6.(b) state that such tests are required at every refueling outage or every 18 months whichever comes first. Since fuel cycles at La Crosse are usually 12–15 months in duration, the licensee's proposal does not comply with Appendix J and was consequently denied.

The licensee's current Technical Specifications require Type C containment leakage testing during each refueling shutdown, but in no case at intervals longer than 2 years. The licensee's application proposed that this testing be done only "at intervals no greater than 2 years". Section III.D.3 of Appendix J requires that Type C tests be performed at each reactor shutdown for refueling, but in no case at intervals greater than 2 years. Thus, the licensee's proposed changes does not comply with Appendix J and was denied.

All other provisions of the Appendix J portion of the amendment request have been approved by Amendment No. 40 or will be resolved by separate correspondence. Notice of issuance of Amendment No. 40 will be published in the Commission's next regular monthly **Federal Register** notice.

The licensee was notified of the Commission's denial of the proposed technical specification changes by letter dated April 23, 1985.

By June 1985 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to O.S. Heistand, Jr., Esquire, Morgan, Lewis and Bockius, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 29, 1982, and (2) the Commission's Safety Evaluation issued with Amendment No. 40 to DPR–45 dated April 23, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear

Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-11506 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 309-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "General Guidance for Designing, Testing, Operating, and Maintaining Emission Control Devices at Uranium Mills" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to describe procedures acceptable to the NRC staff for designing, testing, operating, and maintaining emission control devices to ensure the reliability of their performance.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accomplished by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by July 8, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Keith G. Steyer,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 85-11503 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (PASNY/the licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the licensee to operate the James A. FitzPatrick Nuclear Power Plant (the facility) at power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Oswego County, New York. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48(c)(4) of 10 CFR Part 50 requires a licensee to complete, if necessary, the alternative shutdown capability at a nuclear power plant according to the schedule detailed in the rule. The schedule in the rule calls for implementation to be complete before startup after the earliest of the following events commencing 180 days or more after NRC approval of the design of the alternative shutdown capability:

(1) The first refueling outage;

(2) A planned outage lasting 60 days or more; or

(3) An unplanned outage lasting 120 days or more.

By letter dated April 26, 1983, the NRC staff transmitted a Safety Evaluation to the licensee which concluded that the licensee's alternative safe shutdown capability and associated proposed modifications met the requirements of sections III.G.3 and III.L of Appendix R to 10 CFR Part 50 within the control room, cable spreading room and relay room and were therefore acceptable. (These three areas were identified in an earlier staff Safety Evaluation as areas in which redundant systems could be damaged by a single fire, thereby affecting safe shutdown. The licensee committed to provide alternative safe shutdown capability for these areas.) In accordance with the schedule set forth in the rule and cited above, all necessary modifications are to be completed before startup from the current Reload 6/Cycle 7 refueling outage, which began on Febraury 16, 1985.

By letter dated March 15, 1985, the licensee informed the NRC staff that, as a result of an independent third party review of its fire protection progarms and systems, it had identified a condition existing at the FitzPatrick facility similar to that described in IE Information Notice No. 85-09, "Isolation Transfer Switches and Post-Fire Shutdown Capability," dated January 31, 1985. This Information Notice describes a condition at Kansas Gas and Electric Company's Wolf Creek nuclear power plant that could disable the plant's alternative shutdown system in the event of a fire in the control room. Fire damage could open fuses, rendering the equipment inoperable if the fuses open before control is transferred to the alternate shutdown circuit. At FitzPatrick, the scheme used to transfer control of shutdown systems to the alternative shutdown system does not include redundant fuses. To correct this condition, the licensee has committed to install redandant fuses in alternative shutdown system circuits.

In its March 15, 1985 letter, the licensee stated that, because this condition was identified only recently, the installation of redundant fuses could not be completed prior to startup from the refueling outage currently in progress as required by 10 CFR 50.48(c)(4). Therefore, in accordance with the provisions of 10 CFR 50.12, the licensee has requested a schedular

exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completing all modifications required for alternative shutdown capability until the startup of Cycle 8 (estimated January 1987). In a subseqent letter dated April 5, 1985, the licensee provided justification as to why the installation of redundant fuses could not be completed prior to startup from the current outage, now scheduled for May 6, 1985. Among the reasons stated are:

(1) The design and engineering of the modifications, including preparation of procurement specifications for Class 1E equipment, design of new conduit runs and seismically qualified supports, and revision of around 100 plant drawings, would require between five to seven months.

(2) Estimated procurement time for all requisite materials and components is at least five months after issuance of specifications.

(3) A significant portion of the required work can be performed only during an outage because of equipment locations and operating restrictions.

The licensee's letters dated March 15 and April 5, 1985 also described interim compensatory measures to be taken to provide an acceptable level of alternative shutdown capability until the necessary modifications are completed. The licensee has committed to implement these measures prior to startup from the refueling outage now in progress.

The areas affected by the schedular exemption are the control room, cable spreading room and relay room. The cable spreading room and relay room are presently protected by area-wide automatic fire detection and fire suppression systems, which annunciate alarms in the constantly-manned control room. If a fire should occur in these locations, it would be detected in its formative stages before significant flame propagation or temperature rise occurred. The plant fire brigade would be summoned and fire extinguishment achieved by the use of portable fire extinguishers or manual hose stations. If rapid fire spread occurred, the automatic fire suppression system in these rooms would actuate to put out the fire and protect vulnerable shutdown-related systems. The staff, therefore, has reasonable assurance that safe shutdown capability can be maintained for the cable spreading room and relay room pending completion of the licensee's planned modifications.

In the control room, the licensee, by letter dated April 5, 1985, committed to implement a continuous fire watch until modifications are complete. The fire watch will observe all areas of the control room and will be able to react immediately upon any indication of fire. The watch will be trained in the safe use of portable fire extinguishers and will, therefore, be capable of suppressing a fire before significant damage to shutdown-related systems occurs.

The staff therefore has reasonable assurance that, pending completion of the licensee's Appendix R-related modifications, the advent of a fire in any of these areas will not result in damage to systems such that safe shutdown could not be achieved and maintained.

The staff has reviewed the licensee's justification for schedular exemption and the interim compensatory measures to be taken and finds these acceptable. Thus, the staf has concluded that schedular exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of March 15, 1985, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completion of alternative shutdown capability at the James A. FitzPatrick Nuclear Power Plant until the startup of Cycle 8 (estimated January 1987).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 15515).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 6th day of May, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11504 Filed 5-10-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1985, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1985, 26.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 74.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 6, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-11465 Filed 5-10-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22021; File No. SR-BSECC-84-01]

Self-Regulatory Organizations; Order Approving Proposal Rule Change by Boston Stock Exchange Clearing Corp.

On May 29, 1984, the Boston Stock Exchange Clearing Corporation ("BSECC") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change establishes the relationship between, and respective duties of, BSECC and its members consistent with section 17A of the Act and Division of Market Regulation Standards for the Registration of Clearing Agencies (the "Standards"). The Commission solicited public comment concerning the proposal rule change on July 27, 1984. No comments were received. As discussed below, the Commission is approving the proposed rule change.[1]

The proposed rule change revises BSECC's rules to reflect recent changes in BSECC's operations and BSECC's relationships with the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company (the "DTC"). The proposal rule change covers, among other things: (1) Minimum qualifications for

[1] *See* Securities Exchange Act Release No. 21178 (July 27, 1984), 49 FR 31022 (August 2, 1984).

membership; (2) maintenance and use of participant clearing fund deposits; (3) services offered to members; (4) member business conduct; (5) establishment of fees; (6) audit and other financial reporting; (7) procedures with respect to disciplining participants for violations of BSECC rules; (8) procedures with respect to denial of participation status to any applicant and prohibiting or limiting any person's access to BSECC's services; and (9) authority for appropriate disciplinary actions for violation of BSECC's rules.

New BSECC Rule I establishing qualifications for membership, the rights and obligations of members using BSECC's services, and the use of services by non members. Rule II governs BSECC's clearing fund contributions and BSECC's use and investment of clearing fund assets. Rule II also authorizes BSECC to collect, on a pro rate basis, additional clearing fund contributions but establishes a maximum assessment so that a participant can ascertain its maximum potential liability.

New Rule III authorizes BSECC to provide various services to its members. These services include trade comparison, clearance and bood-entry settlement. (BSECC relies on NSCC and DTC to perform many of the tasks necessary in offering these services.) BSECC also offers members BSE specialists financing services to meet their daily settlement obligations and member institutions access to DTC's Institutional Delivery System.

New Rule IV concerns the business conduct of members. Under this Rule, for example, members must have representatives available during normal business hours. The Rule specifies BSECC's right to act on behalf of a member, members' accessibility to the premises of BSECC, settlement of members' accounts and what constitutes sufficient "Notice" to members by BSECC. In addition, the rule gives BSECC the right to inspect member's books and records and to request information from its members concerning activities that might affect that member's dealings or relationship with BSECC.

New Rule V authorizes BSECC to charge fees on a non-discriminatory basis for services rendered. The Rule also authorizes BSECC to charge members for unusual expenses like the production of records pursuant to a court order or other legal proceeding.

New Rule VI concerns annual financial statements and internal accounting control reports and distribution of those reports. Among other things, the rule provides for an annual financial audit of BSECC's financial statements and an annual review of internal accounting control by BSECC's independent accountant.[2]

Rule IX covers the termination and suspension of BSECC members except by reason of insolvency. The Rule enables a member to terminate membership in BSECC voluntarily. That termination would be effective 30 days after the member's written notice to BSECC. The rule also authorizes BSECC to terminate membership summarily for cause, *i.e.*, to cease to act for a member, in certain circumstances.[3] Rule IX specifies that BSECC promtly must notify the terminated member, the Commission and any member that might be affected by the termination. In addition, the member has a right to a prompt hearing in accordance with Rule XI. Notwithstanding termination of BSECC membership, however, the terminated member would continue to be liable for all services or securities transactions compared, cleared or settled through BSECC. As collateral for these liabilities, Rule IX would grant BSECC a lien on the terminated member's funds or securities, to the extent such liens are authorized under Securities Exchange Act Rules 8c-1 and 15c2-1.

New Rule X covers insolvencies of BSECC members and defines a member as insolvent if the member fails or is unable to perform its contracts or obligations. The Rule further states that BSECC shall cease to act for the insolvent member from the "time of insolvency," unless it determines to do otherwise and notifies the insolvent member and other members as to how pending matters will be handled. The Rule gives BSECC the authority to close out the insolvent member's positions and grants BSECC a lien on all of the member's securities and cash except on customer fully paid securities that would be prohibited by Commission Rules 8c-1 and 15c2-1 under the Act.

New Rule XI sets forth BSECC's procedures concerning discipline and denial of access. The Rule lists sanctions that BSECC can impose on members for violations of its rules or its agreements with members. The list of sanctions include the right to censure, suspend, expel, limit member activities or fine. The rule also allows BSECC to impose a fine of less than $1,000 upon a member using a summary notice process. When BSECC imposes such fines, BSECC must notify the affected members of the charges, the fine, and the member's right to request a hearing within ten days of BSECC's notice. If the member requests a hearing, collection of the fine is stayed until the hearing process is completed; otherwise, the fine becomes final ten days after written notification to the member.

Before BSECC may impose any sanction or any fine over $1,000, new Rule XI requires BSECC to give the member notice of the charges and the member's right to a hearing. The member has twenty-five days from receipt of the notice to file a reply and/or request for a hearing concerning the allegations. Upon receipt of a request for a hearing, BSECC must select a three-member panel, a hearing officer and two panelists, to hear the case and render a decision. The member has a right to a fair and impartial panel and has the right to object, for cause, to any prospective panelists. The conduct of the hearing and the admissibility of evidence shall be determined by the hearing officer in accordance with section 6 of new Rule XI. Upon conclusion of the hearing, section 7 of new Rule XI requires that each specific charge be determined by a majority of the panel, and once the panel has reached a decision, the member be properly notified in writing of the panel's decision.

Sections 8 and 9 of new Rule XI concerns the review process. Within twenty days after notification of the panel's decision, the affected member may request the BSECC's Board of Directors to review the decision. The Board, upon review, either summarily or after a hearing, may sustain, reverse or modify such determination or return the matter to the panel for further findings. Upon completion of the hearing process, notice of the final decision must be given to that member and a copy of that notice sent to the Commission.

[2] As discussed in Securities Exchange Act Release No. 21355 (September 20, 1984), 49 FR 37879 (September 26, 1984), the Commission granted BSECC a one year exemption from the Act and Standards with respect to the annual report on BSECC's system of internal accounting control. Under the terms of that exemption during FY 1985, BSECC's independent accountant will open with respect to BSECC's system of internal accounting control for a period fo three months. Thereafter, BSECC will obtain a for-the-period annual report.

[3] *I.e.*, the Rule Authorizes BSECC to cease to act for a member when that member: (1) Fails to satisfy its clearing fund deposit obligations; (2) fails to pay any fine, fee or other charge; (3) fails to meet its settlement obligations; (4) experiences financial or operational conditions such that continuation as a member would jeopardize the interest of other members or BSECC; or (5) fails to meet the qualifications and requirements for membership set forth in Rule I.

Finally, Rule XIII has been revised to reflect current BSECC procedures regarding such things as: Delegation of authority; amendments to the by-laws, rules or procedures; suspension of the rules or procedures; and the indemnification of BSECC by its members except in cases of gross negligence, fraud or criminal acts of BSECC or its officers, employees or agents.

Discussion

BSECC believes that the proposal is consistent with sections 17A(b)(3) and 17A(b)(5) of the Act because the proposed amendments, among other things, provide: (i) Minimum qualifications for membership; (ii) adequate safeguards for securities and funds which are in BSECC's custody or control or for which it is responsible; (iii) equitable allocation of reasonable dues, fees and other charges among its participants; (iv) fair procedures with respect to disciplining participants, denying participation status to any applicant and prohibiting or limiting any person's access to BSECC's services; and (v) authority for appropriate disciplinary actions for violations of BSECC's rules. In addition, BSECC believes these revisions will conform BSECC's rules to Division of Market Regulation standards for full registration of clearing agencies.

During the course of the full registration review process, this proposed rule change was specifically considered by the Commission and was found to be consistent with the provisions of the Act and the Standards. For the reasons discussed in the Full Registration Order,[4] the Commission finds that the proposed rule change is consistent with the Act and the rules thereunder and, in particular, section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–11518 Filed 5–10–85; 8:45 am]

BILLING CODE 8010-01-M

[4] *See* Securities Exchange Act Release No. 21335 (September 20, 1984), 49 FR 37879 (September 28, 1984).

[Release No. 34-22020; File No. SR-BSECC-84-02]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange Clearing Corp.

On September 7, 1984, the Boston Stock Exchange Clearing Corporation ("BSECC") submitted to the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would conform BSECC's By-laws to sections 17A(b)(A)–(I) of the Act and Division of Market Regulation Standards for the Registration of Clearing Agencies (the "Standards").[1] On March 22, 1985, BSECC amended the proposed rule change.

The proposed rule change, among other things, revises BSECC's By-laws relating to: (1) The selection and composition of BSECC's Board of Directors; (2) the selection and duties of BSECC's Audit Committee; and (3) the establishment of BSECC's clearing fund. The proposed rule change also deletes from BSECC's By-laws several sections that have been incorporated into BSECC's Rules during the Commission's review of BSECC's registration application.

As amended on March 22, 1985, the proposed rule change revises Article II of BSECC's By-laws to specify that a majority of BSECC directors must be BSECC members. Article II would require BSECC's Nominating Committee to solicit names for possible nomination from all segments of the BSECC community and to select BSECC directors with a view toward assuring fair representation of the interest of a cross-section of BSECC members. New Article X establishes an Audit Committee composed of non-management BSECC and Boston Stock Exchange directors.

New Article VIII of BSECC's By-laws clarifies BSECC's authority to maintain a clearing fund "to make good losses suffered by the Corporation or its clearing members incident to the operation of its clearance and settlement business." BSECC's rules, however, set forth specific requirements concerning the clearing fund, such as minimum member contributions, BSECC's investment of clearing fund assets, and BSECC's use of clearing fund assets to meet certain clearance and settlement losses or liabilities.

The proposed rule change would delete several by-law provisions, including all references in Article VII to membership requirements (these requirements are now stated in BSECC's Rules). In addition, Section 1 of Article VIII, Article IX and Section 2 of Article X regarding certain member services now appear in the rules and, therefore, also would be deleted. Finally, former Article XI, concerning the promulgation of BSECC Rules, would be renumbered Article IX.

BSECC believes the proposed rule change is consistent with the Act. In particular, BSECC believes that new Article II is consistent with section 17A(b)(3)(C) of the Act and the Standards, because the revisions would help ensure that a cross-section of the member community enjoys fair representation in the selection of the board of directors and the administation of BSECC's affairs. BSECC also believes that Article VIII (authorizing a clearing fund) and Article X (establishing an audit committee) are consistent with section 17A(b)(3)(A) of the Act and the Standards, because these Articles help to ensure the safeguarding of securities and funds in BSECC's custody or control or for which it is responsible.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of publication in the **Federal Register.**

During the course of the full registration review process, the Commission specifically considered the substance of this proposed rule change and found it to be consistent with the Act and the Standards. For the reasons discussed in the Full Registration Order

[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

dated September 20, 1984.[2] the Commission believes that the proposed rule change is consistent with the Act and the rules thereunder. The Commission believes that the proposal's benefits should be made available to BSECC and is participants as soon as possible.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11519 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22018; File No. SR-MCC-85-2]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving Proposed Rule Change

Midwest Clearing Corporation ("MCC") on March 11, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. On March 26, 1985, the Commission published notice of the proposed rule change in the **Federal Register** to solicit public comment.[1] No comment has been received. The Commission is approving the proposal.

MCC's proposal would require mandatory input of accrued interest on trade input forms [2] for MCC's Municipal Bond Comparison System ("MBCS").[3] Under MCC's current System, participants may submit accrued interest on the trade input forms.[4] If a Participant enters the accrued interest, the interest is shown on contract sheets and receive/deliver tickets.

MCC began monitoring trade input forms in February 1985 for inclusion of accrued interest data and anticipates that its monitoring efforts will end in early May. During this monitoring period, comparison input has not been rejected for missing or incomplete accrued interest data. After the end of the monitoring period, participants will be required to input accrued bond interest on their trade input forms, and MCC may reject bond input that is submitted without accrued interest data.

MCC believes the proposed rule change is consistent with the requirements of the Act in that it provides for the prompt and accurate clearance and settlement of municipal securities transactions. MCC further believes that the proposal will facilitate municipal bond trade comparison and thereby enhance the establishment of a naitonal system for municipal securities clearance and settlement.

For the following reasons, the Commission believes MCC's proposal is consistent with Section 17A of the Act and should be approved. The Commission agrees with MCC that the proposal will facilitate the prompt and accurate clearance and settlement of municipal securities transactions. The Commission agrees with MCC and the great majority of its participants that accrued interest should be a mandatory comparison item. Parties to a municipal securities transaction should agree about the amount of accrued interest, which can be substantial, due from the buyer and payable to the seller on settlement day. The Commission also believes that MCC's proposal will help to eliminate any financing expenses and settlement delays from having to resolve accrued interest differences outside the automated clearing agency environment. Accordingly, the Commission believes that the proposal will enhance the establishment of a national system for municipal securities clearance and settlement.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11521 Filed 5-10-85; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* Securities Exchange Act Release No. 21335 (September 20, 1984), 49 FR 37879 (September 26, 1984).

[1] Securities Exchange Act Release No. 21864 (March 19, 1985), 50 FR 11976 (March 26, 1985).

[2] This requirement applies to all municipal bond input, *i.e.*, T+1, As-of, Withhold, and Demand-As-Of. For zero coupon bonds, multipliers, and other bonds trading without interest, participants must enter zeros into the accrued interest field.

[3] For a description of MCC's MBCS, *see* Securities Exchange Act Release No. 21723 (February 5, 1985), 50 FR 5833 (February 12, 1985) and Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28490 (July 12, 1984), in which the Commission approved that System.

[4] A recent participant survey conducted by MCC showed that more than 85 percent of all MBCS participants submit accrued interest as part of their comparison input. A majority of MBCS users have recommended to MCC that accrued interest input should be mandatory.

[Release No. 34-22019; SR-OCC-85-5]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of a Proposed Rule Change.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

OCC's proposed rule change would amend OCC Rule 602(a) to reduce clearing members' minimum margin OCC requirements for Treasury securities and foreign currency options. The proposed rule change is necessary to conform Rule 602(a) to OCC Rule 601.[1]

OCC believes that the proposed rule change is consistent with the requirements of the Act in that it removes an impediment to participation in the non-equity options market by reducing costs. OCC further believes that the proposal would not adversely affect the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register**. Please refer to File No. SR-OCC-85-5, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of OCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

[1] *See* Securities Exchange Act Release No. 20930 (May 4, 1984), 49 FR 20097 (May 11, 1984), in which the Commission approved a proposed rule change amending OCC Rule 601 to reduce the minimum margins for Treasury securities and foreign currency options.

Dated: May 7, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–11520 Filed 5–10–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Order 85–5–40; Docket 42731]

Application of Trail Lake Flying Service, Inc. d/b/a Harbor Air Service for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85–5–40), Docket 42731.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order granting Trail Lake Flying Service d/b/a Harbor Air Service a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation and in intra-Alaska all-cargo Service.

DATE: Persons wishing to file objections should do so in Docket 42731 by May 24, 1985 and addressed to the Documentary Services Division, C–55, Department of Transportation, Washington, D.C. 20590.

ADDRESSE: Responses should be filed in Docket 42731 and addressed to the Documentary Services Division, C–55, Department of Transportation, Washington, D.C. 20590, and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Arthur B. Barnes, Office of Essential Air Service, Service Analysis Division I, S–63, Department of Transportation, 400 7th Street, N.W., Washington, D.C. 20590 (202) 426–9813.

Dated: May 7, 1985

Mathew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–11475 Filed 5–10–85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85–037]

Acceptance of Plan Review, Inspections and Examinations by the American Bureau of Shipping (ABS) on Behalf of the United States Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice of public comment period.

SUMMARY: The Coast Guard is requesting public comment on the implementation of certain delegations by the Coast Guard to the American Bureau of Shipping regarding vessel plan review, inspection and tonnage measurement.

DATE: Comments must be received prior to June 10, 1985.

ADDRESS: Comments may be mailed to Commandant (G–CMC/21), U.S. Coast Guard, Washington, D.C. 20593.

SUPPLEMENTARY INFORMATION: Discussion: In 1981, the Coast Guard was given authority by Congress to delegate certain plan review and vessel inspection and examination functions to the American Bureau of Shipping (ABS), a private sector, non-profit classification society. There followed three Memoranda of Understanding (MOU) between the Coast Guard and ABS, two MOUs concerning vessel plan review and inspection and one MOU concerning vessel tonnage measurement.

The first MOU concerning plan review and inspection was signed June 9, 1981 and implemented by Navigation and Vessel Inspection Circular (NVIC) 7–81. This MOU was expanded by MOU II signed April 27, 1982 and implemented by NVIC 10–82. These MOUs sought to reduce duplication in plan review and vessel examination. These MOUs do not relieve the Coast Guard of its statutory rsponsibilities for commercial vessel safety. To carry out these responsibilities, the Coast Guard has maintained oversight and is the final reviewing authority in administrative appeals of the activities delegated to ABS. The delegations contained in the MOUs sought to shorten time to review certain vessel construction plans, simplify inspection procedures, and allow better use of Coast Guard inspection personnel.

The MOU concerning vessel tonnage measurement was signed February 1, 1982 and was implemented by NVIC 1–82. This MOU provided for Coast Guard acceptance of certain ABS measurement certificates. Because of the cost involved, ABS measurement was offered as an alternative to Coast Guard measurement rather than being mandatory. The use of ABS measurement services will reduce the Coast Guard measurement workload.

To assess the effects of these delegations and to report to Congress, the Coast Guard is seeking comments from industry and the general public. In addition to general comments, we wish that the following questions be addressed. Have these procedures led to more efficient plan review and inspections? Have there been any undue problems with interpretation or in appeals of decisions under these delegations? What experience have you had with ABS tonnage measurement?

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

May 8, 1985.

[FR Doc. 85–11498 Filed 5–10–85; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in April 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2000-X	DOT-E 2000	Union Carbide Corp. Danbury, CT	49 CFR 172.101, 173.304(a), 173.316(a)(2)	To authorize use of a non-DOT specification portable tank or a DOT Specification 4L cylinder, for shipment of flammable liquefied compressed gases. (Mode 1.)
2000-P	DOT-E 2000	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.304(a), 173.316(a)(2)	To become a party to Exemption 2000 (Mode 1.)
3353-X	DOT-E 3553	Kerr-McGee Chemical Corp., Oklahoma City, OK	49 CFR 173.163(a)(7), 173.239a(a)(2)	To authorize transport of ammonium perchlorate, potassium chlorate or sodium chlorate, in a non-DOT specification steel or aluminum portable tank (Modes 1, 2.)
3768-P	DOT-E 3768	Vanchem, Inc., Lockport, NY	49 CFR 173.119, 173.245, 173.288	To become a party to Exemption 3768. (Mode 1.)
4177-X	DOT-E 4177	Hydrodyne Industries, Inc., Hauppauge, L.I., NY.	49 CFR 173.302(a)(1), 175.3	To authorize use of a non-DOT specification pressure vessel containing a nonflammable, nonliquefied gas. (Modes 1, 2, 3, and 4.)
4262-X	DOT-E 4262	Schlumberger Well Services, Houston, TX	49 CFR 172.191, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Modes 1, 3.)
4262-X	DOT-E 4262	Schlumberger Offshore Services, Houston, TX.	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached (Modes 1, 3.)
4338-X	DOT-E 4338	Stauffer Chemical Co., Westport, CT	49 CFR 173.119(m), 173.245a, 173.247	To authorize use of DOT specification 3AA2015 cylinders and DOT Specification 51 portable tanks, for shipment of certain corrosive liquids and a flammable liquid. (Modes 1, 2, and 3.)
4354-P	DOT-E 4354	Vanchem, Inc., Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To become a party to Exemption 4354. (Modes 1, 2, and 3.)
4453-P	DOT-E 4453	Ladshaw Explosives, Inc., New Braunfels, TX.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4575-X	DOT-E 4575	Union Carbide Corp., Danbury, CT	49 CFR 173.314(c), 173.315(a)	To authorize use of DOT Specification 106A500X and 110A500W multi unit tankcar tanks; DOT Specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed AAR 120A300W, 112A340W tank cars, for transportation of certain liquefied compressed gases. (Modes 1, 2, and 3.)
4884-X	DOT-E 4884	Union Carbide Corp., Danbury, CT	49 CFR 173.302(a)(1), 175.3, 178.61	To authorize shipment of gas-calibration mixtures of compressed gases, in non-DOT specification stainless steel cylinders complying with DOT Specification 4BW, with certain exceptions. (Modes 1, 2, 3, 4, and 5.)
4884-P	DOT-E 4884	Ashland Oil, Inc., Columbus, OH	49 CFR 173.302(a)(1), 175.3, 178.61	To become a party to Exemption 4884. (Modes 1, 2, 3, 4, and 5.)
5022-X	DOT-E 5022	Aerojet Strategic, Propulsion Co., Sacramento, CA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5022-X	DOT-E 5022	National Aeronautics and Space Administration Washington, DC.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To authorize shipment of certain Class A and Class B explosives in temperture controlled equipment (Modes 1, 2.)
5022-X	DOT-E 5022	The Boeing Co., Seattle, WA	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1)	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5206-X	DOT-E 5206	Mesabi Powder Co., Hibbing, MN	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents (Mode 1.)
5206-X	DOT-E 5206	Kesco, Inc., Kittanning, PA	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Atlas Powder Co., Dallas, TX	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Austin Powder Co., Cleveland, OH	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5248-X	DOT-E 5248	Rockwell International Corp., Anaheim, CA	49 CFR 173.431(a), 175.3	To authorize shipment of a certain quantity of polonium/210 in any DOT Specification approved outer Type A packaging. (Modes 1, 2, and 4.)
5600-P	DOT-E 5600	Synthatron Corp., Parsippany, NJ.	49 CFR 175.3, Part 173	To authorize to become a party to Exemption 5600. (Modes 1, 2, and 4.)
5600-X	DOT-E 5600	Ozark-Mahoning Co., Tulsa, OK	49 CFR 175.3, Part 173	To authorize transport of flammable or nonflammable compressed gases, flammable or corrosive liquids presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
6151-X	DOT-E 6151	Virginia Chemicals, Inc., Portsmouth, VA	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixures in inside nonefillable aluminum containers comparable to DOT Specification 2Q, with intergral pressure relief system. (Modes 1, 2.)
6267-X	DOT-E 6267	Alden Leeds, Inc., South Kearny, NJ	49 CFR 173.154, 173.217(a)	To authorize use of DOT and non-DOT specification doubled-faced fiberboard boxes, for shipment of certain oxidizing materials (Modes 1, 2, and 3.)
6267-P	DOT-E 6267	Hydrotech Chemical Corp., Marietta, GA	49 CFR 173.154, 173.217(a)	To become a party to Exemption 6267. (Modes 1, 2, and 3.)
6296-X	DOT-E 6296	Platte Chemical Co., Fremont, NE	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags (Modes 1, 2.)
6531-X	DOT-E 6531	Tavco, Inc., Chatsworth, CA.	49 CFR 173.302(a)(1), 175.3	To authorize use of a non-DOT Specification pressure vessel for shipment of a nonflammable compressed gas (Modes 1, 2, 4, and 5.)
6589-P	DOT-E 6589	International Safety, Devices, Inc., Hesperia, CA.	49 CFR 173.302(a)(1), 175.3	To become a party to Exemption 6589 (Modes 1, 2, 4, and 5.)
6610-P	DOT-E 6610	Akzo Chemie America, Chicago, IL	49 CFR 173.221	To become a party to Exemption 6610. (Modes 1, 2.)
6752-X	DOT-E 6752	Pennwalt Corp., Philadelphia, PA	49 CFR 173.301(d)(3), 173.304(a)(2)	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders forming part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6759-X	DOT-E 6759	Hercules, Inc., Wilmington, DE	49 CFR 173.87, 177.835(g)(2)	To authorize transport of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6762-P	DOT-E 6762	Kem Manufacturing Corp., Tucker, GA	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, and 4.)
6762-P	DOT-E 6762	Nutmeg Chemical Co. New Haven, CT	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, and 4.)
6772-P	DOT-E 6772	Thomas Gray & Associates, Inc., Orange, CA.	49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369.	To become a party to Exemption 6772. (Mode 1.)
7052-P	DOT-E 7052	Datasonics, Inc., Cataumet, MA	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Southwest Electronics, Inc., Stafford, TX	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7076-P	DOT-E 7076	Thomas-Scientific, Philadelphia, PA	49 CFR 173.286(b)	To become a party to Exemption 7076. (Modes 1, 2, 3.)
7286-X	DOT-E 7286	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain nonliquefied compressed gases in DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
7413-X	DOT-E 7413	Chilton Metal Products Division, Chilton, WI	49 CFR 173.302(a), 173.304(a)(1), 175.3, 178.42	To authorize transport of carbon dioxide, nitrogen and compressed air, in a non-DOT specification brazed steel cyliner. (Modes 1, 2, 3, 4, and 5.)
7451-X	DOT-E 7451	Union Carbide Corp Danbury, CT	49 CFR 173.304, 173. 315	To authorize use of non-DOT Specification pressure vessels, for transportation of a nonflammable gas. (Modes 1, 3.)
7505-X	DOT-E 7505	Platte Chemical Co., Greeley, CO	49 CFR 173.28(m), 173.346(a)(2), 173.358(a)(2), 173.359(a)(2), 173.359(b)(2)	To authorize use of DOT Specification 17C drums, previously used for shipment of class B poisons and reconditioned (decontaminated) (Mode 1.)
7513-X	DOT-E 7523	Messer Griesheim Industries, Inc., Valley Forge, Pa.	49 CFR 173.315(a)(1)	To authorize shipment of pressurized liquid oxygen, in DOT Specification MC-331 cargo tanks. (Mode 3.)
7721-X	DOT-E 7721	Applied Environments Corp., Woodland Hills, CA	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking, and sale of non-DOT Specification steel cylinders, for transportation of nonflammable, nonliquefied compressed gases. (Modes 1, 2, and 4.)
7822-X	DOT-E 7822	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.318(a)	To authorize shipment of liquid helium in specifically insulated non-DOT specification, triple shell, portable tanks. (Modes 1, 3.)
7929-X	DOT-E 7929	Austin Power Co. Beachwood, OH	49 CFR 173.65	To become a party to Exemption 7929. (Modes 1, 2.)
8009-X	DOT-E 8009	MCF Services, Inc., Golden, CO	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3)	To become a party to Exemption 8009. (Mode 1.)
8053-X	DOT-E 8053	Eastman Kodak Co., Rochester NY	49 CFR 173.118(a), 175.3	To authorize shipment of monoethylamine in inside glass bottles/metal cans, overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2, and 4.)
8086-X	DOT-E 8086	Boeing Aerospace Co., Seattle, WA	49 CFR 172.101, 172.102, 173.118(b), 173.119, 173.206, 173.87	To authorize transport of a cruise missile containing hazardous materials, packed in a wooden box. (Mode 1.)
8099-X	DOT-E 8099	Union Carbide Agricultural Products Co., Danbury, CT	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solid (Modes 1, 2, and 3.)
8099-X	DOT-E 8099	Union Carbide Corp., Danbury, CT	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solids. (Modes 1, 2, and 3.)
8127-X	DOT-E 8127	Societe Nationale Des Poudres et Explosifs Bergerac, France.	49 CFR 171.12(d), 173.127, 173.184, 178.224	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (Modes 1, 2, and 3.)
8127-X	DOT-E 8127	Hercules, Inc., Wilmington, DE	49 CFR 171.12(d), 173.127, 173.184, 178.224	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (Modes 1, 2, and 3.)
8131-X	DOT-E 8131	Lockheed Space Operations Co., Lompos, CA.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3.	To become a party to Exemption 8131. (Modes 1, 2, and 4.)
8144-X	DOT-E 8144	ICI Americas, Inc., Wilmington, DE	49 CFR 173.193, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums. (Modes 1, 3, and 4.)
8144-X	DOT-E 8144	Hercules, Inc., Wilmington, DE	49 CFR 173.193, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums (Modes 1, 3, and 4.)
8144-X	DOT-E 8144	Atlas Powder Co., Dallas, TX	49 CFR 173.193, 175.3, 176.3	To authorize transport of 10 percent nitroglycerine in propylene glycol or ethyl alcohol, in DOT Specification 2E polyethylene bottles or DOT Specification 2U containers overpacked in DOT Specification 12A or 12B fiberboard boxes, or DOT Specification 21C fiber drums. (Modes 1, 3, and 4.)
8167-X	DOT-E 8167	Manostat Corp., New York, NY	49 CFR 173.287, 173.3.	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystyrene/glass bottle inside packaging. (Modes 1, 2, 3, and 4.)
8184-P	DOT-E 8184	Austin Powder Co., Beachwood, OH	49 CFR 173.65	To become a party to Exemption 8184. (Modes 1, 2, and 3.)
8184-X	DOT-E 8184	Trojan Corp., Salt Lake City, UT	49 CFR 173.65	To authorize transport of flake trinitrotoluene in non-DOT specification composite bags. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	Eurotainer, S.A., Paris, France	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8230-P	DOT-E 8230	Seastar Chemicals, Div. of Seastar Instruments, Sidney, S.C., Canada.	49 CFR 173.268(b)(6), 173.269(a)(4)	To become a party to Exemption 8230. (Modes 1, 2, 3, and 4.)
8232-X	DOT-E 8232	Eurotainer, S.A. Paris, France	49 CFR 173.123(a), 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)
8445-P	DOT-E 8445	Thomas Gray & Associates, Inc., Orange, CA	49 CFR Part 173, Subpart D, E, F, &H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Hughes Aircraft Co., Fullerton, CA	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	U.S. Department of the Army, Falls Church, VA	49 CFR Parat 173, Subpart D, E, F, & H.	To become a party to Exemption 8445. (Mode 1.)
8451-X	DOT-E 8441	Stresau Laboratory, Inc., Spooner, WI	49 CFR 173.65, 173.86(e), 175-3	To authorize shipment of not more than 25 grams, of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, and 4).
8494-X	DOT-E 8494	Fruehauf Corp., Omaha, NE	49 CFR 178.342-6(a)	To authorize manufacture, marking and sale of DOT Specification MC-307 aluminum cargo tanks equipped with glass sight gauges in lieu of the acceptable gauging devices, for transportation of flammable gases. (Mode 1.)
8495-X	DOT-E 8495	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47	To increase the volumetric water capacity to not exceed 100 lbs. and the design service pressure to not exceed 1400 psi. (Modes 1, 2, 4, and 5.)
8495-X	DOT-E 8495	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize manufacture, marking and sale of welded steel container, fabricated in compliance with DOT Specification 4DS with certain exceptions, for transportation of compressed gases. (Modes 1, 2, 4, and 5.)
8498-X	DOT-E 8498	Hunter Drums Limited, Burlington, Ont., Canada	49 CFR 173.26, Part 173 Subpart F	To renew and to authorize hydrobromic acid solutions of up to 63%, and up to 60% hydrogen peroxide additional commodities. (Modes 1, 2, and 3.)
8507-X	DOT-E 8507	U.S. Department of Energy, Washington, DC	49 CFR 173.302, 175.3	To authorize use of non DOT specification stainless steel welded conical pressure vessal, for shipment of a compressed gas (Modes 1, 2, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8510-X	DOT-E 8510	Dow Chemical Co., Freeport, TX	49 CFR 173.178	To authorize shipment of salt-coated magnesium granules in a non-DOT specification wax-impregnated, intermediate bulk, fiberboard box with an inside polyethylene bag. (Modes 1, 2, and 3.)
8518-X	DOT-E 8518	Pacific Tank and Manufactring, Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking, and sale of non-DOT Specification cargo tanks complying generally with DOT specification MC-307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Modes 1.)
8536-X	DOT-E 8536	Pennwalt Corporation Buffalo, NY	49 CFR 173 157(a)(5)	To authorize an increase in the maximum allowable gross weight of a DOT Specification 12B corrugated fiberboard box, for shipment of wet benzoyl peroxide. (Modes 1, 2, and 3.)
8539-X	DOT-E 8539	Aero Taxi-Rockford, Inc., Rockford, IL	49 CFR 172.101, 172.204(c)(3), 173 27, 175.30(a)(1), 175.320(b), Part 107 Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Modes 4.)
8550-X	DOT-E 8550	ESA, Inc. (Formerly Environmental Sciences Assoc.), Bedford, MA.	49 CFR 173.119(m)(6), 175.3	To authorize shipment of a hydrochloric acid/propanol mixture, classed as a flammable liquid, in non-DOT specification one-pint polyethylene bottles, not to exceed 6 bottles to one outside DOT Specification 12B fiberboard box. (Modes 1, 2, 3, and 4.)
8551-X	DOT-E 8551	Streamline Manufacturing, Inc., vice Huber Mfg., Gulfport, MS.	49 CFR 173.119(a), (m), 173.245(a), 173.3469(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations and certain other valve variations and certain other features, for transportation of flammable, corrosive, or poisonous waste liquids or semi-solids. (Modes 1.)
8552-X	DOT-E 8552	Brenner Tank, Inc., Fond du Lac, WI	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification carge tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Modes 1.)
8555-X	DOT-E 8555	Morton Thiokol, Inc., Brigham City, UT	49 CFR 173.92	To authorize shipment of large rocket motor segment on a special highway vehicle. (Modes 1.)
8558-X	DOT-E 8558	Trojan Corp., Salt Lake City, UT	49 CFR 173.53	To authorize transport of a pharmaceutical described as an initiating explosive, in a 5 gallon polyethylene pail containing, not over 40 pounds of material overpacked in a 15 gallon DOT Specification 37A steel drum, with ring bolt closure. (Mode 1.)
8564-X	DOT-E 8564	Eaton Corp., Formerly Bunker Ramo Electronic Sys., Westlake Village, CA.	49 CFR 173.206, 173 247	To authorize transport of battery containing lithium metal and thionyl chloride, packed in separate compartment, in DOT Specification 19 wooden boxes. (Mode 1.)
8564-X	DOT-E 8564	Altus Corp., San Jose, CA	49 CFR 173.206, 173.247	To authorize transport of battery containing lithium metal and thionyl chloride, packed in separate compartment, in DOT Specification 19 wooden boxes. (Mode 1.)
8602-X	DOT-E 8602	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, making and sale of non-DOT specification vacuum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8620-X	DOT-E 8620	Polar Tank Trailer, Inc., Holdingford, MN	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8682-X	DOT-E 8682	Beall Trans-Liner Portland, OR	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosive waste liquids or semi solids. (Mode 1.)
8723-X	DOT-E 8723	Pacific Powder Co., Tenino, WA	49 CFR 173.114a(h) (3)	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Mode 1.)
8723-X	DOT-E 8723	Pacific Motor Transport, Inc., Tenino, WA	49 CFR 173.114a(h)(3)	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Mode 1.)
8755-X	DOT-E 8755	U.S. Department of Interior, Anchorage, AK.	49 CFR 172.101, 173.119, 175.3, 175.320(c)	To authorize shipment of gasoline and turbine fuel, classed as flammable liquids in non-DOT specification rubberized fabric containers (Sealdrums) (Mode 4.)
8859-X	DOT-E 8859	AVM Corp., Pittsburgh, PA	49 CFR 173.306(f) (2) (iii), 173.306(f) (3), 175.3.	To authorize shipment of a compressed gas in accumulators which deviate from required test criteria. (Modes 1, 4, and 5.)
8870-X	DOT-E 8870	EM Science, Cincinnati, OH	49 CFR 172.101, 173.286, 175.3	Request party status and to authorize organic peroxide as an additional commodity (Modes 1, 2, 3, 4, and 5.)
8877-X	DOT-E 8877	Allied Chemical, Morristown, NJ	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 firberboard boxes with inside, glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	KTI Chemicals, Inc., Danbury, CT	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	Union Carbide Corp., Danbury, CT	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosvie, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
887-X	DOT-E 8877	Mallinckrodt, Inc., Paris, KY	49 CFR 173 119, 173.245	To authorize shipment of certain materials described as flammable liquids, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s., in DOT-12A65 and DOT-12B65 fiberboard boxes with inside glass bottles having a capacity not to exceed one-gallon. (Modes 1, 2, and 3.)
8897-X	DOT-E 8897	Kerrco, Inc., Hastings, NE	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tanks, for shipment or corrosive materials. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8910-X	DOT-E 8910	Canbar Products Limited Waterloo, Ontario, Canada	49 CFR 178 19, 178.253, Part 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed in a steel cage, for shipment corrosive of liquids. (Modes 1, 2.)
8933-X	DOT-E 8933	Ford Aerospace & Communications Corp., Newport Beach, CA.	49 CFR Parts 100-199	To authorize transport of an electric car, containing a sodium-sulfur battery which is below its operating temperature or is depleted. (Mode 1)
8937-X	DOT-E8937	Dow Chemcial Co., Freeport, TX	49 CFR 173 178	To renew and authorize water as an additional mode of transportation. (Modes 1, 2, and 3.)
8937-X	DOT-E 8937	Amax Specialty Metals Corp., Salt Lake City, UT	49 CFR 173 178	To authorize shipment of coated magnesium granules in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2000 pounds each. (Modes 1, 2, and 3.)
8946-X	DOT-E 8946	U.S. Department of the Army Falls Church VA.	49 CFR 173 127	To authorize shipment of nitrocellulose wet with not less than 30% by weight of heptane, in DOT Specification containers. (Mode 1.)
8965-X	DOT-E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI	49 CFR 173 302(a), 175 3	To Authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
8967-X	DOT-E 8967	Hercules, Inc., Wilmington, DE	49 CFR 173 93(a)(11)	To Authorize shipment of a solid propellant explosive, in a non-DOT specification fiberboard tube, overpacked in a non-DOT specification palletized metal cage. (Mode 1.)
8968-X	DOT-E 8968	Degussa Corp., Teterboro, NJ	49 CFR 173 206	To Authorize use of a non-DOT Specification IMO Type 1 portable tank for transporation of a flammable solid. (Modes 1, 2, and 3.)
8969-X	DOT-E 8969	McDonnell Douglas Corp., Saint Louis, MO	49 CFR 173 79(b), 173 92(b)	To Authorize shipment of certain rocket motors with ignite installed (Modes 1, 3.)
8971-X	DOT-E 8971	NL McCullough/NL, Industries, Inc., Houston, TX	49 CFR 172 101, column (4), 173.246, 175 3	To Authorize use of a non-DOT specification steel cylinders of equal or greater integrity than those currently authorized, for transportation of a liquid oxidizer. (Modes 1, 2, 3, and 4.)
8978-X	DOT-E 8978	A/S Hellesens, S...org, Denmark	49 CFR 172 101, 175 3	To Authorize transport of lithium cells containing more than 12, but not more than 50, grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8983-X	DOT-E 8983	Universal Propulsion Co., Inc., Phoenix, AZ	49 CFR 173 238	To Authorize transport of aircraft rocket engines, commercial, which do not comply with the requirements of 49 CFR 173.238, Note 1, as engines contain a small amount of Class B explosives.
8995-X	DOT-E 8995	Worum Chemical Co., Saint Paul, MN	49 CFR 173 315(a)(1), 173 346	To Authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B posionous liquid. (Modes 1, 2.)
8995-X	DOT-E 8995	Olin Corp., Stamford, CT	49 CFR 173 315(a)(1), 173 346	To Authorize use of non-DOT specification steel portable tanks for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
8999-X	DOT-E 8999	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY	49 CFR 173 154, 175.3, 175 85, Part 172, Subpart C, Subpart D, E.	To Authorize transport of emergency oxygen generators without marking, labeling, shipping papers or specification packaging. (Modes 1, 2, 3, 4, and 5.)
9019-X	DOT-E 9019	Completion Services, Inc., Lafayette, LA	49 CFR 173.119, 173.125, 173.263, 173 264, 173.277, 46 CFR 64 9.	To Authorize use of a marine portable tank, for transportation of certain flammable and corrosive liquids. (Mode 1.)
9024-X	DOT-E 9024	Fauvet-Girel, St Laurent Blangy, France	49 CFR 173 315	To Authorize use of a non-DOT specification IMO Type 5 portable tank for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	S.E.M.I. Paris, France	49 CFR 173 315	To Authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9108-P	DOT-E 9108	Austin Powder Co., Beachwood, OH	49 CFR 173.77	To become a party to Exemption 9108. (Mode 1.)
9022-P	DOT-E 9222	Bryson Industrial Services, Inc., Lexington, SC	49 CFR 173.119(b), 173.154	To become a party to Exemption 9222. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
9220-N	DOT-E 9220	Custom Packaging Systems, Inc., Manistee, MI.	49 CFR 173 182, 173.217, 173.245b	To authorize manufacture, marking and sale of non-DOT specification collapsible flexible bag, disposable bulk container, for transportation of corrosive solids and oxidizers. (Modes 1, 2, and 3.)
9254-N	DOT-E 9254	Speer Products Inc., Memphis, TN	49 CFR 173 304, 173.33a, 175.3	To authorize shipment of insecticides and liquefied gas mixtures in inside nonrefillable aluminum containers comparable to DOT Specification 2Q, with integral pressure relief system. (Modes 1, 2, 3, and 4.)
9308-N	DOT-E 9308	Pennwalt Corp., Buffalo, NY	49 CFR 173 243	To authorize shipment of a corrosive liquid, n.o.s., in a DOT Specification 2E polyethylene bottle equipped with a vented closure, to be overpacked in a DOT Specification 12B40 fiberboard box. (Modes 1 and 3.)
9336-N	DOT-E 9336	Avant Air, Newport Beach, CA	49 CFR 172 101, 172.204(c)(3), 173.27, 175 30(a)(1), 175.320(b), Part 107, Appendix B	To authorize carriage of certain class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9337-N	DOT-E 9337	Northland American, Inc., Minneapolis, MN.	49 CFR 172 101, 172.204(c)(3), 173.27, 175 30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9347-N	DOT-E 9347	Boondock International, Inc., Houston, TX	49 CFR 173 302(a)(1), 173.304(a)(1), 173 304(b)(1), 175.3, 178 42	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of flammable and nonflammable gases used for sampling purposes. (Modes 1, 4.)
9348-N	DOT-E 9348	Duracell Inc., Bethel, CT	49 CFR 173 2[illegible], 175.3, 175 85, Part 107 Appendix B	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Mode 5.)
9349-N	DOT-E 9349	Atlantic Cylinder Corp., Jacksonville, FL	49 CFR 173 34(l)(1)(2)(3), Part 107 Appendix B.	To authorize rebuilding, retesting, marking and selling of DOT Specification 4B, 4BA and 4BW cylinders, for transportation of compressed gases, flammable liquids and corrosive materials. (Modes 1, 2, 3, 4, and 5.)
9354-N	DOT-E 9354	Companhia Nitro Quimica Brasileira, Sao Paulo, Sp Brazil.	49 CFR 173.127	To authorize transport of alcohol-wet nitrocellulose in non-specification fiber drums. (Modes 1, 2, and 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
9355-N	DOT-E 9355	Eastman Kodak Co., Rochester, NY	49 CFR 173.206, 175.3, 175.85, Part 107 Appendix B.	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Mode 5.)
9358-N	DOT-E 9358	Ashland Oil, Inc., Dublin, OH	49 CFR 178.210, part 173, Subpart D, F	To authorize shipment of various flammable or corrosive liquids in glass or DOT Specification 2E polyethylene bottles of up to one-gallon capacity, packed no more than four to a non-DOT specification thermoformed high density polyethylene case, instead of a DOT Specification 12A box. (Mode 1.)
9364-N	DOT-E 9364	Security Chemical Co., Fort Valley, GA	49 CFR 173.359	To authorize shipment of a parathion mixture, liquid, in a DOT Specification 12P corrugated fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallon capacity. (Mode 1.)
9372-N	DOT-E 9372	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1, 3.)
9377-N	DOT-E 9377	Atlas Powder Co., Dallas, TX	49 CFR 173.64(a)(5)	To authorize transportation of high explosives containing more than 5% moisture in packagings without inner plastic bags or other linings. (Modes 1, 2, and 3.)
9385-N	DOT-E 9385	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m) (13), (14)	To authorize transport of certain amines in DOT Specification 111A100W4, 112A200W and 114A340W tank cars. (Mode 2.)
9387-N	DOT-E 9387	Virginia Chemicals, Inc., Portsmouth, VA	49 CFR 173.334	To authorize transport of an organic phosphate compound pressurized, with a nonflammable compressed gas, in concentrations and quantities greater than now authorized in the regulations, in DOT Specification 3B cylinders. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9423-N	DOT-E 9423	ICS Corp., Kent, WA	49 CFR 173.34(d)	To authorize shipment of air in nonrefillable aluminum cylinders that are part of an emergency breathing apparatus. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7220-X	Greif Brothers Corp., Springfield, NJ	49 CFR Parts 173, Subpart D, E, F, & H	To authorize manufacture, marking and sale of non-DOT specification reusable, blow-molded, polyethylene containers, for shipment of certain corrosive, flammable liquids, oxidizers and Class B poisonous liquids. (Modes 1, 2, 3, and 4.)
7888-X	Rheem Manufacturing Co., Linden, NJ	49 CFR 173, Subpart F, 178.19	To authorize manufacture, marking and sale of non-DOT specification reusable polyethylene container, for transportation of corrosive liquids and oxidizers. (Modes 1, 2, 3, and 4.)
8948-X	Immuno Nuclear Corp., Stillwater, MN	49 CFR 173.242, 173.25(b)	To authorize shipment of limited quantities of a radioactive material flammable liquid and corrosive material (liquid), in non-DOT specification single wall, corrugated fiberboard boxes. (Modes 1, 4.)

Denials

8129-X Request by Acurex Corporation, Mountain View, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by McKesson Corporation, Dublin, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Mine Safety Appliances Company, Evans City, PA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Stauffer Chemical Company, Westport, CT, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Kerr-McGee Chemical Corporation, Oklahoma City, OK, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Burroughs Wellcome Company, Greenville, NC, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Hewlett-Packard Co., Palo Alto, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by Chemical Waste Management, Inc., Oak Brook, IL, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by GTE Network Systems Incorporated, Albuquerque, NM, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by CECOS International, Inc., Buffalo, NY, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129-X Request by University of California, Davis, Davis, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material

overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–P Request by University of California, Riverside, Riverside, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–P Request by Washington State University, Pullman, WA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Borg-Warner Chemicals, Inc., Parkersburg, WV, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by GSX Services, Inc., formerly Triangle Resources, Laurel, MD, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by McDonnell Douglas Corp., Saint Louis, MO, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Findly Chemical Disposal, Inc., Riverside, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Ecoflo, Inc., Bladensburg, MD, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Virginia Polytechnic Institute & State University, Blacksburg, VA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Aqua-Tech, Inc., Port Washington, WI, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

8129–X Request by Loma Linda University, Loma Linda, CA, to authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums denied April 19, 1985.

9227–X Request by Canadian Arsenals Limited, Gardeur, Quebec, Canada, to authorize shipment of barium styphnate, monohydrate, an initiating explosive, Class A in packaging prescribed in 173.74 denied April 12, 1985.

9309–N Request by Sky Lines International, Inc., Mobile, AL, to authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment denied April 12, 1985.

9391–N Request by Dowell Schlumberger, Inc., Tulsa, OK, to authorize shipment of hydrochloric acid, classed as a corrosive material in 3,100 gallon capacity DOT Specification 60 rubber lined portable tanks in the State of Alaska only denied April 22, 1985.

9395–N Request by Overland Tank & Trailer Mfg. Inc., Abilene, TX, to manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC–307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids denied April 5, 1985.

9414–N Request by Union Carbide Corporation, Danbury, CT, to authorize shipment of tetrafluoromethane (halocarbon 14) non-liquefied, nonflammable gas, in DOT Specification 3AL, aluminum cylinders denied April 12, 1985.

Issued in Washington, DC, on May 2, 1985.

J.R. Grothe, Chief,

Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85–11493 Filed 5–10–85; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Workshop/Intern Program for East Asian Journalists: This project constitutes a three-week summer workshop and intern exchange program for East Asian journalists primarily from the Association of Southeast Asian Nations (ASEAN) area. The program is designed for mid-level journalists who are fluent in English who may also work for an English language newspaper, magazine or other media element. It will include two weeks of presentations, site visits, workshops and panels led by recognized print-media journalists both from the local community and those with national prominence. Discussions will center on accuracy in reporting; editorial writing; news gathering, interviewing and related procedures; and case studies in economic or security affairs reporting. A third week will optimally include a structured hands-on intern program. A second program on electronic or broadcast journalism is envisioned for 1986.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations must postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected

organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency 301 4th Street, S.W., Washington, D.C. 20547.

Dated: May 7, 1985.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 85-11460 Filed 5-10-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 92
Monday, May 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 8:30 a.m. Tuesday, May 14, 1985.

LOCATION: Quality Inn, 300 Army-Navy Drive, Arlington, Virginia.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Swimming Pool and Spa Safety Conference.

The Commission will cosponsor with the National Spa and Pool Institute a safety conference Tuesday, May 14, 1985 at the Quality Inn, 300 Army-Navy Drive, Arlington, Virginia, beginning at 8:30 a.m., to discuss accidents relating to diving, infant drowning and entrapment.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–11523 Filed 5–9–85; 8:57 am]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, May 15, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: ATV Task Force Status Report.

The staff will provide the Commission with a status report on ATV activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301–492–6800.

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–11524 Filed 5–9–85; 8:57 am]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 16, 1985, See Times Below.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Open to the Public

8:30 a.m.

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

Closed to the Public

9:30 a.m.

2. Enforcement Matter OS# 4665

The Commission and staff will discuss Enforcement Matter OS# 4665.

3. Compliance Status Report

The staff will brief the Commission on various Compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: May 8, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–11528 Filed 5–9–85; 8:57 am].

BILLING CODE 6355-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, May 6, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of South Boston Savings Bank, an operating noninsured savings bank located in Boston, Massachusetts, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–11573 Filed 5–9–85; 12:57 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, May 6, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those asets:

Case No. 46,225–L (Amended)

The First National Bank of Midland, Midland, Texas

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11574 Filed 5-9-85; 12:57 pm]

BILLING CODE 6714-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

May 6, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: May 15, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary. Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 813th Meeting—May 15, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8736-000, Christopher M. Anthony

CAP-2.
Project No. 5447-003, D. William Saulsberry

CAP-3.
Project No. 8644-001, Pacific Hydropower Company

CAP-4.
Project No. 4059-003, South Fork Irrigation District

CAP-5.
Project No. 3492-004, city of Haines, Oregon

CAP-6.
Project No. 7358-002, Salt Lake County Water Conservancy District

CAP-7.
Project No. 2515-000, Potomac Edison Company

CAP-8.
Project No. 6115-001, Hydro Development Group, Inc. and Pyrites Associates

CAP-9.
Project No. 2030-009, Portland General Electric Company

CAP-10.
Docket Nos. EL80-19-000 and 004 through 016, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
Docket Nos. EL80-24-000 and 002 through 014, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
Docket Nos. EL78-24-029 and 032 through 042, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York

CAP-11.
Docket No. ER85-375-000, Centel Corporation-Kansas

CAP-12.
Docket Nos. ER85-380-000 and ER77-175-004 (Remand), ER78-19-000 (Phase II), et al., and ER81-588-000, Florida Power & Light Company

CAP-13.
Docket No. ER 85-400-000, Virginia Electric and Power Company

CAP-14.
Docket No. ER85-401-000, Jersey Central Power and Light Company

CAP-15.
Docket No. ER85-404-000, Commonwealth Edison Company

CAP-16.
Docket No. ER85-398-000, Northern States Power Company (Wisconsin)

CAP-17.
Docket No. ER84-604-003, Southwestern Public Service Company

CAP-18.
Docket Nos. ER82-618-000, ER82-622-000, ER82-661-000, ER83-241-000, ER83-687-000 and ER83-712-000, Idaho Power Company

CAP-19.
Docket No. E-9206-000, McDowell County Consumers Council, Inc. v. American Electric Power Company, et al.

CAP-20.
Docket No. QF85-210-000, Pynoyl Corporation

CAP-21.
Omitted

CAP-22.
Docket No. RE80-11-006, Southern California Edison Company

CAP-23.
Docket No. RE83-3-002, New York State Electric and Gas Company

Consent Miscellaneous Agenda

CAM-1.
Docket Nos. RM83-56-001 through 003, application for license, permit and exemption from licensing for water power projects

CAM-2.
Docket No. RM85-16-000, delegation to the Chief Administrative Law Judge

CAM-3.
Docket No. RM78-17-000, rules of practice and procedure for Commission review of DOE adjustment request denials

CAM-4.
Docket No. RM79-32-000, establishment of final NGPA adjustment procedures

CAM-5.
Docket No. RM79-76-107 (Kansas-1), high-cost gas produced from tight formations

CAM-6.
Docket No. GP83-29-000, Texas Railroad Commission, section 103 NGPA determination, C.J. Wofford, Parker Higginbottom #1 well, FERC JD. No. 83-26112
Docket No. GP83-30-000, Texas Railroad Commission, section 103 NGPA determination, C.J. Wofford, H.G. Higginbottom #1 well, FERC JD. No. 83-26111

CAM-7.
Docket No. GP80-23-004, Texas Gas Transmission Corporation

CAM-8.
Docket No. GP83-23-000, Commonwealth of Pennsylvania, section 108 NGPA determination, J&J Enterprises, Inc., R&P #9 well, FERC J.D. No. 82-20075

CAM-9.
Docket No. RO84-2-000, Crown Central Petroleum Corporation

CAM-10.
Docket No. FA84-7-000, Sea Robin Pipeline Company

Consent Gas Agenda

CAG-1.
Docket No. RP85-135-000, Pacific Interstate Offshore Company

CAG-2.
Docket Nos. RP85-138-000 and RP85-139-000, Consolidated Gas Transmission Corporation

CAG-3.
Omitted

CAG-4.
Docket Nos. TA85-3-32-000 and 001, Colorado Interstate Gas Company

CAG-5.
Docket Nos. TA85-2-52-002 and RP84-77-003, Western Gas Interstate Company

CAG-6.
Docket No. TA85-2-42-002, Transwestern Pipeline Company

CAG-7.
Omitted

CAG-8.
Docket Nos. TA83-1-32-000, TA84-1-32-000, TA85-1-32-000, RP79-59-000 and RP82-54-000, Colorado Interstate Gas Company

CAG-9.
Docket No. RP85-112-001, Boundary Gas, Inc.

CAG-10.
Docket Nos. RP85-29-000 and TA85-1-49-000, Montana-Dakota Utilities Company

CAG-11.
Docket No. RP81-38-009, Tennessee Gas Pipeline Company, Division of Tenneco Inc.

CAG-12.
Docket Nos. RP84-20-001 through 003, Panhandle Eastern Pipe Line Company

CAG-13.
Docket No. RP84-45-000, Texas Gas Pipe Line Corporation
CAG-14.
Docket Nos. ST83-442-001, ST80-299-002, ST82-249-001, ST83-260-001, ST83-317-001, ST83-660-000, ST83-678-000, ST84-29-000, ST84-632-000, ST84-650-000, ST84-804-000, ST84-896-000, ST84-1013-000 and ST85-126-000, Acadian Gas Pipeline System
CAG-15.
Docket Nos. ST82-95-002, ST82-442-001, ST83-668-000, ST84-628-000 and 001, Red River Pipeline Corporation
CAG-16.
Docket No. RI84-9-001, Grace Petroleum Corporation
CAG-17.
Docket Nos. RI74-188-051 and RI75-21-046, Independent Oil & Gas Association of West Virginia
CAG-18.
Docket No. CI85-180-001, Pogo Producing Company
CAG-19.
Docket No. CI85-181-001, McMoran Offshore Exploration Company
CAG-20.
Docket No. CI84-10-000, Felmont Oil Corporation and Essex Offshore, Inc.
CAG-21.
Docket No. G-7645-003, Mobil Oil Corporation
CAG-22.
Docket Nos. RP83-137-019 through 022, Transcontinental Gas Pipe Line Corporation
Docket Nos. RP83-11-037 through 039 and RP83-30-035 through 037, Transcontinent Gas Pipe Line Corporation
Docket Nos. CP83-340-027 through 029, producer-suppliers of Transcontinentl Gas Pipe Line Corporation
Docket Nos. CP83-428-035 through 037, producer-suppliers of Transco Gas Supply Company and Transcontinental Gas Pipe Line Corporation
CAG-23.
Docket No. TC85-14-000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-24.
Docket No. CP84-700-001, Colorado Interstate Gas Company
CAG-25.
Docket Nos. CP75-16-005, CP75-81-004 and CP75-104-045, High Island Offshore System
CAG-26.
Docket No. CP85-232-000, Northwest Pipeline Corporation
Docket No. CI85-172-000, Coastal Oil and Gas Corporation
CAG-27.
Docket No. CP85-96-000, Superior Offshore Pipeline Company
Docket No. CP85-111-000, Trunkline Gas Company
CAG-28.
Docket Nos. CP85-212-000 and 001, Columbia Gas Transmission Corporation
CAG-29.
Docket No. CP85-302-000, El Paso Natural Gas Company
CAG-30.
Docket No. CP85-95-000, United Gas Pipe Line Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. EF84-4061-000, U.S. Secretary of Energy—Southwestern Power Administration
ER-2.
Docket No. QF84-442-000, Turbine Tech, Inc.
ER-3.
Docket No. EL84-31-000, Kern River Cogeneration Company

Miscellaneous Agenda

M-1.
Docket No. RM84-15-000, generic determination of rate of return on common equity for public utilities
M-2.
Docket No. RM83-63-000, automatic authorization for holding certain positions that require Commissin approval under section 3050(B) of the Federal Power Act
M-3.
Reserved
M-4.
Reserved
M-5.
Docket No. RM83-53-000, obligations of sellers and purchasers of first-sale natural gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA85-3-7-000 and 001, Southern Natural Gas Company
RP-2.
Docket Nos. TA85-2-47-000, 001 and 002, MIGC, Inc.
RP-3.
Docket Nos. TA85-1-26-000 and 003 (PGA85-1b), Natural Gas Pipeline Company of America
RP-4.
(A) Docket Nos. RP83-113-014 through 016, Pacific Gas Transmission Company
Docket No. RP83-135-004, Pacific Interstate Transmission Company
Docket No. RP83-136-003, Pacific Offshore Production Company
Docket No. RP84-28-001, Pacific Interstate Offshore Company
Docket No. RP83-139-005, El Paso Natural Gas Company
Docket Nos. RP81-130-014 through 016 (not consolidated), Transwestern Pipeline Company
(B) Docket Nos. RP81-130-007, 017 and 018, Transwestern Pipeline Company
(C) Docket No. TA83-1-42-002, Transwestern Pipeline Company
RP-5.
Omitted
RP-6.
Docket Nos. RP80-55-000, RP80-118-000, RP81-73-000, RP82-32-000, RP80-55-008, RP80-118-010, RP80-55-009 and RP80-118-011, Sea Robin Pipeline Company
RP-7.
Docket Nos. RP80-72-000 and 003, Algonquin Gas Transmission Company
RP-8.
Docket No. RP80-107-016, Natural Gas Pipeline Company of America
RP-9.
Docket Nos. ST83-692-001, ST83-717-001, ST83-719-001, ST83-720-001, ST83-721-001, ST83-738-001, ST84-14-001, ST84-104-001, ST84-114-001, ST84-157-001, ST84-293-001, ST84-396-001, ST84-427-001, ST84-522-001 and ST84-951-001, Northern Natural Gas Company, a Division of Internorth, Inc.

II. Producer Matters

CI-1.
Docket No. CI83-249-001, et al., Tenneco Oil Company, et al.

III. Pipeline Certificate Matters

CP-1.
Docket No. CP84-21-000, Steve Bowman, et al., v. Columbia Gas Transmission Corporation, et al.
Docket No. CP84-99-000, Columbia Gas Transmission Corporation
CP-2.
Omitted
CP-3
Docket No. CP66-43-000, Texas Eastern Transmission Corporation
CP-4.
Docket No. CP84-659-000, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP82-158-000 and 004, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company, Division of Tenneco Inc., Columbia Gulf Transmission Company, ANR Pipeline Company, Northern Natural Gas Company, Division of Internorth, Inc. and Southern Natural Gas Company
CP-5.
Docket No. CI83-269-038, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd., and Tenneco West, Inc.
Docket Nos. RP83-11-000 through 026 and RP83-30-000, Trancontinental Gas Pipe Line Corporation
Docket No. CP83-279-002, producer-suppliers of Trans continental Gas Pipe Line Corporation
Docket No. CP83-340-003, producer-suppliers of Transco Gas Supply Company
Docket Nos. CP83-428-001 through 014, producer-suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket No. CP83-452-027, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket Nos. CP83-502-000 through 004, CP83-502-008 and 013, Tennessee Gas Pipe Line Company, a Division of Tenneco Inc.
Docket No. CP83-333-029, Panmark Gas Company, et al.
Docket No. CP84-244-008, Texas Eastern Transmission Corporation and producer-suppliers of Texas Eastern Transmission Corporation

Docket No. CI84–332–013, Cities Service Oil and Gas Corporation, Cities Offshore Production Company and Oxy Petroleum, Inc.
Docket No. CI84–374–001, TXP Operating Company
Docket No. CI84–485–014, Amoco Production Company
Docket No. CI84–539–000, El Paso Natural Gas Company
Docket No. CP84–510–000, Sun Exploration and Production Company
Docket No. CI85–36–000, Texas Gas Exploration Company
Docket No. CI85–51–000, Exxon Corporation
Docket No. CI84–555–000, ANR Production Company
Docket No. CI84–596–000, Cenergy Exploration Company
Docket No. CI85–17–000, Mesa Petroleum
Docket No. CI84–571–000, Champlin Petroleum
Docket No. CI84–557–000, Arco Oil & Gas Company, a Division of Atlantic Richfield Company
Docket No. CI85–4–000, Shell Offshore, Inc. and Shell Western E & P, Inc.
Docket No. CI85–29–000, Odeco Oil & Gas Company
Docket No. CI85–41–000, American Petrofina Company of Texas and Petrofina Delaware, Inc.
Docket No. CI85–50–000, Diamond Shamrock Exploration Company
Docket No. CI85–99–000, Union Texas Petroleum Company
Docket No. CI85–156–000, Conoco, Inc.
Docket No. CI84–565–000, Yankee Resources, Inc.
Docket No. CI85–167–000, Chevron USA, Inc.
Docket No. CI85–173–000, Marathon Oil Company
Docket No. CI85–176–000, Kerr-McGee Corporation
Docket No. CI85–239–000, Samson Resources Company
Docket No. CI85–244–000, Arkoma Production Company

CP–6.

Docket No. CI85–255–000, Citizens Energy Corporation and Citizens Resources Corporation

Kenneth F. Plumb,
Secretary.
[FR Doc. 85–11515 Filed 5–9–85; 8:57 am]
BILLING CODE 6717-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, May 15, 1985.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting
2. Review of Central Liquidity Facility Lending Rate
3. Insurance Fund Report
4. Assessment of Examination Fee for Conversion of State and Privately Insured Credit Unions to National Credit Union Share Insurance Fund
5. Clarifying Amendment to 12 CFR 701.6, Fees Paid By Federal Credit Unions
6. Clarifying Amendment to 12 CFR 741.5, Insurance Premium and One Percent Deposit

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,
Secretary of the Board.
[FR Doc. 85–11572 Filed 5–9–85; 12:57 pm]
BILLING CODE 7535-01-M

8

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

At its meeting on May 7, 1985, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for June 3, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano.

The Board of Governors has determiend that, pursuant to section 522b(c)(6) of Title 5, United Sates Code, and § 552(c)(6) of Title 5, United States Code, and §7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determiend that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(6) of Title 5 United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,
Secretary.
[FR Doc. 85–11618 Filed 5–9–85; 3:53 am]
BILLING CODE 7710-12-M

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, May 6, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting scheduled for Tuesday, May 14, 1985, at 2:30 p.m.

Consideration of whether to approve or disapprove proposals by the Chicago Board Options Exchange, Incorporated ("CBOE") which would increase the representation of floor members on the CBOE Board of Directors and allow CBOE members to elect the Executive Committee Chairman. For further information, please contact Holly Hasley Smith at (202) 272–2371.

Commissioner Cox, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272–2179.

Dated: May 8, 1985.

Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 85–11575 Filed 5–9–85; 12:58 pm]
BILLING CODE 8010-01-M

10

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: ———, FR ——— (May —, 1985).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (e.d.t.), Wednesday, May 8, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Sullivan Central High School, Little theater, Route 4, Blountville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER:

The following item is added to the previously announced agenda:

D. Personnel Items

1. Personal Services Contract with Quality Technology Company, Lebo, Kansas, for Development and Implementation of a Program for the Identification, Investigation, and Reporting of Employee-Raised Issues of Concern, with Special Emphasis on those Issues Dealing with Nuclear Safety at TVA Facilities; Requested by Nuclear Safety Review Staff.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-800, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Approved:

C.H. Dean, Jr.,
Director and Chairman.

Richard M. Freeman,
Director.

John B. Waters,
Director.

Dated: May 3, 1985.

[FR Doc. 85-11571 Filed 5-9-85; 12:38 pm]

BILLING CODE 8120-01-M

federal register

Monday
May 13, 1985

Part II

Department of Health and Human Services

Social Security Administration

Availability of Funding for Planned Secondary Resettlements of Refugees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Availability of Funding for Planned Secondary Resettlements (PSR) of Refugees

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Notice of availability of funding for grants to assist interested refugees to effect planned secondary resettlements to favorable communities.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies for the purpose of providing assistance to eligible refugees in high welfare dependency areas who wish to relocate in a planned way to communities offering favorable employment and resettlement opportunities. Eligible refugees include those who have experienced recurrent or continuing unemployment and/or public assistance dependency. Planned secondary resettlement (PSR) grants will be conducted in two phases: A planning phase to assess and prepare prospective receiving communities and to identify and prepare interested refugees for participation in PSR; and a resettlement phase to implement a planned relocation, involving the provision of services to facilitate prompt employment and a positive resettlement. Planned secondary resettlement is distinguished from "secondary migration" in that planned secondary resettlement involves a considered assessment of the resettlement area prior to relocation, pre-relocation identification of employment opportunities, and consultations with, and advance notification to, appropriate government authorities.

DATE: *Closing Date:* Not Applicable. This is a standing announcement. Grant applications will be reviewed periodically. (See *Review and Award Procedures* for a schedule of proposal due dates and panel review dates.) Applications received later than July 15, 1985 will only be considered for funding in Fiscal Year 1986. Proposals will be evaluated by an independent panel on the basis of the weighted criteria listed in Section V of this Notice. However, all final funding decisions rest with the Director, ORR. Grants will be awarded subject to the availability of funds.

Authorization

Authority for this activity is contained in section 412(c) of the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(c).

Available Funds

Approximately $600,000 will be available for this grant program in Fiscal Year 1985. The Director estimates these funds could support up to four grant awards, at an average cost of $150,000 each. The anticipated range for these grants is $75,000 to $300,000 depending on the distance from sending site to receiving site, the size of the population to be resettled, the number of sending and receiving sites to be involved, and the availability of other support. The anticipated range for planning phase costs is $10,000 to $25,000; the range for resettlement phase costs is estimated at $65,000 to $135,000. Higher funding amounts will be considered for applications involving multiple sites. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Office of Refugee Resettlement to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Future Fiscal Year funding for this grants program will be contingent upon appropriations. If adequate funds are available, the Director, ORR, anticipates continuation of this program.

Awards will not exceed an 18 month period of performance for planning and resettlement phases combined.

Application and Funding Process

Applicants shall submit one application which addresses both phases (planning and resettlement) of a proposed project. While applicants will be expected to describe proposed activities and costs in both phases with as much specifity as possible, the description of the proposed resettlement phase plan will be viewed as preliminary and subject to revision during the course of the planning phase.

Funding of PSR grants shall be incremental. Applicants approved for funding shall receive funds for the planning phase only. Release of resettlement phase funding will be contingent upon the submission of an acceptable final resettlement plan at the conclusion of the planning phase. The resettlement plan will be evaluated by the Office of Refugee Resettlement on the basis of the quality and completeness of all components of the plan as specified in Section II, 4. Grantees will be expected to provide a detailed description of proposed resettlement activities and budget at that time.

Should a grantee fail to provide an acceptable resettlement plan, ORR reserves the right not to continue the grant beyond the planning phase. Under such circumstances it would be considered against the Government's best interests to proceed with funds release for the resettlement phase.

Eligible Grantees

State agencies responsible for the administration of State refugee programs, public and private non-profit organizations that have had demonstrated experience in the provision of services to refugees, such as refugee mutual assistance associations (MAAs) and national or local voluntary resettlement agencies, are eligible to apply for funds under the PSR program. Applicants will be required to demonstrate clearly how they will maintain communication with the refugee community in which the identified group of refugees currently resides.

Any combination or consortium of qualified organizations may join together to make application so long as one organization is clearly identified as the responsible grantee. Examples of possible combinations include, but are not limited to: a consortium of MAAs; MAAs and voluntary agencies; States and voluntary agencies; a national voluntary agency with local affiliates; MAAs and States; or any combination of the above.

It is anticipated that, in most cases, the participant organization representing the receiving site will be the primary applicant. However, linkages, through contractual arrangements, with organizations representing sending sites are not only encouraged, but are desired. If a refugee group or an organization (e.g., MAAs or voluntary agencies) representing refugees interested in relocating to a favorable site wishes to initiate a PSR, they are encouraged to link with an established organization or agency in a receiving site to make application.

Program Information

I. Purpose

The purpose of this announcement is to provide an opportunity for refugees residing in high welfare dependency/high unemployment areas [1] who have

[1] For purposes of this announcement, these areas include areas with high welfare dependency or high unemployment among time-expired refugees (over 36 months) as well as areas with a high dependency or unemployment rate among time-eligible refugees. High welfare dependency shall be defined as any rate of over 55% in a given locale.

not been able to find employment to relocate to areas in the U.S. that offer favorable prospects for employment and positive resettlement. The Planned Secondary Resettlement Program serves two objectives:

• To increase refugee self-sufficiency while reducing welfare dependency and/or high unemployment; and

• To increase the use of underutilized communities while seeking to ease the burden of heavily impacted communities.

Planned secondary resettlements should be viewed as a self-sufficiency strategy of last resort and as such should be considered only for those refugees who have little or no chance of obtaining full-time employment where they currently reside.

Accordingly, grants provided for under this program are intended to be applied to groups of refugees who have experienced particularly severe labor market problems and are at risk of long term welfare dependency in the areas in which they reside. While not limited to any ethnic or nationality group, refugee resettlement program experience to date suggests that certain populations are particularly at risk, such as the Highland Lao ethnic groups, as well as segments of the Khmer population.

Resettlement supported under PSR grants must be keyed to assisting refugees to relocate to communities which provide significantly better opportunities for full employment of heads of household than exist in the refugees' current community. Central to a planned secondary resettlement if the pre-relocation identification of employment opportunities that will enhance the economic self-sufficiency of participating refugees. No grants will be awarded to support resettlements in high welfare utilization areas or in areas where the job market is insufficient to accommodate the refugee population residing in those areas.

Resettlements to be supported under PSR grants must proceed from a clear expression of interest and readiness on the part of the refugee group to participate in a resettlement.

II. Program Description

1. It is expected that each planned secondary resettlement grant will involve a minimum of one, and a maximum of 5, sending sites and no more than 2 receiving sites. That is, in each PSR project, eligible and interested refugees could be recruited from one to five different communities for secondary resettlement in one or two favorable communities. It is anticipated that the total number of refugees to be resettled under PSR will not be less than 40 per receiving community, nor more than 200 per grant.

2. Planned secondary resettlements shall be conducted in two phases: A planning phase and a resettlement phase.

3. *Planning phase:* The planning phase is for the purpose of undertaking all preparatory activities needed to ensure a smooth and successful planned resettlement. Such activities shall include at a minimum:

• Pre-resettlement consultations with the designated State refugee agency when the applicant is not the State agency; pre-resettlement consultations with local refugee and resettlement organizations when the applicant is the State agency.

• A detailed assessment of the capacity of the receiving community to provide tangible opportunities for employment, appropriate social services, adequate and affordable housing, health care, favorable educational facilities for children, and a receptive community climate for refugees.

• Introductory visits by representatives of the receiving site to prospective sending site(s) to make presentations to interested refugees, refugee community leaders and other interested parties, on available opportunities in the prospective receiving community.

• On-site visits by prospective PSR refugees and/or refugee community representatives to the proposed receiving site for a first-hand assessment of the community and its resources.

• Identification of eligible refugees in the sending site(s) who wish to relocate to the proposed receiving site(s).

• Preparation of a final resettlement plan if the planning phase indicates feasibility of a resettlement project.

• Other reasonable planning-related activities in support of project goals.

Applicants are advised in developing a planning phase budget to allow for a sufficient number of on-site visits by prospective PSR refugees and their leaders to the receiving site. Such visits should be limited to the number necessary to permit prospective refugees seeking relocation to assess the receiving site. The budget should reflect an emphasis on these types of visits rather than on visits by receiving site representatives to sending sites.

The period of performance for planning phase activities normally shall not exceed 6 months from the date of award. ORR will consider a longer time period if good cause is clearly indicated in the application.

4. *Resettlement Plan.* Upon completion of the planning phase, grantees will be required to submit a detailed resettlement plan which contains the following elements:

a. A description of all activities undertaken during the planning phase, including documentation of refugee involvement and interest.

b. A breakdown of the numbers of individuals and families to be resettled, from each sending site and to each receiving site, and a proposed timetable for resettlement.

c. Statements of intent, signed by the heads of household of the participating families, indicating an interest and commitment to relocate to the proposed site and to accept employment in the new site. (A sample Statement of Intent is included at the conclusion of this announcement.)

d. A detailed description of the characteristics of each refugee family identified for planned resettlement, in terms of time in the U.S., current public assistance and/or employment status, employment/unemployment history in the U.S., and ethnicity.

e. An updated assessment (both qualitative and quantitative) of the capacity of the prospective resettlement community to receive the planned refugee population with particular regard to:

• Available employment opportunities

• Available and affordable housing

• Available and affordable health care services

• Supportive social services such as interpreter/translator services.

f. Evidence that the receiving site offers immediate or imminent prospects for full employment with advancement potential, and that local employers would be interested in hiring relocated refugees.

g. A plan which establishes timeliness for securing employment for relocated refugees.

h. Evidence of the availability of adequate and affordable health insurance for PSR refugees through employer-provided health benefits.

i. Evidence of consultation with the appropriate State Refugee Coordinator(s) for the receiving site(s) if the State agency is not the applicant.

j. Certification of acceptability of the resettlement plan on the part of the sending organization and at least one adult member of each participating refugee family.

k. A final detailed plan for the organization, delivery and coordination of social services, including the identities of proposed service providers

at the resettlement site, the specific services to be provided, the methods by which service needs of the resettlement population were determined, and the period of performance for each proposed service provider funded from the grant.

l. A plan for the provision of housing and resettlement allowances to the participating families.

m. A final itemized budget with complete narrative justification for the resettlement phase.

Funds for the resettlement phase of a PSR grant will be released to the grantee once a resettlement plan is received and found to be acceptable by ORR. The acceptability of a plan will be evaluated by ORR on the basis of the quality and completeness of all components of the plan as specified above. Should the plan be unacceptable, ORR is under no obligation to fund the resettlement phase.

5. *Resettlement Phase:* The planned secondary resettlement shall be implemented during this phase. Allowable activities include:

- Any priority social service (as recognized by ORR);
- Day care services for preschool children to enable secondary wage earners to obtain employment;
- Short-term emergency health coverage;
- Targeted training expenses in cases where employers guarantee employment for refugees successfully completing on-the-job training;
- Training stipends for employees in unpaid or reduced wage training programs;
- Resettlement allowances as noted below;
- Information management/data tracking services to permit monitoring and evaluation of PSR results.

6. *Resettlement Allowance:* To enable participating refugees to meet transportation and basic food and shelter expenses during the initial resettlement period, a resettlement allowance will be an allowable cost item under PSR grants. Such allowances will be restricted to the following costs:

- Reasonable transportation and moving costs
- Living expenses for a period not to exceed 60 days, including food, shelter, utilities and local transportation costs, whose monthly total shall not exceed local AFDC payment levels. Monthly totals exceeding the local AFDC level will be considered by ORR only if fully justified by special circumstances.
- One-time-only security deposits for housing and utilities.

These expenses shall be covered only in cases where wages/income are not immediately available to meet these essential costs during the initial resettlement period.

Resettlement allowances must be justified in the resettlement plan on the basis of need of the defined resettlement group. Resettlement allowances may be paid by the grantee directly to the qualifying head of household, or to an agency or organization designated to coordinate or supervise the resettlement. The resettlement allowances must be applied in full to expense items noted above.

It is expected that applicants will make a good faith effort to obtain funds for this purpose from private sources before applying for resettlement allowances under the PSR program. For example, a major source of support for cases of intra-state resettlements might be the relocation assistance allowance for Work Incentive Program (WIN) registered refugees. (See 45 CFR 224.33.)

7. *Eligible Refugee Populations:* The eligible population under this grant program is limited to refugees (single adults and families) who have lived in the U.S. for at least 18 months and have experienced recurrent or continuing unemployment during their period of residency and/or are receiving public assistance. These eligibility criteria must be met by the primary adult wage earner in each participating family. The following special exception will be made regarding these eligibility criteria: Recently arrived refugees (those who have been in the U.S. less than 18 months) may participate in a planned resettlement with their anchor relatives (relatives with whom recently arrived refugees have been reunited) as long as 80% of the refugees proposed for PSR meet the eligible population criteria.

8. *Eligible Sending Sites:* Eligible sending sites will be limited to communities where there is a high welfare dependency (over 55%) or unemployment rate among the refugee population (including time-expired refugees). Under special circumstances, the Director may determine additional sites to be eligible as sending sites.

9. *Characteristics of Receiving Sites:* It is expected that receiving sites proposed for PSR will have demonstrably favorable conditions for refugee resettlement. In general, the following conditions are required to be present in proposed receiving sites:

- The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or accessible and affordable health services within the community;
- The capacity to provide job placement, ESL and other social services on a timely and ethnically appropriate basis;
- A high employment rate and, concomitantly, a low welfare dependency rate (30% or below) among the existing refugee population;
- An expanding job market in skill areas in which PSR refugees would be qualified; and
- A minimum of racial discrimination or community tension likely to have an adverse effect on refugees.

III. Application Content

The application should set forth in detail the following:

1. An identification of proposed sending and receiving sites.

2. An identification of the refugee welfare dependency rate and refugee unemployment rate in each proposed sending site.

3. A description of the suitability of each proposed receiving site including: Specific refugee employment opportunities; availability of employee health benefits; availability of adequate housing and health care services; ethnicity, size, employment and welfare rates within the receiving refugee community; availability of refugee social services; and an analysis of the local economy regarding the likelihood of stable and expended employment opportunities for refugees.

4. A description of the proposed resettlement population in terms of numbers to be resettled, ethnicity, length of time in the U.S., employment history, and public assistance status.

5. A description of proposed planning phase activities and sequence (timelines and milestones) for achieving the objectives of the planning phase, including the development of a resettlement plan. The applicant should specify a plan for on-site visits by prospective PSR refugees and refugee community representatives to the receiving site(s), with a budget justification for the proposed number of individuals to be included in site visits. A plan for conducting a detailed presentation in prospective sending communities which describes the economic and social conditions in the receiving site(s) should also be provided. Applicants shall describe in detail, the type of presentation proposed and the scope of information to be provided.

6. A preliminary plan for the resettlement phase, including an outline of services to be provided, the identification of proposed service deliverers, a plan for coordination of

services and a proposed timetable for relocation of participating families. (A fully developed resettlement phase plan will be required of grantees at the conclusion of the planning phase.)

7. An identification of the organizations/agencies proposed for participation in the PSR project; a clear delineation of their proposed responsibilities; a description of their qualifications in relation to those responsibilities; and the mechanism for coordination among these organizations. Evidence shall be provided of the fiscal management capacity of the organization which will be responsible for the disbursement of resettlement allowance funds. Proposed sending organization(s) should be identified and their qualifications described.

8. A detailed management plan which: Indicates who will have fiscal and overall program responsibility, identifies the organizational structure and the lines of authority, and describes the proposed staffing plan and staff qualifications.

9. A plan which describes how linkage and communication will be established and maintained with the targeted refugee community in the proposed sending site(s).

10. A description of steps the applicant has taken, or plans to take, to coordinate proposed activities with existing mutual assistance associations or other refugee representatives in the receiving and sending sites.

11. An itemized budget with complete narrative justification for the planning phase and a preliminary, itemized budget for the resettlement phase.

IV. Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The extent to which the proposed resettlement population conforms with the eligible population criteria stated in this announcement. (15 points)

• Evidence that the proposed target population is currently unemployed and has had a history of unemployment and/or welfare dependency in the U.S.;

• The extent to which the proposed population consists of refugees who have been in the U.S. for 18 months or more.

2. The extent to which the narrative description of the proposed receiving site(s) provides justification for their selection. (15 points)

• The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;

• The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or available health services which are affordable;

• The availability of affordable housing;

• The capacity to provide job placement, ESL and other social services on a timely and ethnically appropriate basis;

• A high employment rate and, concomitantly, a low welfare dependency rate, among the existing refugee population;

• An expanding job market suitable to refugees.

3. The extent to which the proposed sending sites conform with the eligible sending site criteria stated in this announcement. (10 points)

• Existence of a high welfare dependency or unemployment rate among the resident refugee population;

4. The reasonableness and specificity of proposed planning phase activities, sequence, and timeliness. (15 points)

• Reasonableness of proposed activities and timeliness in achieving the objectives of the planning phase;

• Adequacy of plan for on-site visits by prospective PSR refugees and refugee community representatives to the receiving community;

• Adequacy of the proposed community presentation in conveying a comprehensive view of the economic and social conditions in the receiving site(s), including a realistic view of available resources and opportunities.

5. The reasonableness of proposed resettlement phase activities, sequence, and timeliness; (15 points)

• Relevance of proposed resettlement services to the needs of the refugees to be resettled;

• Reasonableness of proposed timetable for relocation of participating families.

• Reasonableness of proposed resettlement services in relation to existing refugee services in the receiving community.

6. The quality of proposed participating organizations, project management and staffing (15 points)

• Adequacy of qualifications of participating organizations in relation to proposed roles. Extent to which proposed organizations have demonstrated track records as providers of services to refugees;

• Extent to which the organization to be responsible for the disbursement of resettlement allowance monies has a demonstrated capability in fiscal management.

• Extent to which the proposed receiving organization(s) has an established, positive relationship with the resident refugee community;

• Adequacy of project management plan and plan for coordination among participating organizations;

• Adequacy of staffing patterns and qualifications.

7. The extent to which the applicant has coordinated or plans to coordinate proposed activities with existing mutual assistance associations or other refugee representatives in both sending and receiving sites. (15 points)

8. The adequacy of the budget narrative and the reasonableness of the proposed budget in relation to proposed planning activities. (10 points)

9. The reasonableness of the proposed budget for the resettlement phase, in relation to the activities proposed. (10 points)

SUPPLEMENTARY INFORMATION:

Review and Award Procedures

Applications will be evaluated by a review panel of ORR staff and other experts according to the above criteria, and in accordance with the HHS Grants Administration Manual. Final funding decisions will be made by the Director, ORR.

Following is a schedule of panel review dates and the corresponding proposal due dates.

Proposed due dates	Panel review dates
July 15, 1985	July 29, 1985
September 27, 1985	Oct. 21, 1965
December 16, 1985	Jan. 13, 1986
April 4, 1986	Apr. 21, 1986.

The Office of Refugee Resettlement reserves the right to cancel or reschedule panel review dates in cases where the number of applications received would not, in the judgment of the Director, warrant the expenditure of public monies to convene a panel review. In such instances, all eligible applicants will be notified in writing of the schedule adjustment at least ten calendar days before the scheduled review date.

Executive Order 12372 Notification Process

These applications are covered by the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Applicants should contact the designated Single Point of Contact (SPOC) in their State as early as possible to alert the SPOC of the prospective application and receive specific instructions regarding the State's review process. Applicants should submit the material required by the State to the SPOC. State SPOC offices are encouraged to send their comments on the application to ORR as soon as possible for consideration prior to the award process. Directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application from the deadline date for final application submission to ORR through the process established by the State. SPOCs' comments should be transmitted to Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C St. SW., Washington, D.C. 20201 or to the applicant to be forwarded to ORR. A list of State SPOCs is included at the end of this announcement.

Application Request and Submission

Eligible Applicants may request grant applications (Standard Form 424 "Federal Assistance") from the Office of Refugee Resettlement, HHS, Grants Management Office, Room 1229, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, Betsy Andress, (202) 245-1715. For program related information, contact Toyo Biddle, telephone: (202) 245-1966.

To be considered for funding from Fiscal Year 1985 funds, prospective grantees must submit a signed original application and one copy to the Grants Management Office by 5:00 p.m., Eastern Daylight Time on July 15, 1985, or send by first class mail post-marked by 11:59 p.m. A second copy should be sent concurrently to the appropriate Regional Director, ORR. Proposals received or after the above noted date and time will be retained for review at the next scheduled panel review date.

The Director, ORR, encourages pre-application before the submission of a formal grant application. Pre-applications will be received at any time and reviewed by Office of Refugee Resettlement staff within 30 days of receipt. The submission of a pre-application proposal will: (a) Establish communication between the applicant and the ORR; (b) enable early determination of the applicant's eligibility; and (c) determine how well the project might fare in the panel review process, in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures in preparing an application. The pre-application process provides technical assistance to applicants to aid them in improving their submissions. Pre-applications should contain enough detail around the critical elements of the proposed project to enable ORR to make a considered judgment. Pre-applications are not mandatory.

Prospective grantees who wish to submit a pre-application prior to submitting a formal application by July 15, 1985, must do so no later than June 3, 1985, to permit adequate review and response time.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C Street, SW., Washington, D.C. 20201. ATTN: Mr. Stan Le.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, the applicant should check with its local post office. Applicants are encouraged to use registered, or at least first class mail.

Applications Delivered by Hand

An application that is hand-delivered should be taken to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C Street, S.W. Washington, D.C. 20201. The Grants Management Office will accept a hand-delivered application between 8:30 a.m. and 5:00 p.m. Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered after 5:00 p.m. on July 15, 1985 will be accepted, but will not be reviewed until the first panel review for FY 1986.

FOR FURTHER INFORMATION CONTRACT:

Mr. Jack Anderson, Regional Director, ORR, Region I, Room 2403, J.F.K. Federal Bldg., Government Center, Boston, MA 02203, 617-223-6180

Mr. William Neary, Regional Director, ORR, Region III, Room 10400, 3535 Market Street, P.O. Box 13716, 215-596-0210

Mr. James Turman, Regional Director, ORR, Region VI, Room 1630, 1200 Main Tower, Dallas, TX 75202, 214-767-4301

Mr. Edwin LaPedis, Regional Director, ORR, Region VIII, Rm. 1185, Federal Building, 19th & Stout Street, Denver, CO 80294, 303-837-8387

Ms. Suanne Brooks, Regional Director, ORR, Region IV, Suit 2112, 101 Marietta Tower, Atlanta, GA 30323, 404-221-2250

Mr. Derek Schoen, Regional Director, ORR, Region V, 35th Floor, 300 S. Wacker Drive, Chicago, IL 60606, 312-353-5182

Mr. John Crossman, Regional Director, ORR, Region X, Mail Stop 212, 2901 Third Avenue, Seattle, WA 98121, 206-442-8049

Ms. Toyo Biddle, Division of Operations, Room 1229, Switzer Bldg., 330 C street

SW., Washington, D.C. 20201, 202-245-1966

Mr. Larry Laverentz, Assistant Regional Director, ORR, Region VIII, 601 East 12th Street, Rm 210, Kansas City, MO 64106, 816-758-7081

Ms. Sharon Fujii, Regional Director, ORR, Region IX, Room 352 (Mail Stop 352), 50 United Nations Plaza, San Francisco, CA 94102, 415-556-8582

Mr. Manuel R. Fleitas, Director, Florida Office, ORR, 701 SW 27th Avenue, Room 701, Coral Gables, FL, 305-643-2667.

IX. A-95 Notification Process

The PSRP grants are not covered by the requirements of OMB Circular A-95.

Applicable Regulations

The following HHS regulations apply to grants under this Notice:

45 CFR Part 16—Department Grant Appeals Process;

45 CFR Part 74—Administration of Grants;

45 CFR Part 75—Informal Grant Appeals Process;

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Benefitting from Federal Financial Assistance;

45 CFR Part 90—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

Records and Reports

Grantees will be required to report financial status and program progress quarterly, and separately from ORR's regular Refugee Resettlement Program.

Both financial status (SF 269s) and program progress reports will be due 30 days after the first calendar day of each quarter following the effective date of the grant award, except for the final financial and program progress reports which shall be due 90 days after the expiration or termination of grant support.

Dated: April 23, 1985.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105-0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255-5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445-0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106-4459

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736-4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Tel. (404) 656-3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548-3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281-3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296-5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

Louisiana

Michael J. Jefferson, Dept. of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925-3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 383-7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727-7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373-0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Room 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–[illegible]

Note.—Correspondence and questions concerning the State's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–[illegible]

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310, Tel. (503) 373–1998.

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina, 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington, 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol

Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774-0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727-6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

Sample Statement of Intent

(To be presented in English and in the native language of the refugees to be relocated)

1. I certify that I am interested in resettling in ______.

2. I am willing to accept employment and am determined to become self-sufficient.

3. I have received an orientation packet and have studied its contents.

4. I am making this move of my own free will.

Signature of PSR refugee head of household: ______

[FR Doc. 85-11485 Filed 5-10-85; 8:45 am]

BILLING CODE 4190-11-M

federal register

Monday
May 13, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 403

Medicare Program; Recognition of State Reimbursement Control Systems; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[BERC-240-P]

Medicare Program; Recognition of State Reimbursement Control Systems

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the conditions and procedures under which HCFA would permit Medicare payments for hospital services to be made in accordance with a State hospital reimbursement control system, rather than under Medicare reimbursement principles. This proposal would implement section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), section 601(c) of the Social Security Amendments of 1983 (Pub. L. 98-21) and section 2315(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

DATE: To assure consideration, comments must be received by June 27, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attn: BERC-240-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland. In commenting, please refer to file code BERC-240-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202-245-7890).

Please address a copy of comments on information collection requirements to: Fay Iudicello, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, (301) 594-4010

SUPPLEMENTARY INFORMATION:

I. Background

A. Tranditional Hospital Reimbursement

Traditionally, Medicare payments for inpatient hospital services under Title XVIII of the Social Security Act (the Act) have been made on a retrospective, reasonable cost basis. Under this reasonable cost reimbursement method, hospitals have been paid for the costs they actually incurred in providing services to Medicare beneficiaries. While this reimbursement method has guaranteed payment for almost all allowable hospital expenditures, it has provided little economic incentive for hospitals to moderate costs.

In recent years, this cost-based reimbursement mechanism has come under increasing criticism as being a major contributor to inflationary pressures on health care costs. Because of this, Medicare has experimented with a number of alternative reimbursement approaches, including a variety of prospective reimbursement and State ratesetting demonstration projects. Medicare participation in these demonstrations is authorized under the Social Security Amendments of 1967 and 1972. Both the dissatisfaction with the retrospective reasonable cost reimbursement system and the experience gained under the ratesetting demonstration projects contributed to recent enactment of the hospital reimbursement reform legislation described in the following section of this preamble.

B. Legislation

Medicare reimbursement has been significantly affected by the passage of several pieces of legislation. On September 3, 1982, the President signed into law the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). Section 101 of Pub. L. 97-248 added a new section 1886 to the Act, and made conforming changes in other sections of Title XVIII of the Act. Subsequently, on April 20, 1983, the Social Security Amendments of 1983 (Pub. L. 98-21) were enacted. Section 601 of this legislation amended the new section 1886 of the Act. Further changes to section 1886 of the Act resulted from the enactment of section 2315(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which was signed into law on July 18, 1984.

Under Pub. L. 97-248, section 1886(a) of the act provided for the extension of the routine hospital cost limits, authorized under section 223 of the Social Security Amendments of 1972 (Pub. L. 92-603), to include total operating costs of all inpatient hospital services. (These costs were defined as all routine operating costs special care unit operating costs, and ancillary services operating costs.) Before section 1886(a) was added to the Act, the section 223 limits applied only to operating costs of inpatient general routine care (that is, bed, board, and routine nursing services.)

In addition, the costs to which the expanded limits applied were to be determined on a per discharge or per admission basis, and the limit for each hospital was required to be set based on the mix of types of Medicare cases treated by the hospital. However, under section 1886(a)(1)(D) of the Act, as added by Pub. L. 98-21, the expanded cost limits no longer apply to hospitals whose cost reporting periods begin on or after October 1, 1983, because, except for certain excluded hospitals, the prospective payment system (section 1886 (d) of the Act, enacted as part of Pub. L. 98-21) applies to these hospitals.

Section 1886(b) of the Act provided for a new 3-year limitation on payment for hospital costs, which required that we establish a ceiling level for the allowable rate of increase of hospitals' inpatient operating costs per case.

Section 602(e) of Pub. L. 98-21 added a new paragraph (14) to section 1862(a) of the Act to prohibit payments to hospitals for non-physician services under Part B unless the hospital is granted a waiver by HCFA in accordance with the specified conditions as set forth in section 602(k) of Pub. L. 98-21.

In addition, we note that section 108 of Pub. L. 97-248 established section 1887(a) of the Act, which directs the Secretary to prescribe regulations that distinguish between (1) professional medical sevices that are personally rendered to individual patients and are reimbursed under Part B on a charge basis, and (2) professional medical services performed by a physician that are generally beneficial to patients and are reimbursed on a reasonable costs basis. Reasonable cost reimbursement for provider-based physician services cannot exceed a reasonable compensation equivalent established by the Secretary in regulations. Section 1887(a)(1)(B) of the Act explicitly applies to professional services furnished to patients in hospitals that are reimbursed under section 1886(c) of the Act.

Section 1886(c) of the Act, as established by Pub. L. 97-248 and as since amended by section 601(c) of Pub. L. 98-21 and section 2315(a) of Pub. L. 98-369, generally authorizes Medicare reimbursement for impatient hospital services in accordance with a State's

hospital reimbursement control system, rather than under the Medicare reimbursement method. Under section 1886(c) of the Act, reimbursement may be made under a State's system if one of three alternative sets of requirements are met.

First, under section 1886(c)(1) of the Act, as enacted by Pub. L. 97–248, HCFA has discretion to allow Medicare hospital reimbursement to be made in accordance with a State reimbursement control system ("the State system") if the chief executive officer of the State requests approval of the State system, and if the State system meets specific minimum requirements as summarized below.

1. The State system must apply to substantially all non-Federal acute care hospitals in the State.

2. The State must apply to at least 75 percent of all inpatient revenues or expenses for the State.

3. The State must provide assurances that payors, hospital employees and patients in the State will be treated equitably under its system.

4. The State must provide assurances that its system will not result in greater Medicare expenditures over 36-month periods.

Section 601(c) of Pub. L. 98–21 amended section 1886(c)(1) of the Act to allow continuation of HCFA's discretionary authority for approval, as provided under Pub. L. 97–248, but added two additional requirements as follows.

5. The State system may not preclude health maintenance organizations (HMOs) or competitive medical plans (CMPs) from negotiating directly with hospitals concerning payment for inpatient services under section 1876 of the Act.

6. The State system must prohibit charging individuals for services for which such individuals are entitled to have payment made under Part A of Medicare under section 1866(a)(1)(G) of the Act; and also prohibit, in accordance with section 1862(a)(14) of the Act, payments under Part B of Medicare for nonphysician services provided to inpatients, unless waived by the Secretary in accordance with the regulations at 42 CFR 489.23, published as part of the prospective payment system interim final regulations on September 1, 1983 (48 FR 39838) and as final regulations on January 3, 1984 (49 FR 324).

Second, section 601(c) of Pub. L. 98–21 added section 1886(c)(5) to the Act to specify six additional requirements that, if met by a State system that also meets requirements one through six as presented above, would make HCFA's approval of a request by the State for Medicare reimbursement under its system mandatory. The additional requirements are that the State system must:

7. Be operated directly by the State or an entity designated by State law;

8. Use a payment methodology to be applied prospectively;

9. Provide for hospital reports, as required by the Secretary;

10. Provide satisfactory assurances that it will not result in admission practices that will reduce treatment to uninsured, low income, high cost, or emergency patients;

11. Not reduce payments without 60 days notice to HCFA and to hospitals; and

12. Provide satisfactory assurances that, in developing the program, the State has consulted with local officials concerning its impact on public hospitals.

Third, special provisions apply to those States that currently have demonstration projects with HCFA under section 402 of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or section 222(a) of the Social Security amendments of 1972 (42 U.S.C. 1395b–1 (note)) for the operation of state reimbursement control system. Under section 1886(c)(4) of the Act, as added by section 601(c) of Pub. L. 98–21 and subsequently amended by section 2315(a) of Pub. L. 98–369, HCFA approval of a State's application to continue the operation of a system upon expiration of the demonstration project is mandatory if, and for so long as, the system meets the requirements one through six presented above.

In addition to the specific requirements discussed above, a general requirement that all hospitals eligible for payment under section 1886(c) of the Act must meet is contained in section 1866(a)(1)(F) of the Act. This latter section was added to the Act by Section 602(f)(1) of Pub. L. 98–21. It requires hospitals, in order to be eligible for Medicare payment under section 1886(c) of the Act, to have and maintain an agreement with a utilization and quality control Peer Review Organizations or in the absence of such agreements with such organizations, agreements with Professional Standard Review Organizations or fiscal intermediaries.

With respect to requirement number four above, section 1886(c)(6) of the Act provides that if the Secretary determines that the assurances have not been met for any 36-month period, the payments to hospitals shall be reduced under either the States system or the Medicare payment system in a an amount equal to the excess over what Medicare would have paid for these services.

Under section 1886(c)(1) of the Act, a State's application for reimbursement under the State's system may not be denied on the basis that the system does not pay on a diagnosis related group (DRG) methodology or on the basis that the State system does not produce savings greater than what would have accrued under the Medicare payment system, either the cost reimbursement or the prospective payment system, whichever is applicable.

Section 1886(c)(1) of the Act also provides parameters regarding a State's discretion, under certain circumstances, to determine how to substantiate the assurance regarding whether the amount of payment that would otherwise have been made under Medicare will be exceeded. If we determine that this comparison is to be made by maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying the comparison test on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. Since we will not be determining whether the State's assurance is acceptable by reference to percentage increases above a base level (except in the case of States with existing demonstration projects), we are not proposing to allow States this option on the method of measurement.

Section 1886((c)(1) of the Act further provides that the State's rate of increase in payments need not be less than the national average rate of increase if the Secretary implements the comparison test by reference to the national average percentage increase in total payments. This provision will generally not be applicable, because, except where required by statute for continuation of existing demonstration projects, we do not intend to assess a State's assurance regarding the amount of payments by reference to the national average rate of increase. Under the proposed regulations, we would measure a State's assurance by comparison to what actual payments would have been under the Medicare system.

HCFA may, under certain conditions, permit an adjustment to take into account previous reductions in Medicare reimbursement amounts that were the result of the effectiveness of a State's reimbursement control system prior to the State's application for Medicare participation. Specifically, section 1886(c)(2) of the Act authorizes this adjustment if, as a result of the State's already existing reimbursement control

system, the State's aggregate rate of increase in hospitals' total operating costs is less than the national aggregate rate of increase in hospitals' total operating costs.

Under section 1886(c)(4) of the Act, HCFA would judge the effectiveness of a State system with an existing Medicare demonstration project on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under Medicare, as compared to the national rate of increase or inflation for such payments. The State would retain the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during its hospitals' three cost reporting periods beginning on or after October 1, 1983. After the date, however, this test would no longer apply. In this case, the State system would be treated in the same manner as under other waivers authorized by these proposed regulations.

To summarize, HCFA would have discretionary authority to approve Medicare reimbursement under a State system that meets each of the minimum requirements one through six above. This discretionary authority also would apply if a State system meets the minimum requirements and any of the additional requirements seven through twelve. However, if a State system meets all of the requirements, HCFA approval would be mandatory. Furthermore, if a State system was established and operated under an existing Medicare demonstration project and meets the requirements of items one through six above, HCFA approval would be mandatory as long as those minimum requirements continue to be met.

C. Medicare and Medicaid State Rate Control Experience to Date

Under section 402 of the Social Security Amendments of 1967 and section 222(a) of the Social Security Amendments of 1972, HCFA has broad discretion to waive certain Medicare and Medicaid provisions of the Act as necessary to conduct demonstration projects. Under this demonstration authority, HCFA has participated in a variety of efforts to develop, demonstrate and evaluate various prospective reimbursement and State ratesetting programs. These projects have resulted in a comprehensive evaluation of many methods of hospital reimbursement, such as rates based on negotiated budgets, budget reviews, formula methods and diagnostic specific payment rates.

Currently, in the States of Maryland, Massachusetts, New York and New Jersey, both Medicare and Medicaid pay for hospital services in accordance with payment methodologies incorporated in statewide, all payor systems, rather than under the Medicare and Medicaid requirements that would otherwise apply. Under these ratesetting systems, nearly all acute care hospitals are paid at rates determined under the State controlled systems.

Congress provided in section 1814(b) of the Act, which was enacted in 1980, that we could continue Medicare demonstration project reimbursement systems indefinitely so long as certain specified conditions were met. In light of the enactment of section 1886(c) of the Act, which establishes different conditions for the continuation of such demonstration projects, we do not intend to exercise our discretion under section 1814(b) of the Act. Rather, continuation of the projects will be assessed under the provisions of section 1886(c) of the Act.

In addition, Congress included section 603(b) in Pub. L. 98–21 to provide that, upon the request of a State that has an existing demonstration project (or upon the request of a party to the demonstration project agreement) approved under section 402 or section 222(a), the terms of the demonstration project agreement must be modified so that the demonstration project is not required to maintain the rate of increase in Medicare hospital costs in that State below the national rate of increase in Medicare hospital costs. To qualify under this provision, the demonstration project agreement must have been in effect as of March 1, 1983 and must have been approved after August 1982.

We intend to address requests for revisions in demonstration agreements approved under sections 402 or 222(a) under the existing demonstration project procedures and not under the requirements set forth in these proposed regulations.

II. Proposed Requirements for Approval of State Reimbursement Control Systems

In developing these proposed regulations to implement section 1886(c) of the Act, we have set forth requirements that are necessary to facilitate effective administration of the legislation. We believe that these requirements would assure protection for all involved parties, such as Medicare beneficiaries, participating providers, and the Medicare program.

These proposed regulations specify that HCFA *may* approve applications submitted by the Chief Executive Officer of the State for Medicare reimbursement under a State system if the *minimum* requirements presented below are met and *would be required to* approve an application if *all* the requirements are met. We also describe the proposed requirements for those States that had existing Medicare demonstration projects for reimbursement control systems under section 402 or 222(a) in effect on the date of enactment of Pub. L. 98–21 (that is, April 20, 1983).

Section 403.304 of these proposed regulations implements section 1886(c)(1) of the Act by specifying the minimum requirements and assurances that a State system must meet. The system would be required to—

• Apply to substantially all non-Federal acute care hospitals (these hospitals must have and maintain an agreement with a utilization and quality control Peer Review Organization);

• Apply to the review of at least 75 percent of all revenues or expenses in the State for inpatient services;

• Permit an HMO or CMP to negotiate the rate of payment for inpatient hospital services directly with a hospital;

• Limit hospital charges for beneficiaries to deductibles, coinsurance, and services for which the beneficiary would not be entitled to have payment made under Medicare Part A; and prohibit payment under Part B of Medicare for nonphysician services provided to hospital inpatients unless this prohibition is waived in accordance with regulations at 42 CFR 489.23.

• Assure the equitable treatment of all entities that pay hospitals for inpatient hospital services, hospital employees, and hospital patients, as follows—

—Assure that all entities that pay hospitals for inpatient hospital services are treated in a uniform and substantially equal manner in that all payors have equal opportunity to participate under the system and to receive available benefits of the system.

—Assure that the risks and savings are shared equitably by all entities that participate under the system.

—Assure that the State system will not result in reduction of the services or of due process rights to which Medicare beneficiaries are otherwise entitled.

• Assure that the system will provide a means for providers to appeal errors in the calculation of payment rates.

• Assure that Medicare payments made under the system over 36-month periods will not be greater than those that would have otherwise been made

under the Medicare principles of reimbursement.

The proposed § 403.304 would also provide, as noted earlier, that if a State had an existing Medicare demonstration project in effect on April 20, 1983, and requests a waiver under section 1886(c)(4) of the Act, the effectiveness of the State's system may be judged on the basis of the State system's rate of increase or inflation in payments for inpatient hospital services as compared to the national rate of increase or inflation in payment for such services during the State's hospitals' three cost reporting periods beginning on or after October 1, 1983.

The new § 403.304 would further provide that if the assurances and supporting data pertaining to the cost-effectiveness provisions, as described above, are insufficient, the State would be allowed to provide an additional assurance in order to meet the requirement. The additional assurance would be that the State would control expenditures by agreeing to do one of the following:

• The State would agree that Medicare payments under its system would be limited to the Medicare prospective payment rates. The State would be required to pay hospitals covered by its system any excess payment generated by the system.

• The State would agree on a predetermined percentage relationship between Medicare payments under the State's system and Medicare payments under the prospective payment system. This percentage relationship would be monitored by HCFA on a quarterly basis and the monitoring results would be provided to the State. If the payments show a deviation from the agreed upon predetermined relationship, then Medicare payments to the State would be automatically capped, with the State paying to hospitals under the system the excess over the prospective payment system expenditures. As an alternative to this second option, the State may provide through State legislation or binding regulations that, in accordance with its payment control assurance, reduced payments to hospitals will constitute full and final payment for services rendered to Medicare beneficiaries.

We propose in § 403.306 of these regulations that, if a State system meets the requirements of § 403.304 and meets the additional requirements and assurances specified in section 1886(c)(5) of the Act, HCFA approval of the system would be mandatory. As set forth in this proposal, these additional requirements would be that the system—

• Be operated directly by the State or an entity designated by State law.

• Provide for a methodology (that sets forth exceptions and adjustments if any, as well as any method for changes in the methodology) by which prospectively determined payment rates are established.

• Provide for hospitals to make reports as required by HCFA.

• Provide that the State must notify HCFA and affected hospitals 60 days prior to enactment of reductions or increases in payments that might generate from any material change in the system or the payment methodology. Approval would have to be granted by HCFA prior to the State's effective date for the change in payments.

In addition, under the proposed § 403.306, the State would have to provide satisfactory assurances to HCFA that—

• The operation of the sytem will not result in any change in hospital admissions practices that would result in—

—A significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third party coverage and who are unable to pay for hospital services;

—A significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services;

—The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital; or

—The refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services.

• The State consulted with local government officials, during the development of the system, concerning the impact of the system on public hospitals.

III. Discussion of Proposed Requirements

A. Requested by Chief Executive Officer

The Chief Executive Officer of the State would have to submit the request for approval of the State system on behalf of the State. This requirement is specified at section 1886(c)(1) of the Act and in these proposed regulations at § 403.304(b)(1). Normally, the Chief Executive Officer would be the Governor of the State. However, if a State or territorial constitution or other State or territorial statutory authority designates some other official as the highest official of the State with authority to act with respect to matters covered by these proposed regulations, then that official would qualify to submit the application.

B. Applicable to Substantially All Hospitals

Section 1886(c)(1)(A)(i) of the Act requires, as a condition for approval of a State's hospital reimbursement control system, that the system apply to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State. Under this statutory requirement, our proposal defines "Federal hospital" in § 403.302 and specifies in § 403.304 the proposed criteria for determining which hospitals must be excluded from the system and which hospitals may, at the State's option, be excluded. The proposed criteria are as follows:

1. Federal Hospitals

We have defined Federal hospitals, for purposes of these proposed regulations, to be those hospitals that are administered by, or that are under exclusive contract with, the Department of Defense, the Veterans Administration, or the Indian Health Service. Since payments for inpatient hospital services in these institutions are prescribed in the statutes and regulations governing these programs, these hospitals must be excluded from the State's system.

2. Acute Care Hospitals

We have generally considered acute care hospitals to be those facilities that are primarily engaged in providing a variety of diagnostic or therapeutic services to inpatients on a short-term basis. Thus, acute care hospitals are short-stay, general facilities as opposed to chronic-care hospitals or long-term care institutions. For the most part, the average length of stay in acute care hospitals does not exceed 25 days. Hospitals that ordinarily treat patients on a long-term or specialty basis, such as rehabilitation, psychiatric, tuberculosis, or childrens' hospitals, may be excluded from a State's reimbursement control system.

We note, however, that the exclusion of non-acute care hospitals would not be mandatory for HCFA's recognition of the system. States may apply their system to these facilities, if they desire, without influencing HCFA's approval of the system.

Section 602(f)(1) of Pub. L. 98-21 amended section 1866 of the Act by

adding section 1866(a)(1)(F), which requires that hospitals receiving payments under section 1886(c) of the Act must have and maintain an agreement with a utilization and quality control Peer Review Organization. Regulations at § 466.78(a), published in the **Federal Register** on April 17, 1985 (50 FR 15331), implement this requirement.

3. Mandatory Statewide Applicability

In order to ease the administration of the statutory requirement concerning applicability to all non-Federal acute care hospitals, we would further specify that the State reimbursement control system must be mandatory statewide. If the proposed system is mandatory as authorized and governed by State legislation or other enforceable mandate, the determination that the system applies to substantially all non-Federal acute care hospitals (except for those hospitals mentioned in item two above) would be relatively straightforward. This would also facilitate a lessening of the administrative burden to determine if the State system continues to meet this requirement. For example, if participation of hospitals was voluntary, at any point in time the State system may not meet the applicability requirements because hospitals may participate or not participate as they choose. The designated State agency or commission responsible for the operation of the system would be required to notify the affected hospitals in writing of the basis for the system and of the State's intention to adhere to mandatory applicability of the system. HCFA's determination would be based on this information.

C. Applies to 75 Percent of Revenues or Expenses for Inpatient Hospital Services

Under section 1886(c)(1)(A)(ii) of the Act, in order to approve Medicare payment under a State system, we must determine that the system applies to review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and that the State's system applies to 75 percent of revenues or expenses for inpatient hospital services under the State's Medicaid plan.

In implementing this statutory requirement, our proposal specifies that both the Medicare and Medicaid program must participate under the system. In addition, all other private third-party payors must be afforded the opportunity to participate under the system. Although HCFA would be responsible for determining if 75 percent of the revenues or expenses for inpatient hospital services are covered under the system, a State would be required, when applying for approval of its system, to submit an assurance and supporting documentation that this requirement is met. The State's assurance must identify the payors that participate under the system and how the State concluded that the 75 percent requirement is met. HCFA would review and evaluate the assurance and make a determination as to whether this requirement is met.

A State system need not be limited to inpatient services. At the discretion of the Secretary, a State that applies for approval of a State system for inpatient services could also seek approval to have its system cover outpatient services. If the State system applies to outpatient services, the State would be required to submit a separate waiver application subject to the same regulatory requriements of an inpatient waiver application, that is, the application would have to meet all the requirements for mandatory inpatient waiver approval as they apply to outpatient services. For example, the outpatient system would have to apply to all non-Federal acute care hospitals and to 75 percent of revenues or expenses for outpatient hospital services. Furthermore, the State would be required to assure equitable treatment of all entities and that the outpatient system will be cost effective independent of the inpatient system, in that payment for outpatient services will not result in greater Medicare expenditures over a 36 month period. The application for an outpatient waiver would be evaluated independent of the application for an inpatient waiver and would be approved only for those States that have an approved inpatient reimbursement system. The approval of outpatient provisions would be within HCFA's overall discretionary authority for approval of State systems. We recognize the statute specifically authorizes only inpatient hospital services. Therefore, we invite public comments regarding the optional application of State systems approved under section 1886(c) of the Act to outpatient services.

D. Equitable Treatment of All Entities

Section 1886(c)(1)(B) of the Act requires that satisfactory assurances be provided as to the equitable treatment under the system of all entities that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients. Thus, these proposed regulations require a number of assurances by the State in accordance with the statute.

1. Equitable Treatment of All Entities That Pay for Hospital Services

The State would be required to assure that all entities that pay for hospital services are provided equal opportunity to participate under the State system and consequently, share in its risks and benefits. Further, the State would be required to assure that its system provides for uniform treatment of all payors that participate in the system in terms of opportunity. Therefore, it is not necessary that every payor receive benefits under the system that are identical, as long as each payor has an equal opportunity to obtain or qualify for those benefits.

2. Risks and Savings Must Be Shared on an Equitable and Proportionate Basis

These proposed regulations specify that the State system must assure that risks and savings are shared by all third-party payors.

This requirement is in keeping with, and would help to implement, the statutory requirement in 1886(c)(1)(B) of the Act regarding equitable treatment of all payors.

3. Assurances of Equitable Treatment of Hospital Employees and Patients

To implement section 1886(c)(1)(B) of the Act, these proposed regulations require written assurances of equitable treatment of hospital employees and hospital patients. It would not be necessary for a State to include in these assurances a detailed narrative of how the system provides equitable treatment. However, HCFA would be free to request additional information to substantiate the assurances, if necessary.

4. Continuation of Medicare Coverage, Entitlement, and Program Administration

Recognition of State systems under the new law may alter the means by which Medicare inpatient hospital services may be reimbursed. However, section 1886(c) of the Act does not affect the coverage and entitlement provisions of title XVIII of the Act. On the contrary, it requires that each State assure equitable treatment of Medicare beneficiaries under its system by specifying equitable treatment of hospital patients. Threfore, these proposed regulations require the State to agree that it would not restrict Medicare beneficiaries' access to services. Entitlement to Medicare benefits would remain a Federal determination. Additionally, the beneficiaries' benefit package (for example, the days of care, statutory exclusion of certain services,

deductibles and coinsurance provided for by title XVIII of the Act) could not be changed by the State. Further, services currently covered in Medicare's payment rate to hospitals may not be restricted. Under a State system, States would be expected to assure at a minimum that Medicare beneficiaries will continue to receive all reasonable and necessary services as required under the present reimbursement system.

Similarly, section 1886(c) of the Act did not affect title XVIII of the Act with respect to program administration. Therefore, a State's system may not abridge the rights of providers that are assured under their Medicare participation agreements. The current procedures for assuring quality of care inherent in the provider survey and certification process, the present terms of provider agreements, and the Medicare procedures of utilization monitoring would generally remain intact. Further, Medicare intermediaries would continue their claims processing function, with necessary changes to accommodate the State's determination of Medicare reimbursement for providers. Medicare intermediaries would continue to process bills, make payments, and adjudicate and reconsider beneficiary bills and claims. This involves a consideration of the medical reasonableness and necessity of the services for which Medicare reimbursement is claimed. The State would, however, be responsible for provider appeals as discussed in section III.N. of this preamble.

E. Payments May Not Exceed Medicare Reimbursement Levels

Section 1886(c)(1)(C) of the Act requires that the Secretary be provided satisfactory assurances that, over 36-month periods, the first of which begins with the first month in which this provision applies to a State system, the amount of Medicare payments that are to be made under the State's system will not exceed the amount of payments that would otherwise have been made under the Medicare reimbursement principles for items and services provided under Medicare. States that have an existing Medicare demonstration project on April 20, 1983 and that have requested approval of a State system under section 1886(c)(4) of the Act may have the system's effectiveness judged on the basis of the State's system's rate of increase or inflation in payments for Medicare inpatient hospital services as compared to the national rate of increase in payments for such services during the three cost reporting periods beginning on or after October 1, 1983.

We may, under certain conditions, permit an adjustment to take into account previous reductions in the Medicare reimbursement amounts that were the result of the effectiveness of the State's reimbursement control system prior to application for Medicare participation. Specifically, the statute authorizes the Secretary to provide for this adjustment if, as explained in the legislative history for Pub. L. 97-248 (see H.R. Rep. No. 97-760, 97th Cong. 2nd Sess. 422 (1982)), a result of the State's existing system that does not include Medicare is that the State's aggregate rate of increase in hospitals' total operating costs is less than the national aggregate rate of increase in hospitals' total operating costs. Although the statute allows for such discretionary adjustment and we have provided for it in these proposed rules, we are concerned as to how a State entity would establish quantitatively such amounts. Moreover, we are also concerned as to how we would substantiate the savings realized by Medicare in some prior period. We invite specific public comment on the operation of this provision.

As noted below, the State's assurance and projections on cost-effectiveness must be based on the Medicare principles in effect at the time and must also include established future changes to the Medicare system. HCFA will review these projections to determine if the cost-effective assurance is acceptable for purposes of approving the application. However, the test of cost-effectiveness will be based on a comparison of actual expenditures under the State system and the amounts that Medicare would have paid absent the waiver. We wish to emphasize that, in most instances, it would be necessary for a State to make changes to its payment system to adapt to changes that occur in the national Medicare program after the State system is approved. Accordingly, once the application is approved, HCFA will monitor quarterly the Medicare expenditures under the State system and compare these amounts to what Medicare would have paid if the State system had not been in existence. Of course, any changes to the Medicare system would be included in this comparison. If we determine that the assurances have not been met or will not be met with respect to any 36-month period, sections 1886 (c)(3) and (c)(6) of the Act authorizes termination of the approval agreement or a reduction in payment to individual hospitals under the State system. If appropriate, we may reduce payments under the Medicare payment system in an amount equal to the amount by which the Medicare payments under the State system exceed the amount of Medicare payments that otherwise would have been paid to the hospitals involved, including the appropriate recognition of the time value of the excess payments (that is, the interest the Medicare Trust Fund earned, or would have earned, on these amounts). The amount of the overpayment would be recouped on a proportionate basis from each of those hospitals that received payments under the State system that exceeded the payments they would have received under the Medicare system. The hospital's proportionate share would be determined by a comparison of the hospital's total overpayment to the total amount of excess payments under the State's system over the aggregate payments that the Medicare system would have paid. Recoupment may be accomplished by a hospital's direct payment to the Medicare program or by offsets against future payments to the hospital. If the expenditures test is applied by a rate of increase factor, the amount of excess payment would be determined by comparison of the State system rate of increase to the national rate of increase in order to determine the amount of excess payments to be recouped from each individual hospital.

As an alternative to the recoupment procedures described above, but subject to HCFA's acceptance, the State may provide by legislation or binding regulations for a process and procedure whereby excess payments will be recouped by the Medicare program.

Although the statute requires an assurance that payments under the State's system will not exceed the amount of payment that would have been made under the Medicare reimbursement principles over 36-month periods, these proposed regulations further require detailed and quantitative estimates, data, and reports to demonstrate the projected costs or savings for each hospital. This is necessary to substantiate the assurance that Medicare program expenditures will not exceed what Medicare would have paid over the 36-month period. The estimates and data are also necessary for the following reasons: (1) to provide a uniform basis to review the State's assurance irrespective of the design of the State's system, (2) to protect the Medicare program from excessive expenditures by allowing analysis as to whether it is reasonable to accept the State's assurance that its system will indeed not result in expenditures above the statutory requirements, and (3) to

assist HCFA to determine if payments to hospitals under the State's system or, if applicable, under the Medicare payment system, should be reduced in an amount equal to the excess over what Medicare would have paid during the period the State system was in effect. HCFA would monitor expenditures on a quarterly basis during the period the State system is in effect for purposes of comparision with amounts that would have been paid using the Medicare payment system to determine if excess payments have been made. The projections and supporting data would be especially critical if a State's system fails to meet the statutory requirements during a particular year. For example, if a State's system were to result in the projection of sizable expenditures above the limit in the first year of operation, we could reasonably conclude, unless there were quantitative supportive information to the contrary, that it is not likely that the system would result in payments that would equal the Medicare expenditure over the 36-month period.

Specifically, these proposed regulations require the State to submit estimates and data in support of its assurance. The State would be required to submit for *each hospital* projections for the first 12-month period covered by the assurance, in both the aggregate and on a per discharge basis, of Medicare inpatient expenditures without the State system in effect (that is, using the Medicare principles) and parallel projections of Medicare inpatient expenditures under the State's system, and the resulting cost or savings to the program including the time value of trust fund expenditures during the period the State system expenditures either exceeded or were less than Medicare system payments. The State would also be required to submit separate *statewide* projections for each year of the 36-month period, in both the aggregate and on an average weighted discharge basis, of inpatient expenditures under the State system and under the Medicare system. These projections would have to include a detailed description of the methodology and assumptions used to derive the expenditure amounts under both systems. In instances where the assumptions are different under the sets of projections, the State would have to provide a detailed explanation of the reasons for the differences. At a minimum, the following separate data would be included in the projections for the Medicare principles and for the State's system.

• The base year and the Medicare allowable and reimbursable cost (that is, costs that represent a full accounting period and that have been fully reported and reviewed or audited as appropriate) for each hospital that was used to develop the projections, including the amount of estimated pass through costs (for example, capital).

• The categories of costs that are included in the State system and that are reimbursed differently under the State system than under the Medicare system.

• The number of Medicare, and total, base year discharges and admissions for each hospital.

• The rate of change factor, and method of application of this factor, used to project the base year costs over the 36-month period to which the assurance would apply.

• Any allowance for anticipated growth in the amount of services from the base year. If applicable, the allowance would have to be depicted in separate estimates for population increases or increases in rates of admissions.

• Any adjustments to the projections the State is permitted to take into account due to previous reductions in the Medicare payment amounts that are the result of the effectiveness of the State's system prior to Medicare participation.

• States with existing Medicare demonstration projects that apply for approval under a rate of increase effectiveness test would also be required to submit data projecting the parallel rates of increase during the requisite period.

The estimates and projections of Medicare payments as required for the assurance must take into account all of the Medicare reimbursement principles in effect at the time. This would include the HCFA market basket (a measure that is used to reflect changes in the prices of goods and services that hospitals use in producing general inpatient services, which is explained in detail in the September 1, 1983 **Federal Register** (48 FR 39764)), the provisions of Pub. L. 97–248, and the Medicare prospective payment system.

1. Hospital Outpatient Services

For those State systems that include payment for Medicare outpatient services, these proposed regulations would also require the submission of a *separate* application and assurance for those services, and estimates and data in further support of the State's assurance. The estimates and data that the State would be required to submit include, but are not limited to, projections for the first 12-month period covered by the assurance for each hospital, in both the aggregate and on an average cost and payment per service basis, of Medicare outpatient expenditures without the State's system being in effect (that is, using the Medicare principles); comparable projections of Medicare outpatient expenditures under the State's system; and the resulting cost or savings to the Medicare program. In addition, the State would also be required to submit separate statewide projections of the aggregate outpatient expenditures for each system for each year of the 36-month period. The State would be required to submit the methodology and assumptions used to derive the expenditure amounts under both systems. The minimum requirements regarding the assurance and supportive data would be consistent with those listed for the inpatient hospital projections as described above. The cost-effectiveness test for expenditures for outpatient services would have to be met independently of the cost-effectiveness test for expenditures for inpatient services.

2. HCFA Review of Assurances

HCFA would review the State's assurances and data as a prerequisite to the approval of the State's system. HCFA would compare the State's projections of payment amounts to HCFA data in order to determine if the State's assurances are reasonable and fully supportable. If the assurances and supporting data are by themselves insufficient to provide satisfactory assurance to HCFA, then HCFA may agree that the States adoption of one of the following additional procedures provides a satisfactory assurance:

• The State agrees that the appropriate Medicare intermediaries each month will disburse to the State's hospitals no more Federal funds in the aggregate than would have been disbursed in the absence of the State system. Any additional funds necessary to pay hospitals for Medicare services as required by the State system will be furnished to the intermediaries by the State. These amounts will be refunded to the State by the intermediaries to the extent that, in subsequent months, the State's system requires a smaller aggragate payment for Medicare services than would have been paid in the absence of the State system.

• The State agrees that, as a result of projections that exceed Medicare payments in any particular period, there will be a payment schedule established that would limit State system hospital payments to a predetermined percentage relationship between projected State

system hospital payments and what payments under Medicare would have been. This payment pattern would be monitored on a quarterly basis and any deviation from the agreed upon payment pattern would automatically result in Medicare payments being capped at prospective payment system levels with an offset to recover prior excess payments, and the State would be required to make up the difference in payments. If the State chooses not to make up the difference in payments, the State would be required to have in place legislation or binding regulations that provide that reduced payments to hospitals will constitute full and final payment for services rendered to Medicare beneficiaries during the period covered by the reduced payments.

With regard to existing State systems currently under a HCFA demonstration project, HCFA is required under section 1886(c)(4) of the Act to judge the effectiveness of of the system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under Medicare as compared to the national rate of increase or inflation for such payments. The States with existing Medicare demonstration projects may retain the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during its hospitals' three cost reporting periods beginning on or after October 1, 1983. After that date, at our option the above test would no longer apply, and instead we may apply a test similar to that used for a new State system.

In connection with the maximum expenditure requirements, we believe that it is necessary to discuss our concerns and policy regarding the inclusion of additional categories of costs that are not usually allowable for reimbursement purposes under the Medicare program: for example, (1) the costs associated with bad debts or uncompensated care not attributed to Medicare beneficiaries; (2) the cost of poison control hotlines, etc., and (3) costs resulting from the administration of the State's system, or State taxes or other assessments that are specifically designated for purposes of financing the administration of the State's reimbursement control system. These proposed regulations would not preclude a State system from including these costs in the overall expenditure determination. However, we wish to emphasize that it would be a requirement that the total expenditure must not exceed the amounts that would have otherwise been paid under the Medicare reimbursement principles for items and services provided to Medicare beneficiaries. We believe that inclusion of such non-allowable costs must be monitored closely in order to achieve consistency with the legislative intent that the effect of a State system be budget neutral in terms of what Medicare would otherwise pay for services covered under the Medicare program.

Additionally, these proposed regulations provide that States are not to attain Medicare savings through shifting of costs to other payors, including the Medicaid program. HCFA would monitor this aspect in conjunction with the monitoring of expenditures under the State system. It would be inappropriate to increase Medicaid costs in order to achieve Medicare savings, since this would be inconsistent with the intent of the existing Medicaid upper limit requirement in regulations at § 447.253, and the legislative intent of sections 1902(a)(13)(A) and 1902(a)(30) of the Act, which limit maximum Medicaid payment for inpatient hospital services to that which would have been paid under the Medicare principles of reimbursement. The upper limit requirement in § 447.253 is based on section 1902(a)(30) of the Act and the intent of Congress in enacting section 2173 of Pub. L. 97–35, which amended section 1902(a)(13) of the Act. (See the Conference Report on Pub. L. 97–35, H.R. Rep. No. 97–208, 97th Cong. 1st Sess. 962 (1981).) The upper limit requirement was not affected by either section 101 of Pub. L. 97–248 or section 601 of Pub. L. 98–21. Therefore, these proposed regulations specify that the State's system must not produce aggregate expenditures for the Medicaid program in excess of what those expenditures would have been if the Medicare payment principles were used.

F. Exception for Health Maintenance Organizations (HMOs)

In section 1886(c)(1)(D) of the Act, Congress recognized that HMOs offer a competitive alternative to traditional health care providers. (See the Report of the Committee on Ways and Means on H.R. 1900, H.R. Rep. No. 98–25, 98th Cong., 1st Sess. 148 (1983).) Through years of study with various HMO demonstrations, it has been concluded that health care utilization of HMO enrollees is somewhat different than that of the population generally. Often this difference is reflected in lower hospital admission rates for inpatient care. This characteristic of their enrollees' utilization of services permits many HMOs to negotiate individual prepayment plans with the hospitals furnishing services to enrollees, such as monthly per capita payments. The payment plans that result from these negotiations may not be consistent with the State system. Thus, section 1886(c)(1)(D) of the Act and these proposed regulations specify that State systems must provide that HMOs or CMPs, as defined by section 1876(b) of the Act, may negotiate their own inpatient hospital service reimbursement rates. It is the intent of Congress that, to avoid undermining the State system and to provide the exception afforded HMOs or CMPs, the definition in section 1876(b) of the Act be narrowly interpreted. (See Report of the Committee on Ways and Means on H.R. 1900, H.R. Rep. No. 98–25, 98th Cong., 1st Sess. 146 (1983).) If an HMO or CMP chooses not to negotiate special reimbursement arrangements with hospitals, the usual State reimbursement rates and controls as provided under the State system would apply.

G. Operated Directly by the State or Designated Entity

In accordance with the provisions of section 1886(c)(5)(B)(i) of the Act, these proposed regulations give each State the option to operate its State system itself or to designate a legal entity to operate the system in accordance with State law.

H. Prospectively Determined Rates

Section 1886(c)(5)(B)(ii) of the Act requires that the system must provide for payment rates that are prospectively determined. Under these proposed regulations, the application for approval would have to include a detailed description of the methodology used in determining the rates. Although the rate, once computed, is final, the system would allow for exceptions and adjustments that could arise from possible computation errors. Flexibility in the development of the methodology may be considered to allow for possible changes in the methodology where needed. However, such changes could not include or entail additional Federal expenditures for items and services that are not covered by the Medicare program and that were not included in the original ratesetting methodology and in the agreement regarding that methodology unless the State advises HCFA at least 60 days prior to the proposed effective date and HCFA approves such changes in advance of the effective date.

I. Required Reports.

We would require hospitals covered by a State's system, in accordance with

section 1886(c)(5)(B)(iii) of the Act, to submit either Medicare cost reports or approved substitute reports in lieu of cost reports to HCFA or its intermediaries in order that proper monitoring of the State's assurances (discussed previously) may be accomplished. The States in turn would be responsible for the design, and for obtaining HCFA approval, of substitute reports. Furthermore, we would require the States to submit financial, statistical, administrative, or any other reports that may be needed to satisfy the requirements in sections 1886(c)(1) (A), (C), and (E) of the Act, which pertain to the level of revenues, expenses or payments controlled or incurred by the operation of the State system.

J. Admission Practice Assurances

The State would have to provide satisfactory assurances that operation of the cost control system would not result in any change in the patient admission practices of participating hospitals, as required by section 1886(c)(5)(C) of the Act.

1. Financially Distressed Patients

Two assurances would be required by the State regarding the admission practices of financially distressed patients. The first assurance requires that the system would not result in any change in hospital admission practices that results in a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third party coverage and who are unable to pay for hospital services. The second assurance is that the system would not result in any change in hospital admission practices that results in a significant reduction in the proportion of patients for which payment is (or is likely to be) less than the anticipated charge for, or cost of, such services.

2. High Cost or Prolonged Length of Stay Patients

As proposed, the State would have to assure that the operation of the system would not result in a refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

3. Emergency Service Patients

The State would be required to assure that the operation of the system would not result in the refusal to provide services to patients who are in need of emergency services if the hospital provides those services.

K. Material Changes in Payments

As required in section 1886(c)(5)(D) of the Act, we are stating in these proposed regulations that any change in the State system that has the effect of materially reducing or increasing payments to hospitals would take effect only upon 60 days advance notice to HCFA and to the hospitals whose payments are likely to be materially affected by the change. HCFA would respond prior to the effective date, granting or denying the proposed change. Generally, the basis for approval of a particular State payment system would be that the system is expected to yield certain results. Thus, we believe that, for purposes of accountability and adherence to the basis on which the system is initially approved, any material change in the system that would alter those results should be subject to approval prior to implementation. Therefore, we propose to require not only that notice of all material changes must be provided to HCFA but also that the changes be subject to HCFA's approval.

L. Consultation With Local Government Officials

The State, as a requirement of section 1886(c)(5)(E) of the Act, would assure HCFA that in developing the cost control system, the State consulted with local government officials concerning the effect of the system on publicly owned or operated hospitals. As part of this assurance, the State would be required to describe the consultation efforts it undertook with all local governmental officials, and to summarize the comments it received and the actions taken to respond to those comments.

M. Beneficiary Liability and Nonphysician Services

Under section 1886(c)(1)(E) of the Act, we would require that the State system limit hospital charges for beneficiaries to deductibles and coinsurance and to noncovered services, and prohibit payment to hospitals for nonphysician services under Part B unless the hospital is granted a waiver by HCFA in accordance with § 489.23 of the regulations. The system would also have to conform to the Medicare requirements that hospitals agree not to charge beneficiaries or the Medicare program for denied services due to inappropriate or unnecessary admissions or other inappropriate medical or other practices.

In accordance with § 489.23 a waiver may be granted by HCFA only during the prospective payment system transition period (that is, Federal fiscal years 1984–1986) in the case of hospitals that have allowed direct billing under Part B so extensively that immediate compliance with such restrictions would threaten the stability of patient care.

Except in instances where a waiver is granted in accordance with § 489.23, State systems and hospitals are required to comply with the rebundling requirements as set forth in sections 1862(a)(14) and 1866(a)(1)(H) of the Act, which apply the Medicare coverage provisions to *all* hospitals participating and entitled to payment under Medicare. The State systems would also be required to comply with the provider-based physician rules of section 1887(A) of the Act and implementing regulations at §§ 405.480–405.482 and §§ 405.550–405.557, without exception.

It should be noted that the authority provided the Secretary in section 1886(c) of the Act for approval of State systems does not extend to reimbursement for physician services. Therefore, we would expect that State systems would not seek waivers for such services under section 1886(c) of the Act. Rather, waivers for these types of projects would be sought and carried out under the various authorities granted to HCFA for research and demonstration activities under Medicare and Medicaid.

N. Provider Appeal Process

These proposed regulations require that the State reimbursement control system have an appeals process. Since the Medicare intermediary would not be setting the payment rates, it would not be the appropriate entity to resolve disputes over payment rates. Similarly, since the Medicare Provider Reimbursement Review Board (PRRB) is not intended to be knowledgeable regarding the State's procedures for ratesetting, it would not be an efficient or appropriate use of resources to involve the PRRB in appeals of State actions.

Providers would still be given the opportunity to present evidence and receive redress, if their payment is inaccurate as a result of errors arising from incomplete or inaccurate data, errors in calculations, etc. Although not specifically provided for in the statute, we believe that this requirement would be consistent with the legislative intent of section 1886(c)(1)(B) of the Act, which requires equitable treatment, and the provisions of 1886(c)(5)(B)(ii) of the Act, which indicate that the payment system should provide for exceptions and adjustments as well as for a method for changes in the methodology. The mechanism for appeals and the type of

appeals permitted would be at the State's discretion; however, the system may not permit providers to file administrative appeals that could lead to retroactive revision of a prospectively determined payment rate. Details of the appeals process would be included in the application for approval of the system, and the applicant would be required to provide additional information if HCFA requests it.

Beneficiary appeals would continue to be processed by a Medicare intermediary, or carrier, or the HHS Administrative Law Judges in accordance with the requirement for continuation of Medicare coverage, entitlement, and program administration. (See section III.D.4. of this preamble.) Beneficiary appeals generally would involve actions taken by the intermediary in applying the Medicare entitlement and coverage provisions under the State's system when processing claims.

O. Reporting and Billing

We propose that the State system must provide for timely provider reporting and billing and for submission of any reports required by HCFA, or substitute forms developed by the State and approved by HCFA.

Since the Medicare intermediary would continue to process claims under the State reimbursement control system, it is necessary that the system continue to use Medicare billing forms and that such forms be submitted to the appropriate Medicare intermediary.

IV. Evaluation and Approval

A. Evaluation

States that wish to obtain Medicare recognition of statewide reimbursement control systems would submit their applications to HCFA. HCFA would review each complete application for consistency with the requirements of the law and regulations and respond to the State within 60 days of receipt of the request. If questions arose during the evaluation, HCFA would contact the State for additional information or for clarification of specific aspects of the application. If HCFA concludes that further information is necessary from the State, a new 60-day period would begin when all the required information is received. Once HCFA completes its evaluation of the State's application, it would then notify the State of its decision.

B. Reconsideration of Denied Applications

The proposed regulations state that if HCFA denies approval of an application of a State system, and if the State is dissatisfied with the determination because it believes it has met all of the requirements for mandatory approval under § 403.306 or § 403.308, the State may request reconsideration of the denial by HCFA. The request would have to be submitted within 60 days of the date of the notice of HCFA's denial. HCFA would then notify the State of the results of its reconsideration within 60 days after HCFA receives the State's request.

C. Approval

If HCFA approves a State's application for Medicare recognition of the State reimbursement control system under 1886(c) of the Act, the Administrator of HCFA or his or her designee will enter into an agreement with the Chief Executive Officer of the State or his or her designee, or with the Chief Executive Officer of the entity designated by State law. The agreement would have to grant HCFA access to the State's records, and to provider records as authorized by section 1815(a) of the Act. Other conditions of the agreement would include the requirements of these proposed regulations and any other items that may be agreed upon by the parties to the agreement. These may include such features as time limitations, options for renewal, administrative and operating procedures, and reporting requirements.

D. Termination of Agreements

Section 1886(c)(3) of the Act authorizes the Secretary to terminate Medicare participation in an approved State system if there is reason to believe that the system no longer meets or will not be able to meet certain requirements set forth in section 1886(c) of the Act. Thus, the proposed regulations set forth rules regarding termination of agreements for Medicare recognition of State systems. HCFA would review the State's system quarterly and advise the State of its performance regarding compliance with section 1886(c) of the Act. If it is determined that the system is not operating as the State has assured, the agreement may be terminated. For example, if Medicare costs under the system are significantly exceeding projected or agreed upon expenditure levels so that it appears that the system will not meet the expenditure test over a 3-year period, or if applicable, the rate of increase test, the agreement may be terminated and offsets against future payments to hospitals would be made for the excess payments. The statutory requirements at sections 1886(c)(1)(C), 1886(c)(3) and 1886(c)(6) of the Act provide for these actions that may be taken either in conjunction with the State system or under the Medicare payment system if or when the State system is terminated.

HCFA would notify the State of the decision to terminate at least 90 days in advance of the termination date. The termination date would be the last day of a calendar quarter. The advance notice would provide the State with an opportunity to present evidence to substantiate why the system should be continued. A State may voluntarily terminate an agreement after giving notice at least 90 days in advance of the last day of the calendar quarter in which the State intends to terminate the agreement.

V. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires us to prepare and make available to the public a regulatory impact analysis for any regulations likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria specified in section 1(b) of the Order. We have determined that these proposed regulations do not meet the criteria for a "major rule" under section 1(b). Therefore, a regulatory impact analysis is not required.

We expect that State systems for Medicare reimbursement, particularly in conjunction with the implementation of the prospective payment system for Medicare inpatient hospital services under Pub. L. 98–21, will have a significant economic effect. However, the extent of this impact will depend on the choices made by States concerning whether to utilize a State reimbursement control system; whether to bring any such system under the Medicare program in accordance with these proposed regulations; and on the behavioral changes of providers in responding to whatever systems are developed by States. Some of the factors that would affect the extent of this impact include:

- Applying these requirements statewide and to substantially all acute care hospitals in the State; and
- Requiring a review of at least 75 percent of the State's revenues or expenses for inpatient hospital services, instead of a lesser percentage.

The types of effects that can be expected are discussed in some detail in the impact analysis for the regulations establishing the Medicare prospective payment system (48 FR 39804–07, 39852, September 1, 1983, and 49 FR 301, January 3, 1984). One of the effects

expected of this proposal, however, is to increase the number of hospitals that do not participate in the national Medicare hospital prospective payment system, because they will be subject to State systems.

Because the law and these proposed regulations are designed to encourage the establishment of systems using incentives and controls that would restrain increases in the costs of hospital care, and because the statute requires that the amount of Medicare payments, over 36-month periods, made under a State's system will not exceed the amount of payments that would otherwise have been made under Medicare reimbursement principles, we expect the system may produce some Medicare program savings. To the extent that State systems result in State Medicaid savings, we expect concomitant savings on Federal financial participation payments. In addition, State controls may result in reductions in expenditures for other payors, such as non-governmental insurers and private parties. The effects could be very wide-ranging, extending to diverse factors such as insurance premium levels, copayment obligations, bad debt levels, and hospital bond ratings.

Because of the number of economic factors involved, the range and extent of potential effects, and the contingency of those effects on future and unpredictable actions on the parts of States, providers, insurers, and consumers, the effects are inestimable in dollar terms. Moreover, the effects are primarily the result of statutory changes made by section 101 of Pub. L. 97-248, section 601 of Pub. L. 98-21, and section 2315(a) of Pub. L. 98-369. The administrative discretion exercised through these proposed regulations is minor compared to the impact of the statute and decisions made by States that will affect their hospitals. Based on our experience, we do not believe that, in the near term, these proposed rules will result in an annual economic impact of $100 million, or otherwise meet the threshold criteria for a "major rule". Therefore, a regulatory impact analysis is not required. However, we do solicit public comments on the economic impacts that would result from these provisions to assist us in the identification of potential economic impacts on hospitals.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these proposed regulations would not have a significant impact on a substantial number of small entities. That Act requires us to prepare and make available to the public an initial regulation flexibility analysis, under 5 U.S.C. 603(b), unless the Secretary so certifies. The purpose of the analysis would be to explain the expected impact of the proposed regulations and to analyze alternatives that might reduce negative effects of regulations on small entities. (A small entity is a small business, a nonprofit enterprise, or a government jurisdiction with a population of less than 50,000.)

Nearly all hospitals are small entities under the Regulatory Flexibility Act. In any State implementing a system under these proposed regulations, a substantial number of hospitals (non-Federal, acute care hospitals) would be affected. Many of those hospitals may be significantly affected. However, the impact of the State systems must be considered in view of the implementation of the prospective payment system for Medicare inpatient hospital services under Pub. L. 98-21. The Medicare prospective payment system and State systems have mutually exclusive impacts, in that they are explicitly established as alternatives and will not both affect any particular hospital at the same time. The effects of State systems are inestimable before the characteristics of such systems are known in detail, so the effects on hospitals cannot be analyzed at this time. Furthermore, any effects would be primarily the result of the implementation of the statutory requirements of Pub. L. 98-248, Pub. L. 98-21, and Pub. L. 98-369, as noted earlier, and not the result of these proposed regulations.

C. Paperwork Burden

Sections 403.318 and 403.320 of this proposed rule contain general information collection requirements that would be imposed on States. As required by the Paperwork Reduction Act of 1980, we will be submitting a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements.

VI. Public Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "DATES" section of this preamble and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

VII. List of Subjects in 42 CFR Part 403

Agreements, Federal hospitals, Hospitals, Inpatients, Medicare, Medicare supplemental health insurance panel, Medicare supplemental insurance, Reporting requirements, State reimbursement control system, Voluntary certification program.

PART 403—SPECIAL PROGRAMS AND PROJECTS

42 CFR Part 403 would be amended as set forth below:

1. A new Subpart C is added to the table of contents to read as follows:

Subpart C—Recognition of State Reimbursement Control Systems

Authority: Sections 1102, 1862(a)(14), 1866(a)(1)(F), 1871 and 1886(c) of the Social Security Act (42 U.S.C. 1302, 1395y(a)(14), 1395cc(a)(1)(F), 1395hh and 1395ww(c)).

2. A new Subpart C is added to Part 403 to read as follows:

Subpart C—Recognition of State Reimbursement Control Systems

§ 403.300 Basis and purpose.

(a) *Basis.* This subpart implements section 1886(c) of the Act, which authorizes payment for Medicare inpatient hospital services in accordance with a State's reimbursement control system rather than under the Medicare reimbursement principles as described in HCFA's regulations and instructions.

(b) *Purpose.* Contained in the subpart are—

(1) The basic requirements that a State reimbursement control system

must meet in order to be approved by HCFA:

(2) A description of HCFA's review and evaluation procedures; and

(3) The conditions that apply if the system is approved.

§ 403.302 Definitions.

For purposes of this subpart—

"Federal hospital" means a hospital that is administered by, or that is under exclusive contract with, the Department of Defense, the Veterans Administration, or the Indian Health Service.

§ 403.304 Minimum requirements for State reimbursement control systems—Discretionary approval

(a) *Discretionary approval by HCFA.* HCFA may approve Medicare payments under a State system, if HCFA determines that the system meets the requirements in paragraphs (b) and (c) of this section and, if applicable, paragraph (d) of this section.

(b) *Requirements for State reimbursement control system.* (1) An application for approval of the system must be submitted to HCFA by the Chief Executive Officer of the State.

(2) The State system must apply to substantially all non-Federal acute care hospitals in the State.

(3) All hospitals covered by the system must have and maintain a utilization and quality review agreement with a Peer Review Organization, as required under section 1866(a)(1)(F) of the Act and § 466.78(a) of this chapter.

(4) Federal hospitals must be excluded from the State system.

(5) Nonacute care or specialty hospitals (such as psychiatric, tuberculosis or children's hospitals) may, at the option of the State, be excluded from the State system.

(6) The State system must apply to at least 75 percent of all revenues or expenses—

(i) For inpatient hospital services in the State; and

(ii) For inpatient hospital services under the State's Medicaid plan.

(7) Under the system, HMOs and competitive medical plans, as defined by section 1876(b) of the Act, must be allowed to negotiate payment rates with hospitals.

(8) The system must limit hospital charges for Medicare beneficiaries to deductibles, coinsurance or non-covered services.

(9) Unless a waiver is granted by HCFA under § 489.23 of this chapter, the system must prohibit payment under Part B of Medicare for nonphysician services provided to hospital inpatients, as required under section 1862(a)(14) of the Act and § 405.310(m) of this chapter.

(10) The system must require hospitals to submit Medicare cost reports or approved reports in lieu of Medicare cost reports as required.

(11) The system must require—

(i) Preparation, collection, or retention by the State of reports (such as financial, administrative, or statistical reports) that may be necessary, as determined by HCFA, to review and monitor the State's assurances; and

(ii) Submission of the reports to HCFA upon request.

(12) The system must provide hospitals an opportunity to appeal errors that they believe have been made in the determination of their payment rates. The system, if it is prospective, may not permit providers to file administrative appeals that would result in a retroactive revision of prospectively determined payment rates.

(c) *Satisfactory assurances.* The State must provide to HCFA satisfactory assurance as to the following:

(1) The system provides for equitable treatment of hospital patients and hospital employees.

(2) The system provides for equitable treatment of all entities that pay hospitals for inpatient hospital services, including Federal and State programs. Under this requirement, the following conditions must be met:

(i) Both the Medicare and Medicaid programs must participate under the system.

(ii) The State must assure equitable and uniform treatment under the system of third-party payors of inpatient hospital services in terms of opportunity. Equitable opportunity must include, but need not be limited to, participation in the system and availability of discounts.

(iii) The State must assure that all third-party payors that participate under the system share in the system's risks and benefits.

(3) The amount of Medicare payments made under the system over 36-month periods may not exceed the amount of Medicare payment that would otherwise have been made under the Medicare principles of reimbursement for Medicare items and services had the State reimbursement control system not been in effect. States must submit the assurance and supporting data as required by § 403.320 to document that the payment limit is not exceeded. States that have an existing Medicare demonstration project in effect on April 20, 1983, and that have requested approval of a State system under section 1886(c)(4) of the Act, may elect to have the effectiveness of the State system under this paragraph judged on the basis of the State system's rate of increase or inflation in Medicare inpatient hospital payments as compared to the national rate of increase or inflation for such payments during the three cost reporting periods of the hospitals in the State beginning on or after October 1, 1983.

(d) *Additional cost-effectiveness assurance.* If the assurances and supporting data required under paragraph (c)(3) of this section are insufficient to provide assurance satisfactory to HCFA regarding the cost-effectiveness of the State's system, the State may additionally submit one of the following assurances in order to meet the cost-effectiveness test:

(1) The State must agree that each month Medicare intermediaries will disburse to the State's hospitals Federal funds that in the aggregate equal no more than would have been disbursed in the absence of the State system. Any additional funds necessary to pay hospitals for Medicare services required by the State's system will be paid to the intermediaries by the State. These additional amounts will be refunded to the State by the intermediaries to the extent that, in subsequent months, the State's system requires a smaller aggregate payment for Medicare services than would have been paid in the absence of the State's system.

(2) The State must agree that as a result of the projections that exceed what Medicare would pay in any particular period, the State and HCFA will establish an agreed upon payment schedule that will limit payments under the State's system based on a predetermined percentage relationship between projected State payments and what payments would have been under Medicare.

(3) If deviation from the predetermined relationship described in paragraph (d)(2) of this section occurs, the State must further agree that—

(i) Medicare payments would be capped automatically at payment levels based on the rates used for the Medicare prospective payment system and the State would be required to pay the difference to individual hospitals in its system; or

(ii) The State may provide by legislation or legally binding regulations that any reduced payments to hospitals under the system that result from this cost-effectiveness assurance will constitute full and final payment for hospital services rendered to Medicare beneficiaries for the period covered by these reduced payments.

§ 403.306 Additional requirements for State reimbursement control systems—Mandatory approval.

(a) *General policy.*—(1) *Mandatory approval.* HCFA will approve an application for Medicare reimbursement under a State system if the system meets all of the requirements of § 403.304 and of paragraph (b) of this section.

(2) *Exception.* HCFA may approve an application if the State system meets all of the requirements of § 403.304 but only some of the requirements of paragraph (b) of this section.

(3) *Time limit.* HCFA will respond to applications submitted by States under this section within 60 days after receipt of the application. HCFA's response may be in the form of a request for additional information. If HCFA concludes that further information from the State is necessary, a new 60-day period begins when all the required information is received by HCFA.

(b) *Additional requirements.*—(1) *Operation of system.* The system must—

(i) Be operated directly by the State or by an entity designated under State law;

(ii) Provide for payments to hospitals using a methodology under which—

(A) Prospectively determined payment rates are established; and

(B) Exceptions, adjustments, and methods for changes in the methodology are set forth;

(iii) Provide that a change by the State in the system that has the effect of materially changing payments to hospitals can take effect only upon 60 days notice to HCFA and to the hospitals likely to be materially affected by the change and upon HCFA's approval of the change.

(2) *Satisfactory assurances.*—(i) *Admissions practice.* The State must assure that the operation of the system will not result in any change in hospital admission practices that result in—

(A) A significant reduction in the proportion of patients receiving hospital services covered under the system who have no third-party coverage and who are unable to pay for hospital services;

(B) A significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is less, or is likely to be less, than the anticipated charges for or costs of the services;

(C) A refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital; or

(D) A refusal to provide emergency services to any person who is in need of emergency services, if the hospital provides the services.

(ii) *Consultation with local government officials.* The State must provide documentation that it has consulted with local government officials concerning the impact of the system on publicly owned or operated hospitals.

§ 403.308 State reimbursement control systems under demonstration projects—Mandatory approval.

HCFA will approve an application from a State for a State reimbursement control system if—

(a) The system was in effect prior to April 20, 1983; and

(b) The minimum requirements and assurances for approval of a State system are met under § 403.304 (b) and (c), and, if appropriate § 403.304(d)

§ 403.310 Reductions in payments.

(a) *General rule.* If HCFA determines that the satisfactory assurances required of a State under § 403.304(c) and, if applicable, § 403.304(d) have not been met, or will not be met, with respect to any 36-month period, HCFA will reduce Medicare payments to individual hospitals being reimbursed under the State's system or, if applicable, under the Medicare payment system, in an amount equal to the amount by which the Medicare payments under the system exceed the amount of Medicare payments to such hospitals that otherwise would have been made not using the State system, including the appropriate recognition of the time value of the excess payments (that is, the interest the Medicare Trust Fund earned, or would have earned, on these amounts).

(b) *Recoupment procedures.* The amount of the overpayment will be recouped on a proportionate basis from each of those hospitals that received payments under the State system that exceeded the payments they would have received under the Medicare payment system. Each hospital's share of the aggregate excess payment will be determined on the basis of a comparison of the hospital's proportionate share of the aggregate payment received under the State system that is in excess of what the aggregate payment would have been under the Medicare payment system. Recoupments may be accomplished by a hospital's direct payment to the Medicare program or by offsets to future payments made to the hospital.

(c) *Alternative recoupment procedures.* As an alternative to the recoupment procedures described in paragraph (b) of this section and subject to HCFA's acceptance, the State may provide, by legislation or legally binding regulations, procedures for the recoupment of the amount of payments that exceed the amount of payments that otherwise would have been paid by Medicare if the State system had not been in effect.

(d) *Rule for existing Medicare demonstration projects.* In cases of existing Medicare demonstration projects where the expenditure test is to be applied by a rate of increase factor, the amount of the excess payment will be determined, for the three hospital cost reporting periods beginning before October 1, 1986, by a comparison of the State system's rate of increase to the national rate of increase. Recoupment of excessive payments will be assessed and recouped as described in this section.

§ 403.312 Submittal of application.

The Chief Executive Officer of the State is responsible for—

(a) Submittal of the application to HCFA for approval; and

(b) Supplying the assurances and necessary documentation as required under §§ 403.304–403.308.

§ 403.314 Evaluation of State reimbursement control systems.

(a) *HCFA review.* HCFA will evaluate all State applications for approval of State systems and will request additional information if necessary. States must furnish the additional information requested by HCFA.

(b) *Notification.* HCFA will notify the State of its determination concerning approval of the application within 60 days of receipt of a complete application and background information.

(c) *Resubmittal of application.* A State may submit an amended reimbursement control system application under this subpart if HCFA denies the initial application.

§ 403.316 Reconsideration of denied applications.

(a) *Request for reconsideration.* If HCFA denies an application for a State reimbursement control system, the State may request that HCFA reconsider the denial if the State believes that its system meets all of the requirements in §§ 403.304 and 403.306 or, in the case of a State with a system operating under an existing demonstration, the applicable requirements of §§ 403.304 and 403.308.

(b) *Time limit.* (1) The State must submit its request for reconsideration within 60 days after the date of HCFA's notice that the application was denied.

(2) HCFA will notify the State of the results of its reconsideration within 60

days after it receives the request for reconsideration.

§ 403.318 Approval of State reimbursement control systems.

(a) *Approval agreement.* If HCFA approves a State reimbursement control system, a written agreement will be executed between HCFA and the Chief Executive Officer of the State. The agreement must incorporate any terms of the State's application for approval of the system as agreed to by the parties and, as a minimum, must contain provisions that require the following:

(1) The system is operated directly by the State or an entity designated by State law.

(2) For purposes of the Medicare program, the State's system applies only to Medicare payments for hospital services.

(3) The system conforms to applicable Medicare law and regulations other than those relating to the amount of reimbursement for inpatient hospital services, or for inpatient and outpatient services, whichever the State system covers. Applicable regulations include, for example, those specifying Medicare benefits and entitlement requirements for program beneficiaries, as specified in Parts 408 and 409 of this chapter; the requirements at Part 405, Subpart J of this chapter specifying conditions of participation for hospitals; and the requirements at Part 405, Subparts A, G, and S of this chapter on Medicare program administration.

(4) The State must obtain HCFA's approval of the State's reporting forms and of provider cost reporting forms or other forms that have not been approved by HCFA but that are necessary for the collection of required information.

(b) *Effective date.* An approved State system may not be effective earlier than the date of the approval agreement, which may not be retroactive.

§ 403.320 HCFA review and monitoring of State reimbursement control systems.

(a) *General rule.* The State must submit an assurance and detailed and quantitative studies of provider cost and financial data and projections to support the effectiveness of its system, as required by paragraphs (b) and (c) of this section.

(b) *Required information.* (1) Under § 403.304(c)(3) an assurance is required that the system will not result in greater payments over a 36-month period than would have otherwise been made under Medicare not using such system. If a State that has an existing demonstration project in effect on April 20, 1983 elects under § 403.304(c)(3) to have the effectiveness of its system judged on the basis of a rate of increase factor, the State must submit an assurance that its rate of increase or inflation in inpatient hospital payments does not exceed, for that portion of the 36-month period that is subject to this test, the national rate of increase or inflation in Medicare inpatient hospital payments. The election of the rate of increase test applies only to the three cost reporting periods beginning on or after October 1, 1983. At the end of these cost reporting periods, the State must assure, beginning with the first month after the expiration of the third cost reporting period beginning after October 1, 1983, that payments under its system will not exceed over the remainder of the 36-month period what Medicare payments would have been.

(2) Estimates and data are required to support the State's assurance, required under § 403.304(c)(3), that expenditures under the State system will not exceed what Medicare would have paid over a 36-month period. The estimates and projections of what Medicare would have otherwise paid must take into account all the Medicare reimbursement principles in effect at the time and, for any period in which payments either exceed or are less than Medicare levels, the value of interest the Medicare Trust Fund earned, or would have earned, on these amounts. Upon application for approval, the State must submit projections for each hospital for the first 12-month period covered by the assurance, in both the aggregate and on a per discharge basis, of Medicare inpatient expenditures under Medicare principles of reimbursement and parallel projections of Medicare inpatient expenditures under the State's system and the resulting cost or savings to Medicare. The State must also submit separate statewide projections for each year of the 36-month period, in both the aggregate and on a weighted average discharge basis, of inpatient expenditures under the State system and under the Medicare principles of reimbursement.

(3) The projection submitted under paragraph (b)(2) of this section must include a detailed description of the methodology and assumptions used to derive the expenditure amounts under both systems. In instances where the assumptions are different under the projections cited in paragraph (b)(2)(of this section, the State must provide a detailed explanation of the reasons for the differences. At a minimum, the following separate data and assumptions are to be included in the projections for the Medicare principles and for the State's system.

(i) The base and the Medicare allowable and reimbursable cost of each hospital that the State used to develop the projections, including the amount of estimated pass through costs.

(ii) The categories of costs that are included in the States system and are reimbursed differently under the State system than under the Medicare system.

(iii) The number of Medicare and total base year discharges and admissions for each hospital.

(iv) The rate of change factor (and the method of application of this factor) used to project the base year costs over the 36-month period to which the assurance would apply.

(v) Any allowance for anticipated growth in the amount of services from the base year (if applicable, the allowance must be presented in separate estimates for population increases or for increases in rates of admissions or both).

(vi) Any adjustment in which the State is permitted by HCFA to take into account previous reductions in the Medicare payment amounts that were the result of the effectiveness of the State's system even though Medicare was not a part of that system.

(vii) States applying under a rate of increase effectiveness test under § 403.304(c)(3) must also submit data projecting the parallel rates of increase during the requisite period.

(4) the projection must include both the aggregate payments and the payments per discharge for the individual hospitals and for the State as a whole.

(5) On a case by case basis, HCFA may require additional data and documentation as needed to complete its review and monitoring.

(6) For existing Medicare demonstration projects in effect on April 20, 1983, the assurance and data as required by paragraphs (a) and (b) of this section, if appropriate, may be based on aggregate payments or payments per inpatient admission or discharge. HCFA will judge the effectiveness of these systems on the basis of the rate of increase or inflation in Medicare inpatient hospital payments compared to the national rate of increase or inflation for such payments during the State's hospitals' three cost reporting periods beginning on or after October 1, 1983. The data submitted by the State for the period subject to the rate of increase test must include the rate of increase projection for that particular period of time. For the subsequent period of time, the State must assure that payments under its system will not exceed what Medicare

payments would have been, as described in § 403.304(c)(3).

(7) If the amount of Medicare payments under the State system exceeds what would have been paid under the Medicare reimbursement principles in any given year, the State must also submit quantitative evidence that the system will result in expenditures that do not exceed what Medicare expenditures would have been over the 36 month period beginning with the first month that the State system is operating. For a State that has an existing demonstration project in effect on April 20, 1983 and that elects under § 403.304(c)(3) to have a rate of increase test apply, if the State's rate of increase or inflation exceeds the national rate of increase or inflation in a given year, the State must submit quantitative evidence that, over 36 months, its payments will not exceed the national rate of increase or inflation. Furthermore, if payments under the State's system must be compared to actual Medicare expenditures, at the end of the third cost reporting period, as described in paragraph (b)(1) of this section, and payments under the State's system exceed what Medicare would have paid in a given year, the State must submit quantitative evidence that, over 36 months, payments under its system will not exceed what Medicare would have paid.

(c) *Hospital Outpatient Services.* HCFA may approve a State's application to have the State's system apply to Medicare outpatient services if the following conditions are met:

(1) The State's inpatient system is approved.

(2) The State's outpatient application meets the requirements of § 403.304 (b) and (c), and § 403.306 (b)(1) and (b)(2)(ii).

(3) The State submits a separate application that provides separate assurances and estimates and data in further support of its assurance submitted under paragraph (b)(1) of this section, as follows:

(i) Upon application for approval, the State must submit estimates and data that include, but are not limited to, projections for the first 12-month period covered by the assurance for each hospital, in both the aggregate and on an average cost per service and payment basis, of Medicare outpatient expenditures under Medicare principles of reimbursement; parallel projections of Medicare outpatient expenditures under the State's reimbursement control system; and the resulting cost or savings to Medicare independent of the reimbursement system for hospital inpatient services.

(ii) The State must submit separate statewide projections for each year of the 36-month period of the aggregate outpatient expenditures for each system. The projections submitted under this paragraph must—

(A) Comply with the requirements of paragraphs (b) (3) and (5) of this section regarding a detailed description of the methodology used to derive the expenditure amounts;

(B) Include the data and assumptions set forth in paragraphs (b)(3) (i), (ii), (iii), (iv), and (v) of this section; and

(C) Include any assumption the State has adopted for establishing the number of Medicare and total base year outpatient services for each hospital.

(iii) The State must provide a detailed explanation of the reasons for any difference between the data or assumptions used for the separate projections.

(d) *Review of assurances regarding expenditures.* HCFA will review the State's assurances and data submitted under this section, as a prerequisite to the approval of the State's system. HCFA will compare the State's projections of payment amounts to HCFA data in order to determine if the State's assurance is reasonable and fully supportable. If the HCFA data indicate that the State's system would result in payment amounts that would be more than that which would have been paid under the Medicare principles, the State's assurances would not be acceptable. For States applying in accordance with § 403.308, if HCFA data indicate that the State's system would result in a rate of increase or inflation that would be more than the national rate of increase or inflation, the State's assurances would not be acceptable.

(e) *Medicaid upper limit.* In accordance with § 447.253 of this chapter, the State system may not result in aggregate payments for Medicaid inpatient hospital services that would exceed the amount that would have otherwise have been paid under the Medicare principles.

(f) *Monitoring of Medicare expenditures.* HCFA will monitor on a quarterly basis expenditures under the State's system as compared to what Medicare expenditures would have been if the system had not been in effect. If HCFA determines at any time that the payments made under the State's system exceed the State's projections, as established by the satisfactory assurances required under § 403.304.(c) and, if appropriate, the predetermined percentage relationship of the payments as required under § 403.304(d), HCFA will—

(1) Conclude that payments under State's system over a 36-month period will exceed what Medicare would have paid;

(2) Terminate the waiver; and

(3) Recoup overpayments to the affected hospitals in accordance with the procedures described in § 403.310.

§ 403.322 Termination of agreements for Medicare recognition of State reimbursement control systems.

(a) *Termination of agreements.* (1) HCFA may terminate any approved agreement if it finds, after the procedures described in this paragraph are followed, that the State system does not satisfactorily meet the requirements of section 1886(c) of the Act or the regulations in this subpart. A termination must be effective on the last day of a calendar quarter.

(2) HCFA will give the State reasonable notice of the proposed termination of an agreement and of the reasons for the termination at least 90 days before the effective date of the termination.

(3) HCFA will give the State the opportunity to present evidence to refute the finding.

(4) HCFA will issue a final notice of termination upon a final review and determination on the State's evidence.

(b) *Termination by State.* A State may voluntarily terminate a Medicare reimbursement control system by giving HCFA notice of its intent to terminate. A termination must be effective on the last day of a calendar quarter. The State must notify HCFA of its intent to terminate at least 90 days before the effective date of the termination.

(Catalog of Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance)

Dated: December 23, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 21, 1984.

Margaret M. Heckler,

Secretary.

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Part IV

Office of Personnel Management

5 CFR Part 831

Retirement; Interim Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Interim Rule with Request for Comments

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim rules and requesting comment on the rules to implement the Civil Service Retirement Spouse Equity Act of 1984. The interim rules also incorporate current regulations concerning the subjects covered by the Act, specifically civil service retirement survivor annuities, court orders affecting civil service retirement benefits, and lump-sum payments under the civil service retirement system.

DATE: Interm rules effective May 7, 1985; comments must be received on or before July 12, 1985.

ADDRESS: Send comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Washington, D.C. 20044, or deliver to OPM, Room 4351, 1900 E. Street, NW., Wash., D.C.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-4684, on provisions relating to survivor annuities and court orders affecting retirement benefits. Contract Francis J. Derby, (202) 632-4634, on provisions relating to lump-sum payments.

SUPPLEMENTARY INFORMATION: The Civil Service Retirement Spouse Equity Act (CSRSEA) of 1984, Pub. L. 98-615, amended the Civil Service Retirement Act (1) to require a joint waiver by annuitant and spouse of survivor benefits at the time of retirement; (2) to require that we recognize court orders granting survivor benefits to former spouses of Federal employees and retirees; (3) to require notice before payment of lump-sum refunds of contributions to the Civil Service Retirement System be given to some current spouses and former spouses entitled to survivor benefits, or a portion or an annuity, or a portion of the refund; (4) to provide that Federal retirees may elect survivor annuity for former spouses; (5) to provide that certain Federal retirees who were previously denied the option of providing survivor benefits to their current spouses will be permitted to provide such benefits; and (6) to provide survivor benefits payments to certain former spouses of Federal retirees who were divorced prior to the effective date of this legislation.

CSRSEA generally does not apply in the case of retirements or divorces before its effective date (May 7, 1985). However, under CSRSEA, some former spouses of annuitants who retire or died before the effective date of the Act will be eligible for a survivor benefit, which will not affect the annuity of the retired employee or Member. To qualify, the former spouse *must*: (1) Have been divorced after September 14, 1978; (2) not have remarried before age 55; (3) have been married to the annuitant during 10 years of creditable service; (4) be age 50 or older; (5) not be entitled to any other pension (other than benefits under title II of the Social Security Act or section 8345(j) of title 5, United States Code); and (6) apply for the benefit before May 9, 1987.

The interim regulations implementing CSRSEA apply primarily to persons who die in service on or after May 7, 1985, or retire on or after that date. Unless otherwise specified in the interim regulations only §§ 831.609 through 831.611, 831.615, 831.616, 831.619 through 831.624, and 831.627 and the portions of Subpart Q concerning court orders affecting employee retirement benefits apply to persons retired before May 7, 1985.

1. Consolidation of Existing Regulation

The current subpart F is entitled "Types of Annuities." The interim regulations consist of a new Subpart F, entitled "Survivor Annuities," which consolidates the current Subpart F, portions of Subpart J that regulate survivor annuities, and new regulations necessitated by the portions of CSRSEA that control entitlement to survivor annuities (without court orders).

The current Subpart J is entitled "Death Benefits." It has information about survivor annuities that belongs with Subpart F and information about lump-sum death benefits that belongs in Subpart T. This new format eliminates Subpart J by consolidating its provisions into Subparts F and T.

The current subpart Q is entitled "Apportionment From Civil Service Retirement Benefits." It implemented Pub. L. 95-366 (Sept. 15, 1978), which requires us to comply with certain State court orders which divide civil service retirement benefits payable to the former Federal employee during his or her lifetime. We are issuing a new Subpart Q, entitled "Court Orders Affecting Civil Service Retirement Benefits," which amends the current Subpart Q to incorporate the changes in handling State court orders on refunds and survivor annuities required by CSRSEA.

The current Subpart T is entitled "Payment of Lump Sums." It regulates payment of lump-sum benefits under the Civil Service Retirement System. The interim rules consolidate the current Subpart T, portions of Subpart J that cover lump-sum payments, and the changes required by CSRSEA into a revised Subpart T that retains its current title.

2. Survivor Annuities

The Terms "fully reduced annuity," "insurable interest annuity," "partially reduced annuity," and "self-only annuity" are used to describe benefits that are payable to former employees and Members. "Current spouse annuities" and "former spouse annuities" are defined as payable to survivors of former employees and Members. The definition of "marriage," although never before promulgated in our regulations, has been used by us in our adjudications relative to survivor benefits since 1979.

"Time of retirement" is defined as the date when a retiree's annuity commences. We considered using the date of separation from the Federal service as the time of retirement. However, employees can separate with title to a deferred annuity many years before they are eligible to begin receiving payments. Using the date of application would cause administrative difficulties because people can file applications before or long after becoming eligible for benefits.

Section 831.604(b) of the interim regulations applies to cases when a former spouse by a court decree has preempted the current spouse annuity under section 8341 of title 5, United States Code. Under these regulations: (1) A qualifying court order that awards a former spouse annuity will require an appropriate reduction in the retiree's annuity (regardless of any election to provide a current spouse annuity); (2) the retiree must make an election regarding the current spouse's survivor annuity at the time of retirement (even though that annuity has been wholly or partially preempted by a court-ordered former spouse annuity); (3) the current spouse's consent must be given (or waived) to permit a retiree to elect less than a fully reduced annuity to provide a current spouse annuity; (4) in the event of the retiree's death, payment of the current spouse annuity will be wholly or partially prevented as long as the former spouse remains eligible for a former spouse annuity.

The reduction in annuity to provide a current spouse annuity under § 831.604 terminates in accordance with the new section 8339(j)(5) of title 5, United States Code. The conditions under which the reduction is terminated are consistent with those provided under the prior section 8339(j)(1) of title 5, United States Code. Generally, the reduction will terminate upon the death of a current spouse for whose benefit the reduction was made or upon dissolution of the marriage to that spouse. Even if the latter condition is met, a reduction will not be terminated when that spouse has acquired entitlement (in the dissolution decree or by election under § 831.612) to a survivor benefit as a former spouse under the new section 8339(j)(5)(A) of title 5, United States Code.

Section 831.605 implements the new sections 8339(j)(3) and (5) of title 5, United States Code, which permits an employee or Member to elect to provide a survivor annuity for a former spouse or spouses at the time of retirement.

Section 831.606 regulates insurable interest annuities under the amended section 8339(k)(1) of title 5, United States Code. Under prior law, only an employee or Member who was unmarried at the time of retirement could make an election to provide an annuity for an individual who had an insurable interest in the employee or Member. Section 8339(k)(1), as amended by CSRSEA, extends this election to married individuals as well.

Section 831.606(a) restates the requirement of section 8339(k)(1) that only a person in good health and retiring on an immediate annuity under section 8336 of title 5, United States Code, or a deferred annuity under section 8338 of title 5, United States Code, is eligible to elect an insurable interest annuity. Persons retiring on disability annuities under section 8337 of title 5, United States Code, are excluded by statute.

Section 831.606(e) promulgates as a regulation our long-standing internal guidelines concerning the degree of relationship that would automatically constitute an insurable interest. Section 831.606(e) also permits us to require documentation of the beneficiary's age that is necessary to compute the rate of reduction.

Because of the large reduction frequently required (up to 40% of the self-only annuity) to elect an insurable interest election, our policy has been to require a written confirmation of election after the retiree has been informed by us of the amount of the reduction. Section 831.606(f) requires that confirmation in all such cases.

Within 2 years after the death or remarriage before age 55 of the former spouse for whom a retiree is providing a former spouse annuity, § 831.606(h) permits a retiree to end an insurable interest reduction elected to provide for a current spouse in order to elect a reduced annuity to provide a current spouse annuity. The conversion will provide a survivor annuity at a lower cost to the retiree than maintaining the insurable interest annuity. However, if the retiree elects to convert, he or she may not thereafter reinstitute the insurable interest annuity to provide for someone else. After conversion of the insurable interest annuity, the aggregate of all survivor annuities cannot exceed 55 percent of the retiree's annuity.

Section 831.606(i) provides that a similar election is not permitted in the reverse situation. Although revised section 8339(j)(5)(B) of title 5, United States Code, authorizes continuation of an annuity reduction to provide a former spouse annuity (after the death or remarriage of the former spouse) for the purpose of providing a current spouse annuity, nothing in CSRSEA authorizes a corresponding continuation to benefit a former spouse after the death of a current spouse.

Section 831.606(j) is the old § 831.601(b).

Section 831.607 implements the spousal consent requirement discussed in connection with § 831.604. Section 831.607(c) imposes a notarization requirement to discourage forged or coerced consent.

Section 831.608 presents the requirements for waiver of spousal consent. Section 2 of CSRSEA requires that we provide that a married employee may elect a self-only or a partially reduced annuity without the spouse's consent only when the spouse's whereabouts are unknown to the employee or, "due to exceptional circumstances" it would be "inappropriate" to require the employee to seek the spouse's consent. We are requiring in § 831.608(a) proof that the employee does not know the spouse's whereabouts before waiver can be granted on that ground. Waiver for exceptional circumstances (e.g., the spouse is suffering from diminished mental capacity, the spouse and the employee have been maintaining separate residences with no financial relationship for several years, the spouse abandoned the employee but, for religious or other reasons, the parties choose not to divorce) are permitted by § 831.608(b). However, before a waiver for exceptional circumstances is allowed, the regulations require documentation from a judicial body that substantiates the request for waiver. This procedure is necessary to guarantee that the current spouse receives due process before he or she loses the right to a survivor annuity without his or her consent.

Section 831.609 restates the rule of the old § 831.601(d), which permits a change of election until we complete the adjudication of the employee's or Member's retirement application. The standard for determining when we have completed adjudication is defined as 30 days after the date of the first regular monthly payment. This standard avoids the inconsistencies inherent in any standard that is controlled by a retiree's action, rather than our action. Under this rule, a retiree will have a reasonable period of time to change the survivor election after OPM has notified the retiree of the effect of the election by means of the annuity statement showing the adjudicated rate of the retiree's annuity as well as the survivor's rate.

Section 831.611 restates the old § 831.601(e).

Section 831.612 (a) and (b) implement the new section 8339(j)(3) of title 5, United States Code, which permits a retired employee or Member to elect to provide a survivor annuity for a former spouse within 2 years after the dissolution of the marriage to that former spouse. Section 831.612(c) implements the deposit requirement of section 8339(j)(3) of title 5, United States Code. Section 831.612(d) implements the new section 8339(j)(5) of title 5, United States Code, that provides for termination of the annuity reduction.

Section 831.613 concerns "post-retirement" elections of survivor benefits for spouses acquired after retirement. Under the pre-CSRSEA law that continues to apply to annuitants who are retired before May 7, 1985, a married employee who elects to provide a survivor benefit at the time of retirement and an employee who is unmarried at the time of retirement may elect to provide a survivor annuity to a new spouse acquired after retirement. In such a case, the retiree had to make the "post-retirement" election within 1 year after the new marriage, and an annuity reduction is continued (or in the case of an employee who was unmarried at the time of retirement is commenced) upon the making of the election. Except as provided in section 4(c) of CSRSEA (implemented in § 831.623), an employee retired before May 7, 1985, married at the time of retirement who did not elect to provide a survivor benefit at retirement may not elect a survivor benefit in the event of a subsequent marriage during retirement. Also, in the event of a marriage during a retirement that commenced before May 7, 1985, the

marriage must have lasted for at least 1 year before a survivor benefit election may be effective.

Section 831.613(a) sets the requirements for post-retirement elections for pre-CSRSEA retirees. Section 4 of CSRSEA provides that the retirement amendments made by section 2 will take effect May 7, 1985, and will apply to any individual who, on or after that date, is married to an employee who retires, dies, or applies for a lump-sum refund of contributions after that date. In other words, CSRSEA generally does not apply to persons retired before May 7, 1985. Accordingly, the prior law and regulations continue to apply to annuitants retired before May 7, 1985, for most purposes.

The 1-year time limit in § 831.613(a) (but not the requirement of an election before the retiree's death) can be waived when the retiree was not notified of the time limit in accordance with Pub. L. 95-317 and he or she exercised due diligence in seeking an annuity reduction to provide a current spouse annuity. This waiver is based on the Merit Systems Protection Board's decision in the case of *Davies* v. *Office of Personnel Management*, 5 MSPB 251 (1981).

Section 831.613(b) implements the CSRSEA provisions on post-retirement survivor elections. New subsections (j)(5)(C) and (k)(2) of section 8339 of title 5, United States Code, contain several changes, which apply to employees and Members who retire on or after May 7, 1985, or die in service on or after that date. First, the length of marriage requirement for eligibility for survivor annuity is reduced from 1 year to 9 months. Second, an employee married at the time of retirement who did not elect survivor benefits will be permitted to make such an election after a post-retirement marriage (provided that the marriage is not to the same spouse to whom the employee was married at retirement). The time limit for making the election is extended from 1 year following the remarriage or marriage, as the case may be, to 2 years.

Section 831.614 (a) and (b) state the general policy of CSRSEA that the total amount of survivor annuity benefits available will not be greater than under existing law. Generally, spousal survivor benefits attributable to the service of an employee or Member may not exceed 55 percent of that employee's or Member's annuity. The CSRSEA continues this policy but does permit this 55 percent to be divided between any former spouses and a current spouse and permits election of an additional insurable interest annuity in some cases.

Sections 831.615 and 831.616 are derived directly from current §§ 831.601(g), 831.1005, and 831.1006 without substantive change.

Section 831.617 on the rate of children's annuities result from the definitions of "former spouse" and "child" in section 8331 and 8341 of title 5, United States Code.

Section 831.618 states the marriage duration requirements before a survivor annuity right attaches based on a death of an annuitant who retired on or after May 7, 1985, or an employee or Member who died while employed in a position under CSRS on or after that date. Section 8341(a) of title 5, United States Code, as amended, provides that a spouse must be married to an employee, Member, or annuitant for only the 9 months immediately preceding death or be the parent of a child of that marriage to be eligible for a survivor annuity. Prior law (which continues to apply to annuitants who retired before May 7, 1985) required 1 year of marriage or a child born of that marriage. New section 8341(i) of title 5, United States Code, provides that the requirement that a surviving spouse of an employee or Member must have been married to an employee or Member for at least 9 months immediately before death should be deemed to be satisfied in any case in which the death was accidental or in which the surviving spouse previously had been married to the individual and the aggregate time married is at least 9 months. These statutory changes are reflected in § 831.618 (a) through (c).

Section 831.618(c) also adopts the reasoning of the recent decision of the Merit Systems Protection Board in *Smith* v. *Office of Personnel Management*, No. AT0831841098, November 15, 1984. In that case, the Board determined that children born out of wedlock who were later legitimated by a marriage of their parents were children of the legitimating marriage for purposes of section 8341(a) of title 5, United States Code. The regulation extends this rule to legitimate children by prior marriages between the same parties. This accomplishes two objectives: (1) It prevents a parent of an illegitimate child from being more favorably treated simply because the child was born out of wedlock and (2) it furthers the policy of CSRSEA by treating children born of the marriage in the same manner as CSRSEA treated the length of the marriage, namely, by considering all time when the current spouse and the employee were married to determine whether the duration requirement has been met.

Section 831.618(d)(1) defines "accidental" for this purpose. All homicides are considered accidental. The definition applicable to non-homicide cases was taken from the accidental death provision of the Federal Employees' Group Life Insurance Program except that death resulting from acts of war are not excluded from the § 831.618(d)(1) definition.

Section 831.618(d)(2) provides that we will accept certain State determinations of the cause of death. Judicial determinations such as the finding, in insurance litigation, that double indemnity is payable or, in a criminal case, that the death was a homicide are typical examples. An administrative finding from a coroner's inquest or similar proceeding is included. Lesser weight will be given to statements on the death certificate. However, without other evidence, the statement on the death certificate will be accepted as proof that the death was accidental.

Section 831.619(a) restates the general rule of the old § 831.1001. Section 831.620 restates the old § 831.1002.

Section 831.621 concerns the voluntary election to provide a former spouse annuity under section 4(b) of CSRSEA. Section 4(b) provides that a former spouse of an annuitant who retired before May 7, 1985, is entitled to a survivor annuity if the annuitant elects in writing before May 9, 1986, to have his or her annuity fully reduced and to deposit in the Civil Service Retirement and Disability Fund an amount reflecting the difference between the rate of a self-only annuity and the amount that he or she would have received if a reduction for the survivor annuity had been in effect since the annuity commenced. If a retired employee makes an election under section 4(b) but does not make the required deposit, we will collect the amount of the deposit by offset against the retiree's annuity up to a maximum of 25 percent of the net annuity payable to the employee.

Former spouses who meet the requirements set forth in § 831.622 will receive 55 percent of the annuity of the retired employee plus cost-of-living adjustments after the death of the retiree. If a retired employee has more than one former spouse who falls within the class of former spouses qualifying under § 831.622, each qualifying former spouse will receive the full survivor annuity.

Paragraph (a)(1) implements the statutory requirement that the marriage must have been dissolved after September 14, 1978, the effective date of Pub. L. 95-366. Pub. L. 95-366 authorized us to comply with certain State court

orders dividing civil service retirement benefits.

Paragraph (a)(3) implements the statutory requirement that the former spouse must not be entitled to any other employer-provided retirement or survivor annuity. Social security benefits under title 42, United States Code, and court awarded benefits under section 8345(j) of title 5, United States Code, are specifically excluded by CSRSEA. In view of the unambiguous language of the statute, receipt of any other employer-provided retirement or survivor annuity, regardless how small, will disqualify a former spouse from receiving an annuity under this section—notwithstanding remarks during the Senate's consideration of CSRSEA that only "substantial" employer-provided benefits should disqualify a former spouse from receiving a section 4(b) annuity. We believe that the statutory language and the legislative history as a whole, including our consultations during the drafting of this legislation, support this interpretation.

Paragraph (b)(1) relates to the application requirement for the above former spouses. We will accept correspondence as an informal application for meeting the timeliness requirements. Any informal application must be followed by an application on the appropriate form.

We require documentary proof that the requirements regarding date of application are met, but accept the former spouse's certification on the application as proof that the other requirements are met.

Section 831.623 implements section 4(c) of CSRSEA that provides that a retireee who retired before May 7, 1985, and who is married to a spouse acquired after retirement for whom the retiree was unable to provide a survivor annuity may provide a survivor annuity to the spouse if (1) the retiree was married at the time of retirement and elected not to provide a survivor annuity; or (2) the retiree notified us of the post-retirement marriage more than 1 year after the marriage and we disallowed the attempt to elect a reduced annuity because it was untimely. Under these circumstances, the retiree may elect in writing, within 1 year after the date of enactment, to provide for a survivor annuity for the current spouse. The retiree must deposit in the Civil Service Retirement and Disability Fund an amount reflecting the difference between what the retiree had received and what would have been received if the election had been in effect since the retiree's annuity commenced. If the retired employee does not make such a deposit, we will collect the amount by offset against the retiree's annuity up to 25 percent of the net annuity. The retiree may change his or her decision to make an election under § 831.623 until 30 days after the date of the first payment at the reduced annuity rate.

Section 831.624 regulates the collection of the deposits (including interest) required in making post-retirement elections under §§ 831.612, 831.613, 831.621, or 831.623. These payments are not subject to the procedures for the collection of annuity overpayments under subpart M because the retiree is deemed to consent to the collection. Reconsideration rights under § 831.109 are available to review whether the amount of the deposit has been correctly calculated.

Section 831.624(d) permits the spouse to complete the deposit if the retiree dies before making the entire deposit. Since the deposit is a prerequisite to payment of a survivor annuity, the deposit must be fully paid before the survivor annuity can be paid.

Section 831.625 regulates current and former spouse annuities in the event of remarriage by the recipient (except for former spouses entitled to survivor annuities under §§ 831.621 or 831.622). Whether age 55 or age 60 is the standard for terminating the annuity based on remarriage is determined by the date of the annuitant's retirement or the employee's or Member's death while serving in a position covered by CSRS, not the date of the remarriage. If the annuitant retired before May 7, 1985, or the employee or Member died in service before that date, the old law (age 60) continues to apply. If the annuitant retires on or after May 7, 1985, or the employee or Member dies in service on or after that date, the CSRSEA rule (age 55) controls. This is based on section 4(a) of CSRSEA that states that the retirement amendments to title 5, United States Code, apply only when the former employee or Member retires, dies in service, or requests a refund after May 7, 1985.

Since no statutory provision permits reinstatement of former spouse annuities, paragraph (d) provides that remarriage permanently extinguishes them. The solemnization of the remarriage is the event terminating the former spouse's entitlement. Accordingly, even if the remarriage is later annulled the entitlement is not reinstated. This rule is necessary for essentially the same policy reasons cited by the Missouri Court of Appeals when finding that alimony should not be reinstated following annulment of a remarriage. In *Glass* v. *Glass*, 546 S.W.2d 738 (Mo. App. 1977), the court supported its decision on the following policy considerations:

> (1) A former husband is entitled to rely on the remarriage ceremony of the former wife to recommit assets previously used for alimony obligations to her. (2) Unless the remarriage ceremony is taken as conclusive, any latent grounds for annulment between the remarried spouse and her new husband may remain suspended until the offended spouse seeks annulment, so that the former husband's alimony obligations may never be certainly determined. (3) Even though both former spouses may be innocent, the more active of the two [the one whose remarriage is later annulled] should bear the loss from the misconduct of a stranger. (At 741.)

Similar policy considerations apply in the context of the former spouse's annuity entitlements. First, the retiree is entitled to rely on the remarriage ceremony to provide a current spouse annuity for a subsequent spouse. Second, unless the remarriage is taken as conclusive, any latent grounds for annulment could prevent a current spouse's entitlement from becoming certain. Third, the spouse whose marriage is annulled should bear the loss rather than the spouse with no involvement whatsoever.

Section 831.626 continues our present procedure of requiring retirees who gain new title to an annuity to make all elections required upon retirement, when they apply to retire under the new annuity right. The elections under this section are made in accordance with the law at the time of the latest retirement.

Section 831.627 states the annual notice requirement of the Civil Service Retirement Act Amendment of July 10, 1978, Pub. L. 95–317, 92 Stat. 382. Section 3 of Pub. L. 95–317 requires that we, "* * * on an annual basis, inform each retiree of such retiree's right of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code." This provision does not appear in the United States Code.

Based on the reasoning of a Merit Systems Protection Board regional office decision, we determined that giving notice each calendar year was inadequate and that notice must be given at least every 12 months. Furthermore, the Merit Systems Protection Board determined in *Davies* v. *OPM*, 5 MSPB 251 (1981) (discussed in connection with § 831.613) that the time limit for making an election could be waived if the retiree did not receive the annual notice and acted with due diligence in making the election.

3. Court Orders Affecting Civil Service Retirement Benefits

State laws and State courts have traditionally controlled matters of domestic relations and property rights. Questions such as an individual's obligations to a former spouse are determined by the courts on a case-by-case basis taking into consideration many factors, such as the financial status of both parties, property settlements, children involved, etc.

As a result of the enactment of Pub. L. 93-647, which added section 459 to the Social Security Act (42 U.S.C. 659), since 1975, civil service retirement benefits have been subject to garnishment, attachment, or similar legal process to enforce support obligations.

In recent years, many State courts have ruled that future retirement benefits earned during a marriage should be considered marital property and subject to division in the event of a legal separation, divorce, or annulment of marriage. The Social Security Act garnishment amendments did not cover property settlements.

Pub. L. 95-366, effective September 15, 1978, required us to pay a portion of an annuity to someone other than the retiree to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Final rules implementing Pub. L. 95-366 were published in the **Federal Register** on March 7, 1980 (45 FR 14835). However, survivor benefits still could not be affected by court orders.

Now, under CSRSEA, State courts are permitted to award former spouse annuities to assure former spouses of their property rights regardless of whether the employee spouse survives. Awarding former spouse annuities could also be used to assure continuing support payments to a former spouse.

The revised Subpart Q incorporates this new type of benefit available by court order into the framework established for handling court orders dividing employee retirement benefits under section 8345(j) of title 5, United States Code.

The general rule of section 8346(a) of title 5, United States Code, is that State court orders have no effect on civil service retirement benefits. Subpart Q contains procedures for the exceptional cases when section 8346(a) does not apply.

Nothing in this subpart or anywhere else authorizes the United States, the Office of Personnel Management, or the Civil Service Retirement System to be made a party to divorce proceedings. The sovereign inmunity of the United States bars the attempted joinder.

Our experience has shown that joinders are sought for three reasons:

(1) To obtain information about an individual's contributions to the retirement system;

(2) To divide the retirement benefits; and

(3) To stay payment of benefits.

Under Federal laws and regulations, these ends can be attained despite the court's lack of jurisdiction over the Civil Service Retirement System.

We will release information from retirement records to a court in response to a subpoena. The proper place to submit the subpoena is determined by whether the person has been separated from the Federal service. If the individual about whom the information is sought is not a current Federal employee, the subpoena should be addressed to the Civil Service Retirement System at the Office of Personnel Management.

If the individual is still an active Federal employee, and all of his or her Federal service has been continuous and with the same agency, the records should be with the payroll office of that agency. Service must be made upon the agency in which the individual is employed.

If the individual is currently a Federal employee but has had a break in service or has worked for more than one agency, some of the records will be on file with us while others will still be with the employing agency. In this situation, process must be served on both.

It takes approximately 30 days to respond to a subpoena. Submissions must include the employee's (or former employee's) full name, date of birth and/or social security number or we will not be able to locate the record.

Section 8345(j) of title 5, United States Code, instructs us to divide civil service retirement benefits in accordance with State court orders. The required contents of the court order are set out in § 831.1704 of the the interim regulations. Our guidelines for interpreting language frequently used in orders dividing benefits is an appendix to subpart Q of the interim rules. An application to apportion benefits requires approximately 30 days processing time after receipt.

Finally, court orders may be necessary to maintain the status quo during the time the suit is pending. The way to accomplish this is to obtain an order directing us to pay some or all of the benefits that may become due to the court. Such an order should be served upon the Associate Director for Compensation.

We cannot pay any money into the court before it would be payable to the employee or retiree. Employee contributions in the retirement fund are not payable in a lump sum to an employee until he or she separates from the Federal service and submits an application for refund.

The defintion of "employee retirement benefits" was taken from the definition of "retirement benefits" in the old § 831.1702. These are the benefits that were subject to court orders under Pub. L. 95-366 because they are payable to the person who performed the Federal service on which they are based.

The definition of "former spouse" contains two usages for the term. In connection with divisions of employee retirement benefits under section 8345(j) of title 5, United States Code, "former spouse" has the same meaning that it had under the old § 831.1703. In connection with awards of survivor annuities under section 8339(h) of title 5, United States Code, "former spouse" has the meaning given to it in section 8331(23) of title 5, United States Code.

The definition of "gross annuity" is taken from the Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits (49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984).

The definition of "net annuity" is derived directly from the old § 831.1705(a).

Section 831.1704(b) is a restatement of the old § 831.1703(c). It was rewritten to eliminate the confusion and clarify our original intent to exclude orders requiring us to compute the value of a variable about which we have no knowledge.

Section 831.1704(c)(1) rephrases the rule of the old § 831.1703(b) for clarity. The language is taken from Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits (49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984). The interpretation of Pub. L. 95-366 expressed in the old § 831.1703(b) has been upheld by the United States Court of Appeals in *McDannell* v. *Office of Personnel Management,* 716 F.2d 1063 (5th Cir. 1983).

Section 831.1704(c)(2) states a broader rule for honoring orders awarding former spouse annuities. No legitimate purpose could be served by denying effect to an order directing the retiree to provide a former spouse annuity.

Section 831.1705 contains the application requirements for all persons

seeking compliance with qualifying court orders. Section 831.1705(a) allows the application to be made in any writing. We recommend use of a letter. A special form is required only when payments must terminate upon remarriage.

Section 831.1705(b) contains the documentation requirements that must accompany the application. Previously we required that the certification of the court order be "recent." This requirement failed to serve any useful purpose. Accordingly, future applications will require only a proper certification; we are no longer requiring that the certification be "recent."

The quantity of identifying information required under § 831.1705(b)(3) varies with the type of civil service retirement benefit to be affected. Current retirees can be identified with only the name and claim number, date of birth, or social security number. The date of birth is essential in all other types of cases. Without the date of birth, we cannot effectively identify future incoming records.

The certification requirement of § 831.1705(c) applies to former spouse annuities of persons who have not attained age 55, and court orders affecting employee retirement benefits that terminate on remarriage. An example of the latter type order would be an alimony award to be paid from a civil service annuity.

Section 831.1706(a) and (b) are the old § 831.1705(b).

Section 831.1706(c) states the maximum amount available to comply with court orders. The limitations of the Federal Consumer Credit Protection Act (15 U.S.C. 1673(b)(2)) do not apply to court orders under this subpart.

Section 831.1707 states the preliminary review procedure of the old § 831.1706. Upon receipt of an order, we will check to see whether immediate action is necessary because either benefits are immediately payable or an immediate reduction in annuity is necessary to provide a former spouse annuity. If neither of the conditions is met, § 831.1707(a)(1) provides that we will acknowledge receipt of the court order and file the order for future consideration. Only after one of those conditions has been met will the order be reviewed.

Section 831.1707(b) provides that if, as a result of the preliminary review, the initial determination is that the order could be a qualifying court order, all interested parties will be given the notices provided in § 831.1708. On the other hand, if the initial determination is that the order does not qualify, § 831.1707(c) requires that the former spouse be given an explanation of the reasons that the order fails to qualify and a notice of his or her administrative review right. The former employee or Member will be notified that we have received a court order even when, as a result of the preliminary review, we determine that we will not honor the order.

Section 831.1709 retains the decision procedure from the old § 831.1708. The former spouse's claims will be disallowed only if the court order does not meet the requirements of § 831.1704 or a court determines that it should not be honored. Anyone adversely affected by a decision under § 831.1709 may request reconsideration under § 831.109. Section 831.109(g) prohibits us from implementing decisions under § 831.1709 until the administrative review process is completed.

Section 831.1711 states the timing requirement applicable to court orders. Section 831.1711(a)(1) states the rule under section 8345(j) of title 5, United States Code, that orders affecting employee retirement benefits can be honored regardless of when the orders were issued. On the other hand, § 831.1711(b)(1) states the rule under CSRSEA that orders creating a former spouse annuity are effective only if the marriage to the employee or Member was in force on or after May 7, 1985, and the employee or Member retires under the civil service retirement system or dies in a covered position on or after May 7, 1985.

Section 831.1712 contains procedures for handling employee retirement benefits that were being paid to a former spouse who dies. In 1980, when we promulgated regulations (45 FR 14835, March 7, 1980) to implement section 8345(j) of title 5, United States Code, we stated that we would promulgate a rule to provide restrictions and procedures applicable to payments after the death of the former spouse after further study. Section 831.1712 now establishes restrictions and procedures for these payments. (It should be noted that section 8345(j) of title 5, United States Code, requires that an apportionment of employee retirement benefits must terminate if the annuity benefit is suspended or terminated. This statute relieves us from the obligation of paying an apportioned benefit after the death of an *annuitant.*)

In cases when a former spouse dies while entitled to a portion of a retiree's payments in accordance with a court order, § 831.1712 requires that we request guidance from the court that issued the apportionment order. The court could then make further provision for future payments. This approach was chosen only after concluding that automatically paying the former spouse's share to the court was unfeasible because too many courts would not have procedures to handle and account for the funds.

Section 831.1713 is taken from the old §§ 831.1710 and 831.1711. Sections 831.1713 (a) through (d) are derived from the old § 831.1710 (a) through (d). Section 831.1713(e) is the old § 831.1711(c).

Section 831.1714 provides for publication and indexing of interpretive guidelines. We have received approximately 1000 State court orders dividing civil service retirement benefits. In implementing these orders, we have been forced to interpret many terms that are capable of more than one meaning. To insure consistency in interpretation and to simplify the task of interpreting ambiguous terms that are frequently used, we have developed a set of guidelines that we will use to interpret State court orders.

The legal community has attempted to draft orders dividing civil service retirement benefits that minimize the potential confusion generated in interpreting the orders. However, without knowledge that a term used in a decree has a technical meaning within the civil service retirement law, unclear orders frequently resulted. The guidelines for interpreting these technical terms should assist the legal community in drafting orders that will be interpreted by us to produce the intended result.

The guidelines contain no regulatory language. The original guidelines were published at 49 FR 26746, June 29, 1984, corrected by 49 FR 27647, July 5, 1984. These guidelines are appended to subpart Q in the interim rules and apply to court orders dividing employee retirement benefits but not to court orders awarding survivor annuities.

Section 831.1715 restates the old § 831.1711(a).

Section 831.1716 provides for handling multiple court orders against one former employee or Member. Section 831.1716(a) states the order-of-issuance rule required by CSRSEA for formal spouse annuity cases whenever two or more former spouses are involved. Section 831.1716(b) states the usual rule for determining the effect of court judgments for cases when conflicting judgments affect the same parties.

Section 831.1717 restates the old § 831.1710(e). Section 831.1718 restates the old § 831.1711(d).

4. Payment of Lump Sums

Pub. L. 98-615 also affected lump-sum credit payments (refunds) of accumulated retirement deductions. A former employee's or Member's current spouse must be notified of the former employee's or Member's application for a lump-sum payment after May 6, 1985. Any former spouse from whom the employee was *divorced after May 6, 1985*, must also be notified of the application for lump-sum payment.

If the employee's or Member's current or former spouse does not acknowledge notification, the employee or Member may submit a signed postal return receipt as proof that he or she has mailed the notification to the current or former spouse. Alternatively, the employee or Member may submit affidavits signed by two individuals who witnessed the employee's or Member's personal attempt to obtain the current or former spouse's signature on the notification form. This is in substantial conformance with regulations found at old § 831.601(c) to Title 5, Code of Federal Regulations, which governed spousal notification of survivor annuity elections at the time of retirement under previous law, and which the Congress expressed its intent that we follow. (House Report No. 98-1054, September 24, 1984, p. 15.) The burden of proving a *bona fide* effort to notify the spouse or former spouse is placed upon the employee or Member, with the intent of keeping any delay in paying the refund within reasonable limits.

If the employee or Member is unable to obtain the acknowledgement of any *former* spouse, the employee or Member may, instead, submit a divorce decree, community property settlement or similar court-approved document wherein the former spouse has relinquished any rights to the annuity or the annuity was wholly awarded to the employee or Member. The object here is to require proof that the former spouse's entitlement to any benefit from the employee's or Member's annuity has been relinquished. If that is the case, there is no benefit which the former spouse could lose by the refund being paid and, therefore, notification would serve no reasonable purpose.

If the spouse's whereabouts are unknown, § 831.2008 sets out the conditions necessary for a waiver of the notification requirement.

The lump-sum payment will also be subject to any court order or decree *issued after May 6, 1985*, which directly relates to the lump-sum credit, if the payment of the lump-sum would adversely affect a former spouse's entitlement to a court-ordered share of an annuity and/or a survivor annuity. These regulations set forth procedures that we will follow to implement these provisions.

Sections 831.2005 and 831.2006 are the former §§ 831.1003 and 831.1004. Section 831.2001 has been expanded to include more definitions. Sections 831.2002 through 2004 remain essentially unchanged except that they are made subject to the restrictions of these new regulations and to section 3716 of title 5, United States Code, on administrative offset for government claims.

I find that there is good reason to make these amendments effective in less than 30 days (5 U.S.C. 533(d)(3)). The regulations are effective on May 7, 1985, to prevent irreparable harm to persons entitled to benefits under CSRSEA. Delaying rulemaking would be contrary to the public interest as expressed in CSRSEA because such a delay would require delayed payments in cases authorized by the revised statute most of which becomes effective May 7, 1985, until implementing regulations could be put in place. Although later payments could be retroactive to May 7, 1985, when entitlement attached on that date, delay could seriously harm entitled persons with an immediate need for payment.

Furthermore, CSRSEA imposes restrictions on the time in which application under sections 4(b) and 4(c) of the Act can be made. The 30-month period under section 4(b) and the 18-month period under section 4(c) began to run on November 9, 1984. It would be unconscionable to further delay processing applications while awaiting comments.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Personnel Management Office, Retirement.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

PART 831—[AMENDED]

Accordingly, OPM is amending 5 CFR Part 831, as follows:

1. By revising Subpart F to read as follows:

Subpart F—Survivor Annuities

Authority: 5 U.S.C. 8347.

Subpart F—Survivor Annuities

§ 831.601 Purpose.

This subpart explains the annuity benefits payable in the event of the

death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

§ 831.602 Relation to other regulations.

(a) Subpart Q of this part contains information about former spouses' entitlement to survivor annuities based on provisions in court orders or court-approved property settlement agreements.

(b) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(c) Parts 870, 871, 872 and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(d) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(e) Section 831.109 contains information about the administrative review rights available to a person who has been denied a survivor annuity or an opportunty to make an election under this subpart.

§ 831.603 Definitions.

As used in this subpart—

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Current spouse" means a living person who is married to the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

"Current spouse annuity" means a recurring benefit under CSRS that is payable (after the employee's, Member's, or retiree's death) to a current spouse who meets the requirements of § 831.618.

"Deposit" means a deposit required by the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, 98 Stat. 3195. "Deposit," as used in this subpart does not include a service credit deposit or redeposit under sections 8334(c) or (d) of title 5, United States Code.

"First regular monthly payment" means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under CSRS and has paid the annuity accrued since the time of retirement. The "first regular monthly payment" is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a recurring benefit under CSRS that is payable to a former spouse after the employee's, Member's, or retiree's death.

"Fully reduced annuity" means the recurring payments under CSRS received by a retiree who has elected the maximum allowable reduction in annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

"Insurable interest annuity" means the recurring payments under CSRS to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree.

"Marriage" means a marriage recognized in law or equity under the whole law of the jurisdiction with the most significant interest in the marital status of the employee, Member, or retiree unless the law of that jurisdiction is contrary to the public policy of the United States. If a jurisdiction would recognize more than one marriage in law or equity, the Office of Personnel Management (OPM) will recognize only one marriage, but will defer to the local courts to determine which marriage should be recognized.

"Member" means a Member of Congress.

"Net annuity" means the net annuity as defined in § 831.1703.

"Partially reduced annuity" means the recurring payments under CSRS to a retiree who has elected less than the maximum allowable reduction in annuity to provide a current spouse annuity or a former spouse annuity.

"Qualifying court order" means a court order that meets the qualifications of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity.

"Self-only annuity" means the recurring unreduced payments under CSRS to a retiree with no survivor annuity to anyone.

"Time of retirement" means the date when a retired employee's or Member's annuity entitlement commences.

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under CSRS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a partially reduced annuity, or a fully reduced annuity to provide a former spouse annuity, in accordance with § 831.605(b) or § 831.607; or

(2) The employee or Member elects a self-only annuity, a partially reduced annuity or a fully reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 831.608.

(b) Qualifying court orders that award former spouse annuities prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.614.

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance with § 831.607 or spousal consent is waived in accordance with § 831.608.

(c) An election under paragraphs (a) or (b) of this section is void if it—

(1) Conflicts with a qualifying court order; or

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent of the self-only annuity to which the employee or Member would be entitled.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse dies or remarries before age 55, unless—

(1) The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to

provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

§ 831.606 Election of insurable interest annuity.

(a) At the time of retirement, an employee or Member in good health, who is applying for a non-disability annuity, may elect an insurable interest annuity. Spousal consent is not required, but an election under this section does not exempt a married employee or Member from the provisions of § 831.604(a).

(b) An insurable interest annuity may be elected by an employee or Member electing a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c) An employee or Member may elect an insurable interest annuity to benefit a current or former spouse who, upon the retiree's death, will also be entitled to a current spouse annuity or a former spouse annuity.

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement and must submit evidence to demonstrate that he or she is in good health. OPM may also require a medical examination to demonstrate that the employee or Member is in good health.

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) A blood or adopted relative closer than first cousins;

(iii) A former spouse;

(iv) A person to whom the employee or Member is engaged to be married;

(v) A person with whom the employee or Member is living in a relationship which would constitute a common-law marriage in jurisdictions recognizing common-law marriages.

(2) When an insurable interest in not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(3) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

(f) After receipt of all required evidence to support an election of an insurable interest annuity, OPM will notify the employee or Member of initial monthly annuity rates with and without the election of an insurable interest annuity and the initial rate payable to the named beneficiary. No election of an insurable interest annuity is effective unless the employee or Member confirms the election in writing, dies, or becomes incompetent no later than 60 days after the date of the notice described in this paragraph.

(g) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(h) Except as provided in § 831.625(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(i) Upon the death of the current spouse, a retiree whose annuity is reduced to provide both a current spouse annuity and an insurable interest benefit for a former spouse is not permitted to convert the insurable interest annuity to a reduced annuity to provide a former spouse annuity.

(j) An employee or Member may name only one natural person as the named beneficiary of an insurable interest annuity. OPM will not accept the designation of contingent beneficiaries and such a designation is void.

§ 831.607 Election of a self-only annuity or partially reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a partially reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with § 831.608.

(b) Evidence of spousal consent or a request for waiver of spousal consent must be filed on a form prescribed by OPM.

(c) The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

§ 831.608 Waiver of spousal consent requirement.

(a) The spousal consent requirement will be waived upon a showing that the spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial determination that the spouse's whereabouts cannot be determined; or

(2) (i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the current spouse and stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as tax returns filed separately or newspaper stories about the spouse's disappearance.

(b) The spousal consent requirement will be waived based on exceptional circumstances if—

(1) The employee or Member is considered unmarried at the time of retirement based on § 831.610; or

(2) The employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

§ 831.609 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or

justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

§ 831.610 Marital status at time of retirement.

An employee or Member is unmarried at the time of retirement for all purposes under this subpart only if the employee or Member was unmarried on the date that the annuity begins to accrue.

§ 831.611 Changes of election after final adjudication.

Except as provided in section 8339 (j) or (k) of title 5, United States Code or § 831.621 or § 831.623, an employee or Member may not revoke or change the election or name another survivor, later than 30 days after the date of the first regular monthly payment.

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b) An election under paragraph (a) of this section will not be permitted—

(1) If it conflicts with a qualifying court order; or

(2) If it would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity; or

(3) In the case of a married retiree, if the current spouse does not consent to the election on the form described in § 831.607(c) and spousal consent is not waived by OPM in accordance with § 831.608; or

(4) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.604 (a)(1) or (a)(2).

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(d) The annuity reduction under this section terminates under the conditions stated in § 831.605(d).

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a post-retirement marriage, to provide a current spouse annuity.

(3) The reduction under paragraphs (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) In cases involving retirees who retired on or after May 7, 1985:

(1) Except as provided in paragraph (b)(3) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) Except as provided in paragraph (b)(3) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(i) The retiree was awarded a fully reduced annuity under § 831.604 at the time of retirement; or

(ii) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.608; or

(iii) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election.

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective if it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity.

(4) A retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(5) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

§ 831.614 Division of a survivor annuity.

(a) Except as provided in § 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

(b) By using the elections available under this subpart or to comply with a court order under Subpart Q, a survivor annuity may be divided into a combination of former spouse annuities and a current spouse annuity so long as the aggregate total of current and former spouse annuities does not exceed the maximum limitation in paragraph (a) of this section.

(c) Upon termination of former spouse annuity payments because of death or remarriage of the former spouse, or by operation of a court order, the current spouse will be entitled to a current spouse annuity or an increased current spouse annuity if—

(1) The employee or Member died while employed in a position covered under CSRS; or

(2) The current spouse was married to the employee or Member continuously from the time of retirement and did not consent to an election not to provide a current spouse annuity; or

(3) The current spouse married a retiree after retirement and the retiree elected, under § 831.613, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

§ 831.615 Child's annuity during school attendance.

For a child to be eligible for continuation of annuity beyond age 18 because of student status, the child, in addition to meeting all other requirements applicable to a child survivor who has not attained age 18.

must present a certificate on a form prescribed by OPM from the educational or training institution that certifies that the child is regularly pursuing a full-time day or evening course of resident study or training. For this purpose, a full-time course of resident study or training means a day or evening noncorrespondence course that contemplates school attendance at the rate of at least 36 weeks per academic year with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

§ 831.616 Proof of dependency.

(a) To be eligible for survivor annuity benefits, a child must have been dependent on the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

(b) A child is considered to have been dependent on the deceased employee, Member, or retiree if he or she is—

(1) A legitimate child; or

(2) An adopted child; or

(3) A child who lived with, and for whom a petition of adoption was filed by, the employee, Member, or retiree, and who was adopted by the surviving spouse of the employee, Member, or retiree after the employee's, Member's, or retiree's death; or

(4) A stepchild or recognized natural child who lived with the employee, Member, or retiree in a regular parent-child relationship at the time of the employee's, Member's, or retiree's death; or

(5) A recognized natural child for whom a judicial determination of support was obtained; or

(6) A recognized natural child to whose support the employee, Member, or retiree made regular and substantial contributions.

(c) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a natural child who did not live with the employee, Member, or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs; and

(2) Proof of inclusion of the child as a dependent on the decedent's income tax returns for the years immediately before the employee's, Member's, or retiree's death; and

(3) Cancelled checks, money orders, or receipts for periodic payments received from the employee, Member, or retiree for or on behalf of the child; and

(4) Evidence of goods or services that show regular contributions of considerable value; and

(5) Proof of coverage of the child as a family member under the employee's Member's, or retiree's Federal Employees Health Benefits enrollment; and

(6) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(d) Survivor benefits may be denied—

(1) If evidence shows that the deceased employee, Member, or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(2) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's, Member's, or retiree's recognition and support of the child.

§ 831.617 Rates of child annuities.

(a) (1) Subject to paragraphs (a)(2) and (a)(3) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(1) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member or retiree.

(2) When paragraph (a)(1) of this section applies because of the existence of a current spouse:

(i) Paragraph (a)(1) of this section applies even if the current spouse is not entitled to a current spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the current spouse.

(3) When paragraph (a)(1) of this section applies only because of the existence of a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member, or retiree:

(i) Paragraph (a)(1) of this section applies even if the former spouse is not entitled to a former spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the former spouse.

(iii) Paragraph (a)(1) of this section does not apply to any child of the former employee or Member if the former spouse has no offspring entitled to an annuity.

(b) The rate of annuity payable to a child survivor is computed under section 8341(e)(1) (i) through (iii) of title 5, United States Code, with adjustment in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child (who is entitled to a child's annuity) of the former employee or Member.

(c) On the death of the current spouse or the former spouse or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the spouse, former spouse, or child had not survived the former employee or Member.

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, can qualify for a current spouse annuity only if—

(1) The surviving spouse and the employee, Member, or retiree had been married for at least 9 months, as explained in paragraph (b) of this section; or

(2) A child was born of the marriage, as explained in paragraph (c) of this section; or

(3) The death of the employee, Member, or retiree was accidental as explained in paragraph (d) of this section.

(b) For satisfying the 9-month marriage requirement of paragraph (a)(1) of this section, the aggregate time of all marriages between the spouse applying for a current spouse annuity and the employee, Member, or retiree is included.

(c) For satisfying the child-born-of-the-marriage requirement of paragraph (a)(2) of this section, any child, including a posthumous child, born to the spouse and the employee, Member, or retiree is included. This includes a child born out of wedlock or of a prior marriage between the same parties.

(d)(1) A death is accidental if it results from homicide or from bodily injuries incurred solely through violent, external, and accidental means.

(i) Caused wholly or partially, directly or indirectly, by disease or bodily or mental infirmity, or by medical or surgical treatment or diagnosis thereof; or

(ii) Caused wholly or partially, directly, or indirectly, by ptomaine, by bacterial infection, except only septic infection of and through a visible wound

sustained solely through violent, external, and accidental means; or

(iii) Caused wholly or partially, directly or indirectly, by hernia, no matter how or when sustained; or

(iv) Caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane.

(2) A State judicial or administrative adjudication of the cause of death for criminal or insurance purposes is conclusive evidence of whether a death is accidental.

(3) A death certificate showing the cause of death as accident or homicide is *prima facie* evidence that the death was accidental.

§ 831.619 Time for filing applications for death benefits.

(a) A survivor of a deceased employee, Member, or retiree, may file an application for annuity, personally or through a representative, at any time within 30 years after the death of the employee, Member, or retiree.

(b) A former spouse claimng eligibility for an annuity based on § 831.622 may file an application at any time between November 8, 1984 and May 9, 1987. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.622 if the former spouse is eligible on that date.

§ 831.620 Commending and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622.

(b) A survivor annuity terminates at the end of the month preceding death or any other terminating event.

(c) A current spouse annuity terminated for reasons other than death may be restored under conditions defined in sections 8341(e)(2) and 8341(g) of title 5, United States Code.

(d) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. An annuity does not accrue for the 31st day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st day. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity to provide a former spouse annuity.

(b) The election should be made by letter addressed to OPM. The election must—

(1) Be in writing; and

(2) Agree to pay any deposit due under paragraph (d) of this section; and

(3) Be signed by the retiree; and

(4) Be filed with OPM before May 9, 1986.

(c)(1) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity under this seciton to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit if a fully reduced annuity is elected under this section.

(2) A retiree who elects a fully reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity must deposit an amount equal to the differences between the rate of annuity actually paid to the retiree and the amount of annuity which would have been paid had a fully reduced annuity been paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(3) A retiree who elects a fully reduced annuity under this section, and is not covered under paragraphs (c)(1) or (c)(2) of this section, must deposit an amount equal to the difference between the self-only annuity and a fully reduced annuity since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the former spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (e)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of the notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (e)(2) of this section.

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a) The former spouse of a retiree who retired before May 7, 1985, is entitled, after the death of the retiree, to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse meets all of the following requirements:

(1) The former spouse's marriage to the retiree was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former

spouse and the retiree ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissovled.

(2) The former spouse was married to the retiree for at least 10 years of the retiree's creditable civilian service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C.

(3) The former spouse is not receiving any other employer-provided retirement or survivor annuity.

(i) Employer-provided retirement or survivor annuity means recurring retirement or survivor payments (other than benefits under title II of the Social Security Act or under section 8345(j) of title 5, United States Code) that are made by, on behalf of, or under the terms of a contract with an employer and are based on past service of the former employee or Member or the former spouse.

(ii) Employer-provided retirement or survivor annuity to which the former spouse is entitled but not actually receiving because of a failure to apply for the benefit or because the benefits were waived (and the waiver was accepted by the retirement or survivor benefit plan) are not considered employer-provided benefits for purposes of this section.

(4) The former spouse has not remarried before reaching age 55.

(5) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(6) The former spouse is at least 50 years old when filing the application.

(b) (1) Application must be filed on the form prescribed for that purpose by OPM. The application form will require the former spouse to certify under the penalty provided by section 1001 of title 18, United States Code, that he or she meets the requirements listed in paragraph (a) of this section.

(2) In addition to the application form required in paragraph (b)(1) of this section, the former spouse must submit proof of his or her age and the date when the marriage to the retiree commenced, and a certified copy of the divorce decree terminating the marriage to the retiree.

(3) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application and at all times while a former spouse annuity, under this section, is being paid to that former spouse. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she ceases to meet any of the qualifications in paragraph (a) of this section.

(c) Survivor annuities payable under this section commence on the later of the day after the date of death of the retiree or the first day of the second month after the application is filed under § 831.619(b).

(d) Cost-of-living adjustments under section 8340 of title 5, United States Code, are applicable to annuities payable under this section.

§ 831.623 Second chance elections to provide survivor benefits.

(a) A married retiree who retired before May 7, 1985, and is not currently receiving a fully or partially reduced annuity to provide a current spouse annuity may elect a fully or partially reduced annuity to provide a current spouse annuity for a spouse acquired after retirement if the following conditions are met:

(1) (i) The retiree was married at the time of retirement and did not elect a survivor annuity at that time; or

(ii) The retiree failed to elect a fully or partially reduced annuity within 1 year after a post-retirement marriage that occurred before November 8, 1984, and the retiree attempted to elect a fully or partially reduced annuity after the time limit expired and that request was disallowed as untimely.

(2) The retiree applies for a fully or partially reduced annuity under this section before November 9, 1985.

(3) The retiree agrees to pay the amount due under paragraph (d) of this section.

(b) Applications must be filed on the form prescribed by OPM, except filing the form is excused when the retiree dies before filing the required form if:

(1) The retiree made a written request, after November 8, 1984, to elect a fully or partially reduced annuity under this section, and

(2) The retiree was denied the opportunity to file the required form because the retiree, without fault, did not receive the form in sufficient time for the retiree to be reasonably expected to complete the form before death.

(c) (1) In response to a retiree's inquiry about providing a current spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the current spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully or partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential current spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (c)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of this notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (c)(2) of this section.

(d) The retiree must state on the application form whether the application is made under paragraph (a)(1)(i) of this section or paragraph (a)(1)(ii) of this section. If the application is made under paragraph (a)(1)(ii) of this section, the retiree must prove that he or she had attempted to elect a fully reduced annuity and that OPM rejected that application because it was filed too late. The proof must consist of a copy of OPM's letter rejecting the previous election as untimely filed or an affidavit swearing or affirming that he or she made an untimely application which OPM rejected. The affidavit is sufficient documentation to provide proof of the retiree's attempt to elect a reduced annuity, unless the record contains convincing evidence to rebut the certification.

(e) A retiree who elects to provide a current spouse annuity under this section must agree to pay a deposit equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if a fully reduced annuity were being paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.612, 831.613, 831.621, or 831.623 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

(b) If a retiree fails to make a deposit required under § 831.621 or § 831.623 within 60 days after the date of the notice required by § 831.621(e) or § 831.623(c), the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(c) If a retiree fails to make a deposit required by §§ 831.612 or 831.613 within 2 years after the date of the post-retirement marriage or divorce, the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(d) If a retiree dies before a deposit required under §§ 831.612, 831.613, 831.621, or 831.623 is fully made, the deposit will be collected from the survivor annuity (for which the election required the deposit) before any payments of the survivor annuity are made.

§ 831.625 Remarriage.

(a) A current spouse annuity based on the death of a retiree who retired before May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS before May 7, 1985, terminates on the last day of the month before the current spouse remarries before attaining age 60.

(b) A current spouse annuity or a former spouse annuity based on the death of a retiree who retired on or after May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS on or after May 7, 1985, terminates on the last day of the month before the recipient remarries before attaining age 55.

(c) If a current spouse annuity is terminated because of remarriage of the recipient, the annuity is reinstated on the day of the termination of the remarriage by death, annulment, or divorce if—

(1) The surviving spouse elects to receive this annuity instead of a survivor benefit to which he or she may be entitled, under CSRS or another retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is repaid (in a single payment or by withholding payment of the annuity until the amount of the lump sum has accrued).

(d) If present or future entitlement to a former spouse annuity is terminated because of remarriage of the recipient or potential recipient, the entitlement is permanently extinguished. An annulment of the remarriage does not reinstate the entitlement.

§ 831.626 Elections by previously retired retiree with new title to an annuity.

(a) A reemployed retiree (after 5 or more years of reemployed annuitant service) who elects a redetermined annuity under section 8344 of title 5, United States Code, is subject to §§ 831.604 through 611 at the time of the redetermination.

(b) A disability retiree who recovers from disability or is restored to earning capacity is subject to §§ 831.604 through 611 at the time that he or she retires under section 8336 or 8338 of title 5, United States Code.

(c) A retiree who is dropped from the retirement rolls and subseqently gains a new annuity right by fulfilling the requirements of section 8333(b) of title 5, United States Code, is subject to §§ 831.604 through 611 when he or she retires under that new annuity right.

§ 831.627 Annual notice required by Pub. L. 95-317.

At least once every 12 consecutive months, OPM will send a notice to all retirees to inform them about the survivor annuity elections available to them, under sections 8339(j) and 8339(k)(2) of title 5, United States Code, in the event of post-retirement marriages.

Subpart J—[Removed]

2. By removing Subpart J and reserving it for future use.

3. By revising Subpart Q to read as follows:

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

Authority: 5 U.S.C. 8347

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

§ 831.1701 Purpose.

This subpart regulates the Office of Personnel Management's adjudication of claims arising out of State court orders that affect civil service retirement benefits. The Office of Personnel Management (OPM) must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of a former employee's or Member's retirement benefits or a survivor annuity to a former spouse. This subpart prescribes the procedures to be followed by—

(a) A former spouse when applying for benefits based on a court order under sections 8345(j) or 8341(h) of title 5, United States Code; and

(b) The Associate Director in honoring court orders and in making payment to the former spouse.

§ 831.1702 Relation to other regulations.

(a) Part 581 of this Chapter contains information about garnishment of Government payments including salaries and civil service retirement benefits.

(b) Parts 294 and 297 of this chapter and § 831.106 contain information about disclosure of information from OPM records.

(c) Subpart F of this part contains information about entitlement to survivor annuities.

(d) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(e) Parts 870, 871, 872, and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(f) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(g) Section 831.109 contains information about the administrative review rights available to a person who has been adversely affected by an OPM action under this subpart.

§ 831.1703 Definitions.

In this subpart:

"Associate Director" means the Associate Director for Compensation in the OPM or an OPM employee officially authorized to act on his or her behalf.

"Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Employee retirement benefits" means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or lump-sum payments made pursuant to section 8342 (c) through (f) of title 5, United States Code.

"Former spouse" means (1) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order; or (2) in connection with a court order awarding a former spouse annuity, a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a former spouse annuity as defined in § 831.603.

"Gross annuity" means the amount of a self-only annuity less only applicable survivor reduction, but before any other deduction.

"Member" means a Member of Congress.

"Net annuity" means the amount of annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums pursuant to section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this title, (3) deducted for life insurance premiums pursuant to section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, or (5) properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which he or she was entitled.

"Qualifying court order" means a court order that meets the requirements of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in the subpart, does not include a current spouse, former spouse, child or person with an insurable interest.

"Self-only annuity" means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

§ 831.1704 Qualifying court orders.

(a) A former spouse is entitled to a portion of an employee's retirement benefits only to the extent that the divison of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variables whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For purposes of payments from employee retirement benefits, OPM will review court orders as a whole to determine whether the language of the order shows an intent by the court that the former spouse should receive a portion of the employee's retirement benefits directly from the United States.

(i) Orders that direct or imply that OPM is to make payment of a portion of employee retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid in accordance with § 831.1709.

(ii) Orders that specifically direct the retiree to pay a portion of employee retirement benefits to a former spouse (and do not contain language to show the court intends payment from the Civil Service Retirement System) will be honored unless the retiree objects to direct payment by OPM within the 30-day notice period prescribed in § 831.1708, but will not be honored even if the retiree raises only a general objection to payment by OPM within that 30-day notice period.

(2) For purposes of awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2) The employee or Member on whose service the former spouse annuity is based retired under CSRS before May 7, 1985.

(e) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

§ 831.1705 Applications by former spouse.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting benefits under CSRS; and

(2) A statement that the court order has not been amended, superseded, or set aside; and

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, claim number, date of birth, and social security number, if available; and

(4) The mailing address of the former spouse.

(c) When payments are subject to termination upon remarriage, no payment shall be made until the former spouse submits to the Associate Director a statement on the form prescribed by OPM certifying—

(1) That a remarriage has not occurred; and

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 831.1706 Amounts payable.

(a) Money held by an executive agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

(1) Separation from a covered position in the Federal service; and

(2) Application for payment of the money by the former employee or Member.

(b) Waivers of employee or Member annuity payments under the terms of Section 8345(d) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked before the expiration of the 30-day notice period provided by § 831.1708.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Member annuities, the net annuity.

(2) In cases involving lump-sum payments (refunds), the amount of the lump-sum credit.

(3) In cases involving former spouse annuities, the amount provided in § 831.614.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM receives written notice of the court order together with the additional information required by § 831.1705. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

(3) A court order will not be honored to the extent is is inconsistent with any joint designation or waiver previously executed under § 831.607 with respect to the former spouse involved.

§ 831.1707 Preliminary review.

(a)(1) Upon receipt of a court order and documentation required by § 831.1705 affecting the future civil service retirement benefits of an employee or Member who is living and has not applied for benefits under CSRS, the Associate Director will notify the former spouse that OPM has received the court order and documentation. The court order and documentation will be filed for further review when the employee or Member dies or funds become available under § 831.1706.

(2) When OPM has received a court order and documentation required by § 831.1705 affecting an employee or Member who retires, dies, or applies for a lump-sum benefit, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(3) Upon receipt of a court order and necessary documentation required by § 831.1705 affecting employee retirement benefits that are available under § 831.1706 or awarding a former spouse annuity to a former spouse of an employee who retired under CSRS or died, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(b) Upon preliminary determination that the court order is qualifying, the Associate Director will give the notifications required by § 831.1708.

(c) Upon preliminary determination that the court order is not qualifying, the former spouse will be notified of the basis for the determination and the right to reconsideration under § 831.109.

§ 831.1708 Notifications.

(a) In a case in which the court order affects employee retirement benefits:

(1) The Associate Director will notify the employee, Member, or retiree that a court order has been received that appears to require that a portion of his or her retirement benefits be paid to a former spouse and provide the employee, Member, or retiree with a copy of the court order. The notice will inform the former employee or Member—

(i) That OPM intends to honor the court order; and

(ii) Of the effect that the court order will have on the former employee or Member's retirement benefits; and

(iii) That no payments will be made to the former spouse for a period of 30 days from the notice date to enable the former employee or Member to contest the court order.

(2) The Associate Director will notify the former spouse—

(i) That OPM intends to honor the court order; and

(ii) Of the amount that the former spouse is entitled to receive under the court order, and in cases that award a portion of the benefits on a percentage basis or by a formula, how the amount was computed; and

(iii) That payment is being delayed for a period of 30 days to give the former employee or Member an opportunity to contest the court order.

(b) In a case in which the court order awards a former spouse annuity—

(1) The Associate Director will notify the retiree, if living, or, if the employee, Member, or retiree is dead, his or her surviving spouse, or the person entitled to the lump-sum death benefit under section 8342 of title 5, United States Code, if possible, that a court order has been received that requires the payment of a former spouse annuity. The notice will include a copy of the court order. The notice will state—

(i) That OPM intends to honor the court order; and

(ii) The effect it will have on the potential retirement benefit of the person receiving the notice; and

(iii) That any objection to honoring the court order must be filed within 30 days from the notice date.

(2) The former spouse will be notified—

(i) That OPM intends to honor the court order; and

(ii) Of the amount of survivor annuity that he or she will be entitled to receive and how the amount was computed; and

(iii) That anyone adversely affected has a period of 30 days in which to contest the court order.

(c) In a case in which the court order affects employee retirement benefits and awards a former spouse annuity all of the notices under paragraphs (a) and (b) of this section will be provided.

§ 831.1709 Decisions.

(a)(1) When the individual does not respond within the 30-day notice period provided for by § 831.1708, the court order will be honored in accordance with the notification.

(2) When a timely response to the notification is received, the Associate Director will consider the response. The former spouse's claim will be denied and the former spouse will be notified of the right to request reconsideration under § 831.109 whenever is is shown that—

(i) The court order is not a qualifying court order; or

(ii) The court order is inconsistent with a contemporaneous or subsequent court order.

(b) If any person who may lose benefits if OPM honors the court order objects to payment based on the validity of the court order and the record contains reasonable support for the objection, he or she will be granted 30 days to initiate legal action to determine the validity of the objection. If funds are available under § 831.1706 and evidence is submitted that legal action had been started before the 30 days have expired, money will continue to be withheld, but no payment will be made to the former spouse pending judicial determination of the validity of the court order.

§ 831.1710 Lump-sum credits.

Payment of the lump-sum credit to a former employee or Member will be subject to court orders in accordance with § 831.2009.

§ 831.1711 Effective dates.

(a)(1) The provisions of this subpart apply to any employee retirement

benefits regardless of the date of issuance of the court order or the date when the employee or Member retires.

(2) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefit. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's entitlement. These changes will be prospective only.

(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the beginning of the month after receipt of a qualifying court order and the documentation required by § 831.1705, and terminate no later than the last day of the month before the death of the retiree.

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to an individual who, on or after May 7, 1985, is married to an employee or Member who, on or after May 7, 1985, retires under CSRS or dies during employment covered by CSRS.

(2) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(i) The day after the employee, Member, or retiree dies; or

(ii) The first day of the second month beginning after OPM receives the court order, together with such additional information required by § 831.1705, whichever is later. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

§ 831.1712 Death of the former spouse.

(a) When the former spouse predeceases the retiree, and further employee retirement benefits that would have been subject to the court order are payable, the Associate Director will seek guidance from the court upon whose order the award to the former spouse was based about the proper disposition of the former spouse's share.

(b) The request for guidance from the court will—

(1) Explain the circumstances that led to the request; and

(2) Inform the court of limitations on payments under § 831.1713 applicable to the case; and

(3) Notify the court of the effect of its failure to provide guidance.

(c) While OPM is awaiting guidance from the court, the retiree will be paid only his or her share of the annuity. The former spouse's share may be disbursed only in accordance with paragraphs (d) and (e) of this section.

(d)(1) If no response (or an inadequate response) is received from the court within 60 days from the date of receipt of the request for guidance, the full annuity will be restored to the retiree effective on the date of the first annuity check due after the death of the former spouse.

(2) Disbursement will be made only after the completion of any reconsideration and appeals procedures required by § 831.109.

(e) Payment of all or part of the former spouse's share may be made only to one of the following—

(1) The retiree; or

(2) A child or children of the retiree (or a court-appointed representative for the benefit of such children); or

(3) The court (or other State, county or municipal agency which serves as a collecting and disbursing agent for the court).

(f) The request for guidance required by this section will be sent by certified mail, return receipt requested, addressed to the clerk of the court. Copies of the request for guidance will be sent by certified mail, return receipt requested, to the retiree and to the representative of the estate of the former spouse (if an address is available).

§ 831.1713 Limitations.

(a) Employee retirement benefits are subject to apportionment by court order only while the former employee or Member is living. Payment of apportioned amounts will be made only to the former spouse and/or the children of the former employee or Member. Payment will not be made to any of the following:

(1) The heirs or legatees of the former spouse; or

(2) The creditors of the former employee or Member, or the former spouse; or

(3) Other assignees of the former employee or Member, or the former spouse.

(b) The amount of payment under this subpart will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.

(c) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence of a special schedule of accrual or payment of amounts due the former spouse.

(d) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse will also resume.

(e) Since the former spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 831.1714 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the **Federal Register** a notice of the guidelines it uses in interpreting court orders. Upon publication of the notice in the **Federal Register** of such guidelines, they will become an appendix to this subpart.

§ 831.1715 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to court order if such payment is made in accordance with the provisions of this subpart.

§ 831.1716 Receipt of multiple court orders.

In the event that OPM receives two or more qualifying court orders—

(a) When there are two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under §§ 831.614 and 831.1706.

(b) Where there are two or more court orders relating to the same former spouse, the one issued last will be honored.

§ 831.1717 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases unless the court directs otherwise.

§ 831.1718 Settlements.

The former spouse may request that an amount be withheld from the retirement benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation of OPM for the period in which the request is in effect.

Appendix A to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

UNITED STATES OF AMERICA

Office of Personnel Management

Compensation Group

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquires and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 831.1703.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing formula in a decree is a month.

1. This policy is based on the provision of section 8332 of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits became payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement and Disability Fund.

V. Orders Directing the Annuitant To Make Payment

A. Orders which specifically direct the retiree to pay a portion of retirement benefits to a former spouse will be honored unless the retiree objects to direct payment by the Office of Personal Management, but will not be honored even if the retiree raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Management is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid.

4. By revising subpart T to read as follows:

Subpart T—Payment of Lump Sums

Sec.
831.2001 Definitions.
831.2002 Eligibility for lump-sum payment upon filing an Application for Refund of Retirement Deductions (SF 2802).
831.2003 Eligibility for lump-sum payment upon death or retirement.
831.2004 Amount of lump sums.
831.2005 Designation of beneficiary for lump-sum payment.
831.2006 Designation of agent by next of kin.
831.2007 Notification of spouse and/or former spouse before payment of lump sum.
831.2008 Waiver of spouse and/or former spouse notification requirement.
831.2009 Court orders or decrees preventing payment of lump sums.

Authority: 5 U.S.C. 8347.

Subpart T—Payment of Lump Sums

§ 831.2001 Definitions.

"Court order or decree" means the order or decree of any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands or any Indian court, as defined section 8331(24) of title 5, United States Code.

"Current spouse" means a person who is married to the employee or Member at the time the application for refund is filed.

"Former spouse" means a living person who was married for at least 9 months to an employee or Member who had performed at least 18 months of creditable service in a position covered by the retirement system.

"Retirement system" means the civil service retirement system as described in subchapter III of chapter 83 of title 5, United States Code.

§ 831.2002 Eligibility for lump-sum payment upon filing an Application for Refund of Retirement Deductions (SF 2802).

Except as provided in §§ 831.2007 through 2009 or in section 3716 of title 31, United States Code, on administrative offset for government claims, a former employee or Member who has been separated from a covered position for at least 31 days at the time of filing an application for refund and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a refund for the total lump-sum credit to his or her credit in the Retirement Fund.

§ 831.2003 Eligibility for lump-sum payment upon death or retirement.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of a former employee, Member, annuitant, or survivor annuitant, the total lump-sum credit to the former employee's or Member's credit in the Retirement Fund is payable, except as provided in section 3716 of title 31, United States Code, on administrative offset for government claims, to the person(s) entitled in the normal order of precedence described in section 8342(c) of title 5, United States Code.

(b) If an annuity is payable, the former employee, Member or the person entitled in the order of precedence described in section 8342(c) of title 5, United States Code, may be paid, except as provided in section 3716 of title 31, United States Code, administrative offset for government claims, lump-sum payment of—

(1) Retirement deductions withheld from the employee's or Member's pay after he or she became eligible for the maximum annuity, if the employee or Member does not elect to treat those deductions as voluntary contributions toward the purchase of an additional annuity; and

(2) Retirement deductions withheld from the employee's or Member's pay during his or her final period of service if the employee or Member was not subject to the retirement system for at least one of the last 2 years before final separation from service and if the service covered by the deductions is not used for title to annuity; and

(3) Partial redeposits of refunds previously paid; and

(4) Partial deposits for civilian service performed on and after October 1, 1982; and

(5) Partial deposits for post-1956 military service; and

(6) Annuity accrued and unpaid.

(c) A former employee, Member, or survivor who is eligible for an annuity may not be paid a lump-sum payment of—

(1) Partial or completed deposits for nondeduction civilian service performed before October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(2) Completed deposits for nondeduction civilian service performed on and after October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(3) Completed deposits for post-1956 military services, unless the service covered by the deposit is not creditable under the retirement system.

Payments of the partial or completed deposits mentioned in this paragraph are subject to 31 U.S.C. 3716 (administrative offset for government claims).

§ 831.2004 Amount of lump-sums.

If applicable, the amount of a refund will include interest computed as described in § 831.105(b).

§ 831.2005 Designation of beneficiary for lump-sum payment.

(a) The Designation of Beneficiary must be in writing, signed, and witnessed,and received in OPM before the death of the designator.

(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this section, has any force or effect.

(c) A witness to a Designation of Beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted.

§ 831.2006 Designation of agent by next of kin.

When a deceased employee, Member, or annuitant has not named a beneficiary and one of the next of kin entitled makes a claim for lump-sum benefit, other next of kin entitled to share in the lump-sum benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

(a) Payment of the lump-sum credit based on a refund application filed on or after May 7, 1985, may be made only if any current spouse and any former spouse (from whom the employee or Member was divorced after May 6, 1985) are notified of the former employee's or Member's application.

(b) Notification of the former spouse will not be required if the marriage to the former spouse was of less than 9 months duration or if the employee has not completed a total of 18 months of creditable service covered under the retirement system.

(c) Proof of notification will consist of a signed and witnessed statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions (SF 2802).

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) A signed postal return receipt as evidence that the notification was received at the address of the current or former spouse; or

(2) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the notification attempt was made and that the employee's or Member's purpose should have been clear to the current or former spouse.

(e) If a *former* spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement of a former spouse, the employee or Member may submit a certified copy of a court order or decree wherein the former spouse has relinquished all claim to the employee's or Member's annuity or which awards the annuity wholly to the employee or Member.

§ 831.2008 Waiver of spouse and/or former spouse notification requirement.

The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(a) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the former employee or Member and two other persons at least one of whom is not related to the former employee or Member attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse from whom the employee or Member was divorced after May 6, 1985 if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order or decree before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders or decrees—

(i) When there are two former spouses, the court orders or decrees will be honored in the order in which they were issued until the lump-sum has been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the lump-sum credit.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order or decree regular on its face, if such payment is made in accordance with this subpart.

[FR Doc. 85-11562 Filed 5-10-85; 8:45 am]

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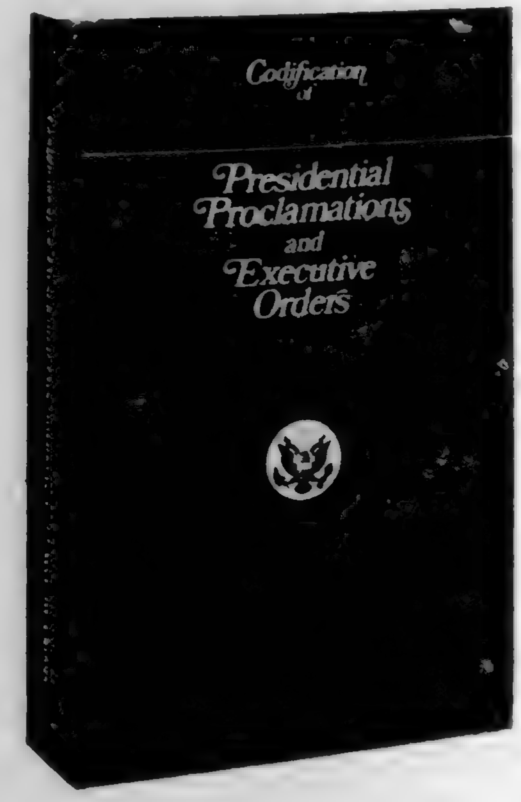

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Tuesday
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Selected Subjects

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 3, 1985

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regs. 342 and 343, Amdt. 1; Valencia Orange Reg. 344]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules.

SUMMARY: Amendment 1 of Regulation 342 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 3–May 9, 1985. Amendment 1 of Regulation 343 increases the quantity of such fruit that may be shipped during the period May 10–May 16, 1985. Regulation 344 establishes the quantity of such fruit that may be shipped to market during the period May 17–May 23, 1985. These amendments and regulations are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATE: Regulation 342, Amendment 1 (§ 908.642) is effective for the period May 3–9, 1985. Regulation 343, Amendment 1 (§ 908.643) is effective for the period May 11–16, 1985. Regulation 344 (§ 908.644) is effective for the period May 17–23, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

These rules have been reviewed under USDA procedures and Executive Order 12291 and have been designated "non-major" rules. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These amendments and the regulations are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendments and the regulations are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on March 26, 1985. The committee met again publicly on May 7, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which these actions are based became available and the effective date necessary to effectuate the declared policy of the act.

Interested persons were given an opportunity to submit information and views on the amendments and the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendments and the regulations and their effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.642 is revised to read as follows:

§ 908.642 Valencia Orange Regulation 342.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 3, 1985, through May 9, 1985, are established as follows:

(a) District 1: 285,000 cartons;
(b) District 2: 465,000 cartons;
(c) District 3: Unlimited cartons.

3. Section 908.643 is revised to read as follows:

§ 908.643 Valencia Orange Regulation 343.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 10, 1985, through May 16, 1985, are established as follows:

(a) District 1: 360,000 cartons;
(b) District 2: 540,000 cartons;
(c) District 3: Unlimited cartons.

4. Section 908.644 is added to read as follows:

§ 908.644 Valencia Orange Regulation 344.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 17, 1985, through May 23, 1985, are established as follows:

(a) District 1: 340,000 cartons;
(b) District 2: 510,000 cartons;
(c) District 3: Unlimited cartons.

Dated: May 8, 1985.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–11568 Filed 5–13–85; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 85–015]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling and Standard Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: A conference was held over 1 year ago to review regulatory control over Rabies Vaccines. This conference included representives of the animal industry, professional organizations, biologics manufacturers, and Federal and State agencies involved with rabies control. A number of changes in the parts of Title 9, Code of Federal Regulations, related to Rabies Vaccines were proposed. These proposed changes included the deletion of the requirement that inactivated Rabies Vaccine must be administered only at the one site in the thigh. The Department agreed to consider many of these and published them as proposed rulemaking on September 5, 1984. As part of the proposed rulemaking, a complete review of § 112.7 was made. As a result, § 112.7 of the regulations which contains special label provisions for Rabies Vaccines and other products, and the standard requirements for Rabies Vaccines in Part 113 are amended herein. This action amends the special labeling requirements for Rabies Vaccines, including the requirement that inactivated Rabies Vaccine must be administered only at one site in the thigh. This action also revises the special labeling requirements for other products by deleting or revising various provisions which have been determined to be obsolete or unnecessary. The Standard Requirements in Part 113 of Title 9 for Rabies Vaccine are revised to eliminate certain restrictions and testing steps.

EFFECTIVE DATE: This amendment becomes effective July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

At the time § 112.7(b) of Part 112—Packaging and Labeling was published, protection against specific serotypes of avian infectious bronchitis could only be achieved by including each specific serotype in the product. With the advent of new production methods, it should not be necessary to use specific serotypes to ensure protection. However, it remains essential to have label information to indicate the serotypes for which protection is claimed. Revision of 9 CFR 112.7(b) by changing from "serotypes used" to "serotypes for which protection is claimed" has been made.

Presently, inactivated Rabies Vaccines labels and enclosures are required to contain recommendations for intramuscular administration at one site in the thigh. This requirement was thought to be necessary to ensure effectiveness and to guard against improper use of vaccines by providing for a single method of administration. Inactivated products are now available which are known to be equally effective when administered by other, more desirable routes. Adequate instructions and controls have been developed to ensure proper administration of Rabies Vaccines. Therefore, this revision of 9 CFR 112.7(c)(1) deletes the requirement for the recommendation that inactivated Rabies Vaccines be administered intramuscularly at one site in the thigh.

Because of minor variations in conducting immunogenicity and duration of immunity tests on Rabies Vaccines and because of individual choices of language by licensees, variations in recommended dosage and immunization schedules have arisen. These variations have resulted in difficulties for administrators of State and local regulatory programs for rabies control. In a conference involving licensed manufacturers, Federal, State, and local regulatory authorities, and interested scientists, agreement was reached on uniform language which would provide adequate label recommendations. As a result of such agreement, the Department has revised 9 CFR 112.7 (c)(2) and (d)(6) to provide for uniform age and repeat dose recommendations.

Label requirements in 9 CFR 112.7 (c)(4) and (d)(1) contain recommendations for annual revaccination with Rabies Vaccines in high risk areas. This recommendation is now considered unnecessary. Animals vaccinated with products shown to confer immunity for more than 1 year have not been shown to be more susceptible to rabies during the period of immunity than those revaccinated annually.

Inclusion of the annual revaccination provision on the labels has been the source of considerable difficulty in areas where an increased incidence of rabies exists in wild species. Varying interpretations of "high risk areas" tended to interfere with rabies control by State and local health authorities. This revision of 9 CFR 112.7 (c) and (d) deletes this recommendation.

The requirement for a label statement regarding accidental human exposure to modified live virus Rabies Vaccine in 9 CFR 112.7(d)(5) is probably insufficient to ensure that all users will be adequately warned. Although all currently approved labeling contains the warning, the regulation does not apply to cartons containing one multiple dose container where no enclosure is provided. This revision requires prominent placement of the warning on all cartons and enclosures, regardless of size of the container.

The specific repeat dose requirements in 9 CFR 112.7(f) applicable to aqueous and adjuvanted inactivated bacterial products in general, as well as to specific fractions in 9 CFR 112.7(f) (1) and (3), have been found inappropriate in the case of certain products either prepared by advanced methods or from different ingredients, or both, and administered pursuant to new husbandry practices. This revision deletes the requirements for a repeat dose at 7 days for aqueous products and at 14 days for adjuvanted products. The special requirements for *Clostridium chauvoei, septicum,* and *novyi* fractions are also deleted. Appropriate recommendations are required to be included on labels in accordance with

specific characteristics of each product and conditions surrounding its use. Paragraphs are renumbered accordingly.

Substantial concern for human safety existed when the restrictions on the route of administration for Marek's Disease Vaccine 9 CFR 112.7(k) were introduced. Procedures using spray equipment were under investigation at several research institutions without adequate knowledge of public health implications. As a result, recommendations were limited to subcutaneous or intramuscular routes. Subsequently, substantial information has been obtained indicating that these viruses are not implicated in human disease. Newer methods of administration are being evaluated and should be approved if they are shown to be safe and effective. Therefore, this restriction is deleted. The paragraph currently identified as (l) would be redesignated as (k).

The alternate statement regarding corneal opacity in 9 CFR 112.7(m) which can occur in vaccinated animals has resulted in frequent misunderstanding and is unnecessary. This statement attempts to point out that corneal opacity may occur as an event not related to vaccination. When it occurs coincidentally with administration of vaccine, even though the vaccine is not at fault, the alternate statement may be misunderstood. This revision redesignates 9 CFR 112.7 (m) as (l), requires a warning statement only where adequate data regarding corneal opacity had not been filed, and deletes the requirement for the alternate statement in cases where adequate data were filed.

The immunogenicity and duration of immunity tests necessary for evaluation of Rabies Vaccines require 15 to 39 months to conclude. In some tests, even under excellent conditions and care, deaths of test animals occur during the prechallenge period. In order to ensure that a suitable number of test subjects are available for challenge, some manufacturers have found it necessary to include extra test animals at the time of vaccination. However, to prevent compromising the results, it remains essential for all test animals to be challenged. This revision of 9 CFR 113.129(b)(3)(i) and 113.147(b)(3)(i) removes the upper limit of 30 vaccinates. Revision of 9 CFR 113.129(b)(3)(ii) and 113.147(b)(3)(ii) permits use of more than 10 controls. The basic number of vaccinates required to survive the challenge remains at 22 of 25 or 26 of 30 but provisions for acceptance of equivalent results are added. In order to ensure that other aspects of the studies are conducted and product evaluations made in a manner which will support licensure and acceptance for use in rabies control programs, it is essential that a protocol be approved before such tests of Rabies Vaccines are initiated. This revision changes 9 CFR 113.129(b) and 113.147(b) to require submission of a protocol for each immunogenicity test of Rabies Vaccine.

Rabies Vaccines are vitally important to animal and public health. When in combination with other fractions, freedom from interference with the establishment of protection from rabies by presence of the other fractions is essential. These revisions of 9 CFR 113.129(b) and 113.147(b) codify the requirement that the Rabies Vaccine component in combination with other fractions provide the same protective value established for single fraction Rabies Vaccines.

Killed virus Rabies Vaccines can be prepared so that administration by routes other than intramuscularly will provide protection which is at least equal to that obtained by intramuscular administration. These other routes are frequently less painful and less difficult to administer. Acceptance of vaccines administered by other routes in the past was resisted because of a desire on the part of regulatory officials to have all vaccines administered by a single, uniform method. This restriction has since been shown to be unnecessary because of better instructions, information, and controls. This revision of 9 CFR 113.129(b)(3)(i) permits administration by any method shown to safely provide adequate protection.

Measurement of serological response in test animals administered Rabies Vaccine is required six times during the prechallenge period. Adequate evaluation of serological response can be determined when this is reduced to five times. This revision of 9 CFR 113.129(b)(3)(iii) and 113.147(b)(3)(iii) deletes the requirements for these determinations at 60 days postvaccination and therefore eliminates one measurement of the present six.

The regulation in 9 CFR 113.129(b)(1) makes reference to the NIH Test in Chapter 33 of "Laboratory Techniques in Rabies." The test, as described in that publication, specifies that the challenge dose contain between 5 and 50 LD_{50}. However, this is not clearly stated and, as a result, some manufacturers have failed to observe this restriction. This revision adds clarifying language in 9 CFR 113.129(b)(1) to ensure that tests are run correctly.

The regulations in 9 CFR 113.129(b)(3)(iv) and 113.147(b)(3)(iii) with regard to Rabies Vaccines require challenge using street virus with a recommendation of injection in the masseter muscles. These requirements tend to preclude use of equally effective challenges which might not be considered to be street viruses. These requirements also preclude equally effective and simpler methods of administration into muscles other than the masseter. These revisions provide for use of challenge virus to be furnished or approved by Veterinary Services and delete the masseter muscle recommendation.

The requirement for observation of animals during the rabies test postchallenge period in accordance with 9 CFR 113.5(b) has been found to be inadequate. In order to ensure the validity of test results, additional specific tests to ascertain that deaths of test animals are due to rabies by examination of brain material for the presence of rabies virus are considered necessary. Therefore, this revision adds an examination of brain tissue to ensure that deaths from challenge are due to rabies. Currently licensed products have been adequately evaluated and are not affected by this revision.

The regulations in 9 CFR 113.129(b)(4) and 9 CFR 113.147(b)(4) with regard to Rabies Vaccine provide for reduced numbers of certain species of animals to be challenged in immunogenicity test. Reduction is permitted only for cattle, horses, sheep, and goats. Because of widespread need and interest in products to protect many species from rabies, it may become necessary to evaluate Rabies Vaccines in animals not considered at the time when this Standard Requirement was established. Some of these species present problems in restraint and confinement during the postchallenge period similar to those associated with challenge of those currently excluded. This revision allows for the reduction of test animals when domestic species other dogs and cats are challenged. It also allows for more adequate selection of vaccinates to be challenged by considering SN titers at the last two bleedings instead of restricting the selection only from those lowest at the last bleeding. This revision also changes the serological response considered to be sufficient to ensure protection from challenge to a higher titer. This is based on serology and challenge results involving over 900 animals. These studies demonstrate that titers of 1:10 by the mouse SN test or 1:16 by the rapid fluorescent focus inhibition test are necessary to ensure

protection. The rapid fluorescent focus inhibition test, which was not available when present regulations were published, is added as an alternative method for determining serological response. This method uses an in vitro test instead of mice to determine serological response with equal assurance of accuracy.

The regulations in 9 CFR 113.147(a)(5)(ii) specify a 1.0 m1 volume of high titer virus for the nerve infiltration safety study. This could result in inadequate or in excessive virus being used because of variations in the titer inherent in various products. This revision standardizes the amount by specifying the equivalent of 10 doses for cats and dogs and to one dose per site in other species.

Comments Received

On Wednesday, September 5, 1984, a notice of proposed rulemaking was published in the **Federal Register** at 49 FR 35022 discussing this revision and soliciting comments.

Comments were received from nine licensed manufacturers, two State departments of public health, and the Department of Health and Human Services. None opposed adoption of the amendments. The following is a discussion of the comments received regarding the proposed rulemaking.

Because of concern about competition from a foreign-based firm, three licensed manufacturers commented that the proposed revision of the regulations in 9 CFR 112.7(c)(1) to permit recommendations for additional routes of administration for Rabies Vaccine, Killed Virus, would have a significant effect on competition, investment, productivity, and innovation with respect to U.S. firms not prepared to market the new vaccines. Commentors stated that in the past the Department had always adhered to a policy of allowing only a single route of administration for all Rabies Vaccines. Therefore, the proposed change would put them at a disadvantage in the marketplace. Because of this, three licensees and two others recommended delay in the effective date of the recommended change until January 1, 1986, or later. In light of the events preceding the recommendation, the time the industry has had to develop new routes of administration, as well as other considerations, the Department is not of the opinion that this change will have a significant adverse effect on competition, productivity, innovation, or ability to compete with foreign manufacturers. The policy of a single route of administration was in effect because of consideration for the needs of authorities responsible for State and local rabies control programs. It was considered to be desirable to have all Rabies Vaccine administered by a route and at a site known to provide safe, effective protection regardless of the differences in the vaccines. In December, 1982, the National association of State Public Health Veterinarians Rabies Compendium Committee, after considering all aspects of these restrictions, expressed willingness to accept Rabies Vaccines recommended for routes of administration other than intramuscular, if they were shown to be safe and effective. Information on this policy change was supplied to the Department and to a consultant to the Rabies Compendium Committee representing the interest of licensed manufacturers of Rabies Vaccines. A conference was held on January 31 and February 1, 1984 to review all aspects of regulatory control of Rabies Vaccines. Representatives of the animal industry, veterinary professional organizations, each licensed manufacturer of Rabies Vaccines, and Federal and State agencies involved with rabies control were present. The subject of additional routes of administration was discussed at length. No one objected to a possible approval of additional routes of administration. Some differences were expressed as to the minimum acceptable proof needed to support revision of labels for killed virus vaccines already licensed. The Department's declared willingness to accept and review protocols for this purpose following the conference was acknowledged in correspondence from a veterinary professional organization (American Veterinary Medical Association) and in one of the licensees' comments. No mention was made of a moratorium or delay in approval of revised label recommendations at the conference or in any Department communications subsequent to the conference. However, the Department recognizes that this amendment represents an important change for licensed manufacturers, State and local regulatory authorities, users, and APHIS regulatory personnel. In order to ensure that licensees, animal and public health agencies, veterinary practitioners and other vaccine users, and Agency personnel have ample time to take all steps necessary for a smooth transition, the effective date has been established at 60 days following publication of this final rule in the **Federal Register**.

One manufacturer recommended an indefinite delay in approving additional routes of administration for Rabies Vaccine, Killed Virus, based on lack of published information to support the change. Although substantial information has been published in scientific journals in other countries, the Department does not require publication of test results in scientific journals to support acceptance for licensure. What it does require is proof that a vaccine will provide safe, effective protection of host animals when administered as recommended on the label. Therefore, this recommendation was not accepted.

One licensee objected to deletion of the recommendations for annual revaccination in high risk areas. This was based on a concern for animal and public health risks which might be reduced by the additional vaccinations. Because of problems associated with interpretations of "high risk area" and difficulties in applying the extra vaccinations, as well as insufficient evidence that such extra vaccinations would reduce the incidence of disease, the National Association of Public Health Veterinarians recommended deletion of this requirement in 1981. They continued to recommend its deletion at the Conference on Regulatory Control of Rabies Vaccines. Therefore, this requirement has been deleted.

One State public health agency recommended that a minimum relative potency value be imposed on killed virus Rabies Vaccine in 9 CFR 113.129(b)(3)(i). This recommendation was based on standards established for vaccines to be used in humans and on recommendations by some experts. Such minimum relative potency may be acceptable for products to be used where vaccination-challenge studies are not feasible, but are not appropriate for products where such protection studies can be conducted.

The State agency also recommended an increase in number of test animals to ensure that a Rabies Vaccine would be 99 percent effective and would protect all vaccinates against challenge. This is not realistic for statistical or biological reasons. Certain immunologically unresponsive individuals could result in rejection of a satisfactory vaccine. A prohibitive number of test animals would be needed, further increasing the likelihood of immunologically unresponsive individuals. Therefore, these recommendations were not adopted.

The State Agency also recommended that vaccinates and controls be challenged simultaneously using a separate syringe and needle for each animal. All tests of licensed Rabies Vaccines have been and will continue to be conducted with challenge virus

administered on the same day to both vaccinates and controls. Challenge of test animals at different times has not, nor will it be acceptable for proof of efficacy. Including the word "simultaneously" would be subject to misinterpretation and would not result in improvement of the test to determine effectiveness. Use of separate syringes and needles for the purpose of preventing transfer of other disease organisms among animals housed together for months or years would unacceptably increase the risk of accidental self-injection by laboratory personnel. Therefore, these recommendations were not adopted.

The State agency also recommended adding a minimum median serological titer to criteria for acceptance of a Rabies Vaccine. Use of such criteria for exemption of certain animals from challenge is appropriate, but should not be used to reject a vaccine which protects animals from challenge. Therefore, this recommendation was not adopted.

The State agency also recommended that test animals be obtained from a source which has possessed them from birth, be from an unvaccinated dam, and held individually isolated during the postchallenge period. Such limitations are considered unnecessarily restrictive and would not reduce the likelihood of acceptance of an unsatisfactory vaccine. Therefore, these recommendations were not adopted.

Another State agency requested that the label recommendations for primary immunization, 9 CFR 112.7 (c)(1) and (d)(5), be revised to specify that the repeat dose one year later be limited to dogs initially vaccinated at less than 12 months of age. This concept was considered in the development of the uniform recommendations, but was determined to be less desirable than the published proposal. The advantage gained in protection resulting from the second dose in all animals regardless of the age when first vaccinated, is considered sufficient to jusitfy the added cost. Therefore, this recommendation was not adopted.

Three licensees commented that the requirement for examining brains of test animals dying during the postchallenge period only by the fluorescent antibody test is unduly restrictive. Other tests are equally reliable and, in some cases, more readily conducted by certain licensees. The Department agrees with this comment. Therefore, provisions for use of other methods were incorporated in 9 CFR 113.129(b)(3)(iv) and 113.147(b)(3)(iv).

One licensee recommended that the number of vaccinates required to survive challenge specified in 9 CFR 113.129(b)(3)(ii) and 113.147(b)(3)(ii) be stated only as 86 percent. This would not be statistically valid. If fewer vaccinates are used, a higher percentage must survive than required when larger numbers are challenged. Therefore, this recommendation was not adopted.

One licensee suggested that the test in 9 CFR 113.129(b)(i) be extended to permit acceptance of test results where the challenge LD_{50} exceeds 50 if the LD_{50} of the standard is within the acceptable range of previous valid tests. This would result in acceptance without a valid basis for such acceptance. Very little experience is needed to achieve consistent challenge levels within the stated range of 5 to 50 LD_{50}. Therefore, this recommendation was not accepted.

List of Subjects

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and container, Transportation.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

PART 112—PACKAGING AND LABELING

Accordingly, 9 CFR Part 112 is amended as follows:

1. The authority citation for Part 112 is revised to read as follows, and all authority citations appearing at the end of subparts of Part 112 are removed.

Authority: 21 U.S.C. 151–158; 37 FR 28477, 28646; 38 FR 19141.

2. Section 112.7, paragraphs (c) (1) and (2), (d), (f), (k) and (l) are revised to read:

§ 112.7 Special additional requirements.

* * * * *

(c) * * *

(1) That vaccine be administered to animals at 3 months of age or older, with a repeat dose 1 year later.

(2) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.129 (b) or (c) or both.

(d) In the case of a biological product containing modified live rabies virus, the carton labels, enclosures, and all but very small final container labels shall include the recommendations provided in this paragraph.

(1) For low egg-passage (below the 180th egg-passage level) the statement "For Use in Dogs Only! Not For Use in Any Other Animal!"

(2) For other vaccines containing modified live rabies virus, the statement "For Use In (designate animal(s)) Only! Not For Use In Any Other Animal!"

(3) Intramuscular injection at one site in the thigh shall be recommended.

(4) The statement "In event of accidental exposure to the vaccine virus, the possible hazard to human health should be considered and State Public Health Officials should be consulted for specific recommendations "shall be prominently placed on all carton labels and on enclosures, if used.

(5) That vaccine be administered to animals at 3 months of age or older, with a repeat dose 1 year later.

(6) Subsequent revaccination as determined from the results of the duration of immunity studies conducted as prescribed in § 113.147 (b) or (c) or both.

* * * * *

(f) Unless otherwise authorized in a filed Outline of Production, labels for inactivated bacterial products shall contain an unqualified recommendation for a repeat dose to accomplish primary immunization to be given at an appropriate time interval: *Provided,* That, repeat dose recommendations prescribed in paragraphs (f) (1) through (3) of this section are required for products containing the fractions listed.

(1) *Clostridium haemolyticum.* "Repeat the dose every 5 or 6 months in animals subject to reexposure."

(2) *Erysipelothrix rhusiopathiae.* "Swine: For breeding animals, repeat after 21 days and annually. Turkeys: Repeat dose every 3 months."

(3) *Clostridium botulinum Type C.* "Revaccinate breeders 1 month before breeding."

* * * * *

(k) In the case of normal serum, antiserum, or antiserum derivatives, the type of preservative used shall be indicated on all labels.

(l) Unless acceptable data has been filed with Veterinary Services, to show that development of corneal opacity is not associated with the product, carton labels and enclosures used with biological products containing modified live canine hepatitis virus or modified live canine adenovirus Type 2 shall bear the following statement: "Occasionally, transient corneal opacity may occur following the administration of this product."

PART 113—STANDARD REQUIREMENTS

Accordingly, 9 CFR Part 113 is amended as follows:

1. The authority citation for Part 113 is revised to read as follows, and all

authority citations appearing at the end of subparts of Part 113 are removed:

Authority: 21 U.S.C. 151–158; 37 FR 28477, 28646; 38 FR 19141.

2. Section 113.129 introductory paragraph (b), (b)(1), (b)(3) (i) through (v), and (b)(4) are revised to read:

§ 113.129 Rabies vaccine, killed virus.

* * * * *

(b) The immunogenicity of vaccine prepared with virus at the highest passage from the Master Seed shall be established in each species for which the vaccine is recommended. Tests shall be conducted in accordance with a protocol filed with Veterinary Services before initiation of the tests. The vaccine shall be prepared using methods prescribed in the Outline of Production. If Rabies Vaccine is to be in combination with other fractions, the product to be tested shall include all fractions to be tested.

(1) The preinactivation virus titer shall be established as soon as possible after harvest by at least five separate virus titrations. A mean relative potency value of the vaccine to be used in the host animal potency test shall be established by at least five replicate potency tests conducted in accordance with the NIH Test For Potency in Chapter 33 of "Laboratory Techniques in Rabies," Third Edition (1973), World Health Organization, Geneva. The volumetric method of calculation, as described in this publication, shall be used and the challenge dose shall contain between 5 and 50 LD_{50}. The provisions of "Laboratory Techniques in Rabies," Third Edition (1973), are incorporated by reference and are the minimum standards for achieving compliance with this section.

* * * * *

(3) * * *

(i) Twenty-five or more animals shall be used as vaccinates. Each shall be administered a dose of vaccine at the proposed minimum potency level and by the method specified in the Outline of Production.

(ii) Ten or more additional animals shall be held as controls.

(iii) On or about 30, 90, 180, 270, and 365 days postvaccination, all test animals shall be bled and individual serum samples tested for neutralizing antibodies to rabies virus.

(iv) All surviving test animals shall be challenged intramuscularly with virulent rabies virus furnished or approved by Veterinary Services 1 year after vaccinations, except as provided in (b)(4) of this section. The challenged animals shall be observed each day for 90 days as prescribed in § 113.5(b). The brain of each test animal that dies following challenges shall be examined for rabies by the fluorescent antibody test or other method acceptable to Veterinary Services.

(v) Requirements for acceptance in challenge tests shall be death due to rabies in at least 80 percent of the controls while at least 22 of 25 or 26 of 30 or a statistically equivalent number of the vaccinates remain well for a period of 90 days.

(4) When animals of domestic species other than dogs and cats are the test animals, the five vaccinates with the lowest SN titers at each of the last two bleedings may be challenged, except that all vaccinates with SN titers below 1:10 by the mouse SN test or below 1:16 by the rapid fluorescent focus inhibition test at any bleeding shall be challenged at 1 year postvaccination. At least five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be determined to an endpoint. The unchallenged vaccinates shall be considered protected when evaluated for acceptance as specified in (b)(3)(v) of this section.

* * * * *

3. Section 113.147 paragraphs (a)(5)(ii), introductory paragraph (b), (b)(3) (i) through (v), and (b)(4) are revised to read:

§ 113.147 Rabies vaccine.

* * * * *

(a) * * *

(5) * * *

(ii) Infiltrate a major nerve of each of the animals in the other group of 5 with 10 doses of the same high titer virus. For all species except dogs and cats, multiple injections along the cervical spine in the proximity to the nerve trunks emerging from the spinal cord may be used: *Provided*, That a 1-dose volume shall be injected into each of four or more sites bilaterally.

* * * * *

(b) The immunogenicity of vaccine prepared with virus at the highest passage of the Master Seed shall be established in each species for which the vaccine is recommended. Tests shall be conducted in accordance with a protocol filed with Veterinary Services before initiation of the tests. The vaccine shall be prepared using methods prescribed in the Outline of Production. If Rabies Vaccine is to be in combination with other fractions, the product tested shall include all fractions to be recommended.

* * * * *

(3) * * *

(i) Twenty-five or more animals shall be used as vaccinates. Each shall be injected intramuscularly at one site in the thigh with a dose of vaccine at the proposed minimum virus titer as specified in the filed Outline of Production.

(ii) Ten or more additional animals shall be held as controls.

(iii) On or about days 30, 90, 180, 270, and 365 postvaccination, all animals shall be bled and individual serums tested for neutralizing antibodies to rabies virus.

(iv) All surviving test animals of each species shall be challenged intramuscularly with virulent rabies virus furnished or approved by Veterinary Services 1 year after vaccination, except as provided in paragraphs (b)(4), (b)(5), and (b)(6), of this section. The challenged animals shall be observed each day for 90 days as prescribed in § 113.5(b). The brain of each test animal that dies following challenge shall be examined for rabies by the fluorescent antibody test or other method acceptable to Veterinary Services.

(v) Requirements for acceptance in challenge tests shall be death due to rabies in at least 80 percent of controls while at least 22 of 25 or 26 of 30 or a statistically equivalent number of the vaccinates remain well for a period of 90 days.

(4) When animals of domestic species other than dogs and cats are the test animals, the five vaccinates with the lowest SN titers at each of the last two bleedings may be challenged, except that all vaccinates with SN titers below 1:10 by mouse SN test or below 1:16 by the rapid fluorescent focus inhibition test at any bleeding shall be challenged at 1 year postvaccination. At least five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be determined to an endpoint. The unchallenged vaccinates shall be considered protected when evaluated for acceptance as specified in (b)(3)(v) of this section.

* * * * *

Done at Washington, D.C., this 8th day of May 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–11483 Filed 5–13–85; 8:45 am]

BILLING CODE 3410–34–M

FARM CREDIT ADMINISTRATION

12 CFR Part 617

Examinations, Audits, and Investigations; Frequency Requirement

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), amends its regulation dealing with frequency of examinations and audits of each Farm Credit System institution by the FCA. The current regulation requires the examination and audit of each Federal land bank association (FLBA) once each 18 months. The amended regulation changes the requirement to once each 36 months.

The Federal Board believes that notice and public comment are not required because the regulation merely sets forth Agency procedure. Furthermore, the Federal Board finds that notice and public comment are unnecessary because it believes that the safety and soundness of Farm Credit institutions will not be adversely affected.

EFFECTIVE DATE: Thirty days from this publication date, provided either or both houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Assistant Deputy Governor, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4401.

SUPPLEMENTARY INFORMATION: The Farm Credit Act of 1971, as amended (Act), does ot prescribe the frequency of examinations of FLBAs as it does for other Farm Credit institutions. Rather, it authorizes the examination and audit of each FLBA of the Farm Credit System at such time as the Governor of the FCA may determine. The current 12 CFR 617.7060 provides that FLBA examinations and audits shall be conducted once every 18 months and at such other times as the Governor may determine.

Because the FLBAs act as agents for the Federal land banks (FLBs), loans made through the FLBAs are carried on the books of the FLBs, which are required by statute to be examined and audited annually. Furthermore, FLBs currently conduct comprehensive association reviews of FLBAs who act as their agents. Thus, the FCA is able to monitor FLBA activities through the annual examination of each FLB. In addition, the FCA monitors FLBAs through periodic financial reports to the FCA. Accordingly, the Federal Board believes 12 CFR 617.7060 should be amended to require the FCA to examine and audit each FLBA once every 36 months. The regulation will continue to permit the examination of FLBAs at such other times as the Governor may determine.

List of Subjects in 12 CFR Part 617

Accounting, Agriculture, Banks, Banking, Rural areas.

PART 617—EXAMINATIONS, AUDITS, AND INVESTIGATIONS

For reasons set out in the preamble, Part 617 of Chapter VI, Title 12 of the Code of Federal Regulations, is amended as shown:

Subpart A—Examinations and Audits

* * * * *

1. The authority citation for Part 617 continues to read as follows:

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246 and 2252), unless otherwise noted.

2. Section 617.7060 is amended by revising the introductory paragraph and paragraph (b) as follows:

§ 617.7060 Frequency of examinations and audits.

Farm Credit System institutions and their activities shall be examined and audited in accordance with the following schedule and at such other times as the Governor shall deem necessary.

* * * * *

(b) Each Federal land bank association—once each 36 months.

* * * * *

Donald E. Wilkinson,

Governor.

[FR Doc. 85–11576 Filed 5–13–85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–8]

Alteration of Transition Area; Carmi, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: The nature of this action is to alter the Carmi, Illinois, transition area by revising the coordinates identifying the location of the Carmi, Illinois, Municipal Airport.

EFFECTIVE DATE: 0901 G.m.t., May 14, 1985. Comments must be received on or before June 17, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves only a change in listed geographical coordinates for Carmi, Illinois, Municipal Airport and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendent to § 71.181 of Part 71 of the Federal Aviation Regulations is to alter the Carmi, Illinois, transition area description. Section 71.181 of Part 71 of

the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The geographical coordinates currently published in Handbook 7400.6 to describe the location of Carmi, Illinois, Municipal Airport are incorrect. This action amends the geographical coordinates to reflect the correct location of the airport as published in the Airport/Facility Directory and as depicted on aeronautical charts.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to alter the airport coordinates as currently shown in the Carmi, Illinois, transition area description. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Carmi, Illinois

By removing "* * * (lat. 38°06'00"N., long. 88°09'00"W.) * * *" and inserting in its place "* * * (lat. 38°05'22"N., long. 88°07'23"W.)."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69)

Issued in Des Plaines, Illinois, on April 26, 1985.

Paul K. Bohr,

Director, Great Lakes Region

[FR Doc. 85-11543 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWP-11]

Alteration of VOR Federal Airways and Jet Routes—Prescott, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The name of the Prescott Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aid (VORTAC) facility at Prescott, AZ, was changed to the Drake VORTAC, effective 0901 GMT, June 6, 1985. Through inadvertent error the compulsory reporting points which refer to that facility were not amended to reflect the name change. This correction makes that amendment.

EFFECTIVE DATE: 0901 G.M.T., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Paul C. Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1985, the FAA published a final rule changing the name of the Prescott VORTAC to the Drake VORTAC (50 FR 14092). In listing the sections of 14 CFR Part 71 that were to be amended to reflect the change, 14 CFR Part 71.203 was inadvertently omitted. This correction amends that section.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Compulsory reporting points.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, FR Doc. 85-8595, as published in the **Federal Register** on April 10, 1985, (50 FR 14092) is corrected as follows:

§ 71.203

Prescott, AZ [Revoked]
Drake, AZ [New]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69.)

Issued in Washington, D.C., on May 7, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-11544 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AGL-5]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: The nature of this action is to alter the Mt. Comfort, Indiana, transition area by removing reference to the Indianapolis, Indiana, transition area and inserting reference to the McCordsville, Indiana, transition area so as to correlate the written description with the transition area as currently charted.

EFFECTIVE DATE: 0901 G.m.t., May 14, 1985. Comments must be received on or before June 17, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The offical docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation

Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves a correction to the written description for the Mt. Comfort, Indiana, transition area and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to redescribe the Mt. Comfort, Indiana, transition area with reference to the McCordsville, Indiana, transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The current description of the Mt. Comfort, Indiana, transition area implies that there is an overlap involved with the Indianapolis, Indiana, transition area. There is no such overlap. The overlap actually involves the McCordsville, Indiana, transition area. This action is only to correct the written description. There is no additional designated airspace involved, and the transition areas as currently charted will remain the same.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to correct the written description of the Mt. Comfort, Indiana transition area. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amended, as follows:

By removing the words ". . . excluding that portion within the Indianapolis, Indiana, transition area" and inserting in their place the words ". . . excluding that portion within the McCordsville, Indiana, transition area."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983]; and 14 CFR 11.69.)

Issued in Des Plaines, Illinois, on April 26, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85–11541 Filed 5–13–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AGL–7]

Alteration of Various Control Zones and Transition Areas Within the FAA Great Lakes Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: The nature of these actions is to alter the published descriptions for certain control zones and transition areas within the FAA Great Lakes Region area.

EFFECTIVE DATE: 0901 G.M.T., August 1, 1985. Comments must be received on or before June 17, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The offical docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although these actions are in the form of a final rule which involves only a navigational aid radio class change and were not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to §§ 71.171 and 71.181 of Federal Aviation Regulations (14 CFR Part 71) is to redescribe control zones and transition areas within the Great Lakes Region area. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

In these actions, there will be no change to any existing designated airspace area or designated altitudes for any of the associated control zones and/ or transition areas. A total of 13 navigational aids will reflect a change in their radio class designation subsequent

to conversion from VORTAC's to VOR/DME's. The conversions consist of removing the TACAN azimuth feature utilized by military aircraft from the VORTAC's. These changes have been coordinated with and approved by the Department of Defense.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to effect the navigational aid radio class designation changes. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

Adoption of the Amendment

§ 71.171 [Amended]

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, as follows:

In all instances where the acronym VORTAC appears, it is to be removed and the acronym VOR/DME is to be inserted in its place for the control zones and transition areas listed below:

Section 71.171—Control Zones

Bloomington, IN
Grand Forks, ND
Hibbing, MN
Jackson, MI
Jamestown, ND
Rochester, MN
Zanesville, OH

Section 71.181—Transition Areas

Bismarck, ND
Bloomington, IN
Dixon, IL
Grand Forks, ND
Hibbing, MN
Jackson, MI
Jamestown, ND
Kankakee, IL
Kokomo, IN
Millersburg, OH
Philip, SD
South Bend, IN
Zanesville, OH

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.)

Issued in Des Plaines, Illinois, on April 26, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85–11542 Filed 5–13–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles in State of Wisconsin; Temporary Stay of Effective Date

AGENCY: Federal Trade Commission.

ACTION: Temporary stay of effective date; Wisconsin.

SUMMARY: The Federal Trade Commission has received a petition from the Wisconsin Department of Transportation for exemption for the State of Wisconsin from the trade regulation rule concerning the sale of used motor vehicles, 16 CFR Part 455. The Commission is staying the effective date of the used motor vehicles rule for 120 days insofar as it applies within the State of Wisconsin, while the Petition is being considered.

DATE: The temporary stay of the effective date of the used car motor vehicle rule in Wisconsin is effective May 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission has decided for good cause to grant a 120 day stay of the effective date of the Used Car Rule in the State of Wisconsin pending consideration of the Wisconsin Petition.

Although the Used Car Rule and the Wisconsin Regulation differ in many respects, the Commission has decided that a stay of the effective date of the Used Car Rule should be granted pending the Commission's consideration of the Petition. Wisconsin has had its regulation in effect for several years and dealers already are using the disclosure forms required by this regulation. Wisconsin dealers are thus providing some information to consumers already. Therefore, a brief stay of the Used Car Rule to allow full consideration of the Petition is unlikely to cause significant consumer injury if the Petition is denied, and may avoid unnecessary expense to Wisconsin dealers if the exemption is granted.

In addition, the Commission has, for good cause, determined that public notice and comment on this 120 day extension of the effective date is unnecessary, impractical, and contrary to the public interest. Public comment would appear to be unnecessary because the stay is merely designed to maintain the status quo and to avoid placing a potentially unnecessary burden on dealers in the State of Wisconsin during the limited period of time during which the Petition is being considered. Thus, in accordance with §§ 1.26(b) and (e) of the Commission's Rules of Practice, 16 CFR 1.26(b) and (e), and sections 553(b) and (d) of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), the Commission, for the reasons stated above, determined that there is good cause for deciding that prior public notice and comment is not necessary before granting a temporary stay of the effective date of the Used Car Rule as it applies within the State of Wisconsin. For the same reasons, this stay will become effective immediately on May 9, 1985.

Given the unique circumstances of this Petition, the Commission is persuaded that a temporary stay is appropriate. Accordingly, the Commission temporarily stays the effective date of the Used Car Rule as it applies within the State of Wisconsin for 120 days, from May 9, 1985, to September 6, 1985, pending final consideration of the Petition.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–11550 Filed 5–13–85; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 8

[Docket No. RM85-14-000; Order No. 419]

Deletion of a 1987 Filing Requirement For FERC Form No. 80

Issued May 10, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations (18 CFR 8.11) to delete a filing requirement for FERC Form No. 80. Licensees of hydroelectric projects under major or minor license will not be required to file FERC Form No. 80 by the upcoming April 1, 1987, filing deadline. The next scheduled filing of FERC Form No. 80 will be due on April 1, 1991. This amendment is part of the Commission's ongoing program to review and evaluate all of its reporting requirements. By deleting the 1987 filing requirement for FERC Form No. 80, the Commission will achieve a major reduction in the reporting burden on licensees and in administrative review costs for the Commission.

EFFECTIVE DATE: This rule will become effective September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Janet L. Oakley, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8491.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations (18 CFR 8.11) governing the filing of FERC No. 80, entitled "Licensed Hydropower Development Recreation Report", to delete an April 1, 1987, filing requirement for the form. This amendment is part of the Commission's ongoing program to review and evaluate all of the data required by the Commission for regulatory purposes and to eliminate requirements where it is appropriate.

II. Background and Discussion

FERC Form No. 80 is a compilation of data concerning existing and potential recreational use at developments within hydroelectric projects licensed by the Commission. The Commission has used these data to determine whether the public's need for water-based recreational facilities is being fulfilled by the licensees of these projects or whether additional resources should be provided to satisfy current and future recreational needs.

Licensees of projects under major or minor license are required to file a FERC Form No. 80 every four years, for data compiled during the previous calendar year, pursuant to § 8.11 of the Commission's regulations, 18 CFR 8.11 (1984). The first such scheduled filing of FERC Form No. 80 is due April 1, 1987.

The Commission's review of licensed hydroelectric projects and the current use of data reported by FERC Form No. 80 indicates that a re-evaluation is appropriate to assess the regulatory need for the § 8.11 filing requirements for Form No. 80. The Commission's licensing procedures provide mechanisms, independent of the Form No. 80 filing requirements, for informing the Commission on recreational matters at the time of acting on applications. Form No. 80 filing requirements become applicable after the issuance of the license. Deletion of the Form No. 80 filing requirement for 1987 will require greater reliance on other existing procedures, such as input from interested agencies and members of the public and staff inspections, to enable the Commission during the term of a license to determine whether the public's need for water-based recreational facilities is being adequately fulfilled by the licensee. Input from agencies and the public is typically in the form of inquiry, comment, or complaint. In addition, with the large pending workload on hydropower authorizations, only limited staff resources are available to provide technical analysis of the data. In view of the availability of alternative procedures and the limited staff resources, the Commission believes it appropriate to delete the current requirement for filing Form No. 80 by April 1, 1987, for data compiled during the calendar year ending December 31, 1986. However, although licensees will not be required to collect certain recreational data for the purposes of filing the April 1, 1987, Form No. 80, if issues arise with respect to recreation at an individual licensed project, the Commission may require the licensee to develop the data necessary to resolve such issues.

Under this final rule, licensees will not be required to file FERC Form No. 80 by the upcoming April 1, 1987, filing deadline. The next filing will be due on April 1, 1991. The Commission will continue to re-evaluate the need for the filing of Form No. 80. If experience over the next five years indicates that Form No. 80 is not necessary or should be modified, the Commission can then take further action.

By deleting the April 1, 1987, filing requirement for FERC Form No. 80, the Commission will eliminate the reporting burden on licensees.

III. Paperwork Reduction Act Statement

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501–3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR 1320.13 (1984), require that OMB approve certain information collection requirements or revisions thereof imposed by agency rule. Upon approval of the agency requirements or revisions, OMB issues a control number which must be displayed in the agency's regulations to inform the public of OMB's approval. The information collection provisions now in 18 CFR 8.11 have OMB approval (Control No. 19020106). Consistent with the PRA and OMB's regulations, the deletion of these information collection requirements for 1987 in this rule is being submitted to OMB for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Janet L. Oakley, (202) 357–8491).

IV. Effective Date

This rule is being made effective 120 days after publication in the **Federal Register**. The primary objective of the rule is to delete for 1987 the Commission's filing requirement for FERC Form No. 80. This is necessary to allow time to re-evaluate the need for the form and at the same time eliminate reporting burdens imposed on licensees. The data otherwise collected are primarily for Commission use rather than use by the public. The Commission believes that it will be able to discharge its statutory obligations by obtaining pertinent recreational data from other sources. The Commission, therefore, for good cause finds pursuant to section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) (1983), that prior notice and opportunity for public comment are unnecessary. Inasmuch as the information collection revisions in this rule must be submitted to OMB for clearance, this rule will become effective September 11, 1985.

List of Subjects in 18 CFR Part 8

Electric power, Recreation, recreation areas.

In consideration of the foregoing, the Commission amends Part 8, Subchapter B, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 8—[AMENDED]

1. The authority citation for Part 8 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. § 7101–7352 (1982); Exec. Order No. 12,009, 3 C.F.R. 142 (1978); Federal Power Act, 16 U.S.C. §§ 791a–825r (1982); Administrative Procedure Act, 5 U.S.C. §§ 551–557 (1983).

2. In § 8.11, paragraph (a)(2) is revised to read as follows:

§ 8.11 Information respecting use and development of public recreational opportunities.

(a) *Applicability.* * * *

(2) FERC Form No. 80 is due on April 1, 1991, for data compiled during the calendar year ending December 31, 1990. Thereafter, FERC Form No. 80 is due on April 1 of every fourth year for data compiled during the previous calendar year.

* * * * *

[FR Doc. 85–11616 Filed 5–13–85; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200 and 203

[Docket No. R–85–1162; FR–1867]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance Endorsement on a Proposed or New Dwelling in a New Subdivision or Improved Area

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule modifies current policy that requires analysis of new and proposed residential subdivisions before mortgage insurance commitments may be issued on individual one- to four-family dwellings in a subdivision. The revised policy will permit, without subdivision analysis, the processing and issuance of individual and master conditional commitments for FHA insurance on individual lots and dwellings located in certain improved areas. The rule also provides a regulatory basis for subdivision analysis and approval standards and procedures, and provides for the acceptance, on a fully reciprocal basis, of subdivision approvals issued by the Veterans Administration and Farmers Home Administration. This rule is intended to provide alternative procedures and points in time for obtaining conditional commitments and endorsement for mortgage insurance with respect to properties located in these development areas.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Kappeler, Director, Office of Single Family Housing and Mortgage Activities, Department of Housing and Urban Development, Room 10276 451 Seventh Street, SW., Washington, D.C. 20410, Telephone (202) 755–3046, (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 24, 1984, HUD published in the **Federal Register** (49 FR 21938) a Notice of Proposed Rulemaking to amend portions of 24 CFR Parts 200 and 203. This rule proposed to provide a regulatory basis for the analysis of residential subdivisions by HUD or certain local jurisdictions before mortgage insurance commitments could be issued on individual one- to four-family dwellings in a subdivision. The rule also proposed to change HUD's policy by allowing, without subdivision analysis, the issuance of commitments for FHA insurance on individual lots and dwellings in certain improved areas, and to provide for acceptance, on a fully reciprocal basis, of subdivision approvals issued by the Veterans Administration and the Farmers Home Administration.

HUD received three comments in response to the proposed rule: one each from a builder, a mortgage bankers' association and a builders' association. Two commenters supported the rule, stating their agreement with the proposed rule's deference to local standards and their belief that the rule would expedite the process associated with the purchase of a home in a new housing development.

The third commenter inquired whether (a) HUD would accept assurance that a municipal utility district will operate and maintain water and sewage systems or streets in lieu of assurances from local Government, (b) HUD would allow an appraiser to review an entire block or subdivision, when a developer has submitted an application for a conditional commitment on one lot; and (c) there would be a fee charged by HUD for all subdivision analysis processing.

HUD must be assured of continuous maintenance of streets and drainage, and maintenance and operation of the water and sewage systems serving HUD-insured properties. Some areas designated as municipal utility districts operate independently of local government control. Where the local government does not accept the sytems for continuous maintenance, adequate provisions acceptable to HUD must be demonstrated. Also the local government shall certify, with regard to the water and sewage systems serving the properties, that public systems are economically infeasible.

HUD requires an appraisal to be made on each house and lot as a condition to accepting an application for mortgage insurance. A review for acceptability of other lots in a subdivision is not a necessary action in order to determine acceptability of the subject site. We recommend that those wishing to make HUD mortgage insurance available in a new subdivision or improved area use the HUD process for group appraisals. This is not only will expedite processing, but may result in a lower "per case" appraisal fee.

The processing fee is charged for analyzing a subdivision proposal in non-certified areas. The fee is submitted with the developer's Application for Environmental Review, which is the first step in the subdivision analysis process. The amount of the fee will be published in the **Federal Register** on or before the date that the final rule becomes effective. The fee applies only to subdivision processing and is not a surcharge to ususal appraisal fees charged for unit appraisal. No fee is charged when the subdivision is to be located in a certified area or when the developer request processing for an improved are under § 203.12(d).

With regard to the improved area procedure, the Department wishes to point out an important procedural aspect that does not appear in the rule. Appraisal instructions generally require appraiser attention to items sometimes considered environmental in nature which also are underwriting concerns, such as location near hazards, inharmonious land uses, and soil conditions. The Department plans no special instructions for individual commitment appraisals under the improved area procedure. However, for appraisals for master conditional commitments, the Department will require the fee appraiser and the HUD staff review appraiser to complete a checksheet covering related environmental laws and authorities and certain factors that a study of subdivision anlaysis experience has indicated to be the most frequent causes of rejection or mitigation requirements.

The items to be specified in the appraiser checksheet include floodplains, wetlands, site and soil suitability, proximity to flammable and explosive materials, toxic wastes, airport runways, and other natural and man-made hazards, noise levels, endangered species and their critical habitats, sole source aquifers, coastal zones and coastal barriers, and historic preservation sites (See HUD Form 5489/5491–A). As indicated, the "improved area" procedure also will be available to developers seeking mortgage commitments from Direct Endorsement lenders. The Department will issue instructions under the Direct Endorsement program that will mirror the master conditional commitment procedures as well as individual commitment procedures. Under these instructions, the supplemental checksheet described above will be completed in cases where the insured property would have been processed under a master conditional commitment, had commitment procedures under § 203.12(f) been used. (The lenders' appraisers and underwriters will fill out the first part of the checklist and it will be submitted for completion by a HUD review appraiser.)

Other Matters

Unrelated amendments published during 1984 have resulted in the redesignation of 24 CFR 200.163(c)(22) as § 200.163(c)(24). (See 49 FR 19454, May 8, 1984, and 49 FR 23584; June 6, 1984.) Accordingly, the Part 200 amendment contained in this final rule is appropriately redesignated as an amendment to § 200.163(c)(24).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicated that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). In accordance with 24 CFR 50.34(b), the Finding of No Significant Impact is available for public review. This document can be inspected and copied during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)) the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule should decrease the burden on these entities because it will eliminate unnecessary duplication of paperwork in cases involving improved areas. In those cases where obtaining HUD subdivision acceptance is preferred, builders are free to continue to follow this course.

This rule was listed as item number 45 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684, 41702) under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501–3520) and have been assigned OMB Control Number 2502–0327.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan Programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards.

24 CFR Part 203

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Parts 200 and 203 are amended as follows:

1. The authority citation for 24 CFR Part 200 is revised to read as set forth below and any authority citation following any section in Part 200 is removed:

PART 200—INTRODUCTION

Authority: Secs. 2 and 211 of the National Housing Act, (12 U.S.C. 1703 and 1715b).

2. By revising paragraph (c)(24) of § 200.163, to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(c) * * *

(24) In the case of proposed or new construction to which 24 CFR 203.12 is applicable, that the property covered by the application for insurance meets the requirements of 24 CFR 203.12(c).

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

3. The authority citation for 24 CFR Part 203 is revised to read as set forth below and any authority citation following any section in Part 203 is removed.

Authority: Secs. 203 and 211, National Housing Act, (12 U.S.C. 1709, 1715b).

4. By amending the Table of Contents of 24 CFR Part 203 to include the following entry:

* * * * *

* * * * *

5. By adding a new §203.12 to Part 203, to read as follows:

§ 203.12 Mortgage insurance on proposed or new construction in a new subdivision or improved area.

(a) *Applicability.* This section applies to all applications for insurance of mortgages on one- to four-family dwellings constructed in a new subdivision or improved area (both as defined in paragraph (b)), except an application for insurance of a mortgage on a dwelling which:

(1) Was completed more than one year before the date of the application for mortgage insurance (or, under the Direct Endorsement Program, was completed more than one year before the date of the appraisal), or

(2) Is located in a subdivision in which all development construction has been completed and accepted by the local jurisdiction and most dwellings have been completed, or

(3) Is being sold to a second or subsequent purchaser.

(b) *Definitions.* For purposes of this section:

(1) "Subdivision" means the total area containing all of the proposed land development activities, building or construction operations which are under centralized control, and planned principal development elements to support the creation of 25 or more dwelling lots (or such lesser number of

lots as HUD shall determine to be appropriate to require applicability of this section in individual cases).

(2) "Improved area" means an area of at least the minimum size in which the local government is willing to accept the streets, or the water and sewage systems for maintenance, as appropriate. In the absence of local approval procedures, the term means an area of such size as HUD is willing to process.

(3) "Partially completed", with respect to an improved area, means that:

(i) The local government has accepted the plat of a subdivision or of an improved area, and the plan for its principal development elements and rights-of way;

(ii) All government approvals to begin development and construction in the improved area have been secured;

(iii) The development or construction of the improved area's streets, water and sewage systems and utilities has proceeded to a point that precludes any major changes; and

(iv) Provisions are in place for continuous maintenance of the streets and water and sewage systems once the improved area is substantially completed.

(4) "Substantially completed", with respect to an improved area, means that:

(i) With the exception of delays approved by the local government and HUD, the improved area's principal development elements have been completed;

(ii) The local government has issued occupancy permits or their equivalent on those new dwellings being processed by HUD for mortgage insurance; and

(iii) The local government does or will accept for continous maintenance the streets, water and sewage systems. Where local acceptance for maintenance is not available, adequate provision for private maintenance must be demonstrated. However, with respect to private water and sewer systems, the local government must also certify that public systems are economically infeasible, or that the property is served by a system approved by the Commissioner under Title X of the National Housing Act.

(5) "Principal development elements" include without being limited to, necessary grading, streets, water and sewage systems, utilities, storm drainage, and community facilities, as well as measures and devices for the abatement of nuisances and hazards.

(c) *Procedures.* Applications for insurance to which this section applies shall be processed in accordance with procedures consistent with this section, or in accordance with such instructions prescribed under the Direct Endorsement Program as the Commissioner may prescribe. Such procedures may provide for endorsement for insurance.

(1) Of a mortgage covering a dwelling located in an improved area in accordance with terms of a commitment issued as described in paragraph (d);

(2) Of a mortgage covering a dwelling located in a subdivision to which paragraph (e) is applicable, in accordance with the terms of a commitment issued as described in paragraph (e);

(3) Of a mortgage covering a dwelling located in a subdivision found acceptable under paragraph (f), in accordance with the terms of a commitment issued as described in paragraph (f).

(d) *Improved areas.* A commitment to insure a mortgage on a dwelling located in an improved area may be issued (or the dwelling appraised for insurance under the Direct Endorsement Program) when:

(1) The improved area is at least partially completed;

(2) There is vehicular access to the finished lot at least to a line beyond the subject site(s), and the lot and block grading are sufficiently finished to permit the appraiser to analyze the influence of adjacent areas on the subject site(s); and

(3) Compliance with applicable HUD and local requirements can be demonstrated. The commitment issued (or Direct Endoresement Program instructions prescribed) with respect to a dwelling located in an improved area appraised in accordance with this paragraph shall require that the improved area be at least substantially completed before endorsement for insurance.

(e) *Local area certification.* The Commissioner may prescribe procedures for certifying the capacity of a local jurisdiction to maintain and enforce acceptable environmental, underwriting and development standards and procedures for the analysis and approval of subdivisions and their principal development elements. A subdivision which is or will be approved by a certified jurisdiction shall not be reviewed by HUD under paragraph (f) of this section, except with regard to elements for which HUD may have conditioned the certification of the jurisdiction. Commitments for insurance of mortgages covering dwellings located in a subdivision to which this paragraph (e) applies may be issue before, during, or after subdivision development.

(f) *Subdivision analysis.* The Commissioner shall prescribe procedures for analysis of proposed or new subdivisions by HUD for compliance with applicable HUD and local development, underwriting and environmental standards. Such analysis may be conduced (and commitments for insurance of mortgages covering dwelling located in subdivision found acceptable under such procedures may be issued) before, during, or after subdivision development. Such procedures also shall provide for acceptance by HUD, on a fully reciprocal basis, of subdivision approvals issued by the Veterans Administration and Farmers Home Adminstration.

(g) *Processing fee.* The developer of a subdivision shall pay a nonrefundable fee to cover the costs of processing. The fee shall be paid at the time of filing the Application for Environmental Review. The amount of the fee shall be set by, and may from time to time be changed by, notice published in the **Federal Register**. Any subsequent application involving additional lots must be accompanied by an additional fee payment. In the event the application is incomplete on its face, or is otherwise not acceptable for processing, payment will be returned with the application.

Approved by the Office of Management and Budget under OMB Control Number 2502–0327.

Dated: May 2, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–11577 Filed 5–13–85; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 22, 200, and 250

[T.D. ATF–199; Correction]

Distribution and Use of Denatured Alcohol and Rum, and Tax-Free Alcohol; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision; correction.

SUMMARY: This final rule corrects technical errors made in FR Doc. 85–5136, published in the **Federal Register** on March 6, 1985 at 50 FR 9151.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms issued Treasury decision ATF-199 on March 6, 1985, amending regulations in Title 27, Code of Federal Regulations, relating to the industrial use of alcohol. In some cases, this final rule amended regulations that were published in the **Federal Register** on the previous Friday, March 1, 1985 (Treasury decision ATF-198, FR Doc. 85-4200, 50 FR 8455). None of these corrections make any substantive regulation changes and are only intended to improve the clarity of Title 27.

Authority and Issuance

This final rule is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917). Accordingly, Title 27, Code of Federal Regulations, is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

In the middle column of page 9160, in Amendatory Paragraph 5, insert the word "(5150.9)" immediately after the words "Forms 5110.38 and 1479-A".

In the right-hand column of page 9161, in § 19.540(C)(2)(ii)(A), replace the word "nonpermittees" with the words "a nonpermittee".

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

1. In the left-hand column of page 9163, in the table of sections for Part 20, revise the heading for § 20.119 by inserting the words "not less than" after the word "containing".
2. In the middle column of page 9164, in the definition of *Manufacturer or user* in § 20.11, add the word "or" immediately before the words "to recover".
3. In the middle column of page 9166, in § 20.41(b), replace the words "application of Form 5150.22" with the words "application on Form 5150.22".
4. In the right-hand column of page 9167, in § 20.50, replace the words "error or a permit" with the words "error on a permit".
5. In the right-hand column of page 9168, in § 20.57(b)(1), replace the word "successor" with the word "permittee".
6. In the right-hand column of page 9168, delete the last sentence of § 20.57(b)(2).
7. In the left-hand column of page 9169, in § 20.59(c), replace "§ 20.56" with "§ 20.57(c)".
8. In the middle column of page 9169, in § 20.60, delete the heading of paragraph (a) and delete all of paragraph (b), so that the entire section consists only of the text originally printed as paragraph (a).
9. In the middle column of page 9169, in § 20.63(a), replace "to be made a part of the written notice or the application for a new permit submitted to the regional director (compliance)" with "submitted to the Director".
10. In the left-hand column of page 9170, in the first sentence of § 20.71(d), replace "ATF F 5150.20" with "ATF F 5150.25".
11. In the left-hand column of page 9170, in § 20.71(d), add the following sentence after the first sentence of paragraph: "No bond is required if the permittee is a State, any political subdivision of a State, or the District of Columbia."
12. In the middle column of page 9170, in § 20.73(b), replace "Audit Staff, Bureau of Government Financial Operations" with "Surety Bond Branch, Financial Management Service".
13. In the middle column of page 9173, revise the heading and the first sentence of § 20.119 by inserting the words "not less than" after the word "containing".
14. In the left-hand column of page 9176, in § 20.161(c)(2), delete the words "and date of issue".
15. In the right-hand column of page 9181, in § 20.251(b), replace the word "nonpermittees" with the words "a nonpermittee".

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

16. In the middle column of page 9188, in § 22.57(a)(4), replace the word "with—" with the word "will—".
17. In the left-hand column of page 9189, in § 22.61, delete the heading of paragraph (a) and delete all of paragraph (b), so that the entire section consists only of the text originally printed as paragraph (a).
18. In the right-hand column of page 9189, in § 22.71(b), add the following sentence after the first sentence of the paragraph: "However, no bond is required if the permittee is a State, any political subdivision of a State, or the District of Columbia."
19. In the left-hand column of page 9190, in § 22.73(b), replace "Audit Staff, Bureau of Government Financial Operations" with "Surety Bond Branch, Financial Management Service".
20. In the middle column of page 9192, in § 22.111(c)(2), delete the words "and date of issue".
21. In the middle column of page 9192, in § 22.111(c)(3), replace "Form 5150.9" with "Form 5150.9, unless the regional director (compliance) authorizes the shipment".
22. In the right-hand column of page 9195, in § 22.172(c), replace the word "authorization" with the word "authorizing".

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

23. In the middle column of page 9198, in § 250.36(d)(2), replace the word "manufacturers" with the word "manufactures."
24. In the right-hand column of page 9198, in § 250.191, replace the word "permittee" with the word "person".

Dated: April 29, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-11510 Filed 5-13-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Recodification of Safety and Health Standards for Metal and Nonmetal Mines; Technical Amendments and Corrections

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This document corrects typographical errors and makes nonsubstantive technical amendments to a final rule that recodified safety and health standards for metal and nonmetal mines, published January 29, 1985 (50 FR 4048).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 29, 1985, the Mine Safety and Health Administration (MSHA) published a recodification of the health and safety standards for metal and nonmetal mines in Title 30 of the Code of Federal Regulations (50 FR 4048). This document corrects typographical errors in that document and makes the following nonsubstantive technical amendments.

Authority citations are added to Subpart C of Part 56 and Subpart C of Part 57. These authority citations were included in the final rule published on

January 29, 1985 (50 FR 4022) which made substantive changes to the fire prevention and control standards in these subparts. They were inadvertently omitted from the recodification document (50 FR 4048).

The definition for "fire door" in § 57.2 is removed. This definition contains substantive requirements for the construction of fire doors. However, the final rule which made substantive changes to the fire prevention and control standards for underground metal and nonmetal mines (50 FR 4022) no longer uses the term "fire door." The substantive requirements for control doors may now be found in § 57.4760, which concerns ventilation control measures for shaft mines.

The word "This" is added at the beginning of paragraph (b) in §§ 56.4200 and 57.4200 to clarify MSHA's intent that the onsite fire-fighting equipment referred to in paragraph (b) is the same onsite fire-fighting equipment referred to in paragraph (a).

In the introductory paragraph to § 57.4560, reference to Subpart J, Travelways and Escapeways, is removed. "Escapeway" is a defined term under Subpart C, which includes § 57.4560; therefore, the meaning of escapeway is clear without a cross-reference to Subpart J.

This document also corrects two other cross-reference citations: § 57.4057, "30 CFR 18.65" is corrected to read "30 CFR 18.64"; and Table C-3, Control Door Construction, in § 57.4760, "30 CFR 57.5031" is corrected to read "30 CFR 57.8531".

List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health.

Dated: May 2, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

The following technical amendments and corrections are made in FR Doc. 85-1866 beginning on page 4048 in the issue of Tuesday, January 29, 1985:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. On page 4059, column 3, immediately below the subpart heading for Subpart C—Fire Prevention and Control, an authority citation is added. The authority citation reads as follows:

Authority: Sec. 101, Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (30 U.S.C. 811).

2. On page 4060, middle of column 2, the introductory text of paragraph (b) in § 56.4200 is revised to read as follows:

§ 56.4200 General requirements.

* * * * *

(b) This onsite firefighting equipment shall be— * * *

* * * * *

3. On page 4078, middle of column 2, under § 56.19018, the words "close position" are corrected to read "closed position".

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

§ 57.2 [Corrected]

1. On page 4087, under § 57.2, in column 3, the definition of "Fire door" is removed.

2. On page 4090, column 1, immediately below the subpart heading for Subpart C—Fire Prevention and Control, an authority citation is added. The authority citation reads as follows:

Authority: Sec. 101, Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (30 U.S.C. 811).

§ 57.4057 [Corrected]

3. On page 4090, top of column 3, under § 57.4057, "30 CFR 18.65" is corrected to read "30 CFR 18.64".

4. On page 4091, bottom of column 1, the introductory text of paragraph (b) in § 57.4200 is revised to read as follows:

§ 57.4200 General requirements.

* * * * *

(b) This onsite firefighting equipment shall be—

* * * * *

5. On page 4094, top of column 2, § 57.4560 is amended by revising the introductory text to read as follows:

§ 57.4560 Mine entrances.

For at least 200 feet inside the mine portal or collar timber used for ground support in intake openings and in exhaust openings that are designated as escapeways shall be—

* * * * *

6. On page 4095, in Table C-3, in the column under the heading "Minimum required construction," "30 CFR 57.5031" is corrected to read "30 CFR 57.8531".

[FR Doc. 85-11553 Filed 5-13-85; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS DAHLGREN (DDG 43) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 30, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS DAHLGREN (DDG 43) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), regarding the arc of visibility of its forward masthead light, and Annex I, section 3(a), regarding the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and

contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: Executive Order 11964: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by adding the following numbered note which reflects navigational light certifications issued by the Secretary of the Navy:

* * * * *

22. On the following ships, the arc of visibility of the forward masthead light, required by Rule 21(a), may be obstructed through 1.4° at the following angles relative to the ship's heading:

Vessel	Number	Obscured angles relative to ship's heading
USS DAHLGREN	DDG 43	21.8° and 328.7°

3. Table Five of § 706.2 is amended by revising the heading of column three of the table to read as follows:

Forward masthead light less than the required height above the hull. Annex I, sec. 2(a)(i)

4. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	Aft masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS DAHLGREN	DDG 43						X	X	24.0

Dated: April 30, 1985.

Approved:

James E. Goodrich

Acting Secretary of the Navy.

[FR Doc. 85-11601 Filed 5-13-85 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Amdt. G-72]

Use of Cash

AGENCY: Office of the Comptroller, GSA.

ACTION: Final rule.

SUMMARY: The revised policy and procedures regarding the use of cash to purchase passenger transportation services are currently contained in a temporary regulation. Since temporary regulations are effective for only a definable period of time, this regulation makes permanent the provisions of the temporary regulation concerning cash purchases of passenger transportation services. This regulation also amends the use of cash provisions to be more consistent with current Government travel regulations.

EFFECTIVE DATE: May 14, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits (202-786-3014).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Federal Property Management Regulations, Temporary Regulation G-47 gave agency heads or their designated representatives the flexibility to approve emergency cash purchases of passenger transportation services exceeding $100 but required GSA approval for nonemergency cash purchases. The G-47 also established procedures by which GSA would review and audit both emergency and nonemergency cash purchases of transportation exceeding $100. Temporary Regulation G-47 was published in the **Federal Register** of May 12, 1983 (48 FR 21327), for a period of two years, expiring May 12, 1985. No comments were received. This final rule is making permanent the provisions of Temporary Regulation G-47. This rule also provides for the purchase of transportation from travel agents under GSA contract and Scheduled Airline Traffic Offices (SATO's). Finally, this rule exempts from the $100 restriction cash purchases of passenger transportation services procured with GSA contractor-issued charge cards and cash purchases made in accordance with group or charter arrangements as provided in section 1-3.4(2)(a) of the Federal Travel Regulations (FTR), 41 CFR Part 101-7, as amended.

List of Subjects in 41 CFR Part 101-41: Air carriers, Accounting, Audits, Claims, Passenger services, Railroads, Transportation.

Title 41, Part 101-41 of the Code of Federal Regulations is amended as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101-41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

Subpart 101-41.2—Passenger Transportation Services Furnished for the Account of the United States

2. Section 101-41.203-2 is revised to read as follows:

§ 101-41.203-2 Use of cash.

(a) Cash shall be used to procure all passenger transportation services costing $10 or less, exclusive of Federal transportation tax, and to pay air excess baggage charges of $15 or less for each leg of a trip (see § 101-41.203-6), unless special circumstances justify the use of a GTR or GEBAT. Agencies have the

option of requiring travelers to use cash to procure passenger transportation services from, to, or between points in the United States, including Alaska and Hawaii, and its possessions or trust territories, where such services cost more than $10, but do not exceed $100, exclusive of Federal transportation tax, for each trip authorized on an official travel authorization. GTR's shall be used to procure all passenger transportation services costing in excess of $100, excluding Federal transportation tax, unless otherwise exempted herein. For the purpose of this subpart, references made to GTR's also apply to Government Travel System (GTS) accounts and Government-issued charge cards.

(1) Approval for the use of cash in excess of $100 should be obtained prior to travel. In the absence of advance written authorization or approval, travel shall be purchased in accordance with policies and procedures prescribed in applicable Government travel regulations. The traveler shall be responsible for all additional costs involved for this travel, such as the use of foreign-flag carriers, first-class travel, or more costly modes unless such use is approved on the travel voucher in accordance with the governing provisions of the Federal Travel Regulations. The traveler should be aware that the use of a GTR may be required to obtain certain discount fares and to comply with the mandatory provisions of FPMR Temporary Regulations (A Series) governing the use of contract airline service between designated city-pairs. Cash shall not be used to circumvent the regulations governing airline city-pair contracts.

(2) Agencies shall not impose a financial hardship on travelers by requiring their use of personal funds to purchase the services set forth in paragraph (a) of this section but should provide the funds through travel advances.

(3) Use of credit cards, other than the GSA contractor-issued charge cards, and all travelers checks to purchase passenger transportation services shall be considered the equivalent of cash and subject to the $100 limitation provided in paragraph (a) of this section.

(4) Passenger transportation services procured with GSA contractor-issued charge cards or under Government Travel System accounts are not subject to the $100 cash limitation.

(5) Passenger transportation services procured in accordance with the group or charter provisions of section 1-3.4(2)(a) of the Federal Travel Regulations (FTR), 41 CFR Part 101-7, as amended, are not subject to the provisions of this subpart.

(b) Under emergency circumstances, where the use of GTR's is not possible, heads of agencies, or their designated representatives, may authorize travelers to exceed the $100 limitation when procuring passenger transportation services.

(1) Delegation of authority for authorizing and approving the use of cash in excess of $100 for the procurement of emergency transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. These delegations of authority shall be made in writing and copies retained to permit monitoring of the system. These records of delegations of authority shall be available for examination by GSA auditors.

(2) To justify the use of cash in excess of $100 instead of GTR's when procuring passenger transportation services, both the Government agency head, or his/her designated representative, and the traveler shall certify on the travel voucher the reasons for this use.

(3) After a traveler has been reimbursed for an emergency cash purchase, copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF 1170's, Redemption of Unused Tickets, shall be forwarded for audit to the General Services Administration (BWAA/C), Attention: Code E, Washington, DC 20405.

(4) Travel vouchers shall be maintained in the agency to be available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see § 101-11.404-2), provides instructions for the disposal of these travel vouchers.

(c) Under nonemergency circumstances, where use of a GTR is possible, heads of agencies, or their designated representatives, shall request an exemption from the Director, Office of Transportation Audits (BW), GSA, Washington, DC 20405 for cash purchases exceeding the $100 limitation.

(1) Requests shall be made in writing, shall only be for individual travel itineraries, and shall fully explain why an exemption should be granted. Traveler convenience will not be cause for GSA approval. For the purpose of performing a fare audit, requests shall also include copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF 1170's associated with the travel in question.

(2) Travelers shall not be reimbursed for the nonemergency use of cash to procure passenger transportation services costing more than $100 unless written approval is granted by GSA.

(d) Suspected travel management errors and/or misroutings which result in higher travel costs to the U.S. Government will be reported by GSA (BWCA) to the appropriate military or civil agency travel manager for corrective action with the violating agency.

(e) Travelers using cash to purchase individual passenger transportation services shall procure such services directly from carriers, travel agents under GSA contract (see § 101-41.203-1), or SATO's, and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment is preprinted on the travel voucher and shall be initialed by the traveler.

(f) Travelers using cash to procure passenger transportation services shall be made aware of the provisions of § 101-41.209-4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers (see § 101-41.203-1(b)).

Subchapter G Appendix [Amended]

3. The appendix to Subchapter G is amended by removing Temporary Regulation G-47.

Dated: April 15, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-11677 Filed 5-13-85; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Maritime Administration

[Docket No. 78]

46 CFR Part 276

Construction-Differential Subsidy Repayment; Total Payment Policy

Correction

In FR Doc. 85-11045 beginning on page 19170 in the issue of Tuesday, May 7, 1985, make the following corrections:

On page 19177, in the first column, in paragraph "5e", in the second line of the heading, "CDS" should read "ODS"; also, in the next paragraph, in the fourth

line, "CDS" should read "ODS"; and in the following paragraph, in the ninth line, "CDS" should read "ODS".

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 84-27]

Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Co-Loading Practices by NVOCCs; Deferral of Effective Date of Rules

AGENCY: Federal Maritime Commission.

ACTION: Deferral of effective date of final rule.

SUMMARY: Due to the uncertainty expressed by various segments of the affected industry as to the application of the final rule regarding co-loading practices by Non-Vessel Operating Common Carriers (NVOCC's), the effective date of the final rule is being deferred for 90 days.

EFFECTIVE DATE: Final rule published April 15, 1985, will be effective August 13, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5796

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5827.

SUPPLEMENTARY INFORMATION: By Notice published in the Federal Register on April 15, 1985 (50 FR 14704-14710), the Commission issued a Final Rule in this proceeding with a scheduled effective date of May 15, 1985. Since the publication of this final rule, numerous non-vessel-operating common carriers (NVOCCs) and representatives of the NVOCC industry have written or contacted the Commission indicating uncertainty as to the application of certain aspects of the rule to the various types of NVOCC operations. Particular concern was expressed over the meaning of a carrier-to-carrier relationship and the requirement for bills of lading to identify any other NVOCC involved in a co-loaded shipment. Several parties have requested postponement of the effective date of the final rule, and given the apparent uncertainty on the part of certain portions of the affected industry, the Commission believes a deferral is warranted. Accordingly, the effective date of the final rule in this proceeding is being hereby postponed until August 13, 1985. During the deferral period, the Commission staff will further reveiw the entire situation and make an appropriate recommendation to the Commission as to the final disposition of this matter

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11567 Filed 5-13-85; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[GSAR AC-85-3]

Restriction on Procurement of Hand and Measuring Tools

Correction

In FR Doc. 85-10434 beginning on page 18262 in the issue of Tuesday, April 30, 1985, make the following corrections:

1. On page 18262, third column, in the second line, the expiration date now reading "June 18, 1985" should read "October 21, 1985".

2. On page 18263, first column, in paragraph 4, the expiration date now reading "(June 18, 1985)" should read "(October 21, 1985)".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 40211-4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries; Final Annual Specifications for Atlantic Mackerel

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final annual specifications for Atlantic mackerel.

SUMMARY: NOAA issues this notice to provide final initial annual specifications for the Atlantic mackerel fishery for the fishing year 1985-1986. Regulations governing this fishery require that the Secretary of Commerce (Secretary) publish his final determination of the specifications for the current fishing year. This action is intended to promote development of the U.S. Atlantic mackerel fishery.

EFFECTIVE DATE: These specifications were effective March 12, 1985, as an interim rule.

ADDRESS: Copies of the regulatory flexibility analysis are available from Mr. Richard Schaefer, Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm St., Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, extension 273.

SUPPLEMENTARY INFORMATION: In order not to adversely impact the U.S. and foreign mackerel fisheries by causing fishing to halt when the 1984-1985 fishing year ended on March 31, 1985, the Secretary issued an interim rule on March 15, 1985 (50 FR 10499), of the initial annual specifications for the 1985-1986 fishing year for Atlantic mackerel (effective March 12, 1984).

The Secretary requested public comments on the initial specifications, and retained the option to modify or maintain the specifications, based on a review of public comments received. No comments on the Atlantic mackerel inital specifications were received. Therefore, the Secretary maintains the initial annual specifications unchanged as found at 50 FR 10499 (March 15, 1985).

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291. The Mid-Atlantic Fishery Management Council prepared a regulatory flexibility analysis for the rule which authorized this action (see ADDRESS for a copy)

(16 U.S.C. 1801 *et seq.*)

Dated: May 9, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service

[FR Doc. 85-11563 Filed 5-9-85; 12:09 pm]

BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 50460-5060]

Western Pacific Spiny Lobster Fisheries; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule: correction.

SUMMARY: This document adds effective dates, inadvertently omitted, for two paragraphs amending § 681.7 in the regulatory text of the emergency interim rule for Western Pacific Spiny Lobster

Fisheries that was published April 30, 1985, at 50 FR 18264.

FOR FURTHER INFORMATION CONTACT: Robert T.B. Iverson, Western Pacific Program Office, P.O. Box 3830, Honolulu, HI 96812, 808–955–8831.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

§ 681.7 [Corrected]

The correction is made in FR Doc. 85–10204, page 18266, column 1. After the amendments to § 681.7, insert the following sentence: "Section 681.7(b) (2) and (3) are in effect from April 25, 1985, to July 24, 1985."

Also, on page 18264, under the **DATES** caption, add the same sentence.

[FR Doc. 85–11564 Filed 5–13–85; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 93
Tuesday, May 14, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-37]

Proposed Alteration of VOR Federal Airways; Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V–489 and V–157 located in the vicinity of Albany, NY. Increasing traffic at Newark, NJ, Airport and the satellite airports has caused numerous en route and terminal area delays. This action would segregate traffic by realigning airways that would separate en route traffic from departure/arrival traffic thereby reducing controller workload, reducing delays and providing more efficient use of the navigable airspace.

DATES: Comments must be received on or before June 27, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 84–AWA–37, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal busines hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–37." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airway V–489 between Sparta, NJ, and Plattsburgh, NY, and extend V–157 from Kingston, NY, to Albany, NY. Traffic at Newark, NJ, Airport has been increasing since 1981, and delays have become routine because of the complex airway system in that area and increased traffic at Newark and the numerous satellite airports. This action would segregate en route traffic from arrival/departure traffic thereby reducing delays and reducing controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–489 [Revised]

From Sparta, NJ; INT Sparta 023°T(034°M) and Albany, NY, 192°T(205°M) radials; Albany, Glens Falls, NY; to Plattsburgh, NY.

V-157 [Amended]

By removing the words "to Kingston, NY." and substituting the words "Kingston, NY; to Albany, NY."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on May 7, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-11548 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85-AWA-12]

Proposed Alteration of Jet Routes; Plattsburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend alignment of Jet Routes J-75 and J-567 in the vicinity of the Plattsburgh, NY, Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aid (VORTAC) due to relocation of the Plattsburgh VORTAC to an on-airport site.

DATES: Comments must be received on or before June 28, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, New England Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-12, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to amend the alignment of Jet Routes J-75 and J-567 due to relocation of the Plattsburgh, NY, (PLB) VORTAC. Plattsburgh VORTAC is being moved to an on-airport site on the Plattsburgh/Clinton County, PA, Airport (lat. 44°41'03.31"N., long. 73°31'26.40"W.). The actual alignment of several other VOR Federal Airways and Jet Routes will be affected by the VOR relocation, including V-91, V-104, V-196, V-489, J-29, J-97, J-560 and J-595. However, the legal descriptions of all except the two previously mentioned will remain unchanged. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.65; 49 CFR 1.47.

2. § 75.100 is amended as follows:

J-75 [Amended]

By removing the words "Plattsburgh 334° radial" and by substituting the words "Plattsburgh 341°T(356°M) radial"

J-567 [Amended]

By removing the words "Plattsburgh 334° radial" and by substituting the words "Plattsburgh 341°T(356°M) radial"

Issued in Washington, D.C., on May 8, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-11547 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811-0089]

Decorating Products Association of Central Florida; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF would also be barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization would be further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the Order would obligate DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the Order.

DATE: Comments must be received on or before July 12, 1985.

ADDRESS: Comments should be directed: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Ave., NW. Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ed Glynn, FTC/L 502-4, Washington, D.C. 20580 (202) 634-6608.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Wallcoverings, Trade practices.

[File No. 811-0089]

Agreement Containing Consent Order To Cease and Desist

In the matter of Decorating Products Association of Central Florida an unincorporated association.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Decorating Products Association of Central Florida ("DPACF"), an unincorporated association, and it now appears that DPACF, hereinafter sometimes referred to as propsed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It is hereby agreed by and between DACF, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. DPACF is an unincorporated association with its mailing address at P.O. Box 183, Orlando, Florida 32802.

2. DPACF admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. DPCF waives:

a. Any further proceedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice act.

4. This agreement is for settlement purposes only and does not constitute an admission by DPACF that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify DPACF, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to DPACF: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the procedding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to DPACF's address as stated in this agreement shall constitute service. DPACF waivers any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

7. DPACF has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. DPACR further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that for purposes of this order the following definitions shall apply:

A. "DPACF" means the Decorating Products Association of Central Flordia (an unincorporated association with its mailing address at P.O. Box 183, Orlando, Florida 32802), its members,

officers, directors, committees, representatives, agents, employees, successors and assigns.

B. "Wallcoverings" mean flexible materials used to cover residential and commercial walls, such as simple wall papers, vinyls, fabrics and foils.

II

It is further ordered that DPACF, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, shall cease and desist from:

A. Conduct having the purpose or effect of:

1. Fixing, maintaining, or stabilizing prices, terms or conditions of sale of wallcoverings;

2. Coercing any seller of wallcoverings to adopt, abandon, or refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

B. Expressly or impliedly advocating, suggesting, advising, or recommending that any of DPACF's members refuse to deal with any seller of wallcoverings on account of, or that any of DPACF's members engage in any other act to affect, or to attempt to affect, the prices, terms or conditions of sale, or distribution methods or choice of customers of any seller of wallcoverings.

C. Publishing or circulating the results of any survey of, or otherwise identifying, prices, terms or conditions of sale, distribution methods, or choice of customers of any seller of wallcoverings in order to coerce, compel or induce any seller of wallcoverings to adopt or abandon or to refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

D. Aiding or assisting any affiliates of the National Decorating Products Association ("NDPA") or NDPA members in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that this Order shall not be construed to prevent DPACF from providing information or its member's views to other sellers of wallcoverings, provided, however, that the information or views are not presented in a manner constituting an actual or threatened refusal to deal.

IV

It is further ordered that DPACF shall:

A. Within 30 days following service of this Order, mail a copy of this Order to each of its members.

B. Within 60 days following service of this Order, publish this Order in an issue of DPACF's newsletter in the same type size normally used for articles in the DPACF's newsletter.

C. As a condition of continued membership in DPACF, require within 90 days following service of this Order, or as a condition of initial membership in DPACF, require within 90 days of such membership, that any members agree in writing to be bound by the provisions of Part II of this Order.

D. Terminate for a period of one year the membership of any DPACF member within one hundred and twenty (120) days after learning or having reason to believe that said member has engaged, after the date this Order becomes final, in any act or practice that, if engaged in by DPACF would be prohibited by Part II of this Order.

It is further ordered that DPACF shall:

A. Within sixty (60) days following service of this Order, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to DPACF, require.

B. For a period of three (3) years following service of this Order, maintain in its files a copy of all correspondence received from, or sent to, sellers of wallcoverings, associations of sellers of wallcoverings, or other DPACF members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request.

C. Notify the Commission at least thirty (30) days prior to any proposed change in DPACF's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor coporation or association, or any other change that may affect compliance obligations arising out of this Order.

[File No. 811-0089]

Analysis of Proposed Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Decorating Products Association of Central Flordia ("DPACF").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that DPACF and its members have engaged in various acts and practices that have unreasonably restrained competition in the retail sale of wallcoverings.

Count I of the complaint alleges that DPACF members have conspired through DPACF to unlawfully:

(1) Remove certain wallcovering sample books from their store shelves;

(2) Discontinue the promotion of products of certain wallcoverings suppliers; and

(3) Cease placing orders through certain wallcovering suppliers.

The complaint also alleges that these concerted acts or practices were directed at a wallcovering supplier that planned to open retail wallcovering stores. Such activities violate section 5 of the Federal Trade Commission Act.

Count II of the complaint alleges that DPACF members have conspired through DPACF to unlawfully:

(1) Threaten to refuse to deal with suppliers that charge for cutting a single roll of wallcovering;

(2) Refuse to pay the cutting charge; and

(3) Publish statements urging members to refuse to pay the cutting charge.

The complaint also alleges that these concerted acts or practices were attempts at fixing the price that wallcovering retailers paid to suppliers which is a clear violation of section 5 of the FTC Act.

Count III of the complaint alleges that DPACF members have conspired through DPACF to unlawfully:

(1) Publish statements urging members to refuse to deal with wallcoverings suppliers that sell to building contractors; and

(2) Coerce suppliers into discontinuing direct sales to building contractors.

The Complaint also alleges that these concerted acts or practices were attempts to restrain competition at the retail level in violation of section 5 of the FTC Act.

The complaint alleges several anticompetitive effects from DPACG's activities including restraining competition in connection with the sale and distribution of wallcoverings, fixing the price of wallcoverings paid by retailers to suppliers, restraining the ability of suppliers to distribute wallcoverings a manner that would place suppliers in competition with DPACF's member and others, and

depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

The Proposed Order

The proposed order is intended to prevent DPACF from restraining competition in the retail sale of wallcoverings by interfering with supplier's distribution and pricing decisions and suppliers' decisions to intergrate to the retail level.

The order is narrowly drawn to circumscribe the types of illegal conduct and behavior that appear to have been involved in the alleged conspirational acts without unduly infringing on respondent's First Amendment rights and ability to represent its members with respect to legitimate business goals. The order's ultimate objective is to ensure that free market forces within the industry are not thwarted by the alleged unlawful acts of the respondent.

Paragraph II of the proposed order contains a prohibition against agreements between DPACF, its members, or others, to fix prices, or coerce suppliers' choice of prices, terms or conditions of sale, distribution methods or choice of customers. This prohibition is intended to eliminate any illegal conspiratorial activity or combinations of the types alleged to have occurred and is coupled with specific prohibitions focusing on the particular tactics that DPACF appears to have utilized to implement the alleged conspiratorial acts or combinations. In addition, Paragraph II.D prohibits DPACF from aiding or assisting any NDPA affiliates or NDPA members in committing any of the acts specified in that paragraph. This provision is necessary to ensure that other affiliates or NDPA members do not circumvent the order with the tacit approval of DPACF.

Paragraph IV requires that DPACF, within 30 days following service of the order, mail a copy of the Commission's order to each member and to publish the order in an issue of DPACF's newsletter within 60 days following service of the order. In addition, Paragraph IV stipulates that DPACF require, as a condition of initial or continued membership, that members agree to be bound by the order, and that DPACF terminate any membership for a one-year period of any member reasonably believed to have engaged in conduct prohibited by the order.

Paragraph IV also contains a record-keeping provision covering all correspondence received or sent by DPACF for a period of three years, a provision pertaining to compliance reports, and notification requirement concerning any organizational changes that would affect respondent's compliance with the order.

Emily H. Rock,

Secretary.

[FR Doc. 85-11552 Filed 5-13-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM85-13-000]

Revisions to FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements"

Issued: May 10, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements." Form No. 8 solicits information from companies that operate underground natural gas storage fields. The information is used to assess the total amount of storage gas in the United States. The data collected by Form No 16 is used by the Commission to assess the actual and anticipated supplies available to interstate natural gas pipeline companies and the volumes needed to satisfy their customers' requirements. The collected Form No. 16 data is used by the Commission in the analysis of certificate applications and rate cases and in developing programs to address supply imbalances.

The Commission has reviewed Form No. 8 and Form No. 16 as part of its ongoing program to reduce unnecessary reporting burdens by eliminating the reporting of information that is no longer used for decision making in the regulatory process. As a result of its review, the Commission proposes to reduce the number of filings of Form No. 8 required each year and to provide more time between the closing date of each reporting period and the date by which Form No. 8 must be filed. The Commission proposes to revise Form No. 16 and its instructions to eliminate several line items and required attachments that call for information in more detail than is currently required by the Commission and to reduce the number of copies of the completed form that respondents are required to file. In addition to changes in the forms themselves, the Commission would also make corresponding changes to the regulations at 18 CFR 260.11 and 260.12 that prescribe Form No. 8 and Form No. 16, respectively.

DATE: Comments must be filed by 4:30 p.m. EST on June 28, 1985.

ADDRESS: Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket No. RM85-13-000. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8565.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise FPC Form No. 8, "Underground Gas Storage Report," FERC Form No. 16, "Report of Gas Supply and Requirements," the instructions thereto, and the regulations at 18 CFR 260.11 and 260.12 that prescribe those forms, respectively.[1] The revisions would eliminate the reporting of certain information that is not needed by the Commission for decision making purposes.

II. Background

Form No. 8 solicits information from interstate natural gas pipeline companies that operate underground natural gas storage fields. The information collected is used to assess the total amount of storage gas in the United States. For that purpose, Form No. 8 requests that responding companies provide information regarding injections and withdrawals of: (1) Gas belonging to those companies and gas belonging to others, into and from reservoirs operated by the companies, and (2) gas belonging to the companies, into and from reservoirs operated by others.

The data solicited by Form No. 16 is used by the Commission to assess the

[1] The proposed Form No. 8 and Form No. 16 (Appendices A and B, respectively) are not being printed in the **Federal Register** or the *Code of Federal Regulations*. Copies of the proposed forms, including all instructions to the forms, are available at the Division of Public Information, Room 1000, 825 North Capitol Street, Washington, D.C. 20426. (202) 357-8118.

actual and anticipated supply and requirements of interstate natural gas pipeline companies. The collected data is used by Commission staff in the analysis of certificate applications and rate cases filed with the Commission. The Form No. 16 information also aids the Commission in developing programs to address supply surpluses as well as shortages. The form collects information twice yearly on interstate pipelines' actual gas supply sources and requirements for the past year and their projected gas supply sources and requirements for the coming year. In addition to the overall figures on the respondents' gas sources and requirements, Form No. 16 requests specific information used in arriving at those summary balances. This information covers actual and projected specific sources of supply, storage operations, and deliveries, requirements and net deficiencies for each customers.

III. The Proposed Amendments

A. Overview

This rulemaking proceeding has been initiated as part of the Commission's ongoing program to review its filing requirements, to eliminate the reporting of information that is no longer used for decision making in the regulatory process, and to reduce unnecessary reporting burdens. For this reason, the Commission solicits comments on these proposed changes in information reporting burdens that consider both the Commission's current information needs and any potential future needs for such information in light of on-going changes in gas markets and regulation.[2]

As a result of reevaluating Form No. 8, the Commission proposes to reduce the number of filings of Form No. 8 required each year and to provide more time between the closing date of each reporting period and the date by which Form No. 8 must be filed. The proposed changes to Form No. 8 should result in net reductions in the current burden on the companies required to file the form by providing approximately a 25 percent reduction in the time required to prepare the form.

After reviewing Form No. 16, the Commission proposes to eliminate several line items and required attachments that call for information in more detail than is currently required by the Commission and to reduce the number of copies of the completed form that respondents are required to file. These changes to Form No. 16 would decrease the filing burden by providing approximately at 38 percent reduction in preparation time.

In addition to changes in the forms themselves, the Commission would also make corresponding changes to the regulations at 18 CFR 260.11 and 260.12 that prescribe Form No. 8 and Form No. 16, respectively.

B. Form No. 8

Respondents are currently required to file Form No. 8 a total of 16 times each year. Specifically, Form No. 8 presently must be filed within 5 days of the following dates: the first and fifteenth days of each of the months December through March and the first day of the months April through November. The Commission proposes to amend the instructions to Form No. 8 and section 260.11 of the regulations to reduce the number of filings each year to twelve, one monthly, by eliminating the mid-month filings for the months December through March. This proposal is based on the Commission's conclusion that once-a-month reporting under Form No. 8 during the winter heating season is sufficient to enable the Commission to fulfill its regulatory responsibilities. The Commission also believes that the length of time allowed following the close of each reporting period for the filing of Form No. 8 should be extended from 5 to 10 days. By establishing the tenth day of each month as the filing deadline, the Commission believes that the information included in Form No. 8 would in more instances reflect actual rather than estimated volumes.

C. Form No. 16

The Commission is seeking to limit the information required to be filed on Form No. 16 to that necessary to ensure fulfillment of its regulatory responsibilities by eliminating several attachments currently required to be filed by respondents with Form No. 16. For the same reason, the Commission proposes to revise Schedules I and V of Form No. 16 so that respondents no longer would be required to report the various subtotals of gas deliveries used to arrive at the total volumes of gas delivered in the past year and projected to be delivered in the next year from sources other than system supply. Also, the Commission proposes to amend the instructions to Form No. 16 and section 260.12 of the regulations to reduce the number of signed copies of Form No. 16 required to be sumitted from 6 to 4 copies in order to reduce respondents' burdens. Certain non-substantive revisions would be made to clarify the instructions to Form No. 16 and reflect changes made elsewhere therein.

The proposed changes to Form No. 16 are indicated in the following table.

FERC FORM NO. 16.—REPORT OF GAS SUPPLY AND REQUIREMENTS

Schedule	Proposed changes
Schedule I, summary of actual supply, requirements, and net deficiency or surplus.	Insert new line 13 for continued reporting of total deliveries to customers from sources other than system supply. Eliminate seperate reporting of subtotals for deliveries of: Other purchases (line 13), fuel oil displacement gas (line 14); and other gas (line15). Eliminate attachment II: Other purchases for system supply (identifies sellers for previous year in exempted and self-implemented purchases). Eliminate Attachment III: Distributor or customer self-help gas (identifies other firms' sales to respondent's customers in previous year)
Schedule II, actual sources of supply adjusted for losses.	Eliminate attachment I: Producing areas (identifies supplies from each producing area in each month of previous year).
Schedule III, actual storage operations.	Eliminate Attachment I: Field names (identifies supplies in each storage field in each month of previous year). Eliminate attachment II: Adjustments or changes to storage volumes (identifies types and volumes of adjustments each month in previous year).
Schedule IV, actual deliveries, requirements, and net deficiency or surplus.	No proposed changes.
Schedule V, summary of projected supply, requirements, and net deficiency or surplus.	Insert new line 13 for reporting of total projected deliveries to customers from sources other then system supply. Eliminate seperate reporting of subtotals for projected deliveries of: other purchases (line 13); fuel oil displacement gas (line 14); and other gas (line 15). Eliminate attachment II: Other purchases for system supply (identifies projected sellers for upcoming year in exempted and self-implemented purchases). Eliminate attachment III: Distributor or customer self-help gas (identifies other firms' projected sales to respondent's customers in upcoming year).
Schedule VI, projected sources of supply adjusted for losses.	Eliminate attachment I: Producing areas (projects supplies from each producing area in each month of upcoming year).
Schedule VII, projected storage operation.	Eliminate attachment I: Field names (projects supplies in each upcoming year). Eliminate attachment II: Adjustments or changes to storage volumes (projects types and volumes of adjustments each month in upcoming year).
Schedule VIII, projected deliveries, requirements and net deficiency by customers.	No proposed changes.
Schedule IX, footnote data.	No proposed changes.

IV. Paperwork Reduction Act Statement

The proposed revisions to the information collection provisions set

[2] The Commission has recently issued two notices of inquiry into the effects on the natural gas industries of the Congressionally mandated transition to competitive pricing of natural gas at the wellhead. Interstate Transportation of Gas for others, 50 FR 114 (Jan. 2, 1985), and Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985).

forth in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1310.12 (1984). Interested persons can obtain information on these proposed revised information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20406. (Attention: Jack O. Kendall (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Certification of no Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602 (1982), requires certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Some of the entities that store gas in underground reservoirs and are therefore currently required to file Form No. 8 are small entities. However, the proposed revisions relating to Form No. 8, which would extend the filing deadline and reduce from 16 to 12 the number of filings required each year, would reduce for all respondents the burden in filing that form. In addition, all the companies required to file Form No. 16 are interstate pipelines, none of which are small entities. Furthermore, the proposed rule would reduce for all respondents the burden of filing Form No. 16 because of the proposed elimination of several attachments required to be filed with the form and a decrease in the number of copies of the form required.

VI. Written Comment Procedure

The Commission invites interested persons to submit written data, views and other information concerning the changes to Form No. 8 and Form No. 16 that are set out in this notice. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20406 and should reference Docket No. RM85–13. An original and 14 copies of such comments should be filed with the Commission by June 28, 1985.

All written submissions to this rulemaking will be placed in the Commission's public file and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

List of Subjects in 18 CFR Part 260

Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Form No. 8 and Form No. 16 as set forth in the Appendices, and Part 260 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 260—[AMENDED]

1. The authority citation for Part 260 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Exec. Order 12,009, 3 CFR 142 (1978).

2. In § 260.11, paragraph (b) is revised to read as follows:

§ 260.11 Form No. 8, Underground Gas Storage Report.

* * * * *

(b) Each person found by the Commission to be a natural gas company, as defined by the Natural Gas Act, as amended, including any jurisdictional affiliate, as defined in § 157.40(a)(3) of the Commission's regulations, that operates an underground natural gas storage field located in the United States must prepare and file with the Commission by the tenth day of each month an original and four copies of Underground Gas Report, FPC Form No. 8. Parts IV, V, VI and VII (Sheet Nos. 2 and 3) of FPC Form No. 8 are only required to be completed for the initial filing of FPC Form No. 8, and thereafter whenever any changes or additions of information initially reported are made.

§ 260.12 [Amended]

3. In § 260.12, paragraph (b) is amended by removing the word "six" and inserting, in lieu thereof, the word "four".

FR Doc. 85–11617 Filed 5–13–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Zion National Park, UT; Oversize Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed regulation revises and deletes portions of an existing special regulation that establishes road use and convoy requirements for large vehicles using the Zion-Mt. Carmel tunnel road in Zion National Park, Utah. This road receives substantial levels of use by buses and other large vehicles. There are two tunnels on this road that were constructed in the 1930's and that do not accommodate two lanes of traffic safely if large vehicles are involved; the road system itself is narrow with numerous tight curves; bridges carry a Federal Highway Administration rating that is marginal for larger trucks. In the interest of public safety, certain large vehicles must be escorted by National Park Service (NPS) convoy. The existing convoy requirements and fees have not been changed since 1970 and therefore do not reflect current road and traffic conditions, changes that have occurred in large recreational vehicle specifications nor the increased cost to the NPS of providing convoy services.

The NPS proposes to delete the portion of the existing regulation that contains size restrictions for vehicles traveling on the Zion-Mt. Carmel tunnel road so that the park superintendent may revise those requirements locally pursuant to authority provided to establish public use limits and subject to the requirement to provide public notice. This revision would allow a greater number of vehicles to proceed on this road without a convoy and would provide the superintendent greater flexibility to revise vehicle size limits in the future to respond more rapidly to changes in visitor use patterns, traffic situations and local weather and road conditions. The NPS also proposes to raise the fee charged for a convoy from $5 to $15 to recover the costs associated with providing the personnel and equipment necessary to provide this service which typically lasts approximately one hour.

DATES: Written comments will be accepted until June 13, 1985.

ADDRESS: Comments should be addressed to: Superintendent, Zion National Park, Springdale, UT 84767.

FOR FURTHER INFORMATION CONTACT: Roger Rudolph, Chief Park Ranger, Zion National Park, Springdale, UT 84767, Telephone: 801-772-3256.

SUPPLEMENTARY INFORMATION:

Background

The Zion-Mt. Carmel tunnel road was built by the Federal government in the late 1920's and early 1930's to provide a link through Zion National Park between two sections of Utah State Route 9 built on either side. Very few roads existed in that area then, or do now, and the road provides a convenient access between the small communities of Springdale and Mt. Carmel as well as vehicle access for park visitors. In 1959 the National Park Service (NPS) developed a special regulation to control large truck traffic on the tunnel road; the regulation was amended in 1970. Use of the tunnel road by large vehicles such as motorhomes, buses, travel trailers and a few trucks has increased significantly over the years, with vehicles becoming larger as well. The tunnel road severely restricts the size of vehicles that can be negotiated over it safely because of its lane widths in the tunnels (10'), low clearance in the tunnels (11'6"), low bridge weight limits and severe curves. Total visitation to the park has increased over 50% since 1970. On a typical summer day, numerous buses and motor homes exceeding the current height limitations travel the tunnel road. The present regulation restricts truck use so that it remains low and consists mainly of vehicles associated with local businesses; alternate routes around the park are available for vehicle operators who do not wish to be escorted and pay the fee or whose vehicles exceed the physical limitations of the roadway.

This revision will delete all specific vehicle size limitations from 36 CFR 7.10 in favor of the park superintendent's using the authority in 36 CFR 1.5 to establish public use limits without a formal rulemaking. By using this authority, the superintendent can have greater flexibility to establish and then change, in the interest of public safety, vehicle size and weight restrictions that accurately reflect and respond to local requirements and road conditions as well as changing patterns of public use, visitation and local transportation. The public would be assured of appropriate opportunities for participation in the establishment of such restrictions through the public notice requirements of 36 CFR 1.7. The net result of this revision will be to allow a greater number of large vehicles to negotiate the tunnel road without a convoy by relaxing existing vehicle size restrictions which are outdated. A permit and payment of convoy fees would be required only of operators of large vehicles that exceed the new size restrictions and who wish to travel through the park nevertheless. Such vehicles would typically be semi-tractor trailers or vehicles towing excessively long recreational trailers.

The NPS also proposes as part of this rulemaking to increase the fees charged for a required vehicle convoy from $5 to $15. A typical convoy involves one park ranger in a marked patrol vehicle escorting the oversized vehicle for a distance of 16 miles, a procedure that usually lasts one hour. This increase is proposed in order for the NPS to recover the costs of providing the service. Federal, State and local government vehicles will still be subject to permit and convoy requirements, but will not be required to pay convoy fees.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following National Park Service employees participated in the writing of this regulation: Larry E. Florea, formerly of Zion National Park; Roger Rudolph of Zion National Park; and Andy Ringgold of the Branch of Ranger Activities, Washington, D.C.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The National Park Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising § 7.10 to read as follows:

§ 7.10 Zion National Park.

(a) *Vehicle convoy requirements.* (1) An operator of a vehicle that exceeds load or size limitations established by the superintendent for the use of park roads may not operate such vehicle on a park road without a convoy service provided at the direction of the superintendent.

(2) A single trip convoy fee of $15 is charged by the superintendent for each vehicle or combination of vehicles convoyed over a park road. Payment of a convoy fee by an operator of a vehicle owned by the Federal, State or county government used on official business is not required. Failure to pay a required convoy fee is prohibited.

Dated: April 19, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11582 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-07; Notice 1]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, by modifying the test rig used to test air brakes on trailers and adjusting its timing, by making corresponding adjustments in the actuation and release times for air brakes on trailers and towing vehicles, and by setting actuation and release times at the control line coupling of towing vehicles. The present test rig, which delivers air much more rapidly than actual tractors do, has prompted the trailer manufacturers to use half-inch brake tubing in control lines instead of three-eighths-inch tubing. The agency's research suggests that the smaller tubing may provide somewhat faster actuation and release times in real-world braking events, with a corresponding reduction in stopping distances. The proposed increases in the actuation and release times of the test rig will give the manufacturers greater flexibility in their choice of tubing. The proposed requirement for control line coupling times in intended to ensure that the control lines in towing vehicles act quickly enough to balance the actuation and release times of the towed vehicles with those of the towing vehicle.

DATES: Comments must be received by June 28, 1985. If adopted, the proposed amendments would become effective one year after publication of the final rule in the **Federal Register**. Manufacturers would be permitted to comply voluntarily with the amended requirements upon publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket Room hours 8 a.m.–4 p.m.).

FOR FURTHER INFORMATION CONTACT: James Clements, Office of Vehicle Safety Standards, Room 5319, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426–1714.

SUPPLEMENTARY INFORMATION: When NHTSA began the development of a standard for air brake systems, in the early 1970's, one of the questions the agency faced was how to test the brakes of vehicles that were designed to operate in combination with other vehicles. It was clear that there should be a balance among the brakes of all the vehicles in a combination, and that the performance requirements should achieve that balance. However, it was necessary to devise suitable tests.

From the outset, timing was known to be a significant factor in the brake balance of vehicle combinations. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying a force on the kingpin connecting the trailer to the tractor that may reduce the stability of the combination. Accordingly, when the agency proposed actuation and release times for truck brakes, it proposed equivalent times for trailer brakes. The timing test for truck brakes was simple: a small air reservoir, with a volume roughly equal to the volume of a trailer's control air line, was attached to the truck's control line coupling. The truck's brakes were then actuated and released.

The timing test for trailers was somewhat more complicated. Rather than employ a control line from an actual tractor to actuate the trailer brakes, the agency adopted a test rig dervied from SAE Recommended Practice J982. The rig consisted essentially of two air reservoirs, one for a supply line and one for a control line, with each line connected to a coupling that could fit the corresponding coupling on a trailer. The control line ran through a brake control valve, analogous to the treadle valve in an actual truck, which was used to apply the brakes in the trailer. A rig of this design had the advantages of simplicity and convenience, since the manufacturers could install such test rigs adjacent to their assembly lines for in-plant testing of trailer brakes. The trailer test rig is shown as Figure 1 in FMVSS 121.

At first, NHTSA did not specify performance characteristics for the trailer test rig. However, after petitions pointed out that the agency's compliance tests might prove inconclusive if a manufacturer could show conformity on a faster test rig, the agency adopted the actuation and release time suggested by the petitioners. These times reflected the performance of test rigs in use by the manufacturers, and were significantly faster than the times for tractors in use on the road. As presently specified in S6.1.13, the actuation time for the trailer test rig, from atmospheric to 60 p.s.i., is 0.06 seconds, and the release time, from 95 p.s.i. is 0.22 seconds.

To adjust for the test rig's faster actuation time, NHTSA set an actuation time for trailer brakes that was faster than the time for the towing vehicles. As presently specified in S5.3.3., the actuation time for the brakes of a trailer, from atmospheric to 60 p.s.i., is 0.30 seconds, compared to the actuation time of 0.45 seconds for trucks and buses.

As the trailer manufacturers converted their vehicles to meet the requirements of FMVSS 121 and began to use the trailer test rig, they found that control line tubing with an exterior diameter of one-half inch produced faster actuation times than did smaller tubing. Although the larger tubing is more expensive, concerns about compliance have prompted its use in almost all trailers.

During the course of its testing programs on air-braked vehicles at the Vehicle Research Test Center (VRTC), NHTSA has found that the half-inch control line tubing, despite its advantages in tests using the trailer test rig, produces *slower* actuation times than three-eights-inch tubing in some vehicle combination. This phenomenon appears to results from the tendency of the larger tubing to act as a reservoir at rates of air delivery slower than that of the trailer test rig. In a series of actuation tests at progressively slower air delivery times, using both half-inch and three-eights-inch tubing in the contol line, the agency has found that the advantage of the half-inch tubing vanishes as the times reach the range typical for trucks. As the times continue to increase, the advantage shifts in favor of the smaller tubing.

These tests suggest that in acutal use the brakes on trailers may be actuating more slowy than anticipated, and that in some combinations they may be actuating considerably later than the tractor brakes. Measurements of trailer kingpin forces during braking tests at the VRTC support the view that slower trailer actuation times have a significant effect on the magnitude of the forces acting on the kingpin, with potential consequences for the stability of the combination.

In view of its experience at the VRTC, NHTSA is proposing to amend the specifications for the trailer test rig in S6.1.13 to bring its performance more in line with that of actual tractors. In place of the rapid actuation and release times now specified (0.06 and 0.22 seconds),

the agency is proposing an actuation time of 0.35 seconds and a release time of 0.70 seconds. These times are within the range of times observed in the trucks tested at the VRTC, and should ensure that the air flow characteristics of the test rig would be more representative of the conditions experienced on the road.

In addition to the new timing specifications, NHTSA is proposing to modify the trailer test rig itself. In place of the schematic drawing in Figure 1, the agency is proposing a more detailed layout, with metering valves and other plumbing changes that should permit better control of trailer test conditions. If adopted, the revised trailer test rig would be used by NHTSA and its test contractors for all compliance tests under S5.3.3 and S5.3.4.

A final proposal relating to the trailer test conditions would be to specify the reservoir pressures in the test fig during brake testing. No pressures are specified under S6.1.13 at present. In the interest of making the test conditions as close to real-world operating conditions as practicable, NHTSA is proposing that the pressure in the test rig reservoirs be set at 100 p.s.i. for actuation tests and 95 p.s.i. for release tests. The test rig would be calibrated at these pressures, and compliance tests would be run at the same pressures.

If adopted, the proposed changes in the timing of the trailer test rig would necessitate changes in the actuation and release times for trailers under S5.3.3 and S5.3.4. On the basis of its testing at the VRTC, NHTSA considers an increase in the actuation time from 0.30 seconds to 0.50 seconds and an increase in the release time from 0.65 seconds to 1.00 seconds to be satisfactory adjustments for trailers tested on the modified test rig. Although the test rig actuation time would be increased by 0.29 seconds (from 0.06 seconds to 0.35 seconds), tests with the modified test rig suggest that trailers can readily achieve an actuation time that is only 0.20 seconds slower than the time presently required under S5.3.3. By contrast, the increase in the release time (0.35 seconds) is greater than the increase in the test rig timing (0.16 seconds). This reflects NHTSA's view that trailer release times that are slightly slower than the release time for towing vehicles do not degrade the stability of combination vehicles.

The timing of trailer brakes cannot be considered independently of the timing of the brakes for other vehicles in the combination. Presently, S5.3.3 and S5.3.4 specify times for trucks and trailer converter dollies, as well as for trailers. The proposed adjustment in the timing requirements for trailers suggests corresponding adjustments in timing for other vehicles. To promote balance in the brakes in combination vehicles, NHTSA is accordingly proposing an increase of 0.05 seconds in the actuation time for trucks designed to tow other air-braked vehicles, and an increase of 0.15 seconds in the actuation time for trailer converter dollies. The effect of these changes would be that all vehicles designed to operate in combinations would have an actuation time of 0.50 seconds. Other trucks, and buses, would retain the present actuation time of 0.45 seconds.

Upon considering the effects of the modified test rig on the release times of combination vehicles, NHTSA is proposing to increase the release time for trailer converter dollies to 1.00 seconds, the same as the time proposed for trailers. The agency is not proposing to change the release times for other vehicles, which will remain at 0.55 seconds.

To ensure that the air delivery from towing vehicles to towed vehicles is fast enough to actuate the brakes of all vehicles in the combination at the same time, NHTSA is proposing to require minimum air delivery times at the air line couplings of towing vehicles. S5.3.3 and S5.3.4 presently specify that brake actuation and release times for towing vehicles are to be tested with the control air line coupled to a fifty-cubic-inch test reservoir, but neither section specifies a minimum time for the rise or fall of air pressure in the test reservoir. Such times were proposed for the standard in Docket 74-10, Notice 1, issued on March 1, 1974, but the standard was not amended to include such times due to the closeness of the effective dates of the standard at that time. This timing is of particular importance in the case of combinations consisting of more than one towed vehicle. The agency is therefore proposing to require that a truck or bus actuate the test reservoir in 0.35 seconds, and release it in 0.70 seconds. A trailer would be required to actuate the test reservoir in 0.50 seconds and release it in 1.00 seconds.

The intended collective effect of the proposed changes would be to bring the brakes of towing and towed vehicles more nearly into balance. Although the slight increase in actuation times for tractors may lengthen their stopping distance slightly in bob-tail stops, the improved performance of the trailer brakes should more than compensate for this effect in combination stops.

To enable manufacturers to bring their vehicles into compliance with the new timing requirements as expeditiously as possible, the agency is proposing to permit manufacturers to elect to comply with the new requirements upon the publication of the final rule. The rule will become effective for all vehicles one year after publication.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other effects of this rulemaking action are so minimal that a full regulatory evaluation is not required.

Amending FMVSS No. 121 as proposed in this notice would result in some slight increases in the cost of the trailer test rig. The estimated cost of modifying existing rigs would be on the order of $200 each. However, because the manufacturers may now choose to install a smaller, less expensive tubing in their control lines, it is believed that any increase in the cost of the test rig will be exceeded by the savings in the cost of tubing. The proposed requirement for actuation and release times at the air line couplings of towing vehicles could result in cost increases for a manufacturer who needs to reroute air lines or install relay valves in order to meet the proposed times. The benefit would be improved balance between the brakes of vehicles used in combination, with a resulting improvement in accident avoidance.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few motor vehicle manufacturers would qualify as small entities. The smaller manufacturers of trailers would likely not be significantly affected, since the one time cost of improving the trailer test rig would be offset quickly by the savings from installing smaller tubing. Small organizations and governmental units should not be significantly affected since there would be no price increase associated with this proposed action.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant

impact on the qualify of the human environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submissions, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material

Those person disiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571.

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.121, *Air Brake Systems*, be amended as follows:

1. S5. would be revised to read:

* * * * *

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. A vehicle manufactured between [the publication date of the final rule] and [the effective date of the final rule] may comply with the amended requirements of S5.3.3 and S5.3.4 that become effective [the effective date of the final rule].

* * * * *

2. S5.3.3 would be revised to read:

* * * * *

S5.3.3 Brake actuation time. With an initial service reservoir system air pressure of 100 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 p.s.i. in not more than 0.45 seconds in the case of buses and trucks not designed to tow a vehicle equipped with air brakes, 0.50 seconds in the case of trucks designed to tow a vehicle equipped with air brakes, and 0.50 seconds in the case of trailers, including trailer converter dollies. A vehicle designed to tow a vehicle with air brakes shall meet the above actuation time requirement with a 50-cubic-inch reservoir connected to the control line coupling, and shall increase the pressure in such reservoir to 60 p.s.i. in not more than 0.35 seconds, in the case of trucks and buses, and 0.50 seconds in the case of trailers. A trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its brake system connected to the test rig shown in Figure 1.

* * * * *

3. S5.3.4. would be revised to read:

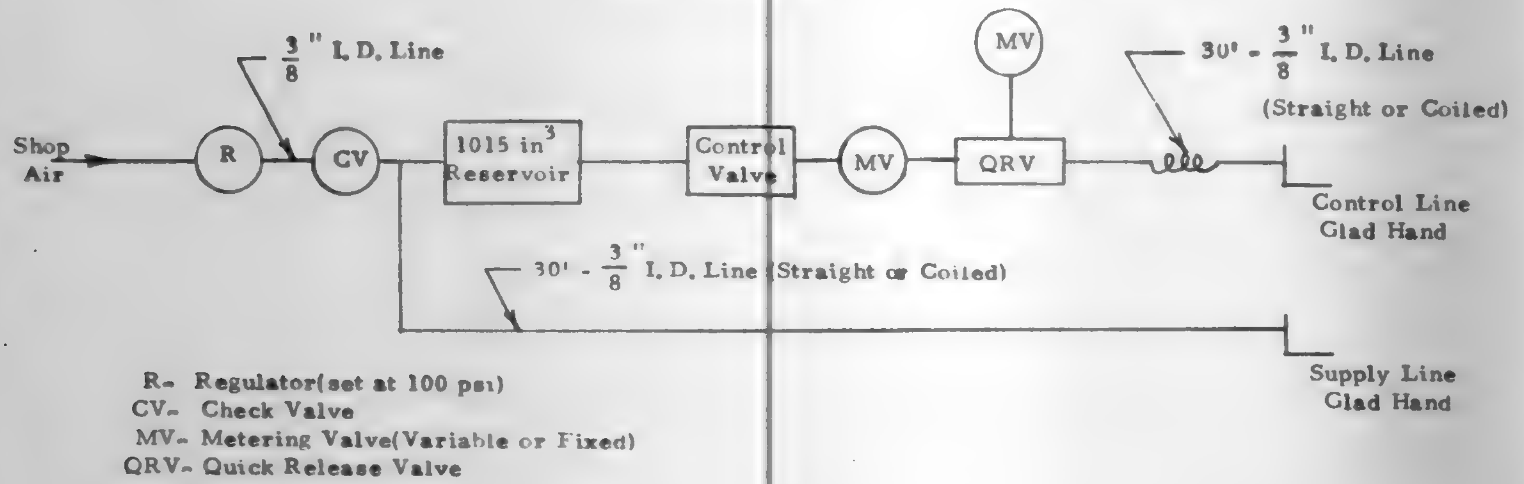
* * * * *

S5. 3.4 Brake release time. With an initial service brake chamber air pressure of 95 p.s.i, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 p.s.i. in not more than 0.55 seconds in the case of trucks and buses, and fall to 5 p.s.i. in not more than 1.00 seconds in the case of trailers, including trailer converter dollies. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservior connected to the control line coupling, and shall release the pressure in such reservoir from 95 p.s.i. to 5 p.s.i. in not more than 0.70 seconds, in the case of trucks and buses, and 1.00 seconds in case of trailers. A trailer, including a trailer converter dolly, shall meet the above release time requirements with its brake system connected to the test rig shown in Figure 1.

4. Figure 1 would be revised as follows:

Figure 1

Trailer Test Rig



5. S6.1.13 would be revised to read:

* * * * *

S6.1.13 The trailer test rig shown in Figure 1 has a reservoir pressure of 100 p.s.i. for actuation tests and 95 p.s.i for release tests. At these reservoir pressures, the trailer test rig increases the pressure in a 50-cubic-inch reservoir connected to the control line coupling from atmospheric to 60 p.s.i. in 0.35 seconds, measured from the first movement of the service brake control, and releases pressure in such a reservior from 95 p.s.i. to 5 p.s.i. in 0.70 seconds, measured from the first movement of the service brake control.

* * * * *

Issued on May 7, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–11517 Filed 5–13–85; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 93
Tuesday, May 14, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Agreement Regarding Flood Control Measures by the Nashville District, Corps of Engineers, in the Cumberland River Basin, KY

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provide information about and invites comments on a proposed Programmatic Memorandum of Agreement that provides for identification, evaluation, and treatment of historic properties in the planning of twelve flood control projects authorized by section 202 of the Energy and Water Development Act of 1981 (Pub. L. 96–367) in the Cumberland River Basin, KY.

Comments Due: Comments must be submitted on or befoe June 13, 1985.

ADDRESS: Executive Director, Advisory Council on Historic Preservation 1100 Pennsylvania Ave., N.W., Room 803, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas F. King, Director, OCRP, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., N.W., Room 803, Washington, D.C. 20004. Phone: (202) 786–0505.

SUPPLEMENTARY INFORMATION: The Council proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulation (36 CFR Part 800) with the Nashvilie District of the Corps and the Kentucky State Historic Preservation Officer. The proposed Agreement provides for coordinating and streamlining phased identification and planning for historic properties with the Corp's design and construction procedures.

The Corp's responsibilities pursuant to section 106 of the National Historic Preservation Act will be fulfilled by implementation of the proposed Agreement. Interested parties are encouraged to obtain a copy of the proposed Agreement from the Council and submit comments.

Robert R. Garvey, Jr.,
Executive Director.

Dated: April 8, 1985.

[FR Doc. 85–11566 Filed 5–13–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-408]

Termination of Countervailing Duty Investigation and Initiation of Countervailing Duty Investigation; Converted Paper-Related School and Office Supplies from Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: Mexico has become a "country under the Agreement." Accordingly, we are terminating our countervailing duty investigation under section 303 of the Tariff Act of 1930, as amended (the Act), and we are initiating a countervailing duty investigation under Title VII of the Act to determine whether manufacturers, producers or exporters in Mexico of converted paper-related school and office supplies receive benefits which constitute subsidies within the meaning of the countervailing duty law.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Haldenstein or Laura Winfrey, Import Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230; (202) 377–4136 or 377–0160.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

On November 16, 1984, we receive a petition in proper form from the Stationery International Trade Committee filed on behalf of the U.S. industry producing converted paper-related school and office supplies. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26) the petition alleges that manufacturers, producers or exporters in Mexico of converted paper-related school and office supplies receive bounties or grants.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation under section 303 of the Act. Therefore, on December 12, 1984, we published a notice of initiation, stating that we would issue a preliminary determination on or before July 24, 1985, if our investigation proceeded normally (49 FR 48347). We presented a questionnaire concerning the allegations to the government of Mexico. We received a response from the government of Mexico and Kimberly-Clark de Mexico, S.A. de C.V. on March 27, 1985.

On April 23, 1985, the Office of the United States Trade Representative announced that Mexico was a "country under the Agreement," as set out in section 701(b) of the Act. As a result Title VII of the Act became applicable to the pending countervailing duty investigation. According to section 102 of the Act, once Title VII becomes applicable, any pending investigation under section 303 of the Act must be terminated. Where an initiation, but not a preliminary determination, has been made under section 303, the case is to be treated as if it were initiated under section 702 on the day Title VII first applied to that country. Therefore, we are terminating the investigation we initiated on December 6, 1984 and are initiating another countervailing duty investigation, effective April 23, 1985.

Scope of Investigation

The products covered by this investigation are converted paper-related school and office supplies, which comprise:

- Typing and filler paper
- Wirebound notebooks and composition books
- Pads

These products are curently classified under item numbers 256.9080, 256.5600, 256.5800, and 256.9040 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Allegations of Subsidies

We are initiating this investigation with respect to the same programs that were included in the initiation of the investigation under section 303 (49 FR 48347).

Notification of ITC

Pursuant to section 702(d) of the Act we are notifying the U.S. International Trade Commission (ITC) of this action and making available to it information we used to arrive at this determination. We will make available to the ITC all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC has 45 days after it receives notice from the Department to determine whether or not there is a reasonable indication that imports of converted paper-related school and office supplies from Mexico cause material injury or threaten material injury to, a U.S. industry. If the ITC's determination is negative, we will terminate this investigation. Otherwise, it will proceed according to the statutory procedures. If the ITC's determination is affirmative, we will issue a preliminary determination on or before December 9, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 9, 1985.

[FR Doc. 85-11585 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Trust International Services Company, Inc. This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230

Comments should refer to the certificate as "Export Trade Certificates of Review, application number 85-00004."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products. Engines and turbines; farm and garden machinery; construction and related machinery; metalworking machinery; special industry machinery; general industry machinery; electric distributing equipment; electrical industrial apparatus; household appliances; electric lighting and wiring equipment; radio and television receiving equipment; communications equipment; electronic components and accessories; miscellaneous electrical equipment and supplies; transportation equipment; and durable and nondurable wholesale goods.

Services. Trade facilitating services in connection with the foregoing Products, including matching buyer with seller; furnishing short, medium and long-term financing; placement of marine, casualty and war risk insurance; coordinating the shipment of products and other transportation services; building construction; special trade construction contracting; processing documentation; providing ancillary services; market analysis and research; countertrade services; and consulting.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Trust International may:

(a) Enter into any number of nonexclusive agreements with individual buyers in the Export Markets or with individual Suppliers to act as a Sales Representative or Broker for Products and related Services in export trade.

(b) Enter into agreements with individual Suppliers for Products and related Services in export trade each wherein:

(1) Trust International agrees to serve as the Supplier's exclusive Sales Representative and in addition, may agree not to represent any competitors of such Supplier unless authorized by the Supplier; or

(2) The Supplier agrees not to sell, directly or through any other intermediary, into the Export Markets in which Trust International exclusively represents the Supplier; or

(3) Both (1) and (2) above.

(c) Enter into exclusive agreements with Export Intermediaries wherein Trust International agrees to pay competitive commissions or other compensation, and wherein (1) Trust International agrees to deal in Products and related Services in the Export Markets only through that Export Intermediary, or (2) that Export Intermediary agrees not to represent Trust International's competitors in the Export Markets or not to buy from Trust International's competitors for resale in any Export Markets, or (3) both (1) and (2).

(d) Establish price, quantity, territorial and customer restrictions for Products to be sold in the Export Markets for Trust International's own account or on behalf of an individual Supplier.

(e) Enter into exclusive or nonexclusive agreements, each with respect to a particular transaction, with individual buyers in the Export Markets to act as a Purchasing Agent for Products and related Services in export trade.

(f) Upon receiving a request from a buyer in the Export Markets for the price of a particular Product, Trust International may ask one or more Suppliers individually to supply a price quotation to Trust International for that Product (provided, that Trust International not reveal to any Supplier the quotation of any other Supplier or

the identity of the other Supplier that provided the quotation), add its own markup to the Supplier's price, and transmit a price quotation to the buyer. Upon placement of an order by a buyer, Trust International may purchase the Product and ship to the buyer.

(g) As Trust International becomes aware of invitations to bid or other sales opportunities in the Export Markets, Trust International may contact individual Suppliers of the various or similar Products specified in the invitation to bid or purchase specifications, and invite the Suppliers to supply independent quotations to Trust International for the Products, provided, that Trust International not reveal to any Supplier the quotation of any other Supplier or the identity of the other Supplier that provided the quotation. Trust International may enter into independent agreements with individual Suppliers whereby Trust International will submit a response to the bid invitation or request for quotation.

Definitions

For purposes of this certificate, the following terms are defined:

(1) "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of related Services for export sales in the Export Markets.

(2) "Sales Representative" means an intermediary who represents a Supplier of Products in the Export Markets and who, in so acting, offers, provides or engages in some or all of the related Services.

(3) "Broker" means an intermediary who locates buyers of Products in the Export Markets for Suppliers or who locates Suppliers of Products for buyers in the Export Markets on a straight commission or cost-plus basis, and who, in so acting, offers, provides or engages in some or all of the related Services.

(4) "Purchasing Agent" means an intermediary who locates Products for purchase, gives advice on or chooses among prospective Suppliers, advises on or negotiates prices, quantities, or other purchase terms and conditions, and purchases Products for its own account or for the account of others, and who, in so acting, offers provides, or engages in some or all of the related Services.

(5) "Suppliers" means a person who produces, supplies, or sells a Product or related Services.

(6) "Agreements with individual Suppliers (buyers)" means that the agreements and negotiations have been entered into independently of, are not related to, and do not exist because of agreements or nogotiations with other Suppliers (buyers).

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: May 9, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-11615 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held Wednesday, May 29, 1985 at 1:00 p.m., Herbert C. Hoover Building, Room 4803, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: May 9, 1985

Ronald I. Levin,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-11659 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Dall's Porpoise; Availability of Final Action Plan

Pursuant to Section 14(b)(2) of the North Pacific Fisheries Act of 1954 as amended (16 U.S.C. 1021 *et seq.*), the National Marine Fisheries Service has released to the general public its Final Action Plan for Dall's Porpoise for 1985. The Plan describes research studies conducted on Dall's porpoise, research plans for 1985, and management measures taken to reduce the incidental take of this species in the Japanese high seas salmon fishery.

Copies of this report are available from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: May 8, 1985.

Carmin J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11627 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Brent Stewart, Hubbs Marine Research Institute

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Brent S. Stewart (P278B), Hubbs Marine Research Institute.

b. Address: 1700 South Shores Road, San Diego, California 92109.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Pacific Harbor Seals (*Phoca vitulina richardii*) 60/year.

4. Type of Take: Up to sixty (60) harbor seals will be captured, restrained, blood samples taken, tagged (up to 20 with radio tags) and marked per year.

5. Location of Activity: San Nicolas Island, California.

6. Period of Activity: 4 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-11629 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Correction

In **Federal Register** Volume 50, Number 75, published April 18, 1985, page 15472, Column 2, Item 1.b. reads:

"Address: 8410 Owen Circle, Anchorage, Alaska 99502".

It should read:

"Address: P.O. Box 4885, Anchorage, Alaska 99510".

Dated: May 8, 1985.

Carmin J. Blondin,

Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-11628 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation Import Restraint Levels for Certain Cotton Textile Products Produced or Manufactured in Brazil

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 15, 1985. For further information contact Ann Fields, International Trade Specialist, (202) 377-4212.

Background

On April 1, 1985, a notice was published in the **Federal Register** (50 FR 12845) which established import restraint levels for cotton and man-made fiber textile products in Categories 315 (printcloth), 317pt. (sateen fabrics in TSUSA items 320.— through 331.— with statistical suffixes 50, 87 and 93), knit shirts in Category 338/339, dressing gowns in Category 350, sheets in Category 361, terry and other pile towels in Category 363, and acrylic spun yarn in Category 604pt. (only TSUSA 310.5049), produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985.

It has been decided that, except for man-made fiber textiles in Category 604pt. (only TSUSA 310.5049), restraints will not be established at this time. However, CITA reserves the right to establish these restraints if no solution is reached in consultations with Brazil by May 31, 1985. Accordingly, the letter which follows this notice, cancels the import restraint levels established for Categories 315, 317pt., 338/339, 350, 361 and 363. The control level for Category 604pt. (only TSUSA 310.5049) will remain in effect until further notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 9, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Effective on May 15, 1985, this directive cancels and supersedes that part of the directive of March 27, 1985, which established import restraint levels for cotton textile products in Categories 315, 317pt., 338/339, 350, 361 and 363, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985. The level established for man-made fiber textiles in Category 604pt. (only TSUSA 310.5049) should be maintained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11586 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisons of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been changed to include 11 June (See 50 FR 15603; April 19, 1985).

DATES: 10-11 June 1985 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Based Collection and Reconnaissance.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense

May 9, 1985.

[FR Doc. 85-11598 Filed 5-13-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Cancellation of Closed Meeting

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee Microelectronics and Computers Panel, scheduled for 9 May 1985, that was announced in the **Federal Register** on Tuesday, 16 April 1985 (50 FR 14959) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 9, 1985.

[FR Doc. 85-11599 Filed 5-13-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 3, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Biotechnology Readiness for Man in Space will meet May 28–30, 1985 at Headquarters, Space Command, Chidlaw Building, Colorado Springs CO from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting will be to identify potential military roles for humans in space and to assess the readiness (on a technology by technology basis) of the USAF to handle space related biotechnology problems.

The meeting concerns matters listed in section 552(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–11559 Filed 5–13–85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 30, 1985.

The USAF Scientific Advisory Board Weapons Panel will meet at Eglin AFB, Florida, Building 1, Room 204, on May 29 and May 30, 1985, from 9:00 AM to 5:00 PM, to review Air Force weapon development programs.

This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at, (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–11560 Filed 5–13–85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Armed Forces Epidemiological Board Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board.

Date of meeting: 7 June 1985.

Time: 0845—1600 hours.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda:

Information retrieval methodology for Navy inpatient records; chemoprophylazis programs for selected infectious diseases; military immunization in 1985; infection control in Air Force dentistry; deaths in Air Force recruits—a twenty year review; military services preventive medicine officer reports; respective subcommittee(s) report and business meeting.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG–AFEB, Room 2D455, Pentagon, Washington, DC 20310–2300, (202) 695–9115.

Dated: May 6, 1985.

Robert F. Nikolewski,

Col, USAF, BSC, Executive Secretary.

[FR Doc. 85–11613 Filed 5–13–85; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board Subcommittee on Disease Control.

Date of meeting: 6 June 1985.

Time: 0900—1600 hours.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda:

A review of malaria chemoprophylaxis policies; selective update on medical research and development.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG–AFEB, Room 2D455, Pentagon, Washington, DC 20310–2300, (202) 695–9115.

Dated: May 6, 1985.

Robert F. Nikolewski,

Col, USAF, BSC, Executive Secretary.

[FR Doc. 85–11614 Filed 5–13–85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Advisors to the President, Naval War College, Newport, RI; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the President, Naval War College, will meet on May 30, 1985, in Room 210, Conolly Hall, Naval War College Newport, Rhode Island. The meeting will commence at 8:30 a.m. and terminate at approximately 4:30 p.m. The purpose of the meeting is to elicit the advice of the Board of educational, doctrinal, and research policies and programs of the Naval War College. The agenda will consist of a number of presentations to the Board on the curriculum and programs of the Naval War College. This meeting is open to the public. For further information concerning the meeting contact: Mrs. Mary Guimond, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02841–5010. Telephone number (401) 841–2245.

Dated: May 9, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–11602 Filed 5–13–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education, DOE.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 12–14, 1985.

ADDRESS: The Copley Plaza Hotel, 138 St. James Ave., Copley Square, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 500, Washington, D.C. 20036, Telephone: (202) 634-6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council meeting will begin on June 12 at 2:00 P.M. to 4:30 P.M. and continue with a dinner meeting from 7:00 P.M. to 9:00 P.M., and then from 8:30 A.M. to 5:00 P.M. on June 13 and from 8:30 A.M. to 12:00 Noon on June 14, 1985.

The proposed agenda includes:

—Reauthorization of the Higher Education Act
—Inventory of Federal programs
—Council/CERI–OECD Conference Plans
—Legislative Update
—Council's Annual Report
—Other business

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 500, Washington, D.C.

Signed at Washington, D.C., on May 7, 1985.

William G. Shannon,
Executive Director.

[FR Doc. 85-11578 Filed 5-13-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of Additional Information for the Transmittal of Applications for Grants for Institutional Operations for NIE Research and Development Centers.

SUMMARY: The Secretary of Education (the Secretary) announces the results of his review of research priorities for the NIE research and development center (center) competitions and provides additional information to prospective applicants.

FOR FURTHER INFORMATION CONTACT: Raymond F. Wormwood, Chief, Contracts and Grants Management Division, National Institute of Education, 1200 19th Street, N.W., Washington, D.C. 20208, telephone (202) 254-5080.

SUPPLEMENTARY INFORMATION:

Background

The Secretary provides additional information to applicants for grants to operate a center under the Regional Educational Laboratories and Research and Development Centers Program. Additional information is limited to the research areas of centers and the budgetary targets for five of the centers.

Authority for these grants is contained in section 405(f) of the General Education Provisions Act (GEPA), as amended (20 U.S.C. 1221e(f)).

On October 12, 1984, the Secretary published in the **Federal Register** an application notice for the transmittal of applications for planning grants and grants for institutional operations for centers (49 FR 40079). In the case of five-year grants for institutional operations, the Secretary had requested applications by June 6, 1985.

Subsequently, the Secretary published a notice in the **Federal Register**, announcing a meeting of scholars to discuss educational research priorities to be held April 17, 1985 (50 FR 13062, April 2, 1985). In that notice, the Secretary stated that no changes would be made in the eleven missions of centers but that the Secretary might provide additional guidance to prospective applicants on more specific research areas in the **Federal Register**. In anticipation of the possibility that additional information would be provided, a **Federal Register** notice was published extending the closing date to August 15, 1985, for transmittal of applications for institutional operations for centers (50 FR 14006, April 9, 1985).

After considering the April 17, 1985 discussion on educational research priorities, the Secretary is providing the following guidance concerning how applicants might best achieve the missions and priorities established for these competitions. The Secretary strongly encourages applicants to utilize the information provided in this notice in preparing applications. Applications previously submitted in response to the June 6 deadline date may be revised by the new closing date.

Program, information regarding eligibility requirements, selection criteria, post-award requirements, and length of awards, as well as requirements for the transmittal of applications, were given in the October 12, 1984 notice and remain unchanged. In addition, no changes will be made in the eleven missions identified in the October 12, 1985 notice.

Grant information packages, including application forms and a copy of the application notice mentioned above, may be obtained by contacting Susan Klein (telephoe: (202) 254-6271) or Gail MacColl (telephone: (202) 254-7930), National Institute of Education, 1200 19th Street, N.W., Washington, D.C. 20208. Originally released in October 1984, these packages provide current information to applicants, with the sole exception of the change in closing date included in the April 9, 1985 notice, and the additional information included in this notice.

Prospective applicants and other interested individuals and organizations not already on NIE's mailing list for laboratory and center competitions may request to be kept informed of new information on the center competitions by contacting Mrs. Ella Jones, National Institute of Education, 1200 19th Street, N.W., Washington, D.C. 20208. Telephone: (202) 254-7180.

Nothing in this notice is intended to impose any requirement with respect to paperwork, the content of applications, reporting, or grantee performance beyond those imposed by the statute and regulations.

Additional Information for Applicants (General)

The Secretary encourages applicants to place a general emphasis in their proposed projects and activities on the following:

—Content-related studies, especially with respect to the Center on Learning; the Center on Student Testing, Evaluation, and Standards; the Center on Effective Elementary

Schools; and the Center on Effective Secondary Schools.

—Projects aimed at providing state-of-the-art syntheses and international comparisons of education.

—Projects aimed at middle schools and learning among adolescents, especially with respect to the Center on Teacher Education, the Center on Learning, the Center on Effective Elementary Schools, and the Center on Effective Secondary Schools.

—Collaboration on crosscutting study topics, especially among the Center on Effective Elementary Schools, the Center on Effective Secondary Schools, the Center on Teacher Education, and the Center on Postsecondary Teaching and Learning, but also between and among other centers and researchers as appropriate.

—Projects that recognize that an educational reform movement of massive proportions is underway at the State and local level, and that this movement constitutes an important opportunity to develop studies in which State and local efforts to improve education across the country can be compared and analyzed for their effectiveness.

Additional Information for Applicants (Specific Centers)

The Secretary strongly encourages applicants to adopt the following emphases within specific mission areas.

Center on Teacher Education

The Secretary wishes to emphasize research which contributes to improving and strengthening teacher preparation programs, and investigations of innovative and/or alternative programs. The Secretary encourages applicants to propose projects and activities which demonstrate sensitivity to the diverse philosophies of teacher education and a balanced concern for the acquisition of subject-matter knowledge and professional knowledge by teachers.

Applicants are encouraged to examine different models of teacher preparation and certification, such as the conventional four-year undergraduate program, the alternative certification approach, and the "fifth-year" approach, as well as questions about *what* teachers should know before they begin to teach and *how* to determine that knowledge.

Because some teachers remain in schools for only a few years and others for a full career, consideration should be given to training which is especially oriented to individuals who may follow one or the other of these paths. Other career paths may also be identified. Moreover, the Secretary emphasizes the need for continuing education of practicing teachers to keep pace with advances in their subject area, the teaching profession, and intellectual life.

Applicants are encouraged to consider the extent to which revised teacher certification requirements might change the roles of different types of institutions in the preparation of teachers.

In satisfying the post-award requirement to collaborate (34 CFR 708.41(c)), applicants are encouraged to coordinate closely with the Center for Teacher Quality and Effectiveness, as well as with other teacher-related research supported by NIE and others across the nation. This could include, for example, collegial planning of research agendas; jointly undertaken research, conferences, and dissemination; and the regular exchange of project results.

Center on Teacher Quality and Effectiveness

In considering the increasing competition for talent among all sectors of the economy, applicants are encouraged both to look at the extent to which the need for new and additional teachers in the nation's schools over the next decade may create pressures for teacher education institutions and programs to lower standards, and to study more appropriate alternatives. One approach might be to explore new teaching roles that take advantage of and build on the strengths of both the existing and emerging talent pools.

With regard to policies governing the profession, applicants are encouraged to consider the question of how teaching can become a more professional career. Applicants are encouraged to examine the "state of the profession" and how best to enhance it over time. A related issue that applicants are encouraged to consider is the extent to which bureaucratization of schooling affects professional behavior of teacher.

While applicants are encouraged to propose work that maintains continuity of inquiry over time, they are also encouraged to provide a design that will be sufficiently flexible for the center to respond to rapidly developing changes in this field, particularly as they are influenced by current State and local educational reform efforts.

As noted previously, applicants are encouraged to coordinate proposed projects and activities with those of the Center of Teacher Education, as well as with other teaching-related research supported by NIE and others across the nation. This might include, for example, collegial planning of research agendas; jointly undertaken research, conferences, and dissemination; and the regular exchange of project results.

Center of Student Testing, Evaluation, and Standards

The Secretary wishes to emphasize testing and evaluation in the core subjects. Applicants are encouraged to consider research on testing that increases understanding of how to measure content mastery and achievement.

The mission statement emphasizes, for the most part, testing issues at the local level. Applicants are encouraged also to consider proposing research that focuses on issues of assessment, evaluation, and standards at the State level, particularly as those affect the improvement of instruction. One possible focus of research could be the evaluation of large-scale educational improvement programs within States (in collaboration with the Center on State and Local Policy and Leadership in Education). In this context, there is a need for research that enables comparisons across States as well as nations. Of special interest would be research as to the effects of "test-driven" education programs (e.g., "Regents' examinations" in the U.S., the British "A" and "O" levels, the "International Baccalaureate"). For example, the lack of calibrated measures for such comparisons could be addressed.

Applicants also are encouraged to consider the extent to which content-oriented testing and evaluation promote "teaching to the test." Research could shed light on how positive or negative such activity might be.

Applicants are encouraged to pay particular attention to the alignment of test administered at different levels and also to the overreliance on apptitude/IQ testing in American education.

Applicants are strongly encouraged to plan work in active collaboration with the Center of Postsecondary Teaching and Learning to assist in the development of sound approaches to the assessment of learning at the postsecondary level.

The Secretary encourages applicants to consider the kinds of cooperative activities necessary to help policymakers obtain and use information on educational performance and achievement.

Center for the Study of Writing

The Secretary encourages applicants to focus attention on ways of applying the results of the research that his already been done in the area of writing. One activity could be a synthesis of

research results as a basis for subsequent work aimed primarily at improving the teaching of writing. Consistent with this emphasis on the application of what is known about the teaching of writing, the budgetary target for the center is reduced from $5.0 million to $4.0 million for the five-year award.

Within this reduced budget, the Secretary recognized the need for continued research on reading and writing as related activities, as well as research on how writing influences the learning of different kinds of academic content. The Secretary advises applicants to plan this research in cooperatiion with the Center for the Study of Reading (University of Illinois) in addition to collaboration with the Center for the Study of Learning. Applicants should also give consideration to (1) the effective training of teachers of writing and (2) cost-effective methods for the teaching of writing, including the use of technology.

Center for the Study of Learning

The Secretary encourages applicants to balance an emphasis on mathematics and science with comparable attention to the learning of content in other core academic subjects. An additional focus could be the examination of how adolescent learners differ in their rates and levels of learning, and how such differences might influence curricular decisions and instructional strategies. One particular activity might be a synthesis of research in this area. This center's work could effectively be coordinated with related activities in the Center on Effective Secondary Schools and the middle school components of the Center on Effective Elementary Schools. Another important area of research is the influence of parents and home life on the learning achievement of students.

Applicants are encouraged to include consideration of gifted and talented learners and, with it, ways that the gifted and talented among educationally disadvantated students can achieve success proportionate to their potential.

Center of Effective Elementary Schools

The Secretary wishes to encourage attention to the middle school.

Applicants are also encouraged to propose work that examines school leadership with respect to pertinent skills, backgrounds, and experiences. Applicants are encouraged to look at the ways in which effective elementary and middle schools (1) create greater professional status for teachers and more collegiality, (2) exhibit control over decisions most directly affecting them, (3) use resources in different or more effective ways than other schools, and (4) can be replicated in new settings. The Secretary encourages applicants to pay particular attention to an emphasis on content and to undertake research that compares effective public and private elementary schools.

In veiw of the scope and importance of this center's mission, the Secretary increases the budgetary target for the five-year award from $5.0 million ot $5.5 million.

The Secretary wishes to emphasize the need for cooperation with the Center on Effective Secondary Schools, especially with regard to work on the middle school. This could include, for example, collegial agenda planning; jointly undertaken research, conferences, and dissemination; and regular exchange of project results.

Center on Effective Secondary Schools

The Secretary emphasizes the need for research that examines the curriculum, what is learned, and how learning is assessed in the middle and the secondary school.

The Secretary wishes to emphasize the need for research on: (1) The connections between academic experiences, organizational practices, students' lives outside of school, and student behavior in secondary schools; (2) the relationship of school effectiveness to school control over decisions most directly affecting them; and (3) comparative use of resources in effective secondary schools.

The Secretary encourages research that compares effective public and private secondary schools. The Secretary also emphasizes the need to consider how knowledge about effective secondary schools can be used to help other schools become more effective.

In view of the scope and importance of this center's mission, the Secretary increases the budgetary target for the five-year award from $5.0 million ot $5.5 million.

The Secretary encourages strong cooperation between this center and the Center on Effective Elementary Schools, especially with regard to work on the middle school. Activities could include, for example, collegial agenda planning; jointly undertaken research, conferences, and dissemination; and the regular exchange of project results.

Center on Education and Employment

The Secretary encourages applicants to consider the need for syntheses of research information on education and employment.

Applicants are encouraged also to consider the issue of students' expectations about work and careers in light of the rapid changes in jobs, the economy, and the marketplace.

An important issue for consideration is the role of education and training in economic development. As part of that issue, the Secretary encourages applicants to consider research on the link between the perceived quality of higher education in a State and that State's ability to attract resources and spur employment.

Center on Postsecondary Management and Governance

The Secretary encourages applicants to consider the role that *leadership* plays in the successful operation of postsecondary institutions.

The Secretary encourages applicants to consider research that examines (1) the effect of higher education entrance requirements on the content of elementary and secondary education and (2) the effectiveness of the use of postsecondary resources such as the allocations of funds, fiscal trends over time, and the relationship between institutional costs and inflation. Comparative studies of public and private institutions should be included.

The Secretary encourages cooperation between this center and the Center on Postsecondary Teaching and Learning that could include, for example, collegial research agenda planning; jointly undertaken research, conferences, and dissemination; and regular exchange of project results.

Center on Postsecondary Teaching and Learning

The Secretary encourages applicants to consider the question of value added by postsecondary education. One approach could be to explore ways of identifying and defining what students study, what they learn, and how their learning can be assessed. Comparative studies of public and private institutions could be included, covering such issues as student outcomes and institutional performance.

Because of this center's broad scope, the five-year budgetary target for the five-year award is increased from $4.0 million to $5.0 million. To address this broad range of issues, applicants are encouraged to organize the prospective work of the center around an initial phase of problem identification and definition, including a well focused synthesis of the knowledge base related to postsecondary teaching and learning.

The Secretary encourages cooperation between this center and the Center on Postsecondary Management and Governance that could include, for

example, collegial research agenda planning; jointly undertaken research, conferences, and dissemination; and regular exchange of project results. In addition, similar close association with the Center on Student Testing, Evaluation, and Standards is encouraged.

Center on State and Local Policy Development and Leadership in Education

The Secretary wishes to emphasize the need for this center to exercise leadership in studying the comparative effects of State and local policies in education and educational improvement. The Secretary encourages particular attention to clearinghouse functions and comparative analysis of the effectiveness of State and local educational reform efforts. The Secretary emphasizes appropriate use of existing research products for these purposes, and reduces the budgetary target for the five-year award from $7.5 million to $6.5 million.

The Secretary urges applicants to propose projects and activities that do not intrude on State or local policymaking and government action and that do not prescribe government policies. The Secretary futher advises applicants not to propose projects or activities that in any way advocate particular programs or policies.

The Secretary draws applicants' attention to the importance of problem identification and definition of current and emerging needs, and encourages applicants to consider diverse individuals and groups affected by State and local policymaking. The Secretary emphasizes the need to address issues relevant to the full spectrum of persons affected by State and local policies. Examples include parents, teachers, administrators of public and private schools, community citizens and leaders, employers, legislators, and other elected officials.

The Secretary also encourages applicants to demonstrate how their proposed organization and national advisory panel will ensure representation of the widely varying views of all the public.

Among issues that might be examined in this center are (1) the roles of local government in an era when States have demonstrated a stronger tendency to take leadership and (2) the effects of various ways of dealing with matters of uniformity of central control, on the one hand, and self-direction of decentralized institutions, on the other, including the potential for increasing equity and excellence by encouraging alternative school governance structures such as school-based management, open enrollments, schools within the schools, and magnet schools.

(Section 405(f) of the General Education Provisions Act, 20 U.S.C. 1221e(f))

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: May 10, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-11762 Filed 5-13-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council, Refinery Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in May 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy, on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its sixth meeting on Thursday, May 9, 1985, starting at 9:00 a.m., in the Dallas Room of the Houston Airport Marriott, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mrs. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 29, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-11634 Filed 5-13-85; 8:45 am]

BILLING CODE 6450-01-M

Office of General Counsel

Intent To Grant Partially Exclusive Patent License; Rockwood Systems Corp.

Notice is hereby given of an intent to grant to Rockwood Systems Corporation of Lancaster, Texas, a partially exclusive license to practice in the United States the invention described in U.S. Patent No. 4,442,018, entitled "Stabilized Aqueous Foam Systems and Concentrate and Method of Making Same." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e., limited to the field of use of physical security applications and subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States in the field of use of physical security applications, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the field of use of physical security applications.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after

consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on May 8, 1985.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 85-11635 Filed 5-13-85; 8:45 am]

BILLING CODE 6450-01-M

Intent To Grant Exclusive Patent License; University of Wyoming Research Corp.

Notice is hereby given of an intent to grant to the University of Wyoming Research Corporation (Western Research Institute) of Laramie, Wyoming, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,325,738, entitled "Tertiary Nitrogen Heterocyclic Material to Reduce Moisture-Induced Damage in Asphalt-Aggregate Mixture." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on May 8, 1985.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 85-11636 Filed 5-13-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 48503; TSH-FRL 2835-2]

Methylene Chloride; Initiation of Accelerated Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initiation, under section 4(f) of Toxic Substances Control Act (TSCA), 15 U.S.C. 2803(f), of a priority review of risks of human cancer from certain exposures to methylene chloride. The exposures which will be reviewed include workplace exposures and ambient air exposures. Information relevant to the review may be submitted to EPA and will receive consideration in the Agency's determination whether to initiate appropriate action to prevent or reduce risks from the exposures cited above or to find that the risks are not unreasonable.

DATES: Information for review must be submitted before July 15, 1985.

ADDRESS: Since some information may contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Rm. E-201, 401 M St., SW., Washington, D.C. 20460.

Submissions should include the docket numbers OPTS-48503. Submissions received on this notice which do not contain confidential business information will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. E-543B, Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has initiated a priority review of methylene chloride under section 4(f) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603(f). The Agency will review the risks from cancer posed by methylene chloride for workplace exposures and ambient air exposures. Based upon the results of this review, the Agency will either initiate appropriate action under section 5, 6, or 7 of TSCA or under other statutes to prevent or reduce such risks to a sufficient extent or publish a finding that such risk is not unreasonable.

Methylene chloride is widely used as a multipurpose solvent and component in aerosols. Recent inhalation studies by the Department of Health and Human Services National Toxicology Program (NTP) found that methylene chloride causes malignant liver and lung tumors in mice and benign mammary tumors in rats. The results of these studies, together with the findings that workplace exposures to methylene chloride can be high and that a large number of people may be exposed from methylene chloride in ambient air lead to EPA's decision that workplace exposures and ambient air exposures warrant review under section 4(f) of TSCA. The Agency's analysis of the potential risks posed by methylene chloride is available in EPA's public docket number OPTS-48503.

Authority: 15 U.S.C. 2603(f).

Dated: May 8, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-11591 Filed 5-13-85; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL 2835-3]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an Opportunity for Public Hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its exhaust emission standards and test procedures to provide for the certification of Liquefied Petroleum Gas (LPG)- and Liquefied Natural Gas (LNG)-powered vehicles. California has requested EPA to determine that these amendments are within the scope of previous waivers granted to California pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. § 7543(b). These amendments pertain to new LPG- and LNG- powered passenger vehicles, light-duty trucks, and medium-duty vehicles. However, EPA considers these to be new standards and test procedures. This notice announces that EPA has tentatively scheduled a public hearing for June 14, 1985 to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at

the public hearing, instead of, or in addition to, written comments, must notify EPA by June 7, 1985. If no party informs EPA that it wishes to testify, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA will hold a public hearing on June 14, 1985, beginning at 9:00 am, if any party notifies EPA by June 7, 1985, that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by July 12, 1985.

ADDRESSES: EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), Nevada Room, 6th Floor, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Donald E. Zinger, Acting Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN 85-03. Copies of material relevant to the waiver request (Docket EN 85-03 will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia Garrett McKnight, Attorney/Advisor, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-2521.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or atempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent * * * to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the state determined that [its] * * * standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards * * * [unless] the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, of (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity or receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By letters dated August 20, 1984 and February 22, 1985, CARB submitted to EPA a request for a determination that certain amendments are within the scope of previous waivers of Federal preemption. These amendments provide the following:

1. An amendment to require 1983 and subsequent model year LPG- and LNG-powered vehicles to comply with California's Exhaust Emission Standards and Test Procedures promulgated for 1981 and subsequent model year vehicles;
2. An amendment to require 1983 and subsequent model year LPG-powered vehicles to comply with California's Evaporative Emission Standards and Test Procedures;
3. An amendment to California's Assembly-line Test Procedures for 1983 and subsequent model year vehicles to include LPG- and LNG-powered vehicles.

California states in its letter that it has determined that these amendments do not undermine its determination that its standards and test procedures are at least as protective as comparable Federal standards and that they raise no new issues regarding previous waiver decisions. Further, California states that these amendments are consistent with section 202(a) of the Clean Air Act for the following reasons: (1) there are no issues regarding adequate lead time for compliance by the manufacturer when considering the available technology and the cost of compliance and (2) there are no conflicting certification procedures since, at present, no Federal test procedures exist for gaseous-fueled vehicles. However, by extending California's standards and test procedures to vehicles not previously covered, these amendments do raise significant new issues not considered in prior waiver decisions. In effect, California's amendments establish "new" standards and procedures for those vehicles.

Since EPA believes California's request should be considered according to the requirements for a full waiver determination, a hearing will be held to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than June 7, 1985. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designed to give interested persons an opportunity to participate in this proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she

deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. The Administrator will base his determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other scientific, engineering or other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: May 6, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-11596 Filed 5-13-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Hearing Designation Order; Alfred H. Roever III and Garcia Communications

Adopted: April 22, 1985.

Released: May 2, 1985.

By the Chief, Video Services Division.

In re Applications of Alfred H. Roever III and Garcia Communications for construction permit, Odessa, TX, MM Docket No. 85-122; File No. BPCT-840920KN; File No. BPCT-840921LB.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Alfred H. Roever III (Roever), and Garcia Communications (Garcia) for authority to construct a new commercial television station on Channel 42, Odessa, Texas.

2. In section II, Item I, FCC Form 301, Alfred H. Roever, III indicates that the applicant is a general partnership, but in section II, Item 5(a), he refers to limited partners. Consequently, it is unclear whether the application is a general partnership or a limited partnership. The application further shows that Mr. Roever has a 51% interest in the partnership and unidentified limited partners will have the remaining 49%, but the application does not identify any other partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC Forms, unless the information is inapplicable. Consequently, the required information must be furnished. If the applicant is a limited partnership, however, the attribution principles articulated in *Attribution of Ownership Interests* (97 FCC 2d 997 (1984), reconsideration pending) apply. In that document, the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and if the limited partner is not involved in any material respect in the business or operation of the station. *Id.* at 1023. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1034. Although changes in the form have not yet been made, there may be no need to provide information as to the limited partners if Roever can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Mr. Roever will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the limited partners' interests. If the applicant is a general partnership, the applicant must furnish all required information on each partner.

3. The effective radiated visual power, antenna height above average terrain and other technical data [1] submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

4 No determination has been made that the tower height and location proposed by Garcia would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a conslidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by Garcia Communications would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Alfred H. Roever, III shall submit the information and documents required by Paragraph 2, *supra*, regarding the nature and composition of the applicant partnership, to the presiding Administrative Law Judge within 20 days after this Order is released.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice

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[1] Roever shows his coordinates to be West Longitude 120 degrees 20'10", but since this would place the site in the Pacific Ocean, we are assuming that the correct coordinates are West Longitude 102 degrees 20'10". If this assumption is not correct, Roever will need to amend his application to provide the correct longitude.

of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-11549 Filed 5-13-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010752.

Title: EAC-TPS Licensing of Trade Name and Management Agreement.

Parties: The East Asiatic Company, Ltd. (EAC), EAC Lines Transpacific Service, Ltd. (EAC Lines TPS, Ltd.).

Synopsis: The proposed agreement would permit EAC to transfer its operating authority and use of its trade names and trademarks to EAC Lines TPS Ltd. in the trade covered by FMC Agreement No. 213-010719 and any other Pacific trade routes currently served by EAC. The parties have requested a shortened review period.

Agreement No.: 213-010753.

Title: Safemarine-Bank Line Space Charter and Sailing Agreement.

Parties: The Bank Line Limited, South African Marine Corporation Limited.

Synopsis: The proposed would permit the parties to schedule sailings and charter space on each others vessels for the transportation of cargo between ports in the range from the northern border of Southwest Africa to and including Cape Guardafui, Somalia, as well as islands in the Indian Ocean, and inland and coastal points served via those ports, on the one hand; and U.S. ports and inland and costal points, except Alaska and Hawaii, on the other.

Dated: May 9, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11538 Filed 5-13-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Marshall & Ilsley Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) for the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c) (8) of the Bank Holding Company act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governs. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased cometition, or gains in efficency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commeting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin; to acquire the Data Processing Department of First National Bank of Springfield, Springfield, Illinois. This subsidiary will provide data processing and data transmission services, facilities, data bases or access to such services, facilities or data bases by all technologically feasible means. The data to be processed or furnished are financial, banking or economic in nature. The subsidiary will also provide packaged financial systems involving data processing hardware and software to institutions to perform banking and banking related functions. Applicant will also engage in the sale of excess capacity of tis data processing and data transmission activities. These services will be conducted in Springfield, Illinois.

Board of Governors of the Federal Reserve System, May 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 11554 Filed 5-13-85; 8:45 am]

BILLING CODE 6210-01-M

Pemi Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 4, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600

Atlantic Avenue, Boston, Massachusetts 02106:

1. *Pemi Bancorp, Inc.*, Plymouth, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of The Pemigewasset National Bank of Plymouth, Plymouth, New Hampshire.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bank of Blue Island Employee Stock Ownership Plan*, Blue Island, Illnois; to become a bank holding company by acquiring 50.90 percent of the voting shares of Great Lakes Financial Resources, Inc., Blue Island, Illinois, thereby indirectly acquiring First National Bank of Blue Island, Blue Island, Illinois, and Community Bank of Homewood-Flossmoor, Homewood, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First National Bancshares Corporation II*, Lexington, Tennessee; to become a bank holding company by acquiring 95.0 percent of the voting shares of First National Bancshares Corporation, Lexington, Tennessee, thereby indirectly acquiring First National Bank of Lexington, Lexington, Tennessee.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Kingsville State Bancshares, Inc.*, Kingsville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Kingsville, Kingsville, Texas.

2. *Plaza Bankers, Inc.*, Austin, Texas; to acquire 100 percent of the voting shares of Plaza National Bank, Kerrville, Texas, a *de novo* bank.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *NABCO Holdings, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 55 percent of the voting shares of The North American Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, May 3, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11555 Filed 5-13-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plants. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0381—Damson Energy Co. L.P.'s proposed acquisition of assets of 11 limited partnerships (Damson Oil Corp., UPE).	Apr 22, 1985
(2) 85-0400—AMF Inc.'s proposed acquisition of voting securities of SUPELCO, Inc.	Do.
(3) 85-0441—Mission Insurance Group, Inc.'s proposed acquisition of voting securities of Transport Indemnity Co. (American Financial Corp., UPE).	Do
(4) 85-0348 and 85-0349—Emerson Electric's proposed acquisition of voting securities of Automatic Switch Co.	Apr. 23, 1985
(5) 85-0390—Eli Lilly & Co.'s proposed acquisition of assets of Intec Systems, Inc. (Medrad/Intec, Inc., UPE).	Do.
(6) 85-0392-0393—Thyssen-Bornemisza Continuity Trust's proposed acquisition of voting securities of C.L. Systems, Inc. (Technology Capital Corporation, Bela R. Hatvany and Walter A. Winshall, UPE's).	Do
(7) 85-0409—Klockner-Humboldt-Deutz Aktiengesellschaft's proposed acquisition of voting securities of Allis-Chalmers Credit Corp., Allis-Chalmers Farm Equipment, Inc., Allis-Chalmers Financial Corp. (Allis-Chalmers Corp., UPE).	Do.
(8) 85-0421 and 85-0422—Service Merchandise Co., Inc.'s proposed acquisition of voting securities of H.J. Wilson Co., Inc. (Huey J. Wilson and Angelina M. Wilson, UPE's).	Do.
(9) 85-0433—Charter Medical Corp.'s proposed acquisition of voting securities of Six Psychiatric Hospitals (Health Group Inc., UPE)	Do
(10) 85-0357—Torchmark Corp.'s proposed acquisition of assets of Home Service Division of Peninsular Life Insurance Co. (McM Corp., UPE).	Apr 24, 1985
(11) 85-0405—Reliable Stores, Inc. and Reliable Stores, Inc. Employee Stock Ownership Trust's proposed acquisition of voting securities of Reliable Stores, Inc.	Do
(12) 85-0408—Brock Hotel Corp.'s proposed acquisition of assets of Pizza Time Theatre, Inc. and voting securities of ShowBiz.	Apr 25, 1985
(13) 85-0474—United Airlines, Inc.'s proposed acquisition of assets of One DC-10-30 (Pan Am Corp., UPE).	Do
(14) 85-0379—NBi Inc.'s proposed acquisition of voting securities of Yukon Office Supply Inc.	Apr 26, 1985
(15) 85-0415—Amsted Industries, Inc.'s proposed acquisition of voting securities of Merck & Co., Inc.	Do
(16) 85-0432—Continental Grain Co.'s proposed acquisition of voting securities of Vleeswarenfabriek Zonnenberg (Martin B.P. Zonnenberg, UPE).	Do
(17) 85-0424—General Electric Co.'s proposed acquisition of voting securities of Scott & Fetzer Co.	Do
(18) 85-0442—McKesson Corp.'s proposed acquisition of voting securities of Spectro Industries, Inc.	Do
(19) 85-0443—McKesson Corp.'s proposed acquisition of voting securities of Spectro Industries, Inc.	Do
(20) 85-0371—Solvay & Cie S.A.'s proposed acquisition of assets of the U.S. Animal Health Division (Squibb Corp., UPE).	Apr. 29, 1985
(21) 85-0397—Saatchi & Saatchi Co.'s PLC proposed acquisition of voting securities of Marlboro Marketing Group, Inc. (Michael Wahl, UPE).	Do
(22) 85-0399—Pancontinental Mining Ltd.'s proposed acquisition of assets of Bowen Basin Minerals, Inc. (General Electric Co., UPE).	Do
(23) 85-0404—Golden Nugget, Inc.'s, proposed acquisition of voting securities of Hilton Corp.	Do
(24) 85-0423—Atlantic Richfield Co.'s proposed acquisition of assets of South Coast Chemical, Inc.	Do
(25) 85-0446—Nisshin Steel Co., Ltd.'s proposed acquisition of voting securities of the Thinsheet Metals Co.	Do.
(26) 85-0451—Royal Dutch Petroleum Co.'s proposed acquistion of assets of Fluor Corp.	Do
(27) 85-0459—Equity Holdings' proposed acquisition of voting securities of the Delta Queen Steamboat Co.	Do.
(28) 85-0465—Farm House Foods Corp.'s proposed acquisition of voting securities of Drug Systems, Inc.	Do
(29) 85-0468—Farm House Foods Corp.'s proposed acquisition of voting securities of Drug Systems, Inc.	Do
(30) 85-0396—Ergon Inc.'s proposed acquisition of assets of Tosco Corp.	Apr 30, 1985
(31) 85-0426—MCA Inc.'s proposed acquisition of assets of Tosco Corp.	Apr 30, 1985
(31) 85-0426—MCA Inc.'s proposed acquisition of voting securities of LJN Toys Ltd. (David C. W. Yeh, UPE).	Do
(32) 85-0448—David C.W. Yeh's propossed acquisition of voting securities of MCA, Inc.	Do.
(33) 85-0452—Phibro-Salomon, Inc.'s proposed acquisition of voting securities of Hill Petroleum Co.	[illegible]
(34) 85-0462—Nationale-Nederlanden N.V.'s proposed acquisition of voting securities of Indiana Insurance Co. and Cooling-Grumme-Mumford Co., Inc. (National Distillers & Chemical Corp., UPE).	Do
(35) 85-0449—Bell Atlantic Corp.'s of voting securities of CompuShop, Inc.	May 1, 1985
(36) 85-0461—Cargill, Inc.'s proposed acquisition of voting securities of Lapeyrouse Grain Corp. (Lapeyrouse Consolidated Industries, Inc. (George Brothers, UPE).	Do

Transaction	Waiting period terminated effective
(37) 85-0301—Eastmam Kodak Co.'s proposed acquisition of voting securities of Verbatim Corp.	May 2, 1985
(38) 85-0302—Eastman Kodak Co.'s proposed acquistion of voting securities of Verbatim Corp.	Do
(39) 85-0458—Gulf & Western Industries' proposed acquisition of assets of Ginn & Co (Xerox Corporation, UPE).	Do
(40) 85-0460—Atlantic Richfield Co.'s proposed acquisition of assets of Henderson Clay Products, Inc.	Do.
(41) 85-0464—Equity Group Holdings' proposed acquisition of voting securities of Easco Corp.	May 3, 1985
(42) 85-0473—John Labatt Ltd.'s proposed acquisition of voting securities of Johanna Farms, Inc.	Do.
(43) 85-0440—U.S. Health Corp.'s proposed acquisition of voting securities of Scioto Valley Health Foundation, Inc.	May 6, 1985.
(44) 85-0450—Jeffry M. Picower's proposed acquisition of voting securities of Monroe Systems for Business Inc.	Do

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-11551 Filed 5-13-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of June 1985.

Epidemiologic and Services Research Review Committee
June 3-5; 9:00 a.m.
Holiday Inn-Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 208215
Open—June 3; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson
Parklawn Building, Room 9C18
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.. 552b(6) and Section 10(d) of Pubic Law 92-463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee
June 5-7; 9:00 a.m.
Sheraton-Washington Hotel
2660 Woodley Road, N.W.
Washington, D.C. 20008
Open—June 5; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Irma Fisher,
Parklawn Building, Room 9C24
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 5, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee
June 6-7; 9:00 a.m.
Holiday Inn-Georgetown
2101 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Open—June 6; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Emilie Embrey
Parklawn Building, Room 9-101
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 6, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

National Advisory Council on Alcohol Abuse and Alcoholism
June 6-7; 10:30 a.m.
June 6—Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201
June 7—Parklawn Building
Conference Room M
5600 Fishers Lane
Rockville, Maryland 20857
Open—June 6; 10:30 a.m.-5:00 p.m.
Closed—Otherwise
Contact: James Vaughan
Parklawn Building, Room 16C20
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: From 10:30 a.m.-5:00 p.m., June 6, the open session will be devoted to general business of the Council and a discussion of current budget, legislative, and program activities. From 9:00 a.m. to adjournment, June 7, at the closed session, the Council will conduct a final review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
June 6-7; 9:00 a.m.
Holiday Inn-Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—June 6; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell
Parklawn Building, Room 9C18
5600 Fishers Lane
Rockville, Maryland 30857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 6, the meeting will be open for discussion of administrative announcements and program

developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Cognition, Emotion, and Personality Research Review Committee
June 7-8; 9:00 a.m.
Holiday Inn-Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—June 7; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Shirley Maltz
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to personality, emotion, cognition, and related higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 7, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Basic Behavioral Processes Research Review Committee
June 10-11; 9:00 a.m.
The State Plaza Hotel
2117 E Street, N.W.
Washington, D.C. 20037
Open—June 10; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Doris East
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIDA
June 11-12; 9:30 a.m.
Addiction Research Center, NIDA
4940 Eastern Avenue
Building C
Francis Scott Key Medical Center
Baltimore, Maryland 21224
Open—June 11; 9:30-10:00 a.m.
Closed—Otherwise
Contact: Francis C. Johnson
Addiction Research Center
P.O. Box 5180
Baltimore, Maryland 21224, (301) 955-7506

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIDA, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:30-10:00 a.m., June 11, the meeting will be open for administrative announcements and program developments. Otherwise, the Board will be performing a review of the intramural research projects of the Addiction Research Center, including an evaluaton of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Research Review Committee
June 12-13; 9:00 a.m.
The Shoreham Hotel
2500 Calvert Street, N.W.
Washington, D.C. 2008
Open—June 12; 9:00-10:30 a.m.
Closed—Otherwise
Contact: Jean Byrne
Parklawn Building, Room 9C14
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, coopertive agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior: individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendtions to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:30 a.m., June 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee
June 12-14; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Open—June 12; 9:00-11:00 a.m.
Closed—Otherwise
Contact: Harvey P. Stein, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00-11:00 a.m., June 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Alcohol Psychosocial Research Review Committee
June 12-14; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Open—June 12; 9:00-9:30 a.m.
Closed—Otherwise
Contact: Laura Weinstein, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00-9:30 a.m., June 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Research Scientist Development Review Committee
June 12-14; 7:00 p.m.
Linden Hill Hotel
5400 Pooks Hill Road
Bethesda, Maryland 20814

Open—June 13; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Linda Rainey
Parklawn Building, Room 9C05
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology Research Subcommittee of the Neurosciences Research Review Committee
June 13–14; 9:00 a.m.
Ramada Inn—Bethesda
8400 Wisconsin Avenue
Bethesda, Maryland 20014
Open—June 13; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Lynn Warwick
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open tc the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee
June 13–14; 9:00 a.m.
Linden Hill Hotel, Sea Pines Room
5400 Pooks Hill Road
Bethesda, Maryland 20814
Open—June 13; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Betty Russell
Parklawn Building, Room 9–101
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee
June 13–14; 8:00 a.m.
Holiday Inn—Georgetown
Dunbarton Room
2101 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Open—June 13; 8:00–9:00 a.m.
Closed—Otherwise
Contact: Sandra Buckhalter
Parklawn Building, Room 9–101
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of psychological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:00–9:00 a.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
June 13–14; 9:00 a.m.
The Shoreham Hotel
Calvert Street and Connecticut Avenue, N.W.
Washington, D.C. 20008
Open—June 13; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Maureen Eister
Parklawn Building, Room 9C14
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee
June 13–15; 1:30 p.m.
The Georgetown Hotel
2121 P Street, N.W.
Washington, D.C. 20037
Open—June 13; 1:30–2:30 p.m.
Closed—Otherwise
Contact: Barbara McCracken
Parklawn Building, Room 9–95
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: From 1:30–2:30 p.m., June 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
June 17–19; 8:30 a.m.
Ramada Inn—Salon A
8400 Wisconsin Avenue
Bethesda, Maryland 20814
Open—June 17; 8:30–9:30 a.m.
Closed—Otherwise
Contact: Ron Gold
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:30 a.m., June 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
June 18–20; 9:00 a.m.
Crowne Plaza Holiday Inn
Woodmont Conference Room
1750 Rockville Pike
Rockville, Maryland 20852
Open—June 18; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Heinz Sorer, Ph.D
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Services Research Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
June 18–20; 8:30 a.m.
Ramada Inn, Salon B
8400 Wisconsin Avenue
Bethesda, Maryland 20814
Open—June 18; 8:30–9:30 a.m.
Closed—Otherwise
Contact: H. Noble Jones
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations of the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:30 a.m., June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
June 18–21; 9:00 a.m.
Halpine Conference Room
Crowne Plaza Holiday Inn
1750 Rockville Pike
Rockville, Maryland 20852
Open—June 18; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Heinz Sorer, Ph.D.
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clinical and Behavioral Research Review Committee
June 18–21; 9:00 a.m.
Crowne Plaza Holiday Inn
Parklawn Room
1750 Rockville Pike
Rockville, Maryland 20852
Open—June 18; 9:00–930 a.m.
Closed—Otherwise
Contact: Daniel L. Mintz
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Mental Health Behavioral Sciences Research Review Committee
June 19–21; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Open—June 19; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Naomi Lichtenberg
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Apendix I).

Aging Subcommittee of the Life Course and Prevention Research Review Committee
June 20–21; 9:00 a.m.
The Shoreham Hotel
Executive Conference Room
Room 763
2500 Calvert Street, N.W.
Washington, D.C. 20008
Open—June 20; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Victoria Souder
Parklawn Building, Room 9C02
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4728

Purpose: The Committee is charged with the inital review of applications for assistance from the National Institute of Mental Health for support of research and activities in the fields od child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final reivew.

Agenda: From 9:00–10:00 a.m., June 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Apendix I).

Child and Family and Prevention Subcommittee of the Life course and Prevention Research Review Committee
June 20–22; 10:30 a.m.
The River Inn
924 25th Street, N.W.
Washington, D.C. 20037
Open—June 20; 10:30–11:30 a.m.
Closed—Otherwise
Contact: Nell Brock
Parklawn Building, Room 9C08
5600 Fishers Lane

Rockville, Maryland 20857, (301) 443–1177

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health of the child and family and prevention, with recommendations to the National Advisory Mental Health Council for final reivew.

Agenda: From 10:30–11:30 a.m., June 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Apendix I).

Neurobehavioral Research Subcommittee of the Neurosciences Research Review Committee
June 27–29; 9:00 a.m.
Marriott Hotel
1221 22nd Street, N.W.
Washington, D.C. 20037
Open—June 27; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Dorothy Tengood
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: May 10, 1985.

Estelle O. Brown,

Committee Management Assistant Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–11698 Filed 5–10–85; 2:46 pm]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 80N–0012, DESI 10826]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug Products; Cortisporin Creams; Amended Notice

Correction

In FR Doc. 85–9173, beginning on page 15228 in the issue of Wednesday, April 17, 1985, make the following correction: On page 15228, in the middle column, in the next to last line of the next to last complete paragraph, the word "formulation" should have read "reformulation".

BILLING CODE 1505-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. May 29 and 30, and if necessary May 31, 8:30 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD. Please note that times for opening and closing sessions of the meeting are approximate.

Contact person. Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Type of Meeting; Agenda—Open public hearing. May 29, 8:30 a.m to 9:30 a.m., unless public participation does not last that long. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. May 29, 9:30 a.m. to 10:30 a.m., Typhoid Vaccine Studies in Chile.

Closed committee deliberations. May 29, 10:30 a.m. to 12:30 p.m. The committee will review trade secret or confidential commercial information relevant to a pending license application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. May 29, 1:30 p.m. to 3 p.m.; May 30, 8:30 a.m. to 10 a.m., 1 p.m. to 2:30 p.m. The committee will review parts of the intramural research program in the Office of Biologics Research and Review (OBRR). Included for review are: (1) The Molecular Pharmacology Program of the Division of Biochemistry and Biophysics, (2) the Immunology and Immunochemistry Programs of the Division of Virology, and (3) the Bacterial Polysaccharides Program of the Division of Bacterial Products. The research that is being conducted in each of these three programs will be discussed during the three open committee discussion times set forth above; FDA has not yet determined the order of the discussion of the three programs. A number of individual projects under each of these programs will be reviewed.

Closed committee deliberations. May 29, 30, and (if necessary) 31: May 29, 3 p.m. to 5 p.m.; May 30, 10 a.m. to 12 m., 2:30 to 4:30 p.m.; May 31, 8:30 a.m. to 12 m. Each of the three closed sessions involves a continuation of the review of the OBRR research program discussed in the preceding section. These closed sessions involve discussions of personal information concerning the scientific competence of individuals associated with these intramural research programs. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee

meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time, permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 9, 1985.

Frank E. Young, M.D., Ph.D.,

Commissioner of Food and Drugs.

[FR Doc. 85-11650 Filed 5-13-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

The Phoenix District Advisory Council; Meeting

The Phoenix District Advisory Council of the Bureau of Land Management meets June 11 and 12 in Phoenix, Arizona. The first day will be devoted to field trip. The Council will depart the Phoenix District office, 2015 W. Deer Valley Road, Phoenix, at 8:15 a.m. Member of the public may accompany the Council, but must provide their own transportation and meals. A formal meeting will be held on the second day at the BLM District Office from 8:30 a.m. until noon.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

Land exchange program between the BLM and the State of Arizona.

The BLM/Forest Service Interchange.

BLM Wilderness Program.

BLM Management updates.

Business from the floor.

Public comments and statements.

Future meetings and agenda topics.

SUPPLEMENTAL INFORMATION: This is a public meeting and BLM welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Date: May 8, 1985.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 85-11539 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-32-M

[4-21207 I-LM; NM-56115]

Realty Action; Exchange of Public Lands, San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on a private land exchange with Thriftway Corporation, NM-56115.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the following described lands have been determined to be suitable for disposal by exchange:

T. 28 N., R. 11 W., N.M.P.M.

Section 9: A portion of Lot 2 (containing 7.35 acres, more or less).

In exchange for these lands the Federal Government will acquire two tracts of non-Federal land in San Juan County from Thriftway Corporation. These lands are described as follows:

T. 31 N., R. 6 W., N.M.P.M.

Section 7: W½NE¼

T. 31 N., R. 7 W., N.M.P.M.

Section 12: NW¼SW¼ (totaling 120 acres, more or less)

The purpose of the exchange is twofold: The BLM would be able to acquire two tracts of private land on Middle Mesa which would enhance the opportunities to improve both range and wildlife management. Second, the tract selected by Thriftway Corporation is currently being used as a part of their refinery under five year lease agreement. The transfer of this site to Thriftway would allow them more flexibility in managing their refinery operations. The public interest will be well served by making the exchange.

Based on the preliminary appraisal estimate, the value of the lands to be exchange are approximately equal. If an adjustment is necessary the values can be equalized by cash payment and/or the addition of lands that would be in the public interest to acquire.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The mineral estates will not be exchanged, and all valid existing rights will be protected.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Farmington Resource Area Office, 900 La Plata Highway, Farmington, New Mexico 87401 and Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87197-6670.

For a period of 45 days interested parties may submit comments to the Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87197-6770. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Michael F. Reitz,

Acting District Manager.

[FR Doc. 11558 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-FB-M

[NM-1004; 5-00252-GP5-078]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 620.39-acre withdrawal for the Bureau of Reclamation continue for an additional 5 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 4293 of October 5, 1967, be continued for a period of 5 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 32 N., R. 12 W.

Sec. 7, Lots 3, 4, 5, and SE¼SW¼;

Sec. 18, Lot 1.

T. 32 N., R. 13 W.,

Sec. 12, Lots 9 to 16, inclusive.

Sec. 13, Lots 1, 2, 3, and 4.

The areas described aggregate 620.39 acres in San Juan County.

The purpose of the withdrawal is for use in connection with the proposed Southern Ute Dam and Reservoir Site. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 2, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-11557 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-FB-M

Regional Coal Team Meeting; Green River-Hams Fork Federal Coal Region, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice.

SUMMARY: This notice advises the public that the Regional Coal Team for the Green River-Hams Fork Federal Coal Production Region will meet to: (1) Recharter the Coal Region, (2) review the status of the Green River-Hams Fork Round II EIS, (3) reaffirm industry interest in remaining Federal coal tracts, and (4) review other coal concerns in the coal region.

DATE: The team will meet at 9:30 a.m., June 13, 1985.

ADDRESS: The meeting will be held at the Colorado State Office, Bureau of Land Management, 11th Floor Conference Room, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, Branch of Solid Minerals, at the above address, telephone (303) 294-7139.

SUPPLEMENTARY INFORMATION: The Green River-Hams Fork Regional Coal Team is a subcommittee of the Federal-

State Coal Advisory Board. This team has the duty to guide all phases of the coal activity planning process in the portions of Colorado and Wyoming that are within the Green River-Hams Forks Coal Region. The team has not met since October 20, 1984. Since then the Bureau of Land Management has issued proposals to implement most recommendations of the Linowes Commission's report on *Fair Market Value Policy for Federal Coal Leasing* and the Officie of Technology Assessment's report on *Environmental Protection in the Federal Coal Leasing Program*, and published the *Federal Coal Management Program, Draft Environmental Impact Statement Supplement*. Although the coal program review is still on-going, the RCT members believe that it is appropriate to meet and review the status of the Round II leasing effort and develop a plan of acton for commencing or discontinuing required activity planning. Implementation of the plan is contingent upon the outcome of the national coal program review.

At this meeting, the team will review the current status of the potential tracts included in the round two draft EIS. To assist the RCT, the team requests public comments and new expressions of leasing interest concerning any of the tracts addressed in the draft EIS. Responses are requested to:

1. Describe any portion of an existing coal tract which warrants redelineation consideration and provide supporting justification,

2. Indicate timeframes for lease offerings and provide supporting rationale for this timeframe, and

3. Provide any new geological or surface data, above and beyond that previously submitted.

Comments and new expressions of interest concerning the Draft tracts may be sent in advance of the meeting to the Chief, Branch of Solid Minerals, Bureau of Land Management, (CO-921).

A summary of all responses received on or before May 31, 1985, will be announced at the May meeting. If no new expressions of interest are received, then the RCT may assume that leasing interest no longer exists.

The approved agenda for this meeting is as follows:

I. Introductions and Opening Comments
II. Regional Charter
  RCT Discussion
  Public Comment
  RCT Recommendations
  Approval of Minutes of Last Meeting
III. Status of the Round II EIS
  Emergency Leases
  Exchanges
  Redelineations
  Drilling Program
  PRLAs
  Effect of Proposed Program Revisions
  Market Analysis and Current Regional Activity
  Reaffirmation of Industry Interest in Remaining Coal Tracts
  Timeframes and Schedules
  Public Comment
  RCT Discussion and Advice
IV. GIS Review
  Colorado
  Wyoming
  Public Comment
  RCT Discussion and Advice
V. Miscellaneous Issues
  Regional Boundaries
  Non-RCT Activities
  Public Comment
  RCT Discussion and Advice

H. Robert Moore,

Associate State Director.

[FR Doc. 85-11606 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-JB-M

[W-93599]

Wyoming; Invitation for Coal Exploration License (Black Butte Coal Co.)

Black Butte Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following described land in Sweetwater County, Wyoming:

T. 19 N., R. 100 W., 6th Prin. Mer.,
  Sec. 12, W½, SE¼;
  Sec. 24, NW¼.

Containing 640 acres.

All of the coal in the above lands consists of unleased Federal coal within the Rock Springs known coal leasing area. The purpose of the exploration program is to determine the quality and quantity of the coal within the boundaries of the above-described area.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under Serial Number W-93599): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82902.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of May 13, 1985, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Black Butte Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notices should be sent to the following addresses: Black Butte Coal Company, P.O. Box 98, Point of Rocks, Wyoming 82942, and the Bureau of Land Management, Wyoming State Office, Attention: Branch of Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing notice is published in the **Federal Register** pursuant to Title 43 of the Code of Federal Regulations, Section 3410.2-1(c)(1).

Hillary A. Oden,

State Director.

[FR Doc. 85-11584, Filed 5-13-85; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Project Agreement & Amendment to Project Agreement.

Abstract: The Project Agreement, used by State fish and wildlife agancies (grantees), obligates the Federal share of estimated costs of activities under the Service's grants-in-aid program to States, implementing the Pittman-Robertson and Dingell-Johnson Acts. The Amendment is used to revise a previously approved agreement.

Form Number(s): 3-1552 (Project Agreement); 3-1591 (Project Agreement Amendment).

Frequency: On Occasion.

Description of Respondents: State fish and wildlife agencies.

Annual Responses: 1,456.

Annual Burden Hours: 1,456.

Service Clearance Officer: Arthur J. Ferguson, 202-653-7499.

Dated April 16, 1985.

Roman H. Koenings,

Associate Director—Federal Assistance.

[FR Doc. 85-11556 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit Issued for the Months of January, February, March 1985

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone (703/235–1903) between the hours of 7:45 am to 4:15 p.m. weekdays.

Jan. 1985		
Forest Service—USDA	X688326	Jan. 1.
Correia's Flyway	X680350	Jan 7.
James E. Deacon	X682900	Jan. 7.
Duke University Primate Center	X687635	Jan. 7.
Nongame & Endangered Species Program.	X685757	Jan 7
Waimea Aboretum Foundation	X688706	Jan 7.
Donald B. Siniff	X688234	Jan [illegible].
Ralph T. Heath	X686150	Jan. 9.
John Gilbert Morris	X688824	Jan. 9.
Peabody Museum of Natural History.	X684539	Jan. 11.
Zoological Society of San Diego	X687645	Jan. 17.
Gladys Porter Zoo	X686806	Jan [illegible]
Brian J. Walton/The Peregrine Fund	X685333	Jan. [illegible]
New England Regional Primate Research.	X682958	Jan. [illegible].
Hubbs-Sea World Research	X689909	Jan. 31.
B Riley McClelland	X671281	Jan. 31.
Feb. 1985		
John Sutterlin	X687585	Feb. 1.
Ford Brothers Circus	X687221	Feb. 4.
International Crane Foundation	X688070	Feb. 5.
Zoological Society of San Diego	X690152	Feb. 7.
Bucky Steele	X690416	Feb. 14.
Joseph A. Burgess	X687538	Feb. 14
Knoxville Zoological Park	X688155	Feb. 15.
Lintt Gamebirds	X690609	Feb. [illegible]
David E. Monuszko	X687422	Feb. [illegible].
Geo Mirsch Avian Research	X683271	Feb. 26
Salisbury Zoological Park	X686473	Feb. 27.
Mar. 1985		
New York Zoological Society	X687858	Mar. 5.
Ollie Barney	X691032	Mar 7.
Caribbean Island National Wildlife.	X689120	Mar. 7.
Toledo Zoological Gardens	X688732	Mar 8.
National Park Service/Channel Islands National Park.	X688260	Mar 15.
International Animal Exchange	X689515	Mar. 19.
Richard T. Neil	X689616	Mar. 18.
Don Perry	X690097	Mar. 18.
Joel W. Smith	X688797	Mar 18.
Roedig Park Zoo	X688235	Mar 19.
Roger Bringas	X688841	Mar 21.
Roger Bringas	X687215	Mar 21.
Rudolf H. Mattoni	X685022	Mar 23.
Gatti Productions	X692042	Mar. 27
Robert J. White	X690324	Mar. 27
New York Zoological Society	X690002	Mar. [illegible].
San Diego Zoological Society	X689969	Mar. [illegible]
W. B. Scott	X689343	Mar [illegible].
Bucky R. Steele	X689621	Mar. [illegible]
D. J. Thurston	X689526	Mar. [illegible]

Dated: May 8, 1985.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–11611 Filed 5–13–85; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application for Permit; National Zoo et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–693556

Applicant: National Zoo, Washington, D.C.

The applicant requests a permit to import two gharial (*Gavialis gangeticus*) from the Gharial Breeding Center, Nepal, for enhancement of propagation.

PRT–693557

Applicant: William Blessing, York, PA.

The applicant requests a permit to import a trophy of a male bontebok (*Damiliscus dorcas dorcas*) culled from the herd of Theo Erasmus, Kroonstad, South Africa, for enhancement of the survival of the herd.

PRT–693559

Applicant: Natalie Corr, Melrose, FL.

The applicant rquests a permit to import one white-handed gibbon (*Hylobates lar*) from her previous residence in Bogata, Columbia, for enhancement of the propagation and survival of the species. The animal originally came from Thailand.

PRT–693560

Applicant: Columbia Zoo, Powell, OH.

The applicant requests a permit to import 2 cheetah (*Acinonyx jubatus*) from the Metropolitan Toronto Zoo for enhancement of propagation.

PRT–693141

Applicant: R.E. Herning, Dept. Of Defense—Navy, San Diego, CA.

The applicant requests a permit to take (collect) seed or cuttings of the following four plant species for propagation and subsequent return of specimens to San Clemente Island, CA, the site of collection: San Clemente Island broom (*Lotus dendroideus traskiae* (=*L. scoparius t.*); SCI larkspur (*Delphinium kinkiense*); SCI Indian paintbursh (*Castilleja grisea*); and SCI bush-mallow (*Malacothamnus clementinus*).

PRT–690033

Applicant: George B. Johnson, Buffalo, WY.

The applicant request a permit to import a sport-hunted bontebok trophy (*Damaliscus d. dorcas*) culled from the captive herd of J.H. Cloete, Republic of South Africa for enhancement of survival of the herd.

PRT–693665

Applicant: Wisconsin Regional Primate Research Center, Madison, WI.

The applicant requests a permit to import a pair of captive-bred cotton-top marmosets (*Saguinus oedipus*) from the University of Bielefeld, Bielefeld, West Germany, for the purpose of enchancement of progagation.

PRT–693666

Applicant: Wisconsin Regional Primate Reearch Center, Madison, WI.

The applicant requests a permit to export a pair of captive-bred cotton-top marmosets (*Saguinus oedipus*) to the University of Bielefeld, Bielefeld West Germany, for the purpose of enhancement of propagation.

PRT–693595

Applicant: Robert Reitnauer, Boyd, TX.

The applicant requests a permit to import two pairs of wild-taken cheetah (*Acinonyx jubatus*) from Mr. and Mrs. Don Price, Mwenezi, Zimbabwe for the purpose of enhancement of propagation.

PRT–693615

Applicant: Tulsa Zoological Park, Tulsa, OK.

The applicant requests a permit to import three female mandrill (*Papio sphinx*) from Emperor Valley Zoo, Port-of-Spain, Trinidad, for the purpose of enhancement of propagation.

PRT–693622

Applicant: Sunlight Gardens Inc., Loudon, TN.

The applicant requests a permit to engage in interestate commerce in artifically propagated Tennessee purple coneflower (*Echinacea tennesseensis*) for the purpose of enhancement of propagation.

PRT—693439

Applicant: Phoenix Zoo, Phoenix, AZ.

The applicant requests a permit to import a captive-born male cheetah (*Acinonyx jubatus*) from Beekse Bergen Safari Park, The Netherlands, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing

to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 7, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-11610 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Alaska OCS Region; Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee: Notice for Meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Alaska Regional Technical Working Group Committee (RTWG) of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 1:30 p.m. to 5:00 p.m., May 31, 1985, at the Sheraton Anchorage Hotel, 401 East 6th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provide advice to the Director, Minerals Management Service, on technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Summary of the OCS Policy Committee meeting (April 9-11, 1985).

(b) Status of Alaskan OCS oil and gas lease sales and the 5-year leasing program.

(c) Goals and activities of the Alaska RTWG.

(d) Environmental Studies Program—Regional Studies Plan for Fiscal Year 1987.

(e) Petroleum development timetables used to prepare environmental impact statements for OCS proposed lease sales.

The Alaska RTWG meeting will be open to the public. Public seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than May 20, 1985, to Alan D. Powers, Regional Director, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510, (907) 261-4010. A request to make an oral statement should be accompanied by a written summary of the oral statement. Written statements should be submitted by May 25, 1985.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska, and at the Office of Offshore Information Services, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: May 3, 1985.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 85-11561 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-MR-M

Extension of Period of Confidentiality for Privileged or Proprietary Data Submitted in Response to the Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf (OCS) and Gas Leasing Program for Mid-1986 through Mid-1991

SUMMARY: The Request for Comments on the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for Mid-1986 through Mid-1991 was published in the **Federal Register** on March 22, 1985 (50 FR 11585).

In that Notice, it was stated that "Industry respondents in particular are requested to rank all planning areas of the OCS which now number 26 instead of 24. In order to encourage the frankest response, each respondent's ranking, upon request, will be deemed to be privileged or proprietary information to be treated as confidential for a period of 2 years after receipt by MMS [the Minerals Management Service]. Confidential treatment of information is authorized under section 18(g) of the OCS Lands Act."

Section 18(g) of the OCS Lands Act does not specify any period for confidentiality. Two years was chosen so as to cover the period of development of the new program. Based upon preliminary response to the Request for Comments published in the **Federal Register**, it has been determined that the period for confidentiality should correspond to the period to be covered by the new program.

Consequently, upon request, individual rankings of planning areas will be treated as confidential privileged or proprietary data for a period of 5 years after final approval of the new 5-year program. Any other privileged or proprietary data submitted with comments on the Draft Proposed 5-Year Program will be treated as confidential for the period provided by the OCS Lands Act and regulations in Chapter II of Title 30 of the Code of Federal Regulations.

While each ranking attachment will be treated as confidential information for a period of 5 years after final approval of the new 5-year program, summaries of rankings prepared by MMS, the names of respondents submitting rankings, and comments other than rankings will not be treated as confidential information.

DATES: No comments are requested on this notice. Comments on the Draft Proposed 5-Year Program, as indicated in Notice published in the **Federal Register** on March 22, 1985, must be received by May 20, 1985.

ADDRESSES: Comments on the Draft Proposed 5-Year Program should be submitted to the Deputy Associate Director for Offshore Leasing, Minerals Management Service (MMS), Mail Stop 641, 12203 Sunrise Valley Drive, Reston, Virginia 2091. Hand deliveries to the Department of the Interior may be made to Room 2525, 18th & C Streets, NW., Washington, D.C. 20240. Envelopes or packages should be marked "Comments on the Draft Proposed 5-Year OCS Leasing Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope or package should be marked "Contain confidential information."

FOR FURTHER INFORMATION CONTACT: Telephone contact may be made with Chris Oynes, Chief, Offshore Leasing Management Division, MMS, at (202) 343-6906, or Paul Stang, Chief, Branch of Program Development and Planning, MMS, at (202) 343-1072.

Dated: May 10, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-11747 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Amendment to the General Management Plan/Development Concept Plan/Interpretive Plan; Port Smith National Historic Site, Sebastian County, AR, and Sequoyah County, OK

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared an Amendment to the General Management Plan/Development Concept Plan/Interpretive Plan, for Fort Smith National Historic Site, Sebastian County, Arkansas, and Sequoyah County, Oklahoma.

The amendment clarifies and modifies the boundary to preserve the historical integrity of the site. Approximately 8.92 acres have been deleted, with 6.13 acres added to the boundary.

A Draft Amendment was available for public review, along with the Draft Land Protection Plan, from the publication date of the Notices of Availability in the **Federal Register** on January 18, 1985 (Vol. 50, No. 13, page 2736), through February 20, 1985. A press release was also issued at this time. The National Park Service will proceed to implement the amendment.

Copies of the Amendment to the General Management Plan/Development Concept Plan/Interpretive Plan are available from Fort Smith national Historic Site, Post Office Box 1406, Fort Smith, Arkansas 72902; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: May 1, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85–11579 Filed 5–13–85; 8:45 am]

BILLING CODE 4310–70–M

Intention to Negotiate Concession Contract; Fort Sumter Tours, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Fort Sumter Tours, Inc., authorizing it to continue to provide boat transportation services for the public visiting Fort Sumter National Monument, South Carolina, for a period of fifteen years from January 1, 1986, through December 31, 2000.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed contract.

Dated: April 18, 1985.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 85–11581 Filed 5–13–85; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 4, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 29, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Tuscaloosa County

Tuscaloosa, *Caplewood Drive Historic District,* Roughly bounded by Caplewood Dr., and University Blvd.

Walker County

Jasper, *Walker County Hospital,* 1100 7th Ave.

ALASKA

Juneau Division

Juneau, *Frances House,* 137 6th St.

Juneau, *Valentine Building,* 202 Front St.

Kenai-Cook Inlet Division

Ketchikan, *Ziegler House,* 623 Grant St.

Nome Division

Nome, *Fort Davis Guardhouse-Nome Nugget,* Front St.

CONNECTICUT

Fairfield County

Danbury, *Locust Avenue School,* Locust Ave.

Middlesex County

Clinton, *Stevens, William, House,* 131 Cow Hill Rd.

INDIANA

Allen County

Huntertown vicinity, *West, Fisher, Farm,* 17935 West Rd.

Daviess County

Glendale Ridge Archeological Site (12 Da 86)

Lawrence County

Bono Archeological Site (12 Lr 194)

Owen County

Ennis Archeological Site (12 OW 229)

Sullivan County

Daugherty-Monroe Archeological Site (12 Su 13)

KENTUCKY

Garrard County

Lancaster vicinity, *Adams House (Garrard County MRA),* KY 39

Lancaster vicinity, *Ballard, Hogan, Home-Pine Crest Farm (Garrard County MRA),* Lexington Rd.

Lancaster vicinity, *Barlow House (Garrard County MRA),* Danville Rd.

Lancaster vicinity, *Beasley Farm (Garrard County MRA),* Lexington, Rd.

Lancaster vicinity, *Blakeman, Calvin, House (Garrard County MRA),* Polly's Bend Rd.

Lancaster vicinity, *Bonta-Owsley House (Garrard County MRA),* Jct. of Boone's Creek and KY 52

Lancaster vicinity, *Bowman-Scott House (Garrard County MRA),* Bowman's Bottom Land

Lancaster vicinity, *Bryantsville Methodist Church (Garrard County MRA),* US 27

Lancaster vicinity, *Craig's Travelling Church (Garrard County MRA),* Goshen Rd.

Lancaster vicinity, *Dalton House (Garrard County MRA),* KY 39

Lancaster vicinity, *Dunn, Raz, Place (Garrard County MRA),* KY 52

Lancaster vicinity, *Dunn-Watkins House (Garrard County MRA),* Danville Rd.

Lancaster vicinity, *Elkin Place (Garrard County MRA),* US 27

Lancaster vicinity, *Forks of the Dix River Church (Garrard County MRA),* Off US 27

Lancaster vicinity, *Gulley Farm (Garrard County MRA),* US 27

Lancaster vicinity, *Hamilton, Roscoe, House (Garrard County MRA),* Buena Vista Rd.

Lancaster vicinity, *Huffman House (Garrard County MRA),* Kemper Lane

Lancaster vicinity, *Lane Farm (Garrard County MRA)*, Polly's Bend Rd.
Lancaster vicinity, *Lusk House (Garrard County MRA)*, US 27
Lancaster vicinity, *Metcalf, Issac, House (Garrard County MRA)*, Broadus Branch Rd.
Lancaster vicinity, *Mt. Olivet Methodist Church (Garrard County MRA)*, Off KY 152
Lancaster vicinity, *Parke-Moore House (Garrard County MRA)*, US 27
Lancaster vicinity, *Parks, William, House (Garrard County MRA)*, Locust Lane
Lancaster vicinity, *Perkins, Lucien, Farm (Garrard County MRA)*, Crab Orchard Rd.
Lancaster vicinity, *Perkins-Daniel House (Garrard County MRA)*, Gilbert's Creek
Lancaster vicinity, *Quantico (Garrard County MRA)*, Sugar Creek & Kentucky River
Lancaster vicinity, *Rankin Place (Garrard County MRA)*, Old Danville Rd.
Lancaster vicinity, *Ray House (Garrard County MRA)*, Jess Ray Rd.
Lancaster vicinity, *Salter, Tom, House (Garrard County MRA)*, KY 39
Lancaster vicinity, *Sebastian Log House (Garrard County MRA)*, Nina Ridge
Lancaster vicinity, *Stapp Homeplace (Garrard County MRA)*, KY 39
Lancaster vicinity, *Teater, Paris, House (Garrard County MRA)*, KY 39
Lancaster vicinity, *Thompson, Smith, Log House (Garrard County MRA)*, Wolf Trail Rt. 563
Lancaster vicinity, *Walden Place (Garrard County MRA)*, Sugar Creek
Lancaster vicinity, *Walker House (Garrard County MRA)*, SR 1295
Lancaster vicinity, *Wilson, Paul, Place (Garrard County MRA)*, Off Polly's Bend Rd.
Paint Lick vicinity, *Smith House (Garrard County MRA)*, Jct. of KY 52 & SR 1647
Paint Lick, *Calico & Brown General Store (Garrard County MRA)*, KY 52
Paint Lick, *Miller, William, Place (Garrard County MRA)*, Jct. of Ky 52 & KY 21
Paint Lick, *Point Lick Presbyterian Church (Garrard County MRA)*, KY 52
Teatersville, *Teater, William, House (Garrard County MRA)*, KY 39

MISSISSIPPI

Jefferson County

Church Hill vicinity, *Wyolah Plantation*, Off MS 553

MISSOURI

Jasper County

Joplin *Elks Club Lodge #501*, 318–320 W. 4th St.

NEBRASKA

Hayes County

Hamlet vicinity, *Daniel, J.M., House*
Hamlet vicinity, *Daniel, J.M., School-District #3*

PENNSYLVANIA

Chester County

Knauertown, *Knauer, John, House and Mill*, PA 23

Lancaster County

Oregon, *Oregon Mill Complex*, 1415 Oregon Rd.

VIRGINIA

Rockingham County

Harrisonburg, vicinity, *Inglewood*, VA 753

Scott County

Maces Spring vicinity, *Carter, A.P. and Sara, House (Carter Family TR)*, Rt. 614
Maces Spring vicinity, *Carter, A.P. Home-place (Carter Family TR)*, West of 691
Maces Spring vicinity, *Carter, A.P., Store (Carter Family TR)*, Rt. 614
Maces Spring vicinity, *Carter, Maybelle and Ezra, House (Carter Family TR)*, Rt. 614
Maces Spring vicinity, *Mt. Vernon Methodist Church (Carter Family TR)*, Rt. 614

To assist in the preservation of historic properties the 15-day comment for the following building has been waived.

IOWA

Des Moines County

Des Moines, *Warfield, Pratt and Howell Company Warehouse*, 100 West Court Ave.

[FR Doc. 85-11580 Filed 5-13-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30646]

Illinois Central Gulf Railroad Co.; Trackage Rights Exemption Between Coulterville and Sparta, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Illinois Central Gulf Railroad Company from the prior approval requirements of 49 U.S.C. 11343 for its acquisition of trackage rights over a 7.22-mile line of the Missouri Pacific Railroad Company between Coulterville and Sparta, IL, subject to standard employee protective conditions.

DATES: This decision will be effective on May 14, 1985. Petitions to reopen must be filed by June 3, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30646 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Richard M. Kamowski, 233 North Central Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,
Secretary.

[FR Doc. 85-11565 Filed 5-13-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30651]

Missouri-Kansas-Texas Railroad Co.; Exemption for Issuance of Securities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Consent and Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance by the Missouri-Kansas-Texas Railroad Company (MKT) of certificates of deposit and consents the acquisition by MKT of certain Certificates Representing a Charge on Income, dated January 1, 1958.

DATES: This exemption will be effective on May 14, 1985. Petitions to reopen must be filed by June 3, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30651 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: May 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,
Secretary.

[FR Doc. 85-11605 Filed 5-13-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant To Clean Air Act; Toronto Paperboard Co., Inc.

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that April 24, 1985, on a proposed consent decree in *United States* v. *Toronto Paperboard Company, Inc.* (S.D. Ohio) was lodged with the United States District Court for the Southern District of Ohio. Under the terms of the proposed consent decree, the defendant pays a civil penalty of $1,000 and must install a new boiler with necessary pollution control equipment.

The Department of Justice will receive comments for a period of thirty (30) days from the date of this publication relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Toronto Paperboard Company, Inc.*, D.J. Ref. No. 90-5-2-1-692.

The proposed consent decree may be examined at the Office of the United States Attorney, 200 U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215, at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed consent decree, refer to the case, proposed consent decree and D.J. Reference number.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-11607 Filed 5-13-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-22]

Hearing; Joseph V. Cusmano, M.D., Boca Raton, FL

Notice is hereby given that on March 7, 1985, the Drug Enforcement Administration, Department of Justice, issued to Joseph V. Cusmano, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC5265396, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, May 23, 1985, in Courtroom I, South Courtroom, Old Courthouse Building, U.S. District Court, 300 N.E. First Avenue, Miami, Florida.

Dated: May 3, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-11570 Filed 5-13-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,891]

Wilker Brothers Company, Inc., McKenzie, TN; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 8, 1985 in response to a worker petition received on April 1, 1985 which was filed on behalf of workers and former workers engaged in the production of pajamas and robes at the McKenzie, Tennessee plant of Wilker Brothers Company, Inc.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-15,770). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 7th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-11638 Filed 5-13-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,864]

Houdaille Industries (Powermatic/Burke), Cincinnati, OH; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 1985 in response to a worker petition received on March 19, 1985 which was filed on behalf of workers at Powermatic/Burke Division of Houdaille Industries, Cincinnati, Ohio.

The petitioning group of workers are covered under certification (TA-W-15,063). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 7th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-11639 Filed 5-13-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 6th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date [illegible]	Date of petition	Petition No.	Articles produced
Aeolian American Corp. (Independent Union of Piano Workers)	East Rochester, NY	4/30/85	4/24/85	TA-W-15,974	Pianos.
Apollo Dyeing & Finishing (CO)	Paterson, NJ	5/1/85	4/24/85	TA-W-15,975	Dyeing and finishing
Brook Manufacturing Co., Inc. (ACTWU)	Old Forge, PA	4/26/85	4/23/85	TA-W-15,976	Men and ladies slacks, shorts, and blazers
Centennial Mills, Flour Mill (American Federation of Grain Millers)	Portland, OR	4/30/85	4/22/85	TA-W-15,977	Wheat flour
Centennial Mills, Starch/Gluten Plant (American Federation of Grain Millers)	Spokane, WA	4/30/85	4/22/85	TA-W-15,978	Wheat gluten and wheat starch
Cotter Corp., Thornburg Mine (workers)	Moab, UT	5/1/85	4/26/85	TA-W-15,979	Uranium mine.
Espy Shoe, Inc. (workers)	Lewiston, ME	4/29/85	4/24/85	TA-W-15,980	Men, ladies, and children shoes
Gendex Corp. (workers)	Milwaukee, WI	4/29/85	4/25/85	TA-W-15,981	Dental x-ray equipment
J.C. Penney, Inc. (company)	Raymond, WA	4/30/85	4/22/85	TA-W-15,982	Retail store
J.L. Coombs (workers)	Phillips, ME	4/30/85	4/24/85	TA-W-15,983	L.L. Bean moccasins, Eddie Baur boat shoes, Penobscot penny loafers
Leader Dyeing & Finishing Corp. (company)	Paterson, NJ	5/1/85	4/24/85	TA-W-15,984	Dyeing and finishing
Standard-Coosa Thatcher Co. (ACTWU)	Chattanooga, TN	5/2/85	4/30/85	TA-W-15,985	Yarn
U.S. Steel Corp., Traffic & Transportation (workers)	Merrillville, IN	5/1/85	4/26/85	TA-W-15,986	Planning shipments
Umetco Minerals Corp. (workers)	Grand Junction, CO	4/30/85	4/12/85	TA-W-15,987	Office workers (engineers, geologist, etc.)
Welland Chemical, Inc. (workers)	Newell, PA	5/1/85	4/25/85	TA-W-15,988	Nitric acid
Zenith Dyeing & Finishing Corp. (company)	Paterson, NJ	5/1/85	4/24/85	TA-W-15,989	Dyeing and finishing

[FR Doc. 85-11637 Filed 5-13-85; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 29, 1985—May 3, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,767; Teledyne Columbia-Summerial, Carnegie, PA

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-15,732; Everything Special, West Palm Beach, FL

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-15,764; Pathfinder Mines Corp., Shirley Basin Mine & Mill, Shirley Basin, WY

A certification was issued covering all workers of the firm separated on or after January 30, 1984.

TA-W-15,758; Cushman Industries, Inc., Hartford, CT

A certification was issued covering all workers of the firm separated on or after January 28, 1984.

TA-W-15,723; LTV Steel Co., Indiana Harbor Works, East Chicago, IN

A certification was issued covering all workers of the firm separated on or after January 18, 1984.

I hereby certify that the aforementioned determinations were issued during the period April 29, 1985—May 3, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. during normal business hours or will be mailed to persons to write to the above address.

Dated: May 7, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-11631 Filed 5-13-85; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Nevada State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafer called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the aproval of the Nevada plan

and the adoption of Subpart W to Part 1952 of Title 29 contaning the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated Janauary 21, 1985, from Kathy Allen to Ray Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR Part 1910, Revocation of Advisory and Repetitive Standards (February 10, 1984, 49 FR 5318); 29 CFR 1910.1025, Occupational Exposure to Lead (June 5, 1984, 49 FR 23175); and 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide (June 22, 1984, 49 FR 25796). These standards are contained in the Department of Occupational Safety and Health, Standards for General Industry, and were promulgated by resolution adopted by the Department of Occupational Safety and Health pursuant to Nevada Occupational Safety and Health Act.

2. *Decision.* Having reviewed the State submission in comparison with Federal Standards, it hs been determined that the standards are identical to the Federal standards and accordingly should be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Department of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710, and Directorate of Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, N.W., Washington, D.C. 20210

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plans a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural reqirements of State law and further participation would be unnecessary.

This decision is effective May 14, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 25th day of Janauary 1985.

Russel B. Swanson,

Regional Administrator.

[FR Doc. 85–11640 Filed 5–13–85; 8:45 am]

BILLING CODE 4510-26-M

[V–82–7]

Zurn Industries, Inc./Tileman & Co., Ltd.; Grant of Variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Grant of Variance.

SUMMARY: This notice announces the grant of variance to Zurn Industries, Inc./Tileman & Co., Ltd., from the standards prescribed in 29 CFR 1926.451(1)(5) concerning boatswain's chairs and in 29 CFR 1926.552 (c)(1), (c)(2), (c)(3) and (c)(14)(i) concerning personnel hoists.

DATES: The effective date of the variance is May 7, 1985.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3656, Washington, D.C. 20210

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 16–18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor, Occupational Safety and Health Administration, 11349 Federal Building, 450 Golden Gate Avenue, Post Office Box 36017, San Francisco, California 94102

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174.

SUPPLEMENTARY INFORMATION:

I. Background

Zurn Industries, Inc./Tileman & Co., Ltd. (the applicant), 405 Reo Street, Tampa, Florida 33609 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR Part 1905.11 for a permanent variance from the safety standards prescribed in 29 CFR 1926.451(1)(5) and 29 CFR 1926.552 (c)(1), (c)(2), (c)(3) and (c)(14)(i). The standards set requirements governing the use of boatswain's chairs and personnel hoists. The facilities affected by the application are all of the applicant's present and future work sites in States under Federal jurisdication where the construction of chimneys, towers and similar tall structures occur.

. Notice of the application and the grant of interim order was published in the **Federal Register** on December 27, 1982(47 FR 57586). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. No written comments or requests for a hearing were received.

II. Facts

The applicant is engaged in the erection of chimneys, towers, and similar tall concrete and steel structures which necessitates the transportation of men and material to and from the elevated work platform during construction activities. The applicant explains that in constructing this type of structure, the elevated work platform or scaffold is moved upward with the construction. Section 1926.451(a)(13) requires that access to this platform shall be provided for the employees by an access ladder or an equivalent safe means. The applicant states that as the height of the construction increases

above 400 feet, it becomes impractical, unsafe and somethimes impossible to use an access ladder. Therefore, some other safe means of acces must be provided.

Section 1926.552(c) sets forth the requirements for personnel hoisting from one elevation to another. The purpose of the standard is to provide requirements so that employees are safely transported to and from the elevated work platform by mechanical means during the construction, alteration, repair, maintenance, or demolition of a structure, building, or other work. This standard, however, does not provide specific safety requirements for hoisting personnel to and from an elevated work platform that is constantly being raised to higher elevations and which tapers to correspond to the diameter of the structure which tappers throughout its height. According to the applicant, the tapering diameter contributes essential stability to the structure. Consequently, the applicant contends that it is unable to comply with the requirements for constructing a hoist tower outside or inside of a structure, anchoring the hoist tower to the structure and using a minimum of two wire ropes for drums type hoists, as required under §§ 1926.552 (c)(1), (c)(2), and (c)(14)(i), respectively.

Section 1926.552(c)(1) requires that a hoist tower located outside a structure shall be enclosed for the full height on the side or sides used for entrance and exit to the structure. Section 1926.552(c)(2) requires that a hoist tower located inside a structure shall be enclosed on all four sides throughout the full height of the structure. According to the applicant, a hoist tower located outside a structure is impractical and hazardous. As the structure rises and tapers, the distance between the structure and the tower becomes greater. Therefore, it becomes increasingly difficult to provide safe access from an outside hoist tower either to the structure or to the movable jack scaffolds used in constructing a brick chimney liner. Also, a hoist tower must be kept higher than the structure under construction. Consequently, the continual extension of the outside hoist tower exposes the employees to high wind conditions and interferes with the guying, erecting and bracing of a chimney over 600 feet. Further, a hoist tower must be rigid in order to function effectively. That rigidity would be difficult to maintain, given the wind conditions at heights over several hundred feet.

The applicant contends that it is hazardous to erect and brace a hoist tower inside a structure because it interferes with the design and construction of proper scaffolding. The applicant also notes that, because the diameter of the structure decreases as it rises, there is insufficient room for a hoist tower inside the structure.

Accordingly, the applicant proposes to install a hoist tower inside the structure in the portion of the structure under construction and at the bottom landing, which meets the requirements of § 1926.552(c)(2). In the remaining portion of the hoistway, the applicant proposes to use a rope-guided hoist system to safely transport employees from the bottom landing to the elevated work platform.

The upper portion of the hoist tower, which conveys the cage into the construction deck, will be suspension mounted over the hoistway opening. It will be assembled in several sections and will carry the cathead, cage guides and landing gates. The cathead is a beam set across the top of the tower which carries the sheave supports and sheaves that run on sealed bearings of suitable dimensions and strength factors for the hoist rope and load to be applied (**Note:** the word suitable is defined in § 1926.32(r)). Landing gates will be of the hinged or vertical sliding type. On passenger service, safety interlocks will apply so that the cage gates cannot be opened while the cage is absent from the landing, and the hoist cannot be operated if they remain open. Wire mesh screening will surround the lower portion of the tower, thus providing protection while permitting a full view of the hoistway and approaching cage. Guides, in the form of channels, will run the length of the upper and lower tower sections. The fixed guides of the upper tower section will have flares fixed at their lower ends for easy entry of the cage runners. The lower section will have a similar arrangement. A transom, running within the guides, will serve to align the cage guide ropes so that the approaching cage enters the flares without hanging, seizing or severe oscillation.

The rope-guided hoist system consists of a hoist drum hauling a rope suspended cage between ground level and one or more elevated work platforms. The cage will run on a pair of taut guide ropes which is designed to retain the cage in the hoistway during all stages of loading and vertical movement. The hoist has a dual purpose rating to carry either material or personnel. Employees will not be transported while material is being hoisted.

The hoist will be controlled remotely, either from within the cage or from the platforms, depending upon the mode of operation selected. Various safety features, such as limit switches to prevent overtravel of the cage, are incorporated in the controls to ensure that the maximum level of worker protection is maintained. In the event of a main hoist line failure, there is an independent, automatically activated emergency braking system attached to the top of the cage (safety clamps). When activated, the safety clamps will grip the two guide ropes to stop the falling cage. This braking system can also be manually activated within the cage, but that only works when the cage is descending. Two other independently operated fail-safe braking systems operate on the hoist. These are caliper style brakes that grip the main hoist drum and operate automatically in the event of any system failure or pressure drop. These braking systems ensure that a hoisting system failure will not result in injury or damage.

The applicant also contends that, because the cage operates on the inside of the structure, it cannot be used safely to transport employees to and from the bracket scaffold on the outside of an existing structure, during flue installation or repair work, or to transport employees to and from the elevated scaffolds when constructing a small diameter structure. The applicant states that it will raise and lower employees on a work platform where space permits or in a boatswain's chair when it is not feasible to use the cage or work platform. Under the applicant's proposal, the cage will be temporarily disconnected from the hoisting cable and a work platform or boatswain's chair will be securely attached to the cable. The employee's safety belt will be attached to a suitable lifeline securely attached to the rigging at the top and to a weight at the bottom, in order to further ensure the safety of the employees on the work platform or in the boatswain's chair.

Under the terms of § 1926.451(a)(5), employers are required to provide and enforce the use of a block and falls with a boatswain's chair. The primary purpose of the standard is to provide an employee who is suspended in a boatswain's chair with a safe method for controlling their ascent, descent and stopping locations. The applicant contends that a block and falls are very difficult or impossible to operate on a structure over 200 feet. The applicant proposes to substitute a hoisting cable for the block and falls required by § 1926.451(1)(5).

The application bases its variance applicant on its many years of successful experience using safe practices in erecting chimneys, towers and similar tall structures. Since 1915 the applicant has erected over 3,000 structures, many over 1,000 feet in height. The applicant has used the rope-guided hoist system for approximately 15 years. Moreover, although this system has not been used in the United States, it has been approved and accepted, for example, in such countries as Canada, Australia, and the United Kingdom. The applicant has also submitted detailed specifications and drawings which describe the function of various components and safety devices provided by the system to protect employees being transported in the cage.

III. Decision

Section 1926.552(c) sets forth the requirements for personnel hoisting from one elevation to another by mechnacial means. OSHA has determined, however, that the standard does not include pertinent safety requirements for hoisting personnel to and from a work platform that tapers in diameter as it rises to higher elevation. As a consequence, the applicant is unable to comply with certain sections of the standard.

The applicant has demonstrated, through the submission of its variance application and supporting data, that compliance with the hoist tower requirements is infeasible and hazardous. For instance, the outside hoist tower does not provide safe access to the inside of the structure, it precludes guying a tower over 600 feet high, and exposes the tower, structure and personnel to high wind loads. The inside hoist tower interferes with the proper design and construction of scaffolding and, as the diameter of the structure decreases, space becomes insufficient to accommodate the tower within the structure.

Under the terms of § 1926.451(1)(5) employers are required to provide and enforce the use of block and falls with the boatswain's chair to provide for the safe means of access and egress. The applicant has demonstrated that compliance with the block and falls requirement is not always technically feasible. For example, as a rule, the block and falls may be used safely to reach height up to 200 feet. Most structures are over 200 feet. Therefore, a hoisting cable may be substituted for the block and falls in order to safely raise and lower employees to elevations over 200 feet.

On the basis of the variance record and the variance investigation conducted by OSHA personnel, OSHA has determined that the procedures used by the applicant during the construction of a chimney or similar structures, as decribed in the Fact section, will provide employment and places of employment which are as safe as or, indeed, safer than those which would prevail if the applicant was to comply with the requirements of the standards. Accordingly, OSHA has determined that the applicant has established a method for hoisting personnel which results in the least hazardous exposure to the employee. Therefore, Zurn/Tileman merits relief from 29 CFR 1926.451(1)(5) and 29 CFR 1926.552 (c)(1), (c)(2), (c)(3), and (c)(14)(i).

IV. Order

Pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No. 9–83 (48 FR 35736), and in 29 CFR Part 1905, it is ordered that Zurn Industries, Inc./Tileman & Co., Ltd. is hereby authorized to:

(1) Utilize a rope-guided hoist system to safely transport personnel to and from the bottom landing and elevated work platform during the construction of structures such as chimneys and chimney liners in lieu of complying with 29 CFR 1926.552 (c)(10), (c)(2), (c)(3), and (c)(14)(i). The system includes the hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings and safety clamps that grip the safety cables in the event the main hoist line fails.

(2) Use a working platform suspended from a hoisting cable to safely transport personnel to and from the elevated scaffold when constructing structures of small diameter or to safely transport employees to and from the bracket scaffold on the outside of the structure.

(3) Use boatswain's chair in situations where the cage or working platform is infeasible. A hoisting cable may be used with the boatswain's chair on structures over 200 feet instead of the block and falls required by 29 CFR 1926.451(1)(5).

All other applicable provisions of 29 CFR 1926.552(c) and ANSI A 10.4–1963 are unaffected by this order and must be complied with in conjunction with the terms of the order.

The terms of the order are as follows:

1. Qualified Person

(a) A qualified competent person as defined in Section 1926.32 (f) and (l) shall be responsible for the design, maintenance and inspection of the personnel hoisting system.

(b) A qualified competent person shall remain at ground level at all times whenever employees are being transported to and from the elevated work platform to assist in the event of an emergency.

2. Hoist Machine

(a) *Type of hoist.* The hoist machine shall be designated as a portable man hoist.

(b) *Power up to power down.* The hoist machine shall be a based-mounted drum hoist designed so that linespeed is controlled. Power up and power down requirements are as follows:

(i) Lowering by disengagement of the driving components (free-wheeling) shall not be permitted.

(ii) The drive system for the hoist shall be continuously interconnected; and

(iii) Belt drives shall not be permitted.

(c) *Source of power.* The hoist machine may be powered by an air, electric, hydraulic or internal combustion drive mechanism;

(d) *Constant pressure control switch.*

(i) The hoist shall be equipped with a hand or foot operated constant pressure control switch (deadman control switch) which shall stop the hoist immediately upon release; and

(ii) The switch shall be provided with appropriate protection to prevent it from activating in the event it is struck by falling or moving objects.

(e) *Braking systems.* The hoist shall be provided with two independently operated, automatically activated, fail safe braking systems, each capable of stopping and holding 150 percent of the maximum lineload.

(f) *Frame.* The hoist machine frame shall be self-supporting, rigid, welded steel structure with skid base. Holding brackets for anchor lines, as well as legs for anchor bolts, shall be located at corners.

(g) *Location.* The hoist machine shall be located far enough from the footblock to obtain correct fleet angle for proper spooling of the cable on the drum.

(h) *Drum and flange diameters.*

(i) The hoist shall have a winding drum not less than 18 times the diameter of the rope used; and

(ii) The flange diameter shall be approximately 1½ times the rope drum diameter.

(i) *Spooling of the rope.* The rope shall not be spooled closer than 2 inches from the outer edge of the hoist drum flange.

(j) *Electrical system.* All electrical equipment shall be weatherproof.

(k) *Limit switches.* The hoisting system shall be equipped with limit switches and related equipment which will automatically prevent overtravel of the cage at the top of the supporting

structure and at the base of the structure.

3. Methods of Operation

(a) The hoist may be controlled either:

(i) At the hoist panel;

(ii) From inside the passenger cage; or

(iii) At the lower and upper landings, provided that no employee in the cage, at the bottom of the shaft or on the platform would be endangered by having the cage motion controlled from a remote point.

(b) The mode of operating the controls shall be selected at the hoist control panel with directional selectors remotely operated by trained personnel by means of a key switch.

(c) Radio frequencies amplified from the cage to ground level which enable a passenger to exercise hoist control from within the cage, shall be kept free from external interference.

(d) All keys shall be kept so that they are readily accessible only to authorized personnel.

4. Operating Controls and Devices

(a) *Operator.* Only trained employees who are knowledgeable in the operation of the hoist system shall control the hoist machine.

(b) *Speed limitations.* The hoist shall not be operated at a speed in excess of:

(i) 100 ft./min. when using the work platform or boatswain's chair;

(ii) 250 ft./min. (± 10%) for the cage when transporting employees; and

(iii) 500 ft./min. for material hoisting, after a drop test with the rated load for material hoisting has been performed and shown to be safe for the system.

(c) *Communication.* Communication among personnel on all working platforms, on the moving cage, in the boatswain's chair, or at the hoist operator's station shall be maintained by a voice type intercommunciation system.

5. Hoist Rope

(a) *Grade.* Hoisting wire rope shall be extra improved plow steel or equivalent grade of nonrotating type or regular lay rope with proper swivel.

(b) *Size.* The hoist ropes shall be not less than one-half inch in diameter and shall be free of damage at all times.

(c) *Installation, removal and replacement.*

(i) Wire rope shall be thoroughly inspected before the start of each job or new setup; and

(ii) During use, wire rope shall be removed and replaced with new wire rope if any of the conditions described in § 1926.552(a)(3) for wire rope removal occur.

(d) *Attachments.* The rope shall be attached to the cage by a shackle.

(e) Wire rope fastenings. Where clip fastenings are used:

(i) There shall be at least three clips used at each fastening;

(ii) Clips shall be installed with the "U" of the clips on deadend of rope; and

(iii) Spacing clip-to-clip shall be six times the diameter of the rope.

6. Footblocks

(a) *Type of block.* The footblocks shall be:

(i) Construction-type blocks of solid single-piece bail or equivalent;

(ii) Designed for the applied loading, size and type of rope being used;

(iii) Designed with a guard to guarantee containment of the rope within the sheave groove;

(iv) Equipped with a slack rope switch to prevent further rotation of the hoist drum in slack rope condition;

(v) Rigidly bolted down; and

(vi) Serve to turn the moving rope to and from the horizontal or vertical for suitable change of direction of rope travel.

(b) *Directional change.* The change from the horizontal direction of the hoist rope at the footblock to the vertical direction shall be approximately 90°.

(c) *Diameter.* The line diameter of the footblock shall be not less than 24 times the rope diameter (Note: This diameter to diameter ratio for rope to sheave size is predicated on regular inspection of the rope and immediate discard from the system when any one of the conditions mentioned in § 1926.552(a)(3) is observable).

7. Hoist Tower

(a) *Tower.* The hoist tower shall be located within the structure between the bottom supporting surface and the highest elevation necessary to safely accomplish the construction work and shall conform to the requirements of ANSI A-10.4-1963.

(b) *Design.* The tower shall be designed and installed to support the load and forces specified.

(c) *Hoist tower enclosure.* The hoist tower enclosure shall be screened off by a surrounding wire mesh with either one or two landing gates.

(d) *Doors and locking devices.* Landing gates, either hinged type or vertical slide type, shall be equipped with a properly secured latch when hoisting employees to prevent the gates from opening in the absence of the cage and shall be electrically interlocked to prevent the hoist from operating if the gates remain open.

8. Cathead and Sheaves

(a) *Qualified person.* A qualified competent person shall be responsible for the design and maintenance of the cathead (overhead structure).

(b) *Support.* The cathead shall consist of a wide flange beam or two steel channel sections securely bolted back-to-back to prevent spreading.

(c) *Channel section.* The channel sections shall straddle the top of the hoist tower.

(d) *Installation.* All sheaves shall revolve on shafts which rotate on the bearings. Bearings shall be securely mounted to maintain proper bearing position at all times.

(e) *Sheave safeguards.* Each sheave shall be provided with suitable rope guides to prevent the hoist rope from leaving the sheave grooves in case there is abnormal vibration or swing of the hoist rope.

(f) *Diameter.* The cathead sheaves shall have a minimum diameter equal to 24 times the diameter of the rope when the rope travels on the sheave at an angle of approximately 90° (see note to 6(c) of this order).

9. Guide Ropes

(a) *Number of cables.* Two guide ropes (steel safety cables not less than one-half inch in diameter) shall be fixed by swivels to the cathead and shall be free of damage or defect at all times.

(b) *Cable fastening and alignment tension.* One end of the each cable shall be securely and properly fastened to the overhead support, with appropriate tension applied at the foundation.

(c) *Safety clamps.* Safety clamps shall be properly designed and constructed to fit the guide ropes.

(d) *Application of tension.* The clamping device used for tension shall be of a type that will not damage the ropes.

(e) *Height.* The guide ropes shall run the height of the structure.

(f) *Flares location.* Flares shall be fixed at the top and bottom platform locations to ensure that the guide ropes provide for easy entry of the cage into the landing position.

(g) *Spacebar.* A spacebar shall be provided to align the guide ropes and to allow the approaching cage to enter the flares without hanging, seizing or severe oscillation.

10. Cage

(a) *Construction.* The cage shall be of steel frame construction.

(b) *Cage frame with crosshead sheaves.* Where a hoisting-rope sheave is mounted on the cage frame, the

construction shall conform to the following:

(i) Where the sheave shaft entends through the web of the cage frame member, the reduction in area of the member shall be considered when calculating the strength of the member. Where necessary, reinforcing plates shall be welded or riveted to the member to provide the required strength. The bearing pressure shall in no case be more than that permitted in ANSIA10.4–1963, Table 1; and

(ii) Where the sheave is attached to the cage crosshead by means of a single threaded rod or specially designed member or members in tension, the single rod member or members shall have a factor of safety 50 percent higher than the factor of safety required for the suspension wire ropes, but in no case less than a factor of safety of 15.

(c) *Floor.* The floor shall be securely fastened in place with a loading factor of 4.

(d) *Walls.* The walls shall be enclosed by expanded metal and steel panels.

(e) *Roof.* The flat roof shall be constructed of ⅛ inch steel plate with an opening provided for emergency escape.

(f) *Enclosures.* The cage shall be permanently enclosed on the top and all sides except the entrance, exits, and emergency exit.

(g) *Types of gates.*

(i) Each entrance shall have its gates electrically interlocked with the hoist control panel to prevent the cage gates from opening unless the cage is at a landing and to prevent the hoist from operating if the cage gates remain open.

(ii) The gates shall guard the full height of the entrance openings.

(h) *Cage operating procedures.* Procedures for operating the cage shall be conspicuously posted in the cage near the cage switch control and at the key switch control located at the hoist panel.

(i) *Constant pressure switch.* All cage control switches shall be of constant pressure type (deadman control type), so that the hoist and cage will stop immediately upon release of the button.

(j) *Handholds.* The cage shall be equipped with handholds to accommodate each occupant.

(k) *Manual safety clamps activation.* A lever shall be located inside the cage so that passengers can manually activate the safety clamps.

(l) *Capacity.* The rated capacity of the cage shall conform to the following:

(i) The maximum load for personnel hoisting for the five-man cage shall be 5 men or 1250 pounds, and for the eight-man cage it shall be 8 men or 2000 pounds;

(ii) The maximum load for material hoisting for the five-man cage shall be 4200 pounds and for the eight-man cage it shall be 5800 pounds;

(iii) The weight of the cage and all auxiliary equipment attached to the cage shall be included in the maximum rated load for material hoisting; and

(iv) A sign stating the loading capacities shall be posted in the cage, notifying employees of either the reduced rating for the specific job or the standard rating which applies when the initial job drop tests have been performed without damaging any components at 125 percent of the posted load.

11. Safety clamps

(a) *Attachment and operation.* Safety clamps shall be attached to the cage for gripping the guide ropes and shall operate on the broken rope principle.

(b) *Function.* The safety clamps shall be capable of stopping and holding the cage at the maximum allowable speed and load.

(c) *Spring compression force.* The clamping force required for each individual hoisting system shall be pre-determined and pre-set.

(d) *Maintenance.* The safety clamp assemblies shall be kept clean and functional at all times.

12 Emergency Escape Exit and Device

(a) *Location.* An emergency exit, with cover, shall be provided in the top of the cage and shall conform to the following:

(i) The exit opening shall have an area of not less than 400 square inches and shall measure not less than 16 inches on any one side;

(ii) The exit opening shall be so located as to provide a clear passageway unobstructed by fixed hoist equipment located in or on top of the cage; and

(iii) The exit cover shall open outward.

(b) An emergency escape device shall be provided in the cage or at the bottom landing. The device shall conform to the following requirements:

(i) If the emergency escape device is stored in the cage it shall be long enough to reach the bottom landing from the highest escape point;

(ii) If the emergency escape device is stored at the bottom landing there shall be a means provided in the cage for raising the device to the highest escape point; and

(iii) Operating instructions shall be attached to the escape device.

(c) *Training.*

(i) All employees to be transported in the cage shall be instructed in the use of the emergency escape system prior to being transported in the cage.

(ii) All employees shall be given instruction periodically in the use of the hoisting and emergency escape systems.

13. Work Platforms and boatswain's Chairs

(a) *Work platform.*

(i) A work platform with 42-inch high enclosure may be used to raise and lower employees whenever it is not technically feasible to use the cage.

(ii) The employer shall comply with the applicable scaffolding strength factor provisions in §§ 1926.45 (a)(7) and (a)(19).

(b) *Boatswain's chairs.* A boatswain's chair shall only be used when the cage or work platform is impracticable.

(c) *Hoisting cable.* A hoisting cable shall be substituted for the block and falls required by § 1926.451(1)(5) on structures over 200 feet.

(d) *Safety belts and lifelines.* An employee riding on the work platform or in the boatswain's chair shall be equipped with a safety belt and lifeline in accordance with § 1926.104 and the applicable provisions of § 1926.451(l).

14. Welding

All field welding shall be done by qualified welders in accordance with § 1926.552)(b)(5).

15. Safeties

The hoisting systems shall be provided with the following safeties to assure maximum protection to the employees under all conditions.

(a) Top and Bottom Ultimate Limit Switches;

(b) Changeover Limit Switch;

(c) Lower and Upper Slowing Limit Switches; and

(d) Overspeed Governor.

Zurn Industries, Inc./Tileman & Co., Ltd. shall give notice of this grant of variance to all affected employees by the same means required to inform them of the application for variance.

Effective date. This order shall become effective on May 7, 1985, and shall remain if effect unless otherwise modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C., on this 7th day of May, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–11633 Filed 5–13–85; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the assistant Secretary of Labor for Occupational Safety and Health (hereinafter called Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated October 2, 1984, from Richard E. Martin, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard identical to the Federal standard, 29 CFR 1910.1002, Coal Tar Pitch Volatiles, as published in the **Federal Register** (48 FR 2764) on January 21, 1983, which modifies the interpretation to exclude petroleum asphalt. The Washington Coal Tar Pitch Volatile Standard is contained in WAC 296-62-020. It was adopted on November 30, 1983 and became effective on December 30, 1983, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 83-34. This interpretation modifies the original State standard published in the **Federal Register** (47 FR 26950) on June 22, 1982.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal busines hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective May 14, 1985.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 18th day of March 1985.

James W. Lake,

Regional Administrator.

[FR Doc. 85-11630 Filed 5-13-85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-85; Exemption Application No. D-5228 et al.]

Grant of Individual Exemptions; Baton Rouge Building Construction Industry Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible:

(b) They are in the interests of the plans and their participants and beneficiaries: and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Baton Rouge Building and Construction Industry Plan (the Program) Located in Baton Rouge, Louisiana

[Prohibited Transaction Exemption 85-85; Exemption Application Nos. D-5228 and D-5229]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 19, 1985 at 50 FR 7009.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

People's Bank of Bridgeport Employee Group Life Insurance Plan (the Plan) Located in Bridgeport, Connecticut

[Prohibited Transaction Exemption 85-86; Exemption Application No. D-5639]

Exemption

The restrictions of sections 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by the Life Insurance Department of People's Bank from the group life insurance contracts sold by the Metropolitan Life Insurance Company to provide benefits to the Plan, provided the conditions set forth in the notice of proposed exemption are satisfied.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 11, 1985 at 50 FR 9726.

For Further Information Contact: Mr. Gary H. Lafkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Robert L. Andronici Self-Employed Retirement Plan (the Plan) Located in Medford, New Jersey

[Prohibited Transaction Exemption 85-87; Exemption Application No. D-5729]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a parcel of real property by the Plan to Mr. Robert L. Andronici (Mr. Andronici), a disqualified person with respect to the Plan, for $23,000 in cash, and the assumption by Mr. Andronici of the remaining indebtedness of the Plan on the property, provided that the terms of sale for the property are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 11, 1985 at 40 FR 9728.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Heilig-Meyers Company Employees' Profit-Sharing Retirement Plan (the Plan) Located in Richmond, Virginia

[Prohibited Transaction Exemption 85-88; Exemption Application No. D-5808]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past cash sale by the Plan of two promissory notes to the Heilig-Meyers Company, the sponsor of the Plan and a party in interest with respect to the Plan, provided that the terms and conditions of the sale were not less favorable to the Plan as those obtainable in a similar transaction between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 11, 1985 at 50 FR 9728.

Effective Date: This exemption is effective September 14, 1984.

[1] Since Mr. Andronici was the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the code.

Written Comments: One written comment was received by the Department. However, the comment received did not address any of the substantive issues contained in the proposed exemption. The Department received no requests for a public hearing.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Aviall, Inc. Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 85-89; Exemption Application No. D-5849]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a third-party mortgage note (the Note) secured by a deed of trust on real property to Aviall, Inc. (the Employer), the sponsor of the Plan, provided that the sale price of the Note is not less than its fair market value on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Friday, March 15, 1985, at 50 FR 10557.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Careerlife Plan of Burlington Industries, Inc. (the Plan) Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 85-90; Exemption Application No. D-5921]

Exemption

The restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Insuratex, Ltd. from the insurance contracts sold by the Provident Life & Accident Insurance Company of Chattanooga, Tennessee to provide life insurance benefits to participants of the Plan, provided the conditions set forth in the notice of proposed exemption are satisfied.[2]

[2] The applicants have also requested an advisory opinion as to whether the Plan is a plan within the meaning of section 3(1) of the Act. The granting of the exemption herein is not dispositive of whether or not the Plan is an employee welfare benefit plan for purposes of the Act. That issue is still under consideration by the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 26, 1985 at 50 FR 7857.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Profit Sharing Plan and Trust (the Plan) Located in Reno, Nevada

[Prohibited Transaction Exemption 85-91: Exemption Application No. D-6032]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by the Plan from Dr. Richard J. Cavell of a 17.727% interest (the Interest) in a certain royalty interest in a gold mine located in Hawthorne, Nevada, for $39,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1985 at 50 FR 13106.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibition transactions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation, of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not disposition of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each applictaion accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 9th day of May, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-11623 Filed 5-13-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5367 et al.]

Proposed Exemptions; Century Graphics Corp. et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W. Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Century Graphics Corporation Thrift Retirement Plan (the Plan) Located in Metairie, Louisiana

[Application No. D-5367]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c) (2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1(A) through (E) of the Code shall not apply to the loans by the Plan of amounts not to exceed 25% of its total assets to

Century Graphics Corporation (the Plan Sponsor) on a recurring basis over five-year period, for the purchase of certain printing equipment, provided that the terms of the loans are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

Temporary Nature of Exemption: if granted, this exemption will be effective for five years from the date of grant of an individual exemption is published in the **Federal Register** on behalf of the transaction. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five-year period.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with approximately 117 participants. As of November 30, 1984, the Plan had total assets of approximately $1,075,000. The Plan is administered by trustees who are also officers and/or directors of the Plan Sponsor. The Plan Sponsor had total assets of approximately $16,750,00 as of June 30, 1984. The primary business of the Plan Sponsor consists of printing advertising supplements to be inserted in newspapers and magazines.

2. The Plan Sponsor requests an exemption to permit the Plan to make loans to the Plan Sponsor (the Loans) on a recurring basis over a five-year period. The proceeds of the Loans will be used to finance the purchase of equipment (the Equipment) to be used in its printing business. The total outstanding balance of all Loans will never exceed 25% of the assets of the Plan.

3. Each Loan will be evidenced by a promissory note and a collateral chattel mortgage (or chattel mortagage) itemizing the collateral which will be filed in the mortgage records of the Parish in which the Equipment is located. The Plan will have a first lien on the Equipment and any other collateral securing the Loans. The collateral for each Loan will have a fair market value of 150% of the amount of the Loan. If the value of the collateral decreases to less than 150% of the outstanding Loan balance, the Plan Sponsor will offer any additional collateral that may be required to assure that the collateralization remains 150% of the outstanding Loan balance. The Equipment will be fully insured by a qualified, licensed insurance company with the Plan designated as the loss payee.

4. The interest rate of the Loans will float daily at a rate one point above the prime rate at Chase Manhattan Bank (the Bank). The applicant represents that it would qualify for this rate at financial institutions in the area. Each Loan will have a minimum interest rate, which will be fixed at a rate one point above the prime rate at the Bank on the day the Loan is made. The interest rate on each Loan will never be less than the minimum interest rate. The maximum length of each Loan will be sixty (60) months. The Loans will be repaid in monthly installments of principal and interest.

5. Mr William Evans, President of M.J. Williams Leasing Corporation in Pittsburgh, Pennsylvania, will serve as the independent appraiser (Independent Appraiser) for the Loans. The applicant represents that the Independent Appraiser is unrelated to the Plan and the Plan Sponsor. Prior to the Plan entering into each Loan, the Independent Appraiser will determine the fair market value of the Equipment securing the Loan, and will determine the fair market value of and other collateral that may be required to bring the total value of the collateral to at least 150% of the principal balance of the proposed Loan. Fair market value is the price for which the collateral could be sold to an unrelated party in its present condition.

6. Mr. Steven Johnson, a Certified Public Accountant will serve as the independent fiduciary (Independent Fiduciary) for the Loans. The applicant represents that the Independent Fiduciary is unrelated to the Plan and the Plan Sponsor, except that he has prepared the personal tax returns for Mr. Donald Tyler who is to be appointed Plan Administrator by the Plan Sponsor. Mr. Johnson will discontinue this relationship while he is acting as Independent Fiduciary. Prior to the Plan entering into each Loan, the Independent Fiduciary will certify that the Loan would be an appropriate investment for the Plan, and that the terms of each Loan are equal to or better than those which the Plan would receive in dealing with an unrelated party. The Independent Fiduciary will monitor repayment of the Loans, including the interest rate charged. The Independent Fiduciary will also review the appraisals of the collateral performed by the Independent Appraiser, and will require reappraisals of the collateral at least annually to ensure that it represents at least 150% of the outstanding balance of the Loans at all times. The Independent Fiduciary will demand additional security should the value of the collateral fall below 150% of the outstanding balance during the term of the Loans. In the alternative, the Independent Fiduciary may accelerate repayment of the Loans.

7. The Independent Fiduciary has made the following representations:

(a) That he understands the general fiduciary duties and responsibilities he has agreed to perform in accordance with section 404 of the Act;

(b) That the value of the collateral for the Loans will be determined by independent appraisals to assure that at all times the collateral represents 150% of the outstanding balance of the Loans;

(c) That he will have the authority to monitor the collateral to assure that it remains 150% of the outstanding balance of the Loans, and will act on behalf of the Plan to require additional collateral should the existing collateral decrease in value below the 150% limit and take whatever steps are necessary to protect the plan's assets invested in the Loans, including any actions involving foreclosure;

(d) That prior to entering into each Loan, he will determine that the Plan Sponsor could obtain a similar loan at the same interest rate secured by the same equipment from local financial institutions and from independent third party lenders; and

(e) That the Loans fit into overall asset investment scheme of the Plan and that no Plan assets other than liquid assets will be needed to fund the Loans.

8. In summary, the applicant represented that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Loans will be adequately secured at all times by a promissory note and recorded first liens on collateral with an aggregate appraised fair market value of at least 150% of the outstanding balance of the Loans;

(b) the Loans will be monitored by an independent fiduciary;

(c) the Loans will be limited to a five-year period; and

(d) the Independent Fiduciary has determined that the Loans are in the interest of and protective of the Plan and its participants and beneficiaries and will renew this determination prior to entering into each Loan.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number).

Haines & Dolgash, D.D.S., P.S. Profit Sharing Plan and Trust (the Profit Sharing Plan) and Pension Plan and Trust (the Pension Plan; Together, the Plans) Located in Olympia, Washington

[Application Nos. D–5995 and D.5996]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase by the Pension Plan of an undeveloped parcel of real property (Lot 12) from Dr. and Mrs. Gerald Dolgash for $47,800 in cash, and the purchase of another undeveloped parcel of real property (Lot 13) by the Pension Plan from Dr. and Mrs. Michael Haines for $47,200 in cash, provided the purchase prices are not greater than the fair market values of the Lots on the date of the acquisitions.

Summary of Facts and Representations

1. The Pension Plan is a money purchase pension plan with approximately 10 participants and assets of $404,215 as of June 30, 1984. The Profit Sharing Plan is a defined contribution plan with approximately 10 participants and assets of $505,174 as of June 30, 1984. Michael P. Haines, D.D.S., and Gerald G. Dolgash, D.D.S., Inc., P.S. (the Employer) is a professional service corporation providing professional dental services in Olympia, Washington. Dr. Haines and Dr. Dolgash each own 50% of the Employer, and they are the trustees and administrators of the Plans.

2. The subject Lots are parcels of undeveloped real estate located in Kamilche Point, Mason County, Washington. Dr. Dolgash and his wife Marianne own Lot 12, and Dr. Haines and his wife Gail own Lot 13. The Lots are located on the beach and are suitable for being developed as waterfront home sites.

3. Drs. Haines and Dolgash both now wish to sell their respective Lots to the Pension Plan. Dr. and Mrs. Dolgash have offered to sell Lot 12 to the Pension Plan for $47,800 and Dr. and Mrs. Haines have offered to sell Lot 13 to the Pension Plan for $47,200. These are the values determined for the Lots by an appraisal performed by Mr. R.D. Swanson, president, of the R.A. Swanson Company, an independent real estate appraiser located in Olympia, Washington.

4. Dr. and Mrs. Dolgash originally purchased Lot 12 on August 10, 1977 from Virgil Adams Co. (Adams), an unrelated party, for $22,000. As of March, 1985 there was an outstanding principal balance of $7,712.50 on a real estate contract on Lot 12 which is held by Adams. The Pension Plan will pay $40.087.50 to Dr. Dolgash for Lot 12 and will assume the real estate contract. Total consideration for the sale will thus equal the appraised value of Lot 12.

Dr. and Mrs. Haines originally purchased Lot 13 on August 10, 1977 from Adams for $23,500. As of March, 1985, there was an outstanding principal balance of $7,643.03 on a real estate contract on Lot 13, which is held by Ruth Simmons, an unrelated party. The Pension Plan will pay $39.556.97 to Dr. Haines for Lot 13 and will assume the real estate contract. The amount of cash and unpaid principal balance on the real estate contracts that are assumed will be adjusted at closing to reflect payments made by Drs. Dolgash and Haines in the interim between March, 1985 and closing. The real estate contracts both bear interest at the rate of 9% per annum.

5. Mr. David L. Odom, C.P.A. of Bellevue, Washington, has been appointed special trustee for the Plans as of June 28, 1984 for the purpose of reviewing the proposed transactions and making the determination as to whether the transactions are in the best interest of the Plans. Mr. Odom represents that he is independent of Dr. Haines and Dr. Dolgash and the Employer, and that he has performed no other services for them other than in his capacity as special trustee for the Plans. Mr. Odom further represents that he has consulted with counsel familiar with the Act, and that he has been informed of and accepts his duties, liabilities and responsibilities as a fiduciary under the Act.

6. Mr. Odom represents that he has reviewed the proposed transactions and has determined that they are appropriate for the Pension Plan and in the Pension Plan's best interest. Mr. Odom represent that he has reviewed the investment portfolio of both Plans. After examining the return on investment for the Plans for the past two years, including two other undeveloped Kamilche Point lots which represents approximately 11.[illegible] of the Profit Sharing Plan's assets, Mr. Odom feels that the potential future appreciation of Lots 12 and 13 would be within an acceptable range for the Pension Plan. Mr. Odom states that the Profit Sharing Plan's lots have appreciated in value at an average of 14–16% per year for the last seven years. Mr. Odom states that the investment by the Pension Plan in the Lots would not decreae the rate of return, increase the risk of loss or unbalance the distribution of investments for the Pension Plan. Mr. Odom further represents that the assumption of the existing real estate contracts held by unrelated parties is in the best interest of the Pension Plan, as the contracts are assignable and bear a sub-market interest rate of 9%.

7. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The Lots represent approximately 23% of the Pension Plan's assets; (2) the sales will be at fair market value prices determined by an independent appraisal; and (3) Mr. Odom, independent trustee for the Pension Plan, has reviewed the proposed transactions and determined that they are appropriate for and in the best interest of the Pension Plan.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number)

Columbus Obstetricians & Gynecologists, Inc. Profit Sharing Plan (the Plan) Located in Columbus, Ohio

[Applications No. D-6023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of the section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loan of $73,000 by the Plan to Columbus Obstetricians & Gynecologists, Inc. (the Employer), the sponsor of the Plan; and the guarantee of the proposed loan by the shareholders of the Employer, provided that the terms of the proposed loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which, as of January 1, 1984, had 26 participants and total assets of $1,624,986.73. The trustees of the Plan are Robert W. Brannon, M.D. and Ralph R. Ballenger, M.D., who are the decision-makers with respect to Plan investments.

2. The Employer is an Ohio medical professional corporation with its principal place of business located at 777 W. State Street, Columbus, Franklin County, Ohio.

3. The applicant requests an exemption to permit the loan of $73,000 (the Loan) by the Plan to the Employer, the proceeds of which would be used to

retire an existing loan and the interest payable thereunder (the Existing Loan) between the Employer and Huntington National Bank. The Existing Loan was entered into on December 15, 1984 in the amount of $70,000 at an interest rate of 12¼%, one percent over the prime rate of interest of Huntington National Bank. The Existing Loan is due and payable in full, including interest, 122 days from the date it was entered into. The proceeds of the Existing Loan were used by the Employer to purchase, from an unrelated vendor, a computer system and accompanying software to provide improved medical services to its patients.

4. The Loan from the Plan to the Employer will bear a 14% fixed interest rate and will be repayable in 48 equal consecutive monthly installments. The Loan will be evidenced by a cognovit promissory note (the Note), signed by the Employer and guaranteed by the shareholders of the Employer (the "Guarantors"). The Guarantors are Harry E. Ezell, M.D., Robert W. Brannon, M.D., Ralph R. Ballenger, M.D., Larry A. Simon, M.D., Charles A Caranna, M.D., R. Dennis Blose, M.D., and Janet M. Lucas, M.D., each of whom owns approximately 14.3% of the outstanding shares of the Employer. The present net worth of the employer and the Guarantors is in excess of $500,000.

5. The collateral for the Loan will be the accounts receivable (the Receivables) of the Employer. The Plan will have a security interest in the Receivables, perfected by the filing of a financing statement with the Secretary of State of Ohio and the Franklin County Recorder. The applicant states that no other lenders will have any security interest in the Receivables. The applicant has provided statements evidencing the status of the Receivables over the period from February 1, 1984 to November 27, 1984. These figures indicate that the Receivables ranged between $281,055.03 and $406,237.10 in value, with an average total of over $350,000. As of November 27, 1984, the Receivables totalled $312,873.07, of which approximately 80% were less than 60 days old. The applicant states that the Receivables have been and will remain highly collectible.

6. Mr. Timonthy P. Nagy, an attorney admitted to the Bar of the State of Ohio and knowledgeable regarding the Act, has been appointed to serve as a special trustee of the Plan (the Special Trustee) to act in all matters relating to the Loan and payment of amounts due under the Note. The Special Trustee represents by affidavit that he is unrelated to any of the parties to the proposed transaction and that he understands his responsibilities as a fiduciary under the Act. The Special Trustee states by letter dated March 29, 1985 that he has reviewed the interest rate, the loan terms and the security for the proposed transaction and finds them to be fair and reasonable as well as commensurate with the interest rates, terms and collateral which would be required by an independent financial institution on a similar loan. Further, he represents that he has reviewed a schedule listing the Plan's assets for the year ending December 31, 1983 and believes that the Loan is a prudent investment which will provide further diversification of the Plan's assets. The Special Trustee states that he has reviewed the Receivables of the Employer and finds them to presently and historically constitute five times the amount of the Loan. In addition, written assurances have been received by the Special Trustee from the Employer that in the event the Receivable ever decrease to an amount which is less than 200% of the then existing balance of the Loan, additional collateral will be supplied. The Special Trustee represents by affidavit that he will monitor compliance with the terms of the Loan, including enforcement of the collection of all payments in the event of default and the maintenance of adequate security.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Loan will be secured by a perfected security interest in collateral which has an average value of five times the amount of the Loan; (b) Mr. Nagy, a qualified, independent party will serve as Special Trustee and has determined that the Loan is appropriate and in the best interest of the Plan; (c) The Special Trustee will monitor the repayment of the Loan and will enforce the performance of the Employer's obligations under the terms of the Loan; (d) the Loan will be for a short term and will represent only about 7% of the Plan's assets.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and nor in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 9th day of May, 1985.

Elliot I. Daniel,

Acting Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–11622 Filed 5–13–85; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Challenge/Special Projects Section) to the National Council

on the Arts will be held on May 30–31, 1985 from 9:00 am–5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sections will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–11609 Filed 5–13–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Design, Manufacturing, and Computer Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufactring, and Computer Engineering (DMCE).

Date and Time: May 30–31, 1985—9:00 a.m.–5:00 p.m., May 30; 9:00 a.m.–3:00 p.m., May 31.

Place: National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, D.C. 20550.

Type of Meeting: Open.

Contact person: Dr. Bernard Chern, Acting Division Director for DMCE, Room 1108, National Science Foundation, Washington, D.C. 20550. Telephone: 202/375–9618.

Summary minutes: Helen L. Hickland at the above address.

Purpose of advisory committee meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer Engineering.

Summarized agenda: Discussions on issues, opportunities and future directions for the Division in Design, Manufacturing, and Computer Engineering, discussion of the Engineering Directorate budget for FY 85 and FY 86; discussion wth NSF Assistant Director for Engineering, as well a other items.

M. Rebecca Winkler,

Committee Management Officer.

May 9, 1985.

[FR Doc. 85–11569 Filed 5–13–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Environmental Assessment and Finding of No Significant Impact; Omaha Public Power District

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Omaha Public Power District (the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action: The exemptions are related to Section III.G of Appendix R to 10 CFR Part 50. Section III.G calls for fire protection features to protect structures, systems, and components important to safe shutdown. This protection can be obtained by separation, utilizing of fire barriers, installation of fire detection and suppression systems, enclosure of cable and equipment, and alternative or dedicated shutdown capability. The licensee requested exemptions for the Fort Calhoun Station, Unit No. 1 in the areas of separation distance of redundant safe shutdown trains, 3-hour fire rated barriers, 1-hour fire rated barriers with fire detection and suppression systems, and alternative or dedicated shutdown capability with fire detection and suppression systems.

These exemptions are responsive to the licensee's letters requesting exemptions dated August 30, 1983, December 3, 1984, and January 9 and March 8, 1985.

The Need for the Proposed Action: The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemptions will provide a degree of fire protection that is equivalent to that requrired by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action invloves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Fort Calhoun Station, Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upn the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letters requesting the exemptions dated August 30, 1983, December 3, 1984, January 9 and March 8, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85–11624 Filed 5–13–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co.; Systematic Evaluation Program Notice of Availability of Draft Integrated Plant Safety Assessment Report for the San Onofre Nuclear Generating Station, Unit 1

The Nuclear Regulatory Commission's (NRC) Office of the Nuclear Reactor Regulation (NRR) has published its Draft Integrated Plant Safety Assessment Report related to Southern California Edison Company's San Onofre Nuclear Generating Station, Unit 1 located in San Diego County, California.

The report documents the review completed under the Systematic Evaluation Program (SEP). The SEP was initiated by the NRC to review the design of older operating nuclear reactor plants to reconfirm and document their safety. The review has provided for (1) an assessment of the significance of differences between current technical positions on selected safety issues and those that existed when San Onofre Unit 1 was licensed, (2) a basis for deciding on how these differences should be resolved in an integrated plant review, and (3) a documented evaluation of plant safety. Equipment and procedural changes have been identified as a result of the review. It is expected that the Final version of this report and its supplements will be one of the bases for considering the issuance of a full-term operating license in place of the existing provisional operating license.

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC. 20555 and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California for inspection and copying. Single copies of this report (Document No. NUREG-0829) may be obtained to the extent of existing supply upon written request to the U.S. Nuclear Regulatory Commission, Division of Technical Information and Document Control, Washington, D.C. 20555, Attention: Publication Services Section.

Dated at Bethesda, Maryland, this 1st day of May 1985.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-11626 Filed 5-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-321 and 50-366]

Environmental Assessment and Finding of No Significant Impact; Georgia Power Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c) to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensees), for the Edwin I. Hatch Nuclear Plant, Units 1 and 2 located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action: The exemption would grant the licensees a schedular deferment from the provisions of Appendix R, Section III.G, fire protection of the equipment used for safe shutdown capability, from startup following the refueling outage scheduled to commence in the fall of 1985 for Hatch Unit 1 and startup following the refueling outage that commenced on April 5, 1985 for Hatch Unit 2 to November 30, 1986 for both Units. The exemption is responsive to the licensees' application for exemption dated April 16, 1985.

The Need for the Proposed Action: Appendix R, Section III.G, requires a licensee authorized to operate a nuclear power reactor to provide fire protection for equipment used for safe shutdown. The schedular requirements of Section 10 CFR 50.48(c) call for the implementation of modifications for which a plant shutdown is required before startup following the first refueling outage that commences 180 days or more after the date of NRC approval of the modifications requiring approval. For Hatch Units 1 and 2, this 180-day period started on April 18, 1984. The deadlines for these modifications were therefore startup following the refueling outage scheduled to commence in the fall of 1985 for Hatch Unit 1 and startup following the refueling outage that commenced on April 5, 1985 for Hatch Unit 2.

In a submittal dated April 16, 1985, the licensees requested that the implementation schedules for the proposed fire protection modification in certain areas at Hatch Units 1 and 2, requiring plant shutdown for installation, be extended to November 30, 1986.

The magnitude of the program associated with the fire protection modifications and with an equipment qualification program and other improvement programs with which the fire protection work must interface does not allow the 10 CFR 50.48(c) schedule requirements to be met. As an alternative to implementation of the required modifications before startup following the refueling outages discussed above, the licensees have proposed interim compensatory fire protection measures to be instituted until the modifications have been completed. These measures are being evaluated by the Commission's staff.

Environmental Impacts of the Proposed Action: By using reasonable interim compensatory measures, the proposed exemption will provide a degree of fire protection such that there is no significant increase in the risk of fire at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in connection with the Final Environmental Statements (FES) relating to this facility, *FES for Hatch Units 1 and 2*, USAEC (October 1972) and *FES for Hatch Unit 2*, NUREG-0417 (March 1978).

Agencies and Persons Consulted: The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated April 16, 1985 which is available for public inspection at the

Commission's Public Document Room. 1717 H Street, NW. Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-11625 Filed 5-13-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- River assessment study.
- Anadromous fish section—Hydro Assessment Study.
- Tribal values study.
- FERC update.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: May 14, 1985, 10:00 a.m.

ADDRESS: The meeting will be held at the Holiday Inn, 9 North 9th, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-11540 Filed 5-13-85; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CDG 85-038]

Towing Safety Advisory Committee; Subcommittee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subommittees of the Towing Safety Advisory Committee (TSAC). The Subcommittee meetings will be held on 29 May 1985 in Room 3328–30 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, D.C. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by TSAC Subcommittees on Tank Barges—Construction, Certification, Operation; Personnel Manning and Licensing; Presonnel Safety and Work Place Standards; Existing Regulations—Review and Restructure; and IMO/MARPOL initiatives.
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain C. M. Holland, Executive Director, Towing Safety Committee, U.S. Coast Guard (G–CMC), Washington, DC 20593 or by calling (202) 426–1477.

Dated May 9, 1985.

C.M. Holland,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 85-11604 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-039]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meetings will be held on 30 May 1985 in Room 2415, U.S. Coast Guard Headquarters 2100 Second Street, SW., Washington, DC The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. The agenda for the meeting follows:

1. TSAC discussion and/or recommendations concerning the following past agenda items:

(a) Air Quality: Vapor Control/Recovery.

(b) Revisions of Rules for Cargo Barges Carrying Bulk Liquid Cargoes.

(c) Intervals of Drydocking and Tailshaft Requirements.

(d) Inspection Intervals for Pressure Vessels and Cargo Tanks.

(e) Qualifications of Person in Charge of Oil Transfer Operations; Tankerman Requirements (79–116 & 79–116a).

(f) Bridge Lighting and Other Signals.

(g) Documentation of Vessels.

2. The following new items will also be discussed by TSAC:

(a) Recent International Maritime Organization (IMO) Developments.

(b) Hazardous Cargo Containers on Deck Cargo Barges.

(c) Perceived Inconsistencies in Barge Inspection Procedures.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Exeuctive Director no later than the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593. (202) 426–1477.

Dated: May 9, 1985

C.M. Holland,

Captain, U.S. Coast Guard, Executive Director, TSAC.

[FR Doc. 85-11603 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-85-10]

Summary of Exemption Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended

to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 24, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washingon, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 8, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

[The following petitions request relief from Jan. 1, 1985, noise level compliance date]

Docket No	Petitioner	Regulations affected
24308-1	Skystar International	14 CFR 91 303
24383-1	National Airlines	14 CFR 91 303
24339-1	Air Transport International	14 CFR 91 303.
24257-1	Ecuatoriana Airline	14 CFR 91.303
24224-1	Transbrasil	14 CFR 91 303
24289-1	Buffalo Airways	14 CFR 91.303.
24186-1	Arrow Air	14 CFR 91 303
23996-1	Zantop	14 CFR 91.303.
24130-1	Worldways Canada	14 CFR 91 303
24370-1	Hawaiian Airlines	14 CFR 91 303.
24146-1	South Pacific Island Airways	14 CFR 91.303.
24086-1	Airlift International	14 CFR 91.303
24967-1	Challenge Air Transport	14 CFR 91 303
24350-1	Vang	14 CFR 91.303
24221-1	Japan Air Lines	14 CFR 91 303.
24372-1	Lan-Chile	14 CFR 91 303
24231-1	Rich International Airlines	14 CFR 91.303.
24421-1	Samoa Airlines	14 CFR 91.303
24615	Nationair	14 CFR 91 303.

[FR Doc. 85-11546 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 151—Airborne Microwave Landing System Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System (MLS) Area Navigation Equipment to be held on June 5-7, 1985, in Building 1202, Room 246, National Aeronautics & Space Administration (NASA) Langley Research Center, Hampton, Virginia commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on February 20-22, 1985; (3) Review and Discuss Special Committee 137 (Airborne Area Navigation Systems), Special Committee 149 (Airborne Distance Measuring Equipment) and the European Organization for Civil Aviation Electronics (WG-27) Activities; (4) Reports of Working Group Activities; (5) Review of Task Assignments from the Previous Meeting; (6) NASA MLS Navigation Simulator Briefing and Demonstration; (7) Working Groups Meet in Separate Sessions; (7) Committee Meeting in Plenary Session; (8) Assignment of Tasks; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 6, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-11545 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP85-8; Notice 1]

B.F. Goodrich Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

B.F. Goodrich Co., of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR Part 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph § 6.5(c) of Standard No. 119 requires tires to be marked with the tire size designations as listed in the documents and publications designated in § 5.1. Goodrich has manufactured 2,823 LT235/85R16 Goodrich Trail Edge light truck tires labeled as LT235/80R16. The incorrect stamping is in the bead area, on the opposite-serial side and the tires were produced from December 16, 1984 through March 24, 1985. The correct aspect ratio appears in all other size designations on these light truck tires.

Goodrich argues that the noncompliance is inconsequential because the failure to label properly has no impact on safety, and the tires otherwise comply with all requirements of Standard No. 119. Goodrich contends that the tire industry has confined these LT type tires to the 75 and 85 aspect series to date and to the best of their knowledge there is no such tire size as LT235/80R16. They state that since the incorrect stamping is in 0.250-inch high characters in the bead area, it would be impractical to correct the label by buffing-off the incorrect numeral 0 and rebranding with the numeral 5. Further, Goodrich states that the point of sale information, contained on the paper tread labels, contains the correct identification for the light truck tires.

Interested persons are invited to submit written data, views, and arguments on the petition of B.F. Goodrich Co., described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: June 13, 1985.

(Section 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 9, 1985.

Barry Ferlrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11619 Filed 5-13-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Boards; Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employees' performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on May 15, 1985.

FOR FURTHER INFORMATION CONTACT: John L. Heiss, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 3417, Washington, D.C., (202) 566-5563.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review Senior Executives rated by the Commissioner and Deputy Commissioner is composed of the following members:

Stepen E. Higgins—Director, Bureau of Alcohol, Tobacco and Firearms
John W. Mangels—Director, Office of Operations, Department of Treasury
Larry B. Sheafe—Assistant Director (Investigations), U.S. Secret Service
Edward T. Stevenson—Deputy Assistant Secretary (Operations), Department of Treasury
Richard Wassenaar—Assistant Commissioner (Criminal Investigations), Internal Revenue Service

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

George C. Corcoran, Jr.—Assistant Commissioner, Office of Enforcement, U.S. Customs Service
William Green—Assistant Commissioner, Office of Internal Affairs, U.S. Custom Service
Eugene H. Mach—Assistant Commissioner, Office of Inspection and Control, U.S. Customs Service
Robert P. Schaffer—Assistant Commissioner, Office of Commercial Operations, U.S. Customs Service
James W. Shaver—Assistant Commissioner, Office of International Affairs, U.S. Customs Service
D. Lynn Gordon—Acting Comptroller, U.S. Customs Service
John L. Heiss—Director, Office of Human Resources, U.S. Customs Service
Robert N. Battard—Regional Commissioner, Southeast Region, U.S. Customs Service
William J. Griffin—Regional Commissioner, Northeast Region, U.S. Customs Service
John R. Grimes—Regional Commissioner, South Central Region, U.S. Customs Service
Donald Kelly—Regional Commissioner, Southwest Region, U.S. Customs Service
Richard McMullen—Regional Commissioner, North Central Region, U.S. Customs Service
Dennis T. Snyder—Regional Commissioner, New York Region U.S. Customs Service
Quintin L. Villanueva, Jr., Regional Commissioner, Pacific Region U.S. Customs Service

Dated: May 9, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-11600 Filed 5-13-85; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 93
Tuesday, May 14, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

CONTENTS

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, May 20, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Proposed purchase of check equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 9, 1985.

William W. Wiles,
Secretary of the Board.

[FR Doc. 85–11737 Filed 5–10–85; 3:51 am]

BILLING CODE 6210-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 13, 20, 27, and June 3, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of May 13

Wednesday, May 15

2:00 p.m.
Briefing on Proposed Revision of Part 20 (Public Meeting)

Thursday, May 16

10:00 a.m.
Mid-Year Budget and Program Review (Public Meeting)

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Proposed Changes in NRC Sunshine Act
b. Commission Response to Aamodt Motion for Reconsideration and Reopening of the Record (Tentative)

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of May 20—Tentative

Tuesday, May 21

2:30 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, May 22

2:00 p.m.
Oral Presentations by Participants on Lifting Immediate Effectiveness of 1979 Shutdown Orders for TMI–1 (Public Meeting)

Thursday, May 23

10:00 a.m.
Discussion on Shoreham Adjudication Matter (Closed—Ex. 10) (Tentative)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of May 27—Tentative

Wednesday, May 29

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Vote on Lifting Immediate Effectiveness of 1979 Shutdown Orders for TMI–1/Discussion if Necessary (Public Meeting)

Thursday, May 30

9:30 a.m.
Discussion of Pending Investigation (Closed—Ex. 5 & 7)

10:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Palo Verde-1 (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of June 3—Tentative

Monday, June 3

1:30 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Wolf Creek (Public Meeting)

Thursday, June 6

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2) was held on May 8.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,
Office of the Secretary.
May 9, 1985.

[FR Doc. 85–11708 Filed 5–10–85; 3:13 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
May 14, 1985

Part II

Environmental Protection Agency

40 CFR Part 141

Fluoride; National Primary Drinking Water Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-2800-2]

National Primary Drinking Water Regulations; Fluoride

April 30, 1985.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This rule is proposed under the Safe Drinking Water Act (SDWA) (42 USC 300f *et seq.*) and would establish a Recommended Maximum Contaminant Level (RMCL) for fluoride in drinking water. The RMCL is proposed at 4 mg/L. An RMCL is a *non-enforceable health goal* set at a level which would result in no known or anticipated adverse health effects with an adequate margin of safety. This proposal is the initial stage in rulemaking for the establishment of a primary drinking water regulation for fluoride. When the RMCL is promulgated, EPA will propose a primary drinking water regulation consisting of a Maximum Contaminant Level (MCL) and monitoring/reporting requirements. An MCL is an *enforceable standard* and is set as close to the RMCL as feasible with the use of the best technology generally available taking costs into consideration.

DATES: Written comments should be submitted by July 15, 1985. A public meeting will be held in Washington, D.C. on June 17–18, beginning at 10:00 AM in Room 2126, EPA, 401 M Street SW., Washington, D.C.

ADDRESSES: Send written comments to: Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. A copy of all comments will be available for review during normal business hours at the EPA, Room 2904 (rear), 401 M Street, SW., Washington, D.C 20460. It is requested that anyone planning to attend the public meeting (especially those who plan to make statements) register in advance by calling or writing Ms. Nancy Dillon at (202) 382–3022, EPA, (WH–550), 401 M Street, SW., Washington, D.C 20460. Persons planning to make statements at the hearing are encouraged to submit written copies of their remarks at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph. D., Director, Criteria and Standards Division, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C 20460, (202) 382–7575.

Supporting documents cited in Section VIII will be available for inspection at the above address in Room 2904 (rear) in the Public Information Reference Unit and at the Drinking Water Supply Branch Offices in EPA's Regional Offices at the addresses listed below.

I. JFK Federal Bldg., Boston, MA 02203, Phone: (617) 223–[illegible]486, Jerome Healy
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–9873, Bernie Sarnowski
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Copies of the draft health criteria, occurrence, and treatment/cost documents are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll free number is (800) 336–4700; in Washington, D.C. area: (703) 487–4650.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

The Safe Drinking Water Act ("SDWA" or "the Act"), in Section 1401, requires EPA to establish primary drinking water regulations which (1) apply to public water systems; (2) specify contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons; and (3) specify for each contaminant either (a) MCL or (b) a treatment technique. See Section 1401(1), 42 U.S.C. 300f. A treatment technique requirement would only be set if "it is not economically or technologically feasible" to ascertain the level of a contaminant in drinking water. *Id.*

The SDWA includes provision for Interim and Revised Regulations. See Section 1412. Interim Regulations were to be established within 180 days of enactment of the SDWA. They were promulgated in 1975 (40 FR 59566, December 24, 1975). Revised regulations are to be developed in two steps: first EPA (the Agency) is to establish RMCLs and then establish MCLs as close to the RMCLs as feasible. *RMCLs are non-enforceable health goals.* RMCLs are to be set at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allow an adequate margin of safety", Section 1412(b)(1)(B). RMCLs have no direct impact on public water systems or the public. By promulgating RMCLs, no system is forced to reduce contaminants to this level or to take other action regarding other contaminants. However, if EPA promulgates an RMCL, the Act requires EPA to eventually promulgate an MCL.

MCLs are the enforceable standards. MCLs must be set as close to RMCLs as is feasible. Feasible means "with the use of the best technology, treatment techniques and other means, which the Administrator finds are generally available (taking costs into consideration)" Section 1412(b)(3).

The SDWA specifies that primary drinking water regulations must contain criteria and procedures to assure a supply of water that complies with the MCLs (i.e., monitoring and reporting

requirements), Section 1401(1)(D). Section 1445(a) also authorizes EPA to require, by regulation, any public water suppliers to keep records, make reports, conduct monitoring and provide such other information as may be required to assist in determining compliance with the SDWA, in evaluating health risks of unregulated contaminants, or in advising the public of such health risks.

National Secondary Drinking Water Regulations (NSDWR) (Section 1412(c)) are also authorized under the SDWA. A secondary drinking water regulation is defined in Section 1401(2) as "a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare." The NSDWR "may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water systems providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare." In addition, such regulations "may vary according to geographic and other circumstances." NSDWR are not Federally enforceable. Secondary Maximum Contaminant Levels (SMCLs) were established in 1979 for 12 parameters (44 FR 42196 July 19, 1979).

States may assume primary enforcement responsibility (primacy) for public water systems under SDWA Section 1413. To assure primacy, States must adopt drinking water regulations that are no less stringent than EPA's National Interim Primary Drinking Water Regulations and other supporting authority. *See* SDWA Section 1413(a). States must, therefore, adopt EPA's primary MCLs but need not adopt the RMCLs or the Secondary MCLs to assume or retain primacy.

II. Regulatory Framework

The issuing of Revised Primary Drinking Water Regulations is a two-step process required by the SDWA.

In the first step, the National Interim Primary Drinking Water Regulations (NIPDWRs) were promulgated for fluoride and other chemicals on December 24, 1975, with an effective date of June 24, 1977. Amendments were issued in 1976, 1979 and 1980. See 40 CFR Part 141. MCLs and monitoring and reporting requirements were set for numerous microbiological, organic, radionuclide, and inorganic contaminants, including fluoride. *See* 40 CFR, Part 141, Subpart B.

As the second step, Section 1412(b)(1) requires EPA to consult with the National Academy of Sciences and to propose and promulgate National Revised Primary Drinking Water Regulations (NPDWR) that include MCLs and monitoring and reporting requirements for those contaminants which may have any adverse effect on human health. This notice initiates the second step for fluoride. NPDWRs for other contaminants in drinking water are being developed in rulemaking separate from fluoride. *See* 48 FR 45502 (October 5, 1983) and 49 FR 24330 (June 12, 1984). An advance notice of proposed rulemaking was issued for fluoride and other contaminants on October 5, 1983 (48 FR 45502, 45514).

This rulemaking will also satisfy a consent decree which settles a legal challenge brought by South Carolina against EPA. On June 4, 1981, the State of South Carolina Department of Health and Environmental Control filed a petition requesting that EPA exercise its rulemaking authority to revoke the fluoride Interim Regulation. The petition contended that (1) fluoride does not pose a public health hazard, and (2) the cost of reducing fluoride concentrations is prohibitively high and not justified by the benefits. The petition recommended "that further study of the medical and economic aspects of fluoride removal be conducted and that, pending results of that study, fluorides be removed to the secondary drinking water regulations."

The Agency responded to the South Carolina petition on December 1, 1981 (46 FR 58345). In this response, the Administrator agreed to make a decision on the South Carolina petition through the Revised Regulation process, "as soon as the current epidemiology studies are completed, reported and reviewed, and revised treatment and economic impact assessments are completed."

In 1984, South Carolina sued EPA seeking faster action in EPA's rulemakings on fluoride (*South Carolina Department of Health and Environmental Control v. U.S. Environmental Protection Agency, et al.*, No. 3:84-0676-15 (D.S.C. April 4, 1984). On January 18, 1985, EPA and South Carolina signed a Consent Decree that set forth a schedule for rulemaking on EPA's decision whether to regulate fluoride under the Revised Regulations. Today's notice is the first step towards implementing that decree.

III. Background

A. Interim Fluoride Regulation

In 1975, EPA promulgated the NIPDWR under Section 1412 of the Safe Drinking Water Act. EPA regulated fluoride and set an MCL. The MCL varied from 1.4 mg/L to 2.4 mg/L, depending upon annual average ambient air temperatures. These levels were considered to be twice the optimum level (.7 to 1.4 mg/L); "optimum" is defined as a balance between the prevention of both dental caries and objectionable fluorosis (Mc Clura, 1970). Objectionable fluorosis is a mottling of dental enamel characterized by staining and/or pitting. The Agency set this MCL based on evidence that higher levels of fluoride in drinking water could produce adverse health effects by increasing the occurrence of objectionable dental fluorosis. This MCL was identical to a previous United States Public Health Service Standard that was established in 1962.

The Interim Regulation for fluoride was challenged by the Environmental Defense Fund (EDF) (*EDF* v. *Costle*, 578 F.2d 337 (D.C. Cir. 1977)). EDF believed that the standard was not sufficiently protective of human health since technologies were available to control fluoride to lower levels. In upholding EPA's position, the Court of Appeals for the District of Columbia Circuit found that EPA had struck a proper balance between health protection and the cost of meeting the standard. However, the court also noted that "there is serious question as to whether mottling (dental fluorosis) can be regulated as an 'adverse effect on health' within the meaning of the Act." *Id.* at 347 n. 35.

B. National Academy of Sciences Review

EPA requested the advice of the National Academy of Sciences concerning contaminants for which MCLs had been established. In *Drinking Water and Health*, Vols. I and III (NAS 1977, NAS 1980) the Academy concluded:

- Fluoride "has not been shown unequivocally to be an essential element for human nutrition"; in addition, the Academy estimated adequate and safe daily intakes of fluoride ranging from 0.1 mg for infants less than 6 months old to 1.5 to 2.5 mg fluoride for children from 7 years to adulthood— these levels of fluoride are considered protective against both caries and osteoporosis (reduced bone density) (NAS 1980).
- "Ingestion of drinking water containing excessive fluoride can result in mottling of the teeth and dental fluorosis in children. Increased density and calcification of bone (osteosclerosis) has been associated with chronic ingestion of high-fluoride. . . . At unusually high levels, chronic fluoride ingestion can result in crippling skeletal fluorosis."; "Dental mottling and changes in tooth structure may develop in children when fluoride levels in water exceed approximately 0.7 to 1.3 mg/liter, depending on ambient temperature . . . and diet"; and "a 10 to 20 year daily ingestion of 20 to 80 mg

fluoride could result in crippling skeletal fluorosis." (NAS 1980).

- "Until more precise measures of the margin of safety for the use of fluoride are available," (concerning crippling skeletal fluorosis and other aspects of fluoride toxicity), "the levels of fluoride in drinking water should not exceed the optimal levels for anticariogenic benefits." (NAS 1980).
- The Academy also noted the lack of recent studies on the incidence of mottling, and suggested the need for additonal studies on dental mottling and skeletal fluorosis as well as sociological studies to determine whether mottling was perceived by the public as a health problem. (NAS 1977) Those studies are now completed (Driscoll *et al.* 1983, Segreto *et al.* 1984, Kleck 1984) and the findings are discussed in Section V.

C. The South Carolina Petition

The petition from South Carolina (June 4, 1981) requested that the Agency delete fluoride from the Primary Drinking Water Regulations and set an SMCL for fluoride in the Secondary Drinking Water Regulations. The state argued that dental fluorosis should not be considered an adverse health effect, but should be considered a cosmetic effect. South Carolina contended that cosmetic effects of dental fluorosis (e.g. discoloration and pitting of teeth) are appropriate for regulation in the Secondary and not the Primary Drinking Water Regulations.

A number of other states and professional organizations supported the petition, including such groups as the American Medical Association, American Dental Association, Association of State and Territorial Dental Directors, and the Association of State and Territorial Health Officials. The main concern of the states appeared to be over the costs of the fluoride removal; however, several of the other groups stated that the inclusion of fluoride in the primary regulations as a contaminant that poses health risks to consumers will undermine efforts to promote fluoridation of community water supplies where optimal levels of fluoride do not occur naturally.

Dose-related beneficial and undesirable effects with the same substance are not an unusual occurrence. Certain chemicals are essential nutrients or otherwise beneficial at low levels, but pose health risks at higher levels of consumption. Fluoride is somewhat unique in this circumstance because there is some overlap of the doses at which beneficial and undesirable effects occur.

D. The Surgeon General's Views and National Drinking Water Advisory Council Recommendations

EPA requested that the U.S. Surgeon General examine "the issue of the relationship of fluoride in drinking water and the health aspects of dental fluorosis." The Surgeon General replied on July 30, 1982 (Koop 1982). He concurred with the findings of an ad hoc committee headed by the Chief Dental Officer of the U.S. Public Health Service, which included the following statements (Albertini et al. 1982):

- "No sound evidence exists which shows that drinking water with the various concentrations of fluoride found naturally in public water supplies in the U.S. has an adverse effect on general health."
- "No sound evidence exists which shows that drinking water with the various concentrations of fluoride found naturally in public water supplies in the U.S. has any adverse effect on dental health as measured by loss of function and tooth mortality."

The Surgeon General did not consider dental fluorosis to be an adverse health effect. He added (in agreement with the previous Surgeon General):

- "Also, as one concerned about the total well-being of the individual and one dedicated in helping people avoid impediments to their reaching their maximum potential in society, I cannot condone the use of public water supplies that may cause undesirable cosmetic effects to teeth, just as I cannot condone the use of water supplies below the optimum concentrations because of diminished protection against dental caries" (Koop 1982, Richmond 1980).

The Surgeon General also stated:

- "I encourage communities having water supplies with fluoride concentrations of over two times optimum to provide children up to age nine with water of optimum fluoride concentration to minimize the risk of their developing aesthetically objectionable dental fluorosis."

On October 26, 1982, the National Drinking Water Advisory Council (NDWAC) convened in a special session to consider the fluoride issue and to develop recommendations to the Administrator (NDWAC 1982). The Regulations Subcommittee of the Council heard testimony from organizations including the American Medical Association, the American Dental Association, the State of South Carolina, the Association of State and Territorial Dental Directors, the Association of State and Territorial Health Officials, the National Institute for Dental Research and the Chief Dental Officer, U.S. Public Health Service. These speakers supported deleting fluoride from the Primary Drinking Water Regulations and placing fluoride in the Secondary Drinking Water Regulations. The subcommittee also considered other scientific and technical information on fluoride in drinking water and in dental and skeletal fluorosis.

In a letter to the Administrator summarizing their discussions, the full NDWAC concluded that osteosclerosis and other adverse health effects constitute a sufficient basis for a Primary Regulation. The Council also felt that dental fluorosis could be the basis for a Secondary Regulation.

Due to the many questions regarding the non-dental effects of fluoride, in January 1983 EPA requested that the U.S. Surgeon General review the available date on these effects. The review was to include a determination of the levels at which such effects would occur and of a margin of safety that would be appropriate. In April 1983, the Surgeon General convened a committee of health scientists to investigate the non-dental health effects of fluoride. The Surgeon General provided the Agency with a copy of the committee report and his recommendations in January 1984 (Shapiro 1983, Koop 1984).

The Surgeon General emphasized that he did not consider changes in bone density to be adverse health effects. Adverse health effects were defined as death, gastrointestinal hemorrhage or irritation, arthralgias, and crippling fluorisis. The Surgeon General stated that no credible reports exist of cases of death or gastrointestinal effects of fluoride in drinking water in the U.S. and that arthralgias are not likely to occur in patients on therapeutic regimens of less than 20 mg/day. He noted that crippling fluorosis had been detected in some people who have consumed 20 mg/day for 20 or more years.

The Surgeon General repeated his earlier opinion on the advisability of limiting fluoride concentrations to twice the optimum to avoid objectionable dental fluorosis. In conclusion, the Surgeon General said that there is "essentially no likelihood of even non-adverse medical effects where drinking water supplies contain up to four times the optimum concentration of fluoride." In the committee report were the following conclusions:

- "The fluoride content of drinking water should not be greater than four times the optimal level of any community water supply. This conclusion recognizes that, fluoride intake from water between 5.0 and 8.0 mg/L (4 times–10 times optimum) has been associated in a very small number of subjects, with the radiologic appearance of early osteosclerosis which while not an adverse health effect, is however, an indication of demonstrable osseous changes not to be anticipated at lower levels (less than 4 times optimum) of fluoride."
- ". . . There exists no directly applicable scientific documentation of adverse medical effects at levels of fluoride below 8 mg/L

(ppm). Therefore, it can be concluded that 4 times optimum in the U.S. drinking water supplies is a level that would provide no known or anticipated adverse effect with a margin of safety."

On August 2 and 3, 1984, the NDWAC reexamined the fluoride issues and reports (NDWAC 1984). The Council heard testimony on a recent study in Texas on fluoride in drinking water (Segreto 1984) and held discussions on whether objectionable dental fluorosis which probably results in psychological and behavioral effects should be considered adverse health effects. It was the Council's recommendation that moderate and severe levels of dental fluorosis be considered adverse health effects since "these effects are associated with cosmetic deformity, dental dysfunction, and possible social and behavioral effects, . . ." (NDWAC 1984). This position reflects a conclusion that, as personal appearance is generally considered important by society, the cosmetic effects associated with moderate and severe dental fluorosis may lead to "psychological and behavioral problems or difficulties" that impede an individual from developing to his full potential.

In response to the Council's recommendation, the Agency, with the assistance of the National Institute of Mental Health (NIMH), convened an ad hoc panel of behavioral scientists to evaluate the potential psychological effects of objectionable (moderate and severe) fluorosis. The panel's conclusion (Kleck 1984) was similar to that of the Council. The panel found that "individuals who have suffered impaired dental appearance as a result of moderate or severe fluorosis are probably at increased risk for psychological and behavioral problems or difficulties" (Kleck 1984).

In its meeting of December 6 and 7, 1984, the NDWAC recommended that the RMCL for fluoride be set at 2 mg/L (a minority position—four members of the Council—recommended setting the RMCL at 1 mg/L) (NDWAC 1985).

E. World Health Organization's Fluoride Guidelines

Guidelines were established for fluoride by the World Health Organization (WHO) in 1984. The guidelines are intended "as a basis for development of standards which, if properly implemented, will ensure the safety of drinking water supplies." The fluoride guidelines was set at 1.5 mg/L and was established in the category of "inorganic constituents of health significance" on the basis of mottling of teeth (WHO 1984). The WHO stated:

"At levels above 1.5 mg/liter, mottling of teeth has been reported very occasionally and at 3.0–6.0 mg/liter skeletal fluorosis may be observed; when a concentration of 10 mg/liter is exceeded, crippling fluorosis can ensue." (WHO 1984).

IV. Occurrence/Human Exposure

This section briefly summarizes the available occurrence data in drinking water and food and provides an overview of population exposure estimates. Additional information can be found in the references listed in Section VIII.

A. Occurrence of Fluoride in Drinking Water

Table 1 shows the range and average concentration of fluoride in seawater, surface waters, and ground waters.

TABLE 1.—FLUORIDE IN WATERS

Water Type	Fluoride Content (mg/L)	
	Range	Average
Seawater		1 2
Ground waters from		
Granitic rocks	0 0–9	1 2
Alkalic rocks	0.7–35 1	5 7
Basaltic rocks	0 0–0.5	0 1
Limestones and dolomites	0.0–1.7	0 3
Shales and clays	0 0–2.8	0 4
Surface water		
Rivers	0.0–6.5	0 2
Lakes	up to 1,627	

Source. Fleischer *et al.* 1974.

Surface waters generally contain less than 1 mg/L fluoride (WHO 1970), although, as indicated in Table 1, they can contain considerably higher levels. The average concentration of fluoride in U.S. rivers, measured at 343 stations of the National Stream Quality Accounting Network in 1975, was 0.33 mg/L; only six streams had concentrations above 1.4 mg/L, and the highest level was 1.8 mg/L. The higher concentrations were reported for streams in southern Arizona, southern Texas, and the Oklahoma Panhandle region (EPA 1984).

The fluoride content of ground water generally averages around 0.4 mg/L, depending upon the type of rock with which it is associated. Relatively high concentrations of fluoride (5–8 mg/L) are found in ground waters associated with alkalic rocks, and for thermal waters associated with volcanoes and epithermal mineral deposits.

In general, the relatively high concentrations of fluoride in ground waters of the southwestern and western states tend to be dispersed around the geographical distribution of major fluorite mineral deposits although this association does not seem to hold for the eastern United States. High levels of fluoride extend from northwestern Ohio, westward through Iowa and then northwestward through the Dakotas and correlate with the glacial materials that are known to underlie this geographic region (EPA 1984).

Data are available for fluoride from a number of sources including compliance information for NIPDWR standards, the EPA Community Water Supply Surveys, and the EPA Rural Water Survey (EPA 1984). These data are summarized for surface and ground water derived water supply systems in Table 2 and Table 3. These and other data indicate that approximately 5% of surface and ground water systems presently exceed the existing temperature dependent MCL of 1.4 mg/L to 2.4 mg/L (EPA 1984). Most of those systems serve small populations (2,500 or fewer people). Table 4 presents the number of people exposed to various concentrations of fluoride in their drinking water.

TABLE 2.—ESTIMATED NATIONAL OCCURRENCE OF FLUORIDE IN SURFACE WATER DERIVED PUBLIC WATER SUPPLY SYSTEMS

System size (population served)	Systems with fluoride concentrations (mg/L)			
	<1.0	1 0–2 0	>2 0–4 0	>4 0
< 500	3 670	117	5	3
500 to 2 500	2 980	265	6	1
>2,500 to 10,000	1,967	174	3	2
>10,000	1,615	148	2	0

TABLE 3.—ESTIMATED NATIONAL OCCURRENCE OF FLUORIDE IN GROUND WATER DERIVED PUBLIC WATER SUPPLY SYSTEMS

System size (population served)	Systems with fluoride concentrations (mg/L)			
	<1 0	1.0–2 0	>2.0–4.0	>4 0
< 500	31,931	2,281	833	220
500 to 2,500	8 964	341	165	40
>2,500 to 10,000	2,828	219	44	14
>10,000	1,187	[redacted]	6	2

TABLE 4.—POPULATIONS (IN THOUSANDS) EXPOSED TO FLUORIDE

Systems	Fluoride concentrations (mg/L)			
	<1.0	1.0–2 0	>2.0–4.0	>4 0
Ground water derived systems	64,619	3,872	572	176
Surface water derived systems	103,680	22,590	78	[redacted]
Total	168,299	26,462	650	184

B. Human Exposure to Fluoride

Fluoride occurs at low levels in food and air as well as in drinking water. Atmospheric levels of fluoride are relatively low and contribute little to the average level of fluoride exposure. Available information suggests that a typical diet may represent a contribution to exposure roughly equivalent to those received from drinking water containing 0.5 mg/L fluoride. For populations

without fluoridated water food is the major route of exposure.

Both natural and man-made processes release fluorine compounds to the air (EPA 1984). Atmospheric emissions of fluorides from certain industries have resulted in serious adverse effects on local vegetation and animals. However, the vast majority of nationwide air measurements have been reported to be below detection limits (0.05 μ/m^3).

Virtually all foods contain trace amounts of fluoride (NAS 1980). Table 5 shows the fluoride content of several foods in its market basket survey taken from four areas in the United States. Very few foods contain more than 1–2 ppm fluoride, and most contain less than 0.5 ppm (dry weight). The notable exceptions are fish, other seafoods, and tea.

Table 6 shows several estimates of the daily dietary intake of fluoride, exclusive of drinking water, in the United States. These estimates generally place fluoride dietary intake in the range of 0.0028–0.011 mg/kg for adults and 0.0024–0.024 mg/kg for infants and children.

TABLE 5.—FLUORIDE CONTENT OF VARIOUS FOODS

Food	Fluoride content (ppm)	
	WHO (1970)	NAS (1980)
Meats	0.2-2 0	0 01-7.7
Offal	2.3-10 1	(¹)
Fish	5 8-25 9	<0.10-24
Shellfish	0.7-2 0	(¹)
Eggs	1.2	0 00-2.05
Milk	0.07-0.22	0 04-0.55
Cheese	1.62	0 13-1 62
Butter	(¹)	0 4
Tea (average, dry weight)	97 0	(¹)
Coffee	0.2-1 6	0.2-1.6
Citrus fruits	0 03-0 36	0 04-0 36
Noncitrus fruits	0 11-1 32	0.02-1.32
Cereals and cereal products	0 1-0.7	0 10-20
Vegetables and tubers	0 1-1.0	0.10-3.0
Beer and wine	0.07-0 24	0.0-6.34
Sugar	(¹)	0 10-0.32

¹ No data provided.

TABLE 6.—REPORTED DAILY INTAKE OF FLUORIDE (EXCLUSIVE OF WATER)

Source	Category of individual	Daily intake (mg/kg)
WHO (1970)	Ages 1 to 3	0.0024-0.024
	Ages 4 to 6	0.002-0.020
	Ages 7 to 9	0 0019-0.019
	Ages 10 to 12	0.0016-0.016
NAS (1980)	Adult	0.0028-0.0043
Underwood (1973)	do	0.0043-0.0071
Hodge and Smith (1970).	do	0.0043-0.011
Singer et al. (1980) ¹	Young adult male	0.0043-0.0086

¹ Excludes all beverages

These estimates of dietary exposure to fluoride may overlook some subpopulations with higher intakes. For example, a person drinking 2 cups of tea a day may be receiving as much as 0.008 mg/kg of additional fluoride.

Leverett (1982) has reported that fluoride dietary levels may have increased in the last 30 years and may be higher than the levels reported above. This rise is believed to be due to factors such as the increased use of fluoridated water in food processing and in beverages, and the widespread use of fluoridated dentifrices.

The relative contribution of drinking water as a source of exposure for a formula-fed infant, a 10-year-old child, and an adult is shown in Table 7. The predominant sources of fluoride to individuals in the United States are food and drinking water. Drinking water is the greater source of exposure where levels approach 1 mg/L.

TABLE 7.—ESTIMATED INTAKE OF FLUORIDE RELATIVE TO DRINKING WATER

Source	Daily dose (mg/kg)		
	Infant ¹	Child ²	Adult ³
Drinking water consumption (1 mg/L)	(⁴)	0 051	0.034
Air (0.05 $\mu g/m^3$)	0.00002	0.00002	0.00002
Food (from Table 5)	0.24	0.002-0.02	0.0043-0.011

¹ The infant is assumed to weigh 3.5 kg, consume solely 0.85 L of formula reconstituted with tap water, and inhale 3.4 m^3 a day.

² The child is assumed to weigh 33 kg, drink 1.4 L of tap water, and inhale 15 m^3 a day.

³ The adult is assumed to weigh 70 kg, drink 2 L of tap water, and inhale 23 m^3 a day.

⁴ No value is listed since the infant's intake of water is by formula and is counted as food.

While food is a significant source of fluoride, the Agency believes that it is unnecessary to adjust the RMCL to allow for dietary exposure. The health effects associated with fluoride and the doses at which they occur, are based upon epidemiology studies which implicitly incorporate dietary exposures to fluoride.

C. Temperature and Fluoride Intake

The present MCL for fluoride establishes the allowable concentration as a function of the average maximum daily temperature. The MCL ranges from 1.4 mg/L for public water systems serving populations located where the annual average maximum temperature is above 79.3 to 2.4 mg/L for systems serving populations located where temperatures are below 53.7° F. This temperature-dependent component of the regulation, referred to in the National Academy of Sciences Review (NAS, 1977), originated in a series of articles on drinking water consumption among children (Galagan and Lamson 1962, Galagan et al. 1957, Galagan and Vermillion 1957). The major portion of these articles consisted of a survey of children, under the age of 10, in two neighboring communities in California. The survey concluded that water consumption during summer months (80 to 90 ° F) increased by about 50 percent over consumption during winter months (50 to 60 ° F). The survey data indicated, however, that temperature played only a minor role in predicting drinking water consumption. Children of similar ages had drinking water consumptions (on a weight basis) that varied by a factor of 300 to 400%. Due to the limitations of the survey, the effect of humidity on water consumption could not be evaluated.

The findings of the Galagan study is contradicted in part by a recent survey of water consumption in Canada which indicates that among children, in areas where the average daily maximum temperature is below 70 ° F, water consumption is independent of temperature (EHD 1982).

The Agency has concluded that there is insufficient data to quantitatively incorporate temperature in drinking water regulations. The Galagan study, while technically sound, was limited by its restriction to a single location. The study was not able to evaluate the effects of humidity or other effects of climate, nor was it able to evaluate drinking water consumption at temperatures below 60 ° F. Further, because the study was performed over 30 years ago, the increased use of temperature controls (heating and air conditioning) in homes and schools is likely to have reduced the effects of temperature on drinking water consumption.

V. Physiological Effects of Fluoride Ingestion

EPA has conducted a comprehensive examination of an extensive amount of literature on the potential adverse effects resulting from the ingestion of fluoride. In addition, comments and advice have been received from a wide variety of sources including such groups as the NDWAC, the U.S. Surgeon General, the American Medical Association, the American Dental Association, and the National Academy of Sciences. Based upon an evaluation of all pertinent information, advice and data in both the literature and that provided to EPA, the following statements briefly summarize EPA's findings:

• Exposure to low levels of fluoride (i.e., 1 to 2 mg/L) can contribute to objectionable (moderate and severe) dental fluorosis in a small percentage of persons. The frequency and severity of objectionable fluorosis increases as these levels are exceeded.

• Some individuals with visibly objectionable fluorosis are probably at an increased risk of related behaviorial effects.

• Fluoride at levels of 1–2 mg/L up to 4 mg/L has been shown to contribute to reduced dental caries formation.

• Fluoridation of drinking water is normally practiced around 1 mg/L to reduce dental caries and represents a balance between the benefits of decreased dental caries and the adverse effects of dental fluorosis.

• Exposures greater than 4 mg/L of fluoride can result in asymptomatic osteosclerosis (increased bone density) in a small percentage of individuals.

• Crippling fluorosis, rheumatic attack, pain and stiffness have been observed in populations (not in the U.S.) chronically exposed to fluoride in drinking water at levels of 10 mg/L to 40 mg/L.

• Other effects of fluoride ingestion, which have been suggested by some reports, including cancer or Down's syndrome, have not been found to be scientifically supportable.

This section discusses these findings. Further details can be found in EPA's Draft Fluoride Health Effects Criteria Document (April 1985).

A. Dental Fluorosis

Dental fluorosis results from excess exposure to fluoride during the age of calcification of the teeth (up to about eight years of age for anterior teeth). Dental fluorosis (Dean 1934) in mild form is characterized in part by white opaque areas covering at least 50% of a given tooth; in its severe form, dental fluorosis is characterized by stains (brown to almost black) and severe pitting of the teeth. Anecdotal data suggest that severe dental fluorosis may be associated with abrasive premature loss of enamel, brittle and deformed teeth, and fracture of the teeth as well. However, this anecdotal data has not been sufficiently corroborated or quantified at this time.

Leverett (1982) has reasoned that total fluoride consumption may have increased in the U.S. over the last thirty or so years, thus suggesting that the incidence and severity of dental fluorosis associated with a given level of fluoride in drinking water may have increased. However, the results of studies conducted over the last forty-eight years (1937–1984), suggests that the relationship of objectionable (moderate and severe) dental fluorosis to fluoride levels has not changed appreciably (Albertini et al. 1982, Segreto et al. 1984). While there are factors that would tend to have increased total fluoride consumption, the Agency believes that there are also factors that would tend to have decreased total fluoride consumption such as: the marked increase in the use of air conditioning which would tend to decrease the consumption of drinking water; increased consumption of soft drinks and other beverages, possibly of relatively low fluoride content; increased public awareness of dental fluorosis in high fluoride areas leading to decreased tap water consumption.

Recently, Driscoll et al. (1983) reported the results of a cross-sectional survey of the prevalence of dental fluorosis and dental caries among 807 school children (8 to 10 years old) in seven Illinois communities. Fluoride concentrations in the community drinking water ranged from 1.1 to 4.1 mg/L. As shown in Table 9, Driscoll et al. observed that the combined incidence of moderate and severe dental fluorosis increased from 2.4% at a fluoride level of 1.1 mg/L to 30.2% at 3.8 mg/L (Also see Table 8).

In a separate study, Segreto et al. (1984) investigated the possibility that significant changes in cultural and dietary patterns have altered fluoride intake patterns from those of 20 to 40 years ago. They selected 16 Texas cities and surveyed children (7 to 18 years old) for dental fluorosis. Fluoride levels ranged from 0.2 mg/L to 3.2 mg/L. The combined incidence of moderate and severe dental fluorosis observed (see Table 10; also see Table 8) is in general agreement with the results of Driscoll et al. (1983), ranging from minimal fluorosis at 0.2 mg/L to 31.6 percent moderate fluorosis at 3.2 mg/L. However, Segreto et al. reported only 1 case of severe dental fluorosis. The variation in the combined incidence of moderate and severe dental fluorosis with increasing levels of fluoride reported in Tables 8 and 10, possibly reflects a marked variation in total fluoride ingestion due to different "lifestyles" in the different communities studied or, possibly, due to different susceptibilities of the children examined or other factors.

TABLE 8.—INCIDENCE OF MODERATE AND SEVERE DENTAL FLUOROSIS VS WATER FLUORIDE LEVEL [1]

Water fluoride level, (mg/L)[2]	Number of children	Moderate fluorosis (pct.)	Severe fluorosis (pct.)
0.2	103	0.0	0.0
0.3	126	0.0	0.0
0.4	223	0.0	0.0
0.4	[redacted]	0.0	0.0
0.4	263	0.0	0.0
0.5	113	0.0	0.0
0.5	403	0.0	0.0
0.6	614	0.0	0.0
0.7	316	2.0	0.0
0.8	[redacted]	2.0	1.0
0.9	361	0.3	0.0
09	123	0.0	0.0
1.0	50	0.0	0.0
1.1	336	1.8	0.6
1.1	211	0.9	0.0
1.1	187	0.0	0.0

TABLE 8.—INCIDENCE OF MODERATE AND SEVERE DENTAL FLUOROSIS VS WATER FLUORIDE LEVEL [1]—Continued

Water fluoride level, (mg/L)[2]	Number of children	Moderate fluorosis (pct.)	Severe fluorosis (pct.)
1.1	128	1.1	0.0
1.2	70	13.0	3.0
1.2	533	0.0	0.0
1.2	152	0.0	0.0
1.2	171	0.0	0.0
1.3	447	0.0	0.0
1.5	110	0.9	0.0
1.6	301	3.3	0.0
1.8	57	3.5	0.0
1.8	170	1.2	0.0
1.9	273	1.1	0.0
1.9	170	13.5	0.0
1.9	23	13.0	0.0
2.0	109	14.7	0.0
2.0	200	4.0	0.0
2.1	143	8.4	4.9
2.2	179	13.4	0.0
2.2	138	11.0	0.7
2.3	[redacted]	6.7	0.0
2.3	67	32.8	0.0
2.4	113	4.4	0.0
2.5	148	14.2	3.4
2.6	404	8.9	1.5
2.9	192	7.8	8.3
2.9	97	23.7	3.1
3.2	190	31.1	0.5
3.8	21	9.0	0.0
3.9	136	7.4	22.8
3.9	[redacted]	33.9	13.2
4.0	[redacted]	38.0	6.0
4.0	101	40.0	2.0
4.0	59	23.7	11.9
4.2	39	33.0	3.0
4.4	189	46.0	17.9
4.8	[redacted]	6.0	0.0
5.7	[redacted]	50.0	39.5
7.6	65	10.8	58.5
8.0	21	47.6	42.9
14.1	26	38.5	53.8

[1] The data in Table 8 is from the following references: Driscoll et al. (1983) Segreto et al. (1984) in which actual fluoride concentrations were not reported in article; values given are personal communication of Edward M. Collins; Albertini et al. (1982)

These data have been collected from 5 surveys taken over a 30 year period. While the surveys are believed to be technically sound they varied in procedure, analytical methods, and sample size. The Agency believes it would be inappropriate to merge these findings into a single distribution and therefore no statistical analysis of the information in this table has been made. The information in the table is offered only as a summary of the historical data

[2] Each value represents a separate city in AR, AZ, CO, IA, IL, KS, NM OH, SC or TX.

TABLE 9.—RELATIONSHIP OF WATER FLUORIDE LEVELS TO DENTAL FLUOROSIS AND CARIES REDUCTION IN ILLINOIS [1]

Water fluoride level	Number of children	Children with moderate and severe dental fluorosis (pct.)	Decrease in caries score from 1.06 mg/L level [2] (pct.)
1.06 mg/L	336	2.4	
2.08 mg/L	143	13.3	37.3
2.84 mg/L	192	27.6	55.1
3.84 mg/L	136	30.2	35.7

[1] Adopted from Driscoll et al. (1983)

[2] Significantly different ($p < 0.05$) from score at 1.06 mg/L, but not from each other

TABLE 10.—RELATIONSHIP BETWEEN FLUORIDE LEVELS AND COMBINED INCIDENCE OF MODERATE AND SEVERE DENTAL FLUOROSIS IN TEXAS [1]

Water fluoride (mg/L) [2]	Number of children examined	Combined incidence of moderate and severe dental fluorosis (pct.)
0.2	103	0.0
0.3	126	0.0
0.4	223	0.0

TABLE 10.—RELATIONSHIP BETWEEN FLUORIDE LEVELS AND COMBINED INCIDENCE OF MODERATE AND SEVERE DENTAL FLUOROSIS IN TEXAS [1]—Continued

Water fluoride (mg/L) [2]	Number of children examined	Combined incidence of moderate and severe dental fluorosis (pct.)
0.8	361	0.3
1.1	211	0.9
1.1	128	0.0
1.1	187	1.1
1.6	301	3.3
1.9	170	13.5
1.9	23	13.0
2.0	109	14.7
2.0	[illegible]	4.0
2.3	[illegible]	6.7
2.3	67	32.8
2.4	113	4.4
3.2	190	31.6

[1] Adapted from Segreto et al. (1984). Only one case of severe fluorosis was reported.

[2] Personal communication from Edward M. Collins (Coauthor with Segreto), actual fluoride concentration not reported in Segreto et al. (1984). Each value represents a separate community in Texas.

In cattle, severe dental fluorosis is associated with more rapid wear of the teeth and, in some cases, an actual erosion of the enamel (NAS 1971). No quantitative human data are currently available as to whether severe dental fluorosis is or is not associated with more rapid enamel wear; and whether this would cause any adverse health effect. A study is being conducted by the National Institute of Dental Health which should provide information on this question.

B. Dental Fluorosis v. Dental Caries

Table 8 summarizes the results of dental fluorosis studies conducted over the last 48 years (1937–1984). Several observations can be made based on this data.

- No moderate or severe fluorosis was observed at levels of 0.6 mg/L or less.
- Moderate fluorosis was observed intermittently at levels of 0.7 to 1.8 mg/L except for one community which had 13% moderate fluorosis at 1.2 mg/L.
- At levels around 1 mg/L and up to 2.2 mg/L, moderate fluorosis was observed in 0–15% of the children examined.
- At levels around 2 mg/L, moderate fluorosis was observed in 1–15% of the children examined.
- A distinct increase in the occurrence of moderate fluorosis is observable at and above approximately 1.9 mg/L.
- Severe fluorosis was consistently observed at levels of 2.5 mg/L and higher. A few cases of severe fluorosis were observed at lower levels.
- At levels of 3 to 4 mg/L moderate fluorosis was observed in 7%–40% of the children.
- At levels between 2.5 mg/L and 14 mg/L, the frequency of severe fluorosis generally increases but varies widely from 0–59%.
- There is a marked variation overall in the incidence of dental fluorosis observed in different cities at essentially the same fluoride level—e.g. 13% moderate fluorosis at 1.2 mg/L vs 0.9% at 1.5 mg/L. This variation could be due to a number of causes such as: different experimental techniques; variation in total fluoride consumption due to different "lifestyles" or economic circumstances and other factors.

As shown in Table 9, fluoride is very effective in reducing dental caries at levels ranging from 1–2 mg/L up to 4 mg/L range. Fluoridation of drinking water at approximately 1 mg/L is believed to be the optimum balance between effective dental caries reduction and the incidence of dental fluorosis.

C. Skeletal Fluorosis

Skeletal fluorosis, which increases in severity with both dose of fluoride and duration of exposure, is characterized in its mildest form by a slight increase in bone density (osteosclerosis) which is detectable only by x-ray examination; there is no evidence that this is an adverse health effect per se. In its most severe form, skeletal fluorosis is characterized by the deposition of irregular bone deposits which, in the case of the joints, results in arthralgia and crippling (EPA 1985).

Though not observed in the United States, crippling skeletal fluorosis has been observed in workers who, due to occupation, were chronically exposed to high levels of fluoride—e.g., cryolite. However, due to improved industrial hygiene, crippling skeletal fluorosis "seldom (if ever) occurs today" (NAS 1971). In addition, crippling skeletal fluorosis has been observed in cattle chronically exposed to high levels of fluoride (McClure 1970).

Skeletal fluorosis in the United States was investigated by Leone et al. (1955, as discussed in EPA 1985) who compared the effects of exposure to fluoride in drinking water in a high-fluoride area (Bartlett, Texas; 8 mg/L) and in a low-fluoride area (Cameron, Texas; 0.4 mg/L). In the groups studied, there were 116 participants from Bartlett and 121 from Cameron, a total of 237 persons. The average length of exposure was 37 years in the Bartlett area and 38 years in the Cameron area.

The authors concluded that fluoride-induced bone changes (i.e., osteosclerosis): (a) occur in approximately 10–15% of those exposed to high levels of fluoride; and (b) are not associated with other physical findings except for dental mottling in persons who resided in Bartlett during the tooth formative period (up to 9 years of age). Independently of the Leone et al. (1955) survey, Stevenson and Watson 1957 (as discussed in EPA 1985), reviewed the medical records on file at the Scott and White Clinic for the 11 year period from 1943 through 1953. The authors noted 23 cases of osteosclerosis from a total of approximately 170,000 x-ray examinations in patients living in Texas and Oklahoma. The earliest bone changes were observed in the pelvis and lumbar spine and consisted of increased bone density with a "ground glass" appearance. Also, the calcification of sacrospinous and sacrotuberous ligaments was apparent. This type of calcification paralleled closely the degree of bone density. Bone changes described in this study were found when the drinking water contained 4–8 mg/L.

Roholm (as quoted in EPA 1985) has characterized three stages of skeletal fluorosis:

Phase I: Osteosclerosis in pelvis and vertebral column. Coarse and blurred trabeculae, diffuse increased bone density to X-ray.

Phase II: Increased density and blurring of contours of pelvis, vertebral column extended to ribs, extremities.

Phase III: Greatly increased density of bone; irregular and blurred contours. All bones affected, particularly cancellous bones. Extremities thickened. Considerable calcification of ligaments of neck and vertebral column.

While the likelihood of crippling skeletal fluorosis increases in the higher phases, crippling skeletal fluorosis is best illustrated by the signs and symptoms presented by an individual who, during his life in India, consumed water at a level of 9.5 mg/L of fluoride. In this individual, the bony contours showed irregular outgrowths and the sites of insertion of muscles and tendons showed excessive periosteal reaction and multiple exostoses. Irregular bone also was laid down in the joint capsules and interosseous membranes. The most pronounced changes were seen in the vertebral column; vertebrae were enlarged and showed marked lipping and some were fused together. The mechanical properties of the left radius and ulna of this subject showed that tensile strength, strain, energy adsorbed to failure and modulus of activity were reduced; compressive strength, strain and energy were increased (EPA, 1985).

It is estimated that the development of crippling skeletal fluorosis, requires the daily consumption of 20 mg or more of fluoride from all sources for 20 or more years. This would correspond to a fluoride drinking water concentration of

10 mg/L, given a 2 L/day drinking water consumption rate and the relatively small exposure contribution of air and food. Although, water related crippling fluorosis has not been diagnosed in the U.S. as it has been in some other countries, it would be expected that a segment of the population in high fluoride communities would likely be consuming more than 20 mg of fluoride per day considering greater than average water consumption and contribution from non-water sources.

D. Other Fluoride Toxicity and Possible Behavorial Effects

Heifetz and Horowitz (1984), in a comprehensive summary of the acute toxicity of fluoride, have characterized the lethal dose of acutely ingested fluoride in man as dependent upon age and ranging from approximately 32–64 milligrams of fluoride per kilogram of bodyweight. In addition, they have described a variety of symptoms associated with acute fluoride intoxication including nausea, vomiting, convulsions, coma and death.

When considered in toto, available evidence leads to the conclusion that the consumption of fluoride at levels found in U.S. drinking water is not associated with scientifically documented allergic or idiosyncratic sensitivity, Down's syndrome, cancer, decreases in longevity or a variety of other toxic effects, notwithstanding the documented effects discussed above (EPA, 1985).

The ad hoc Review Panel on Psychological/Behavioral Effects of Dental Fluorosis stated the following:

> It is concluded that individuals who have suffered impaired dental appearance as the result of moderate to severe fluorosis are probably at an increased risk for psychological and behavioral problems or difficulties. Since this conclusion is based on extrapolations from research on the effects of physical appearance characteristics other than dental fluorosis, it is suggested that investigations be supported to directly assess the social, emotional, behavioral effects, of fluoride induced cosmetic defects.

E. Dental Caries Prevention

There is unambiguous evidence that fluoride, ingested in appropriate amounts, can markedly reduce caries formation (McClure, 1970).

Studies by Dean and others (as discussed in Leverett 1982) established a rationale for setting the "optimum" level in drinking water at approximately 1 mg/L. The "optimum" level was considered to be the concentration of fluoride in drinking water that reasonably maximizes protection against dental caries while minimizing the induction of objectionable dental fluorosis.

The anticaries effect of fluoride is markedly sensitive to the level of fluoride in drinking water. The optimum level of fluoride can provide as much as a 60–65% reduction in caries in some instances, as compared to very low fluoride levels. As shown in Table 9, Driscoll et al. (1983) observed a decrease in caries at fluoride levels of 2.08, 2.84 and 3.84 mg/L over that observed at 1.06 mg/L (optimum). However the decreases in caries scores observed (37.3% at 2.08 mg/L, 55.1% at 2.84 mg/L and 35.7% at 3.84 mg/L) were not significantly different ($p<0.05$) from each other, thus suggesting that the maximum reduction in caries may occur within the range of 2 to 4 mg/L.

VI. Regulatory Options

A. Options

The basic issues regarding the regulation of fluoride in drinking water are the following:

• Should fluoride be included in the Primary Drinking Water Regulations? If so, at what level should the RMCL be set?

• What level of fluoride, if any, would be appropriate for a Secondary MCL?

The SDWA requires EPA to set Primary Drinking Water Regulations for contaminants, "which in the judgment of the Administrator, may have any adverse effect upon the health of persons." Secondary MCLs are to be set for contaminants to protect the public welfare.

The following options have been considered by the Agency for the regulation of fluoride:

1. Propose a Primary Drinking Water Regulation based upon protection from moderate and severe dental fluorosis.

2. Propose a Primary Drinking Water Regulation based upon protection from crippling skeletal fluorosis. Propose a Secondary Drinking Water Regulation to protect against cosmetic effects of dental fluorosis.

3. Delete fluoride from the Primary Drinking Water Regulations based upon a finding that levels of fluoride in U.S. drinking water are not associated with any adverse health effects. Propose a Secondary Drinking Water Regulation to protect against cosmetic effects of dental fluorosis.

The Agency has determined that there are insufficient data to quantitatively predict the role of temperature in drinking water consumption, and therefore temperature effects are not considered in the RMCLs or SMCLs in any of these options.

Option 1: Propose a Primary Drinking Water Regulation Based Upon Protection From Moderate and Severe Dental Fluorosis.

This option would set an RMCL for fluoride based upon the effects of moderate and severe objectionable dental fluorosis upon a significant portion of the population.

To support this option, the Administrator would need to conclude that:

(1) Moderate and severe dental fluorosis, which are manifested by yellow/brown staining and/or pitting of the dental enamel, would be adverse effects, per se, and/or

(2) cosmetic effects associated with moderate and severe dental fluorosis would be adverse health effects because they may lead to psychological and behavioral effects that may impede an individual from developing to his full potential.

Regulating to prevent significant dental fluorosis would be consistent with the advice received from the ad hoc Panel on the psychological/behavioral effects of dental fluorosis. The Panel concluded that persons with cosmetically objectionable dental fluorosis are probably at an increased risk for psychological and behavorial problems or difficulties. This option would also be consistent with the recommendation of the NDWAC that fluoride be regulated on the basis that objectionable dental fluorosis is an adverse health effect.

Under this option, EPA would determine that objectionable dental fluorosis is an adverse health effect as it causes; a) physical damage to dental enamel (pits and stain), which due to possible wear and fracturing and, b) the cosmetic effects which may lead to adverse psychological and behavioral effects.

Two sub-options are presented for the RMCL.

Sub-Option A: Propose an RMCL of 1 mg/L.

A level of 1 mg/L would represent a balancing point or trade-off in minimizing the incidence of moderate to severe fluorosis while allowing the prevention of dental caries. The incidence of moderate and severe dental fluorosis would be expected to range from 0–3% at that level. This is essentially the same as the traditional optimum fluoride level widely accepted by dental authorities. About 5,000 communities currently exceed this level.

Sub-Option B: Propose an RMCL of 2 mg/L.

A level of 2 mg/L would also represent a slightly different trade-off between the incidence of moderate to severe fluorosis and prevention of dental caries. This level would provide a greater protection from dental caries than a fluoride level of 1 mg/L. The incidence of moderate and severe dental fluorosis would be expected to range from 0 to 15% at that level. About 1,300 communities currently exceed this level.

Option 2: Propose a Primary Drinking Water Regulation Based Upon Protection from Crippling Skeletal Fluorosis.

EPA would propose an RMCL at 4 mg/L for fluoride based upon a determination that crippling skeletal fluorosis (but not dental fluorosis) is an adverse health effect. A Secondary Drinking Water Regulation would be proposed at 2 mg/L to protect public welfare on the basis that objectionable dental fluorosis is a cosmetic effect. Monitoring and public notice under Sections 1445 and 1450(a)(1) of the SDWA would be proposed for levels of fluoride of 2 mg/L and above to advise the public of the effects of dental fluorosis and to inform the public of alternatives for prevention.

The incidence of objectionable dental fluorosis would range from 10% to 40% in communities at 4 mg/L. About 280 communities currently exceed this level. As guidance for the States and to further protection of public welfare, an SMCL would be proposed for objectionable dental fluorosis at a level of 2 mg/L. This level represents a balance between the incidence of dental fluorosis and prevention of dental caries.

Monitoring and public notification under Sections 1445 and 1450(a)(1) would also be proposed for those public water systems determined to have levels exceeding the SMCL (about 1,300 communities). Public notification would be to physicians, dentists, and public health officials and to the public. Notification would be required when the SMCL had been exceeded, and would include a statement written by the Agency.

This option would be consistent with the recommendations of the Surgeon General who stated that crippling skeletal fluorosis, in his opinion, was an adverse health effect, and is generally responsive to the position of the professional organizations and state commenters. The Surgeon General's committee endorsed a level of 4 mg/L as preventing osteosclerosis and allowing no known or anticipated adverse effects with a margin of safety. A level of 4 mg/L provides an adequate margin of safety against crippling skeletal fluorosis which has been seen in individuals with intakes of fluoride of 20 mg/day over long periods. Thus it would be protective for individuals with high water consumption.

Option 3: Delete Fluoride From the Primary Drinking Water Regulations Based Upon a Finding That Levels of Fluoride in U.S. Drinking Water are not Associated With any Adverse Health Effects

This option would propose to delete fluoride from the Interim Primary Drinking Water Regulations and propose an SMCL of 2 mg/L for fluoride; the basis of this proposal would be 1) that objectionable dental fluorosis is a cosmetic effect (not an adverse health effect), and 2) that the risks of crippling skeletal fluorosis are minimal because only a small number of communities have natural fluoride levels in drinking water that approach the levels of concern for crippling fluorosis. As in Option 2, monitoring and public notice under Sections 1445 and 1450(a)(1) would be proposed for levels of 2 mg/L and above to advise the public of the effects of dental fluorosis.

Under this option, the Administrator would conclude that human exposure to fluoride in drinking water in the United States would not have "any adverse effect on the health of persons" and would be in agreement with the Surgeon General that at the concentrations of fluoride currently reported in the United States there is "essentially no likelihood of even non-adverse medical effects" (Koop 1984).

This option would be consistent with the recommendations of American Medical Association, American Dental Association, Associations of the State and Territorial Health Officials, Association of State and Territorial Dental Directors, South Carolina, and a number of other States. This option would be inconsistent with the recommendations of the National Drinking Water Advisory Council and the Panel on psychological and behaviorial effects of dental fluorosis.

B. Proposed Approach

1. *RMCL.* The Agency is proposing Option 2 for the regulation of fluoride. Based upon the information available at this time, EPA believes that crippling skeletal fluorosis is an adverse health effect that can be caused by excessive amounts of fluoride in drinking water, and that 4 mg/L is the level below which "no known or anticipated adverse effect on health of persons occur and which allows an adequate margin of safety." Thus an RMCL is proposed at 4 mg/L.

EPA believes that crippling fluorosis should be considered an adverse health effect under the Safe Drinking Water Act. These arthritic-like effects are significant deleterious injuries to the body and are irreversible. Although crippling fluorosis occurs at levels of approximately 10 mg/L (20 mg/day), the SDWA requires the Agency to incorporate an "adequate margin of safety" to protect public health. A safety factor of ten or less is generally appropriate when using data from humans to calculate the level at which to regulate.

This level is also appropriate as it coincides with a level at which osteosclerosis does not occur. Osteosclerosis is not viewed by EPA as an adverse health effect within the meaning of the act as it does not appear to cause clinically significant effects.

The Administrator has also concluded that cosmetically objectionable dental fluorosis is associated with excess fluoride in drinking water above approximately 1 to 2 mg/L. Inadequate evidence exists to determine that objectionable moderate and severe dental fluorosis are adverse health effects per se or that potential behavioral effects from cosmetically objectionable fluorosis, if they occur, are adverse health effects in the context of the SDWA. These cosmetics effects however, should be the basis for secondary regulations intended to protect public welfare.

2. *Secondary Regulation.* At the time of proposal of the MCL for fluoride, EPA plans to propose a Secondary MCL at 2 mg/L. Because of the nature of the psychological effect, EPA is considering proposing monitoring and public notification requirements under Sections 1445 and 1450 (a)(1) of the SDWA. These actions are intended to assure that the users of public water supplies which are likely to contribute to staining and pitting of dental enamel of children will be fully aware of the possible effects and the methods for their prevention.

As part of the montoring, the Agency is considering allowing the States discretion in the proposed monitoring requirement. Based upon the fluoride occurrence data presented previously, the Agency expects that the vast majority of public water supplies will not have fluoride concentrations exceeding an SMCL of 2 mg/L. Further, public water supplies currently have information on the levels of fluoride contamination because of the monitoring requirements of the existing interim standard. Where the States have sufficient evidence that fluoride concentrations have not exceeded the

federal standard, the Agency will not require monitoring. The specifics of when monitoring will be required will be given as part of the MCL and SMCL proposals.

3. *Amendment to Interim Regulation for Fluoride.* Under the SDWA, the existing Interim Regulation for fluoride remains in effect until superseded by the Revised Regulation (which takes effect 18 months after the Revised Regulation is promulgated) SDWA Section 1412(b)(5). Therefore, until the Revised Regulation suspersedes the Interim Regulation, the Interim MCL of 1.4 to 2.4 mg/L will be in effect and enforceable. Because the Revised MCL will be 4 mg/L or higher, EPA is concerned that Public Water Systems may be subjected to citizen suit enforcement actions compelling systems to meet the lower, enforceable Interim MCL. (This situation will occur because the Revised MCL must be set "as close to the RMCL as feasible" with the use of best technology, considering cost, and thus cannot be set lower than 4 mg/L).

The public is not served by forcing water systems to meet a lower Interim MCL that EPA has rejected in promulgating the Revised Regulation. To avoid this result, EPA is considering proposing to amend the Interim MCL when it proposes the MCL for the Revised Regulation. A final amended Interim MCL would be promulgated at the same time as the Revised MCL. The Agency would amend the Interim MCL to be identical with the Revised MCL. Although Interim Regulations when first promulgated under Section 1412(a) must have an effective date 18 months after their date of promulgation (Section 1412(a)(3)), amendments to existing Interim MCLs, that are revised upward need not have an effective date of 18 months. Therefore, the Agency would plan to provide a 30 day effective date for the amended Interim MCL. EPA would thereby avoid a substantial period when there existed a lower, enforceable Interim MCL that the Agency had abandoned.

VII. Treatment for Control of Fluoride

While the Agency is not required to present economic or technical information on the removal of fluoride in the development of an RMCL, the following information is provided as background.

A. Treatment Technology

Experience indicates that ion exchange treatment utilizing activated alumina is the most effective method, in the absence of interfering contaminants, to remove fluorides from water. This technology can be implemented effectively for all sizes of treatment facilities including point-of-use applications. This technololgy, when not operated properly, can leach significant quantities of aluminum which can precipitate in the finished water and therefore is not recommended where adequate facilities, manpower, and resources for operation and maintenace are not available. Other materials such as bone char and tricalcium phosphate can be used in a similar fashion. However, the use of bone char as a defluoridation medium is generally not practical for waters than contain arsenic because of irreversible changes in the composition of bone char. Tricalcium phosphate removes fluoride, but excessive attrition of this media makes this process generally not cost effective.

Reverse osmosis has not been used on a full scale basis for fluoride removal alone, but reverse osmosis is a common technology for total dissolved solids removal. Pilot plant studies have demonstrated its effectiveness for simultaneous fluoride removal. This process may be practical in situations where high dissolved solids and other contaminants must be removed in addition to fluoride. Thus, the overall quality of the water would be improved, which is not the case for activated alumina which selectively removes fluoride. As in the case of activated alumina, reverse osmosis can be used in both small and large systems and in point-of-use applications.

Limited experience with electrodialysis indicates that this method may eventually prove to be cost-effective for removing fluorides where removal of other contaminants is also necessary. Presently, its cost is much greater than other methods (in the absence of an inexpensive source of power).

Alum coagulation can remove limited amounts of fluoride, but this treatment technology is limited to situations where filtration capability is present and initial fluoride concentrations do not appreciably exceed the desired limit.

Similarly, lime softening can achieve partial removal of fluorides. However, application of this technology is limited to larger systems where softening facilities are already in existence. Construction of a full scale softening plant for the removal of fluoride alone would not generally be cost-effective due to the large capital investment and high operating costs.

B. Cost of Treatment

Preliminary design and cost estimates have been developed for the hypothetical situation where raw water fluoride content is 3.2 mg/L (the present average value for systems in violation of the interim standard) and where 60 percent of the water would be blended with 40 percent of the untreated water to maintain a final fluoride effluent of 2.0 mg/L. These values were selected only to illustrate the economics of treatment. Tables 11 and 12 provide relevant cost information for treatment technologies to remove fluoride from drinking water. These technologies include activated alumina and reverse osmosis (central and point-of-use applications) as well as lime softening. The costs for these technologies are not particularly sensitive to influent fluoride concentration and can be generalized to other influent and effluent situations. In any event, they should be considered to be illustrative and not definitive at this stage. The background information to support these costs can be found in "Technologies and Costs for the Removal of Fluoride, EPA, Sept. 1983."

TABLE 11.—PRELIMINARY SYSTEM COSTS FOR CONTROLLING FLUORIDES IN DRINKING WATER, COST PER THOUSAND GALLONS

[Mid-1982 dollars]

System size—MGD	0.01	0.04	0.14	0.44	0.9	1.55	[illegible]
(Population served)	(25-99)	(100-499)	(500-999)	(1,000-2,499)	(2,500-4,999)	(5,000-9,999)	(10,000-100,000)
Activated alumina:							
Central mode	$0.84	$0.58	$0.43	$0.32	[illegible]	$0.20	$0.15
Point-of-use-mode	2.07	2.07	2.07	2.07	2.07	2.07	
Reverse osmosis:							
Central Mode:	2.71	2.19	1.84	1.67	1.28	[illegible]	.79
Point-of-use-mode	3.74	3.74	3.74	3.74	3.74	3.74	

TABLE 11.—PRELIMINARY SYSTEM COSTS FOR CONTROLLING FLUORIDES IN DRINKING WATER, COST PER THOUSAND GALLONS—Continued

[Mid-1982 dollars]

System size—MGD	0.01	0.04	0.14	0.44	0.9	1.55	8.82
(Population served)	(25-99)	(100-499)	(500-999)	(1,000-2,499)	(2,500-4,999)	(5,000-9,999)	(10,000-100,000)
Lime softening							
Central mode [1]					.22	16	09

[1] Modified for fluoride treatment

TABLE 12.—PRELIMINARY COSTS FOR CONTROLLING FLUORIDES IN DRINKING WATER, CAPITAL COST IN THOUSANDS OF DOLLARS

[Mid-1982 dollars]

System size—MGD	0.01	0.04	0.14	0.44	0.9	1.55	[illegible]
(Population served)	(25-99)	(100-499)	(500-999)	(1,000-2,499)	(2,500-4,999)	(5,000-9,999)	(10,000-100,000)
Activated alumina							
Central mode	$1.82	$3.73	$7.14	$12.94	$18.75	$15.22	$87.67
Point-of-use-mode	1.05	3.15	8.41	23.12	55.70	108.25	
Reverse osmosis							
Central Mode	4.42	10.78	24.23	66.86	107.43	178.72	784.14
Point-of-use-mode	3.44	10.44	27.28	76.54	184.52	358.50	
Lime softening							
Central mode [1]					16.77	18.64	25.74

[1] Modified for fluoride treatment

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EPA has received comments from the Office of Management and Budget and has placed them in the Public Docket. However, EPA received these comments late in the process of developing this proposal; EPA is, therefore, unable to address those comments in this notice. EPA will address these comments in its final RMCL regulation.

These references are included in the Public Docket together with other correspondence and information. The Public Docket is available for viewing in Washington, D.C. at the address listed at the beginning of this notice. All public comments received on this proposal will also be included in the Docket.

IX. Request for Comments

EPA requests analyses, comments, and general information on all aspects of this notice, including the appropriate balance between public health protection and practical implementation of EPA's drinking water program under

the requirements of the SDWA. The general questions for which comment is particularly solicited are listed below. Comment on any or all of the specific questions will assist EPA in formulating a protective and practical approach to controlling human exposure to fluoride in drinking water.

1. *Dental Fluorosis.* Should moderate and severe dental fluorosis be considered adverse health effects or should these effects be considered cosmetic and aesthetic effects? If the Agency decides not to consider dental fluorosis as an adverse effect, should dental fluorosis be considered an indicator of excess dosages of fluoride which may potentially result in other adverse effects, such as crippling skeletal fluorosis, at sufficient dosages and duration of exposure?

2. *Psychological Effects of Dental Fluorosis.* The Agency requests comments on whether moderate and severe fluorosis are an adverse health effect because of potential psychological and behavioral effects.

3. *Crippling Skeletal Fluorosis.* The Agency believes that crippling fluorosis is an adverse health effect which occurs at approximately 20 mg/day. EPA requests comment on the data supporting this position and the safety factor the Agency has employed.

4. *Use of a Single Standard for Fluoride.* The proposed RMCL for fluoride, unlike the previous MCL, is a single standard independent of temperature. The Agency is interested in receiving comments on its decision not to make the fluoride standard temperature dependent.

5. *Available Technology.* The Agency is interested in receiving technical and economic information on technologies that are currently or likely to be available to reduce the levels of fluoride in drinking water, including information on costs, operating experience, reliability, and disposal of wastes.

6. *Dental Fluorosis.* The Agency is interested in information on the course of dental fluorosis over time. Is it possible for dental fluorosis in an individual to progress beyond cosmetic effects to adverse health effects?

7. *Remedial Treatment for Dental Fluorosis.* The Agency requests information on the feasibility and cost of available treatments for dental fluorosis.

X. Regulatory Analyses

The proposal of an RMCL is different than the proposal of an MCL in that an RMCL is, by law, to be based only on health and safety considerations, while an MCL takes feasibility and cost into consideration. Therefore, this RMCL proposal notice does not include an analysis of the economic impact of various possible MCLs. However, the Agency intends to fully analyze the probable impact of the various alternatives, and will report on them at the time an MCL is proposed.

The report will include an analysis of the impact of the various alternatives on the water supply industry vis-a-vis capital costs of technology, operating and maintenance costs and the feasibility of financing new treatments. Additionally, impact on the consumer and on the nation as a whole will be analyzed.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I certify that this action will not have a significant impact on a substantial number of small entities. This proposed action will have no economic impact in and of itself because this is a non-enforceable health goal.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposed action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the community and it is a non-enforceable action. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: April 30, 1985.

Lee M. Thomas,

Administrator.

List of Subjects in 40 CFR Part 141

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Waste supply.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

The authority citation for Part 141 continues to read as follows:

Authority: Safe Drinking Water Act 42 U.S.C. 300f *et seq.*

For the reasons set out in the preamble, it is proposed that a new section be added to proposed Subpart F Part 141, Subchapter D, Chapter I of Title 40, *Code of Federal Regulations* on June 12, 1984 (40 FR 24352):

Subpart F—Recommended Maximum Contaminant Levels

§ 141.51 Recommended Maximum Contaminant Levels for inorganic chemicals.

The following are Recommended Maximum Contaminant Levels for inorganic chemicals. This is a non-enforceable health goal.

(a) [Reserved]

(b) Recommended Maximum Contaminant Levels for the following substances are:

	Milligrams per liter
Fluoride	4

[FR Doc. 85-11491 Filed 5-13-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
May 14, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1985; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-278-PN]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1985

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice sets forth a proposed schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. The schedule is an update of the limits to take into account more recent data and the effects of inflation on HHA operating costs and would apply to HHA costs for entire cost reporting periods beginning on or after July 1, 1985. The notice also explains the basic methodology for computing the cost limits and proposed changes to that methodology.

DATES: To assure consideration, comments must be received by June 13, 1985.

ADDRESS: Address comments in writing to: Department of Health and Human Services, Health Care Financing Administration, Attention: BERC–278–PN, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BERC–278–PN.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309–G of the Department's offices at 200 Independence Ave, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT: V. Judith Thomas (301) 594–9235.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that may be reimbursed under Medicare, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. On July 2, 1984, we published in the **Federal Register** (49 FR 27272) a schedule of limits applicable to cost reporting periods beginning on or after July 1, 1984. These limits are set at the 75th percentile of per visit costs by type of service and are applied to each HHA's cost in the aggregate. The schedule set forth below would replace the July 1, 1984 schedule effective with cost reporting periods beginning on or after July 1, 1985.

In developing the limits contained in this schedule, we have retained the basic methodology used for the July 1, 1984 schedule, and we are proposing to apply the limits by discipline. Both the General Accounting Office (GAO) and the Department's Office of the Inspector General (OIG) have previously recommended applying the limits by discipline. In addition, we are proposing a number of changes to improve the accuracy of the limits. The provisions of the proposed new schedule are discussed below.

II. Provisions of the Proposed Limits

The proposed new schedule of limits would provide for the following:

A. A classification system based on whether an HHA is located within or outside a metropolitan statistical area (MSA) or New England county metropolitan area (NECMA).

B. Use of a single schedule of limits for hospital-based and freestanding agencies. This single limit would be based on the per visit costs of freestanding agencies. We would provide for an "add-on" adjustment of the freestanding HHA limit for each hospital-based discipline to account for the higher costs associated with Medicare cost-finding requirements for administrative and general (A&G) cost.

C. A market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing labor and price levels on HHA costs. The market basket index was first introduced effective July 1, 1980, and is used to adjust HHA cost data to the midpoint of the first cost reporting period to which the limits would apply (December 31, 1985).

D. An adjustment to the limits if the estimated market basket index rate differs from the actual rate by more than $\frac{3}{10}$ of one percentage point.

E. A wage index, developed from hospital wages, used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas in which HHAs are located. The employee wage portion of the market basket index (65.42 percent) and the employee benefits portion of the market basket (8.79 percent), plus a factor representing a proportionate share of contract services (5.47 percent) will be used to determine the labor component (79.68 percent) of all home HHA per visit costs used to set the limits. This would revise the present wage component of 79.8 percent.

F. A cost of living adjustment applied to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

G. Elimination of "outlier" costs from the per visit costs used to calculate the limits.

H. Limits set at 120 percent of the mean labor-related and nonlabor components of per visit cost.

I. Calculation and application of per visit limits by discipline.

III. Summary of Changes to the Methodology

A. Elimination of Outlier Costs

The data base we are using for this proposed notice is comprised of data from the second year of the single-method cost report. Reporting accuracy has increased significantly from the first year reports, probably due to a greater familiarity with the new cost reporting forms.

Despite the improved accuracy of the cost report data now available, we continue to find some per visit costs that are abnormal. Since these aberrant costs appear to result from errors in completing the cost report, we have defined minimum and maximum outlier cost per visit values for each discipline.

In our analysis of the distribution of per visit costs, we found that most agencies are incurring similar costs for the same type of services, which supports our belief that these extreme costs are not representative of the industry's experience. Therefore, elimination of these extreme values produces a data base that more accurately reflects the cost of efficient delivery of home health services.

In response to information we received from the industry and to assure the most accurate determination of aberrant costs, we are proposing to use an accepted statistical technique (logarithmic transformation) to

normalize the distribution of per visit costs for each service. We would then eliminate those per visit costs that were more than plus or minus two standard deviations from the mean. This would result in the elimination of approximately 5.0 percent of the highest and lowest per visit costs in each group. For example, for the urban skilled nursing service group, we would exclude costs above $118.65 per visit and below $20.67 per visit.

B. Inclusion of "New HHA" Costs in Limits

In calculating the July 1, 1984 schedule of limits, we excluded from the data base the cost per visit values for "new" agencies; that is, those agencies that have participated in the Medicare program for less than three full years. This was done to exclude the high costs that result from unique, nonrecurring expenditures in the initial years of an agency's operation.

In subsequent analyses, we have determined that using the Medicare certification date to exclude "new HHAs" may eliminate some HHAs that, although they are new to the Medicare program, have actually been in operation for several years. In addition, further analysis of the cost reporting data indicates that the per visit costs of many of these "new" agencies are within a normal range.

With the revised methodology discussed above concerning elimination of outlier costs, and in the interest of including as many HHAs as possible in the data base used to compute limits, we are proposing to include all agencies with 12-month cost reporting periods whose costs are within the outlier cutoff points.

C. Establishment of the Limits at a Percentage of the Mean

We are proposing a change in the methodology concerning how the cost limits are established. In the present schedule, limits are set at the 75th percentile of the labor-related component of per visit cost and the nonlabor component of per visit cost. Under this proposed notice, the limits would be set at 120 percent of the mean labor-related and nonlabor per visit costs. As discussed below, these limits would be lowered in future years.

We have been using a percentile limit since the first HHA cost limits were published in 1979. However, we believe that there is a major disadvantage in using a percentile limit in that it automatically assumed that a certain percentage of HHAs have excessive costs due to inefficient operation. In previous notices, we indicated our intent to reevaluate the methodology used to establish the limits when data from the single-method cost report (effective October 1, 1980) became available.

Since the single-method cost report provides a degree of homogeneity in per visit costs not previously available, we believe that the use of the mean, a widely accepted measure of central tendency, will result in limits that are more representative of the costs incurred by efficiently operated agencies. Consistent with our previous application of mean based limits to other types of providers (that is, hospitals and skilled nursing facilities), we propose to establish these limits at the mean cost per visit of each discipline plus 20 percent. Given the increased accuracy of the cost report data used to derive these limits, and the effect of the refined methodology for eliminating outlier costs, we believe that the additional 20 percent above the mean accommodates those cost variations that occur due to variables not accounted for by the limits methodology. Thus, HHAs with exceedingly high costs will be encouraged to bring their expenditures into line with their more efficient peers.

We are specifically seeking comments about whether setting limits at 120 percent of the mean would be appropriate for each type of the six home health disciplines, or whether it would be more appropriate to establish the limits at different percentages of mean cost for each home health discipline.

D. Application of the Limits by Discipline

The July 1, 1984 schedule of limits applies the limits to total agency costs on an aggregate basis. This allows an agency to offset the high cost of some services with the lower cost of other services, with the result that the intended impact of the limits is reduced or avoided. As mentioned in the final notice that implemented the July 1, 1984 limits (49 FR 27285), as well as in several previous notices, we believe that, ideally, it would be desirable for the costs and revenues related to each service to be managed independently.

In addition, a change to application of the limits by discipline would also fulfill the intent of Congress as expressed in the Conference Committee Report accompanying the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). That report stated, "Although home health agency reimbursement limits are currently being imposed as a single aggregate limit, the conference committee urges the Secretary, as soon as feasible, to begin to impose the limits by type of service." (H.R. Rep. 97–208, 97th Congress, 1st Session 949 (1981)).

As mentioned above, the industry has had two full years of experience with the single-method cost report. The data now available are sufficiently reliable to support this revision. Therefore, we are proposing to revise the HHA cost limit methodology to apply the limits to the cost incurred for each home health discipline, rather than to the aggregate cost of all visits.

We expect that the application of the limits by discipline would result in continuing improvements in management, recordkeeping, and cost reporting by most HHAs. Setting the limits at 120 percent of mean cost would provide a further incentive to contain costs through improved efficiency. This improvement in efficiency would result in a moderation in the rate of increase in average per visit costs. Because we expect improvements resulting from modifications in provider behavior to continue, we believe that the margin above the mean allowed in future schedules of limits could be reduced without adversely affecting efficiently operated HHAs. We anticipate that limits set at 115 percent of mean cost, effective July 1, 1986, and at 112 percent of mean cost, effective July 1, 1987 would adequately accommodate the costs incurred by efficiently operated HHAs. (Under section 2319 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 112 percent of the mean is the upper limit that Congress determined is appropriate for an efficiently operated skilled nursing facility.)

We are notifying HHAs now of our intention to revise the upper limit so that HHAs have over a year to initiate management changes necessary to accommodate the levels of these limits. This continues our policy of providing HHAs with advance notice of major changes under consideration in HCFA. For example, we indicated our intention to adopt application of the limits by discipline in the last two published schedules of HHA cost limits. (See 49 FR 27272; July 2, 1984 for the July 1, 1984 schedule of HHA cost limits.)

IV. Summary of Retained Methodology

A. MSA/NECMA Classification System

We are proposing to retain the classification system based on whether an HHA is located within an MSA or NECMA, as defined by the Executive Office of Management and Budget (EOMB). This proposed notice uses the revised MSA and NECMA designations that were announced by EOMB on June 29, 1984 and were effective June 30, 1984.

as well as the further changes that were made by section 611(d)(5)(A) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984, and section 119(a) of the continuing resolution (Pub. L. 98–473), enacted on October 12, 1984. These designations are the same as those used for the July 1, 1984 schedule except for the following:

- Two new urban areas have been added; Naples, FL (comprised of Collier Co.) and Santa Fe, NM (comprised of Los Alamos and Santa Fe Cos.).
- The Kansas City, KS and the Kansas City, MO urban areas have been combined into one urban area, the Kansas City, MO–KS area.
- The Alton-Granite City, IL, the East St. Louis-Belleville, IL, and the St. Louis, MO–IL urban areas have been combined into one urban area, the St. Louis, MO–IL area.

B. A Single Schedule of Limits for Hospital-Based and Freestanding HHAs

Section 1861(v)(1)(L) of the Act requires the Secretary to establish a single schedule of HHA limits based on the cost experience of freestanding agencies. The proposed schedule of limits set forth below reflects this statutory requirement.

C. Use of an Add-on Adjustment for Hospital-Based HHAs

The proposed schedule retains an add-on adjustment to the freestanding limit for hospital-based HHAs to account for the higher administrative and general costs resulting from Medicare cost allocation requirements.

Program instructions require hospital-based agencies to use the step-down method of cost finding, which allocates a share of overhead expenses from the parent facility to the home care department. In order to determine the appropriate add-on amount, we examined the relationship between these indirect costs and the direct visit costs incurred by the hospital-based HHA. The data used in this study were extracted from worksheet B of the hospital cost report (HCFA–2552) from a sample of 387 hospitals with home care departments.

The functions of the A & G cost center are directed toward overall management and control of the hospital and contain a variety of activities that do not convert easily to quantitative measurement. Therefore, costs are allocated from the parent institution on the basis of accumulated costs and, as a result, the hospital-based HHA receives a substantial amount of hospital A & G costs that are not directly commensurate with the volume or value of service received from the hospital. Although these costs are reimbursable as allowable hospital costs, they are essentially added costs that must be reported by, but are not actually incurred by, the home health agency.

The amount of the add-on is calculated by determining the percent of total per visit cost attributable to A & G cost allocated from the parent hospital to the HHA for each group (MSA and non-MSA). That percent of the mean per visit cost, which is 10.6989 percent for the MSA group and 11.7025 percent for the non-MSA group, is used to determine the add-on adjustment for each of the six disciplines. The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

For cost limit purposes, an agency is considered to be hospital-based if it is a part of a hospital that is required to file a HCFA–2552 cost report (see Chapter 12 of the Provider Reimbursement Manual (HFCA Pub. 15–II)), and meets the definition specified in the schedule of limits published on June 5, 1980 (45 FR 38017).

D. Use of HHA Market Basket Index

Since July 1, 1980, we have used a market basket price index specifically related to the cost of goods and services necessary to provide home health care. We believe that an HHA-specific market basket price index is a more accurate measure of inflation in the home health industry. The market basket is comprised of the most common categories of HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA cost attributable to each category.

The categories used in the market basket contained in this proposed schedule have not changed from those used for the July 1, 1984 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases will receive higher weights and vice versa.

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1984 through 1986 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, WEIGHTS, FORECASTERS, AND PRICE VARIABLE USED

Cost categories	Relative[1] [illegible]	Forecaster of[2] percent changes (1984–86)	Price variable used
Wages and salaries	65.42	DRI–CFS	Average hourly earnings of nonsupervisory private hospital workers. (SIC 806). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly).
Employee benefits	8.79	DRI–TL	Supplements to wages and salaries per worker in nonagricultural establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Miscellaneous	6.45	DRI–TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*
Transportation	4.59	DRI–TL	Transportation component of the Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*
Office costs	[illegible]	DRI–TL	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Medical nursing supplies and rental [illegible]	[illegible]	HCFA–HHS	Medical equipment and supplies component of the Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Nonrental space occupancy costs	1.38	DRI–TL	Composite Fuel and other Utilities Index. Source: HHS–HCFA, Community Hospital Input Price Index.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, WEIGHTS, FORECASTERS, AND PRICE VARIABLE USED—Continued

Cost categories	Relative [1] importance 1986	Forecaster of [2] percent changes (1984-86)	Price variable used
Rent	1.18	DRI–CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*
Contract services	6.87	HHS	Weighted mean of price variables for the preceding eight items
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 1084), 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI–CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS–844), 1750 K Street, NW., Washington, D.C. 20006.

E. Adjustment of the Limits for Inaccurate Economic Forecasts

This proposed notice retains the change we made in the July 1, 1984 schedule concerning adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 3/10 of one percentage point (that is, higher or lower). A more detailed discussion of this policy change can be found in the July 1, 1984 schedule (49 FR 27273).

F. Use of a Wage Index for Adjusting HHA Cost Data

The wage indexes used in this schedule are based on updated wage data for the calendar year 1982. They were developed from data supplied by the Bureau of Labor Statistics (BLS) for the hospital group, a standard BLS reporting category. We are continuing to use a combined wage index that is based on a single national average wage. The use of a combined rather than separate urban/rural indexes allows for direct comparison of index numbers across urban and rural areas.

To develop the combined wage index, we computed the national average hospital wage for all areas (MSAs, non-MSAs, and NECMAs) and divided this average into the average hospital wage for each area. The result of this calculation is an area index number that is used to adjust the labor-related portion of the group limits. For a complete description of the combined wage index, see "Computation of Wage Index Used to Adjust HHA Cost Data" contained in the schedule effective September 3, 1982 (47 FR 42906).

In developing the proposed limits, we have continued to exclude the data for Federal hospitals from the BLS data base in constructing the hospital wage index. The exclusion of Federal data results in more comparable indexes among areas with otherwise similar hospital wage levels. To the extent hospitals must pay employees wage rates similar to those of the Federal facilities to attract qualified personnel, this competitive behavior would be reflected in the non-Federal BLS data used to calculate the index. That is, if non-Federal facilities in an area pay wage rates relatively equivalent to those of Federal hospitals, the exclusion of Federal wages would have little effect on the wage index, if other factors are unchanged.

The wage index used for these proposed limits is based on data for calendar year 1982, which are the latest available data. If data for 1983 are available before publication of a final schedule of limits, we will use these data in developing the final schedule. The data we have used to develop the hospital wage index were supplied by BLS. All hospitals are required under State unemployment compensation laws to report these data.

If we discover that we, or BLS, have made an error that results in an incorrect wage index value for any area, we will notify the Medicare intermediaries of the corrected value and will direct them to recalculate the limits for those providers affected. However, BLS has advised us that they are unable to correct any inaccuracies in the wage index that may result from a hospital's failure to report the required wage data.

The data used in this proposed notice to develop the wage indexes are the most reliable national data currently available. However, HCFA is developing its own hospital wage data reporting system for the wage indexes used in determining the rates under the prospective payment system for inpatient hospital services. We believe this would be an improvement over the BLS data because the HCFA system will be designed to obtain data specifically to meet our needs. If, after this system is developed, we determine that these wage indexes provides a more accurate adjustment of the HHA data than those used in this proposed notice, we will proposed the use of the new HCFA data in place of the BLS data.

G. Separate Treatment of Labor-Related and Nonlabor Components of Per Visit Costs

We are proposing to retain separate treatment of the labor-related and nonlabor components of per visit costs. We calculate the separate components of cost by obtaining actual HHA cost data for each agency and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to standardize for the effect of wage differences. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table I.

H. Use of Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we propose to continue to provide a cost-of-living adjustment for these areas. This is an adjustment to the nonlabor component of the limits that applies to these areas. The adjustment is based on the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor component by the appropriate wage index, this adjustment applies only to the nonlabor component.

I. Calculation of per Visit Limits by Type of Service

The limits are calculated for each type of service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.

V. Application of Limits to State Medicaid Rates

Methods of reimbursement for home health agencies under Medicaid are determined by the individual State agencies. There is no existing regulatory requirement that Medicare cost limits be applied to payment rates for HHA services under Medicaid. Therefore, Medicare cost limits for HHAs will apply to Medicaid payments only in those States that choose to incorporate the limits into their plans for payment for home health services.

VI. Methodology for Determining Cost Per Visit Limits

A. Data

We determined the proposed schedule of limits by extracting actual cost per visit data obtained from the latest Medicare cost reports for periods ending on or before September 30, 1983. We then adjusted the data using market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1985 (the midpoint of the first cost reporting period to which the limits will apply). The annual percentage increases used to compute the per visit costs are:

Calendar year	Percent increase
Market basket	
1982	10.1
1983	[2] 6.8
1984	[2] 5.4
1985	[2] 5.2
1986	[2] 5.6

[1] Final rate

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 3/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Deflation by Wage Index

After adjustment by the market basket, we divided each HHA's per visit costs into labor and nonlabor portions. We determine the labor portion of costs (79.68 percent) by using the 74.21 percent employee wage and benefit factor derived from the market basket weight, plus 5.47 percent representing a proportionate share of the market basket weight for contract services. We then divided the labor portion of per visits costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

The current hospital wage index was developed from data for the calendar year 1982 supplied by the Bureau of Labor Statistics (BLS) for the "hospital industry," a standard BLS reporting category.

C. Adjustment for "Outliers"

We grouped all log-transformed per visit cost date by type of service and MSA and non-MSA locations in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean (see Changes to Methodology section) in each service.

D. Basic Service Limit

A basic service limit equal to 120 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I.)

VII. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Tables I., III A. and III B.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX:
Nonlabor Component—$12.06
Labor Component—$42.84
Wage Index—1.1035
Computation of Adjusted Limit:
Labor Component—$42.84 × Wage Index—1.1035
Adjusted Labor Component—$47.27 + Nonlabor Component—$12.06
Adjusted Limit for Occupational Therapy—$59.33

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1985, the adjusted per visit limit for each service will be revised upward by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

Example—Home Health Agency A's cost reporting period begins January 1, 1986. The labor adjusted per visit limit for occupational therapy for A's group is $59.33.

Computation of Revised Limit for Occupational Therapy

Adjusted Per Visit Limit—$59.33
Adjustment Factor from Table IV—1.0276
$59.33 × 1.0276 = $60.97

In this example, the revised adjusted per visit limit for occupational therapy applicable to A for the cost reporting period beginning January 1, 1986, is $60.97 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of a cost reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA will obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2552 cost report (see HCFA Pub. 15–2, Chapter 12), and meets the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency. Therefore, the HHA will be entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

VIII. Schedule of Limits

The schedule of limits set forth below would apply to 12-month cost reporting periods beginning on or after July 1, 1985. Alternatively, we may actually include in the final notice schedules of limits for the two years beginning July 1, 1986 and July 1, 1987, based on reductions to 115 percent and 112 percent of the mean, as discussed above. In that event, the schedules would be based on currently available cost data adjusted by estimated changes in the market basket index, but subject to revision in the future based on new cost data and new estimates in the market basket index. The fiscal intermediary would compute the adjusted limits using the wage index published in Tables III A and III B and notify each HHA of its applicable limits. (We are specifically requesting comments on this alternative to implement cost limits for three years.)

The HHA costs that would be subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Medical supplies that are not routinely furnished in conjunction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made in addition to the per visit charge) are excluded from the per visit cost if—

(1) The common and established practice of comparable HHA in the area is to charge separately for the items;

(2) The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item:

(3) Generally, the item is not frequently furnished to patients;

(4) The item is directly identifiable to an individual patient and its costs can be identified and accumulated in a separate cost center; and

(5) The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjunction with patient care visits is not subject to this schedule of limits, but is subject to the principles of reasonable cost reimbursement.

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 405.432) and against the limitation on costs that are substantially out of line with those of comparable agencies (see § 405.451).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor	Nonlabor portion
MSA (NECMA) Location			
Skilled nursing care	$53 90	$42 28	$11 62
Physical therapy	51.73	40 56	11 17
Speech pathology	58.71	45 98	12 73
Occupational therapy	54 90	42 84	12 06
Medical social services	80 42	62 62	17 80
Home health aide	34 80	27 19	7 61
NON-MSA location			
Skilled nursing care	58 64	48 04	10 50
Physical therapy	60 22	49 43	10 79
Speech pathology	69 15	56 44	12 71
Occupational therapy	66 19	54 18	12 01
Medical social services	[illegible]	67 32	14 77
Home health aide	43 28	28 08	6 20

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1 250
Hawaii	
Oahu	1 225
Kauai	1 150
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1 125
Puerto Rico	1 075
Virgin Islands	1 125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

	A&G Add-On	Labor portion	Non-labor portion
MSA (NECMA) location			
Skilled nursing care	$6.14	$4 77	$1 37
Physical therapy	5 21	4 02	1 19
Speech pathology	6 17	4 76	1 41
Occupational therapy	5 59	4 29	1 30
Medical social services	8 48	6 52	1 96
Home health aide	3 95	3.07	[illegible]
NON-MSA location			
Skilled nursing care	6.80	5.58	1 22
Physical therapy	6 45	5 29	1 16
Speech pathology	8.62	7.05	1 57
Occupational therapy	6.24	5 13	1 11
Medical social services	12.21	9 96	2.25
Home health aide	4 11	[illegible]	75

Example

A hospital-based agency in New York City has a wage index of 1.3162. It provides the following services:

Skilled Nursing
Physical Therapy
Home Health Aides

The published limits for that agency are:

	Limit		Add-On	
	Labor portion	Nonlabor portion	Labor portion	[illegible] portion
SN	$42 28	$11 62	$4 77	$1 37
PT	40 56	11 17	4 02	1 19
HHA	27 19	7 61	3 07	[illegible]

CALCULATION OF HOSPITAL-BASED LIMIT WITH ADD-ON

	SN	PT	HHA
Limit labor portion	$42 28	$40 56	$27.19
Add-on labor portion	+ 4.77	+ 4 02	+ 3 07
Total	$47 05	$44 58	$30 26
Wage index	× 1 3162	× 1 3162	× 1.3162
Total	$61 93	$58.68	$39 83
Limit nonlabor portion	$11 62	$11.17	$7 61
Add-on nonlabor portion	+ 1.37	+ 1.19	+ 88
Adjusted limits	$74 92	$71 04	$48 32

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abiline, TX	0 9830
Taylor, TX	
Aguadilla, PR	5423
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Arkon, OH	1 0848
Portage, OH	
Summit, OH	
Albany, GA	*.8862
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	9080
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1 0578
Bernalillo, NM	
Alexandria, LA	9874
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1 0665
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1 0904
Blair, PA	
Amarillo, TX	1 0187
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1 2407
Orange, CA	
Anchorage, AK	1 5915
Anchorage, AK	
Anderson, IN	9792
Madison, IN	
Anderson, SC	8605
Anderson, SC	
Ann Arbor, MI	1 1886
Washtenaw, MI	
Anniston, AL	8623
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	[illegible]
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	5717
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	9551
Buncombe, NC	
Athens, GA	[illegible]
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	9489
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1 0663
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	9723
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1 0087
Kane, IL	
Kendall, IL	
Austin, TX	1 0846
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1 2157
Kern, CA	
Baltimore, MD	1 0471

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	9458
Penobscott, ME	
Baton Rouge, LA	1.0470
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0115
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0450
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1827
Beaver, PA	
Bellingham, WA	*1.0895
Whatcom, WA	
Benton Harbor, MI	8588
Berrien, MI	
Bergen-Passaic, NJ	1.0241
Bergen, NJ	
Passaic, NJ	
Billings, MT	*.9947
Yellowstone, MT	
Biloxi-Gulfport, MS	8685
Hancock, MS	
Harrison, MS	
Binghamton, NY	9651
Broome, NY	
Tioga, NY	
Birmingham, AL	9912
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	8875
Burleigh, ND	
Morton, ND	
Bloomington, IN	*9327
Monroe, IN	
Bloomington-Normal, IL	8992
McLean, IL	
Boise City, ID	1.0363
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1213
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	9896
Boulder, CO	
Bradenton, FL	*9656
Manatee, FL	
Brazoria, TX	8640
Brazoria, TX	
Bremerton, WA	*9478
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1476
Fairfield, CT	
Brownsville-Harlingen, TX	9413
Cameron, TX	
Bryan-College Station, TX	9517
Brazos, TX	
Buffalo, NY	9927
Erie, NY	
Burlington, NC	8756
Alamance, NC	
Burlington, VT	*9645
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	5573
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	9516
Carroll, OH	
Stark, OH	
Casper, WY	*9912
Natrona, WY	
Cedar Rapids, IA	[illegible]
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.0155
Champaign, IL	
Charleston, SC	1.0115
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.1484
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	9587
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.0430
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	9761
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Chicago, IL	1.1623
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0497
Butte, CA	
Cincinnati, OH-KY-IN	1.0576
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	8257
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.2192
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0954
El Paso, CO	
Columbia, MO	1.1162
Boone, MO	
Columbia, SC	9458
Lexington, SC	
Richland, SC	
Columbus, GA-AL	[illegible]
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
Columbus, OH	1.0491
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	9581
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	8955
Allegany, MD	
Mineral, WV	
Dallas, TX	1.1035
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	*.8723
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	9047
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0996
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.0005
Volusia, FL	
Decatur, IL	1.0029
Macon, IL	
Denver, CO	1.2022
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0519
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1644
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	9151
Dale, AL	
Houston, AL	
Dubuque, IA	1.0188
Dubuque, IA	
Duluth, MN-WI	9171
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	9803
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	9161
El Paso, TX	
Elkhart-Goshen, IN	*9375
Elkhart, IN	
Elmira, NY	1.0159
Chemung, NY	
Enid, OK	[illegible]
Garfield, OK	
Erie, PA	1.0011
Erie, PA	
Eugene-Springfield, OR	9821
Lane, OR	
Evansville, IN-KY	1.0333
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0161
Clay, MN	
Cass, ND	
Fayetteville, NC	*9505
Cumberland, NC	
Fayetteville-Springdale, AR	[illegible]
Washington, AR	
Flint, MI	1.2122
Genesee, MI	
Florence, AL	[illegible]
Colbert, AL	
Lauderdale, AL	
Florence, SC	[illegible]
Florence, SC	
Fort Collins-Loveland, CO	[illegible]
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1292
Broward, FL	
Fort Myers-Cape Coral, FL	9741
Lee, FL	
Fort Pierce, FL	1.0164
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	9712
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	*.8181
Okaloosa, FL	
Fort Wayne, IN	9412

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	1 0064
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1 1776
Fresno, CA	
Gadsden, AL	[illegible]
Etowah, AL	
Gainesville, FL	9645
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1 1191
Galveston, TX	
Gary-Hammond, IN	1 1798
Lake, IN	
Porter, IN	
Glens Falls, NY	9332
Warren, NY	
Washington, NY	
Grand Forks, ND	.9576
Grand Forks, ND	
Grand Rapids, MI	1.0080
Kent, MI	
Ottawa, MI	
Great Falls, MT	*1.0663
Cascade, MT	
Greeley, CO	*1 0470
Weld, CO	
Green Bay, WI	[illegible]
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	9687
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greeville-Spartanburg, SC	9411
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9601
Washington, MD	
Hamilton-Middletown, OH	1.0288
Bulter, OH	
Harrisburg-Lebanon-Carlisle, PA	1 0594
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Middletown-Britain-Bristol, CT	1.1320
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	[illegible]
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1108
Honolulu, HI	
Houma-Thibodaux, LA	[illegible]
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.1292
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.0103
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9350
Madison, AL	
Indianapolis, IN	1.0687
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1 1197
Johnson, IA	
Jackson, MI	*1 0062
Jackson, MI	
Jackson, MS	8772
Hinds, MS	
Madison, MS	
Rankin, MS	
Jacksonville, FL	1 0231
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	* 8134
Onslow, NC	
Janesville Beloit, WI	[illegible]
Rock, WI	
Jersey City, NJ	1.2428
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	9370
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0051
Cambria, PA	
Somerset, PA	
Joliet, IL	1 1063
Grundy, IL	
Will, IL	
Joplin MO	1.0053
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1 2334
Kalamazoo, MI	
Kankakee, IL	1.0123
Kankakee, IL	
Kansas City, MO-KS	09969
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	*1 1022
Kenosha, WI	
Killeen-Temple, TX	9567
Bell, TX	
Coryell, TX	
Knoxville, TN	[illegible]
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	1.0050
Howard, IN	
Tipton, IN	
LaCrosse, WI	* 9676
LaCrosse, WI	
Lafayette, LA	1 0019
Layayette, LA	
St. Martin, LA	
Lafayette, IN	9546
Tippeconoe, IN	
Lake Charles, LA	9512
Calcasieu, LA	
Lake County, IL	1 1075
Lake, IL	
Lakeland-Winter Haven, FL	.9536
Polk, FL	
Lancaster, PA	1.0830
Lancaster, PA	
Lansing-East Lansing, MI	1 0598
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	* 8545
Webb, TX	
Las Cruces, NM	* 8257
Dona Ana, NM	
Las Vegas, NV	1.2109
Clark, NV	
Lawrence, KS	* 9874
Douglas, KS	
Lawton, OK	*1 0050
Comanche, OK	
Lewiston-Auburn, ME	* 9601
Androscoggin, ME	
Lexington-Fayette, KY	[illegible]
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jassamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	9773
Allen, OH	
Auglaize, OH	
Lincoln, NE	[illegible]
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0543
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	[illegible]
Gregg, TX	
Harrison, TX	
Lorain-Elyna, OH	1.0263
Lorain, OH	
Los Angeles-Long Beach, CA	1.3072
Los Angeles, CA	
Louisville, KY-IN	1.1145
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	[illegible]
Lubbock, TX	
Lynchburg, VA	8911
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robin, GA	[illegible]
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1 1278
Dane, WI	
Manchester-Nashua, NH	9375
Hillsboro, NH	
Merrimack, NH	
Mansfeld, OH	.9676
Richland, OH	
Mayaquez, PR	[illegible]
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaquez, PR	
San German, PR	
McAllen-Edinberg-Mission, TX	.8181
Hidalgo, TX	
Medford, OR	[illegible]
Jackson, OR	
Melbourne-Titusvilla FL	9656
Brevard,FL	
Memphis, TN-AR-MS	1.0793
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.1603
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1 0305

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1 2069
Midland, TX	
Milwaukee, WI	1 0452
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1 0398
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	9486
Baldwin, AL	
Mobile, AL	
Modesto, CA	1 1111
Stanislaus, CA	
Monmouth Ocean, NJ	9560
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	9392
Ouachita, LA	
Montgomery, AL	9505
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	* 9927
Delaware, IN	
Muskegon, MI	* .9288
Muskegon, MI	
Naples, FL	* 1 1719
Collier, FL	
Nashville, TN	1.1273
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Summer, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2093
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	9534
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1 0648
New Haven, CT	
New London-Norwich, CT	1 0254
New Orleans, LA	1 0185
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1 3162
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1 1684
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8570
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	9802
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1 2960
Alameda, CA	
Contra Costa, CA	
Ocala, FL	* 9759
Marion, FL	
Odessa, TX	*1 0917
Ector, TX	
Oklahoma City, OK	1 0825
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	*1 0703
Thurston, WA	
Omaha, NE-IA	9759
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	[illegible]
Orange, NY	
Orlando, FL	[illegible]
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	*.8723
Daviess, KY	
Oxnard-Ventura, CA	1.1811
Ventura, CA	
Panama City, FL	* 8772
Bay, FL	
Parkersburg-Marietta, WV-OH	1.0150
Washington, OH	
Wood, WV	
Pascagoula, MS	*1.1644
Jackson, MS	
Pensacola, FL	8970
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1 1424
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1782
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1 1130
Maricopa, AZ	
Pine Bluff, AR	* 8798
Jefferson, AR	
Pittsburgh, PA	1 1525
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1 0045
Berkshire, MA	
Ponce, PR	7283
Juana Diaz, PR	
Ponce, PR	
Portland, ME	9954
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1 1309
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	8785
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1 1035
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1 0189
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	[illegible]
Utah, UT	
Pueblo, CO	1.1390
Pueblo, CO	
Racine, WI	1.0065
Racine, WI	
Raleigh-Durham, NC	1 0517
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Reading, PA	1.0295
Berks, PA	
Redding, CA	1.0430
Shasta, CA	
Reno, NV	1.2813
Washoe, NV	
Richland-Kennewick, WA	9737
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	[illegible]
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1 1731
Riverside-CA	
San Bernardino, CA	
Roanoke, VA	[illegible]
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1 0156
Olmsted, MN	
Rochester, NY	1 0300
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1 0486
Boone, IL	
Winnebago, IL	
Sacramento, CA	1 2296
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1 0895
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	8837
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	1.0241
Buchanan, MO	
St. Louis, MO-IL	1.0754

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St Louis, MO	
St. Louis City, MO	
Salem, OR	1 0322
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1 2664
Monterey, CA	
Salt Lake City-Ogden, UT	.9629
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	8955
Tom Green, TX	
San Antonio, TX	.9588
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1 1868
San Diego, CA	
San Francisco, CA	1 3524
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1 2980
Santa Clara, CA	
San Juan, PR	.6275
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Las Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1228
Santa Barbara, CA	
Santa Cruz, CA	1.2051
Santa Cruz, CA	
Sante Fe, NM	.9676
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1 1680
Sonoma, CA	
Sarasota, FL	.9848
Sarasota, FL	
Savannah, GA	.9288
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1 0067
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1155
King, WA	
Snohomish, WA	
Sharon, PA	9947
Mercer, PA	
Sheyboygan, WI	.8947
Sheboygan, WI	
Sherman-Denison, TX	*.9601
Grayson, TX	
Shreveport, LA	1.1130
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1 0011
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	9823
Minnehaha, SD	
South Bend-Mishawaka, IN	.9628
St. Joseph, IN	
Spokane, WA	1 0917
Spokane, WA	
Springfield, IL	1 1302
Menard, IL	
Sangomon, IL	
Springfield, MO	9330
Christian, MO	
Greene, MO	
Springfield, MA	1 0112
Hampden, MA	
Hampshire, MA	
State College, PA	*1 0687
Centre, PA	
Steubenville-Weirton, OH-WV	9732
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1 1719
San Joaquin, CA	
Syracuse, NY	1 4143
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0596
Pierce, WA	
Tallahassee, FL	.9444
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	1.0285
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8925
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	1 1765
Miller, AR	
Bowie, TX	
Toledo, OH	1 1421
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.1245
Shawnee, KS	
Trenton, NJ	1 0581
Mercer, NJ	
Tucson, AZ	1.0081
Pima, AZ	
Tulsa, OK	1 0703
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1 0111
Tuscaloosa, AL	
Tyler, TX	.9983
Smith, TX	
Utica-Rome, NY	.9621
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2886
Napa, CA	
Solano, CA	
Vancouver, WA	*1.0793
Clark, WA	
Victoria, TX	*.9056
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9572
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.1022
Tulare, CA	
Waco, TX	.9056
McLennan, TX	
Washington, DC-MD-VA	1.1594
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9245
Black Hawk, IA	
Bremer, IA	
Wausau, WI	*.8970
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0286
Palm Beach, FL	
Wheeling, WV-OH	1.0162
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1 1699
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8774
Wichita, TX	
Williamsport, PA	.9646
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0844
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	9205
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9560
Worcester, MA	
Yakima, WA	1.0358
Yakima, WA	
York, PA	1 0062
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.1188
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0926
Sutter, CA	
Yuba, CA	

*Approximate value for area.

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	0 7797
Alaska	1 4463
Arizona	[illegible]
Arkansas	7788
California	1 0246
Colorado	[illegible]
Connecticut	1 0091
Delaware	9196
Florida	.8830
Georgia	[illegible]
Hawaii	1 1842
Idaho	[illegible]
Illinois	[illegible]
Indiana	.8652
Iowa	8134
Kansas	.8299
Kentucky	8365
Louisiana	.8545
Maine	[illegible]
Maryland	9146
Massachusetts	1 0340
Michigan	9338
Minnesota	[illegible]
Mississippi	[illegible]
Missouri	[illegible]
Montana	[illegible]
Nebraska	7293
Nevada	1 0439

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS—Continued

Non-urban area	Wage index
New Hampshire	1 0052
New Mexico	9639
New York	[illegible]
North Carolina	8545
North Dakota	8350
Ohio	9327
Oklahoma	8723
Oregon	9565
Pennsylvania	1 0363
Puerto Rico	5754
Rhode Island [1]	[1] 9306
South Carolina	[illegible]
South Dakota	7809
Tennessee	7875
Texas	8355
Utah	7836
Vermont	8805
Virginia	8546
Virgin Islands	[1] 1 0000
Washington	9511
West Virginia	9555
Wisconsin	8470
Wyoming	9789

[1] Approximate value for area

TABLE IV—COST REPORTING YEAR ADJUSTMENT FACTORS[1]

	The adjustment factor is—
If the HHA cost reporting period begins	
Aug. 1, 1985	1 0046
Sept. 1, 1985	1 0091
Oct. 1, 1985	1 0137
Nov. 1, 1985	1 0183
Dec. 1, 1985	1 0230
Jan. 1, 1986	1 0276
Feb. 1, 1986	1 0327
Mar. 1, 1986	1 0378
Apr. 1, 1986	1 0429
May 1, 1986	1 0481
June 1, 1986	1 0533

[1] Based on compounded projected market basket inflation rates of 5.6 percent for 1986 and 6.1 percent for 1987. These adjustment factors are subject to changes based on later estimates of cost increases.

IX. Regulatory Impact Analyses

A. Requirements

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611) requires us to prepare and publish a regulatory flexibility analysis for a proposed notice unless the Secretary certifies that the proposed notice would not have a significant economic impact on a substantial number of small entities. All HHAs are considered small entities under the Regulatory Flexibility Act (RFA).

We expect that HHA limits at 120 percent of the mean would result in a major impact on the HHA industry and would yield total Medicare savings of about $102 million for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. Due to the staggered beginning dates of HHA cost reporting periods, those savings would be distributed among three Federal fiscal years (FYs) as follows:

	Million
Fiscal year	
1985	$7
1986	83
1987	12
Total	102

Of these total savings, about $46 million would be incremental savings in addition to the savings that would result from the limits that are already in place. The incremental savings would be distributed among three Federal fiscal years as follows:

	Million
Fiscal year	
1985	$3
1986	37
1987	6
Total	46

These additional savings would result from refinements to the methodology, the use of more recent data, the level at which the limits would be set, and incorporating the most recent estimates of Medicare home health utilization and expenditures.

Although the proposed limits would not have an incremental impact in FY 1986 exceeding $100 million, they would provide a strong incentive for significant behavioral changes by participating HHAs, as discussed below, and would probably result in significant changes in the industry. Further, these proposed limits would clearly have a significant economic impact on a substantial number of HHAs. Finally, as discussed earlier, we are considering reducing the per discipline limits to 115 percent of mean cost per visit for cost reporting periods beginning on or after July 1, 1986, and to 112 percent effective July 1, 1987. Therefore, we have determined that both a regulatory impact analysis and a regulatory flexibility analysis are required.

The following discussion, in combination with the rest of this notice, constitutes both an initial regulatory impact analysis in accordance with section 3 of E.O. 12291, and an initial regulatory flexibility analysis, in accordance with section 603 of the RFA. We welcome comments on this analysis and on the impacts that commenters believe these proposed limits would have on HHAs. We will respond to any comments received by the data specified above in the final notice implementing these proposed limits.

B. Impact on HHA's

As of November 30, 1984, there were about 5150 HHAs participating in Medicare. Of these agencies, about 4290 were freestanding agencies and 860 were hospital-based agencies. We do not have reliable cost data on all of these agencies. However, we do have an accurate and detailed data base covering 2895 agencies, representing about 56 percent of the total population.

We used the available data sample to study the impact that these proposed limits could have on affected agencies. Because we are not able to accurately model the behavior changes that HHAs would adopt if these limits were implemented, we cannot estimate how many HHAs would eventually have costs disallowed because they exceeded the proposed limits. However, *assuming that the behavior of affected agencies does not change,* about 70 percent of the sample would exceed these proposed limits in at least one discipline. This indicates that nearly three-quarters of the HHAs in our data base would have to change their behavior in order to avoid or minimize the disallowance of costs in excess of the limits.

The following table shows how the impact of limits at 120 percent of the mean would be distributed among urban and rural, hospital-based and freestanding agencies in the sample.

TABLE.—DISTRIBUTION OF IMPACT OF PROPOSED LIMITS, ASSUMING NO BEHAVIOR CHANGE

Location type	Urban			Rural			All		
	Number in sample	Number over a limit	Percent over	Number in sample	Number over a limit	Percent over	Number in sample	Number over a limit	Percent over
Hospital-based HHA's	272	226	83.1	205	148	72.2	477	374	78.4
Freestanding HHA's	1,447	981	67.8	971	676	69.6	2,418	1,657	68.5
All HHA's	1,719	1,207	70.2	1,176	824	70.1	2,895	2,031	70.2

If, extrapolating from our data sample to the universe of all participating HHAs, we were to estimate that about 70 percent, around 3500, of all participating agencies would exceed the limits for one or more disciplines during cost reporting periods beginning on or after July 1, 1985, it would be a significant increase above the approximately 1100 participating agencies we believe will have exceeded the existing limits during cost reporting periods beginning on or after July 1, 1984, and before July 1, 1985. Of course, reducing the limits for future years below 120 percent of the mean cost per visit would affect even greater numbers of HHAs. However, agencies have many opportunities to minimize or avoid the impact of per discipline limits by changing their behavior, and we believe that the gradual decrease we are considering would afford agencies sufficient time to make good use of these opportunities. Therefore, we do not believe that these proposed changes will actually result in that large an increase in the number of agencies experiencing disallowances.

Under existing limits, an agency will exceed its limits only if its aggregate cost per visit exceeds its aggregate limit. Under the proposed per discipline limits, higher-cost disciplines would no longer be subsidized by low-cost ones, with the result that many agencies that would have been below continued aggregate limits would exceed one or more of the proposed per discipline limits, if they did not change their behavior.

We expect HHA behavior to change both in terms of management and cost reporting. In general, an HHA would have increased incentives to ensure that each type of service furnished is delivered efficiently and cost-effectively. For example, an HHA could more carefully control the input costs for any discipline over the limits. We expect many HHAs would more closely review salaries, staffing levels, staff productivity, time on site per visit, and travel time and costs. We believe greater emphasis also will be placed on the accurate classification of cost by function on the cost report. This would benefit the HHAs because they would have more accurate information on the relative cost-effectiveness of each of the disciplines they furnished. This should encourage improved management and increased agency productivity for those agencies with disciplines that would exceed the limits if they did not modify their behavior. In addition, more accurate cost reports would improve the quality of the data we collect on HHA costs, which would benefit our program administration and afford a better basis for policy development.

Application of a limit to each discipline's cost separately would not affect the HHAs that we estimate would still have no costs in excess of the limits. However, those HHAs that benefit from the subsidization between disciplines permitted under the existing limits would have their total costs over the limits increased by the use of per discipline limits. We believe that, *if the behavior of this group of HHAs did not change*, the implementation of per discipline limits would increase the incremental savings estimated to result from these proposed limits by about $35 million. However, as discussed above, there are many ways an HHA could reduce its costs and thus avoid incurring the full disallowance it would otherwise experience under these proposed limits.

The proposed limits would have the most severe impact on those HHAs that currently have costs over the proposed limits for *all* the disciplines they furnish. These agencies may have to make substantial changes in their operating in order to minimize the effect of the limits, especially as the level of the limits decreases in later years. We expect that some high-cost agencies would determine that both the amount of their costs in excess of the proposed limits and the operational changes necessary to being these costs down are unacceptable, and thus may choose to cease participating in the Medicare program. However, we wish to point out that HHAs have increased greatly in numbers and diversity of services furnished in recent years. We believe that there would still be a sufficient number of HHAs to serve the beneficiary population, even if a significant number of the higher cost HHAs eventually chose to cease providing services to Medicare beneficiaries.

C. Alternatives Considered

As is made clear in other parts of this preamble, there were many points at which we considered various alternatives in developing these proposals. In particular, each of the changes to the methodology summarized in section III of this notice could have been handled differently, just as we could have chosen a different percentage of the mean at which to set the proposed limits. The number of possible alternative schedules of limits is very large.

Nonetheless, we recognize that the impact of these proposed limits is primarily dependent on two choices we have made among the alternatives considered: the application of the limits on a per discipline basis, and the setting of the limit level at a particular percent of the mean for each discipline. In both cases, we have discussed the basis of our choices in section III., above.

It is difficult to assess the impacts of these decisions separately. In estimating the savings we expect to achieve under these proposed limits, we assumed that many of the agencies that benefit from cross-subsidization between disciplines would be able to avoid or minimize their costs in excess of the limits. Thus, we would attribute only about $13 million of the incremental savings to the effect of application of the limits by discipline. However, the behavior changes adopted by HHAs in response to these proposed limits are one of the probable effects of the proposed limits. Thus, we have discussed these potential behavior changes in some detail, above.

The greatest portion of the quantifiable impact of these proposals, that is, of the estimated savings, must be attributed to our proposal to set the limits at 120 percent of the mean initially and at lower percentages in future years. At the 120 percent level, even if we were to apply the limits on an aggregate basis, nearly 38 percent of participating HHAs would have costs in excess of the limits. We believe that much of the existing cost variation among HHAs is not attributable to factors related to costs necessary for the efficient delivery of needed health services. Other providers of services, which experience the same uncontrollable differences in the costs of their inputs as do HHAs, do not exhibit the same proportion of high-cost services. Thus, we have come to believe that it is necessary to give high-cost HHAs increased incentives to bring their expenditures into line with the

costs incurred by efficiently operated agencies.

We believe future limits for HHAs should be more comparable to limits set for other types of providers. Thus, we are setting the proposed limits at 20 percent above mean cost per visit, with a view toward reducing them to 15 percent and 12 percent above mean cost, respectively, for subsequent cost reporting periods. This would accommodate input cost variable not accounted for by the methodology, and would allow HHAs an extended period over which they could bring their costs under better controls, while at the same time ensuring that we reimburse only those costs necessary for the efficient delivery of services.

D. Conclusion

In summary, we expect that the proposed changes in methodology, improved data, and an updated market basket index would enable us to establish limits that would yield greater program savings than would result from merely inflating previous limits. However, the benefits resulting from these proposed limits would not be confined to the Medicare savings. An HHA that brings its cost down to the limits, or below, would be expected to benefit from improved management. The beneficiaries and other patients it serves could be expected to benefit in turn.

The Medicare program savings resulting from these proposed limits would be experienced as costs by the affected HHAs. Further, some economizing measures adopted by HHAs in response to these limits, such as measures that could affect access to or quality of care, could be viewed as adverse consequences, or costs. However, we believe the proposed limit levels are reasonable and we expect the majority of HHAs to be able to furnish services within them. Also, § 405.460(f) provides an exceptions process that allows for adjustment of a provider's limits under specific conditions described in this section. Therefore, we conclude that this proposal would result in benefits greater than anticipated costs, is not unnecessarily burdensome, and otherwise meets the regulatory standards required by E.O. 12291 and the Regulatory Flexibility Act.

X. Other Required Information

A. Paperwork Burden

This proposed notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

B. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the close of the comment period and will response to them in the final notice.

(Sec. 1861(v) of the Social Security Act (42 U.S.C. 1395x(v)); 42 CFR 405.460)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: March 19, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: April 25, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-11736 Filed 5-13-85; 8:45 am]

BILLING CODE 4120-01-M

Reader Aids

Federal Register

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federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Presidential Documents

Title 3—

The President

Proclamation 5336 of May 7, 1985

Vietnam Veterans Recognition Day, 1985

By the President of the United States of America

A Proclamation

As President and Commander in Chief, I have been pleased to witness a new and abiding recognition of those brave Americans who answered their country's call and served in the defense of freedom in the Republic of South Vietnam. That recognition, figured in the Memorial the Federal government accepted last November as a permanent sign of our determination to keep faith with those who served in that conflict, is both the result and the cause of a new unity among our people. Ten years after American personnel left Vietnam, we honor and remember the deeds of a group of veterans who served as selflessly and fought as courageously as any in our history.

Together we have come through a decade of disillusionment and doubt and reached a new consensus born of conviction—that, however long the wisdom and merits of U.S. policy in the Vietnam era may be debated, no one can withhold from those who wore our country's uniform in Southeast Asia the homage that is their due. Their cause was our cause, and it is the cause that animates all of our experience as a Nation. Americans have never believed that freedom was the sole prerogative of a few, a grant of governmental power, or a title of wealth or nobility. We have always believed that freedom was the birthright of all peoples, and our Vietnam-era veterans pledged their lives—and almost 60,000 lost them—in pursuit of that ideal, not for themselves, but for a suffering people half a world away.

On this day, we recall these sacrifices and say again to our Vietnam veterans: Your cause is our cause. We have not forgotten you. We will not forget you. To those who were killed in Vietnam we say: Your names are inscribed not only on the walls of black granite on the Mall in our Nation's Capital, but in the hearts of your fellow Americans. To those still listed as missing in action in Southeast Asia: We have raised the fullest possible accounting of your fate to one of highest national priority. To those who returned and resumed their daily lives in our Nation's cities, towns, and farms: We will continue to meet our commitment to compensation and health care programs for the more than 300,000 service-disabled Vietnam veterans and to programs to aid in Vietnam veterans' readjustment.

To all of our Vietnam-era veterans, we rededicate ourselves on this day to offer our continuing praise and thanks for your courage and patriotism. We pledge that our Nation will never forget the men and women who gave so much of themselves on behalf of the highest of human ideals.

The Congress, by Senate Joint Resolution 128, has designated May 7, 1985, as "Vietnam Veterans Recognition Day" and authorized and requested the President to issue a proclamation commemorating this important observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 7, 1985, as Vietnam Veterans Recognition Day. I urge all citizens, community leaders, interested organizations, and government officials to observe this day with programs, ceremonies, and activities that commemorate the service and sacrifices of the more than 3 million brave men and women who served in Vietnam.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-11951
Filed 5-14-85; 11:21 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5338 of May 10, 1985

National Asthma and Allergy Awareness Week, 1985

By the President of the United States of America

A Proclamation

Asthma and allergic diseases are among the Nation's most common and costly health problems. More than 35 million Americans suffer from these diseases—about one out of every six persons. The American public pays approximately $4 billion per year in medical bills directly related to the treatment and diagnosis of asthma and allergic diseases, and another $2 billion per year in indirect social costs. Absenteeism in the schools and in the work place resulting from these diseases has an enormous effect on the Nation.

Although modern medical treatments of asthma and allergic disorders have reduced the danger of death considerably, thousands of individuals still die each year from asthma—a disease that affects children more often than adults.

In order to improve the quality of life for those who suffer from asthma and allergic diseases, research scientists supported by the National Institutes of Health (NIH) are acquiring vital knowledge of these disorders. These scientists are optimistic that information gained through their research will provide means to develop new techniques for diagnosing, treating, and possibly preventing these debilitating diseases.

In addition, the NIH works closely with the Asthma and Allergy Foundation of America, as well as with other volunteer and professional health groups, to bring to the attention of health care professionals and the public current research results that can be translated into improved health care.

To focus public and professional attention on the seriousness of asthma and allergic diseases, the Congress, by Senate Joint Resolution 83, has designated the week of May 5, 1985, through May 11, 1985, as "National Asthma and Allergy Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD RAEGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1985, through May 11, 1985, as National Asthma and Allergy Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85–11953
Filed 5–14–85; 11:23 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5337 of May 10, 1985

National Correctional Officers Week, 1985

By the President of the United States of America

A Proclamation

Correctional officers occupy a vital role in our Nation's criminal justice systems. They are called upon to ensure the custody, safety, and well-being of the over 680,000 inmates in prisons and jails. Without these officers performing demanding and often dangerous assignments, it would be impossible to carry out the primary law enforcement mission of protecting the law-abiding citizens of this country.

In a time of rapidly growing inmate populations, the demands upon correctional officers are many. As the backbone of our correctional systems, they work hard to maintain the high professional standards necessary to ensure the safe and orderly running of our Nation's prisons and jails. The dedication exhibited by these officers in the daily performance of their duties deserves our greatest respect and appreciation.

In recognition of the contributions of correctional officers to our Nation, the Congress, by Senate Joint Resolution 64, has designated the week beginning May 5, 1985, as "National Correctional Officers Week" and authorized and requested the President to issue an appropriate proclamation in commemoration of the observance.

NOW THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1985, as National Correctional Officers Week. I call upon officials of State and local governments and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-11952
Filed 5-14-85; 11:22 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

Correction

In FR Doc. 85–11032 beginning on page 19305 in the issue of Wednesday, May 8, 1985, make the following corrections:

1. On page 19310, in the first column in the thirty-fifth line "requirements" should read "requirement"; in the thirty-sixth line, remove the word "not".
2. On page 19312, in the first column, in § 226.23(h), in the ninth and tenth lines, remove, "paragraph (k) of this section;" and replace it with "§ 226.6(k);".
3. On page 19313, in the first column, in § 226.23(ii)(3), in the seventh and eighth lines, remove "paragraph (a) of this section." and replace it with "§ 226.14(a).".

BILLING CODE 1505-01-M

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Food Distribution Program Regulations (7 CFR Part 250) to require a 100 percent yield factor for all substitutable donated foods which have been made available to processors for conversion into different end products pursuant to agreements with distributing, subdistributing or recipient agencies.

DATE: This rule is effective June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Beverly A. King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: This rule contains no new information collection or recordkeeping requirements.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. § 601–612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods. Among other things, processors are required to provide as part of the processing contract a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product. The current regulations do not, however, set forth a specific yield requirement.

On September 17, 1984, (49 FR 36390), the Department published a proposed rule which would require a 100 percent yield factor for all substitutable donated foods. The comment period expired on November 16, 1984.

Analysis of Comments

A total of 44 comments was received. Of the 44 comments, 25 comments were received from private industry sources, 13 from State and local agencies and 6 from units within the Food and Nutrition Service.

Twenty-seven of the commenters opposed the establishment of a 100 percent yield requirement. The majority of those commenters opposed the proposed requirement for the following reasons: (1) It would increase costs to recipient agencies; (2) it would not be attainable due to net weight losses as a result of moisture content in flour, trimming, packaging and unpackaging of products, product aging, underbaking, improper proofing and cutting, and unacceptable products; (3) it would cause processors to have to purchase small amounts of product which would not be cost effective; (4) it would require increased monitoring; and (5) there are no means to determine how much commodity is actually in the end product.

The Department recognizes that actual processing losses do occur and that in some instances increased costs resulting from the need to seek commercial replacement of commodities to make up such losses may be passed on to recipient agencies. However, it is the Department's opinion that competition within the commercial market will keep such increases at a minimum. An audit by the Department's Office of the Inspector General (OIG) of the Food and Nutrition Services' management of donated food processing activities support this opinion. In fact, the audit disclosed that for processors visited, the price for pizza purchased under the National Commodity Processing program, which currently requires a 100 percent yield on the donated foods, was the same as the price for pizza purchased under State processing contracts, with a 95 percent yield despite the 5 percent yield difference.

The OIG audit report also disclosed that the yield requirements for the same end product varied depending on distributing agency and the processor. However, in many instances the auditors were unable to determine the basis upon which the yields had been

set. Based on these audit findings, OIG recommended that the Department adopt a 100 percent yield requirement for all processing agreements. The Department agrees that this requirement is necessary to establish equitable standards to eliminate any subsidy of inefficient processors by allowing them to set a low yield requirement. A 100 percent yield requirement thus ensures that no food processor enjoys unjust enrichment as a result of participation in this program.

The Department does not believe that this requirement will give rise to any particular monitoring problems. Although a 100 percent yield is not currently required, the regulations do require that all processing contracts state the yields for each donated food. Monitoring of yields is already being performed to ensure compliance with the yields stated in the processing contracts.

Thus, this rule does not establish any specific monitoring requirements such as gross examination of the end product or lab analysis. The 100 percent yield requirement will be monitored in the same manner as other yield requirements. However, as a result of ongoing discussions with State distributing agencies, the Food and Nutrition Service has developed a review form for use by State agencies in conducting on-site reviews of processing activities. This review form is available from the Food and Nutrition Service Regional Offices. To ensure compliance with all yield requirements, the Department encourages distributing agencies to increase their monitoring of processing activities.

One commenter who favored the 100 percent yield requirement recommended that the proposed rule be revised to require that the yield factor be a "minimum" of 100 percent in order to clarify that yields in excess of 100 percent are permissible. The Department concurs in this comment and Section 250.15 has been revised to require that a "minimum" of 100 percent of substitutable donated foods be returned in the end product with no allowance for production losses.

Implementation

Processing contracts which are currently being negotiated or renewed must reflect the 100 percent yield requirement for all substitutable donated food. Processing contracts currently in force need not be amended.

List of Subjects in 7 CFR Part 250

Aged Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—[AMENDED]

Accordingly, § 250.15 is amended by revising paragraph (d)(4)(ii) to read as follows:

§ 250.15 State processing of donated foods.

* * * * *

(d) * * *

(4) * * *

(ii) A Description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be at least 100 percent.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.550.)

(Sec. 416, Pub. L. 81.439, amended)

Dated: May 7, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-11743 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-139-AD; Amdt. 39-5065]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A Series Airplanes, Fuselage Numbers 1 Through 370

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires replacement of the aluminum rivet in the speedbrake module gate assembly with a corrosion-resistant steel rivet. This action is prompted by reports of failures of the aluminum rivet in the speedbrake module assembly. This amendment is necessary to prevent failure of the aluminum rivet, which could allow the spoiler handle to latch in the full speedbrake position during an aborted landing or "touch and go" landing situation. With the spoilers in this position and the flaps at 22° or greater, the airplane cannot attain a pitch angle which will permit flight.

DATES: Effective June 24, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require replacement of an existing aluminum rivet in the speedbrake module assembly of certain McDonnell Douglas Model DC-10's with a corrosion-resistant steel rivet was published in the **Federal Register** on February 11, 1985 (50 FR 5627). The comment period for the proposal closed on April 1, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received. All three commenters suggested that the compliance time of the proposed rule should be extended to allow operators adequate time to schedule their airplanes to be modified. The FAA has determined that this can be accomplished without compromising safety, and accordingly, paragraph A. of the final rule has been revised to reflect a two year compliance time.

Approximately 177 U.S. registered airplanes will be affected by this AD. It will require approximately 8 manhours per aircraft to accomplish this

modification. The average labor cost is estimated at $40 per manhour. The cost of the new steel rivet is approximately $16 each. Based on these figures, the total economic impact of this AD on U.S. operators is approximately $59,525.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC-10 or KC-10A airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the following rule with the change discussed above.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A series airplanes, fuselage numbers 1 through 370, certificated in all categories Compliance required as indicated, unless previously accomplished.

To prevent the speedbrake lever from latching into either the ⅔ or full speedbrake detent position during lever retraction after landing, accomplish the following

A. Within two years after the effective date of this AD, replace the existing MS20470AD6 gate rivet in the speedbrake module assembly with a 4932183-3F034 corrosion-resistant steel rivet in accordance with the instructions in Chapter 27-62-01, Item 6, of the DC-10 Component Maintenance Manual, dated August 1, 1982, or later revisions.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 24, 1985.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region

[FR Doc. 85-11646 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-132-AD; Amdt. 39-5066]

Airworthiness Directives; Aerospatiale (Sud Nord) Nord 262A Series Airplanes Equipped With MARTIN Type Engine Fire Extinguishing System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Aerospatiale Model Nord 262A series airplanes which requires replacement of the non-return valve in the MARTIN type engine fire extinguishing system. This action is necessary to prevent jamming of the non-return valve, which could result in partial or total failure of the engine fire extinguisher system.

DATES: Effective June 24, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from Aerospatiale, Service Commercial N262, Boite Postale 159, 36003 Charcauroux, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. West, Foreign Aircraft Certification Branch; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction General de l'Aviation Civile (DGAC), which is the Civil Airworthiness Authority of France, has declared Aerospatiale N262 Fregate Service Bulletin No. 26-12 dated November 5, 1984, as mandatory. This service bulletin prescribes procedures for replacement of MARTIN type 12-09-21950 or ABG SEMCA ref. 821950 non-return valves in the MARTIN type fire extinguishing system.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the action described above was published in the **Federal Register** on January 16, 1985 (50 FR 4227). The comment period closed March 18, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that 16 U.S. registered airplanes will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the modification, and that the average labor cost will be $40 per manhour. Replacement parts are estimated at $225 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,520.

For the reasons discussed above, the FAA had determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Aerospatiale Nord 262A series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Aerospatiale (SUD Nord): Applies to Nord 262A series airplanes, certificated in all categories and equipped with MARTIN type engine fire extinguishing system.

Compliance required within 300 hours time in service or 6 months, whichever occurs first, after the effective date of this AD. To prevent failure of the MARTIN type engine fire extinguishing system, accomplish the following, unless previously accomplished:

A. Replace non-return valves, MARTIN type 12-09-21950 or ABG SEMCA Ref. 821950, in accordance with Aerospatiale N262 Fregate Service Bulletin No. 26-12, dated November 5, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

Effective Date: June 24, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11647 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-30; Amdt. 39-5062]

Airworthiness Directives; Garrett Turbine Engine Company, TFE731-2-1C and -2-2B Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive (AD).

SUMMARY: Amendment 39-1852 (39 FR 17848) AD 74-11-04 requires modification of engines incorporating certain power section part numbers. The AD continues to raise questions in regard to compliance yet all affected engines have been modified in accordance with all provisions of the AD. Therefore, AD74-11-04 is being revoked since it is no longer necessary.

DATE: Effective June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, ANM-174W, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Post Office Box 92007, Worldway Postal Center, Los Angeles, California, telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revoke an AD to eliminate confusion and uncertainty still existing concerning compliance with its requirements was published in the **Federal Register** on February 26, 1985 (50 FR 7793). The proposal was prompted by a request by the engine manufacturer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No objections were received. One comment supporting the action was received. Accordingly, the proposal is adopted without change.

Conclusion

The FAA has determined that this regulation involves no aircraft, will cost nothing, and no small entities are affected. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on any small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revoking Amendment 39-1852 (39 FR AD 74-11-04) applying to Garrett Turbine Engine Company Model TFE731-2-1C and -2-2B engines. This revocation becomes effective June 28, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on May 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11648 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-NE-17]

Establish a Control Zone at Quonset State Airport, North Kingstown, RI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new control zone at Quonset State Airport, North Kingstown, Rhode Island. The control zone will provide controlled airspace protection for aircraft operating at the airport.

EFFECTIVE DATE: 0901 G.m.t., July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139.

SUPPLEMENTARY INFORMATION:

History

On Thursday, May 22, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a new Control Zone at Quonset State Airport, North Kingstown, Rhode Island (49 FR 34290).

Interested parties were invited to participate in this Rulemaking Proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Aircraft Owners and Pilots Association had no objection with the proposal. Except for editorial changes, this amendment is the same as that proposed in the Notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a new Control Zone at Quonset State Airport, North Kingstown, Rhode Island in order to provide for the control of air traffic. The Zone will control a portion of airspace approximately 5 miles in radius around the airport and an additional 15.5 miles south of the VORTAC excluding that airspace within the Providence, Rhode Island Control Zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffice procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

North Kingstown, Rhode Island [New]

[Amended]

"With a 5 mile radius of the center, Lat. 41°35'45" N. Long. 71°24'35" W., of the Quonset State Airport, North Kingstown, Rhode Island; within 2 miles each side of the Providence, Rhode Island VORTAC 171°T(185°M), extending from the 5 mile radius zone to 15.5 miles south of the VORTAC excluding that airspace within the Providence, Rhode Island Control Zone.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Burlington, Massachusetts, on May 3, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11649 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22025; File No. S7-13-84]

Exemption of Securities Underlying Certain Options From Registration

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts amendments to Rule 12a–6 ("Rule") under the Securities Exchange Act of 1934 ("Act"). The Rule currently exempts listed stocks underlying certain exchange traded options from the registration provisions of section 12(a) of the Act. The amendments would extend the exemption to stocks that are not listed or registered on a national securities exchange if quotation information for such stocks is disseminated through the National Association of Securities Dealers Automated Quotations System ("NASDAQ").

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sharon Lawson, (202) 272-2825, Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

In 1973, Rule 12a–6 [1] was promulgated under the Securities Exchange Act of 1934 ("Act") in connection with the commencement of listed options trading on the Chicago Board Options Exchange, Inc. ("CBOE").[2] The rule exempts from the registration requirements of section 12(a) of the Act [3] stocks underlying options if certain conditions are met.[4] In the Adopting Release, the Commission stated that the purpose of the rule was to relieve any exchange which lists options of the need to register the underlying stocks pursuant to section 12(a) of the Act or to apply for UTP in the underlying stock where the exchange has provided for comparable disclosure regarding the listed options and their underlying stocks and does not seek to establish trading markets in the underlying stocks.[5]

As adopted, subsection (b)(3) of the Rule, which requires as a condition of the exemption that the underlying stock be listed or registered on some other national securities exchange at the time the option is issued, effectively excludes over-the-counter ("OTC") stocks from the exemption. Accordingly, because securities traded exclusively in the OTC market are not registered under section 12(a) and are not entitled to an exemption under Rule 12a–6 when they underlie options, the Rule effectively prohibits exchange trading of options on all OTC stocks.[6]

In 1977, the Commission proposed to delete subsection (b)(3) from the Rule in response to rule proposals submitted by the CBOE and the Pacific Stock Exchange, Inc. ("PSE") [7] to trade options on OTC stocks. If adopted, the proposed amendment would have removed the statutory bar to exchange traded options on OTC stocks. The proposed amendment, however, was never adopted due to the commencement of the options moratorium [8] and the subsequent withdrawal of the exchange proposals.[9]

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[1] 17 CFR 240.12a–6 (1984).

[2] Securities Exchange Act Release No. 10123 (April 26, 1973), 38 FR 11448 ("Adopting Release").

[3] 15 U.S.C. 781(a) (1982).

[4] Section 12(a) of the Act requires registration of all securities in which transactions will be effected on a national securities exchange. Because trading an option on a security, or an index of securities, could be deemed to constitute or involve, in some circumstances, transactions in such securities, an exchange would have to register the underlying security pursuant to section 12(a) if Rule 12a–6 did not provide an exemption. As an alternative, the exchanges could apply for unlisted trading privileges ("UTP") in the underlying security pursuant to section 12(f)(1)(C) of the Act. The Commission has indicated, however, that granting UTP applications in such circumstances may not be appropriate because the exchange does not intend to make a market in the prospective underlying security and the UTP application would be filed simply as a technical predicate to permit the exchange to trade options. *See* Securities Exchange Act Release No. 13247 (February 7, 1977), 42 FR 9030.

[5] *See* Adopting Release, *supra* note 2. The Rule provides an exemption from the registration requirements of section 12(a) for stocks underlying options where (1) the related option is itself registered and listed on a national securities exchange; (2) the exchange which lists the option limits its activity in the underlying stock to exercise transactions; and (3) the underlying stock is listed and registered on a national securities exchange, other than the one seeking to list the option, at the time the option is issued.

[6] At the time Rule 12a–6 was promulgated last sale information was not available on any OTC stock. Accordingly, the exclusion of OTC stocks from the Rule was due, in part, to the manipulative and surveillance concerns presented by trading options on stocks that lacked last sale and quotation information. *See* Adopting Release, *supra* note 2, 38 FR at 11448 n. 1.

[7] *See* Securities Exchange Act Release No. 13247 (February 7, 1977), 42 FR 9030 ("1977 Proposal"). The Commission received seven comment letters on its proposal to delete subsection (b)(3) from the Rules. These comments focused primarily on the questions raised by the exchange trading of options on OTC stocks, rather than the specific proposed amendments to the Rule. The CBOE and PSE proposals to trade options on OTC stocks were noticed in Securities Exchange Act Release Nos. 12703 (August 12, 1976), 41 FR 35884 and 12539 (June 11, 1976), 41 FR 24787, respectively. Subsequently, the American and Midwest Stock Exchanges, submitted similar proposals to the Commission. *See* Securities Exchange Act Release Nos. 13095 (December 22, 1976), 42 FR 2145 and 13406 (March 25, 1977) 42 FR 19200, respectively.

[8] *See* Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035. In that release the Commission announced that it did not expect to approve any self-regulatory organization rule proposals that would initiate new programs for the trading of standardized options.

[9] At the request of the Commission, the exchanges withdrew their proposals to trade options on OTC stocks. *See* Securities Exchange Act Release No. 15026 (August 2, 1978), 43 FR 35772. In addition to announcing adoption of amendments to Rule 12a–6 today, the Commission is hereby withdrawing the 1977 Proposal.

Today proposals are pending before the Commission from the five options exchanges and the Boston Stock Exchange, Inc. ("BSE") to list and trade options on securities that are not listed or registered on a national securities exchange under section 12(a) but are designated as national market system securities meeting Tier I criteria as set forth in Rule 11Aa2–1 under the Act ("NMS Securities").[10] Because revision of Rule 12a–6 would be necessary to permit OTC options trading under these proposals, the Commission, in 1984, again proposed amendments to the Rule.[11] The amendments would extend the Rule's exemption to stocks that are not listed or registered on a national securities exchange if quotation information for such stocks is disseminated through the NASDAQ System.

In a separate release issued today, the Commission announces that it will approve the exchange proposals if certain modifications are made to the proposals.[12] The proposed amendments are broader than necessary to accommodate the proposals currently before the Commission to permit exchange trading of options on NMS Securities in that they would eliminate obstacles in the Commission's rules to trading options on any NASDAQ stocks, not just NMS Tier I stocks. In this regard, the Commission solicited comments on whether the exemption should be limited to NMS Securities or to NASDAQ stocks that are subject to last sale reporting. The Commission also solicited comment on whether subsection (b)(3) should be deleted or whether Rule 12a–6 should be rescinded in its entirety.

In addition, the Commission published for comment an alternative amendment to Rule 12a–6 that would extend the exemption to certain OTC stocks included in indexes on which options are traded. The amendment, if approved, would have exempted from registration under section 12(a) of the Act OTC stocks that comprise part of a stock index which underlies an option, so long as no one or more of the OTC stocks in the index constitutes more than 50 percent of the total weighting of the index.[13]

The Commission received three comments on the proposed amendments which are discussed below.[14]

II. Discussion

The Commission discusses in detail in the companion release issued today[15] the reasons why it finds, in concept, it is consistent with the Act to allow exchange trading of options on certain OTC stocks. To effectuate this determination, the Commission has amended subsection (b)(3) of the Rule consistent with its proposal so that stocks underlying exchange traded options that are quoted on NASDAQ, as well as listed on another national securities exchange, will be exempt from the registration provisions of section 12(a).[16]

Each of the commentators endorsed amending the rule so that NASDAQ stocks underlying exchange traded options would be exempt from the registration requirements of section 12(a). They disagreed with the Commission, however, over the manner in which the rule should be amended. All three commentators found it preferable to delete subsection (b)(3) rather than extend its language to include stocks quoted on NASDAQ. In this regard, Amex argued that amending the Rule to exempt all NASDAQ stocks underlying exchange-traded options would be overbroad because such an amendment would render stocks other than Tier I stocks options eligible. It felt this could lead to confusion concerning the status of these stocks.

The Commission recognizes Amex's concerns that the amendment of (b)(3), rather than its elimination, may lead to confusion because there would be no statutory bar to trading options on NASDAQ stocks lacking last sale reporting. We note, however, that deleting subsection (b)(3) as Amex suggests, also would eliminate the statutory bar to trading options on all NASDAQ stocks, not just Tier I stocks, including those lacking last sale reporting. In this regard, the Commission continues to believe that at the very least stocks underlying exchange traded options should be quoted on NASDAQ or listed on a national securities exchange to receive an exemption under section 12(a). In addition, the Commission believes that amending the rule broadly so that it exempts all stocks quoted on NASDAQ underlying exchange traded options, is preferable to limiting the exemption to NMS Tier I Securities.

First, although the amendments remove the statutory obstacle to exchange trading of options on all NASDAQ stocks, Commission approval of these amendments does not itself authorize any exchange to trade options on either any NASDAQ stock irrespective of whether the stock meets Tier 1, Tier 2 or National List standards. Actual exchange trading of options on these stocks only could commence after Commission approval of exchange proposals to trade options on these stocks.[17] The Commission believes that it will be able to ensure that adequate information is available on NASDAQ stocks that underlie options through its authority to review proposed rule changes by the exchanges.[18]

Second, in order for any NASDAQ stock to underlie an exchange traded option, it also would have to satisfy the existing exchange rules establishing eligibility standards for listed options.[19] Because most, if not all, non-Tier I NMS securities would fail to meet these standards, there appears to be little possibility that options on such stocks, especially OTC stocks lacking last sale reporting, could be exchange-traded despite the removal of the statutory bar to such trading.

Third, the exchanges should consider making certain changes to the options

[10] 17 CFR 240.11Ac2–1 (1984). The Commission issued a release soliciting comments on the exchange proposals in Securities Exchange Act Release No. 20853 (April 12, 1984), 49 FR 15291.

[11] *See* Securities Exchange Act Release No. 20854 (April 12, 1984), 49 FR 15222 ("Proposing Release"). As noted in the Proposing Release, the primary significance of designating an OTC stock as an NMS security is that transactions in these OTC securities are subject to last sale reporting and quotations for such stocks must be firm as to price and size.

[12] *See* Securities Exchange Act Release No. 22026, May 8, 1985.

[13] In the Proposing Release, the Commission recognized that adoption of this amendment would be unnecessary if subsection (b)(3) of the Rule was amended to include all stocks quoted on NASDAQ because this would exempt any NASDAQ stocks that comprise an index option, as well as NASDAQ stocks underlying individual stock options.

[14] Letter from Richard O. Scribner, Executive Vice President, American Stock Exchange, Inc. ("Amex") to George A. Fitzsimmons, Secretary, SEC, dated July 17, 1984, at 16; letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE") to George A. Fitzsimmons, Secretary, SEC, dated June 5, 1984; and letter from Marc L. Berman, Executive Vice President and General Counsel, Options Clearing Corporation ("OCC") to George A. Fitzsimmons, Secretary, SEC, dated July 31, 1984.

[15] *See* note 12, *supra*.

[16] To qualify for an exemption options on NASDAQ stocks also would have to meet the other requirements set forth in the Rule. *See* note 5, *supra*.

[17] As noted above, the exchanges have only proposed to trade options on Tier I NMS stocks. The adoption of amendments to Rule 12a–6 will not in itself authorize any exchange trading of options on these stocks. Rather, such trading only could commence if the Commission finds separately that the specific exchange proposals are consistent with the requirements of the Act and independently approves them. *See* note 12, *supra*, and accompanying text.

[18] *See* section 19(b) of the Act.

[19] The current eligibility standards require, in general, a minimum of 7,000,000 publicly held shares, 6,000 shareholders, trading volume of at least 2,400,000 shares for the 12 months preceding listing, and a minimum per share price of $10 for the three months preceding listing. *See, e.g.*, CBOE Rule 5.3.

disclosure document ("ODD") [20] to clarify the types of OTC stocks that underlie exchange traded options.

In sum, the Commission believes that it is preferable, both procedurally and from a competitive point of view, to subject all applications to trade options on OTC stocks or stock indexes to the review standards contained in section 19(b) of the Act, rather than to continue to subject exchanges trading (but not OTC trading) of such options to any sort of absolute prohibition. The amendments adopted today will provide the Commission with the flexibility to respond to changes and developments in the exchange and OTC markets. At the same time, the Commission will be able to ensure that all OTC stocks underlying exchange traded options are traded in an appropriate environment.[21] In addition, the Commission believes that it is important to retain subsection (b)(3) because its requirement that a stock underlying an option be either quoted on NASDAQ or registered on a national securities exchange to be granted an exemption under section 12(a) will ensure that there is a certain minimum level of information available for the stocks underlying exchange traded options.

Because the Commission is adopting amendments to subsection (b)(3) of Rule 12a–6 that would exempt from registration all stocks underlying exchange traded options that are quoted on NASDAQ, including those that comprise an index, it will be unnecessary to adopt the alternative amendments that the Commission proposed for index options.[22] The Commission believes that any interpretive questions arising under section 12(a) concerning index options where the underlying index is comprised entirely or in part of NASDAQ stocks are circumvented by the amendments being adopted today.[23]

For the reasons stated above, the Commission adopts amendments to Rule 12a–6 as set forth below.

III. Regulatory Flexibility Act Considerations

The Chairman of the Commission certified in connection with the Proposing Release that the amendments to Rule 12a–6, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the comments addressed this certification.

IV. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [24] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendment to Rule 12a–6 in light of the standards cited in section 23(a)(2) and believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the Act. This finding is made for the reasons set forth above and in the companion release issued today. As stated herein, the amendment is designed to exempt from the registration requirements of section 12(a) of the Act certain OTC stocks underlying exchange traded options. Insofar as the rule contains limitations, they are designed to promote the purposes of the Act by ensuring that adequate information will be available on exchange traded options and their underlying stocks.

The Commission finds, in accordance with the Administrative Procedure Act,[25] that the amendment to Rule 12a–6 that is being adopted today relieves statutory registration and other requirements and is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis

The amendment to Rule 12a–6 is adopted under the Act, 15 U.S.C. 78a *et seq.*, and in particular, sections 2, 3(a)(12), 6, 11A, 12 and 23(a)(1) of the Act.

VI.

On the basis of the above discussion, the Commission amends Part 240 of Title 17, Chapter II of the *Code of Federal Regulations* by revising paragraph (b)(3) of § 240.12a–6 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted. §§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C.78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 879, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78*o*, 78q, 12 U.S.C. 241 nt., unless otherwise noted.

2. Paragraph (b)(3) of § 240.12a–6 is revised as follows:

§ 240.12a–6 Exemption of securities underlying certain options from Section 12(a)

* * * * *

(b) * * *

(3) Such underlying security is (i) duly listed and registered on another national securities exchange at the time the option is issued; or (ii) duly quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") at the time the option is issued.

By the Commission.

John Wheeler,

Secretary.

May 8, 1985.

[FR Doc. 85–11768 Filed 5–14–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 85N–0172]

Antibiotic Drugs; Erythromycin Topical Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

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[20] Pursuant to Rule 19b–1 under the Act, 17 CFR 240.19b–1(d) (1984), all customers of broker-dealers who invest in options products must be furnished an ODD relating to the options class in which the customer is trading.

[21] Although the statutory obstacle to exchange traded options on any OTC stocks, including stocks lacking last sale reporting, would be removed by the amendments being adopted today, the Commission does not hereby intend to indicate that options on all OTC stocks are appropriate and should be permitted.

[22] *See* note 13, *supra*.

[23] Both the OCC and the NYSE commented on the Commission's proposed alternative amendment for index options. Both contended that such an amendment would be unnecessary, even if the Commission did not adopt the broader amendment to subsection (b)(3). They argued that exchange-trading of a cash-settled index option does not involve actual trading in the stocks included in the index since transactions in the option, including settlement of exercise notices, never involve actual delivery of any of these stocks. Because the Commission is not adopting amendments to Rule 12a–6 specifically directed toward OTC index options, it is not necessary to address this issue at this time.

[24] 15 U.S.C. 78w(a)(2) (1982).

[25] 15 U.S.C. 553(d) (1982).

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new method of administering erythromycin topical solution. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective May 15, 1985; comments, notice of participation, and request for hearing by June 14, 1985; data, information, and analyses to justify a hearing by July 15, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new method of administering erythromycin topical solution (dispensed on a pledget). The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 452

Antibiotics, Macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for Part 452 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. In § 452.510b by redesignating paragraph (a) (2) and (3) as (a) (3) and (4), respectively, by adding new paragraph (a)(2), and by revising the introductory text of paragraph (b) to read as follows:

§ 452.510b Erythromycin topical solution.

(a) * * *

(1) * * *

(2) *Packaging.* In addition to the requirements of § 432.1 of this chapter, if it is dispensed on individually packaged pledgets, each immediate pledget contains 0.8 milliliter of erythromycin topical solution. The erythromycin topical solution used on the pledget contains 20 milligrams of erythromycin per milliliter.

* * * * *

(b) *Tests and methods of assay.* If the erythromycin topical solution is dispensed on a pledget, express the contents of a representative number of pledgets into a suitable container to obtain a volume of sample adequate to perform each assay described in paragraph (b)(1) and (2) of this section.

* * * * *

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective May 15, 1985. However, interested persons may, on or before June 14, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 14, 1985, a written notice of participation and request for hearing, and (2) on or before July 15, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Docket Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective May 15, 1985.

Dated: May 1, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-11654 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin Phosphate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Protein Blenders, Inc., providing for use of Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency. In a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA covering use of said premix is being withdrawn.

EFFECTIVE DATE: May 27, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register** approval of that portion of Protein Blenders' NADA 96-273 covering use of Mixer-Mate "Plus" T-1600 premix is being withdrawn. This document removes that portion of the regulations that reflects approval of this portion of NADA 96-273 for said premix. Other products presently approved under NADA 96-273 are not affected by this order.

List of Subjects in 21 CFR Part 558

Animal feeds, Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10.

2. In § 558.625 by revising paragraph (b)(19) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(19) To 033999: 10 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Effective date. May 27, 1985.

Dated: May 6, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-11652 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning June 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202-254-6476, (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-Multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. With the exception of the months of September and January, the PBGC has published in the ensuing months new rates and factors for plans terminating during the months of August, 1984 through May, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, 50 FR 10498, and 50 FR 14700).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1985, which set reflects a decrease of 1/4 percent in the interest rate to 9 3/4 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC had determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after June 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. In Appendix B to Part 2619, Rate Set 56 is revised and Rate Set 57 is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	on or after	and before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
56	5-1-85	6-1-85	10.00	1.0925	[illegible]	1.0400	7	8
57	6-1-85	....	9.75	1.0900	1.0775	1.0400	7	8

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–11663 Filed 5–14–85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 7, 1984, Indiana submitted an amendment to its program which consisted of: Modifications to the Indiana regulations pertaining to topsoil, backfilling and grading, confidentiality protection of information, annual certification of dams and embankments, and inability to comply; various editorial changes; and various cross-reference corrections to reflect new numbering.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of certain provisions discussed below. Accordingly, the Director is approving those amendments which are consistent and has notified Indiana, pursuant to 30 CFR 732.17, of the additional amendments that are required. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage State to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32071–32108).

On December 7, 1984, the Director, Indiana Department of Natural Resources (IDNR), submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment modifies Indiana regulations on topsoil, backfilling and grading, confidentiality protection of information, annual certification of dams and embankments, and inability to comply; and makes various editorial and cross-reference changes.

OSM published a notice in the **Federal Register** on January 3, 1985, announcing receipt of the amendments, and procedures for the public comment period and for requesting a public hearing on the adequacy of the amendment (50 FR 281). The public comment period ended February 4, 1985. Since no one requested a public hearing, the hearing scheduled for January 28, 1985, was not held.

II. Director's Findings

A. General findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Indiana on December 7, 1984, meet the requirements of SMCRA and the Federal regulations with certain exceptions discussed below. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules. All of the amended provisions are cited at the end of this notice in the amendatory language for section 914.15. Indiana has also made non-substantive changes which the Director finds consistent with Federal requirements.

B. Specific Findings

1. Indiana proposed at 310 IAC 12–2–11 to delete language (concerning areas unsuitable for mining) which provided that the Director, IDNR, need not make available to certain parties, specific information concerning the National Register of Historic Places if it was determined that disclosure of the information would create a risk of harm or destruction of the properties.

The Federal rules at 30 CFR 764.23(a) contain language that is similar to the language proposed for deletion from the

Indiana rules. Therefore, deletion of this rule could render Indiana rules less effective than the Federal rules. However, the Director, IDNR, explained in the December 7, 1984 amendment submission that "repeal of the confidentiality protection was required of us by a legislative committee which was investigating all agency rules after the adoption of the new public records law in Indiana." The IDNR Director explained that the Indiana law at IC 5-14-3-4 requires Indiana to revise its rules on lands unsuitable and citizens's request for an inspection to delete the confidentiality provisions, but that the law at IC 5-14-3-4(a)(3) provides that "records required to be kept confidential by Federal Law" are exempt from IC 5-14-3-4.

The IDNR Director concludes, therefore, that "although we are required to revise our rule on lands unsuitable and the rule on the citizen's request for an inspection, that information will continue to be handled as confidential, as specified in [OSM's] rule."

The Director, OSM, accepts this explanation and finds that deletion of the pertinent confidentiality provisions will not render the Indiana rule less effective than the Federal rule, since Indiana will implement Federal requirements in these instances by applying IC 5-14-3-4(a)(3).

2. Indiana has added language to 310 IAC 12-3-46 and 12-3-80 (for surface and underground mines, respectively) concerning a demonstration of the suitability of topsoil substitutes or supplements. The demonstration is to be based on an analysis of the thickness of soil horizons, pH, buffer pH, phosphorous, potassium, percent coarse fragments and texture and areal extent of the different kinds of soils. The coarse fragments test may be waived by the regulatory authority's representative if he or she determines the alternate material is a silt-blown alluvial soil for which this test would be unnecessary. The director, IDNR, may require certain other tests as necessary.

The Indiana provisions are similar to the provisions at 30 CFR 780.18(b)(4) and 784.13(b)(4) (for surface and underground mines), except that the Federal rules do not contain the waiver for the coarse fragments test. However, since waiver of this test would be on a case-by-case basis and determined by someone who can recognize silt-blown alluvial soils and can decide whether coarse fragments are present, the Director, OSM finds this rule to be no less effective than the Federal rule, since the coarse fragments test will be used when coarse fragments are present.

3. Indiana has deleted from 310 IAC 12-3-96 the exception to steep slope requirements that was provided for operations "where a person obtains a permit under the provision of 310 IAC 12-3-95." This was deleted because 310 IAC 12-3-95 no longer exists in the Indiana rules. The Director, OSM, finds that the deletion does not render the provision less effective than 30 CFR 785.15.

4. Indiana has deleted from 310 IAC 12-3-98(a)(7) the provision for confidentiality protection for trade secrets or proprietary commercial information contained in prime farmland permit applications.

The Federal requirements for permit applications for prime farmlands at 30 CFR 785.17 do not contain this confidentiality provision. The Director finds therefore that deletion of the provision does not render the State provision less effective than the Federal provision.

5. Indiana has added new sections 310 IAC 12-5-12.5 and 12-5-78.1 for surface and underground mining to establish requirements for: Topsoil removal and timing of removal, substitutes and supplements, storage and redistribution; and, subsoil segregation, storage and redistribution.

These added provisions are substantially similar to Federal provisions in 30 CFR 816.22 and 817.22 with the following exception. The Indiana rules 310 IAC 12-5-12.1(a)(3) and 310 IAC 12-5-78.1(a)(3) list more exceptions to the requirement to remove topsoil than the Federal rule list. The Federal rules provide that topsoil need not be removed for minor disturbances which occur at the site of small structures "such as power poles, signs, or fence lines" or which will not destroy existing vegetation and will not cause erosion. The Indiana rules expand the list of disturbances which are exempt to include "electrical substations, transformers and switchboxes, explosive magazines, temporary buildings on skids, topsoil stockpiles, permanent impoundments, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or 'horses', pumps, pump hoses and pipelines."

The Director has determined that, although most of the disturbances listed in the Indiana rules will fall within the Federal limits for "minor disturbances," most "permanent impoundments" would not be considered minor disturbances. Although topsoil removed from the site of a permanent impoundment would be replaced elsewhere and not all used at the permanent impoundment site, this topsoil must be removed and salvaged. Therefore, the Director is requiring that Indiana remove this term from the list of areas from which topsoil need not be removed. Otherwise, the Director finds the Indiana provisions no less effective than the Federal rules.

6. Indiana has added language to 310 IAC 12-5-24 and 12-5-90 (for surface and underground mining) to require that all dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) be certified by a qualified registered professional engineer annually after construction, as having been maintained to comply with the requirements of the section. The Director finds this provision to be no less effective than the requirements at 30 CFR 816.49(a)(10) and 817.49(a)(10) for annual inspections of impoundments.

7. Indiana has added 310 IAC 12-5-54.1 to establish timing and distance requirements for backfilling and grading. The rule establishes timing requirements and limitations on number of open pits for backfilling and grading on various types of mining operations. The rule establishes discretionary power with the regulatory authority to extend time periods or grant variances to the requirements. The Director finds these provisions no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and 817.100. However, Judge Flannery has remanded the Federal rules because they do not give sufficient guidance to the States (In re: *Permanent Surface Mining Regulation Litigation II*, D.D.C., 1984). Therefore, when OSM publishes new regulations for contemporaneous reclamation, Indiana's rules will be reviewed again for consistency.

8. Indiana has added 310 IAC 12-5-55.1 and 12-5-119.1 to establish general backfilling and grading requirements for surface and underground mines. Paragraph (a) requires backfilling and grading to achieve approximate original contour, to eliminate highwalls, spoil piles and depressions, to achieve slopes of 3:1 (h:v) or less with a static safety factor of 1.3, to minimize erosion and water pollution and to support the approved post-mining land use. Paragraphs (b), (c) and (d) establish requirements for spoil handling and placement. Paragraph (e) addresses disposal of coal processing waste and underground development waste. Paragraph (f) addresses covering or treatment of exposed coal seams, acid or toxic-forming materials, and combustible materials. Paragraph (g) establishes requirements for cut-and-fill terraces. Paragraph (h) allows for small depressions under certain

circumstances. Paragraph (i) allows for permanent impoundments when authorized by the regulatory authority. Paragraph (j) requires preparation of final-graded surfaces in a manner that minimizes erosion and provides a surface for topsoil placement that minimizes slippage. Paragraph (k) provides for variances from approximate original contour under certain circumstances and with approval of the regulatory authority. Paragraph (l) establishes discretionary authority with the regulatory authority to modify requirements of the rule in accordance with 310 IAC 12–5–150.1(e), for remining of areas with pre-existing highwalls. Rule 310 IAC 12–5–150.1(e) covers requirements for highwall reclamation in remined areas and is discussed further on in this notice. The Indiana provisions are similar to Federal requirements found in 30 CFR 816.102 and 817.102. The Federal rule for underground mining contains an additional provision at 30 CFR 817.102(1) to allow a variance from approximate original contour for settled and revegetated fills following underground mining. The absence of this provision from the Indiana rule does not render it less effective than the Federal rule, since the effect is to not allow this variance. Therefore, the Director finds the Indiana rules no less effective than the Federal rules.

9. Indiana has added sections 310 IAC 12–5–56.1 and 12–5–121.1 to establish requirements for stabilization of surface areas to effectively control erosion and air pollution attendant to erosion. Paragraph (b) of these Indiana rules establishes requirements for filling, regrading and reseeding or otherwise stabilizing certain rills and gullies which form in regraded, topsoiled areas. The Federal rules at 30 CFR 816.95(b) and 817.95(b) require that such rills and gullies be filled, regraded, or otherwise stabilized, topsoil shall be replaced and the areas shall be reseeded or replanted. Since the Federal rules require that such rills and gullies have topsoil replaced, and that they be reseeded or replanted, and the Indiana rules do not necessarily require this for all such instances of rill and gully formation, the Director finds the State rule less effective than the Federal rule. Therefore, the Director requires that Indiana amend these rules to be no less effective than the Federal rules.

10. Indiana has added 310 IAC 12–5–57.1 on backfilling and grading for thick overburden areas, to establish requirements for grading and for disposal of excess spoil in areas where the thickness of the overburden is large relative to the thickness of the coal deposit. The Indiana rule is similar to Federal rule 30 CFR 816.105. Therefore, the Director finds the rule no less effective than the Federal rule.

11. The State has added 310 IAC 12–5–150.1 to establish requirements for backfilling and grading on steep slopes. The rule establishes restrictions on materials that may be placed on the downslope. It restricts disturbance on land above the highwall and on placement of woody material in the backfilled area. The rule requires backfilling and grading to comply with 310 IAC 12–5–55.1 and 12–5–119.1, except where mining operations affect previously mined areas not returned to those standards, and the volume of reasonably available spoil is demonstrated in writing to be insufficient to completely fill the highwall. In such cases, the highwall shall be eliminated to the maximum extent technically practical in accordance with criteria listed in the rule for stability, spoil handling, grading and public health and safety.

The Indiana rule is substantially similar to the requirements in 30 CFR 816.106, 816.107, 817.106 and 817.107. Therefore, the Director finds the Indiana rule no less effective than the Federal rules.

12. Indiana has deleted language in 310 IAC 12–6–2 that required confidentiality of the identity of any person supplying information relating to a possible violation or imminent danger or harm. As noted in number 1 of this "Specific Findings" section, the Director, IDNR has explained that repeal of confidentiality protection was required following adoption of a new public records law in Indiana. The Director, IDNR assured OSM that under this new records law, confidential information will continue to be handled according to Federal confidentiality requirements by applying IC 5–14–3–4(a)(3). The Director finds, therefore, that the Indiana rule for citizen's request for inspections continues to be no less effective than 30 CFR 842.12.

13. Indiana has added Section 310 IAC 12–6–9.1 to provide that no cessation order or notice of violation issued under 310 IAC 12–6–5 or 12–6–6 may be vacated because of inability to comply, that inability to comply may not be considered in determining patterns of violations, and that inability to comply may be considered only in mitigation of civil penalty amounts and duration of permit suspension. The State rule is substantially similar to the Federal counterpart 30 CFR 843.18, and therefore, the Director finds it no less effective than the Federal regulations.

14. Indiana is repealing numerous sections which are replaced by new sections discussed above. The sections which are repealed are: 310 IAC 12–5–11, 12–5–12, 12–5–13, 13–5–14, and 12–5–15 on topsoil; 12–5–54, 12–5–55, 12–5–56 and 12–5–57 on backfilling and grading; 12–5–77, 12–5–78, 12–5–79, 12–5–80 and 12–5–81 on topsoil (underground mining); 12–5–118, 12–5–119, 12–5–120 and 12–5–121 on backfilling and grading (underground mines); and 12–5–150, 12–5–151, 12–5–152, 12–5–153 and 12–5–154 on steep slope mining.

The Director finds that repeal of these sections does not render the Indiana program less effective than the Federal program, since replacement sections are approved herein.

15. Indiana has made numerous other changes to its regulations which are not substantive and which are either of an editorial nature or which change cross-references to reflect new numbering of certain regulations. The Director finds these changes acceptable.

III. Public Comments

Comments were received from the Indiana Coal Council, Inc. and the Old Ben Coal Company. Both commenters were supportive of the proposed amendents.

The Indiana Coal Council, Inc. representative stated that the rules "achieve the intent of the Surface Mining Control and Reclamation Act of 1977 while accommodating local interests." The commenter stated in regard to the deletions of confidentiality rules that IC 5–14–3 required these confidentiality provisions to be deleted and that the Department has announced that it will continue to maintain information concerning sites of historic cultural value as confidential under IC 5–14–3–4(a)(6), which protects research information. The commenter attached letters from the IDNR to support the commenter's statement. The commenter stated that the IDNR will also "continue to maintain prime farmland grandfather documentation confidential to the extent such documents would constitute 'trade secrets' under Indiana law IC 24–2–3–2." The commenter further stated that "to the best of our knowledge" no one has requested disclosure of the identity of persons providing information on possible violations, and that the divergence between Indiana and Federal requirements is thus one of form rather than substance.

The Director, OSM has approved the deletion of confidentiality provisions with the understanding that the Federal provisions for confidentiality will apply in all instances where there are no State

confidentiality provisions and Federal provisions exist. This is in accordance with the IDNR Director's explanation which accompanied the December 7, 1984 Indiana program amedment package.

This same commenter stated that the proposed topsoil and backfilling and grading rules have been revised as a result of an agreement between IDNR and the Indiana Coal Council to dispose of a rulemaking petition filed by the Coal Council. The commenter stated that OSM commented on the rules during State rulemaking and that the rules should be approved since OSM comments have been incorporated. The commenter further stated that the amendment that adds a requirement for annual certification of certain dams and embankments was proposed in settlement of a judicial review lawsuit entitled *National Audubon Society et al. v. Watt*, U.S.D.C.S.D.I. IP-82-1904-C. The commenter said that in settlement of the lawsuit, the parties have tentatively agreed that the annual certification requirement be added. The commenter said that the Indiana Coal Council supports approval of the amendment.

These amendments have been approved by the Director as being consistent with and no less effective than the Federal requirements, with certain exceptions discussed above.

The Old Ben Coal Company representative supported modifications to the topsoil and backfilling and grading requirements and in particular those at 310 IAC 12-3-46 and 80, 12-5-121 and 78.1, 12-5-44(b) and 12-5-55.1 and 119.1 The commenter said the changes provide needed flexibility and effective protection from adverse environmental effects.

The Director agrees and has approved the Indiana amendments, with certain exceptions discussed above.

IV. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on December 7, 1984, under the provisions of 30 CFR 732.17. As indicated in the findings above, there are certain provisions that are inconsistent with the Federal regulations. The Director has notified Indiana, pursuant to 30 CFR 732.17, that certain program amendments are required. The State must reply within 60 days after notification by submitting either the text of the proposed amendments or a description of the amendments to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

V. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: May 9, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (g) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendments submitted December 7, 1984, are approved effective May 15, 1985: revisions amending Indiana regulations at 310 IAC 12-2-11, 12-3-46, 12-3-80, 12-3-96, 12-3-97, 12-3-98, 12-5-3, 12-5-6, 12-5-18, 12-5-19, 12-5-20, 12-5-21, 12-5-23, 12-5-24, 12-5-44, 12-5-69, 12-5-73, 12-5-84, 12-5-85, 12-5-86, 12-5-87, 12-5-89, 12-5-90, 12-5-108, 12-5-137, 12-5-147, and 12-6-2; revisions adding sections 310 IAC 12-5-12.1, 12-5-54.1, 12-5-55.1, 12-5-56.1, 12-5-57.1, 12-5-78.1, 12-5-119.1, 12-5-121.1, 12-5-150.1, and 12-6-9.1; and revisions to repeal sections 310 IAC 12-5-11, 12-5-12, 12-5-13, 12-5-14, 12-5-15, 12-5-54, 12-5-55, 12-5-56, 12-5-57, 12-5-77, 12-5-78, 12-5-79, 12-5-80, 12-5-81, 12-5-118, 12-5-119, 12-5-120, 12-5-121, 12-5-150, 12-5-151, 12-5-152, 12-5-153, and 12-5-154; with the exception of those provisions identified in §914.16(d) which require further amendments.

3. 30 CFR 914.16 is amended by adding a new paragraph (d) to read as follows:

§914.16 Required program amendments.

* * * * *

(d) By July 15, 1985 Indiana shall submit for OSM approval: an amendment to 310 IAC 12-5-56.1(b) and 310 IAC 12-5-121.1(b) to render the rules no less effective than 30 CFR 816.95(b) and 817.95(b), respectively; and an amendment to 310 IAC 12-5-12.1(a)(3) and 310 IAC 12-5-78.1(a)(3) to remove the term "permanent impoundments" from the listing of sites for which topsoil need not be removed.

[FR Doc. 85-11700 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 544

National Marksmanship Matches and Excellence-in-Competition (EIC) Matches

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This regulation adding rules and regulations for National Marksmanship Matches and Excellence-in-Competition (EIC) matches has been adopted as final. It gives responsibilities for the National Matches, eligibility criteria and categories for the competitors, and the program for the National Trophy Matches. It also describes the awards for the National

Matches. This regulation has been added to change the staff organization of the National Matches, show new eligibility requirements and programs for the National Trophy Matches, and introduce new awards.

EFFECTIVE DATE: June 14, 1985.

ADDRESS: Director of Civilian Marksmanship, Attention: Lieutenant Colonel William Creech, 20 Massachusetts Avenue, NW, Room 1205, Pulaski Building, Washington, D.C. 20314-0100.

FOR FURTHER INFORMATION CONTACT: LTC William Creech at (202) 272-0810 at the above address.

SUPPLEMENTARY INFORMATION: This regulation promotes the maintenance of National defense through the promotion of nationally held rifle and pistol matches. No comments have been received since publication of the interim final rule on April 8, 1985 (50 FR 13771).

Executive Order 12291

The Secretary of the Army has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is administrative and has no economic effect on the public.

Regulatory Flexibility Act

The Secretary of the Army has determined that this rule does not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act (U.S.C. 601 et seq.). It is an administrative and procedural rule.

Paperwork Reduction Act

This rule does not contain information collection requirements which would require approach by the Office of Management and Budget under 44 U.S.C. 350 et seq.

List of Subjects in 32 CFR Part 544

Armed forces, National defense, Awards, Nonprofit organizations.

Accordingly, the amendments to Part 544 published at 50 FR 13771, are adopted as final without change.

John O. Roach II,

Department of the Army Liaison Officer With the Federal Register.

[FR Doc. 85-11612 Filed 5-14-85; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[OA-FRL-2834-7]

Debarment and Suspension Under EPA Assistance Programs; Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule, technical amendment.

SUMMARY: This document revises the authority citation and §§ 32.207 and 32.302 of EPA's debarment and suspension regulation for assistance programs, 40 CFR Part 32. This action is necessary to:

1. Include the School Asbestos Abatement Program in the list of authorities authorizing this regulation;
2. Substitute an avenue of internal administrative review of debarment and suspension determinations to replace the Board of Assistance Appeals which will be abolished upon completion of its existing caseload;
3. Permit the notice of the decision to review a case to be delivered by the use of ordinary mail; and
4. Clarify section 32.207 by eliminating unnecessary verbiage and restructuring its content.

EFFECTIVE DATE: This amendment is effective May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. (202) 475-8028.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Grant programs—environmental protection.

PART 32—[AMENDED]

40 CFR Part 32 is amended as follows:

1. The authority citation for Part 32 is revised to read as follows:

Authority: 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq., 4901 et seq., 6901 et seq., 7401 et seq., 9601 et seq.

2. Section 32.207 is revised to read as follows:

§ 32.207 Reviews.

(a) The determination under § 32.206 shall be final. However, any party to a debarment action may request the Director, Office of Administration (OA Director), to review the findings of the hearing officer or panel by filing a request with the OA Director within 30 calendar days of the determination. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If review is granted, it shall be based solely upon the hearing record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion or based upon a clear error of law.

(c) Notice of the OA Director's decision to review the determination and the OA Director's subsequent determination shall be in writing and mailed to all parties. If a review is granted, the Director, Grants Administration Division, may stay the effective date of a debarment order pending the OA Director's determination. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the determination.

(d) A determination under § 32.206 or a review under this section shall not be subject to a dispute, appeal or a bid protest under Part 30 or Part 33 of this subchapter.

3. The heading and paragraph (f) of § 32.302 are revised to read as follows:

§ 32.302 Notice, hearing, determination and review.

* * * * *

(f) The suspension determination shall be final. However, any party to the suspension action may request the Director, Office of Administration (OA Director), to review the findings of the hearing officer or panel in accordance with the procedures in § 32.207. If a review is requested, the Director, Grants Administration Divsion, may stay the effective date of the suspension pending the OA Director's determination. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the determination.

* * * * *

Dated: April 29, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 85-11597 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2946/R765; PH-FRL 2833-4]

Pesticide Tolerance for Diclofop-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide diclofop-methyl and its metabolites in or on the raw agricultural commodity lentils. This regulation to establish a maximum permissible level for residues of the herbicide in or on lentils was requested in a petition submitted by American Hoechst Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 3F2946/R765], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 29, 1983 (48 FR 44634), which announced that American Hoechst Corp., Agricultural Division, Rte 202-206, North Somerville, NJ 08876, had filed pesticide petition 3F2946 to EPA proposing to amend 40 CFR 180.385 by establishing a tolerance for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate) and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,4 dichloro-5-hydroxyphenoxy)phenoxy] propanoic acid, each expressed as diclofop-methyl, in or on the commodities dry bean seed, dry pea seed, flax seed and straw, and lentil seed at 0.1 part per million (ppm). American Hoechst Corp. subsequently amended the petition by withdrawing the proposed tolerances for all the commodities except lentil seed at 0.1 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a rat oral median lethal dose (LD_{50}) with an LD_{50} of 557 to 580 milligrams per kilogram (mg/kg); a dominant lethal mutagenicity study, negative at 100 mg/kg/day (highest level fed); a micronucleus mutagenicity study, negative at 100 mg/kg/day (highest level tested); an Ames test, negative at 5.0 mg/plate (highest level tested); a mutagenicity study with *Schizosaccharomyces pombe*, negative; a gene conversion study in *Saccharomyces cerevisiae*, negative; an unscheduled DNA synthesis study, negative; a rat teratology study with a teratogenetic no-observed-effect level (NOEL) of 100 ppm (highest dose tested) (equivalent to 5.0 mg/kg of body weight (bw); a rabbit teratology study with a teratogenetic NOEL of 3 mg/kg/day (highest dose tested) and a NOEL for fetoxicity of 0.3 mg/kg/day; a 3-generation rat reproduction study with NOEL of 300 ppm (15.0 mg/kg of bw); a 2-year rat feeding/oncogenenicity study with a NOEL of 20 ppm (1.0 mg/kg of bw) (highest level tested); a 2-year mouse feeding/oncogenenicity study with a systemic NOEL of 2 ppm (0.3 mg/kg of bw) and a significant increase in liver neoplasms in males and females at the highest dose tested, 20 ppm (2.5 mg/kg/day); and a 15-month dog feeding study with a NOEL of 8 ppm (0.2 mg/kg of bw).

The Agency has evaluated dietary exposure to diclofop-methyl residues for the commodities proposed. Assuming that 100 percent of the crop is treated with residues at the tolerance level (0.1 ppm), using a multi-stage model the "worst case" dietary oncogenic risk is calculated to be one incidence in a million. Actual risk will be less, since residues are non-detectable at level of sensitivity (0.1 ppm). There is no expectation of secondary residues in meat, milk, poultry, and eggs. Benefits associated with the use of diclofop-methyl in this minor crop are estimated to be an average $1 million annual savings to growers. No alternative herbicides are available for postemergent wild oat control in this crop.

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.003 mg/kg/day with a maximum permissible intake (MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximum residue contribution of 0.01706 mg/day in a 1.5 – kg diet and use 9.47 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood and an adequate analytical method, gas chromatography using electron capture detector, is available for enforcement purposes. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 2, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 is revised to read as set forth below and the authority citations following all the sections in Part 180 are removed.

Authority: 21 U.S.C. 346a.

2. Section 180.385 is amended by adding the commodity lentils and editorially redesignating the commodity

"soybean seed" to "soybeans" to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Lentils	0.1
* * * * *	
Soybeans	0.1
* * * * *	

[FR Doc. 85-11258 Filed 5-14-85; 8:45 am]

BILLING CODE 4560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6604

[CA-16947]

California Modifications of Executive Order No. 6206 of July 16, 1933

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies an Executive order to allow the State of California to select 20 acres of public land which was withdrawn for use of Los Angeles Department of Water and Power for protection of the city's water supply system. This action will open the land to proposed disposal under State Indemnity Selection to the State of California.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, BLM, California State Office, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714) it is ordered as follows:

1. The Executive Order No. 6206 of July 16, 1933, is hereby modified as stated in paragraph 2 of this order, as to the following described land:

Mount Diablo Meridian

T. 18 S., R. 37 E.,
Sec. 6 fractional SW¼SE¼.

The area described contains 20 acres in Inyo County.

2. Effective immediately, subject to valid existing rights, the land will be opened to application under the School Grant Act of 1853 for State Indemnity Selection by the State of California. The land remains closed to all other forms of appropriation under the public land laws, including the nonmetalliferous mining laws, but remains open to the metalliferous mining laws and mineral leasing laws.

May 7, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-11666 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Dicerandra Immaculata (Lakela's Mint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Dicerandra immaculata* (Lakela's mint), a small shrub restricted to a few sites in Indian River and St. Lucie Counties, Florida. Residential and commercial development is a threat to the continued existence of this plant. This final rule provides the protection of the Endangered Species Act of 1973, as amended, to *Dicerandra immaculata*.

DATE: The effective date for this rule is June 14, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Dicerandra immaculata (Lakela's mint) is a low-growing dome-shaped shrub of the mint family (Lamiaceae). The plants reach 38 centimeters (15 inches) in height, and bear erect flowers in small cymes at the tips of the stems. The spotless, lavender-rose to purplish (rarely white) corolla (petals) of the flower separates *Dicerandra immaculata* from other species of this genus occurring in the southeastern Unites States. *Dicerandra immaculata* was described by Lakela (1963) based on material collected in southern Indian River County, Florida, in 1962. The species is restricted to coastal sand pine scrub vegetation in Indian River and St. Lucie Counties, Florida. Florida sand scrub habitats are found on relict dunes along former shorelines. The soils consist of highly drained, sterile sands.

In *Dicerandra immaculata* habitat, sand pine (*Pinus clausa*) forms an overstory, while oaks (*Quercus geminata, Q. virginiana*, and *Q. myrtifolia*) form an understory. Other small trees or shrubs found in this plant community include scrub hickory (*Carya floridana*), cabbage palm (*Sabal palmetto*), saw palmetto (*Serenoa repens*), hog plum (*Ximenia americana*), and tough bumelia (*Bumelia tenax*). Epiphytes (*Tillandsia fasciculata* and *T. recurvata*) are present. *Dicerandra immaculata* is one of the rarest plants known from the sand scrub community type. Rare animals found in *Dicerandra immaculata* habitat include the Florida scrub jay (*Aphelocoma c. coerulescens*) and the scrub lizard (*Sceloporus woodi*). The Florida scrub jay is considered a threatened species by the State of Florida; the scrub lizard is considered rare by the Florida Committee on Rare and Endangered Plants and Animals. Only 9 remaining sites of *Dicerandra immaculata* are known. The occur in an area 0.8 kilometer (0.5 mile) wide by 4.8 kilometers (3 miles) long in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. The plants occur in the vicinity of 4 small sandhills with an elevation over 14 meters (45 feet), representing ancient coastal dunes. *Dicerandra immaculata* occurs on soil series of the Astatula, Paola, and St. Lucie sands. All known colonies occur on private property. The continued existence of this species is threatened by sand mining, commercial and residential development, and a fungal disease affecting the seeds.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species

pursuant to Section 4 of the Act. *Dicerandra immaculata* was included in the Smithsonian report, the July 1, 1975, notice of review, and the June 16, 1976 proposal.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796); this withdrawal included *Dicerandra immaculata*. On December 15, 1980, the Service published a revised notice of review in the **Federal Register** (45 FR 82480); *Dicerandra immaculata* was placed in category 1 of this notice, meaning that the Service had substantial information supporting a proposed determination of endangered or threatened status.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act, further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dicerandra immaculata* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Dicerandra immaculata* was warranted, and that, although other pending proposals had precluded proposal of *Dicerandra immaculata*, expeditious progress was being made to add the species to the list. This finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(c)(i). In the **Federal Register** of July 23, 1984 (49 FR 29632), the Service published a proposal to list *Dicerandra immaculata* as an endangered species. Publication of the proposal constituted the finding, required by October 13, 1984, that the petitioned action was warranted.

Summary of Comments and Recommendations

In the July 23, 1984, proposed rule (49 FR 29632) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Fort Pierce, Florida *News Tribune* on August 9, 1984; and in the Vero Beach, Florida *Press-Journal* on August 27, 1984. These newspaper notices invited general public comments. Fifteen comments were received, and are discussed below.

The proposal was supported by the Threatened Plants Unit of the International Union for Conservation of Nature and Natural Resources, the Florida Game and Fresh Water Fish Commission, Florida's Treasure Coast Regional Planning Council, and the Florida Native Plant Society, as well as two local chapters of this organization. The Florida Department of Agriculture and Consumer Services indicated that *Dicerandra immaculata* would be recommended for State listing as endangered in the 1985 legislative session. The Indian River County Chief of Environmental Planning supported the concept of listing *Dicerandra immaculata* but stated that the County had no mechanisms to preserve the plant. One individual expressed interest in cultivating *Dicerandra immaculata*. Two other persons expressed interest in the conservation of this species.

Three individuals commented on the continuing decline of *Dicerandra immaculata* due to commercial and residential development. One of these commenters suggested that road widening could adversely affect some of the remaining *Dicerandra immaculata* populations. The Service will consider this potential threat in reviewing future Federal activities in the area. The Federal Department of Transportation was notified of the proposed listing of *Dicerandra immaculata* as an endangered species, but no comments were received.

One landowner suggested transplanting as many plants as possible. The Service thinks that protection and maintenance of existing sites of *Dicerandra immaculata* would be the preferred means of conserving the plant. Failing this, transplantation and cultivation may be alternatives allowing for preservation of this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dicerandra immaculata* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Dicerandra immaculata* Lakela (Lakela's mint) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Dicerandra immaculata* is known only from a 0.8 kilometer (0.5 mile) by 4.8 kilometers (3 miles) area in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. Since the time this species was proposed for listing, one of the 10 colonies then known has been destroyed by commercial development. Two sites have been partially destroyed by clearing for construction of houses. Two other colonies are threatened by sand mining. This commercial and residential development has occurred in the last 2 years; such activities are expected to continue in the near future, affecting most or all of the remaining colonies of *Dicerandra immaculata* (Austin *et al.*, 1980; Kral, 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes*. Not applicable.

C. *Disease or predation. Dicerandra immaculata* is subject to mildew attack, which destroys the viability of the seeds before they are dispersed (Robinson, 1981).

D. *The inadequacy of existing regulatory mechanisms*. No existing Federal, State, or local laws or regulations protect *Dicerandra immaculata* or its habitat. The State of Florida will consider placing *Dicerandra immaculata* on the State endangered plant list in 1985, pursuant to the Preservation of Native Flora of Florida Act (Section 581.185, Florida Statutes). This designation, however, would not protect the habitat of *Dicerandra immaculata*.

E. *Other natural or manmade factors affecting its continued existence*. Peninsular Florida has one of the highest human population growth rates in the United States. The current heavy development pressures on the limited uplands can be expected to intensify in the area in which *Dicerandra immaculata* occurs.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dicerandra immaculata* as endangered. The few

remaining colonies of this species are continuing to decline and the plant is in danger of extinction throughout its range. Critical habitat is not being designated for *Dicerandra immaculata*; the reason for this decision is discussed in the following section.

Critical habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This species is found only on small areas of privately-owned lands, where no Federal involvements are known at present. Publication of critical habitat descriptions and maps in the **Federal Register** could attract attention to the limited area where *Dicerandra immaculata* occurs, subjecting the remaining sites to vandalism. The resultant attention could also encourage increased trespassing and frustrate property owners. Should future Federal activities take place in the area in which *Dicerandra immaculata* occurs, the Service feels that such activities will be brought to the Service's attention without the designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act inlcude recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvements affecting *Dicerandra immaculata* are known at this time.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dicerandra immaculata*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Dicerandra immaculata* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Since *Dicerandra immaculata* is not presently known to occur in any area under Federal jurisdiction, this prohibition will not apply. Requests for copies of the regulations on plant and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Austin, D.F., C.E. Nauman, and B.E. Tatje. 1980. Endangered and threatened plant survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Report submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plant of the South. Vol. II: Aquifoliaceae through Asteraceae. U.S.D.A. Forest Service Publication R8-TP2.

Lakela, O. 1963. *Dicerandra immaculata* Lakela, sp. nov. (Labiatae). Sida 1(3):184-185.

Robinson, A.F., Jr. 1981. *Dicerandra immaculata*. Status review prepared for U.S. Fish and Wildlife Service files. Jacksonville Endangered Species Field Station, Jacksonville, Florida.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical [illegible]	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
*	*	*	*	*		*
Dicerandra immaculata	Lakela's mint	U.S.A. (FL)	E	177	NA	NA
*	*	*	*	*		*

Dated: April 18, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11660 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery time adjustment and closure.

SUMMARY: NOAA issues this notice to reduce the allowable fishing time for surf clams from six hours per week to six hours every other week for vessels harvesting surf clams in the Mid-Atlantic Area of the fishery conservation zone. In addition, the fishery will close for a two-week period from 8:00 a.m. on June 23, 1985, through 2:00 p.m. on July 4, 1985, in the Mid-Atlantic Area. The action is required to prevent significant overharvest of surf clam allocations and avoid a prolonged closure of the fishery. The intended effect is to reduce the rate of harvest from the fishery.

EFFECTIVE DATE: May 12, 1985.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617-281-3600, ext. 351.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3) (i) and (d) provisions to reduce the allowable fishing time for surf clams and close the fishery if the Regional Director, upon review of available information and public comment, including current and expected levels of fishing effort, determines during any quarter that the quarterly quota for surf clams will be exceeded.

Logbooks submitted by fishermen and processors show that as of April 25, 1985, surf clam harvest during the first two quarters of 1985 reached 1,000,000 bushels. Thus, 76 percent of the 1,325,000 bushel quota for the first two quarters of 1985 has already been harvested. Examination of the weekly catch rates indicates a significant increase in surf clam harvest during the second quarter as compared to the first quarter.

The Regional Director has determined that without both a reduction in fishing time and two-week closure, the second quarterly quota will be exceeded and early closure of the fishery will be necessary. Therefore, the Secretary of Commerce reduces fishing time to six hours every other week effective May 12, 1985, and closes the fishery beginning at 8:00 a.m. on June 20, 1985, through 2:00 p.m. on July 4, 1985, to reduce the possibility that harvests will exceed the annual quota.

The reduced fishing schedule divides the surf clam fleet in half alphabetically, divides the calendar month into "odd" and "even" weeks and assigns one-half of the fleet to odd weeks and the other half to even weeks. The first letter of a surf clam vessel's name will determine which week the vessel will conduct its six-hour fishing activity. Vessels with names beginning with letters A–M will fish during "odd" weeks. Vessels with names beginning with letters N–Z will fish during "even" weeks. All vessels will fish on their presently scheduled fishing days, between the hours of 8:00 a.m. and 2:00 p.m.

Therefore, the following schedule is in effect:

REDUCED FISHING SCHEDULE

Week	Vessel		
	Odd	Even	Fishing period (8 am–2 pm)
May 12–16	(A–M)		6 hrs.
May 19–23		(N–Z)	Do.
May 26–30	(A–M)		Do.
June 2–6		(N–Z)	Do.
June 9–13	(A–M)		Do.
June 16–20		(N–Z)	Do.
June 23–27, fishery closed			
June 30–July 4, fishery closed.			
July 7–11	(A–M)		Do.
July 14–18		(N–Z)	Do.

Alternating weeks to continue as above until further notice.

If the assigned week interferes with fishing strategy, vessels should have switched their odd or even fishing week by contacting the Regional Director before 4:00 p.m. on May 10, 1985, pursuant to the surf clam permit holder letter dated May 1, 1985. Vessels will have an additional opportunity to change their fishing week during the two-week closure and should contact the Regional Director between 9:00 a.m. on June 24 and 4:00 p.m. on July 3 to switch their assigned odd-even week.

When the fishery reopens on July 7, 1985, the reduced fishing schedule will continue until the Regional Director determines that the rate of harvest in the surf clam fishery has been reduced sufficiently to avoid a prolonged closure and prevent the annual quota from being exceeded. Further notice of additional adjustments in the fishing time will be forthcoming after the Regional Director reviews the level of harvest under the revised fishing schedule.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11761 Filed 5-10-85; 4:36 pm]

BILLING CODE 3510-22-M

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50 CFR Part 655

[Docket No. 40211-4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final initial annual specifications.

SUMMARY: NOAA issues this notice to provide final initial annual specifications to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries for the 1985–1986 fishing year. Regulations governing these fisheries require publication of final initial annual specifications for the current fishing year. This action is intended to notify users of the final initial specifications and to promote orderly development of the fisheries.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Copies of the regulatory flexibility analysis are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, ext. 273.

SUPPLEMENTARY INFORMATION: Final regulations to implement Amendment 1 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) were published January 4, 1984 (49 FR 402). Interim

specifications for the 1985–1986 fishing year, and request for comments, were published March 27, 1985 effective on March 22, 1985 (50 FR 12032). Comments were received by NOAA through April 26, 1985. Prior to the interim rule, NOAA issued a notice of postponent (50 FR 6953, February 19, 1985) to inform the public that the specifications would be postponed.

The initial annual specifications for Atlantic mackerel were issued as an interim rule and made effective on March 12, 1985 (50 FR 10499, March 15, 1985), and requested public comment; no comments were received on these specifications. Therefore, the final Atlantic mackerel specifications were filed on May 9, 1985, with the effective date of March 12, 1985, unchanged.

Comment Received

Comments, all directed at the squid specifications, were submitted by the Governments of Italy (GOI) and Spain (GOS), the Japan Deep Sea Trawlers Association (JDSTA), the Association of Spanish Fishermen (ANAVAR), the National Fisheries Institute (NFI), Stonavar, a joint venture company with Spain, Sea Harvest, Inc., the U.S. participant in International Seafood Trading Company (ISTC) with Italy, and a shoreside squid processor.

The Japan Deep Sea Trawlers Association commented on the scientific basis for lowering the *Loligo* and *Illex* allowable biological catches (ABCs). The Government of Spain and ANAVAR commented that the *Loligo* and *Illex* total allowable level of foreign fishing (TALFFS) were insufficient. ANAVAR, in addition, stated that it required advance notice of TALFF in order to plan fishing operations, and, that they anticipated a TALFF allocation in consideration of their having signed purchase commitments for U.S. produced products. The representative for Stonavar commented that NOAA erred in not publishing the TALFF and Joint Venture Processing (JVP) specifications as recommended by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC), that the specifications were not published on a timely basis, that analysis of the catcher processor component of Domestic Annual Processing (DAP) was faulty; and, that the *Loligo* Initial Optimum Yield (IOY) was not "in the best interest of the nation". The Government of Italy and ISTC commented that the specifications were very restrictive and that the use of the term "maximum TALFF" and the uncertainty of the linkage between joint venture proposals and TALFF signaled a change in policy in the management of the squid fisheries.

The National Fisheries Institute submitted new calculations in support of their projections for use of *Loligo* squid by U.S. operators of catcher processor vessels. The domestic processor resubmitted a prior presentation to support a request for *Loligo* to use in an expanded processing facility.

Specifications

The following table lists the final initial annual specifications in metric tons (mt) of the Maximum Optimum Yield (Max OY) Allowable Biological Catch (ABC), Initial Optimum Yield (IOY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Joint Venture Processing (JVP), Reserve (if any), and Total Allowable Level of Foreign Fishing (TALFF) for squid, (*Loligo*) and *Illex*) and butterfish. These annual specifications are amounts that the Regional Director, Northeast Region, has determined to be the appropriate levels of harvest for the start of the 1985–1986 fishing year. These levels are subject to modification based on performance as the fishing year progresses.

Modifications In Response To Public Comment

The specifications given below reflect consideration of comments received on the interim specifications.

Initial Optimum Yields (IOYs)

The *Loligo* IOY has been modified upward in the net amount of 2,500 mt because of changes in DAP, DAH and TALFF.

Total Allowable Level of Foreign Fishing—TALFF

Modifications have been made to the *Loligo* TALFF specification to reflect more clearly the agency's intention to make TALFF available to foreign nations that have conferred commensurate benefits upon the U.S. fishing industry.

Previously, the potential availability for *Loligo* TALFF was noted only in a footnote and text reference. A 5,000 mt amount is added to the 700 mt by-catch TALFF amount for a total *Loligo* TALFF of 5,700 mt which may be allocated. The modifications were made both to clarify the agency's intent to make TALFF available in instances where benefits would accrue to the U.S. fisheries and to recognize evidence of actual commitments to participate in such arrangements submitted as part of comments on the specifications.

In making this modification, the agency has not foregone the expectation that commitments made in consideration of TALFF recommendations in the 1984–1985 fishing year would be fulfilled in addition to any commitments made to obtain recommendations for TALFF allocations in the 1985–1986 fishing year. Although availability of TALFF has been made more explicit, the concept of transfer of benefits in turn for TALFF recommendations remains embodied in the process and will govern the agency's recommendations relative to allocations of TALFF amounts now referenced in the table. Where actual performance of existing commitments is not forthcoming, or where additional commitments fail to materialize, the agency will not be inclined to provide favorable recommendations for allocations of TALFF.

The specification for *Illex* TALFF has not been modified. The agency's intention remains to make TALFF available where there is firm evidence of commitment to engage in arrangements which will be beneficial to the U.S. industry. Lacking such indications of commitments as have been received with regard to *Loligo* arrangements during the comment period, NOAA has decided not to modify the *Illex* TALFF specification in the same manner as it modified the *Loligo* TALFF specification. The agency may recognize, however, timely filed, competitive proposals which lack closure only for failure to resolve commercial details. On clearance and after transmittal of evidence of commitment, similar modifications could be made to the *Illex* TALFF as have been made to *Loligo*.

The modification to the *Loligo* TALFF specification and the clarification of the agency's position should alleviate in part concerns received in comments which are addressed later.

FINAL INITIAL SPECIFICATIONS FOR FISHING YEAR—APR. 1, 1985—MAR. 31, 1986

[In metric tons (mt)]

Specifications	Squid		Butterfish
	Loligo	Illex	
Max OY[1]	44,000	30,000	[2] 16,000
ABC	33,000	25,000	[2] 16,000
IOY	28,200	[3] 16,700	11,700
DAH	22,500	16,000	11,000
DAP	20,500	11,500	11,000
JVP	[4] 2,000	[4] 4,500	
Reserve	0	0	
TALFF	5,700	[3] 700	700

[1] These are maximum OYs (as stated in the FMP).

[2] Up to the figure given.

[3] An additional amount may be added to IOY, up to 2,500 mt of *Illex*, based in major part, upon the purchase of U.S processed *Illex*, 1 mt of processed *Illex* to 1 mt of *Illex* TALFF (see text, section on TALFF)

[4] Additional amounts may be added to JVP by increasing IOY up to 1,700 mt (for a total of 3,700 mt) for *Loligo* and up to 4,000 mt (for a total of 8,500 mt) for *Illex*, depending upon performance

Note.—These adjustments will comply with the procedures of 50 CFR 655 22

Specification Setting Procedure

Comment: The representative of Stonavar commented that the agency failed to publish specifications on a timely basis "on or *before*" March 15th.

Response: Section 655.22 describes a number of dates as *"on or about"* by which various steps are intended to be accomplished in the setting of specifications. The dates are approximate to give sufficient flexibility to receive, analyze, and air in public forums all information which is pertinent to the prosecution of the fishery over the ensuing fishing year. On March 27, 1985 interim specifications were published for squids, effective March 22, 1985, (50 FR 12032).

This year a number of circumstances made the process more complex and cause some delay in publications. Determination was made based on scientific assessments that the ABCs for *Loligo* and *Illex* squids should be lowered. The Council lowered the *Loligo* ABC by 11,000 mt and the *Illex* ABC by 5,000 mt, thereby reducing sharply the amount of resource available for allocation and casting doubt on the flexibility to raise the ABCs later to the maximum OYs of 44,000 mt (*Loligo*) and 30,000 mt (*Illex*) and 30,000 mt (*Illex*), which the FMP theoretically allows.

Proposals were submitted that projected substantial increases in domestic use of *Loligo* squid, including consideration of a plant expansion and investments in a number of domestic catcher-processor vessels. The catcher processor vessel proposals came in Mid-February and were discussed in Council meetings in early March. Joint venture paticipants previously engaged in the fishery submitted proposals for the 1985–1986 fishing year, a number of them without collateral requests for TALFF allocations. All of these factors required substantial consultation among NOAA, both the Mid-Atlantic and New England Fisheries Management Councils (Councils) and the public, prior to setting specifications. Consideration of information submitted in February on new catcher processor vessels late in the decision making process required additional time for reference back through the Councils' network to assess the impact of these proposals on prior Council recommendations.

The agency kept the public informed of the status of deliberations through public notices. On February 19, 1985, notice was published of postponement of publication of the specifications (50 FR 6953). Concurrent with the appearance of the March 27, 1985, interim notice, public meetings were held by the Councils, at which members of the public participated in discussions of new developments and their impact on the prior recommendations of these Councils. The delay that occurred was justified by the circumstances. In fact, had NOAA by-passed the claims of the domestic catcher-processors to comply with formal deadlines, it would have violated its substantive obligations under the Magnuson Act and the FMP to favor domestic proposals and to support domestic growth in the utilization of the squid resources by excluding from consideration the needs of domestic processing vessels scheduled to come on line during the 1985–1986 fishing year. NOAA believes that it has met its obligations under the FMP and the regulations.

Squid—Allowable Biological Catch

Comment: The JDSTA commented that the reduction in catch limits for *Loligo* and *Illex* (ABCs) are without proper biological justification because of uncertainties in assessment techniques.

Response: Despite some shortcomings in the assessment methods for *Illex*, NOAA is of the opinion that they provided an adequate basis for action in the context of this year's fishing activity. After consultation with the MAFMC Scientific and Statistical Committee and the Northeast Fisheries Center, NOAA, the Councils proposed to take a conservative management strategy to respond to a sharp decline in survey abundance which was reflected in the best data available on the resource condition. The conservative strategy also appears prudent in light of the Canadian experience with its *Illex* fishery which developed very rapidly to over 150,000 tons per year, but collapsed equally repidly.

JDSTA states that actual catches of *Loligo* in recent years have not been high enough to achieve MSY under terms of the assessment used as reference in management of the fishery. It appears that JDSTA has interpreted the proposed reduction of MAX OY from 44,000 mt to 33,000 mt as intent to reduce the proportion of the population available for harvest below the 41% indicated as needed to produce MSY according to the 1977 assessment. Actually, the reduction from 44,000 mt to 33,000 mt primarily reflects refinement n the estimate of average annual recruitment. The proportion of the population that will be caught is actually higher than 41%. Several options of annual recruitment were given in the 1984 assessment. NMFS and the Councils chose a conservative option as the biological basis of the FMP.

Comment: The NFI criticized an increase in the initially proposed *Loligo* ABC of 27,000 mt upwards to 33,000 mt during the review of annual specifications. NFI characterized this action which occurred during the March 1985 Council meeting as a foreign "give away allocation".

Response: This action complained of was actually undertaken to respond to requests for consideration by domestic catcher processors who made their initial appearance after specifications, including specifications for TALFF had been recommended.

At the NEFMC Foreign Fishing Committee meeting, February 4, 1985, representatives of domestic catcher processing vessels presented information that had not been considered for the DAP specifications for squid recommended by the Councils. NMFS published a notice of postponment (50 FR 6953, February 19, 1985) informing the public that the premilinary initial annual specifications were postponed to allow the Councils and NOAA adequate time to review this new information and formulate specifications that accurately reflected current and projected harvesting and processing during the 1985–1986 fishing year. The domestic catcher processing vessel owners made another presentation at the February 14, 1985 meeting of the MAFMC's Squid, Mackerel and Butterfish Committee. The catcher processor vessel owners also submitted to questioning at that time.

In response, the Council and NOAA decided to investigate whether the original range of ABCs' were rigidly based on the best scientific data or whether they were more like approximations and therefore could be raised. The Northeast Fisheries Center advised the Northeast Regional Director that the assessments which had been relied upon in reducing the ABCs were not "firm" as to harvest levels. Based on this advice, the Council selected the upper ends of both squid ABC ranges as the ABCs for the upcoming fishing year. The situation did not come to a trade-off between needs of foreign and domestic user groups, as implied by NFI, but allowed accommodation of all. Under these circumstances, it would have been questionable to eliminate previously approved proposals.

Initial Optimum Yields (IOYs)

Comments: Commenters associated with Spanish and Italian interests objected to the IOY's in concept stating

that they were too restrictive, and that they signalled a change in policy.

Response: Part of the Commenters' objections may be alleviated by a change which has been made to place in the *Loligo* TALFF column, an amount previously alluded to only in footnotes and in the text of the notice of interim optimum yields. A second change has been made to subtract from the *Loligo* DAP an amount which had been given credit twice in the original calculations of this specification. The result is a net addition to the *Loligo* IOY of 2,500 mt. The basis for the changes are explained in appropriate sections below.

A review of the record of the specification setting process for this year reveals that the "restrictiveness" of the figures is not by Council or government design but was caused by two elements: first, a drastic reduction in the allowable resource, the Allowable Biological Catches (ABC's), based on scientific advice, and, secondly, the presence of multiple competitors for the resources including domestic users having claims are favored under the law. In their final analyses, neither the Councils nor NOAA saw fit to exclude any user group from the fishery since each offered some measure of benefit to the domestic industry. Allocations of TALFF would be tied to performance of promises of benefit to the United States. Joint ventures would benefit domestic harvesters. New and expanding domestic ventures which projected substantial use of available resource, although given great weight, could not produce a record sufficient to justify exclusion of other participants from the fishery in the 1985–1986 fishing year.

Although the specification for *Loligo* set aside a substantial portion of the resource at the outset of the fishing year for various participants' uses, some flexibility does remain in the use of the unallocated amount between IOY and ABC, from the potential for withdrawal from TALFF of unallocated amounts for failure of performance by those who have promised benefits to the U.S. in exchange for allocations of TALFF, and from failure of performance in other categories which could also result in redistribution among users. These are the operational realities of a year in which the circumstances described here have occurred.

In response to other comments raised in connection with comments on "restrictiveness", NOAA concedes that the references in the text accompanying the interim optimum yields to "maximum" amounts, e.g. for TALFF, etc., could have been misleading to the extent that commenters might conclude that amounts specified were the maximums or totals for that category for the fishing year. What was meant was that the amount specified was all that was designated for that category for the beginning of the fishing year. The squid specifications are subject to change during the fishing year (§ 655.22(f)). It was not meant to give the impression that new terms had been developed for the FMP. Also, ISTC was in error when it concluded that a recent agency report on joint ventures was the driving force for the setting of specifications. The deliberations of the Councils, presentations by the various user groups, and staff analyses were the basis on which the specifications were set, not the draft policy paper. Finally, the principles of the Fish and Chips policy still pertain, but the context in which they operate narrowed considerably in this fishing year since the amount of resource available for harvest has been reduced and the number of vessels competing for it has increased.

Domestic Annual Harvest (DAH)

The domestic annual processing component of the *Loligo* DAH has been revised downward from the amount published in the interim optimum yields from 25,000 mt to 22,500 mt, to remove an amount which had been credited twice to the joint venture sector of the fishery. Review of prior analysis for the specifications indicated that 15,000 mt had been used as the estimate for the potential use by the domestic processing sector. This figure, however, which represented total U.S. harvest of *Loligo* for the best performance year, 1983, included joint venture harvests for that year in addition to domestic processing which amounted to 12,500 mt. In setting the specifications for 1985–1986, NOAA, after giving credit for 15,000 mt to domestic processing went on to allocate 2,000 mt for initial JVP and an additional 1,700 mt for cap JVP, in effect giving unjustified credit to joint venture potential in the amount of 2,500 mt. Since the joint venture amounts in the 1985–1986 specifications have been carefully considered and analyzed, there is no need to keep the surplus amount in the specifications in support of that category, and the amount has been deducted from the DAP specification, lowering the DAH to 22,500 mt.

Other comments directed at the *Loligo* DAP specification were not persuasive that DAP be revised further.

Comment: The representative of Stonavar stated that the DAP was inflated because domestic catcher processor vessel owners overstated their projected capacities in order to manipulate the setting of the annual specifications and capture monopoly profits. The government, they said, supported the vessel owners' anticompetitive actions by failing to subject their proposals to rigorous analysis.

Response: Capture of monopoly profits in the squid fishery through manipulation of the specifications is highly unlikely since the specifications may be revised throughout the fishing year based on fulfillment of projected performance, as stipulated at § 655.22(f). Given the variability of experience in this fishery, it is doubtful that this market could be monopolized. Use of such a tactic would have a downside also, since failure to meet inflated performance schedules could result in redistribution of allocation during the fishing year and in closer scrutiny of such assertions in subsequent years. Also, the owners and representatives of these vessels exposed themselves to lengthy questioning at three open Council sessions, an action not likely to be taken by persons relying on unsound information. In any event, after review of the catcher processor vessel proposals, the agency attributed far less of the DAH to their projected use than the 16,000 mt cited by Stonavar. Consideration of the staggered entry on line of the various vessels, their lack of historical performance, and the mutual fulfillment of demand for the vessels and for expanded plant facilities in the same allocation, the agency concluded that an amount far less than 16,000 mt would fulfill the needs of this part of the industry. In fact, Stonavar's calculation of projected utilization supports rather than compels revision of the agency's analysis.

Comment: The National Fisheries Institute submitted additional calculations in support of projections for domestic catch processor vessels and one squid processor resubmitted a prior presentation in support of need for *Loligo* to operate an expanded processing facility.

Response: Both comments underscored physical capacity of vessels and plant facilities, but, understandably since new ventures are involved, were lacking in substantial detail on history and marketing potential, which are critical elements for assessment of their demand for resource. The agency concludes that the needs of these users have been adequately addressed in the specifications and that a case has not been made for total elimination of joint ventures and TALFF arrangements through which benefits will accrue to other domestic sectors. Thus, with the

exception of the removal of a surplus amount from the DAP specification, neither DAP nor other specifications have been revised in response to these comments.

Total Allowable Level of Foreign Fishing—TALFF

Comment: The representative of Stonavar commented that the *Loligo* IOY was not in the best interest of the nation for failing to include more than a by-catch level of TALFF.

Response: The agency revised the *Loligo* TALFF specification based in part on submittal of evidence of purchase commitments by Stonavar and ANAVAR in their comments on the interim optimum yields. This action should alleviate some of the concerns expressed by Stonavar in its comments, but it should not be seen as an acceptance of Stonavar's interpretation of the interim optimum yields as a sign of the agency's intention to eliminate TALFF. Since the inception of Amendment 1 to the FMP, the agency has based its decisions on the specification and allocation of TALFFs on their potential for benefit to the U.S. Prior to Amendment 1, transfers were made to benefits for allocations but the connection between benefits conferred and the level of allocations was not clearly defined. Under Amendment 1, the same components are designated for trade, but the transaction is more tightly drawn to comport with the plan's goals of fostering development of the U.S. commercial fishery. Under Amendment 1, TALFF may not be specified at a level which will interfere with attainment of the U.S. development goal.

Comment: In its comments, the Government of Italy requested TALFF allocations for *Loligo* and *Illex* in conjunction with their planned joint venture operation and expressed willingness to purchase U.S. processed product. ISTC's comments echoed those of the Government of Italy.

Response: NOAA has placed into the annual specifications only those amounts attributable to arrangements which have been received and recommended by the Councils. Taking such recommendations, NOAA suggests that the requesters seek Council review on the terms described in their comments. Because there is not sufficient basis for including amounts attributable to these requests into these specifications, Council recommendations would reference unallocated amounts, or in the event of failure of projected performance by other users, by redistribution of amounts from other specification.

Both commenters also made statements indicating that they expected linkage between joint venture proposals and TALFF recommendations because this had been the case in prior fishing years. Linkage of these factors, however, depends very much on the circumstances prevailing at the time the proposal is introduced. In an intensely competitive year such as this one, with allocable resource reduced, and substantial domestic requests on record, the linkage was not automatic. A number of joint ventures were submitted without requests for TALFF.

Butterfish

No comments were received on the butterfish specifications. The specifications remain unchanged.

Classification

This action is authorized by 50 CFR Part 655, and complies with Executive Order 12291. The Council prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. You may obtain a copy of this analysis from the Council at the **ADDRESS** listed above.

(16 U.S.C. 1801 *et seq.*)

Dated: May 9, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11680 Filed 5-10-85; 12:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Section 22 Dairy Import Quotas; Assessment of Fees for Administering Import Licenses

AGENCY: Foreign Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations (7 CFR 6.20–6.32) governing the importation under license of certain dairy products which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, to provide for the assessment of a fee to reimburse the Department of Agriculture for the costs of administering the licensing system.

DATE: In order to assure consideration, comments on this proposed rule must be received by June 14, 1985.

ADDRESS: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250. Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue SW.), Washington, D.C. during regular business hours (8:30–5:00 weekdays).

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250, (202) 447–5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–32 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Department of Agriculture and the U.S. Customs Service.

Section 501, Pub. L. 82–137, 65 Stat. 290, as amended (31 U.S.C. 9701), commonly referred to as the Independent Offices Appropriations Act (the "IOAA"), provides that it is the sense of Congress that each service or thing of value provided by an agency of the U.S. Government is to be self-sustaining to the extent possible. Section 501 of the IOAA authorizes agencies to prescribe regulations establishing a charge for a service or thing of value provided by the agency. Circular A–25 (September 23, 1959), as amended, issued by the Bureau of the Budget, the predecessor to the Office of Management and Budget, provides that executive agencies should recover the cost of services or benefits provided to persons by the agency.

The dairy import licensing system administered by the Department of Agriculture confers special benefits to the license holder above and beyond those which accrue to the public at large. It has been determined that the public interest would be served by the establishment of a fair and equitable fee to be charged license holders to reimburse the Department of Agriculture for the costs of staff services rendered in processing applications for licenses, computer equipment and operation necessary to insure that quota cheese is entered only in accordance with a dairy import license held by the importer, supervisory hours devoted to management of the licensing system, and other miscellaneous costs involved in administration of the dairy import licensing system.

Therefore, the proposed rule implements section 501 of the IOAA and Circular A–25 by providing for the assessment of fees on licenses issued to licensees to import dairy articles in order to cover the cost to the Department of Agriculture of the administration of the dairy import licensing system. Under the proposed rule, the Licensing Authority shall determine the amount of the fee to be charged per license each year based upon the cost of adminstering the dairy import licensing system for the prior calendar year.

The Department considered alternative methods for imposing the fee on the license holder. It was determined that a fee charged on the basis of the amount of the cheese quota approved for each licensee would not closely reflect the costs incurred by the Department on behalf of a particular licensee since the costs of processing one license with a large quota amount could be less expensive that the cost of processing several licenses for another licensee with an equivalent quota amount.

Accordingly, it was determined that a fee charged for each license issued, without regard to the quota amount involved, would be fair and equitable since such charge will ensure that the fee charged each licensee will closely reflect the cost incurred by the Department on behalf of that licensee. The total fees charged each licensee will depend upon the number of licenses issued to the licensee.

We have made a preliminry estimate of th cost of administering the dairy import licensing system during 1984 and hypotheticall calculated the approximate fee per license which would have been assessed during 1985 if this proposed rule had been in effect for the 1985 calendar year. The cost of administering the licensing system during 1984 was determined by adding the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1984, approximately $151,000 (this figure includes the total personnel costs for the Import Licensing Group of the Foreign Agricultural Service, approximately $126,000, and a proportionate share of the supervisory costs devoted directly to administering the dairy import licensing system, approximately $25,000); the cost of the computer on-line entry system, used to monitor the use of licenses during 1984, approximately $29,000; and other miscellaneour costs including travel, postage, and an in-house

computer system, approximately $24,000 in 1984. The approximate total cost of administration thus derived ($204,000) was then divided by the average number of import licenses issued for the three years immediately preceding 1985 (approximately 3,500 for the years 1982, 1983, and 1984) to obtain the fee for each license for the 1985 calendar year. Based upon the above cost estimates, the fee for a 1985 license, determined in accordance with the proposed rule, would have been approximately $58.25 per license.

The final 1986 fee will depend upon the calculation of the cost of administering the dairy import licensing system for 1985 and may vary from the hyprothetical 1985 fee calculated above.

The fee for each license will be announced by the Licensing Authority no later than July 31 of the year preceding the year for which the fee is to be charged and will be set out in a notice filed with the Federal Register detailing the basis of the fee.

This proposed rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since the proposed rule, if made final, will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The collection of a small fee based upon the number of licenses issued to each importer does not affect the ability of importers to import a quota item, since the fee is too small to have a significant economic impact. The public is invited to comment on the impact of this proposed rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

An evaluation of the impact of this rule on the environment was made and, based on this evaluation, it has been determined that this action is not a major federal action and will have no foreseeable adverse effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

PART 6—[AMENDED]

Accordingly, 7 CFR Part 6, Subpart-Section 22 Import Quotas, is amended as follows:

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, is revised to read as follows:

Authority: Section 3, Pub. L. 897, 80th Cong. 2nd sess., 62 Stat. 1248, as amended (7 U.S.C. 624); Secs. 701, 703, Pub. L. 96-39, 93 Stat. 288, 272; Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82-137, 65 Stat. 290, as amended (31 U.S.C. 9701), unless otherwise noted.

2. 7 CFR Part 6, Subpart-Section 22 Import Quotas, is amended by adding a new § 6.33 to read as follows:

§ 6.33 License Fee

(a) A fee will be charged for each license issued to a person by the Licensing Authority to reimburse the Department for the costs of administering the licensing system under this regulation.

(b) The fee for each license will be determined by dividing the cost of administering the licensing system (determined in accordance with paragraph (c)) by the average number of licenses issued per year for the three years immediately preceding the year for which the fee is to be assessed. The fee will be announced by the Licensing Authority no later than July 31 of the year preceding the year for which the fee is to be assessed and will be set out in a notice filed with the **Federal Register**.

(c) The Licensing Authority shall determine the costs (both incurred and estimated) of administering the licensing system for the calendar year preceding the year for which the fee is to be charged using the following criteria:

(1) The cost of staff and supervisory hours devoted directly to administering the licensing system;

(2) The cost of any computer on-line entry system used to administer the licensing system; and

(3) Other miscellaneous costs directly related to administering the licensing system.

(d) The fee for each license is due upon the date of issuance of the license and must be paid by the licensee no later than May 15 of the year for which the license is issued or such date as may be specified in the announcement issued by the Licensing Authority in accordance with paragraph (b). The fee for any license issued after April 15 of any year must be paid by the licensee no later than 30 days from the date of issuance of the license. Fee payments shall be made by check or money order payable to the Treasurer of the United States.

(e) If the fee for a license is not paid by the licensee by the final payment date, (1) the authority of the licensee to import any article under such license held by the licensee will be automatically suspended by the Licensing Authority until the fee has been paid or arrangements satisfactory to the Licensing Authority have been made for the payment of such fee, and (2) the licensee's eligibility to import cheese will be subject to revocation and suspension in accordance with § 6.29(b)(3).

Signed at Washington, D.C. on May 7, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-11699 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0545]

Truth in Lending; Variable Rate Disclosure Under Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed amendment to Regulation Z (Truth in Lending) that would require creditors to provide more information to consumers about the variable rate feature of adjustable rate mortgages than is currently required under Regulation Z. It would require creditors to make available to consumers descriptive material about adjustable rate mortgages, and to provide a more detailed description of the variable rate feature, along with an example, at the time other Truth in Lending disclosures are given. The proposal would also eliminate a provision of Regulation Z that currently permits creditors to substitute the disclosure required by other federal regulations for the variable rate disclosure required by Regulation Z. These revisions are intended to address concerns regarding the adequacy of information given to consumers entering into adjustable rate mortgage and regarding the burden to creditors of duplicative federal regulations.

DATE: Comments must be received on or before July 12, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve

System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments should include reference to Doc. No. R–0545. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed regulatory amendments, Susan Werthan or Steven Zeisel, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 at (202) 452–3867; regarding the regulatory flexibility analysis, Glenn Canner, Director, Micro-Consumer Projects, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 at (202) 452–2910; or Joy W. O'Connel, TDD at (202) 452–3244.

SUPPLEMENTARY INFORMATION:

(1) Background

The introduction of variable rate lending has been one of the most significant developments in the credit industry since the enactment of the Truth in Lending Act in 1968. Traditionally, lenders and consumers agreed on a specific interest rate which then remained fixed for the entire term of the transaction. In recent years, in order to shift part of the risk of interest rate fluctuations to the consumer, lenders have increasingly turned from fixed to variable rates, particularly in the mortgage industry, where adjustable rate mortgages (ARMs) now account for a significant portion of all mortgages outstanding. A recent survey conducted by the National Association of Realtors indicates, for example, that in October 1984 over one-third of all first mortgage orginations were ARMs.

The Truth in Lending Act itself has never called for disclosure of a variable rate feature, but Regulation Z has since 1977 required creditors in all closed-end credit transactions to provide certain minimal information about the feature. This information, reflected in § 226.18(f) of the regulation, includes the circumstances under which the rate may increase (for example, when an index rises), limitations on the increase (periodic and overall interest rate caps), and the effect of an increase (for example, whether it would result in an increase in either the number or the amount of payments). Section 226.18(f) also requires creditors to provide a very brief example of the payment terms that could result from an increase. The example need not be extensive, and need not be based on that particular loan; it requires only that the creditor give some indication in dollars and cents terms of the possible payment effect of a rising rate. When the revised Regulation Z was adopted in 1981 to implement the Truth in Lending Simplification and Reform Act of 1980, the variable rate disclosed was retained, even though it is one of the few disclosures in the regulation not mandated by the act. In retaining the disclosure, however, the Board determined that the information required should be kept brief, in order to carry out the purpose of Truth in Lending simplification to provide concise, clear credit information to consumers.

Three other federal agencies also require disclosure of a variable rate feature for institutions under their jurisdiction. In contrast to Regulation Z, all three call for more extensive, detailed information. These disclosure requirements are imposed as part of these agencies' authority to prescribe substantive limits on the types of ARMs that lenders may offer. The Federal Home Loan Bank requires variable rate disclosures for federally chartered savings and loan associations and also for certain other lenders that wish to market their loans to federally chartered savings and loans (12 CFR 545.33). The Office of the Comptroller of the Currency mandates variable rate disclosures for national banks and other lenders that seek to market their loans to national banks (12 CFR Part 29). Under the "Alternative Mortgage Transaction Parity Act of 1982" (12 U.S.C. 3802), state chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following rules of the Bank Board or the Comptroller of the Currency. Most recently, the Department of Housing and Urban Development (HUD) issued its own variable rate disclosure regulations for lenders wishing to participate in the Federal Housing Administration (FHA) insurance program administered by the Department (24 CFR Parts 203 and 234).

The regulations of the three agencies call not only for more extensive information, but for that information to be provided at different points in the loan process than is required by Regulation Z. For example, the disclosures of the Comptroller must be provided at the time the consumer first receives written information about the credit transaction, and all three agencies require lenders to provide information each time the rate changes during the loan term. This is in contrast to Regulation Z, which generally requires that ARM disclosures be provided within three business days after the consumer's written application and requires no subsequent disclosure when the rate changes in accord with the variable rate clause originally disclosed to the consumer.

Regulation Z recognizes the existence of these other disclosure requirements and attempts to alleviate the burden of duplicative disclosures by means of footnote 43 to the regulation. Under this footnote lenders making variable rate disclosures in accordance with one of the three agencies' regulations need not make the variable rate disclosures required by Regulation Z.

Recently, the Board has become concerned that the current regulatory structure, with Regulation Z mandating brief variable rate information and several other regulations calling for more extensive disclosure, may not be fully responding to the needs of either consumers of the mortgage industry. ARMs have become more prevalent and the variety of ARM products must more extensive. This, combined with the potential of ARMs for significant unexpected payment changes, raises questions about the ability of consumers to understand and make informed decisions about ARMs before entering into those transactions. At the same time, the variety of regulatory requirements has proven burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or a national bank may have to make disclosures under both agencies' rules.

In the last year, a Congressional subcommittee and the Federal Financial Institutions Examination Council (FFIEC) have addressed the question of the adequacy of current disclosure requirements for ARMs and have made recommendations to the Board. Subcommittee members suggested that the Board amend Regulation Z to require a "worst case" example illustrating the effects of rate increases on payments. They also urged the agencies to work toward uniform disclosure of variable rate features that could be used by all lenders. (In a separate letter, the members of Congress also asked the Board and the Federal Home Loan Bank Board to produce a consumer education pamphlet on ARMs, which was published in February.)

The FFIEC, consisting of representatives from the Board,

Comptroller of the Currency, Federal Home Loan Bank Board, Federal Deposit Insurance Corporation and National Credit Union Administration, was asked by the Board to consider the questions of uniformity among the agencies and the basis for a "worst case" example of rate increases. Based on the work of a FFIEC task force, which included a representative from HUD, the FFIEC made two major recommendations to the Board. One, consumers should be given information about ARMs before they submit a loan application or pay any fee for the loan. Two, the disclosures should include an explanation of the nature of ARMs and examples reflecting the creditor's ARM program in a rising interest rate environment. In the FFIEC's view, all examples should be based on an assumed 2% increase in each of the first three years of the mortgage.

(2) Proposed amendment

Based on recommendations from the FFIEC and its own analysis, the Board proposes to amend Regulation Z to provide more information to consumers about ARMs and to encourage uniformity of disclosure requirements among the agencies. The amendments would apply only only to transactions secured by the consumer's principal dwelling. This would include all purchase money mortgages, in which the consumer is obtaining a mortgage loan for the purpose of purchasing a home, as well as all transactions in which the consumer is using the home as security for a loan. (Home equity lines, in which an open-end line of credit is secured by the consumer's home, would not be subject to the requirement, which applies only to closed-end mortgages, although the Board is specifically soliciting comment on this aspect of the proposal.) All other consumer credit transactions that contain a variable rate feature would continue to be subject to the current variable rate disclosure requirements in Regulation Z.

The first amendment would add a new paragraph (j) to § 226.17, requiring creditors to make available to consumers information explaining ARMs. The *Consumer Handbook on Adjustable Rate Mortgages*, developed by the Board and the Federal Home Loan Bank Board, may be used by creditors to fulfill the requirement if they choose. The Board is aware that other organizations such as the Mortgage Bankers Association and the Federal National Mortgage Association have also developed education brochures on ARMs. This material may also satisfy the proposed requirement.

Because the material on ARMs would be available at all times, consumers would have an opportunity to review the information in an unpressured manner before entering into the application process. The information should illustrate, in general terms, the actual financial impact of ARM features, as well as explain important features such as negative amortization and rate and payment caps. This information would serve to alert the consumer to important questions to ask lenders once the shopping process begins.

The second proposed amendment would revise the variable rate disclosure currently required by § 226.18(f) of Regulation Z. Currently, creditors in any variable rate transaction, including mortgages, must provide consumers with abbreviated information regarding the variable rate feature. The information must be provided along with the other Truth in Lending disclosures, that is, for most ARMs within three business days after the creditor's receipt of the consumer's written application.

The content of the variable rate disclosures under the proposed amendment would be significantly expanded from the current regulation. As outlined in the proposed revision to Appendix H-4, detailed, specific information about all major aspects of the variable rate feature would be required to be presented in a clear, concise format. As with the other model forms in Appendix H, however, creditors may delete and disclosures that do not apply to their ARM plans.

The amendment would require creditors to precisely identify the index to which the rate is tied, or provide a brief description of the formula used in calculating the interest rate if no index is used, along with margin or spread over the index. The requirement that the initial rate be stated is intended to alert the consumer to a discount, as well as the term to which that low initial rate would apply. For example, if a creditor discounted a consumer's rate for six months, the disclosure might read, "Your rate is based on the 6-month Treasury Bill rate plus 2%, but your initial rate will be discounted to 9% for six months." The frequency of rate and payment adjustments would be disclosed, along with rate and payment caps. If there are no payment or rate caps, the disclosure would indicate that there are no limits on potential increases in payment or rate. Moreover, if no overall rate caps exist, creditors would be required to make a conspicuous statement to that effect next to the example of payment increases. If the presence of rate or payment caps would result in interest carryover or negative amortization, the disclosure would need to reflect those features with statements substantially similar to those given in the example. Any limits on negative amortization, typically a maximum percentage over the original loan balance, would also be disclosed.

The most significant change in the variable rate disclosure would be the type of example required. Currently, the regulation requires only a very brief example, which need not be transaction-specific. For example, even if a particular loan were for $85,000, the creditor could state, "In $50,000 loan, an increase of 1% at the end of the first year would result in a payment of $800 a month." In contrast, the proposal would require the creditor to show the effects of an increase on the particular loan. Not only must the example be based on that specific loan amount, but the example must reflect the effects of rate or payment caps or other features that would affect the payment schedule. Thus, if the loan calls for payment caps which would result in negative amortization, both the lower earlier payments resulting from the caps and the presumably higher later payments resulting from the increased loan balance must be incorporated into the example.

The proposed example also differs from the current regulation in that it would specify the assumptions about interest rate increases on which the example must be based. Currently, the creditor may select any reasonably representative rate increase assumption in designing its example. Given this flexibility, many creditors have chosen to assume a 1% increase at the end of the first year. In contrast, the proposal would require that the example be based on an assumed increase of 2% in the index rate in each of the first three years during which a rate increase in permitted, with no increases after that point. The effects of the rate increase must then be shown for the full term of the transaction, not merely at a single point in time, as is now permitted by § 226.18(f).

To highlight the potential effect of a variable rate feature, the amendment calls for the increased-rate example to be shown alongside the payments that would result if there were no change in rates for the term of the loan. This payment schedule would be the same as the amounts disclosed under § 226.18(g); a proposed amendment to that paragraph would allow creditors to use the "no change" example as the payment schedule disclosure.

While the example called for by the proposal is not necessarily the "worst" increase that could occur in individual transactions, the Board believes that specifying a 2% rising-rate scenario has advantages. First, the proposal reflects the recommendation of the FFIEC as to the proper basis for a "worst case" example, and adopting its recommendation may help to foster uniform disclosures among the agencies. Second, an example showing 2% increases for three years would parallel examples that consumers would have gotten earlier if the received the *Consumer Handbook*. Third, specifying a particular basis for the example resolves the question of the proper basis where there are no limits on rate increases and thus no worst case example is possible.

The proposal also includes an amendment to footnote 38 to § 226.17(a). This amendment would require creditors to give all variable rate disclosures as part of the other segregated Truth in Lending disclosures, by removing the phrase "the variable rate example under § 226.18(f)(4)." In the Board's view, subjecting the variable rate disclosures to the same format requirements as other disclosures would help to call consumers' attention to the information provided by § 226.18(f).

(3) Comment Requested

The Board solicits comment on all aspects of the proposal, and particularly welcomes comment on the following questions:

1. Should footnote 43 to Regulation Z be retained? If the footnote were retained, creditors could continue to utilize the disclosures of other agencies in place of the proposed variable rate disclosure under § 226.18(f). This would alleviate the burden of adjusting to new disclosure requirements for those creditors already using the other agencies' disclosures, and those creditors far outnumber creditors using Regulation Z variable rate disclosures. However, continued availability of footnote 43 would also serve to maintain the *status quo* of duplicative federal regulations, possibly to the detriment of both consumers and creditors. In the Board's view, uniformity of variable rate disclosures would better serve both consumers and creditors than the current overlapping of federal regulations in this area. While the Board recognizes that other agencies may continue to impose their own disclosure requirements even without footnote 43, the Board believes that the elimination of the footnote could encourage further movement toward uniformity of disclosures.

2. Should the timing of the disclosures be revised; specifically, should disclosures be required earlier than three days after application? Disclosure of the information before application would provide consumers with information earlier in the credit shopping process and perhaps facilitate comparison among credit sources before the consumer is in any way committed to a particular loan. On the other hand, the information needed for accurate disclosures is less likely to be available at earlier stages in the application process. For example, a consumer may not qualify for the loan terms or ARM plan originally sought, or may alter the loan amount significantly. Furthermore, the Board questions whether the degree of creditor burden involved in providing disclosures before application is justified by the potential benefit to consumers. Would consumers' ability to comparison shop be significantly enhanced if they received disclosures just before application as opposed to three days later?

3. While the Board believes that the proposed example based on assumed 2% increases has advantages, would other examples be preferable?

• Should the example be based on the actual worst case as opposed to a specified rate increase, as proposed? The Board recognizes that the proposed example cannot be characterized as a "worst case" example in all cases. A true worst case would require the creditor to reflect in the example the most extreme rate increases possible over the life of the mortgage. To illustrate, if a 30-year mortgage included a rate cap of 1% per annual adjustment, but no lifetime cap, the example would have to reflect the payments resulting from a 1% increase occurring in each of the 30 years of the transaction. If a loan had neither lifetime nor per adjustment caps, an alternative would have to be devised if the true "worst case" approach were adopted. For instance, the Board might specify the basis for the example, or require no example but require a prominent statement that the loan contains no limits on possible rate increases.

• Should the Board require, in addition to an example of rate increases, an example showing the effect of rate decreases? Because, by their very nature, ARMs have the potential for periods of payments that are lower than the initial amount, should an example showing lower payments be included in the disclosure?

4. Should the Board provide additional sample forms for other ARM plans? If so, what would be the most useful features to illustrate in sample disclosures? For instance, should the Board illustrate ARMs with graduated payments, buydowns, discounts, or other features?

5. Should the variable rate disclosures for home equity lines of credit be expanded to track the expanded disclosure requirements for ARMs? The Board has excluded home equity lines from coverage because the Board believes that open-end variable rate plans have not been identified with the problems of consumer confusion and duplicative regulations associated with other ARMs. However, the Board seeks comment on the appropriate treatment of home equity lines.

List of Subjects in 12 CFR Part 226

Advertising, Bank, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in Lending.

(4) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a regulatory flexibility analysis. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3245.

PART 226—[AMENDED]

(5) Text of Proposed Revision

12 CFR Part 226 is amended as follows:

1. The authority citation for Part 226 continues to read as follows:

Authority: 15 U.S.C. 1604 as amended.

2. Part 226 is revised by removing from footnote 38 to § 226.17 the phrase "the variable rate example under § 226.18(f)(4)," by adding paragraph (j) to § 226.17, by removing footnote 43 to paragraph (f) of § 226.18, by revising paragraph (f) of § 226.18, by revising paragraph (g) of § 226.18, and by revising Appendix H, to read as follows:

Subpart C—Closed-End Credit

§ 226.17 General Disclosure Requirements.

* * * * *

(j) *Consumer handbook.* (1) A creditor that offers variable rate credit secured by the consumer's principal dwelling shall make available at its place of business a clear and concise description of the nature of the loans offered by the creditor. This disclosure shall be made in terms readily understandable by the layman and shall include a description of all significant loan terms.

(2) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board constitutes a disclosure in compliance with the requirements of this paragraph. Other brochures may also be deemed to comply with this paragraph.

* * * * *

§ 226.18 Content of Disclosures.

* * * * *

(f) *Variable rate.* (1) If the annual percentage rate may increase after consummation, the following disclosures, except as provided in paragraph (2):

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(iv) An example of the payment terms that would result from an increase.

(2) If the annual percentage rate may increase after consummation and the transaction is secured by the consumer's principal dwelling, disclosures substantially similar to those contained in Appendix H-4, "Transaction Secured by Consumer's Principal Dwelling," including an example of the payment terms that would result from rate increases of 2 percentage points at the end of each of the first 3 years during which a rate increase is permitted, with no increases for the rest of the term. Inapplicable disclosures may be deleted.

(g) *Payment schedule.****

(3) In a transaction subject to paragraph (f)(2) of this section, the creditor may comply with this paragraph by providing the examples required by appendix H-4.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

H-4—Variable Rate Model Clauses

* * * * *

Transaction Secured by Consumer's Principal Dwelling

Your rate is based on (identification of index and margin or formula used). Based on the index, your initial rate will be (initial accrual rate) for (initial term).

Rate Increases

Your rate can change (frequency).

[Your rate cannot increase more than ——% at each adjustment.]

[Your rate cannot increase more than ——% over the term of your loan.]

[There are no limits on increases to your rate.]

Payment Increases

Your payment can change (frequency).

[Your payment cannot increase more than (amount or percentage) at each adjustment.]

[There are no limits on increases to your payment.]

[If any of your payments are not sufficient to cover the interest due, the difference will be added to your loan amount. Your loan amount cannot increase by more than ——%.]

[If an interest rate increase is foregone because of a rate cap, it may be imposed at a later time.]

The examples below show how your monthly payments *might* change depending on future changes in the index rate or formula used to calculate your interest. These are only illustrations to show the possible effects of rate changes—no one can actually predict what rates will do in the future. An increase would make your future payments higher while a decrease could make them lower than they are now. The first example below shows what your payments will be if the index rate [or formula] stays the same. The second example shows what your payments will be if your index rate [or formula] goes up 2% in each of the first three years during which rate increases are permitted, with no increases for the rest of the term. [The examples also show the effect of rate or payment caps on your payments.] [HOWEVER, THERE IS NO CAP ON TOTAL INCREASES TO YOUR INTEREST RATE DURING YOUR LOAN TERM.]

Year	Monthly payment if no change in rate	Monthly payment if rate increases 2 percent in first 3 years

Example Based on $100,000 Loan for 30 Years

Your rate is based on the 6-month Treasury bill rate plus 3%. Based on the index, your initial rate will be 13% for one year.

Rate Increases

Your rate can change yearly.

Your rate cannot increase more than 2% at each adjustment, but there are no limits on overall increases to your rate.

Payment Increases

Your payment can change yearly.

There are no limits on increases to your payments.

If an interest rate increase is foregone because of a rate cap, it may be imposed at a later time.

The examples below show how your monthly payments *might* change depending on future changes in the index rate or formula used to calculate your interest. However, these are only illustrations to show the possible effects of rate changes—no one can actually predict what rates will do in the future. An increase in the rate would make your future payments higher while a decrease could make them lower than they are now. The first example below shows what your payments will be if the index rate stays the same. The second example shows what your payments will be if your index rate goes up 2% in each of the first three years of the loan with no increases for the rest of the term. HOWEVER, THERE IS NO CAP ON TOTAL INCREASES TO YOUR INTEREST RATE DURING YOUR LOAN TERM.

Year	Monthly payment if no change in rate	Monthly payment if rate increases 2 percent in first 3 years
1	$1106.20	$1106.20
2	1106.20	1263.11
3	1106.20	1422.08
4-30	1106.20	1582.47

By order of the Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11644 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-44-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1248

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, and repair, if necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC-9 series airplanes. This proposal is prompted by reports of upper anticollision light doubler cracks, the failure of which could result in significant damage to the adjacent structure and cause the subsequent loss of cabin structural integrity.

DATES: Comments must be received no later than July 8, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2826.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–44–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Two operators have reported eight instances where cracks were found in the upper anticollision light doubler on airplanes having logged between 39,093 and 59,970 landings. Typically, the doubler exhibited a single crack at one or both ends of the cutout in the long axis of the doubler, originating at a plate nut clearance hole. Laboratory analysis by the manufacturer has determined that the cracks are attributed to fatigue. If not corrected, crack growth in the doubler could result in damage to adjacent structure and cause the subsequent loss of cabin structural integrity. Inspecting the doubler for cracks and accomplishing preventive/repair modification in accordance with this AD will minimize the potential of crack development and/or growth.

Since this situation is likely to exist or develop on other airplanes of this same type design, an AD is proposed to require repetitive nondestructive inspection of the upper anticollision light doubler for fatigue cracks.

Approximately 548 airplanes of U.S. registry would be affected by the proposed AD. It would require approximately 10 manhours per airplane to accomplish the required repair and 4 manhours per airplane to accomplish the required inspections. The average labor charge is $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $306,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 and C–9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 3913 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, fuselage numbers 1 through 1248, certificated in all categories, with more than 30,000 landings. Compliance required as indicated, unless previously accomplished.

A. Within the next 1,000 landings after the effective date of this AD, inspect the skin and doublers around the upper anti-collision light cutout for cracks in accordance with McDonnell Douglas Service Bulletin 53–186, dated April 17, 1985 (hereinafter referred to as SB 53–186), Figure 2, or later FAA approved revisions.

B. If no cracks are found under Condition I, Phase I, as referenced in SB 53–186, perform repetitive eddy current inspections at intervals not to exceed 1 year in accordance with Figure 2, of SB 53–186, until such time stress coining of plate nut clearance holes as outlined under Condition I, Phase II is accomplished.

Note.—Accomplishment of Phase II eliminates the requirements for Phase I repetitive inspections.

C. If cracks are found, before further flight:

1. For cracks less than 1.00 inch long, repair cracked area in accordance with Condition II, of the Accomplishment Instructions in SB 53–186.

2. For cracks 1.00 to 1.25 inches long, repair cracked area in accordance with Condition III, of the Accomplishment Instructions in SB 53–186.

3. For cracks greater than 1.25 inches, repair in accordance with data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Terminating Action. Completion of the Accomplishment Instructions of SB 53–186, or later FAA approved revisions, constitutes terminating actions(s) for this AD.

E. Alternative inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data justify the increase for that operator.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, D1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Sec. 313(a), 314(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–11645 Filed 5–14–85; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-14508; S7-10-85]

Request for Comments on Certain Issues Arising Under the Investment Company Act of 1940 Relating to Scheduled Premium Variable Life Insurance

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission today announced that it had extended from May 10 until July 10, 1985, the date by which comments on Investment Company Act Release No. 14421 (March 15, 1985) [50 FR 11709, March 25, 1985] must be submitted. The Commission has received a request that the comment period be extended and believes that an extension of time until July 10, 1985, will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments must be received on or before July 10, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549 (Reference to File No. S7-10-85). All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Robert E. Plaze, Attorney (202) 272-2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 20549.

SUPPLEMENTARY INFORMATION: In Investment Company Act Release No. 14421, the Commission requested written comments on proposed amendments to Rule 6e-2, which grants insurance company separate accounts exemptive relief from various provisions of the Investment Company Act in order to permit the sale of scheduled premium variable life insurance. The American Council of Life Insurance, an insurance industry representative, has requested that the comment period on the rule be extended. In view of this request and in order to receive the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Investment Company Act Release No. 14421 from May 10 until July 10, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-11769 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 115

Certification of Cargo Containers and Road Vehicles Pursuant to International Conventions

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to reflect the transfer of functions concerning certification of containers and road vehicles for transportation under Customs seal, pursuant to international Customs conventions, from the Secretary of Transportation (acting through the Coast Guard) to the Secretary of the Treasury (acting through the Customs Service). This transfer is mandated by Executive Order 12445 of October 17, 1983.

This notice invites public comment with respect to this proposal.

DATE: Comments should be received on or before July 15, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald Reusch, Office of Regulations and Rulings (202-566-5706) or Arnold L. Sarasky, Office of Inspection and Control, (202-566-8648), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

By Executive Order 11459, published in the **Federal Register** (34 FR 5057), March 11, 1969, the President designated the Secretary of Transportation to take all necessary actions to administer the approval and certification of containers and vehicles for International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on January 15, 1959 (TIAS 6633), and the Customs Convention on Containers, done at Geneva on May 18, 1956 (TIAS 6634). Actual administration was undertaken by the Commandant of the U.S. Coast Guard and regulations setting forth the specific requirements are contained in title 49, Code of Federal Regulations, Parts 420 through 424 (49 CFR Parts 420 through 424).

On October 17, 1983, the President signed E.O. 12445, transferring the administration of approval and certification of containers and road vehicles to the Secretary of the Treasury. In addition to the two Conventions previously mentioned, the E.O. mandates the administration of a third, the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on November 14, 1975 (TIAS), which replaces the 1959 convention as to signatories to both conventions.

Under this program, owners and operators of containers and road vehicles may choose to submit the conveyances (containers or road vehicles) themselves, or a proposed design for such conveyances, to various Certifying Authorities worldwide for approval. Three such Certifying Authorities, all named in the proposed regulations, would be designated by the Commissioner of Customs to perform the examination and certification functions for the U.S. The proposed regulations set forth the species of the certification program, and the approval of a conveyance would merely expedite the movement of the container and the merchandise contained therein.

The regulations by which the Coast Guard administered this area did not reflect the provisions of the TIR Convention, 1975, and did not distinguish between Convention provisions applicable to road vehicles and those applicable to containers. The five parts previously codified in the Coast Guard Regulations (49 CFR Parts 420-424), have been re-designated as Subparts A through F of new Part 115, Customs Regulations (19 CFR Part 115). References to Commandant of the Coast Guard have been changed to Commissioner of Customs, and section references within the regulations have been changed to reflect the recodification.

The proposed regulations do not inlcude the Oceanographic Society, Inc., which was listed in § 421.1, Coast Guard Regulations (49 CFR 421.1), as a designated Certifying Authority. They cannot be located and are therefore presumed to no longer exist.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be

available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 553), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

E.O. 12291 and Regulatory Flexibility Act

Inasmuch as Customs does not believe that the proposal meets the criteria for a "major rule" within the meaning of § 1(b) of E.O. 11291, a regulatory impact analysis has not been prepared.

It has not been determined whether the proposed regulation would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 115

Cargo vessels, Coastal zone, Freight, Harbors, Maritime carriers, Vessels.

Amendments to the Regulations

It is proposed to amend Chapter I of title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 115 to read as follows:

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

Subpart A—General

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), and the Customs Convention on the International Transport of Goods Under Cover of TIR Garnets, November 14, 1975 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent authorities of the country in which the owner or carrier is a resident or is established, and that containers should be similarly approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, or a container for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle or container is located or where the vehicle is registered. The 1975 TIR Convention also provides that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval. The Certifying Authority where the owner is a resident or is established may approve road vehicles and containers presented to it for approval by design type if such road vehicle is manufactured in the territory of a noncontracting party. If approval after manufacture is desired, the container shall be presented to the Certifying Authority of the country where the container is located. The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purposes of this part—

(a) *Certifying Authority.* "Certifying Authority" means a nonprofit firm or association designated by the Commissioner of Customs to certify containers and road vehicles for

international transport under Customs seal.

(b) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(c) *Container.* "Container" means an article of transport equipment (lift van, portable tank, or other similar structure):

(1) Fully or partially enclosed to consititute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer.* "Manufacturer" means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype.* "Prototype" means a sample unit of a series of identical containers or road vehicles all built so far as practical under the same conditions.

(f) *Road Vehicle.* "Road Vehicle", as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR Plan.* "Customs and TIR Plan" means the drawing of a vehicle or container that illustrates each requirement in §§ 115.30, 115.40, 115.51, or 115.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR Convention shall apply in the event of conflict between it and an earlier TIR Convention covered by these regulations.

Subpart B—Administration

§ 115.6 Designated Certifying Authorities.

(a) The American Bureau of Shipping, 65 Broad St., New York, New York 10004.

(b) International Cargo Gear Bureau, Inc., 17 Battery Place, New York, New York 10004.

(c) The National Cargo Bureau, Inc., One World Trade Center, Suite 2757, New York, New York 10048.

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the maufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of Part 1, Annex 7, TIR Convention, 1975, and Annex 1 of the Customs Convention on Containers, 1956. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as described in Annex 7 of the TIR Convention, 1975, for all containers manufactured in conformity with the specifications of the type of container approved. This certificate shall comply with the model certificate in Appendix 2, Part 11, Annex 7 of the TIR Convention, 1975. When approval of a container is granted under the Customs Convention on Containers (1956), the Certifying Authority shall issue a certificate conforming to the model shown in Annex 2 of that Convention.

(c) *After manufacture.* The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in Part 1, Annex 7, TIR Convention, 1975, and Annex 1 of the Customs Convention on Containers, 1956. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in Appendix 3, Part 11, Annex 7, TIR Convention, 1975. When approval of a container is granted under the Customs Convention on Containers (1956), the Certifying Authority shall issue a certificate conforming to the model shown in Annex 2 of that Convention.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall conform by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§ 115.29, 115.31, 115.38, 115.41, 115.49, 115.52, 115.63 and 115.66 of this part.

(a) *Road vehicles.* A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval if it is satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers*—(1) *Approval after Manufacture.* A Certifying Authority shall issue a certificate of approval conforming to the model in Appendix 3 to Annex 7 of the TIR Convention, 1975, for containers approved at a stage after manufacture, when it has ascertained that the containers comply with the technical conditions prescribed in Annex 7 of the TIR Convention, 1975. The certificate shall be valid for the number of containers approved.

(2) *Design type approval.* A Certifying Authority shall issue a single certificate of approval conforming to the model in Appendix 2, Annex 7 of the TIR Convention, 1975, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures.* (1) The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall be based on the costs (including transportation expenses) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.12 Records maintained by Certifying Authority.

(a) Each Certifying Authority shall maintain—

(1) a copy of each individual certificate of approval issued, together with a copy of the plans (in case of design type approval) and the application to which the approval refers, along with any information submitted by the manufacturer for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval and containers approved at a stage after manufacture;

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers by design type and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

§ 115.14 Meetings on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information of road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type: and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, the manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

Subpart C—Procedures for Approval of Containers by Design Type

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer or an owner, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers which will be manufactured in a type series from a standard design and specifications so that each container has identical characteristics, may apply for an approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975. An owner may apply for approval of a container by design type to a Certifying Authority of the country in which he is a resident or is established, if the container is manufactured in the territory of a country which is not a contracting party to the TIR Convention, 1975.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include—

(a) Four copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Four copies of the specifications which include the following information:

(1) The name and address of the manufacturer or the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacurer that—

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with—

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

(f) A statement by the owner that it is a resident or is established in the U.S. as evidenced by incorporation, registration, or the conduct of substantial business activities within the U.S., its territories, or possessions.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall—

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container that are submitted in accordance with the requirements contained in § 115.29, and the one or more containers that are inspected in accordance with the requirements of § 115.31 must comply with the requirements of Annex 6 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 6 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

(a) The manufacturer shall affix, in a clearly visible place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(1) "Approved for transport under Customs seal."

(2) "USA/(number of the certificate of approval)/(last two digits of year of approval)." (e.g. "USA/1600/84" means "United States of America certificate of approval number 1600, issued in 1984).”

(3) Identification of the type of container and of the number of the container in the type series.

(4) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of this part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Type of container;

(b) Name and business address of applicant;

(c) Identification marks and numbers;

(d) Tare weight;

(e) Nominal overall dimensions in centimeters;

(f) Type of construction and essential particulars of structure (nature of materials, parts which are reinforced, whether bolts are riveted or welded, and similar matters); and

(g) Proposed location and date for inspection of container.

§ 115.39 Eligibility.

Containers to be approved after the manufacturing stage may be submitted to a Certifying Authority by the owner or operator for inspection—

(a) In the country in which the owner or operator is a resident or is established;

(b) In the country in which the container is used for the first time for transport under Customs seal; or

(c) In a country in which the owner or operator is able to produce the containers for which approval is sought.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 7 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection

and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval Plates.

The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32), but without any identification numbers or letters indicating the type of container.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the manufacturer, owner, or carrier to a Certifying Authority and must include—

(a) Type of vehicle;

(b) Name and business address of owner or operator;

(c) Name of the manufacturer;

(d) Chassis number;

(e) Engine number (if applicable);

(f) Registration number;

(g) Particulars of construction;

(h) Any photos or diagrams required by the Certifying Authority to facilitate approval; and

(i) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 3 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 3 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 , Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates—

(a) Upon expiration of the certificate of approval; or

(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features requred in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart F—Procedures for Approval of Road Vehicles by Design Type

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer or owner of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975. An owner may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which it is a resident or is established, if the road vehicle is manufactured outside the territory of a country which is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer or an owner for certification of a road vehicle by design type must include—

(a) Four copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Four copies of the specifications which include the following information:

(1) The name and address of the manufacturer or the owner; and

(2) A description of the road vehicle including the—

(i) Particulars of construction;

(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers;

(d) A statement signed by the manufacturer that—

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine.

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured to the design type.

(e) A statement by the owner that it is a resident or is established in the U.S. as evidenced by incorporation, registration, or the conduct of substantial business activities within the U.S., its territories, or possessions.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicle to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall—

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

(a) The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 3 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 3 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall;

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

—The registration number given to the vehicle (item No. 1) or,

—In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8). (See Annex 4 of the Convention for model of certificate of approval):

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with Subpart E of this part. However, repairs in kind do not constitute a change of the essential features.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-11695 Filed 5-14-85; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I, Subchapter C

[Docket No. 85N-0043]

Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives; Intent and Request for Information

AGENCY: Food and Drug Administration.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is considering proposing a rule that would (1) prohibit the use of any antimicrobial preservative or, alternatively, certain specific antimicrobial preservatives in single-dose parenteral drug products for human use; and (2) require the labeling of multiple-dose parenteral drug products for human use which contain any antimicrobial preservative or certain specific antimicrobial preservatives to bear a caution about use in newborn infants. The agency is considering this action because of reports linking the use of parenteral drug products containing an antimicrobial preservative, particularly bacteriostatic water for injection and bacteriostatic sodium chloride injection preserved with benzyl alcohol, to morbidity and mortality among low-weight newborn infants. The purpose of this notice is to (1) give interested persons an opportunity to submit comments on these possible actions; (2) request information and data on related issues and problems; and (3) discuss the agency's policy regarding required labeling warnings for bacteriostatic water for injection and bacteriostatic sodium chloride injection.

DATE: Comments by July 15, 1985.

ADDRESS: Written comments to the Dockets Management Branch (FA-305), Food and Drug Administration, Room 462, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION:

Background

FDA has been concerned about preservatives used in bacteriostatic water for injection and bacteriostatic sodium chloride injection since the agency began to receive reports suggesting a relationship between the administration of such solutions preserved with benzyl alcohol and a sometimes fatal toxic reaction in low birth weight premature infants. The reports have come from medical centers where neonatal intensive care staffs used the products to flush intravascular catheters and to reconstitute drugs for delivery through such catheters. The syndrome possibly linked to these products is characterized by central nervous system depression, metabolic acidosis, and gasping respirations. The syndrome can lead to serious renal and other system failures, hypotension, and, less frequently, to intracranial hemorrhage and death. High levels of benzyl alcohol and its metabolites, benzoic acid and hippuric acid, have been found in blood and urine from newborns suffering from the syndrome. It is theorized that the immature liver of the low-weight, premature infant (and of the fetus, for that matter) is incapable of properly metabolizing and excreting benzyl alcohol or its metabolites.

Action Already Taken

Shortly after the agency started to receive these reports, agency staff contacted all known manufacturers of bacteriostatic water for injection and bacteriostatic sodium chloride injection as well as staff of the United States Pharmacopeial Convention (U.S.P.C.) and arranged for a meeting to be held at FDA. At this meeting, held on June 4, 1982, the manufacturers present voluntarily agreed to place on the product labels for the drugs warning language which would read, "Not for use in newborns." In addition, the U.S.P.C. agreed to publish a revision to the U.S.P. monographs. (*United States Pharmacopeia XX/National Formulary XV*) for these products requiring such warning language on the product labels.

The U.S.P. amended monographs requiring the label of these two products to bear the statement "Not for use in newborns" appeared in Supplement 4 to *USP XX* issued January 1, 1983, and became effective May 1, 1983. The monographs had already required that product labeling include the names and proportions of added preservatives.

FDA'S Policy on the Required Label Warnings

At the time of the June 4, 1982 meeting, FDA considered publishing a rule requiring that explanatory information regarding the label warning and the problems necessitating the warning be added to the professional labeling for these products. Upon reeevaluation, however, FDA has concluded that formal rulemeking is not required because 21 CFR 201.57(e) already provides that a required warning statement which limits the use of a product be explained in the labeling. Further, § 201.57(e) also provides that as soon as there is reasonable evidence of an association of a serious hazard with a drug, the "Warning" section of the labeling is to be revised to include an appropriate warning. Therefore, if such disclusure is not made in the physician labeling of these two products, the product would be considered to be misbranded.

Sodium chloride injection and sterile water for injection do not contain an antimicrobial preservative and are widely marketed and can be substituted for the bacteriostatic products for use in newborn infants. At the same time, there are valid medical uses for multiple-dose containers of bacteriostatic water for injection and bacteriostatic sodium chloride injection. Therefore, it is the agency's position that these bacteriostatic products should remain available, provided that their labels and labeling contain adequate warnings against use in newborn infants.

Is There a Need for Additional Action?

In addition to bacteriostatic water for injection and bacteriostatic sodium chloride injection, otrher parenteral drug products containing benzyl alcohol or other preservatives are used frequently in newborn infants. For example, heparin solutions, which may contain benzyl alcohol, are oftern used to keep intravascular catheters open and thus could pose an additional hazard to low-weight infants whose treatment requires intravascular catheterization. Other products are sued in the treatment of low-weight newborn infants with varying frequency. Low-weight newborn infants often have multiple conditions requiring medical treatment. Because the individual care requirements of low-weight newborn infants vary, it is difficult to identify all the drug products that may be used in newborn infants and the extent of their use.

In addition to newborn infants, other patient populations may be at risk from the use of antimicrobial preservatives in parenteral drug products. Because benzyl alcohol and other antimicrobial preservatives are metabolized in the liver, patients with impaired liver function may be especially at risk. Although there are, at present, no data available to FDA indicating a problem with respect to the use of antimicrobial preservatives in parenteral drug products in hepatically compromised patients, other than low-weight newborn infants, the data regarding newborn infants suggest that other hepatically compromised groups may also be at risk.

Possible Future Actions for Which Comment Is Sought

A. Prohibit Use of Antimicrobial Preservatives in Single-Dose Containers

The agency is unaware of any medical or scientific reason for using benzyl alcohol or any other antimicrobial preservative in single-dose containers of parenteral solutions. For this reason, and because of the documented problems with benzyl alcohol in newborn infants, the agency in considering whether to propose to prohibit the use of benzyl alcohol in single-dose products, such as heparin solutions, which are frequently administered to newborn infants. In addition, because other antimicrobial preservatives are metabolized in a manner similar to benzyl alcohol, and because many such preservatives are chemically similar, these other preservatives may also present hazards to low-weight newborn infants. Thus, the agency is also considering whether to propose to prohibit the use of any antimicrobial preservative in single-dose containers of parenteral products frequently administered to newborn infants. Finally, because (1) it is difficult to identify which products may be administered to newborn infants, (2) there does not appear to be any rationale for including antimicrobial preservatives in single-dose containers, and (3) such preservatives may have an adverse effect on individuals with impaired liver function, the agency is also considering whether to prohibit the use of all antimicrobial preservatives in single-dose containers of parenteral solutions.

B. Requirement for Labeling Statements

The use of preservatives in multiple-dose parenteral products is a recognized pharmaceutical necessity which could not be eliminated without endangering the public health. If an antimicrobial preservative were not included in a multiple-dose container, the product could become contaminated after the first dose is removed from the container. Thus, the agency is not considering prohibiting the use of such preservatives. The agency is considering, however, whether to propose to require a warning in the labeling of (1) all multiple-dose parenteral products containing benzyl alcohol frequently administered to newborn infants, or (2) all multiple-dose parenteral products frequently administered to newborns containing any antimicrobial preservative, or (3) all multiple-dose parenteral product containers. The warning would state that caution should be used in the administration of these drugs to newborn infants and individuals with impaired liver function.

Request for Comments, Data, and Information

The agency is interested in receiving data on the potential safety problems associated with the use of an antimicrobial preservative other than benzyl alcohol in products administered to newborn infants, patients with impaired liver function, or all patients, as well as data concerning potential danger, if any, to fetuses posed by administering antimicrobially preserved parenteral drugs to pregnant women.

The agency also is interested in receiving comments on the possible restrictions on the use of antimicrobial preservatives in single-dose containers and the warning requirements discussed above, including suggestions for appropriate warning language. Specifically, the agency is interested in comments on whether such actions should be limited to heparin and other products frequently administered to newborn infants or should extend to all parental products. The agency is also interested in receiving comments on whether only benzyl alcohol should be subject to the discussed actions or whether all antimicrobial preservatives should be included.

In addition to substances added for the purpose of destroying or inhibiting the multiplication of microorganisms, some scientists consider such additives as antioxidants and stabilizers to fall within the category of preservatives. These additives, while generally

considered nontoxic, have been associated with toxicity reports from time to time. Thus, the agency is also interested in receiving data or comments concerning the need for a general warning statement or other actions applicable to parenteral drug products containing any substance that could be considered a preservative intended for newborn infants, other special patient populations, or for all patients.

In addition to submitting data, comments, or suggestions regarding the issues discussed above or related concerns, the agency is interested in receiving data concerning the economic effects of any of the actions discussed above.

Interested persons may, on or before July 15, 1985, submit to the Dockets Management Branch (address above) written comments concerning this notice of intent. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets at the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-11662 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 14, 1985, the comment period for the notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) laxative drug products. This action is being taken in response to a request to allow more time for interested persons to address adequately several important issues and to consult experts so that more informed comments may be submitted to FDA.

DATE: Written comments by June 14, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1985 (50 FR 2124), FDA issued a notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of OTC laxative drug products. The notice of proposed rulemaking is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until May 15, 1985, to comment on the notice of proposed rulemaking.

In response to the proposal, one comment requested a 30-day extension of the comment period to study the issues adequately relating to bulk-forming fiber laxatives and to confer with outside consultants.

FDA has carefully considered the request. The agency believes that information described by the request may be of assistance in establishing the final rule for OTC laxative drug products and is in the public interest. Therefore, the agency considers a general extension of the comment period for 30 days to be appropriate. Accordingly, the comment period for submissions by any interested person is extended to June 14, 1985. Comments may be seen in the Dockets Management Branch, Food and Drug Administration, at the address noted above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11651 Filed 5-10-85; 2:32 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25, 203, 205, 213, 221, and 244

[Docket No. R-85-1226; FR-1954]

Use of Commitment Correspondents in Connection With FHA Mortgage Insurance

Correction

In FR Doc. 85-10734 beginning on page 18680 in the issue of Thursday, May 2, 1985, make the following corrections:

1. On page 18682, in the third column, under **PART 25—MORTGAGEE REVIEW BOARD**, and above the Authority citation, insert: "1. The authority citation for 24 CFR Part 25 is revised to read as set forth below and any authority citation following any section in Part 25 is removed:".

2. On page 18685, in the first column, the authority citation for Part 203 should have followed amendatory instruction 9.

3. On page 18687, in the first column, the authority citation for Part 205 should have followed amendatory instruction 15.

4. On page 18687, the authority citation for Part 213 should have followed amendatory instruction 19 in the first column.

5. On page 18687, in the second column, the authority citation for Part 221 should have followed amendatory instruction 22.

6. On page 18688, in the first column, amendatory instruction "30" under Part 244, should read "34".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300128; FRL-2835-7]

Alpha-(p-Nonylphenyl) Omega-Hydroxypoly(Oxyethylene) Mixture of Dihydrogen Phosphate and Monohydrogen Phosphate Esters and the Corresponding Salts; Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption from the requirement of a tolerance for *alpha-(p-*nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters when used as inert ingredient surfactants, related adjuvants of surfactants in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by DeSoto, Inc.

DATE: Written comments, identified by the document control number [OPP-300128], must be received on or before June 14, 1985.

ADDRESSES:

By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of DeSota, Inc., the Administrator proposes to amend 40 CFR 180.1001(c) by expanding the existing exemption from the requirement of a tolerance for *alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters when used as surfactant, related adjuvants of surfactants in pesticide formulations. The amendment would expand the poly(oxyethylene) content from 4-14 moles to 4-14 moles or 30 moles. A separate entry is not necessary to reflect this change.

Inert ingredients are all ingredients which are not active ingerdients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosal dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredients may or may not be chemically active.

Preamble to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Alpha-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters.

Name and address of requester: DeSoto, Inc., Harahan, LA 70183.

Bases for approval. 1. The *alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters are cleared under 21 CFR 175.105 for use only as components of adhesives.

2. *Alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters, barium salt is cleared under 21 CFR 177.2600 for use in rubber articles intended for repeated use.

3. *Alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters is cleared under 21 CFR 178.3400 for use as emulsifiers and/or surface-active agents.

4. The parent surfactant is already cleared under 40 CFR 180.1001(c) under the general heading *alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 moles.

The present clearance can be amended to reflect this modest change (from 4-14 moles to 4-14 moles or 30 moles) in the moles of poly(oxyethylene).

5. The Agency does not consider this change in the poly(oxyethylene) content to be of toxicological significance.

Accordingly, the present entry in 40 CFR 180.1001(c) should be amended to reflect the change in poly(oxyethylene) content from 4-14 moles to 4-14 moles or 30 moles.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains these inert ingredients, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, an Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300128]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by revising the entry *alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding salts, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses[2]
* * *	*	*
Alpha-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles or 30 moles.	....	Surfactants, [redacted] adjuvants of surfactants
* * *	*	*

* * * * *

[FR Doc. 85-11692 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300129; FRL-2835-8]

Triethylene Glycol Diacetate; Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that triethylene glycol diacetate be exempted from the requirement of a tolerance when used as an inert ingredient solvent in pesticide formulations applied to beef cattle only. This proposed regulation was requested by the Stauffer Chemcial Co.

DATE: Written comments, identified by the document control number [OPP-300129], must be received on or before June 14, 1985.

ADDRESSES:

By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan, Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Stauffer Chemical Co., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for triethylene glycol diacetate when used as a solvent in pesticide formulations applied to beef cattle only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acid; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the subtance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Triethylene glycol diacetate.

Name and address of requester. Stauffer Chemical Co., Richmond, CA 94804.

Bases for approval. 1. Triethylene glycol diacetate is cleared under 21 CFR 177.1200 for use with cellophane in packaging food.

2. Triethylene glycol diacetate and its possible metabolite triethylene glycol monoacetate have sufficiently low residues (less than 0.1 ppm combined residues) to not be considered toxicologically significant by the Agency.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300129]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	*	*
Triethylene glycol diacetate (CAS Reg. No. 111-21-7).	For use on beef cattle only	Solvent.
* * *	*	*

* * * * *

[FR Doc. 85–11691 Filed 5–14–85; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 261

[FRL-2832-4]

Hazardous Waste Management System: Indentification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; technical correction, notice of availability, and extensions of comment period.

SUMMARY: On December 21, 1984, (49 FR 49784) EPA proposed to add additional hazardous chemicals to the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded (40 CFR 261.33). Today's notice serves three purposes: (1) To correct several mistakes made in the December 21, 1984, NPRM [FR Doc. 84–33126]; (2) to announce the availability of the background document; and (3) to extend the comment period for the subject proposal.

DATE: Comments on the proposed rule must be submitted on or before June 30, 1985. Any person may request a hearing on this proposal by filing a request with Eileen B. Claussen, whose address appears below, by June 14, 1985. Requests must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460. Comments should identify the regulatory docket: "Michigan Petition." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The public docket for this proposal is located in the lower level basement, Southeast entrance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Agnes Ortiz, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1984 (49 FR 49784), EPA proposed the listing of additional commercial chemical products in 40 CFR 261.33 and Appendix VIII. Commercial chemical products are considered as hazardous waste when discarded or intended to be discarded.

The Agency received a number of questions and comments concerning various aspects of the proposal. In reviewing these, a number of typographical and other errors have been identified which require correction. In addition, the Agency would like to announce availability of a background document supporting the proposal.

II. Corrections

The following errors have been identified in the preamble of this proposal:

(1) On page 49784, column 1, under Summary; line 5—change 109 to 121; line 8—change twenty-eight to thirty-five; and line 10—change 81 to 86. On page 49784, column 3, under A. Michigan Petition—"The State of Michigan provided to EPA 11 volumes of background material to support this claim. . ." instead of "1 volumes."

(2) In the tables provided for the new listings:

EPA hazardous waste No.	Compound name	Action taken	Reason
P157	Oxydemeton-methyl	Correction	This item is provided twice in the table on page 49786; remove one.
P142	Phosacetim	do	Do.
P145	Phosphamidon	do	Do.
P153	Dioxathion	Data	The oral rat LD50 is 20 mg/kg.
P158	Mustard gas	do	The inhalation rat LC50 is 0.014 mg/1/hr
P147	Monocrotophos	do	The CAS No. is changed to 6923-22-4.
U278	Antimony trioxide	Delete	Antimony trioxide is not sufficiently toxic for listing in 261.33 (EPA Hazardous Waste No. U278 corresponds to Bendiocarb)
U306	4-Chloro-m-phenylenediamine.	Spelling	The compounds should appear as 4-chloro-o-phenylendiamine.
U284	Dinocap	Data	The CAS No. is changed to 6119-92-2.

III. Availability of Background Document

The December 21, 1984, proposal noticed the availability of a background document for the proposed action. This background document will be available as of April 30, 1985, for review in the public docket. Copies of the background document will also be available for viewing at all EPA regional libraries, as well as the EPA headquarters library, Room 2404, 401 M Street SW., Washington, D.C. 20460.

Dated: April 29, 1985.

Jack W. McGraw,

Acting Assistant Administrator.

PART 261—[AMENDED]

The following corrections are made in the document appearing at 49 FR 49784 (December 21, 1984).

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

§ 261.33 [Amended]

2. Amend § 261.33(e) by correcting the spelling of the following waste stream appearing 10 lines from the bottom of the first column of page 49792 to read as follows:

EPA hazardous waste No.	Substance
P126	Paraquat.

3. Amend § 261.33(f) by removing the following waste stream appearing 28 lines from the bottom of the third column of page 49792.

Hazardous waste No.	Substance
U296	Heptachlor epoxide.

[FR Doc. 85-11595 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-2836-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "site-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR, Part 261.

The Agency has previously evaluated one of the petitions which is discussed in today's notice. Based upon our review at that time, the petitioner was granted a temporary exclusion. Due to recent changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition, and the other two petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed as well as for all other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until June 14, 1985. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by June 5, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petitions (2)."

The public docket for these proposed exclusions is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. David Topping, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. While a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents), other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 3001(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) are evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics—namely, ignitability, reactivity, corrosivity, and EP toxicity.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until exluded. (See 40 CFR §§ 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally and (2) that the waste is not hazardous

after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine if the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originnally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII toxicants are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied, for insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, for any constituents from Appendix VIII of Part 261 for which the wastes is not tested, the petitioner should submit an explanation of why they would not be present in the waste or, if present, why they would pose no toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constitutents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled. (Landfilling is considered here since that is the only reasonable management scheme for the wastes being evaluated today.)[1] The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The receptor-well concentration determined by the model then will be compared directly to a health-based standard. If the value at the well predicted by the model is less than the health-based standard, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the well is above the health-based standard, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control. This approach was described in detail and published in 50 FR 7882, February 26, 1985.

This approach evaluates the petitioned wastes assuming a reasonable worst-case land disposal scenario. This approach has developed a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level not be delisted, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of a waste (and the toxicants in the waste) might not be diluted sufficiently to generate well concentrations below a health-based standard. The approach selected predicts that the larger the waste volume, the higher the level of toxicant in the receptor well. The mathematical relationship yields at least a ten-fold dilution of the toxicant concentration initially entering the aquifer (*e.t.*, any waste exhibiting extract levels equal to or less that ten times a health-based standard will generate a toxicant concentration at the receptor well equal to or less than that same health-based standard). Depending on the volume of waste, up to an additional five-fold dilution may be imparted, resulting in a total dilution of up to fifty times.

The Agency is proposing to use this approach as one factor to determine the potential impact of unregulated disposal of petitioned waste on human health and the environment. In fact, the Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, we are proposing to grant those petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate test results. In addition, the Agency has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the petitions submitted before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today, including the one for which a temporary exclusion has been granted, will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

[1] Although these wastes may be treated by stabilization or some other means, eventually they will be disposed of on or in land in some way.

[2] Other factors may result in the denial of a petition, such as actual field ground-water monitoring data or spot-chech verification data.

Petitioners

The proposed exclusions published today involve the following petitioners:

Mansfield Products Company, Mansfield, Ohio
Teledyne Monarch Rubber Company, Hartville, Ohio
Watervliet Arsenal, Watervliet, New York

I. Mansfield Products

A. Petition for Exclusion

Mansfield Products Company, a division of White-Westinghouse Corporation, involved in the production of washers, dryers, ranges, and dry-cleaning machines, petitioned the Agency in March, 1981, to exclude its treated sludge listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Mansfield was granted a temporary exclusion on August 6, 1981 (see 46 FR 40158). The Agency's basis for granting the exclusion was the low migration potential of the constitutents of concern—namely, cadmium, hexavalent chromium, nickel, and cyanide (complexed)—from the waste. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see Section 222 of the Amendments, 42 U.S.C. 3001(f)). As a result of these new requirements and in anticipation of these changes, additional data was submitted by Mansfield on November 16, 1983. The Agency has re-evaluated Mansfield's petition to: (1) Determine whether the temporary exclusion should be made final, based on the original criteria and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is our re-evaluation of this petition.

Mansfield has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and cyanide; EP toxicity test results for cadmium, total chromium, and nickel; the results from a distilled water leach test for cyanide; and reactivity test data for sulfides.

Mansfield also submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; total oil and grease analyses; and total organic carbon (TOC) analyses on representative waste samples. Mansfield further submitted a list of all raw materials used in the maufacturing process. The Agency requested this information, as noted above, to determine whether constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Mansfield manufactures washers, dryers, ranges, and dry cleaning machines. In their manufacturing processes, steel parts are coated with nickel sulfate and are treated with a chromic acid sealer as part of an alkaline phosphate pre-paint surface preparation step to enhance porcelain enamel deposition. Mansfield's waste treatment system consists of batch reduction of the chromic acid rinse wastewaters followed by equalization, addition of lime and polymers (which results in the precipitation of suspended solids, phosphates, and metallic hydroxides) and pH adjustment. Solids are removed by clarification and are transported to a sludge well where they are dewatered by rotary vacuum filtration to a 25–30 percent solids content. Mansfield claims that its treated wastewater sludge is non-hazardous due to the immobile nature of nickel and chromium and the negligible levels of cadmium and cyanide in the sludge. Mansfield also believes that their sludge is not hazardous for any other reason.

Samples were collected from random areas of a receiving hopper as each batch of sludge was discharged from the rotary vacuum filter. Mansfield's demonstration was originally based upon four samples collected during a five-month period in 1980. For the purposes of further testing, four additional samples were collected during a one-week period in 1983. These samples were collected at different times of the day so as to reflect any short-term variability in the sludge. Mansfield claims that the samples taken over both time periods reflect any variation in constituent concentration in the waste since the manufacturing processes used at their facility are uniform. Furthermore, Mansfield claims that the use of raw materials does not vary over time. Consequently, they believe the samples they have collected and analyzed adequately characterize their waste.

Total constituent analyses and EP toxicity analyses of the treatment sludge for the listed constituents as well as the other EP toxic metals revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
Cd	[illegible]	<0.01
Cr(total)[a]	[illegible]	0.2
Ni	970	12.8
CN(total)	<0.005	[*] <0.005
As	<1.0	<0.10
Ba	26	<0.05
Pb	[illegible]	0.11
Hg	<5	<0.01
Se	2	<0.02
Ag	1	<0.01

[a] Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chromium is unnecessary.
[*] From distilled water leach test.

Total oil and grease values reported for the vacuum filter sludge did not exceed 0.16 percent. Sludge samples analyzed for TOC did not exceed 0.27 percent. Mansfield also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constitutents, other than those tested for, are used in their process and that formation of any of these constituents is highly unlikely. Mansfield also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Mansfield claims to generate a maximum of 1,500 tons per year of vacuum filter sludge.

B. Agency Analysis and Action

Mansfield has demonstrated that the treatment sludge generated from its vacuum filter is non-hazardous. The Agency believes that the total of eight samples collected during the two sampling periods were non-biased and adequately represent any variations that may occur in the wastes petitioned for exclusion. Due to the nature and consistency of the operations involved (*i.e.*, the facility is not a job shop and production does not vary seasonally), the Agency also believes that the samples are representative of the waste generated by Mansfield. The Agency also accepts Mansfield's claims that the duration of the sampling period was long enough to cover any scheduled changes in the product line, since the

facility does not vary its product line over the course of the year.

The Agency's conclusion that sampling adequately represents Mansfield's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low.[4]

The Agency has evaluated the mobility of the constituents from Mansfield's waste using a vertical and horizontal spred (VHS) model.[5] The Agency's evaluation of the 1,500 tons of vacuum filter sludge generated annually and the corresponding maximum extract levels using the VHS model has generated the receptor well concentrations exhibited in Table 2.

TABLE 2.—VHS MODEL: RECEPTOR WELL CONCENTRATIONS (PPM)

	Cd	Cr	Ni
Vacuum filter sludge	[redacted]	0 01	[redacted]
Health based standard	0 01	0.05	0.350

The vacuum filter sludge exhibited cadmium and chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standards. Therefore these constituents are not of regulatory concern. The predicted maximum nickel value exceeds the Agency's interim standard.[6] However, as discussed in Appendix I, the Agency is not yet in a position to deny a petition based solely on a waste's nickel content. The Agency, however, will grant final exclusion, if the concentrations of nickel expected to reach receptors is less than the interim nickel standard (350 ppb) and there is no other reason to deny the petition. In particular, although the Agency is using the systemic toxicity portion of the Ambrose study to calculate a health-based standard for nickel, this study is also flawed (*i.e.*, poor survival of animals in the control group). Therefore, the Agency believes that this value should not be used to deny delisting petitions. Rather, the Agency is in the process of conducting a study on the reproductive effects of nickel in rats. This study, once completed, will provide the Agency with a sound basis for the re-estimation of an ADI and a health-based standard for nickel. Until this is done, no final decision will be made with regard to this petition.

Cyanide levels were not evaluated using the VHS model since the total concentration in the waste is well below the U.S. Public Health Service's suggested drinking water standard of 0.2 ppm[7] (i.e., ikf all the cyanide were to leach out, it would not exceed the health-based standard for cyanide). Total cyanide levels in the waste also are below the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ASCGIH).[8] These constituents, therefore, are not of regulatory concern.[9]

Furthermore, the Agency has also concluded that no other hazardous constituents are present in the vacuum filter waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the receptor well in the VHS model). The raw materials used by Mansfield in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the level of TOC and oil and grease present in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste.[10]

The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste. For the other toxic metals, the data submitted by Mansfield show low maximum extract levels. Using these values in the VHS model results in predicted levels at the well which are less than the applicable health-based standards as seen in Table 3.

TABLE 3.—VHS MODEL: RECEPTOR WELL CONCENTRATIONS (PPM)

	As	[redacted]	[redacted]	Hg	Se	Ag
Vacuum filter sludge	0.005	0.003	0 006	0.0005	0 001	0 0005
Health-[redacted] standard	0.05	1.0	0.05	0 002	0 01	0.05

The Agency believes that, based upon the constituents and factors evaluated, Mansfield's waste is non-hazardous and, as such, should be excluded from hazardous waste control. Since this evaluation did not include the waste's nickel content, the Agency's final

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[4] See standard t-test in *Biometry: The Principles and Practice of Statistics in Biological Research:* Sokal, R. and Rohlf, F.J., 1969.

[5] The model approximates the dispersion of toxicants in an aquifer in the vertical and horizontal directions perpendicular to ground-water flow. The VHS model is used to predict reasonable worst-case contaminant levels in a receptor well 500 ft. from the contaminant source. The model primarily considers the maximum extract concentrations from leachate tests and the volume of waste to be disposed. The model determines the ability of an aquifer to dilute the toxicant from a specific volume of waste without exceeding a health-based standard at the receptor well. See 50 FR 7896–7900, February 26, 1985 for details.

[6] In previous notices, the Agency has used 632 ppb as the health-based standard for nickel (see 50 *FR* 7882, February 26, 1985). A number of persons have raised concerns, however, with the study on which this value was calculated (*i.e.*, the data provided does not permit statistical analysis and there are inconsistencies in the dose-response and generational relationships). Therefore, a group of experts was convened to evaluate the existing studies on nickel to determine what data can be used to develop a long-term health advisory or a drinking water standard for nickel. The group generally concluded that the study on which the 632 ppb value was calculated should not be used: rather, they felt that another study was more appropriate to derive a drinking water criterion for nickel. From these data, an ADI of 700 ug/day was estimated which results in an allowable concentration in drinking water of 350 ug/1. (See Appendix I to this preamble for a more detailed discussion.)

[7] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[8] See *Documentation of the Threshsold Limt Values for Substances in Workroom Air:* American Conference of Governmental Industrial Hygienists: Third edition, 1971, Cincinnati, Ohio.

[9] To confirm our conclusion that the waste is non-hazardous, the Agency has used an alternative method. The Agency calculated the toxicant levels expected at the receptor well using the upper limit of a 95% confidence interval in addition to the maximum extract level. (See footnote 5).

Based upon the data submitted by Mansfield, a confidence interval for each constituent of concern can be calculated. This enables the accuracy with which the sampled mean concentration reflects the true mean concentration of each constituent in the waste to be determined. The upper confidence limit may be calculated and used in the VHS model instead of the maximum EP value reported in the petiton. The use of both the upper confidence limit and the maximum reported EP value ensures that the impact of all reasonable variations in the waste extract level on the toxicant concentrations at the receptor well have been taken into account. The confidence interval (CI) is determined using the following equation:

$$CI = X \pm t\ (s/n^{1/2})$$

where:

x = mean concentration in the samples
t = t-value obtained from statistical tables
s = standard deviation
n = number of samples

It the upper limit of a 95% confidence interval is evaluated using the AHS model and generates a receptor-well concentration below the health-based standard (*e.g.*, the drinking water standard) then it can be concluded that, at least 95 times out of the 100, all receptor-well concentrations will fall below this level. The calculated upper limits for cadmium, chromium, and nickel are 0.01 mg/1, 0.02 mg/1, and 9.03 mg/1, respectively. Using the calculated upper limit values in the VHS model, the receptor-well concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium. The method does predict a maximum nickel concentration of 0.4933 mg/1, which exceeds the Agency's interim standard. As discussed earlier, however, the Agency is still evaluating the wastes nickel content.

[10] On a theoretical basis, one would expect TOC to be 85% of the value for oil and grease. TOC values higher than those for oil and grease generally are observed, however, due to an artifact of the test method for oil and grease. The difference between the levels of TOC and oil and grease is due to the loss of volatile components of the oil and grease during the test.

decision will be deferred, as explained in footnote 6 and Appendix I. Until this proposal becomes final, however, EPA believes that Mansfield may continue to handle their waste as non-hazardous, under the existing temporary exclusion published in the **Federal Register** at 46 FR 40158, August 6, 1981.

II. Teledyne Monarch Rubber Company

A. Petition for Exclusion

Teledyne Monarch Rubber Company (Teledyne), located in Hartville, Ohio, is involved in the manufacture of bonded rubber and steel automotive parts. Teledyne has petitioned the Agency to exclude its treated sludge, presently listed as both EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminium; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum, and EPA Hazardous Waste No. K062—Spent pickle liquor from steel finishing operations. The listed constitutents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed), and, for EPA Hazardous Waste No. K062, the listed constituents of concern are hexavalent chromium and lead. Teledyne has petitioned to exclude both their continuously generated sludge and the sludge previously generated and contained in their surface impoundments because it does not meet the criteria for which it is listed.[11]

Teledyne's manufacturing processes include cleaning, surface preparation, and finishing operations. Teledyne claims that the wastewater from these operations is successfully treated to produce a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in an essentially immobile form. Teledyne further claims that this waste is not hazardous for any other reason.

In support of their petition, Teledyne has submitted a detailed description of its manufacturing and wastewater treatment pocesses, including lists of raw materials and schematic diagrams. Teledyne also has submitted analytical data to characterize the wastewater treatment sludge in its as-disposed condition. This includes the results of total constituent analyses for all the EP toxic metals, nickel, and cyanide; EP toxicity test results for all EP toxic metals and nickel; and the Oily Waste EP Toxicity test [12] for arsenic, barium, cadmium, chromium, lead, nickel, and selenium. Test results were also provided on representative samples for total organic carbon (TOC) and oil and grease content. Cyanide concentrations from distilled water leachate tests were also reported. Much of the information was requested, as noted above, in order to determine if hazardous constitutents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Teledyne's wastewater treatment system consists of water and oil separation followed by chemical coagulation. The solids are then removed in clarifiers and dewatered in a filter press. The dewatered sludge is held on-site in three surface impoundments, identified as S–1, S–2, and S–3. Each surface impoundment measures approximately 30 ft. by 40 ft.

In order to characterize the sludge, samples were collected from both the filter press and the surface impoundments. Filter press samples were collected daily over a four-week period. Samples were collected at different times of the day so as to account for any short-term variability in the sludge. These daily samples were composited to produce four samples representing one week each. The surface impoundments were characterized by making composite samples from each quadrant of each impoundment. Each composite consisted of five grab samples. A backhoe was used to collect these grab samples. Five buckets of sludge were removed from each quadrant. One grab sample was collected from each bucket-load of sludge.

Teledyne claims that the total of these samples reflect any variation in the constituent concentration of the sludge. Teledyne also states that, historically, the only changes in manufacturing activities have been increases in production and not changes in processes. Furthermore, Teledyne claims that the use of raw materials does not vary over time. Consequently, they believe that the samples they have collected and analyzed adequately characterize their wastes.

Total constituent analyses of the wastewater treatment sludge collected from the filter press and the inpoundments revealed the maximum concentration reported in Table 1. Table 1 also presents maximum concentrations from EP and Oily Waste EP leachate tests. (The Oily Waste EP procedure was required, as noted above, because the sludge's oil and grease content was reported at values up to 3.8%).

TABLE 1.—MAXIMUM CONCENTRATIONS

	Filter press			Impoundments		
	Total constituent analysis (mg/kg)	EP leachate analysis (mg/1)	Oily waste EP leachate analysis (mg/1)	Total constituent analysis (mg/kg)	EP leachate analysis (mg/1)	Oily waste EP eachate analysis (mg/1)
As	7.0	0.006	0.24	21.0	< 0.001	0.072
Ba	183	0.04	0.1	[illegible]	0.06	0.1
Cd	3.9	<0.005	0.057	3.0	<0.005	0.054
Cr(total)	417	<0.05	0.4	[illegible]	<0.05	<0.065
CrVI	33	<0.01	0.129	68	<0.01	<0.026
Pb	290	0.007	0.035	135	0.003	0.02
Hg	2.2	<0.0004	NR	<0.1	<0.0004	NR
Se	1.7	0.250	0.018	33.0	0.003	0.025
Ag	<0.3	<0.01	NR	1.0	<0.01	NR
Ni	410	3.5	15.3	1700	6.5	10.3
CN(total)	5.4	<0.2(a)	NA	<1	<0.0002(a)	NA
CN(free)	2.8	(a)	NA	<1	(a)	NA

NR-test not required due to low concentration in constituent analysis.
NA-test is not applicable
(a)-Leachate test for total CN was performed with a distilled water extraction. Due to the low total CN values, free CN analysis was not required.

[11] Teledyne originally submitted their petition on August 12, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constitutents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Teledyne (see 49 *FR* 4803, February 8, 1984). This additional information was submitted by Teledyne on May 8, and October 22, 1984.

[12] The Agency requested that Teledyne run the Oily Waste EP toxicity test on their waste due to a total oil and grease content of 3.8 percent. The Agency has decided to use the Oily Waste EP To determine the migratory potential of metals from wastes containing greater than 1 percent oil and grease content. See 49 FR 42591, October 31, 1984. See also Method 1330 in "Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste," as referenced in 49 FR 38790, October 1, 1984.

Teledyne's organic carbon analysis of the waste indicated values of 4.39 to 6.15 percent. Descriptions of the manufacturing and wastewater treatment processes, however, along with the submitted lists of raw materials, indicated that no other Appendix VIII hazardous constituents, other than those tested for, are used in the process and thus are not expected, nor would they likely be formed, in the sludge. (The Agency's analysis of Teledyne's raw materials included the evaluation of confidential information provided directly by the manufacturers of those materials.) Teledyne also provided data indicating that the sludge is not ignitable, corrosive, or reactive. Finally, Teledyne claims that the maximum volume of waste generated at its plant is 136 tons annually; 5200 cubic yards of previously generated waste is currently held on-site in three surface impoundments.

B. Agency Analysis and Action

Teledyne has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples collected by Teledyne were non-biased and adequately reflect any variations which may occur in the waste stream petitioned for exclusion. The key factor which could vary constituent concentrations in the continuously generated (filter press) sludge would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that Teledyne's claim of uniformity in manufacturing and treatment processes is substantiated. Also, the collection of samples from the full depth of each quadrant of the three impoundments is believed to adequately reflect any stratification or areal variations that may have occurred. The samples, therefore, are believed to be representative of the treated sludge from the full array of raw materials used by Teledyne.

The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[13]

[13] See footnote 4.

The Agency has evaluated the mobility of the constituents from Teledyne's waste using the vertical and horizontal spread model (VHS model).[14] The Agency's evaluation of Teledyne's waste, using the combined volume in impoundments S–1, S–2, and S–3 (5200 cubic yards) and the reported Oily Waste EP results as input parameters, has generated the maximum predicted receptor well concentrations exhibited in Table 2. (Where leachate concentrations were below the detection limit, the value of the detection limit was used to predict these concentrations.)

TABLE 2.—CALCULATED MAXIMUM RECEPTOR WELL CONCENTRATION (MG/1)

	As	Ba	Cd	Cr(total)	CrVI	Pb	Se	Ni
Filter press	0.005	0.002	0.001	[illegible]	0.002	0.0006	0.005	[illegible]
Impoundments	0.007	0.010	0.005	<0.005	0.002	0.002	[illegible]	[illegible]
Health-based standard	0.05	1.0	0.01	0.05	0.05	0.05	0.01	0.350

For both the filter press sludge and the impoundment sludge, the predicted maximum levels at the receptor well for the EP toxic metals are below the National Interim Primary Drinking Water Standards. These constitutents are, therefore, not of regulatory concern.[15] For the impoundment sludge the predicted maximum nickel value exceeds the Agency's interim standard.[16]

However, as discussed earlier (see Agency Analysis and Action for Mansfield Products, Inc., above and as indicated in Appendix I), the Agency is not yet in a position to deny a petition based solely on a waste's nickel content. Therefore, until current studies are completed and a health-based standard for nickel is re-estimated, no final decision on the impoundment sludge will be made.

Since distilled water leachate tests for cyanide on both the filter press and impoundment samples indicated no results above the detection limit (0.2 mg/1), the level of leachable cyanide is not of regulatory concern.[17] Also, the low constituent values of total cyanide are not of regulatory concern from an atomspheric contamination route. These levels are all below the workroom air threshold limit of 10 ppm set by the American Conference of Government Industrial Hygienists.[18]

Furthermore, the Agency has also concluded that no other hazardous constituents are present in Teledyne's waste at levels of regulatory concern (*i.e.*, none would be above any health-based standard at the receptor well in the VHS model). Since TOC values are higher than the sludge's oil and grease content,[19] the Agency carefully evaluated all raw materials used in Teledyne's processes. As described previously, this evaluation indicated that no hazardous constituents, other than those tested for, would be expected, nor would they likely be formed, in the waste.

The Agency believes that based upon the constituents and factors evaluated, Teledyne's wastewater treatment sludge is non-hazardous and, as such, should be excluded from hazardous waste control.[20] Since this evaluation did not include the waste's nickel content, the Agency's final decision will be deferred, as explained in footnote 6 and Appendix I. The Agency will evaluate the potential hazard posed by the nickel content of Teledyne's waste after a health-based standard is developed from the current study.

III. Watervliet Arsenal

A. Petition for Exclusion

Watervliet Arsenal (Watervliet), located in Watervliet, New York, is involved in the manufacture of armament for the U.S. Armed Services. Watervliet has petitioned the Agency to

[14] See footnote 4.

[15] The calculated upper limits for the Oily Waste EP leachate values of cadmium, chromium, and nickel are as follows: 0.07 mg/1, 0.4 mg/1, and 15.1 mg/1, respectively, for the filter press sludge; and 0.09 mg/1, 0.05 mg/1, and 10.36 mg/1, respectively, for the impoundment sludge. Using these calcualated upper limit values for the Oily Waste EP leachate values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standard. The predicted nickel concentration from the impoundment sludge, however, exceeds the Agency's interm standard. See footnote 9 for an explanation of the confidence interval calculation.

[16] See footnotes 6 and Appendix I.

[17] See footnote 7.

[18] See footnote 8.

[19] See footnote 10.

[20] Groundwater monitoring data from the vicinity of the impoundments is currently being reviewed by the Agency. This review was prompted by variations in the levels of certain indicator parameters in recent groundwater samples. This data is not conclusive and additional testing is in progress. The Agency will evaluate the results of current and previous groundwater testing and will not make final this exclusion until it has been determined that, if groundwater contamination does exist, Teledyne's impoundments are not the source of that contamination.

exclude its treated sludge presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Watervliet has petitioned to exclude its waste because it does not meet the criteria for which it is listed.[21]

Watervliet's plating operations consist of a number of cleaning and surface preparation steps, followed by the electroplating of various metals. Watervliet claims that the wastewater from these processes is successfully treated to produce a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in an essentially immobile form. Watervliet further claims that this waste is not hazardous for any other reason.

In support of this claim, Watervliet has submitted detailed descriptions of its manufacturing and wastewater treatment processes, including lists of raw materials and schematic diagrams. Watervliet has also submitted analytical data to characterize the wastewater treatment sludge in its as-disposed condition. This includes the results of total constituent analyses for all EP toxic metals, nickel, and cyanide and Oily Waste EP toxicity test results for all EP toxic metals and nickel. Test results were also provided on representative samples for TOC and oil and grease content. Additionally, ground-water monitoring reports were provided. Much of the information was requested, as noted above, in order to determine if hazardous constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Watervliet's wastewater treatment system treats the cyanide-and chromium-bearing wastewaters from plating operations, as well as oily wastewaters from various machining and other mechanical operations. Sludge is generated only from the chromate reduction and oily waste treatment processes. The maximum annual sludge generation rate is estimated to be 576 cubic yards. Before disposal, the sludge is dewatered for 2–4 months in two drying beds. In order to characterize the sludge in its as-disposed condition, full-depth core samples were collected from each quadrant of drying bed I. These cores were composited to produce four samples representing one quadrant each. Bed II was characterized by collecting six-full depth cores from random locations in the bed and compositing them to produce one sample. Watervliet claims that these samples are representative of their sludge and reflect any variability in constituent concentrations, since during the time period that sludge was being accumulated in the beds, the manufacturing and wastewater treatment processes included the full range of potential variations.

Constituent analyses of these samples revealed the maximum concentrations reported in Table 1. Maximum concentrations from the Oily Waste EP tests are also presented in Table 1. (The Oily Waste EP procedure was used because the sludge's oil and grease content was reported at values up to 13%.)

Table 1.—Maximum Concentrations (mg/kg)

	Total constitu- [illegible] analysis (mg/kg)	Oily waste EP [illegible] analysis (mg/1)
As	5 76	<0.5
Ba	37.29	<10
Cd	1.24	0.19
Cr (total)[22]	17295	2.5
Pb	[illegible]	<0.5
Hg	0.057	[illegible]
Ni	170.18	1.97
Se	0.01	0.023
Ag	0.18	0.03
CN (total)	0.88	[illegible]

NR = test not required due to low concentration of cyanide in constituent analysis.
[22] See footnote 3.

Sludge samples analyzed for total organic carbon indicated a maximum level of 2.81 percent. Watervliet's description of its manufacturing and wastewater treatment processes, along with the submitted lists of raw materials, indicated that no other Appendix VIII hazardous constituents would be expected, nor would they likely be formed, in the sludge. Test results also indicate that the sludge is not ignitable, corrosive, or reactive.

B. Agency Analysis and Action

Watervliet has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the core samples collected by Watervliet were non-biased and adequately reflect any variations which may occur in the waste stream petitioned for exclusion. The key factor which could vary constitutent concentratons in this waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that Watervliet's claim of uniformity in manufacturing and treatment processes is substantiated. Also, the collection of full-depth cores from different areas of the drying beds is believed to adequately reflects any stratification or areal variations that may have occurred. Therefore, the samples are believed to be representative of the treated sludge from the full array of raw materials used by Watervliet.

The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the Oily Waste EP test results from each sample. This analysis would have, but did not, detect any significant variability in the waste [*i.e.*, the standard deviation was low.[23]

The Agency has evaluated the mobility of the constituents from Watervliet's waste using the vertical and horizontal spread model (VHS model).[24] The Agency's evaluation of Watervliet's waste, using the maximum values for estimated annual sludge generation and reported leachate concentrations as input parameters, has resulted in the maximum predicted receptor well concentrations exhibited in Table 2.

[21] Watervliet originally submitted their petition on December 22, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has reasonable basis to believe that such additional factors could cause the waste to be hazardous (See Section 222 of the Amendments, 42 U.S.C. § 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Watervliet (see 49 *FR* 4803, February 8, 1984). This additional information was submitted by Watervliet on September 6 and November 28, 1984.

[23] See footnote 4.

[24] See footnote 5.

TABLE 2.—CALCULATED MAXIMUM RECEPTOR WELL CONCENTRATION (MG/L)

As	Ba	Cd	Cr(total)	Pb	Hg	Ni	Se	Ag	CN
Calculated Maximum Receptor Well Concentration (mg/l)									
0.011	0.125	0.004	0.056	0.011	0.001	0.044	0.001	0.001	0.001
Health-Based Standards									
0.05	1.0	0.01	0.05	0.05	0.002	0.350	0.01	0.05	0.2

The predicted maximum levels at the receptor well for all EP toxic metals except total chromium are well below the National Interim Primary Drinking Water Standards (NIPDWS), the nickel value is below the Agency's interim standard,[25] and cyanide level is below the U.S. Health Service's suggested drinking water standard.[26]

The predicted maximum well concentration for total chromium (0.056 mg/l) slightly exceeds the NIPDWS value of 0.05 mg/l. This prediction is based upon the highest reported chromium leachate value, however, which exceeds the next highest value by a factor of three. Statistical evaluation of all the reported chromium leachate values indicates that, if the upper limit of the 95% confidence interval is used, the VHS model predicts a maximum well concentration of 0.035 mg/l. Since use of the maximum leachate value results in a concentration approximately equal to the NIPDWS, and the statistical evaluation results in a predicted concentration well below the NIPDWS, the Agency concludes that the constituent is not of regulatory concern.[27]

The ground-water monitoring data supplied by Watervliet tends to support this conclusion. Downgradient monitoring wells, however, show high levels of manganese (*i.e.*, up to 7 mg/l), which is not an Appendix VIII hazardous constituent.[28] The results of analytical tests indicate that manganese is present in the sludge (520 mg/kg) and that it is leachable (5.3 mg/l from EP leachate tests). Therefore, the source of downgradient manganese may be the dewatering beds.[29] The absence of the EP toxic metals and nickel in the downgradient wells, however, indicates that these metals do not leach at significant levels.

The Agency did not request free or leachable cyanide analysis because of the low total cyanide concentrations in Watervliet's waste. The previous calculation (using the VHS model) for cyanide assumed that all of the cyanide in the waste would be leachable. (The maximum total cyanide concentration was simulated using a 20:1 dilution of the EP leachate tests.) Free and photodegradable cyanide also are not expected to create a health hazard through atmospheric contamination. It all of the cyanide in the waste were released into the atmosphere, the result still would be well below the air threshold limit of 10 ppm established by the American Conference of Governmental Industrial Hygiensts.[30] Based upon the constituent values reported by Watervliet, therefore, the sludge's cyanide concentration is not of regulatory concern.

The Agency also has concluded that no other hazardous constituents are present in Watervliet's waste at levels of regulatory concern (*i.e.*, none would be above any health-based standard at the receptor well in the VHS model). For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste. (The fact that the oil and grease level exceeds the TOC level may be due to the use of silicone-based oils or some other interferences in the oil and grease analytical method.) The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste.

The Agency believes that based upon the constituents and factors evaluated, Watervliet's waste is non-hazardous and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Watervliet Arsenal, located in Watervliet, New York, for its electroplating wastewater treatment sludge as described in its petition.

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is acheived by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of smal entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

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[25] See footnote 6 and Appendix I.

[26] See footnote 7.

[27] The calculated upper limits for the Oily Waste EP leachate values of cadmium, chromium, and nickel are 0.176 mg/l, 1.55 mg/l, and 0.202 mg/l, respectively. Therefore, using these calculated upper limit values for the Oily Waste EP leachate values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards or the interim health-based standard for nickel. See footnote 9 for an explanation of the confidence interval calculation.

[28] Manganese is a non-conventional pollutant which is not often present in waters because its hydroxides and carbonates are only sparingly soluble. It appears that recommended limitations on manganese in drinking water are based upon aesthetic and economic factors rather than physiological hazards (guidelines issued as National Secondary Drinking Water Regulations recommend a maximum level of 0.05 mg/l), although some evidence indicates that excessive levels of manganese may produce health effects.

Since the source and migration potential of the manganese cannot be clearly defined, and because the resultant potential health hazard, if any, cannot be established at this time, the Agency is not in a position to evaluate the manganese content in this waste. Thus, the Agency's proposal to exclude this waste from hazardous waste control is based upon all factors and constituents except for manganese. The Agency specifically solicits comments on the potential hazard, if any, posed by the manganese concentrations in Watervliet's waste.

[29] Due to previous landfilling in the vicinity of the dewatering beds, the source of the manganese cannot be precisely determined. Specifically, the area between the upgradient well and the dewatering beds is the former path of the Erie Canal. This portion of the canal was filled in the early 1940's Therefore, the fill material also could be the source of the manganese.

[30] See footnote 8.

Dated: May 6, 1985.

Jack McGraw,

(Acting) Assistant Administrator for Solid Waste and Emergency Response.

Appendix I

Criteria Used for Evaluation of Allowable Concentration of Nickel in Wastes

For the purpose of deciding whether to grant delisting petitions based on the nickel content of a waste, the Agency has decided, as an interim measure, to use 350 μg/l as the health-based standard against which to compare the well concentration predicted by the VHS pollutant dispersion model. Since the history of the Agency's development of a health-based standard for nickel in drinking and surface waters has been somewhat confusing and contradictory, a description of the reasons for our decision is provided below.

In 1980, the Agency established an Ambient Water Quality Criterion (AWQC) for nickel of 13.4 μg/l. This value was established as the criterion for the protection of human health (USEPA, 1980), and was published in the **Federal Register** on November 28, 1980.[1] The 13.4 μg/l AWQC value was based on an Allowable Daily Intake (ADI) of 0.031 μg/day, derived from a reproductive effects study conducted by Schroeder *et al.* (1971). Upon subsequent evaluation, the Agency determined that there were a number of problems with this study. The Agency, therefore, believes that this study is not suitable for the development of a criterion. Briefly, the problems associated with the study by Schroeder and Mitchener were as follows: too few animals were used; the animals used for mating were not randomly selected; historical data for stillbirths among unexposed control animals in the laboratory conducting the study are not available; the reproductive assessment protocol used was not a standard one; subsequent studies did not provide supporting evidence; and animals were simultaneously exposed to other metals (Stara, 1983; Rubenstein and Bellin, 1985).

Due to these concerns, a revision of the 1980 AWQC was suggested (de Rosa, 1981) (but not formally published in the **Federal Register**). An ADI of 1.47 mg/day, and an AWQC of 632 μg/l were developed. These values were based on the reproductive effects part of a study conducted by Ambrose et al. (1976). This study also assessed other effects of dosing with nickel. This reproductive study also can be faulted, however, on technical grounds: the data provided do not enable a proper statistical analysis, that is, one which takes into account genetic similarities (*i.e.*, size and stillborn rates of individual litters), and there are inconsistencies in the dose-response and generational relationships (Seilkop, 1982; Stara, 1983; Compton and Patterson, 1983; Sonich Mullen, 1984; Rubenstein and Bellin, 1985; Bellin, 1985).[2]

In an attempt to assess what, if any, data can be used to develop a long-term health advisory or a drinking water standard, the Agency convened a group of experts to assess the scientific information available.[3] The group concluded that, in view of the deficiencies of both the 1971 study by Schroeder and Mitchener, and the reproductive effects part of the 1976 study by Ambrose, the results of the systemic toxicity portion of the 1976 Ambrose study (rather than the reproductive effects section) should be used to derive a drinking water criterion for nickel (Sonich Mullen, 1984). From these data, an ADI of 700 μg/day was estimated. This results in an allowable concentration in drinking water of 350 μg/l.[4]

Therefore, this is the health-based standard the Agency has decided to use (at the present time) for purposes of granting delisting petitions.[5] At the same time, since the systemic toxicity portion of the Ambrose study is also flawed (*i.e.*, poor survival of animals in the control group), we believe that this value should not be used to deny delisting petitions, *i.e.*, we believe it inappropriate to deny a petition based solely on its nickel content.

Rather, the Agency is in the process of conducting a study on the reproductive effects of nickel in rats. This study will employ a two-generation dosing regimen, and will assess both reproductive and teratogenic effects in rats of nickel in drinking water. In addition, the Agency is undertaking a study of the comparative absorption of nickel from water, food, and milk.

These studies, once completed and validated, will provide the Agency with a sound basis for the re-estimation of an ADI and a health-based standard for nickel. It then will be possible to determine whether to grant those delisting petitions for which no final decision had yet been made, as well as those which would have been denied on the 350 μg/l AWQC value.

References

Ambrose, A.M. et al., 1976. Long term toxicologic assessment of nickel in rats and dogs. *J. Food Sci. Technol.* 13: 181–187.

Bellin, J., 1985. Memorandum to M. Straus on suggested allowable drinking water concentration for use in delisting decisions February 19.

Bennett, B.G., 1982. Exposure of man to environmental nickel—an exposure commitment assessment. *Sci. Total Environ.* 22:203–212.

Compton, R.S., and Patterson, Jr., D.J. 1983. Letter to P. Tobin, June 14.

de Rosa, C., 1981. *Memorandum* to M. Morse on ambient water quality criterion for nickel. May 18.

Rubenstein, R. and J. Bellin, 1985. *Memorandum* to J. Sales on evaluation of nickel studies by Ambrose et al. and Schroeder et al. (final version of September 1983 draft).

Schroeder, H.A. and M. Mitchener, 1971. Toxic effects of trace elements on the reproduction of mice and rats. *Arch. Environ. Health* 23: 102–106.

Seilkop, S., 1982. *Memorandum to D. Sivulka on review of reproductive data of Ambrose, et al., March 24.*

Sonich Mullen, C., 1984. *Memorandum* to E. V. Ohanian on consensus following the review meeting on nickel. July 28.

Stara, J. F. 1983. *Memorandum* to Pat Tobin on nickel and ambient water quality criterion. August 15.

USEPA, 1980. Ambient water quality criteria for nickel. 440/5–80–060. Washington, D.C.

Witmer, C. 1982. Toxicity of orally ingested nickel compounds. Unpublished report to the American Iron and Steel Institute. September 27.

[1] AWQC are non-regulatory scientific assessments of human health and ecological effects. These assessments are intended to be used for development of enforceable maximum acceptable levels of a pollutant in ambient waters (USEPA, 1980). The 24-hour aquatic life is 56 μg/l at a $CaCO_3$ hardness of 50 μg/l (USEPA,1980).

[2] Since, at the time, it was felt that the results of the Ambrose reproductive study were the best available data, the Agency, while cognizant of its deficiencies, nevertheless used the 632 ppb value in the evaluation of several delisting determinations. See, for example, 50 *FR* 7882–7900, February 26, 1985. In addition, based on this value, the Agency also considered adding nickel as a constituent of concern to spent pickle liquor generated from the finishing of stainless steel.

[3] In addition to Agency personnel, the following experts participated: Dr. Foulkes (University of Concinnati); Mr. Hellerstein (ICAIR); Dr. Perry (Washington University); and Dr. Sunderman (University of Connecticut).

[4] 700 μg/day/2 1 water/day = 350 μg/l water.

[5] The Agency recognizes that this value does not take into account the fraction of the ADI that is contributed by the consumption of nickel in food other than water (the contribution of air is estimated to be negligible). The 350 ppb value is used because of the uncertainty both in the systemic effects data (Rubenstein and Bellin 1985), and becaused there is uncertainty regarding the proper value to use for intestinal absorption (compare the 5% factor used by EPA (Sonich Mullen, 1984) and the 10% value reported by Bennett (1982)). Moreover, there is disagreement regarding the contribution to the total daily intake from food (400 μg/day is estimated by EPA (Sonich Mullen, 1984), and 175 μg/day is cited by Bennett (1982)).

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 361 continues to reads as follows:

Authority: Secs. 1006, 2002(a), 3001 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix XI, add the following wastestreams in alphabetical order:

Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
(a) Wastes Excluded From Non-Specific Sources		
[redacted] Products Company	Mansfield, OH	Wastewater treatment sludges (EPA Hazardous Waste No F006) generated from electroplating operations after May 15, 1985
Teledyne [redacted] Company	Hartville, OH	Wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and K062) generated from electroplating operations and steel finishing operations after May 15, 1985 as well as those disposed in on-site impoundments on or before this date
Watervliet Arsenal.	Watervliet, NY	Wastewater treatment sludges (EPA Hazardous Waste No F006) generated from electroplating operations after May 15, 1985

[FR Doc. 85-11688 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 10, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Food and Nutrition Service.

Nutrition Education and Training Program Annual Participation Report, State Plan, and Recordkeeping
FNS 42
Recordkeeping, Annually
State or local governments; Non-profit institutions; 2,514 responses; 10,405 hours; not applicable under 3504(h)
Helen Lilly (703) 756-3554

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85-11740 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 12, 1985.

Place: Lexington Marriott Resort, 1800 Newtown Pike, Lexington, Kentucky 40505.

Time: 1:30 p.m.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the level of inspection services to burley markets, that is, the number of sets of graders and their distribution among markets.

The meeting is open to the public. Public participation will be limited to written statement submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street, S.W., U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2567.

Dated: May 9, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 85-11739 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

Natural Resource Management Guide Meeting; San Juan, PR

AGENCY: Farmers Home Administration, USDA

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in San Juan, Puerto Rico, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on June 7, 1985, 10:00 a.m. to 12:00 noon.

Comments must be received no later than July 17, 1985.

ADDRESS: Meeting location at Federal Building, Room G-51, San Juan, Puerto Rico.

Written comments and further information will be addressed to: State Director, FmHA, Post Office Box 6106-G, San Juan, Puerto Rico 00936, Telephone (809) 753-4308.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Puerto Rico State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and local levels and that affect the financing of FmHA activities in Puerto Rico. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: May 9, 1985.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 85–11685 Filed 5–14–85; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Organization, Functions and Delegations of Authority; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; correction.

SUMMARY: In the Notice document published April 17, 1985 at 50 FR 15203, paragraph (g)(i) is corrected by inserting the words "District of Columbia" between the words Delaware and Maryland; (g)(v) is corrected by inserting "Kentucky" between the words Georgia and North Carolina; (g)(vi) is corrected by inserting the words "New Mexico" between the words Oklahoma and Arkansas; and (g)(vii) should be corrected as follows: Western Regional Office: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, Commonwealth of the Northern Mariana Islands and Trust Territory of the Pacific Islands.

Dated: May 9, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–11686 Filed 5–14–85; 8:45 am]

BILLING CODE 3410-30-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 9, 1985, and on June 10, 1985, at 9:00 a.m. to 6:00 p.m. at the Prattville Holiday Inn, 565 Cobbs Ford Road, the Heritage I Room, Millbrook, Alabama. The purpose of the meeting is to hold an Advisory Committee briefing and a community forum on county redistricting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Abigail Turner, or Bobby Doctor in the Southern Regional Office, at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11668 Filed 5–14–85; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Idaho Advisory Committee to the Commission originally scheduled for May 16, 1985, at the Lewiston Community Center, 1424 Main Street, Lewiston, Idaho, (FR Doc. 85–10124, on page 16528) has been cancelled.

Dated at Washington, D.C., May 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11675 Filed 5–14–85; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 3:30 p.m. on May 31, 1985, at the U. S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 11669 Filed 5–14–85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon on May 25, 1985, at the Holiday Inn Downtown, 802 W. 8th Street, Banquet Room C, Cincinnati, Ohio. The purpose of the meeting is to discuss the status of the education project and provide an orientation for new committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11670 Filed 5–14–85; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m. on June 3, 1985, at the Holiday Inn Downtown, 1313 Nicolett Mall, the Board Room, Minneapolis, Minnesota. The purpose of the meeting is to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11671 Filed 5–14–85; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committe to the Commission will convene at 9:00 a.m. and will end at 12:00 p.m. on May 24, 1985, at the Hilton Airport Plaza, Parlor No. 120, I–29 and 112th Street, NW., Kansas City, Missouri. The purpose of the meeting is

to develop program planning and identify cities for future civil rights community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin Jenkins, director of the Central States Regional Office at (816) 374-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11672 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on June 23, 1985, at the Town House, 1615 Gervais Street, the Gervais Room, Columbia South Carolina. The purpose of the meeting is to hold a briefing session for community forum on voting procedures for June 24th.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Elizabeth Patterson or Bobby Doctor, director of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. May 7, 1985.

Bert Silver,

Assistant Staff Directors for Regional Programs.

[FR Doc. 85-11673 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 6:00 p.m., on June 24, 1985, at the Russell Street Inn, 491 Russell Street, Carriage House, Orangeburg, South Carolina. The purpose of the meeting is to hold a community forum on voting procedures in the city and county of Orangeburg.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Elizabeth Patterson or Bobby Doctor, director of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C, May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11674 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Construction Progress Reporting Survey (Private Nonresidential)
Form Number: Agency—C-307, C-400; OMB—N/A
Type of Request: New
Burden: 190 respondents; 95 reporting hours
Needs and Uses: This survey is needed to gather information on construction activities from member corporations of the Business Roundtable. The data will be used to evaluate the coverage of our sampling frames for large industrial construction
Affected Public: Businesses or other for-profit institutions
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: October 1985 School Enrollment Supplement
Form Number: Agency—CPS-1; OMB—0607-0464
Type of Request: Reinstatement
Burden: 57,000 respondents, 3,200 reporting hours
Needs and uses: This survey is conducted to obtain essential detailed statistics in order to analyze the status of young high school graduates and dropouts in the labor force
Affected Public: Individuals or households
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 10, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-11696 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 301]

Resolution and Order Approving the Application of Wisconsin, Ltd., for a Special-Purpose Subzone in Sturgeon Bay, WI, Adjacent to the Green Bay Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, filed with the Foreign-Trade Zones Board (the Board) on November 16, 1984, requesting special-purpose subzone status for the shipyard of Bay Shipbuilding Corporation in Sturgeon Bay, Wisconsin, adjacent to the Green Bay Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subpart B, TSUS, and not incorporated into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bay Shipbuilding shall advise the Board's Executive Secretary as to significant new

contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board, Washington, D.C.

Grant of Authority to Establish a Foreign-Trade Subzone in Sturgeon Bay, Wisconsin, Adjacent to the Green Bay Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone No. 41, has made application (filed November 16, 1984, Docket No. 51–84, 49 FR 46922) in due and proper form to the Board for authority to establish a special-purpose subzone at Bay Shipbuilding Corporation's shipyard in Sturgeon Bay, Wisconsin, adjacent to the Green Bay Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed November 16, 1984, the Board hereby authorizes the establishment of a subzone at Bay Shipbuilding's Sturgeon Bay Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 41E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 6th day of May 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 11741 Filed 5–14–1985; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 303]

Approval for Amendment of Zone Plan of Foreign-Trade Zone No. 84, Harris County, TX, Within the Houston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority (PHA), Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to amend its zone plan by replacing 8 of the originally approved private sites with 10 new ones, located in Harris County, Texas, within the Houston Customs port of entry;

Whereas, the application was accepted for filing on August 29, 1984, and notice inviting public comment was given in the **Federal Register** on September 11, 1984 (Docket No. 39–84, 49 FR 35671);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is given subject to the conditions stated below;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to amend its zone plan in accordance with the application filed August 29, 1984, subject to the conditions in Board Order 214, July 15, 1983 (48 FR 34792), including the same time limitation (7/15/88), and the numbering system assigned by the Board, as amended (Table 1, amended 2/22/85). The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 6th day of May 1985.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee on Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-11742 Filed 5–14–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-501]

Offshore Platform Jackets and Piles From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before September 26, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

The Petition

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation (Kaiser) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United Statese at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on an estimate of a Japanese producer's bid price for a platform scheduled for delivery in May 1985.

Petitioners submit that due to the unique nature of the product, it would be inappropriate to base foreign market value on home market or third country sales. Thus, the petitioners based foreign market value on an estimated constructed value for the same platform based upon economic research conducted in Japan and upon Kaiser's cost estimates for its own bid on the platform. To the sum of fabrication and assembly costs, they added the statutory minimum of 10 percent for general expenses and 8 percent of general expenses and cost for profit.

Based on the comparison of these estimated values, petitioners alleged a dumping margin of 25 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on offshore platform jackets and piles and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 26, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to be seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* under item 652.97.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platform jackets and piles from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11738 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-504]

Initiation of Countervailing Duty Investigation: Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles as described in the "Scope of Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the merchandise materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before July 5, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3464 or (202) 377-0187.

SUPPLEMENTARY INFORMATION:

Petition

On April 19, 1985, we received a petition from the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers on behalf of the offshore platform jackets and piles industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that

manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since the Republic of Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and we have found that the petition meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 15, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms; subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently provided for in item 652.97 of the 1985 Tariff Schedules of the United States (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles receive benefits which constitute subsidies. We are initiating an investigation on the following allegations:

- Short-term Export Financing under the Export Financing Regulations.
- Deferred Export Loans from the National Investment Fund.
- Export Credit Financing from the Korean Export-Import Bank.
- Special and Accelerated Depreciation under Articles 11 and 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Tax Incentives for Exporters under Article 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Export Guarantees.
- Export Credit Insurance.

We have determined not to investigate the following allegation:

- Petitioners allege that the Korean platform jackets and piles producers receive preferential financing for assembly yard development from the Korea Development Bank ("KDB") and/or other government institutions. In past investigations we have found this alleged program not to be countervailable (*See, Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat-Rolled Products from Korea and Final Negative Countervailing Duty Determination: Structural Shapes from Korea* (49 FR 47284)). Petitioners have presented no new evidence or alleged changed circumstances with respect to this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of these actions, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platform jackets and piles from the Republic of Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 9, 1985.

[FR Doc. 85-11734 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before September 26, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

The Petition

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation (Kaiser) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the

Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on an estimate of a Korean producer's bid price for a platform scheduled for delivery in May 1985.

Petitioners argue that, due to the unique nature of this product, it would be inappropriate to base foreign market value on home market or third country sales of jackets and piles. Thus, the petitioners based foreign market value on an estimated constructed value for the same platform based upon Kaiser's cost estimates for its own bid on the platform adjusted for differences between U.S. and Korean labor costs and additional Korean investment costs alleged to be necessary to complete the project. To the sum of fabrication and assembly costs, they added the statutory minimum of 10 percent for general expenses and 8 percent of general expenses and cost for profit.

Based on the comparison of these estimated values, petitioners alleged dumping margins of from 48 to 53 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on offshore platform jackets and piles and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Korea are being, or are likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 26, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* (TSUS) under item 652.97.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administratively protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platforms jackets and piles from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 9, 1985.

[FR Doc. 85-11735 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-403]

Certain Welded Rectangular Carbon Steel Pipes and Tubes From Taiwan; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of postponement of preliminary antidumping duty determination.

SUMMARY: The preliminary antidumping duty determination involving certain welded rectangular carbon steel pipes and tubes from Taiwan is being postponed until not later than July 16, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION: On January 11, 1985, we published the initiation of an antidumping duty investigation to determine whether certain pipes and tubes from Taiwan are being, or are likely to be sold in the United States at less than fair value (50 FR 1614). The notice stated that we would issue our preliminary determination by May 27, 1985, but since May 27 is Memorial Day, the preliminary determination would have been due May 28, 1985.

As detailed in the notice, the petitioner alleges that imports from Taiwan of certain pipes and tubes are being, or are likely to be, sold in the United States at less than fair value.

On May 2, counsel for the petitioner, the Mechanical Tubing Subcommittee of the Committee on Pipe and Tube Imports, further alleged that sales of certain pipes and tubes are being made at below cost of production. Petitioner requested, therefore, that we make our determination of foreign market value on the basis of the respondent's costs and that the deadline for the preliminary determination be extended for 50 days in order to allow sufficient time for the cost of production investigation. We intend to issue a preliminary determination not later than July 16, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 733(f) of the Act.

Scope of Investigation

The products under investigation are welded rectangular (including square) carbon steel pipes and tubes having a wall thickness of less than 0.156 inch, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item 610.4928.

Dated: May 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11697 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification No. 3; Southwest Fisheries Center, National Marine Fisheries Service

Notice is hereby given that the

Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 413 issued on April 20, 1983 (48 FR 17638), which was modified on July 6, 1983 (48 FR 31062) and May 11, 1984 (49 FR 20047), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Regulations Governing the Taking and Importing of Marine Mammals, and the Regulations Governing Endangered Species Permits (50 CFR Parts 216 and 222).

The Permit Holder is requesting to take, on Kure Atoll, Hawaii, seventy (70) Hawaiian monk seals (*Monachus schauinslandi*) of both sexes and all age groups by bleach marking; each animal may be re-bleached once following molt. The requested take is from April through September 1985 only.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 3, 1985. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-11772 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Categories 337 (Playsuits) and 369pt. (Shop Towels)

May 10, 1985.

On April 30, 1985, the Government of the United States requested consultations with the Government of Sri Lanka with respect to Categories 337 and 369pt. (only TSUSA number 366.2740). This request was made on the basis of the agreement between the Governments of the United States and Sri Lanka relating to trade in cotton, wool and man-made fiber textile products of May 10, 1983. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the U.S. may establish prorated specific limits for the April 30-May 31, 1985 period and annual specific limits of 84,697 dozen for Category 337 and 786,445 pounds for Category 369pt. for the subsequent agreement period (June 1, 1985-May 31, 1986).

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in these categories exported during the 90-day consultation period which began on April 30, 1985 and extends through July 28, 1985 at the prescribed limits of 23,305 dozen for Category 337 and 216,396 pounds for Category 369pt.

In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter, may be charged to the limits established during the subsequent agreement year.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be pubished in the **Federal Register**.

Summary market statements for these categories follow this notice.

A description of the textile cateories in terms T.S.U.S. A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), JUne 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 337 and 369pt. under the agreement with the Government of Sri Lanka, or any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Category 337—Cotton Playsuits, Sunsuits and Washsuits

Sri Lanka—Market Statement

April 1985.

Summary and Conclusions

United States imports of Cateogry 337 from Sri Lanka were 58,300 dozens in 1984. These imports compare with 21,800 dozens in 1983. Imports from Sri Lanka were 91,600 dozen in the twelve months period ending February 1985, almost a four-fold increase from the same period one year earlier. January—February 1985 imports were 37,600 dozens, an

annual rate of 225,400 dozens. This is a sharp and substantial increase, impacting a market already adversely affected by imports.

U.S. Production

U.S. Production of Category 337 has averaged near 3,300,000 dozens annually since 1979. In 1980, production dipped to 2,953,000 dozens and in 1981 production was 3,550,000 dozens, the highest level in the 5 year period from 1979 to 1983. Production in 1983 nearly recovered from the 1982 recession impacted level, reaching 3,361,000 dozens, near the 1979–1983 average level.

Imports

U.S. imports of Category 337 from all sources increased 60 percent between 1979 and 1981 and then slowed a to a 6.5 percent increase between 1981 and 1983. In 1984 imports rose 51.3 percent to reach a record of 2,768,000 dozens. In the twelve month period ending February 1985, imports of this category were 2,935,000 dozens, 41 percent higher than the same period one year earlier.

Import to Production Ratio

The import-to-production ratio of Category 337 has grown substantially since 1979. From a level of 33.1 percent in 1979, the ratio grew to 54.4 percent in 1983. With the large increase in imports, the ratio reached an all time high in 1984.

Domestic Producers' Market Share

Domestic producers' share of this market declined from 75.1 percent in 1979 to 64.8 in 1983. In 1984 the share probably droped below 60 percent due to the large increase in imports.

Imports Value vs Domestic Producers' Price

Two-thirds of Sri Lanka's imports into the U.S. in Category 337 were concentrated in two TSUSA numbers: 383.5028 (replaces 1984 number 383.5036) girl's and infants' cotton playsuits not ornamented, not knit; 383.5034 (replaces 383.5049)—WGI other cotton playsuits, etc. not knit, not ornamented. The duty paid value for these products are below the U.S. producer price for comparable items.

Category 369 Part—Cotton Shop Towels

Sri Lanka—Market Statement

April 1985.

Summary and Conclusions

U.S. imports of Category 369 Part, shop towels, from Sri Lanka during the year ending February 1985 were 8.9 million units, more than three times the 2.5 million units imported a year earlier. Imports for the first two months of 1985 alone reached 2.95 million units, 73 percent higher than the total imported from Sri Lanka during the same period in 1984. This is a sharp and substantial increase in imports into a sector a already adversely affected by imports.

Sri Lanka is the fourth largest supplier of cotton shop towels, accounting for 10 percent of the total imports in 1985. These imports from Sri Lanka are entered at duty-paid landed values which are below the U.S. producer price for comparable towels. The continuation of increasing low-priced imports from Sri Lanka threatens to intensify the market disruption occurring in the U.S. for such towels.

U.S. Producers' Market Share

The U.S. producers' share of Category 369pt. shop towel market declined from 59 percent in 1981 to 47 percent in 1984.

U.S. Production

U.S. production of cotton shop towels declined from 162 million units in 1981 to 126 million in 1982, a decrease of 22 percent. Production regained some of the loss in 1983 and 1984 to a level of 138 million units in 1984, up 10 percent over the recession impacted 1982 level. Production in 1984 was far below any level on record prior to 1982.

U.S. Imports

U.S. Imports of Category 369Pt., after remaining relatively flat at 94 million units during 1982 and 1983 due in part to the soft domestic market and the action taken by the United States on antidumping and countervailing duty cases with specific major suppliers, increased substantially in 1984. Imports in 1984 soared to a record high of 158 million units. Imports in the first two months of 1985 were down due to limited imports from China which had utilized most of its restraint level in 1984. Imports during the year-ending February 1985 were 156 million units, an increase of 47 percent over the 106 million imported a year earlier.

Import Penetration

In one year along the ratio of imports to domestic production increased from 73 percent in 1983 to 115 percent in 1984.

Import Values

Imports from Sri Lanka are entered under TSUSA No. 366.2740—cotton shop towels, other than pile or tuft construction. The duty-paid landed value of these imports from Sri Lanka are below the U.S. producer price for comparable towels.

May 10, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which establishes levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984.

Effective on May 16, 1985 paragraph one of the directive of May 10, 1984 is hereby further amended to include the following levels of restraint for cotton textile products in Categories 337 and 369pt.[1] exported during the ninety-day period which begin on April 30, 1985 and extends through July 28, 1985:

Category	Ninety-day level[2]
337	23,305 Dozen.
369pt.[1]	216,396 Pounds.

[1] In Category 369, only TSUSA number 366.2740.
[2] The levels have not been adjusted to account for any imports exported after April 29, 1985.

Textile products in Categories 337 and 369pt.[1] which have been exported to the United States before April 30, 1985 shall not be subject to this directive.

Textile products in Categories 337 and 369pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11658 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Subpoena Pursuant to Section 8(f) of the Commodity Exchange Act, 7 U.S.C. 12(f)

The Commodity Futures Trading Commission ("CFTC") hereby gives notice pursuant to section 8(f) of the Commodity Exchange Act, 7 U.S.C. 12(f), to persons who submitted information to the CFTC that is the subject of a subpoena served on the CFTC on April 15, 1985.[1] The subpoena directs the CFTC to provide a variety of information on and relating to live and feeder cattle contracts traded on the Chicago Merchantile Exchange from April 1, 1978 until December 31, 1980. The subpoena also directs the Commissioner to provide certain information which refers or relates to: REFCO, Inc., Thomas H. Dittmer, Paul Engler, Edward C. Apel, Ed Cox, Jr., Ed Cos, Sr., Howard Foley, Randy Kreiling, Raymond Lacy, Artie Nelson, Charles D. McVean, Robert L. Bone, Roy Woods, Robert Gottsch, Virgil Gottsch, Bruce Strange, Steven Johns, James Dudley, Cactus Feeders, Cactus Growers, Cactus, Inc., Double Tree Cattle Co.,

[1] In Category 369, only TSUSA number 366.2740.

[1] The subpoena was served at the behest of plaintiffs in five cases currently pending in the United States District Court for the Northern District of Iowa: *William Utesch, et al., v. Thomas H. Dittmer and REFCO, Inc.*, No. C 83-4154; *Clarence Vos, et al., v. Thomas H. Dittmer and REFCO, Inc.*, No. C 83-4155; *Victor C. Tomka v. Thomas H. Dittmer and REFCO, Inc.*, No. C 83-4156; *Eugene Von Roekel v. Thomas H. Dittmer and REFCO, Inc.*, No. C 83-4157; and *Mick Dra v. Thomas H. Dittmer and REFCO, Inc.*, No. C 83-4158. The subpoena issued out of the United States District Court for the District of Columbia. *William Utesch, et al. v. Thomas H. Dittmer, et al.*, F.S. 85-0237.

Double Tree Commodities, Agri Beff Financial, Frontier Feed Yards, and/or the Dittmer Family Trust. Documents produced pursuant to the subpoena may contain information submitted to the CFTC by persons that participated or were involved in the above-described matters. Any person who wishes a copy of the subpoena should contact M. Donley-Hoopes, Esq., Office of the General Counsel, CFTC, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-9880. The CFTC will disclose information pursuant to the subpoena after the expiration of fourteen days from the date of this publication.

Whitney Adams,

Deputy General Counsel.

[FR Doc. 85-11794 Filed 5-14-85; 10:07 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 14, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Wester (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State and Federal Law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 10, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Pell Grant Program Student Validation Roster
Agency Form Number: ED 255-4
Frequency: As necessary
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 1,000; Burden Hours: 12,000
Recordkeeping Burden: Recordkeepers: 1,000; Burden Hours: 500

Abstract: The Student Validation Roster is prepared by the Department and sent to participating postsecondary educational institutions to determine the accuracy of the Pell Grant recipient data previously submitted on the Student Aid Report. A school notates corrections on this roster and returns it to the Department for subsequent updating of the Department data which is then processed for end-of-year adjustments to the Pell authorization level at that school.

Type of Review Requested: Extension
Title: Lender's Application for Payment of Insurance Claim for the Federal Insured Student Loan Program
Agency Form Number: ED 1207
Frequency: On occasion
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 36,000; Burden Hours: 5,400
Recordkeeping Burden: Recordkeepers: 12,000; Burden Hours: 1,400

Abstract: This form is used by lenders to request payment of claims on defaulted Federal insured student loans. It provides the Department with loan and payment history which is essential in determining the validity of a claim and the amount to be paid to the lender.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Institutional Characteristics of Postsecondary Institutions, 1985-86
Agency Form Number: G50-12P
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 12,000; Burden Hours: 6,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey collects characteristics of institutions of postsecondary education in order to develop and maintain the Integrated Postsecondary Education Data System control file. The data requested includes the name, address, telephone number and type of institution, as well as tuition and fees information. Institutional accreditation is also verified.

[FR Doc. 85-11745 Filed 5-14-85; 8:45 am]

BILLING CODE 4000-01-M

Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between September 25, 1984, and March 15, 1985. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Elementary and Secondary Education

Appeal of the State of California, Docket No. 39–(171)–84, ACN 09–30029

California requested review of a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed Title I training and conference costs claimed by the Richmond Unified School District for fiscal years 1981 and 1982.

The Assistant Secretary disallowed conference costs finding that the costs were not necessary and reasonable for proper and efficient administration of the Title I program and that the conferneces were not designed to meet the special needs of educationally deprived students.

The Department seeks a refund of $21,255. California concedes liability of $3,046. The sum of $18,209 remains at issue.

Appeal of the State of California, Docket No. 42–(174)–84, ACN 09–30034

The State appealed a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The audit reviewed travel and conference costs charged to the Title I program by the Los Angeles Unified School District during fiscal years 1981 and 1982.

The Assistant Secretary disallowed costs of food and lodging associated with training seminars because the costs were allegedly unnecessary, imprudent, and extravagant. The Assistant Secretary also disallowed conference costs finding that the conferences were general and failed to meet specific needs of educationally deprived students.

The Department seeks a refund of $699,450. California disputes liability.

Appeal of the Texas Education Agency, Docket No. 43–(175)–84, ACN 06–40101

The Texas Education Agency (Texas) requested review of a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The final audit determination was based on an investigation of the Title I program in the Apple Springs Indepdent School District for fiscal years 1979 through 1981.

The Assistant Secretary disallowed salary costs of employees who performed functions unrelated to Title I.

The Department seeks a refund of $33,275. Texas disputes liability.

Vocational Rehabilitation

Appeal of Multi Resource Centers, Incorporated, Docket No. 40–(172)–84, ACN 05–30058

Multi Resource Centers, Incorporated, of Minneapolis, Minnesota, appealed a final audit determination issued by the Acting Regional Commissioner of the Rehabilitation Services Administration. The underlying audit reviewed costs claimed for the period July 1, 1981, through June 30, 1982.

The Acting Regional Commissioner disallowed personnel costs which were not adequately documented.

The Department seeks a refund of $7,725. Multi Resource Centers agrees to repay $1,147. The sum of $6,578 remains at issue.

Appeal of Rhode Island Department of Social and Rehabilitative Services, Docket No. 5–(180)–85, ACN 01–30020

The Rhode Island Department of Social and Rehabilitative Services (Rhode Island) requested review of a final audit determination issued by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on an audit of Rhode Island's vocational rehabilitation program administered under the Rehabilitation Act of 1973.

The Regional Commissioner disallowed costs for training grants because grants allegedly were made without regard to economic need. A training encumbrance was disallowed because services allegedly were provided without obtaining prior or contemporaneous authorization.

The Department seeks a refund of $93,209.14. Rhode Island disputes liability.

Miscellaneous Programs

Appeal of Albany State College, Docket No. 41–(173)–84, ACN 04–30021

Albany State College, Albany, Georgia, appealed a final audit determination issued by the Office of Student Financial Assistance (OSFA) and the Assistance Management and Procurement Service (AMPS). The underlying audit reviewed programs under Title III of the Higher Education Act and student financial assistance programs. The Board has jurisdiction only over the Title III programs.

AMPS disallowed costs charged to the Title III program because the matching requirement allegedly was not met, Federal funds allegedly supplanted other funds, charges were allegedly unallowable, costs were allegedly documented inadequately, costs allegedly were incurred outside the grant period, and funds allegedly were converted for personal use. AMPS also requested the return of monies refunded to Albany State College by Valdosta State College.

The Department seeks a refund of $1,301,414. Of this amount $388,351 involves student financial assistance which is outside the Board's jurisdiction. Of the $913,063 under the Board's jurisdiction, Albany State College has agreed to repay $4,300. The sum of $908,763 remains at issue.

Appeal of Board of School Commissioners of Mobile County, Docket No. 1–(176)–85, ACN 04–30002

The Board of School Commissioners of Mobile County, Alabama (Mobile County), requested review of a final audit determination issued by the Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of Emergency School Aid Act programs administered by Mobile County during the period July 1, 1980, through April 30, 1982.

AMPS disallowed costs which allegedly were inadequately documented, not part of an approved project, unallowable, and unrelated to program activities.

The Department seeks a refund of $253,048. Mobile County disputes the liability.

Appeal of the State of Colorado, Docket No. 2–(177)–85, ACN 08–30020

Colorado appealed a final audit determination by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed the handicapped child

count at the Boulder RE-2 School District.

The Assistant Secretary disallowed expenditures for fiscal years 1980 through 1982 based on an alleged overcount of eligible handicapped children.

The Department seeks a refund of $600,406. Colorado disputes its liability.

Appeal of Lillian Anthony (Individually), Docket No. 4-(179)-85, ACN 03-30011.

Lillian Anthony, Washington, D.C., requested review of a final audit determination issued by the Assistance Management and Procurement Service (AMPS). The underlying audit reviewed a grant made to Ms. Anthony under the Women's Educational Equity Act for the period October 1, 1980, through June 30, 1982.

Costs were disallowed because the charges allegedly were unallowable, inadequately documented, and unrelated to the purpose of the grant. AMPS also requested the return of unexpended funds.

The Department seeks a refund of $26,935.63. Ms. Anthony disputes this liability.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

These applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202) 245-7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: May 9, 1985.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85-11744 Filed 5-14-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Regional Educational Laboratories and Research and Development Centers Program; Correction

AGENCY: Department of Education.

ACTION: Correction—Regional Educational Laboratories and Research and Development Centers Program; Notice of Additional Information for the Transmittal of Applications for Grants for Institutional Operations for NIE Research and Development Centers.

SUMMARY: On May 14, 1985, a notice providing additional information for applicants under the Regional Educational Laboratories and Research and Development Centers Program was published at 50 FR 20122.

On page 20123, first column, second line, under "ADDITIONAL INFORMATION FOR APPLICANTS (GENERAL)", after the first indented phrase that ends "and the Center on Effective Secondary Schools.", the following sentence is added: "Applicants are advised that the Secretary discourages the use of Department of Education funds for development of instructional materials."

Dated: May 14, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-11970 Filed 5-14-85; 12:35 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy.

ACTIONS: Notice of DOE commercial activities scheduled for study in accordance with OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A-76 (dated August 1983), the DOE is publishing a revised inventory of its commercial activities scheduled for study. The listing also provides the principal location of the activity and the proposed review date. This inventory supersedes all previously published inventories. The Department will publish from time to time additions, changes and deletions to this inventory of commercial activities.

Organization and activity description	Geographic location	Date of review
Albuquerque Operations Office		
Plant and vehicle maintenance.	NM: Albuquerque	Dec. 1984
Mail and file services	do	Do.
Supply operations	do	Jan 1986
Museum/library operations	do	Do.
Computer operations and data services	do	Jun 1986
Bonneville Power Administration		
Health care services	OR: Portland	May 1984
Heavy equip/vehicle maintenance	do	Mar 1985
Maintenance/shop support	WA: Vancouver	Sept 1985
Mail services	OR: Portland	Jan. 1986
Supply and facility services	do	May 1986
Warehouse operations	WA: Vancouver	Do
Graphics services	OR. Portland	Sept 1986
Library operations	do	Jan 1987
Engin photogrammetry, surveying	do	May 1987
Employee development and training	do	Sept. 1987
Computer operations/data analysis	do	Jan 1988
Assistant Secretary, Conservation and Renewable Energy		
Correspondence management	DC: Washington	July 1985
Chicago Operations Office		
Facilities support	NY: New York	Aug 1985
Computer operations	do	Jan 1986
Assistant Secretary, Defense Programs		
Records management	DC: Washington	May 1985
Energy Information Administration		
Computer operations/data analysis	do	Aug 1985
General Counsel		
Patent docket control	do	Apr 1985
Law library operations	do	Do
Office of Hearings and Appeals		
Document review and control	do	June 1985
Idaho Operations Office		
Dosim, env sic/anal, chem ops	ID: Idaho Falls	Apr 1985
Fire prevention	do	Jan 1986
Assistant Secretary, Management and Administration		
Payroll operations	MD: Germantown	Jan 1985
ADP operations and message services	DC: Washington	Sept. 1985
Photo and graphics services	do	Jan 1986
Morgantown Energy Technology Center		
Lab mech, instr fab and assembly.	WV: Morgantown	May 1985
Lab services (mech/elec/test).	do	Do
Oak Ridge Operations Office		
Mail, messenger and records	TN: Oak Ridge	Do
Photographic services	do	Jan. 1986
Office of Scientific and Technical Information		
Computer operations	do	Sept. 1985
Descriptive cataloging	do	June 1986
Pittsburgh Energy Technology Center		
Coal conv, util and lab suprt services	PA: Pittsburgh	May 1985
Southeastern Power Administration		
Mail and library services	GA: Elberton	July 1985
Janitorial services	do	Oct 1985

Organization and activity description	Geographic location	Date of review
San Francisco Operations Office		
Supply services	CA: San Francisco.	May 1985
Vehicle operations	......do	Do
Southwestern Power Administration		
Engineering technical support.	OK: Tulsa	Apr. 1985.
Visual information support.	......do	Oct. 1985.
Right-of-way management.	......do	Feb. 1986.
Computer operations/ data analysis.	......do	Mar. 1986
Mail and administrative support.	......do	Aug. 1986.
Facility support	......do	Oct. 1986.
Western Area Power Administration		
Mail and file services	MT. Billings	Jun. 1985.
Do	UT. Salt Lake City	Do
Supply management/ warehouse ops.	MT: Billings	June 1986
Do	NV: Boulder City	Do
Facility, grounds, utility maint.	CO: Fort Collins	Jan. 1987.
Do	NV. Boulder City	Do
Do	CA: Sacramento	Do
Vehicle maintenance	NV: Boulder City	Do
Do	UT. Salt Lake City	Do
Do	MT: Billings	Do

FOR FURTHER INFORMATION CONTACT: Ray Mayfield, Chief, Management Systems Development and Evaluation, Department of Energy (MA-213.2), Room 4B-194, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C. May 2, 1985.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 85-11693 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Refinery Survey Task Group Meeting Change

Federal Register Notice of May 1, 1985, (50 FR 18551) announcing the date of the May 16, 1985, sixth meeting of the Refinery Survey Task Group to be held in the National Petroleum Council Conference Room has been changed. The new date should read: Wednesday, May 15, 1985, starting at 9:00 am.

Issued at Washington, D.C., May 3, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-11775 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Request for Comments on the Annual Report for Enhanced Oil Recovery Incentive Program, Form FE-748

AGENCY: Energy Information Administration, DOE.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), through its Energy Information Administration (EIA), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, EIA requests comments on the continuing use of the Annual Report for Enhanced Oil Recovery (EOR) Incentive Program form. The form is described in the Supplementary Information Section of this Notice. Interested persons are asked to review the form and its instructions and provide comments to the information contact described below.

EFFECTIVE DATE: Written comments must be submitted on or before June 14, 1985.

ADDRESS: Comments should be sent to Mr. James Chism at the address listed immediately below.

FOR FURTHER INFORMATION OR COPIES OF THE FORM OR INSTRUCTIONS CONTACT: Mr. James Chism, Director, Multi-Well Experiment, Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comment Procedures

I. Background

The EIA announces a proposed extension of the Form FE-748, "Annual Report for Enhanced Oil Recovery (EOR) Incentive Program." The information on Form FE-748 is requested annually from all individuals or companies that had EOR projects approved for the Incentive Program. This form provides DOE and industry with the only readily available sources of data with which to assess the performance and success of the projects in the Incentive Program. The form provides information on changes in well data and description of operation, and average monthly production and injection.

II. Comment Procedures

The EIA invites prospective respondents and users of the data from this collection to comment within 30 days of the publication of this notice. The following general guidelines are provided to assist in the responses.

(As a potential data provider:)

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for computation, preparation and administrative review, will it take your organization to complete and submit the form?

E. What is the estimated cost of completing the form, including direct and indirect costs associated with the data collection? Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP, and other administrative costs, directly attributable to providing this information?

G. How can this form be improved?

(As a potential data user:)

A. Can your company analysts use data at the levels of detail indicated on the forms?

B. For what purpose would you use these data? (Be specific.)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data, and do you now use them? What are their deficiencies?

EIA is also interested in receiving comments from persons as to their views on the need for the collection of this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, DC, on May 9, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 85-11694 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RE84-3-001]

Alabama Power Co.; Application for Exemption

May 9, 1985.

Take notice that Alabama Power Company (APC) filed an application on April 26, 1985, for exemption from

certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption APC states, in part, that it should not be required to file the specified data for the following reasons:

> In view of the extent to which the Section 133 data filings duplicate information that is readily available from other sources, and the very limited utilization of the Section 133 data, it is apparent that the benefits, if any, of such filings do not offset the effort and costs associated with compiling the data. The value of this data collection falls far short of the burdens it imposes. It is in the best interest of APC and its customers for FERC to grant APC a permanent exemption from the filing requirements of Section 133 as requested.

Copies of the application for exemption are on file with FERC and are for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person must also serve a copy of such comments on:

Mr. Elmer B. Harris, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291

and

Mr. S. Eason Balch, Jr., Balch and Bingham, P.O. Box 306, Birmingham, Alabama 35201.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11720 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-144-000]

Algonquin Gas Transmission Co.; Notice of Change in Tariff Under Rate Schedule I-2

May 8, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on May 2, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet Nos. 323, 324, and 325—Rate Schedule I-2
Third Revised Sheet Nos. 639 and 640—General Terms and Conditions

Algonquin Gas states that the above-mentioned tariff sheets are being filed to incorporate into Algonquin Gas' FERC Gas Tariff, Second Revised Volume No. 1, the expansion of Rate Schedule I-2 to render interruptible service under Rate Schedule I-2 to include the winter period, November 16 through April 15 of each year.

Algonquin Gas, further states that the expansion of the service to include winter period deliveries may bring deliveries within the period that Algonquin Gas generally operates its compressor facilities. Accordingly, Rate Schedule I-2 is being amended to include a fuel reimbursement provision as is reflected in similar provisions of other existing rate schedules.

Algonquin Gas proposes the effective date of said tariff sheets to be June 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest and filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's rule of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11748 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. P-8198-001 et al.]

Ball Club Associates; Surrender of Preliminary Permits

May 9, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Ball Club Associates

[Project No. 8198-001]

Take notice that Ball Club Associates, Permittee for the proposed Roxanne Nevenner Project No. 8198, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 17, 1984, and would have expired on February 28, 1986. The project would have been located on the Mississippi River in Itasca County, Minnesota. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

2. Carter County Associates

[Project No. 8348-001]

Take notice that Carter County Associates, Permittee for the proposed Julie White Project No. 8348, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 4, 1984, and would have expired on May 31, 1986. The project would have been located on Little Sandy River in Carter County, Kentucky. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

3. Clyde and Rubie Beverland

[Project No. 7818-001]

Take notice that Clyde and Rubie Beverland, Permittee for Lava Creek Hydroelectric Project No. 7819, has requested that its Preliminary Permit be terminated. The preliminary permit was issued on June 19, 1984, and would have expired on November 30, 1985. The project would have been located Lava Creek, near Arco, within the U.S. lands administered by BLM in Butte County, Idaho.

The Permittee filed the request on March 25, 1985.

4. Greenwich Associates

[Project No. 8008-001]

Take notice that Greenwich Associates, Permittee for the proposed

Lower Greenwich Project No. 8008, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 27, 1984, and would have expired on April 30, 1986. The project would have been located on the Battenkill River in Washington County, New York. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

5. Hamilton Associates

[Project No. 7886-001]

Take notice that Hamilton Associates, Permittee for the Jay Snelgrove Project No. 7886, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7886 was issued on August 29, 1984, and would have expired on July 31, 1986. The project would have been located on the South Fork Nooksack River in Skagit County, Washington.

The Permittee filed the request on April 8, 1985.

6. Newhalem Associates

[Project No. 7870-001]

Take notice that Newhalem Associates, Permittee for the Kent Wallin Project No. 7870, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7870 was issued on September 24, 1984, and would have expired on August 31, 1986. The project would have been located on Illobot Creek in Skagit County, Washington, within the Mt. Baker National Forest.

The Permittee filed the request on April 8, 1985.

7. Northwest Power Company, Inc.

[Project No. 6578-003]

Take notice that Northwest Power Company, Inc., Permitte for the proposed Grouse Creek Project No. 6578, has requested that its perliminary permit be terminated. The perliminary permit was issued on May 5, 1983, amended on June 27, 1984, and would have expired April 30, 1986. The project would have been located on Grouse Creek in Humboldt County, California.

The Permitte filed the request on April 8, 1985.

8. Puget Sound Power & Light Company

[Project No. 5402-004]

Take notice that Puget Sound Power & Light Company, Permitte for the West Fork Miller River Project No. 5402, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5402 was issued on September 27, 1982, and would have expired on August 31, 1985. The project would have been located on the West Fork Miller River in King County, Washington.

The Permittee filed the request on April 4, 1985.

9. Schneider Hydropower Company/ Energenics Systems Inc.

[Project No. 8061-001]

Take notice that the Schneider Hydropower Company/Energenics Systems Inc. Permittee for the Norristown Project No. 8061 located on the Schuylkill River in Chester and Montgomery Counties, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on September 17, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Norristown Project did not indicate feasibility for development.

The Permittee filed the request on April 18, 1985.

10. Schneider Hydropower Company/ Energenics Systems Inc.

[Project No. 8064-001]

Take notice that the Schneider Hydropower Company/Energenics Systems Inc. Permittee for the Vincent Dam Project No. 8064 located on the Schuylkill River in Chester and Montgomery Counties, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on September 18, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Vincent Dam Project did not indicate feasibility for development.

The Permittee filed the request on April 18, 1985.

Standard Paragraphs:

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11727 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE 84-1-001]

Central Illinois Public Service Co.; Application for Exemption

May 9, 1985.

Take notice that Central Illinois Public Service Company (CIPS) filed an application on April 11, 1985, for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption CIPS states, in part, that it should not be required to file the specified data for the following reasons:

CIPS' continued compliance with Part 290 is unlikely to serve the purposes of Section 133 of PURPA. Since the Illinois Commerce Commission has completed the consideration of ratemaking standards mandated by Title I of PURPA, and since Part 290 information is unlikely to be necessary or utilized to any significant extent by either the illinois Commerce Commission or intervenors in any CIPS rate proceeding, CIPS submits that its incurrence of expected substantial costs in connection with future Part 290 filings would be unjustified and that the requirements imposed by Part 290 constitute an unwarranted burden on CIPS.

The Illinois Commerce Commission supports the applicant's request for a blanket exemption from the filing requirements of PURPA Section 133 and 18 CFR Part 290 for the June 30, 1986 filing and all subsequent filings.

Copies of the application for exemption are on file with FERC and are for public inspecition. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426., on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person

must also serve a copy of such comments on: Mr. Carl F. Wall, Vice President, Central Illinois Public Service Company, 607 East Adams Street, Springfield, Illinois 62701.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11721 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-106-001 et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP83-106-001]

May 8, 1985.

Take notice that on April 18, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP83-106-001, pursuant to Section 7 of the Natural Gas Act, an amendment to its pending application in Docket No. CP83-106-000, reflecting revisions to the maximum daily volumes obligations (MDVO) requested by K N Energy, Inc. (K N), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states the amendment revises the MDVO's for the towns of Lakin, Deerfield, and Holcomb, Kansas. Applicant states that these towns are currently served by K N pursuant to a gas exchange agreement (agreement) dated March 15, 1968, as amended, between K N and Applicant, but that upon termination of the agreement as proposed in the pending application in Docket No. CP83-106-000, these towns would be added as sales delivery points under the existing service agreement between Applicant and K N. All other aspects of the original application in Docket No. CP83-106-000 remain unchanged.

Comment date: May 29, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP85-451-000]

May 8, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-451-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression, pipeline and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central requests authority to install two 600 horsepower compressors and appurtenances at the Chanute compressor station in Allen County, Kansas. Northwest Central also requests authority to construct and operate 5.1 miles of 12-inch pipeline and appurtenances in Allen County, Kansas. The proposed facilities would enable Northwest Central to transport 15,000 Mcf per day of natural gas production available from the Cambridge 16-inch pipeline north to its Humbold compressor station, it is stated. Production in the area presently is limited due to facilities and pressure conditions, it is explained.

Northwest Central states that the estimated cost of the proposed facilities is $1,904,000, which would be paid from treasury cash.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP85-460-000]

May 8, 1985.

Take notice that on April 24, 1985, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-460-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate on-system sales taps for delivery of gas to new or existing direct retail customers, under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001, as amended in Docket No. CP83-140-002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of 5 sales taps to various end-users located along its jurisdictional pipelines. Applicant has proposed sale of approximately 67 Mcf on a peak day and approximately 4,520 Mcf of natural gas on an annual basis to 5 residential end-users. It is stated that the proposed sales taps are not prohibited by any of Applicant's exisiting tariffs and that the additional taps would have no significant impact on its peak day and annual deliveries. It is further stated that the gas delivered and sold by the Applicant to the various end-users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jursidciton. The name of each customer, location of taps, the quantity of gas to be sold and the end use of gas is as follows:

Customer	Location of tap	Approximate quantity to be sold (Mcf)		End use of gas
		Peak day	Annual	
Leland Potter	Franklin Co., Nebraska	[illegible]	2,400	Grain drying.
Central Contracting Corporation	Buffalo Co., Nebraska	10	600	Small commercial.
Ralph Katzberg	Adams Co., Nebraska	25	[illegible]	Irrigation.
Richard Nash	Goshen Co., Wyoming	[illegible]	120	Domestic.
McConathy Production Company, Inc	Kearny Co., Kansas	10	[illegible]	Small commercial.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Eastern Shore Natural Gas Company

[Docket No. CP85-89-001]

May 7, 1985.

Take notice that on April 18, 1985, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP85-89-001 an amendment to its pending application filed on November 6, 1984, in Docket No. CP85-89-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect changes in its request for a certificate of public convenience and necessity authorizing Applicant to provide additional firm contract demand service to several of its existing customers, initiate firm storage service under two new rate schedules to several of its existing customers, construct and operate certain new pipeline and compressor facilities required to provide the additional firm sales and storage service, reduce its currently authorized firm service to Stauffer Chemical Company from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day, and increase interruptible service to several of its existing customers, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is indicated that in the application filed November 6, 1984, Applicant proposed to provide additional firm contract demand service to several of its

existing jurisdictional customers and to one direct sale customer totaling 4,225 dt equivalent of gas per day effective November 1, 1984, and November 1, 1985. Furthermore, Applicant proposes to render firm storage service to several of its existing customers up to 50,000 dt equivalent of storage capacity and up to 1,000 dt equivalent per day of withdrawal capability effective November 1, 1984, under a proposed Leidy storage service, and provide up to 1,300 dt equivalent per day of withdrawal capability effective November 1, 1984, and an additional 35,000 dt equivalent of storage capacity and 700 dt equivalent per day of withdrawal capability, effective November 1, 1985, under a proposed Rate Schedule CWS. Applicant indicaeted that it proposesd to construct and operate on its system 9.65 miles of 12-inch looping, 11.55 miles of 10-inch looping, and two 360 horsepower compressor units, totaling $4,949,597, for the 1984–85, 1985–86 winter seasons. Applicant also proposed to reduce Stauffer Chemical Company's daily contract demand from 3,600 dt equivalent of gas per day to 2,800 dt equivalent per day and proposed to increase the level of interruptible gas service to four of its direct sale customers by an additional 70,950 dt equivalent of gas per day.

Applicant requests authorization in Docket No. CP85–89–001, to increase the firm contract demand service to several of its existing jurisdictional customers and to one direct sale customer in the following amounts:

Customer	Current con-[illegible] demand	Additional quantity requested (dt per day) Nov. 1, 1984	Nov 1, 1985	Total [illegible] quantity
Delaware Division	6,230	780	295	1,075
Citizens Division	3,105	[illegible]	100	[illegible]
Easton Utilities Commission	1,515	[illegible]	[illegible]	[illegible]
American Hoechst Corporation	100	100	0	100
Total (dt per day)		1,200	425	1,625

It is indicated that Columbia Gas Transmission Corporation (Columbia) would amend its application in Docket No. CP85–94–000 to reflect the new firm service being proposed by Applicant.

Applicant further requests authorization to render firm storage service to the following customers which have indicated a desire to enter into service agreements under two proposed initial rate schedules, the Leidy storage service (LSS) and the Columbia winter service (CWS)

RATE SCHEDULE LSS

[Effective Nov. 1, 1984 (or such later date as the Commission may authorize)]

Customer	Storage withdrawal demand (dt per day)	Storage capacity (dt)
Delaware Division	580	29,000
Citizens Division	200	10,000

RATE SCHEDULE LSS—Continued

[Effective Nov. 1, 1984 (or such later date as the Commission may authorize)]

Customer	Storage withdrawal demand (dt per day)	Storage capacity (dt)
Cambridge Gas Co.	110	5,500
Total	890	44,500

RATE SCHEDULE CWS OR CONTRACT*

Customer	Nov. 1, 1984 (or such later date as the Commission may authorize)		Nov. 1, 1985	
	Storage withdrawal demand (dt per day)	Storage capacity (dt)	Storage [illegible] demand (dt per day)	Storage capacity (dt)
American Hoechst Corporation*	0	[illegible]	[illegible]	2,500
Formosa Plastics Corporation*	350	17,000	0	0
Delaware Division	810	40,500	[illegible]	19,000
Citizens Division	200	10,000	220	11,000
Cambridge Gas	[illegible]	[illegible]	100	5,000
Total	1,360	[illegible]	750	37,500

Applicant states that the LSS storage service would still be provided pursuant to an underlying storage service provided to Applicant by Transcontinental Gas Pipe Line Corporation under authority granted by the Commission on October 3, 1984, in Docket No. CP84–335–000. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule LSS included as Exhibit P of the amendment.

It is indicated that the CWS storage service would still be provided by Applicant pursuant to an underlying storage service proposed under Columbia's Rate Schedule WS pending the Commission's action in Docket No. CP85–94–000. Applicant states that Columbia would amend its application in Docket No. CP85–94–000 to reflect the revised storage service being proposed by Applicant. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule CWS included in Exhibit P of the amendment.

Applicant also requests authorization to construct and operate new pipeline and compressor facilities required to (1) accommodate the increased contract demand and firm storage service requested by its customers to become effective November 1, 1984 (or such later date as the Commission may authorize) and November 1, 1985, and (2) meet the new design day requirements based on a 67 degree day instead of the past 60 degree day as a design day. Applicant states that it requires the construction and installation of 8.7 miles of 12-inch loop line on its existing 8-inch Parkersburg, Pennsylvania line; 11.1 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware, and a compressor station 0.6 mile south of Applicant's existing interconnection with Columbia, located at Dalesville, Pennsylvania, to serve new design day requirements and increased requirements. Applicant submits that the compressor station would be tied into the interconnection with 3,200 feet of 12-inch line and would include two 360-horsepower untis, one of which would be a back-up unit. Applicant states that the estimated cost of these facilities would be approximately $4,621,306 and would be financed initially by internally generated funds together with short-term notes.

To serve the additional firm contract demand and storage service requirements and new design day requirements proposed for the 1985–86 winter season, Applicant requests authorization to construct and operate 2.0 miles of 12-inch loop line on its existing 8-inch Parkersburg line and 2.20 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware. Applicant states that the estimated costs of these facilities would be approximately $651,239 also to be financed initially by internally generated funds together with short-term notes.

Applicant still requests authorization to reduce the contract demand of Stauffer Chemical Company, a direct sales customer, from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day.

Lastly, Applicant still requests authorization to increase the level of interruptibie gas service for four of its direct sale customers shown below.

Customer	Current interruptible sales authority (dt per day)	Proposed additional interruptible sales authority (dt per day)	Proposed total interruptible sales authority (dt per day)
City of Dover	15,000	25,000	40,000
Getty Refining and Marketing Company (Getty)	20,000	40,000	60,000
Stauffer Chemical Company	3,050	2,950	6,000
Formosa Plastics Corporation	3,000	3,000	6,000

Applicant states that no additional facilities would be required to render the increased interruptible service at the proposed increased levels, with the exception of an additional meter at the Getty refining complex. Applicant requests authority to install and operate this additional meter as needed at an estimated cost of $10,000.

Applicant indicates that the additional interruptible sales proposed would have no impact upon Applicant's curtailment plan and include no new high-priority or essential agricultural uses, as defined in the Natural Gas Policy Act of 1978.

Comment date: May 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP85-440-000]

May 8, 1985.

Take notice that on April 16, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-440-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18. CFR 157.205) for authorization to transport natural gas on behalf of Wagner Castings Company (Wagner) under the certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 2,500 Mcf of natural gas per day on an interruptible basis on behalf of Wagner pursuant to a transportation agreement dated March 12, 1985. Panhandle states it requests authorization from the date automatic authorization expires until the earlier of (1) 12 months from March 12, 1985, (2) termination of authorization as provided in Subpart F of Part 157 of the Commission's Regulations, or (3) termination of the transportation agreement by either of the parties.

Panhandle states that Wagner has entered into a natural gas purchase agreement with Grand Resources, Inc. (Grand), for the purchase of up to 1.5 billion Btu of natural gas per day. Panhandle further states it would receive the natural gas at an existing point of receipt between Panhandle and Grand in Cimarron County, Oklahoma, and would then transport and redeliver such natural gas, less a four percent reduction for fuel, to Illinois Power Company (Illinois Power) at an existing point of connection in Macon County, Illinois. It is explained that Illinois Power in turn would make ultimate delivery to Wagner for use at its facilities in Decatur, Illinois. Panhandle indicates that Illinois Power is an existing jurisdictional customer of Panhandle and Wagner is an end-use customer of Illinois Power.

Pannhandle proposes to charge Wagner a transportation rate pursuant to its Rate Schedule OST, which rate is currently 42.0 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery. Panhandle states that the Rate Schedule OST excess service rate is currently 87.0 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Panhandle indicates that the natural gas would be used at Wagner's facility for heat treat furnaces, scrap heaters, ladle burners and make up air. Panhandle also indicates that no intermediary participated in the transaction between Grand and Wagner.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Sea Robin Pipeline Company

[Docket No. CP85-432-000]

May 8, 1985.

Take notice that on April 12, 1985, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-432-000 an application pursuant to Section 7(C) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 500 Mcf of natural gas per day for Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the proposed transportation service on February 8, 1984, under the short-term authorization in Docket No. ST84-263-000 under Order No. 60. Applicant further states that it entered into a transportation agreement with Columbia Gas dated December 4, 1984, to provide the transportation sevice proposed herein for an initial term of five years from the certificate date and year to year thereafter.

More specifically, Applicant states that Columbia Gas would cause gas attributable to production from Eugene Island Area Block 273, offshore Louisiana, to be measured in Eugene Island Area Block 260, platform B, and delivered to Applicant at an existing subsea tap on Applicant's pipeline in Block 273, Eugene Island Area, from which point Applicant proposes to transport and redeliver the gas for the account of Columbia Gas to Columbia Gulf Transmission Company at the terminus of Applicant's system near Erath, Louisiana. Applicant proposes to charge Columbia Gas its currently effective demand charge of $3.82 as well as its currently effective commodity charge of 73.0 cents for each Mcf of natural gas transported.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP85-464-000]

May 6, 1985.

Take notice that on April 25, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-464-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Southern's jurisdictional customers pursuant to the terms of a Flexible Discount Rate Schedule proposed to be in effect from May 1, 1985, through October 1, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that over the course of the last several years Southern has experienced a precipitous decline in sales on its system from an annual level of 627,000,000 Mcf in 1981 to 526,000,000 Mcf in 1982, 489,000,000 Mcf in 1983 and 469,000,000 Mcf in 1984. It is further stated that while certain of the factors which caused the sales decline in the early 1980's, for example, the economic recession and concomitant plant closings in the Southeast, have since moderated, certain other factors such as reduced purchases by Southern's pipeline customers, conversion of some industrial boilers to coal, conservation and competition from alternative fuels, continue to contribute to the downward sales spiral on Southern's system. As a result of these factors, Southern initially projected that its sales in 1985 would further decline to approximately 445,000,000 Mcf. Recent and radical changes in the market conditions in Southern's service area, however, resulting from increased competition from gas transportation services which are being used to transport gas into and displace sales to Southern's core-markets make it clear that Southern's original sales estimate for 1985 is considerably overstated.

In order to respond to the current competitive environment and with the goal of abating, if at all possible, further sales losses on Southern's system, Southern proposes herein to sell gas to all of its jurisdictional customers at a discounted rate pursuant to the terms of a proposed Flexible Discount Rate Schedule. It is asserted that the proposed rate schedule would provide an incentive for all of Southern's existing customers to maintain purchases at or near the levels at which they purchased during 1984. Southern states that thjis should not only assist Southern in preventing further erosion in its sales level, but should be beneficial to Southern's customers since purchases at the discount rate would reduce their average cost of gas from Southern.

Under the terms of Southern's discount rate schedule, which is proposed to be in effect from May 1, 1985, through October 31, 1985, any existing jurisdictional customer of Southern would be eligible to purchase volumes of gas in excess of a threshold level at a discounted rate, if the purchase is made at existing points on Southern's system. Under the terms of the proposed Flexible Discount Rate Schedule, for each month during the period from May 1, 1985, through October 31, 1985, the threshold level would be the lesser of (i) 42.5 percent of the customer's contract demand during the applicable month or (ii) 90 percent of the volume of gas purchased by that customer during the corresponding month in 1984. All volumes of gas sold to any of Southern's existing jurisdictional customers in excess of that threshold volume would be priced at the applicable discount rate, it is stated.

Southern states that there are no end-use restrictions applicable to gas purchased under the Flexible Discount Rate Schedule. Accordingly, all of a distributor's customers, industrial, commercial and residential, would through their distributor have equal access to and be benefited by the discount gas sold under the proposed rate schedule.

Since the discount sales must be made at existing delivery points on Southern's system, Southern does not seek authorization to construct any new facilities in connection with the implementation of its Flexible Discount Rate Schedule.

It is stated that because of the constantly changing competitive circumstances in Southern's service areas Southern has designed its Flexible Discount Rate Schedule to provide it with the maximum degree of flexibility to compete for sales within each of its service areas. Southern, therefore, proposes to establish a flexible discount rate which from month to month and from zone to zone may range from a specified minimum level to a specified maximum level. Specifically, Southern proposes that the minimum rate for sales made under the Flexible Discount Rate Schedule would be the commodity cost of gas supply reflected in Southern's purchased gas adjustment (PGA) filing which is in effect at the time of the sale plus variable costs and the GRI surcharge. It is explained that the maximum rate under the Flexible Discount Rate Schedule would be Southern's commodity cost of gas supply reflected in its then effective PGA plus variable costs, the GRI surcharge and all fixed costs assigned to the commodity component of Southern's rates with the exception of one-half of the return on equity and related taxes. All discount rates posted under the Flexible Discount Rate Schedule within the minimum and maximum ranges described above would be less than the jurisdictional commodity rates approved by the Commission in Docket No. RP83-58-000, it is asserted.

Southern states that on or before the first day of each month during which the Flexible Discount Rate Schedule is in effect Southern would file a revised tariff sheet to be effective on the first day of that month setting forth the discount rates to be applicable during that month. In addition, Southern requests authorization to file a revised tariff sheet once during the course of each month to reduce any of the discount rates which are in effect during that month in response to changes in market conditions. It is stated that rates established under Southern's Flexible Discount Rate Schedule would not be subject to refund as long as they fall within the minimum and maximum levels described above. Southern requests such waivers of the Commission's Regulations as may be necessary in order to permit the monthly rate changes as proposed herein. In addition, Southern requests a waiver of the normal filing fee for Section 4 rate changes since the rate changes described herein will be purely ministerial in nature.

Since Southern currently has pending before the Commission an out-of-period PGA rate decrease with a proposed effective date of May 1, 1985, which reflects a lower commodity cost of gas supply than that reflected in Southern's currently effective PGA, Southern is unable at the present time to specify the discount rates to be applicable during the month of May. Accordingly, Southern requests that it be granted such waivers of the Commission's Regulations as may be necessary in order to permit Southern to place its Flexible Discount Rate Schedule in effect on May 1, 1985, with whatever rates may be determined appropriate by Southern at that time within the range described herein, depending on the outcome of Southern's PGA filing.

It is stated that in order to ensure that sales made under the Flexible Discount Rate Schedule would not generate amounts to be charged or returned to Southern's customers through future PGA surcharges Southern would exclude from its purchased gas costs used to compute Account 191 of the Uniform System of Accounts Prescribed for Natural Gas Companies an amount computed by multiplying the percentage of Southern's total sales which are made under the Flexible Discount Rate Schedule each month the rate schedule is in effect by Southern's actual commodity cost of gas supply incurred during that month. It is explained that under this procedure Southern alone would be at risk for any underrecovery of costs as a result of sales made under its Flexible Discount Rate Schedule. Southern, therefore, proposes to retain all revenues from sales under its Flexible Discount Rate Schedule.

Southern states that the Flexible Discount Rate Schedule proposed herein

would afford Southern the flexibility to target its discount rate to meet changing market conditions in each of its zones while at the same time assuring that all customers who purchase gas under the discount rate schedule would receive at least a minimum discount. The proposal is designed, moreover, to ensure that Southern bears all costs in connection with sales under the proposed rate schedule such that the implementation of the rate schedule would not result in any shifting of costs among Southern's customers or any increase in costs to any group of customers or result in amounts to be charged or returned to Southern's customers through future PGA surcharges. It is stated that rather, to the extent that a customer takes advantage of Southern's proposed discount rate schedule, that customer would be benefited by the resulting reduction in its average cost of gas purchased from Southern.

Comment date: May 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP85–453–000]

May 8, 1985.

Take notice that on April 19, 1985, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP85–453–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) increases in sales of natural gas to twenty-seven existing Small General Services (SG) customers; (2) an increase in sales of natural gas to Central Illinois Public Service Company (CIPSCO), Trunkline's only existing General Service (G) customer; and (3) a change in service classification for CIPSCO such that service would be provided under its Rate Schedule SG in place of its Rate Schedule G, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that the stipulation and agreement filed on March 22, 1985, in Truckline's general rate proceeding in Docket No. PR83–93 (Phase 1), *et al.*, provides for the maximum daily contract quantities under the Rate Schedule SG to be increased from 4,000 Mcf to 10,000 Mcf. It is stated that the proposed increases in sales to SG customers would thus be contingent upon Commission approval of that stipulation and agreement.

Trunkline states that twenty-seven of its SG customers have requested increases in maximum daily contract quantities totaling 38,125 Mcf for peak day protection, growth of residential usage, and potential new industrial markets. The twenty-seven customers are listed in the Attachment. Trunkline further proposes to increase sales to CIPSCO from 11,889 Mcf of gas per day to 15,390 Mcf per day in Zone 1 and from 4,900 Mcf of gas per day to 7,500 Mcf per day in Zone 2. Trunkline proposes to serve CIPSCO pursuant to multiple SG service contracts which would qualify under the revised contract demand limitation of 10,000 Mcf per day. It is stated that this change in service classification requested by CIPSCO was included in the settlement of the issues in the stipulation and agreement filed March 22, 1985, in Docket No. RP83–93 (Phase 1), *et al.* Trunkline further states that the term of the contracts have been extended to October 31, 1993.

Trunkline states that the proposed increases in contract demand would not affect service to other Trunkline customers because sufficient capacity is available to provide the additional peak service. It is further explained that the proposed increases total 44,226 Mcf of gas per day and are therefore small in relation to Truckline's total gas sales and would have no significant effect on Trunkline's gas supply.

Customer	Current (Mcfd)	Requested (Mcfd)	Increase (Mcfd)
Illinois:			
Ciene, village of	650	800	150
Ola City, village of	850	1,100	250
Fairfield, village of	4,000	6,200	2,200
Greenup, village of	2,000	4,000	2,000
Flora, city of	4,000	6,050	2,050
Jeffersonville, village of	275	400	125
Kamak, village of	365	400	35
Kaskaskia Gas Company	400	600	200
Louisville, village of	1,050	1,200	150
Milford, village of	1,450	2,000	550
Pittsburg, village of	251	300	49
Sims, village of	242	300	58
United Cities Gas Company	8,000	10,000	2,000
Vienna, city of	1,300	1,400	100
Indiana: Rensselaer, city of	4,000	6,600	2,600
Kentucky:			
Arlington, city of	524	4,000	3,476
Bardwell, city of	850	4,000	3,150
Clinton, city of	1,100	4,000	2,900
LaCenter, city of	1,400	4,000	2,600
Wickliffe, city of	950	4,000	3,050
Mississippi:			
Byhalia, town of	850	4,000	3,150
Entex, Inc	800	1,900	1,100
Union Gas Company	900	1,200	300
Tennessee:			
Troy, town of	500	1,000	500
Lake County Utility District	3,500	4,000	500
Newbern, town of	1,600	2,400	800
City of Somerville	1,525	1,647	122
Total	39,322	77,447	38,125

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP85–382–000]

May 8, 1985.

Take notice that on March 22, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85–382–000 an application, as supplemented April 25, 1985, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is explained that under the terms of a gas transportation agreement dated May 2, 1951, United has transported gas for Southern from a delivery point at or near Carthage, Panola County, Texas, to a point at Southern's Logansport receiving station near West Monroe, Ouachita Parish, Louisiana.

United states that the transportation agreement providing for the authorized service terminated by its own terms on October 31, 1984. United states that Southern has submitted a letter dated April 24, 1985, indicating that the transportation service by United is no longer needed and that Southern is now connecting the reserves previously delivered to United directly into its own system. United states that no abandonment of facilities is proposed.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment dater file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to interven or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11728 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-23-004 et al.]

Louisiana Intrastate Gas, a Division of CELERON Corp.; Application for Approval of Rates and Charges

May 10, 1985.

Take notice that on March 4, 1985, Louisiana Intrastate Gas, a Division of CELERON Corporation, (LIG) tendered for filing in Docket No. ST79-23-004, *et al.*, an application pursuant to section 284.123(b)(2) and section 284.144 of the Commission's regulations for approval of the rates and charges for transporting natural gas pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and sales under section 311(b) of the NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LIG is requesting that the Commission determine that the rates of 29.8¢ per MMBtu for "regular transactions" and 36.8¢ per MMBtu for certain "incremental transactions" represent fair and equitable rates for performing such services. LIG is requesting that this new rate be effective May 1, 1985.

LIG states that it has been rendering services for a fee of 20¢ per MMBtu to each of the following companies pursuant to Petitions For Rate Approval filed in the indicated dockets (Regular Transactions):

Company name	FERC docket No.
ANR Pipeline Co	CP84-376-000
Arkla Energy Resources, a Division of Arkla, Inc.	CP81-400-000
Colfax, town of (the)	ST84-294-000
Columbia Gas Transmission Corp	ST81-165-002
Faustina Pipe Line Co	ST84-[illegible]-000
Florida Gas Transmission Co	ST84-441-000
Mid Louisiana Gas Co	ST82-229-001
Do	CP84-[illegible]-000
Do	ST79-023-003
Southern Natural Gas Co	ST81-256-001
Tennessee Gas Pipeline Co., a division of Tenneco, Inc.	ST82-479-000
Do	ST84-953-000
Do	ST81-240-002
Texas Eastern Transmission Corp	ST83-57-001
Do	ST83-242-001
Do	ST80-273
Texas Gas Transmission Corp	ST84-924-000
Do	CP81-333-000
Do	ST79-25-002
United Gas Pipe Line Co	ST82-24-001
Do	ST79-24-001

and a fee of 27¢ per MMBtu to each of the following companies pursuant to Petitions For Rate Approval filed in the indicated dockets (Incremental Transactions):

Columbia Gas Transmission Corp.	CP81-416-000
Southern Natural Gas Co.	ST81-381-000
Texas Eastern Transmission Corp.	ST82-433-002

LIG is requesting that effective with deliveries on or after May 1, 1985, the Commission determine that the fair and equitable rate for the regular transactions is 29.8¢ per MMBtu and for the incremental transactions is 36.8¢ per MMBtu with the MMBtu's determined on a saturated basis. As to the transportation transaction for Tennessee Gas Pipeline Company, Docket No. ST82-479-000, the proposed rate of 29.8¢ per MMBtu shall apply only to certain excess volumes.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11722 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8451-002]

Mega Renewables; Withdrawal of Request To Surrender Preliminary Permit

May 7, 1985.

Take notice that Mega Renewables, Permittee for the Upper Power Project, FERC No. 8451, has requested to withdraw its request of surrender of preliminary permit for Project No. 8451. The notice of surrender of preliminary permit for Project No. 8451 was issued on April 10, 1985, and would have become effective on May 10, 1985. The project would be located on Slate Creek, in Shasta County, California.

Mega Renewables states that the surrender request was made in error. The notice of surrender of preliminary permit for Project No. 8451 is hereby considered withdrawn and the preliminary permit in effect.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11749 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-132-001]

Michigan Gas Storage Co.; Notice of Filing

May 9, 1985.

Take notice that on April 30, 1985, Michigan Gas Storage Company (Storage Company) tendered for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, which amend its filing of April 15, 1985:

Eighth Revised Sheet No. 4
Substitute Eighth Revised Sheet No. 5
Substitute Second Revised Sheet No. 24E

Storage Company states that these substitute tariff sheets reduce its proposed overall rate of return from 11.65 percent to 11.25 percent.

Storage Company also submitted with this filing a revised Statement N-10, page 1 of 3. This Statement now shows that the substitute tariff sheets would

result in a reduction of $791,305 in Storage Company's cost of service.

Storage Company indicates that copies have been sent to the Michigan Public Service Commission and Consumer Power Company, Storage Company's parent and only sales customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11723 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-367-000 et al.]

Morton Rimer et al.; Applications for Commission Certification of Qualifying Status of Small Power Production Facilities

May 10, 1985.

On May 2, 1985, Morton Rimer, *et al.* (Applicants [1]) submitted for filing 115 applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. Correspondence and communications regarding these applications should be directed to the common agent of the applicants, TaxVest Wind Farms, Inc., 5950 Canoga Avenue, Suite 600, Woodland Hills, California 91367. No determination has been made that the submittal constitutes a complete filing.

Each small power production facility is located in an unincorporated section of Alamada County, California. A facility consists of one or more Micon Viking 60/13 wind turbine generators which each produce 66 kilowatts at 1,200 rpm and use wind as their energy source. The total power production capacity for the 115 applicants is about 10,164 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions of protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

List of Applicants

85-367-000, Morton Rimer
85-368-000, Dante Marinelli/Walter D. Greer
85-369-000, Howard Marylander/James R. Drake
85-370-000, Gerald Blume/Peter Bryan
85-371-000, M. Stephen Davis/Altamont Wind Turbines
85-372-000, John E. Lindsey/Gerald & Sue Fisher
85-373-000, Patrick & Virginia Lawrence
85-374-000, Bruce Arnold/Ray E. Vogt
85-375-000, Ted M. Saltzman
85-376-000, Altamont Wind Turbines—c/o McGinity & Nodar
85-377-000, Michael H. Spivak/Lauri Hendler
85-378-000, Howard B. & Lois A. Wiggins
85-379-000, Robert B. Stone, MD
85-380-000, John E. & Shirley Ostheimer
85-381-000, Larry R. Mintun & Bernardita E. Mintun, Melinda A. Smith & Sidney R. Adleman
85-382-000, Joseph T. & Mary W. Bunch
85-383-000, Roger & Jacqueline Hay
85-384-000, C.J. & Telmagene Hash
85-385-000, John B. Mayford
85-386-000, Walter Bills
85-387-000, Tom S. Home
85-388-000, Jayar Investors, II
85-389-000, Jayar Investors, I
85-390-000, Drake C. Kennedy
85-391-000, Center Turbine Partnership—c/o Allen Clark
85-392-000, Terry A. Rigsby
85-393-000, Thomas Family Trust of 6-27-75 as Restated on 2-3-84
85-394-000, Martin Wenger
85-395-000, Gary R. Nelson
85-396-000, John C. & Catherine E. DeMartini
85-397-000, Seldon M. Mittleman
85-398-000, Poul & Betty Jorgensen
85-399-000, Wenger Furniture and Appliance Company
85-400-000, Benjamin D. & Lillie Templeton, Philip J. & Claire L. Storm—c/o Richard Brickman
85-400-000, Benjamin D. & Lillie Templeton, Philip J. & Claire L. Storm, c/o Richard Brickman
85-401-000, Dennis May & Don McComas Tenants in Common c/o Richard Brickman
85-402-000, George E. Brownell
85-403-000, Zelman Weingarten
85-404-000, Herbert H. Halperin and T. McAusland
85-405-000, Steven H. & Sharma Stern
85-406-000, Alex Wegner
85-407-000, Murry I. Kaufman & Richard S. Smith
85-408-000, Richard W. & Carol A. Riley
85-409-000, Melvin Goodman
85-410-000, Sarabjit & Bimaljit Singh
85-411-000, Gerald L. Miles
85-412-000, Murry Sporn
85-413-000, Melville I. & Beverly F. Singer
85-414-000, Fred Knight
85-415-000, TaxVest Altamont Wind Park Partners, I
85-416-000, Douglas K. & Kathryn A. Sauter
85-417-000, Carl S. Smetko, D.D.S./Garth G. Gardner
85-418-000, Vladimir Lange and Marilyn Lange
85-419-000, Thomas E. Sullivan
85-420-000, John P. Brunn
85-421-000, Hilton A. Green
85-422-000, Joseph E. Mueth
85-423-000, Angelo J. Minardi
85-424-000, Ernest & Lenie Rennie
85-425-000, Garber, Sokloff & VanDyke and Barry S. Sporn
85-426-000, Julie Kemper Gilliam
85-427-000, Stanley J. Goldberg, M.D.
85-428-000, Garber, Sokloff and VanDyke
85-429-000, Gilbert E. Haakh
85-430-000, Jack C. Bush
85-431-000, Richard R. Davidson & Donald L. Thornburg as Tenants in Common c/o Meridian Parts Corp.
85-432-000, J. David Rutherford
85-433-000, Buckland, Davis, *et al.* c/o Brickmand
85-434-000, Don Thorson
85-435-000, Ruben Garcia
85-436-000, Ruben Garcia/Theodore Johnson
85-437-000, Theodore M. Johnson
85-438-000, Gilbert Greene/Tom Noice
85-439-000, Robert Sherman/J. Bradshaw, Cindy Jo Bradshaw
85-440-000, Michael B. Sherman
85-441-000, Richard C. Rue/Ed Smith c/o Hanessian & Clarke
85-442-000, Merwin & Robert Lichtenstein
85-443-000, Robert Lichtenstein
85-444-000, Robert L. Hiller
85-445-000, C.C. Poon
85-446-000, Joe Meng
85-447-000, Michael H. and Cheryl L. Spivak
85-448-000, John & Nancy L. MacDonald
85-449-000, Jayar Construction
85-450-000, Altamont Wind Systems, General Partnership
85-451-000, Robert T. Hood, Jr., M.D./Wayne R. Fukuhara
85-452-000, Charles D. Hanks
85-453-000, Lawrence H. Fuller
85-454-000, Vern L. Hightower
85-455-000, Daniel E. Moore & Craig Cudlip
85-456-000, Donald C. Leonard & Liam Carmody
85-457-000, Marco Sprintis, M.D.
85-458-000, Beach Turbine Partnership
85-459-000, Leland & Marian Zeidler
85-460-000, B.L. Hill

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[1] Each applicant's name and assigned docket number is shown on the attached list.

85-461-000, Fredrick C. and Donna R. Heitman
85-462-000, Eugene A. Petrasy & John H. Woodfin
85-463-000, Perry Potkin, *et al.*
85-464-000, Perry Potkin, *et al.*, II
85-465-000, Ted M. Saltzman
85-466-000, Sid Kamrava
85-467-000, Joseph Gerson
85-468-000, William N. Thibault
85-469-000, Vern A. Jensen
85-470-000, Natural Country Foods, Inc
85-471-000, Fred S. Fiedler
85-472-000, Malladi & Pravina Reddy
85-473-000, Kenneth J. Lehman
85-474-000, Eddy Family Trust
85-475-000, Gerald J. Chazan
85-476-000, The Lance Family Revocable Trust. Dated August 14, 1981
85-477-000, K-W Properties
85-478-000, Nino J. Cefalu and Dwight E. Clark
85-479-000, Richard & Ruth Isabelle Fergus
85-480-000, Edwin S. Norma Altschuler/Alan & Rebecca Isarel
85-481-000, Jerry Pollen

[FR Doc. 85-11719 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-55-000 and TA85-2-55-001]

Mountain Fuel Resources, Inc.; Rate Change

May 8, 1985.

Take notice that Mountain Fuel Resources, Inc. (Mountain Fuel) on May 1, 1985, tendered for filing and acceptance Second Revised Sheet Nos. 13 and 14 to its FERC Gas Tariff, First Revised Volume No. 1, for rates applicable to service rendered under its Rate Schedule CD-1 affected by and subject to Mountain Fuel's Purchased Gas Cost Adjustment Provision (PGCA). Mountain Fuel states that in compliance with the Commission's Opinion No. 266, it has also submitted First Revised Sheet No. 70 to its FERC Gas Tariff, First Revised Volume No. 1, which reflects the 15-day remittance period for monies received by virtue of Mountain Fuel's GRI charge.

Further, Mountain Fuel has proposed to revise its PGCA so that deferred purchased gas costs would be accrued over a twelve-month period rather than a six-month period and so that such accrued deferrals would be amortized over a twelve-month period rather than a six-month period. In order to effect this revision, Mountain Fuel tendered for filing and acceptance Second Revised Sheet Nos. 58 through 60 and 62; and First Revised Sheet Nos. 61 and 63 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1985. Mountain Fuel has requested waiver of Section 154.38(d)(4)(iv)(*d*) of the Commission's Regulations, which provides that deferred purchased gas costs be accumulated and amortized over a six month period.

Mountain Fuel states that Second Revised Sheet No. 13 reflects a decrease in both the Commodity Base Cost of Purchase Gas and the Unrecovered Purchase Gas Cost Adjustment, resulting in a net change of $(0.17214)/Dth. Mountain Fuel states the monthly commodity charge will be reduced to $2.87339/Dth, which is a $(0.01349)/Dth change from its currently effective rate of $2.88688/Dth. Mountain Fuel proposes an amortization rate of $(0.03394)/Dth, which is a $0.15865/Dth reduction to its currently effective amortization rate of $0.12471/Dth.

Mountain Fuel states that it has not reflected any change in the demand charges it incurs from its major pipeline suppliers. Mountain Fuel further states that Second Revised Sheet No. 14 reflects $0.00 projected incremental pricing for the June through November 1985 PGCA period since Mountain Fuel Supply Company, Mountain Fuel's sole sale-for-resale customer has reported $0.00 Maximum Surcharge Absorption Capability (MSAC) for its non-exempt customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-11750 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-59-000 and TA85-3-59-001]

Northern Natural Gas Co.; Purchased Gas Cost Adjustment Rate Change

May 8, 1985.

Take notice that on May 1, 1985, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1

Substitute Twenty-Eighth Revised Sheet No. 4b

Original Volume No. 2

Substitute Thirty-Seventh Revised Sheet No. 1c

Such substitute tariff sheets are filed to reflect certain changes in gas production mix effective in April, 1985 and pricing changes for Canadian gas which have resulted in lower gas costs which can be passed on to Northern's customers at this time.

Northern requests that the Commission grant any waivers of its regulations as may be required to permit the above substitute tariff sheets to be accepted for filing and made effective on May 1, 1985.

Also enclosed for filing with the Federal Energy Regulation Commission are six copies of the following tariff sheets to change the pagination of the tariff sheets filed on April 26, 1985 to be effective June 27, 1985 and to reflect the rate adjustments of the instant filing:

Third Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 4b

Original Volume No. 2

Thirty-Eight Revised Sheet No. 1c

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-11751 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-002]

Northwest Pipeline Corp.; Notice of Filing

May 9, 1985.

Take notice that on May 1, 1985, Northwest Pipeline Corporation (Northwest) tendered for filing the following revised tariff sheets which amend its filing of Apirl 15, 1985:

First Revised Volume No. 1

Substitute Nineteenth Revised Sheet No. 10
Substitute Thirteenth Revised Sheet No. 10-A

Original Volume No. 2

Substitute Twelfth Revised Sheet No. 2
First Amended Substitute Original Sheet No. 2.1
Substitute Sixth Revised Sheet No. 2-A
Substitute Seventh Revised Sheet No. 2-B

According to Section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 3, 1985.

Northwest states the above-revised tariff sheets fulfill the requirement of the Commission's November 30, 1984, suspension order in Docket No. RP85-13-000, by eliminating all costs associated with facilities not in service as of March 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-11724 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-28-000 and TA85-2-28-001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

May 8, 1985.

Take notice that on May 2, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-First Revised Sheet No. 3-A
Twenty-Eighth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is June 1, 1985.

Panhandle states that these revised tariff sheets reflecting modifications to Panhandle's March 1, 1985 rates, would if approved, result in a 19.96 cents per dekatherm reduction in the gas-cost portion of Panhandle's commodity rates for the remainder of the current PGA effective period through August 31, 1985, as further explained below, for those customers who elect to participate in the reduction.

Panhandle states that in compliance with Ordering Paragraph (B)(3) of the Commission's order dated February 28, 1985 in Docket Nos. TA85-1-28-000 and TA85-1-28-001, Panhandle has reflected in the revised tariff sheets submitted herewith the resultant changes in its demand and commodity rates to reflect the interim settlement rates filed by its primary pipeline supplier, Trunkline Gas Company (Trunkline). On March 25, 1985 Trunkline filed revised tariff sheets to implement interim reduced rates which rates were approved by the Commission's letter order dated April 10, 1985 in Docket No. RP83-93-006, subject to restoration of the amount of the reduction if the Stipulation and Agreement in Docket No. RP83-93 (Phase I), *et al.* is disapproved or is not acted upon by the Commission by June 20, 1985. The interim rate reduction applicable to Trunkline's Rate Schedule No. P-1, which is the rate schedule under which Panhandle purchases its gas supplies from Trunkline, became effective March 1, 1985, as conditioned by the April 10, 1985 letter order. Accordingly, the 5.96 cents interim reduction in Panhandle's rates is dependent upon and coextensive with the duration of the interim Trunkline rate reduction.

Panhandle also states that for the period from March 1, 1985 through May 31, 1985, the cost effect of the differences between the effective Trunkline rates included in Panhandle's original March 1, 1985 PGA and these reduced Trunkline rates will be reflected in the appropriate Account No. 191 deferred purchased gas cost account, as provided for in Section 18 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1 and will be included in Panhandle's next regularly scheduled PGA filing for rates effective September 1, 1985.

In addition to the above-referenced compliance adjustment, Panhandle has included in the revised tariff sheets submitted herewith a mechanism whereby any Panhandle customer who, during the period from June 1, 1985 through August 31, 1985, elects for such month or months not to participate in the 10% contractual entitlement option provided for by the Commission's omnibus SMP order of September 26, 1985 in Docket Nos. CI83-269-000, *et al.*, will receive a 14 cents per dekatherm reduction in the gas cost portion of the applicable commodity and annual contracted volume charges for *all* volumes sold by Panhandle to that customer for that month.

Specifically, Panhandle has included the following language on each of the revised tariff sheets submitted herewith:

> The gas-cost portion of the above-referenced commodity charges and annual contracted volume charge will be reduced 14 cents per dekatherm for all volumes sold and delivered pursuant to these applicable rate schedules during any month for the period from June 1, 1985 through August 31, 1985, with respect to those customers who, for such month, elect to participate in the interim reduction by not nominating or participating in the 10% contractual entitlement option provided for in Ordering Paragraph (M)(a) of the Commission's order of September 28, 1984 in Docket Nos. CI83-269-000, *et al.*

Panhandle is offering this discounted rate to its customers for the upcoming summer period in order to alleviate potentially serious operating and contractual problems on its system. Panhandle will absorb, by a charge to net income each month, the effect of this discount on the revenues collected from those customers who participate. Thus the stockholders of Panhandle will absorb this rate discount. Panhandle is hereby assuring the Commission that it will not attempt, either in this period, nor in any subsequent period, to collect from any of its customers this 14 cents per dekatherm short fall in revenues. The currently effective PGA deferred account surcharges will not in any way be impacted by this 14 cents reduction; the accounting and rate treatment for the PGA surcharges will be governed by the March 1, 1985 PGA.

Panhandle is undertaking this voluntary rate action in order to increase the anticipated sales on its system thereby overcoming the diminution of its gas purchases, in an

effort to avoid breaching certain of its gas purchase contracts with its producer-suppliers, including contracts covering the purchase of casinghead gas. This would avoid the curtailment of casinghead gas purchases, and the resulting curtailment of related oil production. Additionally, this action will permit Panhandle to achieve a lower overall system average cost of purchased gas than it would have otherwise experienced. The requirements of our customers currently being served by the 10% option will be returned to Panhandle's system supply, which currently equates to approximately 20% of our customer's total requirements.

Thus, all of Panhandle's customers are able to benefit from this proposed 14 cents reduction during the June 1, 1985 through August 31, 1985 period, as well as subsequent benefits by virtue of a lower overall cost of purchased gas during this period. Moreover, by increasing the level of sales during this period and recovering a greater portion of deferred account amounts, subsequent PGA deferred account surcharges are expected to be lower than they would have been absent this reduction and the resulting increase in sales during this period.

Panhandle respectfully requests waiver of the Commission's Regulations to permit the revised rate proposed herein to become effective June 1, 1985, and such other waivers as may be necessary to implement this filing.

Supporting computations sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11752 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3856-002, 6876-002, 7182-000, 8824-000, 8828-000]

Reed Hydro-Electric Corp. et al.; Availability of Environmental Assessment and Finding of No Significant Impact

May 9, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemptions listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
3856-002	Savage River	MD	Savage River	Luke	Reed Hydro-electric Corporation.
6876-002	Chalk Creek	UT	Chalk Creek	Fillmore	Fillmore City Corporation.
7182-000	Davis Creek	WA	Davis Creek	Silver Brook	Gerald L. and Lois R. Simms.
8824-000	Little Anderson	CA	Anderson-Cottonwood Irrigation District's Main Canal and Lateral No. 21 Canal.	Anderson	Mutual Energy Company, Inc.
8828-000	Valley View	CA	East Orange County Feeder No 1.	Yorba Linda	The Metropolitan Water District of Southern California.

Environmental assessment (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-11753 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-125-014 et al.]

Tennessee Gas Pipeline Company et al.; Filing of Pipeline Refund Reports and Refund Plans

May 9, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, on or before May 20, 1985. Copies of the respective filings are on file with the Commisson and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
4/10/85	Tennessee Gas Pipeline Co.	RP82-125-014	Report
4/10/85	Eastern Shore Natural Gas Co.	RP84-72-005	Do.
4/15/85	Distrigas of Massachusetts Corp.	RP83-138-003	Do.
4/17/85	Michigan Consolidated Gas Co.	RP84-13-002	Do.
9/17/84	Transcontinental Gas Pipe Line Corp.	RP72-99-023	Do.
4/19/85	MIGC, Inc.	RP85-137-000	Do.
4/24/85	Arkla Energy Resources	RP82-75-008	Do.
4/24/85	Consolidated Gas Transmission Corp. & Consolidated Systems LNG Co.	TA80-2-21-014 & TA80-2-21-015	Do.
4/29/85	Trunkline Gas Co.	RP85-77-001	Report[1]
4/29/85	Southern Energy Co.	RP85-136-007	Report
4/29/85	Southern Natural Gas Co.	RP85-136-006	Do.

[1] Btu Measurement Refund—Each Company will retain the same assigned Docket No. and future related filings will receive new Sub-Docket Nos.

[FR Doc. 85-11725 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP85-143-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1985, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Second Revised Sheet No. 33
Second Revised Sheet No. 34
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 45

These tariff sheets are being filed in order to permit Texas Eastern to reduce its rates from time to time under its Rate Schedule WS with respect to excess gas and its Rate Schedule I in order, *inter alia,* to meet competion. Texas Eastern requests that it be permitted to place such revised tariff sheets into effect June 3, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11754 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No RP85-145-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1985, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following primary revised tariff sheets:

Third Revised Sheet No. 28
Second Revised Sheet No. 54
Second Revised Sheet No. 56
Second Revised Sheet No. 57
First Revised Sheet No. 57A
Seventy-third Revised Sheet No. 14 (p. 1 of 3)
Seventy-third Revised Sheet No. 14 (p. 2 of 3)
Seventy-third Revised Sheet No. 14 (p. 3 of 3)
Seventy-third Revised Sheet No. 14A
Seventy-third Revised Sheet No. 14B
Seventy-third Revised Sheet No. 14C
Seventy-third Revised Sheet No. 14D
Twelfth Revised Sheet No. 14 E
Original Sheet No. 14F

Texas Eastern also tendered for filing in the alternative, the following alternative revised tariff sheets in lieu of the corresponding revised tariff sheets listed above:

Alternate Seventy-third Revised Sheet No. 14 (p. 1 of 3)
Alternate Seventy-third Revised Sheet No. 14 (p. 2 of 3)
Alternate Seventy-third Revised Sheet No. 14 (p. 3 of 3)
Alternate Seventy-third Revised Sheet No. 14A
Alternate Seventy-third Revised Sheet No. 14B
Alternate Seventy-third Revised Sheet No. 14C
Alternate Seventy-third Revised Sheet No. 14D
Alternate Twelfth Revised Sheet No. 14E
Alternate Original Sheet No. 14 F

The filed revised sheets are proposed to effect a change in Texas Eastern's transportation program under its Rate Schedule TS-1 applicable to customers. Such revised tariff sheets would establish three tiers of rates with the effectiveness of such rates dependant upon the level of certain firm sales rate schedule takes by customers of Texas Eastern. Texas Eastern has filed primary and alternate revised sheets in order to reflect rates based on an Offer of Settlement filed in Docket No. RP84-108 and rates based on its motion rates in Docket No. RP84-108, respectively. Texas Eastern will request that the primary set of revised tariff sheets be placed into effect when and in the event the Offer of Settlement has been approved. It will move to place into effect alternate revised tariff sheets if such Offer of Settlement has not yet been approved, subject to an adjustment in the event the Offer of Settlement is finally approved.

The proposed effective date of this filing is June 3, 1985. Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11755 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-42-003]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 9, 1985

Take notice that Transwestern Pipeline Company (Transwestern) on April 29, 1985, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute Twenty-eighth Revised Sheet No. 5
Substitute Twenty-sixth Revised Sheet No. 6

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 3, 1985.

Transwestern states that these tariff sheets are being filed pursuant to the Commission's Order Accepting For Filing and Suspending Proposed Tariff Sheets Subject To Refund And Conditions And Scheduling Informal Technical Conference, issued March 29, 1985. The sheets contain adjustments to Transwestern's Surcharge Adjustment. The adjustment which decreases the Surcharge Adjustment by 1.33¢/dth, relates to the elimination of estimated purchase gas costs which were inadvertently included in Transwestern's March 1, 1985, filing. The proposed effective date for the tariff sheets is April 1, 1985.

Transwestern indicates that copies of the filing were served on its jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 16,

1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11726 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-56-000 and TA85-2-56-001]

Valero Interstate Transmission Co.; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

May 8, 1985.

Take notice that on May 1, 1985, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes in rates pursuant to purchased gas cost adjustment provisions:

First Revised Sheet No. 6 Superseding Original Sheet No. 6 to FEPC Gas Tariff, Original Volume No. 2
7th Revised Sheet No. 14 Superseding Substitute 6th Revised Sheet No. 14 to FERC Gas Tariff, Original Volume No. 1

Vitco states that the rates stated on First Revised Sheet No. 6 and 7th Revised Sheet No. 14 reflects the change in purchased gas costs based on the six months ended February 28, 1985.

The change in rate to Rate Schedule S-1 FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas cost of 3.67¢ per Mcf and a negative surcharge of 18.36¢ per Mcf. The change in rate of Rate Schedule S-2, FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas cost of 16.49¢ per Mcf. The change in rate to Rate Schedule S-3 includes a decrease in purchased gas cost of 18.82¢ per Mcf and a surcharge of 12.22¢ per Mcf. The change in rate to Rate Schedule T-1, FERC Gas Tariff Original Volume No. 1 includes a decrease in purchased gas cost of 0.80¢ resulting from changes in gas costs charged for lost and unaccounted for gas and a surcharge of 5.80¢ per Mcf. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is June 1, 1985. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11756 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

Agreement Regarding Liquefied Natural Gas

May 9, 1985.

Take notice that the attached Memorandum of Understanding has been signed by the Chairman of the Federal Energy Regulatory Commission and the Secretary of Transportation.

Kenneth F. Plumb,

Secretary.

Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Liquefied Natural Gas Facilities

Introduction

The Department of Transportation (DOT), through the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG), exercises the authority to promulgate and enforce safety regulations and standards for the transportation and storage of liquefied natural gas (LNG) in or affecting interstate or foreign commerce. RSPA exercises its authority over LNG facilities under the Natural Gas Pipeline Safety Act of 1968 as amended (NGPSA) (49 U.S.C. 1671, *et seq.*) and the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801, *et seq.*) and the USCG, under E.O. 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (PWSA) (33 U.S.C. 1221 *et seq.*), exercises supplementary safety regulatory authority over LNG facilities which affect the safety of port areas and navigable waterways.

The regulations and standards promulgated under these authorities extend, *inter alia*, to the siting, design, installation, construction, initial inspection, initial testing, operation and maintenance of facilities used in the transportation of LNG by any mode and associated storage of LNG. DOT enforces compliance with these regulations and standards through an inspection program and, when appropriate, the imposition of civil, criminal, or equitable remedies. Under criteria established by the NGPSA, states are eligible to assume these regulatory and enforcement functions as they apply to intrastate pipeline transportation and associated LNG facilities. Although these intrastate facilities are not subject to this memoradum, the regulations and standards promulgated by DOT governing pipeline transportation and associated LNG facilities generally apply to both interstate and intrastate facilities.

The Federal Energy Regulatory Commission (FERC), under Section 7 of the Natural Gas Act (15 U.S.C. 717 *et seq.*), issues certificates of public convenience and necessary with terms and conditions for facilities proposed for use in the sale for resale or transportation of natural gas, including LNG, in interstate commerce. As required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the FERC prepares environmental impact statements for proposed LNG facilities in conjunction with the issuance of certificates. The FERC also conducts a cryogenic design and technical review of the operational aspects of jurisdictional LNG facilities both during the certificate process and biennially thereafter. Particular emphasis is placed on operational reliability and assurance of continued service to the public.

In addition, the Secretary of Energy under Section 3 of the Natural Gas Act (15 U.S.C. 717 *et seq.*) has approval authority for the import and export of natural gas, including LNG. The Secretary of Energy has delegated and assigned to the FERC Section 3 authority to approve gas import and export facilities and their siting.

Purpose

This agreement acknowledges DOT's exclusive authority to promulgate Federal safety standards for LNG facilities used in the transportation and associated storage of LNG in or affecting interstate or foreign commerce. However, under the Natural Gas Act, the FERC exercises the authority to impose more stringent safety

requirements than DOT's standards when warranted by special circumstances at any LNG facility within the FERC's jurisdiction. The FERC also exercises its authority to impose requirements which would ensure or enhance operational reliability of its jurisdictional LNG facilities. Such operational reliability requirements are not subject to this Memorandum of Understanding.

The FERC and DOT agree that this Memorandum of Understanding provides guidance and policy for their respective technical staffs and the regulated pipeline industry regarding the execution of their respective statutory responsibilities to assure the safe siting, design, construction, operation and maintenance of fixed LNG facilities.

Therefore, the FERC and DOT agree to the following program:

1. The FERC shall:

a. Invite DOT to participate in FERC sponsored LNG facility inspections and related technical conferences with facility operators.

b. Except as provided by paragraph 1(e), refer to DOT for its review and comment any FERC proposed corrective action addressing LNG facility safety matters, whether or not in the form of certificate conditions, that differ from or are more stringent than DOT's safety regulations and standards. Proposed corrective actions subject to DOT review under this paragraph may result from FERC review of LNG facility certificate applications, inspection of existing LNG facilities, or otherwise.

c. Take final action on a matter referred under paragraph 1(b) only after receipt and consideration of comments provided by DOT in accordance with paragraph 2(c).

d. Provide the following information in writing to DOT when a referral is made to DOT under paragraph 1(b):

(i) The nature of the hazard, design deficiency, or operational practice to which the proposed corrective action is addressed;

(ii) The extent to which the LNG safety matter appears to be covered by DOT regulations and standards or industry codes;

(iii) The corrective action recommended and its estimated cost-benefit impact upon the operator;

(iv) Whether the recommended corrective action appears to differ from or exceed DOT's LNG safety regulations and standards; and

(v) Any discussion pertinent to items (i)-(iv) contained in a Final Environmental Impact Statement (FEIS) for the concerned LNG facility.

e. In those instances when an applicant for an LNG facility certificate or an operator of an existing LNG facility voluntarily agrees to take corrective action on a hazard, design deficiency or operational practice in accord with recommendations of the FERC staff, the procedures for referral to DOT contained in paragraphs 1(b) through 1(d) do not apply. When such voluntary agreements are reached, the FERC staff will promptly notify DOT of the agreements and provide appropriate background material.

f. Advise the certificate applicant or facility operator of the details of each matter which has been referred to DOT for review under paragraph 1(b), with notice that the applicant or operator may submit written comments on the matter to DOT and the FERC within a period not to exceed 30 days from receipt of the notice. This time period may be extended only by agreement between DOT and the FERC.

g. When a FEIS is required as part of the FERC decisionmaking process on the siting, construction and operation of LNG facilities, the FERC staff shall, to the extent possible, describe in the FEIS any LNG safety matters and their impact on the environment or facility operations that are considered by the staff to warrant corrective action or further analysis.

2. The DOT shall:

a. Evaluate each matter referred to it by the FERC, under paragraph 1, along with any related comments received from an applicant or operator.

b. Take whatever action DOT considers appropriate in the discharge of its responsibilities in the matter referred by the FERC, including issuing a hazardous facility order or imposing other enforcement remedies as authorized by the NGPSA (see paragraph 2(d)) or the PWSA, instituting rulemaking of either general or particular applicability, issuing an interpretation of an existing safety standard, enforcing an existing DOT safety standard, commenting on the appropriateness of a particular safety standard proposed by the FERC with regard to a particular LNG facility or particular circumstances, or deciding that no action is necessary or that the matter is outside DOT jurisdiction.

c. Advise the certificate applicant or facility operator and the FERC of the action contemplated by DOT in each matter referred by the FERC, and the approximate time schedule within which final action will be completed, or advise that the matter is outside the scope of DOT jurisdiction, within a period of 60 days from the date of referral. This time period may be extended only when the time period in paragraph 1(f) is also extended. The date of referral shall be the date when DOT receives an official request for review and comment in writing from the FERC under paragraph 1(b).

d. Exercise NGPSA or PWSA enforcement authority to effect corrective actions recommended and adopted by the FERC and previously concurred with by DOT.

e. Advise the FERC when DOT is going to inspect an LNG facility under FERC jurisdiction and notify the FERC of its findings.

3. Working arrangements.

The DOT and the FERC will designate appropriate staff representatives and will establish joint working arrangements from time to time to administer this Memorandum of Understanding.

4. Effect.

This agreement shall take effect upon signing by authorized representatives of DOT and the FERC and will apply to LNG facility certificate applications filed after the effective date and to LNG facilities in operation on and after that date.

5. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of DOT or the FERC.

6. DOT and the FERC each reserve the option of suspending, modifying, or terminating their respective commitments contained in this Memorandum of Understanding if any of their respective statutory responsibilities stated herein is altered or abolished in the future. Such action must be preceded by written notice to the other party at least 30 days before exercising this option.

Dated: March 29, 1985.

Elizabeth H. Dole,

Secretary, Department of Transportation.

Dated: April 17, 1985.

Raymond J. O'Connor,

Chairman, Federal Energy Regulatory Commission.

[FR Doc. 85-11709 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-487-000]

Distrigas of Massachusetts Corp.; Application

May 8, 1985.

Take Notice that on May 6, 1985, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP85-487-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale, all as more fully set forth

in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport and sell natural gas in interstate commerce for the purpose of making interruptible sales for resale using existing liquefied natural gas (LNG) facilities. Applicant further requests authority for the transportation or exchange of natural gas by any able and willing interstate pipeline, Hinshaw pipeline, intrastate pipeline or local distribution company, as necessary, to enable the gas to be sold to customers.

Applicant asserts that this application is a result of certain of its customers' refusal, as the result of the Commission's Order No. 380, to make their contractual purchases of LNG scheduled for deliver between April 1 and September 30 of this year. It is contended that such refusal has put Applicant and its affiliate, Distrigas Corporation (Distrigas), in a position where sales to Applicant's customers of summer deliveries would generate insufficient revenues to pay the Algerian supplier of the gas in full under the take-or-pay provisions of the supply contract. Applicant states it proposes to make these sales of gas for resale so it can continue to meet the current needs of customers who desire their contractual summer supplies, to avoid precipitating a suspension of summer deliveries and the loss of needed supplies next winter, and to mitigate the amount of underrecovery of purchased gas costs arising from the application of Order No. 380. Applicant has limited this request for authorization to the five deliveries of LNG scheduled between April 1 and September 30, but makes such request without prejudice to its right to seek renewal or extension of such certification with respect to deliveries made after October 1, 185.

It is claimed that the sales for which authorization is sought would be limited to volumes that Applicant first tenders to its existing distribution company customers and that, if the existing customers decline to take tendered volumes, Applicant would offer the gas for sale pursuant to the requested authorization. It is said that in making the sales Applicant would use existing facilities at its Everett, Massachusetts, terminal.

Two types of service are proposed: (1) Sales of LNG as liquid and (2) sales of LNG in vapor form. It is contended that sales in both liquid and vapor form would permit the maximum recovery of gas costs. Applicant asserts that the excess gas would be offered under a new interruptible Rate Schedule I–1 to both existing customers and to off-system customers for resale in interstate commerce. Consistent with the objective of maximizing revenues Applicant claims that to the extent possible priority in purchasing this gas would go to those existing customers who have agreed to take their *pro rata* share of summer deliveries under Rate Schedules GS–1 and TS–1. It is asserted that the rate to be charged would be a negotiated contract rate and that it is not anticipated that such rate would exceed the effective rate under Rate Schedule GS–1.

Applicant asserts that the concept of the sales for which authorization is sought is expressed in its present FERC Gas Tariff which provides that when an existing customer declines to take its contract volumes Applicant would dispose of the gas to other markets and credit the revenues, less costs of sale, to the customer refusing to take the LNG. Consistent with this principle of disposal the rate for the sale of excess gas would be geared toward a market clearing price intended to minimize the unrecovered gas costs, it is claimed.

It is stated that as a result of Commission Order No. 380, two of Applicant's 11 customers have refused to make their *pro rata* contractual purchases of gas from five cargoes of LNG from Algeria scheduled for delivery between April 1 and September 30, 1985. It is stated that this has created an excess supply of LNG which Applicant is presently holding in its storage facilities. It is indicated that under the requested authorization Applicant would be authorized to transport and sell LNG for resale as necessary to eliminate the present and any further excess supplies created by customers' unwillingness to purchase their share of these summer cargoes under their present contracts.

It is claimed that in seeking this authorization Applicant is pursuing a course of action which is consistent with its tariff as well as with the Commission's own express recommendation as to how Applicant might ease any immediate threat to its gas supply enterprise posed by the Commission's Order No. 380.

It is asserted that since the issuance of Order No. 380 Distrigas has made diligent efforts to renegotiate its supply contract wifh Sonatrach, the Algerian national oil company, but that all efforts to obtain a reduction of prices or volumes or a substantial deferral of scheduled deliveries have proven unsuccessful. It is stated Distrigas would continue to pursue renegotiation of the contract but has no reason to believe, based on Sonatrach's reaction thus far, that it would be able to accomplish such renegotiation in the near future, if at all.

It is claimed that the Applicant/Distrigas enterprise does not have the flexibility open to many pipeline companies that have annual take-or-pay contracts with some of their producer suppliers because under the supply contract with Sonatrach Distrigas connot defer payment for LNG until the end of a contract year nor can it subsequently make up such gas. It is further asserted that because it has only one supplier, the Applicant/Distrigas enterprise cannot shut in its gas supply and rely upon other sources to fill the continuing requirements of its customers. It is argued that these restrictions, combined with the limitations imposed by the physical realities of shipment and terminalling of LNG in shipload lots, make it imperative that immediate relief be provided in the form of authorization to make the proposed sales.

Applicant proposes to deliver the LNG using existing facilities. It is claimed that authorization to terminal and make sales for resale on an interruptible basis is necessay to avoid the delay inherent in obtaining certificates for each individual sale for resale. It is further stated that the requested authorization would permit Applicant to continue to provide an essential service and to mitigate the potential losses otherwise resulting from rejection of LNG shipments.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11717 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-488-000]

Distrigas of Massachusetts Corp.; Application

May 9, 1985.

Take notice that on May 6, 1985, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP85-488-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to operate its liquefied natural gas (LNG) terminal in order to make direct interruptible sales of natural gas to industrial end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport natural gas in interstate commerce in order to make direct interruptible sales of excess natural gas directly to end-users through its existing LNG facilities. Applicant further requests authority for the transportation or exchange of natural gas by any able and willing interstate pipeline, Hinshaw pipeline, intrastate pipeline or local distribution company, as necessary, to enable the gas to be sold to direct customers pursuant to the requested authorization.

Applicant states it has filed this application as a result of certain of its customers' refusal, as a result of the Commission's Order No. 380, to make their contracted purchases of LNG scheduled for delivery between April 1 and September 30 of this year. It is claimed that such refusal has put Applicant and its affiliate, Distrigas Corporation (Distrigas), in a position where sales to Applicant's customers of summer deliveries would generate insufficient revenues to pay the Algerian supplier of Applicant and Distrigas in full under the take-or-pay provisions of the supply contract. Applicant states that it proposes to make direct interruptible sales so that it can continue to meet the current needs of customers who desire their contractual summer supplies, to avoid precipitating a suspension of summer deliveries and the loss of needed supplies next winter, and to mitigate the amount of underrecovery of purchased gas costs arising from the application of Order No. 380. Applicant states it is limiting this request for authorization to the five deliveries of LNG scheduled between April 1 and September 30, but makes this request without prejudice to its right to seek renewal or extension of such certification with respect to deliveries made after October 1, 1985.

Applicant states that certain of its customers have refused to make their *pro rata* contractual purchases of gas from five cargoes of LNG scheduled for delivery from Algeria between April 1 and September 30, 1985. It is contended that such refusal has created an excess supply of LNG which Applicant is presently holding in its storage facilities. Applicant therefore proposes to transport LNG for direct interruptible sales to industrial end-users as necessary to eliminate the present and any further excess supplies created by its customers' unwillingness to purchase their share of these summer cargoes under their present contracts.

Applicant states that in seeking such authorization it is pursuing a course of action which is consistent with its FERC Gas Tariff as well as with the Commission's own express recommendation as to how it might ease any immediate threat to its gas supply enterprise posed by Order No. 380.

It is asserted that since the issuance of Order No. 380 Distrigas has made diligent efforts to renegotiate its supply contract with Sonatrach, the Algerian national oil company. It is claimed that all efforts to obtain a reduction of prices or volumes or a substantial deferral of scheduled deliveries have proven unsuccessful. It is indicated that Distrigas would continue to pursue renegotiation of the contract but has no reason to believe that it would be able to accomplish such renegotiation in the near future, if at all. It is stated that the Applicant/Distrigas enterprise does not have the flexibility open to many pipeline companies that have annual take-or-pay contracts with some of their producer suppliers. It is averred that under the supply contract with Sonatrach Distrigas cannot defer payment for LNG not taken until the end of the contract year nor can it subsequently make up such gas. It is further stated that because it has only one supplier the Applicant/Distrigas enterprise cannot shut in its gas supply and rely upon other sources to fill the continuing requirements of its customers. It is claimed that these restrictions, combined with the limitations imposed by the physical realities of shipment and terminalling of LNG in shipload lots, make it imperative that immediate relief be provided in the form of authorization to make the requested sales.

Applicant asserts that authorization to make direct sales would enable it to avoid rejection of the next and subsequently scheduled summer cargoes to the extent this is reasonably possible. It is claimed that based upon communications and meetings with Sonatrach officials as recently as April 23, 1985, Distrigas expects that rejection of any of these cargoes would cause the suspension, pending lengthy arbitration proceedings, of all future deliveries of LNG including those scheduled for next winter. It is contended that suspension of deliveries in the summer can cause harsh consequences to many of Applicant's customers because they purchase LNG for storage in order to provide essential winter service. Suspension of deliveries beyond the summer intensifies these customers' problems and deprive parts of the northeastern United States of the critically needed supplementary supply of winter gas furnished by the Applicant/Distrigas enterprise, it is stated.

Applicant states it is not seeking authorization to construct any additional facilities but would deliver excess LNG using existing facilities. It is claimed that authorization to terminal LNG on an interruptible basis is necessary to avoid the delays inherent in obtaining cetificates for each individual sale. Applicant states it expects to arrange sales whereby third-party transportation may be non-jurisdictional or self-implementing, and that to the extent required, the gas would be transported through exchange or otherwise by other entities to the end-user customers. In addition, to the extent that such transportation or exchange would require additional Commission authorization, Applicant requests that such authorization be granted.

Applicant asserts that the requested authorization is in the public interest because it would permit Applicant to

continue to provide an essential service and to mitigate the potential losses otherwise resulting from rejection of LNG shipments. It is claimed Applicant would serve the needs of industrial en-users through interruptible direct sales with no reduction in volumes available to meet the requirements of existing distribution company customers. It is further stated that the LNG would be available only if both gas supplies and capacity are available after meeting all current firm requirements of Applicant's customers and would not reduce the contract volumes available to any customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11718 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2169-000,et al.]

John B. Bernhart et al.; Interlocking Directorate Applications

Take notice that the following filings have been made with the Commission:

1. John B. Bernhart

[Docket No. ID-2169-000]

May 9, 1985.

Take notice that on April 30, 1985, John B. Bernhart (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Virginia Electric and Power Company

Vice Chairman of the Board and Director, Sovran Financial Corporation

Vice Chairman of the Board and Director, Sovran Bank, N.A.

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. William W. Berry

[Docket No. ID-2170-000]

May 9, 1985.

Take notice that on April 30, 1985, William W. Berry (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Officer and Director, Virginia Electric and Power Company

Director, Sovran Financial Corporation

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragaphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-11711 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-464-000 et al.]

Idaho Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER85-464-000]

May 8, 1985.

Take notice that on April 29, 1985, Idaho Power Company (Idaho) tendered for filing a Service Agreement between it and the California Department of Water Resources, covering the sale of nonfirm energy under Idaho Power Company's 1st Revised FERC Electric Tariff, Volume No. 1.

Idaho requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER85-462-000]

May 8, 1985.

Take notice that on April 29, 1985, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a notice of termination of its Rate Schedule FPC No. 51 which is a transmission contract between Central Vermont and the Vermont Electric Power Company, Inc. (VELCO). Rate Schedule FPC No. 51 is scheduled to expire on June 30, 1985.

Central Vermont also tendered rate schedule supplements to its transmission agreements with several utilities who are the actual recipients of service pursuant to Rate Schedule FPC No. 51. The supplements provide that the transmission service which was rendered pursuant to Rate Schedule FPC No. 51 will be provided pursuant to the rates and terms and conditions in the transmission agreements.

The Company proposes that the notice of cancellation and the transmission agreement supplements take effect July 1, 1985. According to Central Vermont, it is making these changes because of the expiration of Rate Schedule FPC No. 51 and because that rate schedule is not compensatory.

The customers and the rate schedule numbers of their transmission agreements are:

Customer	Rate schedule No
Vermont Electric Cooperative, Inc.	89
Lyndonville Electric Department	93

Customer	Rate schedule No
Village of Ludlow Electric Light Department	97
Allied Power and Light Company	101
Rochester Electric Light and Power Company	102
Village of Johnson Water and Light Department	107
Village of Hyde Park Water and Light Department	110

The rate schedule supplements also contain letters to the customers stating that the Company is terminating the above transmission agreements as of November 1, 1985 and that superseding transmission rate schedules will be filed prior to that date.

Central Vermont states that a copy of the filing has been mailed to each of the customers affected by the proposed changes and the Vermont Public Service Board.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER85-465-000]

May 8, 1985.

Take notice that on April 29, 1985, Florida Power & Light Company (FP&L) tendered for filing seven revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; Utilities Commission; City of New Smyrna Beach; City of Starke; and City of Vero Beach. The proposed effective date for the contract demands for Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; and City of Vero Beach is March 29, 1985. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Utilities Commission, City of New Smyrna Beach; and City of Starke is May 29, 1985, therefore it is respectfully requested that the Commission waive its regulations to permit these revised Exhibits A to become effective as specified herein.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER85-466-000]

May 8, 1985.

Take notice that on April 29, 1985, Florida Power & Light Company (FP&L) tendered for filing an executed "Agreement for the Provision of Alternative Electric Service Among FP&L, Seminole Electric Cooperative, Inc. and Lee County Electric Cooperative" ("Agreement"). Under this Agreement FP&L has agreed, for a limited period of time, to provide "Alternative Service". Alternative Service is described in the Agreement as the delivery, during a planned outage or emergency condition affecting service through the Calusa delivery point, of electric power and energy by FP&L to the Seminole Electric Cooperative, Inc. (Seminole) through alternate existing FP&L transmission facilities to replace power and energy that FP&L has the obligation to deliver to Seminole through the Calusa delivery point under the ABPRSA and the FP&L—Seminole Transmission Service Agreement. Alternative Service will be provided for a limited period of time to enable the Lee County Electric Cooperative (A Seminole member cooperative) to complete construction of its own (second) 230 KV transmission facilities to improve the reliability of its own transmission system.

FP&L states that the charge for Alternative Service will be $4,000.00 per month, which results in annual revenues to FP&L of $48,000.00.

FP&L requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Seminole and the Lee County Electric Cooperative.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER85-463-000]

May 8, 1985.

Take notice that on April 29, 1985, Interstate Power Company (Interstate) tendered for filing a set of revised exhibits to the Agreement for Integrated Transmission Area between Central Iowa Power Cooperative and Interstate (FERC No. 125, Supplements 7, 8, 9, 11 and 12).

Interstate requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket No. ER85-461-000]

May 8, 1985.

Take notice that on April 29, 1984, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes in its FERC Electric Service Tariff Nos. 87, 89, 93, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 128, 134, 135, 144, 149, 151, 152, 153, 154, 155, 156, 157 and 159. KG&E also proposes a new service schedule to the partial requirements municipals, proposes to cancel an unused service schedule to one partial requirements municipal, and proposes four new service schedules to FERC Rate Schedule No. 151. The proposed changes would increase revenues from Applicant's jurisdictional customers' sales under existing service schedules by $459,033, and under new service schedules by $7,073,542 based on the twelve month period ended December 31, 1985.

KG&E states that it needs additional wholesale revenues because present wholesale rates do not reflect expenses and capital costs related to Wolf Creek Generating Station.

KG&E requests an effective date of June 30, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon KG&E's jurisdictional customers and the State Corporation Commission of Kansas.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER85-467-000]

May 8, 1985.

Take notice that on April 29, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during March of 1985, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commission.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER85-469-000]

May 8, 1985.

Take notice that on April 30, 1985, Public Service Company of New Mexico (PNM) tendered for filing Service Schedule G (Transmission Service for El Paso Electric) to the Interconnection Agreement (Rate Schedule FERC No. 9) between PNM and El Paso Electric Company (EPE).

PNM under this agreement shall make available to EPE various levels of firm transmission capacity which EPE may schedule as needed for the delivery of EPE generation entitlements in the

Arizona Nuclear Power Project. Service is scheduled to commence on May 1, 1985, and to continue until May 1, 1995, or the completion of the Four Corners-Ambrosia-Pajarito Transmission Line Project.

PNM requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon EPA and the New Mexico Public Service Commission.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. The City of Provo, Utah

[Docket No. EL85-28-000]

May 9, 1985.

Take notice that on April 29, 1985, The City of Provo, Utah (Provo) submitted for filing an initial rate schedule for transmission service and interconnection with the Utah Power & Light Company (UP&L). Provo is submitting this rate schedule to ensure that service can be authorized to commence on or before May 30, 1985 and requests a waiver of the Commission's notice requirement.

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER85-460-000]

May 7, 1985

Take notice that on April 26, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission serviced as embodied in Edison's agreements with the following entities:

	Rate Schedules FERC No.
City of Los Angeles	102, 118, 140, 141
Pacific Gas and Electric Company	117, 147
Western Area Power Administration	120
Arizona Power Pooling Association	93
Arizona Electric Power Cooperative	132, 161
California Department of Water Resources	38, 112, 169
City of Burbank	135, 166, 177
City of Glendale	136, 143, 176
M-S-P Public Power Company	153
City of Pasadena	137, 158, 175
San Diego Gas & Electric Company	151
Imperial Irrigation District	138

Edison requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11712 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket EL85-19-102]

Owens River Basin, CA.; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Owens River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85-19-000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 17, 1985, will be considered for inclusion in the CIAP analysis for the Owens River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Owens River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 17, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 9:00 a.m. on June 20, 1985, in the Inyo National Forest Conference Room at 873 North Main Street in Bishop, California. The second geographic scoping meeting will be held by the Staff at 7:00 p.m. on June 20, 1985, in the City Hall Auditorium at 377 West Line Street in Bishop, California.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meetings or to obtain information about informal technical meetings should contact the FERC Project Manager, Ron McKitrick, at (202) 376-9065. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 15, 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments; Owens River Basin, California, Docket EL85-19-102.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11713 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket EL85-19-103]

Salmon River Basin, ID; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Salmon River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85-

19–000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 24, 1985, will be considered for inclusion in the CIAP analysis for the Salmon River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Salmon River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 24, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 10 a.m. on June 27, 1985, in the Boise City Council Chambers at 150 North Capitol Boulevard in Boise, Idaho. The second geographic scoping meeting will be held by the Staff at 7 p.m. on June 27, 1985, also in the Boise City Council Chambers.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meetings or to obtain information about informal technical meetings should contact the FERC Project Manager, Thomas Russo, at (202) 376–1976. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 22 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Salmon River Basin, Idaho, Docket EL85–19–103.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11714 Filed 5–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket EL85–19–101]

Snohomish River Basin, WA; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Snohomish River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85–19–000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 10, 1985, will be considered for inclusion in the CIAP analysis for the Snohomish River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Snohomish River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 10, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 10 a.m. on June 12, 1985, in the Ginni Stevens Hearing Room (1st floor) of the Snohomish County Administration Building at 3000 Rockefeller in Everett, Washington. The second geographic scoping meeting will be held by the Staff at 7 p.m. on June 12, 1985, in the Commission Meeting Room in the Electric Building (Public Utility District No. 1 of Snohomish County) at 2320 California Street in Everett, Washington.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meeting or to obtain information about informal technical meetings should contact the FERC Project Manager, Frank Karwoski, at (202) 376–1761. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 5, 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Snohomish River Basin, Washington, Docket EL85–19–101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11715 Filed 5–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–360–000 et al.]

Delta Energy Project—Phase III et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

May 9, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Delta Energy Project—Phase III

[Docket No. QF85–360–000]

On April 30, 1985, Delta Energy Project—Phase III (Applicant), of 177 Bovet Road, Suite 520, San Mateo, California 94402 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in the Altamont Pass near Tracy, California on land leased from the State of California Department of Water Resources. The facility consists, in part, of the leased land and forty-five wind turbine/generators, each having a maximum power output of 75 kW. The maximum power production capacity of the facility is 3.375 kW with a prevailing wind of 30 miles per hour. The primary source of energy is wind.

2. Nalco Chemical Company

[Docket No. QF85–365–000]

On April 30, 1985, Nalco Chemical Company (Applicant) of 2901 Butterfield Road, Oakbrook, Illinois 60521

submitted for filling an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at Diehl Road, Naperville, Illinois. The facility will consist of an Allison 501-KB5 gas turbine/generator, a Coppus RLHA-24 steam turbine/generator and a heat recovery steam generator. The primary source of energy will be natural gas. Installation of the facility will begin December 1, 1985.

3. Western Energy Engineers, Inc. (Klondike I(a))

[Docket No. QF85-366-000]

On April 30, 1985, Paul R. Gerst, Managing Director, Western Energy Engineers, Inc. (Applicant) of Box 474 Newport Beach, California 92662 submitted for filing an application for certification of a facility known as Klondike I(a) as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Klondike I(a) cogeneration facility is located at Foussat and Industrial Streets in Oceanside, California. The facility will contain a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment and heating needs at the Athlete facility. The net electric power production of the facility will be 15,605 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in winter of 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 383.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11710 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-358-000]

Don Jenni; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 10, 1985.

On April 25, 1985, Don Jenni (Applicant), of Handover Hydro, Route 2, Box 2228, Lewiston, Montana 59457 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 240 kilowatt hydroelectric facility will be located near Big Spring Creek, in Fergus County, Montana.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric propect license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying Status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11716 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00202; PH-FRL 2833-2]

Open Meetings of State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Registration and Classification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Enforcement and Certification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Registration and Classification will meet on Tuesday and Wednesday, June 4 and 5, 1985. The Working Committee on Enforcement and Certification will meet on Thursday and Friday, June 6 and 7, 1985. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meetings will be held at: Holiday Inn Crowne Plaza, Sixth and Seneca, Seattle, WA 98101, (206-464-1980).

FOR FURTHER INFORMATION CONTACT:

By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office of location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Registration of chlorine gas for swimming pools.
2. Development of a policy to strengthen EPA's oversight of advertising of pesticide registrations and land uses.
3. Use of vegetable oil as a diluent: status of EPA policy document.
4. Unenforceable label language.
5. Classification of granular formulations of certain agricultural pesticides.
6. Audit of section 24(c) registrations.
7. Labeling utility project.
8. Section 18 proposed regulations.
9. Regulatory status of termiticides.
10. Status of grain fumigants including revised Label Improvement Program (LIP) notice.

11. Results of SFIREG survey regarding State needs for chemical fact sheets/registration standards.
12. Time requirements for generating studies under Data Call-In program.
13. Proposed EPA policy statement on chemigation
14. Procedures for transmitting Experimental Use Permit information to the States.
15. Other topics as appropriate.

The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Wood preservatives national training program.
2. Status of National Pesticide Monitoring Plan.
3. Impact of proposed restricted use classification on State programs: granulars, wood preservatives, 1080, etc.
4. Use of section 7 information for State producer establishment inspections.
5. Chemigation matters, including the planned EPA policy statement and the proposed training manual.
6. Federal facilities policy.
7. Draft Office of Compliance Monitoring strategy for section 3(c)(2)(B) suspensions.
8. Uniform reporting format.
9. Changes in grant negotiation mechanisms.
10. Status of Task Force on FIFRA-State Programs Oversight activities.
11. Federal court decision concerning FDA's establishment of action levels.
12. Report of Working Committee on Groundwater Protection and Pesticide Disposal.
13. Other topics as appropriate.

Dated: May 2, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-11259 Filed 5-14-85: 8:45 am]

BILLING CODE 6560-50-M

[OPP-240063; PH-FRL 2834-9]

State Registration of Pesticides; Arkansas et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 15 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

Office location and telephone number: Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7716)

SUPPLEMENTARY INFORMATION: All of the registration listed below were received by the EPA in March 1985. Receipts of State registrations will be published periodically. Of the following registrations, seven involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arkansas

EPA SLN No. AR 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on soybeans, red rice, sicklepod, barnyardgrass, broadleaf signalgrass, crabgrass, purslane, pigweed, cutleaf groundcherry, and common ragweed to control grasses and broadleaves. (CUP) March 12, 1985.

EPA SLN NO. AR 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on soybeans to control cockleburs, morningglories, grasses, and pigweeds. (CUP) March 12, 1985.

California

SPA SLN No. CA 85 0026. Gustafson, Inc. Registration is for Gustafson Pro-Gro Dust Seed Protectant to be used on onion seed destined for export to Canada to control onion must (*Utocystis magica*). March 1, 1985.

SPA SLN No. CA 85 0027. Solano County Agriculture Commissioner. Registration is for Poast to be used on Zorro fescue, Blando brome, and Harding grasses to control annual rye grass. March 18, 1985.

SPA SLN No. CA 85 0028. Calif. Dept. of Food and Agriculture. Registration is for Commercial Rodent Bait Bromadiolone Treated Grain (0.005%) to be used on burrows and runways to control rats and house mice. March 13, 1985.

SPA SLN No. CA 85 0030. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (2.63%) to be used on fields to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0031. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (0.29%) to be used on runways to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0032. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (0.50%) to be used on runways to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0033 Kern County Agercultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (1.77%) to be used on burrows to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0034. Yolo County Dept. of Agriculture. Registration is for Monuron 80 WP Weed Killer to be used on dichondra grown for seed to control black medic and similar clovers. March 27, 1985.

Florida

EPA SLN No. FL 85 0003. Rhone-Poulenc, Inc. Registration is for Aliette to be used on nonbearing citrus trees to control phytophthoro foot and root rot. March 15, 1985.

Louisiana

EPA SLN No. LA 85 0001. Pfizer, Inc. Registration is for Floguard 1015 to be used on enhanced oil recovery systems to control bacteria. March 6, 1985.

Michigan

EPA SLN No. MI 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds. (CUP) March 13, 1985.

Montana

EPA SLN No. MT 85 0001. FMC Corp. Registration is for Furadan CR-10 to be used on rape to control fleas and beetles. March 13, 1985.

Nevada

EPA SLN No. NV 85 0001. Nevada Dept. of Agriculture. Registration is for Poast to be used on garlic grown for seed to control annual and perennial grass weeds. March 13, 1985.

EPA SLN No. NV 85 0002. Nevada Dept. of Agriculture. Registration is for Abate 4–E to be used on the Humboldt River and the Little Humboldt River to control black fly larvae. March 19, 1985.

Ohio

EPA SLN No. OH 85 0001. Bell Laboratories, Inc. Registration is for ZP Rodent Bait AG to be used on no-till and minimum-tillage operations in cornfields to control voles (prairie, meadow, and house mouse). (CUP) March 8, 1985.

EPA SLN No. OH 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on no-till sunflowers (full season or double crop) for preplant or preemergence treatment for emerged annual broadleaf weeds and grasses. (CUP) March 8, 1985.

EPA SLN No. OH 85 0003. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds between cuttings. (CUP) March 8, 1985.

Pennsylvania

EPA SLN No. PA 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on oats (preplant and preemergence) to control weeds and grasses. March 25, 1985.

South Carolina

EPA SLN No. SC 85 0001. Union Carbide Agricultural Products Co., Inc. Registration is for Paraquat + Plus to be used on tomatoes (staked tomatoes grown in plastic mulch covered row culture only) to be used to prevent destruction of the crop. March 8, 1985.

EPA SLN No. SC 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on corn and fallow land to control witchweed and grassy weeds. March 18, 1985.

EPA SLN No. SC 85 0003. PBI Gordon Corp. Registration is for Quadmec to be used on bluegrass and Bermudagrass turfs to control broadleaves, grass weeds, and nutsedge. March 27, 1985.

EPA SLN No. SC 85 0004. Union Carbide Agricultural Products Co., Inc. Registration is for Sevin 4 Oil to be used on soybeans to control beetles, worms, caterpillars, hoppers, and thrips. March 27, 1985.

Tennessee

EPA SLN No. TN 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds between cuttings. March 5, 1985.

Texas

EPA SLN No. TX 85 0002. Pennwalt Corp. Registration is for Aglcor to be used on applies, asparagus, cabbage, carrots, cauliflower, celery, cherries, cucumbers, lettuce, mushrooms, nectarines, onions, peaches, pears, peppers, potatoes, prunes, quinces, and radishes after harvest to control organisms causing decay. March 2, 1985.

EPA SLN No. TX 85 0003. American Cyanamid Co. Registration is for Cythion Insecticide RTU (The Premium Grade Malathion) to be used on cotton to control aphids, boll weevils, grasshoppers, fleahoppers, leafhoppers, lygus bugs, and thrips. March 22, 1985.

Virginia

EPA SLN No. VA 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on alfalfa to control annual grasses and broadleaves. (CUP) March 12, 1985.

Washington

EPA SLN No. WA 85 0001. Mobay Chemical Corp. Registration is for Sencor 4 Flowable to be used on dry field peas to control chickweed, dog fennel, henbit, lambsquarters, wild mustard, field pennycress (fanweed), and shepherdspurse weeds. March 6, 1985.

EPA SLN No. WA 85 0002. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable to be used on dry field peas to control chickweed, dog fennel, henbit, lambsquarters, wild mustard, field pennycress (fanweed), and shepherdspurse weeds. March 6, 1985.

EPA SLN No. WA 85 0003. Mobay Chemical Corp. Registration is for Metasystox-R Spray Concentrate to be used on strawberries (prebloom and postharvest) to control strawberry aphids. March 6, 1985.

EPA SLN No. WA 85 0004. E.I. du Pont de Nemours and Co. Registration is for Du Pont Benlated Fungicide and Du Pont Manzated 200 Flowable Fungicide to be used on wheat to control septoria leaf and glume blotch. March 13, 1985.

EPA SLN No. WA 85 0005. Mobay Chemical Corp. Registration is for Sencor DR 75% Dry Flowable Herbicide to be used on alfalfa to control grasses and broadleaves. March 22, 1985.

EPA SLN No. WA 85 0006. Mobay Chemical Corp. Registration is for Sencor 4 Flowable Herbicide to be used on alfalfa to control weeds (grasses and broadleaves). March 22, 1985.

West Virginia

EPA SLN No. WV 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa (between cuttings) to control annual grasses and broadleaves. March 28, 1985.

(7 U.S.C. 136)

Dated: May 3, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-11593 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3152/T493] PH-FRL 2835-1]

E.I. du Pont de Nemours and Co., Inc.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the miticide (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazoledine-3-carboxamide) in or on the raw agricultural commodity fresh market apples. This temporary tolerance was requested by E.I. du Pont de Nemours and Co., Inc.

DATE: This temporary tolerance expires May 31, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2400)

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Inc., Legal Department, D-7113, Wilmington, DE 19898, has requested in pesticide petition PP 4G3152 the establishment of a temporary tolerance for residues of the miticide (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazoledine-3-carboxamide) in or on the raw agricultural commodity fresh market apples at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352-EUP-122 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use

permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. duPont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 31, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950)

Authority: 21 U.S.C. 346a(j)

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-11592 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50632; PH-FRL 2834-8]

Issuance of an Experimental Use Permit To U.S. Department of the Interior

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed an Experimental Use Permit (EUP) issued to the U.S. Department of the Interior (USDI). The permit 6704–EUP–27, allows the use of a total of 0.033 pound of sodium fluoracetate (Compound 1080) in single lethal dose baits (SDBs) on rangelands to evaluate the control of coyotes and impacts on nontarget wildlife. A maximum of 231,300 acres may be treated; the program is authorized only in the States of Montana, Idaho, and Utah.

DATE: The permit is in effect from January 8, 1985 to January 8, 1936.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION:

I. Background

In 1982 EPA issued an experimental use permit, NO. 6704-EUP-26, to the United States Department of the Interior (USDI) for research on the use of sodium fluoroacetate (commonly called "1080") in single lethal dose baits (SDBs) for predator control. Shortly after this permit was issued, EPA discovered that USDI intended to conduct the study in a manner that differed from the research authorized under the permit. Accordingly, EPA withdrew the permit without prejudice to USDI to request a new permit authorizing a different program. SDBs containing 1080 were used at only one site under the 1982 permit.

In November 1983, EPA issued a new permit, No. 6704–EUP–27, to USDI for testing with 1080 SDBs. This permit was modeled after the 1982 permit but incorporated the new features of the test program. The 1983 permit authorized use of a total of only 0.01 lb of 1080 in up to four different study areas, each 64,000 acres or less in size. Initially, two study areas were approved, and a third study area was approved a few months later, with no increase in the amount of 1080 authorized.

The research design of the 1983 permit called for evaluation of potential bait sites by use of nontoxic "placebo" baits prior to the placement of 1080 SDBs. Each placebo bait was monitored regularly to determine what species of animals visited and consumed baits. SDBs containing 1080 would be placed only at those sites where placebo baiting showed that baits would be consumed by coyotes and that consumption by nontarget animals would not pose a significant risk. Once placed, SDBs containing 1080 would also be monitored regularly, and following the disappearance of an SDB, USDI researchers would conduct a careful search of the area for any animals that might have died after consuming the missing 1080 SDBs.

USDI also planned to evaluate the impacts of using 1080 SDBs on predation by monitoring coyote predation on livestock before and after placement of SDBs. Rancher records would serve as the primary source of this information, and therefore USDI promised to screen ranchers carefully in selecting test areas. Recognizing that concurrent use of other methods of coyote control could make interpretation of results more difficult, USDI also planned to monitor predator control efforts and results while 1080 SDBs were in use.

In August 1984, USDI requested that EPA extend its experimental use permit for 1080 SDBs for another year. USDI proposed to continue the study using the experimental design, with minor modifications, that had been approved under the 1983 permit. USDI also proposed to study a new baiting strategy in which 1080 SDBs would be placed at sites where coyotes had recently killed livestock. Based on field experience, USDI expected that a predatory coyote would return to feed on the carcass of an animal it had killed and that it could be induced to consume 1080 SDBs. Thus, under the new approach to baiting, placebo baits would not be used, but in most other respects, this part of the test would follow the experimental design of the 1983 permit.

Another important change was made in the research design to deal with the difficulty of determining the species of animals taking placebo baits and 1080 SDBs. Under the 1983 permit, USDI had difficulty at several test sites identifying which species visited and consumed baits based on examination of tracks and other signs near where a missing bait was placed. In an effort to generate better information, USDI planned to use time lapse photography at some sites to aid in identifying the animals taking the baits.

EPA's review of the request for an extension included evaluation of the final report on USDI's 1982 permit and preliminary reports on the results under the 1983 permit. These reports established that placebo baiting was an effective means of determining areas in which use of 1080 SDBs would probably be ineffective due to poor consumption of baits by target species. Placebo baiting also showed promise as a means of identifying sites where use of 1080 SDBs might pose a risk to nontarget species. Depending on the number of

baits to be placed and the species consuming the baits, consumption by a nontarget species of a significant percentage of 1080 SDBs could pose a risk to local populations of nontarget wildlife.

The preliminary results from the 1983 permit also provided indications of the different conditions under which 1080 SDBs were more and less likely to be effective. Specifically, the preliminary results indicated that nontarget consumption was a greater problem in warmer seasons and in more southerly states. On the other hand, bait consumption patterns indicated more successful targeting of coyotes during the winter in northern livestock ranges.

EPA also received additional information on the toxicity and wildlife hazards from use of 1080. In addition to field research with 1080 SDBs, USDI has been conducting toxicity studies and primary and secondary poisoning tests with the 1080 toxic collar. EPA staff monitored the progress of this research and relied on oral reports from USDI scientists in evaluating the risks to nontarget wildlife from the proposed experimental use permit. EPA staff also considered and relied on an unpublished Michigan State University study of the toxicity of 1080 in the diet to different species in the weasel family.

II. Discussion of Public Comments

As authorized under EPA's regulations, 40 CFR § 172.11(a), the Agency issued a notice in the **Federal Register** of October 24, 1984, (49 FR 42790) announcing the receipt of an EUP renewal application from USDI and inviting public comments on the application. The public was given a 30-day period to comment on the USDI application.

The Agency received only two sets of comments on this EUP application. Both sets of comments objected to the renewal of the permit.

A. General

The commenters raised a number of specific objections to the design of the proposed experimental program. Before addressing these comments individually, EPA wishes to address the general comment that the program is not "adequately designed to generate scientifically reliable experimental results."

The Agency's task in deciding whether to allow USDI to conduct another year's testing under the permit is to determine whether the proposed studies would generate information useful in deciding whether to register Compound 1080 SDBs. EPA normally does not deny permit applications which fail to address all outstanding data gaps. Nor does EPA refuse to issue a permit merely because the methodological design might limit the inferences which can be drawn from the resulting data, although EPA routinely informs persons requesting experimental use permits of ways to upgrade the quality of their research.

As explained further below, EPA expects the USDI permit to generate some helpful data on the impact of SDBs on predation and nontarget species and on the best techniques for using SDBs. EPA has also concluded that the permit would not cause unreasonable adverse effects on the environment. Accordingly, EPA has approved the issuance of the USDI permit.

B. Determining Species Which Take Baits

Both commenters questioned the reliability of any data to be generated under the proposed permit because of USDI's inability to determine which species of animal have visited and consumed an SDB. In past studies, USDI has attempted to identify the species of animals visiting bait sites and consuming baits by monitoring tracks and other signs left at bait sites. In many instances, these procedures have failed to identify the species of animal taking baits. Overall, a particular type of animal has been implicated only in a minority of instances of bait removal.

These data can be interpreted at least two ways when attempting to evaluate what happens to missing baits. One could assume, as USDI apparently has, that the species pattern in the unknown take of baits would be similar to that in the known take of baits. One could also argue, however, that some species might be more likely than others to leave tracks (e.g., by virtue of habits or body weight) and, therefore, that the "known" take pattern is distorted in favor of certain types of animals. Because coyotes are among the heavier species likely to take baits, it is possible that the unknown record of takes could be distorted in their favor.

Even though the data on species taking baits do not resolve this question, the data are useful in evaluating the potential impacts of SDBs. Both commenters overlook the fact that work conducted under the 1983 permit shows that pre-treatment exposure of nontoxic baits is capable of indicating whether targeting of baits to coyotes will be poor. Even accepting the argument that coyotes are more likely than some other species to leave detectable tracks, it is clear from data generated to date that some sites (and/or time of year) provided better coyote targeting potential than others.

Based on this information, the Agency has tentatively concluded that if SDBs containing 1080 are ever registered, users should be required to evaluate bait sites with nontoxic "placebo" baits prior to use ot toxic baits. These data also suggest the usefulness of a restriction prohibiting use of SDBs if the vast majority of known takes of placebo baits could be ascribed to other species. (In such instances SDBs would not effectively control coyotes and should not be used.) EPA notes that these regulatory restrictions may not be appropriate for the new baiting strategy to be studied in Utah under the 1985 USDI permit.

Although it could be argued that there is no need for additional studies using only the tracking method for determining which species take baits, EPA thinks that the additional data will be useful. As stated earlier, there has been a wide variation in the acceptance of baits by coyotes and nontarget species at different sites under previous permits. The limited results to date suggest that SDBS might be used effectively in the dead of winter in northern regions but that targeting to coyotes in other situations would be poor. Another year's testing will generate additional information that will help to characterize the type of situations in which effective targeting of SLD baits to coyotes can and cannot be expected.

C. Frequency of Monitoring

USDI's 1985 permit proposed to abandon twice-weekly monitoring of SDBs. One commenter correctly noted that USDI did not support the move to weekly monitoring with confirmatory data. USDI based its decision on an impression relayed by its field personnel that the excess human activity resulting from the extra visit encouraged activity by nontarget animals (especially crows) and caused coyotes to shy away. The validity of this argument cannot be resolved on the basis of available information.

Determining species taking SDBs through tracking requires that the tracks endure from the time when they are "laid" until next time when the site is inspected. The quality of the tracking record can be expected to diminish over time. If precipitation occurs, tracks could be obliterated quickly. Under these conditions, it is logical to expect that more frequent monitoring would be more likely to find identifiable tracks. Accordingly, EPA has required USDI to

monitor baits twice a week, whenever possible.

If, as USDI maintains, too much human activity actually distorts the pattern of animal visits to draw stations and SDBs, researchers will need a method for determining species taking baits which does not involve frequent human visits to the baited areas. Recognizing this, EPA has discussed other methods with USDI staff.

One such method which USDI study personnel have agreed to test under the 1985 permit is time-lapse photography. Because of the intervals between pictures and the relatively short time that would be needed by an animal to approach and remove an SDA, EPA regards this method as better suited for assessing visits to draw stations than for determining species taking SDBs. Moreove, time-lapse cameras would be required to cover large areas (unless funds were available for one camera per SDB location). It is unlikely that visits by small rodents would be detected in such wide-angle shots, particularly if such approaches were made from beneath ground, snow, or ground cover.

Radio-telemetry is the only other alternative for evaluating the impact of SDBs on coyotes and nontarget wildlife. This procedure requires that many animals from many species be trapped in a bait area, equipped with radios, and tracked. While radio-telemetry would probably provide the best remote means for gauging the relative uptake of SDBs by the local animal community, the procedures are costly and time-consuming. So far, USDI has been reluctant to commit the sizable amounts of funding necessary to use radio-telemetry techniques in research on Compound 1080 SDBs, at least until the utility of the method has been demonstrated in the early years of the permit.

D. Concurrent Control Methods

One commenter questioned the reliability of any date concerning the efficacy of SDBs if USDI does not prohibit the use of other methods of coyote control while SDBs are in the field. The commenter argued that unless concurrent control efforts are eliminated, it will be impossible to tell whether any decrease in predation is the result of the use of SDBs or the result of killing coyotes by other means.

EPA recognizes that the use of concurrent control methods makes analysis of the efficacy of SDBs more difficult, and for that reason, EPA recommended that the USDI permit be conducted in areas where other coyote control methods are not being used. USDI, however, decided not to incorporate such a feature into the experimental design of its 1985 permit.

There are two practical reasons why USDI might have decided to allow concurrent control efforts. Eliminating all other control efforts would be difficult under most study conditions because coyotes move over large home ranges that cross different properties and jurisdictions. Moreover, many ranchers might agree to withhold other coyote control methods during the study only if they were indemnified for any livestock killed by predators. Meeting such demands might prove to be very expensive.

While withholding concurrent coyote control efforts would strengthen the reliability of the resulting data, EPA concludes that the study design authorized in USDI's 1985 permit may, nonetheless, yield some useful information. USDI has agreed to document the use and results of other coyote control efforts in study areas. (In some cases, USDI may even be able to select study sites where no predator control is performed during the season that SDBs are being tested. For example in Washington County, Idaho, in 1983 very little winter coyote control was practiced aside from the experimental use of SDBs.) By carefully comparing the timing of coyote kills using various methods and the response in predation livestock, it may possible to determine which control method—SDBs or some other method—was responsible for any observed decrease. EPA would consider such information showing a drop in predator kills following SDB consumption, with few or no kills using other techniques, to be circumstantial evidence of SDB efficacy.

E. Locating SDB Victims

One commenter noted that the method of searching for carcasses proposed by USDI would not be likely to find a large proportion of all victims. EPA thinks that it is impossible to guarantee that every animal dying from consuming a SDB will be located by the USDI searchers, but EPA does expect that they will recover at least some of the poisoning victims. Indeed, USDI reports that carcasses of animals have been located in searches conducted after the disappearance of 1080 SDBs, and that only a small number of these animals were thought to have died from consuming 1080. (Further laboratory analysis may confirm these suspicions.) There are no data which indicate what percentage of victims will be recovered by researchers, although due to the nature of searches, EPA expects that the caracasses of larger victims (e.g., coyotes and dogs) are more likely to be found than the bodies of smaller victims. Thus, the USDI permit will not resolve all of EPA's questions about the impact of SDBs on nontarget species, particularly smaller animals. EPA does expect the USDI permit, however, to provide some useful information on the fate of coyotes and larger nontarget species.

F. Hazards to Nontarget Animals

One commenter objected to issuance of the permit because endangered species, livestock guarding dogs, and other nontarget wildlife would be poisoned by use of SDBs. EPA has concluded that such adverse effects are not likely, in view of the restrictions imposed on use of SDBs.

EPA asked the Office of Endangered Species (OES) to consider whether the permit requested by USDI would jeopardize the continued existence of any endangered species. The OES has reviewed the proposed test sites, the amount of 1080 per bait, the number of baits, and other aspects of the experimental design and has concluded that the proposed permit would not jeopardize any endangered species. It should be noted that USDI has removed or refrained from using SDBs near draw stations which have been visited by bald eagles, an endangered species.

The Agency recognizes that 1080 SDBs can be expected to be lethal to herding and livestock guarding dogs and has concluded that baits should not be used near any operations which employ such animals during the seasons when these dogs are on the range. Accordingly, USDI has been specifically directed not to use SDBs when herding or guarding dogs are on the range. The risk to herding and guarding dogs is further reduced by placing prominent warning signs near the sites where baits will be placed, and by requiring that USDI obtain permission of landowners before placing baits on private property.

Finally, EPA staff scientists have reviewed data on the risks to nontarget species other than endangered and threatened species and have concluded that the proposed permit did not pose an unreasonable risk. This conclusion is based primarily on the numerous safeguards incorporated into the design of the USDI permit. First, SDBs will be placed only in areas where trials with placebo baits have shown that consumption of baits by nontarget species is not likely to be a significant problem. Second, baits will contain a limited dose of 1080, 5 mg, that is not expected to be lethal to most species larger or less sensitive than coyotes. Results from secondary poisoning

studies with the 1080 toxic collar indicate that the risk to scavengers feeding on coyotes and other animals dying from ingestion of approximately 5 mg of 1080 is very slight. Third, only a limited number of baits will be placed at a test site, thereby restricting the number of lethal doses available for any species.

Finally, the risk to nontarget wildlife is further limited because of USDI's plans to search the test area immediately after determining that a bait is missing. EPA recognizes that some SDBs may be consumed by nontarget species and that some of these animals may die. The Agency, however, does not expect that such deaths would have a significant or lasting impact on local populations. While searches may not find every animal dying from eating a 1080 SDB, they should be capable of detecting widespread kills, in the unlikely event that use of SDBs does cause the death of numerous nontargets. USDI is required to inform EPA of such findings at once, and EPA would direct USDI to discontinue testing immediately.

G. Adequacy of Livestock Loss Data

One of the commenters argued that livestock loss data compiled by ranchers was unreliable and therefore that no reliable conclusions could be drawn about the impact of using 1080 SDBs on predators. EPA disagrees.

USDI has stated that one of the criteria it will use in selecting test areas is the reliability of the ranchers' records on predation. While some ranchers may not keep accurate records of predation, USDI will only include a rancher as a participant if there is reason to think his records are reliable. As a further check on the accuracy of ranchers records, USDI researchers will inspect livestock carcasses to verify whether the animal was killed by a predator or died from other causes. EPA concludes that these procedures provide adequate assurance of the reliability of predation loss data.

H. Population Reduction vs. *"Corrective" Control*

One commenter argued against issuance of the USDI permit based on conclusions contained in the Agency's Initial and Final Decisions in the proceeding to reconsider the Agency's 1972 order cancelling the registration of 1080 for predator control. In the reconsideration proceeding, EPA ruled that the proponents of 1080 use had failed to present evidence demonstrating that predation rates could be reduced through a strategy of suppressing the general coyote population in an area. Claiming that the proposed USDI permit was seeking to test the efficacy of 1080 SDBs in a program of population suppression, the commenter argued that the Agency's decisions in the reconsideration proceeding precluded issuance of a permit for that research purpose.

First, the use of 1080 SDBs proposed by USDI is quite different from the population suppression strategies considered in the reconsideration proceeding. Prior to 1972 single lethal dose baits containing strychnine were commonly used to control coyotes. These baits were often scattered by the hundreds or thousands on the open range in an attempt to kill as many coyotes as possible. Very little effort was made to target coyotes specifically by careful placement of baits or selection of bait sites. In contrast, USDI will place only a limited number of baits at each drawn station and will select each bait placement carefully. While use of 1080 SDBs may have some impact on the local population of coyotes, it does not appear that the experimental use resembles the population suppression strategies in use before 1972.

Even if the USDI experimental use were deemed a population control strategy, that conclusion would not preclude issuance of the requested permit, notwithstanding the Agency's decisions in the reconsideration proceeding. In that proceeding, EPA ruled only that the proponents of 1080 use had failed to present substantial new evidence proving that population suppression would reduce the overall rate of predation by coyotes. Because the burden of proof was not met, EPA ruled that use of 1080 in a delivery mechanism that was directed to population suppression (the 1080 large bait station) could not be considered further for registration. (Similarly, the reconsideration hearing resulted in an order authorizing further consideration of 1080 SDBs, subject to registrations in ways that precluded their use on a population control strategy.)

Proponents of 1080 are entitled, however to apply for *experimental use permits* to accumulate additional evidence to show that use of 1080 for population suppression effectively reduces predation rates. EPA has approved USDI applications because it determined that the proposed permit met the statutory standards for issuance of experimental use permits.

I. Census of Coyote Populations

One of the commenters questioned the reliability of the efficacy data to be generated under the proposed permit unless USDI collected information on the population levels of coyotes before and after the use of 1080 SDSs. The commenter indicated that predation rates can change independently of the use of any predator control methods, and that factors such as a decline in the prey base of coyotes might cause coyotes to emigrate from an area, thus leading to a decline in predation. The commenter implied that these phenomena could be evaluated only through censusing coyote populations before and after use of 1080 SDSs.

EPA recognizes that predation rates sometimes fluctuate unexpectedly for reasons unrelated to predator control efforts and that data on coyote populations would be helpful in assessing the possible causes in any observed changes in predation rates. EPA, however, does not consider such information essential to draw inferences about the efficacy of SDBs. If predation declines or stops in an area after 1080 SDBs. If predation declines or stops in an area after 1080 SDBs have been consumed by coyotes, and if there is no indication that coyotes have been killed by other methods and no other alternative explanation, EPA would treat such information as circumstantial evidence of the efficacy of 1080 SDBs in such a trial. A series of such successful trials clearly could not prove conclusively that 1080 SDBs were effective, but they would constitute strong circumstantial evidence of efficacy. It would be extremely unlikely that every apparently successful trial in a series of successful trials was the result of random variations in coyote populations rather than the use of SDBs.

In any event, USDI has agreed to collect information which may shed some light on possible causes of any observed drop in predation, other than use of 1080 SDBs or concurrent coyote controls. As part of the 1985 permit, EPA required USDI to monitor the "activity or population of carnivorous mammals," including coyotes, in one of the study areas.

J. Scavenger vs. *Killer coyotes*

Some of the commenters objected to the new baiting technique proposed for study in Utah. The commenters argued that the baiting strategy would likely kill coyotes that scavenge livestock carcasses, but that these coyotes were not necessarily the same animals that had killed the livestock. In fact, the commenters argued that scavenging coyotes actually help farmers by removing carrion from the range and by controlling unwanted rabbits and rodents. The commenters implied therefore that the proposed method of

using 1080 SDBs, if successful, would be more harmful than helpful.

The theory that predation on livestock is practiced only by a minority of coyotes has never been demonstrated empirically. Although it has sometimes been observed that sheep have existed unharmed in the presence of coyotes, it is also true that coyotes are opportunistic carnivores and that lambs and kids are relatively easy prey. Therefore, it is believed by many that most coyotes, on occasion, kill livestock.

Because there is an issue about the impact of the proposed testing, EPA concludes that it is appropriate to allow the use of 1080 SDBs so that USDI can collect information which may begin to resolve the dispute. EPA would consider data showing that predation declined or stopped in areas near the Utah test sites—following the consumption of 1080 SDBs, and absent other explanations for the decrease—as an indication that predatory coyotes also scavenge.

K. Size of program

Both commenters objected to the issuance of the USDI permits for an expanded area, from 256,000 acres under the 1983 permit to 291,300 acres in 1985. Their objections rested both on grounds that the tests were incapable of producing useful data and that the larger area would only increase the risks.

EPA does not believe that the modest expansion in the total size of the test areas studied increases the risks, and the Agency expects that by expanding the size of the test area, USDI may obtain better data under the new permit. The risks posed by the proposed permit do not change substantially since USDI has not requested any increase in the number of baits to be used in an area. (As a practical matter, USDI has used only a small portion of the baits which were authorized in the previous 2 years of the permit and probably will not use all of the baits authorized under the 1985 permit.)

Moreover, the acreages requested in Montana and Idaho are not excessive in terms of the coyote-sheep situation and the research objectives. The much larger acreages requested for Utah are based on the trouble-shooting nature of the proposed studies. The entire extended range was requested for the Utah trials because it is not possible to determine in advance where the most appropriate kill sites will be found. Only a small portion of the entire area will actually be treated with 1080.

III. Conclusion

On January 8, 1985, EPA approved the requested renewal and issued the experimental use permit to USDI. The permit was issued under the authority of FIFRA sections 5(g) and 5(a). Under section 5(g), the Agency determined that USDI is a public agricultural research agency which is engaged in *bona fide* research on 1080 SDBs for predator control. EPA has also determined under section 5(a) that the proposed permit will not cause unreasonable adverse effects on the environment and is likely to generate information useful in determining whether to register 1080 SDBs. Specifically, the Agency has concluded that the 1985 permit should provide information on the following: (1) The efficacy and hazards of a new baiting strategy for use of 1080 SDBs; (2) the conditions under which 1080 SDBs are and are not likely to be an effective means of predator control; (3) the impact of use of SDBs on populations of nontarget wildlife; and (4) the usefulness of time-lapse photography as a technique for determining what species visit and consume 1080 SDBs. Moreover, in light of available data and field experience with 1080, EPA concludes that the risk to nontarget species is not significant because of the nature of the delivery mechanism, the limited number of baits involved, and the particular areas chosen for testing and the numerous precautions incorporated in the experimental design.

Dated: May 7, 1985.

Robert V. Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-11594 Filed 4-14-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2836-3]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on June 4, 1985, in the Peter Cooper Suite, of the Cooper Union School for the Advancement of Science and Art, Cooper Square, 7 East 7th Street, 8th Floor, New York City, New York, 10003. The meeting will start at 10:00 a.m. and adjourn no later than 4:00 p.m.

The principal purpose of the meeting will be to review the scientific adequacy of a draft Health Assessment Document for Beryllium prepared by the Office of Research and Development (ORD) and dated December 1984 (EPA-600/8-84-026A), and to discuss upcoming issues of current interest to the Subcommittee.

For information on how to obtain copies of the draft Health Assessment Document for Beryllium, please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, D.C. 20460, no later than c.o.b. May 28, 1985.

Dated: May 9, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-11687 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2836-1]

Organic Chemicals Manufacturing, Plastics and Synthetic Fibers; Pesticide Chemicals Manufacturing; Intent To Transfer Confidential Information to a Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to transfer confidential information to a contractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer or to grant access to confidential information collected under Section 308 of the Clean Water Act to selected EPA contractors. This information will assist the contractors in analyzing, revising, and reviewing the technical and economic data base which supports effluent limitations and standards and NPDES permits required by the Clean Water Act.

DATES: Comments on the notice of transfer are due ten days after date of publication..

FOR FURTHER INFORMATION CONTACT: Renee Rico, Economic Analysis Branch, Analysis and Evaluation Division (WH-586), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202)382-5386.

SUPPLEMENTARY INFORMATION: The Clean Water Act of 1977 requires the Environmental Protection Agency to develop, revise, and review effluent limitations and standards for industrial point sources. The Office of Water Regulations and Standards is responsible for the industrial point

source categories. EPA will be transferring confidential files for the Plastics and Synthetic Fibers and Organic Chemicals Manufacturing Point Source Category and the Pesticides Chemicals Manufacturing Point Source Category. The SIC codes contained in these Point Source Categories are:

SIC 2821 · Plastic Materials, synthetic resins and nonvulcanizable elastomers
SIC 2823 Cellulosic man-made fibers
SIC 2824 Synthetic organic fibers, except cellulosic
SIC 2865 Cyclic (coal tar) crudes and cyclic intermediates, dyes and organic pigments (lakes and tones)
SIC 2869 Industrial organic chemicals, NEC
SIC 2879 Pesticides and Agricultural Chemicals, NEC.

The confidential files for Pesticides Chemicals will remain at the same contractor under a different contract. The files are located at Meta Systems, Inc., Cambridge, MA under Contract No. 68–01–6426 and will remain at Meta Systems, Inc. under Contract No. 68–01–6774.

The confidential files for Plastics and Synthetic Fibers and Organic Chemicals are currently located at Meta Systems, Inc., Cambridge, MA under Contract No. 68–01–6426 and will continue to hold them under Contract No. 68–01–6774. Subsequently, the files shall be moved to Abt Associates of Cambridge, MA, (Contract No. 68–01–7074, including Eastern Research Group, Cambridge, MA, Charles River Associates, Inc., Boston, MA, Industrial Economics, Inc., Cambridge, MA, and Marshall Bartlett, Lexington, MA).

EPA has determined that it is necessary to transfer this information or grant access to the designated contractor in order that it may carry out the work required by their contract. The contracts and subcontracts contain all confidentiality provisions required by EPA's confidentiality regulations (40 CFR 2.302(h)(2–3).

In accordance with those regulations, sampled facilities and questionnaire respondents who have submitted confidential information have ten days from the date of this notice to comment on EPA's proposed transfer of this information to these contractors for the purposes outlined above (40 CFR 2.303(h)(2–3)).

Dated: May 7, 1985.

Henry Longest II,

Acting Assistant Administrator, Office of Water (WH–556).

[FR Doc. 85–11689 Filed 5–14–85; 8:45 am]

BILLING CODE 6560-50-M

[FR-2835-9]

Final Determination Concerning the Jack Maybank Site Pursuant to Section 404(c) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to restrict the use of disposal site at Jehossee Island, South Carolina.

SUMMARY: This is notice of EPA's Final Determination under section 404(c) of the Clean Water Act to restrict the use of a 900 acre wetland site (hereafter referred to as the Maybank Site) at Jehossee Island, South Carolina, as a disposal site, based on a finding by the Assistant Administrator for External Affairs that the discharge of dredged or fill material for the purpose or effect of impounding all or part of the Maybank Site would have unacceptable adverse effects on fishery areas (including spawning and breeding grounds) and recreation areas in the South Edisto River and St. Helena Sound.

EFFECTIVE DATE: The effective date of the Final Determination is April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Gregory E. Peck, Aquatic Resource Division, Office of Federal Activities (A–104), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475–8794.

Copies of the Final Determination are available for inspection in the Public Information Reference Unit, EPA Library, Room M 2904, 401 M Street SW., Washington, D.C. 20460, and at the EPA Region IV Library, 345 Courtland Street, Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: Under section 404(c) of the Clean Water Act, the Assistant Administrator for External Affairs has the authority to prohibit or restrict the use of a defined area in the waters of the United States as a disposal site for dredged or fill material, after notice and opportunity for public hearing, whenever he determines that such disposal will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas.

In accordance with the section 404(c) regulations (40 CFR Part 231), EPA's Region IV Administrator, Mr. Charles Jeter, initiated section 404(c) proceedings with regard to a 900 acre wetland site (the Maybank Site), on Jehossee Island, Charleston County, South Carolina. His action was in response to a Section 404 permit application by Mr. Maybank to construct earthen dikes to create two duck hunting/mariculture impoundments. The background of this action is summarized in the Region's notice of proposed determination and public hearing (published at 49 FR 30112, July 26, 1984).

On January 18, 1985, Mr. Jeter forwarded his recommended determination and the administrative record for the Maybank proceeding to the Assistant Administrator for External Affairs for her review in preparation of a final determination. His recommendation to prohibit the use of the Maybank Site for use for specification as a disposal site was based on anticipated unacceptable adverse effects to wildlife, fishery and recreation areas. Mr. Jeter also expressed his opinion that these direct impacts associated with the proposed project would be further magnified by the previous alteration of wetlands in the estuary of which the Maybank Site is a part.

After careful consideration of the record in this case, including extensive public comments, hearing record, comments for the Director of Civil Works (U.S. Army Corps of Engineers), and after consultation with the applicant, the Assistant Administrator for External Affairs determined that the use of the 900 acre wetland site as a disposal site would result in unacceptable adverse effects to fishery and recreation areas in the South Edisto River and St. Helena Sound. Specifically, the proposed project would result in the direct loss of approximately 30 acres of wetlands from the placement of fill material to construct impoundment dikes at the Maybank Site. Moreover, the impoundment of 900 acres of tidal marshes at Maybank Sites is likely to result in a significant decrease in the production and export of plant biomass (primarily in the form of detritus) and severely restrict access to tidal creeks and marsh surface at the Maybank Site by numerous species of fish and shellfish. It is anticipated that these changes will adversely impact the fishery resources of the South Edisto River and St. Helena Sound by reducing nutrient input to the estuarine food web and limiting the use of the Maybank Site as breeding, feeding and nursery habitat by dependent estuarine organisms. These impacts take on added significance when considered in the context of cumulative wetland loses in the area of the Maybank Site. The South Edisto estuary is part of the St. Helena Sound system which has already experienced the impoundment of 26,000 acres (22 percent) of its tidal marshes; 12,000 acres of impoundments are

located within a three mile radius of the proposed project.

On these bases, EPA has concluded that use of the Maybank Site as a disposal site for the discharge of dredged or fill material should restricted. This decision prohibits placement of dredged or fill material in the form of dikes or other structures which would have the purpose or effect of impounding the project marsh site or parts thereof.

Dated: May 6, 1985.

Josephine S. Cooper,

Assistant Administrator for External Affairs.

[FR Doc. 85-11690 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004124-002.

Title: Tacoma Terminal Agreement.

Parties:

The Port of Tacoma

International Transportation Service, Inc.

Synopsis: Agreement No. 224-004124-002 amends the basic agreement by expanding the leased premises at Terminal 7-D in Tacoma as described in Exhibit "C" contained in the agreement. The amendment will also increase the monthly rental for the premises.

Agreement No.: 224-004139-002.

Title: Palm Beach Terminal Agreement.

Parties:

The Port of Palm Beach District (Port)

Seaboard Marine, Ltd. (Seaboard)

Synopsis: Agreement No. 224-004139-002 amends the basic agreement by adding 1,025 sq. ft. of office space in the Port of Palm Beach Maritime Office Building located in Riviera Beach, Florida for the use of Seaboard, relative to its import and export business.

Agreement No.: 224-010754.

Title: New Orleans Terminal Agreement.

Parties:

Baton Rouge Marine Contractors, Inc. (BRMIC)

Machinery Rentals, Inc. (MRI)

Kerr Steamship Co., Inc. (Kerr)

Cooper/T. Smith Corporation (Cooper/T. Smith)

Strachan Shipping Company (Strachan)

ITO Corporation (ITO)

Synopsis: BRMCI is the operator of a container terminal in the Port of New Orleans. There are five shareholders in BRMIC, namely; MRI, KERR, COOPER/T. SMITH, STRACHAN and ITO. The agreement provides that the shareholders agree they will not operate a container terminal in the area of the Port of New Orleans, as defined in the agreement, in competition with the container terminal operated by BRMCI, while participating in it as shareholders. The agreement will become effective upon the date designated by the Commission.

Agreement No.: 224-010755.

Title: San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission (Port)

Naviera Interamericana Navicana S.A. (Navicana)

Synopsis: Agreement No. 224-010755 provides that Navicana agrees that it will utilize the Port of San Francisco as its published regularly scheduled Northern California port of call for its liner vessel service. As consideration to Navicana for such promise they will pay to the Port sixty percent of all revenue from dockage and wharfage generated under the agreement in lieu of one hundred percent of Port tariff charges. The term of the agreement will be for five years commencing on the first day of the month following determination of the effective date of the agreement by the Commission.

Agreement No.: 224-010756.

Title: New Orleans Terminal Agreement.

Parties:

J. Young & Company, Inc. (J. Young)

Oceanic Shipping Company (Oceanic)

Synopsis: J. Young is a Louisiana corporation and Oceanic is a Georgia corporation which is a wholly owned subsidiary of Strachan. Agreement No. 224-010756 provides for the formation of a joint venture to conduct all terminal operator/stevedoring functions of the two parties at the Port of New Orleans. The joint venture will be conducted under the name Transocean Terminal Operators. The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: May 10, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11701 Filed 5-14-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Farmers & Merchants Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Farmers & Merchants Bancorp, Inc.*, Archbold, Ohio: to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers & Merchants State Bank, Archbold, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pan American Banks, Inc.*, Miami, Florida; to acquire 100 percent of the voting shares of Pan American Bank of Broward, N.A., Oakland Park, Florida.

2. *Southwest Banc Shares, Inc.*, Chatom, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Chatom State Bank, Chatom, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Town & Country Bancorp, Inc.*, Springfield, Illinois; to acquire at least 80 percent of the voting shares of Logan County Bank, Lincoln, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Headquarters Holding Company*, Ava, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Ava, Ava, Illinois. Comments on this application must be received not later than May 29, 1985.

2. *Peoples of Indianola, Inc.*, Indianola, Mississippi; to acquire at least 5 percent of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi, thereby indirectly acquiring First Mississippi National Bank, Hattiesburg, Mississippi.

3. *River Bend Bancshares, Inc.*, Wood River, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Illinois State Bank of East Alton, East Alton, Illinois.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Crockett Bancshares, Inc.*, Crockett, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Allied First National Bank of Crockett, Crockett, Texas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Independent Community Bancorp*, Sunnymead, California; to become a bank holding company by acquiring 48.16 percent of the voting shares of Cal-West National Bank, Sunnymead, California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11643 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

Midsouth Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *MidSouth Bancorp, Inc.*, Lafayette, Louisiana; to engage *de novo* through its subsidiary, MidSouth Financial Services, Lafayette, Louisiana, in consumer finance activities throughout the State of Louisiana.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *San Diego Financial Corporation*, San Diego, California; to engage *de novo* through its subsidiary, San Diego Life Insurance Company, Phoenix, Arizona, in the activity of underwriting as reinsurer credit life and disability insurance which is directly related to extensions of credit. This activity would be conducted in the State of California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11642 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

Newport Pacific Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Newport Pacific Bancorp*, Anaheim, California; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Hanford, California. Newport Pacific Bancorp has also applied to acquire the following nonbank companies: American Guarantee Mortgage Corporation (mortgage banking activities including the origination of first and second trust deeds sold to institutional lenders, from offices in Anaheim, Brea, Hesperia, Palm Springs, Diamond Bar, Santa Barbara, Oxnard and Lompoc, California, serving the State of California); Enterprise Financial Services, Anaheim, California (mortgage banking activities including brokering of trust deed loans from an office in Anaheim, California, serving the State of California); NPB Loan Service, Anaheim, California (loan servicing activities including the servicing of first, second and third trust deed mortgages on California real property held by institutional lenders from an office in Anaheim, California, serving the State of California); and Tiffany Escrow Bancorp, Anaheim, California (neutral third party escrow activities from an office in Anaheim, California, serving the State of California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11641 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of new system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to establish a new system of records that will be maintained by GSA. The system of records, Contracted Travel Services Program, GSA/GOVT-4, is being established to allow Government agencies to provide travel agents under contract to the Federal government information for the arrangement of travel services to authorized individuals. A new system report is being filed with the President of the Senate, the Speaker of the House, and the Office of Management and Budget. A waiver of the 60-day advance notice requirements of OMB Circular A-108 is being requested from the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals. Under the system, travel agents will collect and maintain information on individuals authorized by a Federal agency to travel and make travel arrangements for such individuals.

The proposed new system of records is as follows:

GSA/GOVT-4

SYSTEM NAME:

Contracted Travel Services Program.

SYSTEM LOCATION:

This system of records is located in the travel agencies under contract with a Federal agency and in the administrative offices of Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees on travel and individuals being provided travel by the Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include traveler's profile which contains name of individual, social security number, home and office telephones, agency's name, address, and telephone number, air travel preference, rental car identification number and preference of car, hotel preference, current passport and/or visa number, personal credit card numbers, and additional information; travel authorization; and monthly reports from travel agent(s) showing charges to individuals, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 711; interpret or apply 31 U.S.C. 3511, 3512, and 3523.

PURPOSE:

To assemble in one system information to enable travel agents who are under contract to the Federal Government to issue and account for travel provided to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

c. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to an expert, a consultant, or contractor of the agency in performing a Federal duty.

e. To disclose information to a credit card company for billing purposes.

f. To disclose information to a Federal agency for accumulating reporting data and monitoring the system.

g. To disclose information to the agency by the contractor in the form of itemized statements or invoices, and reports of all transactions including refunds and adjustments to enable audits of charges to the Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets. Computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed by name and/or social security number at each location.

SAFEGUARDS:

Records stored in lockable file cabinets or secured rooms. Computerized records protected by password system. Information released only to authorized officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records kept by the Federal agency are held for 3 years and then destroyed. Records kept by the travel agency are held and destroyed according to their needs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Transportation, Office of Federal Supply and Services, General Services Administration (FT), Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the appropriate agency's adminstrative office for which they traveled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the appropriate agency's administrative office for which they traveled. Individuals must furnish their full name and the authorizing department or agency and components for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate agency's adminstrative office for which they traveled. Individuals must furnish their full name and the name of the authorizing agency, including duty station where they were employed when traveling if applicable.

RECORD SOURCE CATEGORIES:

Individuals, employees, travel authorization, credit card companies.

Dated: May 7, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-11676 Filed 5-14-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Mixer-Mate "Plus" T-1600; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of that part of a new animal drug application (NADA) sponsored by Protein Blenders, Inc., covering use of Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: May 28, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Protein Blenders, Inc., Box 631, Highway 218 South, Iowa City, IA 52240, is sponsor of NADA 96-273 for use of Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency.

The application was originally approved on November 4, 1974. In a letter dated October 16, 1984, the firm requested withdrawal of approval of that part of the NADA covering use of Mixer-Mate "Plus" T-1600 because the premix is no longer being marketed. Other products presently approved under NADA 96-273 are not affected by this notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 96-273 for Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix is hereby withdrawn, effective May 28, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, the regulation reflecting this approval is removed.

Dated: May 6, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-11653 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. June 10, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss Cytotec (misoprostil) for therapy of duodenal ulcer: NDA19-268, G.D. searle & Co.; Moctanin (monooctanoin) for solubilizing cholesterol gall stones retained in the biliary tract of patients following cholecystectomy.

Dermatologic Drugs Advisory Committee

Date, time, and place. June 24, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., open committee discussion, 9:30 a.m. to 5 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present

data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Etretinate (Hoffmann-La Roche, Inc.); (2) requirements to prove the efficacy of topical drugs to promote wound healing; (3) prescription topical antibiotics for the treatment of skin infections, pseudomonic acid (Beecham Labs); and (4) Lindane (Reed & Carnrick).

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. June 24 and 25, 9 a.m., Parklawn Bldg., Conference Rms. I and J (June 24) and Conference Rms. G and H (June 25), 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person. Open public hearing June 24, 9 a.m. to 10 a.m.; open committee discussion, June 24, 10 a.m. to 5 p.m.; June 25, 9 a.m. to 12 m.; A. T. Gregoire, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1869.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in metabolic and endocrine disorders.

Agnedo—Open public hearing. Intereated persons requresting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On June 24, the committee will discuss: (1) The medical management of cryptorchidism, and (2) Vitamin E for treatment of retinopathy of prematurity. On June 25, the committee will discuss revision of guidelines for clinical evaluation of drugs used in the treatment of osteoporosis.

Oncologic Drugs Advisory Committee

Date, time, and place. June 28, 8:30 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:45 a.m. to 3:45 p.m.; open public hearing, 3:45 p.m. to 4:45 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane Rockville MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer therapy.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Supplemental NDA for Tamoxifen in combination with cytotoxic drugs in adjuvant chemotherapy for breast cancer; (2) safe handling of cancer drugs; (3) discussion on statistics—power considerations and prerandomization in clinical trials; (4) quality of life evaluation in cancer clinical trials.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall last at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11656 Filed 5–14–85; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Orlando District Office, chaired by Adam J. Trujillo, District Director. The topic to be discussed is Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Friday, May 24, 1985, 8:45 a.m. to 11:15 a.m.

ADDRESS: Sacred Heart Hospital, Children's Auditorium, 5151 North Ninth Avenue, Pensacola, FL 32504.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809, 305-855-0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11655 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Sections SJ. 10 and SJ. 20 of the SSA statement, as published in the **Federal Register** on July 18, 1984 (49 FR 29153-55), and amended on October 29, 1984, is being amended to reflect the organizational and functional realignments of the Office of Disability (OD).

Accordingly, sections of SJ which describe the mission, organization and function of OD have been revised to include new organization and functional requirements.

The OD material is amended as follows:

Section SJ.00 *The Office of Disability*—(Mission)

In line 4, after ". . . issues the operational . . ." add "and administrative appeals process . . . ."

Section SJ. 10 *The Office of Disability*—(Organization)

Delete:

F. The Division of Technical Policy ( ).

Add:

F. The Division of Program Analysis and Technical Policy ( ).

Section SJ.20 *The Office of Disability*—(Functions)

Delete:

F. The Division of Technical Policy ( ) in its entirety.

Add:

F. The Division of Program Analysis and Technical Policy ( ):

1. Is responsible for developing and issuing the policies, procedures and instructions relating to the development of nonmedical evidence, the processing of claims, the development of policy guidelines and technical procedures for the Continuing Disability Review (CDR) process.

2. Is responsible for developing the procedures and instructions which define the administrative appeals process; the development of notice policy and issuing language and forms for use in disability claims and notices including foreign language and braille notices.

3. Is responsible for coordinating, with the Office of the General Counsel and the Office of Policy, recommendations concerning which court decisions should be appealed; the development of responses to interrogatories and court orders; and will ensure that policies and procedures are changed to reflect legal precedents and comply with specific court orders.

4. Is responsible for: (a) coordination of disability program management information needs; (b) coordination of OD action to develop DDS hardware, software needs, office automation requirements, linkages and interfaces, and data bases and (c) detection and definition of policy application inconsistencies and program trends through analysis of all disability program data, end-of-line program case review across all levels of adjudication, assessment of review component findings and monitoring of DDS rebuttal returns.

5. Is responsible for: (a) Format, structure and organization of disability-related POMS issuances; (b) uniformity review of the Office of Assessment, the Office of Hearings and Appeals, the Office of Central Operations and regional office disability-related programmatic issuances; (c) coordination of development and implementation of disability training; (d) managing the policy review tracking and reporting system; (e) startup of disability program initiatives and pilot projects and (f) serving as OD liaison for field office concerns.

6. Is responsible for establishing due process hearing procedural, operational (including spending and staffing levels) and regional oversight policy; establishing quality, quantity and time standards for hearing officer performance; and collection and analysis of hearing data to assess performance and to detect policy application inconsistencies or program trends; design, conduct and analysis of studies on the hearing process.

7. Is responsible for regulatory review of State and Federal hearing officer decisions, preparation of decisions of foreign claims or reversal of hearing determinations in cases of clear decisional error; participation in hearing process studies and preparation of statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

Dated: April 17, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-11684 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Public Lands in Lake County, OR

Correction

In the issue of Thursday, April 25, 1985, on page 16354 a correction to FR Doc. 85-8359 appeared. The correction was inaccurate and should be corrected as follows:

In the table, Parcel #11, a comma (,) should appear between "SE¼" and "SW¼"; in Parcel #14, a comma (,) should appear between "NE¼" and "S½", and the second line should end in a period (.) (remove the dots).

BILLING CODE 1505-01-M

[A-20347; 5-00261-GP5-007]

Realty Action; Safford District Office, Designation of Public Lands To Be Included In State Exchange In Cochise, Graham, and Greenlee Counties, AZ; Correction

In FR Doc. 85-10046 appearing on pages 16357 and 16358 in the issue of Thursday, April 25, 1985 the following correction is made:

On page 16358, second column, the W½NE¼, Sec. 1, T. 15 S., R. 30 E. should be changed to the W½SE¼.

Dated: May 7, 1985.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 85-11665 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-32-M

[W-68745]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-68745 for lands in Fremont County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-67845 effective September 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11733 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-22-M

[M 64885 (ND)]; 4-20703-ILM]

North Dakota; Invitation; Coal Exploration License Application

Correction

In FR Doc. 85-10707 appearing on page 18752 in the issue of Thursday, May 2, 1985, make the following correction: In the first column, the land description should read:

T. 145 N., R. 87 W., 5th P.M.,
Sec. 6: SE¼;
Sec. 20: NW¼.
T. 144 N., R. 88 W., 5th P.M.,
Sec. 2: Lots 3, 4, S½NW¼.
T. 145 N., R. 88 W., 5th P.M.,
Sec. 2: Lot 1, SE¼NE¼.
562.51 acres.

BILLING CODE 1505-01-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the West Delta/Grand Isle Federal Unit Agreement No. 14-08-001-2454, submitted on April 30, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the West Delta/Grand Isle Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). The practices and procedures are set out in a revised §250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11664 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, T. J. Koppenberg/T.J. Mining has filed a plan of operations in support of proposed mining operations on lands embracing the MOOSE #1 & 2, BUENO, TABO #3 & 4 Mining Claims within the Denali National Park and Preserve. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-11758 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Kenai Fjords National Park; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Henry W. Waterfield has filed a plan of operations in support of proposed mining operations on lands embracing the SURPRISE BAY #1 Mining Claims within the Kenai Fjords National Park. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-11757 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-M

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting at 9:00 A.M. on Wednesday, June 12, 1985, and ending Thursday afternoon, June 13, 1985.

Location: F.A.A. Recreation Hall, Bettles Field, Alaska.

Agenda

The following agenda items will be undertaken:

1. Call to order.
2. Roll call.
3. Introduction of visitors and guests.
4. Minutes.

5. Old business.
a. Agency reports.
b. Committee reports and work sessions.
6. New business.
a. Village concerns.
b. Review of draft park General Management Plan.
7. Other business.
8. Adjournment.

Written comments and recommendations received prior to May 29, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Artic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281..

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: May 8, 1985.

Robert L. Peterson,

Regional Director, Alaska Region.

[FR Doc. 85-11759 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-M

Delaware Water Gap National Recreation Area; Revision of Park Boundaries

AGENCY: National Park Service, Interior.

ACTION: Notice of revision of park boundaries.

SUMMARY: With this notice, the National Park Service is notifying the public of adjustments to the boundaries of the Recreation Area to exclude certain lands within the boundaries as proposed by the Land Protection Plan for the Recreation Area, which was approved December 10, 1984.

ADDRESSES: The revised boundary map is on file and available for inspection in the administrative office of the Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324; in the office of the Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106; and in the office of the Natioal Park Service, Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Superintendent Albert A. Hawkins, Delaware Water Gap National Recreation Area, telephone 717-588-6637.

SUPPLEMENTARY INFORMATION: Section 3(b) of Public Law 89-158 of the 89th Congress enacted September 1, 1965 (79 Stat. 612), as amended, authorized adjustments of the boundaries of the Delaware Water Gap National Recreation Area by publication of the amended description thereof in the **Federal Register.**

These boundaries are specified in Section 2(a) of the Act as "lands and interests therein within the boundaries of the area, as generally depicted on the drawing entitled 'Proposed Tocks Island National Recreation Area' dated and numbered September 1962, NRA-TI-7100."

In a subsequent Notice of Establishment published in the **Federal Register**, Vol. 42, No. 109, Tuesday, June 7, 1977, the Secretary of the Interior gave notice of the establishment of the Recreation Area. In this notice, he stated that "adjustments may be subsequently made in the boundaries of the area by publication of the amendments to the boundary description thereof in the **Federal Register**" as provided in the authorizing act.

In a further Notice of Revision of Park Boundaries published in the **Federal Register**, Vol. 46, No. 72, Wednesday, April 15, 1981, 46 FR 22044, the Regional Director, Mid-Atlantic Region, gave notice of a boundary revision as provided in the authorizing act.

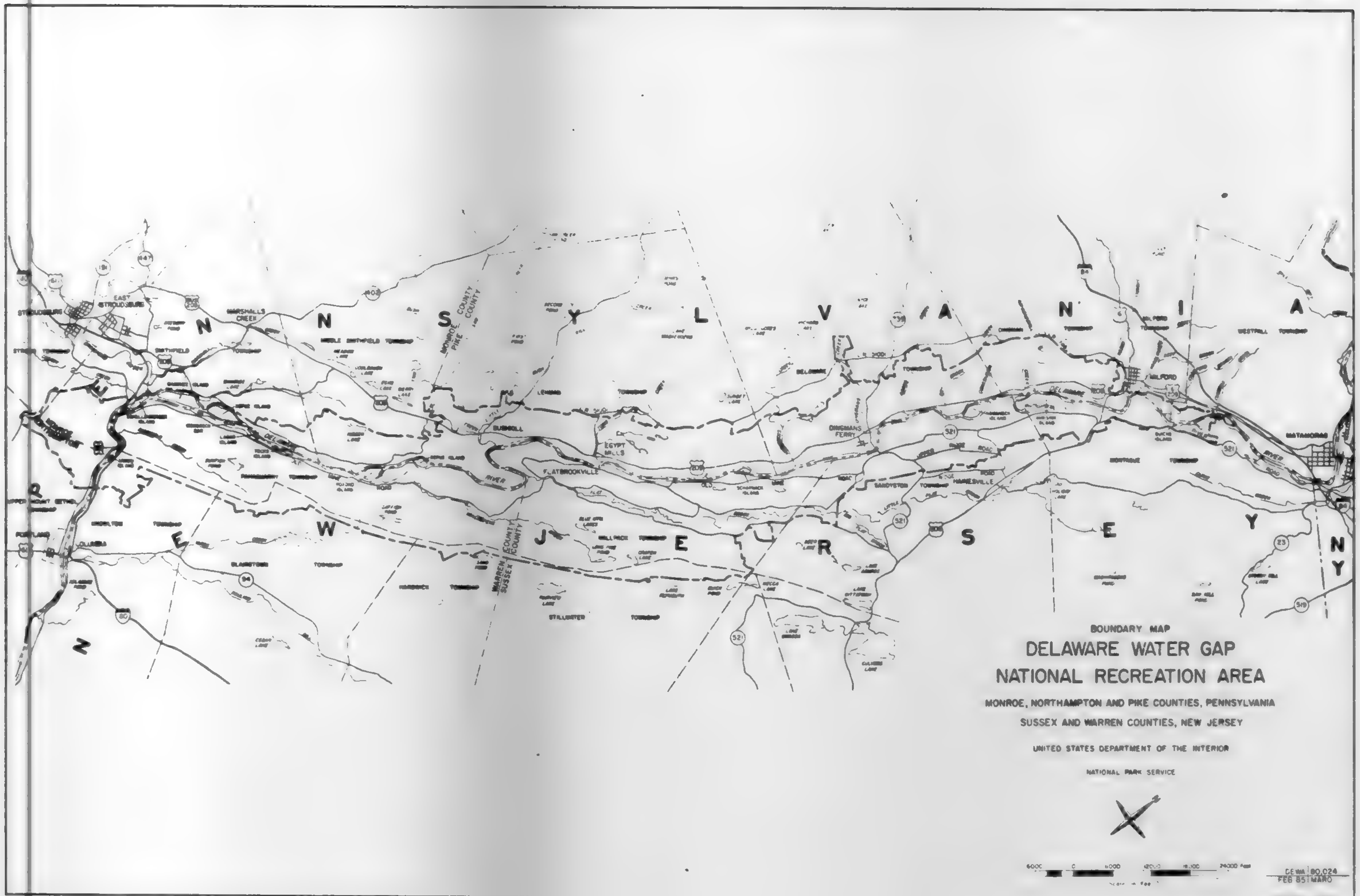
Notice is hereby given that the boundary of the Delaware Water Gap National Recreation Area has been revised pursuant to the above act, to exclude lands depicted on the boundary map numbered DEWA/80,024 dated February 1985. This map was prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

Dated: April 9, 1985.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region

BILLING CODE 4310-70-M



[FR Doc. 85-11583 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-C

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventieth meeting of the Board for International Food and Agricultural Development (BIFAD) on June 6, 1985.

The purpose of the meeting is to: consider action on a proposed AID agricultural research strategy for Africa; receive a report of the Joint Committee on Agricultural Research and Development (JCARD); and discuss "forestry in the Developing World: Issues, Problems, and Opportunities", with participation by representatives of A.I.D., the U.S. Department of Agriculture Forest Service, U.S. universities, and the private sector.

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street NW., Washington, D.C. The meeting is open to the public. Any interested person attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Dated: May 9, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85-11746 Filed 5-14-85; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-211]

Certain Electrical Connectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Allied Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 8, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: May 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11777 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-261 (Preliminary)]

12-Volt Lead-Acid Type Automotive Storage Batteries From Korea

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-261 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of 12-volt lead-acid type automotive storage batteries, provided for in item 683.05 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 24, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202-523-0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 8, 1985, by General Battery International Corporation, of Puerto Rico.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on May 30, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judith C. Zeck (202-523-0300) not later than May 28, 1985 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 3, 1985 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: May 10, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11780 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-206]

Certain Surgical Implants for Fixation of Bone Fragments; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: DePuy, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 8, 1985.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: May 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11776 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-254 (Preliminary)]

Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of heavy-walled rectangular welded carbon steel pipes and tubes, provided for in item 610.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 25, 1985, a petition alleging that an industry in the United States is

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Lodwick not participating

materially injured or threatened with material injury by reason of LTFV imports of heavy-walled rectangular welded carbon steel pipes and tubes from Canada was filed with the Commission and the Department of Commerce by:

Bull Moose Tube Co., St. Louis, MO;
Copperweld Tubing Group, Pittsburgh, PA;
Kaiser Steel Corp., Los Angeles, CA;
Maruichi American Corp., Santa Fe Springs, CA;
UNR-Leavitt, Chicago, IL; and
Welded Tube Co. of America, Chicago, IL.

Accordingly, effective March 15, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-254 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 2, 1985 (50 FR 13089). The conference was held in Washington, DC, on April 16, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 9, 1985. The views of the Commission are contained in USITC Publication 1691 (May 1985), entitled "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada: Determination of the Commission in Investigation No. 731-TA-254 (Preliminary) Under the Tariff Act of 1930, Together With the Informaiton Obtained in the Investigation."

Issued: May 9, 1985.

By Order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11779 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Termination of Respondent and Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of a respondent and the issuance of a consent order directed to that repondent.

SUMMARY: The Commission has granted a motion for termination of respondent Equipment Importers, Inc., d/b/a/ "jet Equipment and Tools" (Jet). The consent order requested by the parties has been issued.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines by reason of alleged unfair acts and practices by Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 20767, May 31, 1984.) The complainant is Delta International Machinery Corp. (See 49 FR 23463, June 6, 1984.)

On December 3, 1984, a joint motion (Motion No. 174-71"C") was filed by Delta and U.S. respondent jet, which requested termination of the investigation as to jet and entry of the consent order incorporated into the parties' settlement agreement. The Commission investigative attorney supported the motion.

On January 11, 1985, the presiding administrative law judge (ALJ) issued an initial determined (ID) granting jet's motion along with consent order motions filed by 12 other respondents. (See 50 FR 3039, January 23, 1985.) The Commission subsequently reversed the ID with respect to jet after discovering that the parties had not submitted a copy of the proposed consent order directed to Jet. (See 50 FR 9142, March 6, 1985.) The Commission noted, however, that Jet's motion could be refiled along with the required documents.

A copy of the proposed order was filed on march 7, 1985. It was accompanied by Motion No. 174-71"C" requesting that the Commission reconsider its denial of Jet's motion. In the alternative, Jet and Delta asked that the Commission treat Motion No. 174-71"C" as a new consent order motion, and certify it to the ALJ for an ID.

The Commission treated Motion No 174-71 "C" as a new motion for the consent order termination of Jet. The Commission concluded, however, that certification of temotion to the ALJ would serve no useful purpose and would unnecessarily delay the disposition of the motion. After reviewing the motion, the Commission determined that (1) the content of the settlement agreement and the proposed consent order complies with the Commission's rules; and (2) there is no indication that the parties' settlement is not in the public interest or that the public would be adversely affected by the proposed consent order. The Commission therefore determined to grant the motion and issue the consent order.

Termination of the investigation as to respondent Jet on the basis of a consent order furthers the public interest by conserving the resources of the Commission and the parties.

Public Inspection

The parties' settlement agreement, the Commission's Action and Order of termination, the consent order, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Issued: May 9, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11778 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on May 22-23, 1985, from 9 a.m. until 5 p.m. at the Villa Capri Motor Hotel, 2400 North IH 35, Austin, Texas 78705.

The major topics to be discussed include:

(1) Presentation of results of studies conducted by independent contractors regarding Federal Agency noncriminal justice use of criminal history records.

(2) Reports of and recommendations from ad hoc subcommittees on the Interstate Identification Index, Quality Assurance, Planning and Evaluation, and Sanctions.

(3) Presentations of proposals recommended by state and local users of the NCIC System to enhance the quality and completeness of records in the System.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come-first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify

the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

Dated: May 13, 1985.

William H. Webster,

Director.

[FR Doc. 85-11852 Filed 5-14-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: 1. June 5, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers' applications in Religion and Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 2. June 6, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 3. June 7, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 4. June 10, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Modern Literature and the Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 5. June 11, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 6. June 12, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 7. June 13-14, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 8. June 20-21, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 9. June 27-28, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 10. June 17-18, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Exemplary Projects in Undergraduate and Graduate Education and Teaching Materials from Recent Research, for projects beginning after August 1, 1985.

Date: 11. June 10-11, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, for projects beginning after January 1, 1986.

Date: 12. June 7, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications category, Basic Research Program, Division of Research Programs, for projects beginning after October 1, 1985.

Date: 13. June 10, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications category, Basic Research Program, Division of Research Programs, for projects beginning after October 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to sebsections (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-11774 Filed 5-14-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street, NW, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

Deputy Director, Chairperson

Thomas Ubois, Assistant Director for Administration, Acting Chairperson and Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Carl W. Hall, Deputy Assistant Director for Engineering

James F. Hays, Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences

William Steward, Deputy Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

Alan I. Leshner, Deputy Director, Division of Behavioral and Neural Sciences, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director.

Dated: May 10, 1985.

Jeff Fenstermacher,

Director, Division of Personnel and Management.

[FR Doc. 85-11667 Filed 5-14-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on June 4, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 4, 1985—8:45 a.m. Until the Conclusion of Business

The Subcommittee will review the following: (1) Proposed Regulatory Guide (Task No. IC 127-5), "Criteria for Programmable Digital Computer Systems Software in Safety-Related Systems of Nuclear Power Plants," (2) proposed Revisions to Appendix J to 10 CFR Part 50, "Leak Tests for Primary and Secondary Containments of Light-Water Cooled Nuclear Power Plants," and (3) proposed Regulatory Guide (Task No. MS 021-5), "Containment System Leakage Testing."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-11732 Filed 5-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue a partial Exemption relative to Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonberry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is an exemption from the 10 CFR 50.54(a) requirement to update the facility's FSAR whenever the QA plan is revised. This partial exemption was requested in the licensee's letter dated April 11, 1983.

The Need for the Action

The exemption is warranted because GPUNC has already been given an exemption from the FSAR updating requirements of 10 CFR 50.71(e). The subject exemption was issued on February 4, 1982. Since the FSAR is not being maintained current, as permitted by the foregoing exemption, it is therefore consistent and justified that an exemption from the FSAR QA plan update requirements of 10 CFR 50.54(a) be granted. Pursuant to the February 1982 exemption, however, the licensee is still required to submit changes to its QA plan to the NRC.

Environmental Impacts of the Proposed Actions

The staff has evaluated the subject exemption and concluded that it will not result in significant increases in airborne or liquid contamination radioactivity inside the reactor building or in corresponding releases to the environment. There are also no non-radiological impacts to the environment as a result of this action.

Alternative to This Action

Since we have concluded that there is no sigfnificant environmental impact associated with the subject Exemption, any alternatives to this change will have either no significant environmental impact or greater environmental impact. The principal alternative would be to deny the requested action. This would not reduce significant environmental impacts of plant operations and would

result in the application of overly restrictive regulatory requirements when considering the unique conditions at TMI-2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Impact Statement for TMI-2 dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see letter to B. J. Snyder, USNRC, from R. C. Arnold, GPUNC, TMI-2 Recovery Quality Assurance Plan, Revision 2, dated April 11, 1983.

The above document is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11731 Filed 5-14-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. PRM-20-7]

Natural Resources Defense Council, Inc.; Action on Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Natural Resources Defense Council, Inc. The petitioners requested that the Commission adopt interim regulations for shallow land disposal of low-level radioactive waste. The petition is being denied on the grounds that the promulgation of the final rule creating 10 CFR Part 61 (entitled "Licensing Requirements for Land Disposal of Radioactive Waste") provides the means of ensuring consistent and safe practices for near-surface disposal of radioactive wastes. Thus, the seven issues raised in the petition were encompassed in the Part 61 requirements.

ADDRESSES: Copies of correspondence and documents cited below are available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Jackson, Sr. Section Leader, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-427-4500.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 1976, Richard Cotton and Terry Lash submitted to the Commission a petition for rulemaking on behalf of the Natural Resources Defense Council, Inc. A notice of receipt of the petition for rulemaking was published in the **Federal Register** on September 23, 1976 (41 FR 41759). The petitioners requested that the Commission adopt the following provisions as interim standards for shallow land disposal of low-level radioactive wastes.

A. Long-Lived, Transuranic-Contaminated Wastes

1. The transfer of regulatory authority over long-lived transuranic wastes from the states to NRC.
2. An immediate end to burial of long-lived transuranic wastes with only retrievable storage permitted.
3. Payment of fees by persons that produce transuranic wastes to finance adequately safe permanent disposal.
4. Establishment of a reporting and inspection system operated by NRC (with on-site, unannounced inspection by NRC inspectors) to assure accurate classification of transuranic wastes.

B. Other Low-Level Radioactive Wastes

5. The suspension of licensing of new or enlarged burial sites until NRC establishes site selection criteria, radioactive release standards setting maximum permissible migration rates for radionuclides away from disposal sites, minimum standards for environmental monitoring programs, and standards for long-term care with mechanisms to finance sure care.
6. Establishment of minimum fees to be paid effective immediately for each cubic foot of waste buried at existing sites to assure adequate funds for long-term care.

C. Solidification of Low-Level Radioactive Wastes Before Shipment

7. The solidification of all radioactive wastes before shipment to reduce the potential for release to the environment either through accident or sabotage.

In an accompanying document (entitled "Memorandum of Points and Authorities in Support of the Natural Resources Defense Council's Petition for Rulemaking and Request for a Programmatic Environmental Impact Statement"), the petitioners also requested that the Commission undertake the preparation of a programmatic generic environmental impact statement (GEIS) on low-level waste disposal.

II. Partial Denial of Petition

Following an analysis by the NRC staff of the issues and points raised by the petition and of the comments received in response to the filing of the petition, the NRC published a partial denial of the petition; specifically, the request for the preparation of a separate programmatic GEIS on the grounds that the Commission believed that a separate GEIS for low-level waste disposal was neither required by the National Environmental Policy Act of 1969 (NEPA) nor necessary for the development of the NRC program. This denial was included in a **Federal Register** notice that was published on July 25, 1979 (44 FR 43541) and included a lengthy discussion of the petition, the public comments received on the petition, the NRC staff position on the petition, and a discussion of the regulations development program which the NRC staff had begun in 1977. The NRC staff indicated that when complete, the regulations under development would address the issues of disposal site selection, financing arrangements for closure and long-term maintenance and surveillance of disposal sites, waste form and classification, and waste disposal alternatives.

III. Development of 10 CFR Part 61

The regulations that the NRC staff had under development became the new 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." Part 61 includes licensing procedures, performance objectives and technical requirements for land disposal of radioactive waste. The Draft Environmental Impact Statement was published on October 22, 1981 (46 FR 51776) following the publication of the

notice of proposed rulemaking for Part 61 on July 24, 1981 (46 FR 38081). Following the NRC staff's evaluation of a broad range of public comments, the final EIS was published on November 26, 1982 (47 FR 53829) and the final rule for Part 61 was published on December 27, 1982 (47 FR 57446).

Part 61 establishes a classification scheme which divides waste intended for land disposal into three classes based on radiological hazard: Class A, B, and C. Class A waste contains the lowest concentrations of radionuclides and must meet only minimum waste form requirements. Class B and Class C wastes contain higher concentrations and must meet both the minimum and stability waste form requirements. Additionally, Class C waste must be disposed of by the disposal site operator using methods that provide additional protection against inadvertent intrusion.

IV. Resolution of Petition Issues in 10 CFR Part 61

Issue 1. The transfer of regulatory authority over long-lived transuranic wastes from the states to NRC.

Part 61: Agreement States have made changes in their license conditions for the operating commercial disposal sites to effect compatibility with Part 61 (See § 61.2, Definitions; Subpart C, Performance Objectives; Subpart D, Technical Requirements for Land Disposal Facilities; portions of Subpart B necessary to implement Subparts C and D; § 20.311, Transfer for Disposal and manifests; and that portion of Subpart E requiring closure funding arrangements). See issu[e 2, below, regarding transuranic waste disposal.

Issue 2. An immediate end to burial of long-lived transuranic wastes with only retrievable storage permitted.

Part 61: The Part 61 classification system (§ 61.55) limits the disposal of long-lived transuranic contaminated waste to 100 nanocuries per gram (Class C maximum concentration). Wastes exceeding Class C are currently being stored by waste generators at their sites.

The NRC staff is currently developing criteria for evaluating disposal of waste which exceeds Class C concentrations. The results of the criteria development will help accomplish two objectives: Expansion of the 10 CFR Part 61 impact analysis methodology (on a generic rather than site-specific basis) and provision for supporting information for case-by-case evaluations of the impacts of individual waste and variations on disposal methods. The methodology will also enable a limited independent check of site-specific proposals. Efforts to define requirements for disposal of waste that exceed Class C concentrations are expected to take several years. However, the staff believes that generic guidance for evaluating disposal requests for a wide spectrum of these wastes will be available by mid-1985.

Issue 3. Payment of fees by persons that produce transuranic wastes to finance adequately safe permanent disposal.

Part 61: Subpart E, Financial Assurances, § 61.61—Each applicant for a disposal site license shall show that it possesses the necessary funds to cover the estimated costs of conducting all licensed activities; § 61.62—Applicants shall provide assurance of funds to carry out disposal site closure and stabilization; and § 61.63—Applicants shall provide assurances that arrangements are in place to provide sufficient funds to cover the cost of monitoring and any required maintenance during the institutional control period (i.e., up to 100 years).

Radioactive waste which exceeds the Class C concentration limits is not generally acceptable for near-surface disposal (in the case of transuranic waste, the Class C upper limit is 100 nanocuries per gram of waste). However, the Commission may, upon request or its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation of the specific characteristics of the waste, disposal site, and method of disposal, it finds reasonable assurance of compliance with the Part 61 performance objectives (see § 61.58).

The matter of special fees being charged to waste generators for disposal of above Class C wastes is currently moot since, in the absence of a repository or other method for disposal, these wastes are currently being stored by the waste generators. When these facilities become available, the matter of fees will be considered.

Issue 4. Establishment of a reporting and inspection system operated by NRC (with on-site, unannounced inspection by NRC inspectors) to assure adequate classification of transuranic waste.

Part 61: Subpart G, Records, Reports, Tests, and Inspections, §§ 61.80, 61.81, 61.82, and 61.83—The commercial operating disposal sites are all under Agreement State jurisdiction, and requirements compatible to Subpart G are required by license conditions at the sites.

Issue 5. The suspension of licensing of new or enlarged sites until NRC establishes site selection criteria, radioactive release standards setting maximum permissible migration rates for radionuclides away from disposal sites, minimum standards for environmental monitoring programs, and standards for long-term care with mechanisms to finance such care.

Part 61: Subpart D, Technical-Requirements for Land Disposal Facilities—§ 61.50 specifies the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal facility; § 61.53 (b), (c), and (d) require a licensee to have plans for corrective measures if migration of radionuclides would indicate that the performance objectives of Subpart C may not be met, require maintenance of a monitoring program during the disposal facility construction and operation, and requires maintenance of a monitoring system after disposal site closure based on the operating history and the closure and stabilization experience of the disposal site; also Subpart C, § 61.41 provides limits for annual dose rates to members of the public from releases of radioactive material to the general environment. The requirements of Subpart E, Financial Assurances, are discussed under Issue 3.

Issue 6. Establishment of minimum fees to be paid effective immediately for each cubic foot of waste buried at existing sites to assure adequate funds for long-term care.

Part 61: Subpart E, Financial assurances, is not incombent on the existing sites, since they operate under Agreement State regulations. However, the Agreement States routinely assess a charge for waste disposal which is placed in a fund to finance long-term care of the site.

Issue 7. The solidification of all radioactive wastes before shipment to reduce the potential for release to the environment either through accident or sabotage.

Part 61: Subpart D, § 61.56, paragraphs (a)(2) and (b)(2) assure that wastes will not be shipped as liquids.

The foregoing discussion of NRC actions, coupled with the earlier partial denial of the NRDC petition, completes the NRC's response to this NRDC petition. The Commission believes that implementation of 10 CFR Part 61 provides the means of ensuring consistent and safe practices for near-surface disposal of wastes. Accordingly, the petition is denied.

Dated at Bethesda, Maryland this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-11730 Filed 5-14-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14506 (812-6087)]

American Pension Investors Trust et al.; Application for Order Permitting Assessment (and Waiver) of a Contingent Deferred Sales Load

May 8, 1985.

Notice is hereby given that American Pension Investors Trust ("Trust") and American Pension Distributors, Inc. ("APDI" and, collectively with the Trust, "Applicants"), each at 2316 Atherholt Road, Lynchburg, VA 24501, filed an application on April 9, 1985, and an amendment thereto on April 30, 1985, for a Commission order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from sections 2(a)(23), 2(a)(35), 22(c) and 22(d) of the Act and Rule 2c-1 thereunder to the extent necessary to permit assessment (and waiver) of a contingent deferred sales load ("CDSL") on certain redemptions of Trust shares. All interested persons are referrred to the application on file with the Commission for a statement of the represcnentations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, the Trust was organized as a Massachusetts business trust in January 1985, and is registered under the Act as an open-end, diversified, management investment company. APDI, a registered broker-dealer, is the Trust's distributor and will receive the proceeds of the CDSL. American Pensions Investors, Inc. ("Adviser"), an affiliate of APDI, is Trust's investment adviser.

Applicants propose to impose a CDSL on certain redemptions of Trust shares. Applicants represent that no CDSL will be imposed upon redemption on amounts derived from (i) increases in the value of shares above the total cost of shares being redeemed due to increases in the net asset value per share, or (ii) shares acquired through reinvestment of dividend income and capital gains distributions, or (iii) purchases made more than five years prior to the redemption. Applicants also represent that if the current net asset value of the shares redeemed has declined below the shareholder's cost due to the Trust's performance, the CDSL will be applied to the current value rather than the repurchase price.

Applicants state that where a CDSL is imposed, the amount will depend upon when the shares being redeemed were purchased. During the first 12 months after purchase, the charge would be 5% of the amount subject to a redemption charge. The charge would decrease by 1% per 12-month period thereafter until after five 12-month periods, at which time no charge would be imposed upon redemptions. Applicants represent that any CDSL imposed upon redemption would not, in the aggregate (including any prior charges incurred), exceed 5% of the total cost of the shares being redeemed. Applicants further represent that in determining the amount of the CDSL, shares held the longest will be assumed to be the first redeemed.

According to the application, the Trust proposed to finance its distribution expenses pursuant to a plan ("Plan") adopted under Rule 12b-1 under the Act. The Plan provides that the Trust will pay APDI a fee for expesnses related to the distribution of shares at the rate of 1% per annum of the Trust's average daily net assets. The fee will accrue daily and be paid monthly.

Applicants support its request for relief from sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c-1 thereunder by alleging that the CDSL in no way restricts an investor from receiving his proportionate share of the current net assests of the Trust, but merely defers the deduction of a sales load and makes it contingent upon an event which may never occur. Applicants also allege that the CDSL is functionally a sales load because it is paid to APDI to reimburse it for expenses related to offering the Trust to the public, and making it contingent upon an event which may never occur does not change its nature. Further, Applicants allege that the imposition of a CDSL at redemption instead of at purchase does not cause an investor to receive less than a price based on the current net asset value of his shares.

Applicants propose to waive the CDSL on redemptions (i) by officers and directors of APDI and Adviser and (ii) pursuant to certain systematic withdrawal or employee benefit plans. Because a CDSL may be considered a sales load under the Act, Applicants also request an exemption from section 22(d) of the Act permitting the proposed waivers. Applicants represent that such waivers will be fully disclosed in the Trust's prospectus and that there will be no discrimination among the members of each class who would benefit from the waivers.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11679 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14507 (File No. 812-5961)]

Benham California Tax-Free Trust and Benham National Tax-Free Trust; Application for Order Permitting Acquisition of Standby Commitments

May 8, 1985.

Notice is hereby given that Benham California Tax-Free Trust ("California Trust") and Benham National Tax Free Trust ("National Trust") (collectively, "Applicants"), 755 Page Mill Road, Palo Alto, CA 94304, each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 12, 1984, and amendments thereto on January 30 and May 3, 1985, for a Commission order pursuant to section 6(c) of the Act exempting them from the provisions of section 12(d)(3) of the Act to the extent necessary to permit them to acquire rights to sell their portfolio securities to banks, brokers or dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for a complete text of the applicable provisions.

Applicants state they are Massachusetts business trusts, each with several series of shares ("Trusts")

to be offered to the investing public. California Trust has been selling its shares to the public since November 1983: National Trust first offered its shares to the public in August 1984. Applicants' investment adviser is Benham Management Corporation.

Applicants represent that their objective is to provide investors with maximum interest income exempt from federal income taxes (and, for investors in California Trust, income also exempt from California income taxes) while avoiding undue risk to principal. Applicants further represent that substantially all assets of a Trust will be invested in investment grade municipal securities. Additionally, Applicants represent that the Trusts are differentiated primarily by the average weighted portfolio maturity and expected yield characteristics of each Trust's investment portfolio.

Applicants propose to improve portfolio liquidity by acquiring standby commitments ("Puts") from broker-dealers. Applicants represent that their investment policies permit them to purchase Puts solely for such purpose. Applicants state that all Puts acquired (1) will be in writing and physically held by Applicants' custodian; (2) may be exercised by Applicants at any time prior to their expiration; (3) will be entered into only with banks, dealers and brokers which, in the investment adviser's opinion, present a minimal risk of default; (4) will provide Applicants with an unconditional and unqualified right of exercise; and (5) will not be transferable although the underlying security could be sold to a third party at any time even though a Put was outstanding. Further, Applicants state that the exercise price of a Put will be (i) the acquisition cost of the underlying security (excluding any accrued interest which an Applicant paid at acquisition) less any amortized market premium or plus any amortized market or original issue discount during the period an Applicant owned the security, plus (ii) all interest accrued on the underlying security since the last interest payemnt date during the period the security was owned by an Applicant.

Applicants represent they will value municipal securities in their money market Trusts on an amortized cost basis in accordance with the requirements of Rule 2a-7 under the Act. In the unlikely situation where the market or fair value of a security is not substantially equivalent to the amortized cost value, Applicants state they will value the money market Trust securities on the basis of available market information and will hold them to maturity. Applicants advise they expect to refrain from exercising Puts in such situations to avoid imposing a loss on a broker, dealer or bank and jeopardizing their business relationship with that entity.

According to Applicants, a Put may be available without the payment of any direct or indirect consideration but if necessary or advisable Applicants will pay for Puts, either separately in cash or by paying a higher price for the securities acquired subject to the Put. Applicants state that the total identifiable consideration paid for outstanding Puts held in a Trust will not exceed ½ of 1% of the value of a Trust's total assets calculated immediately after any Put is acquired. Because it is difficult to evaluate the likelihood of the use or the potential benefit of such Put, Applicants will assign that Put a "fair value" of zero. Applicants further represent that when they pay for a Put, they will reflect its cost as unrealized depreciation for the period during which it is held. Additionally, Applicants state that for purposes of computing the dollar-weighted average maturity of the Trusts, the maturity of a portfolio security shall not be considered shortened or otherwise affected by any Put.

Applicants believe the requested relief is appropriate in the public interest and consistent with the protection of investors. They contend that the Puts will not affect the calculation of the Trust's net asset value per share and will not pose new investment risks. Applicants also contend that the Puts will not expose Trust assets to the entrepreneurial risks of the investment banking business. Nevertheless, Applicants represent that their investment adviser intends to evaluate periodically the creditworthiness of the institutions issuing such commitments. Finally, Applicants state they will not acquire the Puts to promote reciprocal practices, to encourage the sale of its shares, or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11678 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22014; File No. SR-PSE-85-10]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1985, the Pacific Stock Exchange Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") or "Exchange") proposes to amend Rule VIII, section 2(d), of the Rules of its Board of Governors, as set forth below. (Brackets indicate language to be deleted. Italic indicates language to be added).

Rule VIII

Dual Employment

Sec. 2(d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity *or receive compensations,* without the prior and continuing approval of [the Exchange, and] *his member or member organization,* and *such registered employee* shall devote a substantial portion of the business day to the activities of his firm.

The proposed rule change was approved by the Board of Governors of the Exchange on February 28, 1985.

Questions or comments concerning the proposed rule change should be directed to Mr. Kenneth Marcus, Staff Attorney, Pacific Stock Exchange Incorporated, 618 South Spring Street.

Los Angeles, California 90014, at (213) 614-8576.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) The PSE requirements regarding the dual employment of registered employees of member organizations are set forth in Rule VIII, section 2(d) and currently provide that such dual employment is not allowed, "without the prior and continuing approval of the Exchange."

The basic concern here was what role the PSE should take in regard to employees of members being engaged in other businesses or by other employers at the same time, and whether or not the PSE must continue to give prior approval of such "Dual Employment" as required by section 2(d).

A review of New York Stock Exchange ("NYSE") Rule 346(b) provided some guidelines in addressing this issue. The NYSE rule provides that written consent is needed from the member organization before such dual employment is allowed. Rule 346(b) does not require prior approval of the NYSE, apparently believing that the member organization is in the best position to evaluate whether a conflict of interest would occur. In contrast, PSE Rule VIII, section 2(d), places the burden on the PSE to approve and supervise such restrictions.

Recognizing that the PSE is not in the best position to regulate and evaluate such dual employment questions, the Ethics and Business Conduct Committee and the PSE's Board of Governors approved amending the rule so as to place the responsibility of evaluating such dual employment with the member organization. It was recognized that the member organization is in the best position to evaluate the possibility of conflict of interest and that to require the PSE to give approval or get prior notice of such a decision would neither be necessary or advisable.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act"), in that it is intended to prevent fraudulent and manipulative practices and to protect investors and the public interest.

(B) The proposed rule change imposes no burden on competition.

(C) Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 30, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

May 6, 1985.

[FR. Doc. 85-11760 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22026; SR-Amex-83-33, SR-BSE-84-1, SR-CBOE-83-53, SR-NASD-80-10, SR-NASD-85-5, SR-NYSE-84-4, SR-PSE-84-2, SR-Phlx-83-27 and Phlx-84-28 and File No. S7-37-84]

Self-Regulatory Organizations; American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated; National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.; Release Discussing Exchanges' and NASD's Proposed Rule Changes; and Soliciting Comment on Granting Unlisted Trading Privileges to Exchanges for Purpose of Allowing Integrated Market Making

May 8, 1985.

Date: Comments should be received by June 10, 1985.

Addresses: Interested persons should submit 6 copies of their views and comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to File No. S7-37-84.

For further information contact: Alden Adkins or Sharon Lawson, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549 [(202) 272-2843 and (202) 272-2855]

Table of Contents

I. Introduction

On June 12, 1980, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Commission a proposed rule change to establish an over-the-counter ("OTC") market in standardized put and call options on certain individual OTC stocks. On June 28, 1982, the NASD submitted to the Commission Amendment No. 1 to its proposed rule change, which, among other things, proposed to estabilsh an OTC market in standardized put and call options on certain stock indexes. On December 1, 1982, the NASD submitted Amendment No. 2, which proposed to trade options on additional OTC stock indexes.[1] In addition, on December 22, 1983, and June 15, 1984, the NASD submitted documents describing the proposed rule change, as amended, proposing certain additional changes; and discussing certain issues raised in previous comments on the proposal.[2] On March 19, 1985, the NASD submitted Amendment No. 3, which codified the changes to its proposed rule change in its December submission and June letter.[3] On March 20, 1985, the NASD submitted a separate rule filing containing the current specifications for an option on a 100 stock, NMS index.[4]

From November 1983 to July 1984, the Chicago Board Options Exchange, Incorporated ("CBOE"); American ("Amex"); Pacific ("PSE"); Philadelphia ("Phlx"); New York ("NYSE"); and Boston ("BSE") Stock Exchanges, submitted proposed rule changes to permit exchange trading of standardized options on Securities that are not listed and registered on a national securities exchange under Section 12(a) of the Securities Exchange Act of 1934 ("Act") [5] but are designated as National Market System Securities ("NMS Securities") pursuant to Rule 11Aa2–1(b)(1) [6] under the Act.[7] On April 12, 1984, the Commission issued a release soliciting additional comments on the NASD and the exchange proposals.[8] One hundred and ninety six comment letters were received from 175 different commentators, including the NASD and each of the proposing exchanges.[9] On November 7, 1984, the Phlx filed with the Commission a proposal to trade options on an index composed of the 100 most highly capitalized NMS Securities.[10]

The Commission has determined, in principle, that the exchange proposals and the NASD proposal may be modified to make them consistent with the Act. The Commission also has determined that a one year pilot program for integrated market making involving the six most active NMS stocks, commencing no later than October 1, 1985 would be appropriate if the exchanges are allowed to participate in such a pilot and if equity and options audit trails are in place prior to the commencement of such a pilot. The Commission is soliciting comment on the appropriateness of granting unlisted trading privileges in OTC stocks for the purpose of allowing exchanges to participate in such a pilot.

II. The Exchange Proposals

A. Options on Individual OTC Stocks

1. Background

The Amex, CBOE, Midwest Stock Exchange ("MSE") and PSE originally proposed to list standardized options on underlying securities traded exclusively in the OTC market in 1976 and 1977.[11] These proposals, however, were voluntarily withdrawn pursuant to an agreement between the Commission and the self-regulatory organizations ("SROs") participating in a moratorium on the introduction of new options products ("Moratorium").[12] During the Moratorium, the Commission staff conducted a study of the options market.[13] Although the Options Study did not discuss the exchange proposals to trade options on OTC stocks in detail, it did analyze the issues raised by an NASD proposal to establish an OTC market in standardized put and call options on certain OTC securities. In discussing the NASD proposal, the Options Study stated that the "absence of real-time last sale reporting of transactions in underlying securities traded exclusively in the OTC market may present questions of fairness if options trading with respect to these

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[1] The proposed rule change and Amendments No. 1 and 2 were noticed in Securities Exchange Act Release Nos. 16979, 18917 and 19330, July 15, 1980, July 26 and December 13, 1982, 45 FR 53295, 47 FR 33575 and 57812.

[2] Submission of December 22, 1983, accompanied by letter from Gordon Macklin, President, NASD, to Douglas Scarff, Director, Division of Market Regulation, SEC, dated December 22, 1983. ("December Submission"); and letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated June 15, 1984 ("NASD letter"). The December submission and NASD letter were not made pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act'") and Rule 19b–4 thereunder; however, their contents have been filed pursuant to Rule 19b–4 in Amendment No. 3. *See infra*, note 3.

[3] Amendment No. 3 was noticed in Securities Exchange Act Release No. 21891, March 25, 1985, 50 FR 12673.

[4] SR–NASD–85–5. Notice of this proposal was published in Securities Exchange Act Release No. 21890, March 25, 1985, 50 FR 12672.

[5] 15 U.S.C. 781(a) (1982).

[6] 17 CFR 240.11As2–1 (1984). Rule 11Aa2–1 designates certain OTC stocks as NMS Securities. Under the Rule's Tier I criteria, the most actively traded OTC securities are mandatorily designated as NMS Securities. The primary effect of designation as an NMS Security at the present time is to require that transactions in the security be reported on a real time basis and that quotations in the security be firm for the publicly displayed size. *See* Rules 11Aa3–1 and 11Ac1–1 under the Act.

[7] These proposed rule changes were noticed in Securities Exchange Act Release Nos. 20471 (CBOE), 20498 (Amex), 20538 (PSE), 20690 (Phlx), 20691 (NYSE) and 21151 (BSE), December 9 and 16, 1983, January 6, February 23, July 18, and July 19, 1984; 48 FR 55939 and 56875, 49 FR 1808, 7684, 7682 and 29889. The BSE's proposal also would authorize the BSE to trade options on strocks listed on securities exchanges. The other exchanges already trade, or have been authorized by the Commission to trade, options on listed stocks.

[8] Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291 ("April Release").

[9] A list of the commentators and a summary of the comments received, prepared by the Commission's staff, has been placed in File No. SR–NASD–80–10.

[10] The proposed rule change was noticed in Securities Exchange Act Release No. 21576, January 18, 1985, 50 FR 3445. The NYSE also has filed a proposed rule change to trade an option on an index composed of OTC stocks (File No. SR–NYSE–83–52, Securities Exchange Act Release No. 20343, November 3, 1983, 48 FR 51995). The Commission understands, however, that the NYSE is currently reconsidering whether to pursue this index in its proposed form.

[11] See File Nos. SR–CBOE–76–16, SR–Amex–76–28, SR–PSE–76–17, SR–MSE–77–4. The Commission noticed these proposed rule changes in Securities Exchange Act Release Nos. 12703, August 12, 1976, 41 FR 35584; 13095, December 22, 1976, 42 FR 2146; 12539, June 11, 1976, 41 FR 24787; and 13406, March 25, 1977, 42 FR 19200, respectively.

[12] See Securities Exchange Act Release Nos. 15026, August 3, 1978, 43 FR 35772; and 14878, June 22, 1978, 43 FR 35770.

[13] SEC, *Report of the Special Study of the Options Markets* H.R. Rep. No. IFC3, 96th Cong., 1st Sess. (Comm. Print 1978) ("Options Study").

securities is permitted." [14] The Options Study recognized that these same concerns were applicable to the exchange proposals to trade options on OTC stocks and suggested that the prudent course of action for both the exchange and NASD proposals was to defer trading of standardized options on OTC stocks "until such time as [OTC stocks] are included in the consolidated transaction reporting system and real-time last sale reporting is available.[15]

The Moratorium was terminated in 1980.[16] New proposals for the exchange trading of options on OTC stocks were not submitted, however, until the instant filings were submitted by the six exchanges between November 1983 and June 1984.[17]

2. Description

Under the current proposals, Amex, BSE, CBOE, NYSE, PSE and Phlx propose to trade options on OTC stocks that have been designated as NMS Securities meeting the Tier I criteria set forth in Rule 11Aa2–1(b)(1) under the Act.[18] OTC securities would qualify for options trading on an exchange under the proposals if they meet both the Tier I criteria under Rule 11Aa2–1 and the exchange's existing numerical options eligibility standards.[19]

Exchange-traded options on NMS stocks would be subject to the same trading rules and regulations and surveillance techniques that currently apply to exchange traded options on listed stocks. The CBOE, PSE and Phlx requested, however, that the Commission amend Rule 12a–6 under the Act because that rule effectively bars an exchange from trading options on all OTC securities, by effectively prohibiting exchange trading of options on stocks not listed or registered under Section 12(a).

In the April 1984 Release,[20] the Commission solicited comment on a wide range of issues regarding exchange-traded OTC options. At the same time, the Commission proposed amendments to Rule 12a–6 that, if approved, would remove the Rule's effective ban on exchange trading of options on OTC securities. In proposing these amendments, the Commission noted that their approval would not actually authorize any exchange to trade options on OTC stocks and that such trading only could commence if the Commissionindependently approved the exchange propsals as consistent with the Act.[21]

3. Discussion

a. *Exchange trading of options on NMS Stocks.* The exchanges believe their proposals are consistent with Section 6(b)(5) of the Act [22] because they extend their existing investor protection rules to options on OTC trading securities [23] and provide investors the benefits of listed options trading on OTC securities.[24] Many of the commentators, however, indicated that they would prefer trading options on OTC stocks in the OTC market.[25] Several of these commentators, for example, argued that liquidity problems on the exchanges would worsen if the Commission allowed the exchanges to trade options on NMS stocks.[26] Others indicated that, from a surveillance perspective, it was preferable to have the options traded where the underlying stock was traded.[27]

After analysis of the exchange proposals, the Commission has determined that the proposals appear to be consistent with the requirements of the Act, in paticular Section 6 thereof. The Commission believes that the existing exchange trading rules can be applied to options on NMS stocks without presenting any special regulatory concerns. As discussed below, the Commission has concluded that the exchanges will be able adequately to maintain trading in options on OTC stocks and detect abuses with the information currently available.[28] The Commission also believes that the availability of options on actively traded NMS stocks offers substantial benefits to the markets. The Commission in the past has found that options on listed stocks provide efficient and economical means hedge securities positions. The Commission can identify no reason why stocks with similar trading and issuer characteristics should be prohibited from underlying options simply because they are traded in an OTC environment.[29]

b. *Last Sale Reporting.* Since 1982, real-time last sale reports for transactions in OTC stocks have been available pursuant to Rule 11Aa3–1 under the Act. While some commentators (particularly the exchanges) expressed substantial concerns regarding the potential abuses of last sale reporting by OTC integrated market makers,[30] the exchanges

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[14] *Id.* at 933.

[15] *Id.* at 975.

[16] Securities Exchange Act Release No. 16701, March 28, 1980, 45 FR 21426 ("Moratorium Termination Release").

[17] The BSE does not have an established options market and is proposing to trade options on both listed and OTC stocks. *See* Section II.B., *infra.* In addition, the Commission recently approved NYSE's proposal to enter the individual stock options market. See Securities Exchange Act Release No. 21759, February 14, 1985, 50 FR 7250.

[18] As described *supra*, note 6, the primary effect of designation as a NMS Security under Rule 11A2–1(b)(i) under the Act is real-time last sale reporting for transactions in the Security and firm quotations.

[19] The exchanges' eligibility standards require, in general, (1) a minimum public float of 7 million shares; (2) at least 6,000 beneficial owners of the security; (3) aggregated trading volume of at least 2.4 million shares during the 12 months preceding authorization of the option; and (4) a closing price of $10.00 per share on each business day for the 3 months preceding authorization of the option. The exchanges' also have quality of issuer criteria, relating to matters such as the timeliness of the issuer's reporting to the SEC, its net income, defaults on dividends, and related matters, *see, e.g.*, CBOE Rules 5.3 and 5.4.

The exchanges also have "maintenance criteria" for stocks underlying options that require that no new series be introduced in an option if, among other things, the underlying stock falls below certain volume; float and price levels. *See, e.g.*, CBOE Rule 5.4.

[20] April Release, *supra*, noted 8.

[21] In separate release, the Commission is today announcing the adoption of the amendments to Rule 12a–6 to allow exchange trading of OTC option. Securities Exchange Act Release No. 22025, May 8, 1985

[22] 15 U.S.C. 78(f)(b)(5) (1982). The NYSE also argued that its proposal is consistent with section 6(b)(1) [15 U.S.C. 78(f)(b)(1) (1982)] of the Act because it will provide a regulatory framwork for a market on the floor inindividual OTC-stock options.

[23] *See, e.g.*, Amex filing.

[24] *See, e.g.*, CBOE filing.

[25] These comments are summarized in Section IV, *infra*, on the allocation of options.

[26] *See, e.g.*, letters from R. Baxter Brown, President, Brown, Geary & McInnes, Incorporated, dated May 21, 1984; Robert Fomon, Chairman, E.F. Hutton and Company, Inc., dated June 15, 1984; Parks H. Dalton, Chairman and Chief Executive Officer, Interestate Securities, dated June 15, 1984; Richard A. Bruno, Senior Vice President, OTC Department, Painer Webber Incorporated, dated June 29, 1984; Jerome Bine, Sherwood Securities Corp., dated June 8, 1984; and George Griswold, II, Senior Vice President, Walers Parkerson & Co. Inc., dated July 3, 1984; all to George A. Fitzsimmons, Secretary, SEC.

[27] *See, e.g.*, letters from Marvin G. Perry, President, Berney Perry & Company, to George A Fitzsimmons, Secretary, Sec, dated June 8, 1984 ("Berney Perry letter").

[28] Just as with the trading of options on listed stocks, effective options surveillance is dependent on the cooperation of the SRO responsible for the market where the underlying security is traded. The Commission expects the NASD to fulfill its statutory obligations to ensure fair and orderly markets by working closely with the options exchanges through the Inter-Market Surveillance Group. The Commission recognizes, however, that even more effective surveillance will be possible once the NASD's proposed equity audit trail is in place. *See* Section II.A.3.d, *infra.*

[29] In this Release the Commission is announcing its decision to allow the multiple trading of options on NMS stocks among the exchanges and between the exchanges and the OTC market. *See infra,* Section IV. In light of this, the actual approval of the exchange proposals is conditioned upon elimination of exchange barriers to multiple trading that would, in effect, prohibit members from trading OTC options on the OTC market, as well as modification of the Stock Allocation Plan to allow for multiple trading of options on OTC stocks. *See infra,* Section V.

[30] *See* text accompanying notes 126 to 128, *infra.*

nevertheless were satisfied that OTC last sale reporting was adequate to support the exchange trading of options on OTC stocks. Other commentators, including the NASD, stated their general view that last sale reporting is sufficient to support an options market. As discussed more fully below,[31] the Commission also believes that OTC transaction reporting is sufficiently accurate and timely to allow standardized options trading on NMS stocks.[32]

c. *Issuer Consent.* The NASD has suggested that the exchanges be required to obtain an issuer's consent before trading options on an otherwise eligible NMS stock. The NASD has proposed to impose the same condition upon inclusion of a stock in its own NASDAQ options program.

Among the arguments noted by those commentators supporting an issuer consent requirement were that options can have an adverse effect on a company's capital raising efforts,[33] can harm the public's perception of the company and affect the market for the issuer's securities [34] and is a misappropriation and unauthorized use of the issuer's assets.[35] Others noted that an issuer consent provision was consistent with the basic tenet of freedom of choice [36] and allows issuers the right to determine which market is better to trade options on their stocks.[37]

The five exchanges commenting on this aspect of the NASD's proposal opposed such a provision primarily because of the competitive implications such a requirement would have on exchange trading of OTC options.[38] For example, the Phlx contends that the proposal clearly favors the NASD to the detriment of the options exchanges because NASDAQ issuers, with whom the NASD maintains ongoing relationships and who presumably value continued successful trading of their stock on NASDAQ, would be most willing to provide consent to the NASD and least willing to provide consent to the exchanges.[39] In addition, these commentators disputed the NASD's contention that standardized options compete with an issuers capital raising efforts and emphasized the benefits to be gained from options trading.[40]

Because the exchanges have not proposed an issuer consent requirement themselves, in order for the Commission to precondition approval of their OTC options proposals on such a requirement the Commission would have to determine that such a provision is required by the Act. The Commission, however, is unable to conclude that the Act requires that the exchanges adopt rules that would require issuer consent before options could be traded on their stock, or that would give issuers a role in selecting which market(s) would be allowed to trade options on their stock.[41]

First, the Commission notes that Congress in enacting section 12(f)(1)(C) of the Act [42] evidenced a clear intent not to allow an issuer to be the determinative factor in deciding whether a security should trade on an exchange or OTC. Section 12(f)(1)(C) of the Act permits an exchange to seek unlisted trading privileges ("UTP") in securities traded solely OTC.[43] Congress made clear in enacting this amendment to section 12(f) of the Act that an issuer does not have a right to veto exchange trading of its securities. In this regard, the Senate Report recommending adoption of the amendment stated that

> in the context of a [NMS,] there is little or no justification for an issuer to deprive securities holders of the advantages of exchange trading. The protections inherent in exchange trading should be afforded to all securities within suitable characteristics and should not be dependent upon the decision of corporate management to 'list.' [44]

Similarly, the Commission believes that conditioning exchange trading of OTC options on an issuer's approval would be inconsistent with the intent of Congress.

Second, the Commission does not agree with the view that options may diminish an issuer's ability to raise capital. On the contrary, experience has indicated that options trading can actually enhance depth and liquidity for the underlying securities.

Third, the Commission believes that the availability of options can provide significant benefits to public investors. For example, it allows them to avoid downside risks of the stock market through the purchase of puts and sale of covered calls.

Fourth, the Commission believes that serious competitive implications would be raised if issuers, whose stock is quoted on NASDAQ, were permitted to determine which market—exchange or OTC—was to trade options on their stocks. For the reasons identified by the exchanges, we believe that giving the issuer its choice of markets would be tantamount to denying the exchanges the ability to trade OTC options. The Commission concludes, therefore, that an issuer consent provision is not necessary under the Act for the protection of investors and the public interest or to promote just and equitable principles of trade. At the same time, however, the Commission preliminarily believes the NASD's proposal to include issuer's consent as part of its NMS options program is not inconsistent with the Act and that there appears to be no

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[31] In summary, the Commission believes that there is no evidence that OTC market makers intentionally have withheld the execution of reporting of an execution; that the NASD's time stamping and other surveillance procedures and customers' self-interest serve to ensure both the timeliness and accuracy of OTC last sale reporting; that the withholding of the report of an order exposes a market maker to the risk of adverse market movements and would be extraordinarily cumbersome to do with small orders due to the NASD's and member firms' automated execution systems; and that the computation of mark-ups or mark-downs from the "prevailing market" for last sale reporting purposes is not an entirely subjective enterprise in the markets for the stocks that will be eligible to underlie options under the exchanges and the NASD's proposal. *See* text accompanying notes 133–145, *infra*.

[32] Before the exchanges can begin trading OTC options, however, they will need to develop an adequate surveillance plan (*see* Section II.A.3.d., *infra*).

[33] *See, e.g.*, letter from Carl P. Sherr, Carl P. Sherr & Company to George A. Fitzsimmons, Secretary, SEC, dated June 8, 1984.

[34] *See, e.g.*, letter from William G. McGowan, Chairman, MCI Communications Corporation, to George A. Fitzsimmons, Secretary, SEC, dated May 15, 1984 ("'MCI Letter").

[35] *See* letter from Rifkind, Sterling, and Levin, Inc. to George A. Fitzsimmons, Secretary, SEC, dated June 13, 1984.

[36] *See, e.g.*, NASD Letter, *supra* note 2, at 4.

[37] *See, e.g.*, MCI Letter, *supra* note 34, at 3–4.

[38] The exchanges commenting on this issue were Amex, CBOE, NYSE, PSE and Phlx.

[39] *See* letter from Nicholas A. Giordano, President, Phlx, to George A. Fitzsimmons, Secretary, SEC, dated October 19, 1984 ("Phlx letter"), at 17.

[40] *See, e.g.*, letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984 ("NYSE letter"), at 54–55.

[41] In this regard, the Commission notes that the question of whether an exchange can commence trading options without an issuer's consent is currently in litigation. *See Golden Nugger, Inc.* v. *Amex*, No 83 (S.D. 647 Nev., September 1983). We note that this litigation apparently does not involve claims arising under the federal securities laws.

[42] 15 U.S.C. 781(f)(1)(C) (1982), added to the Act by the Securities Acts Amendments of 1975 ("1975 Amendments") (Pub. L. No. 94–29, June 4, 1975).

[43] Prior to the enactment of the 1975 Amendments an exchange could seek UTP only in securities listed by the issuer or another exchange. We note that although the Commission now has the power to grant UTP in OTC stocks, it generally has not granted such applications because of market structure concerns. *See* Securities Exchange Act Release No. 19609, March 17, 1983. As noted below, however, the Comission recently solicited comment on whether UTP applications in OTC stocks should be granted. *See* note 164, *infra*.

[44] Senate Comm. On Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 97–75, 94th Cong., 1st Sess., 18 (Comm. Print 1975) ("Senate Report"), *reprinted in* [1975] U.S. Code Cong. & Ad. News, at 19. *See Ludlow Corp. v. SEC*, 6047 F.2d 704 (D.C. Cir. 1979)

regulatory reasons for prohibiting the NASD from deciding that it is in its interest to require consent before an option is traded on the stock in the OTC market.[45]

d. *Surveillance.* Section 6(b)(5) of the Act requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 6(b)(1) of the Act also requires that an exchange be organized and have the capacity to comply, and enforce compliance by its members and their associated persons, with the provisions of the Act, the rules thereunder, and the rule of the exchange.[46] Accordingly, an exchange has an obligation to develop and administer a comprehensive surveillance program designed to detect manipulation and other improper trading activities.

In determining whether the exchanges can adequately surveil an options market on NMS stocks, the Commission has focused on the information that will be available to the exchange through the NASD on the underlying OTC stocks, as well as the exchanges' operational capacity to detect abuses in such options trading. Accordingly, in the April Release, the Commission solicited comments on whether implementation of an equity audit trail and an equity surveillance system by the NASD should be a precondition to any trading of standardized options on NMS stocks.[47]

Many commentators expressed the view that no proposal (by the exchanges or NASD) to trade options on NMS stocks should be approved until the NASD's surveillance system and related equity audit trail are in place.[48] Conversely, the exchanges argued that exchange trading of OTC options can appropriately occur in the absence of an OTC equity audit trail and equity surveillance system.[49]

The Commission believes that the exchanges have the operational capacity to adequately monitor trading in options on NMS stocks.[50] In addition to operational capacity, however, exchange surveillance also will require adequate information regarding the underlying OTC stocks to detect abuses. In this connection, although the availability of underlying stock audit trail information would enhance the options exchanges' ability to detect inter-market manipulations, the Commission believes the information currently available to the exchanges under existing NASD surveillance systems will be sufficient to detect abuses and to support the exchange trading of options on such securities.[51] This conclusion is based on the obligations assumed by all participants in the Inter-Market Surveillance Group (including the NASD) to share relevant trading and surveillance data with the markets responsible for conducting surveillance in related options.

Nevertheless, the exchanges have not submitted the specific details of their surveillance plans for options on NMS stocks. Accordingly, trading of OTC options may not commence at any exchange until it demonstrates its capacity to adequately monitor trading in options on NMS stocks by submitting a satisfactory surveillance plan. These plans also should detail any proposed surveillance enhancements necessary to adequately surveil options on OTC stocks and should demonstrate that these enhancements will be operational prior to the commencement of trading.

As noted previously, the BSE's entry into options trading for the first time will require a corresponding establishment of an acceptable surveillance program. The Commission will review carefully the BSE's surveillance procedures before it may begin trading options on NMS stocks. At a minimum, the surveillance capacity of the BSE concerning options must be comparable to the surveillance programs of the existing options markets. In this regard, the BSE must incorporate a functioning options audit trail in its surveillance program along with an adequate intermarket surveillance plan prior to the commencement of trading.

e. *Summary.* For the reasons discussed above, the Commission believes that the exchange proposals appear generally to be consistent with the Act. As discussed below, however, the Commission also is approving the multiple trading of options on NMS stocks, and the exchanges will need to eliminate obstacles contained in their rules to such multiple trading before the Commission may approve these proposals.[52] As is also discussed below, the exchanges may have to delay the commencement of trading of these options for a certain period of time (possibly 60 days) after publication of this release in order to address certain regulatory concerns,[53] and the exchanges will have to have in place adequate surveillance programs prior to the commencement of trading.

B. BSE Entry Into the Individual Stock Options Market

The BSE has proposed to establish a market for the trading of standardized put and call options on certain individual exchange-listed and NMS stocks. This represents the BSE's first entry into the listed options market.

BSE has stated that the statutory basis for its rule change is section 6(b)(1) of the Act in that it would provide a regulatory framework for a market in options on the exchange floor. The BSE's existing rules, except for the changes necessary to accommodate options trading, would apply to its proposed market in options. The BSE has proposed a set of new rules to accomodate options trading that are substantially the same as the rules of

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[45] *See infra*, Section III.B.2.a.v.

[46] *See* Section 19(g) of the Act, 15 U.S.C. 78s(g) (1982).

[47] As described below, the NASD is in the process of establishing a complete equity audit trail and surveillance system for NMS stocks comparable to systems for listed stocks underlying options. The NASD currently captures price, time of trade report, amount, identity of security and identity of market maker entering the last sale report for trades in NMS stocks. The NASD system also captures all quotation changes in NMS stocks. The audit trail for all NASDAQ securities eventually will capture the following additional information: size, clearing firms (but and sell sides), executing firms (with the capacity as principal or agent for both the buy and sell sides), and the trade reference number for automated executions. *See* Section III.B.1.f. *infra*, for a more detailed discussion of this plan.

[48] *See, e.g.*, letter from Alan Bush, Alan Bush Brokerage Company, to George A. Fitzsimmons, Secretary, SEC, dated June 6, 1984.

[49] These exchanges, however, have made it clear that they believe an equity audit trail and surveillance system is a necessary precondition to NASD trading of options on NMS stocks, at least in an integrated market making environment. The comments on the adequacy of last sale reporting (*see* text accompanying notes 126 to 128 *infra*) can also be construed to suggest that the NASD's proposed surveillance program, even if implemented, will be insufficient. In this regard, the exchanges have expressed concern over the lack of mechanics for validating the data submitted into the system for surveillance purposes and the 90 second delay allowed in submitting last sale reports. The exchanges, however, do not believe these concerns apply to exchange trading of options on OTC stocks. As discussed more fully below (*see* text accompanying notes 133–135, *infra*) the Commission has concluded that last sale reporting of NMS stocks is sufficient to support options trading and should not result in insuperable surveillance problems in either OTC or exchange markets.

[50] The NYSE has stated, for example, that in terms of both personnel and computerized facilities they have the options surveillance capability to surveil a market in options on OTC stocks. NYSE Letter, *supra* note 40. It appears that the surveillance systems of the other exchanges also should be easily adaptable to surveil these options.

[51] Although the Commission does not believe approval of the exchange proposals should be conditioned on the completion of the NASD's equity audit trail, we continue to believe that the development of complete equity audit trails by both the NASD and the securities exchanges will greatly improve the surveillance capabilities of the SROs, thereby enhancing the integrity of both the options and stock markets.

[52] *See* Section IV, *infra*.

[53] *See* Section V, *infra*.

the existing options markets (in particular, Amex, Phlx and NYSE).

The BSE proposal to establish an options market does not present any significant regulatory issues. BSE will be using the options trading rules that conform to those used by the other options exchanges.[54] For these reasons, the Commission believes that the BSE's proposal to establish an options market in listed securities and NMS stocks generally would be consistent with the Act as soon as the appropriate conforming amendments are filed with the Commission and the BSE satisfies the Commission regarding its surveillance capability.[55]

C. Phlx's OTC Index Option

The Phlx's proposed index would be capitalization-weighted [56] and would consist of the 100 most highly capitalized NMS domestic stocks ("NMS Index"). The Phlx proposes to reconstitute the index semi-annually to ensure that it contains the 100 most highly capitalized NMS stocks. Thus, every six months the Phlx will delete from the index any issue that is no longer in the top 100 most highly capitalized NMS stocks and will add to the index stocks that are in the top 100. The Phlx has retained an independent entity to update the index every minute during the trading day, and updated index values will be disseminated and displayed by means of the Consolidated Transition Reporting System and the facilities of the Options Price Reporting Authority ("OPRA"). The Phlx will apply its existing broad-based index options rules, including ones that govern margin, position and exercise limits and trading limits, to the new index option.

The total capitalization of the NMS Index is $69.003 billion as of March 5, 1985. No one stock in the index constitutes more than 4.45% of the total index value and the top five stocks in the index constitute only 15.40% of the total index value. In addition, the proposed index contains issues representing approximately 30 industry groups.[57] For these reasons, the Commission finds that the Phlx's proposed designation of tis index as broad-based appears appropriate.[58]

The Commission also believes the Phlx's proposal raises no other significant regulatory issues. While this is the first index options proposal the Commission has considered that provides for the semi-annual adjustment of the composition of the index,[59] the Commission finds that this feature of the Phlx proposal, by seeking to ensure that only the most highly capitalized NMS stocks are represented in the Index, serves to ameliorate any concerns with respect to potential manipulative activity involving stocks in the Index. In addition, Phlx has provided for a method of adjusting the calculation of the Index so that these semi-annual changes do not artificially affect continuity in Index values. The Phlx already has submitted to the Commission an adequate surveillance program. Just as the Phlx, and other exchanges, need to amend their rules to eliminate obstacles to multiple trading of individual stock options,[60] however, the Phlx will need to eliminate the barriers to multiple trading of index options contained in its rules.[61] The Commission feels that Phlx's proposed contract appears consistent with the Act; however, we are deferring actual approval of Phlx's proposal until it submits rule amendments that allow its members to act as NASDAQ market makers in index options listed and traded on the Phlx.

III. The NASD Proposal

A. Overview

The NASD proposes to display quotations in standardized put and call options on designated stocks ("NASDAQ options") and stock indexes ("NASDAQ index options"). These quotations, to be displayed in the NASD's NASDAQ System, would be made by options market makers registered as such with the NASD. The options would be standardized as to exercise price, expiration data, and unit of trading, would be issued and guaranteed by the Options Clearing Corporation ("OCC") and would be registered with the Commission under the Securities Act of 1933 and in various states by the OCC. NASDAQ options an index options also would be exercisable through OCC. The NASD proposal includes a provision for last sale reporting of transactions in NASDAQ options and index options contracts. In addition, the NASD proposes to establish an automated NASDAQ options execution system for small customer orders of three contracts or less, and an "order confirmation transaction" feature that will "lock-in" other trades in NASDAQ options and index options for price reporting, surveillance and clearing purposes. The NASD proposes to allow broker-dealers to make markets simultaneously in both NASDAQ options and their underlying stocks, so long as certain conditions are satisfied. In addition, the NASD proposes to implement special coordinated surveillance measures to monitor trading in its proposed options and their underlying stocks.

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[54] The BSE needs to make certain technical changes to its filing so that its options rules conform to those of the existing options exchanges. In addition, as noted above, the BSE would need to develop surveillance systems to accommodate options trading.

[55] *See* Section II.A.3.d., *supra*.

[56] A capitalization-weighted index is one in which an issue's relative weight in the total index value is determined by its total capitalization, as determined by multiplying the issue's price per share times the number of shares outstanding.

[57] *See* letter from Robert B. Gilmore, Senior Vice President, Phlx, to Alden S. Adkins, Attorney, Division of Market Regulation, SEC, dated March 6, 1985. Although the index proposed by the Phlx is not a single industry index, we note that the Commission previously has recognized that certain factors, such as the number of securities in an index and the percent of index weighting of the largest stocks in the index, are relevant in determining whether a non-diversified or industry index (rather than a diversified or broad-based index) represents a "substantial segment of the market" under section 2(a)(1)(B)(II) of the Commodity Exchange Act ("CEA") [7 U.S.C. 2a(ii)(III) (1982)]. *See* Interpretation and Statement of General Policy of the CFTC and SEC, Securities Exchange Act Release No. 20578, January 18, 1984, 49 FR 2884. In this connection, the Commission notes that a Phlx subsidiary, the Philadelphia Board of Trade, has applied to the Commodity Futures Trading Commission ("CFTC") for designation as a contract market to trade a proposed futures contract on the NMS Index (*see* 50 FR 4726, February 1, 1985). Consistent with its statutory obligations, the Commission will comment separately to the CFTC regarding the status of that futures contract under section 2(a)(1)(B) of the CEA.

[58] *See* Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964, regarding the designation of the PSE Technology Index as a broad-based index. The designation of an index as broad-based allows the exchange to apply to trading in options on the index more liberal margin, position and exercise limits and trading halts rules than would apply if the index were designated as narrow-based. While issues will be added and subtracted to the index semi-annually, because these adjustments will tend to occur among the least capitalized issues in the index, it is unlikely that this process will cause any one stock or a small group of stocks to dominate the total index values or otherwise materially alter the nature of the index. Thus, it is unlikely that this process will effect the broad-based nature of the index.

[59] The Commission has, however, previously commented favorably on a proposed municipal bond index futures contract that included provision for bi-weekly replacement of issues in the index. *See* letter from George A. Fitzsimmons, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984.

[60] *See* text accompanying notes 222–226, *infra*.

[61] As described below, the Commission also believes the NASD's proposal to trade an NMS index option could be approved in the near future. The NASD's proposed 100 stock index is not identical to Phlx's, so that approval of both proposals technically would not result in multiple trading of fungible contracts. In this connection we note, however, that the Commission previously has approved the multiple trading of index options. Securities Exchange Act Release Nos. 19264 and 20075, November 22, 1982 and August 12, 1983, 47 FR 53981 and 48 FR 37556, respectively, and believes that the multiple trading of index options between exchanges and the OTC market is also appropriate.

B. Individual Stock Options

1. Description of the Proposal

a. *Eligible Underlying Stocks.* To be eligible to underlie a NASDAQ option, a stock must be (a) a designated NMS Security, (b) displayed on the NASDAQ system and (c) either registered with the Commission under section 12(g)(1) of the Act or issued by an insurance company meeting the conditions of section 12(g)(2)(G) of the Act.[62] The stock also must satisfy certain quality of market and quality of issuer criteria identical to those established by exchanges for stocks underlying individual stock options;[63] and the issuer of the stock underlying the option ("issuer") must consent to the inclusion of the option in the NASDAQ options program.

b. *Proposed NASDAQ Options Automated Execution System.* The proposed NASDAQ Options Automated Execution System ("NOAES") [64] would execute automatically orders in NASDAQ options.[65] This system would permit the automatic execution at the best NASDAQ displayed bid or offer of customer orders for up to three contracts.[66] Participation in NOAES for a particular NASDAQ options class would be mandatory for all NASDAQ market makers in that option. All NASDAQ options quotations displayed, therefore, will reflect prices at which automatic executions may be effected. Each market maker will be able to enter "exposure limits" that specify the maximum number of contracts that the firm is willing to buy or sell via automatic execution. Until the exposure limit is exhausted (*i.e.*, reaches zero), however, the market maker must accept one automatic execution for up to three contracts at his displayed quotation, if such quotation is the best quotation in the system.

If more than one market maker is displaying the best bid or offer, orders entered without designating a preferenced market maker will be automatically executed on a rotating basis against each market maker at that price. Preferenced orders, *i.e.*, ones designating a particular market maker, also would be allowed. A preferenced order will be executed against the preferenced market maker if his quote is equal to the best NOAES price and his exposure limit has not been exhausted.[67] A firm would not be allowed to designate itself as the preferenced market maker. If the preferenced order cannot be executed against the preferenced market maker, the system will treat the order as if it were not preferenced.[68]

NOAES will forward automatically trade data from execution reports to OPRA for dissemination to the distribution vendors. In addition, NOAES will forward to OCC execution reports for both sides of the trade, resulting in a "locked-in" trade for clearing purposes.

c. *NASDAQ Options Orders Not Automatically Executed.* Under the NASD proposal, use of NOAES by order entry forms for small orders is voluntary and, as noted above, the system may not be used for orders larger than three contracts.[69] Under the NASD proposal, the Order Confirmation Transaction ("OCT") procedures would be used for non-NOAES orders. The OCT will allow an order entry firm to contact a NASDAQ options market maker by phone [70] and negotiate a trade. The order entry firm would then be required to enter into the NASDAQ system an OCT message within two minutes. The trade will be reported to OPRA upon entry of the OCT message. The market maker receiving this message will then have a certain amount of time in which to accept the message. If the message is accepted, the transaction becomes a "locked-in" trade to be reported to OCC at the end of the trading day. If a member fails to respond to an OCT message, the message will be retained in OCT for reconciliation at the close of the trading day. All OCT messages, whether accepted or not, would be captured by the system.[71]

d. *Integrated Market Making.* Under the NASD proposal, market makers in stocks underlying NASDAQ options would be able to make markets simultaneously in NASDAQ stocks and options on those stocks. The NASD proposes to impose specific requirements on these integrated market makers who, in addition, would be bound by rules applicable to all members. The specific rules that would apply to integrated market makers are as follows:

(1) Before a member could make a market simultaneously in an underlying stock and options relating to that stock, there would have to be at least 10 registered market makers in the underlying stock and at least 5 registered market makers in each option group [72] in respect to which integrated market making is intended.

(2) Before being approved as an integrated market maker, a firm will have to submit to the NASD for its approval the procedures the firm will use to ensure the integrity and

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[62] The NASD also proposed to allow a stock registered on a national securities exchange to underlie a NASDAQ option if that stock is not a "covered security" under Rule 19c-3 under the Act [17 CFR 240.19c-3 (1984)] and if the stock does not at the time of qualification for NASDAQ options trading underlie an exchange traded option issued by the OCC. *See* the December submission, note 2 *supra*, and Amendment No. 3. The NASD has agreed to a deferral of Commission consideration of this portion of its proposal. Letter from John J. Flood, Senior Attorney NASD, to Alden Adkins, Division of Market Regulation, SEC, dated April 8, 1985. For this reason, the Commission is not at this time reviewing this aspect of the NASD's proposal.

[63] *See supra*, note 19.

[64] Technically, "NOAES" as defined in the NASD's rules would encompass both the automated execution system for options and the Order Confirmation Transaction procedure described below. For purposes of this discussion, "NOAES" refers only to the automated execution system. As the NASD points out in Amendment No. 3 to its filing, NOAES will function in a manner similar to the NASD's recently approved automated Small Order Execution System ("SOES") for stocks. *See* Securities Exchange Act Release No. 21742, February 12, 1985, 50 FR 7435.

[65] NOAES also will be available for executions of NASDAQ index options orders. *See* Section III.C., *infra*.

[66] Either market or limit orders can be entered in NOAES. If, however, a limit order is not immediately executable at the limit price or better, the order will be returned to the order entry firm.

[67] *See* proposed Section 4(e), Part IV of Schedule D, Amendment No. 3.

[68] In its June 1984 letter (note 2, *supra*) and in Amendment No. 3, the NASD indicated that, pending actual experience in the market indicating the extent of pre-opening options order flow, NOAES will not be available to handle pre-opening orders. During this initial period, NOAES will begin to accept orders in options after the underlying stocks are opened based upon quotations disseminated by each market maker. NOAES will stop accepting orders and all options trading in NASDAQ will cease at 4:00 p.m. EST, or simultaneously with the close of the markets for the underlying stocks.

[69] Options market makers will be required to execute via OCT a minimum of three contracts at their displayed quotations. *See* proposed, Section 4(d), Schedule D, Part IV, NASD By-Laws. Thus, the NASD would establish firm quotations for up to three contracts not only for customer trades but for all trades, including inter-dealer trades.

[70] Another form of OCT, called "Unsolicited Order Transaction" ("UOT"), allows the order entry firm to direct an unsolicited order to a market maker via the system without first contacting the market maker by telephone. Once the order is accepted by the market maker via terminal entry, the trade will be automatically reported and locked in for clearing purposes.

[71] The parties to a transaction also would be able to "break" the trade by mutual agreement in the event an incorrect OCT message is inadvertently accepted by the contra-party. Such "broken" trades also will be captured by the system. A third type of OCT specified in the NASD's filing would be called an "Internalized Trade Transaction" which would be utilized when the order entry firm executes its customers' orders as a market maker. The procedure is functionally identical to the basic OCT procedure, except that the trade becomes locked-in upon report of the trade to the NASDAQ System (there being no other broker to accept the trade).

[72] Under the NASD proposal, an option "group" is defined as all options contracts of the same class of options having the same exercise price and unit of trading but separate expiration dates. *See* proposed Section 1(m), Schedule D, Part IV, NASD By-laws.

timeliness of its last sale reports in the underlying stock and its submission of OCT messages.

(3) A member who has sustained over 50% of the non-block volume in a stock over the three-month period prior to application for approval to act as an integrated market maker or otherwise having potentially significant informational advantages over other market participants in overlying options would be required to show that it would be appropriate to allow that member to become an integrated market maker.

(4) Integrated market making in a new options series would not be allowed if there were fewer than 7 registered NASDAQ market displaying quotations on the NASDAQ system in the underlying stock or fewer than 3 registered NASDAQ options market makers displaying quotations on the NASDAQ system in the NASDAQ opitons group. Integrated market making would not be allowed until there were again 10 market makers in the underlying stock and 5 in the opitons group. Furthermore, if an integrated market maker sustains over 50 percent of the non-block volume in the underlying stock for any rolling two-month period,[73] or obtains a market position potentially giving him significant informational advantage over other market participants in the option, the NASD will institute procedures to determine if that firm should be allowed to continue acting as an integrated market maker.

(5) Integrated market makers would be obligated to quote continuously markets for all options series in which they were also making markets in the underlying stocks through the completion of all expiration cycles authorized for trading when the market maker started integrated market making. If an integrated market maker elected to quote options series in a subsequent expiration cycle, the market maker's continuous quotation obligation would extend through the expiration of that cycle.[74] If any integrated market maker failed to abide by this commitment, his registration as an options market maker in the options class would be revoked and he would not be permitted to re-register as market maker in such options until the expiration of both the near term expiration cycle and the expriation cycle which follows.[75]

(6) An integrated market maker would be required to maintain the spread between its bid and offer within certain parameters and also would have to maintain a certain minimal continuity in prices at which successive transactions are executed.[76]

(7) Integrated market makers would be required to report information with respect to transactions and positions in conventional, OTC options covering those stocks in which NASDAQ options markets were being made.

(8) In effecting a NASDAQ options transactions with or for a customer, an integrated market maker would be required to disclose its capacity as such on the confirmation sent to the customer.[77]

e. *Other Options Rules.* The proposed NASDAQ options rules incorporate a number of other provisions contained in exchange rules covering standardized options on individual stocks. These include position and exercise limits that would be identifical to the options exchanges' current position and exercise limits;[78] rules authorizing the NASD to impose limitations on the total number of uncovered short positions in a given class of options; authorizing the NASD to impose limitations on transactions in, or exercises of, one or more series of options in the interest of fair and orderly markets for options or their underlying stocks; prohibiting market makers from entering into any options contract with the issuer, or any controlling person or affiliate of the issuer of the underlying stock; and requiring reports concerning each account (member, associated person or customer) having an aggregate position of 200 or more options contracts on the same side of the market. The NASD also proposes to use strike price intervals, and rules governing the introduction and addition of new strike prices, that are essentially identical to existing exchange rules. The NASD's proposed rules governing comparison, clearing, settlement, exercise and payment are also essentially identical to existing exchange rules. Finally, the NASD also proposes to apply to trading in NASDAQ options the same prohibitions against fictitious and pre-arranged trades, manipulation and frontrunning as currently apply to exchange-traded options.

f. *Surveillance.* The NASD also will implement a fully automated options audit trail that will include the following elements: locked-in options transaction information including class, series, price, size, time, buyer and seller, and retail identifier, for all options trades; individual options market maker quotations, including all upticks and downticks in the actual time sequence they occur; options trade reports containing information on transaction price, size, time, buyer and seller, retail identifier, and class and series; daily options reports for members showing proprietary and customer account information on all positions of 200 contracts or more; and opening and closing interest information as provided by OCC. The NASD states that a substantial portion of the options audit trail data would be collected through the NOAES and OCT facilities described above.

The NASD currently captures the following data for all trades in NMS stocks: price, time of trade report, amount, identity of security, and identify of market maker entering the last sale report. In addition, the NASD's system

[73] The NASD will conduct weekly reviews for this purpose. *See* proposed Section 5(d), Schedule D, Part IV, NASD BY-laws.

[74] Thus, if a market maker commenced integrate market making in ABCD stock and ABCD options at a time when January, April and July ABCD options were trading, it would be obligated to display quotations in all ABCD put and call options series through their expiration. If the market maker at any time displayed quotations in October ABCD options, it would likewise become obligated to display quotations in all October ABCD put and call series through their expiration.

[75] Under the NASD proposal, any integrated market maker who fails to abide by these commitment rules also could have its market maker registration in the underlying stock revoked for a period not to exceed thrity days. In addition, any integrated market maker whose options quotations in an integrated class were withdrawn during the 15 days preceding expiration of an options series may be found in violation of Article III, Section I of the NASD's Rules of Fair Practice, which obligates members to act in accordance with high standards of commercial honor and just and equitable principles of trade.

A member who elects not to become an integrated market maker (a "secondary market maker") also would be bound to quote continuously through expiration will options series in which it commences quotations. In addition, if a secondary market maker commences market making in an options series during the thirty calendar days preceding the expiration of such option series, he shall be abligated simultaneously to commence market making in, and thereafter quote continuously through its expiration, the option series of the same class in the next expiration cycle having the same strike price. A secondary market maker, however, would not otherwise be required to quote continuously all open options series in options classes in which it is registered. The sanctions for a secondary market maker's violations of its quote commitments include a bar from re-registration as an options market maker for the next two expiration cycles and a potential 30 day bar from registration as a stock market maker.

[76] The NASD's proposed spread parameter and continuity requirements are identical to those of the options exchanges. *See, e.g.*, CBOE Rule 8.7.

[77] *Cf.* Rule 10b–10 under the Act, 17 CFR 240.10b–10 (1984), which also requires broker-dealers to disclose in confirmations whether they acted as principal or as agent.

[78] The Options exchanges recently adopted three-tiered position and exercise limits of 3,000, 5,500 and 8,000 contracts. *See* Securities Exchange Act Release No. 21909, March 29, 1985; 50 FR 13440.

currently captures all quotation changes in NMS stocks. The NASD Board of Governors, at a meeting on July 13, 1984, approved an equity audit trail for all NASDAQ securities and for listed securities traded OTC. This audit trail eventually will capture the following trading information: the stock's identifier, price, size, time, clearing firms (buy and sell sides), executing firms (with the capacity as principal or agent for both the buy and sell sides), and the trade reference number for automated executions.

The NASD equity audit trail plan will be implemented in seven phases, the first three of which are relevent to the NASDAQ options proposal. In Phase I, the time of each trade as well as the identity and capacity (principal or agent) of the traders will be captured for NMS stocks through the clearing process. The broker's status as buyer or seller in these stocks will be entered in Phase II. Phase III will produce an integrated survelliance report from the data collected in the first two phases. The NASD currently plans to have Phases I and II fully operational by this fall, with the implementation of Phase III to follow closely thereafter. Thus, the NASD's NMS audit trail could be in place by, approximately, October 1985.[79]

The NASD also has described the monitoring systems and reports it would modify or create to use the data collected in these audit trails. Most of these systems would be comparable to those currently in place by the options exchanges and would be designed to detect violations. In addition, the NASD has proposed systems to monitor for specific possible problems raised by integrated market making such as stock/option manipulation and fair pricing of customer orders.

2. Discussion

a. *General.* The Commission preliminarily believes that, as a general matter, a suitability designed program for the trading of standardized options in an OTC environment, considered apart from questions raised by integrated market making,[80] is appropriate and consistent with the Act, and in particular, Sections 11A and 15A of the Act.[81] The discussion below focuses on the major concerns raised by the commentators.

(i). *Section 11A.* In their comment letters, the CBOE and NYSE argued that approval of the NASD's proposal would be inconsistent with Section 11A of the Act.[82] Specifically, it was argued that Section 11A expresses a "clear and compelling Congressional policy in favor of trading securities in accordance with auction trading principles in all cases where a market based on those principles can be sustained."[83] These commentators suggest that exchanges have in place proven auction/agency trading mechanisms; that options on OTC stocks appear suitable for trading on exchanges; and that, therefore, it would be inconsistent to approve a "dealer" market for the securities, which by its very nature would lack auction/agency trading mechanisms such as order interaction and limit order protection.

First, the Commission notes that, while Congress intended "options," particularly standardized options, to be traded in a NMS,[84] the standardized options market at the time of enactment of Section 11A was still in a fledgling state and was clearly not the focus of the 1975 Amendments[85] which added Section 11A to the Act. Reflective in part of this lack of clear Congressional directive, the Commission has not yet mandated any particular NMS initiatives for the standardized options markets.[86] For example, as discussed below, the Commission has encouraged but not required the exchange markets for options to those market integration facilities (*e.g.*, order routing facilities, limit order protection and consolidated opening procedures) which some have argued would be necessary to allow the multiple trading of exchange-based options.[87] Similarly, the Commission does not believe it is necessary for the OTC markets to have in place all of the optimally beneficial trading procedures and facilities before inaugurating an OTC options market.

Second, Section 11A does not require, as a precondition to OTC options trading, procedures to replicate "auction/agency" trading principles. Instead, Section 11A identifies several broad statutory goals, including "fair competition . . . between exchange markets and markets other than exchange markets," which must be reconciled with one another. Indeed, the goal of providing "an opportunity . . . for investor orders to be executed without the participation of a dealer," is clearly secondary to the goal of "fair competition" between competing marketplaces. Accordingly, the Commission believes that, rather than frustrate the goals of an NMS, the development of an OTC options market could, in the long run, facilitate an NMS by encouraging fair competition between the exchange and OTC markets for options.

Third, in adopting the 1975 Amendments, Congress expressly rejected suggestions to abolish third market (*i.e.*, OTC) trading of listed securities. Some argued that allowing third market trading of listed securities after the elimination of fixed commission rates would cause a "shift away from auction-type markets . . . toward dealer-oriented markets."[88] Instead of prohibiting third market trading of listed securities, Congress enacted section 11A(c)(3) of the Act,[89] giving the Commission the authority to prohibit the third market trading of listed securities only if the Commission found, among other things, that fair and orderly markets could not otherwise be preserved.[90] In partial explanation of its refusal to prohibit third market trading of listed securities, Congress indicated that it believed that third market dealers provide valuable competition to exchange specialists and that this competition enhances the total market making capacity for listed securities.[91] If Congress had intended, in enacting the 1975 Amendments, to require the Commission to prohibit "dealer" markets in new securities products, it seems unlikely that Congress also would have expressly rejected a prohibition against the third market trading of listed securities despite the acknowledged

[79] Portions of these two phases already have been implemented on an experimental basis. The last four phases of the NASD's planned equity audit trail relate on the non-NMS stocks, *i.e.*, those that will not be eligible to underlie NASDAQ options.

[80] The NASD's integrated market making proposal is discussed separately below.

[81] 15 U.S.C. 78k–1 and 78o–3 (1982), respectively.

[82] Letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated August 16, 1984 ("CBOE 1984 letter"), and NYSE letter, *supra*, note 40.

[83] CBOE 1984 letter, *id.*, at 8. The commentators cite section 11A(a)(1)(c) (iv) and (v) of the Act [15 U.S.C. 78k-1(a)(1)(C) (iv) and (v)]. These commentators also cite the legislative history of Section 11A as indicating "clear Congressional policy supporting the preservation and extension of protections associated with auction-type trading for appropriate securities under appropriate circumstances."

[84] Senate Report, *supra*, note 44, at 7.

[85] *Supra*, note 42.

[86] *See, e.g.*, Rule 19c–3 under the Act [17 CFR 240.19c–3 (1984)], which does not apply to standardized options, and Securities Exchange Act Release No. 13662, June 23, 1977, 42 FR 33510, n. 157.

[87] As discussed below, the CBOE, along with the other options exchanges, continues to believe that the development of such facilities is not feasible at this time.

[88] Senate Report *supra* note 44, at 20.

[89] 15 U.S.C. 78k–1(c)(3) (1984).

[90] Section 11A(c)(3)(A)(iii) of the Act, 15 U.S.C. 78k–1(c)(3)(A)(iii) (1982).

[91] Senate Report *supra* note 44 at 20.

possibility that markers for these securities could shift to the third market after the elimination of fixed commission rates.

Finally, Congress also expressly rejected establishing "certain minimum components of the [NMS]" and chose instead to provide the Commission with "maximum flexibility for working out the details" of the NMS.[92] Moreover, Congress recognized that goals of a NMS and the initiatives to attain them would not apply equally at all times to all securities. Indeed, Congress stated that it was not the goal of the Act "to ignore or eliminate distinctions between exchange and [OTC] markets or other inherent differences or variations in components of a [NMS]." [93] Accordingly, the Commission does not believe that Congress, in enacting Section 11A, intended to require that the Commission prohibit the trading of new products in the OTC market until the OTC market makes itself over into an "auction/agency" market.

(ii) *Section 15A*. Section 15A(b)(6) [94] requires that the rules of a registered national securities association be designed "to prevent fraudulent and manipulative acts and practices . . . to remove impediments to and perfect the mechanism for a free and open market . . . and, in general, to protect investors and the public interest." The NASD believes that its OTC options proposal is consistent with these requirements because its proposal, in large part, represents the application of traditional OTC stock trading procedures to the standardized options markets with certain enhancements to reflect the special concerns associated with options trading.[95]

For example, the method of trading options under the NASD proposal is in many respects similar to that currently employed for OTC stocks: quotations are entered into NASDAQ by market makers, the best bid and offer are publicly disseminated, and executions either are negotiated over the phone or achieved automatically through NOAES.[96] Trades in NASDAQ options, unlike those in OTC stocks, also would be subject to reporting and clearing via the OCT feature of the NASD proposal. Moreover, the NASD proposes to apply quote spread, price continuity and quote commitment rules to both its integrated and non-integrated options market makers.[97]

Several commentators, however, suggested that the NASD proposal—even considered apart from integrated market making—is inconsistent with the Act in several respects. The CBOE, for example,[98] argued that a "fragmented unintegrated dealer market" in which no market makers have affirmative obligations lacks mechanisms necessary to assure the best execution of customer orders, to ensure necessary market depth and liquidity, to ensure reliable reporting of trades and to handle spread combination orders fairly. Along these lines, the Phlx argued that NASDAQ options market makers would be subject to pervasive conflicts of interest with their customers because such market makers would be able to deal with their customers "without the intervention of a broker or other third party to represent such order before the market maker." [99]

In large part, these arguments are basically criticims of the nature of the OTC market, rather than specific objections to the OTC options program as such. It could be argued, however, that, even if OTC stock trading is appropriate under such circumstances, OTC options trading is materially different. For example, the CBOE stated that "depth and liquidity are particularly important in an options market, due, among other things, to the large number of exercise prices, and series of both calls and puts, and complex trading strategies;" and claimed that the "unintegrated dealer markets" cannot meet these needs.[100] In addition, while limit orders are frequently employed by exchange-traded options investors, both in connection with combination orders and otherwise, they are much less often used in the OTC market. It thus could be argued that the absence of a limit order book for OTC-traded options could adversely affect the quality of executions of customer limit orders.

The Commission concurs that OTC trading of options may raise unique issues. It is unable to conclude, however, on the basis of the comments received, that these differences raise insurmountable concerns. First, it is true that the large number of options series relating to any particular stock makes it important to have a liquid options market. It should be noted, however, that a large number of commentators stated that OTC options markets would be just as liquid as OTC stock markets, and several stated that they would be more liquid than existing exchange options markets. These comments

[92] Senate Report *supra* note 44 at 1, 7.

[93] *Id. See* Securities Exchange Act Release No. 21583, December 18, 1984, at note 80, (Approving new designation criteria for NMS stocks.)

[94] 15 U.S.C. 78o–3(b)(6) (1982).

[95] As described above, the NASD already has options rules governing matters such as margin, position and exercise limits, the opening and supervision of customer accounts as well as the generalized anti-manipulation and anit-fraud rules with respect to its members' activities in exchange-traded standardized options. Under its proposal, it would simply extend those rules to NASDAQ options.

[96] As indicated above, the NASD recently has implemented SOES for stocks that operates on principles similar to those that would govern NOAES. *See supra*, note 64.

[97] *See* proposed Sections 4 (g) and (h), 6 and 7 of Part IV, Schedule D, NASD By-laws Amendment No. 3. While some commentators suggested that the proposed price continuity rule would not be effective in the OTC market, the Commission disagrees. *See* note 148, *infra*. Some commentators also suggested the quote commitment rules will have little deterrent value. *See, e.g.*, letter from Richard O. Scribner, Executive Vice President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated July 27, 1984 ("Amex 1984 letter") suggesting that the sanction for violating these rules—withdrawal of registration as a market maker—is not a real threat to a market maker failing to maintain his quotes. The Commission believes, however, that a market maker contemplating dropping quotations in some series for a short period of time is not essentially contemplating ceasing his market making activities altogether for up to six months; thus, the proposed sanctions should have an adequate deterrent effect. Furthermore, as indicated above, violation of quote commitment rules by options market makers can lead to a disqualification for up to 30 days from making a market in the related stock. *See* proposed Section 7(b), Part IV, Schedule D, Amendment No. 3 Moreover, the NASD retains the ability, under Article III of its By laws (Rules of Fair Practice), to take additional disciplinary action against market makers engaging in more serious violations of the quote commitment rules.

[98] CBOE 1984 letter, *supra* note 82.

[99] Phlx letter, *supra*, note 39. Other commentators who expressed similar concerns were Kolman Glicksberg, a CBOE market maker, Donaldson, Lufkin & Jenrette, A.G. Edwards & Sons and Raymond James & Associates.

[100] CBOE 1984 letter, *supra* note 82, at 13. The CBOE also asserts that the "unique sensitivity and volatility of options prices . . . will magnify the imperfections of the dealer trading environment in a way that will result in unusually wide spreads . . . unpredictable gyrations in prices and recurrent unfairness to customers." In this regard, the Commission notes that empirical studies which have attempted to prove or disprove whether the liquidity of a stock, or the capital raising ability of an issuer, increases or decreases when a stock lists on an exchange have resulted in a decade-long debate with no definitive answer being provided. Some academic studies have shown that liquidity for stocks does not increase after the listing upon an exchange and that indeed liquidity depends chiefly upon factors extrinsic to the particular system in which a security trades. *E.g., compare* Cooper, Groth & Avena, Liquidity, Exchange Listing and Common Stock Performance, 37 *J. Econ. Bus.* 19 (1985) *with* M. Kramer, *Liquidity Exchange Listing and the Texas A&M studies: A Critical Appraisal*, Amex, Nov. 1983. The Commission neither adopts nor rejects the findings of such studies. These studies do indicate, however, that there is no solid empirical evidence indicating the effects on liquidity of trading an instrument in various extant trading systems. The Commission believes that, in the absence of such empirical evidence, it is impossible to draw any prior conclusions about the likely liquidity of the NASD's options markets.

apparently were based on the substantially greater capital available to firms presently acting as NASDAQ stock market makers as compared to the capital available to market makers on the floor of the exchanges. Commentators also noted with concern that liquidity for many options on individual stocks has decreased as a result of increased attention paid by options market makers to options on stock indexes and other new products.[101] It is quite possible that some combination orders or complex trading strategies may be more difficult to execute because of the absence of published quotations for spreads, straddles and other combination orders and the lack of a trading crowd that can respond promptly to requests for quotes in the absence of a published market.[102] The treatment of limit orders is a major difference between the OTC and exchange markets. To the extent limit orders currently are used in the exchange options markets because customers desire an execution at the published market, but are concerned because the published quotes are not firm, the NASD's NOAES and firm quotation (for three contracts) feature may actually result in enhanced executions.

In short, the Commission is unable to agree with those commentators who suggest that an OTC market *per se* is incapable of supporting an options market. First, in view of the dramatic competitive implications of a decision that the OTC markets could not trade options the Commission believes that any such conclusion would require clear and convincing evidence before the Commission would foreclose an entire marketplace from trading a particular product.[103] Second, the Commission's experience in overseeing OTC stock trading indicates that the OTC market can in fact provide a highly liquid and efficient market for securities transactions. Third, the Commission does not believe that an OTC market is susceptible to unmanageable risks of abuse. The primary concern of those commentators opposed to an OTC options market was that in the absence of exchange-based trading with the public scrutiny associated with executions on a trading floor, brokerdealers would have additional opportunities to overreach their customers. While the Commission acknowledges that OTC trading differs from exchange trading, the Commission does not believe that such differences warrant precluding an OTC market: rather, these differences require the development—as the NASD has done—of enhanced surveillance and regulatory procedures.[104] Finally, as discussed below, the Commission believes there exists a better mechanism for evaluating many of these concerns—allowing multiple trading of options on OTC stocks—than a complete prohibition of OTC trading of options. To the extent exchange commentators are correct that the OTC markets will offer inferior depth and liquidity or inferior executions of combination orders or limit orders, it may be expected that investors and brokerdealers would prefer the exchange markets.[105] Hence, in the absence of sufficient reasons to warrant a conclusion that OTC trading of options is *per se* inappropriate, the Commission believes it is best to allow the market to determine which particular marketplace or type of market best meets investor needs.

(iii) *NOAES.* The NASD's proposed NOAES is described above. The majority of commentators indicated that NOAES would be a step forward in the standardized options markets.[106] Adverse comment on NOAES was minimal, limited primarily to a suggestion that the NASD's proposed pre-opening application of NOAES was inappropriate.[107] This problem has at least been deferred for the time being with the NASD's decision not to use NOAES prior to the opening in the option.[108]

PSE also suggested that the preferencing feature in NOAES is inappropriate.[109] The Commission believes that, at least so long as self preferencing is not allowed, and preferenced orders must be executed at the best displayed price, allowing preferencing in general is an acceptable means of permitting legitimate business relationships between market makers and order entry firms.[110] Furthermore, the NASD's proposed OCT procedure appears to be designed to enhance the reporting, clearing and, ultimately, the surveillance of these markets.[111] Overall, therefore, the NOAES system should improve substantially the efficiency of trading in NMS options and also should improve the accuracy and timeliness of options last sale reporting. In addition, because only market makers disseminating a quotation equal to the best bid or offer will receive non-preferenced order flow through NOAES, the Commission believes that the system will enhance quote competition and improve pricing efficiency. Therefore, the Commission believes that the NASD's proposed NOAES and OCT are consistent with Section 15A.

(iv) *Surveillance.* Some commentators suggested, directly or indirectly, that the NASD's proposed surveillance of its

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101 Letters cited *supra*, note 26.

102 At the same time, by allowing a single firm to make simultaneous markets in both the stock and overlying option, it is arguable that the integrated market making feature of the NASD proposal could enhance executions of stock/options orders. *See* discussion of integrated market making, Section III.B.2.b., *infra*.

103 [illegible] Section 11A[illegible] of the Act, discussed at text accompanying notes 88–91, *supra*.

104 These same basic criticisms—which relate chiefly to last sale reporting and surveillance in the OTC market—were reiterated and elaborated upon in comments submitted with respect to the NASD's integrated market making proposal. Indeed, most opponents of integrated market making argued that the "deficiencies" in OTC markets and surveillance would be magnified in an environment where integrated market making occurs. *See* discussion of integrated market making, Section III.B.2.b., *infra*. Thus, matters such as last sale reporting and surveillance are discussed in more detail below.

105 As indicated below, the Commission believes this competition will provide a fair test of the respective trading systems utilized by exchanges and the OTC market. *See* Section IV, *infra*.

106 *See* the Summary of Comments for a detailed tabulation of these comments.

107 *See, e.g.,* letter from Jim Gallagher, President, PSE, to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984 ("PSE letter").

108 Given the confluence of trading at the opening the Commission strongly urges the NASD to continue to consider ways in which trading interest can be organized before and at the opening. In particular, the Commission believes that it would be useful to undertake measures to minimize the possibility that executions could occur at the opening that were the result of an incomplete assessment of overall supply and demand in the market. While the Commission does not believe preliminarily that the absence of pre-opening procedures raises concerns sufficient to justify withholding approval of the NASD's options proposal, we believe this matter warrants the continued careful attention of the NASD.

109 *See* PSE letter, *supra*, note 107.

110 The Commission notes that the NASD's SOES allows preferencing and has been approved by the Commission. *See supra*, note 94. The Commission also notes that "preferencing" in essence is allowed among the exchanges' automated stock execution systems because the order entry firm can choose the system to which (*i.e.,* which exchange or specialist) it will submit its small orders.

111 While some commentators criticize OCT because it appears to allow the report to OPRA of trades that are later not "accepted" by the market maker, (*see, e.g.,* Phlx letter, *supra* note 39), the fact remains that the trade is not reported to OPRA until after it has been negotiated. Thus, non-existent trades are not reported to OPRA, and the market maker's "acceptance" of an OCT message is more analogous to comparing the trade than accepting the trade. In addition, some commentators have criticized the time parameters of OCT (*see, e.g.,* Comments of the United States Department of Justice, dated June 15, 1984, ("DOJ Comment") and letter from Walter E. Auch, Chairman, CBOE, to John S.R. Shad, Chairman, SEC, dated March 11, 1985 ("CBOE 1985 letter")); these parameters, however, (2 minutes to report the trade to OPRA after the trade is negotiated) are consistent with current last sale reporting requirements in the options markets. *See* Plan for Reporting of Consolidated Options Last Sale Reports and Quotations, Section V(a), approved in Securities Exchange Act Release No. 17638, March 18, 1981.

options market as a general matter (*i.e.*, considered apart from integrated market making) is inadequate. In particular, the PSE set forth several specific criticisms of the NASD's proposed surveillance program, although most of these criticisms apply only to integrated market making and are discussed in Section III.B.2.b. below.

As discussed below, the Commission believes that last sale reporting of NMS stocks, and the last sale reporting of OTC options which will be based upon these same principles, should prove to be adequate to support OTC options trading.[112] As also discussed below, the Commission believes the NASD surveillance programs are capable of detecting patterns of reports that violate the NASD's options and stock last sale reporting rules.[113]

The Commission also believes that the existing NASD equity surveillance system is adequate to allow the OTC trading of options on OTC stocks.[114] In particular, the NASD currently captures for all NMS trades the price, time of trade report, amount, security and identity of market maker entering the last sale report.[115] The NASD's options audit trail, which will be based upon its proposed NOAES and OCT, will be comparable to that utilized by the exchanges. Overall, then, the NASD proposes a data capture capacity comparable to that possessed by the exchanges. The NASD also has developed surveillance procedures to detect options violations comparable to those utilized by the exchanges.[116] Accordingly, while Commission approval of the NASD's options program would be conditioned on completion of a satisfactory surveillance system, the Commission preliminarily finds that the NASD's overall surveillance capacity should be adequate to ensure fair and orderly markets and the protection of investors. Thus, the Commission sees no reason why the NASD could not be allowed to commence trading options on individual stocks, without integrated market making, as soon as it completes the development of its options audit trail (*i.e.*, NOAES and OCT) and submits and satisfactory overall surveillance plan.

(v) *Issuer Consent.* As indicated above, we do not believe it would be appropriate to require exchanges to obtain the consent of an issuer of an otherwise options eligible stock to allow exchange listing of options on that stock.[117] The NASD proposes to impose upon itself this requirement. For the reasons discussed above, we do not agree with much of the NASD's rationale for having such a requirement. Nevertheless, as a preliminary matter we do not believe it is necessary to prohibit the NASD from deciding that it is in its best competitive interests to foster its relationship with NASDAQ issuers by voluntarily seeking their consent to the inclusion in NASDAQ of options on their stocks. Therefore, we preliminarily find that the NASD's proposal to require NASDAQ issuers' consent as a precondition to authorizing trading in NASDAQ of options on their stocks is consistent with the Act.

(vi) *Summary.* In sum, the Commission preliminarily finds that the trading of standardized options as proposed by the NASD, considered apart from integrated market making, is consistent with the Act. Because the NASD has indicated that it does not consider this portion of its proposal to be severable, however, we are not approving, at this time, this portion of the NASD proposal.

b. *Integrated Market Making*—(i) *General.* The commentators agreed that the Options Study set forth the appropriate framework for analyzing particular proposals to integrate the trading of options and their underlying stocks. As a general matter, the Options Study suggested that evaluating integration proposals requires balancing potential improvements in the quality of markets for stocks and their related options that may result from an integration proposal [118] against the competitive, regulatory and surveillance concerns that may accompany integration. The Options Study added that, when attempting to quantify improvements in market quality and the severity of the regulatory concerns that may result from a particular integration proposal, the extent of integration proposed and the characteristics of the market center making the proposal should also be taken into account.[119] The following discussion applies this analysis to the NASD proposal.

(ii) *Benefits of Integrated Market Making.* As indicated above, the benefits associated with integration of the markets for stocks and their related options depend on the extent of the integration proposed and the characteristics of the relevant trading market. The NASD proposes complete integration of stock and options trading which generally can be expected to produce the maximum benefits associated with integrated trading. For example, because of the hedging opportunities integration allows,[120] liquidity and depth in the stock and options markets may increase. While allowing stock market makers to use options solely for hedging purposes also might increase liquidity and depth in the stock markets, complete integration allows a market maker to hedge more efficiently and economically.[121] Moreover, the NASD argues that complete integration should result in the greatest number of well-capitalized options market makers.[122] Thus,

[112] *See* Section III.B.2.b., *infra*.

[113] *Id.*

[114] As described above, *see supra* Section III.B.1.f. The NASD also intends to have in place by early fall an equity audit trail.

[115] *Id.*

[116] The PSE criticized the NASD's proposed surveillance procedures (as well as its data capture capactity). *See* PSE letter, *supra* note 107. The Commission believes, however, that as a general matter—considered apart from surveillance needs that arise if integrated market making occurs—the NASD's overall surveillance plan, including its data capture capacity, is comparable to the exchanges' and should be adequate.

[117] *See supra* Section II A.3.c.

[118] In evaluating the NASD's proposal, the Commission also believes it is appropriate to consider the competitive benefits afforded by allowing the greatest number of market makers to participate in the markets for both the option and the underlying stock.

[119] The Options Study, *supra* note 13, at 876–77.

[120] *See, e.g.*, letter from Peter B. Madoff, Bernard L. Madoff, to George A. Fitzsimmons, Secretary, SEC, dated June 1, 1984, describing various hedging strategies that might be used and explaining how they help a market maker commit greater amounts of capital to his markets.

[121] At the same time, however, complete integration, by allowing the market maker to assume options and stock positions on the same side of the market, may result in less depth and liquidity in some situations than would result if only hedging were allowed. An integrated market maker taking positions on the same side of the market in both stocks and options might well be less willing to make a market in size in either market because of his increased exposure in the other market. Such a market maker in essence is allocating his total theoretical limit on risk between his stock position and options position, instead of allocating the entire risk to the stock market alone or the options market alone.

[122] The DOJ agrees with this argument. DOJ letter, *supra* note 111. In addition, the NASD also suggests that complete integration not only provides more capital and liquidity for these markets than would be provided if there were integration or limited integration but also that OTC options markets would not even exist or be viable if complete integration is not allowed. Several commentators questioned this assertion, suggesting that options market making is a viable business—as shown by the exchange experience—so that some firms would engage in such OTC options market making even if they could not also make a market in the underlying stock. *See, e.g.*, Amex 1984 letter, *supra* note 97, and letter from Richard Jenrette, Chairman, Securities Industry Association, to George A. Fitzsimmons, Secretary, SEC, dated July 17, 1984 ("SIA letter"). Although the Commission agrees that some firms would make OTC options markets without integration, it agrees with the NASD and its members that many of the larger, more highly capitalized market making firms would be unlikely to cease making markets in stocks to be able to make markets in the option. In this connection, the Commission notes that many of the most highly capitalized firms make markets in

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complete integration can be expected, by sheer force of numbers and capital, to encourage greater overall commitments of capital and produce more liquidity and depth in both the stock and options market than would result either without any integration or with integration that only allows hedging.[123]

In addition, complete integration may result in other market improvements. Along with increasing the chances for deep and liquid markets, integrated market making enhances competitive opportunities for OTC market makers by allowing firms to participate as market makers in both the options and underlying stocks. As the NASD argues, restricting integrated market making forces firms to choose between the options and stock markets, and thus is likely to reduce the number of competitors in the market for the options, the stock or both. Integrated market making also could allow market makers to achieve certain operational and execution efficiencies, as well as benefit from their market making expertise in the underlying stock.[124]

(iii) *Regulatory and Surveillance Concerns.* In assessing the appropriateness of allowing integrated market making, the question becomes whether these benefits are significant enough to outweigh the regulatory risks associated with integrated market making. In turn, this balancing process requires a consideration of whether either market making competition or surveillance techniques can minimize the regulatory risks of integrated market making. In this regard, commentators focused on two major regulatory concerns—unfair information advantages and manipulation.

(A) *Information Advantages.* First, many commentators argue that, because an OTC stock market maker may possess unique market information about that stock, if that market maker also is allowed to make a market in options on that stock, he has an opportunity to take unfair advantage of his stock market information. For example, the Amex argued:

> [a] dual market maker would have strong economic incentives to trade options on the basis of non-public market information gained through his activity in the underlying stock . . . . At the same time that dual market making would increase the opportunities to engage in questionable practices, it would diminish the feasibility of performing effective surveillance.[125]

The NYSE also expressed this concern. Specifically, the NYSE argues that, because there is no order interaction in the OTC market, there is no mechanism for validating trade prices. Moreover, the NYSE suggests that the absence of any independent price validation is exacerbated by the OTC last sale reporting rules which require the market maker to add (or subtract) an imputed mark-up or mark-down to the customer's net price for reporting purposes. According to the NYSE, integrated OTC market makers who have sole access to their own retail options and stock order flow, and to the negotiated, unvalidated prices of their principal trades with that order flow, have "formidable information advantages and enhanced opportunities to benefit from them."[126]

In addition, the NYSE contends that the handling of stock/option combination orders by integrated OTC market makers would further aggravate these concerns. Although such orders normally are priced on a "net" basis, for reporting purposes the NYSE notes that a separate last sale reporting price must be reported for both the options and stock portion of the transaction. The NYSE contends that, in the absence of any market process to validate the market maker's determination of the reported stock and options prices, those prices are rendered "incapable of meaningful interpretation."[127] Finally, the NYSE argues that the very nature of these advantages—comprised of information about "unvalidated", unreported, negotiated prices—is not subject to surveillance. Indeed, the NYSE adds that the absence of independent price validation contributes to the surveillance difficulties because there is no independent validation of the timeliness of OTC last sale reports.[128]

Commentators contended these asserted information advantages arising from integrated market making could give rise to other abuses. In particular, some commentators suggested that integrated market making compounds the conflict of interest to which OTC market makers with retail customers are exposed.[129] For example, commentators suggested that a firm that received substantial buying interest in the stock could, by not disclosing that information and without changing its options quotes, receive favorable prices in selling transactions (*i.e.*, sales of calls or purchases of puts) with options customers. Indeed, it could improve its options quotes to attempt to attract increased order flow from its customers, as well as other dealers and order entry firms.

The NASD disagrees strongly with these contentions. It argues that because its proposal requires, as a condition of integrated market making, that the markets for both the option and the stock be dispersed and competitive, no one market maker will have enough order flow to obtain information advantages over other market makes.[130] In this regard, the NASD points to its minimum number of market maker requirements, its quote commitment, quote spread and price continuity rules and its special review procedures in the event a market maker obtains 50% or more of the non-block volume in a particular stock or obtains significant informational advantages.[131] The NASD

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virtually all of the actively traded NMS Securities. Even accepting this premise, however, we note that this does not mean that there would not be viable, competitive (especially with multiple trading) and liquid markets for options on OTC stocks without full integration. It simply means that some potential market makers will not participate in the NASD's market without approval of its integration proposal.

[123] Some commentators nevertheless suggest that, when the characteristics of the OTC market are considered, these potential improvements in market quality would disappear. Thus, the Phlx argues that, in "fragmented" markets, such as those proposed by the NASD, liquidity can never be as great as in physically centralized markets. *See* Phlx Letter, *supra* note 39. In contrast, the NASD argues that its system based on competing, highly capitalized dealers will provide superior liquidity to the exchange markets for OTC options. *See* NASD letter, *supra* note 2. As noted above (*see supra* note 100), the Commission is unaware of any incontrovertible evidence that the different trading procedures on the exchange and OTC markets result in significantly different liquidity for similar securities. Moreover, any such conclusion regarding the NASD's options proposal would be premature in view of the enhanced quotations and executions procedures envisioned for that market. *See* text accompanying notes 64–71, *supra.* Further, even if so-called "fragmentation" unavoidably reduces liquidity, this does not mean that liquidity, even in a "fragmented" system, would not be greater with complete integration of options and stock market making.

[124] *See, e.g.*, letter from A. Dulaney Tipton, Jr., Bullington-Schas & Co., Inc., to George A. Fitzsimmons, Secretary, SEC, dated June 14, 1984.

[125] Letter from Richard O. Scribner, Executive Vice President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated November 29, 1980 ("Amex 1980 letter"). Amex also argues that this information advantage can be applied to stock trading, based on information obtained in connection with options trading.

[126] *See* NYSE letter, *supra* note 40.

[127] *Id.*

[128] Other commentators raised concerns similar to the Amex and NYSE comments. *See, e.g.*, CBOE's 1984 and 1985 letters, *supra* notes 82 and 111; Phlx's 1984 letter, *supra* note 39; and PSE's 1984 letter, *supra* note 107. The SIA also argued that OTC market makers may have information that is not available to the public investor and that the adverse public perception of the options markets that could result if integrated market making were allowed could threaten the integrity of these markets. *See* SIA letter, *supra* note 122.

[129] *See* Phlx letter, *supra* note 39.

[130] NASD December submission and NASD letter, *supra* note 2.

[131] The NASD also submitted statistics showing that for a select eight week period, for 87 of the 94

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also argues that the experience with the integrated market making of stocks and warrants shows that integrated trading can occur without adverse regulatory consequences, including abuse of information advantages. The NASD adds that its proposed surveillance program is capable of detecting any problems in this area.[132] Finally, the NASD notes that the alleged conflicts of interest of integrated market makers are no different than those now confronted by NASDAQ stock market makers. The NASD argued that, because a firm risks alienating customers who are systematically disadvangaged to benefit trading of other customers or the firm's own proprietary trading, it has significant incentives to avoid acting on that information to take advantage of those customers.

In response, the NYSE contending that information advantages may be worse in the OTC markets precisely because in dispersed markets some market makers, having their own order flow, will have information others do not. The NYSE also argued that the NASD's proposed standards, *i.e.*, 10 market makers in the stock and 5 in the option initially, and maintenance levels of 7 market makers in the stock and 3 in the option, do not ensure dispersed markets, and also disputed the value of the NASD's statistics showing sustained non-block volume percentages for market makers. Finally, the NYSE, like certain other commentators, disputes whether the NASD's experience with integrated market making of warrants and stocks indicates the likely consequences of options and stock integration.[133]

While the Commission recognizes the seriousness of the concerns raided by the NYSE and other commentators, it does not agree that those concerns necessarily should preclude entirely the development of an OTC options market with integrated market making. First, the Commission believes that OTC last sale reporting is presently adequate generally to support an options market on NMS stocks as well as to allow integrated market making. Critical comment has focused, however, upon the theoretical deficiencies some believe inherent in OTC last sale reporting. In this regard, many of the concerns raised by commentators in this proceeding also were raised in connection with the Commission's determination to adopt Rule 19c–3. Yet throughout the period of intensive monitoring of OTC trading in Rule 19c–3 securities neither the Commission nor the NASD, identified instances of a firm intentionally withholding execution or reporting of an order.[134] Indeed, the critics of OTC last sale reporting have not provided any empirical support for their assertions.

While the Commission recognizes that sequencing of trade reports, particularly during peak volume periods,[135] will remain a continuing difficulty in a multi-dealer OTC environment, the Commission believes that, for stocks characterized by widely dispersed and highly competitive market maker interest, the quality of last sale reporting in the OTC market should be sufficient to support integrated market making. In this connection, the Commission disagrees with the assumpiton made by certain commentators that integrated market makers could intentionally withhold reporting an option or stock execution in order to benefit their proprietory position. The Commission notes that broker-dealers are required to time stamp orders both at the time they receive an order and at the time that order is executed.[136] Furthermore, the absence of a crowd to observe the actual submission of the reports is compensated for by various factors in the OTC market. Withholding an order imposes a very real risk on a market maker that the market will move in an adverse direction, requiring it to finally execute the order at a more favorable (superior to the market) price to the customer or face customer dissatisfaction. The use of automated execution systems, *i.e.* SOES, NOAES and broker-dealer in-house systems, also makes it very cumbersome to manipulate the input of data for a number of trades.[137] In addition, the NASD requirement of special case-by-case pre-approval review of each integrated market making firm's last sale reporting procedures should further enhance the quality of last sale reporting by complying integrated market makers.

Further, the Commission does not agree that the need to impute mark-ups or mark-downs for principal trades renders OTC last sale reporting totally subjective. Particularly for the largest market makers in the most active OTC stocks, from an operational perspective, computation of mark-ups must of necessity be a largely mechanical process. Compliance with the 90 and 120 second stock and options reporting requirements—indeed, avoiding substantial paperwork problems—will preclude any significant amount of individualized computations.[138] Moreover, under the NASD's rules, reported prices must be reasonably related to the "prevailing" market. In active stocks characterized by numerous market makers several of whom are at the inside quotation,[139] the "prevailing" market shold not be either a totally abstract or subjective concept or one that, as described above, represents "unvalidated" prices.[140] The Commission believes the NASD has implemented surveillance parameters and programs that assure that last sale reports are in fact "related to the prevailing market." [141] In addition,

securities eligible to underlie NASDAQ options, the share of the market marker with the highest level of sustained non-block volume over the eight week period was less than 16% and in only four of these stocks did the fifth largest market maker account for less than 4% of non-block volume. NASD letter, *supra* note 2.

[132] Many members of the NASD agreed with the NASD's argument that there are no significant information advantages in the dispersed, OTC markets. *See, e.g.*, letter from John E. Herzog, President, Herzog Heine Geould, to George A. Fitzsimmons, Secretary, SEC, dated June 13, 1984, and letter from Samuel E. Hunter, Senior Vice President, Merrill Lynch Capital Markets, to George A. Fitzsimmons, Secretary, SEC, dated June 14, 1984. In addition, the DOJ argued that market makers in dispersed markets are unlikely to have information advantages over other market makers. *See* DOJ letter, *supra* note 111.

[133] *See* NYSE letter, *supra* note 40.

[134] *See* SEC, *A Monitoring Report on the Operation and Effects of Rule 19c–3 under the Securities Exchange Act of 1934* (August, 1981); and Securities Exchange Act Release No. 20074, August 12, 1983 (Statistical Appendix), 48 FR 38250.

[135] The Commission believes that this problem has been significantly ameliorated by the development by the NASD and broker-dealers of small stock order automatic execution systems and that NOAES would tend to alleviate similar peak volume problems for NASDAQ options price reporting.

[136] *See* Part XIV, Schedule D, Section (2)(a)(5) NASD By-laws, and Rule 17a-3 (6) and (7) under the Act [17 CFR § 240.17a-3 (6) and (7) (1984)].

[137] As mentioned previously, the size limit for executions in SOES is now 500 shares, and the Commission notes that use of SOES has steadily increased to the point where over 17,344 trades representing 3,451,330 volume were executed in SOES in the first 22 days of February, 1985. Some large firms have in-house systems that automatically execute orders of up to 1,000 shares at the best inside quotation. As described above, NOAES would provide automatic executions for customer orders of three contracts or less. Of course, these systems will not be able to execute combination orders, so that the last sale reports for such trades, which in the past have been significant in options markets, will not be subject to the control provided by these systems.

[138] *Cf.* note 49, *infra*.

[139] In its June, 1984 letter, *supra* note 2, the NASD submitted statistics showing that on May 9, 1984, between 1 p.m. and 3 p.m. in stocks that are options eligible 53.9% of total bids and offers were at the inside quotation.

[140] The development of automated execution systems for OTC (*e.g.*, the NASD's SOES and the system operated by Institutional Networks Corporation in which market makers have agreed to accept trades up to 500 and 1,000 shares, respectively, at the best quotation) provides added validity to the reliance on these quotations as the prevailing market for purposes of the numerous smaller OTC stock orders.

[141] The Commission acknowledges the concerns expressed by certain commentators that automated

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customers have incentives to check the reported prices of their trades to ensure that they receive quality executions.[142]

Finally, the Commission finds significant the dissemination of quotation information through NASDAQ in both the stock and option. In the most actively traded NMS stocks quotation spreads are often ⅛th of a point and seldom exceed ¼ of a point.[143] In such an environment, the ability of any market maker to substantially adjust a transaction price without causing customer complaints and permitting detection by sophisticated surveillance systems appears very limited.

The Commission concurs that combination orders are a source of particular concern. The Commission does not agree, however, with commentators' assertions that customers will be entirely unconcerned with the reported prices of each portion of such an order. In implementing a NASDAQ options program, the Commission does believe it would be useful for the NASD to remind member firms of their obligations to report the components of such transactions at the prevailing market.[144] The NASD also will need to develop specialized surveillance procedures designed to detect reporting of combination transactions or inappropriate prices.

The Commission also disagrees with the commentators' contention that there are no independent market mechanisms in the OTC market for validating reported prices. As a general matter, the dissemination of quotes in a competitive system tends to ensure that prices overall reflect systemwide supply and demand. Thus, pricing in the OTC market is not as free of market discipline as some commentators suggest. In sum, the Commission believes that OTC market makers are not free to negotiate a price for a trade unaffected by market forces, nor are prices reported for that negotiated trade merely the result of a subjective determination; rather, any flexibility in OTC last sale reporting is restrained by the NASD's surveillance as well as its own operational needs.[145]

The Commission believes that the central question, then, is whether integrated market makers possess material, non-public information that would allow them to trade the related option (or stock) to their advantage in a manner that is undetectable. As a preliminary matter, the Commission believes that, in markets truly characterized by dispersal of order flow and competition among market makers, individual market makers, even those with retail order flow, are unlikely to have this type of information advantage.[146] The Commission emphasizes that it is not concluding here that inappropriate informational advantages necessarily exist in competitive markets that are characterized by concentrated order flow, nor is it concluding that competitive markets must have dispersed order flow. Rather, the Commission is a simply stating its belief that informational advantages, as a theoretical matter, and in the absence of dispositive, empirical data one way or the other, are less likely to exist in markets characterized by dispersed order flow than in other types of markets. Accordingly, to determine whether market makers would have a significant informational advantage in the context of integrated trading, the Commission believes a pilot program, as discussed below, limited to options on six OTC stocks with widely dispersed order flow presents minimal risks of abuse of market information.

Although a market maker with retail orders has sole access to that portion of the supply and demand for that stock (or option), such information should not provide material competitive advantages to a market maker in truly dispersed markets. That is, in dispersed markets, knowledge of one market maker's non-block order flow should not provide material information that is consistently predictive of the likely future price of either the stock or option. Any market maker attempting to take advantage os such information in the related options market would take the substantial risk that the remainder of the order flow is actually imbalanced in the opposite direction.

With respect to stock/option combination orders, the Commission believes it would be difficult for a market maker to exploit information regarding such an order without exposing itself to either adverse reaction by other market makers or to detection by the NASD's surveillance system. A market maker attempting to establish a short-term market favorable to making "advantageous" offsetting trades may often have to report a price for one portion of the combination order which is outside of the prevailing market price, rendering its activity detectable.[147] This is particularly true for OTC securities with highly competitive secondary markets, where quotation spreads are narrow.

For these reasons, the Commission believes that, in principle, integrated market making, if it occurs in a market characterized by the dispersal of order flow and open competition, should not confer unfair or unsurveillable information advantages on any integrated market maker. At the same

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surveillance systems may not be successful at detecting incorrect transaction reports if those reports are at or within the disseminated quotations. The Commission notes, however, that the price of a related option will often not respond to trades at or within the disseminated quotation because the trade, in and of itself, does not indicate a market trend. While a large number of consecutive trades at the offer or bid might affect the options price, the effect would appear sufficiently speculative as to make it an unlikely price manipulation tool. In addition, the Commission believes that the NASD will be capable through automated surveillance and examinations to identify a market maker who mis-reports a substantial number of trades in a short period of time.

[142] If the Commission adopts its recently proposed amendments to Rule 10b–10 under the Act [17 CFR 240.10b–10 (1984)], which would require the disclosure in trade confirmations sent to customers of mark ups or mark-downs charged in principal trades (*see* Securities Exchange Act Release No 21708, February 4, 1985, 50 FR 5766), that rule would further enhance the ability of customers to validate the accuracy of last sale reporting.

[143] For example, statistics submitted by the NASD to the Federal Reserve Board ("Board") in connection with the Board's 1983 review of its margin regulations showed that over 70% of all NMS Securities had closing spreads of ¼ of a point or less for the three days studied.

[144] Such a reminder is important both for options in which integrated market making is allowed and for those in which it is not. It is useful to note that the options exchanges have relatively detailed rules relating to the execution of spread, straddle, and combination transactions, particularly when executed with a customer. These rules generally require that, in order to have priority over limit orders or interest in the trading crowd, each leg of such a transaction must be executed at a price equal to our better than the prevailing market.

[145] Moreover, as discussed above, any pricing flexibility at or within the disseminated quotation may not be useful in influencing price changes in the related option.

[146] In making this preliminary determination, the Commission has not, however, relied upon the experience with integrated market making of warrants and stocks. The Commission does not believe that this experience is indicative of the likely regulatory results of integrating stock and option trading. In important respects warrants are sufficiently different from options (*e.g.*, warrants generally have much lower relative trading volume, are usually issued out-of-the-money with substantially longer terms to expiration and thus are less responsive to price changes in the underlying stock) that the warrants precedent is not comparable to integrated options trading. *See* Securities Exchange Act Release No. 21863, March 18, 1985, 50 FR 11972, File No. SR-Amex-84-35.

[147] In this regard, the Commission notes that it expects the NASD to establish special surveillance parameters to detect such improper activity. *See* text and *infra* note 152. In addition, the NASD will have to develop, and propose pursuant to Rule 19b-4 under the Act, acceptable frontrunning restrictions for integrated market makers prior to the commencement of even a pilot program for integrated market making (*see infra*, at notes 150–54).

time, however, the Commission is uncertain whether integrated market making outside of such a market could confer significant information advantages, especially given the leveraged nature of options. Thus, it is important that, until the Commission has obtained adequate empirical evidence regarding the effects of integrated market making, such market making occur only in markets that are both highly competitive and "truly" dispersed, *i.e.*, ones dispersed enough to prevent any one market maker from obtaining significant information advantages. In this regard, the Commission does not believe that the NASD's proposal, as currently constituted, ensures that integrated market making will only occur in highly *dispersed* markets.

As noted above, the NASD's proposal would require a minimum of 7 market makers in the stock and 3 in the option,[148] and also would require a special review of an integrated maker who sustains over 50% of non-block volume for any two-month period or who obtains "significant information advantages." The Commission does not believe that the NASD's proposed requirements are sufficient to ensure that any one market maker could not obtain a large enough percentage of order flow (especially in light of the exclusion of block volume), or that a small number of market makers could not each obtain a sufficient percentage of order flow, to raise possible market information advantage concerns.[149] Thus, the Commission believes that a firm that garnered close to 50% of sustained non-block market share (with the potential of having an even greater share of the market for some periods, or by including block volume) very well might be able to predict the overall direction of the market for a stock based on changes in its own order flow, information which it might profitably employ on a leveraged basis in making markets in options on the stock. Accordingly, in view of the significant concerns raised by integrated market making, the Commission believes a more cautious approach is warranted, as an initial matter.

The Commission believes the six most actively traded NMS stocks [150] clearly have substantial trading volume, dispersed among numerous market makers.[151] As a preliminary matter, the Commission believes these six stocks could support integrated market making without raising the serious market information advantage concerns that have been associated with integrated market making. The Commission also believes, however, that equity and options audit trails must be in place prior to the commencement of any integrated market making. For these stocks, the Commission believes any information advantages of integrated market makers, operating under the NASD's proposal and with equity and options audit trails, would be reduced to manageable and surveillable proportions.

The Commission also believes that integrated market making in these stock should occur as a one-year pilot program, designed to collect information to allow a determination of the actual benefits or costs incurred by allowing integrated market making. During this one year pilot period the NASD would be expected to closely monitor integrated market making trading activities. Such a monitoring program should include, at least, and evaluation of: (1) The distribution of stock and options trading activity among integrated market makers on a daily basis (both for block and non-block size orders), (2) the timeliness and accuracy of last sale reporting by integrated market makers, [152] (3) the handling of combination orders, and (4) whether the introduction of integrated market making affected the underlying market for the stock.[153] The Commission also would expect the NASD [154] to submit an interim report covering the first six months experience with integrated market making. Prior to the end of the one year pilot period the Commission would consider the data gathered to determine whether integrated market

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[148] The Commission believes that the NASD's proposed quote commitment rules will tend to reinforce the minimum number of market maker requirement by ensuring that the market makers who count toward the minimum number are continuously quoting markets. While some commentators suggested that the quote commitment rules lack deterrent value, the Commission disagrees. *See supra* note 97. In addition, the proposed quote spread and price continuity rules should further reinforce the purpose of the minimum number of market makers requirements by ensuring that the market makers who count toward that minimum are making relatively competitive markets, *i.e.* markets characterized by limited spreads and some price continuity. The CBOE argued that the price continuity rules, which are based upon the rules of CBOE and the other options exchanges, are unworkable in the OTC market due to the absence of a common reference. While the Commission concurs that precise sequencing for OTC trades can be problematic, it believes the last sale reporting should be adequate to support these prophylactic rules. *See* text accompanying notes 133–145, *supra*. Thus, the Commission feels this rule is workable and should accomplish the same essential price continuity goal as does that of CBOE.

[149] While the NASD's proposal to review the appropriateness of integrated market making by a firm that has "significant informational advantages" is intended to avoid such a possibility the Commission does not believe that such a subjective standard lends itself to the type of assured and effective interpretation and application that is necessary in this context given the potentially large adverse regulatory costs at stake.

[150] These six stocks, based upon 1984 dollar volume, are MCI Communications, Inc., Apple Computer, Intel, Convergent Technology, DSC Communications, Inc. (formerly Digital Switch), and Tandem, Inc. Two of those six stocks, MCI Communications, Inc. ("MCIC"), and Convergent Technology ("CVGT") do not at this time meet the price per share criterion of the NASD's proposed options eligibility rule. The NASD's proposed rules require that the underlying stock trade at least $10 per share for each business day during the six months before trading in the option commences. The Commission believes, however, that it might be appropriate to permit options trading on stocks such as MCIC and CVGT that have a lower price per share than that required by the exchange's current (and the NASD's proposed) options eligibility criteria but also have exceptionally high market values. Such stocks would not seem prone to the speculative abuse or manipulative potential the price per share criterion is designed to address. The Commission believes, therefore, that amendments to the current (and NASD's proposed) eligibility criteria along these lines might be appropriate.

[151] The six most active NMS stocks based upon 1984 dollar volume were characterized by substantial dispersal of volume among a large number of market makers (ranging from 22 to 43). Thus, no one market maker in these stocks sustained more than approximately 15% of the non-block volume in the stock for the period shown in the latest figures provided by the NASD (May 1984), and the fifth largest market maker in each of these stocks (based upon shares of non-block volume) sustained at least a 5.8% share of volume for this period. In addition, the dollar volume for these stocks for 1984 ranged from $15.063 billion to $1.965 billion. In contrast, in the stocks ranked 7–10, market makers sustained high shares of non-block volume for this period from 27.8% to 19.7% and dollar volume ranged from $1.8 billion to $1.277 billion.

[152] The Commission expects that such an examination would involve, at least on a simple basis, a comparison of the prices reported by the market maker for purposes of transaction reporting with the prices confirmed by the market maker to its customers. In particular, the Commission expects the NASD to inspect separately the execution of block transactions and combination orders in order to ensure compliance with the applicable reporting and regulatory requirements (*e.g.*, frontrunning). In this regard, such an examination would be substantially similar to the monitoring program the NASD undertook in connection with off-board trading pursuant to Rule 19c-3 under the Act. *See* Securities Exchange Act Release No. 20074, August 12, 1983, 48 FR 38250.

[153] For example, the NASD might undertake to examine, on a before and after basis, whether the bid-ask spreads, price continuity or liquidity for the underlying stock was significantly altered by the introduction of integrated market making. In this regard, such as evaluation would be similar to the NASD's evaluation of the effects of last sale reporting on NMS Securities. *See* Securities Exchange Act Release No. 19797, May 20, 1983, 48 FR 24823. The Commission recognizes, however, that it will be difficult, if not impossible, to identify appropriate control groups for such a study because, by definition, the pilot program will include the most actively traded NMS stocks.

[154] Although this monitoring program is described in terms of the NASD's obligation to report to the Commission, in the event an exchange commences integrated trading, the Commission expects such exchange to provide a six-month report which is comparable to that which the NASD is obliged to provide the Commission.

making should be expanded (if desired), eliminated or left intact.

(B) *Manipulative Activity*. Similar to the concerns regarding unfair information advantages, many commentators argue that integrated market makers are in a unique position, and have unique incentives, to engage in manipulative activity.[155] Manipulative activity of greatest concern is mini-manipulation, capping and pegging.[156] In response, the NASD argues that integrated market makers operating in a competitive environment will not have substantial manipulative incentives or abilities and that the NASD's surveillance programs can detect manipulations that are attempted nonetheless.

Attempting such manipulative activities would be quite risky with respect to stocks with deep, liquid, highly competitive markets. Because attempted mini-manipulation, capping or pegging in such markets likely would require substantial trading activity in the underlying stock (and correspondingly, significant options positions), the Commission also believes that these manipulative concerns are surveillable in highly competitive markets. In such an environment, an adequately designed surveillance program, based on operating audit trails in both the stock and options such as proposed, should be able to detect manipulative acts that are likely to be attempted.

In this regard we note that NYSE's comment on the potential abuses associated with the handling of combination orders by integrated market makers raises mini-manipulation concerns as well as informational advantage concerns.[157] For example, under NYSE's hypothesis an integrated market maker with a long call position could attempt to report the price of the stock side of a large combination order [158] at an artificially inflated price in order to profit artificially on his call position. The Commission believes, however, that a market maker attempting to print a price for the stock side of a combination order that will artificially affect options prices likely would be required to print a price far enough outside the market to raise concerns with its customer regarding the quality of the execution it received as well as to permit detection by the NASD's surveillance systems. In this connection we reiterate our expectation that the NASD will develop, prior to the commencement of integrated market making, special surveillance procedures for monitoring potential abuses associated with the reporting of prices of large combination orders.[159]

As discussed above, however, we do not believe that the NASD's proposal adequately limits integrated market making to highly competitive markets. In this regard, it is especially important, for purposes of preventing manipulation, to ensure that one integrated market maker is not the consistent price leader for a particular security. Indeed, it is conceivable that such price leadership could be exercised by a market maker that does not necessarily quantitatively consistently dominate the market. Accordingly, the Commission does not believe the NASD's minimum number of market makers and percentage of the market criteria and other restrictions adequately address this concern. The pilot program described above, however, allowing integrated market making in the top six OTC stocks, would be an acceptable approach. The markets for these stocks are sufficiently competitive, by any measure, that any attempted price manipulation would involve substantial risks of attracting significant opposite side orders from other market makers, thus greatly increasing the cost of the attempted manipulation.

(iv) *Need for and Solicitation of Comment on Exchange Participation in the Pilot*. While, for the reasons discussed above, the Commission believes that a pilot program allowing integrated market making in the OTC market in six stocks with equity and options audit trails appears to be acceptable from a regulatory point of view, such a pilot might impose unfair competitive burdens on exchanges seeking to trade options on the same OTC stocks.[160] Specifically, some commentators [161] suggested that, if exchange options market makers were not allowed to act as integrated market makers, they could be at a disadvantage in competing with OTC integrated market makers.[162] This competitive disadvantage could be particularly acute with the six most active, and thus possibly the six most desirable, NMS option stocks being traded on an integrated basis in the OTC market. For this reason, the Commission does not believe that an integrated market making pilot should be allowed to occur in the OTC market unless the exchanges are provided an opportunity to participate in such a pilot.

Nevertheless, before an exchange could trade an option on an NMS stock side-by-side with the underlying stock, it would be necessary for: (1) The exchange to file and the Commission approve appropriate rule amendments to allow such integrated trading and (2) for the Commission to grant the exchanges unlisted trading privileges ("UTP") in such security.[163]

Both the grant of UTP in NMS stocks and integrated market making on exchange floors may raise potentially difficult issues not raised by integrated market making in the OTC markets. In this connection, the Commission previously issued a release soliciting comment on the appropriateness of granting UTP in NMS stocks.[164] In that release, the Commission specifically requested comment on whether the extension of UTP in any NMS Securities should be conditioned on those securities being traded pursuant to intermarket information and trading linkages (and if so how those linkages should operate), a short sale rule, or the removal of some or all exchange off-board trading restrictions. Although the Commission will address these questions in the near future with respect to determining whether UTP should be extended to a larger group of NMS

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[155] *See, e.g.*, Amex's 1980 letter, *supra* note 125

[156] A mini-manipulation involves the acquisition of an options position, the manipulation of the price of the underlying stock to increase the value of the options position, the liquidation of the options position at prices reflecting the artificially inflated (or reduced) price of the stock, and then the liquidation of the stock position. Capping involves manipulating the price of a stock by the writer of a call option near the expiration of the option in order to avoid the option from being exercised. Pegging is the same type of activity as capping, but engaged in by a put writer.

[157] *See* text accompanying notes 126-128 supra

[158] We do not believe small combination orders would lend themselves to mini-manipulations, especially in markets characterized by ⅛ or ¼ point spreads. In such a market, reports for small stock transactions are not likely to affect options quotations or prices

[159] The Commission emphasizes that its preliminary determination is premised upon audit trails for both the option and the underlying stock. As described above, the NASD could complete its NMS stock audit trail by October, 1985.

[160] *See* Section 11A(C)(ii) of the Act [15 U.S.C. 78k-1(a)(1)(C)(ii) (1982)], which states that it is in the public interest to assure "fair competition . . . between exchange markets and markets other than exchange markets."

[161] *See, e.g.*, PSE Letter, *supra* note 107, and letter from Arthur Levitt, Jr., Chairman, Amex, to Chairman and Commissioners, SEC, dated April 15, 1985.

[162] As discussed in Section IV below, the Commission is approving the multiple trading of options on NMS stocks.

[163] *See* Section 12(f)(1)(C) of the Act, 15 U.S.C. 78l(f)(1)(C) (1982). Two exchanges already have applied for UTP in NMS stocks, *see* Securities Exchange Act Release Nos. 21496 and 21497 November 16, 1984, 49 FR 46156.

[164] Securities Exchange Act Release No. 21498, November 16, 1984, 49 FR 46156, File No. S7-37-84.

Securities, the Commission requests further comment on whether any or all of these conditions should be imposed prior to a grant of UTP on any of the six pilot OTC stocks.[165] Should commentators favor imposing any particular conditions, the Commission requests a discussion of how the conditions should be implemented as well as the delays it might cause in permitting an exchange to commence trading the security on a UTP basis.

Regarding integrated market making of listed options and their underlying stocks, such trading is not currently allowed. As a matter of settled policy, the exchanges either have established separate floors for the trading of stocks and their related options [166] or, in the case of Amex, a policy that requires delisting of the option if the underlying stock lists. Commentators and the Commission have raised the same general types of concerns with integrated market making on exchanges as have been discused in connection with the NASD's integrated market making proposal, *i.e.*, concerns with information advantages and manipulative opportunities. The Commission notes, however, that concerns regarding the informational advantages and manipulative opportunities entailed by side-by-side trading on an exchange which is the primary market for the stock may not arise where an exchange is granted UTP for a stock already actively traded in the OTC market.[167] Accordingly, the Commission requests commentators to address whether such integrated trading, for the pilot stocks, is appropriate on an exchange and, if so, under what conditions.[168]

If the exchanges chose to seek UTP in the six pilot stocks and if the Commission determines not to approve UTP or exchange side-by-side trading in those stocks, the Commission believes that competitive fairness requires that integrated market making, even on a pilot basis, not be allowed in the OTC market. If on the other hand, the Commission determines to allow integrated market making on exchanges as well as by NASDAQ market makers, the Commission believes that the pilot program discussed above (including those exchanges that seek and obtain Commission approval), should commence no later than October 1, 1985, if the necessary equity and options audit trails are in place by then. Of course, the Commission retains the authority to move this date back if interested persons show good cause for so doing.

(v) *Summary.* In sum, the Commission believes that integrated market making should offer substantial improvements in market quality, and that the potential regulatory costs of integrated market making are substantially reduced in a market characterized by competition among market makers, dispersal of order flow and adequate surveillance. The Commission believes, however, that potentially severe regulatory costs could result should integrated market making occur in markets that are not competitive enough to ensure against information advantages and manipulative opportunities. The Commission is unable to conclude, at this time, that the markets in which integrated market making would occur under under the NASD proposal are sufficiently competitive to ensure that these adverse regulatory results will not occur.

The Commission does believe, however, that a more cautious approach would appear to be acceptable, *i.e.*, one allowing integrated market making initially in the six most active NMS stocks for one year, with integrated market making in these six stocks to commence only when options and equity audit trails for the stocks and options are operational. While such a pilot would allow examination of the regulatory concerns raised by integrated market making, if exchanges were not allowed to participate in such a pilot they might be subjected to unfair competitive burdens. Thus, the NASD should not be allowed to proceed with such a pilot until the exchanges have been provided an opportunity to obtain UTP in these six stocks.

In this connection, the Commission solicits comments on whether it should grant exchanges UTP in the top six NMS stocks in order to allow the exchanges to participate in such a pilot. If the Commission determines not to approve UTP or side-by-side trading for exchanges in the pilot stocks, the NASD may not be allowed to proceed separately with the pilot. If, on the other hand, the Commission does approve UTP, the Commission would allow the pilot to commence by October 1, 1985, assuming the necessary equity and options audit trails are in place at that time. If this pilot does occur, after six months, the participants would be required to submit an interim report showing the effects of integrated market making. At the end of one year, the Commission would determine whether an expansion, reduction or even elimination of the pilot is warranted.

C. Index Options

I. Rules

The NASD also proposes rules to govern the trading of NASDAQ index options. The NASD would apply to these index options the same basic trading systems as would be applied to its individual stock options. Thus, these options would trade ina multiple market maker system, with small orders (three contracts or less) eligible for automatic execution in NOAES at the best inside bid (or offer), and executions of other orders (or small orders if the order entry firm so chooses) being negotiated over the phone and reported via the OCT method. Integrated market making of these options and the stocks comprising the underlying indexes would be permitted without the types of limitations imposed upon the integrated market making of options on individual stocks and the underlying stocks.[169] The NASD intends to propose that there be at least five market makers in an index option before trading in the index option can commense, and that no new series could be authorized unless there are at least three index options market

[165] For example, granting UTP to an exchange using a multiple dealer system may raise different compliance concerns than granting UTP to an exchange using a specialist system (*e.g.*, how would a multiple dealer system comply with the requirement that broker-dealer's quotes be firm for NMS Securities?)

[166] *See, e.g.*, Securities Exchange Act Release No. 21759, February 14, 1985, 50 FR 7250 (approving NYSE's listed options proposal).

[167] *See, e.g.*, the Options Study, *supra* note 13, at 870–930. The Commission notes that while particular concern has been expressed with regard to either integrated trading or integrated market making on the primary or dominant exchange for the underlying stock, [*see, e.g.*, Securities Exchange Act Release No. 21710, February 4, 1985, 50 FR 5708 (approving NYSE specialist use of options on their speciality stocks for hedging purposes)] exchange participation in a six NMS stock integrated market making pilot would appear not to raise such concerns initially because there would be no primary or dominant exchange for these stocks.

[168] Interested persons should submit, on or before June 10, 1985, six copies of their comments regarding either UTP for NMS Stocks included in the integrated trading pilot or integrated trading on an exchange to John Wheeler, Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. S7–37–84.

[169] The Commission notes that, for the reasons discussed below, the index on which the NASD desires to commence trading options appears to be a broad-based or market index. If, in the future, the NASD desires to commence trading an option on a narrow-based or industry index, *i.e.*, essentially an index dominated by one or a small group of stocks, the Commission would have to adress whether it was appropriate to permit integrated market making fo such a narrow-based index option and the dominant stocks in the index without the same conditions as may be approved for integrated market making of individual stock options and their underlying stocks.

makers.[170] The NASD also proposes to apply quote commitment rules to index options market makers which will require that, once quotations are commenced in all index options, quotations must be continuously maintained for all series listed in the option at that time or listed thereafter through expiration. The penalty for violation of this rule would be termination of the market maker's registration for up to two expiration cycles.[171]

The NASD proposes to apply to these index options the same margin and position and exercise limits as currently are applied to exchange-traded index options. In addition, as with individual stock options, the NASD proposes to apply the same customer protection (*e.g.*, suitability and account approval rules) rules as apply to exchange traded index options.

2. Specific Contract

The composition and calculation of the index on which the NASD proposes to commence trading options is similar to that of the Phlx OTC index.[172] Specifically, the NASD proposes to trade an option on the "NASDAQ-100 Index" composed of the 100 largest non-financial NMS securities with a minimum market value of $100 million. The index would be limited to one issue per company and include both domestic and foreign NMS Securities. Any security included in the index which is deleted from NASDAQ or NMS status would be replaced by the next largest non-financial NMS Security not in the index.

The index would be weighted by capitalization. Thus, the representation of each security in the index is proportional to its market capitalization (*i.e.*, last sale price times the total number of publicly held shares outstanding) in relation to the total market value of the index. Adjustments to the index for securities being added or deleted or for capitalization changes would be handled so that they will not, in and of themselves, alter the level of the index. The index's base value was calculated as of February 1, 1985, and was set at 250. A multiplier of 100 would be used for the index option [173] and the options would expire in consecutive months.

The most highly capitalized stock in the index as of February 1, 1985, accounted for 6.01% of the total capitalization of the index. The five most highly capitalized issues in the index together accounted for 18.1% of the total index capitalization. In addition, more than 20 industry groups are represented in the index.[174]

3. Discussion

The NASD's index options, of course, would trade in a different system than will Phlx's proposed index contract. As described above, this system is the same system which the NASD proposes to use for individual stock options, and, for the reasons discussed above, the Commission believes that the trading of options in this system would be consistent with the Act. As described above, the non-trading rules that will apply to these index options, *e.g.*, margin, position and exercise limits, disclosure, suitability and generalized antifraud and manipulation rules, are the same as currently apply to exchange traded options.

The NASD has not yet submitted, however, a complete set of index options rules [175] or a comprehensive surveillance plan for these index options. While NOAES, OCT and the NASD's current and enhanced equity audit trails will provide the options and equity trail data that will be sufficient to monitor the markets for these options, the NASD will need to submit a plan for the use of this data that indicates that the NASD's surveillance parameters and systems will be adequately designed to monitor potential abuses in the trading of these index options. Should the NASD complete its index options rules, as it indicates it will, and submit an adequate surveillance plan, the Commission believes, as a preliminary matter, that these portions of the NASD rules would be consistent with the Act.

IV. Allocation of Options

A. General

The OTC options proposals raise questions concerning how options on OTC stocks shold be allocated among the various market centers.[176] Although the exchanges and the NASD have not specifically sought approval to trade options on stocks on which options are traded in another marketplace, in the April release the Commission solicited comment on whether, and under what circumstances, multiple trading of options on OTC stocks should be allowed either among the exchanges and/or between the OTC market and the exchanges. That release reflected the Commission's preliminary view that, because of the potential benefits obtained from competition and in light of the limited risks of significant long-term market fragmentation or of existing market structure disruption, the market, rather than a Commission sanctioned allocation program, should be determine where options on OTC stocks are traded.[177] This view is consistent with the Commission's present position on multiple trading of new options products [178] and its conclusion that,

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[170] *See* NASD letter, *supra* note 2. These proposed requirements, however, have not yet been formally filed.

[171] *See* Proposed Part IV, Schedule D, Sections 6 and 7, NASD By-Laws, Amendment No. 3. Because the NASD also proposes to use a consecutive month expiration cycle for index options, this means that the bar on re-registration as an index options market maker for violation of index options quote commitment rules would last a maximum of two months.

[172] *See* Section II.C., *supra*.

[173] The multiplier is the amount by which the index value is multiplied to obtain the aggregate contract value; thus, if the index value is 250 and the multiplier is 100, the contract is worth $25,000.

[174] The Commission notes that the Chicago Board of Trade, pursuant to an agreement with the NASD, has sought contract market designation for futures on this index. The Commission intends to review the terms of that contract application under the provisions of section 2(a)(1)(B) of the CEA.

[175] As indicated above, the NASD has not yet submitted a rule requiring a minimum number of market makers in each index option class. In addition, the NASD has not yet submitted special exercise notice provisions for these cash settled products (*see e.g.*, CBOE Rule 11.1.04). The NASD has stated that it is deferring completion of the portion of its filing relating to index options pending Commission resolution of the issues raised by the portions of its filing relating to individual stock options. *See* NASD letter, *supra* note 2.

[176] The trading of standardized options on the same underlying security on more than one market, with reliance on the market to allocate trading interest in those options to the various markets, is referred to as "multiple trading." The expansion of multiple trading of options on individual listed stock has been prohibited since the commencement of the options moratorium in July 1977. Currently, options on additional listed stocks are allocated among the various options exchanges by lottery pursuant to an allocation agreement. Thirteen stock options, however, continue to be multiply traded among the exchanges.

[177] In making this determination, the Commission recognized that certain competitive implications may be raised by permitting multiple trading between the OTC market and the exchanges. Accordingly, in addition to soliciting comments on the direct benefits and costs of multiple trading, the Commission solicited specific comments on the competitive issues raised by OTC options multiple trading.

[178] In the past, the Commission had been concerned, among other things, that the expansion of multiple trading of options on individual listed stocks might disrupt the existing options market structure and adversely affect, to a material degree, the financial conditions of certain regional exchanges. *See* Moratorium Termination Release, *supra note* 6, 45 FR at 21430–31. The Commission, however, has relied on the market to allocate new options products, such as options on nonequity securities and options on stock index. In permitting the multiple trading of these new options products, the Commission has emphasized that the existing market structure would not be disrupted because, among other things, the markets had not expended resources based on an expectation that they would receive an exclusive franchise and were not dependent on these new products for their viability. *See, e.g.*, Securities Exchange Act, Release No. 18297 December 2, 1981, 46 FR 60376.

under appropriate circumstances, the benefits of multiply trading options on individual listed stocks appear to outweigh the potential adverse consequences.[179]

B. Comments

Nine commentators opposed the multiple trading of options on NMS stocks. As a general matter these commentors believe that the multiple trading of options on NMS stocks, absent market integration facilities (*e.g.*, market linkages, coordinated openings and limit order files), will result in market fragmentation and best execution problems.[180] Some of these commentators stated that multiple trading also would create operational problems for firms.[181]

Many of the commentators opposing multiple trading emphasized that the competitive benefits of multiple trading are transitory because order flow would focus on a primary market and thus true competition among markets would be eliminated.[182] Phlx, in particular, disagreed with the assumption that the dominant market can be challenged by price and service competition from other securities markets.[183] The Amex also stated that if the Commission approved multiple trading the exchanges would have the difficult and expensive task of developing market integration facilities to link competing markets. In this regard, some of the commentators noted that there have been no changes in the structure of the option markets since a 1981 SRO task force report[184] indicated that such integration facilities are not feasible.[185]

Some commentators addressed the effects multiple trading will have on new entrants. The BSE, for example, stated:

> As a practical matter, elimination of the allocation system will effectively preclude BSE entry. It will not be economical for the BSE to compete with other exchanges under such conditions. The other exchanges will continue to enjoy a protected market share while competing in a small portion of the remaining market. The BSE on the other hand, would face competition in its entire market.[186]

The BSE concluded that multiple trading, at this time, would eliminate all new entrants, except the NYSE, from the market.[187]

Many of the commentators also disagreed with the Commission's comparison of new options products to options on NMS stocks. For example, Phlx stated that options on listed stocks and OTC stocks, as a general matter, have similar trading characteristics and are both options on common stock.[188]

Some of the commentators opposing multiple trading addressed additional concerns that they believed would arise if the Commission permitted multiple trading of OTC options between the OTC market and one or more options exchanges.[189] The major concern noted by the exchange commentators was the competitive advantage that OTC integrated market makers would have over exchange market makers who only would be trading in the options. For example, the PSE argued that the exchanges could not compete fairly with integrated OTC market makers because the latter would be able to observe customer order flow in both the stock and option, and change their market in the stock at will.[190]

The NASD has requested that options on NMS stocks be traded exclusively in the NASDAQ system during a pilot period.[191] In this regard, the NASD argues that without an exclusive pilot it may not be allocated a sufficient number of options for its program to be successful. Following such a pilot, the NASD supported multiple trading so long as there are no barriers to any market seeking to trade OTC options[192] and issuers of underlying stocks have a voice in determining whether options are traded on their stocks.[193] The NASD, however, believes that the benefits of multiple trading only will exist if the markets are linked and has suggested that the NASDAQ system eventually could be used as a market integration facility.[194]

A substantial number of commentators indicated that they preferred trading OTC options in the OTC market rather than on the exchanges.[195] These commentators cited a variety of reasons for preferring to trade OTC options in the NASDAQ system, rather than on the exchanges. Some commentators for example, stated that NASDAQ would provide a more

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[179] Traditionally, the Commission has believed that a number of benefits result from the inter-market competition prompted by multiple trading. These benfits include allowing the marketplace to determine the best market (or markets) for a particular option, rather than having a regulatory process make such a selection without regard to quality. Other possible benefits include improvements in depth, liquidity and price continuity (at least for short periods of time until a primary market emerges or re-emerges in the option) more efficient execution, back office and clearing services, and the development of options contracts that are best suited to the economic needs of market participants. The primary adverse consequences of multiple trading the Commission has identified is market fragmentaton which may result in pricing disparities. Fragmentation, however, appears generally to be a short-term effect because experience indicates that a primary market for each multiply traded option will develop. Moreover, when a primary market does emerge, the potential competition provided by the possibility of multiple trading provides a continuing incentive for the primary market to maintain or improve the quality of its markets. *See* Moratorium Termination Release, *supra* note 16; 45 FR at 21430–34; and Securities Exchange Act Release Nos. 18297, December 2, 1981; 46 FR 60376; 1264, November 22, 1982, 47 FR 53981; and 20075, August 12, 1983, 48 FR 37556.

[180] *See, e.g.*, SIA letter, *supra* note 122 and letter from Howard Brenner, Chairman, SIA Options and Derivative Products Committee, to John Shad, Chairman, SEC, dated March 7, 1985

[181] *See, e.g.*, Amex 1984 letter, *supra* note 97, at 14.

[182] *Id.*

[183] *See* Phlx letter, *supra* note 39, at 33.

[184] As discussed below, a 1981 SRO task force concluded that market integration facilities for equity options were not feasible at that time. *See* note 227, *infra*, and accompanying text.

[185] *See, e.g.*, PSE letter, *supra* note 107, at 2.

[186] Letter from Brian Riddell, Executive Vice President, BSE, to George A. Fitzsimmons, Secretary, SEC, dated July 13, 1984, at 2–3 ("BSE letter").

[187] *Id* at 2. Phlx and Amex proposed pilot programs, which would allocate OTC options among the various markets equally by lottery, to eliminate the competitive disadvantages for new entrants that exist in a multiple trading environment (Phlx, however, would exclude the NYSE from the allocation). Under Phlx's proposed pilot the exchanges and the NASD would commence options trading on separate NMS stocks (allocated equally among the markets) at the same time for a one year period. At the end of the one-year period OTC options trading would be reviewed and revised to the extent necessary. Under Amex's proposed pilot, options on 24 underlying stocks would be initially allocated among the exchanges and the NASD.

[188] Phlx letter, *supra*, note 39, at 35–36.

[189] For example, the Phlx stated that market fragmentation problems would be excacerbated if multiple trading between the OTC market and exchanges was permitted. *See* Phlx letter, *supra* note 39, at 36.

[190] As a result of these concerns, the PSE stated that if the NASD's proposed integrated market making proposal is permitted, it would expect the Commission to grant the exchanges UTP in the stocks underlying exchange-traded OTC options and allow the exchanges to trade the stock and option on an integrated basis. For a discussion of these concerns and, in particular, the question of UTP for the exchanges, *see* text accompanying notes 160–168, *supra*.

[191] NASD letter, *supra* note 2, at 2–3 and 27–28.

[192] In addition, the NASD stated that it would be unfair to permit the exchanges to trade options on NMS stocks and not permit OTC market makers to trade options on exchange listed securities. *Id.*, at 27–28.

[193] It also appears from the NASD's comments that it would like issuers to have the ability to determine which market—OTC or exchange—will trade options on their stocks. *See id.*, at 3–5.

[194] The NASD did not discuss in any detail how trading on an exchange floor could be successfully integrated into a NASDAQ System.

[195] Most of these commentators, however, did not indicate their view on the manner in which OTC options should be allocated between market centers if both the exchange and NASD proposals are approved.

liquid, competitive market than existing exchanges. In this regard, many of the broker-dealers noted liquidity problems that they believe currently exist for exchange traded options (particularly since the advent of index options trading) and believe that if the Commission permits the exchanges to trade options on NMS stocks these liquidity problems will worsen, resulting in "spreading too thin an already too thin market."[196] Others favored the OTC market for surveillance reasons noting that it would be easier to detect manipulation if the options and stocks are traded in the same market.[197] Some commentators asserted that the current lottery system is inequitable and reduces competitive and regulatory efficiencies, but that, in any case, multiple trading should not occur unless the multiple markets are integrated. For example, Dean Witter stated that, until market integration facilities are developed, the NASD options proposal, which would allow exchange floor members to register as NASDAQ option market makers, would provide an open competitive environment for all markets while avoiding the problems of multiple trading.[198]

In addition to the NASD's support for the eventual multiple trading of OTC options as discussed above, five commentators supported the multiple trading of OTC options without qualification.[199] These commentators generally believe that it is beneficial to allow market forces to determine which market emerges for a particular option. For example, despite the fact that experience indicates that after a relatively brief period one market becomes dominant and receives most or all of the subsequent order flow, the DOJ views the direct inter-market competition spurred by multiple trading during the first few days or weeks of trading as desirable.[200] In addition, the DOJ noted that the risk that another market could attract order flow away from the dominant market at any time could have a positive impact on the dominant exchange.

The CBOE agreed with the Commission's belief that options on OTC stocks should be treated as new options products because, among other things, such trading is not likely to have a radical effect on the existing market structure.[201] In addition, CBOE believes that allocating OTC options by lottery is not appropriate because it would be left to chance whether a given option was traded in an exchange or OTC environment.

In addressing the competitive implications of multiple trading, the DOJ believes that it would be inappropriate to insulate markets and individual market makers from competition solely because some way fail. In this regard, the DOJ noted that, if the exchanges become the dominant markets for OTC options, the NASD's ability to operate in other areas would not be seriously threatened.[202]

Although the NYSE also supports the multiple trading of options on OTC stocks, it has proposed a phase-in plan that could have the practical effect of permitting some or all SROs to defer multiple trading for one year.[203] Under the NYSE proposal, each of the exchanges and the NASD would trade options on two or three OTC stocks for a one year period. The NYSE believes that, although its phase-in proposal would not technically preclude multiple trading, the two or three stock limitation would have the practical effect of encouraging some or all SROs to avoid multiple trading during the pilot period. The NYSE also noted that its pilot could afford the new market entrants, the NASD and BSE, time to implement options programs without delaying the established options exchanges.

C. Discussion

The Commission has on numerous occasions had an opportunity to consider the concerns commentators have raised in connection with multiple trading of standardized options. Those concerns, primarily involving fragmentation of the market, the lack of a fair field of competition and possible structural questions, also have been raised in connection with the possible multiple trading of OTC options.

While the Commission recognizes the commentators concerns over multiple trading either among the exchanges or among the exchanges and the OTC market, the commission believes these concerns are outweighed by the benefits that can be derived from permitting multiple trading, particularly in allowing market forces to determine which market (or markets) should trade a particular option.

In the April Release, the Commission stated its preliminary belief that OTC options, like recently introduced new option products,[204] should be subject to multiple trading. The Commission continues to believe that, just as with the introduction of new options products, multiple trading of options on OTC stocks will not have a radical effect on existing markets because no SRO's financial viability is dependent on revenues from these products. Moreover, in approving the multiple trading of new options products in the past the Commission has emphasized that unlike options on listed stocks, the market structure would not be disrupted because no particular market relied on revenue flow from newly introduced options products. In addition, as noted above, the Commission has recognized that the multiple trading of new options products would result in the development of options contracts best suited to the economic needs of market participants, enhance price competition among the markets, at least until a dominant market in a particular option emerged,[205] and improve the quality of markets and execution and back office services.[206] As discussed more fully below, the Commission believes that the same benefits can be derived from multiply trading options on OTC stocks.

The Commission believes that the benefits of multiple trading outweigh those problems which may be associated with market fragmentation resulting from multiple trading. The Commission believes that, during periods of market "fragmentation," *i.e.*, in which more than one market actively trades options on the same stock, increased competition should result in reduced spreads and improved services.[207] Some commentators, however, argued that the benefits to the markets of multiple trading are, at best, transitory because in the long run, a dominant market will emerge and any remaining competition will be

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[196] *See* letters cited note 26, *supra*.

[197] *See, e.g.*, Berney Perry letter, *supra* note 27, at 1.

[198] See letter from Jay H. Perry, Executive Vice President & Director, Dean Witter Reynolds, Inc. to George A. Fitzsimmons, Secretary, SEC, dated June 12, 1984.

[199] These commentators are CBOE, DOJ, Donaldson, Lufkin & Jenrette, and General Electric Investment Corp. We note, however, that although the NYSE does not believe multiple trading should be prohibited, it has proposed a pilot program which, in its view, could result in deferring multiple trading in OTC options for a one-year period. *See* text accompaning notes 200 to 203, *infra*.

[200] DOJ letter, *supra* note 111, at 22.

[201] *See* CBOE 1984 letter, *supra* note 82, at 19.

[202] DOJ letter, *supra* note 111, at 26.

[203] *See* NYSE letter, *supra* note 40, at 2–4

[204] For example, options on foreign currencies, stock index and Treasury securities.

[205] *See* Options Study, *supra* note 13, at 807–24.

[206] Indeed, the Commission previously has recognized that multiple trading of options on individual stocks can result in these same benefits (*see* Moratorium Terminaiton Release, *supra* note 16, 45 FR at 21430–34) but deferred action on multiple trading for other reasons. *See* note 227, *infra*.

[207] Previous studies of multiple trading have indicated that the quality of the markets for standardized options generally improved after the initiation of multiple trading. The Commission notes, however, the data was insufficient to conclude that the improvement in market quality was caused solely by multiple trading. In addition, the data did not provide enough information to determine the long-term effects of multiple trading on the quality of the markets. *See* Options Study, *supra* note 13, at 807–24.

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ephemeral. The Commission disagrees with the assertion that because of the "primary market phenomenon" no real benefits are derived from multiple trading. Indeed, the Commission finds that a principal benefit of multiple trading is that, notwithstanding the primary market phenomenom, multiple trading allows the marketplace (rather than a lottery) to determine which SRO is offering the best market for a particular option. By definition an allocation process ensures that the marketplace offering the least depth and liquidity receives a franchise on an identical number of desirable OTC options than marketplaces boasting superior market quality and services. Permitting multiple trading is especially important for OTC options because by right such options investors will not only be choosing between exchanges, but choosing whether to trade on an exchange or in the OTC market.[208]

The Commission also believes that many of the benefits of multiple trading would remain after the emergence of a dominant market because market participants still would have the ability to execute their options orders in alternate markets. Such potential competition will help encourage the dominant market to continue to provide improved services and facilities and respond to the needs of market participants or risk losing its market share. In this regard, experience has indicated that potential competition does, in fact, encourage primary markets to achieve greater efficiency and other operational improvements.[209] Furthermore, although some contend that the benefits of multiple markets, such as improved depth, liquidity, price continuity and spreads, are of limited duration,[210] such effects from competition can reemerge over time.[211]

In addition, the Commission believes that the multiple trading of OTC options, like that of other new options products, can result in the development of options products that are best suited to the economic needs of market participants. In this connection, however, some commentators have sought to distinguish OTC options from other new options products, because, like listed options, they are options on individual stocks.[212] Hence, it is argued, innovation in contract design is not a likely benefit of multiple trading of OTC options as it is for other new products such as index options (*e.g.*, by designing a superior underlying index).

The Commission disagrees strongly with this conclusion. One of the most significant issues raised by the various OTC options proposals is the choice between different trading systems: an exchange market or an OTC market.[213] It is difficult to conjecture the extent to which various features of the exhcange and OTC systems have developed or may arise in response to the competitive conditions provided by possible multiple trading, although prior experience suggests it will provide clear incentives for innovation. It is clear, however, that the proposed exchange and NASDAQ markets provide clear alternative trading systems. The Commission believes the choice between those systems, to the extent possible, should be made by market participants and not by regulatory fiat.[214]

1. Competitive Implications of Permitting Multiple Trading

Certain markets proposing to trade OTC options have suggested that, if the Commission permits multiple trading, they would be precluded, as new entrants, from effectively competing against the established markets.[215] The Commission has made clear in the past that it does not regard the perpetuation of any particular market place to be a legitimate objective of any allocation system.[216] This view is supported by the Commission's mandate under the Act.[217] The Commission believes its responsibility is to promote fair competition among markets and market participants, not to promote or ensure the viability of any particular market place or participant.[218]

The Commission recognizes that the larger established options exchanges may well be able to attract more order flow than new entrants in a multiple trading environment. In this regard, options trading would not appear to differ materially from other commerical endeavors. It is a natural consequence of fair competition beween markets rather than any unfair advantage the Commission is conferring upon the established options markets.[219] Moreover, to the extent new entrants provide liquid and competitive markets for multiple traded OTC options, the Commission cannot conclude that they cannot attract significant order flow.[220]

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[208] *See* text accompanying note 234, *infra*.

[209] An example of this phenomenon is CBOE's development of an enhanced execution system for small public customer market orders on the S&P 100 index. *See* Securities Exchange Act Rule No. 21695, January 28, 1985, 50 FR 4823. While the CBOE may have been persuaded to develop such systems, even in the absence of competition from other functionally similar broad-based index options markets, the presence of those other markets apparently has spurred the CBOE's determination to develop such systems.

[210] *See* note 182, *supra*, and accompanying text.

[211] For example, the recent trading of options on National Semiconductor ("NSM") indicates that market centers may choose to compete for order flow in different options at different times. NSM options are one of thirteen listed stock options currently eligible for trading on more than one exchange (in this case, CBOE and Amex). CBOE consistently has been the primary market, attracting approximately 95% of the order flow. Recently, however, the Amex specialist for NSM options has begun to compete actively to capture order flow from CBOE. CBOE has responded, in part, by eliminating any charges for limit orders in NSM. *See* Securities Exchange Act Release No. 21609, December 28, 1984, 50 FR 911. As a result of this increased competition, in the past several months, Amex has managed to attract between 20 and 40% of the order flow in NSM away from CBOE. This illustrates that, even absent direct order-by-order competition, market centers can attract order flow away from the primary market by providing a more competitive market. It also indicates that the "potential competition" that exists in a multiple trading environment, even where an established primary market has attracted the vast preponderance of the order flow in the past, is not illusory and can provide effective incentives for market centers to offer better services and markets to attract and retain order flow.

[212] *See* Amex 1984 letter, *supra* note 97.

[213] In addition, within each system markets have developed or proposed systems enhancements (such as exchange limit order books and the NASD's proposed NOAES and OCT procedures) which may offer varying benefits to firms and customers. *See* text accompanying notes 64–71, *supra*.

[214] Once options trading commences on any particular NMS stock, options on that stock will continue to be allocated by the market rather than by lottery, irrespective of whether or not the stock subsequently lists in an exchange. This approach is consistent with the treatment of the exising multiply-traded options classes at the time the allocation plan originally was approved by the Commission. *See* Securities Exchange Act Release No. 16863, May 30, 1980, 45 FR 37928 and Moratorium Termination Release, *supra* note 16, 45 FR 21431, n. 51. As noted below, the exchanges will need to modify their allocation agreement rules to reflect this position. *See* note 225, *infra*.

[215] To the extent multiple trading does develop between the NASD and exchanges, the commission believes it will be necessary for them to develop a single reporting stream to integrate exchange and OTC quotation and last sale reports.

[216] *See* Moratorium Termination Release, *supra* note 16, 45 FR at 21430, n. 47.

[217] *See* Options Study, *supra* note 13, at 870.

[218] As noted in the Moratorium Termination Release, the 1975 Amendments do not require the Commission to pursue competition *per se*, but instead stress the need to assure "fair competition among brokers and dealers, among exchange markets and between exchange markets and markets other than exchange markets." Section 11A(a)(1)(c)(ii) of the Act, 125 U.S.C. 78K–1(a)(C)(ii)(1982).

[219] The BSE has contended that it is unfair to provide for multiple trading of OTC options while the existing options exchanges are largely shielded from direct competition in listed stock options. The Commission recognizes, as noted above, that the existence of established programs is a competitive asset for the existing options exchanges. Each marketplace however, had an equal opportunity to commence trading options after the Commission's initial determination to approve the CBOE in 1973. The fact that the BSE chose not to apply for options trading until now should not result in a conclusion that the competitive advantages enjoyed by earlier entrants are somehow unfair.

[220] For example, as noted above, some commentators stated that they find it preferable to

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In addition, even if the new entrants market in options are unsuccessful, their ability to operate in other areas of the securities markets will not be seriously threatened.[221]

2. Existing Barriers to Multiple Trading

Multiple trading between the exchanges and the NASD would be substantially inhibited unless the exchanges amend their rules prohibiting their members from trading off the floor of an exchange options listed on that exchange.[222] These restrictions were initially adopted to assure that all transactions in standardized options (except accommodation liquidations) occurred on an exchange floor. By their terms, however, these rules also could be applied to prevent exchange members from trading multiply traded standardized options on the NASDAQ system. Accordingly, in the April Release, the Commission indicated its preliminary belief that, as a precondition to Commission approval of their proposals, the exchanges would have to eliminate any barriers to multiple trading that would prevent that members from trading standardized options in the OTC market.

One commentator, the CBOE, stated that any modification of such restrictions would weaken the strength of the existing auction markets and therefore, any change to these rules would require fact findings and hearings to ascertain the effect of a change on options market structure.[223] The NASD, on the other hand, believes that the exchanges should not be permitted to trade OTC options if exchange barriers to trading options in the OTC market are still in place.[224]

These restrictions would effectively prevent options exchange members from being NASDAQ options market makers in any multiply traded options, and thereby artificially would preclude any meaningful multiple trading between the exchanges and the OTC markets. Thus, the Commission continues to believe that approval of the exchange proposals should be conditioned upon the amendment of such rules.[225] Accordingly, before the Commission approves the exchange OTC options proposals, they must amend those rules.[226]

3. Market Integration

As discussed above, many of the commentators are concerned about market fragmentation in a multiple trading environment. The Commission has recognized, however, that, in addition to the emergency of dominant markets, market integration facilities such as order routing facilities, limit order protection and consolidated opening procedures could alleviate many of these fragmentation concerns while maximizing competitive opportunities. Indeed, most commentators agree that market integration facilities could ameliorate many of their concerns about multiple trading, *e.g.*, market fragmentation. In 1981, however, a joint SRO task force concluded that market integration facilities for equity options were not feasible at that time.[227] Moreover, many commentators continue to believe that the development of such facilities remains infeasible.[228] Conversely, some commentators believe that such facilities may, in fact, be possible.[229]

For the reasons noted above, the Commission believes that, even absent market integration, substantial benefits can be derived from multiply trading OTC options. Moreover, the Commission has concluded that any concerns raised by market fragmentation may exist only until a dominant market emerges. Nevertheless, the development of market integration facilities would further the Congressional mandate to provide additional competitive opportunities, enhance opportunities for best execution of public investors orders and increase market efficiency. Accordingly, the Commission urges market participants to consider the development of integration facilities and believes that by stating its position to approve multiple trading for options on OTC stocks at this time may, in fact, encourage the SROs to develop such facilities.[230] The Commission believes, however, that any determination as to what type of market integration facilities would be premature until the securities industry and the Commission can evaluate multiple trading in OTC options on the basis of actual experience.

4. Summary

As discussed above, the Commission believes that substantial benefits can be derived from multiply trading options on OTC stocks. Although the Commission

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trade options on OTC stocks in the NASD's system rather than on the exchanges. This is an indication that the NASD's role as a new entrant will not necessarily put it at a disadvantage as compared to the established exchanges. The experience with stock index futures products supports this conclusion. The Kansas City Board of Trade introduced a future on a Value Line Index several months before any other stock index future was introduced. Nevertheless, in 1984, the number of contracts traded on the Chicago Mercantile Exchange in the S&P 500 futures contract (11,059,000 contracts) and on the New York Futures Exchange in the NYSE Composite Index Futures (3,517,833 contracts) greatly outsurpassed the number of contracts traded on the Value Line futures contract (866,602 contracts).

[221] Commentators also argued that allowing multiple trading between the OTC and exchange markets will put the exchanges at a competitive disadvantage because, unlike exchange specialists and market makers, OTC market makers will be able to internalize their retail order flow. Indeed, in proceedings to determine whether to remove exchange off-board trading restrictions some argued that an OTC market maker's ability to internalize its retail order flow may provide it a competitve advantage over exchange specialists and market makers. *See, e.g.*, Securities Exchange Act Release No. 13662, June 23, 1977, 42 FR 33510. While the Commission recognizes that the same arguments could be made regarding the effects of allowing multiple trading of options on OTC stocks among exchanges and the OTC market, the Commission notes that the NYSE has been able to compete effectively with upstairs firms for order flow in so-called "19c–3 securities," *ei.e.*, securities as to which off-board trading restrictions may not apply.

[222] *See, e.g.*, CBOE Rule 6.49.

[223] *See* CBOE 1984 letter, *supra* note 82, at 5–6.

[224] *See* NASD letter, *supra* note 2, at 29.

[225] Prior to approval of their proposals, the exchanges must also modify their stock allocation agreement rules explicitly to exclude from the coverage of these rules options on OTC stocks traded through NASDAQ. In addition, the exchanges will need to amend the allocation agreement rules so that multiply traded options would not become subject to the lottery allocation procedure at a later time because of the subsequent exchange listing of the underlying NMS stock. *See* note 214, *supra*.

[226] The Commission does not believe that hearings on the effects on market structure are statutorily required or necessary. Under section 19(b) of the Act, the Commission has the authority to approve proposed rule changes submitted by the exchanges after notice and opportunity for comment. No hearings are required under this statutory authority. *See* Securities Exchange Act Release No. 21750, February 14, 1985, 50 FR 7250, 7258–7260 (discussing when hearings are required under section 19(b)). The Commission is not using its authority under section 19(c) to amend exchange rules. It is merely determining pursuant to the statutory analysis required by section 19(b), that approval of the exchange proposals while these restrictive rules applied to trading would appear to impose a burden on competition which is not justified by the other goals and purposes of the Act.

[227] *See* letter from Nicholas A. Giordano, President, Phlx, to George Simon, Associate Director, Division of Market Regulation, SEC, dated September 2, 1981, contained in File No. S7–772. The joint SRO task force was formed in response to a Commission request in the Moratorium Termination Release, *supra* note 16. In that Release, the Commission deferred action on multiple trading for equity options to afford the SROs an opportunity to examine whether and to what extent the development of such facilities would alleviate market fragmentation concerns and maximize competitive opportunities. As noted above, the Commission has not revised its deferral decision since the Task Force issued its conclusion that integration was not feasible at that time.

[228] *See, e.g.*, PSE Letter, *supra* note 107, at 2.

[229] DOJ letter, *supra* note 111, at 23–26 and NYSE letter *supra* note 40, at 73.

[230] Indeed the Commission questions whether market integration facilities, if feasible, will ever be developed without providing the incentive of actually allowing multiple trading. The Commission notes that since 1981 the current options exchanges apparently have not pursued the development of such integration facilities.

recognizes the competitive implications of trading options on the same OTC stocks on more than one exchange and between the exchanges and the OTC market, the Commission has determined that the multiple trading of these new options products, subject to adequate surveillance,[231] raises no signficant regulatory concerns and should be approved.

V. Timing

In addition to multiple trading, the approval of the exchange and NASDAQ proposals will raise significant issues relating to the timing of the start-up of OTC options trading. The exchanges have the operational capacity to offer options on OTC stocks very shortly after Commission approval, while the NASD has indicated that it is several months away, at the earliest, from implementing its options proposal.

A number of commentators have asserted that the first market to trade a new options product invariably captures the overwhelming preponderance of the order flow, even after subsequent entrants trade the same options contract. For this reason, the SIA, for example, has recommended (even in the absence of multiple trading) that start-up of trading by the exchanges be deferred until the NASD is able to begin trading. The NASD has proposed a program that would permit it to trade options on NMS stocks exclusively for a pilot period. The NASD claims that such a pilot would not be anticompetitive because individual exchange members would not be prohibited from participating as market makers in OTC options during the pilot period. The exchanges generally believe, however, that it would be inconsistent with the Act to delay their proposals to trade OTC options because of the NASD delay.[232]

As discussed below, we believe it is appropriate to provide a short period after Commission approval of the exchange proposals to allow the exchanges, their member firms and the public to prepare for OTC options trading. Such a temporary deferral should resolve any of the regulatory issues associated with the timing question except for the competitive concerns raised by the NASD. Accordingly, the consideration of a more extensive delay, sufficient to allow the NASD an opportunity to commence trading in its proposed options program, involves a determination of whether the benefits provided by allowing options trading on OTC stocks as soon as possible are outweighed by any competitive burdens imposed on the NASD by such an earlier start-up. On balance, the Commission has concluded that it would be inappropriate to delay start-up of the exchange programs until the NASD is also ready to trade OTC options.

The Commission does not believe that the goals of the Act are consistent with affirmatively delaying the start-up of trading in OTC options in a manner which benefits one particular marketplace. The NASD has had the technical capability and time to be ready for commencement of its program shortly after Commission action on the proposal. If the NASD is now unable to begin its program, the reason is because the NASD chose not to make the business investment until the risk of Commission disapproval was behind it. While that decision was perfectly reasonable, in light of the difficulty of the issues raised by the NASD's proposal, it is not a basis upon which the Commission can conclude that the NASD is subject to an unfair competitive disadvantage unless the exchange programs are delayed. Subject to the conditions discussed in this order, the Commission believes that there is no regulatory purpose which require delay of the exchange proposals and delay would not promote fair competition among the options markets.

Assuming the exchanges do commence trading before the NASD,[233] the Commission also believes that commentators have overstated the competitives disadvantages to which the NASD would be subject. First, while the first market to trade a particular product often becomes the dominant market, experience shows that late entrants also can have a viable options market. For example, in the new product area, the exchanges have introduced broad-based index options at different times. Although CBOE's S&P 100 index option, the first introduced, is the most successful, Amex, NYSE, and very recently, Phlx have been able to maintain viable options markets in their broad-based index options.

Second, the Commission believes the timing of start-up of trading may be much less significant in competition between the exchanges and the NASD in OTC options than it has been in other derivative product contexts in the past. Prior timing questions have arisen in the context of two competing exchanges. NASDAQ, however, represents a different type of system for trading OTC options. As noted above, many commentators indicated that they find the OTC system for trading options on NASDAQ stocks perferable to exchange trading. Furthermore, these systems will be enhance by NOAES.[234]

The Commission believes, however, that, after announcement of its determination today, a delay of 60 days (or some other appropriate period) in the commencement of the exchange trading of these options may be needed in order to ameliorate certain regulatory concerns. A delay, of course, is required for the exchanges to comply with the conditions in this Release. In addition, the Commission believes that the exchanges and the industry also will need time to have an opportunity to undertake educational efforts for their members and public investors. The Commission, therefore, intends to delay the effectiveness of its approval of the exchange proposals for 60 days (or a similar time period as might appear appropriate) after publication of this release in the **Federal Register.**[235]

VI. Conclusion

For the reasons discussed above, the Commission believes that the NASD's and the exchanges proposals can be made consistent with the Act if

[231] *See* Section II.A.d., *supra*.

[232] *See, e.g.*, CBOE 1984 letter, *supra* note 82 at 21. The Phlx, however, believes the exchanges and the NASD should commence trading at the same time. Phlx letter, *supra* note 39.

[233] Because of the time involved in meeting the conditions set by the Commission before the exchanges can commence trading, it is unclear whether the exchanges will actually begin trading significantly before the NASD.

[234] The Commission also notes that, from a timing perspective, there will be no competitive advantages given to either the exchanges or the NASD in the context of the side-by-side trading of options on OTC stocks. As discussed above, the Commission is announcing today that in concept it approves of a six stock pilot program involving side-by-side trading for the NASD, subject to eventual approval of exchange participation in the pilot (if they request to be included). *See* Section III(b)(2)(b)(iv), *supra*. The Commission believes that, if the exchanges are permitted to participate, the pilot should commence at the same time for both the NASD and the exchanges. Since the NASD has indicated to the Commission staff that it will be ready to commence options trading by October 1, 1985, the Commission believes that, if the pilot proceeds, it should commence for both the exchanges and the NASD no later than October 1, 1985. This decision should eliminate any competitive advantage the exchanges may have over the NASD in the context of the side-by-side trading of OTC options and their underlying stocks. Moreover, the fixed date of October 1, 1985 provides notice to the exchanges and the NASD that the commencement of the pilot will not be postponed past a certain date if a participtant is not yet ready to proceed.

[235] As noted below, approval will also be conditioned in submission of surveillance plans by the exchanges.

modified. Specifically, the NASD's proposal to trade options on individual OTC stocks, appears generally consistent with sections 11A and 15A of the Act. Commencement of trading of options on OTC stocks will require an acceptable options surveillance system, including acceptable options trade data capture mechanisms. The exchange proposals to trade options on individual OTC stocks also would seem to be consistent with the Act if the exchanges eliminate the barriers in their rules to the multiple trading of these options. Prior to the commencement of trading in such options the exchanges will have to submit adequate surveillance plans for these options, and some delays, perhaps as long as 60 days after publication of this release, may be necessary between any actual approval of the NASD's and exchange proposals and the commencement of trading to address certain regulatory concerns. The multiple trading of these options—both among exchanges and among exchanges and the OTC markets—also appears appropriate. The Commission also has determined that a one-year pilot program for integrated market making involving the six most active NMS stocks commencing on October 1, 1985, would be appropriate if the exchanges are allowed to participate in such a pilot and if equity and options audit trails are in place prior to the commencement of such a pilot. The Commission is soliciting comment on the appropriateness of granting unlisted trading privileges in OTC stocks for the purpose of allowing exchanges to participate in such a pilot. The NASD and the exchanges would also have to develop acceptable frontrunning restrictions specifically applicable to integrated market making prior to the commencement of such a pilot. Finally, the Phlx's index option proposal appears to be generally consistent with the Act, but prior to actual approval, the Phlx will need to eliminate the barriers in its rules to multiple trading. The NASD's index options proposal also appears as a general matter to be consistent with the Act. As indicated above, the NASD needs to complete its filing regarding index options, and will need to submit an adequate surveillance plan prior to the commencement of trading.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-11767 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22016; File No. SR-CBOE-85-15]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change; Relating To Approval of Underlying Securities for Options Trading

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 29, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Rule 5.3. No change.

. . . Interpretations and Policies:

.01 No change.

.02 Section (a)(iv) of Rule 5.3 does not apply to the class of options on MCI Communications.

Rule 5.4 No. Change.

. . . Interpretations and Policies:

.01–.05 No change.

.06 Interpretation .02 to Rule 5.4 does not apply to the class of options on MCI Communictations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it rceived on the proposed rule change. The text of these statements may be examined at the places spcified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At its meeting of April 16, 1985, the Commission stated its preliminary approval of a pilot program of side-by-side trading in six classes of options on National Market System ("NMS") Tier 1 securities. The Exchange has not yet seen the Release reflecting the Commission's decisions on April 16, 1985, but understands from the discussion at the meeting and from discussions with Commission staff after the meeting, that two of the underlying securities proposed for the side-by-side pilot, MCI Communications ("MCIC") and Convergent Technologies, do not meet options listing standards because these stocks will not have had a market price of at least $10.00 per share for each business day of the three calendar months preceding the election date. See, e.g., Exchange Rule 5.3(a)(iv). The Exchange understands that the Commission position is that, due to the volume, capitalization, and number of shareholders of these two over-the-counter securities, the lower share price trading standardized options thereon should not be precluded. It should also be noted that one of the Exchange's delisting standards would also jeopardize listing MCIC options. See Interpretation .02 to Rule 5.4.

Because the Commission has expressed the view that it will permit exchanges to list for trading standardized options on NMS Tier 1 securities, including the six side-by-side pilot stocks, the Exchange has made this rule filing to exempt the MCIC options from those listing and delisting standards based on price. Otherwise, the Exchange would be precluded from listing MCIC options. The Exchange is not currently planing to list options on Convergent Technologies. The Exchange understands that absent further rule changes, options on NMS Tier 1 securities are not to be traded on a side-by-side basis with the stock, including options which the Commission has identified as part of the side-by-side pilot.

The Exchange believes that this rule change is consistent with the provisons of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof, in that the rule change will permit investors in MCIC stock to obtain the hedging benefits of trading standardized options in an auction market and that the capitalization, volume, and number of shareholders of MCIC stock counterbalance the lower per share market price on MCIC stock.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by June 6, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-11771 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23685; 70-7060]

Columbia Gas System, Inc., et al.; Proposal To Form Oil and Gas Exploration and Development Subsidiary To Acquire Properties and Farm-Out Agreements; and To Issue, Sell, and Acquire Securities and Notes

May 9, 1985.

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, together with Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and The Inland Gas Company ("Inland"), 340 17th Street, Ashland, Kentucky 41101, subsidiaries of Columbia engaged in the production, transportation and sale of natural gas, have filed an amendment to a proposal with this Commission in this proceeding pursuant to sections 6(a), 7, 9(a), 10, 12, and 13 of the Public Utility Holding Company Act of the 1935 and Rules 42, 43, and 50 thereunder.

It was proposed that Inland's and Transmission's natural resource properties including all mineral and surface rights and related personal property be transferred, pursuant to a Reorganization Agreement, to Columbia Natural Resources, Inc. ("CNR"), a new corporation organized under the laws of Texas. Upon consummation of the transactions proposed, CNR would become a wholly owned subsidiary of Columbia through which all exploration and production of oil and natural gas in the eastern U.S. would be handled. Transmission's operations would thereafter be confined to operation of an interstate pipeline. Inland would own an interstate pipeline and related facilities.

This matter was noticed on January 3, 1985 (HCAR No. 23561). On January 28, 1985, the Office of Consumer's Counsel of Ohio filed a Request for Hearing, and the Kentucky Public Service Commission requested rate impact information. Kentucky withdrew its request on May 3, 1985.

By letter dated May 6, 1985, the applicants-declarants proposed Post-Effective Amendment No. 1 in SEC File No. 70-7051 (Intrasystem Money Pool) as Amendment No. 6 in this matter. The Amendment has the initial effect of deleting all references to the immediate transfer of property to CNR by Transmission and Inland under the Reorganization Agreement, which may occur at a later date subject to the reserved jurisdiction of this commission.

It is now proposed that CNR will issue and sell up to $3 million of its common stock, and up to $2 million of installment promissory notes to Columbia. This, plus internally generated funds, will finance part of CNR's 1985 capital expenditure program. Additionally, Columbia proposes to make advances on a short-term, open account basis in an amount not to exceed $13 million. The terms and conditions will be the same as provided by prior order in Columbia Gas System, Inc., *et al.*, SEC File No. 70-7051, above (HCAR No. 23560, December 28, 1984). CNR will also participate in the Intrasystem Money Pool as provided by that order.

CNR would operate as an oil and gas production company, engaging in construction and gas supply projects. It would acquire new acreage and drill on properties owned by Columbia's system companies pursuant to farm-out agreements.

The application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 5, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11766 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23684; 70-7104]

National Fuel Gas Co.; Proposal To Indemnify Subsidiary for Up to $35 Million for Pollution Control Liability, and To Indemnify All Subsidiaries in an Aggregate Amount of $15 Million, When Indemnification is Required by Law

May 9, 1985.

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By prior Commission order, Seneca Resources Corporation ("Seneca"), an NFG subsidiary, was authorized to engage in oil and gas exploration

projects in the Gulf of Mexico (HCAR No. 23162, December 9, 1983). The projects are conducted pursuant to Federal and Louisiana leases, subject to the provisions of the Outer Continental Shelf Lands Act, as amended ("Lands Act"), 43 U.S.C. 1331. The Lands Act requires leaseholders to provide evidence of financial responsibility in an amount of $35 million to cover costs arising out of oil spills. Seneca does not qualify as a self-insurer under the Lands Act, but carries jointly with NFG, pollution liability insurance in excess of $35 million. However, Seneca's carrier will not certify the coverage to the U.S. Coast Guard as required. In order to obtain a Certificate of Financial Responsibility for Seneca, NFG, which can qualify as a self-insurer, proposes to guarantee through June 30, 1990 any liabilities Seneca incurs in the event of any pollution of Gulf Waters up to an amount of $35 million.

Additionally, NFG seeks authority to act through June 30, 1990 without further authorization as surety, indemnitor or guarantor of any subsidiary in an aggregate amount of up to $15 million, where such evidence of financial responsibility is required by law. Such authority would be used to meet New York and Pennsylvania requirements regarding their Workers' Compensation Funds, but would not be limited to that use.

The declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–11765 Filed 5–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22024; File No. SR-NSCC-85–2]

Self-Regulatory Organizations; Order Approving Rule Change by National Securities Clearing Corporation ("NSCC") Relating to an Amendment to NSCC Rules and Fee Structure Regarding and Release of Clearing Data

The National Securities Clearing Corporation ("NSCC") on March 28, 1985 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") adding a new Rule 49, "Release of Clearing Data" to delineate the current practice that NSCC follows with respect to requests for the release of data within its possession and control.

As a result of its clearing of municipal bond transactions, NSCC has the ability to accumulate, in a central location, a significant amount of data concerning the municipal bond market that was previously unavailable. The rule change governs NSCC's dissemination of this information. The rule change will presently limit NSCC to providing municipal bond comparison data only to (i) regulatory organizations and self-regulatory organizations (and, upon their request, to third parties) for the sole purpose of assisting such entities in the performance of their regulatory functions under the Securities Exchange Act of 1934 or other applicable Federal or State statutes, and (ii) for other than regulatory or self-regulatory purposes to responsible entities, but only in the form of a ranking by trading activity of a pre-selected group of municipal bonds compared by NSCC. NSCC will withhold dissemination of municipal clearing data, other than for regulatory purposes or as permitted above, pending a resolution among industry participants and regulators as to the appropriateness of expanded dissemination.

The rule change also sets forth the basis for fees charged for clearing data. NSCC indicates that the rule change does not affect its ability to safeguard securities and funds in its custody or control or for which it is responsible.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21905 (50 FR 13906, April 8, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the NSCC and, in particular, the requirements of section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 8, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–11764 Filed 5–14–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/855]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 11, 1985 in Room B841, Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on the meeting of international CCITT Study Group XI (Geneva, March 1985);
2. Consideration of contributions to the meeting of international Study Group XVIII (June 17–28, 1985);
3. Consideration of contributions to the meeting of the Group of Experts of CCITT Study Group XI (Boulder, Colorado, July 2–11, 1985);
4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. It is suggested that prior to June 11, all persons planning to attend the meeting should contact Mr. T. de Haas, Department of Commerce, Boulder, Colorado, 80303; telephone 303 497–3728.

Dated: May 9, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85–11703 Filed 5–14–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM-8/854]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 6, 1985 at 9:30 a.m., Room 925, Department of State, 2201 C Street, NW., Washington, D.C.

The meeting will be concerned with fiber optics.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise the office of Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entance to the building.

Dated: May 1, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85-11704 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/856]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 12, 1985 at 9:00 a.m., Room 3524, Department of State, 2201 C Street, NW., Washington, D.C.

The meeting will be concerned with telephone credit card numbering.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise the office of Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entrace to the building.

Dated: May 9, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85-11702 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/857]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment, Technology, and Development on May 31, 1985 from 9:30 a.m. to 12:30 p.m. The meeting will be held in the Loy Henderson Conference Room of the Department of State, 2201 "C" Street, NW., Washington, D.C. 20520.

The purpose of the meeting will be to discuss the World Bank's proposal to establish a Multilateral Investment Guarantee Agency, recent developments in the U.N. Commission and Centre on Transnational Corporations, and a request from the Oil, Chemical and Atomic Workers International Union to discuss a labor relations matter concerning the OECD Guidelines for Multinational Enterprises. With regard to the latter issue, the Advisory Committee will meet in its capacity as U.S. National Contact Point under OECD procedures.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs ((202) 632-2728) in order to arrange admittance. Please use the "C" Street entrance.

The Chairman of the Committee will, as time permits, entertain comments from members of the public at the meeting.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 85-11707 Filed 5-14-85. 8:45 am]

BILLING CODE 4710-07-M

[CM-8/852]

Shipping Coordinating Committee; Subcommittee on UNCTAD; Meeting

The Subcommittee on the United Nations Conference on Trade and Development (UNCTAD) of the Shipping Coordinating Committee (SHC) will hold an open meeting at 10:00 a.m. on June 4, 1985, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of the meeting is to discuss United States preparations for the third session of the United Nations Conference on Conditions for Registration of Ships from July 8 to 19, 1985. In particular, the Subcommittee will discuss the development of U.S. positions regarding the composite text developed at the last sessioon of the Conference especially concerning the issues of ownership, management, and manning.

Members of the public may attend up to the seating capacity of the room. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. For further information, contact Mr. Ronald M. Roberts, Office of Maritime and Land Transport, Room 5828, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Telephone (202) 632-0703.

Dated: May 1, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-11706, Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/853]

Shipping Coordinating Committee; Subcommittee in Safety of Life at Sea Working Group on Radiocommunications; Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on June 5, 1985, room 8334-8336 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Thirtieth Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held 14-18 October 1985. In particular the working group will discuss the following topics:

—Maritime Distress System
—Digital Selective Calling
—Satellite Emergency Position Indicating Radio Beacons (EPIRB)
—Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobile Telecommunications
—Preparations for International Radio Consultative Committee (CCIR) Study Group 8
—Promulgation of Navigational and Meteorological Warnings

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G–TPP–3/63), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426–1231.

Dated: May 3, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85–11705 Filed 5–14–85; 8:45 am]

BILLING CODE 4710–07–M

SYNTHETIC FUELS CORPORATION

Draft Environmental Appendix to Comprehensive Strategy

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Availability of draft of environmental appendix to Comprehensive Strategy report.

SUMMARY: The Corporation announces the availability to the public of a draft of an environmental appendix to the Comprehensive Strategy report of the Corporation.

Copies: For copies of the draft appendix, contact Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822–6460.

FOR FURTHER INFORMATION CONTACT: Andy Lawrence, Acting Director—Environment, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822–6316.

SUPPLEMENTARY INFORMATION: The Corporation's Board of Directors is expected to take final action on the Comprehensive Strategy report, including the environmental appendix, a draft of which is being made available to the public, at a meeting of the Board presently scheduled for June 18, 1985.

Dated: May 10, 1985.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant Secretary.

[FR Doc. 85–11681 Filed 5–14–85; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB Apr. 3, 1985–May 6, 1985

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period Apr. 3, 1985–May 6, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–1887, or Gray Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register,** listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Apr. 3 1985–May 6, 1985.

DOT No: 2552
OMB No: 2138–0017
By: Research and Special Programs Administration
Title: Passenger Origin and Destination Survey Report
Forms: RSPA Form 2787
Frequency: Quarterly
Respondents: Scheduled Air Carriers
Need/Use: O & D data is used in administering DOT's international air transportation program, small community air service program, fitness reviews for new certifications, anti-trust cases, WASP program, guaranteed loan program and aviation policy and planning program. The Bureau of Labor Statistics use O & D data in adjusting the Consumer Price Index.

DOT No: 2553
OMB No: 2138–0013
By: Research and Special Programs Administration
Title: Report of Financial and Operating Statistics for Certificated Air Carriers
Forms: RSPA Form 41
Frequency: Monthly, Quarterly, Semi-annually, Annually
Respondents: Large Certificated Air Carriers
Need/Use: To provide basic financial and traffic data which are used extensively by the Department of Transportation in its ongoing programs under the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.

DOT No: 2554
OMB No: 2120–0061
By: Federal Aviation Administration
Title: Application for Aerodrome Vehicle Operation Permit
Forms: FAA Form 4670–1
Frequency: One-time per respondent
Respondents: Individuals who need to operate motor vehicles on airport flight operation areas.
Need/Use: There is a definite security and safety need to assure that only responsible individuals are operating motor vehicles on the portion of the airport which access actual flight operation areas and maintenance and storage areas. The affected public is personnel at National and Dulles Airports who drive on the Aerodrome.

DOT No: 2555
OMB No: New
By: Federal Aviation Administration
Title: FAA Survey of FAA User's Attitudes
Forms: None
Frequency: One-time survey
Respondents: Individuals
Need/Use: Administrator Engen has been told that the administration of regulations is infringing on the evaluative role of industry persons and increasing operational costs to operators without commensurate safety benefits. A survey of industry which includes demographics will

substantiate or refute the assertions and establish the geographic extent of the problem.

DOT No: 2556
OMB No: 2127–0512, 5015, 0517, and 0522
By: National Highway Traffic Safety Administration
Title: Consolidated Labeling Requirements for Hydraulic Brake Systems, Sd. 105, Glazing Materials, Sd. 205, Seat Belt Assemblies, Sd. 209 and Motor Vehicle Certification, Part 567.
Forms: None
Frequency: On occasion
Respondents: Manufacturers of Motor Vehicles, Glazing Mfrs. Seat Belt Assemblies and Hydraulic Brakes
Need/Use: Motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users and to ensure prompt identification of such equipment in the event of safety related defects.

DOT No: 2557
OMB No: New
By: National Highway Traffic Safety Administration
Title: Production Reporting System for Automatic Occupant Restraint Compliance
Forms: None
Frequency: Annually
Respondents: Motor Vehicle Manufacturers
Need/Use: FMVSS No. 208 requires motor vehicle manufacturers to comply with a 3-year phase-in schedule introducing air bags, or other automatic restraints.

DOT No: 2558
OMB No: New
By: Federal Aviation Administration
Title: In-Flight Medical Emergency Reports
Forms: None
Frequency: Annually for 2 years
Respondents: Air carriers operating under FAR 121
Need/Use: Requires certificate holders to provide medical kits for use in in-flight treatment of injuries or medical emergencies, and report on their usage.

DOT No: 2559
OMB No: 2115–0543
By: U.S. Coast Guard
Title: Regulations, Certificates of Adequacy for Reception Facilities
Forms: Agency form under development; no number
Frequency: On occasion
Respondents: Ports and terminals used by oceangoig ships will have to apply for Certificates of Adequacy for reception facilities.
Need/Use: The Act to Prevent Pollution from Ships, directs the Secretary of the Department in which the Coast Guard is operating, to establish regulations for determining the adequacy of reception facilities at ports and terminals. The reception facilities are needed to receive wastes which ships may not discharge at sea. In order to certify the adequacy of reception facilities, the Coast Guard needs to collect certain information from operators of ports and terminals.

DOT No: 2560
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 584, Splash and Spray Suppression Devices
Forms: None
Frequency: Once
Respondents: Manufacturers of splash and spray devices
Need/Use: Manufacturers of spray suppression flaps are required to label each device with the "DOT" symbol and with either the number 35 or 75 to show that the flaps are certified as complying with these requirements.

DOT No: 2561
OMB No: 2115–0041
By: U.S. Coast Guard
Title: Outer Continental Shelf Lands Act of 1978 Facility Application for Certificate of Financial Responsibility
Forms: CG–5210
Frequency: On occasion
Respondents: Owner or Operation of Offshore Facilities
Need/Use: This information collection requirement is needed to provide evidence of financial responsibility as required by 43 U.S.C. 1815. Coast Guard Offshore Oil Pollution Compensation Fund uses the information submitted on the application form to evaluate the request for certification of financial responsibility.

DOT No: 2562
OMB No: 2115–0526
By: U.S. Coast Guard
Title: International Oil Pollution Prevention Certificate
Forms: CG–5352, CG–5352A, and CG–5352B
Frequency: On occasion
Respondents: Ship owners and operators of ships of various countries who request inspection of their vessels.
Need/Use: 33 U.S.C. 1901–1911 requires that MARPOL 73/78 requirements be implemented in U.S. regulations. The IOPP Certificate will be used for ensuring and documenting compliance. Ships will suffer restrictions in international voyages if they do not posess an IOPP Certificate.

DOT No: 2563
OMB No: 2125–0032
By: Federal Highway Administration
Title: A Guide to Reporting Highway Statistics
Forms: FHWA–531, 532, 534, 536, 541, 542, 543, 551M, 556, 561, 562, 566, 571, 1502
Frequency: Quadrennially
Respondents: State Highway Agencies
Need/Use: The reports are essential to FHWA and Congress in evaluating the effectiveness of the Federal-aid and highway programs.

Issued in Washington, D.C. on May 9, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85–11683, Filed 5–14–85; 8:45 am]

BILLING CODE 4910–62–M

Application of Presidential Airways, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85–5–44) Docket 42960.

SUMMARY: The Department is directly all interested persons to show cause why it should not issue an order finding Presidential Airways fit, awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections shall do so no later than May 29, 1985; answers to objections shall be filed no later than June 10, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42960 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–5–44 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85–5–44 to that address.

Dated: May 8, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–11682 Filed 5–14–85; 8:45 am]

BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIMES AND DATES:

2:00 p.m. (eastern time), Monday, May 13, 1985

9:30 a.m. (eastern time), Tuesday, May 14, 1985

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–88–19262.

CHANGE IN THE MEETING: The following matter was added to the agenda for the closed portion of the meetings:

"Proposed Contract for Expert Services in Connection with a Court Case" A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible. In favor of the change:

Tony E. Gallegos, Commissioner.
William A. Webb, Commissioner
Fred Alvarez, Commissioner
Ricky Silberman, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: May 13, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This notice issued May 13, 1985.

[FR Doc. 85–11848 Filed 5–13–85; 3:20 pm]

BILLING CODE 6750–06–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Thursday, May 9, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Story County State Bank, Story City, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Thursday, May 9, 1985; (2) accept the bid for the transaction submitted by Story County Bank & Trust Company, Story City, Iowa, a newly-chartered State nonmember bank; (3) approve the applications of Story County Bank & Trust Company, Story City, Iowa, for Federal deposit insurance and for consent to purchase certain assets of an assume the liability to pay deposits made in Story County State Bank, Story City, Iowa; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At the same meeting, the Board of Directors also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8),(c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 10, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85–11830 Filed 5–13–85; 1:14 pm]

BILLING CODE 6714–01–M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 2:00 p.m., Wednesday, May 15, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:

(a) Automotive visor/illuminated mirror package and components thereof. (Docket No. 1190).

5. Inv. 731–TA–255 [Preliminary] (Animal feed grade DL-methionine from France)—briefing end vote.

5. Inv. 731–TA–243, 244 [Preliminary] and Inv. 731–TA–256, 258 [Preliminary] (Carbon steel wire rod from Poland, Portugal and Venezuela)—briefing and vote.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11781 Filed 5–13–85; 8:58 am]

BILLING CODE 7020–02–M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 10:00 a.m., Monday, May 13, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigations Nos. 731–TA–191 and –195 [Final] (Oil country tubular goods from Argentina and Spain) – briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11782 Filed 5–13–85; 8:58 am]

BILLING CODE 7020–02–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 2:00 p.m., Wednesday, May 15, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.

3. Ratification List.
4. Petitions and Complaints:
(a) Automotive visor/illuminated mirror package and components thereof. (Docket No. 1190).
5. Inv. 731-TA-255 [Preliminary] (Animal feed grade DL-methionine from France)—briefing and vote.
6. Inv. 701-TA-243, 244 [Preliminary] and Inv. 731-TA-256, 258 [Preliminary] (carbon steel wire rod from Poland, Portugal and Venezuela)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-11783 Filed 5-13-85; 8:58 am]
BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 11:00 a.m., Wednesday, May 22, 1985.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Inv. TA-201-55 (Nonrubber footwear)—briefing and vote on injury.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-11784 Filed 5-13-85; 8:58 am]
BILLING CODE 7020-02-M

7

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1985.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Ex Parte No. 297 (Sub-No. 7), Motor Carrier Rate Bureaus—Expansion of Collective Ratemaking Territory.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,
Secretary.
[FR Doc. 85-11785 Filed 5-13-85; 9:14 am]
BILLING CODE 7035-01-M

8

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, May 24, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters underTthe Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6), (7), (9) (B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—March 7 and 8, 1985
3. Report from Interim Corporation President
4. Report from Special Committee on Presidential Search
5. Action on Recommendations of the Operations and Regulations Committee
—45 CFR 1601 (By-Laws)
—45 CFR 1622 (Sunshine Act)
—45 CFR 1620 (Priorities)
—45 CFR 1614 (Private Attorney Involvement)
6. Actions on Recommendations of the Audit and Appropriations Committee
—Reorganization of the Office of Field Services
—Allocation Formula for Fiscal Year 1986 Basic Field Grants
—Allocation of Fiscal Year 1984 Carryover funds
7. Discussion of litigation and investigatory matters (Closed)
8. Discussion of personnel and personal matters (Closed)

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Date issued: May 13, 1985.
Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11831 Filed 5-13-85; 1:15 p.m.]
BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 9:00 a.m., Thursday, May 23, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—April 25, 1985
3. Report from the Office of Field Services—45 CFR 1614 (Private Attorney Involvement)
4. Report from the Audit Division—45 CFR 1614 (Private Attorney Involvement)
5. Report from the Office of the General Counsel
— 45 CFR 1614 (Private Attorney Involvement)
— 45 CFR 1612 (Lobbying)
6. Recommendations to full Board on above cited Regulations.
7. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: May 13, 1985.
Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11832 Filed 5-13-85; 1:15 pm]
BILLING CODE 6820-35-M

10

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: The meeting will commence at 1:30 p.m. on Thursday, May 23, 1985 or at the adjournment of the meeting of the Operations and Regulations Committee, whichever is later, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes—April 25, 1985
3. Reorganization of the Office of Field Services
4. Allocation of Fiscal Year 1984 Carryover funds
5. Allocation formula for Fiscal Year 1986 Basic Field Grants

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Executive Office, (202) 272-4040.

DATE ISSUED: May 13, 1985.

Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11833 Filed 5-13-85; 1:15 pm]
BILLING CODE 6820-35-M

11

MARINE MAMMAL COMMISSION

TIME AND DATE: The meeting will commence at 10:00 a.m., Tuesday, May 21, 1985 and continue until all official business is completed.

PLACE: Room 211, Douglas F. Manchester Executive Conference Center, University of San Diego, Alcala Park, San Diego, California 92110.

STATUS: The meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED:

(1) Priorities for Commission activities over the next year;
(2) Scope and content of the Commission's Annual Meeting, 24, 25, 26 October 1985;
(3) Provisions for ensuring compliance with the Government in the Sunshine Act;
(4) Budget; and
(5) Appropriations and other Congressional Hearings.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, D.C. 20006, 202/653-6237.

Dated: May 10, 1985.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 85-11786 Filed 5-13-85; 8:45 am]

BILLING CODE 6820-31-M

12

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 6, 1985.

A closed meeting will be held on Tuesday, May 7, 1985, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox and Marinaccio voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 7, 1985, at 10:00 a.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.
Institution of injunctive action.
Opinion.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

John Wheeler,

Secretary.

April 30, 1985.

[FR Doc. 85-11770 Filed 5-13-85 8:58 am]

BILLING CODE 8010-01-M

federal register

Wednesday
May 15, 1985

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 645

Utility Relocations, Adjustments and Reimbursement; Final Rule

Accommodation of Utilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 79-8, Notice 3]

Utility Relocations, Adjustments and Reimbursement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation which prescribes policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal highway projects. The final rule clarifies existing provisions and eliminates unnecessary and duplicative requirements.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202-426-0450; Harvey C. Wood, Office of Fiscal Services, 202-426-0563; or Michael J. Laska, Office of the Chief Counsel, 202-426-0762; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1979, the FHWA issued an advance notice of proposed rulemaking (ANPRM) published as 44 FR 12209, FHWA Docket No. 79-8. Its purpose was to solicit comments in anticipation of a future revision of FHWA's regulation prescribing the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities associated with Federal-aid and direct Federal highway construction.

A total of 25 commenters replied to the ANPRM: 9 being from utility companies or their representatives; 15 from State highway agencies (SHA); and 1 from a county highway agency. Generally, the commenters supported some revision to the regulation, although 3 utility companies and 1 SHA believed the present regulation should remain unchanged.

Several specific changes to the existing regulation were suggested by the commenters. Most of these suggestions were incorporated within a notice of proposed rulemaking (NPRM), FHWA Docket No. 79-8; Notice 2 (45 FR 6924, November 20, 1980), which presented the FHWA's proposals for updating its current regulation covering the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities. There were 22 comments to the NPRM. Comments were received from 12 SHA's, 9 utility companies or their trade organizations, and the Center for Auto Safety.

Overall, the responses were supportive of the rewritten regulation as proposed. Several commenters, representing both the States and the utility industry, made favorable remarks on the overall proposed regulation and many commenters presented additional supportive comments regarding specific subparts of the proposed regulation.

Because of the favorable responses received, the final rule is being issued with few changes from the text proposed in the NPRM. The changes are minor clarifications or editorial. The following discussion addresses the substantive issues most frequently mentioned by the commenters.

1. Payment of Interest

Although the FHWA's inability to pay for interest costs was specifically discussed in the preamble of the NPRM, two utility companies and one SHA asked the FHWA to reconsider its position. The FHWA cannot pay interest under existing law and regulation. A change in law would be necessary before such payments could be made and it is not planned to pursue such a change at this time.

2. Cross-Reference to Other Regulations

The NPRM contained a limited number of cross-references to other regulations within 23 CFR which apply to utility adjustments. One SHA believes researching these references would be time-consuming to a user of the utility relocation regulation. However, other commenters offered suggestions as to where additional cross-references would be helpful. It must be recognized that there are several requirements within 23 CFR which apply to utility relocations and adjustments. The FHWA's approach has been to present the majority of these within 23 CFR 645. However, in those instances where this was not possible without duplicating other material already available, selected cross-references have been used.

3. Preliminary Engineering

Based on comments on the wording in the NPRM, there is some confusion concerning preliminary engineering activities to be conducted by the utility's own forces, those forces of the highway agency, or a consultant hired by the highway agency. A new § 645.109(a) has been added to clarify that these methods for providing engineering services can be eligible for Federal participation.

4. Lump-Sum Agreements

The NPRM proposed raising the ceiling on the lump-sum payment arrangement from $10,000 to $25,000. This revision was put into effect via a final rule issued January 6, 1983 (48 FR 1948, January 17, 1983).

5. Expired Service Life Credit

Six commenters made a direct reference to the proposed change which would no longer require expired service life credit on segments of a utility's service, distribution, or transmission lines, regardless of length. Three SHA's and two utilities expressed agreement with the change in policy. One SHA objected to this change as the commenter interpreted it to mean that no expired service life credits would be required under any circumstances. This interpretation is incorrect in that an expired service life credit would still be required when there is a replacement of major facilities used for the production, transfer, or storage of a utility's products. Because the proposed change in expired service life credit requirements was well received by most commenters and possibly misinterpreted by the one negative commenter, it was decided to include this change in policy in the final rule.

6. Use of Rates in Lieu of Actual Costs

Two utilities indicated that because it is common practice to establish average rates for certain costs such as labor surcharges, the regulation should allow for this method of establishing costs. The FHWA agrees with this comment. Several of the reimbursement provisions addressed in the NPRM allowed for use of average costs. Provisions have been added to §§ 645.117(c)(1) and 645.117(e)(4) of the final rule to allow use of properly documented average rates when dealing with labor surcharges and material handling costs.

7. Audit Requirements

A SHA suggested that the regulation include provisions which would not require audits, or limit audits to a sampling basis, on less costly utility relocations. The audit requirements are being deleted from §§ 645.117(i)(4) and 645.119(c)(2) to provide the States with more flexibility in performing utility audits.

8. Alternate Procedure Exceptions

One utility and one SHA suggested that there should be fewer exceptions to

the alternate procedure process listed in § 645.119(b). These exceptions represent the more unusual circumstances which might arise and are basically the same as those in the regulation being superseded by this issuance. Therefore, no change is being made.

9. Alternate Procedure—Safety Requirements

The Center for Auto Safety presented several comments on this section of the proposed regulation. The center for Auto Safety believed the alternate procedure is a new application of the certification acceptance (CA) process described in 23 CFR Part 640, Certification Acceptance, and this should be acknowledged by an appropriate cross-reference. It is noted that the alternate procedure requirements were first established in 1968 and predate by several years CA requirements. Although somewhat similar to CA, the alternate procedures requirements are self-contained and no cross-reference to CA is necessary.

The Center also believes alternate procedure requirements should make explicit reference to such matters as highway safety improvement requirements and traffic control plans in work zones. Section 645.119(c)(1)(i) of the final rule cross-references 23 CFR Part 645, Subpart B, Accommodation of Utilities, and it is within this latter regulation that FHWA addresses safety requirements related to the use or occupancy of highway rights-of-way. No further cross-reference should be necessary.

10. Payment for Utilities on Local Projects

The FHWA's existing regulation does not permit Federal-aid funds to participate in payments made by a political subdivision of a State for utility adjustments when State law prohibits the State from making such payment. In the NPRM, FHWA proposed to modify its eligibility criteria to allow Federal-aid funds to participate in payments made by political subdivisions provided payment by the political subdivision meets the general eligibility criteria and does not violate the terms of a use and occupancy agreement, or legal contract between the utility and political subdivision.

No significant objections were raised by commenters and this provision is being incorporated into the final rule. In implementing this provision, a distinction is being made between Federal-aid highway projects within local areas when the SHA can participate in project costs versus Federal-aid highway projects within local areas when only the political subdivisions can participate in project costs. For the former situation when the SHA can participate in the highway project costs, the FHWA may participate in utility adjustment costs incurred by political subdivisions only to the extent the SHA has the authority to pay. In the latter situation when only the political subdivision can participate in the highway project costs, FHWA may participate in those utility adjustment costs incurred by the political subdivision, including costs paid for by the political subdivision for the adjustment of utility facilities it owns, in accordance with the overall eligibility criteria found in this regulation.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation regulatory policies and procedures.

The revised regulation updates and clarifies FHWA provisions for adjustment of utility facilities on Federal-aid and direct Federal highway projects. Specifically, modifications are provided regarding the extent utility adjustments are eligible for Federal-aid reimbursement and the application of expired service life credits. Additionally, the revised regulation simplifies and significantly reduces the number of unnecessary and duplicative requirements found in the existing regulation which will reduce implementation costs. Although the economic impact of this rulemaking action will be minimal, a Final Regulatory Evaluation has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

The rulemaking contains three information collection requirements. These items have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The submission of an eligibility statement for utility adjustments required by § 645.107(g) has been approved by OMB (OMB No. 2125–0515) and expires June 30, 1986, unless renewed prior to that date pursuant to 5 CFR Part 1320. The requirement to develop and record costs for utility adjustments found in Section 645.117 has been approved by OMB (OMB No. 2125–0519) and expires November 30, 1987, unless renewed prior to that date pursuant to 5 CFR Part 1320. The submission of alternate procedures for processing utility adjustments discussed in Section 645.119 has been approved by OMB (OMB No. 2125–0533) and expires November 30, 1985, unless renewed prior to that date pursuant to 5 CFR Part 1320.

Note.—The Appendix to Subpart A is removed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Excutive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Utilities—adjustments, relocations, and reimbursement.

Issued on: May 8, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, and under the authority of 23 U.S.C. 123, 315 and 49 CFR 1.48(b), the FHWA hereby revises Subpart A of Part 645 of Title 23 of the Code of Federal Regulations to read as set forth below.

PART 645—UTILITIES

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Sec.

* * * * *

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Authority: 23 U.S.C. 123 and 315; 49 CFR 1.48(b).

§ 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

§ 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State highway agency (SHA) for costs incurred under an approved and properly executed highway agency (HA)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/ utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the SHA will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the SHA subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the SHA or HA are inapplicable, and it is intended that the FHWA be considered in the relative position of the SHA or HA.

§ 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

(a) *Authorization*—for Federal-aid projects authorization to the SHA by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(b) *Betterment*—any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

(c) *Cost of relocation*—the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

(d) *Cost of Removal*—the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

(e) *Cost of salvage*—the amount expended to restore salvaged utility property to usable condition after its removal.

(f) *Direct Federal projects*—highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

(g) *Highway agency* (HA)—that department, commission, board, or official of any State or political subdivison thereof, charged by its law with the responsibility for highway administration.

(h) *Indirect or overhead costs*—those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

(i) *Relocation*—the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(j) *Salvage value*—the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the HA approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility*—a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

(n) *Work order system*—a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

§ 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility relocations. Federal participation is subject to the provisions of § 645.103(d) of this part and may be made under one or more of the following conditions when:

(1) the SHA certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) the utility occupies privately or publicly owned land, including public road or street right-of-way, and the SHA certifies that the payment by the HA is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicy owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the SHA certifies that the HA has the legal authority or obligation to make such payments.

(b) On projects which the SHA has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities when State law prohibits the SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities when the SHA certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use

and occupancy agreement, or legal contract, between the utility and the HA.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the HA, except for utilities owned by the political subdivision on projects which qualify under the provisions of § 645.107(c) of this part in which case the costs of the utility are considered to be costs of the HA.

(e) The FHWA may deny Federal fund participation in any payments made by a HA for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of Title 23, U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the SHA in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by § 645.107(a) and (c), the SHA may file a statement with the FHWA setting forth the conditions under which the SHA will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the SHA under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the HA, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the SHA to proceed in accordance with 23 CFR 630, Subpart A, Federal-Aid Programs Approval and Project Authorization.

(The information collection requirements in paragraph (g) of this section have been approved under OMB control No. 2125–0515)

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the HA and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

(1) The HA's or utility's engineering forces;

(2) An engineering consultant selected by the HA, after consultation with the utility, the contract to be administered by the HA; or,

(3) An engineering consultant selected by the utility, with the approval of the HA, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the SHA in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable. Prior approval by the FHWA of consulting services is necessary, except the FHWA may forgo preaward review and/or approval of any proposed consultant contract which is not expected to exceed $10,000.

(c) The procedures in 23 CFR Part 172, Administration of Negotiated Contracts, may be used as a guide for reviewing proposed consultant contracts.

§ 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location beause it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the HA for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the HA on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

§ 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the HA shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method

proposed by the utility for developing relocation costs must be acceptable to both the HA and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the HA in connection with payments by the HA to the utility under the provisions of § 645.107 of this regulation.

(c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the HA and the FHWA with a clear description of the work required.

(d) When the relocation involves both work to be done at the HA's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.

(e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the HA and the FHWA.

(f) When the estimated cost to the HA of proposed utility relocation work on a project for a specific utility company is $25,000 or less, the FHWA may approve an agreement between the HA and the utility for a lump-sum payment without later confirmation by audit of actual costs. Lump-sum agreements in excess of $25,000 may be approved when the FHWA finds that this method of developing costs would be in the best interest of the public.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the SHA to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved program,

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR Part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR Part 712, the Acquisition Functions, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the HA and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the SHA shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the SHA with the understanding that Federal funds will not be paid for work done by the utility until the SHA proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

§ 645.115 Construction.

(a) Part 635, Subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the HA or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the HA's highway construction contract let by the HA as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the HA or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under Part 635, Subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the HA. The special provisions of contracts let by the utility or the HA shall be explicit in this respect. The costs of force account work performed for the utility by the HA and of contract work performed for the utility under a contract let by the HA shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) *Developing and recording costs.* (1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the HA and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(b) *Direct labor costs.* (1) Salaries and wages, at actual or average rates, and

related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) *Material and supply costs.* (1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a considertion for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the HA or utility following an opportunity for HA inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) *Equipment costs.* The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) *Transportation costs.* (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) *Credits.* (1) Credit to the highway project will be required for the cost of any betterments to the facility being

replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

(i) Required by the highway project,

(ii) Replacement devices or materials that are of equivalent standards although not identical,

(iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in § 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) *Billings*. (1) After the executed HA/utility agreement has been approved by the FHWA, the utility may be reimbursed through the SHA by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed HA/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the SHA that the work is complete, acceptable, and in accordance with the terms of the agreement.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

(4) Reimbursement for a final utility billing shall not be approved until the HA furnishes evidence that it has paid the utility from its own funds.

(The information collection requirements in paragraph (i) of this section have been approved under OMB Control Number 2125–0159.)

§ 645.119 Alternate procedure.

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the SHA is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the SHA's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of § 645.113(h), (i), and (j), and § 645.107(i) of this regulation.

(c) Each SHA is encouraged to adopt the alternate procedure and file a formal application for approval by the FHWA. The application must include the following:

(1) The SHA's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by § 645.119(b), and the provisions of 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the HA's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with SHA policies and the provisions of this regulation, shall be retained by the SHA.

(2) A statement signed by the chief administrative officer of the SHA certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the SHA's utility policies and procedures submitted under § 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The SHA's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the SHA to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The SHA must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under § 645.119(c)(1).

(The information collection requirements in paragraph (c) of this section have been approved under OMB control number 2125–0533.

[FR Doc. 85-11620 Filed 5-14-85; 8:45 am]

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23 CFR Part 645

[FHWA Docket No. 80-4, Notice 3]

Accommodation of Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. The final rule clarifies existing provisions and eliminates unnecessary and duplicate requirements.

EFFECTIVE DATE: June 14, 1985. Incorporation by reference approved by the Director of the Office of the Federal Register on June 14, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202-426-0450 or Michael J. Laska, Office of the Chief Counsel, 202-426-0762, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPRM) was published on September 27, 1976 (41 FR 42220), to request comments on a proposed updating of FHWA's regulation dealing with the accommodation of utility facilities on the right-of-way of Federal and Federal-aid highway projects (23 CFR Part 645, Subpart B). Two comments were received on the ANPRM, one from a utility company and the other from the American Association of State Highway and Transportation Officials (AASHTO).

A notice of proposed rulemaking (initial NPRM), FHWA Docket 80-4 (45 FR 26280, April 17, 1980), presented the FHWA's proposals for updating its current regulations dealing with the utility facility and private line use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects. There were 83 comments submitted to FHWA regarding the initial NPRM. Comments were received from State highway agencies, utility companies, public interest groups, safety organizations, the Rural Electrification Administration, and the American Society of Civil Engineers. Based on further review and on the nature and extent of the comments to the initial NPRM, FHWA issued a second NPRM, FHWA Docket No. 80-4, Notice 2 (49 FR 1219, January 10, 1984), presenting additional proposed revisions of FHWA's utility accommodation regulation and soliciting additional public input prior to preparation of a final rule.

Discussion of Comments

There were 69 comments received on the second NPRM. Comments were submitted by two State governors, 19 State highway agencies, and one State agency. Also, one county highway agency and two cities presented comments. From the utility industry, comments were submitted by 30 utility companies, three utility associations and an attorney representing several utility companies. Six Federal agencies, a safety organization and three individuals also submitted comments.

The following discussion addresses significant issues raised in comments to the second NPRM:

Right-of-Way Requirements

The FHWA's authority for allowing utility use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects is contained in 23 CFR 1.23. Under the provisions of § 1.23, the State must acquire right-of-way which is adequate not only for the construction of the highway facility but also for its operation and maintenance. The right-of-way must be devoted exclusively to public highway purposes. However, § 1.23(c) permits certain nonhighway uses of the right-of-way which are found to be in the public interest provided such uses do not impair the highway or interfere with the free and safe flow of traffic thereon. Section 645.205(a) of the current regulation provides for this public interest finding with respect to use and occupancy of right-of-way by utility facilities.

There exists a direct relationship between the § 1.23 requirements of adequacy of right-of-way to be acquired and the provisions for permitted nonhighway uses. Proposed nonhighway uses cannot be of a nature which would negate the general requirement regarding the adequacy of the right-of-way. Therefore, implicit in the public interest finding for utility use of the right-of-way of Federal-aid or direct Federal projects is that there is adequate space available to locate the utility facilities in a manner which does not interfere with the safe and efficient operations of the highway.

Consequently, when a State intends to permit utilities to use and occupy public highway right-of-way, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. Failure to recognize the impact of such use as well as other uses on private property located adjacent to the public highway right-of-way on the safe and efficient operations of the highway may result in the acquisition of right-of-way which is inadequate to meet the needs of the highway and the traveling public. For example, little would be gained by acquiring restricted right-of-way and denying its use to certain utilities if such utilities could locate their facilities on private property adjacent to the restricted right-of-way with substantially the same impact on the highway and its user. Therefore, the issue of adequate accommodation of utilities is a legitimate consideration in the development of highway projects. This is particularly true of land service facilities where the highway user and utility consumer tend to be one and the same.

This concept of considering potential utility uses in the determination of right-of-way needs was proposed in section 645.209(a). It was generally endorsed by several highway and utility commenters who specifically addressed the issue and as a result this provision has been retained in the final rule.

Several commenters addressed the issue of the use of highway funds for the acquisition of utility right-of-way. When a State or locality routinely dedicates or permits a portion of the road and street right-of-way for use by utilities in accordance with established standard criteria pursuant to State law, ordinance or administrative practice, such right-of-way may be considered eligible for Federal-aid funding reimbursement as an integral part of the project right-of-way. For example, it is common to acquire in urban areas a border strip behind the curbs for sidewalk and utility accommodation purposes. These border strips as well as the roadsides on rural sections provide space for necessary road construction, drainage, road maintenance activities, and clear recovery areas. The border strips also provide sufficient offsets to adjacent private land uses as appropriate to provide a safe and efficient operating environment for the highway facility. These border strips and roadsides serve multiple purposes and it is appropriate to consider these varied purposes in establishing the right-of-way requirements for a project. However, since utility use is not considered to be a highway purpose, Federal-aid highway funds are not eligible to participate in right-of-way acquired solely for the purpose of accommodating utility facilities in excess of that normally acquired in accordance with standard criteria and procedures. When unique utility installations are proposed which

may warrant additional space, these types of accommodations are best handled under a joint development concept with the benefiting parties bearing their share of the cost. The FHWA believes that existing regulations provide sufficient latitude and flexibility to address the issues of Federal participation in the acquisition of adequate right-of-way for Federal-aid or direct Federal projects and as a consequence these matters are not addressed in the final rule.

Private Lines

Private lines, as defined within the regulation, are privately owned facilities which convey or transmit commodities but are devoted exclusively to private use. A question has arisen as to the extent FHWA's utility accommodation regulations are intended to apply to private line use or occupancy of highway right-of-way. It is FHWA's intent that the utility accommodation regulations may be applied to private lines which cross the right-of-way of Federal-aid or direct Federal highway projects. However, longitudinal use of such right-of-way by private lines is to be addressed under the provisions of 23 CFR 1.23(c). This matter has been clarified in the final rule.

Clear Recovery Area

Some of the commenters expressed concern as to how an appropriate clear recovery area is to be established for a highway project. Under the regulation, the highway agency is to establish the clear recovery area. Recognizing that clear recovery areas may vary depending on the type of highway, terrain traversed, and overall road geometric and operating conditions, the regulation has not attempted to define specific clear recovery area criteria or standards. Clear recovery area should be viewed as an essential and integral design feature of a highway project. As such, this particular feature should be evaluated and its impact considered as part of the overall project development process. In doing so, the appropriateness of a particular clear recovery area design may become a legitimate area for discussion and input by the various parties involved in the project. The resulting designation of the clear recovery area should be appropriately described or delineated in the project documents to assure its continued maintenance and to facilitate compliance with the provisions of this regulation.

Breakaway Design

Section 645.209(b) of the proposed regulation placed emphasis on the use of an "approved breakaway design" if a new utility facility is to be installed within the clear recovery area. Numerous commenters, representing both the highway and utility communities, indicated it is unclear what constitutes an approved breakaway design and what approval action would be necessary. Further, questions arise as to whether tested and accepted breakaway design features are readily available for much of the typical above ground utility facilities.

Upon further consideration, FHWA agrees that some modification of § 645.209(b) is in order. The final rule has revised § 645.209(b) and places primary emphasis on keeping the established clear recovery area free of new above ground utility facilities. In addition, emphasis is placed on undergrounding of new utility facilities which have to be located within the clear recovery area. Basically, new above ground utility installations within the designated clear recovery area should be considered only if other alternatives are not available. It is expected that such installations will be infrequent and approved only where clearly warranted. If new above ground utility facilities must be placed within the clear recovery area, then appropriate countermeasures to reduce hazards should be employed. Use of breakaway features is treated as one of several possible countermeasures which should be considered.

Utilities Along Freeways

Proposed § 645.209(c) discussed longitudinal utility use of freeway right-of-way. There were numerous comments on this section and the intent of the FHWA proposal.

A basic principle in the design and operation of the freeway system is full control of access. Access control has been recognized as one of the most significant design factors contributing to safety of a freeway system and is considered an essential element in preserving the traffic carrying capacity of these important highways. Because control of access can be materially affected by the extent and manner in which nonhighway type facilities are permitted to use freeway right-of-way, these nonhighway uses, including longitudinal utility use, are allowed only in special circumstances.

At the initiation of the Interstate freeway program, a policy decision was made to limit and restrict utility use of Interstate right-of-way to the maximum extent possible under the full control of access principles. The need for this policy has been recognized and supported by the highway community. The American Association of State Highway and Transportation Officials (AASHTO) has issued several policy statements over the years reaffirming the principles of this policy. Implementation of this policy required extensive adjustment and relocation of utility facilities during the development of the Interstate system.

Utility proposals to longitudinally use freeway right-of-way must be viewed in the context of the longstanding national policy to minimize longitudinal utility installation within the control of access limits of the Interstate System. The implementation of this policy has been costly to both highway authorities and the utility industry. It would not be logical to subvert the purpose and the accomplishments of this national policy by now permitting new utility installations on completed Interstate facilities which are inconsistent with this policy, thus negating the substantial public expenditure made in accord with this policy and the benefits derived.

The FHWA's intent is to permit longitudinal utility use of freeway right-of-way within the access control limits only when such use is clearly justified due to special and unique circumstances and when denial of such use would result in undue or exceptional hardship on utility consumers or others. To facilitate the determination of public interest, which is also required by Item 2 of the 1982 AASHTO publication entitled "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way" (AASHTO Policy), proposals for such installations should be supported by a showing as to why the location within the access control lines is essential and why it constitutes the most feasible and prudent location available. Care must be exercised to assure that when such installations are permitted they are consistent with prior policy application.

In reviewing utility requests to longitudinally use freeway right-of-way within the access control limits, there are three key tests FHWA uses to determine if an exception to policy should be considered. They are:

(1) Alternate locations (outside freeway right-of-way) are extremely difficult to implement.

(2) Alternate locations are unreasonably costly to the utility consumer.

(3) Alternate locations adversely impact productive agricultural land (reference 23 U.S.C. 109(l)).

Even if one of the above tests can be met, before longitudinal utility use of freeway right-of-way will be approved it must be demonstrated the utility

installation on the freeway right-of-way will not adversely affect the design, construction, stability, traffic safety, or operation of the freeway and that the utility can be serviced without access from the through-traffic roadways or ramps.

The FHWA policy on longitudinal utility use of freeways and the exceptions to be allowed is in general accord with that developed by AASHTO and presented in the AASHTO Policy.

Section 645.209(c) of the final rule has been rewritten to clarify FHWA's policy in regard to longitudinal utility use of freeway right-of-way. In addition, a question was raised as to whether a State highway agency could adopt a policy even more restrictive than FHWA's. For example, could the State highway agency prohibit any longitudinal utility use of freeway right-of-way regardless of the circumstances involved. The final rule indicates that the option to enforce a more restrictive policy is available to the States.

An additional point raised was if an exception is to be granted and a utility allowed within the access control line of a freeway, what is meant by the inward relocation of the access control line and what is to be done with the existing fence. The final rule has provided additional information to help clarify this issue.

Use of AASHTO Publications

In the second NPRM, the FHWA proposed to incorporate by reference in the final rule the following AASHTO publications: "A policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982; "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981; and "Guide for Selecting, Locating, and Designing Traffic Barriers," 1977.

Numerous comments on the use of the AASHTO publications were received with viewpoints varying considerably. One commenter felt the AASHTO publications provide the highway agencies too much flexibility and thus would result in inadequate controls on safety. Several other commenters felt the AASHTO policy regarding longitudinal use of freeways by utilities was too restrictive.

It is FHWA's assessment that the three referenced AASHTO publications present reasonable guidance for use in determining appropriate utility use of highway right-of-way. The three publications are being incorporated by reference in the final rule subject to the one modification noted below.

Several commenters, mainly representing the utility industry, discussed the requirements regarding access to utility facilities found in the AASHTO Policy. Under Item 2, "New Utility Installations Along Freeways," of the AASHTO Policy, it appears that access to construct utility facilities would not be allowed from the through roadways or ramps. As several utility companies pointed out, if a special case exception regarding longitudinal utility use at areas where interchanges were encountered was approved under Item 2, the alignment of the utility facilites might have to be changed considerably to circumvent the interchange if access from the ramps to construct the facility were denied. Further, under Item 7, "Access for Servicing Utilities," of the AASHTO Policy, it is stated that access from the through roadways and ramps may be allowed in special cases under permits issued by the highway agency. The FHWA agrees that there appears to be some inconsistency regarding access allowed at the time a utility facility is constructed versus when it is to be serviced.

As a consequence, the final rule has provided some modification and will consider the possibility of access from the through roadways or ramps to construct utility facilities allowed as special case exceptions within interchange areas. However, such access will only be allowed if controlled by permits issued by the highway agency which set forth the conditions for policing and other controls to protect highway users.

Agricultural Land

Several commenters disagreed that impact on agricultural land is a factor to be taken into account when evaluating utility use of highway right-of-way. There was also concern that this requirement places a considerable burden on the State highway agencies.

First, it is noted that the need to evaluate impact on agricultural land is a requirement found in Federal law (23 U.S.C. 109(l)). However, this evaluation need only be done if the utility's use of the right-of-way of a Federal-aid or direct Federal highway project may be denied and then only if the denial is to be based on provisions found in this regulation. In other words, a State highway agency may deny a utility's request to occupy highway right-of-way based on State law, regulations or ordinances, or State policies or practices and in this case no evaluation of impact on agricultural land is necessary. However, if the FHWA regulations are to be cited as the basis for denying a utility's request to occupy highway right-of-way, then this evaluation must be prepared before final action is taken.

The final rule does not specify who prepares the evaluation of impact on agricultural land. This would be a matter for the State highway agency to determine.

Traffic Control

Certain commenters interpreted proposed § 645.209(j) to imply that the utility would be preparing the traffic control plan and that the highway agency would have little input or control over what was prepared. This is an incorrect interpretation. Under § 645.209(j) the highway agency clearly maintains control over the process of providing proper traffic control devices in work zones. Designation of who is to prepare a traffic control plan and who is to provide the necessary traffic control devices is to be determined by the highway agency under the procedures it establishes.

Wetland Drainage

Several commenters expressed concern that the utility regulation would be used as a basis of authority for allowing placement within highway right-of-way of structures to drain adjacent wetlands. Section 645.209(l) was specifically added in the second NPRM (January 10, 1984) to address this issue. Section 645.209(l) clearly states that installation of private lines on the right-of-way of Federal-air or direct Federal highway projects to drain adjacent wetlands is inconsistent with Executive Order 11990 and is to be prohibited. The final rule has incorporated this position.

Regulatory Impact

The revised regulation updates and clarifies FHWA policies and procedures for accommodating utilities facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. Specifically, clarifications are provided regarding the application of the regulation to private line installations; placement of new utility facilities on highway right-of-way; longitudinal use of freeway right-of-way; corrective measures to address safety hazards associated with existing utility facilities located on highway right-of-way; and need for traffic control plans. In addition, the regulation provides implementing procedures for accommodation of utilities as required by 23 U.S.C. 109(l).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under Department of Transportation's regulatory policies and procedures. A final Regulatory

Evaluation and Regulatory Flexibility Analysis have been prepared and are available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

The benefits provided by this final rule include reduced accident costs resulting from clarifying and implementing a clear roadside policy, and cost savings produced by simplifying or removing certain administrative requirements. This final rule will impose some costs on utility companies which have to relocate their facilities from hazardous roadside locations. The actual costs to the States, utilities, and consumers from implementing a utility accommodation policy will ultimately depend on how the regulations are implemented by the State highway agencies. However, the costs are not expected to exceed the benefits derived from eliminating hazardous utility sites.

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulation Flexibility Act (Pub. L. 96–354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. This rule does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities and does not duplicate, overlap, or conflict with any other Federal rules. This rule does not appear to have an adverse or disproportionate effect on a substantial number of small entities.

The joint use of public right-of-way avoids the additional cost of acquiring separate right-of-way for the exclusive accommodation of utilities. Utilities occupying highway right-of-way must make contractual agreements with highway authorities which acknowledge joint responsibilities for future modifications or relocations of their installations when necessitated by highway operations. The cost to small utilities and political subdivisions of relocating utilities from hazardous locations has historically been minimized by including the relocation as part of other highway improvements. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substanial number of small entities.

The rulemaking contains two information collection requirements. These items have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The development and submission of utility accommodation policies required by §§ 645.211 and 645.215 has been approved by OMB (OMB No. 2125–0514) and expires January 31, 1986, unless renewed prior to that date pursuant to 5 CFR Part 1320. The requirement to issue and have on file utility use and occupancy agreements (permits) required by §§ 645.211 and 645.213 has been approved by OMB (OMB No. 2125–0522) and expires January 31, 1987, unless renewed prior to that date pursuant to 5 CFR Part 1320.

Note.—Appendix A to Part 645 is removed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 645

Grant Programs—Transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements, Utilities.

Issued on: May 7, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing and under the authority of 23 U.S.C. 109 and 116; 23 CFR 1.23, 1.27; and 49 CFR 1.48(b), the FHWA hereby revises Subpart B of Part 645 of Title 23 of the Code of Federal Regulations as set forth below.

PART 645—UTILITIES

* * * * *

Subpart B—Accommodation of Utilities

Sec.
645.201 Purpose.
645.203 Applicability.
645.205 Policy.
645.207 Definitions.
645.209 General requirements.
645.211 State highway agency accommodation policies.
645.213 Use and occupancy agreements (permits).
645.215 Approvals.

Authority: 23 U.S.C. 109, 116; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); Executive Order 11990, 42 FR 26961 (May 24, 1977).

Subpart B—Accommodation of Utilities

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid or direct Federal highway projects.

§ 645.203 Applicability.

This subpart applies to:

(a) New utility installations within the right-of-way of Federal-aid or direct Federal highway projects,

(b) Existing utility facilities which are to be retained, relocated, or adjusted within the right-of-way of active projects under development or construction when Federal-aid or direct Federal highway funds are either being or have been used on the involved highway facility. When existing utility installations are to remain in place without adjustments on such projects the highway agency and utility are to enter into an appropriate agreement as discussed in § 645.213 of this part,

(c) Existing utility facilities which are to be adjusted or relocated under the provisions of § 645.209(k), and

(d) Private lines which may be permitted to cross the right-of-way of a Federal-aid or direct Federal highway project pursuant to State law and regulations and the provisions of this subpart. Longitudinal use of such right-of-way by private lines is to be handled under the provisions of 23 CFR 1.23(c).

§ 645.205 Policy.

(a) Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.

(b) The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by highway agencies in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by highway agencies with respect to location and manner of installation.

(c) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply

with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

§ 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

(a) *Aesthetic quality*—those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

(b) *Clear recovery area*—that portion of the roadside, within the highway right-of-way as established by the highway agency, free of nontraversable hazards and fixed objects. The purpose of such areas is to provide drivers of errant vehicles which leave the traveled portion of the roadway a reasonable opportunity to stop safely or otherwise regain control of the vehicle. The clear recovery area may vary with the type of highway, terrain traversed, and road geometric and operating conditions. The American Association of State Highway and Transportation Officials (AASHTO) "Guide for Selecting, Locating, and Designing Traffic Barriers," 1977, should be used as a guide for establishing clear recovery areas for various types of highways and operating conditions. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.)

(c) *Clear roadside policy*—that policy employed by a highway agency to provide a clear recovery area in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration shall be given to sound engineering principles and economic factors.

(d) *Direct Federal highway projects*—those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA)

(e) *Federal-aid highway projects*—those active or completed highway projects administered by or through a State highway agency which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under 23 U.S.C. 319, Landscaping and Scenic Enhancement.

(f) *Freeway*—a divided arterial highway with full control of access.

(g) *Highway agency*—that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

(h) *Highway*—any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

(i) *Private lines*—privately owned facilities which convey or transmit the commodities outlined in paragraph (m) of this section, but devoted exclusively to private use.

(j) *Right-of-way*—real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired under 23 U.S.C. 319 shall be considered to be highway right-of-way.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the highway agency approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

§ 645.209 General requirements.

(a) *Safety.* Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. However, due to the nature and volume of highway traffic, the effect of such joint use on the traveling public must be carefully considered by highway agencies before approval of utility use of the right-of-way of Federal-aid or direct Federal highway projects is given. Adjustments in the operating characteristics of the utility or the highway or other special efforts may be necessary to increase the compatibility of utility-highway joint use. The possibility of this joint use should be a consideration in establishing right-of-way requirements for highway projects. In any event, the design, location, and manner in which utilities use and occupy the right-of-way of Federal-aid or direct Federal highway projects must conform to the clear roadside policies for the highway involved and otherwise provide for a safe traveling environment as required by 23 U.S.C. 109 (l)(1).

(b) *New Above Ground Installations.* On Federal-aid or direct Federal highway projects, new above ground utility installations, where permitted, shall be located as far from the traveled way as possible, preferably along the right-of-way line. No new above ground utility installations are to be allowed within the established clear recovery of the highway unless a determination has been made by the highway agency that placement underground is not technically feasible or is unreasonably costly and there are no feasible alternate locations. In exceptional situations when it is essential to locate such above ground utility facilities within the established clear recovery area of the highway, appropriate countermeasures to reduce hazards shall be used. Countermeasures include

placing utility facilities at locations which protect or minimize exposure to out-of-control vehicles, using breakaway features, using impact attenuation devices, using delineation, or shielding.

(c) *Installations Within Freeways.* Since the preservation of the control of access feature of freeways is essential to the safe and efficient use of such highways, longitudinal utility use of freeway right-of-way within the access control lines will not be permitted unless such use is clearly justified due to special and unique circumstances and when denial of such use would result in undue or exceptional hardship on utility consumers or others. Utility installations on freeway right-of-way shall conform to the provisions of the AASHTO publication, "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982, except as modified herein. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.) New utilities will not be permitted to be installed longitudinally within the access control lines of a Federal-aid freeway except (1) for those instances warranted under the provisions of 23 U.S.C. 109 (l)(1) (B) and (C) to mitigate damage to agricultural lands, provided (a) there is adequate right-of-way available which is not needed for planned highway expansion, and (b) such use does not adversely affect highway safety, highway operations or otherwise impair the highway, its aesthetic quality, or its maintenance, and (c) it can be shown that the installation on the freeway right-of-way is the most feasible and prudent location available; or (2) for those special cases warranted under Item 2, New Utility Installations Along Freeways, of the aforementioned AASHTO policy. However, in applying the criteria of Item 2 of the AASHTO policy, the FHWA may allow utility facilities to be located within interchange areas and may allow construction and/or servicing of such facilities from the through roadways or ramps provided conditions A, C, and D of Item 2 are satisfied and provided such access is by permits issued by the highway agency to the utility owner setting forth the conditions for policing and other controls to protect highway users. When longitudinal installations are proposed within existing access control lines, a utility strip shall be established by locating a utility access control line between the proposed utility facility and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or servicing such installations.

(d) *Uniform Policies and Procedures.* For a highway agency to fulfill its responsibilities to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

(e) *Private Lines.* Because there are circumstances when private lines may be allowed to cross or otherwise occupy the right-of-way of Federal-aid projects, highway agencies shall establish uniform policies for properly controlling such permitted use. When permitted, private lines must conform to the provisions of this part and the provisions of 23 CFR 1.23(c) for longitudinal installations.

(f) *Direct Federal Highway Projects.* On direct Federal highway projects, the FHWA will apply, or cause to be applied, utility and private line accommodation policies similar to those required on Federal-aid highway projects. When appropriate, agreements will be entered into between the FHWA and the highway agency or other government agencies to ensure adequate control and regulation of use by utilities and private lines of the right-of-way on direct Federal highway projects.

(g) *Projects Where State Lacks Authority.* On Federal-aid highway projects where the State highway agency does not have legal authority to regulate highway use by utilities and private lines, the State highway agency must enter into formal agreements with those local officials who have such authority. The agreements must provide for a degree of protection to the highway at least equal to the protection provided by the State highway agency's utility accommodation policy approved under the provisions of § 645.215(b) of this part. The project agreement between the State highway agency and the FHWA on all such Federal-aid highway projects shall contain a special provision incorporating the formal agreements with the responsible local officials.

(h) *Scenic Areas.* New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State highway agency may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) placement underground is not technically feasible or is unreasonably costly, and

(iii) the proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.

(i) *Joint Use Agreements.* When the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly occupied and used for highway and utility purposes, the highway agency and utility shall agree in writing as to the obligations and responsibilities of each party. Such joint-use agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the highway agency and the rights and privileges retained by the utility. In any event, the interest to be acquired by or

vested in the highway agency in any portion of the right-of-way of a Federal-aid or direct Federal highway project to be vacated, used or occupied by utilities or private lines, shall be adequate for the construction, safe operation, and maintenance of the highway project.

(j) *Traffic Control Plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force in accordance with procedures established by the highway agency. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD) and 23 CFR Part 30, Subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D.)

(k) *Corrective Measures.* When the highway agency determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the highway agency shall initiate or cause to be initiated in consultation with the affected utilities, corrective measures to provide for a safer traffic environment. The corrective measures may include changes to utility or highway facilities and should be prioritized to maximum safety benefits in the most cost-effective manner. The scheduling of utility safety improvements should take into consideration planned utility replacement or upgrading schedules, accident potential, and the availability of resources. It is expected that the requirements of this paragraph will result in an orderly and positive process to address the identified utility hazard problems in a timely and reasonable manner with due regard to the effect of the corrective measures on both the utility consumer and the road user. The type of corrective measures are not prescribed. Any requests received involving Federal participation in the cost of adjusting or relocating utility facilities pursuant to this paragrpah shall be subject to the provisions of 23 CFR Part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR Part 924, Highway Safety Improvement Program.

(l) *Wetlands.* The installation of privately owned lines or conduits on the right-of-way of Federal-aid or direct Federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is considered to be inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall be prohibited.

§ 645.211 State highway agency accommodation policies.

The FHWA shall use the AASHTO publications, "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981, and "Guide for Selecting, Locating and Designing Traffic Barriers," 1977, to assist in the evaluation of adequacy of State highway agency utility accommodation policies. (These publications are incorporated by reference and are on file at the Office of the Federal Register in Washington, D.C. They are available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001). As a minimum, such policies shall make adequate provisions with respect to the following:

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety.

(b) Consideration shall be given to the effect of utility installations in regard to safety, aesthetic quality, and the costs or difficulty of highway and utility construction and maintenance.

(c) The State highway agency's standards for regulating the use and occupancy of highway right-of-way by utilities must include, but are not limited to, the following:

(1) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to ensure compliance with the clear roadside policies for the particular highway involved.

(2) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards or other measures which the State highway agency deems necessary to provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.

(3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by § 645.209(h) of this part should be prescribed as necessary to protect highway interests.

(4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans, limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State highway agency may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State highway agency's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State highway agency utility accommodation policies must be assured. The responsible State highway agency's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise occupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State highway agency. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(The information collection requirements in paragraphs (a), (b) and (c) of this section have been approved under OMB control number 2125–0522; the information collection requirements in paragraph (d) of this section have been approved under OMB control number 2125–0514.)

§ 645.213 Use and occupancy agreements (permits).

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

(a) The highway agency standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and any special conditions applicable to each installation.

(b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.

(c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.

(d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(e) The action to be taken in case of noncompliance with the highway agency's requirements.

(f) Other provisions as deemed necessary to comply with laws and regulations.

(The information collection requirements in this section have been approved under OMB control number 2125–0522)

§ 645.215 Approvals.

(a) Each State highway agency shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State highway agency's power to regulate such use, and the policies the State highway agency employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State highway agency shall include similar information on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of the Federal-aid highway system within its borders where the State highway agency is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agreements with local officials required by § 645.209(g) of this part. It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State highway agency's policies satisfy the provisions of 23 U.S.C. 109 and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA may approve their use on Federal-aid highway projects in that State.

(c) Any changes, additions or deletions the State highway agency proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a State highway agency to use or occupy the right-of-way of a Federal-aid highway project, the State highway agency is not required to submit the matter to the FHWA for prior concurrence, except under the following circumstances:

(1) The proposed installation is not in accordance with this regulation or the State highway agency's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(2) Longitudinal installations on Federal-aid freeways involving special case exceptions, as described in the AASHTO publication, "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982, and § 645.209(c) of this part.

(3) Longitudinal installations of private lines.

(e) The State highway agency's practices under the policies or agreements approved under § 645.215(b) of this part shall be periodically reviewed by the FHWA.

(The information collection requirements in paragraph (a) of this section have been approved under OMB control number 2125–0514)

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 866

Denial of Request To Change Classification of the Antimicrobial Susceptibility Test Disc; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 83N–0197]

Denial of Request To Change Classification of the Antimicrobial Susceptibility Test Disc

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying three requests for a change in the classification of the antimicrobial susceptibility test disc from class II (performance standards) into class I (general controls). FDA will continue the procedure to establish a performance standard for the device.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

History of the Proceedings

In the **Federal Register** of November 9, 1982 (47 FR 50814), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation (21 CFR 866.1620) classifying the antimicrobial susceptibility test disc into class II. An antimicrobial susceptibility test disc is a device that consists of antimicrobic-impregnated paper discs used to measure by a disc-agar diffusion technique or a disc-broth elution technique the in vitro susceptibility of most clinically important bacterial pathogens to antimicrobial agents. In the disc-agar diffusion technique, bacterial susceptibility is ascertained by directly measuring the magnitude of a zone of bacterial inhibition around the disc on an agar surface. The disc-broth elution technique is associated with an automated rapid susceptibility test system and employs a fluid medium in which susceptibility is ascertained by photometrically measuring changes in bacterial growth resulting when antimicrobial material is eluted from the disc into the fluid medium. Test results are used to determine the antimicrobial agent of choice in the treatment of bacterial diseases.

Section 514(b)(1) of the act (21 U.S.C. 360(b)(1)), § 860.132(a) of the regulations providing procedures for the reclassification of medical devices (21 CFR 860.132(a)), and § 861.20(a) of the regulations providing procedures for performance standards development (21 CFR 861.20(a)) require that a proceeding for the establishment of a performance standard for a device classified into class II be initiated by publication in the **Federal Register** of a notice providing interested persons an opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. Accordingly, to initiate a proceeding to establish a performance standard for the antimicrobial susceptibility test disc, FDA published a notice in the **Federal Register** of July 8, 1983 (48 FR 31390) to allow interested persons an opportunity under section 514(b)(2) of the act to request, in accordance with section 513(e) of the act, reclassification of the device from class II into class I or class III (premarket approval).

In response to the July notice, the College of American Pathologists, Skokie, IL 60077; the Cleveland Clinic Foundation, Cleveland, OH 44106; and the Pharmaceutical Manufacturers Association, Washington, DC 20005, each submitted to FDA timely reclassification petitions requesting FDA to change the classification of the antimicrobial susceptibility test disc from class II into class I.

The Legal Standard Governing Reclassification

Section 514(b) of the act requires any reclassification petition submitted in response to a notice issued under section 514(b) to set forth new information relevant to the classification of the device. The term "new information" comprehends information developed as a result of reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at the time. See, a.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and § 860.7. As specified in § 860.7(c), FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

In addition, the valid scientific evidence upon which the agency relies for the purpose of reclassification is required by section 520(c) of the act (21 U.S.C. 360j(c)) to be publicly available, i.e., the evidence may not be trade secret or confidential commercial information in (1) any premarket approval application (PMA) for a device or (2) any other reports obtained by the agency under any of the sections of the act that are specified in section 520(c) of the act.

The Panel's Recommendation

FDA referred the petitions to the Microbiology Devices Panel (then the Microbiology Device Section of the Immunology and Microbiology Devices Panel), an FDA advisory committee, for its consideration and recommendation on the change in classification requested by the petitioners. During an open public meeting on September 9, 1983, the Panel considered the petitions and recommended that the antimicrobial susceptibility test disc remain classified in class II.

After reviewing the petitions and the Panel recommendation, FDA determined that none of the petitions provided sufficient new, publicly available, valid scientific evidence to show (1) why the device should not remain in class II and (2) that class I would provide reasonable assurance of the safety and effectiveness of the device. Therefore, the antimicrobial susceptibility test disc will remain in class II.

FDA'S Conclusions

The following is a summary of the petitions, the Panel's considerations, and FDA's conclusions with respect to the information and views on which the petitioners relied as grounds for their requests that the agency change the classification of the device.

Labeling Requirements

1. Two petitioners claimed that the labeling requirements of § 809.10 of FDA's regulations governing in vitro diagnostic products for human use (21 CFR 809.10) are sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Under § 809.10(b), manufacturers are required to identify, where appropriate, performance characteristics of the device (i.e., accuracy, precision, sensitivity, and specificity), and this information is adequate for users to evalute the test results, according to the two petitioners.

The Panel disagreed that the labeling requirements of § 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel noted that it based its original recommendation that the antimicrobial

susceptibility test disc be classified into class II on the variability in the performance of the device (45 FR 27211; April 22, 1980). This problem persists, as the Panel determined from data submitted by two of the petitioners (Refs. 1 and 2). For example, these data show that for some drugs, notably methicillin, nafcillin, and clindamycin, the results obtained in 1982 from different laboratories testing the same specimen agreed less than 80 percent of the time. The Panel noted that little improvement had occurred in the performance of the device since 1980, when the Panel recommended classification into class II. The Panel concluded that the labeling requirements of § 809.10 were not sufficient, and that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc.

FDA agrees with the Panel and disagrees with the petitioners. Accurate and complete labeling for the antimicrobial susceptibility test disc provides useful information, but labeling alone does not provide reasonable assurance of the safety and effectiveness of the device. Labeling does not solve the problem of variability in the performance of different manufacturers' antimicrobial susceptibility test disc products, ensure the accuracy of individual test results, or ensure the sensitivity or specificity of the device. A device for which there is otherwise no reasonable assurance of safety and effectiveness is not made safe and effective by merely warning the user of that fact in the device's labeling.

Class I Controls Other Than Labeling

2. Two petitioners argued that the other general controls, in addition to labeling requirements discussed in paragraph 1 of this notice, are sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Specifically, the petitioners argued that establishment inspections conducted by FDA under section 704 of the act (21 U.S.C 374) ensure that quality control and device distribution procedures are followed and that manufacturers comply with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). The two petitioners pointed out that FDA no longer requires certification for antimicrobial susceptibility test disc products, which the petitioner cites as evidence that the devices' manufacturers comply with the CGMP regulations. The petitioners contended that such compliance ensures the accuracy, precision, potency, purity, and stability of antimicrobial susceptibility test discs and is adequate to assure their safety and effectiveness. Further, FDA's authority under section 304(g)(1) of the act (21 U.S.C.334(g)(1)) to detain devices and FDA's authority under section 516 of the act (21 U.S.C. 360f) to make devices banned devices enable the agency to ensure that dangerous or ineffective products are removed from the marketplace, according to the two petitioners.

The Panel acknowledged that antimicrobial susceptibility test discs may be manufactured in accordance with the CGMP regulations, but noted that other parameters besides disc content, such as inoculum size and incubation conditions, can affect the test result. The Panel noted that data submitted by two petitioners (Refs. 1 and 2) demonstrate that, even with compliance with the CGMP regulations, there continues to be variability in the performance of the device (see paragraph 1 of this notice).

FDA disagrees with the petitioners. To reclassify a device under section 513(e) of the act, the act and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. For a class II device to be reclassified into class I, the act and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class II and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device. The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). If the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class I (see section 513(a)(1)(A) of the act).

Although FDA recognizes that general controls are useful in the regulation of the antimicrobial susceptibility test disc, the agency has concluded that these controls by themselves do not provide reasonable assurance of the safety and effectiveness of the device. FDA has already concluded that the rejection rate of antibiotic susceptibility disc products submitted for certification is sufficiently low that batch-by-batch testing by the agency is not necessary to ensure the safety and effectiveness of the products (see 47 FR 39155; September 7, 1982). FDA agrees with the Panel, however, that other parameters contribute to the quality of the test result obtained using the antibiotic susceptibility test disc. As discussed is paragraph 1 of this notice, data submitted by two of the petitioners show that there still is a problem with variability in the performance of different manufacturers' antimicrobial susceptibility test disc products. Compliance with the CGMP regulations under section 520(f) of the act and Part 820 ensures that a device conforms to its specifications. However, neither the CGMP regulations nor establishment inspections under section 704 of the act provide the data to ensure that the specifications are adequate to provide reasonable assurance of the safety and effectiveness of the device. Furthermore, although compliance with the CGMP regulations reduces the problem of lot-to-lot variability for a given manufacturer, such compliance cannot address, much less reduce, the problem of manufacturer-to-manufacturer variability.

Administrative detention under section 304(g)(1) of the act and § 800.55 of the regulations (21 CFR 800.55) is of little use in assuring the continued safety and effectiveness of a device. Section 304(G)(1) of the act merely provides for the temporary detention of a device, encountered during inspection, that an authorized FDA employee has reason to believe is adulterated or misbranded, until FDA has had time to consider what further action it should take concerning the device and to initiate judicial enforcement action, if appropriate (see section 304(g)(1) of the act; § 800.55(a)). Similarly, making a device a banned device under section 516 of the act and Part 895 of the regulations (21 CFR Part 895) is of limited use; FDA may make a device a banned device only after the agency has detemined that the device presents substantial deception or an unreasonable and substantial risk of illness or injury (section 516(a) of the act; § 895.1).

3. One petitioner argued that FDA's regulations governing premarket notification procedures (21 CFR Part 807, Subpart E) ensure that FDA is advised of the proposed introduction of a new device and permit FDA to determine whether such a device is substantially equivalent to a preamendments device (i.e., a device in commercial distribution

before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94–295)) or to a postamendments device (i.e., a device that was not in commercial distribution before that date) that has been reclassified into class I or class II.

FDA's review of premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 is intended to permit the agency to determine the status of a postamendments device under section 513(f)(1) of the act, which classifies into class III and requires premarket approval or reclassification of any postamendments device that is not substantially equivalent to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For a postamendments device to be found substantially equivalent, its intended use may not differ from, and its materials, design, and energy source, among other things, may not differ materially from, those of the preamendments or reclassified device. See H.R. Rept. No. 94–853, 94th Cong., 2d Sess. 36 (1976). In addition, any variation between the postamendments and the preamendments or reclassified device may not materially affect safety or effectiveness. See *id.* at 36–37. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or effective, nor to determine whether the preamendments device to which substantial equivalence is claimed is safe or effective. Rather, the premarket notification submission only permits FDA to determine whether the postamendments device is no less safe and effective than the preamendments device. Thus, a determination by FDA that a postamendments device is "substantially equivalent" is not a determination that the device is not adulterated or misbranded or that it is otherwise safe or effective; therefore, review of premarket notification submissions cannot provide reasonable assurance of the safety or effectiveness of a device.

For these reasons and the reasons discussed in paragraphs 1 and 2 of this notice, FDA concludes that class I controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc, and that it has not been shown that a performance standard is not needed to provide such assurance.

Miscellaneous

4. One petitioner stated that the test result is not the sole basis of a diagnosis and that the physician's role in the use of the test result should not be underestimated. The petitioner stated that the test performance is enhanced and given meaning by the interpretative judgment of the pathologists and attending physicians and that good medical practice calls for repeating a laboratory test if unexpected or unsupported results are obtained. Therefore, the petitioner argued, the risks to the health of the patient from an erroneous test result are reduced. Consequently, according to the petitioner, the Panel and FDA did not assess these risks correctly.

The Panel acknowledged that physicians may repeat a laboratory test if unexpected or unsupported results are obtained. The Panel noted, however, that a period of time may pass before the clinician is made aware of problems associated with a poorly performing device. The Panel concluded that a standard is needed to ensure that the antimicrobial susceptibility test disc performs in a safe and effective manner.

FDA agrees with the petitioner that the physician's role in the interpretation of the antimicrobial susceptibility test disc results should be considered. FDA advises, however, that the physician's role was considered by the Panel and the agency when the device was proposed for classification into class II in that the Panel based its recommendation, in part, on its clinical experience with the device (see 45 FR 27211). None of the petitions contains any new information that establishes that either the Panel or FDA underestimated the physician's role in the interpretation of test results. In any event, FDA is responsible for ensuring that the device that furnishes the test result to the physician is both safe and effective. Nothing in any of the petitions establishes that the physician's role will in any way compensate for the variability in the performance of the antimicrobial susceptibility test disc such that the device can be considered safe and effective.

5. All three petitioners argued that proficiency testing is an alternative to performance standards because device problems are identified and inadequate devices are subsequently eliminated from the marketplace. The petitioners also argued that voluntary standards exist which provide adequate control over the variables which have an impact on the quality of the test result.

The Panel noted that proficiency testing is done primarily to measure laboratory competence and not to examine reagent performance. Moreover, data submitted by two of the petitioners (Ref. 2) from studies performed in 1982 demonstrate that less than 80 percent of the laboratories testing the same specimen containing the organism *S. aureus* obtained the correct result regarding the susceptibility of this organism to any one of three different drugs (methicillin, nafcillin, and clindamycin).

FDA agrees with the Panel and concludes that the petitioners have not provided sufficient valid scientific evidence showing why the antimicrobial susceptibility test disc should not remain in class II or that the general controls provided by class I will provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Moreover, even if the data submitted by the petitioners demonstrated improved performance of the device, that alone would not demonstrate that the general controls of the act are sufficient to provide reasonable assurance of safety and effectiveness of the device, because the petitioners have not demonstrated that the improved performance is satisfactory and would continue through the application of general controls only. As stated in paragraphs 1, 2, and 3 of this notice, FDA believes that the safety and effectiveness of the antimicrobial susceptibility test disc cannot reasonably be assured by the general controls alone.

FDA notes that the existence of a voluntary standard, even if the standard is adequate and adhered to, is not a legally defensible basis for reclassifying a device into class I or a basis for not establishing a performance standard under section 514 of the act for a device classified in class II. The act does not permit reclassification of a device into class I based on a determination by FDA that adherence to an adequate voluntary standard, together with application of the general controls, will provide reasonable assurance of the safety and effectiveness of the device. The existence of an adequate, adhered to voluntary standard may, however, be a factor in FDA's establishment of priorities for establishing performance standards for class II devices.

References

A copy of the petitions, the transcript of the Panel meeting, and the following references are on public file under Docket No. 83N–0197 and are available for inspection in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. College of American Pathologists, "DATA ReCAP 1970–1980," edited by Elevitch, F. R., and P. S. Noce, pp. 265–273, 1981.

2. College of American Pathologists, "Special Bacteriology Survey," Set 1982 D–A, pp. 8–15; Set 1982 D–B, pp. 9–17; Set 1982 D–C, pp. 9–13; Set 1982 D–D, pp. 7–15, 1983

Order

For the reasons set out above, FDA is issuing an order under section 514(b)(2) of the act denying the petitioners' requests for reclassification of the antimicrobial susceptibility test disc from class II into class I.

In accordance with § 861.20(c), FDA will continue the procedure by which a performance standard for the antimicrobial susceptibility test disc may be established. In a future issue of the **Federal Register**, the agency will publish a notice under section 514(c) of the act inviting the submission of proposed standards.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11657 Filed 5–14–85; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
May 15, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 866

Denial of Request To Change Classification of the Rheumatoid Factor Immunological Test System; Rule-Related Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 866

[Docket No. 83N-0199]

Denial of Request To Change Classification of the Rheumatoid Factor Immunological Test System

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying five requests for a change in the classification of the rheumatoid factor immunological test system from class II (performance standards) into class I (general controls). FDA will continue the procedure to establish a performance standard for the device.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

History of the Proceedings

In the **Federal Register** of November 9, 1982 (47 FR 50814), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation (21 CFR 866.5775) classifying the rheumatoid factor immunological test system into class II. A rheumatoid factor immunological test system is a device that consists of the reagents used to measure by immunochemical techniques the rheumatoid factor (antibodies to immunoglobulins) in serum, other body fluids, and tissues. Measurement of rheumatoid factor may aid in the diagnosis of rheumatoid arthritis.

Section 514(b)(1) of the act (21 U.S.C. 360d(b)(1)), § 860.132(a) of the regulations providing procedures for the reclassification of medical devices (21 CFR 860.132(a)), and § 861.20(a) of the regulations providing procedures for performance standards development (21 CFR 861.20(a)) require that a proceeding for the establishment of a performance standard for a device classified into class II be initiated by publication in the **Federal Register** of a notice providing interested persons an opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. Accordingly, to initiate a proceeding to establish a performance standard for the rheumatoid factor immunological test system, FDA published a notice in the **Federal Register** of July 8, 1983 (48 FR 31389) to allow interested persons an opportunity under section 514(b)(2) of the act to request, in accordance with section 513(e) of the act, reclassification of the device from class II into class I or class III (premarket approval).

In response to the July 8 notice, the College of American Pathologists, Skokie, IL 60077; Carter-Wallace, Inc., Cranbury, NJ 08512; the Health Industry Manufacturers Association, Washington, DC 20006; the Pharmaceutical Manufacturers Association, Washington, DC 20005; and EM Science, Gibbstown, NJ 08027, each submitted to FDA timely reclassification petitions requesting FDA to change the classification of the rheumatoid factor immunological test system from class II into class I.

The Legal Standard Governing Reclassification

Section 514(b) of the act requires any reclassification petition submitted in response to a notice issued under section 514(b) to set forth new information relevant to the classification of the device. The term "new information" comprehends information developed as a result of reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and § 860.7. As specified in § 860.7(c), FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

In addition, the valid scientific evidence upon which the agency relies for the purpose of reclassification is required by section 520(c) of the act (21 U.S.C. 360j(c)) to be publicly available, i.e., the evidence may not be trade secret or confidential commercial information in (1) any premarket approval application (PMA) for a device or (2) any other reports obtained by the agency under any of the sections of the act that are specified in section 520(c) of the act.

The Panel's Recommendation

FDA referred the petitions to the Immunology Devices Panel (then the Immunology Device Section of the Immunology and Microbiology Devices Panel), an FDA advisory committee, for its consideration and recommendation on the change in classification requested by the petitioners. During an open public meeting on September 16, 1983, the Panel considered the petitions and recommended that the rheumatoid factor immunological test system remain classified in class II.

After reviewing the petitions and the Panel recommendations FDA determined that none of the petitions provided sufficient new, publicly available, valid scientific evidence to show (1) why the device should not remain in class II and (2) that class I would provide reasonable assurance of the safety and effectiveness of the device. Therefore, the rheumatoid factor immunological test system will remain in class II.

FDA's Conclusions

The following is a summary of the petitions, the Panel's considerations, and FDA's conclusions with respect to the information and views on which the petitioners relied as grounds for their requests that the agency change the classification of the device.

Labeling Requirements

1. Four petitioners claimed that the labeling requirements of § 809.10 of FDA's regulations governing in vitro diagnostic products for human use (21 CFR 809.10) are sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system. Under § 809.10(b), manufacturers are required to identify, where appropriate, performance characteristics of the device (i.e., accuracy, precision, sensitivity, and specificity), and this information is adequate for users to evaluate the test results, according to the petitioners.

The Panel disagreed that the labeling requirements of § 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel noted that it based its original recommendation that the rheumatoid factor immunological test system be classified into class II on the variability in the performance of the device (45 FR 27353; April 22, 1980). This problem persists, as the Panel determined from data submitted by two of the petitioners (Refs. 1 and 2) As an example of the variable performance of the device, these data demonstrate that there were very large differences in the amount of rheumatoid factor reported to be present when several laboratories tested the

same sample. The Panel noted that these data demonstrate that little improvement had occurred in the performance of the device since the Panel recommended that the device be classified into class II in 1980. The Panel concluded that the labeling requirements of § 809.10 were not sufficient, and that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system.

FDA agrees with the Panel and disagrees with the petitioners. Accurate and complete labeling for the rheumatoid factor immunological test system provides useful information, but labeling alone does not provide reasonable assurance of the safety and effectiveness of the device. Labeling does not solve the problem of variability in the performance of different manufacturers' rheumatoid factor immunological test system products, ensure the accuracy of individual test results, or ensure the sensitivity or specificity of the device. A device for which there is otherwise no reasonable assurance of safety and effectiveness is not made safe and effective by merely warning the user of that fact in the labeling.

Class I Controls Other Than Labeling

2. All five petitioners argued that the other general controls, in addition to labeling requirements discussed in paragraph 1 of this notice, are sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system. Specifically, the petitioners argued that establishment inspections conducted by FDA under section 704 of the act (21 U.S.C. 374) ensure that quality control and device distribution procedures are followed and that manufacturers comply with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). Further, FDA's authority under section 304(g)(1) of the act (21 U.S.C. 334(g)(1)) to detain devices and FDA's authority under section 516 of the act (21 U.S.C. 360f) to make devices banned devices enable the agency to ensure that dangerous or ineffective products are removed from the marketplace, according to the petitioners. Two petitioners stated that the Panel was unaware of the full impact of controls available under class I and, therefore, could not determine that the rheumatoid factor immunological test can be regulated adequately in class I.

FDA disagrees with the petitioners. To reclassify a device under section 513(e) of the act, the act and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. For a class II device to be reclassified into class I, the act and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class II and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device. The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). If the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class I (see section 513(a)(1)(A) of the act).

Although FDA recognizes that general controls are useful in the regulation of the rheumatoid factor immunological test system, the agency has concluded that these controls by themselves do not provide reasonable assurance of the safety and effectiveness of the device. Compliance with the CGMP regulations under section 520(f) of the act and Part 820 ensures that a device conforms to its specifications. However, neither the CGMP regulations nor establishment inspections under section 704 of the act provide the data to ensure that the specifications are adequate to provide reasonable assurance of the safety and effectiveness of the device. Furthermore, although compliance with the CGMP regulations reduces the problem of lot-to-lot variability for a given manufacturer, such compliance cannot address, much less reduce, the problem of manufacturer-to-manufacturer variability.

Administrative detention under section 304(g)(1) of the act and § 800.55 of the regulations (21 CFR 800.55) is of little use in assuring the continued safety and effectiveness of a device. Section 304(g)(1) of the act merely provides for the temporary detention of a device, encountered during inspection, that an authorized FDA employee has reason to believe is adulterated or misbranded, until FDA has had time to consider what further action it should take concerning the device and to initiate judicial enforcement action, if appropriate (see section 304(g)(1) of the act; § 800.55(a)). Similarly, making a device a banned device under section 516 of the act and Part 895 of the regulations (21 CFR Part 895) is of limited use; FDA may make a device a banned device only after the agency has determined that the device presents substantial deception or an unreasonable and substantial risk of illness or injury (section 516(a) of the act § 895.1).

3. One petitioner argued that FDA's regulations governing premarket notification procedures (21 CFR Part 807, Subpart E) ensure that FDA is advised of the proposed introduction of a new device and permit FDA to determine whether such a device is substantially equivalent to a preamendments device (i.e., a device in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94–295)) or to a postamendments device (i.e., a device that was not in commercial distribution before that date) that has been reclassified into class I or class II.

FDA's review of premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 is intended to permit the agency to determine the status of a postamendments device under section 513(f)(1) of the act, which classifies into class III and requires premarket approval or reclassification of any postamendments device that is not substantially equivalent to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For a postamendments device to be found substantially equivalent, its intended use may not differ from, and its materials, design, and energy source, among other things, may not differ materially from, those of the preamendments or reclassified device. See H.R. Rept. No. 94–853, 94th Cong., 2d Sess. 36 (1976). In addition, any variation between the postamendments and the preamendments or reclassified device may not materially affect safety or effectiveness. See *id.* at 36–37. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or

effective, nor to determine whether the preamendments device to which substantial equivalence is claimed is safe and effective. Rather, the premarket notification submission only permits FDA to determine whether the postamendments device is no less safe and effective than the preamendments device. Thus a determination by FDA that a postamendments device is "substantially equivalent" is not a determination that the device is not adulterated or misbranded or that it is otherwise safe or effective; therefore, review of premarket notification submissions cannot provide reasonable assurance of the safety or effectiveness of a device.

For these reasons and the reasons discussed in paragraphs 1 and 2 of this notice, FDA concludes that class I controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system, and that it has not been shown that a performance standard is not needed to provide such assurance.

Miscellaneous

4. Four petitioners stated that the test result is not the sole basis of a diagnosis and that the physician's role in the use of the test result should not be underestimated. The petitioners stated that the test performance is enhanced and given meaning by the interpretive judgment of the pathologists and attending physicians and that good medical practice calls for repeating a laboratory test if unexpected or unsupported results are obtained. Therefore, the petitioners argued, the risks to the health of the patient from an erroneous test result are reduced. Consequently, according to the petitioners, the Panel and FDA did not assess these risks correctly.

The Panel did not address this issue.

Although FDA agrees with the petitioners that the physicians' role in the interpretation of test results should be considered, in the case of a differential diagnosis of rheumatoid arthritis, the rheumatoid factor immunological test can be an important element. An erroneous test result (false-negative) may lead to a failure to detect rheumatoid arthritis that could lead to a delay in initiating appropriate management of the patient. An erroneous test result (false-positive) in patients with infectious mononucleosis, lupus erythematosus, or Sjogren syndrome may cause a misdiagnosis and inappropriate therapy. Additionally, FDA notes that the physician's role in the interpretation of tests results was considered by the Panel and the agency when the device was proposed for classification into class II in that the Panel based its recommendation, in part, on its clinical experience with the device (see 45 FR 27353). None of the petitions contains any new information that establishes that either the Panel or FDA underestimated the physician's role in the interpretation of test results.

5. Two petitioners claimed that proficiency testing is an alternative to performance standards for identifying and eliminating unsafe or ineffective devices. One petitioner argued that voluntary standards exist which contribute significantly to the quality of test results obtained with these devices.

The Panel acknowledged the existence of voluntary standards, but noted that data submitted by the petitioners were from a proficiency survey performed in 1982 by the College of American Pathologists (Ref. 2) which demonstrated very large differences in the results of tests performed on the same specimen using the rheumatoid factor immunological test system. The Panel noted that proficiency testing is done primarily to measure laboratory competence and not to examine reagent peformance. The Panel concluded that the proficiency data reflect significant differences in interlaboratory agreement as well as in the performance of various manufacturers' rheumatoid factor immunological test systems.

FDA agrees with the comments made by the Panel. Moreover, even if the data submitted by the petitioners demonstrated improved proficiency of the device, that alone would not demonstrate that the general controls of the act are sufficient to provide reasonable assurance of safety and effectiveness of the device, because the petitioners have not demonstrated that device performance has improved sufficiently or that satisfactory device performance would continue with the application of general controls only. As stated in paragraph 2 of this notice, FDA believes that the safety and effectiveness of the rheumatoid factor immunological test system cannot reasonably be assured by the general controls alone.

FDA notes that the existence of a voluntary standard, even if the standard is adequate and adhered to, is not a legally defensible basis for reclassifying a device into class I or a basis for not establishing a performance standard under section 514 of the act for a device classified in class II. The act does not permit reclassification into class I unless the general controls, by themselves, are adequate to provide reasonable assurance of the safety and effectiveness of the device.

6. One petitioner commented that there probably are few reports of problems with the rheumatoid factor immunological test in FDA's Device Experience Network (DEN).

The petitioner did not provide any data to support its allegations. In any case, based on its experience, FDA does not believe that voluntarily submitted adverse experience reports, including those reported to DEN, are an accurate reflection of the actual levels of adverse experiences with devices (see the preamble to FDA's final rule on medical device reporting (49 FR 36326 at 36328; September 14, 1984)).

Reference

A copy of the petitions, the transcript of the Panel meeting, and the following references are on public file under Docket No. 83N-0199 and are available for inspection in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m., and 4 p.m. Monday through Friday.

1. College of American Pathologists, "DATA ReCAP 1970-1980," edited by Elevitch, F.R., and P.S. Noce, p. 306, 1981.

2. College of American Pathologists, "Special Diagnostic Immunology Survey," Set 1982 S-A, S-B, S-C, S-D, 1983.

Order

For the reasons set out above, FDA is issuing an order under section 514(b)(2) of the act denying the petitioners' requests for reclassification of the rheumatoid factor immunological test system from class II into class I.

In accordance with § 861.20(c), FDA will continue the procedure by which a performance standard for the rheumatoid factor immunological test system may be established. In a future issue of the **Federal Register**, the agency will publish an invitation for standards under section 514(c) of the act.

Dated: April 29, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11661 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
May 15, 1985

Part V

Environmental Protection Agency

21 CFR Part 561

40 CFR Part 180

Cyromazine; Pesticide Tolerance Final Rules; Determination Concerning Conditional Registration; Notice

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 2H5355/R753; FRL-2836-8]

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit residues of the insecticide cryromazine in or on poultry feed. This regulation to establish the maximum permissible level for residues of cyromazine in or on the commodity was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 2H5355/R753], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18120), which proposed that a feed additive regulation be established, under section 409 of the Federal Food Drug and Cosmetic Act (FFDCA), permitting residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in poultry feed at 5.0 parts per million (ppm).

Comments on the Federal Register Proposal

The Agency's proposals to (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) published in the **Federal Register** on April 27, 1984, requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, 76 responded favorably to the conditional registration, 11 responded favorably to the establishment of the proposed feed additive regulation (section 409) and six responded favorably to the proposed establishment of a tolerance in or on certain raw agricultural commodities (section 408).

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishment of tolerances and/or a food additive regulation for cyromazine.

For the Agency's response to the comments received, see the companion notice on conditional registration appearing elsewhere in this issue of the **Federal Register**.

Agency Decision

Based on the Agency's review of the data and comments submitted in response to the April 27, 1984 proposal, the Agency has concluded that cyromazine can be safely used in the prescribed manner when such use is in accordance with the labeling, which is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act amended (FIFRA) (7 U.S.C. 136 et seq.). Therefore, the feed additive regulation is established as set forth below.

Elsewhere in this issue of the **Federal Register**, the Agency has issued: (1) A final rule establishing tolerances for residues of cyromazine in or on eggs and poultry (chicken layer hens only) meat, fat, and meat by-products, and (2) a notice of the Agency's determination to issue a conditional registration for cyromazine for use as a 0.3-percent pre-mix feed-through to control fly larvae in poultry manure.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534. 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended as follows:

1. The authority citation for Part 561 is revised to read as set forth below and the authority citations following all the sections in Part 561 are removed.

Authority: 21 U.S.C. 348.

2. Part 561 is amended by adding § 561.99 to read as follows:

§ 561.99 Cyromazine.

The additive cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) may be safely used in accordance with the following prescribed conditions:

(a) It is used as a feed additive in feed for chicken layer hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed.

(b) It is used for control of flies in manure of treated chicken layer hens.

(c) Feeding of cyromazine treated feed must stop at least 3 days (72 hours) before slaughter. If the feed is formulated by any person other than the end user, the formulator must inform the end user, in writing, of the 3 day (72 hours) pre-slaughter interval.

(d) To ensure safe use of the additive, the labeling of the pesticide formulation containing the feed additive shall conform to the labeling which is registered by the U.S. Environmental Protection Agency, and the additive shall be used in accordance with this registered labeling.

(e) Residues of cyromazine are not to exceed 5.0 parts per million (ppm) in poultry feed.

[FR Doc. 85-11841 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2707/R752; FRL-2836-9]

Pesticide Tolerances for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insect growth regulator cyromazine in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of cyromazine in or on these commodities was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 2F2707/R752], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18130), which proposed that a tolerance of 0.4 part per million (ppm) be established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on eggs and poultry meat, fat, and meat by-products from chicken layer hens.

Comments on the Federal Register Proposal

The Agency's proposals to: (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) published in the **Federal Register** on April 27, 1984, requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, 76 responded favorably to the conditional registration, 11 responded favorably to the establishment of the proposed food additive regulation (section 409), and 6 responded favorably to the proposed establishment of a tolerance in or on certain raw agricultural commodities (section 408).

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishment of tolerances and/or a food additive regulation for cyromazine.

For the Agency's response to the comments received see the companion notice on conditional registration appearing elsewhere in this issue of the **Federal Register.**

Agency Decision

Based on the Agency's review of the data and comments submitted in response to the April 27, 1984 proposal, the Agency has concluded that, if good management practices are followed, the requested tolerances of 0.4 ppm for residues of cyromazine in or on eggs and poultry meat, fat, and meat by-products (from chicken layer hens only) are unnecessarily high. Based on the data reviewed, the Agency, has determined that tolerances of 0.25 ppm for combined residues of cyromazine and its metabolite melamine in or on eggs and 0.05 ppm each for residues of cyromazine and its metabolite melamine in or on poultry meat, fat, and meat by-products (from chicken layer hens only) with a 3 day (72 hours) pre-slaughter interval (PSI) are appropriate and that these levels will protect the public health. Therefore, the tolerances are established as set forth below.

The proposal was designated as 40 CFR 180.418. To maintain numerical integrity in the CFR, the final rule is being issued as 40 CFR 180.414.

Elsewhere in this issue of the **Federal Register**, the Agency has issued: (1) A final rule for establishing a feed additive regulation to permit residues of the insecticide cyromazine in or on poultry feed and (2) a notice of the Agency's determination to issue a conditional registration for cyromazine for use as a 0.3-percent pre-mix feed-through to control fly larvae in poultry manure.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice procedure, Agricultural commodities; Pesticides and pests.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 is revised to read as set forth below and the authority citations following all the sections in Part 180 are removed.

Authority: 21 U.S.C. 346a.

2. Part 180 is amended by adding § 180.414 to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

(a) Tolerances are established for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on the following raw agricultural commodities:

Commodities	Parts per million
Eggs	0.25

(b) Tolerances are established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following raw agricultural commodities:

Commodities	Parts per million
Fat, poultry (from chicken layer hens only)	0.05
Meat, poultry (from chicken layer hens only)	0.05
Meat byproducts (from chicken layer hens only)	0.05

(c) Tolerances are established for residues of the cyromazine metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on the following raw agricultural commodities:

Commodities	Parts per million
Fat, poultry (from chicken layer hens only)	0.05
Meat, poultry (from chicken layer hens only)	0.05
Meat byproducts (from chicken layer hens only)	0.05

[FR Doc. 85-11840 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30080A; FRL- 2837-1]

Cyromazine; Determination Concerning Conditional Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Conditional Registration.

SUMMARY: This notice sets forth the Agency's determination to issue a conditional registration, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for the insect growth regulator cyromazine for use as a 0.3 percent premix feed-through to control fly larvae in poultry manure. The Agency has determined that the benefits of use outweigh the risks of the conditional registration, and the issuance of the conditional registration is in the public interest. Elsewhere in this issue of the **Federal Register**, EPA issued final rules establishing tolerances and permitting residues of cyromazine in certain agricultural commodities and poultry feed.

EFFECTIVE DATE: Effective on May 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18172), in which the Agency proposed to issue a conditional registration, pursuant to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for the insect growth regulator cyromazine[1], for use as a 0.3 percent premix feed-through to control fly larvae in poultry manure. A conditional registration was proposed on the basis that: (1) Product performance studies relative to the minimum effective dosage, the effective dosage range, and the performance of the product when used in intermittent dosing management programs be submitted by February 1, 1985; (2) residue data derived from the various treatment regimes along with a poultry feeding study to determine whether cyromazine and melamine have plateaued by 28 days in both meat and eggs and how fast the residues decline after the cessation of dosing to be submitted by May 1, 1985; and (3) a long-term field dissipation study on melamine to be submitted by November 1, 1985. The disposition of these data requirements is discussed below.

Based on a review of the data and comments submitted in response to the Agency's April 27, 1984, proposal, EPA has decided to issue a conditional registration for the use of cyromazine. The registration is conditional on the submission of feed mill mixers exposure information by December 31, 1985. The Agency has determined that for the conditional registration these are the only data missing. In addition, the Agency has determined that the statutory requirements for a conditional registration have been met, in that: (1) The required data are not part of the data base under 40 CFR Part 158, i.e., not data that the registrant should have known to produce earlier and (2) a finding of public interest has been made since the significant benefits of use of cyromazine outweigh any risk of use of the conditional registration. The Agency also has decided to issue tolerances to cover residues of cyromazine in poultry and eggs.

The Agency's decision to permit use of cyromazine is based on an evaluation of a comprehensive toxicological data base. Cyromazine has been extensively studied and a complete data set exists on which to evaluate the potential toxicity of both cyromazine and its major metabolite, melamine.

The data base includes two oncogenicity studies on cyromazine itself and four oncogenicity studies on melamine. The Agency also has reviewed a number of ancillary studies that provide insight on the biological processes associated with the development of bladder stones. With the exception of one study, all oncogenicity studies on both cyromazine and melamine were negative. The one positive study showed that bladder tumors occurred in some male rats fed the highest dose of melamine. The evidence is consistent with the hypothesis that an intergral element in the development of these bladder tumors is the formation of bladder stones consisting of pure melamine; these stones were found to occur only at high doses. Although it is possible that very high doses of melamine could cause bladder tumors to occur by some mechanism not involving stones, the Agency believes this is unlikely given the lack of any oncogenic effect at lower doses and the close correspondence between the occurrence of stones and tumors.

Because all oncogenicity studies on cyromazine itself were negative, because the bladder tumors were only found at the highest dose in one study on melamine, and because of the very low human exposure levels that would result from this use of cyromazine, the Agency has concluded that the weight of evidence strongly supports the thesis that the oncogenic risk to man is nonexistent or, at worst, extremely low. The Agency does not believe that the doses of melamine to which any human is likely to be exposed will lead to the formation of either bladder stones or bladder tumors.

Data Received Since the April 27, 1984 Federal Register Proposal

As a result of comments on the April 27, 1984 **Federal Register** notice, the Agency reevaluated the original rat and rabbit teratology studies on cyromazine. The Agency found the rat study to be acceptable, but indications of fetotoxic effects were found in the rabbit study at the lowest dose tested (10 mg/kg/day). Ciba-Geigy submitted a new rabbit teratology study using dose levels of 5, 10, 30, and 60 mg/kg/day. In its review of this second rabbit study, the Agency determined that cyromazine was teratogenic with a no-observed-effect level (NOEL) of 5 mg/kg/day. The Agency also determined that there is a margin of safety (MOS) factor of at least 1,600 for dietary exposure to the general population.

The Agency has also considered the teratogenic risk that may be posed to feed mill mixers working with Larvadex®. Since large operations are heavily mechanized and automated, and since most small operations are also mechanized, any exposure which may occur to the mixer is expected to be negligible. In addition, cyromazine will be distributed only as a premix, further limiting exposure to cyromazine. Nevertheless, as a condition of registration, the Agency is requiring Ciba-Geigy to provide actual exposure information to assess the risk to feed mill mixers.

The Agency, despite its findings of nonexistent or extremely low risk associated with exposure to cyromazine, has carefully analyzed the available data in light of the requirements of section 409 of the Federal Food Drug and Cosmetic Act. The Agency has determined that the setting of a food additive tolerance for melamine is consistent with section 409, for the

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[1] Cyromazine is the accepted American National Standards Instutute name for the chemical *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine. The trade name for cyromazine as a poultry feed-through product is Larvadex®.

reasons set forth in this document and the April 27, 1984 proposal.

The April 27, 1984 **Federal Register** notice stated that a long term field dissipation study showing that melamine residues will not leach into the lower depth of soil and contaminate groundwater was being required by the Agency as a condition of registration. The notice stated that the requirement could be satisfied either by actual field data or data showing that concentrations of melamine residues will be below detection limits of an analytical method for melamine residues in soil.

Ciba-Geigy Corporation has provided the Agency an assessment of the potential for melamine residues to be found in groundwater. This assessment, using the PESTAN model developed by EPA, found that melamine residues resulting from surface application (5 tons per acre) of manure from poultry fed feed treated with Larvadex® at 5.0 parts per million (ppm) would not be detectable at 6.4 feet even if the method sensitivity was 1.0 part per billion (ppb). The available analytical method for melamine residues in soil has a limit of detection of 0.05 ppm (50.0 ppb). At this level of sensitivity no melamine residue would be detectable in soil from the proposed chicken feed use of Larvadex®.

Based on the information provided by Ciba-Geigy Corporation showing that concentrations of melamine residues in soil will be below the reported limit of detection of the available analytical method, EPA has concluded that a long term field monitoring study is not necessary for 0.3 percent premix feed-through to control fly larvae in poultry manure.

Ciba-Geigy Corporation has provided the Agency data on the mode of action of Larvadex®, the mimimum effective dosage for Larvadex®, information on product performance when used in intermittent dosing management programs, and information documenting soldier fly larvae as a pest. The Agency's review of these data is summarized below.

Mode of Action

Although the specific mode of action for Larvadex® has not been fully determined, the data do indicate that Larvadex® can act as a contact insecticide against fly larvae and that the main site of penetration is the cuticle. The site of action appears to be at the point where the cuticle and epidermal tissues join.

Minimum Effective Dosage

The data submitted consisted of 4 studies, 2 by Ciba-Geigy and 2 by the U.S.D.A. Ciba-Geigy used rates of 0.5, 1.0, 2.5, and 5.0 ppm Larvadex® in feed fed to birds in testing against the house fly and litle house fly in one study and in the other study 1.5 and 3.0 ppm Larvadex® in feed fed to birds in testing against the house fly. U.S.D.A. used rates of 1.25, 2.5, and 5.0 ppm Larvadex® in feed fed to hens in testing against the house fly and little house fly in one study and in the other study 1.5, 3.25, and 5.0 ppm Larvadex® in feed fed to birds in testing against the house fly. The data for 1 ppm (one test by Ciba-Geigy) and 1.25 ppm (one test by the U.S.D.A.) indicated that these rates were effective for house fly control. While the data submitted do not establish the minimum effective dosage for house fly control at 1.5 ppm Larvadex® in feed, without additional testing effectiveness cannot be confirmed for rates below 1.5 ppm for house fly control. The data do, however, establish the minimum effective dosage for control of the little house fly at 5.0 ppm.

Product Performance in Intermittent Dosing Programs

The data establish that Larvadex® 0.3% premix is effective for fly control at the proposed label dosages and that the 0.3% premix can be used successfully in fly control as a poultry feed through insecticide in intermittent dosing management programs and support Ciba-Geigy's proposal for interrupted/alternate feeding in a program of sanitation and manure management based on an initial 4 to 6 week feeding period followed by monitoring for maggot activity and resumption of continuous 4 to 6 week feeding if maggot activity increases.

The data support a 5 to 7 day on and 5 to 7 day off Larvadex® feeding schedule in conjunction with a program of sanitation, manure management and monitoring for maggot activity after 4 to 6 weeks of continuous Larvadex® feeding. The Ciba-Geigy proposal for initial 4 to 6 weeks of continuous feeding followed by a 5 to 7 day on, 5 to 7 day off feeding schedule (with a maximum of 7 days without feeding) in conjunction with a sanitation program when maggot activity cannot be monitored should be modified to include some form of fly population monitoring with resumption of 4 to 6 week continuous feeding if fly populations increase.

The data on egg production, feed consumption and egg quality are limited but indicate no adverse effects from Larvadex® feeding.

Soldier Fly (Family Stratiomyidae) Larvae as a Pest

The information submitted consisted of reprints of papers by Dr. R.C. Axtell of North Carolina State University, a letter from H.W. Myers, Jr., the North Carolina State University Extension agent, and a letter and a publication from the I.F.A.S. of the University of Florida submitted by Professor P.G. Koehler, Extension Entomologist.

The North Carolina information indicates that the soldier fly causes manure to liquify (become semi-liquid). This may result in overflow and contamination, including contamination of walkways, litter, birds, and eggs. In addition the liquid manure is difficult to handle and causes an odor problem. Also there have been increasing numbers of complaints from homeowners about adult soldier flies which have developed from larvae in infested manure spread in adjacent crop and/or pasture areas.

The Florida information indicates that the soldier fly is a major pest in that state and that there have been instances when health departments have been concerned relative to manure running on walkways, filth dissemination by migrating larvae and numbers of larvae being stepped on on walkways and the resulting walkway conditions. Based on a poultry producer questionnaire in Plant City, Florida in 1977, 34% of the producers indicated that the soldier fly was a fly problem.

The Agency concludes that the information submitted does establish that soldier flies are an important pest in poultry production in certain areas.

Ciba-Geigy has also provided the Agency data on residue derived from the various treatment regimes along with a poultry feeding study to determine whether cyromazine and melamine have plateaued by 28 days in both meat and eggs and how fast the residues decline after the cessation of dosing.

In this poultry feeding study, 120 laying hens (one control and three treatment groups of 30 birds each) were maintained on poultry feed containing 5 ppm cyromazine for 56 days. The dosed feeding period was followed by 14 days on untreated feed (depletion period). Birds were sacrificed at 14-day intervals, during the 56-day treatment period and at 1, 3, and 7 days after cessation of the treatment period. Tissue samples were taken and analyzed for residues of the parent compound cyromazine and and its metabolite melamine. Egg samples were collected at 0, 1, 3, 7, 14, 28, 42, and 56 days during

feeding with treated feed and at 1 thru 7 days, 10, and 14 days during the depletion period. The whites and yolks were separated from the shell, pooled, and the shell discarded. Analyses were performed on the pooled samples for residues of cyromzine and melamine.

No detectable residues (<0.05 ppm) of cyromazine were noted in the fat or skin at any time during the feeding period or the depletion period. Cyromazine was noted in lean meat (<0.05–0.08 ppm) and liver (0.06–0.13 ppm) throughout the feeding period. No detectable residues (<0.05 ppm) of cyromazine were noted in any tissues during the depletion period. No detectable residues (0.05 ppm) of melamine were noted in poultry tissues (lean meat, liver, fat, skin) at any time.

Detectable residues of cyromazine were first noted in eggs on day-3 of feeding. These residues were 0.09–0.11 ppm. Overall residues of cyromazine during the feeding period were <0.05–0.11 ppm. During the depletion period, residues of cyromazine were 0.08–0.11 ppm on day-1. No detectable residues (<0.05 ppm) were noted beyond depletion day-1. No detectable melamine residues (0.05 ppm) were noted at any time.

Residues of cyromazine and melamine were determined by the analytical procedure method AG–417 and AG–417A.

The Agency has completed its evaluation of the data submitted by Ciba-Geigy. The Agency has also reviewed current practices for the care of laying hens ("Farm Poultry Management," USDA, Farmers' Bulletin Number 2197, revised June 1977), and contacted various poultry egg producers and feed mill operators and has made the following conclusions:

1. Residues of cyromazine and melamine do plateau by 28 days in both meat and eggs and that the residues decline to non-detectable levels after the birds have been removed from the treated feed for one day.

2. Current layer hen feeding practices and equipment permit the removal of treated feed at least 72 hours (3 days) before slaughter. As a result, the imposition of a pre-slaughter interval (PSI) is reasonable and practical.

3. The imposition of a 3 day (72 hours) PSI would result in lower cyromazine residue levels in poultry tissues. The maximum levels are as follows:

Cyromazine 0.05 ppm in poultry tissues
Melamine <0.05 ppm in poultry tissues

4. The residue level in eggs does not change since eggs are collected on a daily basis for human consumption, and the imposition of a PSI would not affect residue deposition in eggs. The residue level in eggs is 0.25 ppm for combined residues of cyromazine and melamine.

5. An adequate analytical method is available for enforcement of the tolerances for cyromazine and its metabolite melamine.

Comments on the April 27, 1984 Federal Register Proposal

The Agency's proposals to: (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) was published in the **Federal Register** on April 27, 1984, and requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, seventy-six responded favorably to the conditional registration, eleven responded favorably to the establishment of the proposed feed additive regulation (section 409), and six responded favorably to the proposed establishment of a tolerance (section 408). Several commenters commented on more than one document. The following groups favored conditional registration: thirty-four poultry growers; twelve individuals (who complained of an unreasonable fly population arising from poultry farms close to their dwellings); seven feed supply companies; Kentucky Department of Agriculture; New York Department of Agriculture and Markets; Georgia Department of Human Resources; North Carolina Department of Agriculture; Maine Department of Agriculture, Food and Rural Resources; United States Department of Agriculture; the Cooperative Extention Services from Missouri, Utah, South Carolina (Clemson), Idaho, New Hampshire and California; North Carolina State University, School of Agriculture; Hart County (Ga.) Health Center; The Grocery Manufactures of America Inc.; Tysons Food Inc.; Board of Supervisors Sullivan County, New York; Board of Supervisors Lake County, Florida; New York State Electric and Gas Company; Southeastern Poultry and Egg Association; Texas Poultry Federation; Missouri Egg Merchandizing Council; Indiana State Poultry Association; Maine Poultry Federation; Georgia Poultry Federation; Idaho Poultry Industry Federation; Arkansas Farm Bureau Federation; Michigan Farm Bureau; California Farm Bureau Federation; American Cyanamid Company; and Ciba-Geigy Corporation.

All the above commenters for various reasons supported the conditional registration. The reason given most often was that the product is very efficacious and very much needed to control severe fly infestations surrounding caged layer operations. Several commenters also believed that the data did not support the contention that melamine is an oncogen.

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishement of tolerances and/or a food additive regulation for cyromazine.

There were twenty-three private citizens or groups of citizens who opposed the conditional registration, tolerances, and food additive regulation. The individuals' reasons for opposing the conditional registration of Larvadex® was that they did not want the eggs and poultry meat they eat contaminated with another cancer causing chemical.

Eleven commenters opposed to the Agency's proposals in part or in toto commented on the substance of the Agency's rationale for the proposals. These included Sterling Drug, Inc.; State of California Department of Health Services; Texas Department of Agriculture (Agricultural and Environmental Services Program); Natural Resources Defense Council (NRDC); United Food and Commercial Workers International Union (UFCW); State of California Department of Food and Agriculture; South Dakota State University; the Public Citizen Litigation Group; Ciba-Geigy Corporation; American Cyanamid Company; and The Grocery Manufacturers of America Inc. Their concerns are listed below.

Comment: Sterling Drug, Inc., the United Food and Commercial Workers International Union (UF&CWIU), and the Texas Department of Agriculture claimed generally and without qualification that the Delaney clause in section 409 of the Federal Food Drug and Cosmetic Act (FFDCA) bars approval of carcinogens as food additives.

Response: These commenters failed to note the presence in the statute of the so-called "DES proviso" which forms the basis for the Food and Drug Administration (FDA) position (set forth at 44 FR 17070, March 20, 1979) and upon which EPA's proposed rule was explicitly based. The DES proviso is an explicit exception to the Delaney clause. While the meaning of the proviso may be a proper issue for debate, its existence is not.

Comment: The Natural Resources Defense Council Inc. (NRDC) and the Public Citizen Litigation Group commented that EPA should not adopt the reasoning in the 1979 FDA document concerning the meaning of the DES proviso without first conducting a rulemaking concerning the appropriateness of the FDA approach.

Response: EPA has not adopted the FDA approach as a general matter, only for this particular action. In regard to rulemaking, the Agency believes that the notice and comment period provided in this rulemaking action are sufficient.

Comment: The State of California Department of Health Services and NRDC commented that the 1979 FDA document improperly interprets the DES proviso and that the statute should be read as allowing no detectable residues of a carcinogenic feed additive in edible products of livestock.

Response: As stated in the proposed rule (49 FR 18120), EPA agrees with FDA's interpretation of the statute for the reasons set forth by FDA.

Comment: The State of California Department of Health Services stated that because of the positive results in the National Toxicology Program (NTP) bioassay and the lack of knowledge concerning the mechanism of tumor induction, melamine should be regarded as an animal carcinogen and as a potential human carcinogen with no threshhold. The Natural Resources Defense Council commented that whether the mechanism of tumor induction by melamine is direct or indirect is immaterial.

Response: The Agency believes that under the Delaney clause itself, the following questions may not be legally material: (1) What is the mechanism of tumor induction and (2) what is the human threshold. Regarding this action on cyromazine, the Agency is regulating on the basis that those questions are not legally material. The Agency recognizes that the direct/indirect distinction might well be meaningful and material for risk assessment purposes under the DES proviso, given the proper data and circumstances.

Comment: Grocery Manufacturers of America, Ciba-Geigy Corporation, and American Cyanamid Company commented that the data show that cancer occurs only as a result of formation of bladder calculi (stones). Since calculi occur only at high doses and tumors will occur only at those high doses, therefore a threshold exists.

Response: Until more testing is done on mechanisms, all the Agency can do is make informed predictions about whether calculi are prerequisites to tumors. While many scientists would conclude that calculi formation is a prerequisite and that no tumors will result at doses not causing calculi, others are not willing to conclude this from the existing data. Thus, while it is likely that calculi are related to tumor formation, the Agency has not based its regulatory decision solely on this assumption. See the "Discussions and Conclusions" and "Summary of Peer Review Comments" sections of the NTP bioassay (Carcinogenesis Bioassay of Melamine (CAS No. 108–78–1) in F344/N Rats and $B6C3F_1$ Mice (Feed Study), National Toxicology Program, Research Triangle Park, North Carolina [U.S. Department of health and Human Services, Public Health Service National, Institute of Health] (March 1983) NIH Publication No. 83–2501.) See also Hicks, R. M., Multistage Carcinogenesis in the Urinary Bladder, British Medical Bulletin 36(1):39–46 (1980).

Comment: The Natural Resources Defense Council further commented that EPA implies that a threshold exists for exposure to melamine by deriving the ADI from the lowest NOEL from Larvadex® toxicology data.

Response: As stated above, the agency Acknowledged that a threshold for oncogenic efects may exist. However, the agency can not be certain whether a threshold exists at this time. Therefore, the Agency performed the risk assessment as if a threshold did not exist.

Comment: The State of California Department of Food and Agriculture commented that the Agency should get new studies to more clearly delineate the bladder neoplasm problem in rats. They suggested studies using doses of melamine less than those that induced tumors in the NTP study. The study would need to incorporate proper control populations.

Response: The problem of delineating the exact etiology of the bladder neoplasm is confounded by several factors. Reducing the doses in a lifetime feeding study would reduce the power of the test, in which case a negative result may be meaningless. Administration via other routes may change the metabolite production. Proper control selection is problematic. It is an interesting academic problem, but one beyond the regulatory scope. The Agency has data showing an effect from a given dose and, although the mechanism of the effect is debatable, a risk assessment based on that dose/effect relationship can be used to assume the compound is carcinogenic and to regulate the compound accordingly.

Comment: Ciba-Geigy Corporation commented that the Delaney clause only applies where "appropriate" tests show that a substance induces cancer; the NTP bioassay does not satisfy this test.

Response: This comment seems to be based on a misreading of the Delaney clause. The clause comes into play where a food additive is shown to induce cancer either when ingested by animals (as in the NTP bioassay) or "in other appropriate tests".

Comment: Ciba-Geigy Corporation commented that for a substance like melamine (which, if a carcinogen at all surely involves a multistage process), EPA should use a multistage extrapolation model, not a linear model, to calculate risks from low doses.

Response: EPA chose to follow the approach set forth in the 1979 FDA document for reasons of consistency between the agencies in treatment of similar issues. That document concedes that the choice of a linear model is designed to err on the side of overprotection.

Comment: Grocery Manufacturers of America, Ciba-Geigy Corporation, and American Cyanamid Company commented that the Delaney clause and its DES provisio should come into play only when a food additive clearly has been shown to be a carcinogen, and thus need not (indeed may not) be employed with regard to melamine.

Response: Melamine ingestion by test animals at the high dose level in the NTP bioassay clearly did induce cancer in those animals. As explained in the preamble of the Agency's proposed regulation of cyromazine, the Agency is treating melamine as a food additive.

Comment: Ciba-Geigy Corporation commented that because melamine is a trace impurity of cyromazine, not just a metabolite, EPA should use FDA's "constituents policy," which EPA adopted in a separate decision, (see 46 FR 340214, July 27, 1983), not the FDA interpretation of the DES proviso, in analyzing the acceptability of melamine as a food additive.

Response: The "constituents policy" holds that unwanted, nonfunctional impurities of a food additive are not themselves food additives, and thus that the presence of a carcinogenic impurity in a food additive does not necessarily bar approval of the food additive so long as the risk posed by the impurity is insignificant. Although melamine may be a trace impurity of cyromazine, it is also a metabolite and metabolic conversion is responsible for most of the presence of melamine in food that would result from use of Larvadex®. While arguably we could analyze the acceptability of the impurity fraction under the constituents policy, EPA does

not understand FDA's constituents policy as applying to metabolites of the desired components of the food additive, and EPA does not choose to so extend it. Since the bulk of the melamine presence results from metabolism, it would change the analysis but slightly to also analyze the impurity content under the constituents policy, and EPA declines to do so.

Comment: The North Carolina Department of Agriculture and Ciba-Geigy Corporation commented that section 409 of the FFDCA does not provide authority for the setting of an expiration date on a food additive regulation of the sort proposed by EPA.

Response: The FFDCA authorizes the Administrator to prescribe the conditions under which a food additive "may be safely used" (FFDCA sec. 409(c)(1)(A), 409(d)) and gives a non-exclusive list of examples of the types of conditions that may be imposed. The statute also prohibits the Agency from setting a tolerance limitation at a level higher than is reasonably required to accomplish the physical or other technical effect for which the additive is intended (here, control of fly larvae) [FFDCA sec. 409(c)(4)(A)]. The Agency believes it to be reasonable to provide that the food additive regulation expire by its own terms at a time when the Agency will have acquired and evaluated further data concerning, among other things, the possibility of reducing residue levels through different application regimens. The fact that this type of condition may not have been imposed in the past does not mean that it would not be improper here. However, because the Agency received data that permitted a reduction in tolerance levels and needs no additional data on this point, the Agency is not imposing an expiration date on the tolerance.

Comment: The State of California Department of Food and Agriculture asked what effect cooking eggs and meat has on melamine.

Response: Ciba-Geigy has provided the Agency information on the effect of cooking practices on residues of cyromazine and melamine in eggs and chicken tissue. Ciba-Geigy states that they found cyromazine and melamine residues in chicken tissue and eggs to remain basically intact when cooked and that approximately 90% of the cyromazine and melamine was accounted for. This study found that ⅓ to ¼ of the cyromazine and melamine was transferred to the broth during the boiling process. No conversion of cyromazine to melamine was observed.

Comment: The State of California Department of Food and Agriculture also asked what effect Larvadex® has on egg fertility.

Response: Data (two studies) submitted to the Agency by the Poultry Science Departments at North Carolina State University and the University of Florida indicate that Larvadex® has no significant effect on egg fertility.

Comment: Sterling Drug, Inc., and the State of California Department of Food and Agriculture commented that the Agency should not conditionally register cyromazine until all of the requested efficacy data have been reviewed by the Agency and found to be acceptable.

Response: The present policy with respect to the efficacy data waiver provides that the Agency will not routinely require the submission of the efficacy data upon which the label claims are based prior to registration, unless there exists evidence to suggest that the product will be ineffective for those claims. As the Agency was not in possession of any data indicating that the product would not be effective, such data were determined to be unnecessary prior to registration. However, as certain risks have been identified for the subject uses of cyromazine, the Agency requested the submission of not only efficacy data on the proposed uses, but additional data (such as intermittent dosing) that would enable EPA to determine if it is possible to reduce the amount of cyromazine and its metabolites by reducing the dosages used or by treating the chickens on an intermittent basis. The Agency has received and reviewed those data. A summary of the Agency's review of these data can be found in the supplemental information section above. Labeling requirements for the conditional registration of Larvadex® are set forth in the cyromazine label comment section below.

Comment: The State of California Department of Health Services commented that the cost studies associated with the use of Larvadex® at both dosage levels should be made before registration.

Response: Although not detailed in the April 27, 1984 **Federal Register** notices, the Agency did consider the cost-effectivess of Larvadex® and of alternative means of fly control in its benefits assessment of Larvadex®. The benefits information, including the cost-effectiveness of Larvadex® and alternative fly control methods, gathered in the benefits assessment were used in the Agency's risk/benefit assessment. Comments received from poultry operators who have used Larvadex® substantiate the cost-effectiveness of Larvadex® versus alternative fly control measures available to them. In addition, if the product is not economical at one or both dosage levels, potential users will choose not to use this product.

Comment: The State of California Department of Health Services commented that efficacy tests should be run at both dosage levels to determine minimum and intermittent dosing.

Response: As discussed earlier the Agency has received, and reviewed, not only efficacy data on both dosing levels of the proposed uses of Larvadex® but additional data (such as intermittent dosing) that enable EPA to determine whether it is possible to reduce the amount of cyromazine and its metabolites by reducing the dosages used or by treating the chickens on an intermittent basis. As a matter of fact, the Agency is requiring that intermittent dosing be added to the labeling as a condition for registration.

Comment: The State of California Department of Food and Agriculture commented that efficacy has not been proven against flies of *Fannia* species.

Response: Comments submitted by Cooperative Extension Service, University of California verify that the little house fly [*Fannia canicularis* (Linnaeus)] is a serious pest in California during the wet, cool winter months and indicate that available alternatives, including manure management, are not effective. Several California poultry producers have been taken to court because of problems related to this pest. While cyromazine appears to be the most promising material for the control of *Fannia* species, the University of California has indicated that it cannot recommend its use at this time because of a lack of sufficient information. The University of California indicated that more work was planned in the 1984 season. The Agency notes the finding of the University of California and will carefully scrutinize the data submitted in support of label claims for the control of *Fannia* species to determine whether they are sufficient to support this pattern of use. In the interim, California has stated it will reject the use of Larvadex® within the State to control flies of the Genus *Fannia*. Since there are other areas in the United States where this fly is a problem and those areas have not reported efficacy problems, the Agency will allow label directions for control of *Fannia* fly species. Since California has indicated that they will not use Larvadex®, the level of risk described in the April 27, 1984 **Federal Register** notice will be lowered.

Comment: The State of California Department of Food and Agriculture commented that at higher dosage rates

Larvadex® may not be selective against nontarget organisms in manure.

Response: Scientists in California have informed the Agency that they have data showing no adverse effects to nontarget organisms at the high dosage rate (5 parts per million). These data are currently being forwarded to the Agency by the research entomologist.

Comment: The State of California Department of Health Services and South Dakota State University commented that it would be more desirable to register cyromazine as direct manure spray-on products rather than as feed-through products in order to minimize the residues resulting in food.

Response: The Agency agrees that manure sprays are less likely to result in food residues. However, many poultry houses are constructed in such a manner as to make such applications costly, time consuming, difficult, and less effective. The Agency does not dispute the fact that manure sprays are effective in some situations. In this regard the Agency acknowledges the study by Mulla and Axelrod [Journal of Economic Entomology, 76(3) 520–524, June 1983] submitted by South Dakota State University. However, manure treatments are generally only recommended as spot treatments and selective pressures against manure treatment have been shown to expedite development of resistance. Reports from poultrymen indicate that manure sprays do not work as well as feed-throughs. According to the registrant, Ciba-Geigy Corporation, this is the reason application was made for the feed-through product. The Agency has not received any applications for the use of cyromazine as a manure spray. The information in the **Federal Register** notice only concerns the feed-through uses for which application for registration has been made. See the response below for the Agency's plans regarding a review of feed-through pesticides in general.

Comment: The State of California Department of Health Services commented that the Agency should review feed-through issues before registering Larvadex®.

Response: The Agency had considered developing a statement on the social and technical issues regarding feed-through pesticides in general. However, more recently the Agency has been discussing feed-through products with FDA. Any generic statements of feed-through products must await the outcome of our current discussions with FDA.

Comment: The State of California Department of Health Services commented that Larvadex® is not really a "feed-through" product, since some of the chemical is retained in the eggs and chicken tissue.

Response: The Agency views "feed-through" pesticide products as those that are fed "through" the animals to achieve pest control, rather than being applied externally. All of the pesticide does not have to be excreted for the pesticide to be considered a "feed-through".

Comment: The State of California Department of Health Services commented that there are no data to show human effects of cyromazine and its metabolites.

Response: The Agency neither requires nor encourages the testing of pesticides on humans for any reason. On occasion the Agency may request epidemiological data, but such data are not a routine requirement for pesticide registration, particularly where little use history is possible.

Comment: The State of California Department of Health Services asked if lab methods are accurate for determining residues of cyromazine.

Response: A successful method-try-out (MTO) using the Biorex 9 ion exchange resin in Ciba-Geigy's Method (AG–417) for cyromazine and melamine was completed by EPA, and a successful collaborative study with EPA and the United States Department of Agriculture (USDA) was completed using the same method. However, a letter from FDA indicated that the ion exchange resin, Biorex 9, used in the clean-up column was no longer being produced. Subsequent to the FDA letter Ciba-Geigy substituted Dowex 1–X8 resin for the Biorex 9 resin. EPA has completed a successful MTO on the modified analytical method (AG–417A), using the Dowex 1–X8 ion exchange resin, for determining cyromazine and melamine in poultry tissue and eggs. The only difference between the original method and the modified method is the resins used. The preparation and use of the resins remain exactly the same. There were no problems with the modified method and the recovery in both poultry liver and eggs for cyromazine and melamine are adequate for enforcement purposes.[2]

Comment: Sterling Drug, Inc., the State of California Department of Health Services, and the Natural Resources Defense Council commented that risks may be higher than calculated. They asked what the risk is to children and to members of ethnic groups who eat more eggs than the average and to people who eat eggs from a source that treats feed the year around.

Response: The Agency's oncogenicity risk estimates were calculated several different ways, using twenty-one different estimates of food consumption, including ethnic, age, sex, regional and seasonal estimates for the population. Additionally, estimates for the "high consumers" were made, using (among other data) the data which represented high consumers (95th percentile) for the population. Consumption estimates generated from the EPA Tolerance Assessment System were very close to those found in the USDA Food and Nutrition Service references and were further supported by commodity production estimates of USDA. The estimates include consumption of eggs as an individual food item, as well as eggs in bakery or other food items. All consumption estimates assumed that 47% of the commodity contained the maximum residue throughout the year. If all of the commodity were treated, the risk estimate would only be increased by a factor of 2. No one risk estimate was significantly different from the estimates of risk used in the April 27, 1984, **Federal Register** notice. The data base used was the most current, reputable data base available. They are not "guesses" but are extrapolations from a massive national food consumption survey.

Comment: Sterling Drug, Inc., the State of California Department of Health Services, and the State of California Department of Food and Agriculture commented that there are other sources of cyromazine that may affect the residue levels and risk levels (e.g., temporary tolerances and FIFRA section 18 emergency exemptions).

Response: There are currently in effect no experimental use permits, temporary tolerances, or section 18 exemptions (except for the control of flies where avian flu is a concern). The Agency believes it has taken into account the sources of residues appropriate for the conditional registration of Larvadex® for fly control in the caged layer poultry industry and will evaluate risks from other uses when reviewing applications for those uses.

Comment: The State of California Department of Health Services asked if cyromazine and its metabolites accumulate in foods other than eggs and chicken meat.

Response: When used as a feed-through, cyromazine and its metabolites do not accumulate in other foods. The Larvadex® label places a limitation on the quantity of manure per acre that can

[2] It should be noted by chemists testing for the presence of cyromazine and melamine residues that filter paper may contain melamine and present a false reading.

be used to insure that residues do not accumulate in the crops. The very limited plant residue studies submitted with applications for section 18 exemptions indicate that foliar application of cyromazine to lettuce, tomatoes, celery, and carrots lead to less than 1 to 5 parts per million (ppm) of combined residues of cyromazine and melamine (depending on the crop) at 2 to 4 times the proposed application rates. Up to 50% or more of the total residue is melamine.

Comment: The State of California Department of Food and Agriculture asked whether food tolerances will be established for cake mixes, mayonnaise, etc.

Response: No additional tolerance is required, since the raw egg tolerance covers the processed foods. Many foods are reconstituted by FDA (e.g. dried eggs and cake mixes) before sampling for residue levels in that food item, which means that the residue is not expected to exceed the tolerances in raw eggs. If there are any residues of cyromazine or melamine in mayonnaise, they will be covered by the raw egg tolerance.

Comment: The State of California Department of Health Services asked whether adequate studies have been done on cyromazine and its metabolites in chicken manure after the manure has been applied as a fertilizer to crop land.

Response: The Agency has adequate environmental fate data (which determine the fate of cyromazine and melamine in chicken manure which has been applied as a fertilizer to crop land) to support conditional registration of cyromazine. As indicated above, the applicant has submitted information to satisfy this data requirement.

Comment: The State of California Department of Health Services commented that residue studies should be done for 18 months rather than for 28 days.

Response: The Agency sees no need to require an 18-month study per se. In earlier studies the residues did appear to plateau rapidly. However, the Agency did ask for and has received additional poultry feeding data to determine whether cyromazine and melamine residues have plateaued by 28 days in both chicken meat and eggs and how fast the residues decline after the cessation of dosing. Based on the data from this feeding study and the data from earlier feeding studies the Agency concludes that residues of cyromazine and melamine do plateau by 28 days in both meat and eggs and that the residues in poultry tissue and eggs decline to non-detectable levels (<0.05 ppm) after the birds have been removed from the treated feed for one day and two days, respectively.

Comment: Sterling Drug, Inc., and the State of California Department of Health Services asked if there are, or will be, cyromazine-resistant flies.

Response: The Agency has received data on resistance of flies to cyromazine and that data is currently under review. The Agency would expect that resistance buildup is a possibility with cyromazine, as it is with any insecticide, especially if cyromazine is not used in conjunction with other control measures to circumvent proliferation of a strain of flies which possess genetic characteristics of resistance to cyromazine.

Comment: The State of California Department of Health Services asked whether there are other health hazards possible besides those identified in the studies currently available.

Response: The Agency has no suspicion of any problems and no further toxicological data are required for the registration of Larvadex®.

Comment: Sterling Drug, Inc., the State of California Department of Health Services, the State of California Department of Food and Agriculture, and the Natural Resources Defense Council commented that the teratogenicity NOEL is incorrect, and embryotoxic and fetotoxic effects were not addressed.

Response: As a result of these comments, both the original rat and rabbit teratology studies on cyromazine were re-evaluated. The rat study was found to be acceptable but the rabbit study showed indications of fetotoxic effects at the lowest dose tested. A new rabbit teratogenic study was recently submitted by Ciga-Geigy and reviewed by the Agency. The Agency has determined that positive teratogenic effects were noted at 10 mg/kg/day and that a no-observed-effect level (NOEL) was seen at 5 mg/kg/day. When this NOEL was compared to estimated exposure from single servings of chicken and eggs, the ratio (or margin of safety) was greater than 1,600 for dietary exposure.

Comment: Sterling Drug, Inc. commented that the Agency should consider the risk to the feed mill mixers.

Response: The Agency has considered the risk to the mill mixers. Large operators are heavily mechanized and automated. Any exposure which may occur is expected to be negligible. It is believed that the small operators are mechanized as well and the exposure would be similar to that of the large operators. However, as a condition to registration, the Agency is requiring that exposure information be submitted to more accurately assess the exposure to the mixer.

Comment: The State of California Department of Health Services commented that there is no emergency and therefore no real need for Larvadex® in California; Sterling Drug Inc., the State of California Department of Health Services, and the Natural Resources Defense Council, Inc., commented that there are alternative methods to control flies.

Response: While the Agency provided extensive information on the benefits of cyromazine as background information in the April 27, 1984, **Federal Register** notice, it should be noted that the existence of alternative control methodologies per se cannot legally preclude the conditional registration of cyromazine. Certainly, there are many parts of the country where modern manure management and/or previously registered compounds used as space and residual sprays, including manure treatment and/or baits, will continue to be adequate control measures. For example, the California Department of Health Services said that only 10 percent of California farms present any serious fly problems. This is one of the reasons the Agency speculated that a maximum of 60% of the caged layers would ever actually receive cyromazine treatments. However, as explained in the April 27, 1984, **Federal Register** notice, there are many parts of the country where the most efficient methods of manure management with respect to fly control cannot be practiced due to the age and design of structures or state and local ordinances. Also, some areas are subject to greater infestation pressures due to climate than other parts of the country. Proximity to population centers requires a higher degree of fly control than for poultry operations in rural areas. These reasons all contribute to the fact that the conditional registration of cyromazine will certainly provide relief for those parts of the country where adequate fly control cannot be achieved with other measures. The fact remains that nationwide there have been several cases where poultry operations have been taken to court because of problems with fly management.

Comment: The State of California Department of Health Services asked what monitoring of cyromazine is to be done after registration.

Response: Federal monitoring of cyromazine after registration will be similar to that of other registered pesticides. The Food and Drug Administration and the United States Department of Agriculture will monitor

for residue levels in foods and EPA will investigate any misuse claims that may arise.

Comment: Sterling Drug, Inc., commented that FDA should have the lead for food additives.

Response: Under Reorganization Plan No. 3 of 1970, which created EPA, certain functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act were transferred to EPA. The transferred functions relate to the establishment of tolerances for pesticide chemicals in or on raw agricultural commodities and in processed foods.

Comment: The State of California Department of Health Services asked whether cyromazine is a food additive or only a feed additive.

Response: The Agency is treating cyromazine as a food additive.

Comment: The State of California Department of Food and Agriculture commented that they will not register Larvadex® for general use but only for emergency use.

Response: Section 24(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA) provides for a State to regulate the sale or use of any federally registered pesticide or device in the State, so long as the regulation does not permit any sale or use prohibited by FIFRA. Since California has the most serious little house fly control problem, an action that will severally limit use of the higher dosage rate (to control the little house fly) will further lower the risk estimates provided in the April 27, 1984 **Federal Register** notices and thus will increase the margin of safety.

Comment: The United Food and Commercial Workers International Union commented that the sale of eggs and chicken meat will drop if Larvadex® is registered, because of the public concern about its safety due to melamine.

Response: Larvadex® was used under the Agency's Experimental Use Permit (EUP) program from July 1979 until May 1984 and by 28 States under section 18 of FIFRA from 1981 until the fall of 1983 with no apparent effect on the sale of eggs and chicken meat. The Agency does not believe that the issuance of a conditional registration for Larvadex® will have any significant adverse impact on the poultry and egg market.

Comment: The State of California Department of Health Services, the Natural Resources Defense Council, and the State of California Department of Food and Agriculture commented that the comment period should have been longer than 30 days.

Response: Since a significant number of comments covering a broad range of concerns were submitted during the 30-day comment period provided by the April 27, 1984 **Federal Register** notices, the agency believes the comment period was adequate for allowing interested parties to provide comments. In fact, the Agency accepted and included several comments received through June 15, 1984, which actually extended the comment period for an additional 20 days.

Comment: The Natural Resources Defense Council commented that the American Cyanamid studies were not submitted to any scientific peer review.

Response: The American Cyanamid studies were reviewed by both EPA and FDA scientists. A peer review per se is believed to be unnecessary.

Comment: The Natural Resources Defense Council also asked whether EPA found the protocol for the American Cyanamid studies to be adequate and whether there were a sufficient number of animals used.

Response: The protocols were adequate and there were a sufficient number of animals used. The data were accepted by both FDA and EPA.

Comment: The Natural Resources Defense Council commented that EPA determined that melamine does not exceed the RPAR criteria; National Resources Defense Council believes the RPAR criteria have been exceeded.

Response: The agency agrees with National Resources Defense Council and so stated in the April 27, 1984, **Federal Register** notice (49 FR 18172) "The Agency has determined that melamine, a metabolite of cyromazine, meets or exceeds the rebuttable Presumption Against Registration (RPAR) criteria . . ." The Agency then conducted a risk/benefit analysis for cyromazine and its melamine metabolite and determined that the benefits resulting from the registration of cyromazine would exceed the risks.

Other Information

The Agency received comments from the Cooperative Extension Service, University of New Hampshire; Circle 8 Farms, Buford, Georgia; the North Carolina State University Department of Poultry Science; the Department of Entomology, Fisheries and Wildlife at Clemson University; and Sunnymead Ranch of Idalou, Texas, supporting the Agency proposal and indicating that cyromazine was extremely effective for the control of flies in poultry houses. The University of New Hampshire commenter additionally stated that cyromazine was effective in their trials using intermittent dosing. The commenters from Circle 8 Farms, Sunnymeade Ranch, and the University of New Hampshire further indicated that previously used alternatives had been unsatisfactory for fly control. Comments from Sunnymead Ranch indicated that State laws can in some situations preclude the use of the most desirable manure management techniques from the standpoint of fly control.

The North Carolina State University Department of Poultry Science commented that soldier flies (Family Stratiomyidae) are a problem in broiler breeder houses. The Department of Entomology, Fisheries and Wildlife at Clemson University noted just the opposite—that soldier flies, while liquifying the pit waste and making manure management somewhat more difficult, are not a public health nuisance. The applicant has submitted data on the status of soldier flies as a pest. That data indicate that soldier flies cause serious liquification of manure, making it unmanageable in that it can not be handled or removed by conventional means. Therefore, it is appropriate to maintain soldier flies on the label as a pest to be treated.

Comments from Summymead Ranch of Idalou, Texas, and Sterling Drug, Inc., concerned the Agency's estimation of the number of chickens that would be treated with cyromazine. Sunnymead Ranch of Idalou, Texas indicated that the Agency's estimate that a maximum of 60% of the caged layers would be treated with cyromazine was high and that the actual amount would be closer to 40% due to reduced fly activity in parts of the country with colder climates and due to newer facilities with modern manure management programs, such as lagoon systems. Sterling Drug, Inc., was concerned that the actual amount of chickens treated with cyromazine could be considerably higher if the threat of avian influena increased nationally. The Agency feels that the 60% maximum figure is reasonable. While fewer chickens may indeed be treated, it is better to err on the safe side for the purposes of this proposal. As far as avian influenza is concerned, the Agency has no way of predicting the effects of avian influenza, or any other disease, on the use of fly control measures. The Agency will have to evalaute the use of cyromazine at the time such requests are received.

Cyromazine label comments

In addition to other comments, Ciba-Geigy Corporation has submitted a proposed label for Larvadex® premix and a flyer entitled *Larvadex® Fly Control For Egg Laying Poultry*. The

latter is supplementary material describing the use of Larvadex®, alternative chemical and non-chemical methods of fly control, mechanisms for monitoring fly populations, and interrupted feeding programs for both monitored and unmonitored situations. Specifically, treatments are recommended as 4 to 6 weeks of feeding for both monitored and unmonitored populations of fly maggots. Retreatment should be initiated when fly maggot activity is again apparent for operations with monitored manure pits. For unmonitored situations, interrupted use of 5 to 7 days on and 7 days off is recommended.

The proposed label for the use of Larvadex® Premix includes a paragraph after the recommendations for continuous feeding which indicates that alternate feeding programs may be utilized. This label, however, recommends a continuous feeding program as the primary option in the directions for use and then gives statements regarding interrupted treatment schedules and fly monitoring and management programs.

As discussed above the Agency has received several comments regarding the success of intermittent feeding programs for cyromazine, but has received no data indicating failures for such dosing techniques when the birds have received an adequate initial treatment (4 to 6 weeks). As this treatment option offers a potential for reducing cyromazine residues in meat and eggs as compared to continuous feeding for the entire fly season, the Agency will require that interrupted method of dosing be incorporated into the directions for use.

The Agency believes that the incorporation of label statements regarding sanitation, the use of alternative treatments, and the monitoring of larval populations, along with the use of interrupted applications of Larvadex® are all integral parts in reducing the overall amount of cyromazine used and hence the residues of cyromazine destined to appear in the meat and eggs from treated poultry. The currently proposed label does not give sufficient detail concerning these important items and is therefore unacceptable. The Agency therefore, is requiring that the wording in *Larvadex® Fly Control For Egg Laying Poultry* be included in the labeling as part of the directions for use. This presents to the user much greater detail in regards to the range of treatment and management options available according to the type of poultry operation involved, emphasizing the integration of sanitation, adulticiding, and fly monitoring; with interrupted treatments of Larvadex® as the method of use for the subject product. The labeling should also contain a description of the appropriate doses for the pests to be controlled. The phrase, "and continue treatment through the fly season", which appears in the directions for use of the present proposed label must be deleted as a condition for registration.

Agency Decision

Based on a review of the data and comments submitted in response to the Agency's April 27, 1984, proposal, EPA has decided to issue a conditional registration for the use of cyromazine. The conditional registration is being issued on the basis that feed mill mixers exposure information be submitted by December 31, 1985. The Agency determined that the benefits of the use of cyromazine outweigh any risk of use of the conditional registration. The Agency also has decided to issue tolerances to cover residues of cyromazine in poultry and eggs, and a food additive regulation to allow Larvadex® to be sold or used as feed additive. The tolerances for residues in poultry are being set at the level of detection.

Because all oncogenicity studies on cyromazine inself were negative, because the bladder tumors were only found at the highest dose in one study on melamine, and because of the very low exposure levels that would result to man from this use of cyromazine, the Agency has concluded that the weight of evidence strongly supports the thesis that the oncogenic risk to man is nonexistent or, at worse extremely low. The Agency does not believe that the doses of melamine to which any human is likely to be exposed will lead to the formation of either bladder stones or bladder tumors. The Agency also believes that an adequate margin of safety (>1600) for teratogenic effects exists based on a NOEL of 5 mg/kg/day from the rabbit teratology study.

Elsewhere in this issue of the **Federal Register**, the Agency has issued: (1) a final rule establishing tolerances for residues of cyromazine in or on eggs, poultry (chicken layer hens only) meat, fat, and poultry meat by-products and (2) a final rule establishing a feed additive regulation to permit residues of the insecticide cyromazine in or on poultry feed.

As a condition of registration, this notice requires that exposure information to assess the risk to the feed mill mixers must be submitted to the Agency by December 31, 1985.

The Agency has determined that the label must specify:

The front panel must contain the statement:

For fly control in and around caged (chicken) layer operations only.

Note.—Do not feed Larvadex®-treated feed to broiler poultry.

Meat and eggs from breeders treated with Larvadex® are not to be used for food.

Larvadex® use is limited to use as a feed-through in chickens only and may not be fed to any other poultry species.

Manure from chickens fed Larvadex® may be used as a soil fertilizer supplement. Do not apply more than 5 tons of manure per acre per year. Do not apply to small grain crops that will be harvested or grazed.

Incorporate the wording from the Ciba-Geigy Corporation publication "Larvadex® Fly Control for Egg Laying Poultry" into the directions for use section of the labeling.

The larvadex feed formulator must inform the feed user in writing that treated feed must be removed from layers at least 3 days before slaughter. The following label statement is suggested for use on treated feed containers:

This poultry feed is formulated with 5 ppm (0.01 lb./ton) [or 1.5 ppm (0.003 lb./ton) if appropriate] cyromazine. Treated feed must not be fed to layers for a minimum of 3 days (72 hours) before slaughter for food.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Executive Order 12514 of May 14, 1985

Prescribing the Order of Succession of Officers To Act as Secretary of Defense, Secretary of the Army, Secretary of the Navy, and Secretary of the Air Force

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

Part I. *Succession to the Position of Secretary of Defense.*

In the event of the death, disability, or absence of the Secretary of Defense, the incumbents in the Department of Defense positions listed below shall succeed to the position of, and act as, Secretary of Defense in the order indicated:

1. Deputy Secretary of Defense.
2. Secretary of the Army.
3. Secretary of the Navy.
4. Secretary of the Air Force.
5. Under Secretary of Defense for Policy.
6. Under Secretary of Defense for Research and Engineering.
7. Assistant Secretaries of Defense and the General Counsel of the Department of Defense, in the order fixed by their length of service as such.
8. Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as such.
9. Assistant Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as such.

Precedence within a particular group between or among two or more officers having the same date of appointment shall be as determined by the Secretary of Defense at the time of appointment.

Part II. *Succession to the Position of Secretary of the Army.*

In the event of the death, disability, or absence of the Secretary of the Army, the officers designated below shall succeed to the position of, and act as, Secretary of the Army in the order indicated:

1. Under Secretary of the Army.
2. Assistant Secretaries of the Army, in the order fixed by their length of service as such.
3. Chief of Staff, United States Army.
4. Vice Chief of Staff, United States Army.
5. Commanding General, U.S. Army Forces Command.

Part III. *Succession to the Position of Secretary of the Navy.*

In the event of the death, disability, or absence of the Secretary of the Navy, the officers designated below shall succeed to the position of, and act as, Secretary of the Navy in the order indicated:

1. Under Secretary of the Navy.

2. Assistant Secretaries of the Navy, in the order prescribed by the Secretary of the Navy, or if no order is prescribed by the Secretary, then in the order fixed by their length of service as such.

3. Chief of Naval Operations.

4. Vice Chief of Naval Operations.

Part IV. *Succession to the Position of Secretary of the Air Force.*

In the event of the death, disability, or absence of the Secretary of the Air Force, the officers designated below shall succeed to the position of, and act as, Secretary of the Air Force in the order indicated:

1. Under Secretary of the Air Force.

2. Assistant Secretaries of the Air Force, in the order fixed by their length of service as such.

3. Chief of Staff, United States Air Force.

4. Vice Chief of Staff, United States Air Force.

5. The senior Deputy Chief of Staff who is not absent or disabled.

6. The Commander, Air University.

Part V. *Variations in the Order of Succession.*

Without regard to any other part of this Order, except Part VI, the President, or the person acting as President under section 19 of title 3, United States Code, may, in the event of the death, disability, or absence of the Secretary of Defense, appoint any officer designated in Part I of this Order to succeed to the position of, and act as, Secretary of Defense; and that person may, in the event of the death, disability, or absence of the Secretary of a Military Department, appoint any officer designated in the part of this Order that relates to the order to succession in the Department concerned to succeed to the position of, and act as, the Secretary of that Department.

Part VI. *Temporary Nature of Succession/Acting Capacity.*

Succession to office pursuant to this Order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory position held by the successor. An officer shall not succeed to any position under this order if the position that he occupies entitling him so to succeed is held by him in an acting capacity only.

Part VII. *Revocation of Prior Executive Order.*

Executive Order No. 10820 of May 18, 1959, is hereby revoked.

Ronald Reagan

THE WHITE HOUSE,
May 14, 1985.

[FR Doc. 85-12036
Filed 5-15-85; 10:29 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12515 of May 14, 1985

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended, section 604 of the Trade Act of 1974 (19 U.S.C. 2483), and section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), and as President of the United States of America, in order to provide for the continuation, to the greatest extent possible, of preferential treatment under the Generalized System of Preferences (GSP) for articles that are currently eligible for such treatment and that are imported from countries designated as beneficiary developing countries, consistent with the changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which have resulted from the recent enactment of the Trade and Tariff Act of 1984 (Public Law 98–573), it is hereby ordered as follows:

Section 1. In order to take into account the changes made by the Trade and Tariff Act of 1984, Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is further amended as set forth in Annex 1 to this Order.

Sec. 2. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in general headnote 3(c)(iii) of the TSUS, is further amended as set forth in Annex II to this Order.

Sec. 3. General headnote 3(c)(iii) of the TSUS, listing articles tht are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is modified as set forth in Annex III to this Order.

Sec. 4. (a) The amendments made by the paragraphs numbered (b) in Annex I, Annex II, and Annex III to this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after January 1, 1985.

(b) The remaining amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after November 14, 1984.

Ronald Reagan

THE WHITE HOUSE,
May 14, 1985.

Billing code 3195–01–M

ANNEX I

Annex II of Executive Order No. 11888 of November 24, 1975, as amended, is further amended by--

(a)(1) deleting the following TSUS item numbers:

137.84	141.70	670.20
138.40	141.78	792.22

and

(2) inserting in numerical sequence the following TSUS item numbers:

118.35	670.21	792.26
118.45	792.24	

and

(b)(1) deleting the following TSUS item numbers:

684.64	685.20	685.34	708.09
685.10	685.26	685.36	708.29

and

(2) inserting in numerical sequence the following TSUS item numbers:

684.65	684.90	685.37	708.10
684.66	685.06	685.38	708.30
684.67	685.22	707.90	

ANNEX II

Annex III of Executive Order No. 11888 of November 24, 1975, as amended, is further amended by--

(a) inserting in numerical sequence the following TSUS item number:

653.38

and

(b)(1) deleting the following TSUS item numbers:

684.62	685.29	688.15
685.24	685.40	688.43

and

(2) inserting in numerical sequence the following TSUS item numbers:

684.57	685.14	685.25	685.39	688.18
684.58	685.16	685.28	685.40	688.41
684.59	685.18	685.30	688.17	688.42
685.10	685.24	685.32		

ANNEX III

General headnote 3(c)(iii) of the TSUS is modified by--

(a) inserting in numerical sequence the following TSUS item number and country:

653.38	Taiwan

(b)(1) deleting the following TSUS item numbers and countries:

684.62	Hong Kong Taiwan
685.24	Hong Kong Republic of Korea Singapore Taiwan

ANNEX III--Con.

685.29	Hong Kong Republic of Korea Taiwan
685.40	Republic of Korea Taiwan
688.15	Mexico
688.43	Hong Kong Taiwan

and

(2) inserting in numerical sequence the following TSUS item numbers and countries:

684.57	Hong Kong Taiwan
684.58	Hong Kong Taiwan
684.59	Hong Kong Taiwan
685.10	Hong Kong Republic of Korea Taiwan
685.14	Hong Kong Republic of Korea Singapore Taiwan
685.16	Hong Kong Republic of Korea Singapore Taiwan
685.18	Hong Kong Republic of Korea Taiwan
685.24	Hong Kong Republic of Korea Taiwan
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685.39	Republic of Korea Taiwan
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688.17	Mexico
688.18	Mexico
688.41	Hong Kong Taiwan
688.42	Hong Kong Taiwan

[FR Doc. 85-12039
Filed 5-15-85; 10:41 am]
Billing code 3195-01-C

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Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds the positions of special agent, intelligence officer, and intelligence agent to the list of Service positions designated to exercise the powers and duties of an immigration officer.

EFFECTIVE DATE: May 16, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: 633–3048.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service is the only federal law enforcement agency which has not adopted the title of special agent for its investigator positions. Judicial officials have erroneously presumed that Service investigative responsibilities rest solely in the deportation process and Service officers have limited law enforcement powers. In order to sufficiently convey to the public and other agencies the authority and responsibilities of interior enforcement officers, the Service is adding the operational title of Special Agent to the list of positions authorized to exercise the powers and duties of an immigration officer.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management and personnel.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities.

This order is not a rule within the definition of section 1(a) of E.O. 12291 because it relates to agency organization, management or personnel.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Authority delegation (government agencies), Organization and functions (government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103).

2. In § 103.1, paragraph (q) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration Officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention service officer, detention guard, investigator, special agent, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, or senior or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

* * * * *

Dated: May 7, 1985.

Raymond M. Kisor,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 85-11896 Filed 5-15-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-119]

Importation of Cheese

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations in 9 CFR Part 94, which impose prohibitions and restrictions on the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases. Cheese has been exempt from these regulations. This document amends the regulations to provide that the cheese which is exempt from these regulations does not include cheese with liquid or cheese containing certain other items regulated under 9 CFR Part 94. This action is necessary to help ensure that cheese exempted from the regulations and offered for importation into the United States does not present a risk of introducing such animal diseases.

DATES: May 16, 1985. Written comments must be received on or before July 15, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 840, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8379.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD),

viscerotropic velogenic Newcastle disease (VVND), African swine fever, hog cholera, and swine vesicular disease.

Prior to the effective date of this document, § 94.16(a) of the regulations provided that cheese, butter, and butteroil were exempt from the provisions of Part 94. Milk and milk products, other than cheese, butter, and butteroil, are subject to the provisions of § 94.16, which restrict the importation of certain milk and milk products originating in, or shipped from any country designated in the regulations as a country infected with rinderpest or FMD.

It is necessary to amend § 94.16(a) to provide that cheese exempt from the provisions of Part 94 does not include cheese with liquid. It has been determined, based on research and Departmental experience, that cheeses with liquid milk or milk products that had been added after processing, such as ricotta cheese and cottage cheese, may contain rinderpest or FMD virus if from a country infected with rinderpest or FMD. If cheeses with liquid are presented for entry into the United States, it is often impossible to tell upon visual inspection at the port of entry whether the liquid is milk or a milk product and whether the liquid had been added to the cheese after processing.

It was further intended under § 94.16(a) that cheese exempt from the provisions of Part 94 not include cheese containing items regulated by other sections of Part 94, unless the items are independently eligible for importation into the United States under Part 94. These items include, among other things, certain meat of cattle, sheep, other ruminants, or swine regulated because of rinderpest or FMD; carcasses of poultry, game birds, and other birds and parts or products thereof regulated because of VVND; and pork and pork products regulated because of African swine fever, hog cholera, or swine vesicular disease. It has been determined, based on research and Departmental experience, that items regulated by sections of Part 94 other than § 94.16 may present a risk of introducing one or more of the diseases listed above unless they comply with all of the provisions in Part 94 for importation into the United States.

Under the circumstances explained above, it is necessary to amend § 94.16 to provide that the cheese exempt from the provisions of Part 94 does not include cheese with liquid or cheese containing any items regulated by other sections of Part 94 unless the items are independently eligible under the provisions of Part 94 for importation into the United States.

Emergency Action

Dr. J.K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. It is necessary to make this amendment effective immediately in order to help protect animals from the threat of introduction and dissemination of rinderpest, FMD, VVND, African swine fever, hog cholera, and swine vesicular disease.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this emergency action are unnecessary and contrary to the public interest, and good cause is found for making this emergency action effective upon publication. Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

No significant change in the amounts of cheese imported into the United States is anticipated as a result of this action.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Hog cholera, Rinderpest, Swine vesicular diseases.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority for Part 94 is revised to read:

Authority: 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, and 134f; 7 CFR 2.17, 2.51, and 371.2(d), unless otherwise noted.

2. Paragraph (a) of § 94.16 is revised to read:

§ 94.16 Milk and milk products.

(a) The following milk products are exempt from the provisions of this part:

(1) Cheese, but not including cheese with liquid and not including cheese containing any item that is regulated by other sections of this part, unless such item is independently eligible for importation into the United States under this part;

(2) Butter; and

(3) Butteroil.

* * * * *

Done at Washington, D.C. this 9th day of May 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-11827 Filed 5-15-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 85-321]

Facilitation of Modified Conversions

April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations governing modified conversions of mutual insured institutions to stock form. The amendments are intended to facilitate the modified-conversion procedure and enhance its use as a capitalization vehicle.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, (202–

377–6457), J. Larry Fleck, Deputy Director, (202–377–6413), or Julie L. Williams, Director, (202–377–6459) Corporate and Securities Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: In Resolution No. 84–655, dated November 16, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed to amend its regulations governing modified conversions to the stock form of mutual thrift institutions whose deposits are insured by the Corporation ("insured institutions"). *Modified Conversions*, 49 FR 47271 (Dec. 3, 1984). The primary proposed revisions would have: (1) Amended the qualifications guidelines of 12 CFR 563b.36(b)(1) to allow applicants to recognize deferred loan losses and disregard appraised equity capital in determining whether the applicant's regulatory net worth is sufficiently low to justify a modified converson; (2) deleted the requirement that the modified conversion restore the institution to regulatory new-worth compliance on the basis of generally accepted accounting principles ("GAAP") and instead allow the use of regulatory accounting principles ("RAP") in this determination; and (3) allowed insured institutions pursuing modified conversions to limit the preemptive subscription rights of their account holders and other members. Upon reviewing the comment letters and other available information, the Board has determined to adopt these amendments substantially as proposed, with the changes discussed below.

Modified Conversion in General

The authority for the modified-conversion process derives from section 121 of the Garn-St Germain Depository Institutions Act of 1982, which allows the Board to approve stock conversions notwithstanding other provisions of state or federal law, when the Board determines that the converting institution faces severe financial conditions that threaten its stability and conversion is likely to imporve the institution's condition. 12 U.S.C. 1464(p) (1982). Under the Board's modified-conversion regulations, 12 CFR Part 563b, Subpart D (1985), mutual insured institutions experiencing such difficulties may undertake conversions in which the substantive and procedural rights granted to members in converting mutual association by the Board's standard conversion rules may be restricted. *Conversions from Mutual to Stock Form*, 48 FR 15599 (Apr. 12, 1983).

In its standard conversion regulations, contained in Subpart A of 12 CFR Part 563b (1985), the Board has given extensive recognition to the rights and interests of the account holders and other members who are the legal owners of mutual institutions. Subpart A requires the informed approval of members to effect a conversion and gives account holders and other voting members preemptive subscription rights in the stock issued by the converting institution. The standard conversion regulations additionally seek to ensure that a fair price is paid by the subsequent stockholders for their ownership of the institution by mandating that the total price of the stock sold equals the institution's appraised *pro forma* market value. Subpart A seeks to sustain the liquidation interests of account holders by requiring the establishment of a liquidation account for the benefit of account holders in the amount of the net worth of the institution at the date of conversion. Maximum purchase limits and the requirement of widespread stock distribution also serve account holders' interests by preventing parties from using the conversion to acquire control of the institution without premium or gain control of the conversion proceeds to the detriment of account holders and other stockholders.

The conversion approval authority contained in section 121 of the Garn-St Germain act enables the Board to modify the conversion process to meet the needs of institutions whose financial conditions has so deteriorated that standard conversions are not feasible. In order to encourage the development of innovative proposals, the Board declined to promulgate detailed regulations on either the procedural or structural aspects of modified conversions. Subpart D primarily sets forth guidelines for satisfying the statutory requirement of severe financial conditions and provides minimum criteria regarding the structure of modified conversions. The substantive guidelines in 12 CFR 563b.37 generally apply the provisions of Subpart A unless clearly inapplicable, and specifically affirm the preemptive rights of members to purchase all the stock offered in the conversion. Section 563b.37, however, does indicate that modified conversions may be effected without the approval of members and may involve sales of conversion stock at an aggregate price not equal to the *pro forma* market value of the institution as determined by an independent appraiser. To ensure the efficacy of a modified conversion, the current rules require a capital infusion sufficient to bring the converting institution into net-worth compliance calculated by using GAAP rather than RAP.

Proposed Revisions

In Resolution No. 84–655, the Board proposed several amendments to the modified-conversion regulations in order to increase the utility of the modified-conversion procedure. The proposals were primarily the result of discussions between the Board's staff and institutions attempting to structure modified conversions. The Board received thirteen letters in response to its request for comments. Commenters included four insured institutions, one savings and loan holding company, an industry trade group, and the Federal Deposit Insurance Corporation. Commenters uniformly supported the proposal.

1. Qualification Criteria

Among the provisions of the regulations that had been suggested as impediments to using the Subpart D procedure were the current qualification guidelines. Section 563b.36(b) establishes criteria for determinig the existence of the statutory requirement of severe financial difficulties threatening the stability of the applicant. These criteria include: (1) Failure of the institution to meet its regulatory new-worth requirement; (2) a history of recent quarterly losses by the institution referenced to a sliding scale related to net worth; and (3) a demonstration that a standard conversion would not be feasible.

Attention has focused primarily on the initial guideline of failure of the institution to meet its regulatory net-worth requirement. The historic flexibility of the Board's net-worth rules has allowed a number of institutions to satisfy the regulatory net-worth requirements even though the financial prospects of these institutions are not favorable.

A primary cause of this discrepancy is the technique, permitted under RAP, of deferring losses on loans sold. *See* 12 CFR 563c. 14(a) (1985). By establishing a deferred loan-loss account rather than recognizing the loss in the year of sale, insured institutions are able to increase their new worth following a loan sale. Although an institution electing this treatment must demonstrate an intent to use the sale proceeds to improve its future profitability and/or to reduce interest-rate risk, the technique creates a non-earning asset that must be written

off over time and does not of itself improve the institution's operating outlook. While the Board has recently restricted the availability of deferred loan-loss accounting to dispositions of assets acquired prior to October 28, 1984, deferred loan-losses remain a substantial component of the industry's net worth. *See Assets Qualifying for Deferral and Amortization of Grains and Losses*, Resolution No. 85-290, dated April 18, 1985.

In order to allow troubled insured institutions to take advantage of portfolio restructuring opportunities as well as the modified conversion procedure, the Board proposed to amend the qualifications guidelines to disregard deferred loan losses and appraised equity capital in determining whether an applicant's net-worth position supports a finding of severe financial difficulties. Commenters uniformly supported this change and the Board has determined to adopt it as proposed.

In Resolution No. 84-655, the Board additionally proposed to amend the guidelines relating to the amount of losses required to be shown by insured institutions seeking to convert on a modified basis. The current guideline specifies that an institution with more than two-percent net worth must show losses on a GAAP basis for the immediately preceding three quarters, institutions with between one-and two-percent net worth must have GAAP losses in two of the last three quarters, and institutions with less than one-percent net worth need only have one losing quarter in the last three. Because of concern that these guidelines were too rigid and may not provide an accurate indicator of an institution's financial health, the Board proposed to specify instead that an applicant need only show that its current and projected income from continuing operations would not enable it to achieve and maintain the regulatorily required level of net worth without a substantial capital infusion. The proposed formulation is intended to focus on the long-term prospects of the institution rather than its recent operating history. No objection to this proposal was raised by commenters and the Board has determined to adopt it without change.

The Federal Deposit Insurance Corporation ("FDIC") noted in its comment letter that the regulations are not clear on the eligibility of FDIC-insured federal savings banks for modified conversion under § 112 of the Garn-St Germain Act. 12 U.S.C. 1464(o) (1982). Moreover, Subpart D does not address the status of Net Worth Certificates issued by the FDIC in determining such eligibility. The Board has always regarded the Conversion Regulations as applicable to all institutions that meet the definition of an "insured institution" under its rules, which includes federal savings banks chartered under section 112 of the Garn-St Germain Act. 12 CFR 563b.2(a)(18) and 561.1 (1985). However, in response to the FDIC's concerns, the Board is amending § 563.34 to clarify that Subpart D is applicable to conversions under section 5(o) as well as section 5(p) of the Home Owners' Loan Act. The Board is also amending § 563.36(a) to provide that receipt of Net Worth Certifcates from the FDIC presumptively qualifies the institution for modified conversion. In addition, the Board is amending § 563b.36 to clarify that a modified conversion of a federal savings bank the accounts of which are insured by the FDIC may be undertaken when the FDIC certifies, in accordance with section 5(o)(2)(F) of the Home Owners' Loan Act, that severe financial conditions exist that threaten the stability of a savings bank insured by the FDIC and that conversion is likely to improve the financial condition of the savings bank. The Board may then concur in the findings and authorize the conversion if the conversion is in compliance with other applicable requirements of the Board's Conversion Regulations.

2. Sufficiency of Capital Infusion

Under § 563b.37(f), the capital infusion from a modified conversion must be sufficient to bring the converting institution into net-worth compliance calculated on a GAAP basis. As noted in the proposal, this requirement was intended to provide a "benchmark" assurance that the modified conversion would restore the institution to sound operation. Satisfaction of this requirement, however, has proven difficult for institutions that have structured their balance sheets in accordance with regulatory accounting principles. To alleviate this difficulty, the Board proposed to delete GAAP as a standard in favor of RAP net worth for determining the adequacy of the capital infusion. The proposal additionally would have required institutions that disregarded regulatory net-worth items in order to qualify for modified conversion to obtain sufficient capital in the conversion to attain regulatory net-worth levels without these items. Further assurance of the adequacy of the modified-conversion capital infusion would be provided by the requirement of § 563b.37(g) that the infusion be "reasonably sufficient to ensure the financial safety and soundness of the insured institution." 12 CFR 563b.37(g)(2) (1985).

Although this proposed change received no adverse comment, the Board has determined to modify it somewhat in the final rule. To provide a measure for modified-conversion stock sales that ensures that an appropriate amount of new capital is injected into the institution in the conversion, the Board has determined to amend § 563b.37(e) to additionally require that the proceeds from the modified-conversion stock sale exceed the estimated *pro forma* market value of the stock in the converting institution, based on an independent valuation, as provided in § 563b.7. Although such a requirement has not previously been explicitly stated, it has been a natural consequence of the requirement in § 563b.36 that a standard conversion prove impracticable. In the usual case, this has been demonstrated by the inadequacy of a standard conversion capital infusion. However, the Board is of the view that even when the impracticability of a standard conversion can be demonstrated by other means, the value of stock sold in a modified conversion should exceed the value requirement of stock sold in a standard conversion.

3. Preemptive Subscription Rights

Although commenters favorably viewed the proposal to permit restrictions on the preemptive subscription rights of account holders and other members, commenters also raised several issues in this area. Under the proposal, institutions undertaking modified conversions would be allowed to limit subscription rights on a sliding scale tied to the institution's net worth as a percentage of liabilities. For institutions with less than one-percent regulatory net worth, preemptive subscription rights could be limited to between 0 and 20 percent of the offering depending on the institution's actual net-worth position. If an applicant's regulatory net-worth position were between 1 and 2 percent, subscription rights could be limited to between 20 and 50 percent. Finally, for institutions with net worth of between 2 and 3 percent, the required subscription offering would cover between 50-100 percent of the shares offered. As discussed in the preamble to the proposed regulation, the proposal sought to balance the ownership interests of accountholders with the need of converting institutions to provide potential "standby" purchasers with assurance of some control following conversion.

Commenters noted that reference to regulatory net worth may be unclear in view of the modifications in calculating net worth permitted under § 563b.36(b). In addition, it was submitted if net worth for purposes of § 563b.37(g) included such items as deferred loan losses and appraised equity capital, many institutions qualifying for modified conversions would be unable to provide the control assurances to standby purchasers considered necessary for a successful modified conversion.

After further consideration of the matter, the Board has determined to allow insured institutions undertaking modified conversions to eliminate such items as deferred loan losses and appraised equity capital from net worth when calculating the degree to which subscription rights must be conferred. In this manner, the subscription rights of accountholders and other members would be tied to the financial factors that qualified the institution for modified conversion. The Board notes, however, that an election to recognize deferred loan losses that enables an institution to undertake a modified conversion may not be made on a partial basis, and that the recognition of such losses causes a corresponding increase in the total amount of capital that must be raised in the conversion.

Other commenters urged the Board to allow further limitations on the preemptive subscription rights of accountholders in a modified conversion. One commenter advocated the elimination of subscription rights if approved by the members. The commenter submitted that the management of mutual institutions would be in a position to bargain for a better price for the institution if they could guarantee the delivery of control.

The Board is not at this time prepared to amend the modified-conversion regulations to provide such an option, and remains concerned that preemptive subscription rights constitute a necessary attribute of account holders' equity interests. Moreover, the prospect of account-holder subscriptions provides a disincentive to under-valuation of the institution. Any proposal to eliminate preemptive subscription rights must also address these concerns.

The Board is modifying the final regulation to conform to recent changes in the Board's net-worth rules, *Net Worth Requirements of Insured Institutions*, 50 FR 6891 (Feb. 19, 1985). At the time of the proposal, the general net-north requirement was set at a minimum 3 percent of liabilities and the proposal used 3 percent as the maximum figure at which account holder subscription rights could be limited. Under the revised net-worth regulations, however, insured institutions are allowed to reserve against their marginal liability growth at a rate of less than 3 percent, and institutions exceeding their net-worth requirement could conceivably be permitted to limit subscription rights if the modified conversion amendments were adopted as proposed. To avoid such a result, the final version of the rule has been written to more closely tie the permissable limitations on subscription rights to the institution's actual net-worth requirement. As adopted, subscription rights may be limited to between 0 and 20 percent of the offering when the applicant's net worth stands between 0% of liabilities and one-third of the net-worth requirement, 20–50 percent when net worth is between one-third and two-thirds of the requirement, and 50–100 percent when net-worth is between two-thirds and satisfaction (100 percent) of the net-worth requirement.

4. Application Procedures

In addition to the foregoing substantive amendments, the Board proposed several revisions to the modified-conversion applications procedures in order to expedite processing. These proposed revisions included a clarification of the information necessary to obtain permission to file a modified-conversion application. Such materials would include a detailed discussion of the institution's qualification, an outline of the proposed plan of modified conversion, an estimate of proceeds, and a plan of operation following conversion.

Although these proposals received little comment, the Board has determined to make several changes in the final rule. The list of materials required to be filed has been expanded to include a reconciliation statement comparing the institution's net worth with and without deferred loan losses and appraised equity capital. The post-conversion plan of operation could be in summary form although a more detailed business plan would be needed to determine the adequacy of the capital infusion when the formal modified-conversion application is filed.

In addition, the Board is adopting a new provision, § 563b.39, which specifies that the materials required for a modified-conversion application need not include a preliminary offering circular or proxy statement. Instead, modified-conversion applications would include only a plan of conversion, a change-in-control notice or holding company application from any person or company whose projected ownership will exceed regulatory control thresholds, an appraisal report, a business plan, and audited financial statements for the most recent fiscal year. To further expedite processing, the Board is delegating to the General Counsel authority to approve applications for modified conversion by amending § 563b.36 to include a new paragraph (d) delegating to the General Counsel the Board's modified-conversion approval authority under paragraph (a) of that section. The Board is also adopting a new § 563b.40 prohibiting offers and sales of stock in a modified conversion until the Corporation has declared an offering circular effective and delegating that authority to the General Counsel or his designee.

The foregoing amendments will take effect 30 days following publication in the **Federal Register.** The Board has determined that the public notice and comment procedures of 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 are unnecessary, impracticable, and contrary to the public interest with respect to: (1) the amendment to § 563b.37(g), since the amendment essentially codifies past policy and relieves a current restriction; and (2) the amendments to § 563b.36 and the adoption of § 563b.39, since these rules relate to internal agency procedures.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been discussed elsewhere in the supplementary information regarding the amendment.

2. *Small entities to which the rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the rules on small institutions.* To the extent that the rules would affect small institutions, this impact has been discussed elsewhere in the amendment.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as the present rules, tend to limit the utility of the modified conversion procedure. More liberal provisions raise questions of statutory authority.

List of Subjects in 12 CFR Part 563b

Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

1. The authority for 12 CFR Part 563b continues to read:

Authority: Section 5 of the Home Owner's Loan Act, as amended, 12 U.S.C. 1464; sections 402, 403, and 407 of the National Housing Act, as amended, 12 U.S.C. 1725, 1726, 1730; Reorganization Plan No. 3 of 1947, 3 CFR 1071 (1943–48 Comp.).

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart D—Guidelines for Modified Conversion

2. Revise § 563b.34 as follows:

§ 563b.34 Scope of Subpart.

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of insured institutions as authorized or ordered by the Board pursuant to Section 5(p) of the Home Owners' Loan Act, 12 U.S.C. §§ 1464 or of an FDIC-insured savings bank as concurred in by the Board pursuant to Section 5(o) of the Home Owners' Loan Act, 12 U.S.C. 1464(o).

(b) The provisions of this Subpart are not exclusive and may be waived by the Board.

3. Amend § 563b.36 by revising paragraph (a); redesignating paragraph (b) as paragraph (c); adding a new paragraph (b); and revising new paragraphs (c) (1) and (2) and adding a new paragraph (d), as follows:

§ 563b.36 Guidelines for qualification.

(a) The Board may, in its discretion, approve or order a modified conversion if it finds that the following conditions have been met: (1) the insured institution has contracted to receive assistance from the Corporation under section 406 of the National Housing Act or from the Federal Deposit Insurance Corporation under Section 13 of the Federal Deposit Insurance Act; or (2) the Board determines that: (i) Severe financial difficulties exist which threaten the stability of the insured institution, and (ii) the conversion to stock form is likely to improve the financial condition of the institution.

(b) The Board may, in its discretion, concur that an FDIC-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the Federal Deposit Insurance Corporation certifies to the Board in accordance with section 5(p)(2)(F)–(H) of the Home Owner's Loan Act that severe financial conditions exist that threaten the stability of the state-chartered savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

(c) * * *

(1) The insured institution does not meet its regulatory net-worth requirement, *except* that, for purposes of determining compliance, the institution may: (i) disregard the effect of appraised equity capital by following the procedures of § 563b.32 of Subpart C of this part; and (ii) solely for purposes of this paragraph (c), recognize all its losses on sales or other dispositions of mortgage loans, redeemable ground-rent leases or other securities specified in § 563c.14 notwithstanding a prior election under § 563b.12(a) or the exemption under § 563.13(e) of this subchapter;

(2) Current and projected income from operations is not sufficient to restore and maintain the institution's regulatorily required net worth;

* * * * *

(d) *Delegation.* The Board delegates to the General Counsel or his designee its authority under paragraph (a).

4. Revise § 563b.37(e), (f) and (g), as follows:

§ 563b.37 Substantive guidelines.

* * * * *

(e) An insured institution converting under this Subpart D shall sell its stock at an aggregate price greater than the estimated *pro forma* market value of the institution, based on an independent valuation, as provided in § 563b.7 of this Part.

(f) The Board may, in its discretion, approve an application for conversion pursuant to this Subpart if it is demonstrated to the Board's satisfaction, through a submission prepared by an independent investment banking firm or other qualified person, that the net capital to be received from the sale by the converting insured institution of its capital stock pursuant to this Subpart, (1) would bring the insured institution into regulatory net-worth compliance in accordance with the requirements of § 563.13(b) of this Subchapter without including net-worth items excluded pursuant to § 563b.36(c)(1), and (2) would be reasonably sufficient to ensure the financial safety and soundness of the insured institution.

(g) The eligible account holders, the supplemental eligible account holders, and the voting members, if any, of the insured institution converting pursuant to this Subpart shall be granted subscription rights to purchase all of the stock proposed to be issued by the insured institution, in accordance with the rules and regulations of Subpart A of this Part, *except* that such subscription rights may be eliminated or reduced as follows: (1) If the regulatory net worth of the institution is between 0 percent of an institution's liabilities and one-third of its net-worth requirement under § 563.13, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total stock offered, such percentage between 0 percent and 20 percent to be determined on a sliding sale on the basis of the institution's regulatory net worth; (2) if the regulatory net worth of the institution is more than one-third but not in excess of two-thirds of its net worth requirement under § 563.13, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total stock to be offered, such percentage between 20 percent and 50 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth; and (3) if the regulatory net worth of the institution is more than two-thirds of its net-worth requirement but not in excess of the institution's net-worth requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth. In determining its regulatory net worth for purposes of this paragraph, an insured institution may exclude from consideration as net worth items that may be disregarded pursuant to § 563b.36(c)(i) and (ii) of this Subpart.

5. Revise § 563b.38 as follows:

§ 563b.38 Permission to file applications under Subpart D.

(a) *Requirement of prior approval.* No application may be filed under this Subpart D without the prior written approval of the Corporation.

(b) *Application.* Applications for permission to file an application for modified conversion shall be accompanied by a detailed discussion of the institution's qualification for modified conversion, a statement reconciling its net worth under generally accepted accounting principles to its net worth under regulatory accounting principles, an outline of the proposed plan of conversion, an estimate of the amount of capital expected to be raised, and a summary plan of operation of the institution following conversion.

(c) *Delegation.* The Board delegates to the General Counsel or his designee the

authority of the Board under paragraph (a) of this section.

6. Add new §§ 563b.39 and 563b.40 as follows:

§ 563b.39 Application for modified conversion.

(a) An application for modified conversion shall include:

(1) A plan of modified conversion describing the method of stock sale, listing proposed purchasers, and specifying the provisions of Subpart A of this Part for which waiver is sought.

(2) A Change-in-Savings-and-Loan-Control-Act Notice or Savings and Loan Holding Company Act Application for any person or company proposing to acquire shares in excess of the level for which prior notice or approval is required under the regulations implementing those Acts;

(3) An independent valuation of the stock prepared in accordance with § 563b.7 of this part;

(4) A business plan which shall contain the proposed operating policies of the insured institution following conversion; and

(5) Financial statements for the most recent fiscal year prepared in accordance with generally accepted accounting principles.

§ 563b.40 Sale of stock.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Corporation of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(b) *Delegation.* The Board delegates to the General Counsel or his designee the authority of the Corporation to declare a final offering circular effective.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11887 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 563c

[No. 85-290]

Assets Qualifying for the Deferral and Amortization of Gains and Losses

April 18, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations regarding the types of mortgage loans, mortgage-related securities and debt securities that qualify for deferral and amortization treatment under § 563c.14 of the Board's rules for insured institutions. The purpose of the amendment is to prohibit use of this treatment for certain transactions designed to inflate net worth or to avoid the recognition of credit losses while at the same time continuing to provide insured institutions with a means to improve their profitability and reduce their exposure to interest-rate risk. When this amendment was proposed on October 19, 1984, the Board notified the public that it was proposing to apply the amendment as of the publication date of the proposal. Accordingly, the effective date of this amendment is October 28, 1984.

EFFECTIVE DATE: October 28, 1984.

FOR FURTHER INFORMATION CONTACT: Douglas McEachern, Professional Accounting Fellow, Office of Examinations and Supervision, (202-377-6392) or James Underwood, Attorney, Corporate and Securities Division, Office of General Counsel, (202-377-6649), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On October 19, 1984, the Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed an amendment to its regulations limiting the scope of assets that qualify for deferral and amortization of gains and losses (12 CFR 563c.14). The Board had found that, subsequent to the rule's adoption in 1981, certain of its provisions were being construed to allow insured institutions to engage in transactions solely to take advantage of the loss-deferral provisions without enhancing the underlying economic value of the institutions.

The Board continues to believe in the desirability of providing insured institutions with tools to allow them to restructure their operations and adjust to the deregulation of the thrift industry. While providing tools, such as the loss-deferral accounting technique, for these purposes, the Board is, however, particularly intent upon disallowing abusive transactions that either sacrifice the long-term health of the institution or create artificial earnings that have no economic substance. Therefore, after carefully reviewing the comments received and other available information, the Board has determined to adopt the amendments substantially as proposed, with the modification described below.

Comments

The Board received a total of 12 comments on the proposal. Of these, nine were from insured institutions and three were from thrift industry trade groups. The three industry trade groups and two institutions supported the Board's proposal while the balance of the commenters generally expressed reservations about the Board's action or suggested revisions to the proposal.

Two commenters were concerned that the Board's proposed amendment would preclude the use of the loss-deferral regulations for the sale of participation certificates ("PCs") acquired in a swap transaction (with the Federal Home Loan Mortgage Corporation, for example) after October 28, 1984. These commenters noted that the loans collateralizing the PCs would have been purchased or originated prior to October 28, 1984, the proposed effective date of the amendment.

The Board has amended the regulation to clarify that PCs and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under § 563c.14.

Two commenters objected to the proposed elimination of loss deferral in the case of scheduled items. In response, the Board reminds these commenters that, as adopted and subsequently interpreted, the deferred-loss regulation was not intended to permit institutions to avoid recognition of losses that arise from credit risk; the regulation was designed to provide flexibility to institutions dealing with problems related to their portfolios of below-market-interest-rate assets, i.e. losses resulting from disruptive, nationwide interest-rate fluctuations.

Two commenters were concerned that the Board was attempting to retract or rescind the deferred-loss regulation. The proposal, however, was quite clear that the Board was merely proposing to restrict the use of the regulation for certain assets acquired after October 28, 1984, but proposed no retraction or rescission of the regulation for assets acquired before that date.

One commenter objected generally to the proposal and recommended that, rather than restricting management's flexibility, the Board should pursue those it believed were violating the existing regulation or were otherwise engaged in abusive practices. In response, the Board notes the difficulty in requiring corrective accounting if the

regulation may be interpreted as permitting the transaction. In addition, the Board is not persuaded that it would be reasonable to continue to permit the use of this regulation for loans purchased or acquired after October 28, 1984. Institutions have now been provided with a number of tools to deal with old interest-rate losses and manage new interest-rate risks. Institutions that find themselves exposed to interest-rate losses on recently acquired assets should be required to recognize the effects of their actions; these problems were not caused by the rapid deregulation of interest rates.

A commenter recommended, as an alternative approach, that the Board provide for a case-by-case review of transactions involing the disposition of assets acquired after October 28, 1984. The Board has decided not to adopt this recommendation for the reason given above concerning the adequacy of interest-rate risk management tools for currently acquired assets, and for the futher reason that case-by-case review of such a tremendous volume of transactions would be extremely burdensome administratively.

Finally, a trade group suggested that the Board re-examine Memorandum T59-9 "Sale of Loan Servicing Rights," issued by the Board's Office of Examinations and Supervision. The substance of this document is outside the scope of this rulemaking proceeding.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been discussed elsewhere in the supplementary information regarding the amendment.

2. *Small entities to which the rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the amendment.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the rules.

5. *Alternatives to the rule.* Other alternatives, such as rescinding entirely the loss-deferral accounting technique, would be more restrictive and could discourage institutions from prudent restructuring of their portfolios.

List of Subjects in 12 CFR Part 563c

Federal Savings and Loan Insurance Corporation, Accounting, Savings and loan associations.

Accordingly, the Board hereby amends Part 563c, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563c—ACCOUNTING REQUIREMENTS

1. The authority for 12 CFR Part 563c continues to be:

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 1981, 3 CFR 1943-48 Comp., p. 1071.

2. Amend § 563c.14 by revising paragraph (a) thereof, as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses (except for gains and losses related to disposition of scheduled items as defined by § 561.15 of this subchapter, including loans to facilitate sales of foreclosed property), net of related income taxes computed in accordance with generally accepted accounting principles, on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption of a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets. The election to defer gains and losses is restricted to the disposition of assets acquired, purchased, originated or committed to be acquired, purchased or originated prior to October 28, 1984. Participation certificates and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under this section.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11884 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), adopts new regulations and amends existing regulations concerning amendments to Federal land bank association (FLBA) and production credit association (PCA) charters and procedures for effecting mergers or consolidations of such associations. These new regulations and amendments improve the procedures for amending association charters and effecting mergers and consolidations. In addition, the merger and consolidation procedures set forth the requirements for disclosure of information to voting stockholders to ensure that they are adequately informed regarding association merger or consolidation proposals.

EFFECTIVE DATE: Thirty days from this publication date, provided either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Rose M. Ferguson, Office of Examination and Supervision (703) 883-4430

or

Kenneth L. Peoples, Office of the General Counsel (703) 883-4024

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: In the July 20, 1984 **Federal Register** (49 FR 29404-29408), FCA published proposed revisions to its regulations concerning the procedures for amending FLBA and PCA charters and for effecting mergers or consolidations of associations operating under the same title of the Farm Credit Act of 1971, as amended (Act). The comment period closed on September 19, 1984. The FCA received a

large number of comments and requests to extend the comment period to allow for more indepth review of the proposed rules. Due to those requests, the comment period was extended to November 5, 1984. Notification of this extension was published in the September 19, 1984 **Federal Register** (49 FR 36655). A detailed explanation of the proposed amended regulations, 12 CFR 611.1120–611.1125, may be found in the preamble to the proposed rulemaking in the July 20 **Federal Register** (49 FR 29404–29408). The Federal Board considered over 70 comments from Farm Credit System (System) institutions, commercial banks, members of Congress, private attorneys, agricultural organizations, and farmer/borrowers. The Federal Board considered each of the comments received, made changes to the proposed regulations where appropriate, and adopted final regulations at its February 4–6, 1985 meeting.

A large number of the commentators objected to the regulations covering charter amendments, particularly the proposed regulation § 611.1120 setting forth the Governor's authority to direct charter amendments on his own initiative. They alleged that the regulation usurped control of the association from the farmer/owners, violating the Act. Many of these commentators demanded public hearings on the regulations.

The Federal Board believes these commentators have incorrectly read the proposed regulation as authorizing the Governor to require merger or consolidation of associations through charter amendments. While the Act specifically authorizes the Governor to approve association charter amendments or to make charter amendments at his own initiative, 12 U.S.C. 2031, 2091, this authority does not include the power to merge or consolidate associations. Although certain charter amendments may be necessary to effect a merger or consolidation, a merger or consolidation is a form of corporate reorganization which goes beyond amendments to the charter, and which ordinarily requires shareholder approval. However, it should be noted that the Act specifically reserves authority to require merger or consolidation of associations to the Federal Board whenever it determines, with the concurrence of the district Farm Credit board, that an association has failed to meet its outstanding obligations or has failed to conduct its operations in accordance with the Act. The Federal Board believes that this misunderstanding of the purpose and effect of the proposed amendment has been resolved by restructuring and editing the proposed regulation.

The Federal Board does not believe public hearings on these regulations are warranted due to the extended comment period which has afforded active public participation. The FCA is not required to hold public hearings for this informal rulemaking undertaken pursuant to the Administrative Procedure Act. The large number of comments received indicates that an adequate opportunity has been afforded the public for participation in the rulemaking process.

One System institution commented that the approval of the association's supervising bank board should be necessary to approve a charter amendment request under § 611.1121. Another commentator stated that this section should provide for stockholder approval of charter amendments. The Federal Board declined to adopt either suggestion. Bank board approval is not necessary and should not be a prerequisite to Agency action. The Federal Board noted that the regulation does require that the supervising bank review an association's request for a charter amendment and forward it to the FCA with its recommendations. The Federal Board did not think it appropriate to require stockholder approval for charter amendments since the Act does not impose such a requirement.

A large number of commentators made suggestions for changes to proposed new § 611.1122. The regulation specifies the information required to be disclosed to association stockholders when stockholder approval of a merger or consolidation proposal is sought. One System bank suggested that the FCA delegate the responsibility for the merger and consolidation approval process, including the determination of the scope and method of financial disclosure, to the System banks. The Federal Board rejected the suggestion on the belief that approvals of corporate reorganizations and the uniform standards for disclosure of information to stockholders voting on such proposals are Agency actions of a regulatory nature that cannot be delegated. Disclosure standards for mergers and consolidations should follow a Systemwide standard established by FCA regulation.

Two System banks contended that association voting stock is not a security and therefore the disclosure required by the regulation is far too extensive. Alternatively, they suggested that no financial information be sent to stockholders but that the association develop the information and have it available for viewing by interesting members at the association. A representative of some FLBA stockholders went further to assert that the FCA does not have the statutory authority to require such financial disclosure. Other FLBAs argued that the regulations imposing financial disclosure on associations are unnecessary, time consuming, and expensive. A farm credit organization suggested that more financial disclosure to stockholders is needed and stated that FCA would withhold information from the farmer/owners by not requiring distribution of a copy of the merger agreement or bylaws to the stockholders.

The Federal Board did not agree with these positions. The FCA does not base the promulgation of the disclosure regulation on the assumption that voting stock of an FLBA or PCA is a security for purposes of Federal or State securities statutes. The importance of a merger or consolidation decision to stockholders' interests makes it imperative that farmer/borrowers have adequate information available to make informed decisions on the advisability of a proposal. Section 1.1(b) of the Act directs the FCA to encourage participation of the association members in the management, ownership, and control of the associations. Few corporate decisions are more important than a merger or consolidation. The Act authorizes voluntary association merger only with the affirmative vote of a majority of the voting stockholders present and voting or voting by proxy vote for the merger at a duly called meeting at which a quorum is present. The Federal Board believes that it will not have discharged its responsibility to the owners of the Farm Credit System if it does not require dissemination of the minimum information necessary to make an informed decision on a merger or consolidation proposal. The proposed disclosure requirements provide the type of information that any farmer or rancher would want to have in making a decision on whether to acquire a business. The Federal Board believes that stockholders who are asked to approve a transaction that significantly affects their interests should be furnished with the disclosure material along with the proxy solicitation and should not have the burden of obtaining information materials about the proposal.

The FCA's authority to require financial disclosure derives from its authority to approve mergers and consolidations pursuant to section

5.18(a) of the Act. Under that section, the FCA has the power and responsibility to approve mergers or consolidations of FLBAs and PCAs and the consolidation of territories they serve, and to prescribe rules and regulations necessary and appropriate for carrying out these actions. Requiring disclosure of financial information necessary for stockholders to make an informed decision on a merger or consolidation proposal is an important part of the FCA's responsibility to protect both the safety and soundness of System institutions and the rights of its owner/borrowers to information.

A farm credit organization stated that the proposed § 611.1122 has two deficiencies: (1) The FCA will not approve a merger or consolidation until after stockholder action; and (2) the section does not provide for dissenting stockholders' rights. The commentator believes that the FCA has a duty to advise the association members on merger proposals and to assure farmers that all factors of the proposed merger or consolidation meet with the FCA's approval. The commentator believes that the final decision should rest with the stockholder and not a Government agency, and that the stockholders should have the opportunity to present their views prior to the final meeting. The commentator also expressed concern that stockholders are not currently able to obtain stockholder lists to make such communications and do not have the financial or administrative capabilities to present dissenting views.

The Federal Board disagrees that the FCA has a duty to scrutinize a merger or consolidation proposal and evaluate it for borrowers. Associations are privately owned and operated institutions. Stockholders have the responsibility to make their own informed business judgment on whether to vote for a given proposal. The FCA's approval is based on its judgment that the merged entity, based on the information presented by the associations, will be financially viable and able to continue providing adequate agricultural credit and financial services to farmers in the territory. A preliminary FCA approval is given prior to the stockholder vote based on the information available at the time of application. Similarly, the Federal Board does not agree that a merger or consolidation proposal should be presented to stockholders only after the FCA has given it its final approval. Such a procedure would unnecessarily restrict the right of stockholders to alter a proposal as presented because it has already received final regulatory approval. Finally, it is not the responsibility of the FCA to evaluate the merits of a merger or consolidation proposal as it relates to each borrower, nor should the bank, association, or any director, officer, or employee represent that the FCA has passed on the merits of the merger or the effect on particular borrowers. The proposed regulation has been amended to reflect this.

The commentator's demand for dissenters' rights is misplaced. Under general corporate law, dissenters' rights are specifically set forth in the enabling corporate state and allow shareholders who disagree with a proposal for a merger to have the value of their stock determined by independent appraisal and redeemed in cash, rather than having it exchanged for the stock of the continuing association. The Act does not provide for dissenters' rights. Nor are the considerations that underlie such statutory rights present in mergers of solvent associations, since the stock in every System association is purchased and redeemed at the same par value. Where a majority of stockholders approve a merger and thereby bind all stockholders, an unsatisfied stockholder has the option of paying down his or her loan, requesting that the association retire the supporting stock, and seeking financing elsewhere. As for communicating with other stockholders, an association stockholder has the same rights as other stockholders of entities under general corporate law to communicate with fellow stockholders. The FCA has taken the position that an association stockholder has a right to obtain the stockholder list for a proper corporate purpose. However, the issue is not appropriate for a regulation setting forth procedures for effecting mergers or consolidations.

Several System banks suggested new language to permit the supervising bank to determine the list of documents and the type of disclosure required to be given to stockholders voting on a merger or consolidation proposal. The banks believe that this will enable the supervising bank to tailor disclosure to fit a particular proposal. The Federal Board rejected the suggestion on the belief that the FCA must set forth in regulations the minimum Systemwide standard for disclosure of financial information to stockholders in connection with a merger or consolidation vote. The type of required disclosure proposed is minimal. It is relevant in all cases, and should be made available to all stockholders in all mergers and consolidations. There may be cases where additional information must be disclosed to give stockholders a complete picture of the proposal. As a condition of its recommendation on the transaction, the supervising bank may require additional information when it believes that such a condition is present.

Special situations are presented when a proposed merger or consolidation will involve more than three associations. In such cases, the Federal Board believes the FCA should have the discretion to require the supplementation or allow the condensation of certain information to ensure that adequate information is provided to stockholders in a meaningful form, without requiring an unwieldy disclosure package. This is a particularly important point where a proposed merger or consolidation is designed to implement a partial or comprehensive reorganization of association territories within a district. A new paragraph has been added to afford the FCA related flexibility. The amount of information and the level of disclosure will vary depending upon the condition of the constitutent merging or consolidating associations.

Several System banks suggested that the required inclusion in the disclosure to stockholders of a statement that the FCA does not pass on the accuracy or adequacy of the disclosure information be deleted. They asserted that this is not true because the FCA approves the merger. On the other hand, one System bank suggested that an additional phrase be added to the disclaimer to the effect that no representation to the contrary shall be made and that a statement be added prohibiting the making of false or misleading statements. A farm credit organization expressed its view that the FCA's primary role is to audit an association's books to inform stockholders that the information presented on a proposed merger is accurate and adequate for making the decision. The commentator further stated that the FCA should perform an audit and not require the association to spend funds to have an outside party prepare financial statements.

The Federal Board believes that the disclaimer that the FCA has passed on neither the accuracy nor the adequacy of the disclosed information is accurate and appropriate, and should be retained. The responsibility for the accuracy and adequacy of the disclosure to stockholders rests squarely with association management and directors. In approving a merger or consolidation proposal and clearing the disclosure for distribution, the FCA does not guarantee the accuracy of data. That responsibility properly rests with the association which produces the data. The FCA's

approval of a merger or consolidation proposal and the clearance of the disclosure material for distribution does not imply that the information is adequate. When the FCA reviews and approves a proposal, it scrutinizes the information made available by the association in the merger or consolidation application to determine whether the requirements of the regulation are met, whether the disclosure is internally consistent, and whether there is anything to suggest that the information is inaccurate. The proposed regulation set forth only the minimum requirements and are not intended to provide a format for every line item. There may be other facts or financial data that are necessary to state fully the financial condition of the association, and the association is charged with providing any additional information that may be necessary to ensure that the information is not misleading.

The Federal Board does not agree that the FCA should perform a special audit of associations for the stockholders prior to a merger or consolidation. Associations are owned and operated by their farmer borrower/owners. With that ownership goes the responsibility by both directors and stockholders to examine merger proposals closely. Association boards of directors are responsible for ensuring that the information is accurate, and the regulation requires a representation to that effect. The Federal Board does believe that if a board of directors is not comfortable in representing that the data is accurate, it should have the option of obtaining comfort through an opinion of independent accountants, as provided by an amendment to the regulation. However, ultimate responsibility for its accuracy remains with the board. The Federal Board has added a statement prohibiting false and misleading statements.

A spokesman for a family farm organization stated that when the merger of System associations takes place the stockholders should receive adequate equity for their shares, as in the case of a merger of private banks. The commentator stated that the regulations allow the FCA to bring about mergers with less concern for the farmer/owners' rights and equities. Many comments of individual farmer/borrowers stated their position that the regulations limited farmer input into the decision to merge or consolidate and suggested that the regulations be directed toward protecting the rights and interest of the farmer/owners.

The Federal Board does not agree with these commentators and believes that the proposed regulations reflect concern for stockholder equity. The proposed § 611.1123(a) requires that the merger or consolidation agreement set forth a formula for the exchange of equities. Association stock is not precisely equivalent to stock in a private bank in that as there is no reasonable expectation of appreciation, there is no secondary market in the stock, and the stock is transferable only to other eligible borrowers. Voting stock of a solvent association is both acquired and retired at par value. An association's stockholders may receive more than par value only in the unlikely event that the association is liquidated before its surplus has been depleted. The proposed disclosure regulations require that the stock exchange ratio be disclosed, and leave it to the stockholders to evaluate this information and vote on the proposal. The Federal Board believes that the regulations will assure that stockholders are provided with the information necessary to make informed decisions on merger or consolidation proposals, and that these requirements adequately reflect the concern for a stockholder's rights.

One System bank suggested that the phrase "generally accepted accounting practices" (GAAP) is proposed § 611.1122(c)(8) be replaced with "accounting guidelines prescribed by the Farm Credit Administration and the supervising bank" because the associations do not prepare financial statements in all respects in accordance with GAAP. Another System bank believes that the requirement to disclose separately all significant interest-earning assets and interest-bearing liabilities as well as interest and expense accruals in § 611.1122(c)(7) should be eliminated as redundant in view of the requirements in § 611.1122(c)(5), (6), and (8).

The Federal Board agrees that the financial statements of the associations are not prepared in all respects in accordance with GAAP. However, the proposed regulation only requires that the financial position be stated in accordance with GAAP, "except as otherwise qualified." The differences from GAAP must be fully explained in the notes to the financial statements. In addition, the Federal Board believes that the requirement for disclosing interest-earning assets and interest-bearing liabilities separate from other financial disclosure is not redundant, but emphasizes a very important aspect of an association's financial condition.

One bank suggested that the requirement in § 611.1122(c)(8) that the board of directors certify the financial statements of the association should also include a requirement that they be certified by the chief executive officer. Several System banks suggested that the requirement be deleted altogether. One System bank stated that it is the management that bears the responsibility for the financial statements and that any board member would be relying upon the professional staff or outside accountants. One farm credit organization stated that the association board of directors should not be required to make such representation because association directors do not generally have the technical expertise to make such an auditing statement and that the FCA should do an audit and provide the stockholders with an auditing statement and report.

The Federal Board does not agree that management alone bears responsibility for an associations financial statements. An association board of directors is charged with the responsibility of overseeing the management of the association, although day-to-day operations are generally conducted by the officers selected by the directors. Responsibility for the financial condition of the institution rests ultimately with the board. It is not the FCA's function to conduct a financial audit of an association every time the institution pursues a transaction such as a merger or a consolidation requiring an audit. FCA examinations are for the general regulatory and supervisory purpose of protecting the safety and soundness of System institutions, and not for purposes such as facilitating a merger or consolidation proposal. The Federal Board recognizes that many business organizations have outside accounting firms audit the company's financial condition, which provides a level of comfort that the entity's financial statements are accurate. For these reasons, the Federal Board has added an option to § 611.1122(c)(8) permitting an association board to obtain an opinion of an independent accounting firm in lieu of providing the representation of the association's financial condition. This, of course, does not relieve a board of its ultimate responsibility for the association's financial statements. The Federal Board has also adopted the suggestion that the chief executive officer of an association be required, consistent with management responsibilities, to certify the accuracy of the association's financial statements.

One System bank suggested that the requirement in § 611.1122(c)(9) requiring disclosure of information from the latest credit review of the association be replaced with the requirement to disclose nonperforming loans that must be reported to the FCA in accordance with FCA's letter of May 30, 1984. The Federal Board agrees with this comment and has amended the regulation accordingly.

One System bank commented that association information concerning the amount of chargeoffs taken in the previous 2 years in not meaningful to the association members voting on a merger. The institution also did not believe a borrower could obtain any meaningful information from interest rate comparisons of constituent associations, particularly given the power of the board to change interest rates. The Federal Board believes the information regarding the previous 2 years of chargeoff experience is essential to explain the financial statements of the association and to indicate its potential for continuing as a sound institution. In addition, the Federal Board believes that the interest rate comparisons required present a history of incremental changes in the past that may indicate a future trend. This information is valuable to stockholders, notwithstanding the association board's authority to change the interest rate.

A farm credit organization stated that a copy of the entire bylaws should be sent to stockholders in connection with a merger or consolidation proposal in § 611.1123. The Federal Board agrees that stockholders should be able to obtain a copy of the association's bylaws. However, the Federal Board considers this a general right of stockholders and not limited to mergers or consolidations and, therefore, should be the subject of a separate regulation. Accordingly, the Federal Board has developed § 611.1125 to address this issue.

A System institution stated that association directors or officers should not have a right to terminate a merger agreement or consolidation agreement after a stockholder vote for the proposal and that § 611.1123(g) should be amended to reflect this. The Federal Board disagrees with this suggestion. Merger or consolidation agreements for corporations typically give directors or designated officers the authority to terminate a merger or consolidation agreement in case some event occurs making the merger or consolidation less viable. Those reasons are no less applicable here. To prohibit such terminations would unnecessarily restrict the authority of managements and boards of directors and the ability of the associations to develop a favorable merger or consolidation plan.

One System institution suggested that stockholders involved in a territorial transfer as in § 611.1124 should be given the same information as stockholders involved in a merger or consolidation. The Federal Board agrees and has amended proposed § 611.1124 to indicate that stockholders and the holders of participation certificates involved in a territorial transfer have the right to receive the latest financial information relating to both associations. Another System bank believes that it was not intended to require all loans of borrowers to be transferred in a territorial transfer and that the regulation should be amended to reflect this. The Federal Board believes that associations should not be allowed to transfer territory without transferring all loans of borrowers in that territory to the transferee association (unless otherwise approved by the FCA), and the regulation has been amended accordingly.

There were many conditional comments that were technical and editorial in nature. The Federal Board considered each of the comments and adopted the suggestions where appropriate.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

PART 611—ORGANIZATION

As stated in the preamble, it is proposed that Part 611 of Chapter IV, Title 12 of the Code of Federal Regulations, be revised as follows:

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2252).

§ 611.1130 [Removed]

§ 611.1115 [Redesignated from § 611.1140]

2. Subpart F is amended by removing § 611.1130 and redesignating § 611.1140 as § 611.1115.

3. A new Subpart G is added, consisting of § 611.1120 which is revised and redesignated from subpart F to new subpart G, and §§ 611.21–611.25 to read as follows:

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§ 611.1120 General authority.

(a) An amendment to an association charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the association, the location of its offices, or the territory served.

(b) the Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the Farm Credit Administration pursuant to § 611.1121.

(c) The Farm Credit Administration may, by order of the Governor and on its own initiative, make changes in the charter of a Federal land bank association or a production credit association where the Governor determines that the change is necessary for the accomplishment of the purposes of the Act.

§ 611.1121 Charter amendment procedures.

This section shall apply to any request by an association to amend its charter.

(a) An association which proposes to amend its charter shall submit a request to its supervising bank containing the following information:

(1) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(2) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(3) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(4) Any additional information or documents that the association wishes to submit in support of the request or that may be requested by the supervising bank.

(b) Upon receipt of an amendment request from an association, the supervising bank shall review the materials submitted to determine

whether they are responsive to these regulations and shall communicate with the association concerning any deficiency. The bank shall forward the request with attachments, to the Farm Credit Administration, together with the bank's recommendation on the request, the reasons for the recommendation, and any analysis the bank believes appropriate.

(c) Upon receipt of an association's request for a charter amendment forwarded by a supervising bank, the Farm Credit Administration shall review the materials submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the supervising bank of its approval or disapproval of the amendment request, and the supervising bank shall notify the association. A notification of approval shall be accompanied by a copy of the charter, as amended.

§ 611.1122 Requirements for mergers or consolidations.

This section shall apply to any request for approval of a proposed merger or consolidation of associations. A merger involves the combination of one or more associations into a continuing constituent association, which retains its charter and bylaws (except as amended to effect the merger proposal). A consolidation involves the combination of two or more associations into a newly organized association having a new charter and bylaws.

(a) Where two or more associations plan to merge or consolidate, the constitutent associations shall jointly submit a request to their supervising bank containing the following:

(1) In the case of a merger, a copy of the charter of the continuing association reflecting any proposed amendments. In the case of consolidation, a copy of the proposed charter of the new association;

(2) A statement of the reasons for the proposed merger or consolidation, the impact of the proposed transaction on the associations and their stockholders, and the planned effective date of the merger or consolidation;

(3) A certified copy of the resolution of the board of directors of each association approving the merger or consolidation;

(4) A copy of the agreement of merger or consolidation;

(5) All of the information specified in paragraph (e) of this section; and

(6) Any additional information or documents each association wishes to submit in support of the request or that the supervising bank or the Farm Credit Administration requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the supervising bank shall review the materials submitted to determine whether they are responsive to these regulations and shall communicate with the associations concerning any deficiency. When the bank preliminarily approves the request to merge or consolidate, it shall forward the request with attachments to the Farm Credit Administration, together with:

(1) A statement of the reasons for the bank's approval and any analysis the bank believes appropriate; and

(2) Statistical data for each constituent association on credit quality and loan-related assets based on a credit review completed by the supervising bank no earlier than 180 days prior to the date the request for clearance is forwarded to the Farm Credit Administration. The data shall include, at a minimum, the percentage and amount of adversely classified loans. The Farm Credit Administration may waive the 180-day requirement if, in its judgment, the most recent credit review completed by the bank appropriately reflects the credit quality of the loan protfolio of each constituent association as of the date of the request for preliminary approval.

(c) Upon receipt of an association merger or consolidation request from a supervising bank, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the bank, and thereafter by the bank to the constituent associations. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the bank, and thereafter by the bank to the constituent associations. Preliminary approval by the bank or the Farm Credit Administration shall not constitute a definitive approval of the merger or consolidation. Final approval of a merger or consolidation shall be only pursuant to paragraph (g) of this section.

(d) Upon receipt of preliminary approval by the Farm Credit Administration of a merger or consolidation request, each constituent association shall call a meeting of its voting stockholders. The meeting shall be called on written notice to each stockholder entitled to vote on the transaction, and held in accordance with the terms of each association's bylaws. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a merger or consolidation proposal.

(e) One notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the agreement of merger or consolidation and the effect of the proposed merger or consolidation on the associations, their stockholders, the new or continuing board of directors, and the territory to be served. In addition, a copy of the agreement must be furnished with the notice to stockholders.

(3) A summary of the provisions of the charter and bylaws of the continuing or new association that differ materially from the existing charter or bylaw provisions of the constituent associations.

(4) A brief statement by the boards of directors of the constituent associations of the basis for the recommendation that stockholders approve the merger or consolidation.

(5) A description of any agreement or arrangement between a constituent association and any of its officers relating to employment or termination of employment and arising from the merger or consolidation.

(6) A presentation of the following financial data:

(i) A balance sheet and income statement for each constituent association for each of the 2 preceding fiscal years.

(ii) A balance sheet for each constituent association as of a date within 90 days of the date the request for preliminary approval is forwarded to the Farm Credit Administration presented on a comparative basis with the corresponding period of the prior fiscal year.

(iii) An income statement for the interim period between the end of the

last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the preceding fiscal year. The balance sheet and income statement format shall be that contained in the association's annual report to stockholders; shall contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and shall contain appropriate footnote disclosures, including data relating to nonperforming loans and related assets and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

(7) The financial statements (balance sheet and income statement) shall be in sufficient detail to show separately all significant categories of interest-earning assets and interest-bearing liabilities and the income or expense accrued thereon.

(8) Attached to the financial statements for each constituent association, either:

(i) A statement signed by the chief executive officer and each member of the board of directors of the association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with generally accepted accounting principles (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

(9) A presentation for each constituent association regarding its policy on accounting for nonperforming loans together with the number and dollar amount of loans in all nonperforming loan categories, including all nonaccrual, restructured or reduced rate loans, and other high risk loans.

(10) Information on each constituent association concerning the amount of loans changed off in each of the 2 fiscal years preceding the date of the balance sheet, the current year-to-date net chargeoff amount, and the balance in the allowance for loan losses account and a statement regarding whether, in the opinions of management, the allowance for loan losses is adequate to absorb the risk currently existing in the loan portfolio. This information may be appropriately included in the footnotes to the financial statements.

(11) A pro forma balance sheet of the continuing or consolidated association presented as if the merger or consolidation had occurred as of the date on the balance sheets required in paragraph (e)(6) of this section, as recommended to the stockholders. A pro forma summary of earnings for the continuing or consolidated association presented as if the merger or consolidation had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheets.

(12) A description of the type and dollar amount of any financial assistance that has been provided during the past year or will be provided by the supervising bank or other party to assist the constituent or the continuing or new association(s), the conditions on which financial assistance has been or will be extended, the terms of repayment or retirement, if any, and the impact of the assistance on the subject association(s) or the stockholders.

(13) A presentation for each constituent association of interest rate comparisons for the last 2 fiscal years preceding the date of the balance sheet, together with a statement of the continuing or new association's proposed interest rate and fee programs, interest collection policies, capitalization rates, dividends or patronage refunds, and other factors that would affect a borrower's cost of doing business with the continuing or new association. Where agreement has not been reached on such matters, current related information shall be presented for each constituent association.

(14) A description for each constituent association of any event subsequent to the date of the financial statements, but prior to the merger or consolidation vote, that would have a material impact on the financial condition of the constituent or continuing or new association(s).

(15) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the merger or consolidation proposal, or that is necessary to make the required disclosures not misleading.

(16) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(f) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(g) Upon arrival of a proposed merger or consolidation by the stockholder of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the supervising bank for transmittal to the Farm Credit Administration, together with the bank's final approval of the merger or consolidation. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the supervising bank and thereafter by the bank to the constituent associations.

(h) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until cleared by the Farm Credit Administration.

(j) Where a proposed merger or consolidation will involve more than three associations, the Farm Credit Administration may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph shall be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

§ 611.1123 Merger or consolidation agreements.

(a) Like associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the

transaction, including, but not limited to, the following:

(1) The proposed effective date of the merger or consolidation.

(2) The proposed name and headquarters location of the continuing or consolidated association.

(3) The names of the persons nominated to serve as directors until the first regular annual meeting of the continuing or consolidated association to be held after the effective date of the merger or consolidation. Any director of a constituent association may be designated in the agreement to serve as a director of the continuing or consolidated association for a period not to exceed his or her current term, after which he or she must stand for reelection. However, the terms of the agreement must provide for the election of at least one director at each annual meeting subsequent to the effective date of the merger or consolidation. The bylaws of the continuing or consolidated association shall reflect the provisions of the merger or consolidation agreement regarding director terms.

(4) A statement of the formula to be used to exchange the stock of the constituent associations for the stock of the continuing or consolidated association. No fractional shares of stock shall be issued.

(5) A statement of any conditions which must be satisfied prior to the effective date of the proposed transaction, including but not limited to approval by stockholders, the supervising bank, and the Farm Credit Administration.

(6) A statement of the representations or warranties, if any, made or to be made by any association, or its officers, directors, or employees that is a party to the proposed transactions.

(7) A statement of the rights of the constituent associations to terminate the agreement before the effective date.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

§ 611.1124 Territorial adjustments.

Territorial adjustments are subject to the following requirements:

(a) All stockholders, participation certificate holders, and borrowers whose real estate or operations are located in adjusted territories shall be informed in writing of the territory adjustment, and the transfer of their loans to the transferee association. All loans of the transferor association which finance operations located in the transferred territory must be transferred to the transferee association unless otherwise approved by the Farm Credit Administration. Also, the stockholders, participation certificate holders, and borrowers shall be notified of the transfer of their loans and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall be offered which will not affect adversely the interest of the owner. Each stockholder shall be informed that the latest financial and related information of the associations is available for stockholders' review upon written request.

(b) The Agreement of Transfer of Territory and the Notice of Territory Transfer shall give stockholders 60 days from the date of the notice to notify either association in writing of their decision to decline acceptance of the equities of the transferee association and to remain with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except for those applications permitted under § 614.4070 of this chapter.

(c) This section shall not apply to territorial transfers initiated by order of the Governor of the Farm Credit Administration or to territories transferred due to the liquidation of the transferor association.

§ 611.1125 Association articles and bylaws.

Upon request by a stockholder, the association shall provide a copy of the Articles and bylaws of the association to the stockholder.

4. Sections 611.1150 and 611.1160 of Subpart F are redesignated as a new Subpart H and § 611.1160 is redesignated as § 611.1151, the table of contents to read as follows:

Subpart H—Service Organizations

Donald E. Wilkinson,
Governor.

[FR Doc. 85-11836 Filed 5-15-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-5-AD; Amdt. 39-5064]

Airworthiness Directives; Cessna Models 206, P206, U206, 207 and 210 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models 206, P206, U206, 207 and 210 Airplanes, which require inspection, repair and/or modification of the engine induction airbox installation. Loss of engine power has resulted from pieces of the lower forward induction airbox separating from the bottom of the duct and being ingested by the engine. This action will preclude engine power loss caused by induction airbox failures.

EFFECTIVE DATE: June 20, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single-Engine Customer care Service Information Letter, SE84-20 dated November 2, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection, modification and/or replacement of the engine induction airbox installation in certain Cessna 200 airplanes was published in the **Federal Register** on February 28, 1985 (50 FR 8137). This proposal resulted from three

accidents and several incidents involving failure of the lower skin of the engine induction airbox on normally aspirated (non-turbocharged) airplanes. It has been determined that the lower skin failures resulted in airbox fragments being ingested by the engine which effectively blocks the throttle valve and restricts induction air causing a loss of power. These reports indicate that the cracked conditions are not being detected during normal inspection and/or maintenance of the engine installation. In 1981, Cessna Aircraft Company made a production design change on the induction airbox outboard duct by increasing the lower skin thickness from .032 to .040 inches.

To improve in-service airplane airbox integrity and prevent further failures of the airbox, which may result in engine power loss, Cessna Aircraft Company has issued Single Engine Customer Care Service Information Letter SE84–20 dated November 2, 1984, making available for in-service airplanes the improved induction airbox outboard duct having the increased thickness bottom skin. Since this condition is likely to exist or develop in other airplanes of the same type design, the NPRM proposed visual inspections of the outboard induction air duct for cracks and if found, replacement with a new part per the Service Letter or repair of the existing part on certain Cessna Models 206, P206, U206, 207 and 210 airplanes.

Interested person have been afforded an opportunity to comment on the proposal. Two commenters responded. Both commenters concurred with issuance of the AD in its proposed form. However, one commenter stated that the significance of the problem was not specified or documented in the proposed rule. This commenter also stated that the desired information it obtained from the FAA Aircraft Certification Office should have been included in the NPRM. The FAA believes that justification for the proposed rule was adequately set forth in the Notice. In addition more detailed information was available to any interested party as stated in the Paragraph titled "**FOR FURTHER INFORMATION CONTACT:**" Which includes the name and phone number of the FAA, ACO and person directly involved with the proposal. Therefore, the FAA does not concur with this comment.

This commenter also disagreed with the FAA position on the cost to the public for AD compliance being only the initial inspection. The repetitive inspections and eventual parts replacement were in the commenters opinion also included as AD compliance costs. The FAA believes that only the initial inspection is related to the AD compliance because the airplanes may have to have this inspection performed out of sequence with normal inspection intervals. The remaining inspections and eventual parts replacement are (as stated below) expected to be performed in the normal course of proper airplane maintenance and should not be associated with the AD. Therefore, the FAA does not agree with this comment for the reasons stated.

Subsequent to publication of the NPRM, the FAA determined that the repair procedures of paragraph (b) of the proposal should specify a minimum thickness for the repair material. Accordingly, the proposal is adopted without change except for the addition of a minimum thickness specification for the repair procedures.

Discussion

There are approximately 8,000 airplanes affected by the proposed AD at an initial inspection cost of $15 per airplane. Eventually all airplanes are expected to be modified at an approximate cost of $300 per airplane. However, only the initial inspection is considered to constitute unscheduled expense as the repetitive inspection and eventual repair or replacement expenses are considered to be absorbed in the normal cost of airplane operation. Accordingly, the estimated total cost to the private sector of compliance with the proposed AD is $120,000. This cost of compliance with the AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979 and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be otained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13 is amended by adding the following new AD.

Cessna: Applies to Models 206, U206, U206A, U206B, U206C, U206D, U206E, U206F and U206G, (S/Ns 206–0001 thru U20606065); P206, P206A, P206B, P206C, P206D, and P206E, (S/Ns P206–0001 thru P20600647); 207 and 207A, (S/Ns 20700001 thru 20700681); 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M and 210N (S/Ns 21058221 thru 21064226) airplanes certificated in any category which are equipped with Continental Model IO–520–() engines.

Compliance: Required within 100 hours time-in-service after the effective date of this AD and each 100 hours time-in-service thereafter, until modified in accordance with paragraph (b) of the AD. To eliminate the possibility of engine power reduction due to ingestion of pieces of a failed engine induction airbox outboard duct, accomplish the following:

(a) Visually inspect the engine induction airbox outboard duct lower skin for cracks.

(b) If cracks are found, prior to further flight, either replace the induction airbox outboard duct with a Cessna Part Number 1250705–8 duct or repair the skin of the existing duct in accordance with the repair procedures of FAA Advisory Circulars AC 43.13–1A and AC 43.13–2A using material at least .040 inches thick.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Cessna Single Engine Customer Care Service Information Letter SE84–20 dated November 2, 1984, covers the subject matter of this AD.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and § 11.89 of the Federal Aviation Regulations (14 CFR 11.89)

This amendment becomes effective on June 20, 1985.

Issued in Kansas city, Missouri, on May 6, 1985.

Murray E. Smith

Director, Central Region.

[FR Doc. 85–11792 Filed 5–15–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Nos. 84–AWA–13 and 84–AWA–14]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was discovered in the descriptions of new Federal Airways V–554 (50 FR 14089) and V–570 (50 FR 14091) published in the **Federal Register**

on April 10, 1985. This action corrects those errors.

EFFECTIVE DATE: 0901 GMT, June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

Federal Register Documents 85-8592 and 85-8593 were published on April 10, 1985, which redesignated, revoked and established new segments of VOR Federal Airways to enhance the traffic flow within the Albuquerque, Fort Worth, Houston and Memphis Air Route Traffic Control Centers' areas. A mistake was discovered in the descriptions of new airways V-554 and V-570, and this action corrects those errors.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Documents 85-8592 and 85-8593, as published in the **Federal Register** on April 10, 1985, (50 FR 14089 and 14091) are corrected by revising the descriptions of the following airways:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 1.47.

2. Section 71.123 is amended as follows:

V-554 [Revised]

From Natchez, MS, via INT Natchez 310° and Monroe, LA, 160° radials; to Monroe.

V-570—[Revised]

From Alexandria, LA, via Natchez, MS; to McComb, MS.

Issued In Washington, D.C., on May 9, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-11789 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0051]

Listing of Color Additives For Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of an orange dye, C.I. Vat Orange 1 (previously referred to by FDA as dibromodibenzo(*b,def*)chrysene-7,14-dione), for coloring contact lenses. This action responds to a petition filed by Custom Tint Laboratories, Inc.

DATES: Effective June 17, 1985, except as to any provisions that may be stayed by the filing of proper objections; objections by June 17, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of June 17, 1983 (48 FR 27834), FDA announced that a color additive petition (CAP 3C0169) had been filed by Custom Tint Laboratories, Inc., 6020 Six Forks Rd., Raleigh, NC 27609, proposing that the color additive regulations be amended to provide for the safe use of six color additives, including dibromodizenzo(*b,def*)chrysene-7,14-dione, for coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376.)

In the **Federal Register** of July 8, 1983 (48 FR 31374), FDA amended the color additive regulations by listing four of the color additives named in the June 17, 1983 notice. In the July 1983 final rule, as corrected in the **Federal Register** of September 28, 1983 (48 FR 44202), FDA deferred final action with respect to the color additives dibromodibenzo(*b,def*)chrysene-7,14-dione and 6,6'-diethoxy-2,2'-[3*H*3'*H*]b ibenzo[*b*]thiophene-3,3'-dione. The agency is again deferring final action on the latter color additive pending receipt and evaluation of additional studies.

After careful consideration of the description of the substance it has referred to as "dibromodibenzo(*b,def*)chrysene-7,14-dione," FDA has decided that this substance, which imparts a yellowish orange color, is more properly called "C.I. Vat Orange 1." This change in nomenclature is appropriate because the color additive is really a complex mixture with dibromodibenzo(*b,def*)chrysene-7,14-dione as the principal, but not the only, component. The Colour Index number for C.I. Vat Orange 1 is 59105. This document announces FDA's decision on the safety of the use of C.I. Vat Orange 1.

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices where the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of the color additive presented in the petition now before the agency is subject to this listing requirement. The color additive is added to contact lenses in such a way that at least some of the additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed in the eye for several hours a day each day for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time.

III. Analysis of Data

A. Safety of the Color Additive

1. Legal Standard

Under section 706(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color additive is safe for that use. Although what is meant by "safe" is not explained in the general safety clause,

the legislative history makes clear that this word is to have the same meaning for color additives as for food additives.

Safety is defined in the legislative history for the Food Additives Amendment of 1958 as a "reasonable certainty that no harm will result from a proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." S. Rept. 2422, 85th Cong., 2d Sess. 6 (1958). This concept of safety is incorporated in FDA's color additive regulations (21 CFR 70.3(i)). In addition, the anticancer or Delaney Clause of the Color Additive Amendments (section 706(b)(5)(B) of the act) provides that a color additive shall be deemed unsafe and shall not be listed if it is found, after tests that are appropriate for the evaluation of the safety of the additive, to induce cancer in man or animal.

2. Exposure

FDA concludes from the data submitted and from other relevant information that the upper limit of exposure to C.I. Vat Orange 1 from its use in coloring contact lenses is 270 nanograms per day. The agency calculated this upper limit of exposure based on the following factors: First, based on the information submitted by the petitioner, FDA estimated that the maximum use level of C.I. Vat Orange 1 is 50 micrograms per lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) That a user will replace lenses tinted with C.I. Vat Orange 1 once each year with a new pair of lenses tinted with C.I. Vat Orange 1 at the maximum use level, and (2) that 100 percent of the color additive migrates from these lenses into the eye over the 1-year period. Because these assumptions are worst case, exposure to C.I. Vat Orange 1 from its use for coloring contact lenses is likely to be far less than 270 nanograms per day.

3. Toxicology

When presented with a substance whose use will result in the extremely low levels of exposure that the agency estimates will result from the use of C.I. Vat Orange 1 in contact lenses, FDA does not ordinarily consider chronic toxicity testing to be necessary to determine the safety of its use (Ref. 2). FDA has not required such testing here, and no data have been submitted that show this color additive to be a carcinogen. Therefore, the Delaney Clause has no application to this proceeding.

FDA did require the petitioner to conduct an in vitro cytotoxicity test on C.I. Vat Orange 1 and primary ocular irritation studies in rabbits with saline extracts of the tinted lens material. These studies showed no ocular irritation from the saline extracts and no adverse effects in the in vitro cytotoxicity testing.

B. Carcinogenic Constituent

1. C.I. Vat Yellow 4

C.I. Vat Orange 1 may contain a minor amount of the carcinogenic impurity C.I. Vat Yellow 4 (dibenzo(*b, def*)chrysene-7,14-dione). C.I. Vat Orange 1 is manufactured by dibromination of C.I. Vat Yellow 4. Residual amounts of starting materials, such as C.I. Vat Yellow 4, are commonly found among the constituents of a color additive.

In a bioassay conducted for the Carcinogenesis Testing Program of the National Cancer Institute (NCI) (DHEW Publication No. (NIH) 79–1389), a C.I. Vat Yellow 4 commercial formulation was found to be carcinogenic for male B6C3F1 mice, causing an increased incidence of lymphomas. Under the conditions of the bioassay, the formulation was not carcinogenic for male or female Fischer 344 rats or for female B6C3F1 mice. The tested formulation contained 18.2 percent C.I. Vat Yellow 4.

Among male mice in that bioassay, lymphomas occurred at incidences that were dose related ($p=0.002$). Furthermore, in a direct comparison, the incidence of the tumor in the high-dose group was significantly higher ($p=0.019$) than that in the control group (controls 3/20, or 15 percent; low-dose 7/47, or 15 percent; high-dose 22/50, or 44 percent). The incidence of lymphomas and leukemias in historical-control male B6C3F1 mice at the testing laboratory, NCI Frederick Cancer Research Center, Frederick, MD, was 38/323 (12 percent).

2. Prior Action

In the past, FDA often refused to list a color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. The agency now believes, however, that scientific developments and experience with risk assessment procedures make it possible for FDA to approve the use of an additive that contains a carcinogenic chemical but that has not itself been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has listed, on the same basis, the uses of several other color additives that contain carcinogenic impurities, including the use of D&C Green No. 6 for coloring contact lenses (48 FR 13020; March 29, 1983) and the use of D&C Green No. 5 (47 FR 24278; June 4, 1982) and of D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982) for coloring drugs and cosmetics. (See also the advance notice of proposed rulemaking published in the **Federal Register** of April 2, 1982 (47 FR 14464.)

The appropriateness of FDA's decision to list the uses of these color additives is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

The Delaney or anti-cancer clause is not triggered unless the color additive as a whole is found to induce cancer. An additive that has not been shown to induce cancer but that contains a carcinogenic constituent is properly evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

C. Risk Assessment

Using risk assessment procedures to estimate the upper limit lifetime risk presented by the use of C.I. Vat Orange 1 with the expected impurity, the agency has concluded that the color additive is safe under the proposed conditions of use. The risk evaluation consists of two parts: (1) Estimation of exposure to C.I. Vat Yellow 4 from the use of C.I. Vat Orange 1 for tinting contact lenses and (2) extrapolation of the risk from C.I. Vat Yellow 4 observed in the NCI bioassay of that substance to the conditions of exposure in humans.

As explained above, the agency has estimated that the upper limit of exposure to C.I. Vat Orange 1 from its use for tinting contact lenses is 270 nanograms per day. Based on the reaction mechanism for bromination of aromatic compounds, the agency's experience with other brominated color additives, and the extent of bromination of C.I. Vat Orange 1 (bromine content of C.I. Vat Orange 1 is approximately 28

percent, i.e., approximately 1.7 bromines per molecule), the agency concludes that less than 3 percent residual C.I. Vat Yellow 4 will remain in C.I. Vat Orange 1. Based on the 3 percent maximum residual level for C.I. Vat Yellow 4 and the estimated upper limit exposure to C.I. Vat Orange 1 of 270 nanograms per day, the agency estimates an upper limit lifetime-average individual exposure of 8 nanograms per day for C.I. Vat Yellow 4.

FDA has estimated the risk from the C.I. Vat Yellow 4 impurity from use of C.I. Vat Orange 1 for coloring contact lenses by extrapolating from the risk observed at the level of exposure in the NCI-sponsored animal studies to the very low levels of estimated exposure for humans. In this extrapolation, the agency has used a quantitative risk assessment procedure (linear proportional model) similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in D&C Green No. 6 and the other color additives mentioned above. This procedure is not likely to underestimate the actual risk from very low doses. In fact, the estimate of the risk may be exaggerated because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the use of this color additive.

Under this procedure, the upper limit individual lifetime risk from exposure to C.I. Vat Yellow 4 at the level calculated to be the upper limit estimated daily exposure is 3×10^{-11} or less than 1 in 35 billion from the proposed use. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure is expected to be substantially less than the upper limit estimated daily exposure. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to the constituent that results from the use of C.I. Vat Orange 1 in contact lenses.

IV. Certification and Specification Considerations

Based on its consideration of the factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of C.I. Vat Orange 1 is not necessary for the protection of the public health.

The agency has considered whether a specification is necessary to control the amount of C.I. Vat Yellow 4 that may exist as an impurity in the color additive. The agency finds that a specification is not necessary because the upper limit lifetime risk from exposure to the constituent is very low. In addition, exposure to C.I. Vat Orange 1 from use for tinting contact lenses is likely to be substantially less than the estimated upper limit exposure of 270 nanograms per day. Also, the bromination process used to manufacture C.I. Vat Orange 1 (containing approximately 28 percent bromine by weight) is likely to result in substantially less than 3 percent residual C.I. Vat Yellow 4.

V. Conclusion

Based upon the available toxicity data, the small amount of the color additive added to the contact lens, the agency's exposure calculation, and the extremely low risk from the presence of the constituent, FDA finds that the color additive C.I. Vat Orange 1 is safe for use in contact lenses.

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch and can be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum for the Record, November 28, 1984, concerning "CAP 3C0169—Exposure Estimate for Vat Orange 1."

2. Kokoski, C. J., "Regulatory Food Additive Technology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, October 24, 1983, Cambridge, MA.

VII. Objections

Any person who will be adversely affected by the regulation may at any time on or before June 17, 1985 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objection shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or lack thereof will be announced by publication in the Federal Register.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. By adding new § 73.3112 to Subpart D, to read as follows:

§ 73.3112 C.I. Vat Orange 1.

(a) *Identity.* The color additive is C.I. Vat Orange 1, Colour Index No. 59105.

(b) *Uses and restrictions.* (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to

the contact lens in which the color additive is used. A person intending to introduce a device containing C.I. Vat Orange 1 into commerce shall submit to the Food and Drug Administration either a premarket notification in accordance with Subpart E of Part 807 of this chapter, if the device is not subject to premarket approval, or submit and receive approval of an original or supplemental premarket approval application if the device is subject to premarket approval.

(c) *Labeling*. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification*. Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 706(c) of the act.

Dated: May 10, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11928 Filed 5-14-85; 10:47 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No 76N-0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 For Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

Correction

In FR Doc. 85-7768, beginning on page 13017, in the issue of Tuesday, April 2, 1985, make the following correction.

On page 13018 in the second column, in the fourth line of the authority citation, "476" should read "376".

BILLING CODE 1505-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of 13 supplemental new animal drug applications (NADA's) filed for as many sponsoring firms providing for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: May 16, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: The following 13 firms are sponsors of the indicated supplemental NADA's submitted on their behalf by Elanco Products Co.:

NADA and Sponsoring Firm

1. 97-615 Golden Sun Feeds, Inc., 111 South 5th St., Estherville, IA 51334.
2. 97-981 Quali-Tech, Inc., 318 Lake Hazeline Dr., Chaska, MN 55318.
3. 109-816 International Nutrition, Inc., 6664 L St., Omaha, NE 68117.
4. 122-522 Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.
5. 124-391 Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464.
6. 127-506 Heinold Feeds, Inc., P.O. Box 377, Kouts, IN 46347.
7. 127-507 Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338.
8. 128-835 Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369.
9. 129-159 Custom Feed Services Corp., 2100 North 13th St., Norfolk, NE 68701.
10. 129-161 Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850.
11. 129-645 Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 64502.
12. 129-646 I.M.S., Inc., 13619 Industrial Rd., Omaha, NE 68137.
13. 130-465 Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701.

The indicated supplemental NADA's provide for manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for subsequent making of finished swine feeds. The resulting feeds will be used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibrionic), and control swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes)*. The supplemental NADA's are approved and the regulations are amended to reflect the approvals. The basis for approval is discussed in their freedom of information summaries.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10.

2. In § 558.630 in paragraph (b)(3) by removing "024174" and "046987"; in paragraph (b)(8) by removing "016968"; and by revising paragraph (b)(9) and adding new paragraph (b)(10) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(9) To 012286, 022422, and 051359: 5 grams per pound each, paragraph (f)(2)(ii) of this section.

(10) to 016968, 017473, 017790, 018083, 020275, 021780, 024174, 026948, 043727, 043733, 046987, 050568, and 050639: 5, 10, 20, or 40 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

Effective date. May 16, 1985.

Dated: May 7, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-11799 Filed 5-15-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-205 Re: Notice No. 538]

The Hamptons, Long Island Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as The Hamptons, Long Island, located in Suffolk County on the South Fork of Eastern Long Island, New York. The viticultural area includes all of the land areas in the Townships of Southampton and East Hampton. The petition was submitted by a vineyard/bonded winery owner located within the boundaries of the proposed viticultural area. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, ATF Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania, Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name and location of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF was petitioned by Mr. Lyle Greenfield, owner of the Bridgehampton Winery which is located at Bridgehampton, Long Island, New York for the land area of the South Fork of Eastern Long Island known as "The Hamptons, Long Island." The viticultural area consists of all of the land found in the Townships of Southampton and East Hampton (including Gardiners Island) in Suffolk County. The area encompassed by the boundaries consists of 213.2 square miles or 136,448 acres of land that is bounded on the south and east by the Atlantic Ocean. To the north is the Peconic Bay which separates the North Fork of Long Island from The Hamptons. To the west lies the remainder of Long Island where the two forks meet. There are now 55.5 acres of vinifera grapes growing and one bonded winery located within the viticultural area.

The basis for approval of this viticultural area was supported by the following evidence that was submitted by the petitioner:

Historical and current evidence regarding the name and boundaries, provided by the petitioner include:

(a) Historical Evidence of Name

The first English settlers arrived around 1640 to the area now known as The Hamptons. The first town to be established in this area was Southampton which was so named for Henry Wriothesly who was the Earl of Southampton, England. The towns of East Hampton, Bridgehampton, Westhampton and Hampton Bays were established by the late eighteenth century. This area thereafter became known as "The Hamptons," obviously due to the common ending of the major town names and a desire to preserve the area's English heritage. Today this name is commonly used to describe the locality. This is evident by the many publications, businesses and landmark descriptions which use the name "The Hamptons" to distinguish this region from the rest of Long Island, New York.

(1) Viticultural History

For more than 300 years, The Hamptons have been a productive agricultural growing region. Wine grapes had been introduced to Eastern Long Island as early as the 18th Century. Records indicate that vineyards were flourishing in Southampton during Colonial times. Most of the grapes planted in The Hamptons region prior to the 20th Century were cultivated in relatively small vineyards; the grapes and wine which resulted from them were used principally for private consumption. Many of the local Indians, however, may have actually tended vineyards several hundred years earlier.

In 1979, the tradition of grape-growing in The Hamptons region once again came into focus with the installation of 2 vinifera grape plantings.

There are presently 55.5 acres of grapes growing in the viticultural area of which 5 acres are located near the Atlantic Ocean at Sagaponack in the Town of Southampton. All of the grapes are vinifera grapes and almost all of them are now producing a crop.

According to the petitioner, The Hamptons region has potential for vineyard expansion. Current growers are making more land available to them for potential vineyard expansion. In addition, there are still hundreds of acres of prime farmland in the Hamptons region that are available for the planting of grapes in the future.

(b) Evidence of boundaries

The boundaries of "The Hamptons, Long Island" viticultural area may be found on five U.S.G.S. maps. They are titled "Riverhead, N.Y.," 7.5 minute series, scaled at 1:24 000, edition of 1956; "Eastport, N.Y." 7.5 minute series, scaled at 1:24,000, edition of 1956; New York, N.Y.; N.J.; Conn.," U.S. 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979; "Providence, R.I.; Mass.; Conn.; N.Y.," U.S. 1:250,000 series, scaled at 1:250,000 edition of 1947, revised 1969; "Hartford, Conn.; N.Y.; N.J.; Mass.," U.S. 1:250,000 series, scaled at 1:250,000, edition of 1962, revised 1975. Having verified the boundaries, ATF agrees that they meet the requirements for approval of "The Hamptons, Long Island" as an American

viticultural area. The specific description of the boundaries of the viticultural area is found in the regulations which immediately follow this preamble.

Evidence that has been verified by ATF of the geographical characteristics which distinguish "The Hamptons, Long Island" viticultural area from the surrounding areas includes the following information:

The actual geographic area of The Hamptons, although attached to a larger island, may be referred to as a peninsula or fork. This is due to the fact that 3 of it's boundaries are surrounded by water, the Atlantic Ocean to the south and east and the Peconic Bay to the north. The Hamptons region lies entirely in Suffolk County and is governed under the State of New York. The western boundary of The Hamptons, Long Island appellation is the 10 mile long boundary line separating Southampton and Brookhaven Townships. The North Fork consists of the Townships of Riverhead and Southold. The Hamptons (South Fork) consists of the Townships of Southampton and East Hampton (213.2 sq. mi.).

The Hamptons begins roughly where the 2 forks begin to separate. The northern border of The Hamptons has its beginnings at the Peconic River in Riverhead Township and follows the river's path to Peconic Bay. The Peconic Bay accounts for the rest of the northern boundary, meeting the Atlantic Ocean at Montauk Point at the eastern tip of Long Island. Gardiners Island is located off the shore of East Hampton Township. The entire length of The Hamptons is approximately 54 miles from its beginning at the Brookhaven/Southampton Town Line to its end at the tip of Eastern Long Island at Montauk Point. The Hamptons is 10 miles wide at its widest point and less than ½ mile wide at its narrowest point.

(1) Soils

The soils which make up The Hamptons are distinctly different from those of the surrounding areas. The difference in soils occurs fairly abruptly, beginning at the Peconic River and continues eastward to Montauk Point. This also designates the northern boundary for "The Hamptons, Long Island" appellation.

The predominant soil types which are found in the land area north of The Hamptons, commonly known as the North Fork, are as follows:

1. Carver-Plymouth-Riverhead Association. These soils are excessively well-drained and are very sandy. They are located primarily on the perimeter of the North Fork and are usually rolling or sloping in terrain. The natural fertility of these soils is low and the rapid permeability of water through them makes irrigation a desirable option for vineyards in this area.

2. Haven-Riverhead Association. These soils are characteristically deep and somewhat level. They are well-drained and have a medium texture. Most of these soils have a moderate to high water holding capacity and crops respond well to lime and fertilizer when grown in these soils. Due to these factors, this soil association (which is the predominant one of the North Fork) is considered one of the best farming areas in Suffolk County.

The soils of The Hamptons on the other hand are somewhat different and many more soil associations are present:

1. Plymouth-Carver Association. These soils are rolling, hilly, deep and excessively drained. Characteristically, scrub oak and other minor trees are found as cover. Permeability is rapid and natural fertility is low. Most of these soils have never been farmed due to these factors and hence they are known to be poor supporters of crops.

2. Bridgehampton-Haven Association. These soils are deep and excessively drained and have a medium texture. It is its depth, good drainage and moderate to high available water-holding capacity that make this soil well-suited to farming. Most of these areas are currently under cultivation of potatoes and vegetables. These soils are the main reason why potato and vegetable growers in The Hamptons have consistently used less irrigation water than their North Fork counterparts.

3. Montauk-Montauk, Sandy variant—Bridgehampton Association. These soils are deep and usually very sloping. Its steep slopes, irregular topography and a high water table limit the potential of this area for conventional farming, but may be very suitable for supporting grapes. Presently, most of this area is either idle or wooded.

4. Montauk, Sandy Variant—Plymouth Association. These soils are excessively drained and coarse textured. Sloping areas within this association also limit conventional farming practices. This loamy-sand is droughty but contains a black surface layer which is high in organic matter content. There is no indication that grapes cannot be grown on these soils.

5. Montauk-Haven—Riverhead Association. These soils are fairly well-drained and are located mainly on the northern side of The Hamptons along the Peconic Bay. The surface layer is a silt loam, with a fine sandy loam found at deeper levels. These soils are very deep and well suited to cultivation.

6. Dune-Land-Tidal Marsh—Beach Association. The remainder of the soils in The Hamptons consist of these types of soils which make up the beach and marshland areas, both of which are unsuitable for farming.

As was previously stated, the soils of the North Fork and The Hamptons are quite different. At the Town of Riverhead where the forks meet, there is still some slight separation of the different soil associations. To the west of The Hamptons, the soil associations of Long Island tend to become less restricted to a distinct geographic area and much more intermingling and blending of soil series can be found. Along with this fact, there are the soils making up the "spine" of Long Island, known as the "Pine Barrens." These "Pine Barrens" run east and west down the center of Long Island. The Pine Barrens are an untouched pine stand, one of the last wild areas on Long Island. The soils of the "Pine Barrens" can support only short scrubby pine forests. This is the only vegetation found in the light, extremely sandy and unfertile soils found just west of The Hamptons. This land area is the major ground water recharge basin for Suffolk County. This area is presently being considered by New York State for preservation status, due to its importance for Long Island's water supply.

Further west from here through Nassau County and into New York City, the soil associations become more foreign to those found on the eastern end of Long Island. Of major importance, it must also be pointed out that while various soil types found to the west of The Hamptons may be similar to those found there, the encroachment of dense suburban and industrial development on Long Island has made commercial agriculture and land available for it almost non-existent in the townships west of the viticultural area.

The Hamptons contain a greater percentage of silt and loam than the soil series associations found on the North Fork. This accounts for the fact that The Hamptons soils have a greater water-holding capacity than North Fork soils and hence require less irrigation.

(2) Climate

Although The Hamptons and the North Fork are relatively close together, there are many climatic differences which exist between them. These differences are due to the unique topography of the eastern end of Long Island and the relation of the two forks to the Atlantic Ocean.

Most of the climatic data for the eastern end of Long Island is recorded mainly from three weather stations: The Cornell Experimental Station in northern Riverhead (located on the North Fork), the Greenport weather station (located on the North Fork), and the Bridgehampton weather station in The Hamptons (located on the South Fork). The Cornell Station at Riverhead has been recording weather data since the 1950's, while the Bridgehampton Station has been operating for almost half a century.

There are definite climatic differences which exist between the two forks. The winter months are colder on the North Fork. There the colder temperatures average 1½ to 2 degrees (F.) colder than The Hamptons. The reason for this is that the North Fork is further away from the Atlantic Ocean and hence does not receive the warmed southwest winds which come in from the Atlantic Ocean that The Hamptons receive. In the winter, the prevailing winds come from the southwest and are warmed by the Atlantic Ocean. The ocean in the winter has a buffering effect due to its accumulation of heat from the summer and fall months. This wind will therefore buffer the temperature of The Hamptons as it passes over them, however, by the time the wind passes over the colder Peconic Bay and reaches the North Fork, it has lost much of its warmth and hence does little to buffer the temperatures of the North Fork.

By the time spring arrives on Long Island, the ocean has cooled somewhat from the low winter temperatures. Breezes coming from the south at this time of year will therefore become cooled by the ocean, and as they pass over the warming land, a fog will often be produced. This fog will often become trapped on The Hamptons due to the many hills and rolling areas which exist there. Therefore, in the springtime, the North Fork will usually have more sunshine earlier and also have a higher average temperature. This is evident by the fact that the strawberries, sweet corn and potatoes grown on the North Fork begin to grow and ripen earlier than those same crops grown in The Hamptons.

During the summer months the southern breezes coming off the cool ocean will continue to keep average temperatures of The Hamptons lower. As the winds pass over The Hamptons, they travel over the Peconic Bay, which is a smaller body of water and hence warmer. The winds absorb much of the warmth from the bay and therefore cause the average temperatures on the North Fork to be higher than The Hamptons during the summer months. During the summer, the North Fork receives a greater number of thunder and lightning storms. These storms usually arrive from the west, and are pushed over towards the North Fork by the prevailing southeast winds.

During the fall, The Hamptons can also expect cooler temperatures than the North Fork, especially during the night. Otherwise, both forks have the benefit of enjoying a fall season consisting of a lot of sunshine and normal amounts of precipitation. The ocean effect, which alters the climates of both the North and South Fork is considerably reduced west of Riverhead, where the island widens. It is this reason along with the increased blending of soil series, which would keep either fork from being considered part of a larger Long Island appellation.

Although the amount of sunshine and rainfall can have an effect on the length of the growing season, the single most important factor is the number of days between the spring and fall frosts. In data taken from the Riverhead Station on the North Fork and from the Bridgehampton Station in The Hamptons (South Fork), there are definite differences in the frost dates for both forks. During the 6-year period from 1978–1983 the number of days between frosts, or the length of the growing season averaged 195 days on the North Fork and 182 days in The Hamptons. During those years there were anywhere from 1 to over 3 weeks less time for the growing season in The Hamptons as compared to the North Fork.

When this data is further examined, it is seen that this difference occurs mostly between the dates of the last spring frost. The average last frost in The Hamptons is usually around April 23rd, while that on the North Fork occurs around the beginning of April. This spring difference is much greater than the difference between the first fall frosts, which usually occur during the end of October to the beginning of November on both forks. This supports the fact that the growing season gets off to a slower start in The Hamptons.

The use of heat summation of "Growing Degree Days" is also another standard for determining climatic differences in grape-growing areas. Heat-summation is a standard developed by the University of California at Davis, and it is the measurement of the mean monthly temperatures of a single area, above 50° F. The average number of degree days for the North Fork (at Riverhead) and The Hamptons (at Bridgehampton) are as follows:

Riverhead (1941–1970)—2,932
Bridgehampton (1941–1970)—2,531

From the period of 1941 through 1970, the average number of heat summation days for the Riverhead Station placed them between the Regions II and III. During the same period, Bridgehampton was placed between the Region I and II.

The growing degree days for the periods 1973 to 1979 averaged 2,575 for Bridgehampton and 2,987 for Riverhead. During this time the area of the Riverhead Station on the North Fork varied between Regions II and III while the Bridgehampton area varied between Regions I and II.

As far as grape growing areas are concerned, this is a significant difference. In the years 1941–1979, the number of degree days in The Hamptons rarely came close to the number accumulated on the North Fork. This is another distinguishing climate feature which exists between the North Fork and The Hamptons.

The Atlantic Ocean is the main reason for The Hamptons and more so, the North Fork's buffered climate patterns. Heading west, as the two forks merge into the main body of Long Island, the effect of the Atlantic Ocean is greatly diminished. This is evident when data from Bridgehampton is compared with data from specific areas west of the proposed viticultural area. At the Brookhaven National Laboratory located in central Long Island and Patchoque located on the Great South Bay on the south shore, specific comparisons can be made. The Brookhaven National Laboratory located less than 15 miles west of The Hamptons can have as much as 50 days less of a growing season (growing season averages 150 days 1973–1982) than that recorded at Bridgehampton. Patchoque has as much as 36 days less (growing season averages 176 days 1973–1982)) with most seasons being around 1–2 weeks less than Bridgehampton.

The amount of heat summation or growing degree days accumulated in areas to the west of The Hamptons also differs considerably. During the period 1973–1979 the growing degree days averaged 2,403 at the Brookhaven National Laboratory while at Bridgehampton it averaged 2,575 degree days. Over that period the Brookhaven Lab averaged 172 degree days less than Bridgehampton. This significant difference in heat summation correlates with the shorter growing season found at Brookhaven.

The main reason why the climate differs west of The Hamptons is due to the lesser effect of the Atlantic Ocean

on buffering temperatures. As the buffering southwest winds approach western Long Island, they first must travel over a small sliver of land known as Long Beach, Jones Beach and Fire Island. The winds then must travel over the inlets of South Oyster Bay, Great South Bay and Moriches Bay, before traveling over the main body of Long Island. The combination of passing over the narrow, colder, island strips and bays causes a slight loss in the warmth of the winds, thereby lessening its effect in buffering the mainland. By the time the winds travel north, a few miles inward, they have lost a great deal of the warmth they had previously carried and hence do significantly less to control temperatures than the breezes traveling over The Hamptons. The Hamptons and the North Fork are much narrower strips of land than the main body of Long Island, and therefore alter the temperatures of the winds to a much lesser degree than western Long Island. The periods 1973–1981 show Patchogue averaging 4.1 degrees (F.) cooler than Bridgehampton for the same period.

The location of the Western boundary is based on the following evidence:

First and foremost, commercial agriculture, and farmland available for grape-growing are quite limited west of the Riverhead area. The "Pine Barrens" are unsuitable for planting. The remaining areas available for agriculture, to the north and south of the "Pine Barrens," may be suitable for grape growing, however the differences in both soil and climate distinguish this area significantly from The Hamptons. Apart from various soil types having different characteristics, the growing season in this area can be considerably shorter than that found in The Hamptons. The diminished ocean effect in this area, is very inconsistent, allowing for a greater occurrence of late spring and early fall frosts. The consistently shorter growing season, lower amount of heat summation and lower winter minimums, found west of the Town of Riverhead greatly increase the threat of winter injury to the grapes and could force the vintner in this area to carry out cultural practices similar to those used in the colder regions of upstate New York. The Hamptons define an area with unique climatic and geographic conditions, different from the rest of Long Island.

To summarize, it is important that the specific grape growing areas on Long Island be recognized and set apart from one another in order to maintain individuality and also to protect the consumer. The evidence presented in the petition and the notice of proposed rulemaking supports the fact that "The Hamptons, Long Island" region has within its boundaries distinct and unique grape growing conditions which make it a separate American viticultural area.

On the basis of the evidence provided by the petitioner, ATF finds "The Hamptons, Long Island" viticultural area to be a delimited grape-growing region distinguishable by geographical features.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Discussion of Comments

On August 18, 1984, Notice No. 538 was published in the Federal Register within a 45-day public comment period.

In that notice ATF invited comments from all interested parties regarding the proposal to establish "The Hamptons, Long Island" viticultural area.

No comments were received from the public during the comment period.

Having analyzed and evaluated all of the evidence provided by the petitioner, ATF has determined that this viticultural area should be adopted as proposed.

Miscellaneous

ATF does not wish to give the impression by approving "The Hamptons, Long Island" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "The Hamptons, Long Island."

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

PART 9—[AMENDED]

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C.), unless otherwise noted.

Paragraph 1A. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.101 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.101 The Hamptons, Long Island

Par. 2. Subpart C is amended by adding § 9.101 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.101 The Hamptons, Long Island.

(a) *Name.* The name of the viticultural area described in this section is "The Hamptons, Long Island."

(b) *Approved maps.* The appropriate maps for determining the boundaries of "The Hamptons, Long Island" viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) "Riverhead, N.Y.," 7.5 minute series, scaled at 1:24,000, edition of 1956;

(2) "Eastport, N.Y.," 7.5 minute series, scaled at 1:24,000, edition of 1956;

(3) "New York, N.Y.; N.J.; Conn., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979;

(4) "Providence, R.I.; Mass.; Conn.; N.Y., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969, and

(5) "Hartford, Conn.; N.Y.; N.J.; Mass., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1962, revised 1975.

(c) *Boundaries.* The boundaries of the viticultural area are as follows: "The Hamptons, Long Island" viticultural area is located entirely within Eastern Suffolk County, Long Island, New York. The viticultural area boundaries consist of all of the land areas of the South Fork of Long Island, New York, including all of the beaches, shorelines, islands and mainland areas in the Townships of Southampton and East Hampton (including Gardiners Island). The beginning point is found on the "Riverhead, N.Y." U.S.G.S. map on the Peconic River about 2 miles east of Calverton where the Townships of Riverhead, Brookhaven and Southampton meet:

(1) The boundary travels south approximately 10 miles along the Southampton/Brookhaven Township line until it reaches the dunes on the Atlantic Ocean near Cupsogue Beach on the "Eastport, N.Y." U.S.G.S. map.

(2) Then the boundary proceeds east and west along the beaches, shorelines, islands and mainland areas of the entire South Fork of Long Island described on the "New York," "Providence," and "Hartford" U.S.G.S. maps until it reaches the Peconic River near Calverton at the beginning point. These boundaries consist of all of the land found in the Townships of Southampton and East Hampton (including Gardiners Island).

Signed: April 9, 1985.

Stephen E. Higgins,

Director.

Approved: April 26, 1985.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-11897 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior Department.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 29, 1984, Indiana submitted an amendment to its program which consisted of modifications to the Indiana regulations which would establish procedures to be followed in conducting administrative hearings pursuant to the Indiana Administrative Adjudication Act, IC 4-22-11.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of several provisions discussed below. Accordingly, the Director is approving those amendments which are consistent and has notified Indiana, pursuant to 30 CFR 732.17 of additional program amendments which are required. Pursuant to 30 CFR 732.17(f), Indiana must respond to this notification within 60 days.

The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071-32108).

On May 29, 1984 (erroneously reported as May 31, 1984, in the proposed rule **Federal Register** notice) the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment establishes procedures for administrative hearings conducted pursuant to IC 4-22-1, the Indiana Administrative Adjudication Act. In various provisions of Indiana's approved program, reference is made to hearings conducted pursuant to IC 4-22-1.

OSM published a notice in the **Federal Register** on June 26, 1984, announcing receipt of the amendments, and procedures for the public comment period and for requesting a public hearing on the adequacy of the amendment (49 FR 26106). The public comment period ended July 26, 1984. Since no one requested a public hearing, the hearing, scheduled for July 23, 1984, was not held.

During its review of the proposed Indiana amendment, OSM identified several concerns. These were relayed to the State in a letter dated September 17, 1984. The State responded in letters dated October 25 and November 5, 1984, with explanation and modification of the identified provisions, to address OSM's concerns.

On November 23, 1984, OSM published a notice in the **Federal Register** reopening and extending the public comment period on the proposed amendment in light of the State's response (49 FR 46167). The comment period ended on December 10, 1984.

II. Director's Findings

A. General findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Indiana on May 29, 1984, as modified in Indiana's October 25 and November 5, 1984 letters to OSM, meet the requirements of SMCRA and the Federal regulations with the exception of several provisions discussed below. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Unless specifically stated, the

Director approves the revisions to the Indiana program. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be no less stringent than the Act and no less effective than the Federal rules. All of the amended provisions are cited at the end of this notice in the amendatory language for section 914.15 and section 914.16. Indiana has also made non-substantive changes which the Director finds consistent with Federal requirements.

The amendment submitted by Indiana establishes procedures to be followed in conducting administrative hearings pursuant to the Indiana Administrative Adjudication Act, IC 4–22–1.

B. Specific findings

Rules added at 310 IAC 0.5 govern administrative procedures before the Department of Natural Resources. Rules at 310 IAC 0.5–1 establish procedures for conduct by a hearing officer or hearings under the Administrative Adjudication Act.

Indiana has added definitions at Section 1, to define "administrative adjudication," "commission," "department," "hearing officer," and "party" to apply to 310 IAC 0.5–1.

Although the Federal rules do not contain direct counterparts to these definitions, the definitions do not conflict with requirements at 43 CFR Chapter 4 and serve to clarify use of these terms in the Indiana rules. Therefore, the Director finds these definitions to be consistent with Federal requirements.

Section 2 is added to provide that "310 IAC 0.5–1 shall control proceedings in which the ultimate authority appoints a hearing officer in accordance with IC 4–22–1." This section merely establishes where the provisions of 310 IAC 0.5–1 apply and is consistent with Federal requirements at 43 CFR Part 4. The Indiana rules at 310 IAC 0.5–1 Section 3 contain the general requirements for initiating administrative adjudication, for initiating revocation or suspension of permits, and for notification of a hearing officer's address upon appointment of the office. This section contains general requirements which the Director finds consistent with the requirements in 43 CFR Part 4.

Section 4 pertains to the filing and service of documents. It establishes with whom documents shall be filed and upon whom served, and how service shall be made. The Director finds this section consistent with the requirements for filing and service of documents found in 43 CFR Part 4.

Section 5 relates to time periods under 310 IAC 0.5–1, and explains how time periods are computed and when time periods may be enlarged by the hearing office. The Director finds this section consistent with the requirements of 43 CFR Part 4.

Section 6 provides that a party may be represented by an attorney. Section 7 establishes requirements of the contents of a claim. The Director finds these provisions consistent with requirements in 43 CFR Part 4 for representation and filing of a claim.

Section 8 covers response to claims and provides that averments in a claim are automatically deemed by the responding party. A responding party wishing to "assert affirmative defense" or counter claims shall do so in writing 15 days before the hearing. Paragraph (b) provides that a permittee who wishes to contest a permit revocation must file a response within 30 days of receipt of a show cause order. The paragraph also lists what items the response must contain, including an indication of whether a hearing is desired. The Director finds the provisions consistent with 43 CFR Part 4.

Rule 310 IAC 0.5–1 Section 9 establishes provisions for amendment to pleadings and timeframes within which claims may be amended and responses filed. In a letter to the State dated September 17, 1984, OSM pointed out that 310 IAC 0.5–1–9(c) implies that a response to an amended claim is necessary in the provision which states that "a response to an amended claim shall be filed" within a stated period of time. The provisions in Section 8 imply that no response is necessary unless a counter claim is desired. OSM pointed out that these provisions appear contradictory. The State responded in its October 25, 1984 letter that "our interpretation of rule 9(c) is that the 'shall' relates to the fifteen day timeframe for submitting an answer, not to whether or not an answer must be filed." The State said it is willing to revise the rule to read as follows: "The provisions of 310 IAC 0.5–1–8(a) control the filing of a response to an amended claim." This amended language would satisfy OSM's concern, but is not a required change since Indiana's interpretation of the rule as it stands clarifies the requirement.

Section 10 of 310 IAC 0.5–1 concerns pre-hearing conferences and states that the hearing officer may schedule a pre-hearing conference at the request of a party, and shall give at least 5 days notice of the conference. The Director finds this section consistent with the Federal requirements in 43 CFR Part 4.

Section 11, Summary decision, provides that "a party may move for summary decision of all or part of the case" and establishes what actions the hearing officer or ultimate authority may take following such motion. Paragraph (c) of the section provides that nothing in the section obviates the need for the department to make an informal finding encompassing relevant facts. The Director finds this section to be consistent with Federal requirements in 43 CFR Part 4.

Section 12, Dismissal, provides that the hearing officer shall submit an administrative action which the hearing officer determines should be dismissed, as a recommended order of dismissal for final disposition by the ultimate authority. Section 13, Discovery, entitles a party to use the discovery provisions of rules 26 through 37 of the Indiana Rules of Trial Procedure, and establishes relevant provisions. The Director finds these sections consistent with the requirements in 43 CFR Part 4.

Section 14, paragraph (a) of 310 IAC 0.5–1 allows a person to intervene in an action where the person will be affected by the determination of the department or where the right to intervene is otherwise conferred by law (IC 4–22–1, Indiana Administrative Adjudication Act). Paragraph (b) of the section establishes procedures for a person desiring to intervene. In its September 17, 1984 letter to the State, OSM identified a concern with the language of paragraph (a). OSM pointed out that under this provision, the hearing officer is to permit intervention where the person *will be* affected under the Administrative Adjudication Act or where the right to intervene is conferred by law. Under the Federal rules at 43 CFR Part 4.1110, the administrative law judge and the appeals board must grant intervention to a person who had a statutory right to initiate intervention proceedings or who has an interest that is or *may be* affected by the outcome of the proceeding. The Federal rule also states that if the person does not fall into either of these categories, the administrative law judge or the Board is required to consider other specified factors to determine whether intervention is appropriate. OSM pointed out in its letter that the Indiana rule is therefore more exclusionary than the Federal rule and should be amended. OSM also indicated that the State provision only pertains to the hearing officer granting intervention and needs to provide for intervention in a review proceeding before the ultimate authority.

The State responded to these concerns in letters dated October 25, and November 5, 1984. The State said that it does not have statutory authority to use language other than the "will be affected" language, because IC 4–22–1–25 provides that an affected person, for purposes of IC 4–22–1, is one who will be affected. However, the State contends that the rule allows intervention the same as the Federal rule. The State said that the Indiana law and SMCRA confer "broad standing, such that persons who may be affected are allowed to intervene based on a statutory right of intervention." The State said that this statutory right is established in the second part of 310 IAC 0.5–1–14(a) which grants intervention "where the right to intervene is otherwise conferred by law." The State said that this makes it obvious that persons who may be affected under the surface mining law will be allowed to intervene.

Indiana continued that, even if this were not true, the Indiana Court of Appeals, in *Environmental Management Board* v. *Town of Breman*, 458 NE2nd 672, interpreted IC 4–22–1 such that an affected person is any person who may be affected.

The State's third argument is that under IC 13–6–1–1 *et seq.*, any citizen of the State may maintain an action to protect the environment from significant pollution, impairment or destruction. The State maintains that this statute, coupled with its other arguments, makes its regulations no less effective than the Federal requirements.

The Director finds Indiana's explanations inadequate to allow approval of the "will be affected" language. The State's argument that the Indiana Surface Mining law confers broad standing such that persons who may be affected are allowed to intervene based on statutory right of intervention, is not supported by the provisions of the Indiana Surface Mining law. The law is silent as to the right of intervention. Since no statutory provisions were cited by the State supporting its conclusion that its law confers broad standing and intervention rights, the argument must be rejected.

The State's second argument concerning the "Town of Breman" court decision is also rejected. The court in this decision found only that "any aggrieved person" may obtain judicial review of a decision by the Indiana Environmental Management Board. The appellate court merely affirmed the trial court's finding that plaintiffs were "aggrieved" and thus had standing to pursue an action for judicial review. The court, however, did not find that IC4–22–1 includes "any person who may be affected."

Indiana's third argument is that under IC 13–6–1–1 *et seq.*, any citizen of the State may maintain an action to protect the environment from significant pollution, impairment or destruction. This law is more restrictive than the Federal provisions. It applies only to citizens of the State and addresses only situations requiring protection of the environment from "significant pollution, impairment or destruction."

Accordingly, the Director finds 310 IAC 0.5–1–14(a) less effective than the requirements of 43 CFR 4.1110 and requires an amendment to the paragraph to provide for intervention for any person whose interest is or may be adversely affected.

In response to OSM's concern that the rule should apply to an ultimate authority review proceeding as well as to the hearing officer granting prevention, Indiana submitted policy statements which provide that the hearing officer and the ultimate authority will follow 310 IAC 0.5–1–14 in the event they conduct a hearing under IC 13–4.1.

The Director finds that the policy statement submitted by the State dated October 16, 1984, satisifies OSM's concern that 310 IAC 0.5–1–14(a) only pertained to the hearing officer granting intervention, by also providing for intervention in a review proceeding before the ultimate authority.

Section 15 of 310 IAC 0.5–1 concerns trial rules and provides that the hearing officer may apply a provision of the Indiana Rules of Trial Procedure if consented by the parties and if not inconsistent with IC–4–22–1 or 310 IAC 0.5–1. The Director finds this section to be consistent with the requirements of 43 CFR Part 4.

Section 16 covers requirements for award of expenses and attorney fees. It establishes factors to consider when determining whether to make an award and what is a reasonable amount, and establishes timeframes for petitions for and challenges of awards.

OSM in the September 17 letter, pointed out several concerns to the State relating to this section. The State responded to these concerns in its October 25 letter. OSM's first concern as that 310 IAC 0.5–1–16 does not authorize the filing of a petition seeking award of costs as does 43 CFR 4.1290 and does not contain standards for substantiating the amount sought as in 43 CFR 4.1292. Indiana responded that the provisions for filing a petition are at 310 IAC 0.5–1–16(c) and that this rule with IC 13–4.1–11–9 contain all of the provisions of 43 CFR 4.1290. The State said that, although the rules do not specify the type of documentation required to substantiate the amount sought, the petitioner will have the burden of proof. The State also said that 310 IAC 0.5–1–16(b) provides that in determining the amount of attorney fees, the time involved and customary fees for the services are considered.

OSM agrees with this reasoning. The failure to provide specific requirements for substantiating the claim (as in 43 CFR 4.1292) does not render the rule less effective than the Federal rule.

OSM also noted that 310 0.5–1–16 was silent with respect to award against the permittee or the State. OSM asked for assurance that awards may be made against these parties, at least to the extent allowed in 43 CFR 4.1294. In response, the Director, Indiana Department of Natural Resources (IDNR), provided assurance that the rule would allow awards to be made against the permittee or the State to the extent allowed in the Federal rules. The Director, IDNR, stated that "there was no attempt to place such a restriction in the rule, and there is no language in the rule which would allow such a restriction."

OSM remains concerned about awards against the State since there is no indication in the IDNR Director's response of his authority to waive the State's governmental immunity against such awards. The Director, therefore, is requiring that Indiana either submit an Attorney General's opinion concluding that the Director's waiver of the State's immunity is legal and binding upon the State, or amend the provision to provide for awards against the State.

The third concern noted in OSM's letter was that 310 IAC 0.5–1–16(a) states that, in determining whether to make an award, consideration may be given to whether the result would not have been obtained without participation of the person seeking the award. OSM contends that this is less effective than the Federal rule (43 CFR 4.1294) which allows an award if the person made a substantial contribution to the full and fair determination of the issues.

The State responded that, "without this section, the only basis [for award of fees] would have been that the State or the coal company was acting to harass or embarrass the public participant."

OSM is not objecting to the entire paragraph which contains the restrictive phrase, but only to the restrictive phrase itself. Without the phrase the paragraph would read: "In determining whether to make an award for costs and expenses . . . the following factors may be

considered. . . . (2) whether a person seeking the award other than a permittee or the department made a substantial contribution to a full and fair determination of the issues." The provision would then be no less effective than the Federal provision. Therefore, the Director is requiring Indiana to amend its provision accordingly.

Finally, OSM required clarification as to whether a party who prevails only in part would be eligible for an award. The rule at 310 IAC 0.5–1–16(a) states that "no award shall be made except to a prevailing party in the administrative action." A rule which would restrict awards only to a party who prevails on all issues in the administrative action, would be inconsistent with the Federal rule.

The State responded that "the rule will not be interpreted to require that a party prevail on all issues in the case. If a permittee were to successfully have vacated one part of a two-part notice of violation, on the basis that the division issued it for the purpose of harassing the permittee, the permittee could seek its costs and expenses on that portion of the case, even if the division were to successfully defend the second violation."

The Director finds that this response is satisfactory and that it renders this portion of the rule no less effective than the Federal requirement.

III. Public Comments

There were no public comments on this proposed rulemaking.

IV. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory Amendments as submitted on May 29, 1984, including the modifications submitted on October 25 and November 5, 1984, under the provisions of 30 CFR 732.17. As indicated in the findings above, there are a number of provisions which are inconsistent with SMCRA and the Federal regulations. The Director has notified Indiana, pursuant to 30 CFR 732.17, that certain program amendments are required. The State must reply within 60 days after notification by submitting either the text of the proposed amendment or a description of the amendment to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State.

The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: April 25, 1985.

J. Steven Griles,

Deputy Assistant Secretary—Land and Minerals Management.

The authority citation for 30 CFR Part 914 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 914—INDIANA

1. 30 CFR 914.15 is amended by adding a new paragraph (h) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendments are approved effective May 16, 1985, provided they are adopted by the State in the identical form as submitted to and approved by the Office of Surface Mining.

Revisions submitted May 29, 1984, as modified in letters dated October 25, 1984 and November 5, 1984, amending Indiana regulations by adding 310 IAC 0.5 and a policy statement signed on October 16, 1984, and submitted October 25, 1984, with the exception of those provisions identified in section 914.15(c) which require further amendment.

2. 30 CFR 914.16 is amended by adding a new paragraph (c) to read as follows:

§ 914.16 Required Program Amendments.

* * * * *

(c) By July 15, 1985 Indiana shall submit for OSM approval:

(1) An amendment to 310 IAC 0.5–1.14(a) to allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) An opinion from the Indiana Attorney General concluding that the waiver from the Director, IDNR, of the State's immunity from award of fees, is legal and binding on the State; or, an amendment to 310 IAC 0.5–1–16 to provide that an award may be made against the State.

(3) An amendment to 310 IAC 0.5–1–16(a) to delete the phrase which allows consideration of whether the result would not have been obtained without participation of the person seeking the award, in determining whether to make an award for costs and expenses.

[FR Doc. 85–11888 Filed 5–15–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 5–85–01]

Special Local Regulations; Norfolk Harborfest

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for Harborfest 1985. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. These regulations are needed to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate as follows.

a. 9:30 am until 10:30 pm, 7 June 1985
b. 8:00 am until 11:00 pm, 8 June 1985
c. 9:00 am until 6:30 pm, 9 June 1985

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating

Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804-398-6204).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 26 April 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The three-day Harborfest 1985 will consist of numerous water events, including parade of vessels, Coast Guard air-sea rescue demonstration, air shows, jet ski demonstrations, various types of raft and boat races, military vessel and helicopter demonstrations, a pirate ship mock battle, and fireworks. Closure of the waterway for any extended period of time is not anticipated. Thus, commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section is added to read as follows:

§ 100.35-501. Elizabeth River, Norfolk, Virginia.

(a) *Regulated Area:* The waters of the Elizabeth River and its branches from shore to shore, bounded by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) *Special Local Regulations:* Except for participants in the Norfolk Harborfest, or persons or vessels authorized by the Coast Guard Patrol Officer, no person or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations;

(d) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the reviewing platform at Town Point; and

(e) The Coast Guard Patrol Commander has been authorized to stop the event to allow the transit of backed up marine traffic through the regulated area.

(f) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

Dated: May 3, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 85-11870 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1805, 1810, 1815, 1817, and 1852

Interim Changes to the NASA FAR Supplement on Unpriced Options

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Interim rule and request for comment.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulation Supplement, Chapter 18 of the Federal Acquisition Regulations System (see 49 FR 6388) and invites written comments on these interim amendments. The rule revises and strengthens agency criteria for and use of upriced options. In particular, these changes clarify that options must be synopsized; provide conditions to be met before unpriced options may be considered in the selection process and before pricing and excercising unpriced options; provide a solicitation provision to notify offerors that the unpriced option will be considered in the source selection, and provide a contract clause containing the conditions of the unpriced option.

EFFECTIVE DATE: April 1, 1985.

DATE: Comments are due not later than June 17, 1985.

ADDRESS: Comments should be addressed to NASA, Office of Procurement, Procurement Policy Division, (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division, (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION:

Background

NASA has issued interim changes to the NASA FAR Supplement to assure that all acquisition regulations regarding unpriced options are compatible and consistent with existing regulations. Due to urgent and compelling circumstances, these changes are being issued as interim rules without public comment prior to their effectivity.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83-2.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Dated: April 1, 1985.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch. 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—SYNOPSES OF PROPOSED CONTRACTS

2. The introductory text of section 1805.207 is redesignated 1805.207(a) and section 1805.207(b) is added.

1805.207 Preparation and transmittal of synopses.

* * * * *

(b) All options (including unpriced options) must be included in the description required by FAR 5.207(b)(4)(viii); or there must be a separate synopsis of the option as a new procurement prior to its exercise. See FAR 17.207(c)(4).

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1810.004 [Corrected]

3. In FR Doc. 85-7082, appearing at page 11872 in the issue of March 26, 1985, the amendatory language to section 1810.004–71 is corrected by changing the reference in the second line from "1810.011" to "1810.001" and by changing the reference in the third line from "1810.001" to "1810.011."

PART 1815—CONTRACTING BY NEGOTIATION

4. In FR Doc. 85-7082, appearing at page 11872 in the issue of March 26, 1985, in the third column amendatory paragraph 20 is corrected by changing the reference to the removal of 1815.104 in the heading and the first line from "1815.104" to "1815.105."

5. Section 1815.613 is amended by revising section 1815.613–71(b)(1) to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB–5103.6).

* * * * *

(b) *Evaluation and selection procedures.*—(1) *Reponsibility of source selection official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process. In addition, when the RFP contained in the provision at 18–52.217–71, Evaluation of Unpriced Option, the Source Selection Official must, if he intends to have an unpriced option exercised under 18–17.207–71, consider the unpriced option, the proposal's budget estimate for this option, and the Government's most probable cost assessment of this budget estimate.

* * * * *

PART 1817—OPTIONS

6. Section 1817.206–70 is added to read as follows:

1817.206–70 Unpriced options.

This section does not apply to options contained in solicitations issued prior to 1 April 1985, and contracts resulting therefrom. This section applies only to options wherein price or estimated cost and fee are the only undefined elements. If there are other elements of the option that are not fully defined; e.g., quantities or statement of work, the option must be approved by NASA Headquarters, Code HS, prior to synopsis of the solicitation for the basic contract.

(a) The contracting officer may consider an option in the evaluation of a contract proposal (see 1817.208) if—

(1) The documentation specified in FAR 17.205 was provided before issuance of the solicitation;

(2) The option was synopsized (see FAR 17.207(c)(4));

(3) The solicitation specifically provided for how the option would be evaluated (see FAR 15.406–5(c)) and the solicitation included the provision at 1852.217–71, Evaluation of Unpriced Option; and

(4) The solicitation included the clause at 1852.217–72, Unpriced Option.

(b) An option shall not be evaluated if paragraph (a) above is not complied with. Unevaluated options shall not be exercised unless FAR 6.3 is complied with.

7. Section 1817.207–71 is added to read as follows:

1817.207–71 Exercise and pricing of unpriced options.

In exercising an unpriced option that was evaluated in accordance with 1817.206–70, the contracting officer shall provide a preliminary written notice of intent to extend the term of the contract at least 90 (preferably 120) days before the option expires. The notice shall state that the Government anticipates exercise of the option but is not bound to do so, and shall request a cost proposal if a current proposal is not already on hand. Thereafter, the contracting officer shall attempt to negotiate a reasonable price or estimated cost and fee for the option. If agreement is reached, a contract modification shall be issued exercising the option and specifying the price or estimated cost and fee. If agreement cannot be reached before the option must be exercised, the contracting officer shall determine a reasonable price or estimated cost and fee for the option. A unilateral contract modification exercising the option shall be issued and shall set forth the price or estimated cost and fee determined by the contracting officer, state that this determination consititutes a final decision for purposes of the Contract Disputes Act of 1978, and otherwise comply with the requirements of FAR 33.211.

8. Section 1817.208 and 1817.208–70 are added to read as follows:

1817.208 Solicitation provisions and contract clauses.

The provisions and clauses prescribed in FAR 17.208 apply only to priced options. They shall not be included in solicitations or contracts containing unpriced options unless the solicitations or contracts also contain priced options.

1817.208–70 Provisions and clauses for unpriced options.

(a) The contracting officer shall insert the provision at 1852.217–71, Evaluation of Unpriced Option, in solicitations if—

(1) The solicitation contains an unpriced option clause;

(2) The option is not to be exercised at the time of contract award; and

(3) The cost of the option is to be negotiated after the award of the contract.

(b) The contracting officer shall insert the clause at 1852.217–72, Unpriced Option, in contracts if the provision in paragraph (a) above is used, and all terms and conditions in the basic contract, except price or estimated cost and fee, are to apply to the option.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 1852.217 is amended by adding sections 1852.217–71 and 1852.217–72 to read as follows:

1852.217–71 Evaluation of Unpriced Option.

As prescribed in 1817.208–70(a), insert the following provision.

Evaluation of Unpriced Option (Apr 1985)

The Government will evaluate unpriced option(s) for award purposes as one of the Other Factors and separate from the evaluation of the Cost Factors. The offeror shall submit with its proposal a budget estimate for the unpriced option which shall be presented to, and considered by, the Selection Official, along with the Government's most probable cost assessment of this budget estimate.

Evaluation of the option does not obligate the Government to exercise the option, nor does the exercise of the option obligate the Government to accept the budget estimate as a reasonable cost for the option.

(End of provision)

1852.217-72 Upriced Option.

As prescribed in 1817.208-70(b), insert the following clause:

Unpriced Option (Apr 1985)

(a) This clause applies only to optional quantities of supplies or services for which specific prices have not been negotiated at the time of award of the basic contract. Any other option clauses contained in this contract do not apply to such unpriced options.

(b) The Government may extend the term of the contract for the quantities of supplies or services and period specified in the Schedule by written modification of this contract before the current contract performance period expires; provided that the Government shall give the Contractor a preliminary written notice of intent to extend at least 90 days before the option expires. The preliminary notice does not commit the Government to exercise the option.

(c) Except for the price or estimated cost and fee, all other terms and conditions in the contract apply to the option. Upon receipt of the preliminary notice, the parties shall negotiate a reasonable price or estimated cost and fee for the option. The modification exercising the option shall specify the price or estimated cost and fee, if agreed upon. If the price or estimated cost and fee for the option are not agreed upon at the time the Government exercises the option, the Contractor is nevertheless bound to continue performance in accordance with all other terms and conditions, and the parties further agree, in such an event, that a reasonable price or estimated cost and fee for the option shall be determined by the Contracting Officer and shall be set forth in the modification exercising the option. This determination of a reasonable price or estimated cost and fee shall constitute a final decision by the Contracting Officer on a question of fact within the meaning of the Disputes clause in this contract and the Contract Disputes Act of 1978.

(d) If the Government exercises this option, the extended contract shall be considered to include this option. However, the total duration of this contract, including the exercise of any option(s), shall not exceed [1] ——years

(End of clause)

[FR Doc. 85-11773 Filed 5-15-85; 8:45 am]

BILLING CODE 7510-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-7)]

Railroad Exemption—Export Coal

AGENCY: Interstate Commerce Commission.

[1] See FAR 17.204(e).

ACTION: Notice of removal of final rule.

SUMMARY: To comply with a court decision, the Commission removes a regulation that exempted from regulation the transportation by railroads of export coal.

DATES: The Commission's decision is effective on May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's joint decision in Ex Parte No. 346 (Sub-No. 7), *Railroad Exemption—Export Coal,* and Ex Parte No. 346 (Sub-No. 8), *Exemption From Regulation—Boxcar Traffic.* The Commission has found that notice and public procedures are impractical and that this action should be made effective on less than 30 days' notice. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

List of Subjects in 49 CFR Part 1039

Railroads.

1. The authority citation for Part 1039 continues to read:

Authority: 49 U.S.C. 10321(a) and 10505, and 5 U.S.C. 553.)

§ 1039.15 [Removed]

2. In 49 CFR Part 1039, § 1039.15 is removed.

Decided: May 9, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Vice Chairman Gradison commented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-11812 Filed 5-15-85; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1039

[Ex Parte No. 346 (Sub-8)]

Exemption From Regulation—Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of modification of final rule.

SUMMARY: To comply with a court decision the Commission modifies its regulation exempting boxcar traffic from regulation. The modifications exclude joint rates from the exemption and remove provisions authorizing mileage charges for return of empty cars and reclaims of car hire on stored empty cars.

DATE: The Commission's decision is effective on May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's joint decision in Ex Parte No. 346 (Sub-No. 7), *Railroad Exemption—Export Coal,* and Ex Parte No. 346 (Sub-No. 8), *Exemption From Regulation—Boxcar Traffic.* The Commission has found that notice and public procedures are impractical and that this action should be made effective on less than 30 days' notice. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Railroads.

Authority: 49 U.S.C. 10321(a) and 10505, and 5 U.S.C. 553.

Decided: May 9, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Simmons, joined by Commissioner Lamboley, dissented in part with a separate expression. Chairman Taylor commented with a separate expression.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

1. The authority for 49 CFR Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321(a) and 10505, and 5 U.S.C. 553.

2. In § 1039.14(b), a new paragraph (b)(7) is added to read as follows:

§ 1039.14 [Amended]

* * * * *

(b) * * *

(7) Joint Rates.

* * * * *

3. In § 1039.14 paragraph (c), is revised to read as follows:

§ 1039.14 [Amended]

* * * * *

(c) Rail carriers are authorized to negotiate bilateral agreements governing

boxcar car hire rates, empty movements, and storage.

* * * * *

[FR Doc. 85-11811 Filed 5-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012-199]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the incidental longline category in the area south of 36°00′ N. latitude. Closure of this fishery is necessary because the annual catch quota of 115 short tons (st) for this area will be attained by the effective date. The intent of this action is to prevent exceeding the annual quota established for this segment of the fishery and thereby maintain the United States' obligations under the International Commission for the Conservation of Atlantic Tunas.

EFFECTIVE DATES: 0001 hours local time, May 14, 1985, through December 31, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, ext. 325, or David S. Crestin, 617-281-3600, ext. 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal register** on June 17, 1983 (48 FR 27755).

Section 285.22(f)(1) of the regulations provides for an annual quota of 145 short tons (st) of Atlantic bluefin tuna to be taken by vessels permitted in the incidental longline category in the regulatory area. Of this amount, no more than 115 st may be taken in the area south of 36°00′ N. latitude. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported catch of Atlantic bluefin tuna of 100 st, and the recent catch rate, that the annual quota of Atlantic bluefin tuna allocated to vessels permitted in the incidental longline category fishing south of 36°00′ N. latitude will be attained by the effective date. Fishing for and retention of any Atlantic bluefin tuna by these vessels in this area must cease at 0001 hours, local time, on May 14, 1985.

Vessels permitted in the incidental longline category fishing north of 36°00′ N. latitude may continue to fish for and retain Atlantic bluefin tuna until the total annual quota of 145 st is achieved.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: May 13, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-11904 Filed 5-13-85; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of experimental fishing permits.

SUMMARY: This notice announces the issuance of two experimental fishing permits to U.S. fishermen for the harvest of shortbelly rockfish on domestic vessels using modified pelagic trawl gear in the fishery conservation zone (FCZ) off the coasts of Oregon and California. These permits allow experimental fishing which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: April 20, 1985, through April 19, 1986.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150, or Rodney R. McInnis, 213-548-2518.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

Two applications for EFPs to harvest shortbelly rockfish, *Sebastes jordani*, on an experimental basis in the FCZ, one off California and the other off Oregon, have been received and processed by NMFS. The California application was received by the Director, Southwest Region, NMFS, on February 27, 1985, and the Oregon application was received by the Director, Northwest Region, NMFS, on March 7, 1985. Both applicants requested EFPs to authorize the use of modified pelagic trawl gear which has a small-mesh liner in the codend of the net. Current groundfish regulations at § 663.26 prohibit the use of a mesh size smaller than three inches and prohibit the use of double-walled codends in pelagic trawls in the FCZ. Notices acknowledging receipt of these applications, describing the proposals, and requesting public comment were published in the **Federal Register** on March 15, 1985 (50 FR 10525), and on April 4, 1985 (50 FR 13408). No comments were received on either application. Each application was considered by the Pacific Fishery Management Council; one at the March 13, 1985, public meeting and the other at the April 10, 1985, public meeting. The Council recommended that both EFPs be issued. Therefore, NMFS has issued the EFPs under the provisions of § 663.10.

The applicant requesting an EFP for shortbelly rockfish off California (50 FR 10525) also had requested use of the modified pelagic trawl gear to target on Pacific whiting, *Merluccius productus*, and squid, *Loligo opalesceus*. The applicant's additional request to target on Pacific whiting using the one-and-one-quarter-inch mesh liner in the codend of the net was denied because of the potential harvests of small Pacific whiting using this modified gear. Since substantial harvests of Pacific whiting can be achieved using the three-inch mesh gear authorized in § 663.26, the EFP does not permit the use of the one-and-one-quarter-inch mesh liner to

target on this species. Squid, which may be harvested under State of California rules, are not managed under the FMP and, therefore, no restrictions on harvesting this species are included in the EFP.

The EFP off California is in effect from April 20, 1985, through April 19, 1986. Under its terms and conditions the permittee may take up to 1,000 metric tons (mt) of shortbelly rockfish and, in addition, no more than 50 mt of Pacific whiting and other groundfish as an incidental catch. Mesh size and double-walled codend provisions at § 663.26(b) (2) and (4)(i) are waived for fishing under the EFP except that liners for pelagic trawls must not have a mesh size less than one and one-quarter inches. Prohibited species and catch limitation provisions of 50 CFR Part 663 will apply under the EFP. Fishing authorized by the EFP is limited to the FCZ off California between 35°40′ N. latitude and 38°00′ N. latitude. The applicant is required to maintain logs and submit data on catches made under the EFP to NMFS and must accommodate an observer as requested by NMFS.

The EFP in the FCZ off Oregon is in effect from April 20, 1985, through April 19, 1986. Under its terms and conditions the mesh size and double-walled codend provisions at § 663.26(b) (2) and (4)(i) are waived so that the permittee can experimentally target on shortbelly rockfish using a one-and-one-half-inch mesh liner in the codend of the net. The permittee may take groundfish species other than shortbelly rockfish with this experimental gear, but such take must not exceed 20 percent of the total landings per trip. Prohibited species and catch limitation provisions of 50 CFR Part 663 will apply. The permittee is required to maintain and submit detailed logs on the operation and must accommodate an observer as requested by NMFS.

(16 U.S.C. 1801 *et seq.*)

Dated: May 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11858 Filed 5-15-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 95
Thursday, May 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing a change in the regulations on pay retention to clarify that pay retention does not apply when there is a statutory reduction in scheduled rates of pay under the General Schedule or a prevailing rate schedule, including a reduction authorized by a Presidential alternative pay plan.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Send written comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Jan B. Karicher, (202) 254-7052.

SUPPLEMENTARY INFORMATION: Paragraphs (a) (1) and (2) of section 5363 of title 5, United States Code, provide pay retention for employees who cease to be entitled to grade retention as a result of the expiration of the 2-year period of entitlement to grade retention or whose rates of basic pay are reduced as the result of a reduction or termination of a special rate of pay established under 5 U.S.C. 5303. Paragraph (a)(3) of section 5363 authorizes the Office of Personnel Management to prescribe additional circumstances in which employees are entitled to pay retention. Under this authority, the regulations provide that pay retention applies to employees whose rates of basic pay are reduced as a result of the reduction or elimination of scheduled rates (5 CFR 536.104(a)(3)).

When these regulations were written, we recognized that it would not be appropriate to grant pay retention to an employee whose rate of basic pay is reduced as the result of a prevailing rate wage survey, and such a situation is specifically excluded from coverage under the regulations. However, the regulations do not recognize the possibility that Congress or the President may decide to reduce Federal pay rates in the public interest, and there is no specific exclusion from pay retention in the event of a statutory reduction in rates of pay under the General Schedule or a prevailing rate schedule. Therefore, if there is a Government-wide reduction in scheduled rates, either by statute or as a result of an alternative plan submitted by the President under 5 U.S.C. 5305(c), agencies and employees may be under the impression that affected employees will be entitled to pay retention.

To clarify this situation, we propose to revise the grade and pay retention regulations to provide specifically that pay retention does not apply to employees whose pay is reduced as the result of a statutory reduction in rates of pay under the General Schedule or a prevailing rate schedule, including a reduction authorized by a Presidential alternative pay plan.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees.

List of Subjects in 5 CFR Part 536

Administrative Practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM proposes to revise Part 536 of Title 5, Code of Federal Regulations, as follows:

PART 536—GRADE AND PAY RETENTION

1. The authority citation for part 536 is revised to read as follows:

Authority: 5 U.S.C. 5361-5366.

2. In § 536.104, paragraph (a) introductory text and paragraph (a)(3) are revised to read as follows:

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention applies to any employee whose rate of basic pay otherwise would be reduced—

* * * * *

(3) As a result of a reduction or elimination of scheduled rates, special schedules, or special rates, but not as a result of—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under section 5305(c) of title 5, United States Code; or

(ii) A statutory reduction in a prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and Part 532 of this chapter or a reduction in such a schedule that reflects a decrease in the level of prevailing rates, as determined by a wage survey.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 563, and 571

Finance Subsidiaries of Federal Associations; Financings Through Subsidiaries of Insured Institutions

Dated: April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations pertaining to the establishment and operation of finance subsidiaries by federal associations. The proposed amendments are intended to respond to comments and other inquiries concerning the current regulatory provisions. In addition, the Board, as operating head of the Federal Savings and Loan Insurance

Corporation ("FSLIC"or "Corporation"), is proposing to require all institutions whose accounts are insured by the Corporation to include in their minimum net-worth calculation certain financings through subsidiaries.

DATES: Comments must be received by: July 8, 1985.

ADDRESS: Send comments to Director, Information Services Section Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Attorney, Regulations and Legislation Division, (202) 377-6446, or David J. Bristol, Attorney, Corporate and Securities Division, (202) 377-6461, Office of General Counsel; Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209; or Edward Taubert, Deputy Associate Director, Policy Development, Office of Examinations and Supervision, (202) 377-6484, at the above address.

SUPPLEMENTARY INFORMATION: On July 12, 1984, the Board adopted a regulation (12 CFR 545.92) both to recognize the incidental authority of federal associations to establish finance subsidiaries and to ensure that the establishment and operation of these subsidiaries is in keeping with this authority and with safe and sound practices (49 FR 29357, July 20, 1984). The relationship between the parent association and its finance subsidiary is based on the parent's ability to exercise, through the subsidiary, its own authority to issue securities. Thus, the sole purpose of the finance subsidiary is to issue only those securities that the parent association is or could be authorized to issue and to remit the proceeds of the offering (less reasonable costs) to the parent association.

The Board found that the rule relieved an implied restriction and that it was in the public interest for federal associations to be permitted to take immediate advantage of the authority to issue securities through finance subsidiaries. Therefore, the rule was made effective upon publication. However, the Board solicited comments on the provisions of the rule and any other steps necessary to ensure that finance subsidiaries are established and operated in accordance with safe and sound practices. Eleven comment letters were received: three from trade associations; two from investment banking firms; two from law firms; and one each from a savings and loan association, a bank, a service corporation, and a securities rating agency. All of the letters received supported the regulation while suggesting various modifications. In addition, the Board's staff has received numerous inquiries and requests for opinions to clarify the meaning of certain provisions of the regulation. The Board is issuing this proposed rule to address the suggestions received and to respond to the requests for clarification.

Use of Third-Party Intermediaries

The Board has been asked to clarify whether a finance subsidiary could use a third party intermediary to issue securities to the public. The use of such intermediaries was suggested in connection with smaller associations. Due to their size and the limitations on the amount of assets they could provide to their finance subsidiaries, smaller associations may be precluded from individually issuing certain types of securities because the investor market dictates that the offering be a minimum volume size—perhaps as much as $100 million. The Board believes that the use of a third-party intermediary does not cause a finance subsidiary to fail to be characterized as an entity that issues securities, provided that the transaction between the subsidiary and the third-party intermediary may be structured and characterized as the issuance of securities by the subsidiary and the proceeds of that transaction are remitted to the parent association. The Board is proposing to amend paragraph (d)(1) of the regulation to clearly permit the use of third-party intermediaries. Further, the Board is of the opinion that a federal association may establish a "multi-tiered" finance subsidiary provided that each subsidiary can be characterized as a finance subsidiary.

Transactions Between Parent Association and Finance Subsidiary

The regulation limits the amount of "assets transferred or made available" by a parent association to its finance subsidiary. The phrase "assets transferred or made available" was intended to describe the financial resources from the point of view of the finance subsidiary, i.e. as assets carried on the books of the finance subsidiary. However, the Board has received a number of inquiries as to whether a parent association could issue a liability to its finance subsidiary and whether the liability so issued would be included in the limitations. The Board intended to permit parent associations to both transfer their own assets and to issue liabilities (such as non-qualifying subordinated debt or certificates of deposit ("CDs")) to their finance subsidiaries. The issuance of a deposit of savings account (typically a collateralized CD by the parent to its subsidiary will not result in a violation of the prohibition, set forth in paragraph (d)(2), against the subsidiary dealing in the deposits or savings accounts of its parent association (even if, upon the "collapse" of the subsidiary, the collateralized CD may be transferred to the holders of the subsidiary's securities). To clarify this intention, the Board proposes to amend the phrase to state "assets of, or liabilities issued by, a parent association, transferred or made available. . . ."

The amount of assets or liabilities transferred or made available is limited, first, in the aggregate to 30 percent of the book value of the association's total assets and, second, on a "per issuance" basis, to the amount necessary and customary for the issuance of the type of securities or 200 percent of the gross proceeds of the securities offering. These limitations are measured at the time of any transfer. Comments received suggested that these limitations be reduced or eliminated. The Board believes at this time that the aggregate limitation is necessary and appropriate to prevent an unsafe and unsound excessive reliance upon finance subsidiaries, and the Board does not propose to change this limitation. While the Board also believes that the "per issuance" limitation is also necessary to protect the parent association, the Board is aware that new financing vehicles have been developed in which the amount of assets or liabilities "necessary and customary" to support the issuance may exceed the 200-percent level (when the inital capitalization of the subsidiary is included). Therefore, the Board is proposing to increase the limitation to an amount not to exceed 250 percent of the gross proceeds of the securities issued by the subsidiary. Also, the Board will consider that a finance subsidiary has complied with the "necessary and customary" limitation if it can demonstrate that the level was selected to meet the rating criteria of a nationally recognized investment rating service. In addition, the Board is proposing to delegate to the Principal Supervisory Agent the authority to permit an association to exceed either the aggregate of "per issuance" limitations on a case-by-case basis.

The Board received a number of inquiries regarding the impact of the transfer of assets to the subsidiary. With regard to whether the assets transferred may continue to be included in the parent's assets, the Board believes that, since the finance subsidiary is a separate entity, any assets transferred

to the subsidiary may not be included as the parent's assets for purposes of determining whether an association is a "qualified institution" for purposes of § 5(r) of the Home Owner's Loan Act (12 U.S.C. 1464(4)) (pertaining to interstate branching by federal associations) and section 408(n) of the National Housing Act (12 U.S.C. 1730a(n)) and 12 CFR 584.2–2 (concerning activities of unitary savings and loan holding companies). However, assets classified as "scheduled items" will continue to be classified as such in accordance with the provision of 12 CFR 561.15(h).

Other inquiries concerned the accounting impact of the transfer of "underwater"assets (such as mortgages and mortgage-related securities with interest rates below current market rates). Since the finance subsidiary is wholly owned by its parent association, there need be no recognition of any loss, under Generally Accepted Accounting Principles ("GAAP"), when "underwater" assets are transferred to the finance subsidiary. additionally, since finance subsidiaries are wholly owned, GAAP requres consolidation of the subsidiary with is parent association. Reports to the Board are prepared on an unconsolidated basis, but require the use of the equity method of accounting for subsidiaries. Such accounting method is set forth in paragraph 19 of Accounting Principles Board Opinion No. 18, which states that:

> . . . an investor's net income for the period and its stockholders' equity at the end of the period are the same whether an investment in a subsidiary is accounted for under the equity method or the subsidiary is consolidated. . . .

As a result, that accounting method should be used in reports to the Board.

Paragraph (c)(4) permits an off-shore finance subsidiary to invest any funds constituting its capital in liquid assets or in the obligations of an affiliate of its parent association. However, the Board has not been presented with any evidence that such an exception is necessary for off-shore subsidiaries as an alternative to remitting the remaining equity (after the financing is completed) to its parent association. However, this provision could be used in an abusive manner by associations wanting to use a finance subsidiary to channel funds to affiliates in a manner not otherwise authorized. Therefore, the Board is proposing to delete this provision unless it receives comments presenting sufficient evidence supporting such an exception. Also, the Board is proposing a new paragraph (c)(4) which would treat collateralized liabilities issued by the parent association to its subsidiary in the same manner as collateralized guarantees. The current rule requires that the greater of the face amount of the guarantee or the market value of the collateral will count towards the 30-percent and 200-percent (or proposed 250-percent) limits of paragraphs (c)(1)(i) and (ii). The proposed amendment would recognize that the collateral pledged to a liability issued by the parent (such as a collateralized CD) is as unavailable for the general use of the association as is the collateral pledged to a guarantee. Also, the Board is proposing to amend this provision to require that the book value of the collateral be used for purposes of the 30-percent limitation and the market value be used for the proposed 250-percent limitation. The Board is further proposing to amend 12 CFR Part 571(a) to clarify that the transfer of assets from parent to finance subsidiary does not require Board approval under 12 CFR 563.22.

Guarantees by the Parent Association

Paragraph (c)(3) of the regulation permits a federal association to guarantee any obligation issued by its finance subsidiaries, but limits the guarantee in two respects. First, the guarantee is limited to the unpaid principal balance of the obligation. A number of commenters suggested that this limitation made such guarantees ineffective in protecting investors in the subsidiary's securities. The Board therefore is proposing to expand the amount of the guarantee. The proposed modification would also permit an association to guarantee the accrued but unpaid interest and redemption premium, as well as the unpaid principal balance, of the obligation of its subsidiary. Second, the current regulation requires that the total resources of the finance subsidiary issuing the obligation be exhausted before recourse may be had to the guarantee. Commenters suggested that this requirement could result in extensive litigation and costs for the investor attempting to discover all of the resources of the subsidiary before seeking recourse against the guarantee. It was suggested that this result would render the guarantee ineffective. The Board is therefore proposing to decrease the burden by requiring exhaustion only of the resources collateralizing, securing, pledged or otherwise committed to the payment of the obligation of the finance subsidiary.

Remitting Proceeds to the Parent Association

Paragraph (e) of the regulation requires a finance subsidiary to transfer all proceeds from the issuance of its securities to its parent association, net of the reasonable costs associated with issuing the securities and organizing the subsidiary. The regulation was silent on the methods by which a finance subsidiary could make such remittance. The Board's staff received numerous inquiries as to permissible methods to remit proceeds and their impact. The Board is therefore proposing to amend paragraph (e) in order to set forth the permissible methods.

First, a finance subsidiary would be permitted to remit proceeds by paying dividends on or by redeeming the common stock issued by the finance subsidiary to its parent association or by reducing any advance made by the parent association as part of the capitalization of the subsidiary. If the proceeds are remitted by redeeming the subsidiary's common stock, the parent association's investment in the finance subsidiary will be reduced for purposes of the aggregate investment limitation of paragraph (c)(1)(i). Second, proceeds would be permitted to be remitted through the purchase of any asset from, or liability issued by, the parent association, both of which become assets of the finance subsidiary. The assets or liabilities obtained in this manner would be included with those "transferred or made available", and therefore subject to the limitations of paragraph (c)(1). The effects of transferring assets from the parent to the subsidiary, described above, also would apply to transfers of assets in exchange for the proceeds of the securities issued by the subsidiary. Third, while any subordinated debt or capital stock (common or preferred) issued by the parent association would be able to be obtained by remitting proceeds, such subordinated debt or capital stock generally would not count as regulatory net worth (as defined in 12 CFR 561.13) for the parent association. All of the finance subsidiary's common stock is owned by its parent association and, therefore, the parent association itself, and not any outside investor in the finance subsidiary's securities, will be ultimately at risk in most cases. The Board believes that it would be inappropriate to permit the parent association to increase its regulatory net worth in this manner unless the association can demonstrate to the Board that the risk will be effectively transferred to those investing in the securities issued by the finance subsidiary, and that the risk will not reside primarily in the subsidiary or the parent. The proposal would require the association to structure the transaction so that no assets of the parent

association would be transferred to the finance subsidiary and the risk would be transferred to parties other than the finance subsidiary and any insured institution.

The Board is also proposing to amend paragraph (e) to permit the finance subsidiary to retain, as part of the reasonable costs of issuing securities, any necessary reserves. Securities issued by a finance subsidiary may contain a provision requiring the subsidiary to maintain assets or collateral at a specified level. If the value of these assets decline, the parent association may have to increase its investment in the finance subsidiary by providing additional assets. Instead, the amendment being proposed would permit a finance subsidiary to fund a reserve from the proceeds and to use this reserve to purchase further assets from its parent. The amount of this reserve, however, would be included as part of the "assets . . . transferred or made available" subject to the limits of paragraph (c)(1).

Transactions Involving Holding Company Subsidiaries

Paragraph (f)(1) declares that a finance subsidiary is not to be considered an "affiliate" of its parent association for purposes of the Savings and Loan Holding Company Act provision on transactions between affiliates (12 U.S.C. 1730a(d)). However, the Board adopted paragraphs (f) (2) and (3), pertaining to transactions of finance subsidiaries in a holding company context, to prevent a finance subsidiary from being used as a device to permit otherwise prohibited transactions between holding company subsidiary institutions and their affiliates. The Board made two exceptions: transactions receiving prior approval from the Board and transactions permitted by the finance-subsidiary regulation. The latter exception has led to some confusion. Therefore, the Board is proposing to amend paragraphs (f) (2) and (3) to set forth the types of transactions contemplated. In addition, the Board is proposing to clarify that the limitation of paragraph (f)(2) applies to both investments by the finance subsidiary in the parent institution and to investments by the parent in the finance subsidiary.

Notification and Prior Approval

Paragraph (g) of the regulation currently requires prior written notification to the Principal Supervisory Agent by an association before the association establishes a finance subsidiary or transfers any assets to an existing finance subsidiary. In keeping with the clarification discussed above, the Board is proposing to amend this requirement to include the transfer of any asset of, or liability issued by, an association. Also, the Board is proposing to allow a duly authorized executive committee of the association's board of directors to provide the required notification. This proposed change, however, would in no way decrease the responsibilities of the association's board of directors as described in paragraph (b) of the regulation.

While the Board believes that finance subsidiaries can provide associations with a valuable mechanism for using their resources to issue securities, the Board is concerned with the potential for increased risk to the FSLIC arising from the issuance of preferred stock by the finance subsidiary of a troubled association. It is entirely possible that a troubled association could transfer up to 30 percent of it most marketable assets to its finance subsidiary, which would, in turn, issue preferred stock. Should the parent association fail, the FSLIC might have no immediate claim on the assets of a properly structured finance subsidiary. In the case where both the parent association and the finance subsidiary fail, the FSLIC's claim on the finance subsidiary's assets might be subordinated to that of the preferred stockholders.

This concern becomes acute in the case of associations failing to meet their minimum net-worth requirement and those that are subject to supervisory agreements. While § 563.13(d) provides the Principal Supervisory Agents a wide range of authority with which to deal with associations failing to meet the minimum net-worth requirement, that regulation does not explicitly require prior approval of the establishment of a finance subsidiary. Further, the provisions of that regulation do not apply to associations that, for other reasons, may be operating under a supervisory agreement. Therefore, the Board is proposing to require any association that fails to meet its net-worth requirement as provided in § 563.13, or that is operating under any supervisory agreement, to obtain the prior written approval of its Principal Supervisory Agent before establishing a finance subsidiary. The Board intends that the Principal Supervisory Agent approve the establishment of a finance subsidiary by such an association unless the Principal Supervisory Agent finds that the establishment and operation of a finance subsidiary will adversely affect the financial condition or safe and sound operation of the parent association. In order to ensure timely review, the Board is proposing to require the Principal Supervisory Agents to notify the applicant that the application is complete, or that additional information is required, within ten days, and to rule upon such application within 30 days of such notice. Appeals of any adverse determination could be taken to the Board.

Financing Through a Subsidiary of an Insured Institution

In providing for the establishment of finance subsidiaries, the Board viewed finance subsidiaries as free standing and independent entities that would not increase the risk of the parent insured institution. The creation of finance subsidiaries potentially expose the parent institution to two sources of risk—credit risk and interest-rate risk. Credit risk refers to the potential loss from non-performing assets, and interest rate risk refers to the potential for loss resulting from the cost of liabilities responding more quickly to increases in interest rates than does the yield on assets.

As described above, the finance subsidiary rule contains several provisions to control the parent association's credit risk exposure from the activities of its finance subsidiary. These credit-risk control provisions include limiting the amount of excess collateral in the finance subsidiary, limiting the guarantee from the parent association to the finance subsidiary, requiring that the collateral supporting the finance subsidiary's securities be exhausted before recourse to the guarantee from the parent association, and requiring that scheduled items of the finance subsidiary be included in the calculation of the net-worth requirement of the parent insured institution.

There are, however, no such controls limiting the interest-rate risk of the finance subsidiaries (apart from the requirement that the parent association's board of directors, when authorizing the establishment of a finance subsidiary, do so in furtherance of a written business plan to reduce interest-rate risk). Interest-rate risk results from the mismatch of the maturities of an institution's assets and the liabilities funding those assets. The effect of a large levels of interest-rate risk on the savings institution industry is well documented. Interest-rate risk was the primary cause of the merger or failure of over 1,100 savings institutions between June 1980 and September 1984, with over a third of these institutions either liquidated or merged under supervisory or FSLIC mandate.

The Board has been extremely concerned with the continuing interest-rate-risk exposure of insured institutions. As a result, the Board has adopted an interest-rate-risk management rule (12 CFR 563.17–6) which requires boards of directors of insured institutions to monitor the interest-rate risk of their institutions and to adopt policies to control and reduce the interest-rate-risk exposure. In addition, the Board has revised its reporting requirements to provide the Board with information necessary to carefully monitor the interest-rate risk of all insured institutions.

The finance subsidiary rule, however, currently contains no provision to limit interest-rate risk (apart from the requirement that the parent association's board of directors, when authorizing the establishment of a finance subsidiary, do so in furtherance of a written business plan to reduce interest-rate risk). Under the current rule, an institution can, in effect, transfer interest-rate risk from the parent institution to the finance subsidiary by mismatching the maturity of the finance subsidiary's assets and securities. Since the finance subsidiary is owned by the insured institution, this transfer of interest-rate risk of the parent institution. The risk transfer does, however, potentially reduce the parent institution's net-worth requirement because the securities issued by the finance subsidiary are not added to the liabilities of the parent institution for the calculation of the net-worth requirement.

The Board did not intend to remove the net-worth requirements from the finance subsidiary liabilities when those liabilities, coupled with the corresponding assets, continue to expose the parent to substantial interest-rate risk. Rather, the Board believes that the net-worth requirement of the parent institution should omit the finance subsidiary's liabilities only when there is no substantial interest-rate risk in the finance subsidiary. The proposed rule would accomplish this by requiring that the net proceeds of the securities issued by the finance subsidiary be included in the liabilities of the parent association for the purpose of calculating the parent's net-worth requirement unless the finance subsidiary is effectively immunized from interest-rate risk.

The Board recognizes that the potential impact described above is not limited to federal associations. State-chartered insured institutions may also be authorized, under State law, to conduct such activities through a service corporation or operating subsidiary. Therefore, the Board is proposing to adopt a new regulation, § 563.13–2, to address the potential problems of both state- and federally-chartered insured institutions. This proposal would apply to any borrowing or issuance of a security by a finance subsidiary, service corporation, or operating subsidiary of an insured institution (other than the issuance of capital stock by the subsidiary to its parent), the proceeds of which are substantially remitted to the insured institution. This is intended to include an insured institution's use of service corporations or operating subsidiaries in a manner similar to the use of finance subsidiaries (although these other entities might not meet all of the requirements of a federal association's finance subsidiary). However, it is not intended to include a service corporation or operating subsidiary that borrows or issues secutities primarily for its own purposes, i.e., to use the proceed for its own operations rather than for the purpose of remitting the proceeds to its parent. The Board specifically requests comment concerning the percentage of proceeds that would be required to be remitted for a financing through a subsidiary to be considered "substantially remitted" for the purposes of the proposed rule.

The proposed § 563.13–2 would treat the net proceeds of any financing through a subsidiary as if the proceeds were part of the total liabilities of the subsidiary's parent institution for purposes of calculating the minimum net-worth requirement set forth in § 563.13(b). In the case of a service corporation or operating subsidiary owned by an insured institution and other entities, a *pro rata* portion of the net proceeds would be included in the total liabilities of the prarent institution. Two execptions would be granted under the proposal. First, and excption is provided if the duration of the secruities issued by the subsidiary are, at the time of issuance, substantially the same as the duration of the assets held by the subsidiary. This exception reflects the primary concern of the Board in proposing this rule—the interest-rate risk of the parent and the subsidiary. As a result, only those financings that result in further interest-rate risk would be reflected in the calculation of the parent's net-worth requirement. The second exception applies to proceeds that are remitted in exchange for a liability of the parent institution. This exception is intended to avoid counting the proceeds twice in the calculation of the minimum net-worth requirement, i.e. first as a financing through a subsidiary and again as a liability issued by the parent institution.

Duration measures the weighted average maturity or repricing period of a stream of payments. If the duration of an asset exactly equals the duration of the liability funding the asset, then both the asset and liability will on the average reprice at the same time, and the resulting income stream is, in effect, immunized against changes in interest rates.

There are several measures of duration. The most commonly used duration measure is one developed by Macaulay (see, Macaulay, F. R. *Some Theoretical Problems Suggested by the Movement of Interest Rates, Bond Yields, and Stock Prices in the U.S. Since 1856.* New York: National Bureau of Economic Research (1938)) and is the measure the Board will use to determine if the durations of the assets are substantially similar to the duration of the subsidiary's securities. The Board is aware of the theoretical limitation of Macaulay's duration measurement and of the development of other duration measures, and solicits comment on other duration measures which may provide appropriate measurements of interest-rate risk in specific situations.

Under the proposal, the duration of the assets would be considered substantially similar to the duration of the securities if the duration of the assets is between 90 percent and 110 percent of the duration of the securities. The Board believes that many structured financings, such as collateralized mortgage obligations ("CMOs"), would fall within this range and intends to continue the favorable net-worth treatment for these types of issues. For example, a CMO issued by the Federal Home Loan Mortgage Corporation was well within the range proposed in this rule. The Board specifically requests comments as to whether this range is appropriate.

Consider, for example, a subsidiary with only one asset which is a five-year, $100 par bond with a 12-percent coupon interest rate and a current market yield of ten percent. The duration of the bond is 3.95 years. If the subsidiary issues a security to support the bond with a duration between 3.56 and 4.35 years, the security will be considered to have a duration that is substantially similar. If the security was, for example, a $160 par value, four-year bond with zero-percent interest rate and a 12-percent market yield, the security would have a duration of four years at the time of issuance. Since this duration is between the acceptable range of 3.56 years to 4.35 years, the net proceeds from the security

would not be added to the liabilities of the parent for purposes of caluclating the net-worth requirement (unless they were remitted in exchange for a liability issued by the parent which, of course, is included in the calculation of the parent's minimum net-worth requirement). If a subsidiary, however, issued a $100 par value, four-year note with a 12-percent coupon and market yield, the duration of the security would be 3.29 years. Since the duration of the two-year note is less than 90 percent of the duration of the five-year asset, the net proceeds of the subsidiary would be added to the liabilities of the parent for computation of the parent's net-worth requirement. The duration calculations used in these examples are set forth in the tables below.

Year	Cash flow	Present value at 10 pct	Time weighted present value [1]
$100 Par Value 5-Year 12 pct Bond			
0.5	6.00	5.71	2.86
1.0	6.00	5.44	5.44
1.5	6.00	5.18	7.77
2.0	6.00	4.94	9.87
2.5	6.00	4.70	11.75
3.0	6.00	4.48	13.43
3.5	6.00	4.26	14.92
4.0	6.00	4.06	16.24
4.5	6.00	3.87	17.40
5.0	106.00	65.07	325.37
Total present value [2]		107.4	
Total time-weighted present value [3]			425.08
Duration [4]			3.95
$160 Par Value 4-year 0 pct Bond			
0.5	0.00	0.00	0.00
1.0	0.00	0.00	0.00
1.5	0.00	0.00	0.00
2.0	0.00	0.00	0.00
2.5	0.00	0.00	0.00
3.0	0.00	0.00	0.00
3.5	0.00	0.00	0.00
4.0	160.00	100.39	401.54
Total present value [2]		100.39	
Total time-weighted present value [3]			401.54
Duration [4]			4.00
$100 Par Value 4-Year 12 pct Liability			
0.5	6.00	5.66	2.83
1.0	6.00	5.34	5.34
1.5	6.00	5.04	7.56
2.0	6.00	4.75	9.51
2.5	6.00	4.48	11.21
3.0	6.00	4.23	12.69
3.5	6.00	3.99	13.97
4.0	106.00	66.51	266.02
Total present value [2]		100.00	
Total time-weighted present value [3]			329.12
Duration [4]			3.29

[1] Present value times year.
[2] Sum of present values.
[3] Sum of time-weighted present values
[4] Total time-weighted values divided by total present value.

However, if the proceeds are remitted in exchange for a liability issued by the parent, the parent would not be required to count this transaction twice (i.e. as the issuance of a liability and as a financing subject to the proposed rule), but would consider only the issuance of the liability to the subsidiary in calculating the minimum net-worth requirement.

For the reasons set forth in the discussion of the proposed amendments pertaining to notification and prior approval, above, the Board believes that any insured institution that fails to meet its net-worth requirement as provided in § 563.13, or that is operating under any supervisory agreement, should not conduct a financing through a subsidiary without the prior written approval of its Principal Supervisory Agent. Therefore, the proposed § 563.13–2(c) contains a similar prior-approval requirement as that proposed for federal associations in § 545.82(g)(3).

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC and who undertake any financing through a subsidiary, as defined in the proposal. The proposed rule would also apply specifically to the finance subsidiaries of federal associations.

3. *Impact of the proposed rule on small institutions.* The proposed rule would authorize small federal associations to issue securities through a subsidiary, and to pool such securities through a third-party intermediary, thus increasing these associations' ability to raise funds. The proposed rule would require some small institutions, that undertake a duration mismatched financing through a subsidiary, to increase their capital to reflect the interest-rate risks of the financing.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Parts 545, 563 and 571

Savings and loan associations, Savings banks, Securities.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 545, 563, and 571, Subchapters C and D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

1. The authority for 12 CFR Parts 545, 563, and 571 continues to read:

Authority: Sec. 5, 48 Stat. 132, as amended, (12 U.S.C. 1464); Secs. 401, 402, 403, 405, 407, 48 Stat. 1255, 1256, 1257, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1730); Reorg. Plan. No. 3 of 1947, 12 FR 4891, 3 CFR, 1943–1948 Comp., p. 1071.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

2. Section 545.82 would be revised to read as follows:

§ 545.82 Finance subsidiaries.

(a) *Establishment of finance subsidiaries.* A Federal association may establish a finance subsidiary whose sole purpose is to issue debt or equity securities that the association is authorized to issue directly (or, if the parent association is a mutual association, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such issuance to the association, subject to the provisions of this section.

(b) *Responsibilities of the parent association's board of directors.* Prior to the establishment of any finance subsidiary, the board of directors of the Federal association shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Board. The board of directors shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

(c) *Transactions between a parent association and its finance subsidiaries.* (1) A Federal association may provide the capital to establish one or more finance subsidiaries by transferring to one or more finance subsidiaries assets of or liabilities issued by the association: *Provided,* that

(i) The aggregate book value of all assets of, and liabilities issued by, the parent association transferred or made available to finance subsidiaries, shall not, without the prior written approval of the Principal Supervisory Agent of the parent association's Federal Home Loan

Bank district, exceed 30 percent of the book value of the association's total assets determined as of the date any assets or liabilities are transferred or made available;

(ii) The aggregate current market value of assets of, and liabilities issued by, the parent association transferred or made available shall not, without the prior written approval of the Principal Supervisory Agent, exceed the amount necessary and customary for the issuance of the type of securities to be issued by the subsidiary (which may be required by the rating criteria of a nationally recognized investment rating service) or 250 percent of the gross proceeds resulting from the offerings of securities by the finance subsidiary, whichever is less; and

(iii) For the purpose of calculating the limitations set forth in paragraphs (c)(1)(i) and (ii) of this section, assets of, and liabilities issued by, the parent association which are considered to be transferred or made available to a finance subsidiary include such assets or liabilities to capitalize the finance subsidiary, to collateralize a securities offering by an established finance subsidiary, to maintain collateral levels for any security issued by the finance subsidiary, any guarantee issued by the parent association with respect to the obligations of the finance subsidiary or any collateral for such guarantee as provided in paragraph (c)(4) of this section, any portion of the proceeds of the securities issued by the subsidiary held as reserves, and any assets or liabilities obtained by the subsidiary by remitting to the parent association the proceeds of the securities issued by the subsidiary.

(2) Finance subsidiaries shall not be consolidated with their parent association for the purposes of calculating the net-worth requirement of § 563.13 of this Chapter. Finance subsidiaries authorized by this section shall be subject to the requirements of § 563.13–2 of this Chapter.

(3) An association may guarantee any obligation issued by its finance subsidiaries: *Provided,* that the guarantee shall not exceed the unpaid principal balance and the accrued but unpaid interest and redemption premium of the obligation, and *Provided further,* that the guarantee shall provide that the resources collateralizing, securing, pledged or otherwise committed to the payment of the obligation of the finance subsidiary shall be exhausted before recourse shall be had to the guarantee. Such guarantee shall not be considered to be an outstanding loan for purposes of the loans-to-one-borrower limitations of § 563.9–3 of this Chapter.

(4) If a guarantee or a liability issued by the parent association is collateralized, then the greater of the face amount of such guarantee or liability, or the book value of the collateral, shall be included in the total amount that may be transferred by the parent association subject to the limitation of paragraphs (c)(1)(i) of this section, and the greater of the face amount of such guarantee or liability, or the market value of the collateral, shall be included in the total amount that may be transferred by the parent association subject to the limitation of paragraph (c)(1)(ii).

(d) *Issuance of securities by finance subsidiaries.* (1) A finance subsidiary of a Federal association may issue, either directly or through a third-party intermediary, any security which its parent association is authorized to issue (or, if the parent association is a mutual association, would be authorized to issue if it converted to the stock form), subject to the provisions of this section.

(2) A finance subsidiary shall not issue or deal in the deposits and savings accounts of its parent association. A finance subsidiary shall not state or imply that securities issued by it are insured by the Federal Savings and Loan Insurance Corporation.

(3) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent association is insolvent or has been placed into receivership.

(4)(i) An association providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock and may not transfer or otherwise assign any interest in such stock to any other person or entity, without the prior written approval of the Board.

(ii) A finance subsidiary may provide for voting rights for holders of preferred stock, under such conditions and in such manner and to the extent customary to protect the rights of such holders of preferred stock, including but not limited to the following conditions (except that, upon the expiration of any event giving rise to the exercise of such voting rights, such rights shall be vested exclusively as provided in paragraph (d)(4)(i) of this section):

(*a*) The finance subsidiary fails to pay dividends for at least one dividend period;

(*b*) Any merger, consolidation, or reorganization of the finance subsidiary or its parent association (except in a supervisory case) is sought to be authorized, where the issuing finance subsidiary or its parent association is not the survivor, provided that the net worth of the resulting finance subsidiary or parent association available for payment of any class of preferred stock is less than the net worth available for such class prior to the merger, consolidation, or reorganization;

(*c*) Action is sought to be authorized which would create any class of preferred stock having a preference or priority over an outstanding class or classes of preferred stock;

(*d*) Any action is sought to be authorized which would adversely change the specific terms of any class of preferred stock;

(*e*) Action is sought to be authorized which would increase the number of shares of a class of preferred stock, or the number of shares of a class of preferred stock ranking prior to or in parity with another class of preferred stock; or

(*f*) Action is sought which would authorize the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specified financial standards.

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any necessary reserves) associated with the issuance of the securities and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent association; by the repayment of any loan made by the parent to the subsidiary as part of the capitalization of the subsidiary; or through the purchase of assets of, or liabilities issued by, the parent association (subject to the limitations of paragraph (c)(1) of this section): *Provided,* that any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other instrument that would otherwise be considered to be regulatory net worth (as defined in § 561.13 of this Chapter) shall not, if issued by the parent association to its finance subsidiary, be included in the parent association's regulatory net worth unless (1) no assets of the parent association has been transferred to the finance subsidiary, (2) the transaction transfers the risk to parties other than the finance subsidiary or any insured

institution, and (3) the transaction is approved by the Board.

(f) *Holding company subsidiaries and finance subsidiaries.* (1) For purposes of section 408(d) of the National Housing Act (12 U.S.C. 1730a(d)), if the parent Federal association is a subsidiary of a holding company, the finance subsidiary shall not be considered to be an affiliate of its parent association.

(2)(i) A finance subsidiary shall make no investment in, or loan, discount, or extension of credit to, its parent association, if the parent association is a subsidiary of a holding company, without the prior written approval of the Board, except as provided in paragraph (e) of this section.

(ii) If the parent association is a subsidiary of a holding company, the association shall make no investment in, or loan, discount, or extension of credit to, its finance subsidiary, without the prior written approval of the Board, except as provided in paragraphs (c)(1) and (e) of this section.

(3) If the parent association is a subsidiary of a holding company, a finance subsidiary shall make no investment in, or loan, discount or extension of credit to, any affiliate of its parent association, without the prior written approval of the Board.

(g) *Notification to the Principal Supervisory Agent.* (1) Prior to the establishment of any finance subsidiary, or prior to any transfer of assets of, or liabilities issued by, the parent association to an existing finance subsidiary, the board of directors of the Federal association, or a duly authorized executive committee thereof, shall send written notification to the association's Principal Supervisory Agent, specifying:

(i) The name of the finance subsidiary;

(ii) Its jurisdiction of incorporation;

(iii) The amount of assets of, or liabilities issued by, the parent association (market value and book value as of date within 30 days) to be transferred or made available (including the terms of any guarantee to be issued by the association or any affiliate of the association), the book value of all such assets or liabilities previously transferred or made available, and the amount representing 30 percent of the book value of the parent association's total assets as of such date;

(iv) When known and to the extent permitted by the Securities Act of 1933:

(*a*) A description of the securities to be issued, including the term thereof;

(*b*) The aggregate amount of the offer;

(*c*) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments;

(*d*) The minimum denomination of the securities; and

(*e*) Where the subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any security, a finance subsidiary shall notify, in writing, the Principal Supervisory Agent of its parent association and shall provide to the Principal Supervisory Agent a copy of any prospectus, offering circular, or other similar document concerning an issuance.

(3)(i) Any association that fails to meet its net-worth requirement as provided in § 563.13 of this Chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary without the prior written approval of its Principal Supervisory Agent.

(ii) Within 10 days of the filing of the information required by paragraph (g)(1) of this section, or any additional information, by an association subject to paragraph (g)(3)(i), the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(iii) The Principal Supervisory Agent shall approve the application of an association subject to the requirements of paragraph (g)(3)(i) of this section unless the Principal Supervisory Agent finds that the establishment and operation of a finance subsidiary will adversely affect the financial condition or safe and sound operation of the parent association. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Board. The association shall file its petition with the Office of the Secretary to the Board, and shall send a copy to the Principal Supervisory Agent. The Board shall grant or deny a petition for reconsideration within 30 days of receipt. If the Board does not disapprove or deny such petition within such time, such application shall be deemed to be granted.

(h) *Examination of finance subsidiaries.* A finance subsidiary shall agree in writing to permit and to pay the costs of such examinations as the Board deems necessary.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

2. Amend § 563.13(g)(1) by adding at the end thereof the sentence "Total liabilities shall also include the amount of any financing through a subsidiary as required by § 563.13–2 of this Part."

3. Add a new § 563.13–2, as follows:

§ 563.13–2 Financing through subsidiaries.

(a) "Financing through a subsidiary" means any issuance of a security (other than the issuance of capital stock by the subsidiary to its parent) by a finance subsidiary, service corporation, or operating subsidiary owned, directly or indirectly, by an insured institution, the proceeds of which are substantially remitted to the insured institution.

(b) For purposes of § 563.13(g)(1) of this Part, an amount equal to the net proceeds of any financing through a subsidiary (or, in the case of a service corporation or operating subsidiary owned by an insured institution and other entities, a *pro rata* portion of the net proceeds) shall be included in the total liabilities of the subsidiary's parent institution unless either:

(1) The duration of the securities issued by the subsidiary are, at the time of issuance, substantially the same as the duration of the assets pledge to or funding the securities issued by the subsidiary, or

(2) To the extent that the proceeds are remitted in exchange for a liability issued by the parent institution, that such liability is otherwise included in the parent institution's total liabilities pursuant to § 563.13(g)(1).

(c)(1) Any association that fails to meet its net-worth requirement as provided in § 563.13, or that is operating under any supervisory agreement, shall not establish a finance subsidiary without the prior written approval of its Principal Supervisory Agent. To obtain the written approval of the Principal Supervisory Agent, the board of directors of the institution, or an authorized executive committee thereof, shall send a written application to the association's Principal Supervisory Agent, specifying:

(i) The name of the finance subsidiary;

(ii) Its jurisdiction of incorporation;

(iii) The amount of assets of, or liabilities issued by, the parent institution (market value and book value as of date within 30 days) to be tranferred or made available (including the terms of any guarantee to be issued by the institution or any affiliate of the institution), the book value of all such assets or liabilities previously

transferred c made available, and the amount representing 30 percent of the book value of the parent institution's total assets as of such date;

(iv) When known and to the extent permitted by the Securities Act of 1933:

(*a*) A description of the securities to be issued, including the term thereof;

(*b*) The aggregate amount of the offer;

(*c*) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments;

(*d*) The minimum denomination of the securities; and

(*e*) Where the subsidiary intends to market the securities.

(2) Within 10 days of the filing of the information required by paragraph (c)(1) of this section, or any additional information, by an institution subject to paragraph (c)(1), the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(3) The Principal Supervisory Agent shall approve the application of an institution subject to the requirements of paragraph (c)(1) of this section unless the Principal Supervisory Agent finds that the establishment and operation of a finance subsidiary will adversely affect the financial condition or safe and sound operation of the parent institution. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Corporation. The association shall file its petition with the Office of the Secretary of the Board, and shall send a copy to the Principal Supervisory Agent. The Corporation shall grant or deny a petition for reconsideration within 30 days of receipt. If the Corporation does not disapprove or deny such petition within such time, such application shall be deemed to be granted.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

§ 571.5 [Amended]

4. Amend § 571.5(a) by inserting after the second sentence thereof the sentence "Transactions between an insured institution and its finance subsidiary, in accordance with § 545.82 of this Chapter, shall not be considered to be a transfer."

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11895 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-14-AD]

Airworthiness Directives; Pilatus Aircraft Ltd., and Fairchild-Hiller Model PC-6 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Pilatus Aircraft Ltd., Model PC-6 Porter and Turbo-Porter (up to and including Serial Number 844) and Fairchild-Hiller Model PC-6 (Serial Numbers 2001 up to and including 2092) airplanes which would require inpsection for cracks in the areas adjacent to the vertical stabilizer rudder hinge attachment points, horizontal stabilizer elevator bearing bracket attachment points and the horizontal stabilizer front spar rectangular cutout. Pilatus Aircraft Ltd. has received reports of cracks being found in those areas. Inspection of these areas on the vertical and horizontal stabilizers will insure the continued control system integrity and thus prevent the possible loss of airplane control.

DATES: Comments must be received on or before June 20, 1985.

ADDRESSES: Pilatus Aircraft Ltd., Service Bulletins (S/B) No. 142 dated December, 1984, S/B No. 143 dated December, 1984, and S/B No. 144 dated December, 1984, applicable to this AD may be obtained from Pilatus Aircraft Ltd., CH6370-Stans, Switzerland, or the Rules Docket at the address below.

Fairchild-Republic (formerly Fairchild-Hiller) Service Letters PC6-55-2, dated April 9, 1985, PC6-55-3, dated April 9, 1985, and PC6-55-4, dated April 9, 1985, applicable to this AD may be obtained from Fairchild-Republic Corporation, Showalter Road, Hagerstown, Maryland 21740 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East office. FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H. C. Belderok, Foreign FAR 23 Section, Federal Aviation Administration, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications, received on or before the closing date for comments specified above, will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Pilatus, the manufacturer, has received reports of: (a) Cracked Left Hand (LH) and Right Hand (RH) cap angles adjacent to the rudder hinge attachment points on the vertical stabilizer; (b) cracked upper and lower cap angles adjacent to the elevator bearing bracket attachment points on the horizontal stabilizer and (c) cracks propagating from the corners, in particular the upper corners, of the rectangular cutout in the front spar of the horizontal stabilizer adjacent to the

elevator control cables pulley assembly on Model PC-6 airplanes. Fairchild-Republic (formerly Fairchild-Hiller) who manufactured PC-6 model airplanes under license from Pilatus also found cracks in the areas described above. As a result, Pilatus Aircraft Ltd. has issued S/B Nos. 142, 143 and 144, and Fairchild-Republic Service Letters PC6-55-2, PC6-55-3 and PC6-55-4 which require inspection for cracks (a) using a dye penetrant procedure on the LH and RH cap angles adjacent to the rudder hinge attachment points on the vertical stabilizer, (b) using a dye penetrant procedure on the upper and lower cap angles adjacent to the elevator bearing bracket attachment points on the horizontal stabilizer and (c) by visually checking the area around the rectangular cutout in the front spar of the horizontal stabilizer adjacent to the elevator control cables pulley assembly, and repair in accordance with service bulletin instructions if any cracks are found. The Swiss Federal Office of Civil Aviation (FOA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Switzerland has classified these service bulletins, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Swiss registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the FOA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B Nos. 142, 143 and 144 all dated December 1984 (Fairchild-Republic Service Letters PC6-55-2, PC6-55-3 and PC6-55-4 are the U.S. equivalent) and the mandatory classification of these service bulletins by the FOA. Based on the foregoing, the FAA believes that the condition addressed by S/B Nos. 142, 143 and 144 is an unsafe condition that may exist on other products of this type design certified for operation in the United States. Consequently, the proposed AD would require inspection for cracks in certain Pilatus and Fairchild-Hiller Model PC-6 airplanes (a) using a dye penetrant procedure on the LH and RH cap angles adjacent to the rudder finge attachment points on the vertical stabilizer, (b) using a dye penetrant procedure on the upper and lower cap angles adjacent to the elevator bearing bracket attachment points on the horizontal stabilizer and (c) by visually checking the area around the rectangular cutout in the front spar of the horizontal stabilizer adjacent to the elevator control cables pulley assembly, and repair in accordance with service bulletin instructions if any cracks are found.

There are approximately 22 airplanes (11 Swiss and 11 U.S.) affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $4,235 ($192.50 per airplane based upon 5.5 manhours for the inspection @ $35/manhour) to the private sector.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Pilatus Aircraft, Ltd., and Fairchild-Hiller: Applies to Model PC-6 series airplanes (S/N 1 and including 844, and 2001 to and including 2092) certificated in any category.

Note.—Service Bulletin (S/B) Numbers (No.) 142, 143 and 144 all dated December, 1984, are applicable to Pilatus Aircraft Ltd., built airplanes which are identified by Serial Numbers (S/N) below 1000, and Service Letters (S/L) PC6-55-2, PC6-55-3 and PC6-55-4 all dated April 9, 1985, are applicable to Fairchild-Hiller built airplanes which are identified by S/N's above 2000.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent a possible loss of airplane control accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD.

(1) On airplanes S/N 1 and including 826 and 2001 to and including 2092 (except 524, 676, 707, 710 and 816) perform the required inspection and corrective action if needed in accordance with paragraphs (b), (c) and (d) of this AD, and

(2) On airplanes S/N 827 to and including 844 perform the required inspection and corrective action if needed in accordance with paragraph (d) of this AD.

(b) Using a dye penetrant test method inspect the left hand and right hand cap angles adjacent to the rudder hinge attachment points on the vertical stabilizer for cracks, in accordance with S/B No. 142 Section 2, "ACCOMPLISHMENT INSTRUCTIONS", paragraph (para) A "INSPECTION" or S/L PC6-55-2.

If cracks are found, prior to further flight replace the defective cap angle and modify the vertical stabilizer in accordance with S/B No. 142, Section 2, "ACCOMPLISHMENT INSTRUCTIONS" para. B "MODIFICATION", or S/L PC6-55-2.

(c) Using a dye penetrant test method inspect the upper and lower cap angles adjacent to the elevator bearing bracket attachment points on the horizontal stabilizer in accordance with S/B No. 143, Section 2 "ACCOMPLISHMENT INSTRUCTIONS", para. A "INSPECTION", or S/L PC6-55-3.

(1) If cracks are found, prior to further flight, repair in accordance with the repair scheme of S/B No. 143 or S/L PC6-55-3, and in addition;

(2) If the bolt hole is less than 0.120 inches (in.) (3mm) from the edge of the cap angle, modify the horizontal stabilizer prior to further flight in accordance with S/B No. 143, Section 2 "ACCOMPLISHMENT INSTRUCTIONS", para. B "MODIFICATION" or S/L PC6-55-3.

(d) Visually inspect the area around the rectangular cutout located in the front spar of the horizontal stabilizer, adjacent to the elevator control cables pulley assembly, in accordance with S/B No. 144, Section 2 "ACCOMPLISHMENT INSTRUCTIONS", para. B "CRACK INSPECTION", or S/L PC6-55-4. If cracks are found and;

(1) If cracks is longer than 0.20 in. (5mm) install within the next 50 hours TIS standard repair plate (P/N 113.45.06.027) in accordance with S/B No. 144 Section 2 "ACCOMPLISHMENT INSTRUCTIONS", para. D. "INSTALLATION OF STANDARD REPAIR PLATE" or S/L PC6-55-4.

(2) If any cracks is longer than 0.20 in. (5mm) but less than 0.80 in. (20mm), prior to further flight install standard repair plate (P/N 113.45.06.027) in accordance with paragraph (d)(1) of this AD.

(3) If any crack is longer than 0.80 in. (20mm), prior to further flight repair the horizontal stabilizer in accordance with S/B No. 144, Section 2"ACCOMPLISHMENT INSTRUCTIONS", para. C "SPECIAL PROCEDURES" or S/L PC6-55-4.

(e) Each 100 hours TIS after the initial inspection:

(1) On airplanes S/N 1 to and including 826 and 2001 to and including 2092 (except 524, 676, 707, 710 and 816) repeat the inspection required by paragraph (b) of this AD, until the modification described in S/B No. 142, paragraph 2.B "MODIFICATION" or S/L PC6-55-2 is complied with, at which time this repetitive inspection is no longer required.

(2) On airplanes S/N 1 to and including 844 and S/N 2001 to and including 2092 repeat the inspection required by paragraph (d) of this AD.

(f) The intervals between the repetitive 100 hour TIS inspections required by paragraph (e) of this AD may be adjusted up to 10 percent of the specified interval to allow accomplishment of these inspections concurrent with other scheduled maintenance of the airplane.

(g) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(h) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on May 6, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-11788 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 103

[Docket No. 24242; Petition Notice PR 85-1]

Eipper Aircraft, Inc.; Regulation of Ultralight Vehicles

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period on petition for rulemaking.

SUMMARY: The FAA has received a petition for rulemaking from Eipper Aircraft, Inc., proposing to establish what it considers to be more readily enforceable requirements for operation of ultralight vehicles. The petitioner proposes to (1) improve ultralight aircraft safety; (2) foster responsibility for safety by the ultralight industry and ultralight consumer through accountability; (3) simplify regulations, and thus (4) enhance uniform enforcement. The FAA published substantive parts of the petition in the **Federal Register** on February 14, 1985 (50 FR 6312), with the comment period closing on April 15, 1985. Based on a request from the petitioner to extend the comment period, the FAA is reopening the comment period for an additional 60 days.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24242, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald W. Myres, General Aviation and Commercial Division, Office of Flight Operations, (202) 426-8150, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION: The FAA has received a request for extension of the comment period on the subject proposal from Eipper Aircraft, Inc. Eipper states that it has been informed by a significant number of people that the petition, as published in the **Federal Register,** was misidentified as a notice of proposed rulemaking (NPRM) rather than a petition. Eipper Aircraft further states that this error resulted in a lack of comments on its petition, and that a 60-day extension will provide ample time for those who wish to comment.

The FAA has considered Eipper Aircraft's request for extension of the comment period and does not agree with its contention that the petition was misidentified as an NPRM. The FAA clearly states in the publication that the summary does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petition.

The petition was published in a separate part of the **Federal Register** for February 14, 1985, and clearly marked "Regulation of Ultralight Vehicles; Eipper Aircraft; Petition for Rulemaking."

The FAA is concerned, however, that all interested persons have an adequate opportunity to comment, and believes that it would be appropriate to reopen the comment period for an additional 60 days in light of the complexity of the issues involved in the petition and the petitioner's concern that those issues be adequately responded to by industry and the public.

Accordingly, the comment period on the petition of Eipper Aircraft published in the **Federal Register** on February 14, 1985 (50 FR 6312) is reopened until July 15, 1985.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 9, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 85-11791 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9134]

Southwest Sunsites, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Porter Realty, Inc. and Irvin Porter, among other things, to cease, in connection with the advertising and sale of land, or the inducement of payments for land, representing that the purchase of any land is a sound financial investment; involves little monetary risk; is a way to achieve financial security; and will result in economic benefit to the purchaser stemming from an increase in the value of the land as a result of mineral rights, exploration, profitable resale or as a hedge against inflation. Respondents would be prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land is immediately usable for cited purpose without any substantial improvement or development by the purchasers; and from mispresenting in any manner the cost of obtaining or the availability of electric power, telephone service, potable water, sewage disposal or any utility; and any interest in land by respondents or others. Respondents would be required to prepare a "Fact Sheet" containing specified information and to distribute a copy to all purchasers in a prescribed manner. Advertisements, promotional material and sales presentations would have to include statements warning that investment is risky and that prospective buyers should consult a qualified professional before purchasing; and that substantial expenditures may be necessary to make lots suitable for use. Contracts would have to contain a seven-day right-to-cancel provision and a disclosure that refunds will be made within 30 days after the seller receives a cancellation notice. Additionally, respondents would be required to provide consumers with cancellation forms; honor all valid cancellation requests; and make refunds in a timely manner. The order would further require that sales representatives receive a copy of the order; that respondents institute a

surveillance program designed to reveal those who fail to comply with the provisions of the order and discontinue dealing with any person who engages in any prohibited act or practice more than once.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Gary D. Kennedy, Dallas Regional Office, 8303 Elmbrook Dr., Dallas, TX 75247. (214) 729–7053.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Subh comments or views wil be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Land sales, Trade practices.

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the matter of Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Corporations, and Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, Porter Realty, Inc., a corporation, and Irvin Porter, individually and as an officer or former officer of said corporation: Agreement Containing Consent Order To Cease and Desist.

The agreement herein, by and between Porter Realty, Inc., a corporation, by its duly authorized officer, and Irvin Porter, individually and as officer of said corporation, hereinafter referred to as said respondents, and the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Porter Realty, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 717 Ponce de Leon Boulevard, in the city of Coral Gables, State of Florida.

Respondent Irvin Porter is an officer or former officer of respondent, Porter Realty, Inc. During all relevant times, respondent Porter formulated, directed, and controlled the policies, acts, and practices of said corporation, and his address is the same as that of said corporation.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 of the Federal Trade Commission Act, as amended, and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(A) Any further procedural steps;

(B) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(C) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(D) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to said respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to said respondent's address as stated in this agreement shall constitute service. Said respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. The relief set forth in the order herein fully satisfies any claim for consumer redress which the Commission may have under sections 5 and 19 of the Federal Trade Commission Act, as amended, against respondents arising out of the acts and practices alleged in the complaint. By its final acceptance of this agreement, with such modifications, if any, which the parties may make prior to such final acceptance, the Commission waives its right to commence a civil action under section 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices of said respondents alleged in the complaint.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Said respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

As used in this Order, the following definitions shall apply:

(A) "Respondents" means respondent Porter Realty, Inc., its successors and assigns, and its officers, directors, representatives and employees, or respondent Irvin Porter, or both, and any corporation, subsidiary, division, agent, or other device through which either corporate or individual respondent acts.

(B) "Seller" means one who owns and, directly or indirectly, sells, offers to sell, or advertises for sale any land.

(C) "Agent" means one who represents, or acts for or on behalf of, a seller in selling, offering to sell, or advertising for sale any land, but shall not include an attorney at law whose representation of another person

consists solely of rendering legal services.

(D) "Land," "property," or "lot" means any real property unimproved by a commercial or residential building sold, offered for sale, or advertised for sale by respondents, but shall not include any real property sold or offered for sale to a purchaser pursuant to a single contract for a sum in excess of $50,000.

(E) "Purchaser" or "buyer" means any individual who is a potential or actual vendee of the land offered for sale or sold by respondents.

(F) "Commission" means the Federal Trade Commission and/or its duly authorized representatives and employees.

(G) "Homesite" means any lot in which (1) potable water is available at a reasonable cost, (2) the lot is suitable for a septic tank or there is reasonable assurance that the lot can be served by a central sewage system, (3) the lot is legally accessible, and (4) the lot is free from periodic flooding.

I

It is ordered that respondent Porter Realty, Inc., a corporation, its successors and assigns, and its officers, representatives, and employees, and Irvin Porter, individually and as an officer or former officer of said corporation, directly or through any corporation, subsidiary, division, agent, or other device, in connection with the advertising, marketing, offering for sale, sale, or inducement of payments for land, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

A. Representing, directly or by implication, through the use of any means, that:

1. The purchase of any land has been, is, or will be a good, profitable, short-term, safe, or sound financial investment;

2. There has been, is, or will be little or no financial risk involved in the purchase of any land;

3. The resale of any land is not or will not be difficult, or such land can be or has been resold within a certain time;

4. The purchase of any land is a way to achieve financial security or self-sufficiency, to deal with inflation, or to make money;

5. The value of, or demand for, any land has increased, is increasing, or will increase;

6. Purchasing any interest in land will result in any economic benefit to the purchaser, including but not limited to a benefit resulting from an increase in the value of the land from its use or development for any purpose, or as a result of mineral rights, exploration, or extraction; the land's profitable resale; the provision of a hedge against inflation; or the receipt of income or reduction of expenses from growing any crop, raising any animal, or any other source;

7. Any land is suitable for use as a homesite, farm, or ranch, for personal or commercial purposes;

unless such representation is not misleading and unless, at the time such representation is made, respondents possess and rely upon competent and reliable evidence which substantiates the representation, including, at a minimum, (a) data sufficient to demonstrate that the typical owner of such land is likely to achieve the results represented, and (b) where the representation predicts or projects future occurrences, evidence that would generally be accepted by the community of experts qualified to make such representations as providing a reasonable basis for the projection.

B. Failing to maintain evidence in support of and upon which respondents rely in making any representation about the value, suitability, or use of land, including evidence substantiating the representations described in Paragraph I.A., such evidence to be retained for three years from the date of respondents' last use of such representation and to be furnished to the Commission upon request.

C. Representing, directly or by implication, through the use of any means, that any land is currently usable as a homesite, farm, or ranch, unless such land is immediately usable for such purpose without any substantial improvement or development by the purchaser.

D. Misrepresenting in any manner:

1. The cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility;

2. The past, present, planned, proposed, or potential purchase, use, or development of any interest in land by repondents or any other party;

3. The extent, location, value, nature, or significance of any actual or potential mineral right or resource or any activity related thereto.

II

It is further ordered that respondents, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall:

A. Prepare a "Fact Sheet for Buyers" containing only such information as is set forth or referred to in Attachment A to this Order (incorporated herein by reference), and distribute to all purchasers a copy of the Fact Sheet in the following manner:

1. If respondents invite the purchaser by mail to attend a meeting sponsored by respondents, respondents shall include the Fact Sheet with the invitation;

2. If respondents arrange to meet with the purchaser in his or her home or other location, respondents shall mail the Fact Sheet to the purchaser, allowing sufficient time for the Fact Sheet to arrive at least two days prior to the meeting;

3. If the initial contact with the purchaser is in person (for example, at a booth located in a public place), respondents shall, after identifying briefly the purpose of the contact, give the Fact Sheet to the purchaser, request that he or she read it, and provide ample uninterrupted time for it to be read completely before continuing with any sales presentation;

4. If the initial contact is by telephone or the sale is to be completed entirely through the mail, the Fact Sheet shall accompany the initial mailing to the purchaser.

B. Refrain from misrepresenting any information in the Fact Sheet.

C. Refrain from making any representation, directly or by implication, through the use of any means, about:

1. The present, planned, proposed, or potential development, improvement, or facilities of the land or of the subdivision or project in which the land is located where such representation differs in any material respect from the information contained in the Fact Sheet or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982); 24 CFR 1700.1 et seq. (1983);

2. The respondents' or purchasers' rights or obligations where such representation differs in any material respect from the parties' rights or obligations as stated in the contract, the Fact Sheet, or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations.

D. Where respondents are sellers, honor any purchaser's request to rescind the contract and recover all payments thereunder at the purchaser's option, if respondents fail to distribute a copy of the Fact Sheet to such purchaser as required by Paragraph II.A., provided that the purchaser makes such request

within thirty days after receiving a copy of the Fact Sheet.

III

It is further ordered that where respondents are sellers, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce as commerce is defined in the Federal Trade Commission Act, as amended, they shall:

A. Disclose clearly and prominently in every written promotional material, magazine or newspaper advertisement greater than one-quarter page, and oral sales presentation the following statements:

1. THE FUTURE VALUE OF LAND IS UNCERTAIN. THESE LOTS ARE NOT BEING SOLD AS A FINANCIAL INVESTMENT. YOU SHOULD NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT. DISCUSS ANY POSSIBLE PURCHASE WITH A QUALIFIED PROFESSIONAL.

2. THESE LOTS MAY BE SUITABLE FOR USE ONLY WITH SUBSTANTIAL EXPENDITURES FOR THE EXTENSION OF UTILITIES, WATER, AND OTHER NECESSITIES. THESE EXPENDITURES VARY DEPENDING ON THE LOCATION OF THE LOT AND COULD BE SO GREAT AS TO MAKE USE OF THE LAND IMPRACTICAL.

B. Disclose clearly and prominently in every radio advertisement, television advertisement, and magazine or newspaper advertisement of one-quarter page or less the following statement:

REMEMBER—BUYING LAND MAY BE RISKY. CONSULT A QUALIFIED PROFESSIONAL BEFORE BUYING.

C. Include clearly and prominently, immediately preceding the space provided for the purchaser's signature in each contract for the sale of land, the following statement in 12-point boldface type:

SEVEN DAY RIGHT TO CANCEL

YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU SIGN THIS CONTRACT. SEE THE ATTACHED "RIGHT OF CANCELLATION" FOR AN EXPLANATION OF THIS RIGHT.

IF YOU CHOOSE TO CANCEL WITHIN THIS TIME, ANY PAYMENT YOU MADE UNDER THIS CONTRACT WILL BE REFUNDED AND ANY DOCUMENT YOU SIGNED WILL BE CANCELLED AND RETURNED WITHIN THIRTY DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.

ATTENTION: ALTHOUGH YOU HAVE SEVEN DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT, *BEFORE SIGNING,* YOU CONSIDER YOUR NEEDS CAREFULLY AND HAVE THIS CONTRACT AND THE ATTACHED NOTICE TO BUYERS REVIEWED BY A QUALIFIED PROFESSIONAL.

D. Furnish each purchaser, at or before the time the purchaser signs a contract for the sale of land, with two copies of a form, containing only such information as is set forth or referred to in Attachment B to this Order (incorporated herein by reference), captioned in 12-point boldface type, "RIGHT OF CANCELLATION," and with all other writing in 10-point boldface type.

Provided, however, that if respondents fail to distribute the "RIGHT OF CANCELLATION" forms as required by this paragraph, the period during which the purchaser may cancel the contract shall be extended until seven days after the purchaser receives said "RIGHT OF CANCELLATION."

Provided further that during the seven-day cancellation period after a purchaser's signing of a land purcahse contract, respondents shall not initiate any contact or communication, personal, telephonic, or otherwise, with such purchaser, but if respondents initiate any such contact, the period during which the purchaser may cancel the contract shall be extended until thirty days after the date of purchase.

E. Honor any signed and timely exercise of a "RIGHT OF CANCELLATION" (or its functional equivalent) by the purchaser, and within thirty business days after the receipt of such notice of cancellation, (a) refund all payments made under the contract, and (b) cancel and return any contract or other legal document executed by the purchaser.

F. Refrain from misrepresenting, soliciting, or obtaining any purchaser's assent to or otherwise imposing any condition, waiver, or limitation upon the right of a purchaser to cancel a transaction or receive a refund under any provision of this Order or by any applicable statute or regulation.

It is further ordered that respondents shall, within thirty days of a request by the Commission, Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Sydney Gross, or Edwin Kritzler, furnish to such requester a list of the names and last known addresses for each purchaser of land in the subdivisions known as Southwest Sunsites, Green Valley Acres, and Green Valley Acres II who bought such land through respondents, insofar as this information appears in files or records within respondents' custody and control.

Provided further that whenever it appears that an address supplied by respondents is not a purchaser's correct present address and whenever a subsequent request for such purchaser's present address is made by the Commission, Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Sydney Gross, or Edwin Kritzler, respondents shall, within ten days of such request, make all reasonable efforts, including contacting credit bureaus, telephone and utility companies, county land records, and purchasers' relatives or representatives whose addresses are in respondents' files, to obtain the correct present address of such purchaser and furnish it to the requester.

It is further ordered that respondents shall:

A. Forthwith deliver by certified mail or in person, a copy of this Order to all present and future sales representatives and other employees, independent brokers, advertising agencies, and others who sell or promote the sale of land or who otherwise have contact with the public on behalf of respondents in connection with the sale of land.

B. Provide each person described in Paragraph V.A. with a form, to be returned to respondents, clearly stating that person's intention to conform his or her sales practices to the requirements of this Order.

C. Inform each person described in Paragraph V.A. that respondents shall not use the services of any such person, unless such person agrees to and does file notice with respondents that her or she will conform his or her practices to the requirements of this Order.

D. In the event such person will not agree to so file notice with respondents and to conform his or her practices to the requirements of this Order, respondents shall not use the services of such person.

E. Inform the persons described in Paragraph V.A. that respondents are obligated by this Order to discontinue dealing with those persons who engage on their own in the acts or practices prohibited by this Order, or who fail to adhere to the affirmative requirements of this Order.

F. Institute a reasonable program of continuing surveillance adequate to reveal whether the practices of each person described in Paragraph V.A. conform to the requirements of this Order, and promptly investigate and make good faith efforts to resolve any

complaints about any such person received by respondents, and maintain records of any such complaint, investigation, and disposition of the complaint for ten years from the date of the complaint, such records to be furnished to the Commission upon request.

G. Discontinue dealing with any person described in Paragraph V.A. who more than once engages on his or her own in the acts or practices prohibited by this Order.

H. Forthwith deliver a copy of this Order to each of respondents' subsidiaries.

I. Notify the Commission at least thirty days prior to any proposed change in the corporate respondent, such as dissolution, assignment, reorganization, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other in the corporation that may affect compliance obligations arising out of this Order.

J. Within sixty days after service upon it of this Order and annually for three years thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Attachment A—Fact Sheet for Buyers

FACT SHEET CONCERNING: (insert name of subdivision)——————

NAMES OF SELLER/AGENT: (insert name of seller and agent)——————

EFFECTIVE DATE OF NOTICE: (insert date of notice)——————

Important

YOU ARE ADVISED THAT THE FUTURE VALUE OF LAND IS UNCERTAIN. THESE LOTS ARE NOT BEING SOLD AS A FINANCIAL INVESTMENT. YOU SHOULD NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO REESELL IT. IF YOU OFFER YOUR LOT FOR SALE, YOU MAY FACE THE COMPETITION OF THE SELLER'S OWN SALES PROGRAM, WHICH MAY INVOLVE AN EXTENSIVE SALES CAMPAIGN. REAL ESTATE BROKERS ALSO MAY NOT BE INTERESTED IN SELLING YOUR LOT OR LISTING IT FOR SALE.

YOU ARE ALSO ADVISED THAT THESE LOTS MAY BE SUITABLE FOR USE ONLY WITH SUBSTANTIAL EXPENDITURES FOR THE EXTENSION OF UTILITIES, WATER, AND OTHER NECESSITIES. THESE EXPENDITURES VARY DEPENDING ON THE LOCATION OF THE LOT AND COULD BE SO GREAT AS TO MAKE USE OF THE LAND IMPRACTICAL.

AS OF THE DATE OF THIS FACT SHEET, THE SELLER HAS SOLD——— (insert number) LOTS IN———(insert name of subdivision).———(insert number) LOTS REMAIN UNSOLD AND AVAILABLE FOR SALE.

(In connection with any land for which federal property reports are *not* provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982), 24 CFR 1700.1 et seq. (1983), provide the following information:)

THIS FACT SHEET PROVIDES IMPORTANT INFORMATION ABOUT THE VALUE OF THESE LOTS AND THE AVAILABILITY AND ESTIMATED COSTS TO YOU OF UTILITIES, WATER, AND OTHER NECESSITIES.

Water

(Provide the following information regarding water services:

(a) The method of water service to be used:

(b) If individual wells are to be used: whether the seller is responsible for installing such wells; whether evidence exists thast water can be found under every lot offered for sale; the estimated depth at which water can be found in the applicable area; the estimated cost of drilling a well for household purposes and for agricultural purposes if agricultural use is feasible; and whether and under what conditions a refund or exchange will be offered in the event a productive well cannot be installed;

(c) If water is to be provided by a central system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser, including the estimated cost of installing water mains to either the most remote lot in the subdivision or the lot the prospective purchaser is considering purchasing; the estimated service availability date of the water system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

Sewer Service

(Provide the following information about sewer service:

(a) The method of sewage disposal to be used;

(b) If sewage disposal is to be by septic tank or other individual system: whether the seller is responsible for installing the system; the estimated cot of the system; whether a permit is required for such a system; and whether and under what conditions a refund or exchange will be offered if the purchaser is unable to install a septic tank or other on-site sewage system;

(c) If sewage disposal is to be by a central treatment and collection system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser; the estimated service availability date of the system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

Electric Service

(Provide the following information about electric service:

(a) Whether primary service lines have extended in front of, or adjacent to, each lot;

(b) If not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

Telephone Service

(Provide the following information about telephone service:

(a) Whether primary service lines have been extended in front of, or adjacent to, each lot;

(b) If not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

IMPORTANT: BEFORE SIGNING ANY DOCUMENT, OBTAIN AND READ THOROUGHLY THE CONTRACT AND THIS FACT SHEET. IT IS DESIRABLE TO HAVE A QUALIFIED PROFESSIONAL EVALUATE THE TERMS OR MERITS OF THIS PURCHASE *BEFORE* YOU SIGN ANYTHING.

(In connection with any land for which federal property reports *are* provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982), 24 CFR 1700.1 et seq. (1983), provide the following information:)

IMPORTANT: BEFORE SIGNING ANY DOCUMENT, OBTAIN AND READ THOROUGHLY EACH PROPERTY REPORT AND CONTRACT. THE

PROPERTY REPORT CONTAINS ADDITIONAL INFORMATION THAT YOU SHOULD KNOW AND UNDERSTAND BEFORE YOU SIGN A CONTRACT TO BUY THIS LAND. IT IS DESIRABLE TO HAVE A QUALIFIED PROFESSIONAL EVALUATE THE TERMS OR MERITS OF THIS PURCHASE *BEFORE* YOU SIGN ANYTHING.

Attachment B—Right of Cancellation (insert date purchaser signed the contract) Date of Transaction (insert lot identification information) Lot Identification

YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU SIGN THE CONTRACT. YOU SHOULD USE THIS TIME TO EXAMINE WITH CARE THIS CONTRACT AND THE FACT SHEET OR PROPERTY REPORT. WE ALSO RECOMMEND THAT YOU HAVE THIS CONTRACT AND OTHER INFORMATION ABOUT THE PROPERTY REVIEWED BY A QUALIFIED PROFESSIONAL.

NO REPRESENTATIVE OF THE SELLER SHOULD CONTACT YOU IN ANY WAY DURING THIS SEVEN DAY PERIOD. IF, HOWEVER, THE SELLER OR ITS REPRESENTATIVE CONTACTS YOU DURING THIS SEVEN-DAY PERIOD, YOU MAY CANCEL THE PURCHASE BY NOTIFYING THE SELLER BY MIDNIGHT OF THE THIRTIETH DAY AFTER THE DATE OF PURCHASE.

IF YOU CANCEL WITHIN THIS TIME, ANY PAYMENTS YOU MADE UNDER THE CONTRACT WILL BE REFUNDED AND ANY DOCUMENT YOU SIGNED WILL BE CANCELLED AND RETURNED WITHIN THIRTY DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE OR TELEGRAM STATING YOU ARE EXERCISING YOUR RIGHT TO CANCEL, TO (insert name of seller), AT (insert address of seller's place of business) POSTMARKED (if mailed) OR FILED FOR TRANSMISSION (if telegraphed) NOT LATER THAN MIDNIGHT OF (insert date not earlier than the seventh day following the date the purchaser signed the contract).

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH BUYER MUST SIGN THIS NOTICE.)

(Date) ____________________

(Buyer's signature) ____________________

(Buyer's signature) ____________________

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Porter Realty, Inc. and Irvin Porter.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The administrative complaint alleges that respondents violated section 5 of the Federal Trade Commission Act by engaging in false, misleading, deceptive, and unfair advertising and sales practices in connection with the sale of subdivided parcels of rural, undeveloped land located in West Texas. It is alleged that respondents misrepresented and failed to disclose material facts regarding the investment value and usability of the land for homesites, farms or ranches.

The first part of the proposed order contains definitions of terms used throughout the agreement. Paragraph I of the order contains provisions requiring the cessation of certain representations concerning investment and resale potential; lack of financial risk; demand for and supply of the land; and future growth and development unless, at the time a representation is made, the statement is not misleading and respondents possess and rely upon data substantiating the representation. Paragraph I also prohibits respondents from representing that any land is currently usable as a homesite, farm or ranch unless the land is immediately usable for such purpose without substantial improvement. In addition, Paragraph I prohibits respondents from misrepresenting the cost of obtaining or the availability of utilities; the purchase, use or development of any interest in land by respondents or any other party; and the extent, location, value, nature or significance of any mineral rights or resource or any activity related thereto.

Paragraph II of the proposed order requires respondents to distribute a "Fact Sheet for Buyers" ("Fact Sheet") to all purchasers. The Fact Sheet states that the future value of land is uncertain and resale may be difficult and that substantial expenditures may be necessary in order to use the land as homesites, farms or ranches. This paragraph also prohibits respondents from making representations about the land or the subdivision in which the land is located which differ in any material respect from the Fact Sheet or the Property Report required by the Interstate Land Sales Full Disclosure Act. In addition, Paragraph II prohibits respondents from making representations about respondents' or purchasers' rights or obligations which differ in any material respect from the parties' rights or obligations as stated in the contract, Fact Sheet or the Property Report required by the Interstate Land Sales Full Disclosure Act. This paragraph further provides that when respondents are sellers, any requests to rescind the contract must be honored if the respondents failed to provide the Fact, Sheet, as required by the order.

Paragraph III of the proposed order requires respondents to disclose in sales and promotional materials, printed advertisements that are greater than one-quarter page, and oral sales presentations that the future value of land is uncertain; that any possible purchase should be discussed with a qualified professional; and that large expenditures may be necessary to make the lots suitable for use. Radio advertisements and printed advertisements of one-quarter page or less must disclose that buying land is risky and a qualified professional should be consulted before buying. This paragraph also provides for a post-purchase cancellation period, requires respondents to provide each purchaser a right of cancellation form, and prohibits respondents from contacting the purchaser during the period in which the purchaser may cancel the contract. In addition, Paragraph III requires respondents to honor signed and timely cancellation notices. Further, Paragraph III prohibits respondents from misrepresenting or limiting a purchaser's right to cancel a transaction or receive a refund under the order or applicable law.

Paragraph IV of the proposed order requires respondents to furnish the Commission and the subdivider respondents (Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Sydney Gross, and Edwin Kritzler), upon request, a list of the names and addresses of all individuals who purchased land through respondents, insofar as this information appears in files or records within respondents' custody or control.

Paragraph V of the proposed order requires respondents to provide all of their sales representatives, employees, independent brokers, and advertising agencies with copies of the order and to institute certain procedures to discover

and remedy any violations of the order provisions. This paragraph also requires respondents to deliver copies of the order to each of their subsidiaries and to notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order. In addition, Paragraph V requires respondents to provide the Commission proof of compliance with the order within sixty (60) days after service of the order and annually for three years thereafter.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-11810 Filed 5-15-85; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82-18; Notice 7]

Incentive Grant Criteria for Alcohol Traffic Safety Programs; Amendment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; amendment.

SUMMARY: This document proposes to amend the regulation which established a grant program to encourage States to adopt effective programs to reduce crashes resulting from persons driving while under the influence of alcohol. This effort is undertaken pursuant to Pub. L. 98-363, which modified the alcohol traffic safety incentive grant program by expanding the scope of the legislation to include not only programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol but also from driving while under the influence of a controlled substance. It specifically amends the alcohol traffic safety incentive grant program by (1) including drugged driving rehabilitation and treatment programs or drugged driving detection research programs as one of the criteria from which a State can select in order to qualify for a supplemental incentive grant and (2) encouraging States to enact laws specifying minimum sentencing standards for persons convicted of drunk driving by establishing a special grant.

DATES: All written comments must be received on or before June 17, 1985.

ADDRESSES: Written comments should refer to the docket number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours are 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-0837).

SUPPLEMENTARY INFORMATION: On July 17, 1984, the President signed into law a bill (Pub. L. 98-363) which amends the Incentive Grant Criteria for Alcohol Traffic Safety Programs (23 U.S.C. 408). The original statute established a two tier grant system as an incentive for States to implement effective programs to reduce the drunk driving problem. The first tier is a basic grant in the amount of 30 percent of each State's fiscal year 1983 apportionment under section 402 of the Highway Safety Act, 23 U.S.C. 402. A State is eligible for the basic grant if it meets four criteria specified in the Act. The second tier is a supplemental grant up to an additional 20 percent of the amount apportioned to a State under the Highway Safety Act. A State is eligible for the supplemental grant if it qualifies for the basic grant and implements its choice of eight additional alcohol traffic safety program elements from a list of 21 such elements specified in 23 CFR Part 1309.

Pub. L. 98-363 modifies that grant program by expanding the scope of the legislation to include not only drunk driving but also drugged driving and by encouraging States to enact minimum sentencing standards for persons convicted of drunk driving. This rulemaking action is undertaken to implement these provisions of the new legislation.

Drugged Driving

In the original legislation, Congress instructed the agency to establish criteria with which a State would have to comply in order to be eligible for a supplemental grant. Congress did not mandate what those criteria should include but instead suggested several criteria that the agency could require. In amending the original legislation, Congress has added to the suggested list one additional criterion: The establishment and operation of rehabilitation and treatment programs for persons arrested and convicted of driving under the influence of controlled substances or the establishment or research programs to develop effective means of detecting the use of controlled substances by drivers.

The legislation uses the phrase "controlled substance," which is defined in section 802 of the Controlled Substances Act (21 U.S.C. 802). However, for the sake of brevity, this notice will use the word "drug" to mean a "controlled substance".

Currently, the regulation implementing 23 U.S.C. 408 contains no provisions for allowing States to become eligible for a basic or supplemental grant on the basis of drugged driving programs which they might conduct. To date research has shown that drugs may be potential highway safety hazards. Studies have shown that certain drugs such as marijuana and tranquilizers have been found in the bloodstreams of fatally injured and injured drivers. In addition, some laboratory data on the effect of drugs on driving are available which show decreased performance on driver-related tasks. However, further research is needed to develop a simple, reliable and effective method of detecting drug use by drivers and to determine whether a threshold level of drug use can be established as the accepted level at which driving impairment occurs—similar to the widely accepted Blood Alcohol Concentration (BAC) of 0.10 percent used in most State drunk driving laws. In light of the research conducted to date and in light of Congress' concern that these programs be included, the agency is proposing to adopt the language in Pub. L. 98-363 as an additional criterion from which a State may choose in order to qualify for a supplemental grant.

Minimum Sentencing

Pub. L. 98-363 also modifies the grant program by adding a special grant for which a State can qualify if it enacts laws specifying tough minimum sentencing standards for persons convicted of drunk driving. The minimum requirements for such laws are as follows: First offenders must have their licenses suspended for 90 days and either be imprisoned for 48 hours or perform 180 hours of community service; second offenders, within a five year period, must have their licenses revoked for one year and be imprisoned for ten days; third offenders, within a five year period, must have their licenses suspended for three years and be imprisoned for 120 days; and persons driving in violation of any license restrictions that were imposed as a result of convictions for DWI (including

suspensions or revocations) must be imprisoned for 30 days and, upon release, receive an additional period of license suspension or revocation.

The statute specifies that the amount of the special grant shall not exceed five percent of the amount apportioned to the State for fiscal year 1984 under sections 402 and 408 of Title 23. The agency is proposing to provide grants only at the full five percent level for those States that meet all of the minimum sentencing requirements. As with the basic and supplemental grants, a State would be eligible for a special grant for up to three fiscal years. However, unlike the supplemental grant, a State can become eligible for a special grant without being eligible for the basic grant.

The purpose of the Act is to encourage the States to adopt and implement effective programs to reduce traffic safety problems resulting from driving while under the influence of alcohol or a controlled substance. In enacting the original law, Congress made the judgment that certain licensing and criminal sanctions were so essential that each State must satisfy those criteria in order to receive a basic grant.

The legislation provides that a State must adopt and implement specific penalties for persons convicted of "driving under the influence of alcohol." The language "driving under the influence of alcohol" was evidently adopted from the report issued by the Presidential Commission on Drunk Driving and there is no legislative history which defines the phrase. In the proposed regulation, we have substituted the language "driving while intoxicated" for "driving under the influence of alcohol."

A review of the Act and its legislative history shows that Congress intended both the licensing and criminal sanctions to be applied against persons who were driving with a BAC of 0.10 percent or greater. It is, therefore, the opinion of the agency that Congress also intended that the minimum sentencing provisions be based on a BAC of 0.10 percent. An interpretation allowing for a State-established BAC of over 0.10 percent would result in the anomaly of creating a special grant for minimum sentencing requirements that is weaker than the sentencing requirements found in the basic grant provisions.

Additionally, while most States have "driving under the influence" statutes and do not use the term "driving while intoxicated", a few States consider driving under the influence a separate and lesser offense. Because of the possible confusion over the use of this phrase, the agency proposes to substitute the phrase "driving while intoxicated". This term was discussed in the previous rulemaking action and it was determined that "driving while intoxicated" should be based on a 0.10 BAC. However, we are specifically requesting comments on retaining the phrase "driving under the influence" and letting States apply it to any BAC level provided that level is not greater than 0.10.

The sentencing provisions require license "suspensions" and "revocations" of varying lengths of time. Generally, the word "suspension" implies a temporary debarring of driving privileges while "revocation" implies a permanent debarring of driving privileges. The agency believes that it is the length of the debarment period that is important and not whether the debarment is temporary or permanent. Therefore, it is proposing to retain the definitions of "suspension" found in section 1309.3 of the current regulation except that "revocation" may be used interchangeably with "suspension". As noted in the definition, restricted, provisional or conditional licenses are allowed the last 60 days of a suspension for a first offense. However, no restricted, provisional or conditional licenses are allowed from convictions for second or subsequent offenses.

The sentencing provisions also require imprisonment for varying lengths of time. The agency is proposing that the definition of "imprisonment" for the special grant be the same as for the basic grant. In addition, the legislation specifies that the term of imprisonment be 48 consecutive hours for those convicted of first offenses, however, it does not specify whether the other terms of imprisonment be for consecutive days. The agency is, therefore, proposing that the term of imprisonment for second offenders, which is specified as ten days, be served is no less than 48 consecutive hour segments within a 90 day period from conviction. This definition will satisfy the following concerns: The length of each consecutive segment of imprisonment should be no less than that imposed on first offenders; flexibility for rehabilitation and treatment programs is provided if treatment periods are spaced out over a period of time rather than compressed into the ten days; the imprisonment should not extend beyond 90 days from sentencing because of losing the deterrent effect of swiftness of punishment; and allowing the imprisonment to be spread over a longer period of time than ten days will accommodate those communities where jail space is inadequate.

While the agency is not proposing a consecutive period of imprisonment for second offenders, it is proposing such for third and subsequent offenders and for those convicted of driving with a suspended or revoked license or in violation of a restriction due to driving while intoxicated. The agency believes that the seriousness of these offenses warrant the stiffer penalties proposed. Consequently, the language of the proposed regulation incorporates the word "consecutive" into the description of the terms of imprisonment for these offenses.

Additionally, the provision for performing community service as an alternative to imprisonment for first offenders does not specify the period of time within which that service must be completed. The agency is proposing to require that such service be completed within three months and has incorporated this interpretation into the proposed regulation.

General Requirements

The general requirements and the certification and award procedures will remain the same as those established for the basic and supplemental grants. Each State is to provide information to document and verify its eligibility for the special grant. Upon review by NHTSA, the State will be notified that it is or is not eligible for the grant award based upon the documentation submitted. If eligible for a grant award, the State would also be advised of the amount of the grant to be awarded subject to receipt and NHTSA formal approval of the State's Alcohol Highway Safety Plan. Upon receipt and subsequent approval of the Plan, the grant will be awarded by execution of a Federal-Aid Agreement.

Paperwork Reduction

Information proposed to be provided by the States to determine State eligibility for a grant is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB approves this information collection.

Comments on the proposed information collection requirement should be addressed to: Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attention: Desk Officer for Department

of Transportation. Copies of these comments should also be sent to Docket 82-18; Notice 7 at the address shown at the front of this notice.

Procedures for Commenting on Proposal

Interested persons are invited to submit written comments on this proposal. It is requested but not required that 10 copies be submitted. Comments should not exceed 15 pages in length (*See* 49 CFR 553.21). Necessary attachments may be added to these submissions without regard to the 15-page limitation. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date.

To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written statements and comments will be placed in Docket 82-18; Notice 7 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington D.C. 20590.

The agency has determined that this rulemaking should be classified as nonsignificant under the Department's regulatory policies and procedures. The agency is merely implementing an Act of Congress. The agency has determined that since this rule will not have an annual impact of $100 million on the economy, it is not a major rule within the meaning of Executive Order 12291. The impact is so minimal that preparation of a full preliminary regulatory evaluation is not required.

Regulatory Flexibility Act

I hereby certify that the requirements that will be established by this rulemaking action will not have a significant economic impact on a substantial number of small entities because the States will be the recipients of any funds awarded under the regulation and, therefore, preparation of an Initial Flexibility Analysis is not necessary.

List of Subjects in 23 CFR Part 1309

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In consideration of the foregoing, Part 1309 of Title 23 of the Code of Federal Regulations is revised to read as follows:

PART 1309—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Authority: 23 U.S.C. 408 delegation of authority at 49 CFR 1.50.

§ 1309.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving and driving under the influence of a controlled substance.

§ 1309.2 Purpose.

The purpose of this part is to encourage States who have adopt or do adopted and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol or controlled substances. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving, or driving under the influence of a controlled substance.

§ 1309.3 Definitions.

(a) "Controlled substance" has the meaning given such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(b) "Driving while intoxicated" means operating or being in actual physical control of a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(c) "Imprisonment" means confinement in a jail, minimum security facility or in-patient rehabilitation or treatment center.

(d) "Prompt" means that the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State submit a plan showing how it intends to achieve a 45 day average.

(e) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(f) "Suspension" or "revocation" means:

(1) for first offenses, the temporary debarring of all driving privileges for a minimum of 30 days and then the use for a minimum 60 days of a restricted, provisional or conditional license permitting a person to drive only for the purposes of going from a residence to or from a place of employment or to and from a mandated alcohol education or treatment program. A restricted, provisional or conditional license can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test, first offense, the temporary debarring of all driving privileges for 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

§ 1309.4 General requirements.

(a) *Certification Requirements.* To qualify for a grant under 23 U.S.C. 408, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1309.7 and/or § 1309.5 and, if applicable, the requirements of § 1309.6

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 that: (i) It has an alcohol traffic safety program that meets those requirements. If the certification is based upon prior adoption of a criterion, a State must provide information showing that it has been actively implementing that criterion during the four years prior to application for a grant, (iii) it will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and (iii) it will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982 (either State or Federal

fiscal year 1981 and 1982 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grants and provides the necessary information, identified in § 1309.5 and § 1309.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

(b) *Limitations on Grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) The amount received as a special grant shall not exceed 5 percent of a State's 23 U.S.C. 402 and 408 apportionment for fiscal year 1984.

(4) In the first fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(5) In the second fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C 408; and

(6) In the third fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C 408.

§ 1309.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest. A State can provide the necessary data based on a statistically valid sample.

(b)(1) A mandatory sentence, which shall not be subject to suspension or probation, of imprisonment for not less than 48 consecutive hours, or not less than 10 days of community service for any person convicted of driving while intoxicated more than once in any five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years, what general types of confinement are being used, and the sentences for those persons. A State can provide the necessary data based on a statistically valid sample.

(c)(1) Provide that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

§ 1309.6 Requirements for a supplemental grant.

(a) to qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed an average of 45 days, and

(b) have in place and implement or adopt and implement eight of the following twenty-two requirements:

(1) Enactment of a law that raises, either immediately or over a period of three years, the minimum age for drinking any alcoholic beverages to 21. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problem, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A Statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. Conviction information must be recorded in the system within 30 days of a conviction, license sanction or the completion of the appeals process. Information in the record system must be retained for at least five years. The public shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing that the time required to enter alcohol-related convictions into the system is not greater than 30 days. A State shall also submit information showing that the data is retained in the system for at least 5 years.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety

program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States, local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term education programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education program, discussing how it is related to changing societal attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program, and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre- or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of its screening process.

(9) Development and implementation of State-wide evaluation system to assure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(10) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving financial self-sufficiency must be shown in subsequent years.

(11) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit information showing that it is systematically using roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(12) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(13) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(14) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State is a member of the Driver License Compact and has adopted a one-license/one-record policy, and is participating in the National Driver Register.

(15) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowlege of the suspension or revocation. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of innovative programs. To demonstrate compliance a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(22) Rehabilitation and treatment programs for those arrested and convicted of driving under the influence of a controlled substance or research programs to develop effective means of detecting use of controlled substances by drivers. To demonstrate compliance with the rehabilitation and treatment portion of this criterion, a State shall submit a copy of its law or regulation adopting the requirement and a copy of the minimum standards set for these programs by the State. To demonstrate compliance with the research portion of this criterion, a State shall submit a description of its drugged driving research program and the research plan.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must (1) Have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed 45 days; and (2) have in place and implement or adopt and implement four of the twenty-two requirements specified in section (b).

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance for each of the requirements it adopted in the prior year, and

(2) Adopt two more requirements from section (b) for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

§ 1309.7 Requirements for a special grant.

To qualify for a special grant of five precent of its 23 U.S.C. 402 and 408 apportionment for fiscal year 1984, a State must have in place and implement or adopt and implement a statute which provides that:

(a) Any person convicted of a first violation of driving while intoxicated shall receive:

(1) A mandatory license suspension for a period of not less than ninety days; and

(2)(i) An assignment of one hundred hours of community service to be completed within three months; or

(ii) A mandatory minimum sentence of imprisonment for forty-eight consecutive hours;

(b) Any person convicted of a second violation of driving while intoxicated within five years after a conviction for the same offense shall receive:

(1) A mandatory minimum sentence of imprisonment for ten days to be served in no less than 48 consecutive hour segments within a ninety day period from conviction; and

(2) A mandatory license revocation for not less than one year;

(c) Any person convicted of a third or subsequent violation of driving while intoxicated within five years after a prior conviction for the same offense shall receive:

(1) A mandatory minimum sentence of imprisonment for one hundred and twenty consecutive days; and

(2) A mandatory license revocation of not less than three years; and

(d) Any person convicted of driving with a suspended or revoked license or in violation of a restriction due to driving while intoxicated conviction shall receive:

(1) A mandatory sentence of imprisonment for thirty consecutive days; and

(2) Upon release from imprisonment, and additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of ther offense of driving with a suspended or revoked license.

§ 1309.8 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1309.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

Issued on: May 13, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-11823 Filed 5-13-85; 12:49 pm]

BILLING CODE 4910-59-M

Coast Guard

33 CFR Part 100

[CGD1-85-1R]

Regatta; Marina Bay 100

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering a proposal to restrict the navigation of non-participating vessels in the proposed race route of the "Marina Bay 100" power boat race. This event will be held on June 29, 1985 at 11:00 a.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATE: Comments must be received on or before June 17, 1985.

ADDRESS: Comments should be mailed to Commander (b), First Coast Guard District, 150 Causeway Street, Boston, MA 02114. The comments and other materials referenced in this notice will be available for inspection and copying at 150 Causeway Street, Room 1102, Boston, MA 02114. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG T.E. Hobaica, (617) 223-3607.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-85-1R) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG T.E. Hobaica, USCG, project officer, First Coast Guard District Boating Standards/Affairs Branch and LCDR J.M. Collin, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The participants in this marine event, sponsored by the Race New England, include approximately 30 high speed offshore power boats. The participants will follow a course from position 42°18′38″ N., 070°51′53″ W. to 42°16′37″ N., 70°50′00″ W. to 42°17′02″ N., 070°46′00″ W., to 42°19′38″ N., 070°49′50″ W. The race will be patrolled by various units from Coast Guard Group Boston with Auxiliary units augmenting throughout. Inclement weather will postpone the race until 30 June 1985. The purpose of this regulation is to augment the safety precautions taken by the sponsor to insure the safety of the boating public and the participants of this event. Severe injury to spectators and the boating public due to loss of steerage by high speed power boats constitute the primary concern.

This regulation limits the distance to which non-participating vessels may approach the race course in order to provide for the safety of life on navigable waters during this marine event. A Captain of the Port Safety Zone was issued in support of the 1984 Marina Bay 100.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation restricts navigation for only a short period of time and only affects a small body of water.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-1-01R to read as follows:

§ 100.35–1–01R Marina Bay 100.

(a) *Regulated Area:* All areas within 800 yards of a line drawn from position 42°18′38″ N., 070°51′53″ W. to 42°16′37″ N., 70°50′00″ W. to 42°17′02″ N., 070°46′00″ W., to 42°19′38″ N., 070°49′50″ W.

(b) *Effective Period:* 10:45 a.m., June 29, 1985 until 3:00 p.m., June 29, 1985 or completion of the Marina Bay 100, whichever is later.

(c) *Special Local Regulations:* All non-participating vessels operating in the vicinity of participants in this event shall:

(1) Approach no closer than 800 yards from the above Regulated area.

(2) Exercise extreme caution when operating in this area.

(3) All vessels in the effective area will comply with the instructions from the Coast Guard and Coast Guard Auxiliary vessels.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: May 13, 1985.

R.A. Bauman, RADM, USCG,

Commander, First Coast Guard District.

[FR Doc. 85–11874 Filed 5–15–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD3 85–18]

Regatta; Connecticut River Raft Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Connecticut River Raft Race being sponsored by the Connecticut River Raft Race Inc., of Norwich, Connecticut. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

DATES: Comments must be received on or before July 1, 1985.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or argument. Persons submitting comments should include their names and addresses, identify this notice (CGD3 85–18) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Annual Connecticut River Raft Race is a marine event to be held on the Connecticut River between Hurd and Haddam Meadows State Parks. It is sponsored by the Conecitcut River Raft Race Inc., of Norwich CT and is well known to the boaters and residents of this area. This event is traditionally held each year on the first Saturday in August. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations and thereafter provide the public with full and adequate notice of this annual event by publication in the Third District Local Notice to Mariners. Over 100 self-propelled homemade rafts will cruise down a 25 mile section of the Connecticut River. Vessels provided by the State of Connecticut State Police, and Department of Environmental Protection will work in conjunction with approximately 12 vessels provided by the sponsor to patrol this event. Specific requirements have been imposed upon the sponsor to ensure that all participants wear personal flotation devices throughout the event for their own safety. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event on this section of the river. A Coast Guard patrol vessel will be located at strategic locations on the river both above and below the regulated area to stop vessel traffic.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a fully regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding Section 100.305 to read as follows:

§ 100.305 Connecticut River Raft Race.

(a) *Regulated Area:* That section of the Connecticut River between the Salmon River (Marker no. 48) and Middle Haddam (Marker no. 72).

(b) *Effective Period:* This regulation will be effective from 9:00 a.m. to 2:00 p.m. on August 3, 1985 and thereafter annually on the first Saturday in August unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** Notice.

(c) *Special Local Regulations:* (1) The regulated area shall be closed to all vessels in excess of 20 meters (65.6 feet) in length during the effective period.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) All spectator vessels shall be moored or anchored prior to the start of the event in such a way as to not interfere with the passage of the race participants. They shall remain

anchored or moored until the end of the race or until directed by a patrol vessel.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: May 7, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-11875 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 140, 141, 142, 143, 144, 145, and 146

[CGD 84-098]

Revision of the Regulations on Outer Continental Shelf Activities, Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period of the advance notice of proposed rulemaking that would revise the Coast Guard regulations on Outer Continental Shelf (OCS) Activities. The extension was requested by four commentors, three of whom are industry associations. All four commentors cited the broad scope of this regulatory initiative and their difficulty in providing meaningful responses within the original 90 day comment period. Two commentors requested a six month extension, one commentor requested a three month extension, and one commentor requested an extension of an unspecified length. Because of these requests for additional time to comment on the advance notice of proposed rulemaking, the deadline for receipt of comments is extended to September 3, 1985.

DATE: The comment period on the advance notice of proposed rulemaking is extended to September 3, 1985.

ADDRESS: Comments should be mailed to the Commandant (G-CMC/21) (CGD 84-098), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593. Between the hours of 8 a.m. and 4 p.m. Monday through Friday except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: LCDR A.J. Cross G-MVI-4, (202) 426-2307.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking was published on March 7, 1985, in the **Federal Register** (50 FR 9290). A correction notice was published on March 14, 1985 (50 FR 10252).

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

May 13, 1985.

[FR Doc. 85-11873 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Headstone or Marker Allowance

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to increase the monetary allowance payable in lieu of a Government-furnished headstone or marker from $68 to $70. The need for this action results from the fact that the average actual cost of a Government-furnished headstone or marker for fiscal year 1984 was $70. The effect of this proposed amendment would be to permit payment of up to $70 in lieu of a Government-furnished headstone or marker.

DATES: Comments must be received on or before June 17, 1985.

These changes are proposed to be effective October 1, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, (202) 389-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 3.1612 the Veterans Administration is authorized to pay a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of 38 CFR 1.631 (a)(2) and (b). The amount of the allowance is the lesser of the actual cost of acquiring a non-Government headstone or maker (or adding identifying information to an existing marker) or the average actual cost of a Government-furnished headstone or marker for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was furnished (or identifying information added).

The average actual cost to the Veterans Administration of headstones and markers furnished at Government expense for fiscal year 1984 (Oct. 1, 1983 through Sept. 30, 1984) was $70. Consequently, we are amending § 3.1612(e) to reflect this information.

The Administrator has certified that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Also, this change simply updates VA regulations to reflect the actual average cost to the VA of headstones and markers in fiscal year 1984. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons.

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Catalog of Federal Domestic Assistance Program number is 64.101.

Approved: May 1, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3 *Adjudication,* is amended by revising § 3.1612, paragraph (e)(2)(ii) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.*

* * * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1983 (October 1, 1982 through September 30, 1983) is $68 and for fiscal year 1984 (October 1, 1983 through September 30, 1984) is $70.

(38 U.S.C. 906(d))

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[FR Doc. 85–11835 Filed 5–15–85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2837-2]

Standards of Performance for New Stationary Sources: VOC Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI), Air Oxidation Processes and Distillation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule: Reopening of Pubic Comment Period.

SUMMARY: The period for receiving written comments on the proposed New Source Performance Standards (NSPS) for Volatile Organic Compound emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI), Air Oxidation Processes and Distillation Operations, is being reopened for the limited purpose of allowing public comment on the results of the EPA's reanalysis of the total resource effectiveness (TRE) equations and coefficients, the costing procedures, and the designation of affected facility in both proposed standards. Analysis of new information received in public comments and collected since proposal has resulted in changes to the TRE equations and coefficients for both proposed standards and reconsideration of the affected facility designation for the distillation operations proposed standards. Comments will also be considered on the documentation in the air oxidation and distillation dockets concerning the potentially toxic compounds emitted from air oxidation processes and distillation operations.

DATE: Comments must be postmarked on or before July 15, 1985.

ADDRESS: Comments should be submitted [in duplicate if possible] to: Central Docket Section [LE-131], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Specify the following docket numbers: A–81–22 (Air Oxidation Processes) and A–80–25 (Distillation Operations).

FOR FURTHER INFORMATION CONTACT: Mr. William Harnett, for copies of memoranda on revised flare and incinerator costing procedures or for further information on regulatory decisions and the affected facility designation, at the Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541–5578. Mr. Robert Rosensteel or Mr. David Beck, for information on the costing revisions and the TRE equations and coefficients, at the above address, telephone number (919) 541–5671.

SUPPLEMENTARY INFORMATION: On October 21, 1983, EPA proposed in the **Federal Register** (48 FR 48932) standards for volatile organic compound (VOC) emissions from air oxidation processes under Section 111 of the Clean Air Act. The public comment period for the proposed standards ended January 3, 1984. Also, under Section 111, EPA proposed in the **Federal Register** (48 FR 57538) standards for VOC emissions from distillation operations on December 30, 1983. The public comment period for the proposed standards ended March 13, 1984. The EPA received comments from 19 interested parties on the costing procedures used for both standards and on the designation of affected facility for the distillation NSPS. These comments caused the Agency to consider changes to sections of both proposed standards. The revised costing procedures and the affected facility changes being considered are discussed in two separate sections within this notice, beginning with costing procedures.

Because of the changes that are being considered and the EPA's desire to ensure that the standards are based on the most complete and accurate information available, EPA is reopening the public comment period until July 15, 1985. The EPA will consider only those comments that pertain to the revised total resource effectiveness (TRE) equations and coefficients in both proposed NSPS, the costing procedures in both proposed NSPS, the documentation of the potentially toxic compounds emitted from air oxidation processes and distillation operations, and the designation of affected facility in both proposed standards; the comment period for all other aspects of the rulemaking ended January 3, 1984, and March 13, 1984, respectively for the air oxidation and distillation proposed standards.

Revision to Costing Procedures Since Proposal

The EPA received letters from 10 commenters on the costing procedures used for both the proposed air oxidation processes NSPS and the proposed distillation operations NSPS. These commenters indicated that some of the costing assumptions were incorrect and that the costing procedures overlook several items that should have been included. Also, at the National Air Pollution Control Techniques Advisory Committee meeting for the reactor process draft NSPS, one commenter had noted differences among results obtained from the TRE equations used for the two proposed standards and the draft standards for reactor processes. The commenter had sugggested that since the TRE equations are used to determine if it is cost effective to further control the VOC emissions, the three equations should calculate essentially the same TRE values for a given set of vent stream characteristics. After evaluating the public comments on costing, EPA performed a complete review of all costing procedures, including those not commented on by the public. Based on that analysis, EPA has preliminarily decided to make several changes to the costing methodology.

Changes were first made to costing procedures for both air oxidation processes and distillation operations where appropriate. The TRE index equation for the proposed air oxidation NSPS was also revised so that a TRE index value of 1.0 is associated with a cost effectiveness of $1,900 per Mg. of VOC controlled, similar to the TRE index equations in the proposed distillation NSPS and draft reactor processes NSPS.

With respect to the incinerator costing procedures, EPA made several changes including: modifications in design of the vent stream duct and addition of duct supports; revisions to the estimated prices of natural gas, electricity, water, and caustic; adoption of a new methodology for calculating total labor cost; and revision of the taxes, insurance, and administration charges factor.

The Agency incorporated several changes in costing procedures suggested by commenters. One example involves the need for an incinerator duct support system used to mount the vent stream duct which is routed from the emission source to the control device. The original costing procedures assumed that all ducts would be supported on existing support structures. However, industry commenters indicated that a separate duct support system is necessary because, in many cases, existing support structures will not be available. The EPA decided that the incinerator costing procedures should include the cost of a duct support system. Although there was little information contained in the industry comment describing the design of the recommended support structure, they estimated that a support structure, referred to as a pipe bridge, would be needed and would have an installed capital cost of $50,000 (1984 dollars). Independent investigations into support structure costs indicated that this cost represents a type of heavy-duty pipe bridge capable of supporting a number of large diameter ducts. However, for an individual affected facility, relatively small diameter pipes would be used and the number of pipes and ducts would be few. Therefore, a lighter weight pipe rack was costed and included in the costing procedures for incinerators.

Changes were also made to the incinerator costing procedures as a result of the Agency's comprehensive review. One example of these changes involves the natural gas price used in the costing procedures. Although the public had not commented on the gas price, EPA reviewed both the gas price estimate used in the procedures and the method used to develop that price. The gas price used for the air oxidation and distillation proposed NSPS was based on price projected to the fifth year of the respective standards' applicability and then expressed in the appropriate base year dollars for each standard. As a result of the Agency's re-evaluation, the natural gas price was revised to include: (1) Use of a gas price projection method that more accurately reflects current gas price trends, (2) adoption of a gas price that is geographically weighted according to the occurrence of SOCMI production in the 10 EPA Regions, and (3) use of net heating value as the basis for natural gas energy costs. The revised gas price is lower than the price used at proposal because the proposal price was based on projections made when gas prices were increasing rapidly due to deregulation. The steep rise in prices projected at proposal did not continue. Consequently, the gas price used at proposal was too high.

The change in costing procedures required the development of a revised TRE equation and the derivation of new coefficients for the TRE equation, since the TRE equation and coefficients are derived from the costing procedures. The revised TRE equation is presented in Table 1. The revised TRE coefficients are presented in Table 2.

The cost, environmental, and energy impacts of the air oxidation NSPS have also changed, since these impacts are estimated using the revised incinerator costing procedures. The regulatory impact analysis presented in the preamble to the proposed air oxidation NSPS was based on data in the national emission profile (NEP) developed for air oxidation processes. The NEP was revised after the preparation of the proposed regulatory impact analysis. The revised NEP is presented in Appendix F of the background information document for the proposed standards, "Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry," EPA-450/3-82-001a. Table 3 reflects the impacts based on the revised NEP and the costing procedures used at proposal. Table 4 reflects the current impacts based on the revised NEP and the revised costing procedures.

Table 1.—Revised Air Oxidation/Distillation Incinerator Total Resource Effectiveness (TRE) Index Equation

$$TRE = 1/E_{TOC}\,[a + b\,(Q_S)^{0.88} + c\,(Q_S) + d\,(Q_S)(H_T) + e\,(Q_S)^{0.88}(H_T)^{0.88} + f\,(Q_S)^{0.5}]$$

where:

TRE = Total resource effectiveness index value;

Q_S = Vent stream flow rate (scm/min), at a standard temperature of 20 °C;

H_T = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mmHg, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C, as in the definition of Flow; and

E_{TOC} = Hourly emissions of total organic compounds reported in kg/hr measured at full operating flow rate.

a, b, c, d, e, and f are coefficients from Table 2.

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Table 2. AIR OXIDATION/DISTILLATION NSPS INCINERATOR COEFFICIENTS

A1. FOR CHLORINATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5:

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	21.93709	0	0.75762	-0.13064	0	0
13.5 < W < 19.82	19.18370	0.27580	0.75762	-0.13064	0	0.01025
19.82 < W ≤ 699.4	20.00563	0.27580	0.30387	-0.13064	0	0.01025
699.4 < W ≤ 1398.9	39.87022	0.29973	0.30387	-0.13064	0	0.01449
1398.9 < W ≤ 2098.3	59.73481	0.31467	0.30387	-0.13064	0	0.01775
2098.3 < W ≤ 2797.7	79.59941	0.32572	0.30387	-0.13064	0	0.02049
2797.7 < W ≤ 3497.2	99.46400	0.33456	0.30387	-0.13064	0	0.02291

A2. FOR CHLORINATED PROCESS VENT STREAMS, IF 3.5 < NET HEATING VALUE (MJ/scm):

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	21.51549	0	0.20044	0	0	0
13.5 < W < 19.82	18.84466	0.26742	0.20044	0	0	0.01025
19.82 < W ≤ 699.4	19.66658	0.26742	-0.25332	0	0	0.01025
699.4 < W ≤ 1398.9	39.19213	0.29062	-0.25332	0	0	0.01449
1398.9 < W ≤ 2098.3	58.71768	0.30511	-0.25332	0	0	0.01775
2098.3 < W ≤ 2797.7	78.24323	0.31582	-0.25332	0	0	0.02049
2797.7 < W ≤ 3497.2	97.76879	0.32439	-0.25332	0	0	0.02291

B. FOR NONCHLORINATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 0.48:

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	9.61935	0	0.09030	-0.17109	0	0
13.5 < W < 1345	8.54245	0.10555	0.09030	-0.17109	0	0.01025
1345 < W ≤ 2690.1	16.94386	0.11470	0.09030	-0.17109	0	0.01449
2690.1 < W ≤ 4035.2	25.34528	0.12042	0.09030	-0.17109	0	0.01775

C. FOR NONCHLORINATED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) ≤ 1.9:

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	9.89107	0	0.31937	-0.16181	0	0
13.5 < W < 1345	9.25233	0.06105	0.31937	-0.16181	0	0.01025
1345 < W ≤ 2690.1	18.36363	0.06635	0.31937	-0.16181	0	0.01449
2690.1 < W ≤ 4035.2	27.47492	0.06965	0.31937	-0.16181	0	0.01775

D. FOR NONCHLORINATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) ≤ 3.6:

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	7.39997	0	0.02582	0	0	0
13.45 < W < 1183.7	6.67868	0.06943	0.02582	0	0	0.01025
1183.7 < W ≤ 2367.3	13.21633	0.07546	0.02582	0	0	0.01449
2367.3 < W ≤ 3550.9	19.75398	0.07922	0.02582	0	0	0.01775

E. FOR NONCHLORINATED PROCESS VENT STREAMS, IF 3.6 < NET HEATING VALUE (MJ/scm):

W = Design Standard Flowrate (scm/min)	a	b	c	d	e	f
W < 13.5	7.39997	0	0	0.00707	0	0
13.45 < W < 1183.7	6.67868	0	0	0.00707	0.02220	0.01025
1183.7 < W ≤ 2367.3	13.21633	0	0	0.00707	0.02412	0.01449
2367.3 < W ≤ 3550.9	19.75398	0	0	0.00707	0.02533	0.01775

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TABLE 3.—ESTIMATED IMPACTS OF SELECTED REGULATORY ALTERNATIVES FOR THE AIR OXIDATION NSPS[a]

Regulatory alternative	TRE cutoff (dollars per milligram)	Percent of sources affected	National emissions (1,000 milligrams per year)	Percent emissions reduction from baseline	National annualized cost (10^6 dollars per year)	National capital cost (10^6 dollars per year)
Baseline		0	23.5	0	0	0
I	[illegible]	2	22.5	4	0.4	1.7
II	1,330	10	16.8	29	4.6	5.9
III	1,900	15	13.4	43	10.2	7.8
IV	2,748	[illegible]	10.4	56	17.3	17.8
V	5,497	[illegible]	3.2	86	45.4	32.1
VI	>5,500	100	0.47	98	75.9	57.8

[a] Estimated impacts using the revised national emissions profile and the costing procedures at proposal.

TABLE 4.—ESTIMATED IMPACTS OF SELECTED REGULATORY ALTERNATIVES FOR THE AIR OXIDATION NSPS[a]

Regulatory alternative	TRE cutoff (dollars per milligram)	Percent of sources affected	National emissions (1,000 milligrams per year)	Percent emissions reduction from baseline	National annualized cost (10^6 dollars per year)	National capital cost (10^6 dollars per year)
Baseline		0	23.5	0	0	0
I	[illegible]	5	18.6	21	1.8	4.4
II	1,330	12	15.8	33	4.2	9.1
III	1,900	[illegible]	12.8	46	[illegible]	14.4
IV	2,748	34	[illegible]	58	15.5	[illegible]
V	5,497	[illegible]	1.8	92	44.5	62.3
VI	>5,500	100	0.47	98	[illegible]	[illegible]

[a] Estimated impacts after cost revisions.

The net effect of all these cost procedure changes would be to lower total annualized costs for most air oxidation facilities. This would occur primarily because of the lower natural gas price that would be used in the costing procedures. The total installed capital cost would increase slightly for all facilities because of the addition of duct support costs, but after annualizing this cost, the increase in total annualized cost would be much less than the decrease associated with the lower fuel costs. Also, the labor cost would increase slightly due to the addition of supervisory labor, but this increase also would be much less than the decrease associated with the lower fuel costs and the net effect would be a decrease in annualized costs.

At the TRE cutoff ($1,900/Mg), the costing procedure changes would result in the following changes in the estimated impacts: (a) The percent of sources affected would increase by 4 percent; (b) the national emissions reduction beyond baseline would increase by 3 percent; (c) the national annualized cost would decrease by $1,300,000/yr; and (d) the national capital cost would increase by $6,600,000.

The preceding discussion contained examples of changes in the incinerator costing procedures. Additional information on all the changes made to the incinerator costing procedures is available in a memorandum entitled "Revisions to the Incinerator Costing Algorithm." This memorandum has been placed in Dockets A–81–22, Item IV–B–8 (Air Oxidation) and A–80–25, Item IV–B–7 (Distillation). These dockets are available for public inspection. Copies of the memorandum are available from Mr. William Harnett at the address given in the section entitled **FURTHER INFORMATION.**

With respect to flare costing procedures, EPA made revisions or added costs associated with certain components. These include modifications in the design of the vent stream duct and addition of piping and duct supports; revisions to the estimated prices of natural gas, electricity, water, and caustic; adoption of a new methodology for calculation of total labor costs; addition of costs for natural gas, steam, and instrument air lines to the flare; modifications in some flare operating and design specifications; and changes in the taxes, insurance, and administration charges factor.

The Agency incorporated some changes in the flare costing procedures identical to those made for thermal incinerators. As with the incinerator costing procedures, modifications were made to the electricity price, the calculation of total labor costs, and the natural gas price. For example, the natural gas price used for flares was revised for the reasons previously mentioned. Also, costs were estimated and added for installing a duct support system appropriate for routing a vent stream to a flare.

The EPA made further changes to the flare costing procedures to incorporate several public comments. One example involves the costs associated with bringing services such as natural gas, instrument air, and steam lines to the base of the flare. Several industry commenters stated that the cost associated with these services had been overlooked. Upon evaluating this comment, EPA decided that, since services will not be readily available near the base of the flare, such services to the flare should be included in the costing procedures. The support structure discussed above was sized to be sufficient for supporting the vent stream duct and the lines for the services.

The change in costing procedures required the development of a new TRE index equation and the derivation of new TRE coefficients, since these are derived from the new costing procedures. The revised TRE index equation is presented in Table 5 and the revised TRE coefficients are presented in Table 6. The cost, environmental, and energy impacts of the proposed distillation NSPS are based on the use of either a flare or incinerator to achieve the required 98 weight-percent VOC reduction. Table 7 presents the estimated cost, environmental, and energy impacts of regulatory alternatives before cost revisions. The revised cost, environmental, and energy impacts are summarized in Table 8. The total installed capital and total annualized cost of control will vary among facilities according to the flow rate, net heating value, and VOC emission rate of individual vent streams. However, for most distillation vent streams, the changes in the costing procedures for the two control techniques would tend to cause a slight increase in the total annualized cost and corresponding cost of control per megagram of VOC emissions reduced.

Table 5.—Revised Flare TRE Index Equation for Distillation NSPS

$$TRE = \frac{1}{E_{TOC}} \left(aQ_S + bQ_S^{0.8} + cQ_S H_T + dE_{TOC} + e\right)$$

Where:

TRE = Total resource effectiveness index.

Q_S = Vent stream flow rate (scm/min).

H_T = Vent stream heating value (MJ/scm). and

E_{TOC} = VOC emission rate (kg/hr).

a, b, c, d, and e are coefficients.

TABLE 6.—COEFFICIENTS FOR FLARE TRE INDEX EQUATION FOR DISTILLATION NSPS

	[illegible]	b	[illegible]	d	[illegible]
For net [illegible] [illegible] < 11.2 MJ/scm (300 Btu/scf)	2.25	[illegible]	0.193	0.0051	[illegible]
For net [illegible] value > 11.2 MJ/scm (300 Btu/scf)	[illegible]	0.0619	0.0043	0.0034	2.08

The primary reasons for the increased annualized costs that would be incurred by the majority of facilities are the following: (1) An increase in the minimum vent stream net heating value requirement for attaining 98 weight-percent VOC destruction efficiency using flares; (2) the addition of costs associated with a piping support system for both control techniques; (3) the addition of costs associated with natural gas, air, and steam services for flares; and (4) an increase in the total labor cost due to the addition of supervisory labor costs for both control techniques.

Overall, fewer distillation units are shown to have to control VOC emissions compared to proposal for each regulatory alternative. At the $1,900/Mg cutoff, the following changes in estimated impacts would occur: (1) The number of distillation units projected to be controlled would decrease by 16 percent; (2) the national emissions reduction over baseline would decrease by 4 percent; (3) the national total annualized cost would decrease by $590,000/yr; and (4) the national additional energy requirement would increase by 22,000 MMBtu/yr.

TABLE 7.—ESTIMATED IMPACTS OF PROPOSED DISTRIBUTION NSPS PRIOR TO COSTING PROCEDURE REVISIONS

Dollars per milligram cutoff	Number of units controlled [a]	VOC emissions reduction over baseline [b]: 10³ milligrams per year	VOC emissions reduction over baseline [b]: Percent	Total annualized cost, 10⁶ dollars	Additional energy requirement 10⁴ million Btu per year
0	0	[illegible]	[illegible]	[illegible]	0
100	31	26.6	52	1.07	7.2
300	63	30.7	[illegible]	1.55	8.4
600	118	33.8	66	2.60	11.3
1,000	197	40.2	79	6.77	43.7
1,400	284	42.2	83	7.88	50.5
1,900	342	43.9	86	9.59	54.5
2,900	348	44.0	86	9.70	54.7
3,500	390	44.4	87	10.0	55.7
9,000	466	44.9	88	12.5	64.9
20,000	545	45.2	[illegible]	14.4	73.9
75,000	689	45.5	89	19.2	95.4
No cutoff	[illegible]	45.5	[illegible]	21.3	110.0

[a] 888 units potentially controlled by NSPS + 312 units controlled without NSPS (due to State regulations or for resource recovery) + 860 units with recycled vent streams or negligible flows (insignificant emissions) = 2,060 units expected to be constructed within the next 5 years.

[b] Reductions are for a baseline emission rate of 51,000 Mg/yr.

NOTE.—This table overstates both costs and emission reductions for a given cutoff. Costs presented in this table assume flares are used for required control, but under certain circumstances, boilers or process heaters will be less costly. Furthermore, sources close to the cutoff may install product recovery devices rather than combustion controls, costing less and producing less of a reduction in emissions. The degree of overstatement cannot be quantified.

TABLE 8.—ESTIMATED IMPACTS OF PROPOSED DISTRIBUTION NSPS AFTER COSTING PROCEDURE REVISIONS

Dollars per milligram cutoff	Number of units controlled [a]	VOC emissions reduction over baseline [b]: 10³ milligrams per year	VOC emissions reduction over baseline [b]: Percent	Total annualized cost, 10⁶ (dollars)	Additional energy requirement 10⁴ million Btu per year
0	[illegible]	[illegible]	0	[illegible]	0
100	21	19.6	38	0.46	0.98
300	31	26.7	52	1.13	1.43
600	[illegible]	33.4	65	3.43	18.3
1,000	161	37.0	72	5.31	39.2
1,400	[illegible]	39.7	78	6.07	45.3
1,900	266	42.2	82	9.00	56.7
2,900	344	44.1	86	11.9	67.4
3,500	344	44.1	[illegible]	11.9	67.4
9,000	452	44.8	88	14.2	72.7
20,000	486	45.2	88	18.8	74.1
75,000	[illegible]	45.5	89	23.9	107.7
No cutoff	888	45.5	89	26.9	116.5

[a] 888 units potentially controlled by NSPS + 312 units controlled without NSPS (due to State regulations or for resource recovery) + 860 units with recycled vent streams or negligible flows (insignificant emissions) = 2,060 units expected to be constructed within the next 5 years.

[b] Reductions are for a baseline emission rate of 51,000 Mg/yr.

NOTE.—This table overstates both costs and emission reductions for a given cutoff. Costs presented in this table assume flares or incinerators are used for required control, but under certain circumstances, boilers or process heaters will be less costly. Furthermore, sources close to the cutoff may install product recovery devices rather than combustion controls, costing less and producing less of a reduction in emissions. The degree of overstatement cannot be quantified.

Additional information on the changes made to the flare costing methodology is available in a memorandum "Revisions to the Flare Costing Algorithm." This memorandum has been placed in Docket A-80-25, Item IV-B-8 (Distillation). This docket is available for public inspection. Copies of the memorandum are available from Mr. William Harnett at the address given in the section entitled FURTHER INFORMATION.

An additional change being considered to the proposed distillation operations NSPS concerns the use of the flare and incinerator TRE equations for determining whether an affected facility must be controlled. The proposed regulation would requre the incinerator TRE equation to be used when the vent stream of an affected facility contains halogenated compounds. The EPA is not considering a change to this provision. However, in the case of a vent stream containing nonhalogenated compounds, EPA is considering requiring the use of the incinerator TRE equation and the flare TRE equation. The lower value of the two calculated TRE indexes would be used to determine a vent stream must be controlled. Under the proposed standards, only the flare TRE equation would have been required to be used for nonhalogenated vent streams. This change in procedure is being considered because a review of control cost estimates for distillation vent streams in the EPA's emission data base revealed that occasionally incinerators may be less expensive than flares.

Affected Facility Designation for Distillation NSPS and Air Oxidation NSPS

As a result of industry comments, EPA is considering changing the affected facility designation for the proposed distillation NSPS to the individual recovery system and all distillation units venting to that recovery system. This revised designation is consistent with the affected facility designation in the proposed air oxidation NSPS. This change is being considered because it would net greater emission reductions than would the narrower designation in the proposed standards. At proposal of the distillation NSPS, the affected facility was designated to be any single distillation unit with its asociated recovery system that produces any of the chemicals listed in § 60.667 of the proposed regulation. This designation was thought to represent the narrowest practical designation of affected facility, which generally results in the greatest emission reductions because it ensures that all new, modified, and reconstructed units will be brought under coverage of the standards as they are constructed, modified, or reconstructed. Based on information available at the time, the Agency believed that designation to be an accurate reflection of the way all distillation operations are designed and operated in the industry. The EPA selected the affected facility designation at proposal for these reasons.

The EPA treats the narrow designation only as a presumption, however, because in some cases a broader affected facility designation may be more consistent with the purposes of Section 111. For example, the Agency might choose a broader designation if it concludes that either (1) it would result in greater emissions reduction than would a narrow designation; or (2) the other relevant statutory factors (technical feasibility, energy, cost, and nonair quality health and environmental impacts) point to a broader designation.

At proposal, EPA specifically requested public comment on this designation and on two alternative designations: (1) The recovery system with all associated distillation units, and (2) all the distillation units and recovery systems in the process unit. The EPA received comments from nine industry representatives and one environmental group representative. One industry commenter and the environmental group representative supported the designation set forth at proposal; seven commenters disagreed with that designation and recommended designating the affected facility as the recovery system with all associated distillation units routed to that recovery system. No comments were received recommending the entire plant as the affected facility.

The seven industry commenters who had disagreed with the designation selected at proposal did so because, they stated, the designation did not reflect the way distillation units are operated within the industry. The commenters indicated that distillation units are often physically linked together, and that separating them in the proposed designation would be inconsistent with the way units are operated. Further, the commenters stated that a broader designation would give industry flexibility to change operating conditions or equipment in lieu of adding combustion devices. They also added that reduction in testing, control, and hardware costs would result from the change without any significant loss in emission reductions.

After receipt of these comments, EPA initiated an investigation to identify how distillation units may be linked together and to determine the frequency and types of changes they may occur at distillation facilities. This investigation was made in order to evaluate how these factors may affect the designation used at proposal.

A re-evaluation of existing information supplied by industry shows that as many as 20 percent of all distillation units are ducted together and have common recovery systems. Under the designation selected for distillation at proposal, two new units ducted to a common recovery system would have constituted two affected facilities. (For further information, see the memorandum, "Product Recovery Systems Used in Distillation Column Vent Streams," in Docket No. A-80-25, Item IV-B-2.) The industry information also shows that 80 percent of new units stand alone and would face the same situation under either of the designations set forth earlier.

Along with re-evaluating existing information, the Agency also obtained new information by contacting industry representatives. (See memorandum entitled "Process Changes and Replacements Occurring at Distillation Facilities," Docket A-80-25, Item IV-B-9.) The representatives were asked to identify the reason why distillation units would share the same recovery system, the longevity of distillation units, the typical changes occurring at distillation facilities and frequency of these changes; and the manner in which capacity is added at distillation facilities. All of the representatives agreed that when distillation units share the same recovery system, the units are all used to distill the same chemical.

Information obtained from industry indicates that the replacement or reconstruction of distillation units rarely occurs within the industry because there units are normally designed to last the lifetime of the facility. This is true even for distillation units handling corrosive vent streams. Distillation unit replacements that do occur are likely to be the result of process changes, or possibly the result of catastrophic events such as a plant explosion which would destroy the units. Industry information also indicates that when changes are made to individual units at distillation facilities, it is usually to

improve the distillation process for greater efficiency or to change the process to produce a new chemical. Where several units share a recovery system, it is a common practice to make these changes simultaneously to all the units because, as mentioned previously, each unit would be producing the same chemical. Industry representatives said that uniform changes to all units would usually be necessary to maintain product purity.

There are two ways that distillation capacity is usually expanded. The first is by adding new units with a new separate recovery system. The second way is by adding a new distillation unit to an existing group of units sharing a recovery system. Any new group of units and recovery systems that are not joined together with existing units and recovery systems would be covered identically by both designations of affected facility.

In light of these facts, the Agency believes that the broader affected facility designation (i.e., the recovery system and all associated units) will result in greater VOC emission reductions for several reasons. As indicated above, the most common way for capacity expansion to occur is through adding a distillation unit to an existing group of units sharing a recovery system. Under the broader designation, when a new distillation unit is added to an existing group sharing a recovery system, there are two possible outcomes, both of which will result in greater emission reductions over the previous designation. First, if a new distillation unit is added to an existing group sharing a recovery system, and emissions increase, all distillation units sharing the recovery system will come under coverage of the standard as a modification of the affected facility. Under the designation at proposal, only the new unit would have been covered. Second, if a new distillation unit is added to an existing group and emissions do not increase, this would equal 100 percent VOC reduction for the new unit. Under the designation at proposal, VOC emissions from the unit would have to be reduced by 98 weight percent if the TRE index value was less than or equal to 1.0. Although it is unlikely that VOC emissions will not increase after the distillation unit is added, the broader designation still would result in greater VOC emission reductions than would the designation at proposal.

The Agency believes that reconstruction or modification provisions would not be avoided under the designation being considered because reconstruction or modification of only one distillation unit in a group of units sharing a recovery system rarely occurs in distillation operations. Distillation unit replacements usually occur as a result of process changes or as a result of catastrophic events. These situations would most likely result in the replacment of all distillation units, thereby bringing the entire affected facility under the standards.

Because the broader affected facility designation would result in greater emission reductions than the designation in the proposed standards, EPA is considering changing the affected facility designation from a single distillation unit with its associated recovery system to the individual recovery system and all distillation units venting to that recovery system.

As indicated above, this change would make the affected facility designation in the distillation standards consistent with the designation in the air oxidation standards. In response to comments received on the air oxidation proposed standards, EPA reanalyzed which affected facility designation would produce the greatest emission reduction under that standard. The Agency's analysis shows that the broader designation which had already been selected for the proposed air oxidation standards would produce greater emission reduction than any narrower designation.

The replacement of air oxidation reactors or pieces of product recovery equipment is rare within the industry. This is because reactors are expensive pieces of equipment which are designed to last a long time. Moreover, the Agency has concluded that those few replacements which do occur often result from process changes (e.g., from chlorination to hydrochlorination) or catastrophic events that would probably require replacement of most of the group of reactors joined to a single product recovery system. These changes would likely amount to a "reconstruction" of the facility as it is defined in these standards. The above information is based upon contacting industry representatives (see memorandum entitled "Process Changes Modification at Existing Facilities That May Be Covered Under the New Source Performance Standards (NSPS) for Air Oxidation Processes and Reactor Processes," Docket A-81-22, Item IV-B-3). Thus, in the small percentage of cases where reactor replacements occur, the facility would most likely fall under the coverage of the standards.

In the event an owner added a reactor to an existing group of reactors hooked up to the same product recovery system, it is unlikely the facility could avoid being considered a modification by offsetting the new reactor emissions somewhere else within the reactor group. This is because it would likely be technologically infeasible to reduce emissions sufficiently or at all from the other reactors. Although some VOC reductions could occur through upgrading product recovery equipment, it is unlikely that this reduction would result in a full offset of the new reactor emissions because the increased load on the recovery device (i.e., increased flow and VOC) would make the needed increase in VOC removal efficiency difficult to achieve. Thus, the likely result is that addition of a reactor to a group of joined reactors would bring the entire set under the coverage of the standards as a modified facility.

In short, the broad evasion of the modification and reconstruction provisions that might generally occur under a broad affected facility designations would not occur under EPA's designation for the air oxidation standards. In fact, under EPA's designation, the inability of owners to offset emissions from new reactors added to a set of existing reactors would likely cause the entire set of new and existing reactors to come under the standards as a modified facility. This results in a greater emission reduction potential than would be the case for these reactors under a narrow designation. For these reasons, EPA is not considering a change in the affected facility designation in the proposed air oxidation standards.

The EPA notes that the broader affected facility designation would make implementing both standards less costly and complex. Under that designation, only one sampling site, located just downstream of the common recovery device, would be required to determine the TRE index value during compliance testing. Under the narrower designation, three sampling sites would have been required.

Consideration of Potentially Toxic Compounds in Selecting the TRE Cutoff

A commenter on both proposed standards questioned the EPA's consideration of the reduction of potentially toxic compounds, which is a secondary benefit of controlling VOC emissions from distillation operations and air oxidation processes, in selecting the TRE cutoff. The commenter stated

that EPA has made no demonstration that emissions form these processes are toxic.

During the production of any of the chemicals covered by the two proposed standards, the potential exists that some VOC emissions from these processes will include the chemicals being produced. A document listing the known toxic effects for the chemicals covered by these standards has been placed in Dockets A-80-25 (Item IV-J-15) and A-81-22 (Item IV-J-9). The Agency believes that this information demonstrates that potentially toxic compounds could be emitted by these sources. These potentially toxic compounds would be reduced by these standards. Although EPA has not yet decided whether to list many of these chemicals under Section 112 of the Clean Air Act, the Agency believes that it may properly consider their potential toxicity in deciding what cost and, therefore, what TRE cutoff is reasonable for the purpose of implementing Section 111.

Reopening of Public Comment Period

As discussed above, EPA is reopening the public comment period and will consider only those comments that pertain to the revised TRE equations and coefficients in both proposed NSPS, the costing procedures used in both proposed NSPS, the documentation of the potentially toxic compounds emitted from air oxidation processes and distillation operations, and the designation of affected facility for both proposed standards.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: May 9, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-11838 Filed 5-15-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-6-FRL-2836-5]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The Environmental Protection Agency proposes to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Dixico, Incorporated (Dixico), Dallas County, Texas, on December 7, 1984. The DCO requires Dixico to bring air emissions of volatile organic compounds from their flexographic and rotogravure printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. If approved by EPA, the DCO will become an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This notice invites public comment on EPA's proposed approval of the DCO.

DATE: Interested persons are invited to submit comments on the proposed action on or before June 17, 1985.

ADDRESSES: Written comments should be submitted to the following address: Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

The State order, supporting material, evaluation report and public comments received in response to this notice are available for inspection during normal business hours at the address above (as Docket number R6-85-DCO-2) and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Willie Kelley, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-5145.

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon absorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Dixico's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic and rotogravure processes, and as such is subject to Rule 115.201. Based on Dixico's contention that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Dixico extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Dixico under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now proposed for approval under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments.

If the DCO is approved by EPA, compliance with its terms would preclude federal enforcement action under section 113 of the Clean Air Act

[1] "EPA Review of Texas State Delayed Compliance Order for Dixico, Incorporated, Dallas County, Texas, December 7, 1984; March 1985". This evaluation is available at the addresses given previously in this Notice.

against Dixico for violations covered by the order during the period that the Order is in effect. Further, enforcement under the citizen suit provisions of section 304 of the Clean Air Act would be similarly precluded. If approved, the Order would constitute an addition to the Texas SIP. However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) of (C).

All interested persons are invited to submit written comments on the proposed approval action. Written comments received by the date specified above will be considered in determining whether EPA will approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order and the corresponding addition to 40 CFR Part 65.

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

This notice of proposed approval is issued under the authority of sections 113 and 301 of the Clean Air Act, 42 U.S.C. 7413 and 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: May 2, 1985.

Dick Whittington,

Regional Administrator, Region 6.

The text of the Delayed Compliance Order is set forth below. Final agency action on the order will be published in Subpart SS of Part 65 of Title 40 of the Code of Federal Regulations.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas

Board Order—Dixico, Inc.

[No. 84-12]

Whereas, Texas Air Control Board Rule 115.201 requires control of Volatile Organic Compound (VOC) emissions from rotogravure and flexographic processes; and

Whereas, Dixico, Incorporated at Dallas County (hereinafter referred to as Dixico) is a major stationary source of VOC's within the meaning of 40 CFR 65.01(d); and

Whereas, The VOC's emitted from the flexographic printing process at Dixico are subject to the requirements of Rule 115.201 of Regulation V of the Texas Air Control Board; and

Whereas, Rule 115.201 has been approved by the administrator of the Environmental Protection Agency (hereinafter referred to as EPA) pursuant to section 110 of the Federal Clean Air Act (42 U.S.C. 7410) as a requirement of the applicable implementation plan for Texas; and

Whereas, Texas Air Control Board Rule 115.203 requires that persons affected by Rule 115.201 to submit compliance schedules and that such persons be in compliance with the requirements of Rule 115.201 as soon as practicable but not later than December 31, 1982; and

Whereas, Texas Air Control Board Rule 115.422(b) allows the Texas Air Control Board to approve and extension of certain compliance dates, including that contained in Rule 115.203, to not later than December 31, 1985 based upon nonavailability of low solvent technology; and

Whereas, Dixico is unable to comply with the limits in Rule 115.201, except by shutting down the source listed above; however, Texas Air Control Board Order 81-7 dated August 14, 1981 extended the date for Dixico's compliance under said Rule to a time as soon as practicable but no later than December 31, 1985, pursuant to Rule 115.422(b) which was approved as a part of the applicable State Implementation Plan for Texas; and

Whereas, Dixico has submitted a revised compliance schedule which contains a request for an extension to not later than December 31, 1985; and

Whereas, such request contains the necessary justification for the extension to a date not later than December 31, 1985, based upon current nonavailability of necessary low solvent technology; and

Whereas, the Texas Air Control Board has examined said request and finds that the requirements for the extension have been satisfied; and

Whereas, the Texas Air Control Board gave notice to the public and to the EPA on October 14 that it proposed to issue the following Order to Dixico; and

Whereas, the public notice contained the content of the following Order, invited comment, and scheduled a public hearing; and

Whereas, a public hearing was held at the Dallas Public Library, 1515 Young Street, Dallas at 6:00 p.m. on November 14, 1984; and

Whereas, an investigation of all relevant facts, including public comment, has demonstrated that this Order requires compliance as expeditiously as practicable and that this Order requires the best practicable system of interim emission reduction; and

Whereas, the public interest in continued operation of the source listed above outweighs the environmental cost of the additional period of noncompliance provided in this Order because there are no discernible effects associated with the emissions from Dixico's flexographic printing operations, and strict compliance with such rule would require cessation of certain operations with attendant adverse economic effects for which there is insufficient corresponding environmental benefit; and

Whereas, the Texas Air Control Board has consulted with the Dallas Health Department, Dallas County Health Department and North Central Texas Council of Governments pursuant to section 121 of the Federal Clean Air Act (42 U.S.C. 7421); and

Whereas, Dixico asserts that it is in compliance with legal requirements and the actions of Dixico pursuant to this Order do not constitute an admission by Dixico of any violation of law or waiver by Dixico of the right to present any evidence and argument that it is in compliance with the requirements of law in any case, cause, controversy or court of law or equity; and

Whereas, Dixico is also seeking approval of an alternate means of control pursuant to section 115.401 in lieu of the emission controls otherwise required by Rule 115.201 and by this Order.

Now, therefore, it is the decision and order of the board that:

1. The date for compliance with Texas Air Control Board Rules 115.201 and 115.203 by Dixico is hereby extended to a time as soon as practicable but not later than December 31, 1985, in accordance with the following schedule for compliance:

Prior to December 31, 1984

—Order and install an Electrostatic Assist Unit for the gravure press to facilitate evaluation of low solvent technology.

—Order and install a Corona Treater of a flexographic press owned and operated by Dixico for the purpose of evaluating the effectivenes of the treater in combination with low solvent technology.

—Commerce performance evaluations of Aqua Lam P* water based ink and similar low solvent technology of flexographic presses.

—Evaluate market acceptance of products produced utilizing new low solvent technology.

—Convert to low solvent technology on all paper products run on flexographic presses.

Prior to March 1, 1985

—Continue performance and market evaluation on products produced with Aqua Lam P* and other low solvent technology.

—Continue evaluation of Corona Treater.

—Commence design of emission control equipment necessary to achieve compliance with the requirements of Rule 115.201(3).

—Continue evaluation of available low solvent technology of gravure press.

Prior to June 1, 1985

—Submit final plans for any emission control equipment necessary to achieve compliance with Rule 115.201(3) to the Executive Director of the TACB.

—Place orders for any emission control equipment necessary to achieve compliance with Rule 115.201(3).

—If evaluative tests indicate, place orders for Corona Treaters for the flexographic presses.

—Continue evaluation of low solvent technology.

Prior to August 1, 1985

—Commence installation of any control equipment necessary to achieve compliance with Rule 115.201(3).

Prior to December 31, 1985

—Achieve final compliance with 115.201.

*A trade name of Crown Zellerbach.

2. This Order is issued pursuant to the Texas Clean Air Act, Article 4477–5 V.A.C.S. This Order is intended to fulfill the requirements for a delayed compliance order provided for by section 113(d) of the Federal Clean Air Act 42 U.S.C. 7413(d). Upon approval by EPA and as long as Dixico is in compliance with the terms of this Order, this Order shall preclude federal enforcement action under section 113(d) of the Federal Clean Air Act (42 U.S.C. 7413(d)) and citizen suits against Dixico under section 304 of the Federal Clean Air Act (42 U.S.C 7604) with respect to the requirements for the source covered by this order.

3. Dixico shall take the following actions during the entire period in which this Order is in effect, as a means of achieving the best practicable interim system of emission reduction which is both reasonable and practicable:

a. Dixico shall comply with the limits in Rule 115.201 during any period insofar as it is able to do so.

b. Dixico shall comply with all lawful directives issued by the Texas Air Control Board, EPA, or any public health authority pursuant to the Texas Clean Air Act or the Federal Clean Air Act necessary to avoid an imminent and substantial endangerment to health of persons resulting from the emissions which are the subject of this Order.

4. Dixico shall comply with the following emissions monitoring and reporting requirements no later than the times indicated:

a. Commencing on December 31, 1984, Dixico shall submit on a quarterly basis, monthly summaries of production levels for its product lines and of VOC emissions from inks utilized in such production to demonstrate Dixico's progress toward compliance with Rule 115.201. Such quarterly submissions shall include sufficient information to demonstrate progress toward compliance on a twenty-four (24) hour (daily) basis.

5. All notices, reports, and documents which Dixico is required to file pursuant to this Order shall be submitted to Bill Stewart, Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. If the deadline for filing falls upon a Saturday, Sunday or holiday, the document must be filed on the next business day.

6. This Order supersedes Board Order No. 81–7 entered on August 14, 1981.

7. Nothing in the Order shall in any way limit or preclude Dixico from seeking and obtaining approval of an alternate method of control pursuant to TACB Rule 115.401 as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.201 pursuant to this Order. In the event an alternate method is so approved as a revision to the State Implementation Plan, the provisions and requirements contained in such approval may be complied with in lieu of the provisions and requirements of Paragraph 1 of this Order.

Notice

Pursuant to the provisions of section 113(d)(1)(D) of the Federal Clean Air Act (42 U.S.C. 7413(d)(1)(E), Dixico is hereby notified that, unless excepted under section 120(a)(2) (B) or (C) of the Federal Clean Air Act (42 U.S.C. 7420(a)(2) (B) or (C), it may be required to pay a federal noncompliance penalty. This notice does not constitute a "notice of noncompliance" as that term is used in section 120(b)(3) of the Federal Clean Air Act (42 U.S.C. 7420(b)(3)) and 40 CFR 66.11.

Passed and approved at the regular meeting of the Texas Control Board at Austin, Texas, this 7th day of December, 1984.

Texas Air Control Board

By:

John L. Blair,
Chairman.

Charles R. Jaynes,
Vice Chairman.

Vittorio K. Argento, P.E.,
Member.

Bob G. Bailey,
Member (absent).

Fred Hartman,
Member.

D. Jack Kilian, M.D.,
Member.

Otto R. Kunze, Ph.D., P.E.,
Member.

R. Hal Moorman,
Member.

Hubert Oxford III,
Member.

Attest:

Bill Stewart, P.E.,
Executive Director.

[FR Doc. 85–11844 Filed 5–15–85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-6-FRL-2836-2]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The Environmental Protection Agency proposes to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Princeton Packaging, Incorporated (Princeton), Dallas, Dallas County, Texas, on December 7, 1984. The DCO requires Princeton to bring air emissions of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Dallas County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. If approved by EPA, the DCO will become an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit

provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This notice invites public comment on EPA's proposed approval of the DCO.

DATE: Interested persons are invited to submit comments on the proposed action on or before June 17, 1985.

ADDRESSES: Written comments should be submitted to the following address: Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

The State order, supporting material, evaluation report and public comments received in response to this notice are available for inspection during normal business hours at the address above (as Docket Number R6-85-DCO-3) and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street, SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Stan R. Burger, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-9868.

SUPPLEMENTARY INFORMATION: Princeton's Dallas facility was formerly owned by the St. Regis Corporation. Princeton Packaging, Incorporated, bought the Dallas facility from St. Regis effective October 1, 1984. To avoid ambiguity, "Princeton" will be used throughout this document to represent the Dallas facility.

On May 3, 1982 (47 FR 18857), EPA approved TACB regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP.

Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982.

Princeton's Dallas plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Princeton's contention that water based and/or high solids content ink would not be available by the SIP compliance date, and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Princeton extending their SIP compliance date until Decmeber 31, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as an extension to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Princeton under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TACB developed the December 7, 1984, DCO that is now proposed for approval under this notice. The TACB transmitted the DCO to EPA on January 16, 1985. EPA has reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments.

If the DCO is approved by EPA, compliance with its terms would preclude federal enforcement action under section 113 of the Clean Air Act against Princeton for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act would be similarly precluded. If approved, the Order would constitute an addition to the Texas SIP. However, compliance with the order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed approval action. Written comments received by the date specified above will be considered in determining whether EPA will approve the order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order and the corresponding addition to 40 CFR Part 65.

This DCO affects only one entity and involves an "Order", rather than a "rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

This notice of proposed approval is issued under the authority of sections 113 and 301 of the Clean Air Act, 42 U.S.C. 7413 and 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: May 2, 1985.

Dick Whittington,

Regional Administrator, Region 6.

The text of the delayed Compliance order is set forth below. Final agency action on the order will be published in Subpart SS of Part 65 of Title 40 of the Code of Federal Regulations.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas

Board Order—Princeton Packaging, Inc.

[No. 84-14]

Whereas, Texas Air Control Board Rule 115.201 requires control of Volatile Organic Compound (VOC) emissions from rotogravure and flexographic processes; and

Whereas, Princeton Packaging, Inc., at Dallas County (hereinafter referred to as Princeton), as an assignee of St. Regis Corporation, owns and operates a flexographic printing process which constitutes a major stationary source of VOC's within the meaning of 40 CFR 65.01(d); and

Whereas, the VOC's emitted from the flexographic printing process at Princeton are subject to the requirements of Rule 115.201 of Regulation V of the Texas Air Control Board; and

Whereas, Rule 115.201 has been approved by the Administrator of the United States Environmental Protection Agency (hereinafter referred to as EPA) pursuant to Section 110 of the Federal Clean Air Act (42 U.S.C. 7410) as a requirement of the applicable State Implementation Plan for Texas; and

Whereas, Texas Air Control Board Rule 115.203 requires that persons affected by Rule 115.201 submit compliance schedules and that such persons be in compliance with the requirements of Rule 115.201 as soon as practicable but not later than December 31, 1982; and

Whereas, Texas Air Control Board Rule 115.422(b) allows the Texas Air Control Board to approve an extension of certain compliance dates, including that contained in Rule 115.203, to not later than December 31, 1985 based upon nonavailability of low solvent technology; and

[1] "EPA Review of Texas State Delayed Compliance Order for Princeton Packaging, Incorporated, Dallas County, Texas, December 7, 1984; March 1985". This evaluation is available at the addresses given previously in this Notice.

Whereas, Princeton is unable to comply with the limits in Rule 115.201, except by shutting down the source listed above, and Texas Air Control Board Order 81–9 dated August 14, 1981, extended the date for compliance under said Rule to a time as soon as practicable but no later than December 31, 1985, pursuant to Rule 115.422(b) which was approved as a part of the applicable State Implementation Plan for Texas; and

Whereas, Princeton has submitted a revised compliance schedule which contains a request for an extension to not later than December 31, 1985; and

Whereas, such request contains the necessary justification for the extension to a date not later than December 31, 1985, based upon current nonavailability of necessary low solvent technology; and

Whereas, the Texas Air Control Board has examined said request and finds that the requirements for the extension have been satisfied; and

Whereas, the Texas Air Control Board gave notice to the public and to EPA on October 14, 1984 that it proposed to issue the following Order to Princeton; and

Whereas, the public notice contained the content of the following Order, invited comment, and scheduled a public hearing; and

Whereas, a public hearing on the proposal was held on November 14, 1984 at the Dallas Public Library; and

Whereas, an investigation of all relevant facts, including public comment, has demonstrated that this Order requires compliance as expeditiously as practicable and that this Order requires the best practicable system of interim emission reduction; and

Whereas, the public interest in continued operation of the source listed above outweighs the environmental cost of the additional period of noncompliance provided in this order because there are no discernible effects associated with the emissions from Princeton's flexographic printing operations which exceed the level of emissions allowed under Rule 115.201, and strict compliance with such rule would require cessation of certain operations with attendant adverse economic effects for which there is insufficient corresponding environmental benefit; and

Whereas, the Texas Air Control Board has consulted with the Dallas Health Department, Dallas County Health Department and North Central Texas Council of Governments pursuant to Section 121 of the Federal Clean Air Act (42 U.S.C. 7421); and

Whereas, Princeton asserts that it is in compliance with legal requirements and the actions of Princeton pursuant to this Order do not constitute an admission by Princeton of any violation of law or waiver by Princeton of the right to present any evidence and argument that it is in compliance with the requirements of law in any case, cause, controversy or court of law or equity; and

Whereas, Princeton is also seeking approval of an alternate means of control pursuant to Section 115.401 in lieu of the emission controls otherwise required by Rule 115.201 and by this Order.

Now, therefore, it is the decision and order of the board that:

I

The date for compliance with Texas Air Control Board Rules 115.201 and 115.203 by Princeton is hereby extended to a time as soon as practicable but not later than December 31, 1985 in accordance with the following schedule for compliance:

1. By December 31, 1984, complete review of available incinerators and issue report.

2. By March 31, 1985, complete preliminary engineering study and report recommended type of incinerator(s) to be installed and installation requirements.

3. By May 30, 1985, issue purchase order for incinerator(s).

4. By September 30, 1985, begin installation of incinerator(s).

5. By December 1, 1985, complete installation and begin operation of incinerator(s) that comply with Section 115.201(3) of TACB Regulation V.

6. By December 31, 1985, complete shakedown of incinerator(s) and achieve full compliance with Section 115.201(3) of TACB Regulation V.

II

This Order is issued pursuant to the Texas Clean Air Act, Article 4477–5 V.A.C.S. This Order is intended to fulfill the requirements for a Delayed Compliance Order provided for by Section 113(d) of the Federal Clean Air Act [42 U.S.C. 7413(d)]. Upon approval by EPA and as long as Princeton is in compliance with the terms of this Order, this Order shall preclude federal enforcement action under Section 113(d) of the Federal Clean Air Act [42 U.S.C. 7413(d)] and citizen suits against Princeton under Section 304 of the Federal Clean Air Act (42 U.S.C. 7604) with respect to the requirements for the operations covered by this Order.

III

Princeton shall take the following actions during the entire period in which this Order is in effect, as a means of achieving the best practicable interim system of emission reduction which is both reasonable and practicable:

1. Princeton shall comply with the limits in Rule 115.201 during any period insofar as it is able to do so.

2. Princeton shall comply with all lawful directives issued by the Texas Air Control Board, EPA or any public health authority pursuant to the Texas Clean Air Act or the Federal Clean Air Act necessary to avoid an imminent and substantial endangerment to health of persons resulting from the emissions which are the subject of this Order.

IV

Princeton shall comply with the following emissions monitoring and reporting requirements no later than the times indicated:

1. Commencing on December 31, 1984, Princeton shall submit on a quarterly basis, monthly summaries of production levels for its product lines and of VOC emissions resulting from such production to demonstrate Princeton's progress toward compliance with Rule 115.201. Such quarterly submissions shall include sufficient information to demonstrate progress toward compliance on an average twenty-four (24) hour (daily) basis.

V

All notices, reports, and documents which Princeton is required to file pursuant to this Order shall be submitted to Bill Stewart, Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. If the deadline for filing falls upon a Saturday, Sunday or holiday, the document must be filed on the next business day.

VI

This Order supersedes Board Order No. 81–9 entered on August 14, 1981.

VII

Nothing in the Order shall in any way limit or preclude Princeton from seeking and obtaining approval of an alternate method of control pursuant to TACB Rule 115.401 as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.201 pursuant to this Order. In the event an alternate method is so approved as a revision to the State Implementation Plan, the provisions and requirements contained in such approval may be complied with in lieu

of the provisions and requirements of Section I.

Notice

Pursuant to the provisions of Section 113(d)(1)(D) of the Federal Clean Air Act [42 U.S.C. 7413(d)(1)(E)], Princeton is hereby notified that, unless excepted under Section 120(a)(2) (B) or (C) of the Federal Clean Air Act [42 U.S.C. 7420(a)(2) (B) or (C)], it may be required to pay a federal noncompliance penalty. This notice does not constitute a "notice of noncompliance" as that term is used in Section 120(b)(3) of the Federal Clean Air Act [42 U.S.C. 7420(b)(3) and 40 CFR 66.11].

Passed and approved at the regular meeting of the Texas Air Control Board in Austin, Texas, this the 7th day of December, 1984.

Texas Air Control Board

By:

John L. Blair,
Chairman.

Charles R. Jaynes,
Vice Chairman.

Vittorio K. Argento, P.E.,
Member.

Bob G. Bailey,
Member (absent).

Fred Hartman,
Member.

D. Jack Kilian, M.D.,
Member.

Otto R. Kunze, Ph.D., P.E.,
Member.

R. Hal Moorman,
Member.

Hubert Oxford III,
Member.

Attest:

Bill Stewart, P.E.,
Executive Director.

[FR Doc. 85-11643 Filed 5-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-6-FBL-2636-6]

Administrative Orders Permitting a Delay in Compliance With Texas State Implemenation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The Environmental Protection Agency proposes to approve a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to Printpack, Incorporated (Printpack), Grand Prairie, Tarrant County, Texas, on November 9, 1984. The DCO requires Printpact to bring air emission of volatile organic compounds from their flexographic printing processes into compliance with the Texas State Implementation Plan (SIP) by December 31, 1985. The SIP required compliance by December 31, 1982. Tarrant County is presently not attaining the National Ambient Air Quality Standard for ozone. Because the Order has been issued to a "major" stationary source and permits delay in compliance with the Texas SIP, the Clean Air Act requires it to be approved by EPA before it can become effective. If approved by EPA, the DCO will become an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement of citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This notice invites public comment on EPA's proposed approval of the DCO.

DATE: Interested persons are invited to submit comments on the proposed action on or before June 17, 1985.

ADDRESSES: Written comments should be submitted to the following address: Air Branch, Air And Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

The State order, supporting material, evaluation report and public comments received in response to this notice are available for inspection during normal business hours at the address above (as Docket number R6-85-DCO-1) and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, D.C. 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Richard Raybourne, Enforcement Section (6AW-AE), Air and Waste Management Division, Environmental Protection Agency, Region 6 Office, (214) 767-5145.

SUPPLEMENTARY INFORMATION: On May 3, 1982 (47 FR 18857), EPA approved TACB Regulation V, Rule 115.201, "Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties", as a revision to the Texas SIP. Rule 115.201 prohibits operation of certain flexographic or rotogravure printing facilities unless they limit emissions of volatile organic compounds (VOC) by utilization of either water based inks, high solids content inks, or by the use of "add-on" control equipment such as carbon adsorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1980, and were to be in compliance by December 31, 1982. Printpack's Grand Prairie plant is a "major" stationary source, which emits more than 100 tons of VOC per year from flexographic processes, and as such is subject to Rule 115.201. Based on Printpack's contention that water based and/or high solids content ink would not be available by the SIP compliance date and that "add-on" control equipment was economically infeasible, on August 14, 1981, the TACB issued an order to Printpack extending their SIP compliance date until December 1, 1985. The TACB did not, however, submit the SIP compliance date extension to EPA for review as a revision to the SIP, and thus the SIP required compliance date remained December 31, 1982. On January 30, 1984, EPA notified Printpack under sertion 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. Subsequently, the TCAB developed the November 9, 1984 DCO that is now proposed for approval under this notice. The TACB transmitted to DCO to EPA on December 18, 1984. EPA reviewed the DCO,[1] and found that it satisfies the requirements of section 113(d) of the Clean Air Act, including public notice and hearing requirements and section 121 of the Clean Air Act regarding consultation with general purpose local governments.

If the DCO is approved by EPA, compliance with its terms would preclude federal enforcement action under section 113 of the Clean Air Act against Printpack for violations covered by the order during the period that the order is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act would be similarly precluded. If approved, the Order would constitute an addition to the Texas SIP.

However, compliance with the Order will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C). The Notice in the DCO regarding the assessment of section 120 noncompliance penalties may be misleading. As the Clean Air Act clearly states, a major stationary source in the position of Printpack,

[1] "EPA Review of Texas State Delayed Compliance Order for Printpack, Incorporated, Tarrant County, Texas, November 9, 1984; January, 1985". This evaluation is available at the Region 6 address given previously in this notice.

unless exempted under section 120 (a)(2)(B) or (C), is subject to noncompliance penalties after December 31, 1982. If the DCO is approved, a footnote to this effect will be included in the approval listing in Part 65 of 40 CFR.

All interested persons are invited to submit written comments on the proposed approval action. Written comments received by the date specified above will be considered in determining whether EPA will approve the Order. After the public comment period, the Administrator or EPA will publish in the **Federal Register** the Agency's final action on the Order and the corresponding addition to 40 CFR Part 65.

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

This Notice of Proposed Approval is issued under the authority of sections 113 and 301 of the Clean Air Act, 42 U.S.C. 7413 and 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: May 2, 1985.

Dick Whittington,

Regional Administrator, Region 6.

The text of the Delayed Compliance Order is set forth below. Final agency action on the Order will be published in Subpart SS of Part 65 of Title 40 of the Code of Federal Regulations.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas

Board Order—Printpack, Inc.

[No. 84-10]

Whereas, Texas Air Control Board Rule 115.201 requires control of Volatile Organic Compound (VOC) emissions from rotogravure and flexographic processes; and

Whereas, Printpack, Inc. at Tarrant County (hereinafter referred to as Printpack) is a major stationary source of VOC's within the meaning of 40 CFR 65.01(d)); and

Whereas, the VOC's emitted from the flexographic printing process at Printpack are subject to the requirements of Rule 115.201 of Regulation V; and

Whereas, Rule 115.201 has been approved by the administrator of the Environmental Protection Agency (hereinafter referred to as EPA) pursuant to section 110 of the Federal Clean Air Act (42 U.S.C. 7410) as a requirement of the applicable implementation plan for Texas; and

Whereas, Texas Air Control Board Rule 115.203 requires that persons affected by Rule 115.201 submit compliance schedules and that such persons be in compliance with the requirements of Rule 115.201 as soon as practicable but not later than December 31, 1982; and

Whereas, Texas Air Control Board Rule 115.422(b) allows the Texas Air Control Board to approve an extension of certain compliance dates, including that contained in Rule 115.203, to not later than December 31, 1985, based upon nonavailability of low solvent technology; and

Whereas, Printpack is unable to comply with the limits in Rule 115.201, except by shutting down the source listed above; however, Texas Air Control Board Order 81-10 dated August 14, 1981, extended the date for Printpack's compliance under said Rule to no later than December 1, 1985, pursuant to Rule 115.422(b); and

Whereas, Printpack has submitted a compliance schedule which contains a request for an extension to not later than December 31, 1985; and

Whereas, such request contains the necessary justification for the extension to a date not later than December 31, 1985, based upon current nonavailability of necessary low solvent or water-based technology; and

Whereas, the Texas Air Control Board has examined said request and finds that the requirements for the extension have been satisfied; and

Whereas, the Texas Air Control Board gave notice to the public and to the EPA on September 11, 1984, that it proposed to issue the following Order to Printpack; and

Whereas, the public notice contained the content of the following Order, invited comment, and offered the opportunity for a public hearing; and

Whereas, a public hearing was held on October 11, 1984 at Grand Prairie, Dallas County, Texas; and

Whereas, an investigation of all relevant facts, including public comment, has demonstrated that this Order requires compliance as expeditiously as practicable and that this Order requires the best practicable system of interim emission reduction; and

Whereas, the Texas Air Control Board had consulted with the Grand Prairie Health Department, Tarrant County Health Department and North Central Texas Council of Governments pursuant to section 121 of the Federal Clean Air Act (42 U.S.C. 7421); and

Whereas, the public interest in continued operation of the source listed above outweighs the environmental cost of the additional period of noncompliance provided in this Order because there are no discernible effects associated with the emissions from Printpack's flexographic printing operations which exceed the level of emissions allowed under Rule 115.201, and strict compliance with such rule would require cessation of certain operations with attendant adverse economic effects for which there is insufficient corresponding environmental benefit.

Now, therefore, it is the decision and order of the Board that:

1. The date for compliance with Texas Air Control Board Rules 115.201 and 115.203 by Printpack is hereby extended to a time not later than December 31, 1985, in accordance with the following schedule for compliance:

November 2, 1984 Use complying material for 25% of press formulations on a weight percent basis per month.

and

Complete trials of water-based white formulation on all presses.

and

Complete initial trials of potential water-based colored inks (in Atlanta).

December 31, 1984 Use complying material for 50% of press formulations on a weight percent basis per month.

and

Complete development of a predictive computer program for scheduling use of formulations in compliance with Rule 115.201(1) by utilizing a daily weighted average of volatile organic compound emissions.

and

Order additional electrostatic treaters if needed.

If any of the above three actions is not accomplished by December 31, 1984 begin design of add-on control devices capable of meeting the requirements of Rule 115.201(3).

May 31, 1985 Complete trial of water-based color formulation on all presses.

and

Order complying add-on control devices if development program does not indicate compliance by December 31, 1985, using low solvent or water-based technology.

June 30, 1985 Use complying material for 75% of press formulation

(referring to both white and color inks) on a daily weighted average.

December 31, 1985 The volatile fraction of press formulations, as applied to the substrate, shall contain 25% by volume or less of VOC solvent and 75% by volume or more of water on a daily weighted average.

or

Complete installation of add-on control devices in compliance with Rule 115.201(3).

2. This Order is issued pursuant to the Texas Clean Air Act, Article 4477–5 V.A.C.S. This Order is intended to fulfill the requirements for a Delayed Compliance Order provided for by Section 113 of the Federal Clean Air Act (42 U.S.C. 7413). Upon approval by EPA and as long as Printpack is in compliance with the terms of this Order, this Order shall preclude federal enforcement action under section 113 of the Federal Clean Air Act (42 U.S.C. 7413) and citizen suits against Printpack under section 304 of the Federal Clean Air Act (42 U.S.C. 7604) with respect to the requirements for the source covered by this Order.

3. Printpack shall take the following actions during the entire period in which this Order is in effect, as a means of achieving the best interim system of emission reduction which is both reasonable and practicable:

a. Printpack shall continue to work with its suppliers to attempt to develop compliant formulations which can be utilized earlier than is provided under the above schedule.

b. Printpack shall comply with the limits in Rule 115.201 during any period insofar as it is able to do so.

c. Printpack shall comply with all lawful directives issued by the Texas Air Control Board, EPA, or any public health authority pursuant to the Texas Clean Air Act or the Federal Clean Air Act necessary to avoid an imminent and substantial endangerment to health of persons resulting from the emissions which are the subject of this Order.

4. Printpack shall comply with the following emissions monitoring and reporting requirements no later than the times indicated.

a. Printpack shall submit quarterly, starting on December 31, 1984, monthly summaries of the amount of each press formulation used and by June 30, 1985, to include daily weighted averages for all press formulations if Printpack plans at that time to achieve compliance through low solvent or water-based technology.

b. Printpack shall submit at the same time quarterly reports on its review and evaluation of low solvent or water-based press formulations.

5. All notices, reports, and documents which Printpack is required to file pursuant to this Order shall be submitted to Bill Stewart, Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. If the deadline for filing falls upon a Saturday, Sunday or holiday, the document must be filed on the next business day.

6. No statement or assertion underlying this Order or any commitments herein or actions taken by Printpack hereunder, shall, under any circumstances, constitue evidence of or be construed as an admission by Printpack of any wrongdoing or violation of law or breach of duty in any case, cause, controversy, or court of law or equity.

7. This Order supersedes Board Order No. 81–10 entered on August 14, 1981.

8. Nothing in this Order shall in any way limit or preclude Printpack from seeking and obtaining approval of a transaction pursuant to TACB Rule 101.23 (Alternate Emission Reduction Policy), and EPA's Controlled Trading Policy as in effect at the time any such transaction is submitted to EPA as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.201 pursuant to this Order.

9. Nothing in the Order shall in any way limit or preclude Printpack from seeking and obtaining approval of an alternate method of control pursuant to TACB Rule 115.401 as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.201 pursuant to this Order.

Notice

Pursuant to the provisions of section 113(d)(1)(E) of the Federal Clean Air Act [42 U.S.C. 7413(d)(1)(E)], Printpack is hereby notified that, unless excepted under section 120(a)(2) (B) or (C) of the Federal Clean Air Act, if it fails to achieve full compliance by December 31, 1985, it may be required to pay a noncompliance penalty. This Notice does not constitute a "notice of noncompliance" as that term is used in section 120(b)(3) of the Federal Clean Air Act (42 U.S.C. (B)(3)) and 40 CFR 66.11.

Passed and approved at the regular meeting of the Texas Air Control Board in Austin, Texas on this the 9th day of November, 1984.

Texas Air Control Board

By:

John L. Blair,
Chairman.

Charles R. Jaynes,
Vice Chairman.

Vittorio K. Argento, P.E.,
Member (absent).

Bob G. Bailey,
Member.

Fred Hartman,
Member.

D. Jack Kilian, M.D.,
Member.

Otto R. Kunze, Ph.D., P.E.,
Member.

R. Hal Moorman,
Member.

Hubert Oxford III,
Member.

Attest:

Bill Stewart, P.E.,
Executive Director.

[FR Doc. 85–11845 Filed 5–15–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56, 58, 107, 108, 109, 111, and 174

[CGD 83–071a]

Mobile Offshore Drilling Unit Requirements; Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period on the advance notice of proposed rulemaking that would revise the Coast Guard mobile offshore drilling unit requirements. The extension was requested by two commentors, both of whom are industry associations. Both commentors cited the broad scope of this regulatory initiative and their difficulty in providing meaningful responses within the original 90 day comment period. Once commentor requested a six month extension and one commentor requested a three month extension. Because of these requests for additional time to comment on the advance notice of proposed rulemaking, the deadline for receipt of comments is extended to September 23, 1985.

DATE: The comment period on the advance notice of proposed rulemaking is extended to September 23, 1985.

ADDRESS: Comment should be mailed to the Commandant (G-CMC/21) (CGD 83-071a), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593. Between the hours of 8 a.m. and 4 p.m. Monday through Friday except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Anthony Dupree, Jr., Office of Merchant Marine Safety, G-MVI-4, (202) 426-2307.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking was published on March 25, 1985, in the **Federal Register** (50 FR 11741).

May 13, 1985.

Clyde T. Lusk Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-11871 Filed 5-15-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered and Threatened Status for the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposed determination of endangered and threatened status for the piping plover is reopened. This bird is found on the Atlantic and Gulf coasts, Great Lakes, and northern Great Plains. The reopening of the comment period will allow comments on this proposal to be submitted from all interested persons.

DATES: The comment period on the proposal is reopened. The comment period, which originally closed on January 7, 1985, then extended to January 28, 1985, and extended again to March 29, 1985, now closes June 17, 1985.

ADDRESSES: Written comments and materials should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials will be available for public inspection during business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on the comment period, contact James M. Engel, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

The piping plover (*Charadrius melodus*) is a small shorebird that nests on beaches of the Atlantic coast from Newfoundland to North Carolina, along the shores of the Great Lakes and saline wetlands of the northern Great Plains and on sandbars in rivers of the Upper Missouri River system. The species winters along the Gulf coast and Atlantic coast from South Carolina to Florida, and the Bahamas and Greater Antilles. The Service has information that the species is endangered and threatened by human disturbance, habitat destruction, alteration of natural river dynamics, and unfavorable plant succession. In the **Federal Register** of November 8, 1984 (49 FR 44712), the Service proposed determination of endangered status for the piping plover in the Great Lakes watershed and threatened status throughout the remainder of its range. The period for submission of public comments on the proposal was originally scheduled to last until January 7, 1985, and then extended to January 28, 1985, and again extended to March 29, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. The Service originally received requests within the 45-day period from Tom Pitts & Associates, Consulting Engineers, Loveland, Colorado (on behalf of the Colorado-Nebraska-Wyoming Interstate Task Force on Endangered Species (comprised of the Colorado Water Congress, Nebraska Water Resources Association, and the Wyoming Water Development Association)); Warren G. White, natural resource advisor at the Office of the Governor of Wyoming; Colorado Water Congress; Davis, Graham & Stubbs (on behalf of the Northern Colorado Water Conservancy District); Colorado Water Conservation Board; Nebraska Water Resources Association; and the Board of Water Commissioners of the City and County of Denver. They requested public hearings in Colorado, Nebraska, and Wyoming and a 60-day extension of the comment period.

The Audubon Society of Omaha, Nebraska; the Central Nebraska Public Power and Irrigation District; and Cook & Kopf, P.C., Lexington, Nebraska (on behalf of the Central Platte Natural Resources District) requested a public hearing be held in Nebraska. The Central Nebraska Public Power and Irrigation District also requested a 60-day extension of the comment period. The Wyoming Water Development Association requested a public hearing be held in Wyoming. Notice of public hearing and reopening of the comment period was published in the **Federal Register** on December 31, 1984 (49 FR 50748). The public hearing was held on January 18, 1985, at the Peter Kiewit Conference Center, Omaha, Nebraska. The comment period was extended until January 28, 1985.

After the 45-day public hearing request period had ended on December 24, 1985, the Service received requests for public hearings and a 60-day extension of the comment period from the Central Colorado Water Conservancy District; Nebraska Rural Electric Association; Niobrara River Basin Development Association, Ainsworth, Nebraska; The Republican Valley Conservation Association, McCook, Nebraska; Board of Public Utilities, Casper, Wyoming; James W. Sanderson of Saunders, Snyder, Ross & Dickson, P.C., Denver, Colorado (on behalf of the legal committee of the Colorado Water Congress' Special Project on Endangered Species); and U.S. Representative Virginia Smith, 3d District, Nebraska. Notice of a second public hearing and reopening of the comment period was published in the **Federal Register** on January 29, 1985 (50 FR 3940). The second public hearing was held on February 27, 1985, at the Denver City Council Chambers, Denver, Colorado. The comment period was extended until March 29, 1985.

On April 15, 1985, the Service received a request for an additional 60-day comment period on the proposed listing of the piping plover and interior least tern (proposed as endangered on May 29, 1984; 49 FR 22444) from Janes W. Sanderson of Saunders, Snyder, Ross & Dickson, P.C., Denver, Colorado (on behalf of the legal committee of the Colorado Water Congress' Special Project on Threatened and Endangered Species).

Mr. Sanderson stated:

> The U.S. Fish & Wildlife Service, at the February 27, 1985 Public Hearing held in Denver regarding the listing of the Piping Plover as an endangered or threatened

species, presented a number of graphs, including the mean annual flows of the Platte River near Overton, Nebraska (copy attached). That graph [Fig. 24B *in* Williams, G.P. 1978. The case of the shrinking channels—the North Platte and Platte Rivers in Nebraska. U.S. Geol. Surv. Circ. 781. 48 pp.] was used to purportedly demonstrate alteration of flows and, therefore, the habitat of the Piping Plover. The graphs were not made available to us prior to that hearing. Therefore, subsequent to the hearing we undertook to verify the accuracy of the graph. We have not concluded that analysis, but it appears that the graphs presented at the hearing, particularly with respect to average mean annual flows, do not accurately depict the facts and the flows of the Platte River near Overton, Nebraska.

Mr. Sanderson also sent to the Service a graph, depicting mean annual flows at the Platte River near Overton, Nebraska, from 1917 to 1980, which he stated "suggested the lack of any downward trend" in flows. He stated: "The point is that graphics which the U.S. Fish & Wildlife Service decision makers have is misleading and a thorough review is necessary. Secondly, the need for a precipitous decision based on alleged deteriorating conditions simply does not exist. The verification of the hydrologic data is critical to any action that the U.S. Fish & Wildlife Service may take with respect to the above-proposed listing."

Although the piping plover is not believed to occur in Colorado or Wyoming, tributaries of the Platte River, Nebraska, where the species does occur, extend into Colorado and Wyoming. Water user organizations are concerned about the proposed listing in view of water development in the South Platte River, Colorado, and the North Platte River, Wyoming.

Therefore, the Service reopens the public comment period only on the proposed listing of the piping plover for 30 days. Written comments may be submitted until June 17, 1985, to the Service office in the **ADDRESSES** section. The Service will accept comments on the proposed listing of the piping plover relative to any part of the bird's range, and any particular information concerning:

1. Biological, commerical, trade, or other relevant data concerning any threat (or lack thereof) to the piping plover;

2. The location of any additional populations of the piping plover and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

3. Additional information concerning the range and distribution of the species; and

4. Current or planned activities that may adversely modify the habitat of this bird.

Author

The author of this notice is John G. Sidle, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612–725–3276 or FTS 725–3276).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Publ L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 10, 1985.

Gerald R. Lowry,

Acting Regional Director.

[FR Doc. 85–11883 Filed 5–15–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Parts 32 and 33

Addition of Twenty National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to add twenty national wildlife refuges to the lists of open areas for migratory game bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary of the Interior believes that this action would be in accordance with the provisions of all applicable laws, would be consistent with the principles of sound wildlife management, and would otherwise be in the public interest. The Secretary further believes that such uses would be compatible with, and in some cases enhance, the major purposes for which each refuge was established. The hunting of migratory game birds, upland game and big game, and/or sport fishing would provide additional public recreational opportunities.

DATE: Comments must be received on or before June 17, 1985.

ADDRESS: Comments may be addressed to Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Room 3252, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Room 2343, Washington, D.C. 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open twenty refuges to hunting and/or sport fishing. Some of the hunting and fishing programs that are proposed require refuge-specific hunting or fishing regulations. These regulations are also included in this rulemaking.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the opening of the refuges cited below to migratory bird, upland game or big game hunting, and/or sport fishing. Accordingly, interested persons may submit written comments, suggestions, or objections concerning this propsal to the Associate Director—Wildlife Resources (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which such areas were established. The

compatibility determination for each refuge affected by this rulemaking is discussed below.

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, opening refuges to hunting or fishing under the Refuge Recreation Act requires that the Secretary shall determined that funds be made available for the development, operation, and maintenance of these permitted forms of recreation prior to initiating such uses of refuge areas.

Executive Orders 1014 and 5316 and Proclamation 2416 recognized that on a number of refuges, including Back Bay National Wildlife Refuge (NWR), Cedar Keys NWR, Pelican Island NWR, Tybee NWR, Union Slough NWR, and Wolf Island NWR, public taking of game was not allowed "except as permitted" by the Secretary through regulations. Thus, authority to open these refuges by regulation predates the Refuge Recreation Act.

In accordance with the Refuge Administration Act and the Refuge Recreation Act, the Secretary of the Interior believes that the proposed openings for hunting and fishing would be appropriate under applicable Executive Orders and compatible and consistent with the primary purposes for which each of the refuges listed below was established. The hunting and fishing programs would be consistent with State and Federal (migratory game bird) regulatory frameworks which are developed specifically to ensure conservation of fish and wildlife populations. A discussion of the compatibility of the hunting and fishing programs with the purposes for which each refuge was established and the availability of funding for each program follows:

Back Bay NWR was established in 1938 by Executive Order 7907 as "a refuge and breeding ground for migratory birds and other wildlife." The Service proposes to open the refuge to big game hunting. Currently, white-tailed deer populations exceed the carrying capacity of the refuge's habitat. This has led to habitat damage and a documented parasite problem within the refuge deer herd. In addition, feral hogs are present in sufficient numbers on the refuge that they are also destroying valuable wildlife habitat. Refuge hunting would be regulated to allow only the taking of white-tailed deer and feral hogs, and a refuge permit would be required to limit the number of hunters on the refuge. Time and space zoning would be implemented to ensure that the hunting program would not interfere with the management of other refuge wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a management tool would be in keeping with refuge purposes to conserve wildlife populations and habitats. Controlling refuge deer and hog populations would ensure the preservation and enhancement of habitat for breeding birds and other wildlife, and would occur at a time of year so as not to disturb nesting birds. For these reasons, the opening of Back Bay NWR to big game hunting would be an appropriate exercise of Secretarial power under Proclamation 2416, would further the purposes for which the refuge was established, and would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be approximately $6,900. Within the annual refuge budget of approximately $442,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Back Bay NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Bogue Chitto NWR was established in 1980 by Pub. L. 96–288 to preserve bottomland hardwood habitat and its associated wildlife, and for wildlife-oriented recreation and education. The Service proposes to open the recently-acquired Mississippi portion of the refuge to migratory bird, upland game, and big game hunting. The Louisiana portion of the refuge is currently open to these activities. Time and space zoning and other refuge-specific regulations would be implemented to ensure that hunting would not interfere with other refuge wildlife programs; these measures have proven effective on the Louisiana portion of the refuge. In addition, opening the Mississippi portions of the refuge to hunting would contribute toward accomplishment of one of the refuge's primary purposes by making the area available to hunting, an important form of outdoor recreation. For these reasons, the opening of Bogue Chitto NWR to migratory bird, upland game, and big game hunting would enhance the purposes for which the refuge was established and would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be less than $16,000. Within the annual refuge budget of approximately $170,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Bogue Chitto NWR to migratory bird, upland game, and big game hunting would be in compliance with the Refuge Recreation Act.

Bon Secour NWR was established in 1980 by Pub. L. 96–267 to preserve coastal barrier island habitat for migratory birds and threatened and endangered wildlife, and to provide wildlife-oriented recreation. The Service proposes to open the refuge to sport fishing. The proposed fishing activity would permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. This activity would involve fishing in two small freshwater lakes on the refuge. Boats with gasoline-powered motors would be prohibited from these waters. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. A Section 7 evaluation indicated that threatened and endangered wildlife species woudl not be adversely impacted by the proposed fishing program. Accomplishment of one of the refuge's primary purposes would be enhanced by making the area available to an important form of outdoor recreation. For these reasons, the opening of Bon Secour NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program would be approximately $500. Within the annual refuge budget of approximately $50,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Bon Secour NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Buenos Aires NWR was established in 1985 under authority of the Endangered Species Act, as amended (16 U.S.C. 1531), to provide protected and managed habitat for the endangered masked bobwhite quail. The Service owns 21,258 acres of the 118,694-acre refuge. Eventually, cooperative agreements, leases, and easements will allow the Service to consolidate management authority over the remainder of the refuge, which is owned by the State of Arizona (90,191 acres), the U.S. Forest Service (6,662 acres), and the Bureau of Land Management (583 acres). The Service proposes to open the refuge to migratory bird, upland game,

and big game hunting. Hunting has traditionally occurred on portions of the Buenos Aires Ranch by permission of the landowner on private lands and by open hunting on State and Federal lands within the Ranch boundaries. Bottomland grassland habitats preferred to masked bobwhite quail, which comprise about 50,000 acres of the refuge, have been closed to all quail hunting by the State of Arizona for several years. (Gambel's Montezuma, and scaled quail also occur on the refuge.) The Service proposes to continue traditional hunting uses on an interim basis until a master plan is completed for the refuge. All quail hunting would continue to be prohibited on the 50,000 acres of bottomland masked bobwhite quail habitats closed in the past by the State. Opening limited areas of the refuge to hunting would result in only minor and temporary disturbances to refuge habitat. In the experience of the Service, such minor disturbances would have no measurable adverse effects on wildlife populations. In addition, hunting on the bottomlands could aid in reestablishing masked bobwhite quail populations by reducing predation. A Section 7 consultation determined that the continued existence of the endangered masked bobwhite quail would not be jeopardized by the proposed hunting program. The possibility of accidental taking of masked bobwhites would be minimized through hunter education, posting of the closed quail hunting area, law enforcement, and population monitoring. Also, the preferrred habitat of the masked bobwhite, and potential release sites for reintroduced birds, are located within the area closed to all quail hunting. For these reasons, the opening of Buenos Aires NWR to migratory bird, upland game, and big game hunting would not interfere with the purposes for which the refuge was established and would be in compliance with the Refuge Recreation Act. The estimated annual cost to administer the hunting program would be approximately $8,820. Within the projected annual refuge budget of $300,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Buenos Aires NWR to migratory bird, upland game, and big game hunting would be in compliance with the Refuge Recreation Act.

Buffalo Lake NWR was established in 1985 by Executive Order 10787 for the conservation of migratory birds. The Service proposes to open the refuge to upland game hunting. Refuge hunting would be regulated to allow only the taking of pheasants, and a refuge permit would be required to limit the number of hunters on the refuge. The area proposed for hunting is dry lake bed and grassland habitat, which is primarily used by resident wildlife species. During periods of increased runoff, when the lake bed holds standing water, upland game habitat is inundated and upland game populations disperse. Under such conditions, the hunting program would be modified or suspended. Because only a nonmigratory species would be hunted, and only on a portion of the refuge used primarily by resident wildlife species, migratory birds would not be adversely affected by the proposed hunting activity. Therefore, the opening of Buffalo Lake NWR to upland game hunting would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be approximately $5,600. Within the annual refuge budget of approximately $99,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Buffalo Lake NWR to upland game hunting would be in compliance with the Refuge Recreation Act.

Cedar Keys NWR was established in 1929 by Executive Order 5158 as "a refuge and breeding ground for birds." The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The proposed fishing program would only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Most fishing would occur in conjunction with other refuge activities such as picnicking and beach-combing. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect bird populations or habitats. Therefore, the opening of Cedar Keys NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program would be approximately $100. Within the annual refuge budget of approximately $5,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Cedar Keys NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Columbian White-tailed Deer NWR was established in 1972 under authority of the Endangered Species Act, as amended, to preserve and manage critical habitat for the endangered Columbian white-tailed deer. It is currently administered as part of the Lower Columbia River Refuge Complex. The Service proposes to open the refuge to big game hunting. In 1983, the Columbian White-tailed Deer Recovery Team determined that the presence of large numbers of Roosevelt elk on the refuge is jeopardizing the continued survival of the deer. Hunting would help to maintain the elk population at a level that would minimize adverse impacts on the Columbian white-tailed deer. The elk control program would be intended to reduce competition between elk and the endangered deer for the available habitat. The hunt would be implemented only when other methods of population reduction, such as trapping and transplanting, fencing, and off-refuge hunting, fail to achieve the desired elk herd size. Elk hunting would be regulated to ensure that it would not jeopardize the endangered deer, adversely modify its habitat, or interfere with or distract from the conservation of fish and other wildlife and their habitats. Since reduction of the refuge elk herd would contribute materially to the accomplishment of the refuge purpose of conserving Columbian white-tailed deer habitat, the opening of Columbian White-tailed Deer NWR to big game hunting would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be approximately $14,000. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Columbian White-tailed Deer NWR to big game hunting would be in compliance with the Refuge Recreation Act.

The Service also proposes to open Columbian White-tailed Deer NWR to sport fishing. The proposed fishing activity would permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. The activity would involve fishing from a refuge dike to take fish from non-refuge waters and fishing in a refuge pond. The locations where fishing would occur are such that they would not jeopardize the endangered deer or adversely modify its habitat. Therefore, the opening of Columbian White-tailed

Deer NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it and public access would be via a county road open to all refuge visitors. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds would be available for the administration of the fishing program. Therefore, the opening of Columbian White-tailed Deer NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Egmont Key NWR was established in 1974 by Pub. L. 93–341 to preserve habitat for shore and colonial birds. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The proposed fishing program would only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. No bird nesting occurs on the island. In the experience of the Service, the proposed activity would not adversely affect birth habitat. Therefore, the opening of Egmont Key NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual refuge budget of approximately $8,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Egmont Key NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Harbor Island NWR was established in 1984 under authority of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742), to preserve and enhance the island's unique ecosystem. It is currently administered by Seney NWR. The Service proposes to open the refuge to migratory bird, upland game, and big game hunting. Hunting occurred regularly on the island prior to its purchase from The Nature Conservancy, with no adverse impacts. Access to Harbor Island is by boat only, which would limit hunter use of the refuge and result in only minor and temporary disturbances to refuge wildlife and habitat. Hunting would help to preserve the island's habitat by maintaining wildlife populations at acceptable levels. Therefore, the opening of Harbor Island NWR to migratory bird, upland game, and big game hunting would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be approximately $1,000. Within the annual Seney NWR budget of approximately $275,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Harbor Island NWR to migratory bird, upland game, and big game hunting would be in compliance with the Refuge Recreation Act.

Harris Neck NWR was established in 1962, under authority of Pub. L. 80–537 to provide winter feeding and resting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The proposed fishing program would only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing would not be permitted during the refuge hunting season. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect migratory bird habitat. Therefore, the opening of Harris Neck NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Harris Neck NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Hobe Sound NWR was established in 1968 under authority of the Fish and Wildlife Act of 1956 to provide nesting habitat for threatened and endangered marine turtles. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. The proposed fishing program would permit a limited number of individuals to fish from designated beach areas on the refuge. A Section 7 evaluation indicated that because fishing would only be permitted during daylight hours, it would not interfere with turtle nesting, which occurs at night. Therefore, the opening of Hobe Sound NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program would be approximately $750. Within the annual refuge budget of approximately $60,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Hobe Sound NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Lower Suwannee NWR was established in 1979 under authority of the Fish and Wildlife Act of 1956 to protect and manage a unique ecosystem used by wintering waterfowl and threatened and endangered species, and to provide essential feeding habitat for the West Indian Manatee. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The proposed fishing program would only permit bank fishing into interior refuge waters. Fishing would not be permitted during the refuge hunting season. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect waterfowl or Manatee habitat. A Section 7 evaluation indicated that threatened and endangered wildlife species, including the Manatee, would not be adversely impacted by the proposed activity either. For these reasons, the opening of Lower Suwannee NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program would be approximately $1,000. Within the annual refuge budget of approximately $70,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Lower Suwannee NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Pelican Island NWR was established in 1903 by an unnumbered Executive Order as "a preserve and breeding ground for native birds", and redesignated by Proclamation 2416 in 1940. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-

controlled waters near the refuge, with no adverse impacts. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. The proposed fishing program would only permit fishing during daylight hours from designated areas of the refuge into the surrounding waters. The public would continue to be prohibited from using those portions of the refuge that are sanctuary for colonial nesting birds. Therefore, the opening of Pelican Island NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual refuge budget of approximately $12,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Pelican Island NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Pinckney Island NWR was established in 1975 under authority of the Fish and Wildlife Act of 1956 to provide feeding and nesting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the water near the refuge, with no adverse impacts. The proposed fishing program would only permit fishing from boats into tidal creeks. A lease with the State of South Carolina conveys jurisdiction of these waters to the Service. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishing resource. In the experience of the Service, the proposed activity would not adversely affect migratory bird habitat. Therefore, the opening of Pinckney Island NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it.

Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Pinckney Island NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Pinellas NWR was established in 1908 by an unnumbered Executive Order as "a preserve and breeding ground for native birds." The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the waters surrounding the refuge, with no adverse impacts. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. The proposed fishing activity would only permit fishing from boats into the waters surrounding the Tarpon Key portion of the refuge. A lease with the State of Florida conveys jurisdiction of these waters to the Service. No fishing would be permitted from refuge shores to protect colonial nesting birds. Therefore, the opening of Pinellas NWR to short fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual refuge budget of approximately $2,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Pinellas NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Tybee NWR was established in 1938 by Executive Order 7882 as "a refuge and breeding ground for migratory birds and other wildlife." It is currently administered as part of the Savannah Coastal Refuge Complex. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The proposed fishing program would only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect wildlife populations or habitats. Therefore, the opening of Tybee NWR to sport fishing would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Tybee NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Union Slough NWR was established in 1938 by Exective Order 7976 as "a refuge and breeding ground for migratory birds and other wildlife", and redesignated by Proclamation 2416 in 1940. The Service proposes to open the refuge to migratory bird, upland game, and big game hunting. Hunting would be limited to the Buffalo Creek and Schwob Units, which will soon be transferred to the Service from the Iowa Conservation Commission. The State has permitted hunting on these areas, with no adverse impacts. The units lie adjacent to those portions of the refuge devoted to intensive management for migratory bird production and maintenance. Hunting would be regulated to assure that disturbances to refuge wildlife and habitat would be minor and temporary; it would occur at a time of year so as not to disturb nesting birds. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and not intended to be "safe havens" for individual animals, the use of hunting as a management tool would be in keeping with refuge purposes to conserve wildlife populations and habitats. For these reasons, the opening of Union Slough NWR to migratory bird, upland game, and big game hunting would be an appropriate use of the discretion given in Proclamation 2416 to allow taking of game and would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program would be approximately $2,500. Within the annual refuge budget of approximately $130,000, the necessary funds would be available for the administration of the proposed hunting program. Therefore, the opening of Union Slough NWR to migratory bird, upland game, and big game hunting would be in compliance with the Refuge Recreation Act.

Wassaw NWR was established in 1969 under authority of the Fish and Wildlife Act of 1956 to protect wintering habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The proposed fishing program would only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing would not be permitted during the refuge hunting season. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect migratory bird habitat. Therefore, the opening of Wassaw NWR

to sport fishing would be in compliance with the Refuge Administration Act. The annual cost of the fishing program would be less than $100 since no special services or facilites would be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Wassaw NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Wheeler NWR was established in 1938 by Executive Order 7926 as "a refuge and breeding ground for migratory birds and other wild life." The Service proposes to open the refuge to sport fishing. The proposed fishing activity would permit continuation of recreational uses which have occurred, with no adverse impacts, since before the refuge was established. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. The primary use of the refuge by migratory birds is during the fall and winter, whereas the peak periods of fishing activity would be during spring and summer. In the experience of the Service, the proposed activity would not adversely affect wildlife populations or habitats. For these reasons, the opening of Wheeler NWR to sport fishing would not interfere with the purposes for which the refuge was established and would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual refuge budget of approximately $420,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Wheeler NWR to sport fishing would be in compliance with the Refuge Recreation Act.

Wolf Island NWR was established in 1930 by Executive Order 5316 as "a refuge and breeding ground for wild animals and birds", and redesignated by Proclamation 2416 in 1940. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service proposes to open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The proposed fishing program would permit bank fishing from refuge lands into the surrounding waters, and fishing from boats into the rufuge-controlled waters of two creeks. Refuge fishing would be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the proposed activity would not adversely affect wildlife populations or habitats. Therefore, the opening of Wolf Island NWR to sport fishing would be appropriate under proclamation 2416 and would be in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program would be less than $100 since no special services or facilities would be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds would be available for the administration of the proposed fishing program. Therefore, the opening of Wolf Island NWR to sport fishing would be in compliance with the Refuge Recreation Act.

In summary, the Service believes that these hunting and fishing programs would be appropriate incidental or secondary uses of these refuges; would be compatible with, would not interfere with, and in some cases would enhance, the primary purposes for which these refuges were established; would be biologically sound and compatible with the principles of sound wildlife management; and would not be inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service further believes that funds would be available for administration of these programs, and that these programs would otherwise be in the public interest in that they would provide needed recreational opportunities without impairment of the resource.

Hunting and fishing plans are developed for each hunting and fishing program on a refuge prior to the opening of the refuge to hunting and/or fishing. In some cases, refuge-specific hunting and/or fishing regulations are included as a part of the hunting or fishing plan to ensure the compatibility of the programs with refuge purposes. For this reason, refuge-specific regulations that are necessary for the proposed hunting and fishing programs are also included in this rulemaking. Refuge-specific regulations for refuges open to migratory bird, upland game, and big game hunting are codified in 50 CFR Part 32, §§ 32.12, 32.22, and 32.32, respectively. On February 20, 1985, at 50 FR 7079, a rule was published which proposed codifying refuge-specific fishing regulations for refuges open to sport fishing in 50 CFR Part 33, §§ 33.5 through 33.54.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the proposed opening of these refuges to hunting and fishing will generate approximately 130,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $2.6 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 11 states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule would have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. the proposed openings would provide recreational opportunities and generate economic benefits that would not otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, etc., needed to implement activities undr this rule would be less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Hunter surveys	1018-0044
Special use permits	1018-0046
Hunter reservation/permit application/blind assignment	1018-0047

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments have been prepared for these proposed openings. Section 7 evaluations have been prepared, where appropriate, pursuant to the Endangered Species Act. These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, or by mail, addressing the Director at the above address.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, is the primary author of this proposed rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938-1943 Comp., p. 167; E. O. 1014 (January 26, 1909), unless otherwise noted.

2. Section 32.11 would be amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, and Bogue Chitto NWR, MS, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Arizona

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

* * * * *

Union Slough National Wildlife Refuge

* * * * *

Michigan

* * * * *

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Bogue Chitto National Wildlife Refuge

* * * * *

3. Section 32.12 would be amended by redesignating paragraphs (c) through (rr) as (d) through (ss), respectively; adding a new paragraph (c); redesignating newly redesignated paragraphs (v)(1) through (v)(6) as paragraphs (v)(2) through (v)(7), respectively; and by adding a new paragraph (v)(1) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(c) *Arizona—Buenos Aires National Wildlife Refuge.* Hunting of mourning doves, white-winged doves, ducks, geese, and coots in permitted on designated areas of the refuge.

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

* * * * *

4. Section 32.21 would be amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island, NWR, MI, Bogue Chitto NWR, MS, and Buffalo Lake NWR,TX alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Arizona

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

* * * * *

Union Slough National Wildlife Refuge

* * * * *

Michigan

* * * * *

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Bogue Chitto National Wildlife Refuge

* * * * *

Texas

* * * * *

Buffalo Lake National Wildlife Refuge

* * * * *

5. Section 32.22 would be amended by redesignating paragraph (b) introductory text, and (b)(1)-(b)(3) as paragraphs (b)(2), (b)(2)(i), (b)(2)(ii) and (b)(2)(iii), respectively, and by adding new paragraph (b)(1); by redesignating paragraphs (v)(1)-(v)(6) and (v)(2)-(v)(7), respectively; by adding new paragraph (v)(1); by redesignating paragraph (kk) introductory text, and (kk)(1) and (kk)(2) as paragraphs (kk)(2), (kk)(2)(i) and (kk)(2)(ii), respectively and by adding a new paragraph (kk)(1) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of quail (except masked bobwhite quail), cottentail rabbit, jackrabbit, coyote, fox, and bobcat is permitted on designated areas of the refuge.

(2) Kofa National Wildlife Refuge.

* * *

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, and opossum is permitted on designated areas of the

refuge subject to the following conditions:

(i) Dogs are permitted for rabbit hunting following the last day of the State deer season.

(ii) Hunting of raccoon and oppossum is permitted from the opening day of the State season through November 30.

* * * * *

(kk) *Texas*—(1) *Buffalo Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: A refuge hunting permit is required.

(2) Hagerman National Wildlife Refuge * * *

* * * * *

6. Section 32.31 would be amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island, NWR, MI, Bogue Chitto NWR, MS, Back Bay NWR, VA, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Arizona

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

* * * * *

Union Slough National Wildlife Refuge

* * * * *

Michigan

* * * * *

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Bogue Chitto National Wildlife Refuge

* * * * *

Virginia

* * * * *

Back Bay National Wildlife Refuge

* * * * *

Washington

* * * * *

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

7. Section 32.32 would be amended by redesignating paragraphs (b)(1) through (b)(3) as paragraph (b)(2) through (b)(4), respectively; adding a new paragraph (b)(4); by redesignating paragraph (p) introductory text and (p)(1)–(p)(4) as paragraph (p)(1)(i),–(p)(1)(iv), respectively, and adding a new paragraph (p)(2); by redesignating paragraphs (v)(1) and (v)(2) as paragraphs (v)(2) and (v)(3), respectively; by adding a new paragraph (v)(1); by redesignating paragraphs (x)(1) through (x)(6) a paragraphs (x)(2) through (x)(7), respectively; by adding a new paragraph (x)(1); by redesignating paragraphs (qq)(1) through (qq)(3) as paragraphs (qq)(2) through (qq)(4), respectively; and by adding a new paragraph (qq)(1) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of mule deer, white-tailed deer, and javelina is permitted on designated areas of the refuge.

* * * * *

(p) *Iowa*—(1) *Desoto National Wildlife Refuge* * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

* * * * *

(v) *Michigan*—(1) *Harbor Island National Wildlife Refuge.* Hunting of white-tailed deer and black bear is permitted on designated areas of the refuge.

* * * * *

(x) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted.

(ii) A 14-day primitive weapon deer hunt is permitted beginning December 1. During this hunt, one deer of either sex may be taken.

(iii) An 8-day gun deer hunt is permitted beginning December 15. During this hunt, only male deer may be taken.

* * * * *

(qq) *Virginia*—(1) *Back Bay National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) One deer of either sex may be taken daily a maximum of two deer may be taken per season.

(iii) Only shotguns 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bow and arrow, are permitted.

(iv) Dogs are not permitted.

(v) Possession of loaded firearms or nocked arrows is not permitted on refuge roads or proclamation waters.

(vi) Hunters must wear in a conspicuous manner on head, chest, and back, a minimum of 400 square inches of "hunter orange" clothing or material.

* * * * *

PART 33—[AMENDED]

8. The authority citation for Part 33 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 451, 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 167; E.O. 1014 (January 26, 1909), unless otherwise noted.

9. Section 33.4 would be amended by adding Bon Secour NWR, AL, Wheeler NWR, AL, Cedar Keys NWR, FL, Egmont Key NWR, FL, Hobe Sound NWR, FL, Lower Suwannee NWR, FL, Pelican Island NWR, FL, Pinellas NWR, FL, Harris Neck NWR, GA, Tybee NWR, GA, Wassaw NWR, GA, Wolf Island NWR, GA, Pinckney Island NWR, SC, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Alabama

* * * * *

Bon Secour National Wildlife Refuge
Wheeler National Wildlife Refuge

* * * * *

Florida

* * * * *

Cedar Keys National Wildlife Refuge
Egmont Key National Wildlife Refuge
Hobe Sound National Wildlife Refuge
Lower Suwannee National Wildlife Refuge
Pelican Island National Wildlife Refuge
Pinellas National Wildlife Refuge

* * * * *

Georgia

* * * * *

Harris Neck National Wildlife Refuge
Tybee National Wildlife Refuge
Wassaw National Wildlife Refuge
Wolf Island National Wildlife Refuge

* * * * *

South Carolina

* * * * *

Pinckney Island National Wildlife Refuge

* * * * *

Washington

* * * * *

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

10. Section 33.5 would be amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and by adding new paragraphs (a) and (d), to read as follows:

§ 33.5 Refuge-specific fishing regulations—Alabama.

(a) *Bon Secour National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Only nonmotorized boats and boats with electric motors are permitted on Gator and Little Gator Lakes.

* * * * *

(d) *Wheeler National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is not permitted around the shoreline of the refuge headquarters and in the display pool.

11. Section 33.13 would be amended by redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (d), (f), (g), (j), and (k), respectively; and by adding new paragraphs (a), (b), (c), (e), (h), and (i) as follows:

§ 33.13 Refuge-specific fishing regulations—Florida.

(a) *Cedar Keys National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(b) *Egmont Key National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(c) *Hobe Sound National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round, during daylight hours only.

* * * * *

(e) *Lower Suwannee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is permitted into interior refuge creeks, borrow pits, and canals from March 15 to September 30 only.

* * * * *

(h) *Pelican Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Bank fishing from spoil islands is permitted, during daylight hours only.

(i) *Pinellas National Wildlife Refuge.* Fishing is permittd on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats, into the waters surrounding Tarpon Key.

* * * * *

12. Section 33.14 would be amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and by adding new paragraphs (c), (g), and (h) as follows:

§ 33.14 Refuge-specific fishing regulations—Georgia.

* * * * *

(c) *Harris Neck National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

* * * * *

(g) *Wassaw National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

(h) *Wolf Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing from boats is only permitted on Beacon and Wolf Creeks.

(3) Bank fishing into estuarine waters is permitted, during daylight hours only.

13. Section 33.44 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and by adding a new paragraph (c) as follows:

§ 33.44 Refuge-specific fishing regulations—South Carolina.

* * * * *

(c) *Pinckeny National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing is only permitted from boats, into the estuarine waters adjacent to the refuge.

* * * * *

Dated: April 18, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11847 Filed 5–15–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of experimental fishing permit applications and request for comments.

SUMMARY: This notice acknowledges receipt of two experimental fishing permit (EFP) applications and announces a public comment period. The applicants propose to conduct experimental fisheries to harvest soupfin shark (*Galeorhinus galeus*) and other groundfish species using gillnets in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California. If granted, the EFPs would allow the harvest of groundfish species with fishing gear which otherwise would be prohibited by Federal regulations.

DATE: Comments on these EFP applications must be received by July 5, 1985.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., Bin C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that an EFP may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

Two EFP applications to harvest groundfish species using gillnets in the FCZ off the coasts of Washington, Oregon, and California were received by the NMFS Northwest Regional Office on April 5, 1985. Current groundfish regulations at § 663.26 do not authorize the use of drift gillnets nor set nets (anchored gillnets) north of 38°00′ N. latitude in the FCZ to harvest groundfish. If granted, the EFPs would allow the use of this fishing gear.

One application proposes to retain and market soupfin, leopard, and spiny dogfish sharks taken incidentally in drift gillnets in a fishery that targets on thresher shark, a species that is not managed under the FMP. The purpose of the experimental fishery is to obtain information on the harvest and potential

utilization of shark species taken incidentally to the thresher shark gillnet fishery in the FCZ. Such information will be used to evaluate the regulations which have the effect of prohibiting the retention of soupfin, leopard, and spiny dogfish sharks taken in drift gillnets. Three individuals are signatory to this application and all three will be involved in the experimental fishery, each using up to 2,000 fathoms of drift gillnets with sixteen- to twenty-inch mesh webbing. The applicants and their vessels are based in Washington and Oregon. The applicants have requested that the EFP be issued for June to December 1985 in the FCZ off Washington, Oregon, and California.

The other application proposes to target on soupfin sharks using a set net. The purpose of this experimental fishery is to obtain information on reestablishment of a viable soupfin shark fishery utilizing set nets that have been modified to reduce or eliminate the incidental take of other groundfish species. Six individuals are signatory to this application and all six and their individual vessels would be involved in the experimental fishery, each using one to four 800-meter set nets with nine- to sixteen-inch mesh webbing. The applicants and their vessels are based in Oregon. The applicants have requested that the EFP be issued for one year in the Columbia and Vancouver management subareas in the FCZ off Washington, Oregon, and northern California.

Both applications will be discussed at the next public meeting of the Pacific Fishery Management Council in Portland. The decision to approve or deny these EFP applications will be based on a number of considerations including recommendations made by the Council at their July 10–11, 1985, meeting and comments received from the public.

(16 U.S.C. 1801 *et seq.*)

Dated: May 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–11857 Filed 5–15–85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 95
Thursday, May 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finding of No Significant Impact; Pike County Roadside Critical Area Treatment RC&D Measure, Indiana

AGENCY: Soil Conservation Service, Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317–248–4350.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pike County Roadside Critical Area Treatment #317 RC&D Measure, Pike County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The measure involves a plan for Critical Area Treatment. The planned works of improvement include grading and shaping of roadside ditches; installing earthen fill; installing rock rip rap; installing excelsior blanket; and applying seed, fertilizer, and mulch to establish vegetation.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Food Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 6, 1985.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 85–11819 Filed 5–15–85; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact; Shelbyville High School Critical Area Treatment RC&D Measure, Indiana

AGENCY: Soil Conservation Service, Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317–248–4350.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shelbyville High School Critical Area Treatment RC&D Measure, Shelby, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for Critical Area Treatment. The planned works of improvement include the installation of a grade stabilization structure, grass waterway regarding, subsurface drainage, and critical area planting. Approximately one acre will be seed.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Food Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 6, 1985.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 85–11818 Filed 5–15–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Montgomery County Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environment Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Montgomery County Park Critical Area Treatment RC&D Measure, Montgomery County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street,

Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for seeding eroding areas on the Montgomery County Park property in Montgomery County, Virginia. The planned work will include the establishment of 1.5 acres of permanent vegetative cover, installation of diversions and grassed waterways and grading and shaping eroding areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copies request at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 6, 1985.

Manly S. Wilder,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects in applicable)

[FR Doc. 85-11876 Filed 5-15-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held June 11, 1985, 9:30 a.m., J. Robert Oppenheimer Study Center, Los Alamos National Laboratory, Los Alamos, NM. The meeting will continue to its conclusion on June 12, 1985, in the J. Robert Oppenheimer Study Center. The Hardware Subcommittee was formed to focus on manufacturing and performance charactertiscs of main frames and other computer hardware.

General Session:

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Comments and recommendations on changes to the data processing rate.
4. Proposed break-up of CCL 1565.
5. Action items underway.
6. Action items due at next meeting.

Executive Session:

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: May 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-11803 Filed 5-15-85; 8:45 am]

BILLING CODE 3510-DT-M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85-053. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Ion Microanalyzer, Model IMS 3F with Accessories. Manufacturer: CAMECA Instruments, Inc., France. Intended Use: See notice at 50 FR 987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) ion microscope capabilities, and (2) trace element analysis with high mass resolution (10 000) and high spatial resolution (<0.5 micrometers). The National Bureau of Standards advises in its memorandum dated March 21, 1985 that (l) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11868 Filed 5-15-85; 8:45 am]

BILLING CODE 3510-DS-M

The Research Foundation of State University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and

Constitution Avenue NW., Washington, D.C.

Docket No.: 84–304. Applicant: The Research Foundation of State University of New York, Albany, NY 12201. Instrument: Plasma Spray Equipment System. Manufacturer: Plasma Technik AG, Switzerland. Intended use: See notice at 49 FR 40069.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides precise, reproducible control of vacuum plasma spraying of coatings for materials research. The National Bureau of Standards advises in its memorandum dated March 7, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11867 Filed 5–15–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Florida; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 84–218. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Electromagnetic Survey Conductor, Model EM–31 with Analog Recorder. Manufacturer: Geonics, Canada. Intended use: See notice at 49 FR 28288.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides in situ non contact conductivity measurement for selective topographic mapping of archeological settings. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11866 Filed 5–15–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–149. Applicant: University of Southern California, Los Angeles, CA 90033. Instrument: 137 Caesium Irradiator System, Model Gamma Cell 40. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use: See notice at 50 FR 7363.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a large, uniform field of radiation with high calibration stability, and (2) a specimen chamber large enough to accommodate an adequate sample (30 rats). The National Institutes of Health advises in its memorandum dated June 20, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–11865 Filed 5–15–85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determinations on Steel Pipe and Tube: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces review of a request for a short supply determination under Article 8 of the US–EEC Pipe and Tube Arrangement with respect to seamless hot finished alloy steel mechanical tubing which is used in the production of reinforcements for the interiors of vehicle doors.

EFFECTIVE DATE: Comments must be submitted on or before May 28, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20330, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377–4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985 the United States (U.S.) and the European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that "* * * the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department "* * * shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for short supply for the following two sizes of seamless, hot finished alloy steel

mechanical tubing used in the production of reinforcements for the interiors of vehicle doors:

A. Tubing with a diameter of 25.0 to 34.4 mm and a wall thickness of 2.4 to 4.0 mm, conforming to ASTM specifications A-519, A-370, and E-18; and,

B. Tubing with a diameter of 31.8 mm and a wall thickness of 2.3 and 3.2 mm conforming to ASTM specifications A-519, A-310, and E-18.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after the publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a submission without proprietary information, which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

May 12, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11864 Filed 5-15-85; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Transmittal No. 85-85029; Project I.D. Number: 06-10-85029-01]

Lubbock Minority Business Development Center (MBDC)

May 10, 1985.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *Three (3) year period,* subject to available funds. The cost of performance for the first *thirteen (13) months* is estimated at *$201,965* for the project's performance of *09/01/85 to 09/30/86.* The MBDC will operate in the *Lubbock Metropolitan Statistical Area (MSA).*

The first year cost for the MBDC will consist of *$171,666* Federal funds and a minimum of *$30,299* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer tham a full range of management and technical assistance (F&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: *Closing Date:* The closing date for applications is June 17, 1985. Applications must be postmarked ON or BEFORE June 17, 1985.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Bill Medina, Business Development Specialist, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of the application kits and applicable regulations can be obtained at the above address.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

[FR Doc. 85-11798 Filed 5-15-85; 8:45 am]

BILLING CODE 3510-21-M

[Transmittal No. 85-6000-03; Project I.D. Number: 06-10-85010-01]

Corpus Christi Minority Business Development Center (MBDC)

May 10, 1985.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period,* subject to available funds. The cost of performance for the first *thirteen (13) months* is estimated at *$356,291* for the project's performance of *09/01/85 to 09/30/86.* The MBDC will operate in the *Corpus Christi Metropolitan Statistical Area (MSA)* and counties of Nueces, Kleberg, Jim Wells, San Patricio, Bee and Aransas.

The first year cost for the MBDC will consist of *$302,840* Federal funds and a minimum of *$53,451* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business indviduals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: *Closing date:* The closing date for applications is June 17, 1985. Applications must be postmarked ON or BEFORE *June 17, 1985Q02*

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Bill Medina, Business Development Specialist, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of the application kits and applicable regulation can be obtained at the above address.

Mcdla Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

[FR Doc. 85–11786 Filed 5–15–85; 8:45 am]

BILLING CODE 3510–21–M

[Transmittal No. 85–6000–13; Project I.D. Number: 06–10–85023–01]

New Orleans Minority Business Development Center (MBDC)

May 10, 1985.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period,* subject to available funds. The cost of performance for the first *thirteen (13) months* is estimated at *$489,335* for the project's performance of *09/01/85 to 09/30/86.* The MBDC will operate in the *New Orleans Metropolitan Statistical Area (MSA).*

The first year cost for the MBDC will consist of *$415,935* Federal funds and a minimum of *$73,400* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing managment and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing managment and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: *Closing date:* The closing date for applications is June 17, 1985. Applications must be postmarked ON or BEFORE June 17, 1985.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Bill Medina, Business Development Specialist, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of the application kits and applicable regulation can be obtained at the above address.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

[FR Doc. 85–11797 Filed 5–15–85; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

The South Atlantic Fishery Management Council will convene a public meeting, May 20–23, 1985, in Brunswick, GA, to discuss billfish, mackerel, snapper-grouper, shrimp, swordfish, and other fishery management business. A detailed agenda will be available to the public around May 10. For further information contact David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: May 13, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–11905 Filed 5–15–85; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: July 18, 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: May 10, 1985.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-11824 Filed 5-15-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: July 16, 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1985.

[FR Doc. 85-11825 Filed 5-15-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Strengthening Program, Special Needs Program, Endowment Grant Program; Closing Date for Transmittal of Requests for Designation as an Eligible Institution for Fiscal Year 1986

Institutions of higher education that wish to apply for a grant under the Strengthening, Special Needs, or Endowment Grant Programs in Fiscal Year 1986 are invited to apply for designation as an "eligible institution" under one or more of these programs by submitting a "Request for Designation as an Eligible Institution" form (ED Form 1049-6). The Strengthening Program, Special Needs Program, and Endowment Grant Program are authorized under sections 301-347 of Title III of the Higher Education Act of 1965, as amended (HEA).

(20 U.S.C. 1051-1069c)

The above programs are designed to help eligible institutions of higher education become self-sufficient by providing Federal grant funds to improve their academic quality; strengthen their planning, management, and fiscal capabilities; and establish or expand their endowment funds.

To apply for a grant under one or more of the above programs, an institution must first be designated as an eligible institution under the applicable regulations for each program.

Closing Date for Transmittal of Requests: A "Request for Designation as an Eligible Institution" must be mailed or hand-delivered to the U.S. Department of Education by July 1, 1985.

Requests Delivered by Mail: A request sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031H (Title III-Designation), Washington, D.C. 20202.

A request must show proof of mailing, consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier;
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a request is sent through the U.S. Postal Service, the Secretary does *not* accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified by the Application Control Center that its request for designation as an eligible institution will not be considered.

After the closing date, the Secretary will not accept any new information or adjustments to the information that has been submitted on the "Request for Designation as an Eligible Institution" form.

Requests Delivered by Hand: A request that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered request between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

A request that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Request Forms: A copy of the "Request for Designation as an Eligible Institution" form (ED Form 1049-6) will be mailed to all institutions of postsecondary education on or about May 24, 1985. Copies of the request form may also be obtained by writing to the Division of Eligibility and Agency Evaluation, Attention: 84.031H (Title III Designation), Room 3522, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Approved by the Office of Management and Budget under Control Number 1840-0103.)

Program Information: Under the Strengthening and Special Needs Programs, the Secretary determines an institution's eligibility based, in part, upon an institution's education and general (E&G) expenditures, together with either the amount of Pell Grants (for the Strengthening Program) or the amount of Title IV, HEA, student financial assistance (for the Special Needs Program) that was awarded to students attending that institution during a particular base year (i.e., base

year 1981–1982 for this notice). In order to quality for a grant under the Endowment Grant Program, an applicant institution must qualify as an "eligible institution" using the eligibility criteria for E&G and award data of the Strengthening Program or the Special Needs Program. The specific program eligibility requirements are detailed in the "Request for Designation as an Eligible Institution" form and in the applicable regulations.

An institution that has completed a nonrenewable development grant or is currently the recipient of an ongoing non-competing continuation or planning grant under the Strengthening Program or the Special Needs Program is not precluded from receiving a grant under the Endowment Grant Program. However, such an institution must submit a Request for Designation form and be redesignated as an eligible institution under this notice to be eligible to apply for and receive an Endowment grant.

For Fiscal Year (FY) 1986 grant awards, the Secretary will use award year 1981–1982 (July 1, 1981–June 30, 1982) as the base year for calculating an institution's eligibility to apply for a grant under the Strengthening, the Special Needs, and the Endowment Grant Programs. This is the same base year that the Secretary used to establish eligibility for the FY 1984 Endowment Grant Program and for the FY 1985 Strengthening, Special Needs, and Endowment Grant Programs. Because data for the same base year of 1981–1982 are being used for FY 1986, decisions that were made regarding an institution's eligibility to apply for participation in the FY 1984 Endowment Grant Program or the FY 1985 Strengthening, Special Needs, and Endowment Grant Programs will also pertain to the FY 1986 funding competitions for these programs. While an institution that was designated "eligible" to apply for participation in the Strengthening or Special Needs Programs in FY 1985, or the Endowment Grant Program in FY 1984 or FY 1985, does not need to re-submit the "Request for Designation as an Eligible Institution" form for that particular program or programs for FY 1986, *such an institution must submit a letter indicating its intent to maintain eligibility for that program or programs in FY 1986 by the closing date of this notice.*

Any institution that was designated "eligible" to apply for the Endowment Grant Program in FY 1984 that wishes to be designated eligible under the Specials Needs Program for FY 1986 must submit its Fall 1984 full-time equivalent enrollment data in order to maintain its eligibility designation for the FY 1986 Special Needs Program. The Title III Special Needs Program legislation requires an institution to have an enrollment of at least 100 full-time equivalent students in the academic year in which it applies for designation.

If an institution was declared ineligible to participate in the FY 1984 Endowment Grant Program competition or the FY 1985 funding competitions for the Strengthening, Special Needs, or the Endowment Grant Programs, it is suggested that the institution review the 1981–1982 base-year data that it submitted on the request form (ED Form 1049–6) for that competition. If any element of its 1981–1982 award data needs to be corrected, the institution may submit corrected data and re-apply under this notice.

If an institution did not apply for designation as an "eligible institution" using its 1981–1982 award data in connection with the funding competitions for the FY 1984 Endowment Grant Program or the FY 1985 Strengthening Program, Special Needs Program, or Endowment Grant Program, it may apply for such designation under this notice.

In completing the "Request for Designation as an Eligible Institution" form (ED Form 1049–6), an institution must submit its E&G expenditure data for the same 12-month period (July 1, 1981–June 30, 1982). This information should correspond with data submitted under the "Higher Education General Information Survey (HEGIS XVI), Financial Statistics of Institutions of Higher Education for Fiscal Year Ending 1982."

The Secretary will use Pell grant award data that are currently on file in the Department for base year 1981–1982 to make determinations under the financial aid eligibility criteria, as set forth in 34 CFR 625.2 and 626.2.

Under amended section 109 of the Tribally Controlled Community College Assistance Act of 1978, an institution applying for eligibility under the Strengthening, Special Needs, and Endowment Grant Programs may include together with its Pell grant award data, (1) the number of Indian students who received student assistance grants from BIA and (2) the amount of BIA student assistance funds disbursed to students for postsecondary education.

In accordance with this section, any institution that participated in the BIA student assistance grant program (in base year 1981–1982) is requested to submit along with its "Request for Designation as an Eligible Institution" form (ED Form 1049–6) the following information:

	Award Year
The number of BIA student assistance grant recipients who did not receive Pell grants	———
The number of students who received both BIA student assistance grants and Pell grants	———
The amount of BIA student assistance funds distributed to Indian students	$———

Please submit the information, in the format shown above, on official letterhead stationery of the institution over the signature of the President of the institution.

The conversion tables and eligibility thresholds which the Secretary will use in determining an institution's eligibility are published as an appendix to this notice. These are the same conversion tables and eligibility thresholds that were previously published in the **Federal Register** on June 20, 1984 (49 FR 120) for the FY 1984 Endowment Grant Program, and on September 28, 1984 (49 FR 190) and November 30, 1984 (49 FR 232) for the FY 1985 Strengthening, Special Needs, and Endowment Grant Programs.

Applicable Regulations: Regulations applicable to the eligibility process include the Institutional Aid Programs-General Provisions Regulations (34 CFR 624.2, 624.3 and 624.20); the Strengthening Program Regulations (34 CFR 625.2 and 625.3); the Special Needs Program Regulations (34 CFR 626.2 and 626.3); and the Endowment Grant Program Regulations (34 CFR 628.2). These regulations were published in the **Federal Register** of January 5, 1982, 47 FR 540–557, and of July 12, 1984, 49 FR 28520–28536.

Applicable Legislation: Legislation applicable to the eligibility process include Title III of the Higher Education Act of 1965, as amended; and the Tribally Controlled Community College Assistance Act of 1978, as amended by section 109 of Pub. L. 98–192.

Further Information: For further information, contact the Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, Washington, D.C. 20202. Telephone (202) 245–9873.

(20 U.S.C. 1051–1069c)

(Catalog of Federal Domestic Assistance Number: 84–031H Institutional Aid Programs)

Dated: May 13, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

FISCAL YEAR 1986 COMPETITION.—STRENGTHENING PROGRAM; SPECIAL NEEDS PROGRAM; ENDOWMENT GRANT PROGRAM—NATIONAL STANDARDS FOR DETERMINING INSTITUTIONAL ELIGIBILITY FOR THE TITLE III INSTITUTIONAL AID PROGRAMS

[Threshold chart]

Categories of potentially eligible institutions	Minimum thresholds			
	Strengthening Program		Special Needs Program	
	[redacted]	Waiver threshold	Overall threshold	[redacted]
Two-year Public Institutions	146	97	[redacted]	[redacted]
Two-year Non-profit Private Institutions	137	[redacted]	87	56
Four-year Public Institutions	185	123	109	73
Four-year Non-profit Private Institutions	[redacted]	131	125	[redacted]
Graduate Public Institutions [1]				[redacted]
Graduate Non-profit Private Institutions [1]				76

[1] Institutions that do not award bachelor's degrees but do award graduate, postgraduate, or professional degrees may request designation for the Endowment Grant Program under the eligibility criteria for the Special Needs Program.

BILLING CODE 4000-01-M

The Secretary of Education uses the following tables to determine Title III Institutional Eligibility for the Strengthening Program, Special Needs Program, and Endowment Grant Program for Fiscal Year 1986 (based on 1981-1982 data).

PART-A : STRENGTHENING

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0615	0.01 - 368.04	12826.90+
2	0.0616 - 0.0829	368.05 - 400.42	12826.89 - 9957.15
3	0.0830 - 0.0991	400.43 - 415.11	9957.14 - 8861.19
4	0.0992 - 0.1090	415.12 - 427.86	8861.18 - 7606.61
5	0.1091 - 0.1127	427.87 - 440.05	7606.60 - 7321.91
6	0.1128 - 0.1163	440.06 - 446.50	7321.89 - 7153.44
7	0.1164 - 0.1225	446.51 - 449.29	7153.43 - 6755.29
8	0.1226 - 0.1299	449.30 - 459.75	6755.28 - 6382.41
9	0.1300 - 0.1366	459.76 - 463.89	6382.39 - 6238.02
10	0.1367 - 0.1419	463.90 - 467.86	6238.01 - 6060.24
11	0.1420 - 0.1454	467.87 - 471.12	6060.23 - 5839.29
12	0.1455 - 0.1501	471.13 - 476.21	5839.28 - 5776.19
13	0.1502 - 0.1566	476.22 - 481.97	5776.18 - 5619.09
14	0.1567 - 0.1626	481.98 - 484.64	5619.08 - 5523.21
15	0.1627 - 0.1697	484.65 - 490.02	5523.20 - 5364.95
16	0.1698 - 0.1768	490.03 - 493.56	5364.94 - 5260.52
17	0.1769 - 0.1833	493.57 - 495.94	5260.51 - 5219.23
18	0.1834 - 0.1875	495.95 - 499.77	5219.21 - 5056.63
19	0.1876 - 0.1963	499.78 - 503.11	5056.62 - 4989.19
20	0.1964 - 0.1984	503.12 - 509.36	4989.18 - 4931.50
21	0.1985 - 0.2072	509.37 - 515.35	4931.49 - 4898.99
22	0.2073 - 0.2120	515.36 - 517.45	4898.98 - 4832.35
23	0.2121 - 0.2173	517.46 - 520.73	4832.34 - 4766.30
24	0.2174 - 0.2235	520.74 - 524.29	4766.29 - 4689.61
25	0.2236 - 0.2295	524.30 - 529.44	4689.60 - 4615.10
26	0.2296 - 0.2358	529.45 - 532.38	4615.09 - 4576.72
27	0.2359 - 0.2424	532.39 - 535.16	4576.71 - 4534.21
28	0.2425 - 0.2481	535.17 - 537.99	4534.20 - 4496.61
29	0.2482 - 0.2565	538.00 - 543.39	4496.60 - 4446.84
30	0.2566 - 0.2617	543.40 - 545.79	4446.83 - 4426.86
31	0.2618 - 0.2660	545.80 - 551.14	4426.85 - 4366.07
32	0.2661 - 0.2687	551.15 - 554.83	4366.05 - 4321.45
33	0.2688 - 0.2735	554.84 - 559.27	4321.44 - 4278.71
34	0.2736 - 0.2778	559.28 - 561.82	4278.70 - 4209.76
35	0.2779 - 0.2813	561.83 - 565.14	4209.75 - 4160.49
36	0.2814 - 0.2839	565.15 - 568.64	4160.48 - 4136.48
37	0.2840 - 0.2875	568.65 - 571.56	4136.46 - 4078.06
38	0.2876 - 0.2912	571.57 - 573.89	4078.05 - 4023.56
39	0.2913 - 0.2940	573.90 - 576.92	4023.55 - 3973.27
40	0.2941 - 0.2985	576.93 - 578.42	3973.26 - 3949.22
41	0.2986 - 0.3011	578.43 - 580.69	3949.21 - 3907.57
42	0.3012 - 0.3053	580.70 - 583.52	3907.56 - 3860.54
43	0.3054 - 0.3076	583.53 - 584.59	3860.53 - 3824.30
44	0.3077 - 0.3106	584.60 - 588.53	3824.29 - 3799.70
45	0.3107 - 0.3170	588.54 - 589.91	3799.69 - 3769.37
46	0.3171 - 0.3207	589.92 - 594.64	3769.36 - 3759.32
47	0.3208 - 0.3289	594.65 - 596.53	3759.31 - 3732.35
48	0.3290 - 0.3338	596.54 - 598.74	3732.34 - 3708.53
49	0.3339 - 0.3367	598.75 - 599.98	3708.52 - 3687.74
50	0.3368 - 0.3407	599.99 - 602.48	3687.73 - 3631.23

PART-A : CONTINUE

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3408 - 0.3439	602.49 - 604.96	3631.22 - 3590.61
52	0.3440 - 0.3485	604.97 - 606.19	3590.60 - 3570.10
53	0.3486 - 0.3554	606.20 - 608.77	3570.09 - 3538.79
54	0.3555 - 0.3601	608.78 - 611.75	3538.78 - 3509.44
55	0.3602 - 0.3650	611.76 - 614.07	3509.43 - 3476.22
56	0.3651 - 0.3679	614.08 - 616.03	3476.21 - 3447.80
57	0.3680 - 0.3740	616.04 - 618.57	3447.79 - 3409.89
58	0.3741 - 0.3788	618.58 - 619.29	3409.88 - 3400.70
59	0.3789 - 0.3832	619.30 - 620.18	3400.69 - 3371.08
60	0.3833 - 0.3877	620.19 - 623.20	3371.07 - 3333.41
61	0.3878 - 0.3916	623.21 - 626.75	3333.40 - 3289.25
62	0.3917 - 0.3953	626.76 - 634.02	3289.24 - 3264.32
63	0.3954 - 0.3987	634.03 - 638.60	3264.31 - 3233.12
64	0.3988 - 0.4018	638.61 - 640.70	3233.11 - 3212.84
65	0.4019 - 0.4052	640.71 - 643.10	3212.83 - 3185.09
66	0.4053 - 0.4117	643.11 - 647.54	3185.08 - 3149.68
67	0.4118 - 0.4174	647.55 - 651.65	3149.67 - 3138.24
68	0.4175 - 0.4246	651.66 - 653.06	3138.23 - 3116.24
69	0.4247 - 0.4291	653.07 - 654.20	3116.23 - 3097.86
70	0.4292 - 0.4357	654.21 - 657.42	3097.85 - 3059.72
71	0.4358 - 0.4404	657.43 - 660.25	3059.71 - 3018.07
72	0.4405 - 0.4462	660.26 - 664.09	3018.06 - 3003.71
73	0.4463 - 0.4530	664.10 - 665.87	3003.70 - 2991.19
74	0.4531 - 0.4595	665.88 - 671.16	2991.18 - 2942.65
75	0.4596 - 0.4636	671.17 - 673.55	2942.64 - 2902.00
76	0.4637 - 0.4746	673.56 - 675.78	2901.99 - 2878.91
77	0.4747 - 0.4836	675.79 - 677.89	2878.90 - 2864.57
78	0.4837 - 0.4962	677.90 - 682.52	2864.56 - 2813.61
79	0.4963 - 0.5021	682.53 - 685.72	2813.60 - 2787.36
80	0.5022 - 0.5112	685.73 - 690.28	2787.35 - 2754.49
81	0.5113 - 0.5168	690.29 - 693.46	2754.48 - 2737.91
82	0.5169 - 0.5289	693.47 - 698.17	2737.90 - 2722.29
83	0.5290 - 0.5340	698.18 - 702.56	2722.28 - 2683.10
84	0.5341 - 0.5480	702.57 - 707.54	2683.09 - 2662.00
85	0.5481 - 0.5598	707.55 - 713.14	2661.99 - 2640.26
86	0.5599 - 0.5713	713.15 - 720.59	2640.25 - 2625.91
87	0.5714 - 0.5874	720.60 - 725.53	2625.90 - 2576.94
88	0.5875 - 0.6030	725.54 - 729.37	2576.93 - 2547.06
89	0.6031 - 0.6260	729.38 - 733.48	2547.05 - 2523.46
90	0.6261 - 0.6425	733.49 - 740.97	2523.45 - 2499.34
91	0.6426 - 0.6693	740.98 - 748.39	2499.33 - 2432.26
92	0.6694 - 0.6884	748.40 - 756.74	2432.25 - 2390.07
93	0.6885 - 0.7302	756.75 - 764.67	2390.06 - 2345.09
94	0.7303 - 0.7520	764.68 - 774.90	2345.08 - 2292.83
95	0.7521 - 0.8106	774.91 - 787.19	2292.82 - 2271.01
96	0.8107 - 0.8809	787.20 - 794.80	2271.00 - 2224.39
97	0.8810 - 0.9526	794.81 - 808.93	2224.38 - 2098.02
98	0.9527 - 1.0530	808.94 - 840.65	2098.01 - 2041.67
99	1.0531 - 1.4319	840.66 - 887.99	2041.66 - 1900.13
100	1.4320+	888.00+	1900.12 - 1.00

PART-B : SPECIAL NEEDS

2 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0576	0.01 - 418.19	9957.15+
2	0.0577 - 0.0683	418.20 - 457.27	9957.14 - 7606.61
3	0.0684 - 0.0740	457.28 - 478.80	7606.60 - 7153.44
4	0.0741 - 0.0816	478.81 - 490.90	7153.43 - 6382.41
5	0.0817 - 0.0868	490.91 - 506.58	6382.39 - 6060.24
6	0.0869 - 0.0944	506.59 - 520.84	6060.23 - 5776.19
7	0.0945 - 0.0993	520.85 - 530.67	5776.18 - 5523.21
8	0.0994 - 0.1124	530.68 - 541.02	5523.20 - 5260.52
9	0.1125 - 0.1223	541.03 - 548.25	5260.51 - 5056.63
10	0.1224 - 0.1281	548.26 - 553.12	5056.62 - 4931.50
11	0.1282 - 0.1364	553.13 - 560.21	4931.49 - 4832.35
12	0.1365 - 0.1440	560.22 - 565.83	4832.34 - 4689.61
13	0.1441 - 0.1535	565.84 - 574.49	4689.60 - 4576.72
14	0.1536 - 0.1567	574.50 - 583.94	4576.71 - 4496.61
15	0.1568 - 0.1613	583.95 - 590.08	4496.60 - 4426.86
16	0.1614 - 0.1652	590.09 - 593.26	4426.85 - 4321.45
17	0.1653 - 0.1725	593.27 - 598.99	4321.44 - 4209.76
18	0.1726 - 0.1766	599.00 - 603.83	4209.75 - 4136.48
19	0.1767 - 0.1808	603.84 - 609.98	4136.46 - 4023.56
20	0.1809 - 0.1863	609.99 - 616.83	4023.55 - 3949.22
21	0.1864 - 0.1925	616.84 - 623.02	3949.21 - 3860.54
22	0.1926 - 0.1972	623.03 - 630.45	3860.53 - 3799.70
23	0.1973 - 0.2027	630.46 - 635.29	3799.69 - 3759.32
24	0.2028 - 0.2059	635.30 - 643.16	3759.31 - 3708.53
25	0.2060 - 0.2133	643.17 - 648.40	3708.52 - 3631.23
26	0.2134 - 0.2172	648.41 - 652.36	3631.22 - 3570.10
27	0.2173 - 0.2235	652.37 - 657.14	3570.09 - 3509.44
28	0.2236 - 0.2276	657.15 - 662.09	3509.43 - 3447.80
29	0.2277 - 0.2328	662.10 - 667.62	3447.79 - 3400.70
30	0.2329 - 0.2395	667.63 - 675.70	3400.69 - 3333.41
31	0.2396 - 0.2472	675.71 - 679.36	3333.40 - 3264.32
32	0.2473 - 0.2548	679.37 - 684.97	3264.31 - 3212.84
33	0.2549 - 0.2641	684.98 - 687.63	3212.83 - 3149.68
34	0.2642 - 0.2723	687.64 - 692.47	3149.67 - 3116.24
35	0.2724 - 0.2820	692.48 - 701.34	3116.23 - 3059.72
36	0.2821 - 0.2890	701.35 - 708.64	3059.71 - 3003.71
37	0.2891 - 0.2996	708.65 - 714.00	3003.70 - 2942.65
38	0.2997 - 0.3102	714.01 - 724.49	2942.64 - 2878.91
39	0.3103 - 0.3236	724.50 - 730.73	2878.90 - 2813.61
40	0.3237 - 0.3341	730.74 - 737.97	2813.60 - 2754.49
41	0.3342 - 0.3482	737.98 - 746.75	2754.48 - 2722.29
42	0.3483 - 0.3583	746.76 - 752.19	2722.28 - 2662.00
43	0.3584 - 0.3735	752.20 - 762.81	2661.99 - 2625.91
44	0.3736 - 0.3906	762.82 - 772.20	2625.90 - 2547.06
45	0.3907 - 0.4207	772.21 - 787.30	2547.05 - 2499.34
46	0.4208 - 0.4642	787.31 - 806.21	2499.33 - 2390.07
47	0.4643 - 0.5051	806.22 - 835.07	2390.06 - 2292.83
48	0.5052 - 0.5606	835.08 - 885.98	2292.82 - 2224.39
49	0.5607 - 0.7103	885.99 - 941.43	2224.38 - 2041.67
50	0.7104+	941.44+	2041.66 - 1.00

PART-A : STRENGTHENING

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.1145	0.01 - 603.47	17341.83+
2	0.1146 - 0.1160	603.48 - 625.34	17341.82 -14175.57
3	0.1161 - 0.1697	625.35 - 648.14	14175.55 -11153.14
4	0.1698 - 0.1791	648.15 - 696.77	11153.13 - 9234.77
5	0.1792 - 0.1890	696.78 - 715.20	9234.76 - 8704.02
6	0.1891 - 0.2047	715.21 - 723.53	8704.01 - 8335.66
7	0.2048 - 0.2221	723.54 - 750.53	8335.64 - 8097.48
8	0.2222 - 0.2307	750.54 - 759.69	8097.46 - 7923.25
9	0.2308 - 0.2358	759.70 - 764.35	7923.24 - 7567.53
10	0.2359 - 0.2443	764.36 - 769.29	7567.52 - 7183.89
11	0.2444 - 0.2536	769.30 - 785.17	7183.88 - 6907.50
12	0.2537 - 0.2646	785.18 - 793.02	6907.49 - 6481.62
13	0.2647 - 0.2723	793.03 - 795.74	6481.61 - 6403.98
14	0.2724 - 0.2780	795.75 - 798.05	6403.96 - 6208.09
15	0.2781 - 0.2856	798.06 - 806.15	6208.08 - 5993.69
16	0.2857 - 0.2891	806.16 - 808.47	5993.68 - 5913.12
17	0.2892 - 0.3011	808.48 - 810.46	5913.11 - 5785.20
18	0.3012 - 0.3050	810.47 - 818.67	5785.19 - 5652.44
19	0.3051 - 0.3084	818.68 - 822.05	5652.43 - 5539.07
20	0.3085 - 0.3164	822.06 - 828.25	5539.05 - 5225.32
21	0.3165 - 0.3219	828.26 - 830.97	5225.30 - 5193.42
22	0.3220 - 0.3260	830.98 - 838.93	5193.41 - 5111.98
23	0.3261 - 0.3290	838.94 - 849.11	5111.96 - 5074.24
24	0.3291 - 0.3332	849.12 - 857.74	5074.23 - 5046.27
25	0.3333 - 0.3385	857.75 - 864.25	5046.26 - 4972.50
26	0.3386 - 0.3444	864.27 - 866.03	4972.49 - 4941.55
27	0.3445 - 0.3541	866.04 - 871.10	4941.54 - 4865.97
28	0.3542 - 0.3703	871.11 - 874.25	4865.96 - 4775.70
29	0.3704 - 0.3760	874.26 - 875.33	4775.69 - 4659.55
30	0.3761 - 0.3792	875.34 - 876.95	4659.54 - 4653.02
31	0.3793 - 0.3849	876.96 - 880.34	4653.01 - 4641.16
32	0.3850 - 0.3922	880.35 - 882.07	4641.14 - 4411.79
33	0.3923 - 0.3945	882.08 - 883.41	4411.78 - 4384.00
34	0.3946 - 0.4012	883.42 - 886.50	4383.99 - 4348.14
35	0.4013 - 0.4076	886.51 - 888.90	4348.13 - 4324.23
36	0.4077 - 0.4143	888.91 - 891.87	4324.21 - 4286.21
37	0.4144 - 0.4166	891.88 - 892.91	4286.20 - 4267.52
38	0.4167 - 0.4187	892.92 - 895.66	4267.51 - 4226.27
39	0.4188 - 0.4206	895.67 - 898.12	4226.26 - 4177.36
40	0.4207 - 0.4309	898.13 - 901.40	4177.35 - 4146.02
41	0.4310 - 0.4453	901.41 - 903.88	4146.01 - 4094.33
42	0.4454 - 0.4612	903.99 - 904.34	4094.32 - 4049.68
43	0.4613 - 0.4680	909.35 - 913.50	4049.67 - 3988.36
44	0.4681 - 0.4731	913.51 - 914.99	3988.35 - 3953.84
45	0.4732 - 0.4761	915.00 - 920.66	3953.83 - 3849.56
46	0.4762 - 0.4800	920.67 - 923.15	3849.55 - 3767.77
47	0.4801 - 0.4859	923.16 - 927.50	3767.76 - 3710.23
48	0.4860 - 0.4892	927.51 - 929.75	3710.22 - 3685.69
49	0.4893 - 0.4960	929.76 - 930.80	3685.68 - 3535.52
50	0.4961 - 0.5020	930.81 - 934.16	3535.51 - 3456.81

PART-A : CONTINUE

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.5021 - 0.5058	934.17 - 936.60	3456.80 - 3397.16
52	0.5059 - 0.5124	936.61 - 939.02	3397.15 - 3322.68
53	0.5125 - 0.5271	939.03 - 944.37	3322.67 - 3306.27
54	0.5272 - 0.5344	944.38 - 948.43	3306.26 - 3289.45
55	0.5345 - 0.5483	948.44 - 951.75	3289.44 - 3252.96
56	0.5484 - 0.5612	951.76 - 955.73	3252.95 - 3239.81
57	0.5613 - 0.5637	955.74 - 961.99	3239.80 - 3228.12
58	0.5638 - 0.5753	962.00 - 969.31	3228.11 - 3167.07
59	0.5754 - 0.5829	969.32 - 970.93	3167.06 - 3112.96
60	0.5830 - 0.5901	970.94 - 973.89	3112.95 - 3015.97
61	0.5902 - 0.5931	973.90 - 975.93	3015.96 - 3007.76
62	0.5932 - 0.5999	975.94 - 978.67	3007.75 - 2917.90
63	0.6000 - 0.6213	978.68 - 982.63	2917.89 - 2877.93
64	0.6214 - 0.6377	982.64 - 984.62	2877.92 - 2824.46
65	0.6378 - 0.6421	984.63 - 986.59	2824.45 - 2800.12
66	0.6422 - 0.6643	986.60 - 990.45	2800.11 - 2776.17
67	0.6644 - 0.6877	990.46 - 994.82	2776.16 - 2750.58
68	0.6878 - 0.6919	994.83 - 995.29	2750.57 - 2709.42
69	0.6920 - 0.6942	995.30 - 999.02	2709.41 - 2643.99
70	0.6943 - 0.7254	999.03 -1002.65	2643.98 - 2628.94
71	0.7255 - 0.7316	1002.66 -1006.10	2628.93 - 2567.53
72	0.7317 - 0.7515	1006.11 -1010.08	2567.52 - 2532.26
73	0.7516 - 0.7766	1010.09 -1011.22	2532.25 - 2459.68
74	0.7767 - 0.7934	1011.23 -1014.29	2459.67 - 2428.28
75	0.7935 - 0.8020	1014.30 -1018.73	2428.27 - 2424.44
76	0.8021 - 0.8175	1018.74 -1024.46	2424.43 - 2342.15
77	0.8176 - 0.8325	1024.47 -1025.37	2342.14 - 2320.02
78	0.8326 - 0.8489	1025.38 -1029.16	2320.01 - 2282.39
79	0.8490 - 0.8570	1029.17 -1043.82	2282.38 - 2218.12
80	0.8571 - 0.8696	1043.83 -1049.36	2218.11 - 2136.58
81	0.8697 - 0.8921	1049.37 -1054.28	2136.57 - 2105.07
82	0.8922 - 0.9108	1054.29 -1057.85	2105.06 - 2068.95
83	0.9109 - 0.9350	1057.86 -1061.48	2068.94 - 2034.49
84	0.9351 - 0.9847	1061.49 -1062.16	2034.48 - 2014.33
85	0.9848 - 1.0045	1062.17 -1064.89	2014.32 - 1987.21
86	1.0046 - 1.0507	1064.90 -1073.48	1987.20 - 1938.79
87	1.0508 - 1.0778	1073.49 -1081.49	1938.78 - 1910.38
88	1.0779 - 1.0896	1081.50 -1083.86	1910.37 - 1889.79
89	1.0897 - 1.1285	1083.87 -1093.10	1889.78 - 1791.28
90	1.1286 - 1.1621	1093.11 -1099.05	1791.27 - 1733.02
91	1.1622 - 1.2013	1099.06 -1107.98	1733.01 - 1664.15
92	1.2014 - 1.2479	1107.99 -1113.53	1664.14 - 1629.05
93	1.2480 - 1.3749	1113.54 -1125.46	1629.04 - 1505.72
94	1.3750 - 1.4670	1125.47 -1138.10	1505.71 - 1361.07
95	1.4671 - 1.5129	1138.11 -1148.27	1361.06 - 1169.11
96	1.5130 - 1.6181	1148.28 -1175.35	1169.10 - 1133.29
97	1.6182 - 1.6499	1175.36 -1212.43	1133.29 - 1046.43
98	1.6500 - 1.6500	1212.44 -1240.05	1046.42 - 940.53
99	1.6500 - 1.6500	1240.06 -1275.35	940.52 - 799.16
100	1.6501+	1275.36+	799.15 - 1.00

PART-B : SPECIAL NEEDS

2 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0786	0.01 - 549.93	14175.57+
2	0.0787 - 0.1245	549.94 - 622.78	14175.55 - 9234.77
3	0.1246 - 0.1414	622.79 - 660.02	9234.76 - 8335.66
4	0.1415 - 0.1629	660.03 - 692.77	8335.64 - 7923.25
5	0.1630 - 0.1738	692.78 - 707.91	7923.24 - 7183.89
6	0.1739 - 0.1871	707.92 - 715.95	7183.88 - 6481.62
7	0.1872 - 0.1971	715.96 - 723.51	6481.61 - 6208.09
8	0.1972 - 0.2053	723.52 - 738.32	6208.08 - 5913.12
9	0.2054 - 0.2142	738.33 - 749.49	5913.11 - 5652.44
10	0.2143 - 0.2275	749.50 - 758.97	5652.43 - 5225.32
11	0.2276 - 0.2380	758.98 - 773.14	5225.30 - 5111.98
12	0.2381 - 0.2456	773.15 - 785.61	5111.96 - 5046.27
13	0.2457 - 0.2486	785.62 - 789.41	5046.26 - 4941.55
14	0.2487 - 0.2529	789.42 - 798.73	4941.54 - 4775.70
15	0.2530 - 0.2741	798.74 - 806.18	4775.69 - 4653.02
16	0.2742 - 0.2800	806.19 - 815.61	4653.01 - 4411.79
17	0.2801 - 0.2875	815.62 - 825.82	4411.78 - 4348.14
18	0.2876 - 0.2943	825.83 - 840.22	4348.13 - 4286.21
19	0.2944 - 0.2987	840.23 - 846.47	4286.20 - 4226.27
20	0.2988 - 0.3121	846.48 - 850.61	4226.26 - 4146.02
21	0.3122 - 0.3188	850.62 - 860.87	4146.01 - 4049.68
22	0.3189 - 0.3282	860.88 - 866.03	4049.67 - 3953.84
23	0.3283 - 0.3405	866.04 - 880.79	3953.83 - 3767.77
24	0.3406 - 0.3499	880.80 - 888.67	3767.76 - 3685.69
25	0.3500 - 0.3570	888.68 - 891.48	3685.68 - 3456.81
26	0.3571 - 0.3787	891.49 - 901.59	3456.80 - 3322.68
27	0.3788 - 0.3837	901.60 - 906.68	3322.67 - 3289.45
28	0.3838 - 0.4020	906.69 - 914.03	3289.44 - 3239.81
29	0.4021 - 0.4081	914.04 - 918.71	3239.80 - 3167.07
30	0.4082 - 0.4281	918.72 - 925.13	3167.06 - 3015.97
31	0.4282 - 0.4354	925.14 - 930.31	3015.96 - 2917.90
32	0.4355 - 0.4524	930.32 - 937.40	2917.89 - 2824.46
33	0.4525 - 0.4684	937.41 - 942.26	2824.45 - 2776.17
34	0.4685 - 0.4841	942.27 - 945.19	2776.16 - 2709.42
35	0.4842 - 0.5096	945.20 - 961.89	2709.41 - 2628.94
36	0.5097 - 0.5358	961.90 - 976.42	2628.93 - 2532.26
37	0.5359 - 0.5545	976.43 - 994.98	2532.25 - 2428.28
38	0.5546 - 0.5935	994.99 -1005.11	2428.27 - 2342.15
39	0.5936 - 0.6072	1005.12 -1016.67	2342.14 - 2282.39
40	0.6073 - 0.6465	1016.68 -1030.45	2282.38 - 2136.58
41	0.6466 - 0.6677	1030.46 -1040.55	2136.57 - 2068.95
42	0.6678 - 0.7123	1040.56 -1060.72	2068.94 - 2014.33
43	0.7124 - 0.7474	1060.73 -1081.48	2014.32 - 1938.79
44	0.7475 - 0.8181	1081.49 -1104.23	1938.78 - 1889.79
45	0.8182 - 0.8723	1104.24 -1137.32	1889.78 - 1733.02
46	0.8724 - 0.9725	1137.33 -1164.38	1733.01 - 1629.05
47	0.9726 - 1.1174	1164.39 -1191.24	1629.04 - 1361.07
48	1.1175 - 1.3231	1191.25 -1264.32	1361.06 - 1133.29
49	1.3232 - 1.6499	1264.33 -1471.51	1133.28 - 940.53
50	1.6500+	1471.52+	940.52 - 1.00

PART-A : STRENGTHENING

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0939	0.01 - 538.24	26103.34+
2	0.0940 - 0.1260	538.25 - 607.09	26103.33 -20855.06
3	0.1261 - 0.1345	607.10 - 620.21	20855.05 -17768.36
4	0.1346 - 0.1432	620.22 - 629.21	17768.35 -13151.79
5	0.1433 - 0.1528	629.22 - 646.97	13151.78 -11143.16
6	0.1529 - 0.1632	646.98 - 660.26	11143.14 -10509.04
7	0.1633 - 0.1684	660.27 - 666.76	10509.03 -10326.05
8	0.1685 - 0.1744	666.77 - 674.54	10326.04 - 8674.21
9	0.1745 - 0.1774	674.55 - 681.46	8674.20 - 8464.98
10	0.1775 - 0.1803	681.47 - 688.18	8464.96 - 8325.39
11	0.1804 - 0.1867	688.19 - 692.86	8325.38 - 8074.47
12	0.1868 - 0.1925	692.87 - 698.95	8074.46 - 7710.76
13	0.1926 - 0.1932	698.96 - 701.26	7710.75 - 7411.33
14	0.1933 - 0.1985	701.27 - 703.39	7411.32 - 7141.99
15	0.1986 - 0.2008	703.40 - 710.34	7141.98 - 7039.90
16	0.2009 - 0.2051	710.35 - 713.87	7039.89 - 6835.25
17	0.2052 - 0.2091	713.88 - 722.62	6835.24 - 6747.85
18	0.2092 - 0.2155	722.63 - 726.04	6747.84 - 6594.07
19	0.2156 - 0.2201	726.05 - 730.95	6594.05 - 6500.36
20	0.2202 - 0.2226	730.96 - 737.42	6500.35 - 6349.40
21	0.2227 - 0.2258	737.43 - 742.67	6349.39 - 6273.22
22	0.2259 - 0.2277	742.68 - 745.49	6273.21 - 6174.54
23	0.2278 - 0.2324	745.50 - 754.87	6174.53 - 6025.75
24	0.2325 - 0.2355	754.88 - 757.34	6025.74 - 5910.54
25	0.2356 - 0.2375	757.35 - 764.06	5910.53 - 5841.65
26	0.2376 - 0.2396	764.07 - 768.99	5841.64 - 5619.45
27	0.2397 - 0.2410	769.00 - 772.78	5619.44 - 5580.54
28	0.2411 - 0.2477	772.79 - 775.95	5580.53 - 5475.40
29	0.2478 - 0.2513	775.96 - 778.46	5475.39 - 5382.95
30	0.2514 - 0.2527	778.47 - 784.29	5382.94 - 5350.45
31	0.2528 - 0.2561	784.30 - 787.11	5350.44 - 5307.20
32	0.2562 - 0.2592	787.12 - 789.91	5307.19 - 5272.98
33	0.2593 - 0.2612	789.92 - 790.56	5272.96 - 5143.76
34	0.2613 - 0.2668	790.57 - 794.49	5143.75 - 5052.06
35	0.2669 - 0.2710	794.50 - 797.99	5052.05 - 4984.24
36	0.2711 - 0.2733	798.00 - 798.90	4984.23 - 4970.58
37	0.2734 - 0.2785	798.91 - 801.23	4970.57 - 4907.09
38	0.2786 - 0.2802	801.24 - 803.19	4907.08 - 4828.87
39	0.2803 - 0.2831	803.20 - 803.97	4828.86 - 4800.98
40	0.2832 - 0.2854	803.98 - 805.46	4800.96 - 4759.69
41	0.2855 - 0.2879	805.47 - 808.97	4759.68 - 4673.50
42	0.2880 - 0.2899	808.98 - 810.95	4673.49 - 4652.00
43	0.2900 - 0.2921	810.96 - 813.99	4651.99 - 4612.53
44	0.2922 - 0.2953	814.00 - 814.62	4612.52 - 4561.15
45	0.2954 - 0.2988	814.63 - 816.44	4561.14 - 4520.18
46	0.2989 - 0.3005	816.45 - 821.94	4520.17 - 4490.61
47	0.3006 - 0.3039	821.95 - 825.11	4490.60 - 4453.80
48	0.3040 - 0.3059	825.12 - 827.09	4453.79 - 4403.72
49	0.3060 - 0.3079	827.10 - 827.66	4403.71 - 4383.87
50	0.3080 - 0.3100	827.67 - 830.65	4383.86 - 4338.86

PART-A : CONTINUE

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3101 - 0.3133	830.66 - 831.68	4338.85 - 4317.64
52	0.3134 - 0.3140	831.69 - 833.65	4317.63 - 4304.37
53	0.3141 - 0.3164	833.66 - 835.65	4304.36 - 4273.67
54	0.3165 - 0.3179	835.66 - 836.87	4273.66 - 4241.81
55	0.3180 - 0.3193	836.88 - 840.35	4241.80 - 4202.61
56	0.3194 - 0.3205	840.36 - 841.09	4202.60 - 4164.98
57	0.3206 - 0.3279	841.10 - 844.16	4164.96 - 4022.91
58	0.3280 - 0.3297	844.17 - 846.37	4022.90 - 3985.47
59	0.3298 - 0.3304	846.38 - 847.87	3985.46 - 3969.92
60	0.3305 - 0.3325	847.88 - 852.09	3969.91 - 3930.62
61	0.3326 - 0.3345	852.10 - 852.63	3930.61 - 3875.61
62	0.3346 - 0.3375	852.64 - 855.02	3875.60 - 3838.91
63	0.3376 - 0.3438	855.03 - 859.02	3838.90 - 3808.48
64	0.3439 - 0.3461	859.03 - 862.33	3808.47 - 3775.92
65	0.3462 - 0.3479	862.34 - 864.68	3775.91 - 3756.35
66	0.3480 - 0.3523	864.69 - 866.07	3756.34 - 3738.02
67	0.3524 - 0.3601	866.08 - 867.68	3738.01 - 3726.95
68	0.3602 - 0.3664	867.69 - 868.16	3726.94 - 3714.73
69	0.3665 - 0.3743	868.17 - 874.39	3714.72 - 3679.20
70	0.3744 - 0.3800	874.40 - 877.36	3679.19 - 3649.10
71	0.3801 - 0.3880	877.37 - 879.42	3649.09 - 3618.91
72	0.3881 - 0.3967	879.43 - 883.52	3618.90 - 3601.65
73	0.3968 - 0.4012	883.53 - 886.91	3601.64 - 3577.04
74	0.4013 - 0.4083	886.92 - 888.20	3577.03 - 3526.79
75	0.4084 - 0.4125	888.21 - 891.51	3526.78 - 3472.81
76	0.4126 - 0.4204	891.52 - 894.22	3472.80 - 3411.82
77	0.4205 - 0.4282	894.23 - 896.23	3411.81 - 3394.44
78	0.4283 - 0.4367	896.24 - 900.57	3394.43 - 3378.48
79	0.4368 - 0.4419	900.58 - 902.76	3378.47 - 3340.15
80	0.4420 - 0.4511	902.77 - 908.31	3340.14 - 3296.89
81	0.4512 - 0.4641	908.32 - 913.56	3296.88 - 3254.01
82	0.4642 - 0.4806	913.57 - 917.25	3254.00 - 3209.33
83	0.4807 - 0.4905	917.26 - 921.77	3209.32 - 3179.35
84	0.4906 - 0.4982	921.78 - 926.81	3179.34 - 3094.70
85	0.4983 - 0.5081	926.82 - 931.72	3094.69 - 3013.87
86	0.5082 - 0.5261	931.73 - 933.55	3013.86 - 2975.51
87	0.5262 - 0.5537	933.56 - 944.88	2975.50 - 2901.89
88	0.5538 - 0.5601	944.89 - 952.59	2901.88 - 2850.12
89	0.5602 - 0.5988	952.60 - 957.96	2850.11 - 2829.72
90	0.5989 - 0.6265	957.97 - 968.08	2829.71 - 2742.87
91	0.6266 - 0.6700	968.09 - 976.60	2742.86 - 2709.33
92	0.6701 - 0.6903	976.61 - 986.27	2709.32 - 2668.29
93	0.6904 - 0.7403	986.28 - 992.93	2668.28 - 2625.96
94	0.7404 - 0.7557	992.94 -1006.21	2625.95 - 2573.02
95	0.7558 - 0.7716	1006.22 -1024.05	2573.01 - 2557.19
96	0.7717 - 0.8065	1024.06 -1045.97	2557.18 - 2500.10
97	0.8066 - 0.8439	1045.98 -1062.99	2500.09 - 2444.41
98	0.8440 - 0.9079	1063.00 -1074.30	2444.40 - 2377.48
99	0.9080 - 1.0112	1074.31 -1126.64	2377.47 - 2135.41
100	1.0113+	1126.65+	2135.40 - 1.00

PART-B : SPECIAL NEEDS

4 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0885	0.01 - 672.41	20855.06+
2	0.0886 - 0.1106	672.42 - 697.35	20855.05 -13151.79
3	0.1107 - 0.1199	697.36 - 726.89	13151.78 -10509.04
4	0.1200 - 0.1230	726.90 - 734.53	10509.03 - 8674.21
5	0.1231 - 0.1265	734.54 - 750.26	8674.20 - 8325.39
6	0.1266 - 0.1330	750.27 - 766.84	8325.38 - 7710.76
7	0.1331 - 0.1450	766.85 - 776.04	7710.75 - 7141.99
8	0.1451 - 0.1518	776.05 - 781.96	7141.98 - 6835.25
9	0.1519 - 0.1607	781.97 - 787.35	6835.24 - 6594.07
10	0.1608 - 0.1672	787.36 - 794.40	6594.05 - 6349.40
11	0.1673 - 0.1736	794.41 - 798.13	6349.39 - 6174.54
12	0.1737 - 0.1774	798.14 - 805.95	6174.53 - 5910.54
13	0.1775 - 0.1816	805.96 - 813.62	5910.53 - 5619.45
14	0.1817 - 0.1834	813.63 - 819.71	5619.44 - 5475.40
15	0.1835 - 0.1863	819.72 - 823.31	5475.39 - 5350.45
16	0.1864 - 0.1909	823.32 - 833.17	5350.44 - 5272.98
17	0.1910 - 0.1944	833.18 - 842.22	5272.96 - 5052.06
18	0.1945 - 0.1980	842.23 - 847.87	5052.05 - 4970.58
19	0.1981 - 0.2016	847.88 - 854.33	4970.57 - 4828.87
20	0.2017 - 0.2073	854.34 - 857.99	4828.86 - 4759.69
21	0.2074 - 0.2104	858.00 - 864.74	4759.68 - 4652.00
22	0.2105 - 0.2134	864.75 - 871.44	4651.99 - 4561.15
23	0.2135 - 0.2182	871.45 - 876.94	4561.14 - 4490.61
24	0.2183 - 0.2239	876.95 - 882.44	4490.60 - 4403.72
25	0.2240 - 0.2307	882.45 - 888.24	4403.71 - 4338.86
26	0.2308 - 0.2341	888.25 - 893.05	4338.85 - 4304.37
27	0.2342 - 0.2402	893.06 - 898.87	4304.36 - 4241.81
28	0.2403 - 0.2429	898.88 - 902.98	4241.80 - 4164.98
29	0.2430 - 0.2463	902.99 - 915.95	4164.96 - 3985.47
30	0.2464 - 0.2504	915.96 - 926.10	3985.46 - 3930.62
31	0.2505 - 0.2577	926.11 - 929.93	3930.61 - 3838.91
32	0.2578 - 0.2672	929.94 - 937.10	3838.90 - 3775.92
33	0.2673 - 0.2747	937.11 - 947.77	3775.91 - 3738.02
34	0.2748 - 0.2808	947.78 - 955.95	3738.01 - 3714.73
35	0.2809 - 0.2956	955.96 - 971.61	3714.72 - 3649.10
36	0.2957 - 0.3026	971.62 - 981.36	3649.09 - 3601.65
37	0.3027 - 0.3113	981.37 - 984.46	3601.64 - 3526.79
38	0.3114 - 0.3305	984.47 - 994.26	3526.78 - 3411.82
39	0.3306 - 0.3396	994.27 -1005.43	3411.81 - 3378.48
40	0.3397 - 0.3554	1005.44 -1016.53	3378.47 - 3296.89
41	0.3555 - 0.3736	1016.54 -1034.23	3296.88 - 3209.33
42	0.3737 - 0.3969	1034.24 -1044.54	3209.32 - 3094.70
43	0.3970 - 0.4305	1044.55 -1056.84	3094.69 - 2975.51
44	0.4306 - 0.4525	1056.85 -1065.52	2975.50 - 2850.12
45	0.4526 - 0.4880	1065.53 -1075.80	2850.11 - 2742.87
46	0.4881 - 0.5544	1075.81 -1105.73	2742.86 - 2668.29
47	0.5545 - 0.6263	1105.74 -1132.80	2668.28 - 2573.02
48	0.6264 - 0.6699	1132.81 -1156.43	2573.01 - 2500.10
49	0.6700 - 0.7792	1156.44 -1229.61	2500.09 - 2377.48
50	0.7793+	1229.62+	2377.47 - 1.00

PART-A : STRENGTHENING

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0571	0.01 - 698.17	21317.37+
2	0.0572 - 0.0897	698.18 - 760.33	21317.36 -15038.08
3	0.0898 - 0.1051	760.34 - 784.50	15038.07 -13594.30
4	0.1052 - 0.1250	784.51 - 810.64	13594.29 -12102.52
5	0.1251 - 0.1363	810.65 - 818.63	12102.51 -11115.52
6	0.1364 - 0.1431	818.64 - 827.63	11115.51 -10642.75
7	0.1432 - 0.1474	827.64 - 836.09	10642.74 -10276.52
8	0.1475 - 0.1526	836.10 - 841.98	10276.51 -10186.97
9	0.1527 - 0.1601	841.99 - 847.80	10186.96 - 9681.36
10	0.1602 - 0.1659	847.81 - 852.54	9681.35 - 9418.54
11	0.1660 - 0.1711	852.55 - 856.43	9418.53 - 9160.14
12	0.1712 - 0.1782	856.44 - 860.69	9160.13 - 8833.39
13	0.1783 - 0.1821	860.70 - 863.70	8833.38 - 8703.32
14	0.1822 - 0.1901	863.71 - 868.72	8703.30 - 8294.02
15	0.1902 - 0.1937	868.73 - 871.57	8294.01 - 8160.92
16	0.1938 - 0.1991	871.58 - 876.43	8160.91 - 8074.15
17	0.1992 - 0.2033	876.44 - 879.19	8074.14 - 7952.78
18	0.2034 - 0.2077	879.20 - 884.32	7952.77 - 7765.44
19	0.2078 - 0.2131	884.33 - 886.77	7766.43 - 7636.25
20	0.2132 - 0.2175	886.78 - 891.40	7636.24 - 7522.10
21	0.2176 - 0.2231	891.41 - 894.66	7522.09 - 7389.64
22	0.2232 - 0.2270	894.67 - 898.74	7389.63 - 7289.51
23	0.2271 - 0.2297	898.75 - 902.26	7289.50 - 7160.73
24	0.2298 - 0.2336	902.27 - 906.02	7160.71 - 7070.71
25	0.2337 - 0.2390	906.03 - 908.33	7070.70 - 6998.64
26	0.2391 - 0.2427	908.34 - 911.16	6998.63 - 6897.70
27	0.2429 - 0.2487	911.17 - 913.49	6897.69 - 6791.72
28	0.2488 - 0.2528	913.50 - 917.12	6791.71 - 6705.99
29	0.2529 - 0.2571	917.13 - 919.46	6705.98 - 6602.59
30	0.2572 - 0.2617	919.47 - 922.29	6602.58 - 6500.73
31	0.2618 - 0.2656	922.30 - 925.58	6500.71 - 6421.55
32	0.2657 - 0.2684	925.59 - 928.18	6421.54 - 6367.62
33	0.2685 - 0.2741	928.19 - 932.11	6367.61 - 6292.60
34	0.2742 - 0.2803	932.12 - 935.72	6292.59 - 6224.40
35	0.2804 - 0.2860	935.73 - 938.24	6224.39 - 6162.72
36	0.2861 - 0.2894	938.25 - 941.17	6162.71 - 6108.21
37	0.2895 - 0.2938	941.18 - 943.96	6108.20 - 6019.20
38	0.2939 - 0.2979	943.97 - 946.36	6019.19 - 5934.93
39	0.2980 - 0.3026	946.37 - 947.55	5934.92 - 5879.34
40	0.3027 - 0.3058	947.56 - 949.27	5879.33 - 5815.29
41	0.3059 - 0.3095	949.28 - 951.95	5815.28 - 5757.80
42	0.3096 - 0.3136	951.96 - 954.30	5757.79 - 5707.27
43	0.3137 - 0.3179	954.31 - 957.19	5707.26 - 5635.34
44	0.3180 - 0.3220	957.20 - 960.58	5635.33 - 5587.76
45	0.3221 - 0.3256	960.59 - 962.46	5587.75 - 5509.07
46	0.3257 - 0.3288	962.47 - 964.54	5509.05 - 5435.68
47	0.3289 - 0.3354	964.55 - 966.56	5435.67 - 5367.75
48	0.3355 - 0.3403	966.57 - 968.76	5367.74 - 5322.77
49	0.3404 - 0.3452	968.77 - 972.50	5322.76 - 5288.41
50	0.3453 - 0.3492	972.51 - 975.29	5288.39 - 5235.43

PART-A : CONTINUE

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3493 - 0.3543	975.30 - 976.93	5235.42 - 5185.90
52	0.3544 - 0.3595	976.94 - 979.86	5185.89 - 5137.48
53	0.3596 - 0.3640	979.87 - 981.94	5137.46 - 5093.57
54	0.3641 - 0.3666	981.95 - 984.17	5093.55 - 5043.03
55	0.3667 - 0.3706	984.18 - 987.55	5043.02 - 4998.78
56	0.3707 - 0.3764	987.56 - 991.16	4998.77 - 4948.31
57	0.3765 - 0.3830	991.17 - 993.87	4948.30 - 4895.10
58	0.3831 - 0.3850	993.88 - 997.60	4895.09 - 4867.81
59	0.3851 - 0.3899	997.61 -1000.18	4867.80 - 4835.55
60	0.3900 - 0.3946	1000.19 -1003.24	4835.54 - 4798.70
61	0.3947 - 0.3999	1003.25 -1005.35	4798.69 - 4735.62
62	0.4000 - 0.4046	1005.36 -1008.00	4735.61 - 4684.24
63	0.4047 - 0.4097	1008.01 -1010.55	4684.23 - 4616.48
64	0.4098 - 0.4131	1010.56 -1013.55	4616.46 - 4578.07
65	0.4132 - 0.4172	1013.56 -1015.55	4578.05 - 4532.66
66	0.4173 - 0.4209	1015.56 -1019.23	4532.64 - 4495.82
67	0.4210 - 0.4301	1019.24 -1025.77	4495.80 - 4421.48
68	0.4302 - 0.4351	1025.78 -1029.31	4421.46 - 4354.18
69	0.4352 - 0.4420	1029.32 -1033.93	4354.17 - 4298.42
70	0.4421 - 0.4508	1033.94 -1038.28	4298.41 - 4230.77
71	0.4509 - 0.4569	1038.29 -1042.70	4230.76 - 4180.80
72	0.4570 - 0.4604	1042.71 -1045.19	4180.79 - 4137.60
73	0.4605 - 0.4669	1045.20 -1049.92	4137.59 - 4091.83
74	0.4670 - 0.4721	1049.93 -1052.92	4091.82 - 4041.84
75	0.4722 - 0.4775	1052.93 -1057.60	4041.83 - 3998.01
76	0.4776 - 0.4870	1057.61 -1063.49	3998.00 - 3941.60
77	0.4871 - 0.4924	1063.50 -1068.15	3941.59 - 3900.75
78	0.4925 - 0.5022	1068.16 -1074.88	3900.74 - 3824.10
79	0.5023 - 0.5092	1074.89 -1080.07	3824.09 - 3775.62
80	0.5093 - 0.5262	1080.08 -1083.18	3775.61 - 3708.14
81	0.5263 - 0.5347	1083.19 -1087.87	3708.13 - 3633.77
82	0.5348 - 0.5462	1087.88 -1095.59	3633.76 - 3593.12
83	0.5463 - 0.5555	1095.60 -1100.45	3593.11 - 3523.54
84	0.5556 - 0.5690	1100.46 -1110.48	3523.53 - 3471.47
85	0.5691 - 0.5832	1110.49 -1119.17	3471.46 - 3401.47
86	0.5833 - 0.6058	1119.18 -1129.29	3401.46 - 3331.50
87	0.6059 - 0.6249	1129.30 -1138.17	3331.49 - 3228.58
88	0.6250 - 0.6474	1138.18 -1152.87	3228.57 - 3165.26
89	0.6475 - 0.6737	1152.88 -1171.10	3165.25 - 3088.15
90	0.6738 - 0.6957	1171.11 -1188.30	3088.14 - 3010.37
91	0.6958 - 0.7185	1188.31 -1208.41	3010.36 - 2890.30
92	0.7186 - 0.7537	1208.42 -1221.25	2890.29 - 2770.60
93	0.7538 - 0.8025	1221.26 -1241.51	2770.59 - 2655.30
94	0.8026 - 0.8497	1241.52 -1262.74	2655.29 - 2499.82
95	0.8498 - 0.9006	1262.75 -1288.81	2499.81 - 2362.56
96	0.9007 - 0.9389	1288.82 -1313.17	2362.55 - 2103.40
97	0.9390 - 0.9882	1313.18 -1354.31	2103.39 - 1902.16
98	0.9883 - 1.0662	1354.32 -1419.30	1902.15 - 1669.07
99	1.0663 - 1.2927	1419.31 -1525.66	1669.06 - 1435.75
100	1.2828+	1525.67+	1435.74 - 1.00

PART-B : SPECIAL NEEDS

4 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0787	0.01 - 710.86	15038.08+
2	0.0788 - 0.1102	710.87 - 747.49	15038.07 -12102.52
3	0.1103 - 0.1285	747.50 - 781.80	12102.51 -10642.75
4	0.1286 - 0.1434	781.81 - 811.30	10642.74 -10186.97
5	0.1435 - 0.1613	811.31 - 836.72	10186.96 - 9418.54
6	0.1614 - 0.1729	836.73 - 858.86	9418.53 - 8833.39
7	0.1730 - 0.1849	858.87 - 872.75	8833.38 - 8294.02
8	0.1850 - 0.1932	872.76 - 893.98	8294.01 - 8074.15
9	0.1933 - 0.2048	893.99 - 906.57	8074.14 - 7766.44
10	0.2049 - 0.2117	906.58 - 918.81	7766.43 - 7522.10
11	0.2118 - 0.2202	918.82 - 926.81	7522.09 - 7289.51
12	0.2203 - 0.2282	926.82 - 942.52	7289.50 - 7070.71
13	0.2283 - 0.2340	942.53 - 952.46	7070.70 - 6897.70
14	0.2341 - 0.2402	952.47 - 958.18	6897.69 - 6705.99
15	0.2403 - 0.2471	958.19 - 965.37	6705.98 - 6500.73
16	0.2472 - 0.2537	965.38 - 977.71	6500.71 - 6367.62
17	0.2538 - 0.2611	977.72 - 986.23	6367.61 - 6224.40
18	0.2612 - 0.2653	986.24 - 996.71	6224.39 - 6108.21
19	0.2654 - 0.2713	996.72 -1008.41	6108.20 - 5934.93
20	0.2714 - 0.2787	1008.42 -1017.71	5934.92 - 5815.29
21	0.2788 - 0.2864	1017.72 -1027.85	5815.28 - 5707.27
22	0.2865 - 0.2963	1027.86 -1035.14	5707.26 - 5587.76
23	0.2964 - 0.3049	1035.15 -1043.20	5587.75 - 5435.68
24	0.3050 - 0.3124	1043.21 -1054.51	5435.67 - 5322.77
25	0.3125 - 0.3207	1054.52 -1065.47	5322.76 - 5235.43
26	0.3208 - 0.3293	1065.48 -1075.85	5235.42 - 5137.48
27	0.3294 - 0.3373	1075.86 -1084.42	5137.46 - 5043.03
28	0.3374 - 0.3469	1084.43 -1094.79	5043.02 - 4948.31
29	0.3470 - 0.3549	1094.80 -1109.66	4948.30 - 4867.81
30	0.3550 - 0.3649	1109.67 -1120.25	4867.80 - 4798.70
31	0.3650 - 0.3713	1120.26 -1134.01	4798.69 - 4684.24
32	0.3714 - 0.3806	1134.02 -1144.11	4684.23 - 4578.07
33	0.3807 - 0.3895	1144.12 -1154.23	4578.05 - 4495.82
34	0.3896 - 0.4004	1154.24 -1164.77	4495.80 - 4354.18
35	0.4005 - 0.4070	1164.78 -1182.91	4354.17 - 4230.77
36	0.4071 - 0.4193	1182.92 -1195.00	4230.76 - 4137.60
37	0.4194 - 0.4297	1195.01 -1212.65	4137.59 - 4041.84
38	0.4298 - 0.4400	1212.66 -1228.48	4041.83 - 3941.60
39	0.4401 - 0.4541	1228.49 -1246.34	3941.59 - 3824.10
40	0.4542 - 0.4621	1246.35 -1262.22	3824.09 - 3708.14
41	0.4622 - 0.4753	1262.23 -1296.73	3708.13 - 3593.12
42	0.4754 - 0.4950	1296.74 -1317.78	3593.11 - 3471.47
43	0.4951 - 0.5140	1317.79 -1343.19	3471.46 - 3331.50
44	0.5141 - 0.5445	1343.20 -1374.29	3331.49 - 3165.26
45	0.5446 - 0.5793	1374.30 -1410.88	3165.25 - 3010.37
46	0.5794 - 0.6127	1410.89 -1446.60	3010.36 - 2770.60
47	0.6128 - 0.7043	1446.61 -1517.31	2770.59 - 2499.82
48	0.7044 - 0.8032	1517.32 -1603.72	2499.81 - 2103.40
49	0.8033 - 0.9521	1603.73 -1763.08	2103.39 - 1669.07
50	0.9522+	1763.09+	1669.06 - 1.00

PART B: SPECIAL NEEDS

GRADUATE PUBLIC

POINTS	NEED PERCENT	NEED DOLLARS
1	0.0001 - 0.0942	0.01 - 545.59
7	0.0943 - 0.1869	545.60 - 1380.94
19	0.1870 - 0.3619	1380.95 - 1408.23
32	0.3620 - 0.3785	1408.24 - 1675.49
50	0.3786+	1675.50+

PART B: SPECIAL NEEDS

GRADUATE PRIVATE

POINT	NEED PERCENT	NEED DOLLAR
1	0.0001 - 0.0176	0.01 - 449.61
2	0.0177 - 0.0248	449.62 - 577.11
3	0.0249 - 0.0315	577.12 - 595.20
4	0.0316 - 0.0401	595.21 - 618.31
5	0.0402 - 0.0567	618.32 - 669.46
6	0.0568 - 0.0618	669.47 - 728.18
7	0.0619 - 0.0635	728.19 - 783.84
8	0.0636 - 0.0650	783.85 - 813.56
9	0.0651 - 0.0863	813.57 - 848.67
10	0.0864 - 0.0994	848.68 - 873.85
11	0.0995 - 0.1018	873.86 - 881.80
12	0.1019 - 0.1028	881.81 - 897.93
13	0.1029 - 0.1113	897.94 - 949.89
14	0.1114 - 0.1170	949.90 - 968.59
15	0.1171 - 0.1299	968.60 - 969.71
16	0.1300 - 0.1419	969.72 -1011.31
17	0.1420 - 0.1461	1011.32 -1018.04
18	0.1462 - 0.1478	1018.05 -1024.48
19	0.1479 - 0.1605	1024.49 -1030.75
20	0.1606 - 0.1629	1030.76 -1071.02
21	0.1630 - 0.1737	1071.03 -1100.22
22	0.1738 - 0.1777	1100.23 -1112.27
23	0.1778 - 0.1785	1112.28 -1127.49
24	0.1786 - 0.1816	1127.50 -1301.17
25	0.1817 - 0.1855	1301.18 -1360.01
26	0.1856 - 0.1913	1360.02 -1369.27
27	0.1914 - 0.1977	1369.28 -1415.09
28	0.1978 - 0.2021	1415.10 -1444.43
29	0.2022 - 0.2044	1444.44 -1448.95
30	0.2045 - 0.2062	1448.96 -1512.23
31	0.2063 - 0.2098	1512.24 -1517.85
32	0.2099 - 0.2130	1517.86 -1543.44
33	0.2131 - 0.2307	1543.45 -1584.03
34	0.2308 - 0.2367	1584.04 -1589.99
35	0.2368 - 0.2400	1590.00 -1604.72
36	0.2401 - 0.2618	1604.73 -1635.81
37	0.2619 - 0.2625	1635.82 -1643.40
38	0.2626 - 0.2736	1643.41 -1664.07
39	0.2737 - 0.2833	1664.08 -1766.45
40	0.2834 - 0.2858	1766.46 -1802.77
41	0.2859 - 0.2954	1802.78 -1945.64
42	0.2955 - 0.3064	1945.65 -1955.76
43	0.3065 - 0.3174	1955.77 -2028.77
44	0.3175 - 0.3203	2028.78 -2258.91
45	0.3204 - 0.3520	2258.92 -2275.66
46	0.3521 - 0.3717	2275.67 -2580.90
47	0.3718 - 0.4614	2580.91 -2772.57
48	0.4615 - 0.5237	2772.58 -3400.06
49	0.5238 - 0.6939	3400.07 -3563.35
50	0.6940+	3563.36+

[FR Doc. 85-11900 Filed 5-15-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Intent (NOI) To Prepare an Environmental Impact Statement on Decommissioning the Eight Shutdown Production Reactors Located at the Hanford Site Near Richland, WA

AGENCY: Department of Energy.

ACTION: Notice is hereby given that the Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) pertaining to the decommissioning of eight federally owned, shutdown production reactors located at the DOE Hanford Site, in the State of Washington.

SUMMARY: The DOE announces its intent to prepare an EIS, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), to provide environmental input into the decision on the proposed selection and implementation of a decommissioning alternative for the eight shutdown production reactors at the Hanford Site, near Richland, Washington. The DOE's Hanford Site is a 570 square mile, controlled access area that is dedicated to a variety of nuclear-related activities which include producing nuclear power for commercial use, waste management, defense reactor operations, fuel fabrication/processing and nuclear research. This EIS will consider only the disposition of the eight reactors, associated fuel storage basins, and buildings used to house these systems, located in the 100 Area of the Hanford Site in general.

The purpose of this NOI is to present pertinent background information on the proposed scope and contents of the EIS, and to invite interested agencies, organizations, and members of the general public to submit comments or suggestions for consideration in connection with the preparation of the draft EIS.

Upon completion of the draft EIS, its availability will be announced in the **Federal Register** and local news media for public review and comments. Comments received on the draft will be used in preparing the final EIS.

ADDRESS: DOE invites interested agencies, organizations, and the general public to submit comments or suggestions for consideration in the preparation of th EIS. Written comments or suggestions on the scope of the EIS may be submitted to: Judy L. Torkaz, External Affairs Officer, US/DOE, RL, P.O. Box 550, Richland, WA 99352, (509) 376–7378.

For general information on the DOE EIS process, please contact: Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, Attn: Ms. Carol M. Borgstrom, PE–252, Forrestal Building, Room 3G092, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–4600.

Written comments postmarked within 30 days of publication of this NOI in the **Federal Register** will be considerd in the preparation of the draft EIS. Comments received after that date will be considered to the degree practicable.

Background

In 1943, the Manhattan Engineer District of the U.S. Corps of Engineers selected the 570 square mile Hanford ~~Site~~ in Southeastern Washington for production of special nuclear materials, principally plutonium, for national defense activities. Between 1943 and 1955, eight graphite moderated reactors were constructed at the Site, approximately 30 miles north of Richland, Washington, along the Columbia River, to support the plutonium production effort. They are the B, C, D, DR, F, H, KE, and KW reactors. A ninth production reactor, N Reactor, was started up in 1963 and is still in operation. The decommission of N Reactor is not within the scope of this EIS.

The Hanford reactors were operated by the U.S. Atomic Energy Commission and its successors the U.S. Energy Research and Development Administration (ERDA) and the U.S. Department of Energy (DOE).

In early 1964, a presidential decision to begin closing down the older Hanford reactors resulted in deactivating and removing the fuel from all eight reactor sites by the end of 1971. Due to the technical nature of the reactors, their unique design and purposes, and the age of the facilities, no future long-term beneficial use has been identified. The eight reactors contain irradiated reactor components, and the buildings that house the reactors are all contaminated to some degree with low levels of radioactivity. Safe storage of the reactors, since deactivation, has consisted of short-term surveillance and maintenance actions adequate to protect the workers and the environment.

Proposed action

The proposed decommissioning of the shutdown reactors will permanently remove or better isolate any remaining radioactive wastes in a manner that minimizes the potential health and safety impacts onthe pubic and the environment. The proposed EIS will evaluate several decommissioning alternatives for potential short-term and long-term environmental impacts, and for engineering and cost considerations.

Preliminary Definition of Alternatives To Be Considered in the EIS

1. Safe Storage/Deferred Dismantlement

This alternative involves temporarily storing the reactor in a safe, secure status for a predetermined period of time to allow decay of resident radionuclides to a level permitting hands-on, low radiation exposure dismantlement work. For the eight ractors, the estimated storage period is 75 years. If this alternative were implemented, some additional upgrading of the reactor buildings would be needed, followed by a continued routine maintenance and suveillance program with major maintenance repairs of the buildings conducted every 20 years. After 75 years, the reactors would then be dismantled piece by piece and any remaining radioactive waste transported to approved low-level waste burial areas on the Hanford Site. The maximum distance from the reactors to the proposed burial site is approximately 15 miles, with the transport routes being entirely within the Hanford Site.

2. Immediate Dismantlement

In this alternative, the entire reactor facility is promptly removed from the present reactor site. All radioactive waste material is packaged and transported to an approved low-level waste burial area on the Hanford Site. Dismantlement is accomplished by first removing facility equipment and materials for reuse or disposal, and then demolishing the building. The reactor block is removed in one piece by excavating under the block, positioning a tractor crawler under it, and slowly lowering the block onto the platform. Once the reactor block is physically and radiologically secured aboard the crawler, the crawler is driven across the Hanford Site along predetermined route to the waste burial area. The 15 mile trip to the wast burial area would take approximately 48 hours per reactor.

3. *In Situ Disposal*

In situ disposal involves leaving the reactor at its present location, as opposed to relocating it to an alternate waste disposal area on the Hanford Site. Facility equipment, reactor components, and other materials that have a potential for reuse are removed. The reactor block is left intact on its foundation, with special care taken to prevent damage to it during the in situ decommissioning process. Loose

external contamination is immobilized, major voids filled, and potential pathways (openings) such as large pipes and air ducts are sealed. Then the perimeter portions of the reactor building are demolished. To complete the process, building rubble, earth, and gravel are used to form an earthen mound over the reactor block. The mound will act as a long-term protective barrier to isolate the radioactive wastes from pathways to man and the environment.

4. *No Action*

This alternative involves leaving the reactors in place and continuing the present maintenance and surveillance program, including periodic major repairs, until the reactors no longer have potential for impacting the environment. The DOE believes that these alternatives encompass the range of reasonable alternatives to be considered in the EIS. Comments on the scope and definition of these alternatives, as well as suggestions on other reasonable alternatives which the DOE should consider, are invited. The DOE will recommend a preferred alternative in the Draft EIS.

Identification of Environmental Issues

The following is a list of issues that will be analyzed in this EIS; this list is intended neither to be all inclusive nor a predetermination of impacts:

- Effects on the general population from emissions of radiologic and nonradiologic releases caused by decommissioning operations.
- Magnitude of exposure of decommissioning personnel to radiologic and nonradiologic releases during decommissioning operations.
- Offsite (general population) effects resulting from potential accidents.
- Effect on air and water quality and other environmental consequences during short-term and long-term decommissioning operations.
- Applicable regulations and guidelines.
- Onsite transportation impacts.
- Short-term versus long-term land use.
- Irretrievable and irreversible commitment of resources.
- Socioeconomic impacts to surrounding communities.
- Mitigation measures.

Scoping and Comments

All interested parties are invited to submit comments or suggestions in connection with the preparation and scoping of the EIS. Comments are invited on both the alternatives and the issues to be considered in the EIS.

No public scoping meeting is scheduled at this time; however, DOE will determine the need for a public scoping meeting after reviewing the comments received in response to this NOI. If it is deemed necessary to hold a public scoping meeting, a place, date, and time will be selected and advance notice provided.

Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS for review and comment, should notify Judy L. Torkaz (address above). A copy of the comments received on this NOI, other NEPA documents, and major references used in the preparation of this NOI and Draft EIS will be made available during normal business hours at the following locations:

U.S. Department of Energy, Forrestal Building, FOI Reading Room, Room IE-190, 1000 Independence Avenue, Washington, DC 20585

Pasco Public Library, 1320 West Hopkins, Pasco, WA 99301, (509) 545-3451

Walla Walla Public Library, 238 East Alder, Walla Walla, WA 99362, (509) 525-5353

Kennewick Public Library, 405 South Dayton, Kennewick, WA 99336, 1-800-572-6251 or (509) 586-3156

Richland Public Library, Swift & Northgate, Richland, WA 99352, (509) 943-9117

Yakima Valley Main Public Library, 102 North 3rd Street, Yakima, WA 98901, (509) 452-8541

RL Public Library, P.O. Box 800, Federal Building, Room 157, Richland, WA 99352, (509) 376-8583.

Dated in Washington, D.C., this 10th day of May 1985, for the United States Department of Energy.

William A. Vaughan,

Acting Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 85-11906 Filed 5-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of April 5 Through April 12, 1985

During the Week of April 5 through April 12, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 7, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 5 through Apr. 12, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 17, 1985	Economic Regulatory Administration, Washington, DC	HRZ-023[illegible]	Request for Interlocutory Order. If granted: The Proposed Remedial Order issued to Ozark County Gas, Inc. (Case No. HRO-0239) would be withdrawn without prejudice to a future refiling.
Mar. 1, 1985	Economic Regulatory Administration, Washington, DC	HRZ-024[illegible]	Request for Interlocutory Order. If granted: The Proposed Remedial Order issued to Ozark County Gas, Inc. (Case No. HRO-0239) would be modified as to the amount of the alleged overcharges.
Apr. 8, 1985	Bale Oil Co., Horse Cave, KY	HEE-014[illegible]	Exception to the Reporting Requirements. If granted: The Bale Oil Co. would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Do	Don Anderson Oil Co., Chillicothe, MO	HEE-013[illegible]	Exception to the Reporting Requirements. If granted: Don Anderson Oil Co. would no longer be required to file certain EIA reports.
Do	Echols Oil Co., Inc., Greenville, SC	HEE-013[illegible]	Exception to the Requirements. If granted: Echols Oil Co., Inc. would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 5 through Apr. 12, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 9, 1985	H. Michael Clyde, Pheonix, AZ	HFA-0283	Appeal of an Information Request Denial. If granted: The Mar. 25, 1985, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Mr. Clyde would receive access to certain DOE documents.
Do	Mid-West Oil, Ltd., Enid, OK	HEE-0141	Exception to the Reporting Requirements. If granted: Mid-West Oil, Ltd. would not longer be required to file form EIA-782B "Resellers/Retailers' Petroleum Product Monthly Sales Report".
Do	Peter L. Hirschburg, Washington, DC	HRR-0100	Request for Modification/Rescission. If granted: The Apr. 3, 1985 Decision and Order issued to the Economic Regulatory Administration (Case Nos. HRZ-0236 and HRZ-0237) would be modified regarding the joining of Peter L. Hirschburg as a party to the Proposed Remedial Order (Case No HRO-0247).
Apr. 10, 1985	Ed Joyce Fuel & Feeds, Geraldine, MT	HEE-0143	Exception to the Reporting Requirements. If granted: Ed Joyce Fuel & Feeds would no longer be required to file certain EIA reporting forms.
Do	Island Close-up News Service, Sag Harbor, NY	HFA-0285	Appeal of an Information Request Denial. If granted: The Island Close-up News Service would receive a waiver of fees entailed by a Freedom of Information request concerning a Plutonium-fueled generator.
Do	Ivan Von Zuckerstein, Darien, IL	HFA-0284	Appeal of an Information Request Denial. If granted: The Mar. 28, 1985, Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Ivan Von Zuckerstein would receive full access to the Phase 2 RCS report.
Do	Pettway Oil Co., Chattanooga, TN	HEE-0142	Exception to the Reporting Requirements. If granted: Pettway Oil Co. would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Products Sales Report".
Apr. 11, 1985	International Brotherhood of Electrical Workers, Portland, OR.	HFA-0286	Appeal of An Information Request Denial. If granted: The Mar. 4, 1985, Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and the International Brotherhood of Electrical Workers would receive full access to certain certified payroll reports.
Apr. 12, 1985	Juniper Petroleum Corp., Washington, DC	HEF-0579	Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with a Mar. 6, 1981, Court Order issued to the Juniper Petroleum Corp.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 5 to Apr. 12, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/08/85	APCO/Vasey Tire & Gas	RF83-7.
4/08/85	Midwest Industrial Fuels/Big Bear	RF82-2.
4/08/85	Little America Refining/Silco Oil Co.	RF112-7.
4/08/85	Hertz Corp./American Can Co	RF76-128.
4/08/85	Hertz Corp./Marley Cooling Tower Co.	RF76-129.
4/08/85	Hendel's Inc./Machmik Bros., Inc	RF79-12.
4/08/85	Bayou State Oil/Idan Gasoline/C.C. Dickson, Jr.	RF117-2.
4/09/85	Seminole Refining/Engelhard Corp.	RF111-7.
3/25/85	Alkek/Adams/Texaco Refining & Marking, Inc.	RF6-68.
3/25/85	Alkek/Adams/Texaco, Inc	RF6-67.
3/25/85	Alkek/Adams/Mohawk Petroleum Corp.	RF6-66.
3/22/85	Alkek/Adams/Exxon Company, USA.	RF6-65.
4/08/85	Tenneco/H.O. Anderson, Inc	RF7-124.
4/08/85	Tenneco/Holden Oil Co., Inc	RF7-125.
3/29/85	Amoco/Hall's Standard Service	RF21-12390.
		RF21-12391.
4/09/85	Hertz Corp./Hammermill Paper Co	RF76-130.
4/09/85	Hertz Corp./General Cable Co	RF76-131.
4/09/85	Hertz Corp./Champion Spark Plug Co.	RF76-132.
4/09/85	Hertz Corp./American Home Products Corp.	RF76-133.
4/09/85	Hertz Corp./Anheuser Busch Companies.	RF76-134.
4/09/85	Hertz Corp./The Nestle Co	RF76-135.
4/09/85	Hertz Corp./Western Co. of North America.	RF76-136.
4/09/85	Hertz Corp./Hexcel Corp	RF76-137.
4/09/85	Hertz Corp./Pillsbury Co	RF76-138.
4/09/85	Hertz Corp./CBS, Inc	RF76-139.
4/09/85	Hertz Corp./Reliance Electric	RF76-140.
4/09/85	APCO/Wilhelm Oil Co	RF3-8.
4/11/85	APCO/Krause Gentle Oil Corp	RF83-12.
4/11/85	APCO/Warin Oil Co	RF83-11.
4/11/85	APCO/Kenny's Apco	RF83-10.
4/11/85	APCO/Manning Oil Co., Inc	RF83-9.
4/11/85	Hendel's Inc./Rou's Chevron	RF79-13.
4/11/85	Hendel's Inc./Coffee's Chevron	RF79-14.
4/11/85	APCO/Yuska Oil Co	RF83-13.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 5 to Apr. 12, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/11/85	Hertz Corp./Arthur Young International	RF76-141.
4/12/85	APCO/Dee-Jay Petroleum, Inc	RF83-14.
4/12/85	Kiesel Co./Security Armored Car Service.	RF126-1.
4/12/85	Kiesel Co./Scrap Metal Processors.	RF126-2.
4/08/85 to 4/12/85	Gulf Refund Applications	RF40-3006 thru RF40-3013.

[FR Doc. 85-11806 Filed 5-15-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $4,800,000 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Quaker State Oil Refining Corp. (Case No. HEF-0219.)

DATE AND ADDRESS: Comments must be filed on or before June 17, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue. SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0219.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Quaker State Oil Refining Corp. (Quaker State) and the DOE which settled possible regulatory violations in the firm's sales of refined petroleum products during the consent period, January 1, 1973 through January 28, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by Quaker State pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Quaker State refined petroleum products during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be

given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 7, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 7, 1985.

Name of Firm: Quaker State Oil Refining Corporation.

Date of Filing: October 13, 1983.

Case Number: HEF-0219.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Quaker State Oil Refining Corporation (Quaker State) is engaged in the production, refining, and sale of crude oil and refined petroleum products as well as other petroleum related activities, and was therefore subject to the Mandatory Petroleum Allocation and Price Regulations set forth at 10 CFR Parts 210, 211 and 212.

A DOE audit of Quaker State's refining and marketing operations during the period August 1, 1973 through December 1978 revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products.[1] In order to settle all claims and disputes between the parties concerning Quaker State's (and its affiliates' and subsidiaries')[2] compliance with the price and allocation regulations during the period January 1, 1973 through January 28, 1981 (the consent order period),[3] Quaker State and the DOE executed a consent order on March 5, 1982, whereby Quaker State agreed to deliver to the Strategic Petroleum Reserve of the United States (SPR) a quantity of crude oil valued at $4,800,000 or, in the alternative, to pay the DOE the balance of its refund obligation. The consent order refers to the DOE's allegations of regulatory violations, but notes that no findings of violation were made. Additionally, the consent order states that Quaker State does not admit that it committed any such violations. Notice of the proposed consent order was published on April 12, 1982 (47 FR 15641), and interested persons were invited to submit comments. On September 3, 1982, the proposed consent order was made final with few modifications. 47 FR 38968 (September 3, 1982). On that same date, in accordance with Paragraph 404(h) of the final consent order, Quaker State deposited $4,800,000 with the DOE in lieu of delivering crude oil to the SPR. This Proposed Decision concerns the distribution of the $4,800,000 that was deposited in the escrow account, plus accrued interest.

II. Jurisdiction

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. After reviewing the record in this proceeding, we have concluded that it is difficult to identify potentially injured parties and to readily ascertain the extent to which such parties may have been injured by Quaker State's pricing practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The OHA will therefore accept jurisdiction over the funds received by the DOE pursuant to the Quaker State consent order.

III. Proposed Refund Procedures

We propose that the Quaker State consent order fund be distributed to claimants who satisfactorily demonstrate that they were injured by Quaker State's alleged regulatory violations. The information available to us at this time regarding Quaker State's operations during the consent order period indicates that Quaker State operated primarily in Pennsylvania, West Virginia, New York, and Ohio, but that the firm's primary refined products, lubricating oils, were sold through intermediate resellers and retailers throughout the United States. We expect that claimants will fall into two general categories: (i) Refiners, resellers and retailers (hereinafter collectively referred to as resellers) who resold Quaker State petroleum products and (ii) individuals or firms that consumed Quaker State petroleum products for their own use (end-users). Although the consent order period covers the period from January 1, 1973 through January 28, 1981, applicants may only claim refunds with respect to purchases of a particular product during the time it was subject to price controls.[4]

To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the petroleum products purchased from Quaker State at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from Quaker State, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.,* 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.,* 10 DOE ¶ 85,009 (1982). In addition, a reseller that files a claim based upon Quaker State's pricing practices will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of banks will not, however, automatically establish injury. *See, e.g.,*

[1] The alleged violations included the misallocation of crude oil costs, improper treatment of product exchanges, improper treatment of cost overrecoveries, cessation of customary credit practices to dealers and to Quaker State credit card holders, and overcharges in motor oil sales.

[2] Quaker State's subsidiaries include Corn Brothers, Inc., Jamestown Design and Machine Corp., Fetterley Oil Company, Producers Gathering Company, Inc., Truck-Lite Company, Inc., Corey Oil Company, and Palmer Oil Company, Inc.

[3] Quaker State's crude oil sales and rights or obligations under the Entitlements Program were expressly excluded from the settlement agreement. *See* Consent Order ¶ 501.

[4] Motor gasoline was decontrolled on January 28, 1981, middle distillates were decontrolled on June 30, 1976, and lubricants were decontrolled on August 31, 1976. *See* Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,535 at 14,014–15.

Tenneco Oil Co./Chevron U.S.A., 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of products sold by Quaker State during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by Quaker State. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period. In the present case, based on the information available to us at this time, the volumetric refund amount is $0.001682 per gallon, exclusive of interest ($4,800,000 consent order fund divided by 2,949,106,155 gallons, the estimated total volume of refined petroleum products sold by Quaker State during the period). However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Quaker State consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to substantiate such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently.

Under the small claims presumption we are proposing to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exeed the amount of the refund to be gained. In this case, where the time period of the consent order is quite distant and the volumetric refund amount is quite small, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1985).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We therefore propose that end-users of Quaker State petroleum products need only document their purchase volumes from Quaker State to make a sufficient showing that they were injured by the alleged overcharges.[6]

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[5] A reseller that made only spot purchases from Quaker State shall be presumed not to have suffered an injury, and will therefore be ineligible to receive a refund, even one below the threshold level, unless it makes a showing that rebuts this presumption. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[6] We further propose to treat refund applications submitted by cooperatives as applications made on behalf of the consumers who are their ultimate customers. We have consistently excused cooperatives that acted as petroleum marketers from the requirement that they demonstrate that they did not pass through to their customers cost increases resulting from alleged overshargee. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982). This determination was based on our finding that under the by-laws that control the financial practices of cooperatives, any overcharges incurred by a cooperative would have been passed through to its customers who, for the most part, are its member-owners, and, similarly, any refunds would be passed on to the current member-owners of the cooperative. In the present proceeding, we will treat cooperatives similarly, placing them in the same category as consumers and excusing them from the requirement that they make a detailed showing of injury with regard to that portion of their purchases that was resold to their members. We will, however, require cooperatives to specify in their applications the percentage of refined products they purchased from Quaker State during the consent order period that was resold to their members and to provide a full explanation of the manner in which refunds will be passed through to their members. With respect to that portion of their purchases from Quaker State that was resold to non-members, cooperatives will be treated in the same manner as other resellers.

Although the information we have reviewed in the Quaker State audit files did not reveal any alleged allocation violations, the consent order covers the firm's compliance with the allocation regulations. Therefore, we will accept claims based on Quaker State's allocation practices. We propose to adopt the guidelines described below which have been used for evaluating allocation claims in previous special refund cases. *See generally Office of Special Counsel,* 9 DOE ¶ 82,538 at 85,205–207 (1982).

Claims for refunds based on alleged allocation violations are substantially different than those based on alleged overcharges. Allocation claims are based on the consent order firm's alleged failure to furnish product which it was obliged to supply to the claimant under the DOE allegation regulations, 10 CFR Part 211. An allocation claimant should have been aware of the alleged violation at the time when it occurred, and should have taken some contemporaneous action to mitigate the injury. *Office of Spcial Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982). We therefore propose to exclude from eligibility any allocation claimant which had not contemporaneously complained of Quaker State's alleged allocation violation. In addition, the measure of injury from the alleged violation is different for an allocation claimant. Allocation claimants have been awarded refunds in the nature of damages attributable to the monetary loss which was casued by the failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.,* 10 DOE ¶ 85,012 (1982). An allocation claimant should submit sufficient information to make a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury which was sustained.

As in previous cases, we propose to establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g. Uban,* 9 DOE at 85,225.

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Quaker State Oil Refining Corporation pursuant to the March 5, 1982 consent order as modified September 3, 1982, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–11805 Filed 5–15–85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures and Solicitation of Comments

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1,550,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Good Hope Refineries, Inc., a refiner based in Good Hope, Louisiana that also owned a chain of motor gasoline stations in New England and New York under the "Gasland" brand name.

DATE AND ADDRESS: Comments must be filed on or before June 17, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should be conspicuously display a reference to case number HEF–0211.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Good Hope Refineries, Inc., which settled possible violations of DOE price controls in the firm's sales of covered petroleum products to its customers during the August 1973 through July 1976 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Good Hope pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register,** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 8, 1985.

Name of Firm: Good Hope Refineries, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0211.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82.553 at 85,284 (1982).

I. Background

Good Hope Refineries, Inc. was a refiner as that term was defined in 10 CFR Part 212, and a wholly-owned subsidiary of good Hope Industries, Inc. (Good Hope). Good Hope Industries also owned Gasland, Inc., a chain of motor gasoline stations in three New England states and New York. Good Hope Refineries operated a refinery in Metairie, Louisiana, while Good Hope Industries had main offices located in Springfield, Massachusetts. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. Several DOE audits of Good Hope's records revealed possible regulatory violations with respect to the firm's pricing of motor gasoline, diesel fuel, and other refined petroleum products, during the period August 19, 1973 through July 31, 1976 (hereinafter referred to as the consent order period). In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's pricing of refined products during the consent order period, Good Hope and DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution, through: (i) Price rollbacks; (ii) reductions in its banks of unrecouped costs; and (iii) a direct cash payment to the DOE. At the time of the consent order, Good Hope was involved in bankruptcy proceedings. Since then Good Hope has fallen into arrears on its payments to the DOE. Enforcement of the Consent Order has been referred to the Department of Justice, and it is uncertain whether further payments will be received. Thus far, the DOE has received $1,550,000. This sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of March 31, 1985, the Good Hope escrow accont had earned $697,692 in interest. This Proposed Decision concerns the distribution of the $1,550,000 that was depositied into the escrow account, the accrued interest, and any further payments that the DOE may receive from Good Hope.

II. Jurisdiction

We have considered EAR's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Good Hope consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of petroleum products who may have been injured by Good Hope's pricing practices during the period August 19, 1973 through July 31, 1976. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

II. Proposed Refund Procedures

Insofar as possible, the consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. In this case, the ERA audit file pertaining to the Consent Order lists the names of the customers who purchased refined products from the consent order firm, along with the pro rata amounts the ERA calculated the customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Proposed Decision and Order. However, we recognize that there may be other purchasers of petroleum products from these firms who were not listed in the ERA audit files and who may have been by the pricing practices of Good Hope during the relevant time period. We therefore propose to accept applications from any party that can show injury resulting from the consent order firms' alleged overcharges.

Most of the indentified customers of the consent order firms are resellers, i.e., retailers and wholesalers. We propose that these firms, and any other claimants who resold petroleum products purchased from one of the consent order firms, be required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* In addition, the reseller must show that it maintained a "bank" of unrecovered increased costs.

As in many prior special refund cases, we will adopt a presumtion of injury with respect to small claims. The use of presumtions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to prticipate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Good Hope consent order is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Good Hope and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a climant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in

Texas Oil & Gas Corp., 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[1] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Good Hope petroleum products need only document their purchase volumes from Good Hope to make a sufficient showing that they were injured by the alleged overcharges.

We believe that if a reseller or retailer made only spot purchases from Good Hope, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Good Hope petroleum products. *See Amoco* at 88,200.

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe that this information can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). Specifically, we note that the ERA attempted to ascertain the identities of the injured parties and the precise amount of injury after the completion of all of the audits covered by the consent order. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. We therefore propose that the refunds for the firms listed in the Appendix who make the requisite showing set forth in Part III of this Proposed Decision be equivalent to the potential refund amounts calculated by the ERA. These refund amounts, which are listed in the Appendix, represent a prorated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow accounts.

However, some companies not listed by the ERA have notified the DOE that they believe they were injured by Good Hope's pricing practices. It is also possible that additional Good Hope customers who have not yet contacted the DOE may have been injured. A refund applicant who is not listed in the Appendix to this decision may also receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. An applicant who wishes to apply for a refund of greater than the threshold amount according to the volumetric method will also be required to provide evidence of injury. In the present case, based on the information available to us at this time, the volumetric refund amount is $.000912 per gallon,[2] exclusive of interest. As of March 31, 1985, accumulated interest increased the volumetric refund amount to $.001322. Any applicant who establishes that it would receive a greater refund under the volumetric method than under the percentage method shall be entitled to the larger refund. *Marion Corp., supra.* In addition, as noted earlier, a customer who can show that it bore a disproportionate share of the impact of Good Hope's alleged overcharges may receive a refund larger than the volumetric level. *Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

The precise amount of refunds that any claimant will receive is uncertain at the present time. First, it is possible that Good Hope will make additional payments into the escrow fund. This would increase the total refund available to each customer. Second, it is possible that some customers of Good Hope not listed in the audit file will be able to prove that were injured by Good Hope's pricing practices. This might decrease the total refund available to any customer who elected to apply according to the volumetric refund allocation. Accordingly, no refunds will be granted until after the deadline for filing asspplications has passed. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). If the DOE receives additional payments from Good Hope after refunds have been granted, each successful applicant (except those who elected to accept the $5,000 threshold level refund) will receive an additional pro rata refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize

[1] Any claimant whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold amount.

[2] According to the ERA audit file, during the audit period Good Hope sold 1,699,975,030 gallons of covered petroleum products. $1,550,000 divided by 1,699,975,030 equals $.0009118/gallon.

widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers Council, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding.

V. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Good Hope's alleged overcharges. *See, e.g., Northeast Petroleum Industries,* 11 DOE ¶85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Good Hope Industries, Inc. pursuant to the consent order executed on July 31, 1979 will be distributed in accordance with foregoing Decision.

APPENDIX

Customers listed in audit file	Percentage share of alleged overcharges
Standard Oil Company (Ohio), 20600 Chagrin Blvd., Cleveland OH 44122	4.6370
Coastal States Marketing, Inc, 9 Greenway Plaza, Houston, TX 77046	0.1555
Stillings Petroleum Corporation, P.O. Box 700328, Tulsa, OK 74170	0.2923
Continental Oil Company, P.O. Box 2197, Houston, TX 77252	5.2449
Allied Oil, P.O Box 6479, Cleveland, OH 44101	3.2721
Texaco, Incorporated, 2000 Westchester Ave., White Plains, NY 10650	4.0074
Wanda Petroleum, P.O. Box 53120, Houston, TX 77052	0.0580
Charter International Oil Co., P.O. Box 5008, Houston, TX 77012	1.3055
Consolidated Edison, 4 Irving Place, New York, NY 10003	6.9966
Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102	1.3287
Union Oil of California, 461 S. Boylston St., Los Angeles, CA 90017	0.8182
Texas Olefins, 2 Park West Plaza, Baytown, TX 77520	1.0336
Coral Petro, P.O. Box 19666, Houston, TX 77224	3.0205

APPENDIX—Continued

Customers listed in audit file	Percentage share of alleged overcharges
Exxon Corporation, P.O. Box 2180, Houston, TX 77001	2.0654
Saber Petroleum, 1400 Smith Street, Suite 1700, Houston, TX 77002	2.0076
Apex Oil Company, 7930 Clayton Rd., St. Louis, MO 63117	2.0581
Thomas Reidy, 1100 Milam St., Suite 2170, Houston, TX 77002	2.0221
Systems Fuels, P.O. Box 61532, New Orleans, LA 70161	4.1186
Tauber Oil Company, P.O. Box 4645, Houston, TX 77210	3.6785
Amoco, 200 E. Randolph Drive, Chicago, IL 60601	17.9050
L&L Oil Company, Rt. 1, Box 367, Crown Point, LA 70072	0.0182
Ashland Petroleum, P.O. Box 391, Ashland, KY 41114	[illegible]
Amerada Hess, 1185 Avenue of the Americas, New York, NY 10036	[illegible]
Union Texas Petroleum, P.O. Box 2120, Houston TX 77252	0.0639
Sun Oil, 100 Matonsford Road, Radnor, PA 19087	0.4633
Don Love, P.O. Box 262507, Houston, TX 77207	0.0108
Marathon Oil, 539 S. Main Street, Findley, OH 45840	2.0672
Gulf Oil, P.O. Box 3725, Houston, TX 77001	3.2329
Allied Chemical, P.O. Box 2120, Houston, TX 77252	0.0776
Bulk Oil, USA, Inc., 425 Park Avenue, New York, NY 10025	1.5209
Agway, 333 Butternut Drive, DeWitt, NY 03214	[illegible]
Triangle Refining Company, P.O. Box 3367, Houston, TX 77253	0.0662
Northwell Industries Corporation, 35 Pine Lawn Rd., Melville, NY 11747	0.4221
Kerr McGee, Kerr-McGee Center, Oklahoma City, OK 73125	0.0417
Tenneco Oil, P.O. Box 2157, Houston, TX 77002	[illegible]
Bray Terminals, P.O. Box 174, Mercy, NY 13403	0.1592
Toro Petroleum Corporation, Houston, TX	0.1965
Howard Oil, Maspeth, New York	1.9637
Texas City Refineries, New York, NY	1.0005
Franks Fuel	0.5594
Petroleum Heat and Power	2.0776
International Trade Limited, New Orleans, LA	0.3409
Patchogue Oil, Brooklyn, NY	0.5418
Baysett Transportation, Birmingham, Alabama	0.0008
Hol Petroleum, New York, NY	0.0018
Point Landing Fuel, Harahan, LA	0.2034
Val Cap, Incorporated, Alice, TX	0.1458
HiOctane Terminal Company Panama City, FL	0.1543
Gulf Coast Service Station, Westwego, LA	0.0508
Texas Star Oil Company, Corpus Christi, TX	0.0398
Pel-State Oil	[illegible]
Koziol, Ware, MA	0.0013
Stafford	0.0012
Autotronic Systems, Houston, TX	[illegible]
Timbros Service Stations, Middletown, CT	0.0127
Gasland, Inc., Retail sales	[illegible]

[FR Doc. 85-11804 Filed 5-15-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Open Meeting; Rescheduling

Notice of Time for Meeting

The time of the May 22, 1985, meeting of the National Petroleum Council Open Meeting has been changed. The new time for the start of the meeting is 8:00 a.m. The notice of this meeting appeared in 50 FR 16340, Thursday, April 25, 1985 (FR Doc. 85-9978).

Issued at Washington, D.C. on May 14, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-12040 Filed 5-15-85; 11:17 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2836-7]

Availability of the Mountain Communities Wastewater Management Alternatives Report

AGENCY: Environmental Protection Agency.

ACTION: Announcing the Availability of the Mountain Communities Wastewater Management Alternatives Report (EPA 904/10-84 124).

SUMMARY: EPA Region IV recently completed a report addressing alternatives for wastewater management in the mountainous region of the southeastern United States. The emphasis of the Mountain Communities Wastewater Management Alternatives Report is to provide a description of technical, financial and management alternatives appropriate for the provision of the wastewater facilities in the mountainous communities of the Southern Appalachians.

ADDRESSES: Copies of the Mountain Communities Wastewater Management Alternatives Report may be obtained by contacting: Mr. Robert C. Cooper, Project Officer, Environmental Assessment Branch, EPA-Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365 (Commercial Phone Number: 404/881-3776, FTS Number: 257-3776).

Dated: May 3, 1985.

John A Little,

Acting Deputy for Regional Administrator.

[FR Doc. 85-11842 Filed 5-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-351]

Annual Disclosure Report

May 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection, "Annual Disclosure Report"

to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the the **Federal Register**. Comments regarding the paperwork burden aspect of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Cynthia Graae, Office of Examinations and Supervision. Phone: 202-377-6886.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11890 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-433]

Madison County Federal Savings and Loan Association, Granite City, IL; Final Action; Approval of Conversion Application

May 9, 1985.

Notice is hereby given that on April 12, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Madison County Federal Savings and Loan Association, Granite City, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secreatriat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Room 700, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11893 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

[No.: 85-350]

Change of Control of an Insured Institution or Savings and Loan Holding Company

May 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new request of its information collection, "Notice of Change of an Insured Institution or Savings and Loan Holding Company" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork burden aspect of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Linda Lowry, Office of Examinations and Supervision. Phone: 202-377-6361.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11889 Filed 5-15-15; 8:45 am]

BILLING CODE 6720-01-M

[No. 85-352]

Savings and Loan Holding Company Applications

May 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised request of its information collection, "Savings and Loan Holding Company Applications" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork burden aspect of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Charles Brewer, Office of Examinations and Supervision. Phone: 202-377-6849.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11891 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

[No: 85-353]

Savings and Loan Holding Company Reports

May 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection, "Savings and Loan Holding Company Reports" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

COMMENTS: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork burden aspect of the request should be directed to: Office of Management and Budget, Office of Information and

Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Cynthia Graae, Office of Examinations and Supervision. Phone: 202-377-6886.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11892 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-434]

Smithville Savings and Loan Association, Smithville, TX.; Final Action Approval of Conversion Application

May 9, 1985.

Notice is hereby given that on April 18, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Smithville Savings and Loan Association, Smithville, Texas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11894 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-34]

Shipping Conditions in the U.S./Argentina Trade; Order of Discontinuance

This proceeding was instituted on the Petition of A/S Ivarans Rederi (Ivarans) for issuance of rules to meet alleged conditions unfavorable to shipping in the United States trades with Argentina, pursuant to section 19, Merchant Marine Act of 1920 (46 U.S.C. app. 876). Ivarans' Petition alleged that certain laws, decrees and actions of the government of Argentina and certain Argentine-flag carriers, particularly relating to Argentine government Resolution 619 which restricts the carriage of Argentine export cargoes to members of a northbound pooling agreement, has resulted in conditions unfavorable to shipping which would preclude Ivarans from competing for cargoes in the northbound trade. Ivarans is not currently a member of the northbound pooling agreement.

The Commission published notice of the Petition in the **Federal Register** inviting public comment. (49 FR 40097, October 12, 1984). The Commission also asked the Departments of State and Transportation to attempt to reach an informal resolution of the problem through government-to-government initiatives. In addition, Ivarans itself entered discussions with the government of Argentina, and requested that the Commission defer consideration of its Petition while it pursued such descussions.

The Commission has now been notified by the Departments of State and Transportation that they have received assurances from Argentine authorities that "they are not enforcing and do not intend to enforce" Resolution 619. Iverans has likewise informed the Commission that it has received assurances directly from Dr. Casado Bianco, Argentine Undersecretary for Maritime and River Transport, that neither Resolution 619 or other measures, including necessary clearances and export licenses, will be used to prevent it from loading cargo in Argentina.

Based on these assurances, Ivarans informs the Commission by an April 26, 1985 letter from its counsel that it "is satisfied that the primary purpose of its Section 19 petition in regard to the northbound trade has been achieved," and requests that the Commission terminate this proceeding. Because Ivarans will have continued access to the northbound trade from Argentina to the U.S., and no further regulatory purpose would therefore be achieved by continuing this proceeding,

Therefore, it is ordered, that this proceeding is discontinued.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11826 Filed 5-15-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engate *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to expand the geographic scope of previously approved activities (leasing

and making and servicing of loans) through a *de novo* office of its subsidiary, Bank One Leasing Corporation. The new office will be located in Chicago, Illinois.

Board of Governors of the Federal Reserve System, May 10, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11807 Filed 5-15-85; 8:45 am]

BILLING CODE 6210-01-M

First Bankshares of St. Martin, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 7, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Bankshares of St. Martin, Ltd.*, St. Martinville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of St. Martin, St. Martinville, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Financial Service Corporation*, Hales Corners, Wisconsin; to acquire 100 percent of the voting shares of University National Bank, Milwaukee, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire 100 percent of the following bank holding companies: M-L Bancshares, Inc., Wichita (The Kansas State Bank Newton); Pittsburg Bancshares, Inc., Pittsburg (The National Bank of Pittsburg, Pittsburg); Coffeyville Bancshares, Inc., Coffeyville (The First National Bank of Coffeyville, Coffeyville); Salina Bancshares, Inc., Salina (The Planters Bank and Trust Company, Salina); and Olathe Bancshares, Inc., Olathe (Patrons State Bank & Trust Co., Olathe) all located in the State of Kansas.

Board of Governors of the Federal Reserve System, May 10, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11808 Filed 5-15-85; 8:45 am]

BILLING CODE 6210-01-M

Philadelphia National Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than June 6, 1985.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

Philadelphia National Bank, Philadelphia, Pennsylvania; to establish a corporation to be known as Philadelphia National Bank Overseas, Inc., Wilmington, Delaware. Philadelphia National Bank Overseas, Inc. would operate as a subsidiary of Philadelphia National Bank. This application may be inspected at the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, May 10, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11809 Filed 5-15-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate two information collections which have expired.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: See below.

SUPPLEMENTARY INFORMATION:

1. Purpose

a. *Household Goods Shipment Report.* This collection is used to monitor and control the performance of household goods carriers and by agencies to select carriers for future Government household shipments. Respondents and responses 5,000 each; hours 1,666. Contact John Millington, Office of Transportation (703-557-1256).

b. *Transportation Discrepancy Report.* This collection provides data on loss, damage, or other discrepancies occurring during transportation of Government freight and is used in support of claims filed against commercial transportation companies. Respondents, responses and hours 10,800 each. Contact: Raymond Price, Office of Transportation (703-557-1256).

c. *Copies of proposals.* Copies of these proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, DC, 20405 (202-566-0666).

Dated: May 9, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-11820 Filed 5-15-85; 8:45 am]

BILLING CODE 6820-24-M

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise a system of records that will be maintained by GSA. The system of records, Travel Charge Card Program, GSA/GOVT-3, is revised to include travelers who do not have an individual charge card but use a "Government Travel System account number" to pay for their transportation expenses. No additional information or routine uses are created. As no new information is being collected by GSA, the proposed amendment is not considered as being within the purview of the provisions of 5 U.S.C. 552(o) which would require submission of an altered report to Congress and the Office of Management and Budget.

DATE: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble in one system information to provide Government agencies with (1) necessary information on the commercial travel and transportation payment and expense control system which provides travelers charge cards and the agency an account number for official travel and related travel expenses on a worldwide basis, (2) attendant operational and control support, and (3) management information reports for expense control purposes.

The revised system of records is as follows:

GSA/GOVT-3

SYSTEM NAME:

Travel Charge Card Program.

SYSTEM LOCATION:

This system of records is located in the finance office of the local installation of the Department or Agency which the individual travelled. Records necessary for the contractor to perform under the contract are located at the contractor's facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees who have their own Government assigned charge card and all other Federal employees and authorized individuals using the GTS account number who are all on travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, address, social security number, employment information, telephone numbers, information needed for identification verification, travel authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for use of charge cards, and monthly reports from contractor(s) showing charges to individual account numbers, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707 and implementing Federal Travel Regulations, FPMR 101-7.

PURPOSE(S): To assemble in one system information to provide Government agencies with (1) necessary information on the commercial travel and transportation payment and expense control system which provides travelers charge cards and the agency an account number for official travel and related travel expenses on a worldwide basis, (2) attendant operational and control support, and (3) management information reports for expense control purposes.

THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made in behalf of a constituent.

c. To disclose information to the contractor in providing necessary information for issuing credit cards.

d. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to officials of labor organizations recognized under Pub. L. 95-454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.

g. To disclose information to a Federal agency for accummulating reporting data and monitoring the system.

h. To disclose information in the form of listings, reports, and records of all common carrier transactions including refunds and adjustments to GSA by the contractor to enable audits of carrier charges to the Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders. Computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed by name, Social Security Number, and/or credit card number.

SAFEGUARDS:

Paper records stored in lockable file cabinets or secured rooms. Computerized records protected by use of access codes and entry logs. There is restricted access to credit card account numbers.

RETENTION AND DISPOSAL:

Records are kept for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Transportation Office of Federal Supply and Services, General Services Administration (FT), Crystall Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

NOTIFICATION PROCEDURES:

Inquiries by individuals should be addressed to the agency Finance Officer for which they travelled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the agency Finance Officer for which they travelled. Individuals must furnish their full name and the authorizing department or agency and component of their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the agency Finance Officer for which they travelled. Individuals must furnish their full name and the authorizing agency and component for which the individual travelled.

RECORD SOURCE CATEGORIES:

Charge card applications, monthly reports from the contractor, travel authorizations and vouchers, and data interchanged between agencies.

Dated: May 8, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-11863 Filed 5-15-85; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH Board of Scientific Counselors; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors.

Date: June 4-5, 1985.

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

Time and Type of Meetings: Closed 9:00 a.m. to 5:00 p.m., June 4, 1985. Open 9:00 a.m. to 3:00 p.m., June 5, 1985.

Contact Person: Elliott S. Harris, Ph.D., Executive Secretary, NIOSH Board of Scientific Counselors, NIOSH, CDC, Building 1, Room 3007, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Phone: Commerical—404/329-3773, FTS—236-3773.

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research as related to the Institute's goals.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, and future meeting dates. Beginning at 9 a.m. through 5 p.m., June 4, the site visit teams will discuss their review and evaluation of NIOSH intramural programs and projects conducted by NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chair and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation through the Executive Secretary to the Chair. At the discretion of the Chair, and as time permits, appropriate questions will be asked of the speakers.

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: May 8, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-11787 Filed 5-15-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85F-0092]

Squirt & Co.; Filing of Food Additive Petition

Correction

In FR Doc. 85-7765, appearing on page 13084, in the issue of Tuesday, April 2, 1985, make the following correction:

In the second column, the tenth line should read:

(1-methyl *N*-l-α-aspartyl-l-

BILLING CODE 1505-01-M

Health Resources and Services Administration

Public Health Service; Fiscal Year 1985 Funding Preference for Grants for Geriatric Education Centers

The Bureau of Health Professions, Health Resources and Services Administration, announces the final funding preference which will govern the distribution of grant awards for Grants for Geriatric Education Centers authorized by section 788(b) of the PHS Act, as amended.

A proposed funding preference was published for public comment in the **Federal Register** of March 8, 1985 (50 FR 9522) and three comments were received. Each commenter endorsed the multidisciplinary approach of the Geriatric Education Center programs, and two recommended changes for consideration.

One respondent recommended deletion of the language requiring that one of four health professions receiving faculty or student training through the proposed project be allopathic or osteopathic medicine. The Department does not intend in the funding preference to give undue emphasis to any one profession but believes that expressed congressional interest in geriatric medical education and the need for faculty with geriatric skills and knowledge can be addressed most effectively by multidisciplinary efforts that include allopathic or osteopathic medicine.

The second respondent questioned whether the Geriatric Education Center model addresses adequately the need for geriatric training in podiatry. It was noted that the inclusion of podiatry is at the discretion of the applicant, and the geographic distribution of colleges of podiatric medicine limits their participation because of the regional focus of Geriatric Education Centers. A specific funding allocation for podiatric faculty development was recommended along with a direct requirement for inclusion of podiatric medicine in the development of Geriatric Education Centers.

The Department believes funds available for Geriatric Education Centers in Fiscal Year 1985 should be used to develop multidisciplinary centers, each with the potential to further geriatric education in a number of different health professions. Applications are invited from all types of health professions schools, including colleges of podiatric medicine. However, requiring participation of podiatric

medicine in every Geriatric Education Center does not appear to be workable.

Final Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, preference will be given to applications which satisfactorily address all three of the program priorities listed below. All applications, however, will be reviewed and given consideration for funding.

(1) Projects which will train faculty or students from four health professions, one of which is allopathic or osteopathic medicine. The additional three or more professions proposed shall be designated from among the following:

a. Allied health professions which provide direct patient care services;

b. Dentistry;

c. Nursing;

d. Optometry;

e. Pharmacy;

f. Podiatry;

g. Appropriate public or community health specialities.

(2) Projects which currently have or plan to provide for a high degree of areawide collaboration as evidenced by:

a. Significant multidisciplinary health care educational activities;

b. Letters of agreement or assurance among participating entities, such as professional schools, teaching facilities and other clinical sites, professional associations, and State and local health agencies; and

c. Organizational or other arrangements for participation by the social and behavioral science disciplines.

(3) Projects which during the first year will initiate a training program for health professions schools and programs outside the applicant organization. This program must provide during the first year a minimum of at least 20 weeks of training among at least six faculty. The applicant must demonstrate the availability of resources to initiate such training.

Dated: May 13, 1985.

Robert Graham, M.D.

Administrator, Assistant Surgeon General.

[FR Doc. 85-11851 Filed 5-15-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Public Information Plan on Lead Poisoning in Waterfowl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: In recent months, States, conservation organizations, ammunition companies, sportsmen, and others ahve been consulted to determine what actions should be taken to resolve the lead poisoning/nontoxic shot issue. One recommendation resulting from this consultative process was that the Department of the Interior develop and implement an objective public information plan. Such a plan has now been prepared and is titled the "Lead Poisoning Public Information Plan." The major goals of this plan are:

1. To reach waterfowl hunters in all four Flyways with information on lead poisoning, including the scientific basis for Federal and State decisions to require use of nontoxic shot in designated areas;

2. To accomplish these information objectives in cooperation with the States, private sportsmen's and conservation organizations, ammunition manufacturers and associated businesses, and other interested parties.

The purpose of this notice is to announce the availability of the "Lead Poisoning Public Information Plan."

DATE: Copies of the plan may be requested at any time.

FOR FURTHER INFORMATION CONTACT: Phil Million, Assistant Director—Public Affairs, Department of the Interior, Fish and Wildlife Service, 18th & C Streets, NW., Room 3240, Washington, D.C. 20240. Phone: 202/343-5634.

Dated: April 19, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-11829 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[F-14838-A]

Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Bethel Native Corporation for approximately 70 acres. The lands involved are within U.S. Survey No. 4000, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 17, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11854 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-84-M

[AA-55021]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), and sec. 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611, will be issued to Cook Inlet Region, Inc., for approximately 9.47 acres. The lands involved are in:

U.S. Survey No. 7410, Alaska, lot 4, situated on the right bank of the Naknek River approximately 5 miles southeasterly from the village of King Salmon, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 17, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the

requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11853 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-JA-M

[C-41127; 4310-JB 5-00258-GP5]

Colorado; Invitation for Coal Exploration License Application; Western Fuels-Utah, Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Western Fuels-Utah, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

Township 2 North, Range 100 West, 6th P.M.

Sec. 6, lots 8 to 14, 17 to 19, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, SW¼SE¼.

Township 2 North, Range 101 West, 6th P.M.

Sec. 1, lots 1, 2, 5 to 7, S½NE¼, N½SE¼.

Township 3 North, Range 100 West, 6th P.M.

Sec. 31, lots 5 to 8, E½, E½W½.

Township 3 North, Range 101 West, 6th P.M.

Sec. 36, N½, N½S½, S½SE¼.

The application for coal exploration license is available for public inspection during normal business hours under serial number C-41127 at the BLM Colorado State Office, Public Room, 1037 20th Street, Denver, Colorado and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and must be received by them within thirty (30) days after the publication of this Notice of Invitation in the **Federal Register**:

Chief, Mineral Leasing Section, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and

Mr. Don L. Deardorff, Manager, Engineering and Exploration, Western Fuels-Utah, Inc., 405 Urban St., Ste. 305, Lakewood, Colorado 80228

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85-11821 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-JB-M

[5-00251]

Salt Lake District; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that the Salt Lake District Grazing Advisory Board will be meeting and touring public lands on June 4 and 5, 1985.

The Board will meet at 8:00 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah. The board will then depart for a tour of public lands in Tooele County. The night of June 4, 1985, a business meeting will be held at 7:30 p.m. at Vernon BLM field camp.

The purpose of the tour and meeting will be to: (1) Review implementation efforts of the Tooele Grazing E.I.S.; (2) review range improvements projects; and (3) review status of the Box Elder RMP/EIS.

The meeting is open to the public and interested persons may make oral statements at the business meeting at Vernon between 7:00 and 7:30 p.m., or file a written statement for the Board's consideration.

Persons wishing to make statements to the Board are requested to contact Glade Anderson at 524-5348 prior to May 30, so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade Anderson, Supervisory Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 300 West, Salt Lake City, Utah 84119, (801) 524-5348.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 85-11822 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-DQ-M

Field Tour, Vale District Advisory Council and Grazing Advisory Board

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that the Vale District Advisory Council and Grazing Advisory Board will conduct a field tour on June 11 and 12, 1985. The Advisory Council and Grazing Advisory Board will examine riparian management areas and wilderness study areas in the district's Northern and Southern Resource Areas.

ADDRESS: The field tour will begin at 9:00 a.m. from the Vale District Office, 100 Oregon Street, Vale, OR 97918. Interested persons are invited to attend but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Vale District Office, 503-473-3144.

George D. House,

Acting Vale District Manager.

[FR Doc. 85-11802 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-33-M

(NM-52382)

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 7,243.85-acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of July 17, 1908, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land is described as follows:

New Mexico Principal Meridian

T. 8 S., R. 2 W.,
Sec. 20, lot 1, SE¼NE¼, NE¼SE¼.

T. 9 S., R. 3 W.,
Sec. 1, lots 1, 2 SW¼NE¼, NE¼SW¼, SW¼SW¼;
Sec. 11, SW¼NE¼,NE¼SE¼;
Sec. 12, NW¼NW¼
Sec. 14, SW¼SE¼
Sec. 23, SW¼SW¼
Sec. 26, NW¼NW¼
Sec. 27, SE¼NE¼, W½SE¼

Sec. 33, S½NE¼, SE¼SW¼, N½SE¼, SW¼SE¼:
Sec. 34, W½NE¼, NW¼.
T. 10 S., R. 3 W.,
Sec. 4, lots, 3, 4., SW¼NW¼;
Sec. 5, SE¼NE¼, NE¼SE¼;
Sec. 8, SE¼NE¼, E½SE¼:
Sec. 17, NE¼, S½SW¼, NW¼SE¼;
Sec. 19, SE¼NE¼, E½SE¼;
Sec. 20, NW¼NW¼, NW¼SW¼:
Sec. 22, lots 2, 3;
Sec. 28, S½SW¼:
Sec. 29, NW¼SW¼;
Sec. 30, E½E½, SW¼SE¼;
Sec. 31, NE¼;
Sec. 32, SW¼NW¼, E½SW¼;
Sec. 33, NW¼, N½SW¼, SW¼,SW¼.
T. 11 S., R. 3 W.,
Sec. 4, lot 4, SW¼NW¼, W½SW¼;
Sec. 5, lot 4, SE¼NW¼, NE¼SW¼:
Sec. 7, E½W½, SE¼SE¼;
Sec. 8, SE¼NE¼, W½SE¼;
Sec. 9, W½NW¼;
Sec. 17, W½E½;
Sec. 18, lot 3, NE¼NE¼, W½NE¼, E½NW¼, NE¼SW¼;
Sec. 20, W½NE¼, SE¼NW¼, NE¼SW¼;
Sec. 21, SW¼;
Sec. 28, NE¼NW¼, E½SW¼;
Sec. 30, SE¼SE¼:
Sec. 31, lot 1;
Sec. 33, NE¼NE¼, S½NE¼:
Sec. 34, lots 1 thru 4.
T. 12. S., R. 3 W.,
Sec. 3, lots 1,2,3;
Sec. 6, lots 6,7, E½SW¼, W½SE¼;
Sec. 7, lots 1 thru 4, E½W½, W½E½, NE¼SE¼;
Sec. 10, lots 3,4;
Sec. 15, lot 1;
Sec. 18, lots 3,4,5, NW¼NE¼, NE¼NW¼.
T. 11 S., R. 4 W.,
Sec. 13, SW¼SW¼;
Sec. 24, E½SW¼:
Sec. 25, W½E½, E½W½, SE¼SE¼;
Sec. 35, E½SW¼;
Sec. 36, NE¼NE¼, W½NE¼, E½NW¼, SW¼.
T. 12 S., R. 4 W.,
Sec. 1, lots 2,3,4, S½N½, SE¼:
Sec. 2, lot 1;
Sec. 12, NE¼NE¼.

The area described aggregates 7,243.85 acres.

The purpose of the withdrawal is for use in connection with the Rio Grande Project, Elephant Butte Dam and Reservoir. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 6, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-11795 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-FB-M

[5-00262-GP5-073]

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 32 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation. The lands involved are within the Tongass National Forest.

Serial No.	Land description	Approximate acreage
AA-10440	T. 79 S., R. 96 E., CRM, a portion of Sec.19.	12.75
AA-10441	T. 79 S., R. 94E., CRM, a portion of sec. 17.	22 5
AA-10443	T. 82 S., R. 98 E., CRM, a portion of sec. 11.	11.4
AA-10457	T. 77 s., R. 83 E., CRM, a portion of sec. 19.	0.31
AA-10502	T. 49 S., R. 58 E., CRM, a portion of sec. 22.	3.5
AA-10523	T. 42 S., R. 63 E., CRM, a portion of sec. 20.	4.0

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until June 17, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Secton Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11855 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-10-JA-M

[F-14895-A; 5-000262-GP5-025]

Alaska Native Claims Selection; NIMA Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Nima Corporation for approximately 1.57 acres. The lands involved are in the vicinity of Mekoryuk, within U.S. Survey No. 4051.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE TUNDRA DRUMS. Copies of decision may be obtained by contracting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until June 17, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49, FR. 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11856 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-JA-M

[5-00252-GPS-100]

Albuquerque District, NM; Intent To Prepare Resource Management Plan and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare resource management plan.

SUMMARY: The Bureau of Land Management, Farmington Resource Area, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The plan will guide and control future management actions on approximately 3.0 million acres of public land and mineral resources by the BLM's Farmington Resource Area. The code of Federal Regulations, Title 43, Subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in June of 1985.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until July 29, 1985.

ADDRESS: Send comments to: BLM, Farmington Resource Area, RMP Team Caller Service 4104, Farmignton, NM 87499.

FOR FURTHER INFORMATION CONTACT: Mat Millenbach, Area Manager, or Doug Burger, RMP Team Leader, Farmington Resource Area, (505) 325-3581.

SUPPLEMENTARY INFORMATION: The planning area will include the public land and federal mineral ownership in all or parts of Rio Arriba, San Juan, Mckinley and Sandoval Counties. This encompasses approximately 1.5 million acres of BLM-administered surface and 3.0 million acres of Federal minerals under Federal, state, or private surface in the four-county area. Anticipated issues to be addressed during development of the RMP include, but are not limited to, the following: (1) Which lands in the Farmington Resource Area could be transferred to other than BLM administration or may require further study and which lands would be beneficial to BLM programs if acquired; (2) what are the correct levels of vegetative use for livestock, wildlife, and watershed protection; (3) what public land, if any, should be designated as open, restricted, or closed to motorized vehicle access; (4) what additional lands should be further considered for competitive coal leasing (a call for coal resource information will be published in an up-coming **Federal Register;** (5) what public lands require special management practices to ensure conservation of a specific resource; and (6) which areas should be either closed to fuelwood collection or intensively managed for the fuelwood resources. These preliminary issues are not final and may be further refined by direct input through active public participation. The RMP will be developed by an interdisciplinary team, using representation from the team leader, technical coordinators, range conservationists, realty specialists, a wildlife biologists, a geologist, and an outdoor recreation planner, with additional technical support to be provided by other specialists as needed.

A comprehensive public participation plan has been prepared. It is intended to invlove interested or affected parties early and continuously throughout the planning process. An individual may protest approval of a Proposed Plan only with respect to those items submitted in writing to the District Manager during the planning process. The plan emphasizes localized one-to-one contacts, media coverage, direct mailings, and continual coordination with local, state, and other federal agencies. Meetings to determine the scope of the RMP and to obtain input on issues and planning criteria will be held in Farmington, Grants, Crownpoint, and Cuba, New Mexico at the following times and locations.

June 20, 1985, 7:00 p.m., Grants Holiday Inn
June 21, 1985, 10:00 a.m., Crownpoint, Navajo Skill Center
June 24, 1985, 7:00 p.m., Farmington Civic Center
June 25, 1985, 7:00 p.m., Cuba Municipal Complex

Complete records of all phases of the planning process will be available for public review at the Farmington Resource Area Office throughout development of the RMP. Draft and final documents will be published.

Dated: May 7, 1985.

Bill J. Warner,

Acting State Director.

[FR Doc. 85 11861 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-FB-M

[C-6-85]

California; Filing of Plat of Survey

May 8, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Diego County

T. 14 S., R. 1 E.

2. This supplemental plat of the W½ of sec. 27, T. 14 S., R. 1 E., San Bernardino Meridian, California, was accepted April 10, 1985.

3. This supplemental plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-11878 Filed 5-15-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 775]

California; Filing of Plat of Survey

May 8, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Amador County

T. 7 N., R. 14 E.

2. This plat, representing the dependent resurvey of portions of the east and west boundaries and a portion of the subdivisional lines, and the survey of the subdivision of sections 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, and 20, T. 7 N., R. 14 E., Mount Diablo Meridian, under Group No. 775, California, was accepted April 8, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–11879 Filed 5–15–85; 8:45 am]

BILLING CODE 4310–40–M

Montrose District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of Public Law 94–579 and 43 CFR Part 1784, that a meeting of the Montrose District Advisory Council will be held in Gunnison, Colorado.

DATE: Thursday, June 20, 1985, 9:30 a.m. at the DOE uranium mill tailings site for a field tour and 1:00 p.m. at the Gunnison Resource Area Office conference room, 216 North Colorado, Gunnision, Colorado. Requests to persent oral comments must be received by June 17, 1985.

ADDRESS: Submit requests to comment or for further information to: District Manager, Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, (303) 249–7791.

SUPPLEMENTARY INFORMATION: All meetings of the Advisory Council are open to the public. Interested persons may file written statements prior to the meeting or make oral statements to the Council between 1:15 and 1:45 p.m. Members of the public wishing to participate in the tour must provide their own transportation.

The agenda will include:

1. Tour of uranium mill tailings site and alternate disposal sites.
2. Election of officers.
3. Discussion of uranium mill tailings remedial action plans and recommendations by the Council.
4. Presentation of the San Juan/San Miguel RMP decision summary.
5. Uncompahgre RMP update including issues and criteria.

Dated: May 10, 1985.

Paul W. Arrasmith,

District Manager.

[FR Doc. 85–11877 Filed 5–15–85; 8:45 am]

BILLING CODE 4310–JB–M

Oregon: Burns District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Advisory county meeting.

SUMMARY: In accordance with Pub. L. 92–463 this notice sets forth the meeting schedule and two-day tour of the Burns District Advisory Council in Harney County, Oregon.

DATE: June 20 and 21, 1985.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720—Telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: This meeting will be in the form of a field orientation tour of proposed Wilderness Areas in the Three Rivers and Andrews Resource Areas.

The two-day tour will begin at the Burns District Office, located at the above address, at 8:00 A.M. on Thursday, June 20, 1985.

An informal meeting will be held that same evening, at the BLM Field Camp in Fields, Oregon to discuss the USFS/BLM Interchange Proposal, Grazing Fee & Sub-leasing Issue and Oregon's Wilderness Program.

The tour and meeting are open to the public, however, transportation for the public will not be provided. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address prior to June 14, 1985. Written statements must also be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: May 6, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85–11880 Filed 5–15–85; 8:45 am]

BILLING CODE 4310–33–M

[A–18416–C; 5–00261]

Navajo Relocation Exchange, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Designating Public Lands for Transfer out of Federal Ownership in Exchange for Private Lands Selected by the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provision of Sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C., 640d–10 and 25 U.S.C. 640d–26, the Navajo Tribe filed a selection application on June 30, 1983, for private lands in Apache County, Arizona, to be obtained by exchange for public lands. Interest has been expressed by the private landowners to select the following public lands for part of the compensation for the lands selected by the Navajo Tribe:

Gila and Salt River Meridian Arizona

Maricopa County

Township 4 N., Range 1 E.,
Sec. 3: lots 1–4, Incl., lots 11–20, Incl., S½NE¼, NE¼SE¼—440.484 acres.
Township 5N., Range 1 E.,
Sec. 33: N½NE¼—80.000 acres.
Sec. 34: NE¼NE¼NE¼NE¼, E½NW¼NE¼NE¼NE¼, SW¼NW¼NE¼NE¼NE¼, SE¼NE¼NW¼NE¼NE¼, W½NE¼NW¼NE¼NE¼, NW¼NW¼NE¼NE¼, S½N½NE¼NE¼, S½NE¼NE¼, W½ NE¼, SE¼NE¼, W½, W½ E¼, W½E½SE¼, NE¼NE¼SE¼, N½NE¼SE¼NE¼SE¼, SW¼NE¼SE¼NE¼SE¼, W½SE¼NE¼SE¼, W½SE¼SE¼NE¼SE¼, W½NE¼NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, SE¼SE¼SE¼—635.625 acres.

Comprising 1156.109 acres, more or less in Maricopa County.

In accordance with the regulations in 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing law or Geothermal Steam Act.

The Segregation of the above-described lands shall terminate upon issuance of a document of conveyance to such lands to the private landowners or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Inquiries, comments and protests to the Notice should be addressed to either the Chief, Branch of Lands and Recreation, Bureau of Land Management, Arizona State Office, 3707 North 7th Street, Post Office Box 16563, Phoenix, Arizona 85011 or the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 10, 1985.

Barry D. Stallings,

Acting District Manager.

[FR Doc. 85–11968 Filed 5–15–85; 8:45 am]

BILLING CODE 4310–32–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-254)]

Burlington Northern Railroad Co., Abandonment—in Kandiyohi County, MN; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 17.44-mile rail line between Hawick (milepost 35.66) and Willmar (milepost 53.10) in Kandiyohi County, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Byne,

Secretary.

[FR Doc. 85-11814 Filed 5-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30618]

New England Southern Railroad Co., Inc.—Lease and Operation Exemption—Boston and Maine Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343(a)(2), the lease and operation by New England Southern Railroad Co., Inc., of certain trackage of Boston and Maine Corporation (B&M), referred to as the "New Hampshire Lines", including (1) the portion of the main line between milepost B56.00, near Manchester, NH, and milepost B80.68, near Penacook, NH; (2) a portion of the Concord-Lincoln line beginning at the switch with the New Hampshire main line in Concord at milepost B73.72 and extending to milepost 1.17; (3) a 0.49-mile segment of the former Claremont and Concord Railroad line from the switch in Concord at valuation station 1039+42.15 to valuation station 41+98; and (4) one track in the B&M yard at Manchester for interchange purposes. The total mileage will be approximately 27 miles.

DATES: This exemption will be effective on June 17, 1985. Petitions to stay must be filed by May 20, 1985, and petitions for reconsideration must be filed by June 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30618 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioners' representatives:

James E. Howard, One Boston Place, Suite 3210, Boston, MA 02108

Keith G. O'Brien, 1729 H Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commissions decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 26, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression. Commissioner Simmons did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-11813 Filed 5-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-10 (Sub-30X)]

Wabash Railroad Co. and Norfolk and Western Railway Co.; Abandonment and Discontinuance of Service Exemption—in La Salle, Livingston, and Kankakee Counties, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Wabash Railroad Company (Wabash) and Norfolk and Western Railway Company (N&W) from 49 U.S.C. 10903, *et seq*, in connection with the abandonment by Wabash of a 2.72-mile line of railroad between Clay and Streator, IL, and the discontinuance by N&W of trackage rights over the Wabash line and over 31.9 miles of the line of Consolidated Rail Corporation between Streator and Reddick, IL, subject to standard employee protective conditions.

DATES: This exemption will be effective on June 17, 1985. Petitions to stay must be filed by May 20, 1985, and petitions for reconsideration must be filed by June 5, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-10 (Sub-No. 30X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representative: Angelica D. Lloyd, 204 S. Jefferson Street, Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Rom 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: May 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-11815 Filed 5-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Dupont Pharamaceuticals

By Notice dated January 22, 1985, and published in the **Federal Register** on January 30, 1985 (50 FR 4282), Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	[illegible]
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant

Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 1, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11860 Filed 5-15-85; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; MD Pharmaceutical, Inc.

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 14, 1984, MD Pharmaceutical Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphendate (1724)	II
Diphenoxylate (9170)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must filed no later than June 17, 1985.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 9, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11859 Filed 5-15-85; 8:45 am]

BILLING CODE 4410-09-M

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Department of Justice, Bureau of Prisons.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published int he **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prison institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions and is designating a new Federal Correctional Institution at Phoenix, Arizona. The institution is scheduled for formal dedication during May 1985.

FOR FURTHER INFORMATION CONTACT: Milk Pearlman, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534 (202-272-6874).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexiblity Act, 5 U.S.C. 601(2), or Executive Order No. 12291, section 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 4001, 4003, 4042, 4081, and 4082 and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Alderson, West Virginia;
(2) Asland, Kentucky;
(3) Bastrop, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut;
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Fort Worth, Texas;
(9) La Tuna, Texas;
(10) Lexington, Kentucky;
(11) Loretto, Pennsylvania;
(12) Memphis, Tennessee;
(13) Milan, Michigan;
(14) Morgantown, West Virginia;
(15) Otisville, New York;
(16) Oxford, Wisconsin;
(17) Petersburg, Virginia;
(18) Phoenix, Arizona;
(19) Pleasanton, California;
(20) Ray Brook, New York;
(21) Safford, Arizona;
(22) Sandstone, Minnesota;
(23) Seagoville, Texas;
(24) Talladega, Alabama;
(25) Tallahassee, Florida;
(26) Terminal Island, California; and
(27) Texarkana, Texas.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Allenwood, Pennsylvania;
(2) Big Spring, Texas;
(3) Boron, California;
(4) Duluth, Minnesota;
(5) Eglin Air Force Base, Florida; and
(6) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York;
(4) San Diego, California; and
(5) Tucson, Arizona.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

Dated: May 13, 1985.

C.A. Turner,

Acting Director, Bureau of Prisons.

[FR Doc. 85-11898 Filed 5-15-85; 8:45 am]

BILLING CODE 4410-05-M

LEGAL SERVICES CORPORATION

Announcement of Transfer of Funds for the Provision of Legal Services in the State of Ohio

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project the Corporation shall announce publicly . . . such grant, contrct or project . . ."

The Legal Services Corporation (LSC) hereby publicly announces the transfer of responsibility of the LSC grant for legal services to eligible clients residing in the Ohio counties of Ashland, Crawford, Cuyahoga, Geauga, Labe, and Richland from the Council for Economic Opportunity in Greater Cleveland to the Legal Aid Society of Cleveland. Both programs are located in the city of Cleveland, Ohio.

DATE: All comments related to this action must be received by the Office of Field Services on or before June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation 733, Fifteenth Street NW., Washington, D.C. 20005, (202) 272-4080.

SUPPLEMENTARY INFORMATION: Since the inception of the LSC grant in 1975, the Council for Economic Opportunity in Greater Cleveland has subcontracted the provision of legal services work to the Legal Aid Society of Cleveland. All parties mutually agree that beginning in grant year 1985 the LSC grant will be made directly to the Legal Aid Socity of Cleveland. The annualized level of Legal Services Corporation's funding for this service area is $1, 686,989 for calendar year 1985.

All groups and persons interested in submitting comments related to this transfer should submit such to the Legal Services Corporation, Grants Assistant, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street NW., Washington, D.C. 20005, within thirty (30) calendar days of publication of this notice.

Dated: May 10, 1985.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-11850 Filed 5-15-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-29]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Form Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by May 28, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: Patent License Report
OMB Number: 2700-0010
Type of Request: Extension
Frequency of Report: Annually
Type of Respondent: Businesses or other for-profit, small businesses or ogranizations
Annual Responses: 600
Annual Burden Hours: 300

Abstract-Needs/Uses: NASA grants licenses to commercial firms for commerical use of NASA inventions. This report is obtained annually from the licenses to determine what commercial use is being made of the inventions.

Title: Aerospace Technologist (AST) Supplemental Qualifications Statement
OMB Number: 2700-0031
Type of Request: Revision
Frequency of Report: On Occasion
Type of Respondent: Individuals or households
Annual Responses: 400
Annual Burden Hours: 400

Abstract-Needs/Uses: In order for NASA to select the best qualified candidates for Aerospace Technologist positions we must ask applicants to provide information concerning their knowledge, skills, abilities and other characteristics related to the positions applied for. The qualifications were developed and recently revised under OPM Uniform Guidelines On Employee Selection Procedures.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-11793 Filed 5-15-85; 8:45 am]

BILLING CODE 5710-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts and Visual Arts Ad Hoc Planning; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts and Visual Arts Ad Hoc Planning Meeting to the National Council on the Arts will be held on May 20, 1985 from 9:30 am-2:00 pm at the Cooper Union School, President's Office, Cooper Square, 4th Avenue and 8th Street, New York, NY.

This meeting will be open to the public on a space available basis. This is a jointly appointed group to discuss public space design with professionals in the Visual and Design Arts fields.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-11846 Filed 5-15-85; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translation Fellowships) to the National Council on the Arts will be held on June 6-7, 1985 from 9:00 am—5:30 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of the meeting will be open to the public on June 7, 1985 from 4:00-5:30 pm to discuss policy.

The remaining sessions of this meeting on June 6, 1985 from 9:00 am-5:30 pm and on June 7, 1985 from 9:00 am-4:00 pm are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 9, 1985.

[FR Doc. 85-11882 Filed 5-15-85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge Section) to the National Council on the Arts will be held on June 4-5, 1985 from 9:00 am—5:30 pm in Room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 9, 1985.

[FR Doc. 85-11881 Filed 5-15-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

Union Electric Co. (Callaway Plant, Unit 1); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by Petition dated March 25, 1985, Alan S. Nemes, Esq., on behalf of Kay Drey and the Missouri Coalition for the Environment, requesting that an order be issued to the Union Electric Company to show cause why the operating license for the Callaway Plant should not be suspended or revoked pending an investigation of the issues described in the Petition, and why the other actions requested therein should not be taken. The issues raised in the petition pertain primarily to the qualification of construction and operations quality assurance personnel. The petition is being handled pursuant to 10 CFR 2.206 and accordingly, appropriate action will be taken on the Petition within a reasonable time.

Copies of the Petition are available for public inspection in the Commission's public document room at 1717 H Street, NW., Washington, DC, 20555 and in the local public document for the Callaway Plant, located at the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, MO, 63130.

Dated at Bethesda, Maryland, this 10th day of May, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-11913 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Availability of the Final Environmental Statement for Nine Mile Point Nuclear Station, Unit 2

Notice is hereby given that the Final Environmental Statement (NUREG-1085) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Nine Mile Point Nuclear Station, Unit 2 on the southeast shore of Lake Ontario in the town of Scriba, Oswego Count, New York.

Copies of NUREG-1085 are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555, and at the Pennfield Library, State University College, Oswego, New York 13126. The document is also being made available at the State Clearinghouse, New York State Division of the Budget, State Capitol, Albany, New York 12224. The Notice of availability of the Final Environmental Statement for Nine Mile Point Nuclear Station, Unit 2 and request for comments were published in the **Federal Register** on August 17, 1984 (49 FR 32920). The comments received from Federal, State and local agencies and from interested members of the public have been included in the appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-1085) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or may be ordered by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Document, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland this 9th day of May 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-11911 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-396]

Notice of Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-123, University of Virginia

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-123 for the University of Virginia CAVALIER training reactor located on the campus in Charlottesville, Virginia.

The amendment will renew the Operating License for a period of twenty years from its date of issuance, in accordance with the licensee's application dated June 22, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on August 2, 1984, at 49 FR 31017, as corrected August 15, 1984 at 49 FR 32696. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment, dated May 1, 1985, for this action and has concluded that it will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts as Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1974. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the University of Virginia CAVALIER training reactor for an additional twenty years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to suport a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) Even after prolonged operation at a power level of 100 watts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of collant, and

(c) The hypothetical loss of integrity of a fueled experiment will not lead to radiation exposures in the unrestricted environment that exceed the guideline values of 10 CFR 20.

For further details with respect to this proposed action, see the application for license renewal dated June 22, 1984, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG-1119). These documents and this Notice of Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTENTION: Director, Division of Licensing.

Copies of NUREG-1119 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 10th day of May 1985.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Acting Assistant Director for Safety Assessment Division of Licensing.

[FR Doc. 85-11912 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning Proceeding)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Order; Reopened Hearing

Notice is hereby given, pursuant to the Order of the Licensing Board of May 6, 1985, that the reopened hearing on Contention 24.0 will commence at 9:30 a.m. o'clock, local time, on June 4, 1985, in the Court of Claims, State of New York, State Office Building, Veterans Memorial Highway, Hauppauge, New York.

It is so Ordered.

Dated at Bethesda, Maryland this 10th day of May, 1985.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 85-11909 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289-SP]

Restart Remand on Management; Metropolitan Edison Co. et al. (Three Mile Island Nuclear Station, Unit 1); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordancce with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this restart proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Gary J. Edles, Chairman
Dr. W. Reed Johnson
Christine N. Kohl

Dated: May 9, 1985.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-11910 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co. (Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2); Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-42 and DPR-60 which authorize operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and

Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Goodhue County, Minnesota.

II

By letters dated December 21, 1984 and January 30, 1985, the licensee requested an exemption from the schedular requirements of 10 CFR 50.48(c), which establishes deadlines for the completion of fire protection modifications required by Appendix R to 10 CFR Part 50. Specifically, the licensee requested that the current deadline of December 31, 1984 for the installation of one-hour barriers pursuant to section III.G.2(c) and the exemption issued by letter dated April 26, 1984, be extended to June 1, 1985, for both Prairie Island units. The request applies to Fire Areas 31, 32, 58, 59, 73 and 74, in which areas certain shutdown-related cables are being wrapped to provide the requisite one-hour barrier.

III

The licensee states that the installation of cable wrapping in these fire areas is the only remaining Appendix R modification for the Prairie Island units. In the fire areas mentioned, all other Appendix R measures have been taken to the extent required, i.e., suppression and detection capabilities. Specifically, in Fire Areas 31 and 32 the shutdown related systems are protected by automatic fire detection and fire suppression systems. If a fire should occur in these areas, it would be detected in its initial stages and suppressed by the suppression systems to allow time for the fire brigade to attend the fire during its infancy, before significant propagation occurs. If a rapid temperature rise occurs before the arrival of the fire brigade, the fire suppression system would actuate to control the fire and protect the shutdown systems. We therefore have reasonable assurance that, pending completion of the licensee's Appendix R related modification, a fire in either of these two areas will not result in disabling the shutdown systems to the extent that the safe shutdown could not be achieved and maintained.

In the remaining areas (i.e., 58, 59, 73, and 74) that do not have a fire suppression system, the licensee committed by letter dated January 30, 1985 to implement a roving fire watch patrol in the remaining fire areas for which the schedular relief has been requested. The fire watch will continue until all fire protection related work associated with Appendix R has been completed. The routing of the fire watch will be established so that the patrol observes each area at a frequency of about every 20 minutes to ensure that a fire could not damage redundant safe shutdown related equipment. If a fire were to occur, the control room will be immediately notified and the fire brigade response initiated. Pending the arrival of the fire brigade, the fire watch patrol will be trained in the proper use of portable fire extinguishers in suppressing the fire before significant damage could occur. On this basis, if a fire would occur within an area provided with a fire watch, there is reasonable assurance that it will be detected in its incipient stage before significant flame or temperature rise occurs.

The licensee's efforts to complete the one-hour barrier installation have been delayed somewhat by the late delivery of wrapping material and unforeseen interface problems between environmental qualification work going on at the same time as Appendix R efforts were being planned. The delay in material delivery was due to the large influx of orders which the manufacturer received after approval of the material by the NRC staff. A design hold was placed on the associated cable wrapping in Fire Areas 31 & 32 until the potential issue of relocating the auxiliary feedwater pumps related to environmental qualification was resolved.

The only remaining activity in fire protection at the Prairie Island Nuclear Generating Plant is the installation of the cable wrapping in the affected fire areas. Moreover the staff has judged that the delays encountered by the licensee were unforeseen and could not be avoided. In addition, the interim compensatory measures committed to by the licensee for the extended period will result in maintaining an adequate level of safety that is equivalent to that intended by Appendix R.

The staff finds that the licensee has proceeded diligently to implement Appendix R at the Prairie Island units and that the fire protection measures required by Appendix R have been installed with the sole exception of the cable wrap for which the extension is requested. Under these circumstances, the public health and safety will not be adversely affected by the extension of the deadline for a period of 5 months, especially considering that the work will be accomplished steadily throughout this period.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the requirements of subsection III.G. of Appendix R to 10 CFR Part 50:

Extend the implementation date in 10 CFR 50.48 (c)(2) for installation of modification in Fire Areas 31, 32, 58, 59, 73 and 74 required by Appendix R subsection III.G for both units, from December 31, 1984 to June 1, 1985.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 18333).

Dated at Bethesda, Maryland this 7th day of May, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–11908 Filed 5–15–85; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities.
3. The form number if applicable: Not applicable.
4. How often the collection is required: 3 times/year.
5. Who will be required or asked to report: Owners of nuclear power plants.
6. An estimate of the number of responses: 339 per year.
7. An estimate of the total number of hours needed to complete the requirement or request: 3517 hours/year.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The proposed rulemaking updates existing references to specific sections of the ASME Boiler and Pressure Vessel Code that set forth requirements by which nuclear power plant components are constructed and inspected. These requirements provide that plant owners maintain records of certain safety related activities. The records can be used by NRC to audit the performance of these activities. The recordkeeping applies to the owners of nuclear power plants and does not affect the general public.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 13th day of May 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 11907 Filed 5–15–15; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–312]

Sacramento Municipal Utility District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–54, issued to Sacramento Municipal Utility District (the licensee), for operation of the Rancho Seco Nuclear Generating Station located in Sacramento, California.

To satisfy the habitability requirements of NUREG–0737, Item III.D.3.4, the Control Room Emergency Heating, Ventilating and Air Conditioning (HVAC) System was changed from a single train system into a two-loop redundant full-flow system. In addition, the Control Room Emergency HVAC System was expanded to include the Emergency HVAC requirements for the Technical Support Center (TSC). The new Control Room/TSC Emergency HVAC System is designed to satisfy the habitability requirements of both the Control Room and the TSC.

In accordance with the licensee's application dated February 14, 1985, the proposed amendment would revise the Technical Specifications to incorporate design changes to the Control Room/TSC Emergency Filtering System and the Air Supply System which are subsystems of the new Control Room/TSC Emergency HVAC System. Specifically, the amendment would: (1) Change the name of the Emergency Control Room Filtering System to Control Room/TSC Emergency Filtering System, (2) change the Limiting Condition for Operation (LCO) for the Filtering System to reflect the new design, (3) revise the surveillance testing of the Air Makeup System to reflect new design flow rates and Control Room/TSC positive pressure requirements, and (4) revise surveillance testing of the filtering system to reflect proposed reduced removal efficiencies for testing of the charcoal and HEPA filters and to reflect new design flow rates. The NRC staff earlier reviewed the proposed Technical Specifications for these four items and found the proposed reduced removal efficiencies for testing charcoal and HEPA unacceptable. Subsequently, by letter dated May 6, 1985, the licensee revised the February 14, 1985 application to delete the proposed change of the reduced charcoal and HEPA filter testing (i.e., so that the original tech specs remain unchanged.)

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commisison's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain example (48 FR 14870). Examples of actions likely to involve no significant hazards considerations are Example (i), a purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and Example (vi), a change which either may result in some increase to the probability or consequence of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The change in name of the Emergency Control Room Filtering System to Control Room/TSC Emergency Filtering System is the same as example (i) of an administrative change because it involves only a nomenclature change.

The modified Control Room/TSC Emergency HVAC System including the Control Room/TSC Emergency Filtering System and the Air Makeup System satisfy the acceptance criteria of SRP Section 6.4 and General Design Criterion 19 of Appendix A to 10. CFR Part 50. Since the changes proposed to the Technical Specifications are necessary to reflect design changes to the Control Room/TSC Emergency HVAC System, this change is similar to Example vi.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission's staff has made a proposed determination that the application involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 17, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a

request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Sacramento City-County Library, 828 I Street, Sacramento, California.

Dated at Bethesda, Maryland, this 14th day of May 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 85-11997 Filed 5-15-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 6, 1985
Thursday, June 13, 1985
Thursday, June 20, 1985
Thursday, June 27, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing

Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, D.C. 20415 (202) 632–9710).

William B. Davidson, Jr., Chairman,

Federal Prevailing Rate Advisory Committee.

May 9, 1985.

[FR Doc. 85–11862 Filed 5–15–85; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Investigation of Claim for Possible Days of Employment.

(2) Form(s) submitted: ID–5i, ID–5R(SUP), UI–48 and UI–54.

(3) Type of request: Existing regulation (no change proposed).

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, small businesses or organizations.

(6) Annual responses: 21,700.

(7) Annual reporting hours: 2,783.

(8) Collection description: Under the RUIA, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection information from the claimant, claims agent, railroad and non-railroad employer about work performed during the same period as unemployment benefits are claimed.

Additional Information or Comments

Copies of the proposed froms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85–11817 Filed 5–15–85; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 937]

United States-Spain Joint Committee for Science and Technology; Announcement Plans

This is to advise that the U.S.-Spain Joint Committee for Scientific and Technological Cooperation plans to publish its next announcement on applied awards in June 1985 with a probable deadline period on submission of cooperative proposals in October 1985.

Separately, interested scientists may submit proposals for cooperative seminars or workshops at this time. Applications for seminars which were received after the November 30, 1984 deadline will also be given consideration at this time. It is expected that action will be taken on these seminar applications by June 1985. Guidelines for such applications are as contained in the **Federal Register** Announcement (Public Notice 912), published in the **Federal Register** of August 17, 1984. Applications for Joint Seminars or Workshops may be submitted on the 1984 Seminar Form Applications. Awards for seminars have been increased to a maximum of $30,000, but the Joint Committee will give serious consideration to proposals submitted for lesser amounts.

Dated: May 3, 1985.

Charles Horner,

Deputy Assistant Secretary for Science and Technology.

[FR Doc. 85–11816 Filed 5–15–85; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Feasibility Study

AGENCY: Federal Aviation Admininstration, DOT.

ACTION: Notice of Study.

SUMMARY: The Federal Aviation Administration (FAA) announces a study on the feasibility and capability of private industry to perform some or all of the functions of the federally operated flight service stations (FSS).

FOR FURTHER INFORMATION CONTACT: Harold W. Becker, Manager, Safety Programs Division, ASF–300, 800 Independence Avenue, SW., Washington, D.C. 20591, 202–426–9472.

Submitted this day, May 7, 1985.

B. Keith Potts,

Deputy Director of Aviation Safety.

[FR Doc. 85–11790 Filed 5–15–85; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the program evaluation of the Veterans Administration's Domiciliary Care Program has been completed.

Single copies of the Domiciliary Care

Program evaluation are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mrs. Lynn H. Covington, Director, Program Evaluation Service, Veterans Administration (074), 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: May 9, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-11834 Filed 5-15-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 95
Thursday, May 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that as its open meeting held at 2:00 p.m. on Monday, May 13, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Director of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Proposed amendments to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendments will govern insured banks' direct and indirect involvement in insurance, real estate, and guarantor or surety activities.

Memorandum and resolution re: Petition for public hearing on proposed amendments to Part 332.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matter:

Application of Community Bank, North Las Vegas, Nevada, a proposed new bank, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: May 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–11947 Filed 5–14–85; 11:24 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, May 13, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of City Loan Bank, an operating noninsured institution located at 200 West Market Street, Lima, Ohio, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: May 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–11948 Filed 5–14–85; 11:24 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 20, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

The Morris Plan Company of California, an operating noninsured industrial bank located at 425 University Avenue, Palo Alto, California.

Home Thrift & Loan Association, an operating noninsured industrial bank located at 1380 Garnet Avenue, San Diego, California.

Peoples Finance & Thrift Company of Salt Lake City, an operating noninsured industrial bank located at 157 South State Street, Salt Lake City, Utah.

Application for consent to purchase assets and assume liabilities, establish two branches and redesignate the main office:

University Bank and Trust Company, Ames, Iowa, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Union Story Trust & Savings Bank, Ames, Iowa, to establish two branches of Union Story Trust & Savings Bank as branches of University Bank and Trust Company, and for consent to redesignate the present main office of Union Story Trust & Savings Bank as the main office of University Bank and Trust Company.

Application for consent to consolidate and establish three branches:

First American Bank for Savings, Boston, Massachusetts, an insured mutual savings bank, for consent to consolidate, under its charter and title, with Edward Everett Federal Savings Bank, Boston, Massachusetts, a non-FDIC-insured institution, and to establish the three offices of Edward Everett Federal Savings Bank as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,229–SR: Hereford State Bank, Hereford, Colorado.

Case No. 46,230–SR: Indian Springs State Bank, Kansas City, Kansas.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Parts 303, 304, and 347 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," "Forms, Instructions, and Reports," and "Foreign Activities of Insured State Nonmember Banks," respectively, which (1) expand the Director of the Division of Bank Supervision's and regional directors' delegated authority to act on (a) requests for approval of minor or nominal deviations from requirements prescribed by prior FDIC action, (b) applications for deposit insurance submitted on behalf of proposed or newly organized nonmember banks, on behalf of State member banks that have withdrawn from membership in the Federal Reserve System, and on behalf of operating noninsured banks or institutions, (c) applications by an insured bank to convert into a noninsured bank or institution, (d) applications by an insured bank to enter into a merger transaction with a noninsured bank or institution, and (e) applications to exercise any trust powers; (2) delegate to the Board of Review the authority to act on (a) applications to establish and operate any new branch or relocate any existing branch, to exercise any trust powers, for deposit insurance filed by State member banks upon withdrawal from membership in the Federal Reserve System, and to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures, (b) notices of acquisition of control of insured State nonmember banks, and (c) requests for approval of any deviations from requirements prescribed by prior action of the Board of Review taken under delegated authority; (3) substitute letter applications for application forms for banks applying to continue deposit insurance upon withdrawal from the Federal Reserve System and for applications to reduce or retire capital; and (4) make certain technical changes.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11949 Filed 5-14-85; 11:24 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 20, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 11950 Filed 5-14-85; 11:24 am]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

[Federal Register No. 85-11398]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 16, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF MAY 9, 1985: Proposed regulations governing standards of conduct for employees.

* * * * *

DATE AND TIME: Tuesday, May 21, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel

* * * * *

DATE AND TIME: Thursday, May 23, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be opened to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft advisory opinion ±1985-16: Robert Neil Weiss
Proposed statement of reasons to accompany notification of Commission's final determination regarding January 28, 1985 statement of net outstanding campaign obligations of the Mondale for President Committee, Inc.
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 85-11993 Filed 5-14-85; 3:48 pm]

BILLING CODE 6715-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 20031, May 13, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., May 15, 1985.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added:

Item No., Docket No. and Company

RP-2 TA85-1-47-000, MIGC, Inc.

CP-4(A) CP84-26-000 and 001, Mantaray Pipeline Company and Texas Eastern Pipeline Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11919 Filed 5-14-85; 10:00 am]

BILLING CODE 6717-02-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 20, 1985.

A close meeting will be held on Tuesday, May 21, 1985, at 5:30 p.m. Open meetings will be held on Tuesday, May 21, 1985, at 9:30 a.m. and on Thursday, May 23, 1985, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Marinaccio, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, May 21, 1985, at 9:30 a.m., will be:

The Commission will hold a public hearings on oversight of the government securities markets. For further information, please contact Andrew E. Feldman at (202) 272-2388.

The subject matter of the closed meeting scheduled for Tuesday, May 21, 1985, at 5:30 p.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

institution of injunctive actions.

Application for re-entry into employment in the securities industry.

The subject matter of the open meeting scheduled for Thursday, May 23, 1985, at 2:30 p.m., will be:

1. Consideration of whether to adopt and solicit public comment on temporary Rules 111, 601, 602, and 603 under the Public Utility Holding Company Act and amend Edgar temporary Forms SE, ET and ID to facilitate the participation of public utility holding companies and their subsidiaries in the Edgar Pilot, and allow for electronic filings under the Public Utility Holding Company Act. For further information, please contact Kathleen Brandon at (202) 272-2676.

2. Consideration of whether to amend Rule 15Bc7-1 governing provision of municipal securities dealer examination reports to the Municipal Securities Rulemaking Board. For further information, please contact William Uchimoto at (202) 272-2409.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Barry Mehyman at (202) 272-2648.

Shirley E. Hollis,

Assistant Secretary.

May 15, 1985.

[FR Doc. 85-12049 Filed 5-15-85; 11:22 am]

BILLING CODE 8010-01-M

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SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are invited to attend and observe the meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes.
III. Letter of Intent Project Review.
  1. Great Plains
IV. Third General Solicitation Issues
  1. Paraho Ute
V. Solicitation Options
  1. Tar Sands
VI. Fourth General Solicitation Projects—Programmatic Review/Determinations
  1. Keystone
  2. Utah Methanol
  3. ASC/Indiana
VII. Resolution to Close Meeting

Closed Session

VIII. Fourth General Solicitation Projects—Negotiation Status
  1. Keystone
  2. Utah Methanol
  3. ASC/Indiana
IX. Letter of Intent Project Review
  1. Great Plains—Confidential Material
  2. Cathedral Bluffs

TIME AND DATE: 9:00 a.m., May 21, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. March Coleman, Assistant General Counsel-Corporate & Litigation, at (202) 822-6571.

March Coleman,

Assistant Secretary.

May 14, 1985.

[FR Doc. 85-11984 Filed 5-14-85; 2:05 pm]

BILLING CODE 0000-00-M

federal register

Thursday
May 16, 1985

Part II

Department of Education

Office of Educational Research and Improvement

34 CFR Parts 768, 769, 770, 771, and 772
Library Services and Construction Act—State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

34 CFR Parts 768, 769, 770, 771, and 772

Library Services and Construction Act—State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the Library Services and Construction Act State-Administered Program and to issue regulations governing the direct grant programs under the Act. These proposed regulations would implement the Library Services and Construction Act (LSCA) Amendments of 1984 (Title I of Pub. L. 98–480). These proposed regulations would include information on the types of program activities the Secretary supports with funds appropriated under the Library Services and Construction Act (the Act) and the selection criteria for evaluating applications under the Act's direct grant programs.

DATES: Comments must be received on or before June 17, 1985.

ADDRESSES: Comments should be addressed to Mr. Robert Klassen, Chief, State and Public Library Services Branch, U.S. Department of Education (Brown Building, Room 613) 400 Maryland Avenue SW., Washington, D.C. 20202–1630.

FOR FURTHER INFORMATION CONTACT: Robert Klassen. Telephone: (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

The LSCA Amendments of 1984 (Title I of Pub. L. 98–480), enacted on October 17, 1984, authorize Federal assistance through fiscal year 1989 for Titles I through IV of the Act, and through fiscal year 1988 for Titles V and VI of the Act.

The Act was originally enacted as the Library Services Act in 1956 (Pub. L. 84–597). In 1964 authorization for spending on construction projects was added, to be followed in 1966 by authorization for spending on interlibrary cooperation projects and projects for the institutionalized and the physically handicapped. In 1970, major amendments were made to the Act including the enactment of provisions for strengthening State library administrative agencies and metropolitan libraries which serve as national or regional resource centers, the removal of matching requirements for interlibrary cooperation, and the streamlining of State plan procedures.

The 1977 amendments to the Act extended the Act for five years and, among other things, established the requirement that Federal funds spent to cover administrative costs be matched with State or other non-Federal funds, as well as providing for special assistance to major urban resource libraries under certain circumstances.

The Omnibus Budget Reconciliation Act (Pub. L. 97–35) extended Title I (Library Services) and Title III (Interlibrary Cooperation) through fiscal year 1984. No funds were authorized to be appropriated for Title II (Public Library Construction) for fiscal years 1982, 1983 and 1984. No provision was made for Title IV (Older Readers Services).

Therefore, the final regulations published March 30, 1984, included no provisions relating to Titles II and IV.

Summary of Major Amendments

The Library Services and Construction Act State-Administered Program.—(a) *Amendments to Title I (Library Services):* Sections 109, 110, and 111 of Pub. L. 98–480 contain amendments to Title I of the Act. Section 109, for example, expands the specific purposes of Title I grants. Thus, a State may use funds under Title I for the establishment, extension, and improvement of public library services to meet the needs of geographic areas or groups of persons in the State who lack those services or for whom current services are inadequate. Other types of projects a State may carry out with funds under Title I include: making library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the general public; assisting libraries to serve as community information referral centers; and assisting libraries in providing literacy programs for adults and school dropouts in cooperation with other agencies and organizations, if appropriate. (See proposed § 770.10.)

Section 110 of Pub. L. 98–480 amends section 102(a)(1) of the Act by adding that Federal funds under Title I may be used to assist libraries to serve as community centers for information and referral. A provision is also added, by section 111 of Pub. L. 98–480, to ratably reduce the level of fiscal effort which a State must maintain for institutional services and services to the physically handicapped to the extent that Federal allocations to a State are reduced. Section 111 of the LSCA Amendments of 1984 also requires a State to describe how it will develop programs for the elderly which may include one or more of seven different activities listed in section 111. (See proposed §§ 770.10 and 770.40(c)(2).)

Although Title IV of the Act and the proposed regulations would provide funding directly to Indian tribes and organizations primarily serving and representing Hawaiian natives, the Congress indicated that State library administrative agencies should assist Indian tribes and eligible Hawaiian organizations with Title I funds in planning and developing library services to meet their needs. (See H.R. Rep. No. 98–165, 98th Cong., 1st Sess. 7 (May 16, 1983).)

(b) *Amendments to Title II (Public Library Construction):* Under section 112 of the LSCA Amendments of 1984, the Federal share of the cost of construction of any project assisted under Title II cannot exceed one-half of the total cost of the project. This section also contains a provision entitling the Department to recover a portion of its equity interest within 20 years after completion of the construction of any library facility constructed in part with funds made available under Title II, if the recipient or its successor in title or possession ceases or fails to be a public or nonprofit institution or the facility ceases to be used as a library facility. However, the Secretary has the option of determining whether there is good cause for releasing the institution from this obligation. (See proposed §§ 770.41(b) and 770.42.)

(c) *Amendments Affecting Both Titles I and II:* Section 108 of Pub. L. 98–480 allows a State to expend funds received under Titles I and II for administrative costs in connection with programs and activities carried out under Title I, II, and III. Administrative expenditures under these titles for any fiscal year may not exceed the greater of 6 percent of the sum of the amounts allotted to each State under Titles I and II for any fiscal year, or sixty thousand dollars ($60,000). (See proposed § 770.43.)

(d) *Amendments to Title III (Interlibrary Cooperation and Resource Sharing):* Section 113 of Pub. L. 98–480 amends Title III of the Act and changes its title from "Interlibrary Cooperation" to "Interlibrary Cooperation and Resource Sharing". Pursuant to section 113, States must now include in their long-range and annual programs a Statewide resource sharing plan which is directed toward eventual compliance

with the new section 304 (Resource Sharing) of the Act. (See proposed §§ 770.12(b)(1)(ii) (A) and (B), 770.23(c)(1)(i), and 770.24(d).)

In addition to the types of libraries listed in section 302(a)(2) of the Act, the Congress indicated that State library administrative agencies should assist Indian tribes and organizations primarily serving and representing Hawaiian natives to participate in resource sharing to the extent possible. (See H.R. Rep. No. 98-165, 98th Cong., 1st Sess. 7 (May 16, 1983).)

(e) *Other Changes to the Library Services and Construction Act State-Administered Program Regulations:* A new clause is added to these proposed regulations prohibiting the inclusion of in-kind contributions among the amounts the State declares that it will have available for expenditure for maintenance of effort purposes under paragraph (b)(5)(i) of § 770.24. This addition is not due to any amendment to the Act, but rather to the fact that section 7(a) of the Act refers to sums from State or local sources, or both, "available for expenditure" and "actually expended".

These proposed regulations also contain a new clause in § 770.50 to make clear that 34 CFR 76.401(b) of EDGAR, which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs, does not apply to public library construction grants. This is due to the fact that under section 203 of the Act, with respect to a project for construction of public library facilities, a State must provide an opportunity for a hearing to every local or other public agency whose application for a subgrant for construction has been denied.

(2) *The Library Services and Construction Act Library Service for Indian Tribes and Hawaiian Natives Program.* Pub. L. 98-480 deletes Title IV (Older Readers Services) and introduces a new Title IV entitled "Library Services for Indian Tribes" in its place. The new Title IV was prompted by the findings of the Congress that: (1) Most Indian tribes receive little or no funds under the State-administered Titles I, II, and III of the Act; (2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States; and (3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all.

Under Title IV, for the purpose of making grants to Indian tribes there will be available 1.5 per cent of the amounts appropriated for Titles I, II, and III for each fiscal year. For the purpose of making grants to organizations primarily serving and representing Hawaiian natives (Hawaiian native organizations), there will be available 0.5 percent of the amounts appropriated for Titles I, II, and III for each fiscal year. The Secretary makes basic grants from these separate allotments to Indian tribes and Hawaiian native organizations which have submitted approved applications under section 403 (Applications for Library Services to Indians) of the Act. After consultation with the Secretary of the Interior, the Secretary has determined that for purposes of this program, an Indian tribe means an Indian tribe, band, nation or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services. Any allotted funds for which an Indian tribe or Hawaiian native organization has not applied, or has applied but has not qualified, will be reallocated by the Secretary among Indian tribes and Hawaiian native organizations which have submitted approved plans under section 404 (Plans for Library Services to Indians) of the Act as special projects grants. In accordance with sections 403 and 404 of the Act, the Secretary proposes regulations to implement: (1) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program, and (2) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

(3) *The Library Services and Construction Act Foreign Language Materials Acquisition Program.* Title V (Foreign Language Materials Acquisition) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the acquisition of foreign language materials.

Under Title V, State and local public libraries may submit grant applications to the Department for the acquisition of foreign language-materials. The term "foreign language materials" is defined in these proposed regulations to mean "library materials for various age levels in a language other than English." Recipients of grants under Title V will be selected on a competitive basis, and grants awarded are not to exceed fifteen thousand dollars ($15,000) for any fiscal year.

(4) *The Library Services and Construction Act Library Literacy Program.* Title VI (Library Literacy Programs) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the support of library literacy programs. Under Title VI, grants to State public libraries are to be used for coordinating and planning library literacy programs and for making arrangements to train librarians and volunteers for carrying out these programs. Grants to local libraries are to be used for: promoting the use of voluntary services of individuals, agencies, and organizations in providing literacy programs; acquiring materials for literacy programs; and providing for the use of library facilities for literacy programs.

The Library Literacy Program was prompted by the findings of the Congress that the role of public libraries has expanded to include literacy training for illiterate and functionally illiterate adults. Literacy activities otherwise permissible under Title I (Library Services) of the Act, such as assisting libraries in providing literacy programs for adults and school dropouts, should not be in conflict with the purposes of the Library Literacy Program.

It was also the recommendation of the Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 21 (1984), also printed at 130 Cong. Rec. H10136, daily ed. September 25, 1984) that applicants for funding show that any proposed project is not in conflict with the State plan required under section 6 of the Act, and that any proposed project demonstrate evidence of cooperation and coordination with other service providers, as appropriate, including State adult education officials or their local representatives.

Recipients of grant awards under the Library Literacy Program will be selected on a competitive basis and no grant for any fiscal year shall exceed twenty-five thousand dollars ($25,000).

(5) *Definitions Under the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480.* No new definitions were added under section 103 to the State-Administered Program (Titles I through III); however, an insertion was made to the definition of "construction" in section 3(2) of the Act. (See proposed § 770.11) In the definition of "State institutional library services" at section 3(9) of the Act, the words in parentheses were added to clarify the types of handicapping conditions permissible under State institutional library services. (See proposed §§ 770.10 and 770.40(c)(1)).

Section 103 of Pub. L. 98-480 adds two new definitions of "Indian tribe" and "Hawaiian native" that are defined in

proposed § 771.4(b) and cross-referenced in proposed § 772.4(b).

Other Information

Readers' attention is drawn to the provision in the Education Department General Administrative Regulations (EDGAR) requiring a State to make available for public inspection "all State plans and related official materials". (34 CFR 76.106 (a)). In the case of the Library Services and Construction Act State-Administered Program, the State plan and all related materials—as described in proposed § 770.21—includes: (1) The basic State plan covering all three types of grants provided under the program, (2) the long-range program that addresses each type of grant for which the State is applying, and (3) the annual program for each type of grant for which the State is applying.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Under the State-Administered Program, grants for library services, public library construction, and interlibrary cooperation and resource sharing purposes are available only to States and State library administrative agencies. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. To the extent that these regulations have an impact on small entities, they implement statutory requirements. The regulations concerning the State-Administered Program do not impose any non-statutory requirements that will have a significant economic impact on the small entities affected.

The selection criteria for applications reviewed under the four direct grant programs require the minimum amount of information necessary for a fair appraisal of the qualifications and activities proposed by applicants in order to ensure the funding of high-quality projects.

Paperwork Reduction Act

The information collection requirements contained in these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Information collection requirements are contained in the following sections: Sections 768.31, 769.31, 770.22, 770.23, 770.24, 771.20, 771.30, 772.20, 772.31.

A copy of comments that only concern information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and to the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that Federally) recognized Indian Tribal governments are not subject to Executive Order 12372.)

Initiation of Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 707, Brown Building, 1200 19th Street NW., Washington, D.C. 20202-1630, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available to any other agency or authority of the United States.

List of Subjects

34 CFR Part 768

Education, Foreign Language—Library, Grant Programs, Libraries, Reporting and Recordkeeping Requirements.

34 CFR Part 769

Education, Education of Disadvantaged, Grant Programs—Education, Literacy Program—Libraries, Reporting and Recordkeeping Requirements.

34 CFR Part 770

Aging—libraries, Construction—libraries, Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, handicapped, libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries, Reporting and recordkeeping requirements.

34 CFR Part 771

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

34 CFR Part 772

Construction—libraries, Grant programs—education, Hawaiian natives—Libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: May 13, 1985.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84-034 (Library Services); 84.154 (Public Library Construction); 84-035 (Interlibrary Cooperation and Resource Sharing); 84.163 (Basic Grants to Indian Tribes and Hawaiian Natives Program and Special Projects Grants to Indian Tribes and Hawaiian Natives Program); 84.166 (Library Services and Construction Act Foreign Language Materials Acquisition Program); and 84.167 (Library Services and Construction Act Library Literacy Program))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as follows:

1. Part 768 is added to read as follows:

PART 768—THE LIBRARY SERVICES AND CONSTRUCTION ACT FOREIGN LANGUAGE MATERIALS ACQUISITION PROGRAM

Subpart A—General

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.

Under the Library Services and Construction Act Foreign Language Materials Acquisition Program—referred to in this part as the Foreign Language Materials Program—the Secretary provides Federal financial assistance for the acquisition of foreign language materials.

(20 U.S.C. 371)

§ 768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?

State public libraries and local public libraries are eligible to apply for grants under the Foreign Language Materials Program.

(20 U.S.C. 371)

§ 768.3 What regulations apply to the Foreign Language Materials Program?

The following regulations apply to the Foreign Language Materials Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 768.

(20 U.S.C. 371)

§ 768.4 What definitions apply to the Foreign Language Materials Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Library service
Public library
Public library services.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Foreign language materials" means library materials for various age levels in a language other than English.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, and materials designed specifically for the handicapped.

(20 U.S.C. 351 *et seq.*)

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 768.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 768.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 371(b))

§ 768.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need and anticipated benefits.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed project and the anticipated benefits of the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant has surveyed or otherwise studied the geographic area for which it provides public library services to determine the need for library materials in a particular foreign language or particular foreign languages;

(ii) The extent to which the applicant has received requests for materials in that language or those languages;

(iii) Whether the proposed project would duplicate in the geographic area other collections of library materials available to the general public in the same foreign language or languages; and

(iv) The benefits likely to be derived by the general public or a particular segment of the public as a result of the proposed project.

(20 U.S.C. 371(b))

2. Part 769 is added to read as follows:

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

Subpart A—General

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 769.1 The Library Services and Construction Act Library Literacy Program.

Under the Library Services and Construction Act Library Literacy Program—referred to in this part as the Library Literacy Program—the Secretary provides Federal financial assistance for literacy projects.

(20 U.S.C. 375(a))

§ 769.2 Who is eligible to apply for a grant under the Library Literacy Program?

State public libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

20 U.S.C. 375(a))

§ 769.3 What regulations apply to the Library Literacy Program?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 769.

(20 U.S.C. 375(a))

§ 769.4 What definitions apply to the Library Literacy Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public Library
State library administrative agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Adult" means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

"Functionally illiterate adult" means an adult whose minimal skills in reading, writing, or comprehension or in performing basic arithmetical computations precludes the individual from functioning in society without assistance from others.

"Illiteracy" means the inability to read, write, or comprehend or to perform basic arithmetical computations.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, and materials designed specifically for the handicapped.

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"State public library" means, for this program, the State library administrative agency.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§769.10 For what types of projects does the Secretary provide assistance to State public libraries?

(a) The Secretary provides assistance to State public libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Assisting libraries to provide literacy programs for adults in cooperation with other agencies and organizations, if appropriate.

(2) Providing in-service training for librarians and volunteers in the use of appropriate library materials for illiterate or functionally illiterate adults.

(3) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) The handicapped;

(ii) The institutionalized;

(iii) Older Americans; and

(iv) Other disadvantaged individuals.

(20 U.S.C. 357(b))

§769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Promoting the use of volunteers in disseminating information about literacy programs.

(2) Training volunteers to serve local literacy programs.

(3) Acquiring library materials designed to improve the literacy of illiterate and functionally illiterate adults.

(4) Conducting literacy programs for adults.

(5) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(20 U.S.C. 357(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 769.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 375(d))

§769.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial of ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Cooperation and coordination.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to cooperate and coordinate its proposed project with other parties providing similar or related services.

(2) The Secretary looks for information that shows—

(i) That the applicant—

(A) Has identified other providers of literacy-related services, including State or local adult education agencies or both, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The specific measures of cooperation and coordination the applicant has proposed.

(20 U.S.C. 357(d); H. Conf. Rept. No. 98-1075, 98th Cong. 2d Session (1984), p. 21)

3. Part 770 is revised to read as follows:

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act State-Administered Program.

Under the Library Services and Construction Act State-Administered Program—referred to in this part as the State-Administered Program—the Secretary provides Federal funds to assist States to—

(a) Extend and improve public library services;

(b) Construct and renovate public libraries; and

(c) Develop and strengthen interlibrary cooperation and resource sharing.

(20 U.S.C. 351, 353, 355b, 355e)

§ 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Under the State-Administered Program the following parties are eligible to apply:

(a) States are eligible to apply to the Secretary for—

(1) Library Services grants under title I of the Act;

(2) Public Library Construction grants under title II of the Act; and

(3) Interlibrary Cooperation and Resource Sharing grants under title III of the Act.

(b)(1) Public libraries are eligible to apply to their respective States for subgrants under each type of grant specified in paragraph (a) of this section.

(2) In the case of Interlibrary Cooperation and Resource Sharing grants, a State may also permit other types of libraries to apply for subgrants.

(20 U.S.C. 351d, 352, 355a, 355e)

§ 770.3 What regulations apply to the State-Administered Program?

The following regulations apply to the State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(20 U.S.C. 351 *et seq.*)

§ 770.4 What definitions apply to the State-Administered Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Annual program
Basic State plan
Indian tribe
Hawaiian native
Library service
Library services for the physically handicapped
Long-range program, except that this program may cover a period of not fewer than three nor more than five years.

(20 U.S.C. 351d)

Major urban resource library
Public library
Public library services
State Advisory Council on Libraries
State institutional library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(c) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91-600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98-480).

"Community information referral center" means a center that provides information and makes referrals to link people in need of services to appropriate resources.

"Disadvantaged persons" means persons whose socio-economic or educational deprivation or whose cultural isolation from the general

comunity may preclude them from benefiting from public library services to the same extent as the general community benefits from these services.

"Handicapped" means, for purposes of this program, mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or otherwise health impaired.

"Illiteracy" means the inability of an individual to read, write, or comprehend or to perform basic arithmetical computations.

"Interlibrary cooperation" means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers.

"Interlibrary Cooperation and Resource Sharing grants" means Federal financial assistance provided by the Secretary under title III of the Act.

"Library materials" means books, periodicals, newspapers, documents, pamphlets photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, and materials designed specifically for the handicapped.

"Library Services grants" means Federal financial assistance provided by the Secretary under title I of the Act.

"Limited English-speaking proficiency," where used with reference to individuals, means individuals who—

(1) (i) Were not born in the United States or whose native tongue is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of the reason(s) listed in paragraph (1) (i), (ii), or (iii) of this definition, have sufficient difficulty speaking, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in society. (See section 703 (a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 3223))

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"Public Library Construction grants" means Federal financial assistance provided by the Secretary under title II of the Act.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 770.10 What types of projects may be funded under Library Services grants?

(a) The Secretary awards Library Services grants to assist projects designed to plan for, establish, extend, or improve public library services.

(b) The types of projects referred to in paragraph (a) of this section may include, but are not restricted to, the following:

(1) Extending public library services to areas and populations that lack these services.

(2) Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations.

(3) (i) Making public library services accessible to individuals who, because of a disadvantage, are unable to benefit from public library services reqularly made available to the general public.

(ii) These disadvantages include, but are not restricted to, distance, residence, handicap, age, literacy level, and limited English-speaking proficiency.

(4) (i) Improving State and local public library services for—

(A) The elderly; and

(B) Handicapped, institutionalized, and other disadvantaged individuals.

(ii) Services for the elderly may include, but are not restricted to, the following:

(A) Training librarians to work with the elderly.

(B) Conducting special library programs for the elderly, particularly for the elderly who are handicapped.

(C) Purchasing special library materials for use by the elderly.

(D) Paying salaries for elderly persons who work in libraries as assistants on programs for the elderly.

(E) Providing to the elderly home visits by librarians and other library personnel.

(F) Establishing programs to notify the elderly about the availability of library services.

(G) Furnishing transportation to enable the elderly to have access to library services.

(5) Adapting public library services to meet particular needs of individuals.

(6) Assisting libraries to serve as community information referral centers.

(7) (i) Assisting libraries in providing literacy programs for adults and school dropouts.

(ii) If possible and appropriate, applicants shall propose to conduct these literacy programs in cooperation with other agencies and organizations.

(8) Strengthening the capacity of the State library to meet the needs of the people of the State with regard to library services, facilities, and resources.

(9) Supporting and expanding the services of major urban resource libraries that meet the demands of individual users and other libraries.

(10) Establishing, expanding, and operating programs to provide—

(i) State institutional library services;

(ii) Library services to the handicapped; and

(iii) Library services for the disadvantaged in urban and rural areas.

(11) Strengthening metropolitan libraries that serve as national or regional resource centers.

(12) Increasing public library services or access to these services through effective use of technology.

(20 U.S.C. 351(a), 351a, 351 note(b)(4), 352, 353)

§ 770.11 What types of projects may be funded under Public Library Construction grants?

(a) The Secretary awards Public Library Construction grants to assist projects designed to carry out the activities in paragraphs (b) and (c) of this section.

(b) As used in this part, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3) (i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a

facility for the provision of library services.

(4) Architectural services.

(5) Acquisition of land.

(6) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(7) Any combination of two or more of the activities referred to in paragraphs (b)(1) through (b)(6) of this section.

(c) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a(2), 355a, 355c; EO 11490, as amended)

§ 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

(a) The Secretary awards Interlibrary Cooperation and Resource Sharing grants to assist projects designed to enable various types of libraries to share resources and materials.

(b) These types of projects may include, but are not restricted to, the following:

(1) (i) Planning for, and taking other steps leading to the development of, cooperative library networks.

(ii) Planning may include—

(A) Development of a statewide resource sharing plan directed toward eventual compliance with section 304 of the Act; or

(B) One or more of the items listed in section 304(c) of the Act.

(2) (i) Establishing, expanding, or operating local, regional, or interstate cooperative library networks.

(ii) As used in paragraph (b)(2)(i) of this section, "cooperative library networks" are those networks designed to—

(A) Provide for the systematic and effective coordination of the resources of various types of libraries, including school, public, academic, and special libraries and information centers; and

(B) Improve supplementary services for the special clientele served by these types of libraries.

(20 U.S.C. 351(a), 355e, 355e–1(a), 355e–2)

Subpart C—How Does a State Apply for a Grant?

§ 770.20 What must a State do to receive a grant under the State-Administered Program?

(a) In order to receive a grant under the State-Administered Program, a State must—

(1) Establish a State Advisory Council on Libraries; and

(2) After consulting with the council, submit to the Secretary by the various dates established by the Secretary the three parts of a State plan, as described in § 770.21.

(b) The Secretary does not consider the other parts of the plan until the Secretary has approved the basic State plan

(20 U.S.C. 351d(a))

§ 770.21 What must a State plan include?

A State plan must consist of the following three parts:

(a) (1) A basic State plan, as described in § 770.22, covering a five-year period.

(2) The State shall submit one basic plan to cover all three types of grants provided under this program:

(i) Library Services grants.

(ii) Public Library Construction grants.

(iii) Interlibrary Cooperation and Resource Sharing grants.

(b) (1) A long-range program, as described in § 770.23, covering a period of not fewer than three years and not more than five years.

(2) The State library administrative agency shall develop the long-range program—

(i) With the advice and assistance of the State Advisory Council on Libraries; and

(ii) In consultation with the Secretary.

(3) The State shall—

(i) Submit a long-range program that addresses each type of grant for which the State is applying;

(ii) Review the program each year;

(iii) Revise the program each year according to changing needs and the results of evaluations and surveys; and

(iv) Submit the revised program to the Secretary.

(c) An annual program, as described in § 770.24, for each type of grant for which the State is applying.

(20 U.S.C. 351d(a))

§ 770.22 What must a State include in a basic State plan?

A State shall include the following in its basic State plan:

(a) Assurance that the State library administrative agency—

(1) Will administer or supervise the administration of all programs and projects in the State assisted under the State-Administered Program;

(2) Has the fiscal and legal authority and capability to administer or supervise the administration of programs and projects assisted under the State-Administered Program;

(3) Has established or will establish policies, priorities, criteria, and procedures necessary to implement the program in the State;

(4) (i) Will make the reports the Secretary reasonably requires to—

(A) Carry out the Secretary's functions under the program; and

(B) Determine the extent to which funds provided under the program have been effective in carrying out the purposes of the program;

(ii) Will include in these reports, if requested by the Secretary, reports of evaluations made under the State plan; and

(iii) Will make the reports in the form and containing the information reasonably required by the Secretary; and

(5) (i) Will keep the records the Secretary finds necessary to assure the correctness and verification of the reports referred to in paragraph (a) (4) of this section; and

(ii) Will give the Secretary access to the records as the Secretary finds necessary.

(b) Assurances that—

(1) Any funds paid to the State under a long-range program and an annual program will be expended only for the purposes for which the funds have been authorized and appropriated; and

(2) The State has adopted the necessary fiscal control and fund accounting procedures to assure proper disbursement of, and to account for, Federal funds paid—

(i) To the State under the State-Administered Program; and

(ii) By the State to any other agency under the program.

(c) An assurance that the State will give priority to proposed projects designed to carry out one or more of the following objectives:

(1) To improve access to public library resources and services for the least served populations in the State, including—

(i) Projects for individuals with limited English—speaking proficiency;

(ii) Projects for individuals who are handicapped; and

(iii) Projects in urban and rural areas.

(2) To serve the elderly.

(3) To combat illiteracy.

(4) To increase library services and access to services through effective use of technology.

(20 U.S.C. 351a(11), 351d(b))

§ 770.23 What must a State include in a long-range program?

(a) A State shall include the following in a long-range program:

(1) A description of the State's identified present and projected library needs with respect to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate.

(2) A plan for meeting those identified needs with Federal funds made available through the appropriate type of grant under the State-Administered Program.

(3) (i) The State's policies, priorities, criteria, and procedures for administering this type of grant and appropriate subgrants under the State-Administered Program.

(ii) A description of how the State plans to implement the priorities in § 770.22(c).

(4) A description of the State's policies and procedures regarding each of the following:

(i) The periodic evaluation of the effectiveness of projects supported under this type of grant.

(ii) The appropriate dissemination of—

(A) The results of the evaluation referred to in paragraph (a)(4)(i) of this section; and

(B) Other information pertaining to these projects.

(iii) The coordination of projects assisted under this type of grant with similar library programs and projects operated by other libraries, institutions, and agencies in the State.

(b) In the case of an application for a Public Library Construction grant, the State shall also include in its long-range program the policies and procedures to be followed by the State library administrative agency in providing an opportunity for a hearing to a local or other public agency whose application for a subgrant is denied.

(c) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include the following in its long-range program:

(1) (i) A statewide resource sharing plan directed toward eventual compliance with the provisions of section 304 of the Act.

(ii) In developing the plan, the State library agency, with the assistance of the State Advisory Council on Libraries, shall consider recommendations from current and potential participating institutions in interlibrary cooperation and resource sharing projects authorized under the Act.

(2) (i) An identification of interlibrary cooperation and resource sharing objectives to be achieved during the period covered by the basic State plan and the long-range program.

(ii) These objectives may include, but are not restricted to, one or more of the items listed in section 304(c) of the Act.

(20 U.S.C. 351(a), 351a(12), 355c, 351d(a)(d); 355e, 355e–2, 355e–3)

§ 770.24 What must a State include in an annual program?

(a) A State shall include the following in an annual program:

(1) A description of the projects and activities the State plans to carry out—or for which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate.

(2) A description of how these projects and activities would—

(i) Be consistent with purposes specified in the Act and in §§ 770.10, 770.11, or 770.12, as appropriate;

(ii) Fulfill the objectives of the State's long-range program or the update of the long-range program; and

(iii) Meet the needs identified by the State in the long-range program.

(3) A description of the criteria the State plans to use in allocating funds.

(4) (i) A demonstration that the manner in which the State proposes to carry out the annual program is consistent with the policies, criteria, priorities, and procedures specified in the long-range program or the update of the long-range program.

(ii) In meeting this requirement, the State shall address, among other items, policies and procedures regarding evalutions, dissemination, and coordination, as described in § 770.23(a)(4).

(5) A description of how proposed projects and activities are to be based on the results of evalutions undertaken according to the long-range program.

(6) A demonstration that proposed projects and activities would meet the assurance given by the State in its basic State plan to implement the priorities specified in § 770.22(c), if appropriate.

(7) The amount of Federal funds the State plans to spend to carry out its administrative functions under the grant, as specified in § 770.43.

(b) In the case of an application for a Library Services grant, the State shall also include the following in its annual program:

(1) The criteria the State plans to use to ensure that the State meets the financial obligations specified in § 770.40(c).

(2) A description of how the State plans to allocate funds to support and expand library services of major urban resource libraries if—

(i) The sum appropriated for the year exceeds the amount specified in section 102(c)(1) of the Act; and

(ii) The State has one or more cities with populations of at least 100,000 individuals.

(3) A description of how the State plans to use funds for projects and activities for the elderly.

(4) A description of how the State plans to use funds to make library services more accessible to handicapped persons.

(5) (i) To enable the Secretary to make a determination of payment under section 7(a) of the Act (Payments to States), a statement of the amounts the State will have available for expenditure for the proposed projects and activities during the period covered by the annual program from—

(A) State sources; and

(B) Local sources.

(ii) The State may not include in-kind contributions among the amounts the State declares it will have available for expenditure under paragraph (b)(5)(i) of this section.

(c) In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for construction of public libraries in areas of the State lacking the library facilities necessary to provide adequate library services.

(d) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include in its annual program a description of how the proposed projects and activities would meet the requirements of the Act and of § 770.23(c) with respect to—

(1) The statewide resource sharing plan; and

(2) The interlibrary cooperation and resource sharing objectives identified in the long-range program.

(20 U.S.C. 351, 351a(13), 351d(a), (b)(4); 351e(a)(1), 354, 355c, 355e–2, 355e–3)

Subpart D—How Does the Secretary Make a Grant to a State?

§ 770.30 What special conditions does the Secretary apply in considering an application for a grant?

(a) The Secretary considers an applicant's long-range program and annual program for a grant under this

part only if the Secretary has approved the applicant's basic State plan.

(b)(1) In the case of an application for a Library Services grant, the Secretary makes a grant to a State only if the Secretary has determined that the State will have the following amounts available for expenditure for the projects and activities proposed in its annual program during the period covered by the annual program:

(i) From combined State and local sources an amount—

(A) Sufficient to enable the State to receive not less than its minimum allotment under the Act; and

(B) Not less than the total amount actually expended from State and local sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(ii) From State sources an amount not less than the total amount actually expended from State sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(2) The requirements in paragraph (b)(1) of this section do not apply to an application from the Trust Territory of the Pacific Islands.

(20 U.S.C. 351e, 354, 355c, 355e–2)

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

§ 770.40 What are a State's financial obligations under a Library Services grant?

A State that receives a Library Services grant shall meet the following financial obligations:

(a) The State shall meet the maintenance-of-effort requirement in § 770.30(b).

(b) The State shall provide the difference between—

(1) The cost of services financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(c) (1) For State institutional library services and library services to institutionalized individuals, and for library services to the physically handicapped, the State shall spend from Federal, State, and local sources an amount not less than the amount the State spent from those sources for those services during the second year preceding the year for which the Secretary makes the grant.

(2) If the Federal allocation for the State's Library Services grant is reduced, the Secretary informs the State that the amount the State is required to spend under paragraph (c)(1) of this section is ratably reduced.

(d) If the amount of the grant obligates the State to allocate funds to support and expand library services of major urban resource libraries (see sections 102(a)(3) and (c) of the Act and § 770.24(b)(2)), the State may not reduce the amount it pays to an urban resource library below the amount the State paid to that library in the preceding year.

(20 U.S.C. 351e(b), 354)

§ 770.41 What are a State's financial obligations under a Public Library Construction grant?

(a) A state that receives a Public Library Construction grant shall provide, from State or local sources or both, the difference between—

(1) The costs of projects financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(b) In case of any individual project under a Public Library Construction grant, at least one half of the total cost must be supplied by State or local sources or both.

(20 U.S.C. 351e(b), 355b(b))

§ 770.42 What other financial obligation does a recipient have under a Public Library Construction grant?

(a) Unless released from the obligation by the terms of paragraph (c) of this section, a recipient of Federal financial assistance under a Public Library Construction grant—or the recipient's successor in title or possession—shall repay to the United States on request an amount as specified in paragraph (b) of this section if, within 20 years of the completion of construction of the library facility—or part of a facility—for which the assistance was received—

(1) The recipient or its successor ceases or fails to be a public or nonprofit institution; or

(2) The facility ceases to be used as a library facility.

(b) The amount the recipient or its successor may be obligated to repay is an amount that equals—

(1) The value of the facility or part of the facility at the time of the occurrence specified in paragraph (a)(1) or (a)(2) of this section; multiplied by

(2) The ratio of—

(i) The amount of the Federal assistance under the grant or subgrant; to

(ii) The cost of the facility or part of the facility for which the assistance was received.

Example. In 1974 a local public library completed a project to enlarge its reading room. The project had been assisted by a subgrant from the State under a Public Library Construction grant. The total cost of the project was $300,000; the subgrant had amounted to $120,000 a ratio of 2 to 5 or 40 percent of the cost.

In 1986 the local library moves to another district, and the facility for which it received assistance in 1974 ceases to be used as a library facility. It is determined that the part of the facility for which assistance was received has a current market value of $400,000.

The United States is entitled to recover from the local public library an amount equal to 40 percent of the current market value of the facility or portion of the facility assisted with Federal funds; that is, 40 percent of $400,000 or $160,000.

(c) The Secretary may decide, for good cause, to release the recipient from its obligation under paragraph (a) of this section.

(d) The provisions of this section apply to any facility constructed at any time with assistance under Title II of the Library Services and Construction Act.

(20 U.S.C. 355b)

§ 770.43 What administrative costs are allowable under this program?

(a) A State library administrative agency may spend funds received under a Library Services grant and funds received under a Public Library Construction grant to carry out its administrative functions under a Library Services grant, a Public Library Construction grant, and an Interlibrary Cooperation and Resource Sharing grant.

(b) The total amount the agency may spend to carry out its administrative functions under all of these grants during any year may not exceed the amount specified in section 8 of the Act (Administrative Cost).

(c) The agency may spend the funds for administrative costs in connection with the following activities:

(1) Administration of the State plan, including obtaining the services of consultants.

(2) Statewide planning for and evaluation of library services.

(3) Dissemination of information concerning library services.

(4) Activities of the State Advisory Council on Libraries and of any other advisory groups and panels necessary to assist the State library administrative agency in carrying out its functions.

(20 U.S.C. 351f, 353(b))

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

§ 770.50 Under what circumstance must a State provide an applicant with an opportunity for a hearing?

(a)(1) In the case of a Public Library Construction grant, if a State denies funds to a local or other public agency that applies for a subgrant for construction of public library facilities, the State library administrative agency shall give the local or other public agency an opportunity for a hearing.

(2) The provision in 34 CFR 76.401(b) (which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs) does not apply to Public Library Construction grants.

(b) In providing opportunity for a hearing, the State library administrative agency shall follow the appropriate policies and procedures included in the State's long-range program for the Public Library Construction grant.

(20 U.S.C. 355c)

4. Part 771 is added to read as follows:

PART 771—THE LIBRARY SERVICES AND CONSTRUCTION ACT BASIC GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Basic Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(1), (d)(1), (d)(2); 361)

§ 771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in § 771.4(b).

(b) Organizations—

(1) Primarily serving and representing Hawaiian natives; and

(2) Recognized by the Governor of the State of Hawaii.

(20 U.S.C. 351, 351a (15), (16); 351c(d)(1), 361)

§ 771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Program), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 771.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Contract
Department
EDGAR
Grant
Grantee
Project
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91–600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98–480).

"Hawaiian native" means an individual having an ancestor, who prior to 1778, was a native in the area that now comprises the State of Hawaii.

"Indian tribe."

(1)(i) This term means an Indian tribe, band, nation, or other organized group or community determined by the Secretary to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) After consultation with the Secretary of the Interior, the Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services.

(2) The term includes an Alaskan Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act.

"Library materials."

(1) This term means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, and materials designed specifically for the handicapped.

(2) (i) The term also includes restricted collections of cultural materials of Indian tribes or Hawaiian natives, as appropriate.

(ii) "Restricted collection" means library materials not placed in general circulation.

(20 U.S.C. 351a, 362(c))

"Library service" means the performance of all activities of a library relating to—

(1) The collection and organization of library materials; and

(2) Making the materials and information of a library available to users.

"Public library."

(1) This term means a library that—

(i) Serves free of charge all residents of a community, district, or region; and

(ii) Receives its financial support in whole or in part from public funds.

(2) The term also includes a research library; that is, a library that—

(i) Makes its services available to the public free of charge;

(ii) Has extensive collections of books, manuscripts, and other materials that are—

(A) Suitable for scholarly research; and

(B) Not available to the public through public libraries;

(iii) Disseminates humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and

(iv) Is not an integral part of an institution of higher education.

"Public library services" means library services furnished by a public library free of charge.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 771.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.

(2) In-service or preservice training of Indians as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians to have access to library services.

(7) Conduct of special library programs for Indians.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:

(1) Assessment of library needs of Hawaiian natives.

(2) In-service or preservice training of Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3) (i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.

(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Architectural services.

(5) Acquisition of land.

(6) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(7) Any combination of two or more of the activities referred to in paragraphs (c)(1) through (c)(6) of this section.

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 351c(d)(2), 362)

Subpart C—How Does One Apply for a Grant?

§ 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

(a) To be considered for a basic grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary an application containing the following:

(1) Information showing that the applicant is—

(i) An Indian tribe, as defined in § 771.4(b); or

(ii) An organization primarily serving and representing Hawaiian natives and recognized by the Governor of the State of Hawaii.

(2) A description of the project or projects—from among those listed in § 771.10 (a) or (b), as appropriate—the applicant proposes to conduct under its grant.

(3) A description of how the proposed project is likely to establish or improve public library services for—

(i) Indians living on or near a reservation; or

(ii) Hawaiian natives.

(4) In the case of an Indian tribe that supports a public library system, an assurance that the tribe will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirement in § 771.40.

(b) Each year, through a notice published in the **Federal Register**, the Secretary notifies potential applicants of the closing date for the transmittal of applications.

(20 U.S.C. 351c (d)(1), (d)(2); 361, 362, 363)

Subpart D—How Does the Secretary Make an Award?

§ 771.30 What factors does the Secretary consider in making an award?

The Secretary awards a basic grant to an applicant if—

(a) The applicant meets the requirements of eligibility in § 771.2; and

(b) The Secretary determines that the application meets the requirements as § 771.20.

(20 U.S.C. 351c (c)(1), (d)(1), (d)(2); 351d(g)(1), 361(c), 363)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 771.40 What are the financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

5. Part 772 is added to read as follows:

PART 772—THE LIBRARY SERVICES AND CONSTRUCTION ACT SPECIAL PROJECTS GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Special Projects Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in 34 CFR 771.4(b), that have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(b) Organizations that—

(1) Primarily serve and represent Hawaiian natives;

(2) Are recognized by the Governor of the State of Hawaii; and

(3) Have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(20 U.S.C. 351, 351a, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in 34 CFR Part 771, as appropriate.

(3) The regulations in this Part 772.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Project
Public
Secretary
Supplies

(b) *Definitions in 34 CFR Part 771.* The following terms used in this part are defined in 34 CFR 771.4(b) (the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program):

Act
Hawaiian native
Indian tribe
Library materials, including restricted collections of cultural materials
Library service
Public library
Public library services

(c) *Definition that applies to this part.* The following definition also applies to this part:

"Librarian" means an individual with training or experience in providing or managing library services.

(20 U.S.C. 351, 351a, 362c)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 772.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.
(2) In-service or preservice training of Indians as library personnel.
(3) Salaries of library personnel.
(4) Purchase of library materials.
(5) Dissemination of information about library services.
(6) Transporation to enable Indians to have access to library services.
(7) Conduct of special library programs for Indians.
(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.
(9) Contracts to—
(i) Provide public library services to Indians living on or near reservations; or
(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.
(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:
(1) Assessment of library needs of Hawaiian natives.
(2) In-service or preservice training of Hawaiian natives as library personnel.
(3) Salaries of library personnel.
(4) Purchase of library materials.
(5) Dissemination of information about library services.
(6) Transporation to enable Hawaiian natives to have access to library services.
(7) Conduct of special library programs for Hawaiian natives.
(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.
(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:
(1) Construction of new buildings.
(2) Acquisition, expansion, remodeling, or alteration of existing buildings.
(3)(i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.
(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:
(A) Machinery.
(B) Utilities.
(C) Built-in equipment.
(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.
(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.
(4) Architectural services.
(5) Acquisition of land.
(6) Within public libraries, construction of spaces that—
(i) Provide shelter from nuclear fallout; and
(ii) Are constructed at a nominal cost as part of a larger project.
(7) Any combination of two or more of the activities referred to in paragraphs (c)(1) through (c)(6) of this section.
(d) As used in this part, "remodeling" includes the following:
(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.
(2) Remodeling designed to conserve energy.
(3) Renovation or remodeling to accommodate new technologies.
(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 251c (c)(2), (d)(2); 361(d), 362; EO 11490, as amended)

Subpart C—How Does One Apply for a Grant?

§ 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

(a) To be considered for a special projects grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary—
(1) A plan for the year for which the applicant is seeking Federal financial assistance; and
(2)(i) A long-range program; or
(ii) If the tribe or organization has a long-range program on file with the Secretary in conjunction with a grant under this program, an update, if necessary, of that long-range program.
(b)(1) The Secretary regards the plan as an application for Federal financial assistance under Subpart D of this part.
(2) The project or projects the applicant proposes to carry out in its plan must be from among those listed in § 772.10 (a) or (b), as appropriate.
(c) The long-range program must be a comprehensive program that—
(1) Covers a period of not fewer than three years and not more than five years;
(2) Contains a clear and concise description of objectives; and
(3) Includes the following:
(i) Identification of the need for public library services by—
(A) Indians living on or near a reservation; or
(B) Hawaiian natives.
(ii) Identification of the specific service or services needed.
(iii)(A) A description of the project or projects to be undertaken toward meeting those specifically identified needs with assistance under this program.
(B) The project or projects must be from among those listed in § 772.10 (a) or (b), as appropriate.
(d) Each year, through a notice published in the **Federal Register**, the Secretary notifies potential applicants of the closing date for the transmittal of applications.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361, 362, 364)

Subpart D—How Does the Secretary Make an Award?

§ 772.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 772.31.
(b) The Secretary awards up to 100 possible points for these criteria.
(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361(d), 364)

§ 772.31 What selected criteria does the Secretary use?

(a) *Plan of operation.* (15 points)
(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.
(2) The Secretary looks for information that shows—
(i) High quality in the design of the project;
(ii) An effective plan of management that insures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;
(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and
(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.
(b) *Quality of key personnel.* (15 points)
(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (5 points)*

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for applicant to carry out the proposed public library services from among the projects listed in § 772.10 (a) or (b), as appropriate.

(2) In making this determination the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number or percentage of individuals in the area to be served by the project who require the proposed library services;

(ii) A description of other library services in the area—including any offered by the applicant—that are designed to meet the same needs as those to be addressed by the project;

(iii) Evidence that these other library services are insufficient in quantity or quality or both, or an explanation of why they are not used by individuals who require the proposed public library services; and

(iv) A description of how the project is likely to meet these needs by establishing or improving public library services for—

(A) Indians living on or near a reservation; or

(B) Hawaiian natives.

(g) *Consistency with long-range program.* (20 points)

(1) The Secretary reviews each application for information that shows the consistency of the project with the applicant's long-range program submitted under § 772.20.

(2) The Secretary looks for information that shows—

(i) How the project is designed to help meet one or more of the specific needs identified in the long-range program; and

(ii) The extent to which the project is likely to meet one or more of the long-range objectives described in the program.

(h) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the community are involved in the project.

(2) The Secretary looks for information that shows that individuals to be served and other members of the community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361(d), 364)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 772.40 What are the financial obligations of a grantee?

A tribe that receives a grant under this program shall provide the difference between—

(a) The costs of carrying out the plan approved by the Secretary for that year; and

(b) The Federal allocation, which, in no case, exceeds 80 percent of the costs.

(20 U.S.C. 351e(c))

§ 772.41 What are the additional financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 772.50 Who must administer funds under a special projects grant to an Indian tribe?

Funds granted to an Indian tribe under this program must be administered by a librarian.

(20 U.S.C. 351c(c)(2))

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Part III

Department of Education

Office of Educational Research and Improvement

Application for New Awards Under the Library Services and Construction Act; Basic Grants to Indian Tribes and Hawaiian Natives Program and Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1985; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Application for New Awards Under the Library Services and Construction Act; Basic Grants to Indian Tribes and Hawaiian Natives Program and Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1985

AGENCY: Department of Education.

SUMMARY: Applications are invited for new projects for (1) Basic Grants and (2) Special Projects Grants authorized under sections 5(c) and 5(d) and Title IV of the Library Services and Construction Act, as amended by Pub. L. 98–480 (20 U.S.C. 351 *et seq.*).

The Secretary awards Basic Grants to (1) eligible Indian tribes that propose projects designed to establish or improve public library services for Indians residing on or near reservations, and (2) organizations primarily serving and representing Hawaiian natives, recognized by the Governor of Hawaii, that propose projects designed to establish or improve public library services for Hawaiian natives. After consultation with the Secretary of the Interior, the Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services. Indian tribes and Hawaiian native organizations that have received Basic Grants are eligible to apply for Special Projects Grants on a competitive basis.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before July 15, 1985.

Proposed regulations for these programs are published in this issue of the **Federal Register**. If the Secretary makes changes in the final regulations that would affect the content of applications under this program, applicants will be allowed to amend or resubmit their applications.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA 84.163) 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of maling consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does note uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building No. 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m., and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

(1) Applicants for Basic Grants to Indian tribes and Hawaiian natives should note the application requirements in proposed §771.20.

(2) Indian tribes and Hawaiian native organizations that have received a Basic Grant are eligible to apply for Special Projects Grants. Applicants should note the application requirements in proposed §772.20 regarding a one-year project plan and a long-range program. Please note that under Title IV of the Library Services and Construction Act, grant funds are to be used to develop and improve public library services for Hawaiian natives or Indians residing on or near a reservation. Thus, applications for Basic and Special Project Grants that do not serve Hawaiian natives or Indians on or near a reservation will not be considered for funding.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographical area.

The State of Hawaii has established a process, has designated a single point of contact, and has selected this program for review.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact Hawaii's single point of contact to find out about, and to comply with, the State's process under the Executive Order. The single point of contact for Hawaii is included in the application package for this program.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 15, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA 84.163, 400 Maryland Avenue, SW., Washington, D.C. 20202. Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds

In Fiscal Year 1985 two percent (or $2,360,000) of the appropriation for LSCA Titles I, II, and III, was set aside for LSCA Title IV, Library Services for Indian Tribes and Hawaii Natives Program ($1,770,000 for Indian Tribes and $590,000 for Hawaiian natives).

Basic Grants

The average award is not expected to exceed $4,000 per eligible Indian tribe. One grant of up to $590,000 is expected to be awarded to serve Hawaiian natives. The grant period will begin October 1, 1985 and end on September 30, 1986.

Special Projects Grants

Prospective applicants under this grant category must be cognizant of the fact that if all eligible applicants apply and qualify for a Basic Grant, no funds will be available for Special Projects Grants. Should funds be available, awards will be made on a competitive basis in accordance with program regulations.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages will be available by May 31, 1985, and may be obtained by writing to the Library Education, Research and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 725, Brown Building, Washington, D.C. 20202-1630, Attention: LSCA Title IV.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed fifty pages. The Secretary urges that applicants not submit information that is not requested.

Applicable Regulations

The following regulations, when adopted in final form, will apply to these programs:

(a) For basic grants, the regulations governing the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program proposed to be codified in 34 CFR Part 771.

(b) For special projects grants, the regulations governing the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program proposed to be codified in 34 CFR Part 772.

In addition, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78 and 79 apply to Basic Grants and Special Projects Grants.

Further Information

For further information contact Frank A. Stevens, Chief, or Beth P. Fine, Education Program Specialist, Division of Library Programs, Library Education, Research and Resources Branch, Room 725, Brown Building, 400 Maryland Avenue, SW., Washington, D.C. 20202-1630. Telephone: (202) 254-5090.

(20 U.S.C. 351 *et seq.*)

(Catalog of Federal Domestic Assistance Number 84.163, Basic Grants to Indian Tribes and Hawaiian Natives Program and Special Projects Grants to Indian Tribes and Hawaiian Natives Program)

Dated: May 13, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-11800 Filed 5-15-85; 8:45 am]

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Reader Aids

Federal Register

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FEDERAL REGISTER PAGES AND DATES, MAY

CFR PARTS AFFECTED DURING MAY

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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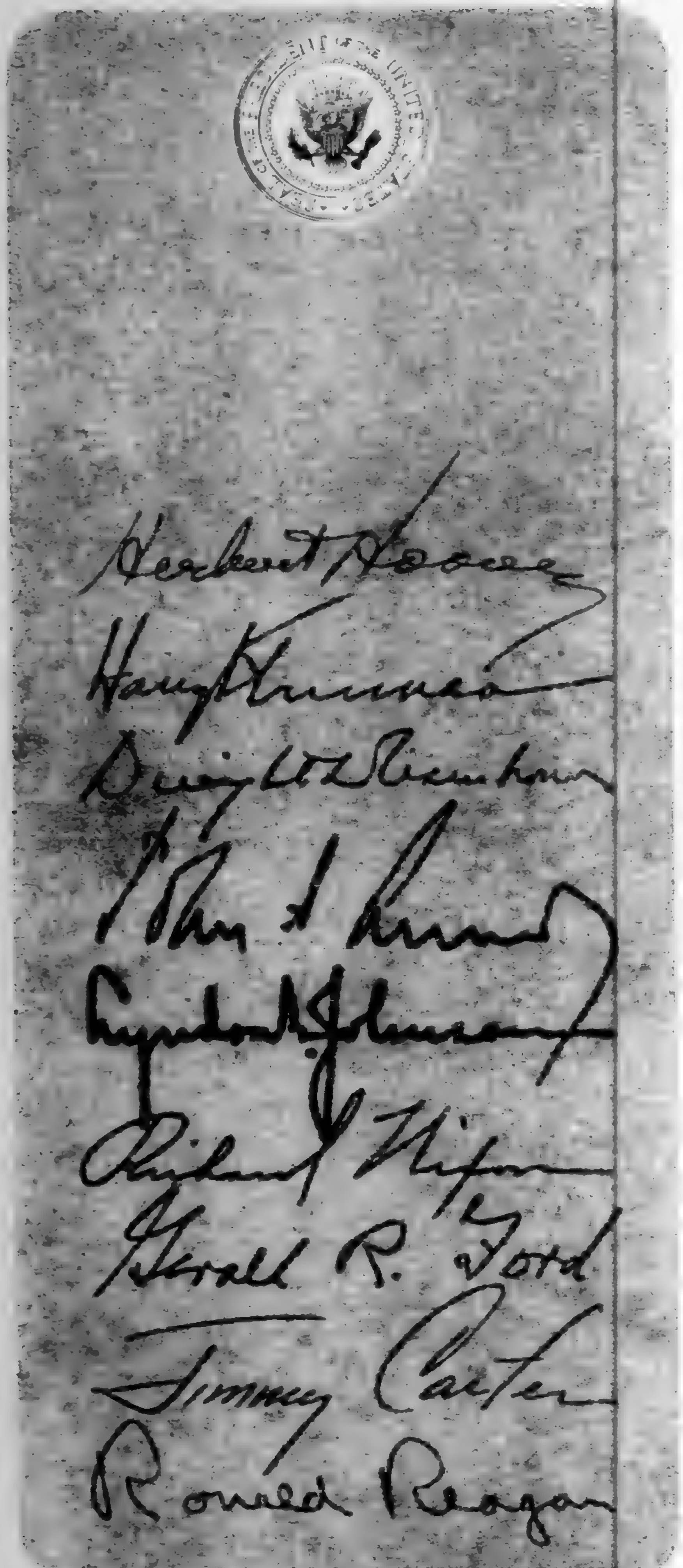

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Friday
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Selected Subjects

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5339 of May 14, 1985

National Science Week, 1985

By the President of the United States of America

A Proclamation

We live in an age when rapidly changing science and technology are transforming our economy and our way of life. But this is nothing new for Americans, because we have always been inventors and explorers who looked to science as a way of achieving a better future.

Today the pace of scientific discovery has accelerated, and its effects are being felt worldwide. No nation or group of nations has a monopoly on the world's scientific talent, so no nation can take for granted that it will remain in the forefront of technological change just because it has been in the past. America must continually strive to undertake basic research in science as well as to develop new technological applications of scientific ideas.

In order to do this, it is particularly important that we provide our young people with good scientific education. Even those who do not pursue careers in science should understand the scientific method and appreciate the contributions science and technology make to our way of life.

Americans are coming together to meet the challenges that the rapid advance of scientific knowledge creates for us. As we have so many times before in our history, we see these challenges as opportunities. Our businesses, universities, and State and local governments are working in partnership with the Federal government to meet our needs through research and education. As these cooperative relationships develop, we can look forward with confidence to an era of scientific discovery and technological innovation unimagined only a few years ago.

In recognition of the importance of science, technology, and science education, and to draw public attention to the great works being accomplished in these fields, the Congress, by Senate Joint Resolution 59, has designated the period from May 12 through May 18, 1985, as "National Science Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 12 through May 18, 1985, as National Science Week. I urge the people of the United States to observe this week and participate in the many activities planned by universities, businesses, State and local governments, and the Federal government during this period.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-12153
Filed 5-16-85; 9:16 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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Friday, May 17, 1985

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the National School Lunch Program and the School Breakfast Program to implement the decision by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *National Soft Drink Association v. Block, et al.*, respecting the sale of foods of minimal nutritional value in schools participating in these programs. The court found that the Department had exceeded its rulemaking authority when it promulgated the "time and place" regulations restricting the sale of foods of minimal nutritional value *throughout* the school from the *beginning* of the school day until after the end of the last food service period. Therefore, in this final rule the Department amends the regulations to control the sale of competitive foods and foods of minimal nutritional value only during breakfast and lunch periods in food service areas. In other words, restrictions on foods sold on school premises outside the food service area may now be imposed at State or local discretion, but are no longer imposed by the Department.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as "not major" because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Background

On March 13, 1984, the Department published a proposed competitive foods rule at 49 FR 9426 which would amend the "time and place" portion of the rule to restrict the sale of foods of minimal nutritional value only during meal hours in meal service areas. This change responds to a decision by the U.S. Court of Appeals for the District of Columbia in the case of the *National Soft Drink Association* v. *Block, et al.*, 721 F.2d 1348 (D.C. Cir. 1983). In that case, the court ruled that the Department had exceeded its rulemaking authority when it promulgated the "time and place" portion of the competitive foods rule, restricting the sale of carbonated beverages throughout the school from the beginning of the school day until after the last lunch period. The court found that an examination of legislative history led to the conclusion that Congress intended to authorize the Secretary to restrict the sale of foods of minimal nutritional value only in the food service areas during periods of meal service.

In response to the court's decision, the proposed rule was intended to limit federal control of competitive foods sales to the food service areas during meal hours.

Comment Summary

The proposed rule provided for a 60-day comment period which ended on May 14, 1984. During that period, 858 comments were received of which 823 commenters opposed the proposal, 21 commenters favored the proposal, and 14 comments were unclear or uncommitted.

Supportive comments—Personal freedom of choice was the reason most cited by the 21 commenters favoring the proposed rule. Although some felt that there should not be a competitive foods rule at all, they said that the proposal was an improvement on the 1980 rule. Another reason cited by commenters favoring the rule was that competitive foods sales were crucial to school fund raising drives, and that if the school did not sell restricted items, the students would buy from someone else. One school official stated that competition was healthy, and would force school cafeterias to improve their services.

Opposing comments—Over 95 percent of the commenters were opposed to the proposal and most cited the same two objections: (1) Income issues (55%) and (2) nutritional issues (70%).

Income Issues—Those commenters concerned about income to the school food service believed that the proposal would encourage competition against the school's nonprofit lunch program by allowing all types of food to be sold by anyone just outside of the cafeteria during meal hours. Many commenters feared that this would considerably reduce student participation in the programs and ultimately reduce school food service income. The appeals court opinion stated:

> The statute provides in the first sentence that the Secretary may regulate the sale of foods offered in competition to the food served in the subsidized school food programs . . . We cannot however ignore the second sentence of the statute. In that sentence the authority of the Secretary to

regulate the sale of competitive foods is restricted to the sale of competitive foods in "food service facilities or areas during the service of food" under the school nutritional program. (*National Soft Drink Association* v. *Block, et al.*, 721 F.2d 1348, 1352 (D.C. Cir. 1983).)

The court concluded that Congress intended federal control over the types of foods sold in schools to extend only to food service areas during meal service periods. Although the U.S. Court of Appeals was addressing foods of minimal nutritional value, specifically carbonated beverages, the issue is time and place rather than a specific food item. The court did not specifically address the issue of income from the sale of food outside the food service area. However, it is our view that a reasonable interpretation of the ruling would extend the "time and place" restrictions to the Department's authority to control not only the sale but the income from the sale of foods outside the food service area. Hence, under this final rule the Department no longer regulates sales or income on sales occurring on school campuses outside the food service area, unless the income is earned by the school food service as explained below. The Department's position is that income earned outside the cafeteria may be subject to restrictions and may be controlled by the school food service, but such restrictions and controls must be imposed by the State or local level governments or school officials. The same interpretation of the court's ruling holds true regarding restrictions on the individuals, organizations and companies allowed to sell products on school campuses outside the food service area.

The Department now leaves such restrictions up to State and local level officials.

The revised accountability rules published on September 6, 1983, at 48 FR 40194, set forth definitions for nonprofit school food service and for revenues to such food service and require School Food Authorities to maintain appropriate revenue and expenditure records in order to substantiate the nonprofit status of their school food service. Under § 210.7(b) of those rules, all income to the nonprofit school food service must be used only for the operation or improvement of that food service. Income from all food sales conducted by the nonprofit school food service are subject to this provision whether or not the sales occur within the lunchroom or during meal service periods.

Income from food sales not conducted by the nonprofit school food service are subject to federal restriction only if such sales meet the definition of competitive foods—meaning they are sold in the food service area during meal periods. Under this final rule, the definition of competitive foods has been substantially narrowed to comply with the court's decision. Therefore, the Department will not stipulate to whom income from food sales *outside* of the lunchroom or outside meal service periods may accrue, unless the sale is conducted by the nonprofit school food service. However, all income from the sales of competitive foods *within* the food service area during meal periods, even if not conducted by the nonprofit school food service, must accrue to the benefit of the nonprofit school food service, to the school, or to student organizations approved by the school.

In summary, the Department does not regulate the sale of foods *outside* the food service area or where the income from such sales go; *except* that the regulations continue to require that income earned by the nonprofit school food service, even outside the food service area, such as in hallways, *must* be used only for the operation or improvement of the nonprofit school food service.

The Department encourages parents, students, school officials, teachers, school food service personnel, and nutrition experts to work together to design local policies. The school nutrition programs are a partnership of local, State and federal agencies. Local and State officials have the authority to implement a more comprehensive competitive foods rule that accommodates local needs and exceeds the Department's minimum rule concerning the treatment of income, areas, time, and restricted foods.

Some commenters expressed concern that the proposed rule lessened the authority of State agencies and local schools to impose restrictions on competitive foods beyond the minimum imposed by the federal government. As stated in the preamble to the proposed rule, the proposal was not intended to limit State or local authority in this area. States and local school food authorities have always had, and will continue to have, the authority to impose restrictions on the sale of foods on their school campuses which are more stringent or detailed than those imposed by this Department. Because many commenters believed the proposed rule deprived schools and States of this authority, the final rule maintains the current language which specifically requires States and School Food Authorities to establish such rules or regulations as are necessary to control the sale of foods in competition with meals served under the Program. The determination as to how far to regulate beyond the minimum federal requirement remains with the State and local officials as it did in the previous rule. As further clarification, this final rule specifies that State agencies and school food authorities may impose additional restrictions on the sale of and income from foods sold anywhere in schools.

Nutritional Issues

The reason most cited by commenters opposed to the proposal (70%) was that nutrition efforts in the school system should not be weakened. Another major concern was that the proposal undermined the nutrition education efforts of parents and schools. The Department recognizes these commenters' concerns. However, the Department anticipates that nutritional concerns will be foremost in the minds of State and local officials who establish controls on competitive foods. Since State and local school food officials have the authority to impose further restrictions on the sale of all competitive foods, including foods of minimal nutritional value, schools and parents, through their local school officials, can use this control to reinforce their nutrition education efforts. We are confident that school officials, with the help of their community, can effectively influence the food habits of their students. The Department encourages schools and public officials to include publicity about the nutritional superiority of school lunches in their educational activities. For years the Department has mandated that schools actively seek to involve parents and students in their school meal programs. Local public concern about food issues in schools should encourage involvement by students and parents in the decisionmaking process regarding competitive foods sold on school campuses.

Definitions—The proposed rule did not define the terms "food service area," "lunch period" and "breakfast period" because those terms are self-descriptive. Since less than 20 commenters requested that the terms be defined, we continue to believe that regulatory definitions are unnecessary and that the proper application of these terms is best left to State agencies and local School Food Authorities who are familiar with local circumstances. Generally, the food service area will be the cafeteria or other areas in the school where meals subsidized by the National School Lunch and School Breakfast Program are

served and eaten. The "lunch period" and "breakfast period" are generally the times designated for the service and/or consumption of meals.

The proposed definition of "competitive foods" included a reference to "foods of minimal nutritional value" which confused some readers. We agree that even without the reference to "foods of minimal nutritional value," the definition clearly encompasses those foods. The reference is therefore redundant. The definition of competitive foods in this final rule is simply stated as any foods sold in competition with the Program to children in food service areas during the meal periods.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School breakfast program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; (42 U.S.C. 1751–1760, 1779), unless otherwise noted.

2. In § 210.2, paragraph (c–3) is revised and paragraph (c–4) is removed.

§ 210.2 Definitions.

* * * * *

(c–3) "Competitive foods" means any foods sold in competition with the National School Lunch Program to children in food service areas during the lunch periods.

* * * * *

3. In § 210.15b, paragraph (a) is revised to read as follows:

§ 210.15b Competitive foods.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and School Food Authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the National School Lunch Program.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889; (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.2, paragraph (c–1) is revised and paragraph (c–2) is removed.

§ 220.2 Definitions.

* * * * *

(c–1) "Competitive foods" means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period.

* * * * *

3. § 220.12, paragraph (a) is revised to read as follows:

§ 220.12 Competitive foods.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with breakfasts served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the breakfast periods. The sale of other competitive foods may, at the discretion of the State agency and the School Food Authority, be allowed in the food service area during the breakfast period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the School Breakfast Program.

* * * * *

Dated: May 10, 1985.

John Bode,
Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 85–11828 Filed 5–16–85; 8:45 am]
BILLING CODE 3410-30-M

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7 CFR Parts 272, 273, 274, 277, and 282

[Amdt. No. 253]

Food Stamp Program; Amendments to the Requirements for State Agency Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The FNS–256/388 reporting system provides Food Stamp Program participation and coupon issuance data necessary for the Secretary to fulfill the requirements of section 18(a) of the Food Stamp Act. On May 27, 1983, the Department issued a proposed rule to amend this reporting system. Comments on the proposal were solicited through July 26, 1983. This final rulemaking, which will revise the 256/388 reporting system, takes the comments received into account.

The revisions to the reporting system are intended to improve the utility of the participation and issuance data reported to FNS as well as to reduce the burden placed on State agencies which report the data. Thus, the monthly FNS–388 report of coupon issuance and participation will be expanded to contain three months' data instead of the two on the current report. Additionally, twice each year, for the months of January and July, State agencies will be required to provide data on the number of non-assistance (NA) and public assistance (PA) households and persons that participated. Offsetting this, however, the form FNS–256, Project Area Participation and Coupon Issuance report, will be eliminated. In its place, a project area level breakdown of the NA/PA data for the months of January and July will have to provide as an attachment to the March and September FNS–383 reports.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3427.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." This rule will not have an annual effect on the economy of $100 milion or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This final rule has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Recordkeeping Requirements

The reporting requirements contained in the rule (§ 274.8(a)(6)) have been approved by the Office of Management and Budget (OMB), under OMB number 0584-0081.

Background

This final rule addresses the provisions contained in the proposed rule of May 27, 1983 (48 FR 23825). The revised procedures contained in this rulemaking are intended to improve the utility of the participation and coupon issuance estimates reported to FNS. We received a total of 23 comment letters on the proposed rules. In light of the comments, the final rules are modified such that the major concerns are eliminated. This preamble addresses the changes made to the proposed rules and the controversial provisions that were not changed.

The proposed rules would have modified the FNS-388 report to include a third column for the State agencies to report the actual Statewide total number of households and persons for the second preceding month. Further, the proposed rules would have modified the FNS-256 report by requiring non-assistance (NA) and public assistance (PA) breakdowns of the number of households and persons that participated in the project area and the totals of NA/PA coupon issuance. In addition, the Department proposed to collect on the FNS-256 NA/PA certification and application processing activity. It was also proposed that the FNS-256 be submitted twice annually for the months of January and July.

Most of the comments on the proposed rules concerned the collection of certification and application processing data on the Project Area Participation and Coupon Issuance report, Form FNS-256. These final rules eliminate Form FNS-256, although the required submission of the data currently collected on the FNS-256 is retained. As a result of these changes to the proposed rules, a response to most of the comments is deemed unnecessary. Thus, only the comments relative to the reporting system outlined in the final rules will be addressed. Since the explanation of many of the provisions of the final rules are set forth in the proposed rules, it may be necessary to refer to that publication for a full understanding of the reporting requirements contained in the final rules.

Commenters expressed concern that the requirement to report State and local level participation figures would possibly be a duplication of effort. However, the timeliness of the Statewide totals enables us to fulfill the requirement, mandated by section 18(a) of the Act, that the Department report by the 15th day of each month the best estimate of the second preceding month's expenditure and a statement as to whether there is reason to believe that reductions in the value of food stamp allotments will be necessary. The greater breakdown of the data by project areas is needed for special studies and to respond to Congressional and other inquiries.

While the coupon issuance data collected on the FNS-388 may be considered a duplication of reporting since similar data is collected on the FNS-250, Food Stamp Accountability Report, the difference between the data on the two reports warrants the continued data collection from the two systems. The issuance data reported on the FNS-250 is collected after the end of each issuance month and is derived from the reconciled allotments issued to households and from an inventory check on the number of coupons issued. However, the FNS-388 issuance and participation data is collected earlier in the issuance process. It is calculated from the authorization documents before households are issued their allotments. This means that the data on the FNS-388 report can be reported much more quickly, thereby satisfying the need for quick readings of program expenditures for the current and preceding months. The data for the second preceding month, however, can be taken from the FNS-250 report since it will be available by this time. Therefore, States do not need to report actual Statewide issuance totals for the second preceding month. Instead, the Department will use the issuance total reported on line 19 of the FNS-250 report.

The revision of the proposed Form FNS-388 requires that NA/PA Statewide totals of the number of participating households and persons be reported on the March and September reports for the actual second preceding months of January and July. Also, the Statewide total number of participating households and persons shall be reported for the second preceding month. Additionally, this rule requires that State agencies submit project area breakdowns of coupon issuance and the NA/PA household and person participation total for the months of January and July as an attachment to the March and September FNS-388 reports.

The actual participation and issuance data reported for the FNS-388 system shall be figures calculated from the manual or automated issuance documents from which households received their allotments. For issuance systems that require the household to transact an ATP, actual issuance means the value of coupons reflected on the transacted ATP's (including altered, counterfeit, duplicate, expired, supplemental allotments, and stolen ATP's). For other issuance systems, actual issuance means the value of coupons distributed to households as reflected on authorization documents, tape rosters or other authorization devices, (such as a video monitor in an on-line issuance system) used to distribute allotments. In the case of some newly developed automated systems, such as the electronic benefit transfer system, actual issuance is the value of the allotment as credited to the household's account.

Report Due Dates

Due to the necessity of receiving the Form FNS-388 data to meet the mandated timeframe for the Department's report to Congress, the current FNS-388 reporting timeframe is unchanged. However, this rule requires that project area data be provided as an attachment to the March and September FNS-388 reports. Compared to the current 45-day requirement to mail the

FNS-256 reports, the new requirement allows an additional 4 days.

Definition of PA and NA Households

To ensure consistency of the data reported nationwide for this rulemaking, commenters suggested and the Department agrees that a clear definition of public assistance (PA) and non-assistance (NA) households is necessary. Therefore, for the reporting requirements of this rule: (A) "PA households" are those food stamp households in which *all* members are receiving income from the Aid to Families with Dependent Children (AFDC) program, the Supplemental Security Income (SSI) program, or a General Assistance (GA) program that uses formalized application procedures and eligibility criteria that test levels of income and resources; and, (B) "NA households" are those food stamp households containing at least one member not receiving income from the AFDC, SSI, or a means-tested GA program.

Acceptable Tolerance Levels

A commenter suggested that the Department retain in this final rule, the tolerance level provisions which are currently used as standards for accuracy of participation estimates submitted on the FNS-388 report, and that acceptable standards be incorporated for the issuance estimates as well. As proposed, the accuracy standards for the FNS-388 issuance and participation estimates are retained to encourage the State agencies to achieve and sustain a high degree of accuracy in their monthly estimates. The Department will use the accuracy standard to monitor the effectiveness of State agencies' estimation techniques. Whenever a State agency fails to report data within the standards, the Department will work with the State agency to improve its performance.

Implementation

State agencies shall implement the new requirements the first month beginning on or after the 90th day following publication of this final rule in the **Federal Register**. The first revised FNS-388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. The State agencies will cease submission of the FNS-256 report as of July 1985. All State agencies shall provide the new reports in accordance with the requirements contained in this rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

7 CFR Part 282

Food stamps, Government contracts, Grants programs-social programs, and research.

Accordingly, 7 CFR Parts 272, 273, 274, 277, and 282 are amended as follows:

1. The authority citation for Parts 272, 273, 274, 277, and 282 continues to read:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(65) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(65) Amendment 253. The provisions of § 274.8(a)(6) (i), (ii), and (iii) shall be implemented the first month beginning on or after the 90th day following publication of this final rule. In that month, the FNS-388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. State agencies will cease submission of the FNS-256 report as of July 1985.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10, paragraph (g)(3)(ii)(A) is amended by replacing the third sentence with two new sentences which read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(g) *Certification notices to households.* * * *

(3) *Identification (ID) Cards.* * * *

(ii) *Mandatory Photo ID Cards.*

(A) * * * FNS will evaluate the January participation data reported as an attachment to the March FNS-388 report. Based on the analysis, FNS will notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of photo ID cards. * * *

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

4. In § 274.8, paragraph (a)(6) is revised to read as follows:

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* * * *

(6) State agencies shall report information regarding coupon issuance and participation on the Form FNS-388 report as follows:

(i) State agencies shall telephone the FNS-388, State Coupon Issuance and Participation Estimates, data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the FNS-388 data shall be reported by telephone and mailed on the first work day after the 19th. The FNS-388 report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The FNS-388 report shall provide Statewide estimated totals of issuance and participation (persons and households) for the current month, revised estimates or actual totals for the preceding month, and actual participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, Statewide non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September FNS-388 reports, State agencies shall provide project area breakdowns of coupon issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the FNS-388 data to the FNS regional office for review and comment. FNS shall

monitor the accuracy of the estimated dollar value of coupons issued as reported on the FNS-388 against the Statewide total dollar value of coupon as reported by the issuance agents on the FNS-250, Food Stamp Accountability Report, for the corresponding month. FNS shall monitor the accuracy of the Statewide estimated number of households and persons participating as reported on the FNS-388 report against the Statewide actual total participation as reported on succeeding FNS-388 reports and against the semi-annual project area participation totals attached to the March and September FNS-388 reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) 4 percent and the estimates for the previous month be within (+) or (−) 2 percent of the actual levels. State agencies shall explain any unusual circumstances that cause coupon issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

* * * * *

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.18 [Amended]

5. In § 277.18, paragraph (c)(2)(vii)(A) is amended by adding the word "and" after the semicolon, paragraph (c)(2)(vii)(B) is removed, paragraph (C)(2)(vii)(C) is redesignated as (B), and the newly designated (B) is amended by adding the word "State" before the word "coupon".

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

6. In § 282.12, paragraph (l)(2)(i) and paragraph 17.(a) of Section B of the Appendix to § 282.12 are revised to read as follows:

§ 282.12 SSI/Elderly cash-out demonstration project.

* * * * *

(l) *Records and reports.* * * *

(2) * * *

(i) A monthly project area report, providing the following data: * * *

* * * * *

Appendix—Notice of Intent. * * *

B. *State agency responsibilities.* * * *

17. * * *

(a) A monthly project area report of participation and coupon issuance shall be provided. The report shall include the total number of households and persons participating for aged only, SSI aged, and SSI blind and disabled, the total value of monthly benefits issued, and the average monthly benefit for each group of households indicated above;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: May 13, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-11954 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

Amendments Relating to the Issuance and Use of Subordinated Debt Securities

Dated: April 18, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the issuance and use of subordinated debt securities as regulatory net worth by institutions the accounts of which are insured by the FSLIC ("insured institutions"). The changes are intended to eliminate the use of techniques that tend to overstate the capital adequacy of insured institutions and therefore increase FSLIC risk. Four principal changes have been made. First, the amendment provides that for subordinated debt issued after December 5, 1984, the amount includable as net worth must be amortized pursuant to a schedule which permits 100 percent to be included when the years to maturity are greater than or equal to seven, and decreases by approximately one-seventh each year thereafter. Second, the amendment prohibits an insured institution from selling subordinated debt securities to other insured institutions or their corporate affiliates and including the subordinate debt as part of its regulatory net worth. The amendment does not, however, prohibit sales of subordinated debt to the issuer's corporate affiliates or sales to diversified savings and loan holding companies and their non-insured-institution subsidiaries. Third, the amendment requires that the subordinated debt certificate and any related document include specified language regarding the rights of the FSLIC in determining the treatment of subordinated debt liabilities of an insured institution which is in receivership. Fourth, the amendment delegates to the Principal Supervisory Agents the authority to approve most subordinated debt applications. Subordinated debt applications involving novel policy issues or offerings circulars for subordinated debt to be sold in a public offerings will continue to be received at the Board. Finally, a number of technical and clarifying changes have been made.

When this amendment was proposed on November 30, 1984, the Board notified the public that it was proposing to use as an effective date the publication date of the proposal. Accordingly, the effective date of this amendment is December 5, 1984.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Attorney, Office of General Counsel, (202) 377-6649, or Francis M. Passarelli, Deputy Director, Office of Examinations and Supervision, (202) 377-6493, or Joseph A. McKenzie, Economist, Office of Policy and Economic Research, (202) 377-6763, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84-680, dated November 30, 1984 (49 FR 47499), the Board proposed revisions to its regulations concerning the issuance and inclusion of subordinated debt as regulatory net worth ("the proposal"). As part of the proposal, the Board proposed revisions to the subordinated debt and regulatory net-worth regulations, to: (1) Provide that the amount of subordinated debt includable as net worth would be amortized by approximately one-seventh each year beginning when the term to maturity of the subordinated debt is less than seven years; (2) prohibit the sale of subordinated debt to insured institutions or their corporate affiliates (excluding corporate affiliates of the issuer) if such subordinated debt is to be included in the issuer's regulatory net worth; (3) clarify the rights of the FSLIC in determining the treatment of subordinated debt liabilities of an insured institution which is in receivership; and (4) delegate to the Principal Supervisory Agents the authority to approve most subordinated debt applications. In addition, the Board proposed a number of technical and clarifying changes to 12 CFR 563.8 and 563.8-1, the Board's regulations

pertaining to general borrowings and subordinated debt offerings.

As indicated in the proposal, the Board does not believe that subordinated debt should be treated as the equivalent of retained earnings and capital stock for purposes of complying with the Board's net-worth requirement. Although the Board recognizes that subordinated debt affords protection to the FSLIC in the event of insolvency of an insured institution, the proposal reflects the Board's belief that the use of an amortization schedule which reduces the amount of subordinated debt includable as net worth as the subordinated debt approaches maturity appropriately recognizes that subordinated debt is a non-permanent liability which must be repaid upon maturity.

Similiarly, the proposed revision to the subordinated debt regulation to prohibit subordinated debt that has been issued to other insured institutions or their corporate affiliates from being included as regulatory net worth was intended to recognize the economic reality that no risk has been transferred outside the group of institutions with FSLIC-insured accounts when the purchaser of the subordinated debt security is another insured institution or a corporate affiliate thereof. Finally, the third major change set forth in the proposal, which would clarify the rights of the FSLIC to determine the treatment of subordinated debt liabilities in receivership cases, was intended to ensure that subordinated debt which is included as part of an insured institution's regulatory capital will help to reduce the FSLIC's costs in receivership cases and that the investing public will be aware of the treatment afforded such securities in the event of receivership.

Summary and Discussion of Comments Received on the Proposal

The Board received fifteen public comments in response to its proposal. Ten of the comments were received from savings and loan associations and Federal savings banks. Of the remainder, two were from law firms, and three from trade associations. Four commenters generally endorsed the proposal. Of those commenters who were opposed to all or part of the proposal, one was generally opposed to the proposal, eight were in general agreement with the proposal but objected to certain of its provisions, and two expressed no opinion on the proposal as a whole but objected to particular provisions.

Three commenters objected to the proposed requirement of a phased reduction in the amount of an subordinated debt issue qualifying as net worth, because no exemption was provided for subordinated debt issued with a sinking fund or serial maturity feature. These commenters argued that adoption of such a rule would result in duplicative reductions to net worth because of the net-worth amortization schedule and the fact that the scheduled prepayments or redemptions would reduce the amount of subordinated debt outstanding to which the amortization schedule would apply. Because of these features, it was argued that the proposed regulation would create disincentives to issuing subordinated debt with a sinking fund or a serial maturity feature.

As the commenters correctly pointed out, one of the issues addressed by the proposal was the Board's concern that the current regulation, which permits 100 percent of a subordinated debt issue to be included as net worth until the remaining period to maturity is less than one year, does not take into account the fact that the degree of protection provided to the FSLIC by subordinated debt diminishes as the subordinated debt issue approaches maturity. Because the amount of a subordinated issue outstanding, and the amount includable as net worth, would be reduced over time for those subordinated debt issues with a sinking fund or a serial maturity feature, the commenters suggested that there was no need for those types of subordinated debt issues to be subject to the amortization schedule.

What was ignored by the commenters, however, was the second issue addressed by the Board in its proposal, concerning the significant leveraging potential of a subordinated debt issue as it approaches maturity. The Board believes that this leveraging potential should be reduced by a phased reduction in the proportion of the then-outstanding subordinated debt issue that can qualify for regulatory net worth. For a subordinated debt issue without a sinking fund or other required prepayments, the amount of money at risk, until the debt matures, is the original issue size.

On a subordinated debt issue with a sinking fund or serial maturity feature, however, the amount of money at risk, and the protection afforded the FSLIC, is gradually reduced as the sinking fund or serial payments are made. By not applying the phased-reduction requirement prepayments, the Board would be permitting, in effect, 100 percent of a shrinking issue to count as regulatory net worth while constantly reducing the qualifying regulatory-net-worth proportion of a larger and longer maturity non-sinking-fund issue. After consideration of these factors, the Board does not believe that it would be appropriate to distinguish between subordinated debt issues with a sinking fund or serial maturity feature and those without such features.

Several commenters suggested revisions to the seven-year amortization schedule. For example, one suggested that 100 percent of the subordinated debt issue be included as regulatory net worth during the first five years that the issue is outstanding, then be reduced on a straight-line basis for the remaining term of the issue, while another commenter suggested that the amortization schedule only take effect over the last half of the maturity schedule. After further consideration of this issue, the Board believes that the proposed seven-year amortization schedule is appropriate because it provides for a more gradual reduction of the issuer's regulatory net worth, thus giving the issuer more time either to replace the regulatory capital by the issuance of additional capital stock and/or subordinated debt or to adjust the amount of its liabilities to compensate for the reduction in its regulatory net worth. In addition, the seven-year amortization schedule encourages the issuance of longer-term subordinated debt, which affords the FSLIC a greater degree of protection.

One commenter asked the Board to explicitly address the treatment of subordinated debt that was either approved before December 5, 1984, the proposal date, or for which a substantially complete application was on file prior to that date. Although the Board indicated in the preamble of the proposal that subordinated debt which had previously been approved or for which a substantially complete application was filed by December 5, 1984, would be permitted to be included as regulatory net worth in accordance with the regulation as then in effect, this "grandfathering" provision has been incorporated in the final regulation.

Two commenters suggested that the prohibition on sales of subordinated debt to other insured institutions or their corporate affiliates be modified to permit such investments in *de minimis* amounts, e.g., one percent of assets. In addition, one commenter suggested that there should be no prohibition of sales to insured institutions if the transaction is not part of any related transaction between the insured institutions involving the purchase or sale of other assets. As indicated in the proposal, the Board does not believe that subordinated debt which has been

issued to other insured institutions or their corporate affiliates should be included as regulatory net worth since no risk has been transferred to a third party outside of the group of FSLIC members. The Board notes, however, that the final rule allows for a waiver of the restriction on the sale of subordinated debt to other insured institutions where unusual circumstances would justify such a waiver.

Two commenters also objected to a restriction on sales of subordinated debt to other insured institutions because the effect would be to prohibit the use of a subordinated debt security as collateral for a loan from any insured institution. For the reasons discussed above, the Board does not believe that subordinated debt which is held by other insured institutions should be permitted to be included as part of the issuer's regulatory net worth, and it sees no reason to make an exception to permit the use of subordinated debt as collateral for a loan from an insured institution. In such a case, default by the borrower would result in the insured lender holding subordinated debt issued by another insured institution, to the ultimate detriment of the FSLIC.

In connection with the proposal, the Board specifically requested comments on two issues: (1) With regard to the treatment of subordinated debt as regulatory net worth, whether subordinated debt that is convertible into common stock should be treated differently from non-convertible subordinated debt, and (2) in connection with the proposed prohibition of the sale of subordinated debt to other insured institutions or their corporate affiliates, whether any distinction should be made between sales of subordinated debt to diversified and non-diversified savings and loan holding companies. With respect to the first issue, the Board received only one comment. The commenter suggested that convertible subordinated debt not be subject to the seven-year amortization schedule but failed to provide any reasoned basis for the distinction. Upon further consideration of this issue, the Board has determined that there is no need to make any distinction in the regulation between convertible and non-convertible subordinated debt. Upon proper application, however, the Board would be disposed to permit subordinated debt which automatically converts to permanent capital stock to be 100-percent includable as regulatory net worth and not subject to any net-worth amortization schedule.

The Board received no comments on the second issue. The Board recognizes that the purchase of subordinated debt by a diversified savings and loan holding company (or one of its non-insured-institution subsidiaries) involves the risk that the issuing insured institution may fail and negatively affect the financial strength of the holding company. The Board believes, however, that diversified savings and loan holding companies, unlike non-diversified holding companies, will usually have sufficient financial strength to absorb potential losses resulting from the failure of the issuing insured institution and still ensure the capital adequacy of their own insured subsidiaries. The final rule, therefore, permits insured institutions to issue subordinated debt to diversified savings and loan holding companies and their non-insured-institution subsidiaries and to include the subordinated debt as part of their regulatory net worth.

One commenter also requested that the Board address the issue of whether an insured institution may sell subordinated debt to its service corporation or finance subsidiary and include the subordinated debt as part of its regulatory net worth. Although the final rule does not prohibit an insured institution from selling subordinated debt to its service corporation or finance subsidiary, the Board would not generally approve the inclusion of the subordinated debt as regulatory net worth since the transaction does not result in any risk being transferred outside of the FSLIC insurance system, or, in this case, outside the insured institution itself. If the service corporation or finance subsidiary were merely being used as a conduit for the transfer of funds from an independent third party, however, the Board, under circumstances where no assets of the parent savings and loan association were being transferred to the finance subsidiary or service corporation and which resulted in a transfer of risk to parties other than FSLIC members, may be willing to approve the use of the subordinated debt as regulatory net worth.

The Board is aware that during the past year many institutions have issued subordinated debt to "limited purpose" finance subsidiaries which obtained the funds to purchase the subordinated debt by issuing preferred stock to independent third parties. These transactions were typically structured so that, prior to the issuance of the preferred stock, the parent savings and loan institution would transfer to a second-tier finance subsidiary interest-earning assets with a market value in excess of the redemption price of the to-be-issued preferred stock. The finance subsidiary would then issue preferred stock to the public and use all or part of the net proceeds to purchase subordinated debt of the parent savings and loan institution. In addition, once the preferred stock was issued, the finance subsidiary would be obligated to maintain assets having a market value equal to or in excess of the amount necessary to pay the redemption price of the preferred stock.

After careful consideration of the issues involved in these transactions, the Board has concluded that the parent savings and loan association should not be permitted to include as part of its regulatory net worth the subordinated debt issued to its finance subsidiary. The basis for the Board's conclusion is that the transaction, when viewed as a whole, does not result in any transfer of risk from the FSLIC to an independent third party since the holders of the preferred stock will have priority in liquidation over the FSLIC with regard to the assets of the finance subsidiary in the event that the parent savings and loan association becomes insolvent and is placed in receivership.

Because there may be other transactions involving the issuance of subordinated debt to a service corporation or finance subsidiary which the Board may be willing to approve, the Board does not believe that it would be appropriate to include as part of the final rule a flat prohibition on these types of transactions. Instead, the Board intends to retain the flexibility to review applications involving the issuance of subordinated debt to a service corporation or a finance subsidiary on a case-by-case basis. To address the Board's concern, as discussed in the preamble of the proposal, that issuance of subordinated debt should result in a transfer of risk to parties outside the FSLIC insurance system, the text of the final rule is clarified to specifically require that issuance of subordinated debt must result in the transfer of risk outside the FSLIC insurance system in order for the subordinated debt to qualify as net worth.

The Final Rule

The Board notes that the final rule being adopted today is substantially similar to the proposal. Section 561.13 has been modified to make clear that subordinated debt approved pursuant to § 563.8–1 prior to December 5, 1984, or for which a substantially complete application was on file prior to that date, would be 100-percent includable as

regulatory net worth until the remaining period to maturity is less than one year. The proposed change to § 563.8–1 has been modified to clarify that the prohibition on sales of subordinated debt to insured institutions or their corporate affiliates does not extend to corporate affiliates of the issuer or to diversified savings and loan holding companies and their non-insured-institution subsidiaries.

As discussed previously, the effective date of this rule is December 5, 1984, the date the proposed rule was published in the **Federal Register** (49 FR 47499). The Board is aware that several applications have been filed and approved since the date of the publication which conformed with the proposed rule. Although the final rule is substantially similar to the proposed rule, questions have arisen as to whether the changes being made by today's action will have any effect on those applications which were approved during the interim period. The Board wishes to take this opportunity to confirm that applications which were in conformity with the proposed rule and were approved during the period since December 5, 1984, will not be affected by the final rule. Similarly, institutions which have issued subordinated debt during the interim period which was in conformity with the proposed rule but have not yet filed an application pursuant to § 563.8–1 will not be required to amend their certificate forms or related indentures or purchase agreements in order to obtain approval of the subordinated debt application.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by public comments and agency assessment and response.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

3. *Alternative to the final rule.* There are no alternatives to the elimination of techniques that overstate the capital adequacy of small institutions and cause greater risks to the FSLIC that would be less burdensome in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

Lists of Subjects in 12 CFR Parts 561 and 563

Insurance of accounts, Savings and loan associations.

Accordingly, the Board hereby amends Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. The authority for 12 CFR Parts 561 and 563 will continue to be: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Secs. 2 and 5, 48 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Sec. 409, 94 Stat. 160, Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1729, 1730), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071; sec. 4, 80 Stat 824, as amended (12 U.S.C. 1425a).

PART 561—DEFINITIONS

2. Amend § 561.13 by revising paragraph (a); redesignating paragraph (c) as new paragraph (d) and revising the text thereof; and adding new paragraph (c); as follows:

§ 561.13 Regulatory net worth.

(a) The term "regulatory net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, common stock, preferred stock, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), securities which constitute permanent equity capital in accordance with generally accepted accounting principles (if approved by the Corporation), appraised equity capital (as defined in § 563.13(c) of this subchapter), and any other nonwithdrawable accounts of an insured institution: *Provided*, that for any non-permanent instrument qualifying as regulatory net worth under this section, either (1) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or (2) the redemption or prepayment is only at the option of the issuer and such payments would not cause the institution to fail to meet its net-worth requirement under § 563.13 of this subchapter; and *Provided further*, that capital stock may be included as net worth without limitation if it would otherwise qualify but for either (i) a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation where the issuing institution is not the survivor, or (ii) a provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock.

* * * * *

(c)(1) The term "regulatory net worth" also includes subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided*, that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory net worth until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less than one year; *Provided further*, that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory net worth until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less then one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984; and *Provided further*, that except as otherwise provided in this paragraph (c)(1) and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory net worth only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in net worth
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	[illegible]
Less than 6 but greater than or equal to 5	71
Less then 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	[illegible]

(2) For purposes of determining the principal amount outstanding of an obligation issued at a discount which exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accured interest not payable until maturity, as of the date of the

computation. In the case of an instrument sold at a discount which exceeds 10 percent and which bears no stated rate of interest, the amount which can be added to principal each period is an amount equal to the accured interest payable computed on the "level-yield" or "interest" method.

(3) For purposes of computing the amount of subordinated debt includable as regulatory net worth pursuant to this paragraph, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt which is subject to required sinking-fund payments, other required prepayments and required reserve allocations, and calculate the percentage amount of each portion of the principal amount outstanding which may be included pursuant to the schedule set forth in this paragraph.

(d) Unless the context indicates otherwise, the term "net worth" whenever used in this subchapter shall mean "regulatory net worth" as defined in this section, except that the term as used in § 563.8–4 shall not include items permitted to be used pursuant to § 563.13(c).

PART 563—OPERATIONS

3. Amend § 563.8 by revising paragraph (f)(1); removing the word "or" at the end of paragraph (f)(2)(i)(*b*), substituting a semi-colon for the period at the end of paragraph (f)(2)(i)(*c*), and adding paragraph (f)(2)(i)(*d*); revising the introductory text of paragraph (f)(2)(ii); and revising paragraphs (g) and (h) as follows:

§ 563.8 Borrowing limitations.

* * * * *

(f) *Minimum denominations of securities evidencing outside borrowings.*

(1) *General.* The minimum denomination of the security shall be $100,000, and the purchase price upon original issue shall be at least $90,000.

(2) *Exceptions.*

(i) * * *

* * * * *

(*d*) Distributed exclusively abroad to foreign nationals, provided the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States. Such safeguards include, without limitation, measures that would be sufficient such that registration of the offering would not be required if the issuer were subject to the Securities Act of 1933.

(ii) The minimum denomination may be $1,000 (without regard to purchase price) if the securities are not offered or sold at any office of the institution or any of its affiliates, and

* * * * *

(g) *Disclosure.* No insured institution shall, directly or indirectly in connection with the offer, sale, or issuance of a security evidencing a borrowing pursuant to this section, make any statement that: (1) Is false or misleading with respect to any material fact; or (2) omits to state any material fact (i) necessary in order to make the statements made, in light of circumstances under which they were made, neither false nor misleading, or (ii) during the period the securities are being offered, necessary to correct any earlier statement made in the offering materials that has subsequently become false or misleading.

(h) *Offering Circular.* (1) *Review.* No final offering circular shall be furnished to purchasers under paragraph (f)(2)(ii)(*b*) of this section unless it is filed with the Corporate and Securities Division of the Board's Office of General Counsel, and declared effective by the General Counsel or his designee, prior to its use.

(2) *Content.* A final offering circular under this section shall be in a form satisfactory to the Corporation. At a minimum, it shall contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1, or such other form as would be appropriate if the issuing institution meets the eligibility requirements prescribed by the Securities and Exchange Commission for use of that form, and Item 7 of Form PS as prescribed in Part 563b of this subchapter.

(3) *Financial statements.* A final offering circular under this section shall contain financial statements required by the appropriate form under the Securities Act of 1933 which the insured institution would be eligible to use. Such financial statements shall be prepared in accordance with the requirements of § 563c.1 of this subchapter. The issuer shall make available promptly upon request to each purchaser of a security issued subject to the requirements of paragraph (f)(2)(ii)(*b*) (including purchasers upon resale) while the securities are outstanding, audited annual statements of condition and operation, and comparative unaudited quarterly statements of condition and operations for the first three quarters.

* * * * *

4. Amend § 563.8–1 by substituting a semi-colon for the period at the end of paragraph (b)(2)(iv) and adding new paragraphs (b)(2)(v) and (b)(3); revising the introductory text of paragraph (d): revising paragraphs (d)(1)(i) and (d)(1)(v); adding new paragraph (d)(1)(vi); revising paragraph (d)(3); and adding new paragraph (i), as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.* * * *

(2) * * *

(v) The subordinated debt securities have been issued, or are proposed to be issued, to an institution whose accounts are insured by the Corporation, or a corporate affiliate thereof. This requirement, however, shall not apply to any corporate affiliate of the issuer or to any diversified savings and loan holding company or any non-insured-institution subsidiary thereof.

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions.

* * * * *

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (1)(i)(*a*) and (1)(ii) of this section which are not eligible for waiver, are waived by the Corporation.

(1) *Form of certificate.* * * *

(i) Bear on its face, in bold-face type, the following legends: (*a*) "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation"; and (*b*) "This security is not eligible for purchase by any institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation or a corporate affiliate thereof, except that this security may be purchased by a corporate affiliate of the issuer or by any diversified savings and loan holding company and any non-insured-institution subsidiary thereof."

* * * * *

(v) Be in a minimum denomination of at least $100,000 (provided that the purchase price upon original issue shall be at least $90,000), except that the minimum original amount shall be $1,000 (without regard to purchase price) for securities meeting the requirements of § 563.8(f)(2)(ii) of this Part, and upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor; and

(vi) Set forth, in the certificate and the purchase agreement or indenture, precisely the following statement:

Notwithstanding anything to the contrary in this certificate (or in any related document): (a) If the FSLIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another insured institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another insured institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other insured institutions, the FSLIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any insured institution or institutions which results from any such merger or which has purchased or otherwise acquired from FSLIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with FSLIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by an insured institution with or into which the issuer may have been merged, as described in this subparagraph (a), and/or by one or more insured institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by FSLIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in the Federal Home Loan Bank Board's regulations as they may be applicable to the receivership of the issuer or as they may be set forth in orders of the Federal Home Loan Bank Board relating to such receivership. (b) In the event that the obligation represented by this certificate is assumed in full by another insured institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with FSLIC assume all or a portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interest upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (c) This security is not eligible to be purchased or held by any FSLIC-insured institution or corporate affiliate thereof except that this security may be purchased or held by a corporate affiliate of the issuer or by a diversified savings and loan holding company and its non-insured institution subsidiaries. The issuer of this security may not recognize on its transfer books any transfer made to a FSLIC-insured institution or any corporate affiliate thereof (except as provided in the preceding sentence) and will not be obligated to make any payments of principal or interest on this security if the owner of this security is a FSLIC-insured institution or any corporate affilitate thereof (except as provided in the preceding sentence). (d) For the purpose of parts (a) and (b) of this paragraph, the term "insured institution" means a depository institution the accounts of which are insured by the FSLIC, the Federal Deposit Insurance Corporation or any federal or state agency which performs similar functions.

* * * * *

(3) *Limitations on sale to certain institutions.*

(i) No insured institution may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Corporation in a supervisory situation, to the Corporation; and

(ii) Without the prior written approval of the Corporation, no insured institution may sell, either directly or indirectly through an underwriter or otherwise, any subordinated debt securities issued pursuant to this section to an insured institution or any corporate affiliate thereof, except that an insured institution may sell such securities to its corporate affiliates or to a diversifed savings and loan holding company and its non-insured-institution subsidiaries.

* * * * *

(i) *Delegations of authority.* (1) The Principal Supervisory Agent is authorized to approve subordinated debt applications filed pursuant to this section, if they are in compliance with regulatory requirements, unless the subordinated debt application involves a significant issue of law or policy upon which the Corporation has not taken a formal position or requires an offering circular for subordinated debt securities to be sold in a public offering. (2) The Director of the Office of District Banks, with the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel or their designees, are authorized to approve any subordinated debt application filed pursuant to this section if they are in compliance with regulatory requirements, unless the respective office directors are of the opinion that the subordinated debt application involves policy considerastions which warrant formal consideration by the Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85–11885 Filed 5–16–85; 8:45 am]

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12 CFR Parts 563b and 569

[No. 85-320]

Conversion Proxy Solicitations

Dated: April 30, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is adopting alternative procedures for obtaining the approval of the members of mutual insured institutions for plans to convert from the mutual to stock form of organization. The alternative procedures authorize the use of certain existing proxies to approve such plans when the members have been provided previously with adequate disclosure regarding the plan. The alternative procedures are intended to balance the interests of members with the practical needs of converting insured institutions. In addition, the Board is clarifying other provisions of the Conversion Regulations relating to voting by mutual account holders.

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, Corporate and Securities Division (202) 377–6457; J. Larry Fleck, Deputy Director, Corporate and Securities Division (202) 377–6413; or Julie L. Williams, Associate General Counsel, Director, Corporate and Securities Division (202) 377–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84–654, dated November 16, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed to amend the rules governing the conversion-to-stock form of savings and loan associations and savings banks whose deposits are insured by the Corporation and of federal savings banks whose accounts are insured by the Federal Deposit Insurance

Corporation ("insured institutions"). *Conversion Proxy Solicitations*, 49 FR 47410 (Dec. 4, 1984). The proposed amendments would have authorized mutual insured institutions to use general proxies previously granted by account holders to obtain approval by account holders of a plan of conversion to the stock form. The authority to use general proxies in this manner, however, would be limited to instances in which the account holders or other voting members have been furnished a proxy statement meeting the requirements of § 563b.5(c) of the Conversion Regulations, 12 CFR Part 563b (1984).

Under the Board's current regulations, a mutual insured institution must conduct a special proxy solicitation in order to obtain approval of the plan of conversion. 12 CFR 563b.6(c) (1984). The proxy solicitation requirements were intended to ensure that members have all the information they need to vote intelligently on the plan of conversion. *See Conversions of Insured Institutions From Mutual Into Stock Associations*, Resolution No. 73–26, 38 FR 1335 (Jan. 11, 1973). Since the conversion will extinguish the voting rights of members, 12 CFR 563b.3(c)(15) (1984), such consent is critical to the validity of the plan. The member proxy solicitation, however, adds significantly to the cost of conversion to stock form. There is not only the cost of preparing, printing, and mailing the proxy statement, but, in the event members do not respond to the initial solicitation, converting institutions must incur the additional expense of supplemental mailings, advertisements, telephone solicitations and even personal visits to members.

The proposal reflected the Board's belief that the member approval process could be streamlined through the use of general proxies and still provide the necessary informed consent of members when voting members have been furnished the disclosures mandated by the Form PS and are specifically informed that their previously executed proxies may be used if they do not respond to the solicitation. The Board proposed to amend § 563b.5(d) of the Conversion Regulations to allow the use of proxies other than those specifically solicited for the meeting to approve a conversion if all voting members as of the voting record date have been provided with a proxy statement meeting the requirements of § 563b.6(c) and with a proxy meeting the requirements of § 563b.5, and containing provision for an affirmative or negative instruction as to casting of the member's vote. Item 2 of the Form PS itself was proposed to be amended to require a bold-face legend on the cover of the proxy statement indicating that, if a proxy is not returned by the meeting date, management may use its general or other existing proxies to vote on the plan of conversion. Item 4 regarding voting rights also was proposed to be amended to require additional disclosure on the use of other proxies. In order to allow for variations in the authority conferred by individual proxies, the preamble to the proposal suggested that the independent counsel's opinion on the validity of the special conversion meeting should address the issue of authority conferred by general proxies held by the association.

In addition, the Board proposed to amend § 563b.6(c) to require the forwarding of conversion proxy-solicitation materials to known beneficiaries of trust accounts held by the institution to ensure the fullest participation in the conversion vote. Finally, the Board proposed to relocate this provision in § 563b.6 with the other provisions relating to the furnishing of proxy materials and to update the sectional references in § 563b.3(d)(14).

The Board received five public comments on the proposal. All commenters supported the use of general proxies in conversions. The continued provision of proxy materials to voting members was viewed as a prudent precaution. One comment from a mutual insured institution estimated that adoption of the rule could save the institution approximately $160,000 on the cost of its conversion. Another commenter, a firm that often acts as a proxy-solicitation agent in conversions, noted that as a practical matter fewer than five percent of accountholders and other members actually vote against a conversion: The main difficulty in securing member consent is obtaining response to the solicitation.

One commenter did suggest that for purposes of clarity, the Conversion Regulations should specifically require an opinion of independent counsel that any general proxies used confer sufficient authority to vote on conversion. The Board is amending § 563b.8(c)(2) to specifically provide that the opinion of counsel on the special meeting must address the issue of proxy authority if general proxies are used.

Several commenters criticized the proposed amendment to § 563b.6(c) that would require the mailing of proxy materials to each beneficial holder of an account held in a fiduciary capacity when, in the case of a federal association, the name of the beneficial holder is known, or, in the case of a state-chartered association, the beneficial holder possesses voting rights. Although there was no objection to furnishing proxy materials and voting rights to IRA beneficiaries, the Board was urged not to extend this treatment to beneficiaries of other types of fiduciary accounts. It was noted that a large percentage of fiduciary accounts are established for the benefit of children. In the majority of cases, it was asserted, the beneficiaries have no control over the account. Accordingly, it was contended that the extension of voting privileges to all types of beneficiaries whose names are known to a federal association will result in disproportionate administrative expenses and burden.

The Board finds the arguments raised by the commenters persuasive and has determined not to adopt that portion of the proposal that would require converting federal mutual associations to send proxy materials to each account beneficiary whose name appears on the association's records. The final rule does, however, require federal associations to furnish proxy materials to IRA beneficiaries and afford them voting rights. The Board is of the view that such beneficiaries are in a different position than beneficiaries of other fiduciary accounts because they represent an identifiable category of beneficial account holders who retain a degree of control over their accounts.

With respect to the conversion proxy-solicitation process, the Board has become aware that some confusion may have existed concerning the applicability of the Conversion Regulations to conversions that are undertaken in multiple steps where the intended result is a conversion and a necessary step to that end requires a vote of approval of the association's members, but where members will not be furnished a proxy statement subsequently to obtain their approval of the conversion. It is the Board's longstanding position that such multi-step transactions must comply with the Conversion Regulations and, specifically, that the conversion proxy-solicitation rules apply to such a solicitation.

The Board also is taking this opportunity to clarify an inadvertent technical omission in another regulation affecting the voting rights of members in a mutual insured institution. Part 569 of the Insurance Regulations generally governs solicitations of proxies from "security holders" in insured institutions. However, when a definition of "security" was added to the Insurance Regulations by Resolution No.

82-193, dated March 24, 1982, the term excluded insured accounts in order to exempt such accounts from the filing requirements for new securities. *See Amendments Relating to Savings Accounts,* 47 FR 13776, 13779-80 (Apr. 1, 1982). *See* 12 CFR 561.41 (1984). The Board did not intend this change to affect the scope of Part 569, and does not believe that it did. However, since the definition of "proxy" in § 569.1(c) states that the term includes every form of authorization by which a person is, or may be deemed to be, designated to act for a "security holder", the argument might be made that the amendment to the general definition of the term "security" resulted in excluding proxies given by mutual account holders, since accounts were removed from the definition of a "security."

While the definition of security holder in § 569.1(a) specifically encompasses the owner of an institution's indebtedness that confers voting rights and while accounts are generally considered debts of the institution, the number of inquiries regarding the current regulation indicates the need for clarification and the Board is therefore amending § 569.1(a) to specifically provide, as the Board has always intended, that the term "security holder" includes an account holder who has a right to vote in the affairs of the institution.

Finally, the Board is taking this opportunity to correct a cross-reference in § 563b.2(a)(34) of the Conversion Regulations.

The Board has determined for good cause to implement the amendments that have not been published as proposals on a permanent basis without notice and comment pursuant to 5 U.S.C. 553(b)(3)(B) and 12 CFR 508.11. It is the Board's view that good cause exists for immediate implementation since the changes are in the nature of technical clarifications and consistent with longstanding policy.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this impact has been discussed elsewhere in the proposal.

4. *Overlapping of conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

List of Subjects in 12 CFR Parts 563b and 569

Federal Savings and Loan Insurance Corporation, Securities, Savings and loan associations.

Accordingly, the Board hereby amends Parts 563b and 569 of Subchapter D, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

1. The authority for 12 CFR Parts 563b and 569 continues to read:

Authority: Secs. 402, 403, and 407 of the National Housing Act, 48 Stat. 1256, 1257, and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; Secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended, 15 U.S.C. 78c, l, m, n, and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR Part 1071 (1943-48 Comp).

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart A—Standard Conversions

§ 563b.2 [Amended]

2. Amend § 563b.2 by revising the cross-reference in paragraph (a)(34) to read "§ 563b.3(c)(4)."

* * * * *

3. Amend § 563b.5 by adding a new paragraph (d)(4) thereto, as follows:

§ 536b.5 Solicitation of proxies; proxy statement.

* * * * *

(d) *Requirements as to proxy* * * *

(4) Notwithstanding any other provisions of this paragraph (d), the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting, *Provided:* That such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

* * * * *

4. Revise paragraph (c) of § 563b.6 as follows:

§ 563b.6 Vote by members.

* * * * *

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless state law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity: (i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the institution's records, and (ii) in the case of a state-chartered association where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1). Without prior approval by the Board, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this Subpart A;

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following:

(*1*) Item 6. *Management Remuneration.*

(*2*) Item 7. *Business of the Applicant.* Paragraphs (c) through (m), and (o).

(*3*) Item 14. *Financial Statements.*

(4) Item 15. *Consents of Experts and Reports,* Paragraph (b).

(B) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under Item 16.

(E) Includes the statement contained in § 563b.8(u) of this Part.

* * * * *

4. Amend § 563b.8(c) by removing the word "and" at the end of subparagraph (2)(i) thereof and inserting, before the period at the end of subparagraph (2)(ii) thereof, the following:

§ 563b.8 Procedural requirements.

* * * * *

(c) *Additional filing requirements.* * * *

(2) * * *

"; and (iii) if the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion."

* * * * *

Subpart E—Forms

* * * * *

§ 563b.101 Form PS—Proxy Statements.

* * * * *

5. Amend Item 2 of the Form PS by adding the following sentence at the end thereof:

Form PS

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street, NW., Washington, D.C. 20552.

Proxy Statement

* * * * *

Form PS

Information Required in Conversion Proxy Statement

* * * * *

Item 2 Notice of Meeting.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following bold-face legend:

THE ASSOCIATION MAY USE YOUR PREVIOUSLY-EXECUTED PROXIES TO VOTE FOR THE PLAN OF CONVERSION IN THE EVENT YOU DO NOT EXECUTE ANOTHER PROXY FOR THIS MEETING, ATTEND AND VOTE IN PERSON, OR OTHERWISE REVOKE YOUR PREVIOUSLY-EXECUTED PROXIES.

* * * * *

6. Amend Item 4 of the Form PS by adding the following sentence at the end of paragraph (a): "Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts."; and adding a new paragraph (d), as follows:

* * * * *

Item 4 Voting Rights and Vote Required for Approval.

* * * * *

(d) If the Applicant intends to use previously executed proxies to vote on the plan of conversion in accordance with § 563b.5(b)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

* * * * *

PART 569—PROXIES

7. Amend § 569.1 by adding the following sentence at the end of paragraph (a) thereof:

§ 569.1 Definitions.

(a) *Security holder.* * * * For purposes of this part, the term "security holder" shall include any account holder having the right to vote in the affairs of a mutual insured institution.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-11886 Filed 5-16-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-18]

Blanding, Utah, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published description of the Blanding, Utah, transition area. A restricted area referred to in the description of the transition area has been revoked. This action does not increase the size of the transition area, but makes only editorial changes in the description.

DATES: Effective date—0901 G.m.t., August 1, 1985.

Comments must be received on or before July 18, 1985.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this is in the form of a final rule, which involves an editorial change to the description of the Blanding, Utah, transition area, and thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make an editorial change to the published description of the Blanding, Utah, transition area. Airspace docket 81-ARM-17 (47 FR 4504) revoked a Restricted Area (R-6410) contained in the description of the Blanding, Utah, transition area. This action does not enlarge the size of the transition area but makes only an editorial change in the description.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Since this amendment is only editorial or corrective in nature, and imposes no

additional regulatory or economic burder on any person, notice and public procedure hereon are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Blanding, Utah—(Amended)

On the ninth and tenth lines of the description, delete ". . . excluding that portion within R-6410 during the times that R-6410 is in use."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on May 6, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11915 Filed 5-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-17]

Alteration of Various Transition Areas in the Northwest Mountain Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the published descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas. Two airways referred to in these descriptions have been renumbered. This action does not increase the size of the transition areas, but makes only editorial changes in the descriptions.

DATES: Effective date—0901 G.m.t., August 1, 1985.

Comments must be received on or before July 18, 1985.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this is in the form of a final rule, which involves editorial changes to the descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas, and thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to make editorial changes to the published descriptions of the Coppertown, Montana; Great Falls, Montana; and Logan, Utah, transition areas. Airspace docket 83-ANM-9 (49 FR 19292) redescribed an airway contained in the description of the Coppertown, and Great Falls, Montana, transition areas (V2N changed to V247). In addition, airspace docket 83-ANM-13 (49 FR 19293) redescribed an airway contained in the description of the Logan, Utah, transition area, (V4S to V142). This action does not enlarge the size of the transition area, but makes only editorial changes in the descriptions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Since this amendment is only editorial or corrective in nature, and imposes no additional regulatory or economic burden on any person, notice and public procedure hereon are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Coppertown, Montana—(Amended)

Replace "V2N" with "V247."

Great Falls, Montana—(Amended)

Replace "V2N" with "V247."

Logan, Utah—(Amended)

Replace "V4S" with "V142."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on May 6, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11916 Filed 5-16-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F-0211]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the use of hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant/stabilizer in polyoxymethylene copolymers that contact foods containing more than 8 percent alcohol. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 17, 1985; objections by June 17, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1984 (49 FR 30370), FDA announced that a food additive petition (FAP 4B3805) had been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 177.2470 *Polyoxymethylene copolymer* (21 CFR 177.2470) be amended to expand the use of hexamethylene bis(3,5-di-*tert*-buty-1-4-hydroxyhydrocinnamate) as an antioxidant/stabilizer in polyoxymethylene copolymers that contact foods containing more than 8 percent alcohol.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive uses are safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 17, 1985 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 177.2470 [Amended]

2. Section 177.2470 *Polyoxymethylene copolymer* is amended in paragraph (b)(1) by revising the entry "Hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) (CAS Reg. No. 35074-77-2) (for use in contact with foods containing no more than 8 percent alcohol)" to read "Hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) (CAS Reg. No. 35074-77-2)."

Effective date. This regulation is effective May 17, 1985.

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11922 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-204; Re: Notice No. 472]

Establishment of the Northern Sonoma Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in California known as "Northern Sonoma." The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW; Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

E. & J. Gallo Winery on behalf of its subsidiary Frei Brothers, a winery located in Healdsburg, California, petitioned ATF for the establishment of a viticultural area in California to be known as "Northern Sonoma." In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 472) in the **Federal Register** on June 27, 1983 (48 FR 29539) proposing the establishment of this viticultural area.

General Description

The Northern Sonoma viticultural area consists of approximately 329,000 acres encompassing 26,000 acres of grapevines and 72 wineries.

The Northern Sonoma viticultural area is located entirely within the North Coast viticultural area. Six approved viticultural areas are located entirely within the Northern Sonoma viticultural area as follows: Chalk Hill, Alexander Valley, Sonoma County Green Valley, Dry Creek Valley, Russian River Valley, and Knights Valley.

The Sonoma County Green Valley and Chalk Hill areas are each entirely within the Russian River Valley area. The boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley areas all fit perfectly together dividing northern Sonoma County into four large areas. The Northern Sonoma area uses all of the outer boundaries of these four areas with the exception of an area southwest of the Dry Creek Valley area and west of the Russian River Valley area. This area has nearly 300 acres of grapevines and possesses the same geographical features as the rest of the Northern Sonoma area.

Name

The name "Northern Sonoma" was used as a community name by the *Healdsburg Enterprise*, a local newspaper, beginning in 1887. A winery was established in Geyserville in 1890 named "North Sonoma Winery"; the winery was destroyed by fire three years later. In 1910, *The Pacific Wine and Spirits Review*, reported that Sonoma County would soon become the leading grape producing county in the state, attributing the growth partly to the construction of three new wineries in Northern Sonoma. In January 1920, the *Healdsburg Enterprise* and the *Santa Rosa Press Democrat* both reported on a movement to divide northern and southern Sonoma County into two counties. These reports support the concept of "Northern Sonoma" as a distinct community. A winery was established in Geyserville at the end of prohibition named "Northern Sonoma Wines, Inc." By the mid-1940's, this winery was producing approximately one million gallons annually, most of which was sold in bulk to bottlers. This winery was phased out of existence in 1953. Beginning in 1950, tourism publications of the county government and local chambers of commerce have divided the county into "Northern Sonoma" and other regions. A series of articles published in 1973 and 1974 in *Wines & Vines*, a wine industry trade magazine, describe the "northern" district" of Sonoma County. This "northern district" is approximately the same as the approved viticultural area. In the spring of 1980, another effort was initiated to establish a separate county comprising the northern part of Sonoma County. This also supports the idea that "Northern Sonoma" may be identified as a separate community.

Geographical Features Which Affect Viticultural Features

The approved area is separated from the Sonoma Valley viticultural area in southern Sonoma County by the city of Santa Rosa and Cotati Valley which are urban or undergoing urbanization. These and other urban areas distinguish the proposed area from areas located south of the proposed boundary.

The area west of the approved western boundary is mountainous and relatively inaccessible. A small part of the western portion of the approved area is also mountainous and inaccessible. However, for convenience the boundary was drawn as a series of straight lines connecting features which can be found conveniently on the map.

North and east of the approved area are mountain ridges which distinguish the microclimates of Northern Sonoma from the microclimates on the opposite sides of the mountain ridges. The northern part of the area is cooler than the Guenoc Valley viticultural area to the north. The eastern part of the area receives significantly more rainfall than the Napa Valley viticultural area to the east.

Public Comments

ATF received 2 comments in response to Notice No. 472, from ISC of California, Inc. and Heublein Wines. Both commenters were in favor of establishment of the Northern Sonoma viticultural area as proposed. Both commenters were specifically in favor of establishment of large areas which include smaller approved areas. Both commenters believe that the name "Northern Sonoma" applies to the proposed area and that the name would not be confusing to consumers.

Boundary Adopted as Proposed

Based on the foregoing, the boundary of the Northern Sonoma viticultural area, as proposed in Notice No. 472, is established unchanged. However, the proposed § 9.70(c)(20) erroneously referred to "Big Oak Mountain" where the correct name of the geographical feature is "Big Oat Mountain." This error is corrected in the final rule. The boundary of the approved viticultural area is described in § 9.70.

Miscellaneous

ATF does not wish to give the impression by approving Northern Sonoma as a viticultural area that it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Northern Sonoma wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not

expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With E.O. 12291

In compliance with Executive Order 12291 the Bureau has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended by adding the heading of § 9.70 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.70 Northern Sonoma.

Par. 3. Subpart C is amended by adding § 9.70 to read as follows:

§ 9.70 Northern Sonoma.

(a) *Name.* The name of the viticultural area described in this section is "Northern Sonoma."

(b) *Approved map.* The approved map for determining the boundary of the Northern Sonoma viticultural area is the U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970.

(c) *Boundary.* The Northern Sonoma Viticultural area is located in Sonoma County, California. The boundary description in paragraphs (c)(1)-(c)(23) of this section includes (in parentheses) the local names of roads which are not identified by name on the map.

(1) The beginning point is the point, in the town of Monte Rio, at which a secondary highway (Bohemian Highway) crosses the Russian River.

(2) The boundary follows this secondary highway (Bohemian Highway) southeasterly across the Russian River, along Dutch Bill Creek, through the towns of Camp Meeker, Occidental, and Freestone, then northeasterly to the point at which it is joined by State Highway 12.

(3) The boundary follows State Highway 12 through the town of Sebastopol to the point, near a bench mark at elevation 96 feet, at which it intersects a northbound secondary highway (Fulton Road) leading toward the town of Fulton.

(4) The boundary follows this secondary highway (Fulton Road) north to the town of Fulton where it intersects an east-west secondary highway (River Road).

(5) The boundary follows this secondary highway (River Road)—

(i) East past U.S. Highway 101 (where the name of this secondary highway changes to Mark West Springs Road),

(ii) Easterly, then northerly to the town of Mark West Springs (where the name of this secondary highway changes to Porter Road),

(iii) Easterly to the town of Petrified Forest (where the name of this secondary highway changes to Petrified Forest Road), and

(iv) Northeasterly to the Sonoma County-Napa County line.

(6) The boundary follows the Sonoma County-Napa County line northerly to the Sonoma County-Lake County line.

(7) The boundary follows the Sonoma County-Lake County line northwesterly to the section line on the north side of Section 11, Township 10 North, Range 8 West.

(8) The boundary follows this section line west to the northwest corner of Section 9, Township 10 North, Range 8, West.

(9) The boundary follows the section line south to the southwest corner of Section 4, Township 9 North, Range 8, West.

(10) The boundary proceeds in a straight line northwest to the northeast corner of Section 36, Township 10 North, Range 9, West.

(11) The boundary follows the section line north to the northeast corner of Section 13, Township 10 North, Range 9, West.

(12) The boundary proceeds in a straight line northwesterly to the intersection of 38°45′ North latitude parallel and 122°52′30″ West longitude meridian.

(13) The boundary proceeds in a straight line northwesterly to the southeast corner of Section 4, Township 11 North, Range 10 West.

(14) The boundary follows the section line north to the Sonoma County-Mendocino County line.

(15) The boundary follows the Sonoma County-Mendocino County line west then south to the southwest corner of Section 34, Township 12 North, Range 11 West.

(16) The boundary proceeds in a straight line southeasterly to the southeast corner of Section 3, Township 11 North, Range 11 West.

(17) The boundary follows the section line and its extention south to 38°45′ North latitude parallel.

(18) The boundary follows this latitude parallel west to the west line of Section 5, Township 10 North, Range 11 West.

(19) The boundary follows the section line south to the southeast corner of Section 18, Township 9 North, Range 11 West.

(20) The boundary proceeds in a straight line southwesterly approximately 5 miles to the peak of Big Oat Mountain, elevation 1404 feet.

(21) The boundary proceeds in a straight line southeasterly approximately 2¾ miles to the peak of Pole Mountain, elevation 2204 feet.

(22) The boundary proceeds in a straight line southerly approximately 2¾ miles to the confluence of Austin Creek and the Russian River.

(23) The boundary follows the Russian River northeasterly, then southeasterly to the begining point.

Signed: March 4, 1985.

Stephen E. Higgins,
Director.

Approved: April 24, 1985.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations).

[FR Doc. 85-11879 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 841

Licensing Government-Owned Inventions in the Custody of the Department of the Air Force

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising Part 841, Subchapter D, Title 32 of the Code of Federal Regulations—Licensing Government-Owned Inventions in the Custody of the Department of the Air Force. This revision is necessary to assure that the Department of the Air Force is consistent with the General Services Administration rule which implements the applicable public law. The intent of the revision is to provide information necessary for submitting all requests for a license under an Air Force invention.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Garvert, HQ USAF/JACP, Washington, DC 20324, telephone (202) 475-1386.

SUPPLEMENTARY INFORMATION: This is a complete revision made according to Pub. L. 96-517 and the General Services Administration regulation on Licensing of Federally Owned Inventions, 41 CFR Part 101-4. Pub. L. 96-517, dated December 12, 1980, established the policy and objective of the Congress to promote the utilization of inventions arising from federally supported research and development and authorized the Administrator of General Services to promulgations specifying the terms and conditions upon which any federally owned invention may be licensed. The Department of the Air Force has determined that this part is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Proposed rulemaking was published on pages 14532 and 14533 in the **Federal Register** on April 12, 1984 and invited comments for 30 days ending May 14, 1984. One comment was received questioning the Department of the Air Force determination that the regulation is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). After consideration, the Air Force determination was upheld. The regulation involves patents and patent applications vested in the United States of America and, therefore, falls within the "public property" exception in 5 U.S.C. 553 to Pub. L. 96-354.

List of Subjects in 32 CFR Part 841

Inventions and patents.

Accordingly, 32 CFR Part 841, is revised to read as follows:

PART 841—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

Subpart A—General Information

Authority: 10 U.S.C. 8012.

Subpart A—General Information

§ 841.0 Purpose.

This regulation prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in federally owned patents and patent applications vested in the United States of America in the custody of the Department of the Air Force. It is consistent with General Services Administration Licensing of Federally Owned Inventions, 41 CFR 101-4, which implements Pub. L. 96-517. It applies to all requests for a license under an Air Force invention.

§ 841.1 Air Force policy.

Federally owned inventions in the custody of the Department of the Air Force normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. Nonexclusive, partially exclusive, or exclusive licenses for the practice of these inventions may be granted to applicants who agree to develop and/or market the inventions. All Air Force inventions normally will be made available for the granting of licenses to responsible applicants.

§ 841.2 Execution of licenses.

Nonexclusive, partially exclusive, or exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary or by anyone to whom this authority is delegated.

§ 841.3 Delegation of authority.

The administration of this part is delegated to The Judge Advocate General, who may redelegate the administration of this part to the Chief, Patents Division, Office of The Judge Advocate General. All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and sent without further action directly to HQ USAF/JACP,Wash DC 20324.

§ 841.4 Definitions.

(a) "Air Force invention" means an invention, plant, or design which is covered by a patent or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection in a foreign country, title to which has been assigned to or otherwise vested in the United States Government and in the custody of the Department of the Air Force.

(b) "Small business firm" means a small business concern as defined in section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(c) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(d) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 841.5 Royalties.

(a) Royalties may or may not be charged under nonexclusive licenses granted to US citizens and US corporations on Government inventions; however, the Department of the Air Force may require other considerations when a royalty is not charged.

(b) Normally, an exclusive or partially exclusive license on an Air Force invention will contain a royalty provision and/or other consideration flowing to the Government.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

§ 841.6 Restrictions and conditions.

The following restrictions and conditions apply to all licenses granted under this part:

(a) Restrictions:

(1) A license may be granted only if the applicant has supplied the Air Force with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under an Air Force invention in the United States shall normally be granted only to a licensee who agrees that any product embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) Conditions. Licenses shall contain such terms and conditions as the Air Force determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated according to provisions therein.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of the Air Force. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of each sublicense shall be furnished to the Air Force.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report, at least annually, on the utilization or efforts at obtaining utilization that are made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) When the licensee agrees that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Air Force to terminate the license, in whole or in part, if:

(i) The Air Force determines that the licensee is not executing the plan submitted with its requests for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Air Force that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Air Force determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated consistent with this part upon mutual agreement of the Air Force and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person, any immunity from or defense under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

(12) The license shall contain a provision that the government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent and that the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 841.7 Nonexclusive licenses.

Each Air Force invention normally will be made available for the granting of nonexclusive licenses, subject to the provisions of any other license, including those in § 841.8, and subject to the following condition: the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license according to this part.

§ 841.8 Exclusive and partially exclusive licenses.

Each Government invention may be made available for the granting of an exclusive or partially exclusive license subject to the following restrictions and conditions:

(a) Restrictions. Exclusive or partially exclusive licenses may be granted on federally owned inventions as follows:

(1) Three months after notice of the invention's availability has been announced in the **Federal Register**; or

(2) Without such notice where the Air Force determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and

(3) In either situation specified in paragraph (a) (1) or (2) only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the 60-day period and consideration of any written objections received during the period, the Air Force makes the determinations required by § 841.15 favorably to the applicant; and

(iii) The Air Force has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(b) Conditions. In addition to the provisions of § 841.6, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(3) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(4) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of 35 U.S.C. 29, as determined appropriate in the public interest.

§ 841.9 Additional licenses.

Nothing in this part will preclude the Air Force from granting licenses for Air Force inventions which are the result of an authorized exchange of rights in the settlement of patent disputes. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 841.10 Foreign licenses.

(a) Exclusive or partially exclusive licenses may be granted on an Air Force invention covered by a foreign patent, patent application, or other form of protection, provided that:

(1) Notice of a prospective license identifying the invention and prospective licensee has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(2) The Air Force has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(3) The Air Force has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(b) In addition to the provisions of § 841.6, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable, royalty-free right of the United States Government to practice and have practiced the invention on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall be subject to any licenses in force at the time of the grant of the exclusive license.

(3) The license may grant the licensee the right to take any suitable and necessary action to protect the licensed property on behalf of the United States Government.

Subpart C—Licensing Procedures

§ 841.11 Publication requirements.

The Department of the Air Force will cause to be published in the **Federal Register**, and at least one other publication that the Air Force deems would best serve the public interest, a list of Government inventions in the custody of the Department of the Air Force available for licensing under the conditions specified in Subpart B.

§ 841.12 Request for a license.

Requests for a license under an Air Force invention should be addressed to the Chief, Patents Division, HQ USAF/JACP, Wash DC 20324.

§ 841.13 Contents of a license application.

An application for a license will include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 841.4 above;

(h) A detailed description of the applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature, and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which the applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing the applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 841.14 Published notices.

A notice that the prospective exclusive or partially exclusive licensee has been selected will be published by the Department of the Air Force in the **Federal Register** and a copy of the notice will be sent to the Attorney General. The notice will include:

(a) Identification of the invention;

(b) Identification of the selected licensee; and

(c) A statement that the license will be granted unless any written objection is received within 60 days.

§ 841.15 Determination to grant or deny exclusive or partially exclusive licenses.

(a) After the notice is published in the **Federal Register** that a prospective exclusive or partially exclusive licensee has been selected and the 60 days for filing written objections has expired, a decision will be made whether to grant or deny the license considering all arguments and evidence of record. A memorandum of the decision will be prepared and shall include:

(1) An identification of the invention, type of license desired, and name and address of the party applying for the license;

(2) The name and address of all third parties who objected to the granting of the license, if any;

(3) A brief statement of the reasons for the objections, if any;

(4) A discussion of the relative merits of the license application vs. the objections filed by third parties, if any;

(5) Determinations, and reasons supporting the determinations, whether:

(i) The interests of the Federal Government and the public will be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(ii) The desired practical application has not been achieved or is not likely expeditiously to be achieved under any nonexclusive license which has been granted on the invention;

(iii) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(iv) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(v) The grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistant with the antitrust laws; and

(vi) The interest of the United States Government or industry in foreign commerce will be enhanced, if the license request is under a foreign patent, patent application, or other form of protection.

(6) The signature of the individuals making the determinations.

(b) A record of the determinations to grant or deny an exclusive or a partially exclusive license shall be maintained by the Patents Division.

§ 841.16 Modification and termination.

Before modifying or terminating a license, other than by mutual agreement, the Air Force shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 841.17 Appeals.

A party whose application for a license has been denied, a licensee whose license has been modified or terminated, in whole or in part, or a party who timely filed a written objection in response to the notice required in § 841.8 and § 841.10 and who can demonstrate to the satisfaction of the Air Force that such party may be damaged by the agency action, may appeal to The Judge Advocate General, any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license. The appeal must be in writing and submitted within 60 days from the date the decision or determination was mailed to the party.

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

§ 841.18 Transfer procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of any invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

§ 841.19 Confidentiality of plans and reports.

Title 35 U.S.C. 209 provides that any plan submitted pursuant to § 841.13 above and any report required by § 841.6 may be treated by the Air Force as commercial and financial information obtained from a person and priviledged and confidential and not subject to disclosure under 5 U.S.C. 552.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–11961 Filed 5–16–85; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85–08]

Special Local Regulations; Great Chattanooga Raft Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 470.5 to 464.0, Tennessee River. The "Great Chattanooga Raft Race", an approved marine event, will be held on June 1, 1985, at Chattanooga, Tennessee. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 12:00 noon on June 1, and terminate at 4:00 p.m. on June 1, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 279–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Tennessee River between miles 470.5 and 464.0 during the "Great Chattanooga Raft Race", June 1, 1985. This event will consist of approximately 1000 participants with homemade and inflatable unpowered rafts, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event.

A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until April 18, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, and to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0207 to read as follows:

§ 100.35—0207 . Tennessee River, miles 470.5 through 464.0.

(a) *Regulated Area.* The area between Mile 470.5 and 464.0 Tennessee River is designated the regatta area, and may be closed to commercial navigation or mooring between the hours of 12:00 noon on June 1, and 4:00 p.m., on June 1, 1985. All times listed are local time.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0207 will be effective on June 1, 1985, between the hours of 12:00 noon and 4:00 p.m. (local time).

(33 U.S.C. 1233; 49 U.S.C. 108; 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 1, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85–11872 Filed 5–16–85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Annual Fee—Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule change amends section 641 of the Domestic Mail Manual to require payment of third-class annual bulk mailing fees only by those persons or organizations which actually enter mailings at the bulk rates. The current regulation requires mailers of third-class bulk matter to pay annual bulk fees even when an agent has been engaged to present their material to the Postal Service. The change was proposed to achieve consistency in the application of third-class bulk fee requirements through simplification of the regulation. We also feel that the new rule, which is analogous to the approach taken to the annual First-Class presort fee, will be more closely related to the legitimate business purposes which support the fee because it will henceforth be paid only by those entities which actually present the mail and thus deal directly with the Postal Service.

EFFECTIVE DATE: May 19, 1985.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 245–4512.

SUPPLEMENTARY INFORMATION: On April 1, 1985, the Postal Service published in the **Federal Register** for comment (50 FR 12839), a proposed rule concerning the payment of annual bulk third-class mailing fees. Interested persons were invited to submit written comments concerning the proposed change by May 1, 1985.

A total of eight written comments were received from mailers and mailers' organizations. Six commenters favored the proposed change as written; one favored it, but requested clarification of several points, and one opposed it. Those commenters who favored the change as written believed that the new rule would result in consistency in the application of third-class annual bulk fee requirements and would also simplify administration of the bulk fee requirements. The commenter who requested a clarification was concerned with the applicability of bulk fees when permit imprint mail is presented by an agent, but postage is paid from the trust account of the client whose permit imprint appears on the mailing piece. Under these circumstances, the individual or organization whose permit imprint appears on the mailing piece, and from whose account postage is paid, is considered to be the mailer and must pay the bulk mailing fee.

Only one commenter, a newspaper association, opposed the proposed rule. This commenter supported its opposition with two arguments. First, the commenter asserted that the current requirement of separate permits protected an interest in allowing mail recipients to "know whence the mail came," and to enable them to satisy themselves that the mail has paid the required postage. Second, the commenter asserted that there is no great difficulty in distinguishing coupon and shared mailings.

Regulations governing third-class mail today do not provide any assurance that mail recipients will be able to identify the "true" originator of third-class mail matter. Permit imprints were devised for administrative, and not investigatory purposes, and it seems doubtful that mail recipients who are curious about the origin of their mail would research by permit number, rather than through reference to the contents of the third-class mail piece, or even the return address, if one has been provided. More importantly, whatever help a permit imprint might provide for purposes of originator research, the imprint can properly be avoided through the use of precanceled stamps.

As noted above, the commenter also stressed the value of a recipient's being able to be assured that mail has paid its "freight." The Postal Service itself has a substantial interest in proper postage payment, and has devised verification and audit methods to protect its revenue. Mail recipients, and the public at large, essentially must rely on these

methods, and on external audits, to satisfy themselves about proper postage payment, particularly in the case of permit imprint mailings. The new rule will in no way reduce available information about postage payment. Under the new rule, the Postal Service will continue to look to presenters of mailings to substantiate the proper payment of postage. To the extent that (for mailers utilizing permit imprints) permit indicia might be altered, financial records of postage payment will continue to be maintained at origin.

The commenter also asserted that coupon and shared mailings could be readily distinguished. This may be true in typical cases, but continuing changes in mail-preparation and mailing practices have produced ever-increasing numbers of variations from the typical. For example, if the preparer of a "typical" coupon mailing should agree to add another producer's promotional material to its mail piece, the line identified by the commenter would be blurred. Any postal effort to keep the line clear and to enforce distinctions would require inquiries into mailers' business dealings, inquiries which are unrelated to the Postal Service's administrative purposes.

The Postal Service has decided to implement this rule change on May 19, 1985, without the usual 30-day waiting period. The change will affect only new third-class mailers, and those current mailers which have not yet made third-class mailing this calendar year. A 30-day delay in implementation would only encourage delays in mailing. In addiiton, the relaxation in fee administration will remove, rather than create, restrictions on mail users.

For the above reasons, the Postal Service hereby adopts the following amendment to section 641 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

Chapter 6 Third-Class Mail

640—Authorizations and Permits

1. The authority citation for 39 CFR Part 111 is revised to read as set forth below, and the authority citation following § 111.3 removed.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Each person or organization which enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2). The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. This change will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–11972 Filed 5–16–85; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2837-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: The USEPA today announces approval of a revision to the Indiana State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to Indiana Rule 325 IAC 6–2.1, Particulate Emission Limitations for Sources of Indirect Heating. This rule repeals and replaces 325 IAC 6–2. The purpose of the new rule is to clarify the emission limits that were contained in 325 IAC 6–2, and to set revised emission limits for new sources. USEPA's action is based upon a SIP revision request that was submitted by the State of Indiana on December 21, 1983. A notice of proposed rulemaking on this revision was published on October 24, 1984 (49 FR 42746).

EFFECTIVE DATE: This final rulemaking becomes effective on June 17, 1985.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, the technical support document, and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION: On December 21, 1983, the Indiana Air Pollution Control Board (IAPCB) requested that USEPA approve Indiana Rule 325 IAC 6–2.1. Indiana Rule 325 IAC 6–2.1 repeals and replaces, for State purposes, 325 IAC 6–2. The final rule was adopted on June 6, 1983, promulgated on September 21, 1983, and submitted to USEPA as a SIP revision on December 21, 1983.

The proposed rule is divided into four sections, 325 IAC 6–2.1–1 through 325 IAC 6–2.1–4. Each of these sections was discussed in detail in the October 24, 1983, notice of proposed rulemaking (49 FR 42746). A short synopsis of each section is given below.

325 IAC 6–2.1–1

Section 6–2.1–1 discusses the applicability of the rule. Subsection 1(a) through 1(d) are acceptable. USEPA wishes to make the following clarifications concerning 1(e) through 1(h).

1(e)—This subsection states that, if any limitations established by 325 IAC 6–2.1 are inconsistent with the New Source Performance Standards (NSPS) contained in Indiana's Rule 325 IAC Article 12.1 then the provisions in Article 12.1 prevail. Regardless of the wording of Subsection 1(e) all new facilities to which the Federal New Source Performance Standards (NSPS) apply must continue to meet the requirements of the NSPS as of the effective date of these regulations.

1(f) and 1(g)—These subsections state that, if any limitations established by 325 IAC 6–2.1 are inconsistent with the limitations contained in a facility's construction or operating permit, or with the limitations required to meet the National Ambient Air Quality Standards (NAAQS), then the limitations contained in the permit and the limitations required to protect the NAAQS prevail (325 IAC Article 2, Permit Review

Regulations). Any emission limit revisions for existing facilities, and any relaxations of the SIP for new facilities, that are approved by the IAPCB under 325 IAC Article 2, have to be submitted to USEPA as SIP revisions.

1(h)—This subsection pertains to the addition of a new facility at a source. USEPA finds the wording of this subsection acceptable, but would have preferred language which explicity states that more stringent emission limitations may apply.

325 IAC 6–2.1–2

Section 6–2.1–2 discusses the emission limitations for all sources of indirect heating located in Lake, Porter, Marion, Boone, Hamilton, Hendricks, Johnson, Morgan, Shelby, and Hancock Counties, Indiana, which were operating, or had received construction permits, prior to the effective date of 325 IAC 6–2.1. Subsection 2(a) and 2(c) are acceptable. USEPA wished to make the following clarification concerning Subsection 2(b).

2(b)—325 IAC 6–2.1–2 contains an equation which sets one emissions limit for all emission points at a source to which this portion of the regulation is applicable. However, 325 IAC 6–2.1–2(b) allows the State to establish, through its operating permit mechanism, different specific emission limits for each emission point at a source, as long as the total emissions from these points are equal to the emissions that the regulation would allow if only the one emission limit were used. USEPA proposed to approve section 2(b) (49 FR 42746), if the State committed, in writing, prior to final rulemaking, to send all bubbled emission limits approved under 325 IAC 6–2.1 to USEPA as SIP revisions. USEPA received a letter from the IAPCB on March 27, 1985, stating its intention to do so.

325 IAC 6–2.1–3

Section 6–2.1–3 discusses the emission limits for all sources of indirect heating that were not specified in section 6–2.1–2. USEPA finds this section generally acceptable, as the State made the clarifications recommended by USEPA. However, additional clarification concerning sections 3(a) and 3(b) is given below.

3(a)—This subsection gives the equation for determining the particulate emission limits for indirect heating sources that existed, and were in operation, prior to the effective date of 325 IAC 6–2.1. USEPA and the State have agreed on the definitions of "C", "Q", "a", "h", and "h," as stated in the notice of proposed rulemaking (49 FR 42746).

3(b)—The comments made under 2(b) also apply to 3(b).

325 IAC 6–2.1–4

Section 6–2.1–4 discusses the emission limits of all sources of indirect heating receiving permits to construct on, or after, the effective date of Rule 325 IAC 6–2.1. USEPA finds this section acceptable. The State made the clarifications recommended by USEPA with the exception of 4(b). The comments made under 1(e) above also apply to 4(b).

Figures

The December 2, 1983, submittal did not include the two figures that are referenced in 325 IAC 6–2.1, which graphically depict the emission limitation equations of the rule. On October 25, 1984 (49 FR 42746), USEPA proposed to approve 325 IAC 6–2.1, since the omission of these figures did not substantially affect the rule. On November 28, 1984, the IAPCB submitted the missing figures for USEPA's review.

USEPA's review has revealed an error factor in the figures of 6–10%, so USEPA does not approve these figures for SIP purposes. However, since the proposed approval of the rule did not include these figures, USEPA can still proceed to finally approve 325 IAC 6–2.1. Indiana should revise the figures and, if it so chooses, resubmit them as an addendum to the TSP SIP.

Conclusion

During the 60-day public comment period, USEPA received no comments. Therefore, based on USEPA's analysis of the rules, and Indiana's clarifications and comments, USEPA finally approves 325 IAC 6–2.1, Particulates Emission Limitations for Sources of Indirect Heating. This revision to the Indiana TSP SIP merely clarifies the emission limits contained in the Indirect Heating Rule (325 IAC 6–2), which this revision is replacing, and adds emission limits for new sources.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: May 8, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7410 and 7502.

2. Section 52.770 is amended by adding new paragraph (c)(50) as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(50) On December 21, 1983, the Indiana Air Pollution Control Board submitted Indiana Rule 325 IAC 6–2.1, Particulate Emission Limitations for Sources of Indirect Heating. This rule repeals and replaces Indiana Rule 325 IAC 6–2. See §§ 52.770(c)(4) and (c)(35) and § 52.776(i).

(i) Incorporation by reference.

(A) 325 IAC 6–2.1, revised regulation establishing Particulate Emission Limitations for Sources of Indirect Heating.

(ii) Additional material.

(A) December 21, 1983, submittal of Finding of Facts and Recommendations of Hearing Officer R. W. James on 325 IAC 6–2.1.

(B) March 27, 1985, commitment letter from the State concerning the procedures the State will use in processing "bubbles" under 325 IAC 6–2.1–2(B) and 3(b). See § 52.776(i).

* * * * *

3. Section 52.776 is amended by adding new paragraph (i).

§ 52.776 Control strategy: Particulate matter.

* * * * *

(i) 325 IAC 6–2.1 is approved with the State's March 27, 1985, commitment that any "bubble" approved by the State under 325 IAC 6–2.1–2(b) and 3(b) will also be subject to the State's general "bubble" regulation, 325 IAC 2–4. The State additionally committed that until such time as 325 IAC 2–4 is approved as a part of the SIP, all such limits approved under the bubbling provisions of 325 IAC 6–2.1–2(b) and 3(b) will be submitted as site specific revisions to the SIP. Unless and until these emission point specific limits are approved as a portion of the SIP, the SIP limit for each individual emission point will remain

the general limit calculated by means of the formulae in 325 IAC 6-2.1-2(a) and 3(a), even though a revised emission point specific limit has been adopted by Indiana under 325 IAC 6-2.1-2(b) and 3(b). See 52.770(c)(50).

* * * * *

[FR Doc. 85-11990 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC-247-CN]

Medicare Program; Payment to Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period, published January 10, 1985, that implemented a new program of reimbursement for health maintenance organizations and competitive medical plans.

FOR FURTHER INFORMATION CONTACT: Nancy Drucker, (301) 594-9773.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-786 beginning on page 1314 in the issue of Thursday, January 10, 1985, make the following corrections:

1. On page 1345, second column, the redesignation table is corrected by inserting "§ 405.2071" between "§ 405.2070" and "§ 405.2072" in the left column and inserting "§ 417.271" between "§ 417.270" and "§ 417.272" in the right column.

§ 417.407 [Corrected]

2. On page 1349, first column, in § 417.407(b), "section 1301(d) of the Public Health Service Act" is corrected to read "section 1301 of the Public Health Service Act."

3. On page 1349, second column, in § 417.407(d), "paragraph (b)(1)(iv)" is corrected to read "paragraph (c)(i)(iv)."

§ 417.410 [Corrected]

4. On page 1349, third column, in § 417.410(g), §§ 417.530 through 417.596" is corrected to read "§§ 417.530 through 417.598."

§ 417.424 [Corrected]

5. On page 1352, first column, in § 417.424(a)(2), "§§ 417.412–417.416" is corrected to read "§§ 417.412 through 417.418."

§ 417.440 [Corrected]

6. On page 1354, first column, in § 417.440(b)(4), "417.422" is corrected to read "417.442."

§ 417.442 [Corrected]

7. On page 1354, second column, in § 417.442(a), "§§ 417.592 and 417.594" is corrected to read "§§ 417.590 through 417.594."

§ 417.444 [Corrected]

8. On page 1355, first column, in § 417.444(b)(8), "paragraph (c)(6)" is corrected to read "paragraph (b)(6)."

§ 417.448 [Corrected]

9. On page 1355, third column, in § 417.448(b)(2), "§ 417.460(a)(2)(v)" is corrected to read "§ 417.460(a)(2)(iv)."

§ 417.472 [Corrected]

10. On page 1358, second column, in § 417.472(f), "section 1876(l)(5) of the Act" is corrected to read "section 1876(i)(5) of the Act."

§ 417.478 [Corrected]

11. On page 1358, third column, in § 417.478(d), "§ 110.108(j)(i)" is corrected to read "§ 110.108(j)(1)."

§ 417.523 [Corrected]

12. On page 1361, first column, in § 417.523(c), "§§ 417.410 through 417.416" is corrected to read "§§ 417.410 through 417.418."

§ 417.526 [Corrected]

13. On page 1361, first column, in § 417.526, in the second sentence, "Sections 417.580 through 417.596" is corrected to read "Sections 417.580 through 417.598."

§ 417.532 [Corrected]

14. On page 1362, first column, in § 417.532(e)(3), "Part 406" is corrected to read "Part 405."

§ 417.536 [Corrected]

15. On page 1363, first column, in § 417.536(i), "405.425" is corrected to read "§ 405.424."

§ 417.580 [Corrected]

16. On page 1368, first column, in § 417.580(a), "Sections 417.582 through 417.596" is corrected to read "Sections 417.582 through 417.598."

17. On page 1368, first column, in § 417.580(b), "Sections 417.582 through 417.596" is corrected to read "Sections 417.582 through 417.598."

§ 417.582 [Corrected]

18. On page 1368, first column, in § 417.582, "§§ 417.584 through 417.596" is corrected to read "§§ 417.584 through 417.598."

§ 417.584 [Corrected]

19. On page 1368, second column, in § 417.584(c), the last word in the paragraph, "amount", is corrected to read "account."

§ 417.596 [Corrected]

20. On page 1371, first column, in § 417.596(c)(1), "paragraph (b)(3)" is corrected to read "paragraph (c)(3)."

21. On page 1371, first column, in § 417.596(c)(3), "paragraph (b)(1)" is corrected to read "paragraph (c)(1)."

§ 417.597 [Corrected]

22. On page 1371, second column, in § 417.597(e)(2), "paragraph (c)(1)" is corrected to read "paragraph (e)(1)."

§ 417.616 [Corrected]

23. On page 1372, third column, in § 417.616(c)(2), "paragraph (a)" is corrected to read "paragraph (b)."

§ 417.632 [Corrected]

24. On page 1373, second column, in § 417.632(a), "§ 417.616(c)(2)" is corrected to read "§ 417.616(a)."

§ 417.634 [Corrected]

25. On page 1373, second column, in § 417.634, "20 CFR 404.967 through 404.981" is corrected to read "20 CFR 404.967 through 404.983."

(Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program, and No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 13, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11996 Filed 5-16-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) between the U.S.-Canada border and Cape Falcon, Oregon, at midnight May 14, 1985, to ensure that the chinook salmon quota for the May fishing period is not exceeded in 1985. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW), that the commercial fishery quota of 27,000 chinook salmon for the area during the May fishing period will be reached by midnight May 14. This action is intended to conserve chinook salmon stocks.

EFFECTIVE DATE: Closure of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours Pacific Daylight Time, May 14, 1985.

ADDRESS: The data upon which this notice is based are available for public inspection from 8:00 a.m. to 4:30 p.m. weekdays at the Northwest Regional Office, NMFS, Building 1, 7600 Sand Point Way, NE., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 202-526-6150.

SUPPLEMENTARY INFORMATION: Final regulations to implement the framework amendment to the fishery management plan for the commercial and recreational ocean salmon fisheries off the coasts of Washington, Oregon, and California were published in the **Federal Register** on October 31, 1984 (49 FR 43679). Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672).

The regulations implementing the framework amendment specify at § 661.21(a)(1) that when a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

The chinook salmon quota for the May non-Indian commercial fishery in the area from the U.S.-Canada border to Cape Falcon, Oregon, is 27,000 fish, as shown in Table 1 of the 1985 management measures. Based on the most recent catch and effort information supplied by the WDF and the ODFW, the non-Indian commercial fishery catch in the area is projected to reach the 27,000 chinook salmon quota by midnight, May 14. The Secretary therefore issues this notice to close the ocean non-Indian commercial troll fishery from the U.S.-Canada border to Cape Falcon, Oregon, effective midnight, May 14, 1985. This notice does not apply to the treaty Indian troll fishery in the same area or other fisheries which may be operating in other areas.

The Regional Director consulted with the Directors of WDF and ODFW regarding this closure. The Directors of WDF and ODFW have indicated that Washington and Oregon will close the non-Indian commercial troll fishery in State waters adjacent to this area of the FCZ at the same time this action closes the FCZ, and will prohibit further landings after a grace period of 36 hours (noon, Thursday, May 16) for landings in all ports.

As provided under § 661.22(e), all data and other information relevant to this notice of closure have been compiled in aggregate form and are available for public review at the above address.

Other Matters

This action is taken under the authority of § 661.22 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: May 14, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-12018 Filed 5-14-85; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Determinations of Serious Deficiencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: To ensure consistency among States, the Department is proposing to amend the Child Care Food Program (CCFP) regulations to specify that institutions that have been denied or terminated from the program because they have been determined to be seriously deficient in their operations in one State shall not be permitted to participate in the CCFP in any State until the serious deficiency is corrected. The Department is further proposing to specify that FNS may make independent determinations of serious deficiencies and require States to act upon these determinations. The proposed rule would also set out appeal rights applicable to such situations. Finally, in the interests of clarity, this proposed rule would revise and reorganize the existing provisions regarding seriously deficient institutions. This proposed rule will enhance program integrity.

DATE: Comments must be received on or before July 16, 1985, to be assured of consideration in the final rulemaking.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James O'Donnell at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Robert E. Leard, the Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements included in this rule have been submitted and approved by the Office of Management and Budget, under clearance 0584–0055.

Background

Section 226.6(c) of the CCFP regulations prohibits State agencies from entering into agreements with applicant institutions which can be identified through their corporate organizations, officers, employees or otherwise as an institution which formerly participated in a Federal child nutrition program and was found to have been seriously deficient in its operation of such program. This provision further directs State agencies to terminate institutions which have been found to be seriously deficient and have not taken appropriate corrective action. The intent of this provision is to ensure the integrity of the CCFP by preventing institutions with demonstrable operational or managerial deficiencies from participating in the program. The Department finds, however, that some confusion has arisen concerning a State agency's application of this provision when a denial or termination action has been taken by another State agency or the Department has made a determination of serious deficiency. In order to clarify this situation, the Department is proposing to amend § 226.6(c) of the CCFP regulations.

First, the Department proposes to stipulate that a finding of serious deficiency leading to a denial or termination action taken by one State agency shall be binding upon all States in which the institution participates or is applying to participate in the CCFP. Section 17(a)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(a)(2)(B)), mandates that institutions are not eligible to participate in the CCFP if they have been seriously deficient in their operations of any child nutrition program for a period of time specified by the Secretary. The language of the statute is very broad in this respect and clearly directs administering agencies to consider an institution's complete operation of any child nutrition program and not just the portion of that operation occurring within their respective States. Consequently, one State agency's action to deny or terminate participation because of serious deficiency must be respected by any other State in which the institution operates or is applying to operate.

Secondly, there are occasions when a serious deficiency is identified by the Department rather than by a State agency. At times, the Department may possess more information regarding an institution than the State agency. This is especially true in the case of institutions which operate in more than one State. In order to comply with the mandate of the statute that seriously deficient institutions may not participate in the CCFP, it may be necessary for the Department, itself, to make a finding of serious deficiency. In these instances, the Department has the responsibility to bring this finding to the attention of the States in which the institution operates and to require the termination of the institution's participation in the CCFP and the denial of any subsequent applications from that institution. The Department must also advise other States of the finding and require that they deny any applications by that institution.

Consistent with the current regulations which require a State agency to afford a seriously deficient institution every reasonable opportunity to correct

problems before terminating the institution, the Department will afford institutions which it finds to be seriously deficient an opportunity to take corrective action before notifying the States of the institution's ineligible status. Consequently, when the Department makes an independent determination that an institution is seriously deficient and that appropriate corrective action has not been taken, State agencies are bound to abide by this finding just as if the actions had been taken by another State agency. The proposed regulation would clarify the Department's authority and States' responsibility in this area.

To ensure that information about seriously deficient institutions can be disseminated quickly, the proposed regulation would require State agencies to notify the Department within 15 days of any action to deny or terminate a seriously deficient institution. The name and other pertinent information about the institution will be included on a list of ineligible institutions, and the Department will make this list available to all State agencies which administer the CCFP. The Department will also include on this list any institutions which the Department has determined to be seriously deficient. State agencies will be prohibited from executing a new agreement with any institution on this list and will be required to terminate the participation of any ineligible institution within 15 days of receiving notification from the Department. The proposal further specifies that once an institution has been declared ineligible, it shall remain ineligible until FNS, in consultation with the appropriate State agency, has determined that the serious deficiency which resulted in ineligibility has been corrected.

Thirdly, the proposed rule provides a "good cause" exception to the prohibition against participation by institutions which can be identified with seriously deficient institutions through their corporate organizations, officers, employees or otherwise. While such identification would continue to constitute grounds for denial or termination, the proposed rule would ensure that the mere fact an institution has hired a former employee of an ineligible institution would not automatically result in that institution's becoming ineligible as well. In order for this exception to be invoked, however, the institution must demonstrate to the satisfaction of the State agency, with FNS concurrence, that the employee was not linked in any way with the deficiencies which resulted in the ineligibility of the former institution.

Finally, the proposed rule delineates the appeal process for institutions that have been included on this list of ineligible institutions. Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) directs State agencies to provide fair hearings to any institution aggrieved by any action of that State with respect to participation or reimbursement. The intent of this provision is to safeguard institutions from arbitrary and capricious actions by the State agency. However, States will have no discretion with respect to the continued participation of institutions determined ineligible by other States or FNS. It would not, therefore, be appropriate for actions stemming from prior findings of serious deficiency to be appealed over and over again in each individual State.

The Department emphasizes, however, that institutions will have full rights of appeal of the determinations leading to ineligibility. If an institution is determined to be seriously deficient by a State agency, the institution will be able to appeal the State's adverse action (denial or termination) which is based on that finding. Only when the State's action has been upheld on appeal will the institution be included on the list of ineligible institutions. When the Department determines independently that an institution has been seriously deficient, the institution will be notified of this decision by the Department and will be afforded an opportunity to take corrective action. If the Department finds the corrective action to be inadequate, the Department will declare the institution to be ineligible to participate in the CCFP and the institution will be afforded an opportunity to appeal the decision to the Department's administrative review officers. If the Department's determination is upheld on appeal (or if the institution elects not to exercise its appeal rights), the institution will be included on the list of ineligible institutions, and States will be notified that they must deny applications from or terminate the participation of that institution.

In both cases, institutions will be deemed ineligible only after careful deliberations by the agency most familiar with all of the pertinent circumstances. These deliberations will include a review, if requested, by an impartial hearing official. In view of these procedural safeguards and because States will have no discretion with respect to an institution's continued participation in the CCFP once it has been declared ineligible, additional opportunities for administrative appeals would not be allowed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Surplus agricultural commodities.

PART 226—[AMENDED]

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810, and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1766); Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.6, Introductory text of paragraph (c) is amended by removing the first 4 sentences and inserting in their place 12 sentences, to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution which the State agency determines to have been seriously deficient at any time in its operation of any Federal child nutrition program unless the deficiencies have been corrected to the satisfaction of the State agency, with FNS concurrence. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. However, the State agency shall afford an institution every reasonable opportunity to correct problems before terminating the institution for being seriously deficient.

The State agency shall notify FNS whenever it has denied an application from or terminated the participation of a seriously deficient institution. This notification shall be made within 15 days of the review official's decision upholding the State's action or, if the institution elects not to appeal the decision, within 15 days of the expiration of the appeal right. FNS will maintain a list of these institutions and will notify all other State agencies of these institutions' ineligibility to participate in the program. FNS may determine independently that an institution has been seriously deficient in its operation of any Federal child nutrition program and include such institution on the list of ineligible institutions if appropriate corrective

action is not taken. State agencies shall not enter into an agreement with any institution included on this list of ineligible institutions and shall terminate any participating institution included on the list within 15 days of the receipt of notification by FNS of the institution's ineligible status. Once included on this list, an institution shall be ineligible to participate in the program until such time as FNS, in consultation with the appropriate State agency, determines that the serious deficiency which resulted in the ineligible status has been corrected. Any institution which is identifiable with a seriously deficient institution through its corporate organization, officers, employees, or otherwise shall also be considered to be ineligible unless it is demonstrated to the satisfaction of the State agency, with FNS concurrence, that good cause exists for considering the institution distinct from the seriously deficient institution. Denial or termination actions taken on the basis of FNS notification of ineligible status shall not be subject to administrative review as provided in § 226.6(j). However, an institution which FNS determined to be seriously deficient and which has not taken acceptable corrective action nay request an administrative review of this determination by an FNS review official in accordance with the appeal procedures set forth in § 226.6(j) and will not be included on the list of ineligible institutions unless FNS' determination is upheld by the review official. * * *

* * * * *

Dated: May 14, 1985

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-12002 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to incorporate by reference the Winter 1982 Addenda, Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda and 1983 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the Winter 1982 Addenda, Summer 1983 Addenda, and 1983 Edition of Section XI, Division 1, of the ASME Code. The sections of the ASME Code being incorporated provide rules for the construction of light-water-cooled nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

DATES: Comment period expires July 16, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments or suggestions may be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443-7860.

SUPPLEMENTARY INFORMATION: On February 7, 1983, the Nuclear Regulatory Commission published in the **Federal Register** (48 FR 5532) amendments to its regulation, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," which incorporated by reference new addenda to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The amendment revised § 50.55a to incorporate by reference the Winter 1981 Addenda to Division 1 rules of Section III, "Rules for the Construction of Nuclear Power Plant Components," and Division 1 rules of Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME Code. On November 4, 1983, the Commission published in the **Federal Register** (48 FR 50878) an amendment to § 5055a to incorporate by reference the Summer 1982 Addenda to Section III, Division 1, of the ASME Code. The ASME did not publish a Summer 1982 Addenda to Section XI. On March 15, 1984, the Commission published in the **Federal Register** (49 FR 9711) an amendment to § 5055a to, among other things, incorporate by reference those subsections of Section III which apply to the construction of Class 2 and Class 3 components.

Since publication of the last ASME Code addenda incorporated by reference in § 5055a, the Winter 1982 Addenda, Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda, and 1983 Edition, to the ASME Code have been issued. The 1983 Edition is equivalent to the 1980 Edition, as modified by the Summer 1980 Addenda, Winter 1980 Addenda, Summer 1981 Addenda, Winter 1981 Addenda, Summer 1982 Addenda, and Winter 1982 Addenda. The Commission proposes to amend § 5055a to incorporate by reference all editions through the 1983 Edition and all addenda through the Summer 1984 Addenda that modify Section III, Division 1, and all editions through the 1983 Edition and all addenda through the Summer 1983 Addenda that modify Section XI, Division 1, of the ASME Code. The Summer 1983 Addenda for Section XI does not include any technical requirements related to Division 1, but is being included in the reference to avoid confusion that might occur with a lack of continuity in the addenda references.

Editorial revisions are proposed to correct certain existing footnote and paragraph references that are inconsistent with the last amendment (49 FR 9711) to this rule and to simplify the language. These editorial revisions are contained entirely in § 50.55a(g).

For facilities whose operating licenses were issued prior to March 1, 1976, this rule provides the effective date for implementing the inservice inspection requirements and for defining the effective edition and addenda of the Code for the start of the next one-third of a 120-month inspection interval after September 1, 1976. Since this one-third of an inspection interval has already been completed for all applicable facilities, it is proposed that the part of the rule addressing it in § 50.55a(g)(4)(iii) be deleted.

Power reactors for which a notice of hearing on an application for a provisional construction permit or a construction permit had been published on or before December 31, 1970, were permitted to use the rules for construction required by power reactors that had received their construction permits prior to January 1, 1971. It is proposed that § 50.55a(1) which covers this provision be deleted because it is no longer necessary. Section 50.55a(c)(4) provides that for these and other facilities that received a construction permit prior to May 14, 1984, the applicable Code Edition and Addenda

for a component of the reactor coolant pressure boundary continue to be that Code Edition and Addenda that were required by Commission regulations for the component at the time of issuance of the construction permit.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Mr. G. C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commision, Washington, D.C., 20555, Telephone (301) 433-7860.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.58 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.55a is amended as follows:

Paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised;

Reference to footnote 2 in paragraph (g)(1) is deleted;

References to footnote 3 in paragraph (g)(2) and in paragraphs (g)(3) (ii) and (iv) are removed;

Paragraphs (g)(3) (i) and (iii) are revised;

Paragraph (g)(4)(iii) is removed and reserved; and

Paragraph (i) is removed.

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1983 Edition and Addenda through the Summer 1984 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1983 Edition and Addenda through the Summer 1983 Addenda, subject to the following limitations and modifications:

* * * * *

(g) * * *

(3) * * *

(i) Components which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice examination of such components and shall meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [a] applied to the construction of the particular component.

* * * * *

(iii) Pumps and valves which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [a] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(iii) [Reserved]

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Dated at Bethesda, MD this 19th day of April 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 85-11998 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

Notices

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finesville Recreational Field Land Drainage Measures; Finding of No Significant Impact

The Finesville Recreational Field Land Drainage Measure is located in Phohatcong Township, Warren County, New Jersey in the Sussex-Warren Resource Conservation Development Area.

Technical and financial assistance for the measure is being provided by the Soil Conservation Service of the U.S. Department of Agriculture under the Resource Conservation and Development Program. Authorization is provided by Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87–703) and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a–f).

An environmental assessment was conducted in conjuction with the planning of the measure in consultation with federal, state and local agencies as well as interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873.

The Measure Plan provides basic information on the proposed action and addresses the five provisions of section 102(2)(c) of the National Environmental Policy Act.

The environmental assessment for the measure indicates that the proposed action will not have a significant adverse impact on the human environment. Therefore, based on these findings, I have determined that an environmental impact statement is not required for the Finesville Recreational Field Land Drainage Measure.

Dated: May 13, 1985.

Joseph C. Branco,

State Conservationist.

[FR Doc. 85–11917 Filed 5–16–85; 8:45 am]

BILLING CODE 3410–16–M

Winters Road Critical Area Treatment (CAT) Measures; Finding of No Significant Impact

The Winters Road Critical Area Treatment (CAT) Measure is located in Phohatcong Township, Warren County, New Jersey in the Sussex-Warren Resource Conservation Development Area.

Technical and financial assistance for the measure is being provided by the Soil Conservation Service of the U.S. Department of Agriculture under the Resource Conservation and Development Program. Authorization is provided by Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87–703) and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a–f).

An environmental assessment was conducted in conjuction with the planning of the measure in consultation with federal, state and local agencies as well as interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873.

The Measure Plan provides basic information on the proposed action and addresses the five provisions of section 102(2)(c) of the National Environmental Policy Act.

The environmental assessment for the measure indicates that the proposed action will not have a significant adverse impact on the human environment. Therefore, based on these findings, I have determined that an environmental impact statement is not required for the Winters Road Critical Area Treatment Measure.

Dated: May 13, 1985.

Joseph C. Branco,

State Conservationist.

[FR Doc. 85–11918 Filed 5–16–85; 8:45 am]

BILLING CODE 3410–16–M

Spring Valley Reservoir Critical Area Treatment RC&D Measure, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Spring Valley Reservoir Critical Area Treatment RC&D Measure, Latah County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Spring Valley Reservoir Critical Area Treatment RC&D Measure will provide adequate vegetative and structural treatment to the Spring Valley Reservoir area severely damaged by erosion. Planned treatments to control the severe erosion problems include water barring of foot trails, seeding of abandoned roads and trails, shoreline protection and grading and shaping of existing roads and parking areas to prevent erosion and subsequent sedimentation in the Reservoir. Other treatments include gully and escarpment grading, shaping and seeding. Terraces will be installed to protect the treatments on the gullies and escarpments from runoff.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N.

Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 7, 1985.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 85-11964 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-16-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Notice of Meeting

May 14, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on June 10, 1985, at the Atlanta Airport Marriott, College Park, Georgia.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "U.S. Agricultural Competitiveness" should contact the Commission staff at (202) 488-1961.

Future meetings are scheduled as follows:

July 12, Washington, D.C.
August 12, Denver, Colorado
September 13, Fresno, California

Kenneth L. Bader,

Chairman.

[FR Doc. 85-11942 Filed 5-16-85; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 9:45 a.m. and will end at 2:00 p.m. on June 7, 1985, at the Best Western Starlight Village, 923 3rd Street, Des Moines, Iowa. The purpose of the meeting is to provide an orientation for new Committee members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin Jenkins, director of the Central States Regional Office at (816) 374-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12012 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Kentucky Advisory Committee to the Commission originally scheduled for May 20 and 21, 1985, at the Lexington, Kentucky, has new addresses and convening times.

The meeting dates will remain the same. The meeting time will change to 7:00 p.m. to 8:00 p.m. on May 20th and 9:00 a.m. to 5:15 p.m. on May 21st. The address will change to The Brown, A Hilton Hotel, Fourth and Broadway, Room Louis XVI, Louisville, Kentucky on May 20th and City Hall, 601 West Jefferson Street, Aldermanic Chambers, Louisville, Kentucky on May 21st.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12013 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on June 6, 1985, at the Capitol House, 201 Lafayette Street, Room #303, Baton Rouge, Louisiana. The purpose of the meeting is to provide an orientation session for new members and develop plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Michael R. Fontham or J. Richard Avena, director of the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12014 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m., on June 7, 1985, at the Capitol House, 201 Lafayette Street, Rouge Royale Room, Baton Rouge, Louisiana. The purpose of the meeting is to hold a Community Forum on Comparable Worth.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Michael R. Fontham or J. Richard Avena, director of the Southwestern Regional Office, at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12015 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m. on May 30, 1985, at the AMFAC Hotel, 2910 Yale Boulevard, S.E., Albuquerque, New Mexico. The purpose of the meeting is to hold an orientation and to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Chair, Vincent Montoya or J. Richard Avena, director of the Southwestern Regional Office, at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12016 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m. on June 10, 1985, at the Fairmont City Hall, 200 Jackson Street, 3rd Floor, City County Complex, Fairmont, West Virginia. The purpose of the meeting is to provide an orientation for new Committee members and discuss with public and private officials attending the meeting some civil rights issues that may be addressed by the Committee during the next two years.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Rutledge, director of the Mid-Atlantic Regional Office, at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-12017 Filed 5-16-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permit

On May 10, 1985, a general permit to incidentally take marine mammals during commercial fishing operations in 1985 was issued to: The Office of the Fisheries Attache, Embassy of Union of Soviet, Socialist Republics, Washington, D.C.

In Category 1: Towed or Dragged Gear, to take 95 pinnipeds and 45 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11979 Filed 5-16-85; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 4, 1985, at 9:30 a.m., at the Westin Bonaventure Hotel, Santa Anita #C Conference Room, 404 South Figueroa Street, Los Angeles, California, 90071.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Business
  A. Report on Tourism Policy Council Resolutions
  B. Industry Marketing Summary
  C. Approval of 1984 Annual Report
  D. Report on USTTA Industry Meeting
IV. New Business
  A. USTTA Marketing Plan
  B. Expanded Tourism Trade with Israel
V. Miscellaneous
VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 85-11978 Filed 5-16-85; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Forms Under Review by Office of Management and Budget

The Committee for Purchase From the Blind and Other Severely Handicapped has submitted requests to extend the authorization for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S. Chapter 35).

On September 30, 1983, OMB approved the following Committee forms:

Initial Certification—Blind; Form 401
Initial Certification—Severely Handicapped; Form 402
Annual Certification—Blind; Form 403
Annual Certification—Severely Handicapped; Form 404

It is proposed to limit the reporting of direct labor hours used in determining the ratios of blind and other severely handicapped direct labor to hours actually worked. This change would be effective on October 1, 1985 (Fiscal Year 1986).

Currently, the certifications listed above submitted to the Committee by workshops require that the hours for paid vacations, sick leave and holidays are included in the direct labor hours reported on the forms. It appears that some workshops may not be including holiday, vacation and sick leave in the direct labor hours they are reporting. This is particularly true for workshops which are providing services where accounting for the direct labor hours required to provide the service is separate from the hours for holidays, sick leave and vacation which are considered as "Burden" rather than "Direct Labor." Similarly, the hours of vacation, sick leave, and holidays are not included in the direct labor hours shown on the forms which forecast the direct labor ratio for new items being added to the Procurement List.

The Committee's Act states that direct labor "includes all work required for preparation, processing, and packaging of a commodity, or work directly related to the performance of a service . . ."

(41 U.S.C. 48b(5)). Similarly, in establishing the requirements for the qualification of a workshop, the Act uses the words "employs . . . for not less than 75 per centum of the man-hours of direct labor required for the production or provision of commodities and services (41 U.S.C. 48b(3) and 48b(4)). Thus, the plain language of the statute addresses only man-hours of work rquired for the production of commodities or for the provision of services.

The Committee Counsel in reviewing the practice of including the hours paid for vacations, sick leave and holidays as a part of "direct labor" concluded that, in the interest of consistency and accuracy, it would be advisable to limit the reporting of direct labor hours to the hours actually worked.

The Wage and Hour Division of the Department of Labor has issued regulations (Chapter V of Title 29, Code of Federal Regulations) which implement the various laws governing wages and employment. Part 516 of Chapter V establishes the "Records to be kept by Employers." All employers, including workshops, are required to maintain and preserve payroll or other records on each employee which, among other things, show the actual hours worked each workday and the total hours worked each workweek (29 CFR 516.2(a)(7)) as well as the total wages paid in each pay period. Part 785 of Chapter V defines "Hours Worked." Hours worked as defined in Part 785 do not include vacation, holiday, and sick leave. Thus, limiting the reporting of direct labor to the hours actually worked should not impose a new recordkeeping requirement.

To be able to monitor better the Committee's program, an item is being added to the annual reports to record the 'Total Value of Fringe Benefits Paid" by the workshops to their blind or other severely handicapped workers. The Committee would then be able to respond to inquiries from Congress regarding the value of fringe benefits being paid to the blind and other severely handicapped workers. That information is not now available but the portion covered by holiday, vacation and sick leave pay is not included as a part of 'Wages Paid".

The proposed changes in reporting direct labor were coordinated with the Department of Labor, the National Industries for the Blind and the National Industries for the Severely Handicapped. The last two agencies have been designated by the Committee as central nonprofit agencies to represent respectively the blind workshops and the other severely handicapped workshops participating in the Committee's program.

To respond to a congressional concern on upward mobility in the workshops, the question on number of placements was divided into two parts. One showing the total placements of blind and other severely handicapped direct labor persons into the competitive labor work force and the other reflecting separately the number of blind and other severely handicapped persons promoted from direct labor to supervisory, administrative or managerial positions within the agency.

In addition to the changes referenced above, it is proposed to extend the authorization for the collection of information on the above forms. The information included on the forms is required to ensure that new workshops entering the Committee's program meet the requirements of Pub. L. 92-28, June 23, 1971, (44 U.S.C. 46-48c) and that participating workshops continue to meet the requirements of the Act.

Requests for information including copies of the proposed information requests and supporting documentation should be directed to: C.W. Fletcher, Committee for Purchase from the Blind and Other Severely Handicapped, 1755 Jefferson Davis Highway, Crystal Square 5, Suite 1107, Arlington, VA, 22202, (703) 557-1145).

Comments on the requests to extend the authorization for the reports should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Joseph Lackey.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11982 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar and Cocoa Exchange: Proposed Amendments Relating to the Sugar No. 12 ("Domestic") Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Coffee, Sugar and Cocoa Exchange ("CSCE") has submitted a proposal which would amend the terms and conditions of its sugar No. 12 ("domestic") futures contract. The principal amendments being proposed by the CSCE would rename the contract as the "sugar No. 14" contract; change the discounts and premiums applicable to raw cane sugar of different polarizations delivered on the contract; revise the testing procedures to be used to determine the color acceptability of sugar delivered on the contract, and the associated discounts and premiums applicable to sugar of different color values; establish a new quality requirement relating to the dextran content of sugar delivered on the contract, including specification of standards for dextran content and associated discounts and premiums for sugar of differing dextran content. In addition, the proposed amendments would institute a method of automatically determining the discharge allowance applicable to contract deliveries on an annual basis. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 17, 1985.

ADDRESS: Interest personsed should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CSCE Sugar No. 14 futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The current terms and conditions of the sugar No. 12 ("domestic") contract specify testing procedures and associated discounts and premiums for color and polarizations. Under the CSCE proposal, the sugar No. 14 ("domestic") contract would specify new testing procedures and revised discounts and premiums for color, and revised discounts and premiums for polarization. In addition, the proposed amendments would also establish a new quality requirement for sugar delivered on the contract relating to the dextran content of delivery sugar. The CSCE proposal would establish dextran content standards and associated discounts and premiums for the No. 14 contract.

The current and proposed schedule of differentials for sugar polarization are presented below:

POLARIZATION DIFFERENTIALS [1]

Degrees	Current terms	Proposed [illegible]
94-95	2.75	−2.75
95-96	−1.75	−5.50
96-97	+1.5	+.50
97-98	+1.25	+2.25
98-99	+1.00	+1.20

[1] The sugar No. 12 contract's current differentials are expressed as percentages of the invoice price less any applicable import duty payable per pound for 96 degree sugar in effect on the date of delivery. Although the method of applying the percentage differentials would not change, certain terminology has been revised. The proposed differentials are expressed as percentages of the basis price. The basis price is the contract price less any applicable duty or import fee per pound for 96 degree sugar in effect on the date of entry of the sugar. The current and proposed differentials printed in the table reflect the incremental change in the total differential to be paid for each full degree of polarity above or below 96 degrees. For sugar testing in fractions of a full degree (*e.g.*, 97.5), the total differentials for polarity are changed in proportion to such fractions.

The sugar No. 12 contract currently requires that testing procedures for sugar color be conducted in accordance with International Commission for Uniform Methods of Sugar Analysis (I.C.U.M.S.A.) color units methods 2 (1958). Under the proposed amendments, sugar color tests would be conducted in accordance with I.C.U.M.S.A. color units method 4 (1978) modified. In addition, the proposals would revise the current testing procedures for sugar color to the extent that the current color test for affined raw sugar would be modified to provide for separate tests for affined raw sugar and whole raw sugar.[2] The current and proposed differentials for sugar color are presented below:

CURRENT COLOR DIFFERENTIALS FOR SUGAR [3]

Method 2 color units	[illegible] (percent)
Less than 104	+0.009
105-124	+0.00625
125-210	0.0
211-245	−0.015
246-280	−0.03
281-315	−0.045
Over 315	0.06

[3] The current color differentials for the sugar No. 12 contract are expressed as percentages of the basis price. The basis price represents the contract price for the delivery sugar less any applicable duty. The differentials printed in the table reflect additions to the total differential to be paid for each full color unit above and below the par range. Differentials for fractions of each unit of color are established in proportion to such fractions.

PROPOSED COLOR DIFFERENTIALS FOR AFFINED AND WHOLE RAW SUGAR [4]

Affined		Whole	
Method 4 color units	[illegible]	Method 4 color [illegible]	Differential (percent)
[illegible]	+ [illegible]	less than 3,000	+0.0009
800-1,500	0.0	3,000-6,000	0.0
1,500-1,800	−.0135	6,000-7,000	−.0015
1,800-2,100	−.027	7,000-8,000	−.0030
2,100-2,400	−.0405	8,000-9,000	−.0045
Above 2,400	−.054	Above 9,000	−.0060

[4] The proposed differentials are expressed in percentages of the basis price (see footnote 3 above for a description of the basis price). The proposed differentials for affined raw sugar reflect additions to the total differential to be paid for each increment of 10 color units above or below the par range. The proposed differentials for whole raw sugar reflect additions to the total differential to be paid for each increment of 25 color units above or below the par range. Under the proposed amendments, differentials for fractions of each increment of color units are to be established in proportion to such fractions.

[2] Under the terms of the sugar No. 12 and No. 14 contracts, whole raw sugar denotes raw centrifugal cane sugar. Affined raw sugar represents raw centrifugal cane sugar which has been washed with water. Under the sugar No. 12 contract's current terms, tests for sugar color are applied to affined raw sugar only.

The proposed amendments would establish a new quality requirement for sugar deliverable on the contract relating to the dextran content of delivery sugar expressed in Milli-Absorbance Units (M.A.U.). This proposal would establish standards for dextran content as well as differentials applicable to delivery sugar having specified dextran content levels. The proposed differential schedule for dextran content is presented below:

PROPOSED DIFFERENTIALS FOR DEXTRAN [5]

M.A.U.	[illegible] (percent)
250 or less	0.0
251-350	−0.007
351-450	−0.009
451-550	−0.011
Above 550	−0.013

[5] The proposed differentials are expressed as percentages of the basis price (see footnote 3 above for a description of the basis price) for each unit of M.A.U. above the lowest M.A.U. value listed for each range of M.A.U. given in the table. The proposals further provide that differentials for fractions of one M.A.U. unit shall be calculated in proportion to such fractions.

The current CSCE sugar No. 12 contract requires deliverers of sugar to pay receivers of sugar a stevedoring allowance for discharging sugar. Under existing procedures, the allowance is periodically revised and implemented with respect to existing contract months and deliveries made in selected previously expired contracts, subject to Commission approval, by the CSCE. Under the CSCE proposal, the discharge allowance would be calculated annually by the CSCE, based on a weighted average of discharge allowances posted by sugar refining firms located at the contract's delivery points. The weights would reflect each refiner's annual share of the total imported tonnage of sugar received by all refiners located at the contract's delivery ports for a period ending June 30 of each year. The calculated discharge allowance would be implemented on October 1 of each year with respect to all contract deliveries occurring after that date.

The CSCE states that the proposed amendments with regard to polarity, color and dextran reflect standards, testing procedures, discounts and premiums that are expected to be the most commonly used in the domestic sugar industry. The CSCE indicates that the proposed amendments accurately reflect cash market contract changes recently adopted by major U.S. sugar refiners that will become effective for cash market deliveries beginning July 1, 1985.

The CSCE indicates that the proposed method of setting the stevedoring allowance would eliminate the current procedure of periodically requesting Commission approval of rates, which in the past has required retroactive applicability of rates. According to the CSCE, the discharge allowance would then be smoothly and objectively determined, and known to the industry prior to becoming effective. The CSCE also indicates that the proposed system of determining the stevedoring allowance would minimize disruption and confusion for deliveries on the domestic sugar contract.

The proposed amendments to the CSCE domestic sugar contract would become effective two business days following the CSCE's receipt of notice from the Commission of approval of the proposed amendments. Under the CSCE's proposed implementation procedure, trading in the sugar No. 14 contract would begin shortly after receipt of notice of Commission approval of the proposed amendments in delivery months commencing with the July 1985 contract month. Trading in the sugar No. 12 contract would be permitted to continue in any delivery months listed for trading at the time trading commences in the sugar No. 14 contract. In regard to continued trading in the sugar No. 12 contract, the CSCE has submitted proposed Rule 12.01(c) which provides that, upon the commencement of trading in the sugar No. 14 contract, no trading in the new delivery months shall be initiated in the sugar No. 12 contract. Proposed Rule 12.01(c) specifies also that any sugar No. 12 contract for any delivery months shall be de-listed following the commencement of trading in the sugar No. 14 contract if no transaction is executed and there is no open position in such delivery month for five consecutive trading days. In addition, the Exchange is proposing to implement the proposed procedure for establishing revised discharge allowances with respect to any existing delivery months

listed for the sugar No. 12 futures contract at the time sugar No. 14 futures contract begins trading.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CSCE concerning its domestic sugar futures contract is of major economic significance and that the receipt of public comment on the proposed rule amendments will assist the Commission in its determination whether they should be approved. In particular, the Commission is requesting comments from interested parties with regard to the following:

1. The extent to which the proposed differentials for the polarity of raw cane sugar, the proposed standards and associated differentials with regard to the color and dextran content of raw sugar, and the proposed testing procedures for color would conform to such standards, testing procedures and differentials for cash market deliveries commencing on July 1, 1985, at U.S. East Coast and U.S. Gulf Coast delivery points for the contract;

2. The extent to which the proposed method of establishing the stevedoring or discharge allowance for contract deliveries would result in an allowance that would reflect stevedoring or discharge fees which sellers pay or grant to buyers in the course of transactions for cash market deliveries commencing on July 1, 1985, at U.S. East Coast and U.S. Gulf Coast delivery points for the contract; and

3. The effect of the proposed amendments on the supply of raw cane sugar available for delivery on the domestic raw sugar futures contract.

The CSCE proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commisison's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 by June 17, 1985.

Issued in Washington, D.C. on May 15, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-12090 Filed 5-16-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Wednesday, 19 June 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services Inc., One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 14, 1985.

[FR Doc. 85-12010 Filed 5-16-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 9:00 a.m. on Thursday and 8:30 a.m. on Friday, June 13 and 14, 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Michael Shapiro, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 14, 1985.

[FR Doc. 85-12011 Filed 5-16-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Local Protection Project for the City of Winfield, Cowley County, KS

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Proposed Action: The proposed action is to raise the height of an existing levee and extend the levee about 1,250 feet on the north side of Winfield and about 4,000 feet on the south side. This includes the addition of ponding areas, ramps and swing gates, drainage structures, a pump station, and increased bridge openings.

2. Reasonable Alternatives: The alternatives that will be evaluated include one no action alternative and eight action alternatives. The no action alternative (without condition) would retain the flood control capabilities of the existing project. The eight action alternatives look at the same levee alignment with four different levee heights, with and without the addition of upstream flood water detention, that would provide 100-, 200-, and 400-year and Standard Project Flood (SPF) conditions. Three increased bridge openings, 50-, 100-, and 150-feet, for the Atchison, Topeka, and Santa Fe Railroad and Highway up on the south side of Winfield will be investigated. Environmental impacts would be similar with each of the action alternatives.

3. Scoping Process: a. Public Involvement. Public involvement during this study has been through informal meetings with city officials of Winfield, Kansas, representatives of the US Fish and Wildlife Service (USFWS), and personnel of the Kansas Fish and Game Commission (KF&G).

b. Significant Issues Requiring in-Depth Analysis. None.

c. Assignments. The USFWS will provide formal consultation as outlined in section 7 of the Endangered Species Act and a Fish and Wildlife Coordination Act Report. The KF&G will provide information concerning aquatic habitat in the affected streams. The US Soil Conservation Service will report on prime and unique farmlands.

d. Environmental Review and Consultation Requirements. The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. Informal scoping meetings have been held between the Corps and city officials of Winfield, and the Corps and personnel from the USFWS and the KF&G.

5. Estimated date when the DEIS will be available to the public: January 1, 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, US Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121-0061, (918) 581-7857—FTS 745-7857.

Dated: May 8, 1985

Franklin T. Tilton,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-11693 Filed 5-16-85; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF ENERGY

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and time: Monday, June 10, 1985—9:30 a.m.-3:00 p.m.

Place: The Four Seasons Hotel, Washington, D.C.

Contact: Kathryn Cameron, Special Assistant to the Assistant Secretary, Fossil Energy, U.S. Department of Energy, Room 4G-084, FE-1, Washington, D.C. 20585, 202/252-1608.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to the coal and coal industry issues.

Tentative agenda:

—Call to Order by John N. Dalton, Chairman Pro Tempore, National Coal Council
—Remarks by the Honorable John S. Herrington, Secretary of Energy
—Remarks by Ralph E. Bailey, Vice Chairman, National Petroleum Council
—Organizational Discussion
—Consideration of Administrative Matters
—Discussion of Any Other Business Brought Before the National Coal Council
—Public Comment—10 minute rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman Pro Tempore of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Kathryn Cameron at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on May 13, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-11958 Filed 5-16-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board Supply Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Supply subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: June 6, 1985—9:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in the Department and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To examine the future energy needs of the Nation and develop judgments on the essential ingredients of a balanced energy R&D effort. The Panel has established Supply, Demand, Research, and Infrastructure Subpanels to assist in carrying out its assignments.

Tentative Agenda:

- Review and comment on the summary of the Supply Subpanel report.
- Review and comment on the eight appendixes to the Supply Subpanel. Report (consisting of the individual reports on each area of energy supply research).
- Plan for material to be provided to the Long Range R&D Strategy Steering Committee.
- Discuss future plans for the Supply Subpanel.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC on May 10, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff Office of Energy Research.

[FR Doc. 85-12008 Filed 4-16-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-379-004 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Florida Power and Light Company

[Docket No. ER84-379-004]

May 9, 1985.

Take notice that on May 2, 1985, Florida Power and Light Company submitted for filing a compliance refund report pursuant to the Commission's acceptance of the settlement agreement by letter dated March 19, 1985.

The acceptance letter required that any amounts collected in excess of the settlement rate levels be refunded within thirty days from the date of the acceptance letter, with interest computed in accordance with the appropriate section of the Commission's Regulations.

On April 18, 1985, a refund in the amount of $457,011.64, was made to Seminole Electric Cooperative, Inc. (Seminole) in accordance with the settlement agreement and the amended Attachment A rate schedule (Phase II) to the Aggregate Billing Partial Requirements Service Agreement (ABPRSA). An additional refund of $1,789.60 was made to Seminole on April 24, 1985. The original refund on April 18, 1985 understated the interest payable to Seminole by $1,785.96 due to an error in the operation of FPL's rate refund program. An additional $3.64 of interest was included on the $1,785.96 amount from April 18, 1985 through the additional refund date of April 24, 1985.

Based on the terms of the settlement agreement and approved rate schedules, no refunds were due to the Company's full and partial requirements customers.

Comment date: May 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Florida Power Corporation

[Docket No. ER85-472-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing a revision to the capacity charge for short term firm interchange service to Florida Power, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Sebring Utilities Commission, Tampa Electric Company, and the Cities of Gainesville, Kissimmee, Lakeland, Lake Worth, St. Cloud, Tallahassee, and Vero Beach, Florida and interchange service contracts with each of those utilities. According to Florida Power, the revised charge is derived using the same methods reflected on the cost support schedules submitted with each of the original contracts.

Florida Power proposes to change the present Service Schedule B capacity charge for fossil production plant of $126.36 per MW per day to $143.45 per MW per day, based on 1984 data.

Florida Power requests that the revised capacity charge be made effective on May 1, 1985, and requests waiver of the sixty day notice requirement.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER85-470-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing revisions to the reservation fees for Assured Capacity and Energy Interchange Service to Sebring Utilities Commission, and the City of Kissimmee, Florida under interchange service contracts with each of the utilities. According to Florida Power, the revised fees are derived using the same methods reflected on the cost support submitted with the original contracts.

Florida Power proposes to change the present Service Schedule F reservation fees of $2.68 per MW per hour for base load plant, and $1.60 per MW per hour for intermediate load plant to $3.35 per MW per hour and $1.55 per MW per hour respectively, based on 1984 data.

Florida Power requests that the revised reservation fees be made effective on May 1, 1985, and requests waiver the sixty day notice requirement.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER85-471-000]

May 10, 1985.

Take notice that on April 30, 1985, Florida Power Corporation (Florida Power) tendered for filing revisions to the capacity charges for Short Term Firm, Backup, and Reserve Interchange Service to Seminole Electric Cooperative, Inc., under an interchange service contract. According to Florida Power, the revised charges are derived using the same methods reflected on the cost support schedules submitted with the original contract.

Florida Power proposes to change the present Service Schedule B capacity charge for fossil production plant of $1.26.36 per MW per day to $143.45 per MW per day, based on 1984 data. Florida Power also proposes to change the present Service Schedule G and H capacity charges of $131.26 per MW per day for base load plant $76.93 per MW per day for immediate load plant, and $62.85 per MW per day for peaking load plant to $160.90 per MW per day, $74.52 per MW per day, and $64.30 per MW per day, respectively based on 1984 data.

Florida Power requests that the revised daily capacity charges be made effective on May 1, 1985, and requests waiver of the sixty day notice requirement.

According to Florida Power, the filing has been served on Seminole Electric Cooperative, Inc. and the Florida Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER85-475-000]

May 10, 1985.

Take notice that on May 1, 1985, New England Power Company (NEP) tendered for filing as an amendment to FERC Rate Schedule No. 101, as supplemented, a proposed agreement to supersede said Rate Schedule.

NEP submits that the existing schedule no longer provides reasonable cost recovery and therefore tenders the instant submittal in order to provide for additional revenues for the services currently being provided.

Since the present agreement has been under extensive negotiations for an extended period of time, and in fact has been extended several times past its expiration date, NEP requests the Commission's prior notice provision be waived and the tendered agreement be allowed to become effective on May 1, 1985, in accordance with NEP's intentions.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER85-486-000]

May 10, 1985.

Take notice that on May 1, 1985, New England Power Company (NEP) tendered for filing a proposed amendment to its FERC Electric Tariff, Original Volume No. 3 as presently on file and effective with this Commission.

The proposed amendment would increase the effective rate for PTF service on NEP's system to a full cost basis of $9.29 per KW yr. from the present rate of $7.66 per KW yr. for similar wheeling service.

The proposed effective date is July 1, 1985.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas and Electric Company

[Docket No. ER85-474-000]

May 10, 1985.

Take notice that on May 1, 1985, San Diego Gas & Electric Company (SDG&E) tendered for filing as initial rate schedules the following agreements:

(1) Interruptible Transmission Service Agreement between San Diego Gas and Electric and City of Burbank.

(2) Interruptible Transmission Service Agreement between San Diego Gas and Electric and Imperial Irrigation District.

Under the terms of each Agreement, SDG&E will make available interruptible transmission service between any Point of Receipt and any Point of Delivery as specified in each Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California, City of Burbank and Imperial Irrigation District.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER85-473-000]

May 10, 1985.

Take notice that on May 1, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreements with the following entities:

Name of customer	Rate schedule FERC No.
Arizona Electric Power Cooperative	161.
California Department of Water Resources	38, 112, and [illegible].
City of Burbank	135 and 166.
City of Glendale	136 and 143.
M-S-R- Public Power Company	153.
City of Pasadena	137
San Diego Gas and Electric Company	151.
Imperial Irrigation District	138.

Edison requests an effective date of May 1, 1985, and requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER85-468-000]

May 10, 1985.

Take notice that on April 29, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing a Transmission Service Agreement (the Agreement), dated February 15, 1985, between SWEPCO and the Oklahoma Municipal Power Authority (OMPA). The Agreement provides that SWEPCO will supply OMPA with transmission services with respect to power and energy from two units jointly owned by SWEPCO and OMPA within SWEPCO's service area.

SWEPCO requests that the Agreement and rates determined thereunder be made effective as of May 1, 1985, and requests waiver of the Commission's notice requirements.

Copies of the filing have been served on OMPA, the Oklahoma Corporation Commission, the Public Utility Commission of Texas, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER85-477-000]

May 10, 1985.

Take notice that on May 1, 1985, Southwestern Public Service Company (Southwestern) tendered for filing proposed changes in its FERC Electric Service Tariffs to all full requirements customers as follows:

Name of customer	Rate schedule FERC No.
Bailey County Electric Cooperative	86
Central Valley Electric Cooperative	87
Deaf Smith Electric Cooperative	88
Farmers Electric Cooperative	89
Greenbelt Electric Cooperative	90
Lamb County Electric Cooperative	91
Lea County Electric Cooperative	103
Lighthouse Electric Cooperative	92
Lyntegar Electric Cooperative	[illegible]
Midwest Electric Cooperative	105
Northfork Electric Cooperative	94
Roosevelt County Electric Cooperative	[illegible]
South Plains Electric Cooperative	96
Swisher Electric Cooperative	97
Rita Blanca Electric Cooperative	[illegible]
North Plains Electric Cooperative	[illegible]
Tri County Electric Cooperative	100
Texas-New Mexico Power Company	75
Partial Requirements Customers	
City of Brownfield, Texas	81
City of Floydada, Texas	83
Lubbock Power and Light Company	85
City of Tulia, Texas	101
Texas-New Mexico Power Company	107

Southwestern proposes a two step increase for their full requirements and their partial requirements customers. The proposed full requirements customer changes would result in an increase of $3,131 under the Phase I rate and an additional $5,706,301 under the Phase II rate for Period II year ended June 30, 1986, resulting in a .002 percent increase and 3.52 percent increase, respectively, above the existing full requirements rate subject to refund under Docket ER84-604. The proposed partial requirements customer changes would result in an increase of $936,218 under the Phase I rate and additional $848,317 under the Phase II rate for Period II, resulting in a 3.72 percent increase and a 7.10 percent increase, respectively, above the existing partial requirements rate subject to refund under Docket ER84-604.

The proposed effective date for the Phase I rates is 60 days after filing date. The Phase II rates are requested to be made effective 61 days from the filing date. Southwestern requests that the Phase I rates be allowed, subject to refund, without suspension or that it be suspended for no longer than one day. Southwestern would not oppose a maximum five-month suspension of the Phase II rate. If the Commission orders a five month suspension of the Phase I rates beyond their proposed effective date, Southwestern requests that the Phase I rates be deemed withdrawn and the Phase II rates only be considered in this filing.

Southwestern also proposes to modify the Fuel Adjustment Clause (FAC) for each of its full requirements and partial requirements to become effective concurrent with the Phase II rates. The modification incorporates the seventy-five percent flow through of off-system and interchange margin revenues through the FAC.

Copies of the filing were served on the affected customers, the Public Utility Commission of Texas, the Public Service Commission of New Mexico, and the Oklahoma Corporation Commission.

Comment date: May 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11935 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-468-000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-468-000]

May 9, 1985.

Take notice that on April 26, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-468-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap located on United's Waskom-Goodrich 20-inch line in Nacogdoches County, Texas, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the sales tap would enable United to supply an estimated average of 1 Mcf per day of natural gas to Entex, Inc., for resale to the residence of Mr. Mack Cagle under United's Rate Schedule DG-N.

United states that it would have sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Bayou Industrial Gas Corporation

[Docket No. CP85-459-000]

May 10, 1985.

Take notice that on April 23, 1985, Bayou Industrial Gas Corporation (BIGCO), 1001 Fannin Street, Suite 1700, Houston, Texas 77002, filed in Docket No. CP85-459-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as of BIGCO were an intrastate pipeline as defined in Subparts C, D and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

BIGCO states that it presently plans to engage only in transactions that would take the form of exchanges for which there would be no charges for services rendered. BIGCO further states that if it elects to perform services in the future for which charges would be made, BIGCO would provide, at that time, the information required by § 284.222(c)(7) of the Commission's Regulations. BIGCO asserts that it received during the period November 1984 through March 1985, a total of 1,035,095 million Btu of natural gas, all of which was received within or at the state boundary, and was exempt from the Commission's jurisdiction under the Natural Gas Act by reason of Section 1(c) of the Nautral Gas Act.

BIGCO indicates it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket Nos. CP85-376-000 and CP85-376-001]

May 10, 1985.

Take notice that on March 28, 1985, as amended on April 18, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-376-000 [1] an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to make various changes to its FERC Gas Tariff, Original Volume No. 1, all as more fully set forth in the application, and amendment thereto, which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authority to modify Rate Schedule PS-1 and cancel Rate Schedule S-1 in Applicant's FERC Gas Tariff, Original Volume No. 1.

Applicant's Rate Schedule PS-1 is available to certain customers for the purpose of natural gas peaking service. The modification of Rate Schedule PS-1 would enable Applicant to synchronize its contract obligations with storage withdrawal and still meet or exceed the required deliveries for the coldest weather pattern of the last 30 years in Applicant's service area.

Applicant's Rate Schedule S-1 is available to certain customers for the seasonal purchase of natural gas between the period May 1, and September 30, of each year. Rate Schedule S-1 has not been used since 1982 and customer nominations for 1986 indicate that Rate Schedule S-1 would not be used in the future.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85-447-000]

May 10, 1985.

Take notice that on April 18, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-447-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity

[1] Docket No. TC85-12-000 has also been assigned to this application. Due to the nature of the amendment filed by Applicant in Docket No. CP85-376-001, Docket No. TC85-12-000 is hereby terminated.

seeking authorizing the transportation of gas for Western Natural Gas and Transportation Corp. (Western), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to the application, Western has required that Applicant provide transportation for up to 15,000 Mcf of gas per day on behalf of certain Denver area end-users, to be delivered to Public Service Company of Colorado (PSCo) at an existing gas sales point from Applicant. Such transportation would be provided on an interruptible basis using existing facilities. Applicant's proposed transportation rate is 58.85 cents per Mcf of gas. Applicant states that the proposed transportation rate is equivalent to the non-gas component of Applicant's Rate Schedule G-1 commodity sales rate (56.60 cents per Mcf of gas) plus 1.25 cents per Mcf of gas for the Gas Research Institute Funding Fee.

Applicant states that the proposed transportation volumes will be delivered for Western's account by Williston Basin Interstate Pipeline Company at the Elk Basis delivery point located in Section 29, Township 58 North, Range 99 West, Park County, Wyoming. Applicant also would receive gas at the Cimarron delivery point located in Section 13, Township 18 South, Range 45 West, Kiowa County, Colorado, directly from Western. Redeliveries of thermally equivalent volumes are proposed to be made to PSCo for Western's account at the East Denver redelivery point located in Section 29, Township 2 South, Range 66 West, Adams County, Colorado.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP85-472-000]

May 10, 1985.

Take notice that on April 29, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-472-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Texas Gas from a point of receipt at an existing interconnection between the facilities of Applicant and Sea Robin Pipeline Company in Vermilion Parish, Louisiana, for delivery to Texas Gas at an existing interconnection between the facilities of Applicant and Texas gas at the terminus of the Blue Water Project near Egan, Acadia Parish, Louisiana. Applicant would transport up to 1,000 Mcf of natural gas per day on an interruptible basis pursuant to a gas transportation agreement dated August 17, 1984. The proposed service, it is said, would provide Texas Gas with the most practical and economical means of transporting an additional supply of natural gas.

Applicant states that Texas Gas would pay 6.60¢ per Mcf of natural gas received for transportation at the point of receipt. Applicant states further that the transportation would continue for a period of seven years, and yearly thereafter unless terminated by either party.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP85-458-000]

May 10, 1985.

Take notice that on April 23, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-458-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by conveyance without cost to the Navajo Tribal Utility Authority (NTUA) certain sales lateral pipeline, with appurtenances, located in San Juan County, Utah, all as more fully set forth in the application on file with the Commission and open to public inspection. Applicant states that the pipeline and metering facilities are currently being utilized by Applicant to sell and deliver natural gas to the NTUA for resale to the community of Montezuma Creek, Utah (Montezuma Creek), at the existing Montezuma School delivery point.

Applicant asserts that subsequent to the installation of the pipeline and metering facilities serving Montezuma Creek, it began experiencing increases in the natural gas requirements in and around the Montezuma School delivery point. It is explained that the increases in the NTUA's natural gas requirements at said delivery point have and continue to consist of high-priority load requirements and that with this continuous development of the NTUA's residential and small commercial requirements, Applicant's existing sales lateral pipeline facilities situated downstream of its Montezuma School meter station have suffered serious encroachment. In addition, Applicant states that from an operational standpoint these facilities are effectively serving as a distribution service for the NTUA and can be more properly monitored and maintained by the local distributor, the NTUA, as a distribution pipeline facility.

Applicant proposes to abandon and convey to the NTUA the sales lateral pipeline facilities extending from its Montezuma School meter station located in San Juan County, Utah, at no cost, pursuant to the terms and conditions of the letter agreement between El Paso and the NTUA dated January 21, 1985.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-455-000]

May 10, 1985.

Take notice that on April 22, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-455-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain taps and related facilities for the sale of approximately 8,250 Mcf of natural gas per year to four residential customers in Oklahoma and Texas and to a residential subdivision, that will contain approximately 78 residences in Bryan County, Oklahoma, under Lone Star's blanket certificate issued in Docket No. CP83-59-000, as amended, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate the appropriate facilities for the sale of approximately 450 Mcf of gas annually to four residential customers one of which is located in Bryan County, Oklahoma (O.E. Sullivan) another customer in Stephens County, Oklahoma (Kenneth Brooks) and two customers are located in Denton County, Texas (Russell Wood and Joe Edge). Lone Star also proposes to construct and operate a sales tap for the sale of approximately 7,800 Mcf of gas annually to the Western Meadow subdivision under development in Bryan County, Oklahoma, that would contain about 78 homes.

Lone Star asserts it would charge those customers located in Oklahoma the residential rate which is approved by the Oklahoma Corporation Commission and those customers

located in Texas the residential rate which is approved by the Texas Railroad Commission.

Lone Star alleges that the proposed volumes of gas for the new residential customers is not expected to have any significant impact on its peak day or annual system sales or operations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-457-000]

May 10, 1985.

Take notice that on April 22, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-457-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain taps and related facilities for the sale of approximately 400 Mcf of natural gas per year to four residential customers in Oklahoma and Texas, under Lone Star's blanket certificate issued in Docket No. CP83-59-000, as amended, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate the appropriate facilities for the sale of approximately 400 Mcf of gas annually to four residential customers located each one in Choctaw (Betty Marcum) and Bryan (Melvin Rodgers) Counties, Oklahoma and Denton (Mr. Payne) and Grayson (Dennis McCray) Counties, Texas.

Lone Star asserts it would charge those customers located in Oklahoma the residential rate which is approved by the Oklahoma Corporation Commission and those customers located in Texas the residential rate which is approved by the Texas Railroad Commission.

Lone Star alleges that the proposed volumes of gas for the new residential customers is not expected to have any significant impact on its peak day or annual system sales or operations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Michigan Consolidated Gas Company—Interstate Storage Division

[Docket No. CP82-502-003]

May 10, 1985.

Take notice that on April 22, 1985, Michigan Consolidated Gas Company (MichCon) 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP82-502-003 pursuant to Section 7(c) of the Natural Gas Act a third amendment to its pending application filed on August 20, 1982, in Docket No. CP82-500-002 as amended on August 4, 1983, and on July 6, 1984, so as to reflect an increase in the natural gas transportation service to be rendered by it to ANR Storage Company (ANR) as well as changes in the charges for such service, all as more fully set forth in the amendment which is on file with the commission and open to public inspection.

MichCon indicates that, insofar as here pertinent, said application requested authority for MichCon to transport gas for ANR incidental to the storage of gas by ANR for Transcontinental Gas Pipe Line Corporation (Transco).

MichCon states that on February 11, 1985, MichCon and ANR amended the transportation agreement between then to reflect recent changes in the storage agreement between ANR and Transco in order to accommodate Transco's need for additional storage service to enable it to meet its customers' peak day and winter period requirements during the 1987-88 and subsequent heating reasons. Because of that amendment, MichCon states that it is amending its application herein as follows:

(1) The maximum daily quantity of gas which MichCon would transport for ANR, exclusive of compressor fuel, during any summer period would be 119,416 Mcf per day rather than 75,750 Mcf per day.

(2) The maximum daily quantity of gas which MichCon would transport for ANR, inclusive of compressor fuel, during any winter period would be 249,250 Mcf per day, rather than 149,625 Mcf per day.

(3) The contract quantity would be 15,888,000 Mcf rather than 10,100,000 Mcf.

(4) The maximum daily volume of gas which MichCon may, at ANR's request and at MichCon's sole option, receive for ANR's account, inclusive of compressor fuel, during the summer period from the partnership between ANR and Washington 28 Gas Storage Company (Couch Gas Storage Company's successor in interest), which partnership was established for the purpose of developing and operating gas storage fields in Macomb County, Michigan, for the provision of storage service to ANR, at the Romeo delivery point and redeliver to Great Lakes Gas Transmission Company (Great Lakes) at the Belle River Mills delivery point, would be 249,250 Mcf per day, rather than 149,625 Mcf per day.

(5) The maximum daily volume of gas which MichCon may, at ANR's request and at MichCon's sale option, receive for ANR's account, exclusive of compressor fuel, during the winter periods from Great Lakes at the Belle River Mills delivery point, and redeliver to the Partnership at the Romeo delivery point, would be 119,416 Mcf per day, rather than 75,750 Mcf per day.

(6) The revised rates which MichCon would charge ANR under the amended agreement are as follows: a revised monthly service charge of $83,584 per month, rather than $58,050 per month; and a revised charge of 3.18 cents per Mcf, rather than 3.47 cents per Mcf, for gas in excess of the contract quantity delivered to MichCon for ANR's account at Belle River Mills delivery point a redelivered to Romeo delivery point or delivered to MichCon at the Romeo Delivery Point and redelivered to Great Lakes at the Belle River Mills delivery point for the account of and redelivery to Transco. In addition, the credit to which ANR would be entitled in the event MichCon fails or is unable to accept delivery or redelivery of gas volumes up to contract maximums which it does not make-up during the winter period would be equal to 6.36 cents per Mcf, rather than 6.94 cents per Mcf, multiplied times the difference between volumes redelivered by MichCon and volumes so scheduled and mad available for delivery to MichCon. It is stated that these changes in rate are necessary to reflect changes in volumes and changes pursuant to the Commission's letter order, issued January 11, 1985, in connection with MichCon's filing in Docket No. RP84-13. MichCon states that the amendment also includes revisions to Exhibits C, D, G, N, P, and Z-1 and Z-2.

MichCon further states that in all other respects its application remains the same as filed on August 20, 1982, as amended.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. National Fuel Gas Supply Corporation

[Docket No. CP84-204-001]

May 10, 1985.

Take notice that on April 25, 1985, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84-204-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for an eligible end-user under the

certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to transport up to 2,500 Mcf of gas per day and 912,500 Mcf of gas per year, for the account of Airco Carbon, Division of BOC, Inc., to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Airco at Airco's facilities in Niagara Falls, New York, pursuant to the terms of the gas transportation agreement dated August 10, 1983. National states that the current transportation rate is 28.72 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T–2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Airco is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

National states that the gas to be purchased by Airco involves gas supplies previously under contract to and released by National. Airco would use the gas transported by National in boilers, infrared heaters, water heaters, space heating furnaces, incinerators, dryers and miscellaneous process use, which are qualified end-uses pursuant to § 157.209(e)(2) of the Regulations, it is asserted. National states that no new facilities are necessary to effectuate the proposed transportation. It is stated that the proposed transportation would commence as of the effective date of the requested authorization and terminate on the expiration date set forth in § 157.209(e) of the Commission's Regulations.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. New Orleans Public Service Inc.

[Docket No. CP85–479–000]

May 10, 1985.

Take notice that on May 2, 1985, New Orleans Public Service Inc. (NOPSI), 317 Baronne Street, New Orleans, Louisiana 70112, filed in Docket No. CP85–479–000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations (18 CFR 284.222) for a certificate of public convenience and necessity for blanket authorization to transport, sell or assign natural gas in interstate commerce under the Natural Gas Act as if NOPSI were an intrastate pipeline as defined subject to the Commission's Regulations in Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NOPSI states that its rates, services and facilities are subject to the regulatory jurisdiction of the Louisiana Public Service Commission and that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

NOPSI indicates that it is contemplating entry into mutually beneficial exchange agreements with interstate pipelines for which no rate will be charged. NOPSI also states that if in the future it wishes to charge for any transaction entered into under the blanket certificate, it would comply with the provisions of § 284.222(e) of the Commission's Regulations.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. Northwest Central Pipeline Corporation

[Docket No. CP85–450–000]

May 10, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP85–450–000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon by reclaim certain compression and appurtenant facilities and a certificate of public convenience and necessity authorizing the construction and modification of compression and appurtenant facilities on Northwest Central's Pampa-Wichita 20-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central proposes to abandon by reclaim compressor units and appurtenant facilities at Burnett, Pampa, Higgins and Mooreland compressor stations; modify two compressor units at Burnett Station; and install two new compressor units and appurtenant facilities at Higgins Station to meet more efficiently changing operating conditions on its pipeline system and more readily accommodate these stations for future automation. It is explained that declining production in the various fields require smaller compression facilities providing greater flexibility in station operations. The application reflects that the Pampa and Mooreland compressor stations would be by-passed and abandoned in their entirety, and that there would be at total net reduction in compression capacity of 16,800 horsepower. A summary of the proposal follows:

COMPRESSOR UNITS TO BE

Station	Location	Reclaimed (horsepower)	Installed (horsepower)	Modified (horsepower)	Remaining (horsepower)
Burnett	Carson County, Texas	2–1,000		2–1,000	2–1,000
Pampa	Gray County, Texas	6–1,000			[illegible]
Higgins	[illegible] County Texas	5–1,000	2–600		2–600
Mooreland	Woodward County, Oklahoma.	5–1,000			0
Total		18–1,000	[illegible]–600	2–1,000	

Northwest Central states that the estimated cost of the proposed facilities is $2,041,000, which would be paid from treasury cash. Further, Northwest Central states that the total reclaim cost for the proposed abandonments is $421,000, which would be paid with available funds, and the estimated salvage value of the facilities to be reclaimed is $653,000.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Sea Robin Pipeline Company

[Docket Nos. CP76–428–002 and CP76–428–003]

May 10, 1985.

Take notice that on April 9, 1985, and April 17, 1985, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP76–428–002, and Docket No. CP760–428–003, respectively, petitions to amend the order issued February 12, 1977, in Docket No. CP76–428 pursuant to section 7(c) of the Natural Gas Act so as to authorize the designation of a new receipt point and an additional transportation redelivery point to United Gas Pipe Line Company (United), all as more fully described in the petitions to amend which are on file with the Commission and open to public inspection.

Sea Robin states that it is authorized to provide transportation service for United for the transportation and redelivery of United's gas purchased from certain offshore Louisiana delivery points. Sea Robin further states that it is authorized to redeliver United's gas at the terminus of Sea Robin's system onshore near Erath, Vermilion Parish, Louisiana, into the facilities of United. Sea Robin also states that the transportation agreement between United and Sea Robin dated June 1, 1976, has been amended on March 13, 1984, and December 5, 1984, to provide for a new redelivery point at the inlet side of the measuring station of Faustina Pipeline Company located at the offshore terminus of the Sea Robin system and a new receipt point at South Marsh Island Area Block 127, offshore Louisiana.

No other changes are proposed by the transportation agreements.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP85-448-000]

May 10, 1985.

Take notice that on April 18, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP85-448-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon its present meter station in Aiken County, South Carolina, and for authorization to construct and operate a replacement station at the same site under the authorization issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that two of its customers, Carolina Pipe Line Company (Carolina) and South Carolina Electric and Gas Company (South Carolina), merged their operations, and since the merger, Southern has continued to deliver gas to Carolina and South Carolina at separate delivery points in Aiken County. However, Southern has determined that a single delivery point would provide more accurate measurement of the gas sold as well as simplifying operations and reducing operational and maintenance costs.

Southern estimates the cost of construction, installation and operation of the new meter station at the single delivery point to be $1.5 million. Of this amount, it is stated, $115,000 would be borne by South Carolina Pipe Line, formerly Carolina and South Carolina.

Southern also indicates that the sole purpose of constructing the replacement station is to effect a contract demand delivery of 198,000 Mcf of natural gas, which amount would not increase as a result of this proposal.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

15. Tarpon Transmission Company

[Docket No. CP85-389-000]

May 10, 1985.

Take notice that on March 25, 1985, Tarpon Transmission Company (Applicant), 4665 First International Building, Dallas, Texas 75270, filed in Docket No. CP85-389-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of a public convenience and necessity authorizing the construction of a tap facility to permit the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to install a tap facility on its 18-inch pipeline in Block 361, Eugene Island, offshore Louisiana. Applicant states that it transports natural gas for the account of Trunkline Gas Company (Trunkline) which Trunkline obtains from various independent producers by authorization granted August 4, 1977, in Docket No. CP77-315. Applicant states further that Trunkline has entered into an agreement with Natural Gas Pipeline Company of America (NGPL) to transport gas NGPL has acquired in the Block 361 area. It is said that Trunkline seeks to provide that service for NGPL utilizing in part Tarpon's transportation service. It is further said that there would be no increase in Trunkline's minimum daily obligation or transportation entitlement.

Applicant states that it proposes to charge the transportation rate that is currently in effect, subject to the outcome of the proceedings in Docket No. RP84-82, for the transportation of these volumes. Applicant states further that the cost of construction of the tap facility would be reimbursed by NGPL.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

16. Transwestern Pipeline Company

[Docket No. CP85-441-000]

May 10, 1985.

Take notice that on April 16, 1985, as supplemented April 23, 1985, Transwestern Pipeline Company (Applicant), 1200 Travis Street, Houston, Texas 77001, filed in Docket No. CP85-441-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Great Plains Gas Company (Great Plains) and for a certificate of public convenience and necessity authorizing the operation of existing facilities to provide direct sale service and authorizing construction and operation of such sales taps, meter stations and pipeline facilities as are necessary to continue service to certain right-of-way grantors and other users of natural gas for agricultural and irrigation purposes in the Panhandle areas of Texas and Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon service under Rate Schedule RW-1 to its customer, Great Plains, and to continue serving the existing authorized customers of Great Plains under direct sales arrangements. It is asserted that Great Plains has failed to pay for gas delivered to it by Applicant since prior to October of 1983 and that it has accumulated a debt to Applicant of $749,152.84. It is further asserted that Great Plains is not in compliance with the resale restrictions in Applicant's RW-1 tariff and that Applicant believes that certain safety problems exist in the operation of Great Plains' system.

It is stated that upon abandonment of its sales to Great Plains, Applicant proposes to continue serving Great Plains' existing authorized customers. Applicant further proposes to construct minor pipeline facilities, as necessary, to continue natural gas service to its right-of-way and agricultural customers now being served by Great Plains. Total cost of all facilities needed to continue serving Great Plains' existing authorized customers is estimated not to exceed $150,000.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85-465-000]

May 10, 1985.

Take notice that on April 25, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas,

filed in Docket No. CP85-465-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for SCM Corporation (SCM), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport up to 8,500 Mcf of natural gas per day on behalf of SCM through June 30, 1985. It is stated that the gas to be transported would be purchased from The Resource Group, Inc. (Resources Group), and would be used as boiler fuel and as fuel for sulfate and chloride plant heating equipment. It is explained that United would receive the gas from the Resources Group at a point in Northeast Houma Field, Terrebonne Parish, Louisiana, and deliver it to Columbia Gulf Transmission Company which would deliver it to Columbia Gulf Transmission Company which would deliver it to Columbia Gas Transmission Corportion for delivery to Baltimore Gas and Electric Company, the distribution company serving SCM.

United states that it would charge a rate equal to United's Type I Rate which excludes the cost attributable to gas consumed in the operation of United pipeline system. It is indicated that currently the rate for such service is 7.79 cents per Mcf.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

18. Williston Basin Interstate Pipeline Company

[Docket No. CP85-214-001]

May 10, 1985.

Take notice that on April 12, 1985, Williston Basin Interstate Pipeline Company (Williston), 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP85-214-001 a petition to amend the order issued March 11, 1985, in Docket No. CP85-214-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of additional volumes of natural gas for Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Williston states that it was authorized by the March 11, 1985, order to transport natural gas and construct and operate a pipeline tap for the delivery of such natural gas to EES in McKenzie County, North Dakota. Williston further states that it proposes to transport up to 700 Mcf of natural gas per day for the account of EES pursuant to a service agreement dated November 1, 1984, which would terminate two years after the date of initial deliveries.

It is indicated that the natural gas that Williston would transport is owned and produced by EES. It is further indicated that Williston would receive the natural gas into its transmission system at the Boxcar Butte plant in McKenzie County, North Dakota, and would transport and redeliver such natural gas to EES, through a tap certificated in Docket No. CP84-469-000, for use as fuel at its Alexander field gathering compressor located in McKenzie County, North Dakota. It is stated that the compressor, which is used for gathering gas condensate and oil well gas to be processed at a gas processing plant, must be fueled with pipeline quality gas rather than sour gas available in the field.

Williston states that transportation service under its Rate ScheduleT-4 was provided for EES from November 1, 1984, through March 1, 1985, pursuant to Williston's blanket certificate authorization, under § 157.209(e)(1) of the Commission's Regulations. Williston further states that prior to that time, and subsequent to March 1, 1985, EES was and is receiving transportation service under Rate Schedule T-3 in accordance with Williston's certificate issued in Docket No. CP83-335.000. Williston states that continued certificate authority is sought for transportation of the natural gas under Service Class I, Rate Option B, of Williston's Rate Schedule T-4. Williston indicates that this rate schedule was approved, subject to refund, for Williston's parent company, Montana-Dakota Utilities Co., in Docket No. RP84-93-000.

Comment date: May 31, 1985, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

19. Texas Eastern Transmission Company

[Docket No. CP85-466-000]

May 10, 1985.

Take notice that on April 25, 1985, Texas Eastern Transmission Corporation, (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85-466-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale and transportation of natural gas and terminating the certificate of public convenience and necessity issued in Docket No. CP80-90 which authorized the sale to and transportation of natural gas on behalf of Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on November 9, 1979 Boarder Gas, Inc. (Border), filed an application jointly with the Commission and the Economic Regulatory Administration (ERA) in Docket No. CP80-75 and ERA Docket No. 79-31 NG, respectively, for authorization to import up to approximately 300,000 Mcf of natural gas per day from Mexico to be purchased from Petroleos Mexicanos (Pemex) for resale to six U.S. interstate pipeline purchasers, including Applicant. Pursuant to the gas sales agreement dated November 8, 1979 between the pipeline purchasers and Border, Applicant states that it is entitled to purchase up to 27½ percent of the gas imported by Border.

These applications were consolidated with Docket No. CP80-75 by notices issued November 30, 1979, and December 5, 1979. Border and the pipeline purchasers were granted certificates by Commission order issued December 21, 1979, in Docket Nos. CP80-93, *et al.* 9 FERC § 61,362. On December 29, 1979, the ERA issued its Opinion and Order No. 12 approving the importation of the subject Mexican gas by Border.

Applicant states that the Commission in its December 21, 1979, order granted to Applicant in Docket No. CP80-90 a certificate authorizing it to resell one-third of the volumes it is entitled to purchase from Border to Transwestern pursuant to a gas sales and transportation agreement dated November 13, 1979 (Agreement). Such Agreement is currently on file as Rate Schedule X-105 of Applicant's FERC Gas Tariff, Original Volume No. 2. Under the Agreement, Applicant asserts that it transports such gas quantities for Transwestern from an existing interconnection between Applicant and Pemex located at the Mexican/United States international boundary to an existing interconnection between Applicant and Valero Transmission Company (Valero) located near Angleton, Brazoria County, Texas. Valero then redelivers the gas to Transwestern at an interconnection of Valero's 36-inch pipeline and Transwestern's 20-inch pipeline in Pecos County, Texas, it is explained.

Applicant states that authorization to abandon the above described sale of gas to Transwestern is appropriate since on November 1, 1984, Pemex and Border suspended importation of Mexican natural gas which resulted in the non-availability of gas for sale to Transwestern. Subsequent to the

cessation of deliveries from Pemex and by letter agreement dated November 28, 1984, Appplicant states that it and Transwestern mutually agreed to terminate the November 13, 1979, Agreement effective as of November 1, 1984.

Applicant further states that Transwestern asserts that no adverse impact on Transwestern's customers would result from approval of this abandonment application. It is said that additional gas supplies made available to Transwestern since the passage of the Natural Gas Policy Act to 1978 are currently permitting Transwestern to meet the market demand of Transwestern's customers even after taking into account the suspension by Border and Pemex of importation of Mexican natural gas.

Comment date: May 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP85-449-000]

May 10, 1985.

Take notice that on April 19, 1985, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-449-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Memphis Light, Gas and Water Division (Memphis), as agent for The Buckeye Cellulose Corporation (Buckeye), beyond June 30, 1985, under the certificate issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that by a gas transportation agreement dated March 11, 1985, it agreed to continue transportation of gas to Memphis for ultimate delivery to Buckeye at several of its Memphis, Tennessee, plants. It is explained that up to 4.5 billion Btu of natural gas per day would be transported on an interruptible basis, with average daily quantities estimated to be 3.3 billion Btu and as much as 1,1642.5 billion Btu on an annual basis. The agreement extends the term of the transportation service to October 31, 1985, provided that authorization is received acceptable to both parties and provided that the end-user transportation program is extended beyond June 30, 1985, it is stated.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Applicant proposes to charge for its service the rate provided in its Rate Schedule TSC-1 for Rate Schedule G sales customers, which is currently 16.26 cents. Applicant is also charging the legally effective GRI funding unit, which is currently 1.25 cents per MMBtu.

Applicant indicates that the gas, transported through existing facilities, would be used for boiler fuel. Applicant states that Buckeye has purchased its gas supplies from The Cheney Group, in a first sale, and such gas was not dedicated to interstate commerce on November 8, 1978, and that The Cheney Group is acting as agent for Cities Service Oil and Gas Corporation, a producer. Applicant submits a statement by Memphis that it has capacity sufficient to perform this transportation service without deteriment or disadvantage to its other customers.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn with in 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11943 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. EL85-17-000]

Hydraco Power, Inc.; Petition for Declaratory Order

May 13, 1985.

Take notice that on January 3, 1985, Hydraco Power, Inc. (Petitioner) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that Petitioner's Martindale Dam Project is not subject to the Commission's jurisdiction under the Federal Power Act (Act), since it will not involve the construction of a dam on a navigable waterway, will not require any post-1935 construction, and will not affect the interest of the interstate or foreign commerce pursuant to section 23(b) of the Act. Therefore, it is not required to be licensed or exempted from licensing before the Petitioner may restore, operate, or maintain the project. The project is located on the San Marcos River in the town of Martindale,

in Caldwell County, Texas. Correspondence concerning this petition should be addressed to: Mr. Rodger M. Zimmerman, Attorney at Law, Route 1, Box 74, Driftwood, Texas 78619.

As described in the petition, the project dam was constructed in 1883, and the project was utilized as a generating facility for many years. The power station was operated by the Texas Power and Light Company and the Lower Colorado River Authority until sometime in the 1940's, when it was abandoned. The project consists of: (1) An existing concrete dam approximately 100 feet long and 12 feet in height; (2) an existing impoundment with water surface area of about 10 acres, a storage capacity of 40 acre-feet at normal water surface elevation of 501.3 feet, m.s.l.; (3) an existing penstock, 10 feet wide and 18 feet long; (4) an existing powerhouse about 25 feet by 12 feet, housing one turbine-generator unit with an installed capacity of 150 kW; (5) about 30 feet of existing transmission line at 480 volts; and (6) appurtenant facilities. The petitioner estimates that the average annual energy generation would be 875,000 kWh.

Comments, Protest, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commisson will consider all the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before June 24, 1985. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11937 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7282-004]

Roaring Creek Ranch; Application for Transfer of Major License

May 13, 1985.

Public notice is hereby given that an application was filed on April 4, 1985, under the Federal Power Act, 16 U.S.C. 791(a)-825(r), by the Roaring Creek Ranch, Licensee and Roaring Creek Ranch and Mega Renewables, transferee, for transfer of major license for the Roaring Creek Water Power Project No. 7282. The project is located on Roaring Creek, in Shasta County, California. Correspondence should be directed to: Mr. John Downs, Roaring Creek Ranch, 1110 Shasta Street, Redding, California 96001.

The transferee is a private partnership organized under the laws of the State of California. Transferee states that it will comply with all applicable laws of the State of California as required by section 9(b) of the Federal Power Act.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before June 21, 1985. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11938 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-478-000]

Tampa Electric Co.; Filing

May 13, 1985.

The filing Company submits the following:

Take notice that on May 1, 1985, Tampa Electric Company (Tampa) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power and Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Sebring Utilities Commission, Seminole Electric Cooperative, and the Cities of Gainesville, Kissimmee, Lake Worth, Lakeland, St. Cloud, Starke, Tallahassee, and Vero Beach, Florida. Tampa states that the revised daily capacity charge is based on 1984 Form No. 1 data, and is derived by the same method that is shown in the cost support schedules submitted with the interchange agreements.

Tampa requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing has been served upon each of the above-mentioned parties to interchange agreements with Tampa, as well as the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11936 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-15-000]

Texas Eastern Transmission Corp.; Tariff Filings

May 13, 1985.

Take notice that on May 6, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, tendered for filing in Docket No. TC85-15-000 pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 93
Fourth Revised Sheet No. 94
Sixth Revised Sheet No. 95
Second Revised Sheet No. 95A
Original Sheet No. 95B
Fifth Revised Sheet No. 96

It is explained that these tariff sheets suspend the annual quanity entitlements (AQE) contained in the curtailment provisions of the FERC Gas Tariff on the

terms and conditions set forth in the Statement of Nature, Basis and Reasons filed concurrently herewith. It is indicated that under these new tariff provisions, the AQE's on Texas Eastern's system would be lifted except in the event of a long-term supply shortages. It is further indicated that in the event of a temporary *force majeure*, not expected to exceed thirty consecutive days, Texas Eastern would curtail its customers *pro rata*, with certain exceptions as to small customers. In the event of long-term gas supply shortages, Texas Eastern would reinstitute the AQE's for curtailment purposes, it is said.

It is indicated that the new tariff sheets were filed by Texas Eastern, after agreeing to do such a filing, in conjunction with the offer of settlement proposed in Docket No. CP84-429-000 *et al.* Texas Eastern requests that the tariff sheets be permitted to go into effect on June 6, 1985.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before May 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11939 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-49-002]

Williston Basin Interstate Pipeline Co.; Change in Tariff

May 10, 1985.

Take notice that on May 7, 1985, Williston Basin Interstate Pipeline Company (Williston) tendered for filing Substitute Alternate First Revised Sheet Nos. 10 and 11 to its FERC Gas Tariff, Original Volume No. 1, and Substitute Alternate First Revised Sheet No. 10 and Alternate First Revised Sheet No. 11 to its FERC Gas Tariff, Original Volume No. 2, proposed to be effective May 1, 1985. These revised tariff sheets with supporting detail are filed pursuant to the Commission's order issued April 30, 1985, with respect to Williston's PGA filing of March 29, 1985, directing the revision of Account No. 802 purchase volumes in January, 1985 and the correction of two minor clerical errors.

The substitute tariff sheets effect a net rate decrease of 0.637 cents per Mcf relative to Williston's PGA filing of March 29, 1985, and net rate decrease of 122.690 cents per Mcf relative to previously effective Rate Schedules G-1, PR-1 and I-1. X-5 reflects an additional 0.021 cents per Mcf reduction and a net rate decrease of 70.516 cents per Mcf.

Copies of this compliance filing were served upon Williston's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11940 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-7-001]

Williston Basin Interstate Pipeline Co.; Tariff Filing

May 10, 1985.

Take notice that on May 1, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. TC85-7-001 pursuant to Part 154 of the Commission's Regulations the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 to be effective July 1, 1985:

First Revised Sheet No. 159
Original Sheet No. 159A
First Revised Sheet No. 181
First Revised Sheet No. 184
First Revised Sheet No. 185
First Revised Sheet No. 188
First Revised Sheet No. 190

Williston Basin states that the purpose of this filing is to revise the tariff sheets filed by Montana-Dakota Utilities Co. (MDU) on February 1, 1985, in Docket No. TC85-7-000 to reflect the Commission's order dated February 13, 1985, in Docket No. CP82-487-000, *et al.* (30 FERC ¶ 61,143). This order approved a settlement authorizing Williston Basin to acquire and operate interstate pipeline facilities and services of MDU, effective January 1, 1985. Williston Basin, in compliance with this order, filed an FERC Gas Tariff to replace MDU's FERC Gas Tariff necessitating the subject tariff filing to make the original filing consistent with the numeration of pages in Williston Basin's tariff.

Any person desiring to be heard or to make any protest with reference to said tariff sheets filing should on or before May 20, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11941 Filed 5-16-85; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Record of Decision To Construct the Thermopolis-Alcova-Casper 230-/345-kV Transmission Line Project, Wyoming

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision to Construct the Thermopolis-Alcova-Casper 230-/345-kV Transmission Line Project, Wyoming.

SUMMARY: The Western Area Power Administration (Western) has made the decision to construct the Thermopolis-Alcova-Casper 230-/345-kilovolt (kV) transmission line following the preferred alternative identified in the final environmental impact statement (EIS). The preferred route is environmentally acceptable but not environmentally preferred since some of the alternative routes addressed in the EIS would have lower impacts on some environmental resources. The transmission line will be

constructed with a combination of single-pole structures made of steel and steel H-frame structures. Two new substations, a 3-mile, 34.5-kV transmission line from the existing Bridger Pumping Plant, and a short 69-/115-kV tap line to the existing Lost Cabin Substation will be constructed as part of the project. Also, the existing Arminto-Casper 69-kV transmission line will be rebuilt at the same voltage on most of its existing right-of-way. Western will proceed with land acquisition, construction, and subsequent operation and maintenance of the proposed facilities. The availability of the draft and final EIS for the project was announced in the **Federal Register** by the Environmental Protection Agency on February 1, 1984, and October 26, 1984, respectively.

Western will implement the mitigation measures listed in the EIS. A specific mitigation plan for cultural resource impacts will be developed in consultation with the Wyoming State Historic Preservation Officer (SHPO), and this plan will be implemented before construction activities commence in the vicinity of eligible cultural resource sites. In addition, any site-specific mitigation requirements identified during construction will be addressed by Western and coordinated with appropriate Federal, State, and local agencies. General mitigation measures are discussed later in this document.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Shafer, Acting Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224-7201.

SUPPLEMENTARY INFORMATION: The existing Western system consists of a 115-kV line from Thermopolis to Boysen to Alcova, Wyoming, and a 69-kV line between Thermopolis and Casper, Wyoming. During periods of heavy power transfers, the 115-kV line approaches its thermal limit of 106 megawatts (MW). Transmission power losses during these peak periods can be 15 to 20 MW. The Thermopolis-Boysen-Alcova 115-kV line is also one of the weaker links in the overall transmission system between Yellowtail, Montana, and Ault, Colorado; and is one of the first lines to trip during system disturbances. As such, it is a primary contributor to instability of the regional transmission system.

Also, the existing Casper-Thermopolis 69-kV line which serves numerous customers of Western, Pacific Power & Light Company, and Tri-State Generation and Transmission Association, Inc., is over 44 years old and is subject to numerous outages because it lacks direct-strike lightning protection and because of structure failures. Replacement of the line will reduce maintenance costs and increase system reliability to the required level.

Replacing the 69-kV line at the same voltage would not provide the additional capacity required. Western proposes to replace the line with a 230-kV line which would provide the needed capacity for load growth in the area, alleviate major outage problems, reduce local transmission losses by 90 percent, improve reliability to the overall utility system in the area, provide voltage support to the underlying 115-kV and 69-kV systems, and increase transfer capability to the north and south.

Planning for the proposed project began in the spring of 1981. In September 1981, Western conducted three scoping meetings with Federal, State, and county agencies and the general public. Public scoping meetings were held in Thermopolis, Riverton, and Casper, Wyoming. The primary concerns identified during the scoping and other interagency meetings were: (1) The need for the project and how it relates to existing and planned utility facilities in the project area; (2) the environmental studies which would be conducted and the methodology for selecting a preferred corridor; (3) right-of-way acquisition procedures and the extent to which individual landowners would be informed and involved in decisionmaking; (4) impacts to agricultural land use and how they would be mitigated; (5) design, construction and routing alternatives, including underground construction, double-circuiting, paralleling existing transmission lines, and construction of a line of sufficient capacity to preclude additional transmission line construction in the near future; (6) protection of cultural resources; and (7) protection of threatened and endangered species.

Following the scoping meetings, Western evaluated the resources within the study area to identify potential transmission line corridors. Areas of opportunity, least impact, avoidance, and exclusion were identified in the study area. The factors considered in this phase of the siting study included: (1) Archeological and historical sites; (2) areas of religious significance to native Americans; (3) wildlife and fisheries resources, particularly waterfowl concentration areas; (4) land use patterns, especially agricultural and residential; (5) geology and soils; (6) paleontological resources; and (7) visual resources.

After alternative corridors were identified, Western conducted a series of public planning workshops to solicit input from landowners and other interested groups and individuals. The planning workshops were held in Thermopolis, Riverton, and Casper, Wyoming, in January 1983. In addition, an informational meeting was held in January 1983 with the Joint Business Council of the Shoshone and Arapahoe Tribes at Fort Washakie, Wyoming. Subsequent to this input and an analysis of all other data collected, a preferred corridor was selected.

The draft EIS was issued in February 1984. It evaluated Western's proposed action, reasonable alternatives to the proposed action, and the environmental impacts of the proposal and alternatives. Public hearings on the draft EIS were conducted in Thermopolis, Riverton, and Casper, Wyoming, in March 1984, and written and oral comments were received. The final EIS was issued in October 1984.

Description of Alternatives

1. No Action—Western would construct no transmission facilities between Thermopolis, Alcova, and Casper, Wyoming.

2. Energy Conservation—Western encourages energy conservation which eliminates wasteful, uneconomic, or unnecessary uses of energy resulting in the reduction of energy consumption and documented adverse environmental impacts.

3. Alternative Generation Sources—Another alternative for meeting the stated need would be for Western to use other existing or planned transmission systems or new technologies.

4. Alternative Transmission Systems and Technologies—A direct current (DC) transmission system was considered as a possible alternative to an alternating current (AC) system. Underground systems were also evaluated.

5. Design Alternatives—Western considered various voltage levels, structure types, and conductors including:

A. Voltage Level—Four voltage levels were studied: 69-, 115-, 230-, and 345-kV.

B. Structure Types—Single-pole construction using either concrete, steel, or a combination of those materials, steel lattice, and wood and steel H-frame structures were alternatives considered by Western.

C. Conductors—Specular (normal) and nonspecular (dulled finish)

conductors were evaluated, as well as size of conductor.

D. Routing Alternatives—A wide variety of route locations (16) was initially considered and then rejected for environmental and technical reasons. This resulted in a reduced network of candidate routes for the proposed 230- or 230-/345-kV transmission lines between Thermopolis and Alcova, and between Alcova and Casper, and the proposed 69-kV line rebuild between Arminto and Casper.

Basis of Decision

The no-action alternative would result in low voltage, overload, and loss of load on the Thermopolis-Boysen-Alcova 115-kV transmission line, the Thermopolis-Casper 69-kV line, and the Alcova-Casper 69-kV line, increasing the frequency and severity of service interruptions, overloaded lines, and poor voltage regulation in the area's transmission system.

Energy conservation measures could not siginficantly reduce existing area loads to offset projected load growth in the area.

No projects for alternative generation exist or are planned by other utilities that could meet Western's need. Therefore, this is not a viable alternative.

In comparison to an AC transmission system, a DC system is generally not eonomical except for transferring large blocks of power over long distances (i.e., 300 or more miles). A DC system with the power-transfer capability of a 230-kV AC system would cost approximately two to three times as much as a 230-kV AC system with no additional significant environmental benefits.

Underground construction of a 230-kV transmission line between Thermopolis-Alcova would be technically feasible and would avoid some esthetic impacts; however, costs would be considerably higher, and the line would not be as accessible.

A resource inventory of the project's study area identified exclusion and avoidance areas, and areas of least potential impact and opportunity for transmission line routing. Alternative corridors were selected and studied along with a substation site near Alcova. The corridors were made up of links and were divided into systems. The corridor links within each system were compared and ranked by an interdisciplinary environmental study team, resulting in the identification of impact levels for each alternative corridor.

Between Thermopolis and Alcova, the preferred route addressed in the draft and final EIS is environmentally acceptable but not environmentally preferred because it would have slightly higher impacts on land use, cultural, and visual resources than the primary alternative. Both routes addressed in the Thermopolis-Alcova section are similar in that they share a common link for a portion of the project, and they both parallel existing transmission lines. The preferred route in the Thermopolis-Alcova section was designated because of lower construction costs.

In the draft EIS, Western addressed the existing transmission line corridor along the North Platte River between Alcova and Casper as the preferred route based on the assumption that the existing transmission line corridor would be used indefinitely. With this assumption the existing corridor would have been the environmentally preferred route. However, following the issuance of the draft EIS, the Bureau of Land Management (BLM) designated a utility corridor west of the North Platte River. With this designation, the existing transmission lines along the North Platte River would eventually be removed, switching the emphasis on the impact ratings. Western then reevaluated the impacts and found that the existing corridor was no longer the environmentally preferred route. The BLM corridor was then chosen as the preferred corridor between Casper and Alcova since it would occupy a designated corridor and would have comparable impacts to the other alternative routes addressed in the Casper-Alcova segment. Based on the above, Western has selected the preferred route as addressed in the final EIS as the route for the new transmission line even though it is not the true environmentally preferred alternative.

All practicable means to avoid or minimize environmental harm from Western's preferred alternative were identified in the draft and final EIS, and Western will incorporate these measures in the project. Special environmental requirements for sensitive or fragile areas will be included in the project construction specifications, including requirements for right-of-way clearing, structure site preparation, structure erection, conductor stringing, timing of construction, and the protection of archeological and historical resources. Western will implement any additional feasible site-specific mitigation measures identified and agreed upon during consultation with other Federal and State agencies. In order to lessen the visual impacts of the line, Western will use nonspecular conductors.

Western project inspectors will be fully familiarized with the project mitigation measures and will insure their implementation during construction. When crossings of Federal and State lands are involved, Western will insure that agency representatives are able to perform necessary monitoring functions. The construction mitigating measures included in the EIS will be implemented through Western's standard construction specifications and procedures.

A cultural resource mitigation plan will be developed in consultation with the SHPO and Advisory Council on Historic Preservation. No construction will be implemented in the vicinity of any eligible cultural resource sites until the section 106 compliance process has been completed for each particular eligible site. The project construction specifications will provide that, in the event previously undiscovered cultural resources are encountered during construction of the line, activities that could jeopardize those resources will be suspended until the provisions of section 106 of the National Historic Preservation Act have been carried out.

Integration With Other Requirements

Intergovernmental Cooperation—Under requirements of the Intergovernmental Cooperation Act of 1968, Western notified the Wyoming State Clearinghouse of the project by sending it copies of the draft and final EIS. Western coordinated project planning with other Federal and State agencies and received their independent evaluation of the potential impacts of the proposed transmission line and substation facility.

Western also conducted considerable coordination with the SHPO, other State agencies, U.S. Fish and Wildlife Service (FWS), and local planning boards and commissions. Reasonable suggestions and concerns of affected landowners were incorporated into project planning wherever feasible.

Endangered Species—Western has conducted a biological assessment for the project. Based on the results of the assessment, the FWS has concurred with Western's compensation measures and determination that the construction, operation, and maintenance of the transmission line will not affect endangered species. As a result, Western will use aviation ball markers or some other effective means to increase the visibility of the overhead ground wires to bald eagles and peregrine falcons where the transmission line crosses daily migration routes, reducing the potential

for in-flight collisions with the line, and will survey according to current guidelines and methodologies all prairie dog towns located within one-half mile of the transmission line to determine the presence of black-footed ferrets.

Floodplain/Wetlands—In response to the Department of Energy's *Compliance with Floodplain/Wetlands Environmental Review Requirements* (10 CFR Part 1022), Western evaluated the potential effects of the project on flood plain/wetlands. Published flood plain information was only found for the 100-year flood plains of the Bighorn River and Badwater, Casper, and Poison Spider Creeks, and these are the largest floodplains crossed by the project. Also, it was assumed that several floodprone areas exist at the numerous streams and creeks crossed by the project including the Middle Fork Casper, Buffalo, Bridger, and E-K Creeks. However, detailed information was not available for these creeks to exactly delineate the 100-year floodplain boundaries. Regardless, no transmission facilities would be located within the known 100-year floodplains or suspected floodprone areas since long spans would be used at their crossings. Potential wetland soil areas are crossed including areas associated with riparian vegetation zones as well as tracts of irrigated cropland. Western will make efforts to avoid locating transmission structures, access roads, and other facilities in wetlands. If it is not possible to totally avoid wetlands, Western will implement erosion control measures, including reseeding, to minimize effects to wetlands.

Western will obtain any necessary permits which might be required by the Clean Air Act and Clean Water Act of 1977. Copies of this record of decision will be sent to the Wyoming State Clearinghouse, appropriate Federal and State agencies, and to other agencies, organizations, and individuals commenting on the draft or final EIS.

Issued at Golden, Colorado, March 1, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85-12006 Filed 5-16-85; 8:45 am]

BILLING CODE 6450-01-M

Salt Lake City Area; Proposal for Developing and Marketing Power; Diamond Fork Power System and Jordanelle Powerplant

AGENCY: Western Area Administration, DOE.

ACTION: Extension of written comment period; proposal for developing and marketing power; Diamond Fork Power System and Jordanelle Powerplant.

SUMMARY: The Western Area Power Administration (Western) is in the process of developing a plan for developing and marketing power from the proposed Diamond Park Power System and Jordanelle powerplant. In the **Federal Register** notice of March 29, 1985 (50 FR 12619), Western's Salt Lake City Area Office published the proposal for development of the above resources and requested written comments to be submitted to Western by May 6, 1985. Western has now determined that an extension of this deadline is desirable.

DATE: The deadline date for written comments on the March 29, 1985, publication is now extended to July 8, 1985.

ADDRESS: On or before this extended deadline, written comments on the proposed development of the Diamond Fork and Jordanelle resources should be sent to Mr. Lloyd Greiner, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524-5494. Further information concerning this request for written comments or other information pertaining to proposal should be addressed to Mr. Greiner.

Issued in Golden, Colorado, May 3, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-12007 Filed 5-16-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51571; FRL-2837-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-900, 85-901, 85-902, 85-903, 85-904, 85-905, 85-906, 85-907, 85-908, 85-909 and 85-910—July 31, 1985.

P 85-911, 85-912, 85-913, 85-914, 85-915, 85-916 and 85-917—August 3, 1985.

P 85-918, 85-919, 85-920, 85-921, 85-922, 85-923, and 85-924—August 4, 1985.

P 85-925, 85-926, 85-927, 85-928, 85-929, and 85-930—August 5, 1985.

P 85-931, 85-932, 85-933 and 85-934—August 6, 1985.

Written comments by:

P 85-900, 85-901, 85-902, 85-903, 85-904, 85-905, 85-906, 85-907, 85-908, 85-909 and 85-910—July 1, 1985.

P 85-911, 85-912, 85-913, 85-914, 85-915, 85-916, and 85-917—July 4, 1985.

P 85-918, 85-919, 85-920, 85-921, 85-922, 85-923, and 85-924—July 5, 1985.

P 85-925, 85-926, 85-927, 85-928, 85-929 and 85-930—July 6, 1985.

P 85-931, 85-932, 85-933, and 85-934—July 7, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51571]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, D.C. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-900

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyamino-polyamide.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 103 da/yr.

Environmental Release/Disposal. 6,539 kg/batch released with 54 kg/batch maximum to land. Disposal by landfill and incineration.

P 85-901

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyamino-polyamide-epichlorohydrin polymer.

Use/Production. (S) Industrial and commercial wet strength resin for paper. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 78 da/yr.

Environmental Release/Disposal. Approximately 10,000 kg/batch released with 176 kg/batch to land. Disposal by publicly owned treatment works (POTW), landfill incineration.

P 85-902

Manufacturer. Confidential.

Chemical. (G) N-substituted lauroylamide.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-903

Importer. Confidential.

Chemical. (G) Tetrasubsituted amine.

Use/Import. (G) Polymerizing agent. Import range: 2,000-6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No data submitted.

P 85-904

Importer. Confidential.

Chemical. (G) Alkoylated diol.

Use/Import. (S) Site-limited and industrial solvent. Import range: 1,000-3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No data submitted.

P 85-905

Manufacturer. Ethyl Corporation.

Chemical. (S) Sodium aluminum tetrahydride.

Use/Production. (S) Chemical reducing agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 85-906

Manufacturer. Confidential.

Chemical. (G) Polymer reacted by a poly)aliphatic) isocyanate.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-907

Importer. Confidential.

Chemical. (G) Polymer reacted by a poly (aliphatic) isocyanate.

Use/Import. (G) Open, non-dispersive use. Importer range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-908

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Short oil alkyd resin.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-909

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic, cycloaliphatic polyester.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-910

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic, aromatic copolyester.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by POTW, incineration, approved landfill and on-site water treatment.

P 85-911

Manufacturer. Confidential.

Chemical. (S) Trifluoromethanesulfonic acid, 2-propynyl ester.

Use/Production (G) Chemical intermediate. Prod. range: 3-4 kg/yr.

Toxicity Data. Acute oral: Males — 2,263 mg/kg, females — 1,903 mg/kg; Acute dermal: Between 2.5 and 5.0 ml/kg; Irritation: Skin — Severe.

Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.4 hr/da, up to 2 da/yr.

Environmental Release/Disposal. No release. Less than 0.1 kg/batch to less than 0.4 kg/batch incinerated.

P 85-912

Manufacturer. Confidential.

Chemical. (G) Substituted alkanol adduct of a long chain diisocyanate.

Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: 3,000-6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture a total of 5 workers.

Environmental Release/Disposal. 0.01 kg to 1.0 kg released to land. Disposal by landfill.

P 85-913

Manufacturer. Confidential.

Chemical. (G) Polyol sulfate.

Use/Production. (G) Open, non-dispersive, dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 50 to 100 kg/yr released to air with 1,000 to 1,5000 kg/yr to wash water. Disposal by POTW.

P 85-914

Manufacturer. Confidential.

Chemical. (G) Trisubstituted triazole.

Use/Production. (G) Contained use in an article. Prod. range: 400 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, inhalation and ocular, a total of 10 workers, up to 1.1 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and less than 0.5 to less than 3.4 kg/batch incinerated.

P 85-915

Manufacturer. Hach Company.

Chemical. (S) 2,4,6-tri (2-pyridyl)-1,3,5-triazine 1:1 salt with p-toluensulfonic acid.

Use/Production. (S) Site-limited and consumer powder mixture formulation to be used as analytical reagent for determination of iron in water. Prod. range: 25 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 3 workers, up to 2–4 hrs/da, up to <5 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW.

P 85–916

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) 1,2-diaminocyclohexane, epoxy resin reaction product.

Use/Production. (S) Industrial cargo and stationary storage tank linings; pipeline coating, chemical processing and pollution control equipment. Prod. range: Confidential.

Toxicity Data. Acute oral: Combined—2,189 mg/kg Male—2,505 mg/kg; Female—1,921 mg/kg; Acute dermal: Male and female>2,000 mg/kg; Irritation: Skin—Corrosive.

Exposure. Confidential.

Environmental Release/Disposal. Released to water. Disposal by biological treatment system.

P 85–917

Importer. Emser Industries.

Chemical. (G) Further clarification needed before information can be released to public file.

Use/Import. (S) Industrial copolymers for producing formulations of metal coating fine powders. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Inhalation.

Environmental Release/Disposal. No release.

P 85–918

Manufacturer. Confidential.

Chemical. (G) Methylene diisocyanatebenzene a polyether glycol and a propenoate ester.

Use/Production. (G) A formulation component for open, non-dispersive use. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 4 workers.

Environmental Release/Disposal. 0.01 kg to less than 2.0 kg released to land. Disposal by landfill.

P 85–919

Manufacturer. The Upjohn Company.

Chemical. (G) Modified aromatic isocyanate.

Use/Production. (S) Extender/crosslinker in polymeric materials with functional groups (OH, NH_2, etc.) and functionalized coatings (NH_2 groups). Prod. range: 500–1,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 workers, up to 1 hr/da, up to 15 da/yr.

Environmental Release/Disposal. Traced released to air and 0.5 kg/batch to land. Disposal by hazardous waste landfill.

P 85–920

Manufacturer. Confidential.

Chemical. (G) Ethoxylated amidoamine of rosin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 8 workers.

Environmental Release/Disposal. Less than 1 kg/batch released with (averaged over 15 batches) to water and less than 0.1 kg/batch to land. Disposal by hazardous waste contractors.

P 85–921

Manufacturer. The Goodyear Tire and Rubber Company.

Chemical. (S) Reaction product of thiodipropionic acid and p-aminodiphenylamine.

Use/Production. (S) Industrial polymer stabilizer and age resister additive for polymers. Prod. range: 10,500–100,000 kg/yr.

Toxicity Data. Acute oral:>13.7 g/kg; Irritation: Skin—Non-irritating; Eye—Moderate/Inconsequential; Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal and inhalation, a total of 8 workers, up to 8 hrs/da, up to 80 da/yr.

Environmental Release/Disposal. Release to air. Disposal by POTW, Grant Creek Municipal Sewer, Salisbury, North Carolina and to Akron Municipal Sewer.

P 85–922

Importer. American Hoechst Corporation.

Chemical. (S) Benzenesulfonic acid, 2-amino-4-acetylamino-5-(4-((2-(2-(sulfooxy)ethyl)sulfonyl)phenyl)azo-, sodium salt.

Use/Import. (S) Reactive dye. Import range: Confidential.

Toxicity Data. Acute oral: Female—>5,000 mg/kg; Irritation: Skin—Slight, Eye-Irritant; Ames Test: Negative; LC_{50} 96 hr Brachydanio rerio: >500 mg/1.

Exposure. Use: dermal and inhalation, a total of 40 to 50 workers, 20 customers, 600 manhours/yr.

Environmental Release/Disposal. Disposal by POTW.

P 85–923

Manufacturer. Mc Whorter, Inc.

Chemical. (G) Oil modified silicone polyester.

Use/Production. (S) Resin for industrial coatings. Prod. range: 65,454 kg/yr..

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 2 workers, up to 1 hr/da, up to 12 da/yr.

Environmental Release/Disposal. Release to air. Disposal by landfill.

P 85–924

Manufacturer. Confidential.

Chemical. (S) Polymer of 2,2 dimethyl-3-hydroxypropyl-2, 2 dimethyl-3-hydroxypropionate, trimethylol propane, 2, 4 toluene diisocyanate, adipic acid and E-caprolactone.

Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 184,600–307,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch of resin released and 0.2 to 1 kg/batch of paint. Disposal by landfill.

P85–925

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) Prepolymer of 2-ethanol, 1,1′-thiobis, ethanol, 2-mercapto, reaction product with propylene oxide, 3-thiahept-5-ene-1-ol, ethanol, 2-mercapto, reaction product with oxirane [2-propenyl (oxy)methyl], 4,4′-thiodiphenol, ethanethiol, 2,2′-[1,2-ethanediyl bis (oxy)]bis.

Use/Production. (S) Industrial polymer for adhesive and sealants. Prod. range: 60,000–500,000 kg/yr.

Toxicity Data. Acute oral:>5 g/kg; Irritation: Skin—Mild, Eye-Non-irritating; Ames Test: Non-mutagenic; Maximization test: Non-sensitizing.

Exposure. Manufacture and processing: dermal, a total of 47 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. 0.3 to 5 kg/batch released to land. Disposal by landfill.

P 85–926

Manufacturer. Confidential.

Chemical. (G) Ethoxylated aminoamine of rosin.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, inhalation and ocular, a total of 8 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to land with less than 1 kg/batch to water. Disposal by state-approved hazardous waste contractor.

P 85–927

Manufacturer. Confidential.
Chemical. (G) Modified essential oil.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–928

Manufacturer. Confidential.
Chemical. (S) Polymer of: Pentaerythritol, benzoic acid, tall oil fatty acid, neopentyl glycol, isophthalic acid, phthalic anhydride, styrene and acrylic acid.
Use/Production. (G) Used in a closed system. Prod. range: 200–1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure: Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons and state licensed landfill.

P 85–929

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (G) Polyurethane chain extender. Prod. range: Confidential.
Toxicity Data. Acute oral: >500 mg/kg; Acute dermal: >1.0 g/kg; Irritation: Skin—Mild; Ames Test: Negative.
Exposure: Confidential.
Environmental Release/Disposal. Confidential.

P 85–930

Manufacturer. IFP Enterprises, Inc.
Chemical. (S) 1,2-benzenedicarboxylic acid-4-[(3-aminophenyl) hydroxymethyl] methyl ester.
Use/Production. (S) Industrial coating for micro electronics devices. Prod. range: 500–1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. No data submitted.

P 85–931

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstitutedalkyltriazine salt.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. None expected.

P 85–932

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstitutedalkyltriazine
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. None expected.

P 85–933

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstituted alkyltriazine.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,000 mg/kg; Ames test: Non-mutagenic.
Exposure: Confidential.
Environmental Release/Disposal. Disposal by POTW and navigable waterway.

P 85–934

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Manufacture and processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. .5 kg/batch released to water with .5 to 10 kg/batch to land. Disposal by POTW and landfill.

Dated: May 13, 1985.

Linda A. Travers,
Acting Director, Information Management Division.

[FR Doc. 85–11837 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2837-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 29, 1985 through May 3, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the rating assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-D65013-PA, Rating EC2, Allegheny Nat'l Forest Land and Resources Mgmt. Plan, PA. *Summary:* EPA's review indicates that potential water quality problems may result from implementation of the managment plan as proposed, due to potentially excessive clearcutting that could occur, and potential oil, gas, and coal extraction activities. EPA also believes that the alternatives considered may overemphasize economic considerations to the detriment of important ecological values.

ERP No. D-AFS-F65011-MN, Rating LO, Chippewa Nat'l Forest Land and Resource Mgmt. Plan, MN. *Summary:* EPA's review of the DEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. DR-AFS-K65061-AZ, Rating EC2, Tonto Nat'l Forest Land and Resourse Mgmt. Plan, AZ. *Summary:* EPA believes that this DEIS did not adequately analyze potentially significantly impacts to air and water quality, which could result from implementation of this plan.

ERP No. D-BLM-K70000-AZ, Rating EC2, Lower Gila South Resource Mgmt. Plan. AZ. *Summary:* EPA identified the need for further clarification of: the impacts on air and water quality; pesticides use; conflicts between grazing and wildlife habitat; and the environmental benefits of increased wilderness designation in the Resource Area.

ERP No. D-CDB-D89078-PA, Rating EC2, Philadelphia Convention Complex Development, CDBG, PA. *Summary:* EPA believes that the DEIS did not adequately analyze potentially adverse impacts—particularly to air quality.

ERP No. DS-COE-E34028-FL, Rating Alter. A=LO; Alter. B=EC1, Canaveral Harbor West Basin and Approach Channel Navigation Improvement, Fish and Wildlife Mitigation Plan, FL. *Summary:* On the basis of EPA's evaluation of the various alternatives, Alternative A has the greatest potential to acutually mitigate the environmental losses accruing from the proposed harbor upgrades. Alternative B has much less appeal since it would not adequately mitigate for the environmental losses occasioned by the facility upgrades.

ERP No. DS-COE-E35079-AL, Rating EC2, Upper Mobile Harbor Dredged Material Disposal, Maintenance Dredging, Long Range Disposal Plan, AL. *Summary:* EPA has some environmental concern regarding four of the alternative

dredged material disposal plans, but the environmental losses are considered manageble, mitigable, or both. However, the environmental consequences of Alternative C are of such magnitude that it it were to become the selected choice we would seriously consider rating it as environmentally unsatifactory as well as a candidate for a pre-decision referral to the Council on Environmental Quality for arbitration.

ERP No. DS–JUS–A82111–00, Eradication of Cannabis on Federal Land and Intermingled Forests and Rangelands in the Continental U.S. *Summary:* EPA believes that the DSEIS adequately presents and analyzes the additional information presented in this document.

Final EISs

ERP No. F–BLM–J02007–WY, North Fork Well Oil and Gas Exploration, Permit, Shoshone Nat's Forest, WY. *Summary:* The FEIS responded to EPA's concerns on the second DEIS.

ERP No. FS–COE–G30008–LA, New Orleans to Venice Hurricane Protection Project's, Permit, LA. *Summary:* The FEIS adequately responds to EPA's comments issued on the DEIS. EPA did not identify any new issues of concern with regard to the proposed action.

ERP No. FS–FHW–H40071–IA, I–380 Extension, US 218 to US 20, Waterloo and Cedar Falls, New Aligment Alternative, IA. *Summary:* EPA is concerned that 49 residences will experience noise impacts. The FHWA is studying some possible changes in alignment that might alleviate these noise impacts.

FS–IBR–J34002–CO, Narrows Unit Multipurpose Water Development, Pick-Sloan Missouri Basin Program, South Platte Division, CO. *Summary:* EPA has serious environmental objections to the proposal because of the predicted poor water quality conditions in the reservoir. The information on wetland losses in the EIS is not adequate. EPA has determined that the Narrows Unit, as proposed, is not consistent or otherwise in compliance with the Clear Water Act, section 404(b)(1) Guidelines since there is a jeopardy opinion issued under the Endangered Species Act for the whooping crane and the proposal fails to adequately replace lost wetlands. EPA believes another supplemental EIS is necessary. Purchase of land at the preferred site should be delayed until another Supplemental EIS is issued.

ERP No. F–NOA–L64021–00, N. Pacific Fur Seals Conservation Interim Convention, Extension, Pacific Ocean. *Summary:* EPA made no formal comments. EPA reviewed the FEIS and had no comment.

Dated: May 14, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–12026 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2837-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed May 6, 1985 through May 10, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850194, Revised, COE, NC, Scuppernong River Flood Control and Channel Drainage Improvements, Construction, Washington County, Due: July 1, 1985, Contact: Richard Jackson (919) 343–4745.

EIS No. 850195, Suppl, AFS, CA, Peppermint Mountain Resort Development, Permit, California Condor Survivability, Slate Mountain, Sequoia National Forest, Tulare County, Due: July 1, 1985, Contact: Julie Allen (209) 784–1500.

EIS No. 850196, Final, FHW, TX, Beltway 8, Section II, Circumferential Freeway Construction, TX–225 to I–45, Houston, Harris County, Due: June 17, 1985, Contact: John Inabinet (512) 482–5516.

EIS No. 850197, Draft, AFS, NC, Croatan and Uwharrie National Forests, Land and Resource Management Plan, Due: August 15, 1985, contact: George Olson (704) 253–5602.

EIS No. 850198, Draft, GSA, CA, Los Angeles Federal Center Development, Construction, Metropolitan Detention Center, VA Outpatient Clinic and Federal Building-Courthouse, Los Angeles County, Due: July 1, 1985, Contact: Veronica Holland (415) 974–7624.

EIS No. 850199, Final, FHW, CA, Harbor Freeway Corridor/I–110 Transitway Construction, San Pedro to the Convention Center in Los Angeles, Los Angeles County, Due: June 17, 1985, Contact: Glenn Clinton (916) 440–3578.

EIS No. 850200, Final, FHW, MI, Carpenter Road Widening, Extension and Grade Separation, North Saginaw Street to Genesee Pond, Genesee County, Due: June 17, 1985, Contact: Kenneth Barkema (517) 377–1838.

Amended Notice

EIS No. 850175, Final, SFW, Bristol Bay Regional Management Plan, Due: June 17, 1985, Contact: John Hardy (907) 786–3484. Published FR 5–3–85 Filing date reestablished, New contact information and Review extended.

Dated: May 14, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–12027 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

[Opp 180677; PH-FRL 2831-1]

Montana and Wyoming; Receipt of Applications for Specific Exemptions to Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Montana Department of Livestock and the Wyoming Department of Agriculture (hereafter referred to individually by state name or collectively as "Applicants") to use the active ingredient strychnine in eggs in Johnson County, Wyoming, and in eggs and lard baits throughout Montana to control rabid skunks. EPA is soliciting comment regarding its intent to deny these requests in the absence of any substantial new evidence which would warrant a reconsideration of the cancellation order for strychnine. It is also inviting submission of substantial new evidence from interested persons.

DATE: Comments must be received on or before June 3, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180677," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street S., Washington, D.C. 20460.

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All

written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jack E. Houseger, Registration Division Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1192).

SUPPEMENTAL INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions under FIFRA section 18 to permit the use of strychnine in eggs in Johnston County, Wyoming, and in eggs and lard baits throughout Montana to control rabid skunks. These requests were accompanied by the information required to be submitted as part of an application for an emergency exemption under 40 CFR Part 166. Strychnine has been used under specific exemptions for the past 11 years to control rabid skunks in Montana. Wyoming was last issued a specific exemption for this use in 1981 for use in two counties.

The proposed control programs involve use of strychine paraffin-lard baits (Montana only) and strychnine egg baits which contain 0.012 grams and 0.035 grams of actual strychnine alkaloid, respectively. A maximum of two strychnine baits per site will be placed in such skunk habitats as follows: skunk dens, holes, garbage dumps, road culverts, junk piles and under non-occupied buildings. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at entries to all premises and other visible positions near locations where treated baits have been placed. Treated eggs will be stamped with the word "poison." Special precautions will be taken to protect endangered species, including the black-footed ferret, which may inhabit prairie dog towns in areas targeted for treatment.

The Agency considers, it inconsistent with the purposes of FIFRA to permit the indefinte continuation of this use of strychnine under the section 18 program. Instead, the registration process would be the appropriate mechanism in evaluating this use pattern. The very fact that the need for this use has continued for 11 years raises a question about the efficacy of the control program. There appears to be little scientific evidence to demonstrate that the control of a rabid animal population or pockets of a rabid animal population reduces either the incidence or the spread of rabies. It has even been suggested that such control may prolong the rabies outbreak. The proper mechanism to obtain evidence to demonstrate that control is beneficial is an experimental use permit under section 5 of FIFRA.

On several occasions, Montana has been advised of the Agency's concern regarding continuation of this use of strychnine under the section 18 program. Montana was advised in June 1984 to contact the Agency to discuss the specifics regarding consideration of this use under the FIFRA section 3 registration process. However, no discussion have been initiated to date.

In 1972, EPA cancelled the registrations of strychnine products used for predator control. The use of strychnine on skunks was one of the uses cancelled. As such, these proposed actions are subject to EPA's Subpart D regulations, 40 CFR 164.130 through 164.133. Subpart D provides that any application for a registration or an emergency exemption for a pesticide use that has been cancelled shall be considered as a petition for reconsideration of the prior cancellation order. The Administrator will review the appliation to determine whether reconsideration is warranted. The Administrator shall determine that such reconsideration is warranted when he finds that: (1) The applicant has presented substantial new evidence which may materially affect the prior cancellation order and which was not available to the Administrator at the time he made his final cancellation determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation proceeding prior to the issuance of the final order.

Ordinarily, Subpart D requires the Agency to hold a formal hearing to determine whether there is substantial new evidence to justify modification of the previous cancellation order to allow the proposed use. However, there are provisions which allow the Administrator to dispense with a hearing, where otherwise required, when he determines under 40 CFR 164.133(a) that (1) the application presents a situation involving need to use the pesticide to prevent an unacceptable risk (i) to human health, or (ii) to fish or wildlife populations when such use would not pose a human health hazard; and (2) there is no other feasible solution to such risk; and (3) the time available to avert the risk to human health or fish and wildlife is insufficient to permit convening a hearing as required by § 164.131; and (4) the public interest requires the granting of the request as soon as possible. If it is determined that the above criteria are met, the need for a hearing can be waived.

The Agency has evaluated the information submitted in connection with the requests for emergency exemptions as well as that previously submitted with a pending section 3 registration request from Montana for this use. Based on a preliminary review, it does not appear that any of the requests contains the substantial new evidence required by the subpart D regulations to warrant a reconsideration of the 1972 cancellation order.

In general, substantial new evidence is new information or data which would alter or change the Agency's assessment of the benefits and/or risks associated with the use of a pesticide affected by a cancellation order. Such information or data could, for example, demonstrate that the benefits of the use of strychnine in a rabid skunk control program are higher than originally thought or that the use of strychnine does not pose as great a risk to nontarget organisms as originally believed.

The Agency is seeking public comment regarding its intent to deny the rquests for specific exemptions for use of strychnine to control rabid skunks. It is also inviting interested persons to submit any information which they believe may constitute substantial new evidence and thus warrant a reconsideration of the cancellation order.

Written views and/or information may be submitted to the Program Management and Support Division at the address above. The comments must be received on or before June 3, 1985 and should bear the identifying notation "OPP 180677."

The Agency will review and consider all comments and information received during the comment period in determining whether to deny the emergency exemption requested by Montana and Wyoming.

Dated: May 7, 1985.

Steven Schatzow,

Director, Office of Pesticide programs

[FR Doc. 85–12024 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

[OW-6-FRL-2837-5]

Proposed Determination To Prohibit, Deny, or Restrict the Specification, or the Use for Specification, of an Area as a Disposal Site; Notice and Public Hearing

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq*) provides that the Administrator of the U.S. Environmental Protection Agency (EPA) is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas. The procedures for implementation of 404(c) are set forth in 40 CFR Part 231. This notice of the proposed determination and public hearing is being published in accordance with 40 CFR 231.3 by the Regional Administrator of EPA's Region 6.

On December 18, 1984, EPA Region 6 notified the U.S. Army Corps of Engineers, and subsequently notified affected landowners, of our intention to prohibit an area known as the Bayou aux Carpes swamp from future use as a disposal site under section 404(c) of the Clean Water Act (CWA). The approximately 3,000 acre site lies south of New Orleans, Louisiana, on the "West Bank" of Jefferson Parish. The area is bounded on the north by the east-west Estelle Pumping Station Outfall Canal, on the east by the Plaquemines-Jefferson Parish line, on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway La. 3134 and the "Vee-Levee" pipeline canal. Maps of the project area are available at the above address. The geographic coordinates are:

Range 23E, Township 15S, Portions of Sections 13, 14, 55, 57, 59;
Range 24E, Township 14S, Portions of Sections 55, 81, 82; and
Range 24E, Township 15S, Portions of Sections 48, 49, 50, 52, 57.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination, which could result in the denial of any future applications for Section 404 (CWA) permits for the discharge of dredged or fill material in wetlands within the area in question. We are also soliciting comments on whether or not the impacts of any such proposed disposal operations would represent an unacceptable adverse effect as described in Section 404(c) of the Clean Water Act.

Public Hearing

A public hearing will be conducted on June 18, 1985, beginning at 7:00 in the evening, in the Council Chambers of the Gretna Courthouse, located at Second Avenue and Derbigney Street in Gretna, Louisiana.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of business on July 3, 1985, or possibly a later date announced at the hearing. Comments submitted prior to or after the hearing should be sent to the Environmental Protection Agency, Federal Activities Branch, 1201 Elm Street, Dallas, Texas 75270. All comments should directly address whether the proposed determination should become the final determination. These comments will be considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit or deny the specification or the use for specification of the area as a disposal site. If a recommended determination is made, it and the administrative record will be forwarded to the Administrator of EPA in Washington, DC, for review and the final determination. The procedures to be used by the Administrator in making the final determination are specified in 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. weekdays at the EPA address above.

The Regional Administrator of EPA's Region 6, or his designee, will be the Presiding Officer at the hearing. Any person may appear at the hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

Background

EPA is taking this action according to the provisions of section 404(c) of the Clean Water Act. Although the U.S. Army Corps of Engineers actually issues the section 404 permits, EPA also has certain responsibilities regarding this program. EPA is responsible for developing the guidelines to be used by the Corps in reviewing the permit applications. The agency also reviews and provides comments to the Corps during their review of the applications and EPA has the authority to restrict or prohibit certain areas from use as disposal sites.

EPA's decision to initiate the 404(c) process came about at this particular time partly as a result of recent judicial action. A suit was filed in 1977 by landowners who were interested in seeing a project, which originated in the 1960's as a Corps flood control project (Harvey Canal—Bayou Barataria Levee project), completed as it was originally designed. This original design included levee-building, construction or a pumping station, and closure of some waterways.

Over the years, EPA (and other agencies) continually objected to the original project design because of the significant adverse effects (primarily drainage of the wetland) which would be inflicted on this productive wetland ecosystem. In 1975, EPA recommended a modified design, which would replace the dams with flood gates and which would require that, if a pumping station was needed for flood control, it be operated so as to maintain the integrity of the wetlands.

The latest step in the landowner's law suit occurred in the U.S. District Court for the Eastern District of Louisiana (on remand from the U.S. Court of Appeals for the 5th Circuit). Judge Lansing Mitchell issued an order which, in part, allowed EPA until December 18, 1984, to invoke 404(c) on the project as originally designed. On December 18, 1984, EPA initiated the 404(c) process with respect to that portion of the Bayou aux Carpes swamp owned by these landowners.

Subsequently, EPA initiated the 404(c) process for an additional area adjoining that property, but outside of the realm of the area being considered in the specific case before the District Court. Together, both of these tracts comprise the approximately 3,000 acre tract which is the subject of this notice and the public hearing.

EPA concern regarding the effects from projects involving the discharge of dredged or fill material in this area is not new. During a review of the Environmental Impact Statements and section 404 permit applications for two other large-scaled projects (the Marrero-Lafitte Waterline Project and the West Bank Hurricane Protection Levee

Project) which would affect this same area, EPA became involved in extensive negotiations regarding the protection of these wetland resources. EPA has thereby historically recognized this area as a sensitive, valuable wetland worthy of special protective measures and yet continually subject to project proposals which could adversely affect its wetland characteristics.

Section 404(c) criteria

Unacceptable adverse effects of municipal water supplied, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas are the four criteria which may individually or jointly be used to support an EPA decision to invoke the provisions of section 404(c) of the Clean Water Act. As a result of previous studies of the area associated with various project proposals and recent studies related to this proposed determination, EPA staff has concluded that the discharge of dredged or fill material in the subject area could induce significant and unacceptable adverse effects in all criteria areas except that of municipal water supplies.

The wooded swamp and marsh habitat, in conjunction with the waterways, is a part of an intertidal estuarine system within the biologically productive Barataria Basin. The area exhibits the hydrological, biological, and soils characteristics typical of a wetland regulated under Section 404 of the Clean Water Act. The value of the area is also evidenced by the tidal exchange, with attendant detrital export and ingress and egress of estuarine fauna. Detritus from the wetland plant species serves as a fundamental element in the food chain of the regional estuarine biota. The marsh and swamp provide valuable feeding, breeding, and/or nursery habitat for various species of fish and wildlife. In addition, the public currently has access to portions of the area for certain recreational pursuits through several watercourses which pass through the site.

In summary, the tract displays many beneficial wetland characteristics and functions such as: (1) A high degree of biological productivity; (2) habitat for all or portions of the life cycles of a variety of fish and wildlife, including waterfowl, furbearers, freshwater sport fish and commercially important shellfish and marine fish; (3) hydrological buffering, including stormwater retention and downstream freshwater contribution; (4) water quality improvement and erosion control; (5) nutrient and energy export; and (6) recreational opportunities.

Potential Adverse Impacts of Section 404 Permit Activities

The direct water quality effects resulting from the discharge of dredged or fill material could significantly and adversely affect the functions and values currently characterizing this wetland system. For example, plant productivity and the resulting food supply for fish and wildlife are dependent to a large degree upon existing water quality characteristics. Also, many important finfish and shellfish species are adversely impacted by alterations to the physical-chemical environment during critical stages in their life cycles. Effects on the ability of estuarine species to utilize in this area would be manifested in other portions of the Barataria Bay estuarine system.

Aside from the more immediate and direct effects of depositing fill material, activities requiring a Section 404 permit have been proposed for the area which would result in isolating the area hydrologically and/or draining the wetland. Although previous projects have limited the area through which water may flow, this wetland and its associated functions and values are still predominately determined by this interchange. Hydrological isolation would unacceptably diminish the current fish and wildlife potential of the immediate site. Areas further downstream would be affected also because of the site's use as a nursery area, its nutrient and detrital contributions, and its water quality contributions.

Draining the wetland would be the most severe of the indirect results of possbile section 404 permit activities. The maintenance and movement of water through this wetland are vital to the preservation of the system. In addition, draining this site would have unacceptable adverse effects on the ecological characteristics of and recreational opportunities afforded by the eastern wetland portions of the Barataria Unit of the Jean Lafittee National Historical Park, which lies within the same drainage area as the site in question.

Drainage and conversion of this area would also contribute significantly to the cumulative wetland losses currently being experienced in coastal Louisiana in general, and in the Barataria Basin in particular. According to the Louisiana State University Center for Wetland Resources, Louisiana is losing nearly 40 square miles of its coastal wetlands each year. The rates of loss in the Barataria Basin from 1955–1978 averaged 7.5 square miles per year (Louisiana Department of Natural Resourses) and are increasing faster than the national average for wetlands. This situation is significant because of the associated adverse consequences described above and because the Barataria Bay estuary provides an average 44 percent of Louisiana's total annual fish and shellfish harvest (Louisiana Department of Transportation and Development).

Proposed Determination

Based on a thorough site evaluation, coordination with other agencies and knowledgeable individuals, and a review of the literature, the Regional Administrator of Region 6 is of the opinion that issuing permits for Section 404 activities to be conducted in the wetlands in question could result in unacceptable adverse effects on shellfish beds and fishery areas, wildlife, and recreation areas. A possible exception would be for permits covering only certain habitat enhancement activities. EPA proposes to prohibit the specification of this wetland site for discharge of dredged or fill materials because such discharge could result in the direct loss of fish and wildlife habitat, the loss of detrital materials and fresh water which are exported to downstream fisheries by tidal exchange, a potential decreased production of fish food items, the loss of the natural water filtration mechanisms, the loss of stormwater buffering capacity, and the loss of recreational opportunities.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Federal Activities Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2716.

Dated: May 10, 1985.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 85-11985 Filed 5-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Allen H. Weiner and Weiner Broadcasting Co.; Order To Show Cause

In the matter of Allan H. Weiner and Weiner Broadcasting Company Presque Isle, ME MM Docket No. 85-109; FCC 85-183.

Licensee of radio stations WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and remote pickup base station KPF-941, Yonkers, NY.

Order to show cause why the licenses for radio stations WOZW(AM), Monticello, ME,

WOZI(FM), Presque Isle, ME, and remote pickup base station KPF-941, Yonkers, NY should not be revoked.

Adopted: April 11, 1985.

Released: April 18, 1985.

By the commission.

1. The Commission has before it for consideration (a) the licenses of Weiner Broadcasting Company, for Radio Stations WOZW(AM), Monticello, ME, WOZI(FM), Presque, ME, and Remote Pickup Base Station KPF-941, Yonkers, NY (KPF-941); (b) the results of its investigation into the unlicensed operation of radio communications on frequency 1616 kHz Allan H. Weiner; and (c) the result of its investigation into the unauthorized direct broadcasting to the public on 1622 kHz from KPF-941, Yonkers, NY.

2. Weiner Broadcasting Company is the licensee of WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and Remote Pickup Base Station KPF-941, Yonkers, NY.[1] Allan H. Weiner is the President and majority (52%) stockholder of Weiner Broadcasting Company.

3. Information before the Commission as the result of its investigation raises serious questions as to whether Allan H. Weiner and/or Weiner Broadcasting Company possess the requisite qualifications to be or to remain a licensee of the Commission.

4. The evidence obtained in the course of the investigation indicates that Allan H. Weiner broadcasted on 1616 kHz from an antenna affixed to the top of the building which houses radio station WOZW(AM), Monticello, ME. The station was identified by the name "Pirate Radio North" and by the call letters "KPRC". However, Commission records reflect that Weiner is not authorized to broadcast on 1616 kHz and that the call letters KPRC have been issued to a licensee in Houston, Texas.

5. Section 301 of the Communications Act of 1934, as amended, (47 U.S.C. 301), prohibits radio operation "except under an in accordance with this Act and with a license in that behalf granted under the provisions of this Act." The use by a licensee of frequencies not assigned to him constitutes a violation of section 301 of the Act; such conduct may reflect adversely upon the qualifications of an individual to be or remain a Commission licensee, and may warrant license revocation. *See, e.g., Ramax Printing Service,* 69 FCC 2d 1785 (1978). Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner operated a radio station on 1616 kHz without a Commission license and, if so, whether such operation violated section 301 of the Communications Act of 1934, as amended.

6. Our evidence also indicates that a Commission employee was unable to inspect the WOZW(AM) facility due to Mr. Weiner's lack of cooperation. 47 CFR 73.1225 (hereinafter § 73.1225 of the Commission's Rules) requires that the "licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station's business hours or at any time it is in operation." Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner refused to allow an inspection of his radio station in contravention of § 73.1225 of the Commission's Rules.

7. In addition, our evidence indicates that the WOZW(AM) main studio is located in Presque Isle, ME while the station is licensed to Monticello, ME and the transmitter is also located in Monticello, ME. In addition, good cause has not been demonstrated for the location of the studio in Presque Isle, ME. 47 CFR 73.1125 (hereinafter § 73.1125 of the Commission's Rules) specifies that absent a showing of good cause for locating elsewhere, an AM station must maintain a main studio in its principal community of license or at the station's transmitter, which may be located outside the community of license. Consequently, an appropriate issue will be specified to determine whether Allan H. Weiner and/or Weiner Broadcasting Company failed to comply with the main studio location requirement of § 73.1125 of the Commission's Rules.

8. Commission records also indicate that Mr. Weiner, on behalf of Weiner Broadcasting Company, applied for a Remote Pickup Base Station on February 15, 1984 (BPLRE-840215MD). The application was subsequently granted on August 13, 1984, and call sign KPF-941 was assigned to this facility. KPE-941 was authorized under 47 CFR 74.402(a)(1) (hereinafter § 74.402(a)(1) of the Commission's Rules) to operate on 1622 kHz.

9. The permitted used for such base stations are expressly stated in 47 CFR 74.431 (e), (g) 74.432 (c)(2), (c)(5) (hereinafter § 74.431 (e) and (g) and §§ 74.432 (c)(2) and (c)(5) of the Commission's Rules). Section 74.431(e) provides that "[a] remote pickup broadcast base station may be used for the transmission of cues, orders, and instructions to remote pickup broadcast mobile stations in its system for the purpose of dispatching them to the scene where broadcasters may originate and directing [sic] their operation on the scene. . . . A remote pickup base station may also be used to relay transmission, either directly or via an automatic relay station, to and from remote pickup broadcast mobile stations in its system. . . ."

10. Section 74.431(g) provides that "[r]emote pickup broadcast base . . . stations may be used for operational communications . . . [which] include the transmission of alerting tones of short duration and special signals used for telemetry or control." In general, operational communications are defined in § 74.401 as "[c]ommunications concerning the technical and programming operation of a broadcast station and its auxiliaries."

11. Section 74.432(c)(2) specifies that "[b]ase stations may be authorized to provide one-way or two-way voice communications between the studio and transmitter of a broadcasting station, the licensee of which is also licensee of an aural or television broadcast STL station used for program transmissin between the same two points, or to provide such voice communications between the point of origin and the termination of an aural or television intercity relay system. . . ."

12. Section 74.432(c)(5) states that "[b]ase stations may be authorized to provide standby program circuits from places where official broadcasts may be made during a war, threat of war, or state of public peril or disaster or other national, state or local emergency constituting a threat to the safety of life or property; . . ."

13. It has come to the Commission's attention that Mr. Weiner has used KPF-941 to broadcast directly to the public on 1622 kHz in Yonkers, NY. Such direct broadcasts to the public are inconsistent with the permissible uses of base stations stated in the previously-cited Commission rules. In addition, we note that 47 CFR 74.432(g) (hereinafter § 74.432(g) of the Commission's Rules) provides that an application for a remote pickup broadcast station "shall specify the broadcasting station . . . with which [it] is to be principally used." KPF-941 was licensed to be operated in association with WOZI(FM), Presque Isle, ME. The base station was,

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[1] Weiner Broadcasting Company has pending an application for an international broadcast station (File No. BPIB-840904MZ). Further action on this application will be withheld pending resolution of the instant proceeding. In addition, Weiner Broadcasting Company has filed an application for a UHF television station in Presque Isle, ME (BPCT-841128KE) which will be designated for hearing with two other mutually exclusive applications. The outcome of that licensing proceeding will be conditioned on the resolution of the captioned proceeding.

however, used to broadcast directly to the public on 1622 kHz independently of its associated station. Consequently, an appropriate issue will be specified as to whether the use of base station KPF–941 to broadcast directly to the public on 1622 kHz constitutes a violation of the above-mentioned Commission rules.

14. In addition, we note that the transmitter used by Weiner Broadcasting Company for base station KPF–941 would be type accepted for commercial broadcast operation under § 73.1660 and Part 2 of the Commission's Rules. This equipment is not, however, type accepted under § 74.451(a) of the Commission's Rules for the purposes for which remote pickup base stations are intended. Consequently, an appropriate issue will be specified to determine whether Mr. Weiner and Weiner Broadcasting Company misrepresented in the application for base station KPF–941 that the transmitter would comply with the type acceptance criteria of § 74.451(a) of the Commission's Rules.

15. Accordingly, it is ordered, that, pursuant to sections 312(a) (2) and (4) of the Communications Act of 1934, as amended, Allan H. Weiner and Weiner Broadcasting Company are directed to show cause why the licenses for Radio Stations WOZW(AM), WOZI(FM) and KPF–941 should not be revoked, upon the following issues:

(1) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner operated a radio station on frequency 1616 kHz in Monticello, ME at various times from January 31, 1982 through July 16, 1984, without a license issued by the Commission, in violation of section 301 (47 U.S.C. 301) of the Communications Act of 1934, as amended.

(2) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and/or Weiner Broadcasting Company refused to allow an inspection of radio station WOZW(AM) on May 3, 1984, by an authorized Commission representative, in violation of § 73.1225 of the Commission's Rules.

(3) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and/or Weiner Broadcasting Company failed to comply with the main studio location requirement of § 73.1125 of the Commission's Rules.

(4) Whether, in light of all the facts and circumstances pertaining thereto, Allan H. Weiner and Weiner Broadcasting Company used Remote Pickup Base Station KPF–941 to broadcast directly to the public on 1622 kHz in Yonkers, NY in violation of the permitted uses for remote pickup base stations as stated in §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5), and § 74.432(g) of the Commission's Rules.

(5) Whether Allan H. Weiner and Weiner Company misrepresented to the Commission that the transmitter to be used for Remote Pickup Base Station KPF–941 would comply with the type acceptance criteria of § 74.451(a) of the Commission's Rules.

(6) Whether, in light of all the evidence adduced under issues (1) through (6) above, Weiner Broadcasting Company possesses the requisite qualifications to be or to remain a licensee of the Commission.

16. Information relating to the above questions has come to the attention of the Commission since grant of the license renewals for WOZW(AM) and WOZI(FM) and the grant of a license for KPF–941. This information might, if substantiated, warrant revocation of a license or permit, and raises serious questions, best resolved in a hearing, as to whether Allan H. Weiner and Weiner Broadcasting Company have the qualifications to remain a licensee of the Commission.

17. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon the licensee and Allan H. Weiner within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (1) through (4) inclusive.

18. It is further ordered, that pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (1) through (6) inclusive.

19. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty days of the receipt of the Order to Show Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* § 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the Order to Show Cause. *See* § 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* §§ 1.92 (c) and (d) of the Commission's Rules.

20. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the licenses of Weiner Broadcasting Company for Radio Stations WOZW(AM), WOZI(FM) and Remote Pickup Base Station KPF–941,[3] it shall also be determined whether Allan H. Weiner and/or Weiner Broadcasting Company has (have) willfully or repeatedly violated section 301 of the Communications Act of 1934, as amended (unlicensed operation), § 73.1225 of the Commission's Rules (failure to allow station inspection), § 73.1125 of the Commission's Rules (failure to locate main studio in community of license or at transmitter site), §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5) of the Commission's Rules (failure to comply with any of the specified uses for remote pickup base stations), § 74.432(g) (failure to operate a base station in conjunction with previously licensed broadcast station) and § 74.451(a) (type acceptance criteria) of the Commission's Rules. If so, it shall also be determined whether an Order for Forfeiture should be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the repeated violations of section 301 of the Communications Act of 1934, as amended, §§ 73.1225 and 73.1125 of the Commission's Rules, and/or $20,000 for the repeated violations of §§ 74.431 (e) and (g), and §§ 74.432 (c)(2) and (c)(5), of the Commission's Rules, and the violations of §§ 74.432(g) and 74.451(a) of the Commission's Rules, or some lesser amount for violations which occurred within the statutory period preceding the issuance of the Bill of Particulars in this matter.

21. It is further ordered, that this document constitutes a Notice of Apparent Liability for forfeiture for violation of section 301 of the Communications Act of 1934, as amended, §§ 73.1225 and 73.1125 of the

[3] We note that § 74.432(a) of the Commission's Rules states that "[a] license for a broadcast remote pickup station . . . will be issued only to the licensee of an AM, FM, noncommercial educational FM, TV, or International broadcast station . . . ." Remote Pickup Base Station KPF–941 was licensed to be associated with WOZI(FM). Consequently, if the hearing record warrants an Order revoking the licenses of WOZW(AM) and WOZI(FM), KPF–941 would be unable to operate with its associated broadcast station in violation of § 74.432(a), thus necessitating an automatic revocation of the KPF–941 license.

Commission's Rules, §§ 74.431 (e) and (g), §§ 74.432 (c)(2) and (c)(5) and §§ 74.451(a) and 74.432(g) of the Commission's Rules. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer of renewal or license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

22. It is further ordered, that the Secretary of the Commission send a copy of this Order by *Certified Mail, Return Receipt Requested*, to:

(1) Allan H. Weiner and
(2) Weiner Broadcasting Company, P.O. Box 1117, 4 Second Street, Presque Isle, ME 04769

Federal Communications Commission
William J. Tricarico,
Secretary.

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[FCC 85-228]

Iowa Telephone Association Petition for Declaratory Ruling; Memorandum Opinion and Order

Adopted: April 26, 1985.
Released: May 7, 1985.
By the Commission.

I. Introduction

1. On January 20, 1984, the Iowa Telephone Association (ITA), a voluntary association of telephone utilities operating in Iowa, submitted a Petition for a Declaratory Ruling on the following questions: (a) Whether this Commission's rules are inconsistent with rules recently adopted by the Iowa State Commerce Commission (Iowa Commission) that prohibit, for a special class of exchange service, (i) access to interstate toll service, and (ii) the imposition of customer line charges; and (b) whether this Commission has the jurisdiction to (i) require that local exchange services include access to interstate toll service, or (ii) apply customer line charges to local exchange services that do not access interstate toll service. These questions arise in connection with the potential offering in Iowa of Basic Local Service (BLS) by exchange telephone companies. BLS is a new class of exchange telephone service that would allow a subscriber to place or receive calls within the local exchange or extended area only, with no access, outgoing or incoming, to interstate or intrastate toll service.

2. The Iowa Commission, in a ruling issued October 7, 1983, ordered each exchange telephone company in Iowa to make BLS available to residential customers in those exchanges that are technically capable of restricting toll access on an economical basis. The Iowa Commission also held that since BLS does not provide a subscriber with access to toll services, no customer line charges—either interstate or intrastate—may be applied to such a service offering by the exchange carrier. In a subsequent Order issued November 4, 1983, the Iowa Commission deferred the effective date of its BLS rule from January 1, 1984, until such time as it decides to implement customer line charges for intrastate toll services.

II. Background

3. The events leading to the submission of the ITA petition began on February 25, 1983, with an *Order Commencing Rulemaking* issued by the Iowa Commission. In that Order, the Iowa Commission stated that it was "concerned about the effects of the FCC access charge action on universal service"; and, citing its statutory mandate to ensure "reasonable and just rates" for telephone service, it questioned whether the imposition of a toll access charge, where toll service "may be neither used nor desired," would be reasonable and just.[1] The Iowa Commission then invited comments concerning its proposal to require exchange carriers to offer a new local service that would be restricted from placing outgoing toll calls and would be exempt from customer line charges.

4. On October 7, 1983, the Iowa Commission issued an *Order Adopting Rules*. It defined a new class of service—Basic Local Service—that would permit local exchange and extended area communications, while blocking all toll calls, incoming and outgoing, interstate and intrastate. Each Iowa telephone utility was ordered to file tariffs for BLS on or before December 2, 1983. The BLS rules include the following provisions: (a) BLS shall be made available to all residential subscribers on or before January 1, 1984, "where the exchange equipment is technically capable of restricting toll access on a reasonably economical basis"; (b) "[n]o charges for access to the toll network will apply"; and (c) "charges for [BLS] . . . shall not exceed the rate applicable for local service" (*i.e.*, the basic local exchange rate, without the inclusion of any customer line charges).[2]

5. On October 21, 1983, ITA filed with the Iowa Commission a *Petition for Declaratory Ruling* addressed to the newly adopted BLS rules. ITA took the position that the provisions of the rules relating to the restriction of access to toll services and the prohibition on customer line charges are inconsistent with the FCC's access charge orders in CC Docket No. 78-72,[3] and the interstate access tariffs of the ITA members. ITA therefore asked the Iowa Commission to rule on its authority to adopt such rules. In discussing its concerns, ITA also indicated it was uncertain as to whether the BLS rules were to apply to intrastate toll services only, or to interstate toll service as well.

6. On November 4, 1983, the Iowa Commission issued a further order in which it noted that both this Commission and the Iowa Commission had delayed the implementation of their respective interstate and intrastate customer line charges. It therefore postponed the effective date of the BLS rule from January 1, 1984, until "end user charges have been implemented by this [the Iowa] Commission."[4]

7. The Iowa Commission responded to the ITA petition of November 21, 1983, on December 2, 1983, stating that since BLS is a purely intrastate service "unconnected in any way with the interstate toll network," there could be no conflict between the BLS rules and FCC rules, as properly interpreted, because the FCC "is without jurisdiction to require toll access with respect to this service or to apply end user access charges to customers requesting this service.[5]

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[1] *Order Commencing Rulemaking*, ISCC Docket No RMU-83-2, at 1 (issued February 25, 1983).

[2] *Order Adopting Rules*, ISCC Docket No. RMU-83-2, Adopted Rules at 1-2, (issued October 7, 1983).

[3] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (*Access Charge Order*), *modified on reconsideration*, 97 FCC 2d 682 (1983), *further modified on reconsideration (Second Reconsideration Order)*, 97 FCC 2d 834 (1984) *aff'd in part, remanded in part, NARUC v. FCC*, 737 F.2d 1095(D.C. Cir. 1984), *cert. denied*, 53 U.S.L.W. 3583, 3595 (U.S. February 19, 1985) (No. 84-95) (*NARUC v. FCC*).

[4] *Order Adopting Rules on an Emergency Basis*, ISCC Docket No. RMU-83-2, at 1 (issued November 4, 1983).

[5] *Declaratory Ruling*, ISCC Docket No. DRU-83-7, at 1-2, (issued December 2, 1983).

8. Subsequent to these proceedings in Iowa, this Commission modified several aspects of the access charge plan originally set forth in the *Access Charge Order*. In our *Second Reconsideration Order*, we deferred customer line charges for residential and single-line business customers to June 1, 1985. Shortly thereafter, we issued a *Further Notice of Proposed Rulemaking* [6] requesting comments on four interrelated sets of issues: (a) customer line charges for residential and single-line business subscribers; (b) the transitional mechanism for implementing such charges; (c) life-line exemptions or other assistance for low income subscribers; and (d) additional assistance for small telephone companies. At the same time, we also referred these issues to the existing Federal-State Joint Board.

9. In an order released November 23, 1984, the Joint Board recommended, *inter alia*, modification of our existing access charge plan to include the implementation of customer line charges for residential and single-line business subscribers of $1.00 per month for the June 1, 1985 to May 31, 1986 period, and $2.00 per month beginning June 1, 1986, and a reduction of the customer line charge for customers who meet a state-established means test subject to verification.[7] We adopted the Joint Board's recommendations, with minor changes and clarifications, in an order released December 28, 1984.[8] In this *Decision and Order*, we also directed the Joint Board to undertake a further study of issues relating to lifeline assistance measures and directed the Common Carrier Bureau to request additional comments concerning the affect of subscriber line charges on small business customers.[9]

III. Discussion

10. The effect of the Iowa Commission's BLS decision would be to provide residential subscribers in Iowa with an alternative local exchange service. Under the Iowa Commission rules, a BLS subscriber would be denied inbound and outbound interconnection with toll facilities, would pay no customer line charges, and would be subject to charges that could not exceed the applicable tariffed rate for conventional local exchange service. ITA now asks this Commission to rule on whether those parts of the BLS rules that require Iowa telephone companies to offer a local exchange service that is blocked from access to interstate toll services, and exempt from residential customer line charges, are inconsistent with any of our rules.

A. Restriction of Access to Interstate Services

11. With regard to the first set of issues raised by ITA, none of our present rules expressly prohibits the offering of a local exchange service like BLS, with restrictions on interstate access. Furthermore, given that the Iowa consumer has the option of choosing conventional local exchange service, which does provide access to interstate services, it is not clear that the offering of BLS as an alternative service would in and of itself violate our statutory mandate or any of our policies. There is no rulemaking petition before us asking us to prohibit such a service, and we see no need at the present time to initiate such a proceeding ourselves. Accordingly, we need not reach the further question raised by ITA of whether we have the jurisdictional authority to prohibit the offering of BLS by requiring that access to interstate toll service must always be provided as part of local exchange service.[10]

B. Application of Customer Line Charges

12. Section 69.104(a) of our rules, which was adopted in its present form in our *Reconsideration Order*, addresses the imposition of customer line charges:

> A charge . . . shall be assessed upon end users that subscribe to local exchange telephone service, Centrex, or semi-public telephone service to the extent they do not pay carrier common line charges. Such charge shall be assessed for each line between the premises of an end user and a Class 5 office that is or may be used for local exchange service.

The application of a customer line charge to local exchange lines derives from a more general principle of ratemaking followed by this Commission: any costs of service assigned to the interstate jurisdiction as a result of the separations process (which obviously must be recovered through interstate charges of some type) should be recovered through interstate charges on the services and customers that cause the costs to be incurred.[11] In our *Access Charge Order*, we applied this principle in determining that interstate customer line charges were to be the primary mechanism for the recovery of the interstate share of the non-traffic-sensitive costs of a customer's local loop. This principle was upheld by the Court in *NARUC v. FCC*:

> The scheme advance by the FCC simply requires all telephone subscribers to pay, on a per-line basis, for that portion of *their necessarily-incurred local telephone plant costs* assigned under *Smith* to the interstate jurisdiction. We cannot sensibly say that the FCC has overstepped the limits of its jurisdiction in embarking upon such an arrangement.[12]

13. In our *Second Reconsideration Order*, we applied this principle to determine the applicability of customer line charges to the special case of a line that may be restricted to internal or local use and thus be denied toll access. This issue was raised by the Bell Operating Companies in the specific context of Centrex service.[13] We found that customer line charges were still applicable because "a share of the costs of these restricted access lines is allocated to the interstate jurisdiction and must be recovered through interstate service charges. . . ." [14] Our determination that such costs would be allocated to the interstate jurisdiction was based upon the manner in which such lines are currently treated in the separations process as defined in Part 67 of our rules.[15]

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[6] MTS/WATS Market Structure and Amendment of Part 67, Further Notice of Proposed Rulemaking, 49 FR 18,318, Current Service, 2d (P&F) 64:41 (1984) (*Further Notice*).

[7] MTS/WATS Market Structure and Amendment of Part 67, Recommended Decision and Order, 49 FR 48,325 (1984) (*Joint Board Order*).

[8] MTS/WATS Market Structure and Amendment of Part 67, Decision and Order, 50 Fed. Reg. 939 (1984) (*Decision and Order*).

[9] *Id.* at para. 7.

[10] We do note that one of the purposes of the Communications Act is "to make available, so far as possible, to all the people of the United States a rapid, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges". 47 U.S.C. 151. Furthermore, under section 201(a) of the Act, 47 U.S.C. 201(a), we may require local exchange carriers to interconnect their facilities with those of interexchange carriers if, after an opportunity for hearing, we find such action "necessary or desirable in the public interest. . . ." To the extent that BLS or similar services were to proliferate in Iowa, or elsewhere, in such a manner as to implicate the purposes of the Act, we would have to consider whether, under section 201(a) or otherwise, we could and should impose a general interstate, interconnection requirement of the provision of local exchange service (and preempt contrary state regulation, such as Iowa's BLS rule). *See Virginia State Corp. Comm'n. v. FCC*, 737 F. 2d 388 (4th Cir. 1984).

[11] *See, e.g., American Telephone & Telegraph Co.*, 61 FCC 2d 587 (1976), aff'd *sub nom. Aeronautical Radio, Inc. v. FCC*, 642 F. 2d 1221 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981); *American Telephone & Telegraph Co.*, 64 FCC 2d 1, 54–56 (1977).

[12] *NARUC v. FCC, supra* note 3, 737 F. 2d at 1115.

[13] Centrex is a service offered by an exchange carrier under state tariffs that provides a customer with switching and other capabilities functionally equivalent to those offered by an on-premises PBX. The equipment that implements Centrex services is located primarily in the end office of the exchange carrier.

[14] *Second Reconsideration Order, supra* note 3, 97 FCC 2d 834 at para. 37, n. 19.

[15] Amendment of Part 67 of the Commission Rules, 49 FR 7934 (March 2, 1984).

14. An analogous issue, concerning the treatment of the closed-end of intrastate WATS lines, was also addressed in the *Second Reconsideration Order*. Since Part 67 treats all WATS lines (interstate and intrastate) in the same manner as ordinary exchange service lines, a portion of the intrastate WATS access line revenue requirement is assigned to the interstate jurisdiction.[16] We therefore determined that the application of customer line charges to such lines is required.[17]

15. The threshold criterion for determining whether interstate customer line charges should be assessed upon BLS subscribers is, therefore, whether any portion of BLS subscriber line costs would be apportioned to the interstate jurisdiction under the jurisdictional separations procedures set forth in Part 67. Only if, under Part 67, all such costs were required to be allocated to the state jurisdiction, would there be a basis for asserting that no interstate customer line charge should be assessed.[18] When we turn to Part 67 for guidance, we observe that the allocative treatment of those subscriber lines that are not used for wideband services (such as, *e.g.*, BLS lines) is set forth in § 67.124(d) of the rules (Subscriber Line Outside Plant Excluding Wideband—Category 1.3). In particular, this section states that subscriber line outside plant used jointly for exchange service and toll message services (Category 1.33) shall be apportioned to the interstate jurisdiction in accordance with an interstate subscriber line factor.[19]

16. When we consider the special case of BLS, we note that while it is described as a "local-only" service, several technological realities make it highly unlikely that all interstate toll calls could effectively be blocked from BLS subscriber lines. Moreover, the attempt by a state to prevent all originating and terminating toll calls from having access to BLS lines would require that state to assert jurisdiction over interstate carriers in order to impose, *inter alia*, certain necessary reporting requirements upon interstate carriers.[20]

17. Turning first to the technological impediments, a major problem in implementing toll access blocking, even in exchanges using stored program-controlled switching systems, arises from the treatment of incoming toll calls. In the outgoing case, the end office switch can identify the calling party number and, if that number is assigned to a BLS subscriber, can readily block access to outbound toll circuits whenever a three digit area code is sent by that calling party.[21] In the incoming toll case, however, the local switch cannot readily differentiate between a toll call and an exchange call that is destined for a BLS called party. In many cases, the first three area code digits will have been stripped at an intermediate switching point. Even the three digits that identify a particular exchange may have been stripped. Under these circumstances, the identification of a toll call by the area code digits is not feasible, and more costly procedures, such as the physical reconfiguration of incoming trunks at either the interexchange carrier Point of Presence, or the end office, or both, may be necessary.

18. Second, another potential problem associated with the technical feasibility of blocking toll access arises from the treatment of both outgoing and ingoing interstate calls destined for interexchange carriers (IXCs) that either have a line-side interconnection in an end office that has not been converted to equal access, or that have a similar connection, under the Feature Group A provisions, in a converted end office. In these cases, a subscriber could access the IXC facility through two line-side connections to the end office switch. A BLS subscriber could then place an outgoing interstate toll call merely by dialing a local number and being connected to the OCC facility in a manner no different from that which would be employed if the BLS call were to an ordinary exchange subscriber. For incoming calls, problems similar to those discussed in para. 17, *supra* would exist.

19. Third, any routing of interstate calls through a so-called "leaky PBX" could also prevent the blocking of all BLS subscriber lines from interstate communications.[22] In an area in which BLS service is offered, an incoming call on a private line from an out-of-state source could be routed by a locally installed PBX directly into the line side of an end office switch and then to a BLS subscriber. Such a call would be indistinguishable (by the end office switch) from a locally originated call, and would not seem to be susceptible to blocking. Similarly, a BLS subscriber could initiate an outbound interstate call by reversing this procedure.

20. Thus, it would be impossible for BLS subscriber lines to be completely blocked from carrying interstate calls, both ingoing and outgoing, without the assertion by a state of jurisdiction over interstate carriers. Complete blockage would be higly unlikely even if such jurisdiction were permissible. Under these circumstances, BLS subscriber lines would necessarily fall into Category 1.33 of the Part 67 rules (outside plant use jointly for exchange service and toll message services) with the result that a portion of the costs of BLS lines line costs would be assigned to the interstate jurisdiction.[23]

IV. Conclusions

21. With regard to the issues concerning access to the interstate services, we have stated that we have

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[16] Section 67.112(a)(3) of the Commission's Rules, *supra* note 15. The Joint Board recently has requested further comments concerning the direct assignment of WATS closed end access lines. Order Inviting Comments, CC Docket No. 80–286, FCC 84–139 (released April 11, 1984), 49 FR 18746 (May 2, 1984).

[17] *Second Reconsideration Order*, *supra* note 3, 97 FCC 2d 843 at paras. 102–106.

[18] The Court in *NARUC* v. *FCC* reached the same conclusion in rejecting an argument made by NARUC that end users should not be required to pay interstate customer line charges if they elected not to make or receive interstate calls, the Court concluded that: If we indulged NARUC's claim—that jurisdictional significance attends an individual subscriber's decision to use its line entirely for interstate calls—then. . .NARUC could hardly contest an allocation of all of such a subscriber's line costs (previously divided between the interstate and intrastate domains) to the intrastate jurisdiction alone. . . .It is hard to see what significant benefit NARUC would gain under such an arrangement. *NARUC* v. *FCC*, *supra* note 3, 737 F. 2d. at 1115.

[19] Under § 67.124(d)(4) of the rules, investments attributable to these BLS subscriber lines would be allocated to the interstate jurisdiction by the Subscriber Plant Factor (SPF), which will eventually be replaced by a flat 25 percent interstate allocation supplemented by an additional interstate allocation for high cost companies. Similarly, Part 67 would also require the allocation to interstate operations of certain additional, related costs—such as depreciation and maintenance expenses—that are keyed to the allocation of Category 1.33 Subscriber Line Outside Plant.

[20] *See* para. 18, *infra*.

[21] The assumption here is that either a subscriber is attempting to place a call with AT&T Communications at an end office that is not equipped for equal access, or that the end office has been converted to equal access and the subscriber is attempting to place a call to any interexchange carrier that subscribes to Feature Group B or D. We note, however, in para. 18, *infra*, that outgoing toll calls via interexchange carriers that have line-side interconnection at an end office switch (rather than the trunkside connections of Feature Groups B and D) cannot conveniently be blocked.

[22] The "leaky PBX" phenomenon is described in the *Second Reconsideration Order* in CC Docket No. 78–72 Phase I, *supra* note 3.

[23] Even if total blocking were possible, it is not clear whether under the current separations rules, part of the costs of the BLS subscriber line would not be assigned to the interstate jurisdiction in any event. Section 67.124(d) (Subscriber Line Outside Plant Excluding Wideband), which is the only section that could possibly subsume the BLS line, lists these four categories only: Category 1.31 (lines used exclusively for state private line services); Category 1.32 (lines used exclusively for interstate private line services; Category 1.33 (lines use jointly for exchange and toll services, including WATS access lines); and Category 1.34 (lines used for TWX service). BLS are clearly not used for state or interstate private line services (Categories 1.31 and 1.32); or are they TWX lines (Category 1.34).

no specific rules requiring that an exchange service provide access to interstate toll services. Since the Iowa consumer now has the option of subscribing to a conventional local exchange service, we do not find it necessary to reach the further question of whether this Commission has the jurisdiction to prohibit a service like BLS with substantial restrictions on access to interstate toll service.

22. With regard to the issues concerning the application of interstate customer line charges to BLS service, we reaffirm the general regulatory principle, which has been upheld by the D.C. Circuit Court of Appeals, that interstate charges may properly be imposed on a service offering when a portion of the costs of providing that service is assigned to the interstate jurisdiction. In particular, we conclude that since both incoming and outgoing interstate toll call attempts cannot in all cases be blocked from a BLS subscriber line, subscriber line charges must be imposed upon BLS subscribers to recover the interstate portion of the costs associated with BLS subscriber line plant.

V. Ordering Clauses

23. It is ordered, that pursuant to sections 1, 2, and 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 154(i)–(j), and § 1.2 of the Commission's Rules, 47 CFR 1.2 (1984), the Petition for Declaratory Ruling filed by the Iowa Telephone Association is granted in part and dismissed in part as provided herein.

24. It is further ordered, pursuant to section 4(m) of the Communications Act of 1934, as amended, 47 U.S.C. 154(m), that the Secretary of the Commission shall cause a copy of this Order to be published in the **Federal Register**.

25. It is further ordered, pursuant to Section 4(m) of the Communications Act of 1934, as amended, 47 U.S.C. 154(m), that the Secretary of the Commission shall cause a copy of this Order to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-11975 Filed 5-16-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 9, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301
Action: Revision
Estimated Annual Burden: 3,328 Responses; 496,928 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11974 Filed 5-16-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of policy.

SUMMARY: In order to preserve public confidence in the banking system in an increasingly deregulated and competitive environment, the Federal Deposit Insurance Corporation ("FDIC") believes that greater reliance on market discipline is preferable to the introduction of an excessive and extensive system of regulatory controls over the activities of banks. To achieve such discipline, the banking public needs relevant information concerning the banks with which it conducts or may conduct its business in order to properly evaluate the level of risk that will be encountered in dealing with specific banks. Thus, the Board of Directors has determined that public disclosure of orders resulting from statutory enforcement actions taken by the FDIC against banks and persons participating in their affairs will facilitate the development of effective market discipline, thereby encouraging funds flows to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates.

Therefore, the FDIC has adopted a statement of policy which provides that it will publish and make available to the public in an FDIC press release the names of all banks and persons participating in their affairs to whom the FDIC has issued orders in conjunction with formal enforcement actions. In addition, a brief description of the nature of the enforcement action taken and a summary of the order will be provided for each action disclosed. This policy will apply to insurance termination orders, cease-and-desist orders, removal orders, suspension orders, civil money penalty orders, and capital directives.

Orders will be publicly disclosed in a press release after their issuance. Public disclosure will apply to all orders issued on or after January 1, 1986, except for those orders resulting from notices issued prior to May 6, 1985, the date of adoption of this policy by the FDIC's Board of Directors. When applicable, the press release will also identify previously disclosed orders that have been termainted by the FDIC. In addition, copies of the orders issued in connection with these disclosed enforcement actions will be released to the public upon written request under the Freedom of Information Act ("FOA") with appropriate deletions of examination data.

The FDIC's existeng practice of not publicly announcing orders will remain in effect for those issued prior to January 1, 1986, and for those issued on or after that date resulting from notices issued prior to May 6, 1985, the date of the policy statement's adoption. Hence, the FDIC will not publicly announce the names of the banks and the persons participating in their affairs that are subject to such orders. In certain cases, however, the banks themselves may be obligated to disclose the existince of these orders. Nonetheless, consistent with the FDIC's current practice, copies of final orders issued in actions that are not publicly announced will still be available under the FOIA.

The FDIC's public disclosure of statutory enforcement actions will not extend at this time to notices issued by the FDIC to banks and persons participating in their affairs to initiate the administrative proceedings associated with these actions, although such notices may become subject to this policy statement in the future.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Supecialist, Division of Bank Spervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 289-4761.

SUPPLEMENTARY INFORMATION:

Background

As the banking industry in the United States has moved from the tightly controlled environment that prevailed from the 1930s into the 1970s to an environment that has become increasingly deregulated and competitive, the need to maintain public confidence in the banking system continues to be of paramount importance. The FDIC believes that this objective can best be achieved through greater reliance on market discipline as a supplement to effective bank supervision. In order for market discipline to have this desired effect, the FDIC has concluded that there should be a significant improvement in the disclosure of information to the public. Better disclosure should serve to protect sound, well managed institutions by distinguishing them from the small number of banks that have been willing to take excessive risks or are otherwise not well run.

On February 21, 1985, the FDIC published for public comment a proposed Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions. 50 FR 7220 (1985). The FDIC proposed to begin publishing and making available to the public the names of all banks and persons participating in their affairs to whom the FDIC issued notices and final order in conjunction with statutory enforcement actions initiated on or after Februray 21, 1985, the publication date of the propsal. The proposed disclosure policy encompassed insurance termination actions, cease-and-desist actions, removal actions, suspension acitons, civil money penalty actions, and capital directive actions taken by FDIC. It was proposed that the FDIC disclose notices as soon as they had been issued and final orders on or about their effective date. The termination of previously disclosed final order was also to be disclosed.

The policy statement proposal was developed as a means of furnishing the FDIC with an additional tool for increasing market discipline by subjecting banks and their managements to greater public scrutiny. It was not intended to be a substitute for timely and effective bank supervision by the FDIC. Rather, the publc disclosure of enforcement actions woud serve as a further deterrent to bank managements that might wish to engage in activities that test the bounds of acceptable banking practice. Implementation of a disclosure policy covering both notices and final order was also seen as a method for helping to assure that banks have the caliber of management necessary for their safe and sound operation in an increasingly deregulated and competitive environment.

Present Disclosure Practices for Enforcement Actions

Insured state nonmember banks that are subject to orders resulting from statutory enforcement actions are presently required by FDIC regulations or policies to disclose this fact only in certain specific circimstances. Banks with securities registered with the FDIC in accordance with the Securities Exchange Act of 1934 are required to inform investor of the issuance of final orders in documents such as annual reports, quarterly reports, current reports, and proxy statements. (Similary, bank holding companies are required to make a public disclosure when a subsidirary bank has been subject to a final order.) Banks seeking to raise capital (dabt or equity) through a public offering, whether or not their securities are registered, are expected to disclose the existence of enforcement actions in offering circulars prepared for distribution to potential purchasers of their securities. Beginning in late 1984, all cease-and-desist orders issued by the FDIC have contained a provision requiring the bank to provide a description of the order to its shareholders in conjunction with the bank's next shareholder communication and with its notice or proxy statement preceding the next shareholder's meeting.

Other than in the circumstances described above, information concerning a statutory enforcement action against a particular insured state nonmember bank has generally not been made available directly to the bank's depositors, its other customers and creditors, and the public at large by either the bank or the FDIC. The FDIC has since 1976 published summaries of its statutory enforcement actions, but these summaries do not name the banks or individuals subject to such orders. It may be possible in some cases for a person with considerable knowledge of a particular bank to determine from a summary that the bank is subject to an order. Moreover, the FDIC will release a copy of the actual final order issued against a specific bank or individual when such a document is requested under the Freedom of Information Act ("FOIA," 5 U.S.C. 552). Under present FDIC policies, when a person requests a copy of a final order imposed on a single named bank, the bank's name is not deleted from the document that is furnished to this person. If the request covers more than one institution, however, the FDIC currently excises the banks' names and other identifying data from the copies of the orders released to the individual submitting the FOIA request. Specific examination data is deleted from all orders released under the FOIA. Notices, however, have not been released to date by the FDIC under the FOIA, nor has their existence normally been disclosed directly by the affected banks.

The FDIC views its existing disclosure procedure as an inefficient method for ensuring that market participants are equally aware of statutory enforcement actions taken against a bank or a person participating in its affairs. Moreover, the FDIC believes that the nature and content of the order issued to a bank or individual is relevant to customer decisions regarding their relationships with a bank. The effect of the disclosure policy will be to subject the activities of the banks and the individual bank directors, officers, and employees against which statutory enforcement actions are being taken to potentially greater public scrutiny. Institutions whose problems have resulted from poor management will be less able to hide that fact. Persons evaluating the financial condition of banks will be better able to determine the caliber of their managements if the specific institutions against which final orders have been issued are known to the public. Uninsured depositors and other creditors will be in a better position to assess their potential risk.

Statutory Enforcement Actions Available to the FDIC

The vast majority of the insured state nonmember banks supervised by the FDIC are sound, well managed institutions. The FDIC relies on reason and persuasion as its primary corrective tools when weaknesses are detected in these banks. In certain banks which are regarded as having sufficient overall strength and financial capacity to make failure only a remote possibillity, the FDIC may identify weaknesses that, if not properly addressed and corrected, could worsen into a more severe situation. The policy of the FDIC's Division of Bank Supervision provides that matters in need of corrective action in such institutions should be addressed in a memorandum of understanding. (The policy statement does *not* provide for the disclosure of the names of banks that have entered into memorandums of understanding with the FDIC and the FDIC does not consider memorandums of understanding available to the public under the FOIA.) A smaller number of insured state nonmember banks are found to have problems or violations of

sufficiently greater severity that the Division of Bank Supervision recommends to the FDIC's Board of Directors that formal action be taken against these institutions pursuant to sections 7(j)(15), 8, or 18(j)(3) of the Federal Deposit Insurance Act ("FDI Act"), section 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA"), or section 908(b) of the International Lending Supervision Act of 1983 ("ILSA"). In addition, the FDIC may institute a formal action under these sections of the FDI Act against any director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured state nonmember bank. Through these enforcement actions, the FDIC acts to correct imnproper banking practices, increase bank capital, or suspend or remove individuals from further participation in a bank's activities.

The FDIC has been granted authority by section 8(a) of the FDI Act to initiate termination-of-insurance proceedings against any insured bank in an unsafe or unsound condition. Only the actual insurance termination order and not the corrective order issued at the inception of a section 8(a) action would be subject to disclosure by the FDIC under this policy statement. Section 8(b) of the FDI Act authorizes the FDIC to issue a final cease-and-desist order while section 8(c) empowers the FDIC to issue a temporary cease-and-desist order if an insured state nonmember bank is engaging in an unsafe or unsound practice or is violating a law, rule, or regulation or any written agreement entered into with the FDIC. If the bank or any individual does not comply with such an order, the FDIC may impose a civil money penalty in accordance with section 8(i)(2) of the FDI Act. Under sections 8(e) and 8(g) of the FDI Act, the FDIC may suspend or remove bank directors and officers and prohibit other persons from participating in the management of an insured state nonmember bank if the person has violated a law, regulation, or final cease-and-desist order, has engaged in unsafe or unsound banking preactices, has breached his or her fiduciary duty, or has been indicated for a felony involving dishonesty or breach of trust. Section7(j)(15) of the FDI Act authorizes the FDIC to assess a civil money penalty for willful violation of laws relating to the acquisition of control of an insured state nonmember bank. Section 18(j)(3) of the FDI Act provides for the FDIC to levy a civil money penalty against an insured state nonmember bank or person participating in the conduct of its affairs for violations of laws or regulations relating to loans and other dealings between banks and their affiliates or to loans and extensions of credit by a bank to its executive officers and principal shareholders. Section 801 of FIRA empowers the FDIC to assess a civil money penalty for violations of the prohibitions against preferential lending to bank insiders based upon a correspondent account relationship.

The administrative procedures applicable to these formal actions generally afford the bank or person participating in its affairs an opportunity for a heaing before an administrative law judge. Unless this right to a heaing is waived, the FDIC must serve the appropriate parties with a notice that contains a statement of facts relating to the practices or violations which warrant the enforcement action and fix a time and place for a hearing. Exceptions to this hearing procedure occur under sections 8(c) and 8(e)(4) of the FDI Act. The former section authorizes the FDIC to issue a temporary cease-and-desist order whenever it is determined that violations or threatened violations of law or unsafe or unsound practices are likely to cause insolvency or substantial dissipation of a bank's assets or earnings, serioulsy weaken its condition, or otherwise seriously prejudice the interests of its depositors. A temporary cease-and-desist order, accompanied by a notice of charges, becomes effective upon service, however, the bank or individual subject to such an order may seek injunctive relief to set it aside, limit it, or suspend it. The latter secion empowers the FDIC to suspend a director or officer of an insured state nonmember bank from office and temporarily prohibit any other person from participating in the bank's affairs whenever it is deemed necessary for the protection of the bank or the interests of its depositors. Such suspension or prohibition becomes effective upoon service and the affected indivieuals may seek a stay of the FDIC's action.

Finally, section 908(b) of ILSA authorizes the FDIC to issue a directive to an insured state nonmember bank that fails to maintain the minimum capital requirement prescribed for it under the FDIC's capital maintenance regulations (12 CFR 325, 50 FR 11128 (1985)) which implement section 908(a) of ILSA. A directive is a final order mandating that a bank restore its capital to the required minimum level within a specified time period.

The FDIC relies on its authority to institute the types of formal enforcement actions described above when circumstances warrant in order to properly discharge its supervisory responsibilities over insured state nonmember banks (and, in the case of insurance termination actions, over all FDIC-insured institutions). Nonetheless, adoption of the policy statement should directly affect only a relatively small number of banks. During 1984, the FDIC initiated 226 enforcement actions, many of which were still in process at year-end. In connection with actions initiated in that year and in previous years, the FDIC in 1984 issued 125 final cease-and-desist orders, 13 removal orders, and 13 civil money penalty orders affecting 62 individuals. The number of insured state nonmember banks at year-end 1984 totalled approximately 8,850. Hence the FDIC continues to believe that sound, well managed institutions should view the publication of the names of banks and other parties subject to orders as an appropriate response in a deregulated banking environment. This disclosue will provide the market with an indication of the institutions that the FDIC has found to be operating in a less than acceptable manner or with more than normal risk. Public notice of such situations should aid market participants in their evaluation of the condition of the institutions with which they wish to maintain or initiate banking relationships. Should a customer be averse to the risk of a continuing relationship with a bank against which a statutory enforcemen action has been taken, the selection of a new bank or banks with which to conduct business should inure to the benefit of well managed competing institutions. Thus, adoption of this policy statement should have the long range effect of strengthening the industry.

Comments Solicited and Received

The FDIC solicited comments on the merits of disclosing the existence of notices and final orders and whether the adoption of its proposed policy would foster more effective market discipline, encouraging funds flows to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates. In addition, comments were requested on (1) whether the policy should also extend to enforcement actions in process as of the date of the proposal, (2) whether the FDIC should release to the public upon request the text of notices and final orders issued in connection with formal actions initiated prior to the date of the proposal without deleting names and certain other identifying information, (3) whether disclosure of notices and final orders

should be made directly by banks, either on their own or in addition to the FDIC's disclosure, (4) whether disclosure of formal actions would lead to greater use of informal actions, and (5) whether the FDIC should disclose the existence of such informal enforcement actions.

While the public comment period officially closed on March 25, 1985, all comments received through April 11, 1985, were reviewed by the FDIC in order to determine whether and how to proceed with the policy statement proposal. The FDIC received a total of 768 comments of which some 665 were submitted by banks, bank holding companies, and their officers and directors. Comments were also filed by 20 bankers association and by 17 bank regulatory agencies or organizations. Others submitting comment letters to the FDIC principally included attorneys, members of Congress, businesses, and individuals. Most respondents confined their comments to the merits of the disclosure proposal and did not address the additional specific questions for which comments were requested.

The opinions expessed by the 768 commenters on the disclosure proposal were decidedly negative. Taken as a whole, only 57 or seven percent of the commenters indicated any degree of support for the proposed policy. This support was centered in the comment letters submitted by businesses, individuals, and other respondents not directly associated with banks. Only 23 of the 665 commenting banks, bank holding companies, and bank directors and officers stated their support for the FDIC's disclosure of enforcement actions while six furnished general comments on the proposal without taking a position on it.

Upon evaluating the comments and after reconsidering the policy statement as published for comment, the FDIC's Board of Directors has determined that it should proceed with a disclosure policy for statutory enforcement actions. Nevertheless, the FDIC has significantly narrowed the scope of the statement of policy that it published for comment and has made certain other changes to that proposed version in order to address issues and concerns raised by respondents. A discussion of the comments received and the resulting revisions is set forth below.

Issues Raised in Comment Letters

Disclosure of Notices

With respect to the proposed disclosure of notices, about 68 of the opponents of the FDIC's proposed policy specifically presented strongly negative views on this issue. A notice is issued at the inception of the enforcement proceedings against a bank or person participating in bank affairs and contains a statement of the facts that justify, in the opinion of the FDIC, the need for the enforcement action to be taken.

Some of the respondents questioned the FDIC's legal authority to disclose the existence of notices, referring to section 8(h)(1) of the FDI Act (12 U.S.C. 1818(h)(1)). That section provides that all hearings pursuant to section 8 of the FDI Act shall be private unless the FDIC determines, after considering the views of the bank or individual charged, that a public hearing is in the public interest. Furthermore, it was stated that the legislative history of this section of the FDI Act, which dates back to 1966, reveals that the United States Senate was strongly in favor of private proceedings which indicates that the FDIC's disclosure proposal would violate Congressional intent. One writer also cited a 1939 Securities and Exchange Commission ("SEC" or "Commission") case to support the general proposition that confidential bank information cannot be legally disclosed in a notice of charges absent specific statutory authorization (*Bank of America* v. *Douglas*, 105 F. 2d 100, 104 (D.C. Cir. 1939)).

The writers who addressed this issue also indicated that the FDIC's disclosure that a notice had been issued to a particular bank or individual would deprive the affected party of due-process rights. Several respondents stated that disclosure of the issuance of a notice before the bank or individual had had an opportunity to refute the allegations listed in the notice was effectively treating institutions and persons associated with them as guilty until proven innocent. Moreover, since hearings are generally private and not open to the public, it was asserted that the disclosure of notices by the FDIC would provide no forum for the bank to present its side to the public. As a consequence, a number of the commenters suggested that banks and persons participating in their affairs will find themselves being tried in the press before the FDIC has had to substantiate the charges contained in the notice during a meeting.

Hence, the disclosure of notices was characterized by some commenters as a method for the FDIC to coerce banks and individuals to consent to the entry of a final order, particularly in cases where certain of the FDIC's findings were believed to be without merit and should have been contested. These commenters argued that even if these banks or individuals had prevailed on the points they disputed once their hearings had concluded, they would have had to defend themselves both publicly and privately during the period between the issuance and disclosure of the notice and the entry of a less comprehensive final order. A high potential for abuse by the FDIC was foreseen by at least 26 commenters as a result of the coercive power that the disclosure of notices would have on banks and individuals that were faced with enforcement actions. Because the perceived adverse effects of the disclosure of notices would lead bank managements to agree reluctantly to stipulate and consent to orders, some writers felt that the disclosure of notices would permit the FDIC to include provisions in consent orders that are onerous and lack justification.

In those cases where banks or persons participating in their affairs regard the FDIC's charges them as unfounded and successfully exonerate themselves through the hearing process, some respondents expressed concern that disclosure of notices issued at the start of enforcement actions would irreparably harm the reputations of the affected banks or individuals. These commenters stated that the public and the media would focus almost exclusively on the initial disclosures and would ignore the outcome of the case which would go undisclosed by the FDIC if no final order were ever issued.

The FDIC has carefully considered the comments addressing the disclosure of notices. In responding to the supposed legal impediment to disclosure contained in section 8(h)(1) of the FDI Act, the attention given to the legislative history of this section should include the views of both houses of Congress. The House of Representatives was as strongly in favor of making the enforcement proceedings public as the Senate was in favor of keeping them private. Moreover, the resulting compromise language in the statute refers only to a presumption that, absent certain circumstances, hearings will normally be private. This presumption does not extend to the entire administrative proceedings in general. In the 1939 SEC case referred to in a comment letter, the court held that, in the absence of specific statutory authority, the SEC had acted improperly in publicly disclosing information derived from examination reports of Bank of America, over which it had no direct jurisdiction, in its notice of an investigative hearing targeted against the bank's parent company and to which the bank was not a party. This case does not hold that the FDIC needs a

specific statutory mandate to disclose publicly the enforcement proceedings it initiates directly against banks.

Moreover, it should be noted that the SEC follows a disclosure policy for the enforcement actions it takes that is similar to the policy which was proposed by the FDIC. Just as the FDIC relies on its examination process to identify situations where formal administrative action is considered warranted, the SEC conducts investigations that form the basis for determining whether it should proceed with enforcement action. Public disclosure occurs when the Commission grants the order for formal administrative proceedings. Many times the registrant has already agreed to settle, in which case the Commission's order and the settlement itself are publicized concurrently. When the appropriate avenue of redress to the SEC is court action, the first public disclosure after any investigation is when the Commission files a complaint requesting an injunction with the court. Often the registrant will have consented to an order and disclosure is made of both the complaint and order at the same time. The Commission's disclosure of orders to proceed with formal action and complaints requesting injunctions is made in a biweekly litigation release published by the SEC. Hence, the enforcement actions brought by the SEC are disclosed to the public before the persons subject to those actions have had an opportunity to rebut the charges against them.

Thus, the FDIC continues to believe that the disclosure of a notice in connection with a statutory enforcement action would be in the public interest. The FDIC regards its issuance of a notice as an event that is relevant to an assessment of a bank's condition and its management's abilities. The statement of facts included in a notice represents charges against a bank or individual that the FDIC has determined that it can prove from the evidence gathered during an examination or otherwise. The FDIC initiates a formal administrative action against a bank or individual only when all of the charges, taken as a whole, are sufficiently critical to warrant such serious enforcement action. The impetus for such action is the FDIC's desire for a bank to undertake the corrective actions needed to restore it to a safe and sound condition and to bring it into compliance with applicable laws and regulations. The disclosure of notices and the resulting public recognition of problems within a bank is therefore seen as a method by which the bank's depositors, shareholders, and other customers would be in a position to apply pressure on bank management for correction of the bank's weaknesses.

At the same time, the FDIC also felt that it would be more equitable to those banks consenting to the entry of final orders that would be faced with immediate disclosure of the orders for the FDIC to disclose both notices and orders. If only orders were disclosed, a bank could decide against consenting to an order for the sole purpose of using the hearing process to avoid immediate disclosure. The bank might also delay instituting necessary corrective measures to its own detriment and experience further deterioration in its condition during this period. In proposing to disclose notices, the FDIC was not intending to coerce banks and individuals to consent to the entry of a final order or to deny banks and individuals their right to a hearing.

The FDIC remains concerned that if it discloses only orders, certain banks and individuals that otherwise would consent to the entry of orders and undertake remedial actions may be motivated solely by the disclosure process to opt for a hearing, allowing problems and violations to go uncorrected during the ensuing administrative proceedings. Nevertheless, when the problems and violations within a bank are of sufficient gravity, the FDIC does have the authority to issue a temporary case-and-desist order against a bank or individual and a suspension or prohibition order against an individual. In those situations where the issuance of orders of this nature is appropriate, their existence will be disclosed by the FDIC. Therefore, in an attempt to balance the concerns of banks as expressed in the comment letters and the concerns and regulatory responsibilities of the FDIC, the FDIC has concluded that its disclosure policy should not extend at this time to notices issued by the FDIC in connection with statutory enforcement actions. However, the FDIC may reconsider its exclusion of notices from its disclosure policy in the future.

Public Confidence and Related Issues

While the minority of bankers who supported the proposed policy statement concurred with the FDIC's conclusion that the disclosure of enforcement actions would be beneficial to the banking public, the issue of public confidence was one of the central themes of some 332 of the commenters who opposed this proposal. These respondents feared that public knowledge of an enforcement action against an individual bank would taint not only that institution, but would lead to a loss of confidence in all banks in that community or market area because the public would perceive that the conditions which prompted an enforcement action against one bank would be common to all banks in the same locale. Many of these commenters argued further that this loss of confidence would spread to the entire banking system. In particular, because of the generally high regard in which the FDIC is held by the public, it was felt that bank customers would ascribe a presumption of guilt rather than innocence to any bank (or individual) that is subject to a publicly disclosed notice, prompting a damaging loss in confidence in the institution that may in the end prove to have been unwarranted.

An additional 268 commenters referred to two of the possible consequences of a loss in confidence. They stated that disclosure will cause deposit runs not only at the banks identified by the FDIC as being subject to enforcement actions, but also at nearby sound banks because of the public's impression that all banking institutions in the area generally are weak. As deposit runs become more commonplace, the end result of the disclosure of enforcement actions by the FDIC would be an increased incidence of failures. The comments from numerous bankers and other writers referred to the recent events involving the privately-insured, state-chartered savings and loan associations in Ohio as evidence of the adverse effect that publicity of one depository institution's problems can have on a large number of institutions that had been regarded as being in acceptable condition. The disclosure of enforcement actions would cause similar panicky reactions by depositors in FDIC-insured banks according to these commenters. The letters from some 72 persons took a slightly different approach toward the effect that a loss of confidence would have in institutions against which publicly disclosed enforcement actions have been taken. Without referring specifically to runs on deposits or bank failures, these writers indicated that the disclosure of enforcement actions would destroy whatever chance bank managements would have had to successfully correct their problems. Bankers' attention would supposedly be diverted from the implementation of corrective programs because of the need to restore customer confidence in their institutions.

Closely related to the confidence issue were comments from about 228 respondents that the public will

misunderstand the significance of enforcement actions to the operations and condition of a bank. In this regard, it was widely held that the distinction between a notice and a final order would not be clear to depositors and other bank customers and that the differences between the various types of enforcement actions would be overlooked by the public. Furthermore, there was concern that by having access only to the names of the banks and the persons participating in their affairs that are subject to statutory enforcement actions, bank customers will not be able to determine from this disclosure the nature and severity of the problems and weaknesses within banks in order to relate these underlying conditions to the risk of insolvency. Two commenters also cited the similarity of many banks' names and predicted that the public would confuse banks identified as being subject to enforcement actions with those that are not. In addition, 73 comment letters suggested that the press and other media would likely be as unsophisticated as the public in understanding enforcement actions, leading to distorted coverage and sensationalist stories.

The FDIC recognizes that public confidence in the banking system as a whole must be preserved and that incomplete and misleading disclosures may cause irreparable harm to individual institutions. The commenters were quite correct in stating that a loss of public confidence caused by adverse information about a bank could possibly lead to a run on the institution. Nevertheless, the FDIC does not believe that this possibility justifies the blanket withholding from the public of information concerning the existence of enforcement actions. Rather, it argues for more and better disclosure of accurate information, not less disclosure. When the public's perception that a bank is experiencing difficulties is not met with an adequate response, the informational void is filled by rumors and half-truths. Therefore, the systematic, dependable disclosure of information will promote public confidence in banks and reduce the likelihood of deposit runs.

Consequently, the FDIC has been encouraging banks to make regular disclosures to the public so that bank customers can gain a greater understanding of the depository institutions with which they have established relationships. When such disclosures reveal a management that is capable of identifying potential problems within its bank and implementing appropriate corrective action, public confidence is further enhanced. By establishing a dialogue with the public through a framework of disclosure, a bank's customers will be better able to comprehend the significance of a statutory enforcement action and will be less inclined to initiate a destabilizing run on deposits. Similarly, in these circumstances, the local media will be in a better position to put the existence of an enforcement action into proper perspective.

In response to the concerns expressed by commenters that confidence in the banking system would not be promoted if the FDIC were to publicly name the banks and the persons participating in their affairs that are subject to statutory enforcement actions and that such disclosures would be misunderstood by the public, the FDIC will expand the amount of information it had originally proposed to disclose to the public about each order. In addition to identifying the type of enforcement action being taken and the bank or individual involved, the FDIC will provide a brief description of the nature of the enforcement action and a summary of the order. Hence, if bank management has not instituted its own program of periodic public disclosures which would have addressed the problems identified within the bank and the actions being taken to correct them, the FDIC's expanded disclosure of the order should furnish the public with sufficient basic information about the enforcement action in a manner that does not lead to misunderstanding by bank depositors, shareholders, and other customers.

Deterrent Effect of the Policy

The statement of policy as it is now being adopted by the FDIC contains another significant change from the version that was issued for public comment. An objective of the policy is to deter banks and persons participating in their affairs from engaging in unsafe and unsound banking practices and from violating applicable laws, rules, and regulations. At the same time, the FDIC proposed that enforcement actions initiated on or after the **Federal Register** publication date of the proposal would be subject to disclosure. If examined shortly after the proposal were adopted in final form, few banks that were already engaging in questionable practices would have had sufficient opportunity to react to the proposal's adoption and initiate appropriate measures to correct their deficiencies on their own. Therefore, a statutory enforcement action would be a likely result of an examination of such a bank. A small number of commenters observed that by applying the policy as it was proposed, the disclosures that the FDIC would make over the first several months after the policy's adoption would have a punitive rather than a deterrent effect on the affected institutions.

In order to mitigate this aspect of the proposal, four of the banking industry respondents who expressed support for disclosure of enforcement actions as well as one commenter not in agreement with the policy statement favored some form of deferral in its implementation. These commenters recommended delays of as long as two years before any disclosure of enforcement actions would be made. This delayed implementation would provide those bankers whose institutions are currently experiencing significant problems and who shortly come under formal enforcement actions with time to work toward the elimination of their deficiencies without being subjected to the alleged adverse effects that immediate disclosure would bring about.

The FDIC concurs with those commenters recommending a deferral of the date when the disclosure of enforcement actions would begin. Therefore, the policy statement has been revised to provide for the FDIC to disclose publicly all orders issued on or after January 1, 1986, except for those resulting from notices issued prior to May 6, 1985, the date of the policy statement's adoption by the FDIC's Board of Directors. The FDIC believes that this change to the policy statement as originally proposed will serve to enhance the deterrent effect of the policy.

Applicability of Policy to All Financial Institutions

An area of concern to 142 commenters, including some who were generally supportive of the proposal, is in their view the discriminatory effect of the proposal. Among the institutions insured by the FDIC, the disclosure policy would apply only to insured state nonmember banks and not to national banks, state member banks, and FDIC-insured federal savings banks (except for insurance termination orders under section 8(a) of the FDI Act which may be issued to any FDIC-insured bank). Other financial institutions that compete with banks, such as savings and loan associations, would be excluded entirely from the coverage of the FDIC's policy. Many of those commenting on this issue mentioned that the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System had not seen fit to propose a similar policy for the banks

they supervise. Several indicated that their sole basis for opposing the proposal was that it would extend only to state nonmember banks and that they would favor the disclosure of enforcement actions if all financial institutions would be subject to such disclosure.

Because the FDIC's disclosures would generally be limited to state nonmember banks that are subject to enforcement actions, a number of respondents suggested that effective market discipline, the development of which the FDIC is seeking to facilitate, cannot be achieved. These commenters stated that the coverage of the FDIC's proposed policy would not ensure that funds would flow "to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates." In their view, funds would migrate to depository institutions that had not been identified publicly as having had FDIC enforcement action taken against them. Nevertheless, these institutions, whether they are national banks, state member banks, or savings and loan associations, may be more poorly operated than a state nonmember bank and be subject to an enforcement action by their regulator that has not been disclosed to the public. As a consequence, state nonmember banks would purportedly be placed at a competitive disadvantage compared to these other depository institutions since the absence of disclosures about them causes the public to regard them as safer institutions with which to do business.

The competitive advantage issue surfaced in a different form in some 29 comment letters which expressed concern that funds would tend to flow from smaller banks to larger banks if the FDIC began to disclose the enforcement actions it had taken. Several of these commenters felt that the FDIC is apt to bring a formal enforcement action against a smaller bank while relying on an informal action such as a memorandum of understanding to achieve correction of the same problems at a larger bank. Information about the formal action would be released to the public while the informal actions would remain confidential. A number of the writers also suggested that disclosure would be more likely to cause funds to flow out of smaller banks than out of larger banks. In their view, the bank regulatory agencies have erected a safety net around larger banks and will not allow them to fail. Accordingly, depositors expect to be fully protected at larger banks while they are less assured of such protection at smaller banks.

While the FDIC would prefer that enforcement actions taken against all depository institutions be public knowledge, the respondents have correctly noted that the adoption of this disclosure policy will directly affect only state nonmember banks (with the exception referred to above for insurance termination orders). The FDIC understands the concerns of those commenters who feel that competing institutions may gain some advantage over state nonmember banks. However, the number of state nonmember banks against which the FDIC initiates statutory enforcement action represents a small percentage of these institutions (about 2.5 percent in 1984). The FDIC therefore finds no basis for concluding that a disclosure policy covering only state nonmember banks will place such banks as a class at a competitive disadvantage with other classes of depository institutions when the events giving rise to disclosure affect so few state nonmember banks. Furthermore, by increasing the awareness of the banking public that enforcement proceedings are initiated against depository institutions that are found to have severe problems, customers of all depository institutions may begin to inquire of their institutions about the existence of enforcement actions against them.

The fears that funds would tend to flow from smaller to larger banks also appear to be unfounded. While the number of formal actions initiated by the FDIC against smaller institutions clearly outnumbers the actions taken against larger banks, this reflects the fact that 88 percent of insured state nonmember banks have less than $100 million in total assets, a commonly used benchmark for defining "small banks". Moreover, the FDIC does not base its decisions on whether to initiate statutory enforcement actions against banks on bank size. Rather, the FDIC takes formal action against banks based on the conditions and violations in each institution. On the movement of funds from smaller to larger banks, disclosures of enforcement actions should lessen any tendency depositors may now have for characterizing all smaller banks as less safe than larger banks. Since smaller banks have generally provided only limited disclosures relating to their condition, disclosures of enforcement actions by the FDIC will help to place those smaller banks that are sound and well managed in a better position to compete for deposits than at present.

In addition, the FDIC is not alone in its efforts to improve market discipline generally and to provide for the disclosure of enforcement actions. As stated in its comment letter on the proposal, the OCC is "proceeding with a proposed regulation requiring disclosure of financial and narrative data, including information on administrative actions." According to published reports, the OCC's proposed disclosure rules would require all national banks to disclose enforcement actions taken against them on a quarterly basis. Moreover, as noted previously, banks and bank holding companies subject to the requirements of the federal securities laws have disclosure obligations with respect to administrative enforcement actions. While the FDIC is not aware of any actions contemplated by the other federal regulators of financial institutions with respect to increased disclosure, the FDIC will continue to strongly advocate the disclosure of enforcement actions taken against institutions competing with state nonmember banks whenever an opportunity arises for the FDIC to do so.

Adequacy of Existing Powers

In 45 of the comment letters, respondents who opposed the proposal felt that the FDIC's existing enforcement powers were sufficient to the task of causing banks to correct their problems without the FDIC having to resort to the disclosure of the formal actions it takes against banks and individuals. Several of these commenters suggested that ineffective supervison by the FDIC and the agency's own lack of success in pursuing formal administrative actions lay behind the FDIC's decision to advance the disclosure proposal. In their view, if the FDIC would concentrate on using the enforcement tools already available to it, there would be no need to discipline banks through disclosure.

These arguments to ignore the deterrent effect that discolsure would have on bank behavior. Bank managements would normally seek to avoid disclosure by routinely working to identify emerging problems in their institutions and taking appropriate remedial action on a timely basis. Hence, the FDIC should seldom find compelled to draw on its inventory of enforcement tools to bring about corrective action. Therefore, disclosure would not serve as a substitute for effective bank supervision, but as an important supplement to the supervisory process.

Relationship Between Examiners and Bankers

According to about 25 commenters, adoption of the proposed policy would result in an increase in friction between bank managements and bank examiners, making the conduct of examinations more difficult. It was suggested that bankers would be less willing to share information with examiners for fear that management's candid remarks concerning bank problems would quickly find their way into the public domain. Such reluctance would reduce FDIC's ability to accurately assess the condition of a bank under examination and lessen the effectiveness of the agency's supervision of individual institutions.

The FDIC would have serious reservations about implementing any policy that would undermine its supervisory efforts in general and its examination program in particular. While certain bank managements may become less communicative with examiners as a result of the FDIC's decision to disclose enforcement actions, there has always been a small percentage of banks that has viewed the examination process as an adversary relationship. Hence, the FDIC does not believe that the number of banks adopting such a posture will increase significantly as a result of the adoption of a disclosure policy. Moreover, at the sound, well managed banks that form the vast majority of all banks, officers and directors will normally have identified the problems their banks are experiencing and will have instituted corrective action on their own. These bank managers can reasonably expect that the disclosure policy will have no direct effect on them and therefore there is no incentive for them to regard the bank examiners as adversaries. On the other hand, at a problem or near-problem bank, the intensive analysis of the bank and its activities that is called for in such circumstances dictates that examiners adopt a more detached role.

Finally, the FDIC continues to view the examination report as confidental and has not prosposed to disclose its content. While the statutory enforcement actions that the FDIC will now begin to disclose will include summaries of the orders, specific examination data will not normally be divulged.

Legal Objections

In about ten of the comment letters, the FDIC's statutory authority to adopt a policy of disclosing the names of banks and individuals subject to formal enforcement actions was questioned. Most commonly referred to in these letters was section 8(h)(1) of the FDI Act which has been discussed above under "Disclosure of Notices." Some commenters also cited a number of other federal statutes to underscore the private and confidential nature of bank supervision. For example, the FOIA specifically exempts data contained in or related to bank examinations from disclosure (5 U.S.C. 552(b)(8). A federal criminal statute (18 U.S.C. 1906) prohibits the unauthorized disclosure of bank information. Certain states have, according to eight commenters, enacted laws that prohibit the disclosure of information about banks under various circumstances. Included among these statutes are provisions that make it an offense to release information that could lead to a general withdrawal of deposits from a bank or that would otherwise injure its business or good will.

The FDIC has reviewed the legal objections raised in the comment letters and has concluded that none of them directly pertains to the FDIC's policy for disclosing statutory enforcement actions. The exemption provided for bank information in the FOIA does not prohibit such disclosures but merely authorizes certain discretionary refusals to disclose. The prohibition contained in 18 U.S.C. 1906 relates to the release of certain information by bank examiners, but would not otherwise affect public disclosures by the FDIC. With respect to the state statutes barring disclosure of bank information, it is extremely doubtful that any state legislature could constitutionally restrict the authority of a federal agency to disclose such information. The most that state law might do in this area would be to prevent state authorties from providing information to the FDIC that the FDIC might, in turn, make public.

Other Comments on the Merits of the Disclosure Proposal

The comment letters raised a host of other issues and concerns on the merits of the disclosure proposal but at a lesser frequency than for those discussed above. Among these additional comments on disclosure were the following: Attracting competent directors and officers will become more difficult; selling a problem bank will become more difficult; banks will become overly conservative and not serve the legitimate credit needs of their communities; bank examiners will become too cautious; enforcement actions relating to matters other than safety and soundness should not be disclosed; the higher rates that a bank subject to an enforcement action will have to offer to attract funds will force other local banks to raise their rates to retain deposits; and the FDIC should work toward using risk-related deposit insurance premiums rather than disclosure as a means of disciplining banks. After considering the additional comments it received, the FDIC was not persuaded that it would be appropriate to make any changes to its disclosure proposal other than those previously described.

Enforcement Actions in Process

Since the policy statement as proposed represented a change in the FDIC's disclosure practices with respect to enforcement actions, the disclosure proposal issued for public comment applied only to those enforcement actions initiated on or after the date the proposal appeared in the **Federal Register** (February 21, 1985). Enforcement actions that were already in process as of that date that subsquently resulted in the issuance of notices and final orders were not covered by the proposed disclosure policy. While banks and other persons involved in statutory enforcement actions are normally informed that final orders specifically identifying their names may be released in response to a request under the FOIA, these parties would likely have been advised of the limited amount of routine disclosure that had been applicable to enforcement actions in the past. Hence, the FDIC requested public comment on whether and to what extent disclosure should apply to enforcement actions that were under way on the date the proposal was issued for comment.

Since more than 90 percent of all commenters were opposed to the overall disclosure proposal, it is understandable that only ten of the respondents specifically addressed the request for comment on whether public disclosure should extend to enforcement actions already in process. Of those addressing this particular issue, three responded affirmatively while the remainig seven commented negatively. Each of the three favoring disclosure of actions in process had supported the proposed policy statement as well.

Because the FDIC's objective in adopting a policy of publicly disclosing enforcement actions is to deter unsafe and unsound practices by banks, the EDIC has determined that the disclosure of actions in process on the date the policy was proposed is inconsistent with this stated objective. Accordingly, the disclosure policy adopted by the FDIC does not apply to actions initiated prior to the February 21, 1985 publication date of the proposal.

Release Under FOIA of Notices and Final Orders Issued Prior to Proposal Date

By adopting a policy statement on disclosure of enforcement actions, those final orders issued to banks and individuals that have been disclosed can be released to the public under the FOIA without the omission of the names of these banks and individuals since their names will already be publicly known. Examination data would be deleted from these documents to the extent deemed appropriate by the Director of the Division of Bank Supervision. However, current FDIC practice would continue to apply to enforcement actions that predate the effective date of the disclosure policy. Hence, final orders resulting from enforcement actions have names and identifying data deleted before they are released in response to FOIA requests (unless an FOIA request covers only a single name bank).

As the policy statement was originally proposed, a different FOIA treatment would have applied to notices and final orders based on whether they had been publicly disclosed. The FDIC therefore solicited comment on whether notices and final orders resulting from formal actions instituted prior to the date the proposal was issued for comment should be released to the public upon written request without deletions of names and certain other identifying information.

As with the previous specific question, the overall negative response to the FDIC's disclosure proposal largely explains the small number of comment letters that spoke to the routine release under the FOIA of pre-existing notices and final orders without the deletion of the names of the bank's and individuals involved in the enforcement actions. Seven respondents referred to this issue with three expressing a preference for releasing notices and final orders without omitting names and four opposing the idea. After due consideration, the FDIC has concluded that it would be preferable to maintain the current procedures it follows under the FOIA for final orders that will not have been publicly disclosed by the FDIC in accordance with the policy statement and for all notices. To authorize the retroactive release under the FOIA of outstanding notices and final orders without the deletion of names would not at this stage have a deterrent effect on the banks and individuals involved in those enforcement actions.

Bank Disclosure of Enforcement Actions

The policy statement as proposed provided for the publication of enforcement actions by the FDIC since, as described above, state nonmember banks themselves are not generally required to make extensive disclosure of such actions. Nonetheless, an alternative approach to achieving timely public awareness of notices and final orders issued by the FDIC would be for the FDIC to adopt a policy that places the responsibility for disclosure of statutory enforcement actions on the banks involved. In the public comment document, the FDIC requested input on whether banks that are subject to enforcement actions (or whose directors, officers, employees, or agents are subject to such actions) should be required to publicly disclose this fact, either in place of the FDIC's publication of these actions or in addition to it.

Six comments letters addressed this particular question and the one writer who opposed requiring banks to disclose enforcement actions that had been instituted against them also opposed the FDIC's proposed disclosure of such actions. Five respondents, including the OCC, indicated that enforcement actions should be disclosed by banks rather than the FDIC. The FDIC concurs with these five commenters and last year did issue for public comment a proposed policy statement on the disclosure of bank information which was designed to encourage depositors and other customers of FDIC-insured banks to request certain minimum information about the condition of such depository institutions. One provision of the proposed policy dealt with bank disclosure of enforcement actions. 49 FR 26809 (1984). However, that policy statement did not mandate disclosure by banks and the proposal itself remains under study. Nevertheless, as discussed above, the FDIC would encourage banks to implement their own systematic, dependable disclosure of information into which would be incorporated the disclosure of statutory enforcement actions taken against them.

Informal Enforcement Actions

Informal enforcement actions taken against banks by the FDIC, typically in the form of memorandums of understanding, were not included within the scope of the proposed disclosure policy statement. They are, however, an important means by which the FDIC seeks to ensure that bank managements recogize the problems within their institutions and take appropriate corrective action to eliminate these weaknesses. Since informal actions are directed toward banks of supervisory concern whose overall strength and financial capacity make the possibility of failure remote, whereas statutory enforcement actions are intitiated against banks with problems of greater severity, memorandums of understanding are not intended to be a substitute for formal actions such as cease-and-desist orders. Nevertheless, because the policy statement as it was proposed did not provide for the FDIC to divulge the names of banks that have entered into memorandums of understanding, concerns were raised within the FDIC that banks with severe weakness that would normally be the subjects of formal FDIC enforcement actions might strive to negotiate their way into informal memorandums of understanding to avoid disclosure if the policy statement were to be adopted. Comments were therefore sought on the questions of whether the adoption of the proposal would likely lead to an increased use of memorandums of understanding in preference to formal enforcement actions and, should this occur, what the effects, either beneficial or detrimental, of such a shift might be. A follow-up issue on which the FDIC solicited comment was whether the disclosure policy statement as it was proposed should be extended to include informal enforcement actions such as memorandums of understanding.

Only limited input was received on the questions relating to the effect that the adoption of a disclosure policy covering formal enforcement actions would have on the usage of informal actions. One commenter did not foresee any change in the frequency with which the FDIC would enter into memorandums of understanding if the disclosure proposal were to be adopted. A bank respondent that strongly favored the FDIC's adoption of the proposed statement of policy also urged that the FDIC not permit banks whose conditions would warrant the initiation of cease-and-desist actions to go the memorandum of understanding route to avoid disclosure. The five other comment letters addressing this issue either expected to see or hoped to see an increased reliance on memorandums of understanding by the FDIC if formal actions were publicly disclosed.

The most illuminating comments on this subject were received from a large multinational bank that suggested that, in theory, the number of memorandums of understanding that would be issued should not change significantly but that, in practice, the incentive for banks to negotiate for these informal agreements would be extremely strong. As a consequence, there might be a reduction in the publicily available information on banks that are engaging in or have engaged in unsafe and unsound

practices. This bank also expressed concern about what it saw as the FDIC's lack of clear guidelines for determining when to use a formal versus an informal enforcement action. This might cause the FDIC to pursue one type of action rather than the other for arbitrary or punitive reasons.

The specific question regarding FDIC disclosure of memorandums of understanding drew greater interest. A total of 17 commenters voiced an opinion on this matter and only the OCC favored the disclosure of informal enforcement actions (provided, however, they were disclosed by the bank and not by the regulator). The OCC indicated that by excluding memorandums of understanding from disclosure, a bank and its regulator would be wasting valuable time negotiating the type of enforcement action to use rather than correcting the problems that have been identified in the bank. While the exclusion of informal actions from disclosure clearly creates such a risk, a comparable risk would tend to arise if informal actions were to be disclosed. Banks bordering on being of supervisory concern would work long and hard to convince examiners that their condition was improving to such an extent that a disclosable informal enforcement action was not necessary. The 16 respondents not favoring disclosure of memorandums of understanding did so for the same reasons they had given for opposing the disclosure of statutory enforcement actions.

The FDIC has determined that at this time it would not be appropriate to publicly disclose informal enforcement actions such as memorandums of understanding. The circumstances in which such informal actions are utilized by the FDIC involve banks exhibiting weaknesses of moderate severity whose managements have demonstrated a willingness to take necessary corrective actions. In these cases, the solvency of the institution is not an issue provided management's interest in effecting corrections will be translated into positive results. Furthermore, memorandums of understanding lack legal enforceability and do not provide banks with the due process rights inherent in formal enforcement actions. In addition, the FDIC does not view memorandums of understanding as "material" under the securities laws and, therefore, does not require registered banks and banks preparing offering circulars that have entered into memorandums of understanding to disclose the existence of such informal agreements. (Instead, these banks are expected to disclose their underlying problems and the salient features of their corrective plans.) For these reasons, the FDIC has not revised the policy statement to incorporate the public disclosure of memorandums of understanding.

Statutory Authority

Authority To Promulgate Disclosure Policy

The FDIC is authorized under the FDI Act to promulgate rules and regulations to carry out its specific powers. 12 U.S.C. 1819. The Supreme Court has expressly held that an administrative regulation promulgated pursuant to such an enabling statute is valid if "it is reasonably related to the purposes of the underlying statute." *Thorpe* v. *Housing Authority*, 393 U.S. 268, 280–81 (1969). One of the undisputed purposes of the FDI Act is effective enforcement of the federal banking laws, including the prevention of unsafe or unsound banking practices. In this policy statement, the FDIC has determined that public disclosure of enforcement orders will further that statutory purpose. In *FCC* v. *Schreiber*, 381 U.S. 279 (1965), the Supreme Court held that an enabling statute in many respects similar to the FDI Act authorized the public disclosure of information otherwise confidential.

Longstanding Administrative Practice of Release of Enforcement Orders Under the Freedom of Information Act and Disclosure Required Under the Securities Laws

This policy statement merely confirms the FDIC's longstanding administrative practice of disclosing to the public enforcement orders against specific banks or individuals when such documents have been requested under the FOIA. This practice has been followed since 1976.

The FDIC has been, and is, of the view that the FOIA requires it to make public all final enforcement orders, subject to certain exemptions in the FOIA. The FOIA requires an agency, in accordance with published rules, to make public all "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases." 5 U.S.C. 552(a)(2)(A). The FDIC has promulgated published rules, 12 CFR Part 309, using almost the identical language of the FOIA, to make available "all final orders made in the adjudication of cases." The FDIC has been releasing specific orders upon request under the FOIA. Therefore, the policy statement is supported by the FDIC's longstanding administrative interpretation of the FOIA and of its own published regulations.

The policy statement is also supported by the disclosure requirements of the securities laws. As already noted, under the securities laws, registered banks are required to disclose the issuance of final cease-and-desist orders, and all banks are required to disclose the existence of statutory enforcement actions, if "material," in their securities offerings.

Authority of the FDIC To Waive Freedom of Information Act Exemptions

The FOIA was enacted to promote the public's right of access to agency information and to further the principle that acts of government should not be secret except in exceptional circumstances. Thus, the Senate Report on the 1974 FOIA Amendments states that:

> Congress did not intend the exemptions in the FOIA to be used either to prohibit disclosure of information or to justify automatic withholding of information. Rather they are only *permissive*. They merely mark the outer limits of information that *may* be withheld where the agency makes a specific affirmative determination that the public interest and the specific circumstances presented dictate—as well as the intent of the exemptions allows—that the information *should* be withheld.

S. Rep. No. 93–854, 93d. Cong., 2d Sess. 6 (1974) (emphasis in original.)

Therefore, the Supreme Court has held that the FOIA's exemptions from disclosure are permissive and can be waived by an agency whenever disclosure serves the public interest. *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 294 (1979).

Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) has often been relied upon by the bank regulatory agencies as a means of keeping confidential bank examination and related materials. However, as stated above, this exemption, as well as the others, can be waived by the agencies. See *Gregory* v. *FDIC*, 631 F. 2d 896, 899 (D.C. Cir. 1980). Thus, FDIC regulations provide for disclosure of exempt information in the public interest. See 12 CFR 309.6(c). See also 28 CFR 16.1. In 1972, FDIC similarly exercised its discretion and began releasing bank reports of condition and income to the public although such reports are specifically exempted from public disclosure under exemption 8 of the FOIA. In taking this action, the FDIC's Board of Directors determined that public availability of these reports:

> Will assist in maintaining public confidence in the Nation's banks. Such availability will also serve the salutary purpose of permitting equal access to basic

financial information by all shareholders of insured State nonmember banks and all depositors in such banks, whereas presently access to such information may be limited to a select group of insiders. Public access to the information contained in the reports will also provide greater competition in geographic areas of better-than-average profitability or greater-than-average demand for banking services, greater incentives for banks with a consistently poor performance to correct their problems, an improved ability for insured nonmember banks to raise capital, the development of more uniform rules of bank accounting and reporting, the availability of more reliable and complete data for bank research efforts and legislative policy determinations, and greater consistency with the spirit of the Administrative Procedure Act.

37 FR 28607 (1972). See 12 CFR 309.4(e).

Disclosure Not Barred by Section 8(h) of the FDI Act or 18 U.S.C. 1905

Section 8(h) of the FDI Act provides that administrative enforcement hearings shall be private, unless the FDIC, "in its discretion," determines that they be public. The policy statement does *not* cover enforcement hearings, which shall remain private unless the FDIC orders otherwise. Therefore, section 8(h) is completely inapposite here and, in any event, as noted above, there are strong policy reasons why Congress intended that "all final orders" be made public, whereas enforcement hearings be private. Likewise, The Trade Secrets Act, 18 U.S.C. 1905, is not a bar to disclosure of final enforcement orders. Section 1905 prohibits disclosure of certain confidential information, such as trade secrets, except as authorized by law. However, the FDIC will not be disclosing trade secrets or other protected information, but its own orders. Generally, FDIC enforcement orders do not contain section 1905 material and, to the extent that they do, the policy statement permits the withholding of such material.

Accordingly, there is abundant statutory authority and case law supporting the FDIC policy statement on disclosure.

Method of Disclosure

The FDIC presently intends to issue a press release once each week as the method for disclosing orders once the policy statement becomes effective January 1, 1986. The policy statement, however, does not prescribe a specific frequency for publishing the names of the banks and individuals subject to the FDIC's orders and the FDIC may adopt or later change to a frequency for its press releases that is other than weekly.

The text of the statement of policy follows:

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

In order for the FDIC to carry out its responsibility to promote a safe and sound banking system that enjoys public confidence, the Board of Directors has been given broad enforcement powers under section 8 of the Federal Deposit Insurance Act ("FDI Act"). The Board has the power to terminate the insurance of any FDIC-insured bank (section 8(a) of the FDI Act, 12 U.S.C. 1818(a)). The Board has also been given the power to order an insured state nonmember bank to cease and desist from engaging in unsafe or unsound practices or violations of law or regulations (sections 8(b) and 8(c) of the FDI Act, 12 U.S.C. 1818 (b) and (c)) and to suspend or remove a bank officer or director or prohibit participation by others in an insured state nonmenber bank's affairs (sections 8(e) and (g) of the FDI Act, 12 U.S.C. 1818(e) and (g)). In addition, sections 7(j)(15), 8(i)(2), and 18(j)(3) of the FDI Act (12 U.S.C. 1817(j)(15), 1818(i)(2), and 1828(j)(3)) and section 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA," 12 U.S.C. 1972(2)) give the FDIC authority to assess a civil money penalty against an insured state nonmember bank or an individual for violations of certain statutes. Finally, section 908(b) of the International Lending Supervision Act of 1983 ("ILSA," 12 U.S.C. 3907(b)) authorizes the FDIC to issue a directive to an insured state nonmember bank that fails to maintain its required minimum capital.

The administrative proceedings associated with these various enforcement actions generally provide the bank or the person participating in its affairs with an opportunity to consent to the entry of a final order or to contest the action in a hearing presided over by an administrative law judge. When an action is contested, the FDIC must issue a notice to the bank or the other persons subject to the action describing the practices or violations for which corrective action is sought and setting a time a place for a hearing during which the FDIC must prove the charges it has made. Exceptions to this hearing procedure occur in temporary cease-and-desist actions under section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and in suspension or prohibition actions under section 8(e) (4) of the FDI Act (12 U.S.C. 1818(e)(4)) where judicial review of the actions may be requested after their issuance.

Except for banks whose securities are registered with the FDIC in accordance with the Securities Exchange Act of 1934 and banks using offering circulars in connection with the public issuance of their own securities, insured state nonmember banks have not generally been required to publicly disclose the existance of orders issued by the FDIC. However, the FDIC does include a provision in all of its cease-and-desist orders requiring timely disclosure of such orders to bank shareholders. Moreover, in response to requests under the Freedom of Information Act ("FOIA") inquiring about the existence of any orders against a single named bank or individual (but not against more than one named bank or individual), the FDIC releases copies of final orders under sections 7(j) (15), 8, and 18(j)(3) of the FDI Act, section 801 of FIRA, and section 908(b) of ILSA, provided certain information (but not the name of the bank or individual) has been deleted from the documents pursuant to the provisions of the FOIA.

The FOIA permits federal agencies in their discretion to withhold certain types of sensitive information from routine public disclosure. The generally confidential treatment heretofore accorded banks and bank directors, officers, employees, and agents involved in statutory enforcement actions emanates from FDIC policy. In the current environment of deregulation of the banking industry, the Board of Directors has reassessed the value of retaining this disclosure policy for agency orders issued in conjunction with the FDIC'S statutory enforcement actions.

Deregulation is intended to decrease the Government's involvement in the banking business both with respect to the industry as a whole and individual institutions. Nevertheless, widespread trust in the banking system must be maintained. As the regulatory restrictions which had previously constrained bank actions are removed, the market takes on greater importance as a mechanism for promoting sound bank management and reducing the potential for inappropriate or abusive behavior by encouraging funds flows to the vast majority of banks that are prudently operated. Thus, the availability of relevant information is essential to an evaluation of bank condition and the effectiveness of the resulting market discipline.

The market's judgment of bank performance incorporates an assessment of the ability and willingness of an institution's management to operate its bank in a safe and sound manner and in conformity with applicable laws, rules,

and regulations. One may conclude from an enforcement action taken by the FDIC that a bank has exhibited a serious weakening in the quality of its assets, other unsound conditions, or violations of law that warrant prompt corrective action by its management, its shareholders, or others. Thus, the marketplace's perception of management's ability, or lack thereof, to effect the remedial measures prescribed in an order and to restore the bank to a safe and sound condition and eliminate violations should help to provide an element of discipline over the institution.

Therefore, the Board of Directors has determined that the names of all banks and persons participating in their affairs to whom the FDIC has issued orders in conjunction with statutory enforcement actions should be published and made available to the public in an FDIC press release. In addition, a brief description of the nature of the enforcement action taken and a summary of the order will be provide for each action disclosed. Orders are to be publicly disclosed in the press release after their issuance. Public disclosure will apply to all orders issued on or after January 1, 1986, except for those orders resulting from notices issued prior to May 6, 1985, the date of adoption of this policy by the FDIC's Board of Directors. When applicable, previously disclosed orders that have been terminated by the FDIC will also be identified. The press release will also indicate that any person desiring copies of the orders listed therein may obtain them under the FOIA upon written request to the FDIC by naming the banks or individuals of interest. Examination data are to be deleted from these copies to the extent deemed appropriate by the Director of the Division of Bank Supervision.

Adoption of this policy will not only promote market discipline, but will also enhance the FDIC's supervisory efforts. Facing the prospect of disclosure, bank managements may be less likely to engage in activities which are unsafe or unsound. Moreover, those insured state nonmember banks that have entered into memorandums of understanding, an informal administrative action used by the FDIC as a means of effecting corrective action in banks considered to be of supervisory concern, but which have not deteriorated to the point where they warrant formal statutory enforcement action, may tend to become more highly motivated than at present to implement the recommended corrective measures. In those cases where statutory enforcement action becomes necessary, awarenss or orders should provide the market, in concert with the FDIC, with the opportunity to exert pressure on banks to eliminate the unsafe and unsound practices and conditions within their control and to attract and retain competent personnel to properly manage bank affairs.

By order of the Board of Directors this 6th day of May 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 85-11987 Filed 5-16-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Alaska Tour and Marketing Services, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Alaska Tour and Marketing Services, Inc., d/b/a Exploration Cruise Lines, c/o Exploration Holidays and Cruises, 1500 Metropolitan Park Building, Olive Way at Boren Avenue, Seattle, Washington 98101

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11933 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Carnival Cruise Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Carnival Cruise Lines, Inc. and Jubilee Shipping Company Limited, c/o Carnival Cruise Lines, 5225 N.W. 87th Avenue, Miami, Florida 33166

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11934 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); North Star Cruises, Limited

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

North Star Cruises Limited, K/S A/S North Star Cruises, A/S North Star Cruises, Fearnley and Eger A/S, and Alaska Tour and Marketing Services, Inc., d/b/a Exploration Holidays and Cruises and Exploration Cruise Lines, c/o Exploration Holidays and Cruises, 1500 Metropolitan Park Building, Olive Way at Boren Avenue, Seattle, Washington 98101

Dated: May 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11920 Filed 5-16-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Comerica Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-10977), published at page 19245 of the issue for Tuesday, May 7, 1985. In the first paragraph of the document, the names of the banks should be corrected to read: Michigan Bank-Midwest, Jackson, Michigan; Michigan Bank-MidSouth, Litchfield, Michigan; Michigan Bank-Huron, East Tawas, Michigan; and Michigan Bank-Livingston, Brighton, Michigan.

Board of Governors of the Federal Reserve System, May 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-11946 Filed 5-16-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 158; 4-D-PA-712]

Union City Dam Project, French Creek, Waterford and Amity Townships, Erie County, PA; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated March 18, 1985, the property, consisting of 303.79 acres of unimproved land, known as the Union City Dam Project, Waterford and Amity Townships, Erie County, Pennsylvania (4-D-PA-712), has been transferred to the Pennsylvania Game Commission.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: May 8, 1985.

J. Wayne Kulig,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 85-11988 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-96-M

Intent To Prepare a Supplemental EIS

The General Services Administration (GSA) will prepare a Supplemental Draft and Final Environmental Impact Statement on the proposed disposal of four parcels of land in Rhode Island. The four parcels are:

Hoskins Park Housing Area—86.68 acres of land with 102 buildings containing 333 housing units in North Kingstown,

Old Wickford—5.1 acres of level, vacant land in North Kingstown,

Naval Gardens Housing Area—14.3 acres of land with 16 buildings containing 119 housing units in Middletown, and

Gould Island (Portion)—22.02 acres of land and 8 buildings thereon.

The Supplemental EIS will contain site-specific information on each of these parcels and consider the impacts of reasonable reuse alternatives.

Two scoping meetings will be held for the identification of issues. One will be held on May 23, 1985, at 7:30 p.m., at the Davisville Middle School, North Kingstown, R.I., and the other on May 30, 1985, at 7:30 p.m., at the Middletown, R.I. Town Hall. Interested participants may register by mail or in person at the address below for an opportunity to make a presentation at either meeting. Presentations will be heard in the order of registration. Registrations will also be accepted in person at the meeting place prior to the start of the meeting.

Interested parties unable to attend either meeting may submit written suggestions on the scope of the EIS at the address below for a period of 30 days following publication of this notice.

Questions, comments, and requests for further information may be addressed to: Pasquale Vaccaro, Realty Officer, General Services Administration, 806 J.W. McCormick Post Office & Courthouse, Boston, Massachusetts 02109, Telephone: (617) 223-2651.

Dated: May 8, 1985.

J. Wayne Kulig,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 85-11989 Filed 5-16-85; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 10, 1985.

Public Health Service

National Institutes of Health

Subject: Sister Chromatid Exchanges in the Lymphocytes of Smokers, Passive Smokers and Non-Smokers—New
Respondents: Individuals

Health Resources and Services Administration

Subject: Record of State and Local Action Under Section 1122 of the Social Security Act—Extension (0915-0055)
Respondents: Businesses

Office of the Assistant Secretary for Health

Subject: PHS Contractors Profile System—Extension (0937-0120)
Respondents: Small businesses
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Medicaid Quality Control (MQC) Statistical Tables—Reinstatement (0938-0310)
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: National Reference Center User Survey—SSA 5039—New
Respondents: Individuals, states
Subject: Taxation of Benefits Questionnaire—SSA 5031—Revision (0960-0401)
Respondents: Individuals
Subject: State Agency Schedule for Equipment Purchases for SSA Disability Programs—SSA 871—Existing Collection
Respondents: State governments
OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 205-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: May 10, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11869 Filed 5-16-85; 8:45 am]

BILLING CODE 4150-04-M

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1985:

Name: Health Services Developmental Grants Review Subcommittee.

Date and time: June 11-12, 1985, 8:30 a.m.

Place: Hyatt Regency O'Hare, Pan Am A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 11, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 11 from 8:30 AM to 9:30 AM will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee wil be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This informtion is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

* * * * *

Name: Health Care Technology Study Section.

Date and time: June 11-12, 1985, 8:00 a.m.

Place: Hyatt Regency O'Hare, Ozark A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 11, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:00 AM to 9:00 AM on June 11 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

* * * * *

Name: Health Services Research Review Subcommittee.

Date and time: June 12-13, 1985, 8:00 a.m.

Place: Hyatt Regency O'Hare, Ozark A Room, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018.

Open June 12, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Service Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting on June 12 from 8:00 AM to 9:00 AM will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This informtion is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: May 9, 1985.

John E. Marshall,

Director National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-11969 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

Immunology Devices Panel; Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Immunology Devices Panel

Date, time, and place. June 17 and 18, 9 a.m., Rm. 703-727A, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and executive secretary. Open public hearing, June 17, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, June 18, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before June 7, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for tumor marker in vitro diagnostic assays; there will also be a general discussion of in vitro allergy testing on June 18.

Closed presentation of data/closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information

regarding premarket approval applications for tumor marker in vitro diagnostic assays. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Regiser** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open pulic hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 10, 1985.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 85-11929 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0188]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acrylic acid/2-acrylamido-2-methyl propane sulfonic acid for use as a boiler water additive.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3857) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that Part 173 (21 CFR Part 173) be amended to provide for the safe use of acrylic acid/

2-acrylamido-2-methyl propane sulfonic acid for use as a boiler water additive.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11926 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0183]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3858) has been filed by General Electric Co., Highway 69 South, Mt. Vernon, IN 47620, proposing that § 178.1005 of the food additive regulations (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11924 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0317]

McCormick & Co., Inc.; Amended Notice of Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a notice that announced that McCormick & Co., Inc., had filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect and microbial contamination in certain dried spices and dried vegetable seasonings at doses not to exceed 3 megarads (3 Mrad). This notice is amended to increase the list of permitted spices and seasonings as well as to increase the maximum permitted dose from 1 to 3 Mrad.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 9, 1984 (49 FR 39615), FDA announced that a petition (FAP 4M3816) had been filed by McCormick & Co., Inc., 11350 McCormick Rd., Hunt Valley, MD 21031-1066, proposing that Part 179 (21 CFR Part 179) be amended to provide for the safe use of a cobalt-60 or cesium-137 source of gamma radiation to control insect and microbial infestation in certain dried spices and dried vegetable seasonings by increasing the maximum permitted dose from 1 to 3 Mrad.

On November 14, 1983, a citizen petition (83P-0386/CP), filed by McCormick & Co., Inc., requested amendment of the regulations to provide for the safe use of gamma radiation for the treatment of substances listed in § 182.10 *Spices and other natural seasonings and flavorings* (21 CFR 182.10), dehydrated onion products, dehydrated garlic products, and other natural substances used as minor ingredients solely for their flavoring properties; and blends representing any combination of said substances at an absorbed dose not to exceed 30 kiloGray (3.0 Mrad). The petitioner further stated that the qualifying phrase "minor ingredients used solely for their flavoring properties" includes the smaller particle sizes of dehydrated or dried products. This excludes the larger particle sizes used for purposes other than flavoring, e.g., as vegetables.

The petitioner has withdrawn its citizen petition and resubmitted it as an amendment to food additive petition (FAP 4M3816).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11925 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-85-6000]

Memorandum of Understanding With the National Cancer Institute

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the National Cancer Institute (NCI). The agreement, between NCI's Radiation Epidemiology Branch and FDA's Center for Devices and Radiological Health, is to facilitate a study of subsequent cancer incidence in women treated by irradiation with x-rays for infertility.

DATE: This agreement became effective, April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the National Cancer Institute and the Food and Drug Administration

I. Purpose

This agreement between the Radiation Epidemiology Branch of the National Cancer Institute (NCI) and the Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) is to facilitate a study of subsequent cancer incidence in women treated by irradiation with x-rays for infertility.

II. Background

During the period 1925 through 1960, Dr. Ira Kaplan, a radiologist in New York City, used x-ray therapy to the ovaries and pituitary in 800 to 1,000 women who were referred to him with diagnoses of refractory infertility secondary to menstrual irregularities. These records were made available to FDA in 1968 through Dr. Kaplan's estate. However, they were judged to be inadequate for the evaluation of the deleterious effects of radiation upon future offspring, and further study of this population was terminated in early 1973. The focus of the present proposal, however, is not to study the radiation effects on the offspring but to determine cancer risks to the irradiated women. By combining Dr. Kaplan's series with several other series of women also irradiated for infertility, such as in Israel, FDA will have an adequate sample size to evaluate the risk of subsequent malignancy.

Particular attention will be given to cancers of the brain, thyroid, ovary, uterine corpus, and breast. Because the radiation doses received for treatment of infertility were lower than those given for other conditions, such as cervical cancer, benign gynecological diseases, and tinea capitis, this study provides a unique opportunity to estimate cancer risk following relatively low-dose radiation in a group of women of reproductive age, and particularly for sites such as the brain, where little information is currently available.

III. Substance of Agreement

FDA will:

(1) Give NCI access to the medical records from Dr. Kaplan's series of women irradiated for infertility;

(2) Appoint a qualified person to collaborate with the Radiation Epidemiology Branch of NCI. This person will provide scientific guidance, monitor study progress, and review all manuscripts to come from this study;

(3) Assist NCI, when appropriate, in reviewing proposals for work to be conducted on this project;

(4) Assist NCI in data analysis and manuscript preparation.

Priority of authorship on any manuscript to come from this study will be decided at a later date and by mutual agreement and will reflect relative input into the study.

NCI will:

(1) Provide the necessary funds, if any, for this study;

(2) Be responsible for all contractual matters, if any;

(3) Assume the lead role in study direction with full collaboration of CDRH;

(4) Conduct data analysis with full collaboration from CDRH;

(5) Assume the lead role in combining the study results from the Kaplan series with those from other series.

IV. Name and Address of Participating Parties

A. National Cancer Institute, NIH, Rm. 3A-22, Landow Bldg., 7910 Woodmont Ave., Bethesda, MD 20205.

B. Food and Drug Administration, Division of Life Sciences, OST, CDRH, 5600 Fishers Land (HFZ-116), Rockville, MD 20857.

V. Liaison Officers

A. For NCI: Staff Fellow, Radiation Epidemiology Branch, (currently Joan V. Liebermann), and Senior Epidemiologist, Radiation Epidemiology Branch, (currently Daniel A. Hoffman), National Cancer Institute, NIH, Rm. 3A-22, Landow Bldg., 7910 Woodmont Ave., Bethesda, MD 20205, 301-496-6600.

B. For FDA: Chief, Branch, Division of Life Sciences, OST, CDRH, Food and Drug Administration, (currently Richard P. Chiacchierini), 5600 Fishers Lane (HFZ-116), Rockville, MD 20857, 301-443-7201.

VI. Period of Agreement

This agreement, when accepted by both parties, will remain in effect indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and Accepted for The National Cancer Institute

By: Vincent Devita
Title: Director, National Cancer Institute
Dated: March 27, 1985.

Approved and Accepted for the Food and Drug Administration

By: Joseph P. Hile
Title: Associate Commissioner for Regulatory Affairs (HFC-1)
Dated: April 10, 1985

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11921 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0176]

Petrolite Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Petrolite Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use in or on food of synthetic petroleum wax prepared by copolymerization of ethylene with higher alpha olefins.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3849) has been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119, proposing that the food additive regulations be amended to provide for the safe use in or on food of synthetic petroleum wax prepared by copolymerization of ethylene with higher alpha olefins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11927 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0076]

Toyobo Co., Ltd.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Toyobo Co., Ltd., to amend the food additive regulations to permit the use of the copolymer of adipic acid, 1,3-benzenedimethanamine, and *alpha*-(3-aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene in articles used in processing, handling, and packaging of food. The previous filing notice is amended to include the use of the reaction product of adipic acid and 1,3-benzenedimethanamine (Nylon MXD-6 resin).

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF 334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 20, 1984 (49 FR 16839), FDA published a notice that a petition (FAP 3B3752) had been filed by Toyobo Co., Ltd., Osaka, Japan, proposing that the food additive regulations be amended to provide for the safe use of the copolymer of adipic acid, 1,3-benzenedimethanamine, and *alpha*-(3 aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene (Nylon MXD-6) in articles used in processing, handling, and packaging food.

The previous filing notice had inadvertently listed the copolymer as Nylon MXD-6 resin rather than the impact modified Nylon MXD-6 resin.

The previous notice which covered only the impact modified Nylon MXD-6 resins is also amended to provide for the safe use of the reaction product of adipic acid and 1,3-benzenedimethanamine (Nylon-MXD-6 resin) containing none of the monomer *alpha*-(3-aminopropyl)-*omega*-(3-aminopropoxy) polyoxyethylene in articles used in processing, handling, and packaging of food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-11923 Filed 5-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Office of the Secretary Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Information Collections Related to Specific Procurement Transactions.

Abstract: Respondents supply information and data on their qualifications and performance history, organizational conflicts of interest and salient characteristics of products for brand name or equal provisions of solicitations. This information allows the Department to evaluate offerors on the basis of demonstrated capabilities judged necessary for successful completion of individual contract projects, to ensure that selected contractors are free of conflicts of interest and to effectively evaluate products comparable to commercially specified items.

Bureau Form Number: Nome.

Frequency: On occasion.

Description of Respondents: Government Contractors.

Annual Responses: 32,304.

Annual Burden Hours: 64,608.

Bureau Clearance Officer: John Strylowski 202-343-6191.

R.W. Piasecki,

Director, Office of Acquisition and Property Management.

[FR Doc. 85-11960 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Colorado; Filing of Plats of Survey

May 8, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 8, 1985.

The plat, representing the dependent resurvey of a portion of the west boundary and subdivisional lines; the survey of the subdivision of sections 18 and 19, and the metes-and-bounds survey in sections 18 and 19, T. 37 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted May 1, 1985.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-11965 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-84-M

Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held June 20, 1985.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, P.O. Box 550, Prineville, OR 97754.

The agenda will include the following items:

1. Range Management sections of the Two Rivers Resource Management Plan.
2. Grazing fee study update.
3. Riparian management.
4. District monitoring program.
5. Wilderness Status update.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address prior to June 14.

Summary minutes of the meeting will be available for review an reproduction within 30 days following the meeting.

Dated: May 9, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85-11966 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-33-M

Realty Action; Noncompetitive Lease of Public Lands in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Noncompetitive Lease of Public Lands (CA 14023).

SUMMARY: The following described land has been examined and found suitable for leasing under provisions of section 302 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2762, 43 U.S.C. 1732), at no less than the appraised fair market value:

San Bernardino Meridian, California

T. 11 N., R. 24 W.,
Sec. 11, portion of the SE1/4SW1/4NE1/4.
Containing approximately 0.56 acres.

SUPPLEMENTARY INFORMATION: The land is located near Maricopa, California. The proposed lease parcel is occupied by portions of a house, garage, and yard owned by Mr. J.D. Wilson. The parcel has been occupied by these improvements for approximately 30 years without authorization. The lease will be offered to Mr. Wilson to legalize his occupancy of the land and resolve an unauthorized use. The lease is consistent with the Bureau's and Kern County's planning, and would best serve the public interest.

DATE: For a period of 45 days from the date of publication of this notice, interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: Glenn A. Carpenter, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305. Objections will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Caliente Resource Area Manager, at the above address; telephone (805) 861-4236.

Dated: May 8, 1985.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 85-11962 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-33-M

Realty Action; Sale of Public Land in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Removal of R&PP Classification and Sale of Public Land in Nevada County, CA.

SUMMARY: The following described lands have had R&PP classifications (BLM O C4-352), (CA 5179c) removed and are now open to operation of the general land laws including the mining laws.

T. 16 N., R. 9 E., MDM

Sec. 18, Lot 16, 18, 19

T. 13 N., R. 10 E., MDM

Sec. 5, Lot 9

The following described land has been examined and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (90 Stat. 2750; 43 U.S.C. 1713). Sale parcels will be offered for sale July 26, 1985, at no less than the appraised fair market value, using direct sale, modified competitive or competitive procedures.

Serial No. and legal description	Acres	Fair market value	Bidding procedure
CA 16969—T. 13 N., R. 10 E., MDM: Sec. 5, Lot 9	±5.5	[illegible]	Direct sale.
CA 17171—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 13	±2.4	13,000	Competitive.
CA 17172—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 39	±6.6	31,000	Competitive.
CA 17173—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 40	±.32	[illegible]	Modified, competitive.
CA 17174—T. 15 N., R. 8 E., MDM: Sec. 2, Lot 41	±31	250	Modified, competitive.
CA 17175—T. 16 N., R. 8 E., MDM: Sec. 2, Lot 5	±1.3	750	Modified, competitive.
CA 17176—T. 16 N., R. 8 E., MDM		[illegible]	Modified, competitive.
Sec. 11, Lot 17	±.03		
Sec. 11, (AP 4-15-79)	±.14		
Sec. 14, Lot 15	±.11		
Total	±.28		
CA 17177—T. 16 N., R. 8 E., MDM: Sec. 13, Lot 17	±1.02	750	Modified, competitive.
CA 17178—T. 16 N., R. 9 E., MDM: Sec. 7, Lot 12	±.91	5,000	Modified, competitive.
CA 17179—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 20	±.5	500	Modified, competitive.
CA 17180—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 21	±1.0	1,000	Modified, competitive.
CA 13807—T. 16 N., R. 8 E., MDM: Sec. 26, Lot 24	±1.84	1,000	Modified, competitive.
CA 17353—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 24	±.83	750	Modified, competitive.
CA 17354—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 25	±1.75	1,250	Modified, competitive.
CA 17355—T. 16 N., R. 9 E., MDM: Sec. 17, Lot 28	±.55	750	Modified, competitive.
CA 17356—T. 16 N., R. 9 E., MDM		120,000	Modified, competitive.
Sec. 18, Lot 16	4.18		
Sec. 18, Lot 18	.11		
Sec. 18, Lot 19	12.38		
Total	±16.67		
CA 17359—T. 15 N., R. 8 E., MDM		1,500	Modified, competitive.
Sec. 6, Lot 20	.75		
Sec. 6, (AP 53-18-6)	1.03		
Total	±1.78		
CA 17360—T. 16 N., R. 8 E., MDM: Sec. 2, Lot 9	±1.77	[illegible]	Modified, competitive.
CA 17361—T. 16 N., R. 8 E., MDM: Sec. 11, Lot 20	±.40	100	Modified, competitive.
CA 17362—T. 16 N., R. 8 E., MDM		[illegible]	Modified, competitive.
Sec. 11, Lot 23	.08		
Sec. 11, Lot 24	.04		
Total	±.12		
CA 17363—T. 16 N., R. 8 E., MDM: Sec. 11, Lot 25	±1.22	100	Modified, competitive.
CA 17365—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 20	±.34	[illegible]	Competitive.
CA 17366—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 21	±.42	100	Modified, competitive.
CA 17367—T. 16 N., R. 8 E., MDM		[illegible]	Modified, competitive.
Sec. 12, Lot 23	.15		
Sec. 12, (AP-5-10-41)	.05		
Total	±.20		
CA 11982—T. 6 N., R. 13 E., MDM: Sec. 30, Lot C	1.91	4,500	Direct sale.
CA 17382—T. 15 N., R. 10 E., MDM: Sec. 33, Lot 19	±5.00	[illegible]	Modified, competitive.
CA 17383—T. 16 N., R. 8 E., MDM: Sec. 12, Lot 22	±10.42	[illegible]	Competitive.

The BLM solicits and will accept bids on these lands; and may accept or reject any and all bids, or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Sale terms and conditions are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. CA 16989 will be sold by direct sale to Foresthill Calvary Chapel. The Chapel's R&PP lease (CA 5179c) has expired and they have elected to purchase under Section 203 of FLPMA (PL 94-579). The patent will be subject to a road right-of-way (CA 3847) (43 U.S.C. 1761-1771).

4. CA 17173 through CA 17180, CA 13807, CA 17353 through CA 17355, CA 17359 through CA 17363, CA 17366 and CA 17367 will be sold by a Modified Competitive Bid procedure. These parcels have been determined to have no utility as separate lots due to their size, shape, character, surrounding ownership pattern and lack of access. Consequently, the above parcels will only be offered to the adjoining landowers as designated bidders.

5. CA 11982 will be offered by direct sale to M.C. Huston. The direct sale will resolve a complicated color-of-title case.

6. CA 17356 will be offered by Modified Competitive Bid procedures. The Nevada County Board of Education will be a designated bidder and as such will be given to the right to meet the highest bid in consideration of the needs of the local county government. A condition of the sale will include the protection and preservation of certain elements of a historic Chinese Cemetery which once occupied the parcel. R&PP classification (BLM 0C4-352) has been removed with the publication of this Notice of Realty Action.

7. CA 17176, CA 17359, CA 17367 contain parcels which are described with El Dorado County Assessor's parcel map numbers. These are currently being lotted and will be patented with legal descriptions containing lot numbers.

8. CA 17382 will be offered by Modified Competitive Bid procedures. Colfax Elementary School District will be a designated bidder and as such will be given the right to meet the highest bid in consideration of the needs and plans of local government. A condition of the sale will be the protection and preservation of an existing cemetery on a portion of the property. The patent will be subject to a right-of-way (CA 15776) for a water storage tank and pipeline for the Iowa Hill Water Cooperative (43 U.S.C. 1761-1771).

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2711.1-2(d) (amended) the above lands will be segregated from appropriation under the mining laws but excepting the mineral leasing laws for a period not to exceed 270 days, or until the lands are sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 270-day period. The above described lands, will be separately offered for sale by sealed bids. The bids will be opened at 10:00 a.m. on July 26, 1985, at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on July 26, 1985. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior-BLM for 10 percent of the bid.

The sealed bid envelopes must be marked on the front lower left corner "Folsom Resource Area, July 1985, Land Sale, Case File Serial #———." After opening all sealed bids, if two or more envelopes containing valid high bids of the same amount are received, the determination of which is to be considerd the highest bid shall be by supplemental oral bids. The oral bidding, if needed, will be conducted by the Authorized Officer immediately following the opening of the sealed bids. The person declared to have entered the highest qualifying oral bid shall submit payment of 10 percent as specified above, immediately following the close of the sale.

The successful bidder, whether such is a sealed or oral bid, shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit result in concellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

It has been determined that the lands are without known mineral values and a successful bid will constitute a simultaneous request for conveyance of the reserved mineral estate. As such, the successful high bidder will be required to deposit a $50.00 nonreturnable filing fee for conveyance of the mineral estate.

If any of the lands described do not receive qualifying bids on July 26, 1985, they will be available over the counter at the fair market value until December 31, 1985. Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861-4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination.

DATES: Sealed bids must be received by 10:00 a.m. July 26, 1985.

ADDRESS: Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: May 10, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-11959 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Statement of Responsibilities and Role of the Fishery Resources Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of a *Statement of Responsibilities and Role* for its Fishery Resources Program. This document identifies and describes four responsibilities that will henceforth be

the Program's focus. Also outlined is the general approach the Service has adopted in discharging these responsibilities. A summary of the *Statement* is presented as Supplementary Information.

The Service is interested in providing all interested individuals and organizations the opportunity to examine or obtain the full *Statement*. Copies of the document can be examined at Service regional offices and field installations. Copis will also be sent to other Federal agencies, to State fish and game agencies, to affected Indian tribes, and to private organizations with known interest in fishery resources. In addition, a limited number of copies will be available for free distribution while the supply lasts.

ADDRESS: Requests for copies of the *Statement* should be sent to: Publications Unit, Room 527, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph H. Kutkuhn, Associate Director—Fishery Resources, Washington, DC [(202)343–6394] or Robert A. Peoples, Jr., Office of Program Development—Fisheries, Washington, DC [(202)343–6307].

SUPPLEMENTARY INFORMATION: The *Statement* defines the responsibilities and role of the U.S. Fish and Wildlife Service (FWS) as a major and integral contributor to the stewardship of the Nation's fishery resources. It serves both as a new basis for the Service's Fishery Resources Program and as guidance for implementation of the Service's near- and long-term contributions to fishery resource protection and management.

Need for Redefinition of Program Responsibilities

Federal statutory responsibilities for stewardship of the Nation's diverse and valuable fishery resources date from 1871 when Congress established the position of Commissioner of Fish and Fisheries in response to concern about the decline in domestic foodfish supplies. Subsequently, the kinds of fishery resource activities involving the Federal Government have expanded and changed greatly. The factors causing this growth and evolution are numerous, varied, and complex. Three, however, have been central in shaping Federal fishery resource responsibilities:

- Continually growing, broad-based *awareness* of the importance of fishery resources, especially as a focus of recreation and source of low-cost food.
- Increasing *recognition* of the finiteness of fishery resources and of the consequences of their unregulated use as well as the degradation, if not destruction, of their habitat.
- Evolving *need* for more comprehensive and better-coordinated management of fishery resources.

The acceptance by States and tribes of responsibilities for managing fishery resources has also affected the kind and degree of Federal fishery-related activity. Because of their substantial and still-growing technical capabilities, State fishery agencies and Indian tribes are undertaking many tasks formerly performed by the Federal Government.

A major factor inducing a reassessment of Federal Fishery resource responsibility, role, and activity is the imperative to improve administrative efficiency. In addition, increasing emphasis has been placed on "users" paying for the benefits that are derived from or necessitate fisheries work performed by Federal agencies. In many cases, the beneficiaries are groups other than fishermen. With respect to mitigation of resource damage, for instance, the real beneficiaries are those who realize the services provided by the water projects that created the need for mitigation in the first place, namely, electric power consumers, irrigators, shippers, etc.

Almost from the beginning of Federal involvement with fishery resources, there has been a fundamental dichotomy in programs built around commercial and sport (or recreational) use of the Nation's fishery resources, both marine and inland.

This *Statement* addresses *interjurisdictional* anadromous, Great Lakes, and other inland, and estuarine fishery resources, whose conservation the FWS views as a major responsibility it shares at the Federal level.

Identification of Program Responsibilities

In light of these circumstances, it has been necessary and desirable to critically examine and clarify FWS responsibilities for, and role in, the management of national fishery resources. This future direction and the responsibilities of the Service's Fishery Resources Program have been methodically and rigorously redefined in terms of the resources themselves, not in terms of resource management functions; i.e., they were viewed on the basis of *what* has to be done ("ends") rather than on *how* related program objectives will be attained ("means" to an end) A wide range of options was examined, assuring good representation of past and current activity aimed at fish and fisheries in the United States. This statement presents the results of that exercise.

To identify what needs it could most appropriately meet, the Service asked four questions about each of the activities it reviewed:

- Are there statutory mandates requiring Service involvement?
- Are economically important interjurisdictional or transboundary (i.e., international, interstate, tribal/State, migratory) fishery resources involved that are depleted, threatened with impairment, or otherwise in need of Federal attention?
- Are interjurisdictional fishery resources involved whose use is the focus of major management or allocation issues? Or, are the factors adversely affecting target fishery resources interjurisdictional in nature?
- Is there share of the responsibility for redressing problems associated with such resources being discharged by the States, companion Federal agencies, Indian tribes, or others?

After reviewing each candidate activity, four were concluded to represent bonafide national responsibilities meriting the highest-priority attention of the Service's Fishery Resources Program. The redefined Program responsibilities are:

- To facilitate restoration of depleted, nationally significant fishery resources.
- To seek and provide for mitigation of fishery resource impairment due to Federal water-related development.
- To assist with management of fishery resources on Federal (primarily Service) and Indian lands.
- To maintain a Federal leadership role in scientifically based management of national fishery resources.

Articulating what the Service believes to be the valid and appropriate responsibilities of its Fishery Resources Program removes considerable doubt as to where the Program stands with regard to certain fishery resources and restores to it a much-needed sense of purpose and stability. A clear, well-defined statement of responsibilities also facilitates Service work that addresses concerns it shares with companion Federal agencies, the States, Indian tribes, interstate commissions, the private sector, academia, and public-interest groups of many kinds. The *Statement* should also facilitate definitive long-range planning for fishery resources.

The overriding goal of the Service's focus on these four responsibilities is to increase both the degree and quality of fishing opportunity, by restoring or replacing fishery resources. Moreover, placing attention on a limited number of

important fishery problems with national dimension will allow the Service to use its manpower and funding more efficiently and thereby shorten the time required to attain major Program objectives. What has not changed, and will not change, is Service commitment to the Nation's fishery resources and to closer cooperation with States, tribes, and others in advancing the best interests not only of the fishery resources themselves, but of those who use them as well.

Implementation

The question of how to best discharge these four responsibilities is also a major objective of this review. Listing them shoud *not* be taken to mean that they are exclusively the Service's. Nor is simply identifying them, though a crucial step, sufficient by itself. Equally essential, if not of paramount importance, is their timely implementation.

Implementation entails deep involvement of the Service and its Fishery Resources Program. Several recent initiatives, exemplified by such diverse activities as the Lower Snake River Compensation Plan, the Connecticut River Basin Atlantic Salmon Compact, and the Emergency Striped Bass Study, provide useful insight into how best the Service can meet these implementation requirements. Experience in these and other comparable activities indicates that the Service role in fulfilling the redefined Fishery Resources Program responsibilities will, in effect, consist of two distinct, but closely related parts:

1. Serving as a *catalyst* in ensuring that problems are identified, corrective steps are organized, and agreed-to action is coordinated.

2. Taking its own corrective action where statutorily mandated, where doing so is consistent with plans developed jointly by all responsible parties, and where its budget and manpower permit.

In a number of respects, the general implementation strategy outlined here does not represent significant departure from current Program activity and practices. However, one fundamental change is that the Service would defer operation of certain facilities, mainly new ones serving mitigation purposes, to the States or others. This would include those funded by or through the Service.

Application of this general strategy will vary according to the circumstances surrounding fulfillment of each responsibility, as well as to geographic and other differences. Hence, a detailed "Implementation Planning Process," one that approaches the strategy in terms of discrete, manageable (i.e., relatively small) program elements, will be required as the basis for meeting these Program responsibilities. Such an implementation planning process is being employed.

Dated: May 3, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-11994 Filed 5-16-85; 8:45 am.]

BILLING CODE 4310-55-M

National Park Service

Draft Environmental Impact Statement; Draft General Management Plan and Alternatives; Lake Meade National Recreation Area, Mohave County, AZ, and Clark County, NV; Availability of Draft Environmental Impact Statement

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the general management plan for Lake Mead National Recreation Area. This notice also announces public meetings for the purpose of receiving public comments on the draft EIS.

DATES: Comments on the draft EIS should be received no later than July 24, 1985. The date(s) of the public meetings regarding the draft EIS are June 12, 13, 17, 18, 19, 20 and 24, 1985.

ADDRESSES: Comments on the draft EIS should be sumbitted to: Jerry D. Wagers, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, (702) 293-4041.

The public meetings will be held at:

St. George, Utah, City Council Chambers, 175 East 200 North, June 12, 1985—7:00 p.m.

Overton, Nevada, Moapa Valley Community Center, June 13, 1985—7:00 p.m.

Boulder City, Nevada, Alan Bible Visitor Center, June 17, 1985—7:00 p.m.

Las Vegas, Nevada, EPA Auditorium, 944 E. Harmon Avenue, June 18, 1985—7:00p.m.

Phoenix, Arizona, Maricopa County Board of Supervisors, 111 South 3rd Avenue, June 19, 1985—7:00 p.m.

Bullhead City, Arizona, Chamber of Commerce, June 20, 1985—7:00 p.m.

Los Angeles, California, Pasadena City College, 1570 E. Colorado Boulevard, Pasadena, California, June 24, 1985—7:00 p.m.

Public reading copies of the draft EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 (Telephone: 202-343-6843)

Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102

Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

A limited number of copies of the statement are available on request from:

Jerry D. Wagers, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

SUPPLEMENTARY INFORMATION: The document presents a proposed general management plan for Lake Mead National Recreation Area (NRA), three alternatives to the plan, and an analysis of the environmental consequences of implementing the plan or its alternatives. The proposed plan would accommodate increasing visitor use through a combination of providing new developed areas, improved access points, acceptable levels of expansion in existing developed areas, and maximum resource protection. Visitor safety hazards from flash floods would be reduced by providing structural flood protection in five developed areas and nonstructural protection in other developed areas. Management zoning would restrict land uses on 75 percent of NRA lands, less restrictive zoning would cover 25 percent of the area. Carrying capacity limits have been set for the number of slips in each marina with a parkwide total of 8,370, or an increase of 90 percent over 1978 levels. The information/education program would encourage visitor safety and resource protection, provide information and orientation, and educate visitors about the area's resources. The proposed action would not change the cabin site policy and would allow expansion of short-term trailer sites. No lands are proposed for wilderness designation. Under the no action alternative present management strategies would continue with no major changes in existing conditions. Under alternative A increasing use would be accommodated by expanding existing developed areas and resource protection would be emphasized. Under alternative B resource utilization would be emphasized and increasing use would be accommodated by maintaining existing developed areas, improving existing shoreline access points, and providing new developed areas. The environmental analysis also serves as a compliance instrument for Executive

Order 11988, "Floodplain Management" and 11990 "Protection of Wetlands".

The document is divided into two volumes. Volume I describes the draft general management plan and alternatives. Volume II describes the affected environment and environmental consequences of implementing the alternatives and proposed action. A discussion of consultation and coordination, the appendixes, bibliography, and the list of document preparers are also included.

Dated: May 6, 1985.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 85-11992 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-70-M

Availability Draft Land Protection Plan; Lyndon B. Johnson National Historical Park, Blanco and Gillespie Counties, TX

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, and the final interpretive rule for Preparation of Land Protection Plans printed in the **Federal Register** on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Lyndon B. Johnson National Historical Park, Blanco and Gillespie Counties, Texas.

The Draft Land Protection Plan addresses the protection of 1,335.68 acres within the authorized boundary that have not been acquired. It considers alternate means of protection, provides for public use and safety and identifies what land or interest in land need to be in Federal ownership in order to achieve management purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Lyndon B. Johnson National Historical Park, Post Office Box 329, Johnson City, Texas 78636; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Lyndon B. Johnson National Historical Park, at the address provided above, within 30 days from the publication date of this notice.

Dated: May 3, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-11991 Filed 5-16-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice OP3MCF-250]

Motor Carrier; C.W. Transportation Services

Decided: May 10, 1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and I.C.C. Failure seasonably to opose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of the publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC-F-16276, filed April 23, 1985, C.W. Transportation Services (C.W.) (615 W. 41st St., Chicago, IL 60609)—Purchase (Portion)—Keeshin Charter Service, Inc. (Keeshin) (615 W. 41st St., Chicago, IL 60609). Representative: Arnold L. Burke, Esq., Schulman, Silverman & Kreiter, Ltd., 19 S. LaSalle St.—Fourth Floor, Chicago, IL 60603. C.W., a non-carrier, seeks authority to acquire a portion of the operating rights of Keeshin in its lead certificate No. MC-118044, which authorizes the transportation of passengers and their baggage, in charter operations (restricted to traffic originating in the territory indicated), from points in Cook and Will Counties, IL, and points in Lake County, IN, to points in Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, and return.

C.W. is a joint venture partnership of Keeshin Air Transport, Inc. (Keeshin Air), a non-carrier controlled by transferor Keeshin, and C.W. Limosine Services, Inc. C.W. Limo), a passenger carrier holding authority in No. MC-165970. Keeshin and Keeshin Air are

commonly controlled by Paul A. Keeshin. C.W. Limo is controlled by Charles A Wilson, Jr.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

[FR Doc. 85-11995 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-100)]

Rail Carriers; the Baltimore and Ohio Railroad Co; Abandonment—in Harrison County, WV; Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company to abandon its 5.09-mile rail line between milepost 19.30 at Haywood and milepost 24.39 at Spelter, in Harrison County, WV.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 85-11944 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3; Sub. 55]

Missouri, Pacific Railroad Co.—Abandonment—in Montgomery County, AR; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 7.0-mile line of railroad between milepost 479.4 near Birds Mill and milepost 486.1 near Norman.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective June 17, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by May 27, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 6, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 14, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-12055 Filed 5-16-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Marion Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 1985, Marion Laboratories, Inc., Analytical Systems Inc. Division, 23162 La Cadena Drive, Laguna Hills, California 92653 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II.
1-Pipendinocyclohexanecarbonitrile (PCC) (8603)	II.
Benzoylecgonine (9187)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 17, 1985.

Dated: May 14, 1985.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-11983 Filed 5-16-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Women's Bureau
Local Displaced Homemaker Program Questionnaire
One-time questionnaire
Non-profit institutions
300 responses; 150 hours; 1 form.

Survey questionnaire to assess the impact and effectiveness of National Displaced Homemaker Network in providing technical assistance to local programs. Information will be used to plan future programs connected through the Network, most of which are non-profit institutions.

Extension

Office of Pension and Welfare Benefit Programs
Summary Annual Report
1210–0040
Annually
Individuals or households; businesses or other for profit; non-profit institutions; small busineses or organizations
179,190,138 responses; 1.6 minutes.

Employee benefit plans covered by ERISA, with some exceptions, are required by law to provide participants and beneficiaries with a Summary Annual Report (SAR) which provides information on the financial operations of their plan.

Employment Standards Administration
Report of Changes That May Affect Your Black Lung Payment 1215–0084; CM–929
Annually
Individuals or households
97,000 responses; 12,610 hours; 1 form.

To help determine continued eligibility of primary beneficiaries and dependents receiving separate checks (split payees) from the Trust Fund. To verify and update on an annual basis income, marital status, and dependency status.

Collection of Information in Current Rules

Employment Standards Administration
General Regulations Under The Walsh-Healey Public Contracts Act 41 CFR Part 50–201.101(a)(2) (i) and (ii), 41 CFR Part 50–201.501, 41 CFR Part 50–201.604 (a) and (b)
On occasion
Businesses or other for-profit; Small businesses or organizations 2,030 responses; 169 hours.

Contractors subject to the Public Contracts Act must keep employment records which would permit DOL to determine compliance with the Act. Regular dealers must notify manufacturers that furnish goods directly to the U.S. that the minimum wage and overtime provisions of such contract work is subject to the Act.

Signed at Washington, D.C. this 14th day of May, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–12025 Filed 5–16–85; 8:45 am]

BILLING CODE 4510–23–M

OMB Circular A–76 Management Study; Department of Labor National Office Library

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Labor.

ACTION: Notice of OMB Circular A–76 Management Study.

SUMMARY: The Directorate of Administrative Services and Safety and Health Programs (DASSHP), OASAM, has scheduled an OMB Circular A–76 management study of the Department of Labor National Office Library to begin May 14, 1985.

FOR FURTHER INFORMATION CONTACT:
William J. McLaughlin, 202–523–6963
or
Edward L. Jackson, 202–523–6295.

Dated at Washington, D.C. this 10th day of May, 1985.

Donald E. Lemmon,

Director, Office of Information Management and Productivity.

[FR Doc. 85–12020 Filed 5–16–85; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–15,667]

Pako Corp., Golden Valley, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 3, 1985, applicable to all workers at Pako Corporation, Golden Valley Minnesota. The Notice of Certification was published in the **Federal Register** on April 16, 1985 (50 FR 15003).

On the basis of additional information, furnished by a corporate official on pending layoffs, the Office of Trade Adjustment Assistance reviewed the February 28, 1985, termination date, in the subject certification. The additional information shows that the final closure of the plant is taking longer than originally anticipated. It was the Department's intent to include all workers as eligible to apply for adjustment assistance who were laid off from Pako Corporation, Golden Valley, Minnesota.

The amended certification for TA–W–15,667 is hereby issued as follows:

All workers of Pako Corporation, Golden Valley, Minnesota who became totally or partially separated from employment on or after December 21, 1983 and before July 31, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this May 8, 1985.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–12091 Filed 5–16–85; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[License No. 34-13774-01, EA-85-40]

John C. Haynes Co.; Order Prohibiting Access to Controlled Areas

I

On April 5, 1985, the Director, Office of Inspection and Enforcement, issued an Order requiring among other things that John C. Haynes Company ("Licensee") permit entry of NRC authorized individuals into its facility at 6532 Parr Road, Rural Route 6, Newark, Ohio, for the purpose of removal of radioactive material and contamination which pose an imminent hazard to the public health and safety. In accordance with the Order, the license is to be revoked following the completion of decontamination and removal of radioactive material. The licensee did not contest the Order. The Order was issued because of the history of the licensee's unauthorized possession and use of radioactive material, the extensive contamination at the facility, the licensee's financial condition, and the potential for dispersion of radioactive material as a result of vandalism, fire, or other phenomena.

At the time the Order was issued, Mr. Haynes, the licensee's sole agent, had been arrested by the Federal Bureau of Investigation for unauthorized possession and use of radioactive material and making false statements to the Commission. He was prohibited by order of a U.S. Magistrate from going to the facility at 6532 Parr Road, Rural Route 6. The Director concluded in the previous Order that Mr. Haynes' disregard for the Commission's requirements and the public health and safety as evidenced by his unauthorized use and possession of material and the contamination of the facility demonstrates that he neither appreciates the hazards posed by the radioactive material nor can be trusted to safely maintain the facility. The Director also found that the radioactive contamination of the facility and the physical condition of the facility and its contents pose an imminent hazard that requires immediate action to abate the hazard. Consequently, the Director concluded that immediate action pursuant to 10 CFR 2.202(f) was required to decontaminate and to remove all radioactive material from the facility.

II

The Court's prohibition of Mr. Haynes from going to the facility was lifted as a result of the May 7, 1985 dismissal by the U.S. Magistrate without prejudice of the charges against Mr. Haynes. Although decontamination activities are under way the facility remains extensively contaminated and the imminent safety hazard remains. The presence of unauthorized individuals including Mr. Haynes in areas controlled for purposes of protection of individuals from exposure to radiation and radioactive materials could (1) interfere with the decontamination efforts by disturbing monitoring equipment, delaying activities, and causing resources to be diverted to monitor and protect such individuals, (2) cause a hazard to such individuals as a result of their contamination, and (3) cause a hazard to the general public if such individuals remove contamination or radioactive material from the facility.

Therefore, I have determined that neither Mr. Haynes nor any other unauthorized individual should be permitted access to any area controlled by the NRC or its agents for the purpose of protection of individuals from exposure to radiation and radioactive materials in and around the facility at 6532 Parr Road, Rural Route 6, until the decontamination activities under the previous order are completed unless specific authorization has been approved by the Regional Administrator, Region III, or his designee. I have also determined that, pursuant to 10 CFR 2.202(f), the public health, safety, and interest requires that this Order be immediately effective.

III

Accordingly, pursuant to sections 81 and 161b, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Part 30, it is hereby ordered that:

Effective immediately, neither Mr. Haynes nor any other individual may be permitted access to any area controlled by the NRC or its agents for the purpose of protection of individuals from exposure to radiation and radioactive materials in and around the facility at 6532 Parr Road, Rural Route 6, Newark, Ohio until the decontamination activities under the April 5, 1985 Order have been completed unless specific authorization has been received from the Regional Administrator, Region III, or his designee, following the date of this Order.

IV

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 20 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order. Upon the failure of the licensee to answer within the specified time, this Order shall be final without further proceedings.

The licensee or any other person who has an interest affected by this Order may request a hearing within 20 days after issuance of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address. If a person other than the licensee requests a hearing, that person shall describe specifically, in accordance with 10 CFR 2.714(a)(2), the nature of the person's interest and the manner in which that interest is affected by this Order. AN ANSWER TO THIS ORDER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF SECTION III OF THIS ORDER.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated At Bethesda, Maryland this 10th day of May, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-11999 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on June 5, 1985, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 5, 1985—3:00 p.m. until 5:00 p.m.

The Subcommittee will review the Interim Use Manual Chapter on Plant-Specific Backfitting.

Oral Statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be

accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above name individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 13, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-12000 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on May 31, 1985, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 31, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review selected portions of the NRC Thermal Hydraulic Research Program for the ACRS Report to the Commission on the FY 1987 research Budget.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., eastern daylight time. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-12001 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498-OL and 50-499-OL; ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co., et al.; South Texas Project, Units 1 and 2; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Houston Lighting and Power Company, et al.* (South Texas Project, Units 1 and 2), Docket Nos. 50-498-OL and 50-499-OL, is hereby reconstituted by appointing Administrative Judge Frederick J. Shon in place of Administrative Judge Ernest E. Hill, who because of a schedule conflict, is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles Bechhoefer, Chairman, Mr. Frederick J. Shon, Dr. James C. Lamb, III.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 10th day of May, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-12021 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., et al.; (Millstone Nuclear Power Station, Unit No. 1); Exemption

I

The Connecticut Light and Power Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees) are holders of Provisional Operating License No. DPR-21 which authorizes operation of the Millstone Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of one boiling water reactor located in Waterford, Connecticut.

II

Appendix J to 10 CFR Part 50 was published on February 14, 1973. Since by this date there were already many operating nuclear plants and a number more in advance stages of design or construction, the NRC decided to have these plants reevaluated against the requirements of this new regulation. Therefore, beginning in August 1975, requests for review of the extent of compliance with the requirements of Appendix J were made of each licensee. Following the initial responses to these requests, NRC staff positions were developed which would assure that the objectives of the testing requirements of the above cited regulation were satisfied. These staff positions have since been applied in our review of the submittals filed by Northeast Nuclear Energy Company (NNECO) for Millstone

Unit 1. The results of this evaluation are provided below.

III

On August 7, 1975, the NRC requested NNECO to review it containment testing program for Millstone Station Unit 1 and the related technical specifications, for compliance with the requirements of Appendix J to 10 CFR Part 50.

The NRC staff's consultant, Franklin Research Center (FRC), has reviewed NNECO's submittals dated November 14, 1975; July 29, 1977; May 31, 1978; September 20, 1978; May 9, September 9, October 15, and November 6, 1980; and February 26, 1981. The submittals involved several requests for exemption from certain requirements of Appendix J to 10 CFR Part 50. The NRC staff reviewed the Technical Evaluation Report (TER) prepared by FRC, which documents FRC's review of the exemption requests and concurred at that point in time with its bases and findings.

However, based on additional information provided by the licensee in a submittal dated September 16, 1983, telephone conversations with licensee representatives on October 13th and 14th, 1983, and April 12, 1984 meeting in Bethesda with licensee representatives and the last licensee submittal dated December 7, 1984, the staff has modified its conclusions relative to the TER. The staff now finds that:

1. Type C testing of isolation valves in emergency core cooling systems in lieu of Type A testing is in accordance with the requirements of Appendix J and is, therefore, acceptable.

2. NNECO's procedure for isolating leaks during the Type A test, later testing via local testing procedures, and adding the leakage to the Type A results fulfills the requirements of Appendix J and is, therefore, acceptable.

3. The matter of Type A testing being performed in less than 24 hours was reviewed and approved by Amendment No. 94 to Provisional Operating License No. DPR-21 for Millstone Nuclear Power Station, Unit 1 dated December 19, 1983.

4. Type A testing of penetrations with expansion bellows is acceptable as an exemption from the requirements of Appendix J because of the testing experience gained with this type of penetration.

5. An exemption from the requirement to test airlocks, following an outage when the air locks are open, at design pressure is acceptable. This is because the licensee will do a low pressure test at 10 psig prior to reopening for containment entry to inspect for leakage when the plant is at operating pressure and temperature and follow with a design pressure test within the 24 hour period following startup while containment inerting is in progress.

6. In extrapolating the results of reduced pressure airlock tests to full pressure, an empirical relationship based on seven back to back 10 and 43 psig tests to be conducted over a 3-year period will be used. Until the results are available a technical specification limit of 0.024 La will be in effect. On this basis the staff concludes that the Appendix J requirements are satisfied.

7. Testing MSIVs at 25 psig is an acceptable exemption from the requirements of Appendix J because it provides a conservative determination of valve status.

8. NNECO's proposed action with regard to reversing certain valves in order to conservatively perform reverse direction testing meets the requirements of Appendix J and is acceptable.

9. The substitution of valves LP-43A and B for LP-44A and B is acceptable because either set of valves may equally be relied upon to prevent escape of containment air.

10. NNECO's proposed hydraulic testing of penetrations x-204 and x-210 will establish that the valves will remain water sealed for 30 days following an accident and, therefore, satisfies the requirements of Appendix J.

11. The licensee commitment in NNECO letter dated December 7, 1984 for Type C testing of the Transient Incore Probe (TIP) ball valves is in accord with 10 CFR Part 50 Appendix J requirements and therefore acceptable.

12. Various technical specifications were found to be in compliance with Appendix J, subject to certain clarifications and/or exemption requests as evaluated in the TER attached to the staff's safety evaluation.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission grants the following exemptions with respect to the requirements of Appendix J to 10 CFR Part 50:

1. Type A testing of penetrations with expansion bellows is acceptable as an exemption from the requirements of Appendix J because of the testing experience gained with this type of penetration.

2. Testing MSIVs at 25 psig is an acceptable exemption because it provides a conservative determination of valve status.

3. Containment airlock testing at 10 psig instead of design pressure during startup after an outage, but prior to containment inerting, is an acceptable exemption because the airlock will later be tested at design pressure within the first 24 hours following startup while the containment is being inerted.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (April 30, 1985, 50 FR 18333).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 10th day of May 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-12022 Filed 5-16-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23690; 70-7022]

American Electric Power Co., Inc., and AEP Generating Co.; Proposal To Finance Pollution Control Facilities, and Guaranty of Pollution Control Bonds

May 13, 1985.

AEP Generating Company ("AEGCO"), and its parent American Electric Power Company, Inc. ("AEP"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to an application-declaration previously filed pursuant to sections 9(a), 10, 12(b), and (d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 thereunder.

By prior Commission Order, AEGCO acquired one-half undivided interest in the Rockport Generating Station ("Plant") along with Indiana & Michigan Electric Company ("I&ME"), also a subsidiary of AEP. Each company is responsible for 50% of the costs associated with disposing of and acquiring certain air and water pollution control devices ("Project") (HCAR No. 23399, August 17, 1984). By subsequent Order, AEGCO was authorized to enter into an Agreement of Sale (now "1984 Agreement") with the City of Rockport, Indiana ("City") providing for the construction and installation of the Project by the City, and the issuance by the City of pollution control revenue bonds ("Series A Bonds") to finance AEGCO's share of the project (HCAR

No. 23420, October 4, 1984). The Series A Bonds were issued in an initial principal amount of up to $150 million.

It is now proposed by Post-Effective Amendment No. 4 that the City will issue and sell one or more additional series of bonds in a principal amount of up to $175 million ("Series 1985 Bonds") to refund on or before October 10, 1985 outstanding short-term Series A Bonds issued in the principal amount of $150 million, and to cover a portion of the cost of construction of the Project now estimated to be $200 million. The proceeds of the sale of the Series 1985 Bonds will be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as Trustee, under the Indenture between the City and such Trustee, to be amended by one or more Supplemental Indentures, pursuant to which the Series 1985 Bonds are to be issued and secured.

Proceeds received by AEGCO in reimbursement of its cost of construciton of the AEGCO Project are to be applied to the payment of maturing long-term debt and outstanding bank loans of AEGCO and for construction and other corporate purposes. At March 31, 1985, $480,000,000 of such bank loans were outstanding.

It is contemplated that the Series 1985 Bonds will be sold by the City pursuant to arrangements with an underwriter or a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series 1985 Bonds will be fixed by or on behalf of the common council of the City. While AEGCO will not be a party to the underwriting arrangements for the Series 1985 Bonds, the Agreement provides that the terms of Series 1985 Bonds and their sale by the City shall be satisfactory to AEGCO. AEGCO understands that interest on the Series 1985 Bonds will be exempt from federal income taxation under the provisions of section 103 of the Internal Revenue Code of 1954, as amended. It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Series 1985 Bonds. However, AEGCO has been advised that, depending on maturity and other factors, the annual interest rates on obligations, interest on which is so tax exempt, historically have been, and can be expected at the time of issuance to be, 1½% to 2½% or more lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

The Series 1985 Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series 1985 Bonds will not be redeemable at the option of the City prior to a date of up to ten years subsequent to the first day of the month in which they are issued, except under certain circumstances and terms specified in the Supplemental Indenture or Indentures of Trust.

Four provisions in the terms of the Series 1985 Bonds to be issued by the City are being contemplated in order to reduce the effective interest cost to the City on the obligations. Three of the alternatives contemplated a form of credit enhancement to assure the repayment of principal and interest to bondholders. This arrangement would be effected (a) by a guaranty by AEP, (b) by a letter of credit to be issued by a commercial bank or (c) through a consortium of insurance companies. The fee for arrangements (b) and (c) would be paid by AEGCO. Under the fourth alternative, the City would issue the Series 1985 Bonds with an interest rate which would be adjusted periodically in accordance with changes in some other lending rate such as that on United States government securities or the prime lending rate, or with an interest rate which would be fixed for an initial period with the option on the part of the bondholder to convert to such an adjusted rate on one or more subsequent occasions.

In the event the Series 1985 Bonds are issued with an adjustable or "floating" rate, AEGCO may, subsequent to their issue, enter contractual arrangements, generally referred to as "interest rate swaps", with one or more commercial banks or counter-parties pursuant to which AEGCO would agree to make payments of interest at a fixed rate based on a principal amount of the bonds, in return for such banks' or counter-parties' agreement to make payments to AEGCO based upon the same principal amount at a floating interest rate which may approximate the rate payable by AEGCO with respect to the bonds. The fixed rate to be paid by AEGCO would be a rate based on a fixed term obligation maturing not later than the maturity date of the bonds, but in no case greater than 10% per annum.

The application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–12005 Filed 5–16–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23680; 70-7106]

Columbia Gas Transmission Corp. and the Columbia Gas System, Inc.; Proposed Intrasystem and Bank Financing by Subsidiary Company

May 13, 1985.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue SE., Charleston, West Viriginia 25314, have filed an application-declaration with this Commission pursuant to sections 6(a) 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Transmission is a wholly owned subsidiary of Columbia engaged in the business of producing, purchasing, transporting, storing, and selling natural gas at wholesale in interstate commerce. As an interstate transporter of natural gas, Transmission is subject to regulation by the Federal Energy Regulatory Commission ("FERC"). Transmission has been burdened with marketing problems due to contract obligations to purchase quantities of gas at prices which exceed that which the market can accept. These problems have resulted in major contingent liabilities in two areas. The recent proposed resolution of the liability in one area, the purchased gas adjustment ("PGA") proceedings pending before FERC ("FERC Settlement"), is expected to reduce Transmission's revenues by up to $1 billion for a two-year period commencing April 1, 1985. Transmission expects FERC approval of the settlement. Settlement of the other major

area of liability, Transmission's exposure on contracts with producers, will produce an immediate impact upon Transmission of substantial magnitude but mitigate the cost of the FERC Settlement. It is stated that these settlements are necessary to assure Transmission's viability as a going concern and that unless Transmission can reach a satisfactory producer settlement, it will be subject to contractual obligations for gas purchases which would yield continual substantial losses far in excess of the ability of that company to sustain.

Settlements have been reached with the pipeline suppliers ("Pipeline Settlements") under which Transmission has agreed to pay the suppliers' fixed costs for purchases below minimum bill levels and to advance to the suppliers Transmission's allocable share of take or pay payments made by the pipeline suppliers in connection with Transmission's reduced purchases, with such advances to be repaid to Transmission as the pipeline suppliers work their way out of their take or pay situation.

Transmission's financial condition is of immediate and vital concern to Columbia. As of December 31, 1984, Columbia had over $1.3 billion invested in Transmission. The Board of Directors of Columbia has determined that if the contract obligations with producers can be reformed in exchange for cash payments, Columbia will provide the estimated additional funding necessary. However, not only until such time as those contracts can be reformed but also until Transmission is no longer faced with continuing losses, Columbia has determined that the protection of its investors requires that additional capital only be provided to Transmission on a secured basis.

To finance Transmission's needs in the critical period to come while protecting Columbia's investors and Transmission's customers to the maximum extent possible, Columbia requests Commission authorization for the following proposals:

1. To finance Transmission's inventory of gas stored for sale in winter months, Transmission proposes to issue and sell to Columbia, and Columbia proposes to acquire, an Inventory Financing Note, secured by Transmission's gas in storage. Under the Note, Columbia may advance during each of the years 1985 and 1986 up to $450 million to Transmission during the storage injection period. Repayment, with interest at Columbia's cost of funds, will be no later than April 30 of the year following the advance. Customer prepayments for winter service gas will also be secured by gas in storage.

2. To provide part of the financing for Transmission's operations during the next few years, Transmission proposes to sell interests in the proceeds of production from certain proved reserves ("Production Payments") to a commercial bank group in an amount of up to $400 million. The terms and conditions are to be filed by amendment.

3. To provide the remaining amount of financing for Transmission's operations in the next few years, Transmission proposes to issue and sell to Columbia two series of First Mortgage Bonds aggregating up to $350 million secured by a first lien on all of Transmission's assets, with certain exceptions. Series A Revolving Credit Bonds would permit Columbia to fund Transmission's short-term financing needs (other than for inventory purchases), and Series B Bonds would permit funding of Transmission's longer-term financing needs. The terms and conditions of this financing are to be filed by amendment.

4. Transmission is also investigating the possibility of direct bank financing of up to $70 million for its allocable share of take or pay payments made and to be made by Transmission's pipeline suppliers to their producers. These payments are required to be made by Transmission under its Pipeline Settlements. To date, $24 million of such payments (net of amounts previously recovered in rates) have been made to transmission's pipeline suppliers, and it is estimated that an additional $40 million will be paid in 1985. Transmission's maximum additional exposure for such take or pay payments under the terms of the Pipeline Settlements is estimated at $320 million. Under the terms of the Pipeline Settlements, the companies receiving the take or pay payments are obligated to repay Transmission as gas is recouped from producers or when it is determined that such amounts are not recoupable. Direct bank financing of these take or pay amounts by Transmission would rely for partial credit support on the other pipelines' obligations to repay these amounts. Further information of this proposed transaction is to be filed by amendment.

5. Emerging from the winter heating season, Transmission generates substantial amounts of cash in excess of current requirements.

As well, there are considerable fluctuations in Transmission's aggregate daily cash flow on a day-to-day basis during each month due to normal receipt and disbursement patterns. transmission proposes from time to time during 1985 and 1986, temporarily to prepay outstanding Installment Promissory Notes issued prior to 1985 with excess cash in amounts not to exceed the aggregate amounts of such notes. The Installment Promissory Notes prepaid by Transmission will be those bearing the highest interest rate outstanding at the time of each prepayment. Interest on such indebtedness will cease upon prepayment and recommence upon reinstatement. As such funds are thereafter required for construction and other corporate purposes, it is proposed that advances be made on open account to transmission by Columbia in such aggregate amounts not to exceed the amount of long-term indebtedness previously prepaid, less any current maturities applicable to Installment Promissory Notes which have matured subsequent to the date of prepayment. Either at such time as the advances equal the aggregate amount of the indebtedness prepaid, or, in any event, not later than December 31, 1986, the indebtedness that was prepaid will be reinstated and accepted by Columbia in repayment of the outstanding open account advances. These procedures are designed to permit the effective utilization of Transmission's temporary excess funds at all times.

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 6, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-12003 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23689; 70-6458]

Indiana & Michigan Electric Co.; Proposal To Finance Pollution Control Facilities

May 13, 1985.

Indiana & Michigan Electric Company ("I&ME"), One Summit Square, Fort Wayne, Indiana 46801, a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has proposed a transaction with this Commission subject to sections 6, 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 thereunder.

By order dated June 11, 1980 (HCAR No. 21618), the Commission authorized I&ME to dispose of and acquire certain pollution control systems ("Project") at its Rockport Generating Station ("Plant"), under construction near the City of Rockport in Spencer County, Indiana ("City") to comply with prescribed environmental control standards of the State of Indiana. I&ME's disposition and acquisition was undertaken pursuant to a June 1, 1980 Agreement of Sale (now "1984 Agreement") with the City, and in connection with the issuance by the City of pollution control revenue bonds in the amount of $40 million to finance the Project (HCAR No. 21642, June 25, 1980). This represented a portion of I&ME's then estimated cost of $150 million, for its 50% share obligation for the Project shared with AEP Generating Company also a subsidiary of AEP (HCAR No. 23399, August 17, 1984).

It is now proposed by Post-Effective Amendment No. 9 that the City will issue and sell one or more additional series of bonds in a principal amount of up to $160 million ("Series 1985 Bonds") to cover a portion of the cost of construction of the Project now estimated to be $200 million, and to refund outstanding short-term 1984 Series A Bonds in the principal amount of $110 million. The proceeds of the sale of the Series 1985 Bonds will be deposited by the City with the Trustee, under the 1984 Indenture between the City and such Trustee, to be amended by one or more Supplemental Indentures, pursuant to which the Series 1985 Bonds are to be issued and secured.

The Series 1985 Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series 1985 Bonds will not be redeemable at the option of the City prior to a date of up to ten years subsequent to the first day of the month in which the Series 1985 Bonds are issued, except under certain circumstances. The Series 1985 Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Supplemental Indenture or Indentures of Trust.

Proceeds received by I&ME in reimbursement of its cost of construction of the Project are to be applied to the payment of maturing long-term debt and outstanding bank loans of I&ME and for construction and other corporate purposes. At March 31, 1985, no such bank loans were outstanding.

It is contemplated that the Series 1985 Bonds will be sold by the City pursuant to arrangements with an underwriter or a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series 1985 Bonds will be fixed by or on behalf of the common council of the City. While I&ME will not be a party to the underwriting arrangement for the Series 1985 Bonds, the 1984 Agreement provides that the terms of Series 1985 Bonds and their sale by the City shall be satisfactory to I&ME. I&ME understands that interest on the Series 1985 Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954, as amended. It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Series 1985 Bonds. However, I&ME has been advised that, depending on maturity and other factors, the annual interest rates on obligations, interest on which is tax exempt, historically have been and can be expected at the time of issuance of the Series 1985 Bonds to be 1½ percent to 2½ percent lower than the rate of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

Three provisions in the terms of the Series 1985 Bonds to be issued by the City are being contemplated in order to reduce the effective interest cost to the City on the obligations. Two of the alternatives contemplate a form of credit enhancement to assure the repayment of principal and interest to bondholders. This arrangement would be effected either by a letter of credit to be issued by a commerical bank or through a consortium of insurance companies. The fee for such arrangement would be paid by I&ME. Under the third alternative, the City would issue the Series 1985 Bonds with an interest rate which would be adjusted periodically in accordance with changes in some other lending rate such as that on United States government securities or the prime lending rate, or with an interest rate which would be fixed for an initial period with the option on the part of the bondholder to convert to such an adjusted rate on one or more subsequent occasions.

In the event the Series 1985 Bonds are issued with an adjustable or "floating" rate, I&ME may, subsequent to their issue, enter contractual arrangements, generally referred to as "interest rate swaps", with one or more commercial banks or counter-parties which I&ME would agree to make payments of interest at a fixed rate based on a principal amount of the Series 1985 Bonds, in return for such banks' or counter parties' agreement to make payments to I&ME based upon the same principal amount at a floating interest rate which may approximate the rate payable by I&ME with respect to the Series 1985 Bonds. The fixed rate to be paid by I&ME would be a rate based on a fixed term obligation maturing not later than the maturity date of the Series 1985 Bonds, but in no case greater than 10% per annum.

The application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application declaration, as now filed or as it may be amended, be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

FR Doc. 85-12004 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23682; 70-7108]

Atlee M. Kohl; Proposed Acquisition of Securities of Public Utility Company

May 7, 1985.

Atlee M. Kohl ("Kohl"), 3007 Skyway Circle North, Irving, Texas 75039, has filed an application with this

Commission pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Applicant, an individual, presently holds with power to vote, directly or through family trusts, 8.6% of the voting securities of Chesapeake Utilities Corporation ("Chesapeake"), a Delaware corporation and a "gas utility company" as defined in section 2(a)(4) of the Act and 9.9% of the voting securities of Florida Public Utilities Company ("FPU"), a Florida Corporation which is an "electric utility company" as defined in section 2(a)(3) and a "gas utility company" as defined in section 2(a)(4) of the Act. Applicant also holds with power to vote, directly or through family trusts, 4.8% of the voting securities of Southwestern Electric Service Company ("Southwestern"), a Texas corporation, and an "electric utility company" as defined in section 2(a)(3) of the Act. Kohl has applied for authorization under sections 9(a)(2) and 10 to acquire, directly or indirectly, additional common shares of Southwestern such that he will thereby become an "affiliate" of Southwestern under section 2(a)(11)(A) of the Act.

Chesapeake distributes natural gas in the Southern Delaware and the Salisbury, Maryland areas. Eastern Shore Natural Gas Company ("Eastern"), a wholly-owned subsidiary of Chesapeake, is an interstate pipeline which buys gas from Transcontinental Gas Pipe Line Corporation at two points in Pennsylvania, serving this gas to utility and industrial customers in Southern Delaware and the Eastern Shore of Maryland, as well as being the primary source of supply for Chesapeake. Dover Exploration Company ("Dover"), a wholly-owned subsidiary of Eastern, is engaged in gas and oil exploration ventures primarily in the Southwestern United States; it also brokers small amounts of natural gas. Eastern has two other subsidiaries, Skipjack, Inc. which owns one of Chesapeake's business offices and Sharpgas, Inc. (formerly Baygas, Inc.) which distributes propane to approximately 4,300 residential and small commercial customers generally in Delaware and Maryland. Eastern and its subsidiaries are all Delaware corporations. At December 31, 1984, Chesapeake had utility plant of $26,964,837 and for the twelve months ending December 31, 1984 it had a consolidated net income of $3,001,920.

FPU renders electric, natural gas, water and propane bottled gas service to consumers in Florida. FPU is comprised of five divisions: (1) West Palm Beach located in Southeast Florida serves natural gas to 20,290 customers and propane bottled gas to 6,092 customers; (2) Marianna is located in the Florida Panhandle and provides electricity to 9,597 customers; (3) Fernandina Beach is located in the extreme Northeast portion of Florida and serves 7,759 electric customers and 3,646 water customers; (4) Sanford is located in the Mid-Central part of the State and serves 4,965 natural gas customers and 924 propane bottled gas customers; and (5) DeLand, also located in Mid-Central Florida, provides service to 2,473 natural gas customers and 1,327 bottle propane customers. Utility plant at December 31, 1984 was $47,913,806 and its net income for the twelve months ending December 31, 1984, was $1,493,698.

Southwestern is engaged primarily in the purchase, transmission, distribution and sale of electric energy. All electricity is purchased from another utility under firm contract totalling 315,000 KW and extending to 1996. The areas served are two non-connected groups of communities in East and Central Texas of approximately 3,500 square miles with an estimated population of 120,000. At December 31, 1984 its utility plant was $58,107,000 and for the twelve months ending December 31, 1984 its net income was $2,581,000.

Applicant states that the proposed acquisition of additional Southwestern shares to result in an aggregate 5% holding (approximately 843 shares) would be effectuated through: (i) An open market purchase or purchases at prevailing market prices; (ii) a private purchase or purchases at negotiated prices; or (iii) any combination of the foregoing transactions. Subsequent acquisitions would be made similarly to the extent such acquisitions were deemed appropriate by Kohl, however, he will not directly or indirectly acquire Southwestern common stock in such amounts that he will directly or indirectly own more than 10% of the outstanding common stock of Southwestern without seeking further Commission approval.

The application is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 31, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–11955 Filed 5–16–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–23687; 70–6906]

Middle South Utilities, Inc., Middle South Energy, Inc., Extension of Time Period in Which To Issue and Sell Common Stock

May 13, 1985.

Middle South Utilities, Inc. ("MSU"), a registered holding company, and its wholly owned subsidiary Middle South Energy, Inc., 225 Basonne Street, New Orleans, Louisiana, 70112, have filed a post-effective amendment to their application-declaration subject to sections 6(a), 7, 9(a), 10, and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 thereunder.

On January 23, 1985 (HCAR No. 23579) this Commission authorized MSE to issue and sell to MSU, and MSU was authorized to purchase, from time to time through July 31, 1985, up to 160,000 additional shares of MSE's authorized but unissued common stock, no par value ("Additional Shares"). As of March 31, 1985, MSE had not sold any shares of the Additional Shares to MSU.

Based upon MSE's revised estimate of cash requirements for the remainder of 1985 and through July 31, 1986, it may be necessary for MSE to issue and sell the Additional Shares to MSU during the remainder of 1985 and through July 31, 1986. MSE requests authority for an extension of the period, through July 31, 1986 during which MSE may issue and sell from time to time and MSU may purchase, not in excess of 160,00 shares of the Additional Shares at a price of $1,000 per share for an aggregate cash purcahse price of $160,000. MSE will apply the proceeds of the sale of the Additional Shares to costs incurred in connection with the Grand Gulf Project.

The application-declaration is available for public inspection through The Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 6,

1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued int his matter. After said date, the amended application-declaration, as now filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11957 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22034; File ST-NASD-85-4]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Schedule C of the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1985, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the definition of "representative" in Schedule C of the By-Laws to include persons who are employed by certain non-broker/dealer organizations and who perform activities on behalf of members similar to those performed by registered representatives. The effect of the amendment will be to make explicit the requirement that members register such persons as representatives and thereby bring them under regulation comparable to the regulation to which registered representatives of members presently are subject.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under existing Schedule C, persons whose responsibilities include soliciting and accepting orders, recommending securities to customers, or providing investment advice resulting in securities transactions must be registered before being permitted by a member to engage in such activities. These persons are in fact, persons associated with members. The definition of "representative" in Schedule C covers persons who are engaged in the investment banking and securities business "for the member" including the functions of "solicitation of conduct of business in securities." The definition, however, has been traditionally applied only to employees and other natural persons who are directly compensated by the member for such activities.

The proposed rule change would explicity extend the coverage of Schedule C to apply to certain persons who, if they were employees of a member, would clearly fall within the definition of representative because of the activities they perform. The securities activities of banks, savings and loan associations and certain other organizations have expanded over the past few years. In addition, the relationship between NASD members and these institutions has assumed a different direction. There have traditionally been personnel within these institutions engaged in securities activities such as trust officers, traders, portfolio managers, investment and financial consultants, and investment officers. In the past, however, these institutions simply referred securities business to members which charged the institutions a commission or fee. The commissions or fees earned by members from this referred business were not shared by the members with the institutions.

The NASD understands that a number of banks, savings and loan associations, and other business organizations have recently entered into contractual or other arrangements with members to refer the institution's customers to members for execution of securities transactions and in return for such business the members have agreed to compensate the institutions. This appears to be an increasing trend in the securities industry. In many cases the ability of institutions to provide brokerage services to their customers through these arrangements with members is actively promoted through advertising and publications. Although some personnel at the institutions appear to perform only clerical and ministerial functions, there do not appear to be any requirements to limit the ability of personnel to make recommendations or engage in other functions specified in the definition of "representative" in Schedule C to the By-Laws. If such persons do make recommendations to customers, however, there is a question as to whether the registration requirements of Schedule C apply since they often receive no direct compensation from members even though the employer institution does.

The Association believes the public interest is not served by exempting from the registration requirements employees of organizations who are dealing with public customers in the same way in which registered representatives of members deal with the public. At the present time, these persons are not required to take qualification examinations and function outside the supervisory responsibilities which members are required to exercise over their other representatives. The Association is concerned that the lack of any formal qualification standards, supervision and individual accountability for misconduct may create conditions which unnecessarily may expose public customers to the risk of harm. The Association believes that in fact, these persons are associated persons of members and that unless registration is a requirement, it cannot fully carry out its statutory responsibility to prevent fraudulent acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

The proposal is intended to apply to persons who perform securities activities on behalf of members. It is thus limited to employees or other agents of organizations who have

entered into arrangements with members by which the activities of those persons actively further the securities business of the members. Further, the only non-broker/dealer persons who would come under the new definition of "representative" in proposed subsection (b)(ii) would be persons who receive compensation from members or whose employers receive compensation from members. The Association believes that its statutory duty to regulate its members is not fully implemented by allowing a situation where persons soliciting or receiving business for members are not required to take and pass qualification examinations and be subject to disciplinary action for violations of applicable requirements. The Association believes that if a person is soliciting or receiving business for a member and the member compensates the employer, the impact on the public interest is no less great than if the person is compensated directly by the member. The need for protection against unqualified persons which is achieved by examinations and accountability through disciplinary proceedings and member supervisory responsibility is no less important. Accordingly, the effect of the proposal is to require members to register such persons so that investors will receive equal protection under the Association's rules and the federal securities laws.

Under section 15A(b)(6) of the Securities Exchange Act of 1934 (the "Act"), the rules of a national securities association shall be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest." The Association believes the use by members of non-broker/dealer personnel to solicit customers and further the securities business of members presents the danger that such statutory goals will not be fully acheived without appropriate regulation by the Association. The effect of registration of these persons as envisioned by the proposed rule change will ensure that they are identified to the Association, as is presently the case with respect to other registered representatives, that they have met the same standards of training and competence established by the Association for other registered representatives, that they are subject to similar supervision as that provided for persons associated with members and that they will be subject to the jurisdiction of the Association and accountable for misconduct. As such, the proposed rule change is consistent with, and in furtherance of, the stated purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary in furtherance of the purposes of the Act. The proposed rule change will affect equally all members desiring to receive business through arrangements with non-broker/dealers. While the requirement to register, qualify and supervise persons may tend to impede the maintenance and creation of these arrangements, these requirements are identical to those imposed on persons associated with members. Moreover, as discussed above, these requirements are necessary for the Association to fulfill its statutory responsibilities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In NASD Notice to Members 83–72, December 20, 1983, the Association solicited comments regarding the proposed amendment. Forty-six comment letters were received. Copies of the Notice to Members and the comment letters have been submitted to the Commission as Exhibit 2 to this filing.

Sixteen of the commentators generally approved of the proposal while others raised specific objections. Some commentators discussed the Association's statutory authority to adopt this rule change, the impact of the proposed rule change on a member's supervisory responsibilities and the effect of the proposed rule change on competition. Other commentators proposed technical amendments and others urged the Association to defer action until the Commission had acted on proposed Exchange Act Rule 3b–9. The Association's Board of Governors considered all of these comments in connection with its final action on the Rule and the Association has provided a response to all comments in the filing with the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Specifically, the Commission requests comments on the statutory authority of the NASD to adopt this proposal, the similarity of issues raised by this proposal, and the Commission's proposed Rule 3b–9 [1] under the Act and the extent to which comments that the Commission has received on the Rule are relevant to this proposal.

With respect to the NASD's authority to adopt the proposal, the Commission specifically requests comment on the applicability of several statutory provisions. First, section 15A(b)(2) of the Act requires the NASD to adopt rules to ensure that its members and persons associated with a member comply with the federal securities laws and the NASD's rules. In this regard, section 3(a)(21) of the Act defines the term "person associated with a member," ("associated person") to mean "any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member."

The NASD, in its filing, indicates that the statutory definition of an associated person encompasses persons who solicit or receive business for a member and receive compensation for such services or whose employers receive compensation from members. The NASD states that by using the word "control" in section 3(a)(21) of the Act, Congress did not limit the definition to include only the degree of control necessary to establish the common law relationships of principal—agent or employer—employee. Rather, the NASD believes the protection of investors and other purposes of the Act require a broader reading of that term if the Act's purposes are to be achieved. The NASD reasons, therefore, that the concept of control should be construed as meaning the ability to influence, to a significant extent, the relevant activities of another person.

The NASD continues that a member has such influence in any arrangement

[1] Published for comment in Securities Exchange Act Release No. 20357 (November 8, 1983). 48 FR 51830 (November 15, 1983).

where persons solicit and receive business for the member and are paid compensation by the member for such services or their employers receive compensation. For example, under many arrangements, especially between a bank and a member, the NASD states that the member will provide for other organization with compliance manuals and will train the organization's employees to carry out the arrangement. In addition, such arrangements often provide that the member shall have the authority to reject any account being referred, to establish the terms, conditions and operations of any margin account, to instruct the organization in obtaining margin or maintenance calls, to establish the type of new account information the organization must obtain before referring a customer, and to establish the terms of discretionary accounts if the member agrees to accept such accounts. The NASD believes that this amount of influence, in addition to other examples of the member's control, is sufficient to satisfy the control requirement of section 3(a)(21) of the Act. The NASD concludes, therefore, that it has the authority to regulate persons who solicit or receive business for a member for compensation.

Second, as previously discussed in section II(a), the NASD cites section 15A(b)(6) of the Act as support for its statutory authority to adopt this proposal. That section of the Act charges the NASD to adopt rules that will prevent fraudulent practices and protect the investing public.

Finally, the Commission requests comment on the interrelationship between this proposal and the currently pending proposed Commisson Rule 3b-9. The proposed Rule 3b-9 would render the bank exclusion from broker-dealer registration in sections 3(a)(4) and 3(a)(5) unavailable to a bank that: (1) Publicly solicits brokerage business unless it meets certain specified exceptions; (ii) receives transaction—related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank provides investment advice; or (iii) deals in or underwrites securities. The Commission is continuing its review of proposed Rule 3b-9.

Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30(a)(12).

John Wheeler,
Secretary.

[FR Doc. 85-11956 Filed 5-16-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Order 85-5-59; Docket 42597]

Application of Skystar International, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting Skystar International, a certificate to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than June 3, 1985.

ADDRESSES: Responses should be filed in Docket 42597 and addressed to the Office of Documentary Service, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Thomas F. Mahoney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-59 is available from our Documentary Service Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85-5-59 to that address.

Dated: May 13, 1985.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-11971 Filed 5-16-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amdt. to Dept. Circ. Public Debt Series—No. 29-84]

Treasury Bonds of 2004

May 7, 1985.

Department of the Treasury Circular, Public Debt Series—No. 29-84, dated October 5, 1984, as amended and supplemented, descriptive of 115/8% Treasury Bonds of 2004, hereafter referred to as Bonds, is hereby amended effective May 17, 1985.

The following section and subsections in the original circular dated October 5, 1984, are hereby redesignated:

From 2.5 to 2.6.
From 6. to 7.
From 6.1 to 7.1.
From 6.2. to 7.2.

In addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.5. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1 through 2.4 of this section are descriptive of Bonds in their fully constituted from; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: Each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component).

Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $1,600,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on November 15, 2004.

6.5 Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of November 15, 2004, CUSIP No. 912810 DM 7

The Principal Component is designated 11⅝% Treasury Principal (TPRN) 2004 due November 15, 2004, CUSIP No. 912803 AB 9.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. [illegible]
Treasury Interest (TINT) 2004 Due		Treasury Interest (TINT) 2004 Due	
Nov. 15, 1985	HC 7	Nov. 15, 1995	HY 9
May 15, 1986	HD 5	May 15, 1996	HZ 6
Nov. 15, 1986	HE 3	Nov. 15, 1996	JA 9
May 15, 1987	HF 0	May 15, 1997	JB 7
Nov. 15, 1987	HG 8	Nov. 15, 1997	JC 5
May 15, 1988	[illegible]	May 15, 1998	JD 3
Nov. 15, 1988	HJ 2	Nov. 15, 1998	JE 1
May 15, 1989	HK 9	May 15, 1999	JF 8
Nov. 15, 1989	HL 7	Nov. 15, 1999	JG 6
May 15, 1990	HM 5	May 15, 2000	JH 4
Nov. 15, 1990	HN 3	Nov. 15, 2000	JJ 0
May 15, 1991	HP 8	May 15, 2001	JK 7
Nov. 15, 1991	HQ 6	Nov. 15, 2001	JL 5
May 15, 1992	HR 4	May 15, 2002	JM 3
Nov. 15, 1992	HS 2	Nov. 15, 2002	JN 1
May 15, 1993	HT 0	May 15, 2003	JP 6
Nov. 15, 1993	HU 7	Nov. 15, 2003	JQ 4
May 15, 1994	HV 5	May 15, 1904	JR 2
Nov. 15, 1994	HW 3	Nov. 15, 1904	JS 0
May 15, 1995	HX 1		

[FR Doc. 85-11932 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No. 12-85]

Treasury Notes; Series S-1988

May 8, 1985.

The Secretary announced on May 7, 1985, that the interest rate on the notes designated Series S-1988, described in Department Circular—Public Debt Series—No. 12-85 dated May 1, 1985, will be 10 percent. Interest on the notes will be payable at the rate of 10 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-11931 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No. 13-85]

Treasury Notes; Series B-1995

May 9, 1985.

The Secretary announced on May 8, 1985, that the interest rate on the notes designated Series B-1995, described in Department Circular—Public Debt Series—No. 13-85 dated May 1, 1985, will be 11¼ percent. Interest on the notes will be payable at the rate of 11¼ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-11930 Filed 5-16-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 85-88]

Customhouse Broker's License—Cancellation of Customhouse Broker's License No. 5081

Notice is hereby given that the Commissioner of Customs, on May 13, 1985, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part III of the Customs Regulations, as amended (19 CFR Part III), cancelled with prejudice the individual customhouse broker's license No. 5081 issued to Michael Alan Baker, Los Angeles, California, on November 14, 1974, for the Customs District of Los Angeles, California. The decision is effective as of May 13, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-11986 Filed 5-16-85; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue NW, Washington, DC on June 13 and 14, 1985. Both meetings will begin at 9 a.m. and adjourn at 4 p.m. However, the morning session on June 13 will be held in Room 1012 from 9 a.m. to 11:30 a.m.

Both meetings will be open to the public to the seating capacity of the conference room. Anyone having questions concerning meetings may contact Mr. Edward Lord, Associate Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, 202/389-5410/5419.

Dated: May 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11980 Filed 5-16-85; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Board; Availability of Annual Reports

Notice is hereby given that the Annual Reports of the Veterans Administration Medical Research Service Merit Review Boards for Calendar Year 1984 have been issued.

The reports summarize activities of the Boards on matters related to the review, discussion, and evaluation of individual investigator initiated medical research projects. They are available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Medical Research Service Program Review Division (151D), Room 755, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11981 Filed 5-16-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 96
Friday, May 17, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FARM CREDIT ADMINISTRATION

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of June 1985, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia, on June 3, 1985, 8:30 a.m. to 4:30 p.m.; June 4, 1985, 8:30 a.m. to 4:30 p.m.; and June 5, 1985, 8:30 a.m. to 12:00 Noon.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Monday, June 3, 1985

1. Executive Session [1]
2. Approval of Minutes
3. Review of Agenda
4. Reports of Board Members
5. Governor's Report
   (a) Report on FFCB Appointments
   (b) Senior Deputy Governor Selection
   (c) Status of Litigation Cases Involving FCA [2]
6. Progress Report on Federal Board's Leadership Agenda
7. Regulation Changes

Final

Part 611—Liquidation of Banks and Associations

Proposed

Part 620—Disclosure to Shareholders Requirements
Part 621—Accounting and Reporting Requirements
Section 250—Official Records of the Farm Credit Administration
Section 1150—Incorporation of Service Organizations
Section 5150—Real and Personal Property

Tuesday, June 4

8. Office of Examination and Supervision Report
   (a) Status Report on Serious Problem Banks [3]
   (b) FCA Supervisory Reports [3]
   (c) System Liquidity and the Systemwide Reserve Fund [3]
   (d) Salary Proposal for Funding Corporation CEO [4]
   (e) Status Report on BC International Financing
   (f) Alternatives for Pricing Bank CEO Positions
9. Office of Administration Report
   (a) Report on FCA Assessment Formula Review and Recommendation
   (b) Legislative Report
   (c) Economic Report
   (d) FCA Budget
      (1) Report on Automation
      (2) Budget Performance Report

Wednesday, June 5

10. FCS Building Association
11. Other Items

Dated: May 15, 1985.

Larry H. Bacon,

Acting Governor, Farm Credit Administration.

[FR Doc. 85-12117 Filed 5-15-85; 3:27 pm]

BILLING CODE 6705-01-M

[1] Closed Session—exempt pursuant to 5 U.S.C. 522b(c)(2).

[2] Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(10).

[3] Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

[4] Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(6).

2

SECURITIES AND EXCHANGE COMMISSION.

Federal Register citation of previous announcement: May 10, 1985, 50 FR 20520.

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 15, 1985.

CHANGE IN THE MEETING: Additional meeting/items.

The following item will be considered at a closed meeting scheduled for Monday, May 20, 1985, at 9:00 a.m.

Regulatory matter regarding financial institution.

The following item will be considered at an open meeting scheduled for Monday, May 20, 1985, at 1:00 p.m.

The Commission will hear statements from individuals regarding current tender offer practices and may discuss its 1984 tender offer legislative proposal. For further information, please contact David B.H. Martin, Jr. at (202) 272-2014.

The following item will be considered at an open meeting scheduled for Tuesday, May 21, 1985, at 9:00 a.m.

Consideration of whether to approve or disapprove proposals by the Chicago Board Options Exchange, Incorporated ("CBOE") which would increase the representation of floor members on the CBOE Board of Directors and allow CBOE members to elect the Executive Committee Chairman. For further information, please contact Holly Halsey Smith at (202) 272-2371.

(For additional open meeting scheduled for 9:30 a.m. this date, see 50 FR 20520.)

Commissioner Marinaccio, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission Priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Barry Mehlman at (202) 272-2648.

John Wheeler,

Secretary.

May 15, 1985.

[FR Doc. 85-12161 Filed 5-15-85; 11:28 am]

BILLING CODE 8010-01-M

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TENNESSEE VALLEY AUTHORITY (Meeting No. 1350)

TIME AND DATE: 10:15 a.m. EDT, Tuesday, May 21, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 8, 1985.

Discussion Items

1. Tennessee River Gorge Project

Action Items

A—Budget and Financing

A1. Adoption of supplemental resolution authorizing 1985 Series C power bonds.

A2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1985 Series C power bonds.

A3. Amendment to fiscal year 1985 capital budget financed from Power revenues and capital budget financed from Appropriations.

B—Purchase Awards

B1. Invitation 34-963512—Coal reclaim facility including installation for Cumberland Fossil Plant.

B2. Requisition 96—Spot coal for Johnsonville Steam Plant.[1]

C—Power Items

C1. Renewal power contract with Benton, Kentucky.

C2. Agreement with Big Rivers Electric Corporation covering arrangements for wheeling of long-term firm power and energy.

D—Personal Items

D1. Supplement to personal services contract with Wyle Laboratories, Huntsville, Alabama, providing to TVA engineering and testing support as needed for the environmental qualification assessment of safety-related equipment at Browns Ferry and Sequoyah Nuclear Plants; requested by Power and Engineering.

E—Real Property Transactions

E1. Land exchange and sale affecting Fontana Reservoir land transferred by TVA to U.S. Department of Agriculture for the use and benefit of the Forest Service as part of the Nantahala National Forest—Tract No. XTFR-3.

E2. Sale of permanent easement to Russell A. Hughes affecting approximately 0.14 acre of Chatuge Reservoir land in Clay County, North Carolina, for a road right of way—Tract No. XCHR-74H.

E3. Grant of permanent easement to Watts Bar Utility District for construction, operation, and maintenance of a public water supply system affecting 8.1 acres of Watts Bar Reservoir land in Rhea County, Tennessee—Tract No. XTWBR-131WS.

F—Unclassified

F1. Agreement between TVA and Knoxville Utilities Board to allow TVA to assist KUB by providing mapping services.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 14, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-12056 Filed 5-15-85; 2:37 pm]

BILLING CODE 8120-01-M

[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Friday
May 17, 1985

Part II

Environmental Protection Agency

40 CFR Part 790

Toxic Substances Test Rule Development and Exemption Procedures; Final Rule

40 CFR Part 799

Identification of Specific Chemical Substance and Mixture Testing Requirements; Final Rule

40 CFR Parts 798 and 799

2-Ethylhexanoic Acid; Proposed Test Rule

40 CFR Part 799

Bisphenol A; Proposed Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 790

[OPTS-42052A; TSH-FRL 2809-7]

Toxic Substances; Test Rule Development and Exemption Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is amending the procedural rule, published in the **Federal Register** of October 10, 1984 (49 FR 39774), describing a two-phase rulemaking process it would use to develop certain test rules under section 4(a) of the Toxic Substances Control Act (TSCA) and to grant exemptions from those test rules under section 4(c) of TSCA. EPA is amending that rule by describing an alternative single-phase rulemaking process it will use in most cases to develop test rules under section 4(a) of TSCA and to grant exemptions from those test rules. This rule describes the procedures which persons subject to those test rules must follow.

DATES: Effective on June 17, 1985. Submit written comments on or before July 16, 1985.

ADDRESS: Submit written comments identified by the document control number (OPTS-42052A) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460; Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the United States: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This rule amends a procedural rule, published in the **Federal Register** of October 10, 1984 (49 FR 39774), by prescribing an alternative process EPA will use to develop test rules under section 4 of TSCA and to grant exemptions from those test rules.

I. Statutory Background

Section 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.;* 15 U.S.C 2601 *et seq.*) authorizes EPA to promulgate rules requiring testing of chemical substances and mixtures to develop data relevant to determining the risks that those chemicals may present to health or the environment.

Section 4(b) of TSCA requires that each section 4(a) test rule identify the chemical substance or mixture for which testing is being required, provide standards for the development of test data, and specify deadlines for the submission of test data. The standards are to prescribe: (1) The health and environmental effects, and information relating to toxicity, persistence, and other characteristics which affect health and the environment for which test data are to be developed, and (2) to the extent necessary to assure development of adequate and reliable data, the manner in which the data are to be developed, the test protocol or methodology to be employed, and such other requirements as are necessary to provide such assurance (TSCA section 3(12)(B)).

The responsibility for required testing is borne jointly by all manufacturers (including importers) and/or processors of the subject chemical, depending on which activities give rise to the testing requirement (TSCA section 4(b)(3)(B)). Manufacturers or processors required by rule to sponsor testing may do so either individually or jointly through formation of a testing consortium (TSCA section 4(b)(3)(A)). The test sponsors must conduct the testing according to the standards provided in the test rule.

Alternatively, manufacturers and/or processors required by rule to test may choose to apply for a testing exemption under TSCA section 4(c) based on the belief that the required testing will be performed by another person subject to the rule. To approve an exemption application, EPA must find that: (1) The substance or mixture which the applicant manufacturers or processes is equivalent to the substance or mixture for which test data have been submitted or are being developed, and (2) data submitted by the applicant under a section 4 test rule would be duplicative of data already submitted or being developed pursuant to the rule (TSCA section 4(c)(2)).

II. Testing Standards and Test Rule Development

A. Prior Proposals and Rules

Under EPA's original approach to providing testing guidance, the Agency proposed to publish and codify in the Code of Federal Regulations (CFR), a number of model test methodologies. A number of proposed "test standards" for health effects were published in the **Federal Register** of May 9, 1979 (44 FR 27334) and on July 26, 1979 (44 FR 44054); similar proposed standards for chemical fate and ecological effects were published in the **Federal Register** of November 21, 1980 (45 FR 77332). The Agency planned to adopt such "test standards" or "generic methodology requirements" for all of the major types of tests which might be required under section 4 test rules. The Agency planned to incorporate by reference whichever of these test methodologies was appropriate for use in each chemical-specific test rule.

In response to comments that the codified testing standards approach would provide insufficient flexibility in test design, EPA proposed in the **Federal Register** of March 26, 1982 (47 FR 13012) a different approach for providing testing standards. In that notice, the Agency proposed to abandon the idea of codifying its approved generic test methodologies and to publish them as guidelines instead. It planned to make test rule development a two-phase process. In the first phase, EPA would establish by rule the effects and characteristics for which a given chemical must be tested and refer subject manufacturers and/or processors to suitable guidelines for how the testing should be performed. The subject firms would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests and including proposed schedules for initiation and completion of the testing and submission of test data. In the second phase, after consideration of public comment on the proposed study plans, the Agency would promulgate another rule adopting the study plans (reflecting any modifications deemed necessary by EPA to assure the development of reliable and adequate data) as test standards for the development of test data and deadlines for the submission of test data.

In the **Federal Register** of October 10, 1984 (49 FR 39774), EPA issued a procedural rule adopting this two-phase process for the development of certain test rules.

B. Change in Process for Adopting Test Standards

In December 1983, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. *NRDC and AFL-CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984). In an August 23, 1984 Opinion and Order, the Court found that

utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame. *NRDC and AFL–CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984).

Subsequent to the issuance of that Opinion, the Agency submitted papers to the Court which indicated that in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985. [Declaration of Don R. Clay, at 12 (September 24, 1984)]. In accordance with that commitment, the Agency is setting forth in this rule guidelines and procedures for utilization of single-phase rulemaking in the test rules program. The Agency is issuing these procedures as an interim final rule. The Agency will apply these procedures in the development of individual test rules. The Agency believes it is unnecessary to issue these specific procedures as a proposal because the Agency has received comment on the issues relating to these test rule development procedures in response to previous proposals (see Unit II.A above). Nevertheless, the Agency is providing an opportunity for public comment on this interim final rule in the event persons wish to provide comments on these specific procedures. If these comments result in a need for changes to the rule, EPA will modify the rule as appropriate.

Section 4(b)(1) of TSCA specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent OTS test guidelines(s) or other suitable test guideline(s) as the required test standard in the initial notice of proposed rulemaking, and EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modification to the OTS test guideline, i.e., the proposed test standard, during the public comment period, and such comment should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard. Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standard either the OTS test guideline or other suitable guidelines, a modified version of these guidelines, the alternative methodology submitted by commenters, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(5).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten the rulemaking period and expedite initiation of the required testing. Secondly, because the OTS test guidelines or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Yet, by allowing commenters to submit alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at a reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA will continue to utilize the two-phase process for rulemakings where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well-accepted test methodology is available for inclusion in a proposed test rule.

III. Exemptions

EPA issued a procedural rule, published in the **Federal Register** of October 10, 1984 (49 FR 39774), describing the process it would use to grant exemptions from test rules under section 4(c) of TSCA. EPA has not changed its approach to granting exemptions. According to the October 10, 1984 rule, each exemption applicant must submit an application establishing that the chemical for which the exemption is being sought is equivalent to the one being tested and that duplicative data would result from its testing. The Agency stated its belief that one properly designed and executed study will normally provide a sufficient basis for making a regulatory decision on a given characteristic or effect of a chemical and decided to consider all tests meeting its standards to be duplicative of each other as long as the substances being tested were equivalent. Therefore, if an exemption applicant establishes that its chemical is equivalent to a substance which is to be tested according to the standards described in the test rule, the Agency will accept the contention that testing of that applicant's chemical would yield duplicative data.

Where possible, EPA plans to select a single representative test substance and to consider all forms of the chemical "equivalent" to each other for exemption purposes. The selection is to involve, among other factors, consideration of the nature of the test, the various grades of the chemical on the market, the toxicity of the various components found in those different grades of the chemical, and the effects that various additives and impurities might have on the outcome of the testing. However, if it is necessary to require testing of two or more test substances, the Agency will require that each exemption applicant provide data to establish which test substance its chemical is to be considered equivalent to. EPA will provide guidance in each test rule concerning what data must be submitted to substantiate equivalence. For a more in-depth discussion of the Agency's interpretation of TSCA section 4(c), selection of test substance, and equivalency, the reader is directed to the **Federal Register** of October 10, 1984 (49 FR 39774).

Under the procedures issued October 10, 1984, if EPA found the applicant's chemical to be equivalent to one for which study plans had been submitted and approved, the Agency would grant a conditional exemption. Exemption applicants would be notified in a Phase II test rule or by certified mail that they have received conditional exemptions. All exemptions granted prior to completion of testing would be conditional upon the sponsor's proper completion of the required tests.

Because study plans are not required to be submitted for approval under single-phase rulemaking, EPA has incorporated the following procedure to accommodate the single-phase process. EPA will grant conditional exemptions under single-phase rulemaking following EPA's receipt of a letter of intent to conduct the required test rather than after receipt and approval of a study plan. Exemption applicants will be notified in a **Federal Register** notice or by certified mail that they have received conditional exemption. No changes have been made to the procedures for granting exemptions under two-phase rulemaking.

Unless otherwise indicated in the single-phase test rule, only manufacturers (including importers) will be expected to submit exemption applications or letters of intent to conduct testing. Normally, processors will share the testing costs with the manufacturer through the pricing mechanism. However, if the exposure or risk upon which the test rule is based is associated with processing as well as manufacturing or with other downstream activities (distribution in commerce, use, and disposal), and if manufacturers fail to submit letters of intent to conduct testing, the Agency will publish a notice in the **Federal Register** and call upon processors to submit letters of intent to conduct testing or exemption applications.

IV. Discussion of Final Rule Amendment

A. Single-Phase Test Rule Development

1. *Promulgation of a single-phase test rule.* Under single-phase rulemaking, the proposed test rule will discuss who should conduct testing (manufacturers or processors or both), the health and environmental effects or other characteristics for which testing will be required, appropriate Good Laboratory Practice requirements, OTS test guidelines or other test guidelines as proposed test standards, schedules for submission of test data, and the representative substance or substances to be tested. If more than one substance is to be tested, the proposed test rule will also give proposed instructions for showing equivalence.

The Agency will accept comment on its proposal for 60 days. An opportunity will also be provided for oral comment at a public meeting with EPA, if requested. Comments will be solicited on EPA's findings under section 4(a) of TSCA, on the particular health or environmental effects or other characteristics for which testing is proposed, on the test substance or substances proposed to be tested, on the proposed standards for the development of test data, and on the schedules for the submission of test data. Commenters may suggest alternative test methodologies or modifications to the OTS test guidelines, i.e., the proposed test standards. Such comments should state why the alternative methodology or modification is more suitable for the specific chemical substance than the EPA proposed test standards.

After considering public comments, including any oral comments, EPA will publish a final rule specifying the health and environmental effects and other characteristics for which data are required to be developed, standards for the development of test data, deadlines for the submission of data, the persons responsible for testing, the required test substance(s), and instructions for showing equivalence. The final rule will promulgate as the test standard either the OTS test guideline or other suitable guidelines, a modified version of these guidelines the alternative methodology submitted by commenters, or a modified version of the alternative methodology.

2. *Persons subject to single-phase test rule.* Each test rule will specify whether manufacturers, processors, or both are found under TSCA section 4(b)(3)(B) to be responsible for testing and submitting data on the subject chemical substance or mixture.

a. *Manufacturers only.* If testing is being required solely to allow evaluation of risks associated with manufacturing, only manufacturers of the chemical substance or mixture will be subject to the rule. Once the test rule is in effect, 44 days after publication in the **Federal Register,** each current manufacturer will have 30 days to submit, for each required test, either a letter of intent to conduct testing or an application for exemption. Each manufacturer who submits a letter of intent to conduct a specific test will be obligated to conduct testing and submit data.

b. *Processors only.* If the test rule's findings are based solely on exposure associated with processing, only processors will be subject to the rule. Each processor of the chemical substance or mixture will be required within 30 days of the effective date of the test rule to submit a letter of intent to conduct testing or an exemption application. Each processor who submit a letter of intent to conduct testing will be obligated to conduct testing and submit data.

c. *Both manufacturers and processors.* If testing is being required to allow evaluation of risks associated with manufacturing and processing, or with distribution in commerce, use, or disposal of the chemical, both manufacturers and processors will be subject to the rule. Although both manufacturers and processors are legally subject to the test rule in these circumstances, EPA expects that only manufacturers ordinarily will be required to submit letters of intent to conduct testing or exemption applications and to conduct testing and submit data. If manufacturers submit letters of intent to conduct testing and perform all the required tests, processors will not be required to submit letters of intent to conduct testing, to perform the testing, or to submit exemption applications. EPA will automatically grant such processors exemptions without requiring the submission of exemption applications.

It is expected that, in most cases, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the costs of testing. However, processors will be called upon to sponsor tests if manufacturers fail to do so, or may be required to provide reimbursement directly to those sponsoring this testing (See Data Reimbursement rule, 40 CFR 791.45).

Once the test rule is in effect, 44 days after publication in the **Federal Register,** each current manufacturer will have 30 days to submit, for each required test, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submits a letter of intent to perform a specific test will be obligated to perform that testing.

If no manufacturer submits a letter of intent to perform a particular test within the 30-day period, EPA will publish a notice in the **Federal Register** to notify all processors of the subject chemical. The notice will state that EPA has not received letters of intent to perform certain tests and that current processors will have 30 days to submit, for each test remaining, either a letter of intent to perform the test or an exemption application for that test. Each processor who submits a letter of intent to perform a specific test will be obligated to perform the testing.

If no manufacturer or processor submits a letter of intent to perform a particular test, EPA will notify all manufacturers and processors, either by letter or by notice in the **Federal Register,** that all exemption applications concerning that test will be denied and that beginning 30 days later all manufacturers and processors will be in violation of the rule unless a manufacturer or processor submits a letter of intent within that period to perform the tests.

d. *New manufacturers and processors.* Any person not manufacturing or processing the chemical at the time the rule goes into effect, or within the first 30 days after the rule goes into effect, who later begins manufacturing or processing before the end of the reimbursement period and who is subject to the rule, will be required to submit a letter of intent to conduct testing or an exemption application for each required test by the day the person begins manufacture or processing. If both manufacturers and processors are

subject to a rule, processors are not required to submit letters of intent or exemption applications unless EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain tests, in which case any person not processing the chemical at the time the rule goes into effect or within 30 days after the publication of the notice, who later begins processing before the end of the reimbursement period, will be required to submit a letter of intent to test or an exemption application for each test specified in the **Federal Register** notice by the day the person begins processing.

3. *Submission of letter of intent to conduct testing or exemption application.* Those subject to a single-phase test rule must either submit a letter of intent to perform testing, or request an exemption based on the belief that the test will be performed by another, for each of the tests required by the test rule. Persons subject to a test rule who do not submit a letter of intent to conduct testing or an exemption application will be in violation of the rule.

Letters of intent to conduct testing must specify which study or studies the respondent will sponsor and, if more than one representative form of the chemical is to be tested, which test substance will be used in each of those studies. For applicants participating in a testing consortium, the letter of intent to test must include the names and signatures of all consortium members and the identity of the primary spokesperson for the consortium. EPA will consider such notices as commitments to perform testing unless EPA agrees to the substitution of an exemption application in instances where more than one company indicates an intent to sponsor equivalent tests.

Exemption applications must list the test requirements for which an exemption is being sought and discuss the applicant's basis for believing that the tests will be performed by another party. If more than one representative substance is to be tested, the applicant must also state which test substance it believes its chemical to be equivalent to and support this assertion with the types of data called for in the test rule.

Under section 14(c) of TSCA, any person submitting data under the Act may assert a claim of confidentiality with regard to information afforded such protection under section 14(a) of TSCA. Section 14(b) severely limits confidentiality claims for health and safety data on chemicals subject to section 4 test rules. For a discussion of the Agency's policy and procedures concerning confidentiality aspects of its test rule and exemption process, the reader is directed to the **Federal Register** of October 10, 1984 (49 FR 39774).

4. *Submission of study plans.* Under single-phase rulemaking, EPA is requiring the submission of study plans no later than 30 days before the initiation of testing for each required test. EPA will not be approving study plans under single-phase rulemaking. The submission of study plan information is being required, however, to facilitate lab inspections and data audits to assure the Agency that testing which is being undertaken is reliable and adequate.

Study plans must contain:

(a) The identity of the test rule.

(b) The specific test requirements covered by the study plan.

(c) The names and addresses of the test sponsors, testing facilities, responsible administrative officials, project managers, and appropriate individual to contact for communications with EPA.

(d) Brief summaries of the training and experience of each testing facility professional involved in the study.

(e) Data on the chemical substance being tested.

(f) Study protocol.

(g) Schedule for initiation and completion of each test and for submission of interim progress and final reports to EPA.

B. Exemption Process for Single-Phase Test Rules

1. *Submission of exemption application.* Any person subject to a single-phase test rule may request an exemption from conducting any of the tests required under the test rule based on the belief that the test will be performed by another. Exemption applications must list the test requirements for which an exemption is being sought and discuss the applicant's basis for believing that the tests will be performed by another party. If more than one representative substance is to be tested, the applicant must also state which test substance it believes its chemical to be equivalent to and support this assertion with the types of data called for in the test rule.

2. *Evaluation of exemption applications.* EPA will examine exemption applications after their receipt to determine whether properly completed exemption applications have been received from all those not sponsoring testing or participating in a consortium sponsoring testing, and to evaluate equivalency claims. When a single representative substance is to be tested, all forms of the chemical will be considered equivalent to it, and the Agency will contact the applicant only if information is missing or unclear.

If two or more chemical substances are to be tested, equivalency claims will be assessed according to the criteria in the test rule. If the Agency finds an equivalency claim to be in error, or if information needed to make an equivalency determination is missing, the applicant wil be notified. If the equivalency claim is being questioned because supporting data are inadequate, the applicant will be given 15 days to provide explanatory information. If EPA finds the applicant's chemical equivalent to a different test substance than was claimed in its application, EPA will notify the applicant in writing and explain why.

3. *Approval of exemption applications.* Provided that the first condition for granting exemptions (equivalence to the test substance) has been satisfied, the second condition, i.e., duplicativeness of data, will be considered to have been met and conditional exemptions will be granted following EPA's receipt of a letter of intent to conduct that test. Exemption applicants will be notified by certified mail in a **Federal Register** notice that they have received conditional exemptions. The exemptions will be conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the specifications and schedules in the test rule. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively, i.e., on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions, the Agency must terminate the exemption, after an opportunity for hearing, if the test sponsor has not complied with the test rule.

4. *Appeal of exemption denials.* Persons whose exemption applications are denied will be notified by certified mail or by **Federal Register** notice and may appeal that denial. Appeals must be filed with EPA within 30 days of the receipt of the letter or publication of the **Federal Register** notice denying the exemption. Appeals should include a detailed explanation of why the applicant disagrees with EPA's decision. The applicant may request a hearing. EPA will notify applicants of its decision within 60 days after EPA receives the appeal or 60 days after the hearing if the request for a hearing is granted.

5. *Termination of conditional exemptions.* Exemptions granted prospectively are conditional. The Agency will terminate the exemption if

the test sponsor does not comply with the test rule. If EPA determines that one or more of the test requirements contained in a test rule has not been fully complied with because (a) data required by the rule were not submitted by the date specified in the rule, or (b) data were not generated according to the test standards or in accordance with EPA's Good Laboratory Practice requirements, EPA will notify holders of exemptions based on that testing by certified letter or **Federal Register** notice as to its basis for believing that the testing supporting the exemptions has not satisfied the test rule's requirements and of its intent to terminate those conditional exemptions.

Such exemption holders may file written comments concerning EPA's intent to terminate such exemptions and may request an opportunity for a hearing to refute EPA's tentative decision or may submit a letter of intent to conduct the required test. Comments, hearing requests and letters of intent to test must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice announcing the Agency's intent to terminate the exemptions. The comments and hearing requests should include a brief statement of the basis for the exemption holder's belief that the conditional exemption should not be terminated. If an exemption holder requests a hearing, a single hearing will be held by EPA to address the concerns of all conditional exemption holders objecting to the termination unless confidentiality claims preclude a joint hearing. Exemption holders will receive written notification of EPA's final decision whether the exemption will be terminated.

If the Agency finds it necessary to terminate conditional exemptions, it will notify the exemption holders to that effect, will explain the reason for the Agency's decision and will give instructions as to what actions the former exemption holders must take to avoid being found in violation of the test rule.

V. Rulemaking Record

EPA has established a public record for this rulemaking, docket number [OPTS-42052A], which contains the following information:

(1) **Federal Register** notices pertaining directly to this rule consisting of:

(a) Rule concerning two-phase test rule development and exemption procedures.

(b) Notice of proposed rule pertaining to exemptions.

(c) Proposed rule related notice describing changes in EPA's test standards policy and test rule development process.

(2) **Federal Register** notices related to this rule consisting of:

(a) Proposed health effects testing standards.

(b) Proposed chemical fate and ecological effects testing standards.

(c) Final rule concerning EPA's good laboratory practice standards.

(d) Final rule concerning data reimbursement.

(3) Comments pertaining to this rule.

This record, which includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices, is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule on test rule development and exemption application procedures is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The regulation is a procedural rule and will have virtually no effect on the economy. The rule describes the process EPA will use to develop test rules under section 4(a) of TSCA and to grant exemptions from those test rules under section 4(c) of TSCA. It will not cause price or cost increases to the regulated community. The regulation will not significantly affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, Sept. 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small entities.

The alternative procedures for the development of test standards described in this rule are expected to present an even smaller burden to the test sponsor than those referred to in the two-phase test rule development process described in the **Federal Register** of October 10, 1984 (49 FR 39774). Because EPA will propose pertinent OTS test guidelines or other guidelines as test standard requirements, industry will not have to develop proposed study plans for submission and approval. This will reduce the burden on industry.

In addition, by facilitating an exemption process in which a single manufacturer or processor can sponsor tests on behalf of all those subject to a TSCA section 4 test rule, this rule reduces the administrative and financial burden which those testing rules might otherwise impose on regulated industries.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070-0033.

List of Subjects in 40 CFR Part 790

Testing, Exemptions, Environmental protection, Hazardous materials, Chemicals.

Dated: May 7, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 790 is amended as follows:

1. The authority citation for Part 790 is revised to read as follows:

Authority: 15 U.S.C. 2603.

2. In Subpart A, by revising § 790.5, to read as follows:

§ 790.5 Submission of information.

(a) All submissions to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule, e.g., § 799.4400 *1,1,1-Trichloroethane.*

(b) Submissions containing confidential business information must be addressed to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

(c) Submissions not containing confidential business information must be addressed to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

(d) In addition, a copy of the cover memo for all submissions must be addressed to: Director, Office of Compliance Monitoring (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

3. By revising Subpart B to read as follows:

Subpart B—Test Rule Development

Subpart B—Test Rule Development

§ 790.20 Promulgation of test rules.

(a) If EPA determines that it is necessary to test a chemical substance or mixture under section 4 of the Act, it will promulgate a test rule in Part 799 of this chapter.

(b) EPA will promulgate specific test rules in Part 799 of this chapter either by a single-phase rulemaking procedure or by a two-phase rulemaking procedure.

(1) Under single-phase test rule in Part 799 of this chapter through a notice and comment rulemaking which specifies the following:

(i) Identification of the chemical for which testing is required under the rule.

(ii) The health or environmental effect or effects or other characteristics for which testing is being required.

(iii) Which test substance(s) must be tested.

(iv) Standards for the development of test data.

(v) The EPA Good Laboratory Practice requirements for the required testing.

(vi) Schedule for submission of interim reports and/or final reports to EPA.

(vii) Who must submit either letters of intent to conduct testing or exemption applications.

(viii) What types of data EPA will examine in determining equivalence if more than one test substance is to be tested.

(2) Under two-phase test rule development, EPA will promulgate a Phase I test rule in Part 799 of this chapter through a notice and comment rulemaking which specifies the following:

(i) Identification of the chemical for which testing is required under the rule.

(ii) The health or environmental effect or effects or other characteristics for which testing is being required.

(iii) Which test substance(s) must be tested.

(iv) A reference to appropriate guidelines for the development of test data.

(v) The EPA Good Laboratory Practice requirements for the required testing.

(vi) Who must submit either letters of intent to conduct testing and study plans, or exemption applications.

(vii) What types of data EPA will examine in determining equivalence if more than one test substance is to be tested.

(3) Under two-phase test rule development, test standards and schedules will be developed in a second phase of rulemaking as described in §§ 790.30 and 790.32.

§ 790.22 Persons subject to a test rule.

(a) Each test rule described in § 790.20 will specify whether manufacturers, processors, or both are subject to the requirement for testing of the subject chemical under section 4(b)(3)(B) of the Act and will indicate who will be required to submit letters of intent to conduct testing.

(1) If testing is being required to allow evaluation of risks:

(i) Primarily associated with manufacture of the chemical, or

(ii) Associated with both manufacturer and processing of the chemical, or

(iii) Associated with distribution in commerce, use, and/or disposal activities concerning the chemical, each manufacturer of the chemical will be subject and must comply with the requirements of the test rule.

(2) While legally subject to the test rule in circumstances described in paragraph (a)(1) (ii) and (iii) of this section, processors of the chemical must comply with the requirements of the test rule only if processors are directed to do so in a subsequent notice as set forth in § 790.28(b).

(3) If testing is being required to allow evaluation of risks associated solely with processing of the chemical, processors will be subject and must comply with the requirements of the test rule.

(b) [Reserved]

§ 790.25 Submission of letter of intent to conduct testing or exemption application.

(a) No later than 30 days after the effective date of a test rule described in § 790.20, each person subject to that rule and required to comply with the requirements of that rule as provided in § 790.22(a) must, for each test required, either notify EPA by letter of his or her intent to conduct testing or submit to EPA an application for an exemption from testing requirements for the test.

(b) EPA will consider letters of intent to test as commitments to sponsor the tests for which they are submitted unless EPA agrees to the substitution of an exemption application in instances where more than one person indicates an intent to sponsor equivalent tests.

(c) Each letter of intent to conduct testing must include:

(1) Identification of test rule.

(2) Name, address, and telephone number of the firm(s) which will be sponsoring the tests.

(3) Name, address, and telephone number of the appropriate individual to contact for further information.

(4) For sponsors participating in a testing consortium—a list of all members of the consortium, the signature of an authorized representative of each member, and a designation of who is to serve as principal sponsor.

(5) A list of the testing requirements for which the sponsor(s) intends to conduct tests.

(6) If EPA is requiring testing of more than one representative substance—which test substance the sponsor(s) intends to use in each of the tests.

(d)(1) Any person not manufacturing or processing the subject chemical as of the effective date of the test rule describing in § 790.20 or by 30 days after the effective date of the rule who, before the end of the reimbursement period, manufacturers or processes the test chemical and who is subject to and required to comply with the requirements of the test rule must submit the letter of intent to test or an exemption application required by paragraph (a) of this section by the date manufacture or processing begins, or

(2) When both manufacturers and processors are subject to the rule, any person not processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after publication of the **Federal Register** notice described in § 790.28(b)(2) who, before the end of the reimbursement period, processes the test chemical and who is required to comply with the requirements of the rule must submit the letter of intent to test or an exemption application required by § 790.28(b)(3) of the date processing begins.

(e) Manufacturers subject to a test rule described in § 790.20 who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption from testing for each test for which testing is required in the test rule will be considered in violation of

that rule beginning on the 31st day after the effective date of the test rule described in § 790.20 or on the date manufacture begins as described in paragraph (d) of this section.

(f) Processors subject to a test rule described in § 790.20 and required to comply with the requirements of test rule pursuant to § 790.22(a)(2) or a **Federal Register** notice as described in § 790.28(b)(2) who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption for each test for which testing is required in the test rule will be considered in violation of that rule beginning on the 31st day after the effective date of the test rule described in § 790.20 or 31 days after publication of the **Federal Register** notice described in § 790.28(b)(2) or on the date processing begins as described in paragraph (d) of this section, as appropriate.

§ 790.28 Procedure if no one submits a letter of intent to conduct testing.

(a) *If only manufacturers are subject to the rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with manufacturing and the test rule described in § 790.20 states that manufacturers only are responsible for testing.

(2) If no manufacturer subject to the test rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will notify all the manufacturers by certified mail or publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted and will give the manufacturers an opportunity to take corrective action.

(3) If no manufacturer submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (a)(2) of this section, all manufacturers subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph.

(b) *If manufacturers and processors are subject to the rule.* (1) This paragraph applies if testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, use, or disposal of the chemical and the test rule described in § 790.20 states that manufacturers and processors are responsible for testing.

(2) If no manufacturer subject to the rule has notified EPA of its intent to conduct testing for one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted.

(3) No later than 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, each person processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA by letter of his or her intent to conduct testing or submit to EPA an application for an exemption from the testing requirements for the test.

(4) If no manufacturer or processor of the test chemical has submitted a letter of intent to conduct one or more of the required tests within 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, EPA will notify all manufacturers and processors by certified letter or publish a **Federal Register** notice of this fact specifying the tests for which no letter of intent has been submitted. This letter or **Federal Register** notice will give the manufacturers and processors an opportunity to take corrective action.

(5) If no manufacturer or processor submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (b)(4) of this section, all manufacturers and processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (b)(4) of this section.

(c) *Only processors are subject to the rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with processing and the test rule described in § 790.20 states that only processors are responsible for testing.

(2) If no processor subject to the rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.20, EPA will notify all the processors by certified mail or publish a notice in the **Federal Register** of this fact, specifying the tests for which no letter of intent has been submitted and give the processors an opportunity to take corrective action.

(3) If no processor submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (c)(2) of this section, all processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph.

§ 790.30 Submission of study plans.

(a) *Who must submit study plans.* (1) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of a single-phase rule as described in § 790.20(b)(1) must submit study plans for those tests no later than 30 days before the initiation of each of those tests.

(2) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) must submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I rule; or, for processors complying with the notice described in § 790.28(b)(2), 90 days after the publication date of that notice; or 60 days after the date manufacture or processing begins as described in §790.25(d), as appropriate.

(3) Study plans must be prepared according to the requirements of this Subpart B and Part 792 of this chapter. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing.

(4) Any person subject to a test rule may submit a study plan for any test required by the rule at any time, regardless of whether the person previously submitted an application for exemption from testing for that test.

(5) Unless EPA has granted an extension of time for submission of proposed study plans, manufacturers who notify EPA that they intend to conduct testing in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 60 days after the date manufacture begins as described in § 790.25(d) will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(6) Unless EPA has granted an extension of time for submission of proposed study plans, processors who notify EPA that they intend to conduct

testing in compliance with the requirements of a Phase I test rule as described in § 790.20(b)(2) and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 90 days after the publication date of the notice described in § 790.28(b)(2), or 60 days after the date processing begins as described in § 790.25(d), as appropriate, will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(b) *Extensions of time for submission of study plans.* (1) The Agency may grant requests for additional time for the development of study plans on a case-by-case basis. Requests for additional time for study plan development must be made in writing to EPA. Each extension request must demonstrate why that extension should be granted.

(2) Under two-phase rulemaking, extension requests must be submitted to EPA within 60 days after the effective date of the Phase I test rule as described in § 790.20(b)(2); or for processors complying with the notice described in § 790.28(b)(2), 60 days after the publication date of that notice; or 30 days after the date manufacture or processing begins as described in § 790.25(d), as appropriate.

(3) EPA will notify the submitter by certified mail of EPA's decision to grant or deny an extension request.

(4) Persons who have been granted an extension of time for submission of study plans as described in paragraph (b)(1) of this section and who do not submit proposed study plans in compliance with the requirements of a Phase I test rule in accordance with the new deadline granted by EPA will be considered in violation of the test rule as if no letter of intent to test had been submitted as described in § 790.25(e) and (f).

(c) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) Identity of the test rule.

(ii) The specific test requirements of that rule to be covered by the study plan.

(iii)(A) The names and addresses of the test sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual to contact for oral and written communications with EPA.

(D) (*1*) The names and addresses of the testing facilities and the names, addresses, and telephone numbers of the testing facilities' administrative officials and project manager(s) responsible for the testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study, including study director, veterinarian(s), toxicologist(s), pathologist(s), chemist(s), microbiologist(s), and laboratory assistants.

(iv) Identity and data on the chemical substance(s) being tested, including physical constants, spectral data, chemical analysis, and stability under test and storage conditions, as appropriate.

(v) Study protocol, including rationale for species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of each short-term test and of each major phase of long-term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information required in paragraph (c)(1)(iii)(D) of this section is not required in proposed study plans submitted in compliance with the requirements of a Phase I test rule if the information is not available at the time of study plan submission; however, the information must be submitted before the initiation of testing.

(d) *Incomplete study plans.* (1) Upon receipt of a study plan, EPA will review the study plan to determine whether it complies with paragraph (c) of this section. If EPA determines that the study plan does not comply with paragraph (c) of this section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission.

(2) The submitter will have 15 days after the day it receives this notice to submit appropriate information to make the study plan complete.

(3) If the submitter fails to provide appropriate information to complete a proposed study plan submitted in compliance with the requirements of a Phase I test rule on or before 15 days after receipt of the notice, the submitter will be considered in violation of the test rule as if no letter of intent to conduct the test had been submitted as described in § 790.25(e) and (f).

§ 790.32 Phase II test rule.

(a) If EPA determines that the proposed study plan described in § 790.30(a)(2) complies with § 790.30(c), EPA will publish a proposed Phase II test rule in the **Federal Register** requesting comments on the ability of the proposed study plan to ensure that data from the test will be reliable and adequate.

(b) EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(c) After receiving and considering public comment, EPA will adopt the study plan, including the time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, in a final Phase II test rule as test standards and schedules for the required testing.

§ 790.35 Modification of test standards or schedules during conduct of test.

(a) *Application.* Any test sponsor who wishes to modify the test standards or schedules for any test required under a test rule must submit an application in accordance with this paragraph. Application for modification must be made in writing to the Director, Office of Compliance Monitoring (EN-342), Office of Pesticides and Toxic Substances, EPA, 401 M St., SW., Washington, D.C. 20460, or by phone, with written confirmation to follow within 10 working days. Applications must include appropriate explanation of why the modification is necessary.

(b) *Adoption.* (1) To the extent feasible, EPA will seek public comment on all substantive changes in test standards and schedules. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either:

(i) EPA believes that an immediate modification to a test standard is necessary to preserve the accuracy or validity of an ongoing study, or

(ii) EPA determines that a modification clearly does not pose any substantive issues.

(2) EPA will notify the sponsor of EPA's approval or disapproval. When EPA approves a modification, it will publish a notice in the **Federal Register** indicating that the test standard or schedule has been modified.

§ 790.39 Failure to comply with a test rule.

(a) Persons who notified EPA of their intent to conduct a test required in a test rule in Part 799 of this chapter and who fail to conduct the test in accordance with the test standards and schedules adopted in the test rule, or as modified in accordance with § 790.35, will be in violation of the rule.

(b) Any person who fails or refuses to comply with any aspect of this Part or a test rule under Part 799 of this chapter is in violation of section 15 of the Act. EPA will treat violations of the Good Laboratory Practice standards as indicated in § 792.17 of this chapter.

4. By revising Subpart E, to read as follows:

Subpart E—Exemptions

Subpart E—Exemptions

§ 790.80 Submission of exemption applications.

(a) *Who should file applications.* (1) Any manufacturer or processor subject to a test rule in Part 799 of this chapter may submit an application to EPA for an exemption from performing any or all of the tests required under the test rule.

(2) Processors will not be required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice as described in § 790.28(b)(2) under the following circumstances:

(i) If testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, use, or disposal of the chemical and manufacturers do not submit notice(s) of intent to conduct the required testing; or

(ii) If testing is being required solely to allow evaluation of risks associated with processing of the chemical.

(b) *When applications must be filed.* (1) Exemption applications must be filed within 30 days after the effective date of the test rule described in § 790.20 or, if being submitted in compliance with the **Federal Register** notice described in § 790.28(b)(2), within 30 days after the publication of that notice.

(2) Exemption applications must be filed by the date manufacture or processing begins by any person not manufacturing or processing the subject chemical as of the effective date of the test rule described in § 790.20 or by 30 days after the effective date of the test rule described in § 790.20, who, before the end of the reimbursement period, manufactures or processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(3) When both manufacturers and processors are subject to the rule, exemption applications must be filed by the date processing begins by any person not processing as of the effective date of the test rule described in § 790.20 or by 30 days after publication of the **Federal Register** notice described in § 790.28(b)(2) who, before the end of the reimbursement period, processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(c) *Scope of application.* A person may apply for an exemption from all, or one or more, specific testing requirements in a test rule in Part 799 of this chapter.

(Approved by the Office of Management and Budget under control number 2070–0033).

§ 790.82 Content of exemption application.

The exemption application must contain:

(a) The identity of the test rule.

(b) The specific testing requirement(s) from which an exemption is sought and the basis for the exemption request.

(c) Name, address, and telephone number of applicant.

(d) Name, address, and telephone number of appropriate individual to contact for further information.

(e)(1) If required in the test rule to establish equivalence:

(i) The chemical identity of the test substance on which the application is based.

(ii) Equivalence data specified in § 790.85.

(2) If a test rule requires testing of a single representative substance, EPA will consider all forms of the chemical subject to that rule to be equivalent and will not require the submission of equivalence data as described in § 790.85.

§ 790.85 Submission of equivalence data.

If EPA requires in a test rule promulgated under section 4 of the Act the testing of two or more test substances which are forms of the same chemical, each exemption applicant must submit the following data:

(a) The chemical identity of each technical-grade chemical substance or mixture manufactured and/or processed by the applicant for which the exemption is sought. The exact type of identifying data required will be specified in the test rule, but may include all characteristics and properties of the applicant's substance or mixture, such as boiling point, melting point, chemical analysis (including identification and amount of impurities), additives, spectral data, and other physical or chemical information that may be relevant in determining whether the applicant's substance or mixture is equivalent to the specific test substance.

(b) The basis for the applicant's belief that the substance or mixture is equivalent to the test substance or mixture.

(c) Any other data which exemption applicants are directed to submit in the test rule which may bear on a determination of equivalence. This may include a description of the process by which each technical-grade chemical substance or mixture for which an exemption is sought is manufactured or processed prior to use or distribution in commerce by the applicant.

§ 790.87 Approval of exemption applications.

(a) EPA will conditionally approve exemption applications if:

(1)(i) For single-phase test rules, EPA has received a letter of intent to conduct the testing from which exemption is sought;

(ii) For two-phase test rules, EPA has received a complete proposed study plan for the testing from which exemption is sought and has adopted the study plan, as proposed or modified, as test standards and schedules in a final Phase II test rule; and

(2) The chemical substance or mixture with respect to which the application was submitted is equivalent to a test substance or mixture for which the required data have been or are being submitted in accordance with a test rule; and

(3) Submission of the required test data concerning that chemical substance or mixture would be duplicative of data which have been or are being submitted to EPA in accordance with a test rule.

(b)(1) If a single representative substance is to be tested under a test rule, EPA will consider all forms of the chemical subject to that rule to be equivalent and will contact the exemption applicant only if information is missing or unclear.

(2) If two or more representative substances are to be tested under a test rule, EPA will evaluate equivalence claims made in each exemption application according to the criteria discussed in the test rule.

(i) If EPA finds an equivalence claim to be in error or inadequately supported, the applicant will be notified by certified mail. The applicant will be given 15 days to provide clarifying information.

(ii) Exemption applicants will be notified that equivalence has been accepted or rejected.

(c) The final Phase II test rule which adopts the study plans in two-phase rulemaking, a separate **Federal Register** notice in single-phase rulemaking, or a letter by certified mail will give exemption applicants final notice that they have received a conditional exemption. All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications in the test rule.

§ 790.88 Denial of exemption application.

(a) EPA may deny any exemption application if:

(1) EPA determines that the applicant has failed to demonstrate that the applicant's chemical is equivalent to the test substance; or

(2) The exemption applicant fails to submit any of the information specified in § 790.82; or

(3) The exemption applicant fails to submit any of the information specified in § 790.85 if required in the test rule; or

(4)(i) For single-phase test rules, EPA has not received a letter of intent to conduct the test for which exemption is sought; or

(ii) For two-phase test rules, EPA has not received an adequate study plan for the test for which exemption is sought; or

(5) The study sponsor(s) fails to initiate the required testing by the deadlines adopted in the test rule; or

(6) The study sponsor(s) fails to submit data as required in the test standard and deadlines for submission of test data as adopted in the test rule or as modified in accordance with § 790.35.

(b) EPA will notify the exemption applicant by certified mail or **Federal Register** notice of EPA's determination that the exemption application is denied.

§ 790.90 Appeal of denial of exemption application.

(a) Within 30 days after receipt of notification that EPA has denied an application for exemption, the applicant may file an appeal with EPA.

(b) The appeal shall indicate the basis for the applicant's request for reconsideration.

(c)(1) The applicant may also include a request for a hearing. Hearings will be held according to the procedures described in § 790.97.

(2) Hearing requests must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice described in § 790.88(b). Hearing requests must provide reasons why a hearing is necessary.

(d) If EPA determines that there are material issues of fact, then the request for a hearing will be granted. If EPA denies a hearing request, EPA will base its decision on the written submission.

(e) EPA will notify the applicant of its decision within 60 days after EPA receives the appeal described in paragraph (a) of this section or within 60 days after completion of a hearing described in paragraph (c) of this section.

(f) The filing of an appeal from the denial of an exemption shall not act to stay the applicant's legal obligations under a test rule promulgated under section 4 of the Act.

§ 790.93 Termination of conditional exemption.

(a) EPA shall terminate a conditional exemption if it determines that:

(1) The test which provided the basis for approval of the exemption application has not been started by the deadlines for initiation of testing adopted in the test rule or modified in accordance with § 790.35; or

(2) Data required by the test rule have not been generated in accordance with the test standards or submitted in accordance with the deadlines for submission of test data that were adopted in the test rule or modified in accordance with § 790.35; or

(3) The testing has not been conducted or the data have not been generated in accordance with the Good Laboratory Practice requirements in Part 792 of this chapter.

(b) If EPA determines that one or more of the criteria listed in paragraph (a) of this section has been met, EPA will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice of EPA's intent to terminate that conditional exemption.

(c) Within 30 days after receipt of a letter of notification or publication of a notice in the **Federal Register** that EPA intends to terminate a conditional exemption, the exemption holder may submit information to rebut EPA's preliminary decision or notify EPA by letter of its intent to conduct the required test pursuant to the test standard established in the final test rule. Such a letter of intent shall contain all of the information required by § 790.25(c).

(d)(1) The exemption holder may also include a request for a hearing. Hearings will be held in accordance with the procedures set forth in § 790.97.

(2) Hearing requests must be in writing and must be received by EPA within 30 days after receipt of the letter or publication in the **Federal Register** notice described in paragraph (b) of this section.

(e) EPA will notify the exemption holder by certified letter or by **Federal Register** notice of EPA's final decision concerning termination of conditional exemptions and will give instructions as to what actions the former exemption holder must take to avoid being found in violation of the test rule.

§ 790.97 Hearing procedures.

(a) Hearing requests must be in writing to EPA and must include the applicant's basis for appealing EPA's decision.

(b) If more than one applicant has requested a hearing on similar grounds, all of those appeals will be considered at the same hearing unless confidentiality claims preclude a joint hearing.

(c) EPA will notify each applicant of EPA's decision within 60 days after the hearing.

§ 790.99 Statement of financial responsibility.

Each applicant for an exemption shall submit the following sworn statement with his or her application:

I understand that if this application is granted before the reimbursement period described in section 4(c)(3)(B) of TSCA expires, I must pay fair and equitable reimbursement to the person or persons who incurred or shared in the costs of complying with the requirement to submit data and upon whose data the granting of my application was based.

[FR Doc. 85–11587 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42034B; TSH-FRL 2815-4]

Identification of Specific Chemical Substance and Mixture Testing Requirements; Ethyltoluenes, Trimethylbenzenes, and the C9 Aromatic Hydrocarbon Fraction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a final test rule requiring the manufacturers and processors of the C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum, other than those who manufacture and process this fraction solely as an impurity, to test the C9 aromatic hydrocarbon fraction for neurotoxicity, mutagenicity, developmental toxicity, reproductive effects, and oncogenicity (unless certain mutagenicity test results are negative). This rule requires that testing of the C9 aromatic hydrocarbon fraction be performed according to protocols submitted to and approved by the Agency.

DATES: These regulations shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on June 3, 1985. These regulations shall become effective on July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460; Toll Free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is promulgating a final rule under section 4(a) of TSCA to require testing of the C9 aromatic hydrocarbon fraction, which contains isomers of ethyltoluene and trimethylbenzene as primary components, for the following health effects: Neurotoxicity, mutagenicity, developmental toxicity, reproductive effects, and oncogenicity (unless specified mutagenicity test results are negative). In its Tenth Report (47 FR 22585, May 25, 1982), the Interagency Testing Committee (ITC) designated mixed ethyltoluenes (ET) and 1,2,4-trimethylbenzene (1,2,4-TMB) for priority consideration for environmental and health effects testing. In its Eleventh Report (47 FR 54624, December 3, 1982), the ITC recommended that the other trimethylbenzenes be considered for testing. EPA issued a proposed test rule published in the **Federal Register** of May 23, 1983 (48 FR 23088) under 40 CFR 799.1625 *C9 aromatic hydrocarbon*. Because of the rearrangement of the specific chemical substances in Part 799, this final rule for the C9 aromatic hydrocarbon is recodified to § 799.2175.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance or mixture to develop health or environmental data if the Administrator finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's published proposed test rules on chloromethane and chlorinated benzenes (45 FR 48524; July 18, 1980) and dichloromethane, nitrobenzene, and 1,1,1-trichloroethane (46 FR 30300; June 5, 1981) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

1. *Ethyltoluenes*. Ethyltoluene (ET) occurs in three isomeric forms: 2-ET (ortho), 3-ET (meta) and 4-ET (para). Unless otherwise noted, the term "ethyltoluene" in this document refers to mixed ethyltoluenes, a substance containing all three isomers. ET (CAS No. 25550-14-5) is a colorless liquid readily soluble in most organic solvents, but relatively insoluble in water. ET is sufficiently volatile to enter the atmosphere, and is chemically stable under normal environmental conditions at room temperature. The individual isomers of ET are found in crude oil, gasoline, petroleum products, and have been detected in air and water, and in foods and natural products. ET, along with other nine-carbon aromatic hydrocarbons (C9), is produced during the catalytic reforming of petroleum, which is one of several processes involved in petroleum refining. A portion of this C9 stream is used as a solvent or a component in solvents. The remainder is used in gasoline blending. The solvents produced from the C9 aromatic hydrocarbons are used in paint and varnish formulations, paint thinners, printing inks, pesticide formulations and, to a lesser extent, hydrocarbon lubricating oils for refrigerants. Solvents known to contain significant amounts of ET are Suresol 100®, Aromatic 100® and Espersol 10®.

Nearly pure *ortho*-ET is synthetically produced by Dow Chemical Company and used in the production of *ortho*-vinyltoluene which is used in fiber reinforced polyesters, vinyltoluene alkyds and copolymer resins. Conversion of *ortho*-ET to these products is nearly complete. Mobil Oil Company synthesizes *para*-ET to produce *para*-vinyltoluene.

Total ET production (pure isomers plus that contained in the C9 aromatic hydrocarbon fraction) is estimated to be between 30 to 50 billion pounds annually.

Despite the ITC's designation of ET and the existence of a CAS number, EPA has been unable to identify any product containing only mixed ET isomers. With the exception of the *ortho*-ET manufactured by Dow and the *para*-ET manufactured by Mobil, ET is found exclusively as one of the major components of the C9 fraction.

2. *Trimethylbenzenes.* Trimethylbenzene (TMB) also occurs in three isomeric forms: 1,2,3-TMB, (CAS No. 526-73-8); 1,3,5-TMB, (CAS No. 108-67-8); and 1,2,4-TMB, (CAS No. 95-63-6). The 1,2,4-isomer is the most abundant and commercially is the most important isomer. 1,2,4-TMB is a clear, colorless liquid, readily soluble in organic solvents, but with low solubility in water. It is a stable compound under normal conditions, it undergoes typical electrophilic substitutions such as nitration, halogenation, sulfonation and alkylation, and is oxidized in the presence of catalysts.

Similar to ET, 1,2,4-MB and the other trimethylbenzenes are produced during catalytic reforming and comprise a major portion of the aromatic C9 fraction. The uses of the C9 fraction were discussed in the profile of ET.

1,2,4-TMB is separated from the aromatic C9 reformate by the Koch Refining Company. Koch's 1,2,4-TMB production was in the range of 10 to 50 million lbs in 1977. Current U.S. production volume of isolated 1,2,4-TMB appears to be in excess of 50 million lbs, with imports in 1981 of approximately 11.9 million lbs. Phillips Petroleum Company has reported production only of research quantities of 1,2,4-TMB since 1971.

Most of the isolated 1,2,4-TMB appears to be consumed as a raw material in the manufacture of trimellitic anhydride (approximately 50 million lbs/yr) which is subsequently used in the production of plasticizers, alkyd resins, unsaturated polyesters, and other industrial chemicals.

The 1,2,3-isomer (hemimellitene) is used principally to make a musk, similar to xylene musk. It is also oxidized to anhydro-hemimellitic acid. No information is currently available to EPA on the quantities consumed through these uses, although those quantities are expected to be a small percentage of the total TMB production which is estimated to be approximately 30 billion pounds per year. EPA required reporting under section 8(a) of TSCA to obtain information on the production, exposure and release of 1,2,3- and 1,3,5-TMB (49 FR 25856). No reports have been received by the Agency to date, indicating that there is not substantial production of 1,2,3-TMB. Under the section 8(a) small manufacturer's exemption standards, contained in the Preliminary Assessment Information Rule (47 FR 26992, June 22, 1982), small manufacturers (and importers) were exempt from reporting only if the firm's total annual sales was less than $30 million and less than 100,000 pounds of the chemical were produced or imported per year at a given site.

Some of the 1,3,5-isomer (mesitylene) is separated from the C9 fraction and is used as an intermediate, primarily for production of 1,3,5-trimethyl-2,4,6-tris(3,5-di-tert-butyl-4-hydroxybenzyl) benzene, which is produced by Ethyl Corporation and sold as Ethanox 330®. It is an important antioxidant (noncoloring stabilizer) for plastics such as polypropylene, high-density polyethylene, polyamides, adhesives, specialty rubbers such as Spandex® fibers, and waxes.

B. ITC Recommendations

The ITC designated ET (mixed isomers) and 1,2,4-TMB for priority testing consideration in its Tenth Report, published in the **Federal Register** of May 25, 1982 (47 FR 22585) and recommended in its Eleventh Report published in the **Federal Register** of December 3, 1982 (47 FR 54624) that the other trimethylbenzenes (1,2,3- and 1,3,5-isomers) be considered for testing. These actions were based on the chemicals' exposure potential and the lack of sufficient information on health and environmental effects. The trimethylbenzenes were recommended for testing for neurotoxicity, reproductive effects, teratogenicity and subchronic effects. ET mixed isomers were recommended for testing for mutagenicity, metabolism and subchronic effects. Both ET and TMB were recommended for testing for environmental effects and chemical fate.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of May 23, 1983 (48 FR 23088) under 40 CFR 799.1625 *C9 aromatic hydrocarbon*, which would require that testing of the C9 aromatic hydrocarbon fraction containing *ortho*-, *meta*-, and *para*-isomers of ethyltoluene and the 1,2,3-, 1,3,5- and 1,2,4-isomers of trimethylbenzene be performed. Because of the rearrangement of the specific chemical substances in Part 799, the final rule for the C9 hydrocarbon fraction is recodified to § 799.2175. Health effects testing proposed for the C9 fraction included neurotoxicity, mutagenicity, teratogenicity (developmental toxicity), reproductive effects, and oncogenicity (unless the results of certain mutagenicity studies are negative). The EPA based its proposed testing requirements on the authority of section 4(a)(1)(B) of TSCA. It found that:

1. There was no production of the mixed ETs aside from production of the C9 aromatic hydrocarbon fraction.

2. There were no data to indicate that exposure to 1,2,4-TMB or other isolated isomers of TMB was substantial and there was no basis for finding that exposure to isolated isomers of TMB may present an unreasonable risk to human health from the effects mentioned by the ITC.

3. There was no evidence of substantial release of isolated TMB isomers to the environment; furthermore, available data were adequate to reasonably predict that these isolated TMB isomers would neither persist nor accumulate in the environment in sufficient quantity that would likely result in an unreasonable risk to the environment.

4. There were substantial amounts of the C9 aromatic hydrocarbon fraction (containing ET and TMB isomers) produced in the U.S. each year (approximately 80 billion pounds).

5. A substantial number of workers and consumers were exposed to the C9 aromatic fraction through exposure to solvents and gasoline.

6. There were insufficient data on neurotoxicity, reproductive effects, teratogenicity, mutagenicity and oncogenicity upon which to reasonably determine or predict the effects of exposure to the C9 fraction, and that testing was necessary to develop such data.

7. EPA did not propose an oncogenic bioassay based on the section 4(a)(1)(B) finding because EPA considered the required mutagenicity tests as an appropriate first tier for oncogenicity. However, EPA found that unless certain of the required mutagenicity tests produced negative results, there would be insufficient basis to rule out the potential of oncogenic effects for the C9 fraction. In such circumstances, EPA found that unless a 2-year bioassay had been conducted, there would be insufficient data upon which to predict oncogenicity, and testing would be necessary to develop oncogenicity data.

8. There were sufficient data on the subchronic effects and metabolism of the C9 fraction; therefore, EPA did not propose testing of these types.

9. Although the C9 fraction was found to be released to the environment in substantial quantities, available data were adequate to predict that this material neither persisted nor accumulated in the environment in

sufficient quantity that would likely result in an unreasonable risk to the environment. For this reason, EPA did not propose that environmental effects testing be conducted at that time.

The scientific support used by EPA in making the proposed section 4 findings and for the proposed test rule was set forth in the support documents for ET and TMB, which are available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for that proposed rule.

III. Public Comment

The comments received by the Agency in response to the proposed rule for ET/TMB/C9 aromatic hydrocarbons were from the American Petroleum Institute (API), the Chemical Manufacturer's Association (CMA), the American Industrial Health Council (AIHC), the Natural Resources Defense Council (NRDC), Eastman Kodak Company, and the Neurobehavioral Toxicity Test Standards Committee of the Division of Psychopharmacology of the American Psychological Association. The major issues identified during the comment period are discussed below.

A. Comments on Substantial Exposure Finding

API commented that the Agency has not demonstrated that there is "substantial exposure" to the C9 aromatic fraction through exposure to motor gasoline. API contended that the Agency's approach to the substantial exposure finding does not satisfy the requirements of section 4(a)(1)(B) of TSCA, violates the Administrative Procedures Act, and yields a conclusion "that a reasoned evaluation of the relevant data will not support." API contended that EPA had not satisfied the statutory requirements of section 4(a)(1)(B) of TSCA in support of a substantial exposure finding for the C9 fraction through exposure to gasoline because it had failed to consider all relevant data available such as: (1) The volatility of the C9 fraction, (2) monitoring studies conducted on C9, and (3) the relevant toxicological data and information available on these compounds.

1. API stated that the term "substantial exposure," where exposure to the C9 aromatic fraction is concerned, is not satisfied by showing simply that a substantial number of workers and consumers are exposed. API cited past EPA regulatory activity on dichloromethane, 1,1,1-trichloroethane and nitrobenzene as instances in which the Agency stated that it was neither feasible nor desirable to make strict numerical definitions of substantial exposure or release, intending rather to make judgments of these factors on a case-by-case basis. It was the opinion of API that the Agency had failed, in the case of C9, to make this individual judgment based on available data which, if considered in the context of section 4 as interpreted by API, would not support the substantial exposure finding.

In the case of C9 in gasoline, the Agency considered both the number of persons potentially exposed as well as the levels and durations of exposure and relevant toxicological data.

The number of persons directly exposed (inhalation, dermal, etc.) to gasoline on a frequently recurring basis, primarily service station attendants (approx. 300,000) and consumers pumping their own gasoline, is certainly large.

Data submitted by industry on exposures to driver-salesmen and service station attendants (Ref. 3) show non-detectable to very low levels of exposures to ET and TMB (92 percent of the readings for ET and TMB are below 0.1 parts per million (ppm)). No data were submitted concerning the levels of ET and TMB exposure to the millions of consumers who pump their own gasoline and are by far the greatest number of individuals exposued to gasoline vapors; however, it is unlikely that the levels of exposure to consumers substantially exceed those for service station attendants. The frequency and extent of dermal exposure of consumers, as well as trained personnel, to gasoline also may constitute an important route of exposure which the industry data do not address.

2. API contended that a reasoned evaluation of existing exposure data demonstrates that exposure to the C9 aromatics through gasoline is not substantial. A reasoned evaluation, API continued, "would consider their relevant physical and chemical properties, like the volatility of the C9s, the monitoring studies conducted on ET, 1,2,4-TMB and others C9s, and relevant toxicological data and information." The API cited volatility data on the C9 fraction, air monitoring data on gasoline vapor concentrations in employee breathing zones at four representative bulk terminals (Ref. 1), service station air sampling at seven representative service stations (Ref. 2), air monitoring data of employees exposed to gasoline in both service station and non-service station settings (Ref. 4), and exposure to gasoline components during typical vehicle refueling operations at gasoline stations (Ref. 4). The last two studies above were new submissions to the Agency. Exposure values in those two studies ranged from non-detectable (ND) to 0.16 ppm for ET and ND to 0.11 ppm for 1,2,4-TMB (detection limit of 0.01 ppm). API stated that these data support the conclusion that exposure to the C9 aromatics through exposure to motor gasoline "occurs at extremely low, indeed barely detectable, levels."

In discussing exposure levels in relation to health effects information, API stated that "an evaluation of the existing toxicity data and information on the alkyl benzenes and the C9 aromatics suggest that excessive concern over the long-term, low level exposure to the C9 aromatics in the complex hydrocarbon mixture is certainly not warranted, as these data indicate the low inherent toxicity of the C9 compounds."

Two subchronic toxicity studies (Refs. 5 and 6) on commercial C9 aromatic solvents (45 to 47 percent TMB; 31 percent ET) previously submitted to EPA were cited by API. API contended that "the absence of clinically significant toxicity at the levels tested in these studies indicates that the C9 aromatics have an extremely low probability of producing chronic effects, particularly at the levels encountered during exposure to gasoline vapor." API further cited the National Academy of Sciences (NAS) review of the toxicity of the alkyl benzenes (Ref. 8), which concluded that chronic toxic effects are unlikely, due to rapid metabolism and excretion. The NAS report further found that although the toxicity of most alkyl benzenes is not well studied, the information available to date on alkyl benzenes in general characterizes these chemicals as "relatively impotent toxic agents" and "not a serious carcinogenic hazard." API concluded that these findings are "strongly supported" by the results of the Shell/Exxon studies (Refs. 5 and 6).

API also noted that "the scores that 1,2,4-TMB and ET received in the TSCA Interagency Testing Committee (ITC) 1980 scoring exercise largely concur with this API position." API stated that in the areas of mutagenicity, carcinogenicity and teratogenicity, ET and 1,2,4-TMB received scores indicating that the ITC had no experimental data in these health effect areas and had little or no reason for suspicion.

The Agency disagrees with API's contention that the Agency has not conducted a reasoned evaluation of existing data and information on exposure to the C9 aromatics through exposures to gasoline. EPA has considered all available data on C9, and believes that information is available

which indicates that a large number of persons are exposed to gasoline, that low levels of C9 are found in vapors of gasoline, and that there is a lack of toxicological data to reasonably determine or predict the significance of those exposures. EPA believes that although the subchronic studies on C9 provide sufficient data to reasonably determine or predict certain chronic effects of C9, these studies do not address adequately the areas of neurotoxicity, reproductive effects, developmental effects, mutagenicity, or oncogenicity to permit the Agency to reasonably determine or predict the effects of C9 exposure in these areas. As the NAS study pointed out, the toxicity of most alkyl benzenes is not well studied.

3. API stated that the Agency's alleged failure to consider all relevant factors would render a final rule defective under the Administrative Procedure Act. API stated that the Agency had "violated the Administrative Procedure Act (APA) by failing to identify the basis for its conclusions that the evidence warranted a section 4 test rule in this case." API described EPA's finding as "a brief two sentences with no supportive or explanatory reasoning." API further stated that the support documents issued for ET and TMB did not articulate a rationale, discuss the factual material EPA found pertinent, discuss all of the relevant evidence, or draw a connection between the facts and EPA's conclusion.

The Agency recognizes the need to explain adequately its basis for regulatory action and believes it has done so in the proposed test rule and this final test rule for the C9 aromatic hydrocarbon fraction. The rulemaking record for this action includes all relevant information considered by the Agency and its analysis of this information.

The support documents issued for ET and TMB discussed the data available to the Agency and the adequacy or inadequacy of these data within the context of section 4. The support documents for ET and TMB provide a more than adequate basis of the Agency's assessment of testing needs based upon review and evaluation of available data pertinent to the chemical substance designated for testing. The ET/TMB support documents discuss the Agency's rationale for its findings and for each proposed test. In the final rule, the Agency is setting forth additional explanation of its findings and the basis for this action.

4. Overall, EPA still believes that there may be substantial human exposure to gasoline and its component hydrocarbons. However, as discussed in Unit III. D. below, the Agency has concluded that data obtained from the toxicological testing of the C9 fraction would have very little relevance to an assessment of the risks of exposure to gasoline. Therefore, EPA is not considering exposure to the C9 fraction through exposure to gasoline as part of its basis for finding substantial human exposure to the C9 fraction. The Agency believes that exposures associated with the manufacture and processing of the C9 fraction and the use of solvents containing significant concentrations of the C9 fraction provide more than sufficient basis for a finding of substantial human exposure under TSCA section 4(a)(1)(B)(i).

B. Comments on the Test Substance

In the proposed rule, the Agency put forth several issues for comment specifically related to the selection of the C9 fraction as the test substance:

1. Is the C9 fraction the appropriate test substance? Can a single C9 substance or mixture be selected which would be representative, for toxicological purposes, of the C9 fraction to which persons are exposed through exposure to solvents and gasoline? If so, what should the specifications be for such a substance or mixture? If not, what substances should be selected for testing and why? Should a commercial C9 fraction be used for testing instead of a synthetic mixture?

API responded that a C9 aromatic solvent could be tested for purposes of assessing unreasonable risk to solvents only and that a blend of the five commercial C9 aromatic solvents would be the most appropriate test article. API strongly emphasized that "the test material recommended by API would not be appropriate for characterizing the hazard from exposure to gasoline." API contended that ET and TMB were only minor components of gasoline and that exposure to ET and TMB vapors from gasoline was likely to be at very low concentrations. The recommended C9 aromatic solvents blend would, according to API, contain the isomers of ET and TMB in proportion relevant to the real world usage of C9 aromatic solvents in the United States.

The Agency agrees that a blend of the five commercial C9 aromatic solvents could serve as an appropriate test article, although the EPA does not believe that such a blend is essential so long as the test substance meets the criteria specified in § 799.2175(b) of the final rule. These criteria require that the test substance have a minimum ET content of 22 percent and a minimum TMB content of 15 percent with minimum total ET/TMB content of 75 percent. Data submitted by API in its comments on the proposed test rule showed a range of 22 to 45 percent ET, 15 to 71 percent TMB and 75 to 90 percent total ET/TMB composition to be representative of the ET/TMB ranges encountered in surveying the major U.S. C9 solvent products currently in use. As discussed in Unit III.D., EPA is no longer concerned with the representativeness of the test substance with respect to exposures resulting from the presence of the C9 fraction in gasoline.

2. The Agency further asked whether testing of the individual ET and TMB isomers should be required for any of the tests? If so, which isomers and which tests.

API commented that the choice of a C9 aromatic solvent to test for certain effects resulting from exposure to such solvents is relevant to making unreasonable risk determination. API stated that it did not believe that the most efficient and accurate method of determining the overall toxicity of a mixture is to test the individual components. API stated that "from a regulatory standpoint, it is often reasonable to assess risk of injury to health or environment for the material to which populations are likely to be exposed (e.g., the C9 solvent)." API noted that testing of representative mixtures has precedence in environmental regulations, citing the 1978 FIFRA guidelines, 40 CFR Part 158, as an example (Ref. 17). Public comments on the FIFRA guidelines recommended that each ingredient of a pesticide product be tested in chronic and subchronic assays, an alternative the Agency considered economically prohibitive, and stated that such testing would not significantly improve the quality of EPA's decision-making.

In the case of the C9 fraction, composed primarily of high percentages of ET and TMB isomers, the Agency agrees that testing the C9 fraction alone would most likely elucidate any potential problems that may result from exposures to the C9 fraction or solvents containing significant concentrations of the C9 fraction. Testing of the individual isomers does not appear necessary at this time in order to evaluate the risk posed by exposure to the C9 fraction and solvents containing it.

C. Comments on Persons Subject to Testing

Comments were received from Eastman Kodak Company concerning the Agency's definition of "manufacture" as that term is used under section 4(a)(1)(B) of TSCA.

Specifically, the comments related that definition to byproducts, impurities and non-isolated intermediates subject to test rules promulgated under section 4. The comments stated that the Agency should clarify in each test rule the potential application of the definition of "manufacturer" to certain persons who might otherwise be required to test, or to reimburse others required to test, because of the unintentional creation of the chemical specified in the rule during manufacture or processing of another chemical substance.

EPA is exempting from these testing requirements those manufacturers and processors which produce and process the C9 aromatic hydrocarbon fraction only as an impurity. The Agency is exempting those manufacturers and processors because the EPA findings under section 4(a)(1)(B) are based on exposures to the C9 fraction which are a result of intentional manufacture, processing, and use. In addition, it will be difficult for both EPA and manufacturers and processors to identify with complete assurance all chemical substances which contain the C9 fraction solely as an impurity. Finally, the Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process the C9 fraction solely as an impurity. The Agency's reimbursement regulations issued pursuant to section 4(c) state that those who manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48b). EPA finds no basis to impose such a requirement in this rule.

Persons who manufacture or process the C9 fraction as a byproduct or as a non-isolated intermediate are subject to the testing requirements set forth in this rule; these activities constitute intentional manufacture and processing of the C9 fraction. The total C9 domestic production, including that produced as a byproduct or a non-isolated intermediate, will be used in determining reimbursement shares under the Data Reimbursement Final Rule. (48 FR 41786).

D. Comments on Relevance of Test Data

API contended that testing of C9 aromatics will not produce data which will enable the Agency to make "unreasonable risk" determinations for persons exposed to gasoline; therefore, EPA does not have a basis for requiring those who manufacture or process gasoline to test the C9 aromatic fraction. The API contends that the data generated by the proposed testing required under section 4 of TSCA must be sufficient to support a comprehensive risk determination that could provide a basis for EPA to take action under TSCA section 6. Because exposure to C9 aromatics is not representative of exposure to gasoline, and because test results on the C9 aromatics will be of minimal value in assessing the risks to persons exposed to low levels of C9 aromatics in gasoline, the Agency should separate its testing of C9 aromatic based on solvent exposures from the questions of risks associated with exposure to gasoline.

API contends that C9 aromatics constitute a minor portion of gasoline vapors, and that data on the biological activity of a small part of a mixture are not useful in predicting the overall effects, let alone the risks, of the mixture. The interaction of chemicals in mixtures can, API states, modify their individual absorption, distribution, metabolism and excretion. Thus, in API's view, the toxicity of an isolated minor component may differ significantly from its toxicity as part of a mixture. In addition, the applicability of the test results on C9 aromatics to assessing gasoline risk will be further complicated by the dilution factor. API stated that, unless a component possesses extreme toxicity, it is rare that it will contribute significantly to the overall risk of the mixture, except additively or synergistically. API contends that the data available on C9 aromatics clearly show no extreme toxicity, and because the testing of this isolated material will not allow one to measure additive or synergistic effects, little is to be gained in the overall risk or hazard evaluation for gasoline exosure by gathering data on isolated C9 aromatics.

EPA does not agree that data required under section 4 must support a comprehensive risk determination, but the Agency does believe that such data must be relevant to that determination. In general, EPA disagrees with API's position that testing of a component or set of components of a mixture or complex substance will not produce data that are relevant to assessing the risk to persons exposed to the tested material as part of the mixture or complex substance. In this instance, however, after reviewing the information available to the Agency, EPA has concluded that test data on the C9 aromatics would only be minimally relevant to assessing the health risks to persons exposed to gasoline. C9 aromatics are among approximately 300 chemical species in gasoline and the levels of C9 encountered in a typical motor gasoline are relatively low (approximately 3 percent). In some cases the testing of a component present at such a level in a complex product may be relevant to assessing the risk of exposure to the complex product (e.g., if the component were found to be a potent neurotoxicant). However, in this instance existing data show unleaded gasoline to be carcinogenic in laboratory animal inhalation studies (Ref. 19). Exposure controls for gasoline are expected to be based on these data or on additional testing of gasoline aimed at characterizing its overall toxicity as a complex product. Data on the C9 aromatic fraction alone will be of minimal relevance to that overall determination. Therefore, EPA is separating its decision to require testing of C9 based on exposure to this material through its manufacture, processing, and use as a solvent from the Agency's broader consideration of testing of gasoline or regulation of gasoline exposures.

API commented further that EPA should reevaluate the economic effect of the proposed test rule for the C9 fraction because test results obtained on C9 aromatics would not be relevant to a determination of the risk of exposure from the C9 aromatics through exposure to gasoline. EPA has performed a revised economic analysis for this final rule based on the test costs and an analysis of the market characteristics of the C9 aromatic solvents. This analysis is discussed in detail in Unit V, Economic Analysis of Final Test Rule.

E. Comments on Protocol Submission and the Phased Test Rule Process

The Natural Resources Defense Council (NRDC) submitted comments concerning the need for requiring validated protocols and recommended modification of the Agency's two-phase test rule process. NRDC stated that the Agency should require test sponsors to use validated reference protocols or give adequate justification for any deviations from these protocols. NRDC cited the Agency's two-phase test rule process (as described at 47 FR 13012; March 26, 1982) as an apparent "reversal" of EPA's previous policy which had required that specific EPA, FIFRA or OECD testing protocols be followed by persons required to test under section 4(a) of TSCA. The proposed policy of demanding only that test sponsors select protocols listed in Agency guidelines, or develop protocols on their own, was cited as an approach "apparently developed in response to industry criticism that the requirements are too rigid and would inhibit innovation in

testing methodologies." The commenter further characterized this decision as compromising the recognized need for reliable and adequate data.

The Agency disagrees with NRDC's view that the two-phase test rule process based on EPA's review and approval of chemical-specific study plans would compromise the ability of the test rule to generate reliable and adequate data. In general, EPA believes that issuance of generic test methodology guidelines, rather than generic test requirements provides more flexibility for test facilities, test sponsors, and EPA itself in arriving at cost-effective, scientifically sound test methodologies, and facilitates the incorporation of scientific judgement where necessary on a chemical-specific basis. This approach also encourages scientific innovation and the development of more sophisticated and scientifically advanced testing methodologies. With either single-phase or two-phase rules a public comment period and an opportunity for a public meeting will allow interested parties to review and comment on the chemical-specific test standards. After this comment period, EPA will issue a final rule adopting chemical specific test standards as required under section 4(b)(1)(B) of TSCA. A more detailed discussion of the Agency's views on these and other related issues may be found in the Agency's Test Rule Development and Exemption Procedures final rule (49 FR 39774; October 10, 1984).

NRDC also stated that the Agency should modify the timing of the two-phase test rule development process so that subsequent test rules, complete with specific protocols for testing, are published within one year of EPA's receipt of the ITC's recommendations. NRDC contended that application of the two-phase rulemaking process in the case of the C9 rule has resulted in the Agency's failure to meet the statutory deadlines for initiating rulemaking.

EPA does not agree that the Agency has not met its statutory responsibility for mixed ET's and 1,2,4-TMB. The Agency's statutory obligation under TSCA section 4(e)(1)(B) was fulfilled with the issuance of the proposed test rule for the C9 fraction; in so doing EPA initiated rulemaking under section 4(a) to require testing appropriate to the actual exposures to mixed ETs and 1,2,4-TMB.

EPA shares NRDC's desire that test rules should be completed as rapidly as possible and the Agency is continuing to explore ways to better achieve that objective. EPA believes that in most instances in the future it will be able to minimize the time required to complete test rulemaking by proceeding in a single phase to propose test standards along with the required tests. Nevertheless, having initiated the rulemaking for the C9 fraction using the two-phase process, EPA believes that the most expeditious way to complete that rulemaking is to continue with the two-phase rulemaking.

F. Comments on Proposed Health Effects Testing

1. *Use of C9 fraction to extrapolate risk for ET/TMB.* In the proposed rule for C9's, the Agency asked whether a negative result or a high no-observed-effect level (NOEL) on the C9 fraction could be used to make reasonable predictions that the individual ET and TMB isomers would not present an unreasonable risk of that effect.

API responded that a negative result (or a high NOEL) for the C9 solvent could be interpreted to mean that it was likely that the individual ET and TMB isomers had no observable effect at the concentration (dose) of the individual isomers administered. API stated that, unlike gasoline, C9 aromatic solvents are composed of substances, i.e., the individual ET and TMB isomers, which boil over a narrow range and are similar in chemical and biological properties. API maintained that the toxicity of such mixtures is generally the sum of that of its individual components, especially for low dose exposure. Therefore, API stated, a determination of the toxicity from exposure to C9 solvents allows inference that its individual components would manifest similar toxicity.

The Agency agrees with API that assessing the toxicity of the C9 mixture as a complete entity should provide a reasonable upper bound for the toxicity of the individual ET TMB in the C9 mixture. (API reported the total percentage ET/TMB content of representative U.S. C9 solvent at 75–90 percent; with a median of 80 percent).

2. *Route of exposure for test article.* The Agency also asked what the routes of exposure for the test substance should be.

API believed that the question related directly to the development of test protocols, and therefore should more appropriately reside in Phase II of section 4 rulemaking, as the Agency described in its notice concerning the test rule development process (47 FR 13012, March 26, 1982), wherein the Agency stated that not until Phase II would sponsors be required to develop test protocols. However, if the Agency proceeds to define the route of exposure in Phase I, the general API comment was that, where applicable, if a route other than that expected in humans is used, it should be justified.

The Agency agrees in principle that where possible the route of exposure for testing should reflect that expected to be encountered in the actual exposure situation to be addressed. The Agency believes, however, that when the two-phase test rule process is used it is appropriate to specify the route of exposure in Phase I. EPA considers such specification to be part of defining the effects for which testing is being required, particularly when more than one route of exposure is possible and the Agency is interested in the effects resulting from a particular type of exposure. There generally will be a significant interelationship between the exposures giving rise to the test rule (which are addressed in the Phase I rulemaking) and the appropriate route of exposure for testing. However, should there be questions of the technical feasibility of conducting a test with the preferred route of exposure which come to light only during the development of study plans, these issues will be addressed in the Phase II rulemaking. In the case C9, the Agency believes dermal and inhalation exposures can be expected to occur. The Agency has specified the inhalation route of exposure for testing of C9 because it believes the inhalation route is the predominant route encountered, and the Agency is particularly interested in the effects resulting from inhalation exposure to the C9 fraction.

3. *Neurotoxicity.* Comments were received from the Neurobehavioral Toxicity Test Standards Committee of the American Psychological Association, concurring with the Agency's recommendation for neurotoxicity testing of the C9 fraction as set forth in the proposed rule. The commenter specifically cited the appropriateness of such testing in the case of the C9 fraction, because these types of violatile lipophilic materials can penetrate into and affect the central nervous system. Because the effects of long-term exposure on the structure and function of the nervous system are unknown and are of concern, the comments characterized the proposed testing as desirable for predicting the potential of exposure to C9 to cause adverse effects on behavior and the nervous system.

The Agency agrees with the comment that examination of neurobehavioral toxicity be included in its evaluation of the C9 fraction because such evaluations have been demonstrated to be relevant in assessing the adverse behavioral effects of inhaled gases and

vapors. The Committee commented that the subchronic data collected would not be useful, however, in establishing short-term exposure threshold limit values (STEL–TLV) to protect against acute performance impairment. While the proposed subchronic testing is not specifically designed to determine a STEL–TLV, EPA believes that the conduct of the subchronic study, combined with existing data, will provide sufficient data to reasonably predict the acute neurotoxic effects of the C9 fraction.

API contended that the Shell 90-day inhalation study and the 1-year chronic study submitted in 1982 were adequate to address the neurotoxic effects of the C9 fraction in rodents, and that an additional 90-day study on C9 as proposed by the Agency was not a necessary or cost-effective implementation of section 4 of TSCA.

The Agency proposed that a 90-day subchronic neurotoxicity test, with functional and neuropathologic components, be performed on the C9 fraction for reasons set forth in the ET support document. Although the Shell study was specifically oriented towards the detection of neurotoxic effects, techniques the Agency believes are necessary to specially prepare neural tissue for histopathologic examination were not used in this study. Furthermore, the primary effects seen in both oral and inhalation toxicity were functional changes, which have not yet been adequately studied. Therefore, the Agency is requiring an additional 90-day study to further investigate neurotoxic effects.

4. *Mutagenicity.* API, CMA, and AIHC submitted comments on the proposed mutagenicity testing requirements for the C9 fraction.

a. *Guidelines for human risk assessment from mutagenicity data.* CMA and AIHC stated that EPA should articulate the human health risks to which the mutagenicity test data are intended to relate, and the methodologies by which the data will be used to assess those risks.

EPA is proposing to use its test scheme in two ways: (1) As a screen to determine the need for long-term testing to characterize the oncogenic potential of the C9 fraction; and (2) to determine whether exposure to the C9 fraction may pose a threat to future generations by inducing either heritable gene mutations or chromosome aberrations.

Risk estimates have been made for humans from mutagenicity test results. For gene mutations, for example, data derived from the mouse specific locus test with the antineoplastic drug procarbazine have been used to estimate the risk of human mutations (Ref. 7).

In this example, the spontaneous mutation rate in humans was calculated by estimating the frequency of genetic disease which might result from new mutations. Second, data from radiation experiments in mice were used to extrapolate from increased mutations to obvious skeletal disorders. Third, an estimate was made to extrapolate from this restricted class of disorders to genetic disease in general. The major assumptions here were an assumed equivalency between mice and humans and an assumed equivalency between radiation-induced mutations and those induced by chemicals. The major health impacts estimated in this way will be from autosomal dominant and X-linked recessive syndromes, with negligible impact from other recessive disorders.

Risk estimates for chromosomal aberrations have also been made (Refs. 13 and 14). The heritable chromosome aberration of concern was reciprocal translocation. The majority of conceptuses with such translocations die *in utero*. Using a somewhat limited human data base and experimental work in the marmoset, it was estimated that 2 to 10 congenitally malformed children arise per million conceptuses for each rad of paternal X-ray exposure. If one knows: (1) The spontaneous frequency of translocations in humans and (2) the increase which results from chemical exposure in laboratory mammals, and if one assumes equivalency for rodents and humans and X-rays and chemicals (or knows how to correct for nonequivalency), the Agency believes that one can calculate the increased disease burden resulting from a defined exposure.

The Agency recognizes that all estimates made using such data are gross estimates at best, that many of the assumptions may not be proven valid, and that there is a great dependence on incomplete data bases. Nevertheless, it is the Agency's view that heritable mutation is a serious threat to the health and well-being of the population and that mutagenicity is a valid regulatable health endpoint. The tests that will be required by this test rule should provide a basis for EPA to determine if exposure to the C9 fraction presents a risk of heritable mutation that would warrant control.

CMA also stated that it was premature to require mutagenicity testing until the Agency had adopted scientifically sound guidelines on mutagenicity risk estimation, that the goals of Phase II of the Gene-Tox Program had still not been finalized nor had the conclusions of this program been announced. Phase II's announced goals include an assessment of the strengths and weaknesses of various test systems for human risk assessment, and development of techniques for using experimental data to evaluate mutagenic risks to the human population.

The Agency has updated its guidelines for mutagenicity risk estimation first published in the **Federal Register** of November 13, 1980 (45 FR 74984). These guidelines treat mutagenicity as a separate endpoint from oncogenicity, and provide guidance on how EPA intends to use the results of mutagenicity testing to estimate human risk (49 FR 46314; November 23, 1984). Public comment has been solicited on the updated guidelines, but in the interim they are being used for Agency assessments.

The report of the Goal 8 Subcommittee of the Gene-Tox Program entitled "Evaluation of Existing Mutagenicity Bioassays for Purposes of Genetic Risk Assessment" is presently undergoing prepublication review prior to publication in "Mutation Research Reviews in Genetic Toxicology". In essence, the report states that there is a high degree of correlation between positive responses in lower tier, nongerm cell assays, and those observed in mammalian germ cell assays; it further concludes that these nongerm cell assays may be used to identify potential mammalian mutagens.

These potential mammalian mutagens can be further tested using germ cell assays which confirm their mutagenic potential and allow one to make human risk estimates from the resulting data. This approach is compatible with the testing proposed by the Agency in the C9 test rule in which positive responses in lower tier assays lead to additional testing of presumptive germ cell mutagens in assays for heritable gene mutations (specific locus assay) and chromosomal aberrations (heritable translocation).

The Gene-Tox Program has adequately validated as meaningful and repeatable the tests included in the final C9 rule (Ref. 12). Furthermore, the test sequence has been designed so that one test compliments the others. In its TSCA section 4 program, the Agency uses a standardized sequence and a model set of tests as a starting point in defining the mutagenicity testing scheme for each chemical, but varies the tests used in the sequence when a chemical's properties or data on the test chemical or related chemicals indicate such a need. Commenters have not suggested any modification of the test scheme in their

comments on the proposed rule other than elimination of certain tests as discussed in Units III.F.4.c. through h., below. The Agency believes that its current model test sequence approach is technically defensible and offers sufficient flexibility to address chemical specific issues.

Likewise, the Agency's approach to the identification of mammalian mutagens is compatible with that of the National Academy of Sciences (Ref. 9). Here too, a series of positive responses in lower tier assays leads to designation of a chemical as a potential mammalian mutagen. Mammalian mutagens are confirmed by positive results in assays which measure heritable mutations.

In summary, the Agency feels that there is a consensus in the scientific community on both the need for, and manner of, identifying mammalian mutagens and that its proposed scheme for identifying these agents is in keeping with those recommended by experts in the field of mammalian mutagenesis. Further, while it is recognized that there is, as yet, no generally accepted single methodology for estimating human risk from mutagenic agents, it is the Agency's view that such methodologies do exist and are usable. Therefore, the Agency concludes that it is appropriate at this time to require mutagenicity testing of the C9 aromatic fraction to obtain data with which to perform risk estimates with a view to regulation should the C9 fraction prove to be a mammalian germ cell mutagen.

b. *Automatic triggers in mutagenicity testing scheme.* In the proposed rule, EPA utilized a mutagenicity testing scheme which included three tiers. The Agency proposed that if positive results were obtained in the lower tiers, manufacturers and processors would be automatically required to conduct the next higher level of test(s). Both CMA and AIHC stated that EPA should eliminate automatic triggers in its mutagenicity testing scheme, and adopt instead a scheme which permits assessment of the weight-of-evidence and consideration of alternative testing approaches.

EPA believes the use of automatic triggers is appropriate in certain portions of its mutagenicity testing scheme for the C9 fraction, but has modified its approach in other portions to take into consideration the concerns raised by the commenters. The Agency's rationale for employing a mutagenicity testing scheme utilizing automatic triggers is discussed in part in Unit III.F.4.a., above. In addition, EPA uses the automatic trigger sequence in section 4 rulemaking as a more expedient means of obtaining necessary test data than that afforded by using a stepwise tiering approach, which would rely on evaluation and quantification of a variety of individual test results as a basis for determining if higher-level testing is necessary. Under the Agency's preferred section 4 rulemaking process, test sequences and results which trigger higher level testing are defined before testing sequences are initiated. No additional regulatory actions by EPA are required between testing tiers. Under a stepwise tiered testing arrangement, a new rulemaking describing the next test sequence and interpretation of results would have to be performed for each level in the tiered sequence. This would result in a very time consuming and laborious process of individual rulemaking for individual testing requirements on a step-by-step basis. The Agency does not believe such an approach would be a timely or cost effective use of Agency resources.

Although the Agency believes the use of automatic triggers is suitable for many of the mutagenicity tests in the C9 test rule, the Agency does acknowledge that the incorporation of scientific judgment may be necessary in circumstances where reference data are not as extensive or where a test is more controversial in nature. For instance, because of the limitations, particularly the sensitivity, of the highest tier mutagenicity tests, EPA believes that a step allowing the Agency's judgment as to the need for those tests would be appropriate. As described below, such a decision step has been incorporated in the final rule for the C9 fraction. In contrast, EPA believes that because of the much more extensive reference data available for conducting and interpreting the results of the first and second tier mutagenicity tests it will not be necessary for the Agency to conduct on independent evaluation of the results prior to requiring that higher tier testing be performed.

To incorporate appropriate scientific judgment prior to the use of end-point mutagenicity tests, EPA has decided to utilize automatic triggers between the first and second tier tests, and a "presumptive automatic trigger and opt-out" approach between second tier tests and the final or "end-point" tests in this final test rule for C9 aromatic hydrocarbons. Under this approach, EPA is promulgating a tiered testing scheme for mutagenicity for the C9 fraction with automatic triggers to additional mutagenicity testing. Before the last tier, EPA will hold a public program review if the results of the previous tier test are positive. Public participation in this program review will be either in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the **Federal Register**. If, after review of public comment, no change in the test sequence is deemed necessary EPA will provide formal notification to the test sponsor that the next tier test should be conducted. If the Agency believes additional testing is no longer warranted as a result of the earlier test results, public comment, scientific judgment, and other appropriate factors, EPA will issue a proposed amendment to "opt-out" by repealing the existing requirement and, after consideration of public comment on the proposed amendment, issue a final decision whether it will rescind the rule requirement. This approach offers the advantage of allowing the incorporation of scientific judgment based on the weight of the evidence after the initial testing tiers have been completed, while not significantly delaying higher tier testing where it is deemed necessary.

EPA has decided not to use the public program review approach between the lower tier mutagenicity tests for the C9 aromatic hydrocarbon test rule. EPA believes the use of automatic triggers between these tiers is suitable. It should be noted that this does not exclude the public from requesting modifications in the test program. Provisions are available under section 21 of TSCA for the public to petition EPA at any time to amend a rule under section 4.

c. *Sex-linked recessive lethal (SLRL) assay in Drosophila.* API and CMA both submitted comments questioning the applicability of the *Drosophila* SLRL assay to predict heritable genetic effects.

CMA cited several limitations of the *Drosophila* SLRL assay which it considered to be sufficient cause for eliminating this assay from the mutagenicity testing scheme. These limitations include its performance in the International Collaborative Study (Ref. 10); problems with dosimetry; problems with data evaluation because of the occurrence of clusters; differences in metabolism between insects and man; and incomplete data evaluation by the Gene-Tox Work Group on *Drosophila*.

EPA responds to these comments in the reverse order to which they are listed above: (1) The Gene-Tox Work Group report on the SLRL assay is complete and has appeared in the open literature (Ref. 11). The Work Group concluded that one major advantage of the assay is its objectivity in testing for transmissible mutations in a eukaryotic test system. In addition, using a list of carcinogens developed for Phase I of the

Gene-Tox Program, the Work Group found a 90 percent correlation between in vivo carcinogenicity and the SLRL assay. Using a revised carcinogen list developed during the second phase of the Gene-Tox Program, the Phase II Assessment Panel found an 88 percent correlation between results in the SLRL assay and in vivo carcinogenicity.

(2) CMA is correct in stating that there are metabolic differences between insects and humans. However, the Agency considers these differences to be no greater than those between bacteria and humans such as in the Ames assays, and further believes that the in vivo metabolism afforded by *Drosophila* with intact enzyme systems and repair mechanisms is superior to the artifically manipulated in vitro metabolic activation systems used with bacterial and in vitro cell culture systems.

(3) Statistical methodology which allows for the appearance of clusters exists and should be used in evaluating data from the SLRL assay. Such methods are discussed in the Gene-Tox Work Group report (Ref. 11).

(4) Dosimetry is a generic problem in toxicology and is not unique to studies with *Drosophila*. Good toxicologic practices help to minimize this problem which is not a valid reason for eliminating the SLRL assay from the proposed testing scheme. Also, it should be remembered that results from this assay will not be used for quantitative risk assessment, but rather as a qualitative indication of potential mammalian mutogenicity which will be confirmed by subsequent testing.

(5) A review of the data from the International Collaborative Study (Ref. 10) fails to confirm the 27 percent accuracy figure cited by CMA. Six of 17 carcinogens and 8 of 9 noncarcinogens were correctly identified in this study. Overall, 14 of 26 chemicals were correctly identified, which gives an accuracy rate of 53.8 or 54 percent, not 27 percent as stated by CMA.

In summary, EPA believes that the SLRL assay is sufficiently validated to be used as a qualitative indicator of potential mutagenicity and oncogenicity as outlined in its proposed test scheme. This opinion is shared by the NAS Report (Ref. 9), which recommends the use of this assay in a scheme to identify environmental mutagens. In addition, both Phase I and Phase II of the Gene-Tox Program found the SLRL assay to be ready for use in testing programs. The Phase I Work Group found advantages in the use of this assay for both screening and hazard evaluation (Ref. 11). The Phase II report on the developmental status of bioassays in genetic toxicology found that the SLRL assay was one of the ten assays which could be considered as "routine", using as criteria the number of facilities conducting the test, the number of chemicals and chemical classes represented in the Gene-Tox data base, the uniformity of protocol development and the number of assays conducted per year in all facilities (Ref. 12).

d. *Mouse specific locus assay.* CMA and API both opposed the inclusion of the mouse specific locus assay on the grounds that the test is inappropriate for mutagenic risk evaluation due to lack of chemical data to validate the results, and on the grounds that it is not intended for human risk estimation. They further commented that the test is costly, insensitive, and available only in a limited number of testing facilities.

EPA disagrees with the contention that the mouse specific locus test is not intended for human risk estimation. The assay has been used to test for the genetic effects of both chemicals and radiation. This assay is the primary source of the data used by the National Research Council Advisory Committee on Biological Effects of Ionizing Radiation (BIER) and the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) (Refs. 13 and 14) to estimate the genetic risk of radiation. EPA is aware that the NAS (Ref. 9) has recommended that assays such as the dominant skeletal and cataract mutation assays be used for human risk estimation because they measure dominant mutations (as opposed to the recessive mutations detected in the mouse specific locus assay) and permit sampling of a larger portion of the genome than does the specific locus assay. EPA further recognizes that the mouse specific locus assay is subject to many of limitations cited by CMA. Nevertheless, it is the Agency's view that the specific locus assay, in spite of its limitations, is suitable for human risk estimation, primarily because its data base of test chemicals exceeds those of the dominant skeletal and cataract mutation assays and because it has been used for risk estimation with both chemicals and radiation. Further, the Agency believes that the limitations cited by CMA for the mouse specific locus assay apply to both the dominant skeletal and cataract mutation assays as they would to most, if not all, assays currently in use for heritable mutations in mammals. These assays are all subject to limitations in number of chemicals that can be tested and the number of facilities which can perform the assay because of the cost, time, and numbers of animals required. They are not intended as screening assays, but rather as confirmatory tests for heritable mutations. They should be considered equivalent in time, cost and facilities needed to those required to perform a two-year assay for oncogenicity.

e. *Cytogenetic assays.* API and CMA both questioned the Agency's rationale in requiring an in vitro cytogenetic assay in the tiered testing sequence, since an in vivo assay is required upon a negative finding in the in vitro test. API cited the in vivo results as a more definitive endpoint in the evaluation of mutagenic effect.

EPA has included both an in vitro and an in vivo cytogenetics assay in its bottom tier of testing to maximize detection of potentially clastogenic agents. An in vitro cytogenetics assays precedes the in vivo cytogenetics assay because it is a easier to perform than the in vivo cytogenetics assay and is conservative of time, resources, money and animals. Further, the Agency is of the opinion that in vitro cytogenetics assays are sufficiently predictive of both carcinogenicity and potential germ-cell mutagenicity that further testing can be triggered as a result of positive results in this assay. However, the Agency also believes that the in vitro test is subject to sufficient limitations, particularly in the use of in vitro metabolic activation systems, that a negative response, particularly one which occurs in the face of technical difficulties with metabolic activation systems or in the face of erratic or narrowly defined toxicity curves, should be confirmed by an in vivo assay. As additional information on these two test systems becomes available, the Agency will continue to consider the need to include in future test rules both in vitro and in vivo cytogenetics assays and may eliminate one or substitute other assays for the ones now required to determine clastogenicity.

f. *Dominant lethal assay.* API stated that the potential for inducing heritable chromosomal damage could be addressed initially in the reproductive studies, rather than through the use of the dominant lethal assay or the heritable translocation assay. EPA does not agree with this assessment. The use of the dominant lethal assay and the heritable translocation assay provides a more definite evaluation of the potential for heritable chromosomal damage than does the reproductive study, which is oriented towards the detection of more generally defined adverse effects.

CMA did not agree with the inclusion of the dominant lethal test as a higher tier assay because, they claimed, it is: (1) Insensitive because of the high

frequency of spontaneous embryonic death, (2) difficult to interpret because death may be caused by nongenetic events; (3) there are strain differences among mice; and (4) the assay measures chromosomal events indirectly.

EPA is aware of the criticisms directed at the dominant lethal assay by CMA. EPA disagrees with the contention that there is a "high" degree of spontaneous embryonic death, although some fetal wastage does occur in the untreated control population. It is for this reason that one should include untreated control animals in each experiment and should compare experimental data both to concurrent and historical control data for the laboratory performing the assay.

Embryonic death may occur as a result of nongenetic events. However, EPA is of the opinion that it is safe to assume death is a result of chemical treatment when it is statistically increased above control levels in the treated population. Further, because chromosomal aberrations are known to result in fetal wastage (Ref. 15), EPA also believes that for a chemical which has been shown to induce chromosomal aberrations either in vitro or in vivo, it is safe to assume that increased fetal death is a result of chemically induced chromosomal aberrations in the treated population. CMA's argument about strain differences in this assay is spurious. Species and strain differences are known to occur in all assays for toxicological effects and are neither unique to the dominant lethal assay nor germane to the rejection of this assay in a testing program.

In summary, EPA considers the dominant lethal assay to be an appropriate second tier assay for chromosomal aberrations because it provides evidence that the chemical in question reaches germ cell tissues where it induces chromosomal aberrations which are transmitted to the next generation. In this context, the NAS also recommends the use of the dominant lethal assay to confirm suspected mammalian mutagenicity (Ref. 9). Once this activity has been confirmed, NAS further recommends the use of the heritable translocation assay for human risk estimation. Recognizing that other assays which provide such evidence are in development, EPA will be reviewing its position on the dominant lethal assay in the future and may require other tests in place of, or in addition to, this assay in other test rules.

g. *Heritable translocation assay.* CMA objected to the use of the heritable translocation assay, primarily on the grounds that it is a research tool unsuitable to use in a testing program. CMA's primary support for this contention is a quote from the Gene-Tox Work Group Report (Ref. 16), which states: "It should be clearly understood that the heritable translocation test is still under development and that it is not ready for wide scale use in testing."

CMA cited an inadequate data base as one of the limitations of this assay, along with high cost, and an insufficient number of available facilities to perform the assay. These are the same limitations CMA applied to the mouse specific locus assay and EPA's response to them is the same as that articulated above for the mouse specific locus assay. In addition, the heritable translocation assay is available in more facilities than the specific locus assay and is not subject to limitations with source and stock of mice. Although the present data base consists of alkylating agents or agents which are converted to alkylators in vivo, EPA agrees with Gene-Tox report which states that the ". . . test appears appropriate when any compound (regardless of class) gives evidence of dominant-lethal and/or cytogenetic effects in germ cells".

EPA feels that CMA has misconstrued the essential meaning of the characterization of this test by the Work Group. The Gene-Tox report referred to use of the assay in a screening program. EPA agrees that this assay should not now, and because of time and cost consideration, most likely will never be, considered to be a part of a screening program for the identification of potential mutagens. Rather, EPA is suggesting that this assay be used to confirm germ cell mutagenesis. The Gene-Tox Report states ". . . its [the heritable translocation assay's] use is in the final phase of the testing program, when mutagenicity to mammalian germ cells is evaluated and data for use in genetic risk assessment are obtained" (Ref. 16). The NAS also recommended that the heritable translocation test be used for human risk estimation once a suspect mammalian mutagen, identified on the basis of results in an in vitro cytogenetics assay, has been confirmed in a dominant lethal assay (Ref. 9).

Finally, CMA has raised a question about the use of negative results for risk estimation in the face of positive results in other test systems. This problem is not unique to the heritable translocation assay but it also a consideration for results from the mouse specific locus test. For the purposes of risk estimation, agents producing negative results in these tests will have to be presumed nonmutagens and risk estimation for mutagenicity will not be performed.

h. *DNA damage assay.* API contended that the Sister Chromatid Exchange (SCE) assay alone should be adequate to identify potential DNA damage in cells.

The Agency agrees that the SCE assay alone is sufficient to identify potential DNA damage from the C9 fraction and has dropped the requirement for a DNA damage assay from the final rule for C9.

5. *Oncogenicity.* EPA requested comment on whether oncogenicity testing of the C9 fraction should be required only if selected mutagenicity tests produce non-negative results, or whether oncogenicity testing should be required immediately on the basis of the TSCA section 4(a)(1)(B) findings.

API commented that there is a very low probability of the C9 fraction to induce an epigenetic oncogenic effect. API stated that "in the absence of any genotoxic mechanisms, there would be no need to consider the C9's as having a high priority need for oncogenicity testing." API supported current Agency efforts in using an appropriate battery of short-term mutagenic tests to prioritize testing for oncogenic effects, but believed neither a positive mutagenic effect nor a substantial exposure finding alone should automatically trigger oncogenicity testing.

CMA objected to the use of rigidly defined battery of tests where a single positive response would trigger a two-year bioassay and proposed instead a scheme where the results of both short-term genotoxicity testing and other relevant information would be considered "in toto" prior to proceeding with a 2-year bioassay. AIHC stated that appropriate screening batteries for potential oncogenicity should be flexible, allowing the exercise of good scientific judgement and the consideration of expanding data bases in selecting assays and interpreting test results.

EPA agrees with API that there is a very low probability of the C9 fraction to induce an epigenetic effect because long-term subchronic toxicity testing (16 months) produced no indication of sustained histopathological changes related to C9 aromatic hydrocarbon exposure. Therefore, EPA is not requiring oncogenicity testing immediately under section 4(a)(1)(B) for the C9 aromatic hydrocarbon fraction. EPA's proposed and final test schemes for oncogenicity testing of the fraction are designed to screen for oncogenic potential of chemical substances which act through genotoxic mechanisms. While the chronic bioassay is, at present, the most appropriate means of confirming and quantifying a chemical's potential to cause oncogenic effects, the Agency believes that several short-term

genotoxicity tests can provide a reasonable screening of the oncogenic potential of the C9 fraction. If all of these tests yield negative results, the likelihood of the C9 fraction being oncogenic is small and the chronic bioassay will not be required. Conversely, if any one of these trigger tests is clearly positive, potential oncogenicity of the C9 fraction is suggested and the chronic bioassay is essential to confirm or deny that potential and provide a basis for judging what oncogenic risk exposure to the C9 fraction may present. The Agency's rationale for selecting specific trigger tests for such screening is discussed further below. Because the selected short-term tests measure different genotoxic events, each of which has been shown to correlate with oncogenicity in a variety of chemicals, even if only one of these tests was positive and all of the others were negatives, EPA believes that the potential for the C9 fraction to be oncogenic would not be sufficiently disproven to warrant foregoing the chronic bioassay, given the substantial exposure to the substance. However, EPA agrees with the commenters that a weight-of-the evidence judgment by the Agency may be necessary should the results from the specified short-term tests be a mixture of negative and equivocal outcomes.

Therefore, EPA is finalizing the rule with triggering of the chronic bioassay if any of the selected short-term tests fails to produce a negative result. If results of one or more tests are clearly positive, EPA will notify the test sponsors to initate the chronic study. However, if mixed negative and equivocal results are obtained, the Agency will review the overall weight of scientific evidence provided by all of the tests. If, in EPA's judgment, that evidence indicates that oncogenicity of the C9 fraction is quite unlikely, the Agency will solicit public comment on whether it should rescind the requirement for the chronic test.

The Agency proposed that a non-negative response in any of several short-term genotoxicity tests be used to trigger oncogenicity testing for the C9 because it believes that a non-negative response in any of these assays provides sufficient basis to establish a concern for potential oncogenicity. These assays were selected because: (1) Except the the *Drosophila* sex-linked recessive lethal assay, all are mammalian in origin; (2) all are known to detect carcinogens with a reasonable degree of accuracy; (3) all measure a defined genetic endpoint; and (4) all are readily available for general testing purposes.

In the final section 4 test rule for the C9, the Agency has adopted a first tier battery which consists of tests for both gene mutations and chromosomal aberrations. Results of these lower tier assays may trigger additional testing, both for oncogenicity and heritable germ cell mutations. If the C9 fraction is nagative in the required in vitro assays for gene mutation (the Ames assay and one or two in vitro assays for specific locus gene mutation in cells in culture) and in both in vitro and in vivo assays for chromosomal aberrations, no further testing for oncogenic potential will be required.

Of the four tests in the lower tier, oncogenicity testing is triggered by non-negative results in three of them: the in vitro assay for gene mutation in cells in culture; the in vitro assay for chromosomal aberrations; and the in vivo assay for chromosomal aberrations. These assays were chosen as triggers because they are mammalian assays which measure known genetic endpoints. Each of these assays also shows an empirical correlation with in vivo oncogenicity.

The overall correlation between results in the three most widely used tests for gene mutation in cells in culture to oncogenicity, as determined by Phase II of the EPA Gene-Tox Program, is 85.9 percent (Ref. 16). Seventy-three of 85 known chemical carcinogens tested in either the Chinese hamster V79 system, the mouse lymphoma L5178Y system, or the Chinese hamster ovary (CHO) system, were correctly identified. On an individual basis, 18 of 22 (81.8 percent) carcinogens tested in the L5178Y system, 12 of 12 (100 percent) tested in the CHO system and 58 of 69 (84 percent tested in the V79 system were correctly identified. EPA feels that there is sufficient evidence to indicate that these assays may be used to trigger an in vivo assay for oncogenicity. EPA is not, at this time, recommending any one cell system. However, as the data base of tested chemicals increases, certain assays may prove to be more appropriate for specific classes of chemicals. EPA will consider such information in its review of study plans submitted during Phase II of this rulemaking.

Likewise, the EPA is not recommending a particular cell system for use in the in vitro cytogenetics assay. For all cell systems combined, 17 of 22 carcinogens or 77.3 percent were correctly identified. EPA recognizes that this is a limited data base but nonetheless feels that there is sufficient evidence of an empirical correlation of results in these systems to oncogenicity to allow the use of this assay as a trigger for long-term oncogenicity studies and is, in fact, more concerned about the possibility of false negative results with these test systems.

In vitro sister chromatid exchange (SCE) assays show a better correlation with in vivo carcinogenicity; 40 of 41 carcinogens tested, or 97.5 percent, were correctly identified in these assays. However, the Agency was, and still is, reluctant to adopt these tests as direct triggers for oncogenicity testing because neither the mechanistic basis nor the genetic significance of this event is known. However, in light of the high degree of correlation shown by SCE assays with in vivo oncogenicity, the Agency is revaluating its position and may in the future recommened such assays as triggers for oncogenicity testing.

Only 10 carcinogens have been tested in the in vivo cytogenetics assay; nine were correctly identified (REF. 16). In spite of this limited number of chemicals evaluated, EPA believes that this assay is of sufficient significance that a positive response should be used to trigger long-term testing.

The only second tier assay to be used as a trigger for oncogenicity studies is the *Drosophila* sex-linked recessive lethal (SLRL) assay. This assay shows a good correlation with in vivo test results; 67 of 76, or 88.2 percent, of carcinogens tested in this assay were positive (Ref. 16). It measures a genetic event of known significance, and is an in vivo eukaryotic system. It will not serve as a single test trigger since chemicals which are tested in *Drosophila* will first have shown a positive response in another system such as *Salmonella typhimurium* or the SCE assay. EPA feels that this combination of responses is sufficient to warrant in vivo testing for oncogenicity.

6. *Reproductive effects.* API stated that any debate over the issue of whether the 2-generation inhalation reproduction study should be carried through the second generation belongs in the second phase of rulemaking. The Agency agrees that it is more appropriate to address the second generation question in the second phase of rulemaking, but emphasizes that study plans designed for the performance of such studies should reflect OTS test guideline recommendations, which for reproductive effects testing recommend a 2-generation study, or should provide justification why the protocols

submitted differ from those recommended by EPA.

7. *Estimated test costs.* API stated that the Agency's estimated range of test costs is significantly lower than the actual costs industry will incur to perform the battery of tests proposed in the C9 rule.

The Agency acknowledges that the cost of the mouse specific locus test, for example, is in excess of $100,000, not $10,000, as cited in the proposed rule. The Agency has reviewed its estimated range of test costs for the remaining tests required in this rule, and has revised the test cost estimates where appropriate. A complete discussion of test cost estimates is included in Unit V.

IV. Final Test Rule for C9 Aromatic Hydrocarbon Fraction

A. TSCA Section 4 Findings

The EPA is basing the final testing requirements for the C9 aromatic hydrocarbon fraction on the authority of section 4(a)(1)(B) of TSCA.

1. EPA finds that there are substantial amounts of the C9 aromatic hydrocarbon fraction manufactured, processed and sold for use as solvent end products in the U.S. each year (approximately 500 million pounds), and that a substantial number of persons (approximately 20,000) are exposed to the C9 aromatic hydrocarbon fraction through exposure to solvents. Additional persons are or may be exposed during the manufacture and processing of the much larger volume (approximately 70 billion pounds/year) of the C9 fraction which is blended into gasoline and other fuels. The bases for these findings are set forth in the Agency's ET and TMB support documents.

Data submitted to EPA since the publication of the Notice of Proposed Rulemaking (NPRM) for the C9 fraction (48 FR 23088, May 23, 1983) indicate that certain commercial solvents contain substantial concentrations of C9 aromatic hydrocarbons and that the C9 aromatic hydrocarbon content of solvents in general is much greater than originally estimated. API submitted data which represented 80 percent of the domestic production of C9 aromatic solvents, showing a median ET/TMB content of 80 percent, with a range of 75 to 90 percent. One TSCA section 8(d) submission showed a commercial solvent C9 content of 95 percent (Ref. 18).

2. Based on the large number of persons exposed to the C9 aromatic hydrocarbons through the manufacture and processing of the C9 fraction and the use of C9-containing solvents, taking into account the high percentage of C9 in many of those solvents and the use categories and general use patterns of C9 solvents, EPA finds that there is substantial human exposure to the C9 fraction.

3. EPA finds that although there are sufficient data on the subchronic effects and metabolism of the C9 fraction, currently available data are insufficient to allow the Agency to reasonably determine or predict the neurotoxic, reproductive, teratogenic (or, more appropriately, developmentally toxic), mutagenic and oncogenic effects of exposures to the C9 aromatic hydrocarbons resulting from the manufacture and processing of the C9 fraction and the use of C9-containing solvents. EPA finds that testing is necessary to develop such data.

4. EPA has reconsidered those exposures associated with the processing, distribution and use of motor gasoline and has decided not to include such exposures as a part of the basis of its section 4(a)(1)(B) findings to require testing of the C9 fraction. However, manufacturers and processors of the C9 fraction who do so in the course of producing gasoline and other motor or heating fuels are subject to this rule because the Agency's section 4(a)(1)(B)(ii) findings are based on the manufacture and processing as well as on the use of the C9 aromatic hydrocarbon fraction. Thus, in accordance with TSCA section 4(b)(3)(B), both manufacturers and processors of the C9 fraction are subject to the requirements of this rule (see Unit IV. D.)

B. Required Testing

The EPA is requiring that the C9 aromatic hydrocarbon fraction be tested for neurotoxicity, developmental toxicity, mutagenicity, and reproductive effects, and for oncogenicity unless specific mutagenicity test results are negative.

C. Test Substance

EPA is requiring that a C9 petroleum fraction, composed of mixed isomers of ET (22 percent minimum content) and 1,2,4-, 1,2,3- and 1,3,5-TMB (15 percent minimum content), with a total minimum ET–TMB content of 75 percent, be used as the test substance.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import".) Processors are required to test if the findings are based on processing. (Section 3(10) of TSCA, defines "process" as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce.) Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution or disposal. Because EPA has found that the manufacture and processing of the C9 fraction and its use in solvents may give rise to substantial exposure, persons who manufacture or process, or who intend to manufacture or process, the C9 aromatic hydrocarbon fraction (other than as an impurity) at any time from the effective date of this test rule to the end of the reimbursement period are subject to this rule. The end of the reimbursement period will be 5 years, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the last final report required under the test rule. As discussed in the Agency's Test Rule Development and Exemption Procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturers of C9 aromatic hydrocarbon fractions will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rules and exemption procedures in 40 CFR Part 790.

E. Test Rule Development and Exemptions

Test rule development for the C9 aromatic hydrocarbon fraction will be conducted according to the two-phase process described in 40 CFR Part 790. Under the two-phase process, this Phase I test rule is being promulgated for the C9 aromatic hydrocarbon fraction specifying the test substance, the effects for which test data are to be developed

and which persons are subject to the rule. In Phase II, following promulgation of this Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects specified in the Phase I rule or to obtain exemptions from the testing requirements.

This rule for the C9 aromatic hydrocarbon fraction is a final Phase I test rule. Within 30 days from the effective date of this final Phase I test rule, manufacturers subject to this rule must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days from the effective date of this Phase I test rule. After an opportunity for public comments, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the chemical specific test standards and schedules for the tests required by the Phase I rule. Testing will also be subject to EPA's generic TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792). Persons who submit study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modification to the adopted study plans can be made only with EPA approval.

Processors of the C9 aromatic hydrocarbon fraction subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications or study plans or to conduct testing unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the costs of testing on to processors through the pricing of their C9 aromatic hydrocarbon products.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards (40 CFR Part 792), published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved. The procedures for the second phase rulemaking are described in 40 CFR Part 790.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any C9 aromatic hydrocabon product subject to the testing requirements of this rule notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export the C9 aromatic hydrocarbon product must submit notices to the Agency pursuant to TSCA section 12(b)(1). For additional information, see 49 FR 45581 (November 19, 1984).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to : (1) Establish or maintain records or (2) submit reports, notices, notices, or other records required by the Act or any regulations issued under TSCA.

Additionally, TSCA section 15 (4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . . " The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for the C9 aromatic hydrocarbon fraction. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data.

These standards are defined in section 3(2)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular this includes individuals who report false information or who cause it

to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Final Test Rule

EPA has prepared an economic evaluation that examines the cost of the required testing and the potential economic impacts of those costs on the manufacturers and processors of C9 aromatics subject to this rule. The analysis considered four market characteristics of the C9 aromatic fraction: (1) The price sensitivity of demand for the C9 fraction, (2) producer cost characteristics, (3) industry structure, and (4) market expectations. Costs of conducting the health effects tests required in this rule are estimated to range from $1,187,656 to $3,414,369, with annualized test costs ranging from $307,742 to $884,720. Based on these test costs and an analysis of the market characteristics of the C9 aromatic fraction, the economic evaluation indicates that the potential for a significant adverse economic impact is low. This conclusion is based primarily on the following observations:

1. The demand for C9 for solvent use is relatively inelastic due to its selective performance advantage in its major uses.
2. The market expectations for C9 solvents are generally favorable.
3. The relative magnitude of the test cost is small (i.e., an estimated 0.001 cents per pound in the upper bound case); this represents 0.07 percent of the sales value of C9.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Guidelines and Reports

The following guidelines and reports referenced in this rulemaking are available from the: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

NTIS publication No.	Title	Price
P9 83-140773	Chemical Testing Industry. Profile of Toxicological Testing	$16.00
PB 83-257691	OTS Health Effects Test Guidelines—new and revised	25.00
PB 83-233295	OTS Health Effects Test Guidelines—new and revised	11.50
PB 83-153916	Pesticide Assessment Guidelines; Subdivision F—Human and Domestic Animals	16.00

The OECD Guidelines for Testing of Chemicals referenced in this rulemaking are available for $80.00 from: OECD Publications and Information Center, Suite 1207, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006, (202-274-1857).

VIII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this notice. The effective date has, in turn, been calculated from the promulgation date.

IX. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS-42034). This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, D.C.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on the C9 aromatic hydrocarbon fraction.

(b) Notice of the proposed rule on ET/TMB and the C9 aromatic hydrocarbon fraction (48 FR 23088).

(c) Notice containing the ITC designation of ET and 1,2,4-TMB to the Priority List (47 FR 22585).

(d) Notice containing the ITC recommendation of 1,2,3- and 1,3,5-TMB to the Priority List (47 FR 54624).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41786).

(2) Support documents consisting of:

(a) ET and TMB Technical Support documents.

(b) Economic impact analysis of final test rule for the C9 aromatic hydrocarbon fraction.

(c) Economic impact analysis of NPRM for the C9 aromatic hydrocarbon fraction.

(3) Communications consisting of:

(a) Written public comments.

(b) Summary of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) *Shell Oil Company 1975.* Air monitoring data on gasoline vapor concentrations in employee breathing zones at four representative bulk terminals. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1982.

(2) *Shell Oil Company 1977.* Service station air sampling at seven representative service stations. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1983.

(3) *Shell Oil Company 1982.* Exposure to driver salemen. In: Letter from J.P. Sepesi (Shell) to Document Control Officer, OPTS, USEPA, dated July 8, 1982.

(4) *API 1983.* Comments on Proposed Test Rule on Ethyltoluenes, Trimethylbenzenes and the C9 Aromatic Hydrocarbon Fraction. Letter from Phil G. Goulding, American Petroleum Institute, to Document Control Officer, OPTS, USEPA, dated Sept. 1, 1983.

(5) *Shell Oil Company 1980.* Report on the inhalation toxicity of SHELLSOL A to rats following 13 weeks exposure. Study No. TGLR.79.176.

(6) *Shell Oil Company 1980.* Report on toxicity of SHELLSOL A/SOLVESSO 100 to rats following daily exposure to vapor atmosphere for 12 months. Study No. SBGR.81.172. (Shell/Exxon joint submission).

(7) *Ehlins, U.H., Neuhouser, A. 1979.* "Procarbazine-induced specific locus mutations in male mice." *Mutation Res* 59:245–256.

(8) *National Academy of Sciences 1981.* "Review of the alkyl benzenes." National Academy Press, Washington, D.C.

(9) *National Academy of Sciences 1982.* National Research Council Committee on Chemical Environmental Mutagens. "Identifying and estimating the genetic impact of chemical mutagens." National Academy Press, Washington, D.C., pp. 141–142.

(10) *de Serres, F.J., Ashby, J. 1981.* "Evaluation of short-term tests for carcinogens." Report of the International Collaborative Program. Elsevier/North Holland. New York. Amsterdam. Oxford.

(11) *Lee, W.R., Abrahamson, S., Valencia, R., von Halle, E.S., Wurgler, F.E., and Zimmering, S. 1983.* "The sex-linked recessive lethal test for mutagenesis in *Drosophila melanogaster.*" A report of the U.S. Environmental Protection Agency Gene-Tox Program. *Mutation Res* 123:183–279.

(12) *Brusick and Auletta. 1984.* "Developmental status of bioassays in genetic toxicology." A report of Phase II of the USEPA's Gene-Tox Program. *Mutation Res.* In Press.

(13) *National Research Council, Advisory Committee on the Biological Effects of Ionizing Radiations. 1972.* The effects on populations of exposures to low levels of ionizing radiation. (BIER I). National Academy of Science, Washington, D.C.

(14) *UNSCEAR. 1977.* United Nations General Assembly. Report of the United Nations Scientific Committee on the Effects of Atomic Radiation. Official records of the General Assembly. Thirty-second session. Supplement No. 40 (A/32/40). United Nations, New York.

(15) *Brewen, J.G., Payne, H.S., Jones, K.P., Preston, R.J. 1975.* "Studies on chemically induced dominant lethality. I. The cytogenetic basis of MMS-induced dominant lethality in post-meiotic germ cells." *Mutations Res* 33:239–250.

(16) *Generoso, W.M., Bishop, J.B., Goss Lee, D.G. Newell, G.W., Sheu, C-J, von Halle, E. 1980.* "Heritable translocation test in mice." *Mutation Res* 76:191–215.

(17) *USEPA. 1978.* Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 40 CFR Part 58. Guidelines for Registration for FIFRA.

(18) *Marathon Oil Company 1984.* April 2 letter to USEPA. TSCA–8(d) submission (cover letter) on aromatic C9 fraction from petroleum refining.

(19) *API 1983.* September 29. TSCA 8(d) submission No. FYI–AX–1083–0148 (Sequence N). Chronic inhalation of unleaded motor fuel: Dated Sept. 15, 1983 conducted by International Research and Development Corporation, Mattawan, Michigan, 49071.

X. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the actual annual cost of the testing prescribed for the C9 aromatic hydrocarbon fraction is less than $704,647 over the expected market life of the C9 fraction for use in solvents. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on producers' costs or users' price for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of the C9 aromatic hydrocarbon fraction.

2. Small processors are not likely to perform testing themselves, or to participate in the organization of the testing effort.

3. Small processors will experience only minor costs in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 is revised to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.2175 to Subpart B to read as follows:

§ 799.2175 C9 aromatic hydrocarbon fraction.

(a) *Identification of chemical substance.* The C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum shall be tested in accordance with this Part.

(b) *Identification of test substance.* A C9 substance consisting of *ortho-, meta-* and *para*-ethyltoluene (minimum 22 percent), and 1,2,4-, 1,2,3,- and 1,3,5-trimethylbenzene minimum 15 percent) that is representative of a typical C9 aromatic hydrocarbon fraction obtained from the reforming of crude petroleum (minimum total ET–TMB content 75 percent) and intended for use as a solvent end product shall be prepared and used as the test substance in all tests.

(c) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process, or intend to manufacture or process, the C9 aromatic hydrocarbon fraction, other than as an impurity, from July 1, 1985, to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans, and shall

conduct tests and submit data as specified in this section, Subpart A of this part, and Part 790 of this chapter.

(d) *Health Effects Testing*—(1) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.* (A) An in vitro cytogenetics test shall be conducted with the C9 test substance.

(B) An in vivo cytogenetics test shall be conducted for the C9 test substance if the in vitro cytogenetics test conducted pursuant to paragraph (d)(1)(i)(A) of this section produces a negative result.

(C) A dominant lethal assay shall be conducted with the C9 test substance unless the in vitro cytogenetics test conducted pursuant to paragraph (d)(1)(i)(A) of this section and the in vivo cytogenetics test conducted pursuant to paragraph (d)(1)(i)(B) of this section (if required) produce negative results.

(D) A heritable translocation assay shall be conducted with the C9 test substance if the dominant lethal assay conducted pursuant to paragraph (d)(1)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects-Genetic Toxicology, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(2) *Mutagenic effects—Gene mutation*—(i) *Required testing.* (A) A *Salmonella typhimurium* mammalian reverse mutation microsomal assay shall be conducted with the C9 test substance, both with and without activation.

(B) A sister chromatid exchange (SCE) assay shall be conducted with the C9 test substance.

(C) A gene mutation in mammalian cells in culture assay shall be conducted with the C9 test substance.

(D) A second gene mutation in mammalian cells in culture assay, using a different cell line from that used in the first assay, shall be conducted with the C9 test substance if the first gene mutation in cells in culture assay, conducted pursuant to paragraph (d)(2)(i)(C) of this section, produces a negative result, unless the *Salmonella* microsomal assay, conducted pursuant to paragraph (d)(2)(i)(A) of this section, and the SCE assay, conducted pursuant to paragraph (d)(2)(i)(B) of this section, produce negative results.

(E) A *Drosophila* sex-linked recessive lethality test shall be conducted with the C9 test substance unless the *Salmonella* microsomal assay conducted pursuant to paragraph (d)(2)(i)(A) of this section and the gene mutation in cells in culture assays conducted pursuant to paragraphs (d)(2)(i) (C) and (D) of this section produce negative results.

(F) A mouse specific locus assay shall be conducted with the C9 test substance if the *Drosophila* sex-linked recessive lethality test, conducted pursuant to paragraph (d)(2)(i)(E) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Gene Mutations and DNA Effects, published by NTIS (PB 83–257691 and PB 84–233295), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects-Genetic Toxicology, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(3) *Oncogenicity*—(i) *Required testing.* A 2-year inhalation oncogenicity bioassay shall be conducted with the C9 test substance unless it produces negative results in all of the following tests: In vitro cytogenetics test, in vivo cytogenetics test (if required), first gene mutation in cells in culture assay, second gene mutation in cells in culture assay (if required), and *Drosophila* sex-linked recessive lethality test (if required) conducted pursuant to paragraphs (d)(1)(i) (A) and (B) and (d)(2)(i) (C), (D) and (E) of this section.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guidelines for Chronic Exposure-Oncogenicity published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects Section 451, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(4) *Developmental Toxicity*—(i) *Required testing.* An inhalation developmental toxicity study shall be conducted with the C9 test substance.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the OTS Health Effects Test Guideline for Inhalation Development Toxicity Study Teratogenicity, published by NTIS (PB 84–233295), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(5) *Reproductive Effects*—(i) *Required testing.* An inhalation reproductive effects study shall be conducted with the C9 test substance.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Reproduction and Fertility Effects, published by NTIS (PB 83–257691), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects Section 416, published by OECD, and the Pesticide Assessment Guidelines; Subdivision F, published by NTIS (PB 83–153916).

(6) *Neurotoxicity*—(i) *Required testing.* A neurotoxicity test battery consisting of a 90-day subchronic inhalation exposure incorporating the following tests shall be conducted with the C9 test substance:

(A) A neuropathology test;

(B) A motor activity test; and

(C) A functional observation battery.

(ii) *Study plans.* For guidance in preparing study plans it is recommended that the OTS Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 83–257691), be consulted.

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–11590 Filed 5–16–85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS-42065; FRL-TSH-FRL 2818-1]

2-Ethylhexanoic Acid, Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors conduct health effects tests for 2-ethylhexanoic acid (EHA, CAS No. 149-57-5). The proposed health effects tests include pharmacokinetic studies, and 90-day subchronic toxicity and developmental toxicity tests. This notice constitutes EPA's response to the Interagency Testing Committee's designation of EHA for priority consideration for testing.

DATES: Submit written comments on or before July 16, 1985. If persons request time for oral comment by July 1, 1985, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VII of this preamble.

ADDRESS: Submit written comments, identified by the document control number OPTS-42065, in triplicate to: TSCA Public Information Office (TS-783), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

Include the document control number (OPTS-42065) on all submissions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll Free (800-424-9065). In Washington, DC: (554-1404). Outside the USA (operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the Interagency Testing Committee's designation of EHA for health effects testing consideration.

I. Background

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for EPA's priority consideration for requiring testing.

The ITC designated EHA for priority consideration for health effects tests in its 14th Report, published in the **Federal Register** on May 29, 1984 (49 FR 22389). The ITC recommended that EHA be tested for chronic health effects including carcinogenicity. The ITC further identified, although it did not specifically recommend for testing, the following biological effects of concern to human health: acute toxicity, teratogenicity/embryo-toxicity, metabolism and toxicokinetics, genotoxicity, and other effects (peroxisome induction). These biological effects of concern were identified by the ITC because there is either insufficient information to characterize these effects or there is a structural similarity between EHA, which is known to induce peroxisomal proliferation, and other chemicals which also induce peroxisomes and are animal carcinogens.

The ITC's testing recommendations were based upon a U.S. production volume in 1977 of 11 to 61 million pounds. The ITC, using the National Occupational Hazard Survey, identified over 16,000 persons potentially exposed to EHA in different occupational settings. Also, the ITC stated that EHA is a chemical intermediate used primarily in the manufacture of 2-ethylhexanoate metal soaps (salts of EHA) which have a variety of uses. The ITC further commented that, although EHA itself is not used in consumer products, the salts of EHA are used in various consumer products. The ITC believed that general population exposure to the 2-ethylhexanoate anion may occur from the use of products containing these salts. The ITC further stated that suspicion exists as to the potential toxicity of the 2-ethylhexyl moiety on the basis of results from carcinogenicity studies of four 2-ethylhexyl compounds [di(2-ethylhexyl) phthalate, di(2-ethylhexyl)adipate, 2-ethylhexyl sulfate, and tris (2-ethylhexyl)phosphate] and of the ability of a group of 2-ethylhexyl compounds, including 2-ethylhexanoic acid, to induce peroxisomal proliferation and hypolipidemia in rats.

No environmental effects tests were recommended by the ITC. According to the ITC, chemicals with a similar structure to EHA have been found to have a low to moderate toxicity to aquatic organisms. The ITC did not believe that EHA would be toxic to aquatic organisms at the levels at which it is likely to occur in the environment.

B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

> (A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
> (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release. For the findings under sections

4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the **Federal Register** of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning EHA, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of EHA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning EHA; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for EHA under section 4(a)(1)(A). By these actions, EPA is responding to the ITC's designation of EHA for testing consideration.

C. Change in Process for Adopting Test Standards

In the **Federal Register** of March 26, 1982 (47 FR 13012), EPA announced an approach to adopting test rules that involved two-phase rulemaking. In the first phase of rulemaking EPA would specify the test substance, who would be responsible for testing, and the required tests. In the second phase, EPA would establish the tests methodologies (test standards) and the deadlines for submission of test data. EPA has used this approach for most of the test rules it has proposed for chemicals recommended in the first through the thirteenth ITC reports.

In December 1983 the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20, which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame (*NRDC* and *AFL–CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)).

Subsequent to the issuance of this Opinion, the Agency submitted papers to the Court which indicated that, in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most future test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985 (Declaration of Don R. Clay at 12 (September 24, 1984)). In accordance with this commitment, the Agency is setting forth in the preamble of this proposed rule and elsewhere in this issue of the FEDERAL REGISTER, interim final guidelines and procedure for utilization of single-phase rulemaking in the test rules program.

Section 4(b)(i) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent Office of Toxic Substances (OTS) guideline(s), Organization for Economic Co-operation and Development (OECD), or other suitable test guideline(s) as the required test standard(s) in the notice of proposed rulemaking; at this time EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modifications to the guideline, i.e., the proposed test standard, during the public comment period, and such comments should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard.

Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standards either the OTS guidelines, OECD or other suitable guidelines, a modified version of these guidelines, the alternative methodology submitted by commenters, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(1).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten rulemaking by as much as 18 months, resulting in the expedited initiation of the required testing. Secondly, because the OTS guidelines, OECD guidelines, or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to prepare and submit test protocols. Yet, by allowing commenters to submit alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA may continue to utilize the two-phase process for rules where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well accepted test methodology is available for inclusion in a proposed test rule.

II. 2-Ethylhexanoic Acid

A. Human Exposure and Environmental Release

1. *Profile and production.* EHA is a colorless liquid with a mild odor. It has a vapor pressure of 0.03 torr at 20 °C, boils at 226.9 °C at 760 torr, and is 0.1 percent soluble in water at 20 °C. EHA is used exclusively as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives (Refs. 24 and 40).

There are two domestic manufacturers and three importers of EHA (Ref. 32). Eastman Kodak Co. is the primary domestic manufacturer of EHA. Union Carbide Corp. is also a domestic manufacturer of EHA; American Hoechst Corp., BASF Wyandotte, and Filo Chemical Inc. are importers of EHA. The annual U.S. supply (domestic production plus imports) of EHA is currently between 20 to 25 million pounds.

The import level of EHA is about 1 million to 2 million pounds annually.

The TSCA Inventory identified the 1977 U.S. production/importation of EHA as 11 to 61 million pounds, the same figure used by the ITC (Refs. 16, 24, and 25).

2. *Exposure during manufacturing and processing.* In evaluating the exposure of workers to EHA, the Agency considered: (a) The effectiveness of in-place engineering controls and manufacturing methods; (b) the number of workers that manufacture, handle, transport, and/or process EHA; (c) the frequency and duration of such activities; (d) typical and worstcase concentrations (estimated) of EHA which might be inhaled or dermally absorbed; and (e) the use of protective clothing to minimize dermal exposure.

Inhalation and dermal exposure to EHA are limited by engineering features and controls employed in manufacturing and processing. EHA is manufactured using enclosed, automated, continuous feed chemical processes (Refs. 16, 24, and 39). The raw materials are pumped from storage tanks to closed, continuous feed vertical reactors. After reaction, the product (EHA) is refined through distillation and pumped to storage tanks, where the EHA remains until pumped directly to another process for use, or loaded into tank cars, trucks, or drums. Waste from the distillation column is recycled to the reactor or disposed by incineration or chemical treatment. During clean-up for changeover or maintenance, the distillation column is drained, a heel of water or solvent added and put on total reflux, then the equipment is blown back. The water or solvent is drained and incinerated or treated as a chemical waste stream.

The equipment and methods used to process EHA derivatives are generally the same as those used to produce naphthenate metal soaps. The ethylhexanoate metal soaps are typically manufactured in mineral spirits by reaction of either the free metal, its oxide, or its hydrate with EHA in a closed reactor. During production the EHA and mineral spirits are charged through feed lines directly from closed storage tanks. The solids (i.e., the metal or metal oxide hydrates) are introduced by means of screw or bucket feeders equipped with dust collectors. Processing typically consists of a batch reaction followed by a neutralizing step where excess acid is stripped off. The solids from this step (not the desired salt) are removed by filtration and disposed. At the end of the neutralization step, all the EHA should have been consumed or removed from the process stream. Engineering controls for the processing equipment are described by industry as satisfactory to comply with OSHA standards currently regulating the handling of the raw materials, including lead compounds, and the product's base solvent (Ref. 38).

The number of workers exposed to EHA is significantly less than reported by the ITC. The ITC utilized the 1970 National Occupational Hazard Survey (NOHS) which estimated that as many as 16,000 workers in 28 occupations were potentially exposed to EHA (Ref. 26). However, over 95 percent of these workers were exposed to products that contained ethylhexanoate metal soaps or other derivatives of EHA. For comparison, the National Occupational Exposure Survey (NOES), a survey that more closely represents actual observations, estimates that approximately 1,600 workers may be exposed to EHA (Ref. 27). More recent information reported to EPA indicated that approximately 400 workers are potentially exposed to EHA (Ref. 39). Industry estimates that at most 75 workers are currently involved in manufacturing and 300 in processing EHA nationwide.

During manufacturing, the duration of occupational exposure to EHA is typically less than 2 hours per day per worker. Rotation of assignments further limits exposure of any given individual. Workers may be exposed to EHA via inhalation of vapors and dermally. Exposure may occur primarily during sampling of reactors and distillation columns and loading/unloading of drums, tank cars, and trucks EHA is manufactured at two sites, 24 hours per day, approximately 300 days per year, with on the order of 75 workers potentially exposed to EHA. The reactor and distillation column are sampled several times per day. During sampling, the 2 to 5 workers involved are collectively exposed to EHA for approximately 2 hours per day per site.

Exposure is also expected during loading/unloading of EHA. Tank cars and trucks are loaded approximately 100 days per year. This loading also involves 2 to 5 workers per site for a total of 1 o 2 hours per day per site. A small percentage of the EHA is drummed and this is done approximately 60 days per year, 1 to 2 hours per day. Occupational exposure to EHA at processing facilities is also possible. EHA is processed at an estimated 30 to 100 sites. At these sites, 1 to 3 workers are typically involved in the manufacture of EHA derivatives up to 8 hours per day, 30 to 250 days per year. (Ref. 39).

Industry has not monitored EHA in the workplace nor provided estimates of airborne concentrations. In order to estimate airborne concentrations of EHA, the Agency utilized its "Standard Parameters for Worker Exposure Models" (Ref. 39), which are based upon vapor pressure during typical activities. Actual conditions may be different; however, the results given by these models should represent the range from typical to worst-case airborne concentrations. For EHA manufacture, estimated exposure is greatest during the loading of tank cars and trucks. To estimate this worst-case exposure (0.1 to 0.2 mg/kg/day), the Agency assumed that the worker would stay on top of the tank car or truck while it is being filled, positioned immediately downwind of the vent. Actual exposure may be an order of magnitude lower (0.01 to 0.02 mg/kg/day) since the worker typically stands away from the truck during most of the time it is being filled. During sampling and processing activities, airborne concentrations of EHA are probably less than 0.01 mg/m^3, resulting in inhalation of less than 0.01 θg/kg/day.

Workers who sample, load, unload, and/or drum EHA or clean the filter press in processing may also be dermally exposed. This potential is considered to be negligible by industry because gloves and other protective clothing and equipment are "routinely worn" during these activities (Refs. 24, 25, and 38). However, the Agency notes that worker hygiene procedures can vary widely throughout the industry and believes that a worker might be exposed to as much as 500 mg/kg/contact if both hands were immersed in EHA, and 100 percent of the EHA film on the hands was absorbed through the skin (Ref. 39).

3. *Exposure associated with consumer goods.* EHA is not an ingredient or constituent in any consumer product, and consumers are not exposed to manufactured EHA. Consumers, however, may be exposed to a wide variety of products that contain ethylhexanoate metal soaps or other derivatives of EHA.

The ethylhexanoate metal soaps and other derivatives of EHA have the following uses (Refs. 24 and 40):

(a) Vinyl stabilizer (barium, cadmium, and zinc salts). Typically, the final vinyl article contains one percent of the EHA salt.

(b) Paint and ink dryers (cobalt, lithium, zinc and manganese salts). Typically, the paint or ink would contain about 0.5 percent of the EHA salt.

(c) Peroxide catalysts (such as t-amylperoxy 2-ethylhexanoate).

(d) Catalyst in oxo chemical production (cobalt salt).

(e) Manufacture of plasticizer for synthetic rubbers.

(f) Promoter for curing thermoset polyester resins (cobalt salt). Typically, the final resin would contain 0.005 to 0.1 percent of the EHA salt.

Products that contain these derivatives of EHA include dried paint films, coatings and inks, PVC products, and fiberglass reinforced products. However, potential for consumer exposure to EHA from use or contact with such products is extremely low because of their expected low volatility, low water solubility, high resin solubility, and the small concentration (usually less than 1 percent) in the product. Therefore, EPA believes that there is minimum potential for EHA (or its derivatives) to migrate from the polymerized products in which they are incorporated.

Products containing EHA derivatives that are available for direct use by consumers are limited to oil base paints, varnishes, stains and polyester fiberglass resins. The Agency found no stability constant or other data to support the ITC's contention that EHA derivatives in these consumer products dissociate (hydrolyze) resulting in indirect exposure to the EHA anion. Both industry (Ref. 41) and EPA (Ref. 43) Believe that significant hydrolysis does not occur during the use of these products. These derivatives are not expected to hydrolyze at the near neutral pH's maintained by buffers and the low moisture levels in these products. Potential exposure is further reduced because the amount of EHA derivatives in these products is typically less than 0.005 to 0.5 percent of the product (Ref. 16), and most of the product that might contact the skin would be removed by clean-up. Therefore, the Agency believes that indirect consumer exposure to EHA anion, even if it were to occur, would be negligible.

4. *Environmental and general population exposure.* The Agency has no reason to believe that present levels of EHA released to the environment result in human exposure from either contaminated drinking water or foods. Eastman Kodak Co. reports that more than 99.5 percent of the EHA in their process effluents is either incinerated or biodegraded on-site in a wastewater treatment plant (Refs. 24 and 25). Furthermore, because of EHA's low vapor pressure, little atmospheric release is expected from venting of storage tank cars, and trucks. Union Carbide Corp. treats its process effluents containing EHA in an on-site wastewater treatment plant prior to discharge to Galveston Bay, Texas. The reported volume and frequency of this release (Ref. 39) and the anticipated concentrations of EHA discharged to the bay in treated effluents are considered insignificant. EHA should be readily biodegraded, similar to other short chain carboxylic acids. Both its persistence and bioaccumulation potential are considered to be low and of no consequence.

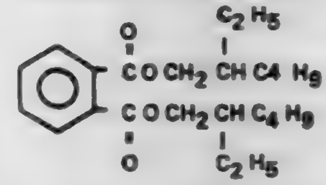
Environmental release of EHA from processing facilities is also considered low. Because of its metal and mineral spirit content, the filter cake waste is disposed of according to Resource Conservation and Recovery Act regulations (Ref. 38). Airborne emissions of EHA are expected to be low because of the low vapor pressure of EHA (and its derivatives) and the engineering features and controls that are generally utilized.

5. *Summary.* The Agency believes that dermal exposure to EHA may be a significant concern during manufacturing, handling, and processing operations if gloves and other protective equipment are not worn. Since all workers who may come in contact with EHA are not required to wear gloves, the Agency assumes that potential exists for exposure of up to 500 mg EHA/kg body weight/contact. The Agency also believes that airborne exposure in the workplace, consumer exposure, and general population exposure to EHA are not of sufficient magnitude to be of concern at this time.

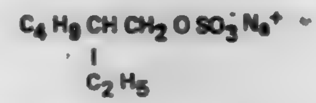
B. Health Effects

1. *Similarities in chemical structure.* A variety of chemicals with structures similar to EHA have been or are currently being tested by the National Toxicology Program (NTP). These chemicals possess a similar range of biological activity. As can be seen from the chemical structures below, they all contain similar structural features.

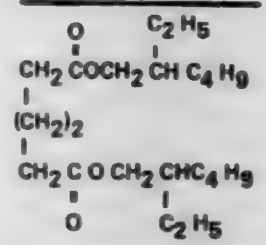
1. Di (2-ethylhexyl) phthalate (DEHP)



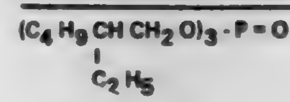
2. Sodium 2-Ethylhexyl Sulfate (EHS)



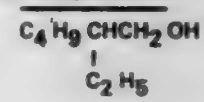
3. Di (2-ethylhexyl) adipate (DEHA)



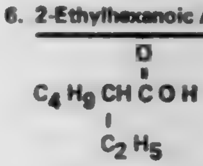
4. Tris (2-ethylhexyl) Phosphate (TEHP)



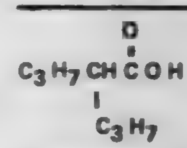
5. 2-Ethylhexanol (EH)



6. 2-Ethylhexanoic Acid (EHA)



7. Valproic Acid (2-Propylpentanoic Acid)



As illustrated by the chemical structures, the first 5 chemicals have one or more 2-ethylhexyl groups while the last 2 chemicals, EHA and valproic acid, are short, branched chain carboxylic acids.

2. *Carcinogenicity.* The first four chemicals that contain the 2-ethylhexyl moiety (DEHP, EHS, DEHA, TEHP) were tested by the NTP for carcinogenic and other chronic toxic effects in 90-day and 2-year studies in male and female

Fischer 344 rats and B6C3F1 mice. All four of these chemicals caused increased occurrence of hepatocellular tumors, principally carcinomas, in female mice. DEHP and DEHA also caused hepatocellular tumors in male mice, while DEHP caused hepatocellular tumors in both male and female rats as well. These four 2-ethylhexyl containing chemicals have been shown by the NTP bioassays to be animal oncogens, though the response appears to be relatively species, sex, and site specific (Refs. 11 through 15). These studies suggest that compounds containing the 2-ethylhexyl moiety (including EHA) possess some carcinogenic hazard (Ref. 7).

3. *Other biological effects.* The 2-ethylhexyl containing chemicals (including EHA) have also illustrated a spectrum of other biological effects. EHA, DEHP, DEHA, EHS, 2-ethylhexanol, and 2-ethylhexyl aldehyde induce peroxisomal proliferation and, in addition, may be associated with hepatomegaly and hypolipidemia in rats (Refs. 9 and 17). Peroxisomal induction is primarily an enzymatic biochemical event typically associated with the liver (Ref. 9). Furthermore, there is evidence to suggest an association between peroxisomal induction and hepatocarcinogenicity in rats and mice (Refs. 9, 17, and 18). However, there is currently insufficient information to understand the nature and importance of this association.

4. *Metabolism.* In addition to peroxisomal induction, the 2-ethylhexyl type chemicals have some metabolic interrelationships. Both DEHP and DEHA are diesters that are metabolically hydrolyzed to their corresponding monoesters and 2-ethylhexanol (Refs. 28 and 30). Albro (Ref. 23) reported that within 28 hours after administration of ^{14}C-labeled 2-ethylhexanol to rats by gavage, 80 to 82 percent was excreted in urine; 8 to 9 percent in feces; and 6 to 7 percent in respirable CO_2. EHA was identified as the major (61 percent) urinary metabolite of 2-ethylhexanol, while probable metabolites of EHA accounted for almost all of the remaining urinary excreted radioactivity. Only 3 percent of the 2-ethylhexanol was excreted unchanged. In contrast, sodium 2-ethylhexyl sulfate (EHS) is excreted primarily unchanged by rats with only a small percentage excreted as 2-ethylhexanol (Ref. 29). Although no confirming metabolic data are available, TEHP is probably hydrolyzed to 2-ethylhexanol as well. Thus it appears that three of the four 2-ethylhexyl containing chemicals tested by the NTP are converted to 2-ethylhexanol and EHA. The NTP is planning further comparative feeding studies with 2-ethylhexanol, DEHP, and mono (2-ethylhexyl) phthalate to compare toxic effects and dose response relationships (Ref. 31). They are also planning a 2-year oncogenicity bioassay with 2-ethylhexanol (Ref. 42).

5. *Neurological effects.* EHA has been shown to have pronounced anticonvulsant activity similar to that of valproic acid (Ref. 22) which affects brain enzyme chemistry (Refs. 19, through 21). However, although EHA has been shown to have therapeutic anticonvulsive activity in experimental mice with induced audiogenic seizures, this is not a sifficient basis to indicate that significant neurological effects may occur in humans from exposure to EHA.

6. *Developmental toxicity.* EHA, along with 12 other short chain carboxylic acids, was tested in an *in vitro* screen using a whole rat embryo culture system (Ref. 1). EHA produced a spectrum of malformations similar to those produced by valproic acid, a known human teratogen. Valproic acid produces the same spectrum of malformations *in vivo* as it does *in vitro* (Ref. 2). Furthermore, an *in vivo* teratogenicity screen conducted on 2-ethylhexanol indicated significant adverse effects (Ref. 5). Severe maternal toxicity, however, was also observed and could have caused the adverse effects of these fetuses. The positive results of both EHA and valproic acid (and several other short chain carboxylic acids) in the same *in vitro* test, coupled with the close structural analogy between EHA, valproic acid, and 2-ethylhexanol, suggests that EHA may possess some developmental toxicity hazard.

Furthermore, a recent TSCA section 8(e) submission (Ref. 36) for [[(3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]methyl]thio] acetic acid, 2-ethylhexyl ester (CAS No. 80387-97-9) reported teratogenic and embryolethal effects in pregnant rats which were administered a dose of 300 mg/kg/day orally. This 2-ethylhexyl ester can be expected to be metabolized to 2-ethylhexanol which will be metabolized to EHA. If EHA is the causal agent, it may cause similar developmental toxicity effects.

7. *Acute toxicity.* The acute toxicity of EHA has been adequately characterized in the 14th ITC Report (49 FR 22389). In brief, EHA has an oral LD_{50} equal to 3g/kg in rats; a dermal LD_{50} equal to 6.3 ml/kg in rabbits and 6.3 g/kg (4-day contact period) in guinea pigs; and an inhalation LC_{50} greater than 400 ppm for 6 hours in guinea pigs (Refs. 3, 4, and 6). Full-strength EHA has also been shown to cause corneal necrosis and skin erythema in rabbits (Ref. 4).

C. Findings

EPA is basing its proposed testing of EHA on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that EHA may present an unreasonable risk of subchornic toxicity, oncogenicity, and developmental toxicity. These findings are based on potential dermal exposure of workers engaged in manufacturing, transfer, storage and processing of EHA and the suggestive evidence of toxicity discussed in Unit II. B of this preamble.

Inadequate data exist to characterize the pharmacokinetics, subchronic toxicity, and developmental toxicity of EHA. In addition, the dermal exposure of an estimated 400 workers during the manufacturing, transfer, storage, and processing of EHA has not been sufficiently characterized to conclude that there is no unreasonable risk from this exposure to EHA. Furthermore, the potential health hazard of EHA is significant because of: (1) Its structural similarity to several chemicals that have been associated with such health effects; (2) the metabolic interrelationships of certain of these chemicals to EHA; and (3) the suggestive evidence that chemicals such as EHA that induce peroxisomal proliferation may have oncogenic potential. The available data on the health effects of concern are inadequate to reasonably predict or determine the health risks posed by present exposure to EHA.

The National Toxicology Program's planned testing of 2-ethylhexanol (Ref. 42) should resolve much of the uncertainty over the oncogenic potential of EHA since EHA is the principal metabolite/excretion product of animals dosed with 2-ethylhexanol (Refs. 23 and 37). The Agency, therefore, is not proposing a 2-year bioassay of EHA at this time since such testing would most likely not be necessary given the current knowledge of the pharmacokinetics and metabolism of 2-ethylhexanol to EHA and the proposed pharmacokinetic testing of EHA. EHA has also been nominated for genotoxicity testing by the NTP (Ref. 10). NTP's genotoxicity testing may include the *Salmonella* assay, cytogenetic testing of chromosomal aberrations, and sister chromatid exchange in Chinese hamster ovary cells.

Data are not available to characterize the pharmacokinetics, subchronic toxicity, and developmental toxicity of EHA. The Agency is unaware of any ongoing or planned testing in these areas of concern. Therefore, the Agency finds that the testing specified below is necessary to characterize these risks.

D. Proposed Testing and Test Standards

On the basis of these findings, the Agency is proposing pharmacokinetic tests, 90-day subchronic tests, and developmental toxicity tests as a basis for determining the health risks of EHA.

The Agency is proposing that the following health effects test guidelines be adopted as test standards for the purposes of the proposed tests for EHA.

The Agency believes that the metabolism test standards developed by OTS for this proposed rule (Ref. 8) is appropriate for determining and comparing the pharmacokinetics of EHA for both the oral and dermal routes of administration. Data from these studies on the absorption, distribution, excretion, and metabolism of EHA are necessary to aid in the evaluation of test results from other toxicology studies and to determine the comparability of oral and dermal dosing.

The purpose of these studies is to determine: (1) The bioavailability of EHA after dermal administration, (2) whether or not the biotransformation of EHA is qualitatively and quantitatively the same after dermal and oral administration, (3) whether or not the biotransformation of EHA is changed qualitatively or quantitatively by repeated dosing, and (4) the extent of transport of EHA and its metabolites to the fetus.

The Agency proposes that 7 to 9 week old Fischer 344 rats and 5 to 7 week old Hartley guinea pigs be used for these studies. Fischer 344 rats are proposed for subchronic testing of EHA and have been used extensively by NTP for testing ethylhexyl containing chemicals. They have also been used extensively in percutaneous absorption studies. Hartley guinea pigs are proposed because their skin resembles human skin. Two doses will be required in these studies, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level. The same "high" and "low" dose will be administered orally and dermally. The proposed studies evaluate blood levels, urinary and fecal excretion, biotransformation, and placental transport of EHA when administered dermally and/or orally. In addition, the extent to which washing removes dermally applied EHA is also evaluated.

The Agency believes that this OTS metabolism test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard is proposed under § 798.460 of 40 CFR Chapter I.

The Agency believes that the subchronic exposure oral toxicity test standard developed by OTS for this proposed rule is appropriate for determining the subchronic toxicity of EHA. This test permits the determination of the no-observed-effect level, the characterization of toxic effects associated with continuous or repeated exposure for a period of 90 days, and provides information on target organs.

The subchronic test is conducted by administering a chemical substance such as EHA orally for 90 days in graduated daily doses to several groups of experimental animals, one dose level per group. During the period of administration the animal are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied, and at the conclusion of the test all surviving animals are sacrificed and histopathological examinations are conducted on the tissues. Given the test results of Moody and Reddy (Refs. 9 and 17), the subchronic toxicity evaluation should pay particular attention to hepatotoxicity and serum lipid alterations. In addition, Fischer 344 rats and B6C3F1 mice are proposed for this testing since results from these tests will allow comparison with subchronic and other testing of 2-ethylhexanol by NTP.

The Agency believes that this subchronic toxicity test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard is proposed under § 789.75 of 40 CFR Chapter I.

The Agency believes that either the OTS test guideline entitled "Developmental Toxicity (HG-Organ/Tissue-Developmental Toxicity-Oral, OTS Health Effects Test Guidelines)" or the OECD test guideline entitled "Teratogenicity", No. 414, adopted May 12, 1981 is appropriate for determining the developmental hazard of EHA. Both developmental toxicity test guidelines using the oral route of administration have been designed to determine the potential of a chemical substance such as EHA to induce structural and/or other abnormalities in the fetus which may arise from exposure of the mother to the chemical substance during pregnancy.

The developmental toxicity test is conducted by administering a chemical substance such as EHA orally in graduated doses, for at least that part of the pregnancy covering the period of organogenesis, to several groups of pregnant experimental animals, one dose level being used per group. Shortly before the expected date of delivery, the pregnant females are sacrificed, the uteri removed, and the contents examined for structural malformations, *in utero* death, growth retardation, and functional deficits. The Agency proposes two modifications to this protocol:

1. Rats and a non-rodent mammalian species should be utilized instead of rats and mice. EPA recommends rabbits as the non-rodent species. The Agency believes that multispecies testing is a more sensitive means of detecting developmental hazards than single species testing (Refs. 33, 34, and 35). Testing EHA in the rat and a non-rodent mammalian species will provide the Agency with the data needed to reasonably determine or predict whether EHA poses a risk of developmental toxicity to humans.

2. EPA does not specify the strains or precise ages of the animals to be used; it recommends that young adult rats and rabbits be used. The Agency is unaware of specific strains of test animals which might be sensitive to EHA for developmental effects.

The Agency believes that either the OTS or OECD oral developmental toxicity test guideline represents the state-of-the-art methodology and forms the basis for a valid and scientifically acceptable test standard for evaluating the developmental toxicity of a chemical substance such as EHA. Both guidelines have been reviewed to ensure that they reflect the most current scientific approach to developmental toxicity testing.

E. Test Substance

EPA is proposing that EHA of at least 99 percent purity be used as the test substance. EHA of this purity is commercially available at nominal cost. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to EHA itself. Radiolabeled ^{14}C–EHA will be needed for the pharmacokinetics testing.

F. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and

processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacture, transport, storage, and processing of EHA may present an unreasonable risk to human health, EPA is proposing that persons who manufacture or process, or intend to manufacture or process EHA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the pharmacokinetic, subchronic toxicity, and developmental toxicity testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA promulgated in the **Federal Register** of October 10, 1984 (49 FR 39774) procedures for the granting of exemptions under TSCA section 4(c) for use with two-phase rulemaking. Elsewhere in this issue to the **Federal Register**, EPA is promulgating interim final exemption procedures for use with single-phase rulemaking. These new procedures differ only slightly from those previously adopted. In brief, when both manufacturers and processors are subject to a test rule, processors will be granted an exemption without filing exemption applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for EHA. As noted in Unit II. E of this preamble, EPA is interested in evaluating the effects attributable to EHA itself and has specified a relatively pure substance for testing.

G. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA good laboratory practice (GLP) standards, which appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

The pharmacokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

The subchronic toxicity tests shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

NTP's experience with testing other ethylhexyl moiety substances and the Agency's experience with Negotiated Testing Agreements with industry suggests that the proposed time allowances and reporting requirements are reasonable.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

H. Issue

This proposed rule identifies various OTS developed test standards and an OTS or OECD test guideline as a test standard for health effects testing of EHA. The Agency is soliciting comments as to whether these health effects test standards and guidelines are appropriate and applicable for the testing of EHA. The Agency also requests comments on the adequacy of this testing, and the reporting times for the identified health effects tests.

III. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issue under TSCA.

Additional, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for EHA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or proccessors that fail to submit a letter of intent or an exemption requst and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of

the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant econmic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Based upon the Level I analysis, total testing costs for the proposed rule for EHA are estimated to range from $185,600 to $491,700. The Level I economic analysis (Ref. 16) suggests that the potential for adverse economic effects due to the estimated test costs is low. Annualized costs should be $48,100 to $127,400 and should increase the price 0.2 to 0.6 cents per pound which is equivalent to 0.4 to 1 percent of the current base price.

V. Availaility of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of tests facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)", can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VI. Guidelines

The OTS developmental toxicity testing guideline cited in this proposed test rule is available from the NTIS, 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4657). This OTS guideline is within NTIS publication PB 84-233295 which costs $11.00. The OECD teratogenicity testing guideline cited in this proposed test rule is available from the OECD Publication and Information Center, Suite 1207, 1750 Pennsylvania Ave. NW., Washington, DC. 20006 (202-724-1857). This guideline is within OECD Guidelines for Testing Chemicals, publication ISBN-9264-12229-4, which costs $80.00. These guidelines are included in the docket for this proposed rule. The pharmocokinetics and subchronic toxicity test standards are contained in the proposed test rule and will be codified under § 798.460 and § 798.75 of 40 CFR Chapter I.

VII. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analysis, EPA will hold a public meeting in Washington, DC. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, DC: (554-1404); Outside the U.S.A. (operator 202-554-1404), by July 1, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting will be scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Rulemaking Record

EPA has established a record for this rulemaking, (OPTS-42065). This record includes basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of EHA to the Priority List. (49 FR 22389, May 29, 1984).

(b) Notice of final rule of EPA's TSCA good laboratory practice standards (48 FR 53922, November 29, 1983).

(c) Notice of final rule on two-phase test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures.

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(f) Notices relating to the availability of OTS health effects test guidelines (49 FR 39911, October 11, 1984; 48 FR 44898, September 30, 1983).

(g) Notices requiring TSCA section 8(a) and 8(d) reporting for EHA (49 FR 22284, 49 FR 22286, May 29, 1984).

(2) Support documents: consisting of:

(a) Study of availability of test facilities and personnel.

(b) EHA economic analysis.

(3) Records of minutes of informal meetings.

(4) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Reports—published and unpublished factual materials.

(5) Test guidelines proposed as standards.

B. References

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Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., S.W., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the total cost of all the proposed testing for EHA is $125,000 to $332,000 over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on our present analysis, EPA does not believe that there will be any significant adverse effects as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*), Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked, "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 798 and 799

Testing, Environmental Protection, Hazardous Material, Chemicals, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

John A. Moore,

Assistant Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. By adding new Part 798, consisting at this time of Subpart B, § 798.75, and Subpart F, § 798.460, to read as follows:

PART 798—HEALTH EFFECTS TEST STANDARDS

Authority: 15 U.S.C. 2603, 2611, 2625.

Subpart A—[Reserved]

Subpart B—General Toxicity Testing

§ 798.75 Subchronic oral toxicity test standard.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting does levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Definitions.* (1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately ten percent for rats) of a life span.

(2) Does is the amount of test substance administered. Does is expressed as weight of test substance (g, mg) per unit weight to test substance per unit weight of food or drinking water.

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is espressed in terms of the weight of a substance given daily per unit weight of test animal (mg/kg). When administered to animals in food or drinking water, the no-observed-effect level is expressed as mg/kg of food or mg/ml of water.

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered substance or its metabolites in susceptible tissue.

(c) *Principle of the test method.* The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 90 days. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test all animals are necropised and histopathological examinations carred out.

(d) *Test procedures*—(1) *Animal selection*—

(i) *Species and strain.* A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains should be employed. The commonly used non-rodent species is the dog, preferably of a defined breed; the beagle is frequently used. If other mammalian species are used, the tester shall provide justification/reasoning for their selection.

(ii) *Age.* (A) Young adult animals shall be employed. At the commencement of the study the weight variation of animals used shall not exceed ±20 percent of the mean weight for each sex.

(B) Dosing of rodents shall begin as soon as possible after weaning, ideally before the rats are 6, and in any case, not more than 8 weeks old.

(C) Dosing of dogs shall commence after acclimatization, preferably at 4-6 months and not later than 9 months of age.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and non-pregnant.

(iv) *Numbers.* (A) At least 20 rodents (10 females and 10 males) shall be used at each dose level.

(B) At least eight non-rodents (4 females and 4 males) shall be used at each dose level.

(C) If interim sacrifices are required, the number shall be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(2) *Control groups.* A concurrent control group is required. This group shall be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(3) *Satellite group.* A satellite group of 20 rodents (10 animals per sex) shall be treated with the high does level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post treatment period of not less than 28 days.

(4) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data shall be sufficient to produce a dose response curve.

(ii) The highest dose level in rodents shall result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation; for non-rodents there should be no fatalities.

(iii) The lowest dose level shall not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level shall exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a graduation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low, to permit a meaningful evaluation of the results; for non-rodents, there should be no fatalities.

(5) *Exposure conditions.* The animals shall be dosed with the test substance on a 7-day per week basis over a period of 90 days. However, based primarily on practical considerations, dosing by gavage or capsule studies on a 5-day per week basis shall be acceptable.

(6) *Observation period.* (i) Duration of observation shall be for at least 90 days.

(ii) Animals in the satellite group scheduled for follow-up observations shall be kept for not less than 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Administration of the test substance.* (i) The test substance shall be administered in the diet or in capsules. Alternatively for rodents it may be administered by gavage or in the drinking water.

(ii) All animals shall be dosed by the same method during the entire experimental period.

(iii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution of oil, and then by possible solution in other vehicles.

(iv) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is amdinistered in the diet, either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight shall be used; the alternative used shall be specified.

(v) For a substance administered by gavage or capsule, the dose shall be given at similar times each day, and adjusted at intervals (weekly or bi-weekly) to maintain a constant dose level in terms of animal body weight.

(8) *Observation of animals.* (i) Each animal shall be handled and its physical condition appraised at least once each day.

(ii) Additional observation shall be made daily with appropriate actions taken to minimize loss of animals to the study (e.g. necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity shall be recorded as they are observed including the time of onset, degree and duration.

(iv) Cage-side observations shall include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Measurements shall be made weekly of food consumption or water consumption when the test substance is administered in the food or drinking water, respectively.

(vi) Animals shall be weighed weekly.

(vii) At the end of the 90-day period all survivors in the non-satellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(9) *Clinical examinations.* (i) The following examinations shall be made on at least five animals of each sex in each group for rodents and all animals when non-rodents are used as test animals.

(A) Certain hematology determinations shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. The following hematology determinations shall be carried out: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucoyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. The following clinical biochemical test areas shall be carried out: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of additional tests shall be influenced by observations on the mode of action of the substance. Suggested additional determinations include: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species/breed), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional

clinical biochemistry may be employed where necessary to extend the investigation of observed effects. Non-rodents shall be fasted for a period (not more than 24 hours) before taking blood samples.

(ii) The following examinations shall be made on at least five animals of each sex in each group for rodents and all animals on test for non-rodents.

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals shall be examined.

(B) Urinalysis is required only when there is an indication based on expected or observed toxicity.

(10) *Gross necropsy*. (i) all animals shall be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also shall be weighed wet.

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: all gross lesions; brain-including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys/adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostrate, and, if present, seminal vesicles); aorta, (skin), (non-rodent gall bladder); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland), (thigh musculature), peripheral nerve; (eyes); (femur including articular surface); (spinal cord at three levels—cervical, midthoracic and lumbar); and, (rodent-exorbital lachrymal glands).

(11) *Histopathology*. (i) Full histopathology shall be performed on the organs and tissues, listed under paragraph (d)(10) (ii) and (iii) of this section of all rodents in the control and high dose groups, all non-rodents, and all rodents that died or were killed during the study.

(ii) Histopathology shall be performed on all gross lesions in all animals.

(iii) Histopathology shall be performed on target organs in all animals.

(iv) Histopathology shall be performed on the tissues mentioned in brackets under paragraph (d)(10)(iii) of this section if indicated by signs of toxicity or target organ involvement.

(v) Histopathology shall be performed on lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) For the satellite group of rodents, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

(e) *Data and reporting*—(1) *Treatment of results*.

(i) Data shall be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the type of lesions, and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, shall be evaluated by an appropriate statistical method. Any generally acceptable statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of the study results*. (i) The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation shall include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects or mortality and any other general or specific toxic effects. The test shall provide a satisfactory estimation of a no-effect level.

(ii) In any study which demonstrates and absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance shall be considered.

(3) *Test report*. In addition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

(i) *Group animal data*. Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(ii) *Individual animal data*.

(A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

Subparts C-E—[Reserved]

Subpart F—Special Studies

§ 798.460 Pharmacokinetic test standard.

(a) *Purpose*. The purpose of these studies is to determine:

(1) The bioavailability of 2-ethylhexanoic acid (EHA) after dermal administration.

(2) Whether or not the biotransformation of EHA is qualitatively and quantitatively the same after dermal and oral administration.

(3) Whether or not the biotransformation of EHA is changed qualitatively or quantitatively by repeated dosing.

(4) The extent of transport of EHA and its metabolites to the fetus.

(b) *Definitions*. (1) Bioavailability refers to the rate and extent to which the administered compound is absorbed, i.e., reaches the systemic circulation.

(2) Relative percent of percutaneous absorption is defined as 100 times the ratio between total urinary excretion of compound following topical administration and total urinary excretion of compound following oral administration.

(c) *Test procedures*—(1) *Animal selection*—

(i) *Species*. The species utilized for investigating EHA shall be the rat, a species for which historical data on the toxicity and carcinogenicity of several compounds are available and which is used extensively in percutaneous absorption studies, and the guinea pig, a species whose skin resembles human skin.

(ii) *Animals*. Adult female Fischer 344 rats and Hartley guinea pigs shall be used. The rats shall be 7 to 9 weeks old and weigh 125 to 175 grams, and the guinea pigs, 5 to 7 weeks old and weigh

400 to 500 grams. Prior to testing the animals shall be selected at random for each group. Animals showing signs of ill health shall not be used. For studying EHA transport to the fetus, pregnant rats shall be used in accordance with the OTS or OECD guideline on teratogenicity.

(iii) *Animal care.* (A) The animals should be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms should be maintained at a temperature of 25±2 °C and humidity of 50±10 percent with a 12 hour light/dark cycle per day. The rats and guinea pigs should be kept in a quarantine facility for at least 7 days prior to use.

(B) During the acclimatization period, the rats and guinea pigs should be housed in cages on hardwood chip bedding. All animals shall be provided with conventional laboratory diets and water *ad libitum.*

(2) *Administration of EHA*—(i) *Test compound.* These studies require the use of both non-radioactive EHA and ^{14}C-labeled EHA. Both preparations are needed to investigate under paragraph (a)(2) of this section. The use of ^{14}C-EHA is required to investigate under paragraphs (a) (1), (2) and (4) of this section because it will facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing the presence of previously unidentified metabolites.

(ii) *Dosage and treatment.* (A) Two doses shall be used in the study, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level.

(B) The same "high" and "low" doses shall be administered orally and dermally.

(C) Oral dosing shall be performed by gavage or by administering encapsulated EHA.

(D) For dermal treatment, the doses shall be applied at a volume adequate to deliver the prescribed doses. The backs of the rats and guinea pigs should be lightly shaved with an electric clipper shortly before treatment. The dose shall be applied with a micropipette on a specific area (2 cm² for rats, 5 cm² for guinea pigs) on the freshly shaven skin. The dosed areas shall be occluded with an aluminum foil patch which is secured in place with adhesive tape.

(iii) *Washing efficiency study.* Before initiation of the dermal absorption studies described in paragraphs (c)(2)(iv) (A) and (B) of this section, an initial washing efficiency experiment shall be performed to assess the extent of removal of the applied EHA by washing with soap and water. Four rats and 4 guinea pigs should be lightly anesthesized with sodium pentobarbital. These animals shall then be treated with dermal doses of test compound at the low dose level. Soon after application (5 to 10 min) the treated animals shall be washed with soap and water then housed in individual metabolism cages for excreta collection. Urine and feces shall be collected at 8, 24, and 48 hours following dosing. Collection of excreta shall continue every 24 hours if significant amounts of EHA and metabolites continue to be eliminated.

(iv) *Determination of bioavailability.* (A) Rat studies.

(*1*) Eight animals shall be dosed once orally with the low dose of ^{14}C-EHA.

(*2*) Eight animals shall be dosed once orally with the high dose of ^{14}C-EHA.

(*3*) Eight animals shall be dosed once dermally with the low dose of ^{14}C-EHA.

(*4*) Eight animals shall be dosed once dermally with the high dose of ^{14}C-EHA.

(*5*) In the oral studies, the animals shall be placed in individual metabolic cages for collection of excreta at 8, 24, 48, 72 and 96 hours following administration.

(*6*) In the dermal studies, doses of ^{14}C-EHA shall be kept on the skin for the duration of the study (96 hours). After application, the animals shall be placed in metabolism cages for excreta collection. Urine and feces shall be collected at 8, 24, 48, 72 and 96 hours.

(B) *Guinea pig studies.* The same procedures shall be followed as specified in paragraph (c)(2)(iv)(A) (*1*) through (*6*) of this section.

(v) *Repeated dosing study.* Four rats shall receive a series of single daily oral doses of non-radioactive EHA over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of ^{14}C-EHA. Each does shall be at the low dose level.

(vi) *Study of placental transport.* A single low dose of ^{14}C-EHA shall be administered orally to four pregnant rats during the period of organogenesis.

(3) *Observation of animals*—(i) *Bioavailability*—

(A) *Blood levels.* The levels of total ^{14}C shall be determined in whole blood, blood plasma or blood serum at 8, 24, 48, 72, and 96 hours after dosing rats as specified in paragraph (c)(2)(iv)(A)(*1*) of this section and guinea pigs as specified in paragraph (c)(2)(iv)(B) of this section. Four animals from each group shall be used for this purpose.

(B) *Urinary and fecal excretion.* The quantities of total ^{14}C excreted in urine and feces by rats dosed as specified in paragraph (c)(2)(iv)(A) of this section and guinea pigs dosed as specified in paragraph (c)(2)(iv)(B) of this section shall be determined at 8, 24, 48, 72 and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals from each group shall be used for this purpose.

(ii) *Biotransformation after oral and dermal dosing.* Appropriate qualitative and quantitative methods shall be used to assay urine specimens collected from rats dosed as specified in paragraph (c)(2)(iv)(A) of this (c)(2)(iv)(B) of this section. Any metabolite which comprises greater than 10 percent of the dose shall be identified.

(iii) *Change(s) in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of ^{14}C-labeled components of urine collected at 24 and 48 hours after dosing rats as specified in paragraph (c)(2)(iv)(A)(*1*) of this section with those in the urine collected at 24 and 48 hours after the ^{14}C-EHA dose in the repeated dosing study. Any metabolite which comprises greater than 10 percent of the dose shall be identified.

(iv) *Placental transport.* Reference shall be made to OTS or OECD guidelines on teratogenicity to assist in deciding when fetuses should be removed for ^{14}C assay. The percentage dose transferred to the whole fetus shall be determined. If EHA is found to cause developmental toxicity s specified in § 799.2050(c)(3) of this chapter, an effort shall be made to identify the proximate teratogen transferred to the fetus.

(d) *Data and Reporting*—(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In adition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, 40 CFR 792 Part, Subpart J, the following specific information shall be reported:

(i) Species, strain, and supplier of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substances.

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Relative percent absorption by the dermal route for rats and guinea pigs administered low and high doses of

^{14}C-EHA, assuming 100 percent absorption of the oral doses.

(v) Quantity of isotope, together with percent recovery of the administered dose, in feces, urine, and blood.

(vi) Biotransformation pathways and quantities of EHA and metabolites in urine collected after administering single high and low oral and dermal doses to rats and guinea pigs.

(vii) Biotransformation pathways and quantities of EHA and metabolites in urine collected after administering repeated low doses of EHA to rats.

(viii) Extent of placental transfer of radioactivity from ^{14}C-EHA to fetuses as a percent of dose transfered to the whole fetus.

2. The authority citation for Part 79 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

3. In Part 799, Subpart B, by adding § 799.2050 to read as follows:

§ 799.2050 2-Ethylhexanoic acid.

(a) *Identification of test substance.* (1) 2-Ethylhexanoic acid (CAS No. 149–57–5)((hereinafter "EHA") shall be tested in accordance with this section.

(2) EHA of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process EHA other than as an impurity from the effective date of this section (44 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit an exemption application, or shall submit a letter of intent to conduct testing, study plans, conduct tests, and submit data as specified in this section, Subpart A of this Part, and Parts 790 and 798 of this chapter. The end of the reimbursement period shall be 5 years after the submission of the last final report required under this test rule. Information collection requirements are approved by the Office of Management and Budget under control number 2070–0033.

(c) *Health Effects Testing*—(1) *Pharmacokinetics.*

(i) *Required testing.* Metabolism studies of the oral and dermal routes of exposure shall be conducted with EHA in accordance with the test standard specified in §798.460 of this chapter.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 1 year from the effective date of the final test rule.

(2) *Subchronic Toxicity*—(i) *Required testing.* Subchronic toxicity tests shall be conducted with EHA using Fischer 344 rats and B6C3F1 mice in accordance with the test standard specified in § 798.75 of this chapter. Non-rodents need not be tested for subchronic toxicity.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 15 months from the effective date of the final test rule.

(3) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity tests shall be conducted with EHA using one rodent and one non-rodent mammalian species in accordance with either the OTS Health Effects Guideline for HG–Organ/Tissue-Dev Tox or the OECD guideline entitled "Teratogenicity", No. 414, Adopted May 12, 1981. The OTS guideline is available in U.S. Environmental Protection Agency Publication No. EPA 560/6–84–002 which is sold by the NTIS (Accession No. PB 84–233295). The OECD guideline is available in OECD Publication No. ISBN 92–64–12221–4 and is sold by the OECD Publication and Information Center. These documents also are available for inspection at both the Office of the Federal Register Information Center and the OPTS Reading Room (docket no. OPTS–42065). This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the effective date of this rule; a notice of any change will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency on a quarterly basis beginning 90 days after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 18 months from the effective date of the final test rule.

[FR Doc. 85–11589 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS–42067; TSH–FRL 2815–3]

Bisphenol A; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that manufacturers and processors of bisphenol A (4,4'-isopropylidenediphenol, BPA, CAS No. 80–05–7) be required, under the Toxic Substances Control Act (TSCA), to perform testing for 90-day inhalation subchronic toxicity with emphasis on pulmonary effects, and acute and chronic aquatic toxicity testing. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of BPA for priority consideration for health and environmental effects testing.

DATES: Submit written comments on or before July 16, 1985. Make requests to submit oral comments by July 1, 1985. If requests are made to submit oral comments, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS–42067) to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm E–108, 401 M St., SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday though Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Rm. E–543, 401, M St., SW., Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (operator—202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of BPA for health and environmental effects testing consideration.

I. Background

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2010 *et seq.;* 15 U.S.C. 2603 *et seq.*) established the ITC to recommend

to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated BPA (CAS No. 80–05–7) for priority consideration in its 14th Report submitted to EPA on May 8, 1984. The report was published in the **Federal Register** of May 29, 1984 (49 FR 22389). The ITC recommended that BPA be considered for chemical fate testing, including octanol/water partition coefficient and persistence, health effects testing, including reproductive effects, chronic effects and oncogenicity specifically as a result of inhalation exposures, and ecological effects testing, including acute and chronic toxicity to fish, aquatic invertebrates, and algae, and bioconcentration. The bases for these recommendations were as follows: annual production of 479 million pounds, estimated occupational exposure of 9,446 workers, expected environmental releases from manufacture and processing, and lack of sufficient data to characterize the effects of concern for BPA.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, the EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release. For the findings under sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the **Federal Register** of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning BPA, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of BPA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning BPA; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health and environmental effects testing requirements for BPA under section 4(a)(1)(A). By these actions, EPA is responding to the ITC's designation of BPA for priority testing consideration.

C. Change in Process for Adopting Test Standards

EPA announced an approach to adopting test rules that involved two-phase rulemaking in the **Federal Register** of March 26, 1982 (47 FR 13012). In the first phase of rulemaking, EPA would specify the test substance, who would be responsible for testing, and the required tests. In the second phase, EPA would establish the test methodologies (test standards) and the deadlines for submission of test data. EPA has used this approach for most of the test rules it has proposed for chemicals designated in the first through the thirteenth ITC reports.

In December 1983 the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame. (*NRDC* and *AFL–CIO* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y.)).

Subsequent to the issuance of this Opinion, the Agency submitted papers to the Court which indicated that in order to expedite the test rule development process, EPA would utilize a single-phase rulemaking process for most test rules. The Agency also indicated that EPA would publicly announce this policy in the first test rule proposal to be published in the spring of 1985. (Declaration of Don R. Clay, at 12 (September 24, 1984)). In accordance with this commitment, the Agency is setting forth in the preamble of this proposed rule and elsewhere in today's **Federal Register** notice, guidelines and procedures for utilization of single-phase rulemaking in the test rules program.

Section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under the two-

phase process, both test standards and data submission deadlines are established during the second phase of rulemaking. However, in the single-phase approach, EPA will propose the pertinent OTS test guideline(s) or other suitable test guideline(s) as the required test standards in the initial notice of proposed rulemaking, and EPA will also propose time frames for the submission of the test data. Industry and other commenters may suggest an alternative methodology or modifications to the OTS guideline, i.e., the proposed test standard, during the public comment period, and such comments should state why the alternative methodology or modification is more suitable for the chemical substance in question than the EPA-proposed test standard. Comment will also be sought on the proposed data submission deadlines. All such submissions, including alternative test methodologies, will be placed in the rulemaking record and will be available for review by the public. The final rule will promulgate as the test standards either the OTS guidelines or other suitable guidelines, a modified version of these guidelines, an alternative methodology submitted in comments, or a modified version of the alternative methodology. The proposed test standards and data submission deadlines will be open for discussion at any public meeting held pursuant to TSCA section 4(b)(5).

The single-phase approach offers a number of advantages over the two-phase approach. First, the Agency believes that the single-phase approach will shorten rulemaking, resulting in the expedited initiation of the required testing. Secondly, because the OTS guidelines or other appropriate methodologies will be proposed as the test standards, the one-phase process eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Yet, by allowing submission of alternative test methodologies during the comment period, it preserves the flexibility of the two-phase process, but at reduced administrative cost.

Because of these advantages, the Agency intends to utilize single-phase rulemaking for most rules promulgated under TSCA section 4(a). However, EPA will continue to utilize the two-phase process for rulemakings where the two-phase process may be a more expeditious route to a final test rule, e.g., in cases where no well-accepted test methodology is available for inclusion in a proposed test rule.

II. Bisphenol A

A. Profile

BPA is a white solid with a mild phenolic odor. Depending on purity, its melting point ranges between 153 °C and 157 °C (Ref. 1). It has a rather low vapor pressure at ambient temperatures, but it can be distilled at 220 °C at 4 mm Hg (Ref. 2). EPA has calculated its solubility in water to be 120 mg/1 at 25 °C. BPA is soluble in polar organic solvents, and various octanol/water partition coefficients have been reported from several sources to be 3.32 (Ref. 3) and 2.20 (Ref. 4) as experimentally determined log K_{ow} values, and 3.84 (Ref. 5) as a calculated log K_{ow} value.

By applying these data to the EPA ENPART model the environmental distribution of BPA can be estimated. Using the relative volumes of the water, soil, and air compartments built into the ENPART model, the mass environmental distribution of BPA is 96 percent in water, 4 percent in soil, and a trace in air. Based on partitioning data, estimated rates of hydrolysis, photolysis and biodegradation, and inter-media transport rates, the environmental persistence from the steady state condition after loading ceases is approximately 90 years for a 50 percent mass reduction.

B. Production

In the commercial process for producing BPA, phenol and acetone are charged to a glass-lined reactor, in a molar ratio of two or three to one. Dry hydrogen chloride, as the catalyst, is bubbled through the mixture, which is kept at about 50°C for 8 to 12 hours. Careful control is necessary to prevent a number of side reactions which would yield impurities.

The product slurry is then washed with water, neutralized, and distilled under vacuum to remove water and phenol. The BPA, which is still molten, is then sprayed with steam to remove traces of methyl mercaptan, which was added initially as a catalyst promoter, quenched in water, washed, filtered and dried. More recently, the purification process has been carried out continuously, using distillation and extractive crystallization. For BPA to be used as a polycarbonate feedstock, an additional purification step is necessary to remove all BPA isomers (Refs. 6 and 7).

The manufacturers of BPA have included Dow Chemical USA, General Electric (GE), Shell Chemical, Union Carbide, and USS Chemicals. Union Carbide put its facility on standby in 1982 and has not announced plans for resuming production. Thus, four companies are current producers. Shell reportedly planned to increase its capacity in its existing plant during 1984 (Ref. 7).

All of these companies have captive on-site or nearby sources of the BPA feedstocks, phenol and acetone. All of the companies, except USS Chemicals, also use much or all of their production captively. Dow, GE, and Shell produce the necessary coreactants for their epoxy and polycarbonate derivatives which are downstream products of BPA. Although it currently sells BPA only in the merchant market, USS Chemicals is considering the construction of a polycarbonate plant (Ref. 7).

BPA production grew at annual rates of 15 percent in the 1960's and then ten percent in the 1970's. After reaching a peak of 576 million pounds in 1979, production fell to 480 million in 1982, due to the general recession and a major decline in exports. In 1983, production reportedly rose past the 1979 peak to 643 million pounds, due to recovery in the construction, automobile, appliance and electronics industries (Ref. 7). Preliminary figures through October 1984 indicate a further significant increase. If the ten month trend continued through year end, BPA production in 1984 would be up 22 percent to 785 million pounds. Imports of BPA have been minor. Exports were about 40 million pounds per year in the early 1980's (Ref. 7).

C. USE

Domestically, BPA is used in the manufacture of polycarbonate resins (50 percent of manufactured BPA), epoxy resins (44 percent), polysulfone and phenoxy resins (2 percent), and miscellaneous products (4 percent) (Ref. 7).

Polycarbonates are linear polyesters of carbonic acid. The principal commercial polycarbonate (PC) is formed from BPA and phosgene ($COCl_2$). The dominant commercial process for making PC uses a batch-wise direct reaction of the feedstocks in aqueous sodium hydroxide, with a small amount of phenol added to control the chain length. The resulting polymer dissolves across a liquid-liquid interface into an immiscible methylene chloride phase in the reactor. When the reaction is complete, the phases are separated and the PC is purified (Ref. 7).

The two domestic producers of PC are the General Electric Co., Plastics Business Operations, with 300 million pounds of capacity in Mount Vernon, IN, and the Plastics and Coatings Division of Mobay Chemical Corp. (a Bayer subsidiary), with 130 million pounds of

capacity in Cedar Bayou, TX (Ref. 7). Dow Chemical Co. has been operating a ten million pound per year pilot plant in Freeport, TX, for several years. It plans to bring a 30 million pound plant on-line in the first quarter of 1985, with a duplicate unit to follow later (Ref. 7).

The principal end-use categories of PC plastics are glazing, communication and electronics equipment, appliances, sports equipment, transportation equipment, lighting, and signs.

Epoxy resins are the other major use of BPA. Epoxies are a class of thermosetting resins with versatile composition and superior toughness, adhesion, heat and chemical resistance, and electrical properties. They are generically polyethers with terminal, and sometimes side-chain, epoxy groups. The dominant epoxy is formed by the reaction of epichlorohydrin and bisphenol A.

The epoxy resins are manufactured in several steps which involve BPA in different ways. The common practice uses the direct reaction of an excess of epichlorohydrin with BPA in an alkaline solution to give crude epoxy. Such products are known as unmodified epoxies.

The advancement process is commonly used to achieve higher molecular weight resins. BPA is added to crude epoxy produced above, in the presence of a catalyst. Comonomers such as flame-retardants, can also be added, either directly or as a prepolymer (reaction product) with the BPA or crude expoxy (Ref. 7). The resulting materials are known as advanced, or modified, epoxies. In the final uses, a curing agent (anhydride, aliphatic amine, polyamide, or one of a variety of others) is added to form cross-linkages among the hydroxy groups and terminal epoxides (or a catalyst promotes self-polymerization), causing the epoxy to harden and form its final properties (Ref. 7). Thus, in much of their use, epoxy resins are more strictly a chemical intermediate, rather than a final end-use resin as is the case for PC (Ref. 7).

Unmodified BPA-epoxies are produced in the United States by five major companies at eight locations. The companies, and their capacities for both unmodified and advanced BPA-epoxies (thus double-counting some BPA demand), are (in millions of pounds): Celanese Corp. (30); Ciba-Geigy Corp. (70); Dow (230); Reichhold Chemicals (32); and Shell (270), for total capacity of 632 million pounds. Two-thirds to three-fourths of this capacity is for liquid BPA-epoxy resins. A dozen other companies also report the production of unmodified BPA-epoxies. Advanced or modified BPA-epoxies are made by 30 to 40 companies, including major paint, electronics, and adhesives companies (Ref. 7).

The principal uses of BPA-epoxy resins are for coatings, laminates and composites, castings and molded items, flooring and construction materials (Ref. 7).

BPA is used as a basic component of a variety of other plastic resins. The most important is polysulfone, which is a thermoplastic polymer produced by condensing BPA with 4,4'-dichlorophenylsulfone. With U.S. production estimated at 15 million pounds in 1982, polysulfone consumes about one percent of BPA (Ref. 7).

Polysulfone is used as a specialty engineering plastic to make power-tool housings, medical and electrical equipment, electronic and computer components such as printed circuit boards, professional food processing equipment, and extruded pipe, pressure valves, distillation tower components and other chemical processing equipment.

D. Exposure and Release

The National Occupational Hazard Survey (NOHS) data base (Ref. 8) estimates that as many as 33,000 people in the chemical industries may be exposed to BPA at 911 plants. The National Occupational Exposure Survey (NOES) data base (Ref. 9) estimates that 9,446 workers (of whom 1,541 are female) are exposed to BPA. Whereas the NOHS data base uses actual exposures, exposure to tradename products thought to contain BPA, and exposures to products of the type that contain BPA, the NOES data base is limited to workers present where BPA has been identified to be present.

During production of the flaked BPA, there are fugitive air emissions associated with packaging and bulk loading operations. Plant monitoring studies show BPA average air concentrations ranging from less than 0.01 to 5.7 mg/m^3 (Ref. 10). The particle size of 99 percent of the packaged BPA is greater than 100 mesh (147 microns). BPA dust in 3 samples of the packaged product from one company had a particle size distribution ranging from 81.2 to 90.5 percent for mesh size less than 20, 8.8 to 17.2 percent for mesh sizes 20–100, and 0.7 to 1.6 percent for mesh sizes greater than 100. Additionally, estimation of particle sizes for 2 samples of airborne dust collected during packaging of flaked BPA indicated less than 30 and 14 percent of the estimated BPA dust by weight was less than 10 microns in size (Ref. 10).

Dow Chemical reported BPA dust present in work stations handling flaked product at levels between 0.3 and 2.6 mg/m^3 for extended monitoring periods and between 2.3 and 3.4 mg/m^3 during shorter periods (Ref. 11). Plant area monitoring studies showed daily levels between 0.4 to 6.8 mg/m ^{3} (Ref. 11).

Only one reference to BPA in envirionmental samples in the U.S. has been found (Ref. 12). This sample was actually an effluent from a plant in Mt. Vernon, IN., rather than a true environmental matrix. Neither the analytical method used nor the concentration of BPA found was reported. No other monitoring surveys detecting BPA in U.S. waters are known.

There are two reports of BPA contamination of the environment in Japan. Matsumoto and Hanya (Ref. 13) found BPA amount the phenolic and carboxylic compounds in atmospheric fallout near Tokyo. Deposition rates for BPA ranged from 0.04 to 0.2 μg/m^2 per day, compared to total phenolics that ranged from 1.5 to 12 μg/m^2 per day, and total organic carbon that averaged 12,000 μg/m^2 per day. BPA was not found in surface soil.

BPA was also found at low levels in river water sediments (Ref. 14). In two out of three samples from the Tama River in Japan taken during 1973, it was not detected, and in the third sample, it was detected in the range of 10 to 90 ng/1. The authors concluded that the BPA was probably from an industrial source.

Domestically, Shell Chemical determined the amount of BPA in plant wastewater effluents at its Deer Park, TX., facility to be 0.08 ppm or less on three sampling days (Ref. 15). A second company measured BPA levels in production/processing wastewater effluents at less than 0.1 ppm for three consecutive days. A third company's wastewater effluent concentration of BPA was described as typically less than 0.1 ppm (Ref. 10). Another company has detected no BPA at levels greater than 40 ppb in sampling wells around a landfill for BPA wastes.

The manufacturers believe that polycarbonates and cured epoxy resins are insoluble in water and most solvents, and non-biodegradable, and because of their long life applications, resistant to degradation. Furthermore, any unreacted BPA in the resin is expected to remain encapsulated in the polymer.

Thus, consumer and general population exposure to BPA also is not expected to be very significant. To prove this point, extraction studies were carried out on molded polycarbonates using various digestion precedures. No BPA was detected in washings (Ref. 10).

At BPA manufacturing and major processing facilities, production is continuous and continuous biotreatment wastwater systems are used. One company produces and processes BPA, both via continuous processes. At this facility BPA is a component of several waste streams which go to disposal. These streams are liquid organic mixtures (50 percent BPA), dry solids (i.e., sweeping, small spills) (95 to 100 percent BPA), and wet solids (i.e., sumps, etc.) (70 percent BPA) (Ref. 10).

The liquid organic waste streams are incinerated on site and the dry solid wastes are currently sent to a commercial hazardous waste facility. Some of the dry solid wastes and all of the wet solid wastes are periodically dumped into a primary solids lagoon. The pH of the lagoon is maintanied at 10 to ensure solubility of the BPA. The decant water from the lagoon, containing 20 to 70 ppm BPA salts, is sent to a neutralizing distributor box. The content of the outflow of the distributor box is 4 to 10 ppm BPA. Further dilution with other streams reduces BPA content to 0.2 to 0.5 ppm. The usual aeration in activated sludge, followed by clarification, reduces the BPA to less than 0.1 ppm in the outfall from the plant. The analysis of three outfall samples resulted in two values described as non-detectable and one value of 0.08 ppm; the detectability limit is 0.05 ppm (Ref. 10).

Another company which maufacturers and processes BPA uses a similar biotreatment process. The influent to the system averaged 0.2 ppm and the effluent was less than 0.01 ppm on three consecutive days (Ref. 10).

A third company which also manufactures and processes BPA uses a similar biological effluent treatment system. Input to the system contains 5 to 10 ppm of BPA; outfall from this plant averages 0.1 ppm of BPA (Ref. 10).

E. Environmental Fate and Effects

BPA can enter the environment as dust or in wastewaters. Its low vapor pressure (0.20 mm Hg at 170 °C; Ref. 2), moderate solubility in water, and moderate octanol/water partition coefficient (experimentally determined log P=3.32 and 2.20, and calculated log P=3.84; Refs. 3, 4 and 5) indicate that BPA should partition mainly to water as opposed to soil and air. BPA is not expected to bioconcentrate significantly in aquatic animals because of its moderately low water solubility and partition coefficient. The bioconcentration factors calculated using the available log K_{ow} values are 133 (based on log K_{ow} 3.32), 15 (2.20), and 366 (3.84) (Ref. 16).

Photo-oxidation of BPA in surface water is likely based on analogy with other phenols (Ref. 17). BPA was easily decomposed by test-activated sludge in wastewater (Ref. 18). BPA and phenol were decomposed by *Chlorella vulgaris* and *Scenedesmus obliquus* in laboratory experiments (Ref. 19). Studies from Dow Chemical Company also indicate that BPA will be degraded by acclimated cultures (Ref. 20). The biochemical oxygen demand (BOD) reported at 5 days (BOD_5) was 26 percent of the theoretical oxygen demand; the BOD_9 and BOD_{30} were 56 and 71 percent, respectively.

However, the rate of BPA degradation by fresh mixed microbial cultures is much lower. Using widely accepted test methods for determining a chemical's "ready biodegradability," Shell Chemical Company produced test data indicating that BPA does not readily biodegrade (Ref. 21). In a Closed Bottle Test (procedure described in OECD test guidelines 301D), BPA consumed none of its theoretical oxygen demand in 28 days from an initial test concentration of 3 ppm, nor did it significantly inhibit the test system. Using the Modified Sturm test only 1 to 2 percent of BPA's theoretical carbon dioxide production was observed in 28 days based on an initial test concentration of 20 ppm. BPA also inhibited the growth of *Pseudomonas fluorescens* with an IC_{50} of 54.5 mg/l (Ref. 21).

There was little information in the available literature on the environmental effects of BPA. Polozova *et al.* (Ref. 22) reported that BPA completely inhibited the growth of the fungus *Septoria avenae* at a concentration of 0.1 percent in culture media. BPA was mixed with agar in Petri dishes at concentrations of 0.0, 0.005, 0.01, 0.02, 0.03, 0.1, 0.2, and 0.5 percent, the fungi inoculated, and the cultures incubated for 5 days. However, additional information on the methods, incubation conditions, and number of replicates used was not reported. The effects of BPA on peroxidase and catalase activities, and ascorbic acid and gluten content in wheat plants, as well as its effects on some sugars and amino acids in black currants were reported (Ref. 23). The data suggest that at low concentrations, BPA had favorable effects on plant growth and yield.

Dow Chemical Company (Ref. 24) reported that the 96-hour LC_{50} value for BPA to the sheepshead minnow, *Cyprinodon Variegatus*, in flow-through experiments was 7.5 ppm. The tests utilized 10 fish per group, each weighing approximately 1.3 g, maintained at 80 °F. The report, however, does not describe the analytical results of the study, responses observed at other concentrations, nor the stability of the compound in the stock solution.

Other aquatic toxicity data made available to the Agency through the BPA manufacturers include a 96-hour LC_{50} nominal value of 4–6 ppm for the Lake Emerald shiner (Ref. 25), a 96-hour LC_{50} nominal value of 3–3.5 ppm for the rainbow trout, *Salmo gairdneri* (Ref. 26), a 48-hour LC_{50} nominal value of 3.9 ppm for *Daphnia magna* (Ref. 27), and a 96-hour EC_{50} nominal value of 2.5 ppm for *Selenastrum capricornutum* (Ref. 27).

F. Findings for Environmental Fate and Effects

The Agency finds that sufficient data are available from testing done by Shell Chemical Co. and Dow chemical Co. to reasonably predict BPA's persistence in the environment.

The Agency also finds that sufficient data are available on BPA's octanol/water partition coefficient from values calculated and experimentally derived. EPA believes that additional testing would probably serve only to confirm that the log k_{ow} for BPA lies between 3.3 to 3.8, and within that range closer to the 3.3 value. This is because the method used by Thorp (Ref. 4) for experimentally determining BPA's log k_{ow} of 2.2 is only expected by EPA to give a value within ±1 log unit of the "true" experimental value. The value of 2.2 is nearly 1 log unit from the 3.3 to 3.8 range. The Agency believes that by using this information sufficient data are available on the octanol/water partition coeffecient to reasonably predict BPA's ability to bioconcentrate.

After reviewing and evaluating the existing aquatic acute toxicity data for the BPA, EPA has determined that they are not reliable because the concentrations reported in most studies are not measured and where they are, the results are not completely described. Therefore, these data are insufficient to accurately quantify the levels of acute toxicity and to reasonably predict the chronic effects levels of BPA. These data are sufficient, however, to indicate that BPA may be toxic to sensitive aquatic species at less than 1 ppm. The Agency believes that data on other compounds have demonstrated that if a compound is not acutely toxic to aquatic organisms at less than or equal to 1 ppm, it is not likely to cause chronic effects at the ppb levels (i.e., the levels at which EPA has determined from confidential business information that BPA may be found in the environment). Conversely, data have shown that compounds with LC_{50}s less than 1 ppm ofter have chronic

effects at levels in which BPA may be found in the environment. The Agency finds that BPA may present an unreasonable risk of acute and chronic aquatic toxicity, that data are insufficient to reasonably determine or predict these effects as a result of manufacturing and processing, and that testing is necessary to develop such data. EPA is therefore proposing that acute aquatic toxicity testing be conducted to determine the sensitivity of freshwater and marine algae, invertebrates and fish to BPA under TSCA section 4 (a)(1)(A).

EPA is also proposing that if the LC_{50} value derived from any of the invertebrate or veratebrate acute tests is less than 1.0 ppm, or there are indications of chronicity (i.e., the ratio of the 48-hour to 96-Hour LC_{50}s greater than 2), then chronic toxicity tests with the most sensitive vertebrate or invertebrate species shall be performed. If neither or the above criteria is met, the Agency believes that chronic aquatic toxicity testing is not needed.

Consequently, the Agency is proposing that acute toxicity testing of the aquatic species listed in Unit II.I. using the OTS Test Guidelines shall be required. Upon completion of these studies, the results shall be evaluated to determine if they meet the criteria described above indicating the likelihood of chronic effects occurring at ppb levels. If the criteria are met, chronic toxicity tests with the most sensitive test species shall be automatically required through finalization of this proposed rule for BPA.

C. Health Effects

1. *Metabolism.* BPA is absorbed from the gastrointestinal tract after oral administration. Experiments conducted by Knaak and Sullivan (Ref. 29) showed that in rats 56 percent of the radioactivity of an orally administered dose of 120 mg of BPA was excreted via feces and 28 percent via urine. Less than 1 percent of metabolities in urine were present as free BPA, while 88 percent appeared as glucuronide conjugate. In feces, 35 percent was excreted as free BPA, 35 percent as hydroxylated BPA, and 30 percent unidentified.

2. *Acute toxicity.* Acute toxicity studies of BPA resulted in LD_{50} values ranging between 3,250 and 5,660 mg/kg when given orally to rats (Refs. 2 and 28). The oral LD_{50}s for mice and rabbits were 2,500 and 2,230 mg/kg, respectively (Ref. 28). BPA also showed eye- and skin-irritating properties.

A 14-day repeated dose study was performed as part of the National Toxicology Program's (NTP) range-finding activities for the subchronic testing of BPA (Ref. 30). Groups of five males and five females of each species (Fischer-344 rats or B6C3F1 mice) were administered BPA in their diet for 2 weeks at concentrations of 0, 500, 1,000, 2,500, 5,000, or 10,000 ppm. No deaths occurred in either rats or mice. However, mean body weight gain in male rats was decreased by 60 percent or more, as compared to that of the controls, at doses of 2,500 ppm or more. Doses of 5,000 ppm or more produced a decrease in body weight gain averaging 40 percent in female rats. Body weight changes in male and female mice at all dose levels were comparable to those of the control group.

3. *Subchronic toxicity.* To determine suitable dosage levels of BPA to be used in oncogenicity studies, the NTP performed a 90-day study on rats and mice (Ref. 30.). Groups of 10 animals per sex of Fisher-344 rats were given 0, 250, 500, 1,000, 2,000, or 4,000 ppm of BPA in their diet for 13 weeks. Two of the ten male rats that received 1,000 ppm of BPA died. The time of death was not reported. Although food consumption was not changed at any dose level, weight gain in males and females that received 1,000 ppm or more of BPA was depressed by 18 percent and 10 percent, respectively. Hyaline masses were found in the urinary bladder lumen of 30–60 percent of all dosed male animals. A compound related cecal enlargement was also found in 60–100 percent of animals in all dosed groups except female rats that received 250 ppm. No abnormalities were detected when cecal walls were examined histologically.

In the same study (Ref. 30), groups of B6C3F1 mice (10 per sex) were fed BPA in concentrations of 0, 5,000, 10,000, 15,000, 20,000, or 25,000 ppm in diet for 13 weeks. Two female animals from the group that received the lowest dose of BPA (5,000 ppm) died. Body weight gain was decreased by 14 percent or more in male mice that received 15,000 ppm or more and in females of all groups. Multinucleated giant hepatocytes were also observed to be dose related in male mice.

Stasenkova *et al.* (Ref. 31) administered BPA to rats by inhalation ("dynamic method," otherwise unspecified) at concentrations approximately those of workroom atmospheres (i.e., about 50 mg/m³, an average of 47 mg/m³ with a range of 15–86 mg/m³ for 4 hours/day for 4 months. Whether it was for 5 or 7 days a week was not clear. By the end of the fourth month, there were "pronounced signs of intoxication." Body-weight gain was depressed in exposed animals relative to controls (89 percent *v.* 107 percent); synthesis of hippuric acid was likewise depressed (92 mg in exposed *v.* 126 mg in control); the ascorbic-acid content of the exposed group was decreased compared to controls in the liver and kidney (20.1 and 34.6 mg, respectively, *v.* 23.5 and 41.1 mg in controls). The relative organ weights of liver and kidney were increased relative to controls (4.2 and 0.81, respectively, compared with 3.5 and 0.73 in the controls). These differences were all reported to be statistically significant. Histological signs of intoxication included a slight "plethora" of the liver, "protein swelling of cells" in the kidney, and a thickening of interalveolar partitions. The authors reported that all toxic changes had resolved within 1 month after cessation of exposure.

4. *Oncogenicity.* The NTP oncogenicity bioassay of BPA (98 percent pure) was conducted by feeding diets containing 1,000 (equivalent to 74 mg/kg/day) or 2,000 ppm (equivalent to 148 mg/kg/day for male and 135 mg/kg/day for female rats) of the compound to groups of 50 Fischer-344 rats of either sex, 1,000 or 5,000 ppm to groups of 50 male B6C3F1 mice and 5,000 or 10,000 ppm to groups of 50 female B6C3F1 mice for 103 weeks (Ref. 30). Groups of 50 rats and 50 mice of each sex served as controls.

In rats, the survival was the same for treated and untreated animals up to 65 weeks. Beyond this time the percent of survival began to decline. In male rats, the control group had the lowest survival, and the low-dose group had the highest survival. The low-dose group consistently maintained a 5 to 10 percent higher rate of survival than the control (no explanation was given). In the female rats, the survival was essentially the same for the control and two treated groups.

In mice, the controls had a higher survival than those treated in both sexes. All the mean body weights of the treated animals were lower than the controls except the male mice on the low dose diet. The food consumption of the dosed male rats was 90 percent that of the controls, and that of the dosed female rats was only 70–80 percent that of the controls. The data on food consumption of mice were incomplete due to spilling, but the investigators considered it to be similar among all groups of mice. Major tissues were examined grossly and microscopically.

Leukemia occurred at increased incidences in dosed rats of both sexes and in dosed male mice. In male rats, the dose-related trend was 13/50 (controls), 12/50, and 23/50.

The incidences of leukemia in female rats were 7/50 (controls), 13/50, and 12/50. In male mice the combined incidence of leukemias and lymphomas was 2/49, 9/50, and 5/50. However, these effects were not considered by NTP to be compound related effects. Interstitial-cell tumors of the testes occurred in low- and high-dose male rats; however, the increased incidence observed in this study (35/49, 48/50, 46/49) was not considered compound-related because this lesion normally occurs at a high incidence in aging Fischer-344 male rats.

5. *Mutagenicity.* The mutagenic potential of BPA was tested by NIOSH in *Salmonella typhimurium* strains with and without activation (Ref. 23). The compound was not mutagenic in these tests. These results were later confirmed by NTP testing in *Salmonella* (Ref. 23). A separate study (Ref. 23) reported that BPA had no effect on somatic cells of *Drosophila melanogaster.* Dominant lethal tests on rats and sperm abnormality tests in mice were also negative for BPA (ref. 32).

6. *Developmental toxicity.* The developmental toxicity (teratogenic) potential of BPA was studied using young adult female Sprague-Dawley rats (Ref. 33). BPA dissolved in corn oil was injected intraperitoneally on day 1 through day 15 of gestation. Doses used were 85 mg/kg (0.37 mmol/kg, the 5-day maximum tolerated dose (MTD) for male rats in a dominant lethal study (Ref. 32)), and 125 mg/kg (0.55 mmol/kg, the MTD in this study).

A significant decrease in the mating index (number pregnant per number mated$\times$100) was observed in animals that received the high dose level (3 of 12; 25 percent) as compared to that of the control (11 of 12; 91.7 percent). The mating index of the animals in the low dose group was 100 percent; however, only 4 animals were used, compared to 12 in the control and high dose groups. Both dose levels decreased the number of live fetuses and the number of implants per litter. The significant decrease in the mating index of rats that received the 125 mg/kg dose was ascribed to an estrogenic effect of bisphenol A resulting in blockage of implantation.

Fetal toxicity included significant decreases in fetal body weights and crown-rump length, which were observed at both dose levels used.

Although the number of litters in the treated groups was limited, several significant changes were found in the treated groups when compared to those in the control group. These changes included enlarged cerebral ventricles (in both dose levels), incomplete skeletal ossification (in both dose levels) and hydrocephaly (in the 125 mg/kg group). Imperforate anus was also observed in three fetuses from a single litter that received 125 mg/kg of BPA.

An NTP teratology study on rats and mice that received BPA orally is in progress; the study protocol is available for review in the public docket for this rule (docket no. OPTS-42069).

7. *Reproductive effects.* Ovariectomized adult Sprague-Dawley rats injected intraperitoneally with a single dose of 50 or 100 mg/kg of BPA showed a significant increase in the percentage of uterine weight (Ref. 33). In the same study, doses of 85 mg/kg per day of BPA injected intraperitoneally for 5 consecutive days to adult male Sprague-Dawley rats and adult male C3H/He mice failed to show an effect in a dominant lethal study (rats) or produce evidence of sperm abnormality (mice).

Reproductive effects testing sponsored by GE in which BPA was fed in the diet of Charles River CD® rats for 17 weeks (F_0 generation) and for 13 weeks (F_1 generation) at 1,000, 3,000, and 9,000 ppm produced no compound-related effects in the fertility indices, number of pups per litter, or pup survival (Ref. 34). Decreased body gains were the only observed effects in either generation of rats.

In a followup reproductive effects study (Ref. 34), using BPA dietary levels of 100, 250, 500, 750, and 1,000 ppm, no differences were seen in F_0 female estrus cycles, male and female fertility indices, length of gestation period, number of pups per litter, or pup body weights.

NTP is completing a continuous breeding BPA reproductive effects study in mice. The test protocol for this study is available for review in the public record for this notice. Final study results should be available in mid-1985.

H. Findings for Health Effects

EPA finds that sufficient data are available from the NTP bioassay report to reasonably predict that ingested BPA is not oncogenic. EPA therefore accepts NTP's conclusion that the ingestion carcinogenicity study results give no convincing evidence that BPA was carcinogenic to laboratory animals under the conditions of study. There also is no reason at this time to believe that inhalation of BPA, as suggested by the ITC, would present any greater oncogenic potential than ingestion. Differences in metabolism when BPA is ingested versus inhaled are not expected to be significant. Therefore, BPA is not expected to be any more active in producing tumors via inhalation than via ingestion.

The Agency also finds that additional reproductive effects testing is underway at NTP. EPA believes that when considered in conjunction with available industry testing of reproductive effects, sufficient data are available to reasonably predict BPA's reproductive effects potential in humans.

EPA believes appropriate developmental toxicity testing has been conducted at NTP. Preliminary study results indicate that the final reports should provide sufficient data to reasonably predict BPA's teratogenic potential.

EPA believes, however, that insufficient data are available to reasonably predict BPA's localized effect on lung tissue after chronic inhalation exposure, which is the most likely route of workplace exposures. Available monitoring data indicate that in a large portion of the workplace environments BPA dust is readily available for inhalation because of its respirable size. The BPA manufacturers have also supplied information showing that workers have registered compliants of eye, nose, and throat irritation when exposed to this dust at levels equal to OSHA's 8-hr. time weighted average (TWA) workplace nuisance dust limit of 5 mg/m^3.

Therefore, because of this information, the fact that several hundred to 9,500 workers may be exposed to BPA dusts, and the findings of one study which describes observable changes in lung tissues of rats after extended inhalation exposures to BPA, the Agency finds that: (1) Subchronic inhalation exposures to BPA may present an unreasonable risk of lung injury to workers involved in the manufacture and processing of BPA; (2) there are insufficient data to reasonably determine or predict the risk of injury to the lungs from subchronic inhalation of BPA; and (3), testing is necessary to develop such data. EPA is proposing under TSCA section 4(a)(1)(A) that manufacturers and processors of BPA conduct a 90-day subchronic dust inhalation toxicity study in rats, including a 21 to 35 day post-exposure recovery and observation period, to characterize the effects of BPA dust on lung tissues.

There is no information currently available that raises concern for other health effects of BPA.

I. Proposed Testing and Test Standards

On the basis of the findings given above for environmental fate and effects testing (Unit II.F.), the Agency is proposing that acute aquatic toxicity testing of BPA shall be conducted on (1)

the freshwater alga, *Selenastrum capricornutum*, and the saltwater alga, *Skeletonema costatum*, using the OTS test guideline entitled "Algal Acute Toxicity Test" (EG–8), (2) the freshwater invertebrate, *Daphnia magna*, using the OTS test guideline entitled "Daphnid Acute Toxicity Test" (EG–1), (3) the saltwater invertebrate, *Mysidopsis bahia*, using the OTS test guideline entitled "Mysid Shrimp Acute Toxicity Test" (EG–3), (4) the freshwater vertebrate, *Pimephales promelas* (fathead minnow), using the OTS test guideline entitled "Fish Acute Toxicity Test" (EG–9), and (5) the saltwater vertebrate, *Menidia peninsulae*, using the "Flow-Through Methods for Acute Toxicity Tests Using Fishes and Macroinvertebrates" given in an EPA published document entitled "Bioassay Procedures for the Ocean Disposal Permit Program".

The Agency also is proposing that if the 96-hour LC_{50} value from any of the vertebrate or invertebrate acute test species is less than 1.0 ppm, or there are indications of chronicity (i.e., the ratio of the 48-hour to 96-hour LC_{50}s is greater than 2), then chronic toxicity testing with the most sensitive (i.e., that with the lowest LC_{50} value or in the absence of an LC_{50} lower than 1 ppm the test species that showed the greater tendency for chronicity) vertebrate or invertebrate species shall be performed. Where one of the above criteria for chronic testing is met for any of the vertebrate or invertebrate acute test species, chronic testing shall be conducted on either (1) Daphnia using the OTS test guideline entitled "Daphnid Chronic Toxicity Test" (EG–2) or Mysid using the OTS test guideline entitled "Mysid Shrimp Chronic Toxicity Testing" (EG–4), or (2) fathead minnow using the OTS test guidelines entitled "Fish Early Life Stage Toxicity Test" (EG–11) or *Menidia* using the procedures of Goodman *et al.* (Ref. 35). EPA is proposing that if nether criterion is met for any of the four required invertebrate and vertebrate acute toxicity test species, no chronic toxicity test shall be required.

The Agency is proposing that the above referenced OTS Environmental Effects Test Guidelines and other cited methods be considered the test standards for the purposes of the proposed test for BPA. The OTS guidelines for aquatic toxicity testing specify generally accepted minimal conditions for determining aquatic plant and animal toxicities for substances like BPA to which aquatic life is expected to be exposed. The Agency's review of the guidelines, which occurs on a yearly basis according to the process described in 47 FR 41857 (September 22, 1982), has found no reason to conclude that these protocols need to be modified significantly. Additionally, the "Bioassay Procedures for the Ocean Disposal Permit Program" and the test procedures employed by Goodman *et al.* (Ref. 35) specify, in EPA's judgement, minimal test conditions and practices for acceptable investigation of BPA's acute and chronic toxicities to the saltwater vertebrate, *Menidia peninsulae*. Although the Agency has not issued OTS testing guidelines for saltwater vertebrates, the testing procedures found in these references reflect the current state-of-the-art for such testing and are being proposed as acceptable methods of testing BPA in a saltwater fish.

On the basis of the findings given above for health effects testing (Unit II. H), the Agency is proposing that a 90-day subchronic inhalation toxicity test with a 21 to 35 day post-exposure recovery and observation period shall be conducted for BPA.

EPA is proposing that this testing be done in accordance with the procedures given in the OTS Health Effects Test Guideline entitled "HG-Subchronic-Inhal 1983" which reflects current standards among toxicologists for obtaining reliable data on effects that might occur during and immediately after subchronic exposure to a substance via inhalation. The guideline specifies generally accepted minimal conditions for determining a no-observed-effect-level for substances like BPA to which people are expected to be exposed repeatedly over a limited period of time. The Agency has not received any new data since the last revision in 1983 (48 FR 44898) which would justify a major reappraisal of the guideline. The Agency reviews its OTS test guidelines once a year according to the process described in the **Federal Register** of September 22, 1982 (47 FR 41857), and has found no reason to indicate that this guideline needs to be modified significantly. Therefore, EPA is proposing that this guideline be considered the test standard for the purposes of the proposed subchronic inhalation test for BPA.

Certain modifications and clarifications of the subchronic inhalation test guideline have been included in the proposed test standard for this substance. They reflect the Agency's particular concern with the respiratory system after exposure to BPA via inhalation.

J. Test Substance

EPA is proposing that BPA of at least 95 percent purity be used as the test substance; EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to BPA itself. Commercial BPA ranges in purity from 92 to 99 percent (Ref. 36).

K. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacture and processing of BPA may present an unreasonable risk to human health and the environment, EPA is proposing that persons who manufacture or process, or intend to manufacture or process BPA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the aquatic toxicity testing and subchronic toxicity testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA promulgated procedures for applying for TSCA section 4(c) exemptions for use with two-phase rulemaking published in the **Federal Register** of October 10, 1984 (49 FR 39774). Elsewhere in today's **Federal Register**, EPA is issuing an interim final exemption policy for use with single-phase rulemaking. Procedurally, these differ only slighty from those previously adopted. In brief, when both manufacturers and processors are

subject to a test rule, processors will be granted an exemption automatically without filing applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for BPA. As noted in Unit II.J, EPA is interested in evaluating the effects attributable to BPA itself and has specified a relatively pure substance for testing.

L. Study Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA GLP standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 792 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 30 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The aquatic vertebrate, invertebrate and algal acute toxicity tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final test rule. No progress reports shall be required.

2. The aquatic vertebrate and invertebrate chronic toxicity tests shall be completed and the final results submitted to the Agency within 2 years of the effective date of the final test rule if those criteria necessary to trigger chronic aquatic toxicity testing are met. No progress reports shall be required.

3. The subchronic toxicity and recovery tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final test rule. Progress reports shall be submitted quarterly.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

M. Issues

1. This proposed rule identifies various OTS test guidelines and other published test methods as test standards for health and environmental effects testing of BPA. The Agency is soliciting comments as to whether the health and environmental effects test guidelines and other cited methods are appropriate and applicable for the testing of BPA. Also regarding the testing of BPA, the Agency requests comments on the adequacy of this testing, the reporting times for the identified health and environmental effects tests, and the criteria used in the environmental effects testing to trigger the chronic aquatic toxicity studies.

2. The Agency is soliciting comments on which of the procedures specified in the OTS Environmental Effect Test Guidelines and the OTS Health Effect Test Guideline for Subchronic Inhalation Testing should be made mandatory.

3. Comments are requested on whether the Agency should define BPA-respirable particles for use in the subchronic inhalation toxicity testing guideline as particles having an aerodynamic diameter enabling them to be inhaled deep into the lungs where gaseous exchange occurs (respiratory bronchioles and alveoli). For man, the Agency believes this is a BPA particle size ranging from 0.1 to 5μm.

4. EPA is requesting comments on whether a concurrent control group should be required in the subchronic inhalation toxicity study; whether a vehicle should be used; and if the toxic properties of the vehicle are not known or cannot be made available, whether both untreated and vehicle control group should be tested.

5. Comments are requested on EPA's belief that a satellite group of 20 animals (10 animals per sex) for the inhalation study be included with the high concentration level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects with a post-treatment period of not less than 21–35 days.

6. EPA is soliciting comments on whether the clinical examination to be conducted in the inhalation study be limited to an acid/base balance determination of the blood at least three times; just prior to initiation of dosing (base line data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period.

7. Comments are requested on limiting the gross pathology to an examination of the external surfaces of the body, all orifices, thoracic and abdominal cavities and their contents, and the esophagus, stomach, and upper small intestine.

8. The Agency is also soliciting comments on whether the full histopathological examination should be initially limited only to the respiratory tract and lungs of all animals in the control and high dose groups, and if further examinations of other dose groups should be contingent on the findings of the initial examination.

III. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for BPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted

their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for BPA are estimated to range from $66,900 to $197,000. This estimate includes the costs for both the required minimum series of tests as well as the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $17,300 to $51,000. Based on the projected 1984 production of 785 million pounds, the unit tests costs range from 0.002 to 0.006 cents per pound. In relation to the current list price of 67 to 71 cents per pound for BPA, these costs are equivalent to 0.003 to 0.01 percent of price.

The Level I economic analysis (Ref. 7) indicates that the potential for adverse economic effects due to the estimated test cost is low. This conclusion is based on the following observations: (1) demand for BPA appears relatively inelastic due to its dominant use as a captive intermediate; (2) the market expectations for BPA are optimistic; and (3) the estimated unit test costs are very low. A Level II analysis is not necessary.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82–140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, D.C.: (554–1404); Outside the U.S.A. (operator 202–554–1404), by July 1, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

VIII. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS–42067)]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of BPA to the Priority List (49 FR 22389).

(b) Notice of final rule on two-phase test rule development and exemption procedures (49 FR 39774).

(c) Notice of final rulemaking on data reimbursement (48 FR 31786).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures.

(e) TSCA GLP Standards (48 FR 53922).

(f) Rules requiring TSCA section 8(a) and 8(d) reporting on BPA (49 FR 22284 and 22286).

(g) OTS test guidelines and other published test methodologies cited as test standards for this rule.

(2) Support documents consisting of:

(a) Study of availability of test facilities and personnel.

(b) BPA economic analysis.

(3) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Records of telephone conversations.

(c) Records or minutes of informal meetings.

(4) Reports—published and unpublished factual materials.

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(33) Hardin, B.D. Bond, G.P., Sikov, M.R., Andrew, F.D., Beliles, R.P., Niemeier, R.W. Testing of selected workplace chemicals for teratogenic potential. Scand. J. Work. Environ. Health. 7 (suppl. 4):66–75. 1981.

(34) General Electric Company. Bisphenol A—TSCA section 8(d) submission. Letter from Ladd W. Smith, G.E., to Philip Wirdzek, Office of Pesticides and Toxic Substances, EPA. August 23, 1984.

(35) Goodman, L.R., Middaugh, D.P., Housen, D.J., *et al.* Early life-stage toxicity test with tidewater silversides (*Menidia peninsulae*) and chlorine-produced oxidants. Environ. Toxicol. and Chem. 2:337–342. 1983

(36) Szap, P., Kesse, I., Klapp, J. The analysis of bisphenol A by high performance liquid chromotography. J. Liq. Chromotogr. 1(1):89–96. 1978.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This test rule is not major

because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual cost of all the proposed testing for BPA is estimated to range from $66,900 to $197,000 or less than $1 million over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on our present analysis, EPA does not believe that there will be a significant adverse effect as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.* Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Environmental protection, Hazardous material, Chemicals, Testing, Reporting and recordkeeping requirements.

Dated: May 7, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

It is proposed that 40 CFR Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Part 799 is amended by adding § 799.940 to subpart B to read as follows:

§ 799.940 Bisphenol A.

(a) *Identification of test substance.* (1) Bisphenol A (CAS No. 80–05–7) (hereinafter "BPA") shall be tested in accordance with this rule.

(2) BPA of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process BPA from the effective date of this rule (44 days from the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests and submit data as specified in this section, Subpart A of this Part, and Part 790—Test Rule Development and Exemption Procedures for Single-phase Rulemaking.

(c) *Environmental effects testing*—(1) Aquatic acute toxicity—(i) *Required testing.* (A) Aquatic vertebrate, invertebrate, and aquatic plant acute toxicity tests shall be conducted with BPA with the fathead minnow *(Pimephales promelas)*, silversides *(Menidia peninsulae)*, *Daphnia magna*, *Mysidopsis bahia*, *Selenastrum capricornutum*, and *Skeletonema costatum* in accordance with the OTS Environmental Effects Test Guidelines for acute aquatic toxicity testing (EG–1, 3, 8, and 9), published by the NTIS (PB 82–232992), and other cited methods which are incorporated by reference.

(B) The OTS Environmental Effects Test Guidelines for acute toxicity testing were published by the EPA with the publication number EPA–560/6–82–002 and are for sale from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161. When ordering use NTIS Accession No. PB 82–232992. These guidelines are also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, D.C. 20005. A copy of this publication has also been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Room, E–107, 401 M Street, SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(C) The document "Bioassay Procedures for the Ocean Disposal Permit Program," which specifies acute toxicity testing procedures for *Menidia peninsulae*, has the EPA document Publication No. EPA–600/9–78–010 and is dated March 1978. A copy of this procedure is included in the public record for this rule (docket no. OPTS–42067) and is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, D.C. 20005. This incorporation by reference was approved by the Director of the Federal Register on [date]. This document is also available from EPA, Office of Research and Development, Technical Information Staff, Cincinnati, OH 45268. This material is incorporated as it exists on the date of the approval and a notice of any changes in it will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The acute toxicity tests shall be completed and the final results submitted to the Agency within one year of the effective date of the final rule.

(B) No quarterly progress reports are required to be submitted.

(2) *Aquatic chronic toxicity*—(i) *Required testing.* (A) Aquatic vertebrate and invertebrate chronic toxicity tests shall be conducted with BPA using the most sensitive vertebrate and invertebrate test species (i.e., that with the lowest LC_{50} value or in the absence of an LC_{50} less than 1 ppm the test species that showed the greater tendency for chronicity) from the acute toxicity testing conducted in accordance with paragraph (c)(1)(i) of this section if the following criteria are met. The chronic test shall be conducted only if the 96-hour LC_{50} value for the test species is less than 1 ppm, or there are indications of chronicity (i.e., the ratio of the 48 hour to 96 hour LC_{50} greater than 2) in that species. If neither of these criteria is met, chronic testing is not required. The chronic testing, if required, shall be conducted in accordance with the OTS Environmental Effects Test Guidelines for chronic toxicity (EG–4 and 11), published by the NTIS (PB 82–232992), and other cited methods which are incorporated by reference.

(B) The OTS Environmental Effects Test Guidelines for chronic toxicity testing are incorporated by reference and available as described above in § 799.940(c)(1)(i)(B).

(C) The chronic aquatic toxicity testing procedures to be used for BPA testing in *Menidia peninsulae* are specified in a publication by Goodman

et al. entitled "Early life-stage toxicity test with tidewater silversides (*Menidia peninsulae*) and chlorine-produced oxidants" available in *Environmental Toxicology and Chemistry*, Vol. 2, pp. 337–342, 1983. A copy of this publication has been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(ii) *Reporting requirements.* (A) Chronic toxicity tests shall be completed and the final results submitted to the Agency within two years of the effective date of the final rule.

(B) No quarterly progress reports are required to be submitted.

(e) *Health effects testing*—(1) *Subchronic toxicity*—(i) *Required testing.* (A) Subchronic toxicity and recovery tests shall be conducted with BPA in accordance with the OTS Health Effects Test Guidelines for Subchronic Exposure/Inhalation Toxicity, published by the NTIS (PB 83–257691) which is incorporated by reference.

(B) The OTS Health Effects Test Guideline for Subchronic Toxicity/Inhalation Toxicity was published by the EPA with the publication number EPA 560/6–83–001 and is for sale from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161. When ordering use NTIS Accession No. PB 83–257691. It is also available for inspection at the Office of the Federal Register, Rm. 8301, 1100 L Street NW., Washington, D.C. 20005. A copy of this publication has also been included in the public record for this rule (docket no. OPTS–42067) and is available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(ii) *Reporting Requirements.* (A) Subchronic toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted quarterly.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–11588 Filed 5–16–85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
May 17, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84-3009	Apr. 6, 1984.
Florida: FL85-3024	Apr. 26, 1985.
Illinois:	
IL85-5006	Feb. 8, 1985.
IL85-5007	Do.
IL85-5002	Jan. 11, 1985
IL84-5042	Dec. 14, 1984
Indiana:	
IN83-2067	Sept. 2, 1983
IN83-2069	Do.
Kansas:	
KS84-4052	Aug. 24, 1984.
KS84-4053	Do.
Michigan:	
MI83-2015	Mar. 11, 1983.
MI83-2008	Feb. 11, 1983.
MI85-5019	Mar. 8, 1985.
New York:	
NY85-3019	Mar. 29, 1985.
NY84-3036	Sept. 14, 1984.
Tennessee: TN83-1087	Nov. 25, 1983.
Utah: UT83-5120	Sept. 30, 1983.
Washington: WA84-5040	Nov. 16, 1984.
Wisconsin: WI84-5016	June 22, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Ohio: OH81-2015 (OH85-5023)	Apr. 10, 1981.
Wyoming: WY84-5009 (WY85-5025)	Apr. 6, 1984.

Signed at Washington, D.C. this 10th day of May 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits
DECISION NO. DC84-3009-MOD. #12		
(49 FR 13800-April 6, 1984)		
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.		
DELETE:		
BRICKLAYERS:		
Apartment buildings over 4-stories	11.15	.85
Light commercial - New buildings and additions limited to 50,000 sq. ft. in floor space and not to exceed 4-stories in height above ground; schools, churches, warehouses, chain food stores; shopping malls (excluding all stores over 50,000 sq. ft. in floor space)	13.00	3.10
All other work	16.30	3.10
ADD:		
BRICKLAYERS	16.50	3.40

	Basic Hourly Rates	Fringe Benefits
DECISION NO. FL85-3024-MOD. #1		
(50 FR 16610-April 26,1985)		
Cape Canaveral AFS, Patrick AFB, Kennedy Space Flight Center, & Melabar Radar Site in Brevard & Volusia Counties in Florida		
BUILDING, HEAVY & HIGHWAY CONSTRUCTION		
ADD:		
GLAZIERS:		
JOURNEYMAN	$11.50	.73
WORK ON SWING STAGE	12.00	.73
WORK ON HIGH REACH	12.00	.73

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IN83-2067 - MOD. #3		
(48 FR 40064 - September 2, 1983)		
Brown, Clark, ..., Wayne Counties, Indiana		
CHANGE:		
ELECTRICIANS		
Area 1	18.15	2.26+3%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IN83-2069 - MOD. #3		
(48 FR 40069 - September 2, 1983)		
Clay, Davies, ..., and Warrick Counties, Indiana		
CHANGE:		
ELECTRICIANS		
Area 1	18.15	2.26+3%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IL85-5006 - Mod#4		
(50 FR 5486 - Feb. 8, 1985)		
ADAMS, BOND, BOONE, BROWN, BUREAU, CALHOUN, CARROLL, CASS, CLINTON, DEKALB, FULTON, GREENE, HANCOCK, HENDERSON, HENRY, JERSEY, JO-DAVIESS, KNOX, LASALLE, LEE, LIVINGSTON, LOGAN, MCDONOUGH, MCLEAN, MACOUPIN, MARSHALL, MASON, MENARD, MERCER, MONROE, MONTGOMERY, MORGAN, OGLE, PIKE, PUTNAM, RANDOLPH, ROCK ISLAND, SCHUYLER, SCOTT, STARK, STEPHENSON, WARREN, WASHINGTON, WHITESIDE, WINNEBAGO & WOODFORD COUNTIES, ILLINOIS		
CHANGE:		
AREA DESCRIPTIONS:		
BOILERMAKERS:		
Area 1: Adams, Bond, Brown, Calhoun, Cass, Clinton, Greene, Jersey, Macoupin, Menard, Monroe, Montgomery, Morgan, Pike, Randolph, and Washington Counties		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IL85-5007 - Mod#2		
(50 FR 5478 - February 8, 1985)		
ALEXANDER, CHAMPAIGN, CHRISTIAN, CLARK, CLAY, COLES, CRAWFORD, CUMBERLAND, DEWITT, DOUGLAS, EDGAR, EDWARD, EFFINGHAM, FAYETTE, FORD, FRANKLIN, GALLATIN, HAMILTON, HARDIN, IROQUOIS, JACKSON, JASPER, JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, MOULTRIE, PERRY, PIATT, POPE, PULASKI, RICHLAND, SALINE, SHELBY, UNION, VERMILLION, WABASH, WAYNE, WHITE & WILLIAMSON COUNTIES, ILLINOIS		
CHANGE:		
BOILERMAKERS:		
Area 2	$19.20	$3.905
CARPENTERS; LATHERS, MILLWRIGHT, PILEDRIVERMEN & SOFT FLOOR LAYER		
Area 5:		
Carpenters, Piledrivermen & Soft Floor Layers	15.61	1.93
Millwrights	16.01	1.93
IRONWORKERS:		
Area 1	$15.55	$2.45
Area 2:		
Ironworkers	15.00	2.68
Fence Erectors	12.00	3.68
Marble setters, Terrazzo Workers & Tile Setters:		
Area 4	16.00	[illegible]
PAINTERS:		
Area 11:		
Brush, Roller, Paperhangers, Hand Taper	15.24	
Swing Stage, Scaffold over 30 ft, Epoxy, Toxic materials Sandblast, Spray, Machine Taper	16.24	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IL85-5002 - Mod#1		
(50 FR 1676 - Jan. 11, 1985)		
PEORIA & TAZEWELL COUNTIES, ILLINOIS		
CHANGE:		
BOILERMAKERS	18.50	3.03
CARPENTERS: Commercial:		
Peoria Co. (Chillicothe area)		
Millwrights	16.48	3.25
Carpenters, Piledrivermen & Soft Floor Layers	15.30	2.95
RESIDENTIAL CARPENTERS:		
Peoria Co. (Chillicothe Area)	12.00	2.95

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IL84-5042 - MOD#1		
(49 FR 48881 - Dec. 14, 1984)		
Sangamon County, Illinois		
CHANGE:		
BOILERMAKERS	19.20	3.905
BRICKLAYERS, Caulkers, Cleaners, Pointers, Stonemasons	16.00	1.87
CEMENT MASONS	16.03	1.50
ELEVATOR MECHANICS	16.425	3.00+ab
Helpers	70%	3.00+ab
IRONWORKERS	16.28	2.73
MARBLE, TILE SETTER, TERRAZZO	16.00	1.87
PLUMBER PIPE & STEAMFITTERS	17.23	2.68

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI83-2015 - MOD. #5		
(48 FR 10579-March 11, 1983)		
Allegan, Barry, Berrien, etc., Counties, Michigan		
Change:		
Laborers:		
Clinton, Eaton and Ingham Counties:		
Group 1	$11.75	$1.69
Group 2	11.99	1.69

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI83-2008 - MOD. #11		
(48 FR 6456 - February 11, 1983)		
Alger, Baraga, Chippewa, etc., Counties, Michigan		
Change:		
Boilermakers	16.94	5.70

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI85-5019 - MOD. #1		
(50 FR 9567-March 8, 1985)		
Kent County, Michigan		
Change:		
Plumbers & Steamfitters	14.30	3.22
Sheet Metal Workers	15.18	3.42

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KS84-4052 - MOD. #2		
(49 FR 33780 - August 24, 1984)		
Sedgwick County, Kansas		
CHANGE:		
CARPENTERS	$12.00	$1.08
MILLWRIGHTS & PILEDRIVER-MAN	12.30	1.08
ELECTRICIANS	15.00	2.05+ 4%
CABLE SPLICERS	15.25	2.05+ 4%
LABORERS		
(Building Construction		
Group 1	8.00	1.55
Group 2	8.20	1.55
PLUMBERS & PIPEFITTERS	15.40	2.60

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KS84-4053 - MOD. #4		
(49 FR 33784 - August 24, 1984)		
Leavenworth County, Kansas		
CHANGE:		
CEMENT MASONS	16.325	1.95
IRONWORKERS	17.51	3.39
PLASTERERS	18.05	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY85-3019 - MOD. #1		
(50 FR 12690 - March 29, 1985)		
Jefferson County, New York		
CHANGE:		
BRICKLAYERS & CEMENT MASONS	16.59	2.91

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TN83-1087 Mod #8		
(48 FR 53270 - November 25, 1983)		
Hamilton, Marion, Polk & Rhea Counties, Tennessee		
CHANGE:		
BRICKLAYERS & STONE MASONS:		
Polk County	$12.75	
Hamilton County	13.92	1.5[illegible]
All Other Counties	12.00	1.5[illegible]

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits
DECISION NO. UT83-5120- MOD. # 11		
(48 FR 44992 - Sept. 30, 1983		
STATEWIDE, UTAH		
OMIT:		
Electricians as issued in original decision		
Cable Solicers as issued in original decision		
ADD		
Electricians:		
Projects $250,000 to $5,000,000 Total Electricial contract	16.25	2.50+ 3&8/10%
Projects over 5,000,000 Total Electricial contract	18.35	2.50+ 3&8/10%
CHANGE:		
Laborers:		
Building Construction:		
Group 1	9.47	2.09
Group 2	10.47	2.09

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WI 84-5016 - MOD. #5		
48 - FR-25829 - June 22, 1984)		
Statewide, Wisconsin		
Correct Decision Number on Modification Number 4 to read WI 84-5016		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY84-3036 - MOD. #3		
(49 FR 36230 - Sept. 14, 1984)		
Onondaga County, New York		
CHANGE:		
ASBESTOS WORKERS	18.70	3.41
BOILERMAKERS	18.93	1.875+ 10%
SHEETMETAL WORKERS	18.12	5.335+ 3%
Projects with Sheetmetal work contracts totaling $5 million or less	17.12	5.335+ 3%
TRUCK DRIVERS		
Building projects where total project cost is over $5 million		
Class 1	14.58	2.72
Class 2	14.73	2.72
Class 3	14.78	2.72
Class 4	14.98	2.72
Building Construction where total project cost is under $5 million		

DECISION NO. WA84-5040 - Mod#7 (49 FR 45332 - Nov 16, 1984) Statewide Washington	Basic Hourly Rates	Fringe Benefits
ADD:		
CARPENTRY:		
Area 2:		
Buildings under $500,000 and Bridges under $350,000:		
All Classifications	$15.00	$2.61
LABORERS:		
Area 2:		
(See Footnote "f" regarding cost of project.) On projects as described in Footnote "f" the following rates apply:		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.69	3.43
Group 4	13.20	3.43
Group 5	13.40	3.43
Area 5: Kittitas, Yakima, and the parts of Chelan, Douglas, and Okanogan Cos. lying West of the 120th Meridian. (See Footnote "g" regarding cost of project.) On projects as described in Footnote "g" the following rates apply:		
Group 1	8.46	3.43
Group 2	9.60	3.43
Group 3	9.60	3.43
Group 4	9.98	3.43
Group 5	10.27	3.43
All other work not covered in Footnote "g"		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.00	3.43
Group 4	12.48	3.43
Group 5	12.84	3.43
POWER EQUIPMENT OPERATORS:		
Area 2:		
(See Footnote "g" regarding cost of project). On projects as described in Footnote "g" the rate for each group shall be 85% of the base rate plus full fringe benefits		

	Basic Hourly Rates	Fringe Benefits
POWER EQUIP. OPERATORS (cont'd)		
Area 5: Kittitas, Yakima, and the parts of Chelan, Douglas & Okanogan Cos. lying West of the 120th Meridian (See Footnote "g" regarding cost of project) On projects as described in Footnote "g" the rate for each group shall be 65% of the base rate plus full fringe benefits.		
All other work not covered by Footnote "g", the following rates apply:		
Group 1	16.73	4.16
Group 2	16.23	4.16
Group 3	15.74	4.16
Group 4	15.43	4.16
Group 5	15.11	4.16
Group 6	13.33	4.16
TRUCK DRIVERS:		
Area 2:		
All Counties and portions of Counties lying West of the 120th Meridian except those enumerated in Area 3. Includes the Northern portion of Pacific, and all of Kittitas and Yakima Counties. (See Footnote "g" regarding cost of project) On projects as described in Footnote "g" the rate for each group shall be 85% of the base rate plus full fringe benefits.		

NOTE: Classification Descriptions for LABORERS and POWER EQUIPMENT OPERATORS in Area 5 are identical to those in Area 2 contained in the Wage Decision.

DECISION NO. WA84-5040 (Cont'd)

ADD:

FOOTNOTE "f"

f. LABORERS (AREA 2):

Reduced rates as indicated in the wage decision may be paid on projects which involve work on structures such as buildings, bridges or docks which have a total value of less than $1.5 million, excluding the cost of electrical, mechanical and utilities. These rates may also be paid on projects where no building is involved which have a total value of less than $1 million, surfacing and paving included but utilities excluded. For the purposes of this footnote, utilities are defined to include sanitary and storm sewerage and facilities for the delivery of water, electricity, gas and communications.

Footnote "g":

g. LABORERS (AREA 5), POWER EQUIPMENT OPERATORS (AREA 2 and AREA 5) & TRUCK DRIVERS (AREA 2):

Reduced rates, as indicated in the wage decision, may be paid on the following kinds of projects:

1. Marine type projects (docks, wharfs & similar) which have a total value of less than $150,000.
2. Projects involving work on non-marine structures, such as buildings and bridges, which have a total value of less than $1.5 million, excluding the mechanical, electrical and utility portions of the contract.
3. Non-marine projects where no building is included which have a value of less than $1 million, surfacing and paving included, but utilities excluded.

For the purposes of this footnote, utilities are defined to include sanitary and storm sewerage and facilities for the delivery of water, electricity, gas and communications.

MODIFICATIONS P. 7

DECISION NO. WA84-5040 (Cont'd)

CHANGE:

FOOTNOTE "e"

e. LABORERS (AREA 1), POWER EQUIPMENT OPERATORS (AREA 1), AND TRUCK DRIVERS (AREA 1): All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties:

On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on component with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

Paving (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
Crushing (including delivery to jobsite).	200,000
Grading, & Clearing (highway only)	350,000 350,000
Bridges (including related work such as approaches and landscaping)	500,000
Utilities (storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
Buildings	$2,000,000 exclusive of mechanical and electrical subcontracts

EXCEPTIONS: Paving within a 45 mile radius of Spokane or Lewiston shall receive the full rate.

Laborers only: For work on buildings over $2,000,000, excluding mechanical and electrical, shall receive the full rate on all components including any that fall below the amounts shown.

PAGE:

LINE CONSTRUCTION:

Fringe Benefits:

Groups 1 to 3	$3.25 + 3 1/2%
Groups 4 to 7	$2.55 + 3 1/2%

SUPERSEDEAS DECISION

STATE: OHIO COUNTY: MEDINA
DECISION NUMBER: OH85-5023 DATE: Date of Publication
Supersedes Decision No. OH81-2015, dated April 10, 1981 in 46 FR 21585
DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$10.19	
CARPENTERS	9.95	
CEMENT MASONS	9.19	
ELECTRICIANS	9.19	
INSULATORS	7.00	
LABORERS	6.00	
PAINTERS	9.19	
PLUMBERS	9.85	
SOFT FLOOR LAYERS	8.00	
POWER EQUIPMENT OPERATORS:		
Backhoes	9.12	
Bulldozers	9.12	
TRUCK DRIVERS	6.25	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).		

	Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: Wyoming
COUNTY: Statewide
DECISION NUMBER: WY85-5025
DATE: Date of Publication
Supersedes Decision No. WY84-5009 dated April 6, 1984 in 49 FR-50432

DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 11.66	
CEMENT MASONS	11.90	
IRONWORKERS:		
Structural	14.11	
Reinforcing	10.52	
PAINTERS:		
Brush and Spray	10.99	
LINE CONSTRUCTION:		
All work over 34.5 KV all work on steel towers and/or multiple wood structures, all cross country underground communications work, and all motor traffic controlling, streets and highway lighting:		
Cable Splicer	16.00	
Linemen	16.00	
Equipment Operators	14.39	
Groundmen	10.60	
All work 34.5 KV and under:		
Lineman	16.00	
Line Equipment Operator	13.74	
Groundman	10.60	

Line Construction Fringe Benefits $1.75+3-1/2%

LABORERS:	Basic Hourly Rates	Fringe Benefits
Group 1	8.23	
Group 2	8.33	
Group 3	8.48	
Group 4	8.75	
Group 5:	8.71	
(a)	8.55	
(b)	8.98	
(c)	8.82	
(d)		

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
Group 1	10.74	
Group 2	10.79	
Group 3	10.84	
Group 4	10.88	
Group 5	10.91	
Group 6	10.96	
Group 7	11.00	
Group 8	11.02	
Group 9	11.13	
Group 10	11.19	
Group 11	11.21	
Group 12	11.39	
Group 13	11.43	
Group 14	11.50	
Group 15	11.56	
Group 16	11.73	
Group 17	12.07	

DECISION NO. WY85-5025 Page 2

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits
Pick-up Truck Drivers (when used for hauling)	$ 9.16	
Dump Trucker Drivers; (water level capacity box):		
7 cu. yds. and less	9.21	
Over 7 cu. yds. to and including 10 cu. yds.	9.36	
Over 10 cu. yds. to and including 13 cu. yds.	9.46	
Over 13 cu. yds. to and including 20 cu. yds.	9.96	
Over 20 cu. yds. to and including 25 cu. yds.	9.96	
Over 25 cu. yds. to and including 30 cu. yds.	10.06	
Over 30 cu. yds. to and including 35 cu. yds.	10.11	
Over 35 cu. yds. to and including 40 cu. yds.	10.16	
Over 40 cu. yds. to and including 45 cu. yds.	10.21	
Over 45 cu. yds. (to be negotiated prior to use)		
Snow Plow Truck Drivers (the cu. yd. rate of the truck driver classification):		
Pilot Car Drivers	9.16	
Gravel Spreader	9.21	

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Flat Rack Material Truck Drivers:		
Less than 2 tons	9.21	
2 tons to 5 tons	9.36	
Over 5 tons	9.46	
Low Boy and Tandem Axle Float Drivers	9.96	
Gang Truck Drivers	9.21	
Stringing Truck Drivers:		
Single axle type truck	9.21	
Multiple axle type truck, semi	9.96	
Winch Trailer Truck Drivers (cable and hoist)	9.46	
Utility Winch Truck Drivers	9.46	
"A" Frame Truck Drivers	9.46	
Transit Mix or Wet Mix Truck Drivers:		
Less than 5 cu. yds.; single axle	9.46	
Over 5 cu. yds. to and including 10 cu. yds.; Tandem axle	9.56	
Over 10 cu. yds.	9.66	
Power Broom Drivers and/or Operator	9.36	

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Water Truck Drivers:		
2500 gallons or less (straight truck)	9.21	
2500 gallons or less (semi truck)	9.36	
Over 2500 gallons to and including 3600 gallons	9.46	
Over 3600 gallons (straight truck)	9.56	
Over 3600 gallons (semi truck)	9.66	
Heavy Duty (Euclids, electric or similar type)	9.96	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

LABORERS

Group 1: Axeman and Hand Faller; Concrete Worker (wet or dry); Concrete Worker (curing and drying); Dumpman; Erector and Installer (includes the installation and erection of fences, snow fences, guard rails, median rails, median posts, signs and right-of way marker); Form Stripper; General Labor; Heater Tender; Material Handler (lumber, rods, cement, concrete); Nozzleman, air and water; Pre-watering, pre-wetting and pre-irrigation (all work); Riprap Man; Sandblaster Pot Tender; Signal Men, Grade Concrete, etc.; Scissor Man or Hopper Man; Stake Jumper for equipment; Tar and Asphalt Pot Tender; Wrecking and demolition crews

Group 2: Asphalt Raker and Tamper; Bin Wall Installer; Bituminous Curb Builder; Cement Mason or Finisher and Tender; Chuck Tender; Form Setter; (paving); Hand operated Vibratory Roller; Landscaper; Mortar Man on Stone Riprap; Operator of pneumatic, electric, gas tamper and similar mechanical tools; Pipe Setter (corrugated culvert pipe, sectional, multiplate and similar type); Pipe Setter; Pipelayer (non-metalic); Pipe Wrapper, Power type concrete buggy (push or ride); Power Saw Operator (clearing); Vibrator - concrete

Group 3: Concrete Saw; Gunite Nozzleman; High Scaler (using air tools from Bos'n Chair, Swing Stage, Lift Belt or Block and Tackle, shall receive $.20 per hour more than the classified rate); Jackhammer and Pavement Breaker; Sandblaster Nozzleman; Sewer Pipe Installer (non-metallic), clay, concrete, etc. (Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker)

Group 4: Powderman and Blaster; Wagon Drill, Air-trac, Diamond and other drills for blasting powder or grouting

Group 5: Tunnel and Underground Work:

(a) Brakeman; Swamper, Vibrator Man
(b) Bull Gang; Dumpman; Mucker; Trackman
(c) Miners (Drillers); Machine Men; Timbermen; Steelmen; Drill Doctor, Form Setter and Mover; Spader; Tuggers spilling and/or Caisson Workers; Powderman; Jackhammer-men Finishers
(d) Nipper; Chucktender; Topman; Toploader

POWER EQUIPMENT OPERATORS

Group 1: Auger Machine Operator (post holes, etc.); Batch Bin Weighman, Scissorman or Hopperman; Brakeman; Crusher Oiler; Oiler Utility; Screed Operator; Tractor Operators (farm, crawler or wheel type, 60 HSP - drawbar) or less with or without use of power attachments, except for use of Backhoe or Bucket)

Group 2: Broom Operators, self-propelled; Cableway Signalman (Bellboy); Concrete Saw (self-propelled); Fireman; Power Loader, belt and bucket type

Group 3: Air Compressor over 315 cu. ft. capacity; Chip Spreader Operator; Form Grader Operator; Joint Machine Operator; Longitudinal Float Operator; Mixer Operator Concrete (under one yard); Roller Operators, self-propelled (pneumatic, rubber tired, sheep foot vibratory or combination type); Tire Repairman

Group 4: Pump Operator (all others)

Group 5: Conveyor Belt Operator; Fork Lift and Lumber Stacker; Screening Plant Operator

Group 6: A-Frame Truck; Tractor Operators (farm, crawler or wheel type, over 60 HSP - drawbar) without use of power attachments

Group 7: Oiler, Lead Utility

Group 8: Gunnite and Grout Machine Operator; Mulching Machine Operator; Oil Distributor

Group 9: Front End Loader (up to and including 1½ cu. yds.); Pavement Breakers, Hydro-tamper and similar type machines; Pumps, well points

Group 10: Hoist Operator (one drum)

Group 11: Haulage Motorman and Industrial type Motorman; Motor Patrol Operator (all others); Pump Operator (in tunnels, shafts, raises); Hydro type Cranes (up to 15 tons)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 12: Air Compressor, two or more machines or tunnels, shafts, raises of Plant Operator; Asphalt Plant Operator; Bituminous Laydown Machine Operator; CMI Machine or similar; Concrete Batch Plant; Concrete Finish Machine Operator; Concrete Multi Blade Span Saw (Hunt process or similar); Concrete Spreader and Paver Operator; Crusher Operator; Drilling Machine, integrated (Core, Rotary, Caisson, Diamond); Elevating Grader; Front End Loader (over 1½ cu. yds.); Jumbo Form Operator; Mixer Operator, base course pug mill type; Mixer Bituminous Opeartor (travel plant); Mixer Operator Concrete (over one yard); Motor Patrol Operator (finish); Mucking Machine Operator (all types); Pneumatic Guns; Pumpcrete Operator; Roller Operator (Tandem steel wheel, three axle or three wheel); Scraper Equipment (all types); Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes (manufacturers' rating) up to 3½yds., all attachments; Hydro type cranes (15 ton and over); Shuttle Car Operator; Subgrade Machine Operator (power); Tractor Operator, all with use of power attachments and including Push-cat, Dozer, Tournadozer, etc. (The use of power attachment shall not include disking, pulling or rollers, and similar unskilled actions); Trenching Machine Operator; Wash Plant Operator

Group 13: Welder, Machine Doctor

Group 14: Hoist Operator (two or more drums of shafts or raises); Repairman; Mechanics; Machine Doctors, Welders, Heavy Duty Mechanic, Machine Doctor

Group 15: Cableway Operators; Mixer Dual Drum; Cranes, (Whirley, Gantry, Stiffleg, Overhead traveling)

Group 16: Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes manufacturer's rating) 3½ yds. to 7 cu. yds.; all attachments; Wheel Excavator Operator

Group 17: Shovels, Draglines, Cranes, Piledrivers, all truck mounted Cranes, (manufacturer's rating) 7 cu. yds. and over, all attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii).

[FR Doc. 85-11763 Filed 5-16-85; 8:45 am]

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federal register

Friday
May 17, 1985

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1985, of 242 rescission proposals and 69 deferrals contained in the first eight special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, and March 22, 1985.

Rescissions (Table A and Attachment A)

As of May 1, 1985, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the 242 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of May 1, 1985, $5,241.7 million in 1985 budget authority was being deferred from obligation and $9.1 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984

Vol. 49, FR p. 44870, Friday, November 9, 1984

Vol. 49, FR p. 47804, Thursday, December 6, 1984

Vol. 50, FR p. 1420, Thursday, January 10, 1985

Vol. 50, FR p. 6582, Friday, February 15, 1985

Vol. 50, FR p. 6648, Friday, February 15, 1985

Vol. 50, FR p. 9410, Thursday, March 7, 1985

Vol. 50, FR p. 12504, Thursday, March 28, 1985

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)	
Rescissions proposed by the President	$1,805.9	
Accepted by the Congress	0	
Rejected by the Congress	1,805.9	a/
Pending before the Congress	0	

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)	
Deferrals proposed by the President	$14,846.6	
Routine Executive releases through May 1, 1985 (OMB/ Agency Releases of $9,794.3 million and cumulative adjustments of $199.6 million)	-9,595.9	
Overturned by the Congress	0	
Currently before the Congress	$ 5,250.7	b/

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a/ Rescission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $9.1 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs................................	R85-1		99,000	2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program................................	R85-2		5,168	2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses..........	R85-3		1,231	2-6-85		1,231	4-25-85	
verseas Private Investment Corporation Overseas Private Investment Corporation.	R85-4		[illegible]	2-6-85		[illegible]	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary..................	R85-5		114	2-6-85		114	4-25-85	
Departmental Administration Departmental Administration.............	R85-6		149	2-6-85		149	4-25-85	
Office of Governmental and Public Affairs Office of Governmental and Public Affairs................................	R85-7		497	2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General.........	R85-8		41	2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel...........	R85-9		24	2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service...........	R85-10		1,313	2-6-85		1,313	4-25-85	
Buildings and facilities................	R85-11		16,950	2-6-85		16,950	4-25-85	
	R85-12		20,950	2-6-85		20,950	4-25-85	
Cooperative State Research Service Cooperative State Research Service......	R85-13		151	2-6-85		151	4-25-85	
Extension Service Extension Service.......................	R85-14		310	2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library...........	R85-15		11	2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses....................	R85-16		[illegible]	2-6-85		206	4-25-85	
Economic Research Service Salaries and expenses....................	R85-17		132	2-6-85		132	4-25-85	
World Agricultural Outlook Board World Agricultural Outlook Board........	R85-18		32	2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service............	R85-19		424	2-6-85		424	4-25-85	
Office of International Cooperation and Development Salaries and expenses....................	R85-20		52	2-6-95		52	4-25-85	
Scientific activities overseas (special foreign currency program).............	R85-21		9	2-6-85		[illegible]	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses....................	R85-22		100	2-6-85		100	4-25-85	
Dairy indemnity program..................	R85-23		[illegible]	2-6-85		[illegible]	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses...	R85-24		1,906	2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund.......	R85-25		31	2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses....................	R85-26		[illegible]	2-6-85		[illegible]	4-25-85	
Rural Electrification Administration Salaries and expenses....................	R85-27		288	2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund...........	R85-28		215,964	2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock..........................	R85-29		30,000	2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses....................	R85-30		1,315	2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations..................	R85-31		5,174	2-6-85		5,174	4-25-85	
River basin surveys and investigations..	R85-32		235	2-6-85		235	4-25-85	
Watershed planning.......................	R85-33		133	2-6-85		133	4-25-85	
Watershed and flood prevention operations..............................	R85-34		[illegible]	2-6-85		[illegible]	4-25-85	
Great plains conservation program.......	R85-35		[illegible]	2-6-85		126	4-25-85	
Resource conservation and development...	R85-36		164	2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses....................	R85-37		1,464	2-6-85		1,464	4-25-85	
Federal Grain Inspection Service								
Salaries and expenses....................	R85-38		[illegible]	2-6-85		[illegible]	4-25-85	
Agricultural Marketing Service								
Marketing services.......................	R85-39		150	2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation.................	R85-40		[illegible]	2-6-85		[illegible]	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses....................	R85-41		2,473	2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration................	R85-42		[illegible]	2-6-85		[illegible]	4-25-85	
Food stamp program.......................	R85-43		8,762	2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service.....	R85-44		34	2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration...	R85-45		117	2-6-85		117	4-25-85	
Agricultural Cooperative Service								
Salaries and expenses....................	R85-46		50	2-6-85		50	4-25-85	
Forest Service								
Forest research..........................	R85-47		923	2-6-85		923	4-25-85	
State and private forestry..............	R85-48		463	2-6-85		463	4-25-85	
National forest system..................	R85-49		12,134	2-6-85		12,134	4-25-85	
Construction.............................	R85-50		1,922	2-6-85		1,922	4-25-85	
Land acquisition.........................	R85-51		[illegible]	2-6-85		[illegible]	4-25-85	
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses....................	R85-52		3,700	2-6-85		3,700	4-25-85	
	R85-53		[illegible]	2-6-85		[illegible]	4-25-85	
Economic Development Administration								
Salaries and expenses....................	R85-54		120	2-6-85		120	4-25-85	
Economic development assistance programs................................	R85-55		24,000	2-6-85		24,000	4-25-85	
	[illegible]		179,000	2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses....................	R85-57		241	2-6-85		241	4-25-85	
Periodic censuses and programs..........	R85-58		791	2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses....................	R85-59		433	2-6-85		433	4-25-85	
International Trade Administration								
Operations and administration...........	R85-60		2,783	2-6-85		2,783	4-25-85	
	[illegible]		18,750	2-6-85		18,750	4-25-85	
Participation in United States expositions..............................	R85-61		[illegible]	2-6-85		[illegible]	4-25-85	
Minority Business Development Agency								
Minority business development...........	D85-62		305	2-6-85		305	4-25-85	
United States Travel and Tourism Administration								
Salaries and expenses....................	R85-63		[illegible]	2-6-85		[illegible]	4-25-85	
	R85-63A		3,417	2-6-85		3,417	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64		4,140	2-6-85		4,140	4-25-85	
	R85-64A		100,200	2-6-85		100,200	4-25-85	
Fisheries loan fund....................	R85-65		1,550	2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses..................	R85-66		1,472	2-6-85		1,472	4-25-85	
National Bureau of Standards								
Scientific and technical research and services.............................	R85-67		1,019	2-6-85		1,019	4-25-85	
National Telecommunications and Information Administration								
Salaries and expenses..................	R85-68		183	2-6-85		183	4-25-85	
Public telecommunications facilities, planning and construction.............	R85-69		32	2-6-85		32	4-25-85	
	R85-69A		9,968	2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations..................	R85-70		2,000	2-6-85		2,000	4-25-85	
Construction, general..................	R85-71		4,000	2-6-85		4,000	4-25-85	
Operation and maintenance, general......	R85-72		8,000	2-6-85		8,000	4-25-85	
General expenses........................	R85-73		1,200	2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries............................	R85-74		1,000	2-6-85		1,000	4-25-85	
Revolving fund..........................	R85-75		3,900	2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs........................	R85-76		80,000	2-6-85		80,000	4-25-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants..................	R85-77		30,000	2-6-85		30,000	4-25-85	
Office of Postsecondary Education								
Higher education........................	R85-78		59,750	2-6-85		59,750	4-25-85	
Departmental Management								
Salaries and expenses..................	R85-79		4,189	2-6-85		4,189	4-25-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities........	R85-80		8,280	2-6-85		8,280	4-25-85	
Energy Programs								
General science and research activities.	R85-81		[illegible]	2-6-85		[illegible]	4-25-85	
Energy supply, research and development activities............................	R85-82		2,676	2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83		[illegible]	2-6-85		[illegible]	4-25-85	
Fossil energy research and development..	R85-84		3,276	2-6-85		3,276	4-25-85	
	R85-85		[illegible]	2-6-85		[illegible]	4-25-85	
Naval petroleum and oil shale reserves..	R85-86		181	2-6-85		181	4-25-85	
Energy conservation.....................	R85-87		931	2-6-85		931	4-25-85	
Strategic petroleum reserve.............	R85-88		156	2-6-85		156	4-25-85	
Energy Information Administration.......	R85-89		846	2-6-85		846	4-25-85	
Emergency preparedness..................	R85-90		51	2-6-85		51	4-25-85	
Economic regulation.....................	R85-91		156	2-6-85		156	4-25-85	
Federal Energy Regulatory Commission....	R85-92		204	2-6-85		204	4-25-85	
Alternate fuels production..............	R85-93		23	2-6-85		23	4-25-85	
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration.........................	R85-94		29	2-6-85		29	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Southeastern Power Administration..................	R85-95		15	2-6-85		15	4-25-85	
Operation and maintenance, Southwestern Power Administration..................	R85-96		243	2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.........................	R85-97		432	2-6-85		432	4-25-85	
Departmental Administration Departmental administration.............	R85-98		2,786	2-6-85		2,786	4-25-85	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration Salaries and expenses....................	R85-99		2,194	2-6-85		2,194	4-25-85	
Health Resources and Services Administration Health resources and services...........	R85-100		2,263	2-6-85		2,263	4-25-85	
Indian health...........................	R85-101		161	2-6-85		161	4-25-85	
Centers for Disease Control Disease control..........................	R85-102		2,261	2-6-85		2,261	4-25-85	
National Institutes of Health National Cancer Institute...............	R85-103		4,362	2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	R85-104		1,401	2-6-85		1,401	4-25-85	
National Institute of Dental Research...	R85-105		166	2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases.....	R85-106		1,171	2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders...............	R85-107		462	2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases....................	R85-108		428	2-6-85		428	4-25-85	
National Institute of General Medical Sciences...............................	R85-109		211	2-6-85		211	4-25-85	
National Institute of Child Welfare and Human Development......................	R85-110		309	2-6-85		309	4-25-85	
National Eye Institute..................	R85-111		173	2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences...............................	R85-112		542	2-6-85		542	4-25-85	
National Institute on Aging.............	R85-113		196	2-6-85		[illegible]	4-25-85	
Research resources......................	R85-114		250	2-6-85		250	4-25-85	
John E. Fogarty International Center....	R85-115		241	2-6-85		241	4-25-85	
National Library of Medicine............	R85-116		354	2-6-85		354	4-25-85	
Office of the Director..................	R85-117		182	2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration Alcohol, drug abuse, and mental health..	R85-118		3,972	2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health Public health service management........	R85-119		493	2-6-85		493	4-25-85	
Health Care Financing Administration Program management......................	R85-120		1,540	2-6-85		1,540	4-25-85	
Human Development Services Human development services..............	R85-121		1,334	2-6-85		1,334	4-25-85	
Family social services..................	R85-122		396	2-6-85		396	4-25-85	
Community services block grant..........	R85-123		34	2-6-85		34	4-25-85	
Departmental Management General departmental management.........	R85-124		1,246	2-6-85		1,246	4-25-85	
Office of the Inspector General.........	R85-125		496	2-6-85		496	4-25-85	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs Payments for operation of low income housing projects...............	R85-126		253,138	2-6-85		253,138	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently Before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Management and Administration								
Salaries and expenses....................	R85-127		6,919	2-6-85		6,919	4-25-85	
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources.......	R85-128		5,778	2-6-85		5,778	4-25-85	
Oregon and California grant lands.......	R85-129		679	2-6-85		679	4-25-85	
Working capital fund....................	R85-130		2,951	2-6-85		2,951	4-25-85	
Minerals Management Service								
Minerals and royalty management.........	R85-131		1,764	2-6-85		1,764	4-25-85	
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology...............	R85-132		546	2-6-85		546	4-25-85	
Abandoned mine reclamation fund.........	R85-133		333	2-6-85		333	4-25-85	
	R85-133A		2,900	2-6-85		2,900	4-25-85	
Bureau of Reclamation								
Construction program....................	R85-134		2,571	2-6-85		2,571	4-25-85	
General investigations..................	R85-135		209	2-6-85		209	4-25-85	
Operation and maintenance...............	R85-136		1,540	2-6-85		1,540	4-25-85	
General administrative expenses.........	R85-137		1,468	2-6-85		1,468	4-25-85	
Geological Survey								
Surveys, investigations and research....	R85-138		4,519	2-6-85		4,519	4-25-85	
Bureau of Mines								
Mines and minerals......................	R85-139		1,355	2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service								
Resource management.....................	R85-140		3,869	2-6-85		3,869	4-25-85	
Construction............................	R85-141		40	2-6-85		40	4-25-85	
National Park Service								
Operation of the national park system...	R85-142		8,598	2-6-85		8,598	4-25-85	
National recreation and preservation....	R85-143		94	2-6-85		94	4-25-85	
Construction............................	R85-144		397	2-6-85		397	4-25-85	
Land acquisition and state assistance............................	R85-145		52	2-6-85		52	4-25-85	
	R85-146		30,000	2-6-85		30,000	4-25-85	
Bureau of Indian Affairs								
Operation of Indian programs............	R85-147		5,570	2-6-85		5,570	4-25-85	
Office of Territorial Affairs								
Administration of territories...........	R85-148		107	2-6-85		107	4-25-85	
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses....................	R85-149		166	2-6-85		166	4-25-85	
Working capital fund....................	R85-150		3,000	2-6-85		3,000	4-25-85	
Legal Activities								
Salaries and expenses, General Legal Activities..............................	R85-151		470	2-6-85		470	4-25-85	
Salaries and expenses, Antitrust Division................................	R85-152		65	2-6-85		65	4-25-85	
Salaries and expenses, United States Attorneys and Marshals..............	R85-153		889	2-6-85		889	4-25-85	
Fees and expenses of witnesses..........	R85-154		309	2-6-85		309	4-25-85	
Salaries and expenses, Community Relations Service................................	R85-155		43	2-6-85		43	4-25-85	
Federal Bureau of Investigation								
Salaries and expenses....................	R85-156		3,505	2-6-85		3,505	4-25-85	
Drug Enforcement Administration								
Salaries and expenses....................	R85-157		876	2-6-85		876	4-25-85	
Immigration and Naturalization Service								
Salaries and expenses....................	R85-158		947	2-6-85		947	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal Prison System								
Salaries and expenses....................	R85-159		451	2-6-85		451	4-25-85	
National Institute of Corrections.......	R85-160		894	2-6-85		894	4-25-85	
Buildings and facilities................	R85-161		13	2-6-85		13	4-25-85	
Office of Justice Programs								
Justice assistance......................	R85-162		2,031	2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration..................	R85-163		218	2-6-85		218	4-25-85	
	R85-163A		1,703	2-6-85		1,703	4-25-85	
Training and employment services........	R85-164		11,447	2-6-85		11,447	4-25-85	
	R85-164A		244,291	2-6-85		244,291	4-25-85	
Labor-Management Services Administration								
Salaries and expenses...................	R85-165		1,678	2-6-85		1,678	4-25-85	
Employment Standards Administration								
Salaries and expenses...................	R85-167		1,635	2-6-85		1,635	4-25-85	
	R85-167A		[illegible]	2-6-85		600	4-25-85	
Occupational Safety and Health Administration								
Salaries and expenses...................	R85-168		1,694	2-6-85		1,694	4-25-85	
Mine Safety and Health Administration								
Salaries and expenses...................	R85-169		1,776	2-6-85		1,776	4-25-85	
Bureau of Labor Statistics								
Salaries and expenses...................	R85-170		765	2-6-85		765	4-25-85	
	R85-170A		5,000	2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses...................	R85-171		728	2-6-85		728	4-25-85	
Inspector General salaries and expenses.	R85-172		3,766	2-6-85		3,766	4-25-85	
Special foreign currency program........	R85-173		[illegible]	2-6-85		20	4-25-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses...................	R85-174		2,432	2-6-85		2,432	4-25-85	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety....................	R85-175		164	2-6-85		164	4-25-85	
National Highway Traffic Safety Administration								
Operations and research.................	R85-176		767	2-6-85		767	4-25-85	
Trust fund share of operations and research..............................	R85-177		408	2-6-85		408	4-25-85	
Highway traffic safety grants...........	R85-178		250	2-6-85		250	4-25-85	
Federal Railroad Administration								
Office of the Administrator.............	R85-179		100	2-6-85		100	4-25-85	
Railroad research and development.......	R85-180		170	2-6-85		170	4-25-85	
Rail service assistance.................	R85-181		90	2-6-85		90	4-25-85	
Railroad safety.........................	R85-182		140	2-6-85		140	4-25-85	
Northeast corridor improvement program..	R85-183		200	2-6-85		200	4-25-85	
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses...............	R85-184		265	2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations..............................	R85-185		18,888	2-6-85		18,888	4-25-85	
Headquarters administration.............	R85-186		1,065	2-6-85		1,065	4-25-85	
Operation and maintenance, Washington metropolitan airports.................	R85-187		17	2-6-85		17	4-25-85	
Facilities and equipment (Airport and airway trust fund)....................	R85-188		10,000	2-6-85		10,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Coast Guard								
Operating expenses......................	R85-189		14,724	2-6-85		14,724	4-25-85	
Acquisition, construction and improvements..........................	R85-190		500	2-6-85		500	4-25-85	
Reserve training........................	R85-191		441	2-6-85		441	4-25-85	
Research, development, test, and evaluation............................	R85-192		135	2-6-85		135	4-25-85	
Maritime Administration								
Operations and training.................	R85-193		888	2-6-85		888	4-25-85	
Office of the Inspector General								
Salaries and expenses...................	R85-194		300	2-6-85		300	4-25-85	
Office of the Secretary								
Salaries and expenses...................	R85-195		435	2-6-85		435	4-25-85	
Transportation planning, research and development............................	R85-196		65	2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Salaries and expenses...................	R85-197		9[illegible]9	2-6-85		[illegible]	4-25-85	
Office of Revenue Sharing								
Salaries and expenses...................	R85-198		90	2-6-85		90	4-25-85	
Federal Law Enforcement Training Center								
Salaries and expenses...................	R85-199		75	2-6-85		75	4-25-85	
Financial Management Service								
Salaries and expenses...................	R85-200		972	2-6-85		972	4-25-85	
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses...................	R85-201		397	2-6-85		397	4-25-85	
United States Customs Service								
Salaries and expenses...................	R85-202		1,223	2-6-85		1,223	4-25-85	
Bureau of the Mint								
Salaries and expenses...................	R85-203		87	2-6-85		87	4-25-85	
Bureau of the Public Debt								
Administering the public debt...........	R85-204		52	2-6-85		52	4-25-85	
Internal Revenue Service								
Salaries and expenses...................	R85-205		198	2-6-85		198	4-25-85	
Processing tax returns and executive direction.............................	R85-206		781	2-6-85		781	4-25-85	
Examinations and appeals................	R85-207		1,588	2-6-85		1,588	4-25-85	
Investigation, collection, and taxpayer service................................	R85-208		1,633	2-6-85		1,633	4-25-85	
United States Secret Service								
Salaries and expenses...................	R85-209		1,465	2-6-85		1,465	4-25-85	
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses.....................	R85-210		1,863	2-6-85		1,863	4-26-85	
Research and development..................	R85-211		4,125	2-6-85		4,125	4-26-85	
Abatement, control, and compliance........	R85-212		7,413	2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund..................	R85-213		3,204	2-6-85		3,204	4-25-85	
Personal Property Activities								
Operating expenses......................	R85-214		300	2-6-85		300	4-25-85	
General supply fund.....................	R85-215		30,848	2-6-85		30,848	4-25-85	
Office of Information Resources Management								
Operating expenses......................	R85-216		45	2-6-85		45	4-25-85	
Consumer information center fund........	R85-217		63	2-6-85		63	4-25-85	
Federal telecommunications fund.........	R85-218		415	2-6-85		415	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Automatic data processing fund..........	R85-219		145	2-6-85		145	4-25-85	
Federal Property Resources Activities Operating expenses......................	R85-220		207	2-6-85		207	4-25-85	
Expenses, disposal of surplus real and related personal property............	R85-221		1,832	2-6-85		1,832	4-25-85	
General Activities General management and administration, salaries and expenses.................	R85-222		403	2-6-85		403	4-25-85	
Office of the Inspector General.........	R85-223		35	2-6-85		35	4-25-85	
Allowances and staff for former Presidents............................	R85-224		19	2-6-85		19	4-25-85	
Working capital fund....................	R85-225		8	2-6-85		8	4-25-85	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management...........	R85-226		4,000	2-6-85		4,000	4-25-85	
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....................	R85-227		1,161	2-6-85		1,161	4-25-85	
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....................	R85-228		3,781	2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care..............................	R85-229		10,261	2-6-85		10,261	4-25-85	
Medical and prosthetic research...........	R85-230		323	2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses......................	R85-231		2,109	2-6-85		2,109	4-25-85	
General operating expenses................	R85-232		4,334	2-6-85		4,334	4-25-85	
Construction, minor projects.............	R85-233		377	2-6-85		377	4-25-85	
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses......................	R85-234		1,139	2-6-85		1,139	4-25-85	
Federal Emergency Management Agency Salaries and expenses..................	R85-235		786	2-6-85		786	4-25-85	
Emergency management planning and assistance............................	R85-236		1,287	2-6-85		1,287	4-25-85	
National Archives and Records Administration Operating expenses......................	R85-237		166	2-6-85		166	4-25-85	
National Labor Relations Board Salaries and expenses..................	R85-238		1,070	2-6-85		1,070	4-25-85	
National Science Foundation Research and related activities.........	R85-239		2,002	2-6-85		2,002	4-25-85	
Nuclear Regulatory Commission Salaries and expenses..................	R85-240		4,329	2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.........	R85-241		1,538	2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses..................	R85-242		433	2-6-85		433	4-25-85	
Subtotal, rescissions.................			1,805,913			1,805,913 /1		

/1 Rescission proposals transmitted with the FY 1986 Budget were released on April 25, 1985, the day following expiration of the 45 day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit..............	D85-24	4,939,500		11-29-84	4,356,000				583,500
Economic support fund......................	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,511,400				668,333
Military assistance........................	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	695,145				106,125
International military education and training..................................	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations....................	D85-38	7,000		1-4-85	7,000				0
African Development Foundation									
African Development Foundation.............	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.......................	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal...................	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Soil Conservation Service									
Watershed and flood prevention operations..................................	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses......................	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services........	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	827,090				379,240
Family Housing									
Family housing, all services...............	D85-26	230,790		11-29-84	73,870				156,920
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation......................	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	150			135	1,177
DEPARTMENT OF ENERGY									
Energy Programs									
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	7,042				41,355
Fossil energy construction.................	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation........................	D85-30	3,398		11-29-84					
	D85-30A		2,374	3-22-85					5,772
Strategic petroleum reserve................	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738
SPR petroleum account......................	D85-42	827,028		2-6-85					827,028

Attachment 8 - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
Energy security reserve and alternative production	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					30,300
Departmental Administration									
Departmental administration	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration									
Program management	D85-66	4,271		3-22-85					4,271
Social Security Administration									
Limitation on administrative expenses (construction)	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems)	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					49
National Park Service									
Construction (trust fund)	D85-45	38,172		2-6-85	3,500				34,672
Land Acquisition	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs									
Construction	D85-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses	D85-46	3,890		2-6-85					3,890
Legal Activities									
Support of United States prisoners	D85-47	5,319		2-6-85					5,319
Federal Prison System									
Buildings and facilities	D85-19	44,534		10-31-84					44,534
Office of Justice Programs									
Justice assistance	D85-60	13,026		3-1-85					13,026
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					
	D85-34A			3-1-85					3,767
	D85-62	37,000		3-1-85					37,000
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85					119

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres-sionally Required Releases	Congres-sional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation.......	D85-64	228		3-1-85					228
Bureau of Labor Statistics									
Salaries and expenses......................	D85-35	5,000		11-29-[illegible]	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund................	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	24,905				8,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses...	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance.....................	D85-49	413		2-6-85					413
Northeast corridor improvement program.....	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds...........................	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration									
Research, training and human resources.....	R85-52	25,206		2-6-85					25,206
Federal Aviation Administration									
Construction, metropolitan Washington airports.................................	D85-53	910		2-6-85					[illegible]
Facilities and equipment (airport and airway trust)............................	D85-11	537,205		10-1-[illegible]					
	D85-11A		652,957	1-4-[illegible]					
	D85-11B		93,731	[illegible]-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training....................	D85-54	8,500		[illegible]					8,500
Office of the Secretary									
Salaries and expenses......................	D85-55	800		[illegible]-6-85					[illegible]
Payments to air carriers...................	D85-69	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund................................	D85-12	55,400		10-1-84	32,458			31,395	54,337
	D85-13	19,900		10-1-84	10,802			33	9,131
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses.........................	D85-21	4,408		10-1-84	4,408				0
National Archives and Records Service									
Operating expenses..........................	D85-36	4,700		11-29-[illegible]					4,700
National Science Foundation									
Science and engineering education activities................................	D85-56	31,450		[illegible]-6-85					31,450
Panama Canal Commission									
Operating expenses..........................	D85-37	6,346		11-29-84	6,086				260
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund......	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration..............................	D85-15	108		10-1-84					
	D85-15A		7	[illegible]-6-85					115
Limitation on administration................	D85-57	3,098		[illegible]-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund.............	D85-58	502		[illegible]-6-85					[illegible]

Attachment B - Status of Deferrals - Fiscal Year 1985

As of May 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-85
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					[illegible]
U.S. Institute of Peace									
U.S. Institute of Peace	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS		7,977,489	6,869,133		9,795,486	0		199,563	5,250,699

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.

[FR Doc. 85-11901 Filed 5-16-85; 8:45 am]

BILLING CODE 3110-01-C

federal register

Friday
May 17, 1985

Part V

Department of Energy

Western Area Power Administration

10 CFR Part 904

Charges for the Sale of Power From the Boulder Canyon Project; Proposed Rule

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposed rulemaking.

SUMMARY: In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Hoover Power Plant Act), the Western Area Power Administration (Western) has developed these proposed General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These proposed General Regulations shall supersede the "General Regulations for Lease of Power" dated April 25, 1930, and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), which will be terminated on May 31, 1987. These proposed General Regulations shall serve as the basis for computation of all charges for the sale of power from and after June 1, 1987, from the Boulder Canyon Project. The Boulder Canyon Project is under the marketing jurisdiction of Western's Boulder City Area Office.

Interested parties are invited to submit comments concerning these proposed General Regulations to Western. The final General Regulations will be published by the Secretary of Energy, acting by and through the Administrator of Western, upon completion of the comment period. Western will review and consider each comment prior to publishing the final General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project in the **Federal Register.** Also to be included in that **Federal Register** will be responses to all major comments, criticisms, and alternatives offered during the comment period.

DATES: Written comments concerning the proposed General Regulations should be submitted on or before July 15, 1985. A public information forum on this subject will be held on June 4, 1985, beginning at 9:30 a.m. An opportunity will be given all interested to present written or oral statements at a public comment forum to be held on July 1, 1985, beginning at 9:30 a.m.

ADDRESSES: Both the public information forum and the public comment forum will be held at the Plaza Room, Tropicana Hotel, Las Vegas, Nevada, on the dates cited above. Written comments concerning the General Regulations should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293-8800.

FOR FURTHER INFORMATION CONTACT:

Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293-8800

Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, Colorado 80401, (303) 231-1531.

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 5 of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy upon charges that will provide sufficient revenue that will cover all expenses of operation and maintenance and repayment of all amounts advanced from the Treasury with interest for the Boulder Canyon Project.

The Project Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority the Secretary of the Interior approved and promulgated the 1941 General Regulations. Those General Regulations provide for the basis of computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project to Western from the Bureau of Reclamation (Reclamation). The operation, maintenance, and replacement responsibilities of the Project remained with Reclamation. The power marketing function includes the responsibilities for promulgating charges for the sale of power. The marketing of power from the Boulder Canyon Project is the responsibility of Western's Boulder City Area Office. The marketing of power from the Boulder Canyon Project after June 1, 1987, shall be in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the **Federal Register** (49 FR 50582) on December 28, 1984. That document conforms the Boulder City Area Office marketing criteria to the Hoover Power Plant Act.

The Hoover Power Plant Act amends and is supplemental to the Project Act and the Adjustment Act. The Hoover Power Plant also sets forth requirements and guidelines for the marketing and allocation of power from the Boulder Canyon Project for the period beginning June 1, 1987.

These proposed General Regulations, promulgated pursuant to section 8 of the Adjustment Act and article 27 of the 1941 General Regulations, are necessary and appropriate for the administration of the Project in accordance with the Project Act and the Adjustment Act, as amended.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a Regulatory Impact Analysis must be made prior to the publication of a major rule. The proposed general regulations are of a technical nature and are considered to be a non-major rule within the meaning of the Executive Order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of these proposed regulations by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, the Secretary of Energy, acting by and through the Administrator of Western, hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule controlling Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rule for the interested public to participate in the development of the general regulations. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of the General Regulations supply information about themselves to the Government. It follows that the proposed general regulations are exempt from the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General-Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE EA-0204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Part of the original Consolidated Marketing Plan was a reference to the rate formula and application criteria that are now developed and proposed in this notice. At the time of the Criteria EA, the formula and its application were determined to not, either by themselves or cumulatively, have a significant impact. Now that these general regulations are better defined, Western will make an environmental determination of their possible impacts prior to their final implementation.

List of Subjects in 10 CFR Part 904

Electric power rates.

Issued at Golden, Colorado, May 3, 1985.

William H. Clagett,

Administrator.

It is proposed to amend Title 10 of the Code of Federal Regulations by adding a new Part 904 to read as follows:

PART 904—GENERAL REGULATIONS FOR THE CHARGES FOR THE SALE OF POWER FROM THE BOULDER CANYON PROJECT

Authority: Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); and the Hoover Power Plant Act of 1984 (98 Stat. 1333).

§ 904.1 Authorities.

The Secretary of Energy, acting by and through the Administrator, is authorized and directed to promulgate charges for the power generated at the boulder Canyon Project powerplant, and also to promulgate general regulations as the Secretary finds necessary and appropriate in accordance with the power marketing authorities in Federal Reclamation laws (43 U.S.C. 372 *et seq.*, and all acts amendatory thereof and supplementary thereto).

§ 904.2 Purpose.

In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) as amended and supplemented (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) as amended and supplemented (Adjustment Act); the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Hoover Power Plant Act; the Western Area Power Administration (Western—promulgates these General Regulations defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project). These General Regulations shall supersede the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations) approved and promulgated on May 20, 1984, which will be terminated on May 31, 1987, and the "General Regulations for Lease of Power" dated April 25, 1930. These General Regulations shall serve as the basis for computation of all charges for the sale of power from and after June 1, 1987, from the Boulder Canyon Project.

§ 904.3 Scope.

These General Regulations are effective June 1, 1987, and shall apply to the charges applicable to any sale of power from the Boulder Canyon Project after May 31, 1987. "The General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" dated May 20, 1941 and the "General Regulations for Lease of Power" dated April 25, 1930, are heregy repealed as of the effective date of these regulations.

§ 904.4 Definitions.

The following terms wherever used therein shall have the following meanings:

(a) "Additions and betterments" shall mean such additions and betterments constructed or acquired which enhance or improve the Project and do more than restore the Project to a former good operating condition.

(b) "General Arizona Project" shall mean works as described in section 301(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*).

(c) "Contingent Capacity" shall mean the capacity which is normally available from the Project, subject to water availability for generation or forced or planned outages that affect powerplant capability.

(d) "Contract" shall mean any contract for the sale of Boulder Canyon Project power after May 31, 1987, between the United States and any contractor.

(e) "Contractor" shall mean any entity which has a fully executed contract for the purchase of power.

(f) "Firm Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(A) and section 105(a)(1)(B) of the Hoover Power Plant Act.

(g) "Overruns" shall mean the use of capacity or energy in amounts greater than the United States contract delivery obligation in effect for each type of service provided for in the Contract except with the approval of the United States.

(h) "Project" or "Boulder Canyon Project" shall mean all works authorized by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act, to be constructed and owned by the United States, and any future authorized additions, but exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal.

(i) "Renewal Contractor" shall mean a contractor offered power in accordance with section 105(a)(1)(A) of the Hoover Power Plant Act.

(j) "Replacements" shall mean such replacements as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the word "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(k) "Uprating Program" shall mean the replacements and betterments made to increase the capacity of existing generating equipment and appurtenances at the Hoover Power Plant as authorized by the Hoover Power Plant Act.

§ 904.5 Power generation and marketing responsibilities.

(a) Power generation and associated operation, maintenance and replacement shall be the responsibility of the United States Department of the Interior, Bureau of Reclamation (Reclamation).

(b) Power generated for sale from the Project will be marketed by Western under terms of the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Boulder City Area Marketing Criteria) published in the **Federal Register** on December 28, 1984 (49 FR 50582). Western shall allocate the power from the Project in accordance with section 105(a)(1) of the Hoover Power Plant Act.

(c) Procedures for the scheduling and delivery of power shall be provided for in the Contract between the Contractor and Western.

§ 904.6 Revenue requirements.

(a) Costs and financial obligations associated with the Project shall be identified annually by Reclamation and Western for compliance with § 904.12 of these regulations.

(b) Western shall collect all revenues from the Project in accordance with statutes and regulations and deposit such revenue into the Colorado River Dam Fund. Reclamation shall use such deposited revenue to repay all costs associated with the Project. Revenue from the Project shall be derived from a charge for power that shall yield sufficient revenues, together with other revenues from the Project, to recover all costs as follows:

(1) Annual operation and maintenance;

(2) Annual interest on unpaid investments in accordance with appropriate statutory authorities;

(3) Investment costs within a period not to exceed 50 years;

(4) Replacements;

(5) Additions and betterments; and

(6) Any other financial obligations of the Project.

(c) The charge shall specifically provide revenue for statutory requirements relating to the Boulder Canyon Project as follows:

(1) The payment of $300,000 annually for each of the States of Arizona and Nevada provided for in section 2(c) of the Adjustment Act and section 403(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*) (Basin Act), as amended or supplemented.

(2) Repayment of the cost, with interest, of the visitor facilities pursuant to section 106 of the Hoover Power Plant Act.

(3) Repayment of funds, with interest, contributed to the Secretary of the Interior for the Uprating Program and associated work.

(4) Repayment to the Treasury, of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 2(b) of the Project Act as provided by section 7 of the Adjustment Act. Such deferred advance payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over a 50-year period beginning June 1, 1987.

(5) Repayment to the Treasury, of the advance to the Colorado River Dam Fund for the Project made prior to May 31, 1987, that was deferred because of a deficiency in firm energy generation due to a shortage of available water, as provided for in article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958, Public Law 85-900 (72 Stat. 1726) (Boulder City Act). Such deferred principal payment shall be repaid with interest at a 3 percent interest rate, compounded annually, over the power contract period beginning June 1, 1987, and ending September 30, 2017. The amount of such deferred principal payment to be repaid shall be the amount shown on the books of accounts of Reclamation as of May 31, 1987.

(d) The charge will also provide for surplus revenue for contribution to the Lower Colorado River Basin Development Fund pursuant to section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act to provide revenue for the purposes of sections 403(f) and 403(g) of the Basin Act.

(e) All annual costs will be calculated based on a Federal fiscal year. To accommodate the transition from the pre-1987 operating year of June 1 to May 31, there will be a 4-month transition period beginning June 1, 1987, and ending September 30, 1987.

§ 904.7 Basis of charge for contingent capacity and firm energy.

The charge for contingent capacity and firm energy from the Boulder Canyon Project shall be composed of two separate charges; a charge to provide revenue for the basic revenue requirements (Base Charge) and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution (Lower Basin Development Fund Contribution Charge).

§ 904.8 Base charge.

A base rate formula shall be developed by the Administrator of Western and promulgated in accordance with the Administrative Procedure Act and the Department of Energy regulations. The Administrator will provide contractors and all interested parties an opportunity to comment on any proposed base rate formula and the capacity and energy components of the rate design during a public process.

§ 904.9 Lower basin development fund contribution charge.

The capacity and energy components of the Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalency of 4½ mills and 2½ mills per kilowatthour required to be included in the rates charged to purchasers pursuant to section 403(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, shall be equitably apportioned between capacity and energy. The revenue requirement for each of the States of Arizona, California and Nevada will be established in accordance with section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act. Arizona contractors will be obligated to pay an equivalent of 4½ mills per kilowatthour billed and California and Nevada contractors will be obligated to pay an equivalent of 2½ mills per kilowatthour billed until the

end of the repayment period of the Central Arizona Project. After the end of the repayment period of the Central Arizona Project, all contractors will be obligated to pay an equivalent of 2½ mills per kilowatthour billed so long as power revenue is being collected from operation of the Boulder Canyon Project.

§ 904.10 Application of base charge.

The capacity component shall be an amount per kilowatt applied to the annual contract rate of delivery to the contractor. The energy component shall be a mills per kilowatthour amount applied to each kilowatthour either scheduled or metered as provided for by contract. Application of the Base Charge to capacity and firm energy overruns will be provided for by contract. The capacity component and the energy component of the Base Charge shall be applied on a monthly basis for each contractor.

§ 904.11 Application of lower basin development fund contribution charge.

The capacity component shall be an amount per kilowatt applied to the annual contract rate of delivery to the contractor. The energy component shall be a mills per kilowatthour amount applied to each kilowatthour either scheduled or metered as provided for by contract. Application of the Lower Basin Development Fund Contribution Charge to capacity and firm energy overruns will be provided for by contract. The capacity component and the energy component of the appropriate state Lower Basin Development Fund Contribution Charge shall be applied on a monthly basis for each contractor within the State.

§ 904.12 Adjustment of base charge.

The capacity and energy components of the Base Charge shall be reviewed annually. The Base Charge components shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenue to effect payment of costs and all other financial obligations associated with the Project.

§ 904.13 Adjustment of lower basis Development Fund Contribution Charge.

The capacity and energy component of the Lower Basin Development Fund Contribution Charge shall be reviewed annually. The Lower Basin Development Fund Contribution Charge components shall be adjusted either upward or downward, when necessary and administratively feasible, to assure compliance with section 403(c)(2) of the Basin Act as amended by section 102(c) of the Hoover Power Plant Act.

§ 904.14 Charge for excess energy.

The charge for energy in excess of the energy obligated under sections 105(a)(1)(A) and 105(a)(1)(B) of the Hoover Power Plant Act shall be developed by Western in accordance with applicable procedures for short-term power sales. The charge for excess energy shall include the applicable Lower Basin Development Fund Contribution Charge developed under section 904.9 of these regulations.

§ 904.15 Payments to contractors.

(a) Those amounts advanced by non-Federal purchasers shall be returned to those purchasers advancing funds throughout the power contract period through credits on monthly billings which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the Uprating Program and associated work. Monthly credits will be developed pursuant to the terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a contractor shall be repaid to such contractor through credits on billings, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.16 Payments to states and transfers from/Lower Colorado River Dam Fund.

(a) All receipts from the Project shall be paid into the Colorado River Dam Fund and shall be available for payment of all costs associated with the Project.

(b) Annual payments as provided for in section 2(c) of the Adjustment Act and section 403(c)(2) of the Basin Act for the States of Arizona and Nevada shall be made from revenues received in the Colorado River Dam Fund as long as revenues accure from the operation of the Project.

(c) Transfer will be made to the Lower Colorado River Basin Development Fund established by Title IV of the Basin Act of surplus revenues accrued as a result of application of the provisions of section 403(c)(2) of the Basin Act, as amended by section 102(c) of the Hoover Power Plant Act, from and after June 1, 1987.

§ 904.17 Repayment periods.

(a) *Investment prior to June 1, 1937.* The repayment period for advances to the Colorado River Dam Fund for the Project made prior to June 1, 1937, to be paid within the 50-year period ending May 31, 1987, that were deferred pursuant to section 7 of the Adjustment Act, article 14(a) of the 1941 General Regulations, and section 8 of the Boulder City Act shall be as follows:

(1) The repayment period for the payment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 2(b) of the Project Act and deferred by section 7 of the Adjustment Act shall be the 50-year period beginning June 1, 1987.

(2) The repayment period for the payment to the Treasury of the advances to the Colorado River Dam Fund for the Project payable prior to May 31, 1987, and deferred pursuant to article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act shall be repaid within the power contract period provided in the Hoover Power Plant Act beginning June 1, 1987 and ending September 30, 2017. Such repayment period shall be based on a 50-year repayment period beginning June 1, 1937, adjusted for the period the payment was deferred.

(b) *Investment on or after June 1, 1937 and prior to June 1, 1987.* (1) The repayment period for advances to the Colorado River Dam Fund for the Project made on or after June 1, 1937, and prior to June 1, 1987, shall be the 50-year period beginning June 1, immediately following the year of operation in which the funds were advanced.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for advances made to the Colorado River Dam Fund from funds advanced to the Secretary of the Interior by non-Federal entities for the Uprating Program and associated work shall be within the period commencing with the first day of the month following completion of each segment of the Uprating Program and ending September 30, 2017.

(c) *Investment on or after June 1, 1987.* (1) The repayment period for investments made on or after June 1, 1987, shall be a 50-year period beginning with the first day of the fiscal year following the fiscal year the investment goes into service.

(2) Except as provided in the Hoover Power Plant Act, the repayment period for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act shall be the 50-year period beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

§ 904.18 Disputes.

(a) Any disputes or disagreements as to interpretation or performance of the provisions of these regulations under the responsibility of the Secretary of Energy or the Secretary of the Interior, as the

case be, if authorized to act for the United States, shall first be presented to and decided by the appropriate Secretary or the Secretary's delegated representative, hereinafter called the Appropriate Federal Representative. The decision of the Appropriate Federal Representative shall be final and binding unless a written request by the Appropriate Federal Representative within 30 days from the date of receipt of the notice of decision, or the disputing party files a claim in a proper Federal District Court within 6 months of receipt of the notice of decision. The Appropriate Federal Representative, shall have 90 days from the date of receipt of the request for arbitration to either concur in or deny the request for arbitration in writing. Failure by the Appropriate Federal Representative to take any action within the 90 days shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the disputing party's remedy lies with the appropriate Federal District Court.

(b) When a timely request for arbitration is received and the Appropriate Federal Representative concurs in writing with the request, the disputing party and the Appropriate Federal Representative shall each name one arbitrator to the panel of arbitrators within 30 days who will decide the dispute. In the event there are more than one disputing party in addition to the Appropriate Federal Representative, the disputing parties shall collectively name one arbitrator to the panel of arbitrators. In addition, the Appropriate Federal Representative shall make a request in writing to the appropriate Federal District Court that a third arbitrator be named to the panel of arbitrators by the Chief Judge of the Federal District Court which have exercised jurisdiction over the dispute but for the mutually agreed to arbitration process. This arbitrator shall act as chairperson of the panel of arbitrators. The panel of arbitrators shall render a final decision in this dispute within 60 days of the date of the naming of the arbitrator by the Chief Judge of the appropriate Federal District Court. A decision by any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute. Pending a final decision by the panel of arbitrators, the Appropriate Federal Representative's prior decision shall be binding upon the parties.

§ 904.19 Future regulations.

Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administation of the Project in accordance with applicable law.

[FR Doc. 85-12009 Filed 5-16-85; 8:45 am]
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federal register

Friday
May 17, 1985

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 516; Lemon Reg. 515, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 325,000 cartons during the period May 19–25, 1985, and increases the quantity of lemons that may be shipped to 350,000 cartons during the period May 12–18, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.816) becomes effective May 19, 1985, and the amendment (§ 910.815) is effective for the period May 12–18, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 14, 1985, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is generally good on most sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. New § 910.816 is added to read as follows:

§ 910.816 Lemon Regulation 516.

The quantity of lemons grown in California and Arizona which may be handled during the period May 19, 1985, through May 25, 1985, is established at 325,000 cartons.

3. Section 910.815 Lemon Regulation 515 is revised to read as follows:

§ 910.815 Lemon Regulation 515.

The quantity of lemons grown in California and Arizona which may be handled during the period May 12, 1985, through May 18, 1985, is established at 350,000 cartons.

Dated: May 16, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–12157 Filed 5–16–85; 11:25 am]

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LIST OF PUBLIC LAWS

Last List May 3, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S.J. Res. 64/Pub. L. 99–31

To designate the week beginning May 5, 1985, as "National Correctional Officers Week". (May 14, 1985; 99 Stat. 60) Price: $1.00

S.J. Res. 83/Pub. L. 99–32

Designating the week beginning on May 5, 1985, as "National Asthma and Allergy Awareness Week". (May 14, 1985; 99 Stat. 61) Price: $1.00

H.J. Res. 258/Pub. L. 99–33

To designate May 6, 1985, as "Dr. Jonas E. Salk Day". (May 14, 1985; 99 Stat. 63) Price: $1.00

H.J. Res. 195/Pub. L. 99–34

Designating May 1985, as "Older Americans Month". (May 14, 1985; 99 Stat. 65) Price: $1.00

S.J. Res. 128/Pub. L. 99–35

To designate May 7, 1985, as "Vietnam Veterans Recognition Day". (May 14, 1985; 99 Stat. 66) Price: $1.00